

16 July 1996

D1440/58 Bis

**UNITED
NATIONS**

D1440/58 Bis - D1440/1 Bi



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-95-5-R61
IT-95-18-R61

Date: 11 July 1996

Original: English
French

MM

IN THE TRIAL CHAMBER

**Before: Judge Jorda, Presiding
Judge Odio Benito
Judge Riad**

Registrar: Mr Dominique Marro, Deputy Registrar

Decision of: 11 July 1996

PROSECUTOR

v.

**RADOVAN KARADŽIĆ
RATKO MLADIĆ**

**REVIEW OF THE INDICTMENTS PURSUANT TO RULE 61
OF THE RULES OF PROCEDURE AND EVIDENCE**

The Office of the Prosecutor:

**Mr Eric Ostberg
Mr Mark Harmon
Mr Terree Bowers**

Case No. IT-95-5-R61
IT-95-18-R61

11 July 1996

I. RULE 61 PROCEDURE

1. In their Decisions rendered on 25 July and 16 November 1995 respectively, Judges Claude Jorda and Fouad Riad confirmed the indictments issued by the Prosecutor against Radko MLADIĆ and Radovan KARADŽIĆ. On the same dates, they issued warrants of arrest with orders for surrender against the two accused. The warrants were sent *inter alia* to the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Bosnia and Herzegovina and the Bosnian Serb Administration in Pale. As of this date they have not been executed. The confirming Judges in their decisions of 18 June 1996 considered that a reasonable time had elapsed since the warrants of arrest were issued and therefore invited the Prosecutor to report on the measures taken to effect personal service of the indictments or to inform the accused of their existence. Satisfied by the steps the Prosecutor had taken, in those same decisions the Judges ordered that he submit both indictments to the Trial Chamber for joint review by all three Judges during a public hearing, pursuant to the provisions of Rule 61 of the Rules of Procedure and Evidence ("the Rules").

2. During this review, the Trial Chamber must consider whether there are reasonable grounds for believing that the accused committed one or all of the offences for which they are charged in the indictment. To that end, it has reviewed all the evidence submitted to the confirming Judges as well as the additional material produced during the hearings. It also heard the witnesses who had been called and examined by the Prosecutor and two *amici curiae*, Mrs. Rehn, Special Rapporteur for the United Nations Commission on Human Rights and Mrs. Cleiren, member of the Commission of Experts established pursuant to Security Council Resolution 78D (1992) who had been invited to testify during the hearings of 27 and 28 June and 1-5 and 8 July 1996. Furthermore, the Trial Chamber must review the legal characterisation by the Prosecutor of the acts charged so that it may confirm whether its jurisdiction has been established at this stage.

3. Recourse to the Rule 61 proceedings permits the International Criminal Tribunal which does not have a police force, to react to the failure of the accused to appear voluntarily and to the failure to execute the warrants issued against them. Should the reviewing Trial Chamber reconfirm the indictments, it must issue international warrants of arrest. It may also note that the failure to effect personal service of the indictment and therefore the non-execution of the initial warrants of arrest may be ascribed to the failure or refusal to co-operate by the State or States or the self proclaimed entity to which they were transmitted and it may request the President of the Tribunal to inform the Security Council of those failures. Rule 61 proceedings permit the charges in the indictment and the supporting material to be publicly and solemnly exposed. When called to appear by the Prosecutor, the victims may use this forum to have their voices heard and to live on in history. International criminal Justice, which cannot accommodate the failures of individuals or States, must pursue its mission of revealing the truth about the acts perpetrated and suffering endured, as well as identifying and arresting those accused of responsibility.

4. Prior to the Rule 61 hearings on 27 June and 5 July 1996 and after having authorised their oral presentation, the Trial Chamber reviewed two applications from attorneys, Mr. Pantelić, attorney at the bar of Belgrade, then Mr. Medvene and Mr. Hanley III of the bar of California, assigned by Radovan KARADŽIĆ to represent him before the International Criminal Tribunal, in which they requested access to the courtroom and all the documents and relevant files which the Prosecutor would submit during the proceedings. In decisions rendered on those two dates, the Trial Chamber, noting the powers of attorney lodged successfully on behalf of Radovan KARADŽIĆ, invited the Registrar to read the two indictments issued against the accused in the presence of the first attorney chosen. Rejecting the requests filed by the attorneys, it granted them observer status but required them to observe the proceedings from the public gallery.

II. DESCRIPTION OF THE INDICTMENTS. JOINDER OF THE INDICTMENTS FOR THIS REVIEW.

5. Two indictments have been submitted to the Trial Chamber for review.

6. The former, confirmed on 25 July 1995, states that Radovan KARADŽIĆ, President of the Bosnian Serb administration, and Ratko MLADIĆ, Commander of the Bosnian Serb Army, are responsible for a series of serious violations of international humanitarian law allegedly committed by the forces of the Bosnian Serb Administration in the territory of the Bosnia and Herzegovina since May 1992. The indictment contains 16 counts, set out in three parts. The Trial Chamber notes that they relate to all the offences within the Tribunal's jurisdiction, namely grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide, and crimes against humanity.

- The charges of crimes against humanity refer to persecution on political, racial and religious grounds of Bosnian Muslim and Bosnian Croat civilians (count 2) as well as to the sniping campaign against the civilian population of Sarajevo (counts 11 and 12).

These same acts are also separately indicted in other counts of the indictment.

- The charge of genocide is invoked for the internment of civilians in detention facilities and inhumane treatment therein (count 1).

- Characterised as grave breaches of the Geneva Conventions of 1949 are: the unlawful confinement of civilians in detention facilities (count 3), the extensive destruction of property (count 7), and the appropriation and plunder of property (count 8).

- Characterised as violations of the laws or customs of war are: the unlawful confinement of civilians (count 4), the shelling of civilian gatherings (count 5), the destruction of sacred sites (count 6), the appropriation and plunder of property (count 9), and the sniping at civilians in Sarajevo (count 10).

- Lastly, for taking United Nations Peacekeepers hostage and using them as "human shields", the accused are considered to be responsible for grave breaches of the Geneva Conventions (counts 13 and 15) and violations of the laws and customs of war (counts 14 and 16).

7. The second indictment, confirmed on 16 November 1995, relates to serious violations of international humanitarian law allegedly committed by the forces of the Bosnian Serb Administration during the take-over of the "safe area" of Srebrenica, in eastern Bosnia and Herzegovina, in July 1995. Radovan KARADŽIĆ and Ratko MLADIĆ are charged with genocide (count 1), crimes against humanity (counts 2, 3, 5, 7, 9, 11, 13, 15, 17 and 19) and violations of the laws and customs of war (counts 4, 6, 8, 10, 12, 14, 16, 18 and 20) for the summary execution of Bosnian Muslims at and around Potočari and Karakaj, as well as in the woods in the direction of Tuzla.

8. The Trial Chamber notes that both indictments involve the same individuals, Radovan KARADŽIĆ and Ratko MLADIĆ, and that both invoke the individual criminal responsibility of the accused on account of their positions of authority in the Bosnian Serb Administration. For these reasons the Trial Chamber considered it appropriate to join the two indictments for further review under Rule 61.

* *
*

9. The Trial Chamber will begin by describing the offences alleged in the indictments and the supporting evidence. It will then turn its attention to the alleged individual criminal responsibility of Radovan KARADŽIĆ and Ratko MLADIĆ, first putting those acts in their historical, political and military context, in particular in the light of the concept of "ethnic cleansing", and then considering the organisational role of the two accused. It will then legally characterise the acts in accordance with the Statute.

III. THE OFFENCES CHARGED

10. The facts are demonstrated both from the material submitted by the Prosecution in support of the indictments and from the documents and testimony presented during the hearings.

A. The First Indictment

11. The charges against the accused in the first indictment relate to a series of acts which occurred between April 1992 and July 1995 in Bosnia and Herzegovina. They included setting up internment camps, targeting Bosnian Muslim and Bosnian Croat political, intellectual and professional leaders, shelling civilian gatherings, appropriating, plundering and/or destroying property and systematically destroying places of worship. The criminal acts charged will be examined in three main sections, respectively: crimes related to Bosnian Serb military operations, crimes related to the siege of Sarajevo and crimes against United Nations personnel.

1. Crimes related to Bosnian Serb military operations

12. These crimes may be further sub-divided into four categories.

a. Unlawful confinement and related crimes

13. During the period in question, a network of camps which were managed and organised by civilian and military personnel and Bosnian Serb police, and which were located across the entire territory of Bosnia and Herzegovina under Bosnian Serb occupation (Omarska, Keraterm, Trnopolje, Luka, Manjača, Sušica, KP Dom, Foča, Livade, Batković, etc.),¹ was used to intern thousands of civilian Bosnian Muslims and Bosnian Croats, including women, children and elderly people who had been systematically selected and assembled for national, ethnical, political or religious reasons.

Detained for weeks, months or even years² under inhuman living conditions (involving inadequate rations and lack of medical care and proper hygiene), the civilians were then either

¹ Oral testimony of John Ralston, 28 June 1996, p. 87, French version of the provisional transcripts; exhibit 60.

² Oral testimony of John Ralston, 28 June 1996, p. 86, French version of the provisional transcripts.

executed, subjected to mistreatment and other physical and mental harm calculated to bring about their physical destruction, or used as human shields against other troops.³ After their execution, the remains of the victims from the KP DOM and Luka camps were thrown into the nearby Drina and Sava Rivers, respectively.⁴ In the Omarska camp in July 1993, many detainees were said to have been burned alive by soldiers celebrating Saint Peter's Day, a Serbian family saint's day.⁵

Inside the camps or at other places,⁶ many of the women and girls being detained were systematically raped and/or subjected to other forms of sexual assault by Serbian soldiers and police or by their agents with the consent and complicity of the officials of the detention units.⁷ Some of the camps were nothing less than "specialised centres" for the rape of women.⁸ On a smaller scale, many men were also victims of rape and sexual assault by the Serbian forces. On several occasions, brothers or parents were forced to have sexual contact with one another.⁹ Forms of sexual assault particularly degrading for women, and using a variety of objects, and the castration of men, sometimes performed under duress by prisoners on one another, was practised.¹⁰

b. Appropriation or plunder of property, destruction of places of worship

14. In the cities and villages of Bosnia and Herzegovina which had come under their command, the Bosnian Serb military personnel and police, along with other agents of the Bosnian Serb administration committed various sorts of arbitrary large-scale appropriation of real and moveable property belonging to Bosnian Muslim and Bosnian Croat civilians.¹¹ Prior to their forced transfer, many detainees in the internment camps were forced to sign official

³ Oral testimony of John Ralston, 28 June 1996, *passim*, pp. 87-91, French version of the provisional transcripts.

⁴ Confirmation case-file (IT-95-5-I), p. 61

⁵ Confirmation case-file (IT-95-5-I), p. 61; Oral testimony of John Ralston, 28 June 1996, p. 89, French version of the provisional transcripts.

⁶ Foča, partizan Sports hall, Velecevo Women's prison, Buk Bijela, Miljevina Motel, Omarska, Keraterm, Trnopolje.

⁷ Confirmation case-file (IT-95-5-I), *passim*; oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, pp. 12 and ff., French version of the provisional transcripts.

⁸ Oral testimony of Irma Oosterman, 2 July 1996, p. 28, French version of the provisional transcripts; oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 11, French version of the provisional transcripts.

⁹ Oral testimony of Irma Oosterman, 2 July 1996, p. 28, French version of the provisional transcripts; confirmation case-file (IT-95-5-I), pp. 72-73; see also oral testimony of John Ralston, 28 June 1996, p. 89, French version of the provisional transcripts; oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 19, French version of the provisional transcripts.

¹⁰ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 12, French version of the provisional transcripts.

¹¹ Oral testimony of John Ralston, 28 June 1996, *passim*, French version of the provisional transcripts

Bosnian Serb documents by which they “voluntarily” gave up their titles of ownership and their possessions to the Bosnian Serb administration.¹² With the approval and consent of the leaders of the internment camps, or on their instructions, many detainees were escorted from the camps to their homes, businesses or enterprises, in order to force them to hand over their funds and other valuables.¹³

Elsewhere, in order to rule out any possibility of return by the dispossessed,¹⁴ Bosnian Serb forces systematically destroyed buildings. The destruction took place in areas where the hostilities had ceased and in the regions untouched by them as well as in those where the populations had surrendered without resistance.¹⁵ In cities, like Foča, where Serbian and non-Serbian neighbourhoods were next to one another, Serbian neighbourhoods were carefully spared.¹⁶

15. Throughout the territory of Bosnia and Herzegovina under their control, Bosnian Serb forces also destroyed, quasi-systematically, the Muslim and Catholic cultural heritage, in particular, sacred sites. According to estimates provided at the hearing by an expert witness, Dr. Kaiser, a total of 1,123 mosques, 504 Catholic churches and five synagogues were destroyed or damaged,¹⁷ for the most part, in the absence of military activity or after the cessation thereof.¹⁸

This was the case in the destruction of the entire Islamic and Catholic heritage in the Banja Luka area which had a Serbian majority and the nearest area of combat to which was several dozen kilometres away. All of the mosques and Catholic churches were destroyed. Some mosques were destroyed with explosives and the ruins were then levelled and rubble thrown in the public dumps in order to eliminate any vestige of Muslim presence.¹⁹

Aside from churches and mosques, other religious and cultural symbols like cemeteries and monasteries were targets of the attacks.²⁰

¹² Confirmation case-file (IT-95-5-I) p. 64; Oral testimony of John Ralston, 28 June 1996, p.73, French version of the provisional transcripts

¹³ Confirmation case-file (IT-95-5-I) pp. 83-85

¹⁴ Confirmation case-file (IT-95-5-I) p. 69

¹⁵ Oral testimony of John Ralston, 28 June 1996, p. 83, French version of the provisional transcripts

¹⁶ Oral testimony of John Ralston, 28 June 1996, p. 85, French version of the provisional transcripts

¹⁷ Oral testimony of Dr. Kaiser, 2 July 1996, p. 40, French version of the provisional transcripts

¹⁸ Confirmation case-file (IT-95-5-I) p. 77

¹⁹ Confirmation case-file (IT-95-5-I) pp 78-80; Oral testimony of John Ralston, 28 June 1996, p. 85, French version of the provisional transcripts; exhibits 57 and 58

²⁰ Confirmation case-file (IT-95-5-I) p. 79;

c. Expulsion and Deportation

16. Thousands of civilians were unlawfully expelled or deported to other places inside and outside the Republic of Bosnia and Herzegovina. Removed from their homes, many civilians, including women, children and elderly persons, were used in prisoner exchanges. The result of these expulsions was the partial or total elimination of Muslim and Bosnian Croats in some of Bosnian Serb-held regions of Bosnia and Herzegovina. In the municipalities of Prijedor, Foča, Vlasenica, Brčko, and Bosanski Šamac, to name but a few, the once non-Serbian majority was systematically exterminated or expelled by force or intimidation. Among the methods used to apply pressure, the Prosecutor noted a radio announcement which told Muslims to leave town or face execution and stated that, "for a Serb killed at the front, ten Muslims were to be executed".²¹

17. At the same time, Bosnian Serb military and police personnel persecuted leaders and members of the non-Serbian political parties, especially the mainly Muslim Party of Democratic Action (SDA) and the Croatian Democratic Union (HDZ), the main Croatian political party, in the towns of Prijedor, Vlasenica, Bosanski Šamac, Brčko, and Foča. Based on the lists drawn up by the Serbian Democratic Party, the leaders were arrested, interned, subjected to physical abuse and, in many cases, executed.²²

Generally speaking, Bosnian Muslim and Bosnian Croat political, intellectual and professional leaders were victims of persecution by Bosnian Serb groups.²³

d. Shelling of civilian gatherings

18. Throughout the conflict, the strategy of Bosnian Serb forces consisted in indiscriminately targeting civilians.²⁴ Such was the case during the entire siege of Sarajevo, and at times in the safe areas of Srebrenica, Žepa, Goražde, Bihać and Tuzla.²⁵

²¹ Confirmation case-file (IT-95-5-I) pp. 68-69

²² Confirmation case-file (IT-95-5-I) p. 68

²³ Oral testimony of Prof. Garde, 28 June 1996, p. 11, French version of the provisional transcripts

²⁴ Oral testimony of John Ralston, 28 June 1996, p. 68, French version of the provisional transcripts

²⁵ Confirmation case-file (IT-95-5-I) pp. 73-74

From July 1992 to July 1995, many civilian gatherings, particularly at stadiums or in public squares, were subject to shelling by Bosnian Serb military forces with the object of killing, terrorising and demoralising the civilian population.

2. Crimes related to the siege of Sarajevo

19. From 5 April 1992 to 31 May 1995, the city of Sarajevo was besieged by Bosnian Serb forces.²⁶ During this period, the city was subjected to a systematic and deliberate sniping campaign, the outbreak of which allegedly occurred on 6 April 1992 from the headquarters of the Serbian Democratic Party (SDS) at the Holliday Inn.²⁷

The snipers, who were members of the Bosnian Serb army, used very sophisticated weapons to shoot people while on their daily business.²⁸ Casualties included women, children, and the elderly.²⁹

3. Crimes committed against United Nations military personnel

20. In response to the air-strikes of the North Atlantic Treaty Organisation (NATO) on Serbian military targets, between 26 May and 2 June 1995, Bosnian Serb forces took hostage 284 United Nations peacekeepers assigned, *inter alia*, to the regions of Pale, Sarajevo, and Goražde.³⁰

Around 26 May 1995, Bosnian Serb forces selected United Nations military observers in the Pale region and used them as "human shields". Those observers were tied to potential targets of NATO air-strikes, specifically the munitions depot at Joharinski Potok, the radar facility site at Jahorina and a nearby communications centre.³¹ High-level Bosnian Serb political and military delegations - which included, *inter alia*, Professor Koljević, the then vice-president of Republika Srpska and president of the State Committee for Co-operation with the United Nations and the other humanitarian organisations, even inspected and photographed

²⁶ Oral testimony of John Ralston, 28 June 1996, p. 72, French version of the provisional transcripts; Oral testimony of T. Kupusović, Mayor of Sarajevo, 1 July 1996, p. 49, French version of the provisional transcripts

²⁷ Oral testimony of T. Kupusović, Mayor of Sarajevo, 1 July 1996, p. 49, French version of the provisional transcripts

²⁸ Closing statement by the Prosecutor, 8 July 1996, p. 8, English version of the provisional transcripts

²⁹ Closing statement by the Prosecutor, 8 July 1996, pp. 7 - 8, English version of the provisional transcripts

³⁰ Confirmation case-file (IT-95-5-I) pp. 85-86; exhibit 69

³¹ Oral testimony of Capt. Rechner, 2 and 3 July 1996, French version of the provisional transcripts

the scene.³² According to one of the hostages, Captain Rechner, a Canadian military observer who was stationed in Pale and was in charge of, among other things, liaison between the United Nations Protection Force (UNPROFOR) and Bosnian Serb Administration, and who was often in contact with Radovan KARADŽIĆ's cabinet, the hostage-taking had been officially decided at the highest level of the chain of command.³³

B. The Second Indictment

21. The charges against Radovan KARADŽIĆ and Ratko MLADIĆ in the second indictment relate to a series of crimes committed during the military operations which preceded and followed the fall of the Srebrenica enclave in July 1995.

22. Due to the military occupation of their villages in eastern Bosnia by Bosnian Serb forces, the Muslim people of this region fled, in particular towards the enclaves of Goražde, Žepa, Tuzla and Srebrenica. In order to provide them with the requisite protection, the Security Council of the United Nations, acting pursuant to Chapter VII of the Charter, demanded in its resolution 819 of 16 April 1993³⁴ that the parties to the conflict regard the Srebrenica enclave as a safe area and as such not subject it to armed attack or any other hostile act.

23. Besieged since April 1995³⁵, the Srebrenica enclave was targeted, from 6 July 1995, by the shelling of Bosnian Serb forces, to whom it fell on 11 July 1995. This was followed by an exodus of 40,000 Muslims who had lived in the safe area.

24. Initially, the populations in the enclave gathered in and around the United Nations Srebrenica compound.³⁶ Then, victimised by shelling from Bosnian Serb forces, they adopted two different lines of conduct. Several thousand mainly women, children and elderly men went to seek refuge with the Dutch UNPROFOR battalion stationed at Potočari. A second group, made up of roughly 15,000 mostly unarmed able-bodied Muslim men, was formed at Šušnjari

³² Oral testimony of Capt. Rechner, 2 and 3 July 1996, French version of the provisional transcripts; confirmation case-file (IT-95-5-I), p. 85

³³ Oral testimony of Capt. Rechner, 2 and 3 July 1996, pp. 68-69, French version of the provisional transcripts; confirmation case-file (IT-95-5-I), pp. 85-86

³⁴ See also resolution 824 of 6 May 1993 and 836 of 4 June 1993

³⁵ Oral testimony of Col. Karremans, 3 July 1996, pp. 73-74, French version of the provisional transcripts

³⁶ Oral testimony of Jean-René Ruez, 3 July 1996, p. 18, French version of the provisional transcripts; exhibit 3, clip 1.

in the evening of 11 July 1995 and fled, in one enormous column, through the woods in the direction of Tuzla, a zone controlled by the Bosnian government.³⁷

25. The evidence is that, whichever option was chosen, Bosnian Muslims faced a similar fate of deportation, summary or mass execution, torture, rape or other humiliations. Nightmarish scenes have been evoked which would, as the confirming Judge noted during his initial review of the indictment, fill “the darkest pages of human history”.³⁸

1. Massacres in the Woods

26. The evidence in the case-file³⁹ and testimony during the hearing establishes, that in the morning of 12 July 1995, Bosnian Serb soldiers stationed along the Bratunac-Nova Kasaba road, armed with APCs, tanks, anti-aircraft guns and artillery, set numerous ambushes for the column of Bosnian Muslims trying to reach Tuzla through the woods. Ensnared behind Bosnian Serb lines and lured by guarantees of safety promised by the Serbs, a number of those fleeing surrendered or were taken prisoner. In either event, thousands of Muslims were summarily executed, either at the very place of their surrender or elsewhere.⁴⁰ Many witnesses reported the infiltration of the column by Bosnian Serb soldiers who gave the crowd erroneous directions in order to direct people towards ambushes or towards the Bratunac-Nova Kasaba road, where the army lay in wait for them.⁴¹

27. It is alleged that the barbarity of the methods of execution and mutilation used by Bosnian Serb troops was such that Muslim refugees were seized by a wave of frenzy and that many of them committed suicide.⁴² Among the methods mentioned in testimony, the survivors of massacres made special reference to dumdum bullets⁴³ and knives. At the hearing, the investigator Jean-René Ruez described the horror of some of the scenes. Survivors told how a man was forced to eat the liver of his grandson, the throat of whom had been cut before his eyes by a Serbian soldier, and how a woman watched helplessly as her baby was executed by

³⁷ Oral testimony of Jean-René Ruez, 3 July 1996, pp. 17, 19, 20, French version of the provisional transcripts; exhibit 3, clip 1.

³⁸ Confirmation of 16 November 1995, (IT-95-18-I)

³⁹ confirmation case-file (IT-95-18-I), namely statements S-3, S-4, S-8, S-10, S-20, S-22, S-21, S-29, S-24, S-25, S-34; Oral testimony of Jean-René Ruez, 3 July 1996, p. 20, French version of the provisional transcripts;

⁴⁰ Oral testimony of Jean-René Ruez, 3 July 1996, pp. 21 and 33, French version of the provisional transcripts

⁴¹ Oral testimony of Jean-René Ruez, 3 July 1996, p. 22, French version of the provisional transcripts

⁴² confirmation case-file (IT-95-18-I), S-22, S-23; See also S-28, S-31, S-36, S-8, S-10, S-29, S-22.

⁴³ confirmation case-file (IT-95-18-I), S-29.

stabbing with a bayonet.⁴⁴ The Tribunal has deliberately chosen not to describe any other incidents here.

2. Mass executions at Kravica

28. On 13 July 1995, a large group of approximately 500 to 1,000 Bosnian Muslims who had been surrounded after the ambush at Kamenica surrendered to Bosnian Serb soldiers on the asphalt road there, and were directed to a field at Sandici and then on foot towards Kravica. There, the group was forced into a hangar which could barely hold all its members. The soldiers surrounding the hangar opened fire through all of the hangar's apertures and threw grenades inside. With a few rare exceptions, this group was exterminated.⁴⁵

3. Mass executions near Karakaj/ Lazete

29. According to the descriptions by survivors,⁴⁶ the operations which among other things led to the massacres at Karakaj unfolded according to the following scenario: after their surrender or capture, thousands of the Muslims who had initially been part of the column fleeing towards Tuzla were led towards various assembly or transit points, notably a soccer field at Nova Kasaba, a hangar at Bratunac, then towards the Grbavci school facility near Karakaj.

30. During the day of 14 July 1995, Bosnian Serb soldiers took all the Muslim detainees out of the school in small groups and boarded them on trucks. Blindfolded or with their hands tied behind their backs, the detainees were subsequently driven either to a field near the school of Grbavci, or to the artificial lake of a dam where they were all executed.⁴⁷ Those showing signs of life were finished off by individual shots.⁴⁸ Present at one of the sites, General MLADIĆ witnessed the execution of those detainees who were there when he arrived.⁴⁹ Thereafter, an excavator thereafter dug a mass grave.⁵⁰ The massacres reportedly took place from about noon to midnight on 14 July 1995, the trucks arriving at the execution areas every

⁴⁴ confirmation case-file (IT-95-18-I), S-10, S-21, S-25, S-29, S-34; Oral testimony of Jean-René Ruez, 3 July 1996, p. 35, French version of the provisional transcripts

⁴⁵ Oral testimony of Jean-René Ruez, 3 July 1996, pp. 33-35, French version of the provisional transcripts; exhibits 4, 5, 6, 7.

⁴⁶ confirmation case-file (IT-95-18-I), S-3, S-8, S-10, S-21, S-29, S-34.

⁴⁷ Oral testimony of Jean-René Ruez, 3 July 1996, p. 43, French version of the provisional transcripts

⁴⁸ Oral testimony of witness A, 5 July 1996, p. 13, French version of the provisional transcripts

⁴⁹ Oral testimony of witness A, 5 July 1996, p. 13, French version of the provisional transcripts

⁵⁰ Oral testimony of witness A, 5 July 1996, p. 13, French version of the provisional transcripts

ten to 15 minutes.⁵¹ The number of persons executed at this site was estimated at 2,500 by one of the survivors.⁵²

31. That same day of 14 July 1995, a witness at the Konjevici intersection saw three buses full of men, followed by a wheeled APC and an excavator, take a turnoff towards Cerska. Those buses later headed back, without their occupants.⁵³

4. Mass executions at a farm at Branjevo and other places

32. According to testimony at the hearing given by Drazen ERDEMOVIĆ - also indicted by this International Criminal Tribunal - Muslim civilians previously held in a school at Pilica were taken by bus on 16 July 1995 to a farm at Branjevo. This group of 1,200 people was executed in its entirety by soldiers of the unit to which Drazen ERDEMOVIĆ belonged. He also participated in the executions.⁵⁴

33. After 16 July 1996, many groups of Muslims still trying to reach Tuzla through the woods continued to be savagely killed by Bosnian Serb soldiers: half of a group of 150 people at Konjevic Polje, and another group of 150 people at Udric. On 17 July 1995, 250 people who were captured were gathered around what was to be their grave and were pushed into it alive by an excavator.⁵⁵

5. Summary executions at Potočari

34. Potočari and its environs were the assembly point for most of the Muslim women, children, elderly and invalids who had journeyed to the UNPROFOR compound held by the Dutch battalion. Since not all of them were able to find protection there, many spent the nights of 11 to 13 July 1995 in the neighbouring factories and were then transferred by truck to the areas controlled by the Muslim government forces. The few fighting-age men present were transported towards execution sites.

⁵¹ confirmation case-file (IT-95-18-1), S-21, S-34.

⁵² Oral testimony of witness A, 5 July 1996, p. 17, French version of the provisional transcripts

⁵³ Oral testimony of Jean-René Ruez, 3 July 1996, p.45, French version of the provisional transcripts

⁵⁴ Oral testimony of Drazen Erdemović, 5 July 1996, pp .56 ff., French version of the provisional transcripts

⁵⁵ Oral testimony of Jean-René Ruez, 3 July 1996, p. 47, French version of the provisional transcripts;

35. Potočari and its environs were the scene of summary executions.⁵⁶ Several hundred people⁵⁷ were allegedly selected and then cruelly massacred with knives.⁵⁸ For several hours on 12 July 1995, Serbian soldiers randomly selected refugees among the crowd of Muslims, collected them together in small groups of ten, and led them behind the “11th of March factory”, where they were mutilated with knives and had their throats cut. It took a truck approximately five trips to collect the bodies of those thus executed. This selection and execution process continued until the morning of 13 July 1995.⁵⁹

36. These arbitrary massacres were of such exceptional cruelty and created such a degree of terror and panic amid the remaining Muslims that some were driven to commit suicide.⁶⁰ Horrific scenes reported by witnesses tell of several babies being killed with knives before their mother’s eyes.⁶¹

37. The International Criminal Tribunal has not been requested to review under what conditions the enclave was defended. The Prosecutor, nonetheless, requested that Colonel Karremans, commander of the Dutch battalion and two of his men testify. In his testimony, the corps leader described the impotence of his unit in avoiding the tragedy even though he did recognise a list of the men present among the refugees allegedly given to a Serbian officer by one of his men.⁶² The corps leader suggested several causes:

- imbalance of men and weapons;
- the logistical and psychological impact on the battalion of the blockade of the enclave;
- an unfavourable international context;

He concluded by saying:

“On 25 May, in a very long report, I informed all the hierarchical levels and my authorities that I was no longer in a position to carry out my mission and execute my orders. In fact, this signalled the end of my

⁵⁶ Confirmation case-file (IT-95-18-I), S-34; Oral testimony of Jean-René Ruez, 3 July 1996, p. 47, French version of the provisional transcripts

⁵⁷ Confirmation case-file (IT-95-18-I), S-1

⁵⁸ Oral testimony of Jean-René Ruez, 3 July 1996, p. 28, French version of the provisional transcripts

⁵⁹ Oral testimony of Jean-René Ruez, 3 July 1996, pp. 28-30, French version of the provisional transcripts

⁶⁰ Confirmation case-file (IT-95-18-I), S-23, S-28, S-31, S-36.

⁶¹ Oral testimony of Jean-René Ruez, 3 July 1996, p. 18 and 31, French version of the provisional transcripts; Confirmation case-file (IT-95-18-I), S-1.

⁶² Oral testimony of Col. Karremans, 3 and 4 July 1996, French version of the provisional transcripts; Oral testimony of Capt. Koster et Corporal Groenewegen, 4 July 1996, French version of the provisional transcripts

mission. We then began to do what we could, to improvise. By doing this, we succeeded in holding out until 6 July, which was part of our mission.⁶³

38. The material in the confirmation file along with the additional evidence tendered by the Prosecutor at the hearing bears out the following conclusions:⁶⁴

a) The following places in Bosnian Serb-held Bosnia and Herzegovina were used as prisoner assembly or transit points: Srebrenica, Potočari, Bratunac, Sandici, Nova Kasaba, a school at Tisca, Lazete, a school at Grbavci, and a school at Pilica.

b) The following places were execution sites: Srebrenica, Potočari, an area at the Konjevici intersection and an area all along the road between Konjevic Polje and Nova Kasaba, the Jadar River, the Cerska valley, the hills near Vlasenica, Lazete, the plateau at the dam at Lazete, and the farm at Branjevo;

c) Mass graves have been identified at the following places: two at Tatar Glogova, three potential ones are near the Nova Kasaba soccer field, one in the Cerska Valley, two at the execution site at Lazete, and at the farm at Branjevo.

39. All of these operations leading to and following the fall of the Srebrenica enclave took place under the supervision of General Ratko MLADIĆ, to whose presence at the decisive moments there has been more than sufficient attestation.⁶⁵

Upon entering Srebrenica, MLADIĆ spoke to the press in these terms:

“That’s it. As of 11 July 1995, Srebrenica is Serb. On the eve of another great Serbian feast day, we are offering the city to the Serbian people. Finally, after the rebellion against the Dahijas, the moment has arrived for us to take vengeance on the Turks in this region.”⁶⁶

General MLADIĆ was present in the environs of the United Nations compound at Potočari on 12 July 1995.⁶⁷ He was seen giving a short interview to reporters and speaking to

⁶³ Oral testimony of Col. Karremans, 4 July 1996, pp. 2-4, French version of the provisional transcripts

⁶⁴ Oral testimony of Jean-René Ruez, 3 July 1996, pp. 58-60, French version of the provisional transcripts; exhibits 23-51, 54-58

⁶⁵ Oral testimony of Jean-René Ruez, 3 July 1996, pp. 60-61, French version of the provisional transcripts; Oral testimony of witness A, 4 and 5 July 1996, pp. 18 and ff., French version of the provisional transcripts

⁶⁶ Oral testimony of Jean-René Ruez, 3 July 1996, p. 25, French version of the provisional transcripts; exhibit 3, clip 1. The revolt of the Dahijas would refer to a revolt of local officers serving the Ottoman empire who would have organised a massacre of the Serbian nobility and started the first Serbian revolution in 1804; *ibid.*

the crowd whom he pretended to appease. On his orders, the men were separated from the women and loaded onto buses.

At Bratunac on 13 July 1995,⁶⁷ MLADIĆ went to see the detainees in a hangar and told them that they would subsequently be exchanged. In the night of 13 to 14 July 1995, when the detainees were evacuated towards the school at Grbavci, MLADIĆ was seen giving instructions to his troops.

MLADIĆ was also present at Sandići, and spoke to the large throng of prisoners held there and reiterated the same reassurances. Mass executions followed his departure.

On 13 July 1995, he spoke to a crowd of prisoners before their transfer to Nova Kasaba and participated first-hand in separating a group of some thirty men from among the prisoners.

On 14 July 1995, General MLADIĆ was at the school at Grbavci and spoke to the prisoners once again. His departure was immediately followed by the transfer of the detainees towards an execution site. It was at that sight that he was subsequently seen in the evening by Witness A, one of those who survived the massacre.

40. Specifically in respect of the events at Kravica and the Branjevo farm which do not appear in the indictment of 16 November 1995 but with regard to which there was extensive testimony during the hearings, the Trial Chamber invites the Prosecutor to supplement the indictment.

41. The above-mentioned consistent criminal acts, all targeting the same type of population and manifesting the same desire to annihilate its culture and religious sites, coupled with the effect of criminality on such a massive scale, properly gives rise to the question: what is the appropriate hierarchical level at which to analyse the concept, planning and organisation i.e. the concerted project and the execution i.e. the accomplishment of the desired result. This analysis of the conflict in the former Yugoslavia should, without however exonerating those more directly responsible, converge upon a political responsibility in the highest sense of the term. Pre-eminently, this entails individual criminal command responsibility and, in this case,

⁶⁷ Confirmation case-file (IT-95-18-I), S-34, S-18, S-9; Oral testimony of witness A, 4 and 5 July 1996, French version of the provisional transcripts; Oral testimony of Jean-René Ruez, 3 July 1996, p. 59, French version of the provisional transcripts

⁶⁸ Confirmation case-file (IT-95-18-I), S-34

that of political and military leaders. Historical precedence (such as that of the International Tribunals at Nuremberg and Tokyo) furnishes no example where the historical responsibility at the highest level for planning, preparing or executing the criminal design of a conflict has not been discovered.

IV. RESPONSIBILITY FOR THE ALLEGED OFFENCES : INDIVIDUAL CRIMINAL RESPONSIBILITY

42. The facts presented by the Prosecutor in support of the indictment permit the inference to be drawn that the offences alleged were committed in accordance with a political programme and an institutional and military organisation, the background to which is here summarised. The Trial Chamber will then analyse the seizure of power in several parts of the Republic of Bosnia and Herzegovina and its consequences.

A. Historical And Political Context Of The Offences Charged

43. Bosnia and Herzegovina was one of the six Republics and two autonomous regions which constituted the Socialist Federative Republic of Yugoslavia (SFRY). After the last convention of the League of Communists of Yugoslavia (LCY) on 20 January 1990, which abrogated the dominant role of the Communist Party, elections were organised in all the Republics. Parliamentary elections were held in Bosnia in November and December 1990 in which three nationalist parties emerged victorious: the SDA (Party of Democratic Action) for the Muslims, the Serbian Democratic Party (SDS) and the Croatian Democratic Union (HDZ).⁶⁹

After the elections, the three parties formed a coalition and divided the main institutional positions within the Republic among themselves. The President of the Republic was a Bosnian Muslim, Alija Izetbegović, the head of the Parliament, a Serb, Momčilo Krajišnik, and the Prime Minister, a Croat, Jure Pelivan. Despite the apparent consensus, it seems that the objective of the SDS was different from that of the other parties represented in the Republic's institutions,⁷⁰ it being to seize power in certain regions of the Republic.

⁶⁹ Oral testimony of Prof. Garde, 28 June 1996, p. 3, French version of the provisional transcripts

⁷⁰ Oral testimony of Prof. Garde, 28 June 1996, p. 7, French version of the provisional transcripts

1. Political Preparation: The Programme of the Serbian Democratic Party (SDS) of Bosnia and Herzegovina and the Concept of a Greater Serbia

44. The Serbian Democratic Party of Bosnia and Herzegovina (SDS) was founded in July 1990 in anticipation of the elections scheduled in Bosnia and Herzegovina at the end of the year. The themes it used can be understood only in the light of the process of dissolution of the SFRY. Its stated goal was the defence of the rights of the Serbian people in Bosnia and Herzegovina. During the conference which led to the founding of the party in July 1990, Radovan KARADŽIĆ, who became its president, insisted on the need to grant total equality to the Serbs in Bosnia and Herzegovina and alleged that the Serbian nation was being destroyed by the system in place and by the “genocide” continuously being perpetrated against the Serbs.⁷¹ To a great extent, these themes were similar to those supported by all Serbian nationalists in the SFRY, which were given a voice in the memorandum of the Serbian Academy of Arts and Sciences in 1986 condemning an alleged bureaucratic shift of the regime in Yugoslavia as well as “physical, political, legal and cultural genocide” which would be perpetrated in Kosovo against the Serbian population of that province.⁷² The nationalist trend expressed in that text was used by the new power in Serbia.⁷³ The President of the Communist League of the Republic of Serbia, Slobodan Milošević, at the start of 1987, launched an “anti-bureaucratic revolution” at the same time that he initiated a fight against decentralisation. According to Professor Paul Garde, expert witness, “under the mask of the anti-bureaucratic revolution was hidden (...) the attempt by the Serbs to retake control of the entire Federation which, naturally appeared as a threat to all the other peoples”.⁷⁴ From that date forward, the powers in Serbia organised popular rallies on the struggle against bureaucracy and in defence of the Serbian nation. The rallies were organised not only in Serbia but also in Croatia and in Bosnia and Herzegovina and were designed to rekindle tensions against the other peoples of Yugoslavia, *inter alia* by recalling the massacres of the Second World War.⁷⁵

45. The SDS supported the idea of keeping the Republic of Bosnia and Herzegovina within the Yugoslav Federation, as can be seen from the position expressed by the SDS deputies on 10

⁷¹ Speech of Radovan KARADŽIĆ, doc. 34 of confirmation case-file (IT-95-5-I)

⁷² *SANU memorandum*, additional case-file submitted by the Prosecutor on 24 June 1996

⁷³ Report by Dr. Gow, additional case-file submitted by the Prosecutor on 24 June 1996 (Report)

⁷⁴ Oral testimony of Prof. Garde, 27 June 1996, p. 80, French version of the provisional transcripts

⁷⁵ Oral testimony of Prof. Garde, 27 June 1996, p. 82, French version of the provisional transcripts

June 1991, but with the notion of turning this to their own advantage.⁷⁶ It appears that the federal system definitively ceased to operate with the blocking of the rotating federal presidency system by the Serbian group within the Presidency on 17 May 1991. Through the rallies which were organised from 1987 by the leaders of the Republic of Serbia, it was possible to weaken their political opponents not only in that Republic but also in Montenegro and the two autonomous provinces of Kosovo and Vojvodina. A “Serbian bloc” was gradually established which comprised the Republic of Serbia, Montenegro and the provinces of Kosovo and Vojvodina, whose autonomy was reduced by constitutional changes. Having four out of the eight votes, this “Serbian bloc” prevented the automatic succession of the Croatian member, Stipe Mesić to the presidency of the Yugoslav Federation.⁷⁷ Confronted by the fact that the federal institutions had ceased to function, Slovenia and Croatia officially proclaimed their independence on 26 June 1991 after a referendum.⁷⁸ From the moment the process of dissolution of the federal institutions had begun and the Yugoslav People’s Army (JNA) had intervened in Slovenia and Croatia, provoking a violent conflict in the latter, the Bosnian Parliament also declared on 14-15 October 1991 its support for the independence of Bosnia and Herzegovina.⁷⁹ It may be considered that the SDS demand in Bosnia and Herzegovina that the federal Yugoslav system be maintained intact was, in this context, designed to establish a new federal State dominated by the Serbs.

46. It appears that the project was inspired by a certain desire for partition. In a speech in November 1991, Radovan KARADŽIĆ asserted:

“...Let us separate as many things as possible. Like in the days of the Turks. One Serbian town centre, one Turkish town centre, Serbian affairs, Turkish affairs, Serbian cafes, theatres, schools and everything else. This is the only solution.”⁸⁰

The solution advocated is based on a principle of national exclusion. In the above-mentioned speech, evoking the discrimination of which the Serbs had allegedly been the

⁷⁶ Doc. 51, confirmation case-file (IT-95-5-I); Oral testimony of Prof. Garde, 28 June 1996, p. 5, French version of the provisional transcripts

⁷⁷ Oral testimony of Prof. Garde, 27 June 1996, p. 80 and 28 June 1996, p. 4, French version of the provisional transcripts; Dr. Gow (Report), p. 26

⁷⁸ Oral testimony of Prof. Garde, 28 June 1996, p. 5, French version of the provisional transcripts

⁷⁹ Oral testimony of Prof. Garde, 28 June 1996, p.6 and 17, French version of the provisional transcripts; Oral testimony of Dr. Gow, *Vukovar* case, (IT-95-13-R61), exhibit 75

⁸⁰ Exhibit 30

victims and the supposed risks which lay ahead, especially in Sarajevo, Radovan KARADŽIĆ also said:

“It is not always good to disclose one’s plans but it is not bad to say that we will not give them up because we will instruct Serbs: ‘You must not sell land to Muslims!’ You must not! Here battles are being fought; battle to keep our living space.”⁸¹

47. The territory of the Republic of Bosnia and Herzegovina was inhabited by a very mixed population. According to the last census in 1991, out of a population of 4.4 million inhabitants, the Bosnian Muslims represented 44%, the Serbs 31% and the Croats 17-18%.⁸² The distribution of the population, however, was extremely complex, and it seems that there were many marriages between members of different nationalities.⁸³ According to Mr. Kupusović, Mayor of Sarajevo between 1994 and 1996, called as a witness by the Prosecution, before the war in Sarajevo “30% of the marriages were mixed (...) and the children born of the marriages considered themselves Yugoslav or Bosnian and did not really think that they belonged to a distinct ethnic group”.⁸⁴ As tensions began to rise, the central authorities in both Bosnia and Herzegovina and Sarajevo attempted to promote the idea of a common State and a common multi-ethnic city.⁸⁵

48. The SDS position on the future of Bosnia and Herzegovina, at least from the fall of 1991, was that resort to force in order to modify the organisation of that Republic should it leave the Federation should not be ruled out.⁸⁶ Threats were made against groups or individuals who did not subscribe to the SDS plans, specifically directed at the Bosnian Muslims. In his speech of 14-15 October 1991 to the Assembly of Bosnia and Herzegovina, addressing himself to those members of Parliament who favoured the independence of the Republic of Bosnia and Herzegovina, Radovan KARADŽIĆ declared:

“You want to take Bosnia and Herzegovina down the same highway of hell and suffering that Slovenia and Croatia are travelling. Do nothing that will lead Bosnia to hell and do nothing that may lead the Muslim people to their annihilation because the Muslim cannot defend themselves if there is war. How will you prevent everyone from being killed in Bosnia?”⁸⁷

⁸¹ Exhibit 30

⁸² Dr. Gow, (Report), p. 9

⁸³ Oral testimony of Prof. Garde, 27 June 1996, p. 73 and 75, French version of the provisional transcripts

⁸⁴ Oral testimony of T. Kupusović, 1 July 1996, p. 51, French version of the provisional transcripts

⁸⁵ Exhibit 1.7.6, Declaration by the Municipal assembly of Sarajevo on 12 April 1992; Oral testimony of J. Doko, 1351, additional case-file submitted by the Prosecutor on 24 June 1996

⁸⁶ Exhibit 30

⁸⁷ Exhibit 29, clip 1

It appears that the SDS programme sought to realise the concept of a Greater Serbia in the form of a national or ethnically homogeneous territory which, according to Professor Garde, particularly in Bosnia and Herzegovina, represented a utopian vision which could be achieved only through violence. The precursor of this violence was the conflict in Croatia which coincided with the positions expressed by Radovan KARADŽIĆ already analysed.⁸⁸ According to this witness:

“the notion of Greater Serbia does not necessarily imply “ethnic cleansing”, but the example of what happened during the war in Croatia demonstrates that it did, in fact, imply just that.”⁸⁹

From that moment on, resort to force seemed to have been envisaged by the President of the SDS as a way of separating the nationally diverse populations. The Trial Chamber must now consider whether there existed military and institutional preparations designed to achieve that plan.

2. Institutional Preparations for Taking Power in Bosnia and Herzegovina

a) The constitution of a parallel central institutional structure and the definition of the territory

49. Even before the elections of November and December 1990 were held in the Republic of Bosnia and Herzegovina, a Serbian National Council of Bosnia and Herzegovina was established in Banja Luka. An unofficial body supposed to represent the interests of the Serbs, it was composed of members of the SDS with Radovan KARADŽIĆ as its President. Its first decision stated that the Serbian people of Bosnia and Herzegovina would not agree to the change in status of that republic unless it was voted for by a referendum of the Serbian people⁹⁰. On 23 October 1991, the President of the group of Serbian deputies of the Assembly, Vojislav Maksimović, invited the representatives of the Serbian parties to attend the session dedicated to establishing an “Assembly of the Serbian people in Bosnia and Herzegovina” which was held the following day.⁹¹ The event followed the vote by the Parliament of Bosnia and Herzegovina on 14-15 October 1991 which declared itself in favour of sovereignty for

⁸⁸ Oral testimony of Dr. Gow, *Vukovar* case, (IT-95-13-R61), exhibit 75

⁸⁹ Oral testimony of Prof. Garde, 28 June 1996, p. 38, French version of the provisional transcripts

⁹⁰ Doc. 44, confirmation case-file (IT-95-5-I)

⁹¹ Doc. 50, confirmation case-file (IT-95-5-I)

Bosnia and Herzegovina and its withdrawal from the Yugoslav Federation.⁹² On 24 October 1991, the new “Assembly of the Bosnian Serbs”, presided over by the former president of the Assembly of Bosnia and Herzegovina, Momčilo Krajišnik, decided that the Serbian people had to remain in the joint State of Yugoslavia and stated the following:

“Pursuant to the right to self-determination and for the purpose of the full and permanent protection of the rights and interests of the Serbian people, the Serbian people in Bosnia and Herzegovina determine that the Serbian people in Bosnia and Herzegovina remain in the joint State of Yugoslavia, with Serbia, Montenegro, SAO (Serbian Autonomous District) Krajina, SAO Slavonija, Baranja and Western Srem, and others who have expressed the same wish.”⁹³

By the spring of 1991, the SDS had begun to establish Autonomous Serbian Regions or Districts, including the Autonomous Serbian Region of Krajina. None considered itself bound any longer to the power of the central institutions of Bosnia and Herzegovina. It appears that the establishment of an institutional structure parallel to the legal central power also included a new definition of the territory. During the hearings, Professor Garde stated:

“So long as Yugoslavia existed as a Federal State, the purpose of the Serbian nationalists was merely to reinforce centralisation in the State. As that ideal began to recede ... the notion developed that it might be wise to accommodate oneself to the fact that there were borders between the Republics and that, consequently, their position should be modified. That was when the idea of a redistribution of territories began to take shape”.⁹⁴

By an analogous process, Croatia also witnessed the formation of Serbian Autonomous Regions on its territory which are referred to in the decision of the “Assembly of the Serbian people of Bosnia and Herzegovina”. The decision rather clearly expresses the project under consideration: the establishment of Autonomous Regions not under the control of each of those Republics and a union of those regions in a new Yugoslav State.

50. On 24 October 1991, the “Assembly of the Serbian people in Bosnia and Herzegovina” decided that it would also authorise several people as its representatives “in the agencies of the Federation and in relations with other States and international organisations and institutions”.⁹⁵ Radovan KARADŽIĆ, President of the SDS, was given the responsibility of representing the “Assembly” at the Presidency of the Socialist Federative Republic of Yugoslavia.⁹⁶ On 21 November 1991, “the Assembly of the Serbian people in Bosnia and Herzegovina” adopted a

⁹² Oral testimony of Prof. Garde, 28 June 1996, p. 17, French version of the provisional transcripts

⁹³ Exhibit 7

⁹⁴ Oral testimony of Prof. Garde, 27 June 1996, p. 66, French version of the provisional transcripts

⁹⁵ Exhibit 8

⁹⁶ Oral testimony of Prof. Garde, 28 June 1996, p. 20, French version of the provisional transcripts

decision on “the verification of the proclaimed Serbian autonomous districts in Bosnia and Herzegovina.” This referred to a territorial delineation of the various regions which remained imprecise and which constituted “federal units in the joint State of Yugoslavia.”⁹⁷ One month later, this same body decided to create the “Republic of the Serbian people in Bosnia and Herzegovina”⁹⁸ and to set up a council of ministers for it.⁹⁹ On 9 January 1992, “the Republic of the Serbian people in Bosnia and Herzegovina” was proclaimed.¹⁰⁰ The first article of this declaration includes a definition of the territory of the “Republic”. It included the Autonomous Regions and Districts, the “other Serbian ethnic entities” and, last, “the regions in which the Serbian people remained in the minority due to the genocide conducted on it in World War II”. For its authors, this expression leaves the definition of the territory broad and reverts to a powerful nationalist myth already invoked in Radovan KARADŽIĆ’s speech when the SDS was being established and to which reference has already been made. Article 2 of the proclamation specifies that “the Republic” shall remain within “the Yugoslav federal State”. The Constitution of the “Republic” was proclaimed on 28 February 1992¹⁰¹. Article 6 states that “citizens of the Republic have the citizenship of the Republic and of Yugoslavia”. Article 9 asserts that “the capital of the Republic is Sarajevo.” The proclamation of the constitution was made the day before the referendum on independence which was organised on the territory of the Republic of Bosnia and Herzegovina at the request of the European Community. Out of 63% of the voters, more than 90% declared themselves in favour of independence for the Republic. The voting was boycotted by the SDS.¹⁰²

b) Local Control

51. In addition to the centralised parallel institutional structure which was based on a broad definition of the territory, the SDS worked on establishing an institutional network on the local level which first took shape with the Serbian Autonomous Districts and Regions. On 19 December 1991, confidential instructions were issued by the SDS to set up local crisis committees. In order to seize power the instructions were to apply to “the whole territory of Serbian Republic of Bosnia and Herzegovina, that is, in all municipalities where the Serb

⁹⁷ Exhibit 10

⁹⁸ Exhibit 15

⁹⁹ Exhibit 16

¹⁰⁰ Exhibit 17

¹⁰¹ Exhibit 18

¹⁰² Dr. Gow (Report), p. 41

people live”, whether or not the Serbian population was in the majority. The local crisis committees were composed of people in the municipality who were members of the SDS, in particular, members of the police. They were required to set up parallel municipal bodies, to prepare to exercise control over personnel, facilities, and material and to work with the armed forces command. Information and propaganda had to be “intensified in order to inform the Serb people promptly and completely about the political and security situation in the municipality.” The final provisions explained that “the tasks, measures and other activities in these instructions can be applied only on the orders of the president of the SDS in Bosnia and Herzegovina, according to a secret procedure especially for that purpose”.¹⁰³ The local structures were linked by a secret communications network, as shown in the confidential directives from the President of the SDS in August 1991¹⁰⁴ and March 1992.¹⁰⁵

c) Use of the Media and Propaganda

52. The media seem to have played a vital role in the rise and development of nationalism and the crisis in the former Yugoslavia. Around 1990, the massacres of the Second World War were continuously recalled in the press. The idea that there was an international plot against the Serbs was omnipresent and based on a rewriting of history. The Serbs who practice the Orthodox religion and whose church has its own patriarch are said to have always been the target of great multi-national empires such as the Ottoman and Habsburg Empires and to have been dominated by religions like Islam and Catholicism which are also international. In addition, they are said to have suffered from the domination of international Communism through the regime of Marshall Tito. The government press as well as national opposition presses developed nationalist themes.¹⁰⁶

The importance of controlling the media is illustrated by Radovan KARADŽIĆ in the above cited November 1991 speech. In it he said:

“We cannot have a radio chairman or a newspaper editor-in-chief who does not implement the policy of the party in power. Those are the functions of a State ... I am, therefore, asking you to oust this week, through an

¹⁰³ Exhibit 47; oral testimony of John Ralston, 28 June 1996, p. 68, French version of the provisional transcripts

¹⁰⁴ Exhibit 5

¹⁰⁵ Exhibit 28; oral testimony of John Ralston, 28 June 1996, p. 51, French version of the provisional transcripts

¹⁰⁶ Oral testimony of Prof. Garde, 27 June 1996, p. 84, French version of the provisional transcripts

executive committee decision, all radio chairmen and editors-in-chief who do not listen to you and do not respect the official policy, or for some other reason. In all municipalities where we have the radio, we have power.”¹⁰⁷

The material submitted to the case-file supports the inference that the institutional control at the level of the Republic and the municipalities was supplemented by military preparations.

3. Military Preparations for the Take-Over by the SDS in Bosnia and Herzegovina

53. Since 1991 contacts seemed to have been established between the SDS and the Yugoslav People’s Army (JNA), as well as with the representatives of the “Serbian block” within the federal institutions. After the latter became paralysed, the army had no civil authority over it and for a while became an autonomous force.¹⁰⁸ From mid-1991 to mid-1992, the JNA, whose officer corps was mainly Serbian but whose reserve force was multi-national, became a force entirely comprised of Serbian military personnel.¹⁰⁹ The change in the composition of the army seem to have coincided with the change in its role. In a book published in Belgrade in 1993, General Kadijević, Federal Secretary of National Defence and Chief of Staff of the Supreme Command of the SFRY’s armed forces between 15 May 1988 and 6 January 1992, explained that the option chosen by the JNA from spring 1991 onwards, meant in practice:

“protecting and defending the Serb people outside of Serbia and assembling the JNA within the borders of the future Yugoslavia”¹¹⁰

Within this new context, the first operations of the Yugoslav People’s Army (JNA) were carried out in Slovenia and then in Croatia, particularly at Vukovar. This Trial Chamber has reviewed several events related to the capture of that city by the JNA (Decision of 3 April 1996, IT-95-13-R61). According to General Kadijević:

¹⁰⁷ Exhibit 30

¹⁰⁸ Oral testimony of Prof. Garde, 28 June 1996, p. 14, French version of the provisional transcripts

¹⁰⁹ Dr. Gow, (Report), p. 34; oral testimony of Col. Selak, 1290-1291, exhibit 70; oral testimony of Col. Kranjc, 1327-1328, exhibit 71

¹¹⁰ Veljko Kadijević, *My view of the Break-Up, An Army Without a State*, Belgrade 1993, p. 61, additional case-file submitted by the Prosecutor on 24 June 1996

“the principal ideas behind the basic concept for deploying the JNA in the Yugoslav region were: total defeat of the Croatian army, if the situation so allowed (...), full co-ordination with Serb insurgents in the Serbian Krajina; completion of the pull out from Slovenia of remaining JNA forces; full awareness that the role of the Serb nation in Bosnia and Herzegovina would be instrumental to the future of the Serb nation at large. The location of the of JNA forces was to be adjusted accordingly.”¹¹¹

Close contacts between the JNA and the SDS party were brought out during the *Tadić* trial (IT-94-1-T) by several high ranking military officers who were serving in that army at the time.¹¹² In respect of co-ordination in the military preparations, these contacts might permit clarifying the official requests of the parallel institutions created by the SDS in Bosnia and Herzegovina. On 11 December 1991, for example the “Assembly of the Serbian People in Bosnia and Herzegovina” asked the JNA to use whatever means it had available to protect the territories of Bosnia and Herzegovina considered Serbian as part of the State of Yugoslavia.¹¹³

54. From the material submitted to the Trial Chamber at this stage, it seems that the military preparations for the take-over by the SDS in Bosnia and Herzegovina comprised two types of action: armament and logistics support for the Serbian populations in the regions controlled by the SDS authorities, which underlay preparations for a more direct military intervention by the JNA. At the beginning of September 1991, in a confidential note to the President of the SDS, Radovan KARADŽIĆ, Velibor Ostojić, an SDS leader reported on the conversation that he had with high officials of the Government of the Republic of Serbia. The discussions and agreements seem to have focused mainly on arms supply and communications material.¹¹⁴ It appears that during 1991 some of the units of the Territorial Defence, composed of reservists which were under the partial command of the authorities of the federated Republics were obliged to surrender their military equipment to the JNA, which allegedly deprived the non-Serbian populations of their traditional means of defence.¹¹⁵ The weapons which had been surrendered were allegedly distributed by the JNA to other units of the Territorial Defence dominated by the Serbs.¹¹⁶ It appears that starting in the spring of 1992, large scale distribution of weapons to the police forces began.¹¹⁷ This assistance is confirmed by the words of President of Serbia, Slobodan Milošević, who, in May 1993, declared:

¹¹¹ Kadujević, p. 73, additional case-file submitted by the Prosecutor on 24 June 1996

¹¹² Oral testimony of Col. Kranjc, 1318, exhibit 71; oral testimony of Col. Selak, 1224, exhibit 70;

¹¹³ Exhibit 14

¹¹⁴ Doc. 54, confirmation case-file (IT-95-5-I)

¹¹⁵ Oral testimony of J. Doko, 1349-1351, additional case-file submitted by the Prosecutor on 24 June 1996; Dr. Gow, (Report), p. 40; oral testimony of Col. Selak, 1225-6, exhibit 70

¹¹⁶ Dr. Gow, (Report), p. 40; oral testimony of Col. Selak, 1227, exhibit 70; oral testimony of J. Doko, 1359, additional case-file submitted by the Prosecutor on 24 June 1996

¹¹⁷ Oral testimony of Col. Selak, 1237, exhibit 70

“In the past two years, the Republic of Serbia - by assisting Serbs outside Serbia - has forced its economy to make massive efforts and its citizens to make substantial sacrifices... Most of the assistance was sent to people and fighters in Bosnia and Herzegovina ... following a year of was an long-term peace negotiations, the Serbs have gained their freedom and have regained the equality taken from them when the war started. Most of the territory in the former Bosnia-Herzegovina belongs now to Serb provinces. This is a sufficient reason to halt the war ... Serbia has lent a great deal of assistance to the Serbs in Bosnia. Owing to the assistance they have achieved most of what they wanted.”¹¹⁸

55. The JNA also seemed to be preparing for a more direct military intervention in Bosnia and Herzegovina. After the war in Croatia, JNA troops and equipment were massively redeployed in Bosnia and Herzegovina.¹¹⁹ According to General Kadejević,

“assessing the further development of events, we felt that after leaving Croatia we should have strong JNA forces in Bosnia and Herzegovina.”¹²⁰

Several testimonies in the case-file give credence to the thesis that paramilitary groups were trained by the JNA.¹²¹

All this material shows that preparations were being made in Bosnia and Herzegovina in order to carry out the SDS programme. The preparations were carried out at several levels. An institutional structure ensuring the establishment of a cohesive chain of command was put into place by the SDS in 1991 and at the beginning of 1992. Furthermore, by the fall of 1991, the SDS was in contact with the federal authorities dominated by the Republic of Serbia and the Yugoslav People's Army (JNA). By arming the Serbian population and organising a more direct JNA intervention, the contacts permitted the SDS to take power in the territory of Bosnia and Herzegovina.

¹¹⁸ Declaration, additional case-file submitted by the Prosecutor on 24 June 1996

¹¹⁹ Oral testimony of Prof. Garde, 28 June 1996, p. 6, French version of the provisional transcripts; Dr. Gow, (Report), p. 40

¹²⁰ Kadijević, p. 80, additional case-file submitted by the Prosecutor on 24 June 1996

¹²¹ Dr. Gow, (Report), p. 35; oral testimony of Col. Selak, 1247, exhibit 70; oral testimony of Col. Kranjc, 1317, exhibit 71

B. The Seizure of power and implementation of “ethnic cleansing”

1) The seizure of power by the SDS

56. The material tendered to the Trial Chamber by the Prosecutor justifies the finding that, between March and May 1992, SDS forces, with wide-ranging military support from the JNA, engaged in attacks against certain strategic points of Bosnia and Herzegovina, in particular at Foča, Bosanski Šamac, Vlasenica, Brčko, and Prijedor, where the majority of the population was non-Serb.¹²² These large-scale military offensives¹²³ were usually conducted in collusion with paramilitary units, such as the groups led by Zeljko Raznjatović, alias “Arkan”, Vojislav Šešelj, the “White Eagles” at Foca, and the “Grey Wolves” at Bosanski Šamac¹²⁴, and had the support of SDS members.¹²⁵ These offensives gave the SDS control over the peripheral territory of Bosnia and Herzegovina.¹²⁶ During the same period, the JNA initiated the military preparations for the siege of Sarajevo.¹²⁷

57. A series of maps produced at the hearing showed that the zones held in November 1992 by the military forces and the SDS administration in Bosnia and Herzegovina corresponded to a large extent to the territories which had been declared autonomous by the SDS as specified by the “Assembly of the Serbian people in Bosnia and Herzegovina” on 21 November 1991.¹²⁸ Some zones were taken though they were not among the autonomous territories; thus for instance the town of Brčko and the municipalities in the Drina valley, including Bratunać and Srebrenica. According to Professor Paul Garde, “the additional advances were especially bloody” since it was in those areas that the policy of persecution was the most violent.¹²⁹

58. From May 1992 on, there was a change within the JNA. It was reorganised and a specific military structure which was linked directly to the “Serb Republic of the Serbian people of Bosnia and Herzegovina” was established. At the same time, according to General Kadijević,

¹²² Confirmation case-file (IT-95-5-I); oral testimony of John Ralston, 28 June 1996, p. 70, French version of the provisional transcripts; oral testimony of Col. Selak, 1283, exhibit 70

¹²³ Oral testimony of John Ralston, 28 June 1996, p. 67, French version of the provisional transcripts

¹²⁴ Dr. Gow, (Report), pp. 35 and 42

¹²⁵ Oral testimony of J. Doko, 1365, additional case-file submitted by the Prosecutor on 24 June 1996;

¹²⁶ Dr. Gow, (Report), p. 42

¹²⁷ Oral testimony of J. Doko, 1352, additional case-file submitted by the Prosecutor on 24 June 1996; oral testimony of T. Kupusović, 1 July 1996, p. 47, French version of the provisional transcripts

¹²⁸ Exhibits 10, 11, 12

¹²⁹ Oral testimony of Prof. Garde, 28 June 1996, p. 23, French version of the provisional transcripts

“The JNA provided the basis for the formation of three armies: the Army of the FRY, the Army of the Republic of Srpska and the Army of the Republic of Serbian Krajina.”¹³⁰

He went on to note:

“The units and headquarters of the JNA formed the backbone of the army of the Serb Republic, complete with weaponry and equipment.”¹³¹

According to General Kadijević, the army of the Serbian Republic performed the same functions as those of the JNA:

“In Bosnia and Herzegovina, first the JNA and later the army of the Republic of Srpska, which the JNA put on its feet, helped to liberate Serb territory, protect the Serb nation and create the favourable military preconditions for achieving the interests and rights of the Serb nation in Bosnia and Herzegovina by Opolitical means, to the extent and under the conditions that international circumstances allowed.”¹³²

Some of the material in the case-file would tend to confirm those statements and lend credence to the view that the army of the “Republic of the Serbian people of Bosnia and Herzegovina”, which became the army of the “Republika Srpska”, would be but a new name for the former Yugoslav military structure, which continued to exist in Bosnia and Herzegovina.¹³³

In this respect, the instructions for withdrawal would seem to amount mainly to a reshuffling of men so that the majority of the members of the army of the Serbian Republic would be from Bosnia and Herzegovina.¹³⁴ The federal Yugoslav army and the Belgrade political authorities apparently went on exercising major control over the army of the Republika Srpska, which seemingly was sometimes even exercised against the Bosnian Serb administration.¹³⁵ There is evidence that the Yugoslav army went on providing materiel and equipment as well as also intervening directly in Bosnia and Herzegovina after May 1992.¹³⁶

¹³⁰ Kadijević, p.89, additional case-file submitted by the Prosecutor on 24 June 1996

¹³¹ Kadijević, p.80, additional case-file submitted by the Prosecutor on 24 June 1996

¹³² Kadijević, p.88, additional case-file submitted by the Prosecutor on 24 June 1996

¹³³ Oral testimony of Prof. Garde, 28 June 1996, p. 25, French version of the provisional transcripts

¹³⁴ Declaration by the Government of Yugoslavia on 12 May 1992, additional case-file submitted by the Prosecutor on 24 June 1996; oral testimony of Prof. Garde, 28 June 1996, p. 25, French version of the provisional transcripts; declaration by General Djukić, additional case-file submitted by the Prosecutor on 24 June 1996; declaration by Col. Krsmanović, additional case-file submitted by the Prosecutor on 24 June 1996

¹³⁵ Oral testimony of Col. Selak, 1280, exhibit 70; declaration by General Djukić, additional case-file submitted by the Prosecutor on 24 June 1996

¹³⁶ Dr. Gow, (Report), pp. 44-45; Oral testimony of J. Doko, 1362, additional case-file submitted by the Prosecutor on 24 June 1996

59. The offensive of the Serbian forces in Bosnia and Herzegovina enabled SDS-controlled parallel Serbian structures to be established very rapidly in municipalities, that is, in particular, to set up crisis staffs which seem to have been in already set up.¹³⁷ In some towns, the Serbian forces did not seize power but exerted constant military pressure, as for example in the siege of Sarajevo. The Trial Chamber has not been seized by the Prosecutor of the entirety of the military offensive and of the political seizure of power conducted by the Serbian forces in Bosnia and Herzegovina. It does appear, however, relative to the events subject to its review, that a deliberate and systematic line of conduct called "ethnic cleansing" has been substantiated, which shall now be analysed.

2) The policy of "ethnic cleansing"

60. In the spring of 1992, throughout the municipalities where the Prosecutor carried out investigations relating to the first indictment, i.e. Foča, Bosanski Šamac, Vlasenica, Brčko, and Prijedor, the same deliberate line of conduct was adopted. On the basis of the case-file it may be considered that in each of those municipalities, the SDS crisis staffs made themselves the true holders of power. They issued ultimatums ordering the non-Serbian inhabitants of villages to lay down their arms and to pledge allegiance to the new authorities. Discriminatory administrative measures were established, and arbitrary murders and rapes were committed. The non-Serbian men and women, or those not having pledged allegiance, were separated and then interned in detention facilities under the control of the SDS police or military authorities; it was in such facilities that the atrocities described in III above were committed. Among the camps, may be mentioned Omarska (Commander: Željko Meakić); Keraterm (Commander: Duško Sikirica); Trnopolje (Commander: Slobodan Kuruzović); Luka (Commander: Goran Jelisić); Manjača (Commander: Božidar Popović), Sušica (Commander: Dragan Nikolić); KP Dom Foča (Commander: Milorad Krnojelac). People not loyal to the SDS were deported following their internment or transferred to other camps. Those who were not detained were forced to flee, abandoning their property. The extent of the damage and the determination systematically to destroy sacred symbols devoid of any military significance or outside combat zones were according to expert witnesses part of a "memory-cide",¹³⁸ a policy of "cultural cleansing (...) aiming at eradicating memory".¹³⁹ That policy resulted in a radical change in the makeup of the population. The Municipality of Foča had 40,513 inhabitants, of whom 51.6%

¹³⁷ Oral testimony of John Ralston, 28 June 1996, pp. 53,54 and 69, French version of the provisional transcripts

¹³⁸ Oral testimony of Prof. Garde, 28 June 1996, p. 12, French version of the provisional transcripts

¹³⁹ Oral testimony of Dr. Kaiser, 2 July 1996, pp. 46 and 54, French version of the provisional transcripts

were Muslim Bosnians. According to the Serbian authorities, there were only nine Muslims in the city in August 1993.¹⁴⁰ Bosanski Šamac had 32,835 inhabitants, of whom 45% were Croats, 41% Serbs, and 7% Muslims. According to the Prosecutor's Office, ten Croats and 250 Muslims were still present in the municipality in March 1995.¹⁴¹ In the Prijedor Municipality, 88% of the Muslim population of about 49,000 population was killed or deported.¹⁴² The estimates of the United Nations High Commissioner for Refugees (HCR) presented by Dr. James Gow show that in July 1994 about 750,000 non-Serbs were displaced from northern and eastern Bosnia, the population of the Republic of Bosnia and Herzegovina in 1991 being 4.4 million.¹⁴³ This policy apparently went on throughout the conflict, as attested to by the creation by the Security Council of the United Nations of "safe areas" to halt the forced departures and the policy of "ethnic cleansing".¹⁴⁴ At Srebrenica, the take-over of the enclave in July 1995 entailed the execution or deportation of its 40,000 inhabitants.

61. The material in the case-file demonstrates that the take-over by the SDS and its military allies in Bosnia and Herzegovina was followed by a systematic implementation of that policy. This was not coincidental, since it corresponded to the project of the SDS, expressed as early as 1991, to establish a new entity inhabited homogeneously by Serbs and which might be part of a new federal State dominated by the Republic of Serbia. Radovan KARADŽIĆ, in an interview published on 16 July 1995, said:

"Our number one priority is to be part of Serbia; our second priority is to be part of Yugoslavia as a federal unit".

He went on to say:

"The Muslim enclaves in Bosnia are not viable and must disappear. Otherwise, we will make them disappear by force. (...) The Muslims and the international community must accept the reality that this country is totally Serbian."¹⁴⁵

These plans illustrate fully the spirit and the political means of the SDS in Bosnia and Herzegovina: a policy of "ethnic cleansing".

¹⁴⁰ Oral testimony of John Ralston, 28 June 1996, p. 73, French version of the provisional transcripts

¹⁴¹ Oral testimony of John Ralston, 28 June 1996, p. 74, French version of the provisional transcripts

¹⁴² Oral testimony of John Ralston, 28 June 1996, p. 79, French version of the provisional transcripts

¹⁴³ Dr. Gow, (Report), pp. 11 and 12

¹⁴⁴ Resolution 824 (1993), 6 May 1993

¹⁴⁵ Interview in the Spanish newspaper *El Pais*, confirmation case-file (IT-95-18-I)

62. According to Professor Garde, “ethnic cleansing is a practice which means that you act in such a way that, in a given territory, the members of a given ethnic group are eliminated, aiming that a given territory be “ethnically pure”, in other words, that that territory would contain only members of the ethnic group that took the initiative of cleansing the territory”.¹⁴⁶ According to Elisabeth Rehn, the *amicus curiae* already quoted, the policy practised was designed to remove a “population belonging to the given ethnic group from the given territory. You really need methods that are quite serious, quite grave ... to fulfil that goal”.¹⁴⁷

Those methods of “ethnic cleansing” include, in particular, murder, sexual assault, intimidation, harassment, and the destruction of sacred and cultural buildings. Such acts have been described in III above.

In the light of the material tendered at the hearings, the Trial Chamber considers, however, that certain features of the policy of “ethnic cleansing” warrant elaboration.

63. The Trial Chamber would first examine the siege and shelling of and sniping in cities, and particularly in the capital of Bosnia and Herzegovina, Sarajevo. On 19 April 1992, before the siege began, the Municipal Assembly of Sarajevo adopted a communiqué stating in particular:

“The city of Sarajevo, with more than five centuries of history marked by the coexistence of a multi-cultural, multi-confessional, and multi-national community, is indivisible.”¹⁴⁸

During the whole siege of Sarajevo, the civilian population was subjected to shelling which concentrated on civilian gatherings and to selective sniping at individual victims. Further, the minimum conditions for subsistence imposed on the inhabitants¹⁴⁹ seem to have contributed to the demoralisation and gradual weakening of the population, which was ethnically mixed, since, according to witness M. Kupusović, former mayor of Sarajevo, nearly 40,000 Sarajevoan Serbs refused the authority of the SDS and remained in the city throughout the siege. At Sarajevo, it would seem that it was the example of peaceful coexistence between the various groups which was targeted, as expressed in the plans for partition voiced by Radovan KARADŽIĆ. Thus, in the afore-quoted interview, he also affirmed:

¹⁴⁶ Oral testimony of Prof. Garde, 28 June 1996, p. 11 French version of the provisional transcripts

¹⁴⁷ Oral submissions made by Elisabeth Rehn, *amicus curiae*, 5 July 1996, p. 27, French version of the provisional transcripts.

¹⁴⁸ Exhibit 1.7.6.

¹⁴⁹ Oral testimony of T. Kupusović, 1 July 1996, p. 62, French version of the provisional transcripts

“Sarajevo will become two cities. Two neighbouring cities, if the Muslims want it so, or, if not, a Serbian city because the city was built in a Serbian area. (...) We insist on half the city’s becoming Serbian or we will take over the entire city”.

On the basis of the material submitted to the Trial Chamber, the siege should be assessed in the context of the policy of “ethnic cleansing”. It has all the features of an instrument aimed at expelling non-Serbs, and Serbs rejecting the SDS plan, and thereby to make Sarajevo, like other towns in Bosnia and Herzegovina, an ethnically homogeneous territory.

64. Further, the Trial Chamber considers that, among the methods of “ethnic cleansing”, sexual assaults warrant special attention owing to their systematic nature and the gravity of the suffering thereby inflicted on civilians.¹⁵⁰ The Trial Chamber wished to hear an *amicus curiae* in relation to this issue as a whole.

In his indictment of 25 July 1995, the Prosecutor focused on the sexual assaults committed in the detention facilities of the Bosnian Serbs: camp guards or commanders, soldiers, members of the police or of paramilitary groups and even civilians had access to those camps and allegedly perpetrated sexual assaults on civilian Bosnian Muslim and Bosnian Croat detainees.¹⁵¹ It seems to the Trial Chamber however that sexual assaults in the camps constitute but one aspect of a broader practice. Sexual assaults were committed by individuals or groups before the conflict broke out, in a context of looting and intimidation of the population.¹⁵² During military attacks on civilian gatherings, there was sexual abuse, in particular public rapes.¹⁵³ It seems that some women were particularly affected by the practice of sexual assault. Some camps were specially devoted to rape, with the aim of forcing the birth of Serbian offspring, the women often being interned until it was too late for them to undergo an

¹⁵⁰ Oral testimony of Prof. Garde, 28 June 1996, p. 13 French version of the provisional transcripts; Oral submissions made by Elisabeth Rehn, *amicus curiae*, 5 July 1996, pp. 29, 42 and 43, French version of the provisional transcripts.

¹⁵¹ Oral testimony of Irma Oosterman, 2 July 1996, p. 25-27, French version of the provisional transcripts; oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, pp. 10 and 13, French version of the provisional transcripts.

¹⁵² Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 10, French version of the provisional transcripts, quoting the final report of the Commission of Experts established pursuant to Resolution 780 (1992) of the Security Council, para. 245 (Report submitted to the Trial Chamber).

¹⁵³ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 10, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 246

abortion.¹⁵⁴ It would seem that there were also hostels or private homes where women were raped for the soldiers' entertainment.¹⁵⁵

On the basis of the features of all these sexual assaults, it may be inferred that they were part of a widespread policy of "ethnic cleansing": the victims were mainly "non-Serbian" civilians, the vast majority being Muslims.¹⁵⁶ Sexual assaults occurred in several regions of Bosnia and Herzegovina, in a systematic fashion and using recurring methods (e.g. gang rape, sexual assault in camps, use of brutal means, together with other violations of international humanitarian law)¹⁵⁷. They were performed together with an effort to displace civilians and such as to increase the shame and humiliation of the victims and of the community they belonged to in order to force them to leave.¹⁵⁸ It would seem that the aim of many rapes was enforced impregnation;¹⁵⁹ several witnesses also said that the perpetrators of sexual assault - often soldiers - had been given orders to do so and that camp commanders and officers had been informed thereof and participated therein.¹⁶⁰

Lastly, the Trial Chamber considers it important to mention an inherent aspect of the policy of "ethnic cleansing" in Bosnia and Herzegovina, confirming the conclusions of the reports of the first Special Rapporteur of the United Nations Commission on Human Rights, Mr. Tadeusz Mazowiecki, referred to before the Trial Chamber by his successor Mrs. Elisabeth Rehn: "ethnic cleansing" indeed seems to be not a *by-product* of the war initiated by the SDS and its military allies, but rather its *aim*.¹⁶¹

¹⁵⁴ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, pp. 10 and 11, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 247 and 248

¹⁵⁵ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 11, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 249; see also oral testimony of Irma Oosterman, 2 July 1996, p. 26, French version of the provisional transcripts

¹⁵⁶ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 13, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 251

¹⁵⁷ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, pp. 13 and 15, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 252; see also oral testimony of Irma Oosterman, 2 July 1996, pp. 24,25,27 and 29, French version of the provisional transcripts

¹⁵⁸ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, pp. 12, 13, 15 and 16, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 250; oral submissions made by Elisabeth Rehn, *amicus curiae*, 5 July 1996, p. 42-43, French version of the provisional transcripts.

¹⁵⁹ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 11, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 248 and 250; see also oral testimony of Irma Oosterman, 2 July 1996, pp. 25,26,31 and 32, French version of the provisional transcripts

¹⁶⁰ Oral submissions made by Christine Cleiren, *amicus curiae*, 2 July 1996, p. 14, French version of the provisional transcripts, and final report of the Commission of Experts, *cit.*, para. 250; see also oral testimony of Irma Oosterman, 2 July 1996, pp. 25-28, French version of the provisional transcripts

¹⁶¹ Second report by Tadeusz Mazowiecki, 27 October 1992, E/CN.4/S-1/10

C. Position Of The Accused. Type Of Responsibility Incurred

65. The description of the offences has demonstrated that those committing them were part of an institutional, political and military organisation whose purpose was to establish a territory with a homogeneous population and which covered all of the regions of Bosnia and Herzegovina held by the Bosnian Serb Administration.

According to the two indictments, the offences charged were committed by the military and police personnel obeying the orders of the Bosnian Serb administration. Both indictments indicate that the perpetrators were acting under the control, command and direction of Radovan KARADŽIĆ and Ratko MLADIĆ. All of the charges would therefore involve the individual criminal responsibility of those in superior authority. Two provisions of the International Tribunal's Statute are germane in this connection: Article 7(1):

"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."

and Article 7(3):

"The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

66. In all the counts of the indictment of 25 July 1995, with the exception of the first (genocide), the Prosecutor refers to both paragraphs 1 and 3 of Article 7. For the charge of genocide in count 1, the individual criminal responsibility of the accused would be implicated only through the operation of paragraph 3, that is to say that they would be responsible for having known or had reason to know that their subordinates were committing genocide and not taking necessary and reasonable measures to prevent such acts or to punish the perpetrators. The indictment of 16 November 1995 stipulates that the accused are individually responsible for the offences charged pursuant to Article 7(1), but "also, or alternatively" pursuant to Article 7(3).

The Trial Chamber turns now to assess the individual criminal responsibility of Radovan KARADŽIĆ and Ratko MLADIĆ. It will examine the position of each of the accused in the overall organisation described with a view to determining their institutional functions and how they exercised their powers.

1. Radovan KARADŽIĆ

67. Radovan KARADŽIĆ has been the president of the Serbian Democratic Party (SDS) ever since it was founded in July 1990.¹⁶² He was thus vested with the executive power of the party's activities.¹⁶³ According to the regulations of the SDS,¹⁶⁴ the president is one of the party's six main organs. He is elected by the Assembly and his functions are to co-ordinate the work of the party's organs, to convene the Main and the Executive Boards, to oversee the implementation of the party's platform and objectives, as well as to represent the SDS. He is *ex officio* president of the Main Board, the party's supreme organ when the Assembly is not in session, consisting of 57 members and having functions such as preparing all the acts on which the Assembly votes, adoption of any decision delegated by the Assembly and executing the Assembly's decisions. The party's president is also at the head of the 11-member Executive Board which prepares and executes the decisions of the Main Board, implements all party policy and conducts its current affairs. His powers were moreover expanded in 1991.¹⁶⁵

The SDS is also built upon a vast organisation spread over the territory of Bosnia and Herzegovina (at the regional, sub-regional, municipal and local community level).¹⁶⁶ The local organs have some autonomy in assessing the political situation in the territory of their competence and for decisions pertaining to personnel matters.¹⁶⁷ The central organs, and the president in particular, retain the party's political power; they exercise it by adopting decisions and dispatching orders or instructions to subordinates.¹⁶⁸ The principles of discipline, co-operation and co-ordination were deemed necessary for the SDS's functioning¹⁶⁹ and an

¹⁶² Oral testimony of John Ralston, 28 June 1996, p. 45, French version of the provisional transcripts; see also speech of Radovan KARADŽIĆ before the founding Assembly of the SDS as president of the new party, 12 July 1990

¹⁶³ Confirmation case-file (IT-95-5-I), p. 25

¹⁶⁴ Oral testimony of John Ralston, 28 June 1996, pp. 49-50, French version of the provisional transcripts

¹⁶⁵ Oral testimony of John Ralston, 28 June 1996, p. 50, French version of the provisional transcripts

¹⁶⁶ Speech of Radovan KARADŽIĆ before the founding Assembly of the SDS, *cit.*, July 1990; Confirmation case-file (IT-95-5-I), p. 11

¹⁶⁷ Confirmation case-file (IT-95-5-I), p. 11

¹⁶⁸ Confirmation case-file (IT-95-5-I), p. 26

¹⁶⁹ Order by Radovan KARADŽIĆ establishing ten "Regionalisation Headquarters", Sarajevo, 9 September
Case Nos. IT-95-5-R61
IT-95-18-R61

efficient system for the transmission of information between the party's various organisational levels was developed (See Part IV.A above).¹⁷⁰

68. Radovan KARADŽIĆ also holds a central position in the whole parallel power structure set up by the SDS in Bosnia and Herzegovina. For instance, when on 13 October 1990 a "Serbian Assembly of Bosnia and Herzegovina" established a "Serbian National Council" to guarantee the civil and political equality of the Serbs of Bosnia and Herzegovina,¹⁷¹ Radovan KARADŽIĆ was appointed its president.¹⁷² On 24 October 1991, Radovan KARADŽIĆ was entrusted with representing the Bosnian Serb people vis-à-vis the Yugoslav presidency,¹⁷³ and a decision of 21 November 1991 of the Assembly of the Serbian people of Bosnia and Herzegovina authorised him in particular to negotiate with the Muslim and Croatian peoples to arrange future co-habitation in the territory of Bosnia and Herzegovina.¹⁷⁴ On 19 December 1991 an SDS Crisis Staff instructed the party's municipal councils to set up local Crisis Staffs made up of party members, accordingly coming under the orders of its central organs and in particular of the President.¹⁷⁵

69. The decisive step in the institutional preparation of the seizure of power by the Serbs of Bosnia and Herzegovina occurred on 28 February 1992 with the proclamation of the Serbian Republic of Bosnia and Herzegovina. In this phase again, Radovan KARADŽIĆ was quickly to assume a position of authority within the parallel power structure.

Since 12 May 1991, Radovan KARADŽIĆ has been the president of what was then called the "Serbian Republic of Bosnia and Herzegovina" (a self-proclaimed republic). On that day, three people were elected members of the Presidency of the Republic by the Assembly of the Serbs of Bosnia and Herzegovina: Radovan KARADŽIĆ, Biljana Plavšić and Nikola

¹⁷⁰ See in particular confidential directives by Radovan KARADŽIĆ to the local and regional committees of the SDS, Sarajevo, August 1991 and directives to the SDS presidents of the municipalities, Sarajevo, 23 March 1992 (exhibits 5 and 28) as commented by Prof. Garde, 28 June 1996, pp. 15 and 16 and by John Ralston, *idem*, pp. 47 and 48

¹⁷¹ "Decision", Banja Luka, 13 October 1990, confirmation case-file (IT-95-5-I), p. 12, note 41.

¹⁷² "First Decision by the Serbian National Council of Bosnia and Herzegovina", Banja Luka, 13 October 1990, confirmation case-file (IT-95-5-I); see also oral testimony of Prof. Garde, 28 June 1996, p. 7, French version of the provisional transcripts

¹⁷³ "Decision on Delegating Authority to Represent and Protect the Interests of the Serbian People in Bosnia and Herzegovina", Assembly of the Serbian People in Bosnia and Herzegovina, Sarajevo, 24 October 1991, exhibit 8, as commented by Prof. Garde, *idem*, pp. 17 and 18

¹⁷⁴ "Decision on Territories of Communes, Local Communities and Populated Places in Bosnia and Herzegovina which are considered Territory of the Federal State of Yugoslavia" 21 November 1991, confirmation case-file (IT-95-5-I)

¹⁷⁵ "Instructions for the organisation and activities of the Serb People in Bosnia and Herzegovina in a state of emergency", Sarajevo, 19 December 1990, Exhibit 47.

Koljević; within that Presidency, Radovan KARADŽIĆ was elected President.¹⁷⁶ Several months later, the Assembly would elect him President of the “Republika Srpska” directly.¹⁷⁷ In his capacity as president, consistent with the “Constitution” of that entity,¹⁷⁸ he assumed functions typical of a head of State, including representing the Republic (Article 80). Following an amendment to the constitution on 12 May 1992, he became the Commander-in-Chief of the army and could appoint, promote and recall his officers (Article 111).¹⁷⁹ These constitutional powers were most extensive in the event of war, or of immediate danger of war, when he may legislate by decree (Article 81).

However, the dominating position of President of that “Republic” must be assessed in the light of other legislative texts granting him considerable power in the Bosnian Serb political and military administration. He presides *ex officio* over the National Security Council, which was established by the Assembly of the Serbian people on 27 March 1992 with extensive powers over questions of interest for the security of the Serbian people of Bosnia and Herzegovina.¹⁸⁰ The Bosnian Serb “Act on People’s Defence” of 28 February 1992¹⁸¹ grants him the role of ensuring the unity and indivisibility of the national defence system; in the event of war or any other emergency, he directs the use of the police forces (Article 6) and the deployment of territorial defence units (Article 39). Pursuant to the “Act on Internal Affairs”¹⁸² adopted on the same day, in the event of an emergency the mobilisation of the reserve police forces may be ordered by the President of the Republic as well (Article 33).

70. Thus, Radovan KARADŽIĆ, as president of the SDS and then of the so-called Serbian Republic of Bosnia and Herzegovina, acceded to broad institutional powers making him the head of a political organisation and of the armed forces throughout Bosnian Serb-held territory of Bosnia and Herzegovina.

¹⁷⁶ Decision on the election of members of the Presidency of the Serbian Republic of Bosnia and Herzegovina, Assembly of the Serbian People of Bosnia and Herzegovina, Banjaluka, 12 May 1992, exhibit 23. Oral testimony of Prof. Garde, 28 June 1996, p. 33-34 French version of the provisional transcripts.

¹⁷⁷ Exhibit 26 and oral testimony of Prof. Garde, 28 June 1996, p. 35 French version of the provisional transcripts.

¹⁷⁸ Decision on proclaiming the Constitution of the Serb Republic of Bosnia and Herzegovina, Sarajevo, 16 March 1992, exhibit 18.

¹⁷⁹ Decision on proclaiming the amendments I-IV to the Constitution of the Serb Republic of Bosnia and Herzegovina (Amendment III), Banjaluka, 12 May 1992, exhibit 20.

¹⁸⁰ Decision for the creation of the National Security Council, 27 March 1992, cited in the Confirmation case-file (IT-95-5-I).

¹⁸¹ Exhibit 32.

¹⁸² Exhibit 33

71. The Trial Chamber shall now consider the effective exercise of those powers by, and the political decisions of, Radovan KARADŽIĆ, on the basis of the documents tendered.

In his public appearances, the SDS president rapidly took on a polemical tone. He advocated a Bosnian Serb Republic united with the other Serbian lands and a separation between the country's nationalities. He called the Muslims the people the Bosnian Serbs should be defending themselves against in order to preserve their "living space" and speaks of a "bloody and rough" war.¹⁸³ In the speech he gave on 14 and 15 October 1991 (already cited in Part IV.A), he said that in a war the Muslims were defenceless and that they might disappear.¹⁸⁴

The Prosecutor tendered to the Trial Chamber various documents signed by Radovan KARADŽIĆ containing orders or instructions to the SDS's various bodies. Radovan KARADŽIĆ often stressed the need for strong and centralised control of the party's activities: the SDS's whole structure tended to ensure such control, as indicated above.¹⁸⁵ On 18 October 1991, Radovan KARADŽIĆ declared a state of emergency for all party organs, whereupon daily instructions were addressed to the municipal boards.¹⁸⁶ In his capacity as president of the SDS he represented the party vis-à-vis Bosnian and foreign authorities.¹⁸⁷

In his capacity as President of the self-proclaimed Republic of the Serbs of Bosnia and Herzegovina, Radovan KARADŽIĆ made full use of his powers as commander in chief of the Bosnian Serb Army; by placing the army and police under a unified command,¹⁸⁸ promoting officers who had carried out victorious operations during the war,¹⁸⁹ and supporting the actions of his military subordinates in public.¹⁹⁰ It bears mentioning that following a decision by the interim Presidency on 15 April 1992, as confirmed by the Assembly on 12 May 1992,¹⁹¹ a

¹⁸³ Speech of November 1991, during the campaign for the Plebiscite of the Serb people of 9-10 November, exhibit 30; also cited in Part IV. A.

¹⁸⁴ Speech cited in Part IV. A., exhibit 29, clip 1 and oral testimony of Prof. Garde, 28 June 1996, p. 18 French version of the provisional transcripts.

¹⁸⁵ Exhibits 27, 28, 30.

¹⁸⁶ Daily message by Radovan KARADŽIĆ to municipal boards, 18 October 1991, cited in the confirmation case-file (IT-95-5-I).

¹⁸⁷ Message to Slobodan Milošević, exhibit 4, commented by Prof. Garde, French transcripts, 28 June 1996, p. 15. Exhibit 35 (Agreement signed in Geneva, 22 May 1992, by D. Kialinić, "Representative of Mr. Radovan KARADŽIĆ, President of the SDS").

¹⁸⁸ Exhibit 29, clip 2. Oral testimony of John Ralston, 28 June 1996, p. 59-60 French version of the provisional transcripts.

¹⁸⁹ Oral testimony of John Ralston, 28 June 1996, p. 59 French version of the provisional transcripts.

¹⁹⁰ *Idem*, p. 60.

¹⁹¹ Exhibit 19.

general and standing mobilisation of the territorial defence system over the whole territory of Bosnia and Herzegovina was ordered. By virtue of his institutional powers, Radovan KARADŽIĆ therefore had control over the exceptional measures taken in this context immediately upon taking office. In addition, Radovan KARADŽIĆ himself stated that he was the head of the Bosnian Serb Administration¹⁹² and was treated as such by the officers under his orders and the other parties to the conflict.¹⁹³ He also signed numerous agreements on behalf of the Bosnian Serb Administration, which were all subsequently executed by the latter's authorities.¹⁹⁴

72. Further, Radovan KARADŽIĆ knew the obligations under international humanitarian law and had been informed of the many United Nations resolutions condemning the violations of international humanitarian law committed in Bosnia and Herzegovina.¹⁹⁵ A witness said, in particular, that Radovan KARADŽIĆ was aware of the living conditions in the detention facilities run by the Serbian forces in Bosnia and Herzegovina¹⁹⁶ and that a large number of transfers of prisoners between the various camps occurred in direct execution of his orders, which would show his command and control over these camps.¹⁹⁷ Radovan KARADŽIĆ's control over his troops in relation to the shelling of civilian gatherings has been attested to.¹⁹⁸ His statements in connection with the hostage-taking of United Nations Peacekeepers has demonstrated his knowledge of those acts and that they were carried out in compliance with his orders.¹⁹⁹ Lastly, it has been sufficiently established that Radovan KARADŽIĆ took no measure whatever to punish his subordinates who committed grave breaches of international humanitarian law.²⁰⁰

¹⁹² Exhibit 34 (Affidavit by Radovan KARADŽIĆ to the US authorities, 3 May 1993).

¹⁹³ Oral testimony of John Ralston, 28 June 1996, p. 60 French version of the provisional transcripts.

Oral testimony of John Ralston, 28 June 1996, p. 60 French version of the provisional transcripts.

¹⁹⁴ *Idem*, pp. 54-55 and exhibits 36 (Agreement of 5 June 1992 on the reopening of Sarajevo airport for humanitarian purposes), 37 (Instructions to the Serbian forces around the town of Goražde for an immediate unilateral cease-fire, London, 16 July 1992), 38 (Declaration for humanitarian assistance, Geneva, 18 November 1993) and 39 (Agreement on complete cessation of hostilities, 31 December 1994).

¹⁹⁵ Oral testimony of John Ralston, 1 July 1996, p. 7-8 French version of the provisional transcripts and exhibits 64 and 66. See also exhibit 65 of case IT-95-18-I (Statement concerning the contacts between United Nations Representatives and Radovan KARADŽIĆ and Ratko MLADIĆ, read during the hearing of 5 July 1996, French version of the provisional transcripts, p. 79-82) and 25 (Order on the application of the rules of international laws of war in the Army of the Serbian Republic of Bosnia and Herzegovina, 13 May 1992, signed Radovan KARADŽIĆ).

¹⁹⁶ Oral testimony of John Ralston, 28 June 1996, pp. 90-91, and 1 July 1996, pp 2-3, French version of the provisional transcripts : the witness quotes the conclusions of the Thompson Commission (pp 3-5)

¹⁹⁷ Oral testimony of John Ralston, 28 June 1996, p. 90 French version of the provisional transcripts.

¹⁹⁸ Statement by Lieut.-General Francis Briquemont, commandant of the United Nations forces in Bosnia and Herzegovina, interviews of 9, 29, and 30 May and 3 August 1995 with the Office of the Prosecutor (testimony joined to the confirmation case-file) and confirmation case-file (IT-95-5-I), p. 73 (the Prosecutor cites an interview of Radovan KARADŽIĆ).

¹⁹⁹ Oral testimony of John Ralston, 1 July 1996, p. 10-11 French version of the provisional transcripts.

²⁰⁰ *Idem*, p. 5.

73. With regard more specifically to the events at Srebrenica, Radovan KARADŽIĆ did not hesitate to tell the press that the Muslim enclaves had to disappear, even if it was necessary to resort to force, in no way denying that civilians had been targeted²⁰¹ and then saying that he was “satisfied” with how his own instructions had been executed when the safe area was taken.²⁰²

Likewise, with respect to the siege of Sarajevo and the alleged killing of several thousand inhabitants, the evidence submitted on video by the Prosecutor confirms the direct presence and control of Radovan KARADŽIĆ.²⁰³

74. Radovan KARADŽIĆ’s central role in the political and military preparation of the take-over by the Serbs of Bosnia and Herzegovina appears clearly. All of the evidence and testimony tendered by the Prosecutor shows that since July 1990 Radovan KARADŽIĆ has been the unchallenged leader of the Bosnian Serbs. His actions and statements demonstrate not only that he was aware of his subordinates’ doings, but also, and above all, that he endorsed their behaviour, that he participated from the first moment on in the planning of the policy of “ethnic cleansing” in Bosnia and Herzegovina and that he himself was in a position to order the Bosnian Serbs’ operations which led to the commission of offences charged.

It has been ascertained that Radovan KARADŽIĆ always held a position of authority in the Serbian administration of Bosnia and Herzegovina and that he effectively exercised his functions. His career demonstrates a constant ascent in the key positions in the seizure of power, initially at the head of the SDS and then in the various parallel power structures set up by the Bosnian Serbs.²⁰⁴

2. Ratko MLADIĆ

75. Ratko MLADIĆ was a career officer in the Yugoslav People’s Army (JNA) until May 1992. From 1989 to 1991 he served as the head of the Education Department of the Third

²⁰¹ Interview to the Spanish newspaper “El País”, 16 July 1995.

²⁰² Interview in the Bosnian Serb television on 4 August 1995.

²⁰³ Oral testimony of Tarik Kupusović, Mayor of Sarajevo, 1 and 2 July 1996, French version of the provisional transcripts and exhibits.

²⁰⁴ Oral testimony of Prof. Garde, 28 June 1996, p. 36-37 French version of the provisional transcripts. See also oral testimony of John Ralston, 1 July 1996, p. 15 French version of the provisional transcripts (the witness refers to several interviews between the Office of the Prosecutor and senior officers).

Military District of Skoplje. From January to June 1991, he was Deputy Commander of the Pristina Corps in Kosovo. In June 1991 he was sent to Knin as Chief of the Knin Corps, at the time of the fighting against the Croatian forces. Two months after his arrival at Knin, his combat exploits gained him a promotion to the rank of Brigadier General.²⁰⁵

76. In April and May 1992, the JNA was fighting in Bosnia and Herzegovina. Meanwhile, on 19 May 1992 the JNA withdrew officially from the territory of Bosnia and Herzegovina.²⁰⁶ In fact, what was really involved was only the reorganisation of the troops; the JNA units in Bosnia were to comprise henceforth almost exclusively Serbian soldiers from that Republic. All the units and their equipment stayed in Bosnia.²⁰⁷

It is in that context that Ratko MLADIĆ was appointed Chief of Staff of the Second Military District Headquarters of Sarajevo, succeeding Generals Stanković and Kukanjac who were recalled to Belgrade.²⁰⁸ Once the official withdrawal of the JNA took place, Ratko MLADIĆ, in all likelihood in close liaison with the Belgrade authorities, began setting up an autonomous command structure for Bosnia and Herzegovina. He himself apparently described this process in detail in an interview with the magazine "Nin" of Belgrade.²⁰⁹

77. On 12 May 1992 the Assembly of the Serbian people of Bosnia and Herzegovina decided to create the "Army of the Serbian Republic of Bosnia and Herzegovina" and appointed Lieutenant General Ratko MLADIĆ its General Staff Commander-in-Chief.²¹⁰ This event did not involve any major changes in the way the Bosnian army was organised and operated; all the financing of the army - including officers' pay - continued to be provided by the federal authorities and the structure, arms and tactics of the Bosnian Serb Army replicated those of the JNA.²¹¹

Ratko MLADIĆ is the most senior officer in the army of the self-proclaimed Bosnian Serb Republic.²¹² He is assisted by Deputy Commander Milan Gvero. He commands the five-

²⁰⁵ Oral testimony of John Ralston, 28 June 1996, p. 63 French version of the provisional transcripts.

²⁰⁶ Oral testimony of John Ralston, 28 June 1996, p. 64 French version of the provisional transcripts.

²⁰⁷ Oral testimony of Prof. Garde, 28 June 1996, p. 25 French version of the provisional transcripts. Oral testimony of John Ralston, 28 June 1996, p. 63-64 French version of the provisional transcripts.

²⁰⁸ Oral testimony of John Ralston, 28 June 1996, p. 64 French version of the provisional transcripts.

²⁰⁹ *Idem.*

²¹⁰ Decision on the establishment of the Army of the Serbian Republic of Bosnia and Herzegovina, Banjaluka, 12 May 1992, specifically article 3.

²¹¹ Oral testimony of Prof. Garde, 28 June 1996, p. 25 French version of the provisional transcripts. Oral testimony of Colonel Selak, p. 1248 and ff. (exhibit 70). See also confirmation case-file (IT-95-5-I), p. 29.

²¹² Oral testimony of John Ralston, 1 July 1996, p. 15 French version of the provisional transcripts.

member General Staff holding assistance functions and those delegated to it by the Commander-in-Chief. The Commanders of the seven army corps spread over the entire territory of Serb-held Bosnia and Herzegovina are likewise under the direct orders of Ratko MLADIĆ; they have some freedom in conducting military operations in the territory under their responsibility but must comply with the overall strategy laid down by the General Staff and the Commander-in-Chief.²¹³

Ratko MLADIĆ thus has control over the Bosnian Serb Army. He has repeatedly demonstrated absolute control over his troops. The Commander-in-Chief of that army remains, however, Radovan KARADŽIĆ, the president and political leader of the Bosnian Serb Republic, whose authority is recognised by Ratko MLADIĆ himself. In this way the two accused work in close co-operation.²¹⁴

78. The evidence tendered by the Prosecution has provided the Trial Chamber with clear indications of how Ratko MLADIĆ exercised his powers.

First, it emerges that Ratko MLADIĆ had full control over his generals²¹⁵ and that he was often involved personally in the operational decisions of the various corps, going so far as to change commanders' orders and to take tactical decisions in their stead.²¹⁶

His power also extended to the political level. He played an essential role in decisions by the Bosnian Serb Administration²¹⁷ and on the latter's behalf participated in negotiations and signed several agreements, which were all subsequently implemented by his troops.²¹⁸

79. His knowledge of and involvement in the offences in the indictments have been sufficiently proven at this stage of the proceedings. A number of detention facilities were administered by members of the armed forces under his command, and were inspected by senior army officers;²¹⁹ on at least one occasion, he showed that he was aware of living

²¹³ Exhibit 40; confirmation case-file (IT-95-5-I), p. 30.

²¹⁴ Oral testimony of Prof. Garde, 28 June 1996, p. 40 French version of the provisional transcripts and oral testimony of John Ralston, 28 June 1996, p. 65 French version of the provisional transcripts.

²¹⁵ Statement by Lieut.-General, Francis Briquemont, *cit.*, p.8.

²¹⁶ Confirmation case-file (IT-95-5-I), p. 29.

²¹⁷ Statement by Lieut.-General, Francis Briquemont, *cit.*, p.8.

²¹⁸ Exhibit 41 (Agreement of 8 May 1993 on the demilitarisation of Srebrenica and Zepa, with General Sefer Halilović), 42 (Agreement of 8 May 1993 on a cease-fire in the territory of Bosnia and Herzegovina, with General Sefer Halilović), 43 (Agreement of 30 July 1993 on a cessation of hostilities between the parties to the conflict), 44 (Agreement of 11 August 1992 on Peace in Bosnia and Herzegovina).

²¹⁹ Oral testimony of John Ralston, 28 June 1996, p. 87-91, 1 July 1996, pp. 2 et 3, French version of the provisional transcripts.

conditions in the camps.²²⁰ His control over the bombing of civilian gatherings has been indicated by the implementation of the agreements signed and by testimony.²²¹ It is proven that Ratko MLADIĆ controlled even the movement of civilians in the territory of Bosnia and Herzegovina: on 19 May 1992, for instance, he held a group of 3,000 women and children hostage at Iidza and only agreed to release them, after negotiations, three days later.²²² His knowledge of the obligations under international humanitarian law²²³ and generally speaking of the prohibited acts committed²²⁴, as well as the absence of any disciplinary measure to punish the serious violations perpetrated by his subordinates²²⁵, have been sufficiently proven at this stage of the proceedings.

80. As regards more specifically the events at Srebrenica described in the indictment of 16 November 1995, there is direct evidence concerning the type of responsibility incurred by Ratko MLADIĆ. His knowledge of the offences charged is manifest through his presence and behaviour at Bratunac and Potočari,²²⁶ and at several other places at different times during the events, even at mass-execution sites.²²⁷ According to testimony, the taking of Srebrenica had all the features of an operation prepared in advance.²²⁸ Ratko MLADIĆ's participation in that preparation, but also his sway over the whole process of seizing Srebrenica and the evacuation and extermination of Muslim refugees has been corroborated by testimony²²⁹ and by his own statements.²³⁰

²²⁰ Confirmation case-file (IT-95-5-I), p. 55.

²²¹ Statement by Lieut.-General, Francis Briquemont, *cit.*, pp. 7 and 9.

²²² Confirmation case-file (IT-95-5-I), p. 30.

²²³ Oral testimony of John Ralston, 1 July 1996, p. 7, French version of the provisional transcripts.

²²⁴ *Idem*, p. 8 and exhibit 67 (doc. of 2 March 1993 from the European Community Military Headquarters to Gal MLADIĆ)

²²⁵ See, for example oral testimony of John Ralston, 1 July 1996, p. 5, French version of the provisional transcripts.

²²⁶ Oral testimony of Lieut. Col. Karremans, 4 July 1996, p. 8-24, French version of the provisional transcripts and oral testimony of Lieut. Koster, 4 July 1996, p. 46-48 and 52, French version of the provisional transcripts.

²²⁷ Oral testimony of Witness A, 4-5 July 1996, French version of the provisional transcripts. Oral testimony of Jean-René Ruez, 3 July 1996, p. 58-61, French version of the provisional transcripts.

²²⁸ Oral testimony of Lieut. Col. Karremans, 4 July 1996, p. 30, French version of the provisional transcripts.

²²⁹ *Idem*.

²³⁰ Statements by Ratko MLADIĆ cited by Lieut. Colonel Karremans and Lieut. Koster, *cit.*

3. Individual criminal responsibility of the accused

81. In the light of the analysis of the institutional functions and the effective exercise of power by the two accused, the Trial Chamber may now consider their individual criminal responsibility.

82. The conditions for the responsibility of superiors under Article 7(3) of the Statute, that is those constituting criminal negligence of superiors, have unquestionably been fulfilled:

- The Bosnian Serb military and police forces committing the offences alleged were under the control, command and direction of Radovan KARADŽIĆ and Ratko MLADIĆ during the whole period covered in the indictment;

- through their position in the Bosnian Serb Administration, Radovan KARADŽIĆ and Ratko MLADIĆ knew or had reasons to know that their subordinates committed or were about to commit the offences in question;

- lastly, it has been established that Radovan KARADŽIĆ and Ratko MLADIĆ failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

83. The Trial Chamber does consider, however, that the type of responsibility incurred is better characterised by Article 7(1) of the Statute. The evidence and testimony tendered all concur in demonstrating that Radovan KARADŽIĆ and Ratko MLADIĆ would not only have been informed of the crimes allegedly committed under their authority, but also and, in particular, that they exercised their power in order to plan, instigate, order or otherwise aid and abet in the planning, preparation or execution of the said crimes.

On account of his position as leader of the Serbian Democratic Party, and as often elucidated in his speeches, the very conception of the policy of "ethnic cleansing" must be attributed to Radovan KARADŽIĆ, probably in collusion with others not accused in the indictment. The fact that he has always held key posts in the parallel power structures attests to his central role in the SDS's plans to seize power in Bosnia and Herzegovina and the institutional organisation towards that end. His position of authority after taking power within the self-proclaimed Serbian Republic of Bosnia and Herzegovina, the effective exercise of his

functions in the political as well as the military sphere, and his own public statements show that he also ordered, and aided and abetted in, the preparation and execution of the policy of “ethnic cleansing” and, in particular, the crimes with which he is charged. The Trial Chamber considers that, on the basis of the material tendered by the Prosecutor, that responsibility is also incurred for the crimes committed in July 1995 during the take-over of Srebrenica.

Ratko MLADIĆ was in full command of the army of the Serbs of Bosnia and Herzegovina over the whole period covered by the two indictments. His statements and the way he exercised his powers not only in the military but also in the political domain show that he fully subscribed to the policy of “ethnic cleansing” pursued by the Bosnian Serb Administration and became one of its main protagonists. It appears that, from his position of authority at the head of the entire military structure, he planned and organised the crimes described in the indictments committed by troops under his command. Further, corroborated testimony permits the assertion that his role was not restricted to planning an overall strategy, but also that Ratko MLADIĆ was present on the scene where some of the crimes were committed and that he personally supervised some operations, including the take-over of Srebrenica and the ensuing atrocities, down to the last detail.

84. Moreover, very careful consideration should be given to the individual criminal responsibility for the crime of genocide as described in count 1 of the indictment of 25 July 1995. The Trial Chamber is of the view that the evidence and testimony submitted suffice at this stage to demonstrate the active participation of the highest political and military leaders in the commission of the crimes by Bosnian Serb military and policy forces in the detention facilities. The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movements of prisoners between the various camps, and the tenor of some of the accused’s statements are strong indications tending to show that Radovan KARADŽIĆ and Ratko MLADIĆ planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities.

Accordingly, the Trial Chamber considers that count 1 (genocide) of the indictment of 25 July 1995 should be supplemented in order to emphasise the individual criminal responsibility of the two accused pursuant to Article 7(1) of the Statute.

85. Lastly, the Trial Chamber, in thus determining the type of responsibility incurred by the accused, namely governmental or military-command responsibility, can but invite the Prosecutor's office to investigate decision-making responsibility at the same - or higher - echelons.

V. LEGAL CHARACTERISATION OF THE OFFENCES

86. The Trial Chamber is satisfied that there are reasonable grounds for believing that the offences charged in the indictment were planned and ordered by the accused or, at the very least, were not prevented or punished by them. It remains to confirm that the jurisdictional requirements have been met for those offences to fall within the competence of the Tribunal, that is, that they may be given the legal characterisation of war crimes (Articles 2 and 3), crimes against humanity (Article 5), or genocide (Article 4).

A. War Crimes (grave breaches of the Geneva Conventions of 1949 / violations of the laws or customs of war).

87. The Prosecutor has characterised as war crimes several acts described under III. It should therefore be here ascertained whether the general conditions for the application of Article 2 (Grave breaches of the Geneva Conventions of 1949) and Article 3 (Violations of the laws or customs of war) as enumerated by the Appeals Chamber in its decision of 2 October 1995 have been satisfied in this case. The existence of an armed conflict is a prerequisite for the application of Articles 2 and 3 of the Statute of the Tribunal. In the *Tadić* case the Appeals Chamber stated:

“an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.” (decision of 2 October 1995 IT-94-1-AR72, paragraph 70).

According to the expert witness Professor Garde, whose testimony is similar to the report of Dr. Gow submitted to the case-file, an armed conflict has been in progress on the territory of the former Yugoslavia ever since the summer of 1991. It was clearly revealed in the course of the hearings that the conflict had not ceased by the date of the most recent acts which the Trial Chamber is considering, that is, in July 1995. As regards the Republic of Bosnia and

Herzegovina, at this stage, it can be assumed that the hostilities began in April 1992 with the seizure of several municipalities and the beginning of the siege of Sarajevo.

88. In addition, in the above mentioned case (paragraph 84), the Appeals Chamber stated that Article 2 of the Statute is applicable only if the conflict could be characterised as international. At this stage, the Trial Chamber, without prejudice to the unfettered discretion of the trial judges, must consider to what extent the materials submitted to it are sufficient to evaluate the international character of the conflict.

Taken as a whole, the conflict in the former Yugoslavia soon involved several States, as demonstrated by the many documents included in the case-file and presented during the hearings. More specifically, when considering the conflict in the Republic of Bosnia and Herzegovina, the materials submitted to the Trial Chamber tend to show, *prima facie*, that the conflict had an international character, for the following reasons.

The beginning of the military operations in Bosnia and Herzegovina could be placed in April 1992, by which time Bosnia and Herzegovina was already an independent State. The operations were conducted by the JNA together with local Serbian forces and paramilitary groups. At that time, the JNA was under the control of, or acted together, with the authorities of the SFRY, later FRY (Serbia and Montenegro) dominated largely by the Republic of Serbia. The Trial Chamber therefore considers that at the time it began in Bosnia and Herzegovina, the present conflict was international in character insofar as it involved two distinct States, the Republic of Bosnia and Herzegovina and the SFRY, later FRY.

According to the Appeals Chamber in the above-mentioned decision,

“international humanitarian law applies from the initiation of ... armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached” (paragraph 70).

In accordance with that ruling, as well as some of the provisions of the Geneva Convention invoked by the Prosecutor in the brief he submitted on 24 June 1996, (Article 6, paragraph 2 of the 4th Geneva Convention) it may be considered that the laws governing

international armed conflict continue to apply until a conclusion of peace is reached. Such was not the case at the time the last offences charged were committed.

Furthermore, the Trial Chamber has noted that other factual material presented by the Prosecutor, could permit characterisation of the conflict as international until the date the last offences charged were committed, i.e. for example the apparent continuation of the JNA's involvement in Bosnia and Herzegovina after it had officially withdrawn. The JNA, which became the Yugoslav army, allegedly permitted the establishment of the Bosnian Serb army in May 1992, and for a long time thereafter continued to exercise control over that army (See IV B).

89. In addition, the Appeals Chamber has stated that in order to conclude that Article 2 of the Statute is applicable, the victims of the criminal acts must be persons protected under the provisions of the relevant Geneva Convention. At this stage, it appears that the victims of the acts which have been described may be considered as such.

The Trial Chamber considers that, without prejudice to the unfettered discretion of the judges who will hear the trial, a characterisation of crimes against humanity or genocide is nevertheless more appropriate for the totality of acts charged in both indictments and summarised under III. An exception should be made for the acts covered in part three of the first indictment which can only be characterised as a war crime (taking UNPROFOR soldiers hostage and using them as human shields).

B. Crimes Against Humanity And Genocide

90. The analysis in parts III and IV of this decision permits us to consider that the acts on which the two indictments are based, except for those covered by part three of the first indictment mentioned above, are similar in nature. The acts target the members of an identified civilian population, conceived as one or more groups, national or political; the commission of the acts follows the same pattern; the acts are planned and organised at a State level. They appear to have a common objective: permitting the establishment of "ethnically pure" territories and thus creating a new State. The acts constitute the means to implement "the

policy of ethnic cleansing”, devised by the SDS in Bosnia and Herzegovina in complicity or co-ordination with others, and applied by its official bodies in Bosnia and Herzegovina.

91. Article 5 of the Statute, corresponding to crimes against humanity reads as follows:

“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.”

This article has been interpreted by the Secretary-General of the United Nations in the following terms:

“Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds”. (Report pursuant to Security Council resolution 808, S/25704).

In a previous decision, (*Nikolić*, decision of 20 October 1995, IT-94-2-R61), this Trial Chamber specified the context in which the criminal acts listed in Article 5 must have occurred to be characterised as crimes against humanity. Furthermore, in the *Vukovar* case (*Mrksić, Radić, Šljivančanin*, decision of 3 April 1996, IT-95-13-R61), it considered that, although the criminal acts must target a civilian population, individuals who, at a given moment, performed acts of resistance may, under certain conditions, be the victims of crimes against humanity. In that same decision, it confirmed that the acts which constitute crimes against humanity must be widespread or present a systematic character.

The Trial Chamber therefore considers that the above mentioned acts can more appropriately be characterised as a crime against humanity.

92. Article 4(2) of the Statute defines genocide in the following terms:

“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in

whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.”

According to the Article, the following acts shall be punishable:

(a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide.

According to this definition, genocide requires that acts be perpetrated against a group with an aggravated criminal intent, namely, that of destroying the group in whole or in part. The degree to which the group was destroyed in whole or in part is not necessary to conclude that genocide has occurred. That one of the acts enumerated in the definition was perpetrated with a specific intent suffices.

93. Some of the acts presented to the Trial Chamber may be characterised pursuant to (a), (b) and (c) of paragraph 2 of Article 4. Thus (a) the killing of members of the group or groups has been sufficiently described in part III of this decision; (b) the causing of serious bodily or mental harm to the member or members of the group or groups occurred through inhumane treatment, torture, rape and deportation; (c) the deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part was put into effect in the detention camps and through the siege and shelling of cities and protected areas.

94. In this case, the Trial Chamber considers that it must focus more specifically on the analysis of the intention “to destroy in whole or in part a national, ethnical, racial or religious group”. Insofar as it is considering command responsibility, it must carry out its examination in order to discover whether the pattern of conduct of which it is seised, namely “ethnic cleansing”, taken in its totality, reveals such a genocidal intent.

The intent which is peculiar to the crime of genocide need not be clearly expressed. As this Trial Chamber noted in the above mentioned *Nikolić* case, the intent may be inferred from a certain number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the repetition of destructive and discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group - acts which are not in themselves covered by the list in Article 4(2) but which are committed as part of the same pattern of conduct.

In this case, the plans of the SDS in Bosnia and Herzegovina contain elements which would lead to the destruction of the non-Serbian groups. The project of an ethnically homogeneous State formulated against a backdrop of mixed populations necessarily envisages the exclusion of any group not identified with the Serbian one. The concrete expressions of these plans by the SDS before the conflict would confirm the existence of an intent to exclude those groups by violence. The project does not exclude the use of force against civilian populations. Furthermore, it appears that a certain group which had been targeted could not, in accordance with the SDS plans, lay claim to any other specific territory. In this case, the massive deportations may be construed as the first step in a process of elimination. These elements, taken together, would confirm that the project which inspired the offences before the Trial Chamber, contemplates the destruction of the non-Serbian groups, and specifically the Bosnian Muslim group, as the ultimate step.

In addition, certain methods used for implementing the project of "ethnic cleansing" appear to reveal an aggravated intent as, for example, the massive scale of the effect of the destruction. The number of the victims selected only because of their membership in a group would lead one to the conclusion that an intent to destroy the group, at least in part, was present. Furthermore, the specific nature of some of the means used to achieve the objective of "ethnic cleansing" tends to underscore that the perpetration of the acts is designed to reach the very foundations of the group or what is considered as such. The systematic rape of women, to which material submitted to the Trial Chamber attests, is in some cases intended to transmit a new ethnic identity to the child. In other cases, humiliation and terror serve to dismember the group. The destruction of mosques or Catholic churches is designed to annihilate the centuries-long presence of the group or groups; the destruction of the libraries is intended to annihilate a culture which was enriched through the participation of the various national components of the population.

95. At this stage, the Trial Chamber considers that certain acts submitted for review could have been planned or ordered with a genocidal intent. This intent derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group. The national Bosnian, Bosnian Croat and, especially, Bosnian Muslim national groups, are the targets of those acts.

The Trial Chamber therefore invites the Prosecutor to consider broadening the scope of the characterisation of genocide to include other criminal acts listed in the first indictment than those committed in the detention camps.

VI. DETERMINING THAT REPUBLIKA SRPSKA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) HAVE FAILED TO COOPERATE WITH THE TRIBUNAL.

96. After initially confirming the indictments submitted to the Trial Chamber, Judge Claude Jorda, on 25 July 1995, and Judge Fouad Riad, on 16 November 1995, issued warrants of arrest for Radovan KARADŽIĆ and Ratko MLADIĆ; they were sent, in particular, to the Bosnian Serb administration and to the Federal Republic of Yugoslavia (Serbia and Montenegro). The indictments were transmitted to the competent authorities by the Registrar of the Tribunal; the first on 1 August 1995, the second on 21 November (to the Federal Republic of Yugoslavia) and on 22 November 1995 (to the Bosnian Serb administration). Further, at the Prosecutor's request, the Registrar asked Republika Srpska on 10 May 1996 and the Federal Republic of Yugoslavia on 13 May 1996 to arrange the publication of the indictments in their newspapers having wide circulation pursuant to Rule 60.

97. To date, personal service of the indictments has not been effected on Radovan KARADŽIĆ and Ratko MLADIĆ, and the arrest warrants have not been executed.

98. On the basis of all the Tribunal's rules and regulations, and in particular Article 29 of the Statute and Rule 2(A) ("State") of the Rules of Procedure and Evidence, the Bosnian Serb administration (officially entitled "Republika Srpska" following the Peace Agreement signed on 14 December 1995 - the Dayton Accord) is bound to cooperate with the Tribunal. Despite the presence of Radovan KARADŽIĆ and Ratko MLADIĆ on the territory under its control, Republika Srpska has neither served the two indictments on the accused nor executed the warrants for their arrest.

99. The Trial Chamber believes that Radovan KARADŽIĆ and Ratko MLADIĆ were in the Federal Republic of Yugoslavia on several occasions. The Prosecutor produced four letters sent by Judge Antonio Cassese, President of the International Tribunal, to Mr. Slobodan

Milošević, President of the Republic of Serbia.²³¹ In those letters, on the several occasions when the accused were on the territory of the Federal Republic of Yugoslavia, President Antonio Cassese requested the assistance of the Yugoslav authorities in order to execute the warrants of arrest issued by the Tribunal. The letters related in particular to:

- Ratko MLADIĆ's stay in Belgrade for medical attention during the second half of September 1995 (letter of 18 September 1995);
- Radovan KARADŽIĆ's presence at Belgrade on 23 September 1995 (letter of 27 September 1995);
- Radovan KARADŽIĆ's trip to Belgrade for official talks with President Milošević on 24 October 1995 (letter of 23 October 1995);
- Ratko MLADIĆ's stay in Belgrade for medical attention at the end of November 1995 (letter of 29 November 1995).

The Federal Republic of Yugoslavia has never provided the requested assistance as required according to the terms of Article 29 of the Statute. In addition, the Prosecutor has noted the presence of the accused in Belgrade on several other occasions, particularly, during high level meetings on 3 August 1995, 29 August 1995, and 7 February 1996. Furthermore, on 22 May 1996, President Cassese sent a letter to the President of the United Nations Security Council in which he indicated that, despite the presence of Ratko MLADIĆ in Belgrade on 21 May 1996 for the funeral of General Đorđe Đukić, the authorities of the Federal Republic of Yugoslavia did not execute the warrants of arrest²³².

100. In addition, the Trial Chamber notes that during the negotiations in Dayton, the Federal Republic of Yugoslavia committed itself to take all the necessary steps to ensure that Republika Srpska fully respects and complies with the obligations specified in annexes 1-A and 2 of the peace agreement signed on 14 December 1995²³³. Pursuant to Article 10 of annex 1-A, Republika Srpska, *inter alia*, has undertaken the obligation to "cooperate fully with all entities involved in the implementation of this peace settlement, (...) including the International

²³¹ Exhibits 76-80.

²³² Exhibit 80.

²³³ "On behalf of the Federal Republic of Yugoslavia, I wish to assure you that the Federal Republic of Yugoslavia shall take all the necessary steps, consistent with the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina to ensure that the Republika Srpska fully respects and complies with the provisions of the aforementioned annexes (annex 1-A and 2)" (Letters of 21 November 1995, signed by Milan Milutinović, Minister of Foreign Affairs of the FRY, addressed to the Ministers of Foreign Affairs of the Contact Group: Klaus Kinkel, German Minister of Foreign Affairs; Hervé de Charette, French Minister of Foreign Affairs; Andre Kozyrev, Russian Minister of Foreign Affairs; Malcolm Rifkind, British Minister of Foreign Affairs; Warren Christopher, US Secretary of State).

Tribunal for the former Yugoslavia.”²³⁴ Therefore, the Federal Republic of Yugoslavia has given an undertaking to ensure that Republika Srpska would cooperate fully with the International Tribunal. That undertaking was given by the Federal Republic of Yugoslavia at the request of the delegation of Republika Srpska at Dayton to guarantee the international obligations of Republika Srpska.²³⁵ As the Trial Chamber has noted above, Republika Srpska has not honoured its obligations to the Tribunal which also implies the failure of the Federal Republic of Yugoslavia.

101. In light of all the above, the Trial Chamber considers that the failure to effect personal service of the indictments and to execute the warrants of arrest issued against Radovan KARADŽIĆ and Ratko MLADIĆ may be ascribed to the refusal of Republika Srpska and to the Federal Republic of Yugoslavia to cooperate with the Tribunal. Accordingly, the Trial Chamber so certifies for the purposes of notifying the Security Council.

²³⁴ “The Parties shall cooperate fully with all entities involved in the implementation of the Peace settlement, as described in the General Framework Agreement, or which are otherwise authorised by the United Nations Security Council, including the International Tribunal for the Former Yugoslavia” (Annex 1-A, Peace Agreement signed on 14 December 1995).

²³⁵ “President Slobodan Milošević, Head of the Delegation of FR of Yugoslavia

Dear Mr. President,

We write to you regarding the Peace Agreement and the documents which are to be initialled at the conclusion of the peace negotiations in Ohio. Since it is requested, in a number of documents prepared for adoption, that the FR. of Yugoslavia be the guarantor of the obligations taken by the RS in the peace process, we kindly ask you to assume, on behalf of the FRY, the role of the guarantor that the Republika Srpska shall fulfil all the obligations it took.

The Delegation of the Republika Srpska: Momčilo Krajisnik (signed), Nikola Koljević (signed), Aleksa Buha (signed). Dayton, 20 November 1995.

VII DISPOSITION**FOR THE FOREGOING REASONS,**

PURSUANT to Rules 59 bis and 61 of the Rules of Procedure and Evidence,

CONSIDERING the decisions confirming the indictments issued by Judge Jorda and Judge Riad on 25 July and 16 November 1995,

CONSIDERING the warrants of arrest issued on 25 July and 16 November 1996,

CONSIDERING the decisions of 18 June 1996 in which Judge Jorda and Judge Riad ordered the Prosecutor to refer the case to the Trial Chamber,

HAVING HEARD the submissions of the Prosecutor, the presentation of the *amici curiae* and the statements of the witnesses during the hearings of 27 and 28 June and 1-5 and 8 July 1996 at the seat of this Tribunal,

THE TRIAL CHAMBER

RULING unanimously and in public,

ORDERS the joinder of cases IT-95-5-R61 and IT-95-18-R61;

INVITES the Prosecutor to supplement the indictments;

STATES that there are reasonable grounds for believing that Radovan KARADŽIĆ and Ratko MLADIĆ committed the offences with which they are charged in the indictments issued on 25 July and 16 November 1995;

CONFIRMS the sixteen counts of the indictment of 25 July 1995 and the twenty counts of the indictment of 16 November 1995;

ISSUES international warrants of arrest for Radovan KARADŽIĆ and Ratko MLADIĆ;

STATES that the warrants shall be transmitted to all States, and, if necessary, to the Implementation Force (IFOR);

NOTES that the failure to effect personal service of the indictment can be ascribed to the refusal to cooperate with the Tribunal by the Federal Republic of Yugoslavia (Serbia and Montenegro) and by the Bosnian Serb administration in Pale which has become Republika Srpska, and entrusts the responsibility of so informing the Security Council to the President of the Tribunal, pursuant to Rule 61(E).

Done in French and English, the French version being authoritative.

Claude Jorda

Presiding Judge of Trial Chamber I

Dated this eleventh day of July 1996
At The Hague
The Netherlands

Certified true translation
ICTY - Translation Section

Date: 16/07/96

Robert Brown