

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

**Case No: IT-05-88-T**

**IN THE TRIAL CHAMBER**

**Before: Judge Carmel A. Agius, Presiding  
Judge O-Gon-Kwon  
Judge Kimberley Prost  
Judge Øle Bjørn-Støle, Reserve Judge**

**Registrar: Mr. John Hocking**

**Date: 28 July 2010**

**THE PROSECUTOR  
v.  
VUJADIN POPOVIĆ  
LJUBIŠA BEARA  
DRAGO NIKOLIĆ  
LJUBOMIR BOROVIČANIN  
RADIVOJE MILETIĆ  
MILAN GVERO  
VINKO PANDUREVIĆ**

**PUBLIC VERSION**

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**DEFENCE NOTICE OF FILING PUBLIC REDACTED VERSION OF VUJADIN  
POPOVIĆ'S FINAL BRIEF**

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Mr. Dragan Krgović and Mr. David Josse Q.C. for Milan Gvero  
Mr. Peter Haynes Q.C. and Mr. Simon Davis for Vinko Pandurević

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1. Pursuant to the Trial Chamber's 3 June 2010 "Order on Outstanding Documents Marked for Identification and on Public Redacted Versions of the Final Briefs," the Popovic Defence herewith files a public redacted version of its Final Trial Brief, attached at Appendix A.<sup>1</sup> The Final Trial Brief was originally filed confidentially on 30 July 2009.

Word count: 228

  
Zoran Zivanovic  
Lead Counsel

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<sup>1</sup> Due to the redactions, the public versions does not include some relevant parts of the Vujadin Popovic's Final Brief originally filed on 30 July 2009.

**APPENDIX A**

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR  
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**Before:** Judge Carmel A. Agius, Presiding  
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Judge Kimberley Prost  
Judge Ole Bjarn-Stale, Reserve Judge

**Registrar:** Mr. John Hocking

**Date:** 30 July 2009

**THE PROSECUTOR v.  
VUJADIN POPOVIĆ  
LJUBIŠA BEARA  
DRAGO NIKOLIĆ  
LJUBOMIR BOROVCANIN  
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**VUJADIN POPOVIĆ'S FINAL BRIEF**

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Dragan Krgović and David Josse for Milan Gvero  
Peter Haynes and Simon Davis for Vinko Pandurević

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**PUBLIC REDACTED**

**VUJADIN POPOVIĆ'S FINAL BRIEF**

**A. INTRODUCTION**

1. Vujadin Popović, through his Counsel ("Defence"), hereby submits that he is not guilty of any of the crimes alleged in the Indictment. The Defence therefore requests that Popović be acquitted of all the charges and immediately released from the ICTY Detention Unit.
2. In support of this relief, the Defence submits this final brief, in which it addresses the theory of the Defence case and explains the reasons in support of the requested acquittal. The Defence recalls that, pursuant to Article 21(3) of the ICTY Statute, Popović is entitled to a presumption of innocence which places on the Prosecution the burden of proving beyond reasonable doubt all the facts and circumstances which amount to the crimes charged and to Popović's criminal responsibility. The burden of proof never shifts to the Defence and remains with the Prosecution for each individual fact alleged.<sup>1</sup>

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*See Prosecutor v. Brdjanin*, IT-99-36-T, Judgement, 1 September 2004, para. 1.

3. A corollary of this principle is that if the Defence does not challenge certain factual allegations contained in the Indictment, this does not imply that the Prosecution is relieved from its obligation to prove these facts. In addition, should the Defence inadvertently omit to recall evidence in this brief or in its closing arguments that would show that the Prosecution failed to meet its burden, the Trial Chamber will have to consider this evidence *sua sponte*.
4. In observance of the general principle *in dubio pro reo*, in assessing the evidence presented by the parties, the Trial Chamber, when in doubt, must choose the option most favourable to Popović.<sup>2</sup>
5. The Defence recalls that, as fundamental principle of criminal law, an accused has the right to remain silent. This principle is enshrined in Article 21(4)(g) of the ICTY Statute. The Defence submits that no negative inference can be drawn by the Trial Chamber from Popović's choice to exercise this right.
6. Last, the Defence wishes to point out that in this final brief, for lack of time it has not been possible to take into account the evidence admitted today, 30 July 2009, by the Trial Chamber.<sup>3</sup>

## **B. GENERAL REMARKS ON INDICTMENT BACKGROUND**

7. The Indictment presents the charges as the consequence of the criminal policy formulated by the highest authority of Bosnian Serbs, which was adopted and consistently implemented by VRS from the very beginning of the war in Bosnia.
8. The foundation of this policy is the attack on the Bosnian Muslim civilian population, which was laid down in Six Strategic Objectives protracting through the whole period of war until the fall of Srebrenica and Zepa.

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<sup>2</sup> ICTY RPE Rule 89; *see also Prosecutor v. Tadić*, IT-94-1-A, Decision on Appellant's Motion for the Extension of Time-Limit and Admission of Additional Evidence, 15 October 1998, para. 73 ("any doubt should be resolved in favour of the Appellant in accordance with the principle *in dubio pro reo*"); *Prosecutor v. Čelebići*, IT-96-21-T, Trial Judgement, 8 April 2003, para. 602 ("at the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved"); *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Judgement, 2 September 1998, para. 319 ("the general principles of law stipulate that, in criminal matters, the version favourable to the Accused should be selected").

<sup>3</sup> *Prosecutor v. Popović et al.*, Decision on Popović's Motions Regarding Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, 30 July 2009.

9. The Defence will attempt to define more precisely the term "civilian population" particularly within the context of the Srebrenica and Zepa "safe areas" and acts and conducts of the warring parties in these areas.
10. The Indictment relies on extracts from four documents originating from the period 1992-1995<sup>4</sup> as proof that the main goal of the Bosnian Serb leadership, from the very beginning of the war, was to forcibly remove Muslims from the territories under VRS control.
11. The Defence submits that such allegations are unfounded, as they are based on a misinterpretation of these documents, taken out of the overall context of events that took place during the war in Bosnia.

### **I. Strategic Objectives**

12. The fundamental aspects of the policy according to the Indictment can be seen in the Six Strategic Objectives<sup>5</sup> ("Objectives") of 12 May 1992 and in particular the first and third of the Objectives. The Prosecution asserts that the first Objective, "Establishing of state borders separating the Serbian people from the other two ethnic communities" as an "outrageous thing" and the third Objective "establish a corridor in the Drina River valley, that is, eliminate the Drina as a border separating Serbian States" would make Podrinje a part of "Mother Serbia".<sup>6</sup>
13. These arbitrary conclusions result from ignorance of the events which took place in that period of time.
14. Defence witness Momčilo Krajišnik, who personally participated in the drafting of these goals<sup>7</sup> in his capacity as speaker of the Assembly of Republika Srpska,<sup>8</sup> testified about

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<sup>4</sup> Indictment Background para 19, 21, 23 and 24

<sup>5</sup> Indictment para 19

<sup>6</sup> OTP Opening statement 21 August 2006 T.391:24 -392:23

<sup>7</sup> Krajišnik 2 June 2008 T21581:24-25

<sup>8</sup> *Ibid* T.21581:7-9

the context and real meaning of the Objectives and the reasons why the Bosnian Serb leadership presented them to the People's Assembly.

15. He explained that the Objectives followed from an agreement previously consented to by Bosnian Muslims and Croats as well as the EU representative at the time, Mr. Jose Cutillero and that these Objectives were subsequently revoked by the Muslims.
16. He explained that the atmosphere on the session was rather heated as it was the first session after the beginning of the war and many MPs had already experienced the fatal consequences of the war.<sup>9</sup> This was reflected in their discussions at the session.<sup>10</sup>
17. Mr. Krajisnik clearly explained that prior to that session, there was a meeting in Lisbon as a part of conference in Bosnia<sup>11</sup> and that just a day before the RS Assembly session, on 11 May 1992, it was publicly announced that the conference would be delayed.<sup>12</sup>
18. The Six Strategic Objectives represented both the position of the Bosnian Serb delegates as well as guidelines for future negotiations.<sup>13</sup>
19. The session was public<sup>14</sup> indicating that the Objectives became known immediately not only to MPs but to anyone following the events, including the media. Furthermore, nothing in the record indicates that attendants were required to keep any information obtained at the session a secret. This also implies that nothing was hidden as is usually the case where there is either an intent to commit criminal acts or criminal acts have occurred.
20. Mr. Krajisnik explained that the EU offered to mediate in an effort to reconcile the two opposite options: the political will of Bosnian Muslims and

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<sup>9</sup>*Ibid* T.21582:12-25

<sup>10</sup>P00025 Minutes of the 16<sup>th</sup> session of the Assembly of Serbian People in BiH 12 May 1992

<sup>11</sup>*Ibid* T.21583:4-6

<sup>12</sup>*Ibid* T.21583:12-13

<sup>13</sup>*Ibid*T.21583: 13-21, 21585:23-21586-2

<sup>14</sup>*Ibid* T.21584: 6:11

Croats for separation from Yugoslavia and the intent of Bosnian Serbs to remain within Yugoslavia. According to the EU proposal, both sides had to make concessions: the Bosnian Serbs were to accept the independence of BiH, irrespective of the result of their Plebiscite to remain in Yugoslavia.<sup>15</sup> In exchange, they were to get a constituent unit consisting of the territory mostly inhabited by Serbs, which Bosnian Croats and Bosnian Muslims had to accept.

21. The Cutillero Plan was analyzed and assessed by a number of international diplomats and journalists and no criminal element has ever been found within it.<sup>16</sup> As the international recognition of BiH clearly indicated the imminence of the war, the EU, through Lord Carrington, tried to avert disaster by appointing Portuguese diplomat Jose Cutillero to find the common ground between the Serbs, Muslims and Croats before an independent Bosnia was recognized. He advised him to see the possibility of an agreement along the lines of an independent BiH with a strong federal influence. Two days after all three parties signed the agreement, Izetbegovic revoked his signature.
22. The first Objective - separation from the other two ethnic communities -followed from the Cutileiro Plan<sup>17</sup> envisaging Bosnia-Herzegovina as a state composed of three constituent units based on the principle of nationality,<sup>18</sup> taking into account economic, geographic and other criteria. The demarcation between constituent units had to be realized through a working group,<sup>19</sup> with the assistance of Mr. Cutillero's associate Mr. Darwin, and his proposed map.<sup>20</sup> Such a demarcation did not, however, imply any movement of the population.<sup>21</sup>

<sup>15</sup> Krajisnik 2 June 2008 T.21587:19-21588:25

<sup>16</sup> Defence Opening Statement 2.6.2008 T.21568:7-21570:25 video 50'55"-54'4"  
ID 1169 video "The war which could be avoided" Defence Opening Statement 2.6.2008 T.21568:7-21570:25 video 50'55"-54'4"

<sup>17</sup> ID 1156 paragraph A

<sup>18</sup> Statement of Principles ID 1156

<sup>19</sup> *Ibid* paragraphs D and E p.3

<sup>20</sup> Krajisnik 3 June 2008 T.21636:15-21

<sup>21</sup> *Ibid* 21589:20-25

23. Because of the above-mentioned facts, the first Objective was not in contravention of any legal norm or principle.
24. The third Objective - eradication of Drina River as a border between two Serbian states<sup>22</sup> - was a distortion of the genuine wording by the President of Republika Srpska Dr. Radovan Karadžić.<sup>23</sup> He explained that the establishment of a corridor in Drina Valley is an elimination of the Drina River as the border between two worlds not two Serbian states. He also added that it was possible for some Muslim municipalities to be set up as enclaves along the Drina in order for them to achieve their rights on the territory of Serbian Bosnia and Herzegovina. It obviously excluded ethnic cleansing of Muslims from the territory of Serbian Bosnia and Herzegovina as the alleged part of the Objectives.
25. Mr. Krajisnik explained that neither side in negotiations prior to the war sought strictly demarcated BiH borders with Yugoslavia or Croatia.<sup>24</sup>
26. This principle of the special parallel links<sup>25</sup> was agreed upon by the parties during their mutual negotiations and formulated in the Cutiliero Plan. It was even a part of the SDA policy presented personally by Izetbegovic.<sup>26</sup> In actual fact, the ethnically mixed population in BiH, Serbia and Croatia was not conducive to the establishment of strictly controlled borders restricting communications between the people on opposite sides of borders.<sup>27</sup>
27. It is very important to emphasize that the Objectives have never been enacted as a legally binding document. The Objectives were presented at the session of the Assembly on 12 May 1992 but MPs never voted on it.<sup>28</sup> They were actually presented in form of information as to the position of the Bosnian Serb political leadership in further negotiations.<sup>29</sup>

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<sup>22</sup> P2755 Decision on Strategic Objectives 26.11.1993

<sup>23</sup> P00025 Minutes of the 16<sup>th</sup> session of the Assembly of Serbian People in BiH 12 May 1992 p.14

<sup>24</sup> Krajisnik 2 June 2008 T.21590:10 - 21591:11

<sup>25</sup> ID 1156 p. 2-3; Krajisnik 2 June 2008 T.21592:21 -21593:11

<sup>26</sup> ID 1105 p.2 para next to last Speech at the First SDA Conference; Krajisnik 2 June 2008 T. 21591:23 - 21592:16;

<sup>27</sup> Krajisnik 2 June 2008

<sup>28</sup> *Ibid* 2 June 2008 T.21593:13-20; P. 25

<sup>29</sup> *Ibid* T.21594:7-13

28. The preparation of Bosnian Serb leadership for further negotiations was an urgent issue. Just three days later, UN SB called on all three parties in BiH to resume negotiations.<sup>30</sup> Actually it "urges that discussions be resumed without delay and urges three communities in BiH to participate actively and constructively in these discussions on continuous basis."<sup>31</sup>
29. These Objectives were constantly pursued, even through all negotiations under the patronage of the international community and finally both the first and third Objectives were realized in the Dayton Peace Accords.<sup>32</sup> Republika Srpska was established and its internal borders within Bosnia and Herzegovina were defined.<sup>33</sup> The third strategic objective was further realized by the free movement across the borders of Bosnian, Serb and Croat citizens without passports, visas or other formalities.<sup>34</sup>
30. The late publication of this document in the form of the decision was adequately explained by Mr. Krajisnik.<sup>35</sup> However, he explained in detail why the Objectives were published in the Official Gazette in November 1993<sup>36</sup> even though they were not a binding legal act.
31. The efforts of the Prosecution to link this document with crimes committed by RS forces in 1992, after the presentation of these Objectives, disregards the fact that the war was already underway and that many crimes were committed before the formulation and presentation of the Objectives. Moreover, such an approach merely serves to distort the reality of the situation as it existed at the time. Crimes were committed by all warring sides, yet this is overlooked by the Prosecution, particularly in relation to those crimes committed against the Bosnian Serbs during that time.

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<sup>30</sup> ID 1428 UN SB Resolution 752 (1992) 15 May 1992 (not admitted through BT Motion pending certification)

<sup>31</sup> *Ibid* para 2

<sup>32</sup> *Ibid* T.21598:11-21599-6

<sup>33</sup> Krajisnik 2 June 2008 T.21599:22-21600:4

<sup>34</sup> *Ibid* 2 June 2008 T.21600:5-21601:4

<sup>35</sup> Krajisnik 2 June 2008 T.21604:22-21607:13

<sup>36</sup> *Ibid* 2 June 2008 T.21604:22-21607:13

32. Certain people misunderstood or misconstrued all or some of the Objectives.

The position of the Prosecution serves as an illustrative example. The Trial Chamber in *Krajisnik* explicitly said that

"it would be incorrect to place these goals on a pedestal, as the Prosecution does for in the final analysis they are anodyne statements, serving as official state policy and even qualifying for publication in the Bosnian-Serb Republic's *Official Gazette*. If one is inclined to find in them insidious hidden meanings, it is because of the context and the events that followed. An anachronistic reading of the May goals is not only inadvisable, it misses the point, just as an anachronistic reading of the December Instructions misses the point."<sup>37</sup>

33. Consequently, the Six Strategic Objectives formulated in May 1992 cannot be taken as the foundation of any of the crimes committed and in particular those related to the Srebrenica in July 1995. Simply, in May 1992 during the first days of the Bosnian war nobody was able to predict future events, acts and conduct of warring sides, diplomacy, mediations, negotiations. It was equally unforeseeable that the "Muslim municipality established as the enclaves along the Drina River"<sup>38</sup> would be proclaimed as "safe areas" under international protection and conceal the strongholds of the ABiH for terrorist, sabotage and combat activities which resulted in attacks on Serb civilians or military targets.
34. To show that the VRS consistently implemented the misleading points of the "Six Strategic Objectives" policy against the Muslim population, the Indictment<sup>39</sup> quotes the parts of three VRS documents originated between May 1992 and July 1995.<sup>40</sup>

## **II. Operational Directive 04**

<sup>37</sup> Krajisnik TJ IT-00-39-T 27 September 2006 para 995

<sup>38</sup> P00025 Minutes of the 16<sup>th</sup> session of the Assembly of Serbian People in BiH 12 May 1992 p.14 para 2

<sup>39</sup> Indictment para 21, 23, 24

<sup>40</sup> P 29 Directive No 4 dated 19 November 1992, P03177 Order of Slavko Ognjenovic dated 4 July 1994 and P 5 Directive No 7 dated 8 March 1995

35. The Indictment cites just a part of this document saying: "inflict the heaviest possible losses on the enemy, and force him to leave the Eastern Bosnia areas of Birac, Zepa and Gorazde areas together with Bosnian Muslim population."<sup>41</sup>
36. The Prosecution found that the part of document reading: "inflict the heaviest possible losses on the enemy, and force him to leave the Eastern Bosnia areas of Birac, Zepa and Gorazde areas" "is fine" because it was the war<sup>42</sup> and the Defence fully agrees.
37. However it also found that the second part of sentence reading "force him to leave the Eastern Bosnia areas of Birac, Zepa and Gorazde areas" was a call to ethnically cleanse the Muslim population.<sup>43</sup>
38. It is the position of the Defence that such assessment cannot be properly made until the term "Bosnian Muslim population" is clarified both in the sense of its use in Directive 04 and how the term was perceived by VRS at the time.
39. As a preliminary point, it should be noted that this sentence omits the word "civilian" in the definition of Bosnian Muslim population. The Defence submits that this was done neither accidentally, nor to conceal the true intent of its author.
40. The next sentence of the document reads: "First offer able-bodied and armed men to surrender, and if they refuse, destroy them."<sup>44</sup> This means that the enemy targeted for destruction is able-bodied and armed men. The category designated as Bosnian Muslim population, including able-bodied but unarmed men, had just to leave the area.

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<sup>41</sup>Indictment para 21

<sup>42</sup>OTP Opening Statement 21.8.2006 T.394:1-19

<sup>43</sup>*Ibid* T.394:20-25

<sup>44</sup>OTP Pre-Trial Brief para 8

41. The meaning of "Muslim population" as used in this document must be assessed in the full context of events occurring at the time. It is not contested in this case that since the beginning of the Bosnian war many Serbs in East Bosnia were the victims of Muslim attacks.

42. It must be noted that ,

"between June 1992 and March 1993, Bosnian Muslims raided a number of villages and hamlets inhabited by Bosnian Serbs, or from which Bosnian Muslims had formerly been expelled. One of the purposes of these actions was to acquire food, weapons, ammunition and military equipment. According to the Bosnian Serbs, these actions resulted in considerable loss to Bosnian Serb life and property.<sup>45</sup> For the Bosnian Serbs, these Bosnian Muslim raids were of great concern, not least because they tied down a considerable amount of their armed forces, making them unavailable for combat activity elsewhere. During meetings with international observers, Bosnian Serb leaders vigorously expressed their anger over these actions."<sup>46</sup>

43. These attacks were carried out not only by uniformed ABiH members but by armed people in civilian clothing.

"Both Prosecution and Defence witnesses, who gave evidence with respect to the Bosnian Muslim attacks on the Bosnian Serb villages, distinguished between two categories of participants, using terms which reflect their own perception of the events. As such, participants in the first category were characterized as 'soldiers', 'citizen soldiers who take up arms', 'armed people' and 'fighters'. Participants in the second category were characterized as 'civilians', 'refugees', and *'torbarV*. Notwithstanding the different terms used, the Trial Chamber will adopt the term 'fighters' to describe the first category and 'civilians' when referring to the second category".<sup>47</sup>

44. It is thus apparent that Muslim civilians took part in the attacks both on the VRS and on Serbian civilians. In light of such military participation, the VRS could not clearly conceive the "Bosnian Muslim population" as "civilian."

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<sup>45</sup>TC Decision on Adjudicated Facts Annex A Fact 21 2 June 2008

<sup>46</sup>*Ibid* Fact 23

<sup>47</sup>*Ibid* Fact 30

45. It is pertinent to recall some of the acts carried out by Bosnian Muslim civilians before Directive 04 was issued as well as in the months which followed:

46. The Bosnian Muslim fighters who attacked Ratkovići were followed by a crowd of Bosnian Muslim civilians who were mostly refugees from Bosnian Muslim villages near Ratkovići.<sup>48</sup> Following the attack, Gornji Ratkovići, Polimići and part of Dvorište were ablaze and smoke was seen in Ratkovići. After taking cattle out of the stables, Bosnian Muslim fighters and civilians set fire to all barns and outbuildings in the fields near Polimići, which is approximately one kilometer southeast of Ratkovići. Bosnian Muslim fighters then withdrew in anticipation of a counter-attack, whereas civilians stayed behind looking for food.<sup>49</sup> At the time of the attack, the property destroyed in Ratkovići was neither of a military nature, nor was it used in a manner such as to make an effective contribution to the military actions of the Bosnian Serbs.

47. In Gornji Ratkovići, although there was an exchange of fire between Bosnian Muslims and Bosnian Serbs, most of the destruction occurred after the Bosnian Serbs had withdrawn. As a consequence, the destruction of property in Ratkovići, including Gornji Ratkovići, was not required for the attainment of a military objective.<sup>50</sup>

48. The Bosnian Muslim fighters who attacked Brađevina were followed by a crowd of Bosnian Muslim civilians.<sup>51</sup> Bosnian Muslim civilians joined fighters in torching stables and burning livestock in the meadows between Brađevina and Magudovići. Eventually, all the buildings of Brađevina, except those used for storing grain and food, were set on fire. Bosnian Muslim civilians remained in the area after the attack, searching for food and other goods.<sup>52</sup> Around noon on 8 August 1992, Bosnian Muslims attacked

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<sup>48</sup>*Ibid* Fact 31

<sup>49</sup>*Ibid* Fact 32

<sup>50</sup>*Ibid* Fact 33

<sup>51</sup>*Ibid* Fact 34

<sup>52</sup>*Ibid* Fact 35

Ježestica.<sup>53</sup> The Bosnian Muslim fighters who attacked Ježestica were followed by a crowd of Bosnian Muslim civilians, in all likelihood refugees from nearby Bosnian Muslim villages.<sup>54</sup> A number of Bosnian Muslims, some in uniforms, set fire to houses. Ježestica and the surrounding hamlets were engulfed in smoke and numerous houses were burning.<sup>55</sup> On the early morning of 14 December 1992, Bosnian Muslims attacked Bjelovac and Sikirić.<sup>56</sup> The Bosnia Muslim fighters were armed, some wearing uniforms or civilian clothes. Furthermore, some fighters were also wearing a colored bandana around their heads. The Bosnian Muslim fighters who attacked the area of Bjelovac were followed by thousands of civilians.<sup>57</sup>

49. During the attack, several houses in the vicinity of Bjelovac and Sikirić began to burn. One witness heard a Bosnian Muslim fighter in camouflage uniform telling others to "set the house on fire immediately". Another witness saw smoke coming out of houses that Bosnian Muslims in uniforms and civilian clothes had come out from.<sup>58</sup> On 14 December 1992, at least 15 houses in Bjelovac and 15 houses in Sikirić were burned. The majority of houses had been burned by 18 December 1992.<sup>59</sup>

50. In the early morning of the 7 January 1993, Orthodox Christmas day, Bosnian Muslims attacked Kravica, Ježestica and Šiljkovići.<sup>60</sup> The Bosnian Muslim fighters who participated in the attack were preceded and followed by several thousand Bosnian Muslim civilians, who were mostly refugees.<sup>61</sup> Houses in the entire area of Kravica, Šiljkovići and Ježestica, as well as cowsheds and barns in Ježestica, were burnt on 7 January 1993. In both Ježestica and Kravica, Bosnian Muslim fighters and civilians entered houses, searching for food and other items.<sup>62</sup> On 8 January 1993, Bosnian

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<sup>53</sup>*Ibid* Fact 36

<sup>54</sup>*Ibid* Fact 37

<sup>55</sup>*Ibid* Fact 38

<sup>56</sup>*Ibid* Fact 40

<sup>57</sup>*Ibid* Fact 41

<sup>58</sup>*Ibid* Fact 42

<sup>59</sup>*Ibid* Fact 43

<sup>60</sup>*Ibid* Fact 44

<sup>61</sup>*Ibid* Fact 45

<sup>62</sup>*Ibid* Fact 46

Muslims attacked the hamlets of Popovići and Colakovići, driving away the cattle and burning houses.<sup>63</sup>

51. Between January and March 1993, the area of Kravica and Ježestica remained under Bosnian Muslim control. Thousands of Bosnian Muslim civilians continued to flood in and out of this area, searching for food and building material. Some of them set fire to houses and haystacks.<sup>64</sup> In Ježestica, on 7 January 1993, more than 60 houses were burned. In Kajici, a hamlet of Kravica, six houses out of 15 were burned on 7 January 1993. By 8 January 1993, an indeterminate number of houses in Kravica were burned.<sup>65</sup> There is abundant evidence that the crowd of civilians present before, during and after attacks was massive and beyond control.<sup>66</sup>

52. These attacks in 1992 resulted in 2100 Serbs killed in and around Srebrenica only.<sup>67</sup>

53. At the very beginning of the Bosnian war, the warring parties reached an agreement on the rules they would observe in the course of the hostility.<sup>68</sup>

"The agreement was based on common Article 3 of the Geneva Conventions which, in addition to setting forth rules governing internal conflicts, provides in paragraph 3 that the parties to such conflicts may agree to bring into force provisions of the Geneva Conventions that are generally applicable only in international armed conflicts. In the Agreement, the representatives of Mr. Alija Izetbegovic (President of the Republic of Bosnia and Herzegovina and the Party of Democratic Action), Mr. Radovan Karadzic (President of the Serbian Democratic Party), and Mr. Miljenko Brkic (President of the Croatian Democratic Community) committed the parties to abide by the substantive rules of internal armed conflict contained in common Article 3 and in addition agreed, on the strength of common Article 3, paragraph 3, to apply certain provisions of the Geneva Conventions concerning international conflicts." (Agreement No. 1, 22 May 1992, art. 2, paras. 1-6)<sup>69</sup>

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<sup>63</sup> *Ibid* Fact 47

<sup>64</sup> *Ibid* Fact 48

<sup>65</sup> *Ibid* Fact 49

<sup>66</sup> *Ibid* Fact 50

<sup>67</sup> ID 1175 Vuga Expert Report para 3.6; ID 1162 List of Serbs Killed in and around Srebrenica; Vuga 2 July 2008 T.23171:17-23172:2

<sup>68</sup> *Prosecutor v. Dusko Tadic*, AC Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction dated 2 October 1995 para 73

<sup>69</sup> ID 1429, Agreement No 1, 22 May 1992 (not admitted through BT Motion pending certification).

54. "This Agreement shows that the parties concerned regarded the armed conflicts in which they were involved as internal but, in view of their magnitude, they agreed to extend to them the application of some provisions of the Geneva Conventions that are normally applicable in international armed conflicts only." The Appeal Chamber concluded therefore that the ICRC regarded the conflicts governed by the agreement in question as internal; however, at the invitation of ICRC, representatives of the three parties met in Geneva and agreed that they would comply with some rules mainly from the Geneva Conventions. It was agreed *inter alia* that "In order to promote the protection of civilian population, combatants are obliged to distinguish themselves from the civilian population."<sup>70</sup> The jurisprudence of ICTY did not find that the Agreement is contrary to the laws and customs of war.<sup>71</sup>
55. The above mentioned Agreement imposed obligations on the warring parties both towards the civilian population of the opposite side and its own civilian population.
56. Warring parties were obliged to protect the civilian population from enemy attacks and not to use them as a shield for its combat operation. In this sense they were obliged to distinguish themselves from the civilian population. Obviously, this was a necessary measure imposed in the interest of the civilian population to enable an opposite warring party to direct its combat activities towards the enemy armed forces without the risk of inflicting casualties on the civilian population.
57. However, from the onset of the war in Bosnia, ABiH knowingly, intentionally and consistently disregarded this obligation particularly in the Eastern Bosnia areas in and around Srebrenica and Zepa.

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<sup>70</sup> Prosecutor v. Dusko Tadic, AC Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction dated 2 October 1995 para 73; 1D 1429 para 2.5

<sup>71</sup> Prosecutor v. Dusko Tadic, AC Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction dated 2 October 1995 para 73

58. On very rare occasions, members of ABiH wore uniforms during combat activities; however they always used civilian objects for their needs.
59. By attacking Serbians in civilian clothes and hiding amongst civilians, the Muslim side acted in clear contravention of the quoted obligation. As has been previously noted this obligation was agreed upon "in order to promote the protection of civilian population" and not just to avoid military actions affecting civilians.
60. Such a strategy was implemented by the Muslim forces from the beginning of the war in Bosnia, abusing its own population by using them as human shields from enemy attacks. This action was also noticed by international community and will be elaborated upon further *infra*.
61. In addition the parties *inter alia* agreed that "The displacement of the civilian population shall not be ordered unless the security of the civilians involved or imperative military reasons so demand."<sup>72</sup>
62. The VRS had a legitimate right and duty to protect themselves and the Serbian civilian population from such attacks. In fact, the prevention of these types of attacks was an imperative military reason in the context of the Convention and VRS had a full right to plan its combat activities accordingly. This made a counterattack on the fighters inevitable. However, such counterattacks on the Muslim fighters would also unintentionally affect civilians who were not taking part in the hostilities because the attackers were intermixed amongst the civilian population. Indeed, after attacks assailants would intentional withdraw into the Muslim villages; even those assailants in uniforms just had to remove their arms and put on civilian clothing to make it impossible to be distinguished from civilians who did not take part in such activities.
63. In such circumstances inflicting "the heaviest possible losses on the enemy, and forc[ing] him to leave the Eastern Bosnia areas of Birac, Zepa and Gorazde areas

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<sup>72</sup> 1D 1429 para 2.3 p.5

together with Bosnian Muslim population" struck the right balance between the imperative to eliminate the threats of the future attacks by preventing the Muslim fighters from hiding amongst the Muslim civilians and the protection of Muslim civilians who did not participate in such attacks from becoming a target of VRS counterattacks.

64. It is submitted that in such circumstances it was in the best interests of the Muslim population to temporarily leave the area until hostilities ceased. There is nothing in this document which indicates that such a measure was conceived as permanent.
65. Consequently, the Defence submits that cited parts of the Directive 4 met the requirements of the Agreement No 1 and laws and customs of war.
66. As an illustration of the VRS position toward the Muslim civilians, the Defence points to the VRS Main Staff Battle Order for Liberation of Gorazde area dated 22 May 1993. Among other things the VRS units were ordered "to destroy Muslim armed forces and enable the population to leave the territory or recognize the RS authority creating the conditions for returning of Serbian population."
67. In this early stage of the war, the VRS obviously wanted to keep the Muslim civilians within the territory under its control. All that was sought from the Muslim civilians was their recognition of RS authority, thereby creating the conditions for the return of the Serbian population. It is therefore evident that "ethnic cleansing" was not a part of the policy of the Bosnian Serb leadership.
68. It bears noting that the language used in paragraph 2.3.5 of Agreement No 1 as stated is almost identical to the wording of Geneva Convention IV<sup>73</sup> and Protocol II.<sup>74</sup>

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<sup>73</sup> Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 12 August 1949

69. Article 17 of the Protocol reads: "Prohibition of forced movement of civilians".

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

Civilians shall not be compelled to leave their own territory for reasons connected with the conflict."

70. The first two paragraphs of the Article 49 of IV Geneva Conventions read:

"Individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve displacement of protected persons outside the bounds of the occupied territory except when material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."

71. It is useful to consider how these provisions have been implemented in other contexts and by the authorities of other democratic countries. Three pertinent examples are as follows.

72. During the war in Algeria (1954-1962) the French authorities moved large segments of the rural population - including entire villages - into camps under military supervision to

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<sup>74</sup> Additional Protocol II to the Geneva Conventions of 12 August 1949 and relative to the Protection of Victims of Non-International Armed Conflicts 12 December 1977 Entered into Force 7 December 1978

prevent them from aiding the National Liberating Front (FLN)<sup>75</sup> The resettlement was wholly involuntary in practice. In just three years (1957-1960) during which the regroupement program was followed, some two million Algerians - one-fifth of the population! - were removed from their villages, mostly in the FLN-infested mountainous areas, and resettled in the plains, in villages jointly supervised by the military and civilian authorities.<sup>76</sup> Following the cease-fire in March 1962, such acts were qualified as "acts committed in the context of operations designed to maintain order in response to the Algerian insurrection."

73. Involuntary resettlement of thousands of non-combatant villagers from the areas controlled or infiltrated by Viet Cong was an integral part of the U.S. military strategy in Vietnam.<sup>77</sup> It was practiced with particular severity in 1967-68, most notably during "Operation Cedar Falls," a large-scale search-and-destroy offensive involving 16,000 American troops in the NLF-infested "Iron Triangle" just north of Saigon.<sup>78</sup> Operation Cedar Falls entailed wholesale removal of the region's civilian population to the Orwellian-sounding "New Life Villages," subsequent systematic destruction of their homes, and defoliation of the entire area by chemicals. In the village of Ben Suc and surrounding area - to quote but one notable instance - 6,000 individuals were removed in trucks, river boats and helicopters to hastily improvised relocation camps. After the removal of the people, Ben Suc was destroyed by burning and bulldozing. Gen. Bernard William Rogers described the "sight of the natives of Ben Suc with their carts, chickens, hogs, rice" as "pathetic and pitiful."<sup>79</sup> Their removal was involuntary, their return impossible.

<sup>75</sup>It was only in 1992 that most French military documents were released and are now available at the military archives of the Service Historique de l'Armee de Terre at Vincennes, inc. "resettlement centers."

<sup>76</sup>Keith Sutton: "Army Administration Tensions over Algeria's Centres de Regroupement, 1954-1962." *British Journal of Middle Eastern Studies*, 26/2, 1999, pp. 243-270

<sup>77</sup>Cf. Guenter Lewy, *America in Vietnam*. Oxford University Press, 1978, pp. 110-113. certification)

<sup>78</sup>Cf. Stanley Karnow, *Vietnam: A History*. New York: Viking Press, pp. 439-440)

<sup>79</sup><http://www.history.army.mil/books/Vietnam/90-7/ch3.htm>

74. The Turkish invasion of Cyprus in July 1974 was followed by the deportation of up to 200,000 Greek inhabitants from areas under Turkish control.<sup>80</sup> For the past 35 years Turkey has been in violation of repeated U.N. resolutions calling for the respect of the independence, sovereignty and territorial integrity of the Republic of Cyprus and the withdrawal of all foreign troops. Turkey is also in violation of the United Nations' demand for "the full restoration of all human rights to the whole population of Cyprus, including the freedom of movement, the freedom of settlement and the right to property."<sup>81</sup> In 1976 and again in 1983, the European Commission of Human Rights found Turkey guilty of repeated violations of the European Convention of Human Rights: "the acts violating the Convention were exclusively directed against members of one of two communities in Cyprus, namely the Greek Cypriot community... Turkey has thus failed to secure the rights and freedoms set forth in these Articles... as required by Article 14 of the Convention."

75. The demographic structure of the island has been altered by immigration from Turkey. Up over 120,000 settlers were brought into northern Cyprus from the mainland.<sup>82</sup> This represents a clear violation of Article 49 of the Fourth Geneva Convention: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." The UN expressed concern "at the policy and practice of the implantation of settlers in the occupied territories of Cyprus which constitute a form of colonialism and attempt to change illegally the demographic structure of Cyprus."<sup>83</sup> Turkey has additionally violated the Fourth Geneva Convention by preventing the return of deported Greeks, contrary to the second paragraph of Article 49, which provides that

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<sup>80</sup> Gisela Welz. *Divided Cyprus: Modernity, History, and an Island in Conflict*. Indiana University Press (not admitted through BT Motion pending certification)

<sup>81</sup> UN Resolution 1987/19 (1987) of the "Sub-Commission On Prevention Of Discrimination And Protection Of Minorities" which was adopted on 2 September 1987.

<sup>82</sup> Parliamentary Assembly of the Council of Europe, Doc. 9799 of 2 May 2003: "Colonisation by Turkish settlers of the occupied part of Cyprus." Report by the Committee on Migration, Refugees and Demography.

<sup>83</sup> UN Resolution 1987/19 (1987) of the "Sub-Commission on Prevention of Discrimination and Protection of Minorities" which was adopted on 2 September 1987.

persons displaced during armed conflict must be transferred back to their homes as soon as hostilities in the area in question have ceased.

76. The quoted acts demonstrate that Turkey was not found responsible for evacuation of Greek population during combat activities on the island but for failure to permit their return a long time after "hostilities in the area in question have ceased", and colonization of occupied territory.
77. These three cases have never been prosecuted either by national or international courts, clearly indicating that the evacuation of civilians is permissible during wartime and that Article 49 of the Fourth Geneva Convention is not violated by such temporary evacuation.
78. Because of that the Defence finds that the cited part of the sentence from the Directive 4 is not in contravention with laws and customs of war.

### **III. Report by Lieutenant-Colonel Slavko Ognjenovic**

79. It seems that the Indictment incriminates a sentence from the report issued on 4 July 1994 by Slavko Ognjenovic, Commandeer of Bratunac Brigade at the time, which reads: "We must continue to arm, train, and discipline and prepare RS Army for the execution of this crucial task - expulsion of Muslims from the Srebrenica enclave. There will be no retreat when it comes to Srebrenica enclave, we must advance. The enemy's life has to be made unbearable and their temporary stay in the enclave impossible so that they leave the enclave *en masse* as soon as possible, realizing that they can not survive there."<sup>84</sup>
80. The Prosecution saw it as "the policy set out that will eventually lead to the attack on the enclaves and gives us a foundation of why we see the sniping and the shelling and the restriction of the material, all of which is happening now but will happen when our case starts as well in March of 1995."<sup>85</sup>

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<sup>84</sup> Indictment para 23

<sup>85</sup> OTP Opening Statement 21.8.2006, T.396:8-397:5

81. First of all the label of this document is wrongly translated as "the report".<sup>86</sup> So far this word has been used for the BCS word "izveštaj", which are documents submitted to superior command by subordinate units (Regular Combat Report, Interim Combat Report etc). Originally this document used the BCS word "informacija" or "information" in English. It was not sent to the higher command like reports, but to its subordinate unit - 3<sup>rd</sup> Infantry Battalion.

82. Despite interviewing him the Prosecution did not try to obtain an interpretation of this quotation from Mr. Slavko Ognjenovic.<sup>87</sup>

83. There are three relevant elements in this quotation. Firstly, the preparation of VRS through arming, training and discipline for the crucial task. This task, namely, the expulsion of Muslims from the Srebrenica enclave is the second element. The third element is to make the life of the enemy in the enclave unbearable and their temporary stay in the enclave impossible "so that they leave the enclave *en masse* as soon as possible, realizing that they can not survive there."

84. The quotation might be better understood if the previous sentence was cited too. It reads: "The enclaves of Srebrenica, Zepa and Gorazde must be defeated militarily."<sup>88</sup>

85. The Defence will not repeat facts stated in the previous chapter as to the mass attacks on VRS and Serb civilians carried out by Muslims in military uniforms and civilian clothing. This chapter will address just the new developments which took place between the issuance of Directive 4 and this report. Namely the most destructive attacks on Bosnian Serbs in the region which took place in late 1992 and early 1993.<sup>89</sup> The area of

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<sup>86</sup> P.3177 Information for the members of the Brigade p.1

<sup>87</sup> OTP Interview with Slavko Ognjenovic 26 July 2000 T000-0565 (BCS) L001-0201 (Eng) (not admitted through BT Motion pending certification)

<sup>88</sup> *Ibid* p. 3

<sup>89</sup> TC Decision on Adjudicated Facts Annex A Fact 21 2 June 2008 Facts 38, 40-50

responsibility of Bratunac Brigade was the most seriously affected.<sup>90</sup> These actions were also addressed by the Defence Expert Mr. Vuga.<sup>91</sup>

86. Just two days after the Srebrenica "safe area" was proclaimed, VRS ordered an immediate ceasefire and a strict respect for the status of the "safe area".<sup>92</sup> On the other hand, the Muslim side decided to disregard its obligations and issued an order not to surrender a single weapon or a single bullet. It was called "the cunning strategy".<sup>93</sup> Instead of demilitarization ABiH Command reorganized existing military groups in Srebrenica in 8<sup>th</sup> Operation Group.<sup>94</sup> The cunning strategy included terrorist and sabotage actions by Muslim forces in military uniforms or civilian clothes despite a ceasefire agreement and their withdrawal of such actions in the Srebrenica "safe area". In addition to 2100 Serbs killed in 1992, such actions resulted in 594 Serbs killed in and around Srebrenica in 1993 and 591 killed in 1994 until the fall of the enclave on 11 July 1995.<sup>95</sup> The cunning strategy involved logistics supply of Muslim forces in the enclave by appropriation of humanitarian aid as well as smuggling of arms, ammunition and other lethal combat material through the territory held by VRS.

87. The Prosecution agreed in this case that there were plenty of good and legitimate reasons for the VRS to attack Srebrenica in July 1995.<sup>96</sup> The position of the Defence is that such reasons also existed in July 1994 because, the number of attacks and quantity of smuggled lethal combat materials increased and the pattern of acts and conduct of the Muslim forces in the enclave was identical from the establishment of the "safe area" status in April 1993.

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<sup>90</sup> P 274 War History of the Bratunac Brigade

<sup>91</sup> 1D 1175 para 3.4 - 3.8

<sup>92</sup> 1D 1175 para 3.9-3.33; Vuga 2 July 2008 T.23168:22-23170:20; 1D 1285 VRS MS Order 18 April 1993

<sup>93</sup> 1D 721 General Sefere Halilovic: "Cunning Strategy"

<sup>94</sup> 1D 1175 Vuga Expert Report para 3.17

<sup>95</sup> 1D 1175 Vuga Expert Report para 3.23

<sup>96</sup> 2 July 1995, T. 23167:3-10

88. Until the helicopter crash on 7 May 1995 ABiH provided Srebrenica with 374.982 bullets, 436 bombs, 131 rifle grenades, 7 hand held rocket launchers, 292 rockets for this weapon etc. Gorazde was not supplied with so many resources and Sarajevo defended itself with far less in 1992 and 1993. Further details are given in ABiH documents emerged in 1996, they include various kinds of ammunition including sniper rounds<sup>98</sup> and in the first four months in 1995 6 tons of MTS and 17 tons of UBS was transported by air to Zepa.<sup>99</sup>

89. The quoted document was information to the members of the brigade about the briefing of the Drina Corps Command to the VRS Main Staff regarding enclaves Srebrenica, Zepa and Gorazde held on 1 July 1994 after which the Order was issued.<sup>100</sup> Among other things the Order states that Muslim forces from the enclaves did not comply with the Agreement on the demilitarization, moving around armed and opening fire with infantry weapons and mortars against VRS soldiers and the population.<sup>101</sup> It suspended the previous Order from 18 April 1993 as to ceasefire and actions around Srebrenca and instructed on activities to prevent illegal communication between the enclaves and smuggling of arms including the strict control of humanitarian convoys,<sup>102</sup> and improving the defense lines and improving the defense lines around enclave.<sup>103</sup>

90. The document partially quoted in the Indictment conveys to members of the Bratunac brigade the position of the VRS that "The enclaves of Srebrenica, Zepa and Gorazde must be defeated militarily."<sup>104</sup> Military defeat refers to Muslim forces in the enclaves because the armed action against civilians would not require any special preparation, arming or training therefore the military defeat of the enclaves referred to

<sup>97</sup> BiH General Assembly Opening Statement of Geeneral Rasim 30.7.1996, p.4

<sup>98</sup> 1D 746 ABiH General Staff Report on Delivery of UBS and MTS to Srebrenica and Zepa 28.5.1996

<sup>99</sup> 1D 744 ABiH Command of Air Force, Final Analysis of the Srebrenica and Zepa airlift 17.2.1996

<sup>100</sup> P 2749 VRS MS Order 22 July 1994, Vuga 2 July 2008 T.23172:16-23172:23

<sup>101</sup> *Ibid* para 13

<sup>102</sup> *Ibid* para 2-7

<sup>103</sup> *Ibid* para 8-12

<sup>104</sup> *Ibid* p.3

Muslim forces only. It is position of the Defence that the specific words, ABiH or 8<sup>th</sup> Operation Group, were not used just because it was clear that attacks had been carried out by groups in civilian clothes whose affiliation to the ABiH was not established.

91. The Defence also state that "The enemy's life" relates to the Muslim forces which were to be military defeated. It further means that their life "has to be made unbearable", that "their temporary stays in the enclave impossible" and that "they leave the enclave *en masse* as soon as possible, realizing that they can not survive there."

92. The Defence emphasizes that "their temporary stay in the enclave impossible" e means that the expulsion mentioned in the document was seen as just a temporary war measure not a permanent solution.

#### **IV. Directive 7**

93. The Prosecution states that Directive 7 contains the order to remove the Muslim population from the Srebrenica and Zepa enclaves.<sup>105</sup>

94. The OTP singled out the part of the document relating to the Drina Corps which reads: "... complete the physical separation of the Srebrenica and Zepa enclaves as soon as possible, preventing even the communication between individuals between the two enclaves. By planned and well-thought-out combat operation create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa."<sup>106</sup> The OTP further stated that following the Directive 7 "VRS deliberately restricted humanitarian aid and relief supplies to the Muslim inhabitants of Srebrenica and Zepa as part of organized effort to make life impossible for the Muslims and remove them."<sup>107</sup>

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<sup>105</sup> Indictment para 24

<sup>106</sup> OTP Pre-Trial Brief para 10; P 5 Directive 7 8 March 1995 p. 10 (Eng) p. 15 BCS

<sup>107</sup> OTP Pre-Trial Brief para 11

95. According to the Prosecution "... complete the physical separation of the Srebrenica and Zepa enclaves as soon as possible, preventing even the communication between individuals between the two enclaves" was legitimate military act since "Zepa and the Srebrenica enclaves were militarily supporting each other. Items were being flown 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."<sup>108</sup>

96. The Defence agrees and will not further elaborate on this subject.

97. The evidence admitted in this case show that the document bears the signature of the President Karadzic but it remains unclear who formulated the quoted part of this document.

98. This Directive as well as the Directive 7/1<sup>109</sup> and the situation in the Corps area of responsibility was the basis for the DK Commander's issuance of the Order Krivaga 95.<sup>110</sup>

99. In respect of the other quoted parts of the sentence the Defence must highlight the fact that the warring parties agreed *inter alia* that hostilities shall be conducted in respect of the level of armed conflict, particularly in accordance with Articles 43 to 58 of Additional Protocol I.<sup>111</sup>

100. The Article 51 para 7 reads:

101. "The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or

<sup>108</sup> OTP Opening Statement 21.8.2006 T.397:24-398:16

<sup>109</sup> 5D 361

<sup>110</sup> P 107 The Order for Active Combat Activities No1, 2 July 1995 para 2

<sup>111</sup> 1D 1429, Agreement No 1, 22 May 1992 para 2.5

impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."

102. In addition warring parties agreed that Geneva Conventions of 12 August 1949 and Protocol Additional to the Geneva Conventions and relating to the protection of victims of international armed conflicts Protocol I were fully applicable in the conflict in BiH.<sup>112</sup>

103. The Article 60 of the Protocol I reads:

104. Art 60. Demilitarized zones

105. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.

106. The agreement shall be an express agreement, may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.

107. The subject of such an agreement shall normally be any zone which fulfils the following conditions:

- a. all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;

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<sup>112</sup> P 3 Agreement on Demilitarization, 8 May 1993

- b. no hostile use shall be made of fixed military installations or establishments;
- c. no acts of hostility shall be committed by the authorities or by the population; and
- d. any activity linked to the military effort must have ceased.

108. The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in subparagraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.

109. The presence, in this zone, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 3.

110. If the fighting draws near to a demilitarized zone, and if the Parties to the conflict have so agreed, none of them may use the zone for purposes related to the conduct of military operations or unilaterally revoke its status.

111. If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone. In such an eventuality, the zone loses its status but shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

112. As already stated, enclaves Srebrenica and Zepa were not demilitarized, arms and lethal combat material (UBS) were illegally provided to the troops in the enclave, more than was provided for the defence of Sarajevo in 1992, and ABiH troops as well civilians carried out sabotage attacks on VRS and Srebian villages.

114. The Defence takes as firmly established view that contrary to the paragraph 3(a) ABiH combatants, as well as their mobile weapons and mobile military equipment, were not evacuated; that contrary to the paragraph 3(c) both authorities and civilians committed acts of hostility and that contrary to paragraph 3(d) activities linked to the military effort did not cease.

115. It follows that requirements from paragraph 7 were met, therefore VRS was released from its obligations with regards to the conferring upon Srebrenica and Zepa with the status of demilitarized zones but both areas still enjoyed the protection provided by other provisions of this Protocol.

116. The Defence is of the view that the term "inhabitant" used in the quoted part of Directive 7 needs to be clarified. The Defence asserts that this term does not encompass civilians who had never taken part in attacks on Serbian military or civilian targets around the enclave but was primarily related to Bosnian Muslims who had taken part in attacks on the Serbian military and civilian targets, characterized as 'soldiers', 'citizen soldiers who take up arms', 'armed people', 'fighters', 'civilians', 'refugees', and '*torbari*'<sup>113</sup>

117. As soon as the enclaves were established UN Special Rapporteur saw through the strategy of BiH forces in Srebrenica. He reported that violations of Geneva Conventions were perpetrated by BiH forces when they refused to allow the evacuation of the civilian population from Srebrenica, thus attempting to use them as a human shield.<sup>114</sup>

118. In addition, the ABiH requested from international organizations *inter alia* that "under no circumstances is a single inhabitant allowed to move away from demilitarized zone."<sup>115</sup>

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<sup>113</sup> TC Decision on Adjudicated Facts Annex A Fact 30

<sup>114</sup> P 486 UN Economic and Social Council, Report Mr. Tadeusz Mazowiecki 5 May 1993 para 88

<sup>115</sup> 1D 628 ABiH 2<sup>nd</sup> Corps Report to the Command ABiH to Genral Rasim Delic 5.7. 1993

118. A great number of inhabitants were held in Srebrenica "safe area" against their will. This was clearly conveyed to the 2<sup>nd</sup> Corps Commandant General Sead Delic by the UN civilian representative Ken Biser UNPROFOR's Chief for Civilian Affairs for the Sector N/E.<sup>116</sup> Mr. Biser clearly conveyed the position of the refugees that they "consider to be held in Srebrenica against their will."<sup>117</sup>

119. The most precise role of Srebrenica "inhabitant" is that they were the component of ABiH.<sup>118</sup> It was explained in details by the military expert Kosovac that the ABiH members sometimes would dress as civilians and operate as soldiers, that they kept their own population close by knowing that they would not be targeted as soldiers, that they organized its commands in civilian homes, that they used civilian facilities and facilities belonging to the health system to install their fire-power etc.

120. The best example of this role of the Muslim civilian population for the ABiH illustrates the series of reports on humanitarian situation in Srebrenica in days preceding the fall of the enclave. On 4 July 1995 UNHCR convoy reached Srebrenica but deliveries were not enough.<sup>119</sup> Just two days later the first fatalities of hunger were reported.<sup>120</sup> On 7 July 1995 new deaths from starvation were denoted.<sup>121</sup> On 8 July 1995 it was reported that civilians were starving and troops had reserves for just a few more days.<sup>122</sup> Finally, on 9 July 1995 it was reported that the situation with food was catastrophic and that both the population and troops have no reserve of food. New deaths were not reported.<sup>123</sup>

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<sup>116</sup> 1D 495 Command of 2<sup>nd</sup> Corps Meeting with Ken Biser Interim Report 9 December 1994

<sup>117</sup> *Ibid* p. 3

<sup>118</sup> 5DW Kosovac 16.1.2009 30206:11-30211:15

<sup>119</sup> P 428 ABiH 28<sup>th</sup> Division 5 July 1995 Humanitarina situation

<sup>120</sup> P 432 ABiH 28<sup>th</sup> Division 6 July 1995 Humanitarina situation;

<sup>121</sup> P 433 ABiH 28<sup>th</sup> Division 7 July 1995 Humanitarina situation; (not admitted through BT Motion pending certification)

<sup>122</sup> P 439 ABiH 28<sup>th</sup> Division 8 July 1995 Humanitarina situation;

<sup>123</sup> P 436 ABiH 28<sup>th</sup> Division 9 July 1995 Humanitarina situation; (not admitted through BT Motion pending certification)

121. However, just one day later, on 10 July 1995, the people broke into all magazines in Srebrenica town and took out all stocks of food.<sup>124</sup> This means that there was food in warehouses which had not been distributed to civilians despite the fact that they were starving. This also indicates that the problem was not with humanitarian aid supplies but rather with distribution. Above illustrates that BiH military and civilian authorities abused the humanitarian aid intended for the civilian population despite of their starvation.
122. All protests and warnings did not change such situations from the establishment of the "safe areas" until Directive 7. The VRS had no way to eliminate military threats from ABiH in the enclaves with "safe area" status proclaimed even though prerequisite conditions for it to take action was met and a 6000 men strong AbiH division mingled with Srebrenica "inhabitants".
123. The stated strategy of BiH authorities was in clear violation of Article 51 paragraph 7 of the Additional Protocol prescribing "that civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."
124. Because of the above, the term "inhabitants" in Directive 7 implied the members of ABiH and the population which was abused by it serving to shield its military operations and to satisfy its logistics through appropriation of its humanitarian aid.
125. In such circumstances the quoted task meets the requirements for evacuation from the Article 2.3.5 of the Agreement No 1, Article 49 of IV Geneva Convention

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<sup>124</sup> 4D 8, 2<sup>nd</sup> Corps Security Department and MUP SDB Tuzla Fall of Srebrenica 28.8.1995 p. 3 last para 2<sup>nd</sup>; 4D 2 Statement of Ramiz Becirovic to the Military Security Department of the 2<sup>nd</sup> Corps 11.8.1995 p.12;

and Article 17 of the Additional Protocol and adopted in international legal practice.

126. However, there is no evidence that this particular task was implemented although Bosnian Muslim civilians were evacuated on 12 and 13 July 1995 from Potocari to the ABiH controlled territory.

127. The Defence contests the OTP allegation that the Directive 7 contains any Orders. The Defence's objection is based on the following reasons.

128. On the basis of Directive 7, VRS Main Staf issued the Directive 7/1.<sup>125</sup> The only task assigned to the Drina Corps as to enclaves was "to prevent enemy breakthrough along selected operative tactical axes with persistent defence and active combat actions on the north-western of the front and around the enclaves and tie down as many enemy troops as possible through diversionary actions and operative tactical camouflage measures."<sup>126</sup> The rest of the task is related to the "Spreca 95" Operation far away from the enclaves.

129. Explaining this difference the PW Trivic explained that the directive is not binding document but merely guidelines, food for thought about certain parts of the battlefield and suggesting how some problems should be solved.<sup>127</sup> This is the only logical explanation as to how the Main Staff a subordinate organ omitted from its Directive the task assigned by Superior Command.

130. Because of that the Directive 7/1 has nothing in common with the quoted parts of the Directive 7.

131. Also, the content of the Order for Active Combat Operations No 1<sup>128</sup> although refers to Directive 7/1 does not reflect any of the tasks from it.

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<sup>125</sup> 5D 361 VRS MS Directive 7/1 31 March 1995

<sup>126</sup> *Ibid* para 5.3

<sup>127</sup> Mirko Trivic 22 May 2007 T.11928:11-11929:11930:5

<sup>128</sup> P 107 Drina Corps Command Order for Active Combat Activities "Krivaja 95" 2 July 1995

Namely, the Directive 7/1 relates to Operation "Spreca 95" and just demonstrates combat activities around enclaves while the "Krivaja 95 Order" imposed the task on the troops to separate Srebrenica and Zepa enclaves because of that reference on the Directive 7/1 in the "Krivaja 95" Order is quite inappropriate.

132. In addition, the "Krivaja 95" Order contents have nothing on the incriminating parts of Directive 7. There is nothing in this document which indicates that any military tasks was directed towards the civilian population or "inhabitants" of Srebrenica. The task assigned to the troops is to reach the boundaries of the "safe area" and put under VRS control area between Srebrenica and Zepa. Most importantly, it orders that "In dealing with prisoners of war and the civilian population behave in every way in accordance with Geneva Conventions."<sup>129</sup>

133. Even the order to enter Srebrenica<sup>130</sup> has nothing on the removal of Srebrenica "inhabitants". On the contrary, the President of the Republic ordered "continuation of operations for the take over of Srebrenica, disarming of Muslim terrorist gangs and complete demilitarization of the enclave."<sup>131</sup> The President's Order even pointed out that in the follow-up to combat operations "full protection be ensured to UNPROFOR members and Muslim civilian population in the event of their cross-over to the territory of Republika Srpska." The Defence is of the view that translation of words in this sentence might be misleading. Namely, that the word cross-over could not be find in many of English dictionaries. It could be understood that full protection to Muslim civilian population be ensured just if they cross over the territory of Republika Srpska, meaning on their way to the ABiH holding territory. The request for correction of the translation led nowhere. It reads in relevant part<sup>132</sup> that "full protection be ensured to Muslim civilian population if they move to the territory of Republika Srpska." In other words if they move from the "safe area" to the territory of Republika Srpska.

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<sup>129</sup>*Ibid* p.7 item b) para 4

<sup>130</sup> P 33, VRS MS Conduct of combat operations around Srebrenica 9 July 1995

<sup>131</sup> *Ibid* para 2

<sup>132</sup> *Ibid* para 3

The translation of this sentence from the original: "..... ako predju na teritoriju Republike Srpske" was not done adequately and could be understood as a guarantee to be given to the population while they crossover the territory of RS. Following this order VRS MS ordered its troops participating in the operation "to offer maximum protection and safety to all UNPROFOR members and the civilian Muslim population" and "to refrain from the destroying of civilian targets unless forced to do so because of strong enemy resistance." Finally it bans "the torching of residential buildings and order to treat civilian population in accordance with the Geneva Convention of 12 August 1949."<sup>133</sup>

134. It means that the stated Order did not anticipate the abolition of the Srebrenica "safe area" and expulsion of the Muslim civilian population but only demilitarization of the safe area and expelling of the Muslim armed formations.

135. This was confirmed after the fall of Srebrenica by President Karadzic.<sup>134</sup> The decision orders given by Commissioner Miroslav Deronjic to "ensure that all civilian and military organs treat all citizens who participated in combat against VRS as prisoners of war, and ensure that the civilian population can freely choose where they will live or move to."<sup>135</sup>

136. This decision clearly indicates the anticipation of the highest RS authorities that a part of Muslim population will stay in Srebrenica thereby excluding the forcible expulsion of civilians.

137. However, the later evacuation of the Muslim civilians from Srebrenica on 12 and 13 July is inappropriately construed as the consequence of the above stated document. This will be addressed in next Chapter of this Brief.

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<sup>133</sup> *Ibid* para 3 and 4

<sup>134</sup> P 10, Decision on the Appointment of the Civilian Commissioner for the Serbian Municipality of Srebrenica 11 July 1995

<sup>135</sup> *Ibid* para 4

## C. GENERAL REMARKS OF EVIDENCE

### V. Intercepts

138. The Defence would like to stress that evidence proffered by the Prosecution as intercepts has not been properly named. In Defence's view of the name correspond with just the real-time intercepted conversations. The Defence asserts that notebooks, printouts and diskettes are not real-time product, however to avoid confusion in this Brief the Defence will name such documents as intercepts.

139. From a technical point of view the RRU-800 communications could not be intercepted on the frequencies shown in the intercept material (notebooks, printouts and diskettes), due to its incompatibility with the frequencies on which VRS RRU-800 communications operated and the frequencies shown in adduced ABiH intercept material.

140. In addition the Working RR Map of the 2<sup>nd</sup> Corps<sup>136</sup> fully demonstrates the lack of ABiH knowledge of the positions of VRS aerals, its communication lines and devices.<sup>137</sup>

141. The Defence will indicate all evidence corroborating its position that intercept materials admitted into evidence are not real-time products.

### VI. Standard and Protocols

142. The Prosecution identified a part of standards and protocols governing intercept procedure.<sup>138</sup> However it avoided explaining the standards and protocols related to the procedure with saving and archiving intercept materials and

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<sup>136</sup> P 1468

<sup>137</sup> IDIC 238

<sup>138</sup> OTP Motion

in particular the tapes with recorded conversations. So the Defence will address this part of the standards too.

## **VII. Tapes**

143. The most important part of the intercept process is a true capturing of the intercept communication. The recorded intercept conversations are crucial for further analysis particularly with previously and subsequently gathered intelligence.

144. Evidence says that it was done with UHER recorders. The evidence further says that "filled tapes would be collected and taken to the higher command for further analysis. If upon analysis the entire taped reel was of interest, it would be kept by the higher command. However, a shortage of available resources meant that if only a portion of the original reel was of interest that portion would be recopied onto a secondary tape to be maintained by the higher command, while the original would be erased and re-circulated to the sites for reuse. While this was the general policy, in practice the original tapes were sometimes returned to the respective sites without having been erased. As a result, original recordings were on occasion maintained at the [REDACTED] and [REDACTED] sites as well."<sup>139</sup> It was confirmed by the platoon commander from the north site<sup>140</sup> and some other operators.<sup>141</sup>

145. An intercept operator, who during the war worked at all three 2<sup>nd</sup> Corps PEB locations (Par Selo, [REDACTED] and [REDACTED]) but was not called to testify in this case, saw 150-200 tapes in the 2<sup>nd</sup> Corps headquarters in a small archives room under the control of [REDACTED].

146. The evidence also indicates that 290 tapes were found and taken by the OTP.

Only two of these tapes were Srebrenica related.<sup>143</sup> It reads that on 16<sup>th</sup> October 2000

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<sup>139</sup> PW-131, 27.11.2006, T.4567:19-4568:4, 28.11.2006 T.4669:24-4670:11

<sup>140</sup> PW-132, 22.11.2006, T. 4138:23-24;

<sup>141</sup> PW-128, 22.1.2007, T.6131:8-15

<sup>142</sup> 1D 577 Information Report Notes from the conversation with Nermin Talovic 17.5.1999

<sup>143</sup> P 1073 Inventory and Receipt of Property 17.10.2000

a box containing 197 tapes<sup>144</sup> was handed over to the Prosecution and on 17<sup>th</sup> October 2000 a further box containing 98 magnetic reels and 33 audio tapes.<sup>145</sup>

147. Prior to this handover there was a document indicating that the ABiH handed over to MUP-SDB, (later renamed AID) all tapes relating to the events in Srebrenica in July 1995.<sup>146</sup> It explicitly reads that "audio documentation had been submitted earlier (back in 1995) at the request of the BiH Agency for Investigation and Documentation."

148. The Defence considers that none of these tapes pertained to the Srebrenica July 1995 events. There is a tape with conversations between the Accused in this case and the other Srebrenica related cases, however, none of them originated from July 1995.

149. One of them has one side blank. Another side has a Popovic - Nikolic conversation pertaining two volunteers from Poland, the conversation between "General Keresic" and Obrenovic and the conversation between NN and Popovic about 500-600 Turks.<sup>147</sup>

150. The conversation between Popovic and Nikolic was dated 20 April 1995,<sup>148</sup> and only one side of this tape was used while the other side was blank. Besides this, there were three more conversations from early August 1995 between Krle - X - Panorama<sup>149</sup>, Obrenovic - Krstic<sup>150</sup> and Popovic - Krstic<sup>151</sup> all from early August 1995. This indicates that there are no conversations at all from 20 April 1995 to 1 August 1995 apart from three mentioned.

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<sup>144</sup> *Ibid* p. 3

<sup>145</sup> *Ibid* p.4

<sup>146</sup> 1D 221 ABiH General Staff Intelligence Department Dara providing 7.7.1996

<sup>147</sup> P 1070 Summary Listing of tape 49 done by ABiH, 1.7.1998

<sup>148</sup> P2352 Intercept 20.4.1995 at 19:10

<sup>149</sup> P1379d, 1.8.1995 at 13:10

<sup>150</sup> P1387e, 2.8.1995 at 9:50

<sup>151</sup> P1395e, 2.8.1995 at 13:00

151. The above mentioned evidence demonstrates:

- a) that the 2<sup>nd</sup> Corps PEB unit had 150-200 tapes stored by [REDACTED] but that just a certain number of these tapes was turned over to the OTP.<sup>152</sup> The rest stayed in the possession of ABiH.
- b) that none of the audio-records, from tapes surrendered to the ICTY originates from July 1995;
- c) that just three audio-records are from August 1995 and one from April 1995

152. This corroborates the submission by the Defence that in July 1995 the ABiH did not intercept VRS communications related to Srebrenica and that such tapes would be in contradiction with notebooks and reports admitted into evidence in this trial.

153. Absence of tapes casts distorted impression on the admitted intercept evidence.

#### **VIII. Notebooks**

154. Almost three years after Srebrenica events a comprehensive list consisting of 136 notebooks generated by [REDACTED] was handed over to ICTY on 11 March 1998.<sup>153</sup> On 20 April 1998, the ABiH handed over 135 notebooks to ICTY.<sup>154</sup> A day later, 19 tapes were handed over to Jack Hunter from the US Army.<sup>155</sup> A year after that, an additional 55 A-5 notebooks and 1 A-4 notebook, with 2 diskettes and the Shift Diary was handed over to ICTY.<sup>156</sup> More than one and half years later the ABiH handed over to the ICTY various documents listed as Annex 1, 42 notebooks listed as Annex 2, 7 disquettes listed as Annex 3 and 22 Reports listed as Annex 4.<sup>157</sup> As already stated on

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<sup>152</sup> PW-131, 28.11.2006 T.4669:13-18

<sup>153</sup> P 1075 List of Documents of 2<sup>nd</sup> Corps Command 11.3.1995

<sup>154</sup> P 1068 Record on handing over of archival material gathered by ER 24.4.1998

<sup>155</sup> P 1069 Record of transfer of archival material gathered through ER 25.4.1998

<sup>156</sup> P 1071 Record of transfer of archival material to the investigation team of the ICTY, 10.5.1999

<sup>157</sup> P 1072 Record of delivery of archival material to representatives of the ICTY 13.12.2000

17 October 2000 the ICTY received from ABiH a bunch of documents including audio tapes when they were seized.<sup>158</sup>

155. It is an interesting coincidence that on the same day (17<sup>th</sup> October 2000) when the consensual search was carried out, the ABiH burnt the archive of its Intelligence organ originating from the 1992-1996 period.<sup>159</sup>

156. As the PEB units were the part of the Intelligence Department of ABiH it means that they found it necessary to burn Intelligence archive from 1995 too on the day of the ICTY's consensual search of ABiH premises.

157. The common traits of all of them is that they were entered in the appropriate log and got registration numbers before being taken to facilities. They would be taken by the shift departing from duty and the old ones would have been brought by the replacement shift.<sup>160</sup>

158. According to PW-131 the keeping of notebooks was not required by law. He explained that this was the reason for the lack of dates on the notebooks as the dates were typed up when computerised.<sup>161</sup> He added that the notebooks were kept in his safe,<sup>162</sup> and was frank when saying that he kept them to read when resting, because he found them interesting.<sup>163</sup>

159. The above mentioned facts confirms that the registered numbers of the notebooks listed were included to create an illusion as they were not the realtime product.

160. In July 1995, as a rule at the two sites only two notebooks were to be used at any given time.<sup>164</sup>

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<sup>158</sup> P 1073 Inventory and receipt of property obtained during the execution of a consensual search 17.10.1999

<sup>159</sup> P 1072 Annex I item 16

<sup>160</sup> P. 1075 PW-131, 28.11.2006, T. 4674:14-24 and 4676 ::18-25

<sup>161</sup> PW-131, T.4677:21-4678:1

<sup>162</sup> *Ibid* T.4659:7-8

<sup>163</sup> *Ibid* T.4658:17-4659:8

<sup>164</sup> PW-130, 5.12.2006, T.5036:15-24

However on 15<sup>th</sup> July 1995 there were 27 notebooks simultaneously used, even though many of them were not completely filled up. It is the position of the Defence that more than 20 of the notebooks contain misleading information as to real-time intercept conversations of July 1995.

161. Date entries in the notebooks were rare and according to one explanation they "clarified" with reports.<sup>165</sup>

### **IX. Reports**

162. The position of the Defence is that reports on the intercepted conversations are not credible, authentic and real time product.

163. The BiH authorities were able to provide a bunch of imitative and untrustworthy but more legible materials in the form of reports more than a year after the disclosure of the notebooks and coincidentally just as the ICTY was having serious difficulties with corroborating its charges due to the lack of dates on the notebooks.. Furthermore, the delivery of these materials protracted from 1999 until the late 2001.<sup>166</sup>

164. The Defence submits that at the time the purported intercept notebooks were created the relevant dates were not known, therefore they were not written into notebooks. However, establishing of dates presented a considerable effort to the authors of the reports as such they needed a longer time to produce reports. It was for this reason that the delivery of the reports started a year after notebooks were delivered and lasted for two years.

165. There were no witnesses who testified that they typed or encrypted any of specific intercept reports from July 1995.

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<sup>165</sup>PW-132, 21.11.2006, T. 4317:17-21,

<sup>166</sup> P 2400 Reception of documents 27.7.1999; 5D 129 Record on handover of material 20.12.2000; P 2399 Reception document 28.8.2001; P 2400

166. The intercept witnesses gave contradictory information about dates entered in reports.

While most of intercept operators gave evidence that the dates in the reports were entered by hand,<sup>167</sup> PW-132 asserted that the date was automatically entered by the computer at the beginning of each report.<sup>168</sup> As none of the witnesses wrote the reports it is not clear whether the reports had the dates on them at all.

167. In addition, none of the witnesses actually sent any of the reports, although they testified that reports were sent at least once a day. However, the 2<sup>nd</sup> Corps personal told Butler that "some messages from July may not have been sent in the form of a report until months later (in September, October or November)."<sup>169</sup>

168. Given that the material was compiled after the war by members of the ABiH and prepared specifically for OTP, even its investigators were not able to exclude that such material was subject to manipulation.<sup>170</sup>

169. The Defence submits that in July 1995 the ABiH units were more concerned with their offensive around Sarajevo therefore the fall of Srebrenica and Zepa was not of interest for them from a military point of view. This is why they did not intercepted radio-relay VRS communications and as a result have no tapes from July 1995.

**X. Further evidence indicating that most of the intercept materials are not credible, authentic and a real time product.**

170. When the question was first raised with AID, the impression was given that BiH authorities were in possession of intercept materials from the summer of 1995.<sup>171</sup> The issue of available intercept materials was raised orally in 1995, 1996 and 1997, and through the same means the answer consistently

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<sup>167</sup> PW-158, 7.3.2007, T. 8372:12-8373:4; PW-134, 16.01.2007 T.5936:22-25; PW-157, 9.2.2007, T.7178:10-11

<sup>168</sup> PW-132, 21.11.2006, T. 4285:12-15;

<sup>169</sup> Frease 5.3.2007 T.8215:8-13

<sup>170</sup> *Ibid* 8217:14-8218:2

<sup>171</sup> 1D 218 BiH MUP Request to ABiH 2<sup>nd</sup> Corps for audio materials 24.7.1995

given was a confirmation of the existence of intercepts but that "the timing for a request of access was not appropriate."<sup>172</sup> These mystic words have not ever been clarified.<sup>173</sup> The Defence is of the view that the reason for this response was because the intercept material could not corroborate the criminal charges for the Srebrenica July 1995 events. This position is strengthened by the following evidence:

171. Intercept communications were of interest not only for military purposes but also for the ICTY Srebrenica investigations which started on 24 July 1995 with the request that available audio (phono) materials be provided.<sup>174</sup> This indicates that the 2<sup>nd</sup> Corps became fully aware that audio tapes were highly relevant evidence for the Srebrenica charges and therefore have to be delivered to BiH MUP SDB. With such knowledge the fresh tapes should have been saved and delivered or any obstacle in carrying out the task would be reported. This request was made a week after the last Srebrenica related mass execution had occurred and at that time the Zepa Operation was still going on. The platoons from two sites sent their recorded tapes to the company at the end of each shift.<sup>175</sup> On the north location a shift was usually on duty for ten days, meaning there was a shift change on the 4<sup>th</sup>, 14<sup>th</sup><sup>176</sup>, and 24<sup>th</sup> July 1995.<sup>177</sup> A similar procedure was in force at the south location.<sup>178</sup> If there were a number of audio recordings and the platoons became at risk of starting to work on the reserve side of the tapes then someone from the command would come, collect the full tapes and bring new, fresh tapes.<sup>179</sup> This therefore means that the shift change which occurred on 14<sup>th</sup> was on duty until 24<sup>th</sup> when the 2<sup>nd</sup> Corps took into its possession the recorded tapes from platoons. This was the exact date when the request for audio material reached the 2<sup>nd</sup> Corps.

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<sup>172</sup> *Ibid* para 3

<sup>173</sup> Ruez 14.9.2006, T.1592:13-25

<sup>174</sup> 1D 218 BiH MUP Request to ABiH 2<sup>nd</sup> Corps for audio materials 24.7.1995

<sup>175</sup> PW-131 28.11.2006, T.4638:2-5; T.4673:18-23

<sup>176</sup> *Ibid* T.4679:10-12

<sup>177</sup> PW-132, 22.11.2006, T.4369:7-4370-16

<sup>178</sup> PW-130, 5.12.2006, T.5034:18-23; T.5073:9-13

<sup>179</sup> PW-158 7.3.2007 T.8390:21-8391:7

172. BiH MUP apparently sought the intervention of the ABiH General Staff, when it received no response to its request. ABiH General Staff instructed the 2<sup>nd</sup> Corps to provide BiH MUP with the audio materials relating to Srebrenica incidents.<sup>180</sup> On receipt of this instruction, 2<sup>nd</sup> Corps Security Department asked the Corps Intelligence Department to make a selection among "audio recordings relating to the fall of Srebrenica which contain data relating to war crimes and the crime of genocide by the aggressor against inhabitants of the so-called "safe area"." The Intelligence Department was requested to act upon with this document as soon as possible.<sup>181</sup>

173. After a thorough search of all relevant intelligence including those obtained through intercept, which took almost a year the ABiH informed BiH MUP about its results.<sup>182</sup> The relevant parts of their response reads: "According to your request we carried out review and checking of the large part of the gathered information from the period of the take over of Srebrenica and Zepa and we established which aggressor forces participated in the occupation and crimes. We also established the names of the individuals that were engaged in the operation, either directly commanding or directly participating. Besides the names of the individuals, listed are also characteristic parts of information we have at our disposal regarding their participation and the character of engagement. Most of information is gathered via electronic reconnaissance, and all audio documentation was forwarded earlier (in 1995), upon request, to RBiH Agency for Investigations and Documentation. The Intelligence Administration of the RBiH Army General Staff does not possess original documents that could be used as valid evidence in court proceedings."

174. The letter clearly demonstrates that ABiH was not in possession of original tapes and that all the tapes were sent to MUP-SDB (the new name AID). It also reads that the

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<sup>180</sup>1D 219 ABiH General Staff Military Intelligence Administration Instruction 18.8.1995

<sup>181</sup>1D 220 ABiH 2<sup>nd</sup> Corps Command Security Department Request 24.8.1995

<sup>182</sup>1D 221 ABiH General Staff Intelligence Department Dara providing 7.7.1996

ABiH did not possess original documents that could be used as valid evidence in court proceedings.

175. Read in conjunction with Ruez Declaration it becomes clear that the 2<sup>nd</sup> Corps Srebrenica related tapes can exist after the events and that they were sent to AID. Being aware of the content, AID assessed that the request for such material is not appropriate because it does not contain information relevant for Srebrenica criminal charges and that appropriate time is necessary to gather all available intelligence and generate ostensible real-time intercept materials.

176. The true reason for that is explained partially at the second page of the same document subtitled "Names of individuals in the Chain of Command during the attack on Srebrenica". It lists 22 names of VRS officers including the name of a VJ officer. The name of Vujadin Popovic is not on the list, meaning that on 7.7.1996, a year after Srebrenica events, his name, rank and position was still unknown to the ABiH intelligence as well as his participation either in Srebrenica or Zepa operations. They also did not have any adequate information about the units that participated in the operations, asserting that Yugoslav units took part in combat activities mentioning the parts of artillery regiment from Kraljevo, Red Berets Serbia MUP, special unit from Yugoslav MUP, paramilitary units of Arkan, Seselj and Jovic from Serbia. The total strength of units from Serbia was estimated at 3-4.000 soldiers and the total number of participants in the Srebrenica operation was assessed to 15.000. The document further listed the main 22 participants, one from VJ and rest from VRS. However, the basic data for many of them were wrong. The name of General Krstic was written as Radivoje instead Radoslav and he was alleged to be the Commander of the East Bosnia Corps. This means that even a year after Srebrenica, the 2nd Corps Intelligence did not know the first name of General Krstic, his position in VRS in July 1995 or even the unit he was in command. The positions of Lazar Ristic, Drago Beatovic and Ostojica Stanic became known due to the praise

they received from their Commandeer which was published in the media.<sup>183</sup> Eight officers were mentioned just as participants in the attack on Zepa meaning that they had no information that any of them had any role in the Srebrenica event. Major Jevdjovic was named as the DK operation officer who participated in the Zepa occupation, indicating that they even didn't know that Major Jevdjovic was a communications officer. The name of Colonel Blagojevic, Commander of Bratunac Brigade was not listed although it was stated that parts of this unit participated in the Srebrenica Operation, instead the name of Slavko Ognjenovic was noted as an officer of this brigade although at the time of the Srebrenica Operation he was on duty in the DK Command. Finally, Miso Pelemis was mentioned as the officer in 10<sup>th</sup> Sabotage Detachment as a part of East Bosnia Corps, although it was a Main Staff unit.

177. The document further demonstrates that the 2<sup>nd</sup> Corps Intelligence had information on only one of the accused in this case and did not have other accused in Srebrenica related cases on the list (Obrenovic, Blagojevic, Momir Nikolic, Jokic, and Deronjic).<sup>184</sup> However, a few years later a plenty of "intercepts" were produced as real-time product.

178. The most interesting parts of the document relate to the information which the 2<sup>nd</sup> Corps Intelligence had on the "planning and realization of the occupation of Srebrenica and ethnic cleansing of this area." This is presented in the following chronological order.

179. Information completely out of reality was that:

- a) On 3 June 1995 General Staff of VJ created a plan for the operation which would be executed in the Eastern Bosnia area. The plan was approved by the late President Milosevic.

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<sup>183</sup> P 2311 item 50 Record on handover of archive documents 14.5.1999

<sup>184</sup> *Ibid* p.2

- b) On 10 July 1995 at 20:15 there was an order to open artillery fire at Srebrenica because the center of the town was full of people.<sup>185</sup> Namely, in the late afternoon on 10 July 1995 there was a mass of people in Srebrenica. However, no artillery fire was seen except for shooting by men in military uniforms and civilian clothing firing assumingly at VRS positions from a mortar placed near gas station.<sup>186</sup> Exactly at the time when Mladic ordered that firing (20:10) should commence, a crowd was seen in the vicinity of the UN Company B Compound not disturbed by the artillery fire. At 20:39 on the same day a mass of people was seen in the center of the town.<sup>187</sup> If General Mladic really issued the order to open fire it would not have been disobeyed.
- c) However the most crucial point from the Defence position is the information gap between 12<sup>th</sup> and 19<sup>th</sup> July 1995. This confirms that the 2<sup>nd</sup> Corps Intelligence had no information allegedly contained in putative real-time intercepts.

180. The BiH authorities rightly assessed that such information would not be credible for further ICTY proceedings and decided not to send them to the OTP but to keep the tapes of July 1995 and prepare ostensible intercept materials instead. As such material did not exist at the time when Ruez persistently sought it, the excuse that "time for official request of such material is not still appropriate" was used until the purported intercept material was produced. It took almost three years and it was the reason why delivering of these material took place three to six year after the events.

181. The appropriate time came on the first day of March when the ABiH handed over to Ruez the assembled radio monitoring reports and organizational/establishment structure of the DK VRS.<sup>188</sup> However, despite its title, the document does not contain a

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<sup>185</sup> P 2047 Srebrenica Trial Video from 4':55"-10':58"

<sup>186</sup> Oric 30.8.2006 T.1037:6-1038:6

<sup>187</sup> P. 2047 Srebrenica Trial Video from 7'40" - 10'28"

<sup>188</sup> 1D 222 List of assembled materials and documents being submitted to the ICTY 3.3.1998

single radio monitoring report but other intelligence data related to VRS.<sup>189</sup> However, on this occasion the 2<sup>nd</sup> Corps personnel took on the obligation to compile a 300 pages binder. This binder was given to ICTY personal on the same mission.<sup>190</sup> The radio-monitoring documents emerged on 26 April 1995 in form of 550 page binder.<sup>191</sup>

182. The review of this document clearly shows that most of them have no dates too.<sup>192</sup> There are printouts with the date handwritten by someone<sup>193</sup> and even a handwritten comment "description of executions and breakthrough of civilians" and the date 16.7.1995.<sup>194</sup> The lack of real-time intercept is a consequence of several factors.

183. Firstly, at the time the main ABiH forces were engaged in breaking the Sarajevo blockade. After military defeat of the Sarajevo offensive and the beginning of the Croatian offensive in early August 1995, ABiH directed its antennas toward DK AOR.

184. In fact, 2<sup>nd</sup> Corps PEB Company only sent the order to the northern site platoon to redirect all antenna systems and equipment on monitoring area of responsibility of Drina Corps and Sarajevo-Romanija Corps on 8 August 1995.<sup>195</sup> This order demonstrates that until 8 August 1995, the northern site antenna systems were directed towards another direction, not towards the Drina Corps and SRK areas of responsibility. This conclusion is corroborated by the huge number of notebooks from July 1995 related to the other areas of responsibility (Posavina, corridor etc), which are listed in P1075. The order further shows that until this date (8 August 1995) the Company Command did not know that the platoon at any site had monitored or intercepted conversations on the frequency 784.700 Mhz and that they did not have any intercept report from platoons captured from

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<sup>189</sup> Frease, 5.3.2007, T.8248:22-8250:23

<sup>190</sup> Frease 5.3.2007 T.8214:6

<sup>191</sup> 2D 38 Evidence Register Form 26.4.1998

<sup>192</sup> 1D 250, 1D 251, 1D 252, 1D 253 (second and third conversation), 1D 257,

<sup>193</sup> 1D 254, 1D 255

<sup>194</sup> 1D 256

<sup>195</sup> 1D 154 2<sup>nd</sup> Corps PEB Company Order 8.8.1995

that frequency. Otherwise, they would not seek monitoring of that frequency because it would have already been known to the platoons. The notebooks entries and the printouts with dates covering July with this frequency were made postponeously.

185. The Company Command showed that on 8 August 1995 it did not know the radio-relay routes of the Drina Corps RRU 800 communications. Therefore, they marked the non existing RRU 800 route Zvornik - Vlasenica - Han Pijesak and Srebrenica - Bratunac - Vlasenica. Those RRU directions do not exist, even on the 2nd Corps Map (P1468). It also indicates that this map did not exist in July 1995 and that it was made subsequently using unreliable information after 8 August 1995.

186. That the testimony of PW-132 was untrue in part when he stated that on 8 June they got last orders to direct antennas in the direction of those towns and river<sup>196</sup>, because this happened two months later, after the Srebrenica events had already taken place.

187. The Defence, being of the opinion that the intercept materials are not real-time, authentic and credible, instructed its military communication expert Mr. Djuro Rodic<sup>197</sup> to analyze whether the intercepted conversation between collocutors in Vlasenica, Bratunac and Zvornik area could be captured from two 2<sup>nd</sup> Corps PEB locations with their equipment given all data in evidence or obtained from the Prosecution through the Defence. He excluded as irrelevant analysis, the VRS communication lines from which interception of conversations between collocutors in Vlasenica, Bratunac and Zvornik areas as not being technically possible. He also excluded interception with any other equipment (satellite, air-reconnaissance plane etc.) because the evidence demonstrated that intercepts in this case did not originate from such sources. Finally, he did not

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<sup>196</sup> PW-132, 21 November 2006 T. 4285-22 - 4286-3

<sup>197</sup> 1D 321 Analysis of Interception of RR the VRS RR Communications with Appendixes (1D 322 and 1D 323) 23.4.2007

analyze the content of intercepted conversation, except technical data (direction, azimuth, frequencies, devices etc) because it was not in his field of expertise.

188. Firstly, he established that due to a lack of optical visibility there was no direct RR axis between Vlasenica and Zvornik.<sup>198</sup>

189. He found that Radio Relay Communication (RRv) between these areas was conducted with two distinct radio relay routes using three types of devices: RRU-1, RRU-800 and SMC 1306B.<sup>199</sup> RRv between Vlasenica and Zvornik went along four Radio Relay Routes (RRd) using RRU-800 along the RRd Vlasenica - Veliki Zep, Cer - Gucevo and Gucevo - Zvornik, and SMC 1306B device along the route Veliki Zep - Cer.<sup>200</sup> He asserted that the part of this route served for DK RR communication with Main Staff as well as with the Bratunac Brigade.<sup>201</sup> The Bratunac Brigade had only RRU-1 devices for communication between Bratunac and Veliki Zep.<sup>202</sup> Along the route there was a reserve, but not active RRd RRU-800 path between Veliki Zep and Cer.<sup>203</sup>

190. On this basis Mr. Rodic concluded that the direct RRU-800 RRd Vlasenica - Zvornik never operated due to the lack of optical and radio visibility<sup>204</sup> and the need for technical compatibility between DK and IBK of VRS. The intercepts showing this RRd in capturing VRS communications at the time as well as the inadequate antennae orientation demonstrating that operators from two interception sites did not know the accurate structure of intercepted communications.<sup>205</sup> Only the northern intercepting facility was in a good position to intercept conversations from Veliki Zep to Vlasenica. The same applies to Cer-Gucevo route, which was quite appropriate for interceptions by the southern intercepting facility in terms of the antenna orientation.

<sup>198</sup> *Ibid* Chapter I; Rodic T.12073:9-24; Jevdjevic 12.12.2008 T.29635:3-17

<sup>199</sup> *Ibid* Chapter 2.1.

<sup>200</sup> *Ibid* 2.1.2 and 2.2.1, Jevdjevic T. 29635:18-29636:12

<sup>201</sup> Rodic 24.5.2007 T. 12066:1-19

<sup>202</sup> *Ibid* T. 12066:20-12067:15

<sup>203</sup> *Ibid* T.29636:2-29637:19

<sup>204</sup> *Ibid* T. 24.5.2007 T.12073:12-24; Jevdjevic 12.12.2008 T.29635:3-17

<sup>205</sup> 1D 321, Chapter 2.2.2 item 1 and 3

In all other cases, the receiving signal at the intercepting stations was below the threshold normally used by the radio intercepting sets, which meant that they did not receive the signal at all, or in some cases it was just above the threshold of reception, with very poor reception, high level of noise and a very low level of intelligibility.<sup>206</sup> The conclusion was based on detailed calculations of ABiH antennae orientation.<sup>207</sup> In fact only the northern intercepting facility was in a good position to intercept conversations from Veliki Zep to Vlasenica. The same applies to Cer-Gucevo route, which was quite appropriate for interceptions by the southern intercepting facility in terms of the antenna orientation. In all the other cases, the receiving signal at the intercepting stations was below the threshold normally used by the radio intercepting sets, which meant that they did not receive the signal at all, or in some cases it was just above the threshold of reception, which meant very poor reception, with a high level of noise and a very low level of intelligibility.<sup>208</sup> The conclusion was based on detailed calculations of ABiH antennae orientation.<sup>209</sup> It means that the position of two ABiH sites were unfavourable for the interception of all other RRU-800 paths.<sup>210</sup>

191. Mr. Rodic further explained that RRU communication is duplex meaning that a communication has distinct transmission and reception directions so that communication on one RRd is conducted on two different Radio Frequencies.<sup>211</sup> The technical characteristics were detailed in his Analysis but the most important is that RRU-800 operated in the frequency range 610-960 MHz,<sup>212</sup> RRU-1 between 235-270 KHz<sup>213</sup> and SMC-1306B between 4.4-4.6 GHz and 4.8-5.0 GHz<sup>214</sup>.<sup>215</sup> The Analysis addressed the

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<sup>206</sup> Rodic T.12074:25-12075:24

<sup>207</sup> 1D 321 Chapter 11;

<sup>208</sup> Rodic T.12074:25-12075:24

<sup>209</sup> 1D 321 Chapter 11;

<sup>210</sup> Rodic T.12074:25-12075:24

<sup>211</sup> *Ibid* 2.1.7

<sup>212</sup> *Ibid* 3.1

<sup>213</sup> *Ibid* 3.2

<sup>214</sup> *Ibid* 3.3

<sup>215</sup> *Ibid* T.12067:24-12068:14

ABiH interception posts,<sup>216</sup> devices they allegedly used<sup>217</sup> and radio-scouting.<sup>218</sup> Rodic further analyzed optical and radio visibility between [REDACTED] on one side and Vlasenica, Veliki Zepe, Cer, Gucevo and Zvornik and on the finding noted that optical visibility did not exist between [REDACTED] and Vlasenica<sup>219</sup> and [REDACTED] and Zvornik<sup>220</sup> but that visibility was quite good between [REDACTED] on the one side and Veliki Zep, Cer and Gucevo (Crni vrh) on the other.<sup>221</sup> As regard [REDACTED] he found that the propagation of electro-magnetic waves from Vlasenica<sup>222</sup> and Zvornik was not possible due to obstacles.<sup>223</sup> On the other side propagation of electro-magnetic waves was possible between [REDACTED] and other RR nods (Veliki Zep, Cer and Gucevo (Crni vrh)).<sup>224</sup>

192. Rodic further analyzed the phenomenon of the interception of "Duplex" communication on one frequency. He explained that the voices of the two collocutors were transmitted through two different frequencies so that if intercepted just on one frequency, one of them could be barely heard, or completely inaudible.<sup>225</sup> He did not analyze this phenomenon in his Analysis but addressed the issue in the Supplement.<sup>226</sup> Namely, after his testimony, the Defence got the permission from the Government of Serbia to use in this case Expert opinion on the interception capabilities of RRU-1 and RRU-800 devices at one frequency.<sup>227</sup> According to this document interception of transmissions between participants from both directions on one radio frequency is not possible when RRU-1 and RRU-800 operate at full duplex.<sup>228</sup> It is due to the fact that the interception of signals from both directions on one frequency in a communication established with a pair of

<sup>216</sup> *Ibid* 4; Rodic T.12071:19-12072:2

<sup>217</sup> *Ibid* 5; R T.12069:15-20

<sup>218</sup> *Ibid* 6

<sup>219</sup> *Ibid* 7.1.1.

<sup>220</sup> *Ibid* 7.1.5

<sup>221</sup> *Ibid* 7.1.2, 7.1.3 and 7.1.4

<sup>222</sup> *Ibid* 7.2.1

<sup>223</sup> *Ibid* 7.2.5 (typo slip in sub-title instead "Crni vrh" should be "Zvornik". Crni vrh is in 7.2.4)

<sup>224</sup> *Ibid* 7.2.2, 7.2.3 and 7.2.4

<sup>225</sup> *Ibid* 8

<sup>226</sup> ID 1404 Djuro Rodic's Supplementary Analysis of Interception of RR communications of VRS para 6.3.1-6.3.4

<sup>227</sup> ID 1401 Expert opinion of Military Technical Institute Communication Sector with the attachments (not admitted through BT Motion pending certification)

<sup>228</sup> *Ibid* p.13

RRU-1 or RRU-800 devices under the above-stated conditions was not possible.<sup>229</sup>

193. Rodic analyzed the possibilities of interception at the working frequencies along the abovementioned paths.
194. According to the RRU-800 frequency plan of 2 October 1993<sup>230</sup> he established some DK RRU-800 working frequencies on RRd Vlasenica -Veliki Zep and Zvornik - Gucevo.<sup>231</sup> The frequencies along Cer - Gucevo RRd were unknown while Veliki Zep - Cer RRU-800 devices was not in function at the time due to the use of a more sophisticated device SMC 1306B which was being operated.<sup>232</sup> Along each RRU-800 path there were two working frequencies (transmission/reception) meaning that RRU-800 devices were working on six working frequencies in total.<sup>233</sup>
195. These frequencies had not been changed until the end of war.<sup>234</sup> The assertion is strengthened by Kasim Mesic, Captain of the ABiH, who stated to investigators that "the VRS never changed their operating frequencies of the channel designations of their network"<sup>235</sup>
196. Without knowledge of the frequencies the interception of RRU-800 communications was not possible, because the interception could only be successfully realized on precisely corresponding frequencies.<sup>236</sup>
197. There is no evidence that any of the purported conversation depicted as captured with RRU-800 was intercepted on the frequencies on which VRS RRU-800 devices operated at the time.<sup>237</sup>

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<sup>229</sup> *Ibid* 6.3.11-6.3.13

<sup>230</sup> 1D 322 p.13-14 DK data on RR paths, 2.10.1993; P2823

<sup>231</sup> Rodic T.12087:20-23

<sup>232</sup> *Ibid* 9

<sup>233</sup> Rodic T.12087:9-16

<sup>234</sup> Blagojevic 16.7.2008, T.22280:6-22281:7; Pajic 25.11.2008, 28816:24-28819:2; Jevdjevic

12.12.2008 T.29637:21-29638:22

<sup>235</sup> 1D232, Internal Memorandum, 18.12.1998, p. 1 para. 2

<sup>236</sup> *Ibid* T.12087:4-8

<sup>237</sup> *Ibid* T.12088:4-15

198. After analyzing 34 intercepts generated at [REDACTED] and 59 from [REDACTED] he found that none of them was captured from one of the known RRU-800 DK frequencies.<sup>238</sup> He found that along RRd Vlasenica - Veliki Zep - Cer - Gucevo (Crni vrh) - Zvornik there were in total six possible RRU-800 frequencies in operation four of which were know and two unknown. However, the platoon from [REDACTED] allegedly intercepted from nine working frequencies none of them from known frequencies therefore the RRU-800 interception was technically possible from the two unknown frequencies. Interception from the seven other frequencies shown was impossible.<sup>239</sup>

199. On the basis of the data analyzed in his Report Mr. Rodic concluded that it was not possible to detect RF transmission (fpdl) signal from Vlasenica at [REDACTED] due to the lack of optical visibility as well as due to the unfavorable orientation of the antenna itself. In addition, neither of the conversations was intercepted on RF signals operating at 922.000 MHz frequency.<sup>240</sup> He also found that it was not possible to a intercept transmission signal from Vlasenica toward Veliki Zep due to the lack of optical visibility between [REDACTED] and Vlasenica as well as because none of conversations were intercepted on 922.000 MHz.<sup>241</sup>

200. The Analysis also found that the interception of the communications from Veliki Zep at [REDACTED] was not possible due to unfavorable antenna orientation and lack of intercepts from 680.000 MHz transmission frequency.<sup>242</sup> The interception from Veliki Zep at [REDACTED] was possible with poor signal due to unfavorable antenna orientation but not at the frequencies depicted.<sup>243</sup>

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<sup>238</sup>*Ibid* 10

<sup>239</sup>*Ibid* 10.6

<sup>240</sup>*Ibid* 12.1.1

<sup>241</sup>*Ibid* 12.1.2

<sup>242</sup>*Ibid* 12.1.3

<sup>243</sup>*Ibid* 12.1.4

201. Mr. Rodic excluded the possibility of interception along the Veliki Zep - Cer RRd due to a lack of technical ability on the part of the ABiH to intercept SMC 1306B communications.<sup>244</sup> The RRd Cer - Gucevo (Crni vrh) was not analyzed due to lack of information on the working frequencies.<sup>245</sup>
202. Finally, the Analysis demonstrates that interception of the communication at RRd Gucevo (Crni vrh) - Zvornik was not possible at [REDACTED] due to the unfavorable antenna orientation and the fact that none of intercepts was captured on 810.000 MHz, the working frequency<sup>246</sup> and also an interception was not possible from [REDACTED] as well.<sup>247</sup>
203. In addition, interception on that path from Zvornik was not possible from Zvornik at [REDACTED] due to the lack of the optical visibility, unfavorable antenna orientation and the fact that none of intercept was captured on the right frequency.<sup>248</sup> The similar situation applies to [REDACTED].<sup>249</sup>
204. Mr. Rodic did not analyzed RRU-1 communication due to lack of information on the working frequencies and the location of the VRS devices at the moment of interception.<sup>250</sup>
205. The Analysis further states that the regulations governing interception imply that the following documents must be produced: order for electronic reconnaissance defining enemy, task of the unit, the tasks of neighboring units etc., electronic reconnaissance plan including object of reconnaissance, data to collect, duration of data collection, priorities, objects from which reconnaissance is to be performed etc, sending original reports through crypto-protection systems, analysis of received reports to evaluate its

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<sup>244</sup> *Ibid* 12.1.5 - 12.1.8

<sup>245</sup> *Ibid* 12.1.9 - 12.1.12

<sup>246</sup> *Ibid* 12.1.13

<sup>247</sup> *Ibid* 12.1.14

<sup>248</sup> *Ibid* 12.1.15

<sup>249</sup> *Ibid* 12.1.16

<sup>250</sup> *Ibid* 12.2

accuracy and credibility of sources, conclusions and course of actions to be undertaken based on reports.<sup>251</sup>

206. At the very end of his Analysis Mr. Rodic concluded that a direct RRU-800 route for Vlasenica - Zvornik never existed,<sup>252</sup> a RRU-1 route did not operate between Vlasenica and Veliki Zep,<sup>253</sup> and the antennae at both [REDACTED] and [REDACTED] were not adequately oriented<sup>254</sup> thereby disabling interception from some VRS nodes.<sup>255</sup> Mr. Rodic found that only six RRU-800 frequencies were possible along the whole Vlasenica - Zvornik route so that at least 7 of the 9 intercepts could not have been captured from this route.<sup>256</sup> Mr Rodic further concluded that no interception from Vlasenica<sup>257</sup> and Zvornik<sup>258</sup> was possible at both ABiH sites due to the lack of optical visibility<sup>259</sup>. Finally he found that due to a lack of equipment ABiH was not capable of intercepting SMC 1306B communications along the Veliki Zep -Cer route.<sup>260</sup>

207. The Prosecution insisted on the part of testimony of the witness Pajic to the effect that "if there were any disturbances one would go megahertz up or down."<sup>261</sup> Although the context is unclear the concept was explained by Rodic.<sup>262</sup> As a first he indicated that was ABiH ordered not to jam RR communications on the RRU-800 band.<sup>263</sup> This was confirmed by the testimony of the PW 131, who asserted that they did not have devices for jamming RRU-800 signals.<sup>264</sup> Mr. Rodic did not find any document indicating a change of frequencies due to the jamming.<sup>265</sup> Any changes were not even registered in

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<sup>251</sup> *Ibid* 13

<sup>252</sup> *Ibid* 14 item 1

<sup>253</sup> *Ibid* 14 item 2

<sup>254</sup> *Ibid* 14 item 3

<sup>255</sup> *Ibid* 14 item 4-7 and 9-16

<sup>256</sup> *Ibid* 14 item 8

<sup>257</sup> *Ibid* 14 item 17-18

<sup>258</sup> *Ibid* 14 item 23-24

<sup>259</sup> Rodic 24.5.2007 T.12073:12-24

<sup>260</sup> *Ibid* 14 item 19-22

<sup>261</sup> Pajic 25.11.2008 T.28820:20-21

<sup>262</sup> 1D 154 Djuro Rodic's Supplementary Analysis para 3

<sup>263</sup> *Ibid* 3.4.

<sup>264</sup> *Ibid* 3.6.

<sup>265</sup> *Ibid* 3.17.

the 2<sup>nd</sup> Corps PEB Working Map although such registration was obligatory.<sup>266</sup> He explained that arbitrary change 1 MHz "up or down" was not permitted.<sup>267</sup> Finally, he explained that change of frequency by 1 MHz does not affect the possibility of radio monitoring, intercepting or jamming because the change is made not on the transmitter but on the receiver, which receives the signal rather than generating it.<sup>268</sup>

208. The ABiH working map of counter-electronic warfare fully demonstrates absence of relevant information not only about frequencies but also as regard RR directions, paths, hubs and devices used for VRS RR communication.<sup>269</sup> This map and its reliability is the basis for aeriels direction.

209. The Veliki Zep stationary node is true, but the RR direction Veliki Zep-Gucevo never existed.<sup>270</sup> The direction Veliki Zep - Milici Brigade did not also exist, it was connected to Vlasenica by landline due to a lack of optical visibility<sup>271</sup>. The direction Gric-Vrelo did not exist also<sup>272</sup>. There was no direct RR line with Skelani.<sup>273</sup> The line with Rogatica Brigade is not correct as well because RR communications went through the Strazbenica node in Montenegro due to a lack of optical visibility.<sup>274</sup> The map marked Veliki Tmor was never used by military because it was TV tower.<sup>275</sup> The line for Veliki Zep-Pale did not exist because the communications went from Strazbenica to Jahorina, not through Veliki Zep.<sup>276</sup> There was no direct line with Sokolac Brigade but it ran along the route Veliki Zep-Strazbenica-Sokolac.<sup>277</sup> The 2<sup>nd</sup> Romanija Brigade had

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<sup>266</sup> *Ibid* 3.18

<sup>267</sup> *Ibid* 3.19

<sup>268</sup> *Ibid* 3.20

<sup>269</sup> P 1468 2<sup>nd</sup> Corps RR Map;

<sup>270</sup> Jevdjevic 12.12.2008 T.29640:7-29641:2; 1DIC 238

<sup>271</sup> 1DIC 238; *Ibid* T.29641:3-10

<sup>272</sup> *Ibid* T.29641:11-18

<sup>273</sup> *Ibid* T.29641:24-29642:1

<sup>274</sup> *Ibid* T.29642:1-4

<sup>275</sup> *Ibid* T.29642:4-8

<sup>276</sup> *Ibid* T.29642:9-11

<sup>277</sup> *Ibid* T.29642:11-16

landline not RR communication with Vlasenica. Aerial line existed but used for civilian purposes primarily<sup>278</sup>.

210. The Defence will also address the position of the Prosecution in light of the Trial Chamber Decision on Admissibility of Intercepted Communication.<sup>279</sup> In light of evidence presented to date the Trial Chamber found that the Prosecution established that the intercepts as a whole are *prima facie* relevant and probative.<sup>280</sup> It seems that some errors were made as to the testimony of Mr. Rodic. Namely, Mr. Rodic did not testify that intercepts he analyzed were not intercepted on the known frequencies between Vlasenica and Veliki Zep<sup>281</sup> but along the paths Veliki Zep - Cer and Gucevo (Crni vrh) - Zvornik too. It was obvious from the next sentence of the same paragraph but also from his Analysis.<sup>282</sup> Actually he did not analyze the RRd Cer - Gucevo (Crni Vrh) due to the lack of two RRU-800 frequencies in operation at the time.<sup>283</sup> He also repeated this during his testimony.<sup>284</sup>

211. The Defence also considers that Rodic's answer that he did not analyze other RR routes other than Vlasenica - Veliki Zep - Cer - Gucevo - Zvornik and cannot exclude that the intercepts are genuine and originate from a different RR route<sup>285</sup> is consistent as Rodic explained why he analyzed just this RR route. This was done because according to the DK RR communication diagram it was along that route that RR communications took place between DK and its Bratunac and Zvornik brigade.<sup>286</sup> He explicitly said that communications between DK and Zvornik and Bratunac Brigades could not be listened to from another RR facility Sarajevo, Banja Luka, Bijeljina or some installations shown at the map.<sup>287</sup> He also stated:

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<sup>278</sup> *Ibid* T.29642:17-20

<sup>279</sup> Decision on Admissibility of Intercepted Communication 7.12.2007

<sup>280</sup> *Ibid* para 78

<sup>281</sup> *Ibid* para 63

<sup>282</sup> 1D 321 para 12.1.5-12.1.8 and 12.1.13-12.1.15; para 14.6 and 14.7

<sup>283</sup> *Ibid* 12.1.9-12.1.12

<sup>284</sup> Rodic 24.5.2007, T.12087:20-12089:2

<sup>285</sup> TC Decision para 63

<sup>286</sup> Rodic 24.5.2007 T.12066:7-19

<sup>287</sup> *Ibid* T.12091:23-12092:3; T.12515:19-12516:9

“ I can assume that there was a unit in the air, that it was perhaps outside the borders of the area controlled by the BH army. I can assume anything...!can make various assumptions ”<sup>288</sup> In other words he did not analyze possibilities of interception with other equipment except those shown in ABiH documents. And finally Rodic did not analyze RR direction Pale so he was not able to contest the ability of ABiH to intercept VRS RRU-800 communications from this nod.<sup>289</sup>

212. Therefore Rodic's answer that he did not analyze other RR routes except Vlasenica - Veliki Zep - Cer - Gucevo - Zvornik and cannot exclude that the intercepts are genuine and originate from a different RR route should be construed in the context of his complete testimony as stated above.

213. The map also has wrong position for some VRS features. The Vlasenica feature position is wrong resulting in an incorrect antenna orientation.<sup>290</sup> The position of the VRS Main Staff was erroneously marked in Han Pijesak although the right location was Crna Rijeka some 11 kilometers away.<sup>291</sup>

214. None of documents allegedly intercepted shows the right frequencies on which VRS RRU-800 communications operated and also none of these intercepts were captured from the 783.000 MHz frequency.<sup>292</sup>

215. The Defence also adds that interception of both RRU-8000 and RRU-1 communications was not possible unless in full duplex mode as this was the only mode in which they could operate.<sup>293</sup> According to the Report of the Military Technical Institute from Belgrade "it is impossible to intercept the transmissions between participants from both directions on one radio frequency according to the above-stated conditions of communication." This is due to the fact that the interception of signals from both directions on one frequency

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<sup>288</sup> *Ibid* T. 12476:12-22

<sup>289</sup> P 1101, P 1109, P 1111, P 1113, P 1130, P 1158, P 1161, P 1185, P 1190 etc.

<sup>290</sup> *Ibid* T.29642:4-29643:2

<sup>291</sup> *Ibid* T.29643:15-29644:13

<sup>292</sup> Jevdjevic 17.12.2008 T.29879:20-29880:18

<sup>293</sup> ID 1404 Djuro Rodic's Supplementary Analysis para 6.3.1-6.3.4

in a communication established with a pair of RRU-1 or RRU-800 devices under the above-stated conditions is not possible.<sup>294</sup>

216. It is the Defence position that intercept related materials in evidence were created on the basis various information and evidence obtained through intelligence activities and as such was a good basis for the creation of feigned intercepts. A part of these intercepts were surrendered to the ICTY in 1999<sup>295</sup> illustrating the ABiH's ability to gather, during the war or subsequently, a considerable number of original VRS documents. Likewise only a proportion of the tapes, were handed over to the ICTY, further demonstrating that the ABiH had many VRS original documents and amongst these items are the orders on deployment of military conscripts dated 26.6.1995 and 11.7.1995, Register chart of Zvornik Brigade on 182 pages, working plan of communication station, and the list of members of the 4<sup>th</sup> infantry battalion of the Zvornik Brigade.<sup>296</sup>

217. It also explains why corroborative material used as evidence in this case confirms somewhere the subject matter of parroted intercepts.

#### **XI. Other facts contributing to inaccuracies of the intercepts**

218. The Defence is of the view that there are two relevant points for credibility of intercepts. The first point is the appearance of dots in the notebooks. In the absence of any rule<sup>297</sup> the operators used them in various contexts. The north site commander stated that they would put dots if they "heard a murmur or an indistinct conversation."<sup>298</sup> They would write when the operators could not hear a person or rather one to three words but the number of dots were irrelevant. If the longer segment was not audible they would put in parenthesis such as ascertainment.<sup>299</sup> It is unclear how the witness managed to recognize that only up to three words were not audible.

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<sup>294</sup> *Ibid* 6.3.11-6.3.13

<sup>295</sup> P 2311 Record on handover archive material to ICTY Investigation Team, 14.5.1999

<sup>296</sup> *Ibid* item 32, 24, 38, 42, 45

<sup>297</sup> PW-132 24.11.2006 T.4505:17-24

<sup>298</sup> *Ibid* 22.11.2006 T.4345:9-14

<sup>299</sup> PW 140, 11.12.2006, T.5321:6-5322:4

However, one, two or three words could be highly relevant for the proper understanding of the context of the communication.

219. Another witness explained that dots meant that a part of a conversation because of interference or something else that could not be heard. He did not limit dots with up to three words.<sup>300</sup> He also added that it was not a part of any standard protocol but left to the operators how to mark a part of conversation they were not able to hear.<sup>301</sup>

220. One of the witnesses was not able to recall the significance of having three dots; however, in *Krstic* he had testified that if "it was inaudible or not clear" they would put three dots.<sup>302</sup>

221. In addition, despite the consistent testimonies of the operators that they listening to the tapes over and over again in order to understand every word which would be written down in the notebooks there were still clearly many established errors.

#### **D. PROSECUTION WITNESSES WHOSE EVIDENCE IS NOT CREDIBLE**

222. In its Pre-Trial Brief<sup>303</sup> the Prosecution stated that:

"Due to the knowledge and possible involvement in Srebrenica crimes of many of the VRS and MUP members, as well as of the Bosnian Serb civilians, their testimony may become less than credible in certain areas."

223. The Defence agrees that these factors might seriously affect credibility of the witnesses. However, the Defence finds that these factors are not the only ones which make the credibility of witnesses in this case "less than credible". In addition knowledge and involvement in Srebrenica crime is not limited to categories designated by the Prosecution. The Defence recalls that some

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<sup>300</sup> PW 146, 23.1.2007, T.6212:19-6213:5; T.6234:8-15

<sup>301</sup> *Ibid* 6232:19-6233:7

<sup>302</sup> PW 129, 10.1.2007, T.5674:9-5675:3

<sup>303</sup> Confidential Annex B, p.53.

BiH authorities and officials were blamed for this crime and concealment of evidence, in addition to Dutch-Bat members, UN and the international community in general. Litigations were even initiated before Netherlands civilian court against the Netherlands and UN, which resulted in the change of statements and testimonies of some Dutch-Bat and UN witnesses. In addition, BiH initiated a procedure against Serbia before the ICJ in order to prove its responsibility for Genocide in Srebrenica. This also resulted in "less than credible" testimonies of BiH witnesses. Some of them were members of the ABiH who did their best to conceal the fact that the enclave was not demilitarized or that ABiH carried out any acts in contravention to the agreed demilitarization and "safe area" status of the enclave. In view of the above, the Defence sees it as a good reason for reduced reliance on the evidence in possession of BiH, in particular, tapes of intercept conversation. The Defence further notes the inaccuracy of testimonies by the victims, in particular those who survived the executions, at least in part, as a really traumatic experience which might seriously affect their memory on the event.

224. However, the Defence will, in particular, address Serbian witnesses who in order to avoid their own responsibility shifted unfounded blame to others. These witnesses include three Plea Agreement witnesses<sup>304</sup> in this proceeding, PW-128 and PW-101 because they knowingly and willfully gave false statements in this case. The last one did not do it to avoid criminal responsibility but to provide permanent residence for him and his family in a foreign country. In this Chapter the Defence will address only three Plea Agreement witnesses but not in total. Some parts of the testimonies of Miroslav Deronjic, Momir Nikolic and [REDACTED] will be addressed in the relevant Chapters.

<sup>304</sup> [REDACTED], Miroslav Deronjic and Momir Nikolic.

## XII. Plea Agreement Witnesses

225. The most striking common feature of all three Plea Agreement Witnesses was that they consistently lied from their first meetings with the OTP as to their roles, acts and conducts in the Srebrenica events. When detained they opted to lie by helping the Prosecution's case against the others and attempting to avoid conviction for the most serious acts they had carried out. Furthermore, each of the three witnesses tended to hide the acts and conduct of the other two. And finally, that the OTP accepted their strategy whilst aware of the distortion of facts in their statements and testimonies just so that it can have advantages to win its pending or future cases. This will also be subject of the analysis in this FB.

### a. Miroslav Deronjic

226. Although details of his testimony will be analyzed in another Chapter, the Defence wishes to recall the Dissenting Opinion of Honorable Judge Schomburg,<sup>305</sup> because the principles expressed in it may also be applied, with some modifications, to another two Plea Agreement witnesses. In its relevant parts it read:

"6 ..... The fundament of our Tribunal is the Statute based on Chapter VII of the Charter of the United Nations established as a measure to maintain or restore international peace and security.<sup>542</sup> However, there is no peace without justice; there is no justice without truth, meaning the entire truth and nothing but the truth."

The Dissenting Opinion further reads:

"7. ... When it comes to prosecuting crimes against individuals, a Prosecutor acts with the goal to stop a never-ending circle of "private justice", meaning mutual violence and vengeance. This goal can only be achieved if the entire picture of a crime is presented to the judges."

227. The Defence fully accepts these principles as fundamental for administration of justice in all ICTY cases including this one.

228. However, the Defence submits that the three Plea Agreement witnesses and the methods used to get from them basically "less then credible" statements was not a proper venue for the realization of the tasks set by the Statute.

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<sup>305</sup> IT-02-61-S, Sentencing Judgement Disenting Opinion of Judge Wolfgang Schomburg, 30 March 2004

229. The Honorable Judge rightly observed "less than credible" statements of Miroslav Deronjic to date.<sup>306</sup> He also expressed his surprise about the circumstance that Deronjic had not been indicted for the crimes in Srebrenica in 1995.<sup>307</sup> The Judge also expressed his opinion that the Prosecution has to safeguard, *inter alia*, that there be no arbitrary selection of facts in case of an indictment.<sup>308</sup> The Defence fully respects and supports such position.

230. Finally, in his Dissenting Opinion, Judge Schomburg expressed the wonder that the "Understanding of the parties" is not a part of the Plea Agreement. In addition, the Judge expressed his doubt in the submission of the Prosecutor that this document was not prerequisite for the Accused' guilty plea<sup>309</sup> and in particular that the understanding of the parties "was not combined with a warning that the Accused has to tell the truth when called as a witness before this Tribunal (consequences otherwise to be read in Rule 91 and being not under control of the Prosecutor)." Namely, that Rule 91 which regulates the proceeding against the witness who knowingly and willfully gives false statement *inter alia* provides:

..." (ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating proceedings for false testimony."

231. In light of this provision the absence of "a warning that the Accused has to tell the truth when called as a witness before this Tribunal" is a very good indication of the direction the witness should follow, relieved from fear of contempt or deprivation of his status and privileges in case of false testimony.

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<sup>306</sup> *Ibid* para 9b, 15-17;

<sup>307</sup> *Ibid* para 9d

<sup>308</sup> *Ibid* para 10

<sup>309</sup> *Ibid* para 12

232. The Defence's position is that all three Plea Agreement witnesses should have been prosecuted for false statements but this has not been done because their false statements corroborate the indictments.

b. [REDACTED]

233. [REDACTED]

234. [REDACTED]

235. [REDACTED]

236. [REDACTED]<sup>310</sup>

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<sup>310</sup>[REDACTED]

237. [REDACTED]

238. [REDACTED]

239. [REDACTED]

240. [REDACTED]

241. [REDACTED]

242. [REDACTED]

[REDACTED]<sup>311</sup>

243. [REDACTED]

244. [REDACTED]<sup>312</sup>

245. [REDACTED]

246. [REDACTED]

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<sup>311</sup> [REDACTED]

<sup>312</sup> [REDACTED]

247. [REDACTED]<sup>313 314 315 316 317 318</sup>

248. [REDACTED]<sup>319 320 321</sup>

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<sup>313</sup> [REDACTED]

<sup>314</sup> [REDACTED]

<sup>315</sup> [REDACTED]

<sup>316</sup> [REDACTED]

<sup>317</sup> [REDACTED]

<sup>318</sup> [REDACTED]

<sup>319</sup> [REDACTED]

<sup>320</sup> [REDACTED]

<sup>321</sup> [REDACTED]

249. [REDACTED]<sup>322 323</sup>

250. [REDACTED]<sup>324 325</sup>

251. [REDACTED]

252. [REDACTED]<sup>326</sup>

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<sup>322</sup> [REDACTED]

<sup>323</sup> [REDACTED]

<sup>324</sup> [REDACTED]

<sup>325</sup> [REDACTED]

<sup>326</sup> [REDACTED]

[REDACTED]<sup>327</sup>

253. [REDACTED]<sup>328 329 330</sup>

254. [REDACTED]

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<sup>327</sup> [REDACTED]

<sup>328</sup> [REDACTED]

<sup>329</sup> [REDACTED]

<sup>330</sup> [REDACTED]

257. [REDACTED]<sup>331 332</sup>

258. [REDACTED]<sup>333 334</sup>

259. [REDACTED]<sup>335</sup>

260. [REDACTED]<sup>336 337</sup>

261. [REDACTED]

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<sup>331</sup> [REDACTED]

<sup>332</sup> [REDACTED]

<sup>333</sup> [REDACTED]

<sup>334</sup> [REDACTED]

<sup>335</sup> [REDACTED]

<sup>336</sup> [REDACTED]

<sup>337</sup> [REDACTED]

[REDACTED]<sup>338</sup>

262. [REDACTED]<sup>339 340</sup>

263. [REDACTED]<sup>341 .342 .343 .344</sup>

264. [REDACTED]

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<sup>338</sup> [REDACTED]

<sup>339</sup> [REDACTED]

<sup>340</sup> [REDACTED]

<sup>341</sup> [REDACTED]

<sup>342</sup> [REDACTED]

<sup>343</sup> [REDACTED]

<sup>344</sup> [REDACTED]

[REDACTED]<sup>345 346</sup>

265. [REDACTED]<sup>347</sup>

266. [REDACTED]

267. [REDACTED]

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<sup>345</sup> [REDACTED]

<sup>346</sup> [REDACTED]

<sup>347</sup> [REDACTED]

268. [REDACTED]<sup>348</sup>

269. [REDACTED]<sup>349</sup>

270. [REDACTED]

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<sup>348</sup>[REDACTED]

<sup>349</sup>[REDACTED]

271. [REDACTED]

272. [REDACTED]

273. [REDACTED]<sup>350</sup>

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<sup>350</sup> [REDACTED]

274. [REDACTED]

275. [REDACTED]

276. [REDACTED]

277. [REDACTED]

278. [REDACTED]<sup>351</sup>

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<sup>351</sup> [REDACTED]

279. [REDACTED]<sup>352 353 354 355 356 357</sup>

280. [REDACTED]<sup>358 359</sup>

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<sup>352</sup>[REDACTED]  
<sup>353</sup>[REDACTED]  
<sup>354</sup>[REDACTED]  
<sup>355</sup>[REDACTED]  
<sup>356</sup>[REDACTED]  
<sup>357</sup>[REDACTED]  
<sup>358</sup>[REDACTED]  
<sup>359</sup>[REDACTED]

[REDACTED]<sup>360</sup>

281. [REDACTED]<sup>361 362 363 364</sup>

282. [REDACTED]<sup>365</sup>

283. [REDACTED]

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<sup>360</sup> [REDACTED]

<sup>361</sup> [REDACTED]

<sup>362</sup> [REDACTED]

<sup>363</sup> [REDACTED]

<sup>364</sup> [REDACTED]

<sup>365</sup> [REDACTED]

284. [REDACTED]<sup>366</sup>

285. [REDACTED]<sup>367,368</sup>

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<sup>366</sup> [REDACTED]  
<sup>367</sup> [REDACTED]  
<sup>368</sup> [REDACTED]

[REDACTED]<sup>369 370 371 372</sup>

286. [REDACTED]<sup>373 374</sup>

287. [REDACTED]<sup>375 376 377</sup>

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<sup>369</sup> [REDACTED]  
<sup>370</sup> [REDACTED]  
<sup>371</sup> [REDACTED]  
<sup>372</sup> [REDACTED]  
<sup>373</sup> [REDACTED]  
<sup>374</sup> [REDACTED]  
<sup>375</sup> [REDACTED]  
<sup>376</sup> [REDACTED]  
<sup>377</sup> [REDACTED]

288. [REDACTED]

c. Momir Nikolic

289. The Defence also deems the evidence provided by Momir Nikolic as less than credible. The first example is the comparison of his Statement of Facts and the Statement provided upon the order of the Trial Chamber in this case.

290. The position of the Defence is that the wording of the Statement of Facts was intended to conceal the relevant facts resulting in distortion of truth in the Srebrenica events.

291. He testified that he was informed about the intentions of VRS, described in the Supplement, by General Zivanovic before the attack on Srebrenica.<sup>378</sup> According to this information the goal of the attack on the Srebrenica enclave was to separate this enclave from Zepa in the first stage and then to reduce the Srebrenica enclave to its urban area.<sup>381</sup>

292. Asked to explain the difference between such an intent and the intent described in his Statement of Fact, precisely that it was the intention of the VRS forces to cause the forcible removal of the entire Muslim population from Srebrenica to Muslim held territory, the witness explained that both goals and results were the same. He supported his statement by calling upon various documents. The witness however confirmed in his Supplement Statement and in his testimony that the forcible transfer of the entire Muslim population from Srebrenica resulted from the fall of the enclave and certain subsequent<sup>382</sup> decisions.<sup>383</sup>

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<sup>378</sup> C1 (P 4489) Statement of Facts 6.7.2003

<sup>379</sup> C2 (P 4483) Statement

<sup>380</sup> *Ibid* T 33299:23-33300:24

<sup>381</sup> Momir Nikolic 22.4.2009 T.32999:23-33000:2

<sup>382</sup> *Ibid* T.33003:8-11

<sup>383</sup> *Ibid* 23.4.2009 T.33055:5-19 (word "events" corrected to "decisions")

293. It seems that his assertion was founded not on his own knowledge from that time but on his inferences based on subsequent decisions and various documents provided by Prosecution in the case against him. It is not in dispute that the VRS troops found Srebrenica deserted when inhabitants moved to Potocari, Jaglici or elsewhere. It was also clear that from the first Hotel Fontana meeting with the DutchBat Commander, arrangements were made for the transportation of the civilian population to BiH held territory. However, the witness only in his Supplement Statement and testimony in this trial revealed the exact information he provided to the Prosecution. He explained that the failure to put this in the Statement of Facts was because there was no difference between these two statements because the "goal is more or less the same"<sup>384</sup> and that all such questions should be directed to his lawyers.

294. However, the first paragraph of the Statement of Facts, omits this information, distorting the factual presentation of facts, giving the impression that the intent of VRS in the Krivaja 95 Operation was to forcibly transfer the Muslim population from Srebrenica. This demonstrates how the Statement of Facts and Plea Agreement could lead to the incomplete and wrong presentation of the most relevant issues. On the other hand if this paragraph includes witness assessments of available documents and his conclusions, its very title is misleading.

295. In addition, the Statement of Facts reads that there were 1-2.000 able-bodied Muslim men in Potocari.<sup>385</sup> However, the witness stated in his interview that it was just an estimate, which turned out to be wrong as there were between 400-700 able-bodied men.<sup>386</sup> This information was given to the Prosecution before the Statement of Facts was made, however the Statement of Fact still presents the estimate as the real result. OTP only advised that the Information Report should be read together with the Statement

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<sup>384</sup> *Ibid* T 33300:25-33303:5

<sup>385</sup> C1 (P 4489) para 2

<sup>386</sup> Momir Nikolic 22.4.2009 T.33005:10-33009:20

of Facts<sup>387</sup> but the Statement of Facts should reflect true information obtained from the accused without omission of relevant facts. The witness explained that the Statement of Fact did not include "all the things that had been explained in detail, or in the way that it should have been done in my statement."<sup>388</sup> Contrary to his explanation that his intention was not to ingratiate himself to the OTP in order to make the Plea Agreement, the Defence does not believe him as well as his efforts to shift the blame to his lawyers.

296. Furthermore, the Statement of Facts reads that the witness received reports on 11 and 12 July that the bulk of the men of military age from Srebrenica had assembled near the village of Jaglici and begun to move in a long column toward Muslim territory.<sup>389</sup> The witness was aware that Jaglici was the place where the 28<sup>th</sup> Division assembled its forces before it started to break through the VRS held territory.<sup>390</sup> He said: "What else could it be other than members of the 28<sup>th</sup> Division, able bodied-men with arms members of division."<sup>391</sup> As the intelligence officer of Bratunac Brigade the witness had information that BiH civilian and military authorities ordered military-aged men, those who carried arms and were in units including minors to leave the enclave together in the column. He stated that OTP knew that without him.<sup>392</sup> The Defence agrees. He also could not explain why the Statement of Facts labeled the members of ABiH 28<sup>th</sup> Division as able-bodied men or men of military age, despite his knowledge that they were members of the division.<sup>393</sup> In that way the Statement of Facts concealed the existence of ABiH armed unit in the enclave by using the misleading term "men of military age from Srebrenica". The language of such document intentionally conceals ABiH units in the enclaves and its organized action to break through the VRS held area to the BiH territory. It was also done to conceal that the "safe area" was not demilitarized and to present inaccurately

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<sup>387</sup> *Ibid* T.33005:23-33006:3

<sup>388</sup> *Ibid* T. 33005:10-33011:8

<sup>389</sup> C1 (P 4489) para 7

<sup>390</sup> Momir Nikolic 22.4.2009 T.33015:23-33016:9

<sup>391</sup> *Ibid* T. 33016:5-6

<sup>392</sup> *Ibid* T.33018:6-14

<sup>393</sup> *Ibid* T. 33015:10-33017:4

the combat actions against such column as an attack on the civilian population.

297. The Statement of Fact also reads that the witness was "aware that a patrol consisting of two Bratunac Military Policemen was also left overnight from 16 to 17 July in Pilica to assist in securing prisoners detained there."<sup>394</sup> Although both parties were aware that all prisoners in Pilica were executed on 16 July 1995, the Statement was phrased to give the impression that there were live prisoners detained in Pilica who had to be secured<sup>395</sup>, but (not area).<sup>396</sup> The witness stated that he just relied upon the statement of the Military Police Commander, but from the Indictment against him and supporting material accompanying this Indictment he was well informed that the executions in Pilica took place on 16<sup>th</sup> July. The Defence will not mention indictments, judgments or documents demonstrating full awareness of the OTP that such a statement was untrue.

298. The witness also untruthfully blamed Milovan Matic and Nikola Popovic for the commission of war crimes. The first was acquitted and the second was not indicted at all.<sup>397</sup>

299. Additionally, he testified untruthfully that he did not make changes on the copy 2 of the Directive for Active Combat Activities<sup>398</sup> as to the designation of areas for prisoners of war and collection of war booty, which resulted in the incorporation of these changes in the Bratunac Brigade Order.<sup>399</sup> His handwriting was recognized both by the witness Dragoslav Trisic<sup>400</sup> and the handwriting expert.<sup>401</sup>

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<sup>394</sup> C1 (P 4489) para 11

<sup>395</sup> T. 33022:23-33027:25

<sup>396</sup> *Ibid* 23.4.2009 T. 33055:20-24 (T. 33025:23 word "area" corrected to "live people")

<sup>397</sup> *Ibid* T.33074:23-33075:5

<sup>398</sup> *Ibid* T.33076:25-33081-21; 1D 382 p.5 <sup>399</sup> P

<sup>399</sup> 3025 Bratunac Brigade Order 5.7.1995

<sup>400</sup> Trisic 20.10.2008, T.27059:18-27109:7

<sup>401</sup> 3D 583, Gogic Expert Report

300. Until he received the sentence the witness concealed and further is concealing many facts relevant to this case. He stated initially to the representatives of the RS Government Commission investigating the events in Srebrenica that Deronjic was superior to the Chief of MUP CJB Zvornik Dragomir Vasic.<sup>402</sup> He also added that Deronjic in the second stage of the operation was the key person who participated in the making of all decisions and was privy to all events that had to do with the civilian population and prisoners of war who had been separated in Potocari.<sup>403</sup> The witness explained that it was not in his Statement of Facts or his interviews due to his lawyers,<sup>404</sup> which the Defence considers unfounded because these facts were known to him alone and he had a close relationship with Deronjic.<sup>405</sup> Due to this fact the witness knowingly and intentionally suppressed the information about Deronjic and his role in Srebrenica events in July 1995.

301. His testimony that he did not volunteer to give new information never conveyed to anyone else, but to the Commission of the RS Government,<sup>406</sup> which met him in the DU in the presence of his lawyer<sup>407</sup> was also untruthful because there was no reason for Mr. Gordon Bacon to falsely declare that he promised Momir Nikolic that if he provided crucial information he could influence the Appeals Chamber in sense of reducing the sentence due to his cooperativeness.<sup>408</sup>

302. It should not be forgotten that the witness lied in his own proceedings that he ordered executions in Kravica Warehouse and Sandici Meadow, as well as falsely identified himself on the picture shown to him.<sup>409</sup>

303. His explanation that he accepted his responsibility for the crime in Kravica Warehouse because his lawyer allegedly told him that without such confession there

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<sup>402</sup> Momir Nikolic 23.4.2009 T.23081:22-33082:20

<sup>403</sup> *Ibid* T. 33082:21-33083:1

<sup>404</sup> *Ibid* T.33083:2-16

<sup>405</sup> *Ibid* T.33083:23-33084:6

<sup>406</sup> 1D 1378 RS MUP Official Note 21.9.2004

<sup>407</sup> Momir Nikolic 23.4.2009, T.33086:22-33087:23

<sup>408</sup> *Ibid* T.33087:24-33088:33089:1

<sup>409</sup> *Ibid* T.33090:10-33094:12

would not be Plea Agreement<sup>410</sup> is also untruthful. The Defence actually believes that the witness made this assertion without the advice of his lawyers but on his own to demonstrate his willingness to have a Plea Agreement even with a false confession to crimes. This is because he testified in another case<sup>411</sup> that he was not influenced by his lawyers and that no one exerted any pressure on him. The witness explained that in essence it is same thing he said in this trial.<sup>412</sup>

304. He was also insincere about the reasons for his refusal to testify as the Prosecution's witness in two BiH cases<sup>413</sup> as well as about information given to the Prosecution in this case assessed as incredible which led to his withdrawal from the Prosecution Witness List.<sup>414</sup>

305. For all above reasons the Defence considers this Serbian witness as less then credible too.

d.Pandurevic

306. The Defence does not consider Pandurevic's testimony, at least in some respects, to be more credible than [REDACTED] who gave the statements against Popovic only after finding out that without them, his plea bargains would be unsuccessful.

307. The Defence looks at Pandurevic's testimony as an attempt to court the Prosecution and exculpate himself by shifting the responsibility on others including Popovic. As a professional officer who was allegedly informed that the officers from superior command issued an orders to members of his unit to commit war crimes, he would certainly inform not only his superior but also initiate legal proceedings against all involved. It is the position of the Defence that this was not done because he was aware that the officers from superior command did not issue any order to the members of Zvornik Brigade

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<sup>410</sup>*Ibid* T.33095:25-33096:24

<sup>411</sup>*Ibid* T.33096:25-33097:14

<sup>412</sup>*Ibid* T.33097:17-33098:15

<sup>413</sup>*Ibid* T.33098:16-33100:19

<sup>414</sup>*Ibid* T.33100:20-33103:2

but that members of his unit were getting the orders from the acting Commander at the relevant time. In this regard, his testimony that he was informed by Jokic and Trbic about Popovic's involvement as regards the prisoners was intended to shift the blame on Popovic and refer to sources of information not available to testify in this case. Therefore, if he had got such information he would have reported it Popovic's Commander. The Defence finds as highly incredible the part of his testimony that on 16 July he did not meet Popovic although he was ordered to go to Baljkovica, check up on what was going on and report to the DK Command. A number of evidence shows that Popovic carried out the task, namely intercept P1201 and the entry in the Zvornik Brigade Duty Officer Notebook but also the testimony of the witness Ljubo Rakic.

308. The witness Ljubo Rakic was the Operation Duty Officer in the DK Command on that day. He testified that he knew Popovic as the security officer of the DK whose duties were to protect commands of units, important structures and features in the area of responsibility of the DK and to prevent various terrorist groups.<sup>415</sup> The witness could not remember the conversation he had with Popovic on 16 July 1995, described in intercept P1201, but said that it is very likely that it actually took place. The witness testified that his nickname was *Rale*<sup>416</sup> He explained that in this particular conversation "up there" meant the area between Zvornik and Tuzla where the elevation greater than in Zvornik where the combat took place on that day. He also said that "boss" was frequently used for unit commanders and in the context of this particular conversation it denoted the Commander of the Zvornik Brigade Pandurevic. The witness clarified that "interim report" in the conversation meant the report of the Zvornik Brigade about the situation concerning the Baljkovica area which was the most active and busiest combat of the year. He understood from the report that there was a lot of fighting with many casualties because parts of Zvornik Brigade was in a sandwich between the various units at the Tuzla fronts and those units which were coming out of Srebrenica moving

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<sup>415</sup> Rakic 16.6.2008 T.22183:17-22184:3

<sup>416</sup> *Ibid* T.22184:12-22186:3

towards the front lines held by the 2<sup>nd</sup> Corps.<sup>417</sup> The witness further explained the Popovic's words: "Everything is as he wrote" understood by him as Popovic's verifying of data from the interim report. Popovic's words "I've finished all" were understood that he completed his touring of the area of Baljkovica."<sup>418</sup> Popovic's words: "Mostly there are no significant issues, but there were terrible problems up there and what the commander had sent is largely that" the witness explained that there were no sabotage groups in that particular territory, no direct threats to the security of the Zvornik Brigade, since he was in their AOR.<sup>419</sup> The witness further explained that a part of Bratunac Brigade sent to reinforce Zvornik Brigade in the Baljkovica fighting was late and that it was a part of his conversation with Popovic.<sup>420</sup> He confirmed that nothing in the conversation concerned prisoners.<sup>421</sup> Significantly, the witness clarified that the term "package" was used<sup>422</sup> to designate reinforcements sent to Zvornik Brigade. So, the entry in the Zvornik Brigade Duty Officer Notebook made on that day at 12.50 referred to these reinforcements.

309. The Defence considers that the defence strategy of [REDACTED], Deronjic and Momir Nikolic, and to an extent Pandurevic was inspired by a joint idea to exculpate as much as possible commanders of the Corp and brigades, as well as Deronjic as the civilian commissar for the crimes committed in the area of responsibility of their units. Almost all of them were detained and processed at the same time so they built the common defence strategy. On the other hand as the security officers were still at large the burden of command responsibility was shifted to them. Accordingly, the strategy developed that all crimes were committed by security officers who got such instruction from the very top and who were abusing their authority to carry out such illegal task. In keeping this strategy [REDACTED] organized meetings seeking from his subordinates to provide him with an alibi and even exerting revenge against those who refused. The strategy however

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<sup>417</sup> *Ibid* T.22187:12-22188:16

<sup>418</sup> *Ibid* T. 22189:2-22190:7

<sup>419</sup> *Ibid* T.22190:19-25

<sup>420</sup> *Ibid* T.22191:9-22195:12

<sup>421</sup> *Ibid* T.22195:17-25

<sup>422</sup> *Ibid* T.22196:20-22199:7

resulted in the dropping of the charges for Srebrenica 1995 crimes against Deronjic and conviction of [REDACTED] but not for the proper acts in relation to the crimes in Orahovac, Petkovci, Kozluk and the wounded prisoners held at the Zvornik Brigade infirmary. Instead fantastic stories appeared about Popovic's telephone information about the coming of prisoners, what would be done with them and who ordered it. This was followed with a false story of Popovic forcing a highly conscious, but successfully resisting battalion commander to execute prisoners. However, none of them ever reported Popovic to his superior proving that they misrepresented his role in such event.

## **E. THE ALLEGED JOINT CRIMINAL ENTERPRISE TO FORCIBLY TRANSFER THE MUSLIM POPULATION OF SREBRENICA AND ŽEPA**

310. The Indictment alleges that Popović was a co-perpetrator, together with the other Co-accused, in a JCE whose aim was the forcible removal of the Muslim population from the Srebrenica and Žepa enclaves. The Indictment first provides a description of various activities allegedly carried out by the VRS between March and July 1995, alleging that the criminal plan started to take shape on 8 March 1995 with the issuance of Directive 7;<sup>423</sup> this plan allegedly included restrictions of aid and supplies<sup>424</sup> shelling and sniping of civilian targets<sup>425</sup>, the attack on UN Observation Post ("OP") Echo<sup>426</sup> and the attack on Srebrenica pursuant to General Zivanović's order of 2 July 1995 later modified by President's Karadzic Order of 9 July 1995.<sup>427</sup>

311. The evidence presented in this case shows that these actions of the VRS were instead aimed at limiting the logistical and combat capability of the 28<sup>th</sup> Division in Srebrenica, which continuously carried out combat and sabotage activities

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<sup>423</sup> *Ibid* para 50

<sup>424</sup> *Ibid* para 51

<sup>425</sup> *Ibid* para 52

<sup>426</sup> *Ibid* para 53

<sup>427</sup> *Ibid.*, para. 54.

against Serbian military and civilian targets outside the enclave. The following takeover of Srebrenica was a military operation aimed at restoring security for the Bosnian Serbs in and around the enclaves of Srebrenica and Žepa.

312. The Defence has already addressed Directive 4<sup>428</sup> and Colonel Ognjenović's Report of 4 July 1994. In dealing with Directive 4, issued in 19 November 1992,<sup>429</sup> the Defence has illustrated in detail the military activities carried out by the ABiH against Bosnian Serb civilians in 1992 in the Srebrenica area.<sup>430</sup> The Defence will just recall here how the participation of massive groups of civilians to these attacks aggravated the threat to security already represented by Muslim soldiers.<sup>431</sup>

313. The Defence has also dealt with the situation between late 1992 and early 1993 in the part of this brief dedicated to the Report by Lt. Col. Slavko Ognjenović,<sup>432</sup> and has explained how the agreement on demilitarization reached on 18 April 1993 (and then perfected on 8 May 1993<sup>433</sup>) was blatantly and continuously violated by the ABiH from its entry into force up until the takeover of Srebrenica in July 1995.<sup>434</sup>

314. The Defence has also extensively dealt with Directive 7,<sup>435</sup> with the Krivaja 95 order of 2 July 1995 and with President Karadzic's approval of 9 July 1995,<sup>436</sup> explaining that the objectives of the VRS as stated in these documents did not involve the permanent displacement of the entire Muslim population from the Srebrenica and Žepa enclaves.

315. This background information is of crucial importance to understand the reasons of the takeover of Srebrenica as well as the intentions of the VRS. The Defence will now

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<sup>428</sup> See *supra* paras. 29-71.

<sup>429</sup> P29.

<sup>430</sup> See *supra* Chapter B.

<sup>431</sup> Vuga, T. p. 23164 l. 16 - 23165 l. 10.

<sup>432</sup> P3177; see *supra* paras. 79-92.

<sup>433</sup> 6D31.

<sup>434</sup> See *supra* paras. 78-85.

<sup>435</sup> See *supra* paras. 86-131.

<sup>436</sup>

proceed to illustrate in greater detail the presence of the ABiH in the supposedly demilitarized areas, its extensive coverage of the enclave, the weapons at its disposal and its military cooperation with the DutchBat.

### **XIII. ABiH's presence in the enclave**

316. In spite of the ceasefire agreement, the ABiH did everything to preserve and increase its combat capabilities; it also kept carrying out deadly attacks against the Serbian population living around the enclave between 1993 and 1995.<sup>437</sup> Remarkably, notwithstanding the ceasefire, on 1 June 1993, Halilović was very explicit in requesting that the ABiH carry out sabotage and surprise attacks behind the enemy lines.<sup>438</sup> The cost in terms of human lives was very dear.<sup>439</sup>

317. The evidence in this case shows that in 1995, within the supposedly demilitarized area of Srebrenica, was headquartered the 28<sup>th</sup> Division of the 2<sup>nd</sup> Corps of the ABiH. In June 1995, the VRS was aware that in Srebrenica there were 9.600 troops. ABiH's units garrisoned defence positions around the edge of the enclave<sup>440</sup> by keeping shadow positions nearby the Observations Posts manned by the DutchBat.<sup>441</sup> The 28<sup>th</sup> Division was divided into several brigades each responsible for a different area of the enclave. In absence of Naser Orić, the command of the enclave fell into the hands of his lieutenants. Each brigade had its own zone of responsibility within the enclaves.<sup>442</sup> The brigades did not all have the same degree of organization and discipline, but some of them were clearly organized as proper military units.<sup>443</sup>

#### **a. Bandera Triangle**

318. The evidence shows that the bulk of the ABiH's troops and weapons in Srebrenica were amassed in an area known as Bandera Triangle. The ABiH did not want international observers into this part of the enclave. Even before January

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<sup>437</sup> Butler, P. t. 19700, l. 5 - 19701, l. 22.

<sup>438</sup> 5D506.

<sup>439</sup> See 1D1162; see also Vuga p. 23172, l. 17 - p. 23173, l. 23.

<sup>440</sup> Lazić, T. p. 21732, ll. 1-10.

<sup>441</sup> Prosecution Adjudicated Facts Decision, Fact 41.

<sup>442</sup> Franken, T. p. 2438 l. 16 - p. 2439 l. 3.

<sup>443</sup> Franken, T. p. 2604, ll. 11-17.

1995 international observers were prevented from entering the area.<sup>444</sup> On January 1995 the DutchBat was tasked with re-establishing its freedom of movement within the Bandera Triangle. However, about two kilometers within the enclave, the attempt was prevented by a group of about 45 ABiH soldiers commanded by Zulfo Tursunović and the DutchBat soldiers were taken prisoners for about four days.<sup>445</sup> However the Bandera Triangle was not the only part of the enclave where the Dutch Bat's movements were restricted.

319. According to Franken, in fact, the Dutch Bat had encountered a number of other problems with the ABiH's forces in the enclave. For instance, the DutchBat had a lot of problems moving their APCs to better positions when they needed to.<sup>446</sup> In addition, the OPs were sometimes blocked and surrounded: during one of those episodes, DutchBat soldiers were not let go to Srebrenica. Remarkably, the only DutchBat soldier who was killed in Srebrenica, Pvt. Van Rensen, was shot by a Muslim soldier. Although this is the only time when, according to the Dutch Bat, the ABiH killed one of the peacekeepers, it was not the first time that the Dutch Bat was fired upon by the ABiH. OP Mike, in fact, once reported fire against it which could not have come from the VRS positions.<sup>447</sup>

#### b.Srebrenica and Potočari

320. Aside from the Bandera Triangle, the 28<sup>th</sup> Division was divided in different brigades headquartered in private houses, industrial facilities or hotels in different parts of Srebrenica and Potočari. These facilities were used as depots, army kitchens or training halls.<sup>448</sup> There were also several fortified positions within the enclave.<sup>449</sup>

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<sup>444</sup>See Franken, T. p. 2442, ll. 4-12.

<sup>445</sup>See Franken, T. p. 2602, l. 14 - 2603, l. 13.

<sup>446</sup>Franken, T. p. 2603:11-16.

<sup>447</sup>Franken, T. p. 2541:3-25.

<sup>448</sup>4D135; Pandurević, T. p. 31985:2-7.

<sup>449</sup>Pandurević, T. p. 31984:20-25.

321. Since the agreement on the demilitarization of the enclave had been signed in April 1993, the VRS had had a fairly comprehensive knowledge of where the 28<sup>th</sup> Division was deployed within the enclave.<sup>450</sup>

322. However, in order to better assess the enemy's actual military capabilities within the enclave, on 1 July 1995 Lt. Col Pandurević conducted a commander's reconnaissance from tactical positions where he could see the southern, eastern and western approaches to Srebrenica. The reconnaissance was not performed from the northern approaches because the Bratunac Brigade was engaged on that axis.<sup>451</sup> The reconnaissance activity gave General Pandurević a good knowledge of the deployment position of the brigade within the enclave.<sup>452</sup>

323. The VRS therefore knew, for instance, that the 280<sup>th</sup> Brigade of the 29<sup>th</sup> Division was headquartered in Potočari. Like in other parts of the enclave, the forces of the 280<sup>th</sup> Brigade were deployed very close to the UN base in the surrounding facilities,<sup>453</sup> approximately half way between the base and the frontline.<sup>454</sup> It would also appear that the 280<sup>th</sup> Brigade used two different buildings in Potočari. The Drina Corps' order for active combat dated 2 July 1995 also proves that the VRS had knowledge that the 280<sup>th</sup> Brigade was there and ready to engage the Bratunac Brigade. Hence, the 280<sup>th</sup> brigade became a target of the operation.<sup>455</sup>

324. The number of military installations was particularly numerous also in the town of Srebrenica. As it can be seen from the evidence on the record, numerous private houses and other civilian buildings were used for military purposes.<sup>456</sup> The Srebrenica Post Office, for instance, hosted the 28<sup>th</sup> Division's communication centre.<sup>457</sup> The Hotel

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<sup>450</sup> Pandurević, T. p. 31984:5-14.

<sup>451</sup> Pandurević, T. p. 31983:6 - 31984:4.

<sup>452</sup> 4D210; Pandurević, T. p. 31985:8-24.

<sup>453</sup> Pandurević, T. p. 31988:1-21.

<sup>454</sup> Pandurević, T. p. 31990:6-12.

<sup>455</sup> P107, pp. 1-3; Pandurević, T. p. 31990:17 - 31991:7.

<sup>456</sup> 4D135.

<sup>457</sup> Franken, T. p. 2646: 9-16.

Domavija was also used as military installation.<sup>458</sup> Muslim troops were also headquartered in the Locac feature. This installation, also known as the hunting lodge, was in Srebrenica town.<sup>459</sup> The 284<sup>th</sup> Brigade was using the seat of a construction company as its command. Notably, the building used is situated on the main street of the old town.<sup>460</sup> From the evidence it emerges that elements of the 282<sup>nd</sup>, the 283<sup>rd</sup> and the 284<sup>th</sup> brigades were deployed in the Srebrenica town, while battalions and companies were deployed close nearby DutchBat OPs along the Zeleni Jadar - Srebrenica axis.<sup>461</sup>

325. Although at the beginning of July 1995 the VRS knew the positions of several ABiH installations within the enclave, it was not aware of the precise locations of all the military installations in the town of Srebrenica.<sup>462</sup> However, Lt. Col. Pandurević, who led the attack on Srebrenica, testified that his troops were being fired upon with mortars from the centre of the town.<sup>463</sup> The ABiH positions were scattered all over the small town of Srebrenica.

326. The presence of military installations firing on the VRS troops from such a small area greatly endangered the Muslim population. These kinds of military tactics, whose purpose is to shield military objectives by positioning them in densely populated areas or nearby civilian installations, are strictly prohibited by Article 51 paragraph 7 of Additional Protocol I.<sup>464</sup>

#### c. Weapons

327. In July 1995 the 28<sup>th</sup> Division could count on a considerable amount of weapons at its disposal within the enclave, which had been supplied continuously with various means since 1993. The evidence shows that in 1993 several helicopters shipped into Srebrenica a remarkable amount of weapons and other military material and that these shipments were mostly successful. The supplying continued in 1994, when convoys with military supplies

<sup>458</sup> Pandurević, T. 31933:3-13.

<sup>459</sup> 4D671; Pandurević, 31995:7-24.

<sup>460</sup> 4D135, p. 2; Pandurević, 31998:1-11.

<sup>461</sup> 4D210; Pandurević, 31994:7-16; see also Prosecution Adjudicated Facts Decision, Fact 41.

<sup>462</sup> Pandurević, T. 31933:14-22.

<sup>463</sup> Pandurević, T. 31933:4 - 31934:2.

<sup>464</sup> See supra para. 95.

were secretly sent to Srebrenica, careful however to avoid condemnation for the violation of the demilitarization agreement.<sup>465</sup> In the fall of 1994 the ABiH even organized on foot expeditions to the enclaves; however, the danger of this kind of operations pushed the ABiH to rely on helicopters again.

328. Most of the flights were successful and by the end of 1994 about twenty-three tons of equipment had been shipped to Srebrenica.<sup>466</sup> This equipment comprised not only small weapons, but also rocket launchers, bombs of various types, sniper rifles and mortars.<sup>467</sup> The shipments continued until May 1995, when the VRS shot down a helicopter causing casualties amongst the crew and the passengers: up to this point however the ABiH had already transported an impressive quantity of lethal material into Srebrenica.<sup>468</sup>

329. When the Dutch Bat arrived in Srebrenica in January 1995 it was informed that the 28<sup>th</sup> Division could count on about 4.500 small arms and some mortars.<sup>469</sup> The Defence considers this number to be an underestimation. However, the evidence on the record establishes that this number was substantially higher in July 1995. An interim report of the ABiH dated 13 July 1995 shows that the 28<sup>th</sup> Division inside the enclave had been organized and regularly re-supplied and lists the amount of weapons and ammunition shipped to the enclave.<sup>470</sup> The fact that the 28<sup>th</sup> Division was being re-supplied and prepared from the outside is corroborated by the fact that in May 1995 the soldiers started wearing new "combat suits"<sup>471</sup> and new AK47 assault rifles.<sup>472</sup>

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<sup>465</sup> 4D5, p. 3.

<sup>466</sup> *Ibid.*

<sup>467</sup> *Ibid.*, pp. 4-5.

<sup>468</sup> *Ibid.*, p. 4.

<sup>469</sup> Franken, T. p. 2438, ll. 3-15.

<sup>470</sup> *See* 1D464.

<sup>471</sup> Franken, T. p. 2438, ll. 3-15.

<sup>472</sup> Franken, T. p. 2537, l. 15 - 2538, l. 5.

330. Smuggling of goods inside the enclave was a known fact,<sup>473</sup> and the UNMOs knew that they included weapons.<sup>474</sup> However, UNPROFOR was never entirely apprised of the actual military capability of the ABiH within the Srebrenica enclave. UNPROFOR could see about 50% of the area within the Bandera Triangle, but not the rest. Admittedly, a considerable amount of men and equipment could have been hidden there.<sup>475</sup>

d. Military activities carried out by the ABiH from within the enclaves

331. It has already been seen that in 1992 and 1993 the ABiH conducted several sabotage operations and attacks around the enclaves. These attacks continued throughout 1994 and 1995. In November 1994 the 8<sup>th</sup> Operation Group of the Srebrenica Command of the ABiH was ordered to set up a corridor to link up Srebrenica, Žepa and Goradže with Muslim controlled territory. This operation was meant to pave the way to the liberation of the "temporarily occupied territory of BH".<sup>476</sup> The units in the enclave were being organized and strengthened for this task, which was to be carried out in co-ordination with the ABiH's 2<sup>nd</sup> Corps. Equipment was being shipped to Srebrenica and men trained to prepare for this complex and ambitious operation, and according to the Defence's military expert the ABiH in Srebrenica could count on more weapons than in Sarajevo in 1992-1993.<sup>477</sup> Continuing in June and July 1995, Muslims fighters and civilians carried out military actions against Serbian villages and hamlets around the enclave. All these attacks, which the DutchBat did not succeed in preventing, were in clear violation of the agreement reached in April 1993 and reaffirmed in greater detail on 8 May 1993.<sup>478</sup>

332. On 17 June 1995, about 15 days before the beginning of operation Krivaja 95, the 28<sup>th</sup> Division was ordered to carry out preparations to launch an offensive in its area of responsibility. A following order would have regulated the commencement of the

<sup>473</sup> Franken, T. p. 1910, l. 6 - p. 1911, l. 8.

<sup>474</sup> Kingori, T. p. 19365, l. 25 - 19366, l. 17; Butler, p. 19775, ll. 8-21.

<sup>475</sup> Franken, T. p. 2603, ll. 11-16; p. 2604, ll. 20-25.

<sup>476</sup> 1D1175, para. 3.20; *see also* 1D740.

<sup>477</sup> Vuga, 23175, l. 5 - 23175, l. 11.

<sup>478</sup> 6D31.

combat activities.<sup>479</sup> The operation's goal was to tie up and stretch the Serb forces in this area as thin as possible so that combat activities in other areas could be carried out more efficiently because it would have been difficult for the VRS to get reinforcements. This was a synchronized operation with comprehensive actions throughout the region. The level of military planning reveals the real nature of the Srebrenica and Žepa enclaves as areas where an organized army was deployed.<sup>480</sup> According to the Defence's military expert, the sabotage and terrorist actions that were carried out from the enclaves after 17 June 1995, as well as the reports that were sent to the command of the 2nd Corps, coincide with the preparatory order of 17 June and the future actions which were to ensue.<sup>481</sup>

333. According to the list of combat activities of the ABiH's 2<sup>nd</sup> Corps, from 25 June until 16 July 1995, the 2<sup>nd</sup> Corps was engaged in the Defence of Srebrenica.<sup>482</sup> However, according to the Defence's military expert, on 25 June 1995 there had been no attack on Srebrenica by the VRS. Rather, actions were carried out from Srebrenica to provoke the Serbian side to respond at the places where those actions were organized.<sup>483</sup> There is also evidence that the 28<sup>th</sup> Division shelled<sup>484</sup> and carried out sniping against the VRS from the enclave.<sup>485</sup>

334. The attacks carried out in 1995 by the ABiH from within the enclave were violent and provoked many victims amongst the civilians and the military.<sup>486</sup> This created great concern in the Bosnian Serbs, and the VRS lodged several complaints with the DutchBat through their liaison officer, Momir

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<sup>479</sup> 1D946.

<sup>480</sup> Vuga, T. p. 23178, l. 24 - 23180, l. 2.

<sup>481</sup> Vuga, T. p. 23180, ll. 3-12.

<sup>482</sup> 1D1283, p. 25, n. 619.

<sup>484</sup> Vuga, T. p. 23182, l. 22 - p. 23183, l. 7.

<sup>484</sup> The ABiH could count on mortars of different calibre.

<sup>485</sup> Butler, T. p. 19707, ll. 5-13; *See Prosecution v. Popović et al.*, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 6 June 2008, Fact 50.

<sup>486</sup> 1D742, 30 June 1995, ABiH 2<sup>nd</sup> Division Daily Report.

Nikolić. The DutchBat, which was supposed to ensure and oversee the implementation of the ceasefire, never succeeded in stopping the raids.<sup>487</sup>

e. Violation of Article 60 of Additional Protocol 1 to the Geneva Conventions of 1949

335. It is incontestable from the evidence that the safe areas of Srebrenica and Žepa, created pursuant to Article 60 of the Protocol Additional to the Geneva Conventions of 12 August 1949,<sup>488</sup> were not respected by the Bosnian Muslims. ABiH's military activities diverted precious VRS resources from other fronts of the war.<sup>489</sup> The "need to defend the Serbian people against genocide by Muslim forces" had been stated since April 1993 by the VRS in the Analysis of Combat Readiness of the Army of Republika Srpska in 1992.<sup>490</sup> Notably, when asked if this could be just Bosnian Serb propaganda, Butler answered that he did not think it was, since the general public did not have access to that document.<sup>491</sup>

336. Pursuant to Article 60 paragraph 7, the safe area of Srebrenica had lost his status of demilitarized zone. The VRS attack on the enclave, aside from being justified by the aggressive and deadly actions of the ABiH, was therefore also legitimate under international humanitarian law.

**XIV. Restrictions of humanitarian aid**

337. The Defence does not contest that the VRS exercised control and regulated the influx of goods inside the Srebrenica enclave. However, the Defence maintains that the restrictions were justified by military necessity, and were not aimed at forcing the Muslims out of the enclaves, as instead alleged by the Prosecution.<sup>492</sup> Restricting the food supplies entering the enclave therefore meant to reduce the combat capability of the ABiH's 28<sup>th</sup> Division, an enemy with whom the VRS was at war.

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<sup>487</sup> Boering, T. p. 1911, l. 18 - p. 1912, l. 4.

<sup>488</sup> 8 June 1977.

<sup>489</sup> Butler, 19774, l. 13 - 19775, l. 7.

<sup>490</sup> P414, p. 7, para. 3.

<sup>491</sup> Butler T. p. 19688, l. 8 - 19689, l. 15.

<sup>492</sup> Indictment, para. 51.

338. The VRS had legitimate reasons to restrict the influx of humanitarian aid coming into the enclave which was being constantly appropriated by the ABiH.<sup>493</sup> There was also a general belief that the UN were somehow helping the Muslim party by hiding in the convoys extra food or fuel which would have been then appropriated by the ABiH.<sup>494</sup>

339. The DutchBat's mandate was to secure the distribution of humanitarian aid from OP Papa to the warehouse in Srebrenica. Once into the warehouse, the food would be distributed by the UNHCR with people from the municipality and the DutchBat exercised no control on its fair and just allocation.<sup>495</sup> The existence of a black market in the enclaves was a fact. Colonel Boering, from the DutchBat, testified that there was the suspicion that both the military and civilian leadership were involved in it.<sup>496</sup>

340. According to the Prosecution's military expert Richard Butler, the humanitarian aid destined to the enclave, and which was being appropriated by the ABiH 28<sup>th</sup> Division, would substantially increase or at least maintain the ability of that unit to conduct military operations. From a military standpoint, this was detrimental to the VRS' interests.<sup>497</sup> This would have been a justifiable reason to restrict the amount of food entering the enclave.<sup>498</sup> It is worth to note that the restriction of aid flowing into the enclave did in fact reduce the state of readiness of the ABiH, thus favouring the VRS' military victory.<sup>499</sup>

341. The Defence's position is that the cause for the lack of food for the population was therefore the appropriation of the resources by the ABiH. First, by appropriating the humanitarian aid, the ABiH fostered the conditions for restrictions; second, through the appropriation by the ABiH of the food

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<sup>493</sup> See *Prosecution v. Popović et al.*, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 6 June 2008, Fact 50.

<sup>494</sup> Butler, T. p. 19726, ll. 4-18.

<sup>495</sup> Franken, T. p. 2445, l. 17 - 2446, l. 14.

<sup>496</sup> Boering, 2037:25- 2038:5.

<sup>497</sup> Butler, T. p. 20094, l. 12 - p. 20095, l. 7.

<sup>498</sup> Butler, T. p. 19721, ll. 13-20.

<sup>499</sup> 5D54, p. 1, para. 2.

destined to the population, the latter was deprived of its sustainment. From the evidence it emerges that Osman Suljić, president of the Srebrenica Opština, had complained about the lack of food for the population, but the ABiH never let any observer inspect their reserves.<sup>500</sup>

#### **XV. VRS Sniping**

342. The Prosecution did not prove beyond reasonable doubt that the sniping was conducted in the course of an attack against the civilian population, or that it was part of a plan to make life unbearable for the Muslim population in the enclave. There were some individual cases of Muslim civilians injured by sniping one month or two before the fall of Srebrenica but they were injured in ambushes or minefield on the VRS controlled territory while trying to reach Žepa.<sup>501</sup> The only witness who confirmed the VRS sniping was Momir Nikolić, whose testimony the Defence does not consider being credible.<sup>502</sup> The Defence just recalls that, according to Momir Nikolić, the sniping was carried out by the units deployed around Srebrenica,<sup>503</sup> encouraged by Ognjenovic's report of 4 July 1994.<sup>504</sup> The witness added that the target of sniping were "people who were in front of confrontation lines".<sup>505</sup> He also stated that sniping of Srebrenica town was not possible.

343. Even if Nikolić's testimony were to be considered credible in this respect, it is not proven beyond reasonable doubt that the sniping was a part of VRS policy to make life unbearable to the population of Srebrenica. It could rather be seen as a deterrent for the Muslim armed men moving near confrontation line from crossing to the Serbian held territory and as the countermeasure after enemy's sniping.

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<sup>500</sup> 1D472, p. 2.

<sup>501</sup> PW 106, T.3939:21-3940:15

<sup>502</sup> Momir Nikolić, T.32964:24-32968.

<sup>503</sup> *Ibid* 32965:7-12

<sup>504</sup> P3177.

<sup>505</sup> Momir Nikolić, T. 33062:5-18.

344. The Defence however recalls that Momir Nikolić also stated that ABiH unit also carried out sniping against Serbs forces killing both soldiers and civilians.<sup>506</sup> The targets were DutchBat soldiers near the demarcation lines so that the DutchBat would blame the VRS.<sup>507</sup> Sniping was therefore also a part of strategy of the ABiH's strategy to gain support from the international community and to provoke NATO air-strikes.

#### **XVI. Shelling**

345. The Prosecution alleged that the shelling of Srebrenica from March to July 1995 was aimed at making life unbearable for the population.<sup>508</sup> The Defence maintains that the purpose of the shelling was the military defeat of the Muslim forces in the enclaves, and that the harm suffered by the civilian population was the unfortunate consequence of two main factors: the small size of the enclave and the fact that the ABiH's was headquartered in the town of Srebrenica, in Potočari and in other parts of the enclave,<sup>509</sup> and conducted its military operations from within the supposedly demilitarized area, in clear violation of Articles 51 and 60 of Additional Protocol I.

346. Several UNMOs' reports register shells falling into Srebrenica and nearby Potočari throughout the attack, from 6 July until 11 July 1995. However, this shelling, contrary to the Prosecution's allegations, was neither directed against the Muslim population nor used as a strategy to terrorize the Muslims civilians and drive them out of the enclave. The shelling was aimed at disabling the military capability of the ABiH in the enclave, whose military facilities were situated either within civilian buildings or in their immediate proximity.<sup>510</sup> Using civilian buildings for military purposes was in fact a common occurrence in the Bosnian war.<sup>511</sup> This was particularly true for smaller military units such as brigades.<sup>512</sup>

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<sup>506</sup> Momir Nikolić, T. 33063:9-13.

<sup>507</sup> Egbers 20.10.2006 T.2861:19-24

<sup>508</sup> Indictment, para. 52.

<sup>509</sup> See supra paragraphs 316-326.

<sup>510</sup> *Ibid.*

<sup>511</sup> Smith, 17607, ll. 7-10.

<sup>512</sup> Smith, 17607, ll. 11-19.

347. The very low number of civilian victims would appear to corroborate the Defence's position. According to the UNMOs, on 6 July 1995 about 250 shells fell on Srebrenica and Potočari.<sup>513</sup> Notwithstanding the high number of shells counted during the attack, the UNMOs advised the people to stay inside their homes.<sup>514</sup> The Defence finds that the UNMOs' suggestion to the civilians to remain in their homes must have been based on the observation that the targets of the shelling were in fact military objectives. Had the UNMOs perceived the attack as directed against the civilian population, this kind of advice would have been illogical. Witness Kingori also gave a rather unconvincing explanation on this matter: when asked by the Defence why, if there was an attack against the civilian population, he had not advised the civilians to hide in the woods, Kingori answered that in the woods there could have been even greater dangers.<sup>515</sup> In the Defence's view, Kingori's account of his assessment of the situation is paradoxical. In the end, the number of casualties amongst the population in Srebrenica town was very low.<sup>516</sup>

348. Similarly, although the compound in Potočari was being shelled on 11 July 1995, the population around its precinct was not.<sup>517</sup>

349. The intensity of the shelling, coupled with the very low number of victims amongst civilians and the presence of several military targets within the small town of Srebrenica and in Potočari are factors which must be taken into account when assessing whether the attack was directed against the civilian population or against the Muslim army. In fact, in order for an attack to be considered as directed against the civilian population, the civilians must be the primary object of the attack.<sup>518</sup>

350. In the course of the takeover of Srebrenica, aside from attacking ABiH's soldiers and installations, the VRS had also to deal with the DutchBat, which had meanwhile

<sup>513</sup> Kingori, T. p.19352, ll.18-23.

<sup>514</sup> Kingori, T. p.19352, l.23- 19352, l. 17.

<sup>515</sup> Kingori, T. p. 19353:18 - 19354:12.

<sup>516</sup> Kingori, T. 19176:13 - 19177:5.

<sup>517</sup> Nicolai, T. p.18311, ll. 20-22.

<sup>518</sup> See *Kunarac* AJ, para. 91; Naletilić and Martinović TJ, para. 235.

become a hostile force. The Defence's position is that the attack on DutchBat's military installations was completely legitimate, as the DutchBat a) was not preventing infiltrations of Muslim sabotage groups crossing into Serbian territory in proximity of the DutchBat OPs; and b) was actively attempting to prevent the VRS' takeover of Srebrenica, by opening fire, setting up blocking positions and ordering air strikes against the Bosnian Serb troops.

#### **XVII. DutchBat targets**

351. The Prosecution alleges that the attack on OP Echo on 3 June 1995 in the Zeleni Jadar area was the prelude of a major attack on the enclave.<sup>519</sup> The Prosecution's theory was confirmed by the testimony of its military expert, who testified that the control of the Zeleni Jadar road area was necessary to begin a proper military operation against Srebrenica in the future.<sup>520</sup> The Defence suggests that there is evidence that there could have been other reasons for this military action.

352. Notably, the 2 June 1995 VRS order to take over OP Echo explicitly refers to the "liberation" of Zeleni Jadar.<sup>521</sup> The takeover of OP Echo was necessary to take control of an access point into Bosnian Serbian territory through which the ABiH carried out sabotage actions and looting of Serbian property. Because the DutchBat did not stop such incursions even when asked to do so, the VRS had to intervene.

353. The area around OP Echo had a long history of incursions by the ABiH. In 1993 it was used by Muslim sabotage groups as a crossing point to carry out operations in Serb territory. For instance, in June 1993, Colonel Vukotić from the VRS had complained with the DutchBat that the Muslims had crossed into Serb territory through OP Echo and

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<sup>519</sup> Indictment, para. 53.

<sup>520</sup> Butler, T. p. 19766, ll. 7-25.

<sup>521</sup> P2894.

had blown up Serbian water pipes in a factory about 150 meters from the OP.<sup>522</sup> However, the situation around OP Echo did not change.

354. There is evidence that in 1995 OP Echo was again being used as a crossing point to loot a furniture factory which was situated on top of the border between Serb and Muslim territory. The Bosnian Serbs claimed that the factory was in their territory, whilst the Muslims claimed that it was in the free area.<sup>523</sup> There is evidence that, also on this occasion, the VRS had complained with the DutchBat about this problem and had asked that OP Echo be removed. A meeting was held on 31 May 1995 to discuss this problem.<sup>524</sup> However, the DutchBat did not remove OP Echo and did not take any effective measure to prevent further enemy infiltrations. Therefore, the VRS was, from a military point of view, fully justified to gain control of OP Echo primarily to guarantee the security of Bosnian Serb people and property and to avoid enemy incursions in their territory.

355. When the attack on Srebrenica began on 6 July 1995 VRS' artillery attacks were mainly carried out against the Bandera Triangle,<sup>525</sup> the DutchBat HQs and the Observation Posts ("OPs").<sup>526</sup> OPs Foxtrot and Echo came under particularly heavy fire.<sup>527</sup>

356. The evidence therefore shows that the bulk of the fire was concentrated on what were perceived by the VRS as military targets: the 28<sup>th</sup> Division and the Dutch Bat. The Defence as already illustrated that the VRS was aware of the presence and some of the locations of the ABiH in the enclave. As far as the DutchBat is concerned, it was no longer a neutral force, and could be legitimately attacked by the VRS. The DutchBat, in fact, had started losing its neutral status when it had decided to organize a coordinated defence of the enclave with the ABiH. Franken itself had discussed the issue with the

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<sup>522</sup> P3501, p. 1.

<sup>523</sup> T. p. 2645, ll. 16-23.

<sup>524</sup> Kingori, T. p. 19371, l. 5 - 19373, l. 9.

<sup>525</sup> Kingori, T. p. 19162, ll. 13-23.

<sup>526</sup> P. 490; Nicolai, T. p. 18578, l. 14 - 18579, l. 8.

<sup>527</sup> Franken, T. p. 2456, l. 8 - 2457, l. 20.

Chief of Staff of the ABiH's 28<sup>th</sup> Division.<sup>528</sup> The common defence included the enclave's perimeter, with the 28<sup>th</sup> Division controlling the spaces between the OPs manned by the DutchBat. The coordinated defence also implied that the DutchBat should have informed the 28<sup>th</sup> Division before withdrawing from a certain position.<sup>529</sup> In essence, the DutchBat were therefore an obstacle to the VRS' legitimate military operation having as aim the reduction of the size the enclaves and their separation.

357. After that the Bosnian Serb political leadership changed the initial objective of operation Krivaja 95 and decided to order the takeover of Srebrenica, the DutchBat increased the level of hostile activities against the VRS. Notably, on the evening of 10 July 1995 the DutchBat opened fire against the Bosnian Serbs,<sup>530</sup> thus compromising their neutrality even further.<sup>531</sup> The DutchBat was in fact at this point actively attempting to prevent the takeover of Srebrenica, also by using lethal force. To do so it had also set up blocking positions to slow down the advancing of the VRS.<sup>532</sup>

358. These blocking positions had also an offensive purpose. Artillery fire and air support have better chances to hit a still target than a moving one. Therefore, the Dutch Bat had created a so called "killing zone". This is an area, in the words of witness Franken, where "you try to amass the enemy and be sure that there are none of your troops."<sup>533</sup> The purpose of the blocking positions set up by the DutchBat was thus to temporarily stop the VRS in the south of the enclave so that NATO aircrafts could hit the advancing VRS troops, which would have otherwise been a very difficult task.<sup>534</sup>

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<sup>528</sup> Franken, T. p. 2450, l. 9 - 2452, l. 4.

<sup>529</sup> Franken, T. p. 2539, l. 5 - 2540, l. 19.

<sup>530</sup> Franken, T. p. 2479:19 - 2481:1.

<sup>531</sup> Franken, T. p. 2536, l. 19 - 2537, l. 14.

<sup>532</sup> Franken, T. p. 2544:8-21; *see also* IC 8, where the blocking positions are represented by the three markings north of OP Gamma.

<sup>533</sup> Franken, T. p. 2549:16 - 2550:1

<sup>534</sup> Franken, T. p. 2546:5 - 2547:3.

359. Notably, in the night of 10 July 1995 NATO had carried out what had been described by Karremans to the BiH authorities as "massive air strikes".<sup>535</sup> The VRS' attack aimed at disabling the blocking positions could not have been more justified in this case.

#### **XVIII. Disabling the capacity of the DutchBat**

360. There is evidence on the record that the VRS restricted the re-supplying of the DutchBat and made difficult the return of soldiers which had left Srebrenica for a period of leave. For every convoy coming into the enclave VRS authorization was required and ammunitions, radios and other military equipment were not allowed.<sup>536</sup>

361. However, the Defence submits that the restrictions were motivated by the DutchBat's lack of neutrality. This is perfectly understandable from a military point of view. Although General Smith denied that UNPROFOR was supplying the Muslims,<sup>537</sup> he testified that the VRS had information that UNPROFOR was supplying the Muslims in the enclave with fuel. Also considering the embargo to which the VRS was subjected, the VRS wanted to avoid that the supplying of the Muslims would advantage them in the war.<sup>538</sup>

362. There is also evidence that, after having attacked DutchBat's OPs, the VRS disarmed and took as prisoners the soldiers who were manning them.<sup>539</sup> This operation was legitimate. The DutchBat soldiers were in fact an armed and hostile force which had first openly supported the ABiH and then fired on the VRS.

363. DutchBat soldiers were also used by the VRS as leverage to demand the cessation of NATO air strikes. In fact, the VRS had apparently threatened to kill the DutchBat prisoners and to shell the DutchBat

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<sup>535</sup> Franken, T. 2540:16-18.

<sup>536</sup> Franken, T. p. 2443, l. 9, 2444, l. 1.

<sup>537</sup> Smith T. p. 17500, l. 6 - 17501, l. 22.

<sup>538</sup> Smith T. p. 17495, l. 16 - 17496, l. 15.

<sup>539</sup> Franken, T. p. 2478:13 - 2479:18.

compound.<sup>540</sup> It would appear that the threat concerning the prisoners was not taken seriously. In fact, the DutchBat soldiers were ultimately released unharmed.<sup>541</sup>

364. The attempt to prevent air strikes against the VRS forces was legitimate. The strategy of BiH Government was to confront the Bosnian Serbs with the UN and to provoke a NATO intervention, including air-strikes.<sup>542</sup> The Muslims also saw NATO as a potential support for their cause in a military sense<sup>543</sup>

#### **XIX. Defeating the Muslim forces militarily**

365. The Prosecution includes the military defeat of the Muslim forces amongst the actions that it alleges were carried out by the VRS in order to force the Muslims populations of Srebrenica and Žepa out of the area.<sup>544</sup> The Defence contends this interpretation: the military takeover of Srebrenica was a legitimate military operation which had been attempted and planned for two years before Krivaja 95. The goal of the operation was the separation of the enclaves, which represented both a threat to the surrounding Serbian population and a high burden for the VRS, which had to divert precious military resources to contain the Muslim military activities coming from the enclaves.

366. Firstly, the Defence recalls that the Prosecution itself has conceded that "there were a lot of good and legitimate reasons for the VRS to attack Srebrenica in July 1995."<sup>545</sup>

367. The liberation of Srebrenica and of the upper and middle Podrinje regions had been an objective of the Bosnian Serb government and army for more than two

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<sup>540</sup> Franken, T. p. 2485:7-20.

<sup>541</sup> Franken, T. p. 2485:21 - 2486:2.

<sup>542</sup> Fortin T.18273:17-22, T.18309-14

<sup>543</sup> Smith 17492:3-8

<sup>544</sup> Indictment, para. 72b.

<sup>545</sup> T.23167, ll. 3-8.

years.<sup>546</sup> The operation had not been planned to force the Muslim population to leave, but essentially to reduce the enclaves' size and to separate them.<sup>547</sup> Already in January 1993 the VRS had launched an operation in response to ABiH's attacks against Serbs around Srebrenica.<sup>548</sup> The VRS had to intervene<sup>549</sup> as a consequence of the losses inflicted by the 28<sup>th</sup> Division on the Bosnian Serb population.<sup>550</sup> Through this operation, the VRS managed to reduce the size of the Muslim controlled territory.<sup>551</sup> The reduction of the Muslim controlled territory had, *inter alia*, the effect of reducing the ABiH's military capability in the area: according to Rasim Delić, the reduction of the enclaves had made shipments of military supplies to the enclaves much more difficult to carry out.<sup>552</sup>

368. The separation of the enclaves and the reduction of their size were the key objective of the Bosnian Serbs also in July 1995.<sup>553</sup> The VRS at the time was engaged on multiple fronts and suffered from a shortage of men. The military activities carried out by the ABiH from the enclaves represented a problem because they engaged VRS forces which were needed elsewhere. According to General Smith, the VRS had the right to reduce the size of the enclave to stop hostile ABiH's activities against the VRS and the Serbs.<sup>554</sup>

369. The military operations carried out by the ABiH from 17 June 1995 were aimed at engaging the VRS forces by coordinating with the ABiH forces operating around Sarajevo.<sup>555</sup> To hold up the territory gained up to that point, the VRS therefore had to try to reduce the size of the eastern enclaves to free up forces to fight on other fronts.<sup>556</sup> Another reason to restrict the size of the enclaves was the east-west road between Srebrenica and Žepa, which represented a great concern for the Bosnian Serbs according

<sup>546</sup> Lazić, T. p. 21825, ll. 15-19.

<sup>547</sup> Lazić, T. p. 21825, l. 15, - 21826, l. 1.

<sup>548</sup> P3373; Lazić, T. p. 21839, ll. 16-25.

<sup>549</sup> Lazić, T. p. 21877, l. 21, 21878, l. 7.

<sup>550</sup> Lazić, T. p. 21844, ll. 11-20.

<sup>551</sup> Prosecution Adjudicated Facts Decision, Fact 21.

<sup>552</sup> 4D5, p. 3.

<sup>553</sup> P107, p. 3, para. 2.

<sup>554</sup> Smith, T. p. 17638:2- 17639:9.

<sup>555</sup> 1D946, para. 1.

<sup>556</sup> Smith, T. p.17471, l. 21- 17472, l. 11.

to General Mladić: this road was very important to the Bosnian Serbs, and although it run outside the boundaries of the enclave of Srebrenica, it could still be overlooked and attacked by elevated positions under Muslim control.<sup>557</sup> There are therefore a number of circumstances related to the safety of the VRS and of the Bosnian Serb population which justified the attack against the enclaves.

370. However, the *casus belli* which triggered the issuance of the Krivaja 95 order in 2 July 1995 is likely to have been the ABiH attack on the village of Visnjica on 26 June 1995.<sup>558</sup> According to witness Lazić, the connection between the attack against Srebrenica and the Muslim attack against Visnjica, explicitly mentioned in the order for active combat,<sup>559</sup> is certain.<sup>560</sup> On 2 July 1995 in fact the Command of the Drina Corps issued the order for active combat operations codenamed Krivaja 95, whose objectives were achieved by 9 July 1995.

371. On 9 July 1995, encouraged by the military successes gained by the VRS in carrying out operation Krivaja 95, President Karadžić ordered the takeover of the town. The new order was to take the town of Srebrenica, to disarm the Muslim gangs and to demilitarize the enclave.<sup>561</sup> The objective of the new operation is consistent with what had been the main concern of the Bosnian Serbs since 1992: the safety of Bosnian Serbs in the Podrinje region. The disarmament of the Muslim "gangs" and the demilitarization of the enclave were executed pursuant to the new order. Always pursuant to the same order, Muslim civilians should have been guaranteed safety in case of their cross-over to the territory of Republika Srpska; in addition, particular attention should have been paid in avoiding any damage to civilians and civilian property unless forced to do so because of strong enemy resistance.<sup>562</sup>

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<sup>557</sup> Smith, T. p. 17482, l. 18 - 17483, l. 15.

<sup>558</sup> 5D1100.

<sup>559</sup> P107.

<sup>560</sup> Lazić, T. p. 21889, ll. 14-16.

<sup>561</sup> P33.

<sup>562</sup> Vuga, T. p. 23206:24 - 23207:6.

**XX. The evacuation of the Muslim Civilians from Potočari**

372. The desire of the Muslim population of Srebrenica to move elsewhere is also consistent with a common pattern of conduct in the history of the former Yugoslavia. According to General Smith, in fact, shifts of power in specific regions would often impact on the ethnical composition in those regions. It was common for an ethnic group to leave a certain place when no longer in power.<sup>563</sup> However, the desire of the Muslim population was not in line with the political and military plans of the BiH authorities.

373. The BiH authorities, in fact, needed the population to remain in Srebrenica. The BiH authorities had already mobilized large segments of its population even before the proclamation of its independence and the beginning of the war. In fact, on 4 April 1992 the BiH Presidency had ordered the mobilization of the territorial defence units of all the municipalities in BiH and of the entire reserve force.<sup>564</sup> In the first month of the war the BiH authorities issued a decree imposing to the all the citizens between 15 and 60 (the age limit for women was 55 years) to train for in preparation of the defence of BiH.<sup>565</sup> There is also evidence that the BiH in 1993 did not want the inhabitants to leave the demilitarized zones and that in December 1994 the people of Srebrenica felt they were being held in the enclave against their will.<sup>566</sup>

374. The reasons of the BiH authorities' for denying freedom of movement to its population were at least twofold: first the presence of the civilian population was a prerequisite for the existence of the safe areas and for shipments of humanitarian aid that the ABiH appropriate in large quantities; second, a large scale ABiH military offensive, to be organised in coordination by the 28<sup>th</sup> Division and the ABiH forces from the frontline, was to be carried out from the enclaves. In preparing for this offensive, the ABiH units in the enclaves were being illegally supplied with weapons and had stored large quantity of ammunition and other necessary equipment. The ABiH planed linking up the free territories with a minimum corridor at the beginning for some sort of logistical support.

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<sup>563</sup> Smith, T. p. 17633:11-17634:9.

<sup>564</sup> 1D710 RBiH Presidency Decision of 4 April 1992.

<sup>565</sup> 1D731 BiH Decree Law on Defence 20 May 1992, Article 51.

<sup>566</sup> See *infra* paras. 428-423.

Ominously, the plan pointed out that the "Chetnik decision to attack your free territory before our joint active combat operations would complicate the situation entirely, especially for you, if they would go for a direct attack against you."<sup>567</sup> Notably, the ABiH was not only supplied with ammunition for light infantry weapons such as assault rifles, but also rocker propelled grenades projectile with high-explosive charge and anti-armour weapons.<sup>568</sup>

375. However, on 9 July 1995, with the VRS troops inexorably advancing towards Srebrenica, the BiH authorities in Srebrenica sought from the competent BiH organ to arrange a meeting with the Bosnian Serbs to explore the possibility of opening a corridor and move the population to the nearest free BiH held territory. This information can be found in a report from the session of the Srebrenica Municipality Presidency, held on 9 July 1995 at 19:00 hours.<sup>569</sup> This circumstance contradicts the Prosecution's theory of the case, according to which the plan to transport the Muslim civilians out of the enclave was developed by General Mladić after the second meeting at the Hotel Fontana, held around 23:00 hours on 11 July 1995.<sup>570</sup> An idea in that regard already existed, and it had been devised by the Muslim side.

376. On 11 July 1995, the day the VRS entered Srebrenica,<sup>571</sup> the DutchBat Commander Colonel Karremans sought a meeting with General Mladić.<sup>572</sup> The meeting took place around 20:00 hours and Colonel Karremans informed Mladić that he had had a talk with General Nicolai and the BiH national authorities about the request on behalf of the population to be allowed to leave the area. Karremans further added that the request of the BiH Command was to negotiate or ask for the withdrawal of the soldiers and of the refugees; in addition, if possible, the DutchBat was asked to assist that withdrawal.<sup>573</sup>

<sup>567</sup> 1D740, BiH Supreme Command Staff, Basic plan for the execution of the task, 9.11.1994

<sup>568</sup> 1D739 ABiH 2<sup>nd</sup> Corps Request for Supply 3.9.1994

<sup>569</sup> P9, Telegram of Municipality of Srebrenica Presidency 9 July 1995.

<sup>570</sup> Indictment, para. 58.

<sup>571</sup> Prosecution Bar Table Motion, Fact 107.

<sup>572</sup> P2048 p.19; Boering, T.2050:12-2051:8.

<sup>573</sup> P2048 p. 19, Boering, T.2053:1-22.

377. The VRS leadership was therefore informed that Muslim population wanted to be evacuated to ABiH controlled territory by the highest UN representative present in Srebrenica. At this point in time Colonel Karremans was the only source of information about the UN position concerning the refugees. According to the information available to General Mladić, therefore, the evacuation was not only a request of the Muslim population, but also the solution suggested by the UN. In fact, the UN Resolution expressing concern about forced relocation of civilians from Srebrenica was issued only after the transportation was already completed.<sup>574</sup> Precisely, the Resolution was adopted on 14 July 1995 and the transportation was completed on 13 July 1995.<sup>575</sup>

378. The request left General Mladić with the two options of either accepting it or denying it. Had Mladić denied the request, this would have implied denying the freedom movement of the refugees. Given the appalling conditions in which the refugees were living, both a delay and a refusal of their request was not an option available under international humanitarian law.

**XXI. ALLEGED ACTS AND CONDUCT COMMITTED BY  
POPOVIĆ IN THE FURTHERANCE OF THE FORCIBLE  
TRANSFER JCE: CONTROLLING THE MOVEMENTS OF THE  
MUSLIM POPULATION OUT OF THE ENCLAVES**

379. Paragraph 72 of the Indictment provides a non exhaustive list of the actions allegedly carried out singularly or jointly by the Co-accused in this case in furtherance of the charged JCE to forcibly transfer the Muslims from Srebrenica and Žepa. This list comprises: a) making life unbearable for the inhabitants of the enclave; b) defeating the Muslim forces militarily; c) disabling the UN forces militarily; d) preventing and controlling outside international protection of the enclaves, including air strikes and international monitoring; and e) controlling the movement of the Muslim population out of the enclaves.

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<sup>574</sup>Decision on Adjudicated Facts 26.9.2006, Fact 223.

<sup>575</sup>*Ibid.*, Fact 219.

380. Paragraphs 75 to 82 of the Indictment indicate which of the conducts listed in paragraph 72 under the letters a) to e) each Co-accused committed in the furtherance of the JCE. Whilst some of the Co-accused are indicated to have furthered the common plan through two or more of the conducts listed from letter a) to e), Popović's alleged contribution is limited to "Controlling the movement of the Muslim population out of the enclaves".<sup>576</sup> Popović is not accused of having contributed to this JCE in any other form.

381. In providing further details about Popović's alleged conduct, the Indictment states that he entered Srebrenica together with other VRS high ranking officers in the afternoon of 11 July 1995;<sup>577</sup> that with other Bosnian Serb military and civilian authorities he convened the third meeting at the Hotel Fontana on 12 July 1995;<sup>578</sup> that he was present in Potočari the afternoon of 12 July 1995 along with General Mladić and General Krstić when 50 to 60 buses and trucks arrived to transport Bosnian Muslims to the confrontation line;<sup>579</sup> and that on 13 July 1995 he was present along the Konjevic Polje - Bratunac - Milici road, supervising and coordinating the capture, surrender and detention of Muslim men in the area including the mass executions of men at the Jadar River, Cerska Valley, Nova Kasaba and Kravica Warehouse.<sup>580</sup>

382. The Defence does not contest that Popović entered the town of Srebrenica on 11 July 1995, after the defeat of the Muslim forces which were defending it. A triumphal march is a normal occurrence after the takeover of military objectives which cannot be given any other connotation than the celebration of a military victory. The circumstance that Popović entered the town of Srebrenica with other high VRS officers can in no way constitute an act in furtherance of the alleged criminal plan to remove the civilian population.

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<sup>576</sup>Indictment, para. 72e.

<sup>577</sup>Indictment, para. 55.

<sup>578</sup>*Ibid.*, para. 59.

<sup>579</sup>*Ibid.*, para. 61.

<sup>580</sup>*Ibid.*, para.63.

a. Participation to the third Hotel Fontana meeting

383. The Defence does not deny Popović's presence at the third Hotel Fontana meeting. However, contrary to the Prosecution's claim, the evidence does not show that Popović conveyed it. By reading the transcripts of the three Fontana meetings it is clear that General Mladić played an absolutely predominant role and that all the decisions were taken by him<sup>581</sup>. It is in fact Mladić who requested the Muslim representatives to come back to the Hotel Fontana on 12 July 1995 at 10am for a third meeting.<sup>582</sup> In addition, the request to let the Muslim population leave the area had already been conveyed by Karremans to Mladić during the first meeting on 11 July 1995.<sup>583</sup> The allegation that Popović was amongst the ones who conveyed the meeting is pure speculation.

384. Popović's participation in the third meeting cannot be said to have had a causal effect on the subsequent evacuation of the Muslims gathered in Potočari. There is no evidence that he gave any contribution to either the decision of evacuating the Muslims or on the modalities of the evacuation. On the contrary there is evidence that, because virtue of his qualification and professionalism as a security officer, because of the complex security situation and because of threats to Mladić's life, Mr. Popović had plenty of legitimate reasons to be at the Hotel Fontana.<sup>584</sup>

385. The Defence submits that the combination of these two factors, i.e. the absence of evidence of any contribution given by Popović to the meeting and the fact that Popović had legitimate reasons to be there, stands against the labeling of his participation in the meeting as an act in furtherance of the forcible transfer JCE.

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<sup>581</sup>P2048, pp, 14-53.

<sup>582</sup>*Ibid.*, para. 48.

<sup>583</sup>P2048, pp. 19-22.

<sup>584</sup>Vuga, 23208:22 - 23211:6.

b. Knowing that the forcible transfer of the population was unlawful

386. The Fontana meetings were organized pursuant to a request from the UNPROFOR; therefore, Popović had knowledge that the evacuation had been requested by the Muslim side. In addition, the UN had, at least on 12 July 1995, consented to the evacuation.<sup>585</sup> There were no reasons why Popović should have thought that the evacuation was being carried out illegally.

c. Presence in Potočari

387. The Defence does not deny that Popović was in Potočari on 12 July 1995. However, the Defence denies that he was there to supervise and oversee the transportation of the Muslims gathered in Potočari to areas outside the RS. There is no evidence that Popović played any role in the evacuation of the Muslims out of Potočari on 12 July 1995. On the contrary, there is evidence that, as the Chief of Security of the Drina Corps, Popović was heavily engaged in dealing with the many security threats presents in the area of Srebrenica during the operation Krivaja 95.<sup>586</sup> Notably, in performing these tasks, Popović could not count on a well organized and staffed security organ, but had to do the bulk of the work on his own as he was the only professional security of the Drina Corps.<sup>587</sup>

388. A priority task that Popović had at the time was to ensure the safety of General Mladić, who was also in Potočari. In fact, pursuant to intelligence available to Popović in April 1995, a plot had been developed to assassinate General Mladić and other top officers of the VRS. Because of this threat, Popović had ordered that all the necessary measures should be taken by the responsible security officers every time Mladić and the

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<sup>585</sup>Franken, T. 2556:20-2559:25.

<sup>586</sup>Vuga, 23208:22 - 23211:6.

<sup>587</sup>Vuga, T. 23207:7-18.

other threatened officers visited their zones of responsibility.<sup>588</sup> According to the Defence's military expert, this was the most complex operation for the security organs of the VRS.<sup>589</sup> In fact, that was an operative action, which is the most demanding type of engagement for the security organ in the VRS.<sup>590</sup> Although the threat to Mladić's life had been discovered on 20 April 1995, in July the danger still existed and the need to provide security was still a priority: in fact, according to the Defence's military expert, the lapse of time in this kind of operations does not matter unless they have been executed.<sup>591</sup>

389. The Defence submits that, in absence of direct evidence, a reasonable trier of fact could not conclude beyond reasonable doubt that Popović's role in Potočari was to supervise and assist the transportation of the Muslims outside the RS. Popović had in fact plenty of other legitimate reasons to work in Potočari on 12 July 1995. The presence of General Mladić there and the need to ensure his security were definitely the most complex task.

d. Popović's alleged presence along the Konjevic Polje - Bratunac -  
Milici road, supervising and coordinating the capture, surrender  
and detention of Muslim men

390. The Indictment alleges that on 13 July 1995 Popović was present along Konjevic Polje - Bratunac road "supervising and coordinating the capture, surrender and detention of Muslim men in the area including mass execution of men at sites Jadar River, Cerska Valley, Nova Kasaba and Kravica Warehouse<sup>592</sup>" The Indictment also alleges that, in furtherance of the forcible transfer JCE, Popović supervised, facilitated and oversaw the transportation of Muslim men from Bratunac to Orahovac, Petkovci, Ročević and Kula and Pilica Cultural Centre from 13 to 16 July 1995.

391. The Defence has already denied such factual allegations.

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<sup>588</sup>P03033; Vuga,

<sup>589</sup>Vuga, 23208:11-21.

<sup>590</sup>Vuga, T. 23210:3-6.

<sup>591</sup>Vuga, T. 23210:7-14.

<sup>592</sup>*Ibid* para 63

392. The column of Muslim soldiers trying to reach Muslim controlled territory was a military column,<sup>593</sup> and as such it represented a threat to both the VRS and the Bosnian Serb population. The Prosecution made a very clear concession concerning the status of the column and the threat that it represented.<sup>594</sup>

393. Already in the night between 11 and 12 July 1995, the VRS was aware that significant enemy forces, formed by parts of the ABiH's 28<sup>th</sup> Division, were in the area of Ravni, between Milici and Kravica, and they were attempting to break through the Srebrenica enclave and were moving north towards the depth of Bosnian Serb territory. This information reached General Zivanovic early in the morning on 12 July 1995.<sup>595</sup> There was great concern that the column would jeopardize the security in Zvornik<sup>596</sup> and the VRS was expecting to be attacked there.<sup>597</sup>

394. Firstly, in light of the examined ICTY jurisprudence, the detention and transportation of prisoners from the place where they were captured to detention centers, or from a detention centre to another, does not, itself, amount to forcible transfer.<sup>598</sup> Secondly, the captured prisoners, who were members of enemy armed forces with whom the VRS was at war, were not lawfully present in the territory of the RS: they were armed enemy combatants. Thirdly, Additional Protocol II to the Geneva Conventions explicitly provides that the transfer of population does not amount to a crime under international humanitarian law if carried out for imperative military reasons.<sup>599</sup> According to the ICRC commentary on Article 17(1) of Additional Protocol II, the imperative military reasons must be scrutinized carefully, as the adjective "imperative" reduces to a minimum the

<sup>593</sup> Prosecution Adjudicated Facts Decision, Fact 245.

<sup>594</sup> "I can tell you, yes, it was a military column. You don't see any war crimes being charged on the attack of this column. And the head of this column was a military column and it did a hell of an attack on 16 July and many Serb soldiers were killed. That's been part of the case from the beginning. It's in the indictment. It's in Mr. Butler's report.", T. 3382:6-11.

<sup>595</sup> PW-168, T. 15812:1-20.

<sup>596</sup> PW-168, T. 15812:21-15814:3.

<sup>597</sup> PW-168, T. 15818:16-15819:12.

<sup>598</sup> *Krajisnik* TJ para 723

<sup>599</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 17(1).

cases in which displacement may be ordered.<sup>600</sup> The column represented a threat which had been the subject of the VRS' assessment since the night between 11 and 12 July 1995. In the following days, VRS forces were engaged in fierce fighting with parts of the column. In light of these circumstances, the decision to take measures to stop the column was absolutely justified.

e. The allegation that Popovic a) as DK Assistant Commander of Security and b) by virtue of the authority vested in him by his commander was responsible for the handling of all of these Bosnian Muslim prisoners and to ensure their safety and welfare

395. There is no dispute that in July 1995 Popović was DK Assistant Commander for Security. His duties were regulated by the military rules concerning the general duties of army officers, as well as by the specific rules concerning operation of military security organs.<sup>601</sup> The task of the security organ was the detection and prevention of under cover enemy activities either directed against the army or coming from within the army.<sup>602</sup> The rules governing Popović's duties did not allow for security tasks to be delegated to other organs.<sup>603</sup>

396. The work of a security officer in the VRS involved mostly counter-intelligence activities.<sup>604</sup> When engaged in security tasks, security officers were the "protagonists" of such tasks. They had a rather high degree of autonomy, they were duty-bound to perform their work by virtue of their position and they did not need any specific order to be issued by their commander to carry out counter-intelligence tasks.<sup>605</sup> Security officers, however, could also be required to participate in other tasks which were not counter-intelligence.

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<sup>600</sup> ICRC commentary to Article 17 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 17(1).

<sup>601</sup> P407 Rules of Service of security organs in the AF of the SFRY; Vuga, T.23050:9-25.

<sup>602</sup> Vuga, T. 23052:19-23053:2.

<sup>603</sup> *Ibid* T. 23053:24-23054:17.

<sup>604</sup> *Ibid*. T. 23056:16-20.

<sup>605</sup> *Ibid* T. 23055:6-16.

Differently from the counter-intelligence work, this kind of tasks was performed pursuant to an order of the commander of the unit to which the security officer is attached.<sup>606</sup>

397. Neither the Rules of Service governing their job nor any other binding regulation applicable in July 1995 assigned to the security organs, including the Assistant for Security of the Corps Commander, the duty to deal with prisoners of war. According to the Defence's military expert Vuga, who took part in the drafting of the relevant rules, the security organ was "simply not involved in this task."<sup>607</sup> The rationale behind it is twofold: first, prisoners of war are disarmed individuals who are not actors in any security-related threat that may be of interest for the security organs; second, providing security for prisoners of war relates to a more "physical" kind of security, such as their transportation to detention centers, which does not require a degree of professionalism which would require the engagement of the most professional part of the security system, i.e. the security organ.<sup>608</sup> It follows that, contrary to what stated in the Indictment,<sup>609</sup> Popović was not "by virtue of his position" responsible for the handling of all of the Bosnian Muslim prisoners and to ensure their safety and welfare.

398. It is indeed true that security officers were subordinated to their commander, who could of course issue orders to them. The Krivaja 95 order gave the security organs and the military police the task to "indicate the areas for gathering and securing prisoners of war and war booty."<sup>610</sup> The nature of Operation "Krivaja 95" on the separation of the enclaves was such that the military maneuvers were to be carried out along one axis in a very narrow area without any ambition to encircle and take prisoners. It was expected that just sporadic individual prisoners would be taken.<sup>611</sup> However the order was changed, and pursuant to the new order, the responsibility for the prisoners of war no longer rested on the security organs.

399. In fact, after its issuance the Krivaja 95 orders was sent to the Bratunac Brigade, which had to prepare for the operation, on 5 July 1995.<sup>612</sup> It was the place where

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<sup>606</sup> *Ibid.* T. 23056:21-23058:3

<sup>607</sup> Vuga, T. 23081:13-23082:12.

<sup>608</sup> *Ibid.*

<sup>609</sup> Indictment, para. 79(4).

<sup>610</sup> *Ibid.* p.7

<sup>611</sup> Lazić, T.21734:6-13; Vuga, T.23195:22-23196:16

<sup>612</sup> Vuga, T.23428:3-23429:3

copy n. 2 of the "Krivaja 95" order was amended in its section concerning the security aspects of the operation.<sup>613</sup> Specifically, the part of the original text which read "[s]ecurity organs and military police will indicate the sectors for gathering and securing prisoners of war and war booty" was crossed out with a felt-tip pen and substituted with handwritten text stating that "[t]he sector for collecting war prisoners and war booty is the Pribicevac sector." Also the provision according to which "[t]he security organs shall regulate the security system in the zone of combat operations and instruct subordinate commands in its application" was erased. It is the Defence's position that the handwritten text was put in the order instead of the crossed-out one and that it was done by Momir Nikolić.<sup>614</sup> The Defence submits that if the handwriting on copy 2 of the Krivaja 95 order is confronted with other signatures of Momir Nikolić, the similarities appear striking even to the eye of the non expert.<sup>615</sup>

400. What remains unclear is whether Momir Nikolić changed the content of the order out of his own initiative, or upon the request of his Commander. In any event, the performed amendment of the Krivaja 95 order proves that the Bratunac Brigade Command took upon itself the task of deciding where to gather prisoners of war captured during the operation. The Defence points out how the handwritten amendment to the order is in line with the regulations in force at the time in the Army of Republika Srpska, which in no way assigned to the security organ the task of dealing with war prisoners.<sup>616</sup>

401. There is no evidence that the separation of the enclaves or taking of Srebrenica resulted in capturing of any prisoner. Both the separation of the enclaves and the taking of Srebrenica were accomplished due to the withdrawal of Muslim forces which disappeared from the enclave on 11 July 1995.<sup>617</sup> For this reason, the task concerning

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<sup>613</sup>*Ibid* 23429:4-14; 1D382 Copy 2 of DK Order for Active Combat Activities 2.7.1995 p.5;

<sup>614</sup>Trisic 20.10.2008 T. 27054:13-19 4D 378 same as 1D 382 DK.

<sup>615</sup>See for instance P260.

<sup>616</sup>Vuga T.23429:15- 23430:25.

<sup>617</sup>Prosecution Adjudicated Facts Decision, Facts 245-247.

prisoners of war, originally improperly assigned to the security organ,<sup>618</sup> was not implemented in this operation.

## F. CRIMES AGAINST HUMANITY

### XXII. Chapeau Elements of Crimes against Humanity Punishable under Article 5 of the Statute

402. The Appeals Chamber has identified the following five general requirements for crimes against humanity:

- a. There must be an attack;
- b. The attack must be directed against any civilian population;
- c. The attack must be widespread or systematic;
- d. The acts of the perpetrator must be part of the attack;
- e. The perpetrator must know that there is an attack on the civilian population and know, or take the risk, that his acts comprise part of this attack.<sup>619</sup>

403. There is also another jurisdictional limitation which is specific to the ICTY: the crime or crimes must have been committed in armed conflict.<sup>620</sup>

404. Mr. Popović is accused of four counts of crimes against humanity under Article 5 of the Statute: Murder (Count 4); Persecutions (Count 6); Forcible Transfer (Count 7); and Deportation (Count 9).

405. The Defence's main objection concerning the charges for crimes against humanity is the lack of one of the necessary *chapeau* elements: the attack was not directed against the civilian population but against the 28<sup>th</sup> Division of the ABiH. For the crimes of murder and persecutions charged against Popović the Defence will limit its discussion to the lack of such element. However, the Defence will also address in further detail the charges of forcible transfer and deportation.

<sup>618</sup> Vuga T.23430:18-25

<sup>619</sup> See *Kunarac et al.* Appeal Judgement, paras. 85, 102.

<sup>620</sup> See *Kunarac et al.* Appeal Judgement, para. 83; see also *Tadić* Appeal Judgement, paras. 239, 241, 251.

f. The Prosecution has not proved that the attack was be directed against any civilian population

406. The Defence does not contest that an attack was being carried out by the VRS against the enclaves of Srebrenica and Žepa. However, the Defence firmly contests that the attack was directed against the civilian population. In the context of a crime against humanity, the expression "directed against" requires the Prosecution to prove that the civilian population is the primary object of the attack.<sup>621</sup> To determine this, a Trial Chamber will consider the circumstances of the attack.

407. The Defence submits that, although there is evidence that occasional shells wounded or killed a low number of civilians, there are a number of circumstances which show that the attack was primarily directed against military targets: the fact that Srebrenica had not been demilitarized; the widespread sabotage actions and looting carried out against Serbian villages around the enclave; the active presence of the 28<sup>th</sup> Division in various parts of the enclave including Potočari and Srebrenica town; the small size of the enclave; the nature of Operation Krivaja 95; and the low number of victims amongst the population.

408. The Defence submits that, in presence of all these factors, a reasonable trier of fact could not conclude beyond reasonable doubt that the VRS attack was mainly directed against the civilian population.

**XXIII. Forcible Transfer as a Crime against Humanity under Article 5(h) and 5(i)**  
**(Count 7)**

409. The Indictment charges Popović with the crime of forcible transfer as a crime against humanity both as a form of persecution under Article 5(h) of the Statute and as "other inhumane acts" under Article 5(i) of the Statute. For both these offences, the *actus reus* is constituted by (a) the displacement

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<sup>621</sup> See *Milutinović* Trial Judgement, para. 149.

of persons by expulsion or other coercive acts, (b) from an area in which they are lawfully present, (c) without grounds permitted under international law. The required *mens rea* is the intent to displace, permanently or otherwise, the victims within the relevant national border.<sup>622</sup>

410. Under Article 5(h) the Prosecution has the additional burden to prove that the accused had the required special discriminatory intent based on racial, religious and political grounds.<sup>623</sup> *Dolus specialis* is therefore required.<sup>624</sup>

411. Under Article 5(i), the Prosecution need not prove discriminatory intent;<sup>625</sup> instead, it needs to prove four specific requirements:

- a. the conduct must cause serious mental or physical suffering to the victim or constitute a serious attack upon human dignity;<sup>626</sup>
- b. the conduct must be of equal gravity to the conduct enumerated in Article 5;<sup>627</sup>
- c. the physical perpetrator must have performed the act or omission deliberately;<sup>628</sup>
- d. with the intent to inflict serious physical or mental harm upon the victim or commit serious attack upon human dignity<sup>629</sup> or with knowledge that his act or omission would probably cause serious

<sup>622</sup> See *Milutinović* Trial Judgment, para 164.

<sup>623</sup> See *Tadić* AJ, para. 283.

<sup>624</sup> *Stakić* TJ, paras. 737-738.

<sup>625</sup> See *Kordić and Čerkez* TJ, para. 186.

<sup>626</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Appeals Judgment, December 17, 2004,

para. 117, *Krnojelac* TJ para. 130. *Prosecutor v. Dusko Tadić (a.k.a. "Dule")*, Case No. IT-94-1-T, Trial Judgment, Judgment, May 7, 1997, para. 729.

<sup>627</sup> *Kordić and Čerkez* AJ para 671, *Blagojević* TJ para. 580, *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T Trial Judgment, December 5, 2003, para. 152, *Simić et al.* TJ para. 74, *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T Trial Judgment, November 29, 2002, para. 234, *Krnojelac* TJ para. 130, *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2 Trial Judgment, February 26, 2001, para. 269, *Tadić* TJ para. 729, *Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-98-44A-T, Judgment and Sentence, December 1, 2003, para. 932, *Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T Trial Judgment, May 21, 1999, para. 154.

<sup>628</sup> *Blagojević* TJ para. 626, *Simić et al.* TJ para. 74, *Vasiljević* TJ para. 234, *Krnojelac* TJ para. 130.

<sup>629</sup> *Kordić and Čerkez* AJ para. 117, *Blagojević* TJ para. 628, *Simić et al.* TJ para. 76, *Vasiljević* TJ para. 236, *Krnojelac* TJ para. 132, *Blaskić* TJ para. 243, *Kayishema* TJ, para. 154.

physical or mental harm to the victim or constitute a serious attack upon human dignity.<sup>630</sup>

412. ICTY jurisprudence established that the underlying offence of forcible transfer amounts to the statutory crime of "other inhumane acts".<sup>631</sup>

413. Therefore, for Popović to be convicted for forcible transfer the Prosecution must prove:

- a. the general requirement of CAH;
- b. the *actus reus* and *mens rea* of forcible displacement;

and, for Article 5(h) the required *dolus specialis*; while for Article 5(i) the four specific requirements for "other inhumane acts".<sup>632</sup>

414. The Defence has already explained that, in light of the evidence in this case, the VRS attack against the enclaves was a legitimate military operation which was not directed against the civilian population. In light of the absence of one of the requirements for a conviction for under Article 5 of the Statute, the Trial Chamber should proceed no further in examining Popović's responsibility for this offence.

415. However, it is the Defence's position that the crime of forcible transfer was not committed against the Muslim population of Srebrenica because there is strong evidence that the population had wanted to leave the enclave since 1993. The Defence contends that this circumstance should be taken into account in assessing whether the choice of the civilian population to be transported to Muslim territory was a genuine one, or was instead the consequence of the VRS' policies alleged in the Indictment.

416. The conditions in the Srebrenica enclave had been appalling since the beginning of 1993. In 1991 the population in the municipality of Srebrenica

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<sup>630</sup> *Blagojević* TJ paras. 627-8, *Simić et al.* TJ para. 75-6, *Galić* TJ para. 154, *Vasiljević* TJ paras. 235-6, *Krnjelac* TJ paras. 131-2.

<sup>631</sup> *Stakić* AJ para. 317, *Blagojević* TJ para. 629, Kupreškić et al TJ para. 566

<sup>632</sup> *Milutinović et al.* TJ paras. 171-2.

was 37.000.<sup>633</sup> However, around January 1993 a new group of Muslims poured into the enclave and the population swelled between 50.000 and 60.000, in an area of about 150 square kilometers.<sup>634</sup> The living conditions in 1993 were disastrous both in humanitarian sense as well as in security sense.<sup>635</sup> Overpopulation was also one of the main issues.<sup>636</sup> Due to the disastrous situation, in March and April 1993, thousands of Muslims were evacuated by the UNHCR.<sup>637</sup>

417. The evacuations were however opposed by the BiH authorities.<sup>638</sup> From documents in evidence it emerges that the BiH authorities in 1993 and 1994 did not want the Muslim civilians to leave the enclave.<sup>639</sup> Asked about the reasons for this, General Smith was not able to give a satisfying answer because he was not in the area at the time.<sup>640</sup> In the Defence's view, the circumstances suggest that this behaviour may have been far less than noble. In May 1993 the special rapporteur of the Commission on Human Rights, Mr. Mazowiecki, had heavily criticized the BiH authorities for their refusal to evacuate the civilians from Srebrenica and considered this behaviour to be in violation of the Geneva Conventions. According to the report, the Bosnian Muslims were preventing the evacuation of the civilians to use them as some sort of human shields.<sup>641</sup> The presence of the population in the enclave would thus have reduced the military options of the opposing side, which would have been forced to adopt measures to avoid as far as possible to hit the civilians during the attack.<sup>642</sup>

418. The Muslim population of Srebrenica in 1995 had the same desire to leave the enclave that it had in 1993 and 1994. On 11 July 1995 Akashi sent a cable to Kofi Annan informing him on the situation in Srebrenica. Akashi reported

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<sup>633</sup> Prosecution Adjudicated Facts Decision, Fact 21.

<sup>634</sup> *Ibid.*, Facts 21 and 22.

<sup>635</sup> PW-106, T. p. 3930:19-22.

<sup>636</sup> 5D509, p. 4.

<sup>637</sup> Prosecution Adjudicated Facts Decision, Fact 26.

<sup>638</sup> Prosecution Adjudicated Facts Decision, Fact 26.

<sup>639</sup> 5D509 and 5D496.

<sup>640</sup> Smith, 17640:7-24.

<sup>641</sup> 1D1302, p. 18, para. 88.

<sup>642</sup> Vuga, T. p. 23492:18 - 23493:4.

that, according to the UNHCR, 80-90% of the Srebrenica population were displaced persons who had fled their homes at earlier stages of the war, who had no ties with the town of Srebrenica and who were probably interested in leaving to Tuzla. In addition, Akashi reported that according to a local UNHCR staff member in Srebrenica, virtually everyone in the enclave wished to leave.<sup>643</sup> Given the peculiar work of the UNHCR, an organization which operates in the field in close contacts with the people it assists, the Defence submits that this information should be given substantial weight.

419. This information is also perfectly consistent with what had been conveyed in December 1994 to the 2<sup>nd</sup> Corps Commandant General Sead Delić by the UN civilian representative Ken Biser UNPROFOR's Chief for Civilian Affairs for the Sector N/E,<sup>644</sup> *i.e.* that the refugees in Srebrenica felt that they were being held there against their will.<sup>645</sup> Notably, in December 1994 the activities charged in the Indictment as having been carried out to force the Muslims out of the enclaves had not begun yet; however, the inhabitants of Srebrenica were already adamant to leave the enclave.

420. Akashi's cable also stated that, following a consultation with the BiH Government, and in order to avoid a continued humanitarian catastrophe, an agreement was to be elicited from the Bosnian Serbs to allow all residents of Srebrenica, including all men, to leave for Tuzla if they so wished. The DutchBat would be instructed to remain in the Srebrenica enclave at least until the necessary arrangements had been negotiated and finalized.<sup>646</sup>

421. In addition, the evacuation of civilian population gathered in and around UN compound in Potocari<sup>647</sup> was not initiated by the VRS, but it was undertaken upon the initiative of the DutchBat at the first Hotel Fontana meeting on 11 July 1995 at 20:00

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<sup>643</sup> 5D40; Smith, T. p. 17676:1-11.

<sup>644</sup> 1D495 Command of 2<sup>nd</sup> Corps Meeting with Ken Biser Interim Report 9 December 1994

<sup>645</sup> *See supra* para. 111.

<sup>646</sup> *Ibid.*

<sup>647</sup> Indictment, para. 56.

hours. There is no evidence on the record that any measure related to evacuation of the Muslim population had been taken before this meeting. It is in fact only after the first two meetings at the Hotel Fontana that the RS authorities started the mobilization of buses and trucks to transport Muslim civilian population from Potocari.<sup>648</sup>

422. The Defence is aware that forcible transfer under international humanitarian law is not restricted to cases when physical force was used. In the *Krstić* Judgement the Trial Chamber found in fact that the threats to the Srebrenica residents had caused them to want to leave.<sup>649</sup> However, the Defence submits that the Trial Chamber must take into account the ample evidence showing that the civilian population in Srebrenica had since long before March 1995 wanted to leave the enclave, but were prevented to do so by the ABiH. Under these circumstances, even assuming that the Trial Chamber will agree with the Prosecution that the acts of the VRS were aimed at forcing the population out, and they were not, it cannot be established beyond reasonable doubt that these acts were in fact the reason for the Muslims civilians to leave. Doing so would mean ignoring the fact, which has been proved in this trial, that such desire already existed in the Muslim population.

423. In fact, in presence of such evidence, the link between the VRS actions from March 1995 until July 1995 with the decision of the Muslims to abandon the enclave cannot be established.

#### **XXIV. Popović's Criminal Responsibility for the Crime of Forcible Transfer**

424. The Prosecution has failed to prove beyond reasonable doubt that Popović committed, ordered, planned, instigated or otherwise aided and abetted the evacuation of the Muslims from Srebrenica, characterized as forcible transfer by the Prosecution.

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<sup>648</sup> Prosecution Adjudicated Facts Decision 26.9.2006, Facts 204, 205, 206.

<sup>649</sup> *Krstić* TJ, paras. 528-530.

425. As far as the planning and ordering are concerned, there is no evidence that Popović played any role in the organization of the buses in Potočari. Likewise, there is no evidence that he issued any kind of order in that respect. Even from the evidence given by Momir Nikolić about the discussion that he allegedly had with Popović outside the Hotel Fontana, it emerges that Popović did not issue any order concerning the evacuation of the Muslims from Potočari. Firstly, Popović was not in a position to issue orders to Momir Nikolić.<sup>650</sup> In addition, in the conversation which Momir Nikolić alleged to have had with Popović on 12 July 1995 before the third Hotel Fontana meeting started, according to Nikolić, Popović had not given him any order, but it simply an account of what he had learnt would happen to the Muslims in Potočari.<sup>651</sup> The Defence has already explained that it believes that Momir Nikolić lied about the content of the conversation he had with Popović. However, in the event that the Trial Chamber finds Momir Nikolić's testimony to be credible in that regard, the Defence points out that even according to this witness he was not ordered to go to Potočari by Popović.

426. As far as instigating and aiding and abetting are concerned, Popović's mere presence in Potočari cannot be considered to amount to a substantive contribution to the crime. According to ICTY jurisprudence, in fact, mere presence on the scene of a crime will not usually constitute aiding and abetting, although the presence of a superior officer may encourage the perpetrator.<sup>652</sup> However, in Potočari on 12 July 1995 there were several high ranking officers of both the VRS and the MUP. Mladić's presence outshone Popović's presence in Potočari, and it can hardly be said that Popović's presence represented an encouragement to the VRS troops in Potočari. In essence, the Defence submits that there is no nexus between Popović's presence in Potočari and the forcible transfer of the population or the other crimes allegedly committed by VRS and MUP troops in Potočari.

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<sup>650</sup> Momir Nikolić, T. 33036:23-33037:16.

<sup>651</sup> Momir Nikolić, T. 3350:18-24.

<sup>652</sup> Boskoski TJ, para. 402.

427. As far as Popović's responsibility through his participation in a JCE is concerned, the Defence first contests the existence of a common plan to forcibly transfer the population out of Potočari. In support of this submission, the Defence refers to the analysis performed in this brief of the circumstances and the military reasons which led to the attack on Srebrenica. In addition, the Defence contests that the conduct of Popović as charged in paragraph 79 of indictment amounted to a significant contribution to the alleged crimes. The lack of significant contribution, intended as the lack of a causal nexus between the actions that Popović allegedly committed and the commission of the crime of forcible transfer, stand against Popović's commission under this form of responsibility.

#### **G. DEPORTATION (COUNT 9)**

428. As far as Count 9 is concerned, the Prosecution attempts to involve Mr. Popović in the alleged Žepa deportation by an unlikely conflation of the Srebrenica and Žepa operations. The two operations were conducted separately, and most importantly the "plurality of persons" allegedly part of the Srebrenica operation does not seem to tally with the alleged perpetrators of the Žepa one. All the Co-accused in this case are alleged to have been part of and furthered the JCE to remove the Muslim people from the two enclaves. However, when it comes to the description of their alleged roles for Zepa, the Indictment is alarmingly silent.

429. As far as Mr. Popović's position is concerned, no discernible conduct is pleaded in the Indictment that could amount to the commission of the crime of deportation. As far as his participation as a co-perpetrator in a JCE is concerned, the Indictment alleges Mr. Popović's participation in the Hotel Fontana meetings. According to paragraph 58 of the Indictment, between the second and the third meeting "the plan to transport the Srebrenica Muslims from Potočari was developed by General Mladić and others." Therefore the Indictment does not allege that the Žepa operation was developed at the same time as the Srebrenica one. The Defence submits that the Žepa operation was

effectively a distinct one from the Srebrenica one, and that because of these differences it should have been pleaded as a separate JCE in the Indictment; in any event, the Trial Chamber should consider it as a separate JCE and require that all the material and mental elements necessary for conviction under the JCE theory be proved by the Prosecution in respect to the Srebrenica operation.<sup>653</sup>

430. In addition, even assuming that the Trial Chamber will accept that a JCE to remove the population from Srebrenica and Žepa existed and it was indeed one single JCE, the Indictment does not specify in any way how Mr. Popović contributed to the alleged deportation of the Bosnian Muslims from Žepa. Aside from not charging Mr. Popović with any specific conduct in relation to the Žepa operation, the Prosecution has neither brought any evidence that Mr. Popović gave any significant contribution to it, nor that he shared the required intent for the operation. According to the Appeals Chamber, not any kind of contribution to a JCE gives rise to criminal liability: the contribution needs to be "significant".<sup>654</sup> It is a basic principle of criminal law that, to be punished for a crime, an accused must have somehow caused or contributed to causing the commission of a crime. The accused's acts or omissions must therefore form a link in the chain of causation and the significance of his contribution will be taken into account for determining whether such a link existed.<sup>655</sup> The Defence therefore submits that Mr. Popović should be acquitted of the charge under Count 9 of the Indictment.

## H. GENOCIDE

431. The Defence clearly expressed its position arguing that a serious crime was committed after fall of Srebrenica in July 1995 by the execution of a large but still unknown number of Muslim prisoners.<sup>656</sup>

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<sup>653</sup> *Blagojević TJ*, para. 700.

<sup>654</sup> *See Brđanin Appeal Judgement*, para. 430.

<sup>655</sup> *Milutinović TJ*, para. 105. citing *Blagojević TJ*, para. 702., citing *Brđanin TJ*, para. 263.

<sup>656</sup> Defence Opening Statement T.21557:3-7, 2.6.2008

432. The Defence has not changed its position as regards the legal characterization of such an act and the number killed<sup>657</sup> as well as that the executed Muslim men were mobilized members of ABiH<sup>658</sup> with the legal status of prisoners of war or volunteers who joined the military.

433. In short, the Defence considers this crime as so grave that all distortion of facts including inflating the number of persons executed or their legal mischaracterization is quite unnecessary.

434. The Defence is aware of the jurisprudence grounded on the factual findings in the previous Srebrenica related cases<sup>659</sup> but also of the TC decision<sup>660</sup> enabling the adjudication on the Genocide Charge on the ground of evidence in this case. As a large body of evidence in this case had not been the subject of the assessment of previous judgments this jurisprudence might have limited effects in this case.

435. The Indictment states that the plan to murder hundreds of able-bodied men identified in the crowd of Muslims in Potocari developed in the evening hours of 11 July and on the morning of 12 July 1995. The Prosecution did not explicitly indicate the evidence for this assertion. There is no evidence that VRS identified anyone from the crowd in Potocari by the evening hours of 11 July or morning of 12 July 1995.

436. During the conversation with Colonel Karemans, General Mladic, accepted his request for the evacuation of the population and indicated that able-bodied men have to be screened in the search for war criminals, such a procedure is quite legal even as to military combatants.<sup>661</sup>

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<sup>657</sup> *Ibid* 8-12

<sup>658</sup> *Ibid* T. 21859:8-12

<sup>659</sup> Krstic TJ IT-98-33-T 2 August 2001, Krstic AJ IT-98-33-T 19 April 2004; Blagojevic IT-02-60-T , 17 January 2005; Blagojevic IT-02-60-A , 9 May 2007

<sup>660</sup> Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge pursuant to Rule 94(A), 26 September 2006

<sup>661</sup> Rutten 30.11.2006 T.4853:3-8

437. The testimony of Momir Nikolic about the intent to kill separated Muslim men is less than credible. He testified that he was told about it in his conversation with Popovic and Kosoric on 12 July 1995, before the meeting at Hotel "Fontana".<sup>662</sup>

438. In his testimony the witness declared that in respect of his Statement of Fact<sup>663</sup> and the Supplement provided before his testimony,<sup>664</sup> he would give the same responses to any questions as provided in these two documents.<sup>665</sup>

439. The relevant part of the Statement of Fact for the assessment of VRS intents as regard Muslim refugees in Potocari reads: "In the morning of 12 July, prior to the above-mentioned meeting, I met with Lt. Colonel Vujadin Popovic, Chief of Security, Drina Corps, and Lt. Colonel Kosoric, Chief of Intelligence, Drina Corps, outside the Hotel Fontana. At that time Lt. Colonel Popovic told me that the thousands of Muslim women and children in Potocari would be transported out of Potocari toward Muslim-held territory near Kladanj and that the able-bodied Muslim men within the crowd of Muslim civilians would be separated from the crowd, detained temporarily in Bratunac, and killed shortly thereafter. I was told that it was my responsibility to help coordinate and organize this operation. Lt. Colonel Kosoric reiterated this information and we discussed the appropriate locations to detain the Muslim men prior to their execution. I identified several specific areas: the Old Elementary School "Vuk Karadzic" (including the gym), the old building of the secondary School "Djuro Pucar Stari", and the Hangar (which is 50 meters away from the old secondary School). Lt. Colonel Popovic and Kosoric talked with me about sites of executions for temporarily detained Muslim men in Bratunac and we discussed two locations which were outside Bratunac town, namely; State Company "Ciglane" and a mine called "Sase" in Sase."<sup>666</sup>

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<sup>662</sup> Momir Nikolic 21-24 April 2009

<sup>663</sup> C1 Statement of Facts 6 May 2003

<sup>664</sup> C2 Supplementary Statement of Momir Nikolic 16 April 2009

<sup>665</sup> Momir Nikolic 21 April 2009 T.32896:18-23; T.32904:7-14

<sup>666</sup> C1 para 4

440. In his supplemental statement he just objected to the formulation of lines 11-12 of quoted paragraph as regard his acts in Potocari stating that they were mischaracterized as the coordination.<sup>667</sup>

441. He added that he "heard at the previous two meetings what the plans were and general mood was." He further answered that Popovic told him that "probably" civilians would be transported to Kladanj, and that "so-called screening would be carried out in order to separate able-bodied men, to identify those who had committed or who are suspected of committing war crimes, et cetera."<sup>668</sup> He also added that "something happened that was absolutely never planned" or did he grasp from his conversation with Popovic that something could happen. Except in the first convoy not only able-bodied men were separated but all men who were in Potocari<sup>669</sup> He continued that therefore he asked Popovic what was going on to happen to these men because he couldn't understand why these men were being set aside and Popovic told him in his "usual way of putting things: All balijs have to be killed."<sup>670</sup> He further said that he indicated some facilities in Bratunac where the separated men would be detained.<sup>671</sup> He also said that he had a similar conversation with Kosoric after the meeting.<sup>672</sup>

442. In his testimony the witness said that Popovic told him that "so-called screening would be carried out in order to separate able-bodied men, to identify those who had committed or who are suspected of committing war crimes, et cetera." In his Statement of Fact he did not say that Popovic spoke about the screening and identification of those who had committed or were suspected of committing war crimes. However, screening and identifying those suspected of committing war crimes is pointless if all able-bodied men were to be killed anyways. Furthermore, it is unknown whether this meant that suspected war criminals would have their lives saved and that only those who were not

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<sup>667</sup> C2 p.2

<sup>668</sup> Momir Nikolic 21.4.2009, T.32917:15-32918:5

<sup>669</sup> *Ibid* T. 32918:6-9

<sup>670</sup> *Ibid* T.32918:12-16

<sup>671</sup> *Ibid* T.32918:18-32919:1

<sup>672</sup> *Ibid* T.32919:2-7

suspected of war crimes would be killed? Or that suspected war criminals would be killed twice.

443. In further explanation he added that "something happened that was absolutely never planned" or did he grasp from his conversation with Popovic that something could happen. Except in the first convoy not only able-bodied men were separated but all men who were in Potocari"<sup>673</sup> He continued that therefore he asked Popovic what was going on to happen to these men because he couldn't understand why these men were being set aside and Popovic told him in his "usual way of putting things: All balija have to be killed."<sup>674</sup>

444. He confirmed that the conversation with Popovic took place before any convoy left Potocari.<sup>675</sup> But from his statement it follows that he asked Popovic why all men were separated but not able-bodied men only. However, at the time of his ostensible conversation with Popovic, neither transportation nor separation had started and he could not have known that all men would be separated. As quoted above he even said that such process started after the first convoy left Potocari.

445. This statement is in clear contradiction with one of his rarely truthful statement that he met Popovic only on 12 July 1995 before the third meeting in front of the Hotel "Fontana" and that after this meeting he never talked with Popovic on this or the following days.<sup>676</sup> Because of this, it was not possible that this was the subject of conversation between Momir Nikolic and Popovic on 12 July 1995 before the third meeting in front of Hotel Fontana. This also further means that he could not have put to Popovic such a question when they met in front of Hotel "Fontana" before the third meeting and got Popovic's answer that all balijas should be killed.

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<sup>673</sup> *Ibid* T. 32918:6-9 *Ibid*

<sup>674</sup> T.32918:12-16

<sup>675</sup> *Ibid* T. 32921:3-9

<sup>676</sup> Momir Nikolic 22.4.2009 T.33029:12-20

446. When called to clarify contradictions between his testimony and the Statement of Fact on the quoted topic the witness said that he testified the same as it was written in his Statement of Fact.<sup>677</sup> He repeated that he suggested facilities for detention.<sup>678</sup>

447. When asked about "Ciglane" and Sase mine as the execution site he answered that he discussed it with two of them but that it was he who mentioned these facilities as potential places for the execution of detained men.<sup>679</sup> In *Trbic* he testified that Popovic and Kosoric, not he, discussed where to hold men and execute them.<sup>680</sup>

448. Contrary to his Statement of Fact and his testimony in *Blagojevic & Jokic* where he said that such conversation took place in the presence of Popovic, Kosoric and himself<sup>681</sup> he testified in this case that he had separate conversations with Popovic and Kosoric on the same subject.<sup>682</sup> Similarly in *Trbic* he testified that Popovic said that Muslims were to be killed and expressed his bias toward able-bodied Muslims in Srebrenica,<sup>683</sup> but that Kosoric came later and was not with Popovic.<sup>684</sup> In that case he also testified that he did not discuss with Kosoric problems regarding Muslim men.<sup>685</sup> These rather contradictory statements make the witness less than credible on this subject reinforcing the Defence arguments that such a subject was never discussed between Momir Nikolic and Popovic and either in the presence of Kosoric or not.

449. He testified in *Trbic* that statements of Popovic and Kosoric about killings were not instructions of any sort but just their commentaries and expression of their frustration and dissatisfaction. He denied that these were instruction or orders. He did not agree with

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<sup>677</sup> *Ibid* 21.4.2009, T.32920:17-32921:2

<sup>678</sup> *Ibid* T.32922:1-10

<sup>679</sup> *Ibid* T.32922:11-19

<sup>680</sup> *Ibid* 22.4.2009 T.:33044:14-20

<sup>681</sup> Momir Nikolic 22 April 2009 T.33040:9-33041:6

<sup>682</sup> *Ibid* 21.4.2009 T.32916:23-32919:7

<sup>683</sup> *Ibid* 22.4.2009, T.:33043:5-18

<sup>684</sup> *Ibid* T.:33043:19-23

<sup>685</sup> *Ibid* T.:33044:7-13

the Prosecution that it was guidance,<sup>686</sup> but that it was just their position. He also repeated explicitly in this case "that the manner in which it was said simply indicated their frustration and anger.

450. Asked to say if he sees any difference between such testimony and his testimony in *Blagojevic* on the subject he answered that he could not see any substantial difference in his statements.<sup>687</sup>

451. When confronted with his previous statement that Popovic was Kosoric's boss, he stated that there was an Intelligence and Security Department and that Popovic was the Chief of this department and Kosoric was part of this Department.<sup>688</sup> This was contrary to his Statement of Fact where the functions of Popovic and Kosoric were precisely quoted. In addition, the witness was the Chief of Security and Intelligence Organ of the Bratunac Brigade<sup>689</sup> and had to report intelligence matters to Kosoric and security to Popovic, so obviously it could not have been unknown to him that they were the chiefs of separate departments.

452. There is strong evidence that Momir Nikolic was aware of plans for transportation much before the Hotel Fontana meeting and he concocted a conversation with Popovic and Kosoric, this because the witness Mile Janjic testified that on 12 July 1995 in the morning, Momir Nikolic called and asked 10-15 military policemen to come to Yellow Bridge where they met him. Momir Nikolic then told them to go to Potocari and arrived there before them. When they met him in Potocari, the witness was tasked by Momir Nikolic to assist Colonel Jankovic who told him that his job is to count the number of Muslims transported out of Potocari and the witness had to help him. It was before any buses or trucks had arrived.<sup>690</sup> This means that in the early morning hours on 12 July 1995 Nikolic was well aware of the plans of evacuation of the Muslims from Potocari

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<sup>686</sup>*Ibid* T. 33045:5- 33046:5

<sup>687</sup>*Ibid* T. 33046:7-11

<sup>688</sup>*Ibid* T. 33051:1-33052:7

<sup>689</sup>C1 Statement of Facts para 1

<sup>690</sup>Momir Nikolic 21.4.2009 T. 33028:2-33020:11; Janjic 20.11.2007 17926:21-17928:15

and so he had no need to ask either Popovic or Kosoric about it. It is also obvious that he started to work on the evacuation before he allegedly spoke with Popovic and Kosoric.

453. For all foregoing reasons the Defence submits that there is no evidence that VRS plan to murder hundreds of able-bodied men identified in the crowd of Muslims in Potocari developed in the evening hours of 11 July and on the morning of 12 July 1995.

454. The Defence adds that Kosoric also testified in this case and when presented with Momir Nikolic's Statement, he explicitly denied that he had ever had such conversation with Momir Nikolic.<sup>691</sup> He also denied that Popovic in his presence ever said anything like that.<sup>692</sup>

455. Finally the non existence of a plan, decision, order or guidance to kill separated Muslim men in Potocari could be seen from the fact that on that day VRS was fully engaged in the identification of war criminals. In fact, on 12 July 1995 VRS compiled a list of 387 suspected war criminals in order to identify them from the crowd in Potocari.<sup>693</sup> Obviously, if the plan to kill all "separated" men had existed VRS would not have made any effort to identify possible war criminals among them, because anyhow they would be killed and therefore their identification would be pointless.

#### **I. Separation of the able bodied men**

456. The Indictment mischaracterizes the acts in Potocari on 12 and 13 July 1995 as "forcible separation of the able-bodied men in Potocari from their families."<sup>694</sup> Although Vujadin Popovic did not participate in this separation the Defence asserts that it was arresting and was a legitimate act against the men suspected to be members of enemy's armed forces,<sup>695</sup> in particular as the fighting

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<sup>691</sup> Kosoric 30.6.2009 T.33763:15-33765:9

<sup>692</sup> *Ibid* T.33765:10-13

<sup>693</sup> *Ibid* T.23248:15-23249:6; 4D 15 List of war criminals known to the Command of Bratunac Brigade 12.7.1995

<sup>694</sup> Indictment para 28, OTP Opening statement 21.8.2006 T. 374:8, 375:25 etc

<sup>695</sup> Vuga 3 July 2008 T.23246:25-23248:14

was close to the place.<sup>696</sup> It was done according to the domestic regulations, which were not in contravention with rules or customs of war. The Defence points out that on 11<sup>th</sup> July 1995 at 23 hours 300 combatants sitting with 15.000 to 20.000 refugees in the camp at Potocari.<sup>697</sup> The normal consequence of an arrest is the isolation of detainees from others, including members of their families. Therefore the detention of Muslim men of military age in Potocari on 12 and 13 July 1995 was a legitimate act as well as their "separation" from their families who remained free.

457. Yet, such act would be illegal if done in the implementation of the plan to summarily execute detainees. However, the Defence submits that such a plan did not exist at the time of the arrest and detention of Muslim men in Potocari on 12 and 13 July 1995. If such plan had existed it would have been implemented immediately on these days. The Defence submits that Opportunistic killings and Kravica Warehouse killing were not the part of such a plan. Finally, the Defence submits that Cerska Valley execution did not take place on 13 July 1995 as indicated in the Indictment.<sup>698</sup>

458. The subsequent events between 14 and 16 July 1995 however indicate that some decision preceded the killing of prisoners detained in Orahovac, Petkovci, Rocevici, Kula and Pilica. The Defence submits however that such a decision did not exist before the execution in Orahovac started in the afternoon on 14 July 1995.

459. The Indictment states that the plan to kill Muslim men encompassed 6000 Muslim men who surrendered or were captured on 13 July 1995 along the road Bratunac - Konjevic Polje -Milici.<sup>699</sup> The Indictment states that all prisoners, both "separated" and captured by or surrender to VRS were executed at places enlisted in the Indictment.

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<sup>696</sup> PW 160 13.3.2007 T.8725:9-16

<sup>697</sup> 1D 463 ABiH General Staff Interim Combat Report 12.7.1995 p.1-2.

<sup>698</sup> 1D 1391 Supplemental Information Sheet Dusan Janc 27.4.2009 ; 1D 1427 OTP e-mail 27.4.2009 (not admitted through Bar Table certification pending)

<sup>699</sup> Indictment 28

However even the inflated numbers alleged in the Indictment<sup>700</sup> is considerably below 7000 executed.<sup>701</sup>

460. The plan to murder Muslim prisoners did not exist on 13 July either.

461. First of all, on 13<sup>th</sup> July 1995 in Konjevic polje, the witness Momir Nikolic who was allegedly told on the previous day that all Muslim able-bodied men would be shot, took Resid Sinanovic in his car and brought him to the Bratunac Brigade and handed him over to the witness Zlatan Celanovic.<sup>702</sup> He did it because his organ had information that Resid Sinanovic is among those who committed war crimes and Zlatan Celanovic was a lawyer who worked in Bratunac Brigade on the issues relating to the gathering of evidence about the crimes. As Celanovic was an authorized person pursuant to the brigade commander's decision to conduct investigations, gather evidence and file criminal reports, it was quite logical for the witness to handover Sinanovic to him "who was of course supposed later on to apply the legal procedure."<sup>703</sup>

462. This clearly demonstrates an absence of the decision that Muslim prisoners had to be killed, because the investigation of Resid Sinanovic, gathering of evidence and filing of a criminal report against him would be senseless. Why investigate potential war criminals, gather evidence or file criminal reports against them if they would be killed summarily without any court procedure?

463. On 13 July 1995 at 11:25, during the evacuation of civilians from Potocari, there was a conversation between Colonel Beara and an unknown person in which he clearly indicated that there was a plan to transport the captured Muslims to Batkovic.<sup>704</sup> It was supported by the fact that in Batkovici camp preparations had been carried out for the

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<sup>700</sup>Indictment paras 30.4, 30.6, 30.8, 30.8.1, 30.10, 30.11 and 30.12

<sup>701</sup>*Ibid* para 25

<sup>702</sup>C1 (4889) Statement of Facts of Momir Nikolic 6.5.2003

<sup>703</sup>Momir Nikolic 23.4.2009 T33072:12-33074:13

<sup>704</sup>T. 2D Intercept 13 July 1995, Pandurevic, 20.2.2009, T.31881:16-31884:6

accommodation of 1300 Muslim prisoners in two camp's hangars.<sup>705</sup> This information was sent to the East Bosnian Corps since the Batkovic camp was within its area of responsibility, and conveyed to the witness Mikajlo Mitrovic by security officer of that Corps Milenko Todorovic. The second hangar was cleaned and prepared because it was estimated that all of them could not fit into one hangar. He added that food was prepared for them.<sup>706</sup>

464. The Defence submits that this evidence proves that on 13 July 1995 there was no plan to kill Muslim prisoners.

465. In addition, on the same day VRS and MUP compiled the list of potential war criminals. On 13 July 1995 at 18:29 there was a conversation between Zile and an unknown person<sup>707</sup> and in this conversation the unknown participant sought from Zile the list of those suspected of having committed war crimes in Srebrenica, Zepa and Gorazde. Butler believes that Zile is a nickname for General Zivanovic.<sup>708</sup> This nickname was also confirmed by other witnesses.<sup>709</sup> It is very important to say that this conversation took place after the shooting in Kravica Warehouse meaning that at that time there was no the plan to kill all Muslim prisoners. Moreover, the unknown collocutor expressed his concern as to suspect war criminals by saying: "We'll miss them and they'll get away scott free." It's more than obvious that such a list was needed to identify war criminals among the prisoners. If the plan for killing all prisoners existed, seeking of such a list and identification of war criminals would be pointless since both the suspected and unsuspected would likewise be killed. On the other hand it would be quite unbelievable that the DK Commander at the time did not know about such a plan if it existed or that his collocutor obviously a high ranking official was not informed about it. Moreover, this conversation reveals that there was a plan for transportation of prisoners including their subsequent exchange and it was exactly for this reason that efforts were made to

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<sup>705</sup> 11 July 2008 Mitrovic T. 23638:8-23639:12

<sup>706</sup> *Ibid* T.23641:14-23642:7

<sup>707</sup> P 1144 Intercept 13.7.1995

<sup>708</sup> Butler 22.1.2008 T.20123:20-20125-14

<sup>709</sup> [REDACTED], Ruez 8.9.2006 T.1329:25; Boering 21.9.2006, T.1944:19-25

identify and retain those suspects for war crimes and not allow them to escape. It actually also proves that the shooting in Kravica, although a serious crime, was an incident but not part of the plan to kill Muslim prisoners.

466. During the night of 13 July 1995 there was no plan, order or decision to kill Muslim prisoners. One of them testified that a Serbian military policeman saved his life that night and prevented the beating of a prisoner in the bus by some soldier.<sup>710</sup> It could not be possible if the mentioned plan, order or decision was made.

467. The Prosecution offered three testimonies to support the charge that on 13 July the decision was made to transport Muslim prisoners from Bratunac to the Zvornik area and kill them there. [REDACTED]<sup>711</sup> that he received such information in a telephone conversation with Popovic. The second is the testimony of Momir Nikolic<sup>712</sup> that he allegedly travelled to Zvornik on the same evening upon the order by Beara to convey this information to Drago Nikolic and the third is the testimony of the late Miroslav Deronjic admitted into evidence through Rule 92-quater.<sup>713</sup>

468. The Defence submits that all three testimonies are less than credible.

469. [REDACTED]. After his return to Bratunac he allegedly was present on the meeting between Beara and Deronjic with Beara's insisting that the prisoners are kept in Bratunac while Deronjic insisted that all of them should be transported from that area.<sup>714</sup>

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<sup>710</sup> Oric 30.8.2006 T.1070:4-25

<sup>711</sup> [REDACTED]

<sup>712</sup> Momir Nikolic C1 Statement of Facts para 10, 6 May 2003; T.32937:2-20, 214.2009<sup>713</sup>

<sup>713</sup> P3139 Testimony in IT-60-02-T 19-22 January 2004

<sup>714</sup> *Ibid* T.33183:23-33184:9

470. This was corroborated by the testimony of Deronjic that on 13 July 1995 he allegedly had a telephone conversation with President Karadzic<sup>715</sup> when he was told that all prisoners must be transported out of Bratunac<sup>716</sup> and that someone would be coming with instructions.<sup>717</sup> After his return to his office he allegedly met Beara<sup>718</sup> who let him know that he was ordered to kill prisoners there and then. Deronjic was strongly opposed to such a request referring to the order of President Karadzic<sup>719</sup> as such they had arguments until 3:00 a.m. the next day<sup>720</sup> during which he managed to save lives of prisoners. He added that despite this on the morning of 14 July 1995 Beara allegedly wished to transport prisoners to a brick factory near Bratunac, but again Deronjic prevented it by ordering Beara not to do so<sup>721</sup> and the prisoners were transferred to Zvornik.<sup>722</sup> He could not say time when he allegedly met Beara.<sup>723</sup> However, according to the intercept conversation, highly contested by the Defence, such a conversation took place at 20:10 on the 13 of July.

471. During the conversation Deronjic allegedly asked Karadzic: "Do you want me to come down there to Cerska? Where are you calling from?"

472. This indicates that at the time Karadzic was in Cerska when Deronjic offered to personally go there, but he needed the precise location of where Karadzic was. At the time however the column was breaking through Cerska and also as the Supreme Commander of the VRS there was no need for Karadzic to be there.. On the other hand, it was been indicated that the conversation went through an intermediary who was in the same room with Karadzic and was captured at the 785.000 frequency. There was no communication line between Bratunac and Cerska through an RRU-800 device.

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<sup>715</sup> P 1149a Karadzic - Deronjic 13.7.1995 at 20:10

<sup>716</sup> P3139 p.294:19-20; *Ibid* p.296:6-7

<sup>717</sup> *Ibid* p.315:4-6

<sup>718</sup> P3139 p.88

<sup>719</sup> *Ibid* p.89-90

<sup>720</sup> *Ibid* p.303:10

<sup>721</sup> *Ibid* p.137:8-19

<sup>722</sup> *Ibid* p.88

<sup>723</sup> *Ibid* p.294:6-8

In addition, it was captured on a non-existent RR direction Zvornik -Vlasenica<sup>724</sup> although none of collocutors was in Vlasenica or Zvornik at the time.

473. However, other evidence seriously challenges the testimonies of the Plea Agreement witnesses that the plan for execution of prisoners held in Bratunac was made by the late evening hours on 13 July 1995. In a telegram dated on 13 July 1995 but sent from Bratunac Brigade in the early morning hours of 14 July<sup>725</sup> Colonel Jankovic reported among other things that the evacuation of the Muslims from Potocari was completed at 20:00. He further advised that if "we want to takeover the enclaves of Zepa and Gorazde in the same way we should present through media that we have adequately treated population and even the fighters who lay of their arms." It is quite impossible that the first man of VRS Intelligence was not informed that the fate of Muslim prisoners had been decided as such a message was irrelevant.

474. In addition, on the same night the Assistant Commander for Intelligence and Security of the VRS Main Staff General Tolimir sent a telegram informing Main Staff that a space for 800 prisoners has been arranged in Sjemec in the area of responsibility of 1<sup>st</sup> plpbr which could guard them and use them for agricultural work. The message was sent on 13 July 1995 at 22:30.<sup>726</sup> The Defence submits that General Tolimir sent this message fully aware that VRS was engaged in finding a solution for the accommodation of Muslim prisoners but not for their killings. Otherwise he would not indicate the availability on space for their accommodation and engagement in agricultural work. In addition it would be impossible that at the time his subordinate Beara, Popovic, Momir Nikolic and Drago Nikolic were involved in such a task without his knowledge.

475. In addition the plan to kill only those Muslim men who were captured or surrender as the Indictment argues is pointless if it does not include ABiH troops still fighting and inflicting casualties on the VRS and civilian population.

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<sup>724</sup> 1D321, Rodic Analysis.

<sup>725</sup> 5DP 113 Report 13.7.1995

<sup>726</sup> P 131 Accomodation of prisoners of war 13.7.1995

Namely, it was pointless to make a plan on 11 July to kill only those that are captured or surrender but leave those who were still fighting to withdraw, prepare themselves and reengage the VRS in fightings once more.

476. For the above mentioned reasons, the Defence submits that no decision to kill the prisoners had been taken yet on 13 July 1995 and that evidence of the Plea Agreement witnesses in this regard is false.
477. The Defence also submits that the evidence does not show the intent of VRS to kill able bodied Muslim men from Srebrenica after fall of Srebrenica.
478. This assertion is corroborated by the following evidence.
479. The acts of VRS on 11 and 12 July also indicate that they had no intent to kill prisoners not to speak to commit genocide, because if they had such an intention they would have instructed all their forces to concentrate and direct fighting power toward the largest groups of Muslim men i.e. the column breaking through toward BiH held territory.
480. On the contrary to the VRS Command ordered immediately after the fall of Srebrenica all troops and units participating in "Krivaja 95" Operation to go to Zepa notwithstanding the whereabouts of the 28<sup>th</sup> division. It is not in dispute that this decision was made at the late evening meeting in the Bratunac Brigade Command but the date is in dispute. The Prosecution submits that the meeting took place on 12 July 1995 while some Defence teams assert that it was on 11 July 1995.
481. The Defence sees the position of the Prosecution as more favorable for its case i.e. that the meeting took place on 12 July 1995, as such a further elaboration on this date is necessary. On the evening hours of 12 July 1995, VRS Command was well

aware of the movement of 28<sup>th</sup> division toward BiH held territory.<sup>727</sup> Although all details about size of the column and its military threat was unknown,<sup>728</sup> the VRS Command did not demonstrate any serious interest in the column as long as Zvornik did not become exposed. As a result the VRS decided to send troops participating in the Srebrenica Operation in the opposite direction, i.e. to Zepa. This was done even when there was a risk that the remaining forces in Bratunac at the time was not able to guard prisoners detained at several locations in the town. This was also done with the risk that Zvornik was left almost without defence which meant that the advancement of the column and demonstrative actions of ABiH from the front line caused panic in the area. If the VRS had a genocidal plan it would not have acted accordingly. In the other words the VRS would have concentrated all available forces in blocking and surrounding the ABiH column and then kill them all. The above mentioned facts demonstrate the absence of such intent but only a willingness to fight the column with some police and auxiliary forces.<sup>729</sup> The available forces were however not strong enough to defend the Serbian villages and towns alone not to speak of block, surround and annihilate the column.

482. The Defence submits that because of the above mentioned acts, it has demonstrated the absence of the will by VRS to kill the Muslim able bodied men from Srebrenica

## **II. ORAHOVAC**

483. The Prosecution expounded charges from the Indictment on the executions in Orahovac in its Pre-Trial Brief<sup>730</sup> as well as in its Opening Statement.<sup>731</sup> According to these allegations Vujadin Popovic supervised, along with some other accused under orders from their superior command, organisation and facilitation of the transportation of Bosnian Muslim males from in and around Bratunac to the school in Orahovac with knowledge that those

<sup>727</sup> P 239 Bratunac Brigade Daily Combat Report 12.7.1995; Butler 16.1.2008 T.19846:14-23; PW-116 31.10.2006 T.3328:6-9

<sup>728</sup> Butler 31.1.2008 T.20834:3-9

<sup>729</sup> *Ibid* 16.1.2008 T.19844:15-19845:3

<sup>730</sup> OTP Pre-Trial Brief para 66-76

<sup>731</sup> Prosecution's Opening Statement 21.8.2006 T.434:7-437:15

prisoners were to be collected and summarily executed.<sup>732</sup> The Prosecution asserted that Popovic and the chief of the Bratunac Brigade military police and others led a convoy of buses and trucks loaded with some 5000 perhaps 6000 Muslim men and boys from Bratunac to Zvornik.<sup>733</sup> It was added that on 13 July 1995 Popovic informed Zvornik Brigade about the arrival of prisoners.<sup>734</sup>

484. PW-138 stated that one day he received the assignment from Popovic to take UN APC and head to an intersection near the bus station where he should park facing Konjevic Polje.<sup>735</sup> Popovic was in a dark blue "Golf" and he drove it.<sup>736</sup> It was an hour or two before noon.<sup>737</sup> Later Nikola Popovic and Mile Petrovic joined the witness to this trip.<sup>738</sup> Once he parked the APC, Popovic reappeared in the same "Golf" and said that he should move ahead to the point where there was a road turning off to the headquarters. When he did so a tank truck came and parked nearby. Popovic told him to take some fuel if he needs it. He did it although did not know where he was heading.<sup>739</sup> Popovic further told him to move the APC forward by more than 500 metres.<sup>740</sup> Behind his vehicle was a column of buses and trucks with tarpaulins. In the buses there were able-bodied men, probably Muslims from those schools with one soldier "who was probably a member" of VRS. He couldn't see if there were more of them.<sup>741</sup> Also he could not say how many buses and trucks were in the column.<sup>742</sup> Popovic then said to the witness to follow him in the same "Golf and set off toward Zvornik.<sup>743</sup> The column passed Zvornik in the direction of Bijeljina and that's when he "heard" that all prisoners would be exchanged for all the people who wanted to leave the Muslim-held territory. He believed that they

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<sup>732</sup> OTP PTB para. 66

<sup>733</sup> OTP Opening Statement T.436:8-16.

<sup>734</sup> *Ibid* 436:19-437:10

<sup>735</sup> *Ibid* 8.11.2006, T.3837:23-3838:2

<sup>736</sup> *Ibid* T.3838:14-17

<sup>737</sup> *Ibid* T.3838:23-24

<sup>738</sup> *Ibid* T.3839:2-4

<sup>739</sup> *Ibid* T.3839:10-23

<sup>740</sup> *Ibid* T.3840:2-8

<sup>741</sup> *Ibid* T.3842:8-16

<sup>742</sup> *Ibid* T.3842:24-3843-4

<sup>743</sup> *Ibid* T.3843-6-13

were heading in the direction of Tuzla. He saw a sign post saying Sapna to the left, which was under the control of Muslim forces. From that road they turned right to a narrow asphalt road with one lane, came across a bridge and then arrived in front of a school. Opposite the school Popovic turned left and continued to the sports pitch in front of the school. People started disembarking from the vehicles and went toward the gym.<sup>744</sup> The witness turned the APC around but could not say how many buses were there although during his stay there, approximately ten buses were emptied.<sup>745</sup> Popovic told him that he should stay there but he advised that Momir Nikolic ordered him to return although this was not true.<sup>746</sup> The witness did not say the name of village where he went but said that the school looked like that on photograph.<sup>747</sup> Given his description and the photo it was the school in Orahovac. The witness said that after leaving the school area he drove back to Bratunac.<sup>748</sup>

485. In the scope of this Charge the Defence will also deal with the part of evidence related to the participation of the Bratunac Brigade members in securing the prisoners in Pilica. According to Momir Nikolic<sup>749</sup> a vast majority of Muslim men were transported to Zvornik in the morning of 14 July in a column of buses and trucks well over 1 V<sub>2</sub> kilometers in length led by [REDACTED] in a stolen Dutch APC. He also added that "later that day [REDACTED] reported to me that, that day, many Muslim prisoners were detained in schools and gyms in the Zvornik area." Finally he added that he "was aware that two Bratunac military policemen were left overnight from 16 to 17 July in Pilica to assist in securing prisoners detained there."<sup>750</sup>

486. From this information it is evident that (1) on 14 July 1995 a vast majority of Muslim men were transported to Zvornik in a column of buses and trucks, (2) the convoy was led by Mirko Jankovic in a stolen Dutch APC, (3) Mirko Jankovic reported to Nikolic on that day that many Muslim prisoners were detained in schools and gyms

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<sup>744</sup> *Ibid* T.3843:9-3844:16

<sup>745</sup> *Ibid* T.3849:10-3850:15

<sup>746</sup> *Ibid* T.3850:22-3851:9

<sup>747</sup> *Ibid* T.3851:10-21; P 1691

<sup>748</sup> *Ibid* T.3851:22-25

<sup>749</sup> C1 Statement of Facts

<sup>750</sup> C1 (P 4489) para 11

in the Zvornik area, and (4) two military policemen from Bratunac Brigade were left overnight from 16 to 17 July in Pilica to assist with securing prisoners detained there.

487. However, PW-138 testified that he doesn't even know where Pilica is.<sup>751</sup>

488. The Defence considers that parts of the testimony of PW-138 relating to Popovic as inaccurate. There are at least two pieces of evidence indicating that he was the one who led a convoy of buses and trucks, although not to Orahovac.

489. Firstly, there is testimony of the Zvornik Brigade member who on 14 July 1995 embarked on the first bus at Divic<sup>752</sup> in the convoy heading to Orahovac.<sup>753</sup> He did not see any UN APC in front of him. In other words Jankovic's story is untrue. He possibly led the convoy, but without Popovic in front of him. He just wanted to protect himself from the responsibility of leading the convoy by stating that he was traveling behind Popovic who was in his Golf and leading the convoy, however no one else saw Popovic in his Golf leading the convoy. Momir Nikolic also confirm this in his Statement of Fact, when he explicitly stated that it was Jankovic who led the convoy without mention of Popovic or his Golf.<sup>754</sup> If Jankovic led the convoy to Orahovac only, and then went back to Bratunac, he would not be able to report to Momir Nikolic on the same day that Muslim prisoners were detained in schools and gyms in the Zvornik area. He simply wouldn't have known that because he escorted the convoy only to one school. Finally, Bircakovic had no reason to lie when he stated that he went in the first bus in the convoy which took the prisoners to Orahovac.

490. The witness Oric recalled that a white APC with UN letters arrived at the scene

<sup>751</sup> PW-138 9.11.2006, T.3860:19-3862:3

<sup>752</sup> M. Bircakovic 7.5.2007 T.11053:12-16

<sup>753</sup> M. Bircakovic 7.5.2007 T.11019:21-23

<sup>754</sup> C1 para 11

and was the first vehicle to head off toward Kladanj. The soldiers in it wore blue flak UNPROFOR jackets and camouflage uniforms.<sup>755</sup> When the column arrived in front of a village school he saw an APC which led the way for the convoy, parked at side.<sup>756</sup>

491. In addition, witness PW-110 testified that a UN APC was at the school courtyard in Orahovac.<sup>757</sup> The soldiers who drove the UN APC wore UNPROFOR uniforms pretending to be members of UNPROFOR.<sup>758</sup> The witness further said that these two soldiers stayed at the entrance to the courtyard and they ordered prisoners to run into the school as they got off the vehicles.<sup>759</sup> He added that an interpreter, a big man in his 50s with somewhat grayish hair was with them.<sup>760</sup>

492. This is in clear contradiction with the story of PW-138 that he did not stay in Orahovac, but just turned around and returned to Bratunac. If PW-110 was telling the truth, then it was PW-138 and his colleagues who were standing at the entrance of the school courtyard ordering prisoners to run into the school. More importantly he was not just driving the stolen UN APC but wore UNPROFOR uniforms. Finally, the description of the individual standing with the stolen UN APC does not correspond with Popovic's appearance at the time.

493. The witness Bircakovic also testified that he saw Popovic in Orahovac on the day when the prisoners had been brought to the school. He testified that he knew Popovic and was aware of his position.<sup>761</sup> In the morning of 14 of July 1995 he went by car to ZB IKM to pick up Drago Nikolic and bring him back to Zvornik.<sup>762</sup> He said that on the same day he was 99 per cent sure that he saw Popovic in front of the school in Orahovac, standing by the road with two more officers half an hour or an hour after prisoners arrived.<sup>763</sup>

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<sup>755</sup> Oric T.934:22-935:23

<sup>756</sup> *Ibid* T.938:11-17

<sup>757</sup> PW-110 25.8.2006, T.732:16-17

<sup>758</sup> *Ibid* T.732:18-733:1

<sup>759</sup> *Ibid* T.738:11-15

<sup>760</sup> *Ibid* T.738:25-739:3

<sup>761</sup> M.Bircakovic 7.5.2007, T.11012:16-20

<sup>762</sup> *Ibid* T.11013:10-11014:6

<sup>763</sup> *Ibid* T.11024:5-11025:4

The witness testified that he followed the truck driving prisoners toward Krizevici to the water point.<sup>764</sup>

494. The testimony of this witness as to Popovic was far from "99 per cent" accurate because, the witness admitted that he gave an interview to the OTP on 13 March 2002 saying "I'm not sure about Popovic, whether he was there or not. He was and he wasn't. I know that they were there from what other people told me."<sup>765</sup> The witness was not able to explain the reasons for the discrepancies in his interview and the testimony regarding Popovic.<sup>766</sup> He corrected his prior testimony saying that it was possible or not that he saw Popovic there.<sup>767</sup> The witness also changed his testimony regarding the time when he embarked on the first bus in the convoy at Vidikovac<sup>768</sup>

495. Because of the above, it could be concluded that the testimony of the witness as to Popovic's presence in front of Orahovac School on 14<sup>th</sup> July 1995 is not reliable.

496. The Prosecution brought PW-101 who testified that he allegedly saw a Lieutenant-Colonel from the Drina Corps commanding the execution squad to fire at Muslim prisoners at the meadow near the school in Orahovac, later designated as Lazete 1. The description of this individual was intended to lead the Trial Chamber to conclude that it might be Popovic.

497. The Defence submits that PW-101 did not tell the truth and came up with a story of an incident that did not occur in order to obtain exile out of Bosnia with all of his family. He stated that the event he testified about was something he would remember for the whole of his life. He got travel orders but did not know what was going on there.<sup>769</sup> He allegedly got an order that evening from his Chief Pantic to transport food to the school at Orahovac. Once there, he saw soldiers, military police officers, Deputy

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<sup>764</sup> *Ibid* T.11026:8-21

<sup>765</sup> *Ibid* 8.5.2007, T.11071:6-11072:6; T. 11077:25-11078:14

<sup>766</sup> *Ibid* T.11079:13-22

<sup>767</sup> *Ibid* T.11082:13-23

<sup>768</sup> *Ibid* T.11082:24-11085:11

<sup>769</sup> PW-101, 22.4.2007, T.7564:5-15

Commander for Logistics Sreten Milosevic standing in the street talking with a group of people.<sup>770</sup> Allegedly Drago Micic or rather Sreten Milosevic told him to take the rest of the food up there and heralded that he would see something that he had seen just in the movies.<sup>771</sup> Once he got there he saw the pile of dead bodies from which a boy emerged going towards men with automatic rifles who did that job. They lowered their rifles but an officer he thought lieutenant-colonel or colonel at the most ordered the soldiers to finish him off but they refused by saying to do that himself. The officer ordered him to return the boy to the school and bring him back with the next batch.<sup>772</sup> The witness further said that he took a boy in his van at that place called Orac, passed the school being aware that he had to leave him there. At first he intended to leave the boy in the ZB infirmary but changed his mind because he did not dare to tell his friends about what has happened at that site. He decided to leave the boy in Zvornik Hospital. It was dusk.<sup>773</sup> The witness described the lieutenant-colonel who said that the child should be shot as a tall man with moustache, good-looking, well-built "holding his hands out at his sides to indicate that."<sup>774</sup> He added that there was a man amongst the executioners who did it gladly, and used to say that he would kill a toe of a wounded prisoner if it moved. He would finish such prisoners off. The witness said that he would not have developed diabetes if he had not had such an experience.<sup>775</sup> The witness said that a young man whom he had never met him before, approach him and told him that he did not shoot at prisoners but over their heads. The witness concluded that some of executioners were ordered to do that.<sup>776</sup> He was not able to say who issued orders to executioners at the site because there were just two persons who could do it and he believed that one with higher rank did it.<sup>777</sup> The witness sought Pantic to give him two or three days leave for his safety and mental rest<sup>778</sup> but did not get it.<sup>779</sup> The witness further said that he departed

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<sup>770</sup> *Ib.* T.7564:18-7565:6

<sup>771</sup> *Ibid* T.7568:22-7571:4

<sup>772</sup> *Ibid* T.7581:1-7582:8

<sup>773</sup> *Ibid* T.7583:17-7584:16

<sup>774</sup> *Ibid* T.7585:23-7586:12

<sup>775</sup> *Ibid* T.7586:19-7587:11

<sup>776</sup> *Ibid* T.7588:13-24

<sup>777</sup> *Ibid* T.7589:16-7590:7

<sup>778</sup> *Ibid* T.7596:20-24

for Orahovac around 20:30.<sup>780</sup> He got back from Zvornik Hospital at 1:00 next day, when he met Pantic or his colleague Miso, and had the conversation with Pantic about his leave.<sup>781</sup>

498. Despite his reiteration that everything he said in his statement from 2005 was true, the witness changed it by saying that instead of Pantic, Miso could be the person who gave him the order to go to Orahovac and who met him after his return from the Zvornik Hospital<sup>782</sup> after he was shown that Pantic was absent in those days due to the death of his mother, the witness answered that he was present at the funeral during the day and in the evening when they had a gathering.<sup>783</sup> But just some time later he changed his testimony by saying that he was not present at the funeral but only in the evening gathering afterwards.<sup>784</sup> The absence of Pantic was corroborated with two documents: one proving that his mother died on 10 July 1995<sup>785</sup> and another one that he was absent from duty.<sup>786</sup> A part of his statement that his sister-in-law, who was working in the Zvornik Hospital at the time, had problems since he brought a Muslim boy there, was challenged by her stating to the Defence that she never experienced any problem at all.<sup>787</sup> It was corroborated by the fact that she was still the head of the pediatric department of the Zvornik Hospital.<sup>788</sup> He also testified that it was dusk when he transported the boy to the Zvornik Hospital. However, the Registar Book of the Zvornik Hospital reads that the boy was admitted on 15 July 1995 at 00:00 hours.<sup>789</sup> Given the distance from Orahovac to Zvornik it obviously indicates that PW-101 did not tell the truth. The most obvious lie was a part of his testimony that the witness took a boy in his van and transported only him to the Zvornik Hospital not stopping in front of the school in Orahovac afraid that

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<sup>779</sup> *Ibid* 23.2.2007 T.7643:10-17

<sup>780</sup> *Ibid* 22.2.2007 T.7624:17-20

<sup>781</sup> *Ibid* T.7625:16-7626:10

<sup>782</sup> *Ibid* T.7628:4-25

<sup>783</sup> *Ibid* T.7629:2-15

<sup>784</sup> *Ibid* 23.2.2007, T.7707:2-11

<sup>785</sup> 3D1D 217 Death Certificate for Ruzica Pantic

<sup>786</sup> P311 Zvornik Brigade Log Troop Presence for July 1995

<sup>787</sup> PW-101 23.2.2007, T.7650:11-7651:14

<sup>788</sup> *Ibid* T.7654:9-21

<sup>789</sup> P 1891 Zvornik Hospital Regiter Book p. 279 reg. number 4605 (BCS) p.22-23 (Eng.)

a boy would be taken from the Zvornik Brigade infirmary.<sup>790</sup> He even stated that he was offered before his departure to The Hague to say that others were with him but he didn't want to lie. He denied that he stopped in front of the school and took anyone but a boy in his van.<sup>791</sup> He explicitly denied that Sreten Milosevic left with him because he was tasked with being there.<sup>792</sup> After being confronted with the testimony of Tanacko Tanic in *Blagojevic & Jokic* that he was also in the van, the witness again denied it.<sup>793</sup> While in Orahovac, the witness did not see a single machine, not even the smallest of loaders, nor construction machines or tractors.<sup>794</sup> The testimony of the witness that he arrived at the execution site during the day-time was in sharp contrast with Muslims who survived the execution he answered "Well then I'm lying, then I must be lying."<sup>795</sup>

499. It is the position of the Defence that the witness was not truthful when he said that he was at the execution site. He said that he was in order to have protective measures from the ICTY and obtain residency, work and other benefits for himself and members of his family. The Defence does not deny that the witness was in Orahovac but only at the front of the school, where he took the wounded boy and other Zvornik Brigade members including witnesses Tanic and Sreten Milosevic to Zvornik. He left all Zvornik Brigade members in Karakaj and then drove the boy to the Zvornik Hospital.

500. This conclusion follows from their testimonies as one of them testified that he was standing by the road going from the Orahovac to Zvornik when a van passed him, stopped and then reversed and picked him up. The van was driven by [REDACTED] and also in the van was a boy, Sreten Milosevic, Mijatovic, Mihajlo Stevanovic and someone from the logistics platoon. At the front of the "Standard" all passengers left the van excluding the boy and the driver who continued to the hospital.<sup>796</sup>

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<sup>790</sup> *Ibid* T.7659:12-7661:4

<sup>791</sup> *Ibid* T.7662:21-7664:14

<sup>792</sup> *Ibid* T.7665:8-19

<sup>793</sup> *Ibid* T.7669:14-7660:15

<sup>794</sup> *Ibid* T.7691:2-3

<sup>795</sup> *Ibid* T.7722:15-T.7724:5

<sup>796</sup> Tanic 23.4.2007, T.10351:4-10353:13

501. Another witness from the traffic and transport section of the Zvornik Brigade and Radislav Pantic's superior<sup>797</sup> also recalled that in July 1995 Pantic was absent due to a death in his family so that either he or Miso Pavicevic signed the travel orders or vehicle logs. He knew [REDACTED] who was a driver in the Zvornik Brigade and drove a van. He recognized his signature on [REDACTED] travel order for 14 July 1995. According to the travel order and to the best of his recollection [REDACTED] was dispatched just to Uzice on that day and not for Orahovac.<sup>798</sup> The witness explained that drivers were part of the logistics battalion and their commander in July 1995 was Radivoje Obradovic.<sup>799</sup> The witness explained that [REDACTED] could not ask for leave from the traffic and transport section or its chief Pantic because he wasn't a part of that unit but of the rear battalion. He stated that only the Assistant commander for logistics could approve leave requests and as Pantic, Sakotic and Pavicevic were only members of the traffic and transport section they were not able to grant leave to anyone.<sup>800</sup>

502. Finally, the witness Sreten Milosevic testified that he was the operation duty officer on 13 July 1995 but did not receive information on that day concerning prisoners of war. If he had got such information he would have written it down in the Duty Officer Notebook.<sup>801</sup> He was ordered by the Chief of Staff Obrenovic, through a person he was not able to recall, to go to Orahovac and guard prisoners detained in the local school.<sup>802</sup> He was not able to determine the exact time of his departure but it could have been between 2:00 and 5:00 p.m.<sup>803</sup> In Orahovac he could hear intermittent shoots but again he was not able to give a precise time but said that it was between 5:00 and 7:00 p.m.<sup>804</sup> He also did not know precisely how long he stayed there but about one or two hours. He telephoned from a house opposite the school for a vehicle to take him back to Zvornik

<sup>797</sup> Mirko Sakotic 16.9.2008, T.25758:14-25 P 295 p.109-110

<sup>798</sup> *Ibid* 25759:15-25760:11

<sup>799</sup> *Ibid* 25763:8-25764:1

<sup>800</sup> *Ibid* T.25770:19-25771:8

<sup>801</sup> Sreten Milosevic 15.7.2009 T.33968:18-33969:3

<sup>802</sup> *Ibid* T.33976:7-23

<sup>803</sup> *Ibid* T.33977:25-33978:4

<sup>804</sup> *Ibid* T.33978:20-24

and shortly afterwards he was informed that it had arrived in front of the house. He got in and saw a tearful child. On the road they picked up the witness Tanic and also took him to Zvornik.<sup>805</sup> He sought the vehicle to come for him by the Operation Duty Officer.<sup>806</sup> As the Assistant Commander for Logistics he recalled that the Zvornik Brigade had no possibilities at the time to distribute fruit juices and pastries.<sup>807</sup>

503. In addition PW-110 testified that on 14 July he was in a lorry in the column of vehicles which set off towards the exit from Bratunac, past Konjevic Polje and Drinjaca and before or after the Josanica tunnel, near Vidikovac someone saw a UN APC 800 meters away from him. After Karakaj they turned left toward Tuzla and then toward Krizevici. In front of school in Orahovac<sup>808</sup> there were 30-50 Serb soldiers and then he saw UN APC with two Serb soldiers in UN blue uniforms, two more soldiers, a civilian aged over 50 walking with them<sup>809</sup> and an interpreter<sup>810</sup> or rather a person pretending to be an interpreter.<sup>811</sup> Once in the school he saw that most of the people were from Potocari with an average age of 70 and four boys.<sup>812</sup> When everybody entered the gym there was very little space left. All prisoners sat down crunched and squeezed. The witness estimated that there were between 500-1000 prisoners in the gym.<sup>813</sup>

504. The witness was taken away with a group of prisoners to the execution site on a small TAM truck where they were shot. The witness fortunately fell down unharmed pretending that he was dead.<sup>814</sup> The executions went on until he heard the executioners say that they had finished everything at the location where he was lying, and that they did not have enough of room there, so that they went to another meadow to kill the rest

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<sup>805</sup> *Ibid* T.33979:15-33980:2

<sup>806</sup> *Ibid* T.33982:16-33983:9

<sup>807</sup> *Ibid* T.33984:6-15.

<sup>808</sup> PW-110 24.8.2006, T.678:24-679:8

<sup>809</sup> *Ibid* T.674:11-677:10

<sup>810</sup> *Ibid* T.682:8-14

<sup>811</sup> *Ibid* T.683:4-18

<sup>812</sup> *Ibid* T.677:11-21

<sup>813</sup> *Ibid* T.696:16-697:12

<sup>814</sup> *Ibid* T.711:8-713:5

of people. It was completely dark when the executioners went to another meadow.<sup>815</sup> The witness recognized the voice of Gojko Simic saying to gather ammunition and go to another meadow to kill the people there.

505. A while later he heard the shooting from the meadow where they went.<sup>816</sup> The witness testified that Gojko Simic gave the order to the rest of group to gather ammunition and move to another meadow to kill more people.<sup>817</sup>

506. The above testimony clearly indicates that the execution took place at the meadow called Lazete 2 and resumed at Lazete 1<sup>818</sup> only when there was no room left at the first one. It means that the execution at Lazete 1, where the witness allegedly took a boy started during the night.

507. Another survivor testified that in July 1995 he was commander of the squad with the task to defend several villages. He was captured and held in Bratunac and on 14 July in the morning put on the bus which left Bratunac in a column of vehicles transporting prisoners toward Konjevic Polje.<sup>819</sup> Once in Orahovac School at one point the witness allegedly saw Mladic in the sports hall talking with a man with sunglasses who after some time told prisoners that they would be sent to Batkovic camp.<sup>820</sup> He was brought to a meadow, lined up with the other prisoners and shoot, but fortunately survived.<sup>821</sup> He pretended to be dead even fainted and woke up while executions were still going on even in the night under lights.<sup>822</sup> He remembered a prisoner who tried to run away through forest. Another one did the same and managed to escape.<sup>823</sup> When they finished he found another Muslim alive and two of them went through woods to the hill.<sup>824</sup>

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<sup>815</sup> *Ibid* T.718:6-13

<sup>816</sup> PW-110, 24.8.2006, T.715:17-718-5

<sup>817</sup> *Ibid* 25.8.2006 T.731:3-732:4

<sup>818</sup> Ruez T. 1491:6-8

<sup>819</sup> Oric 29.8.2006 T.933:15

<sup>820</sup> *Ibid* T.947:11-948:3

<sup>821</sup> *Ibid* T.955:16-956:10

<sup>822</sup> *Ibid* T.959:8-25

<sup>823</sup> *Ibid* T.957:24-958:6

<sup>824</sup> *Ibid* T.963:1-964:3

The other prisoner was Hurem Suljic<sup>825</sup> and from the place where he stood up, he saw an embankment of railway tracks.<sup>826</sup> He was more precise that the embankment was approximately 20 meters behind him.<sup>827</sup>

508. PW-169 as one of Orahovac survivor testified<sup>828</sup> that he was among the Muslims "separated" in Potocari.<sup>829</sup> After a brief stay in Potocari and Bratunac he was transported to a village school near Zvornik on 14 July around 2:00 in the morning.<sup>830</sup> The witness recognized the school in Orahovac.<sup>831</sup> He was brought to the execution site on the same day at approximately 20:00 hours.<sup>832</sup> Fortunately he survived the execution by pretending that he was dead and like the previous witness he was able to see a high iron fence and a road underneath.<sup>833</sup> He managed to escape with another survivor uphill.<sup>834</sup>

509. The testimony of 3DW-10 confirms the inaccuracy of the statement of PW-101 as to his presence at the execution site and taking of the boy under the circumstances he described because this witness was a professional driver and member of the logistics platoon of the ZB<sup>835</sup> and his immediate superior was Radivoje Obradovic.<sup>836</sup> He remembered a day in July 1995 when between 4:00 and 5:00 p.m. he was sent to Orahovac driving TAM truck.<sup>837</sup> Once in front of Orahovac School he was ordered to park his truck at the door to the hall, with the back part.<sup>838</sup> He drove below the railway line and the passover where he was stopped and the truck was unloaded.<sup>839</sup> After that he got back to the school the process was repeated five or six times.<sup>840</sup>

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<sup>825</sup> *Ibid* T.964:6-9

<sup>826</sup> *Ibid* T.967:18-24

<sup>827</sup> *Ibid* T.997:25-998:11

<sup>828</sup> pw-169 11/1/07

<sup>829</sup> *Ibid* T.17309:12-17310:4

<sup>830</sup> *Ibid*.T.17328:18-23

<sup>831</sup> *Ibid* T.17331:17:17332:7

<sup>832</sup> *Ib*.T.17346:21

<sup>833</sup> 17338:23-17339:11

<sup>834</sup> 17339:12-17340:8

<sup>835</sup> 3DW-10, 15.9.2008, T.25658:12-25659:8

<sup>836</sup> *Ibid* T.25660:16-19

<sup>837</sup> T.25662:1-17

<sup>838</sup> T.25664:11-17

<sup>839</sup> T.25667:6-25668:4

<sup>840</sup> T.25670:23-25671:11

He did not watch executions but saw several bodies by the road side.<sup>841</sup> On the last trip he just went to the water point where the truck was unloaded. When he got back in front of the school he found a child at the back of it.<sup>842</sup> He spent about one hour with him until the van driven by [REDACTED] arrived. One of the people there took the child and placed him in the van. He saw when the child was taken in the van to Zvornik. The witness had not seen either [REDACTED] or his van close to the water point.<sup>843</sup> The witness marked the places where his van was parked as well as the van driven by [REDACTED] in which the child was transferred into.<sup>844</sup>

510. It follows that executions were carried out at Lazete 2 until the meadow was full and only after that resumed at Lazete 1. At that time it was already night.

511. This was supported by all three survivors of the Lazete 2 executions. The witness 110 clearly said that he heard Gojko Simic who was in charge of the executions at that location ordering the soldiers to move to another meadow, meaning Lazete 1, to resume executions. There is no evidence that the executions at Lazete 1 started before the executions at Lazete 2 were completed. None of the victims heard any other shooting apart from at the meadow they were shot at.

512. Finally, the rank and position of Gojko Simic who was in charge of the executions at Lazete 2 clearly indicates that there was no need for a Lieutenant-Colonel to be in charge at another location. In other words such an operation was carried out by volunteers or ordinary soldiers and commanded at the location by an ordinary soldier like Gojko Simic. However, the testimony about Gojko Simic being in charge of the execution or a person with similar rank and position would not bring to PW-101 the status of protected witness, asylum in another country and obtaining of permanent residence, health insurance job for his family members and other benefits,

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<sup>841</sup> 25673:1-11

<sup>842</sup> 25676:10-23

<sup>843</sup> 25676:25-25678:20

<sup>844</sup> 3DIC 217

as a result Gojko Simic was successfully replaced with a high ranking officer and all the above benefits were obtained.

513. The Defence also submits that on the evening of 14 July Popovic was not in Zvornik but in Zepa. This was confirmed by the witness Gordan Bjelanovic, a member of the MP of DK working as the escort and reserve driver of General Krstic.<sup>845</sup> He was not able to remember exact dates but only the year and month.<sup>846</sup> The witness thought that that Srebrenica fell on 12 or 13 July<sup>847</sup> but he knew Popovic as the Lieutenant-Colonel.

514. As the Assistant Commander for Security of the Drina Corps he had a duty and was present at the handover of duties between Generals Zivanovic and Krstic. There was a lineup of the officers and General Mladic also attended directing the handover between the generals. Military policemen who were in Vlasenica secured the building where this was all taking place. There were also two military policemen at the check-point just outside Vlasenica controlling traffic. In his view Popovic and Vujovic, commander of DK Military Police unit organized security for the event with military policemen he had at his disposal. Usually, when General Ratko Mladic previously came things were organized much earlier. The military police would secure the building, the route, and the critical points where enemy groups may access the route. It was all done in advance because usually we never knew the exact time of his arrival, for his security. It was done at least two hours in advance.<sup>848</sup>

515. The witness further stated that on the day after the handover ceremony he went to IKM for a Zepa operation but could not remember if it was in Krivace or Kusace village. He was not able to recall the exact time but believed that it was around noon and he stayed there until it was dark. Whilst he was there he saw Popovic as well as some other

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<sup>845</sup> Bjelanovic T. 10.6.2008, T.20290:25-20291:12

<sup>846</sup> *Ibid* T.20265:21-20266:6

<sup>847</sup> *Ibid* T.20280:18-25

<sup>848</sup> *Ibid* T. 20267:3-20270:12

communication officers.<sup>849</sup> He also saw some officers from the 2<sup>nd</sup> Romanija Brigade. Colonel Miljanovic, and maybe Drljaca and Jevcic. He stayed with the vehicle most of time.<sup>850</sup> He finally added that he was not sure whether he saw Popovic in Zepa on the first or the second day after handover ceremony.<sup>851</sup>

516. [REDACTED]<sup>852</sup> He testified that if he recollected correctly he saw Popovic in Potocari discussing about the safety of the column of buses, who was going to follow and make sure that those people get safely to the Muslim side and some minefields. However, he did not hear any of Popovic's response to General Krstic.<sup>853</sup> It seems that the witness yet did not recall the conversation properly because General Krstic had such a discussion with Kosoric who testified that after the meeting at Hotel Fontana he left with a DutchBat officer for Kladanj.<sup>854</sup> He confirmed a part of Major Boering's testimony that he went off toward Kladanj with that DutchBat officer in order to make sure there was a safe passage for the Muslim refugees. When the two of them arrived in Luke they found the commander of the Vlasenica Brigade, and another person who was probably his Chief of Staff. The witness spoke to both of them and conveyed General Krstic's order. The order was as follows: Secure unhindered passage for all those wishing to go to Kladanj.<sup>855</sup>

517. The witness testified that he saw Popovic a couple of times in Krivace where the command post for Zepa Operation was situated.<sup>856</sup>

518. Although the witness was not able to recall the exact date of Popovic's stay at Krivace, the Defence considers that it must be 14 July 1995 before the beginning of the

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<sup>849</sup> *Ibid* T.20272:17-20274:4

<sup>850</sup> *Ibid* T.20284:7-19

<sup>851</sup> *Ibid* T.22110:12-18

<sup>852</sup> [REDACTED]

<sup>853</sup> *Ibid* T.14589:24-14590:8

<sup>854</sup> Kosoric 30.6.2009 T.33768:19-33769:11

<sup>855</sup> *Ibid* T.33793:3-33795:

<sup>856</sup> *Ibid* T.14603:10-21

Operation in accordance with military rules and regulations the expert Vuga testified about.<sup>857</sup>

519. The Defence expert Vuga explained that security organs of the DK in Zepa Operation were primarily to make sure that the system of command functioned safely. In other words, he was duty-bound to secure the command post from which the combat operation would be commanded, and he had to secure it in such a way as not to disrupt the system of command. He had to provide counter-intelligence security and organize measures of security within the command itself, such measures were to would provide for the uninterrupted functioning of the command post. According to the expert the most critical point is the time of preparedness of the command post and putting it in function because it is at that very moment that the enemy tries to interfere, knowing that it is very complicated to start from scratch at the moment when combat is about to start. This is a very critical moment, and that's when all the security measures have to be in place and they have to start functioning properly.<sup>858</sup>

520. At this point the Defence will address PW-165. In July 1995 the witness was a member of the ZB military police company. On 26.11.1995 he gave a statement to the Prosecution and confirmed that it was the truth.<sup>859</sup> One day the witness worked in Rocevic with two or three of his colleagues but could not recall their names. His colleagues or Jasikovac told him to secure check-point not allowing civilians to approach, to check vehicles and similar thing.<sup>860</sup> Very soon he changed his statement by saying that his commander told him by phone to go to Rocevic School and together with his colleagues at the entrance to the yard check persons who were coming and going. When asked to clarify if he got the instruct for the task from his commander or colleagues he answered that that he got the assignment from his commander but before that he was told by colleagues who were there.<sup>861</sup>

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<sup>857</sup> Vuga 3.7.2008

<sup>858</sup> Vuga 3.7.2008, 23234:10-23235:6

<sup>859</sup> PW-165 3.4.2007 T.9902:9-9905:5

<sup>860</sup> *Ibid* T.9909:14-9910:10

<sup>861</sup> *Ibid* T.9911:1-11

From this answer it follows that he was in touch with his colleagues even before his commander called him. He further explained that his task was to be 400 meters off the main road towards the school, to control the cars and tell civilians to keep away from the yard. The Serb civilians were angry, nervous; swearing and shouting because they lost many relatives during the war. They were bitter and angry at the prisoners at the school.<sup>862</sup> He was there approximately from 11 or 11:30 until 17 hours. He also stated that it took place on 11 July 1995.<sup>863</sup> The witness did not change his testimony about the date even when confronted with his statement that he could not recall that date.<sup>864</sup> The witness testified that civilians wanted to enter the schools for some sort of revenge.<sup>865</sup>

521. On the same evening the witness testified that he saw a few people walking around in camouflage uniforms, he saw their backs and was told that the commander had a meeting with Popovic and Beara. The Commander of the Brigade at the time was Obrenovic.<sup>866</sup> At the time he personally did not know who Popovic was, however from the back and front he saw that the person had a moustache, and after 1998, realized that it was the same person that he saw. He remembered his name as Vujadin from the warrant only.<sup>867</sup> He also said that is "most probably" that he knew Popovic by sight. On that night he saw left side of the face of the person walking upstairs and saw moustaches. He further said that he was tall man.<sup>868</sup> The witness explicitly told the Popovic Defence team that he did not tell the OTP investigators that he knew Popovic at all, that he never saw him in Zvornik but only heard about the meeting.<sup>869</sup> The witness testified that 75 per cent of his memory "is not serving me well."<sup>870</sup> His memory suddenly improved during another cross-examination to the extent that he testified that "it serves him to the extent 75 to 80

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<sup>862</sup> *Ibid* T.9911:12-9912:24

<sup>863</sup> *Ibid* T.9912:25-9913:17

<sup>864</sup> *Ibid* T.9916:10-23

<sup>865</sup> *Ibid* T.9922:12-24

<sup>866</sup> *Ibid* 4.4.2007 T.9965:5-13

<sup>867</sup> *Ibid* T.9962:13-9963:3

<sup>868</sup> *Ibid* T.9964:4-25

<sup>869</sup> *Ibid* T.9967:20-9968:12

<sup>870</sup> *Ibid* T.9968:24-25

percent."<sup>871</sup> He further explained that he had an interview with the OTP upon his arrival in The Hague about the event from May 1992. He denied that he told the Prosecution that he took part in the action on 23 May 1992 but just recognized names from the list.<sup>872</sup> In his witness statement the witness mentioned four persons present when he allegedly saw Popovic in the Zvornik Brigade Command and not a single one of them confirmed that part of his statement.<sup>873</sup> Finally, the witness confirmed that he declared in his witness statement that he knew Popovic very well. He explained that he discussed it with the Prosecutor but testified that he knew Popovic only after 1998 and 1999 after he recognized him from the warrant. He realized that he was the person from the year 1995 and think that the Prosecutor "acknowledged that. He discussed that with the Prosecutor "and we considered this."<sup>874</sup>

522. The testimony of this witness the Defence considers as incredible. He changed the statements he gave to the Prosecution as to his knowledge of Popovic considerably. In the statement he declared that he knew Popovic very well but testified that he knew him after he saw his warrant in 1998 or 1999. His recollection was improperly influenced when his statement was taken with disregard of the rules of identification and recognition explained by Professor Wagenaar<sup>875</sup> namely, the identification requires preparation consisting of the description which the witness firstly has to provide. If the proper procedure was followed the witness would not have erred by recognizing Popovic when four other persons present did not mention that they saw him there. This is because the recognition was as a result of joint "consideration" and "acknowledgment" by the Prosecution.

523. At this place the Defence considers also as highly incredible the recognition or identification made by the witness Rutten.

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<sup>871</sup> *Ibid* T.9982:13-22

<sup>872</sup> *Ibid* T.9969:1-9972:5

<sup>873</sup> *Ibid* T.9973:20-9974:6

<sup>874</sup> *Ibid* T.9974:25-9975:12

<sup>875</sup> Wagenaar 3.9.2008 T.25169:12-25173:20

524. This was also done contrary to the rules described by Professor Wagenaar.

525. The witness testified that he recognized two men from the photos<sup>876</sup> one of them from the back. They allegedly were in front of the White house in the afternoon hours on the 13 July 1995. He confirmed that in *Krstic* he testified that the man whose back could be seen on that photo was in command on 12 and 13 July in and around Potocari. On 13 July he saw the man near "White house". He saw him in the same time frame when he saw another man from the photo.<sup>877</sup>

526. As to the other man the witness confirmed that he had never before given the description of this individual. In addition, he never mentioned in his previous statements or testimonies including the proofing session with the OTP in this case that this person gave direct instructions to other Serb soldiers. He agreed that his memory could not be improved ten years after the event as to the details on the 13 July 1995.<sup>878</sup>

527. As already said, on 13 July 1995 thoroughly preparations were made in Vlasenica relating to attendance of General Mladic at the ceremony of the handover of duties between General Krstic and General Zivanovic. Popovic was fully engaged in his security tasks for the visit and General Zivanovic for the preparation of the handover. Therefore they were not at that time near the White House. There is no evidence that Popovic was there at the time.

528. The Defence further notes the incredulous account of the witness in the part of his testimony which states that he saw the distribution of bread in Potocari when allegedly immediately after filming stopped not only did the distribution cease, but the Serbian soldiers took back some of it from the refugees.<sup>879</sup> It is in clear contradiction with the video depicted in the course of the prosecution reopening showing that the bread was distributed to the refugees

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<sup>876</sup> P.2324

<sup>877</sup> *Ibid* 7.12.2006 T.5223:2-5227:4

<sup>878</sup> *Ibid* T.5220:5-5221:18

<sup>879</sup> Rutten 29.11.2006 T.4799:15-21

behind the fence of UN compound in Potocari so the taking back of bread was impossible, since VRS soldiers did not enter the compound. It is also clear that the distribution of the bread was video taped from the UN compound when the same truck stopped on the road with the crowd of refugees taking the bread from the back.

### **III. PILICA**

529. The Indictment states that on 14 or 15 July 1995 VRS and MUP personnel under the supervision of Popovic and Beara transported approximately 1200 Bosnian Muslim male from Bratunac to the school at village of Kula near Pilica many of whom were executed there. The Indictment further reads that Beara got authority for organizing coordinating and facilitating the detention, transportation, summary execution and burial of the Muslim victims murdered at the Kula School assisted in the task by among others Popovic. Popovic was charged with supervising facilitating and overseeing the Kula School execution.<sup>880</sup>

530. The Indictment also charges Popovic on the morning of 16 July 1995 that VRS personnel, under the supervision of Popovic and Beara transported from Kula School to Branjevo Military Farm by bus the remaining members of the group of approximately 1200 Bosnian Muslim males and they were executed by the 10<sup>th</sup> Sabotage Detachment and other soldiers. The Indictment further reads that Beara got authority for organizing, coordinating and facilitating the detention, transportation, summary execution and burial of the Muslim victims murdered at Branjevo Military Farm assisted among others by Popovic. Popovic was charged with supervising facilitating and overseeing the Branjevo Military Farm executions.<sup>881</sup>

531. The Indictment also charges Popovic on 16 July 1995 that VRS personnel who had participated in the executions at the Branjevo Military Farm worked

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<sup>880</sup> Indictment para 30.9

<sup>881</sup> *Ibid* para 30.11

with other VRS and/or MUP personnel, under the supervision of Popovic and Beara in summary executing with automatic weapons approximately 500 men inside the Pilica Cultural Centre. The Indictment further reads that Beara had authority for organizing, coordinating and facilitating the detention, transportation, summary execution and burial of the Muslim victims murdered at the Pilica Cultur Center assisted amongst others by Popovic. Popovic was charged of supervising, facilitating and overseeing the Pilica Cultural Centre executions.<sup>882</sup>

532. The Prosecution further stated that the mass execution of Bosnian Muslim prisoners which occurred at the Branjevo Military Farm near the village of Pilica took place on 16 July 1995 approximately between 1000 and 1600 hours.<sup>883</sup> The Prosecution further states that the 10<sup>th</sup> Sabotage Detachment group taking part in the execution was met by a Lieutenant-Colonel and informed that buses carrying Bosnian Muslim prisoners were on their way and that upon their arrival, the Unit was to execute them.<sup>884</sup> The Prosecution further states that that the Fuel Disbursal Log of the Zvornik Brigade notes that on 16 July 1995, 500 liters of fuel were sent to Popovic at Pilica. This evidence as well as corroborated telephone intercepts leads to the conclusion that Popovic was directing the murder and burial of these particular victims.<sup>885</sup> The Prosecution further stated that a Lieutenant-Colonel from Drina Corps ordered this Unit, along with men from Bratunac to go and execute 500 Bosnian Muslim prisoners.

533. In its Opening Statement the Prosecution stated that on 16 July 1995 Popovic and Beara were involved in the killings of about 1000 people at the school and maybe 500 in the Cultural Centre and Branjevo Military Farm with the 10<sup>th</sup> Sabotage Detachment.<sup>886</sup>

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<sup>882</sup> *Ibid* para 30.12

<sup>883</sup> OTP Pre-Trial Brief 28.4.2006 para 91

<sup>884</sup> *Ibid* para 98

<sup>885</sup> *Ibid* para 99

<sup>886</sup> OTP Opening Statement 21.8.2009, T.439:9-24

534. The Defence denies the participation of Popovic in Kula, Branjevo and Pilica executions or burials of the victims.

**IV. The Defence's Position on the Prosecution's Evidence**

535. The Defence denies the above charges and states that evidence demonstrates:

- a. That Popovic was not present at Branjevo Military Farm on the day of the execution;
- b. That Popovic did not ask for the bus or 500 liters of D-2;
- c. That Popovic did not receive that fuel;
- d. That given the time and other facts, the said fuel could not be used for transport of prisoners from the Kula School to the Branjevo Military Farm;
- e. That given the time and other facts, the fuel could not be used for burials of the victims from the Kula/Pilica/ Branjeevo area
- f. That Popovic did not go to the Zvornik area or remain there to organize, oversee, executions or transport or burry prisoners.
- g. That Popovic went to the Zvornik area due to his duties as the Chief of Security of the DK
- h. That due to the opening and closing of the corridor he got certain duties from his Commander and had to perform some security tasks included in his security duties.

a. Testimony of Drazen Erdemovic

536. The only witness present at the execution site at Branjevo Military Farm was Drazen Erdemovic, who was a member of the 10<sup>th</sup> Sabotage Unit at the time.

537. In its testimony Drazen Erdemovic mentioned a Lieutenant-Colonel who brought him and his colleagues to Branjevo Farm and spent some time before the buses with prisoners arrived.<sup>887</sup> He described him as "quite tall, corpulent with grayish hair, his face

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<sup>887</sup> Erdemovic T.10970:1-24

had strong features with no facial hair or moustache."<sup>888</sup> It is stipulated between Popovic Defence and the Prosecution that Erdemovic did not recognize Popovic as Lieutenant-Colonel present at Branjevo and Pilica cafe on the day of the execution.<sup>889</sup> The parties stipulated that on 21 December 1998 the witness Erdemovic was shown a photo-board (ERN 0067-6038-0067-6039), which contained photographs of eight individuals where Popovic appears on the photo-board at number 7. The witness Erdemovic informed the OTP that he could not identify any of the individuals on the photographs as the Lieutenant-Colonel who he gave evidence of having observed on 16 July 1995 at a Branjevo Military Farm and Pilica. The photo-board and identification procedure report (ERN 0067-6040-0067-6041) are attached as Annex A. In addition whilst being questioned by OTP on 7 December 2002 (ERN 0293-54040293-5409) witness Drazen Erdemovic was asked "[i]f the person arranging the execution at the Branjevo Farm was "Popovic," Erdemovic said that the person arranging the execution was a Lieutenant-Colonel and that he did not know who he was." Attached hereto at Annex B is a copy of the said information report. The parties stipulated and agreed that Erdemovic did not identify Popovic as the mentioned Lieutenant-Colonel.

b. Testimony of Dragan Todorovic

538. The Defence considers the testimony of another member of the 10<sup>th</sup> Sabotage Detachment, Dragan Todorovic, as irrelevant to this case because the witness testified that he and a group of soldiers from this unit left Srebrenica area on 13 July and went to Trebinje on the funeral of the member of their unit who was killed the day before.<sup>890</sup> The funeral was on 14 July and they got back to Dragasevac on the morning of 15 July 1995 between 1000 and 1100 hours.<sup>891</sup> He found that there were more troops than usual and after while the head of security for General Mladic arrived. An officer stayed outside the base. The witness personally was not able to see this officer but he learned from the gate-keeper that it was Popovic. He knew Popovic as the officer from the

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<sup>888</sup> *Ibid* 4.5.2007, T.10966:6-12

<sup>889</sup> Stipulations between OTP and the Accused Popovic regarding testimony of Drazen Erdemovic 14.5.2007; 2D 571

<sup>890</sup> Todorovic 14009:8-12; P 2867 Obituary for Dragan Koljivrat

<sup>891</sup> *Ibid* T.14010:24-14011:4

Drina Corps, who used to come to their unit but never asked questions or issued orders.<sup>892</sup> Pecanac asked for some soldiers and had a skirmish with Obrenovic; however the witness was not aware of the reason for the argument. After the argument which Pecanac had with Zoran Obrenovic, the troops left the base and started marching on the road towards Sekovici, Tisca, and Kladanj.<sup>893</sup> He added that Pecanac shouted at Gojkovic before the group left. The whole story was to collect people to send them into the field. He did not know what kind of mission it was but at that time ABiH troops were all over the place. The witness knew that the group left the base equipped for the mission. Except Erdemovic nobody else who went to Trebinje was in the group.<sup>894</sup> On the 16 July 1995 the witness went to Srebrenica early in the morning and he was not aware of the mission for the men. He returned late from Srebrenica and did not see anybody from the group.<sup>895</sup> The witness testified that the group which was sent to the mission on 1 July had zoljas. He confirmed that zoljas were normally used only as an assault weapon to open fire at tanks, bunkers, dugouts and similar things. He inferred that it was either ambush or the road was being blocked.<sup>896</sup> He explained that he stated to ICTY investigators that the group was provided with rocket launchers but this was omitted from the statement taken by the Prosecution.<sup>897</sup>

539. It is the position of the Defence that on 15 July 1995 the group from the 10th Sabotage Detachment was sent on combat activities. On that day there was no execution carried out by the members of this unit. In addition, the Plea Agreement or any other testimony of Erdemovic do not indicate that he participated in any crime on that day although, according to Todorovic, he volunteered to be a member of this group. Finally, the kind of arms given to the group (zoljas and rocket launchers) indicates that it was not intended to be used for the execution.

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<sup>892</sup>*Ibid* T.14012:2-14015:20

<sup>893</sup>*Ibid* T.14038:19-14039:5

<sup>894</sup>*Ibid* T.14041:4-14042:21

<sup>895</sup>*Ibid* T. 14045:4-17 *Ibid*.

<sup>896</sup>T.14048:9-14049:4

<sup>897</sup>*Ibid* 14050:19-25

c. Testimony of Slavko Peric

540. The Prosecution witness Slavko Peric testified that in his interview he described one of two individuals present in front of the school in Pilica on 16 July 1995. One of them was described as shorter than the other one, with dark complexion and with a moustache. In his testimony he said that he could not confirm who was a shorter person with the moustache.<sup>898</sup> Although in his interview he named Popovic as one of the officer, he refused to name him before the court since he was under oath and he could not be certain thereby saying that he was not sure.<sup>899</sup> He believed that he heard one of the soldiers address the shorter of two persons as "Pop".<sup>900</sup> In his interview he was not presented with the photo of the individual he eventually would recognize.<sup>901</sup> The witness confirmed that soldiers were not allowed to address the officers by their nicknames.<sup>902</sup>

541. It is the position of the Defence that it could not be inferred beyond reasonable doubt that the individual the witness referred to was Popovic. The addressing of him by his nickname was not permitted given his rank and position in the Drina Corps. The Defence submits that the nickname "Pop" could be used by soldiers in their communication. The nickname is usual for men with the name Popovic which is a very common name in former Yugoslavia or the name Popov. The same was confirmed by the soldiers from the DK Command military police unit. The soldiers addressed him as Lieutenant Colonel, sir. It was the rule implemented to all officers. The soldiers did not address him by name or nickname. Only officers do that among themselves.<sup>903</sup>

542. For illustration purposes among the members of the 10<sup>th</sup> Sabotage Detachment there were two people whose names could correspond to the nickname "Pop". The Order of the Commander of the 10<sup>th</sup> Sabotage Detachment of

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<sup>899</sup> Peric 14.5.2007, 11428:20-11429:22

<sup>900</sup> Peric 11.5.2007 T. 11413:4-11414:25

<sup>901</sup> *Ibid* T.1415:1-6 *Ibid* 11424:2-6

<sup>902</sup> *Ibid* 11424:8-11426:9

<sup>903</sup> *Ibid.* T.20270:13-20271:8

10<sup>th</sup> July 1995 includes the names of 26 soldiers who were to be deployed to Srebrenica. The last name on the list is Boris Popov whose last name could correspond to the nickname "Pop".<sup>904</sup> Another member of this unit who took the flag down from the mosque in Srebrenica was Velimir Popovic whose name could also correspond to the nickname "Pop".<sup>905</sup>

d. Fuel

543. From the testimony of the driver who transported the D-2 it follows that he was a soldier of the Zvornik Brigade.<sup>906</sup> Like all other drivers he had the vehicle log for each trip. In July 1995 he used to drive the TAM-80 truck.<sup>907</sup> His ordinary task was to deliver food and ammunition for the troops.<sup>908</sup> He filled the second page of the vehicle log including date of trip, departing and returning time, distances, kilometers and all other columns except the last one where he recognized the signature of his superior Pantic.<sup>909</sup>

544. The witness recognized his signature on the Material List for Dispatch<sup>910</sup> confirming that on that date he received 500 liters of fuel to transport from the Zvornik Brigade barracks in Karakaj to Pilica.<sup>911</sup> The witness however brought back 140 liters to Zvornik Brigade.<sup>912</sup> He transported the fuel in barrels to the small bridge out of Pilica in the direction of Bijeljina where a group of soldiers was waiting for him. They had plastic and metal canisters and they recanted the fuel from the barrels to the canisters. Since they were short of canisters some fuel was left in a barrel so he returned it to his unit. The witness remembered that they wanted to take the barrel where the rest of fuel was kept but he did not let them do so because he had to return all barrels to the unit.<sup>913</sup> He testified that he was able to do so just because none of these soldiers was an officer

<sup>904</sup> P 2869 Order by Commandeer of the 10<sup>th</sup> Sabotage Detachment 10.7.1995

<sup>905</sup> Erdemovic 4.5.2007 T.10946:12-13

<sup>906</sup> Bogicevic 18.6.2008 T.22352:21-22353:9

<sup>907</sup> P 295 Vehicle Log for July 1995 Bogicevic 18.6.2008 T.22353:10-22356:6

<sup>908</sup> Bogicevic 18.6.2008 T.22356:24-22357:11

<sup>909</sup> P 295 p.11-12; Bogicevic 18.6.2008 T.22358:13-22360:4

<sup>910</sup> P 291 Zvornik Brigade Material list for Dispatch 16.7.1995

<sup>911</sup> Bogicevic 18.6.2009 T.22360:7-22361:16

<sup>912</sup> *Ibid* T.22361:17-18

<sup>913</sup> *Ibid* T.22362:5-22366:5

who could give him the order to leave the barrel, otherwise he would leave it.<sup>914</sup>

545. He confirmed that the vehicle log accurately reflects 21:30 hours as the time of his return to the Zvornik Brigade barracks.<sup>915</sup> He testified that he remained in Pilica for one to one and half hours during the decanting of the fuel from barrels to canisters<sup>916</sup> and that he went directly from Zvornik to Pilica and from Pilica to Zvornik not stopping anywhere.<sup>917</sup> The trip from Zvornik Brigade barracks in Karakaj to Pilica took 30-35 minutes as long as the trip from Pilica to Karakaj<sup>918</sup> The witness was sure that he did not take with him Fuel Log document when he went to Pilica but that the document was made later most probably the next day, due to his late return to Zvornik. He explained that it could not be compiled earlier because nobody could know that 140 liters of fuel would be returned. He also testified that he never met Popovic and that he cannot even recall if he saw Popovic's name at the Material Dispatch List at the time when he signed it.<sup>919</sup>

546. On the basis of this testimony and mentioned documents it might be inferred that he departed from Zvornik between two and half to three hours before he got back. It means that he left Zvornik around 18:30 at the earliest. The testimony of the witness is supported with a vehicle log.<sup>920</sup>

547. Long before that all prisoners from Kula School were already transported and executed at Branjevo Military Farm.

548. It was the position of the Prosecution that the execution at Branjevo Military Farm lasted between 10 and 16 hours.<sup>921</sup> The Defence agrees with that. This position was

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<sup>914</sup> *Ibid* T.22370:1-9

<sup>915</sup> *Ibid* T.22367:3-7

<sup>916</sup> *Ibid* T.22365:11-13

<sup>917</sup> *Ibid* T.22367:8-15

<sup>918</sup> *Ibid* T.22367:16-20

<sup>919</sup> Bogicevic 18.6.2008 T.22370:10-22372:20

<sup>920</sup> P 295 Vehicle Log for July 1995 p.11-12; Bogicevic 18.6.2008

<sup>921</sup> OTP Pre-Trial Brief 28.4.2006 para 91

supported by a number of the witnesses. The witness Erdemovic testified that the executions at Branjevo were completed between 3 and 4 p.m. when his group left Branjevo and went to Pilica. The transport of prisoners however was completed before the execution. Another OTP witness testified that he saw the prisoners from Kula School being tied up and blindfolded between 10 and 11 a.m. on 16 July as well a parked bus.<sup>924</sup> Another OTP witness testified that the transport of prisoners from the Kula School to Branjevo farm lasted about two hours.<sup>925</sup> In short at the time when the fuel was allegedly sought the transport of prisoners from Kula School to Branjevo Farm was almost completed.

549. According to the ZB Duty Officer Notebook, the request for fuel was received at 14:00 hrs.<sup>926</sup> It is quite clear that anyone who would seek 500 liters of D-2 from Vlasenica would be aware that considerable time was required to get it in Pilica, because of the assignment of a proper vehicle and driver, loading of 500 liters of fuel and transportation from Vlasenica to Pilica would require several hours. Therefore this fuel could not be used for the transportation of prisoners from the Kula School to Branjevo Military Farm..

550. These facts did not prevent the Prosecution and its expert from concluding that "from timing of the executions and burials and the fact that the fuel was to be sent to Pilica Village where the Pilica School is located, that the fuel was most likely used for transporting the prisoners to the execution site at Branjevo Farm."<sup>927</sup> Such a conclusion directly misled the Trial Chamber in *Krstic* to conclude that "Popovic was involved in organizing fuel to transport the Muslim prisoners to the execution site at Branjevo Farm."<sup>928</sup> At the time both the Prosecution and Mr. Butler were informed that execution

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<sup>922</sup> Erdemovic 4 5.2007 T.10972:18-22

<sup>923</sup> *Ibid* T.10983:21-23

<sup>924</sup> Babic, 18.4.2007, T.10234:12-10236-6

<sup>925</sup> Peric, 11.5.2007 T.11416:24

<sup>926</sup> P 377 p.148

<sup>927</sup> *Krstic* TJ para 242

<sup>928</sup> *Ibid* para 243

at Branjevo Military Farm was finished around 1500 hours on 16 July 1995.<sup>929</sup>

551. Moreover, the proximity between Kula School and Branjevo Military Farm would hardly require such a large quantity of fuel even for the transportation of all prisoners.

552. The distance from Kula School to Branjevo Farm is not more than 4.5 kilometers.<sup>930</sup> This is corroborated with the BiH Land Register Maps.<sup>931</sup> The first of these maps "Pilica 12 Sepak 2" depicts the part of road leading from the Kula School to Branjevo at a total length of 870 meters (720+60+90).<sup>932</sup> The next map depicted asphalt and dirty roads leading to the road toward Branjevo.<sup>933</sup> The third map depicts the Kula School and a road to Pilica at a length of 2700 meters, a part of the macadam road Zvornik - Bijeljina at a length of 460 metres and the new Zvornik - Bijeljina road at 600 metres long.<sup>934</sup>

553. There is no evidence that Popovic ever received this fuel even though his name was written on the Material Dispatch List that was made.

554. On the other hand the evidence indicates that this fuel was not used for burials too because on the day of delivery of the fuel there was no burial of victims at Branjevo and Pilica.

555. The burial of victims at Branjevo took place the next day, on 17 July 1995. For that purpose several machines were sent from the Zvornik Brigade Engineering Company to Branjevo including BGH-700, ULT-220 and the transport of the BGH-700<sup>935</sup> all of them fueled by the Zvornik Brigade on the day of their

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<sup>929</sup> *Ibid* para 244

<sup>930</sup> Radosavljevic, 11.6.2008, T.22127:11 22128:4

<sup>931</sup> 1D 1108, 1D 1109, 1D 1110, 1DIC 204

<sup>932</sup> Radosavljevic, 11.6.2008, T.22128:5-22132:7; 1D 1106; 1DIC 202,

<sup>933</sup> *Ibid* T.22132:8-22133:21; 1D 1107; 1DIC 203

<sup>934</sup> *Ibid* T.22133:23-22134:8; 1D 1108; 1DIC 204

<sup>935</sup> P 297 Zvornik Brigade Book of Daily Orders p.17; Ristanovic 29.7.1995, 14473:14-25

work.<sup>936</sup> As the Defence demonstrated, one of the machines, excavator ULT-220 was fueled twice on 17 July 1995 with 100 and 70 liters of D-2<sup>937</sup> and worked in Branjevo on the same day<sup>938</sup>. It confirms the order<sup>939</sup> reading that on 17 July 1995 ULT-220 was to work at Branjevo.<sup>940</sup> In addition "R" Battalion of the Zvornik Brigade was engaged as well, so, one of the members of the battalion, who was employed in "Metalno" Company<sup>941</sup> but mobilized between 1992 and 1995 and used to drive TAM-130 truck<sup>942</sup> testified that when they were under work obligation they would be assigned to the barracks to work for the army.<sup>943</sup> He further described that they would receive at barracks, if the trip had to be made, a travel order and fuel.<sup>944</sup> The witness saw the travel order for his trip to Pilica where the bodies were loaded in the truck. Then, he set off to Branjevo where the bodies were unloaded.<sup>945</sup> The testimony of the witness was endorsed by Vehicle Log of the Zvornik Brigade<sup>946</sup> where issuance of 40 liters of D-2 was registered on 17 July 1995. The second page of the document registers that the truck worked for the Army on 17 July 1995 and went on relation Zvornik - Pilica - Kula - Pilica - Zvornik.

556. It means that vehicles and machines working on the burial of victims got the fuel for that purpose in the regular way at the gas station in Zvornik on 17 July and it was registered in their respective vehicle logs.

557. It further means that there was no need to provide the fuel for the burial by recanting to barrels, from barrels to canisters etc. whole day before burials.

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<sup>936</sup> P 302 Vehicle Log for July 1995

<sup>937</sup> P 302 Zvornik Brigade Vehicle Log July 1995

<sup>938</sup> Pandurevic 19.2.1995, T.31746:14-31747:15

<sup>939</sup> P 297 ZB Engineering Company Log p. 17

<sup>940</sup> Pandurevic 19.2.2009 T.31749:14-317

<sup>941</sup> Tomic, 5.2.2008, T.20999:14-17

<sup>942</sup> *Ibid* T.21022:19-21023:6

<sup>943</sup> *Ibid*, T.20998:21-23

<sup>944</sup> *Ibid*, T. 20999-9-13

<sup>945</sup> *Ibid* T.21001:1-21003:2

<sup>946</sup> P 295 p.583

558. In addition the 360 liters of fuel was not needed for the burial of victims since a large quantity of fuel was sent to the Zvornik Brigade because between 14 and 17 July the Zvornik Brigade consumption of fuel drastically increased. On 13 July 1995 consumption of D-2 was 412 liters.<sup>947</sup> A day later the consumption doubled to 827 liters.<sup>948</sup> The explanation that the consumption was "always shown as being slightly more than is actually consumed in order to try and obtain from the corps any amount of fuel at all", and that it was calculated on the basis of daily reports from the units and reports of traffic and technical department might be true in part.<sup>949</sup> The Defence namely agrees that the calculation was made on the basis of daily consumption by units and technical service as well as that the reports presented more consumption of fuel. However, the Defence disagree that it was done in order to obtain from the Corps "any amount of fuel at all." It is the position of the Defence that it was partially done to hide stealing of fuel. However it is implemented on all Zvornik Brigade Regular Combat Reports concerning the fuel not only on those dated between 14 and 17 July.

559. Anyway the consumption of D-2 jumped to 2595 liters on 16 July<sup>950</sup> and slightly decreased to 1590 liters on 17 July.<sup>951</sup>

560. At the time, due to war and UN economic sanctions VRS was always in shortage of fuel. For VRS it was one of the most important strategic items called by Butler as "liquid gold".<sup>952</sup> Because of that the fuel was the most attractive product for black market and subject of the various forms of stealing, theft and illegal appropriation as a result the consumption of oil was the subject of the strict control.

561. It is the position of the Defence that the name of Popovic was abused for criminal purposes. In addition to above supports this position that he had no need to seek the fuel through Zvornik Brigade duty officer as intermediary, because he could call his unit

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<sup>947</sup> P 325 ZB Regular Combat Report 13.7.1995 item 6; Pandurevic 18.2.2009 T.31720:22-31721:7

<sup>948</sup> P 326 ZB Regular Combat Report 14.7.1995 item 6;

<sup>949</sup> Pandurevic 18.2.2009 T. 31721:9-14 Pandurevic 18.2.2009 T.31721:21

<sup>950</sup> 7D 532 Zvornik Brigade Regular Combat Report 16.7.1995

<sup>951</sup> P 331 Zvornik Brigade Regular Combat Report 17.7.1995

<sup>952</sup> *Krstic* TJ para 400

directly because if he was able to communicate with the Zvornik Brigade by telephone he would have been able to call his Corps Command directly in particular if the fuel was urgently needed. This position supports the lack of Popovic's signature on the document or other evidence as to the reception of fuel and all circumstances in which the fuel was delivered described by Bogicevic as far as he could recall details 13 years after the event. The fact is also supported by a part of the testimony of the Zvornik Brigade Commander that he became familiar with the above mentioned regular combat reports only when he arrived in The Hague.<sup>953</sup> If true, it just confirms that the increased consumption was depicted in order to hide theft, but the conclusion is the same even if this part of his testimony is not accurate. The Defence position is strengthened by the fact that the return of 140 liters of D-2 transported by Bogicevic on 16 July 1995 was not presented in the Zvornik Brigade Logs but all 500 liters of D-2 was presented as delivered.<sup>954</sup> It is further endorsed with the intercept conversation<sup>955</sup> recorded just three minutes before the alleged Popovic's request. In this conversation two unknown persons discussed the need for the large quantity of fuel needed for a possible 450 kilometers long trip and that one of them will "check with my guys if I'll be able to secure petrol."<sup>956</sup>

562. As a result the interpretation of the Prosecution that "elements of VRS including Popovic were in process of transporting by bus, approximately 1200 Muslim men from the Kula School near Pilica to Branjevo Military Farm a few kilometers away, where through the day were summarily executed" is not founded on the evidence.

e. Zvornik Brigade Duty Officer Notebook entry

563. It is unclear who was Zvornik Brigade duty officer on that day and who made the entry on the duty officer's notebook. The witness Jovicic testified that he made entries after midnight in the notebook in the capacity

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<sup>953</sup>Pandurevic 18.2.2009 T.31723:5-31732:5

<sup>954</sup>*Ibid* T.31734:19-31738:2

<sup>955</sup>1D 692 BiH MUP Intercept 662 16.7.1995 at 13:55

<sup>956</sup>Pandurevic 19.2.2009 T.31752:21-31754:4

of the assistant of the duty officer. However he was not able to recall who the duty officer was on that day. On the other hand he did not recognize the handwriting of Trbic but "was told" before he gave his statement that it was Trbic's handwriting.<sup>957</sup> The handwriting expert Barr was unable to establish that entries in the Zvornik Brigade duty officer notebook for 16 July 1995 were made by Trbic.<sup>958</sup>

564. It is not possible to establish when the entry was made. [REDACTED]

565. This entry was contested by the witness Ljubo Raki<sup>959</sup> who was DK duty officer on that day. He testified that he did not get the message described in the first communication of this intercept<sup>960</sup> i.e. that Popovic sought 500 liters of diesel (D-2).

566. Therefore, this Notebook entry is not credible.

#### **V. Prosecution's Intercept Evidence**

567. The Prosecution used several intercepts as corroboration of its submission that on 16 July Popovic was engaged in the execution of the prisoners in Branjevo and Pilica as well as the burial on 17 July.<sup>961</sup>

##### **a. Intercept 1189 16 July 1995 at 13:58**

568. The Prosecution finds that this intercept demonstrates that Popovic called ZB Duty Officer telling him to contact Major Golic and to have Golic send 500 liters of diesel fuel to Popovic in Pilica or else Popovic's work

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<sup>957</sup> Jovicic 14.5.2007 11487:3-11488:11

<sup>958</sup> P 2845 Report of Dr. K.J. Barr 29.6.2006; Barr 25.6.2007 T.13187:3-9

<sup>959</sup> 1D 767 List of DK Duty Operation Officers for July 1995

<sup>960</sup> Rakic, 16.6.2008, T.22199:14-22200:13

<sup>961</sup> Prosecution Submission in Support of the Admissibility of Intercept Evidence 2.5.2007 Annex I

would stop.<sup>962</sup> OTP further stated that at the time of these communications elements of VRS including Popovic were in the process of transporting by bus, approximately 1200 Muslim men from the Kula School near Pilica to Branjevo Military Farm a few kilometers away, where through the day where they were summarily executed. The Prosecution concluded from this conversation that the vehicles transporting the Muslims to the execution site were in need of fuel. The Prosecution called upon previously mentioned exhibits 1042<sup>963</sup> and 377<sup>964</sup> as corroboration of its allegation.

569. The ZB Duty Officer Notebook entry reads: "At 1400 hrs. Popovic requested a bus with full tank and 500 liters of D2 (Diesel). Zlatar Duty Officer and Golic informed."<sup>965</sup>

570. The exhibit 1189 is a compilation of four conversations written as one. The first of them is between "Palma" and "Zlatar" duty officers in which "Palma" duty officer said to "Zlatar" duty officer "500 litres D2 for Lieutenant-Colonel Popovic" and "Zlatar" duty officer repeated "Lieutenant-Colonel Popovic". After disconnection the second conversation follows between "Palma" duty officer and the "Zlatar" switchboard and then with Basevic. "Palma" duty officer repeats that Popovic is at "Palma" seeking urgently 500 liters of D2 or his work would stop, recommending him to get in touch with Roševic. The line was interrupted again and "Palma" duty officer spoke with Golic saying that Popovic just called asking for 500 liters of D2 or his work would stop. There is not indication that Golic said a word but "Hello" before the line was disrupted again. Finally, there was the fourth conversation between "Palma" duty officer ordering an unknown individual X to send a bus full of fuel to Pilica with its reservoir separate from 500 liters mentioned in previous conversations with "Zlatar" duty officer, Basevic and Golic.

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<sup>962</sup> Prosecution Submission in Support of the Admissibility of Intercept Evidence 2.5.2007 Annex I p.40

<sup>963</sup> Fuel Receipt 16 July 1995

<sup>964</sup> ZB Duty Officer Notebook

<sup>965</sup> P 377 p.148

571. If Popovic urgently needed the fuel from the Drina Corps Command, he would ask it directly. If he was in a position to call the Zvornik Brigade he was also able to call the Drina Corps. He had no need to ask Zvornik Brigade duty officer to call Drina Corps duty officer or Golic because he could do it directly. There was no clear reason why Popovic as the Assistant Commander of the Drina Corps would ask the Zvornik Brigade duty officer to act as an intermediary in getting the fuel from Drina Corps Command.

572. Additionally the ZB Duty Officer Notebook entry reads that Popovic sought both 500 liters of fuel and a bus with a full tank and that "Zlatar" duty officer and Golic were informed.

573. The Notebook entry did not mention the alleged conversation between Palma duty officer and Basevic. It is the position of the Defence that this discredits both the intercept and Duty Officer Notebook entry because, if the intercept is true there was no reason for the individual who conveyed the message not to enter in the Notebook that Basevic was also informed, especially in the light of the position he held as the DK Logistic Officer, competent for distribution of fuel. On the other hand, it was quite impossible that Zvornik Brigade duty officer did not know who Drina Corps duty officer was on that critical day when the Baljkovica battle took place and the corridor was opened, given the frequent communications they had. Finally, the Notebook entry reads that Zlatar duty officer and Golic were informed about both the fuel and bus requests. Intercept however reads that the Palma duty officer discussed the fuel request only in the first three conversations: Zlatar duty officer, Basevic and Golic not mentioning the bus.

574. The fourth conversation, as regard the bus was not either with Zlatar duty officer or with Golic but with a third unknown person. It is doubtful that this was a conversation with anyone from the Drina Corps. In fact, the "Palma" duty officer ordered the unknown person to send the bus, with its full tank to Pilica separately from the 500 liters of fuel. This means that the full tank request went to the auto battalion and further implies that the individual who got the order from the "Palma" duty officer was

his subordinate as the "Palma" duty officer could not issue an order to anyone from the Drina Corps that "the bus loaded with oil is to go to Pilica."

575. There is no indication in this intercept that Zlatar duty officer and Golic were informed about the request for the bus as the Notebook entry reads.

576. From a technical point this conversation could be intercepted from one of the RRU-800 frequencies operating along the Vlasenica - Veliki Zep - Cer - Gucevo - Zvornik RR route. The intercept does not show any particular frequency but channel 3 indicates that it was allegedly captured from an RRU-800 device, because RRU-1 is one a channel device. The operator explained that the channel was not entered in this particular intercept because it was noted down earlier and that frequency is always the same as long as it is active. As soon as they noticed that nothing was happening on a particular channel, they would know that the frequency has been changed.<sup>966</sup> From this response it seems that the intercept operators thought that absence of conversation on a channel implies a frequency change, not a change of channel indicating their lack of understanding of how RRU-800 devices work.

b. Intercept 1201 16 July 1995 at 21:16

577. This is a conversation between Popovic and Rasic. The name of Rasic again indicates on inaccuracy of intercept witnesses who testified that they listened to tapes over and over again in order to write the right word into the notebook. In this conversation Popovic said that he was "just up there", that he was with the boss "personally" asking Rasic if they got the interim report of the boss. After Rasic confirmed, Popovic told him that he would come tomorrow and asked Rašić to tell General, "I've finished the job". Popovic continued: "I'll come there tomorrow when I'm sure that that's all taken care of" adding "After I bring the transport from there." Popovic further said that "in general there weren't major problem. But up there, there were horrible problems

<sup>966</sup> PW-157, 9.2.2007, T.7182:12-20

and the thing that commander sent it was just the right thing". He repeated two more times the word "horrible". The other interlocutor asked whether the people of Vidoje Blagojevic arrived there and Popovic confirmed that "it's up there but it didn't arrive on time and it wasn't brought in on time and that's why commander who was here had problems". At the end Popovic was not able to answer when Blagojevic men arrived and gave the telephone receiver to another person.

578. It seems that the Prosecution considerably changed the interpretation of this intercept,<sup>967</sup> but did not change its methodology. Such methodology in a previous trial resulted in the understanding that a part of conversation about "horrible problems" and "it was horrible"<sup>968</sup> refers to execution of the Muslims.<sup>969</sup> Namely, after quoting the whole intercept Butler concluded that Popovic's comment that he was "up there" meant that he had just returned from the Pilica area.<sup>970</sup> Butler further concluded that members of Bratunac Brigades took part in executions at Pilica and Branjevo, on the basis of this intercept and testimony of Erdemovic that they arrived at Branjevo too late. Finally the term "job" mentioned in quoted intercept as well as in another two<sup>971</sup> according to Butler referred to executions<sup>972</sup>. The Prosecution is persisting in a one sided method of interpretation of evidence in this case.

579. The Prosecution is partially correct in concluding that Popovic reported after his visit to Pandurevic at the Baljkovica front line and that the word "horrible" was used for the description of the casualties the Serb forces suffered in the battle. The Prosecution is also right that reinforcement sent by the commander "was just the right thing" mentioned in the conversation.

580. However, the Prosecution is wrong in concluding that the words: "I've finished the job" refers to the transport and summary execution of the prisoners held in the Pilica area

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<sup>967</sup> Prosecution Submission in Support of the Admissibility of Intercept Evidence 2.5.2007 Annex I p. 47-48

<sup>968</sup> P 1201 Intercept 16.7.1995 at 21:16

<sup>969</sup> Krstic

<sup>970</sup> Krstic TJ para 401

<sup>971</sup> P 1218 Intercept 17.7.1995 at 12:42 and P 1224 Intercept 17.7.1995 at 16:22

<sup>972</sup> Krstic TJ para 403

Finally, the Prosecution wrongly concludes that Popovic's reference to "making sure that all has been taken care of" is in reference to overseeing the burial operation at Branjevo Farm that occurred the next day.

581. The Defence contests this position for the following reasons. The interpretation of this evidence could not be based just on the fact that on 16 July 1995 the executions at Branjevo and in Pilica took place because in the early morning hours on 12 July 1995 onwards ABiH column consisting of armed and unarmed members in uniforms or in civilian clothes was breaking through the VRS held territory threatening to invade Zvornik in coordination with ABiH 2<sup>nd</sup> Corps forces were at the frontline, in particular, the situation was growing worse because the main forces of the Zvornik Brigade were engaged in the military operation around Zepa. Such a situation implies not only open military activities but also hidden ones, whose organizers and perpetrators are camouflaged and "concealed".<sup>973</sup> This part of security function was known as "counterintelligence" being priority in comparison with all other tasks of security organs<sup>974</sup> According to Rules of Service of Security Organs, implemented in relevant time by the VRS,<sup>975</sup> the "counterintelligence" duties are the group of tasks for which the security organs (OB)<sup>976</sup> were responsible as protagonists<sup>977</sup>. It means that OB carried out counterintelligence without a special order or request, and that they were exclusively competent, authorized and specialized for this group of tasks.<sup>978</sup> It further means that nobody else could replace them in performing such duties either temporarily or permanently and they could not transfer these powers to another person.<sup>979</sup> Among these tasks are detection and prevention of foreign intelligence services, and hostile activities by individuals, groups or organizations.<sup>980</sup> In the circumstances that prevailed in July

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<sup>973</sup> 1D 1175 Vuga Expert Report para 1.21

<sup>974</sup> *Ibid* 1.23

<sup>975</sup> P 407, Rules of Service of Security Organs

<sup>976</sup> 1D 1175 Vuga Report 2.42

<sup>977</sup> Vuga 30.6.2008 T.23054:18-23056:20

<sup>978</sup> 1D 1175 Vuga Report 2.45

<sup>979</sup> *Ibid* 2.47; Vuga 30.6.2008 T.23053:24-23054:1

<sup>980</sup> *Ibid* 2.49

1995 in the Zvornik area, it meant that OB had to detect and prevent ABiH and other intelligence services as well individuals, groups and organizations performing invisible hostile activities against VRS and Republika Srpska. Accordingly it was the duty of Popovic to perform this task in the Zvornik area as the most threatened area in DK AOR after the fall of Srebrenica. At the time Popovic was the only one who was in charge of security in DK Command<sup>981</sup> carrying out all duties and tasks assigned to this organ assisted only by a civilian typist.<sup>982</sup> As clearly shown Popovic was the only one in DK Command who was able to carry out counterintelligence activities at the most vulnerable place in the whole DK AOR. Therefore because all other activities as to prisoners could be performed by any officer from the other military branch, but security tasks had to be performed by him. There was no rule assigning prisoners in the purview of the security organs.<sup>983</sup> In the other words, if he was ordered by his Commander to do any other military task including prisoners of war, there would no one to perform his security duties and tasks because he could not transfer such duties to anybody else. Besides the increased need for counterintelligence work during the breaking of the ABiH column, and ensued mobilization<sup>984</sup> imposed additional tasks on the security organs.<sup>985</sup> In fact, Popovic as the only security officer of the DK Command was obliged to take measures for the timely discovery and prevention of intelligence, reconnaissance, sabotage and other subversive enemy activities jeopardizing preparations and execution of the mobilization.<sup>986</sup> Vuga excluded the possibilities that security tasks in the Corps at such time were not performed at all.<sup>987</sup> Because of that, the position of the Prosecution that Popovic's jobs mentioned in the intercept conversation at the time refers to executions and burials is unsustainable.

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<sup>981</sup> *Ibid* 4.19

<sup>982</sup> *Ibid* 4.20

<sup>983</sup> 1D 1175 Vuga Report 2.56

<sup>984</sup> 1D 1291 Ministry of Defence Secretariat Zvornik, Order for Mobilization 15.7.1995

<sup>985</sup> Vuga 3.7.2008 T.23265:6-23

<sup>986</sup> *Ibid* T.23266:6-23267:8; 1D 693 Regulation of Mobilization of Armed Forces of SFRY Chapter 2 para 319-323

<sup>987</sup> *Ibid* T.23267:9-23268

582. The level of intelligence activities of the ABiH in the Zvornik Brigade AOR at the time is apparent from an ABiH document where detail information was given about strength and deployment of VRS forces in late June 1995.<sup>988</sup> This document demonstrates that ABiH intelligence knew the locations of IKM and Communication centers of Kiseljak Battalion and its deployment, number of people in trenches, shift changeovers, minefields and deployment of artillery. They possessed also detail information about Malesici Battalion, Petkovci Battalion<sup>989</sup> and Grbavci Battalion (Orahovac), deployment of forces defending the town of Zvornik, Zvornik Brigade IKM, directions of bringing forces, kind of arms engaged in the defence, headquarters of some units ("Drina Wolves"), and logistics data. This meant that prevention of the enemy secret intelligence activities imposed no Popovic the duty to be in the Zvornik area in particular at the time when the 2<sup>nd</sup> Corps forces started its demonstrative activities from the front line and targeted Zvornik with its artillery simultaneously with maneuvers of the column, pretending there was an attack on the town and activation of the ABiH forged radio station communication to deceive VRS. It was quite logical for Popovic to be in the Zvornik area, including AOR of all Zvornik Brigade battalions. Therefore it is not only a logical conclusion that Popovic's arrival and stay in the Zvornik area was connected with executions or burials of Muslim prisoners.

583. It should also be added that he clearly got the order to go to Baljkovica and check the circumstances under which the corridor was opened. As already stated, he was bound as all other officers to carry out the tasks issued by his superior and he did so. However, the corridor presented additional security problems due to the possibility of enemy groups abusing it and infiltrating into the VRS lines. In the frame of his duties he had to assess the security risks arising from such acts and to go back to Vlasenica only when the threat was eliminated with the closure of the corridor. Therefore the Prosecution's conclusions as to the role of Popovic in the executions and burials are unfounded, and

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<sup>988</sup> 1D 1077 ABiH 246 Vitez Brigade, Order for the Defence 21.6.1995

<sup>989</sup> *Ibid* p.1

based just on a coincidence with regards the area and time of his whereabouts and the area and time of executions.

584. Prosecution's interpretation of the intercept conversation allegedly captured between a General and Major Golic is also wrong.<sup>990</sup> In this conversation the General was looking for Popovic, and Golic responded that he was in Zvornik and that he was to return that afternoon. The Prosecution concluded that this conversation meant that Popovic was in Zvornik area "overseeing" the burial of Muslim men at the Branjevo Military Farm.<sup>991</sup>

c. Intercept 1219 17 July 1995 at 12:49

585. In this conversation an unknown individual asked Trbic if Popovic was there. Trbic responded that he wasn't but went toward "that task" and confirmed that it was north of him. The Prosecution concluded that it was Branjevo. X said that Zlatar 01 asked Trbic to get in touch with Popovic, but Trbic answered that it was very hard to do that. The Prosecution concludes that it meant that Trbic was not able to contact Popovic because he was at Branjevo and cellular or radio did not exist there.<sup>992</sup>

586. This conversation just confirms that Popovic at that time was at Baljkovica, because it was very hard to establish any contact with units deployed there. The DK Command ordered Popovic on the previous day to go there and report what was going on with the column and corridor. Branjevo Military Farm was in the area of the 1<sup>st</sup> Infantry Battalion and there was no problem with communicating with that unit and conveying any orders. If necessary they were able to send a courier to the Branjevo Military Farm if Popovic was there monitoring the burials. There is no evidence that communications with 1<sup>st</sup> Battalion was interrupted at the time. However, it was very difficult to reach him at Baljkovica were the corridor was open and had to be closed as such the wide area of Popovic's movement prevented Trbic from knowing exactly where Popovic was and

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<sup>990</sup> P 1218 Intercept 17.7.1995 at 12:42

<sup>991</sup> OTP Submission in Support of the Admissibility of Intercept Evidence, Confidential Annex A, p.53, 2.5.2007

<sup>992</sup> OTP Submission in Support of the Admissibility of Intercept Evidence, Confidential Annex A, p.53-54, 2.5.2007

how to reach him. As a result of the above mentioned facts the submission of the Prosecution is unfounded.

587. The Prosecution continued with an improper conclusion of the rest of the intercepts dated 17 July 1995 as in the previous conversation.

d. Intercept 1218 17 July 1995 12:42

588. This is the conversation of Major Golic and according to the Prosecution, an unknown participant. The notebook clearly reads that the other participant was a General with the code name Zlatar 1. This unknown, General Zlatar 1 was looking for Popovic and was informed that he was in Zvornik. The unknown participant ordered Golic to find Popovic and tell him to come to IKM (Forward Command Post). The Prosecution presents this conversation as evidence that Popovic at the time oversaw the burials of Muslim men at the Branjevo Military Farm.<sup>993</sup> As already stated at the time Popovic was at Baljkovica waiting for the corridor to be closed. However, the interest of the unknown person for Popovic could eventually be explained in the transport he had to bring for him from Zvornik, mentioned in the contents of intercept 1201.

e. Intercept 1220 17 July 1995 12:49

589. This is the conversation between same participants (Trbic and X). In this conversation X told Trbic: "It's changed again" adding "if you get in touch with him, let him finish that work". The Prosecution asserts that it means letting Popovic complete the burial of Muslims on Branjevo Military Farm. X further said "let him finish that work he's doing and have him report here." These words are also understood by the Prosecution as referring to the burial. At the end Trbic said: "The preparation is mainly finished". The Prosecution also sees that as reference to the burial. However, the "preparation is mainly finished" is a more adequate reference for the preparation of the closing of the corridor than the burials, because at the time in

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<sup>993</sup> *Ibid* p.53

question the burials were close to the end. They started in the morning so the preparations for the burials had already been done, therefore, no preparations for burials were made at the time.

f. Intercept 1224 17 July 16:22

590. This is the conversation between Popovic and an unknown person<sup>994</sup> who might be, according to the Prosecution either General Krstic or General Mladic. The words "the job was done" the Prosecution interpreted as reporting that he had finished burying the Muslim prisoners at Branjevo.<sup>995</sup> It is interesting that the Prosecution persists in such a position despite the finding that "no reasonable trier of fact could have concluded that this was the only reasonable inference that could be drawn from evidence."<sup>996</sup>

591. The Defence finds that it is firmly established that Popovic was at Baljkovica on 16 July 1995 when the corridor was opened and reported to DK on the same evening. It was also firmly established that the corridor stayed open until afternoon 17 July 1995. Popovic as the security officer of DK Command was duty bound to monitor the corridor which presented a security risk. The corridor was open during the night and there was the likelihood of a group passing through in the opposite direction and bringing arms to those who were not able to break through.<sup>997</sup> As a result of this he was to be at Baljkovica until when the corridor was to be closed.<sup>998</sup>

592. Because of that the "job is done" with marking "A" referred to the corridor and the result of the control and checking of the ZB Commander report, confirmed by Popović as truthful,<sup>999</sup> by the higher command delegation consisting of three Main Staff officers.<sup>1000</sup> "The job was done" could also mean that he brought to Vlasenica the transportation the unknown General Zlatar 01 was interested in. Considering the above

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<sup>994</sup> P 1224 Intercept 17.7.1995 at 16:22

<sup>995</sup> OTP Submission in Support of the Admissibility of Intercept Evidence, Confidential Annex A, p.55-56 2.5.2007

<sup>996</sup> Krstic AJ para 115

<sup>997</sup> Vuga 3.7.2008 T.23271:10-23271:17

<sup>998</sup> *Ibid* T.23272:21-23273:1

<sup>999</sup> P 1201 Intercept 16.7.1995 at 12:46

<sup>1000</sup> OTP Motion Annex I 65-ter 1228 p. 56

given reasons the Defence asserts the interpretation of the Prosecution as unfounded.

g. Intercept 1234 17 July 1995 20:26

593. This is the conversation between an unidentified speaker and Pajo who is identified by the Prosecution as Pavle Golic. In this conversation X asked where "Pop" was and Pajo answered that he went home adding that he was in no mood. The Prosecution infers from this conversation that Popovic had just returned from Zvornik from the final burial of thousands of Muslim men at Branjevo Military farm. The position of the Prosecution contradicts the content of intercept 1224. In this intercept Popovic, according to the Prosecution, reported to General Krstic that the job was done and that he was at the base. It is the submission of the Defence that "base" means the Command of Drina Corps in Vlasenica and reference to the "job" is already explained.

594. The conversations were allegedly captured on the RRU 800 frequencies not used by Drina Corps and its units. It makes these intercept unreliable and contributes to the unreliability to the whole intercept evidence.

**VI. ROCEVICI**

595. According to the Indictment on or about 14/15 July 1995, VRS and/or MUP soldiers detained approximately 500 Muslim males in the school in Rocevic, near Zvornik. Vujadnin Popovic and Drago Nikolic allegedly were active in efforts to assemble an execution squad to murder prisoners. It also states that Popovic was present at the school at one point, at which time he asked for advice on suitable sites to execute prisoners. The Indictment further reads that Beara got authority for organizing, coordinating and facilitating the detention, transportation, summary execution and burial of the Muslim victims murdered at the Rocevic School and near Kozluk assisted in the task by, among others, Popovic. Popovic was charged of supervising,

facilitating and overseeing the Rocevic School/Kozluk executions.<sup>1001</sup>

596. The Indictment also states that on 15 July 1995 VRS and/or MUP personal under supervision of Popovic and Beara transported to an isolated place near Kozluk and summarily executed with automatic weapons about 500 Bosnian Muslim males. It further states that on 16 July 1995 the victims were buried. The Indictment further reads that Beara got authority for organizing, coordinating and facilitating the detention, transportation, summary execution and burial of the Muslim victims murdered near Kozluk assisted in the task by among others Popovic who supervised, facilitated and oversaw the Kozluk executions.<sup>1002</sup>

597. The crucial witness the Prosecution brought to support above charges against Popovic was PW-128. He testified that he was Commander of the 2<sup>nd</sup> Infantry Battalion of the Zvornik Brigade located in Malesici but lived in Rocevici.<sup>1003</sup> In July 1995 after the fall of Srebrenica he got home for a short rest and learned from the local priest and president of the local commune about prisoners held in Rocevici, who asked him why they were held in the school gym because they felt uncomfortable about prisoners. They told him that a woman was wounded near the school while she washing dishes and that the village was in panic.<sup>1004</sup> He went to the school and found unknown soldiers disheveled, some of them shirtless. He asked to speak to the commanding officer but the soldiers told him that he could not talk to them, that they had no obligation to him. One of the soldiers pointed his rifle at him. The witness suspected that the soldiers were under the influence of alcohol or narcotics. He did not enter the gym but was in the school-yard with the priest and the president of the local commune so he could not see prisoners. He only heard their shouting. His conversation lasted about half hour.<sup>1005</sup>

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<sup>1001</sup> Indictment para 30.8.1

<sup>1002</sup> Indictment para 30.10

<sup>1003</sup> PW-128 20.6.2007, T.12931:1-9

<sup>1004</sup> *Ibid* T.12934:14-12935:25

<sup>1005</sup> *Ibid* T.12936:1-12937:9

598. He left the school and went to Kozluk to call the duty operation officer of the Zvornik Brigade, sometime around 20:30 or 21:30. The witness could not remember who the operation duty officer was on the day but this man did not know anything about prisoners. He suspected that somebody was standing next to the duty officer so that he was not "free to discuss that topic." The witness started shouting at him.<sup>1006</sup> He insisted to be put in contact with Obrenovic but got the reply that he was not available. He asked to speak with anyone else who is available and he told him that Popovic had just arrived. He explained to Popovic what was going on, that soldiers were killing prisoners in front of school. Popovic allegedly told him to calm down because the prisoners would be exchanged next morning.<sup>1007</sup> The witness went back to Rocevic conveying the information that the prisoners would be exchanged tomorrow to the president of the local commune and he agreed with the soldiers guarding prisoners to provide some water and containers to the prisoners.<sup>1008</sup>

599. After he got back to the Battalion Command he informed his close associates Vujo Lazarevic and Mitar Lazarevic about these developments. He again called the Zvornik Brigade duty officer looking for Obrenovic but was told that he was in the field and that he could not get in touch with the commander and him. After midnight between 1 and 2 a.m. duty officer from the battalion command woke him up as they received from the Zvornik Brigade by phone the telegram ordering that a platoon of soldiers should be detached and used for the execution of the prisoners. The he was told the content of the telegram and he was shocked.<sup>1009</sup> After consulting with his two mentioned associates they decided to inform the company commanders and say that they have no personnel. He could not remember who signed the telegram because they were paying more attention on its shocking content not on the signature. The answer was sent also by telegram to the Zvornik Brigade but he could not recall to whom. About 45 minutes later another telegram was recieved. The content was almost the same but the order was added that

<sup>1006</sup> *Ibid* T.12937:10-12938:15

<sup>1007</sup> *Ibid* 12939:6-12941:21

<sup>1008</sup> *Ibid* 12941:24-12942:25

<sup>1009</sup> *Ibid* T.12944:14-12946:6

company commanders must be informed. After consultations with his assistants and company commanders he sent the same answer. He spoke with Dragan Stjepanovic commander of the 1<sup>st</sup> Company but was not sure about whether he spoke with commanders of the 2<sup>nd</sup> Miroslav Stankovic and 3<sup>rd</sup> Companies Milan Radic or their deputies.<sup>1010</sup> He identified deputies as Mico Savic, Risto Milosevic and Petko Tomic.<sup>1011</sup> After the second telegram which was sent at approximately 2.30 a.m. Drago Nikolic allegedly contacted him using civilian telephone and said that the order came from above and must be carried out. He allegedly told him that he would call him again at 7 a.m. At 7 or 8 a.m. Drago Nikolic allegedly called him again but he repeated his previous answer that he could not assign anybody for that task.<sup>1012</sup> Further, Nikolic allegedly ordered him to come at 9 or 10 a.m. to the school in Rocevici.<sup>1013</sup>

600. After the purported morning conversation with Nikolic he spoke again with his two associates and tried to get in touch with the Chief of Staff but he was still unavailable. At 9 or maybe 10 he went to Rocevici and allegedly met Popovic in front of the school. Popovic allegedly told him to get into the school to one of the offices. The school was open. They went to the office on the first floor. When he arrived at school there were a lot of unknown people in the school yard. He also saw at least a dozen corpses on the grass in front of the school bathroom. Already in the schoolyard Popovic had started the shooting and kept asking him why he did not bring his men. He was threatening him that he would be responsible for not carrying out the order. Despite the pressure and threats from Popovic the witness said: "No matter what price will be to pay, I am not going to be involved". During that conversation Popovic left the office, he gave instructions to some of his soldiers who were down there. The witness was not sure if anybody was present during this conversation. Popovic literally forced him to go down to the school-yard and see whether there was anybody who was willing to take part in it. He did it and went downstairs. Somebody approached him and asked what was going on so that he

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<sup>1010</sup> *Ibid* T.12946:7-12949:13

<sup>1011</sup> *Ibid* T.21.6.2007, T.13059:6-21

<sup>1012</sup> *Ibid* T.12949:19-12952:1

<sup>1013</sup> *Ibid* T.12954:8-9 1295

answered what the lunatics were asking him to do but told that person that he would not take part in that.<sup>1014</sup>

601. The witness allegedly said to Popovic that he had to evacuate prisoners from the school because this object was used by children so that there was a danger that soldiers abandon their positions because the soldiers were from that village. Popovic allegedly called the duty officer and told him to send vehicles to Rocevici urgently. Before of that the witness told Popovic that the prisoners should be evacuated to Kozluk barracks and he repeated it several times.<sup>1015</sup> Approximately 30-40 minutes after Popovic's call a single truck arrived driven by Veljko who was from the witness's unit. He was sent to the brigade upon their request and at the moment he was not in his unit.<sup>1016</sup>

602. On that day he also saw Dragan Jovic who was also a member of his unit but on leave at the time. This soldier was standing close to Popovic and the witness and listening to the pressure Popovic exerted on him and what he could do with just one truck. He listened as Popovic told one of soldiers guarding the prisoners that the prisoners should be killed near the school. Jovic then said that there were trucks to drive the prisoners away. The witness said that they were civilian trucks used by his unit from time to time. Popovic asked the witness to call for drivers but the witness was not able to do that. After 15 to 20 minutes the driver Djordje Nikolic showed up. One of the soldiers who were securing the area brought a volunteer aged 17 or 18 years old who would participate in the killing. Djordje Nikolic got into his small truck and Popovic was dissatisfied and Jovic tried again to find one more truck. Djordje Nikolic was a member of 2<sup>nd</sup> Infantry Battalion.<sup>1017</sup>

603. The witness added that Popovic was armed with a pistol and had asked the duty officer to send him one or two soldiers who were located either in Petkovci or in Orahovac. In a subsequent conversation with Trbic, he stated that Popovic referred

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<sup>1014</sup> *Ibid* T.12956:20-12961:7

<sup>1015</sup> *Ibid* T.12965:12966:8

<sup>1016</sup> *Ibid* T.12967:2-17

<sup>1017</sup> *Ibid* 21.6.2007 T.12981:6-12

to either him or Jasikovac.<sup>1018</sup> The witness said that he left the school between 11:30 and 12:15. He was not able to say whether the prisoners were being transported at the time when he left the school. When he got to his battalion command he told his colleagues what was going on at Rocevici and tried again to find the Chief of Staff or the Commander but was informed that they were not in the brigade headquarters. He never spoke with his commander about the subject but once he tried to speak with the Chief of Staff and told him that he called numerous time but he cut him short by saying that he was not available<sup>1019</sup>

604. The witness explicitly testified that he did not take part in the commission of any crimes nor did he allow this to be done by men under his command. He also confirmed that he didn't try to conceal these crimes and their perpetrators. The witness testified that he was subordinated to the battalion commander and believed that at the time when prisoners were in the school this duty was carried out by Dragan Obrenovic.<sup>1020</sup> The witness confirmed that his battalion had premises in Kozluk where they sometime spent time near Vitinka factory. The witness explained the differences in his three previous statements by stating that each time he spoke about what he remembered.<sup>1021</sup>

605. He agreed that in his first statement he never mentioned Popovic by saying that the investigators did not jog his memory and did not mention anything to entice him to provide such an answer. He also agreed that in the second statement he mentioned Popovic as regard prisoners but not about his alleged request that he should assign people to execute these people. He explained that he focused very hard on the questions and answers so that the encounter with Popovic, his request to give him people to execute prisoners and rest of things just slipped his mind at that moment.<sup>1022</sup> The witness explained that he did not mentioned the names of Djordje Nikolic, Veljko Ivanovic

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<sup>1018</sup>*Ibid* T.12986:6-12987:18

<sup>1019</sup>*Ibid* T.12989:6-12991:11

<sup>1020</sup>*Ibid* 21.6.2007, T. 12993: 1912994:23

<sup>1021</sup>*Ibid* T.12998:7-12999:8

<sup>1022</sup>*Ibid* T.12999:9-13000:14

and Dragan Jovic as well as the teen who volunteered to take part in the execution because it would be known in BiH where he was interviewed but decided to mention it in The Hague.<sup>1023</sup> He was not able to explain how he and other people in Rocevici were calmed down when informed that prisoners would be exchanged the next day given that soldiers who guarded them behaved erratically and had to spend the night in the village with local inhabitants. He simply said that he was calm.<sup>1024</sup> He denied that he protected the signer of telegram by saying that he cannot recall who it was.<sup>1025</sup> He denied also that he was in communication with Obrenovic at that time although he said that every brigade commander and chief of staff had clear lines with subordinate units. However, he denied that he was able to establish radio communication with Obrenovic even through a courier.<sup>1026</sup> The witness said that he did not inform his commander after the event because he considered it more than enough to brief the duty operation officer who was to convey the information about such an order.<sup>1027</sup>

606. The witness agreed that he did not inform either the duty operation officer or his commander that soldiers from his brigade took part in the crimes against prisoners but avoided clear answers that he did it to conceal his own role and the role of Obrenovic.<sup>1028</sup> The witness said that the telegram was received by Mitar Lazarevic but he was not present when the telegram was decoded. He said that his reply was sent by the duty officer.<sup>1029</sup> The witness stated that on the day he met Popovic he arrived in Rocevici by car. Nobody was with him. He did not see Mitar Lazarevic in Rocevici.<sup>1030</sup> When he saw the attendant list of the 2<sup>nd</sup> Battalion Command for July 1995, the witness said that it was formality and that it was not valid document.<sup>1031</sup>

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<sup>1023</sup> *Ibid* T.13004:10-18

<sup>1024</sup> *Ibid* T.1309:23-13010:23

<sup>1025</sup> *Ibid* T.13012:7-9

<sup>1026</sup> *Ibid* T.13013:21-13016:1

<sup>1027</sup> *Ibid* T.13017:7-18

<sup>1028</sup> *Ibid* T.13018:1-22

<sup>1029</sup> *Ibid* T.13020:16-13021:3

<sup>1030</sup> *Ibid* T.13022:20-13023:16

<sup>1031</sup> *Ibid* T.13025:23-13027:18

607. The witness testified that his battalion received a telegram about the movement of the column.<sup>1032</sup> He denied that Dragan Jovic was courier as shown on the attendant list. He said that his driver was Goran Radic.<sup>1033</sup> He further confirmed that the communication section of his battalion had a switchboard located 40 meters away from the battalion command. He confirmed that in addition to this kind of communication there was a radio network which could link the brigade command and all battalions as well as brigade IKM and that the Chief of Staff would according to the procedure have a radio operator with him.<sup>1034</sup> He confirmed that he was in possession of a Motorola radio but never spoke on it with the commander or Chief of Staff for security reasons. He added that method of communication was rarely used.<sup>1035</sup> The witness said that the operation duty officer received and sent all information on behalf of the battalion writing in his notebook all important information taking place during his shift.<sup>1036</sup> Telegrams were registered in a separate log book.<sup>1037</sup>

608. The witness agreed that in his first interview with the Prosecution he did not mention the first telegram, second telegram, phone calls received from Drago Nikolic that night and at 7:00am in the morning, his going to the school in Rocevici and his meeting with Popovic<sup>1038</sup> which the Prosecution stipulated.<sup>1039</sup> In light of his previous explanation that such questions were not asked or he could not remember on that occasion he was confronted with explicit questions during first interview. One of them reads: "Do you know anything about the execution of prisoners in the zone of responsibility of the Zvornik Brigade?" The second question was: "Did you ever found out what happened to these people?" "Did you get any feedback from either your brigade commander or Popovic about what happened to those people?" The witness answered that he could not recall what he remembered.<sup>1040</sup> The witness could not remember whether he

<sup>1032</sup>Ibid13052:1-14

<sup>1033</sup> 13057:7-13058:7

<sup>1034</sup> 13073:11-13074:11

<sup>1035</sup> 13074:22-13075:12

<sup>1036</sup> 13075:19-13076:6

<sup>1037</sup> 13078:9-18

<sup>1038</sup> 13079:5-130 80:16

<sup>1039</sup> 13081:12-18

<sup>1040</sup> 13081:24-13083:16

decided before this interview not to give this information.<sup>1041</sup> The witness denied that the absence of his call in the Zvornik Brigade Duty Officer Notebook was because did not call him at all.<sup>1042</sup>

609. The credibility of the witness PW-128 was ruined by three other Prosecution witnesses.

610. The Prosecution brought three more witnesses to testify about the event. The first testified that he was the driver of Acimovic who was his battalion commander since 1993. The witness lived in Rocevici with his family about 200 meters from the school.<sup>1043</sup> He learned that prisoners were brought to Rocevici School gym under the 2<sup>nd</sup> Battalion Command when a soldier from this battalion coming from the village told him. On that occasion he heard that there were dead among them and that Joco Stojanovic took them away by tractor.<sup>1044</sup> On that day they he did not go to Rocevici, however the next day after breakfast while he was in front of the command he was called by Acimovic asking the witness to drive him toward Kozluk but when the arrived continued their journey to Rocevici and stopped in front of the school between 1000 and 1200hrs. He parked his car next to the white UNPROFOR APC. From there the witness and Acimovic went directly to the school. The school was unlocked but Acimovic asked for the door of an office where there was a phone line to be opened. It was done by a school secretary Boro Lakic who had been there or he was brought to the school to open the door. In front of the school there were 15-20 soldiers and military policemen who were, as far as the witness was aware, members of the Bratunac Brigade. When the office was opened Acimovic got in. The witness did not see anyone else there either a soldier or an officer. He stayed in the hall some 20 meters away and didn't enter the office.

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<sup>1041</sup> 13085:1215

<sup>1042</sup> 13140:1013

<sup>1043</sup> Dragan Jovic 21.11.2007, T. 18048:1-20

<sup>1044</sup> *Ibid* T.18049:11-18050:6

611. He got permission from Acimovic to go home and take a shower so he was absent for the next 40 minutes. He entered the gym before going home and about a quarter or maybe a third of the gym was not occupied but the rest was full of soldiers and civilians sitting on the floor.<sup>1045</sup> When the witness got back to the school he saw a military jeep on the road not on the sports ground. Sreco was talking with some man but he could not hear what they were talking about. A man was of a powerful stature like Sreco, a little shorter or taller than Sreco, he was wearing a military uniform with no ranks and no hat. He had no weapons. He was shaven with a round face and rather a big man.<sup>1046</sup> When that man left in his jeep Acimovic called the witness and told him to go and see Draskovic to ask him whether he would want to come and execute prisoners. He added that it must be done because it was an order. Acimovic did not tell the witness what he discussed with the man who left.<sup>1047</sup>

612. The witness did not know how long Acimovic spoke with the man but repeated that the man wore a uniform and was well shaven. He didn't see any weapons on this person and he wasn't wearing ranks.<sup>1048</sup> When he got back from Draskovic who refused to take part in the executions he saw the truck driven by Veljko Ivanovic was already there. He said that they should go to Kozluk because the execution would take place there. Gravel was transport from Kozluk before the war but Veljko Ivanovic did not know where the place was so the witness was ordered to sit with Ivanovic in the truck and lead him to the place. The prisoners were in the back of the truck with three or four military policemen. The gravel pit was three kilometers away from Kozluk. Once there the prisoners were unloaded and taken away and must have been shot but he didn't see that. The prisoners were unloaded by the military police which escorted them and there was no one there waiting for them. Afterwards, they returned to Rocevici.<sup>1049</sup>

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<sup>1045</sup>T.18051:7-18055:6

<sup>1046</sup>T.18055:12-18056:13

<sup>1047</sup>T.18056:21-18057:14

<sup>1048</sup>T.18057:25-18058:

<sup>1049</sup>T.18058:6-18060:14

613. When the witness got to Rocevici, Acimovic ordered him to go to Mico Stanojevic and fetch his truck which had been requisitioned by the military. He didn't find him but his mother and wife refused to give the truck. After that the witness and Acimovic drove there again and Sreco used his authority and gave them an order to give him the truck. They complied and the witness took the truck and Acimovic drove the witness's car so that they could get back to Rocevici. The transport of the prisoners lasted nothing less than hour, because with Stanojevic's truck the witness transported the prisoners to Kozluk two or three times.<sup>1050</sup> The witness saw some other trucks transporting prisoners. The transportation lasted until 2 or 3 p.m. He was in Rocevici until 6 or 7 p.m. when Stanojevic arrived and took his truck.

614. Around 5 or 6 p.m. Acimovic ordered the witness to deliver sandwiches and mineral water and juice to soldiers and he got home around 7.30 or 8.00 that evening. After the return of the truck to Stanojevic, Acimovic told the witness in front of school to take sandwiches and to drop in at a store in Kozluk to buy some mineral water and juices and that battalion would sort that out and he took this down and gave it to the first soldier he came across.<sup>1051</sup> The witness said that he didn't see Acimovic after 5 or 6 p.m.<sup>1052</sup>

615. Another witness testified that he was a professional driver living in Donji Sepak.<sup>1053</sup> He was a member of the battalion situated in Malesici under commander Acimovic. He used to drive trucks<sup>1054</sup> and one day when he was at the Standard barracks in Karakaj, Pantic told him that Acimovic had ordered that they take three crates of ammunition and go to Rocevici where he would load some other stuff. When he arrived in front of the school in Rocevici he saw many soldiers and Acimovic standing next to the door leading into the school building. He waved at him, instructing him to reverse the truck and signaled to where he had to stop. As the witness came out the back door of

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<sup>1050</sup> T.18060:15-18062:10

<sup>1051</sup> T.18063:9-18065:10

<sup>1052</sup> T.18067:9-15

<sup>1053</sup> Veljko Ivanovic T.18173:18-21

<sup>1054</sup> Ibid T.18174:17-18175:7

his truck was opened and the ammunition unloaded. Then two planks were placed into the truck and they started to load the truck with people. Acimovic told the witness that they have to be driven to Donji Sepak where the witness lived and that the witness refused. He then ordered Dragan Jovic to do that beyond Vitinka. The ammunition was moved to a car, where there was some food and drinks which must have been obtained and authorized by Acimovic. After that the witness did not see Acimovic again on that day.<sup>1055</sup> The witness finished his duties by 2.30 or 3 p.m. and went straight to Malesic. In his cab was one of Acimovic's assistants Vujo Lazarevic<sup>1056</sup> The witness testified that he was visited by Acimovic after his return from The Hague. He repeated to him that he didn't see any officer there, but Acimovic told him that Popovic was in one of the classrooms on the first floor.<sup>1057</sup> In his interview the witness expressed his doubts wondering what Popovic would be doing on his own in the classroom of the school building. The witness testified that he asked Acimovic, "Who was he sitting there with? And he didn't answer to this question of mine. Which means that he wasn't even there? What business did he have upstairs in a classroom? And I am claiming that he wasn't there, although I didn't go upstairs."<sup>1058</sup>

616. Finally, the Prosecution rebuttal witness PW-174 testified that he was a civilian in July 1995. He met Ljubo Ristanovic who drove him to the school in Rocevici where he saw Acimovic standing by the door with some other men. The prisoners were loaded onto a truck and Dragan Jovic told him to also get into the truck. Two other men were already in the truck and they drove to Kozluk where he saw dead bodies. The prisoners jumped down from the truck and fire was opened from two sides so that he was under fire too. Jovic gave him a rifle and he also used it.<sup>1059</sup>

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<sup>1055</sup> Ibid 1877:1-18178:11

<sup>1056</sup> Ibid 18179:13-18180:5

<sup>1057</sup> Ibid 18183:3-18184:8

<sup>1058</sup> Ibid 18213:21-18214:15

<sup>1059</sup> PW-174, 23.3.2009, T.32701:5-32702:5

617. The Defence submits that witness PW-128 due to his participation in the Rocevic and Kozluk crimes is not only less than credible but absolutely incredible. Being commander of the battalion for three years he was well informed as to who he was subordinated to. His alleged failure to inform Obrenovic about the event could be explained as because he knew that he received such an order from him. From his first contact with the Prosecution when Obrenovic was already arrested, he avoided implicating him in an obvious effort to also protect himself. He was not able however to conceal that prisoners were held in Rocevic but conspired with Obrenovic to charge Popovic as a person who allegedly brought them there with some unknown soldiers and once the Prosecution became aware that members of his unit took part in these crimes exerted pressure on him to provide his soldiers for the killing of the prisoners. He misled the investigations by presenting to them that he refused to carry out the order and that all the job was done by Popovic and some people he managed to gather. As the evidence grew against him he expanded the story by including more and more people from Rocevic including his close friends and neighbours, persistently lying that they did it under Popovic's pressure. However all evidence indicate that it was him who organized guarded and transported of prisoners from the school to the Kozluk execution site, provided three crates of ammunition, trucks, food and drink for soldiers who were working there and asked the people to volunteer for the execution. After he became aware of the Defence knowledge of Veljko Ivanovic he even tried to influence the witness before his testimony to testify that Popovic was in a classroom in the school.

618. However, he spoke of a man whose description did not correspond with that of Popovic. The person got to Rocevic in a jeep and left in it, whilst Popovic at the time drove a Golf. In addition this person was well shaven while Popovic had moustache. Finally, Popovic is not as tall as PW-128.

619. As a result of the above, the Defence considers that the testimony of PW-128 is not credible.

620. Apart from the mass murders already addressed in previous chapters the Indictment charges Popovic for those committed in near Jadar River,<sup>1060</sup> Cerska Valley,<sup>1061</sup> Nova Kasaba,<sup>1062</sup> Kravica Warehouse,<sup>1063</sup> Sandici Meadow,<sup>1064</sup> Luka School near Tisca,<sup>1065</sup> Petkovci School,<sup>1066</sup> and the Dam near Petkovci.<sup>1067</sup>

621. The Indictment states that on dates specified in alleged paragraphs in July 1995 VRS and MUP personnel summarily executed Muslims capture from the column or separated in Potocari, and that Beara got authority for organizing coordinating and facilitating the detention, transportation, summary execution and burial of the Muslim victims murdered at the Kula School assisted in the task by, among others, Popovic. Popovic was charged with supervising, facilitating and overseeing these executions.

622. As far as the Defence is aware not a single piece of evidence indicated Popovic assisted Beara in facilitating, detention, transportation summary execution and burial of the Muslim victims from the above locations or that Popovic supervised, facilitated and oversaw such executions.

623. The Indictment also put into this Count the executions near Snagovo<sup>1068</sup> and the execution of 6 Muslim men and boys near the town of Trnovo not mentioning any act or omission by Popovic or his role in these crimes.<sup>1069</sup>

624. The parties stipulated the video showing the killing of six Bosnian Muslims near Trnovo. The parties agreed that Scorpions combat unit was deployed at Trnovo/Treskavica front approximately 150 km from Zvornik in the area

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<sup>1060</sup> Indictment para 30.2

<sup>1061</sup> Ibid para 30.3

<sup>1062</sup> Ibid para 30.3.1

<sup>1063</sup> Ibid para 30.4

<sup>1064</sup> Ibid para 30.4.1

<sup>1065</sup> Ibid para 30.5

<sup>1066</sup> Ibid para 30.7

<sup>1067</sup> Ibid para 30.8

<sup>1068</sup> Ibid para 30.15.1

<sup>1069</sup> Ibid para 30.16

of defence of Sarajevo Romanija Corps.<sup>1070</sup> In July 1995, after the fall of Srebrenica, Scorpions brought six Muslim men to an isolated location in Godinjske Bare near Trnovo.

625. The witness PW-126 testified that her brother was one of the men killed by Scorpions. According to her testimony he was separated in Potocari on 12 July 1995.<sup>1071</sup> The witness went to the house used for the detention of separated men, was allowed to enter in the house and search around it but she did not find her brother. She just supposed that he was put in a lorry, although no one else but her saw such a lorry at the time. In addition her assumption that her brother was detained by Serbian forces in Potocari is not valid. If he was in Potocari at all more probably he managed to escape to the wood like some other men who were there.<sup>1072</sup> All the evidence indicates that Muslims arrested in Potocari were transported to Bratunac. All of them were transported to the Zvornik area and killed there, therefore it is not clear why this man would be transported 150 kilometers away to Trnovo and killed there with five other prisoners. She was not allowed to see mortal remains of her brother despite her request, however she was just allowed to see his clothes.<sup>1073</sup>

626. Another witness PW-125 testified that her brother was 17 in July 1995.<sup>1074</sup> Her brother and father went through the woods<sup>1075</sup> while she went to Potocari. The witness recognized her brother as one of victims of the Trnovo killings.<sup>1076</sup> The witness testified before the District Court in Belgrade in the criminal proceeding against the accused that killed her brother and five other men. She recognized them in the courtroom.<sup>1077</sup>

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<sup>1070</sup> P 3248 Stipulation: Statement of Agreed Facts concerning the execution video showing the killing of six Bosnian Muslim men near Trnovo.

<sup>1071</sup> PW-126, 6.11.2006, T.3599:25-3600:22; T.3608:4-20.

<sup>1072</sup> Srebrenica Video Still.

<sup>1073</sup> PW-126, 6.11.2006 T.3621:6.

<sup>1074</sup> PW-125, 31.10.2006 T.3305:9-10.

<sup>1075</sup> T.3308:23-3309:7.

<sup>1076</sup> T.3314:8-25.

<sup>1077</sup> T.3318:9-22

627. The Defence submits that the Prosecution did not prove beyond reasonable doubt that any of the men from the video footage were militarily related to Popovic.

## **VII. The Destruction of Women and Children**

628. The charge of Genocide against Vujadin Popovic includes the destruction of women and children.<sup>1078</sup> The Indictment states: '*The forcible transfer of woman and children from Srebrenica and Zepa [...] created conditions known to the Accused that would contribute to the destruction of the entire Muslim population of Eastern Bosnia, including but not limited to the failure of the population to live and reproduce normally.*'

629. The Defence believes that the facts in *Rutuganda* are considerably different from the events in Potocari. Because of that the jurisprudence quoted by the Prosecution that forced separation of males from females of a group in that particular case was a "measure intended to prevent births within a group" is not appropriate in this case.<sup>1079</sup>

630. In Potocari on 12<sup>th</sup> and 13<sup>th</sup> July there were up to 30,000 Bosnian Muslims gathered in and around the UNPROFOR compound.<sup>1080</sup> Majority of these people were women, children and elderly. On 12<sup>th</sup> and 13<sup>th</sup> July 1995, the women, children and elderly were bussed out of Potocari, under the control of VRS forces, to Bosnian Muslim-held territory near Kladanj.<sup>1081</sup> The removal of the Bosnian Muslim civilian population was completed on the evening of 13<sup>th</sup> July by 20:00.<sup>1082</sup> Most of women, children and elderly arrived safely at Tisca.<sup>1083</sup>

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<sup>1078</sup> Indictment, para 33

<sup>1079</sup> OTP BTP, para 364

<sup>1080</sup> Adjudicated Fact I, Facts 122 and 124

<sup>1081</sup> Adjudicated Facts I, Fact 208

<sup>1082</sup> Adjudicated Fact I, Fact 219

<sup>1083</sup> Adjudicated Fact I, Fact 215

631. From the group of civilians gathered in Potocari, the Serb forces allegedly removed approximately 1,000 Bosnian Muslim men and boys.<sup>1084</sup> The civilians in Potocari were split from the able bodied men mobilized in the 28<sup>th</sup> division of ABiH gathered in Jaglici and Susnjari at the time upon the order by BiH military and civilian authorities in the enclave.<sup>1085</sup>
632. During the first meeting in Fontana Hotel in Bratunac on 11 July 1995 at 20:00 hours, the VRS appeared to have no idea where the ABiH was, i.e. able bodied Muslim men.<sup>1086</sup> So, it is crystal clear that the Serb forces did not split men mobilized in the 28<sup>th</sup> division and civilian population.
633. As we have already mentioned, the total number of 25.000-30.000 civilians were present in Potocari. The number of allegedly separated Bosnian Muslim men in Potocari constitutes small part in comparison to the total number of civilians present there. During the first meeting in Fontana Hotel General Mladic informed the UN and Bosnian Muslim representatives that civilian population was not the target of VRS actions.<sup>1087</sup>
634. However, according to the *Krstic* Trial Judgment the plans to transport the Bosnian Muslim civilians out of the enclave is made at this second meeting in Fontana Hotel on 11 July 1995 at 23:00 hour's.<sup>1088</sup> During the third meeting held in Fontana Hotel at 12 July 1995 at 10:00 clock General Mladic had said that the able bodied men in the crowd in Potocari would be screened for war crimes.<sup>1089</sup>
635. Such action of the Serbian forces could was legitimate and in conformity with the international law.<sup>1090</sup> The Defence points out that on 11<sup>th</sup> July 1995 at 23 hours 300

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<sup>1084</sup> Indictment. Para 36,

<sup>1085</sup> PW-139 6.11.2006 T.3664:6-17; PW-156 8.2.2007 T.7079:13-7081:6, Oric 28.8.2006 T.872:6-874:5;

<sup>1086</sup> TJ Krstic, para.127

<sup>1087</sup> TJ Krstic, para.126

<sup>1088</sup> TJ Krstic, para.129

<sup>1089</sup> TJ Krstic, para.156

<sup>1090</sup> Third Geneva Convention, Article 4

combatants sitting with 15.000 to 20.000 refugees in the camp at Potocari.<sup>1091</sup> The able bodied men in Potocari were subject to the mobilization and suspected members of the ABiH.

636. The Defence position is that they were arrested and detained. "[T]here is no arrest without separation of detained individuals from those who remain free, including their families. [...] VRS arrested the Muslim men in Potocari as suspected enemy soldiers, being aware of legitimacy of such act".<sup>1092</sup> The only reasonable conclusion is that separation of the able bodied men from their families is result of their arrest, which was legitimate act.

637. The crime of genocide is strictly determined and it is necessary to fulfill cumulative conditions to obtain the conviction. The Genocide Convention and Article 4 of the ICTY Statute define Genocide as the acts with the intent to destruct a protected group as a whole or in part, as such.<sup>1093</sup> Moreover, two requirements for Genocide are: (i) the act or acts must target a national, ethnical, racial, or religious group; (ii) the act or acts must be undertaken with the intent to destroy all part of that group.<sup>1094</sup>

638. The Appeals Judgment in *Krstic* identified the protected group as the national group of Bosnian Muslims. The Bosnian Muslims of Srebrenica, or the Muslims of Eastern Bosnia were identified as part of the protected group.<sup>1095</sup> The jurisprudence of the Tribunal established that intent requirement of Genocide under Article 4 of the Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group. Furthermore, the numeric size of the targeted part of the group is the necessary and important starting point.

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<sup>1091</sup> 1D 463 ABiH General Staff Interim Combat Report 12.7.1995 p.1-2

<sup>1092</sup> Popovic Defence Team Opening Statement 30 June 2008, T/p 21589-9: 22-1

<sup>1093</sup> AJ *Krstic*, para. 25

<sup>1094</sup> TJ *Krstic*, para.550

<sup>1095</sup> AJ *Krstic*, para. 15

639. Besides the numerical size of the targeted group, its prominence within the group can be a useful consideration.<sup>1096</sup> It is the Defence position that the importance of the part of the protected group in respect to the protected group itself can be analyzed only in relation "the part of the protected group - protected group".

640. The ICTY jurisprudence took into account the importance of the part of the protected group for the protected group itself. Actually, it took the alleged immense strategic importance of Srebrenica and the surrounding Central Podrinje region to the Bosnian Serb leadership, for Serb forces and Serbia, since without Srebrenica, the ethnically Serb state of Republika Srpska they sought to create, would remain divided into two disconnected parts, and its access to Serbia proper would be disrupted.<sup>1097</sup> A look at the map indicates that Srebrenica is a village in Republika Srpska near the border with Serbia. It is like a small island in an ocean. Since the small island could not divide the ocean, so Srebrenica could not divide Republika Srpska into two disconnected parts. Despite of the existence of the Srebrenica enclave, Republika Srpska had never been divided into two disconnected parts. There was normal land communication between all cities, towns and villages including VRS units in Republika Srpska. Srebrenica was prominent only as the ABiH stronghold from which the permanent attacks were carried out against Serbian military and civilian targets and the shelter for intruders withdrawing there after such attacks.

641. Because of that the Defence cannot see a single reason to look at the Muslims living distinctively than other Bosnian Muslims.

642. Additionally, it could not be seen the reason why the part of the Bosnian Muslims from Srebrenica are more prominent than Muslims from Sarajevo, Tuzla, Mstar or other parts of BiH. Said in Orwellian language why the Muslims of Srebrenica were more equals than Muslims from other parts of BiH.

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<sup>1096</sup> AJ Krstic, para 12.

<sup>1097</sup> AJ Krstic, para. 15

643. The Defence contests the Prosecution's submission that the forcible transfer created conditions, known to the Accused that would contribute to the destruction of entire Muslim population in Eastern Bosnia, including but not limited to the failure of the population to live and reproduce normally. The Prosecution did not prove that the movement of the Muslim population from Srebrenica to the BiH held territory disabled their normal life and reproduction. Namely, there is no normal living at the time of war. However the civilian population from Srebrenica, after the movement to the BiH held territory, was not further abused as the human shields of the 28<sup>th</sup> division, the humanitarian aid intended to them was not misappropriated. The genocide Convention requires that the destruction of the part of the group should have the impact on the overall survival of the group.<sup>1098</sup> There is no evidence that the evacuation of the Bosnian Muslims had impact on the overall reproductive ability of the Muslim population.

644. Therefore the Defence rejects charges for genocide towards women and children. Events occurred in Potocari after the fall of Srebrenica towards women and children did not have significant impact to their capability to reproduce, and did not at all jeopardize the survival of the protected group.

### **VIII. EVIDENCE OF A PATTERN OF CONDUCT: THE BISINA EXECUTIONS**

645. Although not a part of the Indictment, the Prosecution was permitted to reopen its case against Popovic to bring evidence of his alleged participation in the Bisina execution. This evidence was admitted pursuant to Rule 93 of the Rules of Procedure and Evidence as evidence of Popovic's pattern of conduct. In essence, this evidence is very similar to what is known in the English system as similar fact evidence. According to the Prosecution, the evidence is directly relevant to the knowledge, intent, acts and conducts of Popović in the JCE to kill the able bodied men.<sup>1099</sup>

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<sup>1098</sup> AJ Krstic, para 8

<sup>1099</sup> *Prosecution v. Popoviet al.*, Motion to Reopen the Prosecution's Case, with two Appendices, 7 April 2008, para. 1.

646. The Prosecution called three witnesses. The first, PW-172 was a military policeman in the Drina Corps.<sup>1100</sup> Some ten days after the fall of Srebrenica he received orders from his commander to go with the lorry to Susica prison, collect some prisoners that were kept there and take them to be exchanged. He assigned two other young foot soldiers to accompany him. The route was Vlasenica - Bisina - Vlasenica. Near Tisca at the restaurant there were a few more prisoners present and someone led the column to the place where it stopped. One of the vehicles was belonged to Popovic and someone ordered them to provide security around the lorry. The soldiers took five prisoners from the lorry to the right side of the road and then he heard shots which is when he realized that there won't be exchange. The procedure continued, until a big construction machine arrived and the five soldiers who executed prisoners left. He asked Popovic what happened but he did not respond but the witness saw tears in his eyes. A machine operator requested the witness and two young soldiers to load the killed people and Popovic told the young soldiers to do that if they can and will.<sup>1101</sup> The witness stated that the most senior officer at the execution site was Popovic. He did not notice any rank on the soldiers who carried out executions but some of them wore the insignia of the 10th Sabotage Detachment.<sup>1102</sup> The witness testified that while in Bisina he did not get any specific order from Popovic and did not see Popovic issue an order to the five soldiers who carried out the execution. He was not sure whether Popovic wore a uniform as well as the color of the Golf he drove. The executioners left the spot immediately.<sup>1103</sup> The witness had some psychological problems which escalated in January 1995. He visited a psychiatrist or rather psychologist and was put on some medication.<sup>1104</sup> He said that he had a fear for his own safety and that of his family because there are plenty of people who would not like his story specifically the people who did it. He also add that he was afraid that the Serbs and Muslims in the community where he lives would probably

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PW-172, 10.3.2009, T.32566:6  
T.32570:6-32754:16  
T.32575:10-20  
T.32588:20-32590:6  
T.32592:11-32593:2

change their opinion of him. The witness now lives in the village where the majority of the population as Muslim.<sup>1105</sup> The witness agreed with the position of the Defence that Popovic had nothing to do with the transportation of the prisoners from Susica or Sekovici to Bisina, but repeated that he was there during the executions.<sup>1106</sup>

647. The Vehicle Log of the witness shows that he left Vlasenica to Bisina on 23 July at 0830 and got back at 1500 hours.<sup>1107</sup>

648. The Prosecution brought also Nikodin Jovicic, the deputy commander of the uniformed police in Han Pijesak. The chief of Han Pijesak police station was Goran Kanostrevac nicknamed Kane. He knew Himzo Mujic who was his operational contact. He could not recall that he tried to help Mujic. He read intercept 1323A and said that he knew Rubez but could not recall any conversation with Rubez regarding Mujic nor the conversation with Kanostrevac regarding this topic. The witness could not remember extensions 343 or 342 from the intercept.

649. The witness PW-175 testified that he drove a minivan for the Drina Corps in July 1995. He went to Dragasevac near Tisca, picked up some soldiers and transported them to Bisina.<sup>1108</sup> Upon their order he stopped the minivan near a place where a building was built.<sup>1109</sup> He was previously informed that the line was broken.<sup>1110</sup> When shown vehicle log he remembered that he left it at the desk of his boss for his signature and after a few days it was signed. They were signed subsequently not immediately.<sup>1111</sup> The witness denied that he worked with Popovic on that day or even that he saw him.<sup>1112</sup>

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<sup>1105</sup> T.32593:11-32595:14

<sup>1106</sup> T.32597:21-32598:17

<sup>1107</sup> P 4425 Vehicle Log

<sup>1108</sup> PW-175, 25.3.2009 32783:4-13

<sup>1109</sup> *Ibid* T.32787:4-11

<sup>1110</sup> *Ibid* T.32789:7-9

<sup>1111</sup> *Ibid* T.32975:1-32796:18

<sup>1112</sup> *Ibid* T.32798:18-19

650. The Defence tendered into evidence three Witness Statements admitted pursuant to Rule 92-bis. The Prosecution did not seek the cross-examination of the witnesses.

651. The witness Kojic<sup>1113</sup> stated that he worked on the construction of the barracks in Bisina from the beginning of 1994.<sup>1114</sup> He worked there with Dragisa Cojic among others.<sup>1115</sup> The witness knows Popovic as his brother in law.<sup>1116</sup> He also knew Djordjije Popovic relative of Vujadin Popovic who was wounded in July 1995 and taken captive.<sup>1117</sup> A few days after he heard that Djordjije Popovic was captured he saw Vujadin Popovic in Bisina at the building site. It was between 1300 and 1400 hours but he could not remember the date.<sup>1118</sup> While he was working at the building site his colleague Cojic called him saying that a man was asking for him and he saw Vujadin Popovic who had a car next to him.<sup>1119</sup> Popovic was in civilian clothing. He did not asked him aboutr his health or his family but immediately asked him whether any military vehicles had driven by. The witness indicated the road along which two lorries had past two or three hours previously.<sup>1120</sup> Popovic was covered in sweat and seemed perturbed so the witness asked him to sit down and rest but he said that he was in a hurry, entered the car and drove off in the direction the witness had pointed to him.<sup>1121</sup> After approximately half an hour Popovic came back in the same car. He seemed tired and miserable. The witness offered him a juice and sat with him. The witness asked Popovic whether he had any news about Djordjije Popovic. Once he put this question to him, Popovic stand up and left. He stayed with the witness for a minute or two.<sup>1122</sup>

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<sup>1113</sup> 1D 1446 Witness Statement Milenko Kojic of 25.12.2008 and 11.4.2009

<sup>1114</sup> *Ibid* para 4

<sup>1115</sup> *Ibid* para 5

<sup>1116</sup> *Ibid* para 9

<sup>1117</sup> *Ibid* para 10-11

<sup>1118</sup> *Ibid* para 13

<sup>1119</sup> *Ibid* para 14

<sup>1120</sup> *Ibid* para 15-17

<sup>1121</sup> *Ibid* para 18

<sup>1122</sup> *Ibid* para 19

652. Another Rule 92-bis Defence witness<sup>1123</sup> stated that he also worked at the construction of the barracks in Bisina. He remembered that one day in July 1995 a passenger car went to the site. A civilian came out of the car and asked him if he had seen any military vehicles drive by. He did not answer because he did not know who the civilian was. The man asked him whether his son-in-law<sup>1124</sup> was there. The witness asked him who his son-in-law was and he replied Milenko Kojic. The witness called Kojic and asked him whether some military vehicles drove by and Kojic showed him which way the two trucks had gone. The man refused to sit down, got into his car and drove down the road Kojic showed him.<sup>1125</sup> At that time Kojic told the witness that the man was Vujadin Popovic.

653. The third Defence witness<sup>1126</sup> stated that he was a commercial manager of the Zvornik Veزيونica in 1995. He knew Vujadin Popovic as well as his relative Djordjije Popovic. In July 1995 he learned that Djordjije Popovic was wounded in the fighting around Zepa and captured by members of ABiH. Several days later Popovic came to see him in Veزيونica. He was in civilian clothes. He told the witness that the Corps military police had the problems with emblems made by Veزيونica because as result of frequent transfers members of this unit went to another units in their uniforms with this markings sewn onto them, so there were no markings for newly arrived members. The Defence recalls that the witness Bjelanovic testified that members of DK military police would normally retain their insignia worn on left arm even if they ceased being members of that unit.<sup>1127</sup> Popovic and Vlacic discussed other options instead of sewing. During the conversation the witness asked Popovic about Djordjije and he told him that they were doing everything in their power to obtain information about him. During this conversation Popovic asked to use the phone and made a call. He shouted several question words: "When"? "Where"? and "Why"? and said that he had to go immediately.

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<sup>1123</sup> ID 1439 Witness Statement Dragisa Cojic of 25.12.2008 and 17.4.2009

<sup>1124</sup> BCS word "zet" means both son-in-law and brother-in-law. In this case it means the "brother-in-law"

<sup>1125</sup> Cojic para 5

<sup>1126</sup> ID 1438 Witness Statement Slavisa Vlacic of 20.4.2008, 29.12.2008 and 17.4.2009

<sup>1127</sup> *Ibid* T.20274:24-20275:10

Several days after that meeting the witness heard that the body of Djordjije Popovic has been obtained.

654. The Defence submits that Popovic was not present when the execution took place but got there later when the burial of the victims was under way. Namely at the time when the truck driven by PW-172 left Vlasenica at 8:30<sup>1128</sup> Popovic was about to leave for Zvornik and at about the same time PW-175 departed Vlasenica to Dragasevac. However, at 9:00 in the morning Popovic left by "Golf" to Zvornik.<sup>1129</sup> The Vehicle Log entry for 23.7.1995 contains the relation Vlasenica - Zvornik - Vlasenica. All other entries read: "As tasked by the service" meaning that these trips were carried out in his capacity of security officer carrying out counter-intelligence work. The entry for 23 July 1995 which indicated the relationship reflects that on that day Popovic did not carry out any counterintelligence tasks. The witness Vlacic explained that he discussed with Popovic problems with emblems made by Vezionica because as a result of frequent transfers members of this unit went to other units in their uniforms with those markings sewn onto them, so there were no markings for newly arrived members. They discussed other options instead of sewing. In addition he stated that Popovic was in civilian clothing.

655. Witnesses Kojic and Cojic met Popovic at Bisina between 1300 and 1400 hours in the civilian clothing on the same day when two military trucks passed by two or three hours earlier. It means that the vehicles passed by between 1000 and 1100 in the morning as such Popovic could not reach the place at the time when the executions were carried out. Due to this fact the witness PW-175 could not see him, because he left Bisina and reached Vlasenica at noon. As the witness drove the soldiers who killed prisoners it means that the executions were carried out before noon. It explains why PW-175 could not see Popovic or his Golf nearby. Finally, if Popovic had been tasked to organize the execution he would not have asked two young

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<sup>1128</sup> P 4425 Vehicle Log 23.7.1995

<sup>1129</sup> P 197 Vehicle Log 23.7.1995

soldiers to assist the machine operator who requested the witness and two young soldiers to load the killed people to do that if they can and will.

656. If intercept conversation reflects the real events Drina Corps Duty Officer informed a General that Popovic went to Vlacic on that morning at 9:04.<sup>1130</sup> The witness Vlacic stated that Popovic visited him one day in July 1995 several days after Djordjije Popovic was wounded and captured. He could not remember exact day, but it could be reconstructed from the above intercept as well as from the date when Djordjije Popovic was wounded and captured. It was on 18 July 1995.<sup>1131</sup> From Vlacic's statement it follows that Popovic left his office suddenly after some disturbing information he got in the course of the phone conversation. The nature of information could be assessed from the fact that he appeared at Bisina after that call.

657. As a result of the above mentioned facts, Popovic did not participate in the transportation of prisoners to Bisina and the Defence position was confirmed by PW-172.<sup>1132</sup>

658. Witness PW-172 however stated that Popovic was at the spot when the executions took place. The Defence considers such statement as inaccurate because the witness saw Popovic after the events and could only infer that he was there previously. The witness who lives in the village with a Muslim majority acknowledged his psychological problems, fear that the both the Serb and Muslims in the community where he lives would probably change their opinion of him.

659. In this situation the witness was obviously fearful that if he said that Popovic came after execution could mean that he was a part of the group of soldiers who carried out the execution. Given diversity of their outfit and the fact that no of them could not be recognized through his rank, the witness became more frightened that his presence at the execution site in conjunction with his role in the transportation of prisoners would

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<sup>1130</sup> P 1313 Intercept 23.7.1995 at 9:04

<sup>1131</sup> P 141 DK Regular Combat Report 18.7.1995 para 7

<sup>1132</sup> PW-172 10.3.2009, T.32597:21-32598:17

put him in a more significant role than he really had. As a result he needed to relieve such a burden through the presence at the execution of some officer. As Popovic appeared at the site he mentioned his presence to the execution.

660. The Defence in particular indicates that intercept communication relating to Himzo Mujic even if true does not reflect the communication with anyone from the Drina Corps.<sup>1133</sup> Namely none of the two locals 342 and 343 were Drina Corps communication links.<sup>1134</sup> The analysis demonstrates that the intercept was captured at the frequency 784.675 MHz, between participant X who was on extension 343 and participant Y who was on extension 342.<sup>1135</sup> The extension 342 belonged to the Sarajevo-Romanija Corps at Pale while the extension 343 belonged to MUP in Han Pijesak.<sup>1136</sup> It is the conclusion of the Expert that such communication could be established by following these RR directions: Participant X on extension number 343 at the MUP in Han Pijesak <-> wire line Han Pijesak - "G-1" installation <-> OM-60 switchboard at "G-1" installation <-> wire line "G-1" installation - Veliki Žep <-> RRv with RRU-800 Veliki Žep - Jahorina <-> RRv with RRU-800 Jahorina - Pale <-> participant Y on extension 342 at the Command of the 1<sup>st</sup> Romanija Brigade in Pale.<sup>1137</sup> If the frequency 784.675 was true it was related to the directions out of the RRU communications of the Drina Corps. It means that none of the conversation could be intercepted on this frequency between collocutors in the Drina Corps AOR including Vlasenica, Bratunac or Zvornik.<sup>1138</sup>

661. In this particular case the collocutor at the extension 343 is Kane. According to the witness Jovicic it could be Goran Kanostrevac the chief of Han Pijesak police station. It corresponds to Rodic's finding that the extension 343 belonged to the MUP in Han Pijesak. The other collocutor was Y at the extension 342 belonging to the Sarajevo - Romanija Corps. In the conversation Kane said that Himzo Mujic was at "our place"

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<sup>1133</sup> P 1323A Intercept 24.7.1995

<sup>1134</sup> ID 1404 Supplement Analysis of Djuro Rodic Chapter 7

<sup>1135</sup> *Ibid* para 7.4

<sup>1136</sup> *Ibid* para 7.7, 7.8

<sup>1137</sup> *Ibid* para 7.10

<sup>1138</sup> *Ibid* para 7.11

meaning in Han Pijesak MUP, but they did not know if he was still there. Y from SRK said that it was the reason because he was looking for him adding that they needed him. Kane further said that Neso (Rubez) went to save him but unofficially therefore his did not take any notes. It means that Kane did not know whether Mujic was still in Han Pijesak MUP but knew that Neso went to save him. Where did Neso go to save Mujic? Kane allegedly knew that Mujic told Neso that Mujic worked for Jovicic. He allegedly told Neso almost everything about the area, "we" are from and our people, what they had done and who did what to whom. Kane offered to call Dragic who was the warden in the prison, meaning that Kane knew the prison where Mujic had been. Y agreed and advised him that if needed he would take care of it through Crna Rijeka. After an irrelevant part of the conversation Y from SRK advised that maybe Popovic security man said that it was misinformation that there was no such thing there at all. Now Kane said that Neso told him that he was 100%. It is now unclear whether Popovic said that it was misinformation that Mujic was in the MUP in Han Pijesak or at some other place. If Neso visited Mujic but not in Han Pijesak, Kane would tell immediately that he knew that Mujic was at some other place. Instead he said that Mujic was in Han Pijesak but that he didn't know if he was still there. He would not call the warden to ask him whether Mujic was still there, but would say that he was transferred at some other place and direct him on Neso.

662. Because of the above the context within which Popovic's name is used in this conversation is unclear as well as the content of information he allegedly gave.

663. Given the highly inaccurate DNA identification of Mujic in the Bisina grave already addressed in this Brief, this document could not be relevant for any conclusion about pattern of conduct, acts or knowledge of Popovic for crimes in the indictment.

## IX. POPOVIC'S POSITION AND ROLE IN THE VRS

664. The Defence agrees that at the time relevant to the Indictment Popovic was a Lieutenant Colonel and was the Assistant Commander of Security of DK and that he reported to the DK Commander.<sup>1139</sup>

665. Firstly, he was not responsible but just participated<sup>1140</sup> professionally<sup>1141</sup> in the managing of 5<sup>th</sup> MP Battallion of the DK Command. However he did not manage all of the DK Military Police in the brigades, which had their own security organs and commanders.<sup>1142</sup>

666. In fact both command and professional managing of a military police unit lies with its commander. He was the only expert for specific military police tasks. The security organ just participated in professional managing due to possession of counterintelligence information and his knowledge on security risks and threats.

### h.Coordination with MUP

667. The Defence also denies that Popovic was responsible in general for co-ordinating with the bodies of MUP in DK zone of responsibility because the MUP units participating in combat activities had, according to the law and evidence admitted a great level of independency. In fact they could be subordinated in whole to army unit, they kept their commander, could not be divided into smaller parts or used beyond the scope of the tasks previously allowed by MUP authorities.<sup>1143</sup> In that case they were subordinated to the Commander of the military unit. Finally, the MUP units had their own security organ even though subordinated to the VRS unit.

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<sup>1139</sup> Indictment para 15.

<sup>1140</sup> Vuga 30.6.2008 T.23058:4-23059:9; P 407

<sup>1141</sup> Vuga 4 July 1995 T.23291:5-17

<sup>1142</sup> *Ibid* 23282:15-17

<sup>1143</sup> Vuga 30.6.2008 T.23044:13-23047:24; P422 Law on the Implementation of the Law on Internal Affairs during and Imminent Threat of War or State of War p. 9-13, 2911.1994; P8 VRS MS Order 25 April 1995

668. In addition, if subordinated to a military unit the co-ordination with MUP is in the function of the organ of the command and control i.e. the commandant of the military unit not of the security organs.<sup>1144</sup>

669. The Defence submits that in the period relevant for the Indictment there is no evidence that any of the MUP units was particularly resubordinated to the VRS or DK. The Defence contests the conclusion of Ristivojevic's Expert Report<sup>1145</sup> as regard his interpretation of the laws as to relations between VRS and MUP as well as his conclusions relating to the responsibilities of VRS and in particular its security organs. The Defence does not contest his general expertise in law, but just in the specific fields relating to military issues.<sup>1146</sup> His answers restricted on the theoretical interperation and language meaning of the legal texts<sup>1147</sup> resulting in erroneous attribution to the military authorities and security organs tasks explicitly vested on the MUP even when military was concerned.<sup>1148</sup> For example, that MUP did not send a single report to its allegedly superior DK Command despite his assertion that they could participate in combat acitivities just subordinated to the VRS.<sup>1149</sup> He also disregarded the fact that MUP reported its combat activities to its superior command<sup>1150</sup> or that MUP units had been sent to combat operations upon the order of MUP Staff without any resubordination to the VRS.<sup>1151</sup> Finally he wandered who would be the Commander of such MUP unit because it was not mentioned in the document although he should be aware that all MUP units always have their own commanders even in the case of subordination.<sup>1152</sup>

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<sup>1144</sup> Vuga 30.6.2008 T.23045:20-23047:24

<sup>1145</sup> 4D 503 Ristivojevic Expert's Report para 6.2 - 6.7

<sup>1146</sup> Ristivojevic 7.11.2008 T.2799:7-8

<sup>1147</sup> *Ibid* T.27964:6-27974: 10

<sup>1148</sup> *Ibid* T.27985:14-27986:25

<sup>1149</sup> *Ibid* T.27994:18-27995:3

<sup>1150</sup> *Ibid* 29995:14-27997:8; P62 Telegram of CJB Zvornik 13 July 1995

<sup>1151</sup> 1D 1316 MUP Order 30.3.1995

<sup>1152</sup> *Ibid* 27991:21-27993:17

i. Duties toward Prisoners of war

670. The Indictment submits that Popovic as Assistant Commander for Security of the Drina Corps, and by virtue of the authority vested in him by his commander, he had responsibility for the handling of all of the Bosnian Muslim prisoners in the Drina Corps zone of responsibility taken after the fall of the Srebrenica enclave and to ensure their safety and welfare, but he failed to do so.<sup>1153</sup>

j. Handling of prisoners

671. There is no evidence that Popovic as Assistant Commander for Security of the Drina Corps had either general or specific responsibility for the handling of prisoners of war.

672. Republika Srpska enacted Instructions on the Treatment of the Captured Persons which was in force in July 1995.<sup>1154</sup> Article 14 of the Instruction provides that a captured person may be interviewed about military issues. Such an interview was not obligatory however it might be conducted by an intelligence officer, security officer or the combat unit which captured the enemy soldier.<sup>1155</sup> In that case captured person "shall not be subjected to any repressive measures or intimidation. There is no evidence however, that Popovic interviewed any prisoner.

673. There was no mention of prisoners of war in the Rules providing for the competence of the security organ.<sup>1156</sup>

674. On the other side the Instruction provides that Corps commanders shall be responsible for camp organization and quartering.<sup>1157</sup>

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<sup>1153</sup> Indictment para 41 a/v and para 79 a/iv

<sup>1154</sup> 3D 315 Instruction of the Treatment of the Captured Persons 13.6.1992

<sup>1155</sup> Vuga 30.6.2008 T.23048:10-23-049:21

<sup>1156</sup> P 407 Rules of Service of Security Organs; Vufa 30.5.2009, T.23081:13-23082:12

<sup>1157</sup> 3D 315 Instruction of the Treatment of the Captured Persons 13.6.1992 Article 18

675. It means that there was no legal act putting the captured persons in the competence of the security organs.

676. However, the Commander of the unit is authorized to give any legal order to his subordinates including security organs. There is no evidence that either General Krstic, or General Zivanovic or the superior commander issued any orders to Popovic as regards the captured persons.

**X. POPOVIC'S CRIMINAL RESPONSIBILITY UNDER ARTICLE  
7(1) OF THE STATUTE**

677. In addition to the general responsibility, the Prosecution further elaborated on the responsibility of Popovic under Article 7(1) of the Statute.<sup>1158</sup>

678. The Defence contests however that Popovic as the Chief of Security of DK, had a wide range of powers and duties, many of which overlapped between the fields of Intelligence and Police work. The Prosecution is right by quoting that his duties included "organising and implementng security measures and undertaking other specialised work in the field of Security" but just where the VRS was concerned. However, according to the rules his fundamental task not overlapng with intelligence or police works. Contrary to the assertion of the Prosecution the Defence submits that evidence does not demonstrates that Popovic exercised the power or authority in the control of the Military Police units by ensuring that prisoners were efficiently detained, secured and then transported to pre-arangred execution sites where they were executed. Firstly, Popovic did not posses the power or authority to control military police units. There is no evidence that he was ensuring that prisoners were efficiently detained, secured and then transported to pre-arangred execution sites where they were executed or "heavily engaged in logistical and security issues concerning the confinement and execution of captured prisoners." Finally, there is no evidence that Popovic was

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<sup>1158</sup> OTP Pre-Trial Brief 28.4.2006 para 306-324

a central figure in the effort to conceal the crimes through massive reburials of the victims.<sup>1159</sup>

679. The Defence contests that Popovic accompanied General Mladic during his triumphant entry into Srebrenica but agrees that Popovic was in Srebrenica on this occasion in the framework of his security duties.<sup>1160</sup> The Prosecution is right that Popovic attended the third meeting at the Hotel "Fontana" but not as a VRS representative. There is no evidence that any Command or Commander was authorised to be representat the meeting by Popovic. The evidence demonstrates that the Chief of Staff of the DK General Krstic was present as well the Commander of the VRS Main Staff General Mladic, because of this Popovic attended the meeting either in the scope of his duties as the security officer of the Drina Corps or by the order of his Commander. The Prosecution stated that in that period of time Popovic stayed in the Hotel "Fontana" calling upon the receipts for 11 and 12 July. It means that the Bratunac Brigade approved for Popovic to stay there on 11 and 12 July were known to the Prosecution before the trial. However, they fiercely denied it by asserting that the evidence shown by the Defence in this respect is something completely new to them.

680. The Defence denies that Popovic oversaw the process of mass expulsion of Muslim women and children. Although the presence of Popovic in Potocari at the time when video was made is not in dispute as well as the presence of General Krstić, General Mladic and other individuals, the Defence denies that at the time "logistical arrangements were being put in place to murder them by the thousands."<sup>1161</sup>

681. The Defence already analysed Momir Nikolic's statement<sup>1162</sup> as to his alleged communication with Popovic in front of Hotel Fontana on the morning of 12 July.

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<sup>1159</sup> OTP PTB para 307

<sup>1160</sup> Ibid para 308.

<sup>1161</sup> Ibid para 309

<sup>1162</sup> Ibid para 310

682. The Defence contests that Popovic escorted a convoy of able-bodied Muslim men from Bratunac towards Petkovci School and on to Pilica.<sup>1163</sup> The Defence also denies that prisoners in Orahovac were under the control of Popovic or that he participated in guarding, killing or burial of these prisoners or prisoners in Petkovci and Kozluk.<sup>1164</sup>

683. The Defence further denies that Popovic was around at noon on the 16 July at Pilica School in Kula, but do not deny that it is possible there was a person fitting to his description there<sup>1165</sup> because, there were many men fitting the description of Popovic and also many men with moustaches have been seen on many videos and photos during this trial.

684. The Defence will not address again the Branjevo/Pilica executions and in particular the fuel and burial issues<sup>1166</sup> as well as intercepts related to it<sup>1167</sup> since it was elaborated on in detail, earlier in this brief.

685. The "trip ticket" or Vehicle Log for Golf does not indicate its blue colour as stated by the Prosecution.<sup>1168</sup> However, the Vehicle Log indicates that he used the car widely during the whole July 1995 "As tasked by the service". The only exception was on 23 July 1995, when he went to meet the commercial manager of Vezionica Zvornik Vlacic.<sup>1169</sup> The 168 kilometers covered on 16 July really reflects the extensive travelling he was undertaking, but not for the purpose of the killing of prisoners or their burrial but to carry out his security tasks in various places including Baljkovica.

686. Finally, the Defence denies that Popovic was one of the principal directors of the cover-up re-burial operation by coordinating necessary logistics of digging up and transportation of corpses to selected secondary mass graves. The testimony of Momir

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<sup>1163</sup> OTP PTB para 311

<sup>1164</sup> Ibid para 312-313

<sup>1165</sup> Ibid para 314

<sup>1166</sup> Ibid para 315-317, 322, 323

<sup>1167</sup> Ibid para 318, 320, 321

<sup>1168</sup> OTP PTB para 319

<sup>1169</sup> 1D 438

Nikolic in this respect, as well as in the other respects, is highly unreliable. He testified that he learned both from his commander and Popovic that "asanacija" was ordered by the Main Staff of the VRS.<sup>1170</sup> He also stated that Popovic told him "that pursuant to this order, the Command of the Drina Corps 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 precisely was to ensure, for this operation, the necessary quantities of fuel and that the fuel provided from the resources of the Drina Corps should be stored into proper storage areas or gas stations, and that the security organ of the brigade, that is me, had the task to monitor the consumption of the fuel. After the task had been completed, my duty was to send a written report justifying the use of petrol and fuel oil that had been received from the Drina Corps."

687. As already stated, fuel was an important strategic product for the VRS and all misappropriation of it was treated as the hidden enemy activities directed against it. Therefore, security organs devoted a part of their work to preventing such misappropriation of fuel during the whole of the war and monitored consumption of fuel by the military and civilian personnel engaged in work with it. In this sense Momir Nikolic, as well the other security personnel had a permanent task to do that. However, he misrepresented such task as the specific task relate just to re-burials. The Defence denies that Popovic gave him any specific task related to re-burial.

688. In this sense his statement that he reported to his commander about everything related to these issues at the meetings is true. In addition, after the operation was over he packed all the books where the consumption of fuel was registered and sent it to the brigade keeping a copy in the safe of the security organ.<sup>1171</sup> He changed this testimony by saying that the books were handed over to the Drina Corps Command.<sup>1172</sup>

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<sup>1170</sup> Momir Nikolic 21.4.2009 T.32960:7-32964:13

<sup>1171</sup> *Ibid* T.32962:20-32963:8 *Ibid* 23.4.2009

<sup>1172</sup> T.33059:4-5

689. However PW-170 testified in previous trial and his testimony was admitted into evidence.<sup>1173</sup> The summary of his testimony was read to the witness at this trial without objections. It reads that in September or October 1995 he was sent by Miroslav Deronjic at the command of the Bratunac Brigade to Momir Nikolic to provide the workers for reburials. Momir Nikolić allegedly was not able to confirm it since he didn't know the identity of the protected witness but explained that he participated in the operation and that people were coming and reporting to him but that "there was no possibility" for him to know that Deronjic sent them over.<sup>1174</sup>

690. However before that answer although asked about the role of Miroslav Deronjic alone, the witness confirmed not only his role but the role of many other local leaders from the civilian structure.<sup>1175</sup> Just a few minutes later when asked again about the specific role of Deronjic the witness testified: "I cannot exclude the possibility that he was involved" adding that there was no possibility for him to know that Deronjic sent him the workers.

691. It is position of the Defence that PW-170 testified truthfully about the event. On this basis the Defence considers the testimony of Momir Nikolic on the subject as less than credible because, he consistently concealed the role of Deronjic as his relative and in this sense he made up a story used by the Prosecution to put Popovic as the "one of the principal directors" of reburials who coordinated necessary logistics of digging up and transporting thousands of corpses to selected secondary mass graves. It is also unfounded that Popovic ordered Momir Nikolic to coordinate and organize re-burial operation in Bratunac.

## I. THE VICTIMS OF THE ALLEGED CRIMES XI.

### Introduction

692. Vujadin Popovic is charged *inter alia* for genocide (count 1), conspiracy to commit genocide (count 2), extermination (count 3), and murders (count 4 and 5) of

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<sup>1173</sup> P 2960 p.68:3

<sup>1174</sup> Momir Nikolic T.33061-17-33062:4

<sup>1175</sup> *Ibid* T.33059:10-23

over 7.000 Muslim men and boys from Srebrenica<sup>1176</sup>. The plan to murder all able-bodied men from Srebrenica<sup>1177</sup> was developed in the evening hours of 11 July and on the morning of 12 July 1995<sup>1178</sup>.

693. In the Pre Trial Brief the OTP stated that at the beginning of 12 July 1995 and continuing through to 01 November 1995, VRS and MUP forces executed more than 7.000 Muslim men at a number of different locations<sup>1179</sup>. The introductory paragraph of the Appeals Chamber Decision in the Krstic case cites that between 7.000-8.000 Bosnian Muslim men were systematically murdered<sup>1180</sup>. In the Opening statement, the OTP emphasized that VRS and MUP systematically murdered over 7.000 Muslim men and boys from the Srebrenica enclave<sup>1181</sup>.

694. The number of over 7.000 murdered includes opportunistic killings as stated in the Indictment. Those killings took place on 12 and 13 July 1995 in Potocari, 12-15 July 1995 in Bratunac, during a night of the 13 to 14 July 1995 at Kravica Supermarket and on 14 and 15 July 1995 at the Petkovci School<sup>1182</sup>.

695. According to the Indictment, on 13 July 1995 Bosnian Serb forces were stationed along the road between Bratunac, Konjevic Polje and Milici. On that occasion, over 6.000 able-bodied Muslims surrendered or were captured. The plan to murder the able-bodied Muslim men from Srebrenica encompassed the murder of the group of over 6.000 men<sup>1183</sup>.

696. The 6.000 men, who were part of the column was formed during the evening hours on 11 July 1995<sup>1184</sup>. The column gathered near the villages of Jaglici and Susnjari

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<sup>1176</sup> Indictment, paras. 25 and 37, counts 1, 2, 3, 4, 5

<sup>1177</sup> Indictment, para. 24

<sup>1178</sup> Indictment, para. 27

<sup>1179</sup> OTP PTB, para. 24

<sup>1180</sup> Krstic AJ, para. 2

<sup>1181</sup> Opening statement, T/p 376:6

<sup>1182</sup> Indictment, para. 31; OTP PTB, para. 24

<sup>1183</sup> Indictment, para. 29

<sup>1184</sup> Adjudicated facts I, fact 246

and began to track north<sup>1185</sup>, to Tuzla with the members of the 28<sup>th</sup> Division. Their intention was to attempt to break through to the Bosnian Muslim held territory in the north<sup>1186</sup>. The column consisted predominately of boys and men who were between 16 to 65 years old<sup>1187</sup>.

697. Further presentation in this Brief will show a multiplicity of inconsistencies with the various evidences introduced by the OTP during the trial. These inconsistencies deal with the final number of people whose death can be connected with the fall of Srebrenica, beyond reasonable doubt.

698. The Defence opposes: (i) that the acts and conduct of the Accused could be connected to the systematic killings of over 7.000 Bosnian Muslims men and boys from Srebrenica; (ii) the final number of the people who were alleged victims of the systematic killings said in sub-paragraphs 30.2-30.12; 30.15 of the Indictment; and the opportunistic killings in sub-paragraphs 31.2e, 31.3 and 31.4 of the Indictment.

699. The first systematic murders began on the morning of 13 July 1995<sup>1188</sup> at approximately 11:00 hours in the valley of Jadar and continued after 20 of July 1995<sup>1189</sup>. The first opportunistic killings occurred on 12 July 1995<sup>1190</sup>.

## **XII. Victims in the Column**

700. The column of Bosnian Muslim, which comprised of the members of the 28th Division of ABiH, was formed in the evening hours on the 11 July 1995. They moved towards the villages of Susnjari and Jaglici<sup>1191</sup>, to the north to Tuzla and to the territory controlled by Bosnian Muslims forces. During several days of moving through the forest, the armed conflicts occurred:

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<sup>1185</sup> Adjudicated facts I, fact 247

<sup>1186</sup> Adjudicated facts I, fact 245

<sup>1187</sup> Adjudicated facts I, fact 248

<sup>1188</sup> Indictment, paras. 30 and 30.2

<sup>1189</sup> Indictment, para. 30.15

<sup>1190</sup> Indictment, para. 31

<sup>1191</sup> Adjudicated facts I, fact 246

- a. Between the 28<sup>th</sup> Division of the ABiH on the one side, and VRS and MUP units on the other side. For them the column of the ABiH was the legitimate target;
- b. As well as between the members of the 28<sup>th</sup> Division of the ABiH itself.

701. A vast number of the ABiH members became casualties from land mines and other explosives, which had been placed not only around the enclave but also on the confrontation line between ZB and ABiH<sup>1192</sup>. This has been proven by a variety of documents, comprising of UN documents and the statements of a couple of witnesses.<sup>1193</sup>

702. During the armed conflict, the human remains of people from the column stayed unburied in the forest. These can be taken only as the surface remains found in a huge number on different locations<sup>1194</sup>. The conflict between the members of the ABiH was widespread. As a result, it caused a hundreds of dead participants<sup>1195</sup>. It is well documented by the huge number of evidences<sup>1196</sup>.

703. On the way of the column toward the free territory were human remains, most probably from the previous armed conflicts. These were in decomposition phase<sup>1197</sup>, which later had to be buried in a process of sanitation.

704. The testimony of the witness Ruez is of great importance in this regard as he acknowledges that because of an ambush close to Kamenica, there were around 600 casualties of Bosnian Muslims. Their bodies were collected as surface remains by Finish

<sup>1192</sup> Richard Butler, T/p 20246:25-20247:10, Exhibit 1D 1425, para. 4

<sup>1193</sup> Exhibit 1D374; Richard Butler, T/p 20291:10-11, Edward Joseph, T/p 14334:3-17, Dragoslav Trisic, T/p 27036:19-25, PW-170, T/p 17857:11-16

<sup>1194</sup> Exhibit 2993, page 24, Annexure B

<sup>1195</sup> Mico Gavric, T/p T/p 26490 :19-26492 :14

<sup>1196</sup> Joseph Edwards, T/p14334:11; Exhibit 1D374; PW168, T/p 16566:15; Zoran Jankovic, T/p 27375:14-22; PW-139, T/p 3733:22-3734:2; Marinko Jevdjevic, T/p 23848:14-23849:3; Drago Cvoric, T/p 22159:6-16; PW-125, T/p 3342:2-12; Exhibit 7DP330,P257,P377 page 164, 7DP340, P341

<sup>1197</sup> Exhibit 1D820, Person mentioned in this document was exchanged from Batkovici, see/exhibit P7D712, page 7

experts, and the cause of their deaths was as a result of grenades, among others<sup>1198</sup>. Furthermore, the military analyst Richard Butler in his testimony confirmed that the number of 1.000 to 2.000 dead from the combat casualties is reasonable in the period from 12 July 1995 effectively to 18 July 1995<sup>1199</sup>.

### **XIII. Cases of Suicide**

705. One of the adjudicated facts is the one that refers to the events in Potocari, after the fall of Srebrenica, on 12 and 13 July 1995. On that occasion, as a consequence of the threatening atmosphere, several refugees committed suicide, or attempted to do so<sup>1200</sup>. The OTP accepted that Smajlovic Hamdija committed suicide in Potocari on 12 July 1995<sup>1201</sup>.

Nevertheless, Smajlovic Hamdija is on the last List of identified persons, and considered as Srebrenica related<sup>1202</sup>. From the OTP point of view, he is counted as a victim of the opportunistic killings, which is unacceptable.

706. During the trial, we heard the testimony of a few eyewitnesses of the events that took place after 12 and 13 July 1995 in the forest when the column of the 28<sup>th</sup> Division of the ABiH tried to breakthrough. Tenth of the members of the ABiH committed suicide activating bombs and grenades, by hanging, or by fire-weapons. It is proved by numbered documents as  
 „<sup>1203</sup>  
 well .

707. Witness Franken testified about two cases; the first was an attempt to commit suicide and the second actually committed suicide<sup>1204</sup>. In his testimony Bojan Subotic said that he had visited several locations on 13 July 1995 and in the area of Nova Kasaba he saw a big number of Bosnian Muslim bodies killed in the fighting amongst them as well as one Muslim

<sup>1198</sup> Jean-Rene Ruez, T/p 1723:9-1724:14

<sup>1199</sup> Richard Butler, T/p 20251:11-14

<sup>1200</sup> Adjudicated facts I, fact 146

<sup>1201</sup> T/p 27850:9-19, 27828:14

<sup>1202</sup> Exhibit P4494

<sup>1203</sup> Exhibits 1D374, page 2; P257; 2D233; Zoran Jankovic, T/p 27375:14-22; PW-139, T/p 3733:22-3734:2; Marinko Jevdjevic, T/p 23848:14-23849:3; PW-125, T/p 3342:2-12; Mico Gavric, T/p 26490:19-26492:14; Dean Manning, T/p 19071:18-25

<sup>1204</sup> Robert Franken, T/p 2511:23-2512:2

who was hanged. He saw irregular wounds as a result of hand grenade suicides. The witness mentions the number of 500 people. Witness Gavric testified quiet similarly<sup>1205</sup>. The witness PW 110, the Muslim, also confirmed that he saw two suicides, by grenade and shooting in the head. It happened when the decision was made that people from the column, which he was a part of, should surrender<sup>1206</sup>.

708. It is the conclusion and position of the Defence that all above-mentioned examples are unambiguous evidence that the members of the ABiH, who are numbered between 1.500 and 2.000, died in inner conflicts and in conflicts with legitimate Serbian forces, or they committed suicide. It is not excluded that on some part of the forest on the way to Tuzla, the approach was easier, there were no mines fields, and so the victims were collected and buried<sup>1207</sup>. These people cannot be considered neither as a victims of systematic killings under paragraph 30 of the Indictment, nor as the victims of the opportunistic killings from paragraph 31 of the Indictment. The number of 7.000 Bosnian Muslims, who were systematically killed by Serbian forces, as it is stated in the Indictment<sup>1208</sup>, should therefore be decreased.

#### **XIV. Burial and Reburial**

709. The OTP emphasizes also that murders include the burial and reburial operations, which followed the murders, and this is asserted in the relevant paragraph in the Indictment<sup>1209</sup>.

710. According to the OTP allegations, after the fall of Srebrenica, the persons who were murdered were buried in the period of 13 July 1995<sup>1210</sup> to 19 July 1995<sup>1211</sup> in a few mass graves.

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<sup>1205</sup> Bojan Subotic, T/p 25017-25018; Mica Gavric, T/p 26490:19-26492:14

<sup>1206</sup> PW110, T/p 798:2

<sup>1207</sup> Dusan Janc, T/p 33643:17-23

<sup>1208</sup> Indictment, para. 30

<sup>1209</sup> Indictment, para. 32; OTP PTB, para. 357

<sup>1210</sup> Indictment para. 30.2

<sup>1211</sup> Indictment, para. 36

They are named by the OTP as the primary graves<sup>1212</sup>. However, Vujadin Popovic is charged of the death of 11 Bosnian Muslims, who were allegedly killed after they have been taken from the infirmary of the ZB headquarter on 20 July 1995, or later.<sup>1213</sup>

711. The time of burial is not established by the OTP's expert witnesses. The expert Clark stated that at the beginning they had information that the bodies had allegedly been in ground for at least 5 to 6 years<sup>1214</sup> and that he would not be able to conclude the time of burial. In addition, it is interesting to mention that the OTP has not warned the experts about the fact that in 1992 and 1993 there were heavy conflicts on the territory of Bratunac and Zvornik Municipalities, and during that period some graves were created.<sup>1215</sup>

712. The expert Clark has stated that during his work in the ICTY the main focus was to obtain criminal convictions.<sup>1216</sup>

713. The time of eventual burial we will try to look through the three examples. First is the Bljeceva 1 grave, which is one of the secondary graves for the Kravica Warehouse. In that Warehouse allegedly more than 1.000 people were killed on 13 July 1995<sup>1217</sup>. In the aforementioned grave 46 persons were identified of which six remains were not Srebrenica related as can be confirmed from P4490 exhibit<sup>1218</sup>. There is clearly a question to be asked as to who these people are and when they were buried? Witness Janc said that these bodies are from 1992.<sup>1219</sup>

714. Another example is Cerska, the primary undisturbed grave<sup>1220</sup>. According to the Indictment, the mass killing there occurred on 13 July 1995<sup>1221</sup>. The expert Haglund

<sup>1212</sup> Exhibits P2995, P2996, P4524

<sup>1213</sup> Indictment para. 30.15 <sup>m</sup><sub>5</sub>

<sup>1214</sup> John Clark, T/p 7348:8; Exhibit P2446, page 3 <sup>1215</sup>

<sup>1215</sup> Christopher Lawrence, T/p 7520:9 <sup>m</sup><sub>6</sub>

<sup>1216</sup> John Clark, T/p 7386:24

<sup>1217</sup> Indictment, para. 30.4

<sup>1218</sup> Exhibit 4490, Annex A, page 26

<sup>1219</sup> Dusan Janc, T/p 33526:2-8

<sup>1220</sup> Exhibit P4490, Annex A, page 2; William Haglund, T/p 8910:2

<sup>1221</sup> Indictment, para. 30.3

exhumed 150 bodies<sup>1222</sup> from this grave and 142 are identified<sup>1223</sup>. The expert Haglund said that victims have been executed at the site, all 150 of them<sup>1224</sup>. The witness Manning reiterates that according to the cartridge in and around the grave it is confirmed that all persons were killed *in situ*<sup>1225</sup>.

715. However, the OTP informs the Defence Teams<sup>1226</sup> that at least 10 persons, identified from this grave, have been captured after 13 July 1995 and in some cases as late as 17 July 1995. The expert Haglund mentions that two additional persons from this grave, whom the OTP had not mentioned, had been seen alive on 16 and 17 July 1995<sup>1227</sup>. The witness Janc does not oppose that 12 identified persons from Cerska grave were killed after 13 July 1995<sup>1228</sup>.

716. The third example is the Kravica Warehouse. On 13 July 1995, according to the Indictment, over 1000 Bosnian Muslims have been summarily executed there<sup>1229</sup>. The witness Janc's Summary asserts that from the primary and secondary graves relating to the Kravica Warehouse 1.319 persons had been identified<sup>1230</sup>. During his testimony, he said that this number was erroneous<sup>1231</sup>, and he called upon the Corrigendum of his Summary. In the Corrigendum it is stated that over 100 bodies plus one truck full of bodies, from other locations which are not the Kravica Warehouse, were taken to Glogova as a primary mass grave for the murders in that Warehouse<sup>1232</sup>. In that grave were buried as well the bodies of Muslims who died in 1992<sup>1233</sup>.

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<sup>1222</sup> Exhibit P611

<sup>1223</sup> Exhibit P4490, Annex A, page 2

<sup>1224</sup> Exhibit P611, page 56

<sup>1225</sup> Dean Manning, T/p 18975:20-25

<sup>1226</sup> Exhibits 1D1391, 1D1427, from denied Defence Bar Table Motion, certification pending

<sup>1227</sup> Exhibit P611, page viii

<sup>1228</sup> Dusan Janc, T/p 33529:2-22

<sup>1229</sup> Indictment, para. 30.4

<sup>1230</sup> Exhibit P4490, Annex A, page 36

<sup>1231</sup> Dusan Janc, T/p 33519:3-8

<sup>1232</sup> Exhibit P4492, 1D1402, clarification pending, paras. 30-32

<sup>1233</sup> PW 161, T/p 9397:17-23, 9399:6-17

717. Glogova 1 is the primary grave for the Kravica Warehouse, with related sub-grave "L". There were found 12 bodies with the ligatures, in pairs of 2 bodies, what makes 6 pairs in total. The Artefacts usually found in the other sub-graves in Glogova 1 were not present in this grave. In addition, there were no blast injuries, which are usual for other Glogova 1 sub-graves<sup>1234</sup>. Nevertheless, other Glogova graves, 1 or 2, do not have ligatures or blindfolds<sup>1235</sup>. This point will be discussed in more detail in the sections on ligatures and blindfolds.

718. The aerials, if they can be taken as credible, show that the earth on a location of the grave "L" has not been disturbed on the 17 July 1995. The Kravica Warehouse event occurred on the 13 July 1995. However, the aerial from 27 July 1995 shows disturbed earth on a place where the grave "L" was discovered<sup>1236</sup>. Those people then died between 17 and 27 July 1995. From where did the 12 bodies appear from? From the Kravica Warehouse definitely not, this has been confirmed by the witness Manning<sup>1237</sup>. The expert Wright does not make any connection with these bodies and the Kravica Warehouse<sup>1238</sup>. This is also applicable to the sub-grave "F", which is contrary to grave "L" reburied, but it has been dug up as well after 17 July 1995<sup>1239</sup>.

719. It is important that the witness Janc in his Corrigendum concludes that the exact number of the persons connected to the Kravica Warehouse can not be given. Therefore, the P4524 exhibit that speaks about the position and connection of the graves, especially pinpointing the connection of the red and green arrows, do not confirm the tendered evidences<sup>1240</sup>.

720. In conclusion it has become evident during the proceedings that the particular graves emerged at either different times or circumstances (they were dug prior or later from the

<sup>1234</sup> Exhibit P4488, P598, page 22

<sup>1235</sup> Adjudicated facts I, facts 328, 333, Exhibits P2446, pages 14, 19; P598, page 18

<sup>1236</sup> Exhibit P4488

<sup>1237</sup> Exhibit P648, page 11

<sup>1238</sup> Exhibit P674, page 18 "Possible connections with Kravica Warehouse," page 21, "b"

<sup>1239</sup> Exhibit P674, pages 5, 21, "b"

<sup>1240</sup> Dusan Janc, T/p 33632:8-33633:8

dates mentioned in Indictment), or they represent a place of successive burial. In addition, some identified persons from these graves had not died on a date stated in the Indictment, so all of them can not be considered as Srebrenica related, because they are not the victims of neither mass nor opportunistic killings.

721. The process of reburial, according to the Indictment, has been carried out in a period from about 1 August 1995 through to about 1 November 1995 in new graves, which are named as secondary<sup>1241</sup>. The reburial operation, according to the Indictment, was a natural and foreseeable consequence of the execution and original burial plan conceived by the JCE<sup>1242</sup>. The process of the reburial is presented with maps as well. The exhibit P2996 is a map made by the OTP<sup>1243</sup> and which presents the forensic connections, the exhibit P 4524 is the map of the forensic and DNA connections between the graves<sup>1244</sup>. According to the OTP, the Accused was one of the central figures in the effort to conceal the crimes through the massive reburial of the victims<sup>1245</sup>. He is linked with reburials in the effect that he allegedly coordinated logistics of digging up and transporting corpse to secondary graves<sup>1246</sup>.

722. HHJ Agius said that the reburial of victims was the final means by which the material evidence of genocide could be hidden, eliminated, or kept away from scrutiny<sup>1247</sup>.

723. [REDACTED]<sup>1248 1249</sup>

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<sup>1241</sup> Indictment, para. 32; Exhibits P2995, P2996, P4524

<sup>1242</sup> Indictment, para. 32

<sup>1243</sup> Dean Manning, T/p 18944:22-25

<sup>1244</sup> Dusan Janc, T/p 33496:24-33497:15

<sup>1245</sup> OTP PTB, para. 307

<sup>1246</sup> OTP PTB, paras. 307, 324

<sup>1247</sup> HHJ Carmel Agius T/p 3780:23-3781:1

<sup>1248</sup> Damjan Lazarevic, T/p 14486:22-14487:2

<sup>1249</sup> [REDACTED]

724. The Defence emphasizes that from the analyses presented during the proceeding, it cannot be concluded without doubt that the Accused in any way with his acts and conducts facilitated in concealing these crimes, in a way that he has assisted in a massive effort at concealment by supervising, facilitating and overseeing all aspects of the reburial operation.

#### **XV. Primary and Secondary Graves**

725. According to the Adjudicated Facts I there were 14 primary graves<sup>1250</sup>, in which allegedly, bodies were placed right after the persons have been killed. The Adjudicated Fact No.\_448 refers to forensic evidences between the graves<sup>1251</sup>.

726. The ICTY chief archaeologist expert Wright<sup>1252</sup> was tasked to determine whether the particular grave is primary or secondary one<sup>1253</sup>. A primary grave is the original grave where the bodies were placed after death, but secondary grave is where the bodies were put after being "robbed" from their primary grave<sup>1254</sup>. There were at least 30 secondary graves<sup>1255</sup>. All the graves, irrespective of the term primary or secondary, were within the DK AOR<sup>1256</sup>.

727. The witness Janc's Summary increases the number of the primary graves<sup>1257</sup>, which existed after the testimony of Dean Manning. The most important result of his Summary is that he established the DNA connection between the primary and secondary graves which is going to be discussed in another section of this Brief.

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<sup>1250</sup> Adjudicated facts I, fact 475; OTP PTB, para. 25

<sup>1251</sup> Adjudicated facts I, fact 488

<sup>1252</sup> Richard Wright, T/p 7439:1

<sup>1253</sup> Richard Wright, T/p 7438:2

<sup>1254</sup> Exhibit P666, page 18

<sup>1255</sup> Adjudicated facts I, fact 475; OTP PTB, para. 25

<sup>1256</sup> Adjudicated facts I, fact 493

<sup>1257</sup> Exhibits P4524, P4490, P4491

## **XVI. Artefacts and Grave Samples**

728. Before the Chamber the question was raised as to whether through the witness Manning, the investigator of the OTP, the other expert reports could be tendered<sup>1258</sup>. However, some reports were tendered into the corpse of the evidence. Those reports refer mainly to potential connection between the primary and secondary graves. Multiple forensic tests, exercised by the OTP experts allegedly approved that some connections between the primary and secondary graves exist as it is stated in Adjudicated Facts I, 461, 476 and 488. There were several connections between the graves, namely artefacts, soil, pollen, shell cases, blood samples, glass and textile<sup>1259</sup>, the Dutch Artefacts<sup>1260</sup>. The proofs of religious affiliation (Islam) were found, but not proofs of the affiliations toward other religions<sup>1261</sup>.

729. The Defence has still not received the systematic and updated reports on Artefacts found in the graves which are Srebrenica related. Nevertheless, the Defence has got many reports, referring to Artefacts found within the graves, but these are from 1999 and 2000 accompanied with a lot of photos. Therefore, those systematic and updated reports on Artefacts are required to fully establish whether the connections between the primary and secondary graves exist.

730. For example, the OTP makes connection between Kozluk as a primary grave and Cancari road, where 13 secondary graves are located. There were pieces of green glass and labels from bottles found in Kozluk and Cancari Road 3 grave as well<sup>1262</sup>. That connection is allegedly established by the pollen expert Brown as well<sup>1263</sup>. In addition, according to the substance of the soil and pollen the connection between Cancari Road 12 and Branjevo farm, and Hodzici road 3, 4, 5 and Lazete 1 was found.<sup>1264</sup>

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<sup>1258</sup> HHJ Agius, T/p 18896:6-7, 18918:17-21

<sup>1259</sup> P562, P563, P599, P636, P675, P676, P678, P679, P3010, P2166, P4490, page 65, ERN X019-4295, 1D1423, 1D1424, from denied Defence Bar Table Motion, certification pending

<sup>1260</sup> Dean Manning, T/p 18957:10-13, Exhibit P666, pages 27,28

<sup>1261</sup> Dean Manning, T/p 18959:6-10

<sup>1262</sup> Exhibit P665, page 14; Dean Manning, T/p 18976:11-25

<sup>1263</sup> Exhibit P562, page 10

<sup>1264</sup> Exhibit P562, page 10

731. There is a just similarity between the pollen found in Glogova 7 grave and Glogova 3 and 5 graves. Just similarities of the pollen exist as well between the Zeleni Jadar grave and Glogova 3 and 5 graves<sup>1265</sup>.

732. The investigation was conducted on the possible existence of the explosive traces on 22 samples (swabs) taken from the Kravica Warehouse. From the Report we do not know the location from where those swabs were taken within the Kravica Warehouse. The Report concludes that there are indications from the presence of TNT just in 2 samples out of 22. From Pilica Cultural Centre the TNT was positively identified just in one sample<sup>1266</sup>.

733. Automated Ballistic Comparison was conducted in February 2000 and from that report we cannot conclude what kind of/type of firearms were taken and examined, where it was taken from and the number of firearms that were taken. After the microscopic examination of the cartridge cases it was established that some of them are connected because they have been fired in the same firearms<sup>1267</sup>. The Defence holds a position that from the said Report it is not possible to establish: (i) where the 2 connected cartridge cases were taken from and (ii) where the firearms were taken from which the 2 connected cartridge cases were fired.

734. The second Report from June 2000 says that in the total 1.754 test fired cartridge cases have been evaluated and examined against 3.519 evidence cartridge cases with negative results<sup>1268</sup>. Witness Manning during his testimony confirmed that the link between the weapons from the BB and ZB and other units and the bullet cases that were found on the Srebrenica mass grave sites was not established<sup>1269</sup>.

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<sup>1265</sup> Exhibit P563, page 4. It seems that expert Brown assigned to the Glogova Sub-graves numbers 1-7, instead of letters, for example A, B, C..

<sup>1266</sup> Exhibit P599, page 5

<sup>1267</sup> Exhibit 676

<sup>1268</sup> Exhibit P3010

<sup>1269</sup> Dean Manning, T/p 19093:19-19095:7

735. The fragments of isolation foam, pieces of cement, hay, and pieces of joist were found in Glogova, Ravnice and Zeleni Jadar graves and they are allegedly connected with the Kravica Warehouse<sup>1270</sup>.

736. The blood sample analyses performed in 1999 in Grbavci School, the Kravica Warehouse and Pilica Cultural Center numerate a large number of tested samples where the DNA detected human blood<sup>1271</sup>. The other Report on the Kravica Warehouse, from where the blood samples were additionally taken deals just with collecting the samples, but do not give us the results<sup>1272</sup>. From such evidence it is not possible to determine whether those blood samples are matched to some exhumed persons and where those matched persons were exhumed from. This is the way that we could connect the crime of execution with a place of burial.

### **XVII. Aerial photographs**

737. During the proceeding numbers of aerial images were tendered which had been provided by the USA government under Rule 70 of the Rules to the OTP<sup>1273</sup>. The admissibility of the aerial images was discussed and the Chamber decided that it was satisfied. The Chamber stated that sufficient evidence of the relevance and probative value of the aerial images had been adduced and the weight that should be given to them will be evaluated at the end of the case<sup>1274</sup>.

738. During the exhumation each grave site was assigned with coordinates by the authority that conducted the exhumation<sup>1275</sup>. However, part of the information regarding the location of the graves was provided through the

aerial images<sup>1276</sup> and some graves have been discovered in that way<sup>1277</sup>. The expert Wright in his Report states that these aerial images are useful in defying the limits

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<sup>1270</sup> Richard Wright, T/p 7440:23-7441:14; Dean Manning, T/p 18980:8-14

<sup>1271</sup> Exhibit P636, P679

<sup>1272</sup> Exhibit P678

<sup>1273</sup> Peter McCloskey, T/p 1428:3-13; Dean Manning, T/p 18932:7-9

<sup>1274</sup> HHJ Carmel Agius, T/p 21187:20-21188:2

<sup>1275</sup> Exhibit P611, page 5, ERN 0149-3704, 1D1392

<sup>1276</sup> Jean-Rene Ruez, T/p 1436:24-1437:10; Dean Manning, T/p 18907:7-9

<sup>1277</sup> William Haglund, T/p 8909:9-24; Dean Manning, T/p 18929:14-19

of the suspect area, but are of no use for locating the individual graves within the suspect area<sup>1278</sup>.

739. The aerials provide information on date range of when graves were created, approximate hour and general location, which were then later compared to the map<sup>1279</sup>. In certain cases, markings on the aerials were done by witness Jean-Rene Ruez<sup>1280</sup>. All images are in black and white, and the markings are in white colour. The marks on the images in white colour was done by the USA government and in other colours are generally done by witness Ruez, who does not oppose that he could have erased some dates on the aerials<sup>1281</sup>.

740. The witness Manning admits that he personally did some markings on the aerials<sup>1282</sup> and that it was not possible to identify the graves which related to Srebrenica by reference to the aerials alone, however it could be seen from the aerials that the graves were created in or about the time of the fall of Srebrenica<sup>1283</sup>. It is worth mentioning that he has never spoken with the people who interpreted the images or made the markings on them, but he did speak with the people who provided them<sup>1284</sup>. He said that he could not interpret them personally but it was clear that there were differences between some images when compared with each other<sup>1285</sup>.

741. Nevertheless, for some images we do not have any link which connects it with the particular place where the grave is located, and this is because none of the images have site code or coordinates<sup>1286</sup>. Some of the images also have notes on them stating that it relates to a "possible grave "or "probably disturbed earth"<sup>1287</sup>.

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<sup>1278</sup> Exhibit P674, page 8

<sup>1279</sup> Dean Manning, T/p 18932:15-21

<sup>1280</sup> Dean Manning, T/p 18936:10-13, Exhibits P1799, P1800

<sup>1281</sup> Jean-Rene Ruez, T/p 1654:22-1655:8

<sup>1282</sup> Dean Manning, T/p 18943:2-18

<sup>1283</sup> Dean Manning, T/p 18932:22-18933:1

<sup>1284</sup> Dean Manning, T/p 19128:18-19130:2; 19

<sup>1285</sup> Dean Manning, T/p 19127:25-19128:9

<sup>1286</sup> Exhibits P1865, P1865

<sup>1287</sup> Exhibits P3482, P3483

742. Many images are dated from 5 July 1995<sup>1288</sup> until November 1995<sup>1289</sup>, but none of them shows the scenes of execution itself, which usually took place during the day. The aerials relating to the Ravnice allegedly show disturbance on 17 July 1995.<sup>1290</sup> However, we do not have images showing the condition of earth on 13 July 1995 or before it when the Kravica Warehouse event occurred. Therefore, we cannot compare the condition of earth.

### **XVIII. Surface remains**

743. Beside the human remains exhumed from mass graves, the OTP count as well any remains found on the surface in a total number of individuals whose death is related to the fall of Srebrenica.

744. In the Summaries of Dean Manning and Dusan Janc, they stated that the Ravnice 1 and 2 are primary undisturbed graves with surface remains. One part of the grave was covered with thin soil, while the other was left on the surface of the slope<sup>1291</sup>. It is the OTP position that these bodies were brought to that location<sup>1292</sup> and as such did not treat the two grave sites as surface remains, which they certainly are, but instead they were embraced in the mass graves<sup>1293</sup>.

745. However, the expert Clark, as chief pathologist during 1999-2001<sup>1294</sup> conducted autopsies from those sites in 2000 and 2001<sup>1295</sup>. He said that Ravnice were not true graves<sup>1296</sup>, because the bodies lay scattered on the surface rather than buried in the ground<sup>1297</sup>. The human remains were fully skeletonised and no ligatures and blindfolds were found<sup>1298</sup>.

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<sup>1288</sup> Exhibit P1640, P1761

<sup>1289</sup> Exhibit P1611

<sup>1290</sup> Exhibit P2994, page 8

<sup>1291</sup> Exhibits P2993, pages 6, 7; P4490 Annex A, page 7

<sup>1292</sup> Dean Manning, T/p 18951:24-18952:5

<sup>1293</sup> Exhibit P2993, Annex A, Table 1, P4490 Annex A, page 36

<sup>1294</sup> John Clark, T/p 7333:12, 7334:10

<sup>1295</sup> John Clark, T/p 7335:8

<sup>1296</sup> Exhibit P598, page 25, Exhibit P2446 page 6

<sup>1297</sup> John Clark, T/p 7369:16, Exhibit P2446, page 6

<sup>1298</sup> Exhibit P598, page 25; P2446, page 6; P2994, page 8, 9; John Clark, T/p 7371:3

746. The expert Peccerelli, the anthropologist, stresses that Ravnice could not be taken as a grave, due to surface remains<sup>1299</sup>. He said that he has never been requested as a qualified pathologist to inform the investigator Manning about his expert opinion on Ravnice surface remains<sup>1300</sup>, or how they should be treated. Moreover, Peccerelli agrees that he can not exclude that persons from Ravnice died in the combat, because there were not found ligatures or blindfolds<sup>1301</sup>.

747. The conclusion of witness Manning that the artefacts found in Ravnice 1 and 2 could be linked to the Kravica Warehouse<sup>1302</sup>, Glogova and Zeleni Jadar graves is inadmissible, since those artefacts were found on the surface. They could have been brought or be placed there through different ways. If they were found there, they must relate only to the Ravnice 2, because the expert Peccerelli did not prepare any particular report on Ravnice 1 site, so we do not know what was found there<sup>1303</sup>. Ravnice 2 site was exhumed by the FCMP and monitored by the ICTY<sup>1304</sup>.

748. Further, on the surface remains in Ravnice we do not have traces of the blast injuries, as usual for all the graves in Glogova<sup>1305</sup>. Therefore, the Defence takes the position that the Ravnice should be considered as surface remains. This approach has been followed by two OTP's expert, namely Clark and Peccerelli, and as well by the Defence expert Dunjic<sup>1306</sup>.

749. It is important to highlight that for the abovementioned surface remains we are not able to establish two very important facts and these are (i) time of death, whether it falls in the timeframe set up in the Indictment<sup>1307</sup> and (ii) the cause of death. The Defence

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<sup>1299</sup> Peccerelli Freddy, T/p 8760:15-21

<sup>1300</sup> Peccerelli Freddy, T/p 8763:6

<sup>1301</sup> Peccerelli Freddy, T/p 8763:14-8764:6

<sup>1302</sup> Dean Manning, T/p 19111:24-19112:4

<sup>1303</sup> Exhibit P2993, pages 6 and 7

<sup>1304</sup> Exhibit p2993, page 6

<sup>1305</sup> Exhibits P598, page 19, 20; P2446, page 16

<sup>1306</sup> Dusan Dunjic, T/p 22778:25-22779:8

<sup>1307</sup> Indictment, para. 30

expert Dunjic concludes in his Report that autopsy reports from Ravnice were inconsistent with the findings on the remains, and that time of death could not be established<sup>1308</sup>.

750. The expert Clark had the same conclusion on Ravnice, since in a majority of the cases the cause of death could not be established<sup>1309</sup>, but conflict as the cause of death could not be excluded, *i.e.* that individuals died in combat<sup>1310</sup>. It is acceptable and logical that the column which had the main goal of reaching ABiH controlled territory would not be occupied with burial of their members, so it was done at a later stage<sup>1311</sup>.

751. It is more than probable that the surface remains are linked to the combats, which occurred during the fall of Srebrenica as well as in the previous years during the war<sup>1312</sup>. This is a view accepted by witness Janc.

752. It is of significant importance that the Srebrenica related surface remains were collected from locations which are consistent with the locations through which the column of Bosnian Muslims trekked through on its way from Jagnjici and Susnjari villages towards Tuzla<sup>1313</sup>. The route of the column is consistent not only with the surface remains but as well with the locations of the mass graves, whether primary or secondary such as Cerska, Hodzici, Cancari, and Liplje.

753. The Defence agrees with the position of military expert Butler who testified that in the first post-war years there were attempts to recover part of the surface remains. The rest of the bodies could not have been collected because of the high threat of uncharted minefields and uncharted and unexploded ordinance<sup>1314</sup>. These later collected remains are included in Janc's and Manning's Summaries. Annex B of the Janc Summary states

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<sup>1308</sup> Exhibit 1D1070, General conclusion for Ravnice, page 122

<sup>1309</sup> John Clark, T/p 7342:4

<sup>1310</sup> John Clark, T/p 7344:3

<sup>1311</sup> Exhibit 2D233

<sup>1312</sup> Ewa Tabeau, T/p 21041:9-24; Dusan Janc, T/p 33593:9-16, 33517-19-33518:5;

<sup>1313</sup> Exhibits P4490, Annex B, P3901, P2110

<sup>1314</sup> Richard Butler, T/p 20252:12-25

that there were 957 cases<sup>1315</sup> collected, of which 648 Srebrenica related persons were identified<sup>1316</sup>.

754. The witness Janc confirmed during his testimony that his Summary<sup>1317</sup> is actually an updated version<sup>1318</sup> of the witness Manning Summary<sup>1319</sup> and that he did not want to change it<sup>1320</sup>.

755. Contrary, it is the Defence position that he did so in regard of the surface remains. In his Summary the surface remains are divided in four groups: Pobudje, Baljkovica, Snagovo and Other surface remains<sup>1321</sup>. The witness Manning has included Kozluk site as the surface remains, with the code KKZ<sup>1322</sup> with the 14 identified persons into the total number of the surface remains<sup>1323</sup>, but witness Janc excluded Kozluk. During his testimony he accepted that the number of 648 identified persons could be increased to include the 14 persons from that location<sup>1324</sup>.

756. The site of Vlasenicka Jelovacka Cesma, with the code V-J.CES with 9 identified persons was placed by the witness Janc among Smaller graves in his Summary<sup>1325</sup>. According to the Exhumation Report and photo-documentation it can be easily seen that this relates to surface remains<sup>1326</sup>. From the Manning Summary we can see that this site is considered as surface remains<sup>1327</sup>.

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<sup>1315</sup> Dusan Janc, T/p 33517:1-5

<sup>1316</sup> Exhibit P4490, Annex B

<sup>1317</sup> Exhibit P4490

<sup>1318</sup> Exhibit P4490, page 2

<sup>1319</sup> Exhibit P2993

<sup>1320</sup> Dusan Janc, T/p 33526:16-21

<sup>1321</sup> Exhibits P4490, Annex B, 2DIC00252

<sup>1322</sup> Exhibit P2993, page 5 and Annex B, page 24

<sup>1323</sup> Dean Manning, T/p 19008:10-24

<sup>1324</sup> Dusan Janc, T/p 33551:1-6

<sup>1325</sup> Exhibit P4490, Annex A, page 31

<sup>1326</sup> Exhibit P4516, P4517, folder ERN X021-7490-X021-7606, pages ERN X021-7563-X021-7565, ERN X021-7494, ERN X021-7497-X021-7499

<sup>1327</sup> Exhibit P2993, Annex B

757. The village Prohici from Manning's Summary is accepted as a location with surface remains<sup>1328</sup>, however the witness Janc changed its status and put it down as "Other graves". For the graves identified as "Other graves" he said that he did not have any or sufficient documentation<sup>1329</sup>. During his testimony he confirmed that he changed the status of the grave from that of surface remains into a regular grave<sup>1330</sup>. Nevertheless, the witness Manning said that he determined the status of the surface remains according to the information provided by the FCMP and reviewed files of the Tuzla cantonal Court<sup>1331</sup>.

758. It is the Defence position that the status of the grave whether it is surface remains or regular graves can only be determined by the archaeologist or anthropologists who conducted the exhumations, and not by the investigators of the ICTY such as Manning and Janc. Both of them are policemen<sup>1332</sup> and thus are not qualified in any of the aforementioned sciences<sup>1333</sup>. Furthermore, none of the investigators were present during the collection of the surface remains<sup>1334</sup>.

759. It is clear that the OTP insists that Ravnice 1 and 2 belong to the mass graves, and that they are connected with the systematic killings. In all, the number of the identifications of the surface remains should be increased to the 24 individuals (14 individuals for Kozluk site, 9 individuals for Vlasenicka Jelovacka Cesma site and 1 individual for Prohici site). If we add 203 identified persons for Ravnice 1 and 2, the total number of the identified surface remains would be 875.

760. In the previous paragraph we discussed the identified persons, but not exhumed persons which number we do not know. Certainly it is higher than 957 cases. It is the

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<sup>1328</sup> Exhibit P2993, Annex B

<sup>1329</sup> Exhibit P4490, Annex A, page 34

<sup>1330</sup> Dusan Janc, T/p 33556:2-7

<sup>1331</sup> Dean Manning, T/p 19038:19-21

<sup>1332</sup> Dean Manning, T/p 18903:14-19; Dusan Janc, T/p 33376:17-25

<sup>1333</sup> Dean Manning, T/p 19017:13-21

<sup>1334</sup> Dean Manning, T/p 18912:7:12, 19037:4-5, 19-20

Defence position that this number is close to 2000 persons, which is indicated as well by the military expert Butler. Furthermore, we cannot exclude that some part of surface remains relate to the death from combats between VRS and ABiH before the fall of Srebrenica and that their names are on the List of missing persons.

761. Furthermore, the surface remains can not be connected to any of the paragraphs of the Indictment, specifically paragraph 30, which refers to the specific locations, nor paragraph 31 which refers to the opportunistic killings, nor paragraph 32 because the surface remains are not reburials.

762. It is the Defence position that the surface remains are not included in the Indictment, so they can not beyond reasonable doubt be linked to the systematic and/or the opportunistic killings. As well, they can not be linked to the acts or conducts of the Accused. Therefore, the number of 7.000 Muslim men and boys systematically killed should be reduced by at least 2.000 persons.

#### **XIX. Sanitation**

763. The hygiene and sanitation measures of the battlefield were exercised by VRS and were regulated by the JNA regulations which are adopted by VRS<sup>1335</sup>. Those measures involve finding and gathering dead bodies and animal carcasses and burying them and removing from the battlefield anything that can be dangerous or detrimental to the health of people or animals. The Instructions on hygiene and sanitation measures in the battle field prescribe, if necessary, the engagement of civil authorities or other subjects.<sup>1336</sup>

764. Hygiene and sanitation measures should be implemented immediately upon the halt of combat operation, or during attacks as soon as the situation

<sup>1335</sup> Exhibit 7D480, this exhibit on page 1 mentions the Law on All-People's Defence, as a basic regulation; Vinko Pandurevic, T/p 32212:2

<sup>1336</sup> Exhibits 7D480, Chapter 1, para. 1 and 4, and Introduction; P4322, para 7; P4329; P4324, para. f; P4326, para 1; P4349; , from denied Defence Bar Table Motion, certification pending, Richard Butler, T/p 20753:7-13; Vinko Pandurevic, T/p 30944:3-14; Momir Nikolic, T/p 32961:7-10; Mirko Trivic, T/p 11958:9-20

allows, with the eventual participation of the parts of the Engineer units<sup>1337</sup>. It is important to emphasize that in order to ensure the freedom of movement of the unit that carries for hygiene and sanitation it is necessary to clear the battlefield of mine fields, unexploded mines, shells and aerial bombs<sup>1338</sup>, and military analyst Butler testified to that regard as well<sup>1339</sup>. The decisions on hygiene and sanitation measures were issued to all levels within DK<sup>1340</sup>. In the evidence tendered documents on hygiene and sanitation measures were from 1992-1995 since it was ongoing task<sup>1341</sup>.

765. The existence of uncollected mortal remains was noticed in village Krizevci in 1993<sup>1342</sup> and thereafter the exhumation took place where the remains of 8 persons identified as Srebrenica related were found<sup>1343</sup>. Right after the fall of Srebrenica the corpses of died Bosnian Muslim were found within the AOR VRS units, *i.e* in the Milici Brigade AOR<sup>1344</sup>. The witness Gavric testified that in the Kamenica village he saw a number of dead members of 28<sup>th</sup> Division<sup>1345</sup>.

766. In the Opening statement the OTP referred to the BB Meetings Report Notebook. The entry for 16 October 1995 states the sanitation process was going on, tasked by GS VRS. The conclusion of the OTP is that this means that the reburial operation of the graves was going on<sup>1346</sup>. The Defence does not agree with the conclusion of the OTP, or with the allegations made by the witness Momir Nikolic<sup>1347</sup>. This means that the sanitation measures were excluded, but the tendered documents show the opposite<sup>1348</sup>.

<sup>1337</sup> Exhibits 7D480, Chapter 1, para. 3 and 10, Chapter III, para. 84; P4347; P4340; P4357

<sup>1338</sup> Exhibit 7D480, Chapter I, para. 3

<sup>1339</sup> Richard Butler, T/p 20252:12-25

<sup>1340</sup> Exhibits P4322, P4326, P4338, P4340, from denied Defence Bar Table Motion, certification pending

<sup>1341</sup> Exhibits P4322, P4324, P4326, P4329, P4332, P4328, P4374, P4339, P4340, P4341, P4347, P4349, P4351, P4355, P4357, P4362, 4DP121, P219, page 11, from denied Defence Bar Table Motion, certification pending

<sup>1342</sup> Exhibit P4355, P4357, from denied Defence Bar Table Motion, certification pending

<sup>1343</sup> Exhibit P4490, Annex A, page 31

<sup>1344</sup> Exhibit P4374, from denied Defence Bar Table Motion, certification pending para. 4

<sup>1345</sup> Mico Gavric, T/p 26488:1-26490:22

<sup>1346</sup> OTP Opening statement, T/p 484:2-5

<sup>1347</sup> Momir Nikolic, T/p 3296:14-15

<sup>1348</sup> Mico Gavric, T/p 26490:19-26492:14; 4DP121

767. The human remains, before and after the fall of Srebrenica, were collected and buried. Today, they are exhumed, irrespective of the fact that a great number of them died in previous years of the combat, they are now considered as Srebrenica related.

## **XX. Exhumations**

768. The first step in establishing the death of people whose death could be related to the fall of Srebrenica is by the exhumation of the human remains from the graves, irrespective of whether it is primary or secondary grave. The expert Haglund confirmed that the first exhumations started at the end February 1996<sup>1349</sup>. However, in 2001 the responsibility for the exhumation of the known Srebrenica related mass graves sites were transferred from the ICTY to the government of BiH. The agreement was reached that one ICTY team would be present during the exhumations in cooperation with the ICMP<sup>1350</sup>.

769. From 1996-2001 on a number of grave sites<sup>1351</sup> the exhumations were  
1352 1353
conducted under the supervision of Dr William Haglund, pathologist . Several of his associates expressed remarks towards his work and the organisation of the exhumation for which was he fully in charge of<sup>1354</sup> and as well on the work of other associates. As a result, a Panel of anthropologist and archaeologist in San Antonio, USA, in November 1997 was held to look further into the veracity of the allegations on administrative mismanagement, professional mismanagement and/or misconduct<sup>1355</sup>.

770. The complaints were addressed to Dr Kirschner, chief pathologist<sup>1356</sup> with regards to the fact that he altered the cause of death in some of the autopsy reports without consultations, which was subsequently

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<sup>1349</sup> William Haglund, T/p 8904:23

<sup>1350</sup> Exhibit P2993, p. 2, Dean Manning, T/p 18912:15-18913:7

<sup>1351</sup> Cerska, N. Kasaba exhumations during 1996, Lazete 2, Pilica

<sup>1352</sup> William Haglund, T/p 8956:22

<sup>1353</sup> Exhibits P611-P625; Exhibit P2993; William Haglund, T/p 8906:6

<sup>1354</sup> William Haglund, T/p 8906:6

<sup>1355</sup> Exhibit 2D70, page 2

<sup>1356</sup> William Haglund, T/p 8913:3

Confirmed<sup>1357</sup>. The other complaints were about speedy exhumations, which caused commingling of the bodies and failure to associate body parts<sup>1359</sup>, which happened in Cerska grave<sup>1360</sup>. The expert Haglund was blamed for throwing away clothes which had identification data<sup>1361</sup>. In addition, the Panel in San Antonio, found that there were concerns regarding the international politics imposing a great deal of pressure on the teams to complete the exhumations quite rapidly<sup>1362</sup>. In the period when the ICTY was in charge of the exhumation (until 2001) it was obvious that SOP's did not exist<sup>1363</sup>, so it was recommended to adopt certain SOP's and to develop a chain of custody system<sup>1364</sup>.

771. At the Panel in San Antonio the legal adviser of the OTP was present<sup>1365</sup>. The impact of the OTP on the exhumation process, finalizing of cause and manner of death as well as editing the final autopsy reports was described as directed by the legal adviser of the ICTY<sup>1366</sup>. The expert Haglund was on the pay list of the OTP<sup>1367</sup> and it is obvious that the exhumations were conducted in a way that suited the OTP's needs. This resulted in the reaction of colleagues and the calling of the Panel in San Antonio. Therefore, the Defence concludes that the exhumation process was not impartial and did not meet the necessary standards.

772. His previous work at the Tribunal in Rwanda was heavily criticized by the Defence expert<sup>1368</sup> and afterwards the Appeals Chamber did not accept his applied scientific methods<sup>1369</sup>.

<sup>1357</sup> Exhibit 2D70, page 3 question 10; William Haglund, T/p 8913:18-8914:9

<sup>1358</sup> Exhibit 2D70, page 4; William Haglund, T/p 8917:22

<sup>1359</sup> Exhibit 2D70, page 4

<sup>1360</sup> William Haglund, T/p 8919:3

<sup>1361</sup> Exhibit 2D70, VI. 14; William Haglund, T/p 8919:17

<sup>1362</sup> Exhibit 2D70, page 7

<sup>1363</sup> Debra Komar, T/p 23876:23-23877:9

<sup>1364</sup> Exhibit 2D70, page 12

<sup>1365</sup> Exhibit 2D70, page 1

<sup>1366</sup> Exhibit P616, page xi, ERN 0149-1641; P611, page 1, ERN 0149-3700; P622, page 69; William Haglund, T/p 8998:7-8999:8, 9000:22-9001:4

<sup>1367</sup> William Haglund, T/p 8984:12

<sup>1368</sup> William Haglund, T/p 8922:1, 8925:17

<sup>1369</sup> William Haglund, T/p 8923:24

773. It is clear that neither the IMP nor the OTP provided the exact number of the exhumed persons. The number depends on how many bodies are considered as whole and what was considered as body parts. After 2001, the OTP totally depended on the data provided by the BiH local authorities, which consisted mostly of the IMP, Cantonal Court in Tuzla and ICMP for the identifications. This allegation has confirmed by the IMP, in its letter dated 8 August 2008 which indicated that in some cases body parts had been found in several graves and that skeletons had been put together from 10 different bags<sup>1370</sup>.

#### **XXI. Blindfolds and ligatures**

774. The number of the blindfolds and ligatures found in the exhumed graves were the subject of the Adjudicated Facts<sup>1371</sup>. That number is mainly matching to the number of found 448 blindfolds and 423 ligatures from the Manning's Summary 20 03<sup>1372</sup>. In order to get the number of victims with the ligatures you cannot just add together these two figures, because in some cases there were persons with both ligatures and blindfolds<sup>1373</sup>. This was the basis the OTP used to establish the connection between the primary and secondary graves<sup>1374</sup>, and in certain cases just based on their similarities<sup>1375</sup>.

775. The expert Dunjic agrees that the individuals with the ligatures and blindfolds were executed<sup>1376</sup>. He testified in length about it<sup>1377</sup>. The ligatures and the blindfolds were brought to The Hague<sup>1378</sup> for further analyses<sup>1379</sup>.

They were examined by expert Maljaars, who got the sample in 1997 and 1999<sup>1380</sup>. The Manning's Summary 20 03<sup>1381</sup> is last, and probably the only systematized overview of the ligatures and blindfolds.

<sup>1370</sup> Exhibits 1D449, 1D1347

<sup>1371</sup> Adjudicated facts I, facts 314, 333, 337, 367, 371, 373, 374, 408, 433, 437, 456, 463, 483 and 484

<sup>1372</sup> Exhibit P2994, page ERN X016-7719

<sup>1373</sup> Dean Manning, T/p 18973:12-14

<sup>1374</sup> Dean Manning, T/p 18949:2-5

<sup>1375</sup> Exhibit P675, page 21; Dean Manning, T/p 18969:24-18970:5; Exhibits P20063, P2064, P2065, P2066

<sup>1376</sup> Exhibit 1D1070, page 23; Dusan Dunjic, T/p 22935:5-10

<sup>1377</sup> Dusan Dunjic, T/p 22931-22945

<sup>1378</sup> Dean Manning, T/p 18911:19-20

<sup>1379</sup> Dean Manning, T/p 18964:7-13

<sup>1380</sup> Exhibit P675; Dean Manning, T/p 18964-13

<sup>1381</sup> Exhibit P2994, Dean Manning, T/p 18971:8-9

The Defence is not aware of the total number of the ligatures and blindfolds recovered after 2003.

776. According to witness Manning, it seems to be that most of the ligatures and blindfolds were in the Kozluk grave<sup>1382</sup>. Witness Veljko Ivanovic testified to this effect<sup>1383</sup>. Now, this has raised a question as to how many of these bodies from Kozluk grave, as the primary grave, were transferred into secondary graves. Kozluk is allegedly linked to Cancari Road 1-7 and 13 graves<sup>1384</sup>.

777. According to the ICMP report, which states that they had been present during the exhumation of the Cancari road 4 grave and no ligatures and blindfolds were found<sup>1385</sup>. In the Report of the Cancari Road 3 grave, which is allegedly connected to both Kozluk and Branjevo farm ligatures and blindfolds were found<sup>1386</sup>.

778. The Indictment states that VRS and MUP participated in the reburial operation in order to conceal the murders and executions<sup>1387</sup> it is hard to believe that they had time to sort human remains on the bases of whether they were with the ligatures and blindfolds or not, and afterwards to transfer them to the secondary graves. According to Janc's Summary there were 10 unique DNA profiles from Cancari Road 4 grave but they still are not connected to any persons. Therefore, the DNA connections were not found or any other forensic connection between Kozluk and Cancari Road 4 grave, as described in Janc's Summary Chart<sup>1388</sup>.

779. From the P4497 and P4498 exhibits we can see that the ICMP was involved in the

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<sup>1382</sup> Exhibit P2994, page ERN X016-7719, Adjudicated facts I, facts 456, 463

<sup>1383</sup> Veljko Ivanovic, T/p 18182:13-18183:-5

<sup>1384</sup> Exhibit P4524

<sup>1385</sup> Exhibit P4497, page 2, "A"

<sup>1386</sup> Exhibit P4498, page 2, "A"

<sup>1387</sup> Indictment, para. 3

<sup>1388</sup> Exhibit P4490, page 65, ERN X019-4295

exhumations in Cancari road 4 and Kozluk secondary graves<sup>1389</sup>. The exhumation in Cancari 4 confirms that animal bones were recovered from all the sections and the depths of the grave<sup>1390</sup>. According to the Defence, those animal bones explain that remains were collected from the surface and buried in the grave.

780. Where did the bodies come from? We do not know and cannot be certain that they are Srebrenica related since there were just 10 unique DNA profiles<sup>1391</sup>. In the previous paragraph it is already emphasized that within the grave animal bones were found<sup>1392</sup>. That indicates that the bodies from that grave were from combat and not from mass execution in Kozluk. From the quantity of green and white glass found within the grave<sup>1393</sup>, which are yet to be analysed. Or the Defence is not provided with the results, we cannot connect this grave with any other primary grave. It is more than likely that for these bodies, this grave is the primary grave and not the secondary grave.

## **XXII. Autopsies**

781. Hundreds of autopsy reports were disclosed to the Defence from the period when the autopsies were conducted by the ICTY alone through to the period when this task was transferred to local authorities.

782. The expert Clark said that in case of skeletonization, it is almost impossible to establish whether the injuries to skeleton occurred before or after the death<sup>1394</sup>. One of the reasons is the disarticulation of the body parts<sup>1395</sup>. The expert Lawrence, the chief pathologist of the ICTY in 1998<sup>1396</sup> said that from the examination of the bodies alone he could not ascertain the time of death<sup>1397</sup>. He also stated that with skeletonized body it is impossible to determinate whether the injury was sustained while the person was alive,

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<sup>1389</sup> Exhibit P4524

<sup>1390</sup> Exhibit P4497, paras. 3, 5, 39

<sup>1391</sup> Exhibit P4490, Annex A, page 10

<sup>1392</sup> Exhibit P4497, page 4, para. 5, page 8 para. 39

<sup>1393</sup> Exhibit P4497, page 8, para. 39

<sup>1394</sup> John Clark, T/p 7345:15; Exhibits P575, page 3, P2446, page 3

<sup>1395</sup> Christopher Lawrence, T/p 7543:24, 7545:6

<sup>1396</sup> Christopher Lawrence, T/p 7515:25

<sup>1397</sup> Christopher Lawrence, T/p 7521:7-12

or if it post mortem injury<sup>1398</sup>. The expert Clark has not excluded the possibility that the injuries occurred in a situation where shots were fired from the considerable distance between the shooter and the target<sup>1399</sup>, *i.e.*, he confirmed that they were not able to assess, according to the findings, the distance at which the target had been from the shooter<sup>1400</sup>.

783. The total number of the examined human remains, for 3 years of work by the pathologist Clark for the sites of Kozluk, K.Polje, N.Kasaba, Glogova, Lazete, Zeleni Jadar and Ravnice, was over 3.000, inclusive of whole bodies and body parts<sup>1401</sup>. There were 1.100 whole bodies in total, perhaps up to 1.500<sup>1402</sup> and all of them were skeletons, which means that 4050% of the found bodies and body parts were skeletonized<sup>1403</sup>. This leads to the conclusion that it was not possible to establish neither the case of death not the time of death for at least 1.100 bodies.

784. The expert Dunjic<sup>1404</sup> in his two Reports examined around 170 autopsy reports done by the ICTY pathologists. The first group of the autopsy reports referred to Nova Kasaba, Pilica, Zeleni Jadar 5 and Ravnice<sup>1405</sup>. The second group comprised autopsy reports from Potocari and Sandici<sup>1406</sup>. His final conclusion is that for the human remains with putrefaction it is impossible to establish the time of death, as well as it has not been possible to use the International classification of diseases and injuries<sup>1407</sup>. It specified that the injuries in the armed conflicts and the code from such classification should be used by one who describes the particular injuries<sup>1408</sup>.

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<sup>1398</sup> Christopher Lawrence, T/p 7526:13-25

<sup>1399</sup> John Clark, T/p 7357:13-25

<sup>1400</sup> John Clark, T/p 7367:11; Exhibit P2446, page 8

<sup>1401</sup> John Clark, T/p 7378:17

<sup>1402</sup> John Clark, T/p 7381 : 2-4;7392:8

<sup>1403</sup> John Clark, T/p 7389:13

<sup>1404</sup> Dusan Dunjic, T/p 22770:8

<sup>1405</sup> Exhibit 1D1070

<sup>1406</sup> Exhibit 4D540

<sup>1407</sup> Exhibits 1D1070, page 124, 1D1073

<sup>1408</sup> Dusan Dunjic, T/p 22859:22-22860:10

785. On the ground of checked autopsy reports by expert Dunjic, it was not possible to determinate the time of death and mechanism of the injuries<sup>1409</sup>. However, the analysis of mechanisms of inflicting the injuries was not provided<sup>1410</sup>.

786. The conclusions of the pathologist of the ICTY are sometimes unsupported by the facts. For example, it was not possible to establish the cause death of the human remains in Nova Kasaba, however, the manner of death was characterized as homicide<sup>1411</sup>. In addition, in some autopsy reports just one wound is listed in the trauma report, but under the cause of death the pathologist lists multiple gunshot wounds<sup>1412</sup>. Another example is the fact that there were skull and right pelvis fractures listed in a trauma report, but the cause of death was stated as gunshot wounds<sup>1413</sup>. Another trauma report listed *probably* gunshot damage, but the cause of death was put down as gunshot wounds and word *probably* was omitted<sup>1414</sup>.

787. Expert Dunjic finds the conclusion of expert Hagland that there was evidence which indicated that some victims were killed whilst being put in the grave unacceptable since there is no basis for such conclusion from the pathologist findings. Furthermore, he disagrees with the conclusion that the distribution, number and angle of shots indicate the possible use of "spray" style shooting, since one, two or even three injuries to the body are not necessarily caused by "spray" style shooting, and far more frequently present in cases of individual fire<sup>1415</sup>.

788. The professional level of the autopsies could be described with a case POT 01 SRE 005, which according to the autopsy report is the female

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<sup>1409</sup> Exhibits 1D1070, page 129, 4D540, Opinion, page 132

<sup>1410</sup> Exhibit 1D1070, page 23

<sup>1411</sup> Exhibit 1D1070, page 35

<sup>1412</sup> Exhibit 1D1070, page 36

<sup>1413</sup> Exhibit 1D1070, page 74, case PLC 38; Dusan Dunjic, T/p 22864:9-20

<sup>1414</sup> Exhibit 1D1070, pages 99 and 100 case ZJ05 B070

<sup>1415</sup> Exhibit 1D1070, page 38, 89 and 90; Dusan Dunjic, T/p 32936:10-32939:12

remain<sup>1416</sup>. However, from the last List of identified persons it is obvious that under the code POT 01 SRE 005 a male was identified<sup>1417</sup>.

789. The expert Dunjic compared autopsy reports from Sandici and Potocari, and he explained that findings on both sites were almost the same. The most of the conclusions about the cause of death for Potocari were correct. Actually, in great number of cases the cause of death could not be established. However, for Sandici, where the findings were almost the same as in Potocari, the cause of death in all cases has been established<sup>1418</sup>. In just 4 cases from Sandici was the cause of death uncertain<sup>1419</sup>. This proves that different forensic teams were performing their duties following different standards.

790. Autopsy reports are standardized<sup>1420</sup>, but the problem seems to be with what is listed. One of the main complaints on the autopsy reports was that generally, instead of providing trauma reports, the pathologists made cut-and-dried diagnosis -"conclusions", or they provided cut-and-dried "opinions"<sup>1421</sup>.

791. The expert Dunjic noticed that different putrefaction changes on the human remains exhumed from the same grave indicate the different time of burial, which could indicate different time of death. For example, in Sandici there were 2 out of 17 cases saponified<sup>1422</sup>.

792. The position of expert Dunjic that injuries in the regions of the shoulder, scapula, arm or when there are no other injuries does not exclude the possibility that the person died in armed conflict (homicide bellicum) is important<sup>1423</sup>. Therefore, he does not agree

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<sup>1416</sup> Exhibit 4D540, pages 46 and 47

<sup>1417</sup> Exhibit P4494, enter for case ID POT 01 SRE 005

<sup>1418</sup> Exhibit 4D540, Opinion, pages 61 and 70

<sup>1419</sup> Exhibit 4D540, SAN-1/006, SAN-1/011, SAN-1/013, SAN-1/016

<sup>1420</sup> Dusan Dunjic, T/p 22784:16

<sup>1421</sup> Exhibit 1D1070, page 16; Dusan Dunjic T/p 22784:24

<sup>1422</sup> Exhibits 4D540, page 120, 1D1402, clarification pending, paras. 39, 44, 50; Dusan Dunjic, T/p 22787:16

<sup>1423</sup> Exhibit 1D1070, page 29

with the expert Clark that the majority of the deaths cannot be connected with combat activities<sup>1424</sup>. Projectiles and metal fragments found show the possibility of being a victim of armed conflict when the projectiles were fired from a distance. Just for Nova Kasaba, such conclusion could be made in 16 cases, but this applies to all the locations<sup>1425</sup>. From Ravnice grave expert Dunjic has analysed 20 autopsy reports and concludes that 19 out of 20 remains were skeletonised and that cause of death can not be established.

### **XXIII. Age and sex of the dead**

793. The age and sex was the subject of the Adjudicated Facts<sup>1426</sup> and of the Reports produced by the H. Brumborg, E. Tabeau, and A. Hetland from the Demographic Unit of the OTP<sup>1427</sup>. The last report on this subject is from 2005<sup>1428</sup>. In these Reports the data was evaluated using several of criteria: ethnicity, age, sex, potential duplicates, potential survivals, etc.

794. According to the Report (P2413) among 7.661 missing persons, 99.1 % were men. The majority of missing person is from the age 16-65<sup>1429</sup>. But, the witness Manning states that majority of victims were in the middle age range, 20 or 30 to 50<sup>1430</sup>.

795. It is clear from these assessments that we are talking about able-bodied men. The data after November 2007 in this regard was not classified in a systematic manner by the OTP. From the List of identified persons provided by the ICMP, if the identifications were conducted accurately, the age of the identified person at the moment when they died can easily be seen. It is possible to see from the comparison of the ICMP data to the data from late 2007 that there has been no change.

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<sup>1424</sup> Exhibit 1D1070, page 31

<sup>1425</sup> Exhibit 1D1070, cases NK 08 048B, NK 08 049B, NK 08 050B, NK 08 051B, NK 08 052B, NK 08 055B, NK 08 056B, NK 08 057B, NK 08 058B, NK 08 061B, NK 08 062B, NK 08 063B, NK 08 064B, NK 08 066B, NK 08 067B, NK 08 069B

<sup>1426</sup> Adjudicated fact I, facts 480, 481, 482

<sup>1427</sup> Exhibits P271, P276, P2410, P2411, P2412, P2413, P2414, P2415, P416, P2417, P2418, P3006, P3159, P3159a, Exhibit P2413

<sup>1429</sup> Exhibit P2413, page 23, table 8, page 24 figure 3

<sup>1430</sup> Dean Manning, T/p18955:24-18956:1

#### **XXIV. Time and cause of death**

796. The cause of death was subject of the Adjudicated Facts, *i.e.* for an overwhelming majority of victims the cause of death was gunshot wounds.<sup>1431</sup>

797. The expert Wright in his report from 1999 made a Chart<sup>1432</sup> reflecting the examination of the automatic watches found within several graves<sup>1433</sup>.

798. The dates shown on the watches from the victim's wrists was the basis for the expert conclusion that those persons died in the time frame set by the Indictment, and in accordance with the information provided by the chief Investigator of the ICTY, Mr. Ruez<sup>1434</sup>. Such automatic watches in normal conditions run some 36-48 hours after all movements of the wearer stops<sup>1435</sup>. In expert Baraybar's report, it was stated that horologist, Mr. Mills concluded that 4 of the automatic watches found in the graves, which he examined would stop running 32-35 hours after the bearer of the watch stopped moving<sup>1436</sup>. The inconsistency between these two reports is obvious.

799. The horologist Mills examined 14 automatic watches and 5 of them showed different dates in the week from those set up in the Indictment<sup>1437</sup>. He concluded that 3 out of 14 watches could not work. He warned the investigator of the OTP not to swing the box with the watches<sup>1438</sup>, to prevent watches to start working again. However, the Defence is not aware of any movement of the watches from the primary graves to secondary graves from where they have been collected, and their movement from the grave to the morgue, and from the morgue to The Hague.

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<sup>1431</sup> Adjudicated facts I, fact 485

<sup>1432</sup> Exhibit P666

<sup>1433</sup> Exhibit P666, pages 28-31

<sup>1434</sup> Exhibit P666, page 29

<sup>1435</sup> Exhibit P666, page 29

<sup>1436</sup> Exhibit P2475, page 19

<sup>1437</sup> Exhibits 1D1423, 1D1424, from denied Defence Bar Table Motion, certification pending, watches A000-1608, A000-1609, A000-1612, A000-1613, A000-1614

<sup>1438</sup> Exhibit 1D1423, from denied Defence Bar Table Motion, certification pending, the last para

800. It is unclear as well, why the expert Wright in his chart listed just 10 out of 14 examined watches. In that chart, two watches expressing the dates that do not fit the timeframe of the Indictment were not included<sup>1439</sup>. Therefore, those conclusions are not reliable.

## **XXV. Identifications**

801. The Defence has challenged reliability of DNA identifications since its introduction in this case through the Manning's Summary (exhibit P 2993). The Defence has asked the OTP and ICMP on several occasions since 3 July 2008 to disclose the complete raw DNA data referred to in the identifications conducted by the ICMP from 2001 until 2008. The main reason for this request was to enable the Defence check the results with its own expert.

802. Due to the circumstance highlighted above the Defence has had to address the Trial Chamber on this issue as well<sup>1440</sup>. Unfortunately, the situation remains that the Defence does not have these results irrespective of the fact that the Trial Chamber felt that the motion had been filed too late in the proceedings or that the requested materials were not in the possession or control of the OTP<sup>1441</sup>. In addition, it is stated that the Defence has not shown that the requested raw DNA data is essential for these proceedings and could have facilitated the Defence case, because it does not present legitimate forensic purpose that could require an order for production<sup>1442</sup>.

803. The Defence has received from the OTP only the raw DNA data for the primary undisturbed Bisina grave, and for the first 29 out of 39 exhumed persons. The second part of the raw DNA data was disclosed on the 14 May 2009. Unfortunately, the Defence experts Prof. Dunjic and Stojkovic had already filed their

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<sup>1439</sup> Exhibits P666, page 10 is not mentioning watches A000-1608, A000-1614, A000-1615, A000-1619

<sup>1440</sup> Vujadin Popovic's Motion for Disclosure Pursuant to Rule 66(B) and Request for Leave to File and Addendum to Prof. Stojkovic Expert Report, 06.08.2008; Vujadin Popovic's Motion for An Order for the Production of Documents Pursuant to Rule 54bis of the Rules, 28.11.2008

<sup>1441</sup> Decision on Popovic's Motion for Disclosure Pursuant to Rule 66(B) and Request to File an Addendum to Professor Stojkovic's Expert Report, 06.10.2008, paras. 9 and 10

<sup>1442</sup> Decision on Motion for Production of Documents Pursuant to Rule 54, 19.02.2009, para. 19

Statements<sup>1443</sup> and therefore could not elaborate on the subsequent raw DNA data provided. In total the Defence is provided with raw DNA data for 30 persons.

804. In the identification process, the ICMP uses three identifiers: (i) Protocol ID, which is ID of DNA report for each person; (ii) Case ID, which is ID of the bone sample used in a DNA matching, containing the grave site identification as well as basic description of the body part (iii) ICMP ID, which is ID of the missing person, and indicates historical number of the match report<sup>1444</sup>. One Protocol ID can be given only to one person and it is issued by the ICMP<sup>1445</sup>. The Defence had the opportunity to cross-examine witness Thomas Parsons twice<sup>1446</sup>. The first testimony was about ICMP methodology, and second on their results.

805. In the identification process, ICMP uses a large number of the SOP's (the Standard Operation Procedure), which has been changed during the course of work of the ICMP. It is not possible to determinate the date when one SOP version was replaced with another. Actually, the SOP's changed often<sup>1447</sup>, and some SOP's from ICMP were without a date<sup>1448</sup>, although they must have it<sup>1449</sup>.

806. Since October 2007, ICMP as a laboratory has been officially recognized and accredited by the DACH agency to comply with ISO 17025 standards<sup>1450</sup>. It is important to mention that the accreditation was issued after most of the DNA reports had been completed<sup>1451</sup>. By then at least 5.000

<sup>1443</sup> Exhibits 1D1402 - Dusan Dunjic R92bis statement, 10.05.2009, 1D1403 - Oliver Stojkovic R92bis statement 09.05.2009, para. 14, clarification pending

<sup>1444</sup> Exhibits P3006, page iii, ERNR091-9554, P2416, pages 3 and 3; Thomas Parsons, T/p 20874:11-20875:2

<sup>1445</sup> Dusan Janc, T/p 33386:19-21; Thomas Parsons T/p 33434:22-23

<sup>1446</sup> 01.02.2008 and 29.04.2009

<sup>1447</sup> Thomas Parsons, T/p 33411:21-33412:2

<sup>1448</sup> Thomas Parsons, T/p 20912:6-8 Debra Komar, T/p 23926:2

<sup>1449</sup> Debra Komar, T/p 23926:2

<sup>1450</sup> Exhibit P3174, paras. 5,28; Thomas Parsons, T/p 20891:4-9

<sup>1451</sup> Exhibit 1D1069, para.2.1, Oliver Stojkovic, T/p 23003:25-23004:16

identifications had already been accomplished, since Manning's Summary from November 2007 stated that there were 5.021 DNA identifications<sup>1452</sup>.

807. Checking the disclosed SOP's, the Defence has established that large part of them was in use after the second half of 2007, just before the accreditation was received and this is not opposed by the witness Parsons<sup>1453</sup>. The Defence raises suspicion that identification conducted before second half of 2007 comply fully with ISO 17025 standards, and that they are not true and reliable.

808. The total number of the victims related to the fall of Srebrenica made by the witness Parsons in his written statement of the 30 November 2007 was estimated<sup>1454</sup>. It is stated that the ICMP has received reference samples relating to 7.772 individuals, who were reported as missing. Firstly, according to the last List of missing persons, there were 7.661 individuals<sup>1455</sup>.

809. Secondly, it is not clear from the Statement how many samples were collected and whether these were of bones, teeth, or blood samples<sup>1456</sup>. Furthermore, the ICMP states that they obtained DNA profiles from 8.445 bones samples and that these 8.445 profiles represent 5.280 different individuals. Out of these 5.280 individual profiles the ICMP was able to determine 5.055 family matches. This means that the matching rate between the number that represent different individuals (5.280) and family matches (5.055 individuals) is  $95,7\% \pm 0,54\%$ .

810. If the same matching rate of approximately 95.7 % applies to 7.772 individuals reported as missing then the total number of potentially missing persons can be estimated to be 8.100. The conclusion that can be gleaned from witness Parsons is that his basic assumption was wrong because he starts from

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<sup>1452</sup> Exhibit P2993, page 2

<sup>1453</sup> Thomas Parsons, T/p 20912:6-12

<sup>1454</sup> Exhibit P3005

<sup>1455</sup> Exhibit P2414

<sup>1456</sup> Thomas Parsons, T/p 20917:12-18, 20918:4-5

the number of missing persons, and not from the conducted identifications<sup>1457</sup>. The expert Komar as well does not agree with Parson's position about the potential number of 8.100 missing persons and considers that for such calculations we must use as a basis the number of DNA profiles, and not the number of individuals reported missing<sup>1458</sup>.

811. Before the witness Parsons came for a second time to testify, the Defence received 29 sets of raw DNA data for Bisina grave. The Defence had asked ICMP to provide the data in electronic form<sup>1459</sup>, according to the request of expert Stojkovic<sup>1460</sup>, and as this is the format that other materials were previously disclosed<sup>1461</sup>. However, expert Parsons said that material was not "desired" in electronic form<sup>1462</sup>.

812. The DNA data was provided in hard copy and amongst the data provided was the raw DNA data for exhumed body numbered as BIS01 SEK040<sup>1463</sup>. One set of raw DNA data had Case Number BIS01 SEK040B (Zmax1) and refers to one tooth from upper jaw (maxilla), with the name of missing person, [REDACTED]<sup>1464</sup>. The second set of raw DNA data had Case Number BIS01 SEK040 (F) and referred to the sample of femur, with the name of the missing person [REDACTED]<sup>1465</sup>.

813. After witness Parsons completed his testimony, two new sets of raw DNA data was disclosed to the Defence on the 14.5.2009. The *first* set of raw DNA data was for exhumed body with Case Number BIS01 SEK040B, a body part (Zmax2), which referred to the second tooth sample under number 2, from upper jaw (maxilla). However instead of the raw data with the mentioned case number having the name of

<sup>1457</sup> Oliver Stojkovic, T/p 23020:2-12 Debra

<sup>1458</sup> Komar, T/p 23947:13-23948:5

<sup>1459</sup> Vujadin Popovic's Motion for An Order for the Production of Documents Pursuant to Rule 54bis of the Rules, Annex F, last page of the letter sent to Mr. Parsons; Oliver Stojkovic, T/p 22985:13-15, 23016:21-23017:6

<sup>1460</sup> Exhibit 1D1069, Opinion, para. 3; Oliver Stojkovic, T/p 22988:4-9

<sup>1461</sup> Oliver Stojkovic, T/p 22981:9-14

<sup>1462</sup> Thomas Parsons, T/p 33448:13-22

<sup>1463</sup> Exhibit 1D1392

<sup>1464</sup> [REDACTED]

<sup>1465</sup> [REDACTED]

[REDACTED], it had the name of [REDACTED]<sup>1466</sup>. The *second* set of raw DNA data for exhumed body which bore the Case Number BIS01 SEK038B (F,Zman) referred to two samples, of a femur and a tooth from the lower jaw (mandibula), with the name of missing person, [REDACTED], as in the first set<sup>1467</sup>.

814. This meant that for the missing person, [REDACTED], the Defence received two separate set of raw DNA data, namely:

- a. for femur - BIS01 SEK040B(F), which is exhibit 1D1355
- b. for tooth number 1 - BIS01 SEK040B(Zmax1), which is exhibit 1D1334<sup>1468</sup>.

815. It should be noted that:

- a. The record on exhumation shows that body BIS01 SEK040 was a whole body<sup>1469</sup>.
- b. The autopsy report for Case BIS01 SEK040B shows that a sample of right femur and a tooth from the upper jaw (maxilla) number 1 and another tooth from the upper jaw number 2 was taken for DNA testing<sup>1470</sup>.
- c. The record on the establishment of identity shows that the identity for the human remains registered under Number BIS01 SEK040B was established and the name of person was [REDACTED]<sup>1471</sup>.

816. Under the name of [REDACTED], the Defence received raw DNA data for a femur and one tooth from the upper jaw (maxilla), but did not receive the raw DNA data for tooth number 2 from the upper jaw (maxilla).

817. For [REDACTED], as a missing person, the Defence received two separate sets of raw DNA data:

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<sup>1466</sup> [REDACTED]

<sup>1467</sup> Exhibit 1D1419, from denied Defence Bar Table Motion, certification pending, from pages 69

<sup>1468</sup> Exhibit 1D1403, clarification pending, paras 8 and 9

<sup>1469</sup> Exhibits 1D1392, 1D1422, from denied Defence Bar Table Motion, certification pending

<sup>1470</sup> Exhibit P4510, ERNX 020-9864-X020-9866

<sup>1471</sup> [REDACTED]

- a. For femur and a tooth from lower jaw - BIS01 SEK038B(F,Zman), which is exhibit 1D1419 from page 69
- b. For a tooth of upper jaw (maxilla) number 2 - BIS01 SEK038 (Zmax2), which is exhibit 1D1419 from page 2-68.

818. It should be noted that:

- a. The record on exhumation shows that body BIS01 SEK038 was a whole body<sup>1472</sup>.
- b. The autopsy report for Case BIS01 SEK038B shows that a sample of the right femur and one tooth. The report does not mention whether the tooth is from the upper or lower jaw<sup>1473</sup>.
- c. The record on the establishment of identity shows that the identity for the human remains registered under Number BIS01 SEK038B and BIS01 SEK040 (Zmax2) was established and the name of person was [REDACTED].

819. This means that the Defence has received as raw DNA data for [REDACTED], a femur and tooth from the lower jaw (mandibula) under the case number BIS01 SEK038B, as well as the raw DNA data for tooth number 2 from the upper jaw (maxilla) under the case number BIS01 SEK040B. However, from the autopsy report we can see that only one tooth was taken from the body BIS01 SEK 040 and it does not mention whether this was from the upper or lower jaw.

820. We can see from a letter sent by the ICMP to the Cantonal Court in Tuzla in the 22 Feb 2007 about the established identity, *inter alia*, for the case numbers "BIS01 SEK038B BIS01 SEK 040B (Zmax2)"<sup>1475</sup>. All raw DNA data include DNA reports<sup>1476</sup>,

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<sup>1472</sup> Exhibit 1D1392, page 8

<sup>1473</sup> [REDACTED]

<sup>1474</sup> [REDACTED]

<sup>1475</sup> Exhibit 1D1366

<sup>1476</sup> [REDACTED]

coded or encoded<sup>1477</sup>, and the Conclusion<sup>1478</sup>. The DNA report for [REDACTED] on sample Zmax2 shows in its Conclusion that the probability or relatedness was greater than 99,999%, but the relatedness was based on a sample, which was not taken from the body of [REDACTED].

821. During the testimony of witness Stojkovic<sup>1479</sup> it was noted that two ICMP DNA reports did not comply with the SOP's that were applicable at that time<sup>1480</sup>. Furthermore, he raised suspicions about the accuracy of the identification of the persons with case numbers BIS01 SEK005 and BIS01 SEK014 based on reasons given in his Statement<sup>1481</sup>.

822. Nevertheless, witness Parsons denied that a mistake in the identifications had occurred. It is Defence position that the ICMP had erroneously identified at least one human remains in case number BIS01 SEK038B<sup>1482</sup>.

823. The Defence notes that this is one mistake out of 30 cases of raw DNA data disclosed to it, which shows a mistake rate of 3%. The Defence therefore raises the question of what is the mistake rate if we have 5.358 identified persons.

824. Witness Parsons admitted that in 25% out of 39 exhumed bodies in Bisina grave, the electropherograms was missing for at least for one donor<sup>1483</sup>. Therefore, the analysis should have been redone during 2009<sup>1484</sup>. Probably the reason for reanalysing raw DNA data was the decision to disclose them to the Defence therefore a further check was required. Witness Parsons does not exclude the possibility that the same thing happened for other locations connected to Srebrenica and that the analysis should be

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<sup>1477</sup> Exhibit 1D1403, clarification pending, para. 10; Thomas Parsons, T/p 33431:20, 33439:3-21

<sup>1478</sup> Thomas Parsons, T/p 33437:21-25

<sup>1479</sup> Exhibits 1D1242, 1D1243

<sup>1480</sup> Oliver Stojkovic, T/p 23012:10-23017:21

<sup>1481</sup> Exhibit 1D1403, clarification pending, paras. 20, 21, 27

<sup>1482</sup> Exhibits 1D1402, clarification pending, paras. 8-24, 1D1422, from denied Defence Bar Table Motion, certification pending

<sup>1483</sup> Thomas Parsons, T/p 33446:13-33447:2

<sup>1484</sup> Thomas Parsons. T/p 33444:21-33446:5

redone<sup>1485</sup>. The Defence concludes from the above that the reason for reanalysis was to check for mistakes and unfortunately there were mistakes found.

#### **XXVI. DNA Connections**

825. An important part of the Janc's Summary is DNA connections, which he said was one of his objectives in the Summary<sup>1486</sup>. He established DNA connections between (i) primary/primary (ii) primary/secondary and (iii) secondary/secondary mass graves<sup>1487</sup>. Under DNA connections witness Janc concludes that the remains of one person were found in at least two different graves.

826. The expert Dunjic said that DNA connections mean that there is a link of parts of the body belonging to the same person<sup>1488</sup>, with the same DNA profile. Expert Stojkovic said that DNA connections between different graves refer to the finding of uniform unique DNA profiles in bone samples from different graves. According to him, on the basis of this uniformity it can be concluded that: (i) either different parts of the body of one person were found in two or more graves; (ii) or the uniformity is coincidental, especially if relevant DNA profiles are incomplete; (iii) or the samples were contaminated, and (iv) or the samples were wrongly numbered<sup>1489</sup>. DNA analysis itself does not designate whether the grave is primary or secondary, since those data could be provided by other forensic-anthropological-archaeological means<sup>1490</sup>.

827. What is the OTP thesis with regards to DNA connections? A means to prove the connection between primary and secondary graves, namely that the secondary graves were directly linked to the five biggest sites of mass executions: Kravica, Orahovac,

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<sup>1485</sup> Thomas Parsons, T/p 33448:3-5

<sup>1486</sup> Dusan Janc, T/p 33378:13-16

<sup>1487</sup> Exhibit P4490, page 5

<sup>1488</sup> Exhibit 1D1402, clarification pending, para. 60

<sup>1489</sup> Exhibit 1D1403, clarification pending, para. 33

<sup>1490</sup> Exhibit 1D1403, clarification pending, para. 35

Petkovci Dam, Kozluk and Branjevo Farm<sup>1491</sup>.

828. For each of the mass graves, witness Janc updated the number of identified persons, irrespective of whether it was primary or secondary. If it was a disturbed grave, then he provided number of DNA connections of that grave that linked to other graves. It is important to note that witness Janc used the term *case*, and for him this referred to the connection and not to a person<sup>1492</sup>.

829. Witness Janc in his Summary divided the graves into the following categories; mass, smaller, other graves<sup>1493</sup>, and surface remains<sup>1494</sup>. Out of 54 mass graves 40 (whether they are secondary, primary, but disturbed) have DNA connections and 4.718 persons were identified in them with 527 established DNA connections.

830. It is the Defence position that only in cases where there is an established DNA connection between primary and secondary graves, can it be claimed that the graves designated by the OTP as secondary graves are really secondary graves for those bodies or body parts. The Defence maintained that there is no basis to claim that cases in a secondary grave are connect to a primary grave where there are no DNA connections found. These entire conclusions depend on whether the DNA connections were correct which is elaborated by the Defence expert Dunjic in his Statement<sup>1495</sup>. For all cases with DNA connections there must be body parts in at least two graves, primary and secondary. In secondary graves, when there is no DNA connection for some body or body parts that grave must be considered as primary one for those bodies or body parts.

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<sup>1491</sup> Exhibit P4490, page 5, Annex A, Table on pages 36 and 37

<sup>1492</sup> Dusan Janc, T/p 33389:20-25, 33495:22-24

<sup>1493</sup> Exhibit 4490, Annex A

<sup>1494</sup> Dusan Janc, T/p 33380:22-24, 33507:8-14

<sup>1495</sup> Exhibit 1D1402, clarification pending, paras. 61-64, 70-72, 76

831. Where did these people come from and when were they buried in these graves? These questions and also whether they died in combat or were victims of mass or opportunistic killings as stated in the Indictment have not been answered. HHJ Kwon asked if it was possible that someone might have brought other corpses to the secondary grave and witness Janc answered to the affirmative that the possibility could not be excluded<sup>1496</sup>.

832. Any increase in the number of connections at one site must be accompanied by reduction in the number of victims in one of the graves linked through a connection. If there are connections from several graves these reduction must be applied to all connections except the primary one<sup>1497</sup>. This means that whole bodies and body parts can not be counted twice.

833. From the Annex C of witness Janc's Summary, which deals with DNA connections, we can see that there are seven "not counted"<sup>1498</sup> cases. For these seven cases, he said that he asked for clarification from the ICMP<sup>1499</sup>. These seven cases not incorporated in his Summary are important because they were listed in the ICMP list of identified persons, and were included in the total number of 5.358 identified persons.

834. Witness Janc states that these connections are not logical<sup>1500</sup>, because they connect primary and secondary graves in a way which should not be done, for example, Ravnice (primary grave for Kravica) with Hodzici Road 5 (secondary grave for Orahovac), Cerska (undisturbed primary grave) with Hodzici Road 2 (secondary grave for Orahovac), etc<sup>1501</sup>.

835. Cerska and Kravica are again mentioned as a place of execution. It is evident from previous sections of this Brief that there are questions as to when the bodies from Cerska

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<sup>1496</sup> Dusan Janc, T/p 33545:3-10

<sup>1497</sup> Exhibit 1D1402, clarification pending, para. 68

<sup>1498</sup> Exhibit P4490, Annex C, pages ERN X019-4293-X019-4294; Dusan Janc, T/p 33390:23-33395:2

<sup>1499</sup> Dusan Janc, T/p 33394:5-6, 33493:6-10. Those seven case are with following ID numbers: 8019/06, 2741/03, 157/02, 3122/03, 10417/07, 2486/03 and 1315/03.

<sup>1500</sup> Dusan Jans, T/0 33392:10-12; 33488:10-33493:5

<sup>1501</sup> Exhibit P2996, P4524

were buried, or when, where and who were buried with the victims from Kravica?

**XXVII. List of missing and identified**

836. The first List of identified in this case was one that accompanied the Indictment as Schedule 2<sup>1502</sup>. After that, the OTP has tendered several Lists of missing and/or identified persons<sup>1503</sup>. The latest data from exhibit P 4494, according to the witness Janc, shows that there are at least 5.358 identified Srebrenica related persons, and when we add the number of surface remains to this figure, we arrive at 6.606<sup>1504</sup>. Included in this number of 5.358 are the 294 unique DNA profiles that are not connected with any missing person yet. These unique profiles were recovered from primary and secondary graves<sup>1505</sup>. From the exhibit P4495 we can see that some of those unique profiles were recovered from the Bljeceva 1, Cerska and Zeleni Jadar graves. Since we already know that in those graves there are some not Srebrenica related remains, we have to ask the question whether all unique DNA profiles are Srebrenica related. This Brief will show to what extent the Lists and/or numbers from them are reliable.

837. During his testimony, he was shown a few exhibits which raised the question as to whether certain persons should be considered as Srebrenica related and being listed by the ICMP<sup>1506</sup>. His usual answer to these questions was that he did not know the answer and that it should be double checked with the Demographic Unit of the OTP<sup>1507</sup>.

838. The Defence stressed that Milorad Trbic who was charged in this case and is now charged in BiH for the same events. The Annex to BiH Indictment is a List with 3.737 identified persons<sup>1508</sup>.

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<sup>1502</sup> Indictment, Schedule 2

<sup>1503</sup> Exhibits P566 May 2000, P2414 November 2005, P3006 November 2006, P3159a January 2008, P3517 July 2008, P4494 March 2009

<sup>1504</sup> Dusan Janc, T/p 33520:14-17

<sup>1505</sup> Exhibit R4490, page 2

<sup>1506</sup> Exhibits 1D1372, 1D1363, 1D1362, 1D1364, 1D1371

<sup>1507</sup> Dusan Janc, T/p 33567:17-33583:7

<sup>1508</sup> Exhibit 1D1360

According to the letter of BiH Prosecution the list of identified is based on certification of death issued by the authorised institution in BiH<sup>1509</sup>.

839. The conclusion is that BiH accepted as a closed case that there are 3.737 identified persons, who died or were killed right after the fall of Srebrenica<sup>1510</sup>. It was confirmed by the IMP in a letter dated 8 August 2008 that it was in possession of data on 3.214 identified persons and for the preliminary identification of about 2.000 others, who still have not been identified by their next of kin<sup>1511</sup>.

840. The Defence agreed with this approach as closed cases could be considered as completed identifications, when the certificate of death was

issued by the pathologist<sup>1512</sup> and the bodies returned to their families<sup>1513</sup>. It should be noted that on the ICMP DNA report is remark that identification is preliminary<sup>1514</sup>.

841. The ICMP Tracking Charts, produced on a weekly basis, supports the approach of the Defence that only closed cases should be considered as completed identifications. Among other data, they indicate the number of blood samples collected, DNA reports, open and closed cases<sup>1515</sup>. The statement of witness Parsons that the ICMP does not have access to accurate information about closed cases is hardly acceptable<sup>1516</sup>, because the ICMP would not put them in the Tracking Charts, and especially because the pathologist, who issued the certificates of death, was an In-House expert<sup>1517</sup>.

842. The witness Janc in his Summary included 63 identified persons who are listed under "Other graves" and were included in a total number of 5.358 identified persons.

<sup>1509</sup> Exhibit 1D1384

<sup>1510</sup> Dusan Janc, T/p 33592:15-17

<sup>1511</sup> Exhibit 1D1347

<sup>1512</sup> Thomas Parsons, T/p 20918:25-20919:6, 33421:8-18, 20918:25-20919:6, 33453:18-23, Exhibits P2413, page 11, P3002b; Ewa Tabeau, T/p 21043:5-18 ;

<sup>1513</sup> Thomas Parsons, T/p 33404:6-13

<sup>1514</sup> Exhibit 1D1371, page 4

<sup>1515</sup> Exhibit 1D1376, P3488, P4500, 3D461

<sup>1516</sup> Thomas Parsons, T/p 33479:18-20

<sup>1517</sup> Thomas Parsons, T/p 2089:24-20897:5

The OTP does not possess any or sufficient documentations on those cases. These names are listed in the ICMP list of the identified and in the Confidential Annex D of Janc's Summary. 18 out of the 63 identified persons were recovered in Republic of Serbia, but the rest in Republika Srpska, or in the Federation and for some, we do not have the location from where they had been recovered<sup>1518</sup>.

843. Expert Brumborg said that they were, according to the information provided by the families, as to the last time they were seen in Serbia, and not Bosnia<sup>1519</sup>. They cannot be therefore considered as Srebrenica related, since they met their death in completely different circumstances and the connection with the mass killings or the opportunistic killings cannot be established.

844. The Defence opposes that 6 persons identified in the village of Hemlijasi<sup>1520</sup>, were Srebrenica related, because Hemlijasi was in the territory of the Federation of BiH during the period covered by the Indictment. The village was under the control of ABiH and no exhibits provide proof that it was in the AOR of the DK.

845. The above argument can be applied for location in Trnovac-Tuzla, because according to the code of location it was clear that the person was buried in a cemetery in Tuzla<sup>1521</sup>.

846. According to the ICMP List of the identified in Nezuk village 4 persons were identified<sup>1522</sup>.

847. Nezuk during the period highlighted in the Indictment was under the control of BiH, because from the direction of Nezuk and Kalesija the VRS had shots fired upon

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<sup>1518</sup> Exhibit P4490, Annex A, page 34, Annex D, part "Others and Serbia related"; Dusan Janc, T/p 33511:13-33512:2

<sup>1519</sup> Helge Brumborg, T/p 11178:16-11179:4

<sup>1520</sup> Exhibit P4494, P4491 "Others and Serbia related" ERNR065-7751, 1D1426, page 3

<sup>1521</sup> Exhibit P4490, Annex A, page 34

<sup>1522</sup> Exhibit P4494

them<sup>1523</sup>. In addition, the Forwarded Command Post (IKM) for 24<sup>th</sup> Division of the ABiH, under command of Semsudin Muminovic was located in Nezuk<sup>1524</sup>.

848. It is unclear what link, persons who are members of 24<sup>th</sup> Division of ABiH, identified from those locations have with mass or opportunistic killings from the Indictment, irrespective of this comment the fact remains that they are on the List of the identified<sup>1525</sup>. The fact that particular persons are on the Lists of the missing whether the ICRC, FHR, ICTY is also of relative importance.

849. The ICRC and FHR started creating these lists in the first few years after the end of the war in Bosnia. The reporting of the missing persons was most extensive during that period. However, subsequent exhumations, and identifications confirm that these Lists contained even the names of the persons who could not be considered as Srebrenica related. Unfortunately, their names were not deleted from the List of missing persons.

850. An illustrative example relates to the list of detainees from Batkovici, exchanged in 1995, on the very top of the list, were two exchanges from the 12 September and 7 October 1995 and information about a third person who died on 7 August 1995<sup>1526</sup>. All three persons are still on the OTP's List of missing and identified from 2008<sup>1527</sup>.

851. The OTP requested from BiH authorities on the 23 December 2008 that they provide data on potential survivals still listed as a missing persons<sup>1528</sup>. In the response the Liaison Officer delivered to the ICTY on the 22 January 2009 a separate list with the names of the individuals who crossed to the free territory. 4 persons out of 9 were still listed as missing, although it could be seen that 3 of the persons were alive, and their

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<sup>1523</sup> Exhibits P82, P92, P1088

<sup>1524</sup> Exhibits P2215, 2D637, page 3; In spite of para. 31.13 of the Indictment and paras. 104 and 105 of the OTP PTB and testimony of PW-139, and *R92bis* statement of PW-119 (P2216) and exhibit P2288

<sup>1525</sup> Dusan Janc, T/p 33512:15-33513:6

<sup>1526</sup> Exhibit P7D712

<sup>1527</sup> Exhibit P3159a

<sup>1528</sup> Exhibit 1D1405, from denied Defence Bar Table Motion, certification pending

addresses were given and the fourth person died<sup>1529</sup>.

### **XXVIII. ABiH Data**

852. The witnesses Manning and Janc have not used ABiH data in their work<sup>1530</sup>. Before this proceeding commenced, the OTP addressed the Ministry of Defence of BiH with RFA (request for assistance) asking the detailed information about 142 died soldiers and other military personnel of ABiH. The 142 names were listed as killed or missing during the combats of 1992-1995, which the Ministry disclose to the OTP in 2001<sup>1531</sup>. In his response, the Ministry of Defence of BiH delivered the requested data in relation to 135 out of the 142 soldiers<sup>1532</sup>.

853. Having reviewed those certificates, it is evident that all of them were issued within two days on 28 and 29 June 2004, but two decisions bear different dates. In two certificates it is obvious that one person went missing on 18 August 1994 and the other person died on 12 August 1992<sup>1533</sup>. Both persons are listed as missing and identified<sup>1534</sup>. For 12 persons, the certificates stated that they are not registered as members of ABiH, particularly not in July 1995<sup>1535</sup>. Furthermore, under item number 2, the status of the person as a member of the ABiH has been struck out in 9 of the certificates<sup>1536</sup>. It is now questionable as to how and under what circumstances the BiH Ministry of Defence issued the certificates for members of ABiH stating that they were not members when they met their death.

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<sup>1529</sup> Exhibit 1D1405, from denied Defence Bar Table Motion, certification pending, page 14, item 1,2,6 and 9

<sup>1530</sup> Dusan Janc, T/p 33569:13-16

<sup>1531</sup> Exhibit 1D1375

<sup>1532</sup> Exhibit P3611, from denied Defence Bar Table Motion, certification pending. The data were disclosed in the form of the certificates, decisions and receipts

<sup>1533</sup> Exhibits 1D1362, 1D1363 (or Exhibit P3611, from denied Defence Bar Table Motion, certification pending pages 15 and 24

<sup>1534</sup> Exhibits P4494, P4491, P2414, P3006, P3159a, P3157

<sup>1535</sup> Exhibit P36111, from denied Defence Bar Table Motion, certification pending pages 11,15,17,28,30,40,42,43,46,49,51,74,

<sup>1536</sup> Exhibit P3611, from denied Defence Bar Table Motion, certification pending pages 34,40,42(or Exhibit 1D1364),43(or Exhibit 1D1365),46,49,51,74,86

854. The certificate of 14 persons show that they became registered members of the ABiH right before the fall of the enclave, i.e. on 10 or 11 July 1995<sup>1537</sup>. This indicates a very important fact which is that there was a new term of mobilisation that took place in those days. 106 out of 135 certificates or decisions noted that persons died on duty in July 1995, which means that they were engaged in combat activities<sup>1538</sup>. In addition, one certificate states that a person was registered as a member of ABiH until 12 July 1995, but he died on 11 July 1995 in Kravica on duty. We know that in Kravica Warehouse occurred mass killings on 13<sup>th</sup> July 1995 and in the vicinity of Supermarket in Kravica killing occurred between 13 and 14 July 1995<sup>1539</sup>.

855. The question is therefore open as to how much of the ABiH data are reliable? It is the position of the Defence that the basic ABiH data are highly reliable because they were completed on a regular basis during the combat activities and were kept according to the units of the soldiers they belonged to<sup>1540</sup>. The OTP also considered them *inter alia* as one of the most significant sources and the most appropriate for studying Srebrenica events<sup>1541</sup>. The reliability of ABiH data becomes questionable when under certain pressures from the OTP; the BiH authorities issued certificates which contain the unreliable data<sup>1542</sup>.

856. Comparing the OTP's List of the missing<sup>1543</sup> and ICMP List of the identified<sup>1544</sup> with ABiH data which refers to Tuzla town region, one starts getting the relevant information for this case. According to the letter of the OTP's Demographic Unit from 24 July 2008<sup>1545</sup> matching ABiH records

<sup>1537</sup>Exhibit P3611, from denied Defence Bar Table Motion, certification pending pages 36,37,41,52,65,66,77,84,94,98,104,135,137,138

<sup>1538</sup> Exhibit P3611, from denied Defence Bar Table Motion, certification pending pages 19,21-28,31,35-39,41,45,47,48,52-65,67-73,75-85,87-95,97-144

<sup>1539</sup> Exhibit P 3611, from denied Defence Bar Table Motion, certification pending page 19, Indictment paras. 30.4 and 31.3

<sup>1540</sup> Exhibit 1D1417, from denied Defence Bar Table Motion, certification pending

<sup>1541</sup> Exhibit P2412, last para. on page 5 and last sentence on page 6

<sup>1542</sup> Svetlana Radovanovic, T/p 24502:6-12

<sup>1543</sup> Exhibit P2414

<sup>1544</sup> Exhibit P3717

<sup>1545</sup> Exhibit 3D457

with OTP's List of the missing<sup>1546</sup>, this numbers 7.661 persons, produced the number of 5.371 matched records, what is 70% of persons listed in the OTP's List of missing. The Defence addressed to the OTP a list of questions to be answered with regards to this letter<sup>1547</sup>, which resulted in a single correspondence<sup>1548</sup> which did not provide us with expected answers.

857. The Indictment states that the column was formed in Jaglici and Susnjari with 15.000 able-bodied men and 1/3 of them were armed and the rest of a column was comprised of unarmed military personnel and civilians<sup>1549</sup>. However, some evidences prove contrary, and support that all of them were armed<sup>1550</sup>. In addition, the OTP indicates that class of persons took no active part in hostilities, including civilians, as well as members of the armed forces who have laid down their arms, or who have been places, *hors de combat*, by sickness, wounds, detention, or other cause.<sup>1551</sup>

858. It is the Defence's position that during proceeding is established that the members of the ABiH were the predominant part of a column, that they were on duty, mostly armed, and that they represent threat for VRS.

#### **XXIX. Demographic data**

859. Srebrenica was part of the Tuzla region and Zvornik sub-region before the war and had 37.000 inhabitants of which, 73 % were Muslims and 20% Serbs. According to a 1991 Census Srebrenica town had approximately 3.500 inhabitants<sup>1552</sup>. At the beginning of 1993 the population of Srebrenica was estimated to be 42.000 by UNPROFOR.<sup>1553</sup> Adjudicated fact states that Bosnian Muslim residents of the outlined area converged on Srebrenica town and its population swelled to between 50.000 to 60.000 people<sup>1554</sup> in 1993.

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<sup>1546</sup> Exhibit P2414

<sup>1547</sup> Exhibit 1D136

<sup>1548</sup> Exhibits 1D1395, 1D1396, 1D1397, from denied Defence Bar Table Motion, certification pending

<sup>1549</sup> Indictment para.56, OTP PTB para. 23

<sup>1550</sup> Exhibit P1183e,c

<sup>1551</sup> OTP PTB, para. 428

<sup>1552</sup> OTP PTB, 6, Adjudicated facts II, fact 19(M27)

<sup>1553</sup> Exhibit 2D3, para. 3

<sup>1554</sup> Adjudicated facts I, fact 22

860. The exact number of the population in Srebrenica town is not known before the fall. Some sources indicate that the number was approximately 40.000<sup>1555</sup>. The mass exodus from the enclave was under way<sup>1556</sup> and it is not known where the people in the enclave came from, but most of them probably came from the Srebrenica municipality itself and surrounding municipalities.<sup>1557</sup> The number of the population from 1991 increased.<sup>1558</sup>

861. In 2001 the OTP prepared its first List of missing. The List was made up of data from: (i) the ICRC List of missing, edition 1997 and 1998, (ii) PHR List of missing, and the 1999 version.<sup>1559</sup> This List used to be called the Consolidated List<sup>1560</sup>. Afterwards, the List was matched to the 1991 Census<sup>1561</sup>, in order to check the data and to determine the existence of these people<sup>1562</sup>. We should not underestimate the fact that from 1991 when the Census was completed until 1995 many people died by natural or violent deaths and that they should be "erased" because they are not connected with events in July 1995<sup>1563</sup>. Later, the Consolidated List was compared with OSCE Voters Register from 1997 and 1998 in order to eliminate potential survivors<sup>1564</sup> and to determine whether the people registered missing might be alive<sup>1565</sup>.

862. We were therefore provided with data on 7.457 missing persons<sup>1566</sup>. It is obviously the OTP's intention to prove that all persons from the List of missing: (i) existed and (ii) died<sup>1567</sup>.

<sup>1555</sup> Exhibit P2410, page 1, 1D1197, 1D1198, 1D1142, 1D1200, page 3

<sup>1556</sup> Exhibit 1D314, para. 3

<sup>1557</sup> Exhibit P2410, page 1

<sup>1558</sup> Helge Brumborg, T/p 11291:19-11292:12

<sup>1559</sup> Exhibits P571, P2411, page 1

<sup>1560</sup> Exhibit P571, page 6

<sup>1561</sup> Exhibit P571

<sup>1562</sup> Exhibit 1D1129, page 2, para. 5; Miladin Kovacevic, T/p 22653:16-22654:6

<sup>1563</sup> Exhibit 3D398, page 15, Svetlana Radovanovic, T/p 24431: 9-25

<sup>1564</sup> Exhibit P571 page 1, Miladin Kovacevic, T/p 22653:16-22654:13

<sup>1565</sup> Exhibit 1D1129, page 2, para. 5, Miladin Kovacevic, T/p 22682:6-12, Svetlana Radovanovic, T/p 24435:20-24

<sup>1567</sup> Exhibits P571, P2411

<sup>1568</sup> Exhibit 1D1129, para.

863. It is worth mentioning that:

- a. on the territory of ex-Yugoslavia the Census files had, *inter alia*, personal ID number (JMBG);<sup>1568</sup>
- b. on the territory of ex-Yugoslavia the Voters Register had, *inter alia*, JMBG;<sup>1569</sup>
- c. JMBG was not used by ICRC<sup>1570</sup> and PHR;<sup>1571</sup>
- d. The father name was not part of Voters Register;<sup>1572</sup>
- e. The father name was listed in List of missing.<sup>1573</sup>

864. The List of missing has been increased with new names provided by the ICRC and MAG Organisation (Muslims against Genocide<sup>1574</sup>)<sup>1575</sup>. The OTP considers the ICRC and OHR as highly reliable, because the ICRC has a good reputation for being neutral and they had access to both sides of a conflict<sup>1576</sup>. In addition, the List of missing provided by MAG is considered as reliable<sup>1577</sup>. On the OTP List, the details of identified persons provided by FCMP were also added<sup>1578</sup>.

865. However, according to expert Radovanovic all the above mentioned sources, do not meet any statistical standards, except the 1991 Census because they have unacceptably large number of errors, and other sources of better quality have not been used<sup>1579</sup>.

866. At the beginning the relevant criteria for determining if a person should be put on the List of missing was the date and place of disappearance, or death. Relevant date defined by the OTP as the period when the missing person could be considered as Srebrenica related was subsequently developed. In their first report from 2000,

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<sup>1568</sup> Exhibit P2413, page 7

<sup>1569</sup> Exhibit P2413, page 9

<sup>1570</sup> Helge Brumborg, T/p 6792:10-11

<sup>1571</sup> Exhibit P571, page 4

<sup>1572</sup> Exhibit 3D398, page 16

<sup>1573</sup> Exhibit P571, page 5; P2413 page 14

<sup>1574</sup> Exhibit P2422, page 6

<sup>1575</sup> Exhibit P2411, page 1

<sup>1576</sup> Helge Brumborg, T/p 6780:12-14

<sup>1577</sup> Exhibit P2411, page 2 and 3

<sup>1578</sup> Exhibit P2411, page 4

<sup>1579</sup> Exhibit 3D398, page 6

demographers H. Brumborg and H. Urdala, defined a date of disappearance as a date when the missing persons were last seen alive. It has to be highlighted that it was not necessarily the date that the persons may have been killed. Srebrenica related persons were considered to be those who are reported as missing between 11 July 1995 and 31 August 1995 however, cases of persons missing on later dates from 1 September until 31 December 1995 have been included as well<sup>1580</sup>.

867. In 2004, the Addendum to Report from 2000, states that reported disappearance or death between 11 July 1995 (or immediately before, but not earlier than 1 July 1995) and 31 August 1995 were to be considered as most relevant. However, records with disappearances between 1 September and 31 December were also taken into account<sup>1581</sup>. This time frame was determined by the OTP<sup>1582</sup>.

868. It is not clear why the time of disappearance should start from the 1 July 1995 especially since from the evidence it is obvious that the "Krivaja 1995" Operation commenced on 6 July 1995 at 4 a.m. The objective was to separate and reduce the size of the Srebrenica and Zepa enclaves to their urban areas<sup>1583</sup>. There were no combat activities before that date.

869. The Indictment charged the accused for mass killings and opportunistic killings. The first killings occurred in Potocari on 12 July 1995, and the last occurred on or shortly after 20 July 1995<sup>1584</sup>. It is obvious that the dates of alleged killing in respective mass or opportunistic killings are defined precisely by the paragraphs 30 and 31.4 of the Indictment. It is noted that none of the killings occurred in the period prior to the 12 July and on or shortly after 20 July 1995. The last OTP's List of missing persons from

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<sup>1580</sup> Exhibit P571, page 2

<sup>1581</sup> Exhibits P2411, page 7

<sup>1583</sup> Helge Brumborg, T/p 6781:14-6782:1

<sup>1583</sup> Adjudicated facts I, fact 71, Exhibit P107, paras. 2 and 4

<sup>1584</sup> Exhibit P571, pages 2 and 3; it should be noted that contrary to the footnote 7 from this exhibit, the mentioned list of locations is not attached

January 2008, clearly shows that there is no earlier date of disappearance than 11 July 1995.

870. Expert Brumborg said that records with reported disappearances before 11 July but not earlier than 1 July and between 1 September and 31 December were taken into account<sup>1585</sup>. It is not said in the Report how many those records exist? It is Defence position that these records should be deducted from the number of missing persons, since their disappearances are not covered by the Indictment.

871. The place of disappearance, i.e. place where the missing person was last seen alive, is not necessarily as reference to where a person may have died. In the Report from 2000, H. Brumborg and H. Urdala defined the place of disappearance as the locations in or near the enclave<sup>1586</sup>. Since 2004, the Addendum of the Report 2000, considers 10 municipalities of Srebrenica as relevant and three municipalities in Serbia, which gives a total of 13 municipalities<sup>1587</sup>. The OTP determined the place of disappearance and time of disappearance<sup>1588</sup>.

872. When mentioning Serbia as a place of disappearance, the expert Brumborg said that this was based on information provided by the families, as to the persons being last seen in Serbia, and not Bosnia<sup>1589</sup>. According to Janc's Summary there were 18 such persons<sup>1590</sup>. These 18 persons were recovered from Serbia, not from any primary or secondary mass graves in the Indictment. It is therefore obvious that those persons are not connected with mass or opportunistic killings.

873. A member of the OTP team described the term Srebrenica related as persons whowent missing in July, August, September, October, 1995, and witness Janc said that these were individuals, who were killed or died after the events in Srebrenica in 1995,

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<sup>1585</sup> Exhibit P2411, page 7

<sup>1586</sup> Exhibit P571, pages 2 and 3; it should be noted that contrary to the footnote 7 from this exhibit, the missing-location list is not attached

<sup>1587</sup> Exhibit P2411, page 7

<sup>1588</sup> Helge Brumborg, T/p 6782:7

<sup>1589</sup> Helge Brumborg, T/p 11178:16-11179:4

<sup>1590</sup> Exhibit P4490, Annex A, page 35

after they (Defence understands "they" to mean Serb forces) took over the Srebrenica enclave<sup>1591</sup>. Obviously, the term "Srebrenica related" is defined poorly in territorial terms<sup>1592</sup> and this also applied to definition for the date of disappearance as we cannot define the persons to whom it is applied. The ICMP list of identified always had the same date of disappearance, which is 11 July 1995 and place of disappearance as "Forest" or "Potocari"<sup>1593</sup>.

874. In 2005 the OTP prepared a new Report and List of missing and death after comparing its previous List with ICRC new data. On that List there were 7.661 persons<sup>1594</sup> and DDP data, version 2000 was used<sup>1595</sup>.

875. In the data provided for missing persons, there were a lot of mistakes regarding the full date of birth, especially date and month. The OTP explained this discrepancy by using a method which meant that during the search for matches of records, the year of birth was calculated with a differential of up to several years<sup>1596</sup>. In actual fact, the year of birth was checked in a range of plus/minus three or four years around the year of birth, in order to identify possible candidate for matches<sup>1597</sup>. Sometimes the search was done within a range of plus/minus 5 years<sup>1598</sup>. In so doing the OTP was able to increase the matching possibility for people on the List of missing that existed in 1991.

876. From the methodological point of view the matching of two lists should always begin with searching of the records for identical names and date of birth. When there were very few matches after the first round the search criteria was gradually made broader by one or more variables<sup>1599</sup>.

<sup>1591</sup> Christopher Mitchell, T/p 27871:14-18; Dusan Janc, T/p 33527:4-8

<sup>1592</sup> Exhibit 3D398, page 25, Svetlana Radovanovic, T/p 24334:13-17

<sup>1593</sup> Exhibit P3159, page 5

<sup>1594</sup> Exhibits P2413 Report, P2414 List

<sup>1595</sup> Exhibit P2413, page 5

<sup>1596</sup> Exhibit P2413, page 14

<sup>1597</sup> Helge Brumborg, T/p 11203:16; Miladin Kovacevic, T/p 22658:16-20

<sup>1598</sup> Ewa Tabeau, T/p 21045:24-21045:5, 21061:2-18, Svetlana Radovanovic, T/p 24434:1-6

<sup>1599</sup> Exhibits P571, pages 4 and 5; P2413, page 13

The OTP experts kept extending the number of criteria until a total number of 71 criteria (keys) were reached<sup>1600</sup>. Since the ICRC and PHR Lists were incomplete it was not possible to create unique identifier (a combination of attributes that unambiguously identify a person)<sup>1601</sup>, the OTP therefore made a list of 71 combinations, called criteria's (key) of matching in order to match the Consolidated List with the 1991 Census<sup>1602</sup>. However, the correct use of the matching method requires establishing a standardised and fixed identification key<sup>1603</sup>.

877. All the 71 criteria represent more or less "relaxed" unique identifiers that are represented by the following information: (i) name, (ii) surname, (iii) father's name, (iv) year of birth<sup>1604</sup>. This creates a very wide group of candidates for identification, however, the 71 criteria (key) was not used by the OTP to match the Consolidated List of missing with the Voters Register, because the father's name was not recorded in the Voters Register<sup>1605</sup>. The OTP did not want to recognize matches in cases where the names, father's name and date of birth was a match, but only the location was different. In such situations, the match with the Voters Register was rejected. The List of missing records information on the place of disappearance whilst the Voters Register records that information of the place of residence<sup>1606</sup>. This approach means that we are unable to find particular persons from the List of missing on the Voters Register<sup>1607</sup>.

878. But, it is not difficult to realize that between 1991-1997 (when first Voters Register was made), a lot of people had changed their place of residence. In so doing the lack of recognition of matches where the place of residence does not overlap meant that a large number of people from the Voters Register cannot be considered as potentially matched candidates as we will not be able to find them on the Voters Register.

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<sup>1600</sup> Exhibit 3D142; Helge Brumborg, T/p 11204:3-6 <sup>1601</sup>  
Exhibit 1D1129, page 2, para. 5

<sup>1602</sup> Exhibits 1D1430, from denied Defence Bar Table Motion, certification pending, 3D142

<sup>1603</sup> Exhibit 3D398, pages 7, 25

<sup>1605</sup> Miladin Kovacevic, T/p 22682:13-19

<sup>1605</sup> Exhibit 1D1129, page 2, para.9 ; Miladin Kovacevic, T/p 22664:4-8

<sup>1606</sup> Exhibit 1D1129, paras. 9, 10 Miladin Kovacevic, T/p 22666:12-21

<sup>1607</sup> Miladin Kovacevic, T/p 22666:22-22667:3

The 71 criteria was created to suit the purpose of finding all the people declared as missing in the 1991 Census, and afterwards not found them on the Voters Register.

879. Defence expert Kovacevic has done parallel matching between the Lists of missing with 7.661 names, with Brumborg's 71 criteria (keys), the 1991 Census<sup>1608</sup> and the Voters Register. The Chart from his Report shows the extent to which the number of groups of candidates that potentially match varies. A lot was dependent on which criteria were applied<sup>1609</sup>.

880. The most "relaxing" criteria, i.e. which gives the biggest matching possibility is 42 criteria (key)<sup>1610</sup>. This criterion creates grounds for more extensive matching, i.e. by applying the 42<sup>nd</sup> criteria a large number of missing persons can be found in the 1991 Census<sup>1611</sup>. The Defence expert has found a few cases which should not have matched whether using the Listing of missing with the 1991 Census or the Voters Register respectively<sup>1612</sup>.

881. In addition to matching Brumborg's List of missing with the 1991 Census using the 71 criteria (key), the expert Kovacevic also performed some independent matches according to the unique criteria (key): name, family name, father's name and date of birth<sup>1613</sup>. The results are following ones.

882. Kovacevic matched the List of missing with the Voters Register and got 22 cases, which means that those 22 persons from the List of missing are probably alive<sup>1614</sup>. In addition, when Brumborg has done the same match using the 71 criteria, he only found 9 cases<sup>1615</sup> that might be alive from the List of missing. Expert Kovacevic has found an additional 22 new cases.

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<sup>1608</sup> Miladin Kovacevic, T/p 22661:16:20

<sup>1609</sup> Exhibit 1D1129, page 5, chart 1

<sup>1610</sup> Exhibit 1D1129, paras. 10-13, Chart 1, pages 5 and 6

<sup>1611</sup> Exhibit 1D1129, paras. 16, 17, 18

<sup>1612</sup> Exhibit 1D1129, paras. 24, 25

<sup>1613</sup> Miladin Kovacevic, T/p 22654:25-22655:5

<sup>1614</sup> Exhibit 1D1129, para 26, Miladin Kovacevic, T/p 22685:5-22686:4

<sup>1615</sup> Exhibit 1D1129, para. 11

Expert Brumborg said: "If the deaths of only a handful of victims are challenged in a trial the credibility of the total estimate may be seriously weakened"<sup>1616</sup>.

883. Kovacevic matched the List of missing with 1991 Census based on the same unique criteria (key): name, family name, father's name, and date of birth, and the match result gave us 2943 persons<sup>1617</sup>, whom we might consider as potentially missing<sup>1618</sup>.

884. For the purpose of complete analyse expert Kovacevic performed matching which Brumborg had not. In addition, he carried out matching of the 1991 Census with the Voters Register by JMBG and came to the results that there were differences in the names and family names<sup>1619</sup>.

885. Further investigations by expert Kovacevic involved analysis of the following:

- a. From the number of inhabitants of Srebrenica<sup>1620</sup> he deducted the number of displaced persons<sup>1621</sup>. The result should give us the number of missing persons<sup>1622</sup>. Since there were several documents with different number of inhabitants of Srebrenica, while the number of displaced persons is fixed, it resulted in different number of missing persons. The highest difference is 2.718 persons<sup>1623</sup>.
- b. From the number of ABiH soldiers in Srebrenica<sup>1624</sup> expert Kovacevic deducted the number of soldiers pulled out from Srebrenica<sup>1625</sup>. The result gives us the figure of 2.895 missing soldiers.<sup>1626</sup>

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<sup>1616</sup> Exhibit 3D398, footnote 16

<sup>1617</sup> Exhibit 1D1129, para. 27; Miladin Kovacevic, T/p 22683:3-14

<sup>1618</sup> Miladin Kovacevic, T/p 22728:19-22729:14

<sup>1619</sup> Exhibits 1D1129, para 23.c, 1D1196

<sup>1620</sup> Exhibits 1D1129, paras. 38-40, Table 1 on page 8, 1D1195, 4D127, 1D312

<sup>1621</sup> Exhibits 1D1129, paras. 41-44, Table 1 on page 8, 1D1171, 1D1172, 1D1173, 1D1174, iladin Kovacevic, T/p 22696:25-22698:10

<sup>1622</sup> Exhibit 1D1129, para. 31; Miladin Kovacevic, T/p 22696:8-15

<sup>1623</sup> By mistake in the Report, 1D1129, in the Table 1 was mentioned document S37525 (jan. 1994), so in paragraphs 32 and 33 instead of figure 2.988 should be 2.718; Miladin Kovacevic, T/p 22733:6-22735:16

<sup>1624</sup> Exhibits 1D1129, para. 51, P3472, P3470

c. From the number of identified persons<sup>1627</sup> he deducted 18 persons that were on both the List of identified and List of displaced<sup>1628</sup>, and when we deduct the number of 1.300 persons who died before July 1995<sup>1629</sup>, we got the figure of 2.629 persons<sup>1630</sup>.

886. What can be concluded from last the above analysis? The most probable figure of missing persons from Srebrenica is at around 3.000<sup>1631</sup> and it composed mainly of ABiH soldiers<sup>1632</sup>. The OTP experts did not use the ABiH data in their Reports<sup>1633</sup>. ABiH database contains a lot of information and are of good quality<sup>1634</sup>. Over hundred ABiH soldiers who were killed prior to 1995 still feature on the OTP's List of missing<sup>1635</sup>. It is worth mentioning that the database collected by the Bureau of Statistics of BiH Federation and Republika Srpska on people who died in the period of 1992-1995 tells us that some people from the List of missing died prior to 11 July 1995<sup>1636</sup>.

887. Since the Defence experts filed their Reports the figure of identified persons has changed.<sup>1637</sup> The process of exhumation and identification are still ongoing. What matters is the methodology, used by the OTP in the process of matching data<sup>1638</sup>. Obviously, it is not possible to obtain reliable data from uncertain sources. The methodology used by the OTP in this case has not been accepted worldwide because it is not based on scientific grounds<sup>1639</sup>.

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<sup>1625</sup> Exhibit 1D1129, para. 52

<sup>1626</sup> Exhibit 1D1129, para. 31

<sup>1627</sup> Exhibits 1D1129, paras. 48-50, Table 1 on page 8, P3002

<sup>1628</sup> Exhibits 1D1129, paras. 34, 54, 1D1171, 1D1172, 1D1173, 1D1174

<sup>1629</sup> Exhibits 1D1129, paras. 34, 53; 1D1139

<sup>1630</sup> Exhibit 1D1129, para. 34

<sup>1631</sup> Miladin Kovacevic, T/p 22686:5-22688:9

<sup>1632</sup> Exhibit 1D1129, para. 35

<sup>1633</sup> Helge Brumborg, T/p 11211:20-11212:5

<sup>1634</sup> Exhibit 3D398, page 21, Svetlana Radovanovic, T/p 24500:23-25

<sup>1635</sup> Exhibit 3D398, page 22

<sup>1636</sup> Exhibit 3D398, pages 22, 23

<sup>1637</sup> Miladin Kovacevic, T/p 22739:12-22743:12, 22748:13-23

<sup>1638</sup> Miladin Kovacevic, T/p 22743:14-22744:1

<sup>1639</sup> Svetlana Radovanovic, T/p 24481:11 -18

**J. CONCLUSIONS:**

888. The Operation "Krivaja 95" was a legitimate military action directed against the 28th division of AbiH in an attempt to prevent its combat activities from the Srebrenica "safe area" on Serbian military units and the civilian population around Srebrenica and Zepa.
889. Before the VRS troops entered Srebrenica, the BiH authorities in the enclave ordered the withdrawal of troops of the 28th division and mobilized all able bodied Muslim men eligible for military service under the BiH law.
890. Simultaneously, the BiH authorities ordered the Muslim civilian population to move to Potocari in and around the Dutch-Bat compound.
891. On the night between 11 and 12 July, there were at least 30 AbiH soldiers in civilian clothing among the refugees at the Dutch-Bat compound in Potocari.
892. During the first meeting at Hotel "Fontana" in Bratunac, held upon the request of Dutch-Bat, Colonel Karemans explicitly asked General Mladic to permit the withdrawal of the Dutch-Bat and refugees and provide assistance with the process.
893. General Mladic announced that able-bodied Muslim men in Potocari would be screened in an effort to identify suspected war criminals.
894. The request was granted and from the early morning hours on 12 July 1995 RS military and civilian authorities engaged a large number of buses and trucks for that purpose.
895. On 12 and 13 July 1995 the evacuation of civilian population from Potocari was carried out.
896. The evacuation of the civilian population from Potocari was a legitimate act, carried out in the interest of the population.
897. Simultaneously, the men suspected as being members of ABiH were detained.
898. The detention of the men suspected of being part of the enemy's forces was also legitimate.
899. All forms of abuse against them, in particular, killings, inflicting of bodily harm and maltreatment was a crime.

900. The detained prisoners were to be transported to Batkovici or exchanged but due to unknown reasons they were temporarily accommodated at various locations in the Zvornik area.
901. The executions in the Zvornik area resulted from a decision but the time and person(s) who made this decision is unclear.
902. It is apparent that the decision was made before the afternoon of the 14 July 1995 when the first mass execution started at Orahovac.
903. In light of the above, the Defence considers that the execution at the Kravica Warehouse was an incident not previously planned.
904. Furthermore, it must be noted that the date of the execution of the 150 victims in Cerska was incorrect because many of the victims found at that location were alive after 13 July 1995 the designated date of the execution.
905. Almost all of those executed at this location were members of ABiH.
906. The Defence considers these executions as a serious crime but they do not amount to the crime of Genocide.
907. It follows from the fact that the activities were not directed at the destruction of the Srebrenica population that was evacuated to the BiH territory.
908. It also follows from the absence of a VRS plan to effectively destroy ABiH forces moving in the column towards the BiH territory and in particular in sending almost all of its forces to Zepa.
909. By virtue of his duties Popovic had not in the scope of his duties any tasks regarding prisoners, unless he required from them a statement relevant for his security tasks.
910. However, there is no evidence that Popovic took any statement from Srebrenica related prisoners.
911. Furthermore, there is no evidence that Popovic received such a task in the period relevant to the Indictment.
912. The presence of Popovic at Srebrenica, Potocari and Bratunac, was closely related to his security tasks and in particular with Operation "Juda" and the counter-intelligence protection for General Mladic.
913. Furthermore, his presence in the Zvornik area was related to his security tasks at a most critical time for this town when the level of undercover enemy activities was expected to culminate.

914. However, his whereabouts throughout the area was not connected with the execution, burial or reburial of the prisoners.

915. The engagement of the security organs with regards to the fuel issue had no relevance to the executions, burials and reburials but centered on their task of preventing a massive misappropriation of that product, which was a principle commodity for the operational capability of the VRS.

916. The prisoners from Vlasenica, executed in Bisina, were taken within the timeframe when he was in Zvornik and he arrived at Bisina when the execution had already concluded.

## **K. RELIEF SOUGHT**

917. For all the reasons stated herein, the Defence requests that Vujadin Popović be acquitted of all counts and be immediately released from the United Nations Detention Unit.

**Respectfully submitted,**



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## ABBREVIATIONS

Accused	Vujadin Popovic
Defence	Defence of the Accused
Indictment	IT-05-88, <i>Prosecutor v. Vujadin Popovic et al</i> , Second Consolidated Amended Indictment, 04 August 2006
Prosecution	Office of the Prosecutor
OTPPTB	IT-05-88, <i>Prosecutor v. Vujadin Popovic et al</i> , Prosecution Pre-Trial Brief, 28 April 2006
DPTB	IT-05-88, <i>Prosecutor v. Vujadin Popovic et al</i> , Defence Pre-Trial Brief.
Adjudicated Facts I	IT-05-88, <i>Prosecutor v. Vujadin Popovic et al</i> , Decision On Prosecution Motion for Judicial Notice of Adjudicated Facts, 26 September 2006
Adjudicated Facts II	IT-05-88, <i>Prosecutor v. Vujadin Popovic et al</i> , Decision On Popovic's Motion for Judicial Notice of Adjudicated Facts, 02 June 2008
JCE	Joint Criminal Enterprise
ICTY	International Criminal Tribunal for the Former Yugoslavia
Rules	Rules of the Procedure and Evidence of the ICTY
Statute	Statute of the ICTY
VRS	Army of Republika Srpska
MSVRS	Main Staff of Army of Republika Srpska
RS MUP	Republika Srpska Ministry of Internal Affairs
DK	Drina Corps
ZB	Zvornik Brigade
BB	Bratunac Brigade
IKM	Forwarded Command Post
ABiH	Army of the Republic of Bosnia and Herzegovina
VJ	Army of Yugoslavia
JNA	Yugoslav People's Army
SFRJ	Former Socialist Federal Republic of Yugoslavia

TJ	Trial Chamber Judgement
AJ	Appeals Chamber Judgement
ICMP	International Commission on Missing Persons
SOP	Standard Operational Procedure
MNI	Minimal Number of Individuals
BiH FCMP	Bosnia and Herzegovina Federal Commission on Missing Persons
IMP	Institute on Missing Persons
ICRC	International Committee for the Red Crsss
PHR	Physicians for Human Rights
JMBG	Personal identification number
RFA	Request for Assistance
T/p or T or T.p	Transcript page