

**UNITED  
NATIONS**



International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-95-11-T  
Date: 12 June 2007  
Original: English

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**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Janet Nosworthy  
Judge Frank Höpfel

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 12 June 2007

**PROSECUTOR**

v.

**MILAN MARTIĆ**

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**JUDGEMENT**

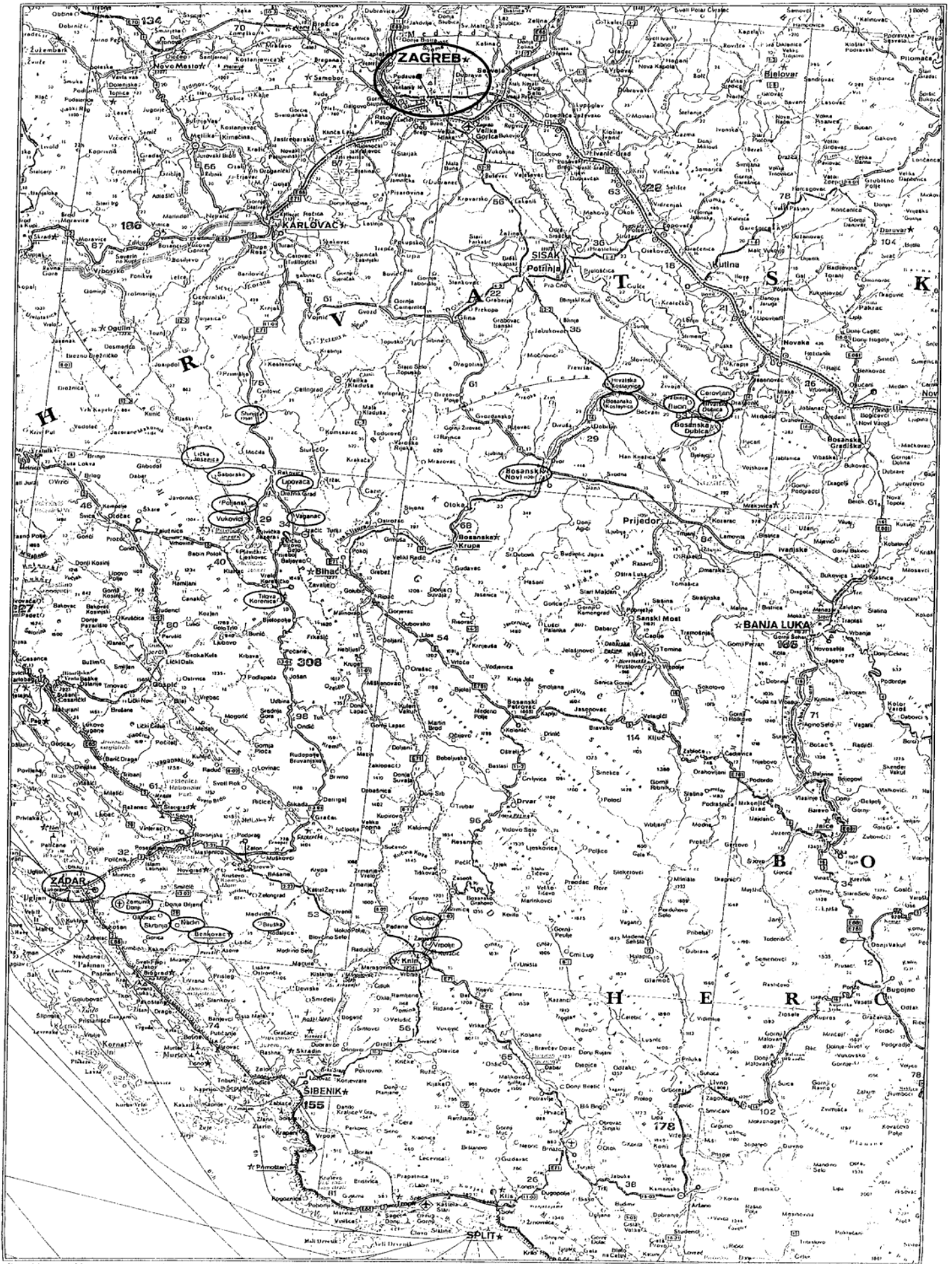
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## **List of abbreviations and acronyms**

Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 12 December 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 12 December 1977
APC	Armoured Personnel Carrier (vehicle)
BiH	Bosnia and Herzegovina
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Defence	Defence of Milan Martić
Defence Final Trial Brief	Final trial brief of Milan Martić, filed confidentially on 5 Jan 2007; public version filed on 17 Jan 2007
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950
Ex.	Exhibit
fn	Footnote
FNU	First name unknown
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
HDZ	Croatian Democratic Union
HVO	Croatian Armed Forces
ICCPR	International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171
ICRC	International Committee of the Red Cross
Indictment	Second Amended Indictment in this case, filed on 9 Dec 2005
JCE	Joint criminal enterprise pursuant to Article 7(1) of the Statute
JNA	Yugoslav People's Army
MUP	Ministry of Interior
p.	Page
pp	Pages
para.	Paragraph
paras	Paragraphs
PJM	Special Police Brigade
Prosecution	The Office of the Prosecutor
Prosecution Final Trial Brief	Final Trial Brief of the Prosecution, filed confidentially on 5 Jan 2007; public version filed on 17 Jan 2007
Rules	Rules of Procedure and Evidence of the Tribunal
Rules of Detention	Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the ICTY
RS	Republika Srpska in Bosnia and Herzegovina
RSK	Republic of Serbian Krajina
SAO	Serbian Autonomous District
SDB	State Security Service
SDS	Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia

SJB	Public Security Station, <i>i.e.</i> police station
SNC	Serbian National Council
Statute	Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827, as amended by Resolution 1481
SUP	Secretariat for Internal Affairs
SVK	Army of the Republic of Serbian Krajina
T.	Page in the transcript of this trial
TO	Territorial Defence
UN	United Nations
UNCIVPOL	United Nations Civilian Police
UNCRO	United Nations Confidence Restoration Operation
UNDU	United Nations Detention Unit
UNMO	United Nations Military Observers
UNPA	United Nations Protected Area
UNPROFOR	United Nations Protection Force
VRS	Army of the Republika Srpska
VJ	Army of the Federal Republic of Yugoslavia
Z-4 Plan	Zagreb 4 Plan
ZNG	Croatian National Guards Corps

## I. INTRODUCTION

### A. The Accused Milan Martić

1. Milan Martić was born on 18 November 1954 in the village of Žagrović, Knin municipality in the Republic of Croatia, SFRY.<sup>1</sup> He graduated from the Post-Secondary Police School in Zagreb and between 1976 and 1981 worked as a policeman at the Public Security Station (“SJB”) in Šibenik. After 1982, Milan Martić was a Junior Police Inspector in Knin and was eventually promoted to Chief of the SJB.<sup>2</sup>

2. From 4 January 1991 until August 1995, Milan Martić held various positions within the Serbian Autonomous Region of Krajina (“SAO Krajina”) and the Republic of Serbian Krajina (“RSK”) governments, including Chief of the Police in Knin, Secretary for Internal Affairs of the SAO Krajina, Minister of Defence of the SAO Krajina, Deputy Commander of the TO of the SAO Krajina, Minister of the Interior of the SAO Krajina and of the RSK, and President of the RSK.<sup>3</sup>

### B. Overview of the case against Milan Martić

3. The Prosecutor (“Prosecution”) charges Milan Martić with 19 counts brought under Article 3 and Article 5 of the Statute of the Tribunal (“Statute”).<sup>4</sup>

4. The Prosecution alleges that Serb forces, comprised of, *inter alia*, units of the Yugoslav People’s Army (“JNA”), later the Yugoslav Army (“VJ”), the Republika Srpska (“RS”) army (“VRS”), the Territorial Defence (“TO”), and forces of the Ministry of the Interior (“MUP”) of both the SAO Krajina, later the RSK, and the Republic of Serbia (“Serbia”), including the police forces of the SAO Krajina and the RSK, commonly referred to as “Martić’s Police”, and paramilitary units, committed persecutions in the SAO Krajina and the RSK between August 1991 and December 1995. It is further alleged that these acts of persecution included the extermination and murder of hundreds of Croats, Muslims and other non-Serb civilians, including in the villages of Hrvatska Dubica, Cerovljani, Baćin, Saborsko, Poljanak (including the hamlet of Vukovići), Lipovača (and neighbouring villages), Škabrnja, Nadin, and Bruška (including the hamlet of Marinovići), the prolonged and routine imprisonment of hundreds of Croats, Muslims and non-Serb

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<sup>1</sup> Ex. 76. *See also* Ex. 493, p. 1, which provides Milan Martić’s birthplace as “Žagorić near Knin”.

<sup>2</sup> Ex. 493, p. 1.

<sup>3</sup> *See infra* paras 135, 151, 156.

<sup>4</sup> Article 3: Counts 4 and 16: Murder, Count 8, Torture, Counts 9 and 18: Cruel treatment, Count 12: Wanton destruction of villages, or devastation not justified by military necessity, Count 13: Destruction or wilful damage done to institutions dedicated to education or religion, Count 14: Plunder of public or private property, Count 19: Attacks on civilians. Article 5: Count 1: Persecutions, Count 2: Extermination, Counts 3 and 15: Murder, Count 5: Imprisonment, Count 6: Torture, Count 7 and 17: Inhumane Acts, Count 10: Deportation, Count 11: Other inhumane Acts (Forcible transfer).



civilians in specified detention facilities, the torture and inhumane treatment of prisoners, and the deportation and forcible transfer of tens of thousands of non-Serb civilians from the territory of the SAO Krajina and the RSK. In addition, it is alleged that public and private property in the SAO Krajina and the RSK was intentionally destroyed or plundered, including buildings dedicated to religion or education, that restrictive and discriminatory measures were imposed against the Croat, Muslim and other non-Serb civilian population. Moreover, it is alleged that unlawful attacks were carried out on Zagreb and undefended Croat and Muslim villages.

5. For each count, individual criminal responsibility is charged under both Article 7(1) and (3) of the Statute. The Prosecution alleges that Milan Martić participated in a joint criminal enterprise (“JCE”) together with, among others, Slobodan Milošević, Veljko Kadijević, Blagoje Adžić, Milan Babić, Jovica Stanišić, Franko “Frenki” Simatović, Radovan Karadžić, Ratko Mladić and other named and unnamed individuals of, *inter alia*, the JNA, later the VJ, the RSK army (“SVK”), the VRS, the TO, and forces of the MUP of both the SAO Krajina, later the RSK, and Serbia, including “Martić’s Police”, and the State Security Service (“SDB”) of Serbia, and Serb paramilitary forces. It is alleged that the JCE came into existence before 1 August 1991 and continued until at least August 1995, and that the common purpose of the JCE was “the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of the Republic of Croatia [“Croatia”] and large parts of the Republic of Bosnia and Herzegovina [“BiH”] in order to make them part of a new Serb-dominated state.”<sup>5</sup> The Prosecution alleges that all crimes charged in the Indictment were within the object of the JCE and that at all relevant times Milan Martić held the necessary state of mind for the commission of each of these crimes. In the alternative, the Prosecution alleges that the crimes enumerated in Counts 1 to 9 and 12 to 19 were a natural and foreseeable consequence of the execution of the common purpose of the JCE and that Milan Martić was aware that such crimes were the possible outcome of the execution of the JCE.

6. The Prosecution alleges that Milan Martić participated in the JCE by, *inter alia*, creating, financing, supplying, training and directing the “Martić’s Police” and the TO of the SAO Krajina and the RSK, and by creating, training and directing special police forces of the SDB of Serbia. Moreover, the Prosecution alleges that Milan Martić participated in the planning, preparation and execution of the take-over of territories in the SAO Krajina and RSK territory, and that Milan Martić personally participated in military actions and subsequent crimes of these forces, including in the subsequent removal of the non-Serb population.

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<sup>5</sup> Indictment, paras 4, 6.

7. The Prosecution also charges Milan Martić with responsibility for each count pursuant to Article 7(1) for having planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, execution and commission of these crimes.

8. The Prosecution alleges that Milan Martić, by virtue of the various positions he held from 1991 to 1995 in the SAO Krajina and the RSK, is individually criminally responsible pursuant to Article 7(3) of the Statute as a superior for failing to prevent or punish the crimes charged and allegedly committed by the above-mentioned forces.

### **C. Interpretation of the Indictment**

9. Pursuant to Article 18(4) of the Statute, an indictment shall contain “a concise statement of the facts and the crime or crimes with which the accused is charged”. According to the well established jurisprudence of the Tribunal, this means that the indictment must set out the material facts underpinning the charges “with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.”<sup>6</sup>

10. Some paragraphs of the Indictment identify specific victims and/or sites of alleged crimes,<sup>7</sup> while other paragraphs of the Indictment use a non-exhaustive enumeration of victims and crime sites.<sup>8</sup> The Trial Chamber also heard evidence regarding victims and sites of crimes, which are not specified in the Indictment. Having regard to the right of the accused to be informed promptly and in detail of the nature and cause of the charges against him,<sup>9</sup> and in view of the degree of specificity required in the Indictment, the Trial Chamber has considered the evidence as described below.<sup>10</sup>

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<sup>6</sup> *Kupreškić et al.* Appeal Judgement, para. 88. See also *Naletilić and Martinović* Appeal Judgement, para. 23; *Stakić* Appeal Judgement, para. 116; *Kvočka et al.* Appeal Judgement, para. 28; *Blaškić* Appeal Judgement, para. 209.

<sup>7</sup> E.g. paras 26, 28-29, 32-34 and 39 of the Indictment.

<sup>8</sup> E.g. paras 23(a), 23(b)-(d), 30-31 of the Indictment.

<sup>9</sup> Article 21(4) (a) of the Statute.

<sup>10</sup> The Appeals Chamber in *Kupreškić et al.* held that: “A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused,” *Kupreškić et al.* Appeal Judgement, para. 89 (emphasis added). In a case based upon individual responsibility where it is not alleged that the accused personally committed the acts for which he is to be held responsible, what is most material is the conduct of the accused by which he may be found to have planned, instigated, ordered, committed or otherwise aided and abetted, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 Feb 2000, para. 18. Where it is alleged that the accused planned, instigated, ordered, or aided and abetted the alleged crimes, the Prosecution is required to identify the “particular acts” or “the particular course of conduct” on the part of the accused which forms the basis for the charges in question, *Naletilić and Martinović* Appeal Judgement, para. 24. If the Prosecution relies upon a theory of JCE, it must plead the purpose of the enterprise, the identity of the participants, and the nature of the accused’s participation in the enterprise, *Kvočka et al.* Appeal Judgement, para. 28. The degree of precision required for the material facts relating to those acts of other persons is higher than that required for an allegation of superior responsibility, but lower than where the accused is alleged to have personally done the acts in question, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 Feb 2000, para. 18. See also *Prlić Decision*, para. 46. Furthermore, in certain cases “the sheer scale of the alleged crimes ‘makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes,’” *Kupreškić et al.* Appeal Judgement, para. 89.

11. In determining the innocence or guilt of Milan Martić in relation to the charges in paragraphs 26, 28, 29, and 32 to 34 of the Indictment, in light of the wording of these paragraphs,<sup>11</sup> the Trial Chamber has only considered evidence concerning victims listed in Annex 1 of the Indictment.

12. In determining the innocence or guilt of Milan Martić in relation to the charges in paragraphs 27, 30 and 31 of the Indictment, in light of the wording of these paragraphs, the Trial Chamber has considered evidence concerning victims who are not listed in Annex I to the Indictment but who are proven beyond reasonable doubt as having been killed during the events described in those paragraphs.<sup>12</sup>

13. In determining the innocence or guilt of Milan Martić under Count 1 (Persecutions), the Trial Chamber has considered evidence concerning unlisted victims of the events described in paragraph 23(a) of the Indictment only with respect to the events described in paragraphs 27, 30 and 31 of the Indictment.

14. Concerning the events described in paragraphs 23(b) to (d) of the Indictment relevant to crimes allegedly committed in detention facilities, the Trial Chamber is of the view that the range of crime sites shall correspond to the scope of paragraph 39 of the Indictment.

15. As to paragraph 39 of the Indictment, and in relation to Count 5 (Imprisonment), Counts 6 and 8 (Torture), Count 7 (Inhumane acts) and Count 9 (Cruel treatment), in light of the wording of paragraph 38 of the Indictment, the Trial Chamber finds that the relevant time period applicable to these counts is from August 1991 to December 1992. The Trial Chamber finds that this time period shall also govern paragraphs 23(b) to (d) of the Indictment relating to Count 1 (Persecutions), which concern the same events.

16. In determining the innocence or guilt of Milan Martić under Count 12 (Wanton destruction or devastation), Count 13 (Destruction or wilful damage done to institutions dedicated to education or religion) and Count 14 (Plunder), in light of the wording of paragraph 47 of the Indictment, the

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<sup>11</sup> These paragraphs provide an exhaustive enumeration of victims allegedly killed in each village and further identify each victim by referring to Annex I to the Indictment listing their names. Paragraph 26 refers to “fifty-six victims” allegedly killed in a location near the village of Baćin and “thirty civilians from Baćin and twenty-four from the villages Dubica and Cerovljani” allegedly killed into an unknown location. Paragraph 28 refers to “seven civilians” allegedly killed in Lipovača. Paragraph 29 refers to the alleged execution of “ten civilians” in Vukovići near Poljanak. Paragraph 32 refers to the killing of “seven non-Serb civilians” in the village of Nadin; paragraph 34 refers to “ten civilians, among them nine Croats” allegedly killed in the village of Bruška (emphasis in original).

<sup>12</sup> These paragraphs provide a non-exhaustive enumeration of victims allegedly killed in each village. Paragraph 27 alleges that members of Martić’s Police and other Serb forces entered the villages of Saborsko, Poljanak and Lipovača and they allegedly killed “all remaining non-Serb inhabitants they found”. Paragraph 30 alleges that “members of Martić’s Police and the JNA and the TO entered the village of Saborsko where they allegedly killed at least twenty-nine

Trial Chamber has considered only evidence concerning destruction and plunder allegedly committed in the villages listed in paragraph 47 during the period between August and December 1991. The Trial Chamber further finds that this time period shall also govern paragraph 23(j) of the Indictment relating to Count 1, which concerns the same events.

17. There are situations where the Trial Chamber is satisfied that the Defence has been put on notice of the Prosecution's case regarding a particular unspecified victim or crime site that is not specifically included in the Indictment, in a manner which has allowed the Defence to prepare its case adequately.<sup>13</sup> In such cases, the Trial Chamber has considered this evidence as a basis for a conviction under the relevant counts.

18. The Trial Chamber notes that in cases where the evidence on unspecified victims and crime sites was not relied upon to determine the innocence or guilt of Milan Martić, such evidence has been utilised, where appropriate, as corroborative of a consistent pattern of conduct, from which inference may be drawn relevant to the elements of crimes with which Milan Martić is charged.<sup>14</sup>

19. The Trial Chamber notes that the Prosecution has decided "not to pursue those crimes alleged in the indictment that occurred in Bosnia and Herzegovina, with the exception of those crimes occurring in Bosanski Novi (including Bosanski [*sic*] Kostajnica [...])."<sup>15</sup> At the Rule 98 *bis* stage of the trial, the Prosecution stated that it had reviewed the evidence and concluded that the evidence did not, even under the standard applicable pursuant to Rule 98 *bis*, support a conviction on the factual allegations under Counts 5 to 9 concerning detention at the Bosanska Kostajnica SJB and the Bosanski Novi SJB.<sup>16</sup> The Trial Chamber will therefore only consider evidence relating to

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Croat civilians". Paragraph 31 alleges that members of Martić's Police and other Serb forces entered Škabrnja and allegedly "killed at least thirty-eight non-Serb civilians in their homes or in the streets" (emphasis in original).

<sup>13</sup> The Prosecution Pre-Trial Brief, its opening statement and Rule 65 *ter* witness summaries provided to the Defence sufficiently in advance could satisfy this requirement, *Naletilić and Martinović* Appeal Judgement, paras 27, 45; *Kupreškić et al.* Appeal Judgement, paras 114-124; *Kvočka et al.* Appeal Judgement, paras 34, 43-54; *Gacumbitsi* Appeal Judgement, paras 55-58. The relevant factors to be considered should be: the timing of these filings, the relevance of the information to the ability of the accused to prepare his defence, and the impact of the newly-disclosed material facts on the Prosecution case, *Ntakirutimana* Appeal Judgement, para. 27; *Kupreškić et al.* Appeal Judgement, paras 119-121. The mere provision of witness statements or of potential exhibits by the Prosecution pursuant to the disclosure requirements does not suffice to inform an accused of material facts which the Prosecution intends to prove at trial, *Naletilić and Martinović* Appeal Judgement, para. 27; *Ntakirutimana* Appeal Judgement, para. 27, citing *Prosecution v. Radoslav Brdanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 Jun 2001, para. 62. The Defence's submissions at trial, for example in a motion for judgement of acquittal, Final Trial Brief or closing arguments, may in some instances assist in an assessment as to what extent the Defence was put on notice of the Prosecution's case and was able to respond to the Prosecution's allegations, *Naletilić and Martinović* Appeal Judgement, para. 27, citing *Kvočka et al.* Appeal Judgement, paras 52, 53; *Kordić and Čerkez* Appeal Judgement, para. 148. Cf. *Mrkšić et al. Decision*, para. 19.

<sup>14</sup> Rule 93 of the Rules; *Kvočka et al.* Trial Judgement, fn 7, paras 547, 556; *Krnjelac* Trial Judgement, para. 230.

<sup>15</sup> Prosecution's Estimate of Time Required for Prosecution Case, 23 November 2005, para. 2; Pre-Trial Conference, 12 Dec 2005, T. 222.

<sup>16</sup> Indictment, paras 39 (d) and (e), respectively; Rule 98 *bis* arguments, 26 Jun 2006, T. 5889-5890.

Bosanski Novi and Bosanska Kostajnica under Counts 1 (except evidence under paragraph 23(b) of the Indictment, which concerns detention), 10 and 11.

#### **D. General considerations regarding the evaluation of evidence**

##### **1. General**

20. The Trial Chamber has considered the charges against Milan Martić in light of the entire trial record, and in this regard has carefully assessed and weighed the evidence in accordance with the Statute and its Rules of Procedure and Evidence (“Rules”). Where no guidance is given by these sources, it has assessed the evidence in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.<sup>17</sup>

21. Article 21(3) of the Statute provides that the accused shall be presumed innocent until proven guilty.<sup>18</sup> The Prosecution therefore bears the burden of proving the guilt of the accused, and in accordance with Rule 87(A) of the Rules, the Prosecution must do so beyond reasonable doubt.<sup>19</sup> In determining whether the Prosecution has done so with respect to each particular count, the Trial Chamber has carefully considered whether there is any reasonable conclusion available from the evidence other than the guilt of the accused.<sup>20</sup>

22. Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against himself. In the present case, Milan Martić exercised his right not to testify.<sup>21</sup> No adverse inferences were drawn from the fact that he did not testify.

23. Pursuant to Rule 84 *bis* of the Rules, Milan Martić made a statement on 13 December 2005.<sup>22</sup> In accordance with Rule 84 *bis* (B) of the Rules, the Trial Chamber has considered the probative value, if any, of the statement and has found that the statement does not have any probative value.<sup>23</sup>

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<sup>17</sup> Rule 89(B) of the Rules.

<sup>18</sup> This provision is in accordance with all major human rights instruments, *see e.g.* International Covenant on Civil and Political Rights, Article 14(2); European Convention on Human Rights, Article 6(2).

<sup>19</sup> *E.g. Krnojelac* Trial Judgement, para. 66; *Limaj et al.* Trial Judgement, para. 10. *See also Ntakirutimana* Appeal Judgement, para. 140; *Niyitegeka* Appeal Judgement, para. 60. The fact that the Defence has not challenged certain factual allegations contained in the Indictment does not mean that the Trial Chamber has accepted these facts to be proven. Furthermore, the Trial Chamber interprets the standard “beyond reasonable doubt” to mean a high degree of probability; it does not mean certainty or proof beyond a shadow of a doubt.

<sup>20</sup> *Čelibići* Appeal Judgement, para. 458.

<sup>21</sup> Hearing, 24 Aug 2006, T. 7122.

<sup>22</sup> Hearing, 13 Dec 2005, T. 296-318.

<sup>23</sup> With respect to the opening statement of Milan Martić, *see* Rule 84 *bis* (B) of the Rules.

24. The Trial Chamber issued a decision adopting guidelines on the standards governing the admission of evidence.<sup>24</sup> In addition to direct evidence, the Trial Chamber has admitted hearsay and circumstantial evidence.<sup>25</sup> In evaluating the probative value of hearsay evidence, the Trial Chamber has carefully considered all indicia of its reliability, including whether the evidence was “voluntary, truthful and trustworthy”, and has considered its content and the circumstances under which the evidence arose.<sup>26</sup> In some instances, the Trial Chamber has relied upon circumstantial evidence in order to determine whether or not a certain conclusion could be drawn. The Trial Chamber recalls that the conclusion must be the only reasonable conclusion available.<sup>27</sup>

25. In evaluating the evidence given *viva voce*, the demeanour and conduct of witnesses has been considered. The Trial Chamber has also given due regard to the individual circumstances of a witness, including the witness’ possible involvement in the events and fear of self-incrimination, the witness’ relationship with Milan Martić and any protective measures granted to the witness. The Trial Chamber has also assessed the internal consistency of each witness’ testimony and other features of his or her evidence, as well as whether there is corroborating evidence. Mindful that the evidence presented in this case relates to events which occurred between 1991 and 1995, the Trial Chamber has in general not treated minor discrepancies between the evidence of witnesses, or between the evidence of a particular witness in court and his or her prior statement, as discrediting their evidence where that witness nevertheless recounted the essence of an incident charged in acceptable detail.<sup>28</sup>

26. In some instances only one witness has given evidence of an incident with which Milan Martić has been charged. In this regard the Trial Chamber recalls that the Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>29</sup>

27. Pursuant to Rule 92 *bis* and Rule 92 *ter*, which allow the admission of written statements and former testimony of witnesses with or without cross-examination, the Trial Chamber has admitted such statements and testimony in lieu of *viva voce* testimony. As regards evidence in

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<sup>24</sup> Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 Jan 2006 (“Guidelines”).

<sup>25</sup> Hearsay evidence is evidence of facts not within the testifying witness’ own knowledge, *Halilović Trial Judgement*, para. 15; *Blagojević and Jokić Trial Judgement*, para. 21. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 Feb 1999, para. 14. Circumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred, *Blagojević and Jokić Trial Judgement*, para. 21; *Brdanin Trial Judgement*, para. 35; Guidelines, para. 10.

<sup>26</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 Aug 1996, para. 16. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 Feb 1999, para. 15, cited in the Guidelines, Annex, para. 8.

<sup>27</sup> *Čelebići Appeal Judgement*, para. 458.

<sup>28</sup> *Kupreškić et al. Appeal Judgement*, para. 31. See also *Čelebići Appeal Judgement*, paras 485, 496-498.

<sup>29</sup> *Tadić Appeal Judgement*, para. 65; *Aleksovski Appeal Judgement*, para. 62; *Kupreškić et al. Appeal Judgement*, para. 33.

statements and testimony admitted without cross-examination, the Trial Chamber recalls that “evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement”.<sup>30</sup> Such “other evidence” may include other witnesses’ testimony, documentary evidence or video evidence.<sup>31</sup>

28. The Parties tendered into evidence a statement of agreed facts pursuant to Rule 65 *ter* (H). The Trial Chamber admitted the evidence based on the agreed facts subject “to the tests of relevance, probative value and reliability” in accordance with Rule 89 of the Rules.<sup>32</sup>

29. The Trial Chamber has also assessed and weighed the testimony of expert witnesses. When weighing an expert’s oral and written evidence, the Trial Chamber considered factors such as “the professional competence of the expert, the methodologies used by the expert and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.”<sup>33</sup> In addition, the Trial Chamber has duly taken into consideration all factors relevant to the position or positions held by an expert witness, such as his or her status as an employee of the Prosecution or a party-related agency, as well as his or her involvement in the respective party’s case preparations.<sup>34</sup> The Trial Chamber also carefully examined the limitation of the expertise of each expert witness and the relevance and reliability of his or her evidence.<sup>35</sup>

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<sup>30</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis* (C), 7 Jun 2002, fn 34.

<sup>31</sup> *Blagojević and Jokić Trial Judgement*, para. 26; *Halilović Trial Judgement*, para. 19.

<sup>32</sup> *Halilović Trial Judgement*, para. 20; *Blagojević and Jokić Trial Judgement*, para. 28. *See also Prosecutor v. Vidoje Blagojević and Dragan Jović*, Case No. IT-02-60-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 Dec 2003, para. 13.

<sup>33</sup> *Vasiljević Trial Judgement*, para. 20; *Blagojević and Jokić Trial Judgement*, para. 27.

<sup>34</sup> The Trial Chamber notes in this regard Reynaud Theunens, who is an employee of the Office of the Prosecutor of the ICTY and who was accepted as a military expert for the Prosecution; Ivan Grujić, who is the President of the Croatian Government Commission for Detainees and Missing Persons and Assistant Minister of the government of the Republic of Croatia and who was accepted as an expert in the field of exhumation for the Prosecution; Davor Strinović, who is a member of the Croatian Government Commission for Detainees and Missing Persons and who was accepted as a forensic expert for the Prosecution; Jožef Poje who is an employee of the Ministry of Defence of the Republic of Slovenia and who was accepted as an artillery expert for the Prosecution; and Mladen Lončar who is a coordinator of the National Programme of Psychosocial Aid to the War Victims within the government of the Republic of Croatia and who was accepted as an expert in the field of psychiatry for the Prosecution. *See also* Decision on Defence’s Motion to Exclude the Evidence of Reynaud Theunens and to Call an Independent Military Expert with Confidential Annexes A, B, C, D and E, 28 Nov 2006, p. 5; Decision on Prosecution’s Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (D) and of Expert Reports Pursuant to Rule 94 *bis*, 13 Jan 2006, paras 39-41. *See further Prosecutor v. Milan Milutinović et al.*, Oral Decision, 13 Jul 2006, T. 840-844. *See also Milutinović et al. Decision*, para. 10.

<sup>35</sup> In this regard, the Trial Chamber is of the view that the factors to be examined in determining the admission of an expert report, indicated in its Decision on Defence’s Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94 *bis*, 9 November 2006, paras 5-12, are *mutatis mutandis* applicable when assessing the weight to be attached to an expert’s evidence in light of the entire trial record. The Trial Chamber further observes that an expert witness may not offer his opinion on the criminal liability of the accused, a matter which falls within the sole jurisdiction of the Chamber at the close of the trial, Decision on Defence’s Submission on the Expert Report of Milisav Sekulić Pursuant to Rule 94 *bis*, and on Prosecution’s Motion to Exclude Certain Sections of the Military Expert Report of Milisav Sekulić, and on Prosecution Motion to Reconsider Order of 7 November 2006, 13 Nov 2006, p. 5 with further references.

30. In order to assess the authenticity of documentary evidence, the Trial Chamber considered the source of the evidence and its chain of custody, to the extent known. The Trial Chamber did not consider unsigned, undated or unstamped documents *a priori* to be void of authenticity. Furthermore, when the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts.<sup>36</sup> The Trial Chamber evaluated all evidence within the context of the trial record as a whole.<sup>37</sup>

31. Between 25 and 30 September 2006, the Trial Chamber and the Parties conducted a site visit to locations in the Republic of Croatia. The locations visited were Zagreb, Hrvatska Dubica, Cerovljani, Baćin, Slunj, Hrvatska Kostajnica, Dvor na Uni, Saborsko, Poljanak (including the hamlet of Vukovići), Lipovača, Vaganac, Hrvatska Korenica, Škabrnja, Nadin, Bruška (including the hamlet of Marinovići), Knin, Vrpolje and Golubić. The purpose of the site visit was to obtain first-hand observations of the geography and topography of the relevant areas, which are of direct consequence to the counts with which Milan Martić is charged.

## 2. Witnesses whose evidence has been assessed with particular caution

32. The Trial Chamber considers that the testimony of the following witnesses should be assessed with particular caution in light of the circumstances surrounding their testimony: Milan Babić, Ari Kerckanen, Witness MM-003 and Witness MM-079.

33. On 15 to 17, 20 and 21 February and 2 and 3 March 2006, Milan Babić, who was previously convicted by this Tribunal, testified as a witness for the Prosecution. However, Milan Babić died prior to the completion of his cross-examination.<sup>38</sup> The Trial Chamber has assessed the evidence of Milan Babić in light of the entire trial record, taking into account the full range of circumstances surrounding his testimony.<sup>39</sup> The Trial Chamber has given due consideration to the fact that the Defence was unable to complete the cross-examination of Milan Babić. In this regard, the Trial Chamber recalls the practice of the Tribunal requiring corroboration of evidence which has not been cross-examined when such evidence leads to a conviction of an accused.<sup>40</sup> In order to remedy or

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<sup>36</sup> Guidelines, para. 5. The Trial Chamber notes in this respect that it has admitted into evidence excerpts of books, *e.g.* Ex. 24, Ex. 860, Ex. 238, Ex. 793, Ex. 476, Ex. 870, Ex. 874, Ex. 937, Ex. 931, Ex. 1011. The Trial Chamber has considered only the parts of the books admitted in light of the trial record as a whole.

<sup>37</sup> Guidelines, para. 6.

<sup>38</sup> The Defence filed a motion to exclude the evidence of Milan Babić from the trial record as a result of the incomplete cross-examination. On 9 June 2006, the Trial Chamber denied the motion. This Decision was affirmed by the Appeals Chamber on 14 September 2006. *See infra* paras 537-540. As a result, the evidence of Milan Babić as a whole remains in the record.

<sup>39</sup> In this regard, the Trial Chamber recalls its Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, paras 71-76.

<sup>40</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis*, 7 Jun 2002, In 34; *Brdanin* Trial Judgement, 1 Sep 2004, fn 944; Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, paras 73-75.



ameliorate any potential unfairness which might arise out of the incomplete cross-examination, the Trial Chamber afforded the Defence an opportunity to file the following additional evidence: (i) a list of the portions of the evidence-in-chief of Milan Babić upon which it intended, but was unable, to cross-examine as a result of his death, and (ii) any documents it intended to use in order to challenge those specific portions of Milan Babić's evidence-in-chief.<sup>41</sup> The Defence availed itself of this opportunity and tendered excerpts of Milan Babić's interviews with the Prosecution.<sup>42</sup> In response, and in view of the fact that the Prosecution was unable to re-examine Milan Babić, the Prosecution tendered other portions of those same interviews.<sup>43</sup> The Trial Chamber gave close attention to these documents in its assessment of the parts of Milan Babić's testimony which were not subject to cross-examination or re-examination.

34. Furthermore, the Trial Chamber considered the alleged inconsistencies between Milan Babić's testimony and his prior testimony or statements as well as the fact that Milan Babić testified pursuant to a plea agreement.<sup>44</sup> In relation to the latter, the Trial Chamber took into consideration that some charges against Milan Babić were dropped without prejudice, that the Appeals Chamber had decided upon his appeal against his sentence at the time he appeared before this Trial Chamber, and that he testified under solemn declaration.<sup>45</sup> The Trial Chamber has also considered that Milan Babić pled guilty as co-perpetrator in a joint criminal enterprise which allegedly comprised, *inter alia*, Milan Martić. The Trial Chamber is therefore of the view that Milan Babić's evidence should be treated with caution and requires corroboration.

35. On 4, 5 and 9 May 2006, Ari Kerckanen, who was previously employed as a Criminal Intelligence Analyst by the Prosecution, testified before the Trial Chamber as a witness for the Prosecution.<sup>46</sup> His written statement was admitted in redacted form on 19 April 2006.<sup>47</sup> The Trial Chamber recalls that Ari Kerckanen was one of the organisers of, and participants in, several archive missions undertaken by the Prosecution, including to the Croatian State Archive, to collect documents on the MUP of the SAO Krajina and of the RSK.<sup>48</sup> The Trial Chamber observes that both during his testimony and in his written statement on the documents collected, Ari Kerckanen presented views on and drew conclusions from the information contained in the documents,

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<sup>41</sup> Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, para. 81.

<sup>42</sup> Defence's Submission Pursuant to the Trial Chamber's Order of 9 Jun 2006, 4 Oct 2006.

<sup>43</sup> Prosecution's Response to the Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 16 Oct 2006.

<sup>44</sup> Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 2 May 2006, paras 22-31 and Annex A.

<sup>45</sup> Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, para. 76; *Blagojević and Jokić Trial Judgement*, para. 24.

<sup>46</sup> Ex. 459, p. 2; Ari Kerckanen, 4 May 2006, T. 3997.

<sup>47</sup> Decision on the Prosecution Motion for the Admission of a Statement of a Witness Pursuant to Rule 89(F), with Confidential Annex A, filed confidentially on 28 Apr 2006.

although he neither possesses expertise in this area nor personal knowledge of the information.<sup>49</sup> Accordingly, the Trial Chamber has attached no weight whatsoever to such views, conclusions and analyses of Ari Kerckanen.

36. Witness MM-003 testified from 8 to 10 March 2006. In its Final Trial Brief, the Prosecution accepted that the evidence of Witness MM-003 should be examined “with care” since “he sought and received assistance from the OTP in order to remain in the country where he is now living”.<sup>50</sup> The Defence submitted that this would be a factor negating the credibility of his testimony.<sup>51</sup> On 9 April 2007, the Prosecution sent a letter to the Defence disclosing details of its assistance provided to Witness MM-003 in his asylum case.<sup>52</sup>

37. Witness MM-079 testified on 31 March, 3 and 4 April 2006. In its Final Trial Brief, the Prosecution acknowledged that the evidence of Witness MM-079 should be “scrutinized with care” since “he said that he hoped to receive the assistance of the OTP to remain in the country where he is relocated.”<sup>53</sup> Witness MM-079 testified that after his lawyer had suggested that he contact the Tribunal to seek assistance with his asylum, he was interviewed by the Prosecution, and that he was subsequently informed that the Prosecution had written a letter to the authorities of the state where he currently lives to ask that he be allowed to stay there until he finishes testifying at the Tribunal.<sup>54</sup> The Trial Chamber notes that the Defence did not raise objections as to the credibility of this witness.

38. The Trial Chamber notes that both Witness MM-003 and Witness MM-079 sought assistance from the Prosecution, which also provided such assistance to both witnesses. The Trial Chamber therefore considers that there is significant doubt as to the credibility of both witnesses and has consequently given weight only to the parts of their respective evidence which are corroborated by other evidence.

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<sup>48</sup> Ex. 459, pp 2-4.

<sup>49</sup> Prosecution’s Reply to Defense Response to Prosecution’s Motion for Admission of Statement of Witness MM-014 Pursuant to Rule 89 (F), filed confidentially on 19 Apr 2006, para. 6, where the Prosecution acknowledges that Ari Kerckanen lacks expertise.

<sup>50</sup> Prosecution Final Trial Brief, para. 44.

<sup>51</sup> Witness MM-003, 10 Mar 2006, T. 2175-2188; Defence Closing Argument, 11 Jan 2007, T. 11330-11331.

<sup>52</sup> Letter from Alex Whiting to Predrag Milovančević, dated 9 April 2007. The Trial Chamber was copied on this letter.

<sup>53</sup> Prosecution Final Trial Brief, para. 85; Witness MM-079, 31 Mar 2006, T. 3025-3028.

<sup>54</sup> Witness MM-079, 31 Mar 2006, T. 3025-3026.

## II. APPLICABLE LAW

### A. General requirements of Article 3 of the Statute

#### 1. Generally

39. Milan Martić is charged with the following crimes as violations of the laws and customs of war punishable under Article 3 of the Statute: murder, torture and cruel treatment, based on Article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”), and attacks on civilians based on Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II.<sup>55</sup> In addition, Milan Martić is charged with wanton destruction of villages, or devastation not justified by military necessity, destruction or wilful damage done to institutions dedicated to education or religion, and plunder of public or private property, punishable under Article 3 (b), (d) and (e), respectively.<sup>56</sup> Article 3 of the Statute provides in its relevant parts:

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: [...]

(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; [...]

(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(e) plunder of public or private property.

40. Article 3 of the Statute has been defined in the jurisprudence of the Tribunal as a general clause covering all violations of international humanitarian law not covered by Articles 2, 4 or 5 of the Statute.<sup>57</sup> The application of Article 3 of the Statute requires a determination that a state of armed conflict existed at the time the crime was committed and that the alleged crime was “closely

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<sup>55</sup> Counts 4 and 16 (murder), Count 8 (torture), Counts 9 and 18 (cruel treatment), Count 19 (attacks on civilians) of the Indictment. Common Article 3, in its relevant parts, reads:

In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions;

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the abovementioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; [...]

<sup>56</sup> Counts 12-14 of the Indictment.

<sup>57</sup> *Tadić* Jurisdiction Decision, para. 89, re-affirmed in *Čelebići* Appeal Judgement, paras 133-136.

related” to the armed conflict.<sup>58</sup> Furthermore, four conditions, known as the *Tadić* conditions, must be fulfilled for a crime to fall within the jurisdiction of the Tribunal.<sup>59</sup>

## 2. Existence of an armed conflict and the nexus requirement

41. An armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State.”<sup>60</sup> Until a general conclusion of peace or a peaceful settlement is reached, international humanitarian law continues to apply “in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there”.<sup>61</sup>

42. Common Article 3 requires the warring parties to abide by certain fundamental humanitarian standards by ensuring “the application of the rules of humanity which are recognized as essential by civilized nations” and as such the provisions of Common Article 3 have general applicability.<sup>62</sup> When an accused is charged with violation of Article 3 of the Statute, it is immaterial whether the armed conflict was international or non-international in nature.<sup>63</sup>

43. When the alleged crime did not occur at a time and place in which fighting was actually taking place, “it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”<sup>64</sup> The crime “need not have been planned or supported by some form of policy”.<sup>65</sup> The armed conflict “need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.”<sup>66</sup>

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<sup>58</sup> *Tadić* Jurisdiction Decision, paras 67-70.

<sup>59</sup> *Tadić* Jurisdiction Decision, para. 94. See also *Kunarac et al.* Appeal Judgement, para. 66.

<sup>60</sup> *Tadić* Jurisdiction Decision, para. 70. The term “protracted” is significant in excluding mere cases of civil unrest or single acts of terrorism in cases of non-international conflicts, see *Kordić and Čerkez* Appeal Judgement, para. 341.

<sup>61</sup> *Tadić* Jurisdiction Decision, para. 70. See also *Kunarac et al.* Appeal Judgement, paras 57, 64. In para. 64, the Appeals Chamber held that: “the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

<sup>62</sup> ICRC Commentary on Geneva Convention IV, p. 34.

<sup>63</sup> *Tadić* Jurisdiction Decision, para. 137; *Čelebići* Appeal Judgement, paras 140, 147-150, 420, where the Appeals Chamber held that the provisions of Common Article 3 are applicable to both international and non-international conflicts. See also *Galić* Appeal Judgement, para. 120.

<sup>64</sup> *Kunarac et al.* Appeal Judgement, para. 57. The Trial Chamber notes that the term “hostilities” is not synonymous with the term “armed conflict.” An armed conflict may continue to exist after the hostilities in an area have ceased. The state of armed conflict ends when a peace agreement has been achieved or – in case of a non-international conflict – if a peaceful settlement has been reached, see *Tadić* Jurisdiction Decision, para. 70.

<sup>65</sup> *Kunarac et al.* Appeal Judgement, para. 58.

<sup>66</sup> *Kunarac et al.* Appeal Judgement, para. 58.

However, “[i]t is essential, [...] that a Trial Chamber establish the existence of a geographical and temporal linkage between the crimes ascribed to the accused and the armed conflict.”<sup>67</sup>

### 3. The *Tadić* conditions

44. The four *Tadić* conditions referred to above are: (i) the violation must constitute an infringement of a rule of international humanitarian law; (ii) the rule must be customary in nature, or, if it belongs to treaty law, the required conditions must be met;<sup>68</sup> (iii) the violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.<sup>69</sup>

45. With regard to murder, torture and cruel treatment, the Appeals Chamber has held that Common Article 3 “is indeed regarded as being part of customary international law, and serious violations thereof would at once satisfy the four requirements”.<sup>70</sup> In relation to attacks on civilians, the Appeals Chamber in *Strugar* held that “the principles” contained in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II have attained the status of customary international law.<sup>71</sup> Moreover, it is clear that attacks against civilians undoubtedly breach rules protecting important values and involves grave consequences for the victim.<sup>72</sup> The Appeals Chamber in *Strugar* also found that “[c]ustomary international law establishes that a violation of these principles entails individual criminal responsibility.”<sup>73</sup>

46. Concerning the crimes of wanton destruction of villages, or devastation, and destruction or wilful damage done to institutions dedicated to education or religion, it is established in the jurisprudence of the Tribunal that the crimes meet the four *Tadić* conditions.<sup>74</sup> Concerning the

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<sup>67</sup> *Stakić* Appeal Judgement, para. 342.

<sup>68</sup> These conditions are that the treaty (i) was unquestionably binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogated from peremptory norms of international law, as are most customary rules of international humanitarian law, *Tadić* Jurisdiction Decision, para. 143.

<sup>69</sup> *Tadić* Jurisdiction Decision, para. 94. See also *Kunarac et al.* Appeal Judgement, para. 66.

<sup>70</sup> *Kunarac et al.* Appeal Judgement, para. 68, referring to *Tadić* Jurisdiction Decision, paras 98-34 and *Čelebići* Appeal Judgement, para. 125.

<sup>71</sup> *Prosecutor v. Pavle Strugar et al.*, Case No. IT-01-42-AR72, Decision on Interlocutory Appeal, 22 Nov 2002, 22 Nov 2002, para. 9; *Blaškić* Appeal Judgement, paras 157-158.

<sup>72</sup> *Galić* Trial Judgement, paras 27, 45; *Strugar* Trial Judgement, para. 221.

<sup>73</sup> *Prosecutor v. Pavle Strugar et al.*, Case No. IT-01-42-AR72, Decision on Interlocutory Appeal, 22 Nov 2002, 22 Nov 2002, para. 10.

<sup>74</sup> Regarding wanton destruction of villages, or devastation not justified by military necessity pursuant to Article 3(b) of the Statute, see *Hadžihasanović and Kubura* Rule 98 bis Appeal Decision, para. 30 (see also paras 28-29); *Brdanin* Trial Judgement, para. 157; *Strugar* Trial Judgement, para. 231. Regarding destruction or wilful damage done to institutions dedicated to education or religion pursuant to Article 3(d), see *Hadžihasanović and Kubura* Rule 98 bis Appeal Decision, paras 44-48, with further references; *Hadžihasanović and Kubura* Trial Judgement, para. 63; *Brdanin* Trial Judgement, para. 157; *Strugar* Trial Judgement, para. 232.

crime of plunder, it is well-established that the first, second and fourth conditions are met.<sup>75</sup> As regards the third condition, the Trial Chamber finds that the jurisprudence establishes that the crime is a breach of a rule protecting important values,<sup>76</sup> and that whether the breach involves grave consequences for the victim has to be decided on a case-by-case basis.<sup>77</sup>

#### 4. “Persons taking no active part in the hostilities”

47. In relation to charges based on Common Article 3, including in this case, the charges of murder, torture and cruel treatment, the Prosecution must prove that the victim was taking no active part in the hostilities when the crime was committed.<sup>78</sup> The perpetrator of the crime must have known or should have been aware that the victim was taking no active part in the hostilities.<sup>79</sup> It is the specific situation of the victim at the moment the crime was committed that must be taken into account in determining the victim’s protection under Common Article 3.<sup>80</sup>

### **B. General requirements of Article 5 of the Statute**

#### 1. Elements

48. Milan Martić is charged with the following crimes against humanity punishable under Article 5 of the Statute: murder, extermination, deportation, imprisonment, torture, persecution, and other inhumane acts (including forcible transfer). Article 5 of the Statute provides:

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

In order to constitute a crime against humanity under Article 5 of the Statute, the acts of the accused must have been carried out during armed conflict, whether international or non-international in

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<sup>75</sup> *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, paras 37-38, with further references.

<sup>76</sup> *Kordić and Čerkez* Appeal Judgement, para. 81.

<sup>77</sup> *Kordić and Čerkez* Appeal Judgement, paras 82-83.

<sup>78</sup> *Čelebići* Appeal Judgement, para. 420; *Tadić* Trial Judgement, para. 615.

<sup>79</sup> *Halilović* Trial Judgement, para. 36; *Krajišnik* Trial Judgement, para. 847.

<sup>80</sup> *Tadić* Trial Judgement, paras 615-616; *Halilović* Trial Judgement, paras 33-34. *See also* ICRC Commentary on Geneva Convention III, p. 39: “a man who has surrendered individually is entitled to the same humane treatment as he would receive if the whole army to which he belongs had capitulated. The important thing is that the man in question will be taking no further part in the fighting.”

character.<sup>81</sup> This is a jurisdictional requirement which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused were linked geographically as well as temporally with the armed conflict.<sup>82</sup>

49. The acts of the accused must have formed part of a widespread or systematic attack directed against any civilian population.<sup>83</sup> Five elements have been set out in the jurisprudence for the establishment of this requirement:

(1) ‘Attack’ may be defined as a course of conduct involving the commission of acts of violence.<sup>84</sup> It is not limited to the use of armed force but may also encompass any mistreatment of the civilian population.<sup>85</sup> ‘Attack’ is a concept different from that of “armed conflict”. The attack may precede, outlast or continue during the armed conflict and need not be part of it.<sup>86</sup>

(2) The attack must be directed against any civilian population, that is, it must be established that the civilian population was the primary object of the attack.<sup>87</sup> It is not required that the entire population be subjected to the attack, however the Chamber must be satisfied that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.<sup>88</sup>

(3) The attack must be widespread or systematic. ‘Widespread’ refers to the large-scale nature of the attack and the number of targeted persons, while the phrase ‘systematic’ refers to the organised

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<sup>81</sup> *Tadić* Jurisdiction Decision, paras 70, 142; *Kunarac et al.* Appeal Judgement, para. 86. See *infra* section II A.

<sup>82</sup> *Kunarac et al.* Appeal Judgement, paras 83-84, referring to *Tadić* Appeal Judgement, paras 249, 251.

<sup>83</sup> *Blaškić* Appeal Judgement, para. 98 (with further references).

<sup>84</sup> *Kunarac et al.* Trial Judgement, para. 415, affirmed by *Kunarac et al.* Appeal Judgement, para. 89.

<sup>85</sup> *Kunarac et al.* Appeal Judgement, para. 86.

<sup>86</sup> *Tadić* Appeal Judgement, para. 251; *Kunarac et al.* Appeal Judgement, para. 86.

<sup>87</sup> *Kunarac et al.* Appeal Judgement, para. 91. See also *Blaškić* Appeal Judgement, paras 110-115, where the Appeals Chamber discussed in detail the scope of the term “civilian population”.

<sup>88</sup> *Kunarac et al.* Appeal Judgement, para. 90. The Appeals Chamber also held (para. 91) that:

[i]n order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.

nature of the acts of violence and the improbability of their random occurrence.<sup>89</sup> It is settled jurisprudence that the existence of a plan need not be proven.<sup>90</sup>

(4) The acts of the perpetrator must objectively form part of the attack on the civilian population. However, it is not required that the acts be committed in the midst of the attack. A crime which is committed before or after the main attack or away from it must be sufficiently connected with the attack and not be an isolated act.<sup>91</sup>

(5) The perpetrator must have known of the attack on the civilian population and that his or her acts formed part of the attack, or at least have taken the risk that his or her acts were part of the attack.<sup>92</sup> However, the perpetrator need not know of the details of the attack.<sup>93</sup> It is the attack, not the acts of the accused, which must be directed against the target population.<sup>94</sup>

## 2. Applicability of Article 5 to non-civilians

50. As a preliminary point, the Trial Chamber notes that it is well established that the term “civilian population” in the general requirements of Article 5 should be given a broad definition and that the presence of combatants within a civilian population does not necessarily alter its characterisation as such.<sup>95</sup>

51. The Trial Chamber now turns to the question of the required status of the victims under Article 5. As held by the Appeals Chamber in *Blaškić*, “the status of the victim as a civilian” is one of the elements which characterises a crime against humanity.<sup>96</sup> In defining the term “civilian”, the Appeals Chamber in *Blaškić* relied upon the provisions of Article 50 of Additional Protocol I,

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<sup>89</sup> *Kordić and Čerkez* Appeal Judgement, para. 94 (with further references). Relevant factors include “the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, and any identifiable patterns of crimes”, *Kunarac et al.* Appeal Judgement, para. 95.

<sup>90</sup> *Blaškić* Appeal Judgement, para. 120 (with further references), also holding that the existence of a plan “may be evidentially relevant in proving that an attack was directed against a civilian population and that it was widespread or systematic”, *ibid.*

<sup>91</sup> *Kunarac et al.* Appeal Judgement, paras 85, 99-101 (with further references). A crime would be regarded as an “isolated act” when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack, *ibid.*

<sup>92</sup> *Kunarac et al.* Appeal Judgement, paras 99, 102, also holding (para. 103) that “the motives of the accused for taking part in the attack are irrelevant and a crime against humanity may be committed for purely personal reasons.”

<sup>93</sup> *Kunarac et al.* Appeal Judgement, para. 102.

<sup>94</sup> *Kordić and Čerkez* Appeal Judgement, para. 99; *Kunarac et al.* Appeal Judgement, para. 103.

<sup>95</sup> Article 50 of Additional Protocol I provides that the “civilian population comprises all persons who are civilians” and that the “presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.” See also *Blaškić* Appeal Judgement, which held that “[t]hus, in order to determine whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave, must be examined,” para. 115.

<sup>96</sup> *Blaškić* Appeal Judgement, para. 107.



which it found “may largely be viewed as reflecting customary law.”<sup>97</sup> Article 50 of Additional Protocol I defines civilians as follows:

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.<sup>98</sup>

In light of this finding of the Appeals Chamber, the Trial Chamber finds no reason why Article 50 of Additional Protocol I should not also be applied when determining to the status of victims under Article 5 of the Statute.

52. The Appeals Chamber in *Blaškić* further held that, “[r]ead together, Article 50 of Additional Protocol I and Article 4A of Geneva Convention III establish that members of the armed forces, and members of militias or volunteer corps forming part of such armed forces, cannot claim civilian status”.<sup>99</sup> The *Blaškić* Appeals Chamber continued that neither may “members of organized resistance groups” claim civilian status, provided that they are commanded by a person responsible

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<sup>97</sup> *Blaškić* Appeal Judgement, para. 110.

<sup>98</sup> Article 4 A (1), (2), (3) and (6), of Geneva Convention III provides:

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) That of being commanded by a person responsible for his subordinates;

(b) That of having a fixed distinctive sign recognizable at a distance;

(c) That of carrying arms openly;

(d) That of conducting their operations in accordance with the laws and customs of war.

3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power. [...]

6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.”

Article 43 of Additional Protocol I provides:

1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

for his subordinates, that they have a fixed distinctive sign recognisable at a distance, that they carry arms openly, and that they conduct their operations in accordance with the laws and customs of war.<sup>100</sup> In determining the status of the victim at the time the crimes were committed, the Appeals Chamber held that:

the specific situation of the victim at the time the crimes are committed may not be determinative of his civilian or non-civilian status. If he is indeed a member of an armed organization, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status.<sup>101</sup>

53. The Appeals Chamber in *Kordić and Čerkez* appears to have taken a different approach to that taken by the Appeals Chamber in *Blaškić*, by expanding the concept of “civilian”. The Appeals Chamber in *Kordić and Čerkez* repeated the language of the Appeals Chamber in *Blaškić* in relying upon Article 50 of Additional Protocol I as part of customary international law.<sup>102</sup> It also followed the Appeals Chamber in *Blaškić*, finding that “during an armed conflict, until a soldier is demobilized, he is considered a combatant whether or not he is in combat, or for the time being armed.”<sup>103</sup> However, the *Kordić and Čerkez* Appeals Chamber continued, concerning evidence underlying, *inter alia*, Count 7, murder under Article 5 of the Statute:

read together, the above excerpts [...] constitute evidence that numerous persons were killed during their arrest, simply because they were Muslims, and ABiH soldiers were killed after their arrest, after being placed *hors de combat*. These persons, wilfully killed by Croat forces, were without doubt [...] “civilians” in the sense of Article 5 of the Statute.<sup>104</sup>

Nevertheless, the Appeals Chamber appears to have followed the reasoning of the Appeals Chamber in *Blaškić* in overturning the finding of the Trial Chamber in relation to the killing of a man and a woman shot by the HVO in their apartment. It held that “as TO members, the two victims are to be considered as ‘combatants’ and cannot claim the status of civilians.”<sup>105</sup>

54. The Appeals Chamber in *Galić* supported the view of the *Blaškić* Appeal Chamber that a person *hors de combat* is not a civilian in the context of international humanitarian law:

Persons *hors de combat* are certainly protected in armed conflicts through Common Article 3 of the Geneva Conventions. This reflects a principle of customary international law. Even *hors de combat*, however, they would still be members of the armed forces of a party to the conflict and therefore fall under the category of persons referred to in Article 4(A)(1) of the Third Geneva

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<sup>99</sup> *Blaškić* Appeal Judgement, para. 113.

<sup>100</sup> *Blaškić* Appeal Judgement, para. 113, referring to Article 4 A of Geneva Convention III.

<sup>101</sup> *Blaškić* Appeal Judgement, para. 114.

<sup>102</sup> *Kordić and Čerkez* Appeal Judgement, para. 97.

<sup>103</sup> *Kordić and Čerkez* Appeal Judgement, para. 421. *See also* para. 50.

<sup>104</sup> *Kordić and Čerkez* Appeal Judgement, paras 421-422. The Appeals Chamber thus upheld the Trial Chamber’s finding of murder under Article 5 and wilful killing under Article 2.

<sup>105</sup> *Kordić and Čerkez* Appeal Judgement, para. 458. The Appeals Chamber also found that “members of the armed forces resting in their homes in the area of the conflict, as well as members of the TO residing in their homes, remain combatants whether or not they are in combat, or for the time being armed,” *Kordić and Čerkez* Appeal Judgement, para. 51. The Appeals Chamber also only applied the crime of imprisonment to those who were proved at trial to be civilians, *ibid.* paras 591-640.

Convention; as such, they are not civilians in the context of Article 50, paragraph 1, of Additional Protocol I. Common Article 3 of the Geneva Conventions supports this conclusion in referring to “persons taking no active part in the hostilities, including *members of armed forces* who have laid down their arms *and those placed hors de combat* by sickness, wounds, detention, or any other cause” (emphasis added).<sup>106</sup>

55. The Trial Chamber agrees with the findings of the Appeals Chamber in *Blaškić* and *Galić* that the term civilian is one which is narrowly defined. The Trial Chamber does not, therefore, follow the logic of the Appeals Chamber in *Kordić and Čerkez*, which appeared to expand the term “civilian” to cover persons *hors de combat*. In the view of the Trial Chamber, such an interpretation is not in keeping with the definition of civilians as set out in Article 50 which the Appeals Chamber found “may be largely viewed as reflecting customary international law”.<sup>107</sup> As held by the Appeals Chamber in *Blaškić* and *Galić*, the fact that a person, who is not a civilian according to Article 4A of Geneva Convention III and Article 43 Additional Protocol I, is not armed or in combat, or is *hors de combat* at the time of the commission of crime, does not render them civilian for the purposes of Article 5 of the Statute.

56. That Article 5 of the Statute is applicable to civilians is in keeping with the fundamental principle of the distinction between civilians and combatants, which permeates the laws of war and international humanitarian law. In this respect, the Trial Chamber recalls the ICRC Commentary to Article 50 of Additional Protocol I, which provides that:

[t]he principle of the protection of the civilian population is inseparable from the principle of the distinction which should be made between military and civilian persons. In view of the latter principle, it is essential to have a clear definition of each of these categories.<sup>108</sup>

Article 5 of the Statute defines crimes against humanity more narrowly than required under customary international law by including a requirement of a nexus between the crime and the armed conflict.<sup>109</sup> This requirement in Article 5 necessarily links crimes against humanity to an armed conflict in which distinction must be made between combatants and non-combatants. Therefore, to allow for the term “civilians” to include all persons who were not actively participating in combat,

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<sup>106</sup> *Galić* Appeal Judgement, fn 437.

<sup>107</sup> *Blaškić* Appeal Judgement, para. 110. The Trial Chamber recalls that the Appeals Chamber in *Kordić and Čerkez* relied upon the Appeals Chamber in *Blaškić*: “The Appeals Chamber considers that Article 50 of Additional Protocol I contains a definition of civilians and civilian populations, and the provisions in this article may largely be viewed as reflecting customary law. As a result, they are relevant to the consideration at issue under Article 5 of the Statute, concerning crimes against humanity” (footnotes omitted), *Kordić and Čerkez* Appeal Judgement, para. 97.

<sup>108</sup> ICRC Commentary on Additional Protocols, para. 1911.

<sup>109</sup> *Tadić* Jurisdiction Decision, paras 140-141, wherein the Appeals Chamber stated (*ibid.* para. 141) that:

It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict. Indeed, as the Prosecutor points out, customary international law may not require a connection between crimes against humanity and any conflict at all. Thus, by requiring that crimes against humanity be committed in either internal or international armed conflict, the Security Council may have defined the crime in Article 5 more narrowly than necessary under customary international law. There is no question, however, that the definition of crimes against humanity adopted by the Security Council in Article 5 comports with the principle of *nullum crimen sine lege*.

including those who were *hors de combat*, at the time of the crime would impermissibly blur this necessary distinction.

### C. Murder

57. Milan Martić is charged with murder, both as a violation of the laws or customs of war pursuant to Article 3 of the Statute (Counts 4 and 16) and as a crime against humanity pursuant to Article 5(a) of the Statute (Counts 3 and 15).

58. The elements of the crime of murder under Article 3 and under Article 5 are identical, with the exception that the respective general requirements for the application of these provisions must be met.<sup>110</sup> The common elements are the following:

1. the death of a victim;
2. the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;
3. the act or omission was committed with intent to kill, or in the knowledge that death was a probable consequence of the act or omission.<sup>111</sup>

59. For the proof of the death of the victim, there is no requirement that the body be recovered. Rather, the death may be established by circumstantial evidence, provided it is the only reasonable inference available from the evidence.<sup>112</sup>

60. The *mens rea* of murder is the intent to kill, including indirect intent, that is the knowledge that the death of the victim was a probable consequence of the act or omission.<sup>113</sup> This Trial Chamber does not consider it to be sufficient that the perpetrator knew that death would be a *possible* consequence of his act or omission.<sup>114</sup> In connection with the identity of victims, it is not required for the perpetrator to have intended to target a certain individual; indiscriminate intent to kill whoever is fatally injured as a result of his action is sufficient.

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<sup>110</sup> *Kordić and Čerkez* Trial Judgement, paras 229, 233, 236; *Brdanin* Trial Judgement, para. 380; *Strugar* Trial Judgement, para. 236; *Orić* Trial Judgement, para. 345.

<sup>111</sup> *Kvočka et al.* Appeal Judgement, para. 261.

<sup>112</sup> *Kvočka et al.* Appeal Judgement, para. 260; *Brdanin* Trial Judgement, paras 383-385; *Krnjelac* Trial Judgement, paras 326-327; *Tadić* Trial Judgement, para. 240. Relevant factors to be considered include, but are not limited to, proof of incidents of mistreatment directed against the victim, patterns of mistreatment and disappearances of other victims, the coincident or near-coincident time of death of other victims, the fact that the victims were present in an area where an armed attack was carried out, when, where and the circumstances in which the victim was last seen, behaviour of soldiers in the vicinity, as well as towards other civilians, at the relevant time, and lack of contact by the victim with others whom he/she would have been expected to contact, such as his/her family, *Halilović* Trial Judgement, para. 37; *Krnjelac* Trial Judgement, para. 327.

<sup>113</sup> *Strugar* Trial Judgement, paras 235-236; *Limaj et al.* Trial Judgement, para. 241. See also *Orić* Trial Judgement, para. 348. Neither negligence nor gross negligence on the part of the perpetrator is sufficient to satisfy the mental element, *Stakić* Trial Judgement, para. 587; *Brdanin* Trial Judgement, para. 386; *Orić* Trial Judgement, para. 348.

<sup>114</sup> *Strugar* Trial Judgement, para. 236.

#### D. Extermination

61. Milan Martić is charged with extermination, a crime against humanity under Article 5(b) of the Statute (Count 2).

62. Extermination is the act of killing on a large scale.<sup>115</sup> The crime of extermination subsumes the elements of murder.<sup>116</sup> The *actus reus* consists of any act or omission, which contributes directly or indirectly to the killing of a large number of individuals.<sup>117</sup> The *actus reus* also includes subjecting a large number of people “to conditions of living that would inevitably lead to death”.<sup>118</sup>

63. The requirement that killings occurred on a large scale does not suggest a numerical minimum.<sup>119</sup> An assessment of whether this requirement has been met must be made on the basis of a case-by-case analysis of all relevant factors.<sup>120</sup> Extermination may be established “on an accumulation of separate and unrelated incidents, meaning on an aggregated basis”, where a large number of killings did not occur during a single incident in a concentrated place over a short period.<sup>121</sup>

64. It is not required that the perpetrator targeted the victims on national, ethnical, racial or religious grounds.<sup>122</sup> Neither is a “vast scheme of collective murder”, nor knowledge of such a scheme, an element of extermination.<sup>123</sup> Moreover, it is not necessary that the victims of extermination be precisely identified by name; it is sufficient for it to be proven that killings occurred on a large scale.<sup>124</sup>

65. The *mens rea* element of extermination requires that the act or omission was committed with the intent to kill persons on a large scale or in the knowledge that the deaths of a large number of people were a probable consequence of the act or omission.<sup>125</sup> In other words, the *mens rea* encompasses direct intent and indirect intent.<sup>126</sup>

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<sup>115</sup> *Ntakirutimana* Appeal Judgement, para. 516 and fn 880; *Stakić* Appeal Judgement, para. 259.

<sup>116</sup> *Krajišnik* Trial Judgement, para. 716. As regards the elements of murder, see *infra* section II C.

<sup>117</sup> *Vasiljević* Trial Judgement, para. 229; *Brdanin* Trial Judgement, para. 389. See also *Rutaganda* Trial Judgement, para. 83; *Musema* Trial Judgement, para. 219.

<sup>118</sup> *Stakić* Appeal Judgement, para. 259; *Ntakirutimana* Appeal Judgement, para. 522.

<sup>119</sup> *Stakić* Appeal Judgement, para. 260; *Ntakirutimana* Appeal Judgement, para. 516.

<sup>120</sup> *Stakić* Trial Judgement, para. 640; *Brdanin* Trial Judgement, para. 391; *Blagojević and Jokić Trial Judgement*, para. 573. The relevant factors include “the time and place of the killings, the selection of the victims, and the manner in which they were targeted”, *Krajišnik* Trial Judgement, para. 716. See also *Nahimana et al.* Trial Judgement, para. 1061.

<sup>121</sup> *Brdanin* Trial Judgement, para. 391. See also *Stakić* Trial Judgement, para. 640.

<sup>122</sup> *Krstić* Trial Judgement, paras 499-500; *Stakić* Trial Judgement, para. 639.

<sup>123</sup> *Stakić* Appeal Judgement, paras 258-259. See also *Krstić* Appeal Judgement, para. 225.

<sup>124</sup> *Ntakirutimana* Appeal Judgement, para. 521, endorsed by *Stakić* Appeal Judgement, fn 552.

<sup>125</sup> *Stakić* Appeal Judgement, para. 259; *Ntakirutimana* Appeal Judgement, para. 522.

<sup>126</sup> *Krstić* Trial Judgement, para. 495; *Stakić* Trial Judgement, paras 587, 641-642; *Brdanin* Trial Judgement, para. 395.

## **E. Attacks on civilians**

66. Milan Martić is charged with attacks on civilians, a violation of the laws or customs of war pursuant to Article 3 of the Statute (Count 19).

67. The crime of attacks on civilians is based upon Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, both of which provide, in their relevant parts, that “[t]he civilian population as such, as well as individual civilians, shall not be made the object of attack.”<sup>127</sup>

68. Article 49 of Additional Protocol I defines the term “attack” as “acts of violence against the adversary, whether in offence or in defence”.<sup>128</sup> In relation to attacks on civilians, the Appeals Chamber in *Blaškić* held that there is an absolute prohibition in customary international law against the targeting of civilians.<sup>129</sup> In *Kordić and Čerkez*, the Appeals Chamber held that “the prohibition against attacking civilians and civilian objects may not be derogated from because of military necessity”.<sup>130</sup> According to Article 52(2) of Additional Protocol I only military objectives may be lawfully attacked, that is “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.<sup>131</sup>

69. The prohibition against targeting the civilian population does not exclude the possibility of legitimate civilian casualties incidental to an attack aimed at military targets.<sup>132</sup> However, such casualties must not be disproportionate to the concrete and direct military advantage anticipated before the attack.<sup>133</sup> In particular, indiscriminate attacks, that is attacks which affect civilians or civilian objects and military objects without distinction, may also be qualified as direct attacks on

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<sup>127</sup> The Indictment provides: “Count 19: Attacks on civilians, a Violation of the Laws or Customs of War, as recognised by Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal”.

<sup>128</sup> This definition of attack has been endorsed in *Kordić and Čerkez* Appeal Judgement, para. 47.

<sup>129</sup> *Blaškić* Appeal Judgement, para. 109; *Galić* Appeal Judgement, para. 190.

<sup>130</sup> *Kordić and Čerkez* Appeal Judgement, para. 54 (as revised by Corrigendum of 26 January 2005).

<sup>131</sup> Article 52(2) of Additional Protocol I. *See also* *Kordić and Čerkez* Appeal Judgement, para. 53. In this context, *see* the Trial Chamber’s discussion on reprisals, *infra* section IV B 4 (c).

<sup>132</sup> *Galić* Appeal Judgement, para. 190.

<sup>133</sup> *Galić* Appeal Judgement, para. 190. The Appeals Chamber also endorsed the Trial Chamber’s finding in *Galić* according to which the parties to a conflict have an obligation “to remove civilians, to the maximum extent feasible from the vicinity of military objectives and to avoid locating military objectives within or near densely populated areas”. However, “the failure of a party to abide by this obligation does not relieve the attacking side of its duty to abide by the principles of distinction and proportionality when launching an attack”, *Galić* Appeal Judgement, para. 194.

civilians.<sup>134</sup> In this regard, a direct attack against civilians can be inferred from the indiscriminate character of the weapon used.<sup>135</sup>

70. It is an element of the crime that the attacks resulted in death or serious bodily injury within the civilian population at the time of such attacks.<sup>136</sup>

71. The Trial Chamber recalls that the Appeals Chamber has considered that “Article 50 of Additional Protocol I contains a definition of civilians and civilian populations”, which may largely be viewed as reflecting customary law.<sup>137</sup>

72. The *mens rea* required for attacks against civilians is direct and indirect intent.<sup>138</sup>

## F. Torture

73. Milan Martić is charged with torture as a crime against humanity under Article 5(f) of the Statute (Count 6), and as a violation of the laws or customs of war under Article 3 of the Statute (Count 8), respectively.

74. The torture of persons not taking an active part in hostilities is expressly prohibited by the Geneva Conventions and the Additional Protocols, both in international and non-international

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<sup>134</sup> *Galić* Appeal Judgement, para. 132, referring to *Galić* Trial Judgement, para. 57. See also ICJ Advisory Opinion: *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, para. 78.

<sup>135</sup> *Galić* Appeal Judgement, para. 132. The Appeals Chamber upheld the Trial Chamber’s finding in *Galić* which relied, *inter alia*, on the *Martić* Rule 61 Decision, 8 Mar 1996, paras 23-31, according to which the Trial Chamber regarded the use of a cluster bomb warhead as evidence of Milan Martić’s intent to deliberately attack the civilian population. The Appeals Chamber noted also that the Trial Chamber is, in principle, entitled to determine on a case-by-case basis that the indiscriminate character of an attack can assist it in determining whether the attack was directed against the civilian population. Among the elements that the Trial Chamber may take into account in its determination as to whether the attack was directed against civilians are “the means and method used in the course of the attack, the status of the victims, their number, [...] the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war”, *Galić* Appeal Judgement, para. 132 referring to *Kunarac et al.* Appeal Judgement, para. 91 and *Blaškić* Appeal Judgement, para. 106.

<sup>136</sup> *Kordić and Čerkez* Appeal Judgement, paras 55-67.

<sup>137</sup> *Kordić and Čerkez* Appeal Judgement, para. 97; *Blaškić* Appeal Judgement, para. 110. The Appeals Chamber based its holding on the ICRC Commentary on Additional Protocols, pp 611-612 (regarding Article 50(3) of Additional Protocol I), which explains the principle as follows:

[I]n war time conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population.

<sup>138</sup> Article 85(3)(a) of Additional Protocol I qualifies as a grave breach the act of “wilfully [...] making the civilian population or individual civilians the object of attack”. The ICRC Commentary on Additional Protocols, para. 3474, concerning this provision reads: “*wilfully*: the accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences, and willing them (‘criminal intent’ or ‘malice aforethought’); this encompasses the concepts of ‘wrongful intent’ or ‘recklessness’, viz., the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., when a man acts without having his mind on the act or its consequences.” See also *Galić* Appeal Judgement, para. 140.

armed conflicts.<sup>139</sup> The definition of torture is identical under both Article 3 and Article 5 of the Statute.<sup>140</sup> It comprises the following elements:

1. The intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental;
2. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person (“prohibited purpose”).<sup>141</sup>

75. The pain and suffering inflicted during acts of torture is more severe than the pain and suffering inflicted during other forms of mistreatment and cruel treatment.<sup>142</sup> The Trial Chamber will assess on a case-by-case basis whether the acts or omissions charged as torture, inflicted severe physical or mental pain or suffering on the part of the victim.<sup>143</sup> In its assessment of the severity of the pain or suffering inflicted, the Trial Chamber may take several factors into account, including the duration of the suffering inflicted, the nature of the crimes, the physical or mental condition of the victim, the effect of the acts on the victim, the victim’s age, and the victim’s position of inferiority to the perpetrator.<sup>144</sup>

76. In the jurisprudence of the Tribunal several acts have been listed as rising to the level of seriousness necessary to constitute torture. These acts include beatings, administering electric shocks, forcing victims to watch executions of others, rape, forcing victims to bury the bodies of their neighbours and friends, and causing burn injuries.<sup>145</sup>

77. As to the *mens rea*, the perpetrator’s acts or omissions must be committed for a prohibited purpose. The definition of torture provides a non-exhaustive list of prohibited purposes.<sup>146</sup> There is no requirement that the act of the perpetrator be committed solely or predominantly to serve this prohibited purpose.<sup>147</sup> Once the conduct has been carried out for one of the prohibited purposes, it

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<sup>139</sup> *Čelebići* Trial Judgement, para. 446, referring in fn 455 to Article 12 Geneva Conventions I and II; Article 50 Geneva Convention I; Article 51 Geneva Convention II; Articles 17, 87 and 130 Geneva Convention III; Articles 32 and 147 Geneva Convention IV; Common Article 3 Geneva Conventions I–IV; Article 75 Additional Protocol I; Article 4 Additional Protocol II.

<sup>140</sup> The definition of torture is largely based on the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 26 June 1987.

<sup>141</sup> See e.g. *Kunarac et al.* Appeal Judgement, paras 142-144; *Brdanin* Trial Judgement, para. 481; *Furundžija* Trial Judgement, para. 162.

<sup>142</sup> *Brdanin* Trial Judgement, para. 483. See also *Čelebići* Trial Judgement, para. 468.

<sup>143</sup> *Naletilić and Martinović* Appeal Judgement, para. 299; *Čelebići* Trial Judgement, para. 469.

<sup>144</sup> *Naletilić and Martinović* Appeal Judgement, para. 300; *Brdanin* Trial Judgement, para. 484, citing *Kvočka et al.* Trial Judgement, para. 143 and *Krnjelac* Trial Judgement, para. 182.

<sup>145</sup> See e.g. *Kunarac et al.* Appeal Judgement, para. 151; *Čelebići* Trial Judgement, para. 495-496, 971, 973, 976-77; *Naletilić and Martinović* Trial Judgement, paras 350-352; *Brdanin* Trial Judgement, paras 492, 503-511, 524.

<sup>146</sup> *Čelebići* Trial Judgement, para. 470; *Brdanin* Trial Judgement, para. 487.

<sup>147</sup> *Kunarac et al.* Appeal Judgement, para. 155; *Čelebići* Trial Judgement, para. 470.



is immaterial whether there is another purpose behind the conduct.<sup>148</sup> In addition, it needs to be established that the perpetrator acted or omitted to act with direct or indirect intent.

### **G. Cruel treatment**

78. Milan Martić is charged with cruel treatment as a violation of the laws or customs of war, as recognised in Common Article 3, pursuant to Article 3(1)(a) of the Statute (Counts 9 and 18).

79. The crime of cruel treatment is defined in the jurisprudence as an intentional act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity, committed against a person not taking an active part in hostilities.<sup>149</sup> The perpetrator must be shown to have acted with direct intent or with indirect intent, that is, in the knowledge that cruel treatment was a likely consequence of his act or omission.<sup>150</sup>

80. It is not required that the suffering caused by the cruel treatment be “lasting”.<sup>151</sup> In its assessment of the seriousness of the act or omission, the Trial Chamber will take all circumstances into consideration, including factors such as the age and health of the victim, and the physical and mental effects of the crime upon the victim.<sup>152</sup> Moreover, it is not required that the seriousness of the suffering or injury amounts to the level of seriousness required for torture.<sup>153</sup>

### **H. Other inhumane acts**

81. Milan Martić is charged with three counts of other inhumane acts, as crimes against humanity pursuant to Article 5(i) of the Statute. Count 7 charges Milan Martić with “inhumane acts” in relation to events in detention centres, Count 11 charges Milan Martić with “inhumane acts (forcible transfers)” in relation to the removal of non-Serb inhabitants of the SAO Krajina and the RSK, and Count 17 charges Milan Martić with “inhumane acts” in relation to the shelling of Zagreb.<sup>154</sup>

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<sup>148</sup> *Kunarac et al.* Appeal Judgement, para. 155.

<sup>149</sup> *Čelebići* Appeal Judgement, para. 424; *Limaj et al.* Trial Judgement, para. 231.

<sup>150</sup> The Trial Chamber notes that in the jurisprudence “likely” is synonymous to “probable”, see e.g. *Prosecutor v. Radoslav Brdanin and Momir Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 Jun 2001, para. 29; *Simić et al.* Trial Judgement, para. 76, citing *Vasiljević* Trial Judgement, para. 236; *Limaj et al.* Trial Judgement, para. 231.

<sup>151</sup> *Kunarac et al.* Trial Judgement, para. 501.

<sup>152</sup> *Simić et al.* Trial Judgement, para. 75; *Vasiljević* Trial Judgement, para. 235; *Krnjelac* Trial Judgement, para. 131.

<sup>153</sup> *Čelebići* Trial Judgement, para. 510; *Kordić and Čerkez* Trial Judgement, para. 245. See *supra* section II F.

<sup>154</sup> The elements of the crime of other inhumane acts (forcible transfer) are discussed in the context of deportation pursuant to Article 5(d) of the Statute, see *infra* section II M.

82. “Other inhumane acts” is a residual category of crimes against humanity recognised as forming part of customary international law.<sup>155</sup> It must be emphasised that the Trial Chamber must exercise great caution in finding that an alleged act, which is not regulated elsewhere in Article 5 of the Statute, amounts to “other inhumane acts” within the meaning of Article 5(i).<sup>156</sup>

83. In addition to meeting the general requirements for application of Article 5, an act or omission must satisfy the following elements to fall within the category of other inhumane acts:

1. the act or omission was of similar seriousness to the other crimes enumerated in Article 5;
2. the act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity; and
3. the act or omission was carried out intentionally by the accused or by persons for whom the accused bears criminal responsibility.<sup>157</sup>

84. The element of “similar seriousness” is to be evaluated in light of all factual circumstances, including the nature of the act or omission, the context within which it occurred, the individual circumstances of the victim as well as the physical and mental effects on the victim.<sup>158</sup> There is no requirement that the effects on the victim be long-term, however any such effects will form part of the determination whether the act or omission meets the “similar seriousness” requirement.<sup>159</sup>

85. The *mens rea* required is that the perpetrator had direct or indirect intent to inflict, by act or omission, serious physical or mental suffering or to commit a serious attack on the victim’s human dignity.<sup>160</sup>

## I. Imprisonment

86. Milan Martić is charged with imprisonment as a crime against humanity pursuant to Article 5(e) of the Statute (Count 5).

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<sup>155</sup> *Stakić* Appeal Judgement, para. 315, noting in fn 649 that the category of other inhumane acts was included in Art. 6(c) of the Nuremberg Charter, Art. 5(c) of the Tokyo Charter, and Art. II(1)(c) of Control Council Law No. 10, and that convictions have been entered on this ground. The Appeals Chamber also noted “that numerous human rights treaties also prohibit inhuman and degrading treatment”, including the ICCPR and the ECHR, *ibid. Kordić and Čerkez* Appeal Judgement, para. 117, affirming *Kupreškić et al.* Trial Judgement, para. 563.

<sup>156</sup> *Kordić and Čerkez* Appeal Judgement, para. 117. In that case, the Appeals Chamber noted that “‘other inhumane acts’ [were] charged exclusively as injuries”, *ibid. See also Blagojević and Jokić* Trial Judgement, para. 625, which held in relation to Article 5(i) that “norms of criminal law must always provide individuals with sufficient notice of what is criminal behaviour and what is not.”

<sup>157</sup> *Kordić and Čerkez* Appeal Judgement, para. 117. *See also Krnojelac* Trial Judgement, paras 130-131; *Vasiljević* Trial Judgement, para. 234.

<sup>158</sup> *Galić* Trial Judgement para. 153; *Vasiljević* Trial Judgement, para. 235; *Krnojelac* Trial Judgement, para. 131; *Čelebići* Trial Judgement, para. 536; *Kunarac et al.* Trial Judgement, para. 501.

<sup>159</sup> *Vasiljević* Trial Judgement, para. 235.

<sup>160</sup> *Krnojelac* Trial Judgement, para. 132; *Vasiljević* Trial Judgement, para. 236; *Kayishema and Ruzindana* Trial Judgement, para. 153.

87. Imprisonment is defined as arbitrary imprisonment, that is the deprivation of liberty of an individual without due process of law.<sup>161</sup>

88. Deprivation of liberty can be achieved by an act or omission on the part of the perpetrator.<sup>162</sup> The act or omission must be committed with the intent to deprive a civilian of his or her physical liberty without due process of law or in the reasonable knowledge that his act or omission was likely to cause the deprivation of physical liberty without due process of law.<sup>163</sup>

**J. Wanton destruction of villages, or devastation not justified by military necessity**

89. Milan Martić is charged with wanton destruction of villages, or devastation not justified by military necessity, violations of the laws or customs of war pursuant to Article 3(b) of the Statute.<sup>164</sup>

90. The following elements must be proven in relation to these violations:

1. the destruction of property has occurred on a large scale;
2. the destruction was not justified by military necessity; and
3. the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.<sup>165</sup>

91. The Trial Chamber considers that there is no material difference between the elements of the crimes of wanton destruction and devastation in the context of this case.<sup>166</sup>

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<sup>161</sup> *Kordić and Čerkez* Appeal Judgement, para. 116. The Appeals Chamber noted that the Trial Chamber had used the term “individual” in the sense of the term “civilian”, *Kordić and Čerkez* Appeal Judgement, fn 139. The Trial Chamber notes that the Appeals Chamber also included the requirement “as part of a widespread or systematic attack directed against a civilian population” in its definition of the crime of imprisonment. The Trial Chamber recalls that this is a general requirement for crimes against humanity. Accordingly, this requirement does not need to be included in the definition of elements of the crime of imprisonment.

<sup>162</sup> *Krnjelac* Trial Judgement, para. 115, cited in *Simić et al.* Trial Judgement, paras 64-65.

<sup>163</sup> *Simić et al.* Trial Judgement, paras 64-65, citing *Krnjelac* Trial Judgement, para. 115. The Trial Chamber notes that the Trial Chambers in *Krnjelac* and in *Simić et al.* included that the acts or omission be “performed by *the accused or a person or persons for whom the accused bears criminal responsibility*”, *ibid.* (emphasis added). The Trial Chamber considers that these words comprise definitions included in elements of Article 7(1) and 7(3) and that there is no need to include them in the definition of a crime.

<sup>164</sup> *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 26; *Brđanin* Trial Judgement, para. 591. Article 3(b) of the Statute is derived from Article 23(g) of the Hague Convention (IV) of 1907 and the annexed Regulations (“Hague Regulations”). Article 23 of the Hague Regulations reads, in its relevant part:

In addition to the prohibitions provided by special Conventions, it is especially forbidden: [...]

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war; [...]

<sup>165</sup> *Kordić and Čerkez* Appeal Judgement, para. 74, reiterating *Kordić and Čerkez* Trial Judgement, para. 346. *See also Naletilić and Martinović* Trial Judgement, para. 579; *Hadžihasanović and Kubura* Trial Judgement, para. 41; *Orić* Trial Judgement, para. 581.

<sup>166</sup> For a similar opinion with which this Trial Chamber agrees, *see Strugar* Trial Judgement, paras 290-297, reaching this conclusion both from a linguistic point of view and with reference to international instruments (*e.g.* Article 6(B) of

92. The element of destruction of property “on a large scale” requires that a considerable number of objects were destroyed. However, it is not required that a city, town or village has been destroyed in its entirety.<sup>167</sup> The Trial Chamber will assess on a case-by-case basis whether the extent of any proven destruction of a particular village was of sufficient scale to meet this element.<sup>168</sup>

93. The destruction or devastation of property is prohibited, except where justified by military necessity.<sup>169</sup> The Trial Chamber considers that military necessity may justify the infliction of collateral damage to civilian objects and as such constitutes an exception to the principles of the protection of civilian objects.<sup>170</sup> The protection of civilian objects may cease entirely or be reduced or suspended when belligerents cannot avoid causing collateral damage to civilian property even though the object of a military attack is comprised of military objectives.<sup>171</sup> In order to establish that the destruction was not justified by military necessity, the Prosecution has to prove not only that the destruction occurred, but also when and how the destruction occurred.<sup>172</sup> An assertion of military necessity or the absence thereof will be assessed on a case-by-case basis. In principle, destruction carried out before fighting begins or after fighting has ceased cannot be justified by claiming military necessity.<sup>173</sup>

94. The *mens rea* of wanton destruction and devastation under Article 3(b) of the Statute is that the perpetrator acted with direct or indirect intent.<sup>174</sup>

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the Nuremberg Charter; Article II (1)(b) of Control Council Law No. 10) treating “destruction” and “devastation” together. *See also Brdanin* Trial Judgement, paras 591-593.

<sup>167</sup> *Orić* Trial Judgement, para. 585; *Hadžihasanović and Kubura* Trial Judgement, para. 43.

<sup>168</sup> *Orić* Trial Judgement, para. 585. The Trial Chamber in *Hadžihasanović and Kubura* held that “destruction is large scale either when a large quantity of property has been destroyed or when the value of a single destroyed object is sufficiently great”, *Hadžihasanović and Kubura* Trial Judgement, para. 43.

<sup>169</sup> *Kordić and Čerkez* Appeal Judgement, para. 495; *Kordić and Čerkez* Trial Judgement, para. 346; *Naletilić and Martinović* Trial Judgement, para. 579; *Brdanin* Trial Judgement, para. 592; *Strugar* Trial Judgement, para. 295; *Hadžihasanović and Kubura* Trial Judgement, para. 45. Article 14 of the 1863 Lieber Code provides that “[m]ilitary necessity, as understood in modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war”.

<sup>170</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 45; *Galić* Appeal Judgement, para. 190.

<sup>171</sup> *Kupreškić et al.* Trial Judgement, para. 522, cited by *Hadžihasanović and Kubura* Trial Judgement, para. 45.

<sup>172</sup> *Kordić and Čerkez* Appeal Judgement, para. 495.

<sup>173</sup> *Orić* Trial Judgement, para. 588; *Naletilić and Martinović* Trial Judgement, para. 589. However, there may be rare occasions in which pre-emptive destruction could arguably fall within the scope of ‘military necessity’, when such destruction is reasonably connected with the overcoming of enemy forces, *Orić* Trial Judgement, para. 588.

<sup>174</sup> *Kordić and Čerkez* Trial Judgement, para. 346; *Naletilić and Martinović* Trial Judgement, fn 1440; *Brdanin* Trial Judgement, para. 593; *Strugar* Trial Judgement, para. 296; *Hadžihasanović and Kubura* Trial Judgement, para. 40; *Orić* Trial Judgement, para. 589.

## **K. Destruction or wilful damage done to institutions dedicated to education or religion**

95. Milan Martić is charged with destruction or wilful damage done to institutions dedicated to religion or education, a violation of the laws or customs of war pursuant to Article 3(d) of the Statute (Count 13).<sup>175</sup>

96. The crime of destruction or wilful damage done to institutions dedicated to religion or education has the following elements:<sup>176</sup>

1. an act has caused damage to, or destruction of, an institution dedicated to religion or education;
2. the damaged or destroyed institution was not used for military purposes at the time of the act; and
3. the act was carried out with intent to destroy or damage, or in reckless disregard of the likelihood of the destruction or damage to the institution in question.

97. Article 3(d) of the Statute is considered as comprising of two types of protection for cultural, historical, and religious monuments: general protection and special protection.<sup>177</sup> General protection applies to civilian objects, that is all objects which are not military objects.<sup>178</sup> Special protection is granted to “historic monuments, works of art, and places of worship, provided they constitute the cultural or spiritual heritage of peoples”.<sup>179</sup> The “cultural or spiritual heritage of peoples” covers “objects whose value transcends geographical boundaries, and which are unique in character and are intimately associated with the history and culture of a people”.<sup>180</sup> Thus, special protection does not encompass all the buildings or institutions dedicated to education or religion.<sup>181</sup>

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<sup>175</sup> Article 3(d) of the Statute prohibits “seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.” Article 3(d) of the Statute is derived from Articles 27 and 56 of the Hague Regulations, and also has its basis in the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 (“1954 Hague Convention”), Articles 52 and 53 of Additional Protocol I, and Article 16 of Additional Protocol II, *Kordić and Čerkez* Appeal Judgement, paras 89-91; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, paras 45-46; *Brdanin* Trial Judgement, para. 595; *Strugar* Trial Judgement, paras 303-306.

<sup>176</sup> *Strugar* Trial Judgement, para. 312.

<sup>177</sup> *Kordić and Čerkez* Appeal Judgement, paras 89-91; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 45. General protection is codified, *inter alia*, in Article 52 of Additional Protocol I.

<sup>178</sup> *Kordić and Čerkez* Appeal Judgement, para. 89; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 45.

<sup>179</sup> *Kordić and Čerkez* Appeal Judgement, para. 90; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 46, both referring to Article 53 of Additional Protocol I. Article 16 of Additional Protocol II reiterates the protection for the same categories of property. *See also* Article 1(a) of the 1954 Hague Convention, which also codifies the special protection.

<sup>180</sup> *Kordić and Čerkez* Appeal Judgement, para. 91; ICRC Commentary on Additional Protocols, paras 2063-2068 (regarding Article 53 of Additional Protocol I), paras 4840-4844 (regarding Article 16 of Additional Protocol II).

<sup>181</sup> *Kordić and Čerkez* Appeal Judgement, paras 89-90, 92; *Brdanin* Trial Judgement, fn 1505.

98. The protection of institutions dedicated to religion or education is lost if such institutions are used for a military purpose.<sup>182</sup> The Trial Chamber considers that this exception applies both to general protection and special protection under Article 3(d) of the Statute.<sup>183</sup> However, the protection is not lost simply because military activities or military installations are situated in the immediate vicinity of the institution. It is the use of an institution and not its location which is the decisive factor.<sup>184</sup>

99. The *mens rea* of this crime is that the perpetrator acted with direct or indirect intent.<sup>185</sup>

#### **L. Plunder of public or private property**

100. Milan Martić is charged with plunder of public and private property, a violation of the laws or customs of war pursuant to Article 3(e) of the Statute (Count 14).<sup>186</sup>

101. Plunder of public or private property under Article 3(e) of the Statute is committed “when private or public property is appropriated intentionally and unlawfully”.<sup>187</sup> The prohibition of plunder includes “all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as ‘pillage’”.<sup>188</sup> There is no difference between public and private property under the Statute.<sup>189</sup>

102. For the crime of plunder to be established, the appropriation of private or public property must be done without lawful basis or legal justification. Belligerent occupants may, in certain instances, lawfully use private or public property in the occupied territory for their military needs.<sup>190</sup> A party to the conflict is also allowed to seize enemy military equipment captured or found on the battlefield as war booty, with the exception that the personal belongings of the

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<sup>182</sup> *Kordić and Čerkez* Trial Judgement, paras 361-362; *Naletilić and Martinović* Trial Judgement, para. 605; *Brdanin* Trial Judgement, para. 598; *Strugar* Trial Judgement, para. 310; *Hadžihasanović and Kubura* Trial Judgement, paras 58, 60-61.

<sup>183</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 60-61. See also ICRC Commentary on Additional Protocols, paras 2069-2079 (regarding Article 53 of Additional Protocol I).

<sup>184</sup> *Naletilić and Martinović* Trial Judgement, para. 605; *Strugar* Trial Judgement, para. 310.

<sup>185</sup> *Brdanin* Trial Judgement, para. 599; *Hadžihasanović and Kubura* Trial Judgement, para. 59.

<sup>186</sup> The offence of plunder has also been codified in the following instruments: Article 6(b) of the Nuremberg Charter and Article 2(1)(b) of Control Council Law No. 10, punishing the war crime of “plunder of public and private property”; Articles 28 and 47 of the Hague Regulations, Article 7 of Hague Convention IX, and Article 33 of Geneva Convention IV, Article 4(2)(g) of Additional Protocol II, prohibiting pillage; Article 46 of the Hague Regulations, prohibiting confiscation of private property.

<sup>187</sup> *Kordić and Čerkez* Appeal Judgement, para. 84.

<sup>188</sup> *Kordić and Čerkez* Appeal Judgement, para. 79. See also *Blaškić* Appeal Judgement, para. 147. Acts of unjustified appropriation of property range from isolated acts of looting, theft or plunder committed by individuals for private gain, to organised seizure of property in violation of the rights of the owners, undertaken within the framework of a systematic economic exploitation of the targeted area, *Čelebići* Trial Judgement, para. 590; *Jelišić* Trial Judgement, para. 48; *Kordić and Čerkez* Trial Judgement, para. 352.

<sup>189</sup> *Kordić and Čerkez* Appeal Judgement, para. 79.

prisoners of war may not be taken away.<sup>191</sup> According to the Hague Regulations, forcible contribution of money, requisition for the needs of the occupying army, and seizure of material obviously related to the conduct of military operations, though restricted, are lawful in principle.<sup>192</sup>

103. It is required that the property unlawfully appropriated be of “sufficient monetary value” for its appropriation to involve grave consequences for the victim.<sup>193</sup> The assessment of whether a piece of property holds the required value “can only be made on a case-by-case basis and only in conjunction with the general circumstances of the crime”.<sup>194</sup> This requirement could be met in cases where appropriations take place *vis-à-vis* a large number of people, even though they do not lead to grave consequences for each individual.<sup>195</sup> What needs to be considered here is “the overall effect on the civilian population and the multitude of offences committed”.<sup>196</sup>

104. With respect to the *mens rea* of this crime, the unlawful appropriation of property must have been perpetrated with either direct or indirect intent.<sup>197</sup>

#### **M. Deportation and other inhumane acts (forcible transfer)**

105. Milan Martić is charged with deportation and other inhumane acts (forcible transfers) under Article 5(d) and (i), respectively (Counts 10 and 11).<sup>198</sup>

106. The protected interests underlying the prohibitions against deportation and forcible transfer “include the right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location.”<sup>199</sup>

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<sup>190</sup> *Naletilić and Martinović* Trial Judgement, para. 616; *Hadžihasanović and Kubura* Trial Judgement, para. 51.

<sup>191</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 51. *See also* Lieber Code, Article 45; Hague Regulations, Article 4; Geneva Convention III, Article 18 (1).

<sup>192</sup> Hague Regulations, Articles 51-53. Article 52 provides that “Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible”. *See also* Geneva Convention IV, Articles 55(2) and 57; *Naletilić and Martinović* Trial Judgement, para. 616; *Simić et al.* Trial Judgement, para. 100. Article 4(2)(g) of Additional Protocol II prohibits pillage in non-international armed conflicts, *see Hadžihasanović and Kubura* Trial Judgement, para. 52; *Customary International Humanitarian Law*, ICRC, Volume I, pp 181-182.

<sup>193</sup> *Čelebići* Trial Judgement, para. 1154, *referred to by Kordić and Čerkez* Trial Judgement, para. 352 and later upheld by *Kordić and Čerkez* Appeal Judgement, para. 82.

<sup>194</sup> *Kordić and Čerkez* Appeal Judgement, para. 82; *Hadžihasanović and Kubura* Trial Judgement, para. 55.

<sup>195</sup> *Kordić and Čerkez* Appeal Judgement, para. 83; *Naletilić and Martinović* Trial Judgement, para. 614; *Hadžihasanović and Kubura* Trial Judgement, para. 55.

<sup>196</sup> *Kordić and Čerkez* Appeal Judgement, para. 83.

<sup>197</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 50; *Orić* Decision on the Motion for Acquittal pursuant to Rule 98 *bis*, Hearing, 8 Jun 2005, T. 9027.

<sup>198</sup> In this judgement, the term “forcible transfer” will be used concerning displacement charged in Count 11.

<sup>199</sup> *Stakić* Appeal Judgement, para. 277, *accepting Stakić* Trial Judgement, para. 681.

107. The *actus reus* of deportation is “the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a *de jure* border or, in certain circumstances, a *de facto* border, without grounds permitted under international law.”<sup>200</sup> The *actus reus* of forcible transfer is the forced displacement of persons within national boundaries.<sup>201</sup>

108. The element that the displacement be forced requires that the victims had no genuine choice in their displacement.<sup>202</sup> In situations where the victims have consented, or even requested, their removal, that consent “must be real in the sense that it is given voluntarily and as a result of the individual’s free will, assessed in the light of surrounding circumstances.”<sup>203</sup>

109. International law permits involuntary displacements on humanitarian grounds.<sup>204</sup> Thus, in cases where displacements are permitted on humanitarian grounds, the act of displacement cannot constitute the *actus reus* of deportation or forcible transfer.<sup>205</sup> However, displacements for humanitarian reasons are not justifiable where the humanitarian crisis that caused the displacement is itself the result of the accused’s own unlawful activity.<sup>206</sup>

110. With regard to deportation, the *Stakić* Appeals Chamber found that “the default principle under customary international law [...] is that there must be expulsion across a *de jure* border to another country.”<sup>207</sup> The Appeals Chamber has also held that under certain circumstances displacement across a *de facto* border may be sufficient to amount to deportation.<sup>208</sup>

111. The *mens rea* of deportation is that the perpetrator must intend to displace the victims across the border.<sup>209</sup> The *mens rea* of forcible transfer is that the perpetrator must intend to displace the

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<sup>200</sup> *Stakić* Appeal Judgement, para. 278.

<sup>201</sup> *Stakić* Appeal Judgement, para. 317.

<sup>202</sup> *Stakić* Appeal Judgement, para. 279. The absence of genuine choice has been interpreted to include displacement as a result of threats or the use of force, fear of violence, and illegal detention, *Krnjelac* Appeal Judgement, para. 229. The Appeals Chamber has held that factors other than force may render an act involuntary, such as taking advantage of coercive circumstances, *Kunarac et al.* Appeal Judgement, para. 129 (in the context of rape).

<sup>203</sup> *Stakić* Appeal Judgement, para. 279, referring to *Krnjelac* Appeal Judgement para. 299 and *Kunarac et al.* Appeal Judgement, paras 127-128 (the latter in the context of rape).

<sup>204</sup> Article 49(2) of Geneva Convention IV, which is applicable to international armed conflict, provides that “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.” Similarly, Article 17 of Additional Protocol II, which is applicable to non-international armed conflict, provides that “[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.” While Article 17 of Additional Protocol II does not use the term “evacuation” it is clear from reading the provision that the same temporary measure as described in Article 49(2) of Geneva Convention IV is intended.

<sup>205</sup> *Stakić* Appeal Judgement, para. 286, noting that “the participation of an NGO in facilitating displacements does not in and of itself render an otherwise unlawful transfer lawful”, *ibid.*

<sup>206</sup> *Stakić* Appeal Judgement, para. 287.

<sup>207</sup> *Stakić* Appeal Judgement, para. 300.

<sup>208</sup> In general, the question whether a particular *de facto* border is sufficient for the purposes of the crime of deportation should be examined on a case by case basis in light of customary international law, *Stakić* Appeal Judgement, para. 300, (footnotes omitted).

<sup>209</sup> *Stakić* Appeal Judgement, para. 278.



victims within the relevant national border.<sup>210</sup> It is not necessary for either crime that the perpetrator intends the displacement to be permanent.<sup>211</sup>

## N. Persecution

112. Milan Martić is charged with persecution, as a crime against humanity pursuant to Article 5(h) of the Statute (Count 1).

113. The crime of persecution consists of an act or omission, which:

1. discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law; and
2. was carried out deliberately with the intention to discriminate on political, racial or religious grounds.<sup>212</sup>

114. Each of the three grounds listed is in itself sufficient to qualify conduct as persecution, notwithstanding the conjunctive “and” in the text of Article 5(h).<sup>213</sup>

115. What distinguishes persecution from other crimes against humanity is that the underlying act is committed on discriminatory grounds.<sup>214</sup> There is no comprehensive list of the acts which may constitute persecution.<sup>215</sup> Such acts may be one of those listed under Article 5 of the Statute, or one of the acts constituting a crime under other articles of the Statute.<sup>216</sup> Furthermore, a persecutory act need not be prohibited explicitly either in Article 5 or elsewhere in the Statute.<sup>217</sup>

116. It is not the case, however, that *any* act, if committed with the requisite discriminatory intent, amounts to persecutions as a crime against humanity.<sup>218</sup> There must be clearly defined limits on the expansion of the types of acts which qualify as persecution.<sup>219</sup> In order to amount to persecutions, the act must constitute a denial or infringement of a fundamental right laid down in

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<sup>210</sup> *Stakić* Appeal Judgement, para. 317.

<sup>211</sup> *Stakić* Appeal Judgement, paras 278, 317.

<sup>212</sup> *Kvočka et al.* Appeal Judgement, para. 320; *Krnjelac* Appeal Judgement para. 185; *Vasiljević* Appeal Judgement para. 113; *Blaškić* Appeal Judgement, para. 131; *Kordić and Čerkez* Appeal Judgement para. 101; *Stakić* Appeal Judgement, para. 327.

<sup>213</sup> *Tadić* Trial Judgement, para. 713. See e.g. *Krnjelac* Appeal Judgement, para. 184.

<sup>214</sup> *Kupreškić et al.* Trial Judgement, para. 607.

<sup>215</sup> *Vasiljević* Trial Judgement, para. 246, citing *Tadić* Trial Judgement, para. 694; *Kupreškić et al.* Trial Judgement, paras 567-568, 614; *Blaškić* Trial Judgement, 218-219; *Kordić and Čerkez* Trial Judgement, para. 192; *Krnjelac* Trial Judgement, para. 433.

<sup>216</sup> *Krnjelac* Appeal Judgement, para. 219.

<sup>217</sup> *Kupreškić et al.* Trial Judgement, para. 614. The Trial Chamber in *Tadić* held that “the persecutory act must be intended to cause, and result in, an infringement on an individual’s enjoyment of a basic or fundamental right”, *Tadić* Trial Judgement, para. 715. Furthermore, it has been held that the acts themselves do not have to be inherently criminal, but they may become criminal and persecutory if committed with discriminatory intent, *Kvočka et al.* Trial Judgement, para. 186. See also *Tadić* Trial Judgement, para. 710.

<sup>218</sup> *Blaškić* Appeal Judgement, para. 139.

<sup>219</sup> *Kupreškić et al.* Trial Judgement, para. 618; *Kordić and Čerkez* Trial Judgement para. 194.

customary international law.<sup>220</sup> Furthermore, not every act which constitutes a denial or infringement of a fundamental right is serious enough to constitute persecution. Acts of persecution must be of equal gravity to the acts enumerated under Article 5.<sup>221</sup>

117. A single act or omission may be sufficient to constitute persecution “as long as this act or omission discriminates in fact and was carried out deliberately with the intention to discriminate on one of the listed grounds.”<sup>222</sup> Therefore, the act or omission itself must have discriminatory consequences and not just be carried out with discriminatory intent.<sup>223</sup>

118. It has been held that an act is discriminatory when a victim is targeted because of membership of a “group defined by the perpetrator on a political, racial or religious basis”.<sup>224</sup> However, it is not necessary that a victim actually *be* a member of the targeted group. Thus, a Serb mistaken for a Muslim may still be the victim of the crime of persecution.<sup>225</sup>

119. The jurisprudence holds that the following acts, which the Prosecution has charged under Count 1 of the Indictment, may constitute the underlying acts of the crime of persecution: extermination and murder; imprisonment, inhumane living conditions, torture, beatings, sexual assault, unlawful attacks on civilians, restrictive and discriminatory measures, robbery, deportation or forcible transfer, destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites.<sup>226</sup>

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<sup>220</sup> *Kordić* Appeal Judgement, para. 103; *Blaškić* Appeal Judgement, para. 139.

<sup>221</sup> *Blaškić* Appeal Judgement, para. 160; *Kupreškić et al.* Trial Judgement para. 619.

<sup>222</sup> *Vasiljević* Appeal Judgement, para. 113. *See also Kordić and Čerkez* Appeal Judgement, para. 102.

<sup>223</sup> *Blaškić* Appeal Judgement, para. 135. *See also Blagojević and Jokić* Trial Judgement, para. 583; *Stakić* Trial Judgement, para. 733.

<sup>224</sup> *Blagojević and Jokić* Trial Judgement, para. 583.

<sup>225</sup> *Krnjelac* Appeal Judgement para. 185.

<sup>226</sup> *Blaškić* Appeal Judgement, paras 143, 153, 155, 159; *Kordić and Čerkez* Appeal Judgement paras 104-106, 108, 672; *Krnjelac* Appeal Judgement, paras 221-222; *Brdanin* Trial Judgement, paras 999, 1029 *et seq*; *Krnjelac* Trial Judgement, paras 438-443; *Kupreškić et al.* Trial Judgement, para. 615; *Stakić* Trial Judgement, para. 757 (holding that “not only rape, but also any other sexual assault falling short of actual penetration is punishable [as persecution]”); *Tadić* Trial Judgement, para. 717. While robbery has not previously been expressly considered as a crime which may constitute an underlying act of persecutions, the Trial Chamber notes that the fundamental right to property is recognised in the Tribunal’s jurisprudence, *see e.g. Blaškić* Appeal Judgement, para. 145, *Blagojević* Trial Judgement, paras 593-594; *Naletelić and Martinović* Trial Judgement, para. 699 (and authorities cited therein); *Kordić and Čerkez* Appeal Judgement, para. 81. The Trial Chamber further notes that destruction of property may constitute an underlying act of the crime of persecutions, *see e.g. Blaškić* Appeal Judgement, para. 146 (and authorities cited therein); *Kordić and Čerkez* Appeal Judgement, para. 108. Aggravated forms of crimes against property in the context of plunder under Article 3 of the Statute have been recognised as acts of persecutions, *see e.g. Kupreškić et al.* Trial Judgement, para. 631; *Kordić and Čerkez* Trial Judgement, para. 205. Moreover, theft and robbery have been considered in the context of a persecutory campaign, *see e.g. Kvočka et al.* Trial Judgement, para. 496, in which the Trial Chamber held “[the Accused] was involved in the extortion of detainees and stealing money from detainees in Omarska camp, which in this context can be characterized as part of the harassment inflicted upon detainees in the camp and thus a part of the persecutory campaign”. *See also Kvočka et al.* Trial Judgement, para. 731, *Kordić and Čerkez* Trial Judgement, paras 514-520. The Trial Chamber is therefore satisfied that the appropriation of property with violence in the form of robbery may constitute an underlying act of the crime of persecution if perpetrated with the requisite intent. In relation to destruction, the Trial Chamber in *Kupreškić et al.* found that the comprehensive destruction of homes and property,

120. The crime of persecution requires evidence of a specific intent to discriminate on political, racial or religious grounds.<sup>227</sup> This intent must be aimed at a group, rather than an individual; thus the *mens rea* “is the specific intent to cause injury to a human being because he belongs to a particular community or group.”<sup>228</sup>

121. Discriminatory intent may be inferred, for example from the discriminatory nature of an attack characterised as a crime against humanity provided that the circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.<sup>229</sup> However, discriminatory intent may not be inferred directly from the *general* discriminatory nature of such an attack, that is such a context may not in and of itself amount to evidence of discriminatory intent.<sup>230</sup>

122. Circumstances which may be taken into consideration when inferring discriminatory intent include “the systematic nature of the crimes committed against a racial or religious group and the general attitude of the alleged perpetrator as demonstrated by his behaviour”.<sup>231</sup> Generally, such specific intent can only be inferred from “objective facts and the general conduct of an accused seen in its entirety.”<sup>232</sup>

#### **O. The Defence’s challenge to the concept of JCE**

123. In its closing arguments, the Defence submitted that JCE is not envisaged in the Statute as a mode of liability and that its existence and applicability can only be established by the United Nations Security Council.<sup>233</sup> The Defence therefore submits that the application of JCE in the instant case is beyond the competence of the Trial Chamber.<sup>234</sup> This conclusion, in the Defence’s view, is not affected by the consideration that JCE has been applied in previous cases.<sup>235</sup>

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which constituted the destruction of the livelihood of a certain population, may constitute a gross or blatant denial of fundamental rights, and if committed on discriminatory grounds, could amount to persecutions, *Kupreškić et al.* Trial Judgement, para. 631. The Trial Chamber in *Kordić and Čerkez* held that the destruction and damage of religious or educational institutions may constitute persecution, *Kordić and Čerkez* Trial Judgement, para. 207. In relation to plunder, the Appeals Chamber in *Kordić and Čerkez* held that it must be considered whether an act of plunder, committed separately or cumulatively, with discriminatory intent *in concreto* amounts to persecutions being of an equal gravity as the other crimes against humanity listed in Article 5 of the Statute, *Kordić and Čerkez* Appeal Judgement para. 109. *See also Blaškić* Trial Judgement, para. 227; *Kordić and Čerkez* Trial Judgement para. 205; *Kupreškić et al.* Trial Judgement para. 631; *Tadić* Trial Judgement paras 707, 710.

<sup>227</sup> *Kvočka et al.* Appeal Judgement, para. 460; *Blaškić* Appeal Judgement, para. 165.

<sup>228</sup> *Kordić and Čerkez* Appeal Judgement, para. 111.

<sup>229</sup> *Blaškić* Appeal Judgement, para. 164, citing *Krnjelac* Appeal Judgement, 184. *See also Kordić and Čerkez* Appeal Judgement paras 110, 950; *Kvočka et al.* Appeal Judgement para. 366; *Naletelić and Martinović* Appeal Judgement, paras 131, 146, 572.

<sup>230</sup> *Kvočka et al.* Appeal Judgement, para. 460 (emphasis added).

<sup>231</sup> *Kvočka et al.* Appeal Judgement, para. 460.

<sup>232</sup> *Kordić and Čerkez* Appeal Judgement, para. 715.

<sup>233</sup> Defence Closing Argument, 11 Jan 2007, T. 11325-11327.

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*

124. The Trial Chamber will discuss JCE as a mode of liability later in the judgement.<sup>236</sup> However, as the Defence has effectively raised a jurisdictional challenge in relation to the application of JCE to the instant case, the Trial Chamber considers it necessary to deal with the Defence submission in the present section.

125. The principle of individual criminal responsibility is laid down in Article 7(1) of the Statute, which provides as follows:

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

126. The Appeals Chamber found that the Statute does not confine itself to providing for jurisdiction over those persons who plan, instigate, order, physically perpetrate a crime or otherwise aid and abet in its planning, preparation or execution.<sup>237</sup> This is established jurisprudence. In other words, the Statute does not exclude other modes of liability such as JCE, which are based in customary international law. After reviewing relevant treaties and national legislation, as well as several post-World War II war-crimes cases, the Appeals Chamber held that JCE existed as a mode of individual criminal responsibility in customary international law at the time of the events in the former Yugoslavia.<sup>238</sup> The Appeals Chamber therefore found that JCE is a form of “commission” under Article 7(1) of the Statute for which the Tribunal has jurisdiction *ratione personae*. The Defence argument is therefore dismissed.

### III. FACTUAL FINDINGS

#### A. Background

127. In April and May 1990, multi-party elections were held in the Socialist Republic of Croatia.<sup>239</sup> The Croatian Democratic Union (“HDZ”) won 41.5% of the votes and two-thirds of the seats in the Parliament.<sup>240</sup> On 30 May 1990, the HDZ candidate Franjo Tudman was elected President of the Presidency of the Socialist Republic of Croatia.<sup>241</sup> As a result of the elections, the

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<sup>236</sup> See *infra* Section IV, B 1.

<sup>237</sup> *Tadić* Appeal Judgement, para. 190.

<sup>238</sup> *Tadić* Appeal Judgement, para. 226. See also *Brdanin* Appeal Judgement, paras 363-365.

<sup>239</sup> Ex. 820, Agreed Facts, para. 3. See also Veljko Džakula, 16 Jan 2006, T. 344; Milan Babić, 3 Mar 2006, T. 1852; Vlado Vuković, 27 Mar 2006, T. 2681; Witness MM-036, 4 Apr 2006, T. 3198; Ratko Ličina, 14 Aug 2006, T. 6370.

<sup>240</sup> Ex. 820, Agreed Facts, para. 3. See also Milan Babić, 15 Feb 2006, T. 1358, 21 Feb 2006, T. 1720; Witness MM-022, 20 Mar 2006, T. 2321; Vlado Vuković, 27 Mar 2006, T. 2681; Witness MM-078, 25 May 2006, T. 4481; Witness MM-096, 18 Aug 2006, T. 6728.

<sup>241</sup> Ex. 820, Agreed Facts, para. 3. See also Veljko Džakula, 17 Jan 2006, T. 453-454; Milan Babić, 21 Feb 2006, T. 1720.

Serbian Democratic Party (“SDS”) gained power in the municipalities of Benkovac, Donji Lapac, Gračac, Glina, Korenica, Knin, Obrovac, and Vojnić.<sup>242</sup>

128. On 25 July 1990, a Serbian Assembly was established in Srb, north of Knin, as the political representation of the Serbian people in Croatia.<sup>243</sup> The Serbian Assembly declared sovereignty and autonomy of the Serb people in Croatia.<sup>244</sup> On 31 July 1990, Milan Babić became president of the Serbian National Council (“SNC”), the executive body of the Serbian Assembly.<sup>245</sup> On 16 August 1990, the SNC called for a referendum on the autonomy of Serbs in Croatia to be held between 19 August and 2 September 1990.<sup>246</sup> The following day, 17 August 1990, the Government of Croatia declared the referendum illegal. The Croatian police moved towards several Serb-majority towns in the Krajina region and removed weaponry from the SJBs.<sup>247</sup> Serbs responded by putting up barricades in Knin and surroundings.<sup>248</sup> The referendum was held between 19 August and 2 September 1990: 97.7% voted in favour of autonomy.<sup>249</sup>

## **B. The SAO Krajina**

### **1. Development of the SAO Krajina**

129. On 21 December 1990, the SAO Krajina was proclaimed by the municipalities of the regions of Northern Dalmatia and Lika, in south-western Croatia.<sup>250</sup> Article 1 of the Statute of the SAO Krajina defined the SAO Krajina as “a form of territorial autonomy within the Republic of Croatia” on which the Constitution of the Republic of Croatia, state laws and the Statute of the SAO Krajina were applied.<sup>251</sup>

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<sup>242</sup> Veljko Džakula, 16 Jan 2006, T. 344; Milan Babić, 15 Feb 2006, T. 1359; Witness MM-037, 28 Mar 2006, T. 2767-2668; Ratko Ličina, 14 Aug 2006, T. 6381-6382, 6403-6404; Branko Popović, 8 Sep 2006, T. 7996-7997. The SDS’ aims and goals included “creating conditions for the full self-confirmation of the spiritual and cultural identity of each Yugoslav people by itself, independently of which federal unit it belonged to; ensuring constitutional possibility for establishing territorial autonomies inside the federal units, if the population on the territories with a special ethnic composition or cultural and historical identity decides so on a referendum”, Ex. 138. *See also* Veljko Džakula, 16 Jan 2006, T. 344; Ratko Ličina, 14 Aug 2006, T. 6371; Ex. 23, pp 20, 24-25.

<sup>243</sup> Ex. 820, Agreed Facts, para. 4. *See also* Ex. 23, p. 25.

<sup>244</sup> Ex. 820, Agreed Facts, para. 4. *See also* Veljko Džakula, 16 Jan 2006, T. 385, 18 Jan 2006, T. 507; Milan Babić, 21 Feb 2006, T. 1743-1744; Ratko Ličina, 15 Aug 2006, T. 6497, 17 Aug 2006, T. 6693-6696; Lazar Macura, 13 Sep 2006, T. 8272; Ex. 141.

<sup>245</sup> Milan Babić, 15 Feb 2006, T. 1327.

<sup>246</sup> Ex. 820, Agreed Facts, para. 5. *See also* Ex. 179.

<sup>247</sup> Witness MM-096, 18 Aug 2006, T. 6755, 6761-6762, 6769. *See also* Ex. 22; Ex. 23.

<sup>248</sup> This is also referred to as the “Log Revolution”, Ex. 820, Agreed Facts, para. 6. *See also* Ex. 496, p. 6; Ex. 497; Witness MM-003, 8 Mar 2006, T. 1968-1969; Witness MM-078, 25 May 2006, T. 4475; Ratko Ličina, 14 Aug 2006, T. 6397, 6400; Witness MM-096, 18 Aug 2006, T. 6777-6778.

<sup>249</sup> Ex. 820, Agreed Facts, para. 7. *See also* Veljko Džakula, 18 Jan 2006, T. 508; Milan Babić, 21 Feb 2006, T. 1746-1747, 2 Mar 2006, T. 1771; Ex. 142.

<sup>250</sup> Ex. 820, Agreed Facts, para. 9. *See also* Milan Babić, 21 Feb 2006, T. 1747; Ex. 143.

<sup>251</sup> Ex. 820, Agreed Facts, para. 9. *See also* Milan Babić, 21 Feb 2006, T. 1747-1748. Art 4 of the Statute provided that “[t]he Serbian Autonomous District of Krajina shall have territory that is comprised of territories of the present Union of Municipalities of Northern Dalmatia and Lika, territories of municipalities with majority Serbian populations which

130. On 22 December 1990, the Parliament of Croatia adopted a new constitution, wherein Croatia was defined as “the national state of the Croatian nation and a state of members of other nations and minorities who are citizens: Serbs [...] who are guaranteed equality with citizens of Croatian nationality [...]”.<sup>252</sup> The Serb population in the Krajina region considered that by the adoption of the new constitution, they had been deprived of the right to be a constituent nation in Croatia, which would include the right of self-determination.<sup>253</sup>

131. On 4 January 1991, the Executive Council of the SAO Krajina established the Regional Secretariat for Internal Affairs (“SUP”) in Knin.<sup>254</sup> On the same date, Milan Martić was appointed the Secretary for Internal Affairs of the SAO Krajina.<sup>255</sup> On 5 January 1991, the Executive Council informed the MUP of Croatia that the establishment of the SUP revoked the authority of the MUP of Croatia in the SAO Krajina territory.<sup>256</sup>

132. In March 1991, there were armed clashes in Pakrac in Western Slavonia and in Plitvice between Titova Korenica and Saborsko between Croatian MUP special police forces and the police of the SAO Krajina. In both of these clashes, the JNA intervened to separate the two sides.<sup>257</sup>

133. On 1 April 1991, Milan Babić as President of the Executive Council of the SAO Krajina ordered mobilisation of the TO and volunteer units of the SAO Krajina.<sup>258</sup> However, the evidence shows that between January and August 1991 the municipal TO staffs and units only existed on paper.<sup>259</sup> In the same order, Milan Babić requested the MUP of Serbia to provide technical and

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adopt decisions to joint the Serbian Autonomous District of Krajina, and settlements in which Serbian people comprise the majority of the population and which have voted at a referendum in favour of joining one of the existing or newly established municipalities with a majority Serbian population”, Ex. 143.

<sup>252</sup> Ex. 910, p. 9; Veljko Džakula, 18 Jan 2006, T. 513.

<sup>253</sup> Ratko Ličina, 14 Aug 2006, T. 6386, 16 Aug 2006, T. 6542-6543; Witness MM-090, 1 Sep 2006, T. 7563-7573.

<sup>254</sup> Ex. 183. The SUP in Knin included SJBs of Obrovac, Benkovac, Knin, Gračac, Titova Korenica, Donji Lapac, Dvor na Uni, Glina, Kostajnica, Vojnić, *ibid.*; Witness MM-096, 21 Aug 2006, T. 6829, 6831-6832. *See also* Ex. 182; Ex. 181; Reynaud Theunens, 26 Jan 2006, T. 686-687; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 10-16; Ex. 1044.

<sup>255</sup> Ex. 820, Agreed Facts, para. 10. *See also* Milan Babić, 15 Feb 2006, T. 1397-1398, 1406, 2 Mar 2006, T. 1800; Reynaud Theunens, 3 Feb 2006, T. 1013; Ex. 33.

<sup>256</sup> Ex. 183. *See also* Ex. 485, Decree on Internal Organisation and Operation of the Ministry of the Interior, providing that there were two services within the MUP, the Public Security Service and the State Security Service (Art. 7), and that in the event of a state of war or imminent threat of war “special police units” would be formed (Art. 6a).

<sup>257</sup> Veljko Džakula, 18 Jan 2006, T. 516-517; Milan Babić, 17 Feb 2006, T. 1506-1507, 1510-1513, (also testifying that a Croat and a Serb policeman were killed), 20 Feb 2006, T. 1600; Marko Vuković, 24 Mar 2006, T. 2571; Vlado Vuković, 27 Mar 2006, T. 2651, 2686-2688, 28 Mar 2006, T. 2722, 2729; Witness MM-037, 28 Mar 2006, T. 2758; Ex. 268, T. 11621; Slobodan Perić, 7 Sep 2006, T. 7908-7910; Lazar Macura, 12 Sep 2006, T. 8208; Stevo Plejo, 20 Sep 2006, T. 8676-8677; Nikola Medaković, 9 Oct 2006, T. 8957-8958; Ex. 476, p. 251.

<sup>258</sup> Ex. 29. In the SFRY, the TO was organised, funded and equipped on the level of the Republics of the SFRY, Reynaud Theunens, 26 Jan 2006, T. 656; Ex. 6, p. 6. *See also* Ex. 147.

<sup>259</sup> Milan Babić, 15 Feb 2006, T. 1393-1395, testifying that the only armed units of the SAO Krajina during this time period were the *Milicija Krajine* and volunteer units, *see also* Radoslav Maksić, 6 Feb 2006, T. 1154-1155, 1171. Ex. 30 providing (p. 1) that the Benkovac municipality TO staff, following a decision by the SAO Krajina Government of 15 July 1991, began “forming and arming the TO units of Benkovac Municipality on 17 July 1991”. It is also stated (p. 1) that “the most difficult problem during the beginning of the formation of TO units was that there was a very small quantity of weapons available.”

personnel support to the SUP of the SAO Krajina.<sup>260</sup> Also on 1 April 1991, the Executive Council of the SAO Krajina passed a decision joining the SAO Krajina to Serbia, wherein it was stipulated that the constitution and laws of Serbia, as well as the constitutional-legal system of the SFRY, were to apply in the SAO Krajina.<sup>261</sup> It was also decided that a referendum was to be held on the question: “[a]re you in favour of the annexation of the SAO Krajina to the Republic of Serbia on the 30<sup>th</sup> of April?”<sup>262</sup> The President of Serbia, Slobodan Milošević, publicly opposed the referendum on joining the SAO Krajina with Serbia, stating that the ballot would have to read instead “in favour of remaining in Yugoslavia”; moreover, he asked that the decision on the annexation of the SAO Krajina to Serbia, be withdrawn.<sup>263</sup>

134. On 12 May 1991, after the intervention of Slobodan Milošević, the referendum was held on the following question: “[a]re you in favour of the SAO Krajina joining the Republic of Serbia and staying in Yugoslavia with Serbia, Montenegro and others who wish to preserve Yugoslavia?” with 99.8% voting in favour.<sup>264</sup> On 16 May 1991, the Assembly of the SAO Krajina approved the outcome of the referendum and stated that “the territory of the SAO Krajina is a constitutive part of the unified state territory of the Republic of Serbia”.<sup>265</sup> Both Milan Babić and Milan Martić publicly expressed views that SAO Krajina belonged with Serbia.<sup>266</sup> On 19 May 1991, a referendum was held in Croatia, except in predominantly Serb areas, concerning independence of Croatia from Yugoslavia. 94.1% of those voting came out in favour of independence.<sup>267</sup>

135. On 29 May 1991, the SAO Krajina government was established with Milan Babić as President.<sup>268</sup> Milan Babić appointed Milan Martić as Minister of Defence.<sup>269</sup> On the same day, the Assembly of the SAO Krajina established “special purpose police units” named *Milicija Krajine*, in addition to the previously established Public Security Service police and State Security Service police.<sup>270</sup> The *Milicija Krajine* was established within the MUP, but was put under the authority of

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<sup>260</sup> Ex. 29.

<sup>261</sup> Ex. 820, Agreed Facts, para. 11. See also Milan Babić, 16 Feb 2006, T. 1511; Ex. 144; Ex. 145.

<sup>262</sup> Milan Babić, 2 Mar 2006, T. 1824, 1830-1832; Ex. 148.

<sup>263</sup> Ex. 235. See also Ex. 201, p. 3; Mile Dakić, 25 Oct 2006, T. 10025-10026; Milan Babić, 16 Feb 2006, T. 1476-1477, 2 Mar 2006, T. 1830-1831; Lazar Macura, 14 Sep 2006, T. 8326.

<sup>264</sup> Ex. 820, Agreed Facts, para. 13. See also Milan Babić, 2 Mar 2006, T. 1830; Ex. 146; Ex. 148; Ex. 234.

<sup>265</sup> Ex. 613, Art. 3, p. 45. See also Ex. 149. Following this decision, an SAO Krajina delegation went to Belgrade to present the results of the referendum as well as the request on the annexation of the SAO Krajina to Serbia, however the delegation was not received by the Serbian Assembly, Lazar Macura, 12 Sep 2006, T. 8201-8203. See also Ljubica Vujanić, 15 Sep 2006, T. 8479-8480, 18 Sep 2006, T. 8535-8538; Ex. 956.

<sup>266</sup> Ex. 973; Ex. 955, pp 3-4. See also Witness MM-105, 1 Nov 2006, T. 10496-10497. On 29 May 1991, the Assembly of the SAO Krajina passed the Constitutional Law of the SAO Krajina which defined the SAO Krajina as part of the federative Yugoslavia, Ex. 820, Agreed Facts, para. 13.

<sup>267</sup> Ex. 820, Agreed Facts, para. 14. See also Ex. 1019, p. 5.

<sup>268</sup> Milan Babić, 15 Feb 2006, T. 1328.

<sup>269</sup> Milan Babić, 15 Feb 2006, T. 1405-1407. See also Ex. 154.

<sup>270</sup> Ex. 820, Agreed Facts, para. 15. See also Ex. 485. The Public Security Service was responsible for maintaining law and order. The SDB handled political crime, terrorism, extremism, and intelligence work. The *Milicija Krajine* units

the Ministry of Defence.<sup>271</sup> The *Milicija Krajine* units wore patches on the sleeves of their uniforms reading in Cyrillic “Milicija Krajine”.<sup>272</sup> On 27 June 1991, Milan Martić was appointed Minister of Interior.<sup>273</sup> According to Milan Babić, on this day Milan Martić withdrew from his position as Minister of Defence.<sup>274</sup>

136. On 25 June 1991, Croatia and Slovenia declared independence from Yugoslavia.<sup>275</sup> However, on 8 July 1991, an international agreement was reached that Croatia and Slovenia would suspend implementation of their independence until 8 October 1991.<sup>276</sup>

137. On 1 August 1991, the SAO Krajina government decided to apply the Law on Defence of Serbia in the SAO Krajina. Accordingly, the *Milicija Krajine* units together with the TO made up the armed forces of the SAO Krajina.<sup>277</sup> The evidence shows that the TO used JNA solid-colour uniforms with patches reading “SAO Krajina” in Cyrillic, on the sleeve.<sup>278</sup> Milan Babić, as President, was the Commander of the TO of the SAO Krajina.<sup>279</sup> On 8 August 1991, Milan Martić was appointed Deputy Commander of the TO of the SAO Krajina, in which position he remained

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defended the territorial integrity of the [SAO Krajina], secured vital facilities, infiltrated sabotage groups, and could also be used in military operations, Radoslav Maksić, 6 Feb 2006, T. 1169-1170; Witness MM-079, 31 Mar 2006, T. 3030-3031; Nikola Medaković, 10 Oct 2006, T. 9054; Witness MM-117, 18 Oct 2006, T. 9674; Ex. 32.

<sup>271</sup> Ex. 820, Agreed Facts, para. 15. The Trial Chamber notes the evidence that a clash occurred between Milan Babić and Milan Martić as a result of the former’s decision to appoint Dušan Vještica as Minister of Interior, and that according to Milan Babić, Milan Martić only accepted the appointment as Minister of Defence on condition that he “could still maintain his control over the special police units which were being trained at Golubić”, Milan Babić, 15 Feb 2006, T. 1406, 1408; Ex. 44; Ex. 544; Ex. 1028, Group 2, p. 13. *See also* Ex. 485, Art. 6b, according to which the “leader” of the future *Milicija Krajine* Service would be accountable to the Minister of the Interior.

<sup>272</sup> Vlado Vuković, 27 Mar 2006, T. 2701-2703; Nikola Medaković, 10 Oct 2006, T. 9052; Ex. 266.

<sup>273</sup> Ex. 820, Agreed Facts, para. 16. *See also* Milan Babić, 15 Feb 2006, T. 1408, 2 Mar 2006, T. 1803-1804; Ex. 34. With the establishment of the government in May 1991, the SUP of the SAO Krajina was changed into the MUP of the SAO Krajina, Milan Babić, 15 Feb 2006, T. 1406-1407; Ex. 44. On 1 August 1991, a decision was reached about the application of the law on internal affairs of the Republic of Serbia on the territory of Krajina, Milan Babić, 15 Feb 2006, T. 1403-1404.

<sup>274</sup> Milan Babić, 15 Feb 2006, T. 1407. The Trial Chamber notes that while Ex. 582, dated 23 July 1991 and Ex. 215, dated 19 August 1991, refer to Milan Martić as Minister of Defence, it however accepts the evidence of Milan Babić.

<sup>275</sup> Ex. 820, Agreed Facts, para. 14.

<sup>276</sup> Ex. 820, Agreed Facts, para. 17. *See also* Milan Babić, 2 Mar 2006, T. 1836, 3 March 2006, T. 1882, 1887, 1923.

<sup>277</sup> Ex. 31, Art. 5.

<sup>278</sup> Witness MM-037, 28 Mar 2006, T. 2787-2788, 29 Mar 2006, T. 2813; Ex. 188. Regarding JNA uniforms, *see infra* fn 283.

<sup>279</sup> Ex. 31, Art. 6. The Trial Chamber notes that the *Milicija Krajine* is not mentioned in this provision, Milan Babić, 16 Feb 2006, T. 1422-1424. *See also* Ex. 189; Radoslav Maksić, 6 Feb 2006, T. 1154.



until 30 September 1991.<sup>280</sup> He continued to hold the position of Minister of the Interior while he was Deputy Commander of the TO.<sup>281</sup>

138. As will be discussed below, there were several ongoing clashes between Croatian armed forces and formations and the forces of the SAO Krajina from the spring of 1991, including in Kijevo, Drniš, Hrvatska Dubica, Saborsko, and Škabrnja.<sup>282</sup> During the second half of 1991, there were numerous cease-fire agreements and agreements on the withdrawal of the JNA from Croatia.<sup>283</sup> On 23 November, the Vance Plan was signed by the President of Croatia Franjo Tuđman, the President of Serbia Slobodan Milošević and the SFRY Federal Secretary for Defence General Veljko Kadijević.<sup>284</sup> The Vance Plan made provision for the deployment of a United Nations Protection Force (“UNPROFOR”) in the Krajina, Western Slavonia and Eastern Slavonia, for demilitarisation, and eventual return of refugees and displaced persons.<sup>285</sup> Importantly, the Vance Plan stated that “[t]he role of the United Nations troops would be to ensure that the areas remained demilitarised and that all persons residing in them were protected from fear of armed attack.”<sup>286</sup>

139. On 30 November 1991, the SAO Krajina adopted its own Law on Defence, whereby the Law on Defence of Serbia ceased to apply in the SAO Krajina.<sup>287</sup> According to the new law, the TO

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<sup>280</sup> Ex. 820, Agreed Facts, para. 19. *See also* Milan Babić, 15 Feb 2006, T. 1395-1396, 16 Feb 2006, T. 1435-1437, testifying that in early August 1991 Slobodan Milošević requested him to appoint Milan Martić as Commander of the TO, however he refused to do this because Milan Martić “was not qualified to hold that position, that this was something that a general of the army should do”, and that Milan Martić was instead appointed Deputy Commander of the TO to prevent him from becoming “independent of the government”; Radoslav Maksić, an officer in the SAO Krajina TO and subsequently TO Commander, testifying that he had numerous meetings with Milan Babić as Supreme Commander and only rarely with Milan Martić, Radoslav Maksić, 7 Feb 2006, T. 1230-1231; Reynaud Theunens, 6 Feb 2006, T. 1128-1129; Ex. 37.

<sup>281</sup> Milan Babić, 15 Feb 2006, T. 1395-1396, 16 Feb 2006, T. 1436. *See also* Ex. 121; Reynaud Theunens, 6 Feb 2006, T. 1128-1129.

<sup>282</sup> *See infra* paras 161-171, 173-175, 220-224, 236-243.

<sup>283</sup> These cease-fire agreements included the Brioni Moratorium, Ex. 820, Agreed Facts, para. 17. *See also* Veljko Džakula, 18 Jan 2006, T. 527-528; Milan Babić, 2 Mar 2006, T. 1834-1835, 3 Mar 2006, T. 1871-1872; the Carrington Plan, Milan Babić, 20 Feb 2006, T. 1614-1615, 1634-1635; Lazar Macura, 14 Sep 2006, T. 8328. On 8 October 1991, the JNA and the Croatian armed forces signed an agreement, under the auspices of the European Community, concerning the withdrawal of JNA units from Croatia, Ex. 240; Milan Babić, 3 March 2006, T. 1922-1923. In the SFRY, JNA was a federal institution, Reynaud Theunens, 26 Jan 2006, T. 656; Ex. 6, p. 6. The evidence shows that JNA soldiers wore solid-colour uniforms, which witnesses described as olive-grey or olive-green in colour. The evidence also shows that from 1992 or 1993 camouflage uniforms were introduced for JNA units. The caps had a five-pointed star and the officers had shoulder patches to denote rank, Vlado Vuković, 27 Mar 2006, T. 2706; Lazar Macura, 15 Sep 2006, T. 8401, 8405.

<sup>284</sup> Ex. 820, Agreed Facts, para. 22. *See also* Milan Babić, 20 Feb 2006, T. 1639, 3 March 2006, T. 1914, 1923-1924; Lazar Macura, 14 Sep 2006, T. 8329; Ex. 948.

<sup>285</sup> Veljko Džakula, 16 Jan 2006, T. 406-407; Milan Babić, 20 Feb 2006, T. 1635; Charles Kirudja, 30 May 2006, T. 4787-4788, 1 Jun 2006, T. 4901-4902; Lazar Macura, 13 Sep 2006, T. 8225-8231, 14 Sep 2006, T. 8337; Ex. 115; Ex. 478, p. 1. A cease-fire agreement was subsequently signed on 2 January 1992, Ex. 820, Agreed Facts, para. 24. *See also* Veljko Džakula, 18 Jan 2006, T. 559; Charles Kirudja, 31 May 2006, T. 4888; Slobodan Jarčević, 13 Jul 2006, T. 6196-6197; Ex. 766.

<sup>286</sup> Ex. 115, paras 7, 10-11.

<sup>287</sup> Ex. 36.

was “part of the unified armed forces of the [SFRY]” and the President of the SAO Krajina led “the armed forces in times of peace and in times of war.”<sup>288</sup>

## 2. Support provided to the SAO Krajina

140. As early as August 1990 and through the summer of 1991, officials of the MUP of Serbia, including the Chief of the SDB, Jovica Stanišić, and an official thereof, Franko “Frenki” Simatović, met with the SAO Krajina leadership, in particular with Milan Martić, concerning the provision of financial, logistical and military assistance.<sup>289</sup> From January 1991, Milan Martić went on occasion to Belgrade to meet with these officials and with Radmilo Bogdanović, the Minister of the Interior of Serbia, concerning the provision of support to the SAO Krajina.<sup>290</sup>

141. The SAO Krajina budget was very small as a result of Croatia having ceased to provide budget allocations to Serb municipalities in May 1991.<sup>291</sup> The SAO Krajina government, including Milan Martić, sent requests to the government of Serbia for military assistance and the evidence shows that these requests were frequently met.<sup>292</sup> The police of the SAO Krajina were mainly

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<sup>288</sup> Ex. 36, Articles 6 and 31.

<sup>289</sup> Milan Babić, 17 Feb 2006, T. 1524-1526; Witness MM-003, 8 Mar 2006, T. 1987-1988, 1991-1992. *See also* Radoslav Maksić, 6 Feb 2006, T. 1179-1180.

<sup>290</sup> Milan Babić, 17 Feb 2006, T. 1525; Witness MM-003, 8 Mar 2006, T. 1994-1995; 10 Mar 2006, T. 2134. *See also* Milan Babić, 15 Feb 2006, T. 1392, 16 Feb 2006, T. 1426-1427; Witness MM-079, 3 Apr 2006, T. 3061; Rade Rašeta, 2 May 2006, T. 3921-3924; Witness MM-018, 9 Jun 2006, T. 5354; Ex. 460; Ex. 619. Milan Babić testified that on Slobodan Milošević’s recommendation he met the Ministry of Defence of Serbia to discuss the need to finance and equip the TO “a couple of times” in September of 1991 and in November 1991 in Belgrade, Milan Babić, 16 Feb 2006, T. 1461-1462, 1464. On 1 August 1991, Milan Babić, as President of the SAO Krajina, abolished the SDB of the SAO Krajina, and thereby the SDB of Serbia, on the territory of the SAO Krajina. Milan Babić testified that this was done in order to establish government control over Ministry of Defence of the SAO Krajina. However, the decision was ultimately unsuccessful, which Milan Babić claimed was due to the close ties between the SDB of Serbia and the MUP of the SAO Krajina, Ex. 187; Milan Babić, 16 Feb 2006, T. 1417, 1420 onwards, 2 Mar 2006, T. 1802; Ex. 523 (confirming that the SDB of Serbia was still active and operating in the SAO Krajina in November 1991). *See also* Witness MM-079, 3 Apr 2006, T. 3078-3079. Milan Babić also testified that he asked Slobodan Milošević to remove Franko Simatović from the SAO Krajina, which eventually happened, however by the time of the attack on Lovinac, Franko Simatović had returned, Milan Babić, 16 Feb 2006, T. 1431. Furthermore, Milan Babić testified that Milan Martić was controlled by the SDB of Serbia and by Slobodan Milošević to such an extent that a “parallel structure” was created to the SAO Krajina government and authorities. According to Milan Babić, this parallel structure included the Minister of the Interior of Serbia, Radmilo Bogdanović, officials of the SDB of Serbia, in particular Jovica Stanišić, Franko Simatović, and Captain Dragan Vasiljković, and some representatives of the SDS and of the police in the Serb municipalities in the Krajina, Milan Babić, 15 Feb 2006, T. 1390-1393, 20 Feb 2006, T. 1601-1602. The Trial Chamber notes that Milan Babić characterised Milan Martić as “the most powerful man within the [parallel] structure in the SAO Krajina” and that he was unable to give orders to Milan Martić, Milan Babić, 15 Feb 2006, T. 1390-1392; Ex. 1037, Group 11, pp 4-6 where Milan Babić defines himself as a “spokesman” of the people in Krajina who was incapable of ordering Milan Martić. Contrary to this, Mile Dakić, testified that Milan Martić “was a clerk, an administrator in the SAO government [who] was far below Milan Babić.” Mile Dakić recognised that Milan Martić “may have out-topped Babić in terms of popularity, the press coverage he received and so on and so forth. However, Milan Babić was the political figure at the head of the SAO Krajina leadership”, Mile Dakić, 25 Oct 2006, T. 10021-10022.

<sup>291</sup> Milan Babić, 16 Feb 2006, T. 1454-1455, testifying that also the SAO Krajina ceased payments to Croatia, T. 1458-1459; Witness MM-003, 9 Mar 2006, T. 2086-2087.

<sup>292</sup> Milan Babić, 16 Feb 2006, T. 1460; Radoslav Maksić, 7 Feb 2006, T. 1243-1244; Ex. 41; Ex. 129; Ex. 190; Ex. 193. *See also* Ex. 204; Milan Dragišić, 19 Sep 2006, T. 8644, testifying that Milan Babić desired to create a Serb army of the SAO Krajina, something which Milan Martić opposed, instead advocating cooperation with the JNA.

financed with funds and material from the MUP and SDB of Serbia.<sup>293</sup> Moreover, there is evidence that weapons were sent from Serbia by Radmilo Bogdanović via Bosanski Novi, BiH, to the SAO Krajina.<sup>294</sup> Beginning at the end of April 1991, Dušan Smiljanić, Chief of Security of the JNA 10<sup>th</sup> Zagreb Corps, made contact with leading figures in the SDS in the SAO Krajina and provided large amounts of infantry and artillery weapons to Serbs in Krajina from JNA depots.<sup>295</sup>

142. The SFRY Federal Secretariat of National Defence of the JNA (“SSNO”) made unit and personnel changes within the SAO Krajina armed forces.<sup>296</sup> There is evidence that beginning after the summer of 1991, the SAO Krajina TO was subordinate to the JNA.<sup>297</sup> There is also evidence of operational cooperation between the JNA and the armed forces of the SAO Krajina. Any resubordination of MUP units to the JNA for temporary assignment required prior approval of the Minister of Interior of the SAO Krajina.<sup>298</sup> When resubordinated, the MUP unit would be under the command of the JNA unit commander. However, if the MUP unit was merely acting in cooperation or concert with the JNA unit, it would remain under the command of the MUP commander.<sup>299</sup> After

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<sup>293</sup> Milan Babić, 16 Feb 2006, T. 1458-1460; Radoslav Maksić, 6 Feb 2006, T. 1179-1180; Witness MM-003, 8 Mar 2006, T. 1982-1984, 1987-1988, 9 Mar 2006, T. 2086-2087; Lazar Macura, 14 Sep 2006, T. 8339; Ex. 213. The Krajina was a poor area with few indigenous resources and it was dependent on the life-line that came through BiH from Serbia, Peter Galbraith, 25 Apr 2006, T. 3756. *See also* Ex. 498.

<sup>294</sup> Milan Babić, 17 Feb 2006, T. 1527, 1575. *See also* Milan Babić, 17 Feb 2006, T. 1544-1545, 20 Feb 2006, T. 1603. Ex. 476, p. 283, wherein Borisav Jović, a member of the SFRY Presidency, describes a meeting with Slobodan Milošević, Veljko Kadijević and Blagoje Adžić on 5 April 1991 and stating that the “Serb nation in Croatia” had not armed itself but was counting on protection by the JNA.

<sup>295</sup> Ex. 206. Milan Babić testified to meeting with Dušan Smiljanić during the summer of 1991, Milan Babić, 17 Feb 2006, T. 1531-1532. *See also* Ex. 24, p. 77, wherein Veljko Kadijević stated that “the future army of the Serbian Krajina was actually built up in the course of fighting, and equipped by the JNA with corresponding arms and material”; Ex. 857, p. 5, wherein Željko “Arkan” Raznjatović stated that he provided weapons and money to “Knin”.

<sup>296</sup> Witness MM-037, 28 Mar 2006, T. 2782-2783, 29 Mar 2006, T. 2823-2825, Ex. 268, T. 11579-11580; Ex. 120; Ex. 122; Ex. 124.

<sup>297</sup> Nikola Medaković, 9 Oct 2006, T. 8991; Borislav Đukić, 19 Oct 2006, T. 9771-9772; Ex. 26. Milan Babić encountered resistance from the JNA concerning the appointments to TO positions which he made during the spring and summer of 1991. However, the resistance ceased in September 1991 when Milan Babić began signing appointments of officers who had been sent from Belgrade. In this respect, the Trial Chamber notes that on 28 November 1991 Radoslav Maksić succeeded Ilija Đujić as TO Commander and that Radoslav Maksić testified that only the SSNO could appoint him as TO commander, Milan Babić, 16 Feb 2006, T. 1445-1447, 17 Feb 2006, T. 1568, 20 Feb 2006, T. 1588-1590; Radoslav Maksić, 6 Feb 2006, T. 1153-1155, 1186, 7 Feb 2006, T. 1197; Ex. 121; Ex. 128; Ex. 219. The SAO Krajina TO Staff in Knin was subordinated to the 9<sup>th</sup> Corps of the JNA, headquartered in Knin. The 9<sup>th</sup> Corps was composed, *inter alia*, of the 221<sup>st</sup> Motorised Brigade, commanded by Borislav Đukić until April 1992, the 180<sup>th</sup> Motorised Brigade (headquartered at the barracks in Benkovac), the 2<sup>nd</sup> TO Brigade, 1<sup>st</sup> TO Partisan Brigade, and a military police battalion, Milan Babić, 16 Feb 2006, T. 1448-1449, 17 Feb 2006, T. 1568, 20 Feb 2006, T. 1583, 1593; Radoslav Maksić, 6 Feb 2006, T. 1153-1155, 1160-1161, 7 Feb 2006, T. 1254-1255; Witness MM-080, 8 Jun 2006, T. 5245-5246, 5279-5280; Borislav Đukić, 18 Oct 2006, T. 9684-9686; Ex. 49.

<sup>298</sup> Radoslav Maksić, 6 Feb 2006, T. 1166-1167. The Minister of the Interior and the MUP would be copied on the resulting order, or at least the parts relating to the MUP units participating in the operation. When resubordinated, regular police units would normally be employed to secure the implementation of the operation, by securing roads, buildings or areas from ambushes and sabotage actions. They could also provide personal security. However, in view of their strength and level of training for combat activities these units could not really participate in combat operations. If regular police units of a company or higher strength were involved, they could however take part in combat activities but this happened rarely, Radoslav Maksić, 6 Feb 2006, T. 1166-1167, 1171-1174. In this respect, the Trial Chamber recalls the evidence that in August and September 1991, Milan Martić cooperated with the 9<sup>th</sup> JNA Corps concerning coordination between JNA and MUP units, Milan Babić, 16 Feb 2006, T. 1445-1446.

<sup>299</sup> Radoslav Maksić, 6 Feb 2006, T. 1173-1174.

the completion of a mission where it had been resubordinated, the MUP unit would return into the structure of the MUP.<sup>300</sup> For the purpose of combat operations, TO units could also be resubordinated to JNA units.<sup>301</sup> When resubordinating, the largest unit of either the TO or the JNA would command, which would normally be the JNA unit in a given area. Such resubordination of TO units would be carried out by the JNA.<sup>302</sup>

143. In early September 1991, Milan Martić was arrested and detained for one to two days by the police in Otoka, close to Bosanska Krupa in BiH, which was a mostly Muslim area.<sup>303</sup> The evidence shows that there was strong coordination between the leaderships of the SAO Krajina, Serbia and BiH, through Milan Babić, Slobodan Milošević, Radovan Karadžić, and Jovica Stanišić, in securing Milan Martić's release.<sup>304</sup>

### 3. Training camp in Golubić and "Martić's Police"

144. In early 1991, the SUP in Knin established a training camp in Golubić, a small village located approximately 9 kilometres north of Knin, because Milan Martić wanted properly trained police officers.<sup>305</sup> There is evidence that this training camp still existed in 1993.<sup>306</sup> The training camp was run and funded by the MUP of the SAO Krajina and by the MUP and SDB of Serbia.<sup>307</sup> Furthermore, there is evidence that Milan Martić visited the camp.<sup>308</sup> Captain Dragan Vasiljković

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<sup>300</sup> Radoslav Maksić, 7 Feb 2006, T. 1188.

<sup>301</sup> Witness MM-080, 8 Jun 2006, T. 5303.

<sup>302</sup> Radoslav Maksić, 6 Feb 2006, T. 1160-1161, 1167, 7 Feb 2006, T. 1262, also testifying that if a MUP unit was the largest unit in an operation then any participating TO units would be resubordinated to the MUP unit. Ex. 47 gives an example of a JNA platoon of T-34 tanks, which was resubordinated to the 1<sup>st</sup> TO Brigade (p. 2). *See also* Reynaud Theunens, 26 Jan 2006, T. 718; Ex. 130.

<sup>303</sup> Milan Babić, 16 Feb 2006, T. 1441-1442, 20 Feb 2006, T. 1616-1618; Ex. 206.

<sup>304</sup> Ex. 223; Ex. 224; Ex. 225; Ex. 226; Ex. 227.

<sup>305</sup> Milan Babić, 16 Feb 2006, T. 1426-1427, 17 Feb 2006, T. 1539-1541, 1543-1544; Witness MM-003, 8 Mar 2006, T. 1999-2000, 2002, 10 Mar 2006, T. 2149-2150, 2195-2196; Ex. 268, T. 11569-11570, 11572; Witness MM-078, 24 May 2006, T. 4435-4437, 25 May 2006, T. 4538-4539; Witness MM-096, 22 Aug 2006, T. 6948, 23 Aug 2006, T. 6955, 25 Aug 2006, T. 7194; Witness MM-090, 4 Sep 2006, T. 7636; Lazar Macura, 14 Sep 2006, T. 8318; Stevo Plejo, 20 Sep 2006, T. 8692-8694, 8705; Nikola Medaković, 9 Oct 2006, T. 8965-8966, 10 Oct 2006, T. 9051, 9054; Borislav Đukić, 20 Oct 2006, T. 9815-9816, 23 Oct 2006, T. 9946, 9949; Dragan Knežević, 3 Nov 2006, T. 10698-10699; Ex. 244; Ex. 464; Ex. 619; Ex. 623; Ex. 627; Ex. 674; Ex. 675. *See also* Witness MM-037, 28 Mar 2006, T. 2804; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 19-27; Ex. 1044.

<sup>306</sup> Dragan Knežević, 3 Nov 2006, T. 10723; Ex. 674; Ex. 675. There is also evidence that training camps were established in Šamarica, Bruška and Korenica and that the SDB of Serbia was involved in the training in Bruška and Korenica, Milan Babić, 17 Feb 2006, T. 1541-1542, 1546-1547; Witness MM-003, 8 Mar 2006, T. 2002-2003, 10 Mar 2006, T. 2205; Ante Marinović, 23 Mar 2006, T. 2510; Rade Rašeta, 2 May 2006, T. 3922; Witness MM-078, 24 May 2006, T. 4435-4436; Ex. 565; Ex. 567; Ex. 568; Ex. 613, p. 25 (ERN 02011443).

<sup>307</sup> Milan Babić, 16 Feb 2006, T. 1459, 17 Feb 2006, T. 1539-1543 (testifying that Milan Martić's assistant "was in charge of the administration of the camp" and "was overseeing the whole camp"), 2 Mar 2006, T. 1822; Witness MM-003, 8 Mar 2006, T. 1999, 2001-2004, 9 Mar 2006, T. 2086; Witness MM-079, 31 Mar 2006, T. 3050; Witness MM-078, 24 May 2006, T. 4436-4438; Lazar Macura, 14 Sep 2006, T. 8327-8328; Borislav Đukić, 23 Oct 2006, T. 9949-9950. *See also* Witness MM-078, 25 May 2006, T. 4539, 4547-4548; Ex. 244; Ex. 620; Ex. 621; Ex. 622; Ex. 623; Ex. 624; Ex. 677.

<sup>308</sup> Witness MM-078, 24 May 2006, T. 4436-4437, 25 May 2006, T. 4547-4548.

from the SDB of Serbia trained special purpose units at the Golubić camp and was paid for this service by the SDB of Serbia.<sup>309</sup>

145. The training in Golubić included: drill practice, ambush training, ideological training geared towards loyalty to the state, not political parties, weapons training (including artillery training, mining training, sniper shooting and target practice), physical exercise, training in the securing of persons, self-protection and abseiling.<sup>310</sup> On average the training lasted for approximately 20 days.<sup>311</sup> Some witnesses testified that the training was classical police training,<sup>312</sup> whereas other witnesses testified that the training was of a military nature.<sup>313</sup> Based on the elements of the training described above, the Trial Chamber finds that the training in Golubić was predominantly military in character.

146. The trainees wore blue camouflage uniforms, which were different from ordinary police uniforms.<sup>314</sup> There is evidence that some trainees wore a patch on their sleeve, which was semi-circular with the words *Milicija Krajine* and the Serbian tricolour.<sup>315</sup> The training groups consisted of between 40 and 100 trainees per group.<sup>316</sup> The men who had trained at Golubić set up further units and trained people in their municipalities.<sup>317</sup>

147. There is evidence of groups referred to as “Martić’s Police” and “Martić’s Men (*Martićevci*)” who were active in the territory of the SAO Krajina and the RSK during the Indictment period. Some witnesses testified that the term Martić’s Police or Martić’s men (*Martićevci*) referred to all those who had completed the training at the Golubić camp and were

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<sup>309</sup> Witness MM-003, 10 Mar 2006, T. 2209-2210; Milan Babić, 16 Feb 2006, T. 1427, 1429-1430, 17 Feb 2006, T. 1543; Ex. 478, p. 2; Ex. 626.

<sup>310</sup> Milan Babić, 17 Feb 2006, T. 1541-1544, 2 Mar 2006, T. 1822; Witness MM-003, 8 Mar 2006, T. 2002-2005; Witness MM-078, 24 May 2006, T. 4412, 25 May 2006, T. 4539; Stevo Plejo, 20 Sep 2006, T. 8693-8695, 21 Sep 2006, T. 8782; Nikola Medaković, 9 Oct 2006, T. 8968-8969, 10 Oct 2006, T. 9074-9075, 12 Oct 2006, T. 9281, 9284, 9286; Borislav Đukić, 20 Oct 2006, T. 9815-9816; Dragan Knežević, 03 Nov 2006, T. 10699-10700; Ex. 622.

<sup>311</sup> Stevo Plejo, 20 Sep 2006, T. 8693-8695; Nikola Medaković, 9 Oct 2006, T. 8968; Borislav Đukić, 23 Oct 2006, T. 9946; Dragan Knežević, 3 Nov 2006, T. 10698; Ex. 620.

<sup>312</sup> Stevo Plejo, 20 Sep 2006, T. 8694. *See also* Witness MM-078, 25 May 2006, T. 4506; Dragan Knežević, 3 Nov 2006, T. 10703.

<sup>313</sup> Witness MM-003, 9 Mar 2006, T. 2100; Witness MM-096, 25 Aug 2006, T. 7196. *See also* Milan Babić, 15 Feb 2006, T. 1382, 2 Mar 2006, T. 1769-1770.

<sup>314</sup> Dragan Knežević, 3 Nov 2006, T. 10723-10724.

<sup>315</sup> Nikola Medaković, 9 Oct 2006, T. 8969, 10 Oct 2006, T. 9052-9053, 12 Oct 2006, T. 9289; Ex. 266, *Milicija Krajine* patch. Dragan Knežević testified that the only emblems the trainees had was the Yugoslav tricolour on the beret, Dragan Knežević, 3 Nov 2006, T. 10724.

<sup>316</sup> Borislav Đukić, 20 Oct 2006, T. 9817. *See also* Witness MM-003, 10 Mar 2006, T. 2195; Stevo Plejo, 20 Sep 2006, T. 8694, 8696-8697; Ex. 625, selection of JNA operative intelligence reports, p. 1, mentioning that 150 people were being trained at Golubić before 12 May 1991; Ex. 464, List of persons from Knin municipality region who finished training in Golubić settlement, listing 190 people who finished training at Golubić. Ex. 625, selection of JNA operative intelligence reports, p. 1.

<sup>317</sup> Milan Babić, 17 Feb 2006, T. 1542-1543; Witness MM-003, 8 Mar 2006, T. 2006; Stevo Plejo, 20 Sep 2006, T. 8696-8697, 9704-9705, 21 Sep 2006, T. 8793-8794; Nikola Medaković, 10 Oct 2006, T. 9051; Dragan Knežević, 3 Nov 2006, T. 10698-10699, 10722; Ex. 568; Ex. 600; Ex. 620; Ex. 1028, L0079797. *See also* Ex. 471.

employed in the SJBs.<sup>318</sup> One witness testified that the reason for that name was that Milan Martić established the Golubić training camp.<sup>319</sup> Other witnesses testified that these terms referred generally to the police force of the SAO Krajina and the RSK.<sup>320</sup> Nikola Medaković, who was the commander of the *Milicija Krajine* unit in Plaški in 1991, testified that the members of that unit were trained at the Golubić training camp and that they were referred to as “Martić’s men”.<sup>321</sup> Witness MM-037 called all of those who were led by Nikola Medaković “Martić’s police”.<sup>322</sup>

148. The evidence shows that groups trained in Golubić were, in some instances, referred to as Martić’s Men or Martić’s Police (*Martićevci*). However, the evidence is insufficient to conclude that all groups that were referred to by these names, or referred to themselves by these names, were trained in Golubić. The evidence also shows that members of the *Milicija Krajine* were trained in Golubić. The evidence is insufficient to conclude that all members of the police of the SAO Krajina were referred to as Martić’s Men or Martić’s Police (*Martićevci*).

### C. The RSK

#### 1. Development of the RSK

149. On 19 December 1991, the RSK was proclaimed by the Assembly of the SAO Krajina with Milan Babić as its President, and the RSK Constitution was passed.<sup>323</sup> The TO constituted the

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<sup>318</sup> Witness MM-078, 24 May 2006, T. 4439. According to Witness MM-078, these policemen were called Martić’s Men or the *Martićevci*, and considered by the citizens to be specialists or an elite, more capable, trained “and even more loyal to the system”, as compared to the other policemen in the SJBs. The reason for the name was that “Martić set up the whole thing and [...] it was after him that [...] they were named”, Witness MM-078, 24 May 2006, T. 4439. Hamdija Krupić testified that there were also policemen in the municipality Bosanski Novi, BiH, who had undergone the training in Golubić “to carry out special tasks” and were called “Martić’s Police”. These men were from the Bosnian Krajina, Hamdija Krupić, 30 Mar 2006, T. 2958-2960. According to Witness MM-037, younger policemen at the Plaški SJB were sent to Golubić for training, and when they returned, they started to call themselves “Martić’s police”, Witness MM-037, 28 Mar 2006, T. 2749, 2804, Ex. 268, T. 11569-11570. The Trial Chamber notes that the units that had been trained at Golubić were also called the Special Police, Specials, Specialists or Special Purpose Units of the Krajina police, Witness MM-003, 8 Mar 2006, T. 2006-2007, 10 Mar 2006, T. 2195-2196; Milan Babić, 17 Feb 2006, T. 1539-1541; Ex. 1028, L0079768.

<sup>319</sup> Witness MM-078, 24 May 2006, T. 4439.

<sup>320</sup> Radoslav Maksić testified that the term *Martićevci* or Martić’s Men was a colloquial term which referred “to the police force of the [SAO Krajina MUP]”, Radoslav Maksić, 7 Feb 2006, T. 1191. Witness MM-096 also testified that the term was used to refer to the entire police force in the SAO Krajina and the RSK “or even something much broader, sometimes even all the citizens who were wearing uniforms”, Witness MM-096, 25 Aug 2006, T. 7194. Witness MM-003 testified that the term Martić’s police, the abbreviated name of which was *Martićevci* and Martić’s Men, “applied to the overall police” of the SAO Krajina, Witness MM-003, 10 Mar 2006, T. 2194 -2195.

<sup>321</sup> Nikola Medaković, 9 Oct 2006, T. 8965-8966, 8999, 10 Oct 2006, T. 9051, 9056, also testifying that in May 1991, he met with Milan Martić in Knin to request weapons to reinforce the Plaški municipality police, and that Milan Martić replied that long-barrelled weapons could only be given to persons who had been trained in Golubić. *See also* Ex. 507, p. 2, providing that Nikola Medaković was commander of the *Martićevci* or “Martić’s men” and that this unit was part of the regular police commanded by Dušan Latas.

<sup>322</sup> Witness MM-037, 28 Mar 2006, T. 2795.

<sup>323</sup> Ex. 820, Agreed Facts, para. 23. *See also* Reynaud Theunens, 27 Jan 2006, T. 759; Witness MM-090, 29 Aug 2006, T. 7373; Witness MM-090, 5 Sep 2006, T. 7777-7779. The RSK was defined as a national state of the Serbian people and of all the citizens residing therein, Ex. 820, Agreed Facts, para. 23.

armed forces of the RSK.<sup>324</sup> On 16 February 1992, the government fell as Milan Babić was removed from the office of President of the RSK by the RSK Assembly due to his opposition to Slobodan Milošević in respect of the Vance Plan.<sup>325</sup> Milan Martić, who had previously opposed the Vance Plan, now publicly supported the adoption of the Vance Plan.<sup>326</sup> After Milan Babić was removed from office, the Vance plan was adopted by the Assembly of the RSK.<sup>327</sup>

150. On 21 February 1992, the UN Security Council adopted Resolution 743 implementing the Vance Plan and establishing UNPROFOR in certain areas of Croatia designated as “United Nations Protected Areas” (“UNPAs”).<sup>328</sup> The UNPAs were areas where Serbs constituted the majority or a substantial minority of the population and where inter-communal tensions had previously led to armed conflict.<sup>329</sup> The Vance Plan defined three UNPAs, which covered four sectors: UNPA Krajina, covering Sector South (Lika and Dalmatia) and Sector North (Banija and Kordun), UNPA Western Slavonia, covering Sector West, and UNPA Eastern Slavonia, covering Sector East.<sup>330</sup> The UNPAs were to be demilitarised, with all armed forces to be either withdrawn or disbanded.<sup>331</sup> However, the plan foresaw maintaining the local police who could carry weapons and wear uniforms.<sup>332</sup> UN police monitors, UNCIVPOL, were to ensure that the local police carried out their duties without discriminating or violating human rights.<sup>333</sup> UNCIVPOL reported any incidents both

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<sup>324</sup> Ex. 166, Art. 102. *See also* Ex. 6, p. 123.

<sup>325</sup> Milan Babić, 20 Feb 2006, T. 1639-1642, 1644 (testifying that he wanted a change in the Vance Plan to the effect that the JNA would remain in the Krajina as a military force that would protect the Krajina until a political solution [was] found for the status); Lazar Macura, 12 Sep 2006, T. 8206. *See also* Ex. 657; Charles Kirudja, 31 May 2006, T. 4888; Slobodan Jarčević, 13 Jul 2006, T. 6196-6197; Lazar Macura, 13 Sep 2006, T. 8226-8231, 14 Sep 2006, T. 8337, 8396-8397.

<sup>326</sup> Milan Babić, 20 Feb 2006, T. 1644-1645; Mile Dakić, 25 Oct 2006, T. 10044; Ex. 230. *See also* Lazar Macura, 14 Sep 2006, T. 8347.

<sup>327</sup> Veljko Džakula, 16 Jan 2006, T. 405-406; Borislav Đukić, 23 Oct 2006, T. 9936.

<sup>328</sup> Ex. 820, Agreed Facts, para. 25. *See also* Veljko Džakula, 18 Jan 2006, T. 559; Peter Galbraith, 25 Apr 2006, T. 3744; John McElligott, 26 May 2006, T. 4553-4554; Charles Kirudja, 30 May 2006, T. 4785-4786, 1 Jun 2006, T. 4901-4905; Ratko Ličina, 15 Aug 2006, T. 6435, 17 Aug 2006, T. 6629-6630; Lazar Macura, 14 Sep 2006, T. 8332; Borislav Đukić, 23 Oct 2006, T. 9903-9904; Ex. 115.

<sup>329</sup> Ex. 820, Agreed Facts, para. 25. *See also* Veljko Džakula, 18 Jan 2006, T. 559; Ex. 864.

<sup>330</sup> Veljko Džakula, 18 January 2006, T. 559, 19 Jan 2006, T. 610; Ex. 115; Ex. 61; Ex. 724. Charles Kirudja, 31 May 2006, T. 4805. The Croats and the Serbs differed in their interpretation of the borders of the UNPAs, with the Croats seeing the borders of municipalities as borders of the UNPAs and the Serbs seeing the confrontation line as the border of the UNPAs, Charles Kirudja, 31 May 2006, T. 4805-4809; Ex. 746.

<sup>331</sup> Ex. 820, Agreed Facts, para. 25, providing that as UNPROFOR assumed its responsibilities, all JNA forces deployed in Croatia would be relocated outside Croatia. *See also* Veljko Džakula, 16 Jan 2006, T. 407; John McElligott, 26 May 2006, T. 4553; Charles Kirudja, 30 May 2006, T. 4788, 31 May 2006, T. 4810, 1 Jun 2006, T. 4902-4903; Slobodan Jarčević, 13 Jul 2006, T. 6197-6198, 6245; Slobodan Perić, 6 Sep 2006, T. 7837-7838; Witness MM-117, 13 Oct 2006, T. 9353; Borislav Đukić, 19 Oct 2006, T. 9721-9722, 23 Oct 2006, T. 9904; Ex. 115.

<sup>332</sup> Borislav Đukić, 19 Oct 2006, T. 9723. The weapons were to be placed under a double-key system; one key for UNPROFOR and one key for the RSK authorities, Charles Kirudja, 31 May 2006, T. 4818-4819, 4821-4822; Slobodan Jarčević, 13 Jul 2006, T. 6198-6199, 6244; Ratko Ličina, 15 Aug 2006, T. 6436-6437; Witness MM-096, 22 Aug 2006, T. 6879; Slobodan Perić, 6 Sep 2006, T. 7838; Borislav Đukić, 23 Oct 2006, T. 9904; Ex. 748.

<sup>333</sup> Ex. 115; John McElligott, 26 May 2006, T. 4553, 4555-4557, 29 May 2006, T. 4660-4662, 4669-4673, 30 May 2006, T. 4770-4771; Witness MM-096, 22 Aug 2006, T. 6880-6882; Ex. 721; Ex. 722; Ex. 723; Ex. 725. Milan Martić issued instructions regulating in detail the mode of cooperation with UNPROFOR and UNCIVPOL, Witness MM-117, 18 Oct 2006, T. 9648-9649.

within its own chain of command, as well as to the relevant Croatian or RSK local police, however in serious cases reports were also sent directly to the relevant government.<sup>334</sup>

151. On 26 February 1992, the SAO Western Slavonia and the SAO Eastern Slavonia, Baranja and Western Šrem joined the RSK.<sup>335</sup> In the new RSK government, Zdravko Zečević became Prime Minister, Goran Hadžić was elected President, and Milan Martić was re-elected Minister of the Interior.<sup>336</sup> In April 1992, UNPROFOR troops started arriving in the UNPAs.<sup>337</sup> In addition, UNPROFOR was also mandated to patrol the so-called “pink zones” outside the UNPAs, which were areas under JNA control, in many instances with a significant Serb presence.<sup>338</sup>

152. The evidence shows that the RSK was not demilitarised in its entirety in accordance with the Vance Plan.<sup>339</sup> On 28 April 1992, Special Police (“PJM”) Brigades and a PJM Administration were established within the RSK Ministry of Defence by the SSNO of Serbia.<sup>340</sup> General Borislav Đukić, a JNA officer, was appointed Chief of the PJM Administration.<sup>341</sup> The PJM Brigades were connected both to the Ministry of Defence and to the MUP of the RSK.<sup>342</sup> The members of PJM units wore blue uniforms and used the side arms and the equipment of the TO.<sup>343</sup> There is also evidence that TO vehicles were repainted in blue and used by the PJM.<sup>344</sup> On 18 May 1992, the

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<sup>334</sup> John McElligott, 26 May 2006, T. 4565-4567, 29 May 2006, T. 4669-4671, 4676-4679, 30 May 2006, T. 4731, 4733; Witness MM-096, 22 Aug 2006, T. 6881-6882, 6929-6931, 24 Aug 2006, T. 7106.

<sup>335</sup> Ex. 820, Agreed Facts, para. 26. *See also* Veljko Džakula, 16 Jan 2006, T. 347-348 (testifying that the SAO Western Slavonia had been declared on 12 August 1991), 358; Ratko Ličina, 15 Aug 2006, T. 6493.

<sup>336</sup> Ex. 820, Agreed Facts, para. 26. Slobodan Jarčević was Minister of Foreign Affairs of the RSK from October 1992 to April 1994, when he was replaced by Milan Babić, Slobodan Jarčević, 12 Jul 2006, T. 6133, T. 6169; Ex. 191. *See also* Veljko Džakula, 16 Jan 2006, T. 358, 19 Jan 2006, T. 621.

<sup>337</sup> Charles Kirudja, 30 May 2006, T. 4781, 4789, 31 May 2006, T. 4804-4805; Witness MM-096, 22 Aug 2006, T. 6873.

<sup>338</sup> Veljko Džakula, 19 Jan 2006, T. 610-611; John McElligott, 26 May 2006, T. 4569, 29 May 2006, T. 4629-4630. *See also* Charles Kirudja, 31 May 2006, T. 4805-4809.

<sup>339</sup> Veljko Džakula, 16 Jan 2006, T. 406-407; Milan Babić, 20 Feb 2006, T. 1645; Slobodan Jarčević, 13 Jul 2006, T. 6245, 6248; Ex. 75, pp 2-4. *See also* Borislav Đukić, 19 Oct 2006, T. 9722.

<sup>340</sup> Ex. 978. The PJM brigades were subordinated to the PJM Administration in both peacetime and wartime, Ex. 978, p. 2, item 10; Borislav Đukić, 19 Oct 2006, T. 9723-9724, 9730.

<sup>341</sup> Ex. 71; Borislav Đukić, 19 Oct 2006, T. 9740-9741; Ex. 633. *See also* Ex. 978; Witness MM-117, 18 Oct 2006, T. 9676-9677.

<sup>342</sup> Borislav Đukić, 19 Oct 2006, T. 9793-9794, also testifying that “[t]he professional part of the execution of the task was connected to the [MUP]” that the PJM Brigades “carried out tasks from within the police force and were linked to the Minister of the Interior”, 23 Oct 2006, T. 9911-9913; Ex. 72.

<sup>343</sup> Charles Kirudja, 31 May 2006, T. 4816; Ex. 747; Slobodan Perić, 7 Sep 2006, T. 7942-7943.

<sup>344</sup> Slobodan Perić, 7 Sep 2006, T. 7942-7943. *See also* Ex. 68; Ex. 696. In Ex. 747, p. 4, Charles Kirudja wrote:

The recent emergence of a newly fortified militia is hard not to notice. Former military vehicles have been repainted from green to blue – the colors of the present police force. Many of the militiamen have begun to sport new blue uniforms and appear to be deployed along the front line.

*See further* Ex. 73; Ex. 74; Ex. 75; Ex. 730; Ex. 864; Ex. 985.



SVK was established.<sup>345</sup> In peacetime, the SVK was to consist of TO units, however in the event of imminent threat of war and during wartime the PJM units would join the SVK.<sup>346</sup>

153. The RSK leadership was against the demilitarisation of the RSK, asserting it would be unable to defend itself in the event of Croatian attacks.<sup>347</sup> Thus, the Vance Plan was interpreted by the RSK authorities to mean that UNPROFOR was to protect the population in the areas of deployment.<sup>348</sup> In this context, the Trial Chamber notes that Croatian forces carried out several armed incursions into the UNPAs between 1992 and 1995, including on the Miljevac plateau on 21 June 1992, Maslenica on 22 January 1993, Medak pocket on 9 and 12 September 1993, and Operation Flash from 1 May 1995.<sup>349</sup>

154. During the spring of 1992, the road which went through the so-called Posavina Corridor, a predominantly Bosnian Croat strip of land in north-eastern BiH, had been blocked in the region of Doboj by Croatian forces in alliance with the forces of BiH.<sup>350</sup> The area was of strategic importance as it linked the Croatian and Bosnian Krajina regions with Serbia.<sup>351</sup> In two phases, during the summer and late autumn of 1992, a military operation known as “*Koridor 92*” was carried out in the Posavina Corridor. While there is evidence that the objective of the operation was to resolve a humanitarian situation which had arisen as a result of the blocking of the road near Doboj, there is significant evidence that the main objective was to link Serb lands.<sup>352</sup> As part of the operation, the

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<sup>345</sup> Ex. 6, p. 141, citing Constitutional Amendment No. VIII.

<sup>346</sup> Law on Defence as amended, cited in Ex. 6, p. 142.

<sup>347</sup> Veljko Džakula, 16 Jan 2006, T. 405-406; Milan Babić, 20 Feb 2006, T. 1644; John McElligott, 29 May 2006, T. 4631; Slobodan Jarčević, 13 Jul 2006, T. 6199-6200; Ratko Ličina, 15 Aug 2006, T. 6439-6440; Ex. 574, p. 1; Ex. 750. See also Charles Kirudja, 31 May 2006, T. 4837-4838, 1 Jun 2006, T. 4981-4982; Borislav Đukić, 19 Oct 2006, T. 9721-9722.

<sup>348</sup> Ratko Ličina, 15 Aug 2006, T. 6439; Witness MM-096, 22 Aug 2006, T. 6880; Witness MM-090, 31 Aug 2006, T. 7484-7485.

<sup>349</sup> John McElligott, 29 May 2006, T. 4631-4632, 4641, 4648-4649; Charles Kirudja, 1 Jun 2006, T. 4921-4922, 4928, 4942-4943; Ratko Ličina, 15 Aug 2006, T. 6450-6453, 6462-6464; Witness MM-096, 22 Aug 2006, T. 6880; Witness MM-090, 4 Sep 2006, T. 7706-7707; Slobodan Perić, 6 Sep 2006, T. 7841; Witness MM-117, 13 Oct 2006, T. 9383-9384, 9388; Patrick Barriot, 9 Nov 2006, T. 10764; Ex. 75, pp 1-2; Ex. 885. After the incursions on Maslenica and Medak pocket, the RSK removed weapons from storage depots, Charles Kirudja, 31 May 2006, T. 4819-4822, 1 Jun 2006, T. 4981-4982; Ratko Ličina, 17 Aug 2006, T. 6635. See also Peter Galbraith, 25 Apr 2006, T. 3795-3796; Slobodan Perić, 7 Sep 2006, T. 7945-7946.

<sup>350</sup> Veljko Džakula, 17 Jan 2006, T. 432, 19 Jan 2006, T. 588; Charles Kirudja, 1 Jun 2006, T. 4966; Slobodan Jarčević, 13 Jul 2006, T. 6192; Borislav Đukić, 19 Oct 2006, T. 9778-9779, 9788-9789, 23 Oct 2006, T. 9918 (testifying that as a result of the blocking of the road a difficult humanitarian situation arose in Krajina and Bosanska Krajina); Witness MM-105, 2 Nov 2006, T. 10610; Ex. 6, p. 169; Ex. 103. See also Reynaud Theunens, 27 Jan 2006, T. 796-797.

<sup>351</sup> The importance of this area was stated by Milan Martić in an article in *Vojska Krajine*, 3 Jun 1993, p. 3, see Ex. 6, p. 169. See also Reynaud Theunens, 27 Jan 2006, T. 797. Moreover, on 12 May 1992, at a session of the Assembly of the Serbian People in BiH, the President of the RS Radovan Karadžić announced as a strategic goal of the Serb people to establish a corridor between the Krajina region and Semberija in Serbia in order to “[integrate] the Serbian lands”, Ex. 45, pp 13-14; Veljko Džakula, 19 Jan 2006, T. 589; Slobodan Jarčević, 13 Jul 2006, T. 6192.

<sup>352</sup> Regarding the humanitarian situation, see Borislav Đukić 19 Oct 2006, T. 9779, 9788-9789; Witness MM-105, 2 Nov 2006, T. 10609 (see also Veljko Džakula, 17 Jan 2006, T. 589; Ex. 6, p. 169; Reynaud Theunens, 27 Jan 2006, T. 813). The Trial Chamber notes that of these witnesses only Borislav Đukić testified to the existence of a grave humanitarian situation. Regarding the linking of Serb lands, see Ex. 944; Lazar Macura, 15 Sep 2006, T. 8412-8413; Ex. 45, pp 13-14; Slobodan Jarčević, 13 Jul 2006, T. 6192 (see also Witness MM-003, 9 Mar 2006, T. 2040-2041).

whole of the Posavina area was devastated; many houses were torched and many civilians, including Croats, were killed.<sup>353</sup>

155. On 20 April 1993, the RSK Supreme Defence Council was established, which was composed of the President of the RSK, the Prime Minister, the Minister of Defence, the Minister of the Interior, and the Commander of the SVK.<sup>354</sup> The President of the RSK “[led] the [SVK] in times of peace and war, in accordance with the [RSK] Constitution and decisions adopted by the Supreme Defence Council, and [presided] over the Supreme Defence Council”.<sup>355</sup> The Supreme Defence Council was mandated to “adopt decisions on the readiness, mobilisation and deployment of the [SVK] and on other matters in accordance with the Constitution and the law.”<sup>356</sup>

156. On 25 January 1994, Milan Martić was elected President of the RSK, defeating Milan Babić.<sup>357</sup> On 21 April 1994, a new government was formed under Milan Martić, *inter alia*, with Borislav Mikelić as Prime Minister and Milan Babić as Foreign Minister.<sup>358</sup> The new government’s aim was to achieve “sovereignty of the RSK and the right of the Serb people to self-determination and unification with other parts of the Serb people.”<sup>359</sup>

157. Following on from the Zagreb Agreement, which had been signed on 29 March 1994,<sup>360</sup> in January 1995 the Z-4 Plan was presented, envisaging a high degree of autonomy within Croatia for the Krajina region and that Eastern Slavonia, Baranja, and Šrem, and Western Slavonia would be

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<sup>353</sup> Veljko Džakula, 19 Jan 2006, T. 590-592, 613, also stating that he heard that “there was damage inflicted and destruction wrought in places where there was no direct fighting or combat”, and that the Posavina Corridor was “razed to the ground, devastated and laid [to] waste”.

<sup>354</sup> Ex. 78, p. 3.

<sup>355</sup> Ex. 78, p. 3. *See also* Ex. 79, Art. 40, p. 1.

<sup>356</sup> Ex. 78, p. 4.

<sup>357</sup> Ex. 820, Agreed Facts, para. 29.

<sup>358</sup> The government also comprised Ilija Prijić as Minister of Interior and Rade Tanja as Minister of Defence, Milan Babić, 15 Feb 2006, T. 1328-1329; Witness MM-117, 18 Oct 2006, T. 9646; Ex. 970, p. 2. Milan Babić remained as Foreign Minister until 27 July 1995 when he became Prime Minister, Milan Babić, 15 Feb 2006, T. 1328-1329; Nikola Dobrijević, 10 Nov 2006, T. 10855, 10902.

<sup>359</sup> Ex. 970, p. 2 (quoting Borislav Mikelić as saying that “our negotiating position is and will be territorial integrity and sovereignty of the Republic of Serb Krajina. The RSK will sooner or later unite with the Serb republic and Montenegro into a unified state”). *See also* Witness MM-117, 16 Oct 2006, T. 9494-9495, 9483-9484.

<sup>360</sup> The Zagreb Agreement foresaw the creation of two cantons within Croatia and also regulated the withdrawal of all indirect weaponry and artillery from the border between Croatia and the RSK. Moreover, all weapons were to be under UN control, Slobodan Jarčević, 12 Jul 2006, T. 6167-6168; Charles Kirudja, 1 Jun 2006, T. 4935-4936; Ex. 929. Two economic agreements ensued, signed in November and early December 1994, and the RSK government undertook measures to abide by these agreements, Milan Babić, 21 Feb 2006, T. 1660; Peter Galbraith, 25 Apr 2006, T. 3743-3745, 3794, 3815, 3796-3797; Charles Kirudja, 1 Jun 2006, T. 4935-4936; Slobodan Jarčević, 12 Jul 2006, T. 6169, 6175; Ratko Ličina, 15 Aug 2006, T. 6451-6452; Slobodan Perić, 6 Sep 2006, T. 7841. Previously during 1993, several unsuccessful attempts had been made at concluding agreements between Croatia and the RSK: the Daruvar Agreement on 18 February 1993 (Veljko Džakula, 16 Jan 2006, T. 359-362; Milan Babić, 20 Feb 2006, T. 1653-1654; Witness MM-105, 1 Nov 2006, T. 10534-10535, 10573-10574, in April 1993, an agreement was negotiated in Geneva (Slobodan Jarčević, 14 Jul 2006, T. 6281-6282), the Erdut Agreement in July 1993 (Slobodan Jarčević, 12 Jul 2006, T. 6151-6153, T. 6162-6163; Ex. 876), the Oslo agreement on 4 November 1993 (Slobodan Jarčević, 12 Jul 2006, T. 6157-6160), the Dobanovci Negotiations in December 1993 (Peter Galbraith, 25 Apr 2006, T. 3741; Slobodan Jarčević, 12 Jul 2006, T. 6163-6165).

reincorporated into Croatia with lesser forms of autonomy.<sup>361</sup> The Z-4 Plan provided for a five-year transition period for the restoration of full sovereignty for Croatia.<sup>362</sup> On 30 January 1995, Milan Martić, as President of the RSK, refused to accept the Z-4 Plan, as Croatia had announced that it would not accept an extension of UNPROFOR's mandate.<sup>363</sup> The mandate was eventually extended in March 1995 and focused on reconstruction and cooperation, however Milan Martić continued to refuse to negotiate the Z-4 Plan because the reshaped UNPROFOR, now called UNCRO, was not a protection force.<sup>364</sup> There is evidence that Milan Martić acted under the instruction of Slobodan Milošević to reject the Z-4 Plan.<sup>365</sup> The negotiations between the RSK and Croatia continued through the first half of 1995, with the RSK government appearing seemingly more amenable to the Z-4 plan.<sup>366</sup>

158. On 2 August 1995, Milan Babić, as Prime Minister of the RSK, accepted the Z-4 Plan "in substance".<sup>367</sup> On 4 August 1995, the Croatian Army and police forces launched a military operation, called Operation Storm, on the RSK and the UNPAs, which eventually resulted in them taking control of the territory of the RSK.<sup>368</sup>

## 2. Cooperation with and assistance from Serbia

159. Throughout 1992, 1993 and 1994, the RSK leadership, including Milan Martić, requested financial, logistical and military support from Serbia on numerous occasions, including directly from Slobodan Milošević.<sup>369</sup> Most of these requests were fulfilled, and support was given to the RSK MUP<sup>370</sup> and to the TO and the SVK.<sup>371</sup> In January 1992, Milan Martić stated that cooperation

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<sup>361</sup> Veljko Džakula, 17 Jan 2006, T. 440-441, 19 Jan 2006, T. 596-597; Milan Babić, 20 Feb 2006, T. 1654; Peter Galbraith, 25 Apr 2006, T. 3742-3743, 3754-3755 (testifying that the Krajina area was to have the right to its own flag and language and competence to decide on legislature, housing, education, culture, public services, energy, business and many other aspects of its society); Slobodan Jarčević, 12 Jul 2006, T. 6177-6178; Slobodan Perić, 7 Sep 2006, T. 7944-7945; Lazar Macura, 13 Sep 2006, T. 8232; Ex. 381.

<sup>362</sup> Veljko Džakula, 19 Jan 2006, T. 597; Peter Galbraith, 25 Apr 2006, T. 3803.

<sup>363</sup> Milan Babić, 20 Feb 2006, T. 1654-1655; Peter Galbraith, 25 Apr 2006, T. 3749-3751, 3801-3802; Slobodan Jarčević, 14 Jul 2006, T. 6299-6300; Lazar Macura, 13 Sep 2006, T. 8233, 14 Sep 2006, T. 8349.

<sup>364</sup> Peter Galbraith, 25 Apr 2006, T. 3750, 3801-3802; Slobodan Jarčević, 12 Jul 2006, T. 6181-6183. *See also* Lazar Macura, 14 Sep 2006, T. 8350.

<sup>365</sup> Rade Rašeta, 2 May 2006, T. 3918-3919 (testifying that Slobodan Milošević told Milan Martić to reject the Z-4 Plan *a priori*); Mile Dakić, 25 Oct 2006, T. 10055-10056 (testifying that the RSK leadership was "awaiting a response from Belgrade [which] was a higher level that was deciding about [whether] the Z-4 Plan would be accepted or not"). *See also* Peter Galbraith, 25 Apr 2006, T. 3751-3753; Charles Kirudja, 1 Jun 2006, T. 4957; Ex. 769, p. 2.

<sup>366</sup> Peter Galbraith, 25 Apr 2006, T. 3793; Witness MM-117, 16 Oct 2006, T. 9450-9451, 17 Oct 2006, T. 9596; Ex. 391.

<sup>367</sup> Milan Babić, 20 Feb 2006, T. 1656-1657; Peter Galbraith, 25 Apr 2006, T. 3747-3749. *See also* Witness MM-117, 18 Oct 2006, T. 9623-9625.

<sup>368</sup> Ex. 820, Agreed Facts, para. 32.

<sup>369</sup> Ex. 11 (identical to Ex. 659); Ex. 12; Ex. 68; Ex. 69; Ex. 194; Ex. 707; Ex. 840; Peter Galbraith, 25 Apr 2006, T. 3756-3757.

<sup>370</sup> The RSK MUP received support from Serbia and the JNA/VJ, in many cases pursuant to a standing SSNO order of 20 April 1992 concerning supply of ammunition to the RSK MUP: Ex. 67; Ex. 692; Ex. 694; Ex. 695; Ex. 697; Ex. 698; Ex. 699, Ex. 700, Ex. 701, Ex. 702, Ex. 703, and Ex. 704. Milan Babić testified that in 1992 the RSK police was financed in the same way as in 1991 with the SAO Krajina, Milan Babić, 16 Feb 2006, T. 1465.

with Serbia never ceased and was good.<sup>372</sup> There is evidence describing the relationship between the RSK and Serbia as one “between two states” although the RSK listened to “the opinions of our ally.”<sup>373</sup> There was a representation office in Belgrade of the RSK Foreign Minister’s office.<sup>374</sup> The RSK Minister of Foreign Affairs was paid by Serbia as a result of being employed by the Ministry of Foreign Affairs of Serbia.<sup>375</sup> As President of the RSK, Milan Martić enjoyed the full support of the VJ.<sup>376</sup>

160. In respect of the cooperation between the RSK and the RS, the Trial Chamber notes the evidence regarding operation *Koridor 92*.<sup>377</sup> Both phases of the operation included units of the RSK police, PJM and TO, and the operation was led by the VRS and RS police.<sup>378</sup> Milan Martić visited the Posavina Corridor on several occasions during the first phase of the operation in June and July 1992.<sup>379</sup> During the second phase of Operation Corridor, two RSK PJM brigades participated.<sup>380</sup> Milan Martić and Borislav Đukić commanded a “strong” RSK police detachment during this phase of operation *Koridor 92*.<sup>381</sup> The evidence shows that following operation *Koridor 92*, Milan Martić’s popularity in the RSK increased significantly.<sup>382</sup>

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<sup>371</sup> Milan Babić, 16 Feb 2006, T. 1466-1467. The support from Serbia to the SVK covered all aspects of its functioning, including personnel, operational and logistical support, Rade Rašeta, 2 May 2006, T. 3894-3896 (between 150-200 VJ officers were seconded to the SVK to leading positions), T. 3903 (testifying that the SVK and the VJ “were actually one and the same organisation, but positioned at two different locations”), T. 3907-3910, 3953-3954, Rade Rašeta, 3 May 2006, T. 3978; Slobodan Perić, 7 Sep 2006, T. 7933; Lazar Macura, 14 Sep 2006, T. 8338-8339; Borislav Đukić, 23 Oct 2006, T. 9927-9928; Ex. 63, p. 2; Ex. 64; Ex. 65, Ex. 456. The SSNO continued to order organisational changes in the SAO Krajina TO, Ex. 62; Ex. 71; Ex. 978. *See also* Ex. 6, pp 161-68; Reynaud Theunens, 27 Jan 2006, T. 806.

<sup>372</sup> Ex. 951, p. 1.

<sup>373</sup> Slobodan Jarčević, 13 Jul 2006, T. 6254.

<sup>374</sup> Slobodan Jarčević, 12 Jul 2006, T. 6139, 13 Jul 2006, T. 6253-6254.

<sup>375</sup> Slobodan Jarčević, 12 Jul 2006, T. 6139, 13 Jul 2006, T. 6170, 6253-6254, 14 Jul 2006, T. 6322-6323.

<sup>376</sup> Rade Rašeta, 2 May 2006, T. 3907-3908. The JNA became the VJ when the SFRY ceased to exist and Serbia and the Republic of Montenegro made up the Federal Republic of Yugoslavia, Lazar Macura, 15 Sep 2006, T. 8428.

<sup>377</sup> *See supra* para. 154.

<sup>378</sup> On 5 June 1992, Milan Martić ordered the SUPs and MUP Brigades in the RSK to form “volunteer police companies” of 120 men each and armed with automatic weapons and wearing Krajina police insignia “in order to carry out tasks of interest for the [RSK] and the Serbian people as a whole”, Ex. 635. On 10 June 1992, Milan Martić ordered these units to march along certain axes into BiH, Ex. 461. The RSK MUP forces formed part of TG-2, commanded by Colonel Mile Novaković, and were deployed in BiH at least as of 24 June 1992, Ex. 634, pp 4, 9. On 19 June 1992, the Ministers’ Cabinet of the RSK MUP announced that RSK MUP units were participating in Operation Corridor, Reynaud Theunens, 27 Jan 2006, T. 813; Ex. 646. *See also* Ex. 6, p. 170; Ex. 568.

<sup>379</sup> Ex. 634, pp 14, 48, 63, 93, 123.

<sup>380</sup> Ex. 87 (Order, dated 13 November 1992, for the two PJM brigades to participate “with the aim of expanding the corridor and liberating all Serbian Territories”).

<sup>381</sup> Veljko Džakula, 17 Jan 2006, T. 432-433. *See also* Witness MM-003, 9 Mar 2006, T. 2041, 10 Mar 2006, T. 2211. There is also evidence that on 22 November 1992 Milan Martić, Borislav Đukić and General Momir Talić of the VRS held a meeting to assess “the situation regarding the forthcoming combat operations” in the area of Gradačac and Orašje, *see* Ex. 6, p. 173.

<sup>382</sup> Veljko Džakula, 16 Jan 2006, T. 404.

## D. Armed clashes between Serb and Croatian forces

### 1. During spring and summer of 1991

161. Several armed clashes occurred between Croatian and SAO Krajina armed forces in several locations during the spring and summer of 1991.<sup>383</sup>

162. As noted above, in March 1991 there were armed clashes in Pakrac and in Plitvice between Croatian MUP special police forces and the police of the SAO Krajina. On both occasions, the JNA intervened after these clashes to separate the two sides.<sup>384</sup>

163. In June 1991, there was a Croatian SJB in Lovinac, in Gračac municipality north-west of Knin, and as a consequence the village was attacked by the police of the SAO Krajina.<sup>385</sup> Witness MM-003 testified that Milan Martić was in command of this attack. The Trial Chamber recalls its finding that the evidence of Witness MM-003 requires corroboration and notes that this piece of evidence is uncorroborated. However, the Trial Chamber notes Milan Babić's testimony that Milan Martić "participated" in the attack together with Franko Simatović.<sup>386</sup> While the evidence does not support a finding that Milan Martić commanded the attack on Lovinac, the Trial Chamber finds it established beyond reasonable doubt that Milan Martić participated in the attack.<sup>387</sup>

164. On 2 July 1991, the village of Ljubovo, south-west of Titova Korenica, was attacked by the *Milicija Krajine* because members of the Croatian MUP had stationed themselves there following the conflict in Plitvice. In public statements, Milan Martić said that this attack was carried out because an ultimatum of the SAO Krajina government had expired which required that all members and units of the Croatian MUP withdraw from the SAO Krajina territory and because of arrests and mistreatment by Croats of Serbs in the area of Lika.<sup>388</sup>

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<sup>383</sup> There is also evidence that there were several similar armed clashes and attacks in other villages during the spring and summer of 1991, including in Potkonje, Vrpolje, and Lički Osik: Potkonje and Vrpolje: Sometime before June 1991, about 60 members of the SAO Krajina police raided the small Croat villages of Potkonje and Vrpolje located in the municipality of Knin, allegedly to locate a radio transmitter. Nobody was killed in this action, however the incident caused the civilian population to leave the area, Witness MM-078, 24 May 2006, T. 4453, 25 May 2006, T. 4520-4521; Witness MM-096, 21 Aug 2006, T. 6846-6849 (testifying that 60 automatic rifles and ammunition were found with some persons, that criminal charges were brought against them but that they were eventually released), 24 Aug 2006, T. 7067-7068, 7072-7073; Ex. 1037, L0092049. Lički Osik: On 2 July 1991, Croatian police in the town of Lički Osik were attacked by "Krajina forces", Ex. 214, p. 3, wherein Milan Martić described this as "our first offensive action".

<sup>384</sup> See *supra* para. 132.

<sup>385</sup> Milan Babić, 16 Feb 2006, T. 1432-1433; Witness MM-003, 8 Mar 2006, T. 2010-2011; Ratko Ličina, 14 Aug 2006, T. 6408.

<sup>386</sup> Witness MM-003, 8 Mar 2006, T. 2010-2011; Milan Babić, 16 Feb 2006, T. 1432-1433.

<sup>387</sup> The Trial Chamber recalls its findings that Milan Babić's evidence, as well as that of Witness MM-003, requires corroboration, see *supra* section I D 2. The Trial Chamber considers, however, that where the evidence of one of these witnesses corroborates the evidence of the other, such corroboration is sufficient.

<sup>388</sup> Ex. 211; Ex. 973; Ex. 975. See also MM-003, 8 Mar 2006, T. 2005-2006. Ratko Ličina testified that the SAO Krajina police only reacted to the establishment of Croatian SJBs in municipalities where the Serbs were in majority, as

165. In mid-July 1991, the town of Glina, located in the Banija area north-west of Dvor, was attacked by a unit under the command of Captain Dragan Vasiljković.<sup>389</sup> The JNA intervened after the attack by creating a buffer zone.<sup>390</sup> On 25 July 1991, the village of Struga, a few kilometres north of Dvor along the Una river, was attacked by units under the command of Captain Dragan Vasiljković and the Glina War Staff: 50 members of a “special forces” unit, 50 policemen and 700 civilians participated in the operation.<sup>391</sup> Following the attack, the JNA intervened and created a buffer zone.<sup>392</sup>

166. On 26 August 1991, the Croat village of Kijevo, situated 15 kilometres east of Knin, was attacked because the MUP of Croatia had established an SJB in the village.<sup>393</sup> The decision to attack Kijevo was taken by Milan Martić in coordination with the JNA and followed an ultimatum issued by him to the Croatian SJB, in which he stated that “[y]ou and your leadership have brought relations between the Serbian and Croatian populations to such a state that further co-existence in our Serbian territories of the SAO Krajina is impossible”.<sup>394</sup> In relation to the civilian population in Kijevo, the ultimatum provided that:

We also want to advise the population of Kijevo to find safe shelters on time so that there should be no casualties among them. We would like to stress that we want co-existence and understanding between the residents of the Serbian villages and the Croatian population in Kijevo, and we guarantee civil and human rights to everyone.<sup>395</sup>

167. Units of the JNA 9<sup>th</sup> Corps in Knin, the *Milicija Krajine* and the local TO participated in the attack.<sup>396</sup> The evidence establishes that there was coordination between the JNA and the MUP, and that the JNA was in command of the participating forces.<sup>397</sup> The evidence is inconsistent as to the strength of the Croatian forces present in Kijevo.<sup>398</sup> Prior to the attack, between 23 and 25 August

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was the case in Plitvice (Titova Korenica municipality), in Lovinac (Gračac municipality), in Kijevo (Knin municipality), in Kruševo (Obrovac municipality), in Škabrnja (Benkovac municipality), in Vidusevac (Glina municipality), Ratko Ličina, 14 Aug 2006, T. 6428, 15 Aug 2006, T. 6507-6508.

<sup>389</sup> Aernout van Lynden, 2 Jun 2006, T. 5002, 5012-5014.

<sup>390</sup> Aernout van Lynden, 2 Jun 2006, T. 4996-4999, 5007.

<sup>391</sup> Ex. 587. See also Ex. 582 (stating that Milan Martić, Captain Dragan Vasiljković and Bogdan Vajagić met on 23 July 1991 to discuss the situation in the Banija area).

<sup>392</sup> Aernout van Lynden, 2 Jun 2006, T. 5008. See also Ex. 587, p. 1.

<sup>393</sup> Milan Babić, 17 Feb 2006, T. 1553-1556; Ex. 1037, L0079681.

<sup>394</sup> Ex. 820, Agreed Facts, para. 20. See also Milan Babić, 16 Feb 2006, T. 1438-1439, 17 Feb 2006, T. 1555, Ex. 1037, Group 11, L0079292-3, L0079682; Ex. 212.

<sup>395</sup> Ex. 212; Milan Babić, 17 Feb 2006, T. 1555. See also Ex. 496, p. 11; Ex. 1037, L0079294, L0079682.

<sup>396</sup> Milan Babić, 17 Feb 2006, T. 1558-1559; Milan Dragišić, 19 Sep 2006, T. 8655-8656.

<sup>397</sup> Ex. 45, p. 48; Ex. 496, p. 11. See also Witness MM-003, 09 Mar 2006, T. 2035.

<sup>398</sup> Witness MM-078, 24 May 2006, T. 4443 (members of the Croatian MUP were billeted in the culture hall in Kijevo). Milan Dragišić, 19 Sep 2006, T. 8655-8656 (there were at least 300 armed men in Kijevo, including ZNG); Borislav Đukić, 20 Oct 2006, T. 9875 (there was a gradual reinforcement of the Croatian forces in Kijevo, which eventually numbered 1,000 men).

1991, the commander of the Croatian SJB evacuated almost the entire civilian population of Kijevo.<sup>399</sup>

168. The attack on Kijevo on 26 August 1991 only lasted a few hours.<sup>400</sup> There is differing evidence as to the purpose of the attack. Witnesses testified that the purpose was “to cleanse Kijevo of its Croatian population”, to link up the two Serb villages of Polace and Civljani on either side of Kijevo, to “liberate the area”, and to provide for further advancement of the JNA.<sup>401</sup> Borislav Đukić, who at the time was commander of Tactical Group 1 (“TG-1”) of the JNA 9<sup>th</sup> Corps in Knin, testified that the attack had not been planned beforehand but was provoked by a Croatian attack on 25 August 1991 on buffer zones previously established by TG-1. According to Borislav Đukić, the purpose of the attack was to lift the blockade along the Kijevo road, set up by the Croatian SJB in Kijevo.<sup>402</sup>

169. The Catholic church in Kijevo was damaged during the attack, and was later destroyed.<sup>403</sup> The evidence also shows that private houses were looted and torched.<sup>404</sup>

170. On 28 August 1991, TG-1 of the JNA 9<sup>th</sup> Corps also attacked the mixed Croat and Serb village of Vrlika, located south of Knin near Kijevo.<sup>405</sup> After the attack, an SJB of the SAO Krajina MUP was established in Vrlika.<sup>406</sup> Subsequently, members of this SJB indirectly participated in the widespread looting by allowing lorries carrying looted goods to proceed towards Knin.<sup>407</sup>

171. On 16 September 1991, Drniš, which is located near Knin and at the time was 75% Croat, was attacked by forces and artillery of TG-1 of the JNA 9<sup>th</sup> Corps.<sup>408</sup> During the attack, and the following days, the centre of Drniš was almost completely destroyed.<sup>409</sup> Widespread looting was

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<sup>399</sup> Borislav Đukić, 20 Oct 2006, T. 9872.

<sup>400</sup> Borislav Đukić, 20 Oct 2006, T. 9880.

<sup>401</sup> Witness MM-003, 9 Mar 2006, T. 2030, 2032-2035; Witness MM-078, 24 May 2006, T. 4443.

<sup>402</sup> Borislav Đukić, 20 Oct 2006, T. 9871-9873, 9875-9876; Milan Dragišić, 19 Sep 2006, T. 8655-8656. Milan Babić testified that the residents of Kijevo had blocked the road, Milan Babić, 17 Feb 2006, T. 1551-1552. *See also* Ex. 105.

<sup>403</sup> Milan Babić, 3 Mar 2006, T. 1931; Witness MM-078, 24 May 2006, T. 4444; Borislav Đukić, 19 Oct 2006, T. 9767, 20 Oct 2006, T. 9886; Ex. 106 (reporting that ZNG was deployed in the church).

<sup>404</sup> Witness MM-078, 24 May 2006, T. 4434-4435; Borislav Đukić, 20 Oct 2006, T. 9885-9886. *See also* Ex. 496.

<sup>405</sup> Milan Babić, 17 Feb 2006, T. 1567; Witness MM-078, 24 May 2006, T. 4444; Borislav Đukić, 20 Oct 2006, T. 9887.

<sup>406</sup> Witness MM-078, 24 May 2006, T. 4445.

<sup>407</sup> Witness MM-078, 24 May 2006, T. 4445; Borislav Đukić, 20 Oct 2006, T. 9887-9888 (testifying that the JNA lifted the Croatian siege of Vrlika and that the JNA did not participate in looting); Ex. 221.

<sup>408</sup> Witness MM-078, 24 May 2006, T. 4446, 4450-4451; Borislav Đukić, 20 Oct 2006, T. 9888, 9894-9895; Ex. 984, pp 7-12. Two JNA military facilities were located outside of Drniš and were blocked by the Croatian forces, Borislav Đukić, 20 Oct 2006, T. 9888-9889. There was no Croatian SJB in Drniš, Witness MM-078, 24 May 2006, T. 4452.

<sup>409</sup> Witness MM-078, 24 May 2006, T. 4450, 25 May 2006, T. 4542.

committed by members of the JNA and the MUP and by local citizens.<sup>410</sup> Approximately 10-15 days after the attack, an SJB of the SAO Krajina MUP was set up in Drniš.<sup>411</sup>

172. Following these attacks, several larger clashes and attacks occurred in predominantly Croat areas of the SAO Krajina. These will be more fully described below.

## 2. Hrvatska Dubica, Cerovljani and Baćin

### (a) Take-over of Hrvatska Kostajnica and Hrvatska Dubica

173. In 1990, Hrvatska Dubica, Cerovljani and Baćin were mixed or predominantly Croat villages in the Hrvatska Kostajnica municipality situated in north-eastern Croatia.<sup>412</sup> In 1990, Hrvatska Dubica had around 2,000 to 2,500 inhabitants.<sup>413</sup> Cerovljani is situated about three to six kilometres north of Hrvatska Dubica and in 1990 its population was some 500 people.<sup>414</sup> Baćin is situated about three to five kilometres west of Hrvatska Dubica and in 1990 it had 200 to 500 inhabitants.<sup>415</sup>

174. In the area of Hrvatska Kostajnica, there was intensive fighting during August and September 1991, which lasted until the beginning of October.<sup>416</sup> In September 1991, Milan Martić went together with Colonel Dušan Smiljanić, Chief of Security of the JNA 10<sup>th</sup> Zagreb Corps, to coordinate combat activities in relation to the “liberation of Kostajnica”.<sup>417</sup>

175. On 12 or 13 September 1991, Serb forces, including the SAO Krajina TO, took control over Hrvatska Kostajnica.<sup>418</sup> The special police unit of the SAO Krajina police at Dvor na Uni participated and cooperated with the TO.<sup>419</sup> Following the takeover of Hrvatska Kostajnica, the

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<sup>410</sup> Witness MM-078, 24 May 2006, T. 4450; Borislav Đukić, 20 Oct 2006, T. 9889-9890.

<sup>411</sup> Witness MM-078, 24 May 2006, T. 4452.

<sup>412</sup> Villages surrounding Hrvatska Dubica are Baćin, Cerovljani, Predore (about eight kilometres from Hrvatska Dubica), Slabinja, Živaja. Directly adjacent to Hrvatska Dubica across the river Una on the side of BiH is Bosanska Dubica, which in 1990 had approximately 10,000 inhabitants (about 40% Serbs, 45% Muslims and 500 Croats). Živaja (situated slightly north of Cerovljani and about eight to fifteen kilometres from Hrvatska Dubica) and Slabinja (ten to fifteen kilometres west of Hrvatska Dubica) were predominantly Serb villages, Witness MM-022, 20 Mar 2006, T. 2278, 2361; Witness MM-025, 12 Jun 2006, T. 5410, 5422-5424; Ex. 265, pp 2-3; Nikola Dobrijević, 10 Nov 2006, T. 10883-10884; Mijo Ciprić, Ex. 274, p. 2; Ex. 23, Atlas p. 21. *See also* Ex. 301, p. 3; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 42-59 and DVD 2, pp 1-7; Ex. 1044.

<sup>413</sup> Ex. 265, p. 2; Ex. 301, p. 2, in 1991, the population was 50% Croat and 38% Serb.

<sup>414</sup> Ex. 265, p. 2. In 1991, 52.9% were Croats, and 39.5% were Serbs, Ex. 301, p. 3.

<sup>415</sup> Witness MM-022, 20 Mar 2006, T. 2278; Ex. 265, p. 3; Mijo Ciprić, Ex. 274, p. 2; Ex. 301, p. 1, also stating that 94.9% were Croat, and 1.5% were Serb.

<sup>416</sup> Milan Babić, 20 Feb 2006, T. 1597-98; Ex. 1034, L0092283; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 7-8; Ex. 1044.

<sup>417</sup> Milan Babić, 16 Feb 2006, T. 1441-1442. *See also* Ex. 206; Milan Babić, 17 Feb 2006, T. 1532-1533.

<sup>418</sup> Nikola Dobrijević, 10 Nov 2006, T. 10873, 10878, 10882-10883. Nikola Dobrijević testified that among 500 or 600 members of the TO, there were 111 Croats and a few percent of Muslims, Nikola Dobrijević, 10 Nov 2006, T. 10881-10882, 13 Nov 2006 T. 10980-10981; Antun Blažević, Ex. 273, p. 2.

<sup>419</sup> Ex. 568, p. 3; Nikola Dobrijević, 13 Nov 2006, T. 10955. *See also* Ex. 957, p. 2, stating that as of 2 September 1991 “[t]here are strong MUP forces in Dubica and Šita”.



operation continued in order to take over the rest of the villages along the axis between Kostajnica and Novska, including the villages of Hrvatska Dubica, Cerovljani and Baćin.<sup>420</sup> A front line between the SAO Krajina and Croatian forces was established from Sunja to Hrvatska Dubica and further towards Novska.<sup>421</sup> Following this operation, there were daily conflicts on the front line.<sup>422</sup>

(b) Hrvatska Dubica

176. In 1991, the Croatian MUP took over the SJB in Hrvatska Dubica.<sup>423</sup> From mid-1991, ZNG units were formed in Hrvatska Dubica.<sup>424</sup> Around the same time, the Serb inhabitants started to move out of Hrvatska Dubica.<sup>425</sup>

177. After the occupation of Hrvatska Kostajnica around 12 or 13 September, Hrvatska Dubica was shelled from Hrvatska Kostajnica and from Bosanska Dubica, BiH.<sup>426</sup> Subsequently, the ZNG and Croatian MUP withdrew from Hrvatska Dubica and the surrounding villages and the civilian inhabitants started to leave.<sup>427</sup> After 13 September 1991, only about 60 Croats, mainly elderly and women, remained in Hrvatska Dubica.<sup>428</sup>

178. An SAO Krajina TO force and a police force, including a unit of the *Milicija Krajine* consisting of 30 policemen from the area, were set up in Hrvatska Dubica.<sup>429</sup> Veljko “Velja” Radunović, his son Stevo Radunović and Momčilo Kovačević were in charge of the *Milicija Krajine* unit, which had a command post at the old school building in Hrvatska Dubica.<sup>430</sup> There

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<sup>420</sup> Nikola Dobrijević, 10 Nov 2006, T. 10883-10884; Antun Blažević, Ex. 273, pp 2-3; Mijo Ciprić, Ex. 274, pp 3-4; Ex. 568, p. 4; Ex. 599, p. 5.

<sup>421</sup> Nikola Dobrijević, 10 Nov 2006, T. 10884-10886. According to Witness MM-022, the front line was between Jasenovac and Sunja along the Sava River, Witness MM-022, 20 Mar 2006, T. 2350-2351.

<sup>422</sup> Nikola Dobrijević, 10 Nov 2006, T. 10886.

<sup>423</sup> Josip Josipović, 6 Apr 2006, T. 3338.

<sup>424</sup> Witness MM-022, 20 Mar 2006, T. 2281-2283, 2324. There were about four units, each made up of four to five men, who did not have uniforms. The units had one firearm between them and some carried personal hunting rifles. The headquarters was in Hrvatska Dubica, close to the bridge between Hrvatska Dubica and Bosanska Dubica, Ex. 265, p. 5; Josip Josipović, 6 Apr 2006, T. 3297-3298, 3348.

<sup>425</sup> Witness MM-022, 20 Mar 2006, T. 2284, 2325, 2330; Ana Kesić, 21 Mar 2006, T. 2385; Josip Josipović, 6 Apr 2006, T. 3304-3305, 3333-3334; Witness MM-025, 12 Jun 2006, T. 5421.

<sup>426</sup> Tomislav Kozarčanin, Ex. 828, p. 2. See also Antun Blažević, Ex. 273, p. 2.

<sup>427</sup> Witness MM-022, 20 Mar 2006, T. 2281, 2286-2287, 2289; Josip Josipović, 6 Apr 2006, T. 3298, 3346-3347; Witness MM-025, 12 Jun 2006, T. 5414, 5421, Ex. 265, p. 4; Tomislav Kozarčanin, Ex. 828, p. 2.

<sup>428</sup> Witness MM-022, 20 Mar 2006, T. 2292-2293; Ana Kesić, 21 Mar 2006, T. 2385-2386; Witness MM-025, 12 Jun 2006, T. 5421-5422, Ex. 265, p. 4.

<sup>429</sup> Witness MM-022, 20 Mar 2006, T. 2289-2290, 2293, 2316, 2336, 2350; Josip Josipović, 6 Apr 2006, T. 3297-3298.

<sup>430</sup> Witness MM-022, 20 Mar 2006, T. 2291, 2297-2298, 2308; Josip Josipović, 6 Apr 2006, T. 3309-3310, 3314. Other *Milicija Krajine* members were Mirko Sarac, Milan Petrović, Đorđe Ratković, Đuro Jerinić, Marjan Prvalo, Mladen Pozar, Rajko Pauković, Dubravko Pauković, Mico Tepić, and Branko Kotur, Josip Josipović, 6 Apr 2006, T. 3309, 3318.

were “reservists” in Živaja under the command of Stevo Borojević.<sup>431</sup> The reservists wore old military olive-green-grey uniforms.<sup>432</sup>

179. On 15 September 1991, the JNA, the TO and the police surrounded Predore, approximately 8 kilometres from Hrvatska Dubica, and proceeded to search houses.<sup>433</sup> They rounded up people and took six or seven, including Josip Josipović, a ZNG member, to the Sava river to reconnoitre the area using them as a live shield, and then returned them to the village.<sup>434</sup> Josip Josipović and his cousin Mićo Ćorić were then taken to Dubička Brda where they were detained for one month.<sup>435</sup> Thereafter, they were transferred to the school building in Hrvatska Dubica, which was used as a command post by Serb forces, including the TO and the police.<sup>436</sup> Present at the school building were Momčilo Kovačević and Veljko Radjunović, who issued orders and participated in the beatings of detainees at the school building.<sup>437</sup> Josip Josipović identified Momčilo Kovačević, Stevo Radjunović, Mirko Šarac, Milan Petrović, Djordje Ratković, Djuro Jerinić, Marjan Prvalo and Miša Pozar as the soldiers guarding them.<sup>438</sup> Josip Josipović testified that he overheard the soldiers discussing amongst themselves and understood them as saying that they were receiving orders from Milan Martić.<sup>439</sup>

180. After the take-over of Hrvatska Dubica until mid-October 1991, some houses were torched in Hrvatska Dubica: approximately eight belonged to Croats, two belonged to couples of mixed marriages, and one belonged to a Serb.<sup>440</sup> There was also widespread looting, committed by the JNA, the TO, the *Milicija Krajine*, and local Serbs.<sup>441</sup> Detained Croats were also forced to loot.<sup>442</sup> All the houses of people who had fled, both Croats and Serbs, were looted and cars, tractors, tools,

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<sup>431</sup> Witness MM-022, 20 Mar 2006, T. 2289, 2293.

<sup>432</sup> Witness MM-022, 20 Mar 2006, T. 2293. The Serb forces in the area at the time wore a variety of insignia, including the five-pointed star and emblems with the inscription “SAO Krajina”, with “*Milicija Krajine*”, with a double-headed eagle and crossed swords, with four Cyrillic “S”. It was not possible to tell to which unit soldiers belonged. There is also evidence of soldiers with patches reading “Special Police Units”, “Blue”, and “Ugljevik”, worn by Serbs who came from BiH, Josip Josipović, 6 Apr 2006, T. 3299-3300, 3300-3303, 3353, 7 Apr 2006, T. 3382-3383; Ex. 266; Ex. 288.

<sup>433</sup> Josip Josipović, 6 Apr 2006, T. 3294, 3309, 3349-3350.

<sup>434</sup> Josip Josipović, 6 Apr 2006, T. 3310, 3350.

<sup>435</sup> Josip Josipović, 6 Apr 2006, T. 3310-3311. The Trial Chamber considers that the Defence has not been put on notice regarding a detention facility in Dubička Brda and will not consider this evidence for a conviction, *see supra* section I C.

<sup>436</sup> Josip Josipović, 6 Apr 2006, T. 3311, 3314.

<sup>437</sup> Josip Josipović, 6 Apr 2006, T. 3314.

<sup>438</sup> Josip Josipović, 6 Apr 2006, T. 3318, 7 Apr 2006, T. 3375.

<sup>439</sup> Josip Josipović, 6 Apr 2006, T. 3356.

<sup>440</sup> Witness MM-022, 20 Mar 2006, T. 2295-2296.

<sup>441</sup> Witness MM-022, 20 Mar 2006, T. 2293-2295, 2336.

<sup>442</sup> Josip Josipović, 6 Apr 2006, T. 3312-3313.

machinery, furniture and cattle were stolen.<sup>443</sup> Serbs who had withdrawn from the areas of Pakrac and Lipik moved into the houses of the people who had fled.<sup>444</sup>

181. In the morning on 20 October 1991, a truck bearing the insignia “Milicija SAO Krajina” with Veljko Radunović, Radovan Šoša and a man nicknamed “Janjeta” came to Ana Kesić’s house and told her and her sister-in-law Katarina to come with them and attend a meeting.<sup>445</sup> Thereafter the truck picked up several other civilians and brought them to the fire station in Hrvatska Dubica.<sup>446</sup> On the same date, Tomislav Kozarčanin was told by Branko Majstorović, who was wearing a JNA uniform, to go to the fire station to attend a meeting, which he did.<sup>447</sup> A second bus arrived at the fire station after ten minutes bringing another 20 people.<sup>448</sup> In total, there were then more than 40 people in the fire station but more people arrived later.<sup>449</sup> They were mostly Croats, although there were also Serbs and Muslims.<sup>450</sup>

182. The people in the fire station were guarded by Katarina “Kaća” Pekić and Stevo Radunovic, who were armed and wore JNA uniforms, and a man with the last name Kovačević.<sup>451</sup> The detainees were not free to leave.<sup>452</sup> Every two or three hours there was a change of guard, and the detainees’ names would be read out from a list to check no one was missing.<sup>453</sup> Over the course of the day, eleven of the detainees were released or managed to escape, including Tomislav Kozarčanin.<sup>454</sup>

183. Several witnesses testified to having heard, including from Serb soldiers in Hrvatska Dubica, that the people detained in the fire station on 20 October 1991 were taken the following day

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<sup>443</sup> Witness MM-022, 20 Mar 2006, T. 2294-2296; Ana Kesić, 21 Mar 2006, T. 2383. *See also* Josip Josipović, 6 Apr 2006, T. 3313.

<sup>444</sup> Witness MM-022, 20 Mar 2006, T. 2296.

<sup>445</sup> Witness MM-022, 20 Mar 2006, T. 2298-2301; Ana Kesić, 21 Mar 2006, T. 2388-2390, Ex. 258, p. 2.

<sup>446</sup> Those who were picked up included Vera Franković, Veronika Stanković, Pavle Kropf, Bara Kropf and her daughter, an 80-year old man nicknamed “Brico”, Danica Krizmanović, Ruza Dikulić, Sofija Dikulić, and Nikola Lončar, Witness MM-022, 20 Mar 2006, T. 2299-2301; Ana Kesić, 21 Mar 2006, T. 2388-2389, Ex. 258, p. 2. The Trial Chamber considers that Vera Stanković, born 1915, is Veronika Stanković in Annex I to the Indictment, that Pavle Kropf, aged 60, is Pavao Kropf in Annex I, that Bara Kropf, aged 60, is Barbara Kropf in Annex I, and that Nikola Lončar is Nikola Lončarević in Annex I. *See also* Josip Josipović, 6 Apr 2006, T. 3324; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 49-53.

<sup>447</sup> Tomislav Kozarčanin, Ex. 828, p. 2.

<sup>448</sup> Witness MM-022, 20 Mar 2006, T. 2301.

<sup>449</sup> Witness MM-022, 20 Mar 2006, T. 2301-2302. *See also* Ex. 380, pp 10, 12.

<sup>450</sup> Witness MM-022, 20 Mar 2006, T. 2303.

<sup>451</sup> Witness MM-022, 20 Mar 2006, T. 2343-2344; Tomislav Kozarčanin, Ex. 828, p. 3; Ex. 380, pp 11-12.

<sup>452</sup> Tomislav Kozarčanin, Ex. 828, p. 3

<sup>453</sup> Witness MM-022, 20 Mar 2006, T. 2302, 2343-2344. Two Serbs, Mićo Kesonja and Đuro Kesonja, made a list of all the people who remained in Hrvatska Dubica during the period of their occupation, Tomislav Kozarčanin, Ex. 828, pp 3-4.

<sup>454</sup> Those released were three Serbs, one Muslim and seven Croats whose Serb neighbours or friends contacted the guards, Witness MM-022, 20 Mar 2006, T. 2304-2306, 2360; Ana Kesić, 21 Mar 2006, T. 2390, 2393-2394, Ex. 258, pp 2-3; Tomislav Kozarčanin, Ex. 828, p. 3; Ex. 380, pp 11-12.

to a place called Krečane near Baćin where they were killed.<sup>455</sup> The bodies of the following 32 civilians, who the evidence shows had been detained in the fire station on 20 October 1991, were subsequently exhumed from several graves, including one at Krečane near Baćin:<sup>456</sup> Katarina Alavančić, Terezija Alavančić, Josip Antolović,<sup>457</sup> Marija Batinović,<sup>458</sup> Mara Ćorić,<sup>459</sup> Mijo Ćović,<sup>460</sup> Marija Delić, Ana Dikulić, Ruža Dikulić, Sofija Dikulić, Antun Đukić, Marija “Maca” Đukić,<sup>461</sup> Ana Ferić, Juraj Ferić, Kata Ferić, Filip Jukić, Marija Jukić, Antun Krivajić, Barbara Kropf, Pavao Kropf, Ivan Kulišić,<sup>462</sup> Nikola Lončarić, Antun Mucavac,<sup>463</sup> Ivo Pezo, Sofija Pezo, Anka Piktaja,<sup>464</sup> Štjepan Sabljar, Veronika Stanković, Antun Švračić, Marija Švračić, Ana Tepić,<sup>465</sup> and Katarina Vladić.<sup>466</sup> Moreover, the evidence shows that the following 9 civilians, whose bodies have not been recovered, were detained in the fire station on 20 October 1991 and killed the following day at Krečane near Baćin: Štjepan Dikulić, Antun Đurinović, Jozo Karanović, Reza Krivajić, Dušan Tepić, Ivan Trninić, Ivo Trninić, Kata Trninić and Terezija Trninić.<sup>467</sup> Although their bodies have not been recovered, in light of the fact that they were detained in the fire station at the same time as the above-mentioned 32 persons who were subsequently killed, the Trial Chamber considers that it has been established beyond reasonable doubt that they were killed.<sup>468</sup> All of the above victims were Croats, except for Ana Tepić and Dušan Tepić, who were Serbs.<sup>469</sup>

184. After Tomislav Kozarčanin fled from the fire station, he hid for seven or eight days. When he returned to his house, he was picked up by Đuro Majstorović and two others with the same surname. They wore JNA uniforms and carried automatic rifles. He was handcuffed, blindfolded

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<sup>455</sup> Witness MM-022, 20 Mar 2006, T. 2310-2311; Josip Josipović, 6 Apr 2006, T. 3324-3325, 3354; Ana Kesić, 21 Mar 2006, T. 2381-2382, Ex. 258, p. 3; Tomislav Kozarčanin, Ex. 828, p. 3. *See also* Ex. 265, p. 6; Ex. 257.

<sup>456</sup> In 1997, 56 bodies were exhumed from a mass grave in Krečane near Baćin, Davor Strinović, 12 Apr 2006, T. 3669; Ana Kesić, Ex. 258, p. 3; Tomislav Kozarčanin, Ex. 828, p. 3; Antun Blažević, Ex. 273, p. 4; Mijo Ciprić, Ex. 274, p. 4; Ex. 301, p. 1; Ex. 380; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 5-7; Ex. 1044.

<sup>457</sup> Ex. 315.

<sup>458</sup> Ex. 316.

<sup>459</sup> Ex. 310; Josip Josipović, 6 Apr 2006, T. 3324-3325.

<sup>460</sup> Ex. 317.

<sup>461</sup> Ex. 308.

<sup>462</sup> There is evidence that an individual called “Ivo Kuliša” remained in Hrvatska Dubica, Tomislav Kozarčanin, Ex. 828, p. 2. However, the Trial Chamber cannot conclude that this person is the same person as Ivan Kulišić.

<sup>463</sup> Ex. 307.

<sup>464</sup> Ex. 314.

<sup>465</sup> Ex. 306.

<sup>466</sup> With respect to these 32 individuals, *see* Ex. 257 (listing all of them except for Marija Batinović); Witness MM-022, 20 Mar 2006, T. 2312-2313; Ex. 302, Ex. 323. Ex. 302 indicates that all of them except for Marija Delić and Ivo Pezo, were exhumed from a mass grave in Krečane near Baćin. Ex. 323 identifies their causes of death as either gunshot wounds, trauma wounds or blast wounds, except for Ivan Kulišić, for whom Ex. 323 states the cause of death as unknown. Ex. 257 also lists FNU Jukić, FNU Krnić and FNU Šestić as having been detained in the fire station. There is no further evidence concerning these persons and in view of this lack of evidence the Trial Chamber is unable to identify them. Having regard to the Trial Chamber’s finding as to the interpretation of the Indictment (*see supra* section I C) the Trial Chamber will not make any further finding regarding these persons.

<sup>467</sup> Ex. 257; Ex. 302; Ex. 323.

<sup>468</sup> In this respect, the Trial Chamber notes the evidence of Mijo Ciprić that there is a possibility that bodies were washed away from the mass grave at Krečane near Baćin as that grave is on the bank of the river Una, Mijo Ciprić, Ex. 274, 7-8 Nov 2000, p. 4. *See also* Ex. 1042; Ex. 1043, DVD 2, pp 5-7.

and beaten, after which he was taken in their car to an abandoned house. He was beaten throughout the journey, which resulted in broken ribs, and his legs were cut with a knife. They then drove him to another location, removed his handcuffs and abandoned him. A Serb later took him to the SJB in Hrvatska Dubica, where he described what had happened to him.<sup>470</sup>

185. After Ana Kesić and her sister-in-law Katarina were released from the fire station, they heard from one of their relatives, Milan Šestić, that three neighbours had been killed and that he dug graves for them.<sup>471</sup> There is no other evidence as to these three persons.<sup>472</sup> The Trial Chamber finds that the evidence is insufficient to establish beyond reasonable doubt that these three persons were killed.<sup>473</sup>

(c) Cerovljani

186. Following the advice of the Croatian police and ZNG, most of the residents of Cerovljani left the village in August and early September 1991, after which only elderly people remained.<sup>474</sup>

187. On 13 and 21 September 1991, Serbs came to Cerovljani and burnt Croat houses.<sup>475</sup> The Serbs who came on 21 September were armed and about fifty in number, the majority wearing civilian clothes, although a few wore military uniforms.<sup>476</sup> The commander was Nikola Begović from Babin Rijeka near Hrvatska Kostajnica and most of the members were from Živaja, Šaš and the surroundings of Hrvatska Dubica.<sup>477</sup> On 24 September, the armed Serbs came again in the afternoon and shooting could be heard; that night three dead bodies were found.<sup>478</sup> On the same date, the houses of Đuro Petrović, Nikola Dragocajać, Anka Barišić and Željko Blinja were torched

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<sup>469</sup> Witness MM-022, 20 Mar 2006, T. 2313.

<sup>470</sup> Tomislav Kozarčanin, Ex. 828, p. 3.

<sup>471</sup> Ana Kesić, Ex. 258, p. 3.

<sup>472</sup> These three were Luka Krnić, Štef Uska and FNU Batinović, Ana Kesić, 21 Mar 2006, T. 2381, Ex. 258, p. 3. Annex I to the Indictment contains two individuals with the last name Batinović, however the Trial Chamber cannot find that this individual is the same person as either of those mentioned in Annex I.

<sup>473</sup> There is evidence that Milan Šestić disappeared from Hrvatska Dubica, Ana Kesić, 21 Mar 2006, T. 2381, Ex. 258, p. 3. *See also* Ex. 302, p. 4. Documentary evidence also shows that Mijo Mišić disappeared from Hrvatska Dubica, Ex. 302, p. 4. Milan Šestić and Mijo Mišić are mentioned in Annex I to the Indictment as victims killed in Bačin and surroundings. However, in view of the evidence regarding these persons provided to the Trial Chamber (Ex. 302, Ex. 323), the Trial Chamber cannot conclude that these individuals are dead or were killed. Maca Dikulić (age 86) is listed in Annex I to the Indictment. There is evidence that she remained in Hrvatska Dubica after the occupation, Ana Kesić, Ex. 258, p. 3; Tomislav Kozarčanin, Ex. 828, p. 2. However, no other information is provided to the Trial Chamber in relation to this person (Ex. 302, Ex. 303). The Trial Chamber cannot conclude that this individual is dead or was killed.

<sup>474</sup> Antun Blažević, Ex. 273, p. 3.

<sup>475</sup> Antun Blažević, Ex. 273, p. 3. On 13 September 1991, "the Serbs" burnt three Croatian houses which were on the Živaja side of Cerovljani. On 21 September, they burnt three more, Antun Blažević, Ex. 273, p. 3.

<sup>476</sup> Antun Blažević, Ex. 273, p. 3.

<sup>477</sup> Antun Blažević, Ex. 273, p. 3.

<sup>478</sup> The victims were Barbara Blinja, Nikola Likić, and Đuro Petrović, Antun Blažević, Ex. 273, pp 3-4. The Trial Chamber finds that these victims were killed by armed Serbs from Živaja under the command of Nikola Begović. The Trial Chamber notes that Barbara Blinja Nikola Likić, and Đuro Petrović are not listed in Annex I to the Indictment. The Trial Chamber considers that the Defence has not been on notice regarding these killings and will therefore not enter a conviction based on them. *See supra* section I C.

by the Serbs and rocket launchers were fired at the Catholic church which damaged the bell tower.<sup>479</sup> Some of the armed Serbs also stole the car of Antun Blažević.<sup>480</sup>

188. The evidence shows that some time in October 1991, unidentified armed Serbs gathered the remaining civilians in Cerovljani into the local community centre under the pretext of having a meeting, following which they were detained for the night. The next morning they were taken away.<sup>481</sup> The bodies of Marija Antolović,<sup>482</sup> Ana Blinja,<sup>483</sup> Josip Blinja,<sup>484</sup> Katarina Blinja,<sup>485</sup> Andrija Likić,<sup>486</sup> Ana Lončar,<sup>487</sup> and Kata Lončar (born 1906)<sup>488</sup> were subsequently discovered in the mass grave in Krečane near Baćin.<sup>489</sup> Another woman also by the name of Kata Lončar, who was a Croat, remained in the village throughout the occupation because she had “connections with the Serbs”.<sup>490</sup> The bodies of Nikola Blinja, Antun Lončar and Nikola Zaočević, who were also rounded up, have not been recovered.<sup>491</sup> In relation to Nikola Zaočević, the Trial Chamber notes that he is not mentioned in Annex I to the Indictment and recalls its interpretation of the Indictment in this respect.<sup>492</sup> Moreover, the Trial Chamber considers that the Defence has not been on notice concerning this victim and the Trial Chamber is therefore unable to consider this victim further. With regard to Nikola Blinja and Antun Lončar, in light of the evidence that they were detained with the other persons named above, all of whom were subsequently killed, the Trial Chamber finds it established beyond reasonable doubt that also they were killed at the same time.

(d) Baćin and surroundings

189. Following the take-over of Baćin, all the inhabitants left, with the exception of around thirty mostly elderly civilians, among whom were the following 22 persons: Željko Abaza, Matija Barunović, Antun Bunjevac, Tomo Bunjevac, Antun Čorić, Barica Čorić, Josip Čorić (30 years old), another man by the name of Josip Čorić (60 years old), Vera Čorić, Nikola Felbabić, Grga Glavinić, Anka Josipović, Ankica Josipović, Ivan Josipović, Josip Karagić, Kata Lončar (born 1931), Štjepan Lončar, Antun Ordanić, Luka Ordanić, Antun Pavić, Matija Pavić, and Nikola

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<sup>479</sup> Antun Blažević, Ex. 273, p. 3.

<sup>480</sup> Antun Blažević, Ex. 273, p. 3.

<sup>481</sup> Antun Blažević, Ex. 273, p. 4.

<sup>482</sup> Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 311; Ex. 323, p. 4.

<sup>483</sup> Antun Blažević, Ex. 273, 23 Jun 2003, p. 1; Ex. 302; Ex. 323, p. 4.

<sup>484</sup> Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 323, p. 4.

<sup>485</sup> Antun Blažević, Ex. 273, 23 Jun 2003, p. 1; Ex. 302; Ex. 323, p. 4.

<sup>486</sup> Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 309; Ex. 323, p. 5.

<sup>487</sup> Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 323, p. 5.

<sup>488</sup> Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 313; Ex. 323, p. 5.

<sup>489</sup> Antun Blažević, Ex. 273, p. 4, 23 Jun 2003, p. 1; Ex. 302.

<sup>490</sup> Antun Blažević, Ex. 273, p. 4.

<sup>491</sup> Antun Blažević, Ex. 273, p. 4; Ex. 302 (regarding Nikola Blinja and Antun Lončar).

<sup>492</sup> See *supra* section I C.

Vrpoljac.<sup>493</sup> The evidence shows that Željko Abaza was detained in mid-October in a toilet in the old school building in Hrvatska Dubica, that he was later killed by members of the *Milicija Krajine*, and that his body was thrown into the Una river by those members.<sup>494</sup> The evidence further shows that the bodies of Antun Bunjevac and Tomo Bunjevac were exhumed from individual graves in Hrvatska Dubica.<sup>495</sup> There is no exhumation evidence concerning the other persons listed above. The Trial Chamber notes the evidence that in October 1991 all of the people who remained in the village were taken to Krečane near Baćin, where they were killed along with a number of others who were brought from Cerovljani and Hrvatska Dubica.<sup>496</sup>

190. In light of the evidence that Željko Abaza was killed in Hrvatska Dubica and not buried but thrown into the Una river, and that Antun Bunjevac and Tomo Bunjevac were buried in Hrvatska Dubica, the Trial Chamber cannot conclude that the above-named persons were killed as one group. However, the Trial Chamber takes particular note of the situation in the area in October 1991 and that there is no evidence of fighting going on in Baćin proper at this time. The Trial Chamber further recalls the evidence that numerous killings of persons from Hrvatska Dubica, Cerovljani and Baćin were committed in Krečane near Baćin around 21 October 1991. In this connection, the Trial Chamber recalls that it visited Baćin and Krečane during the site visit to Croatia, and notes that Krečane is on the outskirts of Baćin and less than a ten-minute walk from the Catholic church in Baćin.<sup>497</sup> In light of the above, and the totality of the evidence, the Trial Chamber therefore considers that the evidence proves beyond reasonable doubt that the above-named persons were killed around October 1991, albeit not necessarily on one occasion or at one and the same location.

191. Annex I to the Indictment lists Ivo Barunović, Nikola Barunović, Kata Bunjevac, Vera Jukić, Terezija Kramarić, Mijo Krnić, Marija Milašinović, Marija Šestić and Soka Volarević as having been killed in or around Baćin. The evidence shows that Vera Jukić, Terezija Kramarić, Mijo Krnić, Marija Milašinović, Marija Šestić and Soka Volarević were exhumed from the mass

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<sup>493</sup> Mijo Ciprić, Ex. 274, p. 3.

<sup>494</sup> Josip Josipović was detained together with Željko Abaza, Antun Knežević and Idriz Čaušević. Idriz Čaušević was killed by persons under Veljko Radunović's and Momčilo Kovačević's command at the old school building in Hrvatska Dubica. Three days later, Željko Abaza and Ante Knežević had their throats slit and Josip Josipović and Mićo Ćorić were forced by Stevo Radunović, Momčilo Kovačević, Mirko Sarac, Milan Petrović, Đorđe Ratković, Đuro Jerinić, Marjan Prvalo, and Mladen Pozar to load the dead bodies of Željko Abaza and Antun Knežević onto a truck. Subsequently, the truck drove the three of them and the two bodies to the river and the bodies were thrown into the water by the same Serbs, Josip Josipović, 6 Apr 2006, T. 3315-3320, 7 Apr 2006, T. 3375-3377. The Trial Chamber finds that these three individuals were killed. However, none of these victims are mentioned in Annex I to the Indictment. The Trial Chamber considers that the Defence has not been on notice with regard to these killings and will not consider this evidence for a conviction. In this regard, the Trial Chamber recalls its findings on the interpretation of the indictment, *see supra* section I C. *See also* Mijo Ciprić, Ex. 274, p. 3; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 46-48.

<sup>495</sup> Ex. 302; Ex. 323.

<sup>496</sup> Mijo Ciprić, Ex. 274, p. 3.

<sup>497</sup> *See* Ex. 1043, DVD 2, pp 5-6; Ex. 1044, pp 5, 8-9.

grave in Krečane near Baćin.<sup>498</sup> Moreover, the evidence shows that Nikola Barunović was exhumed from the mass grave at Višnjevački Bok, where Ivo Pezo, who had previously been detained at the fire station in Hrvatska Dubica, was also exhumed.<sup>499</sup> Furthermore, Ivo Barunović was exhumed from an individual grave in Baćin.<sup>500</sup> With regard to Kata Bunjevac, the evidence shows that she went missing from Kostričićima, however there is no further evidence in relation to her.<sup>501</sup> The Trial Chamber concludes that the above-mentioned victims were killed, except for Ivo Barunović and Kata Bunjevac, in relation to whom the Trial Chamber finds that the evidence is insufficient to establish beyond reasonable doubt that they were killed.

192. With respect to the following 22 individuals listed in Annex I to the Indictment, no evidence has been provided to the Trial Chamber: Sofija Barić, Marija Barunović, Anka Batinović, Danica Đukić, Kata Đukić, Liza Đukić, Iva Jukić, Marija Juratović, Janja Jurić, Marija Krnić, Štefo Krnić, Ivica Kulišić, Mijo Lazić, Anka Likić, Antun Likić, Jelka Likić, Antun Lončarević, Janja Lujčić, Dragica Matijević, Mara Mucavac, Jula Šestić and Pero Vuković.<sup>502</sup> The Trial Chamber therefore finds that there is insufficient evidence to establish beyond reasonable doubt that these individuals were killed. With regard to Nevenka Perković, Vlado Perković and Zoran Perković, who are also listed in Annex I to the Indictment, the evidence shows that they were found alive.<sup>503</sup>

(e) Destruction in Cerovljani, Hrvatska Dubica, and Baćin after December 1991<sup>504</sup>

193. Prior to August 1993, a Catholic church in Hrvatska Dubica was razed to the ground and its foundations were removed.<sup>505</sup> The Orthodox church remained intact and was still standing in 1995.<sup>506</sup> Towards the end of 1992 and beginning of 1993, looting and torching of houses was carried out by local Serbs.<sup>507</sup> By 1995, many houses in Hrvatska Dubica belonging to Croats had been destroyed.<sup>508</sup> The part of the village which contained both Serb and Croat houses remained intact.<sup>509</sup> By 1995, most houses had been looted.<sup>510</sup>

<sup>498</sup> Ex. 302. Regarding Soka Volarević, *see also* Ex. 312; Ex. 323.

<sup>499</sup> Ex. 302. Ex. 323 indicates that the cause of death of Nikola Barunović was a blast wound and that the cause of death of the other victims was gunshot wounds.

<sup>500</sup> Ex. 302; Ex. 323, providing that the cause of death is unknown.

<sup>501</sup> Ex. 302; Ex. 323.

<sup>502</sup> Ex. 302, pp 2-4, indicating that there is no information on these individuals.

<sup>503</sup> Ex. 302, p. 4; Ivan Grujić, 10 Apr 2006, T. 3476.

<sup>504</sup> The Trial Chamber recalls that the period governing the Indictment as to Counts 12 to 14 is 1 August 1991-31 December 1992, Indictment, para. 47.

<sup>505</sup> Witness MM-022, 20 Mar 2006, T. 2365; Ana Kesić, 21 Mar 2006, T. 2383. *See also* Mijo Ciprić, Ex. 274, p. 3; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 53-54; Ex. 1044.

<sup>506</sup> Ana Kesić, 21 Mar 2006, T. 2383. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 54-59; Ex. 1044.

<sup>507</sup> Tomislav Kozarčanin, Ex. 828, p. 4.

<sup>508</sup> Ana Kesić, 21 Mar 2006, T. 2383, Ex. 258, p. 3; Witness MM-022, 20 Mar 2006, T. 2361; Mijo Ciprić, Ex. 274, p. 3.

<sup>509</sup> Mijo Ciprić, Ex. 274, pp 3-4.

<sup>510</sup> Witness MM-022, 20 Mar 2006, T. 2318; Tomislav Kozarčanin, Ex. 828, p. 4.



194. There is evidence that by 1995, Croat houses in Cerovljani had been burnt or blown up, and that the Catholic church had been destroyed.<sup>511</sup>

195. There is evidence that by 1995, half of the houses in Baćin were destroyed or torched.<sup>512</sup> The Catholic church in Baćin had been completely destroyed.<sup>513</sup> Many houses in the surrounding villages suffered damage, and the village of Predore was razed to the ground.<sup>514</sup>

### 3. Saborsko area

196. Saborsko is located in north-western Croatia and stretches seven kilometres along the Korenica-Ogulin road, which goes through Plitvice, Poljanak, Saborsko, Lička Jasenica, Plaški, and Josipdol before reaching Ogulin.<sup>515</sup> Purely or predominantly Croat villages were located south of Saborsko near the Plitvice Lakes,<sup>516</sup> whereas Serb villages, such as Plaški and Lička Jasenica, were located to the north of Saborsko.<sup>517</sup>

#### (a) Municipality of Plaški

197. In 1990, Plaški was within the municipality of Ogulin.<sup>518</sup> Following a referendum, Plaški formed its own municipality and joined the SAO Krajina. Nikola Medaković became the first president of the new municipality.<sup>519</sup> Plaški municipality comprised *inter alia* the Serb villages of Vojnovac, Plaški, Blata and Lička Jasenica and was surrounded by Croat villages.<sup>520</sup>

198. Following the armed clash in Plitvice in March 1991, a split occurred in the Plaški SJB, whereby policemen of Croat origin left the SJB and were replaced with Serb policemen from the

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<sup>511</sup> Witness MM-022, 20 Mar 2006, T. 2362-2363; Antun Blažević, Ex. 273, p. 4; Mijo Ciprić, Ex. 274, p. 3. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 1-2; Ex. 1044.

<sup>512</sup> Witness MM-022, 20 Mar 2006, T. 2362; Mijo Ciprić, Ex. 274, p. 3.

<sup>513</sup> Mijo Ciprić, Ex. 274, p. 3.

<sup>514</sup> Witness MM-022, 20 Mar 2006, T. 2362.

<sup>515</sup> Ex. 22, Map 8; Ex. 23, p. 19; Marko Vuković, 24 Mar 2006, T. 2610; Vlado Vuković, 27 Mar 2006, T. 2655, 2710; Witness MM-037, 28 Mar 2006, T. 2797; Nikola Medaković, 9 Oct 2006, T. 8961; Ana Bićanić, Ex. 276, p. 2. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 30-41 and DVD 3, pp 1-10; Ex. 1044.

<sup>516</sup> Such as Sertić Poljana and Poljanak, Marko Vuković, 24 Mar 2006, T. 2568.

<sup>517</sup> Other Serb villages in this area were Blata, Plavca Draga, Haski, Latin, and Vojnovac, Marko Vuković, 24 Mar 2006, T. 2568; Witness MM-037, 28 Mar 2006, T. 2747; Nikola Medaković, 9 Oct 2006, T. 8946. There were JNA barracks and a large fuel depot in Lička Jasenica, Vlado Vuković, 27 Mar 2006, T. 2655; Marko Vuković, 24 Mar 2006, T. 2574, 2605; Witness MM-037, 28 Mar 2006, T. 2751-2752; Nikola Medaković, 9 Oct 2006, T. 8972.

<sup>518</sup> Witness MM-037, 28 Mar 2006, T. 2746-2747; Nikola Medaković, 9 Oct 2006, T. 8945-8947, 10 Oct 2006, T. 9086.

<sup>519</sup> Witness MM-037, 28 Mar 2006, T. 2747-2748, Ex. 268, T. 11570, 11572; Nikola Medaković, 9 Oct 2006, T. 8948, 10 Oct 2006, T. 9055.

<sup>520</sup> The Croat villages included Slunj, Ogulin, the area of Stajnica, Lipice, and Saborsko, Witness MM-037, 28 Mar 2006, T. 2746-2748, 2770-2771; Nikola Medaković, 9 Oct 2006, T. 8975-8976, 10 Oct 2006, T. 9046.

area.<sup>521</sup> After this, the SJB consisted of 10 to 15 employees and the Chief of the SJB was Dušan Lataš.<sup>522</sup>

199. During the spring and early summer of 1991, a unit of the *Milicija Krajine* was set up in Plaški following training at Golubić. Nikola Medaković, who had also undergone the training, commanded the unit, which at its fullest capacity consisted of 50 policemen.<sup>523</sup> The members of the unit called themselves “Martić’s Police”.<sup>524</sup> In September 1991, a TO Brigade was established in Plaški into which members of the *Milicija Krajine* unit were transferred.<sup>525</sup>

200. Following the armed clash in Plitvice and through the summer of 1991, both Serb and Croat forces set up roadblocks on the road from Saborsko through Lička Jasenica to Ogulin.<sup>526</sup> After the summer 1991, the road was closed by the Croatian MUP which set up barriers in Josipdol to the north of Plaški and Saborsko to the south, which resulted in a blockade of Plaški as well as the JNA training grounds in Slunj.<sup>527</sup> There were neither telephone lines nor electricity, nor basic necessities, such as food or medicine.<sup>528</sup>

(b) Lipovača

201. Lipovača was in the municipality of Slunj, approximately 25 kilometres from Saborsko and 18 kilometres from the town of Slunj and the former training ground of the JNA 5<sup>th</sup> Military District

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<sup>521</sup> The reason for the split was that the policemen of Croat ethnicity refused to sign a pledge of allegiance to the SAO Krajina, Marko Vuković, 24 Mar 2006, T. 2570-2571; Vlado Vuković, 27 Mar 2006, T. 2653; Nikola Medaković, 10 Oct 2006, T. 9094; Witness MM-037, Ex. 268, T. 11569, 11616. Regarding the clash in Plitvice, *see supra* para. 132.

<sup>522</sup> Witness MM-037, 28 Mar 2006, T. 2749, 2751, 29 Mar 2006, T. 2821, Ex. 268, T. 11568-11569; Nikola Medaković, 9 Oct 2006, T. 8959, 8971, 8973.

<sup>523</sup> Nikola Medaković, 9 Oct 2006, T. 8965-8966, 8970, 10 Oct 2006, T. 9051, 9054; Witness MM-037, 28 Mar 2006, T. 2748, 2804, Ex. 268, T. 11569-11570, 11572.

<sup>524</sup> Witness MM-037, 28 Mar 2006, T. 2749, Ex. 268, T. 11570; Ex. 507, p. 2.

<sup>525</sup> Nikola Medaković, 10 Oct 2006, T. 9054. The evidence is unclear as to whether all members of the *Milicija Krajine* unit became part of the TO Brigade at this point in time. Nikola Medaković testified that 15-20 *Milicija Krajine* members refused to join the TO Brigade and established a group of their own under the command of Rade Milanović. Eventually, though it is unclear when, this group was subsumed “in other units”, Nikola Medaković, 10 Oct 2006, T. 9054, 9058-9070. The TO had semi-automatic rifles, machine-guns and olive-drab uniforms, Nikola Medaković, 10 Oct 2006, T. 9112-9113; Witness MM-037, 28 Mar 2006, T. 2787-2788, Ex. 268, T. 11577-11579; Ana Bičanić, Ex. 276, p. 2. By the summer of 1991, there were Serb forces including police, TO and JNA, in both Plaški and in Plitvice, on both sides of the villages of Saborsko, Vukovići and Poljanak, Nikola Medaković, 10 Oct 2006, T. 9047.

<sup>526</sup> Vehicles and passengers were searched and communications in the area were affected, Marko Vuković, 24 Mar 2006, T. 2569, 2571, 2630; Vlado Vuković, 27 Mar 2006, T. 2656, 28 Mar 2006, T. 2722; Witness MM-037, 28 Mar 2006, T. 2758-2759, Ex. 268, T. 11567-11568, 11588, 11617; Nikola Medaković, 9 Oct 2006, T. 8974, 10 Oct 2006, T. 9044, 9120; Ana Bičanić, Ex. 276, p. 2.

<sup>527</sup> Vlado Vuković, 27 Mar 2006, T. 2694; Nikola Medaković, 9 Oct 2006, T. 8961, 8975-8977, 10 Oct 2006, T. 9097-9098 (testifying that after August, the JNA could not pass the road between Slunj and Plitvice, because the town of Slunj was under control of the Croatian MUP), 12 Oct 2006, T. 9273-9275; Witness MM-037, Ex. 268, T. 11567, 11588, 11633-11636. The JNA training grounds in Slunj stretched from Slunj towards Saborsko and Plaški, Marko Vuković, 24 Mar 2006, T. 2574, 2604-2605; Vlado Vuković, 27 Mar 2006, T. 2710-2711; Nikola Medaković, 10 Oct 2006, T. 9096; Witness MM-037, Ex. 268, T. 11585. *See also* Reynaud Theunens, 3 Feb 2006, T. 1051; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 11-15.

<sup>528</sup> Nikola Medaković, 9 Oct 2006, T. 8976.

in Slunj.<sup>529</sup> In 1991, Lipovača was a predominantly Croat village with a total of 267 inhabitants.<sup>530</sup> The Croat inhabitants of Lipovača had guards with a few rifles mounted along the road that passed through the village in case the JNA troops would arrive.<sup>531</sup> There were a few ZNG forces in the nearby Drežnik Grad, Rakovica and Slunj.<sup>532</sup> In 1991, helicopters were used by the JNA to carry weapons and ammunition, which were distributed to local Serbs.<sup>533</sup>

202. At the end of September or in early October 1991, the JNA entered Lipovača and almost all civilian inhabitants fled, with the exception of about 20-50 people.<sup>534</sup> The JNA stayed for seven to eight days and fired from tanks at the Croatian police in Drežnik Grad and Rakovica and a Catholic church in Drežnik Grad.<sup>535</sup> During this stay, some JNA soldiers warned a witness that “[w]hen we leave, beware of the reserve forces of those paramilitary units “who would” beat the people, set houses on fire, loot “and who would kill” regardless of age.”<sup>536</sup> When the JNA troops left, several of the people who remained in the village fled to the forest and spent the night there.<sup>537</sup>

203. Sometime in October 1991, after the JNA had left, armed units including “Serb paramilitary units” from the region and outside of the region arrived in Lipovača.<sup>538</sup> These forces were called “reserve forces, Martić’s troops or Martić’s army”, and that they wore uniforms “like the ones that the army had”.<sup>539</sup>

204. On 27 October 1991, a JNA Military Police unit led by Milan Popović, together with members of the TO and uniformed local Serbs, arrived in the village of Nova Kršlja adjacent to Lipovača.<sup>540</sup> The JNA soldiers wore JNA uniforms whereas the TO soldiers wore black uniforms.<sup>541</sup> They arrested all of the young Croat men, including Ivan Marjanović’s son Marijan,<sup>542</sup>

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<sup>529</sup> Witness MM-036, 4 Apr 2006, T. 3183-3184, 3201; Nikola Medaković, 10 Oct 2006, T. 9096; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 21-24; Ex. 1044.

<sup>530</sup> Ivan Grujić, 12 Apr 2006, T. 3629. Ex. 301, p. 9. About 60 houses belonged to Croats and about 15 houses belonged to Serbs, Witness MM-036, 4 Apr 2006, T. 3183-3184; Ex. 301, p. 9, states that 83.15% were Croats, and 16.48% were Serbs. It is near the Croat villages of Drežnik, Rakovica, Selište, Čatrinja, Smaljanac and Nova Kršlja and the Serb villages of Stara Kršlja, Jamari, Mucila, Witness MM-036, 4 Apr 2006, T. 3184; Ivan Marjanović, Ex. 426, T. 25005, 25013; Ex. 23, p. 19; Ex. 1044.

<sup>531</sup> Witness MM-036, 4 Apr 2006, T. 3200-3201.

<sup>532</sup> Witness MM-036, 4 Apr 2006, T. 3204.

<sup>533</sup> Witness MM-036, 4 Apr 2006, T. 3186-3187, T. 3189, 3206-3207.

<sup>534</sup> Witness MM-036, 4 Apr 2006, T. 3190.

<sup>535</sup> Witness MM-036, 4 Apr 2006, T. 3205, 3210.

<sup>536</sup> Witness MM-036, 4 Apr 2006, T. 3191-3192, 3208.

<sup>537</sup> Witness MM-036, 4 Apr 2006, T. 3207.

<sup>538</sup> Witness MM-036, 4 Apr 2006, T. 3190-3191.

<sup>539</sup> Witness MM-036, 4 Apr 2006, T. 3207, T. 3191. The Trial Chamber notes that Witness MM-036 testified that to him a paramilitary unit is the same thing as a reserve force or the TO, Witness MM-036, 4 Apr 2006, T. 3207.

<sup>540</sup> Ivan Marjanović, Ex. 426, T. 25005-25006, 25035, Milan Popović wore a standard JNA uniform and a cap with the five pointed star; Ivan Marjanović, Ex. 427, p. 2.

<sup>541</sup> Ivan Marjanović, Ex. 427, p. 2.

<sup>542</sup> Ivan Marjanović’s son was released after 15 days with bruises all over his body, Ivan Marjanović, Ex. 426, T. 25006, 25032, upon his return the JNA gave him the choice of joining the army or of performing forced labour.

and searched Ivan Marjanović's house for weapons.<sup>543</sup> On the next day, the soldiers returned to Ivan Marjanović's house and demanded that he surrender his rifle to them, even though he did not have one.<sup>544</sup> The soldiers then beat him severely, kicked him in the groin and broke his wrist.<sup>545</sup> They again returned the next day and told him he was not allowed to leave his house or its immediate surroundings.<sup>546</sup>

205. At the end of October 1991, some time after the arrival of the paramilitary units, the bodies of Franjo Brozinčević, Marija Brozinčević, Mira Brozinčević, and Katarina Cindrić were found in Franjo Brozinčević's house in Lipovača.<sup>547</sup> All four victims were dressed in civilian clothes and had been killed by gunshots.<sup>548</sup>

206. Between 29 and 31 October 1991, Nedo Kotur, a local Serb commander,<sup>549</sup> came to the house of Ivan Marjanović and told him that "the Serbs" had killed some Croats and told Ivan Marjanović to go with him to Lipovača to bury the victims.<sup>550</sup> Nedo Kotur, Ivan Marjanović, and three other Croat villagers, drove to Lipovača and passed a checkpoint manned by "Martić's men".<sup>551</sup>

207. The group of men arrived in Lipovača at 0900 hours and went to the house of Mate Brozinčević, where they found his body in the kitchen with several bullet holes in the stomach.<sup>552</sup> Mate's wife, Roža, had also been shot, and the body of their son Mirko was lying at the entrance to the bedroom with a bullet hole in the neck.<sup>553</sup> All victims wore civilian clothing.<sup>554</sup>

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<sup>543</sup> Ivan Marjanović, Ex. 426, T. 25006, 25035.

<sup>544</sup> Ivan Marjanović, Ex. 426, T. 25007.

<sup>545</sup> Ivan Marjanović, Ex. 426, T. 25007, Ex. 427, p. 3.

<sup>546</sup> Ivan Marjanović, Ex. 426, T. 25007.

<sup>547</sup> Witness MM-036, 4 Apr 2006, T. 3192; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 21-23.

<sup>548</sup> Witness MM-036, 4 Apr 2006, T. 3193-3194; Ivan Marjanović, Ex. 426, T. 25007, 25009, Ex. 427, p. 4; Ex. 304, pp 8-12; Ex. 323, p. 2. *See also* Ex. 375, pp 5-8, indicating that the deaths of these four victims were violent.

<sup>549</sup> The Trial Chamber notes that Ivan Marjanović's evidence is contradictory as to the uniform that Nedo Kotur was wearing. In his testimony in the *Milošević* trial, he testified that Nedo Kotur was dressed in the JNA uniform of a reserve officer and a JNA hat with a red star, Ivan Marjanović, Ex. 426, T. 25007, 25023-25037. In a statement given in 2001, Ivan Marjanović stated that Nedo Kotur was wearing a black police uniform, with a patch of the SAO Krajina on it and a knit cap with a cockade, Ivan Marjanović, Ex. 427, p. 3. The Trial Chamber cannot draw any conclusions on the basis of this evidence.

<sup>550</sup> Ivan Marjanović, Ex. 426, T. 25007, Ex. 427, p. 3.

<sup>551</sup> Ivan Marjanović, Ex. 426, T. 25007, Ex. 427, p. 3.

<sup>552</sup> Ivan Marjanović, Ex. 426, T. 25007; Ex. 323, p. 2. *See also* Ex. 304, pp 6-7; Ex. 375, pp 3-4; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 23-24.

<sup>553</sup> Ivan Marjanović, Ex. 426, T. 25007; Ex. 323, p. 2. *See also* Ex. 304, pp 4-6; Ex. 375, pp 2-3; Witness MM-036, 4 Apr 2006, T. 3194.

<sup>554</sup> Ex. 304, pp 4-7; Ex. 375, pp 2-4; Ivan Marjanović, Ex. 426, T. 25007, 25009, 25022, Ex. 427, p. 4; Ex. 375, pp 2-4.

208. In June 1996, the above-mentioned seven individuals, who are listed in the Indictment, were exhumed from mass graves in Lipovača Drežnička.<sup>555</sup>

209. Milan Babić travelled to Lipovača and villages in the surrounding area in 1993 and testified that he saw “villages which used to be populated by Croats and Croat houses were devastated and there were no Croat residents any more.”<sup>556</sup> Upon returning to Lipovača in 1995, Witness MM-036 found Lipovača and other villages in the municipality looted and burnt.<sup>557</sup>

(c) Poljanak and Vukovići

210. Poljanak is located about 14 kilometres south-east of Saborsko and 8 km north-west of Plitvice.<sup>558</sup> In 1991, there were around 30-50 predominantly Croat households in Poljanak.<sup>559</sup> The Croat hamlet of Vukovići, which is less than one kilometre away from Poljanak, consisted of about six or seven houses.<sup>560</sup>

211. Poljanak was shelled for the first time on 28 August 1991 and was shelled daily after that.<sup>561</sup> A few families initially left but returned two to three days later.<sup>562</sup>

212. On 5 September 1991, women with small children and minors in Poljanak and the surrounding villages left for Kraljevica, south-east of the city of Rijeka on the Adriatic coast.<sup>563</sup> Vukovići was shelled at around noon on 8 October 1991, after which there was shooting in the village by unidentified armed Serbs.<sup>564</sup> The next morning, Tomo Vuković was found dead in front of his burnt down house and at least two more houses had burnt down.<sup>565</sup> Around 14 October 1991, Mile Lončar, an invalid man, and his father, Ivan Lončar, were found hanged in their house.<sup>566</sup>

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<sup>555</sup> Ex. 302. The Trial Chamber notes that also the following persons were killed in Lipovača: Ana Pemper, Barbara Vuković, Juraj Šebalj, Juraj Conjar, and Milan Smolčić, Ex. 304, pp 13-15; Ex. 375, pp 9-10. These victims are not listed in the Indictment. The Trial Chamber recalls its findings regarding the interpretation of the Indictment and concludes that the Defence has not been on notice regarding these victims, *see supra* paras section I C.

<sup>556</sup> Milan Babić, 20 Feb 2006, T. 1600-1601.

<sup>557</sup> Witness MM-036, 4 April 2006, T. 3195. *See also id* at T. 3211.

<sup>558</sup> Marica Vuković, 22 Mar 2006, T. 2403-2404; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 24-26; Ex. 1044.

<sup>559</sup> Marica Vuković, 22 Mar 2006, T. 2403, 2438, 2451; Witness MM-038, 24 Mar 2006, T. 2563.

<sup>560</sup> Witness MM-038, 24 Mar 2006, T. 2451, 2457, 2561; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 26-29; Ex. 1044.

<sup>561</sup> Marica Vuković, 22 Mar 2006, T. 2411.

<sup>562</sup> Marica Vuković, 22 Mar 2006, T. 2414. The shelling usually came from Bigina Poljana, a Serb village, Plitvice and Rastovača, a Croat village that had been burnt down and occupied by Serbs, Marica Vuković, 22 Mar 2006, T. 2415-2416. These villages were about a kilometre away from Poljanak, Marica Vuković, 22 Mar 2006, T. 2442. Marica Vuković did not know which units were stationed in these villages, *ibid*.

<sup>563</sup> Marica Vuković, 22 Mar 2006, T. 2408, 2414-2415.

<sup>564</sup> Marica Vuković, 22 Mar 2006, T. 2417.

<sup>565</sup> Marica Vuković, 22 Mar 2006, T. 2404, 2416-2417 (testifying that the houses were “Pero’s house and Aunt Lucilja’s house”); Ex. 261, p. 2; Ex. 376, pp 6-7, concluding that Tomo Vuković was killed by a gunshot to the thorax; Witness MM-038, 24 Mar 2006, T. 2561-2562. The Trial Chamber notes that although paragraph 27 of the Indictment refers to Poljanak, paragraph 29 refers to the hamlet of Vukovići near Poljanak. Moreover, the Rule 65 *ter* summaries of Marica Vuković and Witness MM-038 contain references to the killing of Tomo Vuković. The Trial Chamber considers

213. There were no Croatian military units in Poljanak in the summer and autumn of 1991.<sup>567</sup> However, there was a civilian protection force that would keep watch, but the members were either unarmed or had two to three hunting rifles at their disposal.<sup>568</sup>

214. On 7 November 1991, there was a large group of soldiers present in Vukovići. The soldiers were dressed in green camouflage uniforms and their commanders wore JNA caps with a red star.<sup>569</sup> There were local people among these troops and there was also a JNA special unit present from Niš, Serbia, who wore darker camouflage uniforms.<sup>570</sup> The soldiers came to Nikola “Šojka” Vuković’s house in Vukovići and lined up and killed Dane Vuković (son of Poldin), Dane Vuković (son of Mate),<sup>571</sup> Lucija Vuković, Milka Vuković, Vjekoslav Vuković, Joso Matovina and Nikola Matovina.<sup>572</sup> Nikola “Šojka” Vuković (born 1926) was too sick to leave the house and was shot from the window while lying in his bed.<sup>573</sup> All killed individuals were Croat civilians.<sup>574</sup> The evidence shows that one or two houses were burnt in Vukovići on 7 November 1991 by members of these units.<sup>575</sup>

215. The Defence pointed out certain discrepancies in the evidence concerning how the killings in Vukovići on 7 November 1991 were carried out.<sup>576</sup> However, the Trial Chamber considers that these discrepancies are not material and therefore do not affect its finding that these killings were committed.

216. Also on 7 November 1991, 20 armed soldiers dressed in camouflage and olive-drab uniforms surrounded the house of Marica Vuković, a Croat, in Poljanak.<sup>577</sup> Marica Vuković did not know where the soldiers were from but concluded that some must be locals because they appeared well informed about Marica Vuković and her family.<sup>578</sup> As soon as they arrived, the soldiers

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that the reference in paragraph 27 to Poljanak includes the hamlet of Vukovići and that the Defence has therefore been on notice in relation to the killing of Tomo Vuković.

<sup>566</sup> Marica Vuković, 22 Mar 2006, T. 2419-2420, 2445. It is not clear from the evidence whether these men committed suicide or were killed; *see also* Ex. 261, p. 3.

<sup>567</sup> Marica Vuković, 22 Mar 2006, T. 2412-2413.

<sup>568</sup> Marica Vuković, 22 Mar 2006, T. 2414, 2423; Ex. 261, p. 3; Witness MM-038, 23 Mar 2006, T. 2555.

<sup>569</sup> Ex. 261, p. 5. It is not clear how many soldiers there actually were in Vukovići on that day. One witness stated that there were between 90-100 soldiers, Witness MM-038, 23 Mar 2006, T. 2549-2551.

<sup>570</sup> Witness MM-038, 23 Mar 2006, T. 2551-2552, 2560, 2563-2564 (also testifying that the local people wore the same uniforms and served as guides); Milan Babić, 20 Feb 2006, T. 1599-1600; Radoslav Maksić, 7 Feb 2006, T. 1253; Ex. 261, p. 5.

<sup>571</sup> Ex. 262; Ex. 302, p. 6.

<sup>572</sup> Ex. 261, p. 4; Witness MM-038, 23 Mar 2006, T. 2535-2542. *See also* Marica Vuković, 22 Mar 2006, T. 2432; Ex. 376; Ex. 302, p. 6; Ex. 323; Ex. 715; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 26-29.

<sup>573</sup> Ex. 261, p. 4; Ex. 376, p. 5; Ex. 302; Ex. 323.

<sup>574</sup> Witness MM-038, 23 Mar 2006, T. 2519.

<sup>575</sup> Witness MM-038, 23 Mar 2006, T. 2551, 24 Mar 2006, T. 2562, Ex. 261, p. 5.

<sup>576</sup> Witness MM-038, 23 Mar 2006, T. 2535-2542; Ex. 262; Ex. 263; Ex. 264.

<sup>577</sup> Marica Vuković, 22 Mar 2006, T. 2443-2444, 2455. *See also id.* at T. 2424, 2450; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 24-26.

<sup>578</sup> Marica Vuković, 22 Mar 2006, T. 2424, 2426, 2446-2447.

“captured” Marica Vuković and the others present in the house.<sup>579</sup> The soldiers tied the arms of Marica Vuković’s husband Nikola Vuković (born 1938) and her father Ivan Vuković.<sup>580</sup> Marica Vuković, her daughter Mira Vuković, her mother-in-law Jelena Vuković and her neighbour Marija Vuković were put under a plum tree where they were slapped, insulted and interrogated.<sup>581</sup> One of the soldiers threatened Marica Vuković and also put a knife at her throat.<sup>582</sup> The soldier wore a glove and said that it was “so that I won't get my hand bloody when I slit the throats of Ustashas.”<sup>583</sup>

217. The women were separated from Ivan Vuković and Nikola Vuković (born 1938) and taken to a nearby maize field whereupon two or three other soldiers came from the direction of Vukovići, together with a boy. The boy was put with the women.<sup>584</sup> Subsequently, shooting was heard from the house where Ivan Vuković and Nikola Vuković had been left.<sup>585</sup>

218. Soon thereafter, a soldier came to the women and told them to flee. The women and the boy hid in the woods for a few hours.<sup>586</sup> After having seen some cars move away from the village, Marica Vuković returned to her house and then came across the bodies of her father and husband in the maize field.<sup>587</sup> She saw that her husband’s “brains were shattered” and that her father’s “skull wasn’t in place any more”.<sup>588</sup> On that day, neither her husband nor her father was armed or wearing a uniform, nor were they members of a military force or the police.<sup>589</sup>

219. The evidence shows that several houses, sheds and cars were burnt in Poljanak on 7 November 1991, by the soldiers present in the village. The evidence also shows that before the houses were burnt private property was looted or destroyed.<sup>590</sup> When torching the houses, some soldiers made comments, such as “Milošević built the house and Milošević is going to destroy it” and “what’s Tuđman done for you? All you are going to get from him is a bullet in your head”.<sup>591</sup>

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<sup>579</sup> Marica Vuković, 22 Mar 2006, T. 2424-2425.

<sup>580</sup> The Trial Chamber notes that both Marica Vuković’s husband and her uncle were named Nikola Vuković, that her husband was born 1938, and that her uncle was nicknamed “Šojka” (born 1926), Marica Vuković, 22 Mar 2006, T. 2424-2425. Both Nikola Vuković and Ivan Vuković were Croat, Marica Vuković, 22 Mar 2006, T. 2405.

<sup>581</sup> Marica Vuković, 22 Mar 2006, T. 2425, 2454.

<sup>582</sup> Marica Vuković, 22 Mar 2006, T. 2426.

<sup>583</sup> Marica Vuković, 22 Mar 2006, T. 2426-2427.

<sup>584</sup> Marica Vuković, 22 Mar 2006, T. 2425-2426.

<sup>585</sup> Ex. 261, p. 5.

<sup>586</sup> Marica Vuković, 22 Mar 2006, T. 2427-2429.

<sup>587</sup> Marica Vuković, 22 Mar 2006, T. 2429.

<sup>588</sup> Marica Vuković, 22 Mar 2006, T. 2430, also testifying that she wrapped the bodies in blankets which were later found during the exhumation; Ex. 376, pp 2-5. *See also* Ex. 323; Ex. 302.

<sup>589</sup> Marica Vuković, 22 Mar 2006, T. 2430.

<sup>590</sup> Marica Vuković, 22 Mar 2006, T. 2428-2429, 2457, also testifying that the soldiers took people out of houses and cars and then set fire to them. Ex. 259, 11 photographs of houses and places described by Marica Vuković. *See also* Milan Babić, 20 Feb 2006, T. 1600-1601, testifying that in 1993 he found Poljanak devastated and there were no Croat residents there anymore.

<sup>591</sup> Marica Vuković, 22 Mar 2006, T. 2428.

(d) Saborsko

220. In early 1991, there were 600 to 850 people, mostly Croats, living in the 300 households of Saborsko.<sup>592</sup> In the centre of Saborsko, there was a large church called the church of St. John. Slightly outside the centre, there was a smaller church, the church of the Mother of God.<sup>593</sup>

221. On 2 April 1991, the Croat members of the Ogulin SJB established an outpost in Saborsko.<sup>594</sup> There were around 30 policemen, armed with automatic rifles and pistols, who engaged in regular police work but also manned check-points in case of an attack on Saborsko.<sup>595</sup> Between April and August 1991, JNA armoured vehicles were allowed to pass through roadblocks and patrolled daily through Saborsko going between Plitvice and Lička Jasenica.<sup>596</sup> From around June 1991, about 20 or 30 local men were organised in Saborsko and patrolled the village at night carrying "hunting guns or some military rifles."<sup>597</sup> Between June and August 1991, Saborsko was fired upon with rifle and artillery fire. It was mostly one of the churches and the school that were shot at and the fire came from Lička Jasenica and from Pištenik hill.<sup>598</sup>

222. In the early morning of 5 August 1991, Saborsko was shelled by mortars from the direction of the Lička Jasenica JNA barracks.<sup>599</sup> Shells fell on the cemetery and central parts of the village.<sup>600</sup> At the time of the shelling, a Croatian special police unit from Duga Resa, numbering 20-30 policemen, had taken up a defence line at the primary school in the centre of the village.<sup>601</sup> On the

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<sup>592</sup> Vlado Vuković, 27 Mar 2006, T. 2648-2649, 2679, 28 Mar 2006, T. 2730; Marko Vuković, 24 Mar 2006, T. 2567-2568; Ana Bićanić, Ex. 276, p. 2; Milan Babić, 20 Feb 2006, T. 1600; In 1991, Saborsko had 852 inhabitants (93.9% were Croat, and 3.3% were Serbs), Ex. 301, p. 7.

<sup>593</sup> Nikola Medaković, 9 Oct 2006, T. 9014; Ana Bićanić, Ex. 276, p. 5. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 30-35, 38-39.

<sup>594</sup> Vlado Vuković, 27 Mar 2006, T. 2651-2652; Marko Vuković, 24 Mar 2006, T. 2572-2573, 2598; Lazar Macura, 14 Sep 2006, T. 8321; Nikola Medaković, 9 Oct 2006, T. 8960.

<sup>595</sup> Marko Vuković, 24 Mar 2006, T. 2572-2573, 2602-2603; Vlado Vuković, 27 Mar 2006, T. 2654, 2686, 2689; Nikola Medaković, 9 Oct 2006, T. 8962-8963, also testifying that the outpost in Saborsko consisted of about 60 men, *id.* at T. 8960.

<sup>596</sup> Marko Vuković, 24 Mar 2006, T. 2574; Vlado Vuković, 27 Mar 2006, T. 2655; Nikola Medaković, 10 Oct 2006, T. 9095; Ana Bićanić, Ex. 276, p. 3.

<sup>597</sup> Ana Bićanić, Ex. 276, p. 3.

<sup>598</sup> Ana Bićanić, Ex. 276, p. 2. In July 1991, Croatian social workers evacuated several elderly persons, younger women and children, *ibid.*, p. 3. As a result of the attacks in June and July 1991, 10 people were killed, including Ivica Krizmanić, Marko Krizmanić, Tomo Matovina, Ante Kovačić, Pere Matovina and Joso Matovina, and there was a large number of wounded, *id.* at p. 3.

<sup>599</sup> Marica Vuković, 22 Mar 2006, T. 2412, 2441; Marko Vuković, 24 Mar 2006, T. 2574-2576, 2608; Vlado Vuković, 27 Mar 2006, T. 2657-2659, 28 Mar 2006, T. 2724; Nikola Medaković, 10 Oct 2006, T. 9122; Ana Bićanić, Ex. 276, p. 3. *See also* Marko Vuković, 24 Mar 2006, T. 2577-2578; Ex. 38; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 5-8. Vlado Vuković also testified, in relation to who fired upon Saborsko, that "it's well-known who it is; it's the JNA and the local leaders, so-called Martić's men", Vlado Vuković, 27 Mar 2006, T. 2658. Based solely on this evidence, the Trial Chamber is unable to draw a conclusion as to who was responsible for this shelling.

<sup>600</sup> Vlado Vuković, 27 Mar 2006, T. 2659, 2692.

<sup>601</sup> Marko Vuković, 24 Mar 2006, T. 2576 (also testifying that this unit fled towards Slunj at 2200 or 2300 hours in the evening), 2606-2607; Vlado Vuković, 27 Mar 2006, T. 2658, 2690-2692 (also testifying that the unit arrived in late July 1991 and that it was armed with side arms and long-barrelled weapons), 28 Mar 2006, 2732; Nikola Medaković, 9 Oct 2006, T. 8963. Nikola Medaković testified that less than 50 metres from the church of the Mother of God, there were fortified Croat positions which constituted a line of defence, Nikola Medaković, 9 Oct 2006, T. 9015-9016.



night of 5 August 1991, most of the civilian population of Saborsko fled through Rakovica to Grabovac, where the Red Cross had arrived with three buses. About 100 to 150 civilians were evacuated to areas under Croatian control, whereas around 400 persons returned to Saborsko in the following days.<sup>602</sup>

223. After 5 August 1991, Saborsko was shelled almost every day from various directions, including from the direction of the barracks at Lička Jasenica.<sup>603</sup> After this date, the policemen stationed at the Saborsko outpost were no longer engaged in regular police work, but were deployed in combat positions.<sup>604</sup> On 6 August 1991, 15-20 policemen armed with rifles and pistols came from Slunj to support the Saborsko police.<sup>605</sup> When the unit from Slunj had left, further reinforcements arrived from Drežnik Grad.<sup>606</sup> The church of St. John was the most hit during the shelling, though many other buildings in Saborsko were also damaged.<sup>607</sup> Around this time, there was also an attempt by the Serb side to take Kušelj, a hamlet of Saborsko, in which some members of the Croatian forces were wounded and killed.<sup>608</sup>

224. Around 25 September 1991, a unit of the Croatian MUP reserve was deployed from Zagreb to support the defence of Saborsko. The unit consisted of between 100 and 200 persons who were armed with automatic rifles, sub-machine guns, two mortars and an anti-aircraft gun.<sup>609</sup> The unit took up positions around Saborsko, in the hamlets of Sivnik, Alan, Kušelj, Borik and Strk, and remained until Saborsko fell on 12 November 1991.<sup>610</sup> There is evidence that the Croatian MUP reserve unit was partly deployed in the church of St. John, which was used as an observation point, machinegun nest and ammunition store.<sup>611</sup> In early October, there was an armed clash in the area of Sertic Poljana.<sup>612</sup> In October 1991, a convoy carrying food and weapons arrived in Saborsko, escorted by between 20 and 50 reserve policemen armed with automatic and semi-automatic rifles. These policemen remained in Saborsko.<sup>613</sup> Beginning on 4 November 1991, Croatian MUP and ZNG forces, including from Saborsko, launched an attack on the barracks at Lička Jasenica and an

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<sup>602</sup> Marica Vuković 22 Mar 2006, T. 2412; Marko Vuković, 24 Mar 2006, T. 2578-2579, 2607-2608, 2629; Vlado Vuković, 27 Mar 2006, T. 2659, 2693; Nikola Medaković, 10 Oct 2006, T. 9048; Ana Bičanić, Ex. 276, p. 3.

<sup>603</sup> Marko Vuković, 24 Mar 2006, T. 2584-2586 (also testifying about aerial attacks); Vlado Vuković, 27 Mar 2006, T. 2659; Ana Bičanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 2.

<sup>604</sup> Vlado Vuković, 27 Mar 2006, T. 2696-2697.

<sup>605</sup> This unit took up positions in some of the hamlets of Saborsko and stayed at least for 12 days, Marko Vuković, 24 Mar 2006, T. 2579-2580, 2608-2611; Vlado Vuković, 27 Mar 2006, T. 2692, 2694 (testifying that this reinforcement remained in Saborsko for "two or three days").

<sup>606</sup> Marko Vuković, 24 Mar 2006, T. 2609.

<sup>607</sup> Vlado Vuković, 27 Mar 2006, T. 2659-2660.

<sup>608</sup> Marko Vuković, 24 Mar 2006, T. 2585.

<sup>609</sup> Marko Vuković, 24 Mar 2006, T. 2580, 2588, 2597-2598; 2614-2615, 2620; Vlado Vuković, 27 Mar 2006, T. 2660-2662 (testifying at T. 2661 that the members of this unit wore green uniforms), 2695-2696; Nikola Medaković, 9 Oct 2006, T. 8964, 8981, 8983, 11 Oct 2006, T. 9134.

<sup>610</sup> Marko Vuković, 24 Mar 2006, T. 2584, 2618. *See also* Nikola Medaković, 9 Oct 2006, T. 8984.

<sup>611</sup> Nikola Medaković, 9 Oct 2006, T. 9028-9029.

<sup>612</sup> Marko Vuković, 24 Mar 2006, T. 2619-2620.

area called Glibodolski Križ nearby.<sup>614</sup> During the attack, Serb civilians were killed by the Croatian forces.<sup>615</sup> The Croatian attack was eventually repelled on 8 November 1991.<sup>616</sup>

(i) Attack on Saborsko on 12 November 1991

225. Saborsko was attacked mid-morning on 12 November 1991 by Tactical Group 2 (“TG-2”), under the command of Colonel Čedomir Bulat, and the 5<sup>th</sup> Partisan Brigade, both of which were within the structure of the JNA 13<sup>th</sup> Corps.<sup>617</sup> A unit of the Plaški SDB,<sup>618</sup> the Plaški TO Brigade<sup>619</sup> and *Milicija Krajine* units participated in the attack.<sup>620</sup> Within the Plaški TO Brigade, a battalion consisting of three companies under the command of Bogdan Grba participated.<sup>621</sup>

226. The attack commenced with aerial bombing followed by an artillery attack.<sup>622</sup> Afterwards, ground units, including tanks, moved in on Saborsko from three axes.<sup>623</sup> During the attack, the church of St. John was hit by a tank shell but the tower remained standing.<sup>624</sup> The church of the

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<sup>613</sup> Marko Vuković, 24 Mar 2006, T. 2586, 2621-2622; Ana Bičanić, Ex. 276, p. 3

<sup>614</sup> Nikola Medaković, 9 Oct 2006, T. 8984-8987, 9003-9004, 11 Oct 2006, T. 9173-9174; Ex. 108, items 3-9; Ex. 962. Fire was guided in from Saborsko because it was at a higher elevation than Lička Jasenica, *ibid.* The presence in Saborsko, between September and November 1991, of a small number of ZNG members is confirmed by Marko Vuković, 24 Mar 2006, T. 2612-2614, 2628; Ex. 52.

<sup>615</sup> Witness MM-037, 28 Mar 2006, T. 2754-2755, 2781-2783; Ex. 268, T. 11625-16266; Nikola Medaković, 9 Oct 2006, T. 8985-8987, 8993-8995, 11 Oct 2006, T. 9167, 9174-9177, 12 Oct 2006, 9268-9269; Ex. 108, item 13; Ex. 605, pp 1-2.

<sup>616</sup> Witness MM-037, 28 Mar 2006, T. 2752, 2780-2781; Nikola Medaković, 11 Oct 2006, T. 9180.

<sup>617</sup> Radoslav Maksić, 7 Feb 2006, T. 1235 (also testifying that the 13<sup>th</sup> Corps had a forward command post in the village of Mukinje in the vicinity of Saborsko); Milan Babić, 20 Feb 2006, T. 1599-1600; Witness MM-037, 28 Mar 2006, T. 2789-2790, 2798; Ex. 268, T. 11591; Nikola Medaković, 9 Oct 2006, T. 8988-8989, 8998-8999, 9009, 12 Oct 2006, T. 9225-9226; Imra Agotić, Ex. 398, T. 23315, 23402; Ex. 51, pp 2-3; Ex. 52, p. 3; Ex. 108, item 18; Ex. 422; Ex. 507, p. 4; Ex. 603; Ex. 605, p. 2. TG-2 was established on 23 October 1991 by the 5<sup>th</sup> Army District, Ex. 960; Ex. 507, p. 4.

<sup>618</sup> Ex. 603; Ex. 605, p. 1.

<sup>619</sup> The Plaški TO Brigade was subordinated to TG-2, Witness MM-037, 28 Mar 2006, T. 2751, 2789-2790; Ex. 51, pp 2-3; Ex. 52, p. 3.

<sup>620</sup> Ex. 605, p. 1.

<sup>621</sup> These companies were of an *ad hoc* nature and were extracted from the TO Brigade and the police in Plaški, Nikola Medaković, 10 Oct 2006, T. 9104; Ex. 607. Nikola Medaković testified that his company consisted of about 60 men, including former members of the *Milicija Krajine* unit in Plaški who had been transferred to the Plaški TO Brigade in September 1991, Nikola Medaković, 9 Oct 2006, T. 8988, 8990-8992, 8998-8999, 10 Oct 2006, T. 9055, 12 Oct 2006, T. 9287; Witness MM-037, 28 Mar 2006, T. 2751, 2794-2795, 29 Mar 2006, T. 2821; Ex. 607, p. 2; Ex. 507, p. 4. The company in the middle was commanded by Đuro Ogrizović, Nikola Medaković, 9 Oct 2006, T. 9018, 10 Oct 2006, T. 9103; Ex. 607, p. 3; Ex. 608, p. 3; Witness MM-037, 28 March 2006, T. 2803-2804. An armoured company with about ten tanks advanced in the centre of the three companies, along the asphalt road, Nikola Medaković, 9 Oct 2006, T. 9014, 9018; Jure Vuković, Ex. 277, p. 2.

<sup>622</sup> Witness MM-037, 28 Mar 2006, T. 2798, stating that the attack started just after 0900 hours. *See also* Ex. 268, T. 11593-11594, 11627 (stating that the artillery consisted of mortars and tanks positioned on elevations surrounding Saborsko and in Slunj); Nikola Medaković, 9 Oct 2006, T. 9010-9011, 11 Oct 2006, T. 9160; Ana Bičanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 2; Imra Agotić, Ex. 398, T. 23314-23315; Ex. 422; Ex. 507, p. 4; Ex. 608, p. 2. One of the bombs from the airplanes fell on the house of a neighbour of Jure Vuković and three floors of the house collapsed, Jure Vuković, Ex. 277, p. 2.

<sup>623</sup> Nikola Medaković, 9 Oct 2006, T. 9009 (testifying that his company started in the village of Momčilovići, went towards Vukelić Poljana and Borik), 9017-9019 (at T. 9018 testifying that one company went towards Sivnik, that Đuro Ogrizović led the company in the centre, including ten tanks, going towards Saborsko itself along the road). *See also* Witness MM-037, 28 Mar 2006, T. 2798, 29 Mar 2006, T. 2798, 2803, Ex. 268, T. 11595; Nikola Medaković, 12 Oct 2006, T. 9238; Jure Vuković, Ex. 277, p. 2; Ex. 607, p. 3. Ex. 608, p. 3.

<sup>624</sup> Witness MM-037, 28 Mar 2006, T. 2753; Jure Vuković, Ex. 277, p. 2.

Mother of God was also shelled and damaged during the attack.<sup>625</sup> That church was used as an observation post because there was a clear view of the Lička Jasenica barracks from it.<sup>626</sup> The fighting went on until some point between 1400 hours and 1700 hours; the tanks withdrew around 1800 hours.<sup>627</sup> There were no casualties on the Serb side whereas “[o]n the Croatian [MUP] side” there were 50 dead.<sup>628</sup>

227. After the attack, there were many Serb soldiers and policemen in the centre of Saborsko.<sup>629</sup> The evidence shows that a shop was looted by Zdravko Pejić and individuals with the last names Cekić or Cvekić, and Momčilović, both of whom were members of Đuro “Snjaka” Ogrizović’s company.<sup>630</sup> An individual identified as “Peić” together with Željko “Buba” Mudrić and Nedeljko “Kiča” Trbojević, as well as “other Martić’s men” drove away in private cars they found in Saborsko.<sup>631</sup> Moreover, all the tractors in Saborsko were driven away, subsequently to be put up for auction, and household goods were stolen by plunderers.<sup>632</sup> There is also evidence that more than 50 cattle from Saborsko were brought to Plaški and that 17 sheep were taken to Kunić.<sup>633</sup> Many houses in Saborsko were set alight and burnt after the attack.<sup>634</sup> The evidence shows that the perpetrators, who were engaged in the burning of the houses included Nedeljko “Kiča” Trbojević, “Peić”, Željko “Buba” Mudrić, as well as “other Martić’s men”.<sup>635</sup> Houses in the hamlets of Tuk and Dumenčići, and in the Serb hamlet of Solaje, were also set alight.<sup>636</sup> In Borik, both Croat and Serb houses were burned.<sup>637</sup> By mid-December 1991, both the church of St. John and the church of the Mother of God had been destroyed.<sup>638</sup> By 1995, the whole of Saborsko, including the school,

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<sup>625</sup> Nikola Medaković, 9 Oct 2006, T. 9015-9016.

<sup>626</sup> Nikola Medaković, 9 Oct 2006, T. 9016, testifying that there was a clear line of sight between the church of the Mother of God and the Lička Jasenica barracks.

<sup>627</sup> Nikola Medaković, 9 Oct 2006, T. 9017-9019; Ex. 108, item 18.

<sup>628</sup> Ex. 605, p. 3. *See also* Witness MM-037, 29 Mar 2006, 2812, Ex. 268, T. 11596.

<sup>629</sup> Witness MM-037, Ex. 268, T. 11599-11601; Nikola Medaković, 11 Oct 2006, T. 9188, 12 Oct 2006, T. 9236-9237; Ex. 507, p. 4.

<sup>630</sup> Witness MM-037, 28 Mar 2006, T. 2803, 29 Mar 2006, 2808-2810; Ex. 268, T. 11597-11600.

<sup>631</sup> Ex. 507, p. 4-5 (on p. 4 Nedeljko Trbojević’s nickname is listed as “Kičin”), providing, *inter alia*, that Mate Matovina’s car was taken by Željko “Buba” Mudrić, and that Jura Matovina’s lorry was torched in Saborsko. Ex. 606 lists Miloš Momčilović and Željko Mudrić as members of the “Reconnaissance-sabotage squad (Special forces) in Plaški” within the DB. Nikola Medaković testified that both these individuals went to the training ground in Slunj and were mobilised in the JNA after the *Milicija Krajine* unit was merged into the TO Brigade, Nikola Medaković, 10 Oct 2006, T. 9106.

<sup>632</sup> Ex. 507, p. 4, also providing that nearly every household in Saborsko had a tractor.

<sup>633</sup> Nikola Medaković, 9 Oct 2006, T. 9025; Ex. 507, p. 4; Ex. 963, p. 2, providing that Slavko Dumenčić saw a man in military uniform, recognised as Milan Grković, move 25 sheep.

<sup>634</sup> Milan Babić testified that by 1993 Saborsko, Poljanak and Lipovača contained no Croat residents and that Croat houses were devastated, Milan Babić, 20 Feb 2006, T. 1600-1601.

<sup>635</sup> Ex. 507, p. 5, also provides that “Nedeljko Trbojević [...] went from house to house [...], hurled grenades into cellars and set hay stacks on fire [burning] around 20 houses”.

<sup>636</sup> Vlado Vuković, 27 Mar 2006, T. 2714; Witness MM-037, 28 Mar 2006, T. 2803, Ex. 268, T. 11597-11598; Imra Agotić, Ex. 398, T. 23315-23316; Ex. 507, pp 4-5.

<sup>637</sup> Vlado Vuković, 28 Mar 2006, T. 2730, 2733; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 3-4.

<sup>638</sup> Witness MM-037, 28 Mar 2006, T. 2753; Nikola Medaković, 12 Oct 2006, T. 9245.

had been destroyed.<sup>639</sup> The only houses left standing were two Serb houses, which had been very badly damaged.<sup>640</sup>

228. Following the attack, most of the inhabitants of Saborsko fled to Karlovac, Zagreb, and Ogulin.<sup>641</sup> However, about 30 to 60 elderly villagers remained in the village and were brought to the Lička Jasenica barracks by the Plaški TO. After spending the night at the barracks, they were taken by bus towards Ogulin and released in territory controlled by the Croatian side.<sup>642</sup>

(ii) Killings in Saborsko on 12 November 1991

229. During the aerial bombing of 12 November 1991, Ana Bićanić and her husband Milan Bićanić, took shelter in the basement of Petar “Krtan” Bićanić’s house, where around 20 people had gathered, including the young boy, Jure Vuković.<sup>643</sup> Once it became quiet outside in the afternoon, Milan Bićanić heard someone say “give me the matches” which led him to believe that soldiers, who had entered the village, were burning houses and that they were going to be burned inside.<sup>644</sup> In order to prevent this, they waved a white undershirt tied to a piece of wood through the basement door, shouting that they were civilians.<sup>645</sup> There were soldiers outside wearing camouflage and olive-grey uniforms, as well as two soldiers dressed in “Serbian dark grey uniforms and wearing helmets with a five pointed red star”.<sup>646</sup> The soldiers told all of the villagers to come out of the basement.<sup>647</sup> The soldiers were armed and spoke in a Serbian dialect.<sup>648</sup> Some of the soldiers swore at them, saying “fuck your Ustaša mother” and that all of them should be slaughtered.<sup>649</sup>

230. One of the soldiers threw a hand grenade into the empty basement.<sup>650</sup> The soldiers separated the men from the women and lined them up opposite each other.<sup>651</sup> The soldiers searched the men

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<sup>639</sup> Marko Vuković, 24 Mar 2006, T. 2590, 2631; Ana Bićanić, Ex. 276, p. 4; Vlado Vuković, 27 Mar 2006, T. 2674-2675.

<sup>640</sup> Witness MM-039, Ex. 277, p. 4.

<sup>641</sup> Vlado Vuković, 28 Mar 2006, T. 2727. *See also* Imra Agotić, Ex. 398, T. 23315-23316, testifying that in more or less all Croat villages in the area, including Vagnac, Drežnik Grad and Rakovica, civilians were displaced, after which the houses and all facilities were devastated.

<sup>642</sup> Witness MM-037, 28 Mar 2006, T. 2801-2803, Ex. 268, T. 11603-11604, 11612-11613, 11637; Nikola Medaković, 9 Oct 2006, T. 9019-9020. *See also* Ex. 963, pp 2-3.

<sup>643</sup> Ana Bićanić, Ex. 276, p. 3. The persons in the basement were: Petar Bićanić and his wife Kate Bićanić, Ana Bićanić and her husband, Ivan Vuković, Nikola Bićanić, Pero Bićanić, Jure Štrk and his wife Kate Štrk, Jure Vuković and his half brother whose name was also Jure Vuković (nicknamed Jura Zenkov), Kate Vuković and her son Jure Vuković (who was 8-10 years old), a second woman named Ana Bićanić, Bara Bićanić, Ana Vuković, Jeka Vuković, a third woman named Ana Bićanić (born 1924), Marija Hodak, Jeka Dumančić, and Marija Štrk, Ana Bićanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 2. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 1-2.

<sup>644</sup> Ana Bićanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, pp 2-3

<sup>645</sup> Ana Bićanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 3.

<sup>646</sup> Ana Bićanić, Ex. 276, p. 4.

<sup>647</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

<sup>648</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

<sup>649</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

<sup>650</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

<sup>651</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3; Marko Vuković, 24 Mar 2006, T. 2588.

and took their money and valuables.<sup>652</sup> While the men were being searched, one soldier hit Jure Štrk and Milan Bićanić.<sup>653</sup> After about 15 minutes, the men were taken around a corner of Ivan Bićanić's house.<sup>654</sup> Two soldiers wearing Serbian dark grey uniforms shot and killed the men with automatic rifle fire.<sup>655</sup> The following seven men were killed: Milan Bićanić, Nikola Bićanić, Petar Bićanić, Jure Štrk,<sup>656</sup> Ivan Vuković, Jure Vuković and his half brother also named Jure Vuković.<sup>657</sup>

231. After the killings, the two soldiers returned to the rest of the group.<sup>658</sup> One of the two soldiers pointed the gun at Ana Bićanić and told them that they had an hour to leave or they would be killed.<sup>659</sup> As they ran away the soldiers shot at them.<sup>660</sup> Jeka Vuković fell, and that was the last time that Jure Vuković saw her.<sup>661</sup> They fled towards Borik and after three days, on 15 November 1991, they came to the HVO barracks in Lipice, east of Saborsko.<sup>662</sup>

232. After the attack on Saborsko, Nikola Medaković, in his capacity as president of the municipality of Plaški, issued an order to bury human corpses after which he received a report that the bodies of more than 20 people had been buried, including civilian women and elderly men.<sup>663</sup>

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<sup>652</sup> Ana Bićanić, Ex. 276, p. 4.

<sup>653</sup> Ana Bićanić, Ex. 276, p. 4.

<sup>654</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

<sup>655</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3. *See also* Marko Vuković, 24 Mar 2006, T. 2588-2589.

<sup>656</sup> Jure Vuković, Ex. 277, p. 3; Ana Bićanić, Ex. 276, p. 4 (mentioning him as "Juraj"). The Trial Chamber notes that Annex I to the Indictment lists a Josip Štrk but cannot conclude that this is the same individual. However, the Trial Chamber recalls its interpretation of the Indictment in this respect and will consider the killing of Jure Štrk for a conviction, *see supra* section I C.

<sup>657</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3. Witness MM-037 was told in the evening on 12 November 1991 by a Serb soldier that five or six soldiers had killed Petar "Krtan" Bićanić and two more men. Witness MM-037 believed that perpetrators were a group of "renegades", members of Martić's Police, who thought Petar Bićanić was carrying a lot of money on him, Witness MM-037, 28 Mar 2006, T. 2800-2801. Witness MM-037 further named Đuro "Snjaka" Ogrizović and individuals called Lecin, Cvekić and Pejić, Witness MM-037, 29 Mar 2006, T. 2814-2815; Ex. 268, T. 11602, 11608-11609, 11613-11614, 11638-11639. The Trial Chamber notes the evidence that a Peić or Pejić was "the worst of all Martić's men" and that he, together with Željko "Buba" Mudrić, boasted about having "shot dead eight people in front of the Centre in Saborsko", Ex. 507, p. 4. However, the Trial Chamber cannot conclude beyond reasonable doubt that this reference to killings in the centre of Saborsko refers to the killings at Petar "Krtan" Bićanić's house. Vlado Vuković knows of one family that was killed as well as his aunt and uncle who had gone to their Serb neighbours' house seeking protection but were nonetheless killed, Vlado Vuković, 28 Mar 2006, T. 2730, 2733. The Trial Chamber notes that victims with the last name "Bićanić" are listed as "Bićanić" in Annex I to the Indictment. *See also* Marko Vuković, 24 Mar 2006, T. 2588-2589. The Trial Chamber has also been furnished with evidence that during the attack on Saborsko, Kata Dumaničić and Nikola "Dika" Dumaničić were killed in front of their house, Ex. 963, p. 2. The Trial Chamber considers that similar names Kata Dumeničić and Nikola Dumeničić listed in Annex I to the Indictment refer to these victims, and will consider these persons for a conviction.

<sup>658</sup> Ana Bićanić, Ex. 276, p. 4.

<sup>659</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, pp 3-4; Marko Vuković, 24 Mar 2006, T. 2588.

<sup>660</sup> Jure Vuković, Ex. 277, p. 4.

<sup>661</sup> Jure Vuković, Ex. 277, p. 4. Annex I to the Indictment lists a Jela Vuković and the Trial Chamber considers this to refer to Jeka Vuković.

<sup>662</sup> Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 4.

<sup>663</sup> Nikola Medaković, 9 Oct 2006, T. 9021-9022, 9027-9028, 10 Oct 2006, T. 9250. Nikola Medaković testified that the victims were to be buried as close as possible to where they had been killed and with everything found on them, including identification, Nikola Medaković, 9 Oct 2006, T. 9027.

233. Beginning in October 1995, several grave sites were exhumed in Saborsko.<sup>664</sup> The biggest site was at Popov Šanac, located close to the church of St. John, where the following 14 victims were found: Ana Bičanić, Milan Bičanić, Nikola Bičanić, Petar Bičanić, Kata Dumenčić, Nikola Dumenčić, Mate Matovina (born 1895), Milan Matovina, Mate Špehar, Ivan Vuković, Jeka Vuković, Jure Vuković (born 1929), Jure Vuković (born 1930), and Petar Vuković.<sup>665</sup> In the grave site at Borik, the following three victims were found: Darko Dumenčić, Ivica Dumenčić, and Josip Štrk.<sup>666</sup> The following ten victims were found in individual graves in Saborsko: Leopold Conjar, Ante Dumenčić, Ivan Matovina, Kata Matovina (born 1920), Kata Matovina (born 1918), Lucija Matovina, Marija Matovina, Marta Matovina, Slavica Matovina, and Slavko Sertić.<sup>667</sup>

234. Considering in particular that there is direct evidence regarding the killing of eight of the victims exhumed from the mass grave in Popov Šanac, the Trial Chamber finds that all 14 victims exhumed from that mass grave were killed in Saborsko on 12 November 1991. Moreover, based on evidence indicating their causes of death, the Trial Chamber considers it established beyond reasonable doubt that also Ivica Dumenčić, Kata Matovina (born 1920) and Slavko Sertić were killed in Saborsko on 12 November 1991. Furthermore, considering that Darko Dumenčić and Josip Štrk were found in the same mass grave as Ivica Dumenčić, who was killed on 12 November 1991, the Trial Chamber considers it established beyond reasonable doubt that these two persons were killed on the same date. Lastly, while the body of Jure/Juraj Štrk has not been recovered, the direct evidence establishes that he was killed on 12 November 1991. The Trial Chamber therefore finds beyond reasonable doubt that 20 persons were killed on 12 November 1991. For the remaining victims (Leopold Conjar, Ante Dumenčić, Ivan Matovina, Kata Matovina (born 1918), Lucija Matovina, Marija Matovina, Marta Matovina, and Slavica Matovina), the evidence is insufficient to establish when, where and by whom they were killed.

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<sup>664</sup> Marko Vuković, 24 Mar 2006, T. 2590-2591; Vlado Vuković, 27 Mar 2006, T. 2676; Davor Strinović, 12 Apr 2006, T. 3667. *See also* Ex. 302.

<sup>665</sup> Vlado Vuković, 27 Mar 2006, T. 2676; Marko Vuković, 24 Mar 2006, T. 2591; Ivan Grujić, 10 Apr 2006, T. 3477; Ex. 302; Ex. 323 (providing that the cause of death was gunshot wounds for Mate Matovina (born 1895), Mate Špehar, Ivan Vuković, Jeka Vuković, Jure Vuković (born 1929), Jure Vuković (born 1930), and Petar Vuković); Ex. 963 (regarding Kata Dumenčić and Nikola Dumenčić). *See also* Nikola Medaković, 12 Oct 2006, T. 9244-9245. The Trial Chamber visited Popov Šanac during the site visit, Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 36-38.

<sup>666</sup> Ex. 302; Ex. 323, providing that the cause of death for Ivica Dumenčić was “probably trauma wounds”. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 40-41.

<sup>667</sup> Ex. 323 (providing that the cause of death of Slavko Sertić and Kata Matovina (born 1920) were gunshot wounds). Mate Matovina (in Annex I to the Indictment listed with birth date unknown) is listed as killed in the list of victims which was created by the Office for Detainees and Missing Persons of the Government of Croatia, Davor Strinović, 12 Apr 2006, T. 3667-3668. His body was not exhumed from any of the graves and there is no other evidence concerning his alleged death. Based on the evidence, therefore, the Trial Chamber is unable to find that this Mate Matovina is dead. *See also* Ex. 302.

#### 4. Škabrnja and Nadin

##### (a) Škabrnja, Nadin and surrounding villages

235. Škabrnja is located in south-western Croatia and in 1991 formed part of the municipality of Zadar, which bordered the Benkovac municipality to the south-east.<sup>668</sup> Škabrnja had about 2,000 inhabitants and was almost exclusively Croat.<sup>669</sup> There were three churches in and around Škabrnja, the church of the Assumption of the Virgin in the centre of Škabrnja, St. Mary's Church in the hamlet of Ambar, and St. Luke's Church to the west of the centre of Škabrnja.<sup>670</sup> In 1991, Nadin was located in the Benkovac municipality and was approximately three kilometres south-east of Škabrnja.<sup>671</sup> Nadin, which was also almost exclusively Croat, had between 300 and 660 inhabitants living in approximately 120 to 150 houses.<sup>672</sup> Croat villages were located to the south of Škabrnja, whereas predominantly Serb villages were located to the north and north-east of Škabrnja, towards Benkovac municipality.<sup>673</sup>

##### (b) Situation in Škabrnja, Nadin and surroundings prior to 18 November 1991

236. In August 1991, running water and electricity to Nadin had been switched off from Benkovac.<sup>674</sup> Around September 1991, approximately 240 Croatian reserve police members and local volunteers were present in Škabrnja.<sup>675</sup> In September 1991, Škabrnja and Nadin were shelled and subjected to aerial bombings, including by cluster bombs.<sup>676</sup> On 2 October 1991, three villagers

<sup>668</sup> Marko Miljanić, 30 Mar 2006, T. 2915; Zoran Lakić, 26 Oct 2006, T. 10151; Ex. 22, Map 8; Ex. 23, pp 24-25; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 31-50 and DVD 5, pp 1-12.

<sup>669</sup> Marko Miljanić, 29 Mar 2006, T. 2862; Zoran Lakić, 26 Oct 2006, T. 10164; Ex. 301, p. 4; Marko Miljanić, 29 Mar 2006, T. 2862; Jasna Denona, 9 Feb 2006, T. 1280; Tomislav Šegarić, Ex. 826, p. 2; Ex. 301, p. 4 (providing that 1991, 97.59% were Croats, and 2.15% were Serbs).

<sup>670</sup> Neven Šegarić, 29 Mar 2006, T. 2848 (referring to Ex. 271, ERN 0468-7818); Luka Brkić, 7 Apr 2006, T. 3393-3394; Ex. 109, p. 1; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 42-50 and DVD 5, pp 8-12; Ex. 1044.

<sup>671</sup> Witness MM-083, 16 Jun 2006, T. 5730; Zoran Lakić, 26 Oct 2006, T. 10151; Nada Pupovac, 31 Oct 2006, T. 10366; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 12-20; Ex. 1044.

<sup>672</sup> Witness MM-083, 16 Jun 2006, T. 5730-5731; Marko Miljanić, 29 Mar 2006, T. 2862; Ex. 301 (97.6% were Croats and 1.95% were Serbs).

<sup>673</sup> Marko Miljanić, 29 Mar 2006, T. 2862 (testifying that Biljane was an exclusively Serb village and that some Croat villages surrounding Škabrnja, including Donji Zemunik, had some Serb population); Zoran Lakić, 27 Oct 2006, T. 10229-10230.

<sup>674</sup> Witness MM-083, 16 Jun 2006, T. 5731.

<sup>675</sup> Marko Miljanić, 29 Mar 2006, T. 2862-2864 (testifying that following an order from the Chief of the Zadar police administration, Marko Miljanić, a Croatian MUP member, placed road check-points near Biljane and Zemunik and erected two barricades in Škabrnja; there was also a manned check-point in the hamlet of Ambar, Luka Brkić, 7 Apr 2006, T. 3391-3392), 2864-2865 (testifying that they were armed with six light machine-guns, two hand-held launchers, automatic and semi-automatic rifles and pistols), Marko Miljanić, 30 Mar 2006, T. 2890-2891; Luka Brkić, 5 Apr 2006, T. 3224-3226 (testifying that the village guards wore second-hand uniforms from East Germany and that he was issued with an automatic rifle three to five days prior to 18 November 1991). There were also mortars in Škabrnja, Witness MM-080, 8 Jun 2006, T. 5254-5255; Ex. 116, p. 2. In Nadin at this time, the only weapons were hunting rifles, Witness MM-083, 16 Jun 2006, T. 5731.

<sup>676</sup> Marko Miljanić, 29 Mar 2006, T. 2863, 2871; Tomislav Šegarić, Ex. 826, p. 2. There is also evidence of snipers shooting at Škabrnja, Neven Šegarić, Ex. 251, p. 2. Nadin was shelled on 18 September 1991 from the direction of the

were killed, and it was decided to evacuate the civilian population, following which only members of the reserve police force and the volunteers remained in Škabrnja to guard the village.<sup>677</sup> Around 2 October 1991, Nadin was attacked by the JNA, whereupon two men were killed.<sup>678</sup> This attack was conducted in order to deblockade the road from Benkovac to the airport in Zemunik.<sup>679</sup> On 9 October 1991, an agreement was concluded between, *inter alia*, the 9<sup>th</sup> Corps command located in Knin and representatives of the Zadar municipality on cessation of combat operations, raising of the blockade of Zadar, and a pull-out of JNA from the Zadar garrison and the Zemunik airport to Benkovac.<sup>680</sup>

237. On 10 October 1991, Marko Miljanić was appointed commander for the defence of Škabrnja, Nadin, Gornji Zemunik, Donji Zemunik, Prkos, Gorica, Galovac and Glavica.<sup>681</sup> This defence force was called the Škabrnja Independent Battalion and consisted of some 730 reserve police and volunteers from the local area.<sup>682</sup> The Škabrnja Independent Battalion placed minefields in and around Škabrnja.<sup>683</sup> On 6 November 1991, the villagers who had been evacuated on 2 October returned to Škabrnja.<sup>684</sup>

238. In 1991, units of the JNA 9<sup>th</sup> Corps, of the Benkovac TO and of the SAO Krajina police were active in the area of Northern Dalmatia, including in the areas around Škabrnja, Nadin and Bruška.<sup>685</sup> The 180<sup>th</sup> Motorised Brigade was located in Benkovac and was within the structure of

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Serb villages of either Biljane or Lišane, following which women and children went to the Croat village of Polača, Witness MM-083, 16 Jun 2006, T. 5732.

<sup>677</sup> Marko Miljanić, 29 Mar 2006, T. 2863, 2865; Tomislav Šegarić, Ex. 826, p. 2; Neven Šegarić, Ex. 251, p. 2.

<sup>678</sup> Witness MM-083, 16 Jun 2006, T. 5732-5733.

<sup>679</sup> Nada Pupovac, 30 Oct 2006, T. 10342-10344 (testifying that the attack was ultimately unsuccessful due to minefields on the Benkovac side of Nadin), 10421-10422; Zoran Lakić, 27 Oct 2006, T. 10214-10216. According to Witness MM-080, from the direction of Škabrnja, some of the Croat forces opened fire on JNA vehicles that moved along the Benkovac-Zemunik road to Zemunik airport, where the JNA was based. According to information available to the JNA, an independent battalion located in Škabrnja and consisting of 250 to 300 men, opened fire upon the JNA vehicles, Witness MM-080, 8 Jun 2006, T. 5250, 5254-5255, 5260. *See also* Ex. 40, a report of the SAO Krajina TO, indicates that on 16 September 1991, Milan Martić ordered the Benkovac TO Staff to “provide as many men as possible for Lieutenant Colonel Živanović who would command the operation to lift the blockade of Zemunik”.

<sup>680</sup> Milan Babić, 20 Feb 2006, T. 1604-1605; Ex. 1030. The Trial Chamber is unable to conclude on the basis of the evidence whether this agreement was complied with, *see* Zoran Lakić, 26 Oct 2006, T. 10148-10152 (testifying that the pull-out of the JNA was obstructed by the ZNG and Croatian police), 27 Oct 2006, T. 10221-10222; Ex. 991 (providing that by 14 October 1991 there had been no major difficulties during the evacuation of the Zadar garrison). Witness MM-080 testified that during November 1991 the JNA convoys from Zadar garrison and Zemunik airport were shot at by Croatian forces before they reached Biljane Donje, Witness MM-080, 8 Jun 2006, T. 5251, 5253, 5260. *See also* Ex. 784; Nada Pupovac, 31 Oct 2006, T. 10443.

<sup>681</sup> Marko Miljanić, 29 Mar 2006, T. 2885, 30 Mar 2006, T. 2895-2897; Luka Brkić, 7 Apr 2006, T. 3388.

<sup>682</sup> Marko Miljanić, 29 Mar 2006, T. 2885, 30 Mar 2006, T. 2890-2891, 2908; Luka Brkić, 5 Apr 2006, T. 3227, 7 Apr 2006, T. 3388-3389; Witness MM-080, 8 Jun 2006, T. 5254-5255. *See also* Zoran Lakić, 26 Oct 2006, T. 10166, 27 Oct 2006, T. 10173.

<sup>683</sup> Marko Miljanić, 30 Mar 2006, T. 2895; Luka Brkić, 7 Apr 2006, T. 3411-3412; Nada Pupovac, 30 Oct 2006, T. 10342-10343, 10349, 10368, 31 Oct 2006, T. 10368, 10448-10449; Zoran Lakić, 27 Oct 2006, T. 10173-10174.

<sup>684</sup> Marko Miljanić, 29 Mar 2006, T. 2868 (testifying that this happened following the signature in The Hague of a truce); Tomislav Šegarić, Ex. 826, p. 2; Neven Šegarić, Ex. 251, p. 2.

<sup>685</sup> Milan Babić, 20 Feb 2006, T. 1601; Ex. 1036.



the 9<sup>th</sup> Corps in Knin.<sup>686</sup> In the autumn of 1991, the commander of the TO in Benkovac was Zoran Lakić.<sup>687</sup> The Chief of the SJB in Benkovac was Boško Dražić.<sup>688</sup>

(c) Attack on Škabrnja and Nadin on 18 and 19 November 1991

239. Between 0600 and 0700 hours in the morning of 18 November 1991, a JNA mechanised infantry unit of between 80 to 200 men with eight to nine APCs and three tanks advanced from the Serb village of Smilčić towards Škabrnja.<sup>689</sup> The TO, including members of the Benkovac TO, also participated in this operation and were resubordinated to the JNA.<sup>690</sup> This JNA force was under the command of Lieutenant-Colonel Momčilo Bogunović of the JNA 180<sup>th</sup> Motorised Brigade.<sup>691</sup> There is evidence that both the Croatian and the Serb sides had mortars and artillery.<sup>692</sup> From around 0700 hours, Nadin was shelled from the direction of the Serb villages of Biljane or Lišane, and the shelling continued throughout the day.<sup>693</sup> Most of the women and children left Nadin and went to Polaca, Zaton and Zadar, while only men and a few women remained in the village.<sup>694</sup> At around 0730 hours, Škabrnja was subjected to intensive shelling, also from the direction of Biljane or Lišane, which lasted until 1230 hours.<sup>695</sup>

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<sup>686</sup> Witness MM-080, 8 Jun 2006, T. 5246. *See also* Nada Pupovac, 30 Oct 2006, T. 10339.

<sup>687</sup> Zoran Lakić, 26 Oct 2006, T. 10128-10130.

<sup>688</sup> Witness MM-080, 8 Jun 2006, T. 5246. *See also* Ex. 959.

<sup>689</sup> Luka Brkić, 5 Apr 2006, T. 3225-3227 (testifying that the Škabrnja village guard was deployed during the night between 17 and 18 November 1991, *see also* Luka Brkić, 5 Apr 2006, T. 3256, 7 Apr 2006, T. 3395, 3434-3435; Zoran Lakić, 26 Oct 2006, T. 10155-10156, 10159-10160, 10166 (testifying that about 110 men took part); Nada Pupovac, 30 Oct 2006, T. 10349 (testifying that “some 200 soldiers on the part of the JNA” participated); Neven Šegarić, Ex. 251, p. 4. Command posts were established in Gornji Biljani and in the hamlet of Trljuge, Luka Brkić, 5 Apr 2006, T. 3255). *See also* Ex. 285 (which makes reference to tanks and APCs (called “BOVs”) in the areas of Ambar, west of Škabrnja and in Biljane Donje). There is also evidence that some of the column went through Gornji Zemunik and that before reaching Ambar some of the vehicles turned to the church of St. Luke, Luka Brkić, 7 Apr 2006, T. 3434; Ex. 285; Ex. 107, p. 1. Luka Brkić testified that Captain Dragan’s White Eagles (“Beli Orlovi”) participated in the attack on Škabrnja, however the Trial Chamber notes that it has not been furnished with any evidence that Captain Dragan commanded a unit by this name, Luka Brkić, 7 Apr 2006, T. 3427.

<sup>690</sup> Nada Pupovac, 30 Oct 2006, T. 10345, 31 Oct 2006, T. 10399, 10425; Ex. 107, pp 1, 3-4 (indicating that the TO was to seal off the area and prevent intervention and that coordination between the TO and the JNA was initially poor but improved). Zoran Lakić testified that the Benkovac TO participated with a unit of 25-30 men, who were deployed in the hamlet Skorić in the Biljani Donji area and that 12 of these TO members relocated wounded civilians and soldiers to Biljani Donji using two minibuses and an ambulance, Zoran Lakić, 26 Oct 2006, T. 10158-10159, 10163, 10168, 27 Oct 2006, T. 10178, 10248, 30 Oct 2006, T. 10278; Nada Pupovac, 30 Oct 2006, T. 10345, 10347, 10356-10358, 31 Oct 2006, T. 10445. Some of the JNA tank crews were manned to full strength by TO members from other locations, Zoran Lakić, 26 Oct 2006, T. 10156 (*see also* Marko Miljanić, 30 Mar 2006, T. 2929, testifying that he was told that some tank crews included volunteers from Serbia; Ex. 616, regarding volunteers from Serbia and BiH who were joined with the Benkovac TO). The Trial Chamber notes that Ex. 116, Ex. 117, Ex. 118, Ex. 411 and Ex. 614 provide that members of TO were present in Škabrnja and Nadin on 18 and 19 November 1991. The Trial Chamber notes Zoran Lakić’s testimony that no other units from the Benkovac TO, than those listed above, participated in the attack, Zoran Lakić, 27 Oct 2006, T. 10190-10192, 30 Oct 2006, T. 10277. On the participation of the TO in the attack *see also* Veljko Džakula, 17 Jan 2006, T. 417-418.

<sup>691</sup> Witness MM-080, 8 Jun 2006, T. 5262; Ex. 107. *See also* Zoran Lakić, 26 Oct 2006, T. 10154.

<sup>692</sup> Luka Brkić, 5 Apr 2006, T. 3256, Zoran Lakić, 26 Oct 2006, T. 10166, Ex. 285, Nada Pupovac, 30 Oct 2006, T. 10354-10355, 31 Oct 2006, T. 10369.

<sup>693</sup> Witness MM-083, 16 Jun 2006, T. 5732, 5735, 5737.

<sup>694</sup> Witness MM-083, 16 Jun 2006, T. 5734-5735.

<sup>695</sup> Marko Miljanić, 29 Mar 2006, T. 2869; Neven Šegarić, Ex. 251, p. 4; Tomislav Šegarić, Ex. 826, pp 2-3.

240. When the column reached the junction of the roads leading to Biljani Donji and Zadar, Lieutenant Miodrag Stevanović and a soldier were killed after having left their APC.<sup>696</sup> The evidence is conflicting as to the reason for their leaving the APC.<sup>697</sup> Thereafter, intensive fire commenced.<sup>698</sup> Croatian forces shot at the JNA tanks and soldiers including from some of the houses.<sup>699</sup> A ZNG unit fired rockets at the JNA column from the elevation Ražovljeva Glavica.<sup>700</sup> Helicopters were also used by the JNA to deploy ground troops in the vicinity of Škabrnja.<sup>701</sup> Cluster bombs dropped from JNA aircraft were also used in the attack.<sup>702</sup>

241. The church of the Assumption of the Virgin in the centre of Škabrnja was shot at by a JNA tank.<sup>703</sup> At one point, tanks attempted to enter the church of the Assumption of the Virgin but were stopped by Captain Janković, a member of the JNA.<sup>704</sup> Following this, and without authorisation by Captain Janković, several soldiers entered the church and fired their weapons.<sup>705</sup> A tank opened fire in the direction of the school in Škabrnja.<sup>706</sup> There is evidence that fire was opened on private houses by tanks and using hand-held rocket launchers.<sup>707</sup>

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<sup>696</sup> Nada Pupovac, 30 Oct 2006, T. 10345-10346; Zoran Lakić, 26 Oct 2006, T. 1016, 27 Oct 2006, T. 10232-10233.

<sup>697</sup> Neven Šegarić, 29 Mar 2006, T. 2835, testifying that no warning was given; Nada Pupovac, 30 Oct 2006, T. 10351-10353; Zoran Lakić, 26 Oct 2006, T. 10161, both testifying that a warning was given by Lieutenant Stevanović using a megaphone after they left the APC.

<sup>698</sup> Marko Miljanić, 29 Mar 2006, T. 2869, testifying that fire was opened first by the JNA column and artillery at around 0730 hours; Luka Brkić, 5 Apr 2006, T. 3229-3231 (testifying that shells hit his brother's house), 3255 (testifying that the map in Ex. 285 accurately describes that fire was first opened on Škabrnja at 0730 hours from the direction of Ambar), 7 Apr 2006, T. 3397, 3417; Zoran Lakić, 26 Oct 2006, T. 10161-10162, 27 Oct 2006, T. 10174, 10233-10234; Nada Pupovac, 30 Oct 2006, T. 10347, 10354; Tomislav Šegarić, Ex. 826, p. 2; Ex. 984, Annex 9.

<sup>699</sup> Marko Miljanić, 29 Mar 2006, T. 2876 (testifying that around 1400 hours he and Luka Škara were by the church of the Assumption of the Virgin and tried to hit the tanks which had entered the village centre using a hand-held rocket launcher, but they stopped because civilians, including women, children and old men were around the tanks with their hands on their necks); Luka Brkić, 5 Apr 2006, T. 3232-3233, 3246, 3248; Nada Pupovac, 30 Oct 2006, T. 10356, 10358, 31 Oct 2006, T. 10392; Zoran Lakić, 27 Oct 2006, T. 10173-10174 *See also* Ex. 109.

<sup>700</sup> Nada Pupovac, 30 Oct 2006, T. 10354-10355, 31 Oct 2006, T. 10369. *See also* Marko Miljanić, 30 Mar 2006, T. 2901-2902, confirming that a ZNG unit was present at this elevation.

<sup>701</sup> Marko Miljanić, 29 Mar 2006, T. 2870, 2075 (testifying that helicopters arrived at a meadow called Jabuka three or four times and deployed troops about 30 troops each time, who wore "dark uniforms"). The Trial Chamber notes that Zoran Lakić testified (27 Oct 2006, T. 10239-10240) that he heard neither helicopters nor airplanes during the attack. However, the Trial Chamber does not find this evidence credible in light of the direct evidence, Marko Miljanić, 29 Mar 2006, T. 2870; Luka Brkić, 5 Apr 2006, T. 3230; Neven Šegarić, Ex. 251, p. 4.

<sup>702</sup> Marko Miljanić, 29 Mar 2006, T. 2870, 30 Mar 2006, T. 2925; Luka Brkić, 5 Apr 2006, T. 3230; 7 Apr 2006, T. 3393-3394.

<sup>703</sup> Luka Brkić, 7 Apr 2006, T. 3393, 3417; Ex. 984, Annex 9; Ex. 922, p. 7. Nada Pupovac testified that the bell tower was shot at by the tank because there was a Croatian machine-gun nest there, Nada Pupovac, 30 Oct 2006, T. 10355-10356, 31 Oct 2006, T. 10431-10433, 1 Nov 2006, T. 10458. The Trial Chamber does not find this evidence convincing in light of the contrary evidence.

<sup>704</sup> Luka Brkić, 5 Apr 2006, T. 3242-3243.

<sup>705</sup> Luka Brkić, 5 Apr 2006, T. 3242-3243.

<sup>706</sup> Luka Brkić, 5 Apr 2006, T. 3239.

<sup>707</sup> Luka Brkić, 5 Apr 2006, T. 3239, 3246 (testifying that sniper fire was opened from a private house which was subsequently targeted by a tank); Zoran Lakić, 27 Oct 2006, T. 10175; Ex. 117, p. 3; Ex. 984, Annex 9, Statement of Svetka Miljanić, Statement of Snježana Ferica.

242. During the fighting, civilians fled south.<sup>708</sup> Civilians were also taken out of Škabrnja by JNA and TO forces and transported to territory under the control of Croatian forces.<sup>709</sup> Village guards Luka Brkić, Ante “Neno” Gurlica and Marin Gurlica were taken by bus to Benkovac, where they stayed overnight after which they were taken to Knin.<sup>710</sup> About half of Škabrnja was controlled by the Serb forces by 1400 hours.<sup>711</sup> The fighting in Škabrnja lasted until dusk.<sup>712</sup> There were two dead and several wounded on the Serb side, whereas the Croatian side suffered about 15 killed.<sup>713</sup>

243. At 0500 hours in the morning of 19 November 1991, the Croatian forces withdrew from Škabrnja.<sup>714</sup> Around 0700 hours, the JNA convoy left Škabrnja and advanced along the road towards Nadin, which was subsequently shelled.<sup>715</sup> The convoy passed through Nadin around 1400 hours after which it withdrew to the Benkovac barracks.<sup>716</sup> During the night of 19 September 1991, “everything was burning” in Nadin.<sup>717</sup>

(d) Evidence of units present in Škabrnja

244. The Trial Chamber has been furnished with evidence describing the units present in Škabrnja on 18 November 1991. The evidence shows that the JNA units were composed of soldiers of different ethnicities.<sup>718</sup> The JNA units were composed of regular soldiers and reservists from

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<sup>708</sup> Marko Miljanić, 29 Mar 2006, T. 2880; Zoran Lakić, 30 Oct 2006, T. 10311, testifying that more than 1,500 civilians of Škabrnja withdrew in the direction of Zadar; Boško Brkić, Ex. 275, p. 2, stating that around 100 villagers fled to a quarry in the forest, a pre-arranged meeting point should the village come under attack, after which they went by foot to Prkos where buses eventually picked them up.

<sup>709</sup> Luka Brkić, 5 Apr 2006, T. 3251-3252. Nada Pupovac testified that over 150 uninjured civilians were taken by the TO, first to Benkovac and then to a junction near the Croat village of Pristeg and the Serb village of Ceranje Gornje where they crossed over to “Croatian territory”, Nada Pupovac, 31 Oct 2006, T. 10364, 10370. Zoran Lakić testified that when he arrived in Škabrnja at 1700 hours on 18 November 1991, he saw 120 or 130 civilians put up at the primary school, and a nursery school, and that later that evening they were transported to “Croatian forces” using buses of the “transport company of Benkovac”, Zoran Lakić, 26 Oct 2006, T. 10164.

<sup>710</sup> Luka Brkić, 5 Apr 2006, T. 3233 (testifying that these three were members of the village guard but that they had removed their camouflage uniforms by the time they were captured), 3250-3253 (also testifying that Ante “Neno” Gurlica was beaten by a soldier before being transported away and that the three of them were beaten as they entered the bus taking them to Benkovac), 3264-3265. *See infra* paras 278, 281.

<sup>711</sup> Marko Miljanić, 29 Mar 2006, T. 2880.

<sup>712</sup> Marko Miljanić, 29 Mar 2006, T. 2869-2870 (also testifying that civilians were killed in the shelling); Luka Brkić, 7 Apr 2006, T. 3417; Zoran Lakić, 26 Oct 2006, T. 10162-10163; Neven Šegarić, Ex. 251, p. 5; Ivica Bilaver, Ex. 821, p. 2; Tomislav Šegarić, Ex. 826, p. 2; Ex. 984, Annex 9. *See also* Nada Pupovac, 30 Oct 2006, T. 10354-10355. At one point, the Croatian side blew up the reserve ammunition of the JNA, Marko Miljanić, 29 Mar 2006, T. 2870-2871, 30 Mar 2006, T. 2902.

<sup>713</sup> Marko Miljanić, 29 Mar 2006, T. 2878; Zoran Lakić, 26 Oct 2006, T. 10170; Ex. 377.

<sup>714</sup> Marko Miljanić, 30 Mar 2006, T. 2904-2905; Witness MM-083, 16 Jun 2006, T. 5736-5737; Nada Pupovac, 31 Oct 2006, T. 10365. *See also* Zoran Lakić, 26 Oct 2006, T. 10165. After the hostilities had ended, the JNA found automatic rifles, pistols, sniper rifles, mortars, anti-aircraft guns, and handheld rocket launchers, which were brought to the Benkovac barracks, Zoran Lakić, 26 Oct 2006, T. 10166-10167, 27 Oct 2006, T. 10173; Nada Pupovac, 31 Oct 2006, T. 10369. Luka Brkić testified that when he was taken from Škabrnja to Benkovac he saw a large pile of weapons which he believed were confiscated in Škabrnja, Luka Brkić, 7 Apr 2006, T. 3406-3407.

<sup>715</sup> Nada Pupovac, 31 Oct 2006, T. 10366-10367; Witness MM-083, 16 Jun 2006, T. 5738.

<sup>716</sup> Nada Pupovac, 31 Oct 2006, T. 10366-10367; 10369-10370.

<sup>717</sup> Witness MM-083, 16 Jun 2006, T. 5745-5746.

<sup>718</sup> Luka Brkić, 5 Apr 2006, T. 3243-3245, 7 Apr 2006, 3405-3406, 3420, 3441-3442 (stating that he believed Captain Janković was a Serb).

neighbouring Serb villages.<sup>719</sup> In addition to the uniforms ordinarily worn by members of the JNA, officers of the JNA present in Škabrnja wore a mix of camouflage uniforms and ceremonial uniforms.<sup>720</sup>

245. The TO present in Škabrnja wore the same uniforms, caps and helmets as the JNA.<sup>721</sup> However, the TO also wore the Serbian flag on their uniforms and some members had a white band on the left shoulder.<sup>722</sup> There is evidence that some TO soldiers wore SAO Krajina patches on their uniforms.<sup>723</sup>

246. Paramilitary units, in the evidence often referred to simply as “Chetniks”, were present in Škabrnja and wore various kinds of JNA uniforms, some with an insignia with four Cyrillic “S”, and different kinds of hats, including berets, fur hats with cockades and hats.<sup>724</sup> Their faces were painted, however the evidence shows that at least some of them appeared to be local.<sup>725</sup>

247. The evidence is insufficient to conclude whether members of the SAO Krajina MUP participated in the attack on Škabrnja on 18 and 19 November 1991.<sup>726</sup> The Prosecution alleges that Goran Opačić was a member of the police and present in Škabrnja at the time of the operation in Škabrnja.<sup>727</sup> The Defence denies both allegations.<sup>728</sup> The Trial Chamber finds that the evidence establishes beyond reasonable doubt that Goran Opačić was a member of the Benkovac SJB special unit on 18 and 19 November 1991. However, while the evidence establishes beyond reasonable doubt that Goran Opačić was present in Škabrnja at some point on 18 November 1991, it is

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<sup>719</sup> Luka Brkić, 7 Apr 2006, T. 3419, 3421 (listing the villages of Zemunik Gornje, Veljane, Biljane, Gornje Biljane, Djevske, Kistanje, Lišane, and Rastević), 3429-3430, 3440-3441.

<sup>720</sup> Luka Brkić, 5 Apr 2006, T. 3236-3237; Nada Pupovac, 31 Oct 2006, T. 10452-10453. For a description of the JNA uniforms, *see supra* fn 283.

<sup>721</sup> Nada Pupovac, 31 Oct 2006, T. 10452-10453. *See also* Ex. 117.

<sup>722</sup> Nada Pupovac, 31 Oct 2006, T. 10453; Ex. 117, p. 3.

<sup>723</sup> Luka Brkić, 5 Apr 2006, T. 3237, 7 Apr 2006, T. 3426-3427.

<sup>724</sup> Marko Miljanić, 30 Mar 2006, T. 2918-2919; Tomislav Šegarić, Ex. 826, pp 3, 5-6; Ex. 118, p. 1.

<sup>725</sup> Tomislav Šegarić, Ex. 826, pp 3-4.

<sup>726</sup> Zoran Lakić, 27 Oct 2006, T. 10258; Nada Pupovac, 31 Oct 2006, T. 10396, 10428; Milan Babić, 20 Feb 2006, T. 1607, Ex. 1036, L0092006; Ex. 116; Ex. 614. *See also* Ex. 411.

<sup>727</sup> Prosecution Final Trial Brief, paras 189-190. The Prosecution relies upon Witness MM-003, 8 Mar 2006, T. 2024 (testifying that Goran Opačić was a member of the “Benkovac special police” at the time of the operation in Škabrnja); Milan Babić, 20 Feb 2006, T. 1607 (testifying that he had heard “that it wasn’t true that Goran Opačić [...] had been involved in the fighting all the time [but that he] had been there at the outset but later left”; *see also* Ex. 1036); Ex. 411 (identifying Goran Opačić as a member of the Benkovac police special unit and that he gives information that killings were committed in Škabrnja); Ex. 511, p. 18 (an undated typed list which provides that Goran Opačić was a member of the Benkovac police until 31 Oct 1991).

<sup>728</sup> Defence Final Trial Brief, para. 19. The Defence relies upon Zoran Lakić, 27 Oct 2006, T. 10258, 10263-10264, 30 Oct 2006, T. 10272 (testifying that Goran Opačić was not a member of the Benkovac SJB and that he did not take part in the fighting, *see also* Nada Pupovac, 31 Oct 2006, T. 10396, 10428); Ex. 116 (providing that “according to unconfirmed data” members of “Opačić’s group” carried out killings in Nadin); Ex. 511, p. 18.

insufficient to establish beyond reasonable doubt that he participated in events or crimes in Škabrnja or Nadin on 18 or 19 November 1991.<sup>729</sup>

(c) Killings in Škabrnja and Nadin

(i) Killings at Slavko Šegarić's house in Ambar on 18 November 1991

248. In the morning of 18 November 1991, Neven Šegarić, Ivica Bilaver, Lucia Šegarić, Krsto Šegarić, Maja Grgica Šegarić, Željko Šegarić, Josip Miljanić and Stana Vicković were hiding in the cellar of Slavko Šegarić's house in Ambar.<sup>730</sup> Shortly after the first shelling, there was banging on the door and they heard a voice outside asking who was in the cellar.<sup>731</sup> They heard someone outside say "Come out you Ustase, we are going to slaughter you all".<sup>732</sup> When the people in the cellar opened the door, about ten JNA soldiers entered.<sup>733</sup> The soldiers' faces were painted, and they wore plain olive green uniforms with a red star on the buttons and on the epaulets.<sup>734</sup> After having taken a rifle and a pistol which were elsewhere in the house, some of the soldiers left.<sup>735</sup> Shortly thereafter five or six "Serb volunteers, who were from the neighbouring villages" arrived.<sup>736</sup> They threatened the people in the cellar and forced them out; everyone left the cellar except Lucia Šegarić.<sup>737</sup> Just as the people exited the cellar, Neven Šegarić saw a "Chetnik" fire a burst of gunfire into the cellar.<sup>738</sup> About five minutes later, when Neven Šegarić and Željko Šegarić were forced to enter the cellar to look for weapons, Neven Šegarić saw that Lucia Šegarić was lying dead

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<sup>729</sup> Regarding membership in the Benkovac SJB "special unit", the Trial Chamber notes Ex. 411, Ex. 511 and Milan Babić, 20 Feb 2006, T. 1601, 1607 (*see also* Ex. 1036). The Trial Chamber notes that in this respect Witness MM-003's testimony is corroborated (Witness MM-003, 8 Mar 2006, T. 2024). Regarding his presence in Škabrnja and Nadin, the Trial Chamber notes Milan Babić's hearsay evidence that Goran Opačić was only present at the "outset" in Škabrnja on 18 November 1991, that Nada Pupovac, who was present in Škabrnja 18 November 1991, denies Goran Opačić's presence, and that Ex. 116 only refers to "unconfirmed data" that "Opačić's group" killed members of a family in Nadin and three unidentified captives from Škabrnja. The Trial Chamber considers that the contrary evidence of Witness MM-003 is not sufficiently credible in this respect. The Trial Chamber notes the hearsay evidence (Marko Miljanić, 29 Mar 2006, T. 2879-2880) that Goran Opačić, nicknamed "Klempa", was heard over the radio in Škabrnja on 18 November 1991, but cannot make any finding based on this evidence (*see also* Milan Babić, 20 Feb 2006, T. 1607; Ex. 1036).

<sup>730</sup> Neven Šegarić stated that he was in the cellar with his grandmother Lucia Šegarić (age 62), his grandfather Krsto Šegarić (age 60 or 61), his cousin Željko Šegarić (age 14 or 15), his great grandmother Maja Grgica Šegarić (age 94), Ivo Bilaver (age 14 or 15), and Josip/Joso Miljanić. However, right before the attack, Maja Grgica Šegarić was brought back to Neven Šegarić's father Mile Šegarić's house, Neven Šegarić, 29 Mar 2006, T. 2836, 2841-2842, Ex. 251, pp 3, 5; Ivica Bilaver, Ex. 821, p. 2 (also stating that the house was close to St. Mary's church in Ambar); Ex. 270, F-2. Ivica Bilaver was 14 or 15 years old, Neven Šegarić, 29 Mar 2006, T. 2836; Ivica Bilaver, Ex. 821, p. 2. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 32-38.

<sup>731</sup> Neven Šegarić, Ex. 251, p. 3.

<sup>732</sup> Neven Šegarić, Ex. 251, p. 3. There is also evidence that women and children were being called "Ustašas" and were insulted, Ex. 984, Annex 9, Statement of Svočka Miljanić, Statement of Snježana Ferica.

<sup>733</sup> Neven Šegarić, 29 Mar 2006, T. 2855-2856, Ex. 251, p. 3.

<sup>734</sup> Neven Šegarić, Ex. 251, p. 3.

<sup>735</sup> Ivica Bilaver, Ex. 821, p. 2; Neven Šegarić, 29 Mar 2006, T. 2834-2835, 2855-2856, Ex. 251, p. 3.

<sup>736</sup> Neven Šegarić, Ex. 251, p. 3; Neven Šegarić, 29 Mar 2006, T. 2856; Ivica Bilaver, Ex. 821, p. 2.

<sup>737</sup> Neven Šegarić, Ex. 251, p. 3.

<sup>738</sup> Neven Šegarić, Ex. 251, p. 3.

a few metres from the door.<sup>739</sup> As Neven Šegarić again left the cellar he saw Stana Vicković and Josip Miljanić being forced to kneel after which a soldier, wearing a camouflage uniform with a patch on his sleeve reading “SAO Krajina”, shot them in the head.<sup>740</sup> After this, Krsto Šegarić was beaten by five or six soldiers wearing green camouflage uniforms with SAO Krajina patches on their sleeves and red stars on the buttons, including Đuro Kosović, whom Neven Šegarić recognised.<sup>741</sup> Đuro Kosović then shot Krsto Šegarić in the back of the head.<sup>742</sup> The soldiers standing around outside at this point in time were a mix of JNA soldiers and soldiers with SAO Krajina patches on their camouflage uniforms.<sup>743</sup>

249. After this, Đuro Kosović, using a list of inhabitants in the village, questioned Neven Šegarić about where some of the inhabitants lived and if they had weapons.<sup>744</sup> When Neven Šegarić said that he did not know, Đuro Kosović left.<sup>745</sup> Subsequently, the soldier who had killed Stana Vicković and Josip Miljanić forced Neven Šegarić and Željko Šegarić against the wall of the house, however a “JNA officer” intervened and prevented their killing.<sup>746</sup> The soldiers then took Ivica Bilaver, Neven Šegarić and Željko Šegarić to Smilčić.<sup>747</sup>

(ii) Killings at Petar Pavičić’s house in Škabrnja on 18 November 1991<sup>748</sup>

250. When the attack on Škabrnja started, Tomislav Šegarić hid in the cellar of Petar “Pešo” Pavičić’s house in Škabrnja together with about 25 to 30 civilians, including women, children and

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<sup>739</sup> Neven Šegarić, Ex. 251, p. 3. The Trial Chamber notes that Ex. 305, autopsy report, p. 22, list a Luca Šegarić, born 1920, who was identified by *inter alia* her two sons Slavko Šegarić and Mile Šegarić (see also Ex. 323, p. 10; Ex. 302). The autopsy report indicates that she was shot multiple times but that she died from a shot at close range to the head. Ex. 377, p. 12, lists a Luca Šegarić, born 1922, who was killed by gunshot to the head. The Trial Chamber finds that this evidence refers to Lucia Šegarić. In this context, the Trial Chamber notes Ex. 270, F-14, which lists a Lucka Šegarić, however due to the discrepancies between Ex. 305 and Ex. 270, F-14, the Trial Chamber cannot conclude that Ex. 270, F-14 refers to Lucia Šegarić. Neven Šegarić testified that Ex. 270, F-14 does not show Lucia Šegarić, Neven Šegarić, 29 Mar 2006, T. 2840.

<sup>740</sup> Neven Šegarić, Ex. 251, p. 3. Regarding Stana Vicković, Ex. 344; Ex. 825, ERN 0469-0704; Ex. 377, p. 13, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Josip Miljanić, Ex. 360; Ex. 825, ERN 0469-0706; Ex. 377, p. 9, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. The Trial Chamber notes that Ivica Bilaver’s statement (Ex. 821, p. 2) is less detailed than that of Neven Šegarić but does not find that the discrepancy between their evidence gives rise to reasonable doubt as to the killing of Stana Vicković and Josip Miljanić. At one point, either when Lucia Šegarić or the group of adults was shot, Ivica Bilaver was wounded in the leg by a ricochet, Ivica Bilaver, Ex. 821, p. 2; Neven Šegarić, Ex. 251, p. 3; Ex. 270, F-2, (Neven Šegarić, 29 Mar 2006, T. 2841-2842, correcting the identities of the bodies in this photo).

<sup>741</sup> Neven Šegarić, 29 Mar 2006, T. 2857; Ex. 251, p. 3 (also stating that Đuro Kosović was from Smoković).

<sup>742</sup> Neven Šegarić, Ex. 251, p. 3; Ex. 270, F-4 and F-5 (see also Neven Šegarić, 29 Mar 2006, T. 2841-2842); Ex. 350; Ex. 825, ERN 0469-0704; Ex. 377, p. 12, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302.

<sup>743</sup> Neven Šegarić, Ex. 251, p. 3. Neven Šegarić testified that a few of them were from a neighbouring village, Neven Šegarić, 29 Mar 2006, T. 2856-2857.

<sup>744</sup> The list included the names of Mile Šegarić, Slavko Miljanić, see *infra* para. 255. Branko Šegarić, Marko Bilaver, Marko Miljanić, and Stipe Miljanić, Neven Šegarić, Ex. 251, pp 3-4.

<sup>745</sup> Neven Šegarić, 29 Mar 2006, T. 2834, Ex. 251, p. 4.

<sup>746</sup> Neven Šegarić, 29 Mar 2006, T. 2832, 2834, Ex. 251, p. 4.

<sup>747</sup> Neven Šegarić, Ex. 251, p. 4; Ivica Bilaver, Ex. 821, pp 2-3 (also stating that he saw that the house of Stana Vicković was burning). Ivica Bilaver was taken to the hospital in Benkovac, Ivica Bilaver, Ex. 821, p. 3.

<sup>748</sup> The Trial Chamber notes that Ivan Jelić stated that Pešo was the nickname of Petar Pavičić, Ivan Jelić, Ex. 825, p. 3.

elderly people.<sup>749</sup> Around 1230 hours the shelling ceased, and there was silence for around 20 minutes whereupon Eva Šegarić went outside the cellar.<sup>750</sup> Shortly thereafter, Tomislav Šegarić heard men shouting that everyone should come out of the cellar or they would throw in hand grenades.<sup>751</sup> The people in the cellar started to leave with their hands up. Outside near the entrance to the cellar, there was a group of more than ten armed “Chetniks” from the local area who wore camouflage uniforms and a variety of headgear.<sup>752</sup>

251. As they left the cellar, people were pulled to the side and killed by the “Chetniks”. Some of these people were first beaten with rifle butts and then killed.<sup>753</sup> The following persons were killed outside Petar Pavičić’s house:<sup>754</sup> Jozo Brkić,<sup>755</sup> Jozo Miljanić,<sup>756</sup> Slavka Miljanić,<sup>757</sup> Mile Pavičić,<sup>758</sup> Petar Pavičić,<sup>759</sup> Ilija Ražov,<sup>760</sup> Kata “Soka” Rogić,<sup>761</sup> Ivica Šegarić,<sup>762</sup> Rade Šegarić<sup>763</sup>

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<sup>749</sup> Tomislav Šegarić, Ex. 826, p. 3 (at p. 4 explaining that the house was located in the centre of Škabrnja). Ex. 270, Photo F-9 depicts the basement of Petar “Pešo” Pavičić’s house, Neven Šegarić, 29 Mar 2006, T. 2845. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 39-42.

<sup>750</sup> Tomislav Šegarić, Ex. 826, p. 3.

<sup>751</sup> Tomislav Šegarić, Ex. 826, p. 3.

<sup>752</sup> Tomislav Šegarić, Ex. 826, pp 3-4, stating that he particularly remembers one called “Kosović” but stated that that was a common surname of people coming from the village of Zemunik.

<sup>753</sup> Tomislav Šegarić, Ex. 826, p. 3; Ex. 984, Annex 9, statement of Svetka Miljanić.

<sup>754</sup> Ex. 984, Annex 9, Statement of Svetka Miljanić. The Trial Chamber notes that Ex. 984, Annex 9, statement of Snježana Ferica, lists an “Iviša Ražov” and concludes that this refers to Ive Ražov. There is no further evidence regarding this person and the Trial Chamber cannot conclude beyond reasonable doubt that Ive Ražov was among those killed outside Petar Pavičić’s house. In relation to this victim, the Trial Chamber recalls its findings on the interpretation of the Indictment, *see supra* paras section I C.

<sup>755</sup> Ex. 354, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 270, F-6 (Neven Šegarić, 29 Mar 2006, T. 2844); Ex. 825, ERN 0469-0706; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 6, listing him as a “Croat civilian”. The Trial Chamber notes that Annex I to the Indictment lists a Joso Brkić as killed in Škabrnja and finds that this refers to the same victim.

<sup>756</sup> Ex. 984, Annex 9, Statement of Svetka Miljanić. The Trial Chamber notes that Annex I to the Indictment lists a Josip Miljanić and recalls its finding that this person was killed at Slavko Šegarić’s house in Ambar. The Trial Chamber recalls that Petar Pavičić’s house was located in the centre of Škabrnja and not in the hamlet of Ambar (Tomislav Šegarić, Ex. 826, p. 4). The Trial Chamber therefore considers that Jozo Miljanić, who was killed at Petar Pavičić’s house, is a different person from Josip Miljanić who is listed in Annex I to the Indictment.

<sup>757</sup> Ex. 984, Annex 9, Statement of Svetka Miljanić, stating that her husband Jozo Miljanić and her mother-in-law Slavka Miljanić were killed at this house. The Trial Chamber notes that Annex I to the Indictment lists a Slavko Miljanić but considers in light of the information in this statement that this is a different person. In relation to this victim, the Trial Chamber recalls its findings on the interpretation of the Indictment, *see supra* section I C.

<sup>758</sup> Ex. 362, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 270, F-10 and F-11 (Neven Šegarić, 29 Mar 2006, T. 2846); Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 3, listing him as a “Croat defender”. *See also* Ex. 377, pp 3-4.

<sup>759</sup> Tomislav Šegarić, Ex. 826, p. 3, stating that he saw the dead body of Petar “Pešo” Pavičić outside the house; Ex. 365, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 10, listing him as a “Croat civilian”.

<sup>759</sup> Ex. 362, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 270, F-10 and F-11 (Neven Šegarić, 29 Mar 2006, T. 2846); Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 3, listing him as a “Croat defender”.

<sup>760</sup> Neven Šegarić, 29 Mar 2006, T. 2844, testifying that the person in Ex. 270, F-5, is Ilija Ražov. In relation to this victim, the Trial Chamber recalls its findings on the interpretation of the Indictment, *see supra* section I C.

<sup>761</sup> Neven Šegarić, 29 Mar 2006, T. 2841-2843; Tomislav Šegarić, Ex. 826, p. 4; Ex. 270, F-3 (Neven Šegarić, 29 Mar 2006, T. 2841-2843); Ex. 338, Autopsy report; Ex. 984, Annex 9, Statement of Svetka Miljanić and statement of Snježana Ferica; Ex. 825, ERN 0469-0702; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 11, listing her as a “Croat civilian”.

<sup>762</sup> Ex. 363, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 4, listing him as a “Croat defender”. *See also* Ex. 377, pp 3-4.

and Vice Šegarić.<sup>764</sup> After this, women and children were lined up and insulted and asked where their men were.<sup>765</sup> Subsequently, they were made to walk towards Ambar while being threatened by the “Chetniks”.<sup>766</sup> There were many JNA officers and soldiers in the area and the JNA officers prevented the “Chetniks” from further killings.<sup>767</sup>

(iii) Killings at Pere Sopić’s house in Nadin on 19 November 1991

252. On 19 November 1991, soldiers wearing JNA uniforms came to the house of Pere Sopić in Nadin where they found Novica Atelj, Stoja Brkić, Danka Brzoja, Ika Čirjak, Maša Čirjak, Jakov Šestan and Marija Šestan. After having taken Novica Atelj and killed him outside the house, the soldiers returned to the house and killed the remaining civilians.<sup>768</sup>

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<sup>763</sup> Ex. 358, Autopsy report; Ex. 984, Annex 9, Statement of Svetka Miljanić and statement of Snježana Ferica; Ex. 270, F-8 (Neven Šegarić, 29 Mar 2006, T. 2845); Ex. 825, ERN 0469-0706; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 12, listing him as a “Croat civilian”.

<sup>764</sup> Tomislav Šegarić, Ex. 826, p. 3, stating that he saw the dead body of Vice Šegarić outside the house; Ex. 359, Autopsy report, Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 825, ERN 0469-0706; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 12, listing him as a “Croat civilian”.

<sup>765</sup> Ex. 984, Annex 9, Statement of Svetka Miljanić, Annex 9, Statement of Snježana Ferica.

<sup>766</sup> Tomislav Šegarić, Ex. 826, p. 4.

<sup>767</sup> Tomislav Šegarić, Ex. 826, p. 4.

<sup>768</sup> Witness MM-083, 16 Jun 2006, T. 5736-5745; Ex: 109, p. 3; Ex. 302; Ex. 323, p. 7; Ex. 324 to Ex. 330 (these autopsy reports show that each victim was shot in the head at point-blank range as well as between five and eleven times from a distance of more than one metre); Ex. 825 ERN 0469-0710, 0469-0712, 0469-0714 (indicating that all victims wore civilian clothes). *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 12-20.



(iv) Other killings in Škabrnja and Nadin

253. Grgica “Maja” Šegarić, who was between 80 and 96 years old and infirm as a result of a stroke, was killed in Mile Šegarić’s house in Ambar on 18 November 1991.<sup>769</sup>

254. Ante Ražov was killed on 18 November 1991 in Škabrnja. The evidence shows that Ante Ražov was beaten and had one of his ears cut off before being shot in the head in front of his mother.<sup>770</sup> Ante Ražov is listed in Annex I to the Indictment as a civilian victim. However, the evidence shows that he was a member of the Croatian defence force in Škabrnja. Nevertheless, it is established beyond reasonable doubt that he was not taking an active part in the hostilities when he was killed. In this respect, the Trial Chamber considers that the Defence has been put on notice of this victim by virtue of Annex I to the Indictment. The evidence is insufficient to conclude who perpetrated this killing.

255. Slavko Miljanić was killed in Škabrnja on 18 November 1991. Slavko Miljanić is listed in Annex I to the Indictment as a civilian victim, however the evidence shows that he was a member of the Croatian defence force in Škabrnja.<sup>771</sup> The Trial Chamber finds that it has not been established beyond reasonable doubt that Slavko Miljanić was taking no active part in the hostilities at the time of his death.

256. On 18 November 1991, several “Chetniks” beat on the road from the centre of Škabrnja towards Ambar. Thereafter, the “Chetniks” put Šime Šegarić and Bude Šegarić in a JNA APC, which drove away in the direction of Biljani. Subsequently, their bodies were handed over to their relatives. The evidence shows that Šime Šegarić and Bude Šegarić were members of the Croatian defence force in Škabrnja.<sup>772</sup> The evidence further shows that they were taken to Knin where they were killed.<sup>773</sup>

257. There is also evidence that the following persons were killed in Škabrnja and Nadin on 18 or 19 November 1991: Ivan Babić, Luka Bilaver, Marija Brkić (born 1943), Marko Brkić, Željko

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<sup>769</sup> Marko Miljanić, 30 Mar 2006, T. 2920; Neven Šegarić, Ex. 251, p. 5; Ex. 356, Autopsy report; Ex. 377, p. 12, listing her as a “Croat civilian”; Ex. 825, ERN 0469-0706. *See also* Ex. 323, p. 9; Ex. 302.

<sup>770</sup> Marko Miljanić, 29 Mar 2006, T. 2871; Ex. 270, F-1 (Neven Šegarić, 29 Mar 2006, T. 2841); Ex. 364, Autopsy report; Ex. 825, ERN 0469-0708; Ex. 377, p. 3, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. *See also* Nada Pupovac, 31 Oct 2006, T. 10414, testifying that she heard that there had been a man without an ear, Ex. 117, p. 4 (a member of the military police battalion stated that a ZNG member had been shot behind a house and that members of the TO had cut off his ear); Ex. 411, Report on the murder of civilians in Škabrnja.

<sup>771</sup> Slavko Miljanić is listed as a civilian in Annex I to the Indictment. Ex. 357, Autopsy report; Ex. 825, ERN 0469-0706; Ex. 377, p. 3, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. *See also* Tomislav Šegarić, Ex. 826, p. 5.

<sup>772</sup> Tomislav Šegarić, Ex. 826, p. 4. The Trial Chamber notes that each is listed as a “Croat defender” in Ex. 377, p. 4.

<sup>773</sup> Ex. 825, ERN 0469-0702, ERN 0469-0722, 0469-0727. Regarding the injuries on Šime Šegarić, Ex. 333, Autopsy report, and Ex. 825, ERN 0469-0702. *See also* Ex. 323, p. 9; Ex. 302. The Trial Chamber notes that Bude Šegarić is not listed in Annex I of the Indictment and refers to the section on the interpretation of the Indictment, *see supra* section I C. The Trial Chamber has not been provided with an autopsy report concerning Bude Šegarić.

Ćurković, Marija Dražina, Ana Jurić, Grgo Jurić, Petar Jurić, Niko Pavičići, Josip Perica, Ljubo Perica, Ivan Ražov, Jela Ražov, Branko Rogić, Nikola Rogić, Kljajo Šegarić, Lucka/Luca Šegarić, Mara Žilić, Pavica Žilić, Roko Žilić, Tadija Žilić and Marko Župan.<sup>774</sup>

258. There is evidence that Petar Rogić and Miljenko Šegarić from Škabrnja were killed in Benkovac on 18 November 1991.<sup>775</sup> There is also evidence that Milka Žilić from Škabrnja was wounded by a shell and died in Zadar on 18 November 1991.<sup>776</sup>

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<sup>774</sup> The Trial Chamber notes that Kljajo Šegarić, Lucka/Luca Šegarić, Luka Bilaver, and Branko Rogić are not listed as civilian victims in Annex I to the Indictment but recalls its findings regarding the interpretation of the Indictment, para. 13. Regarding Ivan Babić, Ex. 305, Autopsy report, pp 24-25 (killed by shrapnel); Ex. 377, p. 5, listing him as a “Croat civilian”; Ex. 323, p. 10; Ex. 302. Regarding Luka Bilaver, Ex. 270, F-15 (on which photograph the victim is wearing civilian clothes). The Trial Chamber notes that Ex. 377, p. 5, and Ex. 825 ERN 0469-0718 contain a person with the same name who died of hypothermia on 1 December 1991. However, the Trial Chamber cannot conclude that this is the same person as Luka Bilaver in Ex. 270, F-15. Regarding Marija Brkić, Ex. 334, Autopsy report (killed by gunshot to the head inflicted from close range); Ex. 825, ERN 0469-0702; Ex. 377, p. 6, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Marko Brkić, Ex. 361, Autopsy report (killed by gunshots to the head inflicted at point-blank range); Ex. 825, ERN 0469-0708; Ex. 377, p. 7, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Željko Ćurković, Ex. 335, Autopsy report; Ex. 825, ERN 0469-0702 (killed by several gunshots including one inflicted at point-blank range to the head). The Trial Chamber notes that Ex. 270, F-17, contains a “Zoran Ćurković. In light of the details provided in the autopsy report and visible on F-17, the Trial Chamber concludes beyond reasonable doubt that this is Željko Ćurković. The Trial Chamber notes that on the photograph F-17 the victim is dressed in civilian clothes. Regarding Marija Dražina, Ex. 367, Autopsy report (killed by gunshot to the head inflicted at point-blank range); Ex. 825, ERN 0469-0710; Ex. 377, p. 7, listing her as a “Croat civilian”; Ex. 302; Ex. 323, p. 9. Regarding Ana Jurić, Ex. 332, Autopsy report (killed by blunt trauma to the head); Ex. 377, p. 8, listing “Anica Jurić” as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Grgo Jurić, Ex. 355, Autopsy report (killed by multiple gunshot wounds to the head inflicted at a distance of a maximum of one metre); Ex. 825, ERN 0469-0706; Ex. 377, p. 8, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Petar Jurić, Ex. 346, Autopsy report (killed by gunshots to the head inflicted from a point-blank to close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 9, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Niko Pavičići, Autopsy report Ex. 343 (killed by gunshots to the head and thorax inflicted from close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 9, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Josip Perica, Ex. 331, Autopsy report (killed by gunshots, including to the head at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 10, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302 (listed as “Joso”). Regarding Ljubo Perica, Ex. 347, Autopsy report (killed by several gunshot wounds, including to the head at point-blank range); Ex. 825, ERN 0469-0704; Ex. 377, p. 10, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Ivan Ražov, Ex. 345, Autopsy report (killed by gunshots, including two shots to the neck inflicted from a relatively close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 11, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Jela Ražov, Ex. 368, Autopsy report (killed by two gunshots to the head inflicted at point-blank range); Ex. 825, ERN 0469-0718; Ex. 377, p. 11, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Branko Rogić, Ex. 270, F-16. There is no further evidence of this victim. Regarding Nikola Rogić, Ex. 339, Autopsy report (killed by several gunshots, including one to the head inflicted at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 11, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Kljajo Šegarić: Ex. 270, F-4 (on which photograph the victim is wearing civilian clothes); Neven Šegarić, 29 Mar 2006, T. 2840, 2843. Regarding Lucka/Luca Šegarić, Ex. 270, F- 14 (on which photograph the victim is wearing civilian clothes). There is no further evidence of this victim. Regarding Mara Žilić, Ex. 353, Autopsy report (killed by several gunshots inflicted from a distance of more than one metre); Ex. 825, ERN 0469-0706; Ex. 377, p. 13, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Pavica Žilić, Ex. 352, Autopsy report (killed by blast wounds); Ex. 825, ERN 0469-0706; Ex. 377, p. 13, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Roko Žilić, Ex. 342, Autopsy report (killed by gunshots, including two inflicted to the head at point-blank range); Ex. 825, ERN 0469-0704; Ex. 377, p. 14, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Tadija Žilić, Ex. 351, Autopsy report (killed by several gunshots, including to the head inflicted at point-blank range); Ex. 825, ERN 0469-0706; Ex. 377, p. 14, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Marko Župan, Ex. 366, Autopsy report (killed by two gunshots, including to the head inflicted at point-blank range); Ex. 825, ERN 0469-0710; Ex. 377, p. 14, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. There is also evidence of killings of unidentified victims in Škabrnja and Nadin on 18 and 19 November 1991, Marko Miljanić, 29 Mar 2006, T. 2877-2878, 30 Mar 2006, T. 2914, 2920; Boško Brkić, Ex. 275, p. 2; Ex. 109; Ex. 116; Ex. 117; Ex. 614. The Trial Chamber is unable to make any further findings on the basis of this evidence, in particular whether it concerns any of the proven killings.

259. Annex I to the Indictment lists the following persons as civilian victims killed in Škabrnja on 18 November 1991, however the evidence shows that they were “Croat defenders”: Vladimir Horvat, Nediljko Jurić, Gašpar Perica, Marko Rogić, Nediljko Škara and Stanko Vicković.<sup>777</sup>

260. Following the attack on Škabrnja, some civilians remained in the village.<sup>778</sup> In December 1991, there were JNA soldiers in the village and machine-gun nests in the houses along the roads.<sup>779</sup> The evidence shows that a TO brigade under JNA command was stationed in the village.<sup>780</sup> Boško Brkić returned numerous times in secret to Škabrnja to visit his parents, Mate Brkić and Josipa Brkić, who had remained in the village.<sup>781</sup> Kata Perica, Marija Bilaver, Anica Pavičić and Eva Pavičić would come to his parents’ house every evening to sleep.<sup>782</sup> At some point after December 1991, Boško Brkić was unable to see his parents due to the situation in the village.<sup>783</sup> His parents told him that every day “Chetniks” would come to them and both threaten and pretend to protect them.<sup>784</sup> The “Chetniks” had long beards and wore uniforms with “Chetnik insignia”.<sup>785</sup> By mid-January 1992, there were only a few JNA soldiers in the village, however about 50 to 70 soldiers with “SAO Krajina” and White Eagle insignia on their camouflage uniforms were guarding and patrolling the village.<sup>786</sup> On 11 March 1992, Anica Pavičić and Eva Pavičić

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<sup>775</sup> Neither of these persons is listed in Annex I to the Indictment. The Trial Chamber recalls its findings regarding the interpretation of the Indictment, *see supra* section I C, and that it will consequently consider these victims for a conviction. Regarding Petar Rogić, Ex. 825, ERN 0469-0722 (listed as killed); Ex. 377, p. 12 (listed as tortured and beaten to death on 18 November 1991 in Benkovac). Regarding Miljenko Šegarić, Ex. 377, p. 4 (listed as a “Croat defender” and captured, tortured and beaten to death in Benkovac).

<sup>776</sup> Milka Žilić is not listed in Annex I to the Indictment. The Trial Chamber recalls its findings regarding the interpretation of the Indictment, para. 13. Ex. 825, ERN 0469-0722; Ex. 377, p. 13, listing her as “Croat civilian”.

<sup>777</sup> Regarding Vladimir Horvat, Ex. 336, Autopsy report (killed by gunshots, including by a shot to the head inflicted at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 2, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 323, p. 9; Ex. 302. Regarding Nediljko Jurić: Ex. 349, Autopsy report (killed by several gunshots from a distance of more than one metre); Ex. 825, ERN 0469-0704; Ex. 377, pp 2-3, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. Regarding Gašpar Perica: Ex. 348, Autopsy report (killed by several gunshot wounds, including two shots to the head inflicted from a close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 3, listing him as a “Croat defender”; Ex. 302. Regarding Marko Rogić: Ex. 340, Autopsy report (killed by several gunshots, including one to the head inflicted at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 4, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. Regarding Nediljko Škara: Ex. 341, Autopsy report (killed by several gunshots from a distance of more than one metre and by blast wounds); Ex. 825, ERN 0469-0704; Ex. 377, p. 5, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. Regarding Stanko Vicković: Ex. 337, Autopsy report (killed by several gunshot wounds from a distance of more than one metre, including by a shot to the head which was the fatal wound); Ex. 825, ERN 0469-0702; Ex. 377, p. 5, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302.

<sup>778</sup> Marko Miljanić, 29 Mar 2006, T. 2877; Boško Brkić, Ex. 275, p. 2.

<sup>779</sup> Boško Brkić, Ex. 275, p. 3.

<sup>780</sup> Zoran Lakić, 30 Oct 2006, T. 10289.

<sup>781</sup> Mate Brkić was confined to a wheelchair as the result of a stroke, Boško Brkić, Ex. 275, pp 2-3.

<sup>782</sup> Boško Brkić, Ex. 275, p. 3.

<sup>783</sup> Boško Brkić, Ex. 275, p. 3.

<sup>784</sup> Boško Brkić, Ex. 275, p. 3, also stating that his parents told him that the JNA soldiers had told them that they should be careful as “the Chetniks” would kill them.

<sup>785</sup> Boško Brkić, Ex. 275, p. 3, also stating that his parents recognised two local Serbs among them.

<sup>786</sup> Boško Brkić, Ex. 275, p. 3.

came to the house and found Marija Bilaver, Mate Brkić, Josipa Brkić and Kata Perica dead on the floor.<sup>787</sup>

261. The evidence shows that killings occurred from 18 November 1991 until 11 March 1992.<sup>788</sup> In 1996, 26 bodies were exhumed from a mass grave site near the school in Škabrnja.<sup>789</sup> In addition to the four victims just mentioned, the exhumed bodies were identified as: Grgo Bilaver, Peka Bilaver, Šime Bilaver, Ana Brkić, Kata Brkić (born 1935), Kata Brkić (born 1939), Marija Brkić (born 1906), Mijat Brkić, Luka Čičak, Jure Erlić, Dumica Gospić, Ljubomir Ivković, Nedelko Ivković, Tereza Ivković, Jela Jurić, Simica Jurjević, Mirko Kardum, Grgica Ražov, Marko Ražov, Simo Ražov, Pera Škara, Božo Stura and Draginja Stura.<sup>790</sup>

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<sup>787</sup> Boško Brkić, Ex. 275, pp 2-3, also stating that Anica Pavičić and Eva Pavičić immediately fled to Prkos where they told Boško Brkić what had happened. The Trial Chamber notes that the period listed in the Indictment for the killings in Škabrnja after 18 November 1991 is until and including February 1992, and that these killings took place in March 1992. However, the Trial Chamber finds that the Defence was put on notice through the inclusion of these names in Annex I to the Indictment and the summary of Boško Brkić's evidence in the Prosecution's 65 *ter* submission of 7 May 2004, which specifically describes this incident and connects it with Count 1 (Persecutions), Count 2 (Extermination), and Counts 3 and 4 (Murder). The Trial Chamber notes that Mate Brkić is listed as Mato Brkić in Annex I to the Indictment. The autopsy report of the victims provide that they wore civilian clothes at the time of their death (Mate Brkić, Ex. 373, body no. 6; Josipa Brkić, Ex. 374, body no. 7; Kata Perica, Ex. 374, body no. 9; Marija Bilaver, Ex. 373, body no. 8). Moreover, Ex. 377 also lists all four victims as civilians. *See also* Ex. 302; Ex. 323.

<sup>788</sup> Ex. 305; Ex. 377. The Trial Chamber also notes that Ex. 107, p. 7, 16 provides for 10 December 1991 "in Škabrnja TO members kill one elderly person each day" and for 15 February 1992 "[a]nother dead body in the village of Škabrnja".

<sup>789</sup> Ivan Grujić, 10 Apr 2006, T. 3477-3479; Davor Strinović, 12 Apr 2006, T. 3670-3671; Ex. 305; Ex. 373; Ex. 374; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, p. 1.

<sup>790</sup> Grgo Bilaver, Ex. 305, pp 15-16, killed by a gunshot to the chest. *See also* Ex. 302; Ex. 323, p.10; Ex. 377, p. 5. Peka Bilaver, Ex. 305, pp 19-20, killed by gunshot. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 6. Ana Brkić, Ex. 305, pp 21-22, killed by an explosion. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 6. Kata Brkić (born 1935), Ex. 374, pp 3-4, killed by gunshot. *See also* Ex. 302; Ex. 323, p. 10. Kata Brkić (born 1939), Ex. 374, p. 6, killed by gunshot to the head. *See also* Ex. 302; Ex. 323, p. 10, Ex. 377, p. 6. Marija Brkić, Ex. 373, p. 2, killed by gunshot to the thorax and blunt trauma to the head. *See also* Ex. 302; Ex. 323, p. 10. Mijat Brkić, Ex. 305, pp 6-7, killed by gunshot. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 7. Jure Erlić, Ex. 305, pp 8-9, killed by shrapnel but Ex. 377, p. 7, provides that he was shot. *See also* Ex. 302; Ex. 323, p.10. Dumica Gospić, Ex. 305, pp 18-19, killed by explosion but Ex. 377, p. 7, provides that she was shot. *See also* Ex. 302; Ex. 323, p. 10. Ljubomir Ivković, Ex. 374, pp 12-13, killed by shrapnel. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 8. Nedelko Ivković, Ex. 305, pp 11-12, killed by gunshot wounds to the chest. The Trial Chamber notes that this victim is listed as a "Croat defender" in Ex. 377, p. 2, however his body when exhumed was dressed in civilian clothing. *See also* Ex. 302; Ex. 323, p. 10. Tereza Ivković, Ex. 373, pp 5-6, killed by a blow to the head with a sharp instrument. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 8. Simica Jurjević, Ex. 305, p. 9, compression of the head and thorax. The Trial Chamber notes that Ex. 377, p. 9, provides that this victim was run over by a heavy vehicle. *See also* Ex. 302; Ex. 323, p. 10. Mirko Kardum, Ex. 305, pp 2-3, killed by shrapnel. *See also* Ex. 302; Ex. 323, p. 10, Ex. 377, p. 9. Simo Ražov, Ex. 305, pp 17-18, killed by gunshot to the head. The Trial Chamber notes that Ex. 377, p. 11, lists a victim called Šime Ražov born 1938, which is the same birth year as listed in Ex. 305 for Simo Ražov. The Trial Chamber notes that Annex I to the Indictment lists a Šime Ražov, born 1938, and concludes that this is the same person as listed in Ex. 305 and Ex. 377. *See also* Ex. 302; Ex. 323, p. 10. Grgica Ražov, Ex. 305, pp 12-14, killed by gunshot to the head. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 10. Marko Ražov, Ex. 305, pp 14-15, killed by gunshot to the head. *See also* Ex. 302; Ex. 323, pp 10; Ex. 377, p. 11. Pera Škara, Ex. 374, pp 10-11, killed by shrapnel. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 13. Božo Stura, Ex. 374, pp 6-7, killed by blows to the head with a sharp instrument. *See also* Ex. 302; Ex. 323, p. 10. Draginja Stura, Ex. 373, p. 3, killed by multiple gunshot wounds. *See also* Ex. 302; Ex. 323, p. 10. Regarding Šime Bilaver, Luka Čičak, and Jela Jurić: The Trial Chamber notes that Šime Bilaver and Luka Čičak are recorded as having died of natural causes (Ex. 373, p. 5 and Ex. 305, pp 5-6 respectively). This evidence is therefore not relevant and will not be considered for a conviction. Jela Jurić is recorded as having been killed by shrapnel (Ex. 305, pp 4-5; Ex. 825, ERN 0469-0702). The Trial Chamber notes that this victim is not listed in Annex I to the Indictment, and recalls its findings regarding the interpretation of the Indictment, *see supra* section I C. The Trial Chamber concludes that the Defence has not been on sufficient notice regarding this victim.

(f) Investigations into the events in Škabrnja and Nadin on 18 and 19 November 1991

262. On 20 November 1991, the JNA Naval Military District in Split, on the request of the European Community Monitoring Mission, asked the JNA 9<sup>th</sup> Corps command to provide a report by the following day on the killings in Škabrnja and Nadin on 18 and 19 November 1991.<sup>791</sup> There is evidence that an on-site investigation was carried out in cooperation with the Benkovac SJB.<sup>792</sup> The 180<sup>th</sup> Motorised Brigade conducted interviews, although not pursuant to superior orders.<sup>793</sup> Following the interviews, reports were sent to the JNA 9<sup>th</sup> Corps command.<sup>794</sup>

(g) Destruction in Škabrnja and Nadin

263. As noted above, during the attack on 18 and 19 November 1991 cluster bombs were dropped on Škabrnja with resulting damage to buildings. Moreover, private houses and the school were shot at by tanks and with hand-held rockets, and the church of the Assumption of the Virgin was also shot at by a tank.<sup>795</sup> Marko Miljanić testified that by 19 November 1991, 30 to 40% of the houses in Škabrnja had been “destroyed” and that also the church of the Assumption of the Virgin and the school had been “destroyed”.<sup>796</sup> The Trial Chamber notes that the only evidence of destruction of this church on 18 or 19 November 1991 is that a tank fired at the bell tower.<sup>797</sup> As noted above, “soldiers” entered this church and fired their weapons.<sup>798</sup> Furthermore, looting was committed by local Serbs and Serb paramilitaries.<sup>799</sup> There is also evidence that volunteers from Serbia and BiH, who were joined to the Benkovac TO, participated during the attack on Škabrnja and that they looted and robbed.<sup>800</sup>

264. After the attack on Škabrnja and until February 1992, Serb paramilitary forces and local Serbs looted and burnt houses in Škabrnja.<sup>801</sup> The evidence is inconclusive as to when Škabrnja was destroyed.<sup>802</sup> However, by 1994 about 90 to 95% of Škabrnja was destroyed and the church of St.

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<sup>791</sup> Ex. 60. On 23 November 1991, the JNA handed over 35 bodies from Škabrnja to the Civilian Protection of the Zadar, Biograd, Benkovac and Obrovac municipalities. By 5 December 1991, a further 13 bodies from Škabrnja and Nadin had been received from the JNA, Ivan Jelić, Ex. 825, pp 2-3 and attached documents.

<sup>792</sup> Zoran Lakić, 27 Oct 2006, T. 10254; Marko Miljanić, 29 Mar 2006, T. 2881, 30 Mar 2006, T. 2914, 2927; Ex. 270.

<sup>793</sup> Ex. 109; Ex. 116; Ex. 117; Ex. 118; Ex. 411; Ex. 615. The Trial Chamber notes that Ex. 116, Ex. 117, Ex. 118, Ex. 411, Ex. 614, and Ex. 615 contain the names of alleged perpetrators of killings. However, the Trial Chamber finds that the evidence is insufficient to link any of the named persons to the above-mentioned killings in Škabrnja and Nadin on 18 and 19 November 1991.

<sup>794</sup> Witness MM-080, 8 Jun 2006, T. 5270-5271, 5279-5280.

<sup>795</sup> See *supra* paras 236, 241.

<sup>796</sup> Marko Miljanić, 30 Mar 2006, T. 2925; Neven Šegarić, 29 Mar 2006, T. 2848 (describing the school as “blown up” and “torched”). The Trial Chamber recalls that a JNA tank fired in the direction of the school, see *supra* para. 241.

<sup>797</sup> See *infra* para. 395.

<sup>798</sup> See *supra* para. 241.

<sup>799</sup> Ex. 107, p. 3; Ex. 922, p. 7; Boško Brkić, Ex. 275, p. 3.

<sup>800</sup> Ex. 616, pp 2, 13-14. It is also alleged that these persons committed killings of unidentified individuals, *id* at p. 2.

<sup>801</sup> Boško Brkić, Ex. 275, p. 3; Ex. 107, p. 3; Ex. 984, Annex 9.

<sup>802</sup> Zoran Lakić, 30 Oct 2006, T. 10294-10295, 10303, testifying that in November 1992 Škabrnja was no more damaged than it had been one year earlier and that the damage was not as shown in Ex. 271 and Ex. 272 but that there

Mary in Ambar and the church of St. Luke near the centre of Škabrnja were badly damaged.<sup>803</sup> By October or November 1995, all the houses in Škabrnja and the church of the Assumption of the Virgin had been destroyed.<sup>804</sup> By 1996, the church as well as the houses in Nadin had been looted, destroyed and burnt down.<sup>805</sup>

## 5. Bruška

265. Bruška is located about 15 kilometres east of Benkovac.<sup>806</sup> In 1991, about 400 people lived there, and the village was predominantly Croat.<sup>807</sup> Marinovići is a hamlet in Bruška comprising of eight houses, which in 1991 was inhabited by Croats.<sup>808</sup>

266. From the spring of 1991, there was a Croatian reserve police force in Bruška, however, they did not have regular shifts, uniforms or weapons.<sup>809</sup> The “Militia Krajina, Martić’s police” set up barricades which cut off the bus line between Zadar and Benkovac.<sup>810</sup> Armed men identifying themselves as “Martić’s men” or “Martić’s Militia” came to Bruška almost every day to scare the inhabitants.<sup>811</sup> The armed men called the villagers Ustašas and said that Bruška would be a part of a Greater Serbia and that the people of Bruška should leave.<sup>812</sup> However, as of December 1991 almost all of the inhabitants of Bruška were still living there.<sup>813</sup>

267. On the evening of 21 December 1991, Ante Marinović was at home playing cards with his brother Dušan Marinović, his father Roko Marinović, his uncle Petar Marinović and Sveto Drača.<sup>814</sup> Ante Marinović’s grandfather and Ljilja Marinović, the wife of Dušan Marinović, were upstairs with two children of theirs, Jure and Donja, and with the children of Sveto Drača and Soka

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was damage to roofs of houses from mortar shells and holes in the walls of buildings made by artillery and tank fire, *ibid.* Zoran Lakić testified that the kind of extensive damage to buildings in Škabrnja shown in the photographs may have occurred in 1993 or 1994 following Croatian attacks on the municipalities of Benkovac, Obrovac, Gracac and (partly) Knin, *ibid.* Boško Brkić stated that by December 1992 Škabrnja had been completely destroyed, Boško Brkić, Ex. 275, p. 4.

<sup>803</sup> Marko Miljanić 30 Mar 2006, T. 2925 (testifying that houses had been blown up with explosives and razed to the ground, rather than having been hit by shells), 2926.

<sup>804</sup> Neven Šegarić 29 Mar 2006, T. 2848, 2851; Luka Brkić, 5 Apr 2006, T. 3290.

<sup>805</sup> Witness MM-083, 16 Jun 2006, T. 5747 (testifying to the taking of a tractor, and furniture and appliances).

<sup>806</sup> Jasna Denona, 9 Feb 2006, T. 1293; Ex. 23, p. 25. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 22-41; Ex. 1044.

<sup>807</sup> Ex. 301, p. 6, states that there were 474 inhabitants in Bruška and that 89.54% were Croats, and 10.46% were Serbs; Jasna Denona, 9 Feb 2006, T. 1269; Ante Marinović, 23 Mar 2006. T. 2472.

<sup>808</sup> Jasna Denona, 9 Feb 2006, T. 1269. The villages surrounding Bruška are Medvida, Zelengrad, Karin, Brgud, Bjeline, and Kalanja Draga. Zelengrad, Karin, Brgud, and Kalanja Draga were Serb; Medvida was half-Serb and half-Croat; and Bjeline was 20% Croat and 80% Serb, Ante Marinović, 23 Mar 2006. T. 2472-2473.

<sup>809</sup> Ante Marinović, 23 Mar 2006. T. 2471, 2492.

<sup>810</sup> Jasna Denona, 9 Feb 2006, T. 1270, 1305.

<sup>811</sup> Ante Marinović, 23 Mar 2006. T. 2493, T. 2479-2480, 2498, also testifying that these men mostly came from Medvida. Ante Marinović further testified that they would say “You have no business here. This is Serb. You can go away,” and would call the people Ustašas, telling them that Bruška would be a part of a Greater Serbia, *ibid.*

<sup>812</sup> Ante Marinović, 23 Mar 2006. T. 2480, testifying that the villagers of Bruška were not armed and thus could not protect themselves.

<sup>813</sup> Ante Marinović, 23 Mar 2006. T. 2480.

Drača.<sup>815</sup> The men were not armed and were dressed in civilian clothes, except Sveto Drača who was a Serb member of the JNA, and who was wearing an olive-drab uniform.<sup>816</sup> Although Ante Marinović was a reserve police officer at the time, he was not on active duty that night.<sup>817</sup>

268. At around 2000 or 2030 hours, three members of the *Milicija Krajine* barged into the house, took the men outside, lined them up against a wall and started shooting.<sup>818</sup> Dušan Marinović and Roko Marinović were killed and Ante Marinović was wounded.<sup>819</sup> Sveto Drača and Petar Marinović ran away but were chased and killed near the gate.<sup>820</sup>

269. The same evening Jasna Denona was in her family home, which was close to Roko Marinović's house, with her mother and her neighbours, Soka and Dragan Marinović.<sup>821</sup> Jasna Denona, her mother and Dragan Marinović were Croats, and Soka was a Serb.<sup>822</sup> At about the same time as the *Milicija Krajine* came to Roko Marinović's house, men identifying themselves as the *Milicija Krajine* and as "Martić's men" came to the door.<sup>823</sup> Dragan Marinović went to answer the door.<sup>824</sup> The women fled out into the garden and across a wall.<sup>825</sup> As they were running Jasna Denona heard one of the men shout "they got away", after which the men started shooting at them and Jasna Denona was hit.<sup>826</sup> Her mother came back and helped her move behind a wall in the vineyard, where they hid together with Jeka and Soka for about two hours.<sup>827</sup> Jeka then went to check what was happening in the house closest to them, which was the house of Roko Marinović.<sup>828</sup> They followed her and saw that at the gate of the yard she had found the dead body of her husband,

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<sup>814</sup> Ante Marinović, 23 Mar 2006. T. 2481-2483, 2498; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 32-41.

<sup>815</sup> Ante Marinović, 23 Mar 2006. T. 2481; Jasna Denona, 9 Feb 2006, T. 1291.

<sup>816</sup> Ante Marinović, 23 Mar 2006. T. 2481-2482; Jasna Denona, 9 Feb 2006, T. 1290.

<sup>817</sup> Ante Marinović, 23 Mar 2006. T. 2481-2482.

<sup>818</sup> Ante Marinović, 23 Mar 2006. T. 2482-2484, (at T. 2483 testifying that they had "Milicija Krajine" on the sleeves of their uniforms).

<sup>819</sup> Ante Marinović, 23 Mar 2006. T. 2484. Ante Marinović was shot seven times: twice in the left thigh, or above the left thigh, twice in the arm, twice above the right hip, and once in the hand, Ante Marinović, 23 Mar 2006. T. 2484. *See also* Ex. 370, p. 2; Jasna Denona, 9 Feb 2006, T. 1274-1275. With respect to Dušan Marinović and Roko Marinović, *see*, Ex. 370, also indicating that they wore civilian clothes; Ex. 323, p. 8, indicating that they were killed by gunshot. *See also* Ex. 302; Ex. 378.

<sup>820</sup> Ante Marinović, 23 Mar 2006. T. 2484.

<sup>821</sup> Jasna Denona, 9 Feb 2006, T. 1270-1271; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 22-31.

<sup>822</sup> Jasna Denona, 9 Feb 2006, T. 1271.

<sup>823</sup> Jasna Denona, 9 Feb 2006, T. 1271-1272, 1281.

<sup>824</sup> Jasna Denona, 9 Feb 2006, T. 1272, 1286, testifying that he was 23 years old.

<sup>825</sup> Jasna Denona, 9 Feb 2006, T. 1272.

<sup>826</sup> Jasna Denona, 9 Feb 2006, T. 1272-1273, 1276-1277. Today she has 50% disability, with her right arm being much weaker than her left arm as well as being disfigured, *id.* at T. 1279.

<sup>827</sup> Jasna Denona, 9 Feb 2006, T. 1273.

<sup>828</sup> Jasna Denona, 9 Feb 2006, T. 1273-1274.

Petar Marinović, and of her neighbour, Sveto Drača.<sup>829</sup> In the front yard she had found the dead bodies of Roko Marinović and his son, Dušan Marinović.<sup>830</sup>

270. Joso Marinović came to the house and told them that both his son, Dragan Marinović, and his wife, Ika Marinović, had been killed.<sup>831</sup> Later that night Dusan Drača, the father of Sveto Drača, came and told them that there were four more dead bodies in Marinovići.<sup>832</sup> The following morning they discovered that the dead bodies belonged to Krsto Marinović, Draginja Marinović, his wife Stana Marinović, and her mother-in-law, Manda Marinović.<sup>833</sup> Jasna Denona's mother and neighbour Kata saw their bodies and told her that they had been shot and that their bodies were "bullet riddled".<sup>834</sup>

271. The next day at 1800 hours an ambulance arrived with a policewoman from Benkovac who interviewed Jasna Denona about what had happened.<sup>835</sup>

272. There were investigations into the killings in Bruška. A JNA report from 11 March 1992 and one on 4 April 1992, confirmed that there were killings in Bruška on 21 December 1991 and indicate that the killings may have been motivated by revenge by a named individual.<sup>836</sup> There was also an on-site investigation team from Benkovac, an investigative judge and people from the SJB involved in the investigation at Bruška.<sup>837</sup>

273. By 1995, most of Bruška had been destroyed.<sup>838</sup>

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<sup>829</sup> Jasna Denona, 9 Feb 2006, T. 1274. With respect to Petar Marinović, Ex. 369, which also provides that he wore civilian clothes; Ex. 323, p. 8, providing that he was killed by gunshots. *See also* Ex. 302; Ex. 378. As regards Sveto Drača, Ex. 302. The Trial Chamber notes that no autopsy report has been provided concerning Sveto Drača.

<sup>830</sup> Jasna Denona, 9 Feb 2006, T. 1274.

<sup>831</sup> Jasna Denona, 9 Feb 2006, T. 1275; Ex. 372, also stating that they wore civilian clothes; Ex. 323, p. 8, stating that they were killed by gunshot. *See also* Ex. 302; Ex. 378.

<sup>832</sup> Jasna Denona, 9 Feb 2006, T. 1275.

<sup>833</sup> Jasna Denona, 9 Feb 2006, T. 1275.

<sup>834</sup> Jasna Denona, 9 Feb 2006, T. 1275; Ex. 369 (regarding Krsto Marinović, Draginja Marinović); Ex. 371 (regarding Stana Marinović and Manda Marinović); Ex. 323, p. 8, providing that they were killed by gunshot. Ex. 369 and Ex. 371 also indicate that all the four victims wore civilian clothes. *See also* Ex. 302; Ex. 378.

<sup>835</sup> Jasna Denona, 9 Feb 2006, T. 1277-1278.

<sup>836</sup> Ex. 403, dated 11 March 1992, pp 2-3, *see also* Imra Agotić, Ex. 398, T. 23277-23278; MM-096, 22 Aug 2006, T. 6901; Ex. 404, p. 2 (in the report, the author states that he believed this information to be true and that it was from a reliable source, *ibid*).

<sup>837</sup> MM-080, 8 Jun 2006, T. 5281-5282, 5318. *See also* Ex. 617; Ex. 618. Jasna Denona was interviewed by Benkovac police, Ex. 134; Jasna Denona, 9 Feb 2006, T. 1281-1284. Witness MM-096 testified that there was information that the perpetrators were Serbs, but "Nobody said specifically the SAO Krajina Police.", Witness MM-096, 24 Aug 2006, T. 7092, 7095-7096. *See also* MM-080, 8 Jun 2006, T. 5318. Neither MM-080 nor Jasna Denona ever heard of anyone having been punished for the killings in Bruška on 21 December 1991, Jasna Denona, 9 Feb 2006, T. 1281; MM-080, 8 Jun 2006, T. 5318.

<sup>838</sup> Ante Marinović, 23 Mar 2006, T. 2509; Jasna Denona, 9 Feb 2006, T. 1279-1280, 1307.



## **E. Detention-related crimes**

### **1. SJB in Titova Korenica**

274. The SJB in Titova Korenica, which was subordinated to the SUP in Knin, was used as a detention facility.<sup>839</sup> The facility consisted of three cells.<sup>840</sup> At the facility, there were *Milicija Krajine* as well as persons in camouflage uniforms and JNA uniforms.<sup>841</sup>

275. Vlado Vuković, a Croatian policeman, was detained at the SJB for approximately ten days together with Ignjac Ivanus, an SJB commander from Zagorje, and Nikola Pemper.<sup>842</sup> He was never informed why he was arrested and detained, rather his captors “would just say vulgar words and that the Republic of Croatia would cost us dearly”.<sup>843</sup> On several occasions while detained at the SJB, Vlado Vuković was beaten by people who referred to themselves as “Martić’s men” and by people wearing camouflage uniforms and by “the JNA in olive-drab uniforms”.<sup>844</sup> During the beatings, members of the *Milicija Krajine* were present but did nothing to stop the beatings.<sup>845</sup> On one occasion, Vlado Vuković was cut on the face.<sup>846</sup>

276. The Trial Chamber has also received evidence of the detention of a Croat civilian named Milan Pavlić for about 15 days, and of Perica Bićanić and Ivica Bićanić, both members of the Poljanak civilian protection force, for nine months and one month, respectively. All three were severely mistreated at the SJB.<sup>847</sup>

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<sup>839</sup> Vlado Vuković, 27 Mar 2006, T. 2669; MM-096, 21 Aug 2006, T. 6829, 6831-6832. The Trial Chamber notes that prior to his detention in Titova Korenica, Vlado Vuković had been detained in the Plaški SJB, where he was mistreated and beaten by men who referred to themselves as “Martić’s men”(see Vlado Vuković, 27 Mar 2006, T. 2665-2667). However, the Trial Chamber notes that as the detention facility in Plaški SJB is not listed in paragraph 39 of the Indictment, it considers that the Defence was not put on notice of this detention. In this regard, the Trial Chamber recalls its finding regarding the interpretation of the Indictment. See *supra* section I C. See also Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 15-16; Ex. 1044, Map of Titova Korenica area.

<sup>840</sup> Vlado Vuković, 27 Mar 2006, T. 2669-2670. Vlado Vuković was however not able to see whether there were other people detained in the other cells of the SJB, *ibid*.

<sup>841</sup> Vlado Vuković, 27 Mar 2006, T. 2669, 2712.

<sup>842</sup> Vlado Vuković, 27 Mar 2006, T. 2679, 2674. The Trial Chamber notes that there is no evidence that Nikola Pemper was mistreated at the Titova Korenica SJB.

<sup>843</sup> Vlado Vuković, 27 Mar 2006, T. 2669, T. 2672, 2674.

<sup>844</sup> Vlado Vuković, 27 Mar 2006, T. 2712-2713.

<sup>845</sup> Vlado Vuković, 27 Mar 2006, T. 2671-2672.

<sup>846</sup> Vlado Vuković, 27 Mar 2006, T. 2671-2672. Vlado Vuković was subsequently transferred to the Željeva military airport in Bihać where he was beaten by people wearing the uniforms of the Military Police. On 28 October 1991, Vlado Vuković was transferred to a hangar at the military training ground in Manjača, BiH. On 9 November 1991, he was exchanged in Slavonski and Bosanski Samac, Vlado Vuković, 27 Mar 2006, T. 2672-2674.

<sup>847</sup> Marica Vuković, 22 Mar 2006, T. 2418-2419, 2422-2423, also testifying that Milan Pavlić sustained a broken nose and “a broken head”, and that Perica Bićanić lost approximately half his body weight and was very traumatised. The Trial Chamber notes the evidence of Ivan Grujić that between 1991 and 1995 there were 22 prisoners detained in “Plaški-Korenica” and 5 persons detained at “Korenica”, Ex. 300, p. 10. The Trial Chamber is unable to draw any conclusions based on Ivan Grujić’s evidence in this respect.

## 2. Detention facilities in Benkovac<sup>848</sup>

277. On 14 October 1991, Ivan Atelj and Šime Čačić were arrested in Zagrad by a member of the “Martić’s police” and taken to the SJB in Benkovac.<sup>849</sup> While being questioned they were threatened and beaten. After 19 days of detention, Ivan Atelj and Šime Čačić were moved to the old hospital in Knin, in the latter’s case on the order of Milan Martić.<sup>850</sup>

278. Following the attack on Škabrnja on 18 November 1991, around 40 inhabitants, including the village guard Luka Brkić, the three children Tomislav Šegarić, Tomislav Gurlica and Marin Jurić, were taken to a kindergarten in Benkovac across the street from the JNA barracks.<sup>851</sup> During the night, more people were brought there.<sup>852</sup> They were interrogated by JNA soldiers.<sup>853</sup> The next morning, Tomislav Šegarić, Tomislav Gurlica and Marin Jurić were taken to the “communal store” in Biljani, northwest of Benkovac, where they were subjected to insults and threats all day by “Chetniks”.<sup>854</sup> Toward the evening, they were driven back to the kindergarten; at that time the other detainees were gone.<sup>855</sup> On 20 November 1991, they were released a short distance from the Croat village of Pristeg.<sup>856</sup>

## 3. Detention facilities in Knin

279. There were two detention facilities in Knin, one at the barracks of the JNA 9<sup>th</sup> Corps and one at the old hospital.<sup>857</sup> The evidence shows that between 1991 and 1995, between 650 and 700 were detained in Knin.<sup>858</sup>

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<sup>848</sup> The Indictment does not refer to detention facilities in Benkovac specifically. However, the Trial Chamber notes that the Prosecution Pre-Trial Brief (para. 50) contains a reference to detention of the non-Serb male population in Benkovac and Knin. Moreover, the Trial Chamber notes that the 65 *ter* summaries of Neven Šegarić, Tomislav Šegarić and Luka Brkić refer to detention in Benkovac. Lastly, the Trial Chamber notes that the Defence called Witness MM-096 who testified, *inter alia*, about detention in the Benkovac SJB.

<sup>849</sup> Ex. 959, pp 1-4. Witness MM-090 testified that Šime Čačić was “taken prisoner as a prisoner of war”, Witness MM-090, 4 Sep 2006, T. 7667. Immediately after their arrest, Ivan Atelj and Šime Čačić were beaten and a third person was shot in the leg. At the Benkovac SJB, Šime Čačić and Ivan Atelj were tied to a bench. They were questioned by Boško Dražić, the Chief of the Benkovac SJB, about Croatian army positions in Nadin and other places near Zadar, as well as weapons used by the Croatian army. Ivan Atelj was beaten after every question and he was also threatened with a knife to his throat. The detainees were beaten and kicked with boots, fists and wooden sticks in the face and other parts of the body. They were not allowed to wash despite their being covered in blood. Ivan Atelj named several persons as being involved in the beatings and interrogations, including Boško Dražić.

<sup>850</sup> Ex. 959, p. 4; Ex. 529.

<sup>851</sup> Luka Brkić, 5 Apr 2006, T. 3225-3226, 3252, 7 Apr 2006, T. 3390; Tomislav Šegarić, Ex. 826, p. 4. The Trial Chamber notes that it heard hearsay evidence that a man named Davor Lukić was detained at the barracks in Benkovac or at the Benkovac SJB, Witness MM-096, 25 Aug 2006, T. 7179-7180.

<sup>852</sup> Tomislav Šegarić, Ex. 826, p. 4.

<sup>853</sup> Tomislav Šegarić, Ex. 826, p. 4. Apart from the JNA soldiers, there were Serbs paramilitaries wearing different kinds of uniforms, including some with an insignia with four Cyrillic “S”. Tomislav Šegarić believes that most of them were local Serbs, Tomislav Šegarić, Ex. 826, pp 4-6.

<sup>854</sup> One person held a knife to Tomislav Šegarić’s neck, Tomislav Šegarić, Ex. 826, pp 4-5.

<sup>855</sup> Tomislav Šegarić, Ex. 826, p. 5.

<sup>856</sup> Tomislav Šegarić, Ex. 826, p. 5.

<sup>857</sup> Milan Babić, 20 Feb 2006, T. 1616; Ex. 8, p. 3; Mladen Lončar, 12 Jun 2006, T. 5435.

(a) Detention at the JNA 9<sup>th</sup> Corps barracks

280. The barracks of the JNA 9<sup>th</sup> Corps is a large complex, which includes several buildings, a heliport and some warehouses.<sup>859</sup>

281. On 19 November 1991, Luka Brkić, Ante “Neno” Gurlica and Marin Gurlica were brought by truck to the JNA barracks in Knin by men wearing JNA uniforms.<sup>860</sup> While they were taken to the barracks, they were beaten and verbally abused.<sup>861</sup>

282. Luka Brkić was detained at various locations at the JNA barracks with between 8 and 17 people, ranging from 30 to 80 years old.<sup>862</sup> The detainees were severely beaten for at least twenty days.<sup>863</sup> The detainees did not receive medical treatment,<sup>864</sup> there was insufficient food and water,<sup>865</sup> and there were no sanitary facilities.<sup>866</sup>

283. Luka Brkić was also detained at the sports hall of the barracks with between 75 and 200 people, mostly Croats.<sup>867</sup> The detainees were occasionally severely beaten.<sup>868</sup> There were limited sanitary facilities and a 200-litre barrel next to the door that was used to urinate in.<sup>869</sup> Ratko Mladić, the then-Commander of the 9<sup>th</sup> Corps, twice visited the detainees at the sports hall.<sup>870</sup> Ratko Mladić taunted them, saying “if you don't do what you are told [...] your fate will be the same as the fate of the inhabitants from Škabrnja.”<sup>871</sup> The detainees were “displayed as Ustashas” and made to “take an oath for the King and the fatherland, the Serbian fatherland”.<sup>872</sup>

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<sup>858</sup> Ex. 300, p. 10; Ex. 008, p. 3. *See also* Mladen Lončar, 12 Jun 2006, T. 5435, Ex. 841, pp 92-93; Ex. 922, p. 15.

<sup>859</sup> Luka Brkić, 5 Apr 2006, T. 3266-3267. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 3-17.

<sup>860</sup> Luka Brkić, 5 Apr 2006, T. 3264-3266.

<sup>861</sup> Luka Brkić, 5 Apr 2006, T. 3264.

<sup>862</sup> Luka Brkić, 5 Apr 2006, T. 3251, 3264, 3268-3269, 3289, 7 Apr 2006, T. 3407; Ex. 286; Ex. 287. The Trial Chamber notes among others Ante “Neno” Gurlica, Marin Gurlica, a civilian named Petar Gurlica, and a man named Jero/Jere Misković, who was born 1912.

<sup>863</sup> Luka Brkić, 5 Apr 2006, T. 3271-3272: “In those rooms they beat us severely. I couldn't stand up. So somebody could help me stand up. If I was lying down, I couldn't stand up. If I was sitting, I couldn't get up from the chair. There was a vet who was there for 15 days. He couldn't sleep, so he helped me. For 20 days I slept standing up. If I lied down, I couldn't stand up. Everything was wet on the ground. It would freeze. So it was very difficult”. Then they were taken to another location on the premises of the barracks, where they were beaten, Luka Brkić, 5 Apr 2006, T. 3267.

<sup>864</sup> Luka Brkić, 5 Apr 2006, T. 3269, 3272, testifying also that Jere Misković had a bad leg: “His leg was falling apart. He had thrombosis.”

<sup>865</sup> Luka Brkić, 5 Apr 2006, T. 3270-3271, testifying that during the first three days, they did not receive any water, that the amount of drinking water they later received was limited, and that they did not have any water to wash themselves.

<sup>866</sup> Luka Brkić, 5 Apr 2006, T. 3270, testifying that they tore up a coat that belonged to Petar Gurlica and used it as toilet paper, that the detainees used a 30-litre bucket instead of a bathroom, and that some persons who were in a state of delirium defecated next to the door and other detainees had to clean up after them. The detained were provided with one blanket each and had to sleep on the concrete floor, *ibid*.

<sup>867</sup> Luka Brkić, 5 Apr 2006, T. 3272, 3274, 7 Apr 2006, T. 3430-3431.

<sup>868</sup> Luka Brkić, 5 Apr 2006, T. 3272, 3274-3275.

<sup>869</sup> Luka Brkić, 5 Apr 2006, T. 3274-3275.

<sup>870</sup> Luka Brkić, 5 Apr 2006, T. 3274-3275.

<sup>871</sup> Luka Brkić, 5 Apr 2006, T. 3275.

<sup>872</sup> Luka Brkić, 5 Apr 2006, T. 3264, 3267-3268.

284. While being detained in the JNA barracks, in addition to JNA soldiers, Luka Brkić saw soldiers wearing SAO Krajina insignia and the White Eagles (“*Beli Orlovi*”) insignia.<sup>873</sup>

(b) Detention facility at the old hospital in Knin

285. In early 1991, a detention facility was established on the premises of the old hospital in the centre of Knin.<sup>874</sup> This facility was sometimes referred to as “Martić’s prison” and the “District Prison”.<sup>875</sup> A section of the hospital was used as a dormitory by “Captain Dragan’s men and members of the JNA reserve force”.<sup>876</sup> From the summer of 1991, the Ministry of Justice of the SAO Krajina took over control of the old hospital from the TO and hired professional guards.<sup>877</sup> On 28 September 1992, the Assembly of the RSK formally established the District Prison in Knin.<sup>878</sup>

286. On 2 October 1991, Stanko Erstić was arrested in Medvida near Bruška by the *Milicija Krajine* and brought to the old hospital in Knin.<sup>879</sup> He was detained with another 120 prisoners, all non-Serbs from Croat or mixed villages in the Krajina region.<sup>880</sup> Except for 20 members of the ZNG who had been captured during the fighting in Kijevo, all detainees were Croat civilians.<sup>881</sup> He was detained in a room with approximately 12 people.<sup>882</sup> In his view, “all the guards were paramilitary and part of ‘Martić’s militia’”.<sup>883</sup> He testified to having seen Ratko Mladić at the old hospital.<sup>884</sup> On 2 November, Stanko Erstić and approximately 100 non-Serb prisoners were exchanged for approximately 60 Serb prisoners.<sup>885</sup> Twenty Croats from Lika remained in the prison.<sup>886</sup> Members of “Special Military Police Unit”, dressed in JNA uniforms, took them to the

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<sup>873</sup> Luka Brkić, 5 Apr 2006, T. 3243-3244, 3273, 7 Apr 2006, T. 3407. Later on, Luka Brkić heard that “there were all sorts of people there; Martić’s men and others”, *id.* at T. 3407.

<sup>874</sup> Witness MM-090, 29 Aug 2006, T. 7382-7383, 30 Aug 2006, T. 7428-7429; Luka Brkić, 5 Apr 2006, T. 3277, 3283. The establishment took several months, Witness MM-090, 29 Aug 2006, T. 7381. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 20-67 and DVD 4, pp 1-3.

<sup>875</sup> Luka Brkić, 5 Apr 2006, T. 3276-3277, 7 Apr 2006, T. 3408; Witness MM-90, 30 Aug 2006, T. 7428; Stevo Plejo, 20 Sep 2006, T. 8724.

<sup>876</sup> Stanko Erstić, Ex. 392, T. 24972; Stevo Plejo, 22 Sep 2006, T. 8900.

<sup>877</sup> Stevo Plejo, 20 Sep 2006, T. 8725; Witness MM-090, 4 Sep 2006, T. 7658-7659; Milan Babić, 20 Feb 2006, T. 1612-1613. *See also* Ex. 906. As of 17 August 1991, a total of 15 people were employed at the old hospital, Ex. 906, pp 10-19. By October 1992, approximately 30 people were listed as employees of the prison, Ex. 903. The 15 people who started work on 17 August 1991 were all still employed at that time, Ex. 923, pp 1-2, 7.

<sup>878</sup> Ex. 906, pp 10-19; Ex. 923, pp 1-2.

<sup>879</sup> Stanko Erstić, 26 Apr 2006, T. 3873, 3875-3877; Ex. 396, p. 3.

<sup>880</sup> Stanko Erstić, 26 Apr 2006, T. 3874; Stanko Erstić, Ex. 396, p. 4; Stanko Erstić, Ex. 392, T. 24996-24997.

<sup>881</sup> Stanko Erstić, Ex. 396, p. 4; Stanko Erstić, Ex. 392, T. 24996. After the establishment of the Prisoner Exchange Commission, the JNA would bring prisoners of war to be temporarily held at the old hospital until the time of their exchange, Witness MM-090, 4 Sep 2006, T. 7674-7675. Ivan Atelj shared his cell with Denis Drča, a Serb who was beaten and accused of being a “Serbian traitor”, Ex. 959, p. 5.

<sup>882</sup> Stanko Erstić, Ex. 392, T. 24980.

<sup>883</sup> Stanko Erstić, Ex. 396, p. 3.

<sup>884</sup> Stanko Erstić, Ex. 396, p. 3; Stanko Erstić, Ex. 392, T. 24972.

<sup>885</sup> Stanko Erstić, 26 Apr 2006, T. 3874-3875, Ex. 392, T. 24973; Ex. 959, pp 4-5. The Trial Chamber notes that Stevo Plejo has disputed the veracity of this document, Stevo Plejo, 22 Sep 2006, T. 8884. The Trial Chamber notes that this document contains an Official Note which was written on 3 May 1992 and that much of the information therein is corroborated by other evidence.

<sup>886</sup> Stanko Erstić, Ex. 392, T. 24982.

JNA barracks in Knin, where they were loaded onto buses. Afterwards they were driven to Pakovo Selo where buses from the Croatian side picked them up.<sup>887</sup>

287. Luka Brkić was brought to the old hospital from the JNA barracks in Knin.<sup>888</sup> In his opinion, “it was the police or the army who operated there.”<sup>889</sup> He also saw another 30 prisoners brought to the old hospital the day he arrived.<sup>890</sup> Luka Brkić was detained in a small room together with nine people.<sup>891</sup> After approximately 12 days, he was transferred to the ground floor of another wing of the old hospital, which was under the control of the JNA. There, he joined the people who had initially been detained with him at the JNA 9<sup>th</sup> Corps barracks.<sup>892</sup>

288. The detainees were threatened and beaten every day for long periods, often by several guards at a time using rifle butts, truncheons, and wooden staves.<sup>893</sup> The detainees were interrogated and also beaten by shift commanders.<sup>894</sup> The detainees also had cocked revolvers pressed against their temples, were beaten on their kidneys until they were swollen, and were denied the use of toilet facilities.<sup>895</sup> They were forced to drink urine and to clean toilets with their bare hands.<sup>896</sup> They had their heads forced into toilets.<sup>897</sup> They also had their personal belongings stolen.<sup>898</sup> There is evidence of sexual abuse of some detainees<sup>899</sup> and that detainees were subjected to sleep deprivation.<sup>900</sup> There was insufficient food.<sup>901</sup> The detainees were verbally abused by the guards, who said things like “the Croatian nation has to be destroyed”, “all Croats have to be killed; Split and Zadar are burning, Šibenik will burn as well”.<sup>902</sup> On one occasion, Vojislav Šešelj visited the old hospital and insulted the detainees, asking them “how many Serbian children they slaughtered, how many mothers”.<sup>903</sup>

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<sup>887</sup> Stanko Erstić, Ex. 392, T. 24972-24973, 26 Apr 2006, T. 3874-3875.

<sup>888</sup> Luka Brkić, 5 Apr 2006, T. 3252, 3266, 3276-3277, 7 Apr 2006, T. 3390, 3408.

<sup>889</sup> Luka Brkić, 7 Apr 2006, T. 3439.

<sup>890</sup> Luka Brkić, 5 Apr 2006, T. 3279-3280, 3285. *See also* Ex. 518, p. 4; Ex. 286.

<sup>891</sup> Luka Brkić, 5 Apr 2006, T. 3279, 7 Apr 2006, T. 3438.

<sup>892</sup> Luka Brkić, 5 Apr 2006, T. 3282-3283.

<sup>893</sup> Stanko Erstić, Ex. 392, T. 24971, 24980, 24983; Ex. 959, p. 5. Luka Brkić, 5 Apr 2006, T. 3280-3281, testifying that he was dragged into the hallway several times, where he was beaten by four or five men and that the beatings became more frequent as it became known that the detainees were going to be exchanged.

<sup>894</sup> Ex. 959, p. 5. *See also* Ex. 919, under number 209 H; Ex. 286, p. 1; Ex. 287, p. 1.

<sup>895</sup> Ex. 984, pp 23-24.

<sup>896</sup> Ex. 984, pp 23-24.

<sup>897</sup> Ex. 984, pp 23-24.

<sup>898</sup> Ex. 984, pp 23-24.

<sup>899</sup> Former detainees reported that detainees were sexually abused through forced mutual oral sex or oral sex with prison guards, and mutual masturbation, Ex. 984, p. 24. *See also* Luka Brkić 5 Apr 2006, T. 3283, testifying that he heard that there had been attempts to rape men in the room next to his.

<sup>900</sup> Ex. 392, T. 24980, 24983; Ex. 959, p. 5; Ex. 984, pp 23-24.

<sup>901</sup> Stanko Erstić, Ex. 392, T. 24980, 24983; Ex. 959, p. 5; Ex. 984, p. 23-24 (reporting that detainees had inadequate food, being fed only three eggs a day and that one former detainee lost over twenty kilograms during his detention).

<sup>902</sup> Stanko Erstić, Ex. 396, p. 4.

<sup>903</sup> Ex. 959, p. 7.

289. “Martić’s police”, wearing blue uniforms, carried out beatings together with people in camouflage uniforms.<sup>904</sup> Ivan Atelj, who was also detained and beaten at the old hospital, stated that while Stevo Plejo and Jovica Novaković were in charge of the old hospital prison, they “allowed beatings of prisoners by civilians, Serbian prisoners, ‘Martić’s Special Forces members’ and all others who wanted to beat them.”<sup>905</sup>

290. From his mistreatment in detention, Luka Brkić sustained permanent injuries to his stomach and contracted Hepatitis B. He is still receiving medical treatment.<sup>906</sup> Stanko Erstić sustained two broken ribs and one cracked rib, while Ivan Atelj sustained three broken ribs and injuries to his spine.<sup>907</sup>

291. On at least one occasion the leadership of the prison was informed that detainees had been mistreated by guards. Disciplinary measures were taken against the responsible guards.<sup>908</sup> However, the guards were not removed from the prison but were only suspended and reinstated later.<sup>909</sup>

292. The International Committee of the Red Cross (“ICRC”) was allowed to visit the detainees at the old hospital.<sup>910</sup> During the visits, some prisoners did not dare to tell the ICRC representatives that they were being beaten, for fear of being “really beaten up”. The detainees who had been badly beaten and seriously injured were transferred to other rooms where the ICRC representatives could not visit them.<sup>911</sup>

293. As of August 1991, any detainee held at the old hospital was supposed to be detained on the basis of a decision by a judge.<sup>912</sup> There is no evidence that Luka Brkić or Stanko Erstić were ever charged with any crime or that they were brought before a judge or military panel to assess the legality of their detention. However, Ivan Atelj stated that he was charged and that the indictment

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<sup>904</sup> Luka Brkić, 5 Apr 2006, T. 3280-3283, also testifying that a member of the “Martić’s police” was the most violent during the beatings. Luka Brkić knew some of the members of the “Martić’s police”. He specifically mentions the “Grahovac brothers from Smiljčići”, Djuro from Plavno and Momir Čupač, *ibid.* The Trial Chamber further notes that a Kazimir Graovac from Smiljčići is listed on Ex. 906, Employee list old hospital May 1993, p. 13. The Trial Chamber notes that Momo Čupač and Kazimir Grahovac are mentioned as guards at the prison by Ivan Atelj, Ex. 959, p. 6.

<sup>905</sup> Ex. 959, p. 5. Although Stevo Plejo testified that as soon as professional guards started working in the old hospital, they were able to prevent anyone entering the prison, Stevo Plejo, 21 Sep 2006, T. 8811. The Trial Chamber does not find this piece of testimony credible in light of the surrounding evidence. *See also* Luka Brkić, 5 Apr 2006, T. 3280-3281, testifying that people came from outside of the old hospital to beat detainees.

<sup>906</sup> Luka Brkić, 5 Apr 2006, T. 3291.

<sup>907</sup> Stanko Erstić, Ex. 392, T. 24971; Ex. 959, p. 5.

<sup>908</sup> Witness MM-090, 29 Aug 2006, T. 7386-7387, 30 Aug 2006, T. 7432; Stevo Plejo, 20 Sep 2006, T. 8735-8737.

<sup>909</sup> Stevo Plejo, 22 Sep 2006, T. 8849-8850. Stevo Plejo testified that he had asked Risto Matković, the then-Minister of Justice, to replace Jovica Novaković because Novaković had been present when guards were “slapping [prisoners] about in his presence” and had done nothing about that. Jovica Novaković was suspended and later reinstated in a lower position. Stevo Plejo, 20 Sep 2006, T. 8730-8733, 8742; Ex. 905; Ex. 923.

<sup>910</sup> Stanko Erstić, Ex. 392, T. 24981; Stevo Plejo, 20 Sep 2006, T. 8737-8738; Witness MM-090, 29 Aug 2006, T. 7386-7387.

<sup>911</sup> Stanko Erstić, Ex. 392, T. 24981, 25000.

<sup>912</sup> Witness MM-090, 4 Sep 2006, T. 7674-7675.

was presented to him verbally, but he was not brought before a judge.<sup>913</sup> Denis Drča, the Serb cell-mate of Ivan Atelj, was released on 11 February 1992, by a decision of the Knin District Court.<sup>914</sup> Out of approximately 300 detainees at the old hospital between mid-1991 and mid-1992, only 13 people were released upon the decision of a court.<sup>915</sup>

294. In October 1991, Milan Martić was seen in the prison wearing a camouflage uniform with the insignia of the *Milicija Krajine*.<sup>916</sup>

#### **F. Crimes of deportation and forcible transfer**

295. In addition to evidence of displacement of the Croat population in the SAO Krajina and RSK discussed above, the Trial Chamber notes the following evidence concerning deportation and forcible transfer.<sup>917</sup>

296. Beginning in 1990, Croat businesses and properties were blown up in Knin and there was constant pressure on the local Croat population.<sup>918</sup> From around April 1991, discriminatory policies were applied against Croats, and Croat houses in the Knin area were searched for weapons.<sup>919</sup> Following the fighting in the Hrvatska Kostajnica, Knin and Glina areas in August 1991, Croat civilians began to leave their homes to go to Zagreb, Sisak and other places.<sup>920</sup>

297. Due to the situation prevailing in the Knin area, the Croat population began to fear for their safety and began requesting authorisation from the RSK authorities to leave the RSK territory.<sup>921</sup> The insecurity of the Croats was also aggravated by speeches of Milan Martić on the radio that he could not guarantee their safety, particularly in the area of Knin.<sup>922</sup> As a result, in the period between 1992 and 1993 the RSK police directed the Croat population towards Croat settlements

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<sup>913</sup> Ex. 959, p. 7.

<sup>914</sup> Ex. 919, under no. 240 S.

<sup>915</sup> Ex. 919, also providing that one detainee was handed over to the Military Police on orders of the Public Prosecutor, *ibid.*, under nr. 202 S. *See also* Ex. 895, pp 10-11, a Human Rights Watch Report, according to which in August 1991 the Knin prison held 51 prisoners to be exchanged and none of whom had been charged or provided with a defence attorney.

<sup>916</sup> Stanko Erstić, 26 Apr 2006, T. 3869-3870. In this respect, the Trial Chamber recalls the evidence that on 12 December 1991, a meeting was held between Milan Martić and chiefs of SJBs during which it was mentioned that in “Krajina prisons in Korenica, Glina, Vrgin Most, Slunj and Knin” there were 128 persons detained, mostly members of the ZNG and the Croatian MUP, Ex. 518, p. 4 (report signed by Milan Martić).

<sup>917</sup> *See supra* paras 167, 177, 180, 186, 189, 202, 209, 212, 222, 228, 236-237, 239, 242.

<sup>918</sup> Witness MM-078, 24 May 2006, T. 4461-4462.

<sup>919</sup> Milan Babić, 16 Feb 2006, T. 1418; Witness MM-078, 24 May 2006, T. 4461-4462, 25 May 2006, T. 4521; *See also* Witness MM-096, 24 Aug 2006, T. 7067, 7072-7073.

<sup>920</sup> Nikola Dobrijević, 13 Nov 2006, T. 10977; Ex. 1017 (providing that in August 1991 there were 650 displaced people in Zagreb who were mostly from Glina and Knin, that most people from Glina had gone to Velica Gorica, that all of Kostajnica had been “evacuated” and some 2,500 had fled to Bosanski Novi and to Zagreb). *See also* Milan Babić, 17 Feb 2006, T. 1572-1574, 20 Feb 2006, T. 1598.

<sup>921</sup> Witness MM-117, 13 Oct 2006, T. 9399

<sup>922</sup> Witness MM-078, 25 May 2006, T. 4518.

near Knin, such as Vrpolje and Kninsko Polje.<sup>923</sup> In Vrpolje, which was five kilometres north of Knin, a cultural centre was used as a gathering point for Croats, who had requested authorisation to leave the RSK.<sup>924</sup> The Knin police secured the area at the cultural centre.<sup>925</sup> The conditions there were poor and the Croats were not free to leave but had to wait for an agreement to be reached between the RSK Government, international organisations and the Croatian authorities before they could be transferred.<sup>926</sup> The police from Knin organised and escorted bus convoys from Vrpolje to Šibenik and across Lika to Karlobag.<sup>927</sup>

298. A decision on the conditions upon which Croats and other nationalities could return to the RSK was adopted by the RSK government on 21 April 1992.<sup>928</sup> However, in September 1992, UNPROFOR reported that “it might be unrealistic to carry out any return [of displaced persons] in the forthcoming future” due to the likelihood of hostile acts being carried out against returning Croats.<sup>929</sup>

299. There is considerable evidence that similar displacement of the Croat population as a result of harassment and intimidation occurred elsewhere in the SAO Krajina, and subsequently RSK, territory and continued until the end of 1994.<sup>930</sup> The evidence shows that harassment and

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<sup>923</sup> Milan Babić, 20 Feb 2006, T. 1646-1647; Ex. 897 (providing that “local Milicija” guarded residents of the village of Vrpolje, who had been forced to leave their homes and that the Milicija had three buses to transport the Croats to territories under Croatian control but that this had not been done as confirmation had not been received that the Croatian side was ready to receive them). *See also* Witness MM-096, 25 Aug 2006, T. 7153.

<sup>924</sup> Milan Babić, 20 Feb 2006, T. 1647; MM-078, 24 May 2006, T. 4460-4461. Croats would travel to Vrpolje in their own vehicles and were accommodated at the cultural centre for up to three days, Witness MM-078, 24 May 2006, T. 4460-4461, 25 May 2006, T. 4545-4546, 4468; Ex. 729 (providing that Vrpolje was a “safe haven” for the Croats). *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 27-31; Ex. 1044.

<sup>925</sup> Witness MM-078, 25 May 2006, T. 4465, 4519-4520 (also testifying that the police assisted the Croats in leaving the RSK, *ibid.*, T. 4465). *See also* Witness MM-117, 13 Oct 2006, T. 9399.

<sup>926</sup> Witness MM-078, 25 May 2006, T. 4468 (testifying that the Croats were provided with blankets and only small quantities of food).

<sup>927</sup> Witness MM-078, 25 May 2006, T. 4468.

<sup>928</sup> Ex. 758; Charles Kirudja, 31 May 2006, T. 4872-4873.

<sup>929</sup> Ex. 731, p. 3.

<sup>930</sup> Witness MM-078, 24 May 2006, T. 4460-4461, 25 May 2006, T. 4466; Witness MM-096, 22 Aug 2006, T. 6914-6917 (testifying that Croats, who were afraid for their lives, were put up in schools and other public buildings in Benkovac by the municipality Crisis Staff which organised a convoy that was escorted by the RSK police until the confrontation line in Zemunik); Milan Babić, 20 Feb 2006, T. 1598; Ex. 551, p. 1 (providing that by April 1992 there were almost no Croats left in Glina); Ex. 726 (listing in summary form 497 crimes committed against the Croat population in Sector South and reporting on five instances of forced evictions of Croats and subsequent transfer to Croatia of one of the victims); Ex. 729, p. 1 (providing that over 100 Croats had left their homes in the Medvida area and were living in caves, fields and forests, that around 50 Croats had filed requests with the civil police in Drniš to leave); Ex. 736 (providing that 10 Croats were transferred from Medvida to the Croat side on 2 October 1992, that 16 Croats were transferred to the Croat side on 16 October 1992 from Medvida Kruševo and Obrovac and that during one month 155 applications to leave the RSK territory had been received in Benkovac); Ex. 761 (reporting on the expulsion of 5 Croats from Ličko Petrovo Selo, dated 16 July 1992, *see also* Charles Kirudja, 31 May 2006, T. 4879-4880); Ex. 762, p. 3 (reporting the expulsion by “a group of uniformed persons” of 12 Croats from the village Korana in the municipality of Korenica, *see also* Charles Kirudja, 31 May 2006, T. 4882-4883); Ex. 865, p. 25 (reporting that before being granted permission to leave Sector South the Croats were forced to sign a statement that their departure was voluntary); Ex. 971, p. 3 (providing that 16 persons from Podlapac had expressed a wish to be transferred to Croatia); Ex. 985, pp 4-5 (reporting that Croat families were gathered from their houses and transported by bus to areas outside the UNPAs). *See also* Ex. 75, p. 5 (reporting that the non-Serb population in Sector North was “very small”).



intimidation of the Croat population was carried out on a large scale by the police and by local Serbs in the territory.<sup>931</sup> On 14 June 1993, Milan Martić met with Cedric Thornberry, the UNPROFOR Director of Civil Affairs, concerning, *inter alia*, the issue of Croats who wanted to leave the RSK. During the meeting, Milan Martić requested that Croats who wished to leave the RSK sign statements that no one had put pressure on them to leave and that these statements bear the signature of either Cedric Thornberry or another United Nations representative. Cedric Thornberry agreed to these requests.<sup>932</sup>

300. The RSK authorities cooperated with the authorities in Bosanski Novi, BiH, regarding the displacement of the non-Serb population from that municipality.<sup>933</sup> There is evidence that the RSK MUP was to be involved in providing security for an organised “safe departure” of Muslims and other non-Serbs in the direction of Croatia, Slovenia, Austria, and Germany in July 1992.<sup>934</sup>

301. In June 1993, the RSK population was 433,595 citizens, the ethnic break-down of which was 92% Serbs, 7% Croats and 2% others.<sup>935</sup> The Prosecution expert Ivan Grujić testified that 220,338 persons of non-Serb ethnicity were forcibly expelled “in the aggression against the Republic of Croatia”.<sup>936</sup> Ivan Grujić was unable to explain with certainty how many of these persons were expelled from the territories which comprised the SAO Krajina and later the RSK.<sup>937</sup> The Trial Chamber therefore finds that it cannot rely on the evidence of Ivan Grujić to determine

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<sup>931</sup> Witness MM-079, 3 Apr 2006, T. 3111 (testifying that “[s]everal people said that Martić’s policemen went door-to-door telling people to leave Knin, that is the SAO Krajina”); John McElligott, 26 May 2006, T. 4581, 4614-4615; Ex. 728, p. 3 (providing also that in the month of October 1992 five Croats were murdered and that houses vacated by Croats have been burned down); Ex. 731 (reporting that “the Serb side” is building up a climate of threat and fear of aggression out of ongoing incidents, that the “[Militia] is expanding ethnic cleansing systematically”, and that the “Serb side” warned against returning Croats without RSK consent because “the recent acts against Croats here can be considered as indication of what would happen on larger scale”); Ex. 732 (listing incidents of murder, destruction and intimidation of Croats in the Benkovac, Borovac, and Knin areas by the local police); Ex. 734 (letter reporting on beating and robbing of elderly and helpless people in the Vrlika area by members of the “Militia”); Ex. 736 (listing a number of incidents of violence, including murders, theft and destruction, aimed at Croats in Korenica, Zaluznica, Knin, Vrlika, Benkovac); Ex. 738 (providing that many Croats wanted to leave the UNPA due to not feeling safe); Ex. 757, p. 3 (providing that in Sector North by July 1992 about 22,000 Croats were listed as “Missing/Displaced”). *See also* Ex. 75; Ex. 866; Ex. 985.

<sup>932</sup> Ex. 965, p. 8.

<sup>933</sup> Ex. 752; Ex. 753; Ex. 754; Ex. 755; Ex. 756; Ex. 757, p. 7. Charles Kirudja testified that during the first organised convoy directed to Croatia, up to 8,000 Bosnian Muslims were expelled. He explained that the Muslims were not leaving voluntarily, Charles Kirudja, 31 May 2006, T. 4849, 4857-4863, 4871.

<sup>934</sup> Ex. 754.

<sup>935</sup> Ex. 178, ERN 0113-2359. This is further broken down by area (Eastern Slavonia, Western Srem and Baranja: 95% Serbs, 4% Croats, 1% others, Banija: 97% Serbs, 2% Croats, 1% others, Kordun: 98% Serbs, 2% Croats, Lika: 93% Serbs, 5% Croats, 2% others, Northern Dalmatia: 90% Serbs, 10% Croats, and Western Slavonia: 73% Serbs, 25% Croats, 2% others), *see* ERN 0113-2360. Witness MM-096 testified that by 1994 “quite a lot of inhabitants had left the territory of the RSK”, 25 Aug 2006, T. 7139. *See also* Witness MM-090, 4 Sep 2006, T. 7703-7704.

<sup>936</sup> Ex. 291, pp 18-19.

<sup>937</sup> Ivan Grujić, 12 Apr 2006, T. 3597, testifying that he provided the Trial Chamber “with numbers that apply to the existing, current division into counties [in Croatia]” and “basically it covers [the SAO Krajina] municipalities as well. Counties were partly occupied, and the people recorded as expelled were expelled solely from these occupied territories.”

the exact number of persons of Croat and other non-Serb ethnicities who left the territory of the SAO Krajina and RSK during the period of the Indictment.

### **G. Attacks on Zagreb on 2 and 3 May 1995**

#### **1. “Operation Flash”**

302. In the early morning hours of 1 May 1995, armed forces of Croatia launched a military offensive known as Operation Flash.<sup>938</sup> The Trial Chamber has been provided conflicting evidence as to the purpose of this operation. There is evidence that the purpose was to take control over Western Slavonia (Sector West).<sup>939</sup> There is evidence that the operation was Croatia’s response to Milan Martić’s decision to close the Zagreb-Belgrade motorway.<sup>940</sup> There is also evidence that Croatia planned its attack long before the closure.<sup>941</sup> Two Croatian guard brigades, one regular HV brigade, and special police forces were involved in the operation.<sup>942</sup> Negotiations to find a peaceful settlement took place during the operation,<sup>943</sup> and agreements were reached on 3 May 1995.<sup>944</sup> Operation Flash ended around 4 May 1995 with the RSK losing control over Western Slavonia.<sup>945</sup> A large part of the Serb population fled the area of Western Slavonia.<sup>946</sup>

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<sup>938</sup> Veljko Džakula, 16 Jan 2006, T. 381; Milan Babić, 21 Feb 2006, T. 1659; Peter Galbraith, 25 Apr 2006, T. 3805-3806; Mile Dakić, 26 Oct 2006, T. 10082.

<sup>939</sup> Peter Galbraith, 25 Apr 2006, T. 3805-3806; Mile Dakić, 25 Oct 2006, T. 10058. *See also* Ex. 99, p. 6.

<sup>940</sup> Milan Babić, 21 Feb 2006, T. 1660-1661; Peter Galbraith, 25 Apr 2006, T. 3805-3806; Ex. 933, p. 5. On 28 April 1995, a Serb was killed at one of the rest areas on the motorway just outside Sector West, and in retaliation local Serbs fired on motorists inside that Sector and Milan Martić decided to close down the motorway. Peter Galbraith, 25 Apr 2006, T. 3805-3806; Mile Dakić, 25 Oct 2006, T. 10058; Ex. 933, p. 2; Ex. 99, p. 4. Milan Babić stated that during negotiations it was already agreed that the motorway would be reopened, but Milan Martić discarded that possibility and said he would not allow that to happen, Milan Babić, 21 Feb 2006, T. 1667. Documentary evidence presented to the Trial Chamber corroborated Milan Martić’s refusal to open the motorway even though it was ready to be reopened, Ex. 789, p. 5; Ex. 233, intercepted telephone conversation, p. 5 (Ex. 789 and Ex. 233 are the same intercepted conversation); Ex. 99, p. 5.

<sup>941</sup> In his book titled “All My Battles”, Janko Bobetko, Chief of the Main Staff of the Croatian Army during Operation Flash, wrote that the initial operation was planned on 5 December 1994 and completed on 4 May 1995 as part of the overall plan of preparations for the final operations by the Croatian Army of what would later become “Operation Storm”, Ex. 931, pp 8, 9-12, 17; Slobodan Perić, 6 Sep 2006, T. 7846-7847, 7849. *See also* Ex. 933, p. 27; Ex. 934, pp 1-3. The Croatian military command warned UNPROFOR in advance about the Operation, during the morning of 1 May 1995, Reynaud Theunens, 3 Feb 2006, T. 1087; Slobodan Perić, 6 Sep 2006, T. 7845; Ex. 930.

<sup>942</sup> Reynaud Theunens, 3 Feb 2006, T. 1081.

<sup>943</sup> Witness MM-117, 13 Oct 2006, T. 9402-9403. The Serb delegation asked for a cessation of hostilities to become effective immediately at midnight on 1 May 1995, but this was rejected by the Croatian side, Witness MM-117, 13 Oct 2006, T. 9406.

<sup>944</sup> On 3 May 1995, members of the international community met in Knin to agree on the text of the agreement which was accepted by both the Serbs and the Croats that same day, Witness MM-117, 13 Oct 2006, T. 9408-9409. It was agreed that military activities would cease and thereafter UNPROFOR forces would be in a position to act in the area, Witness MM-117, 17 Oct 2006, T. 9596. On 3 May the Serbian delegation in Geneva accepted the entire offer of the international community for the resolution of the crisis in the relations between the Republic of the Serbian Krajina and Croatia, Witness MM-117, 18 Oct 2006, T. 9650-9651. *See also* Ex. 112; Ex. 935.

<sup>945</sup> Milan Babić, 21 Feb, 2006, T. 1660-1661; Veljko Džakula, 18 Jan 2006, T. 568; Peter Galbraith, 25 Apr 2006, T. 3820; Slobodan Perić, 6 Sep 2006, T. 7848. *See also* Ex. 99, p. 14; Ex. 112.

<sup>946</sup> Witness MM-117, 13 Oct 2006, T. 9401-9402; Reynaud Theunens, 3 Feb 2006, T. 1097; Ex. 99, p. 14. According to Witness MM-003 the entire Serb population was expelled from Western Slavonia, Witness MM-003, 10 Mar 2006, T. 2170-2171. Slobodan Perić stated that 20,000 people left the area, Slobodan Perić, 6 Sep 2006, T. 7866. *See also* Veljko

## 2. Shelling of Zagreb

### (a) 1 May 1995 – Preparation for attack

303. On 1 May 1995, a meeting was held between, *inter alia*, Milan Martić, the Chief of the SVK Main Staff General Milan Čeleketić, the Prime Minister and ministers of the RSK government. The meeting concerned the proposal of the Supreme Defence Council to deal with the situation which had arisen in Western Slavonia resulting from Operation Flash during the morning that day. The evidence shows that both peaceful solutions, involving negotiations and a surrender of parts of Western Slavonia, and non-peaceful solutions were discussed and that Milan Martić, Milan Čeleketić and the most senior officers of the SVK Main Staff were in favour of the latter.<sup>947</sup> At 1300 hours on 1 May 1995, Milan Čeleketić, in the presence of *inter alia* Milan Martić, ordered artillery fire on Sisak, south-east of Zagreb.<sup>948</sup> The evidence shows that the reason for the attack was “to retaliate against the HV who had carried out an aggression on the Western Slavonia.”<sup>949</sup> Artillery fire was opened at 1700 on 1 May 1995.<sup>950</sup>

304. On 1 May 1995, Milan Čeleketić ordered the M-87 Orkan unit of the SVK to “be alert and ready for engagement on [his] order” and directed them to march from the Knin area to take up positions in Vojnić, 50 kilometres south of Zagreb, by 1400 hours that day.<sup>951</sup>

### (b) 2 May 1995

305. In the mid-morning on 2 May 1995,<sup>952</sup> without warning,<sup>953</sup> Orkan rockets hit Zagreb.<sup>954</sup> Rockets struck the centre of the city, including: Strossmayer Square, Matica Hrvatska Street,

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Džakula, 18 Jan 2006, T. 571-572 (testifying that there were about 1,250 victims); Ivan Grujić, 12 Apr 2006, T. 3633 (that 168 persons were killed during Operation Flash); Rade Rašeta, 3 May 2006, T. 3970-3971 (testifying that there were about 100 victims); Slobodan Perić, 6 Sep 2006, T. 7866, 7 Sep 2006, T. 7947-7948 (testifying that the number of identified victims was 284, including 77 elderly, 30 women and 10 children but that the total number of killed during Operation Flash was 1,200).

<sup>947</sup> Rade Rašeta, 2 May 2006, T. 3932-3933, 3940; Ex. 95.

<sup>948</sup> Rade Rašeta, 2 May 2006, T. 3930-3931; Ex. 93 provides that “members of the Supreme Defence Council” were present when the order was given. However, Rade Rašeta, who was present, testified that it was a meeting of Milan Čeleketić and his closest associates, his “collegium”, Rade Rašeta, 2 May 2006, T. 3930. Milan Čeleketić was appointed Commander of the Main Staff of the SVK by Milan Martić on 22 February 1994, Ex. 80; Ex. 83.

<sup>949</sup> Ex. 93.

<sup>950</sup> Ex. 93.

<sup>951</sup> Ex. 92. The M-87 Orkan is a self-propelled long-range multiple rocket launching system, Ex. 7, p. 38; Jožef Poje, 6 Jun 2006, T. 5123. *See infra* section IV B 4 (b). In 1995, the Orkan rocket launchers were subordinated to Commander Lieutenant General Čeleketić, as Chief of the Main Staff of the SVK, Rade Rašeta, 2 May 2006, T. 3935; Jožef Poje, 6 Jun 2006, T. 5110-5111. The evidence also shows that the use of the Orkan was subject to the approval of the commander of the Main Staff of the SVK, Jožef Poje, 6 Jun 2006, T. 5112-5113; Ex. 781, p. 11, p. 25; Ex. 780, p. 13; Ex. 7, pp 62-63.

<sup>952</sup> Peter Galbraith, 25 Apr 2006, T. 3769; Branko Lazarević, 14 Jun 2006, T. 5624; Aleksandra Szekely, Ex. 824, p. 2.

<sup>953</sup> Branko Lazarević, 14 Jun 2006, T. 5623, 15 Jun 2006, T. 5715; Peter Galbraith, 25 Apr 2006, T. 3762; Sanja Risović, 14 Jun 2006, T. 5577; Rašeljka Grmoja, 19 Jun 2006, T. 5784; Mina Žunac, 20 Jun 2006, T. 5810-5811.

<sup>954</sup> Ex. 95, p. 3, wherein on 2 May 1995, Rade Rašeta informed his counterparts in the VJ that the SVK fired eight rockets from “an *Orkan* multiple rocket launcher on the *Banski Dvori/* Presidential Palace/, the Ministry of Defence and

Petrinjska Street, Boskovićeve Street and Mrazovićeve Street as well as Draškovićeve Street, the intersection of Vlaška and Draškovićeve Streets and a school building in Križanićeve Street, the village of Plešo near Zagreb/Plešo airport,<sup>955</sup> and the airport itself.<sup>956</sup>

306. Five persons were killed during these rocket attacks. The body of Damir Dračić was found lying on the sidewalk at Vlaška Street.<sup>957</sup> Ana Mutevelić was killed when a tram was hit at the intersection of Draškovićeve and Vlaška Streets.<sup>958</sup> The body of Stjepan Krhen was found in the courtyard of No. 41 Vlaška Street.<sup>959</sup> Ivanka Kovač died at the trauma clinic in Draškovićeve Street from the injuries she sustained some 700 metres from the hospital.<sup>960</sup> Ivan Brodar was injured on Draškovićeve Street and died as a result of his injuries on 3 May 1995.<sup>961</sup>

307. A number of witnesses, who were injured during the shelling of Zagreb on 2 May 1995, testified before the Trial Chamber, many of whom still suffer from the injuries sustained on that day. Sanja Buntić was injured in Strossmayer Square.<sup>962</sup> She received injuries to her head and legs.<sup>963</sup> Aleksandra Szekely was injured while waiting at the intersection of Boškovićeve-

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*Plešo* airport”; Ex. 303; Ex. 94, p. 2, indicating that on 2 May 1995 UNPROFOR heard 5 rockets being fired from Glina and it was assessed that these were the Orkans which impacted in Zagreb.

<sup>955</sup> Branko Lazarević, 15 Jun 2006, T. 5656-5657, 14 Jun 2006, T. 5629; Ivan Mikulčić, 14 Jun 2006, T. 5598, 5617-5618; Ex. 805; Ex. 1043, T. 3-11. Plešo village is around 500 meters from Zagreb/Plešo Airport, Ivan Mikulčić, 14 Jun 2006, T. 5597, 5608. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 3-11, pp 12-16, pp 18-31.

<sup>956</sup> Branko Lazarević, 14 Jun 2006, T. 5629. The Trial Chamber heard testimony that while the official name of the airport was “Zagreb” it was locally referred to as “Plešo”, Ivan Mikulčić, 14 Jun 2006, T. 5607. Ex. 810 shows the damage inside the perimeter of Zagreb/Plešo Airport. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 1-2.

<sup>957</sup> Ex. 805, Plan 2, No. 2. *See also* Ex. 799, p. 46, p. 81; Branko Lazarević, 14 Jun 2006, T. 5634, 15 Jun 2006, T. 5700. His injuries were sustained while he was in his car, Ex. 805, Plan 2, marked with a number 3; Branko Lazarević, 15 Jun 2006, T. 5666-5667. An exhibit shows the body of Damir Dračić, Ex. 386, F-53 and F-54; Branko Lazarević, 15 Jun 2006, T. 5673-5674. *See also* Ex. 383, at 8 min. 8 sec.; Branko Lazarević, 14 Jun 2006, T. 5627.

<sup>958</sup> Branko Lazarević, 15 Jun 2006, T. 5658. Ana Mutevelić was killed while on a tram, Branko Lazarević, 14 Jun 2006, T. 5634. *See also* Ex. 799, p. 81; Branko Lazarević, 15 Jun 2006, T. 5700. Ex. 805, Plan 2, marked with a number 1, indicates the location where the body of Ana Mutevelić was found, Branko Lazarević, 15 Jun 2006, T. 5666. Ex. 386, F-35 and F-36 show her body, Branko Lazarević, 14 Jun 2006, T. 5626, 15 Jun 2006, T. 5671. *See also* Ex. 383 at 7 min. 41 sec; Ex. 804, at the location marked in the map as number 1, Branko Lazarević, 15 Jun 2006, T. 5658. Ex. 386, F-1 shows Draškovićeve St., Mina Žunac, 20 Jun 2006, T. 5825. Ex. 386, F-30 shows the intersection of Vlaška and Draškovićeve streets, Mina Žunac, 20 Jun 2006, T. 5825.

<sup>959</sup> Ex. 805, Plan 2, No. 3 marks the site where Stjepan Krhen was found during the on-site investigation, Branko Lazarević, 15 Jun 2006, T. 5667. *See also* Ex. 799, p. 81; Branko Lazarević, 15 Jun 2006, T. 5700. Stjepan Krhen had sustained several injuries on his body, on his chest, and on his legs, and had succumbed to his wounds “immediately”, Branko Lazarević, 14 Jun 2006, T. 5634-5635; Ex. 799, p. 47. Ex. 386, F-98 and F-99 show Stjepan Krhen, Branko Lazarević, 15 Jun 2006, T. 5674.

<sup>960</sup> Branko Lazarević, 14 Jun 2006, T. 5635. *See also* Ex. 799, p. 81; Branko Lazarević, 15 Jun 2006, T. 5700. The cause of her death is indicated as “[e]xplosive wounds of the head, of the body, and the extremities”, Ex. 800; Branko Lazarević, 14 Jun 2006, T. 5639-5640.

<sup>961</sup> Branko Lazarević, 14 Jun 2006, T. 5638-5639, 5641. He was aged 77 at the time of the shelling, and suffered multiple traumas of the head, chest, and lower extremities, Branko Lazarević, 14 Jun 2006, T. 5638-5639. *See also* Ex. 799, p. 71; Branko Lazarević, 14 Jun 2006, T. 5640-5641; Ex. 801.

<sup>962</sup> Sanja Buntić, 19 Jun 2006, T. 5761-5763.

<sup>963</sup> She received injuries to the upper part of both her legs from shrapnel and pellets, as well as two pellets which lodged in her head, one hitting the bone causing a splinter fracture, Sanja Buntić, 19 Jun 2006, T. 5776-5777. She still has pieces of shrapnel in her liver, which require considerable follow-ups; she also has constant headaches caused by the shrapnel in her head, Sanja Buntić, 19 Jun 2006, T. 5768-5769, 5777.

Petrinjska, and received injuries to the left side of her body and her left leg.<sup>964</sup> Mina Žunac was injured in Vlačka Street.<sup>965</sup> She received injuries to her leg, hip, hand and head.<sup>966</sup> Rašeljka Grmoja was 17 years old at the time of the rocket attack on Zagreb and was in her school in Križanićeva Street<sup>967</sup> when she was injured in her shoulder and eye.<sup>968</sup> Ivan Mikulčić was injured at his house in Plešo village near Zagreb on 2 May 1995,<sup>969</sup> and received injuries in his back.<sup>970</sup> There is evidence that in total 160 people were injured during the attack on 2 May 1995.<sup>971</sup>

308. The Trial Chamber finds that as a result of the shelling on 2 May 1995, Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač and Ivan Brodar were killed, and at least 160 people were injured.

(c) 3 May 1995

309. At midday on 3 May 1995,<sup>972</sup> Zagreb was again shelled by Orkan rockets<sup>973</sup> on the following locations: Mažuranićeva Square, Marshall Tito Square where the Croatian National Theatre was located, and Klaićeva Street Children's Hospital.<sup>974</sup>

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<sup>964</sup> She had received approximately twelve pieces of shrapnel, six of which still remain in her body, Aleksandra Szekely, Ex. 824, p. 3.

<sup>965</sup> Mina Žunac, 20 Jun 2006, T. 5811-5812, T. 5826; Ex. 819; Ex. 386, F-50, F-52.

<sup>966</sup> Mina Žunac, 20 Jun 2006, T. 5819. She sustained serious injuries to her right leg, and one part of her foot was amputated, Mina Žunac, 20 Jun 2006, T. 5822. She also sustained injuries to her right hand, hip and head. She spent "all in all" about a year in the hospital, Mina Žunac, 20 Jun 2006, T. 5823-5824. Ex. 818, photographs showing injuries caused to Mina Žunac. She still has over 45 pieces of shrapnel in her leg and had seven surgeries during the first couple of months, and after that three more. Mina Žunac, 20 Jun 2006, T. 5824. She still suffers constant pain and has trouble walking, as well as problems with her hand and with writing, Mina Žunac, 20 Jun 2006, T. 5827-5830.

<sup>967</sup> Križanićeva St. School is a ten-minute walk from Ban Jelačić square, Rašeljka Grmoja, 19 Jun 2006, T. 5780-5781.

<sup>968</sup> Rašeljka Grmoja, 19 Jun 2006, T. 5781-5782. She received shrapnel in her left shoulder and glass in her left eye, Rašeljka Grmoja, 19 Jun 2006, T. 5781-5782, T. 5793; Ex. 813, Photograph of Križanićeva Street School marked by Rašeljka Grmoja, showing the window where she was injured. *See also* her explanation of this photo, Rašeljka Grmoja, 19 Jun 2006, T. 5785-5787. It took her a month to go back to school and she suffered psychological trauma for a year or two after the event, Rašeljka Grmoja, 19 Jun 2006, T. 5794-5795.

<sup>969</sup> Ivan Mikulčić, 14 Jun 2006, T. 5598-5599.

<sup>970</sup> He was injured in his spine and some of the shrapnel remains to this day, Ivan Mikulčić, 14 Jun 2006, T. 5600. *See also* Ex. 796, medical report; Ex. 797, granting him the status of civilian war invalid of group X with 20% permanent disability; Ivan Mikulčić, 14 Jun 2006, T. 5601. Ex. 798, map on which Ivan Mikulčić indicated his house and where cluster bombs had fallen. Ex. 809, indicates damage caused in Plešo village.

<sup>971</sup> Ex. 799, pp 63-80; Branko Lazarević, 15 Jun 2006, T. 5700. Of the 146 victims listed as injured in the Indictment for 2 May 1995, Ex. 799 contains the names of 144 victims, Ex. 799, pp 63-80. The Trial Chamber does not find any reason to doubt that 160 people were injured. (Two persons listed as injured (Ines Malić and Stipe Miličević) in Annex II to the Indictment are found neither in this exhibit nor in other evidence). *See also* Ex. 303, listing 203 persons wounded and 5 persons killed on 2 and 3 May 1995, of which 7 wounded and 1 killed were "MUP.HV". The document states that all of these "MUP.HV" were "out of service", the Trial Chamber interprets this, in light of the principle of *in dubio pro reo* as meaning that they were off-duty and not that they were no longer enlisted in the army or police.

<sup>972</sup> Božica Lisak, Ex. 822, p. 2; Sanja Risović, 14 Jun 2006, T. 5580.

<sup>973</sup> Ex. 303; Ex. 94, p. 4, indicating that on 3 May 1995, UNMO heard the firing of rockets approximately from 5 kilometres northeast of Vrginmost and afterwards observed the movement of an M-87 "Orkan" rocket launcher during the same time as the attack against Zagreb.

<sup>974</sup> Branko Lazarević, 15 Jun 2006, T. 5648-5649, 5659-5660; Ex. 805. Rockets also landed in the suburbs, Novi Zagreb (Čehi) and Žitnjak, but caused no damage, Branko Lazarević, 15 Jun 2006, T. 5649; Ex. 811. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 32-36.

310. Two people were killed in this attack. Luka Skračić was injured on 3 May 1995, and died in hospital on 6 June 1995.<sup>975</sup> Ivan Markulin, a bomb disposal technician and police officer, died when the bomblet he was trying to deactivate exploded outside Klaićeva Street Children's Hospital.<sup>976</sup>

311. The Trial Chamber heard evidence from some of those who were injured on 3 May 1995. Sanja Risović was at Klaićeva Street Children's Hospital with her 4 month-old daughter when she was injured to her shoulders, stomach, right leg, foot and back.<sup>977</sup> Shortly after midday, 18 people, including Božica Lisak, were injured when bombs fell through the glass roof of the Croatian National Theatre.<sup>978</sup> Božica Lisak was severely injured by 27 pieces of shrapnel.<sup>979</sup> Milan Smoljan was injured in his knee by bomblets when he was at Mažuranićeva Square, near the Croatian National Theatre.<sup>980</sup>

312. In total, 54 persons were injured as a result of the shelling on Zagreb on 3 May 1995.<sup>981</sup>

313. The Trial Chamber finds that Luka Skračić and Ivan Markulin were killed and that 54 people were injured as a result of the shelling on 3 May 1995.

### 3. Involvement of the RSK leadership in the shelling of Zagreb

314. There is evidence that Milan Martić had considered shelling of Zagreb prior to 2 May 1995. Already in 1992 and 1993, Milan Martić, as Minister of the Interior, considered attacking Zagreb as

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<sup>975</sup> Branko Lazarević, 15 Jun 2006, T. 5652-5653, 5723. Ex. 803, containing the autopsy report for Ivan Brodar, shows that Luka Skračić had died a violent death as a result of a pneumonia which had developed after having suffered explosive wounds. The Exhibit establishes that there was a cause-effect relation between the injuries which Luka Skračić sustained on 3 May 1995, and his subsequent death, Branko Lazarević, 15 Jun 2006, T. 5653. Ex. 802, p. 53 indicates that Luka Skračić suffered a blast wound to the head with an alien object lodged in his brain and was in a coma on 3 May 1995. *See also* Sanja Risović, 14 Jun 2006, T. 5595.

<sup>976</sup> Branko Lazarević, 15 Jun 2006, T. 5650-5651; Ex. 802, pp 40-41. Ex. 387, F-26, is the site where the bomblet exploded in the hands of Ivan Markulin, Branko Lazarević, 15 Jun 2006, T. 5687.

<sup>977</sup> Sanja Risović, 14 Jun 2006, T. 5580-5584. She was wounded in her right shoulder blade, and one part of her back muscle had to be removed as well as her shoulder blade. Her ribs were fractured and her lungs injured. She had shrapnel wedged in her stomach muscle. She was also injured in her right leg and left foot, Sanja Risović, 14 Jun 2006, T. 5585; Ex. 794; Ex. 795. Sanja Risović was in hospital until 16 June 1995 and then at a rehabilitation centre until 10 August 1995. She has had a total of eleven surgical procedures because of her injuries. She still spends three weeks of every year in rehabilitation and suffers from rheumatoid arthritis which is aggravated by stress and shock. Sanja Risović, 14 Jun 2006, T. 5586-5588. Sanja Risović also testified that she saw three other injured persons at Klaićeva Street Hospital: Mirna Kostović, Zvonko Bakula and a pregnant lady, Sanja Risović, 14 Jun 2006, T. 5584, 5594-5595; Ex. 802, pp 57-58.

<sup>978</sup> Božica Lisak, Ex. 822, pp 2-3, stating that Božica Lisak, Matea Pučko, Dubravko Kolšek, Barbara Novković, and Krištof Pastor were injured.

<sup>979</sup> Božica Lisak, Ex. 822, p. 3. Božica Lisak was injured by 27 pieces of shrapnel in her body, mostly in her legs and feet and one in her neck. She spent four weeks in Vinogradska Hospital in Zagreb and had the casts removed in July and then spent a month in rehabilitation. As a result of her injuries Božica Lisak has 50% invalidity, *ibid.*

<sup>980</sup> Milan Smoljan, Ex. 823, 28 Apr 2004, p. 2. He also saw other persons injured and bleeding, Milan Smoljan, Ex. 823, 28 Apr 2004, pp 2-3.

<sup>981</sup> Ex. 802, pp 50-57, contains the names of all 48 victims listed in Annex II to the Indictment. *See also* Ex. 303, *see supra* fn 971.

a response to Croatian attacks on RSK cities.<sup>982</sup> On 9 June 1993, Milan Martić, as Minister of the Interior, informed Slobodan Milošević that the P-65 LUNA rocket system had been moved to the area of Banija and Kordun in order to prevent aggression or to carry out possible attacks on Zagreb, should RSK towns come under attack.<sup>983</sup>

315. On 5 September 1994, Ratko Mladić, the Commander of the Main Staff of the VRS, requested Milan Martić to approve the loan of 15 Orkan rockets in order to manufacture such rockets for the VRS.<sup>984</sup>

316. In a meeting on 24 October 1994 with Peter Galbraith, the United States Ambassador to Croatia, Milan Martić threatened to shell Zagreb.<sup>985</sup> Milan Martić stated “in effect that attacking civilian targets in Zagreb, attacking the city itself was an option, a way in which the RSK could respond to [...] a Croatian attack on the RSK”.<sup>986</sup> Peter Galbraith warned Milan Martić that a rocket attack on Zagreb would be a crime.<sup>987</sup>

317. On 10 February 1995, Milan Martić, in a speech to the commanding officers of the SVK stated emphatically that “[n]o one can stop us to fire at Zagreb, Osijek, Vinkovci, Zadar, Karlovac, Split”.<sup>988</sup>

318. In a newspaper article published in Serbia on 24 March 1995, Milan Čeleketić is reported as stating:

In the case of the Ustasha aggression, we will certainly not miss the opportunity to hit them where it hurts the most. We know their weak spots and where it hurts the most. Weak points are city squares and we know who goes there – civilians. I have already said this and was criticised a little. Well now, they may ask which squares and in which cities. I shall reply that that’s a military secret. We shall make a decision about it and I think we will be precise. It is hard to say these words because there are, as I said, civilians in the squares, innocent people. However, if we are in war (and we are waging a filthy war for which they are first and foremost to blame), then there will be no mercy. Not only will we be merciless but, as a commander, I shall decided [*sic*] where we will direct our attacks, when and where it hurts the most.<sup>989</sup>

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<sup>982</sup> The Trial Chamber also notes Milan Martić’s statement on 18 July 1992 that “[i]t would be better [...] [for Tudman and his soldiers] not to touch us again because that would compel us to head forcefully for Zagreb and to turn it into Vukovar,” Ex. 119, p. 2.

<sup>983</sup> Ex. 12, p. 2. *See also* Reynaud Theunens, 27 Jan 2006, T. 808. Further evidence that shelling of Zagreb was considered in 1993 can be seen from a report from the 51<sup>st</sup> Infantry Brigade Command, which states “[u]nless [Croatia] withdraws from occupied territories, the following operations will continue: hits on Zagreb with large missiles which have not been used yet and which the world does not know of”, Ex. 89, p. 2.

<sup>984</sup> Ex. 475.

<sup>985</sup> Peter Galbraith, 25 Apr 2006, T. 3757-3759.

<sup>986</sup> Peter Galbraith, 25 Apr 2006, T. 3778. Peter Galbraith also testified that he warned Milan Martić that the RSK would not be able to survive Croatian military action, to which Milan Martić responded that the RSK had the ability to defend itself and to attack Zagreb, Peter Galbraith, 25 Apr 2006, T. 3814-3815.

<sup>987</sup> Peter Galbraith, 25 Apr 2006, T. 3759.

<sup>988</sup> Ex. 90, p. 6.

<sup>989</sup> Ex. 91, p. 6; Reynaud Theunens, 27 Jan 2006, T. 827. In this article, Milan Čeleketić refers to Milan Martić as “my supreme commander”, Ex. 91, p. 4.

319. On 3 May 1995, Milan Martić stated:

As a counter measure to what Tudjman did to you here, we have shelled all their cities: Sisak several times and Karlovac, Zagreb yesterday and today. This was done for you. [...] Today, an ultimatum followed if they continue to attack our besieged forces, we will continue to attack Zagreb and destroy their cities.<sup>990</sup>

In a conversation on 3 May 1995 between Slobodan Milošević and Borisav Mikelić, the Prime Minister of the RSK, Slobodan Milošević said that Milan Martić was “boasting about having shelled Zagreb.”<sup>991</sup>

320. In a radio interview on 5 May 1995, Milan Martić stated:

That order was given by me, personally, as a retaliation to Franjo Tudman and his staff for the order he had given to commit aggression against the Western Slavonia [...].<sup>992</sup>

At a meeting in Knin on 5 May 1995 with UN Special Envoy, Yasushi Akashi, Milan Martić stated in response to Yasushi Akashi’s condemnation of the rocket attacks on Zagreb that “[h]ad I not ordered the rocket attacks [...] they would have continued to bomb our cities”.<sup>993</sup> Milan Martić threatened to resume the shelling of Zagreb if their conditions were not met, and spoke of “massive rocket attacks on Zagreb which would leave 100,000 people dead”.<sup>994</sup> In an interview published on 16 May 1995, Milan Martić is reported as saying that he felt justified in ordering the rocket attacks because he was aiming at military installations.<sup>995</sup> Milan Martić also appeared on television admitting to having ordered the shelling.<sup>996</sup>

321. The RSK Commission charged with determining responsibility for the fall of Western Slavonia found that:

[t]he course of events in Western Slavonia required of the SVK Main Staff to intervene in order to provide assistance to the 18<sup>th</sup> Corps [...] however, no opinions were sought from the commanding officers of the SVK Main Staff. Decisions were made by the Commander and the President and stances and orders were given on the telephone (there are no written orders).<sup>997</sup>

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<sup>990</sup> Ex. 388; *See also* Branko Lazarević, 15 Jun 2006, T. 5692-5693.

<sup>991</sup> Ex. 233, p. 6, Transcript of intercepted telephone conversation between Slobodan Milošević and Borisav Mikelić. *See also* Milan Babić, 21 Feb 2006, T. 1666-1668.

<sup>992</sup> Ex. 389. In an article in Agence France Presse published on 6 May 1995, Milan Martić is reported as saying “I personally gave the order to bombard Zagreb as a response to (Croatian President) Franjo Tudman and the Croatian leadership behind the aggression on Western Slavonia and crimes on civilians”, Ex. 1001. *See also* Ex. 98.

<sup>993</sup> Ex. 97, para. 13. As regards the Defence’s argument concerning reprisals, *see infra* section IV B 4 (c).

<sup>994</sup> Ex. 97, paras 4, 15.

<sup>995</sup> Ex. 390. *See infra* section IV B 4 (c), concerning the Defence’s argument on reprisals. *See also* Patrick Barriot, 9 Nov 2006, T. 10780-10785; Witness MM-117, 17 Oct 2006, T. 9599-9600. *See however* Peter Galbraith, 25 Apr 2006, T. 3778.

<sup>996</sup> Branko Lazarević, 15 Jun 2006, T. 5690-5691; Milan Babić, 21 Feb 2006, T. 1661. Peter Galbraith testified that in media statements Milan Martić “took credit” for this first day of attacks, Peter Galbraith, 25 Apr 2006, T. 3774.

<sup>997</sup> Ex. 100, para. 9.



Rade Rašeta, Chief of Security of the SVK Main Staff, confirmed that members of the Main Staff were not consulted about the decision to shell Zagreb.<sup>998</sup> The RSK Fact-Finding Commission on the Causes and Manner of the Fall of Western Slavonia found that among those responsible for the fall of Western Slavonia was “President of the RSK, Milan Martić, for exceeding his authority as set by the constitution by blocking and preventing the work of the Supreme Defence Council”.<sup>999</sup>

322. Milan Čeleketić resigned on 15 May 1995, giving as a reason having failed to keep his promise “that not one milimetre of the territory of the [RSK]” would be lost.<sup>1000</sup> Peter Galbraith testified that following the shelling, there was a change in the SVK and that Milan Čeleketić was replaced. He believed that this was as a result of Slobodan Milošević’s instructions.<sup>1001</sup>

#### **H. Acts of persecution carried out against non-Serbs in the SAO Krajina and the RSK**

323. The Trial Chamber has been presented with considerable evidence that acts of discrimination and intimidation were carried out against the non-Serb population in the SAO Krajina and the RSK during the Indictment period. Count 1 of the Indictment charges Milan Martić with a wide range of acts of persecution. Many of these are also charged as separate counts in the Indictment and have been dealt with above. In addition, however, the Trial Chamber notes below the following additional evidence.

##### 1. 1991

324. There is evidence of Croats being killed in 1991,<sup>1002</sup> having their property stolen,<sup>1003</sup> having their houses burned,<sup>1004</sup> that Croat villages and towns were destroyed, including churches and religious buildings,<sup>1005</sup> and that Croats were arbitrarily dismissed from their jobs.<sup>1006</sup>

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<sup>998</sup> Rade Rašeta, 2 May 2006, T. 3943-3944, commenting on Ex. 100. General Čeleketić tried to transfer the order over the phone, however the decision “should have been collectively taken. We should all have been familiar with the order. In this case, this went through the closest associates of the commander.” *Ibid.*

<sup>999</sup> Ex. 99, p. 21.

<sup>1000</sup> Ex. 101. The Trial Chamber notes that in his letter of resignation, General Čeleketić specifically refers to “our doctrine of reprisal at the chosen vital targets of the combatant”; Rade Rašeta, 2 May 2006, T. 3944-3945. Rade Rašeta was present at a meeting of the Supreme Defence Council when General Milan Čeleketić informed of his resignation and confirmed the reason for the resignation, Rade Rašeta, 2 May 2006, T. 3930, 3 May 2006, T. 3973.

<sup>1001</sup> Peter Galbraith, 25 Apr 2006, T. 3757.

<sup>1002</sup> Ex. 922, reporting *inter alia* that between 5 and 14 August 1991 “Serbian paramilitary groups” reportedly killed five Croats from the village of Lovinac (Gracac), p. 3, and on 16 August 1991 four Croatian men were reported to have been killed when they returned to the village of Pečki (Vrginmost) to feed their livestock; the village had been occupied by “Serbian forces”. On 13 October 1991, 13 people were reported to have been killed in Široka Kula (Gospić) by a mob led by a “Serbian police officer” and that the “Serbian leader of the local police” ordered the remaining Croats to assemble for evacuation, when they assembled “Serbian paramilitary groups” began looting the homes and shot at the villagers. The bodies of those who were killed were thrown into their homes which had been set on fire, p. 4-5. On 16 and 17 December 1991, five civilians were reportedly killed in the village of Jasenice (Obrovac) pp 10-11. Ex. 922, Helsinki Watch Report sent to Slobodan Milošević and General Blagoje Adžić, dated 21 January 1992; Marica Vuković, 22 Mar 2006, T. 2452-2453 testifying that around a hundred people were killed in the 10 or 15 villages around Vukovići. *See also* Ex. 133, an order from the Glina TO Staff dated 4 October 1991 ordering TO units “when

325. A MUP report of 12 December 1991, signed by Milan Martić, reported on the collection of trucks, passenger vehicles and household items “as war booty from citizens in the war zones and stored in collection centres”.<sup>1007</sup>

326. Following the fall of Slunj in November 1991, Marinko Mudrić reported seeing many burned houses, particularly in Rakovica and Slunj, including a department store, restaurants, an SJB and a hotel, as well as many private houses. He saw “uniformed men and members of the Krajina police in Slunj” as well as “Peić and [Željko ‘Buba’ Mudrić]” stealing cars.<sup>1008</sup> Police as well as Serb civilians were engaged in looting in the villages of Rakovica, Slunj, Saborsko and Poljanak.<sup>1009</sup> Attacks on Modruški Sabljaki and Medvedi and Plivelići were led by “Pejić and [Zelko ‘Buba’ Mudrić], accompanied by some 30 of Martić’s men”, who stole tractors and plundered houses before setting them on fire.<sup>1010</sup> On 21 November 1991, in Dabar a uniformed group led by Predrag Baklajić killed Stipe Brajković, raided Croat houses and stole property.<sup>1011</sup>

## 2. 1992

327. During 1992 on the territory of the RSK, there was a continuation of incidents of killings,<sup>1012</sup> harassment,<sup>1013</sup> robbery, beatings, burning of houses,<sup>1014</sup> theft,<sup>1015</sup> and destruction of churches<sup>1016</sup> carried out against the non-Serb population.<sup>1017</sup>

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mopping up the terrain in Glina, to spare Pajo Bubaš and his wife, who is a Serb, and their house: [t]hey have been verified as loyal people.”

<sup>1003</sup> Ex. 984, p. 19 reports that there was widespread looting around Drniš by ‘reservists in JNA uniforms’. Borislav Đukić testified to requesting measures from the 9<sup>th</sup> Corps command in Knin to be taken against the looters and that seized looted property was sent to the JNA Knin logistics base, Borislav Đukić, 20 Oct 2006, T. 9890. Witness MM-078 testified that both the army and the police were involved in the looting and that the police would let the trucks with looted goods through check-points, Witness MM-078, 25 May 2006, T. 4533.

<sup>1004</sup> Marica Vuković, 22 Mar 2006, T. 2411, 2442 (testifying that on 28 August 1991, the village of Rastovaca (Nova Gradiska) was set on fire by “Serbs”). Marko Vuković testified that after the attack on Grabovac some houses and a motel were torched and burnt, as well as the motel, Marko Vuković, 24 Mar 2006, T. 2634.

<sup>1005</sup> Witness MM-078, 24 May 2006, T. 4450. During the attack in September 1991 the centre of Drniš was “completely” destroyed, Ex. 984, para. 5.3, p. 16; Borislav Đukić, 20 Oct 2006, T. 9896. Regarding damage to houses and churches and looting in Kijevo, see Witness MM-078, 24 May 2006, T. 4434-4435. Borislav Đukić testified that there were no JNA units in Kijevo on 27 August 1991, Borislav Đukić, 20 Oct 2006, T. 9885-9886; Witness MM-078, 24 May 2006, T. 4444, T. 4527-4528; Borislav Đukić, 19 Oct 2006, T. 9768-9769; Ex. 106, Report of Ratko Mladić, JNA 9<sup>th</sup> Corps, to General Staff of the SFRY concerning the attack on Kijevo, dated 4 October 1991; Milan Babić, 17 Feb 2006, T. 1559-1560.

<sup>1006</sup> Ex. 895, pp 22-24.

<sup>1007</sup> Ex. 518, p. 4, signed by Milan Martić as Minister of the Interior.

<sup>1008</sup> Ex. 507, Official Note on Saborsko Operation, dated 7 April 1992, p. 5. One of the cars they stole was afterwards in use by the Plaški SJB, *ibid*.

<sup>1009</sup> Witness MM-037, 29 Mar 2006, T. 2821-2822.

<sup>1010</sup> Ex. 507, Official Note on Saborsko Operation, dated 7 April 1992, p. 6.

<sup>1011</sup> Ex. 561, Report of MUP concerning the activities of Predrag Baklajić, dated 14 July 1993. See also Ex. 43, a request of the commander of the 2<sup>nd</sup> Lika TO Brigade to Milan Martić to disband the unit of Predrag Baklajić, which had previously been trained in Golubić, because it was engaged in looting in November 1991 in Vrhovine near Dabar.

<sup>1012</sup> On 18 January 1992, the Čengić family were killed in their house in Ervenik Village, Knin municipality by three members of the TO. The same three perpetrators also set fire to houses, sheds and barns in the village, Ex. 974; see also Witness MM-117, 17 Oct 2006, T. 9565, T. 9559-9560. Ex. 732. Ex. 75, dated 28 September 1992. Ex. 737, reporting

### 3. 1993-1995

328. Throughout 1993, there were further reports of killings,<sup>1018</sup> intimidation,<sup>1019</sup> and theft.<sup>1020</sup> By 1995, several Croat villages had been attacked and destroyed, including Rakovica,<sup>1021</sup> Poljanak, Kuselj, Saborsko, Korana, Rastovaca, Celiste, Smoljanac, Dreznik, Rakovac, Lipovaca, Vaganac,<sup>1022</sup> Hrvatska Dubica<sup>1023</sup> and Medvida.<sup>1024</sup>

#### **I. The political objective of the Serb leadership**

329. The President of Serbia, Slobodan Milošević, publicly supported the preservation of Yugoslavia as a federation of which, *inter alia*, the SAO Krajina would form a part.<sup>1025</sup> However,

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that in Slunj a Croat was beaten to death and his father beaten into a coma by three persons in local “*Milicija*” uniforms, John McElligott, 26 May 2006, T. 4606-4607. *See also* Ex. 739; Ex. 732.

<sup>1013</sup> Ex. 763, reporting on “a disturbing pattern of abuse, harassment and discriminatory treatment of Croats particularly in 7 villages south of Glina town” as well as murders, destruction of houses and terrorising of residents by “roaming gangsters”. Also reporting on discriminatory distribution of humanitarian aid by the “local red cross” and that buses refused to stop at bus stops. *See also* Charles Kirudja, 31 May 2006, T. 4885-4886; Ex. 739; Ex. 728.

<sup>1014</sup> Ex. 732, UNCIVPOL situation report for Sector South, dated 29 May 1992; John McElligott, 26 May 2006, T. 4579, T. 4606-4607; Ex. 728; Ex. 736.

<sup>1015</sup> Ex. 733, reporting that local police officers wearing uniforms with “Serbian Krajina” or “policemen” based in the Vrlika [Sinj] area were consistently stealing from elderly Croatian people. *See also* Ex. 728.

<sup>1016</sup> Ex. 735, dated 2 October 1992, reporting of the destruction by explosives of St Anna’s Church in Zvjerinac, which is part of the village of Kosovo, south of Knin, on 1 October. *See also* John McElligott, 26 May 2006, T. 4601-4602, 4606-4607. Ex. 737, UNCIVPOL daily situation report for 6 and 7 November 1992, dated 8 November 1992.

<sup>1017</sup> *See also* Ex. 75, dated 28 September 1992. UNCIVPOL’s Report for October 1992 lists numerous incidents of killings, thefts, destruction and looting, Ex. 736. A United Nations Report on the Human Rights situation in the former Yugoslavia, dated 17 November 1992, reports from Sector South that United Nations staff were collecting evidence of murders, robberies, looting and other forms of criminal violence “often related to ethnic cleansing”, Ex. 865, United Nations report on the situation of Human Rights in the territory of the former Yugoslavia dated 17 November 1992, paras 78-81. *See also* Ex. 728; Witness MM-117, 16 Oct 2006, T. 9472-9473, testifying that according to the Ministry of the Interior in 1992 there were 6,000 criminal reports which included looting and to a great extent that Croats were the victims of these crimes. Ex. 864, Further Report by the Secretary-General of the United Nations to the Security Council pursuant to UN resolution 743, dated 24 November 1992. Ex. 727. Ex. 726, Reporting on 497 crimes against Croats only in Sector South between August 1992 and May 1993. *See also* John McElligott, 26 May 2006, T. 4616-4617, 30 May 2006, T. 4731-4732.

<sup>1018</sup> *See* Ex. 741. Ex. 726, Reporting on 497 crimes against Croats only in Sector South between August 1992 and May 1993; John McElligott, 26 May 2006, T. 4616-4617, 30 May 2006, T. 4731-4732. UNCIVPOL reported that the Benkovac police had reported between 11 and 17 Croats murdered and one woman raped “in the previous week”, Ex. 729, Daily Situation Report from UNCIVPOL HQ Sector South, dated 22 February 1993. Concerning evidence of rape, *see also* Marica Vuković, 22 Mar 2006, T. 2453-2454. Ex. 743, reporting on the killing of an elderly Croat woman in Luka-Drage. Ex. 744, reporting on robbery and assault of Ivica Begić aged 69 by four men in “military uniforms”, shooting of Kata Begić and murder of Ana Vracar, all being Croats living in Podlapača, Titova Korenica on 12 July 1993, and the shooting of Milka Bilusic on 16 Jun 1993 in Ljubotić by four men “dressed in uniforms of soldiers”, as well as the beating and murder of Marija Sarić from Lukar Drage by “Serbian soldiers” on 7 June 1991. *See also* MM-117, 13 Oct 2006, T. 9358.

<sup>1019</sup> *See also* Ex. 729, Ex. 743, reporting that “Captain Dragan’s soldiers” harassed an elderly Croat near Bruška.

<sup>1020</sup> Ex. 743, UNCIVPOL Report for Sector South for June and July 1993, dated July 1993.

<sup>1021</sup> Vlado Vuković, 27 Mar 2006, T. 2675-2676.

<sup>1022</sup> Marica Vuković, 22 Mar 2006, T. 2451. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, p. 17; Ex. 1044.

<sup>1023</sup> Josip Josipović, 6 Apr 2006, T. 3325-3326.

<sup>1024</sup> Stanko Erstić, Ex. 392, T. 24974.

<sup>1025</sup> Ex. 200; Ex. 201; Ex. 202; Ex. 979. *See also* Milan Babić, 16 Feb 2006, T. 1415-1416, (testifying that Slobodan Milošević endorsed a “firm type of federation” along with the preservation of the right of self-determination of people who were in majority in an area), T. 1488-1489, 15 Feb 2006, T. 1384-1385, 2 Mar 2006, T. 1781, 3 Mar 2006, T. 1925; Lazar Macura, 14 Sep 2006, T. 8326-8327. In this respect, the Trial Chamber recalls the evidence concerning the referendum held on 12 May 1991, *see supra* para. 134.

Slobodan Milošević covertly intended the creation of a Serb state.<sup>1026</sup> Milan Babić testified that Slobodan Milošević intended the creation of such a Serb state through the establishment of paramilitary forces and the provocation of incidents in order to allow for JNA intervention, initially with the aim to separate the warring parties but subsequently in order to secure territories envisaged to be part of a future Serb state.<sup>1027</sup> In Milan Babić's view, Slobodan Milošević advocated this political objective from the summer of 1990 until the end of 1991.<sup>1028</sup>

330. Through the summer of 1991, the objective of the JNA was to protect the Serbs against attacks by Croatian armed formations and prevent occupation of cities under Serb control.<sup>1029</sup> At the end of the summer 1991 and coinciding with the attack on Kijevo, the JNA became an active participant in Croatia on the side of the SAO Krajina. According to the SFRY Federal Secretary for Defence, General Veljko Kadijević, the task of the JNA became one of protecting "the Serb people in Croatia in such a way that all regions with a majority Serb population would be completely freed from the presence of the Croatian army and the Croatian authorities".<sup>1030</sup> Veljko Kadijević also noted that among "the principal ideas" behind the deployment of the JNA during the second phase was "full co-ordination with Serb insurgents in the Serbian Krajina".<sup>1031</sup>

331. On 3 October 1991, Veljko Kadijević stated that the objective of the JNA in the conflict was "to restore control in crisis areas, to protect the Serbian population from persecution and annihilation".<sup>1032</sup> On 12 October 1991, General Blagoje Adžić, Chief of the General Staff of the JNA, stated that the main task of the JNA was to prevent "the spread of interethnic conflicts and the recurrence of genocide against the Serbian people in Croatia."<sup>1033</sup> On 25 October 1991, at a meeting of, among others, Slobodan Milošević, Veljko Kadijević and Blagoje Adžić, Slobodan Milošević stated that "we have helped [the Serbs in Croatia] abundantly and [we] will continue to do so until the end".<sup>1034</sup>

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<sup>1026</sup> Ex. 201; Milan Babić, 16 Feb 2006, T. 1415-1416, 21 Feb 2006, T. 1672; Witness MM-117, 16 Oct 2006, T. 9491-9497; Mile Dakić, 25 Oct 2006, T. 10025-10026; Ex. 1039, Group 13, pp 4-8.

<sup>1027</sup> Milan Babić, 16 Feb 2006, T. 1416, 17 Feb 2006, T. 1572-1574.

<sup>1028</sup> Milan Babić, 2 Mar 2006, T. 1806.

<sup>1029</sup> Milan Babić, 17 Feb 2006, T. 1503-1506; Ex. 476, ERN: 03023105, noting that at a meeting on 4 April 1991, Slobodan Milošević, Veljko Kadijević, Blagoje Adžić and Borisav Jović agreed that "the military will not allow the Croatian police to occupy Knin and other Serb cities which are now under Serb control". Slobodan Perić, a lieutenant colonel in the 5<sup>th</sup> JNA Military District in Zagreb, testified that at his "operational level" he did not have the impression that the strategic goal of the JNA was to prepare the Serbs for a war against Croatia or that the JNA was "tasked with preparing the Serb people for their own defence", Slobodan Perić, 7 Sep 2006, T. 7913. However, the Trial Chamber is of the view that at his operational level, Slobodan Perić would not have been aware of the specific strategic goal. *See also* Ex. 24, p. 68, ERN: 00362704; Ex. 26.

<sup>1030</sup> Ex. 24, p. 73, ERN: 00362709. *See also* Ex. 27, p. 3.

<sup>1031</sup> Ex. 24, pp 73-74, 77, ERN: 00362709-00362710, 00362713. *See also* Ex. 214; Ex. 477; Ex. 973.

<sup>1032</sup> Ex. 25, p. 3.

<sup>1033</sup> Ex. 26.

<sup>1034</sup> Ex. 476, p. 358, ERN: 03023174.

332. Several witnesses explained that the JNA's role changed because Croatia considered the JNA a hostile army and in September 1991 had ordered the ZNG and police to block and seize JNA facilities across Croatia in order to immobilise the JNA.<sup>1035</sup> According to some witnesses, the JNA therefore intervened only to defend itself.<sup>1036</sup>

333. The SAO Krajina, and subsequently the RSK, leadership endorsed Slobodan Milošević's vision to create a Serb-dominated state.<sup>1037</sup> In early July 1991, Milan Martić stated that the *Milicija Krajine* were "defending Serbian land and the Serbs' ethnic area".<sup>1038</sup> Similarly, on 19 August 1991 Milan Martić stated that he would accept no autonomy and that "the territories controlled by the police and the Territorial Defence of the Serbian Autonomous Region of Krajina will forever remain Serbian".<sup>1039</sup> Milan Babić embraced the same view, stating on 5 September 1991 that "the Serbs are recognised in every part of Yugoslav State territory as a nation, which they will continue to be [w]ithin the part of the state that remains as a whole following the secession of the former Socialist Republic of Croatia's real territory and all Slovenia."<sup>1040</sup> On 12 December 1991, Milan Martić stated that "nobody [...] has the right to deny the Serbian people the right to live in their own country".<sup>1041</sup>

334. On 14 May 1992, Mile Pašpalj, the President of the RSK Parliament, expressed the need to establish "the state of Serbian Krajina" in order to survive.<sup>1042</sup> On 3 July 1992, Milan Martić criticised the presidents of the Banija and Kordun municipal assemblies for their decision to form autonomous districts because the RSK had "paid in blood the corridor we won and [linked] up Serbian territories".<sup>1043</sup> At a meeting on 14 June 1993 with Cedric Thornberry, the UNPROFOR Director of Civil Affairs, Milan Martić stated that the "joint life of Croats and Serbs in one State is

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<sup>1035</sup> Milan Babić, 17 Feb 2006, T. 1563, 3 Mar 2006, T. 1887, 1898; Radoslav Maksić, 7 Feb 2006, T. 1222; Slobodan Perić, 6 Sep 2006, T. 7871, 7 Sep 2006, T. 7922; Milan Dragišić, 19 Sep 2006, T. 8657; Borislav Đukić, 18 Oct 2006, T. 9694-9695, 20 Oct 2006, T. 9846-9847, 9850; Imra Agotić, Ex. 398, T. 23266; Ex. 238, p. 110.

<sup>1036</sup> Slobodan Perić, 7 Sep 2006, T. 7923-7924, 7926-7928; Milan Dragišić, 19 Sep 2006, T. 8601.

<sup>1037</sup> Veljko Džakula, 16 Jan 2006, T. 404-405, testifying that during 1991 and 1992, Milan Martić worked for the "recognition and joining the association of Serb lands, Republika Srpska, and Serbia"; Milan Babić, 16 Feb 2006, T. 1476-1477, 2 Mar 2006, T. 1830-1832; Ante Marinović, 23 Mar 2006, T. 2474; Witness MM-078, 25 May 2006, T. 4498; Witness MM-117, 16 Oct 2006, T. 9491-9496; Mile Dakić, 25 Oct 2006, T. 10025; Ex. 201, p. 3; Ex. 213; Ex. 474, p. 4; Ex. 912. According to the Constitutional Law of the SAO Krajina "[the SAO Krajina] shall represent a form of political and territorial autonomy within the Federative Yugoslavia [...]", see Ex. 151, Art. 1. Moreover, the header or the stamp of several official SAO Krajina documents in evidence show that the SAO Krajina was considered to form part of the SFRY, see e.g. Ex. 34; Ex. 35; Ex. 3; Ex. 42; Ex. 188; Ex. 190; Ex. 467. The Law on Defence of the RSK, adopted 23 March 1992, also provided that the RSK armed forces were a "composite part" of the armed forces of the SFRY, Ex. 6, p. 123.

<sup>1038</sup> Ex. 498, p. 4. See also Ex. 205; Ex. 973; Ex. 975; Milan Babić, 17 Feb 2006, T. 1518; Witness MM-117, 17 Oct 2006, T. 9586-9587.

<sup>1039</sup> Ex. 215.

<sup>1040</sup> Ex. 236, p. 5.

<sup>1041</sup> Ex. 518, p. 3.

<sup>1042</sup> Ex. 750, p. 2. See also Slobodan Jarčević, 14 Jul 2006, T. 6292-6293; Ex. 861; Ex. 862.

<sup>1043</sup> Ex. 77, p. 3. See also Slobodan Jarčević, 13 Jul 2006, T. 6192-6194.

impossible because of genocide politic [*sic*] of Croatia. We want to separate in 2 states [...] I am convinced that we will be good neighbors as separate states.”<sup>1044</sup>

335. Efforts to unify the Croatian Krajina and the Bosnian Krajina continued throughout 1992 until 1995. The evidence shows that the RSK leadership sought an alliance, and eventually unification, with the RS in BiH and that Milan Martić was in favour of such unification.<sup>1045</sup> A letter dated 3 April 1993 from, *inter alia*, Milan Martić as Minister of the Interior to the Assembly of the RS, written on behalf of “the Serbs from the RSK”, advocates a joinder of the “two Serbian states as the first stage in the establishment of a state of all Serbs”.<sup>1046</sup> Moreover, in this regard, the Trial Chamber recalls the evidence concerning operation *Koridor 92*.<sup>1047</sup>

336. On 21 January 1994, during the election campaign for the RSK presidential elections, Milan Martić stated that he would “speed up the process of unification” and “pass on the baton to our all Serbian leader Slobodan Milošević.”<sup>1048</sup>

#### **J. Milan Martić’s knowledge of and reactions to crimes committed**

337. Several witnesses testified that in his capacity as Minister of the Interior, Milan Martić was *de jure* and *de facto* in control of the SAO Krajina and RSK police from 1991 through 1993.<sup>1049</sup> As Minister of the Interior, Milan Martić was kept informed concerning the activities of the SJBs and maintained “excellent communications” with the units subordinated to the MUP.<sup>1050</sup> The evidence shows that information concerning military activities during the autumn of 1991 was sent to Milan Martić.<sup>1051</sup> Moreover, information regarding crimes committed in the SAO Krajina and the RSK

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<sup>1044</sup> Ex. 965, p. 5.

<sup>1045</sup> Veljko Džakula, 17 Jan 2006, T. 436; Rade Rašeta, 2 May 2006, T. 3925-3926, T. 3961-3962, testifying that in the summer of 1994 Radovan Karadžić met in Knin with the RSK leadership about the ways in which the RSK and the RS could come closer on political and military levels in view of possible future unification; Ex. 6, p. 168 describing the Prijedor Declaration of 31 October 1992; Ex. 110, paras 4-5; Ex. 475; Ex. 656, p. 3; Ex. 660; Ex. 868, p. 3.

<sup>1046</sup> Ex. 976. The other signatories of the letter are the RSK General Staff Commander Mile Novaković, the Minister of Defence Stojan Španović, and the Chief of Staff of the RSK General Staff Borislav Đukić.

<sup>1047</sup> See *supra* paras 154, 160.

<sup>1048</sup> Ex. 14, p. 1; Ex. 660. See also Milan Babić, 16 Feb 2006, T. 1475-1476; Ex. 504; Ex. 868, p. 3, in which, in July 1994, Goran Hadžić, President of the RSK, stated that: “[o]ur aim is well known, and this is a unified Serbian state”.

<sup>1049</sup> Veljko Džakula, 16 Jan 2006, T. 400-403, also testifying that Milan Martić was “a person who had authority, who was obeyed, whose orders were complied with” and that “if someone failed to comply with an order of his, he could be quite rough. He could be angry. He could threaten that they would be replaced”; Stevo Plejo, 20 Sep 2006, T. 8702-8703, 21 Sep 2006, T. 8797-8798, see also Aernout van Lynden, 2 Jun 2006, T. 5017-5018; Nikola Medaković, 9 Oct 2006, T. 8965-8966, 8968; Mile Dakić, 25 Oct 2006, T. 10023. See also Milan Babić, 15 Feb 2006, T. 1407, Ex. 1028, ERN: L0079770, p. 24; Stevo Plejo, 20 Sep 2006, T. 8703; Ex. 44. On 23 August 1993, Milan Martić suspended the work of the RSK SDB, pending restructuring of the SDB, because “the political and security situation has deteriorated and the work of certain ministry departments has been blocked”, Ex. 525.

<sup>1050</sup> Radoslav Maksić, 6 Feb 2006, T. 1177-1178. See also Witness MM-003, 8 Mar 2006, T. 1979-1981, testifying about meetings with chiefs of SJBs.

<sup>1051</sup> Ex. 957, dated 1 to 2 September 1991, provides that information had been received from, *inter alia*, Kistanje, Plaški, Gračac, Glina, Kostajnica, and Dubica Štica, concerning fighting and “mopping up” activities. It is unclear in which capacity Milan Martić received this information, Minister of the Interior or Deputy Commander of the TO. See also Radoslav Maksić, 6 Feb 2006, T. 1177, testifying that the TO sent reports to the MUP.

was regularly reported to Milan Martić. In particular, police inspectors, who carried out investigations into crimes on the ground, reported to the MUP and Milan Martić during the time period of 1991 to 1995 pursuant to reporting regulations.<sup>1052</sup> Defence witness Slobodan Jarčević, who was the Foreign Minister of the RSK from October 1992 until April 1994, testified that crimes committed in the territory of the RSK, including those charged in the Indictment against Milan Martić, were discussed at government sessions.<sup>1053</sup> The evidence also shows that there were numerous contacts between UNPROFOR and the RSK government, including the SJBs, regarding crimes committed on the ground by members of the MUP.<sup>1054</sup>

338. There is evidence that Milan Martić stressed that the police should act in accordance with the law and that the police should never differentiate between citizens based on ethnic political, religious, or other affiliation.<sup>1055</sup> Moreover, the evidence shows that Milan Martić in some cases took measures to address the criminal behaviour of members of the MUP and of other units.<sup>1056</sup> At some point during 1991, there was an incident where Croat prisoners were mistreated by “a

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<sup>1052</sup> Witness MM-096, 25 Aug 2006, T. 7188-7189. Pursuant to an SFRY Regulation of 1974, the SJBs had a reporting obligation to the SUP and to the MUP, and these obligations were complied with. On 20 May 1992, this regulation was superseded by the “Mandatory Instruction on Implementation and Information in Internal Affairs Organs in the Republic of Serbian Krajina”, which was issued by Milan Martić in his capacity as Minister of the Interior, Ex. 893, Witness MM-096, 23 Aug 2006, T. 6971-6974. Pursuant to this very detailed Instruction (item 9), “[t]he internal affairs organ shall urgently inform the [MUP] about all important incidents and trends, and measures undertaken”. Moreover, the MUP’s “permanent duty service” was under an obligation to “compile daily information about incidents, trends and measures undertaken” (item 11), regarding the permanent duty service, *see also* Witness MM-096, 25 Aug 2006, T. 7172-7173. If a report contained information concerning two or more casualties, the SJB would not only report to the SUP but would immediately inform also the MUP in Knin, Witness MM-096, 25 Aug 2006, T. 7171-7172.

<sup>1053</sup> Slobodan Jarčević, 13 Jul 2006, T. 6209-6210, also testifying that in his capacity as Foreign Minister, he sent a letter to the UN Security Council wherein he attempted to explain the situation attending those crimes. Moreover, Slobodan Jarčević testified that the RSK government “did not take any steps against the members of any other nation or ethnic group”, Slobodan Jarčević, 13 Jul 2006, T. 6212. In his view, it was difficult for the RSK government to protect the Croats who remained in the RSK because many of the crimes were committed out of revenge for losing family members, Slobodan Jarčević, 13 Jul 2006, T. 6209.

<sup>1054</sup> Witness MM-096, 25 Aug 2006, T. 7185. On 24 August 1992, Cedric Thornberry, the Director for Civil Affairs of UNPROFOR, sent a letter to the RSK Ilija Prijić concerning crimes in the Vrlika area committed by the police, requesting the policemen who were engaging in such crimes be removed from the force, Ex. 734. *See also* Ex. 733; Ex. 735; Ex. 736; Ex. 737; Ex. 739; Ex. 740. Milan Martić issued instructions regulating in detail the mode of cooperation with UNPROFOR and UNCIVPOL, according to which all organs of the RSK MUP should be at the disposal of UNCIVPOL, which was permitted to observe at the SJBs and to act in response to complaints by RSK citizens, Witness MM-117, 18 Oct 2006, T. 9647-9649. The Trial Chamber notes that in the Secretary-General’s report of 28 September 1992, it was reported that “the overall failure to cooperate with UNPROFOR has undermined UNPROFOR’s ability to fulfil its police monitoring functions, Ex. 75, para. 17 (*see also* para. 18). Charles Kirudja testified about interference by RSK authorities with UNPROFOR’s mission, Charles Kirudja, 31 May 2006, T. 4828 (*see also* T. 4832-4833 regarding arrests of UNPROFOR members). *See also* Ex. 757.

<sup>1055</sup> Radoslav Maksić, 7 Feb 2006, T. 1231; Witness MM-096, 21 Aug 2006, T. 6845-6846; Witness MM-117, 13 Oct 2006, T. 9339, 9346, 17 Oct 2006, T. 9580-9582. There is evidence that in August 1991, Milan Martić was aware that prisoners were taken from Kijevo to the Knin SJB. On one occasion he told the police transferring prisoners to “[p]lease make sure that none of the people are harmed or killed”. When asked why, by police officer Bozo Ceko, Milan Martić answered “these people have to be exchanged. They are prisoners”, Dragan Knežević, 3 Nov 2006, T. 10674. The Trial Chamber also notes that some measures were taken by the JNA 9<sup>th</sup> Corps to prevent crimes, including to carry out investigations by military prosecutors, Borislav Đukić, 23 Oct 2006, T. 9920-9921. *See also* Ex. 27; Ex. 965, p. 5.

<sup>1056</sup> Witness MM-003, 8 Mar 2006, T. 2025, testifying that Milan Martić was informed that looting was perpetrated by the police in areas where fighting had occurred and that he disapproved of this and changed the commanders of the police in the villages “where there were major problems and where he had indications of things like that going on”.

commanding officer” at the training camp in Golubić wherefore Captain Dragan Vasiljković requested Milan Martić take measures.<sup>1057</sup> Milan Martić expelled the commanding officer, but eventually this person was allowed to stay on at Golubić.<sup>1058</sup> In November 1991, an attempt was made by Veljko Radunović and Mile Mišljenović to secede, *inter alia*, Hrvatska Dubica from the Hrvatska Kostajnica municipality and annex it to Bosanska Dubica.<sup>1059</sup> The evidence shows that Milan Martić visited the area after the president of the Hrvatska Kostajnica municipality had requested assistance and that Milan Martić disbanded Veljko Radunović’s police unit and replaced it with a military police unit of the JNA Banja Luka Corps.<sup>1060</sup> In January 1992, SJBs were set up in Hrvatska Kostajnica and Šaš, after which some of the renegade groups were imprisoned or entered the legal formations of the SAO Krajina.<sup>1061</sup> However, the Trial Chamber also heard evidence that after a certain period the JNA unit was expelled and the previously disbanded unit was re-installed.<sup>1062</sup>

339. On 19 February 1992, Milan Martić ordered the disbandment of an RSK MUP Special Purpose unit commanded by Predrag Baklajić due to information that this unit had been involved in criminal activities, including several murders, and incidents of robbery, theft and destruction.<sup>1063</sup> This disbandment was ultimately not carried through and the unit continued with criminal activities in 1992.<sup>1064</sup> On 1 April 1993, Milan Martić requested the MUP of Serbia to provide 20-30 inspectors to deal with homicides and property offences which were “rapidly increasing recently in the RSK”.<sup>1065</sup> On 7 September 1993, Milan Martić ordered the arrest of members of certain paramilitary groups, who were suspected of committing organised crimes.<sup>1066</sup> There is evidence that the unit Arkan’s Tigers, under the command of Željko “Arkan” Raznjatović, left the territory of the RSK in 1993 after an order had been issued by the SVK commander Mile Novaković and Milan

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<sup>1057</sup> Stevo Plejo, 20 Sep 2006, T. 8702.

<sup>1058</sup> Stevo Plejo, 20 Sep 2006, T. 8702-8703, 21 Sep 2006, T. 8796-8798.

<sup>1059</sup> Witness MM-022, 20 Mar 2006, T. 2315-2317, 2352-2353.

<sup>1060</sup> Witness MM-022, 20 Mar 2006, T. 2316-2318, 2352-2353; Josip Josipović, 6 Apr 2006, T. 3322; Nikola Dobrijević, 10 Nov 2006, T. 10890-10901, 10895-10896. *See also* Ex. 290, p. 2, stating that the “local Chetniks”, including Momčilo Kovačević and Stevo Radun, controlled the area, and were in conflict with “Martić’s men”; Ex. 600, indicating that in September 1991 Stevan Borojević requested that he and his unit remain under the command of Milan Martić; Ex. 601, indicating that on 13 January 1992 Stevan Borojević was under the command of Milan Martić; Ex. 602. *See further* Nikola Dobrijević, 13 Nov 2006, T. 10983-10985, 10112-10113.

<sup>1061</sup> Nikola Dobrijević, 10 Nov 2006, T. 10889-10890, 10892-10893, 10896-10897, 13 Nov 2006, T. 10943, 10989.

<sup>1062</sup> Josip Josipović, 6 Apr 2006, T. 3322.

<sup>1063</sup> Ex. 43; Ex. 563; Ex. 566, providing that the arrest, in February 1992, of the leaders and several members of this unit only temporarily stopped its activities and that as a result of “inadequate judicial measures” and a “poor political situation in Krajina” this unit could resume its criminal activities. *See further* Ex. 561, which reports on murders in Dabar of seven civilians; Ex. 560, which provides that the “Minister of [the] Interior be informed about the content of this Information, since Baklajić refers to him as his order issuing authority and the only one he is subordinated to.”

<sup>1064</sup> Ex. 563.

<sup>1065</sup> Ex. 665.

<sup>1066</sup> Ex. 541. *See also* Witness MM-096, 22 Aug 2006, T. 6919, 25 Aug 2006, T. 7173-7174, testifying that sometime between 1993 and 1994 Milan Martić ordered that perpetrators of serious crimes, particularly murders, be arrested.



Martić as Minister of the Interior.<sup>1067</sup> Lastly, there is some evidence that criminal investigations were carried out and that perpetrators were brought to justice.<sup>1068</sup>

340. There is no further evidence that measures were taken to address the widespread criminal activities which the evidence shows occurred in the SAO Krajina and the RSK from 1991 through 1995.<sup>1069</sup> Rather, there is evidence which shows the contrary. After the attack on Struga, Captain Dragan Vasiljković arrested ten members of the TO in Dvor, who were allegedly responsible for killing several civilians. Subsequently, Milan Martić arrived in Dvor and ordered Captain Dragan Vasiljković to release the ten men, which he did.<sup>1070</sup>

341. Rade Rašeta testified that on one occasion Milan Martić told him that “he could not make himself hate Croats” and “whoever was saying that [he] was a nationalist and hated Croats was wrong”.<sup>1071</sup> Witness MM-003 testified that Milan Martić did not express hatred towards the Croat population, but rather that “[h]e hated the chequerboard emblem” and that “[h]e hated Tudjman most of all”.<sup>1072</sup> The Trial Chamber heard evidence that during the summer and autumn of 1991 Milan Martić instructed persons involved in humanitarian assistance to treat both Croat and Serb refugees arriving from Drniš equally.<sup>1073</sup> Slobodan Jarčević testified that Milan Martić “demonstrated the nobility of his character” by looking after refugees who arrived from BiH in 1994 despite the difficulties that the RSK was facing due to international sanctions.<sup>1074</sup> However, the Trial Chamber notes the evidence concerning the return of Croat refugees, which was a condition of the Vance Plan and which Milan Martić was clearly against and in fact obstructed.<sup>1075</sup>

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<sup>1067</sup> Witness MM-096, 22 Aug 2006, T. 6921-6922, 6925, 24 Aug 2006, T. 7038-7039. The Trial Chamber notes that there is no evidence that this unit was suspected of having committed crimes.

<sup>1068</sup> Witness MM-117, 13 Oct 2006, T. 9346-9347, 9351, concerning the murder of the Čengić family in 1992 near Knin, T. 9392-9393, concerning incidents in 1993, including murders, which may have been motivated by revenge by Serbs, and that the police identified several perpetrators and filed criminal reports for further judicial proceedings. Further, in relation to Milan Martić’s authority to take measures, *see* Ex. 38, Report to the SAO Krajina TO Staff, dated 6 August 1991, providing that Milan Martić issued a cease-fire order due to the visit of the SFRY Vice-President Branko Kostić; Ex. 40, reporting that Milan Martić issued an order to the Benkovac TO staff on 16 September 1991 re-subordinating TO members of the Benkovac TO to a unit of Lieutenant Colonel Živanović for lifting the blockade of the Zemunik airport; Ex. 521; Ex. 602, order of Milan Martić, dated 26 Nov 1991, that “all persons wearing camouflage uniforms who are not members of the SAO Krajina police [...] have to return the insignia of police members and report to the recruiting office in Kostajnica in order to join [JNA]”. *See also* Nikola Dobrijević, 13 Nov 2006, T. 11013.

<sup>1069</sup> *See supra* section III H. In this respect, the Trial Chamber recalls the testimony of Josip Josipović that neither Momčilo Kovačević nor Stevo Radunović were investigated or prosecuted concerning crimes committed in the Hrvatska Dubica area, Josip Josipović, 7 Apr 2006, T. 3373.

<sup>1070</sup> Aernout van Lynden, 2 Jun 2006, T. 5017-5019, 5038-5039; Ex. 587; Ex. 588. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 8-11; Ex. 1044.

<sup>1071</sup> Rade Rašeta, 2 May 2006, T. 3901. *See also* Charles Kirudja, 1 Jun 2006, T. 4961; Witness MM-096, 21 Aug 2006, T. 6846; Witness MM-090, 31 Aug 2006, T. 7482, 7522; Witness MM-117, 13 Oct 2006, T. 9336, 9339; Witness MM-105, 2 Nov 2006, T. 10623; Ex. 966, p. 1.

<sup>1072</sup> Witness MM-003, 9 Mar 2006, T. 2105-2106.

<sup>1073</sup> Ljubica Vujanić, 18 Sep 2006, T. 8499-8501. *See also* Ljubica Vujanić, 18 Sep 2006, T. 8498-8499.

<sup>1074</sup> Slobodan Jarčević, 12 Jul 2006, T. 6172-6173.

<sup>1075</sup> *See supra* para. 138. Milan Babić, 20 Feb 2006, T. 1645-1647, 1651-53, testifying that Milan Martić never stated that the right conditions existed for the return of refugees. *See also* Veljko Džakula, 16 Jan 2006, T. 405, 407, 17 Jan

342. The evidence shows that Milan Martić actively advocated and pursued the goal of creating an ethnically Serb state in spite of his awareness of the serious and widespread crimes, which were being perpetrated against the Croat and other non-Serb civilian population as a result of this policy. While the Trial Chamber notes the evidence presented above that Milan Martić did not personally express hatred towards Croats or other non-Serbs, and on one occasion instructed that Serb and Croat refugees be treated equally, this evidence does not serve to outweigh the substantial evidence of Milan Martić's conscious disregard for the fate of the Croat and other non-Serb population and persistent pursuance of the goal to create a Serb state.

## IV. RESPONSIBILITY OF MILAN MARTIĆ

### A. Findings on the crimes charged

#### 1. General requirements of Article 3 of the Statute

343. The Defence submitted that an armed rebellion organised by Croatian authorities existed in the territory of Croatia from 1990 to 1992 "when Yugoslavia *de facto* ceased to exist".<sup>1076</sup> It is alleged that this rebellion was aimed at achieving the independence of Croatia. The Defence claims that the federal authorities of the SFRY in Belgrade, including the Presidency, the federal Defence Ministry, the SSNO and the JNA lawfully acted with the aim to suppress this armed rebellion.<sup>1077</sup> The Defence further claims that the SAO Krajina leadership, the police and the TO had a duty to comply with the order and instructions of the federal authorities.<sup>1078</sup> The Prosecution submits that an armed conflict existed during the Indictment period and that the SAO Krajina leadership, including Milan Martić, directly participated in the armed conflict.<sup>1079</sup>

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2006, T. 410-411; John McElligott, 29 May 2006, T. 4707-4708; Charles Kirudja, 31 May 2006, T. 4881; Ex. 232; Ex. 761, a message concerning the expulsion of 5 Croats from Ličko Petrovo Selo, which was copied to Milan Martić but to which he never replied, Charles Kirudja, 31 May 2006, T. 4879-4881. However, according to Slobodan Jarčević Milan Martić was of the view that both Serbs and Croats should be allowed to return, Slobodan Jarčević, 14 Jul 2006, T. 6331, 6333. *See also* Witness MM-105, 2 Nov 2006, T. 10620-10621. The Trial Chamber notes Milan Martić's reaction to information received in June 1991 that Croat refugees in Šibenik from the Knin area had been beaten and harassed by the SAO Krajina police. As for the injuries, Milan Martić said "Well, they can injure themselves, inflict injuries on themselves and then show this and say that somebody had beaten them" and that Martić's Police beat no one without a reason. Moreover, Milan Martić said that he had "told [the refugees that] if they wanted to stay they could stay, but [they] had to respect the laws of the SAO Krajina", something which they rejected and therefore left, Witness MM-079, 3 Apr 2006, T. 3112-3113. Lastly, the Trial Chamber notes that on 23 November 1994 Charles Kirudja met with Slobodan Milošević and Milan Martić in Belgrade during which meeting Milan Martić was not amenable to letting humanitarian assistance go to the Muslim population in the Bihać pocket in BiH according to a plan devised by Charles Kirudja and Yasushi Akashi. Milan Martić had to be ordered by Slobodan Milošević to let the assistance go through, Charles Kirudja, 1 Jun 2006, T. 4897, 4962, 4965; Ex. 765. *See also* Ex. 85.

<sup>1076</sup> Defence Closing Statement, T. 11257-11258; T. 11264-11267

<sup>1077</sup> Defence Closing Statement, T. 11262-11268.

<sup>1078</sup> Defence Closing Statement, T. 11264-11267. In addition, the Defence submits that during the hostilities a violation of Article 3 of Additional Protocol II was carried out by foreign states, *see ibid.* at T. 11260-11262. The Trial Chamber does not find it necessary to consider this argument.

<sup>1079</sup> Prosecution Rebuttal, T. 11375-11378. *See also* Prosecution Final Trial Brief, paras 356-357.

344. Armed clashes erupted between Serbs and Croats from April 1991 in the territory of Croatia. The police and local people from both sides participated in the hostilities. Following these armed clashes, the JNA intervened to separate the sides by establishing buffer zones. From August 1991, the hostilities intensified with the direct involvement of the JNA and the Serb forces of the SAO Krajina. During the summer and autumn of 1991, numerous attacks were carried out on Croat majority villages by the JNA acting in coordination with the TO and the *Milicija Krajine*.<sup>1080</sup> The evidence further shows that throughout 1991, the SAO Krajina leadership, including Milan Martić, played an active role in the conflict. During the conduct of the hostilities, the SAO Krajina leadership requested and obtained military assistance from Serbia.<sup>1081</sup> The leadership participated in the establishment of a training camp, which was predominantly military in character where members of the *Milicija Krajine* were trained. These units subsequently directly participated in the hostilities.<sup>1082</sup> Furthermore, evidence shows that the leadership established the armed forces of the SAO Krajina, made up of the TO and the *Milicija Krajine*, and cooperated with the JNA in organising operations on the ground.<sup>1083</sup> During this period, Croatian authorities organised the Croatian army, *inter alia*, by forming a special military unit, the ZNG, which was employed in the hostilities.<sup>1084</sup>

345. From the end of 1991, several cease-fire agreements and agreements on the withdrawal of the JNA from Croatia were adopted.<sup>1085</sup> In particular, the Trial Chamber notes the adoption on 21 February 1992 of the UN Security Council Resolution 743 implementing the Vance Plan and establishing UNPROFOR in the UNPAs.<sup>1086</sup> However, the peace plan did not end the conflict, which continued in Croatia and also extended into northern BiH, and which continued through 1995 with several attacks and incursions from both sides.<sup>1087</sup>

346. The Trial Chamber finds that the crimes which Milan Martić is charged with were closely related to the conflict. In this regard, the Trial Chamber notes that the perpetrators of the crimes included members of the JNA, the TO and the *Milicija Krajine*, who were involved in the conduct of hostilities.

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<sup>1080</sup> See *supra* section III D.

<sup>1081</sup> See *supra* section III B 2.

<sup>1082</sup> See *supra* section III B 3; section III D.

<sup>1083</sup> The Trial Chamber notes that the SAO Krajina leadership had meetings with JNA commanders in order to plan operations on the ground. See, for example, *supra* para. 174, referring to a meeting between Milan Martić and Colonel Dusan Smiljanić, Chief of Security of the JNA 10<sup>th</sup> Zagreb Corps in relation to the take-over of the Kostajnica area.

<sup>1084</sup> The Trial Chamber notes that ZNG were found in areas such as Kijevo, Hrvatska Dubica, Saborsko and Škabrnja where attacks were carried out by the JNA and the Serb forces.

<sup>1085</sup> See *supra* para. 138.

<sup>1086</sup> See *supra* para. 150.

<sup>1087</sup> See *supra* paras 153-154, 158, 303-313, 327-328.

347. The Trial Chamber finds that a state of armed conflict existed in the relevant territories of Croatia and BiH during the time relevant to the crimes charged in the Indictment. The Defence's argument concerning an armed rebellion is therefore dismissed. Moreover, the Trial Chamber finds that the crimes charged were committed in the context of the armed conflict. Consequently, the Trial Chamber has jurisdiction over all crimes charged in the Indictment and general requirements of Article 3 of the Statute have been fully satisfied.

## 2. General requirements under Article 5 of the Statute

348. The Trial Chamber recalls its finding regarding the existence of an armed conflict and finds that crimes with which Milan Martić has been charged were linked geographically and temporally with the armed conflict.

349. From around June 1991 through December 1991, military operations and raids were carried out against predominantly Croat villages in the SAO Krajina, including by the *Milicija Krajine*, the JNA and the TO.<sup>1088</sup> The attacked villages included Potkonije, Vrpolje, Glina, Kijevo, Drniš, Hrvatska Kostajnica, Cerovljani, Hrvatska Dubica, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja, Nadin and Bruška. Villagers were left with no choice but to flee. During or immediately after the attacks, villagers who stayed behind were killed and beaten. Private and public property, including churches and schools, were destroyed and looted. Hundreds of Croat and other non-Serb civilians and members of Croatian armed forces and formations were captured during and after the attacks and were detained in Knin and other locations, where they were subjected to severe mistreatment.<sup>1089</sup> Moreover, grave discriminatory measures were taken against the Croat population throughout 1991.<sup>1090</sup>

350. There is evidence that there were unarmed or poorly armed Croatian protection forces in the villages of Lipovača, Poljanak and Bruška.<sup>1091</sup> The Trial Chamber considers that this does not alter the civilian nature of the attacked population.<sup>1092</sup> Croatian armed forces and formations, consisting of several hundred men, were present in Škabrnja and in Saborsko and fought against the JNA, the TO and the police forces of the SAO Krajina.<sup>1093</sup> However, considering the size of the civilian population in these areas, the Trial Chamber finds that the presence of Croatian armed forces and formations in the Škabrnja and Saborsko areas does not affect the civilian character of the attacked population.

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<sup>1088</sup> See *supra* section III D.

<sup>1089</sup> See *supra* section III D; section III E.

<sup>1090</sup> See *supra* paras 324-326.

<sup>1091</sup> See *supra* paras 201, 213, 266. There were ZNG and Croatian police forces in Hrvatska Dubica and the surrounding villages. However, they withdrew from the villages around 13 September 1991, see *supra* para. 177.

351. Acts of violence and intimidation against the Croat and other non-Serb population, including killings, beatings, robbery, theft, harassment and destruction of houses and Catholic churches, were prevalent in the RSK during the period between 1992 and 1995, and resulted in an exodus of the Croat and other non-Serb population from the territory of the RSK.<sup>1094</sup> The Trial Chamber also recalls the evidence regarding operation “*Koridor 92*”. As a result of this operation, the Posavina area was devastated, and many civilians, including Croats, were killed.<sup>1095</sup> There is also evidence that in July 1992, the RSK authorities cooperated with the authorities of Bosanski Novi, BiH, in the displacement of the non-Serb population from Bosanski Novi to Croatia and other countries.<sup>1096</sup>

352. The Trial Chamber finds that there was a widespread and systematic attack directed against the Croat and other non-Serb civilian population in the relevant territories of Croatia and BiH during the time relevant to the crimes charged in the Indictment.

353. The evidence presented establishes beyond reasonable doubt that the perpetrators of the crimes charged in the Indictment knew about the attack on the civilian population and that their acts were part thereof.

3. Counts 1, 3 to 4, and 12 to 14 – Persecution, murder, destruction and plunder (Articles 3 and 5)

(a) Hrvatska Dubica<sup>1097</sup>

354. The Trial Chamber finds that the following 41 persons were detained in the fire station in Hrvatska Dubica on 20 October 1991 and intentionally killed the following day at Krečane near Baćin: Katarina Alavančić, Terezija Alavančić, Josip Antolović, Marija Batinović, Mara Ćorić, Mijo Ćović, Marija Delić, Ana Dikulić, Ruža Dikulić, Sofija Dikulić, Štjepan Dikulić, Antun Đukić, Marija Đukić, Antun Đurinović, Ana Ferić, Juraj Ferić, Kata Ferić, Filip Jukić, Marija Jukić, Jozo Karanović, Antun Krivajić, Reza Krivajić, Barbara Kropf, Pavao Kropf, Ivan Kulišić, Nikola Lončarić, Antun Mucavac, Ivo Pezo, Sofija Pezo, Anka Piktaja, Štjepan Sabljari, Veronika Stanković, Antun Švračić, Marija Švračić, Ana Tepić, Dušan Tepić, Ivan Trninić, Ivo Trninić, Kata Trninić, Terezija Trninić, and Katarina Vladić. The Trial Chamber finds that it has been proven beyond reasonable doubt that all victims were civilians and that they were taking no active part in the hostilities at the time of their deaths. Based on the evidence concerning the organised rounding up, detention and guarding of the civilians at the fire station by the *Milicija Krajine*, and the evidence that the victims were killed only one day subsequent to their detention, the Trial Chamber

<sup>1092</sup> Article 50 of Additional Protocol I; *Blaškić* Appeal Judgement, para. 115. *See supra* fn 95.

<sup>1093</sup> *See supra* paras 224 (regarding Saborsko), 236-237 (regarding Škabrnja).

<sup>1094</sup> *See supra* section III F; section III H 2-3.

<sup>1095</sup> *See supra* para. 154.

<sup>1096</sup> *See supra* para. 300.

considers it established beyond reasonable doubt that the *Milicija Krajine* was responsible for these killings. The Trial Chamber finds that all the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

355. The Trial Chamber heard evidence that between mid-September 1991 and mid-October 1991, approximately ten Croat or mixed ethnicity houses were destroyed in Hrvatska Dubica.<sup>1098</sup> There is evidence that “reservists” were involved in these acts. The Trial Chamber notes in particular that by mid-September 1991 there were only some 60 mainly elderly people remaining in the village and considers that this destruction was not justified by military necessity. However, the Trial Chamber considers that the destruction of 10 houses in a village of some 400 to 500 households gives rise to doubt as to whether this destruction can be considered as destruction on a large scale. The Trial Chamber therefore finds that the elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have not been met.

356. In relation to the destruction of the Catholic church in Hrvatska Dubica, the Trial Chamber considers that the evidence does not establish beyond reasonable doubt that it was destroyed before December 1991.<sup>1099</sup> For these reasons, the Trial Chamber concludes that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

357. The Trial Chamber heard evidence that the JNA, TO and *Milicija Krajine* took part in looting of Croat houses in Hrvatska Dubica from mid-September 1991 and stole cars, tractors, tools, machinery, furniture and cattle.<sup>1100</sup> The Trial Chamber finds that this intentional appropriation of property was carried out without lawful basis or legal justification. Furthermore, given the scale of the looting, the Trial Chamber finds that it resulted in grave consequences for the victims, having regard to the overall effect on the civilian population and the multitude of offences committed. The Trial Chamber finds that all the elements of the crime of plunder of public or private property (Count 14) have been established.

358. The Trial Chamber recalls that among the persons rounded up in the fire station in Hrvatska Dubica, the clear majority were Croats. The Trial Chamber notes that there were also Serbs among those rounded up. However, the evidence shows that three Serbs managed to leave the fire station and that seven Croats managed to leave the fire station after their Serb neighbours or friends had contacted the guards. The Trial Chamber finds that the killings of the above-mentioned 41 victims

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<sup>1097</sup> See *supra* section III D 2 (b).

<sup>1098</sup> See *supra* para. 180.

<sup>1099</sup> See *supra* para. 194.

<sup>1100</sup> See *supra* para. 180.

were carried out with intent to discriminate on the basis of Croat ethnicity. The elements of the crime of persecutions (Count 1) have therefore been met in relation to these killings.

(b) Cerovljani<sup>1101</sup>

359. The Trial Chamber finds that the following persons from Cerovljani were intentionally killed: Marija Antolović, Ana Blinja, Josip Blinja, Katarina Blinja, Nikola Blinja, Andrija Likić, Ana Lončar, Antun Lončar, and Kata Lončar (born 1906). The Trial Chamber recalls the manner in which the victims from Hrvatska Dubica were rounded up and detained in the fire station on 20 October 1991 and that they were subsequently killed on 21 October 1991 at Krečane near Baćin and buried in the mass grave at that location. Furthermore, the Trial Chamber recalls its finding that the *Milicija Krajine* was responsible for the killing of the victims detained in the fire station. The Trial Chamber considers that the rounding up, detention and killing of the above-named victims from Cerovljani is almost identical to the events in Hrvatska Dubica, including that most of the victims were buried at the mass grave in Krečane. It is therefore established beyond reasonable doubt that the above-mentioned victims from Cerovljani were killed on or around 20 or 21 October 1991 either by the *Milicija Krajine*, or units of the JNA or the TO, or a combination of some of them that the Trial Chamber has found were present in the area at this time. The Trial Chamber considers it proven beyond reasonable doubt that these victims were civilians and that they were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber therefore concludes that all the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

360. The Trial Chamber finds that on 13, 21 and 24 September 1991, armed Serbs from Živaja under the command of Nikola Begović burnt 10 houses in Cerovljani.<sup>1102</sup> The Trial Chamber finds that in a small village of some 500 people, the destruction of 10 houses must be regarded as destruction on a large scale. The Trial Chamber finds that there is evidence that this destruction was not carried out for reasons of military necessity. In this regard, the Trial Chamber notes in particular the evidence that only elderly persons remained in Cerovljani and that the armed Serbs came on three separate occasions. Finally, the intent of the perpetrators may be inferred from the repeated and deliberate nature of the attacks, as well as from the absence of any military necessity. The Trial Chamber therefore finds that the elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have been met.

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<sup>1101</sup> See *supra* section III D 2 (c).

<sup>1102</sup> See *supra* para. 187.

361. The Trial Chamber finds that on 24 September 1991 the same armed Serbs damaged the Catholic church in Cerovljani.<sup>1103</sup> The Trial Chamber finds that it has been proven that the church was not used for military purposes at the time it was damaged. The intent of the perpetrators to cause damage may be inferred from the fact that it occurred without any military necessity and as part of a series of repeated attacks targeting property in Cerovljani. The Trial Chamber therefore concludes that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have been met.

362. The Trial Chamber heard evidence that the car of Antun Blažević was stolen by the same armed Serbs mentioned above.<sup>1104</sup> Given the circumstances of this appropriation, the Trial Chamber considers that it was done without any lawful basis or legal justification. However, it is required that the property be of “sufficient monetary value” for its appropriation to involve grave consequences for the victim. While the Trial Chamber finds that a personal vehicle is an item of some value, the evidence is insufficient to establish that this particular appropriation resulted in grave consequences for the victim. The elements of the crime of plunder of public or private property under Article 3 (Count 14) have therefore not been met.

363. The Trial Chamber considers the totality of the evidence in relation to the events in Cerovljani in September and October 1991 to establish that the Croat civilian population and Croat property, including the Catholic church, were the objects of attack. In this respect, the Trial Chamber recalls the systematic and repeated incursions into the village by armed Serbs with resulting killings and destruction. Moreover, the Trial Chamber recalls that a Croat civilian, Kata Lončar, survived the occupation because she had connections with the Serbs.<sup>1105</sup> The Trial Chamber therefore finds it established beyond reasonable doubt that the killings of the ten victims referred to above were carried out with intent to discriminate on the basis of Croat ethnicity. Moreover, the Trial Chamber considers the evidence to establish beyond reasonable doubt that the destruction of private houses and of the Catholic church was carried out with the same discriminatory intent. The elements of the crime of persecutions (Count 1) have therefore been met in relation to the killings and the destruction in Cerovljani.

(c) Baćin and surroundings<sup>1106</sup>

364. The Trial Chamber recalls that Vera Jukić, Terezija Kramarić, Mijo Krnić, Marija Milašinović, Marija Šestić and Soka Volarević were exhumed from the mass grave at Krečane near

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<sup>1103</sup> *Ibid.*

<sup>1104</sup> *Ibid.*

<sup>1105</sup> *See supra* para. 188.

<sup>1106</sup> *See supra* section III D 2 (d).



Bačín, and that Nikola Barunović was exhumed from the mass grave at Višnjevački Bok, where Ivo Pezo, who had previously been detained at the fire station in Hrvatska Dubica, was also exhumed. On the basis of this evidence, the Trial Chamber considers it established beyond reasonable doubt that these seven victims were killed at or around the same time as the victims from Hrvatska Dubica and Cerovljani were killed. Moreover, the Trial Chamber considers it established beyond reasonable doubt that these victims were intentionally killed either by the *Milicija Krajine*, or units of the JNA or the TO, or a combination of some of them which the Trial Chamber has found were present in the area from mid-October 1991. The Trial Chamber finds it established beyond reasonable doubt that the victims were civilians and that they were taking no active part in the hostilities at the time of their deaths. The Trial Chamber concludes that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

365. The Trial Chamber finds that the following 21 persons from Bačín were intentionally killed around October 1991: Matija Barunović, Antun Bunjevac, Tomo Bunjevac, Antun Čorić, Barica Čorić, Josip Čorić, Josip Čorić, Vera Čorić, Nikola Felbabić, Grga Glavinić, Anka Josipović, Ankica Josipović, Ivan Josipović, Josip Karagić, Kata Lončar (born 1931), Štjepan Lončar, Antun Ordanić, Luka Ordanić, Antun Pavić, Matija Pavić and Nikola Vrpoljac.<sup>1107</sup> The Trial Chamber finds it established beyond reasonable doubt that the victims were civilians and that they were taking no active part in the hostilities at the time of their deaths. Based on the totality of the evidence, the Trial Chamber finds it established beyond reasonable doubt that the above-mentioned victims from Bačín were killed around October 1991 either by the *Milicija Krajine*, or units of the JNA or the TO, or a combination of some of them which the Trial Chamber has found were present in the area at this time. The Trial Chamber finds that the elements of crimes of murder as a crime against humanity (Count 3) and of murder as a violation of the laws or customs of war (Count 4) have been established.

366. In relation to the destruction of houses and the Catholic church in Bačín, it has not been proven beyond reasonable doubt that the destruction occurred before December 1991.<sup>1108</sup> For these reasons, the Trial Chamber concludes that the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12) and of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

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<sup>1107</sup> The Trial Chamber recalls that it will not consider the killing of Željko Abaza for a conviction, *see supra* fn 494. *See also supra* section I C.

<sup>1108</sup> *See supra* para. 195.

367. The Trial Chamber recalls that in 1991 the population in Baćin was 95% Croat and 1.5% Serb. Even making allowance for the possibility that there may have been a few Serbs among the 21 victims referred to above, this does not affect the Trial Chamber's assessment that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. With regard to the six victims exhumed from the mass graves in Krečane near Baćin and in Višnjevački Bok, the Trial Chamber recalls its findings regarding the killing of persons from Cerovljani and Hrvatska Dubica and finds that also these six killings were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore finds that all the elements of the crime of persecution (Count 1) have been met.

(d) Lipovača and neighbouring hamlets<sup>1109</sup>

368. The Trial Chamber recalls that Franjo Brozinčević, Marija Brozinčević, Mate Brozinčević, Mira Brozinčević Mirko Brozinčević, Roža Brozinčević and Katarina Cindrić were killed in Lipovača towards the end of October 1991. The evidence shows beyond reasonable doubt that the victims were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber recalls the warning given by the JNA to the inhabitants of Lipovača to beware of paramilitary forces who followed after the JNA. The Trial Chamber further recalls that after the departure of the JNA, paramilitary forces arrived in Lipovača and Nova Kršlja from mid-October and that after their arrival the dead bodies of the above-mentioned victims were discovered. The Trial Chamber therefore considers it established beyond reasonable doubt that these intentional killings were perpetrated by Serb paramilitary forces. The Trial Chamber concludes that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

369. The Trial Chamber heard evidence that at the end of September or early October 1991, the JNA arrived in Lipovača and fired its tanks at and damaged the Catholic church in Drežnik Grad nearby.<sup>1110</sup> The Trial Chamber has not been furnished with evidence that the church was not being used for military purposes at the time it was damaged. In this respect, the Trial Chamber notes that the Croatian police were also present in Drežnik Grad at the time. The Trial Chamber therefore concludes that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

370. The Trial Chamber recalls that in 1991 the population in Lipovača was 83% Croat and 16% Serb. Moreover, the Trial Chamber recalls the warning to the villagers by members of the JNA to

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<sup>1109</sup> See *supra* section III D 3 (b).

<sup>1110</sup> See *supra* para. 202.

beware of Serb paramilitary units who followed after the JNA and that such paramilitary units arrived after the JNA had left.<sup>1111</sup> The evidence shows that after their arrival, Mate Brozinčević, Roža Brozinčević, and Mirko Brozinčević, all Croats, were killed.<sup>1112</sup> The Trial Chamber finds the evidence to establish beyond reasonable doubt that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. Moreover, in light of the totality of the evidence, the Trial Chamber also finds that the killings of Franjo Brozinčević, Mira Brozinčević, Marija Brozinčević, and Katarina Cindrić were carried out with the same discriminatory intent. The Trial Chamber therefore finds that all the elements of the crime of persecution (Count 1) have been met.

(e) Vukovići and Poljanak<sup>1113</sup>

371. The Trial Chamber finds that Tomo Vuković was intentionally killed by unidentified armed Serbs in Vukovići on 8 October 1991. The Trial Chamber considers it proven beyond reasonable doubt that Tomo Vuković was a civilian and that he was not taking an active part in the hostilities at the time of his death.<sup>1114</sup> Moreover, the Trial Chamber finds that Joso Matovina, Nikola Matovina, Dane Vuković (son of Poldin), Dane Vuković (son of Mate), Lucija Vuković, Milka Vuković, Nikola “Šojka” Vuković (born 1926) and Vjekoslav Vuković were intentionally killed on 7 November 1991. The Trial Chamber finds that all victims were civilians and that none of them were taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that on 7 November 1991 there was a mixture of JNA soldiers, including members of a JNA special unit from Niš, as well as local armed men present in Vukovići. The Trial Chamber finds it proven beyond reasonable doubt that these groups of soldiers were responsible for the killings of these victims.

372. In relation to the killings in Poljanak, the Trial Chamber finds that Ivan Vuković and Nikola Vuković (born 1938) were intentionally killed on 7 November 1991. The Trial Chamber finds that these victims were civilians and that neither of them was taking an active part in the hostilities at the time of their deaths. The evidence shows beyond reasonable doubt that the killings were perpetrated by around 20 armed soldiers present in Poljanak on 7 November 1991, who wore camouflage and olive-green uniforms and some of whom had arrived from the direction of Vukovići just before the killing of Ivan Vuković and Nikola Vuković.

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<sup>1111</sup> *Ibid.*

<sup>1112</sup> *See supra* para. 207.

<sup>1113</sup> *See supra* section III D 3 (c).

<sup>1114</sup> The Trial Chamber notes in particular Ex. 376, pp 6-7 which provides that Tomo Vuković was killed as he tried to escape from his house which had been set on fire.

373. The Trial Chamber concludes that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the killings in Vukovići and Poljanak.

374. The Trial Chamber finds that at least three houses were destroyed in Vukovići as a result of the shelling on 8 October 1991 and that one or two further houses were burnt in Vukovići on 7 November 1991.<sup>1115</sup> The Trial Chamber finds beyond doubt that in a village consisting of some six or seven houses, the burning of four or five houses constitutes destruction on a large scale. The evidence is insufficient to identify the perpetrators of the destruction on 8 October 1991. With regard to the destruction on 7 November 1991, the Trial Chamber recalls its finding regarding the presence in Vukovići on this date of a large group of soldiers.<sup>1116</sup> The Trial Chamber concludes that the destruction was perpetrated by members of these units. The circumstances of the destruction on 7 November 1991 show beyond reasonable doubt that the destruction was not justified by military necessity and that the destruction was carried out intentionally. The Trial Chamber concludes that all the elements of the crimes of wanton destruction of villages or devastation of villages not justified by military necessity (Count 12) have been met.

375. With regard to Poljanak, the evidence establishes that several houses, sheds and cars were burnt on 7 November 1991 by the soldiers present in the village.<sup>1117</sup> The Trial Chamber considers that the evidence establishes beyond reasonable doubt that the destruction occurred on a large scale. The Trial Chamber is satisfied that the destruction was not carried out for reasons of military necessity and that it was perpetrated intentionally. The Trial Chamber therefore finds that the elements of destruction of villages or devastation not justified by military necessity (Count 12) have been met.

376. The Trial Chamber also heard evidence that some private property was looted in Poljanak.<sup>1118</sup> However, the Trial Chamber was not presented with evidence which would enable it to conclude that the property appropriated was of sufficient monetary value to involve grave consequences for the relevant victims. The Trial Chamber therefore finds that the elements of plunder of public or private property (Count 14) have not been met.

377. The Trial Chamber recalls that all victims from Vukovići and Poljanak were Croats. The Trial Chamber also recalls that one of the soldiers in Poljanak boasted that he slit the throats of

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<sup>1115</sup> See *supra* para. 214.

<sup>1116</sup> *Ibid.*

<sup>1117</sup> See *supra* para. 219.

<sup>1118</sup> *Ibid.*

Ustašas.<sup>1119</sup> The Trial Chamber finds that the above-mentioned killings in Vukovići and Poljanak were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore finds that all the elements of the crime of persecution (Count 1) have been met.

378. The Trial Chamber recalls that all the houses that were destroyed in Vukovići and Poljanak belonged to Croats. Moreover, the evidence shows that while burning houses in Poljanak the soldiers made comments, such as “Milošević built the house and Milošević is going to destroy it” and “what’s Tudman done for you? All you are going to get from him is a bullet in your head”.<sup>1120</sup> The Trial Chamber finds it established beyond reasonable doubt that the destruction in Vukovići and Poljanak was carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met.

(f) Saborsko<sup>1121</sup>

379. The Trial Chamber finds that 20 persons were intentionally killed in Saborsko on 12 November 1991: Ana Bičanić, Milan Bičanić, Nikola Bičanić, Petar Bičanić, Darko Dumenčić, Ivica Dumenčić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina (born 1920), Mate Matovina (born 1895), Milan Matovina, Slavko Sertić, Mate Špehar, Josip Štrk, Jure/Juraj Štrk, Ivan Vuković, Jeka/Jela Vuković, Jure Vuković (born 1929), Jure Vuković (born 1930), and Petar Vuković. With regard to the killings at Petar Bičanić’s house, the evidence establishes that the two perpetrators wore Serbian dark grey uniforms and helmets with a five pointed red star. The Trial Chamber finds that they were members of units present in Saborsko after the attack on 12 November 1991. With regard to the other twelve victims, the Trial Chamber finds it established beyond reasonable doubt that they were killed by members of units present in Saborsko after the attack on 12 November 1991. The evidence proves that the eight persons killed at Petar “Krtan” Bičanić’s house were civilians and that they were not taking an active part in the hostilities at the time of their deaths. Furthermore, the Trial Chamber concludes, based on the totality of the evidence, that Ana Bičanić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina, and Mate Matovina were civilians and that they were not taking an active part in the hostilities at the time of their deaths. With regard to Darko Dumenčić, Ivica Dumenčić, Milan Matovina, Slavko Sertić, Mate Špehar, Josip Štrk, and Petar Vuković, the Trial Chamber finds that the evidence is insufficient to establish beyond reasonable doubt whether they were civilians or taking no active part in the

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<sup>1119</sup> See *supra* para. 216.

<sup>1120</sup> See *supra* para. 219.

<sup>1121</sup> See *supra* Section III D 3.

hostilities at the time of their deaths.<sup>1122</sup> In conclusion, the Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the killings of the following 13 victims: Ana Bičanić, Milan Bičanić, Nikola Bičanić, Petar Bičanić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina, Mate Matovina, Jure Štrk, Ivan Vuković, Jela Vuković, Jure Vuković, and his half brother also named Jure Vuković.

380. The Trial Chamber finds that during the shellings of Saborsko from August 1991 until the attack on 12 November 1991, the church of St. John and civilian buildings and homes were damaged. The evidence shows that there was a significant armed presence in and around Saborsko during this time period and that from at least September 1991 until the fall of Saborsko on 12 November 1991 a Croatian MUP reserve force was deployed in the church of St. John, which was used as an observation post, machinegun nest and for ammunition storage.<sup>1123</sup> While the evidence establishes that the shelling of Saborsko was carried out from several directions, including from the direction of the JNA barracks at Lička Jasenica, it is insufficient to conclude which units were responsible for the shelling. The Trial Chamber further finds that both the church of St. John and the church of the Mother of God were hit during the attack on 12 November 1991. With regard to the latter church, the evidence establishes that it was used as a military observation post on 12 November 1991. The Trial Chamber therefore finds prior to the attack on 12 November 1991 the church of St. John was used for a military purpose and that during the attack on 12 November both churches were used for military purposes. The Prosecution has thus failed to meet its burden of proof in this respect. There is further evidence that the two churches were destroyed by mid-December 1991. However, the evidence is insufficient to establish who carried out this destruction. The Trial Chamber therefore finds that the elements of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

381. The Trial Chamber finds that after the attack on Saborsko, civilian houses and property were burnt on a large scale by the Serb forces which entered the village.<sup>1124</sup> The Trial Chamber finds that this burning was carried out deliberately and was not justified by military necessity, noting in particular the evidence that the attack had ceased at the time this destruction took place. Consequently, the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12) have been met.

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<sup>1122</sup> In this regard, the Trial Chamber has taken into account the evidence that 20 to 30 villagers were organised into armed patrols from June 1991 (*see supra* para. 221) and the range of the ages of the male victims referred to at the time of their death (between 19 and 59 years old).

<sup>1123</sup> *See supra* para. 224.

<sup>1124</sup> *See supra* para. 227.

382. The Trial Chamber heard evidence that Serb soldiers and policemen who participated in the attack looted shops and businesses and took tractors, cars and livestock.<sup>1125</sup> The Trial Chamber finds that this looting was done on a large scale, noting in particular the evidence that nearly every household in Saborsko had a tractor stolen.<sup>1126</sup> The Trial Chamber finds that this appropriation resulted in grave consequences for the victims, taking into account the overall effect on the civilian population and the multitude of offences committed. Furthermore, the evidence establishes that this appropriation was done intentionally and without lawful basis or legal justification. The elements of the crime of plunder of public or private property under Article 3 (Count 14) have therefore been met.

383. The Trial Chamber recalls that some of the soldiers present in Saborsko abused the inhabitants with profanities such as “Fuck your Ustasha mother” and that all Croat villagers should be slaughtered.<sup>1127</sup> The Trial Chamber further recalls that Saborsko was 93.9% Croat and 3.3% Serb.<sup>1128</sup> Even making allowance for the possibility that there may have been a few Serbs among the 13 victims referred to above, this does not affect the Trial Chamber’s overall assessment that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met.

384. The Trial Chamber recalls that the crime of wanton destruction of villages or devastation not justified by military necessity was committed. The evidence shows that houses were burnt in Tuk, Dumenčići, Solaje and Borik.<sup>1129</sup> The evidence further shows that Solaje was a Serb hamlet and that in Borik both Serb and Croat houses were burnt. Therefore, the Trial Chamber does not find it established beyond reasonable doubt that these acts of destruction were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have not been met.

(g) Vaganac

385. The Indictment charges that destruction and looting was committed in Vaganac, however the Trial Chamber has not been furnished with evidence supporting these charges. For these reasons, the Trial Chamber concludes that the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12), of the crime of destruction or

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<sup>1125</sup> *Ibid.*

<sup>1126</sup> *See supra* fn 632.

<sup>1127</sup> *See supra* para. 229.

<sup>1128</sup> *See supra* fn 592.

<sup>1129</sup> *See supra* para. 227.

wilful damage done to institutions dedicated to education or religion (Count 13) and of the crime of plunder of public or private property under Article 3 (Count 14) have not been met.

(h) Škabrnja<sup>1130</sup>

386. The Trial Chamber recalls that Josip Miljanić, Krsto Šegarić, Lucia Šegarić and Stana Vicković were killed at Slavko Šegarić's house in Ambar on 18 November 1991. The Trial Chamber finds that Krsto Šegarić was intentionally killed by Đuro Kosović, a local paramilitary soldier wearing a camouflage uniform with an SAO Krajina patch and who participated together with other SAO Krajina forces in the attack on Škabrnja. The Trial Chamber further finds that the evidence establishes beyond reasonable doubt that Josip Miljanić, Stana Vicković, and Lucia Šegarić were intentionally killed by other members of such paramilitary soldiers. The Trial Chamber finds that all four victims were civilians and that none of them were taking an active part in the hostilities at the time of their deaths. The Trial Chamber concludes that all of the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the above-mentioned killings.

387. The Trial Chamber finds that Jozo Brkić, Jozo Miljanić, Slavka Miljanić, Petar Pavičić, Mile Pavičić, Ilija Ražov, Kata "Soka" Rogić, Ivica Šegarić, Rade Šegarić and Vice Šegarić were intentionally killed outside Petar Pavičić's house in Škabrnja on 18 November 1991. The perpetrators of these killings were members of local paramilitary units, who participated, together with other SAO Krajina forces, in the attack on Škabrnja and who wore camouflage uniforms and different sorts of headgear. Mile Pavičić and Ivica Šegarić are listed in Annex I to the Indictment as civilian victims, however the evidence shows that both were members of the Croatian defence force in Škabrnja. The evidence shows that neither of them were taking an active part in the hostilities at the time of their deaths. The Trial Chamber concludes that the remainder of the victims were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the killings of Jozo Brkić, Jozo Miljanić, Slavka Miljanić, Petar Pavičić, Ilija Ražov, Kata "Soka" Rogić, Rade Šegarić, and Vice Šegarić. With regard to Mile Pavičić and Ivica Šegarić, the Trial Chamber finds that the elements of murder, as a violation of the laws or customs of war (Count 4), have been established.

388. The Trial Chamber finds that Novica Atelj, Stoja Brkić, Danka Brzoja, Ika Čirjak, Maša Čirjak, Marija Šestan and Jakov Šestan were intentionally killed at Pere Sopić's house in Nadin on 19 November 1991 by soldiers wearing JNA uniforms. The Trial Chamber finds that these victims

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<sup>1130</sup> See *supra* section III D 4.



were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for these killings.

389. The Trial Chamber finds that the following civilians were killed in Škabrnja, Nadin or Benkovac on 18 and 19 November 1991: Ivan Babić, Luka Bilaver, Marija Brkić (born 1943), Marko Brkić, Željko Ćurković, Marija Dražina, Ana Jurić, Grgo Jurić, Petar Jurić, Niko Pavičići, Josip Perica, Ljubo Perica, Ivan Ražov, Jela Ražov, Branko Rogić, Nikola Rogić, Petar Rogić, Kljajo Šegarić, Lucka/Luca Šegarić, Grgica “Maja” Šegarić, Mara Žilić, Milka Žilić, Pavica Žilić, Roko Žilić, Tadija Žilić and Marko Župan. The Trial Chamber further finds that these victims were taking no active part in the hostilities at the time of their deaths. The Trial Chamber finds that it has been proven beyond reasonable doubt that these victims, with the exception of Petar Rogić, were intentionally killed by members of the units, including JNA and TO units, which took part in the attack on Škabrnja and Nadin on 18 and 19 November 1991. With regard to Petar Rogić, the Trial Chamber finds that he was intentionally killed in Benkovac by unidentified perpetrators after having been taken from Škabrnja. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for these killings, except for the killing of Petar Rogić.

390. The Trial Chamber finds that the following members of the Croatian defence forces present in Škabrnja and Nadin were killed on 18 and 19 November 1991: Vladimir Horvat, Nediljko Jurić, Slavko Miljanić, Gašpar Perica, Ante Ražov, Marko Rogić, Bude Šegarić, Miljenko Šegarić, Šime Šegarić, Nediljko Škara and Stanko Vicković. The evidence as to cause of death establishes beyond doubt that Ante Ražov, Šime Šegarić and Miljenko Šegarić were not taking an active part in the hostilities at the time of their deaths. The evidence further establishes beyond reasonable doubt that Vladimir Horvat, Gašpar Perica, and Marko Rogić were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that it has been proven beyond reasonable doubt that these victims, with the exception of Šime Šegarić and Miljenko Šegarić, were intentionally killed by members of the units, including JNA and TO units, which took part in the attack on Škabrnja and Nadin on 18 and 19 November 1991. With regard to Miljenko Šegarić, the Trial Chamber finds that he was intentionally killed in Benkovac by unidentified perpetrators after having been taken from Škabrnja. With regard to Šime Šegarić, the evidence establishes beyond reasonable doubt that he was taking no active part in the hostilities when he was intentionally killed in Knin by unidentified perpetrators after having been put by paramilitary soldiers in a JNA APC in Škabrnja. With regard to Slavko Miljanić, Bude Šegarić, Nediljko Jurić, Nediljko Škara, and Stanko Vicković the evidence is insufficient to establish that at the time of their deaths they were taking no active part in the hostilities.

391. The Trial Chamber finds that the elements of murder as a violation of the laws or customs of war (Count 4) have been established for Ante Ražov, Vladimir Horvat, Gašpar Perica, Marko Rogić and Šime Šegarić, but not for Miljenko Šegarić.

392. The Trial Chamber finds that Marija Bilaver, Josipa Brkić, Mate Brkić and Kata Perica were killed in Škabrnja on 11 March 1992. Moreover, the Trial Chamber finds that the following persons were killed between 18 November 1991 and 11 March 1992: Grgo Bilaver, Peka Bilaver, Ana Brkić, Mijat Brkić, Jure Erlić, Dumica Gospić, Ljubomir Ivković, Nedelko Ivković, Tereza Ivković, Simica Jurjević, Mirko Kardum, Simo Ražov, Grgica Ražov, Marko Ražov, and Pera Škara. The Trial Chamber finds all of these victims, except Nedelko Ivković, were civilians and were taking no active part in the hostilities at the time of their deaths. The Trial Chamber finds that it has been proven beyond reasonable doubt that these victims were intentionally killed by members of the units that took part in the attack on Škabrnja and Nadin on 18 and 19 November 1991, or which were subsequently present in the area of Škabrnja following the attack and until March 1992. These units included JNA units, units from a TO brigade under JNA command, and paramilitary units. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established, except with regard to Nedelko Ivković, who the evidence establishes was a “Croat defender”. However, it has not been established beyond reasonable doubt that he was not taking an active part in the hostilities at the time of his death.

393. With regard to Kata Brkić (born 1935), Kata Brkić (born 1939), Marija Brkić (born 1906), Božo Stura, and Draginja Stura, the evidence is insufficient to conclude whether they were killed between 18 November 1991 and 11 March 1992. With regard to Nedelko Ivković, the evidence shows that he was a member of the Croatian defence forces and that he was killed on 19 November 1991. The evidence is insufficient to conclude that he was not taking active part in the hostilities at the time of his death. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have not been established for these killings.

394. The Trial Chamber recalls the evidence that there was intensive shelling in Škabrnja on the morning of the attack.<sup>1131</sup> Moreover, there is evidence that fire was opened on private houses by JNA tanks and using hand-held rocket launchers.<sup>1132</sup> The Trial Chamber recalls the evidence that members of Croatian forces were in some of the houses in Škabrnja.<sup>1133</sup> In the Trial Chamber’s

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<sup>1131</sup> See *supra* para. 239.

<sup>1132</sup> See *supra* para. 241.

<sup>1133</sup> See *supra* para. 240.

opinion, this gives rise to reasonable doubt as to whether the destruction resulting from these actions was carried out for the purposes of military necessity. The elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have therefore not been met.

395. There is evidence that during the attack, the church of the Assumption of the Virgin in the centre of Škabrnja was shot at by a JNA tank. Furthermore, several soldiers entered the church and fired their weapons.<sup>1134</sup> The Trial Chamber finds that the church of the Assumption of the Virgin was not used for military purposes at the time of this damage and furthermore that the circumstances surrounding this damage establishes the intent of the perpetrators to cause such damage. The Trial Chamber notes the evidence that on 18 November 1991 a JNA tank opened fire in the direction of the school in Škabrnja and that by 19 November 1991 the school had been destroyed. However, the Trial Chamber considers the evidence to be insufficient to show that the school was not being used for military purposes at the time it was damaged. The Trial Chamber finds that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have been met in relation to the church of the Assumption of the Virgin.

396. The Trial Chamber heard evidence that looting was committed in Škabrnja by soldiers under the command of the Benkovac TO, by Serb paramilitaries, and by local Serbs after the attack.<sup>1135</sup> However, the Trial Chamber was not presented with sufficient evidence as to the nature or scale of such looting in order to enable it to establish whether the property appropriated was of sufficient monetary value to result in grave consequences for the victims. The Trial Chamber therefore finds that the elements of the crime of plunder of public or private property (Count 14) have not been met.

397. The Indictment charges that destruction and looting was committed in Nadin, however the Trial Chamber has not been furnished with evidence supporting these charges. For these reasons, the Trial Chamber concludes that the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12), of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) and of the crime of plunder of public or private property under Article 3 (Count 14) have not been met.

398. The Trial Chamber recalls that the majority of the victims in Škabrnja and Nadin, referred to above, were of Croat ethnicity. The evidence shows that soldiers present in Škabrnja threatened villagers hiding in the basements, saying “Come out you Ustaše, we are going to slaughter you all”

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<sup>1134</sup> See *supra* para. 241.

<sup>1135</sup> See *supra* para. 263.

and that even women and children were being called “Ustašas” and were insulted by soldiers.<sup>1136</sup> The Trial Chamber further recalls that Škabrnja and Nadin were almost exclusively Croat villages.<sup>1137</sup> Even making allowance for the possibility that there may have been a few Serbs among the victims referred to above, this does not affect the Trial Chamber’s overall assessment that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met.

399. The Trial Chamber recalls that the church of the Assumption of the Virgin was destroyed and that it was not used for military purposes at the time of the destruction. The Trial Chamber recalls the manner in which the church was destroyed and concludes that this destruction was carried out with the same discriminatory intent as referred to above. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have been met.

(i) Bruška<sup>1138</sup>

400. The Trial Chamber finds that Sveto Drača, Dragan Marinović, Draginja Marinović, Dušan Marinović, Ika Marinović, Krsto Marinović, Manda Marinović, Petar Marinović, Roko Marinović and Stana Marinović were intentionally killed in Bruška on 21 December 1991 by the *Milicija Krajine*. The Trial Chamber considers that the JNA reports which indicate that these killings were carried out in revenge do not disturb this finding.<sup>1139</sup> With the exception of Sveto Drača, all victims were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for these victims.

401. With regard to Sveto Drača, the Trial Chamber concludes that he was a member of the JNA and that he was wearing an olive-drab uniform when he was killed. The Trial Chamber recalls that the JNA fought on the same side as the *Milicija Krajine*. For these reasons, the Trial Chamber concludes that the elements of the crime of murder as a violation of the laws or customs of war (Count 4) have not been met.

402. The evidence presented to the Trial Chamber is insufficient to establish when the destruction occurred in Bruška and who carried out this destruction.<sup>1140</sup> For these reasons, the Trial Chamber

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<sup>1136</sup> See *supra* para. 248.

<sup>1137</sup> See *supra* para. 235.

<sup>1138</sup> See *supra* section III D 5.

<sup>1139</sup> See *supra* para. 272.

<sup>1140</sup> See *supra* para. 273.

concludes that the elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have not been met.

403. The Trial Chamber recalls that prior to the above-mentioned killings in Bruška, armed men identifying themselves as “Martić’s men” or “Martić’s Militia” would come to Bruška daily to intimidate the inhabitants, calling them “Ustašas”, and telling them that Bruška would be a part of a Greater Serbia and that they should leave.<sup>1141</sup> The Trial Chamber further recalls that the victims, with the exception of Sveto Drača, were Croats. The Trial Chamber therefore finds it established beyond reasonable doubt that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have been met for all victims except Sveto Drača.

#### 4. Count 2 – Extermination

404. The Trial Chamber recalls that the crime of extermination does not require a minimum number of victims and that it may be established by an accumulation of separate and unrelated killings. However, the Trial Chamber stresses that it is nevertheless a requirement that the evidence supports a finding that the killings occurred on a large scale. In the present case, the Trial Chamber has examined the killing incidents charged under Count 2 and has, in particular, considered the evidence that the crimes were committed within a limited period of time and within a limited territory. Having considered these factors, as well as the totality of the evidence surrounding the killing incidents charged as extermination, the Trial Chamber finds that the evidence is insufficient to establish that the crime of extermination was committed on an accumulated basis. Thus, the element that the killings be committed on large scale has not been met.

405. The Prosecution has argued in the alternative that, should the Trial Chamber not find extermination on the basis of an accumulation of all the killings charged, the killings committed “at Baćin” would amount to extermination in and of themselves.<sup>1142</sup> The Trial Chamber understands this to refer to the killings carried out at Krečane near Baćin. The killings committed at Krečane were without doubt grave, particularly considering the organised and callous manner in which the evidence shows that they were carried out. However, the Trial Chamber cannot agree with the Prosecution. These killings, even taken together, cannot be considered as having been committed on a large scale. In other words, the killings at Krečane near Baćin do not meet the element of massiveness required for extermination.

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<sup>1141</sup> See *supra* para. 266.

<sup>1142</sup> Prosecution Final Trial Brief, para. 397.

406. In conclusion, the Trial Chamber finds that the elements of the crime of extermination as a crime against humanity (Count 2) have not been met.

5. Counts 1 and 5 to 9 – Detention-related crimes and persecution

(a) Detention facility at the JNA 9<sup>th</sup> Corps barracks in Knin<sup>1143</sup>

407. The Trial Chamber finds that between 75 and 200 persons were detained at several locations at the premises of the JNA 9<sup>th</sup> Corps barracks in Knin. Among the detainees were both Croat and other non-Serb civilians, and members of Croatian armed forces and formations. The Trial Chamber finds that the former category of detainees were deprived of their liberty without due process of law.

408. The Trial Chamber heard evidence of many instances of beatings and mistreatment of the detainees at the JNA 9<sup>th</sup> Corps barracks. The Trial Chamber finds, in light of all the circumstances in which beatings and mistreatment were carried out, that such acts caused serious physical and/or mental suffering to the detainees. The Trial Chamber further finds that in some instances the mistreatment was carried out intentionally for the prohibited purpose of intimidating the victims.<sup>1144</sup>

409. The Trial Chamber finds that the detainees at the JNA 9<sup>th</sup> Corps barracks were detained by the JNA. Moreover, while the evidence is insufficient to establish who carried out the beatings and the mistreatment at the premises of the JNA 9<sup>th</sup> Corps barracks, the Trial Chamber concludes that the beatings and mistreatment were carried out at locations under the control of the JNA.

410. The Trial Chamber finds that the elements of the crimes of imprisonment (Count 5), torture (Counts 6 and 8), other inhumane acts (Count 7), and cruel treatment (Count 9) have been met in relation to the civilian detainees at the JNA 9<sup>th</sup> Corps barracks, including Petar Gurlica and Jere Misković. With regard to the detainees who were not civilian, including Luka Brkić, Ante “Neno” Gurlica and Marin Gurlica, the Trial Chamber finds that the elements of the crimes of torture (Count 8) and cruel treatment (Count 9) have been established.

411. The Trial Chamber recalls that most of those imprisoned in the JNA barracks in Knin were not of Serb ethnicity. Moreover, the Trial Chamber recalls the discriminatory remarks of Ratko Mladić when he visited the sports hall at the JNA barracks premises and that he threatened the detainees, saying that their fate would be the same as that of the people from Škabrnja.<sup>1145</sup> Furthermore, the Trial Chamber recalls that the detainees were forced to take oaths “for the King

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<sup>1143</sup> See *supra* section III E 3 (a).

<sup>1144</sup> See *supra* para. 283.

<sup>1145</sup> *Ibid.*

and the fatherland, the Serbian fatherland”.<sup>1146</sup> The Trial Chamber finds the evidence to establish beyond reasonable doubt that the crimes of imprisonment, torture, inhumane acts, and cruel treatment were carried out with intent to discriminate on the basis of ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met in relation to the civilians who were detained at the JNA barracks.

(b) Detention facility at the old hospital in Knin<sup>1147</sup>

412. The Trial Chamber finds that from mid-1991 to mid-1992 between 120 and 300 persons were detained in the old hospital in Knin. Among the detainees were both Croats and other non-Serb civilians and members of Croatian armed forces and formations. The Trial Chamber finds that the majority of the former category of detainees were deprived of their liberty without due process of law. The Trial Chamber concludes that the elements of the crime of imprisonment under Count 5 have been met.

413. The Trial Chamber heard evidence of many instances of beatings and mistreatment of detainees at the old hospital.<sup>1148</sup> The Trial Chamber finds, in light of all the circumstances in which beatings and mistreatment were carried out, that such acts caused serious physical and/or mental suffering to the detainees. The Trial Chamber further finds that in some instances the mistreatment was carried out intentionally for the prohibited purposes of obtaining information and/or to discriminate against them because of their ethnicity.<sup>1149</sup>

414. The Trial Chamber finds that as of the summer of 1991, the detention facility at the old hospital in Knin was run by the Ministry of Justice of the SAO Krajina. The evidence establishes beyond reasonable doubt that the beatings, mistreatment and torture of the detainees was carried out, *inter alia*, by members of the MUP, referred to by witnesses as “Martić’s police”, wearing blue police uniforms, by the *Milicija Krajine* and by persons wearing camouflage uniforms.<sup>1150</sup> Moreover, the evidence shows beyond reasonable doubt that the leadership permitted civilians from outside the old hospital and Serb detainees to beat and mistreat the non-Serb detainees.

415. The Trial Chamber finds that the elements of the crimes of torture (Counts 6 and 8), other inhumane acts (Count 7), and cruel treatment (Count 9) have been met in relation to the civilian

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<sup>1146</sup> *Ibid.*

<sup>1147</sup> *See supra* section III E 3 (b).

<sup>1148</sup> *See supra* paras 288-289.

<sup>1149</sup> *See supra* para. 288.

<sup>1150</sup> In this respect, the Trial Chamber notes in particular the evidence that members of the *Milicija Krajine* brought Stanko Erstić to the old hospital, that members of “Martić’s Special Forces” carried out beatings, and that Milan Martić was present on one occasion wearing camouflage uniform with the *Milicija Krajine* patch on the sleeve, *see supra* para. 286.

detainees. With regard to the detainees who were not civilian, the Trial Chamber finds that the elements of the crimes of torture (Count 8) and cruel treatment (Count 9) have been met.

416. The Trial Chamber recalls that at the old hospital in Knin there were Croat and other non-Serb detainees. The evidence shows that detainees were insulted by the guards, saying that “the Croatian nation has to be destroyed” and that “all Croats have to be killed”.<sup>1151</sup> On one occasion, Vojislav Šešelj, from the Serbian Radical Party, visited the old hospital and asked the detainees “how many Serbian children they slaughtered, how many mothers”.<sup>1152</sup> The Trial Chamber finds the evidence to establish beyond reasonable doubt that the crimes of imprisonment, torture, inhumane acts, and cruel treatment were carried out with intent to discriminate on the basis of ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met in relation to the civilians who were detained at the old hospital in Knin.

(c) Detention facility at the SJB in Titova Korenica<sup>1153</sup>

417. The Trial Chamber heard evidence that the following persons were detained in the SJB in Titova Korenica for periods ranging between 10 days and 9 months: Vlado Vuković, Ignjac Ivanus, Nikola Pemper, Milan Pavlić, Perica Bićanić and Ivica Bićanić. The Trial Chamber recalls that they were all Croats. However, the Trial Chamber notes that Vlado Vuković and Ignjac Ivanus were Croatian policemen and that Perica Bićanić and Ivica Bićanić were members of the civilian protection force of Poljanak. Therefore, at the moment of their detention these persons did not hold the status of civilians, as opposed to Milan Pavlić, who the evidence shows was a civilian. The Trial Chamber has not received evidence as to whether Nikola Pemper was a civilian. Furthermore, the Trial Chamber has not received evidence that he was mistreated at the Titova Korenica SJB. With regard to the other the persons detained at the Titova Korenica SJB, the Trial Chamber finds that the evidence is insufficient to establish that they were civilians. With regard to Milan Pavlić, the Trial Chamber cannot establish beyond reasonable doubt he was detained without due process of law, and the Trial Chamber therefore finds that the elements of the crime of imprisonment (Count 5) have not been met.

418. The Trial Chamber heard evidence that while detained, Vlado Vuković was subjected to beatings and mistreatment, *inter alia*, by members of the MUP, who called themselves “Martić’s men”, and by persons in camouflage uniforms. The evidence shows that members of the *Milicija Krajine* were present during the beatings but did nothing to stop the beatings. Moreover, the Trial Chamber notes the evidence that Milan Pavlić and Perica Bićanić were severely mistreated. The

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<sup>1151</sup> See *supra* para. 288.

<sup>1152</sup> *Ibid.*



Trial Chamber finds, in light of all the circumstances in which the beatings and mistreatment were carried out, that they caused serious physical and/or mental suffering to the detainees. The Trial Chamber further finds that the mistreatment of Vlado Vuković was carried out intentionally for the prohibited purpose of intimidating him.<sup>1154</sup>

419. With regard to Milan Pavlić, the Trial Chamber finds that the elements of the crime of inhumane acts (Count 7) have been met. However, the Trial Chamber has not received evidence to establish the elements of torture (Count 6) or persecutions (Count 1). With regard to the other detainees at the SJB, the Trial Chamber finds that the elements of the crimes of cruel treatment (Count 9), and, in relation to Vlado Vuković, also torture (Count 8), have been met.

(d) Detention facilities in Benkovac<sup>1155</sup>

420. The Trial Chamber finds that two Croats, Ivan Atelj and Šime Čačić, were detained in the SJB in Benkovac for 19 days. There is insufficient evidence to conclude that these persons were civilians. However, the evidence establishes that they were taking no active part in the hostilities.

421. During interrogations at the Benkovac SJB, Ivan Atelj and Šime Čačić were threatened and subjected to severe beatings by the policemen. The Trial Chamber finds that the beatings caused serious physical and mental suffering to the detainees. The Trial Chamber also finds that the mistreatment was carried out intentionally in order to obtain information.

422. The Trial Chamber concludes that the elements of the crimes of imprisonment (Count 5), torture (Count 6), inhumane acts (Count 7), and persecutions (Count 1) have not been met. However, the elements of the crimes of torture (Count 8) and cruel treatment (Count 9) have been met.

423. The Trial Chamber finds that at least 40 non-Serb civilians and members of the Croatian armed forces and formations, including Luka Brkić, Tomislav Šegarić, Tomislav Gurlica and Marin Jurić, were detained by the JNA at the kindergarten in Benkovac following the attack on Škabrnja. While the Trial Chamber considers that these persons were detained without due process of law, the Trial Chamber finds that this detention is more appropriately described as part of the crime of deportation to which these persons were later subjected. The Trial Chamber therefore finds that the elements of the crime of imprisonment (Count 5) have not been established .

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<sup>1153</sup> See *supra* section III E 1.

<sup>1154</sup> See *supra* para. 275.

<sup>1155</sup> See *supra* section III E 2.

424. The evidence is insufficient as to whether the detainees at the kindergarten in Benkovac were mistreated. Thus, the Trial Chamber concludes that the elements of the crimes of inhumane acts (Count 7), torture (Counts 6 and 8), and cruel treatment (Count 9) have not been met. The evidence shows that Tomislav Šegarić, Tomislav Gurlica and Marin Jurić were taken from the kindergarten to the communal store in Biljani by the same individuals who detained them at the kindergarten. In Biljani, they were threatened and insulted after which they were brought back to the kindergarten.<sup>1156</sup> The Trial Chamber concludes, considering in particular the age of the three victims, that they were subjected to inhumane acts and cruel treatment in Biljani. The elements of these crimes (Counts 7 and 9) have therefore been met. However, the elements of torture (Counts 6 and 8) have not been met.

425. With regard to the mistreatment of Tomislav Šegarić, Tomislav Gurlica and Marin Jurić, the Trial Chamber finds that the evidence is insufficient to establish that these acts were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have not been met.

6. Counts 1, 10 and 11 – Persecution, deportation and forcible transfer<sup>1157</sup>

426. From 1990 through the spring of 1991, the Croat and non-Serb population in the Knin area was subjected to increasingly severe forms of discriminatory treatment.<sup>1158</sup> From June 1991, military operations were carried out by the SAO Krajina police, including the *Milicija Krajine*, the JNA and the TO against predominantly Croat villages, including Lovinac, Ljubovo, Glina, and Struga.<sup>1159</sup> This further raised the tensions. Following Milan Martić's ultimatum to the inhabitants of Kijevo, most of the Croat population was evacuated after which the JNA 9<sup>th</sup> Corps, the *Milicija Krajine* and the local TO attacked the village.<sup>1160</sup> The attack resulted in destruction of houses, damage to the church and looting. In August 1991, Croat civilians were displaced from the areas of Knin and Glina to areas under Croatian control.<sup>1161</sup> After the attack on Kijevo, the villages of Vrlika and Drniš were attacked. Destruction and looting were carried out following these attacks.<sup>1162</sup> There is further evidence that in 1991 Croats were killed by Serb forces in various locations in the SAO Krajina.<sup>1163</sup>

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<sup>1156</sup> See *supra* para. 278.

<sup>1157</sup> See *supra* section III F.

<sup>1158</sup> See *supra* para. 296.

<sup>1159</sup> See *supra* paras 163-165.

<sup>1160</sup> See *supra* paras 166-168.

<sup>1161</sup> See *supra* para. 296.

<sup>1162</sup> See *supra* paras 170-171.

<sup>1163</sup> See *supra* para. 324.

427. From August 1991 and into early 1992, forces of the TO and the police of the SAO Krajina and of the JNA attacked Croat-majority villages and areas, including the villages of Hrvatska Kostajnica, Cerovljani, Hrvatska Dubica, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja and Nadin. The displacement of the non-Serb population which followed these attacks was not merely the consequence of military action, but the primary objective of it. This conclusion is supported by the evidence of a generally similar pattern to the attacks. The area or village in question would be shelled, after which ground units would enter. After the fighting had subsided, acts of killing and violence would be committed by the forces against the civilian non-Serb population who had not managed to flee during the attack. Houses, churches and property would be destroyed in order to prevent their return and widespread looting would be carried out. In some instances the police and the TO of the SAO Krajina organised transport for the non-Serb population in order to remove it from SAO Krajina territory to locations under Croatian control. Moreover, members of the non-Serb population would be rounded up and taken away to detention facilities, including in central Knin, and eventually exchanged and transported to areas under Croatian control.<sup>1164</sup>

428. The Trial Chamber considers the evidence to establish beyond reasonable doubt that the systematic acts of violence and intimidation carried out, *inter alia*, by the JNA, the TO and the *Milicija Krajine* against the non-Serb population in the villages created a coercive atmosphere in which the non-Serb population did not have a genuine choice in their displacement. Based on this evidence, the Trial Chamber concludes that the intention behind these acts was to drive out the non-Serb population from the territory of the SAO Krajina. In this respect, the Trial Chamber recalls that the forces in question also undertook direct actions to remove those who had not fled to territories under Croatian control. The Trial Chamber also recalls that in spite of this intention to remove the non-Serb population from the territory of the SAO Krajina, in some instances the non-Serb population left their homes temporarily as a result of the acts of violence and intimidation and subsequently returned.

429. Based on the above, the Trial Chamber concludes that by the end of 1991 large numbers of the non-Serb population had been forcibly removed from the territory of the SAO Krajina to territories under the control of Croatia. The elements of the crime of deportation (Count 10) have therefore been met. Moreover, the Trial Chamber concludes that in some instances, due to the existing coercive atmosphere existing during this time period, members of the non-Serb population

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<sup>1164</sup> In relation to Hrvatska Kostajnica, *see* section III D 2 (a), Hrvatska Dubica, *see* section III D 2 (b), Cerovljani, *see* section III D 2 (c), Baćin, *see* section III D 2 (d) *see also* section III D 2 (e). In relation to Lipovača, *see* section III D 3 (b). Poljanak and Vukovići, *see* section III D 3 (c). Saborsko, *see* section III D 3 (d). Škabrnja, *see* section III D 4.

fled their homes without going to territories under Croatian control.<sup>1165</sup> In such instances, the elements of the crime of other inhumane acts (forcible transfer) (Count 11) have been met.

430. With regard to the period from 1992 to 1995, the Trial Chamber has been furnished with a substantial amount of evidence of massive and widespread acts of violence and intimidation committed against the non-Serb population, which were pervasive throughout the RSK territory.<sup>1166</sup> The Trial Chamber notes, in particular, that during this time period there was a continuation of incidents of killings, beatings, robbery and theft, harassment, and extensive destruction of houses and Catholic churches carried out against the non-Serb population.<sup>1167</sup> These acts created a coercive atmosphere which had the effect of forcing out the non-Serb population from the territory of the RSK. As a consequence, almost the entire non-Serb population left the RSK. Moreover, in some instances the RSK authorities provided transportation and escorts in order to remove the non-Serb population to territories under Croatian control. Furthermore, the Trial Chamber recalls that in July 1992 the RSK authorities cooperated with the authorities in Bosanski Novi, BiH, in the displacement of the non-Serb population from that municipality to Croatia, Slovenia, Austria and Germany.<sup>1168</sup>

431. Based on the substantial evidence referred to above, the Trial Chamber finds that due to the coercive atmosphere in the RSK from 1992 through 1995, almost the entire non-Serb population was forcibly removed to territories under the control of Croatia. The elements of the crime of deportation (Count 10) have therefore been met.

432. In light of the evidence referred to above, which establishes that acts of killing, mistreatment, deportation, forcible transfer, destruction and other acts of intimidation were carried out with the intent to discriminate on the basis of ethnicity, the Trial Chamber finds that all the elements of persecution (Count 1) have been met for the period from August 1991 through 1995.

#### 7. Counts 1 and 15 to 19 – Shelling of Zagreb on 2 and 3 May 1995<sup>1169</sup>

433. The Trial Chamber will consider Counts 15 to 19 in the following section.<sup>1170</sup>

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<sup>1165</sup> See *supra* paras 202, 211, 222.

<sup>1166</sup> See *supra* paras 327-328.

<sup>1167</sup> *Ibid.*

<sup>1168</sup> See *supra* para. 300.

<sup>1169</sup> See *supra* section III G.

<sup>1170</sup> See *infra* section IV B 4.

## **B. Findings on the individual criminal responsibility of Milan Martić**

434. Milan Martić is charged with individual criminal responsibility pursuant to Article 7(1) in its entirety in relation to each Count. Article 7(1) of the Statute provides:

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

With regard to Counts 3 to 14, and Count 1 insofar as it relates to these counts, the Trial Chamber finds that the individual criminal responsibility of Milan Martić is one of JCE pursuant to Article 7(1) of the Statute. With regard to Counts 15 to 19, and Count 1 insofar as it relates to these counts, the Trial Chamber finds that the individual criminal responsibility of Milan Martić is one of ordering pursuant to Article 7(1) of the Statute. Other modes of liability pursuant to Article 7(1) and 7(3) of the Statute will not be considered.

### 1. JCE pursuant to Article 7(1) of the Statute

435. JCE is established as a form of liability within the meaning of “commission” under Article 7(1) of the Statute.<sup>1171</sup> The Appeals Chamber found that “whoever contributes to the commission of crimes by [a] group of persons or some members of [a] group, in execution of a common criminal purpose, may be held to be criminally liable, subject to certain conditions”.<sup>1172</sup> Three categories of JCE have been identified in customary international law.<sup>1173</sup> The Prosecution charges Milan Martić pursuant to the “first” and “third” categories of JCE.<sup>1174</sup> As stated by the Appeals Chamber, regardless of the categories of JCE, a conviction requires a finding that the accused participated in a JCE. There are three requirements for such a finding: a plurality of persons, the existence of a

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<sup>1171</sup> *Tadić* Appeal Judgement, para. 190. See also *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, paras 20, 31; *Stakić* Appeal Judgement, para. 62 and the jurisprudence cited therein.

<sup>1172</sup> *Tadić* Appeal Judgement, para. 190.

<sup>1173</sup> *Tadić* Appeal Judgement, para. 220.

<sup>1174</sup> Indictment, para. 5. The first form of JCE is described by the Appeals Chamber as follows: “all-co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have, effected the killing are as follows: (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitating the activities of his co-perpetrators); and (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result,” *Tadić* Appeal Judgement, para. 196; the third is characterized as follows: “a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example of this would be a common, shared intention on the part of a group to forcibly remove members of one ethnicity from their town, village or region (to effect ‘ethnic cleansing’) with the consequence that, in the course of doing so, one or more of the victims is shot and killed,” *Tadić* Appeal Judgement, para. 204.

common purpose (or plan) which amounts to or involves the commission of a crime provided for in the Statute and the participation of the accused in this common purpose.<sup>1175</sup>

436. A JCE exists when a plurality of persons participate in the realisation of a common criminal purpose. However, they need not be organised in a military, political or administrative structure.<sup>1176</sup>

437. The first form of JCE requires the existence of a common purpose, which amounts to, or involves the commission of one or more crimes provided for in the Statute.<sup>1177</sup> The common purpose need not be previously arranged or formulated and may materialise extemporaneously.<sup>1178</sup>

438. It is not required that the principal perpetrators of the crimes which are part of the common purpose be members of a JCE.<sup>1179</sup> An accused or another member of a JCE may use the principal perpetrators to carry out the *actus reus* of a crime. However, “an essential requirement in order to impute to any accused member of the JCE liability for a crime committed by another person is that the crime in question *forms part of the common criminal purpose*.”<sup>1180</sup> This may be inferred, *inter alia*, from the fact that “the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose.”<sup>1181</sup>

439. For the first form of JCE, it is also required that the accused must both intend the commission of the crime and intend to participate in a common plan aimed at its commission.<sup>1182</sup> For the third form of JCE, the accused is held responsible for a crime outside the common purpose if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk (dolus eventualis)*. The crime must be shown to have been foreseeable to the accused in particular.<sup>1183</sup>

440. The requirement of participation for both forms of JCE is satisfied when the accused assisted or contributed to the execution of the common purpose. The accused need not have

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<sup>1175</sup> *Brdanin* Appeal Judgement, para. 364.

<sup>1176</sup> *Vasiljević* Appeal Judgement, para. 100, referring to *Tadić* Appeal Judgement, para. 227.

<sup>1177</sup> *Brdanin* Appeal Judgement, para. 418. The Appeals Chamber stated that the Trial Chamber should make a finding that the criminal purpose is not “merely the same, but also common to all of the persons acting together within a joint criminal enterprise”, *Brdanin* Appeal Judgement, para. 430.

<sup>1178</sup> *Brdanin* Appeal Judgement, para. 418.

<sup>1179</sup> *Brdanin* Appeal Judgement, para. 410.

<sup>1180</sup> *Brdanin* Appeal Judgement, para. 418.

<sup>1181</sup> *Brdanin* Appeal Judgement, para. 410. *See also* paras 413, 418, noting that the requirement that the crime be part of a common purpose is a matter of evidence.

<sup>1182</sup> *Brdanin* Appeal Judgement, para. 365. The Appeals Chamber also noted that “a Chamber can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence”, *id.* para. 429.

<sup>1183</sup> *Brdanin* Appeal Judgement, para. 365. The Appeals Chamber has clarified that it is not a requirement that the crime which was foreseeable was carried out by a member of the JCE, but that it may be perpetrated also by one or more persons used by a member of the JCE in order to carry out the *actus reus* of the crimes forming part of the common purpose, *id.* para. 411.

performed any part of the *actus reus* of the perpetrated crime.<sup>1184</sup> It is also not required that his participation be necessary or substantial to the crimes for which the accused is found responsible.<sup>1185</sup> Nevertheless, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.<sup>1186</sup>

## 2. Ordering pursuant to Article 7(1) of the Statute

441. Ordering requires that a person in a position of authority instructs another person to commit a crime.<sup>1187</sup> It is required that the crime in question was actually committed by the principal perpetrators.<sup>1188</sup> It is sufficient that the person ordering the crime possesses authority, whether *de jure* or *de facto*.<sup>1189</sup> This authority may be proved expressly or may be reasonably implied from the evidence.<sup>1190</sup> The mens rea is either direct intent in relation to the perpetrator's own ordering or indirect intent, that is, a person, who orders with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite mens rea for this mode of liability under Article 7(1) of the Statute.<sup>1191</sup>

## 3. Findings on Counts 1 to 14

### (a) Common purpose

442. The Prosecution alleges that the common purpose of the JCE was "the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of the Republic of Croatia ["Croatia"] and large parts of the Republic of Bosnia and Herzegovina ["BiH"], in order to make them part of a new Serb-dominated state."<sup>1192</sup> The evidence establishes the existence, as of early 1991, of a political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish an unified territory.<sup>1193</sup> Moreover, the evidence establishes that the SAO Krajina, and subsequently the RSK, government and authorities fully embraced and advocated this objective, and strove to accomplish it in cooperation with the Serb leaderships in Serbia and in the RS in BiH.<sup>1194</sup> The Trial Chamber considers that such an objective, that is to unite with other ethnically similar areas, in and of itself does not amount to a common purpose within the

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<sup>1184</sup> *Kvočka et al.* Appeal Judgement, para. 99; *Stakić* Appeal Judgement, para. 64.

<sup>1185</sup> *Brdanin* Appeal Judgement, para. 430; *Kvočka et al.* Appeal Judgement, para. 98.

<sup>1186</sup> *Brdanin* Appeal Judgement, para. 430.

<sup>1187</sup> *Kordić and Čerkez* Appeal Judgement, para. 28; *Gacumbitsi* Appeal Judgement, para. 182.

<sup>1188</sup> *Brdanin* Trial Judgement, para. 267 (with further references).

<sup>1189</sup> *Brdanin* Trial Judgement, para. 270. *See also Kordić and Čerkez* Appeal Judgement, para. 28, in which it is held that a formal superior-subordinate relationship is not required.

<sup>1190</sup> *Brdanin* Trial Judgement, para. 270; *Limaj et al.* Trial Judgement, para. 515.

<sup>1191</sup> *See Kordić and Čerkez* Appeal Judgement, paras 29-30; *Blaškić* Appeal Judgement, para. 42.

<sup>1192</sup> Indictment, para. 4.

<sup>1193</sup> *See supra* Section III I.

<sup>1194</sup> *Ibid.*

meaning of the law on JCE pursuant to Article 7(1) of the Statute. However, where the creation of such territories is intended to be implemented through the commission of crimes within the Statute this may be sufficient to amount to a common criminal purpose.

443. The Trial Chamber recalls that several armed clashes occurred during the spring and early summer of 1991 between SAO Krajina and Croatian armed forces and formations.<sup>1195</sup> Initially, these clashes were the result of tensions between the Croatian and SAO Krajina police and the climate of fear and mistrust between the Serb and Croat inhabitants. The evidence shows that beginning with the armed attack on the predominantly Croat village of Kijevo in August 1991, the SAO Krajina MUP and TO forces cooperated with the JNA. As of this point in time, the JNA was firmly involved on the side of the SAO Krajina authorities in the struggle to take control of territory in order to unite predominantly Serb areas.<sup>1196</sup> The Trial Chamber recalls the ultimatum given by Milan Martić on 26 August 1991 in relation to the imminent attack on Kijevo that “[y]ou and your leadership have brought relations between the Serbian and Croatian populations to such a state that further co-existence in our Serbian territories of the SAO Krajina is impossible”.<sup>1197</sup> From at least this point in time until early 1992, several other predominantly Croatian villages were attacked by forces of the TO and the police forces of the SAO Krajina and of the JNA acting in cooperation.<sup>1198</sup> The Trial Chamber recalls that these attacks followed a generally similar pattern, which involved the killing and the removal of the Croat population.<sup>1199</sup> Furthermore, after these attacks, widespread crimes of violence and intimidation and crimes against private and public property were perpetrated against the Croat population, including detention in facilities run by MUP forces of the SAO Krajina and the JNA.<sup>1200</sup> The threat clearly expressed in Milan Martić’s ultimatum was therefore carried out throughout the territory of the SAO Krajina in this period through the commission of widespread and grave crimes which created an atmosphere of fear in which the further presence of Croats and other non-Serbs in these territories was made impossible. In this respect, the Trial Chamber has concluded that the displacement of the non-Serb population was not a mere side-effect but rather a primary objective of the attacks.<sup>1201</sup>

444. Widespread acts of violence and intimidation intensified against the non-Serb population and became pervasive throughout the RSK territory from 1992 to 1995.<sup>1202</sup> These acts were committed by members of the TO and the police of the RSK, and of the JNA, as well as members

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<sup>1195</sup> See *supra* Section III D 1.

<sup>1196</sup> See *supra* paras 166-168, 170-171; section III I.

<sup>1197</sup> See *supra* para. 166.

<sup>1198</sup> See *supra* section III D 2-5 (see also paras 170-171); section IV A 6.

<sup>1199</sup> See *supra* section IV A 6.

<sup>1200</sup> *Ibid.*

<sup>1201</sup> *Ibid.*

<sup>1202</sup> See *supra* section III H 2-3; section IV A 6.



of the local Serb population, and created such a coercive atmosphere that the Croat and other non-Serb inhabitants of the RSK were left with no option but to flee.<sup>1203</sup>

445. From at least August 1991, the political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish a unified territory was implemented through widespread and systematic armed attacks on predominantly Croat and other non-Serb areas and through the commission of acts of violence and intimidation. In the Trial Chamber's view, this campaign of violence and intimidation against the Croat and non-Serb population was a consequence of the position taken by the SAO Krajina and subsequently the RSK leadership that co-existence with the Croat and other non-Serb population, in Milan Martić's words, "in our Serbian territories of the SAO Krajina", was impossible.<sup>1204</sup> Thus, the implementation of the political objective to establish a unified Serb territory in these circumstances necessitated the forcible removal of the non-Serb population from the SAO Krajina and RSK territory. The Trial Chamber therefore finds beyond reasonable doubt that the common purpose of the JCE was the establishment of an ethnically Serb territory through the displacement of the Croat and other non-Serb population, as charged in Counts 10 and 11.

(b) Plurality of persons

446. The Trial Chamber has been furnished with a substantial amount of evidence that the objective to unite Serb territories was espoused by the leaderships in Serbia, in the RS in BiH, and in the SAO Krajina and the RSK.<sup>1205</sup> The SAO Krajina, and later the RSK, government which included Milan Babić and Milan Martić, sought and received significant financial, logistical and military support from Serbia, including from the MUP and SDB of Serbia, and from the RS in BiH.<sup>1206</sup> Milan Martić also admitted that he had himself "personally never ceased this cooperation" and that there was "good cooperation with the leadership of Serbia, notably the [MUP]."<sup>1207</sup> In fact, the evidence shows that the police of the SAO Krajina were mainly financed with funds and material from the MUP and the SDB of Serbia.<sup>1208</sup> This support continued from 1991 to 1995 and even included modifications regarding units and personnel within the armed forces of the SAO Krajina and of the RSK.<sup>1209</sup> There is evidence that the cooperation between the armed forces of the SAO Krajina, and later the RSK, and the JNA was extensive and covered such major military actions as those carried out in Kijevo, Hrvatska Kostajnica, Saborsko and in Škabrnja, as well as

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<sup>1203</sup> See *supra* section IV A 6.

<sup>1204</sup> See *supra* para. 166.

<sup>1205</sup> See *supra* section III I

<sup>1206</sup> See *supra* section III B 2; section III C 2.

<sup>1207</sup> See *supra* section III C 2, referring to Ex. 951, p. 1.

<sup>1208</sup> See *supra* section III B 2.

<sup>1209</sup> See *supra* section III B 2; section III C 2. See also para. 142.

operation *Koridor 92*.<sup>1210</sup> In this respect, the Trial Chamber recalls the evidence that the SVK and the VJ were in reality one and the same organisation, only located at two separate locations.<sup>1211</sup> Moreover, the evidence of Milan Martić's arrest in 1991 gives a clear example of joint cooperation between political leaders in the SAO Krajina, in the RS in BiH and in Serbia.<sup>1212</sup> The Trial Chamber has been furnished with evidence that this type of cooperation continued until 1995.<sup>1213</sup> The Trial Chamber therefore finds that at least Blagoje Adžić, Milan Babić, Radmilo Bogdanović, Veljko Kadijević, Radovan Karadžić, Slobodan Milošević, Ratko Mladić, Vojislav Šešelj, Franko "Frenki" Simatović, Jovica Stanišić, and Captain Dragan Vasiljković participated in the furtherance of the above-mentioned common criminal purpose.

(c) Milan Martić's participation in the JCE

447. As noted above, the Prosecution alleges that Milan Martić participated in the JCE in a number of ways.<sup>1214</sup>

448. Milan Martić's contacts with other members of the JCE had already begun during the autumn of 1990 and intensified during 1991 and onwards.<sup>1215</sup> The evidence shows that these contacts were close and direct and that as a result, substantive financial, logistical and military support was rendered to the SAO Krajina and the RSK.<sup>1216</sup> The evidence is clear that Milan Martić actively worked together with the other JCE participants to fulfil the objective of a united Serb state, something which he expressed publicly on several occasions between 1991 and 1995.<sup>1217</sup>

449. Milan Martić was considered one of the most important and influential political figures in the SAO Krajina and the RSK governments.<sup>1218</sup> During his tenure as Minister of the Interior of the SAO Krajina and RSK, Milan Martić exercised absolute authority over the MUP, including the power to intervene on an individual level by appointing and removing chiefs of the SJBs as well as the authority to disband units within the MUP.<sup>1219</sup>

450. The evidence shows that the displacement of the non-Serb population had commenced in and around Knin already in 1991. The ultimatum issued by Milan Martić to the Croatian SJB and the inhabitants of Kijevo at the end of August 1991 is indicative of Milan Martić's mindset in

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<sup>1210</sup> See *supra* section III C 1; section III D 1-5. With regard to Kijevo, the Trial Chamber notes in particular Ex. 45, p. 48, *see supra* fn 397.

<sup>1211</sup> See *supra* fn 371.

<sup>1212</sup> See *supra* section III B 2.

<sup>1213</sup> See *supra* section III C 2.

<sup>1214</sup> Indictment, para. 7. See *supra* para. 6.

<sup>1215</sup> See *supra* section III B 2.

<sup>1216</sup> See *supra* section III B 2; section III C 2.

<sup>1217</sup> See *supra* section III B; section III C.

<sup>1218</sup> See *supra* section III J.

relation to the Croat population of the SAO Krajina.<sup>1220</sup> Furthermore, Milan Martić contributed to this displacement by fuelling the atmosphere of insecurity and fear through radio speeches wherein he stated he could not guarantee the safety of the non-Serb population.<sup>1221</sup>

451. There is no doubt that Milan Martić was aware that the non-Serb population was being driven out as a result of the coercive atmosphere in the SAO Krajina and the RSK. The sheer scale of the widespread and pervasive crimes against the non-Serb population of the SAO Krajina and the RSK must have made such crimes common knowledge.<sup>1222</sup> The Trial Chamber recalls that crimes committed within the territory of the RSK were discussed at RSK government sessions.<sup>1223</sup> Furthermore, Milan Martić and the MUP were informed by UNCIVPOL of the multitude of crimes which were being committed against the non-Serb population.<sup>1224</sup> Here, the Trial Chamber recalls that Milan Martić himself issued detailed instructions concerning the cooperation of the MUP with UNPROFOR and UNCIVPOL, and concerning reporting obligations within the MUP. The evidence shows that these instructions were adhered to.<sup>1225</sup> Moreover, the Trial Chamber recalls that Milan Martić disbanded both Predrag Baklajić's unit and Veljko Radunović's police unit due to criminal activities. However, despite the substantial evidence concerning ongoing crimes committed by the MUP throughout the territory of the SAO Krajina and the RSK, the Trial Chamber has only been presented with evidence of a few examples where Milan Martić intervened to punish members of the MUP who had behaved in a criminal manner.<sup>1226</sup> The Trial Chamber cannot but conclude that Milan Martić deliberately refrained from intervening against perpetrators who committed crimes against the non-Serb population.

452. The evidence establishes that Milan Martić actively participated in the forcible removal of the non-Serb population both through his own actions and those of the members of the MUP. There is evidence of direct acts of deportation perpetrated by MUP forces, which resulted in the removal from the SAO Krajina and RSK territory of the non-Serb population.<sup>1227</sup> In this respect, the Trial Chamber recalls in particular the collection centre at Vrpolje, only a few kilometres north of Knin,

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<sup>1219</sup> *Ibid.*

<sup>1220</sup> *See supra* para. 166.

<sup>1221</sup> *See supra* section III F.

<sup>1222</sup> The Trial Chamber recalls the testimony of Slobodan Jarčević, the Foreign Minister of the RSK, that the RSK government "did not take any steps against the members of any other nation or ethnic group" and that it was difficult for the RSK government to protect the Croats who remained in the RSK because many of the crimes were committed out of a revenge for losing family members, *see supra* fn 1053. In view of the pervasive nature of the crimes committed against the non-Serb population, the Trial Chamber does not find this evidence credible. In this respect, the Trial Chamber also recalls the evidence that Milan Martić was aware of the various detention facilities, which existed in the SAO Krajina and the RSK, *see supra* para. 294; Ex. 518; Ex. 919.

<sup>1223</sup> *See supra* section III J.

<sup>1224</sup> *Ibid.*

<sup>1225</sup> *Ibid.*

<sup>1226</sup> *Ibid.*

<sup>1227</sup> *See supra* section III D 2-5; section III F.

which was secured by members of the Knin SJB and to which they directed the non-Serb population, who desired to leave the RSK territory. Members of the Knin SJB organised bus transport of the non-Serb population to areas under Croatian control. During a meeting with Cedric Thornberry on 14 June 1993, Milan Martić requested that Croats who wished to leave the RSK sign statements that no one had put pressure on them to leave.<sup>1228</sup> Milan Martić was aware of the persecutory and coercive atmosphere which existed and had existed in the SAO Krajina and RSK territory for a long time and that those non-Serbs who expressed a desire to leave the territory did so without having a genuine choice in their displacement. Moreover, there is evidence that Milan Martić repeatedly and publicly opposed the return of refugees.<sup>1229</sup>

453. The Trial Chamber therefore concludes that Milan Martić intended to forcibly displace the non-Serb population from the territory of the SAO Krajina, and subsequently the RSK, and actively participated in the furtherance of the common purpose of the JCE.

454. The Trial Chamber finds that the crimes found to have been perpetrated against the non-Serb population under Counts 3 to 9, Counts 12 to 14, and Count 1 insofar as it relates to these counts, were outside of the common purpose of the JCE. However, the Trial Chamber recalls that Milan Martić was aware that the non-Serb population was being subjected to widespread and systematic crimes, including killings, unlawful detentions, beatings while detained, and crimes against property, as a result of the coercive atmosphere in the SAO Krajina and the RSK. The Trial Chamber considers that this atmosphere was created and sustained by the actions of Milan Martić and other members of the JCE. The Trial Chamber therefore finds that the crimes which have been found to be outside the common purpose were foreseeable to Milan Martić. Furthermore, the evidence includes only scarce reference to Milan Martić acting to take measures to prevent or punish such crimes. Moreover, despite the overwhelming evidence of the scale and gravity of the crimes being committed against the non-Serb population, Milan Martić persisted in pursuing the common purpose of the JCE. Thus, the Trial Chamber considers it proven beyond reasonable doubt that Milan Martić willingly took the risk that the crimes which have been found to be outside the common purpose might be perpetrated against the non-Serb population.

455. The Trial Chamber finds that Milan Martić incurs individual criminal responsibility pursuant to Article 7(1) of the Statute for Counts 3 to 14, and Count 1, insofar as it relates to these counts.

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<sup>1228</sup> See *supra* para. 299.

<sup>1229</sup> See *supra* para. 341.

#### 4. Findings on Counts 1 and 15 to 19

##### (a) Milan Martić's ordering of the shelling of Zagreb on 2 and 3 May 1995

456. The Trial Chamber recalls that Milan Martić repeatedly admitted in media statements that he had ordered the shelling of Zagreb on 2 and 3 May 1995. In this Trial Chamber's view, this is persuasive evidence, which is further supported by circumstantial evidence.

457. The evidence shows that already in 1992 and 1993 Milan Martić, as Minister of the Interior, considered attacking Zagreb as a response to Croatian attacks on RSK cities.<sup>1230</sup> Moreover, as President of the RSK on 24 October 1994, Milan Martić threatened to strike Zagreb with rockets if the situation deteriorated.<sup>1231</sup>

458. The Trial Chamber recalls that following the start of Operation Flash in the early morning hours on 1 May 1995, the Chief of the SVK Main Staff General Milan Čeleketić deployed the M-87 Orkan unit to Vojnić 50 kilometres south of Zagreb. The Trial Chamber further recalls that during a meeting which was held on 1 May 1995, Milan Martić and Milan Čeleketić were in favour of a non-peaceful solution. Following this meeting, at 1300 hours and in the presence of Milan Martić, Milan Čeleketić issued an order to several military commanders to shell Sisak.<sup>1232</sup> The evidence shows that Sisak was shelled at 1700 hours on 1 May 1995. The Trial Chamber finds that the above-mentioned evidence establishes that Milan Martić was involved from the beginning in the RSK's military response to Operation Flash. The Trial Chamber notes the evidence of Patrick Barriot that Milan Martić merely took responsibility for the ordering of the shelling of Zagreb, and that Patrick Barriot came to this conclusion on "an analysis of his personality".<sup>1233</sup> In light of the significant evidence to the contrary presented above, the Trial Chamber finds his testimony unconvincing.

459. The Trial Chamber recalls that according to the RSK Constitution, the President led the SVK in times of peace and war in accordance with the Constitution and the decisions of the Supreme Defence Council.<sup>1234</sup> Accordingly, any decision to shell Zagreb should have been taken by the collegiate body of the Supreme Defence Council. However, the evidence establishes that Milan Martić and Milan Čeleketić circumvented the Supreme Defence Council. The Trial Chamber recalls the evidence of Rade Rašeta, Chief of Security of the SVK Main Staff, that the decisions to shell Zagreb on 2 and 3 May 1995 were not taken by the Supreme Defence Council but by the SVK

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<sup>1230</sup> See *supra* section III G 3.

<sup>1231</sup> *Ibid.*

<sup>1232</sup> *Ibid.*

<sup>1233</sup> Patrick Barriot, 9 Nov 2006, T. 10773-10774, 10777-10778, 10 Nov 2006, T. 10841.

<sup>1234</sup> See *supra* para. 155.

Commander and the President of the RSK.<sup>1235</sup> This is further supported by reports of the two RSK commissions referred to above.<sup>1236</sup>

460. In light of the totality of the evidence, the Trial Chamber finds beyond reasonable doubt that Milan Martić ordered the shelling of Zagreb on 2 and 3 May 1995.

(b) Military targets in Zagreb and the nature of the M/87 Orkan

461. The Defence argues that there were military targets in Zagreb at the time of the attacks on 2 and 3 May 1995, including the Ministry of Interior, Ministry of Defence, Zagreb/Plešo airport which had a military purpose, and the Presidential Palace.<sup>1237</sup> The Trial Chamber notes the report of 2 May 1995 from the SVK Main Staff to the VJ General Staff, which provides that the following targets in Zagreb were fired at by Orkan rockets on that day: the Ministry of Defence, the Presidential Palace and Zagreb/Plešo airport.<sup>1238</sup> The Trial Chamber notes that of these targets, the only one that was hit was Zagreb/Plešo airport, where one bomblet landed in a parking lot.<sup>1239</sup> The report also provides that “[a]ccording to our source, the Ministry of Defence in Križanićeva Street was hit.” However, the Trial Chamber notes that the Ministry of Defence is not located in this street but in the nearby Baureova Street.<sup>1240</sup> The Trial Chamber notes that two police buildings in Matica Hrvatska Street also received damage, to the roof and upper floors, on 2 May 1995.<sup>1241</sup> However, as will be shown below, the presence or otherwise of military targets in Zagreb is irrelevant in light of the nature of the M-87 Orkan.

462. The M-87 Orkan is a non-guided projectile, the primary military use of which is to target soldiers and armoured vehicles.<sup>1242</sup> Each rocket may contain either a cluster warhead with 288 so-called bomblets or 24 anti-tank shells.<sup>1243</sup> The evidence shows that rockets with cluster warheads containing bomblets were launched in the attacks on Zagreb on 2 and 3 May 1995.<sup>1244</sup> Each bomblet contains 420 pellets of 3mm in diameter.<sup>1245</sup> The bomblets are ejected from the rocket at a

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<sup>1235</sup> See *supra* para. 321.

<sup>1236</sup> *Ibid.*

<sup>1237</sup> Defence Final Trial Brief, paras 90, 147. See also Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 31, 37, 42.

<sup>1238</sup> Ex. 95, p. 3.

<sup>1239</sup> Branko Lazarević, 14 Jun 2006, T. 5629; Ex. 810; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 1-2.

<sup>1240</sup> Branko Lazarević, 15 Jun 2006, T. 5663-5664 (testifying that the Ministry complex is 300 by 400 metres and includes military facilities and institutions); Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 30-31; Ex. 814; Jožef Poje, 7 Jun 2006, T. 5211.

<sup>1241</sup> Ex. 808, F-86 to F-89; Ex. 807, F-34 to F-68; Ex. 806; Branko Lazarević, 14 Jun 2006, T. 5628, 15 Jun 2006, T. 5676, 5678.

<sup>1242</sup> Jožef Poje, 6 Jun 2006, T. 5067-5068, 5136; Ex. 7, p. 38.

<sup>1243</sup> Ex. 7, pp 23, 44; Jožef Poje, 6 Jun 2006, T. 5068-5069. See also Ex. 94, p. 8; Jožef Poje, 6 Jun 2006, T. 5103, 5129-5130, 5133-5134.

<sup>1244</sup> Jožef Poje, 7 Jun 2006, T. 5159; Reynaud Theunens, 27 Jan 2006, T. 824-825; Ex. 772; Ex. 775; Branko Lazarević, 15 Jun 2006, T. 5689; Ex. 809, F-65, F-66.

<sup>1245</sup> Jožef Poje, 6 Jun 2006, T. 5133; Ex. 7, p. 23; Ex. 94, p. 8.

height of 800-1,000m above the targeted area and explode upon impact, releasing the pellets.<sup>1246</sup> The maximum firing range of the M-87 Orkan is 50 kilometres.<sup>1247</sup> The dispersion error of the rocket at 800-1,000m in the air increases with the firing range. Fired from the maximum range, this error is about 1,000m in any direction.<sup>1248</sup> The area of dispersion of the bomblets on the ground is about two hectares.<sup>1249</sup> Each pellet has a lethal range of ten metres.<sup>1250</sup>

463. The evidence shows that the M-87 Orkan was fired on 2 and 3 May 1995 from the Vojnić area, near Slavsko Polje, between 47 and 51 kilometres from Zagreb. However, the Trial Chamber notes in this respect that the weapon was fired from the extreme of its range. Moreover, the Trial Chamber notes the characteristics of the weapon, it being a non-guided high dispersion weapon. The Trial Chamber therefore concludes that the M-87 Orkan, by virtue of its characteristics and the firing range in this specific instance, was incapable of hitting specific targets. For these reasons, the Trial Chamber also finds that the M-87 Orkan is an indiscriminate weapon, the use of which in densely populated civilian areas, such as Zagreb, will result in the infliction of severe casualties. By 2 May 1995, the effects of firing the M-87 Orkan on Zagreb were known to those involved.<sup>1251</sup> Furthermore, before the decision was made to once again use this weapon on Zagreb on 3 May 1995, the full impact of using such an indiscriminate weapon was known beyond doubt as a result of the extensive media coverage on 2 May 1995 of the effects of the attack on Zagreb.

(c) Defence argument on reprisals

464. The Defence submits that the shelling of Zagreb may be considered lawful reprisal, carried out with the aim of putting an end to violations of international humanitarian law committed by “the Croatian military and police forces”.<sup>1252</sup> In particular, the Defence submits that the shelling of

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<sup>1246</sup> Jožef Poje, 6 Jun 2006, T. 5129-5130, 5133; Ex. 7, pp 23, 44; Ex. 94, p. 8.

<sup>1247</sup> Jožef Poje, 6 Jun 2006, T. 5066-5067; Ex. 7, p. 47.

<sup>1248</sup> Firing a rocket from a distance of 49 kilometres results in an elliptical area of dispersion of 972m by 1032m, Jožef Poje, 6 Jun 2006, T. 5100-5103; Ex. 776; Ex. 778; Ex. 779. *See also* Ex. 777 (showing the area of dispersion for the distance of 40 kilometres). Rade Rašeta, 2 May 2006, T. 3939, testified that “persons who are familiar with these artillery pieces knew that they were intended for targeting wider areas and not points, and that as such they could entail a lot of casualties”. In this respect, Jožef Poje testified that it would have been easy to conclude what the consequences of using the Orkan would be, however allowed for the possibility that not everyone is familiar with the consequences of using this weapon, Jožef Poje, 6 Jun 2006, T. 5113-5114. *See also* Jožef Poje, 6 Jun 2006, T. 5064-5065, 5108, 5118, 7 Jun 2006, T. 5155-5156, 5190-5192, 5233-5234; Ex. 7, pp 19, 38, 61, 66-68.

<sup>1249</sup> Ex. 7, p. 23; Jožef Poje, 6 Jun 2006, T. 5069; Ex. 94, p. 8; Ex. 771. If the warhead opens along the edge of the dispersion ellipse, it is possible that part of the bomblets fall outside of the ellipse, by approximately 100 m (since the surface area on which the bomblets drop is two hectares), Jožef Poje, 6 Jun 2006, T. 5103.

<sup>1250</sup> Ex. 7, pp 23, 44.

<sup>1251</sup> *See supra* section III G 2.

<sup>1252</sup> Defence Final Trial Brief, paras 86-93. *See also* paras 114-136. This argument was contested by the Prosecution, *see* Prosecution Closing Argument, 10 Jan 2006, T. 11221-11223.

Zagreb was a reaction to Operation Flash, which was in breach of the cease fire agreement, and “conducted without any respect to the norms of international humanitarian law”.<sup>1253</sup>

465. In the law of armed conflict, belligerent reprisals are acts resorted to by one belligerent which would otherwise be unlawful, but which are rendered lawful by the fact that they are taken in response to a violation of that law committed by the other belligerent.<sup>1254</sup> Reprisals are therefore drastic and exceptional measures employed by one belligerent for the sole purpose of seeking compliance with the law of armed conflict by the opposite party. It follows that reprisals, in order to be considered lawful, are subject to strict conditions. These conditions are well-established in customary law and are set forth below.<sup>1255</sup>

466. Reprisals may be used only as a last resort and only when all other means have proven to be ineffective.<sup>1256</sup> This limitation entails that reprisals may be exercised only after a prior and formal warning has been given, which has failed to put an end to the violations committed by the adversary.<sup>1257</sup> In addition, reprisals may only be taken after a decision to this effect has been made at the highest political or military level.<sup>1258</sup>

467. A further requirement is that the measures taken must be proportionate to the initial violation of the law of armed conflict of the opposite party.<sup>1259</sup> According to this condition, the reprisals must cease as soon as they have achieved their purpose of putting an end to the breach which provoked them.<sup>1260</sup> Finally, acts of reprisal must respect the “laws of humanity and dictates of public conscience”.<sup>1261</sup> The Trial Chamber interprets this condition to mean that reprisals must

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<sup>1253</sup> Defence Final Trial Brief, para. 125.

<sup>1254</sup> Commentary ICRC, para. 3427, citing the definition of reprisal adopted by the Institut de droit international in *Annuaire* 708-11, 1934 and defining reprisal as follows: “compulsory measures, derogating from the ordinary rules of such law, taken by a belligerent following unlawful acts to its detriment committed by another belligerent and which intend to compel the latter, by injuring it, to observe the law”.

<sup>1255</sup> See Commentary ICRC on Additional Protocols, para. 3457, which reports that the discussion about the issue of reprisal at the Diplomatic Conference on the adoption of the Additional Protocols to the Geneva Conventions showed agreement among the States on some minimum restrictions, as spelled out in the main text. *Kupreskić et al.* Trial Judgement, para. 535.

<sup>1256</sup> *Ibid.* For example, the YPA Military Manual of the SFRY (FRY) (1988), para. 29 states that “before they undertake reprisals, the armed forces of the SFRY shall try to force the enemy to respect the laws of war by means of other methods for preventing violations of such laws”. A similar wording is contained in the military manuals of numerous States, including, *inter alia*, Canada, LOAC Manual (1999), p. 15-3, para. 17; United States, Field Manual (1956), para. 497(b); Germany, Military Manual (1992), para. 478; Netherlands, Military Manual (1993), p. IV-5; United Kingdom Military Manual (1958), para. 646; Ecuador’s Naval Manual (1989), para. 6.2.3.1; New Zealand, Military Manual (1992), para. 1606(4)(c) and (d); Spain, LOAC Manual (1996), Vol. I, para.2.3.b. (6). Several of the above references to military manuals were extracted from *Customary International Humanitarian Law*, Volume II, pp 3328-3337.

<sup>1257</sup> Commentary ICRC on Additional Protocols, para. 3457; *Kupreskić et al.* Trial Judgement, para. 535.

<sup>1258</sup> *Ibid.*

<sup>1259</sup> Commentary ICRC on Additional Protocols, para. 3457; *Kupreskić et al.* Trial Judgement, para. 535.

<sup>1260</sup> *Ibid.*

<sup>1261</sup> *Ibid.*



be exercised, to the extent possible, in keeping with the principle of the protection of the civilian population in armed conflict and the general prohibition of targeting civilians.<sup>1262</sup>

468. The Trial Chamber finds that the evidence presented to the Trial Chamber regarding the shelling of Zagreb fails to show that the conditions for lawful reprisals have been met. First, even if the Trial Chamber was to assume that the Croatian forces had engaged in serious violations of international humanitarian law during Operation Flash, the evidence shows that the shelling was not carried out as a last resort, after having exhausted all other means. Indeed, the Trial Chamber has been provided with evidence that peace negotiations were ongoing during Operation Flash, until 3 May 1995.<sup>1263</sup> Furthermore, no formal warning was given prior to the shelling that acts of reprisals would be carried out in reaction to the alleged violations conducted during Operation Flash.<sup>1264</sup> The Trial Chamber cannot therefore find that the shelling of Zagreb constituted a lawful reprisal and does not consider it necessary to analyse the issue of reprisal any further. The Defence argument, in this regard, is consequently dismissed.

(d) General requirements of Article 3 and Article 5 of the Statute

469. The Trial Chamber recalls its findings concerning the existence of an armed conflict in the territories relevant to the crimes charged in the Indictment. The Trial Chamber considers the shelling of Zagreb on 2 and 3 May 1995, and the crimes in relation to this shelling with which Milan Martić has been charged, were related to the armed conflict in such a way as to meet the relevant general requirements of Article 3 and Article 5 of the Statute. Moreover, in particular due to the characteristics of the M-87 Orkan and due to the large-scale nature of the attack, the Trial Chamber finds that the shelling constituted a widespread attack directed against the civilian population of Zagreb. Furthermore, the Trial Chamber considers it proven beyond doubt that Milan Martić was aware of this attack on the civilian population and that his ordering of the shelling formed part of the attack. The Trial Chamber therefore concludes that the general requirements of Article 3 and Article 5 of the Statute have been met.

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<sup>1262</sup> See *supra* section II E.

<sup>1263</sup> See *supra* para. 302.

<sup>1264</sup> See *supra* section III G 1-2. In this regard, the Trial Chamber notes that the threat to shell Zagreb given by Milan Martić to Ambassador Peter Galbraith on 24 October 1994 cannot be considered a warning for the purpose of reprisal for at least three reasons: it was given long before Operation Flash commenced, it was not addressed directly to the Croatian authorities, and it lacked any elements of formality. The same is true for the speech given by Milan Martić on 10 February 1995 to the SVK commanding officers and for the interview of Milan Čeleketić reported in a newspaper article on 24 March 1995. The Trial Chamber notes also that with regard to the interview of Milan Čeleketić, it could not be considered as a warning for the purpose of reprisal since it was not given by the highest political or military authority.

(e) Counts 15 and 16 – Murder

470. The Trial Chamber finds that the deaths of Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač, Ivan Brodar, Luka Skračić and Ivan Markulin were caused as a result of the rocket attacks on Zagreb, which were ordered by Milan Martić. Having regard in particular to the Trial Chamber's findings concerning the nature of the M-87 Orkan and that Milan Martić, who ordered the use of the M-87 Orkan, was aware that death was a probable consequence of this attack, the Trial Chamber finds that the mental element of the crime of murder is established. The Trial Chamber recalls that Ivan Markulin was a member of the Croatian MUP and that he was in the process of deactivating a bomb at the time of his death and was not taking an active part in the hostilities. The Trial Chamber therefore finds that Milan Martić bears individual criminal responsibility under Article 7(1) of the Statute for Counts 15 and 16 for the murder of Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač, Ivan Brodar, and Luka Skračić. The Trial Chamber further finds that Milan Martić bears individual criminal responsibility under Article 7(1) of the Statute for Count 16 for the murder of Ivan Markulin.

(f) Counts 17 and 18 – Inhumane acts under Article 5(i) and cruel treatment under Article 3

471. The Trial Chamber finds that the evidence from persons injured during the shelling of Zagreb is representative of the injuries and suffering caused to the 214 persons who were injured on 2 and 3 May 1995. The Trial Chamber therefore concludes that the shelling caused serious mental and/or physical suffering to those injured. The Trial Chamber considers that Milan Martić knew that the shelling was likely to cause such suffering, and thus intentionally committed acts which amount to cruel treatment under Article 3 and inhumane acts under Article 5 against these persons. The Trial Chamber recalls that of the persons injured, 7 were not civilians. The Trial Chamber therefore finds Milan Martić incurs individual criminal responsibility under Article 7(1) of the Statute for Count 17, other inhumane acts under Article 5(i), and for Count 18 for cruel treatment under Article 3 in relation to 207 victims and for Count 18, cruel treatment under Article 3, in relation to the other 7 victims.

(g) Count 19 – Attacks on civilians under Article 3

472. In examining the responsibility of Milan Martić for the crime of attacks on civilians under Article 3, the Trial Chamber recalls that a direct attack on civilians may be inferred from the indiscriminate character of the weapon used. The Trial Chamber has previously found that the M-87 Orkan was incapable of hitting specific targets.<sup>1265</sup> The Trial Chamber has also found that these

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<sup>1265</sup> See *supra* section IV B 4 (b).

attacks resulted in death and serious injury to the civilian population. Having regard in particular to the nature of the M-87 Orkan and the finding that Milan Martić knew of the effects of this weapon, the Trial Chamber finds that Milan Martić wilfully made the civilian population of Zagreb the object of this attack. Milan Martić therefore incurs individual criminal responsibility under Article 7(1) of the Statute for Count 19, attacks on civilians under Article 3.

(h) Count 1 – Persecution

473. The Trial Chamber recalls the situation prevailing prior to the shelling of Zagreb, including the launch of Operation Flash by Croatian armed forces. Moreover, the Trial Chamber recalls that prior to the shelling of Sisak and Zagreb, Milan Martić considered the shelling of Croatian cities as a response to Croatian attacks on RSK cities. However, the Trial Chamber has not found any evidence which would persuade it beyond reasonable doubt that Milan Martić intended to commit such attacks, including the attacks which were eventually carried out on Zagreb on 2 and 3 May 1995, with discriminatory intent on the basis of ethnicity. Rather, the evidence shows that Milan Martić intended to shell the city of Zagreb in order to retaliate on Croatia and to stop further Croatian attacks on the RSK. While an attack on a city, such as in this case, is without doubt grave, the Trial Chamber cannot find that it establishes in and of itself that it was carried out with the requisite intent. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have not been established.

**C. Cumulative convictions**

474. Cumulative convictions, that is multiple convictions entered under different statutory provisions in relation to the same conduct, are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other element. Where this test is not met, the Trial Chamber will enter a conviction only under the more specific provision.<sup>1266</sup>

475. Milan Martić has been found criminally responsible for the crime of persecution (Count 1) and for the crimes charged in Counts 3 to 19.<sup>1267</sup> The acts underlying the findings of persecution include the acts underlying the findings of the crimes under Counts 3 to 14. Persecution requires a

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<sup>1266</sup> *Čelebići* Appeal Judgement, paras 412-413. This test has been further clarified by the Appeals Chamber in *Kordić and Čerkez* as follows: “[w]hen applying the *Čelebići* test, what must be considered are the legal elements of each offence, not the acts or omissions giving rise to the offence. What each offence requires, as a matter of law, is the pertinent inquiry. The Appeals Chamber will permit multiple convictions for the same act or omission where it clearly violates multiple distinct provisions of the Statute, where each statutory provision contains a materially distinct element not contained in the other(s), and which element requires proof of a fact which the elements of the other statutory provision(s) do not. [...]”, *Kordić and Čerkez* Appeal Judgement, para. 1033 (footnotes omitted). See also *Kunarac et al.* Appeal Judgement, para. 177; *Stakić* Appeal Judgement, paras 355-358.

materially distinct element that is not present as an element in any of the other crimes, that is proof that the act or omission discriminated in fact and that the act or omission was committed with the specific intent to discriminate on the basis of one of the grounds listed in Article 5.<sup>1268</sup> The other crimes under Counts 3 to 14 require proof of materially distinct elements, which are not present in the crime of persecution. As a result, cumulative conviction is permissible for persecution and for the crimes found to have been committed under Counts 3 to 14.

476. Milan Martić has been found criminally responsible for the following crimes, charged under Article 3 and Article 5 of the Statute, which are based on the same conduct: murder as a crime against humanity (Count 3) and murder as a violation of the laws and customs of war (Count 4),<sup>1269</sup> torture as a crime against humanity (Count 6) and torture as a violation of the laws or customs of war (Count 8),<sup>1270</sup> inhumane acts as a crime against humanity (Count 7) and cruel treatment as a violation of the laws or customs of war (Count 9),<sup>1271</sup> murder as a crime against humanity (Count 15) and murder as a violation of the laws and customs of war (Count 16),<sup>1272</sup> and inhumane acts as a crime against humanity (Count 17) and cruel treatment as a violation of the laws or customs of war (Count 18).<sup>1273</sup> Crimes under Article 3 of the Statute require a materially distinct element to be proven which is not required for the crimes under Article 5 of the Statute, that is the nexus between the acts of the accused and the armed conflict. Crimes under Article 5 of the Statute require a materially distinct element that is not required for the crimes under Article 3 of the Statute, a widespread or systematic attack directed against any civilian population. Therefore, cumulative convictions are permissible under Article 3 and Article 5.<sup>1274</sup>

477. Milan Martić has been found criminally responsible for the crimes of torture (Count 6) and inhumane acts (Count 7) as crimes against humanity, in relation to the same conduct.<sup>1275</sup> The crime of torture has a materially distinct element, that is, the act or omission must have been carried out for a prohibited purpose. This element is not required for the crime of inhumane acts. However, the crime of inhumane acts does not require proof of a materially distinct element.<sup>1276</sup> Accordingly, a cumulative conviction for the two crimes is not permissible and the Trial Chamber will enter a conviction for the crime of torture only. The same reasoning applies to the crime of torture and the

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<sup>1267</sup> See *supra* section IV A, B.

<sup>1268</sup> *Stakić* Appeal Judgement, paras 359-364; *Kordić and Čerkez* Appeal Judgement, para. 1041.

<sup>1269</sup> See *supra* paras 354, 359, 364, 365, 368, 373, 379, 386-389, 392, 400.

<sup>1270</sup> See *supra* paras 410, 415.

<sup>1271</sup> See *supra* paras 410, 415, 419, 424.

<sup>1272</sup> See *supra* para. 471.

<sup>1273</sup> See *supra* para. 472.

<sup>1274</sup> *Jelišić* Appeal Judgement, para. 82.

<sup>1275</sup> See *supra* paras 410, 415.

<sup>1276</sup> *Kunarac et al.* Appeal Judgement, paras 142, 144, confirming *Kunarac et al.* Trial Judgement, para. 497. See also *Brdanin* Trial Judgement, para. 481; *Krnjelac* Trial Judgement, para. 181.

crime of cruel treatment as violations of laws and customs of war, for which Milan Martić has been found criminally responsible in relation to the same conduct.<sup>1277</sup>

478. In relation to the shelling of Zagreb, Milan Martić has been found criminally responsible for the crimes of murder (Count 16), cruel treatment (Count 18), and attacks on civilians (Count 19), all violations of laws and customs of war under Article 3.<sup>1278</sup> These crimes are based on the same conduct. The crime of attacks on civilians requires the existence of an attack directed against a civilian population, the killings of, or infliction of serious bodily injury to, civilians as a consequence of the attack, and the intent to make the civilian population the object of attack. As the crime of attacks on civilians requires materially distinct elements not required for murder or cruel treatment, the latter crimes are absorbed by the crime of attacks on civilians. As a result, cumulative conviction for these crimes is not permissible and the Trial Chamber will only enter a conviction for the crime of attacks on civilians.<sup>1279</sup>

#### **D. Summary of the Trial Chamber's findings in relation to each count**

479. The Trial Chamber finds Milan Martić **NOT GUILTY** of:

Count 2: Extermination, a crime against humanity

480. The Trial Chamber finds Milan Martić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

Count 1: Persecutions, a crime against humanity;<sup>1280</sup>

Count 3: Murder, a crime against humanity;<sup>1281</sup>

Count 4: Murder, a violation of the laws or customs of war;<sup>1282</sup>

Count 5: Imprisonment, a crime against humanity;<sup>1283</sup>

Count 6: Torture, a crime against humanity;<sup>1284</sup>

Count 7: Inhumane acts, a crime against humanity;<sup>1285</sup>

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<sup>1277</sup> See *supra* paras 410, 415, 419, 422.

<sup>1278</sup> See *supra* paras 471, 472, 473.

<sup>1279</sup> *Strugar* Trial Judgement, para. 449.

<sup>1280</sup> See *supra* paras 358, 363, 367, 370, 377-378, 383, 398-399, 403, 411, 416, 432. Hence acquitting Milan Martić as to the rest of the charges under Count 1, see *supra* paras 384, 403, 419, 422, 425, 474.

<sup>1281</sup> See *supra* paras 354, 359, 364-365, 368, 373, 379, 386-389, 392, 400. Hence acquitting Milan Martić as to the rest of the charges under Count 3, see *supra* paras 387, 389-393, 401.

<sup>1282</sup> See *supra* paras 354, 359, 364-365, 368, 373, 379, 386-389, 391-392, 400. Hence acquitting Milan Martić as to the rest of the charges under Count 4, see *supra* paras 389-393, 401.

<sup>1283</sup> See *supra* paras 410, 412. Hence acquitting Milan Martić as to the rest of the charges under Count 5, see *supra* paras 417, 422, 423.

<sup>1284</sup> See *supra* paras 410, 415. Hence acquitting Milan Martić as to the rest of the charges under Count 6, see *supra* paras 419, 422, 424.

<sup>1285</sup> See *supra* paras 410, 415, 419, 424. Hence acquitting Milan Martić as to the rest of the charges under Count 7, see *supra* para. 422, 424.

- Count 8: Torture, a violation of the laws or customs of war;<sup>1286</sup>
- Count 9: Cruel treatment, a violation of the laws or customs of war;<sup>1287</sup>
- Count 10: Deportation, a crime against humanity;<sup>1288</sup>
- Count 11: Forcible transfer, a crime against humanity;<sup>1289</sup>
- Count 12: Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war;<sup>1290</sup>
- Count 13: Destruction or wilful damage done to institutions dedicated to education or religion, a violation of the laws or customs of war;<sup>1291</sup>
- Count 14: Plunder of public or private property, a violation of the laws or customs of war;<sup>1292</sup>
- Count 15: Murder, a crime against humanity;<sup>1293</sup>
- Count 16: Murder, a violation of the laws or customs of war;<sup>1294</sup>
- Count 17: Inhumane acts, a crime against humanity;<sup>1295</sup>
- Count 18: Cruel treatment, a violation of the laws or customs of war;<sup>1296</sup>
- Count 19: Attacks on civilians, a violation of the laws or customs of war.<sup>1297</sup>

While the Trial Chamber has found that the elements have been established for the crimes charged under Count 16 and Count 18, in view of the fact that these crimes are absorbed by the crime of attacks on civilians under Count 19, the Trial Chamber will only enter a conviction with respect to the crime of attacks on civilians.

## V. SENTENCING LAW AND FACTS

### A. Applicable law

481. The relevant provisions covering sentencing are set out in Article 24 of the Statute and Rule 101 of the Rules of Procedure and Evidence. Article 24 of the Statute provides:

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<sup>1286</sup> See *supra* paras 410, 415, 419, 422. Hence acquitting Milan Martić as to the rest of the charges under Count 8, see *supra* paras 424.

<sup>1287</sup> See *supra* paras 410, 415, 419, 422, 424. Hence acquitting Milan Martić as to the rest of the charges under Count 9, see *supra* para. 424.

<sup>1288</sup> See *supra* para. 431.

<sup>1289</sup> See *supra* para. 429.

<sup>1290</sup> See *supra* paras 360, 374-375, 381. Hence acquitting Milan Martić as to the rest of the charges under Count 12, see *supra* paras 355, 366, 385, 394, 397, 402.

<sup>1291</sup> See *supra* paras 361, 395. Hence acquitting Milan Martić as to the rest of the charges under Count 13, see *supra* paras 356, 366, 369, 380, 385, 397.

<sup>1292</sup> See *supra* paras 357, 382. Hence acquitting Milan Martić as to the rest of the charges under Count 14, see *supra* paras 362, 376, 385, 396-397.

<sup>1293</sup> See *supra* para. 471.

<sup>1294</sup> See *supra* para. 471.

<sup>1295</sup> See *supra* para. 472.

<sup>1296</sup> See *supra* para. 472.

<sup>1297</sup> See *supra* para. 473.

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Rule 101 of the Rules of Procedure and Evidence provides:

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
- (i) any aggravating circumstances;
  - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
  - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
  - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
- (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

These provisions set forth factors to be taken into consideration by the Trial Chamber when deciding a sentence.<sup>1298</sup> They do not constitute binding limitations on the Trial Chamber's discretion to impose a sentence,<sup>1299</sup> which must always be decided based on the facts of each particular case.<sup>1300</sup>

482. The Appeals Chamber has held that the sentencing practice of the Tribunal in cases involving similar circumstances is but one factor which a Chamber must consider when exercising its discretion in imposing a sentence.<sup>1301</sup> The Appeals Chamber has held that comparisons between cases as regards sentencing are not reliable as the sole basis for sentencing.<sup>1302</sup> On the other hand, "[a] previous decision on sentence may indeed provide guidance if it relates to the same offence and was committed in substantially similar circumstances".<sup>1303</sup> However, this assistance may be limited,<sup>1304</sup> as "when comparing a case to the same offence committed in substantially similar circumstances, the Trial Chamber still has an overriding obligation to tailor a penalty to fit the

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<sup>1298</sup> Rule 101(B) of the Rules. *See also Krstić Appeal Judgement*, para. 241; *Čelebići Appeal Judgement*, para. 716.

<sup>1299</sup> *Krstić Appeal Judgement*, paras 241-242; *Čelebići Appeal Judgement*, paras, 715, 718, 780. *See also Kambanda Appeal Judgement*, para. 124; *Furundžija Appeal Judgement*, para. 238.

<sup>1300</sup> *Krstić Appeal Judgement*, para. 241; *Jelisić Appeal Judgement*, para. 101; *Čelebići Appeal Judgement*, para. 717.

<sup>1301</sup> *Krstić Appeal Judgement*, para. 248; *Čelebići Appeal Judgement*, para. 757.

<sup>1302</sup> *Čelebići Appeal Judgement*, para. 719.

<sup>1303</sup> *Momir Nikolić Sentencing Appeal Judgement*, para. 38, citing *Furundžija Appeal Judgement*, para. 250; *Čelebići Appeal Judgement*, para. 720.

<sup>1304</sup> *Čelebići Appeal Judgement*, para. 721.

gravity of the crime and the individual circumstances of the accused, which include the consideration of both aggravating and mitigating circumstances.”<sup>1305</sup>

483. The Prosecution recalls the sentencing judgement of Milan Babić, who was sentenced by the Tribunal to a period of 13 years’ imprisonment for his criminal conduct, to which he pled guilty. The Prosecution submits that the culpability of Milan Martić should be compared with that of Milan Babić, whose conduct occurred within a more limited time (1 August 1991 to 15 February 1992), who cooperated with the Tribunal, and who testified in three trials and therefore received a lower sentence than he otherwise might have.<sup>1306</sup> The Trial Chamber considers that guidance may be had from the *Babić* case, however such guidance will necessarily be limited.

#### 1. Principles and purposes of sentencing

484. The jurisprudence of the Tribunal has consistently held that the main purposes of sentencing for crimes within the jurisdiction of the Tribunal are deterrence and retribution.<sup>1307</sup> The penalties imposed by the Tribunal must, in general, have sufficient deterrent value to dissuade those who would consider committing similar crimes from doing so.<sup>1308</sup> However, deterrence “must not be accorded undue prominence in the overall assessment of the sentences to be imposed on persons convicted by the International Tribunal”.<sup>1309</sup> Moreover, “unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more”.<sup>1310</sup> However, a sentence imposed “should make plain the condemnation of the international community of the behaviour in question.”<sup>1311</sup> A third purpose of sentencing is rehabilitation which, while it may be considered a relevant factor, “is not one which should be given undue weight”.<sup>1312</sup>

#### 2. Gravity and individual circumstances of the convicted person

485. Article 24(2) of the Statute provides that in imposing sentences Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. The Appeals Chamber has held that the gravity of the offence is a primary

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<sup>1305</sup> *Momir Nikolić* Sentencing Appeal Judgement, para. 38, citing *Čelebići* Appeal Judgement, paras 717, 719.

<sup>1306</sup> Prosecution Closing Argument, 10 Jan 2007, T. 11231.

<sup>1307</sup> *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185. See also *Furundžija*, Trial Judgement, para. 288; *Tadić* Sentencing Judgement, paras 7-9; *Kupreškić et al.* Trial Judgement, para. 848. As regards deterrence, see also *Čelebići* Appeal Judgement, para. 800, citing *Tadić* Jurisdiction Decision, para. 72.

<sup>1308</sup> *Kordić and Čerkez* Appeal Judgement, para. 1078.

<sup>1309</sup> *Kordić and Čerkez* Appeal Judgement, para. 1078; *Čelebići* Appeal Judgement, para. 801; *Aleksovski* Appeal Judgement, para. 185; *Tadić* Sentencing Appeal Judgement, para. 48.

<sup>1310</sup> *Kordić and Čerkez* Appeal Judgement, para. 1075 (emphasis in original). See also *Aleksovski* Appeal Judgement, para. 185; *Dragan Nikolić* Sentencing Judgement, para. 140.

<sup>1311</sup> *Aleksovski* Appeal Judgement, para. 185, citing *Erdemović* Sentencing Judgement, paras 64-65.



consideration in imposing a sentence.<sup>1313</sup> There is no hierarchy of crimes within the jurisdiction of the Tribunal.<sup>1314</sup> Sentences must reflect the inherent gravity or totality of the criminal conduct of the accused, requiring a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.<sup>1315</sup>

486. The Appeals Chamber has found that factors to be considered include the discriminatory nature of the crimes where this is not considered as an element of a conviction,<sup>1316</sup> and the vulnerability of the victims.<sup>1317</sup> The Appeals Chamber has also held that the consequences of the crime upon the victim directly injured is always relevant to sentencing,<sup>1318</sup> further factors, such as the effects of the crime on relatives of the immediate victims, may also be considered.<sup>1319</sup>

487. The Prosecution submits that the crimes with which Milan Martić is charged are of serious gravity and directs the Trial Chamber's attention to persecutions as a crime against humanity and crimes involving the intentional deprivation of life.<sup>1320</sup> The Prosecution further submits that the targeted group in this case was predominantly civilian and included women, children and the elderly.<sup>1321</sup>

488. Milan Martić has been found responsible for, *inter alia*, the crimes of murder, imprisonment, torture, cruel treatment, destruction, including of buildings dedicated to religion as well as plunder, directed against people of Croat ethnicity. Many of these crimes were committed with discriminatory intent. The Trial Chamber agrees with the Prosecution that the fact that the crimes were committed with discriminatory intent is a factor to be taken into consideration when assessing the gravity of the criminal conduct of Milan Martić.

489. Milan Martić has also been found guilty of the crimes of deportation and other inhumane acts (forcible transfer). The Trial Chamber particularly notes that the non-Serb population was subjected to widespread and systematic crimes, including killings, beatings, and crimes against

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<sup>1312</sup> *Čelebići* Appeal Judgement, para. 806. See also *Deronjić* Sentencing Appeal Judgement, paras 135-137; *Stakić* Appeal Judgement, paras 400-402.

<sup>1313</sup> *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442. See also *Aleksovski* Appeal Judgement, para. 182.

<sup>1314</sup> *Stakić* Appeal Judgement, para. 375.

<sup>1315</sup> *Blaškić* Appeal Judgement, para. 683, citing *Furundžija* Appeal Judgement, para. 249. See also *Čelebići* Appeal Judgement para. 731, citing *Kupreškić et al.* Trial Judgement, para. 852, cited in the *Aleksovski* Appeal Judgement at para. 182. See also *Čelebići* Appeal Judgement, para. 769; *Stakić* Trial Judgement, para. 903.

<sup>1316</sup> *Kvočka et al.* Trial Judgement, para. 702.

<sup>1317</sup> *Blaškić* Appeal Judgement, para. 683; *Kunarac et al.* Appeal Judgement, para. 352.

<sup>1318</sup> *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Trial Judgement, para. 512.

<sup>1319</sup> *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Appeal Judgement, para. 260. The Trial Chamber in *Čelebići* held that: "The gravity of the offences of the kind charged has always been determined by the effect on the victim or, at the most, on persons associated with the crime and nearest relations. Gravity is determined *in personam* and is not one of a universal effect," *Čelebići* Trial Judgement, para. 1226.

<sup>1320</sup> Prosecution Final Trial Brief, para. 478.

<sup>1321</sup> Prosecution Final Trial Brief, para. 480; Prosecution Closing Argument, 10 Jan 2007, T. 11234.

property, as a result of the coercive atmosphere in the SAO Krajina and the RSK between 1991 and 1995, and that as a result almost all of the Croat and other non-Serb population were forcibly displaced. The scale and systematic nature of these crimes are factors which the Trial Chamber considers to be of particular gravity.

490. The Trial Chamber recalls that the majority of the crimes for which Milan Martić has been found guilty were committed against elderly persons or against people held in detention. Furthermore, the majority of the victims were civilians. The special vulnerability of these groups of victims adds to the gravity of the crimes for which Milan Martić has been found guilty.

491. The Trial Chamber recalls the effects of the crimes committed on victims and their families. Virtually the entire Croat and other non-Serb population was expelled and many had their houses and property burnt and looted. Appalling acts of inhumane treatment, including torture, were committed in detention facilities against Croat and other non-Serb detainees. The Trial Chamber recalls in particular the testimony of some victims of these crimes concerning the suffering they endured and continue to endure as a result of these crimes. Moreover, the Trial Chamber recalls the horrific injuries and the serious suffering inflicted on civilians as a consequence of the indiscriminate attacks on Zagreb ordered by Milan Martić. The impact and long-lasting effects of these crimes, for which Milan Martić is individually criminally responsible, including as a direct perpetrator, render them especially grave.

492. In relation to “the individual circumstances of the convicted person”, the Appeals Chamber has held that while such circumstances can be either mitigating or aggravating, family concerns should, in principle, be a mitigating factor.<sup>1322</sup> The Trial Chamber will consider this factor in the following section.

### 3. Aggravating and mitigating factors

493. The Statute and the Rules require the Trial Chamber to take account of both aggravating and mitigating circumstances when imposing a sentence.<sup>1323</sup> The Appeals Chamber has held that the weight to be attached to such circumstances is a matter within the Trial Chamber’s discretion.<sup>1324</sup>

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<sup>1322</sup> *Kunarac et al.* Appeal Judgement, para. 362; *Erdemović* Second Sentencing Judgement, para. 16; *Tadić* Sentencing Judgement, para. 26.

<sup>1323</sup> See above Article 24 of the Statute and Rule 101 of the Rules; *Čelebići* Appeal Judgement, para. 717.

<sup>1324</sup> *Čelebići* Appeal Judgement, paras 718, 777, 780; *Blaškić* Appeal Judgement, para. 696.

Factors which a Trial Chamber takes into account as aspects of the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances, and *vice versa*.<sup>1325</sup>

494. While mitigating circumstances not directly related to the offence may be considered, with regard to aggravating circumstances only those relating directly to the commission of the offence may be considered.<sup>1326</sup> Furthermore, the absence of a mitigating factor can never serve as an aggravating factor.<sup>1327</sup>

(a) Aggravating circumstances

495. Aggravating circumstances must be proved by the Prosecution beyond reasonable doubt.<sup>1328</sup> Such factors include: (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia;<sup>1329</sup> (ii) the discriminatory intent<sup>1330</sup> or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime;<sup>1331</sup> (iii) the length of time during which the crime continued;<sup>1332</sup> (iv) active and direct criminal participation, if linked to a high-rank position of command,<sup>1333</sup> the accused's role as fellow perpetrator,<sup>1334</sup> and the active participation of a superior in the criminal acts of subordinates;<sup>1335</sup> (v) the informed, willing or enthusiastic participation in crime;<sup>1336</sup> (vi) premeditation and motive;<sup>1337</sup> (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims;<sup>1338</sup> (viii) the status of the

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<sup>1325</sup> *Deronjić* Sentencing Appeal Judgement, para. 106, citing *Krnojelac* Trial Judgement, para. 517; *Plavšić* Sentencing Judgement, para. 58; *Banović* Sentencing Judgement, para. 53. See also *Momir Nikolić* Sentencing Appeal Judgement, para. 58; *Obrenović* Sentencing Judgement, para. 101; *Češić* Sentencing Judgement, para. 53.

<sup>1326</sup> *Kunarac et al.* Trial Judgement, para. 850.

<sup>1327</sup> *Blaškić* Appeal Judgement, para. 687, citing *Čelebići* Appeal Judgement, paras 763, 783; *Plavšić* Sentencing Judgement, para. 64; *Kunarac et al.* Trial Judgement, para. 847.

<sup>1328</sup> *Blaškić* Appeal Judgement, para. 686, citing *Čelebići* Appeal Judgement, para. 763.

<sup>1329</sup> *Ibid.*, citing *Jokić* Sentencing Judgement, paras 61-62. See also *Tadić* Sentencing Appeal Judgement, paras 55-56. The Appeals Chamber in *Stakić* noted that "in considering the superior position in connection with Article 7(1), the Appeals Chamber recalls that it is settled in the jurisprudence of the Tribunal that superior position itself does not constitute an aggravating factor. Rather it is the abuse of such position which may be considered an aggravating factor," *Stakić* Appeal Judgement, para. 411, citing *Kayishema and Ruzindana* Appeal Judgement, paras 358-359; *Babić* Sentencing Appeal Judgement, para. 80; *Kamuhanda* Appeal Judgement, para. 347.

<sup>1330</sup> *Ibid.*, citing *Vasiljević* Appeal Judgement, paras 172-173. See also *Vasiljević* Trial Judgement, para. 277, holding that "the discriminatory purpose of the crimes and the selection of victims based on their ethnicity [...] can only [constitute an aggravating factor] where the crime for which an accused is convicted does not include a discriminatory state of mind as an element. The crime of persecution in Article 5(h) of the Statute already includes such an element. Such a discriminatory state of mind goes to the seriousness of the offence, *but it may not additionally aggravate that offence.*" (Emphasis added). See also *Kunarac et al.* Appeal Judgement, para. 357.

<sup>1331</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Appeal Judgement, para. 357, citing *Tadić* Appeal Judgement, para. 305. See also *Todorović* Sentencing Judgement, para. 57.

<sup>1332</sup> *Ibid.*, referring to *Kunarac et al.* Appeal Judgement, para. 356; *Todorović* Sentencing Judgement, para. 65.

<sup>1333</sup> *Ibid.*, referring to *Krstić* Trial Judgement, para. 708.

<sup>1334</sup> *Ibid.*, referring to *Furundžija* Trial Judgement, para. 281.

<sup>1335</sup> *Ibid.*, referring to *Čelebići* Appeal Judgement, paras 736-737.

<sup>1336</sup> *Ibid.*, referring to *Jelisić* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Appeal Judgement, para. 351.

<sup>1337</sup> *Ibid.*, referring to *Krstić* Trial Judgement, paras 711-712. See also *Krstić* Appeal Judgement, para. 258.

<sup>1338</sup> *Ibid.*, referring to *Kunarac et al.* Trial Judgement, para. 867; *Kunarac et al.* Appeal Judgement, para. 352.

victims, their age and number, and the effect of the crimes on them;<sup>1339</sup> (ix) civilian detainees;<sup>1340</sup> (x) the character of the accused;<sup>1341</sup> and (xi) the circumstances of the offences generally.<sup>1342</sup>

496. Furthermore, it has also been held that the refusal of an accused to testify cannot be taken into account in the determination of the sentence.<sup>1343</sup>

497. The Prosecution submits that the fact that the criminal conduct lasted from 1991 to 1995 throughout the Krajina region should be treated as an aggravating factor in sentencing.<sup>1344</sup> Moreover, the Prosecution submits that the following additional factors are relevant as aggravating circumstances: the discriminatory intent with which the crimes were committed (except for the crime of persecution where discriminatory intent is an element of the crime); the scale of the crimes (except for the crime of extermination where scale is an element); premeditation of the crimes; the willing and enthusiastic participation of the accused; and that crimes were committed against civilian detainees.<sup>1345</sup>

498. The Trial Chamber recalls that throughout the period relevant for the Indictment, Milan Martić held high positions within the SAO Krajina, and subsequently the RSK, including Minister of Interior and President of the RSK. The evidence shows that Milan Martić was one of the most important and influential political figures in the SAO Krajina and the RSK governments and that as Minister of the Interior he exercised absolute authority over the MUP. As President of the RSK, Milan Martić held the highest political office and controlled the armed forces of the RSK. The Trial Chamber considers that in holding such positions, Milan Martić was obligated to prevent the commission of crimes and to ensure that all inhabitants of the territories under his authority enjoyed respect for human rights. However, the evidence presented to the Trial Chamber proves beyond reasonable doubt that Milan Martić abused his positions and that he, through continuous and systematic efforts to create an ethnically Serb territory, promoted an atmosphere of mistrust and fear between Serbs and non-Serbs, in particular Croats. In doing so, Milan Martić contributed significantly to the furtherance of the common purpose of the JCE, of which he was a key member in the SAO Krajina and the RSK. The Trial Chamber considers that these factors are aggravating circumstances when determining Milan Martić's sentence.

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<sup>1339</sup> *Ibid.*, referring to *Kunarac et al.* Trial Judgement, paras 864, 866; *Kunarac et al.* Appeal Judgement, para. 355.

<sup>1340</sup> *Ibid.*, referring to *Furundžija* Trial Judgement, para. 283.

<sup>1341</sup> *Ibid.*, referring to *Čelebići* Appeal Judgement, para. 788.

<sup>1342</sup> *Ibid.*, referring to *Tadić* Sentencing Judgement, para. 19.

<sup>1343</sup> *Čelebići* Appeal Judgement, para. 783; *Blaškić* Appeal Judgement, para. 687; *Plavšić* Sentencing Judgement, para. 64. See also *Čelebići* Appeal Judgement, para. 763; *Kunarac et al.* Trial Judgement, para. 847, cited in *Blaškić* Appeal Judgement, *ibid.*

<sup>1344</sup> Prosecution Closing Argument, 10 Jan 2007, T. 11231, 11234, 11236.

<sup>1345</sup> Prosecution Closing Argument, 10 Jan 2007, T. 11231; Prosecution Final Trial Brief, para. 482.

499. Furthermore, the Trial Chamber considers that the widespread criminal conduct which covered the entire territory of the SAO Krajina and the RSK during a period of more than four years serves as an aggravating circumstance.

500. The Trial Chamber recalls that the vulnerability and status of the victims, as well as the discriminatory intent associated with the crimes were taken into account in assessing the gravity of the crimes for which Milan Martić has been found guilty. Therefore, these factors cannot be additionally considered as aggravating circumstances.

(b) Mitigating circumstances

501. Mitigating factors have to be proven “on a balance of probabilities”, that is “the circumstance in question must have existed 'more probably than not'.”<sup>1346</sup> Factors to be taken into account may include the following: (i) co-operation with the Prosecution;<sup>1347</sup> (ii) the admission of guilt or a guilty plea;<sup>1348</sup> (iii) an expression of remorse;<sup>1349</sup> (iv) voluntary surrender;<sup>1350</sup> (v) good character with no prior criminal convictions;<sup>1351</sup> (vi) comportment in detention;<sup>1352</sup> (vii) personal and family circumstances;<sup>1353</sup> (viii) the character of the accused subsequent to the conflict;<sup>1354</sup> (ix) duress<sup>1355</sup> and indirect participation;<sup>1356</sup> (x) diminished mental responsibility;<sup>1357</sup> (xi) age;<sup>1358</sup> and (xii) assistance to detainees or victims.<sup>1359</sup> Poor health is to be considered only in exceptional or rare cases.<sup>1360</sup>

502. The Prosecution submits that it cannot identify any mitigating circumstances warranting a reduction in sentence. Furthermore, the Prosecution submits that Milan Martić has failed to demonstrate any remorse.<sup>1361</sup>

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<sup>1346</sup> *Babić* Sentencing Appeal Judgement, para. 43.

<sup>1347</sup> *Blaškić* Appeal Judgement, para. 696. See also *Jokić* Sentencing Judgement, paras 95-96; *Todorović* Sentencing Judgement, para. 88; *Kvočka et al.* Appeal Judgement, para. 722.

<sup>1348</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Jelišić* Appeal Judgement, para. 122; *Jokić* Sentencing Judgement, para. 76.

<sup>1349</sup> *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 89; *Erdemović* Second Sentencing Judgement, para. 16(iii).

<sup>1350</sup> *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 73.

<sup>1351</sup> *Ibid.*, referring to *Erdemović* Second Sentencing Judgement, para. 16(i); *Kupreškić et al.* Appeal Judgement, para. 459.

<sup>1352</sup> *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 100; *Dragan Nikolić* Sentencing Judgement, para. 268.

<sup>1353</sup> *Ibid.*, referring to *Kunarac et al.* Appeal Judgement, paras 362, 408.

<sup>1354</sup> *Ibid.*, referring to *Jokić* Sentencing Judgement, paras 90-91, 103.

<sup>1355</sup> *Ibid.*, referring to *Erdemović* Second Sentencing Judgement, para. 17.

<sup>1356</sup> *Ibid.*, referring to *Krstić* Appeal Judgement, para. 273.

<sup>1357</sup> *Ibid.*, referring to *Čelebići* Appeal Judgement, para. 590.

<sup>1358</sup> *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 100.

<sup>1359</sup> *Ibid.*, referring to *Sikirica et al.* Sentencing Judgement, paras 195, 229.

<sup>1360</sup> *Ibid.*, referring to *Krstić* Appeal Judgement, para. 271; *Milan Simić* Sentencing Judgement, para. 98.

<sup>1361</sup> Prosecution Final Trial Brief, para. 483.

503. The Defence submits that before the indictment period Milan Martić had a reputation of being a professional and successful police inspector in Knin and that he was considered a person of broad-minded views and moral integrity.<sup>1362</sup> Moreover, the Defence relies on the testimony of MM-078 who stated that “he was not aware of any such case where Mr. Martić ordered someone to do something harmful to someone else”.<sup>1363</sup>

504. The Trial Chamber notes, in this respect, the Prosecution submission that Witness MM-078 also testified that Milan Martić abused his position as a police inspector in Knin by using coercive means on suspects, forcing them to make statements or admissions against their will, beating prisoners and detaining persons without sufficient evidence.<sup>1364</sup> As a consequence, Milan Martić was suspended from his position.<sup>1365</sup>

505. The Trial Chamber finds that the direct and specific evidence given by Witness MM-078 concerning examples of Milan Martić’s abuse of position is credible and outweighs the Witness MM-078’s evidence referred to by the Defence, as well as other similarly general statements concerning Milan Martić’s character. The Trial Chamber therefore finds that the conduct of Milan Martić prior to the indictment period cannot serve as a mitigating factor.

506. The Defence argued in its closing arguments that Milan Martić was not driven by “chauvinism, intolerance, ruthlessness in relation to members of a certain religion or ethnic group: Muslims and Croats”. The Defence recalled the testimonies of witnesses who stated that they never observed any traces of hatred or any kind of intolerance in Milan Martić against members of Croat community.<sup>1366</sup> The Defence further referred to the testimony of Charles Kirudja, who testified that during his meetings with Milan Martić he did not get the impression that Milan Martić wanted to expel or destroy any other peoples or to mistreat them in any way.<sup>1367</sup>

507. The Trial Chamber recalls that during the summer and autumn of 1991, Milan Martić instructed persons involved in humanitarian assistance to treat both Croat and Serb refugees arriving from Drniš equally.<sup>1368</sup> The Trial Chamber further recalls Slobodan Jarčević’s testimony that Milan Martić “demonstrated the nobility of his character” by looking after refugees who

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<sup>1362</sup> Witness MM-096, 21 Aug 2006, T. 6825-6826; Witness MM-116, 28 Aug, T. 7257.

<sup>1363</sup> Witness MM-078, 25 May 2006, T. 4499. Defence’s Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 9.

<sup>1364</sup> Witness MM-078, 24 May 2006, T. 4393-4395; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007, para. 3.

<sup>1365</sup> Witness MM-078, 24 May 2006, T. 4396; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007, para. 3.

<sup>1366</sup> Defence Closing Argument, 10 Jan 2007, T. 11241. *See also* Defence’s Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, paras 11-12.

<sup>1367</sup> Charles Kirudja, 1 Jun 2006, T. 4961; Defence’s Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 10.

arrived from BiH in 1994, despite the difficulties which the RSK was facing due to international sanctions.<sup>1369</sup>

508. The Trial Chamber considers that even though there is evidence showing positive traits in the character of Milan Martić and that sporadic help was given by him to Croats and other non-Serbs, the effect thereof is diminished by the fact that Milan Martić at all times relevant for the crimes for which he has been found guilty, held positions in which he was able and obliged to take measures to prevent or punish acts of violence.<sup>1370</sup> The Trial Chamber recalls that in such a case, sporadic benevolent acts or ineffective assistance may be disregarded.<sup>1371</sup> The Trial Chamber finds that neither the personality of Milan Martić nor any sporadic acts of assistance given to Croats and other non-Serbs can be treated as mitigating circumstances in this case. The Trial Chamber also finds that neither the age of Milan Martić, nor his family situation at the time of the commission of the crimes can be treated as mitigating circumstances in this case.<sup>1372</sup>

509. As to Milan Martić's situation since the commission of the crimes for which he has been found guilty, the Defence submits that Milan Martić and his family were expelled and displaced following "Operation Storm".<sup>1373</sup> The Trial Chamber considers this to be a mitigating circumstance of limited weight.

510. The Trial Chamber notes that the first Indictment against Milan Martić was confirmed on 25 July 1995 and made public on 23 January 1996.<sup>1374</sup> According to Milan Martić's own admission on the last day of the trial, he was aware of the first Indictment issued against him.<sup>1375</sup> In this respect, the Trial Chamber recalls the decision taken during the pre-trial phase in this case wherein it was considered that Milan Martić's surrender on 15 May 2002 was not necessarily fully voluntary.<sup>1376</sup> The Trial Chamber notes that Milan Martić evaded justice for around seven years in the knowledge that an indictment was issued against him. Rather than surrender in order to respond to the charges brought against him, he chose to publicly make disparaging remarks about the Tribunal.<sup>1377</sup> The

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<sup>1368</sup> Ljubica Vujanić, 18 Sep 2006, T. 8498-8501.

<sup>1369</sup> Slobodan Jarčević, 12 Jul 2006, T. 6172-6173.

<sup>1370</sup> See *supra* section III J.

<sup>1371</sup> *Čelebići* Appeal Judgement, para. 776; *Češić* Sentencing Judgement, para. 79. See also *Krajišnik* Trial Judgement, para. 1162.

<sup>1372</sup> Ex. 494, L0107131.

<sup>1373</sup> Defence's Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 3.

<sup>1374</sup> Review of the Indictment, 25 Jul 1995; Advertisement of Indictment, 23 Jan 1996.

<sup>1375</sup> Statement of the Accused, 12 Jan 2007, T. 11441.

<sup>1376</sup> The Trial Chamber considered that Milan Martić's surrender to the Tribunal in 2000 was at least partially caused by the enactment of the Law on Co-operation by the FRY, making his further hiding almost impossible, see Decision on the Motion for Provisional Release, 10 Oct 2002, pp 3-4.

<sup>1377</sup> Prosecution's Response to Motion for Provisional Release Filed by the Accused Milan Martić, 18 July 2002, para. 14 and Addendum; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007, para 4.

Trial Chamber finds that the fact that Milan Martić surrendered to the Tribunal in 2002, although constituting a mitigating factor in this case, will be given only minimal weight.

511. The Trial Chamber notes the Defence's submission of the neuropsychiatrist's opinion describing Milan Martić as having "a stable personality structure with a dominating quantum of emotions" and finding him to be "socially integrated, non-conflictive [and] conciliatory".<sup>1378</sup> However, in light of Milan Martić's conduct demonstrated during the trial, especially the fact that he did not express any remorse for any of the crimes for which he has been found guilty, the Trial Chamber rejects this opinion.

#### 4. General practice regarding sentencing in the former Yugoslavia

512. Article 24(1) of the Statute provides that "Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia". The jurisprudence of the Tribunal has consistently held that this does not require the Trial Chambers to conform to the practice regarding prison sentences in the courts of the Former Yugoslavia; it only requires that the Trial Chambers take that practice into account.<sup>1379</sup>

513. The Trial Chamber reviews this practice only as an aid in determining the appropriate penalty and may impose a sentence less than or in excess of the punishment that would be applicable under the sentencing law of the former Yugoslavia.<sup>1380</sup>

514. The Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFRY Criminal Code") regulated sentencing law in the territory at issue during the Indictment period.<sup>1381</sup> Article 41 of that Code provides the various factors to be taken into account in determining the sentence, including mitigating and aggravating circumstances, the degree of criminal responsibility, the motives of the accused, his personal circumstances, and his conduct after the commission of the crime.

515. In terms of punishment, Article 34 of the SFRY Criminal Code provides that the court could impose capital punishment, imprisonment, a fine, and confiscation of property. Article 38 of the SFRY Criminal Code provides further that prison sentences could not exceed 15 years unless the crime was eligible for the death penalty, in which case the term of imprisonment could not exceed

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<sup>1378</sup> Defence's Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 13.

<sup>1379</sup> *Čelebići* Appeal Judgement, para. 813, citing *Serushago* Sentencing Appeal Judgement, para. 30. See also *Tadić* Sentencing Appeal Judgement, para. 21; *Kunarac et al.* Appeal Judgement, para. 377; *Jelisić* Appeal Judgement, paras 116-117; *Stakić* Appeal Judgement, para. 398.

<sup>1380</sup> *Stakić* Appeal Judgement, para. 398.



20 years.<sup>1382</sup> The Trial Chamber recalls that Article 24 of the Statute limits it to imposing a sentence of imprisonment. In this context, the Appeals Chamber has held that it does not violate the principle of *nulla poena sine lege* to impose sentences in excess of 20 years.<sup>1383</sup>

516. Having considered all of the evidence and the arguments of the Parties, and based upon the factual and legal findings as determined in this judgement, the Trial Chamber decides as follows:

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<sup>1381</sup> Adopted by the SFRY Assembly at the Session of Federal Council held on 28 September 1976; declared by decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; took effect on 1 July 1977.

<sup>1382</sup> Due to the gravity of the crimes at issue, the accused would have been aware that such actions constituted serious violations of international humanitarian law, punishable by the harshest of penalties, *see Čelebići Appeal Judgement*, paras 816-817; *Blaškić Appeal Judgement*, para. 681. Furthermore, the Trial Chamber notes that violations of Articles 142 (“War crime against the civilian population”), 148 (“Making use of forbidden means of warfare”) provide for a minimum sentence of five years imprisonment with a maximum sentence of death; Article 151 (“Destruction of cultural and historical monuments”) mandates a sentence of at least one year imprisonment; and Article 154 (“Racial and other discrimination”) allows for a sentencing range of 6 months to five years of imprisonment.

<sup>1383</sup> *Stakić Appeal Judgement*, para. 398.

## VI. DISPOSITION

517. The Trial Chamber finds Milan Martić **NOT GUILTY** of:

**Count 2:** Extermination, a crime against humanity

518. The Trial Chamber finds Milan Martić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

**Count 1:** Persecutions, a crime against humanity

**Count 3:** Murder, a crime against humanity

**Count 4:** Murder, a violation of the laws or customs of war

**Count 5:** Imprisonment, a crime against humanity

**Count 6:** Torture, a crime against humanity

**Count 7:** Inhumane acts, a crime against humanity

**Count 8:** Torture, a violation of the laws or customs of war

**Count 9:** Cruel treatment, a violation of the laws or customs of war

**Count 10:** Deportation, a crime against humanity

**Count 11:** Forcible transfer, a crime against humanity

**Count 12:** Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war

**Count 13:** Destruction or wilful damage done to institutions dedicated to education or religion, a violation of the laws or customs of war

**Count 14:** Plunder of public or private property, a violation of the laws or customs of war

**Count 15:** Murder, a crime against humanity

**Count 17:** Inhumane acts, a crime against humanity

**Count 19:** Attacks on civilians, a violation of the laws or customs of war

519. The Trial Chamber sentences Milan Martić to a single sentence of **thirty-five (35) years** of imprisonment.

520. Milan Martić has been detained since 15 May 2002. Pursuant to Rule 101(C) of the Rules, Milan Martić is entitled to credit for time spent in detention, which as of the date of this judgement amounts to 1,855 days, and for such additional time he may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, Milan Martić shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done in English and French, the English version being authoritative.

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**Janet Nosworthy**  
**Judge**

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**Bakone Justice Moloto**  
**Presiding Judge**

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**Frank Höpfel**  
**Judge**

Dated this twelfth day of June 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**

## ANNEX A – PROCEDURAL HISTORY

### A. Pre-trial proceedings

521. The Initial Indictment against Milan Martić was confirmed on 25 July 1995, with corrected or amended versions subsequently filed on 26 August 2002, 18 December 2002 and 14 July 2003, and the Second Amended Indictment being filed on 9 September 2003.<sup>1384</sup>

522. On 8 March 1996, an international arrest warrant was issued for Milan Martić.<sup>1385</sup> On 15 May 2002, Milan Martić surrendered and was transferred to the Tribunal, and ordered to be detained at the UNDU in The Hague.<sup>1386</sup> At the initial appearance on 21 May 2002, Milan Martić pled not guilty to all charges, and on 28 January 2003, Milan Martić pled not guilty to all additional charges and allegations of the Amended Indictment.<sup>1387</sup>

523. During his initial appearance, Milan Martić was represented by Strahinja Kastratović, temporarily assigned by the Registrar from 31 May 2002 until 13 June 2002.<sup>1388</sup> On 13 December 2002, in light of Milan Martić's request for the withdrawal of Strahinja Kastratović and of the communication from the latter stating unwillingness to represent Milan Martić, the Registrar assigned Predrag Milovančević as counsel for Milan Martić.<sup>1389</sup>

524. On 10 October 2002, the Trial Chamber denied the Defence requests for provisional release of Milan Martić, and on 12 September 2005, the Trial Chamber denied a further motion for provisional release.<sup>1390</sup>

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<sup>1384</sup> Review of the Indictment, 25 Jul 1995; Motion to Request Leave to File an Amended Indictment, 26 Aug 2002; Decision on the Prosecution; Motion to file a Corrected Amended Indictment, 13 Dec 2002; Prosecution Motion to file Amended Indictment pursuant to Trial Chamber's Decision on Preliminary Motion against the Amended Indictment, 14 Jul 2003. In relation to the Amended Indictment, on 2 Jun 2003 the Trial Chamber granted in part the Defence Preliminary Motion pursuant to Rule 72A (ii) of the Rules on Procedure and Evidence against the Amended Indictment dated 18 Dec 2002, and 17 Mar 2003, and ordered the Prosecution to file a new Amended Indictment clarifying inconsistencies, *see* Decision on Preliminary Motion against the Amended Indictment, 2 Jun 2003. On 5 Sep 2003, the Trial Chamber denied a further preliminary motion filed by the Defence against the Amended Indictment, declaring it as frivolous, and ordered the Prosecution to file the Amended Indictment, to be known as the Second Amended Indictment, which the Prosecution did on 9 Sep 2003. On 9 Dec 2005, the Second Amended Indictment was re-filed due to a numbering mistake.

<sup>1385</sup> Decision of the Registrar, 8 Mar 1996.

<sup>1386</sup> Order for Detention, 15 May 2002.

<sup>1387</sup> Initial Appearance, 21 May 2002, T. 11-13. Further Appearance and Status Conference, 28 Jan 2003, T. 74-80.

<sup>1388</sup> Decision of the Registrar, 31 May 2002. On 14 June 2002, the Registrar assigned Gert-Jan Knoops as counsel for a period of 100 days, Decision of the Registrar, 14 Jun 2002. Following an appeal by Strahinja Kastratović and order by the Trial Chamber, on 16 August 2002, the Registrar withdrew the assignment of Gert-Jan Knoops and assigned Strahinja Kastratović, Defence's Appeal against the Decision of Registry, 18 Jun 2002; Decision on Appeal against Decision of Registry, 2 Aug 2002; Decision of the Registrar, 16 Aug 2002.

<sup>1389</sup> Decision of the Registrar, 13 Dec 2002.

<sup>1390</sup> The Trial Chamber noted several factors which substantially weighed against the Defence's contention that there was no risk of flight: Milan Martić had shown capacity for evading arrest for a prolonged period of time, he had used false names, had the means and know-how to obtain false documents, had publicly and repeatedly displayed disregard

525. The Prosecution disclosed supporting material to the Defence pursuant to Rule 66(A)(i) and (ii) on 21 May 2002, and 26 August 2002.<sup>1391</sup> On 7 May 2004, the Prosecution disclosed material previously undisclosed to the Defence pursuant to Rule 65 *ter* (E)(iii). On 22 January 2004, the Prosecution assured the Trial Chamber that it had disclosed all Rule 66 (A) material, except for that which the Trial Chamber had agreed to delay disclosure.<sup>1392</sup> On 5 March 2004, the Prosecution disclosed to the Defence exculpatory material relative to Rule 68. On 2 November 2004, the Prosecution recognised that the “Statement of Matters that are not in Dispute”, which was attached to the Defence’s Pre-Trial Brief, accurately reflected the agreement between the Parties.<sup>1393</sup>

526. Status Conferences were held on 23 September 2002, 28 January 2003, 29 May 2003, 29 September 2003, 22 January 2004, 21 September 2004, 19 May 2005, 15 September 2005, and 22 November 2005.

527. The Prosecution filed its Pre-Trial Brief on 7 May 2004. On 1 November 2004, after having been given an extension of 47 days, the Defence submitted its Pre-Trial Brief.

528. On 10 November 2005, the Trial Chamber denied a Prosecution Motion for Joinder of the cases of Milan Martić, Jovica Stanišić, Franko Simatović and Vojislav Šešelj on the basis that the case against Milan Martić had been ready for trial for some time and that Milan Martić had been in detention for over three years and four months, and therefore the trial should commence with the shortest possible delay.<sup>1394</sup>

529. On 15 December 2005, the Trial Chamber granted in part the Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibits List by adding 719 documents and video footage to the Prosecution exhibit list.<sup>1395</sup> The Trial Chamber denied the motion insofar as it sought the addition

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for the Tribunal, and had publicly announced his willingness to resort to violence in the case of forcible apprehension. Moreover, the Trial Chamber noted that Milan Martić’s surrender was not necessarily fully voluntary. On 13 October 2002, the Defence applied for leave to appeal the Trial Chamber’s Decision of 10 October 2002. The Appeals Chamber dismissed the application on 18 Dec 2002. *See also* Milan Martić’s Request for Provisional Release until Beginning of Trial, dated 21 June 2002, and filed on 10 July 2002; Motion for Provisional Release, 9 Jul 2002; Second Motion for Provisional Release, 25 Apr 2005.

<sup>1391</sup> Initial Appearance, 21 May 2002, T. 13. Prosecution’s Material in Support of the Amended Indictment, 26 Aug 2002. An addendum of supporting materials for the Amended Indictment being submitted on 18 November 2002, Prosecution’s Addendum of Supporting Materials in Support of Amended Indictment.

<sup>1392</sup> Status Conference, 22 January 2004, T. 105-106.

<sup>1393</sup> Defence Pre-Trial Brief Pursuant to Rule 65 *ter* (F) with a Confidential Annex, 1 Nov 2004. *See* Prosecution Pre-Trial Brief, 7 May 2004. Prosecution’s Submission to Defence’s Pre-Trial Brief, 2 Nov 2004; at the Rule 65*ter* conference on 14 Sep 2005, both the Prosecution and the Defence stated that they could not go further than the already agreed facts, Rule 65 *ter* Conference, 14 Sep 2005.

<sup>1394</sup> Decision on Prosecution Motion for Joinder, 10 Nov 2005. Prosecution Motion for Joinder, 30 May 2005. Response to the Prosecution’s Motion for Joinder, 13 Jun 2005.

<sup>1395</sup> Prosecution’s Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 17 Aug 2005; Decision on Prosecution’s Motion to Amend Its Rule 65 *ter* Exhibit List, 15 Dec 2005.

of material pertaining to the charges concerning Prnjavor, Šipovo and Bosanska Gradiška, regarding which areas the Prosecution had previously stated that it would not lead evidence.<sup>1396</sup>

530. On 18 November 2005, the President of the Tribunal assigned Judge Bakone Justice Moloto (South Africa) to the present case, and on 1 December 2005, the President of the Tribunal ordered that the Bench be composed of Judge Bakone Justice Moloto, presiding, Judge Janet Nosworthy (Jamaica) and Judge Frank Höpfel (Austria).<sup>1397</sup> The Pre-Trial Conference was held on 12 December 2005 and the Pre-Defence Conference was held on 7 July 2006.

## **B. Trial proceedings**

### **1. Overview**

531. Pursuant to Rule 84 *bis* of the Rules, Milan Martić made an opening statement on 13 December 2005 and in-court statements on 13 March 2006 and 12 January 2007.<sup>1398</sup> The Prosecution case started on 13 December 2005 and concluded on 20 June 2006.<sup>1399</sup> Guidelines on the Standards Governing the Admission of Evidence, and Guidelines Governing the Presentation of Evidence and the Conduct of Counsel in Court, were adopted on 19 January 2006, and 13 April 2006, respectively.<sup>1400</sup>

532. The Prosecution called 45 *viva voce* witnesses, four of whom testified pursuant to Rule 89 (F), and 12 of whom testified pursuant to former Rule 92 *bis* (E).<sup>1401</sup> 16 witness statements were admitted into evidence pursuant to former Rule 92 *bis* (B), two witness statements were admitted pursuant to former Rule 92 *bis* (C), and transcripts of nine witnesses were admitted pursuant to

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<sup>1396</sup> Prosecution Notification Regarding Certain Witnesses on its Rule 65 *ter* List, 24 Nov 2005.

<sup>1397</sup> Order Replacing a Judge in a Case before a Trial Chamber, 18 Nov 2005. Order Assigning Judges to a Case in a Trial Chamber, 1 Dec 2005. During the pre-Trial phase, on 15 May 2002, the President of the Tribunal transferred the case to Trial Chamber I, consisting of Judge Liu Daqun (China), presiding, Judge Amin El Mahdi (Egypt) and Judge Alphonsus Oric (The Netherlands). Order of the President Assigning a Case to a Trial Chamber, 15 May 2002. On 30 May 2003, the President of the Tribunal ordered the composition of the Trial Chamber as Judge Amin El Mahdi, Judge Alphonsus Oric and Judge Joaquín Martín Canivell (Spain). Order Assigning a Case to a Trial Chamber, 30 May 2003. On 2 June 2003, Judge Liu Daqun, as Presiding Judge of Trial Chamber I, designated Judge Alphonsus Oric as Presiding Judge in the case. Order Designating a Presiding Judge for the Case, 2 Jun 2003. On 7 June 2005, the President of the Tribunal assigned the case to Trial Chamber III. Order Reassigning a Case to a Trial Chamber, 7 Jun 2005. The case was reassigned to Trial Chamber I on 4 July 2005. Order Reassigning a Case to a Trial Chamber and Referring the Joinder Motion, 4 Jul 2005.

<sup>1398</sup> Hearing, 13 Dec 2005, T. 296-318. Hearing, 13 March 2006, T. 2222-2224. Hearing, 12 Jan 2007, T. 11441-11442.

<sup>1399</sup> Hearing, 13 Dec 2005, T. 261; Hearing, 20 Jun 2006, T. 5835-5836.

<sup>1400</sup> Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 Jan 2006 (with Annex A). Decision Adopting Guidelines on the Standards Governing the Presentation of Evidence and the Conduct of Counsel in Court, 13 Apr 2004 (with Annex A). The Guidelines were revised on 19 May 2006; Revised Version of the Decision Adopting Guidelines on the Standards Governing the Presentation of Evidence and the Conduct of Counsel in Court, 19 May 2006.

<sup>1401</sup> Decision on Prosecution's Motion for Admission of Statement of Witness Milan Babić Pursuant to Rule 89 (F), 10 Feb 2006; Decision on the Prosecution Motion for the Admission of a Statement of a Witness Pursuant to Rule 89(F), with Confidential Annex A, 28 Apr 2006; Oral Decision on Prosecution's Motion for Admission of Statements of Witnesses MM-016 and MM-018 Pursuant to Rule 89 (F), 9 May 2006, T. 4151-4152.

former Rule 92 *bis* (D).<sup>1402</sup> The testimonies of three witnesses of the Prosecution were heard via videoconference link.<sup>1403</sup> On 13 January 2006, the Trial Chamber granted the Defence's request for cross-examination of five Prosecution experts but dismissed the Defence's objections that the individuals could not, based on their qualifications, be considered as experts, and the objections concerning the impartiality of the experts, and the reliability of the reports.<sup>1404</sup> One subpoena was issued by the Trial Chamber for one witness at the request of the Prosecution.<sup>1405</sup> The Trial Chamber also issued one order for the temporary transfer of a detained witness.<sup>1406</sup> The Trial Chamber admitted 901 exhibits tendered into evidence by the Prosecution.

533. On 26 June 2006, the Defence presented oral submissions pursuant to Rule 98 *bis* of the Rules, moving for an acquittal on all counts.<sup>1407</sup> The Prosecution responded on the same day and opposed the Defence submissions in their entirety.<sup>1408</sup> On 3 July 2006, the Trial Chamber rejected the Defence motion in all respects.<sup>1409</sup>

534. The Defence case began on 11 July 2006 and ended on 16 November 2006.<sup>1410</sup> The Trial Chamber heard 22 *viva voce* witnesses, two of whom testified pursuant to Rule 92 *ter*.<sup>1411</sup> The testimony of one Defence witness was heard via video-conference link.<sup>1412</sup> On 13 January 2006, the Trial Chamber granted a Prosecution motion requesting assignment of pseudonyms to certain witnesses, that certain witnesses would testify in closed session, and that certain confidential material would not be disclosed to the public.<sup>1413</sup> On 18 August 2006, the Trial Chamber granted a Defence motion requesting the assignment of a pseudonym to a witness and closed session

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<sup>1402</sup> Decision on Prosecution's Motions for the Admission of Written Evidence Pursuant to Rule 92 *Bis* of the Rules, 16 Jan 2006; Decision on Prosecution Motions on Admission of Written Statements Pursuant to Rule 92 *Bis* (C), 15 Jun 2006; Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (D) and of Expert Reports Pursuant to Rule 94 *bis*, 13 Jan 2006; Oral Decisions on Prosecution's Second Rule 92 *bis* Motion of 25 January 2006, 15 Feb 2006, T. 1322-1323, and 2 May 2006, T. 3889-3890; Oral Decision to Admit the Statement of Witness MM-038, 23 Mar 2006, T. 2464.

<sup>1403</sup> Hearing, 2 Mar 2006, T. 1751-1752.

<sup>1404</sup> Decision on the Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (d) and of Expert Reports Pursuant to Rule 94 *bis*, 13 Jan 2006.

<sup>1405</sup> Subpoena to a Witness to Appear for a Meeting with the Prosecution, 16 Sep 2005.

<sup>1406</sup> Order for Transfer of a Detained Witness, 13 Jan 2006.

<sup>1407</sup> Hearing, 26 Jun 2006, T. 5841-5886.

<sup>1408</sup> Hearing, 26 Jun 2006, T. 5886-5925, Hearing, 27 Jun 2006, T. 5927-5939.

<sup>1409</sup> Hearing, 3 Jul 2006, T. 5959-5971.

<sup>1410</sup> Hearing, 11 Jul 2006, T. 6024-6025; Hearing, 16 Nov 2006, T. 11142-11143.

<sup>1411</sup> Rule 92 *ter* was adopted at the Extraordinary Plenary Session on 13 Sep 2006 and codifies the procedure, which had developed pursuant to Rule 89(F), *see Milošević Decision*. According to the Rule 92 *bis* (C), Rule 92 *ter* also applies to witnesses who appear for cross-examination, *i.e.* witnesses who were formerly called pursuant to Rule 92 *bis* (E). Before the introduction of Rule 92 *ter*, Rule 89 (F) was applied in determining the admission of such evidence.

<sup>1412</sup> Decision on Defence Motion for the Testimony of Professor Simlja Avramov Via Video-Conference Link, 10 Nov 2006.

<sup>1413</sup> Decision on Prosecution Second Motion for Protective Measures with Confidential Annexes A, C and E, and Confidential and *Ex-Parte* Annexes B, D, and F, 13 Jan 2006. A previous Prosecution request for protective measures had been granted on 18 December 2003, Order on Prosecution Motion for Non-Disclosure of Materials Provided Pursuant to Rules 66(A)(i) and 68 and for Protective Measures for Witnesses During the Pre-Trial Phase. *See also* Decision on Prosecution's Motion for Variation of Protective Measures, 17 Mar 2006.

testimony.<sup>1414</sup> Additional protective measures for witnesses were granted orally during the trial.<sup>1415</sup> The Trial Chamber issued 20 orders for safe conduct at the request of the Defence. In total, the Trial Chamber admitted 90 Defence exhibits into evidence. The Trial Chamber also admitted 24 exhibits as Chambers exhibits.

535. On 28 November 2006, the Trial Chamber denied the Prosecution's motion to admit evidence in rebuttal on the basis that it did not meet the standard for admission as rebuttal evidence pursuant to Rule 85(A)(iii).<sup>1416</sup>

536. On 5 January 2007, the final trial briefs of the Prosecution and the Defence were filed. Closing arguments were heard on 10, 11 and 12 January 2007. On 9 April 2007, the Prosecution sent a letter to the Defence disclosing details of its assistance provided to Witness MM-003 in his asylum case.<sup>1417</sup> On 24 May 2007, the Trial Chamber ordered the Parties to make written submissions regarding the individual circumstances of Milan Martić because the Trial Chamber considered that the Parties had not adequately addressed this in their final trial briefs or closing arguments as was their duty under the Statute and under the Rules.<sup>1418</sup>

## 2. Testimony and evidence of Milan Babić

537. On 6 March 2006, the trial was adjourned until 8 March 2006 on account of the death of Milan Babić on 5 March 2006 at the United Nations Detention Unit, where he was being detained for the duration of his testimony as a Prosecution's witness.<sup>1419</sup> On 8 March 2006, the question of whether Milan Babić's death affected his evidence was raised in court and the Trial Chamber ordered the Parties to address the matter of Milan Babić's evidence "at an appropriate moment", and that the trial proceed in the meantime.<sup>1420</sup> On 9 June 2006, having heard the submissions of the Parties, the Trial Chamber rejected the Defence's arguments, determining that, pursuant to Rule 89

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<sup>1414</sup> Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-090, 18 Aug 2006.

<sup>1415</sup> Hearing, 8 Mar 2006, T. 1943; Hearing, 15 Mar 2006, T. 2265-2267; Hearing, 4 Apr 2006, T. 3178-3179; Hearing, 23 Mar 2006, T. 2467; Hearing, 5 May 2006, T. 4073-4075; Hearing, 14 Aug 2006, T. 6430; Hearing, 11 Oct 2006, T. 9129-9130; Hearing, 31 Oct 2006, 10388-10389.

<sup>1416</sup> Decision on Prosecution Motion to Admit Evidence in Rebuttal Pursuant to Rule 92 *bis*, with Annexes A, B and C, 28 Nov 2006. *See* Prosecution Motion to Admit Evidence in Rebuttal Pursuant to Rule 92 *bis*, with Annexes A, B and C, 16 Nov 2006.

<sup>1417</sup> Letter from Alex Whiting to Predrag Milovančević, 9 Apr 2007. The Trial Chamber was copied on this letter.

<sup>1418</sup> Order for submissions, 24 May 2006; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007; Defence's Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007. Each Party filed a response on 1 Jun 2007.

<sup>1419</sup> Hearing, 6 Mar 2006, T. 1935-1936.

<sup>1420</sup> Hearing, 8 Mar 2006, T. 1945-1948.



(D) of the Rules, in spite of the incomplete cross-examination the need to ensure a fair trial did not outweigh the probative value of the evidence of Milan Babić.<sup>1421</sup>

538. On 20 June 2006, the Trial Chamber granted certification for appeal of the Trial Chamber's decision of 9 June 2006 to the Defence.<sup>1422</sup> On 10 July 2006, after being given an enlargement of time by the Appeals Chamber, the Defence filed its interlocutory appeal.<sup>1423</sup> The Appeals Chamber dismissed the Defence's appeal on 14 September 2006.<sup>1424</sup> On 30 September 2006, the Trial Chamber denied the Defence's motion for reconsideration and modification of the Trial Chamber's order of 9 June 2006.<sup>1425</sup>

539. On 17 November 2006, the Trial Chamber admitted into evidence excerpts of Milan Babić's Prosecution Interviews submitted by the Defence to it pursuant to the Trial Chamber's order of 9 June 2006.<sup>1426</sup>

540. On 28 November 2006, the Trial Chamber dismissed the Defence Motion requesting the Trial Chamber to order Judge Kevin Parker, the Vice-President of the Tribunal, to disclose to the Defence the full statements obtained during the inquiry on Milan Babić's death, having found that it

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<sup>1421</sup> Decision on Defence Motion to Exclude Testimony of Witness Milan Babić, Together with Associated Exhibits, from Evidence, 9 June 2006. *See supra* para. 33. Prosecution's Submissions Regarding the Evidence of Witness Milan Babić, 6 April 2006. The Prosecution submitted that Milan Babić's evidence bore numerous indicia of reliability, such as the fact that the testimony was given under oath, in open session, in the presence of the Accused, was subject to three days of cross-examination and was in large part corroborated by other evidence, both documentary and testimonial. Motion to Exclude Testimony of Witness Milan Babić, Together with Associated Exhibits, from Evidence, 2 May 2006. In its motion filed on 2 May 2006, the Defence requested the Trial Chamber to exclude the testimony of Milan Babić from the trial record on the basis that it was so lacking in indicia of reliability that it had no probative value, and in any case that it was substantially outweighed by the need to ensure a fair trial. On 8 May 2006, the Prosecution filed its Response to the Defence Motion to Exclude Testimony of Witness Milan Babić, Together with Associated Exhibits, from Evidence. The Defence replied on 15 May 2006.

<sup>1422</sup> Decision on Defence Application for Certification of Appeal Pursuant to Rule 73 (B), 20 June 2006. *See also* Prosecution's Response to Defence Application for Certification of Appeal Pursuant to Rule 73 (B), 19 June 2006. Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 10 July 2006. On 20 July 2006, the Prosecution filed its Response to Defence Interlocutory Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić.

<sup>1423</sup> Decision on Motion for Enlargement of Time, 23 Jun 2006.

<sup>1424</sup> Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006. The Appeals Chamber found that the Defence had failed to demonstrate any of the discernible errors allegedly committed by the Trial Chamber that would result in prejudice.

<sup>1425</sup> Decision on Defence Motion for Reconsideration and Modification of the Trial Chamber's Order of 9 June 2006, 30 Sep 2006. The Defence Motion was rejected, *inter alia*, on the basis that it was not shown by the Defence that there had been a change of circumstances, which would require the Trial Chamber to reconsider its decision *See* Defence Motion for Reconsideration and Modification of the Trial Chamber's Order of 9 June 2006, 24 September 2006. Prosecution's Response to the Defence Motion for Reconsideration and Modification of the Trial Chamber's Order of 9 June 2006, 28 September 2006.

<sup>1426</sup> Decision on Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 17 Nov 2006. *see* Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 4 Oct 2006. Prosecution's Response to the Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 16 October 2006.

was not the proper forum before which a request for review of the decision taken by Judge Parker could be brought.<sup>1427</sup>

### 3. Site visit

541. The Trial Chamber and the Parties carried out a site visit between 25 and 30 September 2006, pursuant to the Trial Chamber's Order of 16 May 2006 on Site visit.<sup>1428</sup> An audiovisual record was made of the site visit. The record was subsequently transcribed and both the record and the transcripts thereof were admitted into evidence by the Trial Chamber.<sup>1429</sup>

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<sup>1427</sup> Decision on Defence's Motion for Access to Full Statements Obtained in the Inquiry of the Death of Milan Babić, 28 Nov 2006. *See* Defence's Motion for Access to Full Statements Obtained in the Inquiry of the Death of Milan Babić, 13 Nov 2006.

<sup>1428</sup> The locations visited were Zagreb, Hrvatska Dubica, Cerovljani, Baćin, Slunj, Hrvatska Kostajnica, Dvor na Uni, Saborsko, Poljanak (including the hamlet of Vukovići), Lipovača, Vaganac, Hrvatska Korenica, Škabrnja, Nadin, Bruška (including the hamlet of Marinovići), Knin, Vrpolje and Golubić.

<sup>1429</sup> Order On Site Visit, 16 May 2006. Order on Itinerary for the Site Visit, 23 Jun 2006. Decision on Admission into Evidence of Record of Site Visit, 28 Nov 2006. Ex. 1042: video record; Ex. 1043: transcript. *See also* Prosecution's Proposal of Locations to Visit During Proposed Site Visit, filed confidentially on 6 Apr 2006. Defence Submission Regarding sites to be Visited during the Proposed Site Visit, filed confidentially on 9 May 2006. Prosecution Response to Defence Submission Regarding Sites to be Visited During the Proposed Site Visit, 10 May 2006. *See also* Order to Redact Site Visit Record, 6 June 2007.

## ANNEX B – LIST OF CASES, SOURCES AND SHORT CITES

### C. ICTY

<i>Aleksovski Appeal Judgement</i>	<i>Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 Mar 2000</i>
<i>Babić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Milan Babić, Case No. IT-03-72, Judgement on Sentencing Appeal, Judgement, 18 Jul 2005</i>
<i>Banović Sentencing Judgement</i>	<i>Prosecutor v. Predrag Banović, Case No. IT-02-65/1-S, Sentencing Judgement, 28 Oct 2003</i>
<i>Blagojević and Jokić Trial Judgement</i>	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Judgement, 17 Jan 2005</i>
<i>Blaškić Appeal Judgement</i>	<i>Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 Jul 2004</i>
<i>Brdanin Appeal Judgement</i>	<i>Prosecutor v. Radoslav Brdanin, Case No. IT-99-36-A, Judgement, 3 Apr 2007</i>
<i>Brdanin Trial Judgement</i>	<i>Prosecutor v. Radoslav Brdanin, Case No. IT-99-36-T, Judgement, 1 Sep 2004</i>
<i>Čelebići Appeal Judgement</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. “Pavo”), Hazim Delić and Esad Landžo (a.k.a. “Zenga”), Case No. IT-96-21-A, Judgement, 20 Feb 2001</i>
<i>Čelebići Trial Judgement</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. “Pavo”), Hazim Delić and Esad Landžo (a.k.a. “Zenga”), Case No. IT-96-21-T, Judgement, 16 Nov 1998</i>
<i>Češić Sentencing Judgement</i>	<i>Prosecutor v. Ranko Češić, Case No. IT-95-10-1, Sentencing Judgement, 11 Mar 2004</i>
<i>Deronjić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Miroslav Deronjić, Case No. IT-02-61, Judgement on Sentencing Appeal, 29 Jul 2005</i>
<i>Dragan Nikolić Sentencing Judgement</i>	<i>Prosecutor v. Dragan Nikolić, Case No. IT-94-02, Sentencing Judgement, 18 Dec 2003</i>
<i>Erdemović Sentencing Judgement</i>	<i>Prosecutor v. Dražan Erdemović, Case No. IT-96-22, Sentencing Judgement, 29 Nov 1996</i>
<i>Erdemović Second Sentencing Judgement</i>	<i>Prosecutor v. Dražen Erdemović, Case No. IT-96-22-Tbis, Sentencing Judgement, 5 Mar 1998</i>
<i>Furundžija Appeal Judgement</i>	<i>Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgment, 21 Jul 2000</i>
<i>Furundžija Trial Judgement</i>	<i>Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-T, Judgement, 10 Dec 1998</i>
<i>Galić Appeal Judgement</i>	<i>Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 Nov 2006</i>
<i>Galić Trial Judgement</i>	<i>Prosecutor v. Stanislav Galić, Case No. IT-98-29-T, Judgement, 14 Dec 2003</i>
<i>Hadžihasanović and Kubura Rule 98 bis Appeal Decision</i>	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01-47-AR 73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98 bis Motions for Acquittal, 11</i>

	<i>Mar 2005</i>
<i>Halilović Trial Judgement</i>	<i>Prosecutor v. Sefer Halilović, Case No. IT-01-48-T, Judgement, 16 Nov 2005</i>
<i>Jelisić Appeal Judgement</i>	<i>Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 Jul 2001</i>
<i>Jokić Sentencing Judgement</i>	<i>Prosecutor v. Miodrag Jokić, Case No. IT-01-42-1-T, Sentencing Judgement, 18 Mar 2004</i>
<i>Kordić and Čerkez Appeal Judgement</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement, 17 Dec 2004</i>
<i>Kordić and Čerkez Trial Judgement</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement, 26 Feb 2001</i>
<i>Krajišnik Trial Judgement</i>	<i>Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, 27 Sep 2006</i>
<i>Krnojelac Appeal Judgement</i>	<i>Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 Sep 2003</i>
<i>Krnojelac Trial Judgement</i>	<i>Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 Mar 2002</i>
<i>Krstić Appeal Judgement</i>	<i>Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 Apr 2004</i>
<i>Krstić Trial Judgement</i>	<i>Prosecution v. Radislav Krstić, Case No. IT -98-33-T, Judgement, 2 Aug 2001</i>
<i>Kunarac et al. Appeal Judgement</i>	<i>Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-22&amp;23-/1-A, Judgement, 12 Jun 2002</i>
<i>Kunarac et al. Trial Judgement</i>	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković, Case No. IT-96-22&amp;23-/1-T, Judgement, 21 February 2001</i>
<i>Kupreškić et al. Appeal Judgement</i>	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka "Vlado"), Case No. IT-95-16-A, Judgement, 23 Oct 2001</i>
<i>Kupreškić et al. Trial Judgement</i>	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić ( aka "Vlado"), Case No. IT-95-16-T, Judgement, 14 Jan 2000</i>
<i>Kvočka et al. Appeal Judgement</i>	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-A, Judgement, 28 Feb 2005</i>
<i>Kvočka et al. Trial Judgement</i>	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-T, Judgement, 2 Nov 2001</i>
<i>Limaj et al. Trial Judgement</i>	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Judgement, 30 Nov 2005</i>
<i>Milan Simić Sentencing Judgement</i>	<i>Prosecutor v. Milan Simić, Case No. IT-95-9/2, Sentencing Judgement, 17 Oct 2002</i>
<i>Milošević Decision</i>	<i>Prosecutor v. Slobodan Milošević, Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements, 30 Sep 2003</i>
<i>Milutinović et al. Decision</i>	<i>Prosecutor v. Milan Milutinović et al., Case No. IT-</i>

	<i>05-87-T, Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coo's Expert Report, 30 Aug 2006</i>
<i>Momir Nikolić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 Mar 2006</i>
<i>Mrkšić et al. Decision</i>	<i>Prosecutor v. Mile Mrkšić et al., Case No. IT-95-13/1-T, Decision on Motion Seeking Clarification with Regard to Count 1 of the Indictment, 19 May 2006</i>
<i>Naletilić and Martinović Appeal Judgement</i>	<i>Prosecutor v. Mladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Štela"), Case No. IT-98-34-A, Judgement, 3 May 2006</i>
<i>Naletilić and Martinović Trial Judgement</i>	<i>Prosecutor v. Mladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Stela"), Case No. IT-98-34-T, Judgement, 31 Mar 2003</i>
<i>Obrenović Sentencing Judgement</i>	<i>Prosecutor v. Dragan Obrenović, Case No. IT-02-60/2, Sentencing Judgement, 10 December 2003</i>
<i>Orić Trial Judgement</i>	<i>Prosecutor v. Naser Orić, Case No. IT-03-68, Judgement, 30 Jun 2006</i>
<i>Plavšić Sentencing Judgement</i>	<i>Prosecutor v. Biljana Plavšić, Case No. IT-00-39&amp;40/1-S, Sentencing Judgement, 27 Feb 2003</i>
<i>Prlić Decision</i>	<i>Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-PT, Decision on Defence Preliminary Motions Alleging Defect in the Form of the Indictment, 22 Jul 2005</i>
<i>Sikirica et al. Sentencing Judgement</i>	<i>Prosecutor v. Duško Sikirica et al., Case No. IT-95-8, Sentencing Judgement, 13 November 2001</i>
<i>Simić et al. Trial Judgement</i>	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić, Case No. IT-95-9, Judgement, 17 Oct 2003</i>
<i>Stakić Appeal Judgement</i>	<i>Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement, 22 Mar 2006</i>
<i>Stakić Trial Judgement</i>	<i>Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgement, 29 Oct 2003</i>
<i>Strugar Trial Judgement</i>	<i>Prosecutor v. Pavle Strugar, Case No. IT- 01-42-T, Judgement, 31 Jan 2005</i>
<i>Tadić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule"), Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 Jan 2000</i>
<i>Tadić Appeal Judgement</i>	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule"), Case No. IT-94-1-A, Judgement, 15 Jul 1999</i>
<i>Tadić Sentencing Judgement</i>	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule"), Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 Nov 1999</i>
<i>Tadić Trial Judgement</i>	<i>Prosecutor v. Duško Tadić, Case No. IT-94-1-T, Judgement, 14 Jul 1997</i>
<i>Tadić Jurisdiction Decision</i>	<i>Prosecutor v. Duško Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct 1995</i>

<i>Todorović Sentencing Judgement</i>	<i>Prosecutor v. Stevan Todorović, Case No. IT-95-9-1, Sentencing Judgement, 31 Jul 2001</i>
<i>Vasiljević Appeal Judgement</i>	<i>Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement, 25 Feb 2004</i>
<i>Vasiljević Trial Judgement</i>	<i>Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T, Judgement, 29 Nov 2002</i>

#### **D. ICTR**

<i>Akayesu Trial Judgement</i>	<i>Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 Sep 1998</i>
<i>Gacumbitsi Appeal Judgement</i>	<i>Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-A, Judgement, 7 Jul 2006</i>
<i>Kambanda Appeal Judgement</i>	<i>Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-A, Judgement, 19 Oct 2000</i>
<i>Kamuhanda Appeal Judgement</i>	<i>Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A, Judgement, 19 Sept 2005</i>
<i>Kayishema and Ruzindana Appeal Judgement</i>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement, 1 Jun 2001</i>
<i>Kayishema and Ruzindana Trial Judgement</i>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1991</i>
<i>Musema Trial Judgement</i>	<i>Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement, 27 Jan 2000</i>
<i>Nahimana et al. Trial Judgement</i>	<i>Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Judgement, 3 Dec 2003</i>
<i>Niyitegeka Appeal Judgement</i>	<i>Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-A, Judgement, 9 Jul 2004</i>
<i>Ntakirutimana Appeal Judgement</i>	<i>Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 Dec 2004</i>
<i>Rutaganda Trial Judgement</i>	<i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement, 6 Dec 1999</i>
<i>Serushago Sentencing Appeal Judgement</i>	<i>Prosecutor v. Omar Serushago, Case No. ICTR-98-39-A, Judgement (Reasons), 6 Apr 2000</i>

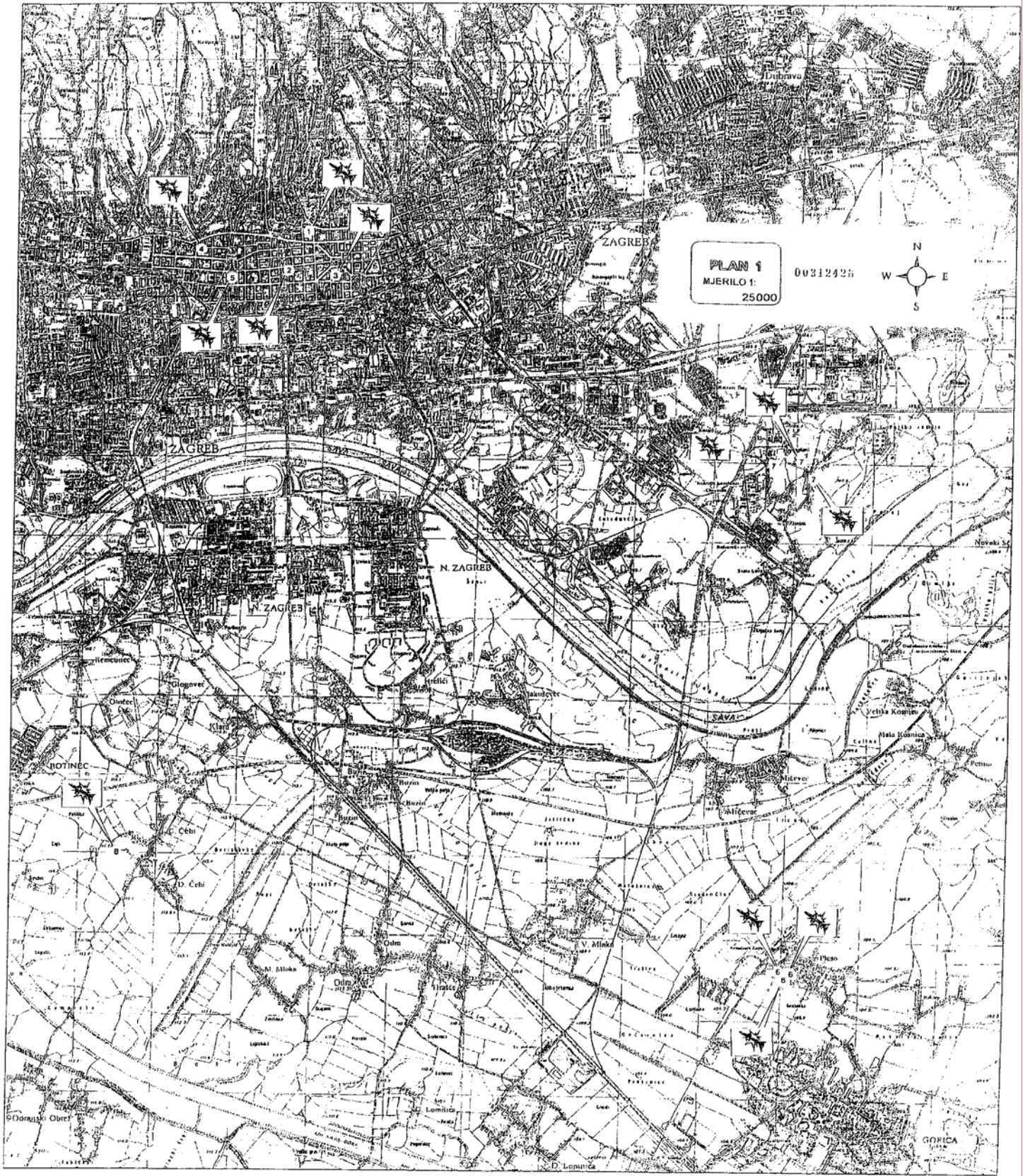
#### **E. ICJ**

<i>ICJ Advisory Opinion</i>	<i>Legality of the Threat or Use of Nuclear Weapons, ICJ Advisory Opinion of 8 Jul 1996, I.C.J. Reports 1996</i>
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#### **F. Other**

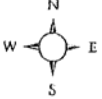
<i>ICRC Commentary on Geneva Convention III</i>	<i>Jean S. Pictet, ed., Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War (Geneva: ICRC, 1960)</i>
<i>ICRC Commentary on Geneva Convention IV</i>	<i>Jean S. Pictet, ed., Commentary: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (Geneva: ICRC, 1958)</i>

- ICRC Commentary on Additional Protocols* Yves Sandoz, Christoph Swinarski and Bruno Zimmermann, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949* (Dordrecht: Martin Nijhoff Publishers, 1987)
- Customary International Humanitarian Law, ICRC* Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *International Committee of the Red Cross: Customary International Humanitarian Law, Volume I: Rules and Volume II: Practice* (Cambridge: Cambridge University Press, 2005)



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ZAGREB



GORICA

D. Lomnica