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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 10 June 2010

Judgement Summary for Popović *et al.*

Please find below the summary of the Judgement read out today by Judge Carmel Agius:

The Trial Chamber is sitting today to deliver its Judgement in the case *The Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević*. I shall now read a summary of the Trial Chamber's findings in that Judgement. However, the authoritative account of those findings is contained in the Judgement, which will be made available after this hearing.

At the outset, the Chamber wishes to express its gratitude to all counsel, past and present, the Registry staff, the interpreters and court reporters, the Security Officers and staff at the United Nations Detention Facility, the Trial Chamber's own staff, and all others who have contributed to the smooth and efficient conduct of this trial. Trial proceedings in this case commenced on 21 August 2006 and concluded on 15 September 2009. In that time, the Trial Chamber has heard or otherwise admitted evidence from 315 witnesses. There are 5,383 exhibits before the Trial Chamber, amounting to 87,392 page numbers.

Over the course of a few days in July 1995, following the fall of Srebrenica, thousands of Bosnian Muslim males were detained in deplorable conditions, transported to various remote locations and summarily executed. In parallel to these mass executions, Bosnian Muslim women, children and the elderly were transferred out of this part of Eastern Bosnia. In the context of the war in the former Yugoslavia, and in the context of human history, these events are arrestive in their scale and brutality.

The Trial Chamber wishes to emphasise that while the horrific crimes committed in and around Srebrenica and Žepa in July 1995 form the basis for this case, this trial is ultimately about seven men—Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević—and their alleged individual criminal responsibility.

The Trial Chamber will first list the charges brought against the Accused. It will then provide a summary of the factual allegations that underpin the crimes charged. Next, it will examine the specific crimes and the criminal responsibility for each Accused. Finally, it will render its verdict.

The Accused

The Prosecution alleges that two joint criminal enterprises existed in Eastern Bosnia and Herzegovina in July 1995. One was a joint criminal enterprise to murder the able-bodied Bosnian Muslim men from Srebrenica (the "JCE to Murder"), and the other was a joint criminal enterprise to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa (the "JCE to Forcibly Remove").

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By virtue of their acts and omissions, five of the Accused—Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin and Vinko Pandurević—are alleged to be responsible for genocide (count 1); conspiracy to commit genocide (count 2); extermination, a crime against humanity (count 3); murder, a crime against humanity and a violation of the laws or customs of war (counts 4 and 5); persecution, a crime against humanity (count 6); inhumane acts (forcible transfer), a crime against humanity (count 7); and deportation, a crime against humanity (count 8).

All five Accused are alleged to have been members of the JCE to Murder and the JCE to Forcibly Remove, and are charged under every form of individual responsibility set out in Article 7(1) of the Statute. In addition, Ljubomir Borovčanin and Vinko Pandurević are alleged to be responsible pursuant to superior responsibility under Article 7(3) of the Statute.

By virtue of their acts and omissions, two of the Accused—Radivoje Miletić and Milan Gvero—are alleged to be responsible for murder, a crime against humanity and a violation of the laws or customs of war (counts 4 and 5); persecution, a crime against humanity (count 6); inhumane acts (forcible transfer), a crime against humanity (count 7); and deportation, a crime against humanity (count 8).

Radivoje Miletić and Milan Gvero are alleged to have been members of the JCE to Forcibly Remove, and are charged under every form of individual responsibility set out in Article 7(1) of the Statute.

The Facts

I now turn to the Trial Chamber's findings in relation to the commission of the alleged crimes by the Bosnian Serb Forces.

I note that the Judgement sets out the background of the events alleged from 1992. For the purpose of this summary, however, the Trial Chamber will limit itself to events that took place between March and September 1995.

In March 1995, Supreme Command Directive 7 was issued by President Karadžić. The Directive set out the criminal plan for an attack against protected UN safe areas aimed at forcing the civilian populations of Srebrenica and Žepa to leave the enclaves. It tasked the Drina Corps to create "an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa". It also detailed that "the planned and unobtrusively restrictive issuing of permits" should be undertaken so as to limit the supply of material resources to the population and logistics support of the United Nations Protection Force ("UNPROFOR").

In the implementation of this plan, from at least June of 1995, the aid supply decreased significantly as a result of the Bosnian Serb Army ("VRS") restrictions, creating an increasingly dire humanitarian situation in the Srebrenica and Žepa enclaves.

On 6 July, the VRS started its military attack on the Srebrenica enclave—known as *Krivaja-95*. Several days of intense shelling followed, with Srebrenica town and the compounds and observations points of the Dutch Battalion of UNPROFOR ("DutchBat") being amongst the targets. On 11 July, the enclave, including the town of Srebrenica, fell.

As a result of the attack, from 10 July, thousands of Bosnian Muslims started fleeing from Srebrenica town to the DutchBat compound in Potočari, desperate for protection. While mostly women, children and the elderly fled to Potočari, Bosnian Muslim men from Srebrenica gathered in villages in the valleys of the Srebrenica enclave. In the late evening, these men formed a column which set off in the direction of Tuzla, which was in territory held by the Army of Bosnia and Herzegovina ("ABiH"). In order to reach Tuzla, the column

had to break through VRS-held positions. The column consisted of about ten to fifteen thousand individuals, mostly men, and with both a civilian and a military component.

Meanwhile, three meetings took place between representatives from the VRS and DutchBat at the Hotel Fontana in Bratunac over 11 and 12 July. “Unofficial” representatives of the Bosnian Muslim population also attended the second and third meetings. The parties discussed the logistics of moving over ten thousand Bosnian Muslims from Potočari and its surroundings, and Mladić told the Bosnian Muslim representatives, “[Y]ou can either survive or disappear. For your survival, I demand that all your armed men...surrender their weapons to the VRS.”

By the morning of 12 July, a decision had been taken to separate the Bosnian Muslim men in Potočari and execute them.

On that same day, the VRS dispatched approximately 50 buses to Potočari where members of the Bosnian Serb Forces, that is VRS Forces, Ministry of the Interior in Republika Srpska (“MUP”) Forces, began separating men aged 15 to 65 from the women, children and the elderly who boarded the buses. Already on the verge of a humanitarian disaster, a night of utter misery ensued at the DutchBat compound: people were frightened, some died, members of the Bosnian Serb Forces took away men who did not return, and women were heard screaming, “Let me go,” and “Don’t.” The transfer and separations continued throughout the next day.

Members of the Bosnian Serb Forces confiscated and eventually burned the separated men’s belongings, including passports and identity papers, and detained the men at various houses in Potočari. They were given no food, hardly any water, and sanitary facilities were scarce. Members of the Bosnian Serb Forces transported the separated men towards Bratunac. The Bosnian Serb Forces thwarted efforts by DutchBat soldiers to escort the convoys and record the men’s names.

On 13 July, there were several random killings of Bosnian Muslims by members of the Bosnian Serb Forces including at the Luke School and in Potočari.

By the evening of 13 July, between twenty and thirty thousand Bosnian Muslims had been bused out to ABiH-held territory and no Bosnian Muslims remained in Potočari or Srebrenica. The Trial Chamber has found this constituted forcible transfer, including, by majority, Judge Kwon dissenting, with respect to the civilian component of the column.

Meanwhile, on 12 and 13 July, the VRS deployed several units along various routes in order to engage militarily and block the column of Bosnian Muslims that was moving from Srebrenica to Tuzla. By this point, the murder plan originally directed at the men in Potočari was extended to Bosnian Muslim men who were captured or surrendered from the column. By 13 July, Bosnian Serb Forces had detained approximately six thousand Bosnian Muslim prisoners in the Bratunac area.

The prisoners were forced to surrender their property, which included identity cards, wallets, watches, and food. They were kept in cramped conditions and received some water, although hardly any food. Members of Bosnian Serb Forces did not ask or record names. Some of these detained prisoners became victims of “opportunistic” killings.

On 13 July, VRS Commander Ratko Mladić issued a telling order prohibiting filming and photographing of prisoners, and preventing access by “unauthorized” and “uninvited” entities. At the same time, a series of meetings were held over 13 and 14 July between members of the civilian authorities and VRS members at which the logistics of the killing and burial operations were the central subjects.

On 13 July 1995, the murder operation began in earnest. Members of the Bosnian Serb Forces shot and killed Bosnian Muslim prisoners on the banks of the Jadar River, at an

area along a dirt road in the Cerkva Valley, the Bratunac Brigade Headquarters, at Sandići Meadow, and in and around the Vuk Karadžić school in Bratunac town.

On the same day, Bosnian Muslim prisoners, who were captured or surrendered from the column, close to Sandići Meadow, were marched or transported to the nearby Kravica Warehouse. There, what appears to be a busload of prisoners were initially killed after a prisoner had grabbed a weapon, killing one member of the Bosnian Serb Forces and wounding others. What followed this initial killing episode can only be described as a massacre of the prisoners held in the warehouse. Members of the Bosnian Serb Forces besieged the prisoners with gunfire and grenades. The assault upon the prisoners lasted through the night. By the end, at least 1,000 Bosnian Muslim men had been killed. Excavators arrived on 14 and 15 July to remove the bodies.

Further mass executions followed in Zvornik shortly after. Over 13 to 17 July, the detained Bosnian Muslim men were taken by the Bosnian Serb Forces in buses and trucks from Bratunac to various places of detention in Zvornik. The men endured a brief but horrific period of detention in various public buildings, mainly schools. The facilities were woefully inadequate; the men were taunted along ethnic lines and largely denied food and water. An atmosphere of terror was maintained through beatings and sporadic executions. Their spirits broken, the Bosnian Muslim men were taken for execution. Some were blindfolded and their hands were tied, and at one detention site they were given a final cup of water. Then they were transported to nearby locations, and shot. This scene played out at a field in Orahovac, a dam at Petkovci, a gravel pit at Kozluk and a farm in Pilica. In addition, hundreds were killed inside the Pilica Cultural Centre, an execution for which there are no known survivors.

Loaders and excavators were either already at the sites at the time of the executions or arrived soon thereafter to bury the dead in mass graves. In the wake of these mass executions, the Bosnian Serb Forces ordered a “mopping up” operation throughout the enclave and executions on a smaller scale continued in the Zvornik area between 16 and 27 July.

The members of the column who had not surrendered or been captured, had continued to move towards ABiH-held territory. By 15 July, the column had reached the Zvornik Brigade’s area of responsibility and heavy fighting took place. However, on 16 and 17 July, a corridor, several hundreds metres wide, was opened in the defence lines of the Bosnian Serb Forces, allowing a significant part of the column to pass to ABiH-held territory. These Bosnian Muslim men escaped the murder operation.

During September and October 1995, in an effort to conceal the killings, the VRS, with the assistance of the civilian authorities, carried out a large scale operation in the areas of the Zvornik and Bratunac Brigades during which bodies of execution victims were moved from their primary graves to secondary locations.

An extensive amount of forensic and demographic evidence was presented in this trial. This evidence is analysed in detail in the Judgement. Based on this evidence, the Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica. However, noting that the evidence before it is not all encompassing, the Trial Chamber is satisfied that the number of identified individuals will rise. The Trial Chamber therefore considers that the number of individuals killed in the executions following the fall of Srebrenica could well be as high as 7,826.

The scale and nature of the murder operation, with the staggering number of killings, the systematic and organised manner in which it was carried out, the targeting and relentless pursuit of the victims, and the plain intention—apparent from the evidence—to eliminate every Bosnian Muslim male who was captured or surrendered proves beyond reasonable doubt that this was genocide.

As these events played out north of Srebrenica, the VRS also maintained a military focus on the Žepa enclave. The VRS initiated discussions regarding the removal of the population of Žepa before arriving militarily at the enclave. Three rounds of “negotiations” took place. At each juncture, military force was the means used to compel concessions from the Bosnian Muslim population of Žepa.

As the attacks continued, they intensified. Further, news about the fate of the Bosnian Muslims from Srebrenica began to circulate, adding to the panic of the population, and loudspeakers broadcasted a message that there was no chance for the Bosnian Muslim population as the area was controlled by Mladić. Ultimately in the face of these impossible conditions, the population had no choice but to leave the enclave. As one witness described, the choice was “to leave Žepa under very cruel and humiliating circumstances [...] or to remain and then either be killed or be subjected to suffering”. Most of the transportation of the civilians took place on 26 July, and by 27 July, around 4,000 or 5,000 Bosnian Muslim women, children, the elderly, and wounded were transported by bus out of Žepa.

As of 31 July, when negotiations as to their fate appeared to have stopped, the Bosnian Muslim able-bodied men of Žepa—civilians and military—fled in various directions including across the Drina River to Serbia. These men also faced the same situation as the civilians and they had no choice but to escape the enclave. While an “agreement” was signed to give a veneer of legitimacy to the movement of the Bosnian Muslim population of Žepa, the Trial Chamber has found this constituted forcible transfer, including by majority, Judge Kwon dissenting, of the able-bodied men who fled to Serbia.

Legal Findings

The Trial Chamber will now summarise its key legal findings. The Trial Chamber has found that there was a joint criminal enterprise to murder and a joint criminal enterprise to forcibly remove with several participants. The Trial Chamber has found that “opportunistic” killings were committed in the course of the JCE to Murder and, by majority, Judge Kwon dissenting, in the course of the JCE to Forcibly Remove. Further, it has found that some members of the JCE to Murder had genocidal intent and thus genocide was committed. It has also found that members of both JCEs had the requisite special intent for the crime of persecution. It has also been established beyond reasonable doubt that there was a widespread and systematic attack against a civilian population. This attack commenced with the issuance of Directive 7 and had various components, including the strangulation of the enclaves through the restriction of humanitarian supplies, the gradual weakening and disabling of UNPROFOR, and a planned military assault on the enclaves, and culminated in the removal of thousands of people from Srebrenica and Žepa.

Therefore, applying the legal elements of the crimes charged in the Indictment to the facts found to be proven, the Trial Chamber has found that the following crimes were committed by members of the Bosnian Serb Forces in various locations alleged in the Indictment: genocide; conspiracy to commit genocide; extermination, a crime against humanity; murder, a crime against humanity and a violation of the laws or customs of war; murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer, as acts of persecution, a crime against humanity; and forcible transfer as an inhumane act, a crime against humanity. The Trial Chamber finds that the elements of the crime of deportation have not been established.

Individual Criminal Responsibility

Vujadin Popović was the Chief of Security of the Drina Corps in 1995 and he held the rank of Lieutenant-Colonel. On 12 July, Popović forecasted the planned separations, transfers and killings in the enclave when speaking to Momir Nikolić prior to the third Hotel Fontana meeting. He told Momir Nikolić that “all the balija have to be killed” and asked him to assist in the operation. Popović was present with the Bosnian Serb Forces in Potočari

on 12 July, and the Trial Chamber has found that Popović was aware of the large number of men among the thousands of Bosnian Muslims gathered at Potočari on this day.

The Trial Chamber has found that Popović had knowledge of the operation to capture men along the Konjević Polje road on 13 July. That evening, Popović phoned Drago Nikolić to inform him that a large number of prisoners would be brought from Bratunac to Zvornik in order to be killed. He asked Drago Nikolić to assist in this operation.

On 14 July, Beara, Popović and Nikolić met at the Standard Barracks to organise and coordinate the killing operation. Following this meeting, Popović carried out the initial steps required to put the plan into action when he accompanied a convoy of buses carrying Bosnian Muslim prisoners from Bratunac to the Grbavci School in Orahovac. The Trial Chamber has found that later that day Popović was present at the field in Orahovac as the executions took place.

On 15 July, Popović was present at the Ročević School, organising personnel and equipment to facilitate the detentions at the school as well as the executions, which occurred later that day at a gravel pit near Kozluk. Also on this day, Popović gave the Zvornik Brigade Duty Officer instructions to not record any information concerning the Bosnian Muslim prisoners nor should he speak about them over the radio.

The following day, 16 July, Popović was present at yet another site where prisoners were detained prior to execution—the Kula School in Pilica. On this day, Popović requested the delivery of fuel from the Zvornik Brigade in relation to the execution and burial of prisoners in Pilica. Dražen Erdemović saw a “lieutenant colonel” at Pilica several times on 16 July, including at the Branjevo Military Farm execution site. The “lieutenant colonel” was organising personnel to participate in the executions. For the reasons outlined in the Judgement, the Trial Chamber is satisfied that this “lieutenant colonel” was Popović. That evening, Popović asked that a message be conveyed to “the General” that he had “finished the job”. The next day, 17 July, Popović again told an unknown interlocutor whom he referred to as “boss” “that all gets an A”. For the reasons outlined in the Judgement, the Trial Chamber is satisfied that in both of these conversations, Popović was referring to the killing operation.

Later in July 1995, ten wounded Bosnian Muslim men came to be held at the headquarters of the Zvornik Brigade. Some time after 23 July, these men were placed in Popović’s custody. For the reasons outlined in the Judgement, the Trial Chamber is satisfied that Popović either killed or facilitated the killing of these ten wounded Bosnian Muslim men.

The Trial Chamber is satisfied beyond reasonable doubt that during these days Popović was fully engaged in the organisation of the killing operation being carried out in the Zvornik area. For the reasons set out in the Judgement, the Trial Chamber has found that Popović was a member of the JCE to Murder the Bosnian Muslim males of Srebrenica, and that he participated in that JCE with persecutory intent. The Trial Chamber has found that Popović was not a member of the JCE to Forcibly Remove the Bosnian Muslim civilian population from the enclaves.

Popović was not a marginal participant in the JCE to Murder. He knew of the plan from the time of its inception, and was privy to each development: from the discussions at Bratunac before the operation began; to the capture of Bosnian Muslim men from the column; to the large scale killings at Zvornik. Popović was entrenched in several aspects of the operation, and he participated with resolve. He was ubiquitous in the Zvornik area, present at all but one of the major killing sites. Popović knew that the intent was not just to kill those who had fallen into the hands of the Bosnian Serb Forces, but to kill as many as possible with the aim of destroying the group. Popović’s ensuing robust participation in all aspects of the plan demonstrates that he not only knew of this intent to destroy, he also shared it.

In July 1995, **Ljubiša Beara** was Chief of Security in the VRS Main Staff and he held the rank of Colonel. He was the superior to Popović and Nikolić in the professional sense. On 13 July, Beara was present in Bratunac, and was seen at a number of places where Bosnian Muslim men were detained. Intercepted conversations from this day record Beara discussing Bosnian Muslim prisoners. Although the record of one conversation indicates that Beara was looking to simply detain the prisoners, the Trial Chamber is nevertheless satisfied, for the reasons set out in the Judgement, that the conversation was deliberately misleading as to the fate which awaited these Bosnian Muslim men.

Several witnesses testified that Beara was present in Bratunac and took part in informal meetings held at the SDS offices between 13 and 14 July 1995. The evidence of these witnesses is analysed in detail in the Judgement. The Trial Chamber is satisfied that Beara participated in these meetings, the subject-matter of which was the logistics of the planned killing operation, including the location for the killings and burial as well as transportation and equipment.

Beara's coordinating role in the murder operation continued throughout 14 July. He sourced construction machinery, enlisted the help of the civilian authorities to assist with burials and inspected possible detention and/or execution sites. Beara was also present at the Grbavci School and the Petkovci School on 14 July, where prisoners were detained prior to execution.

On 15 July, Beara continued to enlist personnel to carry out the killing operation, and intercepted conversations record his thinly-veiled attempts to solicit resources. Beara told General Krstić that he had "3,500 parcels" that needed distributing and pressured him to assign troops for that purpose. In another conversation, he discussed the killing operation in terms of conducting a "triage".

On 16 July, Beara was at the Kula School in Pilica where prisoners were being held prior to execution.

As the most senior officer of the Security Branch, the Trial Chamber is of the opinion that Beara had the clearest overall picture of the massive scale and scope of the killing operation. From his presence in Bratunac on the night of 13 July, to his personal visits to the various detention and execution sites and the significant logistical challenges he faced throughout, Beara had a very personal view of the staggering number of victims destined for execution. Steeped in this knowledge, the Trial Chamber is of the opinion that Beara became a driving force behind the murder enterprise.

For the reasons detailed in the Judgement, the Trial Chamber has found that Beara was a member of the JCE to Murder the Bosnian Muslim males from Srebrenica, and he participated in that JCE with persecutory intent. The Trial Chamber has found that Beara was not a member of the JCE to Forcibly Remove the Bosnian Muslim civilian population from the enclaves.

Beara's vigorous efforts to organise locations and sites, recruit personnel, secure equipment and oversee executions all evidence his grim determination to kill as many as possible as quickly as possible. His encounters with Miroslav Deronjić on the night of 13 July provide a chilling illustration of a mind set on destruction. He announced an intent to "kill all" the detained men, and without pause to consider or comment upon the horrific nature of his "orders", he launched into a series of heated exchanges about the best location for this reprehensible undertaking. For the reasons outlined in the Judgement, the Trial Chamber is satisfied that at this time, Beara was a man intent on destroying a group by killing all the members of it within his reach. Beyond all reasonable doubt, he harboured genocidal intent.

In July 1995, **Drago Nikolić** was the Chief of Security in the Zvornik Brigade, and held the rank of Second Lieutenant in the VRS. On the evening of 13 July 1995, Nikolić was

informed by Popović that the able-bodied Bosnian Muslim males from Srebrenica were to be brought from Bratunac to Zvornik to be killed. Popović asked Nikolić to assist in the murder operation, and Nikolić subsequently sought release from the forward command post for this purpose. The evidence shows that from that moment, Nikolić became an active member of the JCE to Murder the Bosnian Muslim males from Srebrenica.

During the evening of 13 July 1995, Nikolić made preparations for detaining the prisoners at Orahovac, and was at Orahovac giving directions to the Zvornik Brigade Military Police who had been released to him for that purpose. For much of the day on 14 July 1995, Nikolić was present at the Grbavci School in a coordinating role and gave directions at the Orahovac execution site. On 14 July, Nikolić ordered the 1st Battalion of the Zvornik Brigade to secure the prisoners at the Kula School in the awareness that they would be executed. Nikolić was also present with Popović near Petkovci School while prisoners were held there, most of whom were killed the next day. On 15 July, Nikolić, working closely with Beara and Popović, was involved in organising the detention and execution of prisoners at Ročević School. The evidence shows that Nikolić demonstrated a resolve to carry out his assigned tasks in this murderous operation. His contribution to the JCE to Murder can properly be described as persistent and determined.

However, Nikolić's knowledge of the murder operation is of a different nature from that of Beara and Popović. Nikolić was first informed of the murder plan on the evening of 13 July. On the evidence before the Trial Chamber, the information he was given was sparse and it came at a time when the murder operation was already well underway. Further, at that point, other than his general understanding that these were prisoners taken as a result of the attack on, and fall of the Srebrenica enclave, there is no evidence that he had information as to the circumstances by which these men had ended up in VRS custody. Thus, the Trial Chamber has found that on 13 July when he joined in the common plan, Nikolić was aware of the plan to murder on a large scale, but not of some of the key features of the operation which would evidence genocidal intent. However, the Trial Chamber has further found that from his interactions with Popović and Beara, and from his own observations at the school and execution site at Orahovac on 14 July, Nikolić soon became aware that this killing operation was being carried out with genocidal intent. Nonetheless, for the reasons set out in detail in the Judgement, including the nature of Nikolić's acts and participation as well as his personal circumstances and position, the Trial Chamber is not satisfied beyond reasonable doubt that he shared this genocidal intent. In these circumstances, the Trial Chamber has found that Nikolić participated in the JCE to Murder with persecutory intent, that he had with knowledge of the genocidal intent of others and that he made a substantial contribution to genocide.

The Trial Chamber has found that there is no evidence that Nikolić participated in the JCE to Forcibly Remove, or that he contributed to it.

During the time relevant to the Indictment, **Ljubomir Borovčanin** was Deputy Commander of the Special Police Brigade ("SBP") of the MUP Forces. On 10 July 1995, Borovčanin was appointed Commander of a joint force of MUP units which was subordinated to the Drina Corps and sent to Bratunac to participate in the Srebrenica operation.

Borovčanin was present in Bratunac and Potočari between 11 and 13 July, when the plan to forcibly remove culminated in the actual forcible transfer of the Bosnian Muslim women, children and the elderly. The evidence does not demonstrate that Borovčanin was aware of the plan, nor of its incremental implementation, prior to his arrival in Bratunac. On 12 July, however, with his presence in Potočari and what he witnessed there, the Trial Chamber has found, by majority, Judge Kwon dissenting, that Borovčanin came to know that there was a forcible transfer of the civilian population of Srebrenica taking place. The evidence is insufficient, however, to demonstrate that Borovčanin shared the intent to forcibly transfer himself. The Trial Chamber has found that Borovčanin was not a member of the JCE to Forcibly Remove.

However, on 12 July, Borovčanin left the Jahorina Recruits in Potočari under his subordinate commanders Jević and Mane, with orders for them to participate in the process whereby the Bosnian Muslim population was to be removed from the area and transported to ABiH-held territory. They continued to do so on 13 July and were instrumental in executing the physical forcible transfer. While there is no evidence that Borovčanin shared the intent to forcibly transfer or had the intent to discriminate, with his knowledge of the intent of others as found by the majority, including discriminatory intent, Borovčanin's acts in ordering his men to participate constituted a substantial contribution to the crime of forcible transfer.

While Borovčanin was in Potočari, Bratunac and on the Bratunac-Konjević Polje Road when the plan to murder the Bosnian Muslim men was developed and put into place, the evidence is insufficient to find that he had any knowledge of this plan, or that he shared the intent to contribute to the common purpose of the JCE to Murder.

On 13 July, Borovčanin arrived at Kravica Warehouse where over 1,000 Bosnian Muslim men were detained. Outside, in front of the Warehouse, he saw a number of dead bodies, what appeared to be a busload. Borovčanin knew that his units were amongst the Bosnian Serb Forces with custody and/or control of Bosnian Muslim prisoners that day and therefore had a duty to protect the remaining prisoners in the Warehouse. The first and only step Borovčanin took after seeing the evidence of prisoner executions was to remove himself and his men from the Kravica Warehouse as quickly as he could. Borovčanin had the means to protect the prisoners and knew that it was probable that the prisoners would be killed. Borovčanin's failure to protect the Bosnian Muslim prisoners then still detained substantially contributed to the full-scale execution which later took place at Kravica Warehouse. The Trial Chamber is also satisfied that Borovčanin knew that the prisoners at Kravica Warehouse would probably be killed by members of the Bosnian Serb Forces there with discriminatory intent.

Further, Borovčanin was the superior of the SBP 2nd Šekovići Detachment. Having arrived at the Kravica Warehouse shortly after the murder of a busload of prisoners, he had knowledge which was sufficient to put him on notice that his subordinates had committed the crime of murder. For the reasons detailed in the Judgement, he failed to take the necessary and reasonable measures required to punish his subordinates for the murders of the busload of Bosnian Muslim prisoners at Kravica Warehouse.

In 1995, **Radivoje Miletić** was the Chief of the Administration for Operations and Training at the VRS Main Staff. A significant amount of time during the trial proceedings was devoted by the Prosecution and the Defence for Miletić to establish the nature and extent of his powers at the time relevant to the Indictment. The Trial Chamber is convinced that from at least May to October 1995, Miletić, in addition to his regular responsibilities, took on certain duties from the Chief of Staff, Manojlo Milovanović. However, the Trial Chamber is not satisfied that Miletić was Deputy Chief of Staff of the VRS Main Staff or was officially "standing in" for the Chief of Staff. Most importantly though, the Trial Chamber has not assessed Miletić's criminal responsibility on the basis of title or even assigned or undertaken responsibilities but rather on the basis of the factual evidence of his acts and conduct which has been adduced before it.

Miletić drafted Directive 7 and whatever his level of input in terms of content or wording, he was intimately acquainted with its final text, including the incriminatory parts. As such, from the early stages, Miletić had full knowledge of the common criminal plan to force the Bosnian Muslim populations from the Srebrenica and Žepa enclaves and he was instrumental in the plan being captured in writing for dissemination. Through his central role in the drafting process of Directive 7 and Directive 7/1, Miletić contributed to the JCE to Forcibly Remove.

Miletić further played a role in the process for approval of humanitarian convoys. Through this, Miletić implemented the instructions of Directive 7 to incrementally and

unobtrusively deprive the enclaves of humanitarian aid and UNPROFOR of supplies, with the purpose of creating an untenable situation for the population and strangling UNPROFOR. By doing so, Miletić again contributed to the JCE to Forcibly Remove.

Considering the scale and scope of the military attack on and the operations to forcibly remove the Bosnian Muslims from the enclaves, coordination from the Main Staff level was essential. Miletić, with his in-depth knowledge of the strategies and goals of the VRS, was at the centre of this coordination. Through the reports he received from subordinate units and his direct contact with the forces in the field, Miletić was fully attuned to all developments in the field and informed on the progress of the operations. Miletić forwarded the knowledge he gained to Mladić and Karadžić, while at the same time, he ensured the flow of information from the Main Staff to subordinate units. Milovanović, the Chief of Staff and Miletić's direct superior, captured the essence of Miletić's role at the Main Staff when he called him "the soul of the Main Staff of the VRS" and the person "best informed on the situation in various theatres of the war". Miletić skilfully and efficiently used his unique position to inform and advise and thereby enabled the decisions taken to successfully implement the plan, resulting in the forced removal of thousands of Bosnian Muslims from the enclaves. Through these acts, Miletić contributed to the JCE to Forcibly Remove.

Considering all the individual acts and contributions cumulatively, Miletić made a significant contribution to the JCE to Forcibly Remove. Miletić furthermore shared the common intent of the JCE. In addition, Miletić carried out his acts in furtherance of the plan to remove the Bosnian Muslim with the specific intent to discriminate on political, racial or religious grounds.

Based on Miletić's level of involvement and his in-depth knowledge and broad overview of the massive operation to forcibly remove the Bosnian Muslims from Srebrenica, it was foreseeable to him that murder would be committed in Potočari and that these murders would be committed with the specific intent to discriminate on political, racial or religious grounds. Judge Kwon dissents on the foreseeability to Miletić of the killings in Potočari.

In 1995, **Milan Gvero** was the Assistant Commander for Moral, Legal and Religious Affairs of the VRS Main Staff and directly subordinated to Mladić. In this position and as one of the most senior officers in the VRS Main Staff, Gvero played an important role in VRS operations, and this was no different for the operations in Srebrenica and Žepa. Through his knowledge of key documents from 1992 and his involvement in the drafting of Directive 7, Gvero knew of the plan to forcibly remove the populations from Srebrenica and Žepa enclaves from its very inception and of the VRS' role in this plan.

Gvero had to be informed of major developments in the operation so that he would be in a position to act if issues of morale arose or dissemination of information would be necessary. Accordingly, key documents were specifically addressed to him, such as Tolimir's telegram forwarding Karadžić's order to capture Srebrenica; Tolimir and Mladić's instructions concerning prisoners of war; and documents concerning the negotiations in Žepa. The need for Gvero to be fully attuned was enhanced by the fact that on occasion, he was the most senior officer present at the Main Staff, in which case other Assistant Commanders reported to him and he could be called upon to intervene directly in ongoing military action.

During the Srebrenica and Žepa operations, Gvero carried out key functions relating to external propaganda and interaction with international organisations, with the aim to support the plan to forcibly transfer the populations from the enclaves. On 10 July 1995, after the VRS had launched its military assault on the enclave, taken over UN observations points and moved to capture Srebrenica town, Gvero issued a statement to the media concerning the attack on Srebrenica enclave, stating that the VRS' activities were directed at neutralising Muslim terrorists and not against any civilians or UNPROFOR. Though not

criminal as such, the purpose of this blatantly false statement was less innocent. Gvero made this statement with the intention to mislead the international authorities concerned with protecting the enclave, with a view to delaying any action that could frustrate the VRS' plans.

On 11 July, as part of the combined VRS efforts to stop the NATO bombing on the VRS forces approaching Srebrenica town, Gvero adopted the same approach as the day before. He falsely asserted to UNPROFOR's Chief of Staff General Nicolai that the VRS was merely responding to attacks, while knowing that the VRS had taken the town and Bosnian Muslims had fled to Potočari. Gvero further threatened Nicolai by stating, in essence, that failure to stop the NATO bombing could result in serious consequences for UNPROFOR and the civilians in Potočari. The Trial Chamber is satisfied that Gvero issued this threat with the aim to halt NATO bombings so that the VRS could complete its plan to take over the Srebrenica enclave and forcibly remove its Bosnian Muslim inhabitants. Soon thereafter, Gvero warned the VRS personnel on the treatment of UNPROFOR forces to avoid any actions that could provoke a response and interfere with the efforts to end the NATO bombing. With regard to the Žepa operation, though Gvero was clearly knowledgeable as to the illegal purpose of and developments in the Žepa campaign, the Trial Chamber has no evidence to find that Gvero contributed to it.

Based on these factors combined and for the reasons detailed in the Judgement, the Trial Chamber has found that Gvero made a significant contribution to the JCE to Forcibly Remove, and shared the common intent. Furthermore, Gvero acted with the specific intent to discriminate on political, racial or religious grounds.

However, considering the nature of Gvero's acts and his level of involvement in the operation to forcibly remove, the Trial Chamber is not satisfied that it was foreseeable to him that murder would be committed in Potočari.

Vinko Pandurević was Commander of the Zvornik Brigade and held the rank of lieutenant colonel in 1995.

As Commander of Tactical Group-1 ("TG-1"), Pandurević was aware of the criminal objective described in Directive 7 and of the plan to forcibly remove the Bosnian Muslim populations from the Srebrenica and Žepa enclaves. Pandurević and TG-1 participated in the attack on Srebrenica on 6 July, and entered Srebrenica town on 11 July. While the evidence is insufficient to conclude that Pandurević intended to carry out the common purpose of the JCE to Forcibly Remove, the Trial Chamber has found that Pandurević's participation in the military attack and take-over of the Srebrenica enclave substantially contributed to the forcible transfer of the civilian population from Srebrenica. The Trial Chamber is also satisfied that by participating in the attack on the Srebrenica enclave, Pandurević knew that he was assisting in the commission of persecution. With respect to Žepa, the Trial Chamber has found that Pandurević did not make a contribution—significant or substantial to that forcible transfer nor did he share the intent to forcibly remove.

On 15 July, Pandurević was ordered to return to the Zvornik area of responsibility to block or crush the column and prevent the column from joining up with the forces of the ABiH 2nd Corps. Upon his arrival to the Standard Barracks on 15 July, the Trial Chamber is satisfied that Pandurević was told by his Chief of Staff that pursuant to Mladić's order, Beara and Popović had brought a large number of prisoners from Bratunac to Zvornik, where they were executing them and that there were enormous problems with the guarding, execution and burial of prisoners. In the following days, Pandurević received additional information, including about the detentions, executions and burials in Pilica, Petkovci, Ročević, Orahovac, and Branjevo Military Farm. By 18 July, Pandurević had information as to the overall scale of the murder operation. However, there is no evidence to establish that Pandurević shared the intent to commit the crimes that formed part of the JCE to Murder. There is also no evidence that Pandurević himself participated, or that he ordered,

authorised or otherwise approved the participation of his subordinates in the murder operation.

In the period between 13 and 16 July, members of the Zvornik Brigade participated in guarding the detained Bosnian Muslim prisoners and in transporting the prisoners to execution sites in the area of Zvornik. The Trial Chamber is satisfied that members of the Zvornik Brigade provided practical assistance that had a substantial effect on the commission of the executions of the prisoners. Upon his return to the Standard Barracks at noon on 15 July, Pandurević had reason to know that his subordinates had committed, were committing or were about to commit crimes in relation to the detention, execution, and burial of the Bosnian Muslim prisoners in the area of Zvornik. As detailed in the Judgement, the evidence before the Trial Chamber shows that Pandurević did not genuinely attempt to take any measures within his material powers in order to prevent any further or continued participation of his subordinates in the murder operation.

With respect to his duty to punish however, in the unique and extraordinary circumstances Pandurević faced, the Trial Chamber considers that Pandurević's actions were such that he is not responsible for a failure to punish.

On 16 July, Pandurević opened a corridor to allow passage of the column through Zvornik Brigade territory to the territory held by the ABiH 2nd Corps, contrary to the orders he had received from his superiors. Thousands of men passed through this corridor. After the corridor was closed, on 18 July and during the subsequent few days, elements of the Zvornik Brigade participated in searching the terrain for ABiH soldiers. Around 20 July, ten wounded Bosnian Muslim prisoners were transferred from the Zvornik Hospital to the clinic of the Zvornik Brigade. On 23 July, Pandurević requested instructions from the Drina Corps regarding the wounded Bosnian Muslim prisoners in his custody. The Trial Chamber is satisfied that Pandurević was informed that Popović would come to take the wounded prisoners. The Trial Chamber is further satisfied that the wounded men were placed in Popović's custody on 23 July and that Popović was responsible for their death. Although the Trial Chamber has found that Pandurević did not possess the intent to murder the ten wounded Bosnian Muslim prisoners, the Trial Chamber has found, by majority, Judge Kwon dissenting, that Pandurević knew it was probable that the wounded prisoners would be murdered once they were transferred into Popović's custody. By failing to intervene, Pandurević failed to discharge his legal duty to protect the wounded prisoners and therefore substantially contributed to the murder of these ten men.

Verdict

Will the Accused **Vujadin Popović** please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Vujadin Popović, to be **GUILTY** pursuant to Article 7(1) of the Statute, of the following counts: Count 1: Genocide; Count 3: Extermination, as a crime against humanity; Count 5: Murder, as a violation of the laws or customs of war; Count 6: Persecution, as a crime against humanity.

In relation to the following counts against you, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction: Count 2: Conspiracy to Commit Genocide; Count 4: Murder, as a crime against humanity.

You are found **NOT GUILTY** and therefore acquitted of the following counts: Count 7: Inhumane Acts (forcible transfer), a crime against humanity; Count 8: Deportation, a crime against humanity.

In the face of the grave nature of the crimes perpetrated and your significant responsibility for them, the Trial Chamber considers that the only appropriate sentence for you is life imprisonment.

Will the Accused **Ljubiša Beara** please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Ljubiša Beara, **GUILTY** pursuant to Article 7(1) of the Statute of the following counts: Count 1: Genocide; Count 3: Extermination, as a crime against humanity; Count 5: Murder, as a violation of the laws or customs of war; Count 6: Persecution, as a crime against humanity.

In relation to the following counts against you, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction: Count 2: Conspiracy to Commit Genocide; Count 4: Murder, as a crime against humanity.

You are found **NOT GUILTY** and therefore acquitted of the following counts: Count 7: Inhumane Acts (forcible transfer), a crime against humanity; Count 8: Deportation, a crime against humanity.

In the face of the grave nature of the crimes perpetrated and your central responsibility for them, the Trial Chamber considers that the only appropriate sentence for you is life imprisonment.

Will the Accused **Drago Nikolić** please rise.

For all the reasons I have summarised, the Trial Chamber finds you, Drago Nikolić, **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following count: Count 1: Genocide.

You are found **GUILTY** pursuant to Article 7(1) of the Statute, of the following counts: Count 3: Extermination, as a crime against humanity; Count 5: Murder, as a violation of the laws or customs of war; Count 6: Persecution, as a crime against humanity.

In relation to the following count against you, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction for: Count 4: Murder, as a crime against humanity.

You are found **NOT GUILTY** and therefore acquitted of the following counts: Count 2: Conspiracy to Commit Genocide; Count 7: Inhumane Acts (forcible transfer), a crime against humanity; and Count 8: Deportation, a crime against humanity.

The Trial Chamber hereby sentences you to a single sentence of 35 years imprisonment.

Will the Accused **Ljubomir Borovčanin** please rise.

For all the reasons I have summarised, the Trial Chamber finds you **GUILTY**, pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following counts: Count 3: Extermination, as a crime against humanity; Count 5: Murder, as a violation of the laws or customs of war; Count 6: Persecution, as a crime against humanity; and Count 7: by majority, Judge Kwon dissenting, Inhumane Acts (forcible transfer), a crime against humanity.

In relation to the following count against you, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction, pursuant to Art 7(1) of the Statute, for Count 4: Murder, as a crime against humanity.

The Trial Chamber also finds you **GUILTY**, as a superior, pursuant to Article 7(3) of the Statute, of the following counts: Count 4: Murder, as a crime against humanity; and Count 5: Murder, as a violation of the laws or customs of war.

You are found **NOT GUILTY** and therefore acquitted of the following counts: Count 1: Genocide; Count 2: Conspiracy to Commit Genocide; and Count 8: Deportation, a crime against humanity.

The crimes for which you stand convicted are of a grave nature. However, as detailed in the Judgement, the Trial Chamber considers that the particular circumstances which you faced in relation to the forcible transfer and the nature of your criminal responsibility—which, with respect to murder and extermination, is predicated on aiding and abetting by omission and superior responsibility—diminishes the gravity of your criminal conduct. Having considered all of these factors in combination, the Trial Chamber hereby sentences you to a single sentence of 17 years imprisonment.

Will the Accused **Radivoje Miletić** please rise.

For all the reasons I have summarised, the Trial Chamber finds you, **Radivoje Miletić**, **GUILTY** pursuant to Article 7(1) of the Statute of the following counts: Count 4: by majority, Judge Kwon dissenting, Murder, as a crime against humanity; Count 6: Persecution, as a crime against humanity; Count 7: Inhumane Acts (forcible transfer), a crime against humanity.

You are found **NOT GUILTY** and are therefore acquitted of the following counts: Count 5: Murder, as a violation of the laws or customs of war; Count 8: Deportation, a crime against humanity.

The Trial Chamber hereby sentences you to a single sentence of 19 years imprisonment.

Will the Accused **Milan Gvero** please rise.

For all the reasons I have summarised, the Trial Chamber finds you, **Milan Gvero**, **GUILTY**, pursuant to Article 7(1) of the Statute of the following counts: Count 6: Persecution, as a crime against humanity; Count 7: Inhumane Acts (forcible transfer), a crime against humanity.

You are found **NOT GUILTY** and therefore acquitted of the following counts: Count 4: Murder, as a crime against humanity; Count 5: Murder, as a violation of the laws or customs of war; Count 8: Deportation, a crime against humanity.

The Trial Chamber, having considered the extent and nature of your involvement and mitigating factors set out in the Judgement, hereby sentences you to a single sentence of 5 years imprisonment.

Will the Accused **Vinko Pandurević** please rise.

For all the reasons I have summarised, the Trial Chamber finds you **GUILTY**, pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following counts: Count 4: by majority, Judge Kwon dissenting, Murder, as a crime against humanity; Count 5: by majority, Judge Kwon dissenting, Murder, as a violation of the laws or customs of war; Count 6: Persecution, as a crime against humanity; and Count 7: Inhumane Acts (forcible transfer), a crime against humanity.

The Trial Chamber also finds you **GUILTY**, as a superior, pursuant to Article 7(3) of the Statute, of the following counts: Count 4: Murder, as a crime against humanity; and Count 5: Murder, as a violation of the laws or customs of war.

You are found **NOT GUILTY** and therefore acquitted of the following counts: Count 1: Genocide; Count 2: Conspiracy to Commit Genocide; Count 3: Extermination, as a crime against humanity; and Count 8: Deportation, a crime against humanity.

The crimes for which you stand convicted are of a grave nature. However, as detailed in the Judgement, in arriving at an appropriate sentence, the Trial Chamber has considered the limited nature of your involvement in the forcible transfer, the circumstances you faced upon your return to the Zvornik area and the nature of your criminal responsibility—which for murder is premised on aiding and abetting by omission and superior responsibility. Further the Trial Chamber considers that there are several mitigating factors to be taken into account in your sentence, most significantly, your act of opening the corridor for the passage of the column. Having considered all of the relevant circumstances, the Trial Chamber hereby sentences you to a single sentence of 13 years' imprisonment.

Judge Prost appends a Separate Opinion and Judge Kwon appends Dissenting and Separate Opinions to the Judgement

The hearing is now adjourned.