

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

**CASE NO IT-05-88-T**

**IN THE TRIAL CHAMBER**

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

Registrar: Mr John Hocking

Date Filed: 26<sup>th</sup> of July 2010

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

*PUBLIC*

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

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**The Office of the Prosecutor**

Peter McCloskey

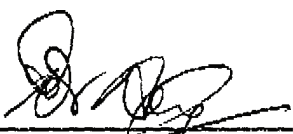
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Pursuant to the Trial Chamber's *Order on Outstanding Documents Marked for Identification and on Public Redacted Versions of the Final Briefs* (3 June 2010), the Defence for Vinko Pandurevic hereby files a public redacted version of its *Final Trial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

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

Respectfully submitted on this 26<sup>th</sup> of July 2010



Peter Haynes

Lead Counsel for Vinko Pandurević

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**ANNEX A**  
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## Annex A

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## **PART 1 – INTRODUCTION**

### **1. Structure of the final brief**

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

### **2. Issues of Proof**

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

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

## **2.1. Preliminary matters on evidence**

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

### **2.1.1. Contemporaneous Documents**

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

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

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

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

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

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

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

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

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

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

<sup>6</sup> T.32975, 22 April 2009, Momir NIKOLIC.

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

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

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



### 2.1.2. Business Records

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

### 2.1.3. Intercepted Radio-communications

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

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

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

<sup>12</sup> T.522, 22 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey.

<sup>13</sup> T.31715, 18 February 2009, Vinko PANDUREVIC.

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

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

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

#### 2.1.4. The Evidence of Eileen Gilleece

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

<sup>16</sup> Rules of Procedure and Evidence, Rules 43 and 63

<sup>17</sup> T.31269-T.31270, 11 February 2009, Vinko PANDUREVIC

<sup>18</sup> T.31270-31271, 11 February 2009, Vinko PANDUREVIC

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

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

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

<sup>22</sup> T.31270-31271, 11 February 2009, Vinko PANDUREVIC

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

<sup>24</sup> T.31282-T.31283, 11 February 2009, Vinko PANDUREVIC.

<sup>25</sup> T.6755-T.6756, 1 February 2007, OTP Prosecution Eileen GILLEECE

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

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

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

### 2.1.5. Experts and Analysts

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

<sup>26</sup> T.31276-T.31291, 11 February 2009, Vinko PANDUREVIC.

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

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

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

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

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

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

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

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

➤ The expertise they possess is seldom sufficient

29. The qualifications of those admitted under Rule 94bis in this trial has, at least since the challenge to Mr Butler, been completely without question. It has covered a wide variety. A warrant officer<sup>37</sup> in the American Army has opined as to the socio-political causes of the Bosnian War,<sup>38</sup> the structure of the VRS at all levels<sup>39</sup> as well as the meaning to be attributed to documents written by others,<sup>40</sup> and the personal motivation involved in the taking of certain military action.<sup>41</sup> A Canadian colonel with little or no combat experience and no command experience has expressed his views as to how a chief of staff acting as commander would have behaved in a highly pressurized combat situation.<sup>42</sup> Additionally,

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

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

<sup>33</sup> T.20264-T.202271, 22 January 2008, Richard BUTLER

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

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

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

<sup>37</sup> P00681, CV of Richard Butler, dated 1 October 2007

<sup>38</sup> P00686, Butler Revised Narrative Report, Chap. 1

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

<sup>40</sup> T.19996-T.19999, 18 January 2008, Richard BUTLER

<sup>41</sup> T.19621-T.19622, 14 January 2008, Richard BUTLER

<sup>42</sup> 3D00409, Military Expert Report by Remi Landry, [REDACTED]

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

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

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

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

31. Perhaps understandably, because narrative experts and analysts are used to advance a party's case, there is a regular tendency for them to use only such material as fits with their case theory. This shortcoming has been frequently exposed during cross-examination. It has served to act as an indicator to the partiality of such witnesses. There have been, moreover, stark examples of the misuse of evidence by experts to fit a theory. When Richard Butler wrote his original Srebrenica Narrative Report, it was in anticipation of his giving evidence to the Trial Chamber in the Krstic case,<sup>46</sup> accordingly, it is unlikely he anticipated that he would be challenged as to his interpretation of the Zvornik Brigade Irregular Combat Report of 15<sup>th</sup> July (since Krstic agreed with it). Notwithstanding that, 2 months into the trial he signed off a report for admission under Rule 94bis in which he simply resolved the issue as to any ambiguity in that document by rewriting it to remove any.<sup>47</sup> His explanation that misquoting the document in not one but 3 crucial respects<sup>48</sup> amounts to a "technical error"<sup>49</sup> does not adequately describe what was serious misrepresentation of the evidence to the Trial Chamber in that case. In other aspects, his reports claim to offer support for propositions in footnotes where the source material was irrelevant to the proposition. His partiality, objectivity and analytical techniques require careful assessment. Sadly, his is not the only example. Defence expert Petar Vuga displayed a flexible approach to the question of who commanded the Military

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

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

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

<sup>46</sup> T.20698, 30 January 2008, Richard BUTLER

<sup>47</sup> P00685, Butler Narrative Report, p101

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

<sup>49</sup> T.20756-T.20759, 30 January 2008, Richard BUTLER

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

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

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

## 2.2. [REDACTED]

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

34. [REDACTED].

35. [REDACTED].

36. [REDACTED].

37. [REDACTED]<sup>66</sup>

38. [REDACTED]<sup>67</sup>

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<sup>50</sup> T.23361-T.23363, 7 July 2008, Petar VUGA

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

<sup>52</sup> [REDACTED]<sup>53</sup> [REDACTED]<sup>54</sup> [REDACTED]

<sup>53</sup> [REDACTED]<sup>54</sup> [REDACTED]

<sup>54</sup> [REDACTED]

<sup>55</sup> [REDACTED]

<sup>56</sup> [REDACTED]

<sup>57</sup> [REDACTED]

<sup>58</sup> [REDACTED]

<sup>59</sup> [REDACTED]

<sup>60</sup> [REDACTED]

<sup>61</sup> [REDACTED]

<sup>62</sup> [REDACTED]

<sup>63</sup> [REDACTED]

<sup>64</sup> [REDACTED]

<sup>65</sup> [REDACTED]

<sup>66</sup> [REDACTED]<sup>67</sup> [REDACTED]

39. Of course, Pandurevic vehemently denies that any such event took place<sup>68</sup>. No other witness ever saw him in the Command of the Zvornik brigade during his involvement in the Srebrenica and Zepa operations<sup>69</sup>. There is no record of his being there on that date in any of the brigade's contemporaneous documents<sup>70</sup>. The trial Chamber has heard from witnesses (e.g. Dragutinovic and Trivic), and seen exhibits<sup>71</sup> showing he was elsewhere on that morning<sup>72</sup>.
40. [REDACTED]<sup>73</sup>, [REDACTED].<sup>74</sup>
41. [REDACTED].
42. [REDACTED].
43. [REDACTED].
44. [REDACTED],<sup>75 76 77</sup>.
45. [REDACTED]<sup>78</sup>.
46. Pandurevic of course denies any such incident<sup>79</sup>. He was not challenged on this point.
47. [REDACTED]
48. It is the Defence position, at least insofar as it relates to Vinko Pandurevic that, where disputed, unsupported and first recalled in or after June 2003, his evidence should not be relied upon.

### 2.2.1. [REDACTED]

49. [REDACTED].
50. [REDACTED].<sup>80</sup>
51. [REDACTED].

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<sup>67</sup> [REDACTED]

<sup>68</sup> T. 30896-T.30897, 30 January 2009, Vinko PANDUREVIC

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

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

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

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

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

<sup>74</sup> See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN page 114

<sup>75</sup> [REDACTED]

<sup>76</sup> [REDACTED]

<sup>77</sup> [REDACTED]

<sup>78</sup> [REDACTED]

<sup>79</sup> [REDACTED]

<sup>80</sup> [REDACTED]

### 2.2.2. [REDACTED]

[REDACTED]

52. [REDACTED]

- [REDACTED].<sup>81</sup>
- [REDACTED].<sup>82</sup>
- [REDACTED].<sup>83</sup>
- [REDACTED].<sup>84</sup>
- [REDACTED].<sup>85</sup>
- [REDACTED].<sup>86</sup>

53. [REDACTED]:

- [REDACTED]...<sup>87</sup>
- [REDACTED].<sup>88</sup>
- [REDACTED]<sup>89 90</sup>
- [REDACTED]<sup>91</sup>

[REDACTED]

54. [REDACTED]<sup>92 93</sup>.

55. [REDACTED].

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<sup>81</sup> [REDACTED]

<sup>82</sup> [REDACTED]

<sup>83</sup> [REDACTED]

<sup>84</sup> [REDACTED]

<sup>85</sup> [REDACTED]

<sup>86</sup> [REDACTED]

<sup>87</sup> [REDACTED]

<sup>88</sup> [REDACTED]

<sup>89</sup> [REDACTED]

<sup>90</sup> [REDACTED]

<sup>91</sup> [REDACTED]

<sup>92</sup> [REDACTED]

<sup>93</sup> [REDACTED]



[REDACTED]

56. [REDACTED]<sup>94</sup>

- [REDACTED].<sup>95</sup>
- [REDACTED].<sup>96</sup>
- [REDACTED]
- [REDACTED]<sup>97</sup>
- [REDACTED]<sup>98</sup>

[REDACTED]

57. [REDACTED].<sup>99</sup>

**2.2.3. [REDACTED]**

58. [REDACTED]:

59. [REDACTED].

60. [REDACTED].

61. [REDACTED].<sup>100 101</sup>

62. [REDACTED].

63. [REDACTED].

64. [REDACTED].

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<sup>94</sup> [REDACTED].

<sup>95</sup> [REDACTED]

<sup>96</sup> [REDACTED]

<sup>97</sup> [REDACTED]

<sup>98</sup> [REDACTED]

<sup>99</sup> [REDACTED]

<sup>100</sup> [REDACTED]

<sup>101</sup> [REDACTED]

### 2.3. Pandurevic's Testimony in his own Defence

65. Much of the instant case amounts to what has been referred to during the course of the trial as “construct”<sup>102</sup>, namely assessment and interpretation of various sources of evidence either by an expert witness, an analyst of some description, an investigator, or even in some instances, counsel. There has in truth been a dearth of direct oral evidence as to many of the crucial averments in the indictment.
66. The Defence does not deny that there is scope for inference, however, inference is a necessary consequence or inevitable conclusion of direct evidence.<sup>103</sup> It is neither theory nor speculation, and it cannot run counter to the effect of the direct evidence itself from which it derives.<sup>104</sup>
67. Pandurevic, uniquely, has given evidence in his own defence. His evidence is direct evidence of events on the ground at the critical times. There is thus, direct evidence in his case on most if not all issues for determination. However, in giving that evidence, he brought upon himself no burden of proving anything. He merely put before the Chamber evidence to cast doubt upon the Prosecution case.<sup>105</sup> Where that evidence went unchallenged, the issue, it is submitted, must be resolved in his favour<sup>106</sup>.

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<sup>102</sup> T. 31773, 19 February 2009, Vinko PANDUREVIC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2.4. The Boksanica and Zivanovic Video Tapes**

### **2.4.1. The Boksanica Footage**

77. During the course of his evidence, Pandurevic told the Trial Chamber that he discussed the murders of prisoners in the Zvornik area with his Corps Commander, General Krstic when he went to see him in the Zepa area on or about 27<sup>th</sup> July 1995.<sup>109</sup> He said that that was the first opportunity he had to discuss matters with him face-to-face after he learnt of these events.<sup>110</sup> After the conclusion of his evidence, the Prosecution sought and was granted leave to adduce the so-called Boksanica video in a second reopening of its case.<sup>111</sup>
78. The Boksanica video apparently shows Pandurevic at the UN checkpoint at Boksanica outside Zepa, in the company of Krstic, Mladic, Gvero and others. The Prosecution argue that the date of the video is 26<sup>th</sup> July and that may be correct, although as will be discussed later in this section, it doesn't seem to square easily with all the evidence in the case.
79. The impact of Pandurevic's presence in or around Zepa during the evacuation process upon his culpability for the crimes charged in the indictment will be dealt with in the appropriate sections of this brief. For present purposes, however, it is the Defence submission that the video is largely corroborative of his account of events and has little or no effect upon the credibility of the wider account of events given by him during his testimony.
80. As a starting point in considering Pandurevic's evidence as to the date of his meeting with Krstic it is worth considering that in answer to the very first question he was asked about going to Zepa, he responded that he believed he went there around 27<sup>th</sup> July.<sup>112</sup> He was then shown 7D00091, the vehicle work log for the Nissan Patrol car in which he travelled. That document suggests that the car travelled to Rogatica and back on 26<sup>th</sup> July with 3 passengers, covering 193km, whilst on 27<sup>th</sup> July it travelled 27km making the much shorter journey to Vlasenica from Zvornik.

<sup>109</sup> T.31172, 10 February 2009, Vinko PANDUREVIC

<sup>110</sup> T.31178-T.31179, 10 February 2009, Vinko PANDUREVIC

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

<sup>112</sup> T.31172, 10 February 2009, Vinko PANDUREVIC

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

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<sup>113</sup> T.31175, 10 February 2009, Vinko PANDUREVIC

<sup>114</sup> 7D00595, intercept 20.03 on 25<sup>th</sup> July, 7D00604, intercept 20.06, 25<sup>th</sup> July

<sup>115</sup> See P01353, intercept 08.20, 26<sup>th</sup> July 1995

<sup>116</sup> See P00377, Zvornik Brigade Duty Operation Officer Notebook , ERN 5803

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

85. There is an ambiguous entry in the Duty officer's logbook at 9.45 on 26<sup>th</sup> July.<sup>117</sup> It records an order from Krstic to Pandurevic that he is to wait at the barracks for Cerovic to arrive. It is not at all clear whether this entry was made at 09.45 on the morning of 27<sup>th</sup> or at 21.45 on the evening of 26<sup>th</sup>. Generally entries are made using a 24 hour clock, which would suggest the former, but the 27<sup>th</sup> July does not apparently begin until the following page and this entry is written in Cyrillic script and the same hand as everything that precedes it whereas the entries for 27<sup>th</sup> are written in latin script in different handwriting, suggesting the latter.
86. 7D609 is an intercept allegedly of a conversation between Pandurevic and the Drina Corps duty officer at 23.20 on 26<sup>th</sup> July. Pandurevic is instructed to attend at what must be Podzjeple the following day at 08.00. There are a number of curiosities about this conversation. Firstly, it makes no sense for the Duty officer to tell Pandurevic something that the Corps commander knew him to have been told 6 hours before. Secondly, assuming that the entry in the Duty officer's logbook for 9.45 related to that evening, there would be little purpose in a message being given to Pandurevic which Cerovic could have fully clarified with him just prior to this.
87. When he gave evidence about this intercept, Pandurevic said that he remembered the conversation and the fact that it required him to report to Krstic the following day. Accordingly, and not unreasonably, his entire recollection of the date of his visit to Zepa is based upon the accuracy of the date of this intercept.<sup>118</sup>
88. Be that as it may, any review of the available contemporaneous documents, taking them to be reliable and accurate would lead one to the inevitable conclusion that Pandurevic, not only went to see Krstic on the 27<sup>th</sup> of July, but also that he could not have gone there on 26<sup>th</sup>. Moreover, even though the dialogue of the video would suggest that the footage was taken on 26<sup>th</sup> July<sup>119</sup>, there are certain incongruities about the film itself. Mladic arrived for that meeting by helicopter, whereas Smith had to travel by car. Of course the Boksanica video records his arrival by helicopter unaccompanied by an interpreter. She is there waiting for him, presumably having received orders to be there for a purpose. The footage of buses containing evacuees from Zepa does not necessarily indicate one date or another, as movement continued from 24<sup>th</sup> through 27<sup>th</sup> July.<sup>120</sup>
89. The Defence for Vinko Pandurevic does not seek to prove the date or dates of the film footage in the Boksanica video, merely to illustrate that even armed with it, Pandurevic could well have concluded that his visit to Krstic was on the 27<sup>th</sup> and not 26<sup>th</sup>. Accordingly, if indeed it can be found to be proved that the Boksanica footage shows Pandurevic with Krstic on 26<sup>th</sup>, then it cannot safely be concluded that this amounts to more than a mistake on the part of the accused in reconstructing events from the material available to him 14 years after the event.

<sup>117</sup> See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN 5804

<sup>118</sup> T.31177, 10 February 2009, Vinko PANDUREVIC

<sup>119</sup> Mladic asks what the date is and is told it is 26th

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

90. The Prosecution theory that Pandurevic paid 2 visits to the Zepa area on 26<sup>th</sup> and 27<sup>th</sup> July (again advanced in an interlocutory filing<sup>121</sup> but not in evidence or cross-examination) is simply without merit or sensible evidential support.<sup>122</sup> The vehicle work log for the Nissan Patrol which forms such a central part of the evidential picture upon which the Prosecution relies, records a journey of a mere 27 kilometers for 27<sup>th</sup> July. Moreover, the entry in the Duty Operations officer's logbook for 09.45 on 27<sup>th</sup> July<sup>123</sup> would seem to suggest that Pandurevic did not leave as ordered the previous evening to be at Krivace for 08.00 but was still waiting for Cerovic in Zvornik by almost 10 a.m. It would, moreover, make no sense for him to return to see Krstic a day after having seen him.
91. As to the contents of the video, Pandurevic testified that on the day he was with Krstic, the evacuation of the civilian population was underway but that he didn't have any specific information as to the manner in which this was being done.<sup>124</sup> Plainly, Pandurevic knew that an evacuation was taking place in Zepa from his conversation with Jevdjevic on the morning of 26<sup>th</sup><sup>125</sup> (if indeed the intercept is correctly timed and dated), and the practicalities of that required little or no imagination – it must necessarily have involved the use of vehicular transport, almost inevitably buses.
92. It is inconceivable that having just referred in his testimony to 7D00609, and acknowledged the detail of the conversation with Jevdjevic in which he discusses the progress of the evacuation, that he would seek effectively to disown the conversation in his evidence, and purport to know nothing about it. So it is safe to conclude that when he said he didn't know the manner in which this was being done, he meant a little more than what mode of transport was being used.
93. Boksanica of course is not Zepa, or rather Podzeplje or Godjenje. It is a checkpoint some way outside the town. His knowledge of what was going on at Boksanica is apparent from the video. Plainly an ungainly visitor, he is heard to have the following conversation with Krstic at one point

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

To which Krstic replies:

“In Zepa”<sup>126</sup>

At the time he was discussing the UkBat commander, Dudnjik

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

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

<sup>122</sup> T.1917, 3 July 2009, Sasa JOVANOVIĆ

<sup>123</sup> See P00377, Zvornik Brigade Duty Operation Officer Notebook, ERN 5804

<sup>124</sup> T.31180, 10 February 2009, Vinko PANDUREVIĆ

<sup>125</sup> 7D0604, Kanjuh -20.06-Cerovic-Gen. Krstic, 25-jul-1995

<sup>126</sup> T.1750-T.1751, 29 May 2009

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

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

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

#### **2.4.2. The Zivanovic Footage**

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

<sup>128</sup> P04537, Boksanica footage, 34.36

<sup>129</sup> P04537, Boksanica footage, 38.32

<sup>130</sup> P04537, Boksanica footage, 39.12

<sup>131</sup> T.32485-T.32486, 9 March 2009, Zvonko BAJAGIC



July 1995.<sup>132</sup> He didn't know what Krstic had said about the date of the meeting and had never met with his lawyers.<sup>133</sup>

100. He described that he had been to buy fish in Serbia on 10<sup>th</sup> July<sup>134</sup>, that he had been cooking both the fish for the fast meal and meat for St. Peter's day during the 11<sup>th</sup> when Acamovic had come to ask him to prepare some food for the Bratunac brigade headquarters that evening, where Generals Mladic, Krstic and about 10 others were expected. That was at about 17.00. It was then that he first heard of the fall of Srebrenica.<sup>135</sup> He said he took the fish to Bratunac in his car, and laid it out for dinner in a room other than that in which the meeting was being held. He saw and greeted Mladic. He also saw Krstic, Jevdjevic and Pandurevic.
101. He said that he was to host a luncheon the following day for 200 people at the hotel in Vlasenica. This was the principle event of St Peter's day rather than any function at his home.<sup>136</sup> He mentioned that General Zivanovic was a guest at the hotel luncheon.<sup>137</sup> The guests at the lunch remained at the hotel until midnight. Perhaps more importantly, he said that he was present there too.<sup>138</sup>
102. When it was suggested to him in cross-examination that it was the 12<sup>th</sup> July when he had taken the fish to Bratunac he responded :”How could it have been on 12th?On 12<sup>th</sup> was the day that you were supposed to eat meat.”
103. Milenko Jevdjevic gave evidence about the meeting and the meal. He said that the meeting was on 11<sup>th</sup> July which was the last day of the fast according to Orthodox Christian beliefs. At the end of the meeting he saw Bajagic enter a larger office with a huge fish on an oval platter.<sup>139</sup>
104. The Zivanovic footage lasts a little over 30 minutes. According to the evidence of Bajagic, therefore, it highlights events covering several hours in Vlasenica. Its apparent discovery in Belgrade at the home of Darko Mladic in December 2008 is profoundly curious. No connection between Bajagic and Mladic (senior or junior) has been established during the course of the trial, and the contents of the video have little or no interest for Mladic. Whilst the Trial chamber found that the video “speaks for itself”, that is, with respect, only partially true. It cannot be determined from the tape how many cameramen contributed to the final edited version. The video comprises scenes from at least 3 locations; the church, Bajagic's home and a third location between (at least on the tape) the other two. The third location cannot be determined from the tape itself – it may be the hotel, or somewhere else. It is plain from the dialogue that it is somewhere where food was available.
105. The impact of the Zivanovic footage even upon the evidence of Bajagic himself, has been massively overstated. The video does not depict the hotel luncheon the preparation of which he was describing in cross-examination, but rather a smaller private affair at

<sup>132</sup> T.32514, 9 March 2009, Zvonko BAJAGIC

<sup>133</sup> T.32514 , 9 March 2009, Zvonko BAJAGIC

<sup>134</sup> T.32515, 9 March 2009, Zvonko BAJAGIC

<sup>135</sup> T.32513-T32517, 9 March 2009, Zvonko BAJAGIC

<sup>136</sup> T.32517, 9 March 2009, Zvonko BAJAGIC

<sup>137</sup> T.32522, 9 March 2009, Zvonko BAJAGIC

<sup>138</sup> T.32522, 9 March 2009, Zvonko BAJAGIC

<sup>139</sup> T.29609. 12 December 2008. Milenko JEVDJEVIC

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

106. There is a grave risk that Bajagic's evidence is mischaracterised. He did not say that fish cannot be eaten on a feast day, rather that he took fish to Bratunac because it was a fast day.<sup>142</sup> Like others, his recollection is not merely of an isolated event but of a whole sequence from the 10<sup>th</sup> through to the 14<sup>th</sup> July.<sup>143</sup> His recollection of events on the 12<sup>th</sup> is substantially corroborated by the video tape as to the service at church, the breaking of the bread, and the reception. It is unfortunate that there is no footage of the hotel meal he described organizing. Within the parameters of his account of events of 12<sup>th</sup> July, there is no room for the preparation of a meal for 10-12 officers and its delivery to Bratunac, and, given the context of his concurrently hosting a private lunch and a civic reception throughout the afternoon and evening, the occurrence of such events seems unlikely.
107. Be that as it may, only he could explain the events depicted on the video tape and his religious and dietary beliefs. Pandurevic may have called him as a witness but Bajagic's credibility as a witness stands alone on the question of what he would or would not eat on St Peter's day and, in the submission of the Defence, generally. Pandurevic's recollection that the meeting took place on 11<sup>th</sup> depends upon so many more things than the service of fish for dinner. He recounted the fact to Eileen Gilleece in October 2001. The suggestion that he aligned his account with that of Bajagic<sup>144</sup> is fanciful and without merit, especially when he first gave that account 7 years before it was known what Bajagic might say about the date of the meeting.<sup>145</sup>

## PART 2 - THE DEFENCE CASE

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

<sup>140</sup> T.32524, 9 March 2009, Zvonko BAJAGIC

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

<sup>142</sup> T.32535, 9 March 2009, Zvonko BAJAGIC

<sup>143</sup> T.32515-32537, 9 March 2009, Zvonko BAJAGIC

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

<sup>145</sup> T.32514, 9 March 2009, Zvonko BAJAGIC

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

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

➤ Absence of Knowledge and Lack of Intent

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

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

(i) he knew nothing of any plan to kill prisoners nor did he have any knowledge of nor perceive a risk of opportunistic killings

(ii) he became aware of prisoners in schools on 15<sup>th</sup> July

(iii) he knew nothing of executions until 16<sup>th</sup> July by which stage events had passed and accordingly, he could not have the necessary intention (whether for genocide or other homicide offences)

(iv) he knew nothing of a plan to rebury those who had been killed in executions

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

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

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

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

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

117. There is no direct evidence of his involvement in any such decision making nor, on the available evidence, would it be possible to draw any reasonable inference that that was the case.

118. Of significant importance is the fact that those who were orchestrating activities must have known that Vinko Pandurevic was absent from his command. The clear inference to be drawn from this fact and from all that there is to know of Vinko Pandurevic, is that had he been present, no such activity would have occurred nor would he have allowed it to occur "on his watch".

➤ A Commander is Responsible for Men not Territory

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

➤ Not in Command and Control of those who committed offences

120. Pandurevic was not the de jure commander of the Zvornik brigade between 4<sup>th</sup> and 15<sup>th</sup> July, and again between 4<sup>th</sup> August and 26<sup>th</sup> September.

121. Neither was he in de facto command of any units or individuals involved in criminal acts. There did not exist between him and those involved in criminal acts any superior subordinate relationship at the time. He did not know that any subordinate of his was about to commit crime or had done so. Once he was appraised of sufficient facts, he reported matters to the competent authority.

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

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

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

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

## **PART 3 - BRIGADE COMMAND ISSUES**

### **1. Zone of responsibility**

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

#### **1.1. False Prosecution theory**

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

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<sup>146</sup> T.31324-T.31325, 12 February 2009, Vinko PANDUREVIC

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

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

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

<sup>147</sup> See also T.20821-T.20822, 31 January 2008, Richard BUTLER

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

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

<sup>150</sup> "The Hostage Case", LRTWC, Ibid, p.70.

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

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

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

### 1.3. Name of the Brigade

131. It is a mere accident that the Zvornik Brigade is called the Zvornik Brigade. The Zvornik Brigade, like most brigades of the VRS between 1992 and 1996, bore the name of the town where its command post was based. However, the municipality of Zvornik, the town of Zvornik and the Zvornik Brigade are not interchangeable concepts.<sup>154</sup> The Zvornik Brigade was so called because it drew most of its men from the municipality of Zvornik and it was only called that between about June 1992 and early 1996.<sup>155</sup> The Zvornik Brigade was also made up of many Serb refugees who came from central Bosnia.<sup>156</sup> Its name did not involve a responsibility to look after everybody and everything in Zvornik, let alone a responsibility for everything that occurred in the municipality.<sup>157</sup> Indeed, the town of Zvornik was not the responsibility of the Zvornik Brigade, because it was not within its zone of defence.<sup>158</sup> Geographically, the Zvornik Brigade defence zone covered the territory of two municipalities - parts of the Osmaci municipality (once called Kalesija), and parts of the Ugljevik municipality to the north.<sup>159</sup>

### 1.4. "Zone of defence" and "zone of responsibility for combat operations"

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

<sup>152</sup> See "Command Responsibility for War Crimes", *Yale Law Journal*, Vol. 82, No. 6 (May 1973), p. 1276.

<sup>153</sup> "The High Command Case", LRTWC, Vol. XII, p.75.

<sup>154</sup> [REDACTED]

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

<sup>156</sup> T.12659, 14 June 2007, Miodrag DRAGUTINOVIC

<sup>157</sup> [REDACTED]

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

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

<sup>160</sup> [REDACTED]

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

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

134. Admittedly, the phrase zone of responsibility did creep into military language during the war in Bosnia, but in truth it was a fiction<sup>165</sup> or an abbreviation; the various plans and maps<sup>166</sup> drawn in this case to illustrate the alleged zone of responsibility of the Zvornik Brigade describe its zone of responsibility for combat operations.<sup>167</sup>
135. The full extent of a brigade's territorial responsibility is to defend, attack or otherwise carry out combat operations within a defined area. Therein lies the fallacy of the Prosecution position. A brigade was only obliged to carry out combat activities within the area it was designated to defend. It did not create a responsibility for any or all activities, criminal or otherwise, which took place within its boundaries. If anything, a brigade's responsibility within its defence zone or defence area was a responsibility to the population it defended and not for activities therein.<sup>168</sup>

### 1.5. Detention and execution sites outside the zone

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

<sup>162</sup> P00694, Brigade Rules, Articles 483-500 and schematics 25 and 26;

<sup>163</sup> T.20793-T.20794, 31 January 2008, Richard Butler.

<sup>164</sup> [REDACTED]

<sup>165</sup> T.10906-T.10907, 03 May 2007, Mendeljev DJURIC

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

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

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

<sup>169</sup> [REDACTED]

<sup>170</sup> [REDACTED]; T.20802, 31 January 2008, Richard Butler.

<sup>171</sup> T.10578, 26 April 2007, Mihajlo GALIC;

<sup>172</sup> T.12813, 18 June 2007, Miodrag DRAGUTINOVIC.

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

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



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

### 1.6. Brigade commander cannot be responsible for the territory

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

<sup>175</sup> [REDACTED]

<sup>176</sup> [REDACTED]

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

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

<sup>179</sup> T.20792 – T.20793, 31 January 2008, Richard BUTLER

<sup>180</sup> [REDACTED]

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

<sup>182</sup> [REDACTED]

<sup>183</sup> T.20803, 31 January 2008, Richard BUTLER

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

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

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

#### 1.7. Zone of responsibility as a basis for criminal liability

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

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

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

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

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T.31798, 19 February 2009, Vinko PANDUREVIC.

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

<sup>186</sup> T.31801, 19 February 2009, Vinko PANDUREVIC

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

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

<sup>189</sup> Prosecutor v. Popovic et al., Indictment, 4 August 2006, para 97

## 2. Commander and chief of staff as deputy commander

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

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

### 2.1. Introduction

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

### 2.2. The Rules of the Brigade of the JNA<sup>192</sup>

151. The Prosecution and, in particular, its military analyst Richard Butler frequently invest the Brigade Rules with the force of law.<sup>193</sup> This is to completely misunderstand them, for they are merely instructions<sup>194</sup>, guidance<sup>195</sup>, a set of aspirations<sup>196</sup>, a wish-list<sup>197</sup>.

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

<sup>191</sup> [REDACTED]

<sup>192</sup> P00408, Brigade rules, Federal Secretariat for National Defence, Infantry Administration, 1-jan-1984

<sup>193</sup> T.19619, 14 January 2008, Richard BUTLER

<sup>194</sup> T.30719, 27 January 2009, Vinko PANDUREVIC

<sup>195</sup> T.30318, 19 January 2009, Slobodan KOSOVAC; T.30724, 28 January 2009, Vinko PANDUREVIC

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

### 2.2.1. Purpose of the Rules

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

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<sup>196</sup> [REDACTED]

<sup>197</sup> T.28060, 12 November 2008, Branislav RISTIVOJEVIC;

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

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

<sup>200</sup> T.30718, 27 January 2009, Vinko PANDUREVIC

<sup>201</sup> T.30318, 19 January 2009, Slobodan KOSOVAC; T.30724, 28 January 2009, Vinko PANDUREVIC

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

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

<sup>204</sup> T.30724, 28 January 2009, Vinko PANDUREVIC; T.30318, 19 January 2009, Slobodan KOSOVAC

<sup>205</sup> T.30719, 27 January 2009, Vinko PANDUREVIC

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

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

157. A JNA brigade was a professional army unit. It was both tactical and mobile and had defined numerical parameters<sup>207</sup> as well as zones of operation. A brigade in the VRS was a completely different institution. In terms of numbers, combat formation and organisation of the defence, the Zvornik Brigade failed to conform in any particular way with a military unit envisaged by the JNA.<sup>208</sup> During the war, the Zvornik Brigade had only 12 professional officers (as opposed to 350 officers in the JNA<sup>209</sup>), to manage 5500 to 6000 soldiers.<sup>210</sup> Furthermore, the rules of the JNA envisaged a brigade should structure its zone of defence over a width of 10-15 km.<sup>211</sup> By contrast, the Zvornik Brigade manned a 45-50 km long static front for 3 years.<sup>212</sup>
158. The function of the army envisaged by the Brigade Rules was the defence of the territory of six former federal republics in a socialist country against an external enemy. They did not envisage a civil war between the republics or the break-up of the army into a series of nationalist armies.<sup>213</sup> Once this army ceased to exist<sup>214</sup>, the rules were of limited applicability.<sup>215</sup> For example, under the Rules, the brigade commander had to be a member of the League of Communists in the JNA. Plainly, this was wholly inapplicable to the VRS.<sup>216</sup>
159. The Rules were deeply unpopular among the soldiers in the VRS.<sup>217</sup> The symbol of the socialist star on the cover of the rules of the brigade was one which was despised or at least disliked by most of the soldiers of the Zvornik brigade. The same applied to the principles of brotherhood and unity on which they were based.<sup>218</sup>

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

<sup>208</sup> [REDACTED]

<sup>209</sup> [REDACTED]

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

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

<sup>212</sup> [REDACTED]

<sup>213</sup> [REDACTED]

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

<sup>215</sup> T.30724, 28 January 2009, Vinko PANDUREVIC

<sup>216</sup> T.30726, 28 January 2009, Vinko PANDUREVIC

<sup>217</sup> [REDACTED]

<sup>218</sup> [REDACTED]

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

### 2.2.3. Commander under the Brigade Rules

#### i. Article 115

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

#### ii. The principle of unity of command and subordination

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<sup>219</sup> [REDACTED]

<sup>220</sup> [REDACTED]

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

<sup>222</sup> P00684, Revised “VRS Brigade Command Responsibility” report, by Richard BUTLER, 31-oct-2002, Para. 1.7.

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

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

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

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

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

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

166. It is submitted that it is wrong to treat Article 115 as law.<sup>228</sup> To overlay the Article with the principle of unity of command and then conclude that only the brigade commander can be in command of the brigade<sup>229</sup> is to misunderstand both the Article and the principle. The principle is not without temporal considerations ; in other words, there can only be one man, one commander of a brigade at a certain time, whoever that might be : the commander, the deputy commander, somebody standing in for the commander, or somebody else temporarily designated to command the brigade.<sup>230</sup> A commanding officer is not necessarily a commander.<sup>231</sup> Article 115 thus applies to each and every officer who, at any given time, has command over a brigade (i.e. the commanding officer). If the deputy commander is in command, then, pursuant to this principle, the deputy commander has the exclusive right to command at that time and the deputy commander bears the full responsibility for the brigade.

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

168. According to prosecution military analyst, Richard Butler :

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

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

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

<sup>228</sup> See above

<sup>229</sup> T.19619, 14 January 2008, Richard BUTLER

<sup>230</sup> T.30726, 28 January 2009, Vinko PANDUREVIC

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

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

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

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

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

### 2.3. Commander's responsibility in law

170. The authority and responsibility of commanders was regulated by law for every command level in the JNA. At Brigade level the appropriate provisions were 'the Rules Regarding the Brigade Commanders Authority of the Regiment'.<sup>234</sup>

171. By contrast to the Brigade rules, these provisions have the force of law. They are based on the 'Law of the Yugoslav's People's Army' and authorised by the Supreme Commander of the Armed Forces of the SFRY.<sup>235</sup>

172. Article 10 of the Rules Regarding the Brigade Commanders Authority of the Regiment sets out the brigade commander's legal responsibilities as follows :

"The commander is responsible for the overall situation in the brigade or regiment, for the correct and lawful work of the command organs, and for the successful and timely completion of all tasks within the remit of the command organs. The commander has direct control over the brigade and regiment units through the Chief of Staff, his assistants, and the organs for combat arms."

173. In law, as opposed to ideology, there is no basis for the assertion that the commander's right to command is exclusive. This accords with Pandurevic's understanding of his responsibilities.<sup>236</sup>

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

<sup>233</sup> T.20773, 31 January 2008, Richard BUTLER

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

<sup>235</sup> 7D00717, Regulations regarding the brigade commanders authority of the regiment

<sup>236</sup> T.30730, 28 January 2009, Vinko PANDUREVIC



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

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

### 3.2.Powers of the deputy commander are unlimited

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

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

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

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

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

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

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

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

<sup>244</sup> T.30019, 13 January 2009, Slobodan KOSOVAC

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

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

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

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

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

181. According to this provision, the deputy commander<sup>247</sup> had all the commander's rights and responsibilities.<sup>248</sup> That necessarily included the power to issue orders of his own volition. The brigade deputy commander must try to act pursuant to Article 115 of the Brigade Rules : the deputy commander has the exclusive right to command and the deputy commander bears the full responsibility for the brigade.

182. In practice this is precisely how the system was perceived to operate by those who worked within it.<sup>249</sup>

183. The situation was mirrored at corps level. Article 10 of the 'Regulations on the Responsibilities of the Land Army Corps Command in Peacetime', states: 'The Chief of Staff shall replace the commander when the latter is absent and shall have all rights and duties.'<sup>250</sup> According to Mr Butler, these peacetime provisions were the 'framework for

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

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

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

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

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

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

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

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

### 3.3.2. Compelling circumstances

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

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

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

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

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

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

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

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

### 3.3.3. Absence of the commander as the only condition

189. Under Article 10, the only condition required for the deputy commander to stand in for the commander, was the absence of the commander. No further order, written or otherwise, was required at law.
190. Absence can cover a multitude of situations. It covers situations over and above that where the commander is absent from the command post or that no appropriate communication can be established with him or that he is unfit to command.<sup>257</sup> It is often understood as absence from the defence zone.<sup>258</sup> The commander may be absent for various reasons – he might be carrying out a task at the orders of superior command; recuperating on sick-leave; on leave ; he may have deserted or been taken prisoner, etc., As an illustration, Pandurevic was not absent when he was fighting in Baljkovica but he was absent when he was in Srebrenica with TG1.
191. According to the testimony of Trivic, the absence of the commander seemed to be the only condition for the chief of staff to take over command: ‘‘When the commander is not present, the Chief of Staff is the person in command of the brigade.’’<sup>259</sup> The same situation occurred at battalion level : ‘‘When the battalion commander is absent, the deputy commander (of the battalion) takes over his responsibilities, is responsible and receives orders from the brigade command.’’<sup>260</sup>

### 3.3.4. Absence of the commander and the chief of staff

192. The brigade rules also fail to address the situation where both the commander and the chief of staff are absent. In contrast, Article 17 of the ‘Rules Regarding the Brigade Commanders Authority of the Regiment’ clearly states:
- "If the commander and the Chief of Staff are absent, one of the assistant commanders shall be ordered to stand in."<sup>261</sup>
193. If both a commander and a Chief of Staff are absent, it will be the corps commander who will regulate the situation and put in place an officer who will perform the duties of the commander.<sup>262</sup> If there is no time or no possibility for the corps commander to order

<sup>257</sup> T.30013, 12 January 2009, Slobodan KOSOVIĆ; T.12765, 18 June 2007, Miodrag DRAGUTINOVIC

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

<sup>259</sup> T.11953, 22 May 2007, Mirko TRIVIC; [REDACTED]; T.12994, 21 June 2007, Steren ACIMOVIĆ

<sup>260</sup> T.10038, 16 April 2007, Lazar RISTIĆ

<sup>261</sup> **7D00717**, Regulations regarding the brigade commanders authority of the regiment, Article 17

<sup>262</sup> T.30733, 28 January 2009, Vinko PANDUREVIC

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

### 3.4. Obrenovic as a deputy commander by appointment

#### 3.4.1. Permanent order of appointment and automatic assumption of command

194. While Pandurevic was commander of the Zvornik Brigade, he was frequently required to carry out activities and personally lead temporary combat formations in areas outside the brigade's area of defence.<sup>264</sup>
195. Obrenovic also performed these tasks<sup>265</sup> The practice of depriving a brigade either of its commander or its deputy on a regular basis was not usual in the JNA, nor envisaged by its rules. The constant absence of either commander or the chief of staff from the brigade command created problems and Pandurevic did not hesitate to complain to the corps command about it.<sup>266</sup>
196. When Pandurevic was absent from brigade command, Dragan Obrenovic, who was deputy commander by appointment or by establishment, took over.<sup>267</sup> His formal appointment as chief of staff and deputy commander by the Drina Corps took place on 11 April 1993.<sup>268</sup> This meant that Obrenovic was 'always' and 'automatically' deputy commander and thus took over the command of the Zvornik brigade whenever Pandurevic was absent; his position as deputy commander was 'permanent'.<sup>269</sup>
197. Irrespective of the opinion of others, this is how everyone perceived the position.:
- "Mr. Haynes: When the commander leaves the command, you automatically become commander?"
- Witness: Yes. Unless it's regulated differently."<sup>270</sup>

#### 3.4.2. No need for subsequent order of appointment

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

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

<sup>265</sup> T.30741, 28 January 2009, Vinko PANDUREVIC

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

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

<sup>268</sup> 7D00462, DC order, 11 April 1993.

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

<sup>270</sup> [REDACTED]

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

### **3.5.Length of time of commander’s absence is irrelevant**

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

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

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

<sup>271</sup> T.30744, 28 January 2009, Vinko PANDUREVIC

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

<sup>273</sup> T.30745, 28 January 2009, Vinko PANDUREVIC

<sup>274</sup> T.30223, 16 January 2009, Slobodan KOSOVAC

<sup>275</sup> T.30745, 28 January 2009, Vinko PANDUREVIC

<sup>276</sup> T.12613, 14 June 2007, Miodrag DRAGUTINOVIC

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

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

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

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

204. There were at least two occasions when Pandurevic was absent from the brigade for more than a month. The first occasion was between 9<sup>th</sup> January and 19<sup>th</sup> March 1995 for spinal surgery and rehabilitation.<sup>282</sup> During that period, Pandurevic was out of contact with the Zvornik Brigade<sup>283</sup> and Obrenovic was its actual commander or its acting commander.<sup>284</sup> The fact that the Drina corps did not issue a subsequent order appointing Obrenovic as deputy commander, (even though Pandurevic was absent for more than a month) did not alter his command position during this time but merely affected his remuneration.<sup>285</sup>
205. The second occasion was his absence between 3<sup>rd</sup> August and 26<sup>th</sup> September 1995. Of that period, he spent about six weeks in Krajina, thereafter, ten days in Montenegro. During this time Obrenovic stood in for the commander.<sup>286</sup> A document acknowledging that fact was of course issued.<sup>287</sup> However, its terms need careful analysis. In the defence submission, the ancillary, if not the principal purpose of this order, is the appointment of

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

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

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

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

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

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

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

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

<sup>286</sup> [REDACTED]

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

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

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

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

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

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

208. [REDACTED]<sup>291</sup>

209. [REDACTED]<sup>292</sup>

210. [REDACTED]<sup>293</sup>

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

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

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

<sup>289</sup> T.24136, 1 December 2008, Dragisa MASAL

<sup>290</sup> [REDACTED]

<sup>291</sup> [REDACTED]

<sup>292</sup> [REDACTED]; [REDACTED]

<sup>293</sup> [REDACTED]

<sup>294</sup> See **P00703**, Law on the Army, 1992; T.31217, 10 February 2009, Vinko PANDUREVIC



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

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

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

<sup>295</sup> T.30019, 13 January 2009, Slobodan KOSOVAC

<sup>296</sup> **7D00462**, DC order, 11 April 1993; T.30750, 28 January 2009, Vinko PANDUREVIC

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

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

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

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

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

<sup>302</sup> **7D00452**, 19 April 1993 Petkovic signed as the 'commander'

<sup>303</sup> T.12647-T.12648, 14 June 2007, Miodrag DRAGUTINOVIC

<sup>304</sup> [REDACTED]; T.30754, 28 January 2009, Vinko PANDUREVIC

concept of 'standing in' was not generally understood by those who were duty officers in the Zvornik Brigade<sup>305</sup>

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

### 3.8. Formality is irrelevant

218. Another assertion made by Butler was that a brigade commander continued to command the brigade unless he was formally relieved or relinquish[ed] command to the superior who was next in line. It is submitted that this approach is not only flawed, but is inconsistent with the prosecution's case in other regards.

219. The Trial Chamber's attention is specifically drawn to the history of Pandurevic as outlined by him and others during his career in the VRS. On 18<sup>th</sup> December 1992, Pandurevic left Visegrad (where he was a commander) and travelled to Zvornik. He left Visegrad without any formal relinquishment of his command. According to his testimony he 'quite simply bade farewell to those people from the brigade and left, on the basis of the oral order from the Drina Corps command. I didn't transfer my duties to anyone.'<sup>307</sup>

220. He was neither formally relieved of his command in Visegrad, nor formally appointed as commander of the Zvornik Brigade on that date. To this day he has never been relieved of the command of the Visegrad Brigade. He was formally appointed as Commander of the Zvornik Brigade in October 1993.<sup>308</sup> Notwithstanding that, it is the view of Mr Butler that Pandurevic was in command of the Zvornik Brigade from 18 December 1992.<sup>309</sup>

221. Despite the appointment of Obrenovic as chief of staff on 11 April 1993,<sup>310</sup> Butler still maintained that he had held the office from October 1992.<sup>311</sup> Again, applying Butler's "formality" theory would lead to the conclusion that Obrenovic was appointed deputy commander not to Pandurevic but to Petkovic, Pandurevic's predecessor.<sup>312</sup>

222. Furthermore, the assertion that Pandurevic 'did not formally relinquish command of the brigade when he assumed command of the tactical group deployed in Srebrenica'<sup>313</sup> is equally flawed. The concession that Pandurevic was in command of Tactical Group 1 is

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

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

<sup>307</sup> T.30683, 27 January 2009, Vinko PANDUREVIC

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

<sup>309</sup> **P00686** Richard Butler, Revised Narrative Report, 2.8

<sup>310</sup> **7D00462**, Order, 11 April 1993

<sup>311</sup> **P00686**, Richard Butler, Revised Narrative Report, 7.8

<sup>312</sup> T.30744, 28 January 2009, Vinko PANDUREVIC

<sup>313</sup> **P00686**, Richard Butler, Revised Narrative Report, 7.60

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

223. It is conceded that the Rules of the JNA envisage formality in the appointment and removal of officers in many circumstances. However, in practice, these procedures were simply ignored in the VRS during the war in Bosnia. Taken to its logical extreme, Butler's position would dictate that Pandurevic remained in command of the Visegrad Brigade to this day. However, the truth is, that all formalities aside, Pandurevic left the Visegrad Brigade and went to command the Zvornik Brigade in December 1992. In the same way, he left the Zvornik Brigade in July 1995 and went to command TG1 in Srebrenica and in August 1995 he left for Krajina to command the Drinski Brigade.
224. In other areas, the Prosecution positively aver that formality is no condition precedent to the assumption of office, even command. In relation to General Krstic, for example, the Prosecution assert that his command of the Drina Corps commenced on 13<sup>th</sup> July with an announcement by Mladic at a meeting.<sup>314</sup> In point of fact, Mladic had no power to appoint a Corps Commander. That was only in the gift of the President of the Republic. In that regard, there are obvious parallels with the formal announcement of Obrenovic assuming command at a public announcement prior to Pandurevic's departure to Srebrenica. Furthermore, there is a logical inconsistency between the position advanced by the prosecution in relation to the accused Miletic, and that of Pandurevic.
225. The central shortcoming to Butler's theory about the need for formality is his failure to identify the legal provisions which define the relationship between the commander and deputy commander of a brigade. Because Article 10 of the Rules Regarding the Brigade Commanders Authority of the Regiment has the force of law, the delegation of power to the deputy commander is legal. Butler's failure to consider these legal provisions and their effect upon the legal rights and duties of the deputy commander render his conclusion that an order was required to effect the delegation<sup>315</sup> completely false.

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

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

<sup>314</sup> T.1803-1804, 30 June 2009, Svetozar KOSORIC.

<sup>315</sup> T.20008-T.20009, 18 January 2008, Richard BUTLER

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

<sup>317</sup> T.11945-T.11955, 22 May 2007, Mirko TRIVIC

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

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

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

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

#### 4. Structure of the Zvornik Brigade

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

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

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

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

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

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

<sup>321</sup> [REDACTED]

<sup>322</sup> T.30761, 28 January 2009, Vinko PANDUREVIC

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

#### 4.1.The Staff

232. ‘The Staff’ was the executive organ of command, bearing the most important tasks and being responsible for all information gathering<sup>324</sup>. Certain units were directly subordinated to it. The Chief of Staff had the right to and regularly did issue orders to the various units contained within the Staff.<sup>325</sup> In addition, the Staff was the most populous organ of the brigade.

#### 4.2.Organ for Logistics

233. In addition to the various elements of this Organ, the rear battalion was also subordinated to the Organ for Logistics.<sup>326</sup>

234. This organ had strong functional links to its professional superior (see below). A logistics organ at a lower rank was duty-bound to follow the orders of a higher rank logistics organ, without going through the commander, who almost never involved himself in logistical issues.<sup>327</sup>

#### 4.3.Organ for Morale

235. The Assistant Commander for morale, religious and legal affairs was Nenad Simic. His deputy was Ljubo Bojanovic. At the tactical level, his function was, inter alia, to organize funerals for fallen fighters, provide for their families and supply humanitarian aid. It could be difficult and distressing work. Simic himself suffered the loss of his son in combat. From time to time he also produced so-called morale boosting reports, an example of which is P2920.<sup>328</sup>

236. Whilst of course unattractive and unfortunate, as its signatory, Pandurevic accepts<sup>329</sup> that the document “characterizes the command climate”, or is “reflective of the type of behaviours and attitudes that the brigade commander wanted to encourage through his command”<sup>330</sup> is hyperbolic, especially given the circumstances in which it was authored

<sup>323</sup> [REDACTED]; T.30719, 27 January 2009, Vinko PANDUREVIC.

<sup>324</sup> T.12611, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>325</sup> T.12612-12613, 14 June 2007, Miodrag DRAGUTINOVIC

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

<sup>327</sup> T.30768, 28 January 2009, Vinko PANDUREVIC.

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

<sup>329</sup> T.30833, 29 January 2009, Vinko PANDUREVIC.

<sup>330</sup> T.19741-19742, 15 January 2008, Richard BUTLER.

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

#### 4.4. Functional relationships

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

#### 4.5. Subordination of units

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

<sup>331</sup> T.12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>332</sup> T.30763, 28 January 2009, Vinko PANDUREVIC.

<sup>333</sup> [REDACTED]

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

<sup>335</sup> T.30763-30764, 28 January 2009, Vinko PANDUREVIC.

<sup>336</sup> T.30763-30764, 28 January 2009, Vinko PANDUREVIC.

<sup>337</sup> T.12616-12617, 14 June 2007, Miodrag DRAGUTINOVIC.

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

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

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

#### 4.6. Battalions

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

#### 4.7. Podrinje detachment or Drina Wolves

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

#### 4.8. Reorganization of the Zvornik Brigade by Pandurevic

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

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

<sup>340</sup> **7D00539**, Organisation of Infantry brigade-scheme.

<sup>341</sup> **P00689**, Richard J. Butler, Srebrenica Narrative (Revised), Appendix B.

<sup>342</sup> **P01463**, Krivaja 95, Military map; [REDACTED]

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

<sup>344</sup> [REDACTED].

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

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

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

#### 4.9.Role of the duty operations officer

##### 4.9.1. General role

250. Every unit from Brigade level upwards had a duty operations officer and an assistant duty operations officer who were in charge of all documents coming in and going out of the Brigade. They were obliged to process all information in the 'staff office' at all times of the day and night.<sup>348</sup>
251. The operations department was obliged<sup>349</sup> to publish a roster seven days in advance for the duties of the duty operations officer and his assistant. It was well known in advance who would be on duty on any given day. The Chief of Staff (not the Commander) was responsible for the roster and the list of persons who might appear on it.<sup>350</sup>
252. The Zvornik Brigade had its own internal rules regarding the responsibilities of the duty officer, which included the obligation to submit twice daily reports to the superior command.<sup>351</sup> In practice, the Brigade submitted reports once a day.<sup>352</sup>

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

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

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

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

<sup>350</sup> T.12623, 14 June 2007, Miodrag DRAGUTINOVIC.

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

<sup>352</sup> T.12622-12623, 14 June 2007, Miodrag DRAGUTINOVIC.



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

#### 4.9.2. Documents kept by the duty operations officer

254. The duty operations officer kept a number of logs which were used to gather information relating to the Brigade.

255. Duty Operations Officer Notebook: P00377, P379 - the duty operations officer recorded all information received from the superior command, parts of the brigades, the subordinate units, the Chief of Staff and the commanders in this notebook. He recorded everything, official or personal, that came to him. Nothing could be omitted or deleted.<sup>354</sup> The notebook is the most contemporaneous document in a brigade.<sup>355</sup>

256. Duty Operations Officer Diary: P378 - this summarised all official information including daily reports, orders from superior command, orders from the Brigade commander and the content of the duty operations officer notebook. It was completed on a daily basis and used during morning briefings.<sup>356</sup>

257. War Diary P384 - this was supposed to contain the most important information relative to combat operations. It was not kept contemporaneously due to manpower or time constraints. The Duty Operations Officer Notebook was often consulted in order to compile this diary ex post facto.<sup>357</sup>

258. Barracks Duty Officer Notebook (P383) - The keeping of the barracks' duty officer notebook was introduced in 1995 in order that the duty operations officer would have some insight into the functioning of the Brigade. For that reason, an additional notebook was kept by the duty officer at the barracks, who was subordinated to the barracks commander.<sup>358</sup>

259. Regular/Daily Combat Reports and Irregular/Interim Combat Reports - Interim reports were only submitted when it was necessary.<sup>359</sup> Regular or interim combat reports were usually drafted in longhand by the duty operations officer who handed it to the Staff office where it was typed up. The report would then be signed by the authorised person at that time and then despatched to the Communications Centre where it would be encrypted and sent by teleprinter to the designated addressee ; hence, on the report you could see the

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

<sup>354</sup> T.12623-12624, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>355</sup> T.12627, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>356</sup> T.12624, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>357</sup> T.12624-12625, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>358</sup> T.12625, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>359</sup> T.12629, 14 June 2007, Miodrag DRAGUTINOVIC.

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

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

## 5. Security organ

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

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

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

### 5.1 Introduction

261. Much has been said during the course of this trial about the position which the security services held within the VRS structure. In the submission of the Pandurevic defence, the debate has ignored certain central realities.

262. The Security Services are of course a necessary part of any military organization. Their functions have been adequately aired during the course of this trial. In order to perform part of their function, it is necessary for them to be given certain powers and authority which to an extent set them apart and above other personnel in the army.

263. Only the security services, and their conjoined forces, the Military Police, had the power to arrest its own soldiers, including senior officers, even commanders. Only they could detain men, search their property, interrogate them, charge them with offences, and support prosecutions before military courts.

<sup>360</sup> T.30754, 28 January 2009, Vinko PANDUREVIC.

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

<sup>362</sup> See BLAGOJEVIC, Trial Judgment, Para 427

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

## 5.2 The Security and Intelligence Services within the VRS

266. In the JNA the security and intelligence services were separately commanded. The Intelligence service was under the direct command of the Army Main Staff, whilst the security service was under the command of the Ministry of Defence. The two organisations were separately regulated: the regulations for the security service were drafted by the Presidency, whilst the regulations for the intelligence service were drafted by the Federal Secretariat for National Defence.<sup>363</sup>
267. The situation in the VRS was different. There was a sector for security and intelligence which fell under the direct command of the army Main Staff. The Main Staff of the VRS itself fell outside the framework of the Ministry of Defence and answered directly to the President himself.<sup>364</sup>
268. Whilst at Main Staff level there was one body under the leadership of a Commander for Security and Intelligence, at Corps and Brigade levels there was a division of the functions. There was a Chief of Security, who was also a deputy commander of the unit, and an assistant chief of staff for Intelligence who was part of the Staff.<sup>365</sup> Accordingly, there was no unification of the services at operational or tactical levels. The exception to this was in a light infantry brigade where there was a deputy commander for security and intelligence.<sup>366</sup>
269. The Security Service was numerically and politically much the more powerful service.<sup>367</sup> The function of the intelligence service was essentially “outward looking”. It was concerned with gathering information about the enemy and its intentions. The Security Service was also concerned with threats posed to the army from within. It was, despite its description, to this service that the task of counter-intelligence fell.<sup>368</sup>
270. Indeed it formed the vast majority of its work, both within the JNA rules<sup>369</sup> and the subsequent Instruction<sup>370</sup> of the Main Staff of the VRS. The Rules of the Intelligence Service give no instruction as to how it was to divide its work in percentage terms,

<sup>363</sup> T.23342, 4 July 2008, Petar VUGA.

<sup>364</sup> T.23343, 4 July 2008, Petar VUGA

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

<sup>366</sup> T.32933, 21 April 2009, Momir Nikolic.

<sup>367</sup> P00692, Main Staff VRS Structure - July 1995, 1 November 2002.

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

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

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

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

### 5.3. Command and Control

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

### 5.4. The Instruction of October 1994

272. Leaving aside the contents of the Instruction, the preamble makes it plain that it is intended to address issues of "command and control...over security and intelligence organs" and has the stated aim of "preventing similar problems in control".

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

### 5.5. Practical Reality

274. Pandurevic has given a clear account of the effects of this instruction upon his ability effectively to monitor or control his security organ, which would seem to accord with the probable results of the application of the Instruction, and is, in any event the only reliable direct evidence on the topic.

275. Pandurevic's account is of a Chief of Security whose time was effectively his own. He also dealt with the question of how and more importantly, who determined whether any given task was to be classified as counter-intelligence or command-staff work. It was apparently a system of self-certification by the security organ itself.

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<sup>371</sup> P02741, The Instruction, paragraph 1

<sup>372</sup> Ibid, paragraph 2

<sup>373</sup> Ibid, paragraph 4

<sup>374</sup> Ibid, paragraph 5

<sup>375</sup> Ibid, paragraph 7

## 5.6. Reporting

276. Reports to the Commander of activities of the Security organ were given when deemed appropriate by the Security Officer. Most significantly, Pandurevic received no reports from Drago Nikolic about events at Orahovac, Rocevic or Petkovci. Indeed, [REDACTED], no further or other attempt was made to report matters either to Obrenovic or Pandurevic.
277. A further issue that had arisen about the autonomy of the security organ concerned its claim to have the exclusive use of a car within the brigade's pool of motor vehicles. Despite Pandurevic's objection, the security organ got its wish, and in July 1995 had the exclusive use of a motor vehicle. It is the prosecution's case that this car was used to scout for detention sites on 13<sup>th</sup> and 14<sup>th</sup> July 1995, and the vehicle work log<sup>376</sup> would tend to confirm that. Leaving aside overriding the Commander's wishes again, the use of the car at all times was none of the commander's business, and in particular, its use on 13<sup>th</sup> July was not reported to either Obrenovic or Pandurevic.

## 5.7. Authority over the Commander

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

## 5.8. Military Police

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

<sup>376</sup> P00904, Vehicle Log for Opel Rekord P-4528, July 1995.

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

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

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

<sup>380</sup> [REDACTED], T.30781-2, 28 January 2009, Vinko Pandurevic

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

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

### 5.9. Powers of Criminal Investigation

283. Points 51 – 56 of the Rules of the Security Organ<sup>383</sup> give the security organ powers to find perpetrators of crimes : to prevent them from going into hiding ; to secure evidence ; to gather information and to submit reports to the Military Prosecutor's office. In relation to offences within the jurisdiction of the Military Courts, these matters fall within the sole jurisdiction of the security organ.<sup>384</sup> They have the power of arrest,<sup>385</sup> and of detention.<sup>386</sup>

284. In addition, the Military Police uncover, find and take into custody perpetrators of crimes : secure the evidence of crime ; collect information and act in accordance with the instructions of those in charge of criminal proceedings.<sup>387</sup> In relation to the investigation of criminal matters falling within the jurisdiction of military courts, their jurisdiction is virtually concurrent with that of the security organ.<sup>388</sup>

## 6. Most senior officer present or 'the concept of superior-officer command'<sup>389</sup>

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

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

<sup>381</sup> 7D00485, KDK - Organ bezbednosti, 11 May 1994, paragraph 4.

<sup>382</sup> 1D00382, Krivaja '95 order, 2 July 1995.

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

<sup>384</sup> 4D00503, Report of Ristivojevic, para 3.10

<sup>385</sup> Point 43 of the Rules of the Security Organ of the JNA (P00706), 1984

<sup>386</sup> Point 45 (P00706), ibid

<sup>387</sup> P00707, Service Regulations of the SFRY Military Police 1985, Chapter III point 2

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

<sup>389</sup> P00696, Richard Butler's VRS Brigade Command Responsibility report, 2.11

<sup>390</sup> T.470, 22 August 2006, Prosecution Opening Statement

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

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

## **6.1.Introduction**

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

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

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

<sup>391</sup> T.11705, 17 May 2007, OTP witness Ostoja STANISIC

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

<sup>393</sup> T.30736, 28 January 2009, Vinko PANDUREVIĆ

<sup>394</sup> T.30325, 19 January 2008, Richard BUTLER; T.30325, 19 January 2009, Slobodan KOSOVIĆ

<sup>395</sup> **P00417**, Provisional Service Regulations of the Army of RS, August 1992, Article 17

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

287. Accordingly, when the superior officer is not present, the most senior officer present will take over the command and members of the army are obliged to carry out his orders.<sup>396</sup> In the situation envisaged by Article 17, the person in command (i.e. the commanding officer) is not necessarily a ‘commander’ by function.<sup>397</sup> This situation may arise in a number of ways - for example, an officer who is not a commander by function can be assigned temporarily to a task by order, and perform the duties of a commander,<sup>398</sup> and a deputy commander who stands in for the commander can become commanding officer.<sup>399</sup> Poignantly, in this case an officer who is tasked to lead a column of buses, find individuals from various units to guard prisoners, both on the buses and at their destination, will assume command of those to whom he gives orders. In addition, they will be obliged to follow his orders pursuant to Article 17.
288. Such was the flexibility of the system prescribed by Article 17 that officers from ‘superior command’ could ‘directly’ command brigade personnel or units.<sup>400</sup> It was not necessarily done by reference to the brigade commander or his deputy.<sup>401</sup> Considering only the Zvornik Brigade for now: an officer from superior command could come and command individuals or even units if he had ‘a broad military authority (deriving from rank and position) and whom everybody knew as having such authority’ without reference to deputy Obrenovic or commander Pandurevic.<sup>402</sup> If a colonel from the superior command came to give orders to Zvornik Brigade members, they would be obliged to carry the orders out, provided they were legal.<sup>403</sup> Of course, in all probability, battalion soldiers were not familiar with the regulations. Nonetheless, they would recognise a colonel when they saw one and acknowledge his superiority and authority.
289. According to Article 17 of the Provisional Service Regulations of the Army of RS, the “execution of each order shall first be reported to the superior officer or to the officer who has given the order”.<sup>404</sup> The practical impact of this upon the reporting chains can be seen graphically in two examples. Firstly, after being ordered to visit Drago Nikolic in Zvornik and inform him about the arrival of prisoners, Momir Nikolic initially reported to Colonel Beara, and not his commander, who was unaware until the following day that he had been given that task.<sup>405</sup> Secondly, Drago Nikolic never reported to his brigade command that he had been investigating the availability of certain school premises as detention facilities.<sup>406</sup>

### 6.3. Security officers as part of the superior command

<sup>396</sup> T.30225, 16 January 2009, Slobodan KOSOVAC; T.30736, 28 January 2009, Vinko PANDUREVIC

<sup>397</sup> T.30326, 19 January 2009, Slobodan KOSOVAC

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

<sup>399</sup> T.30737, 28 January 2009, Vinko PANDUREVIC

<sup>400</sup> [REDACTED]

<sup>401</sup> [REDACTED]

<sup>402</sup> [REDACTED]; T.30737, 28 January 2009, Vinko PANDUREVIC

<sup>403</sup> T.30737, 28 January 2009, Vinko PANDUREVIC

<sup>404</sup> **P00417**, Provisional Service Regulations of the Army of RS, August 1992, Article 17

<sup>405</sup> T.33331, 28 April 2009, Momir Nikolic

<sup>406</sup> **P00904**, T.32395-T.32397, 3 March 2009, Vinko Pandurevic



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

#### 6.4. Article 16: Joint Tasks

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

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<sup>407</sup> [REDACTED]

<sup>408</sup> [REDACTED]

<sup>409</sup> [REDACTED]

<sup>410</sup> P00417, Provisional Service Regulations of the Army of RS, August 1992, Article 16

<sup>411</sup> See P106, P107

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

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

### 6.5. Command means giving orders

296. According to paragraph 13 of the Manual for the Work of Commands and Staff: 'Command is a process function of control.'<sup>414</sup> The content of command is demonstrated by giving 'commands, orders, directives, instructions'.<sup>415</sup>

297. Butler explains it similarly, though in different terms. According to him, the action of command is how the individual 'exercises control' over the functions of the unit.<sup>416</sup> It can be effected variously, by direct orders, broader guidance or directives, and instructions. The giving of an order is the action of command.<sup>417</sup>

298. In simple terms therefore, a person giving orders to certain individuals commands them, and a superior-subordinate relationship is thereby created. Accordingly, that person will bear command responsibility for the acts that subordinate carries out.

### 6.6. Command responsibility of superior officers

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

<sup>412</sup> T.20830, 31 January 2008, Richard BUTLER

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

<sup>414</sup> P00699, Manual for the Work of Commands and Staffs, 1983, point 13

<sup>415</sup> P00699, Manual for the Work of Commands and Staffs, 1983, point 13

<sup>416</sup> T.19631, 14 January 2008, Richard BUTLER

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

<sup>418</sup> P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.10

<sup>419</sup> P00699, Manual for the Work of Commands and Staffs, 1983, Point 5

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

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

## 6.7. Prosecution's standpoint since 2002

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

<sup>420</sup> P00699, Manual for the Work of Commands and Staffs, 1983, Point 5

<sup>421</sup> P00415, RS Law on the Army, 1992, Article 4

<sup>422</sup> P00415, RS Law on the Army, 1992, Article 4

<sup>423</sup> P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

<sup>424</sup> P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

<sup>425</sup> P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

<sup>426</sup> P00684, Richard Butler VRS Brigade Command Responsibility Report, 2.11

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

306. Where the concept of “top Main Staff General authority”, or “command authority derived from comfort” are set out, counsel for the prosecution did not enlighten us. However, in the submission of the defence, if the Chamber is to accept that one superior officer from the Main Staff is able to issue orders of this sort to subordinate units, it inevitably follows that a Main Staff Chief of Security is able and entitled to give orders on the ground to an assortment of military policemen and tactical level security organs from assorted units relating to the movement and detention of prisoners of war.
307. The defence entirely accepts Butler’s limitation that an outside officer cannot come in and take over a brigade commander’s responsibility for the work of the brigade, command and subordinate commands, since the commander has the exclusive right of command, and he also is the one who ultimately bears responsibility for the actions of his subordinates.<sup>429</sup> Nonetheless, as we have seen, an officer from superior command, can issue orders to individuals or units from subordinate units, without consulting the brigade commander, individually or as part of a joint unit, pursuant to an order appointing him, or merely because he is the senior officer present on the ground.

## 6.8. Practical reality

308. During the war in Bosnia and in the Army of Republika Srpska, there were very frequent situations when so-called ‘temporary compositions’ were formed of various units from various areas.<sup>430</sup>
309. In the period between 10th - 20th July, the VRS was engaged in carrying out a variety of tasks, sometimes carried out by units as a whole and sometimes by elements from different units combined as temporary formations and under separate command. Within the Drina Corps, the Zvornik Brigade was tasked with defending its defence zone and engaging in combat with the 28th Division. The Sekovici Brigade was tasked with defending its own defence zone. Parts of these brigades were in the Krajina as part of a temporary formation and were engaged in carrying out tasks under separate command for that specific task or operation. In addition to this, there were other tasks being conducted which relate to the events that are the subject of this trial. The commander of the Main Staff issued tasks to a specific individual, gave him a number of men and assets, and told him to carry out the task of dealing with the prisoners of war, and, based on all the documents that we’ve seen in this trial, whether through General Krstic or directly through Mr. Furtula, he was also given a unit, buses, and other assets required for the execution of this task. Beara (for it was he) acted as a commanding officer and carried out

<sup>427</sup> T.400, 21 August 2006, Prosecution’s Opening Statement

<sup>428</sup> T.470, 22 August 2006, Prosecution Opening Statement

<sup>429</sup> T.19619, 14 January 2008, Richard BUTLER

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

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

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

<sup>431</sup> T.32414-T.32415, 3 March 2009, Vinko PANDUREVIC

<sup>432</sup> T.32464, 3 March 2009, Vinko PANDUREVIC

<sup>433</sup> T.11956-T.11957, 22 May 2007, Mirko TRIVIC

<sup>434</sup> T.11956-T.11957, 22 May 2007, Mirko TRIVIC; T.11957, 22 May 2007, Mirko TRIVIC

<sup>435</sup> T.20825, 31 January 2008, Richard BUTLER

<sup>436</sup> T.20828, 31 January 2008, Richard BUTLER

<sup>437</sup> T.33271, 27 April 2009, Momir NIKOLIC

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

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

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

<sup>440</sup> T.31962, 23 February 2009, Vinko PANDUREVIC

<sup>441</sup> [REDACTED] (PW-104).

<sup>442</sup> [REDACTED] (PW-172)

<sup>443</sup> T.32426, 3 March 2009, Vinko PANDUREVIC

## PART 4 – NARRATIVE OF EVENTS

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

### 1. RELEVANT HISTORICAL BACKGROUND

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

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

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

#### 1.2. Emergence of the VRS

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

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

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

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

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

<sup>448</sup> T.30733-T.30734, 28 January 2009, Vinko PANDUREVIC

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

318. By early June 1992, the Main Staff of the Army published what would be the seminal order in establishing itself as the primary body behind the conduct of military operations. GS SRBH order 02/5-31, dated 04 June 1992, specifically designates the areas of responsibility, as well as the forthcoming tasks of the five Corps which would comprise the Army initially. It also directs each Corps Command to form at least one brigade-sized unit which was to be trained and equipped to fight anywhere inside, or if necessary, outside the Corps area of responsibility.<sup>453</sup>
319. Following this order, on 15 June 1992, the Presidency of the Serbian Republic of Bosnia and Herzegovina formally established the organization, formation and command of the Army. The next day, the commander of the Main Staff directed the Army to pursue operations formally in the basic strategic interests of the Serbian people.<sup>454</sup>

### 1.3. Pre-directive 4

320. In the second half of 1992, the situation was critical for Serbian forces. The Serbian population from Gorazde had been expelled (population movement was a near inevitable consequence of the war) but managed to keep the settlement on the right bank of the Drina. Visegrad was completely cut off and encircled without any means of communication. In central Podrinje, the Serbian settlements were destroyed and reduced to the territory of the town of Bratunac and part of Skelani. Zvornik was threatened by Muslim forces as well with approximately 80 to 90,000 inhabitants endangered by this situation.<sup>455</sup>
321. In this area, the combat achievements of the VRS were almost non-existent.<sup>456</sup> To the contrary, the ABiH were successful and were inflicting material losses on the VRS.<sup>457</sup>
322. During this period, a considerable amount of Serbian villages (in total 146) were burnt because of the Muslim offensives in the area covered by municipalities of Srebrenica and Bratunac.<sup>458</sup>

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

<sup>450</sup> T.30323, 19 January 2009, Slobodan KOSOVAC

<sup>451</sup> T.30733-T.30734, 28 January 2009, Vinko PANDUREVIC

<sup>452</sup> T.30323, 19 January 2009, Slobodan KOSOVAC; [REDACTED]

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

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

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

<sup>456</sup> T.30789, 28 January 2009, Vinko PANDUREVIC

<sup>457</sup> 7D00985, Article – “Bastinici Hajrinog Djela”

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



#### 1.4. Directive 4 and Spring Offensive of 1993

323. The objectives of Directive 4 are well known.<sup>459</sup> In November 1992, Pandurevic was still a unit commander in Visegrad, and accordingly, did not see the directive<sup>460</sup> as it was a strategic document.<sup>461</sup> The Drina Corps order of 24<sup>th</sup> November arrived at the Zvornik Brigade almost a month before he took the command.<sup>462</sup> Pandurevic was not aware of the order, even after he took the command. The Zvornik Brigade was in a poor state in November 1992 (5 commanders in as many months – none at all when Pandurevic arrived),<sup>463</sup> and failure to address the order indicates the level of disorganization at the time.<sup>464</sup>
324. After his arrival his priorities were to organise the Brigade and launch some combat activities to prove its combat capacities.<sup>465</sup>
325. In January 1993, he participated in Operation Proboj. The objective of the operation was to repel Muslim forces from the town of Kamenica, and prevent communication between the 2nd Corps and the 28th Division and eventually, if possible, to push all those forces further away.<sup>466</sup>
326. On the 1st February 1993, he decided to cease fire and open a corridor, so that the civilian population could leave the town without the threat of the combat operation.<sup>467</sup> The aim of opening the corridor was to avoid civilian casualties.<sup>468</sup> A message was conveyed to the opposing commander.<sup>469</sup> Some civilians, indeed, left the town.<sup>470</sup> The procedure was not only logical and justifiable,<sup>471</sup> but correct and lawful.<sup>472</sup> His concern for the protection of the civilian population could be reflected by his organisation of a secure corridor by his own forces, as they could be subject to bombardment while securing the corridor.<sup>473</sup> This was not action taken pursuant to Directive 4, about which, in any event he was ignorant.
327. Operation Udar in April 1993 was a continuation of Proboj. Pandurevic took no part in it.<sup>474</sup>
328. Following these operations, Muslim began to leave their villages and moved towards Srebrenica<sup>475</sup> or Tuzla.<sup>476</sup>

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

<sup>460</sup> T.30785, 28 January 2009, Vinko PANDUREVIC

<sup>461</sup> T.29887, 17 December 2008, Milenko JEVDJEVIC

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

<sup>463</sup> T.29888, 17 december 2008, Milenko JEVDJEVIC

<sup>464</sup> T.29889, 17 december 2008, Milenko JEVDJEVIC

<sup>465</sup> T.30971-T.30972, 28 January 2009, Vinko PANDUREVIC

<sup>466</sup> T.30792-T.30793, 28 January 2009, Vinko PANDUREVIC; 7D1006

<sup>467</sup> 7D1006, ZB Command, 82-4, RBI, 1-Feb-1993

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

<sup>469</sup> 7D1006, ZB Command, 82-4, RBI, 1-Feb-1993

<sup>470</sup> T.30795-T.30796, 28 January 2009, T.30799, 29 January 2009

<sup>471</sup> T.30793-T.30794, 28 January 2009, Vinko PANDUREVIC

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

<sup>473</sup> T.29893, 17 December 2008, Milenko JEVDJEVIC

<sup>474</sup> T.30800, 29 January 2009, Vinko PANDUREVIC

## 1.5. Peace negotiations

329. Following the agreements on the demilitarization of the safe areas on 8<sup>th</sup> May 1993,<sup>477</sup> commissions were set up to achieve the terms of the agreement. In Zepa, the commission gave up its work after 15 days. In Gorazde the commission was never invited to attend. Despite the preparedness of the VRS to participate fully in an agreement intended to achieve a peaceful existence for the enclaves, it was Muslim reluctance to engage in the process which caused it to break down.<sup>478</sup>
330. Other Drina Corps orders were intended to ensure that the ceasefire would hold, even in the event of provocative fire from the enemy,<sup>479</sup> and to ensure the access of humanitarian convoys to the enclaves.<sup>480</sup>
331. Control of the demilitarized zones was the responsibility of UNPROFOR.<sup>481</sup> However, the failure of the commissions<sup>482</sup> and the commencement of diversionary activities from the enclaves<sup>483</sup> led the VRS to conclude that neither the ABiH nor UNPROFOR would ever apply the 8<sup>th</sup> May agreement.<sup>484</sup> Rather, the ABiH would use the cover of UNPROFOR to regroup their forces and dispatch them to other combat zones.<sup>485</sup>

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

332. In the territory of Zvornik, there were no significant combat activities. Towards the end of 1994, in the area of Zvornik on the north western part of the front line, in the direction of Teocak, there were some combat actions with a view to repairing the tactical position. However, due to bad weather conditions, almost no significant results were achieved as a result of that. Units and elements of the Zvornik Brigade were involved in combat activities in other areas; partly in the zone of the Drina Corps and partly in the zone of the Sarajevo and Romanija Corps.<sup>486</sup>
333. In June 1993, a combat group from the Zvornik Brigade was involved in operation MAC 1.<sup>487</sup> The task of Pandurevic's group was to reach Ustipraca and cut off the retreat route for the forces that were deployed north of Ustipraca towards Visegrad.<sup>488</sup> This

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

<sup>476</sup> [REDACTED] (PW-110)

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

<sup>478</sup> T.29014-T.29017, 28 November 2008, Dragisa MASAL

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

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

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

<sup>482</sup> T.29021, 28 November 2008, Dragisa MASAL

<sup>483</sup> T.29022, 28 November 2008, Dragisa MASAL; 5D1264

<sup>484</sup> T.29018-T.29019, 28 November 2008, Dragisa MASAL

<sup>485</sup> T.29021, 28 November 2008, Dragisa MASAL

<sup>486</sup> T.30820, 29 January 2009, Vinko PANDUREVIC

<sup>487</sup> T.30812, 29 January 2009, Vinko PANDUREVIC

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

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

334. After this, Pandurevic took part in operation MAC 2, the aim of which was to repel the Muslim forces further away from Cajnice and to reclaim the Serbian villages on the right bank of the Drina. The success of the operation was limited as the operation was halted there.<sup>494</sup> In July 1993, elements of the Zvornik Brigade were involved in Operation Lukavac<sup>495</sup>. In April-July 1994 a unit from the Brigade took part in Operation Zvijezda between Rogatica and Gorazde.<sup>496</sup>

## 2. THE ZVORNIK BRIGADE

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

### 2.1. The origins of the Zvornik Brigade

335. The Zvornik Brigade was established in June 1992 and it became part of the Drina Corps after the Corps' formation on 1 November 1992. Before that, it was part of the Eastern Bosnia Corps.<sup>498</sup>

336. The Zvornik Brigade was established to defend the Serbian villages in the municipality of Zvornik and neighbouring municipalities. The battalions of the Brigade

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

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

<sup>491</sup> T.30814, 29 January 2009, Vinko PANDUREVIC

<sup>492</sup> T.29573-T.29574, 11 December 2008, Milenko JEVDJEVIC

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

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

<sup>495</sup> T.12167, 29 May 2007, Manojlo MILANOVIC

<sup>496</sup> T.30819, 29 January 2009, Vinko PANDUREVIC

<sup>497</sup> [REDACTED]

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

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

## 2.2. Organisation

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

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

## 2.3. Composition and personnel

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

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

<sup>500</sup> **P00686**, Richard Butler, Srebrenica Narrative, paragraphs 1.4-1.8.

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

<sup>502</sup> T.12634, 14 June 2007, Miodrag DRAGUTINOVIC; [REDACTED].

<sup>503</sup> T.12633, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>504</sup> [REDACTED].

<sup>505</sup> [REDACTED].

<sup>506</sup> [REDACTED]; T.33037, 22 April 2009, Momir NIKOLIC.

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

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

*a) Weekend warriors*

345. The reservists were rotated in shifts. They would spend some time in the Brigade and after that they would stay at home to provide for their families. While at home, the soldiers were beyond the control of the Brigade command and their units.<sup>515</sup> This represented a huge problem of military management<sup>516</sup> and it was necessary for

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

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

<sup>509</sup> T.12631-12632, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>510</sup> T.11387, 11 May 2007, Slavko PERIC; [REDACTED].

<sup>511</sup> T.30706, 27 January 2009, Vinko PANDUREVIC.

<sup>512</sup> [REDACTED]

<sup>513</sup> T.30708, 27 January 2009, Vinko PANDUREVIC.

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

<sup>515</sup> T.12638, 14 June 2007, Miodrag DRAGUTINOVIC.

<sup>516</sup> [REDACTED]

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

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

#### *b) Communication Difficulties*

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

#### **2.4. Tactical situation at Pandurevic's arrival**

349. Pandurevic became commander of the Zvornik Brigade on 18 December 1992.<sup>522</sup>
350. At the time of his arrival, the tactical situation in the brigade was very difficult. First of all, many civilians and soldiers had been killed in the territory of Glodjansko Brdo and one battalion of the Zvornik Brigade had been completely dissolved. The second battalion was in the area of Drinjaca, south of Zvornik, some 12 kilometres further away, and it was completely encircled. The territory between Crni Vrh and Nemici, which is north-west of the city of Zvornik, was not covered by the Serb forces, which meant that that territory was completely empty. The 6th Battalion had basically fallen apart and the Lokanj Battalion had virtually no contacts with the command. The other battalions were in dire straits. It was very difficult to control and command such units.<sup>523</sup>

<sup>517</sup> T.30708, 27 January 2009, Vinko PANDUREVIC

<sup>518</sup> [REDACTED].

<sup>519</sup> T.12640-126442, 14 June 2007, Miodrag DRAGUTINOVIC.

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

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

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

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

351. Upon his arrival, no one could brief Pandurevic about the exact number of men in the brigade. The estimates were between 5600 and 6000.<sup>524</sup>

## 2.5. Relationship with local community

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

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

## 3. EVENTS PRE-KRIVAJA 95

### 3.1. Creation of enclaves and treaty for demilitarization

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

### 3.2. Muslim arming in the enclaves

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

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

<sup>524</sup> T.30695, 27 January 2009, Vinko PANDUREVIC.

<sup>525</sup> [REDACTED].

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

<sup>527</sup> See Adjudicated Facts 9-32 inclusive.

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

<sup>529</sup> T. 2438, 16 October 2006, Robert FRANKEN

<sup>530</sup> EGBERS, Vincent 18 October 2006 page 2791 Line 24 to page 2792

<sup>531</sup> EGBERS, Vincent 18 October 2006 page 2792 line 20 to page 2793

<sup>532</sup> T.2441, 16 October 2006, Robert FRANKEN; T.2603, 17 October 2006, Robert FRANKEN

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

357. Muslims forces appeared to be more and more organized in the enclave. Before May 1995, they wore part uniforms but after May they were kitted out completely with new combat suits worn by the BiH.<sup>535</sup> They also received new weapons.<sup>536</sup> Zulfo's forces which controlled the area between OPA and OPC, were very clearly an organized military unit.<sup>537</sup> The 28<sup>th</sup> Division had an HQ at the post building in Srebrenica<sup>538</sup> which was used for communications with the 2<sup>nd</sup> Corps in Tuzla.<sup>539</sup>

### *Attacks from within the enclaves*

358. Before the VRS operation in Srebrenica, attacks from the Srebrenica enclave into VRS controlled territory involving arson and the murder of soldiers and civilians were reported.<sup>540</sup>

359. The Command of the 8<sup>th</sup> Operations Group Srebrenica listed in detail all military activities carried out by the Muslim army from January 1992 to March 1994 in a document sent to the Sector for Morale of the 2<sup>nd</sup> Corps of the Army of Bosnia and Herzegovina.<sup>541</sup> This was at the time of the most severe ethnic cleansing and expulsion of Serbs from central Podrinje.

360. Momir Nikolic and Beara complained several times to Boering about the ABiH continually leaving the enclave on raids at night, burning Serbian villages, killing Serb civilians and raping the women.<sup>542</sup>

361. Since this did not have any effect, a decision was made to carry out an operation to narrow the "safe area" and to demilitarise it in earnest. This was planned and carried out by the Army of Republika Srpska. VRS Drina Corps forces launched operation "Jadar-95". This operation forced Dutchbat troops to abandon Observation Post (hereinafter "OP") Echo south of Srebrenica. The UN abandonment of this checkpoint ultimately led to the fall of the village of Zeleni Jadar, a key junction that the VRS needed as a stepping stone for future operations. By 5<sup>th</sup> June 1995, the initial military goals of "Jadar-95" were realised, and the VRS ceased offensive operations along the Zeleni Jadar road. Dutch UN forces hastily erected two new OPs, Sierra and Tango, to monitor the southern approach into the "safe area".<sup>543</sup>

<sup>533</sup> T.2601, 17 October 2006, Robert FRANKEN

<sup>534</sup> T.2602, 17 October 2006, Robert FRANKEN; T.2906, 20 October 2006, Vincent EGBERS

<sup>535</sup> T.2438, 16 October 2006, Robert FRANKEN

<sup>536</sup> T.2862, 20 October 2006, Vincent EGBERS

<sup>537</sup> T.2604, 17 October 2006, Robert FRANKEN; T.2907, 20 October 2006, Vincent EGBERS

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

<sup>539</sup> T.2179, 25 September 2006, Peter BOERING

<sup>540</sup> T.2579, 17 October 2006, Robert FRANKEN

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

<sup>542</sup> T.2111, 25 September 2006, Peter BOERING

<sup>543</sup> P00686, Butler narrative Revised Narrative Report, Para 1.38



### 3.3. Directive 7<sup>544</sup>

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

### 3.4. The Order of the Drina Corps<sup>549</sup>

365. According to Pandurevic, this order represented the brigade's ongoing tasks.<sup>550</sup>
366. He did not understand it to be his task to involve the removal of the populations from from Srebrenica or Zepa.<sup>551</sup> He only perceived legitimate military objectives in the order. Item 4 reflected the plan to separate the enclaves.<sup>552</sup>
367. Pursuant to the Order of 20<sup>th</sup> March 1995, the Zvornik Brigade carried out the operation Spreca 95.<sup>553</sup> It was during this operation that Obrenovic was injured.<sup>554</sup>

### 3.5. Convoys

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

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<sup>544</sup> P00005, RS Supreme Command Directive 7, 8-Mar-1995

<sup>545</sup> T.30821, 29 January 2009, Vinko PANDUREVIC

<sup>546</sup> T.11920, 22 May 2007, Mirko TRIVIC

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

<sup>548</sup> T.15216, 11 September 2007, Nedeljko TRKULJA

<sup>549</sup> P203

<sup>550</sup> T.30823-T.30824, Vinko PANDUREVIC

<sup>551</sup> T.30827, Vinko PANDUREVIC

<sup>552</sup> T.30838-T.30829, Vinko PANDUREVIC

<sup>553</sup> T.30824, Vinko PANDUREVIC

<sup>554</sup> T.31103, 9 February 2009, Vinko PANDUREVIC

<sup>555</sup> Adjudicated Facts 48 and 52

military equipment into the enclaves<sup>556</sup> and they were abused at the point of arrival where the army in both Srebrenica and Zepa ring-fenced supplies for itself, thus depriving the civilian population of aid.<sup>557</sup>

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

#### 4. KRIVAJA 95 OPERATION

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

<sup>557</sup> T.2642, 18 October 2006, Robert FRANKEN, T.2537-T.2538, 17 October 2006, Robert FRANKEN

<sup>558</sup> T.2641, 18 October 2006, Robert FRANKEN

<sup>559</sup> T.30809, 29 January 2009, Vinko PANDUREVIC

<sup>560</sup> T.30809, 29 January 2009, Vinko PANDUREVIC

<sup>561</sup> T.30810, 29 January 2009, Vinko PANDUREVIC

<sup>562</sup> T.30809-T.30810, 29 January 2009, Vinko PANDUREVIC

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

#### 4.1. Ad hoc operation and surprise to Pandurevic

373. Pandurevic had no knowledge of a plan to take action against the enclaves before Krstic called him to the Corps command and they had been to Pribicevac to carry out reconnaissance.<sup>564</sup> This was probably 1<sup>st</sup> July.
374. Obrenovic had recently convalesced in Meljine, following injury,<sup>565</sup> and the units of the Drina Wolves were engaged in an operation in the zone of responsibility of the Sarajevo-Romanija Corps.<sup>566</sup> Approximately 955 soldiers were engaged outside the Brigade’s zone.<sup>567</sup> Given that sort of commitment to other theatres of war, Pandurevic did not anticipate that the Brigade would be asked to form another battalion to go outside the area of defence. The absence of reference in the combat reports of 1<sup>st</sup> and 2<sup>nd</sup> July to Krivaja 95 is marked.<sup>568</sup> [REDACTED].<sup>569</sup>
375. A number of objective factors point to the haste with which the operation was planned : commander’s reconnaissance was carried out a day before the use of the Corps was ordered;<sup>570</sup> the preparatory orders of the Corps and the Brigade were unusually issued on the same day;<sup>571</sup> the deadline for preparation of the units was 48 hours after the issue of

<sup>563</sup> T.32147, 26 February 2009, Vinko PANDUREVIC

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

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

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

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

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

<sup>569</sup> [REDACTED]

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

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

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

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

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

## 4.2. Units involved and command of the operation

### 4.2.1. Pandurevic in command of TG1

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

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

<sup>573</sup> T.30850, 29 January 2009, Vinko PANDUREVIC; [REDACTED]

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

<sup>575</sup> T.11954-T.11955, 22 May 2007, Mirko TRIVIC

<sup>576</sup> P00106, DC Preparatory Order, 2 July 1995, Para 2(a)

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

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

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

379. Contrary to the view of Richard Butler,<sup>579</sup> Pandurevic held a different position to that of his colleagues, Trivic and Andric, who also took part in Krivaja '95. Trivic took a combat group from the Romanija Brigade but put Ljubo Eric in command of it. Therefore, up until the 11th of July until the moment he met up with Mladic and until the moment Mladic issued Colonel Andric, the commander of the Birac Brigade, Trivic, and other brigade commanders to be personally engaged in combat, Trivic didn't really do anything. So, from that moment on, he had somewhat broader autonomy. He could stay in the territory, but he could also leave it which meant that his position was entirely the opposite to that of Pandurevic. It would have been too much for a brigade commander to be put in command of a company.<sup>580</sup> Trivic confirmed the position.<sup>581</sup>
380. As for Colonel Andric, Pandurevic neither heard or saw anything of him. The combat group from Andric's brigade was commanded by Major Nemanja Pavlovic.<sup>582</sup>

#### 4.3. Command of the Operation

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

#### 4.4. Aim of the operation as understood by Pandurevic

382. The order did not give any indications of the task involved.<sup>586</sup> During reconnaissance, Krstic told Pandurevic that the enclaves had to be separated to prevent the 28<sup>th</sup> Division moving towards Srebrenica and launching strategic offensives towards the Drina.<sup>587</sup>
383. Pandurevic understood his involvement to concentrate on a point immediately below Pribicevac, which commanded the best view of the planned direction of the use of the Brigade forces.<sup>588</sup> He believed the objectives of active combat were limited and believed

<sup>579</sup> T.20957, 1 February 2008, Richard BUTLER

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

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

<sup>582</sup> T.30881, 30 January 2009, Vinko PANDUREVIC

<sup>583</sup> See P106, P107

<sup>584</sup> See P106, paragraph 2

<sup>585</sup> P417

<sup>586</sup> P106, DC Preparatory Order, 2 July 1995

<sup>587</sup> T.30841, 29 January 2009, Vinko PANDUREVIC

<sup>588</sup> T.30841, 29 January 2009, Vinko PANDUREVIC

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

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

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

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

## 4.5. Legitimate operation

### 4.5.1. Enclaves never demilitarised

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

### 4.5.2. Strength of 28<sup>th</sup> Division

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

<sup>589</sup> T.30841, 29 January 2009, Vinko PANDUREVIC

<sup>590</sup> P00838, Krivaja order, 2 July 1995, point 5

<sup>591</sup> T.32146, 26 February 2009, Vinko PANDUREVIC

<sup>592</sup> T.32149, 26 February 2009, Vinko PANDUREVIC

<sup>593</sup> T.11810-2, 18 May 2007, Mirko TRIVIC

<sup>594</sup> T.11811-T.11812, 18 May 2007, Mirko TRIVIC

<sup>595</sup> T.32143, 26 February 2009, Vinko PANDUREVIC

<sup>596</sup> P00686, Richard Butler’s Revised Narrative Report, para 1.27

<sup>597</sup> T.30854, 29 January 2009, Vinko PANDUREVIC

<sup>598</sup> [REDACTED]

<sup>599</sup> T.11969-T.11970, 23 May 2007, Mirko TRIVIC

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

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

#### 4.6. Pandurevic's movements from 4<sup>th</sup> to 11<sup>th</sup> July

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

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

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

<sup>600</sup> T.11970, 23 May 2007, Mirko TRIVIC

<sup>601</sup> T.29526, 11 December 2008, Milenko JEVDJEVIC

<sup>602</sup> T.30866, 29 January 2009, T.30875, 30 January 2009, Vinko PANDUREVIC

<sup>603</sup> T.11970, 23 May 2007, Mirko TRIVIC

<sup>604</sup> T.11970-T.11971, 23 May 2007, Mirko TRIVIC

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

<sup>606</sup> T.30851-T.30852, T.30857, 29 January 2009, Vinko PANDUREVIC

<sup>607</sup> T.30852-T.30854, T.30857, 29 January 2009, Vinko PANDUREVIC

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

<sup>609</sup> T.30856-T.30857, 29 January 2009, Vinko PANDUREVIC

<sup>610</sup> T.30856-T.30858, 29 January 2009, Vinko PANDUREVIC

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

392. On 10<sup>th</sup> of July, there was a counter-attack by the 28<sup>th</sup> Division. They pushed Pandurevic's unit back virtually to where it stated. Pandurevic spoke to Mladic mid-morning and promised to retake the positions. He did so in the afternoon. Pandurevic spent the night under the balcony of a demolished house by the road between the features Rajne and Bojna.<sup>613</sup>
393. On the evening of 10<sup>th</sup> of July they received an order from Krstic to proceed with the attack and enter the town of Srebrenica in the morning.<sup>614</sup>
394. On the morning of 11<sup>th</sup> July, Krstic ordered Pandurevic to advance further towards the town of Srebrenica. For the first time, he noticed soldiers of the 10<sup>th</sup> Sabotage Detachment in the area. His task was to continue operations along the road, to reach the town and to capture the surrounding hills around the town itself. They could observe a part of the town from their positions and it was completely empty. He was surprised that the 28<sup>th</sup> Division did not put up a fight and make it difficult for VRS forces to enter the town. They managed to take the features after 15:00 hours or possibly 17:00 hours. Pandurevic was moving along the main road leading directly to the town of Srebrenica. He was together with his driver, his signalman, Dragutinovic, the operations officer, and his escort. They entered the town after 15:00 hours.<sup>615</sup>
395. Pandurevic understood that the part of the town he was able to see was empty ; he could hear 28th Division radio communications and the impression he got was that they were retreating in panic towards northern parts of the town<sup>616</sup> with a view to putting as much distance between them and the VRS units due to an imminent NATO bombing campaign.<sup>617</sup>
396. Pandurevic remembers that an aerial bomb was dropped on the southern edge of Srebrenica, landing next to Legenda's jeep. An ambulance was also hit. Pandurevic and a group of officers were on the right-hand side of the road, some 60 metres from the vehicle which had been hit.<sup>618</sup>

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

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

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

<sup>614</sup> T.30566, 29 January 2009, Vinko PANDUREVIC

<sup>615</sup> T.30867-T.30868, 29 January 2009, Vinko PANDUREVIC;

<sup>616</sup> T.30868, 29 January 2009, Vinko PANDUREVIC

<sup>617</sup> T.30868, 29 January 2009, Vinko PANDUREVIC

<sup>618</sup> T.30868-T.30869, 29 January 2009, Vinko PANDUREVIC



397. The entry to Srebrenica and the meeting at the Bratunac brigade are dealt with in detail elsewhere in this brief. That night, Pandurevic took a different route back to Srebrenica from Bratunac. He spent the night in a police station in Srebrenica. His units remained in the positions, on the northern edge of the town.<sup>619</sup> All of Pandurevic's movements can be seen from the short video<sup>620</sup> and map<sup>621</sup> and a map drawn by his operations officer Dragutinovic.<sup>622</sup>

#### 4.7. Shelling of Srebrenica town

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

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

400. It is accepted that there is some support for the evidence of Kingori from other sources<sup>626</sup>. Nonetheless, photographic evidence of the after-effects of heavy shelling on the urban area is conspicuous by its absence from the case (unlike for example photographs of dismantled mosques), and the contemporary video evidence indicates that on or about 10<sup>th</sup> July, the only mortar fire in Srebrenica was outgoing rather than incoming.<sup>627</sup> In addition, the Trial Chamber will have the evidence of its own eyes from a site visit to a place, barely altered between July 1995 and October 2006.<sup>628</sup>

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

<sup>619</sup> T.308674-T.30889, 30 January 2009, Vinko PANDUREVIC

<sup>620</sup> 7D1058 (movements TG-1) and 7D1059 (movements commander)

<sup>621</sup> 7D1066, Map of Pandurevic 's movements during Krivaja 95

<sup>622</sup> 7DIC00126 map drawn by Dragutinovic

<sup>623</sup> Prosecutor v Popovic, Indictment, 14 august 2006, Para 54

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

<sup>625</sup> [REDACTED] (PW-126)

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

<sup>627</sup> P02048, Srebrenica Trial Video

<sup>628</sup> [REDACTED]

<sup>629</sup> T.31993-T.31998, 23 February 2009, Vinko PANDUREVIC

<sup>630</sup> T.31993-T.31998, 23 February 2009, Vinko PANDUREVIC

<sup>631</sup> T.30854, 29 January 2009, Vinko PANDUREVIC

<sup>632</sup> T.19191, 13 december 2007, Joseph KINGORI

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

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

#### 4.8. Attacks on UN observation posts

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

<sup>633</sup> T.19243, 13 december 2007, Joseph KINGORI; P511

<sup>634</sup> T.2266, 27 September 2006, Pieter BOERING

<sup>635</sup> T.12690, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>636</sup> T.12690, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>637</sup> T.11816-T.11817, 18 May 2007, Mirko TRIVIC

<sup>638</sup> T.11899, 21 May 2007, Mirko TRIVIC

<sup>639</sup> T.30864, 29 January 2009, Vinko PANDUREVIC

<sup>640</sup> T.1932, 19 Sept 2006, Pieter BOERING, T.2868, 20 October 2006, Vincent EGBERS

<sup>641</sup> T.30864, 29 January 2009, Vinko PANDUREVIC

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

<sup>643</sup> T. 2517, 17 October 2006, Robert FRANKEN

<sup>644</sup> T. 2469, 16 October 2006, Robert FRANKEN

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

<sup>646</sup> T29533, 11 December 2008, Milenko JEVDJEVIC

#### 4.9. Entering the Srebrenica town

406. The VRS units and Pandurevic entered the town of Srebrenica around 15.00 – 17.00 hours on the afternoon of 11<sup>th</sup> July 1995.<sup>647</sup>
407. Pandurevic was not in the mood for celebration. He had been involved in heavy fighting and had suffered casualties. He was exhausted. More importantly, he was concerned that contact had been lost with the 28<sup>th</sup> Division.<sup>648</sup>
408. The trial video speaks for itself. After entering the town, Pandurevic deployed his troops in keeping with the tactical situation and took smaller forces to continue moving through the town towards the centre; he went all the way to the football pitch in Gostilj village.<sup>649</sup> No TG1 personnel went towards Potocari. Pandurevic based himself at the police station in Srebrenica.<sup>650</sup>
409. He did not see any civilians in Srebrenica, except some elderly people at the UNPROFOR base.<sup>651</sup>

#### 4.10. The Meeting at the Bratunac Brigade Command

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

##### 4.10.1. The Subject of Discussion

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

<sup>647</sup> T.30876, 30 January 2009, Vinko PANDUREVIC

<sup>648</sup> T.30879, 30 January 2009, Vinko PANDUREVIC.

<sup>649</sup> T.30882, 30 January 2009, Vinko PANDUREVIC.

<sup>650</sup> T12688, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>651</sup> T.30882, 30 January 2009, Vinko PANDUREVIC.

<sup>652</sup> T33342, 28 April 2009, Momir NIKOLIC

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

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

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

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

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

#### 4.10.2 The Date of the Meeting.

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

413. Virtually all of those who took part in the meeting recall that it was on 11<sup>th</sup> July. Pandurevic recalls getting to Bratunac at about 22.00.<sup>661</sup> He passed through Potocari and recalls the crowds of people. He told Eileen Gillece the same thing in October 2001, at a time when he didn't know he had been indicted.<sup>662</sup>

414. Milenko Jevdjevic recalls a meeting on 11<sup>th</sup> July at which he was dispatched to set up a Communications centre at Zepa. .<sup>663</sup> He said this to the OTP in April 2000.<sup>664</sup>

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

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

<sup>657</sup> See P1100, 1105 and 1106

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

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

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

<sup>661</sup> T.30883, 30 January 2009, Vinko PANDUREVIC.

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

<sup>663</sup> T.29609-T.29610, 12 December 2008, Milenko JEVDJEVIC

<sup>664</sup> 7D00551, JEVDJEVIC – OTP Interview, 4-apr-2000

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

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

<sup>667</sup> 7D01092, BAJAGIC Zvonko, Defence witness statement, 27-dec-2007

<sup>668</sup> T.12697, 15 June 2007, Miodrag DRAGUTINOVIC

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

#### 4.10.3. Trivic’s Diary

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

<sup>669</sup> T. 33341, 28 April 2009, Momir NIKOLIC

<sup>670</sup> T.33342, 28 April 2009, Momir NIKOLIC

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

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

423. Further, the matter is complicated by the fact that Trivic was not asked to give evidence by reference to his diary, in the sense of using it as an *aide memoire*. Accordingly, there is no evidence as to how often he completed the diary. It is worthy of note that there are no entries for 6<sup>th</sup>, 7<sup>th</sup> and, 8<sup>th</sup>, and that the crucial date 12<sup>th</sup> July appears to have been inserted ex post facto.
424. Moreover, Trivic's account of the meeting is inconsistent with its having taken place on 12<sup>th</sup>. There were no buses full of prisoners on the streets of Bratunac,<sup>672</sup> there were no buses in Potocari.<sup>673</sup> There was no information about the whereabouts of the column such as there would have been on 12th.<sup>674</sup> There were congratulations for Mladic and a meal.<sup>675</sup>
425. PW-109 of course recalls a meeting of the commanders on 12<sup>th</sup> July at the Bratunac Brigade command. Significantly, he does not describe either Pandurevic or Trivic as being present.<sup>676</sup> Moreover, his recollection as to times, dates and events has to be regarded as suspect given that he recalls the walk-through of Srebrenica as taking place on the morning of 11<sup>th</sup> July:<sup>677</sup> The arrival of Krstic and Mladic at Hotel Fontana as being 1500hrs on 11<sup>th</sup>; there being only one meeting at the Hotel on the evening of 11<sup>th</sup><sup>678</sup> and the morning meeting at Bojna<sup>679</sup> on 12<sup>th</sup> July taking place at about 1700hrs.<sup>680</sup>

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

426. Pandurevic spent the night of 11<sup>th</sup>/12<sup>th</sup> July at the police station in Srebrenica. The following morning there was a briefing at Bojna<sup>681</sup> at which he was ordered to move as a reserve along the road towards Zepa. The meeting was brief, because they had already received their general tasks the day before. At this meeting, they were provided with the details in terms of the control of the ground en route of their march. That afternoon, Pandurevic also visited some wounded soldiers and also Major Dragutinovic, whom he conveyed to the unit en route towards Viogor. On 12<sup>th</sup> July, the unit reached the area of Viogor and Mount Jahorina. They stopped marching somewhere after 17:00 hours. Krstic arrived at Viogor at about 18:00 and Pandurevic spoke to him about the location of the 28<sup>th</sup> Division. Having driven through Potocari on the 11<sup>th</sup>, Pandurevic also asked him what was going to happen to people from Potocari. Krstic told him that they had wanted to be evacuated in the direction of Tuzla and Kladanj and that the process was under way. Krstic then ordered Pandurevic to start marching to Rijeka village the following morning

<sup>672</sup> T.11851-T.11853, 21 May 2007, Mirko TRIVIC

<sup>673</sup> T.11980, 23 May 2007, Mirko TRIVIC

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

<sup>675</sup> Personal Diary of Mirko TRIVIC, ERN 6799-6800

<sup>676</sup> [REDACTED] (PW-109)

<sup>677</sup> [REDACTED] (PW-109)

<sup>678</sup> [REDACTED] (PW-109)

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

<sup>680</sup> [REDACTED] (PW-109)

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

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

427. On the morning of 13<sup>th</sup> July, Krstic and General Mladic arrived. Mladic addressed the soldiers and announced that Krstic would take over the command of the Corps forthwith. As soon as the marching column was formed,<sup>683</sup> Pandurevic set off. They encountered problems due to the condition of the road and at one point they encountered anti-tank mines. An APC got stuck, and the whole column had to wait for that part of the road to be cleared. They also stopped in Vlasenica around midnight to refuel<sup>684</sup> and then continued moving towards the village of Rijeka.<sup>685</sup>
428. On the night of 13<sup>th</sup> and 14<sup>th</sup> of July, Pandurevic was travelling with his driver, Dragan Stevic, two escorts, soldiers and a signalman. He does not remember whether Dragutinovic was with him in the car. After all the vehicles were refuelled, he formed a marching column, checked the situation and headed towards Han Pijesak and then the village of Rijeka. Around 2000 hours, they arrived in the village of Rijeka, they set up a make shift camp, put up a tent and rested for a few hours. He arrived in Krivace DC IKM around 1000hrs and reported to Krstic. Other brigade commanders were present. There he received his orders in relation to Zepa<sup>686</sup> and soon thereafter, he led his unit from the Rijeka village sector deploying his men into a combat line around 10 kilometers from Zepa. Pandurevic spent the night in a school.<sup>687</sup>
429. The events of the morning of 15<sup>th</sup> July are dealt with in detail elsewhere in this brief.<sup>688</sup>

#### 4.12. Alleged presence of Pandurevic in Zvornik on 12<sup>th</sup> July

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

<sup>682</sup> T.30889-T.30904, 30 January 2009, Vinko PANDUREVIC

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

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

<sup>685</sup> T.30904-T.30910, 30 January 2009, Vinko PANDUREVIC

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

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

<sup>688</sup> See Part 4 Section 6: Return to Zvornik 15<sup>th</sup> July

**4.12.1. [REDACTED]**

431. [REDACTED]<sup>689</sup>, [REDACTED]<sup>690</sup>, [REDACTED].<sup>691</sup>
432. ]REDACTED].<sup>692</sup> ]REDACTED].<sup>693</sup> [REDACTED].
433. At 0724hrs, approximately half an hour earlier, somebody was looking for Mane on the same channel and the same frequency with the same operator.<sup>694</sup> That was somebody who had already spoken to Radika, was looking for Mane (presumably because he was previously unable to find him), had information about the movement of the column since 0300hrs, was discussing ambushes and was taking measures with his military police. [REDACTED]
434. REDACTED<sup>695</sup>
- REDACTED<sup>696</sup>
  - REDACTED.
  - REDACTED.<sup>697</sup>
435. The explanation that this was a call intercepted by the duty officer on the “red light system” makes perfect sense.<sup>698</sup>

**4.12.2. Regular combat report**

436. Whilst of course it is correct that the Regular combat report of 12<sup>th</sup> July bears Pandurevic’s block signature,<sup>699</sup> that was applied at 1710hrs, which was nine and a half hours later. Nobody suggests he was or could have been in Zvornik at that time.<sup>700</sup> The block-signature of a combat report is no indication that a person is actually in command<sup>701</sup>, let alone the presence of that person in the area.

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<sup>689</sup> [REDACTED]

<sup>690</sup> [REDACTED]; [REDACTED]

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

<sup>692</sup> P01103d translation for ENG, P01103d original for BCS, INTERCEPT, 12<sup>th</sup> July, 7:55

<sup>693</sup> [REDACTED]

<sup>694</sup> P01102d BCS, 7D00694 for ENG, INTERCEPT, 12<sup>th</sup> July at 7:24

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

<sup>696</sup> [REDACTED]

<sup>697</sup> [REDACTED]

<sup>698</sup> [REDACTED]

<sup>699</sup> P00322, Zvornik Brigade RBI, 12<sup>th</sup> July 1995

<sup>700</sup> T.30925-T.30926, 30 January 2009, Vinko PANDUREVIC

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



### 4.12.3. Other evidence that Pandurevic was not present on 12<sup>th</sup> July

437. [REDACTED].<sup>702</sup> [REDACTED].<sup>703</sup>

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

(3) [REDACTED].<sup>704</sup>

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

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

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

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

(8) [REDACTED].<sup>710</sup>

(9) [REDACTED].<sup>711</sup>

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

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

<sup>702</sup> [REDACTED]

<sup>703</sup> [REDACTED]

<sup>704</sup> [REDACTED]

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

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

<sup>707</sup> 7D00495, Vehicle work log of VP for Nissan in July 95 – for - first time: re Han Pijesak – Local-Zvornik on 15<sup>th</sup>

<sup>708</sup> T.10580, 26 April 2007, Mihajlo GALIC

<sup>709</sup> T.10520, 25 April 2007, Mihajlo GALIC; [REDACTED]

<sup>710</sup> [REDACTED]

<sup>711</sup> [REDACTED]

<sup>712</sup> T.11832-T.11835, 21 May 2007, Mirko TRIVIC

<sup>713</sup> See P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, P00378, Zvornik Brigade duty operations officer diary, for period 12 February 1995 through 3 January 1996, P00379, Zvornik Brigade Duty Operations Officer Notebook, P00384, Zvornik Brigade – War Diary Book No. 5, 12 May 1995 through 15 October 1995, P00383 barracks duty officer notebook

(12) Vinko Pandurevic stated that he did not attend the Zvornik Brigade command on the morning of 12<sup>th</sup> July nor did he speak with Obrenovic on that day.<sup>714</sup>

#### 4.13. Communications during Krivaja 95

##### 4.13.1. With battle groups

438. Contacts with battle groups during the Krivaja '95 operation were via RUP-2/2K equipment which provided encrypted communications for anyone privy to a particular frequency being used.<sup>715</sup> Twenty two frequencies were available. However, only one was used during Krivaja '95.<sup>716</sup>

439. The 10<sup>th</sup> Sabotage Detachment was not linked to this system. It was equipped with Motorola radio equipment. According to its signalman, the unit '*had some special assignment*'.<sup>717</sup>

##### 4.13.2. With the Corps Command

440. Communications with Corps Command was through a radio relay device (RRU1). Using encrypted teleprinters, one could receive and transmit encrypted documents.<sup>718</sup>

441. Voice communication with Corps Command was possible at the IKM at Vlasenica.<sup>719</sup> This was an *open line* for voice communications and a *protected* one for encrypted devices.<sup>720</sup>

##### 4.13.3. With Zvornik Brigade Command

442. In order to contact Brigade Command, Pandurevic was obliged to go to the IKM at Pribicevac *personally* where he could use a phone.<sup>721</sup> This may sound strange but the two systems described above could not be interfaced<sup>722</sup> which was the reason why TG1 were not in contact with the Zvornik Brigade at this time.<sup>723</sup>

<sup>714</sup> T.30896, 30 January 2009, Vinko PANDUREVIC

<sup>715</sup> T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

<sup>716</sup> T.29583-T.29584, 11 December 2008, Milenko JEVDJEVIC

<sup>717</sup> T.29587, 11 December 2008, Milenko JEVDJEVIC

<sup>718</sup> T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

<sup>719</sup> T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

<sup>720</sup> T.29589-T.29591, 11 December 2008, Milenko JEVDJEVIC

<sup>721</sup> T.29594, 12 December 2008, Milenko JEVDJEVIC; T.12576, 13 June 2007, Miodrag DRAGUTINOVIC; T.12590, 13 June 2007, Miodrag DRAGUTINOVIC: '*We were together (with Pandurevic) and we did not have an occasion to establish any contact with the brigade.*'

<sup>722</sup> T.29594, 12 December 2008, Milenko JEVDJEVIC

<sup>723</sup> T.12576, 13 June 2007, Miodrag DRAGUTINOVIC

443. According to the Zvornik Brigade Duty Officer's Notebook, Pandurevic only contacted the Brigade on two occasions<sup>724</sup>, namely 5<sup>th</sup><sup>725</sup> and 7<sup>th</sup> July.<sup>726</sup> It was his practice always to speak to the duty officer,<sup>727</sup> which is corroborated by his subsequent calls from the IKM at Krivace.<sup>728</sup> Apart from those two calls, he made no contact with the Zvornik Brigade between 4<sup>th</sup> and 15<sup>th</sup> July.
444. When Pandurevic was at the command of the Bratunac Brigade on 11<sup>th</sup> July, he made no contact with the Zvornik brigade as he was still commanding TG1 under the command of Krstic.<sup>729</sup> Likewise, Equally, nobody from the Zvornik Brigade tried to contact him during the 4<sup>th</sup> to 15<sup>th</sup> July.<sup>730</sup>
445. From the 4th of July, Pandurevic was away from command headquarters.<sup>731</sup> A number of witnesses confirm this. [REDACTED].<sup>732</sup>

#### 4.14. Command of the Zvornik brigade during Pandurevic's absence

446. It is the defence case that, whatever the position at law,<sup>733</sup> Pandurevic did not in any event have any effective control of the Zvornik Brigade between the 4<sup>th</sup> and 15<sup>th</sup> July.

##### 4.14.1. Automatic assumption of command

447. Obrenovic automatically became deputy commander when Pandurevic left the brigade on 4<sup>th</sup> July.<sup>734</sup>

<sup>724</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95– bears no entry as to that effect; T.30921, 30 January 2009, Vinko PANDUREVIC

<sup>725</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS and ENG page 96, ERN 0293-5714, entry on 5<sup>th</sup> July: VP 'tank grenades 50- pieces, 100 millimeters'. Read together with P378, ZB duty operations officer diary, ERN 6685, BCS page 83, ENG translation in 7D1075, entry at 17:00: commander Pandurevic called, asked for 50x100mm grenades for the tank.

<sup>726</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS and ENG page 101, ERN 0293-5719, entry on 7<sup>th</sup> July 11:10: 'Colonel Pandurevic called, they are well, they work, materials to be taken and handed to the faculty'. Read together with P00378, ZB duty operations officer diary, ERN 0293-6686, BCS page 84, ENG translation also in P378, but in the translation for 7 July 1995 on 7.7.: '11:10: Brigade commander reported from the Zeleni Jadar region. Situation among the units is good.' See also T.29597, 12 December 2008, Milenko JEVDJEVIC

<sup>727</sup> T.31457, 13 February 2009, Vinko PANDUREVIC

<sup>728</sup> P01173, intercept 15 July 1995

<sup>729</sup> T.30922, 30 January 2009, Vinko PANDUREVIC

<sup>730</sup> T.30922, 30 January 2009, Vinko PANDUREVIC

<sup>731</sup> [REDACTED] (PW-101)

<sup>732</sup> T.10579, 26 April 2007, Mihajlo GALIC; T.10144, 17 April 2007, Lazar RISTIC; See section Part 4 Section 4 Krivaja Operation

<sup>733</sup> See Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules

<sup>734</sup> [REDACTED]

#### 4.14.2. Drina Corps Orders executed by Obrenovic

448. The interval between the 4<sup>th</sup> and the 15<sup>th</sup> of July was an active period for the Corps and the Zvornik Brigade. Corps command issued a number of orders during the period to the Zvornik Brigade. Unfailingly, these orders were executed by Obrenovic, who issued effective orders of his own without consultation with or deference to Pandurevic. The following is a non-exhaustive list of examples:

(1) On 12<sup>th</sup> July the Drina Corps issued an order to provide buses for the evacuation from the Srebrenica enclave.<sup>735</sup> Obrenovic complied with it without consulting Pandurevic, who was ignorant of the order.<sup>736</sup>

(2) On 12<sup>th</sup> July the Drina Corps issued an order to regulate traffic on the Konjevic Polje Bratunac road.<sup>737</sup> Pandurevic did not know of the order. Obrenovic made decisions in compliance with this order as a deputy commander.<sup>738</sup>

(3) The execution of these orders is recorded in the contemporaneous records of the Brigade, specifically the duty officer's logbook.<sup>739</sup> The eight buses refer to Obrenovic by title.<sup>740</sup> Pandurevic was not consulted about the execution of this order.<sup>741</sup> The orders were signed by Obrenovic<sup>742</sup> Pandurevic had no hand in their execution.<sup>743</sup>

(4) Through the medium of the regular combat report on the 12th of July, Obrenovic reported the execution of these orders to his superior command.<sup>744</sup> The appearance of Pandurevic's block signature on the report merely indicates the practice of the incumbent duty officer.<sup>745</sup> Pandurevic could not have been reporting these matters as he didn't know anything about them.<sup>746</sup>

<sup>735</sup> P00110, Drina Corps order No. 22/226 re the provision of buses for evacuation from Srebrenica, 12<sup>th</sup> July 1995

<sup>736</sup> T.30923, 30 January 2009, Vinko PANDUREVIC

<sup>737</sup> P157, Drina Corps order No. 22/226 re the provision of buses for evacuation from Srebrenica, 12<sup>th</sup> July 1995

<sup>738</sup> T.30924, 30 January 2009, Vinko PANDUREVIC; [REDACTED]

<sup>739</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, 12<sup>th</sup> July, ERN 5734, BCS and ENG page 116: *'the 4th and 7th battalions, everything all right; measures taken pursuant to order; the 2nd battalion, the 7th and 4th battalions - conscripts are to something lines to the maximum - at least three of them should stand guard'*

<sup>740</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, ERN 0293 5732, 12<sup>th</sup> July, BCS and ENG page 114: *'the 1<sup>st</sup> platoon of the Military Police – ambush at Dzafin Kamen, the 1<sup>st</sup> platoon of the 4<sup>th</sup> infantry battalion – tisova Kosa – ambush; chief of staff at the 7<sup>th</sup> pb; 8 buses from the Drina Trans and two buses from Military police and four trucks are going to Bratunac today'*

<sup>741</sup> T.30926-T.30927, 30 January 2009, Vinko PANDUREVIC

<sup>742</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, ERN 0293 5733, 12<sup>th</sup> July, BCS and ENG page 115

<sup>743</sup> T.30928, 30 January 2009, Vinko PANDUREVIC

<sup>744</sup> P00322, ZB regular combat report, 12 July 1995, para 2

<sup>745</sup> T.30926, 30 January 2009, Vinko PANDUREVIC; Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules.

<sup>746</sup> T.30924-T.30925, 30 January 2009, Vinko PANDUREVIC

(5) On 13<sup>th</sup> July the Drina Corps issued an order for the prevention of passage of Muslim groups to Tuzla and Kladanj.<sup>747</sup> Again, the order was not delivered to Pandurevic, nor was he informed about it.<sup>748</sup>

(6) The Zvornik Brigade regular combat report on 13 July records and reports that Obrenovic complied with the order: it records that the primary task for the units is “to cut off groups of Turks retreating from Srebrenica towards Tuzla”.<sup>749</sup>

#### **4.14.3. Obrenovic directly subordinated to the Drina Corps Command and not to Pandurevic**

449. The above processes demonstrate the operation of the principle of unity of command ; Obrenovic made decisions based on the orders of his superior command and based upon on his own assessment.<sup>750</sup>

450. The most poignant illustration of the true command position during this period occurred on the evening of 14<sup>th</sup> July, when Obrenovic faced a moment of crisis. Despite the fact that he could easily have asked Jevdjevic to get Pandurevic to call him from the IKM at Krivace, he didn’t even think of contacting or consulting the Brigade commander. Instead he sought his intercession with the Corps commander, and issued his request in an interim combat report to the Corps.<sup>751</sup>

#### **4.14.4. Pandurevic issued no orders to the Brigade in this period**

451. During the period 4<sup>th</sup> to 15<sup>th</sup> July Pandurevic was duty-bound to command only TG1 to the exclusion of any other unit.<sup>752</sup> He did not resume command of the Zvornik Brigade until it was handed over to him at the briefing of 15<sup>th</sup> July at Brigade Command.<sup>753</sup>

452. From 4<sup>th</sup> to 15<sup>th</sup> of July, Zvornik Brigade personnel received no orders from Pandurevic on any issue,<sup>754</sup> nor did any Zvornik Brigade personnel seek his advice or views on any matter.<sup>755</sup>

453. Pandurevic was unaware of any orders issued to the Zvornik Brigade by higher command while he was in Srebrenica and Zepa (from 4<sup>th</sup> to 15<sup>th</sup> July). He and his unit had special tasks and there was no need for them to be informed about the situation in the Zvornik Brigade.<sup>756</sup>

<sup>747</sup> P01032, Drina Corps Command order 03/156-12, 13 July 1995

<sup>748</sup> T.30929, 30 January 2009, Vinko PANDUREVIC

<sup>749</sup> P325, ZB regular combat report, 13 July 1995; T.30930, 30 January 2009, Vinko PANDUREVIC

<sup>750</sup> T.30930, 30 January 2009, Vinko PANDUREVIC

<sup>751</sup> T.31461, 17 February 2009, Vinko PANDUREVIC; P00327, Zvornik Brigade Interim Report No.06-216/2, dated 14 July 1995

<sup>752</sup> T.12702, 15 June 2007, Miodrag DRAGUTINOVIC;

<sup>753</sup> T.31436, 13 February 2009, Vinko PANDUREVIC

<sup>754</sup> T.10579, 26 April 2007, Mihajlo GALIC

<sup>755</sup> T.30922, 30 January 2009, Vinko PANDUREVIC

<sup>756</sup> T.12702, 15 June 2007, Miodrag DRAGUTINOVIC

#### 4.14.5. The command of Zvornik Brigade from 4<sup>th</sup> to 15<sup>th</sup> July

454. The position of the chief of staff when the commander is absent is discussed in detail elsewhere in this brief. It has been submitted at length that Obrenovic automatically assumed the command of the Zvornik Brigade when Pandurevic was absent, by reason of the order of appointment issued on 11 April 1993.<sup>757</sup> Moreover, Pandurevic, as Commander of TG1, was not the Commander of the Zvornik Brigade and had no control over and no communications with the Zvornik Brigade.<sup>758</sup>

455. In addition, a *public announcement* was made to all the troops to the effect that Obrenovic would take over the command from Pandurevic and remain in command until his return.<sup>759</sup> During that time the Zvornik brigade was under the command and responsibility of Dragan Obrenovic.<sup>760</sup>

## 5. POCARI AND THE COLUMN

*‘‘There’s no evidence that the Command in Zvornik was involved in that, and at present I have no way of knowing whether the brigade commander -- whether he was or was not involved in that [in the decision-making, the planning, and the actual transport of the group of women, children and elder men from Potocari to free territory under the control of the 2nd Corps of the ABiH]... I have no information on whether or not Colonel Pandurevic, as the commander of the brigade, had any input or opinion, from where his vantage point was down in Srebrenica.’’<sup>761</sup>*

### 5.1. Units involved in separation of men and women

#### 5.1.1. Background

456. With the exception of a period of time at the start of 13<sup>th</sup> July, the separation of men at Potocari occurred throughout the evacuation.<sup>762</sup> It was justified as a search for war

<sup>757</sup> Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules

<sup>758</sup> [REDACTED]; T.12614, 14 June 2007, Miodrag DRAGUTINOVIC,

<sup>759</sup> [REDACTED]; **7D00725**, OTP interview with Milan Maric, 30 June 2002.

<sup>760</sup> 7D86, Dragan OBRENOVIC, Statement of facts, 20 May 2003; [REDACTED] (PW-101) ); T.11703, 17 May 2007, Ostoja STANISIC; T.20788, 31 January 2008, Richard BUTLER; See Part 3 Section 3 Chief of Staff and Deputy Commander under Brigade Rules

<sup>761</sup> T.20388-T.20389, 24 January 2008, Richard BUTLER

<sup>762</sup> T.2496-T.2497, 16 October 2006, Robert FRANKEN, T.2752; T.2836; T.2899. 19 October 2006, Vincent EGBERS T. 2300, 28 September 2006, Leendert VAN DUIJN,

criminals on a list held by the VRS.<sup>763</sup> Further separations took place at checkpoints on the route to Kladanj.<sup>764</sup>

### 5.1.2. Units involved

457. A number of units at Potocari took part in the separations ; these included members of the Bratunac Brigade,<sup>765</sup> Bratunac Brigade Military Police,<sup>766</sup> ( though their precise role is unclear),<sup>767</sup> MUP,<sup>768</sup> Special Police Units,<sup>769</sup> and elements of the Drina Corps Military Police, 10<sup>th</sup> Sabotage Detachment and 65<sup>th</sup> Protection Regiment.<sup>770</sup>

## 5.2. Units involved in busing of population

### 5.2.1. Involvement of the Dutchbat

458. Karremans suggested an evacuation.<sup>771</sup> Mladic gave instructions to Karremans as to how the evacuation should be carried out.<sup>772</sup> Franken received orders to cooperate and support the departure and to facilitate it.<sup>773</sup> The Dutch helped the civilians board the buses and escorted the convoys.<sup>774</sup>

### 5.2.2. The Provision of Fuel

459. Fuel for the transport of the people at Potocari came from three sources: the Bratunac Brigade, who from 12 July began disbursing and accounting for fuel ;<sup>775</sup> DutchBat ;<sup>776</sup> and the Main Staff and Drina Corps of the VRS.<sup>777</sup>

<sup>763</sup> P00686, Butler Revised Narrative Report, Para 5.20

<sup>764</sup> P00686, Butler Revised Narrative Report, Para 5.24

<sup>765</sup> P00686, Butler Revised Narrative Report, Para. 5.21

<sup>766</sup> [REDACTED] (PW-126); T.18018, 21 November 2007, Mile JANJIC

<sup>767</sup> T.18015-16, 21 November 2007 Mile JANJIC, T.17942-T.17947 , 20 November 2007, Mile JANJIC T.3807-T.3808, 8 November 2006, Mirko JANKOVIC

<sup>768</sup> T.32986-32987, 22 April 2009, Momir NIKOLIC

<sup>769</sup> T.17938, 20 November 2007, Mile JANJIC; P2963 Transcript of testimony in Case No. IT-02-60-T, *Prosecutor v. Blagojevic, et al.*, dated 24 and 25 May 2004

<sup>770</sup> T.32986-32987, 22 april 2009, Momir NIKOLIC

<sup>771</sup> T.19807, 16 January 2009, Richard BUTLER

<sup>772</sup> T. 2564-T.2565, 17 October 2006, Robert FRANKEN, and P02265

<sup>773</sup> T. 2682 ; T.2554; T.2649; T.2679,18 October 2006, Robert FRANKEN, and P453

<sup>774</sup> T.10811-T.10812 , 2 may 2007, Mendeljev DJURIC

<sup>775</sup> P00686, Butler Revised Narrative Report para 5.8

<sup>776</sup> 4D00613, Command of 1<sup>st</sup> Bratunac lpb, Confidential No. 10-723/95, Overview of the amount of fuel, T.27076, 20 October 2008, Dragoslav TRISIC

<sup>777</sup> T.27153, 21 October 2008, Dragoslav TRISIC

### 5.2.3. Units involved in Busing

460. Bratunac MPs drove the buses<sup>778</sup> while the Special Police and Bratunac MPs were escorting the buses.<sup>779</sup> On 13<sup>th</sup> July MUP were more involved in the transportation.<sup>780</sup> Special Police Units were present in Potocari, apparently with a protective role,<sup>781</sup> and to expedite the evacuations.<sup>782</sup>

### 5.3. Command of units in Potocari

461. A number of senior VRS and MUP officers were present in Potocari, including Mladic,<sup>783</sup> Zivanovic, Krstic,<sup>784</sup> Popovic, Acimovic,<sup>785</sup> Kosoric, Borovcanin,<sup>786</sup> Djuric,<sup>787</sup> and Vasic<sup>788</sup> to name but a few. Boering thought an officer called Kosavic or Kozoric was responsible for the evacuations<sup>789</sup>, although he was not invited to identify this person.

462. There is a substantial body of evidence, not least his own plea agreement, which suggests that the central coordinator and supervisor of the operation to separate the men from the women and to bus the population from Potocari was Momir Nikolic.<sup>790</sup>

463. There is some evidence of individuals who claimed to be Drina Wolves,<sup>791</sup> a unit garrisoned in Kozluk, near Zvornik. Even if deemed to be credible that members of a special forces unit should be in Potocari with no obvious role, such men at that time would have been under the command of either General Zivanovic or Krstic.<sup>792</sup>

### 5.4. No involvement of Zvornik Brigade in Potocari

464. There is no evidence of the presence or involvement of Pandurevic at Potocari and he specifically denies the same.<sup>793</sup> The Zvornik Brigade was not involved in the transfer of

<sup>778</sup> P02963 Transcript of testimony in Case No. IT-02-60-T, *Prosecutor v. Blagojevic, et al.*, dated 24 and 25 May 2004

<sup>779</sup> T.17934-T.17935, 20 November 2007, Mile JANJIC; T.27069-T.27070, 20 October 2008, Dragoslav TRISIC,

<sup>780</sup> [REDACTED] (PW-100); P00686 Butler Revised Narrative Report, para 5.15, 5.23

<sup>781</sup> T.10809, 2 May 2007, Mendeljev DJURIC

<sup>782</sup> [REDACTED]

<sup>783</sup> T.19253, 13 December 2007, Joseph KINGORI

<sup>784</sup> T.32927-T.32928, 21 April 2009, Momir NIKOLIC

<sup>785</sup> T. 2492-T.2493, 16 October 2006, Robert FRANKEN T.19276-T.19277, 14 December 2007, Joseph KINGORI,

<sup>786</sup> P00686 Butler Revised Narrative Report, para 5.16

<sup>787</sup> T. 2310, 27 September 2006, Peter BOERING T.2277-T.2278, , 27 September 2006, Leendert VAN DUIJN

<sup>788</sup> T.32927-T.32928, 21 April 2009, Momir NIKOLIC

<sup>789</sup> T.2020, 22 September 2006, Peter BOERING

<sup>790</sup> **4D00016**, Momir Nikolic – Statement of Facts and Acceptance of responsibility, 6 May 2003, paragraph 6; T.17968, 20 November 2007, T.18016, 21 November 2007, Mile JANJIC; T.3890, 9 November 2006, Mirko JANKOVIC

<sup>791</sup> T.32927-T.32928, 21 april 2009, Momir NIKOLIC; P02048, Srebrenica Trial Video : Drina Wolves members are not present; P01145, Intercept dated 13 July 1995, 18:42

<sup>792</sup> See Structure of Zvornik Brigade

<sup>793</sup> [REDACTED]



the civilian population from Potocari to Klandanj,<sup>794</sup> although it sent four buses to Potocari and a squad (four to five men) to Konjevic Polje to regulate the traffic.<sup>795</sup>

465. According to Butler, no evidence to suggest that either the Command in Zvornik or the Brigade was involved in the decision-making, the planning or the transport of civilians from Potocari.<sup>796</sup> The buses were requested through the Secretariat of Defence of the Ministry in Zvornik which is an independent entity from the Zvornik Brigade.<sup>797</sup>
466. -Other than the alleged presence of members of the Drina Wolves, there is no evidence of any elements of the Zvornik Brigade being present at Potocari.<sup>798</sup>

### 5.5. Involvement of Zvornik Brigade units in ambushes

467. From 12<sup>th</sup> to 15<sup>th</sup> July, the Zvornik Infantry Brigade was deployed in their own zone of defence and actively engaged in ambushes and other combat activities against columns of the 28<sup>th</sup> BH Army Division, which attempted to break through towards the 2<sup>nd</sup> Corps of the BH Army.
468. The Brigade merely complied with orders from superior command to block the column.<sup>799</sup>
469. [REDACTED].<sup>800</sup> [REDACTED].<sup>801</sup>
470. [REDACTED].<sup>802</sup> [REDACTED].<sup>803</sup>
471. On the evening of 13th, the Zvornik Brigade had its first sighting of the 28<sup>th</sup> Division. [REDACTED].<sup>804</sup>
472. The same evening, Obrenovic took the rest of his military police company and some other forces that he had gathered and went to Snagovo. This inexperienced group arrived at about 2100-2130 hours. They organised an ambush assisted by another company sent by Mane Djuric which arrived sometime after midnight.
473. On 14th July, they were linking up the forces all night, attempting to set up some sort of defence but there was no combat that night.<sup>805</sup>
474. [REDACTED].<sup>806</sup> [REDACTED] They were attacked precisely at the link-up of military units and a company of civilian police. His forces offered little resistance and

<sup>794</sup> T3435, 13 February 2009, Vinko PANDUREVIC

<sup>795</sup> [REDACTED]

<sup>796</sup> T.20388, 24 January 2008, Richard BUTLER

<sup>797</sup> T.20391, 24 January 2008, Richard BUTLER

<sup>798</sup> T. 2892. 20 October 2006, Vincent EGBERS

<sup>799</sup> P01032, Drina Corps Command Order 03/156-12, 13-Jul-1995; P00325, Zvornik Brigade Daily Combat Report, 13-Jul-1995

<sup>800</sup> [REDACTED]

<sup>801</sup> [REDACTED]

<sup>802</sup> [REDACTED]

<sup>803</sup> [REDACTED]

<sup>804</sup> [REDACTED]

<sup>805</sup> [REDACTED]

were dispersed. The police were pushed back towards Zvornik, and some of the troops were pushed towards the villages in Gornji Snagovo.<sup>807</sup>

475. The order of the Drina Corps Command received by the Command of the Zvornik Infantry Brigade at 1015 hours on 15<sup>th</sup> July records that the Zvornik Infantry Brigade was fully engaged in “blocking and, if possible, breaking up and capturing Muslim forces.”<sup>808</sup> According to this order, while waiting for the arrival of TG-1 from Zepa, the Brigade had the task of conducting persistent and decisive defence in order to prevent the linking of Muslim formations by “taking all measures of combat security in order to protect the population and material goods.”<sup>809</sup>
476. Butler noted the coincidence of events: “while the prisoners were being accommodated in the territory of Zvornik municipality, the Zvornik Infantry Brigade participated in fierce clashes with a column of Muslims from the former enclave of Srebrenica. The column, which took the most direct way towards Tuzla, came across ambushes of the Zvornik Brigade in the late afternoon of 14<sup>th</sup> July 1995 and, by 1<sup>st</sup> July 1995, the column and the Zvornik Brigade clashed in a relatively fierce battle.”<sup>810</sup>
477. On 15<sup>th</sup> July, fighting broke out again; Obrenovic’s units were blocked but they finally managed to link up with one of their units after pushing back Muslim forces.<sup>811</sup>
478. At a time when momentous events were afoot in Zvornik, the brigade commander, the operations officer and the commander of the special forces were in Krivace : the deputy commander and the commander of the engineering company were in peril at Snagovo and the Assistant Chief of Staff for Personnel was at the IKM.

## 6. RETURN TO ZVORNIK ON 15<sup>TH</sup> JULY

*“Q. And just so that we are clear, could Lieutenant-Colonel Pandurevic have returned to Zvornik without an order from General Krstic?”*

*No.”*

*(T.29630, 12 December 2008, Milenko JEVDJEVIC)*

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<sup>806</sup> [REDACTED]

<sup>807</sup> P00327, Zvornik Brigade Interim Report No. 06-216/2, 14-Jul-1995; [REDACTED]

<sup>808</sup> 7D00686 Drina Corps Command, strictly confidential no. 03/157-7 of 15 July 1995;

<sup>809</sup> 7D00686 Drina Corps Command, strictly confidential no. 03/157-7 of 15 July 1995

<sup>810</sup> P00686 Butler Revised Narrative Report, para 7.66

<sup>811</sup> [REDACTED]

### 6.1. Situation in Zvornik

479. There is no evidence to indicate that, prior to the morning of 15<sup>th</sup> July, Pandurevic had any idea of the military situation in Zvornik. All the evidence suggests that he had little contact with the Brigade command from 4<sup>th</sup> July to that morning.<sup>812</sup> [REDACTED].<sup>813</sup>
480. [REDACTED].

### 6.2. The afternoon of the 14<sup>th</sup> July

481. Milenko Jevdjevic, the IKM communications officer, testified that Obrenovic called him on the evening of 14<sup>th</sup> of July and pleaded with him, as a friend, to intercede with Krstic in order to secure the return of Pandurevic and his units to Zvornik.<sup>814</sup> Jevdjevic relayed Obrenovic's concerns to Krstic. Jevdjevic believed that Krstic knew the problems that the Zvornik Brigade was facing, but was reluctant to permit Pandurevic to return, thus jeopardizing the success of Stupcanica 95. Indeed, Krstic did not even inform Pandurevic of the situation in Zvornik.<sup>815</sup>
482. The situation neatly illustrates how Krstic, as Corps commander, was concurrently in command of Pandurevic in Zepa and Obrenovic in Zvornik. More to the point, it illustrates poignantly how Pandurevic's fate was wholly dependent, during these critical hours, upon Krstic's orders. In this instance, Krstic's orders dictated that Pandurevic remained in Zepa and remained ignorant of developing events in Zvornik, both in military and criminal terms.
483. As afternoon became evening, Krstic returned to the home of his wife's parents, prior to the receipt at the IKM of reports confirming Obrenovic's assessment of the situation.<sup>816</sup> The timing of the receipt of this information again critically prevented Krstic from reconsidering the situation that night. Moreover, no information was given to Pandurevic that night.

### 6.3. The Morning of 15<sup>th</sup> July

484. No further information was received after 0700hrs.<sup>817</sup> As soon as Krstic saw the cables, he summoned Pandurevic. Even so, it was not certain that Krstic would make the order necessary for Pandurevic to return. It was completely within his gift to keep

<sup>812</sup> See section on lack of communications between 4<sup>th</sup> and 15<sup>th</sup> July 1995; T.10579-10580, 26 April 2007, Mihajlo GALIC; T.12702-12704, 15 June 2007, Miodrag DRAGUTINOVIC.

<sup>813</sup> [REDACTED]

<sup>814</sup> T.29614-T.29615, 12 December 2008, Milenko JEVDJEVIC.

<sup>815</sup> T.29616, 12 December 2008, Milenko JEVDJEVIC.

<sup>816</sup> See **P169**, Drina Corps Command Report 03/157-12, 14 July 1995; **P327**, Zvornik Brigade Interim Combat Report 06-216/2, 14 July 1995; **P163**, Drina Corps Command Radio Intercept Detachment Report 13-37/2, 15 July 1995; T.29617-T.29618, 12 December 2008, Milenko JEVDJEVIC.

<sup>817</sup> **P163**, Drina Corps Command Radio Intercept Detachment Report 13-37/2, 15 July 1995.

Pandurevic at Zepa.<sup>818</sup> In the light of Pandurevic's radio communications with the Brigade, that was not impossible. The information which Pandurevic received from Miladin Mijatovic (former commander of the 4<sup>th</sup> battalion) was to the effect that the situation was not as bad as the earlier reports had suggested. In particular, the Western part of the defence zone (the areas of the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> battalions) was apparently stable.<sup>819</sup> On the same morning, Pandurevic found out that Semso Muminovic was trying to contact him.<sup>820</sup>

#### 6.4. Krstic's order

485. At 1000hrs, Krstic issued Drina Corps Order 03/157-7. In the introduction it read: *"The Drina Corps Commander has decided to return part of the forces of the 1st Zvornik Infantry Brigade and the Podrinje Special Forces Detachment to their zones of responsibility where they are to take measures to remove and prevent the consequences of a possible attack on Zvornik and the link-up of Muslim units from Srebrenica and Tuzla."* The body of the order read: *"The 1st Zvornik Infantry Brigade, the Ministry of the Interior forces, and the attached units shall take all measures to block and, if possible, break up and capture Muslim forces until the arrival of parts of the Zvornik Infantry Brigade and the POSS."*<sup>821</sup>

486. Twenty minutes earlier, Dragan Jokic, the Zvornik Brigade duty officer on 15<sup>th</sup> of July, was informed that Pandurevic was returning.<sup>822</sup>

#### 6.5. Arrival in Zvornik

487. Pandurevic arrived at the Zvornik Brigade command around noon on 15<sup>th</sup> of July and went directly to the office of the Chief of Staff, Obrenovic.<sup>823</sup> This account is supported by the accounts in interview of everybody else who was present at the meeting.<sup>824</sup> Even Dragan Obrenovic initially corroborated this account.<sup>825</sup> [REDACTED].<sup>826</sup>

<sup>818</sup> T.30947-T.30948, T.30947-T.30948, T.30954, T.30954, 2 February 2009, Vinko PANDUREVIC. T.29630, 12 December 2008, Milenko JEVDJEVIC

<sup>819</sup> **P01173**, Intercept dated 15 July 1995, 08:55 hrs ; **P01174**, Intercept dated 15 July 1995, 09:10 hours; T.30949-T.30952, 2 February 2009, Vinko PANDUREVIC.

<sup>820</sup> **P01171**, Intercept dated 15 July 1995, 08:34 hours.

<sup>821</sup> **7D00686**, Drina Corps Order 03/157-7, 15 July 1995.

<sup>822</sup> **P01176**, Intercept dated 09:39 hours, 15 July 1995.

<sup>823</sup> T.30955, 2 February 2009, Vinko PANDUREVIC.

<sup>824</sup> **7D00697**, OTP interview with Milos Stupar, 26 June 2002, BCS and ENG page 2 (the document does not have an exhibit status, but the relevant excerpts have been read into the transcript on 18 October 2007 (closed session), at T.16531:17-25 and T.16532:3-6); **7D00699**, OTP interview with Dragomir Vasic, 10 June 2003, pp. 3-4 ENG, p. 1 BCS; **7D693**, Surrogate sheet of the video of an OTP interview with Danilo Zoljic, 9 October 2007 (closed session) (document has MFI status pending the BCS transcript of the interview, but was played in the transcript at 16537:21 on 18 October 2007 (closed session)); **P2893**, OTP interview with Ljubomir Borovcanin, 11-12 March 2002, p. 104 ENG, pp. 95-96 BCS.

<sup>825</sup> **7D00079**, OTP interview with Dragan Obrenovic, 2 April 2000, page 0110-3659 (ENG).

<sup>826</sup> See section on Balkovica

## 6.6. The content of the meeting

488. The evidence about the discussion at the meeting is almost entirely harmonious.<sup>827</sup> There was no discussion about prisoners of war and Pandurevic explained, in spite of objections from most of those present, that his orders were to stop and destroy the column. In his evidence, he gave as his reasons for doing so the following explanation : *"I had quite a lot of wartime experience as regards the information on the enemy coming in, and the information I trusted most was the information I obtained personally and convinced myself on the ground that it was true. It would have been irresponsible if the task I had been issued by General Krstic was changed by me in the office without my having gone out on the ground and seen for myself what the situation was. At that point in time I didn't want to accept any other suggestions."*<sup>828</sup>
489. From the moment Pandurevic stepped into the office of the Chief of Staff, the meeting only lasted 20 minutes.<sup>829</sup> There is no evidence of Pandurevic meeting Dragan Jokic at any time on the 15<sup>th</sup> July.
490. After the meeting, Pandurevic sent Obrenovic to the command of the 4th Battalion in Baljkovica, while Borovcanin went to take his units to the Parlog and Baljkovica area and Pandurevic went to the forward command post at Delici.<sup>830</sup>

## 6.7. The route to Delici

491. The Trial Chamber will be aware from its site visit that the route to Delici is ordinarily via Orahovac. However, on the afternoon of 15<sup>th</sup> July, that route was not available to Pandurevic because of the situation in respect of the column.<sup>831</sup> Instead, he took the route Jordan – Cer - Kitovnice.<sup>832</sup>

## 7. BALJKOVICA - THE PASSING OF THE COLUMN

<sup>827</sup> T.30959-T.30960, 2 February 2009, Vinko PANDUREVIC; [REDACTED]; **P02893**, OTP interview with Ljubomir Borovcanin, 11-12 March 2002, p. 104 ENG, pp. 95-96 BCS; **7D00699**, OTP interview with Dragomir Vasic, 10 June 2003, pp. 3-4 ENG, p. 1 BCS

<sup>828</sup> T.30963, 2 February 2009, Vinko PANDUREVIC

<sup>829</sup> T.30964, 2 February 2009, Vinko PANDUREVIC

<sup>830</sup> T.30964, 2 February 2009, Vinko PANDUREVIC

<sup>831</sup> **P00377**, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS ERN 0293-5757, p. 139: "The Turks have cut off the road to Crni Vrh, the Chief of Staff reported, 6th Infantry Battalion. IKM reports a column moving from Krizevici towards Motovska Kosa."; **P02231** (page 16) and **P02232** (page 12): intercepted call L-1 is reporting to Igman-1 about the 40 men who should not be sent via Krizevici (next to Orahovac), but rather to send them across Jordan, Kitovnice, and Delici.

<sup>832</sup> T.30965, 2 February 2009, Vinko PANDUREVIC. T.30968, 2 February 2009, Vinko PANDUREVIC.

*"It was the first time in the course of the war that I heard two commanders of opposing sides negotiating on very important issues, because at that time everyone was very exclusive, and I was surprised that Major Pandurevic, without consulting his superior command, made the decision to allow the column through, and he allowed them to pass before the barrels of his guns."*<sup>833</sup>

*"Saving lives and one's soldiers and that of the enemy's as well are humanitarian reasons... I could have massacred the 28th Division. However, that's not what I did."*<sup>834</sup>

## 7.1. Introduction

492. The action of Pandurevic in allowing the column of the 28<sup>th</sup> Division to pass through Baljkovica en route to safety in Nezuk has, in the submission of the defence, very profound evidential consequences for the Prosecution case. It rebuts the requisite mens rea to commit genocide. It also rebuts any suggestion that he was an active participant in a joint criminal enterprise. We may never know exactly how many lives his action saved, but it seems safe to suggest it was many thousands. The decision was his and his alone.

493. At the commencement of the case, no doubt enforced by the opinions of Mr. Richard Butler, the Prosecution suggested *"By the early morning hours of the 16<sup>th</sup>, the Zvornik Brigade has lost some 50 people. And that's the moment when Pandurevic re-thinks his decision, and eventually the decision is made to open up an area to allow the rest of the people to go through. That stays open for a couple of days. But it's not done out of humanitarian reasons, but because 50 Serb boys were killed because of Mladic's wonderful scheme to take the Srebrenica enclave"*.<sup>835</sup>

494. During his evidence, Mr. Butler gave a similar explanation for events, opining that there hasn't been a single incident probably where the VRS and in particular one unit of brigade size suffered 40 losses in less than 24 hours.<sup>836</sup>

495. Nobody has previously contested Mr. Butler and the Prosecution's theory as to the motivation for Pandurevic's actions. In this case however, those conclusions have been challenged by the man who took the decision. In the submission of the defence, Mr. Butler and the Prosecution have presented an inaccurate and incomplete picture of the factors which bore upon Vinko Pandurevic on 15<sup>th</sup> and 16<sup>th</sup> July. The Chamber, now seized of all the evidence cannot, consistent with its duty to apply the appropriate standard of proof, conclude that it was not for good and humanitarian reasons that Pandurevic let the column go.

## 7.2. Military situation

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<sup>833</sup> T.29579, 11 December 2008, Milenko JEVDJEVIC

<sup>834</sup> T.31041, 3 February 2009, Vinko PANDUREVIC

<sup>835</sup> T.438-T.439, 22 August 2006, Prosecution's opening statement.

<sup>836</sup> T.20023-T.20024, 18 January 2008, Richard BUTLER

496. There is no doubt that when Pandurevic returned to Zvornik on 15<sup>th</sup> July, he was greeted with a situation which was causing those then in command of affairs in and around Zvornik a significant degree of panic. The panic may have had a number of causes. Firstly, the prospect of combat action within the municipality of Zvornik for the first time perhaps in over two years.<sup>837</sup> Secondly, the presence of thousands of enemy soldiers in and around the surrounding villages. Thirdly, the rumour inspired by propaganda that Naser Oric was leading the column.<sup>838</sup> And last but not least, the response of the VRS and MUP forces who had been tasked to carry out ambushes in the path of the column.<sup>839</sup>
497. In fact, on the 15<sup>th</sup> of July, the combat situation was calm. There was little or no combat taking place.<sup>840</sup> The column was already effectively blocked. It was utterly impotent to break out by itself and the Zvornik Brigade had good and detailed intelligence as to its intentions. The intelligence was being distributed to the appropriate units so that preparations for any possible combat engagement could be made.<sup>841</sup>
498. Although the Brigade did lose a few soldiers that day, losses on the Muslim side were far heavier.<sup>842</sup> The precise whereabouts of the majority of the column had been established - it had crossed the Crni-Vrh - Zvornik road. This enabled Pandurevic to know where to establish blocking units and to secure routes to and from combat positions for which purpose the R battalion was mobilized.<sup>843</sup>
499. On the early morning of 16<sup>th</sup> July, the Zvornik Brigade anticipated an attack at about 0400hrs. Its intelligence proved correct. It comprised heavy artillery fire from Nezuk, focused on the defence positions of the Zvornik Brigade. The initial wave lasted 15-20 minutes and thereafter fire was opened at different times. Some of the firing overshot the Serb defence lines and caused losses to the column. The defence lines of the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> battalions were not broken by the attack.<sup>844</sup>

### 7.3. State of the column

500. Self-evidently, by 16<sup>th</sup> July, the column of the 28<sup>th</sup> Division had been walking through the woods for four or five days. There had been many losses en route in fire fights, in mine fields and even to suicides.<sup>845</sup> The morale of the column was very low and its leadership was divided and fighting within itself.<sup>846</sup>

<sup>837</sup> T.30789-T.30793, 28 January 2009, Vinko PANDUREVIC

<sup>838</sup> T.30942-T.30943, 30 January 2009, Vinko PANDUREVIC

<sup>839</sup> [REDACTED]

<sup>840</sup> T.30968-T.30969, 2 February 2009, Vinko PANDUREVIC

<sup>841</sup> P00377: Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, T.30969-T.30970, 2 February 2009, Vinko PANDUREVIC

<sup>842</sup> P00329: Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurevic, dated 15 July 1995

<sup>843</sup> 1D00698; Document entitled Mobilisation of non-assigned conscripts, request from the Drina Corps Command signed by Commander Radislav Krstic dated 15 July 1995, T.31004-T.31009, 2 February 2009, Vinko PANDUREVIC

<sup>844</sup> T.31027-T.31030, 3 February 2009, Vinko PANDUREVIC

<sup>845</sup> T.26491-T.26492, 1 October 2008, Mico GAVRIC, T.27393, 27 October 2008, Zoran JANKOVIC

<sup>846</sup> T.27392, 27 October 2008, Zoran JANKOVIC

501. By the time the column found itself blocked behind the Zvornik Brigade lines. There was chaos and mass panic. Attempts to establish radio contact with their own units were being blocked by the Serbs.<sup>847</sup> Muminovic himself recalls having no contact with the column.<sup>848</sup>
502. The precise numbers within the column are difficult to establish. Even more so, the numbers who were carrying arms. Salihovic, the communications officer interrogated by Dragan Obrenovic said there were 3000 men. [REDACTED]. Zoran Jankovic thought 80% of the men he saw were carrying weapons. Pandurevic observed the column pass through the trenches and placed their number at 5,000 to 6,000.<sup>849</sup>

## 7.4. Negotiations with Semso Muminovic

### 7.4.1. 15<sup>th</sup> July 1995

503. The evidence suggests that Muminovic first tried to establish contact with Pandurevic during the early morning of the 15<sup>th</sup> July.<sup>850</sup> The historical context of the radio communications was doubtless relevant, but the more pressing reason for making contact was the capture of Jankovic and his Motorola radio.<sup>851</sup>
504. Prior to the return of Pandurevic, there is evidence that Muminovic was in contact with both Obrenovic and Vukotic during 15<sup>th</sup> July.<sup>852</sup> There is evidence of a cease fire agreement as early as 13:45 hours on 15<sup>th</sup> July.<sup>853</sup>
505. Pandurevic's own evidence is that he spoke to Muminovic five or six times on 15<sup>th</sup> July. Initially, he was prepared to let the civilians go, but upon learning that Muminovic was only interested in the armed men and did not care for the civilians, Pandurevic responded that he would allow everybody to pass provided they lay down their arms. He invited Muminovic to indicate the point at which they would pass and where the arms would be surrendered.<sup>854</sup> This conversation (which Pandurevic believed was the 3<sup>rd</sup> of the day) was tape recorded.<sup>855</sup> It is highly significant because firstly, it shows that there was no change in Pandurevic's position regarding the passage of people

<sup>847</sup> T.20848-T.20849, 31 January 2008, Richard BUTLER, [REDACTED]

<sup>848</sup> **2D00635**, Semso Muminovic, Information Report, 8 June 2001.

<sup>849</sup> [REDACTED], T.27371, 27 October 2008, Zoran JANKOVIC, T.31075-T.31076, 3 February 2009, Vinko PANDUREVIC, T.10197-T.10198, 18 April 2007. See also T.11705-T.11713, 17 May 2007, Ostoja STANISIC

<sup>850</sup> P01171; Intercept dated 15 Jul/95, at 08:34 hrs, T.30976-T.30979, 2 February 2009, Vinko PANDUREVIC

<sup>851</sup> T.27369, 27 October 2008, Zoran JANKOVIC

<sup>852</sup> P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 17 BCS P02232, Exhibit P-121 in Case No. IT-02-60-T- Draft English translation covering 11 to 20 July 1995- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 13 ENG, **2D00635**, Semso Muminovic, Information Report, 08 June 2001.

<sup>853</sup> P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 17 BCS P02232, Exhibit P-121 in Case No. IT-02-60-T- Draft English translation covering 11 to 20 July 1995- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 13 ENG

<sup>854</sup> T.30976-T.30979, 2 February 2009, Vinko PANDUREVIC

<sup>855</sup> 7D00656; Video material recorded conversation between Semso Muminovic and Vinko Pandurevic on 15.07.1995



from the 15<sup>th</sup> to 16<sup>th</sup> July and, secondly that he was disingenuous in the irregular combat report of 15<sup>th</sup> July.<sup>856</sup>

506. According to Jankovic, who was close to the command of the 28<sup>th</sup> Division on the evening of 15<sup>th</sup> July, an agreement for the passage of the whole column had been concluded by that time, but that it was not carried into effect because of distrust on the part of the command of the ABiH.<sup>857</sup>

#### 7.4.2. 16<sup>th</sup> July

507. The catalyst for Pandurevic's continued dialogue with Muminovic according to him was his own conscience.<sup>858</sup> Nonetheless, he continued to strengthen the blockade of the column and the Brigade's defence lines. This matter will be amplified below.

508. [REDACTED]<sup>859</sup><sup>860</sup> <sup>861</sup>

509. Once agreement had been reached, Muminovic and Pandurevic were in constant communication throughout the period of the passage of the column. They were monitoring the development of the situation, and they reacted whenever necessary.<sup>862</sup> This is in marked contrast to Pandurevic's lack of communications with his own superior chain of command.

#### 7.5. The forces at Pandurevic's disposal

510. The Zvornik Brigade was an extraordinarily large unit, numbering 5,500 to 6,000 men.<sup>863</sup> It was well equipped<sup>864</sup> and its front line had not been breached in four years. It could be commanded from both its command and forward command posts. On 16<sup>th</sup> July, the whole Brigade was at Pandurevic's disposal.<sup>865</sup>

511. It is of course correct that a tactical force had taken part in Krivaja-95, but by mid day on the 15<sup>th</sup> of July, all those units had returned to the Brigade and were fully deployed during the course of the afternoon.<sup>866</sup>

512. In addition to the brigade units Pandurevic had the following forces available:

- The Podrinje detachment of the special forces was in the area west of the command post of the 4th Battalion.

<sup>856</sup> P00329; Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurevic, dated 15 July 1995

<sup>857</sup> T.27391, 27 October 2008, Zoran JANKOVIC

<sup>858</sup> P02231, Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 18, T.30980-T.30981, 2 February 2009, Vinko PANDUREVIC

<sup>859</sup> [REDACTED]<sup>860</sup> [REDACTED]

<sup>860</sup> [REDACTED]

<sup>861</sup> T.31031-T.31032, 3 February 2009, Vinko PANDUREVIC

<sup>862</sup> T.31042, 3 February 2009, Vinko PANDUREVIC

<sup>863</sup> P00382; Zvornik Brigade Report 05/283-03, 20 July 1995

<sup>864</sup> T.31026-T.31027, 3 February 2009, Vinko PANDUREVIC

<sup>865</sup> T.31025, 3 February 2009, Vinko PANDUREVIC

<sup>866</sup> T.30971-T.30972, 2 February 2009, Vinko PANDUREVIC

- A company of the military police which was deployed at the command post of the 4th Battalion on the east side.
- Two military police regiments of the East Bosnian Corps where the 4th and the 6th Battalions linked up.
- A Bratunac Brigade company on the south-west position vis-a-vis the battalion command post.
- An intervention platoon from the 2nd Infantry Battalion was also close nearby.
- On the 13th and the 14th July, two companies were established by Dragan Obrenovic in the area of Crni Vrh : One company was commanded by Major Jovanovic and the other one was commanded by Milan Maric.
- A MUP detachment from Doboj.
- On the Parlog-Baljkovica road were joint forces of the MUP commanded by Ljubisa Borovcanin including a detachment of the special police from Sekovici and PJP Company from Zvornik.
- A tank company of the Zvornik Brigade which, for the most part, was deployed along the road Crni Vrh-Memici and also on the Orahovac-Parlog-Baljkovica axis.<sup>867</sup>

513. In total, Pandurevic had 2,000 troops under his direct command.<sup>868</sup> He could command from the IKM and he had effective communication systems with all units. He had a clear strategy to block the column, await further reinforcements and then to destroy it. Concurrently, he would resist any attack from the front. His forces were deployed accordingly.<sup>869</sup> It is plain that, had he wanted to, he could have cleared a safe area from the encirclement of the 28<sup>th</sup> Division and massacred the column with his available artillery.<sup>870</sup> To his credit that is not an option he took.<sup>871</sup> The Muslim forces were at all time concerned that the Serbs held the uphill positions.<sup>872</sup>

## 7.6. Prosecution case theory

### 7.6.1. Serb losses

514. The number of Serb dead mentioned both by the Prosecution Counsel in his opening statement and by Richard Butler in his evidence, has never been justified in evidence. Indeed, the Prosecution made no attempt to establish the number of dead on either side

<sup>867</sup> T.31022-T.31024, 3 February 2009, Vinko PANDUREVIC

<sup>868</sup> T.31024-T.31025, 3 February 2009, Vinko PANDUREVIC

<sup>869</sup> T.31026, 3 February 2009, Vinko PANDUREVIC, 7D01116; surrogate sheet; Map, Baljkovica -95

<sup>870</sup> [REDACTED], T.10160-T.10161, 17 April 2007, Lazar RISTIC, T.31026-T.31027, 3 February 2009, Vinko PANDUREVIC

<sup>871</sup> T.31041, 3 February 2009, Vinko PANDUREVIC, T.15115, 10 September 2007, Nedeljko TRKULJA, T.27392, 27 October 2008, Zoran JANKOVIC

<sup>872</sup> **2D00635**, : Semso Muminovic, Information Report, 08 June 2001.

during the combat at Baljkovica. The correct and accurate figures always have been readily ascertainable. They are apparent from various documents retained in the records of the Zvornik Brigade.

515. The irregular combat report for 16<sup>th</sup> July<sup>873</sup> mentions only about ten dead. Admittedly, the position so soon after combat has ended is not entirely clear. However, all subsequent records appear to agree that the number of dead is twenty two or twenty three. The irregular combat report of 18<sup>th</sup> July lists twenty seven dead.<sup>874</sup> However, five of these had already been listed as dead on the 11<sup>th</sup> July.<sup>875</sup> 7D421<sup>876</sup>, a list of dead members of the Zvornik Brigade, suggests that twenty three men died in Baljkovica on 16<sup>th</sup> July.
516. No evidence has been adduced to suggest that any MUP soldier died on 16<sup>th</sup> July. The evidence moreover suggests that only one soldier remained missing from that day.<sup>877</sup> Mr. Butler's suggestion that this was the worst day in VRS history is palpably incorrect. Even within the history of the Zvornik Brigade, the massacre at Glodjansko brdo represented a graver episode in its history.<sup>878</sup>
517. Records suggest that the number of seriously injured was no more than twenty four.<sup>879</sup> The defence does not deny that there was serious combat action on the morning of 16<sup>th</sup> July, but the consequences of it have been exaggerated by the Prosecution.

### 7.6.2. Self propelled guns

518. During the combat, a number of self propelled guns (probably two) were seized by members of the column. It was suggested that these weapons were used against the Zvornik Brigade and that the capture of them was a motivation for Pandurevic to let the column go. However, a closer examination of the evidence suggests that this was not an episode of real significance.
519. Firstly, the guns were only in the possession of the Muslim forces for a very short period of time.<sup>880</sup> Secondly, the guns could not be moved and were trained on ABiH positions in Nezuk.<sup>881</sup> Thirdly, the guns were promptly destroyed.<sup>882</sup>

### 7.6.3. The 4<sup>th</sup> battalion command post

<sup>873</sup> P00330; Zvornik Brigade Interim Combat report 06-218, 16 July 1995

<sup>874</sup> P00334; Zvornik Brigade Interim Combat Report, 18.07.1995

<sup>875</sup> P00321; Zvornik Brigade Daily Combat Report, 11.07.1995

<sup>876</sup> 7D00421: Marked document titled – List of dead members of Zvornik Brigade

<sup>877</sup> P02089; Document entitled Information on Missing soldiers, 15 Maart 2000

<sup>878</sup> 7D00443, ZB Command, Reports of Boskovici combats, 4-aug-1993; 7D00421, List of dead soldiers in the Zvornik Brigade.

<sup>879</sup> P00334, Zvornik Brigade Daily Combat Report 06/232, dated 25 July 1995

<sup>880</sup> 7D00726: OTP witness statement of witness Vejiz Sabic, dated 8, 9 April and 16 May 2002, T.16568-[REDACTED]

<sup>881</sup> 7D00726, OTP witness statement of witness Vejiz Sabic, dated 8, 9 April and 16 May 2002; T.31030, 3 February 2009, Vinko PANDUREVIC

<sup>882</sup> 7D00726, OTP witness statement of witness Vejiz Sabic, dated 8, 9 April and 16 May 2002; T.16568-[REDACTED], T.31030, 3 February 2009, Vinko PANDUREVIC

520. The Prosecution suggest that destruction of the command post of the 4<sup>th</sup> battalion was another episode which compelled Pandurevic to reconsider his position. However, the suggestion misunderstands the evidence as to how that came about.
521. Following the interrogation of Salihovic by Obrenovic, Pandurevic had decided to let the column go<sup>883</sup> but to safeguard his position he ordered Obrenovic to withdraw from the immediate vicinity of the 4<sup>th</sup> battalion command post.<sup>884</sup> The effect of that was to remove Obrenovic's unit from the anticipated path of the column towards Baljkovica, but also to create a safe area upon which Pandurevic could fire artillery if the ABiH seriously breached the agreement.<sup>885</sup> Accordingly, the 4<sup>th</sup> battalion command post was not overrun in the true sense of the word, rather it was abandoned to allow the column to pass through that area. Additionally, doubtless owing to the communication difficulties between Muminovic and the column, the cease fire was not immediately respected.<sup>886</sup>

### 7.7. Pandurevic's decision

522. Pandurevic has explained in evidence that his decision to let all members of the column pass to Nezuk had been made in principle on 15<sup>th</sup> July. That would seem to accord both with the text of his conversation with Semso Muminovic<sup>887</sup> and the only evidence we have heard from a witness close to the command of the column.<sup>888</sup> It would also explain why he was less than straightforward with his Corps command in describing his negotiation with the other side on 15<sup>th</sup> July<sup>889</sup>, and also why he was completely disingenuous in his description of events in his irregular combat report on 16<sup>th</sup> July.<sup>890</sup>
523. There can be no doubt that amongst his other emotions, by 15<sup>th</sup> July Pandurevic was both tired from extensive combat and disillusioned with the decisions of his superior command which he discerned as erroneous and dangerous. Nonetheless, the suggestion that he entered the agreement to let the column go through cowardice or compulsion is simply not made out.
524. Inevitably, as he told the Trial Chamber, further combat at Baljkovica would have led to massive loss of life on both sides. To elect not to take that course, was necessarily humanitarian in nature. It is illogical to say that Serbs would have died too. The fact of the matter is that his action saved the lives of hundreds, even thousands of Muslims in the column.
525. He took that decision on his own. It was contrary to his orders. He set up the decision in writing on 15<sup>th</sup> July. He justified that decision in writing on 16<sup>th</sup> July and again, on 18<sup>th</sup> July. In between times, he did his best to avoid or at least delay discovery of what he had done by his superior command.

<sup>883</sup> T.31031, 3 February 2009, Vinko PANDUREVIC

<sup>884</sup> T31032, 3 February 2009, Vinko PANDUREVIC, [REDACTED]

<sup>885</sup> T.31033, 3 February 2009, Vinko PANDUREVIC

<sup>886</sup> [REDACTED]

<sup>887</sup> 7D00656, Surrogate sheet – recorded conversation between Semso Muminovic and Vinko Pandurevic, 15-Jul-1995

<sup>888</sup> T.27391, 27 October 2008, Zoran JANKOVIC

<sup>889</sup> P00329, Zvornik Brigade Daily Interim Combat Report No. 06-217-1, dated 15 July 1995

<sup>890</sup> P00330, Zvornik Brigade Interim Combat report 06-218, 16-jul-1995

526. Paragraph 3 of the report of the 16<sup>th</sup> of July reads as follow:

*"I have decided in view of the situation to open a corridor along the line of the three lost trenches for the civilian population, about 5,000 of them.*

*"I have agreed on a method of evacuation with the enemy side and this is now going forward. I have requested the release of a captured policeman and my own missing soldiers. This procedure is in progress and I think I will succeed. It is likely that a certain number of soldiers got out among the civilians, but all who passed passed through unarmed".*

527. Self-evidently this does not reflect accurately or at all the agreement or the process being undertaken.<sup>891</sup> [REDACTED].<sup>892</sup> Given his reputation within the Corps command, and the army generally, his lack of frankness on these matters can only be an indication that his justification in this document for letting the column go itself has no basis.

528. Pandurevic was able to talk to Krstic directly on 16<sup>th</sup> July<sup>893</sup> and yet he sought no approval nor advice before reaching the agreement to let the column go. After he had made the decision and the corridor was open, he did his best to avoid any contact with the Corps and Main Staff.<sup>894</sup>

529. Pandurevic's actions throughout the period of 15<sup>th</sup> to 25<sup>th</sup> July are equally consistent with his behaving in a humanitarian fashion. He did not use artillery on the column although he could have done that.<sup>895</sup>

530. He issued instructions that trapped Muslim forces were to be permitted to leave on 18<sup>th</sup> July notwithstanding the closure of the corridor.<sup>896</sup>

531. He personally ensured that a group of Muslim boys were escorted to safety on 18<sup>th</sup> July and that Semso Muminovic confirmed their safe arrival.<sup>897</sup>

532. He employed men with megaphones to call out to members of the column directing them through the corridor.<sup>898</sup>

533. The defence also submits that it is highly relevant in any debate about Pandurevic's motives in respect of the column to consider his behaviour previously in accommodations with Semso Muminovic and other commanders at Ustipraca and Kamenica. Against all that background and the surrounding facts, it is the defence submission that the Trial Chamber should find that the following statement from his evidence is nothing other than genuine:

<sup>891</sup> T.31050-T.31062, 3 February 2009, Vinko PANDUREVIC

<sup>892</sup> [REDACTED]

<sup>893</sup> See for example P01183; Intercept dated 16 Jul/95, 07:06 hrs, from notebook 232

<sup>894</sup> P01192; Intercept dated 16 July 1995, 15:29 hours, T.31045-T.31046, 3 February 2009, Vinko PANDUREVIC, P01194; Intercept dated 16 July 1995, 16:02 hours, T.31047-T.31048, 3 February 2009, Vinko PANDUREVIC, P01195; Intercept dated 16 July 1995, 16:15 hours, T.31048-T.31049, 3 February 2009, Vinko PANDUREVIC

<sup>895</sup> T.31033-T.31034, 3 February 2009, Vinko PANDUREVIC

<sup>896</sup> T.31097-T.31098, 9 February 2009, Vinko PANDUREVIC, T.10162, 17 April 2007, Lazar RISTIC

<sup>897</sup> T.31097-T.31098, 9 February 2009, Vinko PANDUREVIC

T.10162, 17 April 2007, Lazar RISTIC

<sup>898</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS and ENG page 151, T.31089, 2 February 2009, Vinko PANDUREVIC

*“Saving lives and one's soldiers and that of the enemy's as well are humanitarian reasons. My task was to repel the breakthrough by the 28th Division. I wasn't able to do that, but I could have massacred the 28th Division. I could have pulled out my men from Baljkovica, let the 28th Division concentrate in the area, allow elements of the 2nd Corps to link up with them, and in the area of one square kilometre, cover 5,000 men with artillery fire and each shell would hit the target; and, therefore, I would have fulfilled my task completely. However, that's not what I did”*<sup>899</sup>

## **8. THE KILLING OPERATION – PARALLEL EVENTS IN BRATUNAC AND ZVORNIK**

*“I went into a room where I was met by Colonel Beara, and he delivered a brief speech, a monologue which went like this: “We have a lot of prisoners and it is very hard for us to control them. They are at various locations in the Zvornik municipality. We have to get rid of them. I expect assistance from the municipality.” He then said that he was in command of the barracks and that I should obey his orders.”*<sup>900</sup>

### **8.1. Decision to Kill POWs**

534. The prosecution has advanced a case in which the decision to commit mass murder of the able bodied men of Srebrenica was taken on 12<sup>th</sup> July when information was first received that the forces of the 28<sup>th</sup> Division had broken out en masse towards Tuzla.<sup>901</sup> There is of course no direct evidence of the taking of any such decision, nor even its announcement to those who were to carry it out. This is in contrast with the more explicit evidence relating to the events leading to the movement of the prisoners from Bratunac to Zvornik on 13<sup>th</sup> and 14<sup>th</sup>.

535. When, where and in whose presence such a decision was taken is virtually a matter of surmise, and is critical to imputing knowledge of the plan to individual accused, Pandurevic in particular. Pandurevic's movements throughout the relevant period have been carefully detailed elsewhere.<sup>902</sup> In the defence submission, there is no direct evidence of his participation in the taking of any such decision, nor knowing prior to the 15<sup>th</sup> July of any such decision. To the contrary, the evidence shows that the crucial decisions to transport and murder the prisoners were taken in the absence of Pandurevic and without consulting him. The bland assertion made in opening that he was on 13<sup>th</sup> July *contactable*<sup>903</sup> was not advanced at all during the trial, and no inference could properly be drawn to the effect that he was informed of the decision to take the prisoners to Zvornik for execution.

<sup>899</sup> T.31041, 3 February 2009, Vinko PANDUREVIC

<sup>900</sup> [REDACTED] (PW-104)

<sup>901</sup> T.33763, 30 June 2009, Svetozar KOSORIC, T.427, 21 August 2006, Prosecution Opening Statement

<sup>902</sup> See sections ‘Pandurevic's movements 4<sup>th</sup> – 11<sup>th</sup> July’ and ‘Pandurevic's movements 11<sup>th</sup> – 15<sup>th</sup> July’

<sup>903</sup> T.434-T.435, 21 August 2006, Prosecution Opening Statement

536. The absence of direct evidence of a decision being taken or announced on 12<sup>th</sup> is stark, and the theory does not sit well with much of the direct evidence. Abuses of muslim prisoners was already taking place on the night of 11<sup>th</sup>. The following morning Momir Nikolic claims to have discussed with Blagojevic the operation to transport the women and children to Kladanj and separate, detain and kill the able bodied Muslim men in Potocari. It was apparent that Blagojevic was fully informed of the transportation and killing operation and expected that Nikolic would continue to carry out the duties related to those operations that he had begun that morning.<sup>904</sup>
537. Momir Nikolic had a conversation outside the Hotel Fontana on the morning of 12<sup>th</sup> July with Lieutenant-Colonel Popovic and Lieutenant Colonel Kosoric, during which conversation he was told about the intention to separate the able-bodied Muslim men and to execute them. He didn't talk to any other participant in the operation of the transportation of people from Potocari.<sup>905</sup> He was told that it was his responsibility to help coordinate and organize the operation. Kosoric reiterated this information and they discussed the appropriate locations to detain the Muslim men prior to their execution. Nikolic identified several specific areas : the Old Elementary School "Duro Pucar Sari, and the Hangar. Popovic and Kosoric talked with Nikolic about sites of executions of temporally detained Muslim men in Bratunac and they discussed two locations which were outside Bratunac town. These were : State company 'Ciglane' and a mine called 'Sase in Sase'.<sup>906</sup>
538. If Momir Nikolic's account is to be believed, it must be highly doubtful that any decision to kill the able-bodied muslim men was predicated by the breakout of the column. During the 12<sup>th</sup> July Hotel Fontana meeting, Mladic did not refer to it. Nikolic's alleged conversations with Popovic, Kosoric and Blagojevic took place immediately after that meeting at a time when Nikolic himself was not aware of the intelligence reports which did not start coming through until later that day and on 13<sup>th</sup> July.<sup>907</sup>
539. The only direct evidence of the existence of a plan to kill the able-bodied muslim men on 12<sup>th</sup> July comes from Momir Nikolic. He is a witness with serious credibility problems. So much so, that the prosecution abandoned him as being incapable of belief.<sup>908</sup> Had the chamber not elected to call him, there would not be any direct evidence of the existence of a plan on 12<sup>th</sup>. Whether there was a plan to murder as early as the morning of the 12<sup>th</sup> must be seriously open to doubt, and certainly, in the defence submission, it cannot have extended to the members of the column. At that time, the VRS command did not even know of the existence of the column. They had no idea whether there was one or more than one column, where it or they were headed and how big it or they were. They had no reasonable expectation that they would capture anybody.
540. Whilst the provision of buses for transport of the evacuees from Potocari had been well-organised,<sup>909</sup> no real thought had apparently been given to detention or execution

<sup>904</sup> 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 3

<sup>905</sup> T.32904-T.32906, 21 April 2009, Momir NIKOLIC

4D00016: Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 2

<sup>906</sup> 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 2  
T.32917-T.32922, Momir NIKOLIC, 21 April 2009

<sup>907</sup> 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 3

<sup>908</sup> T.17398, 2 November 2007, Prosecution Counsel

<sup>909</sup> P00156; Document of Drina Corps No. 21/6-686 to the VRS Main Staff, Command Post and Rear Command Post (for information), signed by Maj. Gen Milenko ZIVANOVIC, Commander, dated 12 July 1995

sites. Certainly nothing was done to requisition or mobilize property and equipment suitable for such purposes. Moreover, Trivic whose account of a 12<sup>th</sup> July meeting is so heavily relied upon by the prosecution, is clear that nothing of the sort was discussed by the commanders that night.<sup>910</sup> Even by 1110hrs on 13<sup>th</sup> July, senior VRS officers were still communicating about the prisoners being taken to Batkovici, suggesting that they believed the plan was to exchange rather than murder the men.<sup>911</sup>

541. Self-evidently the separated men were not executed on 12<sup>th</sup> which does indicate that the plan had not crystallized on that day. Had there been any such plan, the action of taking them to the town of Bratunac to be detained on the buses and/or in temporary detention sites is inexplicable. They could simply have been taken away and killed that day. In fact the executions did not start until 13<sup>th</sup>, and then scarcely in a manner that indicated an organized plan.
542. About 10-15 minutes after the meeting in the BB HQ, Momir Nikolic spoke to Blagojevic in his office, he was tasked to continue to Potocari operation to transport the Muslim women and children to Kladanj and separate and detain the able bodied Muslim men.
543. On the evening of the 13<sup>th</sup> of July, Momir Nikolic was having dinner at the BB headquarters, when he received a call from a communications room to report directly to Colonel Beara in the centre of Bratunac. He travelled to the centre and met with Colonel Beara around 20:30 hours.<sup>912</sup>

## 8.2. Events in Bratunac

### 8.2.1. Prisoners in the town

544. Thousands of Bosnian Muslim men arrived in Bratunac town during 12<sup>th</sup> and 13<sup>th</sup> July and were detained there for between one and three days. They were put in temporary detention in facilities, such as in and around the Vuk Karadžić School, in the Bratunac town football stadium, as well as in buses parked along the streets in Bratunac town. The security situation in the town was tense and chaotic.<sup>913</sup> For the inhabitants of the town, as well as those in positions of civil authority, it was bad news, a time bomb.<sup>914</sup>

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P00014; RS MOD document, Request 02-21-3638/95 for mobilization of buses, signed by Momcilo KOVACEVIC, dated 12 July 1995.

P02900; Order from RS MOD No. 02-78/95 to the MOD department in Zvornik, Milici, Vlasenica, Sekovici and Bratunac, dated 12 July 1995

P00110; Drina Corps Order re. the provision of buses for evacuation from the Srebrenica enclave, signed by ZIVANOVIC, dated 12 July 1995

<sup>910</sup> T.11981, 23 May 2007, Mirko TRIVIC

<sup>911</sup> See P1134, intercepted telecommunication involving Colonel Rajko Krsmanovic at 11.10 on 13 July 1995

<sup>912</sup> T.32903, 21 April 2009, Momir NIKOLIC

<sup>913</sup> [REDACTED] (PW-162), T.433, 21 August 2006, Prosecution Opening Statement, Decision on Prosecution motion for judicial notice of adjudicated facts, 21 September 2006, page 28, Adjudicated Fact No 204

<sup>914</sup> T.27220-T.27221, 22 October 2008, Ljubisav SIMIC



545. The buses began to arrive in town in the evening of the 12th of July, buses full of men were parked in the street including in front of the municipal building. The policemen guarding the buses on the 12<sup>th</sup> of July said the men were going to be taken to Batkovic for exchange.<sup>915</sup>
546. On the morning of the 13<sup>th</sup>, colonel Beara spoke to Zlatan Celanovic, Bratunac Brigade Lawyer/Clerkin the street in Bratunac town about the numbers of prisoners detained in Bratunac. He indicated that the prisoners would be going to Kladanj the following day.<sup>916</sup>

### 8.2.2. The massacre in Kravica

547. The Kravica warehouse lies a short distance outside the town of Bratunac on the road to Konjevic Polje. Any inspection of the building reveals a great deal about the manner in which the prisoners met their deaths. The defence for Pandurevic reserves the right to adopt the submissions of others in relation to any alleged catalyst of events at Kravica.
548. All the available evidence points to the fact that the killings took place in the afternoon to the evening) on 13<sup>th</sup> July<sup>917</sup>. Obviously by reason of its location, close to the road, between Bratunac and Konjevic Polje, it was observed by a number of people and within a short period of time the event was known to a number of people.<sup>918</sup>

### 8.3. Decision to move the prisoners

549. On 11 July 1995, Deronjic was appointed commissioner for Srebrenica.<sup>919</sup> On 13<sup>th</sup> July Deronjic asked President Karadzic to ask through the media to send any free trucks or buses to Bratunac.<sup>920</sup> Later that evening he met Ljubisa Beara.<sup>921</sup> Beara had indicated that he was there to kill all of the Muslims that were being warehoused in schools and in buses. Significantly, other than the evidence of Momir Nikolic, this is chronologically the earliest mention of the plan to kill prisoners.

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<sup>915</sup> [REDACTED] (PW-162)

<sup>916</sup> T.6638-T.6640, 31 January 2007, Zlatan CELANOVIC

<sup>917</sup> [REDACTED] (PW-161), T.13477-T.13479, 28 June 2007, Predrag CELIC, T.19898, 17 January 2008, Richard BUTLER, P0686, Srebrenica Narrative report, page 55; T.433, 21 August 2006, Prosecution Opening Statement; T.13562-T.13568, 09 July 2007, Milenko PEPIC, T.24214, 28 July 2008, Miladin JOVANOVIC; [REDACTED] (PW-162)

<sup>918</sup> [REDACTED] (PW-161), T.13562-T.13568, 09 July 2007, Milenko PEPIC; [REDACTED] (PW-170); 4D00016, Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 6; T.13481-T.13482, 28 June 2007, Predrag CELIC; T.27198, 22 October 2008, Ljubisav SIMIC; T.27206-T.27207, 22 October 2008, Ljubisav SIMIC; T.27440, 28 October 2008, Dragan NESKOVIC; [REDACTED] (PW-162)

<sup>919</sup> ID00690; Decision on the appointment of the Civilian Commissioner for the Serbian Municipality of Srebrenica signed by President of Republic Radovan Karadzic dated 11 July 1995

<sup>920</sup> [REDACTED]

<sup>921</sup> [REDACTED]

550. Deronjic was adamant that the executions should not take place in Bratunac. He used his influence and friendship with Karadzic to obtain an order from him countermanning Beara's orders to kill the prisoners in situ.<sup>922</sup>
551. Karadzic told Deronjic that all prisoners of war should be transported out of Bratunac. He said that a man would come, giving him full instructions, 'the goods should be in the warehouse'.<sup>923</sup> Deronjic understood this to mean a military prison. Karadzic had told Deronjic that he was going to inform General Mladic to do it that way. That evening, Beara arrived at Deronjic's office.<sup>924</sup>
552. Beara, Dragomir Vasic, Momir Nikolic and Deronjic met in the SDS office in Bratunac. Momir Nikolic sat in another room where the secretary was, because the man superior to him was Beara. Deronjic was concerned that the prisoners in the town created a security risk and did not want the killing of these prisoners to be carried out in and around Bratunac. The killing operation was openly discussed. Deronjic and Beara were involved in a discussion. He said that he wanted the prisoners out of Bratunac and he invoked the decision issued by President Karadzic, saying that he had received instruction from the President how to deal with the prisoners who were present in Bratunac. Colonel Beara invoked the instructions he received from his boss, and he claimed he had totally different instructions.<sup>925</sup>
553. Momir Nikolic received a call from the communication room to report directly to Colonel Beara in the centre of Bratunac. He met Beara there at about 2030hrs. Beara ordered Nikolic to travel to the Zvornik Brigade and inform Drago Nikolic that thousands of Muslim prisoners were being held in Bratunac and would be sent to Zvornik that evening. Beara also told Nikolic that the Muslim prisoners should be detained in the Zvornik area and executed.
554. Where the truth lies between Momir Nikolic and Dragan Obrenovic we may never know. They both struck highly questionable plea agreements at about the same time. Nikolic's account that he travelled to Zvornik after the meeting with Beara and Deronjic, personally to inform Drago Nikolic about the prisoners, seems unlikely for a number of reasons. Firstly, time was of the essence. By the time he got to the IKM to speak to Drago Nikolic, the first prisoners would have been on their way,<sup>926</sup> and Drago would simply not have had the opportunity to carry out the many journeys recorded in his driver's vehicle work log for the day.<sup>927</sup> The following morning Momir Nikolic was responsible for organizing the military police escort for the prisoners.<sup>928</sup> It seems likely that he would have had the same responsibility in relation to convoys which left on the evening of the 13<sup>th</sup>. The prisoners in Bratunac town, moreover were a serious security worry for him. It wouldn't make a lot of sense for him to leave town without informing his commander.
555. [REDACTED]. This is not corroborated by any contemporaneous document or intercept (as we have seen in this case communications through the Zvornik Brigade

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<sup>922</sup> [REDACTED]

<sup>923</sup> [REDACTED]

<sup>924</sup> [REDACTED] (PW-142)

<sup>925</sup> 4D00016 Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003., page 7; T.32937-T.32945, 21 April 2009, Momir NIKOLIC

<sup>926</sup> P00686; Srebrenica Military Narrative – Operation 'Krivaja=95', 15 May 2000, page 2

<sup>927</sup> P00904; Vehicle logbook for Opel Rekord P-4528

<sup>928</sup> T.17931-T.17932, 20 November 2007, Mile JANJIC

switchboard to the IKM were especially porous) but is not incredible. There is one further possibility, and that is that there was no middle man at all. The Zvornik Brigade Duty Officer's Notebook for the evening of 13<sup>th</sup> July records the passing on of a message by Colonel Beara.<sup>929</sup> It is not possible to say whether he appeared in person or was leaving a message by phone or radio. Either way, it would have been straightforward to speak to Drago Nikolic.

556. It seems impossible to avoid the conclusion that Drago Nikolic received the message. His vehicle work log and subsequent events would seem to bear that out. However it reached him, the timeline of events suggest that a decision taken by the President of the Republic was conveyed through the President of the Municipality in Srebrenica to the Main Staff Chief of Security. He then gave orders to Drago Nikolic, the Zvornik Brigade Chief of Security either directly or through one of his professional subordinates. There is no evidence that the regular command of the VRS at Corps or brigade level was informed of this at the time. Momir Nikolic only deigned to mention it to his commander the following day, when the whole plan was *fait accompli*. There must be a serious doubt that Drago Nikolic would have told Obrenovic at all had he not needed to be relieved as Duty Officer at the IKM.

557. The instructions to Drago Nikolic are highly significant. For a start they were given to Drago Nikolic and not to Obrenovic himself. Given the imminent arrival of thousands of prisoners, it is a stark fact that only one man within the Zvornik Brigade was to be informed. The fact that Obrenovic was contacted by Drago Nikolic was little more than an accident. Beara can have had no idea that he was acting as duty officer at the IKM. There is no evidence that Drago Nikolic was instructed to inform his commander, or to arrange the engagement of the brigade's logistics or engineering units. All that he asked for in fact was a handful of military policemen. Whilst they might have been useful in investigating sites around Zvornik for the detention of prisoners, their ability significantly to effect their actual detention, execution and burial was negligible. The plain inference is that Bear believed he could execute the whole plan without engaging the Zvornik brigade command at all. Whether he is in truth "an empty vessel", he was plainly comfortable making direct requests to the brigade for logistical assistance, as well as giving instructions to municipal leaders, even if he had to invoke the authority of his political masters.<sup>930</sup>

558. [REDACTED]. There is no evidence that Pandurevic acquiesced in the plan to transport the prisoners to Zvornik for execution. Indeed to the contrary, he denies any such allegation. More to the point, the available evidence suggests that no such information was, or could have been, in fact conveyed to Drago Nikolic. Indeed, if the Chamber accepts the evidence of Momir Nikolic to the effect that he was the messenger, palpably he did not tell him any such thing. There are a range of possibilities : either somebody gave false information to Drago Nikolic, or he lied to Obrenovic, or Obrenovic, for his own reasons, embellished the message. In any event, it is far too remote and tenuous a piece of evidence to conclude that Pandurevic knew on 13<sup>th</sup> July of the killing operation.

559. On 14<sup>th</sup> July Momir Nikolic returned to the Bratunac Brigade headquarters where he informed Blagojevic of his trip to Zvornik and the instructions he received from Beara

<sup>929</sup> P00377, Zvornik Brigade Duty Operations Officer Notebook, ERN 0293-5742

<sup>930</sup> P0377, Zvornik Brigade Duty Operations Officer Notebook, ERN 0293-5742, [REDACTED] (PW-104)

that all the prisoners would be moved to Zvornik where they would be detained and killed. Interestingly, the Trial Chamber in *Blagojevic* could not conclude that the commander of the Bratunac Brigade knew of the mass murders in Zvornik.

560. Notwithstanding the meeting and discussion on the 13<sup>th</sup> July, Deronjic learned the following morning that Colonel Beara was persisting in his search for the brick factory in Bratunac, in order to put some prisoners over there. Deronjic had a further confrontation with Beara over this and ordered him out of Bratunac and told him that there should be no killings in Bratunac.<sup>931</sup>
561. It is plain that whenever the decision was taken to murder the prisoners, Mladic and Beara intended that the prisoners should be killed in Bratunac. From the above, it can be seen, that Beara was so determined to execute the plan in Bratunac that notwithstanding the orders of *two Presidents* he was still pursuing the original plan on the morning of the 14<sup>th</sup> of July. A short while after this, he was to lament to Krstic over the radio that his problems with killing prisoners in the Zvornik area would not have arisen had he been permitted to kill them all in Bratunac as he had wanted to do.<sup>932</sup>
562. The intervention of Karadzic and Deronjic is critical to the development of events. Had they not interceded, it is almost certain that no prisoners would have been taken to Zvornik at all and accordingly to an area for which Pandurevic is said to have responsibility. The decision was swiftly taken. There is no evidence that Pandurevic was informed of it. And nothing from which that could be inferred. Equally significantly, Momir Nikolic did not inform his own commander that he had been to Zvornik until the following day when events had significantly moved on.<sup>933</sup>
563. In Zvornik, the commander of the brigade was absent. There is no dispute that he was at or near Zepa, preparing his units for combat operations. There is no evidence that there were any communications that would have even alerted him to events in Zvornik. According to the evidence of PW-168, he was throughout the period of the arrival of prisoners in Zvornik, engaged in combat with the 28<sup>th</sup> division in and around Snagovo. He had told nobody about the arrival of the prisoners. Accordingly, their arrival on 13<sup>th</sup> and 14<sup>th</sup> of July was completely unexpected. Given the absence of not only the commander, but also the effective absence of his deputy, as well as the operations officer, the Zvornik Brigade was on 14<sup>th</sup> July a “rudderless ship.” At the risk of mixing shipping metaphors, fatefully, an “empty vessel” was about to sail into its waters.

#### 8.4. Command of the operation

564. The movement of the prisoners commenced according to the evidence that same evening.<sup>934</sup> But the substantial convoy left on the morning of the 14<sup>th</sup>. Momir Nikolic told Janjic and other Bratunac MP's to report to the front of the military police building. Mr Janjic and the others did so, where they again met with Momir Nikolic. He told them to go into town and help secure the Muslims detained in the schools and on the vehicles near the school. On the morning of the 14<sup>th</sup>, soldiers arrived at this location. They were

<sup>931</sup> [REDACTED]

<sup>932</sup> [REDACTED]

<sup>933</sup> T.33331, 28 April 2009, Momir NIKOLIC

<sup>934</sup> P00686; Srebrenica Military Narrative – Operation ‘Krivaja=95’, 15 May 2000, page 2

wearing black overalls and black bandanas and some of them had dogs. Some of these men got on to the buses and the buses began leaving.<sup>935</sup>

565. One survivor recalls being taken to Bratunac on a bus boarded by Military policemen whose insignia he recognized.<sup>936</sup> The following day they set off for Kladanj to be exchanged there. They stopped at a parking lot of the Viogor Company. Three military policemen travelled with them to Viogor. They were replaced by armed soldiers, an APC arrived at the scene but they were not UNPROFOR, but Serbian soldiers.<sup>937</sup> They continued the journey following this APC. They stopped at a school and they were told that they should raise their hands and run to the school. There were soldiers on both sides of the pitch.<sup>938</sup>
566. According to one source, Beara accompanied the prisoners on the buses personally.<sup>939</sup>
567. At a meeting at the Zvornik Brigade on the 14<sup>th</sup> of July, Beara enlisted the help of the Zvornik civil authorities to bury the bodies of the murdered Muslim prisoners. Beara delivered a brief speech. The meeting was held in Pandurevic's office. The plain impression was that Beara and not Pandurevic was in charge of this operation. Beara said as much. He said that there were a lot of prisoners who were hard to control and that they had to be got rid of. He said he expected assistance from the municipal authorities with the burying of the bodies. Beara had said that there was an order from two presidents to get rid of the prisoners in such a way that all of their bodies would need to be buried.<sup>940</sup>
568. The assertion of Beara is noteworthy. In Bratunac on the evening of the 13<sup>th</sup> of July, he told Deronjic the civil authority in Srebrenica that he had orders from Mladic to kill the prisoners in Bratunac. The following day in Zvornik, he told civilian leaders that he had the authority of the President himself. In the interim there can be little doubt that the soldiers or policemen or military policemen who drove or guarded buses en route from Bratunac to Zvornik, did so on his (Beara's) orders.
569. [REDACTED].<sup>941</sup>
570. The reporting chains are of particular interest during the critical days. It was the view of Mile Janjic that the security line to Mladic had distanced itself and was functioning separately.<sup>942</sup> Moreover, whilst it is correct that Drago Nikolic informed Obrenovic of his task to receive prisoners that has to be viewed in the context of his particular difficulty, namely that he needed to be relieved as duty officer of the forward command post. Thereafter, Nikolic reported neither to Obrenovic, nor Pandurevic about his trips on the 13<sup>th</sup> July which the Prosecution suggests show him investigating the detention sites<sup>943</sup>, nor his use of military police units, nor his personal whereabouts and activities. Critically, and fatefully Obrenovic chose not to tell Pandurevic about his knowledge of the killing

<sup>935</sup> T.17931-T.17932, 20 November 2007, Mile JANJIC

<sup>936</sup> [REDACTED]

<sup>937</sup> [REDACTED]

<sup>938</sup> [REDACTED]

<sup>939</sup> [REDACTED], 7D00086;, page 1, 7D000685; [REDACTED]1

<sup>940</sup> [REDACTED] (PW-104)

<sup>941</sup> [REDACTED]

<sup>942</sup> T.17958-T.17959, 20 November 2007, Mile JANJIC

<sup>943</sup> P00904; Vehicle logbook for Opel Rekord P-4528

operation on 13<sup>th</sup> July, a fact he now acknowledges was a mistake.<sup>944</sup> Notably, the reporting lines were determined by the Main Staff.<sup>945</sup>

571. There is an account, whether credible or not, that Mladic himself was present at the school in Grbavci on the 14<sup>th</sup> of July.<sup>946</sup>

## 8.5. Units Involved

572. The details of those who were present at the detention and execution sites will be dealt with in chronological narrative later in the brief.<sup>947</sup> The following is a brief list of the identifiable units from outside the Zvornik brigade who escorted the prisoners to Zvornik and/or were present at various of the detention sites.

### 8.5.1. Elements of the Bratunac Brigade

573. The Bratunac Brigade provided a significant proportion of the manpower necessary to transport the prisoners to Zvornik, guard them in transit and guard them upon arrival. There is clear evidence that certain units of the Bratunac Brigade remained in the Zvornik area for several days.

574. On the morning of the 14<sup>th</sup>, a military police unit took part in the transfer of prisoners in the convoy to Zvornik.<sup>948</sup> The same was recorded in the daily log book.<sup>949</sup> The unit remained in Pilica till the 17<sup>th</sup> of July.<sup>950</sup>

575. The white APC at the head of the column was driven by the commander of the Bratunac Brigade Military Police, Mirko Jankovic, accompanied by Zoran Zivanovic. The Zenica company passed with him on the way to Zvornik to guard prisoners.<sup>951</sup>

### 8.5.2. 10th Sabotage Detachment

576. The 10<sup>th</sup> Sabotage Detachment arrived on the battlefield outside Srebrenica on the 10<sup>th</sup> of July when the fall of Srebrenica was imminent. Their arrival coincided with the appearance of Mladic. It had no sensible military purpose and was regarded by those who had taken part in operation Krivaja-95 with surprise, suspicion and resentment.<sup>952</sup>

<sup>944</sup> [REDACTED], 7D00086, Obrenovic –Statement of facts -20 May 2003, page 1, 7D000685; [REDACTED], T.32361-T.32362, 02 March 2009, Vinko PANDUREVIC

<sup>945</sup> P00377, Zvornik Brigade Duty Operations Officer Notebook, ERN 0293-5744 (colonel Salapura called)

<sup>946</sup> T.949-T.951, 29 August 2006, Mevludin ORIC

<sup>947</sup> See section “Detention and Execution Sites”

<sup>948</sup> T.32907-T.32909, Momir NIKOLIC, 21 April 2009

<sup>949</sup> P00220: Bratunac Brigade Military Police Daily Log Book, 30 June 95 – 29 April 96

<sup>950</sup> T.32907-T.32909, Momir NIKOLIC, 21 April 2009

<sup>951</sup> T.17948-T.17954, 20 November 2007, Mile JANJIC

<sup>952</sup> T.29586-T.29587, 11 December 2008, Milenko JEVDJEVIC, T.11973, 23 May 2007, Mirko TRIVIC, T.30867, 29 January 2009, Vinko PANDUREVIC

577. Their uniform was distinctive and set them apart. They can be seen on the trial video in black with black bandanas.<sup>953</sup> The unit also had its own insignia.<sup>954</sup>
578. It is of course a Main Staff unit. Its commander was Pelemis who answered, in turn, to Salapura, Milovanovic and Mladic.<sup>955</sup>
579. The unit was involved in the executions at Branjevo farm. There is some dispute as to whether the unit received orders from its commander. The inference from the evidence was that they were there under the command of Beara.<sup>956</sup>

### 8.5.3: Drina Corps Military Police

580. There is evidence that units of the military police of the Drina Corps took part in the escort and the guarding of prisoners.<sup>957</sup>

### 8.5.4: Civilian Policemen

581. There is evidence of the presence of civilian policemen at the Pilica Cultural Dom.<sup>958</sup> Drazen Erdemovic, in his testimony of 4 May 2007, said that they went there with an unknown Lieutenant-Colonel after the executions at Branjevo.<sup>959</sup>

### 8.5.5: Paramilitary Units

582. Lastly, at Rocevic there is evidence of the involvement of paramilitary units not obviously attached to any VRS unit. Damjan Lazarevic saw them there. He did not recognize the men. They had painted faces and masks.<sup>960</sup>

## 8.6. Events in Zvornik

583. Throughout the critical period (from about 20:00 hours on the 13<sup>th</sup> July to the morning of the 15<sup>th</sup>) it is important to remember that the Zvornik Brigade's commander was absent in another combat zone and effectively out of contact. To make matters worse, his deputy was preoccupied with fighting an enemy on two fronts and was himself away from the command of the brigade according to his evidence throughout the whole of 14<sup>th</sup> July.

584. [REDACTED].<sup>961</sup>

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<sup>953</sup> P02047; Srebrenica Trial video

<sup>954</sup> T.10939, 04 May 2007, Drazen ERDEMOVIC

<sup>955</sup> T.13994-T.13995, 21 August 2007, Dragan TODOROVIC

<sup>956</sup> T.14015, T.14027-T.14029, 21 August 2007, Dragan TODOROVIC

<sup>957</sup> [REDACTED], 7D00086;, page 2

<sup>958</sup> T.8543-T.8545, 09 March 2007, Pero PETROVIC, T.11404, 11 May 2007, Slavko PERIC

<sup>959</sup> T.10982, 04 May 2007, Drazen ERDEMOVIC

<sup>960</sup> T.14456, 29 August 2007, Damjan LAZAREVIC

585. Between 5:00 and 6:00 pm, Obrenovic tasked Maric to go to Snagovo. Jevtic's unit was lost and was unable to carry out its function. So, at around 0600hrs, Maric drove with his unit to Snagovo.<sup>962</sup> Plainly, the units at Obrenovic's disposal were not coping well with the tasks. [REDACTED].<sup>963</sup>
586. Between the 13<sup>th</sup> and the 14<sup>th</sup> of July, Ljubo Bojanovic joined up with Maric's unit. He had a force of 200 plus police men. Obrenovic dispatched several other units to the Snagovo area during the course of the 14<sup>th</sup> of July. His focus was the command of these units.
587. On the evening of the 14<sup>th</sup> he ordered a search of the terrain ahead in order to go towards the column that was coming in.<sup>964</sup>
588. The evidence suggests that those committed to ambushing the column were oblivious throughout this period to the problem developing with prisoners.<sup>965</sup>
589. [REDACTED]<sup>966</sup>
590. They had their first fight on the 14<sup>th</sup>, early in the morning, and then in the afternoon, fierce fighting began. [REDACTED].<sup>967</sup>
591. In the town of Zvornik itself, therefore, and at the command of the Brigade, the only persons who knew that the prisoners were arriving were Drago Nikolic, Jasikovac and the five military policemen. They also happened to be the only people who knew where they were going to be detained. Obrenovic did of course hear some information by chance that caused him to conclude that one of the sites was Orahovac.<sup>968</sup> That may in due course explain the evidence of Sreten Milosevic as to why he and others went to that particular site rather than any other.

## 9. MOBILISATION AND ZVORNIK BRIGADE MACHINERY

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<sup>961</sup> [REDACTED]

<sup>962</sup> P03138, Transcript of testimony of Milan MARIC from case No. IT-02-60-T, Prosecutor v. Blagojevic and Jokic, dated 6 and 7 July 2004, page 51-52

<sup>963</sup> [REDACTED]

<sup>964</sup> P03138, Transcript of testimony of Milan MARIC from case No. IT-02-60-T, Prosecutor v. Blagojevic and Jokic, dated 6 and 7 July 2004 page 57-62; T.22434, 19 June 2008, Zoran JANKOVIC; T.22463, 19 June 2008, Zoran JANKOVIC; [REDACTED] (PW-107)

<sup>965</sup> P03138, Transcript of testimony of Milan MARIC from Case No. IT-02-60-T, Prosecutor v. Blagojevic and Jokic, dated 6 and 7 July 2004, page 68-69

<sup>966</sup> [REDACTED]

<sup>967</sup> [REDACTED]

<sup>968</sup> [REDACTED]. P2232 page 7



‘Everything the army needs to use and does not own has to be requisitioned and handed over to the army with appropriate records made so that later on, that asset can be returned to the owner, and the legally prescribed procedure had to be followed.’<sup>969</sup>

### 9.1. Mobilisation process

592. In order to requisition and to use the property of others (facilities or equipment), a formal mobilisation procedure had to be used. That meant a brigade command, via Corps command, filing a *request* for specific machines or buildings to be used by the army. A copy of the request went to the military department in Zvornik.<sup>970</sup> The Ministry of Defence would then issue an *order* to the commercial company which owned the requested resources to make them available to the Ministry of Defence, and they were then taken over by the brigade.<sup>971</sup>

593. Brigade commands therefore had no power or authority themselves to mobilize men or to engage material, equipment or property. They were duty bound to contact organs for organisation, mobilisation. This entailed a *request* to Corps command which, in turn, would contact the Ministry of Defence, who in turn would ask them to mobilise men, requisition material or technical equipment. It was then a matter for the Ministry whether the mobilization would take place.<sup>972</sup>

594. It was in mid-1993 when the Corps command centralised these jobs. This resulted in the Corps Command making a request to and ordering the section of the Defence Ministry to carry out the mobilisation. That was the procedure which was in force from mid-1993 until the end of the war.<sup>973</sup>

595. Regardless of the time period over which property was mobilised or requisitioned by the Zvornik Brigade, the process remained the same. After an item was no longer needed, the file was closed, the asset was handed back to the owner, and the whole file was closed within the Ministry of Defence.<sup>974</sup>

596. The Main Staff, the Drina Corps, MUP and civil protection could also mobilize property for their own uses.<sup>975</sup>

597. However, in ‘*extraordinary circumstances*’, the commands of the brigades could submit requests *directly* to the departments of the Ministry of Defence, without going through the Corps command. In those circumstances, notification of the requests only to

<sup>969</sup> T.10570, 26 April 2007, Mihajlo GALIC

<sup>970</sup> Which was a civilian institution. It was part of the Ministry of Defence of the government of Republika Srpska. Being on that territory, by law, it had the ability to execute mobilisations.

<sup>971</sup> 7D01046, RS Ministry of Defence, Instructions by the Ministry of Defence regarding mobilisation, 5 June 1995; T.10569-T.10570, 26 April 2007, Mihajlo GALIC; [REDACTED] T.30710, 27 January 2009, Vinko PANDUREVIC; T.31325, 12 February 2009, Vinko PANDUREVIC; T.19811, 16 January 2008, Richard BUTLER; T.22452, 19 June 2008, Zoran JOVANOVIĆ

<sup>972</sup> T.30710, 27 January 2009, Vinko PANDUREVIC; T.31325, 12 February 2009, Vinko PANDUREVIC

<sup>973</sup> [REDACTED]

<sup>974</sup> T.10572, 26 April 2007, Mihajlo GALIC; [REDACTED]: For example, in February 1995 they would make an official request to remove the roof of an old school that had been abandoned and destroyed, 7D00458, Military post 7469, 6 February 1995

<sup>975</sup> [REDACTED]

the Corps command was required.<sup>976</sup> An example of this type of situation was the mobilization of the R-battalion on 15<sup>th</sup> July.<sup>977</sup> Two points can be illustrated by this particular procedure ; firstly, that the procedure could be very quick; but secondly, that the mobilization process was followed and the rules were respected by the Zvornik Brigade even on 15<sup>th</sup> July.

## 9.2. Mobilisation by the Zvornik Brigade in June and July

598. The evidence reveals that there were a number of requests for the mobilization of men and materials in June and July 1995 by the Zvornik Brigade. These included but were not limited to:

(1) The request for the mobilization of buses pursuant to the Drina Corps order to transport persons from Potocari<sup>978</sup>

(2) The request for the mobilization of the R battalion for “*obezbedjenje terena*” on 15<sup>th</sup> July ;

(3) The Request for the mobilisation of motor vehicles on 15<sup>th</sup> July for the transport of conscripts<sup>979</sup>. The conscripts concerned are those of the R battalion.

(4) The Request for the mobilisation of seven conscripts on 14<sup>th</sup> July in order to secure the Zvornik medical centre.<sup>980</sup> This request was sent since there was a shortage of personnel.<sup>981</sup>

(5) A Request for an extension to the deadline for the use of a crane on 20<sup>th</sup> July.<sup>982</sup> The Zvornik Brigade command could not keep the mobilised piece of equipment after the deadline for mobilisation had expired and therefore had to request an extension of the deadline from the Ministry.<sup>983</sup>

599. Subject to certain comments below, these examples shows that where the Brigade wished to make use of machinery which it did not own, it was legally obliged to and in fact did make proper requests for the mobilization of those men and/or materials. More to the point, unlike organs of higher command, it could not do so unilaterally, only through the proper offices of the Ministry of Defence. The Zvornik Brigade was, for example, unable to mobilise the ULT-220 (owned by *Birač-Holding*), or the machines from the Jošanica quarry and the workers operating them of its own accord. How and by what procedure these men and machines came to be used is a matter of conjecture, but it was not through any request at Brigade level.

<sup>976</sup> 7D01046, RS Ministry of Defence, Instructions by the Ministry of Defence regarding mobilisation, 5 June 1995, point 5

<sup>977</sup> 3D00119, RS Ministry of Defence, Order for mobilisation, 15 July 1995.

<sup>978</sup> Though see below 9.4

<sup>979</sup> 7D00098, ZB Command, Request for mobilisation of motor vehicles, 15 July 1995

<sup>980</sup> 7D00099, ZB, Request for mobilisation, 14 July 1995.

<sup>981</sup> T.10573, 26 April 2007, Mihajlo GALIC

<sup>982</sup> 7D00100, ZB Request regarding a crane, 20 July 1995

<sup>983</sup> T.10574, 26 April 2007, Mihajlo GALIC

### 9.3. There was no mobilisation of schools or heavy digging equipment by the Zvornik Brigade

600. The schools in Zvornik belonged to local authorities.<sup>984</sup>
601. In the month of July, no attempt was made nor in fact was there any mobilisation of any schools at Orahovac, Rocevic, Grbavci, Pilica, Petkovci or other public buildings by either Pandurevic or anyone under his command.<sup>985</sup> Had the mobilization of the schools been done on behalf of the Brigade, it would have to have come through Pandurevic or Obrenovic and then approved by the Corps commander and the appropriate procedure would have been followed.<sup>986</sup>
602. The same can be said in relation to the farm at Agroprom, Branjevo or indeed in respect of engineering equipment or trucks for the purposes of transporting prisoners or burying bodies.<sup>987</sup>

### 9.4. Mobilisation of buses on 12th July

603. The Zvornik Brigade was one of the recipients of the Drina Corps order on 12<sup>th</sup> July stating that 'all the buses and mini-buses belonging to the VRS be secured for the use by the Drina Corps'.<sup>988</sup>
604. In the Zvornik Brigade, it was Obrenovic who received this order in the afternoon when he came back to the brigade command from Memici. He had already been informed that the buses had been sent.<sup>989</sup> He personally acted upon this order.<sup>990</sup>
605. The daily combat report for 12<sup>th</sup> July mentions the *eight buses* from 'Drina Trans' pursuant to the Drina Corps order.<sup>991</sup> These buses were requisitioned by the Ministry of Defence and they were sent directly to the logistics service of the Drina Corps in Bratunac. They were not handed over to the Zvornik Brigade.<sup>992</sup>
606. The Ministry of Defence sent other orders for the mobilisation of the buses. However, these were not addressed to the Zvornik brigade and had nothing to do with the brigade.<sup>993</sup> It was necessary for the majority of the buses to be requisitioned from the

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<sup>984</sup> T.10578, 26 April 2007, Mihajlo GALIC

<sup>985</sup> T.10578, 26 April 2007, Mihajlo GALIC; T.16052, [REDACTED] [REDACTED]; T.13327, 12 February 2009, Vinko PANDUREVIC;

<sup>986</sup> [REDACTED]

<sup>987</sup> T.10578, 26 April 2007, Mihajlo GALIC; [REDACTED]

<sup>988</sup> P00110, Drina Corps, Provision of buses for evacuation from Srebrenica enclave, 12 July 1995

<sup>989</sup> [REDACTED]

<sup>990</sup> P00322, ZB regular combat report, 12 July 1992; See Part 4 Section 4 Krivaja 95

<sup>991</sup> P00322, ZB regular combat report, 12 July 1992

<sup>992</sup> [REDACTED]

<sup>993</sup> See for example P2900, RS Ministry of Defence, Order for the mobilisation of buses, 12 July 1995; T.31326, 12 February 2009, Vinko PANDUREVIC

*civilian economy*, and that fell more in the purview of the RS Ministry of Defence than it did strictly of the army.<sup>994</sup>

607. It is important to note, that according to the testimony of Butler, it cannot be concluded in any way that the sending of buses was understood to be for any illegal act.<sup>995</sup>

## 9.5. Use of machinery (in burials)

### 9.5.1. Inventory stock and war booty of the Zvornik brigade

608. *A Review of the Engineer Units for 1995* shows the material supplies that the Zvornik Brigade used in 1995.<sup>996</sup>

609. The ‘*army stock*’ under (a) is what the engineers’ unit had as its own material and technical equipment. The so-called ‘*inventory stock*’ listed under point (b) was *owned by the public companies*. It is manifestly evident that the Zvornik Brigade simply did not own any machinery. The machinery listed under point (b) (i.e. ‘*listed machinery*’) was put at the temporary disposal of the Zvornik Brigade and for the purposes of the army by public companies, such as Birac Holding, Quarry, Zvornik Putevi. The ‘*war booty*’ under point (c) includes some motorised vehicles which the Zvornik Brigade did in fact own after seizing it from the enemy as war booty. However, no machinery is listed there.<sup>997</sup>

610. Frequently, items on the inventory stock (b) at the disposal of the engineer's unit were subsequently given back to companies to use when they needed to carry out their own assignments and tasks. This obviously depended on urgency and on a need-to-use basis.<sup>998</sup>

611. The Zvornik Brigade engineering company possessed the following construction machines in 1995, namely a BGH-700 excavator, Torpedo excavator, a trailer and four bulldozers (one not in working order).

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<sup>994</sup> T.19808, 16 January 2008, Richard BUTLER

<sup>995</sup> T.20389, 24 January 2008, Richard BUTLER

<sup>996</sup> 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

<sup>997</sup> T.31315, 12 February 2009, Vinko PANDUREVIC

<sup>998</sup> T.13315, 12 February 2009, Vinko PANDUREVIC

### 9.5.2. The ULT-220 owned by Birac Holding

612. From the same review document, it is clear that the Zvornik Brigade did not own nor use any ULT-220 loaders in 1995.<sup>999</sup> In fact, the ULT-220 was owned by the Birac Holding company and was operated by Veljko Kovacevic.<sup>1000</sup>, who was not a member of the Zvornik Brigade<sup>1001</sup>
613. Given that this machine was not owned by the Zvornik Brigade and was not part of its inventory stock, and was not mobilized by order, the process by which it came to be used as it did is not clear from any documents. However, its use cannot be unconnected to the request for machinery made by Beara to an assembly of municipal and business figures in Zvornik on 14<sup>th</sup>.<sup>1002</sup> There is no evidence, significantly, of the presence at that meeting of anybody from the Staff of the Zvornik Brigade, nor the engineering company, nor the logistics organ. Mihajlo Galic, whose duty it was to monitor the Brigade's material resources and process any requisitioning requests,<sup>1003</sup> knew nothing of any such request. The only proper inference to draw is that the acquisition of this machine was done without the involvement of the Brigade. The opening of a vehicle work log in relation to it is unexplained and a matter of conjecture, but demonstrates, in fact, no more than that it was provided with fuel.
614. There is no evidence that this was ever ordered by Pandurevic nor was it ever brought to his attention, since (a) he was at the IKM on 15<sup>th</sup> and 17<sup>th</sup> July when this vehicle was apparently provided with some fuel and (b) he would generally not be consulted about the provision of relatively small amounts of fuel to none-Zvornik Brigade vehicles.

### 9.5.3. BGH-700 owned by Zvornik Putevi

615. Similarly, according to the same Review, the BGH-700 was not owned by the Zvornik Brigade in 1995.<sup>1004</sup> It was owned by the public company called Zvornik Putevi.<sup>1005</sup> However, the machine was at the disposal of the Zvornik Brigade (under (b)) and was operated by Cvijetin Ristanovic, a member of the Brigade.<sup>1006</sup>

### 9.5.4. Rovokopac/Trench digger<sup>1007</sup>

<sup>999</sup> 7D260, A review of the engineer units for 1995, 20 December 1995, Para 8, (Therefore, use of such a machine would have required a requisition order)

<sup>1000</sup> P302= P295, BCS page 565, ENG page 567, VWL for ULT 220, driver Kovacevic Veljko; T.13631, 10 July 2007, Cvijetin RISTANOVIC; T.14479, 29 August 2007, Damjan LAZAREVIC; T.31316, 12 February 2009, Vinko PANDUREVIC

<sup>1001</sup> T.14514, 30 August 2007, Damjan LAZAREVIC, Lazarevic in cross-examination changes his mind and says Veljko was a member of the ZB when he came to help with his machine. There is obviously inconsistent evidence as to the status of this particular individual

<sup>1002</sup> T.31317-T.31318, 12 February 2009, Vinko PANDUREVIC. T.7941, 28 February 2007, Zoran Zekic

<sup>1003</sup> T10494, 25 April 2007, Mihajlo Galic

<sup>1004</sup> 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

<sup>1005</sup> T.13625, 10 July 2007, Cvijetin RISTANOVIC; T.13315, 12 February 2009, Vinko PANDUREVIC

<sup>1006</sup> T.13625, 10 July 2007, Cvijetin RISTANOVIC

<sup>1007</sup> No details specified other than to remark that it was a backhoe excavator

616. The Rovokopac/Trench digger was not on the inventory list of the Zvornik Brigade<sup>1008</sup> and its ownership is unclear. The mere opening of a vehicle work log doesn't render it brigade property, and indicates only the provision of fuel.<sup>1009</sup>
617. The vehicle work log relating to this machine is improperly completed. The same signature appears in three places where there should have been different signatures. None of the signatures appear to be that of Cvijetin Ristanovic, the driver of the machine on the relevant days.<sup>1010</sup>

#### 9.5.5. Rovokopac Torpedo (Torpedo Excavator) owned by Birac Holding

618. The Rovokopac Torpedo was on the inventory list of the machinery used by the Zvornik Brigade in 1995, but was owned by Birac Holding.<sup>1011</sup> It was operated by Cvijetin Ristanovic and Milos Mitrovic according to the VWL<sup>1012</sup>. The VWL says it was in Orahovac, but there is no evidence it was there. The operator Ristanovic says he didn't use it and didn't sign the VWL.<sup>1013</sup> The signatures are the same as on the VWL for the Torpedo.<sup>1014</sup> Plainly the only realistic inference to draw is that the records were completed by the same person at the same time.

#### 9.5.6. Four bulldozers

619. The Brigade did own four bulldozers (only three were in working order<sup>1015</sup>), which could be of use at least in pushing earth into mass graves, yet, according to the work logs, none of the three bulldozers were operating in July.<sup>1016</sup>

<sup>1008</sup> 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

<sup>1009</sup> P00300, VWL, rovokopac – unspecified, July 1995

<sup>1010</sup> T.13627-T.13628, 10 July 2007, Cvijetin RISTANOVIC

<sup>1011</sup> 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8; P00301, Zvornik Brigade Vehicle Log for Rovakopac Torpedo from Birac Holding

<sup>1012</sup> P301, Zvornik Brigade Vehicle Log for Rovakopac Torpedo from Birac Holding; P00295, Zvornik Brigade July 1995 Transportation Records, 1-jul-1995, BCS/ERN 0069-5032, ENG/ERN 0307-5485; T.14475, 29 August 2007, Damjan LAZAREVIC (Zvornik Brigade engineering company members.)

<sup>1013</sup> T.13632, 10 July 2007, Cvijetin RISTANOVIC

<sup>1014</sup> Ie unidentifiable but the same person

<sup>1015</sup> 7D00260, A review of the engineer units for 1995, 20 December 1995, Para 8

<sup>1016</sup> P00295, , Zvornik Brigade July 1995 Transportation Records, 1-jul-1995, VWLs of the TG140, TG220, TG110 - TG110 = BCS/ERN 00695035-00695036 and ENG/ERN 00875995-00875996; BCS PAGE 491-492 and ENG PAGE 493-494; TG220 = BCS/ERN 00695039-00695040; ENG/ERN 00875999-00876000; BCS PAGE 495-496 and ENG PAGE 497-498; TG80 = BCS/ERN 00695041-00695042; ENG/ERN 00876001-00876002; BCS PAGE 497-498 and ENG PAGE 499-500 – the VWLs are silent.

## 10. SITUATION AT THE DETENTION SITES AND EXECUTIONS

620. Between 13<sup>th</sup> July and 16<sup>th</sup> July, prisoners were detained at 5 sites in the Zvornik area. The following is a broadly chronological review of their detention, execution and burial at each of those sites. An attempt will be made to identify where possible who was conducting executions, and who was giving orders at the sites.
621. The defence for Pandurevic reiterates its case that until the afternoon of the 15<sup>th</sup> July, Dragan Obrenovic was in command of the Zvornik Brigade. He has pleaded guilty to the same. Accordingly, the execution of prisoners at Orahovac, and Petkovci were completed during his period of command, and the execution of prisoners from Rocevic was under way. Only the events at Branjevo and Pilica certainly took place on Pandurevic's watch.
622. [REDACTED].<sup>1017 1018 1019 1020 1021</sup>
623. It must follow that whatever individuals or assets, apparently belonging to the Zvornik Brigade, played any part of the events of 13<sup>th</sup> to 17<sup>th</sup> July, they did not do so pursuant to any orders of the brigade command. In fact, the sequence of facts set out in the paragraphs below demonstrates that these events were driven by officers of superior command, and carried out in the main by units of soldiers, policemen and paramilitaries brought in from outside for the purpose of conducting executions.
624. Those in command of the killing operation had not intended to inform the command of the Zvornik brigade of their plans, only its Chief of Security,<sup>1022</sup> and even when they hit manpower problems, they refused to seek help from the brigade despite its manifest resources (5,900 men) being literally under their noses.<sup>1023</sup>
625. The prosecution has identified (and doubtless will continue to do so) those individuals who stood guard, or drove a digging machine, or buried some bodies. These are not acts of the same character, however, as murder, and those who do these things in their own villages do not do these things to encourage, support or enable the commission of murder. They do so because of concern for the security of their own families, they do so because the alternative to burying bodies is to leave them to decompose in the July heat. The defence rejects the suggestion that all these activities are intrinsically linked to the killing operation. It is not a crime to hold prisoners of war in a school, perhaps until they can be taken somewhere more appropriate. It is not a crime to guard them. The crime is killing them. That they would be killed had been pre-determined by the authors of the killing operation in Bratunac. They didn't want to bring the prisoners to Zvornik. That they did was virtually accidental.
626. The general tenor of the evidence at any of these sites is that members of the Zvornik Brigade were drafted in to secure the sites and to ensure the safety of the local population.

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<sup>1017</sup> [REDACTED]

<sup>1018</sup> [REDACTED]

<sup>1019</sup> [REDACTED]

<sup>1020</sup> [REDACTED]

<sup>1021</sup> [REDACTED]

<sup>1022</sup> See above Part 4 Section 8 on "The Killing Operation"

<sup>1023</sup> P01179, intercepted telecommunication of 15 July between Beara and Krstic

Each site was typically close to a local civilian population which had had 'foisted upon it' comparatively large numbers of adult males who were hostile to them.

627. In the main, the evidence points to the fact that the members of the Zvornik Brigade acted in a humane rather than an aggressive way and, when considering the proximity of any actors to the execution sites, members of the Zvornik Brigade appear to have been involved in the aftermath (ie digging and burying) rather than in the actual executions.
628. As has been discussed earlier in this brief,<sup>1024</sup> the senior officer present assumes command of an operation or joint task. In the case of each of the detention and execution sites, it will be seen that a superior officer from outside the brigade (usually Beara or Popovic, though in one instance, possibly Mladic himself) filled that role. All of those connected with the operation were obliged to follow their orders. Conversely, no officer of the Zvornik Brigade would have had authority to give orders to members of the 10<sup>th</sup> Sabotage Detachment, Bratunac Brigade Military Police or other outside unit.

### 10.1 Grbavci School in Orahovac<sup>1025</sup>

629. Pandurevic issued no orders to anybody to detain or execute prisoners at Orahovac.<sup>1026</sup> He had no knowledge of the Zvornik Brigade in the events there.<sup>1027</sup>

#### Sequence of Events

630. Chronologically, the first detention site to receive prisoners was Orahovac. It is also, of course geographically the closest to Zvornik town centre. There is some evidence that this site was known to Obrenovic,<sup>1028</sup> and that he ordered soldiers at the command to go there to protect the villagers.<sup>1029</sup> This would explain why there were a number of soldiers from the command at Orahovac on 14<sup>th</sup> July with no obvious purpose.<sup>1030</sup>
631. The sequence of events began on the evening of 13<sup>th</sup> July 1995 when a number of Military Policemen<sup>1031</sup> ('MPs') from the barracks at Karakaj received an order for them to go to the school at Grbavci<sup>1032</sup>. There, they were to secure the area, particularly the gym area, before the arrival of a number of prisoners. In addition, they were obliged to carry out 'crowd control' duties due to the feelings of the local people. At no stage at this time

<sup>1024</sup> See Part 3 Section 5 : "Most Senior Officer Present"

<sup>1025</sup> Paragraph 30.6 of the Indictment

<sup>1026</sup> T.30935, 30<sup>th</sup> January 2009, Vinko PANDUREVIC, T.10088, 16<sup>th</sup> April 2007, Lazar RISTIC, T.10089, 16<sup>th</sup> April 2007, Lazar RISTIC (It appears that the events at Orahovac were dictated 'along some security chain of command, not through the Main Staff'). T.10164, 17<sup>th</sup> April 2007, Lazar RISTIC (RISTIC questioned how it was that things had happened in Zvornik as they had : that had the command not been absent, what occurred at Orahovac would not have happened)

<sup>1027</sup> T.30936, 30<sup>th</sup> January 2009, Vinko PANDUREVIC

<sup>1028</sup> See section 8 : "The Killing Operation"

<sup>1029</sup> [REDACTED]

<sup>1030</sup> T.10337-8, 23<sup>rd</sup> April 2007, Tanacko TANIC, [REDACTED], [REDACTED], [REDACTED] and 3D327 [extract of Sreten Milosevic OTP interview dated 16/1/06], T.10354, 23<sup>rd</sup> April 2007, T.10339, 23<sup>rd</sup> April 2007, Tanacko TANIC, T.10353, 23<sup>rd</sup> April 2007, Tanacko TANIC, [REDACTED], [REDACTED].

<sup>1031</sup> T.26066, 23<sup>rd</sup> September 2008, Stevo KOSTIC

<sup>1032</sup> [REDACTED], [REDACTED]



does there appear to have been any feeling or knowledge among the personnel present that the prisoners would in any way be harmed. Talks of exchange were overheard and the MPs' main concern was the welfare of the prisoners when they arrived.<sup>1033</sup>

632. Some time elapsed before a number of civilian buses arrived containing the prisoners, who, at that time, were supervised<sup>1034</sup> and there appears to have been an escort with the buses.<sup>1035</sup> The prisoners were taken from the buses and put into the gym where a small number of personnel were tasked to look after them. Water was delivered to the prisoners.<sup>1036</sup>
633. While the prisoners were at the school, a number of senior officers from the Main Staff were also there. The presence of Main Staff Officers at the school highlights the level at which this operation was to be executed. Accordingly, there can be no doubt who was in charge of events here and over the next few days at other sites. Ratko MLADIC<sup>1037</sup> was seen at the school and at the execution site<sup>1038</sup> while an older officer who was tall and wore glasses was also present<sup>1039</sup>. This was almost certainly Beara, say the defence. He had been riding with the convoy, this was the first port of call, and his boss was there. In addition, Vujadin POPOVIC made an appearance.<sup>1040</sup>
634. A number of other sightings were made of individuals to whom command was ascribed but no-one could identify.<sup>1041</sup> Plainly they were not brigade officers.
635. The prisoners were held in the school overnight before executions began the following day. The delay may have been because the logistics and engineering necessary had not been organised. The following afternoon, of course, Beara addressed the assembled municipal leaders at Standard. Within a few hours he had his machinery. It is worthy of note that he chose to approach these people directly, rather than act through the Logistics or Engineering Units of the Zvornik Brigade, both of whom were readily available for him to speak to should he have wished.
636. Drago Nikolic<sup>1042</sup> was at the school. He was in conversation more senior officers who must have been BEARA and/or POPOVIC. Plainly he was taking orders from his

<sup>1033</sup> [REDACTED], T.14541, 30<sup>th</sup> August 2007, Dragoje Ivanovic, [REDACTED, T.26033, 22<sup>nd</sup> September 2008, Stevo KOSTIC, T.[REDACTED], [REDACTED], T.10062, 16<sup>th</sup> April 2007, Lazar RISTIC

<sup>1034</sup> [REDACTED], but see T.14541, 30<sup>th</sup> August 2007, Dragoje Ivanovic

<sup>1035</sup> T.14541, 30<sup>th</sup> August 2007, Dragoje Ivanovic

<sup>1036</sup> T.10747, 1<sup>st</sup> May 2007, Stanoje BIRCAKOVIC

<sup>1037</sup> Commander of the Main Staff of the Bosnian Serb Army (VRS)

<sup>1038</sup> T.947, 29<sup>th</sup> August 2006, Mevludin ORIC but see [REDACTED], [REDACTED]

<sup>1039</sup> [REDACTED]

<sup>1040</sup> T.10337, 23<sup>rd</sup> April 2007, Tanacko TANIC

<sup>1041</sup> T.10081-10082, 16<sup>th</sup> April 2007, Lazar RISTIC (A second lieutenant or a lieutenant arrived with two soldiers. They opened a trunk which contained a .84 mm machine gun. These men were not from the Zvornik Brigade), [REDACTED], T.6603, 30<sup>th</sup> January 2007, Milomir SIMIC, T.14542, T.14546, 30<sup>th</sup> August 2007, Dragoje Ivanovic, [REDACTED], T.943, T.950, 29<sup>th</sup> August 2006, Mevludin ORIC, [REDACTED], [REDACTED] (The person who escorted people to be executed wore a red beret – he was young), [REDACTED] (The same man issued the command for them to put on blindfolds and to leave), [REDACTED] (The same man was running things although it was not entirely clear if he was 100% the boss), [REDACTED], [REDACTED] (There were probably officers there. Their rank was not obvious but someone regulated the whole matter)

<sup>1042</sup> Chief of Security (Assistant commander for security and intelligence) for the Zvornik Brigade of the VRS

professional superiors. Trbic, his deputy, Jasikovac and the requested military police personnel were there too.<sup>1043</sup>

637. Lazar RISTIC<sup>1044</sup> had been ordered to send a dozen soldiers from the 4<sup>th</sup> Battalion to assist with security of the prisoners at the school. Upon their arrival, the MPs were told that they were relieved of their duties.<sup>1045</sup> Subsequently, as the events at the school unravelled, RISTIC received a telephone call from one of his troops.<sup>1046</sup> He was told that his men had been ordered to conduct executions. His men had told him that they wanted nothing to do with these events. RISTIC ordered that they should do nothing and, armed with that information, RISTIC attended at the school. Upon his arrival, he informed TRBIC of what was happening<sup>1047</sup> and extracted those soldiers whom he had supplied for “security purposes” and sent them back to their lines.<sup>1048</sup>

### Zvornik Brigade Personnel

638. A number of Zvornik Brigade personnel (predominantly from the Military Police Unit) attended at the school. They were Slajan JOKIC<sup>1049</sup>, Dragoje IVANOVIC<sup>1050</sup>, Milomir SIMIC<sup>1051</sup>, Stevo KOSTIC, Nada STOJANOVIC<sup>1052</sup>, Cedo JOVIC<sup>1053</sup>, Goran BOGDANOVIC<sup>1054</sup>, Stanoje BIRCAKOVIC<sup>1055</sup> and Milorad BIRCAKOVIC<sup>1056</sup>. They were involved at the school guarding the prisoners. [REDACTED]<sup>1057</sup>. It was there that some of them learned that prisoners had been exchanged and some had been liquidated.<sup>1058</sup>

639. The executions were almost certainly carried out at Orahovac by members of the Bratunac Brigade Military Police unit which had brought the prisoners to Zvornik. A 4<sup>th</sup> battalion soldier did take part on the evidence. His name was Gojko SIMIC. The evidence

<sup>1043</sup> T.10075, 16<sup>th</sup> April 2007, Lazar RISTIC, [REDACTED], T.26003, 22<sup>nd</sup> September 2008, Stevo KOSTIC, but see [REDACTED] (who says it was either Jaskovac or Nikolic who gave the order), T.14540, T.14552 30<sup>th</sup> August 2007, Dragoje Ivanovic, T.14542, 30<sup>th</sup> August 2007, Dragoje Ivanovic, T.14544, 30<sup>th</sup> August 2007, Dragoje Ivanovic, T.14545, 30<sup>th</sup> August 2007, Dragoje Ivanovic

<sup>1044</sup> Deputy Commander of the 4<sup>th</sup> Battalion of the Zvornik Brigade

<sup>1045</sup> T.14544, 30<sup>th</sup> August 2007, Dragoje Ivanovic, T.14545, 30<sup>th</sup> August 2007, Dragoje Ivanovic,

<sup>1046</sup> T.10069, 16<sup>th</sup> April 2007, Lazar RISTIC

<sup>1047</sup> T.10077, 16<sup>th</sup> April 2007, Lazar RISTIC but see T.10086 where the same witness says that TRBIC was not there at the time

<sup>1048</sup> T.10062, 16<sup>th</sup> April 2007, Lazar RISTIC (Captain TRBIC ordered him to send a dozen soldiers to assist with security at the school), T.10181, 17<sup>th</sup> April 2007, Lazar RISTIC (At no stage did TRBIC say that this order had come from command or that it involved executions), T.10072, 16<sup>th</sup> April 2007, Lazar RISTIC, T.10074, 16<sup>th</sup> April 2007, Lazar RISTIC,,T.10133, 17<sup>th</sup> April 2007, Lazar RISTIC (Orahovac was out of his zone of defence)

<sup>1049</sup> [REDACTED]

<sup>1050</sup> T.14539, 30<sup>th</sup> August 2007, Dragoje IVANOVIC

<sup>1051</sup> T.6527, 30<sup>th</sup> January 2007, Milomir SIMIC

<sup>1052</sup> [REDACTED], T.950, 29<sup>th</sup> August 2006 Mevludin ORIC, T. 10081, 16<sup>th</sup> April 2007, Lazar RISTIC but see also statement of Stojanovic at 1D431

<sup>1053</sup> T.10337, 23<sup>rd</sup> April 2007, Tanacko TANIC, P.3750 OTP interview 13<sup>th</sup> March 2002 pages 39 to 48

<sup>1054</sup> T.10337, 23<sup>rd</sup> April 2007, Tanacko TANIC, See P.3750 OTP interview 13<sup>th</sup> March 2002 pages 39 to 48 of JOVIC

<sup>1055</sup> T.10743-T.10765, 1<sup>st</sup> May 2007, Stanoje BIRCAKOVIC,

<sup>1056</sup> T.11018, 7<sup>th</sup> May 2007, Milorad BIRCAKOVIC, [REDACTED]. P.296 Vehicle Log for Opel Rekord – 14<sup>th</sup> July = Orahovac

<sup>1057</sup> [REDACTED]

<sup>1058</sup> T.14550, 30<sup>th</sup> August 2007, Dragoje Ivanovic, T.6585, 30<sup>th</sup> January 2007, Milomir SIMIC

however shows that (a) he was not in service with the 4<sup>th</sup> Battalion of the Zvornik Brigade at the time of the events at Orahovac – he had been granted a period of absence.<sup>1059</sup> (b) he lived near to the school, (c) he had not received any order to attend the school and (d) he volunteered to be involved in executions.<sup>1060</sup>

### Use of Zvornik Brigade Machinery

640. Three excavators were deployed at the execution site<sup>1061</sup>. Almost certainly, they had been acquired from local companies by Beara that afternoon.<sup>1062</sup> Two of the excavators were operated by Damjan LAZAREVIC and Cvijetin RISTANOVIC who are engineers from the Zvornik Brigade. The third excavator was operated by a civilian called Veljko KOVACEVIC<sup>1063</sup>.

641. Other vehicles, including lorries and trucks were seen and used at the site for various purposes.<sup>1064</sup> No link can be established to the Zvornik Brigade.

## **10.2. Petkovci School**

642. This location was outside the area of defence of the 6<sup>th</sup> Battalion of the Zvornik Brigade<sup>1065</sup>

### Sequence of Events

643. The prosecution allege that POPOVIC and BEARA were instrumental in the activities at Petkovci school and Petkovci Dam<sup>1066</sup>. Indeed, BEARA was present at the school at which prisoners were being detained. He was, say the defence in command of the operation at the school, and subsequently the dam.

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<sup>1059</sup> T.10098, 16<sup>th</sup> April 2007, Lazar RISTIC

<sup>1060</sup> T.10140, 17<sup>th</sup> April 2007, Lazar RISTIC

<sup>1061</sup> T.14445, 29<sup>th</sup> August 2007, Damjan LAZAREVIC, T.13626, 10<sup>th</sup> July 2007, Cvijetin RISTANOVIC, T.957, 29<sup>th</sup> August 2006, Mevludin ORIC, [REDACTED], T.967, 29<sup>th</sup> August 2006, Mevludin ORIC

<sup>1062</sup> P686 EXH, Srebrenica Military Narrative, « Operation Krivaja 95 » - Chapter 7, §B p64-68

<sup>1063</sup> T.13631, 10<sup>th</sup> July 2007, Cvijetin RISTANOVIC. See also P.302 and P.297

<sup>1064</sup> T.14565, 30<sup>th</sup> August 2007, Dragoje Ivanovic : [REDACTED]; [REDACTED], [REDACTED] (PW-169), T.10083, 16<sup>th</sup> April 2007, Lazar RISTIC

<sup>1065</sup> 7DIC180; [REDACTED]

<sup>1066</sup> See paragraph 30.7 of the indictment in which it is alleged that BEARA was assisted in the activities by POPOVIC, TRBIC and Drago NIKOLIC. It should be remembered that this location, together with Petkovci Dam is outside the area of defence of the 6<sup>th</sup> Battalion of the Zvornik Brigade

644. On 14<sup>th</sup> July, Marko MILOSEVIC<sup>1067</sup>, deputy commander of the 6<sup>th</sup> Battalion of the Zvornik Brigade, received a call from the duty operations officer at Brigade command to notify him of the impending arrival of prisoners at the school<sup>1068</sup>. The call was plainly for no more than information, as he was given no orders in relation to the prisoners. Nonetheless, his commander STANISIC, travelled to Zvornik to see what it was about. By the time he had got there, he learned that the prisoners were already at the school. He was told to find Colonel BEARA to give him a message. MILOSEVIC was despatched to the school at the instance of STANISIC in order to convey the message to Colonel BEARA<sup>1069</sup>.
645. Upon the arrival of MILOSEVIC at the school, he spoke to Drago NIKOLIC<sup>1070</sup> who pointed him in the direction of Ljubisa BEARA in order to relay the message.<sup>1071</sup> STANISIC indicates that the message which had been communicated to him was intended for a Colonel – that could only have been Colonel BEARA.<sup>1072</sup> Milosevic recalls the Colonel being near a blue Golf motor car.<sup>1073</sup>
646. Subsequently, STANISIC heard shots, bursts of shots from the vicinity of the school.<sup>1074</sup> As far as he was concerned, other officers of superior command were at the school and there was no need for him to check to see what was happening there.<sup>1075</sup> Despite being close to the school, no-one reported to him that prisoners had been transported away from the school over the night of the 14<sup>th</sup> – 15<sup>th</sup> July<sup>1076</sup>.
647. On the morning of the 15<sup>th</sup> July, STANISIC received information from Battalion Communications that the villagers of Petkovci had made a request for a truck in order to clean up the school and to transport away from the school a number of dead bodies. Subsequently, he arranged for that to happen<sup>1077</sup>. On the same day, STANISIC was notified by a security officer that there were to be prisoners at the school. STANISIC informed the security officer that that was not appropriate.<sup>1078</sup>
648. So far as STANISIC was concerned, the Brigade had not requisitioned the school and the events at the school were not of the Brigade's making<sup>1079</sup>.
649. It was clear to him that the command at the school was superior to his. He had no control over events there. He had received no orders from his own command about activities at the school and, on the available evidence his position/rank appears to have

<sup>1067</sup> T.13299, 26<sup>th</sup> June 2007, Marko MILOSEVIC, Deputy Commander of the 6<sup>th</sup> Battalion of the Zvornik Brigade. Evidence from T.13296, 26<sup>th</sup> June 2007

<sup>1068</sup> T.13343, 26<sup>th</sup> June 2007, Marko MILOSEVIC

<sup>1069</sup> T.13301-2, 26<sup>th</sup> June 2007, Marko MILOSEVIC

<sup>1070</sup> T.13303, 26<sup>th</sup> June 2007, Marko MILOSEVIC, T.11604, 16<sup>th</sup> May 2007 Ostoja STANISIC (Milosevic saw Beara, together with Drago Nikolic [the security organ of the Brigade] at the school)

<sup>1071</sup> T.13303, 26<sup>th</sup> June 2007, Marko MILOSEVIC, T.13319, T.13332, 26<sup>th</sup> June 2007, Marko MILOSEVIC (despite detailed and prolonged cross examination on this topic, he is adamant that he met with and spoke to BEARA).

<sup>1072</sup> T.11704, 16<sup>th</sup> May 2007, Ostoja STANISIC.

<sup>1073</sup> T.13305, 26 June 2007, Marko Milosevic

<sup>1074</sup> T.11607, 16<sup>th</sup> May 2007 Ostoja STANISIC

<sup>1075</sup> T.11608, 16<sup>th</sup> May 2007 Ostoja STANISIC

<sup>1076</sup> T.11609, 16<sup>th</sup> May 2007 Ostoja STANISIC

<sup>1077</sup> T.11610, 16<sup>th</sup> May 2007 Ostoja STANISIC

<sup>1078</sup> P.303, T.11621, 16<sup>th</sup> May 2007, Ostoja STANISIC

<sup>1079</sup> T.11701, 17<sup>th</sup> May 2007, Ostoja STANISIC

been seriously undermined by those of more senior command who attended at the school<sup>1080</sup>.

650. Despite its proximity to the school BEARA did not go to the battalion command post in Petkovci.<sup>1081</sup>

651. During the presence of Beara in Petkovci, the battalion continued to function as normal. STANISIC was still receiving orders from senior command to supply troop numbers to various locations. The reasonable inference to be drawn from the evidence of STANISIC and MILOSEVIC is that they were more concerned with the defence of their lines than events at the school due to the presence of higher ranking officers at that location.<sup>1082</sup>

#### Use of Zvornik Brigade men

652. The only realistic conclusion to draw from the available evidence is that no Zvornik Brigade soldiers or MPs were involved in activities at the school.<sup>1083</sup>

653. There were some troops, some unknown troops at the school as well as military policemen who were unrecognisable.<sup>1084</sup>

#### Use of Zvornik Brigade Machinery

654. There is no evidence of any Zvornik Brigade machinery at the school.<sup>1085</sup> The only evidence of machinery and/or transportation at this location relates to the lorries in which the prisoners were transported to the school.<sup>1086</sup>

### **10.3. Petkovci Dam**

655. This location was outside the area of defence of the 6<sup>th</sup> Battalion of the Zvornik Brigade<sup>1087</sup>

#### Presence of Senior Officers

<sup>1080</sup> T.11705, 16<sup>th</sup> May 2007 Ostoja STANISIC

<sup>1081</sup> T.13306, 26<sup>th</sup> June 2007, Marko MILOSEVIC

<sup>1082</sup> T11596, 16 May 2007, OTP witness Ostoja Stanisic

<sup>1083</sup> T.11704, 17<sup>th</sup> May 2007, Ostoja STANISIC, T.13343, 26<sup>th</sup> June 2007, Marko MILOSEVIC and also T.13304 -T.13305, 26 June 2007, OTP witness Marko Milosevic

<sup>1084</sup> T.11605, 16<sup>th</sup> May 2007 Ostoja STANISIC, T.13304-5, 26<sup>th</sup> June 2007, Marko MILOSEVIC

<sup>1085</sup> See P686 EXH (Butler, Srebrenica Narrative) on Petkovci at paragraph 7.34 of his report in which he accepts that there is no record of any machinery used for the burial of bodies. T.13305, 26 June 2007, Marko MILOSEVIC; Also, [REDACTED] (PW-113).

<sup>1086</sup> [REDACTED] (PW-113).

<sup>1087</sup> 7DIC180; T.16101, [REDACTED]

656. It is clear that prisoners who were detained at Petkovci school were transported to the Dam and executed. The only reasonable inference to draw is that BEARA was controlling the events at the Dam and/or at the very least, BEARA must have known about them.

#### Use of Zvornik Brigade men

657. There is no evidence of involvement of Zvornik Brigade personnel being involved in executions at this site.<sup>1088</sup>

#### Use of Zvornik Brigade Machinery

658. Two vehicle logs have been identified by Butler as indicating that the 6<sup>th</sup> battalion may have assisted in transporting prisoners to the dam,<sup>1089</sup> however, neither of the alleged drivers have been called to give evidence, and Staniscic says that at least one of the logs is in error.<sup>1090</sup>

659. The Daily Log of the Engineering company has two entries involving the BGH-700 and the ULT-220 at Petkovci. However, there is no conclusive evidence as to who was operating these machines at the Dam.<sup>1091</sup> Moreover, the Zvornik Brigade did not possess that particular type of machinery. Accordingly, any such machinery would have had to have been requisitioned.<sup>1092</sup>

### **10.4. Rocevic School and the Kozluk site<sup>1093</sup>**

660. Again, these sites did not fall within the defence sector of any of the Infantry Battalions<sup>1094</sup>

#### Sequence of Events

<sup>1088</sup> See again P686 EXH (Butler, Srebrenica Narrative) for Butler's interpretation of the internal Brigade documentation at Para. 7.33 which are Records from the Commander's Daily Orders for the Engineer Company of the Zvornik Brigade. These indicate that on 15 July, the Engineering Company had the following assignments: Assignment # 6 work with DLT in Petkovci, and Assignment # 7 work with excavator in Petkovci.412. [REDACTED]

<sup>1089</sup> P686 EXH (Butler, Srebrenica Narrative), Para. 7.35 vehicle records for 15 July 1995 indicate that two vehicles were active in going back and forth between Petkovci and the Dam (Branja).

<sup>1090</sup> See, on the one hand, P295 EXH, pp. 299-300 and 303-304, entry for 15 July and, on the other hand, T.11614-T.11616, 16 May 2007, OTP witness Ostoja Staniscic - Regarding these two trucks and trips, Ostoja Staniscic said that on the 15<sup>th</sup>, Vlado Josic went with the TAM80 to Srebrenica and that it was impossible to make a return journey to/from Srebrenica as well as to complete six other trips. He emphasises that Vlado Josic told him that personally that he went to Srebrenica

<sup>1091</sup> P297, ENG ERN 0084-6762, entries 6 and 7.

<sup>1092</sup> T.31315-31316, 12 February 2009, Vinko PANDUREVIC.

<sup>1093</sup> Events on 14<sup>th</sup> July 1995, at Rocevic where the Prosecution allege that POPOVIC AND NIKOLIC were active in efforts to assemble an execution squad.

<sup>1094</sup> T.12931, 20<sup>th</sup> June 2007, Srecko ACIMOVIC

661. On 14 July, JASIKOVAC<sup>1095</sup> ordered a number of military policemen to attend the school at Rocevic.<sup>1096</sup> Significantly, they did not ultimately carry out the task.
662. By the time the MPs arrived at the school<sup>1097</sup>, the prisoners were already there<sup>1098</sup>. This tends to suggest that the role of the MPs was auxiliary to that of the guards who were already in place. The available evidence supports the fact that the number and role of the MPs was limited.<sup>1099</sup> The evidence suggests that they were not really wanted at the school.<sup>1100</sup> The scene at the school was chaotic with drunken people walking around with weapons.<sup>1101</sup>
663. Upon arriving at the school with the MPs, JASIKOVAC went into the school alone, he spent about twenty minutes there, came out and then announced that they were going back to barracks.<sup>1102</sup>
664. There was concern locally about the presence of the prisoners at the school.<sup>1103</sup> The local battalion commander was concerned about those who were guarding the prisoners. They appeared to be drunk or under the influence of drugs. They refused to answer his questions, refused to tell them who their commanding officer was and subsequently threatened him with a rifle.<sup>1104</sup> This view was shared by Dragan JOVIC who did not recognise anyone from the Zvornik Brigade. In his view, they were most probably from the Bratunac Brigade.<sup>1105</sup>
665. ACIMOVIC went to barracks in Kozluk and there attempted to make contact with the Duty Operations Officer. The only person whom he could get any answer from was Vujadin POPOVIC<sup>1106</sup>
666. Others will certainly make detailed submissions about the alleged communications between Acimovic and others. Suffice it to say that the following day, 15<sup>th</sup> July, according to Acimovic he met with Popovic outside the school at 09.00.<sup>1107</sup>
667. It is plain that Popovic was purporting to give orders to Acimovic, and was threatening him that the prisoners would be executed in Rocevic unless he provided adequate transport to take them elsewhere.<sup>1108</sup> The guards were still there from the previous day.

<sup>1095</sup> T.14555, 30<sup>th</sup> August 2007, Dragoje IVANOVIC, confirmed at [REDACTED], [REDACTED], [REDACTED], T.14553, 30<sup>th</sup> August 2007, Dragoje IVANOVIC, T.14554, 30<sup>th</sup> August 2007, Dragoje IVANOVIC

<sup>1096</sup> [REDACTED], [REDACTED] but see T.26044, 22<sup>nd</sup> September 2008, Stevo KOSTIC, T.18053, 21<sup>st</sup> November 2007, Dragan JOVIC, , [REDACTED]

<sup>1097</sup> T11047, 7<sup>th</sup> May 2007, Milorad BIRCAKOVIC (Milorad BIRCAKOVIC who drove JASIKOVAC to Rocevic), [REDACTED], [REDACTED], [REDACTED], T.10760, 1<sup>ST</sup> May 2007, Stanoje BIRCAKOVIC

<sup>1098</sup> [REDACTED]

<sup>1099</sup> [REDACTED]

<sup>1100</sup> T.6543, 30<sup>th</sup> January 2007, Milomir SIMIC)

<sup>1101</sup> [REDACTED]

<sup>1102</sup> T.14554, 30<sup>th</sup> August 2007, Dragoje IVANOVIC

<sup>1103</sup> T12934-935, 20<sup>th</sup> June 2007, Srecko ACIMOVIC

<sup>1104</sup> T.12936, 20<sup>th</sup> June 2007, Srecko ACIMOVIC

<sup>1105</sup> T.18053, 21<sup>st</sup> November 2007, Dragan JOVIC

<sup>1106</sup> T12937-940, 20<sup>th</sup> June 2007, Srecko ACIMOVIC

<sup>1107</sup> T.9923-9925, 3<sup>rd</sup> April 2007, Dragan ASCERIC, T.12933, 20<sup>th</sup> June 2007, Srecko ACIMOVIC

<sup>1108</sup> T.12969, 20<sup>th</sup> June 2007, Srecko ACIMOVIC

668. A young man appeared, volunteering to execute the prisoners<sup>1109</sup>. He was young, too young to be a member of the Zvornik Brigade.<sup>1110</sup>
669. MPs escorted the prisoners away from the school on the way to the execution site and, it would also appear that they unloaded them at the other end. No names or identities of those MPs is known other than the view taken that they were not Zvornik Brigade personnel. They must have been from the Bratunac Brigade.<sup>1111</sup>
670. It is accepted that under effective duress the battalion provided transport for the prisoners to Kozluk.
671. The preponderance of the evidence suggests that those who carried out the execution were unrecognisable by reason of their painted faces and balaclava masks.<sup>1112</sup> [REDACTED]<sup>1113</sup> [REDACTED].<sup>1114</sup>
672. The most reasonable inference to draw from the evidence as to identification is that the soldiers who had gathered at the execution site were not from the Zvornik Brigade<sup>1115</sup> but rather from the Bratunac Brigade.<sup>1116</sup> Failing that, the Trial Chamber may decide that the safest conclusion to draw is that the evidence is inconclusive as to the identification of the executioners.
673. In the aftermath, Damjan LAZAREVIC was ordered to go to the site in order to assist with burial of the bodies.<sup>1117</sup>

#### Use of Zvornik Brigade machinery

674. It was assumed that the trucks being used to transport the prisoners away from the school belonged to the Zvornik Brigade. However, this could not be confirmed 100%.<sup>1118</sup>
675. The machinery which was used to bury the prisoners was not the property of the Zvornik Brigade.<sup>1119</sup>

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<sup>1109</sup> T.12971, 20<sup>th</sup> June 2007, Srecko ACIMOVIC, T.18056-T.18058 21<sup>st</sup> November 2007, Dragan JOVIC

<sup>1110</sup> [REDACTED]

<sup>1111</sup> T.18059-18060, 21<sup>st</sup> November 2007, Dragan JOVIC, T.18053

<sup>1112</sup> [REDACTED], T.14457, 29<sup>th</sup> August 2007, Damjan LAZAREVIC

<sup>1113</sup> [REDACTED]

<sup>1114</sup> [REDACTED], T.18063, 21<sup>st</sup> November 2007, Dragan JOVIC, see also T.13119, [REDACTED]

<sup>1115</sup> T.18065, T.18067, T.18085, 21<sup>st</sup> November 2007, Dragan JOVIC,

<sup>1116</sup> T.17951, 20<sup>th</sup> November 2007, Mile JANJIC.

<sup>1117</sup> T.14455, T.14457, 29<sup>th</sup> August 2007, Damjan LAZAREVIC

<sup>1118</sup> [REDACTED]

<sup>1119</sup> T.14458, 29<sup>th</sup> August 2007, Damjan LAZAREVIC (A ULT 220 came later to replace a smaller machine. The ULT 220 was owned by the stone quarry company based at Josanica. It was driven by Rade Boskovic)



### 10.5. Kula School near Pilica<sup>1120</sup>

676. This location is outside the defence area of the 1<sup>st</sup> Battalion of the Zvornik Brigade.<sup>1121</sup> These events took place while the Zvornik Brigade (and in particular at this location, the 1<sup>st</sup> Battalion) was stretched severely across four or five front lines. Spare men were few in number and there very few soldiers available from the 1<sup>st</sup> Battalion to assist at the school.<sup>1122</sup>

#### Sequence of Events

677. On 14<sup>th</sup> July 1995, Momir PELEMIS, the deputy commander of the 1<sup>st</sup> Battalion of the Zvornik Brigade was notified that about 200 prisoners were to be brought to Kula school, that they would stay there one night and then would be exchanged.<sup>1123</sup>

678. Slavko PERIC<sup>1124</sup> spoke with Drago NIKOLIC on the phone and received orders that he should go to the school and that he should provide ten to fifteen men for guard duty. This was to ensure that there was no disruption to civilian lives around the school.<sup>1125</sup>

679. During the conversation with NIKOLIC, PERIC made it plain that he could not receive orders from him but rather any orders given to him had to come from the commander or deputy commander of the battalion<sup>1126</sup>

680. A number of personnel from Battalion Command went to the school after 'agreeing' with Drago NIKOLIC that they would do so and there they prepared the school before the prisoners arrived.<sup>1127</sup> They were unarmed.<sup>1128</sup> Their role was to provide guard duty at the school in ensuring the security of the prisoners and of the villagers.<sup>1129</sup>

681. The prisoners arrived with an armed guard.<sup>1130</sup> The Zvornik Brigade personnel did not recognise anyone.<sup>1131</sup> This tends to support the proposition that at this site, Zvornik Brigade personnel were, effectively, "playing second fiddle" to others at the school.

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<sup>1120</sup> Paragraph 30.9 of the Indictment - In which the prosecution allege that BEARA assisted by POPOVIC, NIKOLIC and TRBIC were instrumental in activities at the school. In addition, the prosecution allege that VRS personnel (Zvornik Brigade soldiers) were involved in the execution of prisoners at the school and the subsequent burial of the prisoners at Branjevo Military Farm under the control and/or command of Vinko PANDUREVIC.

<sup>1121</sup> See 7DIC180, [REDACTED].

<sup>1122</sup> T.11377, T.11387-T.11388, 11<sup>th</sup> May 2007, Slavko PERIC.

<sup>1123</sup> T.11375-T.11376, 11<sup>th</sup> May 2007, OTP witness Slavko PERIC, T.10215-10216, 18 April 2007, OTP witness Rajko Babic

<sup>1124</sup> Assistant Commander for Security and Intelligence of the 1<sup>st</sup> Battalion of the Zvornik Brigade. T.11375-11376, 11<sup>th</sup> May 2007, Slavko PERIC

<sup>1125</sup> T.10215-T.10216, T.10219, 18 April 2007, OTP witness Rajko Babic

<sup>1126</sup> T.11377-11378, 11<sup>th</sup> May 2007, Slavko PERIC

<sup>1127</sup> T.11379, 11<sup>th</sup> May 2007, Slavko PERIC, T.11380, T.10220, 18 April 2007, OTP witness Rajko Babic, T.10221 T.11319, T.11323-11324, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC.; Jovan ILIC (T.11327, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC) ; Rajo JUROSEVIC (T.11327, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC) ; Stevo OSTOJIC (T.11327, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC) and Vojo LAKIC (T.11327, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC).

<sup>1128</sup> T.11325 10<sup>th</sup> May 2007, Jevto BOGDANOVIC and also T.11396, 11 May 2007, OTP witness Slavko Peric

<sup>1129</sup> T.10251-T.10252, 18 April 2007, OTP witness Rajko Babic

<sup>1130</sup> T.11396, 11 May 2007, OTP witness Slavko Peric

682. The Zvornik Brigade personnel were unable to exert any influence over the unknown soldiers and the unknown soldiers were the ones “who had the role to issue orders”<sup>1132</sup>.
683. By the following day, 15<sup>th</sup> July, it became obvious to Slavko PERIC that the prisoners were ‘there to stay’. He went to Brigade Command to seek removal of the prisoners but his request was refused.<sup>1133</sup> Instead, he employed ‘self help’ and went to the school personally.<sup>1134</sup>
684. Despite his personal attendance at the school in order to get the prisoners moved, he achieved nothing. PERIC said in evidence “I came away from all that with a conclusion that it was possible that even this operation, I mean the school, was controlled from a level much higher than that of the brigade even, and I came away with that impression because my arrival and what I said to them barely registered with them”.<sup>1135</sup>
685. However, his overtures appear to have had some effect because on the morning of 16<sup>th</sup> July, he received information that the prisoners would be moved that day.<sup>1136</sup>
686. At about midday on 16<sup>th</sup> July<sup>1137</sup>, two officers and about 10 soldiers in a vehicle arrived at the school. The soldiers were openly hostile towards the men from the Zvornik Brigade.<sup>1138</sup>
687. The irresistible inference to draw is that the two officers were Ljubisa BEARA and Vujadin POPOVIC who attended at the school together.<sup>1139</sup> They were not identified at the scene by name, although descriptions were given. The mere fact that they were not identified by members of the Zvornik Brigade is highly significant given that members of the Zvornik Brigade would know their own commanders. Again, this evidence tends to support the argument that matters had been taken out of the hands of members of the Zvornik Brigade who were at the school.
688. Rajko BABIC spoke to one of the officers whom he described as a colonel or lieutenant colonel. He asked the officer what should be done with the prisoners and whether one or two could stay (he was referring to two people he recognized from the prisoners’ group). The officer said ‘no, they all have to leave’ ; at that moment, BABIC realised that “nothing good would happen to the prisoners” and decided not to set foot in the school again until it was empty.<sup>1140</sup>

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<sup>1131</sup> T.11320, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC, see also T.11381-T.11383, 11<sup>th</sup> May 2007, Slavko PERIC, T.10221, 18 April 2007, OTP witness Rajko Babic, T.11135-T.11136, 8 May 2007, OTP witness Milorad Bircakovic

<sup>1132</sup> T.11383, 11 May 2007, OTP witness Slavko Peric, T.10224-T.10226, 18 April 2007, OTP witness Rajko Babic T.10226-T.10228, (he refers to the unknown soldiers as the ones “who had the role to issue orders”)

<sup>1133</sup> T.11395, T.11397 and T.11399, 11 May 2007, OTP witness Slavko Peric

<sup>1134</sup> T.11392, 11 May 2007, OTP witness Slavko Peric

<sup>1135</sup> T.11397, 11 May 2007, OTP witness Slavko Peric

<sup>1136</sup> T.11408, 11 May 2007, OTP witness Slavko Peric

<sup>1137</sup> One of the witnesses suggests that this attendance was on 15<sup>th</sup> July

<sup>1138</sup> T.11409-T.11410, 11 May 2007, OTP witness Slavko Peric

<sup>1139</sup> T.11414, 11 May 2007, OTP witness Slavko Peric, T.10237-T.10240, 18 April 2007, OTP witness Rajko Babic (On the 15<sup>th</sup> July, T.10247, T.10966, 4<sup>th</sup> May 2007, Drazen ERDEMOVIC (he saw an unidentified senior officer (lieutenant colonel) who was corpulent with grey hair who went with the soldiers to Branjevo Military Farm), T.10971 (that lieutenant colonel left the scene before the buses arrived)

<sup>1140</sup> T.10237-T.10240, 18 April 2007, OTP witness Rajko Babic

689. Prior to buses arriving to take the prisoners away, one of the senior officers went with the unknown soldiers to Branjevo Military Farm, the scene of the next executions<sup>1141</sup>.

690. Subsequently, additional ‘non-Zvornik Brigade’ soldiers arrived, they loaded the prisoners onto a bus and took them piecemeal away from the school. They were hostile to the 1<sup>st</sup> Battalion soldiers.<sup>1142</sup>

#### Use of Zvornik Brigade machinery

691. Some of the witnesses mention the presence of buses at the Kula school. The Zvornik Brigade did not possess any buses which meant that these vehicles must have been commissioned from a civilian company. All in all, there is no evidence of the Zvornik Brigade being involved in procuring these buses.<sup>1143</sup>

### **10.6. Branjevo Farm**

692. The Zvornik Brigade ran two small farms or “ekonomija”, one in Karakaj and one in Branjevo. The farm in Branjevo was part of a much larger agricultural holding belonging to Agroprom. The murders and burials were committed on the larger portion of land, belonging to Agroprom. The epithet “military farm” is entirely an invention of the prosecution and is inappropriate.<sup>1144</sup>

693. There has been a further flawed theory floated in the case concerning the provision of ammunition to the 1<sup>st</sup> battalion. Firstly, the executions at Branjevo were entirely conducted by the 10<sup>th</sup> Sabotage detachment. Secondly, the evidence reveals that that unit had more than an adequate supply of ammunition for the purpose, and lastly, the entries in the duty officer’s notebook of the brigade reveal that no delivery of ammunition was in fact made.<sup>1145</sup>

#### Presence of Senior Officers

694. Drazen Erdemovic asserts the presence of an unidentified lieutenant colonel at the Branjevo Military Farm. According to Erdemovic’s description, this officer was a corpulent man with grey hair. The lieutenant colonel left before the execution started and came back after they finished. He was urging the soldiers of the 10<sup>th</sup> Sabotage Detachment to follow him to the Pilica Cultural Centre.<sup>1146</sup>

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<sup>1141</sup> T.10966, 4<sup>th</sup> May 2007, Drazen ERDEMOVIC (he saw an unidentified senior officer (lieutenant colonel) who was corpulent with grey hair who went with the soldiers to Branjevo Military Farm), T.10971 (that lieutenant colonel left the scene before the buses arrived)

<sup>1142</sup> T.11415 and T.11417, 11 May 2007, OTP witness Slavko Peric, T.11416

<sup>1143</sup> T.10236, 18 April 2007, Rajko BABIC; T.11409-T.11410, 11 May 2007, Slavko PERIC.

<sup>1144</sup> 7DIC364, and T.10286, 19 April 2007, Radivoje LAKIC

<sup>1145</sup> See section Issues of proof

<sup>1146</sup> T.10966, T.10971, T.10975, 4<sup>th</sup> May 2007, Drazen ERDEMOVIC

695. There seems little doubt that the evidence conclusively proves that Popovic was in the Pilica area at the time of the executions at Branjevo and Pilica. The 10<sup>th</sup> Sabotage detachment is of course a main staff unit, and would therefore, naturally be commanded by a Main Staff officer.

#### Use of Zvornik Brigade men

696. Damjan LAZAREVIC<sup>1147</sup> assisted in the burial of the bodies at this site<sup>1148</sup> together with Cvijetin Ristanovic who was operating the BGH-700 excavator.<sup>1149</sup>

697. LAZAREVIC noted that a number of elderly people from the public utilities company were loading bodies into the bucket of the excavator. When asked whether any members of the rear battalion ("R" Battalion) were there, he stated that there may have been two or three with the public utilities men, but he didn't know any of them and did not recall any names.

698. This evidence tends to question the suggestion in the indictment that 'R' Battalion personnel were present. Accordingly, the safest conclusion to reach is that this assertion can no longer be sustained.<sup>1150</sup> More to the point, the mobilization of the R battalion and its deployment have been carefully analysed elsewhere and preclude its use in the Branjevo or Pilica area.<sup>1151</sup>

#### Use of Zvornik Brigade machinery

699. No vehicles belonging to the Zvornik Brigade were used in the transportation or burial process.<sup>1152</sup> Nonetheless, the BGH-700 (belonging to the Zvornik road company) was operated by Cvijetin Ristanovic, member of the Zvornik Brigade Engineering Company.<sup>1153</sup>

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<sup>1147</sup> T.14459, 29 August 2007, OTP witness Damjan Lazarevic

<sup>1148</sup> T.14460, 29 August 2007, OTP witness Damjan Lazarevic

<sup>1149</sup> T.5392-T.5393, 1 December 2003, Prosecutor v. Blagojevic and Jokic, OTP witness Cvijetin Ristanovic

<sup>1150</sup> T.14461-T.14462, 29 August 2007, OTP witness Damjan Lazarevic; T.25949, 18 September 2008, Dragan MILOSEVIC.

<sup>1151</sup> See Part 4 Section 11 about the VBI 15 July

<sup>1152</sup> T.14450, T.14481, 29<sup>th</sup> August 2007, Damjan LAZAREVIC, (Veljko KOVACEVIC) – T.14514, 30<sup>th</sup> August 2007, Damjan LAZAREVIC and see also T.5389-5390, 1<sup>st</sup> December 2003, Prosecutor v Blagojevic and Jokic, Cvijetin RISTANOVIC. T.5390, 1<sup>st</sup> December 2003, Prosecutor v Blagojevic and Jokic, Cvijetin RISTANOVIC (The BGH-700 was driven by RISTANOVIC).

<sup>1153</sup> T.5392-T.5393, 1 December 2003, Prosecutor v. Blagojevic and Jokic, OTP witness Cvijetin Ristanovic

## 10.7. Pilica Cultural Centre

### Presence of Senior Officers

700. According to the testimony of OTP witness Drazen Erdemovic, the same lieutenant-colonel who was present at the Branjevo Military Farm before and after the executions, had also urged the members of the 10<sup>th</sup> Sabotage Detachment to follow him to the Pilica Dom (Cultural Centre).
701. According to Erdemovic, the lieutenant-colonel claimed that “there were 500 people there from Srebrenica who were trying to break down the door and who were trying to escape from there, and he said that they needed to go there and execute those people”. Although Erdemovic and some other members of his unit refused to go to the Dom, it is understood from this witness’ testimony that the lieutenant-colonel with some “Bratunac-people” did go and were present at this detention/execution site.<sup>1154</sup>
702. This officer cannot have been a Zvornik Brigade Commander because LAZAREVIC would have known him. The officer had been at Kula, Branjevo and subsequently at Pilica. The reasonable inference to draw from this sequence of evidence is that BEARA was dictating events at all three sites.

### Presence of Zvornik Brigade Officers

703. Slavko PERIC attended at this site for two or three minutes.<sup>1155</sup>

### Use of Zvornik Brigade men

704. A number of soldiers were ordered to attend this site. These included those who had been at the school at Kula<sup>1156</sup> and others from the 1<sup>st</sup> Battalion of the Zvornik Brigade.<sup>1157</sup>
705. The purpose of their attendance was to clear up the bodies left from the executions.<sup>1158</sup>
706. There were a number of soldiers at the scene whom no-one recognised as being from the Zvornik Brigade and it was unclear who was in overall charge of events at that location<sup>1159</sup>

<sup>1154</sup> T.10982, 4 May 2007, Drazen ERDEMOVIC.

<sup>1155</sup> T.11404, 11 May 2007, OTP witness Slavko Peric

<sup>1156</sup> T.11326-11327, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC

<sup>1157</sup> T.11329, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC

<sup>1158</sup> T.10272-10274, 19<sup>th</sup> April 2007, Radivoje LAKIC (he was the manager of the Branjevo Military Farm – he sent to Pilica Dom a few elderly members of the workers platoon – this was a none combat platoon – they were Dusan Trivkovic, Jevto Lazarevic and Stevo Ostojic)

<sup>1159</sup> T.11328, 10<sup>th</sup> May 2007, Jevto BOGDANOVIC, T.11404, 11 May 2007, OTP witness Slavko Peric

Use of Zvornik Brigade machinery

707. There is no conclusive evidence regarding the vehicles that transported the bodies of prisoners from the Pilica Cultural Centre to the Branjevo Military Farm. Regarding the burying of these bodies, see the relevant paragraph of the preceding section.

## **11. PANDUREVIC'S KNOWLEDGE AND REPORTING OF EVENTS**

### **11.1. Introduction**

708. This section will deal with the proper inferences which can be drawn from the extraneous sources of evidence as to Pandurevic's knowledge of the commission of crimes, especially murders.

709. The case against Pandurevic is unique in a number of ways, but stands apart peculiarly from the cases of others for a number of reasons which relate directly to the question of what knowledge could be imputed to him.

710. As will be detailed below, Pandurevic provided the only examples of report writing which explicitly referred to the existence of prisoners in the Zvornik area.<sup>1160</sup> These references were conscious and deliberate, and, it must be assumed, were intended by Pandurevic to create a permanent record, which in fact they did.

711. By marked contrast, there is no record of any intercepted radio communication from which it could be inferred that Pandurevic had a contemporaneous knowledge of the prisoners or what was to happen to them. It would not be unreasonable to infer that those who were captured in such conversations did not allow themselves to be consciously or deliberately overheard. The absence of any such evidence in the case of Pandurevic is very significant. It is not just that he, himself did not talk of such matters, but also that nobody apparently engaged him in such a topic of conversation, notwithstanding his position and his written reports.

712. Throughout the period of 4<sup>th</sup> to 15<sup>th</sup> July, his ability to communicate with the command at Zvornik at all material times was severely limited, and is dealt with elsewhere in this brief.<sup>1161</sup> Nonetheless, there is no evidence that any attempt was made to alert him of the situation with the prisoners or indeed the column during the critical period 13<sup>th</sup> and 14<sup>th</sup> July.

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<sup>1160</sup> P00329, ZVORNIK BRIGADE DAILY INTERIM COMBAT REPORT NO. 06-217-1, DATED 15 JULY 1995 and P334

<sup>1161</sup> See Part 4 Section 4 on Communications during Krivaja 95

713. Indeed there is compelling evidence which suggests that he was being actively kept out of the communications loop when it came to the business of the prisoners.<sup>1162</sup> There is moreover, no evidence from which it could be properly inferred that any of his subordinates in the brigade reported to him about events in a timely or effective manner ([REDACTED]).

## 11.2. Irregular combat report of 15<sup>th</sup> July

*“If there are potentially two reasonable interpretations, we will give them the benefit of the doubt” – T.480, 22 August 2006, Peter McCloskey (talking about P329)*

### 11.2.1. The Prosecution Opening

714. The Irregular Combat Report of 15<sup>th</sup> July was dictated to the late Ljubo Bojanovic sometime before 1925hrs on that same evening. It has been termed the ‘*most important document in the case against Pandurevic*’,<sup>1163</sup> ‘*the key document*’.<sup>1164</sup> Prosecution counsel conceded in opening the case that the document is difficult to interpret,<sup>1165</sup> and that the Trial Chamber would need to study and consider it throughout the evidence.<sup>1166</sup> In cross-examination of the accused he described it as ‘*cryptic*’.<sup>1167</sup> This view was not shared by his colleague, Mr Butler, who thought it was a quite straightforward document,<sup>1168</sup> although that may have had something to do with the fact that he seemed to be working from a different translation to the rest of us.<sup>1169</sup>

715. On certain things there will be substantial and significant agreement. The use of the word “liquidated” in the first paragraph can only be interpreted to mean killed in combat,<sup>1170</sup> and by the early evening of 15<sup>th</sup> July there had not been a major military engagement between the Zvornik Brigade and the ABiH.<sup>1171</sup>

<sup>1162</sup> P01178, Intercept dated 15 July 1995, 09:54 hours.

<sup>1163</sup> T.477, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

<sup>1164</sup> T.479, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

<sup>1165</sup> T.477, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

<sup>1166</sup> 22<sup>nd</sup> August 2006, Prosecution Opening Statement

<sup>1167</sup> T.32211, 27 February 2009, Vinko Pandurevic

<sup>1168</sup> T.20820, 31 January 2008, Richard Butler

<sup>1169</sup> P00686, Butler, R., Narrative (Revised), para. 7.72

<sup>1170</sup> T.480, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

<sup>1171</sup> T.481, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

### 11.2.2. Butler's Evidence on the Topic

716. Richard Butler's first report contained an assessment of this document based on a translation which was both incorrect and home-made. It is interesting to note that in evidence he averred that his initial reading of this document led him to believe it was exculpatory,<sup>1172</sup> but that many months of further analysis of the document and the surrounding evidence had forged the prosecution position as to its interpretation.
717. However, his reasoning in that regard betrays a fatal flaw which lies at the heart of the prosecution case and the indictment itself. It is based on the premise that merely because the prisoners were in the Zvornik area, the accused Pandurevic had a responsibility for their welfare.<sup>1173</sup> In the defence submission, this notion of a Zone of Responsibility is demonstrably false.<sup>1174</sup> In his evidence in this case, even Butler himself did not advance the theory.<sup>1175</sup> His interpretation of P329 in that light is therefore no longer justifiable.
718. His view as to the intended meaning of P329 was, of course, not challenged in either of the previous cases in which he has given evidence. Indeed the prosecution position as to the interpretation of the relevant passages received some support from the defence.<sup>1176</sup> Butler's comments were not made on the basis of the evidence, especially from the defence, in the present case. In particular, he did not have the benefit of hearing the evidence of the accused, Pandurevic about the report, nor the evidence of him [REDACTED] about Pandurevic's military options on 15<sup>th</sup> and 16<sup>th</sup> July.<sup>1177</sup> Likewise, he did not hear Pandurevic's accepted explanation of his visit to Krstic some days after the report was written.
719. A sensible explanation for Butler's re-translation of the document in his initial report is difficult to find. In the submission of the defence, he certainly did not provide one. At best it displays a careless adherence to case theory in spite of, rather than because of the evidence.
720. The perversion of the sense of the document in the May 2000 report has another effect upon the evidence, for it was necessarily that document with its misrepresentation of the contents of the Irregular Combat Report of 15<sup>th</sup> July which Pandurevic took to Valjevo to discuss with Eileen Gilleece in October 2001. Little wonder therefore, that Pandurevic was at pains to point out that by way of example that '*asanacija*' did not mean *burying the bodies* as Butler had stated in his report. The prosecution's submission that Miss Gilleece's note is evidence of a shift in Pandurevic's case is both unfair and ignorant of historical context.

### 11.2.3. The Evidence of Pandurevic

721. In the defence submission, absent proof beyond a reasonable doubt to the contrary, Pandurevic's explanation as to the sense of the report must be accepted. He needs only to

<sup>1172</sup> T.20820-822, 31<sup>st</sup> January 2008, Richard Butler

<sup>1173</sup> T.20822, 31 January 2008, Richard Butler

<sup>1174</sup> See Part 3 Section 1 "Zone of Responsibility"

<sup>1175</sup> T.20793, 31 January 2008, Richard Butler

<sup>1176</sup> T.32216, 27<sup>th</sup> February, Vinko Pandurevic

<sup>1177</sup> See Part 4 Section 7 "Baljkovica"



satisfy the Trial Chamber that the document *might* mean what he says it means. His explanation for his motives and meaning in writing the report have a credible historical perspective, both viewed from the basis of events at the time, and with the benefit of subsequent events.

722. To draw together a few features of the history, some of which have not been highlighted before - the intended recipient of the report, Krstic, had been in office less than 48 hours by the time it was sent ; he was engaged in combat operations towards Zepa, based at Krivace, and spending his nights at the home of his wife's family nearby.<sup>1178</sup> At the time of Pandurevic's departure from Krivace, there was no intelligence as to the numerical strength of the column, but some information that Naser Oric was leading it.<sup>1179</sup> Those assembled at the Standard Barracks in Zvornik on the morning of 15<sup>th</sup> July represented the Zvornik Brigade and the MUP. There were no representatives of the Drina Corps. Some of those present were strangers to Pandurevic and the area.<sup>1180</sup> The evidence suggests that there was not a voice in the room in favour of fighting, other than Pandurevic's upon his return.<sup>1181</sup> Of those present, only Obrenovic could possibly have any direct knowledge of the whereabouts and size of the column. His perspective was from the conduct of small ambushes between Snagovo and Crni Vrh.

#### 11.2.4. The Sources of the Information

723. There seems little basis for doubting that Pandurevic has done anything other than faithfully and accurately recount the sources of information available to him in preparing his report. The information had to be garnered over about seven hours, either at the Standard barracks or the IKM of the Brigade. Additionally to the personnel he encountered there, he would of course have had radio contact with brigade command and the commands of the battalions.

##### a) [REDACTED]

724. [REDACTED].<sup>1182</sup> If accepted, his account of his whereabouts on the 14<sup>th</sup> and early morning on 15<sup>th</sup> would represent a serious limitation on the information at his disposal by 12 noon on the 15<sup>th</sup>. If not accepted, then there is yet further serious damage to his credibility on any issue. Plainly by about 0930hrs on 15<sup>th</sup> July, the Zvornik brigade duty officer had been informed that Pandurevic was returning.<sup>1183</sup> [REDACTED]<sup>1184</sup> [REDACTED].<sup>1185</sup>

<sup>1178</sup> T.29617, 12 December 2008, Milenko Jevdjjevic

<sup>1179</sup> T.29801, 16 December 2008, Milenko Jevdjjevic; See also Part 4 section 6 "Return to Zvornik"

<sup>1180</sup> T.32017, 23 February 2009, Vinko Pandurevic

<sup>1181</sup> See Part 4 section 6v "Return to Zvornik"

<sup>1182</sup> [REDACTED]

<sup>1183</sup> P01176, Intercept dated 15 July 1995, 09:39 hours; [REDACTED]

<sup>1184</sup> [REDACTED].

<sup>1185</sup> [REDACTED]. See Part 4 Section 6 Return to Zvornik

725. [REDACTED] The prosecution case theory as to the interpretation of the report had been set in stone since at least the signing of Mr Butler's report in May 2000. [REDACTED].<sup>1186</sup> [REDACTED].<sup>1187</sup>

726. [REDACTED].<sup>1188</sup> [REDACTED].<sup>1189</sup> None of those present has any reason to misremember or dissemble on that issue. The most graphic of the accounts describes Pandurevic as "bursting into the room"<sup>1190</sup> which rings of the truth, given the urgency of his return. The alleged corridor conversation conveniently transfers the information to Pandurevic recently acquired from Jokic<sup>1191</sup> sufficient to support the prosecution case theory about the sense of the interim combat report. There is little if anything else to it beyond "I told him what Jokic had just told me." Stark in its absence from the prosecution's cross-examination of Pandurevic [REDACTED] was the explicit suggestion that the corridor conversation had in fact taken place. [REDACTED].

#### **b) Brano Grujic**

727. Given that Obrenovic did not know about the holding of prisoners in schools,<sup>1192</sup> Pandurevic must necessarily have had other information at his disposal before writing that section of the report. His account of a meeting at the IKM with Brano Grujic,<sup>1193</sup> the former President of the Municipality of Zvornik, was not challenged, and found support in the evidence of PW-168,<sup>1194</sup> as well as Dragutinovic.<sup>1195</sup>

728. According to Pandurevic, Grujic arrived at the IKM in the early afternoon of 15<sup>th</sup> July and enquired about the presence of prisoners in schools in the area. He had received the information from his Party activists. Pandurevic believes he mentioned two schools which were Petkovci and Pilica.<sup>1196</sup> The latter assertion is particularly credible, given the fact that it is hardly in Pandurevic's interests to mention that he had acquired knowledge of the prisoners in Pilica on 15<sup>th</sup>, rather than some other location where the prisoners had already been killed.

729. Grujic mentioned that there was concern in the local communities.

#### **c) Ljubo Bojanovic**

730. Nobody present at the IKM was able to give Pandurevic further information about Grujic's query until the arrival of Bojanovic at about 1800hrs. He was unaware of the use of schools as detention facilities but knew that buses were passing towards Bijeljina. He

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<sup>1186</sup> [REDACTED]

<sup>1187</sup> [REDACTED].

<sup>1188</sup> [REDACTED]

<sup>1189</sup> See Part 4 Section 6 Return to Zvornik

<sup>1190</sup> Idem

<sup>1191</sup> [REDACTED]

<sup>1192</sup> [REDACTED].

<sup>1193</sup> T30983, 2 February 2009, Vinko Pandurevic

<sup>1194</sup> [REDACTED].

<sup>1195</sup> T.12805, 18 June 2007, Miodrag Dragutinovic

<sup>1196</sup> T.30983, 2 February 2009, Vinko Pandurevic

did not think the Brigade was involved in this process.<sup>1197</sup> It is worth pausing to note that, of course, the route to Bijeljina and the Batkovci camp passed through Zvornik and, secondly, that the villages of Petkovci and Pilica lie on or just off the Zvornik-Bijeljina Road. Accordingly, there is a synergy between the two pieces of information received by Pandurevic at the IKM on the afternoon of 15<sup>th</sup>. Nonetheless, bus loads of prisoners must have suggested *a large number*, and Grujic had plainly come to voice the concern of the community

#### d) Brigade Command

731. Pandurevic had been in contact with the brigade command since he first arrived at the IKM in Krivace early on the morning of 15th July. The texts of those communications were substantially captured by Muslim intercept operators, and were entirely concerned with the combat situation.<sup>1198</sup> Pandurevic preferred not to use Jokic, the standing duty officer, as a source of information.<sup>1199</sup> Other than the telegrams available,<sup>1200</sup> and the conversations dealt with above, no other information was available to Pandurevic at the IKM at Krivace. Pointedly, Krstic did not discuss with him the detention of prisoners in the Zvornik area.<sup>1201</sup> An hour later Krstic chose not to mention to Beara, during the infamous “3,500 parcels” conversation that Pandurevic was returning to Zvornik with over 400 men. Neither did Beara ask for resources from the Zvornik Brigade,<sup>1202</sup> in spite of the fact that there is scant evidence that he had any knowledge of the Military situation the Brigade faced at that time.

732. From the Zvornik Brigade IKM, Pandurevic had access to all the information in the possession of the duty officer during the afternoon of 15<sup>th</sup>. By then the duty had passed to Nenad Simic.<sup>1203</sup> Nothing could be gleaned by him from the available logbooks or diaries which would have clarified the information from Grujic.

#### 11.2.5. The Accuracy of the Combat Information

733. The daily combat report was sent about 15 minutes earlier than the Interim report at 1911hrs. It records the fact that ; “*..at around 04.40 the enemy launched a heavy artillery attack on the defence lines of the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> battalions. The attack ended at 05.30 but the enemy continued firing artillery and infantry weapons at short intervals. Three fighters from the 7<sup>th</sup> battalion were injured...*”

734. Entries in the Duty Officers logbook for 15<sup>th</sup> July reveal the military situation in the battalions to be normal<sup>1204</sup>. Two tank shells appear to have been recorded as being fired at

<sup>1197</sup> T.30984 2 February 2009, Vinko Pandurevic

<sup>1198</sup> **P01173**, Intercept dated 15 Jul/95, 08:55 hrs; **P01174**, Intercept dated 15 July 1995, 09:10 hours.

<sup>1199</sup> T.30950-T.30952, 2 February 2009, Vinko PANDUREVIC

<sup>1200</sup> **P00327**, Zvornik Brigade Interim Report No. 06-216/2, 14 July 1995; **P00169**, Drina Corps Command Report 03/157-12, 14 July 1995; - **P00163**, Drina Corps Command Radio Intercept Detachment Report 13-37/2., 15 July 1995.

<sup>1201</sup> T.31468-T.31469, 13 February 2009, Vinko Pandurevic

<sup>1202</sup> **P01179**, Intercept dated 15 July 1995, 10:00 hours.

<sup>1203</sup> [REDACTED].

<sup>1204</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p141

the town and another target,<sup>1205</sup> while enemy forces were closing.<sup>1206</sup> The Brigade plainly anticipated that the 28<sup>th</sup> Division would attempt to make a break for the free territories at or about 0400hrs on 16<sup>th</sup>, and were making ready for it. Brigade intelligence revealed the column to be powerless without help from the 2<sup>nd</sup> Corps.<sup>1207</sup>

735. Whilst of course Pandurevic was in possession of better information than the author of the Daily Report about the combat situation at the front, in terms of the military situation, the Interim Report represents a significant escalation in respect of current activity and future risk. However, one aspect is significantly downplayed, namely the numbers of the column. Obrenovic had estimated their number at almost double what Pandurevic wrote in the report.<sup>1208</sup> Accurate information as to the numerical size of the column was one of the principle pieces of information required by Corps command.<sup>1209</sup> Pandurevic explained the inaccuracies as being part of a certain “logic” to the report.<sup>1210</sup> It is difficult to arrive at any other conclusion. Overstating the intensity of the enemy activity, whilst simultaneously placing conservative estimates as to the numbers within the column, must have some logic.

#### 11.2.6. The State of the Negotiations with the ABiH

736. The fact and the details of the negotiations between Pandurevic and Semso Muminovic throughout the 15<sup>th</sup> July represent a five-fold obstacle to prosecution case theory:

- the impetus for a ceasefire and a peaceful passage of the column came from the Muslim side;
- the negotiations pre-dated the combat on the morning of 16<sup>th</sup> July ;
- on 15<sup>th</sup> July, Pandurevic was not indisposed to the passage of all the members of the column, merely to their passage with arms ;
- his assertion in the interim report that he had made an offer to the enemy commander to separate the civilians from the fighters was disingenuous ; and
- the “them” which had been the focus of his attention, and accordingly, the report itself, were the trapped fighters and civilians in the wider area of Pandurice, Planinci etc., rather than prisoners in schools.

737. The impact of these matters upon the Trial Chamber’s finding as to Pandurevic’s *mens rea* will be considered elsewhere in this brief. However, it is the defence submission that the prosecution have sought throughout to avoid the fact and details of the negotiations of 15<sup>th</sup> July, and the paragraph in P329 where Pandurevic refers to them.

<sup>1205</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p141

<sup>1206</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p141

<sup>1207</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p142

<sup>1208</sup> T.30959, 2 February 2009, Vinko Pandurevic

<sup>1209</sup> T.30985, 2 February 2009, Vinko Pandurevic

<sup>1210</sup> T.30987, 2 February 2009, Vinko Pandurevic

738. The impression left by Richard Butler's report of May 2000 is that the negotiations only commenced after the fighting on 16<sup>th</sup>. During his evidence before this Chamber he conceded that he had not troubled to consider the tape-recorded conversations between Pandurevic and Muminovic, and knew nothing of their contents.<sup>1211</sup>
739. The negotiations have a relevant historical context. Previous arrangements between Pandurevic and Muminovic had involved prisoner exchange, ceasefires and wider arrangements concerning the preservation of normal life and humanitarian conditions, irrespective of advantage for one side or the other.<sup>1212</sup> Whilst it is correct that in the absence of Pandurevic, there was contact between Muminovic and Obrenovic and Vukotic, it is plain that the personal connection was of great importance and that in the early morning of 15<sup>th</sup> July, Muminovic was seeking contact with Pandurevic, and leaving his radio frequency.<sup>1213</sup>

### 11.2.7. The knowledge of Higher Command

740. Corps command knew of Pandurevic's previous accommodations with Muminovic through combat reports and other enquiries.<sup>1214</sup> What was known of Pandurevic's negotiations with him on 15<sup>th</sup> July prior to his sending the report is less clear. Plainly, it was known that Muminovic had made an attempt to contact him that morning, as the message was given to him by Mica Petkovic, an intelligence officer of the Drina Corps, at the IKM at Krivace.<sup>1215</sup>

### 11.2.8. The Prosecution's Misunderstanding of the State of Play at the Start of the Case

741. According to Pandurevic, he spoke five or six times with Muminovic on the afternoon of 15<sup>th</sup> July. All of the conversations were during the hours of daylight.<sup>1216</sup> He only negotiated once he had stabilised the lines.
742. The prosecution's position at the start of the trial as espoused in the opening of prosecution counsel,<sup>1217</sup> and further advanced through the evidence of its military analyst, Butler,<sup>1218</sup> is that Pandurevic was not prepared to let the members of the column go on 15<sup>th</sup> July, and was only prepared to do so after suffering heavy losses on the morning of

<sup>1211</sup> T.20733, 30 January 2008, Richard Butler

<sup>1212</sup> **7D01191**, 92bis statement of Semsudin Muminovic.

<sup>1213</sup> **P01171**, Intercept dated 15 July 1995, 08:34 hours.

<sup>1214</sup> See **7D00454**, Zvornik Brigade, Information No. 57, 11 November 1993; **7D00945**, Zvornik Brigade, regular combat report, doc no. 435-04, 8 November 1993; T30975, 2 February 2009, Vinko Pandurevic

<sup>1215</sup> T.30977, 2 February 2009, Vinko Pandurevic

<sup>1216</sup> T.30980-981, 2 February, Vinko Pandurevic

<sup>1217</sup> T.481-T.482, 22 August 2006, Peter McCloskey

<sup>1218</sup> T.20844-T.20845, 31 January 2008, Richard Butler

16<sup>th</sup> July. This position is now demonstrably false, as we know from the actual text of those discussions that, by as early as the third conversation in the sequence, Pandurevic had already agreed that all the members of the column were free to leave, and was merely demanding that they abandon their arms.<sup>1219</sup>

743. The evidence of Jankovic, the captured policeman, is also instructive on this point. On 15<sup>th</sup> July, he was close to the command of the 28<sup>th</sup> Division. According to him, on the evening of 15<sup>th</sup> July, there was a concluded agreement for the safe passage of the column, which was not effective for the simple reason that the ABiH did not trust the Serbs. Had they done so, then, in all probability, there would have been no battle on the morning of 16<sup>th</sup> July. In any event, there is in these pieces of information, not considered by the Prosecution before the start of the case, significant support for the position of Pandurevic that by the time he wrote the Irregular Combat Report of the 15<sup>th</sup>, the passage of the column was effectively a “done deal”.<sup>1220</sup>

### 11.2.9. “An Additional Burden”

#### a) Burden not Obligation

744. The use of the word burden in the critical fourth paragraph of the report is not accidental. Syntactically, it conveys a different concept to the obligations which faced the Brigade and which were dealt with elsewhere in the report. It does so because its author intended it to.<sup>1221</sup>

745. This is significant because it reveals that the Brigade had neither orders in relation to nor obligations for the prisoners.

#### b) Judge Prost’s Question

746. Discerning the meaning of P329 from the face of the document in its English form is made the more difficult by several debatable translations of critical phrases. Richard Butler himself referred to the difficulties of getting an accurate sense of the document in translation.<sup>1222</sup> The Chamber has before it two translations – both were made by the Tribunal’s own service and yet are different in material ways. In the translation of the document prepared of P329, the prisoners are said to have been “*distributed throughout schools*”, a phrase which Judge Prost rightly picked up as conveying a rather wider idea than the information Pandurevic said he had received from Brano Grujic.<sup>1223</sup>

<sup>1219</sup> See 7D00656, Surrogate sheet - recorded conversation between Semso Muminovic and Vinko Pandurevic, 28 May 1995; T.30980, 2 February 2009, Vinko Pandurevic

<sup>1220</sup> [REDACTED].

<sup>1221</sup> T.30992, 2 February 2009, Vinko Pandurevic

<sup>1222</sup> T.20760, 30 January 2008, Richard BUTLER

<sup>1223</sup> T.32468, 3 March 2009, Vinko Pandurevic

747. However, when Pandurevic considered the original document and read back his words, the interpreters in court translated the phrase as merely “*placed in schools*”.<sup>1224</sup> That same phrase had been applied to the words of the document by CLSS when they had been asked to translate it as an appendix to the report of Dr Marojevic.<sup>1225</sup>

748. Accordingly, in the submission of the defence that is the safer translation of the phrase, or at least, it cannot be said that there is anything in that phrase, as written which is inconsistent with the source of information Pandurevic says accounts for it.

### c) “Asanacija I Obezbedjenje Terena”

749. The defence case as to this now infamous phrase is that, far from allowing for the possibility of a second reasonable interpretation as to what the author was intending to convey, the prosecution has not only closed its mind to any interpretation other than that erroneously placed upon it by Richard Butler, but that it has gone further and shaped the evidence to fit its interpretation. In that exercise it has found a willing accomplice in Dragan Obrenovic.

## 11.2.10. Asanacija

### a) The evidence in the case as to its meaning

750. *Asanacija* probably comes second only to *zastupa* as the most discussed BCS word in the whole case. The process of sanitization is described in a variety of manuals and documents. It is an obligation which falls upon different public bodies in different situations. On the battlefield, however, it is the responsibility of the army.<sup>1226</sup> It is a combat activity.

751. It embraces a wide spectrum of practices, which can occur both during and after combat. Those practices or obligations include the rescue and removal of wounded during combat, the removal of dead bodies during combat, as well as the removal of dead and wounded once the battle is over, and the clearing up of harmful and hazardous waste. Harmful or hazardous waste in a battle would necessarily include not just human remains but animal remains and dangerous chemicals, such as might result from the firing of shells or rockets.

### b) The need to remove the dead and wounded on 15<sup>th</sup> (and 16<sup>th</sup> July)

752. There is a central inconsistency at the heart of the Prosecution’s case about the events on the battlefield of 14<sup>th</sup>-16<sup>th</sup> July in Zvornik. On the one hand, it seeks to establish that

<sup>1224</sup> T.31566, 16 February 2009, Vinko Pandurevic

<sup>1225</sup> 7D00917, Linguistic report of Radmilo Marojevic.

<sup>1226</sup> T.30992, 2 February 2009, Vinko Pandurevic

the mounting casualties bore heavily upon Pandurevic's decision to let the column go;<sup>1227</sup> that the relevant casualties were not just from his own units<sup>1228</sup> but also from the immediate vicinity of Baljkovica as well as those on 16<sup>th</sup> July<sup>1229</sup> and that the chamber should consider not just the dead but also the wounded and those missing at that time.<sup>1230</sup>

753. On the other hand, it seeks to persuade the Chamber that Pandurevic had no reason to be concerned about the recovery of dead, missing or wounded men on 15<sup>th</sup> July.<sup>1231</sup> It simply cannot be both. As a matter of fact, at the time of writing the report, there were already many dead and wounded on both sides, some of whom were trapped.<sup>1232</sup>

754. The prosecution's position also fails to take account of the fact that hazards to health do not only emanate from your own fallen and wounded. Large numbers in the column were dying in combat,<sup>1233</sup> or as a result of suicides, land mines and sickness.<sup>1234</sup> Their remains presented an equal hazard. They were not, as is often suggested, all carried away by their colleagues in the column.<sup>1235</sup> Many were buried by Serb forces.<sup>1236</sup> Some even remained to be discovered as surface remains months or years later.<sup>1237</sup>

755. At the time of writing the report, Pandurevic anticipated a substantial offensive would occur during the very early hours of the next morning.<sup>1238</sup> Undoubtedly, his report is intended not only to be a record of past events, but a prediction of possible future developments. ("I *will* be forced to let them go") Indeed, the second illogicality about the prosecution's position in relation to the use of this phrase is that whilst it is suggested that Pandurevic cannot possibly, in using the phrase '*asanacija*', be talking about a future obligation to protect and sanitize the combat area, he can be talking about problems at Kula, Pilica and Branjevo, all of which are equally future events, and more to the point, completely outside his knowledge or contemplation on any version of events.<sup>1239</sup>

### c) The evidence of Momir Nikolic about when he was first told to use the term

756. The evidential impact of the testimony of Momir Nikolic upon the interpretation of this word is minimal. According to him he was instructed by Popovic some time in September or October 1995 to refer to the reburial of bodies by use of this epithet. According to him therefore, his use of the term in a Bratunac Brigade meeting was pursuant to that instruction, and at least by implication, he wouldn't ordinarily have used it to describe the task.

<sup>1227</sup> T.481-T.482, 22 August 2006, Peter McCloskey, T.20844-T.20845, 31 January 2008, Richard Butler

<sup>1228</sup> T.10656, 27 April 2007, Mihajlo Galic

<sup>1229</sup> T.10656, 27 April 2007, Mihajlo Galic

<sup>1230</sup> T.10657, 27 April 2007, Mihajlo Galic

<sup>1231</sup> T.19997, 18 January 2008, Richard BUTLER.

<sup>1232</sup> [REDACTED]

<sup>1233</sup> See e.g paragraph 1 of **P00329**, ZVORNIK BRIGADE DAILY INTERIM COMBAT REPORT NO. 06-217-1, DATED 15 JULY 1995

<sup>1234</sup> T.20848-T.20849, 31 January 2008, Richard Butler

<sup>1235</sup> T.27393, 27 October 2008, Zoran JANKOVIC.

<sup>1236</sup> [REDACTED].

<sup>1237</sup> T.33514, 1 May 2009, Dusan Janc

<sup>1238</sup> See **P00377**, ERN 0293-5760.

<sup>1239</sup> T.483, 22<sup>nd</sup> August 2006, Prosecution Opening Statement



757. [REDACTED], the instructions given to Jokic were that he shouldn't write anything down about the detention, murder or burial of prisoners. Plainly therefore, Pandurevic's report would have been a substantial breach of that instruction, which, going on to describe the burials as '*asanacija*', would have done little to remedy or disguise. There is no evidence of anyone, let alone Pandurevic, being instructed to refer to the burials in this way in July.

### 11.2.11. Obezbedjenje

#### a) Obezbedjenje cf Bezbednosti

758. The prosecution was plainly alive to the difficulties in the translation of this word as "security" from the very outset of the trial.<sup>1240</sup> Butler, in his inimitable way, ignored any such difficulties, stating in his narrative report that the phrase *obezbedjenje* meant "the security operation", thereby inserting into the phrase the concept of security in addition to removing the grammatical link between the words *obezbedjenje* and *terena*. (See below)

759. The trial chamber will be well familiar with the word which expresses the concept of security in BCS, namely *Bezbednost*. It appears in quite literally hundreds of documents admitted into evidence to express not just the organ or the service, but the concept of security itself.<sup>1241</sup>

760. The defence do not submit that the word *Obezbedjenje* is incapable of translation into English as the word security, but it does say that it is a concept that defies such a simple translation. It can plainly mean a number of things. It can be juxtaposed with the word *Bezbednosti*, when it apparently approximates to the English word "support",<sup>1242</sup> as it does when juxtaposed to concepts such as "combat", "air defence" etc.,

761. It is possible to make sense of this sentence with a wholly alternative translation of this word, which is equally consistent with its sense in BCS.

#### b) Obezbedjenje Terena

762. It seems beyond argument that there is a grammatical link between the word *obezbedjenje* and the word *terena*<sup>1243</sup>. In other words, whatever operation the word *obezbedjenje* describes, it is an operation relating to the field.

763. The suggestion, therefore that word means "guarding"<sup>1244</sup>, whilst not impossible in itself, ignores two facts, firstly, that that word cannot stand alone, and secondly, that

<sup>1240</sup> T.481-T.482, 22 August 2006, Prosecution Opening Statement

<sup>1241</sup> See P00407, SFRY Rules of Service of Security Organs in the Armed Forces, 1984, page 1; P00694, JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984 (para 120), pages 56, 65, 116; P00699, JNA Manual for the Work of Command and Staffs, 1983, page 93.

<sup>1242</sup> P00694, JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984 (para 120), page 65.

<sup>1243</sup> T.32641, 12 March 2009, Radmilo MAROJEVIC, T.30996ff, 2 February 2009, Vinko PANDUREVIC

within the clause in which it stands, it has a genitive object, *terena*, and thus cannot refer to the word prisoners.

764. The more logical sense, as circumstances will demonstrate, is that Pandurevic, as he stated, was referring to the extra personnel required for the operations of clearing up the battle field and the support and protection of his units in the field.<sup>1245</sup> To that end, the phrase in the report probably defies word-for-word translation.

#### 11.2.12. The Mobilization of the R Battalion

765. What was intended by the use of the phrase *obezbedjenje terena* can be gleaned from the events in the Brigade on which Pandurevic was reporting. The occurrence of the identical or near identical phrase in a series of other contemporaneous documents is not coincidental. On 15<sup>th</sup> July, the brigade had been compelled to mobilise its Reserve or 'R' battalion.

766. The process can be followed through from a note in the Duty Operations officers notebook for 15<sup>th</sup> July,<sup>1246</sup> to a request of the Drina Corps,<sup>1247</sup> through the process of the Ministry of Defence,<sup>1248</sup> resulting in the calling for mobilization of 254 men, 195 of whom answered the call.<sup>1249</sup>

767. As an aside at this juncture, three points need to be made. These events show that even in these very difficult circumstances, the brigade was still going through the proper procedures on 15<sup>th</sup> July for the mobilization of men and materials. Secondly, it illustrates that the process could be effected very quickly. In this case, within the same day. And thirdly, the mobilization of a whole battalion of men (roughly 5% of the brigade's total manpower) was not a decision to be taken lightly. In this instance they were being sent into a dangerous combat situation. This was a politically sensitive step for the Brigade to undertake. It was a matter about which he was bound to report both from that perspective, and to underline the point that "*all Brigade forces are engaged and we have no reserves.*"<sup>1250</sup>

768. Throughout the whole sequence of the documents listed above and leading to the mobilization of the R battalion, the reason advanced for their call-up is that they are needed for the purposes of *obezbedjenje teritorije*.<sup>1251</sup> There is no shade of meaning between terrain and territory. The words are synonymous.<sup>1252</sup>

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<sup>1244</sup> T.483, 22 August 2006, Prosecution Opening Statement

<sup>1245</sup> T.31000 –T.31006, 2<sup>nd</sup> February 2009, Vinko PANDUREVIC

<sup>1246</sup> See **P00377**, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 138 and T.31000, 2<sup>nd</sup> February 2009, Vinko PANDUREVIC

<sup>1247</sup> See **1D00698**, Drina Corp. Command, mobilization request. Str. Conf. No. 05/1-241, 15 July 1995; T31002, 2<sup>nd</sup> February 2009, Vinko Pandurevic

<sup>1248</sup> See **3D00119**, RS Ministry of Defence, Order for mobilisation, 15<sup>th</sup> July 1995; 7D709, and 3D125

<sup>1249</sup> See **P00377**, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 150 and T.310003, 2<sup>nd</sup> February 2009, Vinko Pandurevic

<sup>1250</sup> **P00329**, ZVORNIK BRIGADE DAILY INTERIM COMBAT REPORT NO. 06-217-1, DATED 15 JULY 1995, paragraph 3

<sup>1251</sup> See **1D00698**, Drina Corp. Command, mobilization request. Str. Conf. No. 05/1-241, 15 July 1995; T31002, 2<sup>nd</sup> February 2009, Vinko Pandurevic

769. Once mobilised, the members of the R Battalion were deployed to make roads safe to pass, conduct blockades, carry out patrols and set up observation posts.<sup>1253</sup> They were sent to Crni Vrh and Planinci to support the unit from Bratunac.<sup>1254</sup>
770. It is further submitted that the use of the phrase *obezbedjenje terena* in this report would have resonated with the Corps command, given the requests it had received to mobilize men earlier in the day for that purpose.

### 11.2.13. Guarding Prisoners is not labour intensive

771. Whilst the mobilization of the R battalion would undoubtedly have merited mentioning, given the above, it is submitted that the guarding of prisoners scarcely would. It certainly would not have required 250 plus men to be mobilised. It may depend to a degree upon the number of prisoners that there were, but held in six enclosed spaces, the requirement for guards would, even assuming the Zvornik brigade had been required to provide manpower, have been relatively little.
772. Moreover, given the fact that the evidence discloses that each of the transports which brought prisoners to the area brought its own guards with it,<sup>1255</sup> there would have been little or no additional requirement for men to fulfil that function. There is, furthermore, no evidence that the Brigade was being asked for men to guard the prisoners, or that it was struggling to respond to such requests ([REDACTED]). [REDACTED]. Interestingly, notwithstanding his presence in Zvornik on that day, Beara did not address his personnel concerns to the Brigade at all.<sup>1256</sup>

### 11.2.14. “As well as” - Conjunctive or Disjunctive?

773. Before embarking upon a semantic or syntactic examination of this document, it is as well to remember the manner and the circumstances of its creation; dictated to Ljubo Bojanovic in a few short minutes whilst in the midst of combat preparations and negotiations. The manuscript document is noteworthy for the absence of any alterations. According to all the evidence, it appears to have been delivered in one take.
774. Nonetheless, the Trial Chamber will probably conclude that Pandurevic is an articulate and intelligent man. According to his own evidence and on the face of the document, it is clear that he was trying to express the idea in paragraph four that the prisoners presented a different problem to his other immediate responsibilities. To that end he expressed the sentiment that they were a burden, thereby distinguishing them from his obligations.

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**3D00119**, RS Ministry of Defence, Order for mobilisation, 15 July 1995; 7D709, and 3D125

<sup>1252</sup> T.31001, 2<sup>nd</sup> February 2009, Vinko Pandurevic

<sup>1253</sup> T.31006, 2<sup>nd</sup> February 2009, Vinko Pandurevic

<sup>1254</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 154 and 157, T.31007, 2<sup>nd</sup> February 2009, Vinko Pandurevic

<sup>1255</sup> [REDACTED], (PW-162), Blagojevic and Jokic Trial Judgment, 17 January 2005, p.113

<sup>1256</sup> P01173, Intercept dated 15 Jul/95, 08:55 hrs.

775. If the prisoners had been his responsibility, then that would have entailed *inter alia* the obligation to guard them. However, he is at pains to distinguish them by his use of language from his responsibilities. They are a burden, a nuisance, a distraction to his men, but they are not his responsibility. To conjoin that sentiment with obligations towards the prisoners makes no sense and is not in keeping with his careful expression.

776. His evidence and sensible syntactic analysis suggests that the use of the phrase “as well as” disjoins the ideas in the two clauses from each other. The joinder of the two ideas would have been achieved by a relative clause, i.e., “prisoners which we are obliged to guard”

### 11.2.15. “Let Them Go”

#### a) Syntax of the whole report. Forces of 28<sup>th</sup> Division referred to in the plural throughout

777. It has become common practice for everyone involved in this case to distinguish between the two bodies of people referred to in Pandurevic’s report in terms of the pronouns applied to each. Those in the schools are “the prisoners” or “them”, whereas those in the woods are “the column”, “the 28<sup>th</sup> Division”, and accordingly “it”.

778. For the rest of us, that practice has removed ambiguity from our discussions. It is a good practice. Pandurevic, however, makes no such distinction, perhaps because one of his principal objectives was to enumerate the soldiers in the column for Corps command.<sup>1257</sup> Accordingly, there being no generic singular for the prisoners, he pluralises both groups.

779. In terms of the relative references in the report, the prisoners receive only one mention, whereas the men in the column are mentioned four times (twice in paragraph one, and once in each of paragraphs two and six). The soldiers in the column are the plain and main focus of the report taken as a whole.

#### b) Sense of the whole report minus the paragraph concerning the additional burden

780. If the fourth paragraph of the report is simply excised, the logic of the report is impeccable and unambiguous, as it is, in fact, if the fourth paragraph is placed after the sixth. One must also observe that this was not a document drafted and redrafted with the care of a legal pleading.

#### c) Reading the paragraph by reference to the following paragraph

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<sup>1257</sup> T.30991-30992, 2 February 2009, Vinko PANDUREVIC

781. The central ambiguity of the document is crystallised in paragraphs four, five and six. In isolation, paragraphs four and five leave the reader with the only possible conclusion that the author is talking about the prisoners in schools, whereas, in isolation paragraphs five and six could only lead to the conclusion he was talking about the soldiers in the column. In the defence submission, however, the contextual link between “them” in the last sentence of paragraph four and the “civilians” and “others” in the very next sentence, is stronger. Moreover, as stated above, the soldiers in the woods are the principal focus of the report, forming the subject of its introductory sentence ; *“Since the fall of Srebrenica in the territory of the first Zvornik infantry brigade....there are about 3,000 armed and unarmed enemy soldiers”*.
782. This is no surprise. The whole purpose of the report was to tell the Corps command about the soldiers in the column;<sup>1258</sup> how many there were; what danger they posed and how they could be dealt with. They were the reason that Pandurevic had been sent back to Zvornik, and why Krstic had made the order he did at 1000hrs that day.<sup>1259</sup> It was entirely appropriate and predictable that Pandurevic would both deal with these questions and inform Corps command what he intended to do about them.

#### 11.2.16. Paragraph 8

783. Such is the level of focus on the central paragraphs of this document, it is often forgotten that there is further information of substance and relevance elsewhere. Paragraph eight reads: *“I request reinforcements to be sent in keeping with previous requests for reinforcements.”*
784. The reference to previous requests must relate to the requests of Obrenovic on 14<sup>th</sup> July.<sup>1260</sup> Read in context, paragraph five of the report of 15<sup>th</sup> July encapsulates not only Pandurevic’s anger at the prior decisions of his superior command but a reminder to the Corps of its responsibilities towards the column relative to that of the Brigade: *“This command cannot take care of these problems any longer, as it has neither the material nor other resources. If no one takes on this responsibility, I will be forced to let them go”* (emphasis added).

#### 11.2.17. Reading the report in conjunction with the following report of 16<sup>th</sup> July

785. Pandurevic’s evidence of the logic of the report of 15<sup>th</sup> July becomes clearer when the report of 16<sup>th</sup> July is considered. It has to be placed into context. Pandurevic had taken the decision ‘off his own bat’ to let the soldiers in the column go, had not consulted any of his superiors, and had spent the afternoon avoiding attempts to contact him by the Corps and Main Staff command. Eventually, at about 1800hrs, he composed the Irregular report of 16<sup>th</sup> July, in which he reported his decision to allow 5,000 “civilians” to pass, all “unarmed”.

<sup>1258</sup> T.30991-30992, 2 February 2009, Vinko PANDUREVIC

<sup>1259</sup> 7D00686, Drina Corps Command Order, 15 July 1995

<sup>1260</sup> P00327, Zvornik Brigade Interim Report No. 06-216/2, dated 14 July 1995

786. Inter-textually, the two documents make a perfect fit as part of a sequence. In both documents, Pandurevic reports on the difficulty of the military situation and the pressure it has placed on the Brigade. In the former he reports on negotiations for the passage of the civilians in the column and in the latter he reports on the concluded agreement for their evacuation. In both he overstates the ferocity, duration and impact of enemy action, whilst understating the numbers in the column. In the latter his corruption of the facts goes rather further.<sup>1261</sup>
787. In short, the report of the 16<sup>th</sup> of July is the report in which Vinko Pandurevic informs Corps command that he has done what he was threatening to do. To interpret paragraph five of 15<sup>th</sup> July report otherwise makes a contextual nonsense of the series of reports as a body.

### “Pustiti”

788. Whilst the principal purpose of adducing the evidence of Marojevic was to tender into evidence his report and, in particular the annexes, including the translation of the combat report,<sup>1262</sup> the fact of the matter is that he gave unchallenged evidence that the verb used in the phrase “let them go” is incapable of being used to mean *to free a prisoner*.<sup>1263</sup>
789. The same verb is used in both paragraphs five and six of the combat report, and although the English translation of the word in paragraph six is “release(d)”, the sense is clear in that it relates unambiguously to the request of Muminovic that the whole column be allowed to leave Serb controlled territory.
790. Moreover, when a little less than 24 hours later, Pandurevic reported that he had asked for the “release” of Jankovic, the captured policeman, he used a quite different word, whose root is in the verb *osloboditi*, meaning release from prison.<sup>1264</sup>
791. Irrespective of opinion, the juxtaposition of the same verb in paragraphs five and six, by contrast with the use of a wholly different (and appropriate) word in a similar document hours later and written by the same author, indicate clearly what sense was intended in the phrase translated as “let them go”.

### 11.2.18. Pandurevic did not have the knowledge, authority or ability to let the prisoners go as at 1800 hrs on 15<sup>th</sup> July

792. At the time of writing the report on 15<sup>th</sup> July, Pandurevic only had the sketchiest of knowledge even of the existence of prisoners. Although it is safe to conclude he knew there were a lot of them, he didn’t know precisely how many. He had little information as

<sup>1261</sup> See P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, Paragraphs 1, and 3

<sup>1262</sup> T.32686, 12<sup>th</sup> March 2009, Radmilo Marojevic

<sup>1263</sup> 7D00917, the Report of Radmilo Marojevic, page 10

<sup>1264</sup> See P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, paragraph 3, 7D00917, page 10 and T.32639, 12<sup>th</sup> March 2009, Radmilo Marojevic

to where they were, and (REDACTED) no information as to who had brought the prisoners to Zvornik, and who was in charge of the operation.

793. He plainly did not know there had been executions by then, or he would not have mentioned them at all. If he had known, as the prosecution suggest, he could not seriously have threatened to release men who had already been executed and buried. Either way, it makes no sense for him to have been referring to the prisoners in this paragraph of the report.
794. More pressing was the military situation which was then engulfing him and proving to be a substantial obstacle to his even trying to discover what was going on and where. Events were far advanced when he got to the IKM, where he first received information about prisoners. They were continuous whilst he was there and he was to be there until the late evening of 17<sup>th</sup> July.<sup>1265</sup>
795. As has been discussed elsewhere, the buildings which housed the prisoners were not under the control of the Zvornik Brigade.<sup>1266</sup> The senior officers present at those locations were from the Main Staff and the Drina Corps.<sup>1267</sup> There is even evidence of Mladic himself visiting one location.<sup>1268</sup> Pandurevic could not give orders to those men, nor to units of the 10<sup>th</sup> Sabotage detachment, 65<sup>th</sup> Protection regiment, or Military police units of the Bratunac Brigade.
796. In short, even if he did know where the ‘still living’ prisoners were being held, and could get away from Baljkovica before they were all killed, he was in no position to threaten to let the prisoners go, unlike the soldiers in the column.

**11.2.19. Reading the report in the context of subsequent events – the soldiers of 28<sup>th</sup> Division were let go, the prisoners in the schools were not**

797. It is the defence case that the report was a form of advanced justification for the action Pandurevic was about to and knew he was about to take in allowing the column to pass on 16<sup>th</sup> July. That explains the disingenuous passages and exaggerations. With the benefit of hindsight, it is plain what Pandurevic’s logic was. In this report he was laying the ground for his action, while in the report of 16<sup>th</sup>,<sup>1269</sup> he was justifying what he was in the process of doing, while further, in the 18<sup>th</sup> July report,<sup>1270</sup> he was defending his actions by reference to evidence. The documents are a series and have a historical context.
798. If, in threatening to “let them go”, Pandurevic was referring to the prisoners, he simply made an empty threat which he could not, did not, and had no intention of executing. As a reference to the soldiers in the column, the report reflects actual events, and his mood and intentions at the time.

<sup>1265</sup> T.31096, 9 February 2009, Vinko PANDUREVIC.

<sup>1266</sup> Refer to section on Part 3 Section 1 Zone of Responsibility

<sup>1267</sup> T.13332, 26 June 2007, Marko Milosevic, T.10337, 23 April 2007 Tanacko Tanic

<sup>1268</sup> T.947, 29 August 2006, Mevludin Oric

<sup>1269</sup> P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995

<sup>1270</sup> P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995

### **11.2.20. Reading the report in the context of prior events – Pandurevic was angry about the Main Staff/DC attitude to the dangers of the 28<sup>th</sup> Division**

799. Pandurevic had been dismayed by the Main Staff attitude to the missing 28<sup>th</sup> Division from the moment that Srebrenica was taken.<sup>1271</sup> He had further voiced his concern during the meeting at the Bratunac Brigade that night.<sup>1272</sup> He had feared that the 28<sup>th</sup> Division would make for Nezuk and endanger the rear of the Zvornik Brigade positions.<sup>1273</sup> When he learnt from Krstic the position of the Brigade on the morning of 15<sup>th</sup> July, he told his operations officer that events had turned out exactly as he had warned.<sup>1274</sup>
800. His anger was still apparent on 18th July when he wrote that “Zvornik was [paying] the price for the taking of Srebrenica”<sup>1275</sup>
801. It is clear that Pandurevic for one did not expect that operation Krivaja '95 would lead to the evacuation of Srebrenica. It was his evidence that he believed that after he had taken the features at Zivkovo Brdo on 9<sup>th</sup> July, and withdrawn to reserve positions, that he would thereafter be returned to Zvornik.<sup>1276</sup>
802. Stability of the area was his concern,<sup>1277</sup> an idea he expanded upon in his irregular combat report of 16<sup>th</sup> July.<sup>1278</sup> Whilst this might seem strongly worded, the reality of the situation has to be borne in mind; a large group of people were trapped in an area where it was in nobody's interests for them to remain. To bring stability to the region, they had to be allowed to go where they wanted to. That was Pandurevic's conviction. It just so happened that he was able to thumb his nose at the main staff as he did it, and justify it to boot.

### **11.2.21. The VBI of 15<sup>th</sup> July is an exculpatory document**

#### **a) It is a record of the existence of prisoners in Zvornik**

803. There is no other contemporaneous VRS document which refers to the existence of prisoners being held in schools in Zvornik.<sup>1279</sup> However angry Pandurevic might have been about the situation the Brigade had been placed in, he could have expressed his dismay, stressed the limits of the brigade's resources and warned that the column of the 28<sup>th</sup> Division may be allowed to pass to Nezuk without referring to the existence of the prisoners at all.
804. If he had known at the time that a large number had already been executed and more were to face the same fate, and he was supposedly an architect or supporter of that plan,

<sup>1271</sup> P02048, Srebrenica trial video.

<sup>1272</sup> T.30874-T.30889, 30 January 2009, Vinko PANDUREVIC.

<sup>1273</sup> T.30942-T.30943, 30 January 2009, Vinko PANDUREVIC.

<sup>1274</sup> T.12596-T.12598, 14 June 2007, Miodrag DRAGUTINOVIC

<sup>1275</sup> See P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995.

<sup>1276</sup> T.31331-31332, 12 February 2009, Vinko PANDUREVIC.

<sup>1277</sup> T.30885, 30 January 2009, Vinko PANDUREVIC.

<sup>1278</sup> **P00330**, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, paragraph 6

<sup>1279</sup> T.20819, 31<sup>st</sup> January 2008, Richard BUTLER



surely he would not have written about them. Those who came to know about the plan wrote nothing down and were extra-cautious about what they wrote down or said over the radio.<sup>1280</sup>

805. Once Pandurevic had written the VBI of 15<sup>th</sup> July, there would be no mystery about where the prisoners were taken from Bratunac. There could be no suggestion they went to other parts of Republika Srpska. Aerial imagery and survivor testimony merely adjoined it. Pandurevic created a record of the truth, contemporaneous with events. There could never thereafter be any suggestion that he didn't know of the prisoners from a very early point after his return to Zvornik. He could neither deny nor even defer his knowledge from that moment forward.

**b) It is a record which created other records in other places**

806. As we have seen throughout the trial, the sending of a report creates an audit trail which is the more difficult to expunge. The handwritten report is retained as is the telegraphed document at the site of despatch. It creates a further record wherever it is received. Further copies of the document are generated whenever it is further disseminated. As a written document, it is virtually impossible to deny, unlike, for example, a radio communication, which may or may not have been intercepted. Pandurevic plainly had the facility to talk to Krstic by radio.<sup>1281</sup> These facts were all well known to Pandurevic at the time he sent the report. It is naive and contrary to the evidence in the case to imagine he did not chose this form of communication with purpose.

**c) The record and all relevant records at the Zvornik Brigade were preserved by Pandurevic**

807. The copy of this document and many others, including other reports, the Duty Officers notebook, diary, war diary, vehicle work logs, and daily orders were retained within the Brigade throughout Pandurevic's command period. Pandurevic played an active role in the implementation of the Dayton peace accords.<sup>1282</sup> The ICTY had by then been created for over 2 years. Madeleine Albright had revealed to the world US aerial imagery of the evidence of murders and burial sites in the Zvornik area.<sup>1283</sup> The destruction of the documents listed above would have been the work of a moment. Pandurevic's evidence is that his protection of the records was intended to serve history and justice well.

808. [REDACTED]<sup>1284</sup> [REDACTED],<sup>1285</sup> one has to view the retention and concealment of many of the records of the Brigade by Obrenovic as particularly sinister, and the behaviour of Pandurevic, more to the point, as the more admirable.

<sup>1280</sup> [REDACTED].

<sup>1281</sup> P01183, Intercept dated 16 Jul/95, 07:06 hrs (conversation between Pandurevic and Krstic).

<sup>1282</sup> T31246, 11 February 2009, Vinko Pandurevic

<sup>1283</sup> P00466, AFP Headlines, p.7

<sup>1284</sup> [REDACTED]

809. Obrenovic was not the only accused to misappropriate documents. As we know from the evidence of Momir Nikolic, virtually all the records of the Bratunac Brigade were destroyed by him.<sup>1286</sup>

810. By contrast, Pandurevic created records of events, notwithstanding how they might affect him, and preserved many others

**d) The fact that by the time of the writing of this report, the prisoners at Orahovac, Petkovci and Rocevic were already murdered, shows that Pandurevic cannot have known of the murder operation**

811. Far from “darn well knowing”<sup>1287</sup> that the prisoners were being murdered, the sending of a report with an explicit mention of the prisoners in it shows quite the opposite. It is a fact that the prisoners at Orahovac and Petkovci were already dead and buried, and, at Rocevic/Kozluk, they were too, probably. It is inconceivable that if Pandurevic knew that murders had already been committed he would have sent a written report acknowledging the responsibility of his men for guarding and burying the victims.

812. In relation to the remainder, it is the defence case that events were too far beyond the tipping point for any intervention to have been of any effect.

**e) A Participant in a JCE secretly to murder prisoners would scarcely create a record of their existence**

813. There was in fact little or no difficulty in executing and burying the prisoners. There were no mass escapes. There were no mutinies or mass refusals to cooperate on the part of the executioners, guards, drivers or gravediggers. Indeed, for the main part, the operation was conducted efficiently and expeditiously within a relatively short period of time. Indeed, the only evidence of any difficulty in manpower comes from [REDACTED] the infamous intercept, allegedly involving Beara and Krstic. Plainly, if there were any such difficulties, they were being kept from Pandurevic.

814. The need for secrecy and discretion was paramount amongst participants in the JCE. Nothing was to be written down and care was to be taken over the airwaves. It defies credibility that, as an architect, conspirator or major player in the criminal enterprise, Pandurevic would create an indelible record of these events at such an early stage, unless he genuinely was in the dark as to what was going on and wanted to find out.

815. To that end this report has to be read alongside his evidence that later that month he visited Krstic at Zepa to discuss with him events within the Zvornik area such as were referred to in the three combat reports. This visit is expressly accepted by the

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<sup>1285</sup> [REDACTED]

<sup>1286</sup> T.33140-33141, 24 April 2009, Momir NIKOLIC.

<sup>1287</sup> T.485, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

Prosecution,<sup>1288</sup> and no challenge was put to Pandurevic about the purpose of his visit and the content of their discussion.

816. If Pandurevic's knowledge and involvement has been properly rather than fancifully characterised, the presence of prisoners in Zvornik could not have surprised him. He would have been at the alleged meeting at Bratunac on 12<sup>th</sup> July where the killing operation *must have been discussed*.<sup>1289</sup> He was *contactable* on 13<sup>th</sup> July and knew that the prisoners were to be sent to Zvornik.<sup>1290</sup> [REDACTED].<sup>1291</sup> It is wholly unclear how the prosecution puts its case in this regard. How could all the above be right, and yet, Pandurevic should write a report containing the sentence "*It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality*"<sup>1292</sup> and thereafter to seek Krstic's explanation for events at Zepa ?
817. The Irregular Combat Report of 15<sup>th</sup> July, written *in extremis*, is the clearest and earliest indication that the prosecution's case as to Pandurevic's knowledge of the plan is nowhere near close to the truth. His own evidence on the topic confirms that.

**f) The threat to "let them go", whether it relates to prisoners or soldiers is inconsistent with an intention to commit genocide or mass murder.**

818. The Response of the Corps command shows that Pandurevic is out of step with superior command. The Drina Corps combat reports copy-paste the majority of his reports of 15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> July, but excise all reference to prisoners.<sup>1293</sup>
819. The action of allowing the column to pass represents the saving of a massive number of lives. Even if in part justified by the saving of life on his own side, the action is humanitarian. The soldiers in the column and the prisoners in the schools are similarly members of the alleged target group, being able bodied Muslim men from Srebrenica.
820. Pandurevic's intention to allow many of them to go free was expressed in writing to his command within a few hours of his having any control of events. His discussions with the Muslim side began almost immediately and were crystallised in principle with agreement on thousands being allowed to go a short while later. Those discussions predated any significant military action and therefore, the agreement can be regarded as entirely unfettered by any question of self-preservation.
821. Such an expression of intent, corroborated by concrete action, does not speak of an intention to destroy the group in whole or in part, rather than to take pragmatic military

<sup>1288</sup> See Prosecution's Motion for Leave to Reply and Consolidated Reply to the Defence Responses to The Prosecution's Second Motion to Reopen its Case, 23 April 2009

<sup>1289</sup> See Prosecution Motion for Leave to Reply and Consolidated Reply to the Defence Responses to The Prosecution's Second Motion to Reopen its Case, 23 April 2009.

<sup>1290</sup> See T.435, 21 August 2006, Prosecution Opening

<sup>1291</sup> [REDACTED].

<sup>1292</sup> P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, paragraph 4

<sup>1293</sup> T.29626, 12 December 2008, Milenko Jevdjovic

and humanitarian steps. His further actions (for example in relation to the prisoners taken by the Zvornik Brigade between 18<sup>th</sup> and 25<sup>th</sup> July) will be dealt with in other parts of this brief. His report of the 15<sup>th</sup> July cannot be said, however, to support the requisite intention for Count 1 of the indictment, nor participation in a JCE, nor a conspiracy such as is alleged in Count 2.

### 11.3. The RBIs and VBIs 16<sup>th</sup> – 18<sup>th</sup>

#### 11.3.1. The Irregular Combat Report of 16<sup>th</sup> July

822. On any version of events, the morning of 16<sup>th</sup> July was a hectic time for Pandurevic. According to all available sources, however, a ceasefire had been agreed by the late morning, and the passage of the 28<sup>th</sup> Division through the corridor began between 1300hrs and 1400hrs.<sup>1294</sup> Once the corridor had been opened, Pandurevic remained at the IKM and in constant contact with Semso Muminovic.<sup>1295</sup> Word about the opening of the corridor plainly reached his superior command quickly.<sup>1296</sup> Pandurevic was aware from an early stage that he was being required to report,<sup>1297</sup> and from an early stage he was avoiding contact with his command.<sup>1298</sup> After about an hour of silence, the Corps command was requesting someone to make personal contact with Pandurevic.<sup>1299</sup> By 1700hrs, Pandurevic could avoid the issue no longer, and so he dictated an interim report to Petrovic.<sup>1300</sup>

823. Obrenovic had been despatched to the area of the 4<sup>th</sup> battalion the previous day. The only evidence of contact between them after that is some radio communication about (i) the interview of the Muslim officer,<sup>1301</sup> and (ii) the point at which the column would pass through Zvornik Brigade lines.<sup>1302</sup> Obrenovic's withdrawal on the 16<sup>th</sup> was not straightforward. He had pulled out at the point of intersection of the 4<sup>th</sup> and 6<sup>th</sup> battalions and then monitored the activities of the 2<sup>nd</sup> Corps.<sup>1303</sup> According to Pandurevic, he didn't arrive at the IKM until 1800hrs<sup>1304</sup> by which time, as far as Pandurevic was aware, the report had been sent. In point of fact, it hadn't been sent because of transmission

<sup>1294</sup> T.13034, 3 February 2009, Vinko PANDUREVIC

<sup>1295</sup> T.13042, 3 February 2009, Vinko PANDUREVIC

<sup>1296</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95 , p148

<sup>1297</sup> T.31044, 3 February 2009, Vinko PANDUREVIC

<sup>1298</sup> T.31048, 3 February 2009, Vinko PANDUREVIC

<sup>1299</sup> P01195, Intercept dated 16 July 1995, 16:15 hours ; P01225, Intercept dated 16<sup>th</sup> July 1995, 16:43 ; T.31050, 3 February 2009, Vinko PANDUREVIC

<sup>1300</sup> T.31050, 3 February 2009, Vinko PANDUREVIC

<sup>1301</sup> T.31031, 3 February 2009, Vinko PANDUREVIC, [REDACTED]

<sup>1302</sup> See P02231 , Exhibit P-121 in Case No. IT-02-60-T- Tactical intercepts notebook, dates covered are 1 Jul to 24 Nov 95, page 22 ; P02232 ,Exhibit P-121 in Case No. IT-02-60-T- Draft English translation covering 11 to 20 July 1995- Tactical intercepts notebook, dates covered are 1 July to 24 Nov 95, page 20

<sup>1303</sup> T.31064, 3 February 2009, Vinko PANDUREVIC, [REDACTED]

<sup>1304</sup> T.31064, 3 February 2009, Vinko PANDUREVIC

difficulties.<sup>1305</sup> Corps command had by then received a daily report from the brigade duty officer which made no reference to the passage of the column through brigade lines.<sup>1306</sup>

824. It is common ground that the report is an inaccurate and disingenuous account of events on the ground, designed to justify Pandurevic's action, without actually revealing the full implications of the agreement which he had reached with the enemy.
825. More than that, the document shares a number of themes with its predecessor, the irregular combat report of 15<sup>th</sup> July. Like P329, it is obsessed with the issue of the column (which, by the time of writing, had been let go), and what the pressure of the situation in the Zvornik area might compel Pandurevic to do.
826. On the topic of common themes, the second paragraph of the report contains the complaint "*we had difficulties bringing in the supplies and evacuating the wounded because of the roads being cut off*" which seems to refer to the predicted problems of "*obezbedjenje i asanacija terena*", especially given Pandurevic's own explanation as to the meaning of this phrase and the use to which the R battalion was in fact put.<sup>1307</sup> Pandurevic in this report is at pains to point out to his superior command that he had foreseen these events.<sup>1308</sup>
827. One theme uncommon to both reports is the issue of prisoners in the schools. There can be no sensible suggestion that Pandurevic was afraid to mention the prisoners. Indeed, given that he was looking for any additional reason he could find to justify his cooperation with the enemy, it is a surprise that he didn't throw them in for good measure. That he did not may infer any number of things, but two reasonable inferences which cannot be dismissed are, firstly, that he had received no further information about them since his earlier report, and secondly, that they were not presenting him with any problem of which he was aware.
828. As to the final paragraph of the report, this reflects Pandurevic's view that the Krivaja operation had changed. It had become, in effect, an operation to search the terrain.<sup>1309</sup>

#### **a) Alleged Encounter with Popovic on 16<sup>th</sup> July**

829. Pandurevic did not see Popovic on 16<sup>th</sup> July.<sup>1310</sup> There is no credible evidence to counter his assertion that he did not. It is of course accepted that Popovic was tasked to go to him at about 1640hrs that day.<sup>1311</sup> At that time, the evidence suggests he was in Pilica and/or Branjevo, and busy with other matters. Shortly after that, the irregular combat report of 16<sup>th</sup> July was sent by Pandurevic to the duty officer at Standard. It would have been available for Popovic to read at the command that evening. The intercepted radio

<sup>1305</sup> P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, made at 18.10, sent at 20.05

<sup>1306</sup> 7D00532, RBI command Zvpbr, sent at 18.30

<sup>1307</sup> See Part 4 section 11 on VBI 15 July 1995

<sup>1308</sup> P00330, ZVORNIK BRIGADE INTERIM COMBAT REPORT 06-218, 16-JUL-1995, paragraph 3

<sup>1309</sup> T.31061, 3 February 2009, Vinko PANDUREVIC

<sup>1310</sup> T.31050, 3 February 2009, Vinko PANDUREVIC

<sup>1311</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 149 and P01225, Intercept dated 16 July 1995, 16:43

call at 2116hrs<sup>1312</sup> must have been made from or to Standard. It is vague in its detail, and fails to deal with one main current concern, namely the seizure of the two self-propelled guns, which were addressed in a further call 10 minutes later.<sup>1313</sup> Had Popovic spoken to Pandurevic, he would surely have had that information, obviating the later inquiry. The obvious inference is that Popovic was not aware of the order to go to Pandurevic until he returned to the command of the Zvornik Brigade around 2100hrs that night. [REDACTED].<sup>1314</sup> This is doubly relevant, since it confirms not only that Popovic was not there, but also that Obrenovic was, which will be dealt with in the next section.

#### **b) The Conversation with Obrenovic on 16<sup>th</sup> July**

830. By the evening of 16<sup>th</sup>, Obrenovic had received information from members of the 4<sup>th</sup> battalion and the 6<sup>th</sup> battalion relating to the execution of prisoners at both Petkovci and Orahovac.<sup>1315</sup> [REDACTED].

831. In spite of the challenges from other accused, there can be little doubt that the conversation between Pandurevic and Obrenovic on the evening of 16<sup>th</sup> July took place. Both men were present there, and Obrenovic had received news of the fact and whereabouts of executions. It was inevitable that he would report that to Pandurevic, whether asked about it or not, and whatever the true state of his knowledge had been beforehand.

832. It is inconceivable that Pandurevic would leave the IKM that night [REDACTED].<sup>1316</sup> He was the only person with whom the ABiH would negotiate,<sup>1317</sup> and arrangements had to be made for the passage of the column during the night.<sup>1318</sup> [REDACTED].<sup>1319</sup> [REDACTED]. However, the evidence demonstrates that Pandurevic did stay at the IKM that night.<sup>1320</sup>

833. [REDACTED]

#### **c) Driving past Orahovac on the morning of 17<sup>th</sup> July**

834. [REDACTED]. Furthermore, it cannot be reconciled with other documented events that morning. Pandurevic spoke to Krstic from the IKM after Obrenovic had arrived that morning.<sup>1321</sup> At 0845hrs three colonels arrived at Standard from the Main Staff. They

<sup>1312</sup> P01201, Intercept dated 16 July 1995, 21:16 hours

<sup>1313</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p152

<sup>1314</sup> [REDACTED], [REDACTED]

<sup>1315</sup> [REDACTED]

<sup>1316</sup> [REDACTED]

<sup>1317</sup> T.29625, 12 December 2008, Milenko JEVDJEVIC

<sup>1318</sup> T31075, 3 February 2009, Vinko PANDUREVIC

<sup>1319</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95 , p 151

<sup>1320</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95 , p 154, T.31077, 3 February 2009, Vinko PANDUREVIC

<sup>1321</sup> P01206, Intercept dated 17 July 1995, 17july 1995, 06:15

were at the IKM until 1500hrs.<sup>1322</sup> They spent their time there in conversation with Obrenovic and Pandurevic.<sup>1323</sup> Pandurevic spent the morning otherwise engaged in the supervision of the passage of the column.<sup>1324</sup> [REDACTED]

835. Nonetheless, Pandurevic did acquire certain information from Obrenovic that morning. He had tasked him the previous evening to make enquiries into the business of the prisoners.<sup>1325</sup> On the morning of 17<sup>th</sup>, Obrenovic told him that he had discovered that prisoners had been held at Orahovac, Petkovci, Pilica and Rocevic, and that they had been executed. He mentioned execution sites on the banks of the Drina and at Branjevo.<sup>1326</sup> [REDACTED]
836. The information received by Pandurevic and the timing of it is of critical relevance to any consideration of his ability effectively to prevent further murders, irrespective of his authority to do so. By the morning of 17<sup>th</sup> July, when he first had details of most, if not all of the detention and execution sites, events had gone beyond prevention everywhere.
837. A second relevant aspect of the conversation with Obrenovic on the morning of the 17<sup>th</sup> is the discussion concerning the opening of the corridor and the interest of superior command in that during the previous day.<sup>1327</sup> At the time of this discussion, neither had any idea that they would receive a visit from the Main Staff later that morning. Events at Baljkovica required still a great deal of attention.<sup>1328</sup> The decision taken by Pandurevic and Obrenovic to adjourn further discussion of what to do viz-a-viz both issues was, in the circumstances, entirely logical.<sup>1329</sup> Likewise the delay until 18<sup>th</sup> July before Pandurevic sent a report detailing the losses suffered by the Brigade. Once the seriousness of the position was known to Pandurevic from the visit of the Main Staff officers, he would naturally want to “beef up” the losses to justify his actions and, despite the request originally being made during the morning of 17<sup>th</sup>,<sup>1330</sup> no report was sent that day.<sup>1331</sup> The further discussion with Obrenovic that evening about the form of the report would have been an inevitable consequence of the visit from Main Staff, which neither could have foreseen at their early morning meeting.<sup>1332</sup>
838. The presence of the Main Staff colonels reveals the involvement of High Command in affairs within the Drina Corps area of responsibility. Pandurevic’s guarded behaviour toward them was understandable in the circumstances. The evidence does not reveal that

<sup>1322</sup> P00378, Zvornik Brigade duty operation officer diary, for the period 12 February 1995 through 3 January 1996, page 89

<sup>1323</sup> T.31091, 9 February 2009, Vinko PANDUREVIC, [REDACTED], T.15112-T.15113, 10 September 2007, Nedeljko TRKULA, T.14374-T.14375, 27 August 2007, Bogdan SLDOJEVIC

<sup>1324</sup> P1221c, Intercept dated 17 July 1995, 13:46 ; T.31093, 9 February 2009, Vinko PANDUREVIC

<sup>1325</sup> T.31071, 3 February 2009, Vinko PANDUREVIC

<sup>1326</sup> T.31084, 9 February 2009, Vinko PANDUREVIC

<sup>1327</sup> T.31085, 9 February 2009, Vinko PANDUREVIC

<sup>1328</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, p156, and T.31089, 9 February 2009, Vinko PANDUREVIC

<sup>1329</sup> T.31086, 9 February 2009, Vinko PANDUREVIC

<sup>1330</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 156, .31089, 9 February 2009, Vinko PANDUREVIC

<sup>1331</sup> T.31095, 9 February 2009, Vinko PANDUREVIC

<sup>1332</sup> T.31095, 9 February 2009, Vinko PANDUREVIC

he received any further information from them concerning the prisoners.<sup>1333</sup> In any event, further information by this stage would have been of limited practical use to him.

### 11.3.2. The Irregular Combat Report of 18<sup>th</sup> July

839. The principle purpose of the irregular combat report is to set out the losses suffered by the Zvornik Brigade which justified the opening of the corridor. Plainly, Pandurevic was nervous that the actual losses were insufficiently serious, and accordingly, listed the brigade's losses over a much broader period of time.<sup>1334</sup> Nonetheless, as detailed elsewhere, the actual losses give the lie to the prosecution's case theory about the gravity of the combat situation.<sup>1335</sup>

840. The secondary purpose was Pandurevic's protest at the killing operation taking place in Zvornik. It is worth recalling the actual words of the report:

841. *"It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality"*

842. No sensible suggestion has been made throughout the case that this expression was anything other than genuine.<sup>1336</sup> If genuinely Pandurevic could not conceive of the idea that anybody had done this, then it is impossible to conclude that he was an active or willing participant in the plan to move and/or murder the prisoners. Even more so than the Irregular Combat Report of 15<sup>th</sup> July, this document exculpates Pandurevic in that it shows his lack of knowledge of the plan to bring the prisoners to Zvornik, his lack of involvement in the execution of that plan, and his lack of any understanding that this operation was not to be reported about openly.

843. To an extent, of course, the two documents have to be considered together. On his own admission, by the time of writing the 18<sup>th</sup> July report, Pandurevic knew of the murder of prisoners. The explicit reference to their existence is therefore, all the more striking. It might be suggested that, having considered matters, this reference in this document is self-serving and an attempt to make it look as though he had nothing to do with the operation, but that could scarcely be said about the report of 15<sup>th</sup>, written at a time when he had little time for consideration, and when, on his account, he had no knowledge of any murders.

844. There may be many inferences to be drawn from these documents, but one wholly plausible inference is that they demonstrate, taken together, genuine expressions of dismay and surprise from a man who was no party to the plan to bring prisoners to the Zvornik area for execution.

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<sup>1333</sup> T.31092, 9 February 2009, Vinko PANDUREVIC

<sup>1334</sup> P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, paragraph 3

<sup>1335</sup> See Part 4 Section 7 : "Baljkovica"

<sup>1336</sup> T.20817-T.20818, 31 January 2008, Richard BUTLER



#### 11.4. Reports of the Drina Corps to the Main Staff

845. If further indication was needed of the extent to which Pandurevic was ‘out of synch’ with his superior command in relation to the killing operation in particular, it is to be gleaned from the manner in which the Drina Corps relayed his reports to the Main Staff.
846. Routinely throughout the Combat reports of the Drina Corps, all references to the existence of prisoners is excised.<sup>1337</sup> The failure to relay the information can only give rise to one inference, which is the same conclusion Pandurevic came to when he heard nothing back from Krstic,<sup>1338</sup> namely, that unlike Pandurevic, the Corps commander was familiar with the details of the operation and was under orders not to refer to it explicitly in any correspondence.

#### 11.5. The Meeting of 23<sup>rd</sup> July

847. Between 18<sup>th</sup> and 23<sup>rd</sup> July, both Pandurevic and Obrenovic were preoccupied with the search of the terrain in the Zvornik area. By 23<sup>rd</sup> the issue of the exchange of prisoners was resolved,<sup>1339</sup> and the sweeping was effectively over. Moreover, following their discussions on 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> July, it was logical to await a response from Corps command. It is common ground that a routine monthly meeting was held on 23<sup>rd</sup> July.<sup>1340</sup> No further information was forthcoming from the meeting, a fact which Pandurevic found strange.<sup>1341</sup> In the conversation between Pandurevic and Obrenovic which followed, both were equally dismayed that the matter had been “put in their laps”, and were curious about the battalion commanders’ silence on the topic. Pandurevic made reference to leaving a record of events by his reports (which of course, Obrenovic had not seen). They agreed that was all they could do and that an investigation at brigade level was likely to do more harm than good.<sup>1342</sup>

#### 11.6. The Meeting with Krstic

848. A meeting with Krstic some time after 18<sup>th</sup> July was inevitable. No sensible challenge has been made to the fact or the content of the meeting. The Boksanica video suggests that the meeting took place on 26<sup>th</sup> July. Given what was known of the killing operation,

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<sup>1337</sup> P138, Drina Corps Command Regular Combat Report No.3/2-216, signed by Radislav KRSTIC, dated 15 July 1995; P00139, Drina Corps Command Regular Combat Report No. 3/2-218, signed by Radislav KRSTIC, dated 16 July 1995 ; P00140,Drina Crps Command Daily Combat Report 3/2-219, 17-jul-1995; P00141,Drina Corps Command Daily Combat Report 3/2-222, 18-jul-1995; P00150, Drina Corps Command Interim Combat Report 3/2-217

<sup>1338</sup> T.311111, 9 February 2009, Vinko PANDUREVIC

<sup>1339</sup> See Part 4 section 12 Small scale executions

<sup>1340</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95 , page 177, T.31149-50, 9 February 2009, Vinko PANDUREVIC. See also [REDACTED] (PW-108); T.12740, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>1341</sup> T.311154, 9 February 2009, Vinko PANDUREVIC

<sup>1342</sup> T.311154, 9 February 2009, Vinko PANDUREVIC; T[REDACTED]

Krstic's response is both logical and plausible.<sup>1343</sup> It is moreover, consistent with his own apparent fatalism about events, as well as his own knowledge of them.<sup>1344</sup>

## 12. SMALL-SCALE EXECUTIONS

849. Leaving aside the major detention and execution sites in the Zvornik municipality, the prosecution relies upon a series of murders as supporting the existence of a plan for large scale systematic murder. The relevant events concern the fate of 27 men in 5 separate locations over a period of about 20 days.<sup>1345</sup>

850. The dates on which these events occurred are approximate. However, it seems inevitably to be the case that the alleged murders must have post-dated 16<sup>th</sup> July, when Pandurevic came to know of the large scale murders of prisoners in some schools in the area. In that context the events of the post-Baljkovica period will be analysed in this section, together with the actions of the Zvornik Brigade and orders of Pandurevic containing the capture, detention and treatment of prisoners.

### 12.1. Scouring the terrain after the corridor was closed

851. Following the closure of the corridor in the late afternoon of 17<sup>th</sup> July, a number of Muslim soldiers remained behind Zvornik Brigade lines. They fell broadly into three categories:

- Unarmed members of the column who wished to pass through to Nezuk;
- Armed combatants; and
- Units of the 2<sup>nd</sup> Corps inserted behind Zvornik Brigade lines for sabotage and/or diversionary operations.<sup>1346</sup>

852. For those who wished to pass through to Nezuk, the evidence reveals that the corridor remained open, pursuant to an order from Pandurevic for some period after its notional closure on 17<sup>th</sup>.<sup>1347</sup> There is also evidence that Pandurevic took a personal interest in ensuring that a group of young men reached their destination safely.<sup>1348</sup>

<sup>1343</sup> T.31179, 10 February 2009, Vinko PANDUREVIC

<sup>1344</sup> P01179, intercept Krstic-Beara, 15 July 1995, "Now, I'll be the one to blame"

<sup>1345</sup> Prosecutor vs Popovic, Indictment, 4 August 2006, Para 30.13-30.16

<sup>1346</sup> P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, BCS page 780 and 782, ENG page 162 and 164; P01261a and b, Intercept dated 19 July 1995, 08:12 hours; T.31128-T.31131, 9 February 2009, Vinko PANDUREVIC

<sup>1347</sup> P00377, Duty Officers log book, BCS and ENG page 156; T.31093-T.31094, 9 February 2009, Vinko PANDUREVIC

<sup>1348</sup> T.10162, 17 April 2007, Lazar RISTIC; T.31097-T.31098, 9 February 2009, Vinko PANDUREVIC

853. Pandurevic's orders were that combatants who laid down their arms and surrendered should be taken prisoner and brought to Standard barracks for further exchange. Moreover, his orders were explicit to the effect that all those who surrendered should be treated fairly in compliance with international conventions.<sup>1349</sup>
854. Not all were prepared to lay down their arms and surrender and caution had always to be exercised in ascertaining whether the apparent intention to surrender was genuine or not.<sup>1350</sup> Nonetheless, the evidence demonstrates that during this period, prisoners were still being taken.<sup>1351</sup>
855. The combat report of 18<sup>th</sup> July referred to the behaviour of some enemy soldiers' determination to evade capture.<sup>1352</sup> One incident in particular had been drawn to Pandurevic's attention by Dragutinovic. It concerned a soldier who exploded a hand-grenade upon being arrested, killing one Serb soldier and blinding another.<sup>1353</sup>
856. In response to these incidents Pandurevic issued instructions that soldiers were to take the utmost care in the taking of prisoners.<sup>1354</sup> The instruction was consistent with his responsibility to his own men and accorded with the Rules of International Law of War in force at that time providing that in any case the commander should "take all precautionary measures for the security of the unit"<sup>1355</sup> [REDACTED]. Further, the evidence of the continued taking of prisoners would tend to contradict the assertion. In any event it was not Pandurevic's intention that it should be understood in that way.<sup>1356</sup> To further ensure that things were clear, Pandurevic issued another order reminding soldiers to respect the rules of procedure concerning the capture of prisoners while taking all the measures to be safe during this operation.<sup>1357</sup>
857. There was heavy fighting during this period in which both sides suffered losses.<sup>1358</sup>

## 12.2. Sending POWs to Batkovići

858. Pandurevic was seeking instructions from the Corps relating to prisoner exchange as early as 20<sup>th</sup> July. A brigade commander did not have the authority on his own to deal with such matters.<sup>1359</sup>

<sup>1349</sup> T.31127, 9 February 2009, Vinko PANDUREVIC

<sup>1350</sup> T.31128-T.31129, 9 February 2009, Vinko PANDUREVIC

<sup>1351</sup> 7D00773, ZB Command, 06-224/2, VBI, 19-Jul-1995

<sup>1352</sup> P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995 ; P00333, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995

<sup>1353</sup> [REDACTED]; T.31126, 9 February 2009, Vinko PANDUREVIC

<sup>1354</sup> [REDACTED]

<sup>1355</sup> P00409, Rules of International Laws of War, art 213 : "*Capture. It is prohibited to wound or kill a member of the enemy armed forces from the moment he stops offering resistance and visibly shows that he is willing to surrender, or when, due to wounding or sickness, he is not capable of fighting. He becomes a prisoner of war when he falls into the hands of the enemy.*

*When capturing a member of the enemy armed forces, the commanding officer of a unit of the armed forces of the SFRY shall take all precautionary measures for the security of the unit."*

<sup>1356</sup> [REDACTED]

<sup>1357</sup> [REDACTED]

<sup>1358</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 162 to 164, T.31130, 9 February 2009, Vinko PANDUREVIC

859. His initial request received no response. Throughout the following days he discussed the matter on several occasions with officers from the Corps command. On 22<sup>nd</sup> July his combat report highlighted the fact that the detention facility at Zvornik was full.<sup>1360</sup> On 23<sup>rd</sup> July he discussed with Cerovic the sending of prisoners to Batkovic. Significantly, this conversation made explicit mention of the wounded prisoners being held in the brigade infirmary, thus indicating that Pandurevic made no distinction between the able bodied and wounded POW's in his detention facility.<sup>1361</sup> Later that day, Pandurevic heard that the first group of prisoners had been transferred to Batkovic.<sup>1362</sup>
860. From 20<sup>th</sup> until the 23<sup>rd</sup> July, prisoners were taken and brought to Standard. On 23<sup>rd</sup>, prisoners were sent to Batkovic. From capture until their transfer to Batkovic, the prisoners appeared in the Brigade records. The number of prisoners was indicated in regular combat reports on a daily basis.<sup>1363</sup> The number of prisoners arriving at the Brigade was recorded by the barracks duty operation officers in his notebook.<sup>1364</sup> They were then duly transferred to Batkovic<sup>1365</sup>. Their reception in the collection centre at Batkovic was also recorded.<sup>1366</sup> Approximately 140 to 150 prisoners of war were transferred to Batkovic after being captured between 23<sup>rd</sup> and 26<sup>th</sup> of July.<sup>1367</sup> Vinko Pandurevic gave orders that the prisoners should be treated fairly from the moment of their capture until their exchange.<sup>1368</sup>

### 12.3. The Branjevo Survivors

861. Four Muslims who had apparently escaped from Branjevo were captured by soldiers from the 1<sup>st</sup> battalion. They were handed over to the military police of the Zvornik Brigade. Following interview by Drago Nikolic, they revealed that they had received help from two soldiers, [REDACTED].<sup>1369</sup> Their statements are in near identical terms<sup>1370</sup>.
862. [REDACTED], were arrested. They too were interrogated by Drago Nikolic. At first, they denied that they helped the four men, but later, when they found out that they had

<sup>1359</sup> P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, page 165-167

<sup>1360</sup> P01307B, Intercept dated 23 July 1995, 06:40 hours : On 23th, Ljubo Bojanovic confirms Krstic the facility is full. P00340, Zvornik Brigade Interim Combat Report No. 06-229, dated 22 July 1995; T.31141, 9 February 2009, Vinko PANDUREVIC

<sup>1361</sup> P01309, Intercept dated 23 July 1995, 08:00 hours

<sup>1362</sup> T.31160, 10 February 2009, Vinko PANDUREVIC

<sup>1363</sup> Example : P00432, 28th Infantry Division Combat Report No. 01-163/95 dated 6 Jul. 1995

<sup>1364</sup> P00383, Zvornik Brigade reports of the duty operations officer, for the period 5 July 1995 through 21 January 1996

<sup>1365</sup> P00344, Zvornik Brigade Daily Combat Report 06/232, dated 25 July 1995 ; P00346, Zvornik Brigade Daily Combat Report 06/233

<sup>1366</sup> 7D00712, List of prisoners in Batkovica prison camp, exchanged in 1995, 13-May-2004

<sup>1367</sup> P00342, Zvornik Brigade Daily Combat Report 06/231, 24-Jul-1995, 26-Jul-1995; P00344, Zvornik Brigade Daily Combat Report 06/232, dated 25 July 1995; P00346, Zvornik Brigade Daily Combat Report 06/233; T.31167-T.31168, 10 February 2009, Vinko PANDUREVIC

<sup>1368</sup> T.31168-T.31169, 10 February 2009, Vinko PANDUREVIC, 7D00257, BiH regional office 02.12.1998, Statement of Salihovic Hasan, 2-Dec-1998

<sup>1369</sup> [REDACTED]

<sup>1370</sup> P00389, KIVIRIC, Sakib – statement provided to the Zvornik Military Police; P00390, MUSTAFIC, Emin – statement provided to the Zvornik Military Police; P00391, DOZIC, Fuad – statement provided to the Zvornik Military Police; P00392, HALILOVIC, Almir – statement provided to the Zvornik Military Police, T.32334, 2 March 2009, Vinko PANDUREVIC;

been captured, they admitted that they had helped them. They had told them which direction to go and gave them some clothes and food.<sup>1371</sup> [REDACTED].<sup>1372</sup> This was not reported to Brigade command.<sup>1373</sup>

863. [REDACTED].<sup>1374</sup> However, Nebosja Jeremic, a lawyer tasked with combating crime within the brigade, wrote up no charges and could not recall any order for imprisonment being written up by the commander.<sup>1375</sup> The Chief of Security would have been obliged to sign off any charges laid against them.<sup>1376</sup> Neither the charges nor the order for imprisonment have been produced. Pandurevic never had to confirm the punishment of his soldiers when the security organ, acting *ex officio* and according to the rules, determined that a soldier had cooperated with the enemy, detained him, and then submitted a criminal charge to the prosecutors. He never punished a soldier for cooperating with the enemy.<sup>1377</sup> The Chief of Security was empowered by law to punish soldiers for cooperating with the enemy and did not need the commander's consent. Pandurevic never issued any such ruling.<sup>1378</sup>
864. [REDACTED], Drago Nikolic informed Pandurevic that these prisoners had escaped from Pilica or Branjevo. This occurred after the briefing on 23<sup>rd</sup> July. A day or two later they disappeared.<sup>1379</sup> [REDACTED], they were shot by the Military on the orders of Pandurevic.<sup>1380</sup> Jeremic last saw them when they were making their statements, and did not know what happened to them.<sup>1381</sup>
865. Pandurevic did not know of the existence of these four Muslim prisoners [REDACTED].<sup>1382</sup> He points out that their statements give no hint that they were survivors from an execution site<sup>1383</sup>, and that it hardly makes sense for him to be ordering the execution of four men, whilst concurrently arranging for 140-150 to be taken for exchange at Batkovic. Other survivors from Branjevo were arrested and taken to Standard, and then transferred to Batkovic. For example, Ahmo Hasic survived the executions at Branjevo and met up with another man, Becir Salikovic. Later, they were captured by men in military uniforms and taken on a bus to Zvornik, where they were immediately placed on a truck which went to Batkovic with a group of twenty nine Muslim prisoners.<sup>1384</sup> Ahmo HASIC and Becir SALIKOVIC were registered in Batkovic camp on the 26<sup>th</sup> July.<sup>1385</sup> Hasic was exchanged on the 24<sup>th</sup> December.<sup>1386</sup>

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<sup>1371</sup> T.32330-T.32331, 2 March 2009, Vinko PANDUREVIC

<sup>1372</sup> [REDACTED]

<sup>1373</sup> T.32334, 2 March 2009, Vinko PANDUREVIC.

<sup>1374</sup> [REDACTED]

<sup>1375</sup> T.10438, 24 April 2007, Nebosja JEREMIC

<sup>1376</sup> T.10421, 24 April 2007, Nebosja JEREMIC

<sup>1377</sup> T.32333, 2 March 2009, Vinko PANDUREVIC

<sup>1378</sup> **P00385**, Judgement against Nesko DOKIC and Slobodan DOKIC (for aiding four Bosnian Muslim males), dated 25-07-1995.

<sup>1379</sup> [REDACTED]

<sup>1380</sup> **P03054**, OTP interview with Dragan Obrenovic, 4-6 June 2003.

<sup>1381</sup> T.10438 – T.10439, 24<sup>th</sup> April 2007, Nebojsa JEREMIC

<sup>1382</sup> [REDACTED]

<sup>1383</sup> P00389, KIVIRIC, Sakib – statement provided to the Zvornik Military Police; P00390, MUSTAFIC, Emin – statement provided to the Zvornik Military Police; P00391, DOZIC, Fuad – statement provided to the Zvornik Military Police; P00392, HALILOVIC, Almir – statement provided to the Zvornik Military Police

<sup>1384</sup> [REDACTED]

<sup>1385</sup> 7D00712, List of prisoners in Batkovica prison camp, exchanged in 1995, Hasic : page 5 BCS, ENG page 4, Salikovic : Page 7 BCS

#### 12.4. The Prisoners from the Milici hospital

866. Prisoners stayed in Milici on the 13<sup>th</sup> and 14<sup>th</sup> July.<sup>1387</sup> They were then transferred to the Zvornik hospital. The prisoners came with their medical records, and were handed into the care of Dr. Lazarevic.<sup>1388</sup> When on the following day he inquired about the health of the prisoners, he was told that they had been evacuated to Tuzla in order to be exchanged.<sup>1389</sup>
867. When they had arrived from Milici, the prisoners were placed in the hospital gynecology ward. There were eleven patients. One of them, Aziz Becirovic, died at the hospital as a consequence of his severe injuries.<sup>1390</sup> A treatment history file was opened for each of them. They were provided with adequate treatment. The prisoners were guarded by policemen. They were taken to Standard military barracks. Doctors from the Zvornik hospital continued to treat their patients daily after their transfer. They were accommodated in one big separate room from wounded Serb soldiers. When Lazarevic came a second time, the patients were no longer there and he was told that they were to be exchanged near Bijeljina.<sup>1391</sup> The eleven patients were supposed to be treated at the Zvornik Hospital until their exchange.<sup>1392</sup> One of the patients was sent to Karakaj barracks to continue his treatment.<sup>1393</sup> Two were sent to Batkovci for exchange.<sup>1394</sup> All the prisoners, brought to the hospital by any soldier from the Zvornik Brigade, and Serb soldiers were treated identically.<sup>1395</sup>
868. Another doctor, namely Dr Begovic confirmed that Pandurevic was not in the Brigade when the prisoners arrived at the hospital.<sup>1396</sup> Dr Begovic only saw Pandurevic after the prisoners had gone.<sup>1397</sup> Dr Begovic was also able to say that he had been told by Obrenovic that the prisoners would be exchanged after a few days and that they should not be harmed.<sup>1398</sup> This was confirmed in writing a day after their arrival<sup>1399</sup>. Again, the prisoners were cared for and records were kept of their treatment<sup>1400</sup> And although the prisoners were registered in a logbook, medical charts were opened in readiness for their transfer to Bijeljina.<sup>1401</sup> Five days after their arrival, prisoners were removed from Standard and an MP later confirmed they had been taken away by bus without a medical

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<sup>1386</sup> T. 1215, 6 September 2006, Ahmo HASIC.

<sup>1387</sup> [REDACTED]; **P1884**

<sup>1388</sup> T.9113-T.9115, 21 March 2007, Jugoslav GAVRIC

<sup>1389</sup> T.9116, 21 March 2007, Jugoslav GAVRIC

<sup>1390</sup> 7D00169, T.9082, 20 March 2007, Radivoje NOVAKOVIC;

<sup>1391</sup> T.9027, 20 March 2007, Radivoje NOVAKOVIC

<sup>1392</sup> T.9036, 20 March 2007, Radivoje NOVAKOVIC

<sup>1393</sup> [REDACTED]; T.9053, 20 March 2007, Radivoje NOVAKOVIC

<sup>1394</sup> T.9073-T.9074, 20 March 2007, Radivoje NOVAKOVIC

<sup>1395</sup> T.9074, 20 March 2007, Radivoje NOVAKOVIC

<sup>1396</sup> T.9135-T.9136; T.9153-T.9154, 21 March 2007, Zoran BEGOVIC

<sup>1397</sup> T.9154, 21 March 2007, Zoran BEGOVIC

<sup>1398</sup> T.9234; T.9144, T.9165, 21 March 2007, Zoran BEGOVIC

<sup>1399</sup> T.9143, 21 March 2007, Zoran BEGOVIC

<sup>1400</sup> T.9160, T.9162, T.9137, 21 March 2007, Zoran BEGOVIC

<sup>1401</sup> T.9144, 21 March 2007, Zoran BEGOVIC

escort.<sup>1402</sup> Following the departure of the prisoners, their files (lists, charts and discharge papers) stayed at the medical centre.

869. Another group of four or five wounded Muslim prisoners arrived. They too were treated and then sent for exchange to Bijeljina soon thereafter.<sup>1403</sup>

870. Pandurevic learned about the existence of these wounded prisoners only once he returned from the IKM on the 18<sup>th</sup> or 19<sup>th</sup> July. He didn't understand why they had to be accommodated at Standard.<sup>1404</sup> He was repeatedly asking the Corps command to deal with the exchange of prisoners. Significantly, on 23<sup>rd</sup> July, Pandurevic was talking to Cerovic about the transfer of the prisoners to Batkovic.<sup>1405</sup> Obrenovic told him that they had been transferred to Batkovic following the meeting of 24<sup>th</sup> July. He never ordered the execution of these prisoners,<sup>1406</sup> nor ordered them not to be registered; that was Obrenovic's initiative.<sup>1407</sup>

## 12.5. Execution near Snagovo

871. On or about 22<sup>nd</sup> July, approximately six Bosnian Muslim<sup>1408</sup> men had become separated from the column of men retreating from the Srebrenica enclave.<sup>1409</sup> The group was partially armed.<sup>1410</sup> They reached Snagovo on or about 20<sup>th</sup> July.<sup>1411</sup> The day after, one of them (Husein Hrnjic) went on reconnaissance but didn't come back.<sup>1412</sup> They were captured by MUP officers from Ugljevik police station in the woods near the town of Snagovo.<sup>1413</sup> One of them managed to escape.<sup>1414</sup> Another was taken to Batkovic after interrogation at Ugljevik.<sup>1415</sup> The others were executed there, where they were captured.<sup>1416</sup>

872. The unit involved was comprised of MUP and PJP<sup>1417</sup>, mainly reserve policemen.<sup>1418</sup> They were sealing off an area near Snagovo.<sup>1419</sup> They were commanded through police chains of command. The witness thought that relations between the police and the army

<sup>1402</sup> T.9137, T.9147-T.9148, 21 March 2007, Zoran BEGOVIC – a medical escort should have accompanied the patients but this could not be organised

<sup>1403</sup> T.9136, T.9148-T.9149, 21 March 2007, Zoran BEGOVIC

<sup>1404</sup> T.31169-T.31170, 10 February 2009 ; T.31709, 18 February 2009, Vinko PANDUREVIC

<sup>1405</sup> P01309, Intercept dated 23 July 1995, 08:00 hours, 23 July 1995

<sup>1406</sup> T.31169-T.31170, 10 February 2009, Vinko PANDUREVIC

<sup>1407</sup> T.31713, 10 February 2009, Vinko PANDUREVIC

<sup>1408</sup> PW-106, Ramiz Hrnjic, Salko Hrnjic, Muhamed Begic, Husein Hrnjic, Muhamed Mehmedovic and another person., [REDACTED] (PW-106)

<sup>1409</sup> [REDACTED] (PW-106)

<sup>1410</sup> [REDACTED] (PW-106)

<sup>1411</sup> [REDACTED] (PW-106)

<sup>1412</sup> [REDACTED] (PW-106)

<sup>1413</sup> [REDACTED] (PW-106)

<sup>1414</sup> [REDACTED] (PW-106)

<sup>1415</sup> [REDACTED] (PW-106)

<sup>1416</sup> [REDACTED] (PW-106)

<sup>1417</sup> [REDACTED] (PW-107)

<sup>1418</sup> P02295, Bijeljina Public Security Centre document No 12-4/01-116/04 - List of police officers who were on assignment on the Zvornik Public Security Centre on 13 and 14 July 1995, dated 28 April 2004 ; [REDACTED] (PW-107)

<sup>1419</sup> [REDACTED] (PW-107)

units were poor.<sup>1420</sup> However he understood his commander to be saying no prisoners were to be taken.<sup>1421</sup> The policeman who shot the prisoners came from another unit. He was one of a number of similarly dressed men wearing bandanas.<sup>1422</sup> It was not the intention of PW-107 that the prisoners should be executed, despite his orders, but he and his colleagues were unable to prevent the shootings.<sup>1423</sup> The unit from whom these soldiers came was unknown.<sup>1424</sup>

873. There is no obvious link between these men and the VRS, let alone the Zvornik Brigade. The shootings have the hallmarks of acts of wanton violence committed by a man or men on a frolic of their own. Moreover, it is an isolated episode, in which a few were killed but one left alive. It does not support the prosecution case of a JCE to commit genocide.

## 12.6. Execution near Nezuk

874. The credibility of the accounts supporting these alleged executions is highly suspect. Both were armed combatants from the 28<sup>th</sup> Division.<sup>1425</sup> Despite being at Baljkovica on or around 16<sup>th</sup> July, neither passed through the corridor, despite that self-evident opportunity, with or without arms. Indeed neither concedes knowledge of the existence of the corridor, which the defence submit is implausible, given that they were amongst thousands of Muslims who at that time must have been passing through it and/or were being called through it by Serb soldiers.

875. The defence submits that the obvious inference is that they were part of a combat unit which had chosen not to pass through the corridor in order to carry out diversionary operations behind enemy lines.

876. It goes without saying that their surrender did not lead to their deaths, but rather to their brief detention at Standard and their subsequent transfer to Batkovic.<sup>1426</sup>

877. There is no logic to this, if in truth they had witnessed the commission of War Crimes. Moreover, it does not support the prosecution's case that this episode, if true, is inferential of a JCE to commit genocide. The defence further contends that it probably indicates that the deaths of men in their unit occurred in combat rather than by execution, which event neither of them chose to record until 5 years later.<sup>1427</sup>

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<sup>1420</sup> [REDACTED] (PW-107); **P00064**, CJB Zvornik report 01-16-02/1-206/95, signed by Dragomir Vasic, dated 17 July 1995; P00091, RS Special Police Brigade Order No. 61/95 re creation of combat group, typed-signed Goran SARIC, dated 17 July 1995; P00974, CJB Zvornik report 01-16-02/1-206/95, signed by Dragomir VASIC, dated 19 July 1995; 7D00717, Drina Corps order 01/159-2 (forwarding the RS Presidential Order declaring a State of War in RS), 29-Jul-1995.

<sup>1421</sup> [REDACTED] (PW-107)

<sup>1422</sup> [REDACTED] (PW-107)

<sup>1423</sup> [REDACTED] (PW-107)

<sup>1424</sup> [REDACTED] (PW-107)

<sup>1425</sup> P02288, OTP Witness Statement dated 28 May 2000;

<sup>1426</sup> [REDACTED] (PW-139)

<sup>1427</sup> P02288, OTP Witness Statement dated 28 May 2000; [REDACTED], (PW-139)



878. The soldiers allegedly involved in the executions were part of the unit from Krajina.<sup>1428</sup> They had been given orders by Obrenovic.<sup>1429</sup> Save for his evidence about the alleged misunderstanding over the Commander's instruction to take care over the taking of prisoners, he was clear that orders relating to the treatment of prisoners were lawful.<sup>1430</sup>
879. Moreover, Pandurevic received no report of any such incident. The killing of enemy soldiers and the taking of prisoners by the Zvornik Brigade was at that time being fully recorded in a number of ways.<sup>1431</sup> Indeed the report of the 19<sup>th</sup> July appears to refer explicitly to this episode.<sup>1432</sup>

### 13. STUPCANICA 95 OPERATION

#### 13.1. Command and purpose of the operation

880. The initial order to carry out operations towards Zepa was issued by General Ratko Mladic at about 1 o'clock in the afternoon on 10<sup>th</sup> July 1995.<sup>1433</sup> At about this time, Pandurevic had been compelled to bring his unit back from their reserve position to retake the features at Rajna and Zivkovo Brdo, following the Muslim counterattack earlier that morning.<sup>1434</sup> Although Pandurevic spoke to Mladic at about the time of the issue of the order, the conversation was limited exclusively to the present combat operation.
881. The order is addressed to the Drina Corps and the 65<sup>th</sup> Protection Regiment. There is no evidence that Pandurevic knew of the order at the time of its issue. The order itself calls for the units involved to take the defence line and improve the tactical position around the Zepa enclave. The offensive combat operation was scheduled to start on the 12<sup>th</sup> July.<sup>1435</sup>
882. The first Pandurevic knew of a planned assault on Zepa was at the meeting of the commanders at the Bratunac Brigade on 11<sup>th</sup> July. This is dealt with in greater detail elsewhere, but the Defence observe that the issue of this order (on 10<sup>th</sup> July) for combat operations to commence on 12<sup>th</sup> July is yet another compelling reason to conclude that

<sup>1428</sup> P00336, Zvornik Brigade Daily Combat Report No. 06-224, type-signed Vinko PANDUREVIC, dated 19 July 1995 ; [REDACTED] (PW-126)

<sup>1429</sup> [REDACTED]; T.31130-T.31131, 9 February 2009, Vinko PANDUREVIC

<sup>1430</sup> T10162-T10163, T10164, 17 April 2007, Lazar RISTIC ; [REDACTED]

<sup>1431</sup> P00383, Zvornik Brigade reports of the duty operations officer, for the period 5 July 1995 through 21 January 1996; [REDACTED]

<sup>1432</sup> P00336, Zvornik Brigade Daily Combat Report No. 06-224, type-signed Vinko PANDUREVIC, dated 19 July 1995

<sup>1433</sup> **P00181** - VRS Main Staff Order No.03/4-1807, Krivaja 95 Order No.04/156-32, 10 Jul.1995 (ERN: 0425-7963-0425-7965).

<sup>1434</sup> T.30861-T.30863, 29 January 2009, Vinko Pandurevic; T.29538-T.29539, 11 December 2008 and T.29602-T.29604, 12 December 2008, Milenko JEVDJEVIC

<sup>1435</sup> **P00181** - VRS Main Staff Order No.03/4-1807, Krivaja 95 Order No.04/156-32, 10 Jul.1995 (ERN: 0425-7963-0425-7965), main operative part and point 4.

Mladic must have addressed his commanders about the action towards Zepa on the evening of the 11<sup>th</sup>.<sup>1436</sup> Pandurevic was, of course, opposed to the suggestion.<sup>1437</sup>

883. The order of Mladic was followed by a Drina Corps order on 13<sup>th</sup> July.<sup>1438</sup> Unlike Krivaja 95, this order made no reference to Operational Directive 7. In terms, Stupcanica '95 was a lawful combat order, respecting the situation of civilians. As the Prosecution asserted in its Opening Statement, the combat action towards Zepa was legal and militarily justifiable.<sup>1439</sup> Pandurevic's understanding of the purpose of the military operation was to neutralise the Zepa Brigade by disarming it.<sup>1440</sup> Disarming the enclave and reducing its size was a military action that attempted to overturn a situation inconsistent with the creation of the safe areas and the terms agreed.<sup>1441</sup>

### 13.2. Involvement of the Zvornik Brigade units on 14 July 1995

884. Pandurevic first saw the order for combat on the morning of 14<sup>th</sup> July at the forward command post at Krivace when Krstic gave him his task.<sup>1442</sup> No mention was made during the handing out of the task of any ultimatum given to the population of Zepa.<sup>1443</sup>

885. After receiving his orders, Pandurevic led his unit from Rijeka village to Podzeplje. His units were deployed in a combat line and, from Podzeplje, they launched an attack along the Podzeplje-Brloznik village and Brloska mountain axis. In the main, his positions were one to two kilometres from the positions of the Zepa Brigade. They were ten kilometers from the village of Zepa itself.<sup>1444</sup>

886. There was sporadic fighting on 14<sup>th</sup> July, mainly due to machine-gun fire from the Zepa Brigade (which was returned) as the units under Pandurevic closed their positions with the enemy.<sup>1445</sup> The positions taken up by Pandurevic's units were the same as those which had been held by the 65<sup>th</sup> Motorised Regiment of the VRS. It is worthy of note that

<sup>1436</sup> **P00181** - VRS Main Staff Order No.03/4-1807, Krivaja 95 Order No.04/156-32, 10 Jul.1995 (ERN: 0425-7963-0425-7965), point 4.

<sup>1437</sup> T.11842, 21 May 2007, Mirko TRIVIC; T.29608-T.29609, 12 December 2008, Defence witness Milenko Jevdjevic; T.30885, 30 January 2009, Vinko PANDUREVIC.

<sup>1438</sup> **P00114**, 13 July 1995, Drina Corps Command Order No. 02/04-158-1, Zepa Op Order 1, signed by Radislav KRSTIC, BCS ERN 0091-7870-0091-7873, ENG ERN 0092-0249-0092-0253.

<sup>1439</sup> T.398, 21 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey

<sup>1440</sup> T.30916, 30 January 2009, Vinko Pandurevic.

<sup>1441</sup> **P0003**, 8 May 1993, Agreement on a Ceasefire in the Territory of the Bosnia and Hercegovina, BCS ERN 0026-3474-0026-3477-BCST, ENG ERN 0026-3474-0026-3477, Article 3 prescribes demilitarization of both enclaves.

In its Opening Statement, the Prosecution asserted: "*Zepa and the Srebrenica enclaves were militarily supporting each other. Items were being flown in in secret helicopter missions from the BiH army and creating havoc within the ranks of the villages outside the enclaves and causing the VRS to tie down hundreds of troops around those enclaves away from the Sarajevo front, which was a crucial front. So this part of it is military and is legitimate.*" (T.398, 21 August 2006, Opening Statement of Chief Prosecutor Peter McCloskey).

<sup>1442</sup> T.30914, 30 January 2009, Vinko Pandurevic.

<sup>1443</sup> T.30915, 30 January 2009, Vinko Pandurevic; Paragraph 9c) of **P00114** makes it clear that the combat operation was not directed against UNPROFOR and the civilian population.

<sup>1444</sup> T.30917, 30 January 2009, Vinko Pandurevic

<sup>1445</sup> T.29613-T.29614, 12 December 2008, Defence witness Milenko Jevdjevic; T.30918, 30 January 2009, Vinko Pandurevic.

the Prosecution allege that attacks towards Zepa predated any combat order or the arrival of Pandurevic's units.<sup>1446</sup> In that context, the contribution of Pandurevic's troops to any sense of insecurity on the part of the inhabitants of Zepa must be regarded as insubstantial. The allegations made in the Prosecution's Pre-Trial Brief are unsubstantiated and lack evidential support.<sup>1447</sup>

### **13.3. Involvement of the Zvornik Brigade units from 15 to 31 July 1995**

887. Pandurevic was summoned to see Krstic at the forward command post at about 8.00 hours on the 15<sup>th</sup> of July. After a short discussion, it was agreed that Pandurevic should withdraw his units from the line and return to Zvornik. He left the Zepa theatre at around 10 o'clock that morning. His units followed shortly.<sup>1448</sup> Thereafter, no unit of the Zvornik brigade (which would, in any event, have been under the command of the operational commander, Krstic) was present in the area until 31<sup>st</sup> July.<sup>1449</sup>

888. On any version of events, the evacuation of Zepa occurred between the 24<sup>th</sup> and the 27<sup>th</sup> of July. Although there is evidence that Pandurevic was in contact with the Drina Corps IKM during that period and knew of the evacuation, that must be true of many people.

### **13.4. Presence of Pandurevic at Boksanica on or about 26 July 1995**

889. The presence of Pandurevic at Boksanica on or about 26<sup>th</sup> July 1995 is no evidence of his participation in the evacuation. He is, in the context of those present, a very junior officer. He plays no active role. His presence cannot amount to encouragement, and in fact a detailed examination of the footage reveals that his Nissan vehicle disappears sometime between General Mladic's salutations to the 8<sup>th</sup> and 9<sup>th</sup> of the 23 coaches. He is not present as the commander of any unit, nor capable of giving any order. He is not able to effect any function beyond standing at a roadside or sitting at a table. His presence is both ephemeral and ineffective. As stated elsewhere, a detailed study of the dialogue reveals the poor state of Pandurevic's knowledge as to the personnel and function of those present.

### **13.5. Prosecution allegations regarding Operation Stupcanica 95**

890. This section of the brief is primarily intended to deal with submissions about facts and events. Submissions as to the law, elements of offences and the indictment will be made elsewhere. However, before passing on, certain observations need to be made. This is the

<sup>1446</sup> Prosecutor v. Popovic et al., Indictment, 4 August 2006, para. 65.

<sup>1447</sup> Prosecution Pre-Trial Brief, 28 April 2006, para. 175. The Prosecution allege that Vinko Pandurevic and his units "entered the pocket from the north-west, captured land and burned villages."

<sup>1448</sup> T.30942-T.30943, T.30947-T.30948, T.30954, 2 February 2009, Vinko PANDUREVIC; T.12596-T.12598, 14 June 2007, Miodrag DRAGUTINOVIC; T.29620-T.29621, 12 December 2008, Defence witness Milenko Jevdjevic

<sup>1449</sup> See **7D00686** and **P00150**; Also, see T.31170, 10 February 2009, Vinko PANDUREVIC; T.12705, 15 June 2007, Miodrag DRAGUTINOVIC; T.11863, 21 May 2007, Mirko TRIVIC.

first trial before this Tribunal in which any allegation as to the forcible movement of peoples from Zepa in July of 1995 has been made. The events at Zepa were not considered by Richard Butler to be any part of his brief prior to June 2006.<sup>1450</sup> Nor was he invited to consider events in his evidence before this Trial Chamber. Whilst the form of any charge is entirely the Prosecution's business (subject to judicial review), one is entitled to ask what supervening events in 2005 made it appropriate to aver that a crime had been committed in Zepa, when it was not deemed appropriate to make such an averment in the Krstic or the Blagojevic trial. The evidence of all the principal witnesses was available then, as now and the documentary evidence has been in the possession of the Prosecution for many years.

891. In the submission of the Defence, the Tribunal would be left with an anomalous historical record, were the operational commander under Stupcanica 95 to escape conviction, whilst his subordinates (or at least some of them) were to be punished on the same evidence. Others may develop these submissions further. Pandurevic reserves the right to adopt them.

## 14. OPERATION STORM IN KRAJINA

### 14.1. Pandurevic's departure to Krajina

892. Before the end of July 1995 the offensive actions by Croatian forces in Krajina had become critical for Republika Srpska.<sup>1451</sup> The evidence discloses that Pandurevic knew he would be going to Krajina as early as 26<sup>th</sup> July. His marching order of 28<sup>th</sup><sup>1452</sup> July was written 'pursuant to the order of the Drina Corps of 26 July 1995'.<sup>1453</sup> It would inevitably have been part of his discussion with Krstic in Zepa.<sup>1454</sup> According to 6DW-02, such was the level of urgency during Pandurevic's brief visit to Boksanica that Mladic was anxious that he and Jolovic should hasten their preparations for the Krajina (as opposed to 'hanging around with' him in Zepa).<sup>1455</sup>

893. Already on 28 July, 220 soldiers from Zvornik brigade were dispatched.<sup>1456</sup> This was ten days before Pandurevic departed.

894. The 2<sup>nd</sup> Drinski Brigade left for Krajina at 1345hrs on 7<sup>th</sup> August<sup>1457</sup>. The unit needed two days to get to the command post of the Main Staff and the 2<sup>nd</sup> Krajina Corps close to Petrovac.<sup>1458</sup>

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<sup>1450</sup> Section Four of the "VRS Main Staff Command Responsibility Report" deals with the Operation Stupcanica 95. The date of the report is 9 June 2006.

<sup>1451</sup> T.31185, 10 February 2009, Vinko PANDUREVIC; P124, DC order, 29 July 1995

<sup>1452</sup> 7D00729, ZB order for march to go to the z/o of the 2<sup>nd</sup> Krajina Corps, 28 July 1995; T.31179, 10 February 2009, Vinko PANDUREVIC; T.12722, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>1453</sup> 7D00729, ZB order for march to go to the z/o of the 2<sup>nd</sup> Krajina Corps, 28 July 1995; T.31179, 10 February 2009, Vinko PANDUREVIC

<sup>1454</sup> T.31179, 10 February 2009, Vinko PANDUREVIC

<sup>1455</sup> T.33855, 2 July 2009, 6DW-02

<sup>1456</sup> P00351, ZB Irregular combat report, 28 July 1995: 'We have dispatched 220 soldiers... the convoy left the barracks at 18:45.' See also P00124, DC order on 29 July 1995, showing that part of Zvornik brigade already left.

895. The fighting in Krajina was extremely intense with the VRS being outgunned and suffering many losses.<sup>1459</sup> The loss of the Krajina was, moreover, a bitter blow for Serb morale. Pandurevic first saw the movement on his way to the front. These were for him, 'perhaps the most difficult days of the war'.<sup>1460</sup>
896. His subsequent report of 23<sup>rd</sup> October sets out the difficulties of the campaign and amounts effectively to a daily record of his and his unit's movements throughout the period 7<sup>th</sup> August to 16<sup>th</sup> September.<sup>1461</sup> His return was entirely dictated by the unfolding of events in Krajina. He might have been away for two weeks or two months. It was beyond his control.

#### 14.2. Communications during stay in Krajina

897. While in Krajina, Pandurevic's superior was Colonel Kukobat Dusan, Chief of Staff and commander of 1<sup>st</sup> operation group of 2 KK, from the composition of the 2 Krajina Corps.<sup>1462</sup>
898. While fighting in Krajina, Pandurevic contacted Zvornik Brigade command only in order to inform them of the well being of the men and to report on losses.<sup>1463</sup> Pandurevic did not speak to Krstic during that time. Although he acknowledged some encrypted communications concerning deserters.<sup>1464</sup>
899. Pandurevic never received any information concerning a plan to exhume and rebury dead bodies in Zvornik.<sup>1465</sup> He did not have any knowledge of the whereabouts of the mass graves.<sup>1466</sup> Moreover, Pandurevic had shown in his reports of 15<sup>th</sup>- 18<sup>th</sup> July 1995 that he would not respect instructions about secrecy in communications in such matters.<sup>1467</sup> Logic dictated he would not be informed of the plan.

#### 14.3. Command of Zvornik Brigade from 3 August to 16 September

900. According to the principle of unity of command, at the moment when Pandurevic was appointed a commander of the 2<sup>nd</sup> Drina Brigade of the Drina Corps, somebody automatically had to take over the command of the Zvornik Brigade. By establishment

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<sup>1457</sup> P00379, ZB duty operations officer notebook, ERN 0293-6702, 7 August 1995; T.12723-T.12724, 15 June 2007, Miodrag DRAGUTINOVIC; P00377, Zvornik Brigade Duty Officer Log Book, for period 29-05-95 through 27-07-95, ERN 0293-6702, 7 August 1995; T.31196, 10 February 2009, Vinko PANDUREVIC

<sup>1458</sup> T.31197, 10 February 2009, Vinko PANDUREVIC

<sup>1459</sup> T.31198-T.31200, 10 February 2009, Vinko PANDUREVIC; 7D00439, Report written by Pandurevic regarding Drinski brigade, 23 October 1995

<sup>1460</sup> T.31204, 10 February 2009, Vinko PANDUREVIC

<sup>1461</sup> 7D439, Report written by Pandurevic regarding Drinski brigade, 23 October 1995; T.31202, 10 February 2009, Vinko PANDUREVIC

<sup>1462</sup> T.31202, 10 February 2009, Vinko PANDUREVIC

<sup>1463</sup> T.31202, 10 February 2009, Vinko PANDUREVIC; P00379, ZB duty operations officer notebook, ERN 439, BCS and ENG page 31: '*commander Pandurevic got in touch, they are all fine*;

<sup>1464</sup> T.31204, 10 February 2009, Vinko PANDUREVIC

<sup>1465</sup> See Part 4 section 17. Pandurevic's knowledge of the reburial operation

<sup>1466</sup> See Part 4 section 17. Pandurevic's knowledge of the reburial operation

<sup>1467</sup> See Part 4 Section 11 on VBI of 15, 16 and 18 July

that was the Chief of Staff as the deputy commander, Obrenovic.<sup>1468</sup> The Drina Corps order of 3<sup>rd</sup> August 1995 appointing Pandurevic as commander of the Drinski Brigade determined his and Obrenovic's respective roles and responsibilities.<sup>1469</sup>

901. From 3<sup>rd</sup> August, Pandurevic was in command of the Drinski Brigade as the order was *effective immediately*.<sup>1470</sup> During that time, the evidence shows him gathering his troops, preparing logistics and issuing *orders* to that effect.<sup>1471</sup>
902. The reports of the Zvornik Brigade at that time display their usual inconsistencies. On 3<sup>rd</sup> August the report was not signed by anybody, but bears the block signature of Pandurevic.<sup>1472</sup> The report on 4<sup>th</sup> August still bears the block signature of Pandurevic but is signed by Obrenovic as 'for the commander Pandurevic', presumably standing in for the commander Pandurevic.<sup>1473</sup> Pandurevic made no contribution to this report.<sup>1474</sup> On 5<sup>th</sup> August the report bears Pandurevic's block signature,<sup>1475</sup> whereas on 6<sup>th</sup> August the report is signed by Obrenovic as "standing in for the Commander".<sup>1476</sup>
903. A few days later on 8<sup>th</sup> August, Krstic issued an order appointing Obrenovic as Pandurevic's '*stand in*' and appointing Milos Maksimovic as chief of staff.<sup>1477</sup> The precise effect of this was more fiscal than legal.<sup>1478</sup> It is beyond dispute that during this time Obrenovic was standing in for the commander.<sup>1479</sup>

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<sup>1468</sup> 7D00462, Order appointing Obrenovic as chief of staff and deputy commander of ZB, 11 April 1993; T.31191, 10 February 2009, Vinko PANDUREVIC

<sup>1469</sup> T.31190, 10 February 2009, Vinko PANDUREVIC; 7D00615, DC Order to go to Krajina, 3 August 1995; T.31187, 10 February 2009, Vinko PANDUREVIC

<sup>1470</sup> T.32302, 2 March 2009, Vinko PANDUREVIC; T.31190, 10 February 2009, Vinko PANDUREVIC; T.31187-T.31188, 10 February 2009, Vinko PANDUREVIC: "*Immediately after having received this order, I was duty-bound to proceed accordingly. I was in constant communication with all the other brigade commanders from the Drina Corps with a view to efficiently gather all the men, material, technical equipment, and to establish first the command and finally the entire brigade. In that sense, I started issuing my first orders to that brigade.*"

<sup>1471</sup> 7D00611, ZB order, Preparation of units to form 2<sup>nd</sup> Drinski brigade, 3 August 1995: "*...At 1400 hours on 6 August for a meeting with the Commander of the Drina lpbr, Lieutenant Colonel Vinko PANDUREVIC. Inform the aforementioned officers that, in keeping with certain duties, they should by that time carry out the necessary preparations at their services and posts.*" See T.31189, 10 February 2009, Vinko PANDUREVIC; T.12722, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>1472</sup> P00359, ZB regular combat report, 3 August 1995

<sup>1473</sup> P00360, ZB regular combat report, 4 August 1995, signed by Obrenovic as standing in.

<sup>1474</sup> T.31194-T.31195, 10 February 2009, Vinko PANDUREVIC

<sup>1475</sup> P00361, ZB regular combat report, 5 August 1995

<sup>1476</sup> P02839, ZB regular combat report, 6 August 1995

<sup>1477</sup> 5D00452, DC Command order no 05/2-384, 8 August 1995, Order appointing Obrenovic as stand in and Maksimovic as chief of staff

<sup>1478</sup> T.31191, 10 February 2009, Vinko PANDUREVIC

<sup>1479</sup> [REDACTED]

## 14.4. Return to Zvornik from Krajina

### 14.4.1. On 15<sup>th</sup> September

904. According to all the available records, Pandurevic returned with the Drinski Brigade to Zvornik on 16<sup>th</sup> September.<sup>1480</sup> On 15<sup>th</sup> September, he was still returning from the Krajina. That day, Obrenovic went to Vlasenica in the morning<sup>1481</sup> and chaired a meeting of all battalion and division commanders at 1100hrs, most likely informing them about the situation in the corps after coming from Vlasenica that day.<sup>1482</sup>

905. On an earlier occasion Obrenovic (doubtless ignorant of Pandurevic's report, and forgetting about the entry in the duty officer's notebook) had claimed that Pandurevic had returned a day or two earlier.<sup>1483</sup> This can now be seen for what it is, namely an ill-thought out attempt to tarnish Pandurevic with knowledge of the telegram relating to fuel on 14<sup>th</sup> September.<sup>1484</sup> As is plain from the evidence, Pandurevic and Obrenovic cannot have met in Zvornik on either 14<sup>th</sup> or 15<sup>th</sup> September [REDACTED].<sup>1485</sup>

### 14.4.2. On 16<sup>th</sup> September

906. When Pandurevic returned to Zvornik brigade HQ on 16<sup>th</sup> September, in accordance with his continuing duties as commander of the Drinski Brigade, he needed first to dismantle his unit. This meant checking that everybody had returned safely, thanking them for their participation, talking to the brigade commanders and ensuring that all soldiers had returned. The process took until late afternoon, after which he held a meeting with the Drinski Brigade command where they analysed events which had passed. After that, he went to Celopek to see his girlfriend.<sup>1486</sup>

907. Dragutinovic does not remember seeing Obrenovic when they got back on 16 September.<sup>1487</sup> Pandurevic says that he saw Obrenovic briefly on 16<sup>th</sup> in the evening before he left the barracks. Pandurevic told him that all the units had returned and asked

<sup>1480</sup> P00379, ZB duty operations officer notebook, ERN 0293-6724, 16 September 1995; 7D00439, Komanda 2. Dlpbr, 23.10.1995- Angazovanje2. Dlpbr u zoni 2. KK, Report written by Pandurevic regarding Drinski brigade, 23 October 1995; T.12723-T.12724, 15 June 2007, Miodrag DRAGUTINOVIC; T.31202, 10 February 2009, Vinko PANDUREVIC

<sup>1481</sup> **7D00261**. PRL, September, Mercedes, VWL Ljubisa Danojlovic, Obrenovic's driver, entry for 15 September: 7:00 – 24: Vlasenica IKM-Zvornik.

<sup>1482</sup> P00379, ZB duty operations officer notebook, September, ERN 525. BCS and ENG page 117; P00378, ZVORNIKBRIGADE DUTY OPERATIONS OFFICER DIARY, FOR PERIOD 12 FEBRUARY 1995 THROUGH 3 JANUARY 1996, ZB duty operations officer diary, ERN 723, BCS and ENG page 121: 'informing of commanders of battalions and divisions about the military politicla situation in VRS in the corps and brigade responsibility'

<sup>1483</sup> 7D00086, Dragan Obrenovic, Statement of facts, Appendix to Plea agreement, ENG page 9, BCS page 8

<sup>1484</sup> See Part 4 section 15 Reburial operation

<sup>1485</sup> [REDACTED]

<sup>1486</sup> T.31208-T.31209, 10 February 2009, Vinko PANDUREVIC

<sup>1487</sup> T.12724, 15 June 2007, Miodrag DRAGUTINOVIC

him to continue looking after them, just like he said to all the other brigade commanders.<sup>1488</sup>

908. Pandurevic specifically denies that there was any conversation with Obrenovic about the delivery of fuel.<sup>1489</sup>

#### 14.5. Command of the Zvornik Brigade on 16<sup>th</sup> September

909. On 16<sup>th</sup> September Pandurevic was not in command of the Zvornik brigade as he was still commander of the Drinski Brigade.<sup>1490</sup> Obrenovic, who was commanding the Zvornik Brigade at that time was, in line with his duties as brigade commander, visiting the 7th battalion in Memici from 0540 – 2400hrs on 16<sup>th</sup> September.<sup>1491</sup> Moreover, he signed the regular combat report on 16<sup>th</sup> and he is referred to as the ‘brigade commander’ in the same report.<sup>1492</sup>

910. The reference to ‘the commander’ in the duty operations officer notebook for 16<sup>th</sup> September is a reference to Obrenovic, since he was the commander at that time.<sup>1493</sup> The evidence shows that references to Obrenovic would be as Chief of Staff or sometimes ‘commander’.<sup>1494</sup>

#### 14.6. Pandurevic’s departure to Montenegro

##### 14.6.1. On 17th September

911. On 16<sup>th</sup> September, Pandurevic finished his tasks with the Drinski Brigade and after informing Krstic over the phone that all units had returned to their garrisons he requested a 10-day-leave of absence. Having reported to Krstic by radio, he asked whether there

<sup>1488</sup> T.31210, 10 February 2009, Vinko PANDUREVIC

<sup>1489</sup> T.31209, 10 February 2009, Vinko PANDUREVIC; See Part 4 section 17. Pandurevic’s knowledge of the reburial operation

<sup>1490</sup> T.32302, 2 March 2009, Vinko PANDUREVIC

<sup>1491</sup> 7D00772, VWL Ljubisa Danojlovic, Obrenovic’s driver, 16 September: 5:40 – 24:00 – Zvornik-Memici; See also P00378, ZB duty operation’s officer diary, ERN 6723, BCS pages 121-122: ‘*Brigade commander (referring to Obrenovic) inspected the positions of the 7.pb in the village of Memici*’; P00379, ZB duty operations officer notebook, September, ERN 528, BCS and ENG page 120: Obrenovic at 7<sup>th</sup> infantry battalion, group of officers in the 2<sup>nd</sup> infantry battalion; See also 7D670, ZB regular combat report 16 September 1995, Para 2. See also T.12724, 15 June 2007, Miodrag DRAGUTINOVIC; [REDACTED]

<sup>1492</sup> 7D00670, ZB regular combat report, 16 September 1995, para 2 (*The brigade commander inspected the positions of the 7<sup>th</sup> pb defence area in Staro Selo*) and signature; See also P00377, ZB duty operations officer notebook, ERN 6541, 6542, 6543; P00378, ZVORNIKBRIGADE DUTY OPERATIONS OFFICER DIARY, FOR PERIOD 12 FEBRUARY 1995 THROUGH 3 JANUARY 1996, ERN 6727; 7D00675, Zvornik Brigade Regular Combat Report, 21 September 1995; 7D00676, Zvornik Brigade Regular Combat Report, 22 September 1995; [REDACTED]

<sup>1493</sup> T.12723-T.12724, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>1494</sup> T.22449, 19 June 2008, Zoran JOVANOVIĆ



was a need for him to attend at Vlasenica. Krstic told him he did not need to come, and granted him 10 day leave.<sup>1495</sup>

912. After that time, Pandurevic was in Celopek, getting ready for his leave in Montenegro.<sup>1496</sup> Officially he was already on leave.<sup>1497</sup> Whilst on leave he was not legally in active service and, accordingly, Obrenovic's tenure as commander continued.

#### 14.6.2. Command of Zvornik Brigade on 17th September

913. On 17<sup>th</sup> September Obrenovic was clearly at the 2<sup>nd</sup> battalion IKM, holding a debriefing of the commanders of the divisions and battalions at Pecina, close to Malesici.<sup>1498</sup> That day he signed the regular combat report for 17<sup>th</sup> September as a person standing in for the commander.<sup>1499</sup>

#### 14.7. Command during Pandurevic's absence

914. On 18<sup>th</sup> September Obrenovic was in Vlasenica with Krstic in his continued capacity as the commander of the brigade.<sup>1500</sup> He signed the regular combat reports as standing in for the commander.<sup>1501</sup> The references in the reports on 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> September are

<sup>1495</sup> P00379, ZB duty operations officer notebook, ERN 530, BCS and ENG page 122: '*Lieut. Pandurevic to get in touch with Krstic before going to Vlasenica, and that he does not need to go to Vlasenica in the afternoon*'; T.31210, 10 February 2009, Vinko PANDUREVIC; P00379, ZB duty operations officer notebook, ERN 536 and telephone number in Budva; See also 7D00770, prl September, Nisan, D. Stevic and B.Pandurevic, 7D00771, PRL September, Reno Fofran, Stupar, Pandurevic, Milovnovic, Danojlovic, Obrenovic

<sup>1496</sup> P00379, ZB duty operations officer notebook, 17 September, ERN 530, page 122 BCS and ENG: '*Lieu. Colonel in Celopek, mayor in Malesici.*' This clearly shows Obrenovic was at Malesici with the 2<sup>nd</sup> battalion, and Pandurevic had informed command that he was in Celopek; T.31210, 10 February 2009, Vinko PANDUREVIC

<sup>1497</sup> P02925, Record of people present in the ZB in September 1995 : According to the record of people present in the Zvornik brigade command in September, Pandurevic was absent from 17<sup>th</sup> to 25<sup>th</sup> September (9 days altogether), so he is *already absent* from the Brigade on 17 September.

<sup>1498</sup> P00378, ZB duty operations officer diary, September, ERN 724, BCS page 122; 7D00261, VWL Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995, driver of Dragan Obrenovic, entry for 17<sup>th</sup> September 1995, page 4 ENG; 7D00671, ZB regular combat report 17 September 1995, Para 2: '*A team of brigade command officers is spending its second day in the defence area of the 2<sup>nd</sup> battalion, inspecting the overall situation in the unit. A briefing with battalion commanders was held at the IKM of the 2<sup>nd</sup> battalion.*'; [REDACTED]

<sup>1499</sup> 7D00671, ZB regular combat report, 17 September 1995, signed by Obrenovic 'for the commander', block signature by Pandurevic. The report for 17th September was composed by Nedeljkovic Milutin (initials MN), an old reserve captain, who was the duty officer very rarely and was very rarely mobilised. Thus, by mistake he put Pandurevic's block signature at the bottom of the report. However, it is signed by Obrenovic; T.31235, 11 February 2009, Vinko PANDUREVIC

<sup>1500</sup> P00379, ZB duty operations officer notebook, 18 September, ERN 632, BCS and ENG page 124; 7D00261, VWL, Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995, driver of Dragan Obrenovic, entry for 18 September: Zvornik – Vlasenica; [REDACTED], [REDACTED]

<sup>1501</sup> 7D00672, ZB regular combat report, 18 September

therefore references to Obrenovic.<sup>1502</sup> The same applies for the entries in the duty operations officer notebook ('commander left ekonomija' etc.)<sup>1503</sup>

## 14.8. Return to Zvornik from Montenegro

### 14.8.1. On 25<sup>th</sup> September

915. According to the Zvornik Brigade personnel roster for September, Pandurevic was absent from 17<sup>th</sup> to 25<sup>th</sup> September (9 days altogether), so he was *still absent* from the Brigade on 25 September.<sup>1504</sup>
916. On 25<sup>th</sup> September 1995 the Drina Corps by order formed a second brigade to go to the Krajina. Furtula was appointed commander.<sup>1505</sup> By a further order on 26<sup>th</sup> September, Furtula's appointment was revoked and Obrenovic was appointed commander of the unit.<sup>1506</sup>
917. This was plainly an unexpected event, and led to the premature curtailment of Pandurevic's holiday.<sup>1507</sup> After receiving a call in Budva<sup>1508</sup>, Pandurevic went back to Zvornik later that day and after arriving in the Zvornik area, he called Krstic from a friend's house.<sup>1509</sup> The call was relayed through Central to give the impression that Pandurevic was at Brigade command. Pandurevic relayed some concerns of Jolovic to Krstic, but the vagueness of the requests belie the fact that Pandurevic was not able to consult Jolovic because he was not there.<sup>1510</sup> Pandurevic did not go to the command of the Zvornik Brigade on 25<sup>th</sup> September<sup>1511</sup> and did not take over the command.<sup>1512</sup>
918. On 25<sup>th</sup> September, Obrenovic was at Corps Command in Vlasenica at 0725hrs.<sup>1513</sup> The meeting of the battalion commanders that day was necessarily conducted by him,

<sup>1502</sup> See 7D00675, ZB regular combat report, 21 September 1995; 7D00676, ZB regular combat report, 22 September 1995; 7D00677, ZB regular combat report, 23 September 1995

<sup>1503</sup> P00379, ZB duty operations officer notebook, 23 September 1995, ERN 542, BCS and ENG page 134: 'commander left to ekonomija (farm) and then on Vjenacac... on Monday at 7:00 commander at the corps commander'. This is relating to ekonomija in Karakaj, not Branjevo. This also shows that on Monday 25<sup>th</sup> Obrenovic was supposed to be in Vlasenica.

<sup>1504</sup> P02925, Zvornik Brigade Command Roster for September 1995 ; T.31233, 10 February 2009, Vinko PANDUREVIC

<sup>1505</sup> 7D00701, Drina Corps Command order : Forming and sending brigade to the zone of 1<sup>st</sup> Krajina Corps, 25 September 1995

<sup>1506</sup> P00158, Drina Corps Command Order 638/94-193-1, 26-sep-1995, DC order appointing Obrenovic instead of Furtula; T.12733, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>1507</sup> T.31222, 10 February 2009, Vinko PANDUREVIC

<sup>1508</sup> P00379, ZB duty operations officer notebook, September, ERN 536: 086-51-486, BCS and ENG page 128: 'room 100, 51998 – commander lieut. Pandurevic'. That is the number in Budva, i.e. Becici, where Pandurevic was staying for 9 days; T.31222, 10 February 2009, Vinko PANDUREVIC

<sup>1509</sup> P00379, ZB duty operations officer notebook, September, ERN 545, BCS and ENG page 137: tel number '584726 – commander'

<sup>1510</sup> P02929, Intercept dated 25 September 1995, 15:40 hours, between Central – Vinko - Krstic

<sup>1511</sup> T.32351, 2 March 2009, Vinko PANDUREVIC

<sup>1512</sup> T.31229, 10 February 2009, Vinko PANDUREVIC

<sup>1513</sup> 7D00261, VWL Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995, driver of Dragan Obrenovic, entry for 25 September: Zvornik – Vlasenica – Zvornik; [REDACTED]

since he had returned from the Corps.<sup>1514</sup> Moreover, Pandurevic held similar meetings on 26<sup>th</sup> September<sup>1515</sup> and on 27<sup>th</sup>.<sup>1516</sup> He would scarcely have done that if he had chaired an informed discussion on 25<sup>th</sup>.<sup>1517</sup> Also, on 25<sup>th</sup> September, Obrenovic had not yet been appointed commander of the unit to go to Krajina.<sup>1518</sup>

919. The daily combat report for 25<sup>th</sup> September was drafted by Milutin Nedeljkovic (it bears the initials 'MN'). He was a reservist with little understanding of the relative roles of the Commander and Chief of Staff.<sup>1519</sup> He habitually block-signed reports with Pandurevic's name and had made the same mistake earlier that month.<sup>1520</sup>
920. A further document bearing the date 25<sup>th</sup> September 1995 bears Pandurevic's manuscript signature. It is the Order for the formation of an Infantry Company.<sup>1521</sup> This is not a contemporaneous document such as a report but a creation of the operations department.<sup>1522</sup> There are of course now two different copies of the document in evidence. The first, shown to [REDACTED] Pandurevic in chief, which appears to show Pandurevic's signature on top of the stamp (that at least was his view;<sup>1523</sup> one with which counsel for the prosecution concurred<sup>1524</sup>), and a second photocopy appearing to show the opposite.<sup>1525</sup> Nevertheless, the order in which the signature and stamp were applied to the document is not determinative of its date, as it is perfectly possible both actions could have occurred on the 26<sup>th</sup>. Pandurevic's evidence is that that was the first date he returned to work at the Zvornik Brigade.<sup>1526</sup>

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<sup>1514</sup> 7D00679, ZB regular combat report, 25 September 1995; P00379, ZB duty operations officer notebook, 25 or 26 September, ERN 547, BCS and ENG page 139: "meeting of the commanders of the battalions at 12:00" and few lines below "meeting at 10:00 as planned Obren"; T.31234, 10 February 2009, Vinko PANDUREVIC; T.31235, 11 February 2009, Vinko PANDUREVIC

<sup>1515</sup> 7D00680, ZB regular combat report, 26 September 1995

<sup>1516</sup> P00379, ZB duty operations officer notebook, 27 September, ERN 548, BCS and ENG page 140: "10:00 debriefing of the battalion and division commanders"; 7D00681, ZB regular combat report, 27 September 1995; P00378, ZB duty operations officer diary, September, ERN 729, BCS page 127: debriefing held.

<sup>1517</sup> T.31238, 11 February 2009, Vinko PANDUREVIC

<sup>1518</sup> [REDACTED]

<sup>1519</sup> T.31235, 11 February 2009, Vinko PANDUREVIC

<sup>1520</sup> 7D00671, Zvornik Brigade Regular Combat Report, 17 September 1995

<sup>1521</sup> P02927, Zvornik Brigade Document No. 01-440, signed by Vinko Pandurevic dated 25 September 1995 : Order on formation of infantry company in the composition n of the Drinski Brigade

<sup>1522</sup> Document was prepared my MM, Milan Maric, who was a clerk in the operative organ. See T.31237, 11 February 2009, Vinko PANDUREVIC

<sup>1523</sup> T 31237:13 to T31238, 11<sup>th</sup> Feb 2009, Vinko PANDUREVIC

<sup>1524</sup> T 31237:13 to T31238, 11<sup>th</sup> Feb 2009, Vinko PANDUREVIC : " MR. McCLOSKEY: It's okay, I've seen it. JUDGE KWON: And do you agree with it? MR. McCLOSKEY: I agree with the part about the stamp. When it was signed, I might have a disagreement with"

<sup>1525</sup> P02927A, Zvornik Brigade Document No.01-440, signed by Vinko PANDUREVIC, dated 25 September 1995

<sup>1526</sup> P02925, Zvornik Brigade Roster for September 1995

## 14.8.2. On 26 September

921. At about 1230hrs on 26<sup>th</sup> September, Obrenovic departed for the Krajina.<sup>1527</sup> Pandurevic had arrived at Brigade Command two or three hours earlier and had resumed command of the brigade.<sup>1528</sup> Prior to that, Obrenovic had been in command of the Brigade for a continuous period of 54 days.<sup>1529</sup>
922. On 27<sup>th</sup> September, Pandurevic left the command post. According to his driver's work log, he did not go very far, and remained local to Zvornik.<sup>1530</sup>

## 15. REBURIAL OPERATION

*“Were you aware of the acquiring of large numbers -- it's hard to say, 15, 20 very large trucks, big dump trucks, the kind that they haul bauxite around in from mid-September to roughly mid-October for a large transportation of materiel, men and materiel in the area of the Zvornik and Bratunac Brigades? Huge operation, took several days, drove through the night doing it, lots and lots of fuel had to be used. You must have know what I'm talking about. It was a Main Staff operation”*<sup>1531</sup>

923. From September through October 1995 the Bratunac Brigade, working with the civilian authorities, exhumed the mass graves at Glogova and other mass graves of Muslim victims of the murder operation, and reburied them in individual mass graves throughout the greater Srebrenica area. A similar process was undertaken in Zvornik, but over a much shorter period. There is evidence that it was concluded in five to six days.<sup>1532</sup> Almost certainly, the process began no later than 22<sup>nd</sup> September in Zvornik.<sup>1533</sup> Wherever it was carried out, operations were conducted at night.<sup>1534</sup>

<sup>1527</sup> P00378, ZB duty operations officer notebook, 26 September, ERN 729 BCS page 127: ‘at 12:30, 430 soldiers left, composition of Drinski Brigade, left to the Zone of 1st Krajina Corps’. See also 7D00261, VWL Ljubisa Danojlovic from 20.09 TO 30-09-95, 20-sep-1995,0, entry for 26th September: Zvornik-Mrkonjic Grad – Radici. That clearly shows that DO left to Krajina on 26th September. See also T.31238, 11 February 2009, Vinko PANDUREVIC

<sup>1528</sup> T.31222, 10 February 2009, Vinko PANDUREVIC; T.31238, 11 February 2009, Vinko PANDUREVIC

<sup>1529</sup> T.12733, 15 June 2007, Miodrag DRAGUTINOVIC

<sup>1530</sup> 7D00770, VWL for Nissan; 7D771, VWL for Renault Safran

<sup>1531</sup> T.24117, 28 July 2008, Zeljko KERKEZ, Peter McCloskey

<sup>1532</sup> T.31244, 11 February 2009, Vinko PANDUREVIC (referring to information received from Miodrag Dragutinovic).

<sup>1533</sup> P02391, Intercept dated 22 September 1995, 18:44 hrs.

<sup>1534</sup> T.14485, 29 August 2007, Damjan Lazarevic

### 15.1. Decision to reburial

924. Undoubtedly, the catalyst for the operation was the revelation on 10<sup>th</sup> August 1995 of the aerial images of alleged atrocities in the wider Srebrenica area<sup>1535</sup>. The evidence suggests, however, that the plan was conceived a few weeks later. Momir Nikolic was contacted by Colonel Popovic, the Drina Corps Chief of Security, and told to conduct a reburial of the Muslim bodies at Glogova. He assisted in the effort to exhume and re-bury Muslim bodies from mid-September to October 1995.
925. Fuel was dispatched to Zvornik on 14<sup>th</sup> September for “engineering works”.<sup>1536</sup> It had apparently been expended whilst “work” was ongoing by 22<sup>nd</sup> September.<sup>1537</sup>

### 15.2. Command of the operation

926. Without doubt the operation to reburial the victims was conceived as a plan in the Main Staff. Indeed, that is the Prosecution’s case.<sup>1538</sup> Momir Nikolic said that the initiative came from the civilian authorities,<sup>1539</sup> but that the order was from the Main Staff.<sup>1540</sup>
927. It is significant to note that he received his instructions from the Drina Corps Chief of Security, rather than from his brigade commander, indicating that the chain of command was the professional security line, notwithstanding the fact that it is difficult to conceive how reburial of bodies could be classified as counter-intelligence work.<sup>1541</sup>
928. In Bratunac, men reported to Momir Nikolic to carry out the work,<sup>1542</sup> and it was his specific duty to monitor and account for the usage of fuel.<sup>1543</sup> Significantly, the same role was given to Milorad Trbic, the acting Chief of Security in the Zvornik Brigade.<sup>1544</sup>

### 15.3. Units involved

929. In Bratunac, the operation was conducted in coordination with the Bratunac Brigade Military Police, civilian police, and elements of the 5<sup>th</sup> Engineering Battalion of the Drina Corp.<sup>1545</sup>
930. The political structure of Bratunac was also involved, namely Miroslav Deronjic, president of the SDS, Srbislav Davidovic, chairman of the executive council, Ljubisa Simic, the president of the municipality assembly of Bratunac and also Miodrag

<sup>1535</sup> See Part 4 Section 17 Pandurevic’s knowledge of the reburial operation

<sup>1536</sup> P00042; VRS Main Staff Order Signed by Ljubijevic dated 14 September 1995

<sup>1537</sup> P02391 Intercept dated 22 September 1995, 18:44 hrs

<sup>1538</sup> T.24117, 28 July 2008, Zeljko KERKEZ

<sup>1539</sup> T.33350, 28 April 2009, Momir NIKOLIC

<sup>1540</sup> 4D00016 : Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 7-8.

<sup>1541</sup> T.32962, 21 April 2009, Momir NIKOLIC.

<sup>1542</sup> [REDACTED] (PW-170)

<sup>1543</sup> T.32962, 21 April 2009, Momir NIKOLIC.

<sup>1544</sup> P00042, VRS Main Staff Order Signed by Ljubijevic dated 14 September 1995 Richard Butler, Srebrenica Military Narrative(Revised), 1 November 2002, page 117

<sup>1545</sup> 4D00016: Statement of Facts and Acceptance of Responsibility, by Momir Nikolic, 6 May 2003, page 7

Josipovic, chief of the public security station in Bratunac. In addition, companies with construction machines were utilised.<sup>1546</sup>

931. There is evidence, albeit hearsay, of the involvement of the 5<sup>th</sup> Engineering Battalion in the reburials in Zvornik as well.<sup>1547</sup> The “bauxite” dumper trucks bore the name ‘Štajer’, owned by ‘Autotransport’, indicating coordination at the highest level.<sup>1548</sup> The involvement in some capacity of two or three members of the Zvornik Brigade engineering company has to be conceded,<sup>1549</sup> nonetheless, the men who operated the machines during the re-excavation of graves were not members of the Zvornik Infantry Brigade. They were employees of commercial enterprises.<sup>1550</sup>

## 15.4. Role of the security organs in the operation

### 15.4.1. Vujadin Popovic

932. Momir Nikolic had contact with Vujadin Popovic in September. Popovic said then that there was an order from the Main Staff for the relocation of the graves in Glogova. He also said that pursuant to this order, the command of the Drina Corps had received an order to initiate the whole action and that the task of the Drina Corps Command or the security organ of the Drina Corps was to ensure, for that operation, the necessary quantities of fuel. Momir Nikolic had the task of monitoring fuel consumption.<sup>1551</sup>

933. On 22<sup>nd</sup> of September, Popovic made inquiries of Trbic to ascertain how his work was going, and how the supplies of fuel were holding up.<sup>1552</sup>

934. [REDACTED].<sup>1553</sup>

### 15.4.2. Momir Nikolic

935. Momir Nikolic’s role in the reburial operation in Bratunac has been adequately set out already. After receiving the task, he did everything he had been asked. The operation involved a lot of people and assets.<sup>1554</sup>

<sup>1546</sup> T.33059-T.33060, 23 April 2009, Momir NIKOLIC

<sup>1547</sup> T.32305, 2 March 2009, Vinko PANDUREVIC

<sup>1548</sup> T.14527, 30 August 2007, Damjan LAZAREVIC; T.32278, 27 February 2009, Vinko PANDUREVIC.

<sup>1549</sup> Damjan Lazarevic admits that he took part in the operation. Additionally, he asserts that Milorad Trbic and Slavko Bogicevic were also present. T14450-14451, T.14469, T.14479-T.14480, T.14488-T.14490, 29 August 2007 and T.14507-T.14508, 14514, 30 August 2007, Damjan LAZAREVIC

<sup>1550</sup> T.14508, T.14513-14514, 30 August 2007, Damjan LAZAREVIC.

<sup>1551</sup> T.32961-T.32962, 21 April 2009, Momir NIKOLIC

<sup>1552</sup> P2391, Intercept dated 22 September 1995, 18:44 hrs.

<sup>1553</sup> [REDACTED]

<sup>1554</sup> T.32962, 21 April 2009, Momir NIKOLIC

### 15.4.3. Milorad Trbic

936. Trbic took control of the fuel in Zvornik<sup>1555</sup> and coordinated the operation. One of the excavator drivers never spoke to anybody else but him.<sup>1556</sup>

## 16. USE OF MEN AND MACHINERY FOR THE REBURIAL OPERATION

*Q : " The Zvornik Brigade was, in fact, involved in that process, wasn't it?*

*A : "Not the Zvornik Brigade, Mr. McCloskey. You cannot say that two men equal the Zvornik Brigade. The Zvornik Brigade was not involved at the time."<sup>1557</sup>*

### 16.1. No mobilization by the Zvornik Brigade

937. Although there appears to have been involvement on the part of a very limited number of personnel affiliated to the Zvornik Brigade, there was no official mobilisation by the Zvornik Brigade for the reburial of bodies.

938. It is evident that whatever did happen, occurred and was sanctioned at a much higher level than that of the Brigade.

939. Damjan Lazarevic<sup>1558</sup> was an individual who knew something of the operation. He knew that those whose names had been put forward for the task were from the engineering unit or from other ZB units.<sup>1559</sup>

940. However, the best evidence of knowledge (or lack of it) comes from Vinko Pandurevic who stated that persons other than Brigade personnel were directing and coordinating this task. Dragan Jokic told him that no one from the engineering company of the ZB was involved in the task. It was impossible for these three men to coordinate this with private companies. This must have been done by someone at a much higher level.<sup>1560</sup>

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<sup>1555</sup> [REDACTED]

<sup>1556</sup> T.14488-T.14490, 29 August 2007, Damjan LAZAREVIC

<sup>1557</sup> T.32304, 2 March 2009, Vinko PANDUREVIC

<sup>1558</sup> Part of the Zvornik Brigade engineering company

<sup>1559</sup> T.14484, 29 August 2007, Damjan Lazarevic

<sup>1560</sup> T.32313, T.32315, 2 March 2009, Vinko PANDUREVIC, T.14489-14490, 29<sup>th</sup> August 2007, Damjan LAZAREVIC (he suggests that the security branch of the command was responsible for the reburial, naming Major Trbic whose superior officer was Drago NIKOLIC. It was Major Trbic who told them what to do)

## 16.2. Use of members of the Zvornik Brigade

941. The evidence suggests that 2 members of the Zvornik Brigade were involved in digging out the graves. However, no Zvornik Brigade personnel were involved in the subsequent transportation and reburial of the corpses.<sup>1561</sup>

942. There was no involvement of members of the Zvornik Brigade over and above those persons mentioned above.<sup>1562</sup>

## 16.3. Use of machinery

943. Trucks from various companies were used to transport the bodies. The Brigade vehicles were too old, and could not be used to complete the work.<sup>1563</sup>

## 16.4. Fuel

944. The fuel for the exhumation operation was authorized by and requested at Main Staff level.<sup>1564</sup> Delivery of fuel of this type could have been made to the Brigade command, otherwise it would be delivered to a local gas station<sup>1565</sup> Notably, Obrenovic, who was in command did not know about the delivery of fuel at the time, nor how it was being disbursed.<sup>1566</sup>

## 17. PANDUREVIC'S KNOWLEDGE OF THE REBURIAL OPERATION

*“somebody was doing a job that had nothing to do with me, and in view of what had happened in July, I assumed that this operation had to be much more secretive and that it was better for me not to get mixed up in it in any way.”*

*(T.31243-31244, 11 February 2009, Vinko PANDUREVIC)*

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<sup>1561</sup> T.14485-T.14486, 29 August 2007, Damjan Lazarevic (he did not know who was involved in the reburial operation – he was not able to know nor was he told of the identity of those persons. In addition, he had no idea of the location to which the corpses were taken)

<sup>1562</sup> T.32305, 2<sup>nd</sup> March 2009, Vinko PANDUREVIC (and this was the use of two men who were involved without the knowledge and order of Brigade Command )

<sup>1563</sup> T.14485, 29 August 2007, Damjan LAZAREVIC

<sup>1564</sup> T.14487, 29 August 2007, Damjan LAZAREVIC, T.24101, 25 July 2008, Zeljko KERKEZ (The responsibility for fuel supplies, was under the technical service, generally at a unit level, the Main Staff, the Corps, brigades, etc)

<sup>1565</sup> T.32109, 10 February 2009, Vinko PANDUREVIC (the gas station which was regularly used by the Brigade, in Karakaj, 500 metres from the Brigade command)

<sup>1566</sup> [REDACTED]



## 17.1. Introduction

945. The exhumation and reburial of bodies was intended to be a secretive operation on any version of events. The prosecution avers, and the defence for Pandurevic certainly agree, that the operation was a response to the fact that the international community knew of the murder operation and the existence of certain mass graves. That had been graphically revealed to the Security Council and to the world by Madeleine Albright on 10<sup>th</sup> August 1995,<sup>1567</sup> when she dramatically displayed a selection of aerial images. It is reasonable to suppose that there would have been no reburial operation but for that event, and that for sure, no such scheme was in anybody's contemplation before that date.
946. Certainly, during the early part of August, the Bosnian Serbs had other concerns, as their forces and the Serbian population was being driven out of the Krajina. That had been Pandurevic's main concern too from July 26<sup>th</sup> when he first learnt that he would have to take a tactical unit to join the fight there. His movements during that period are well documented by his report on the Drinski Brigade's activities of 23<sup>rd</sup> October.<sup>1568</sup>
947. The length of time that Pandurevic spent fighting in the Krajina was dependent upon a number of factors which were entirely beyond his control, in particular, how the combat action developed. In fact he returned to Zvornik on 16<sup>th</sup> September, after 39 days, but that was a mere coincidence.
948. During his absence, Obrenovic had full control of and responsibility for the Brigade which appears to be a non contentious fact. More to the point, according to the prosecution, Krstic had underscored that fact by writing a special order on 8<sup>th</sup> August. It is a significant feature of the secrecy of the reburial operation that those carrying out the plan also kept Obrenovic 'out of the loop'. He was unaware of any plan being executed in Zvornik while he was undoubtedly in command. Obrenovic admitted by his plea of guilty that he had no involvement in the reburial operation.<sup>1569</sup> [REDACTED].<sup>1570</sup> The defence for Pandurevic accepts that to be true.
949. It is plain that the plan to rebury the dead bodies had crystallised by 14<sup>th</sup> September, the day on which the fuel from Main Staff was sent for the operation. There would have been little point in telling Pandurevic of such a plan between 10<sup>th</sup> August and 14<sup>th</sup> September as he would have neither had the ability nor the authority to assist in its implementation. Not to tell Obrenovic, however, has the clearest inference; the plan was to be implemented without the knowledge of the command of the Zvornik Brigade.
950. For argument sake, the defence concedes and avers that involvement in a cover-up can be powerful evidence of participation in the substantive crime. Firstly, and obviously, covering up a crime is a crime in itself, and infers a guilty conscience. However, in the current case especially, covering up the crime required a great deal of detailed knowledge of the original crime, in particular, where the bodies were buried in the first place, and fairly precisely how many bodies there were in each place (so that you knew what you would need to dig them up and move them). Of necessity, those who orchestrated the

<sup>1567</sup> **P00466**, AFP Headlines..page 7

<sup>1568</sup> **7D00439**, Report signed by Vinko Pandurevic, 23 October 1995.

<sup>1569</sup> **P02911**, Plea agreement of Dragan Obrenovic, 20 May 2003 (Count 5 of the indictment); **P02912**, Prosecutor v. Dragan Obrenovic, Indictment, par. 17 (Count 1) refers to reburials.

<sup>1570</sup> [REDACTED]

reburial must have had a central role in the original killings and a particular interest in covering them up.

951. “Looking back up the telescope”, from the perspective of the reburial operation, gives a useful perspective on who was commanding and organizing the killing operation, and more importantly, who was not.
952. In the following section, Pandurevic’s knowledge of the reburial operation will be analysed. Beyond a general assertion of widespread knowledge,<sup>1571</sup> no specific allegation has ever been made about Pandurevic’s involvement in the process of covering up the crimes. In his evidence he denied knowledge of the plan or its implementation until late September, by which time the operation was completed.

## 17.2. Planning and Execution of the Operation

953. As has been mentioned above, the earliest date at which the operation could have been planned was 10<sup>th</sup> August, the date on which the aerial images were published. In the Zvornik area, at least, the plan must have been complete by 14<sup>th</sup> September and was entering its implementation phase, as the Main Staff had sent fuel with a note for reference to the Zvornik Brigade.<sup>1572</sup>
954. Popovic and “Mihailic” were eavesdropped over the radio on 22<sup>nd</sup> September about the issue of fuel and, by necessary, inference the reburials. It is plain from their conversation that the fuel had by then been obtained and that work was underway.<sup>1573</sup>
955. The aerial images of the grave sites in the Zvornik area confirm that the reburial operations were conducted between the 7<sup>th</sup> and 27<sup>th</sup> September.<sup>1574</sup>

## 17.3. Pandurevic’s whereabouts between 10<sup>th</sup> August and 27<sup>th</sup> September

### 17.3.1. Krajina

956. Pandurevic’s presence in the Krajina between 7<sup>th</sup> August and 16<sup>th</sup> September are fully dealt with elsewhere in this brief.<sup>1575</sup>

<sup>1571</sup> See Indictment paragraph 32, and T.484, 22<sup>nd</sup> August 2006, Prosecution Opening Statement

<sup>1572</sup> **P00379**, Zvornik Brigade duty operations officer notebook, page 115 in both BCS and ENG; **P00041**, Main Staff Order No. 03/4-2341 regarding assignment of fuel, 14 September 1995; **P00042**, VRS Main Staff Order No. 10/34/2-3-701, issuing 5,000 litres of D-2 diesel fuel, 14 September 1995.

<sup>1573</sup> **P02391**, Intercept dated 22 September 1995, 18:44 hrs.

<sup>1574</sup> T.1831, 18 September 2006, Jean Rene RUEZ

<sup>1575</sup> See Part 4 section 14 “Operation Storm”

### 17.3.2. Return to Zvornik on 16 September and the issue of fuel

957. On 14<sup>th</sup> September, a telegram arrived at the Zvornik Brigade command notifying them of the arrival of 5 tonnes of fuel. The fuel was not for the use of the Brigade.<sup>1576</sup> That the telegram about the fuel was for Trbic's attention was unusual, because he was a security desk officer and information about fuel would usually be addressed to the rear services.<sup>1577</sup> [REDACTED], after the duty operations officer brought the contents of this anodyne telegram to his commander's attention (at that time, Obrenovic), the commander made an inquiry at the Corps duty operations officer, who knew nothing of it. Ten minutes later, however, Obrenovic received a call from Popovic, telling him, in effect, to mind his own business ("the Duty Officers were incompetent and had made a mistake").<sup>1578</sup> This is indeed a curious tale, especially given that the telegram was from the Main Staff (thus, calling the corps would make no sense), the Corps duty operations officer had no reason to notify Popovic, and Popovic's intervention was quite simply, pointless.
958. All the same, [REDACTED], then it was not intended that the Brigade Commander, Obrenovic, would know about the fuel. If it is not accepted, then it will be difficult to agree that his evidence is credible on this issue.
959. Two days later, [REDACTED] he asked Pandurevic about the fuel upon his return from Krajina. He said that Pandurevic told him that he knew nothing about it and said he would ask at Corps command when he visited later that day. Later, he returned and said that the fuel was for Popovic and his people to carry out reburials.
960. This account has a number of problems. Firstly, [REDACTED].<sup>1579</sup> Secondly, Obrenovic was not at the barracks when Pandurevic returned with his unit from the Krajina.<sup>1580</sup> Instead he was visiting the battalions all day.<sup>1581</sup> Thirdly, Pandurevic did not go to Vlasenica on 16<sup>th</sup> September.<sup>1582</sup> Lastly, given that Pandurevic was still commander of the Drinski Brigade on 16<sup>th</sup> September, and on leave from the morning of 17<sup>th</sup>, command of the Zvornik Brigade was Obrenovic's responsibility. If he had wanted to clear up the issue of the fuel, he was entitled to do so at any time after the arrival of the telegram, before or after Pandurevic's return with the Corps commander (He was, for example, in Vlasenica on 15<sup>th</sup> September).<sup>1583</sup>
961. Obrenovic knew nothing about the arrival of the fuel, nor its disbursement.<sup>1584</sup> More significantly, given the fact that the operation in Zvornik took place between the 7<sup>th</sup> and 27<sup>th</sup> of September, whilst he was in command of the brigade, he knew nothing of it until his return from the Krajina at the end of October.<sup>1585</sup> This evidence is consistent with the

<sup>1576</sup> T.12726, 15 June 2007, Miodrag DRAGUTINOVIC.

<sup>1577</sup> [REDACTED]

<sup>1578</sup> 7D86, Statement of Facts Dragan Obrenovic, 20 May 2003, p. 9; [REDACTED].

<sup>1579</sup> [REDACTED].

<sup>1580</sup> T.12724, 15 June 2007, Miodrag DRAGUTINOVIC. T.31211 and 31223, 10 February 2009, Vinko PANDUREVIC

<sup>1581</sup> **P00378**, Zvornik Brigade duty operations officer diary, page 121-122, P379, page 120, **7D261**, VWL-PRL Danojlovic Ljubisa, 20-30 September 1995.

<sup>1582</sup> **P00379**, Zvornik Brigade duty operations officer notebook, page 122, T.31211-31213, 10 February 2009, Vinko PANDUREVIC.

<sup>1583</sup> **7D00261**, VWL-PRL Danojlovic Ljubisa, 20-30 September 1995.

<sup>1584</sup> [REDACTED].

<sup>1585</sup> [REDACTED]

testimony of several other (senior) officers of the brigade who were apparently unaware of the reburial operation at the time of its execution.<sup>1586</sup> The evidence in the case does not support the suggestion that the Brigade, as a whole, was either informed of the plan or involved in its execution. The theory of widespread knowledge is not supported by evidence.

### 17.3.3. Budva

962. Following the disbandment of the Drinski Brigade, Pandurevic went to Montenegro (Budva) and was there until the 25<sup>th</sup> of September. On 25<sup>th</sup> September, he received a message from the Brigade command that Krstic wanted him to cut short his holiday and to return to Zvornik.<sup>1587</sup>

963. On the afternoon of the 25<sup>th</sup>, he was with friends in Zvornik and called the Brigade command to tell them where he could be reached.<sup>1588</sup> Later, he spoke to Krstic through the Brigade switchboard. Whatever else can be inferred from that conversation, knowledge of the reburial operation certainly cannot.<sup>1589</sup> Pandurevic first attended for duty at Standard on the morning of 26<sup>th</sup> September. Obrenovic was still there. Obrenovic left with his troops around noon the same day.<sup>1590</sup> Whatever they may have discussed, reburials cannot have been a topic, since, on his own account, Obrenovic at that time had no knowledge of them.

### 17.4. Knowledge after the event

964. A few days after his arrival from Budva, Pandurevic found out that some trucks from a transport company had passed through Zvornik for five or six days carrying some sort of material which had left behind an unbearable stench. The operation had taken place at night and local citizens had become upset because of the smell.<sup>1591</sup>

965. Pandurevic asked Dragutinovic whether the Brigade had been assigned any sort of task or issued any sort of order in connection with this and his answer was no. He said he had no knowledge and he knew nothing about the operation.<sup>1592</sup>

966. Pandurevic did not discuss these events in detail with anyone at that time, nor did he make any sort of investigation. When Dragan Obrenovic returned from the Krajina, Pandurevic asked him what he knew. Obrenovic told him that just before Pandurevic's return from the Krajina, he became aware that Mladic personally had approved fuel for the relocation of corpses and that the engineers battalion of the Drina Corps had participated in that operation. Obrenovic also told him that this was being conducted "by

<sup>1586</sup> T.12735-12736, 15 June 2007, Miodrag DRAGUTINOVIC; T.10582, 26 April 2007, Mihajlo GALIC. T.25801, 16 September 2008, Mirko SAKOTIC.

<sup>1587</sup> T.31223, 10 February 2009, Vinko PANDUREVIC.

<sup>1588</sup> T.31225, 10 February 2009, Vinko PANDUREVIC

<sup>1589</sup> T.31227, 10 February 2009, Vinko PANDUREVIC

<sup>1590</sup> T.31230, 10 February 2009, Vinko PANDUREVIC.

<sup>1591</sup> T.31242, T.31244, 11 February 2009, Vinko PANDUREVIC.

<sup>1592</sup> T.31243, 11 February 2009, Vinko PANDUREVIC.

the very top, the highest authorities in the army” and that no task had been issued to the Brigade in that respect.<sup>1593</sup>

967. Pandurevic saw that it was very difficult for him to take any action in view of the information he had. As he put it, “somebody was doing a job that had nothing to do with me, and in view of what had happened in July, I assumed that this operation had to be much more secretive and that it was better for me not to get mixed up in it in any way.”<sup>1594</sup>
968. Pandurevic assumed that the operation was organized within the scope of the security organ. He did not have any direct information about who was engaged in this, who was in charge of it, but, as he said, “I was able to conclude that it was being done by the security organs because no tasks had been issued to any of the commands for them to pass the orders down the chain of command and deal with this matter.”<sup>1595</sup>

## 18. BRIEF REVIEW OF SCIENTIFIC AND OTHER EVIDENCE RELATING TO GRAVE SITES

969. The defence for Pandurevic acknowledge that this topic is likely to be the subject of a substantial amount of discussion in the briefs of other accused, but, nonetheless present this brief review.
970. At the outset of this case, the Prosecution alleged that “By 1 November 1995, the entire Muslim population had been either removed or fled from Srebrenica and Zepa and over 7000 Muslim men and boys from Srebrenica had been murdered by VRS and MUP forces.”<sup>1596</sup> In this short section of the brief, the defence intend to raise a number of points to question the numbers involved in that assertion.
971. The Prosecution called forensic anthropologists<sup>1597</sup>, pathologists<sup>1598</sup>, demographers and statisticians<sup>1599</sup>, and investigators<sup>1600</sup> in order to achieve a Minimum Number of Individuals (“MNI”) who had been murdered allegedly in the conflict.
972. There has to be serious doubt (a) whether the numbers which are alleged to have been involved can safely be interpreted in their thousands, (b) whether this can amount to genocide<sup>1601</sup> and (c) fundamentally, whether the most significant proportion of those listed as missing, actually died in legitimate combat rather than in executions. It is submitted that a number of propositions can be made with a significant degree of

<sup>1593</sup> T.31243, 11 February 2009, Vinko PANDUREVIC.

<sup>1594</sup> T.31243-31244, 11 February 2009, Vinko PANDUREVIC.

<sup>1595</sup> T.31244, 11 February 2009, Vinko PANDUREVIC.

<sup>1596</sup> *Prosecution vs Popovic et al.*, Indictment, 04 August 2006, Paragraph 25.

<sup>1597</sup> Richard WRIGHT, Freddy PECERELLI, Jose Pablo BARAYBAR

<sup>1598</sup> John CLARK, Christopher LAWRENCE, William HAGLUND, Dusan DUNJIC

<sup>1599</sup> Helge BRUNBORG, Miladin KOVACEVIC, Oliver STOJKOVIC

<sup>1600</sup> Dean MANNING, Dusan JANC

<sup>1601</sup> On a purely numerical basis the 7000 number relied upon by the Prosecution can only amount to a small fraction of the overall relevant population (ie 0.5%).

evidential force in respect of determination of a MNI such that there has to be serious doubt whether the 7000 number can be sustained.

### 18.1. First proposition – a significant number of adult males died in legitimate combat

973. Where it is suggested that persons died other than in legitimate combat, there are real doubts as to the causes of death which can be attributed to those who died<sup>1602</sup>. For instance, it is unsafe to accept the bald assertion that due to the numbers who allegedly died from gunshot wounds, that they were executed.<sup>1603</sup> In addition, the remains of many bodies were skeletonised. This caused real difficulties for the pathologists in determining cause and time of death.<sup>1604</sup> Moreover, a number of different causes were determined which are plainly consistent with legitimate combat including gunshots<sup>1605</sup>, blast injuries<sup>1606</sup>, ambush situations involving, inter alia, gunshots<sup>1607</sup>, blunt force trauma<sup>1608</sup>, suicides<sup>1609</sup> and land mines.<sup>1610</sup> In addition, there is ample evidence of deaths occurring, for instance, during the gathering of the column in the Jaglici and Susnjara.

974. Further, the pathology was hampered by an inability to determine whether injury to the bodies had occurred ante or post mortem.<sup>1611</sup> The evidence also demonstrated that the methodology adopted by the Prosecution experts in determining cause of death is in question, in that record keeping both at the grave sites and at the morgues was inconsistent nor of a standard to be expected.<sup>1612</sup>

975. Finally on this aspect, the Prosecution rely upon findings of ligatures and/or blindfolds to support the proposition of executions at various grave sites rather than legitimate combat deaths. A number of points should be considered : (a) the small number of ligatures and/or blindfolds compared with the overall numbers of bodies found<sup>1613</sup>.

<sup>1602</sup> See T.7368-T.7372, 20<sup>th</sup> February 2007, John CLARK; T.24353, 30<sup>th</sup> July 2008 Svetlana RADOVANOVIC

<sup>1603</sup> T.7530, 21<sup>st</sup> February 2007, Christopher LAWRENCE ; T.7458, 21<sup>st</sup> February 2007, Richard WRIGHT; T.8763-8764, 13<sup>th</sup> March 2007, Freddy PECERELLI; T.27809, T.27811, T.27812, 4<sup>th</sup> November 2008, T.27864, 5<sup>th</sup> November 2008, Dusan DUNJIC; T.33542, T.33564, 4<sup>th</sup> May 2009, Dusan JANC

<sup>1604</sup> See T.7358, T.7359, T.7364, 20<sup>th</sup> February 2007, John CLARK; T.7345, T.7345, T.7388, T.7389, T.7390, Clark, 20<sup>th</sup> February 2007, T.7533:11, T.7544, 21<sup>st</sup> February 2007, Christopher LAWRENCE; T.7520, T.7520, T.7521, 21<sup>st</sup> February 2007, Christopher LAWRENCE ; T.7449, 20<sup>th</sup> February 2007, Richard WRIGHT; T.8765, 13<sup>th</sup> March 2007, Freddy PECERELLI; T.18955, 10<sup>th</sup> December 2007, Dean MANNING ; T.27813, 4<sup>th</sup> November 2008, Dusan DUNJIC

<sup>1605</sup> See T.7342, T.7377, 20<sup>th</sup> February 2007, John CLARK; T.18954, 10<sup>th</sup> December 2007, Dean MANNING

<sup>1606</sup> See T.7342, 20<sup>th</sup> February 2007, John CLARK; T.18954, 10<sup>th</sup> December 2007, Dean MANNING, Adjudicated facts 121, 260, T.876, 28<sup>th</sup> August 2006, Mevludin ORIC

<sup>1607</sup> T.7394, T.7395, 20<sup>th</sup> February 2007, John CLARK ; T.33545, T.33550, T.33560, 4<sup>th</sup> May 2009, Dusan JANC, Adjudicated Facts 279

<sup>1608</sup> T.18954, 10<sup>th</sup> December 2007, Dean MANNING

<sup>1609</sup> T.19071, 11<sup>th</sup> December 2007, Dean MANNING, T.33541, 4<sup>th</sup> May 2009, Dusan JANC

<sup>1610</sup> T.33538, 4<sup>th</sup> May 2009, Dusan JANC

<sup>1611</sup> See T.7345, T.7346, T.7389, 20<sup>th</sup> February 2007, John CLARK; T.7526, 21<sup>st</sup> February 2007 Christopher LAWRENCE.

<sup>1612</sup> T.27821, T.27825-27829, T.27831, 4<sup>th</sup> November 2008, Dusan DUNJIC

<sup>1613</sup> “*Decision on Prosecution Motion for Judicial Notice of Adjudicated facts with annex*”, 26 September 2006, Adjudicated Facts 483 and 484 suggest 448 blindfolds were found and 423 ligatures. T.33546, 4<sup>th</sup> May 2009, Dusan JANC, see also P00649, Summary of Forensic Evidence – Execution Points and Mass Graves, report by MANNING Dean, 16 May 2000 page ; 1D00360, MANNING, D. – Report titled “Summary of forensic evidence – Execution Points and Mass Graves” dated 24 aug 03, page 3. See also, for instance, the large

This tends to support more legitimate combat deaths than executions, (b) bandages, field dressings<sup>1614</sup> and armbands can account for some alleged bindings/blindfolds<sup>1615</sup>, (c) some gravesites produced no findings of ligatures and/or blindfolds.<sup>1616</sup> This must raise an obvious doubt as to whether execution occurred at those sites<sup>1617</sup>

## **18.2. Second Proposition - There is no consistent evidence to be gleaned from the anthropological, pathological, archaeological, demographic and DNA analysis**

976. The Prosecution has put forward a number of experts to provide evidence of MNI. There is no consistent method adopted by the Prosecution team. If the court adopts one method (ie DNA matching) before others<sup>1618</sup>, it will achieve a conclusion which is at odds with other more traditional methods. Accordingly, the court can only be left with confusion and serious doubt as to determination of MNI.<sup>1619</sup>

977. The safest and fairest way to deal with this aspect is to indicate that a number of persons were executed but that no specific number can be quantified with a sufficient degree of certainty. To say otherwise would be a 'fudge' of the evidence.

### **18.2.1. Anthropology and Pathology**

978. A number of different aspects were considered by the anthropologists and pathologists. The main areas were skeletal examination, and age estimation. By consideration of these aspects, they suggested that they were able to provide:

- a MNI and,
- possible ages<sup>1620</sup> of those whose bodies had been found in the various graves.

979. In respect of MNI and the expert evidence on this aspect,

- A body count on pathological grounds is a difficult area<sup>1621</sup>. The same can be said of a body count on anthropological grounds.<sup>1622</sup>

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discrepancy between the numbers of people allegedly executed at Orahovac and the number of blindfolds found – Adjudicated Facts 367 and 371

<sup>1614</sup> T.7343 and T.7367-8, 20th February 2007, John CLARK ; T.7531-2, 21st February 2007, Christopher LAWRENCE (see also P00641

<sup>1615</sup> T.7532 and T.7541, 21<sup>st</sup> February 2007, Christopher LAWRENCE

<sup>1616</sup> See reports of Dean Manning of 2000 and 2003 pp.950917ff and X0167710

<sup>1617</sup> T.8764, 13<sup>th</sup> March 2007, Freddy PECCERELLI

<sup>1618</sup> It was Dean Manning, Investigator, who first reported on DNA match findings. This was at a time when all others giving evidence about the issue of MNI propounded the view that DNA was just one aspect which could be used to assist in the identification of missing persons

<sup>1619</sup> T.23999, 24<sup>th</sup> July 2008, Debra KOMAR

<sup>1620</sup> The age range was plus/minus one at each stage, T.9008, 15<sup>th</sup> March 2007, William HAGLUND

- In addition, assumptions had to be made to determine a MNI where grave sites had not been excavated<sup>1623</sup>.
980. In respect of age estimation, the ages which have been achieved from the anthropology support the Prosecution assertion that bodies of men and boys were found in the graves. The ages range from 8-13 years, 11-15 years, 13-17 years, 8-85 years and 12-71 years. A considerable number of those who have been the subject of age estimation have fallen into the ‘under 18’ category. However, no consistent approach has been applied to this aspect.<sup>1624</sup>
981. Some expert evidence suggests that the best way to age a body would be by comparison between a DNA match and the missing person list.<sup>1625</sup>
982. However, no-one appears to have compared the “age evidence” obtained from the bodies and body parts against the DNA evidence. Therefore, it is likely that a body attributed to an eighteen year old could have been matched by DNA with someone in his 40s or a man measured as 1.8m tall has been linked to the remains of a man only 1.5m tall. This must create substantial doubt with the entire identification process<sup>1626</sup>
983. Accordingly, on anthropological and pathological grounds alone, there have to be serious doubts over calculation of a MNI together with age estimation evidence.

### 18.2.2. Demographic Evidence

984. The Prosecution has also used demographic experts to attempt to determine a MNI for those whom they say were executed at the various sites. Their experts have used a number of techniques in their attempt to put forward a MNI. A number of “official” documents<sup>1627</sup> have been compared with missing person lists produced by the International Commission on Missing Persons (“ICMP”) and the International Committee of the Red Cross (“ICRC”).
985. A closer review of those official documents suggests that :
- They are often lacking in detail for those persons allegedly missing from events in and around Srebrenica<sup>1628</sup> :

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<sup>1621</sup> See T.7351:16, T.7378:20, T.7381:2, T.7382:11, T.7385:18, T.8797-T.8802, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR T.18952, 10<sup>th</sup> December 2007, Dean MANNING

<sup>1622</sup> T.8812, T.8873, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR

<sup>1623</sup> T.7461:1, T.7468:22, T.7492:10, 21<sup>st</sup> February 2007, Richard WRIGHT, T.8768:11, 13<sup>th</sup> March 2007, Freddy PECERELLI

<sup>1624</sup> T.8848, T.8853-8854, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR, T.9005-T.9008, 15<sup>th</sup> March 2007, William HAGLUND, T.18954, 10<sup>th</sup> December 2007, Dean MANNING

<sup>1625</sup> T.8838, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR

<sup>1626</sup> T.8858, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR; [REDACTED]

<sup>1627</sup> Census of 1991, electoral lists for 1997, 1998 and 2000, list of displaced persons collected by UNHCR and the Bosnian Government, ICRC list, PHR list and ICMP lists

<sup>1628</sup> T.11182, T.11199, T.11200, T.11220-11221, T.11233, T.11269, T.11279, T.11284, T.11292, 9<sup>th</sup> May 2007, Helge BRUNBORG ; T.22681, T.22708, T.22726, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24327, 29<sup>th</sup> July 2008, T.24426, 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC



- Often the details on the lists are confusing and/or are mistaken<sup>1629</sup> ;
- The lists contained only that information which their donors were able/willing to supply<sup>1630</sup>;
- A number of lists which were available were never considered<sup>1631</sup> ;
- There were difficulties encountered in conducting the comparisons<sup>1632</sup> ;
- Some persons allegedly missing are still alive<sup>1633</sup> ;
- A significant number of persons on the lists produced by the OTP are none existent<sup>1634</sup> ;
- assumptions had to be made where details were lacking<sup>1635</sup> ;
- There is no clear picture of the number of civilians and military personnel who went missing<sup>1636</sup> ;
- The quality of the sources would obviously affect the credibility and reliability of any findings<sup>1637</sup> .
- The criteria adopted by the experts to compare the lists were too wide<sup>1638</sup> ;
- No confidence can be attached to the findings<sup>1639</sup> and
- The methodology adopted by the various experts is inconsistent<sup>1640</sup> .

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<sup>1629</sup> T.11200, 9<sup>th</sup> May 2007, Helge BRUNBORG; T.22703, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.21051-T.21053, 5<sup>th</sup> February 2008, Ewa TABEAU

<sup>1630</sup> T.11185, T.11283, T.11287, 9<sup>th</sup> May 2007, Helge BRUNBORG ; T.22737, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24332, T.24333, T.24334, 29<sup>th</sup> July 2008, T.24492, 31<sup>st</sup> July 2008, Svetlana RADOVANOVIC;

<sup>1631</sup> T.11195, T.11241, T.11242, T.11298, T.11302, 9<sup>th</sup> May 2007, Helge BRUNBORG and see T.22670, T.22721, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24346, 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC; T.21058, 5<sup>th</sup> February 2008, Ewa TABEAU

<sup>1632</sup> T.11203, 9<sup>th</sup> May 2007, Helge BRUNBORG

<sup>1633</sup> T.22685, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC

<sup>1634</sup> T.24365, 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC;

<sup>1635</sup> T.11207, 9<sup>th</sup> May 2007, Helge BRUNBORG

<sup>1636</sup> T.11210, T.11248, 9<sup>th</sup> May 2007, Helge BRUNBORG, T.22699, T.22700, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC

<sup>1637</sup> T.11223, 9<sup>th</sup> May 2007, Helge BRUNBORG , T.24363, T.24406, T.24421, 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC;

<sup>1638</sup> T.11204, 9<sup>th</sup> May 2007, Helge BRUNBORG ; T.22664, T.22676, T.22710, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24336, 29<sup>th</sup> July 2008, T.24350, T.24385, T.24398, T.24412, T.24438, 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC;

<sup>1639</sup> T.11219, T.11228, 9<sup>th</sup> May 2007, Helge BRUNBORG ; T.22675, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24325, T.24329, T.24331, Radovanovic, 29<sup>th</sup> July 2008, T.24359, T.24370-24376, T.24382, T.24389, T.24401, 30<sup>th</sup> July 2008, T.24481, T.24484, 31<sup>st</sup> July 2008, Svetlana RADOVANOVIC;

<sup>1640</sup> T.21048, 5<sup>th</sup> February 2008, Ewa TABEAU

986. From all that can be gleaned from this aspect of the evidence, application of simpler criteria would have produced a lower figure to that which the Prosecution experts achieved – i.e. the difference between 7661 and 2943 or even as low as 2000.<sup>1641</sup>
987. The approximate figure of 3000 as a MNI, on the demographic evidence, is the most realistic figure to be achieved from the available documents<sup>1642</sup> which were used by all those instructed to provide conclusions.
988. In addition, it appears that the Prosecution itself takes the view that any results obtained from analysing these lists can only provide an assessment rather than any firm result<sup>1643</sup>.
989. Accordingly, upon the demographic evidence, there has to be real doubt over the ability on the part of the Prosecution to put forward a cogent and clear MNI.

### 18.2.3. DNA analysis

990. During the course of the trial, the Prosecution changed the way in which they would address the MNI<sup>1644</sup> and indicated that they would rely upon DNA analysis to the exclusion of other more traditional means<sup>1645</sup>. This was a huge sea change and could only be achieved by the very fact that this trial has taken so long to conclude.
991. The Prosecution heavily relies upon the DNA evidence as a means to determine a MNI. They have done this to the exclusion of other tried and tested methods. It is submitted that the DNA results which are relied upon by the Prosecution (in part or in full in determining MNI) are not reliable and should be treated with caution. This submission is made on the following basis:
- The collection of DNA was ongoing from 1996<sup>1646</sup> although there does not appear to have been any clear standard operating procedure for such collection. In some situations, the systems for collection were substandard<sup>1647</sup>.
  - The laboratory facilities which were used to analyse materials and to produce results were not accredited to do so for a considerable period of time<sup>1648</sup>: even if the DNA analysis was conducted properly, there was no ‘control’ in place to confirm that state of affairs<sup>1649</sup>

<sup>1641</sup> T.22683, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24348, T.24378 (3225 persons matched), 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC;

<sup>1642</sup> T.22686 and T.22696, 23<sup>rd</sup> June 2008, Miladin KOVACEVIC ; T.24378, 30<sup>th</sup> July 2008, T.24513, 31<sup>st</sup> July 2008, Svetlana RADOVANOVIC; T.33527, T.33539, Janc, 4<sup>th</sup> May 2009; 1D00374 - United Nations Protection Force, Letter Cover page to Mr. Mousalli regarding Srebrenica and Tuzla, 17 July 1995

<sup>1643</sup> T.19108, 12<sup>th</sup> December 2007, Dean MANNING

<sup>1644</sup> T.1551-T.1552, 12 September 2006, Jean-René RUEZ

<sup>1645</sup> T.18999, 11<sup>th</sup> December 2007, Peter Mc CLOSKEY ; T.19029, 11<sup>th</sup> December 2007, Dean MANNING

<sup>1646</sup> T.8829, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR

<sup>1647</sup> T.22980, 27<sup>th</sup> June 2008, Oliver STOJKOVIC ; [REDACTED]

<sup>1648</sup> T.23004, 27<sup>th</sup> June 2008, Oliver STOJKOVIC; T.20870, T.20872, T20914, 1<sup>st</sup> February 2008, Thomas PARSONS

<sup>1649</sup> T.23012, 27<sup>th</sup> June 2008, Oliver STOJKOVIC

- Standards of expertise to be expected for DNA analysis and production of results were considered lacking<sup>1650</sup>
- It has been indicated that 15,000 to 20,000 blood samples have been obtained from donor family members who had reported persons missing.<sup>1651</sup> The personal details of those donors and of those they have reported missing are lacking for confidentiality reasons. Accordingly, there is a lack of transparency and an inability on the part of the defence to test the findings. In particular, the electropherograms which should accompany any particular results have been withheld and, for transparency, should all be checked.<sup>1652</sup>
- Only those persons who went missing as a result of events in and around Srebrenica after July 1995 should appear on the ICMP list. This list has been compared with the number of DNA matches obtained between (a) the body sample and (b) the donor samples. The ICMP list contains persons who went missing before that date and also some who were not involved in the Srebrenica events.<sup>1653</sup>

992. The numbers who have, apparently, been matched by DNA evidence change on a regular basis. 6006 people have been identified or matched to individuals who went missing from Srebrenica<sup>1654</sup>. In addition, a number of individuals have been identified by their unique DNA but have not been matched to the list of missing persons<sup>1655</sup>.

993. The Defence set out to meet a case in August 2006 which has been changed and updated. It is submitted that there should be finality on this issue.

994. However, due to the way in which the evidence has been obtained and the piecemeal approach to the way in which the Prosecution has addressed this aspect of the evidence, there is only confusion in respect of the number of possible identifications<sup>1656</sup>

995. The most consistent message coming out of the articles written concerning ICMP or even ICMP employees<sup>1657</sup> is that DNA alone should not be used as the sole basis for identification<sup>1658</sup>. Accordingly, it is submitted that the other more traditional, tried and

<sup>1650</sup> T.23022, 27<sup>th</sup> June 2008, Oliver STOJKOVIC ; T.23969, T.23971, 24<sup>th</sup> July 2008, Debra KOMAR T.20882, 1<sup>st</sup> February 2008, Thomas PARSONS

<sup>1651</sup> T.11258, 9<sup>th</sup> May 2007, Helge BRUNBORG

<sup>1652</sup> T.22986, T.22992, T.22998, T.23013, T.23018, 27<sup>th</sup> June 2008, Oliver STOJKOVIC ; T.23973, T.23978, 24<sup>th</sup> July 2008, Debra KOMAR, [REDACTED], T.20911, 1<sup>st</sup> February 2008, Thomas PARSONS.

<sup>1653</sup> T.33559-T.33564, T.33510-T.33512, 4 May 2009, T.33669, 5<sup>th</sup> May 2009, Dusan JANC ; T.20875, T.20879, 1<sup>st</sup> February 2008, Thomas PARSONS

<sup>1654</sup> T.19001, 11<sup>th</sup> December 2007, Dean MANNING; T.21035, 5<sup>th</sup> February 2008, Ewa TABEAU; T.33507, T.33520, 1<sup>st</sup> May 2009, Dusan JANC

<sup>1655</sup> T.19032, 11<sup>th</sup> December 2007, Dean MANNING; T.33507, 1<sup>st</sup> May 2009, Dusan JANC

<sup>1656</sup> T.19031, 11<sup>th</sup> December 2007, Dean MANNING ; T.23953, T.23958, T.23960, 23<sup>rd</sup> July 2008 , Debra KOMAR T.33452, T.33477, 29<sup>th</sup> April 2009, Thomas PARSONS; 1D1347-RFA related to data ident Muslim victims, 18-Aug-2008;

<sup>1657</sup> 2D00540-Yazedjian LN, Kesetovic R, Arlotti A, Karan Z, 'The Importance of Using Traditional Anthropological Methods in a DNA-led Identification system, Proceedings of the Annual Meeting of the Americal Academy.

<sup>1658</sup> T.23943, T.23945, 23<sup>rd</sup> July 2008, Debra KOMAR T.27847, 5<sup>th</sup> November 2008, Dusan DUNJIC, T.20905, T.20907, 1<sup>st</sup> February 2008, Thomas PARSONS. A solid analogy of this is the criteria adopted by the Crown Prosecution Service in the UK when seeking to use DNA evidence to support a criminal charge against a potential defendant - see CPS 'Guidance on DNA Charging at paragraph 3.3, confirmed by ACPO (Assistant Chief Police Officers Association) Guidance on Charging and evidential standards for DNA matches at paragraph 16 (both documents at [www.cps.gov.uk/legal/assets/uploads/files/pdf](http://www.cps.gov.uk/legal/assets/uploads/files/pdf))

tested methods should also be used alongside DNA evidence<sup>1659</sup> in order that the court has a clearer and fairer picture of what the Prosecution assert.

### 18.3. Third Proposition - The Expert evidence on the issue of MNI is flawed and tainted

996. It is submitted that the expert evidence on the issue of MNI is flawed and tainted for the following reasons:

- There was no consistent approach ‘in the field’ and at the morgues as evidence was produced.<sup>1660</sup>
- Legitimate criticisms have been made of the methodology adopted by those tasked with exhuming bodies and calculating MNI.<sup>1661</sup> In fact, in some instances, records were altered without consensus among those tasked to reach findings.<sup>1662</sup>

997. Debra KOMAR<sup>1663</sup> succinctly summarized the evidence of all prosecution witnesses relevant to methodology and the issue of MNI. It is submitted that her evidence was the most independent and the most compelling on all relevant areas. In particular, she found the following:

998. In respect of the evidence of:

- Wright – his methodology and mathematical estimation in respect of MNI was deficient<sup>1664</sup>
- Baraybar – it is difficult to see what standard he uses to determine MNI by bone count<sup>1665</sup>. His introduction of sex and age variables in this particular case is questionable<sup>1666</sup>. His methodology in respect of age assessment is far from transparent<sup>1667</sup> and will introduce bias and a skewing of the results<sup>1668</sup>.
- Parsons – his analysis of DNA collection rates is unclear<sup>1669</sup>: his use of assumptions to assist with conclusions is questionable<sup>1670</sup>.

<sup>1659</sup> T.23944, T.23958, 23<sup>rd</sup> July 2008, Debra KOMAR; [REDACTED]; [REDACTED]

<sup>1660</sup> T.18909-18911, 10<sup>th</sup> December 2007, Dean MANNING; T.23876, 23<sup>rd</sup> July 2008, Debra KOMAR; [REDACTED]

<sup>1661</sup> T.8971, T8929, T8930, T.8939, T.8941, T.8947, T.8954, T.8956, T.8959, T.8960, T.8970, T.8993-5, 15<sup>th</sup> March 2007, William HAGLUND ; see also T.8775-8776, 13<sup>th</sup> March 2007, Freddy PECERELLI ; see also T.8816, T.8878 and T.8884, 14<sup>th</sup> March 2007, Jose Pablo BARAYBAR but see T.19067 and T.19080, T.19143, 11<sup>th</sup> and 12<sup>th</sup> December 2007, Dean MANNING ; T.23890 , 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1662</sup> T.8914, T.8916, 15<sup>th</sup> March 2007, William Haglund

<sup>1663</sup> T.23873, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1664</sup> T.23893-T.23901, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1665</sup> T.23903, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1666</sup> T.23905, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1667</sup> T.23911, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1668</sup> T.23915, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1669</sup> T.23932, 23<sup>rd</sup> July 2008 , Debra KOMAR

<sup>1670</sup> T.23935, 23<sup>rd</sup> July 2008 , Debra KOMAR

999. It is respectfully suggested that the Trial Chamber should consider the evidence of Debra Komar and the content of her report in full on these issues.

1000. Further, it is submitted that because the Prosecution experts had been informed what perceived circumstances had prevailed to cause death, their conclusions could be skewed and biased towards what they had been told rather than remaining objective.<sup>1671</sup> For instance, where there were difficulties in ascertaining cause of death, gunshot wounds were favoured on the principle that they had been informed that there had been mass executions – i.e. ‘they jumped the gun’<sup>1672</sup>.

1001. In this area of the case, the prosecution expert evidence appears to be far from independent and consistent.<sup>1673</sup> Accordingly, the court should be cautious before accepting the conclusions of the Prosecution experts at face value.

#### **18.4. Fourth Proposition - There are very practical issues arising which pertain to the actual number of bodies alleged by the Prosecution**

1002. It is submitted that there are very practical issues arising which pertain to the actual number of bodies alleged by the Prosecution. Many of those practical issues have been addressed on this topic already.

1003. However, there are other obvious issues for the court to consider when/if determining a MNI.

1004. They are the following :

- Transportation of persons in detention – there can only be a finite number of vehicles which could have been used for the purposes of transporting those in detention. That number is limited by the evidence, which, in turn, must limit the numbers of those who were detained.<sup>1674</sup>
- Available space to detain prisoners – again, the same argument applies. There is no clear and unambiguous evidence of numbers held within detention centres. In addition, the estimates provided by the various witnesses of numbers of prisoners in the detention sites

<sup>1671</sup> See T.7349, T.7387, T.7393, T7397, 20<sup>th</sup> February 2007, John CLARK

<sup>1672</sup> See T.7361, 20<sup>th</sup> February 2007, John CLARK

<sup>1673</sup> See T.7386, T.7387, T.8998 - T.9001, 15<sup>th</sup> March 2007, William HAGLUND T.11214-11215, 9<sup>th</sup> May 2007, Helge BRUNBORG ; T.18914, 10<sup>th</sup> December 2007, Dean MANNING, T.19062 and T.19068, 11<sup>th</sup> December 2007, Dean MANNING, T.19083, 12<sup>th</sup> December 2007, Dean MANNING ; T.24000-T.24001, 23<sup>rd</sup> July 2008, Debra KOMAR

<sup>1674</sup> T.33688, T.33693, 5<sup>th</sup> May 2009, Dusan JANC. – see also [REDACTED], (PW-110); T.1179, 6<sup>th</sup> September 2006, Ahmo HASIC, T.14541, 30<sup>th</sup> August 2007, Drago IVANOVIC, [REDACTED] (PW-169), T.6469, 29<sup>th</sup> January 2007, T.11381-11383, 11<sup>th</sup> May 2007, Slavko PERIC

is often entirely unrealistic compared with the size of the site<sup>1675</sup> and the numbers of bodies found.<sup>1676</sup>

- The geographical extent of the area over which persons are alleged to have been involved in the “fall of Srebrenica” is ill defined<sup>1677</sup>

1005. Finally, it is submitted that it cannot be said with any degree of certainty that the numbers which are asserted by the Prosecution involved entirely Muslim males. This submission is based upon the following evidence :

- The Prosecution experts have not turned their minds to evidence of connections between the bodies in the graves and the artefacts found with them and, when they did, their approach was inconsistent.<sup>1678</sup>
- Insufficient work has been conducted upon this aspect of the case to make any kind of definitive conclusion<sup>1679</sup>
- There is no compelling evidence that the question of genocide has been addressed from a scientific perspective when it could readily have been considered<sup>1680</sup>
- The Prosecution experts have ‘cherry picked’ that evidence from graves which appears to have some sort of affiliation with the Muslim race rather than evaluate all of the evidence taken from the graves<sup>1681</sup>

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<sup>1675</sup> T.33686-33700, 5<sup>th</sup> May 2009, Dusan JANC

<sup>1676</sup> [REDACTED] (PW-110), T.943, 29<sup>th</sup> August 2006, Mevludin ORIC, [REDACTED], (PW-169), T.10223-4, 18<sup>th</sup> April 2007, Rajko, BABIC, [REDACTED], T.18055, 21<sup>st</sup> November 2007, Dragan JOVIC, T.18077, [REDACTED], [REDACTED], T.14572, 30<sup>th</sup> August 2007, Dragoje IVANOVIC, [REDACTED] see also 1<sup>st</sup> Zvornik Brigade Commander’s Interim Combat Report 06/217-1 (OTP English translation), 15 Jul.1995 (ERN: 0081-5835-0081-5836). PANDUREVIĆ reported later that 3,000 Muslim prisoners were in Zvornik schools. P334 1<sup>st</sup> Zvornik Brigade Commander’s Interim Combat Report 06-223 (OTP English translation), 18 Jul.1995; T.31103-T.31104, 9 February 2009, Vinko PANDUREVIC

<sup>1677</sup> T.11177-T.11178, 9<sup>th</sup> May 2007, Helge BRUNBORG; T.24334, 29<sup>th</sup> July 2008, Svetlana RADOVANOVIC; T.24366, T.24367, 30<sup>th</sup> July 2008, Svetlana RADOVANOVIC; T.24507, 31<sup>st</sup> July 2008, Svetlana RADOVANOVIC; T.33527, 1<sup>st</sup> May 2009, Dusan DUNJIC

<sup>1678</sup> T.23883, T.23983, 24<sup>th</sup> July 2008, Debra KOMAR

<sup>1679</sup> T.23984-23985, 24<sup>th</sup> July 2008, Debra Komar

<sup>1680</sup> T.23988, T.23989, T.23991, T.24041, 24<sup>th</sup> July 2008, Debra KOMAR

<sup>1681</sup> T.24040, 24<sup>th</sup> July 2008, Debra KOMAR, T.8919, 15<sup>th</sup> March 2007, William HAGLUND

## PART 5 - MODES OF RESPONSIBILITY

1006. Vinko Pandurevic is indicted under both paragraph 1 and paragraph 3 of Article 7 of the ICTY Statute. Accordingly, he is alleged to be responsible both as an individual and as a superior for the crimes in the indictment. In the following paragraphs both modes of liability will be discussed.

### 1. Individual criminal responsibility

1007. Article 7(1) enumerates the following forms of responsibility: planning, instigating, ordering, and committing as well as aiding and abetting. The Prosecution charges each of the accused with all forms of participation in relation to the counts under which they are charged. Additionally, all accused are charged with committing these crimes by participating, with known or unknown co-perpetrators, in a joint criminal enterprise.<sup>1682</sup>

1008. Notwithstanding this, during the Prosecution case, the allegations relating to the individual responsibility of Vinko Pandurevic can be summarized as follows:

- (i) *participation in* developing or *endorsement* of the plans “to murder able-bodied Muslim men” and “to forcibly remove the Muslim population from Srebrenica and Zepa.”<sup>1683</sup>
- (ii) *committing* the crimes that formed the object of the plans as part of a joint criminal enterprise,<sup>1684</sup> or, otherwise,
- (iii) *aiding and abetting* the commission of such crimes.<sup>1685</sup>

In the absence of any positive assertion that Pandurevic “ordered” or “instigated” crimes, these modes of liability will be ignored.<sup>1686</sup>

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<sup>1682</sup> Prosecution Pre-Trial Brief, 28 April 2006, paragraph 430.

<sup>1683</sup> Indictment paragraphs: 27, 36, 39, 77. Although the Prosecution identifies two such plans, it also admits that they are completely intertwined and overlapping. T. 21431-21432, 18 February 2008, 98bis Submission Nelson Thayer.

<sup>1684</sup> The observation made regarding the two plans is also applied to the joint criminal enterprise. Although the Prosecution identifies two such enterprises, it also admits that they are completely intertwined and overlapping. T. 21431-21432, 18 February 2008, 98bis Submission Nelson Thayer.

<sup>1685</sup> For Prosecution assertions regarding Pandurevic’s individual responsibility, see: T.477-485, 22 August 2006, Opening Statement Peter McCloskey; See also, in general, T.21404-21442, 18 February 2008, 98bis Submission Nelson Thayer.

<sup>1686</sup> Indictment paragraphs: 30.14, 30.15, 39 a) and 39 b); Prosecution Pre-Trial Brief, 28 April 2006, paragraphs 435-436. The indictment does refer to Pandurevic “(personally) authorizing” certain acts, but these contentions pertain more to the general *commission* of specific crimes, as opposed to *ordering* them.

### 1.1. Participation in developing or endorsement of the common plan

1009. The defence makes no submissions as to the existence of plans to kill and/or transfer for present purpose. Plainly it is open to the Chamber to infer that some plans did exist.<sup>1687</sup> The Appeal Chamber in *Prosecutor v. Krstic* also suggested that the mere existence of such a plan could be inferred from the facts.<sup>1688</sup>

1010. Nonetheless, in order to prove that Vinko Pandurevic did participate in developing or, at least, endorsed the plan “to murder the able-bodied Muslim men” and “forcibly transfer the Muslim population from Srebrenica and Zepa”, the Prosecution has to demonstrate, beyond reasonable doubt, the following:

- (i) that the *circumstances* in which this plan was forged are known and that on that basis
- (ii) the *participation* of Pandurevic in the planning or his *endorsement* of the plan can be established, showing that
- (iii) he *shared the specific intent* to commit the crimes that formed the object of the plans(s).<sup>1689</sup>

1011. The Defence challenges all three points. It maintains that the circumstances in which the plan was forged have not been clarified and, for that reason, the participation of Pandurevic has not been proved. Moreover, the Defence asserts that Pandurevic did not participate in any such planning and did not share the specific intent required. All three points will be addressed in the section analyzing the first category of the joint criminal enterprise.

### 1.2. Commission of the crimes that formed the object of the common plan

1012. The Prosecution alleges that the common plan was executed through two joint criminal enterprises (JCE): first, “to murder the able-bodied Muslim men” and second, “to forcibly remove the Muslim population from Srebrenica and Zepa.”<sup>1690</sup> The underlying facts and agreements of the joint criminal enterprise are identical to the facts and agreements identified by the Prosecution for the overall planning of these crimes.<sup>1691</sup>

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<sup>1687</sup> *Prosecutor v. Blagojevic and Jokic*, Trial Chamber Judgment, 27 January 2005, paragraph 721. *Prosecutor v. Krstic*, Appeal Chamber Judgment, 19 April 2004, paragraph 93.

<sup>1688</sup> *Prosecutor v. Krstic*, Appeal Chamber Judgment, 19 April 2004, paragraph 93.

<sup>1689</sup> These conditions have been drawn up on the basis of the indictment counts that allege participation in the common plan, that is, Counts 1, 2 and 7. They accumulate requirements *common* for demonstrating participation in planning, be that part of conspiracy, joint criminal enterprise or any other planning of a crime. *Prosecutor v. Haradinaj et al.*, Trial Chamber Judgment, 3 April 2008, paragraphs 138; 142, *Prosecutor v. Popovic et al.*, Decision on Motions Challenging the Indictment pursuant to Rule 72, 31 May 2006, paragraph 20; *Prosecutor v. Limaj et al.*, Trial Chamber Judgment, 30 November 2005, paragraph 513; *Prosecutor v. Kvocka et al.*, Appeal Chamber Judgment, 28 February 2005, paragraph 81; *Prosecutor v. Brdanin*, Trial Chamber Judgment, 1 September 2004, paragraphs 262, 268; *Prosecutor v. Kordic and Cerkez*, Trial Chamber Judgment, 26 February 2001, paragraph 386; *Prosecutor v. Naletilic and Martinovic*, Trial Chamber Judgment, paragraph 529-531; *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Caso No. ICTR-99-52-T, Trial Chamber Judgment, 3 December 2003, paragraph 954.

<sup>1690</sup> See indictment paragraphs: 27, 58.

<sup>1691</sup> See indictment paragraph: 34.



Nonetheless, the liability of a participant to a joint criminal enterprise depends on the *commission* of the criminal acts in furtherance of that enterprise.<sup>1692</sup>

1013. For that reason, in order to demonstrate the participation of Vinko Pandurevic in either JCE (both in the 1<sup>st</sup> category), the Prosecution has to prove, apart from the conditions identified above, that

- (i) Vinko Pandurevic *acted in concert* with the other JCE participants and
- (ii) *committed, assisted in or contributed to* the commission of the specific crimes.<sup>1693</sup>

1014. The Defence challenges both points and avers that Pandurevic did not commit, assist in or contribute to any such crimes. These points will be addressed in relation to each count and as regards JCE I.

1015. To the extent that some of the crimes (coined as opportunistic killings) did not fall within the JCE, the Prosecution allows for the possibility that they were a natural and foreseeable consequence of the JCE I, and each accused was aware that those crimes were a natural and foreseeable consequence of the execution of the JCE. In the Defence submission this doctrine has no application to this case.

### 1.3. Aiding and abetting the commission of such crimes

1016. The Prosecution characterizes aiding and abetting as applicable to all contributions to the criminal event that are not captured by “planning, instigating, ordering or committing.”<sup>1694</sup> Accordingly, if the Prosecution case fails to demonstrate Pandurevic’s participation in developing the plan for the crimes or in the joint criminal enterprise, it can still prove that he aided and abetted the commission of those crimes.

1017. In order to make such claims, the Prosecution will have to demonstrate, beyond reasonable doubt, that:

- (i) while not sharing the specific intent, Pandurevic had *knowledge* of the plans to kill and forcibly transfer or, at least, of the specific intent of minimum one perpetrator, and
- (ii) he *intended to* assist, encourage or morally support the commission of such crimes, consequently,
- (iii) his acts did amount to *practical assistance, encouragement or moral support*, and

<sup>1692</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 139; Prosecutor v. Milutinovic et al., Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanic’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, para. 23.

<sup>1693</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 138; Prosecutor v. Krajisnik, Trial Chamber Judgement, 27 September 2006, paragraph 883; Prosecutor v. Blagojevic and Jokic, Trial Chamber Judgment, 17 January 2005, paragraph 702; Prosecutor v. Brdanin, Trial Chamber Judgment, 1 September 2004, paragraph 263; Prosecutor v. Krajisnik, Trial Chamber Judgment, paragraph 883.

<sup>1694</sup> Prosecution Pre-Trial Brief, para. 445.

(iv) his contribution had a *substantial effect* to the commission of such crimes.<sup>1695</sup>

1018. The Defence avers that the evidence has not established any of these matters. First of all, Pandurevic had no contemporary knowledge of the overall plans. Secondly, the Prosecution has failed to show that Pandurevic was aware of one or more perpetrators criminal intent before any of the crimes occurred. Moreover, even though he did find out about some of the executions in the Zvornik area, he never intended to assist, encourage or morally support those involved in the commission of these crimes and, indeed, he never did so. Finally, the Defence will show that his acts never contributed in any significant way to the commission of those crimes.

1019. The Defence also submits that, as a matter of legal interpretation, it chose to discuss omissions as part of superior responsibility (failure to prevent and punish). Although the Defence agrees that mere presence at a crime scene can, in certain circumstances, amount to aiding and abetting, it also asserts that mere presence or tacit approval is a form of positive action and not omission.<sup>1696</sup> Mere presence and/ or tacit approval will be discussed as part of the counts of forcible transfer and deportation.

1020. These points will be addressed in relation to JCE I and as regards each count of the indictment.

## **2. Pandurevic's Alleged Participation in Joint Criminal Enterprise I**

1021. The indictment alleges two separate yet intertwined JCEs: (1) "to murder the able-bodied Muslim men" and (2) to "forcibly transfer the Muslim population from Srebrenica and Zepa."

1022. The first category JCE has three basic conditions: plurality of persons, the existence of a common plan or purpose and the participation of the accused in the common plan.<sup>1697</sup>

### **2.1. Plurality of persons**

1023. There is no submission made on behalf of Pandurevic that the Prosecution have failed to prove that the two alleged JCE's involved a number of participants<sup>1698</sup> The

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<sup>1695</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraph 145; Prosecutor v. Limaj et al, Trial Chamber Judgment, 30 November 2005, paragraph 517; Prosecutor v. Brdanin, Trial Chamber Judgment, 1 September 2004, paragraph 271; Prosecutor v. Vasiljevic, Appeal Chamber Judgment, 25 February 2004, paragraph 102; Prosecutor v. Tadic, Appeal Chamber Judgment, 15 July 1999, paragraphs 229.

<sup>1696</sup> Prosecutor v. Brdanin, Appeals Chamber Judgment, 9 April 2007, para 273: "An accused can be convicted for aiding and abetting a crime when it is established that his conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime.<sup>551</sup> This form of aiding and abetting is not, strictly speaking, criminal responsibility for omission. In the cases where this category was applied, the accused held a position of authority, he was physically present on the scene of the crime, and his non-intervention was seen as tacit approval and encouragement."

<sup>1697</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 135; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraphs 190-196.

identification of those said to be participants will be the subject of some comment. To mention but a few examples at this stage, the Romanija Brigade and its commander Mirko Trivic are specifically excluded from paragraphs 97 and 98 of the indictment, notwithstanding the clear involvement of both man and unit in the taking of Srebrenica and the evacuation of Zepa.<sup>1699</sup> The Prosecution continue to aver that Colonel Vidoje Blagojevic was a participant in the Joint Criminal Enterprises, notwithstanding his acquittal by the Tribunal. No attempt has ever been made to indict the man listed 3<sup>rd</sup> as a participant, General Zivanovic, despite his regular contact with the office of the Prosecutor. Whilst therefore, a number of people may have been involved together in events, their identification in paragraph 97, is not only, in most cases unproven, it is haphazard and unreliable.

## 2.2. The existence of a common plan, design or purpose

1024. According to the Prosecution's narrative, the two common plans that formed the objectives for the two JCEs were forged as follows:

- during the evening of the 11<sup>th</sup> of July and the morning of the 12<sup>th</sup> of July, the initial plan to murder the hundreds of able-bodied men identified in the crowd of Potocari was developed (paragraph 27 of the indictment);
- at the same time, the plan forcibly to remove the inhabitants of Srebrenica was developed (paragraphs 27 and 58 of the indictment)
- the initial plan to execute "more than 1000 Bosnian Muslim men and boys" was expanded on 12 or 13 July to encompass the summary execution of more than 6000 men and boys (paragraph 36 of the indictment)
- no specific date is provided for when the alleged plan forcibly to transfer the inhabitants of Zepa was developed. It is implied that the planning happened somewhere between the 11<sup>th</sup> and the 13<sup>th</sup> of July 1995 (paragraphs 65-66 of the indictment).
- as an all-encompassing corollary of the plan forcibly to remove the inhabitants of Srebrenica and Zepa, the Prosecution invokes Directive 7 to show that an incipient form of the plan existed as early as March 1995 (paragraph 50 of the indictment).

1025. In order to prove, beyond reasonable doubt, that such a common plan existed, the Prosecution has to show that there was indeed an agreement, an arrangement or some sort of understanding between two or more persons, that need not be express, but it must stay at the basis of the criminal enterprise.<sup>1700</sup> By proving the existence of such an agreement, the Prosecution is also shedding light on the participation of the individual accused in the enterprise. Accordingly, in order to maintain that Pandurevic was a participant in both

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<sup>1698</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Kvocka et al., Trial Chamber Judgment, 2 November 2001, paragraph 307; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 227.

<sup>1699</sup> See section Krivaja 95.

<sup>1700</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 227-228.

JCEs, the existence of such an agreement as well as Pandurevic's knowledge of it has to be proved as an initial step. The Prosecution relies on three assertions regarding the existence of the arrangement and Pandurevic's knowledge of it: the issuing and distribution of Directive 7, the meeting of the 12<sup>th</sup> of July in Bratunac and alleged communications between Pandurevic and others.

### 2.2.1. The relevance of Directive 7

1026. Directive 7 is a strategic document.<sup>1701</sup> In commercial terms it is a mission statement. It was created in the Main Staff and distributed only on a limited basis. The Prosecution's approach to the document is that it should effectively be treated as viral, infecting the whole VRS with criminal intent from the moment of its creation. That approach is naïve and ignorant of two important factors: firstly, very few people actually knew about it, and secondly, soldiers and commanders at tactical level merely followed combat orders which they were bound to do.

1027. Directive 7 was not distributed amongst combat units in its original form, but was re-written and amended by operational commanders on the basis of their specific military assessments. It made no mention of the operational objective which was to be Krivaja 95. In the Drina Corps, Zivanovic rewrote the directive and repeated only the combat objectives relevant to its enemy forces.<sup>1702</sup> The tasks of the Zvornik Brigade are quite specific.<sup>1703</sup> Pandurevic's own evidence on the topic is compelling: he had no knowledge that the brigade's tasks would include the removal of the inhabitants from Srebrenica or Zepa.<sup>1704</sup>

1028. It is important to note that the combat tasks Pandurevic understood he had on the basis of the Drina Corps order derived from Directive 7, were characterized as legitimate by the Prosecution in this case.<sup>1705</sup> Furthermore, the Appeals Chamber in Krstic found that, upon reading Directive 7 and other directives, General Radislav Krstic could have only known about the military plans to take over the enclaves and that the available evidence did not establish that he could have known of the existence of a criminal enterprise in particular, to kill the able-bodied men.<sup>1706</sup>

### 2.2.2. The alleged meeting on the 12th of July

1029. The Prosecution also places great store on the occurrence of a meeting on 12<sup>th</sup> of July at the Bratunac Brigade headquarters.<sup>1707</sup> At this meeting, it is surmised, the plan to kill the able-bodied men *must have been* discussed. Whether such a meeting did in fact occur,

<sup>1701</sup> P00686, Butler, R., Srebrenica Narrative, para. 1.37.

<sup>1702</sup> T.11920, 22 May 2007, Mirko TRIVIC; T.15216, 11 September 2007, Nedeljko TRKULJA; T.15319, 13 September 2007, Milomir SAVCIC; T.30826-T.30827, Vinko PANDUREVIC; See Part 4 Section 3 Events pre-Krivaja

<sup>1703</sup> T.30823-T.30824, 29 January 2009, Vinko PANDUREVIC

<sup>1704</sup> T.30827, 29 January 2009, Vinko PANDUREVIC

<sup>1705</sup> T.398, 21 August 2006, Opening Statement Peter McCloskey; See Part 4 Section 13 Operation Stupcanica 95

<sup>1706</sup> Prosecutor v. Krstic, Appeals Chamber Judgment, 19 April 2004, paragraphs 90, 100.

<sup>1707</sup> See Part 3 Section 8 Decision to Kill POWs

must be subject to serious doubt. The preponderance of evidence suggests that it occurred on 11<sup>th</sup> and not 12<sup>th</sup>, and there is quite simply no evidence at all that the discussion included the commission of any sort of crimes. In the submission of the Defence it is not open to the Chamber to infer *contrary to all the direct evidence* that such a discussion in fact took place.<sup>1708</sup> It is worth pausing again to note that Trivic, who was present at the meeting, is not said to be party to any JCE. In the case of Pandurevic, the meeting is critical to establishing that he was a party, and when he joined. Such evidence is necessary.<sup>1709</sup>

1030. In the submission of the Defence, the Prosecution has failed to discharge the burden of proving that Pandurevic became aware of any plan and/or joined it at a meeting in Bratunac, whenever it might have taken place.

### 2.2.3. Pandurevic's communications

1031. The expansion of the plan is said to have occurred thereafter on the 12<sup>th</sup> or 13<sup>th</sup> of July. There must be cogent evidence to demonstrate when the expansion happened, when alleged members of the JCE (including Pandurevic) were informed of the expansion of objectives and whether they actually began sharing those objectives and whether they persisted with their implementation.<sup>1710</sup> In this respect, it is not necessary to show that the JCE members *explicitly* agreed to the expansion of criminal means; this agreement may materialise extemporaneously and be inferred from circumstantial evidence.<sup>1711</sup>

1032. The Prosecution's case in this regard is vague. No evidence has been led to show what was discussed at the alleged 12<sup>th</sup> of July meeting or whether the expansion had already been conceived by that evening.

1033. There is clear evidence that Pandurevic was marching to Zepa throughout 13<sup>th</sup> July, and accordingly, he was nowhere near Bratunac when the first murders were taking place and the plans of Beara, Deronjic and Momir Nikolic were being hatched. The Prosecution must establish beyond reasonable doubt that Pandurevic was informed of and joined the expanded plan to kill all the able bodied men of Srebrenica. The height of the Prosecution's case in this regard seems to be the assertion in the opening statement that he was "contactable". Pandurevic's movements, communication capabilities and actual communications on 13<sup>th</sup> July have been dealt with in minute detail in this brief and in the evidence. There is not a shred of evidence to suggest that Pandurevic was informed of the expanded plan on 13<sup>th</sup> July, and nothing from which any proper inference to that effect could be drawn.<sup>1712</sup> It should not be forgotten that Pandurevic gave evidence himself on this topic. The Prosecution have not done nearly enough to prove beyond doubt that his

<sup>1708</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 475.

<sup>1709</sup> Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraphs 154, 156-157.

<sup>1710</sup> Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraphs 171-173.

<sup>1711</sup> Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraph 163; Prosecutor v. *Brđanin*, Appeals Chamber Judgment, 4 April 2007, paragraph 418; Prosecutor v. *Kvočka et al.*, Appeals Chamber Judgment, 28 February 2005, paragraphs 96 and 117; Prosecutor v. *Vasiljević*, Appeals Chamber Judgment, 25 February 2006, paragraphs 100, 108-109; Prosecutor v. *Krnjelac*, Appeals Chamber Judgment, 17 September 2003, paragraph 31; Prosecutor v. *Tadić*, Appeals Chamber Judgment, 15 July 1999, paragraph 227..

<sup>1712</sup> See Part 4, Sections 4, 13 and 14.

assertion not to have known about the killing operation before it began was untrue. Mere contact with Krstic and Mladic on that day does not give rise to any such inference.<sup>1713</sup>

1034. As acknowledged by him, Pandurevic came to know of some of the detention sites and executions.<sup>1714</sup> Knowledge of a JCE to kill all the able bodied men of Srebrenica cannot be inferred, however, from knowledge that there are some prisoners in schools, or even that prisoners have been executed.<sup>1715</sup>
1035. In Blagojevic and Jokic it was held that even though there was circumstantial evidence to show that the killings at Kravica Warehouse were common knowledge, it did not lead to the *only possible conclusion* that Blagojevic knew about the mass execution “during the days following the massacre.”<sup>1716</sup> The Trial Chamber thus concluded that there was insufficient evidence to show that Blagojevic knew about the overall plan to kill able-bodied men. The Appeals Chamber upheld that finding.<sup>1717</sup>
1036. The only evidence suggesting that Pandurevic had any knowledge even of the existence of prisoners of war prior to 15<sup>th</sup> July comes from PW-168. The credibility of certain aspects his evidence is highly questionable and has been dealt with in detail elsewhere.<sup>1718</sup> Whatever else may be said about the Irregular Combat Report of 15<sup>th</sup> July, it plainly reflects matters which came to Pandurevic’s attention that day, and not before.
1037. There is no other evidence from which an inference could be drawn that Pandurevic had joined the expanded plan to murder.

### **2.3. Voluntary participation of Pandurevic in one or more aspects of the common design**

1038. In order to demonstrate Pandurevic’s participation in the two JCEs, it is not enough to show that he knew about the common plan, but also that (1) he shared the specific intent for the crimes that formed the objectives of the JCE, and (2) that he either committed these crimes or he assisted in or contributed to their commission.<sup>1719</sup>

#### **2.3.1. Shared intent**

1039. The specific intent required for each charge on the indictment will be dealt with elsewhere. The Prosecution must prove, beyond reasonable doubt, that Pandurevic agreed and shared the common objectives of the two JCEs. In addition, when it comes to the common plan to execute prisoners of war, the Prosecution must prove that Pandurevic

<sup>1713</sup> Prosecutor v. Krstic, Appeals Chamber Judgment, 19 April 2004, paragraph 98.

<sup>1714</sup> T.31084-31085, 9 February 2009, Vinko PANDUREVIC

<sup>1715</sup> Prosecutor v. Krstic, Appeals Chamber Judgment, 19 April 2004, paragraphs 99-100.

<sup>1716</sup> Prosecutor v. Blagojevic and Jokic, Trial Chamber Judgment, 17 January 2005, paragraph 742.

<sup>1717</sup> Prosecutor v. Blagojevic and Jokic, Appeals Chamber Judgment, 9 May 2007, paragraph 129.

<sup>1718</sup> See Part 4 Sections 8 and 11.

<sup>1719</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 135; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 196.

agreed not only to the initial plan, but also with the alleged expanded purpose. It must further prove the point in time Pandurevic became aware of the new objective.<sup>1720</sup>

### 2.3.2. Commit, assist or contribute

1040. A joint criminal enterprise, as a mode of liability, requires that an individual actually *participates* in the commission of the crimes, or, at least, assists in their commission or contributes to them; only in such a case can participation be proven.<sup>1721</sup> Consequently, the Prosecution has to show that Pandurevic acted together, or in concert with the other participants, in the implementation of a common objective, if he is to share responsibility for crimes committed through the JCE.<sup>1722</sup> His contribution need not be substantial,<sup>1723</sup> but it must be significant.<sup>1724</sup> A contribution must involve voluntary and positive action.<sup>1725</sup>
1041. The Prosecution claims that Pandurevic participated in the JCE to kill the prisoners of war by “authorizing” the transportation, detention, summary execution and burial of these prisoners in the Zvornik area with “full knowledge of the plan”.<sup>1726</sup>
1042. Pandurevic’s lack of role in the detention and execution of the prisoners of war has been addressed in several sections of this brief.<sup>1727</sup> The legal implications of his role are discussed in detail in the section on superior responsibility. Similarly, in relation to the JCE forcibly to remove the inhabitants of Srebrenica and Zepa, the Prosecution claim that Pandurevic participated by defeating the enemy forces at both Srebrenica and Zepa, as well as by assisting in the forcible removal of prisoners of war from Srebrenica.<sup>1728</sup> These matters will be dealt with under that specific count.<sup>1729</sup>
1043. Nonetheless, the Defence does briefly observe that in defeating the Muslim forces at Srebrenica, Pandurevic was merely following lawful orders pursuant to a legitimate combat operation.<sup>1730</sup> Significantly, perhaps, no averment is made that Pandurevic

<sup>1720</sup> Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraphs 202-203.

<sup>1721</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; *Prosecutor v. Milorad Krnojelac*, Decision on Form of Second Amended Indictment, 11 May 2000, para. 15; Prosecutor v. Tadic, Appeals Chamber Judgment, 15 July 1999, paragraph 227.

<sup>1722</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 139; Prosecutor v. Brdanin, Appeals Chamber Judgment, 4 April 2007, paragraphs 410, 430; Prosecutor v. Krajisnik, Trial Chamber Judgment, 27 September 2006, paragraph 884.

<sup>1723</sup> Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Kvočka et al, Appeals Chamber Judgment, 28 February 2005, paragraphs 97-98.

<sup>1724</sup> Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009, paragraph 215; Prosecutor v. Haradinaj, Trial Chamber Judgment, 3 April 2008, paragraph 138; Prosecutor v. Brdanin, Appeals Chamber Judgment, 4 April 2007, paragraph 430.

<sup>1725</sup> Prosecutor v. Blagojevic and Jokic, Appeals Chamber Judgment, 9 May 2007, paragraphs 147-176.

<sup>1726</sup> Indictment, paragraph 39.

<sup>1727</sup> See Part 4, Sections 8 and 10.

<sup>1728</sup> Indictment, paragraph 77.

<sup>1729</sup> See Counts 7 and 8, “Forcible Transfer and Deportation”

<sup>1730</sup> See Part 4 Section 4 Krivaja 95; T.398, 21 August 2006, Opening Statement Peter McCloskey; [REDACTED].

contributed to the JCE forcibly to transfer the population by shelling the town. The topic is nonetheless dealt with in more detail elsewhere.<sup>1731</sup>

### 3. Extended category of the joint criminal enterprise (JCE III)

1044. The Prosecution allege that in addition to his liability for the mass murder as a member of the JCE, Pandurevic is also liable for assorted sporadic murders by reason of their being a “natural and foreseeable consequence” of the plan to commit genocide. For the reasons hereinafter set out, the Defence submit that the application of the principles of JCE 3 to this case is inappropriate and unnecessary. Under the doctrine of JCE 3, participants in a criminal enterprise, who agreed to the common criminal design (of the first category JCE), but did not share the intent of any additional, incidental crimes, can be, nevertheless, held responsible for them, if these crimes were the natural and foreseeable consequence of the common design.<sup>1732</sup>

1045. The conditions for a third category JCE to exist are as follows:

- 1) shared intent for the first category of joint criminal enterprise
- 2) the foreseeability of the possible commission by other members of the group of offences that *do not constitute the object* of the common criminal purpose,
- 3) willingness for taking the risk of such offences to take place.<sup>1733</sup>

#### “Opportunistic killings”

1046. The Prosecution claims that “opportunistic killings” took place as “a natural and foreseeable consequence” of the JCE “to murder all able-bodied Muslim men from Srebrenica”.<sup>1734</sup> Further, the Prosecution alleges that such opportunistic killings also took place as a consequence of the JCE to “forcibly transfer and deport the population from Srebrenica and Zepa.”<sup>1735</sup>

<sup>1731</sup> See Part 4 Section 4 Krivaja 95.

<sup>1732</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 137-138; Prosecutor v. Kvočka et al., Appeal Chamber Judgment, 28 February 2005, paragraph 83; Prosecutor v. Blaškić, Appeal Chamber Judgment, 29 July 2004, paragraph 33; Prosecutor v. Krstić, Trial Chamber Judgment, 2 August 2001, paragraph 613; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 31; Prosecutor v. Tadić, Appeal Chamber Judgment, 15 July 1999, paragraphs 220, 227-228, 231-232.

<sup>1733</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 137; Prosecutor v. Krstić, Trial Chamber Judgment, 2 August 2001, paragraph 613; Prosecutor v. Tadić, Appeal Chamber Judgment, 15 July 1999, paragraphs 220.

<sup>1734</sup> Indictment, paragraph 31.

<sup>1735</sup> Indictment, paragraph 83.



*As a consequence of the killing operation*

1047. In the Defence submission, it is nonsense to suggest that assorted odd killings *went beyond the scope* of the plan to commit mass murder. There is a temporal, geographical and personnel link between the incidents said to constitute evidence of the plan to commit genocide, and those said to be opportunistic killings. There is moreover, no obvious logic as to why certain events are said to form part of one and certain others are differently categorized. Why, for example, the murder of certain prisoners at the Petkovci school are said to be opportunistic,<sup>1736</sup> whilst the remainder are part of the JCE to kill the able bodied men,<sup>1737</sup> is a matter of profound curiosity. JCE 3 is intended, in the Defence submission, for situations where the incidental offences are more serious than those agreed upon by the common design.<sup>1738</sup>

1048. A further problem arises from the fact that liability under JCE 3 depends upon the prior existence of a JCE. In other words you cannot foresee that something is a necessary consequence of a plan, until there is a plan. In the indictment as originally pleaded, that is precisely what is alleged.<sup>1739</sup> Whilst the evidence may not have supported some of these allegations in any event, the muddled thinking that went into the drafting of the indictment in the first place is plain.

1049. This averment is particularly relevant to the case of Pandurevic. As has been set out above, when, let alone if, he joined the JCE to murder the able bodied men, is far from clear on the evidence. Any liability for necessarily foreseeable events could only run from the time he is proven to have joined.

*As a consequence of the forcible transfer operation*

1050. Much of that submitted above is pertinent to the allegation that certain crimes were a necessary and foreseeable consequence of the plan forcibly to transfer the population of Srebrenica, not least the comments about the timing of the incidents in paragraph 31. In the Defence submission the killings in paragraph 31 are moreover, too remote from the plan to remove the civilian population to attract liability under JCE 3. However, the indictment alleges also that the crime of persecution was a necessary and foreseeable consequence of the plan to transfer the population.<sup>1740</sup>

1051. The Defence frankly wonder whether this was a mistake in the indictment's drafting. The particulars of paragraph 48 of the indictment cannot properly be characterized as "individual criminal acts" when it actually describes the whole alleged murder and forcible transfer operations. Points b, c and d are presented as elements of the crime of persecution, which, as a crime against humanity, requires widespread and systematic

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<sup>1736</sup> Indictment paragraph 31.4

<sup>1737</sup> Indictment paragraph 30.7

<sup>1738</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraphs 137; Prosecutor v. Krstić, Trial Chamber Judgment, 2 August 2001, paragraph 613; Prosecutor v. Tadic, Appeal Chamber Judgment, 15 July 1999, paragraphs 220. See also, Cassese, A., International Criminal Law, 2008, Oxford University Press, pp. 206-207.

<sup>1739</sup> Indictment paragraphs 31.1 and 31.2

<sup>1740</sup> Indictment paragraphs 83 and 48

behaviour. Consequently, the same acts cannot be both widespread and systematic and at the same time individual and opportunistic.

1052. The Defence submits that category three of the joint criminal enterprise does not arise in the present case. In any event, since the Prosecution has failed to prove, beyond reasonable doubt, that Pandurevic had knowledge of, let alone shared the intent necessary for JCE I, it is otiose to discuss his responsibility for any additional, allegedly foreseeable offences.

#### 4. Elements of command responsibility not fulfilled

1053. Three matters must be proved before Pandurevic can be convicted on the basis of command or superior responsibility: (1) the superior-subordinate relationship between Pandurevic and the perpetrator of the underlying offence, (2) Pandurevic knew or had reason to know that his subordinate was about to commit such act or had done so and (3) Pandurevic failed to take necessary and reasonable measures to prevent such act or punish the perpetrator thereof.<sup>1741</sup>

1054. The three elements necessarily have to be considered in *the order in which they are enumerated above*. To do otherwise is illogical, as it matters not that an individual failed to take necessary and reasonable measures to prevent such act or punish the perpetrator thereof, where there was no command relationship between the individual and the perpetrator. Only once the command relationship has been established, would Pandurevic's knowledge of the crimes become relevant. And the knowledge element is a *conditio sine qua non* in order to trigger Pandurevic's duty to act. Without his knowledge, no duty to punish the perpetrators can arise.

1055. The Prosecution has to prove each of the 3 elements beyond reasonable doubt.<sup>1742</sup>

#### *Underlying offences*

1056. The Prosecution must prove that Pandurevic's subordinate has committed a *criminal offence*. That involves proof of not only the *actus reus* of the subordinate's crime, but also "the requisite *mens rea* [of the subordinates] at the time".<sup>1743</sup> In other words, it is not sufficient to show that, for example, a member of the Zvornik Brigade guarded the prisoners in schools without knowing that the prisoners of war were about to be executed or a member of the brigade was merely present at the crime scene.<sup>1744</sup> To establish that

<sup>1741</sup> See inter alia BLAGOJEVIC, Trial Judgment, Para 686, 790; CELEBICI Appeal Judgment, Para 189-198, 225, 226, 238, 239, 256, 263, 346; ALEKSOVSKI Appeal Judgment, Para 72, 76; KUNARAC Trial Judgment, Para 394-399

<sup>1742</sup> See BLASKIC, Appeal Judgment, Para 451; STAKIC, Appeal Judgment, Para 9, 157, 337; CELEBICI, Trial Judgment, Para 601; KRNOJALAC, Trial Judgment, Para 94; NTAGERURA, Appeal Judgment, Para 166-175

<sup>1743</sup> See BLAGOJEVIC, Appeal Judgment, Para 284; KAYISHEMA and RUZINDANA, Appeal Judgment, Para 186

<sup>1744</sup> See Part 4 Section 10.

Pandurevic had command responsibility for genocide for example, it must first be proven beyond reasonable doubt, that *his subordinate had the required genocidal intent* (and Pandurevic must have been aware of his subordinate's genocidal intent).

1057. In relation to all crimes, for which Pandurevic is said to bear superior responsibility, a failure by the Prosecution to prove the *mens rea* on the part of the subordinate, will render the conviction of Pandurevic impossible. In *Blagojevic*, the Trial Chamber found that:

1058. "... the participation of units of the Bratunac Brigade in the crimes established above has been reflected in the responsibility of Colonel Blagojević for aiding and abetting, with the following exceptions. In relation to the participation of the units in the murder operation, the Trial Chamber is convinced that they rendered practical assistance that furthered the crimes of murder and extermination. However, the Trial Chamber is unable to determine that they "committed" any of the crimes charged under the counts of murder or extermination. Therefore, the Trial Chamber cannot, with any precision, identify the specific perpetrators for whom Colonel Blagojević had the duty to punish."<sup>1745</sup>

1059. The Appeals Chamber reviewed the finding as follows:

"The Prosecution submissions fail to demonstrate that any assistance rendered by Bratunac Brigade members prior to or contemporaneously with the killings was done with knowledge that executions would occur."<sup>1746</sup> If it is alleged, that the crimes of perpetrators have been committed by *omission* rather than action, then proof of mere presence at the crime scene is not sufficient. The Prosecution must also prove to the requisite standard that the omission was a failure to exercise a *legal duty to act*.<sup>1747</sup>

1060. The Statute of the Tribunal and all jurisprudence prior to 2007 spoke unanimously to the fact that superior responsibility only existed in relation to crimes '*committed*' by subordinates.<sup>1748</sup> However, given certain more recent decisions of the ICTY<sup>1749</sup> it may be necessary to address the question of whether Pandurevic may be liable for his subordinates whose participation in crime may better be described under *other modes of liability* described by article 7(1). In the submission of the Defence, and in the particular circumstances of this case, and especially the proven involvement of various members of the Zvornik Brigade, it is a distinction without a difference, and it does not relieve the Prosecution of the burden of proving participation in crime by a subordinate with an appropriate *mens rea* as a condition precedent to superior liability.

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<sup>1745</sup> See BLAGOJEVIC, Trial Judgment, Para 794. In relation to this also see BLAGOJEVIC, Appeal Judgment, Para 287: "Rather, it appears to be the Trial Chamber's conclusion that it lacked sufficient evidence to find that one of Blagojević's subordinates "committed", in the broad sense of the word, one of the crimes encompassed in the murder operation. Indeed, the Trial Chamber specified on numerous occasions throughout the Trial Judgement the identity of the members of the Bratunac Brigade who rendered practical assistance to the murder operation ()

<sup>1746</sup> See See BLAGOJEVIC, Appeal Judgment, Para 295.

<sup>1747</sup> See ORIC, Trial Judgment, Para 302-304.

<sup>1748</sup> See for example CELEBICI, Appeal Judgment, Para 196-198; BLASKIC, Appeal Judgment, Para 67; BAGILISHEMA, Appeal Judgment, Para 49-55; KRNOJELAC, Trial Judgment, Para 93; See Article 7(3) of the ICTY Statute

<sup>1749</sup> See BLAGOJEVIC, Appeal Judgment, Para 280: "As a threshold matter, the Appeal chamber confirms that superior responsibility under Article 7(3) of the Statute encompasses all forms of criminal conduct by subordinates, not only the "committing" of crimes in the restrictive sense of the term, but all other modes of participation under Article 7(1)." See also BOSKOVSKI, Trial Judgment, Para 404; ORIC, Trial Judgment, Para 300-302; ORIC, Appeal Judgment, Para 21

1061. Moreover, it behooves the Prosecution *sufficiently to identify* each of Pandurevic's subordinates among the participants in the underlying offence<sup>1750</sup> and prove beyond reasonable doubt his participation in *an offence*.<sup>1751</sup> In short, if the Prosecution fails to establish *which crimes were committed by which subordinates*, then there can be no finding that Pandurevic is liable under Article 7(3).<sup>1752</sup> In the submission of the Defence, such matters ought properly to have been pleaded in the indictment.

#### 4.1. Superior-subordinate relationship

1062. A relationship of subordination between Pandurevic and the perpetrators can be either *de jure* (a relationship that is supported in law) or *de facto* (supported in factual situation that existed between Pandurevic and the perpetrators).<sup>1753</sup>

##### 4.1.1. De jure command

1063. De jure superior-subordinate relationship means that the superior has been appointed to a *position of authority for the purpose of commanding* other persons.<sup>1754</sup> The Defence submissions as to the position in law relating to the command of the Zvornik Brigade throughout the period July – September 1995 are dealt with in detail elsewhere in this brief.<sup>1755</sup>

1064. *De jure* powers can be granted in writing or *orally*.<sup>1756</sup> Obrenovic's position was by appointment, namely:

- (1) THE ORDER: his permanent order of appointment as deputy commander in 1993,<sup>1757</sup>
- (2) THE LAW: the Article 17 of the Regulations,<sup>1758</sup>
- (3) ORALLY: the official and oral handover of duties<sup>1759</sup>

1065. Moreover, *de jure* command can be established *circumstantially*. Proof of *de jure* command does not always require *an order*.<sup>1760</sup> [REDACTED].<sup>1761</sup>

<sup>1750</sup> See ORIC, Appeal Judgment, Para 32-49

<sup>1751</sup> See BLAGOJEVIC, Appeal Judgment, Para 284; KAYISHEMA and RUZINDANA, Appeal Judgment, Para 186

<sup>1752</sup> See KVOCKA, Appeal Judgment, Para 144

<sup>1753</sup> See CELEBICI, Appeal Judgment, Para 192; BAGILISHEMA, Appeal Judgment, Para 50

<sup>1754</sup> See STUPAR, Trial Judgment, Para 142

<sup>1755</sup> See Part 3 Sections 2 and 3; Part 4, Sections 4, 6, 14.

<sup>1756</sup> See NAHIMANA, Appeal Judgment, Para 787

<sup>1757</sup> See section

<sup>1758</sup> See Part 3 Sections 2 and 3.

<sup>1759</sup> See Part 3 Sections 2 and 3

<sup>1760</sup> See KORDIC, Trial Judgment, Para 424; RASEVIC and TODOVIC, Trial Judgment, Para 149

<sup>1761</sup> See sections 2,3 of Part 3.

***Proof of de jure command is insufficient***

1066. In law, ‘*de jure authority is not synonymous with effective control*’<sup>1762</sup> and de jure position is *not sufficient proof* of effective control.<sup>1763</sup> In other words, ‘*it is necessary to look to effective exercise of power and control and not to formal titles*’.<sup>1764</sup> The reason for such a standpoint in law is that a de jure commander might actually lack a ‘material ability to prevent or punish the crimes of individuals, who are *legally, but not effectively* under his command. A commander could thus be found to have de jure command whilst having no effective control over his superiors, and vice-versa.’<sup>1765</sup>

1067. The existence of de jure command therefore does *not* allow for an *inference or presumption* that the de jure superior had and exercised effective control over his subordinates, since it would place the burden of proof on the Defence.<sup>1766</sup>

1068. Even if the Trial Chamber was to conclude, that Pandurevic had de jure command during one or both of the two crucial periods, they would have to be satisfied, that Pandurevic possessed the *actual powers of authority and control* in order to find him criminally liable.<sup>1767</sup>

**4.1.2. De facto command and ‘effective control’**

1069. A superior can only be held criminally liable, if he exercised ‘*effective control*’ over the perpetrators. Effective control means having the ‘*material ability to prevent offences*

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<sup>1762</sup> ORIC, Appeal Judgment, Para 91-92

<sup>1763</sup> See also HADZIHSANOVIC, Appeal Judgment, Para 20-21; HALILOVIC, Appeal Judgment, Para 85; BAGILISHEMA, Appeal Judgment, Para 50, 56; CELEBICI, Appeal Judgment, Para 192-193; NAHIMANA, Appeal Judgment, Para 787

<sup>1764</sup> See CELEBICI, Appeal Judgment, Para 197

<sup>1765</sup> See BLAGOJEVIC, Appeal Judgment, Para 302: “The Appeals Chamber does not consider the conclusions regarding the scope of Blagojevic’s [de jure] authority irreconcilable with the finding that he exercised no effective control over Momir Nikolic. In the CELEBICI Appeal Judgment, the Appeals Chamber discussed the possibility that *de jure* authority alone may not lead to the imposition of command responsibility. The relevant discussion indicated “possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control.” In the view of the Appeals Chamber, the Trial Chamber’s conclusion in paragraph 419 of the Trial Judgment that Blagojevic remained in command and control of all units of the Bratunac Brigade reflects its assessment of his *de jure* authority over all members of the brigade, including Nikolic, following a lengthy discussion of various legal provisions, orders, and expert testimony. The Trial Chamber’s subsequent finding in paragraph 795 of the Trial Judgment that Blagojevic lacked effective control over Momir Nikolic reflected its assessment of the actual facts on the ground in light of the earlier legal discussion.”

<sup>1766</sup> See ORIC, Appeal Judgment, Para 91-92; HADZIHSANOVIC, Appeal Judgment, Para 20-21, 190-191; HALILOVIC, Appeal Judgment, Para 85

<sup>1767</sup> See BLAGOJEVIC, Appeal Judgment, Para 302; CELEBICI, Appeal Judgment, Para 197, 306; STUPAR, Trial Judgment, Para 142-143

or punish the principal offenders'.<sup>1768</sup> Effective control is the threshold requirement for superior liability.<sup>1769</sup>

1070. Effective control *over third parties* is irrelevant to establishing superior responsibility.<sup>1770</sup> The superior and subordinate relationship is an *inter-personal relationship* and the Prosecution must prove that Pandurevic had the effective control over *those members* of the Zvornik Brigade, *who had committed* the crimes. If certain members of the Zvornik brigade went beyond his control (for example, because of temporary interference with the command structure of the unit), it would not be sufficient to prove that Pandurevic exercised overall or effective control over *the rest of the brigade*.

1071. As an example, in *Blagojevic*, Trial Chamber came to the following conclusion:

“Considering that during the period between July and November 1995 senior members of the VRS were in the Srebrenica area issuing orders and instructions, and taking into consideration the Trial Chamber’s findings in relation to the functional chain of command for the security organ, the Trial Chamber is unable to conclude that Colonel Blagojević had ‘effective control’ over Momir Nikolić to the threshold required in order to establish a superior-subordinate relationship for the purpose of Article 7(3) of the Statute – namely, that he had the “material ability to prevent or punish the commission of the offences”. Moreover, while recognizing that Colonel Blagojević failed to take any measure to prevent or punish the crimes of Momir Nikolić, the Trial Chamber is convinced that “a commander is not obliged to perform the impossible” and that reporting the matter to the competent authorities may not have been, in the circumstances at that time, a reasonable measure that would have led to the punishment of Momir Nikolić.”<sup>1771</sup>

#### 4.1.3. Establishing ‘effective control’

1072. The evidential burden on the Prosecution when establishing effective control is ‘high’.<sup>1772</sup> The ‘indicators of effective control are more a *matter of evidence* than of substantive law<sup>1773</sup> and those indicators are limited to ‘showing that the accused had the power to *prevent, punish, or initiate measures leading to proceedings* against the alleged perpetrators where appropriate’.<sup>1774</sup> In the words of the Trial Chamber in *Oric*, ‘any

<sup>1768</sup> See BLAGOJEVIC, Trial Judgment, Para 791; BLASKIC, Appeal Judgment, Para 67; CELEBICI, Appeal Judgment, Para 196-198; KRNOJALAC, Trial Judgment, Para 93; BAGILISHEMA, Appeal Judgment, Para 49-55; HADZIHASANOVIC, Trial Judgment, Para 1101

<sup>1769</sup> See HADZIHASANOVIC, Appeal Judgment, Para 20; CELEBICI, Appeal Judgment, Para 196; STUPAR, Trial Judgment, Para 142; BAGILISHEMA, Appeal Judgment, Para 50, 56

<sup>1770</sup> See CELEBICI, Appeal Judgment, Para 249, 992; CELEBICI, Trial Judgment, Para 377-378; BRDJANIN, Trial Judgment, Para 276; BLASKIC, Appeal Judgment, Para 67

<sup>1771</sup> See BLAGOJEVIC, Trial Judgment, Para 795

<sup>1772</sup> See BRIMA, Trial Judgment, Para 1660

<sup>1773</sup> See BLASKIC, Appeal Judgment, Para 69; ALEKSOVSKI, Appeal Judgment, Para 73-74; CELEBICI, Appeal Judgment, Para 206

<sup>1774</sup> See BLASKIC, Appeal Judgment, Para 69; ALEKSOVSKI, Appeal Judgment, Para 76

attempt to formulate a general standard *in abstracto* (of what would constitute ‘‘necessary and reasonable’’ measures) may not be meaningful’.<sup>1775</sup>

1073. Moreover, Pandurevic’s effective control cannot be established by the ‘*process of elimination*’ whereby the effective control over the perpetrators could be inferred from the absence of evidence that *any other authority* exercised such control over them.<sup>1776</sup>

1074. It is further necessary for the Prosecution to establish that Pandurevic had ‘effective’ control, *not just ‘any level of control’ or ‘some control’*. There is no intermediate level of control that would be relevant to command responsibility.<sup>1777</sup>

1075. As has been observed elsewhere<sup>1778</sup> one of the indicia of a command relationship is the giving of orders. However, whilst it is a relevant factor it is not conclusive or automatic proof of effective control over the perpetrators of crimes.<sup>1779</sup>

1076. In particular, evidence that an accused had a general authority to issue orders to an individual or unit may serve no greater purpose than to underline his *de jure* command. What will be of greater relevance is the accused’s particular control over the perpetrator at the appropriate time.

1077. The following evidential features of the case mitigate against a finding that Pandurevic had effective control over any of his subordinates alleged to have participated in crimes:

- The lack of professionalism of the brigade as an army unit<sup>1780</sup>
- The lack of continuity and discipline amongst the members of the brigade<sup>1781</sup>
- The interruption of the command chain by orders coming from another source<sup>1782</sup>
- The unique and chaotic nature of the events<sup>1783</sup>
- The existence of parallel chain of commands between military and military-security organs<sup>1784</sup>
- The presence of officers from superior command at the crimes sites

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<sup>1775</sup> See ORIC, Trial Judgment, Para 329

<sup>1776</sup> See HADZIHASANOVIC, Appeal Judgment, Para 217

<sup>1777</sup> See BAGILISHEMA, Appeal Judgment, Para 56; HALILOVIC, Trial Judgment, Para 752

<sup>1778</sup> See section ??? on

<sup>1779</sup> See HALILOVIC, Appeal Judgment, Para 204; STRGAR, Appeal Judgment, Para 195, 253-254: ‘ In situation involving formal hierarchies of command structures, a superior’s capacity to issue orders can amount to a *factor* indicative of his effective control over subordinates.’ And ‘The superior’s authority to issue orders does *not automatically* establish that a superior had effective control over his subordinates.’

<sup>1780</sup> See Part 3 Section 4

<sup>1781</sup> See Part 3 Sections 1 and 4.

<sup>1782</sup> See Part 3, Section 6; Part 4, Section 8.

<sup>1783</sup> See ORIC, Appeal Judgment, Para 145-149; See Part 4 Section 7

<sup>1784</sup> See Part 3 Section 5 ‘Security organs’: Interference with the normal chain of command was such that Pandurevic, who was formally in the line of command with the perpetrators, was in fact not able to exercise effective control over them because they ultimately answered not to him, or to the chain of command, but up to the security line chain of command.

- The presence of different units not under Pandurevic's command<sup>1785</sup>
- The lack of reporting to Pandurevic<sup>1786</sup>
- Pandurevic's lack of knowledge of the extent or whereabouts of the criminal activity
- The resources available to Pandurevic at that time<sup>1787</sup>
- Pandurevic's preoccupation with the military situation
- The obligation of soldiers of the VRS to follow the orders of the senior officer present in the absence of their commander<sup>1788</sup>
- The advanced stage of the killing operation when Pandurevic re-assumed command on 15<sup>th</sup> July<sup>1789</sup>

1078. Graphically in this case, a security officer from the Main Staff used Pandurevic's office in his absence to announce to members of the brigade and local civic officials that Pandurevic was not present, and that he [Beara] was in command. In a case with a similar factual matrix in terms of command chain interference, the Trial Chamber made the following finding:

‘The commander must have formal and factual authority to command, which means that **his command is not brought into question by the command of someone else who is higher up, at the same level or even lower** down the chain of command, and who then, in the course of commanding, exercise the command authority and/or command powers of a formal commander, with the **result that the formal commander actually loses his formal position.**<sup>1790</sup>

1079. The Trial Chamber in *Ademi and Norac* case went on and acquitted the accused Ademi on the basis that the units ‘were not really subordinated to him and he did not have the necessary scope of command authority. His powers were significantly diminished and reduced, which meant that his command power was also reduced.’<sup>1791</sup>

1080. Where a number of individuals have been temporarily re-subordinated to another unit for a *temporary operation*<sup>1792</sup>, they belong to another chain of command and their new commander or commanding officer is responsible for them if he has effective control over them.<sup>1793</sup>

1081. ‘Both those permanently under an individual's command and those who are so only temporarily or on an *ad hoc* basis can be regarded as being under the effective control of that particular individual. The temporary nature of a military unit is not, in itself,

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<sup>1785</sup> See Part 4 Section 8.

<sup>1786</sup> HADZIHASANOVIC, Trial Judgment, Para 795, 844 etc.

<sup>1787</sup> See Part 4 Section 7.

<sup>1788</sup> KUNARAC, Trial Judgment, Para 628, 863; CELEBICI, Appeal Judgment, Para 266; KORDIC, Trial Judgment, Para 412-413

<sup>1789</sup> See Part 4 Section 8

<sup>1790</sup> See ADEMI and NORAC, Trial Judgment, Section 10

<sup>1791</sup> See ADEMI and NORAC, Trial Judgment, Section 10

<sup>1792</sup> See Part 4 Sections 4, 13 and 14.

<sup>1793</sup> See HALILOVIC, Trial Judgment, Para 61



sufficient to exclude a relationship of subordination between the members of a unit and its commander. To be held liable for the acts of men who operated under him on an *ad hoc* or temporary basis, it must be shown that, *at the time when the acts charged in the Indictment were committed*, these persons were under the effective control of that particular individual.<sup>1794</sup> To hold Pandurevic or any other commander liable for the acts of troops who operated under his command on a *temporary basis* it must be shown that at the time when the acts charged in the indictment were committed, these troops were under his effective control.<sup>1795</sup>

1082. Moreover, for units such as 10<sup>th</sup> Sabotage Detachment, MUP, Bratunac Brigade units, Krajisniki etc the Prosecution must prove that Pandurevic in reality did exercise effective control over these troops.<sup>1796</sup>

1083. The Chamber can find Pandurevic was in effective control, only after considering *all relevant circumstances* as they existed at the time, and only after it is satisfied beyond reasonable doubt that *the only reasonable conclusion* is that Pandurevic had effective control over the perpetrators who may have received orders from others.<sup>1797</sup>

1084. Effective control must exist ‘*at the time when the crimes are alleged to have been committed*’.<sup>1798</sup> Put another way:

‘Article 7(3) provides the legal criteria for command responsibility, thus giving the word “commander” a juridical meaning, in that the provision becomes applicable only where a superior with the required mental element *failed to exercise his powers* to prevent subordinates from committing offences or to punish them afterwards. This necessarily implies that *a superior must have such powers prior to his failure to exercise them*’.<sup>1799</sup>

1085. This is a particularly relevant consideration in the case of Pandurevic, who, it is submitted had no such powers during much of the relevant period of the indictment.

<sup>1794</sup> See KUNARAC, Trial Judgment, Para 399

<sup>1795</sup> See HALILOVIC, Trial Judgment, Para 61

<sup>1796</sup> See section Kiling operation???.; Compaer with the finding in KRSTIC, Trial Judgment, Fotenoote 1418, Page 229: ‘‘In the absence of other onclusive evidence, that he (Krstic) in reality did exercise effective control over these trops (10<sup>th</sup> Sabotage detachment, MUP), General Krstic cannot be said to incur command responsibility for their participation in the crimes.’’

<sup>1797</sup> See HADZIHASANOVIC, Article 7(3) AC Decision, Para 51; CELEBICI, Trial Judgment, Para 413; AKAYESU, Trial Judgment, Para 319; KAYISHEMA, Trial Judgment, Para 103

<sup>1798</sup> See HADZIHASANOVIC, Article 7(3), AC Decision, Par 37(ff) See KUNARAC, Trial Judgment, Para 399; Such a position is also supported by the highly respected scholars such as GREENWOOD and MERON. See for example C. Greenwood, Command Responsibility and the Hadzihasanovic Decision, 2(2), JICJ 598 (2004) and T. Meron, Revival of Customary International Law, 99, American Journal of International Law 817 (2005)

<sup>1799</sup> See ALEKSOVSKI, Appeal Judgment, Para 76

## 4.2. Knowledge

### 4.2.1. Types and timing of knowledge

1086. To establish liability under Article 7(3), it must be proven that Pandurevic either (1) knew or (2) had reason to know that his subordinates were about to commit or had committed the crime.<sup>1800</sup> Proof of actual knowledge means Pandurevic's awareness not just of the commission of *a* crime but of *the* crime charged against him by one or more of his subordinates. Imputed knowledge requires that Pandurevic be shown to have possessed such information that *put him on notice* of the commission of the crimes by his subordinates or of the *strong likelihood* that they were about to be committed.<sup>1801</sup> The 'standard of proof of imputed knowledge is strict'.<sup>1802</sup> The Appeals Chamber has expressly *rejected* the view that a commander could be criminally liable for the action of his subordinates *based solely on a failure to obtain information of a general nature* within his reasonable access due to a serious dereliction of duty.<sup>1803</sup> Or in other words, 'negligent ignorance is insufficient to attribute imputed knowledge'.<sup>1804</sup>

1087. Moreover, the information that is relevant to establish Pandurevic's *mens rea* must be shown to have been available to him *prior to* his alleged failure to act adequately, but not at a later stage.<sup>1805</sup> Pandurevic should therefore not be held criminally responsible for a failure to prevent or punish a crime of which he had no or insufficient knowledge at the time of his alleged failure.

### 4.2.2. Object of knowledge – General knowledge of the commission of crimes insufficient

1088. (1) Mere *general information* will not suffice to establish that Pandurevic 'knew' or 'had reason to know' of the crimes or of their likely occurrence, *even if* this information *relates to criminal involvement* on the part of the perpetrators.<sup>1806</sup> Pandurevic must be shown to have known or had reason to know that '*acts such as those charged*' or '*acts of similar gravity*' and not just '*any*' crime had been committed or was about to be committed by his subordinates.<sup>1807</sup> The Prosecution must show that Pandurevic knew or

<sup>1800</sup> See BLAGOJEVIC, Trial Judgment, Para 792; CELEBICI, Appeal Judgment, Para 223-226; KRNOJALAC, Trial Judgment, Para 94; BAGILISHEMA, Appeal Judgment, Para 26-38

<sup>1801</sup> See CELEBICI, Appeal Judgment, Para 238; KORDIC, Trial Judgment, Para 437; BAGILISHEMA, Appeal Judgment, Para 28;

<sup>1802</sup> See BRIMA, Trial Judgment, Para 1734

<sup>1803</sup> See CELEBICI, Appeal Judgment, Para 238, 239, 240; KORDIC, Trial Judgment, Para 432

<sup>1804</sup> See BRIMA, Trial Judgment, Para 796

<sup>1805</sup> See ALEKSOVSKI, Appeal Judgment, Para 76

<sup>1806</sup> See ALIC, Trial Judgment, Para 48; BAGILISHEMA, Appeal Judgment, Para 42

<sup>1807</sup> See KRNOJALAC, Appeal Judgment, Para 155, 178, 179; HADIZHASANOVIC, Trial Judgment, Para 106; STRUGAR, Trial Judgment, Para 416, 417; ALIC, Trial Judgment, Para 48

had reason to know *all the material elements* that constitute each crime committed by his subordinates.<sup>1808</sup>

(2) Moreover, Pandurevic must be shown, to have known of '*his subordinates' criminal involvement in the commission of the crimes*', not just anybody else.<sup>1809</sup>

(3) Pandurevic must also be shown to have been aware of the fact that *his own conduct was illegal* and criminal, and with that knowledge he must have persisted.<sup>1810</sup>

#### 4.2.3. Knowledge in relation to failure to prevent

1089. In terms of failure to prevent, it is not sufficient to simply demonstrate that Pandurevic was aware that there was *a risk* that his subordinates would commit crimes, because there is *always* a risk of the commission of crimes.<sup>1811</sup> Or as put by Appeals Chamber in *Blaskic*: 'The knowledge of *any kind of risk*, however low, does not suffice for the imposition of criminal responsibility for serious violations of international law'.<sup>1812</sup> The risk must be 'substantial' or 'strong' risk that a crime would be committed by the subordinates.<sup>1813</sup>

1090. The risk must also be 'present', 'concrete' and 'real' and not just 'abstract' or 'possible' or 'objective'.<sup>1814</sup> It is also not sufficient to prove that the information Pandurevic had at the time of the offence would have indicated to him the possibility that such crimes '*might occur*'; it must be proven that information indicated to Pandurevic that such crimes '*would occur*'.<sup>1815</sup>

1091. Moreover, '[t]he *mere awareness* of a commander of the risk of a crime being committed by his subordinates is not sufficient to trigger his legal responsibility (as a superior). It must be shown that the commander was *aware of the substantial likelihood* that a crime would be committed as a result of his failure to act and that, aware of that fact, he failed to do anything about it.'<sup>1816</sup>

1092. The crimes must have moreover an imminent probability. Indeed since the law requires that they are 'about to be committed', some evidence is necessary that the superior knew *crimes were being prepared or planned*.<sup>1817</sup>

<sup>1808</sup> See KRNOJALAC, Appeal Judgment, Para 155, 178, 179; NALETILIC, Appeal Judgment, Para 114

<sup>1809</sup> See ORIC, Appeal Judgment, Para 52, 55-60, 169-174; BAGILISHEMA, Appeal Judgment, Para 42

<sup>1810</sup> See NALETILIC, Appeal Judgment, Para 117

<sup>1811</sup> See ALIC, Trial Judgment, Para 48

<sup>1812</sup> See BLASKIC, Appeal Judgment, Para 41

<sup>1813</sup> See BLASKIC, Appeal Judgment, Para 41-42; KVOCKA, Appeal Judgment, Para 155, 179; STRUGAR, Trial Judgment, Para 370, 417, 418, 420, 421, 422

<sup>1814</sup> See HALILOVIC, Trial Judgment, Para 68; CELEBICI, Appeal Judgment, Para 223, 241; BLASKIC, Appeal Judgment, Para 41, 42; STRUGAR, Trial Judgment, Para 417, 418

<sup>1815</sup> See KRNOJALAC, Appeal Judgment, Para 169; HADZIHASANOVIC, Trial Judgment, Para 1543, 1748, 1749, 1750; STRUGAR, Appeal Judgment, Para 301; HADZIHASANOVIC, Appeal Judgment, Para 30

<sup>1816</sup> See ALIC, Trial Judgment, Para 31

<sup>1817</sup> See HADZIHASANOVIC Appeal Judgment, Para 30; STRUGAR, Appeal Judgment, Para 301; KRNOJALAC, Appeal Judgment, Para 169

#### 4.2.4. Knowledge in relation to failure to punish

1093. In terms of failure to punish, Pandurevic must be shown to have sufficient information in his possession to *put him on notice* that his subordinates had committed crimes such as those he is charged with.<sup>1818</sup> *General rumours* that crimes have been committed (whether he came to know of them or not) will not be sufficient to discharge the burden of proving that he had reason to know that his subordinates had committed such crimes as he is charged with.<sup>1819</sup>

#### 4.2.5. Establishing Pandurevic's knowledge

1094. Pandurevic's knowledge that crimes had been committed by his subordinates (if indeed they had) *cannot be presumed*,<sup>1820</sup> or *inferred from* the position he held.<sup>1821</sup> Nor can it be properly inferred from the fact that others knew.<sup>1822</sup> There must be cogent evidence that he was '*in possession*' of such information.<sup>1823</sup>

1095. The circumstances listed above as being relevant to the question of effective control are equally important in considering Pandurevic's actual or imputed knowledge of the commission of crimes by his subordinates.<sup>1824</sup> In addition the Trial Chamber should bear in mind:

- The prior behavior of the Brigade towards prisoners of war;
- The secrecy of the Killing operation<sup>1825</sup>
- The by-passing of Pandurevic in communications relating to prisoners<sup>1826</sup>
- The geographical spread of the execution sites<sup>1827</sup>
- The short period of time during which the murders occurred<sup>1828</sup>

<sup>1818</sup> See for example BAGILISHEMA, Appeal Judgment, para 155

<sup>1819</sup> See HADZIHASANOVIC, Trial Judgment, Para 1222-1223

<sup>1820</sup> See BOSKOSKI, Trial Judgment, Para 413; ALIC, Trial Judgment, Para 50

<sup>1821</sup> See BRIMA, Trial Judgment, Para 792

<sup>1822</sup> See ALIC, Trial Judgment, Para 50

<sup>1823</sup> See CELEBICI, Trial Chamber, Paras. 383-386.

<sup>1824</sup> See ORIC, Trial Judgment, Para 319

<sup>1825</sup> See Part 4 Section 8

<sup>1826</sup> See Part 4 Section 11

<sup>1827</sup> See Part 4 Section 10

<sup>1828</sup> See Part 4 Section 10

### 4.3. Failure to prevent or punish

1096. A failure to take ‘necessary and reasonable measures’ to *prevent or punish* the crimes must be proven.<sup>1829</sup> Mere knowledge that Pandurevic’s subordinates have committed or are about to commit crimes such as he is charged with, is not sufficient to establish his *mens rea* for command responsibility. Additionally, he must be shown to have *intended not to act despite the acquired knowledge* (i.e. deliberately failed to perform his duties).<sup>1830</sup> In other words, it must also be proven that the accused *acquiesced* in the commission of the crimes or (tacitly) *approved* them.<sup>1831</sup>
1097. For Pandurevic to be guilty of command responsibility, he must also be shown that he was able ‘to determine *ex ante*, based on the facts available to him, that the conduct was criminal’.<sup>1832</sup> Mere *criminal negligence* is not a basis for liability under Article 7(3).<sup>1833</sup> Therefore, if Pandurevic made an honest error in judgment or was negligently not aware of the illegality of his conduct, he will not be liable as a commander.

#### 4.3.1. Duty to prevent

1098. The Duty to prevent concerns ‘*future crimes*’, or crimes, that have not yet been committed.<sup>1834</sup> The duty arises from the moment a commander acquires sufficient knowledge that such a crime is *being prepared or planned* (i.e. ‘*about to be committed*’)<sup>1835</sup> and subsists until the moment when the crimes have been committed.<sup>1836</sup>

#### 4.3.2. Duty to punish

1099. The Duty to punish concerns ‘*past crimes*’ which have been committed by subordinates and need to be investigated and the perpetrators punished.<sup>1837</sup> Such a duty arises only once a commander knows or has reason to know that such crimes have been committed by his subordinates.<sup>1838</sup>

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<sup>1829</sup> See BLASKIC, Appeal Judgment, Para 83; HALILOVIC, Trial Judgment, Para 72; ALEKSOVSKI, Appeal Judgment, Para 72, 76; CELEBICI, Appeal Judgment, Para 192, 193, 198; HADZIHASANOVIC, Appeal Judgment, Para 259; BLASKIC, Appeal Judgment, Para 83

<sup>1830</sup> See BAGILISHEMA, Appeal Judgment, Para 35;

<sup>1831</sup> See BLASKIC, Appeal Judgment, Para 41; STRUGAR, Trial Judgment, Para 439; MUSEMA, Trial Judgment, Para 131; ADEMI and NORAC, Trial Judgment, Section 10 (at 265);;

<sup>1832</sup> See NALETILIC, Appeal Judgment, Para 114

<sup>1833</sup> See BLASKIC, Appeal Chamber, Para 63; BAGILISHEMA, Appeal Judgment, Para 34, 35; HALILOVIC, Trial Judgment, Para 71; See AKAYESU, Trial Judgment, Para 489; MUSEMA, Trial Judgment, Para 131

<sup>1834</sup> See ORIC, Trial Judgment, Para 574; BAGILISHEMA, Appeal Judgment, Para 33; HADZIHASANOVIC; Trial Judgment, Para 1042, 1231, 1457; KVOCKA, Trial Judgment, Para 317

<sup>1835</sup> See BLASKIC, Appeal Judgment, Para 83; KORDIC, Trial Judgment, Para 445, 446; STRUGAR, Trial Judgment, Para 373

<sup>1836</sup> See HADZIHASANOVIC, Trial Judgment, Para 1042, 1231, 1457; ORIC, Trial Judgment, Para 574; BAGILISHEMA, Appeal Judgment, Para 33; KVOCKA, Trial Judgment, Para 317; KORDIC, Trial Judgment, Para 445

<sup>1837</sup> See ORIC, Trial Judgment, Para 574; BAGILISHEMA, Appeal Judgment, Para 33; HADZIHASANOVIC; Trial Judgment, Para 1042, 1231, 1457; KVOCKA, Trial Judgment, Para 317

<sup>1838</sup> See LIMAJ, Trial Judgment, Para 527; BLASKIC, Appeal Judgment, Para 83; KORDIC, Trial Judgment, Para 445, 446

1100. A commander does not need to investigate the crimes himself, he can delegate that responsibility by *reporting the matter to the competent authority*.<sup>1839</sup> Other steps in the investigative and prosecutorial process might thereafter be the responsibility of *other people* or agencies.<sup>1840</sup> In other words, the duty to investigate and punish is temporarily limited - it is finished when the superior has been *relieved of his responsibility to investigate by his own superiors*. As particularized elsewhere in this brief, it is the Defence submission that Pandurevic discharged this duty through reporting the matter in:

- (1) the VBI on 15<sup>th</sup> July<sup>1841</sup>
- (2) the VBI on 18<sup>th</sup> July<sup>1842</sup>
- (3) his meeting with Krstic on 26 or 27<sup>th</sup> July<sup>1843</sup>

1101. In such a way he delegated his responsibility to punish the crimes.<sup>1844</sup> Such reporting to Krstic had the practical effect of extinguishing in principle the duty of Pandurevic to punish.<sup>1845</sup>

1102. Moreover, in relation to any alleged involvement of his own subordinates of which he was aware, Pandurevic's failure to report matters to his superiors attracts no superior criminal liability where he knew that those *superiors were themselves involved* in the commission of such crimes.<sup>1846</sup>

1103. In the circumstances of this case, Pandurevic did all that was reasonable to discharge his duty to report matters. To expect him to report the matter beyond his immediate superior, when he believes that the organs of the Corps and Main Staff are involved in the commission of crimes, is unrealistic.<sup>1847</sup> The theoretical but impractical possibility of

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<sup>1839</sup> See BLAGOJEVIC, Trial Judgment, Para 793; HADZIHASANOVIC, Appeal Judgment, Para 154; HADZIHASANOVIC, Trial Judgment, Para 1052-1055, 1061-1062; BLASKIC, Trial Judgment, Para 302, 734; DELIC, Trial Judgment, Para 74, 75; BLASKIC, Appeal Judgment, Para 72;

<sup>1840</sup> See BOSKOSKI, Trial Judgment, Para 529-536; ADEMI and NORAC, Trial Judgment, Section 10.2. at 265

<sup>1841</sup> See Part 4 Section 11

<sup>1842</sup> Idem.

<sup>1843</sup> Idem.

<sup>1844</sup> See T.20816-20817, 31 January 2008, Richard BUTLER: Q. Well, just suppose this: Suppose a brigade commander was informed by his chief of staff and deputy commander that in his absence, crimes had been committed by his security officer and his professional superior, what realistically could the brigade commander do in those circumstances? A. I think his most realistic course of action is going to be he's going to be sitting in his -- his corps commander's office, explaining that situation. I mean, the fact that -- the fact that he is limited with respect to raising legal charges, I mean, and let's put words to the -- to the hypothetical here. Colonel Pandurevic encounters that situation and he wants to, you know, raise charges against Drago Nikolic, he's going to obviously have to go to Colonel Popovic first. If Colonel Popovic either non-concurs or Colonel Popovic himself is involved in this, Colonel Pandurevic's actions doesn't stop. His next port of call is his corps commander, and we go up that same issue. You involve your next superior operational commander, and your next superior operational commander starts to get involved in why his security officer may have been involved in this. And if we don't -- you know, and we go to the next operational commander, Mladic. Q. Right. A. I mean, that's how it would work. Q. **So his course of action would be to report the matter to his corps commander? A. Yes, sir.**

<sup>1845</sup> See STRUGAR, Appeal Judgment, Joint Dissenting Opinion of Judge Meron and Judge Kwon, Para 3; HADZIHASANOVIC, Trial Judgment, Para 152-153; ADEMI and NORAC, Trial Judgment, Section 10.2. at 265; DELIC, Trial Judgment, Para 74, 75; KORDIC, Trial Judgment, Para 446;

<sup>1846</sup> See NTAGERURA, Appeal Judgment, Para 345

<sup>1847</sup> T.31067, 3 February 2009, Vinko PANDUREVIC.

submitting reports in a situation where the whole system was malfunctioning should not be put on the commander:

“Reporting the matter to the competent authorities may not have been, in the circumstances at that time, a reasonable measure that would have led to the punishment of Momir Nikolić.”<sup>1848</sup>

1104. Moreover, international law does not require a superior to set up a special procedure to investigate allegations of crimes.<sup>1849</sup>

#### 4.3.3. ‘Necessary’ and ‘reasonable’ measures

1105. What is ‘necessary’ and ‘reasonable’ will depend upon the *circumstances of each case*, in particular on the extent of the commander’s *actual* and *proven* material ability to prevent or punish the crimes.<sup>1850</sup> In other words, measures that should have been taken by Pandurevic must be limited to those which are ‘*feasible in all the circumstances*’ and are ‘*within his powers*’. A superior is ‘*not obliged to perform the impossible*’.<sup>1851</sup> It will not always be possible to prevent a crime or punish the perpetrators. In the Defence submission, it must follow that it would not be incumbent upon Pandurevic to punish one of his subordinates for following the illegal orders of one of his superiors (if nothing else, the first element of effective control is completely distorted). The Defence submits that the failure to exercise his power to punish or prevent crimes committed becomes relevant only if he actually had the real capability of preventing the crimes alleged. Pandurevic had no power to prevent persons from committing crimes who were not under his *de jure* and/or *de facto* command (for example, members of the 10<sup>th</sup> Sabotage detachment, Bratunac Brigade Military Police Company, or Drina Corps Military Police) nor any power to punish them. It is nonsense to suggest that his notional powers to punish his own subordinates for guarding or burying prisoners pursuant to orders from officers from superior command create a liability on his part for the actions of those he could neither order nor punish. In the circumstances, his reporting to his own superior of the events was all that was reasonable and necessary.<sup>1852</sup>

1106. The concept of ‘reasonableness’ allows a commander a certain *choice of means* which he can adopt to prevent and punish the crimes of his perpetrators without breaching his duty to act. For example, where a commander learns of the commission of the crimes while he and his troops are engaged in combat activities he would be permitted to delay dealings with the investigation of those crimes until that time when he is able to do so without endangering the on-going combat operation.<sup>1853</sup> Commanders who are in the field

<sup>1848</sup> See BLAGOJEVIC, Trial Judgment, Para 795

<sup>1849</sup> See HADZIHASANOVIC, Appeal Judgment, Para 154; BLASKIC, Trial Judgment, Para 335; BLASKIC, Appeal Judgment, Para 72

<sup>1850</sup> See BLASKIC, Trial Judgment, Para 302; ALEKSOVSKI, Trial Judgment, Para 78; CELEBICI, Trial Judgment, Para 302, 394, 395; STRUGAR, Trial Judgment, Para 378

<sup>1851</sup> See BLAGOJEVIC, Trial Judgment, Para 792; KRNOJALAC, Trial Judgment, Para 95; CELEBICI, Appeal Judgment, Para 226

<sup>1852</sup> See HALILOVIC, Appeal Judgment, Para 63; See also ORIC, Appeal Judgment, Para 177; ALEKSOVSKI, Appeal Judgment, Para 76 See ADEMI and NORAC, Trial Judgment, section 8.2.3.

<sup>1853</sup> Under Bosnian Law for example, a military commander could request that aspects of an investigation into allegation of crimes be deferred with a view to permit a military operation to proceed, or for security reasons. See HALILOVIC, 10 April 2005, pp 80, 81

are generally better placed to decide what measures are likely, in a given situation, to achieve the goal of preventing and punishing the crimes than would a court of law 15 years after the events.

1107. Pandurevic's first task after returning to Zvornik was to deal with the column of the 28<sup>th</sup> Division in Baljkovica.<sup>1854</sup> It was a serious combat and humanitarian situation. To impose upon him a responsibility effectively to ignore that and embark upon an investigation into matters of which he knew very little at the time is not a reasonable requirement. Even with the wonderful benefit of hindsight, it is certain that his chosen course of action saved more life than it cost. Judged contemporaneously, which is the appropriate mark, his actions were entirely reasonable. A superior cannot be held criminally liable if he chose measures that were reasonable in the circumstances, even if other measures might have been available to him.<sup>1855</sup>

1108. The commander's action needs to be *adequate* in the circumstances. It is of no consequence that his actions do not lead in fact to prevention of the crimes or punishment of the perpetrators.<sup>1856</sup>

## 5. Conclusion

1109. In the submission of the Defence, none of the modes of liability discussed above can be averred as forming the basis of Vinko Pandurevic criminal responsibility under Article 7 of the Statute.

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<sup>1854</sup> See Part 4 Section 6 and 7

<sup>1855</sup> See HADZIHASANOVIC, Appeal Judgment, Para 152-154; HADZIHASANOVIC, Trial Judgment, Para 1052-1055, 1061, 1062; BOSKOSKI, Trial Judgment, Para 529-536 HADZIHASANOVIC, Trial Judgment, Para 1477

<sup>1856</sup> See STRUGAR, Trial Judgment, Para 378



## PART 6 – COUNTS OF THE INDICTEMENT

### 1. Statutory crimes

1110. The indictment alleges the commission of three crimes expressly defined in the ICTY statute: genocide (Article 4), crimes against humanity (Article 5) and violations of the laws or customs of war (Article 3).

1111. After discussing the different modes of responsibility relevant to Vinko Pandurevic, the Defence now will examine the conditions pertinent to the participation of the accused in these crimes.

### 2. Counts 1 and 2: Genocide and Conspiracy to Commit Genocide

#### 2.1. Genocide

1112. Vinko Pandurevic has been indicted with genocide punishable under Article 4 of the Statute. The Prosecution, therefore has to prove, beyond reasonable doubt the existence of two constitutive elements of genocide:

- the *actus reus* of the offence, which consists of one or several of the acts enumerated under Article 4(2);
- the *mens rea* of the offence, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

1113. The Prosecution has to prove beyond reasonable doubt that Vinko Pandurevic had this specific intent to destroy all or part of a group defined by nationality, ethnicity, race or religion as such, unless this requirement is satisfied, no act qualifies as genocide.<sup>1857</sup> The Prosecution has failed to present any direct evidence of Vinko Pandurevic's genocidal intent.

1114. Genocidal intent may be inferred from the circumstances surrounding the commission of the alleged offences when there is no direct evidence.<sup>1858</sup> However, the inference of genocidal intent must be the only reasonable conclusion from the facts presented at the trial and doesn't relieve the Prosecution of its burden of proof beyond reasonable doubt.<sup>1859</sup>

1115. In this case the Prosecution rely upon the murder of able-bodied Muslim men, the opportunistic killings and the destruction of women and children through separation from

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<sup>1857</sup> Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Appeal Judgment, 1 June 2001

<sup>1858</sup> Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeal Judgment, 19 April 2004, para 34

<sup>1859</sup> Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Trial Judgment, 1 September 2004, para 970

the men and the forcible transfer as the evidence from which such an inference can be drawn.<sup>1860</sup> In the Defence submission there is insufficient evidence that Pandurevic participated in or knew of these events for the inference to be drawn in his case.

1116. The Defence further submits that even if the Prosecution did prove his knowledge of or participation in forcible transfer alone or coupled with the separation, murders and mistreatment in the town, that alone would not suffice to demonstrate Pandurevic's intent to destroy a protected group.<sup>1861</sup>

1117. Much has been made in this case of the use of racial pejoratives by various of the accused. However, the Defence rejects the suggestion that such material can form the basis of a finding of genocidal intent. The submission is especially strong in the case of Pandurevic, whose character on his own evidence, is devoid of prejudice.

1118. The Defence agrees that evidence of a plan to commit the offences constitutive of genocide is strong evidence of genocidal intent.<sup>1862</sup> However, the Prosecution has failed to prove Pandurevic's participation in that plan or that he shared the intent of its authors.

1119. Two pieces of evidence alone, in the submission of the Defence negate any suggestion of genocidal intent on the part of Pandurevic:

- (1) The sending of the combat reports of 15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> July. Indeed the Defence submit that even if he had meant he would let the prisoners go, which of course is denied, the Chamber would struggle to find he had the requisite intent ; and
- (2) The letting of the column of the 28<sup>th</sup> Division pass at Baljkovica

## **2.2. Conspiracy to commit genocide**

1120. As pointed out by the Prosecution, the underlying facts and agreements of the conspiracy to commit genocide are identical to the facts and agreements identified in the Joint Criminal Enterprise.<sup>1863</sup> The difference between the two is that the crime of conspiracy is an inchoate crime and it is punishable even if it fails to lead to its result (that is, even if genocide is not perpetrated).<sup>1864</sup>

1121. Accordingly, the requisite intent for conspiracy to commit genocide is identical to the specific intent required for JCE 1. Pandurevic's lack of knowledge of the common plans and the lack of shared intent for the common objectives has already been dealt with in the section pertaining to the joint criminal enterprise.

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<sup>1860</sup> Prosecutor vs Popovic et al., Case IT-05-88, Indictment, 4 August 2006, para 26 to 33

<sup>1861</sup> Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Appeal Judgment, 9 May 2007, para 123

<sup>1862</sup> Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeal Judgment, 19 April 2004, para 225

<sup>1863</sup> Prosecutor vs Popovic et al., Case IT-05-88, indictment, 4 August 2006, para. 34.

<sup>1864</sup> Cassese, A., International Criminal Law, Oxford University Press, 2008, p. 229.

### 2.3. Aiding and abetting genocide

1122. In order to maintain that Pandurevic aided or abetted, in any way, the crime of genocide, the Prosecution has to prove, beyond reasonable doubt that he *intentionally* assisted, morally supported or encouraged the commission of such a crime, while being aware of the specific intent on behalf of one or more perpetrators.<sup>1865</sup> Indeed, there is no need for Pandurevic to know about the overall plan for being held responsible as an aider and abettor. Nevertheless, it must be proven that “the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist in the commission of a crime by the perpetrator”.<sup>1866</sup> In cases of specific intent crimes such as genocide, it also must be proven that the aider and abettor knew of the principal perpetrator’s *specific* intent.<sup>1867</sup>

1123. This conclusion has to be the only reasonable inference made on the basis of Pandurevic’s acts and behaviour. Even though Pandurevic found out about some of the executions, his peripheral knowledge of these crimes is far from sufficient to form the basis for his responsibility. In the submission of the Defence, not only have the Prosecution failed to prove that Pandurevic aided and abetted genocide, but it has also failed to contradict the compelling evidence that, in reality, Pandurevic acted in a counterproductive manner in relation to these crimes. Accordingly, a long history of successful negotiations and prisoner exchange, a proven trend to disagree with Mladic’s military priorities, an honest reporting to his superior about prisoners and a risky decision to let the column pass not only negate any real assistance, support or encouragement, but also show that *he never intended to be of any help* in such criminal endeavours.

### 3. Counts 3, 4 and 6: Extermination, Murder and Persecution as Crimes against Humanity

1124. Counts 3, 4 and 6 all refer to paragraphs 30 and 31 in relation to the alleged murder operation and opportunistic killings. Count 6 (Persecutions) additionally refers to the planning and the circumstances of both the murder and the forcible removal operation (paragraphs 27-29 and 50-71).

#### 3.1. Preliminary matters regarding the applicability of Article 5 (crimes against humanity)

1125. In order to amount to a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population. This phrase encompasses the following elements:

- (i) there must be an attack;

<sup>1865</sup> Prosecutor v. Furundzija, Trial Chamber Judgment, 10 December 1998, para. 246.

<sup>1866</sup> Cassese, A., International Criminal Law, Oxford University Press, 2008, p. 216, citing para. 776 from Brima and others, SCSL Trial Chamber.

<sup>1867</sup> Prosecutor v. Blagojevic and Jokic, Appeal Chamber Judgment, 9 May 2007, paragraph 107.

- (ii) the attack must be widespread or systematic;
- (iii) the attack must be directed against any civilian population;
- (iv) the acts of the perpetrator must be part of the attack; and

(v) the perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.<sup>1868</sup>

1126. Accordingly, an offence can amount to a crime against humanity only if it is directed against civilians. It must be proven, that the victims of an offence were indeed civilians.

1127. The Defence acknowledges the fact that a population is considered a civilian population if it is predominantly civilian in nature,<sup>1869</sup> and the presence of the combatants within the population at issue does not alter its civilian character.<sup>1870</sup> The Appeal Chamber in the Blaskic case noted that if a member of armed forces is not armed during the crime, it doesn't give him the status of a civilian.<sup>1871</sup> The Appeal Chamber considered furthermore that "in order to determine whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave must be examined".<sup>1872</sup>

1128. Consequently, it must be proven that the persons **targeted** through the alleged crimes were civilians. Accordingly, the Prosecution has to prove, beyond reasonable doubt, that the extermination, murder and persecution was directed against civilians and not other categories. If it cannot be concluded with certainty that the persons targeted were civilians, one has to admit the non-occurrence of Article 5 of the Statute and perhaps analyse the applicability of Article 3 (war crimes).

1129. In this case, it is the prosecution's position that the persons targeted for murder were the able bodied men, and nobody else. Given the fact that able-bodied men and combatants were virtually synonymous in Srebrenica and Zepa, it is difficult to see how the prosecution can even begin to prove to the requisite standard that civilians were the targets of the crimes.

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<sup>1868</sup> Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Appeal Judgment, 12 June 2002, para. 85.

<sup>1869</sup> Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Trial Judgment, 17 January 2007, para 544

<sup>1870</sup> Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Trial Judgment, 30 November 2005, para 186; Prosecutor v. Stanislav Galic, Case No. IT-98-29-A, Judgment, 30 November 2006, para 143; Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004, para 113

<sup>1871</sup> Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004, para 114

<sup>1872</sup> Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, para 113-115, Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Trial Judgment, 30 November 2005, para 186

### 3.2. The alleged participation of Vinko Pandurevic in the crime of extermination

1130. Two elements have to be proven by the Prosecution in order to show Pandurevic's responsibility for the crime of extermination :

a) an act or omission that results in the death of persons on a massive scale (actus reus), and

b) the intent to kill persons on a massive scale, or to inflict serious bodily injury or create conditions of life that lead to the death in the reasonable knowledge that such act or omission is likely to cause the death of a large number of persons (mens rea).<sup>1873</sup>

1131. Leaving aside the bogus zone of responsibility theory, the Prosecution has failed to prove, beyond reasonable doubt, any relevant act or omission by Pandurevic that would make him responsible for the death of prisoners.<sup>1874</sup>

1132. Likewise, the Prosecution has failed to prove beyond reasonable doubt any intent on behalf of Vinko Pandurevic to kill prisoners. The Defence repeats the observations as to the relevance of his reporting<sup>1875</sup> and action towards the Muslim column in this respect<sup>1876</sup>.

### 3.3. The alleged participation of Vinko Pandurevic in the crime of murder

#### Pandurevic and the murder operation

1133. Pandurevic never participated directly or indirectly in the executions, nor was he present at any of the detention and execution sites. He was absent from the command between the 4<sup>th</sup> and the 15<sup>th</sup> and, until the afternoon of the 15<sup>th</sup> July, Dragan Obrenovic was in command of the Zvornik Brigade.<sup>1877</sup> Accordingly, the execution of prisoners at Orahovac and Petkovci was completed during Obrenovic's period of command, and the execution of prisoners from Rocevic was under way.<sup>1878</sup>

1134. Secondly, the individuals who did take part in the events of 13<sup>th</sup> to 17<sup>th</sup> July did so on the basis of orders from officers of superior command and not pursuant to any order or authorization from Pandurevic. Moreover, there is strong evidence to suggest that those carrying out the executions were military units, policemen and paramilitaries without any connection to the Zvornik Brigade.<sup>1879</sup>

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<sup>1873</sup> Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Trial Judgment, 1 September 2004, para 388; Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-T, Trial Judgment, 29 November 2002, para 229

<sup>1874</sup> See section 'JCE I and Superior responsibility'

<sup>1875</sup> See section on Baljkovica

<sup>1876</sup> See section on "Vbi 15<sup>th</sup> as an exculpatory document"

<sup>1877</sup> See section 'absence of Pandurevic from 4th till 15th July'

<sup>1878</sup> See section on Detention sites

<sup>1879</sup> See section on Detention sites

### **Opportunistic killings**

1135. As indicated in the JCE 3 part, the Prosecution has failed to prove any involvement of Pandurevic in the alleged opportunistic killings. It has also failed to show that Pandurevic could, in any way, have foreseen the occurrence of such acts.<sup>1880</sup>
1136. More specifically, Pandurevic never ordered the execution of the prisoners from Milici Hospital, nor did he order them not be registered ; that was Obrenovic's initiative.<sup>1881</sup> Concerning the killings near Snagovo, no obvious link between the perpetrators of the offence and the VRS, let alone the Zvornik Brigade, has been established.<sup>1882</sup> The soldiers allegedly involved in the executions near Nezuk were part of the unit from Krajina. They had been given orders by Obrenovic. Pandurevic received no report of any such incident. The killing of enemy soldiers and the taking of prisoners by the Zvornik Brigade was at that time being recorded in a number of ways and the procedure was governed by Vinko Pandurevic's order to fully respect the procedures to take prisoners.<sup>1883</sup>
1137. In the course of these events, Pandurevic never gave orders permitting the use of resources under his control, including personnel, to facilitate the perpetration of a crime and it cannot therefore be considered as an actus reus for aiding and abetting.<sup>1884</sup> The specific conditions concerning the responsibility of Pandurevic as a commander have been addressed in Part 5 of this final brief.<sup>1885</sup>
1138. There is insufficient evidence to show Pandurevic had an intent to kill the prisoners or reasonable knowledge that his acts or omission might lead to death.

### **3.4. The alleged participation of Vinko Pandurevic in the crime of persecution**

1139. The crime of persecutions consists of an act or omission which :
- (i) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law; and
  - (ii) is carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.<sup>1886</sup>
1140. With regard to the required mens rea, persecution as a crime against humanity requires evidence of a specific intent to discriminate on political, racial or religious grounds. This intent may not be inferred directly from the general discriminatory nature of an attack characterised as a crime against humanity ; such a context may not infer and of itself amount to evidence of discriminatory intent. However, discriminatory intent may

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<sup>1880</sup> See section JCE 3

<sup>1881</sup> See section 'prisoners from milici hospital'

<sup>1882</sup> See section 'executions in snagovo'

<sup>1883</sup> See section 'executions near nezuk'

<sup>1884</sup> Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeal Judgment, 19 April 2004, paras. 137, 138, 144.

<sup>1885</sup> See section 'superior responsibility'

<sup>1886</sup> Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, para. 131. See also Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-A, Judgment, 25 February 2004, para. 113; Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment, 17 September 2003, para. 185.

be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent. Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a racial or religious group and the general attitude of the alleged perpetrator as demonstrated by his behaviour.<sup>1887</sup>

1141. Arguments regarding Pandurevic's lack of knowledge of the alleged murder operation have been expressed already. To prove that Vinko Pandurevic had any discriminatory intent, the Prosecution cannot merely rely on the fact that the whole general attack was characterized as discriminatory. Indeed, a discriminatory intent may be inferred from the context in which the conduct of Vinko Pandurevic occurred, but it should not be presumed merely because the attack of which it is alleged to be a part is itself discriminatory.

1142. The Defence submits that no discriminatory intent can be inferred from Pandurevic's behaviour.

- As already discussed,<sup>1888</sup> Vinko Pandurevic did not intervene or participate in any way in the organization of the mass or opportunistic killings, nor did units under his command participate in executions.<sup>1889</sup>
- The Chamber has heard compelling evidence about his treatment of prisoners of war from a number of sources, and the orders he gave in that respect,<sup>1890</sup> The evidence has tended to suggest that the actual execution of prisoners was not performed by members of the Zvornik Brigade. Indeed, there is evidence of humane behaviour towards prisoners by Brigade members..<sup>1891</sup> Pandurevic's personal conduct in combat towards the town of Srebrenica is also highly relevant.<sup>1892</sup>

1143. Vinko Pandurevic did not participate, give any order or support in any way the organization of the transfers of population from Srebrenica or Zepa, nor did his units participate under his orders.<sup>1893</sup> His units were not in Potocari.<sup>1894</sup> He did not participate in the meetings preparing the evacuation of the population from Srebrenica. What can be inferred from his actions and his behaviour in general is at odds with any discriminatory intent required to establish the offence of persecution. He let the column go despite his fears from any sanction he could risk,<sup>1895</sup> asked his soldiers to treat the prisoners fairly<sup>1896</sup>

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<sup>1887</sup> Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment, 17 September 2003, para. 184; Prosecutor v. Tihomir Blaskic, Case No. IT-95-14-A, Appeal Judgment, para. 164; Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgment, 28 February 2005 para 460

<sup>1888</sup> See section about murder and detention sites

<sup>1889</sup> See Command of the Zvornik brigade during Pandurevic's absence

<sup>1890</sup> Section on Vinko Pandurevic's character evidence

<sup>1891</sup> Section on detention sites

<sup>1892</sup> Section on shelling of Srebrenica

<sup>1893</sup> Section on Potocari and the column

<sup>1894</sup> Section on Potocari and the column

<sup>1895</sup> Section on Baljkovic

<sup>1896</sup> Section on Vinko's character evidence

and urged the Drina Corps to deal with exchange of prisoners so that they would not remain too much time in the overcrowded Zvornik Brigade facilities.<sup>1897</sup>

### 3.5. Aiding and abetting crimes against humanity

1144. Pandurevic acknowledged during his testimony that he found out about some of the executions upon his return to Zvornik. The Defence agrees that aiding and abetting may occur before, during, or after the commission of the principal crime.<sup>1898</sup>
1145. Nonetheless, there is no conclusive evidence of any of Pandurevic's acts amounting to practical assistance, moral support or encouragement of those who committed the crimes. He was not present at any of the detention or execution sites when prisoners were there, thus there is no conclusive evidence of any "tacit approval" on his part. The Prosecution alleges that Pandurevic assisted the murders and the forcible movement by „authorizing" or allowing Zvornik Brigade men and material to be used for the detention and execution of these prisoners.<sup>1899</sup>
1146. It is worth to note that, in Blagojevic and Jokic, the Trial Chamber did not consider that the available evidence was sufficient to establish beyond reasonable doubt that Blagojevic knew about the mass killings and thus, did not convict him of aiding and abetting them.<sup>1900</sup> The Appeals Chamber upheld that finding despite the fact that Blagojevic's participation in searching the terrain for armed men from the enclaves and his knowledge of some of the executions showed a much greater involvement of his in those events than can ever be maintained in the case of Pandurevic.
1147. The obligations of Vinko Pandurevic as a commander have been addressed in the section concerning superior responsibility. The Defence submits that there is no conclusive evidence that Pandurevic, as an individual, assisted, encouraged or morally supported any acts amounting to murder, extermination or persecution. Moreover, in cases of specific intent crimes such as persecutions, the Prosecution has to prove, beyond reasonable doubt, that the aider and abettor knew of the principal perpetrator's specific intent.<sup>1901</sup> Such evidence has not been adduced by the Prosecution.

## 4. Counts 5: Murder as a war crime

1148. The elements of the offence of murder as a crime against humanity and as a violation of the laws or customs of war are identical, except for the category to which the victim or

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<sup>1897</sup> Section on sending pows to Batkovci

<sup>1898</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraph 145; Prosecutor v. *Blagojević and Jokić*, Appeal Chamber Judgment, 9 May 2007, paragraph 127; . Prosecutor v. *Simić et al.* Appeal Chamber Judgment, 28 November 2006, paragraph 85; Prosecutor v. *Blaškić*, Appeal Chamber Judgment, 29 July 2004, paragraph 48.

<sup>1899</sup> Prosecution Pre-Trial Brief, paras. 228-232.

<sup>1900</sup> Prosecutor v. Blagojevic and Jokic, Trial Chamber Judgment, 17 January 2005, paragraphs 740-744,

<sup>1901</sup> Prosecutor v. Blagojevic and Jokic, Appeal Chamber Judgment, 9 May 2007, paragraph 107.



targeted person belongs to.<sup>1902</sup> Accordingly, the victim has to be someone not taking any active part in the hostilities at the time the offence is committed. This covers, inter alios, members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.<sup>1903</sup> The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.<sup>1904</sup> Victims of murder, bodily harm and theft, all placed *hors de combat* by their detention, are clearly protected persons within the meaning of common Article 3.<sup>1905</sup>

1149. Whereas the Defence admits that the prisoners in the Zvornik and Bratunac area fall in the category described above, it also reiterates the arguments put forward in the paragraphs above regarding the alleged involvement of Pandurevic in the crime of murder.

1150. The arguments made above regarding aiding and abetting murder and extermination are also applicable to the present section.

## 5. Counts 7 and 8: Forcible transfer and deportation

1151. Legally, Counts 7 and 8 have the same elements, with the exception of the requirement of destination in Count 8, and are dealt with here for convenience sake, as well as the nexus provided by Count 7 itself. The underlying prerequisites have been dealt with above. In addition to that, the prosecution have to prove: absence of justification for the transfers ; an intention on the part of the accused that the group of persons should be transferred, and an intention that the transfer should be permanent rather than merely provisional.<sup>1906</sup> Justification for a transfer or deportation can derive from its being motivated by the security of the population or imperative military reasons.<sup>1907</sup> A transfer of persons who genuinely want to leave will neither be precluded.<sup>1908</sup>

### 5.1. Count 7

1152. The form of Count 7 bears some careful analysis, as it embraces both the removal of the population of Srebrenica (11<sup>th</sup> -13<sup>th</sup> July) and the removal of the population of Zepa (25<sup>th</sup>-28<sup>th</sup> July).<sup>1909</sup> The prosecution case theory is that the two events are inextricably linked through Directive 7.<sup>1910</sup> All seven accused are indicted jointly in relation to Count

<sup>1902</sup> See, e.g., Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment, 17 September 2003, para. 323; The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, para. 248

<sup>1903</sup> Common Article 3(1); Čelebići Appeal Judgment, para. 420

<sup>1904</sup> Prosecutor v. Sefer Halilovic, Case No. IT-01-48-T, Trial Judgment, 16 November 2005, para. 36.

<sup>1905</sup> Prosecutor v. Goran Jelusic, Case No. IT-95-10-A, Appeal Judgment, 5 July 2001, para. 34

<sup>1906</sup> The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003., paragraphs 518-522

<sup>1907</sup> The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, paragraph 518

<sup>1908</sup> The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, paragraph 519

<sup>1909</sup> Prosecution Pre-Trial Brief para 182

<sup>1910</sup> Prosecution Pre-Trial Brief paras 169-172

7. No concurrent conspiracy is charged. Evidentially, there is plainly a wide spectrum of involvement and/or participation at each of the locations.

1153. It is only pleaded as a Joint Criminal Enterprise, the purpose of which was the removal of both populations. As identified above the prosecution must identify the point at which the accused joined the JCE.<sup>1911</sup> The mere drafting of Directive 7, is in the defence submission, incapable of amounting to a JCE, as at that point in time, there was simply no enterprise. Admittedly, there may have been a form of conspiracy involving certain persons, but that is not alleged. Curiously, whereas the conspiracy count in relation to genocide is wholly otiose in this indictment, a conspiracy count in relation to forcible transfer would have been quite appropriate, given the way in which the case is put by the prosecution.

1154. The Prosecution has been quite particular in relation to Srebrenica to allege when the actual enterprise began forcibly to transfer the population. Interestingly, it does not allege that the JCE began with the drafting of the combat order Krivaja '95, which presumably, amounts to a concession that the operation did not have as a significant part of its purpose the goal of removing the population. Nor yet does it allege that the JCE began once combat operations were under way. In fact the Prosecution do not allege that the permanent removal of the population was an objective prior to July 11<sup>th</sup>.

1155. In relation to Zepa, no such particulars are offered as to when the the JCE was formed or as to when any accused joined it. The history of the negotiations and the evacuation have been detailed in the indictment and in the evidence, but no point is identified as to when the forcible transfer of the population of Zepa became part of the wider criminal enterprise. The evacuation of the population of Zepa was moreover a completely different affair to Srebrenica. The town was not taken. The United Nations was involved on the ground throughout at the highest available level. There were prolonged ceasefires and extensive discussions. The (much smaller) population was consulted over several days as to their wishes.

1156. The manifest differences temporally, geographically, and in terms of the personnel involved ought to have been recognized by the inclusion in this indictment of two separate counts of forcible transfer : one for Srebrenica ; one for Zepa, each, almost certainly, involving different accused. The joining of both events in one count is an unnecessary complication, and presents the prosecution with difficulties of proof which it needn't have taken on - for, to achieve a conviction on this count, it has to prove firstly, that there did in act exist a JCE to forcibly transfer the populations of both Srebrenica and Zepa, and secondly that each of these accused participated in that rather than any other enterprise. It is not, with respect, for the Trial Chamber to rewrite the indictment and treat it as if it contained two separate counts of forcible transfer.

1157. The particulars of involvement of the accused Pandurevic in Count 7 allege he commanded forces which took part in the attacks on Srebrenica and Zepa, knowing one of the main objectives was to force the population out of the enclaves<sup>1912</sup>. In relation to

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<sup>1911</sup> Prosecutor v. Krajisnik, Appeals Chamber Judgment, 17 March 2009

<sup>1912</sup> Prosecutor vs Popovic et al., Case IT-05-88, Indictment, 4 August 2006, para 77(a)(i)

Srebrenica, only he is said to have participated in the forcible removal of the population by arranging for the Zvornik Brigade to receive prisoners.<sup>1913</sup>

1158. Leaving aside for the time being, consideration of the prisoners in Zvornik, the principle action of Pandurevic in support of the forcible transfer centred on his conduct of combat operations.

1159. The combat operation in Srebrenica and Zepa was legal and militarily justifiable.<sup>1914</sup> The combat objectives were clear and did not involve the taking of the enclave nor any attempt to remove the civilian population.<sup>1915</sup> Having achieved those objectives on 9<sup>th</sup> July, Pandurevic and his forces withdrew to a retreated position to allow reserve troops to secure the new positions.<sup>1916</sup>

1160. It is of course correct that Pandurevic commanded a battalion sized unit in the operation to reduce the enclave of Srebrenica<sup>1917</sup>. However, the commander of the operation was General Krstic, and the force he commanded was the size of a brigade.<sup>1918</sup> Direction of the operation was the responsibility of the operational combat commander, Krstic. The fact that Pandurevic was in command of a small unit is of scarce relevance. In particular, the evidence now before the Chamber suggests that real care was taken to target known military facilities by Pandurevic's unit<sup>1919</sup>. It is furthermore, significant that the indictment levels no allegation against Pandurevic that his units shelled the town. The Pre-Trial Brief only makes this accusation against the Bratunac Brigade.<sup>1920</sup> The written and oral orders he received from Krstic were lawful and militarily justifiable and, accordingly, he attracted no responsibility as a commander for the combat action.

1161. More to the point, if the plan permanently to remove the population of Srebrenica did not fully form until 11<sup>th</sup> July, his actions prior to that can scarcely be said to have been in support of such a plan.

1162. The occupation of Srebrenica itself was a consequence of a decision by the forces of the BiH to quit the town<sup>1921</sup>. It is plain that the VRS forces were aware of this from their own radio intelligence<sup>1922</sup>. The forces assembled for Krivaja '95 did not have the capability to take the town in the face of any substantial resistance.<sup>1923</sup> Srebrenica could have been defended effectively with ease.<sup>1924</sup> As an experienced military commander, those factors alone would have borne heavily on Pandurevic's perception of the objectives of the operation.

1163. Pandurevic's presence and actions in the town itself on 11<sup>th</sup> July is more eloquent of his commitment to his combat orders than to any wish to see the civilian population

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<sup>1913</sup> Prosecutor vs Popovic et al., Case IT-05-88, Indictment, 4 August 2006, para 77(b)

<sup>1914</sup> See Part 4 Section 4.

<sup>1915</sup> Part 4 Section 4.

<sup>1916</sup> Idem

<sup>1917</sup> Part 4 Section 4

<sup>1918</sup> Idem

<sup>1919</sup> T.30854, 29 January 2009,

<sup>1920</sup> See Prosecution Pre-Trial Brief paragraph 143

<sup>1921</sup> T.29541, 11 December 2008, Milenko JEVDJEVIC

<sup>1922</sup> T.30866-T.30868, 29 January 2009, Vinko PANDUREVIC; T.29541, 11 December 2008, Milenko JEVDJEVIC

<sup>1923</sup> T.29526, 11 December 2008, Milenko JEVDJEVIC

<sup>1924</sup> T.30866, 29 January 2009, T.30875, 30 January 2009, Vinko PANDUREVIC

removed.<sup>1925</sup> His concerns at that time, as expressed in his own evidence, are diametrically opposed to any such understanding of the purpose of the mission being to that effect, in whole or in part.<sup>1926</sup>

1164. Pandurevic was not present in Potocari on 11<sup>th</sup> or 12<sup>th</sup> July. There is no evidence suggesting that he had any contemporaneous knowledge of events there. No unit which he commanded as part of operation Krivaja '95 was present, and even if the Chamber accepts the highly questionable evidence that members of the so-called Drina Wolves were in Potocari, those men were under the direct command of the Drina Corps.<sup>1927</sup>

1165. Turning briefly to the receipt of prisoners in Zvornik - if, which is strenuously denied, Pandurevic was involved in the arrangements made for the receipt of prisoners in Zvornik, this had little or nothing to do with the plan to evacuate the civilians from Potocari, but rather the other JCE alleged in this indictment, to kill the able bodied men. The fact that Pandurevic was not involved in arranging for the receipt of prisoners is probably best illustrated by the report he wrote on 18<sup>th</sup> July :

*"It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools..."*<sup>1928</sup>

1166. The combat action towards Zepa was legal and militarily justifiable. Disarming the enclave and reducing its size was consistent with the creation of the safe area and the terms agreed. Stupcanica '95 was a lawful combat order, respecting the situation of civilians.<sup>1929</sup> It is plain that an attack on Zepa was not contemplated at all, prior to the capitulation of the muslim forces in Srebrenica. Pandurevic's own evidence was that after the taking of Zivkovo Brdo, he anticipated he would return to Zvornik with his unit.<sup>1930</sup> His evidence as to his understanding of the purpose of the operation is to the effect that the town and its population were of no interest to the VRS, as it was and always had been a muslim town, but that the Zepa brigade had to be disarmed.<sup>1931</sup>

1167. Despite the unsubstantiated and unsupportable claims made in the Prosecution's Pre-Trial Brief, the evidence discloses that the forces commanded by Pandurevic did no more than close with the enemy in preparation for combat on 14<sup>th</sup> July.<sup>1932</sup>

1168. Thereafter, no unit of the Zvornik brigade (which would, in any event, have been under the command of the operational commander, Krstic) was present in the area until 31<sup>st</sup> July.<sup>1933</sup>

1169. The defence of Vinko Pandurevic adopts such submissions of other accused as suit its purposes as to whether in fact and in law the offences of forcible transfer and deportation are made out in relation to events at Zepa. Plainly, there was a wholly different situation there. Zepa was a small hamlet with a few outlying villages. It was isolated after the fall

<sup>1925</sup> T.30879, 30 January 2009, Vinko PANDUREVIC; P02048, Srebrenica Trial Video

<sup>1926</sup> T.30885, 30 January 2009, Vinko PANDUREVIC

<sup>1927</sup> See section 'Potocari and the column'

<sup>1928</sup> P00334, Zvornik Brigade Interim Combat Report 06-222, dated 18 July 1995, paragraph 4

<sup>1929</sup> See section Stupcanica '95

<sup>1930</sup> T.31331-T.31332, 12 February 2009, Vinko PANDUREVIC

<sup>1931</sup> T.30915-T.30916, 30, January, 2009, Vinko PANDUREVIC

<sup>1932</sup> See Part 4 Section 13

<sup>1933</sup> Idem.

of Srebrenica and it required both the presence of a peacekeeping force and continued supply of aid for viability as an enclave. All parties had a voice in fairly protracted negotiations. The muslim negotiators obviously consulted with the army, their government, the UN and most importantly, the population, and they clearly had a mandate to negotiate and reach agreement on their behalf. The evacuation was conducted in a humane fashion, and under UN supervision.

1170. Jurisprudentially, the evacuation of Zepa has an interesting history. Neither General Krstic nor Colonel Blagojevic were indicted for any crime against humanity relating to Zepa. Nor did Richard Butler consider the events prior to the commencement of this trial, notwithstanding the existence of all the relevant source material at the time of the writing of all his prior reports. Moreover, Mirko Trivic appeared as a witness for the Prosecution and was neither deemed worthy of a caution<sup>1934</sup>, nor inclusion in the members of the JCE, notwithstanding the fact that his infamous diary disclosed “hands-on” involvement in the evacuation of civilians.<sup>1935</sup>

1171. Whilst of course the prosecution is completely at liberty to charge such persons with such offences as it believes are made out, the conviction, in particular of Pandurevic for forcible transfer and deportation in relation to the events at Zepa creates an anomaly in the Tribunal’s jurisprudence and the so-called “historical record”<sup>1936</sup> No further evidence has come to light in relation to the removal of the population of Zepa in the last 8 years or so, accordingly, it is difficult to imagine what makes this a crime now, that didn’t make it one then.

## 5.2. Count 8

1172. Leaving aside issues of participation, the defence for Pandurevic will make brief submissions about the offence of Deportation charged under Count 8. In the submission of the defence, the preponderance of evidence reveals that virtually all of those who fled to Serbia were members of the armed forces. Their choice of decisions, as such, was to fight, to surrender or to flee. They chose the latter, and in doing so, crossed a state border. According to Pandurevic, they were the focus of the attack.<sup>1937</sup>

1173. In the defence submission, the crimes of transfer and deportation are not intended to protect retreating armies, and this count on the indictment must fail, by reason of the fact that the prosecution has failed to prove to the requisite standard that :

- the attack was directed against a civilian population ;
- Pandurevic knew that his acts were directed against a civilian population<sup>1938</sup> and

<sup>1934</sup> T.11746, 18 May 2007, Mirko TRIVIC

<sup>1935</sup> 2D00125, Personal Trivic diary, Page 12

<sup>1936</sup> Prosecutor vs Popovic et al., Case IT-05-88, “*Response to Prosecution's second motion to reopen its case and or admit evidence in rebuttal*”, 14 April 2009

<sup>1937</sup> T.30915-T.30916, 30, January, 2009, Vinko PANDUREVIC

<sup>1938</sup> Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, para 85

- That the decision of the armed forces to retreat to Serbia was not genuinely voluntary.<sup>1939</sup>

1174. The above submissions have substantial force in relation to the alleged forcible transfer of the civilian population from Zepa.

### 5.3. Aiding and abetting forcible transfer and the Boksanica footage

1175. The Defence submits that the presence of Pandurevic at Boksanica on or about 26<sup>th</sup> July 1995 is no evidence of his aiding and abetting the evacuation. ICTY jurisprudence has rightly set out the notion that mere presence may only *imply* aiding and abetting when such presence involves substantial encouragement to the crime on account of the authority of the onlooker, with the consequence that the perpetrator draws moral and psychological support or a legitimizing effect from that presence.<sup>1940</sup> Accordingly, such a person should be a superior to the perpetrator or have an important status in society or military hierarchy.<sup>1941</sup>

1176. In the context of those present at Boksanica, Pandurevic is a very junior officer. He plays no active role. His presence cannot amount to encouragement, and in fact a detailed examination of the footage reveals that his Nissan vehicle disappears sometime between General Mladic's salutations to the 8<sup>th</sup> and 9<sup>th</sup> of 23 coaches. His discourse with Generals Gvero, Krstic and Mladic on that occasion is not merely trivial, it speaks eloquently of his unfamiliarity with events there.

1177. The Defence submits that Pandurevic's presence at Boksanica does not show any or any substantial encouragement or legitimizing effect of the evacuation and, thus, his presence cannot amount to aiding and abetting.

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<sup>1939</sup> The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Trial Judgment, 31 March 2003, para 519

<sup>1940</sup> Prosecutor v. Haradinaj et al., Trial Chamber Judgment, 3 April 2008, paragraph 145; Prosecutor v. Brdanin, Appeal Chamber Judgment, 4 April 2007, paragraphs 273, 277; Prosecutor v. Brdanin, Trial Chamber Judgment, 10 December 1998, para. 232; Cassese, A., *International Criminal Law*, Oxford University Press, 2008, pp. 214-215;

<sup>1941</sup> Cassese, A., *International Criminal Law*, Oxford University Press, 2008, pp. 214-215.

## PART 7 - CONCLUSION

1178. The events of this indictment have just passed their 14<sup>th</sup> anniversary. This Chamber has spent three years examining them. Other Chambers have considered them too, and they stand to bear further consideration in the future. There is already a body of consensus about the way in which matters unfolded, the cost in human terms, where responsibility lay, and how culpability ought to be measured in punitive terms.
1179. It would be pleasant to think that the “search for truth” often cited in these proceedings would succeed both in bringing “justice to victims” and perfecting the fabled “historical record.” Sadly, too many compromises may already have been made out of expediency for those twin objectives to be achieved.
1180. For various reasons, those who were most culpable for these events will not ultimately be brought to bear for their actions. In their absence, those for whom this case has been both life and livelihood for years naturally seek to spread the load of the blame. It is only human. Every person available is accused of every matter possible, and the maximum penalty is demanded across the board.
1181. But that is not to serve history or justice. Both now demand that, if any of those before this Chamber are found to be responsible for events in July 1995, their punishment has logic and parity.
1182. One further thing has become clear, namely that not everybody was or could have been complicit in the schemes at the heart of the indictment, and that knowledge cannot be inferred merely from ethnicity or office. That much is plain from the investigations of the Prosecution as much as from the decisions of the Tribunal.
1183. The name of Vinko Pandurevic has resonated through the history of this case, but only this Chamber has heard the evidence against him and perhaps more importantly, for him and from him. At the start of his analysis of the materials in the case, Richard Butler was perturbed by the reports written by Pandurevic on 15<sup>th</sup> and 18<sup>th</sup> of July 1995. He sensed in them the seed of innocence.
1184. That seed has grown now, through the evidence in this case, including that of Pandurevic himself, which of course, Butler was never able to consider before coming to his opinions. The case for Pandurevic has branches and leaves, but its roots are in those reports and in the events of 16<sup>th</sup> of July at Baljkovica.
1185. By reason of his actions there, thousands of people of that generation alone, have a father, a brother, a husband, an uncle or a son. He was not supposed to do that, allow those people to live, and his action stands like a shining beacon in the darkness of this case.
1186. To conclude that the man who did that bears a heavy or central responsibility for acts of mass murder or should in some other way be severely punished would be unfaithful to history and to justice.

