

**UNITED
NATIONS**



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

Case No. IT-01-48-T
Date: 16 November 2005
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IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Amin El Mahdi

Registrar: Mr. Hans Holthuis

Judgement of: 16 November 2005

PROSECUTOR

v.

SEFER HALILOVIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Philip Weiner
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I. INTRODUCTION

A. The Accused Sefer Halilović

1. Sefer Halilović was born in Prijepolje in Serbia on 6 January 1952.¹ After his military education he became an officer in the JNA. In 1990 he attended a two-year course at the school for commanders in Belgrade. Sefer Halilović had attained the rank of Major by the time he left the JNA in September 1991 to return to Bosnia and Herzegovina and join the Patriotic League.² On 25 May 1992 he was appointed by the Presidency of the Republic of Bosnia and Herzegovina (“RBiH”) as Commander of the Territorial Defence (TO).³ Sefer Halilović was Supreme Commander, with the title “Chief”, of the Main Staff of the Army of the Republic of Bosnia and Herzegovina (“ABiH”) until 8 June 1993 when the new position of “Commander of the Main Staff” of the ABiH was established. The 8 June decision, issued by the President of the RBiH Alija Izetbegović, appointed Rasim Delić to the position of ABiH Commander and provided that Sefer Halilović would retain the position of “Chief of the Main Staff” of the ABiH.⁴ By order of 1 November 1993, the President of RBiH, Alija Izetbegović “relieved” Sefer Halilović from his duties as “Chief of the Main Staff”.⁵ When he voluntarily surrendered to the Tribunal on 25 September 2001, Sefer Halilović was retired General of the ABiH and Minister for Refugees, Social Affairs and Displaced People in the Government of Bosnia and Herzegovina (“BiH”).⁶

B. Overview of the Case Against Sefer Halilović

2. The Prosecution alleges that at a meeting held in Zenica from 21 to 22 August 1993, attended by most of the senior commanders of the ABiH including its Commander Rasim Delić, it was decided to conduct a military operation called “Neretva-93” in order to end the HVO-blockade of Mostar. It is alleged that at the meeting an “Operational plan”, prepared and tabled by Sefer Halilović, was discussed and that it was agreed that an “Inspection Team”, headed by Sefer Halilović, would go to Herzegovina “to command and co-ordinate the Operation.”⁷ According to

¹ Initial Appearance, 27 Sep '01, T. 2. The Trial Chamber notes that all dates referred to in this Judgement refer to the year 1993, unless otherwise stated.

² Šefko Hodžić, 23 Mar '05, T. 106; Vahid Karavelić, 21 Apr '05, T. 84.

³ Vahid Kravelić, 18 Apr '05, T. 138.

⁴ Ex. 102, Decision of the RBiH Presidency on restructuring of the RBiH Supreme Command Headquarters, 8 June 1993. *See infra* Section IV.A.1(a).

⁵ Ex. 263, Order of the RBiH Presidency, 1 November 1993. *See infra* Section IV.F, para. 720.

⁶ Jusuf Jašarević, 02 Mar '05, T. 17-18; Mirko Pejanović, Ex. 456, 01 Mar '05, p. 4; Initial Appearance, 27 Sept '01, T. 2; Defence Final Brief, para. 760.

⁷ Indictment, para. 3.

the Prosecution, “Sefer Halilović was the commander of the Operation and as such the troops, involved in the ‘Neretva-93’ Operation were under his command and control.”⁸

3. The Prosecution alleges that “the Operation” was commanded and co-ordinated from a Forward Command Post (“IKM”)⁹ in Jablanica. One axis of attack was from Donja Grabovica to Vrđi. This axis was commanded by Zulfikar Ališpago and involved parts of the following units of the ABiH 1st Corps: the 9th Motorised Brigade (“9th Brigade”), the 10th Mountain Brigade (“10th Brigade”) and the 2nd Independent Battalion. Another axis of attack was from Dobro Polje to Prozor, which is the area where Uzdol is situated. This line of attack was commanded by Enver Buza, the Commander of the Prozor Independent Battalion.¹⁰

4. It is alleged that Sefer Halilović, knowing of the 9th and the 10th Brigades “notorious reputations for being criminal and uncontrolled in behaviour”, ordered the deployment of units of these Brigades to Herzegovina.¹¹ It is further alleged that on 8 September 1993 the unit of the 9th Brigade and a part of the unit of the 10th Brigade were billeted in the village of Grabovica. At this point in time, the 2nd Independent Battalion was already billeted there.¹²

5. According to the Prosecution, soldiers of the 9th Brigade had problems securing accommodation with the local Bosnian Croat civilian population in Grabovica. It is alleged that on 8 September 1993 when the soldiers complained in the presence of Sefer Halilović to Vehbija Karić, a member of the Inspection Team, that the villagers would not allow them into their houses, Vehbija Karić, “in word and gesture indicated that the troops should try those Bosnian Croat Civilians summarily and throw them into the Neretva river if they do not co-operate.”¹³ It is also alleged that Sefer Halilović “voiced his disapproval about the comment to Vehbija Karić but said nothing to prevent the soldiers from acting on it.”¹⁴

6. The Indictment alleges that on 8 and 9 September 1993 thirty-three Bosnian Croat civilians were killed in Grabovica.¹⁵ It further alleges that Sefer Halilović was notified during the night of 8 September about the killing of civilians and that once “notified and having knowledge of the

⁸ Indictment, para. 4.

⁹ In B/C/S, *Istureno Komandno Mesto*.

¹⁰ Indictment, para. 4.

¹¹ Indictment, paras 5 and 6.

¹² Indictment, paras 8 and 9.

¹³ Indictment, para. 10.

¹⁴ Indictment, para. 10.

¹⁵ Indictment, para. 21.

criminal reputation of the 9th [...] and 10th [...] Brigades and having been present earlier that day when Vehbija Karić had made the remark [...], Sefer Halilović was duty bound to act urgently.”¹⁶

7. According to the Prosecution, Sefer Halilović was ordered on 12 September 1993 by Rasim Delić “to re-consider the scope of the ‘Neretva-93’ Operation, to isolate the perpetrators of the incident, to take active measures and to immediately report on the measures he had taken.”¹⁷ It is alleged that Sefer Halilović failed to implement the order of Rasim Delić resulting in a failure to punish the perpetrators of the crime, who were in the area until 19 September 1993.¹⁸

8. The Indictment also alleges that on 14 September 1993 in the course of “the Operation”, the Prozor Independent Battalion attacked Uzdol and killed twenty-nine Bosnian Croat civilians and one HVO prisoner of war.¹⁹

9. The Prosecution alleges that Sefer Halilović, “by virtue of his position and authority as Commander of the Operation”, had effective control over the units subordinated to him, including the 9th Brigade, the 10th Brigade, the 2nd Independent Battalion and the Prozor Independent Battalion.²⁰

10. In view of the above, Sefer Halilović is charged with murder, punishable under Article 3 of the Statute as recognised by Article 3(1)(a) of the Geneva Conventions. The Indictment alleges that Sefer Halilović incurs criminal responsibility under Article 7(3) of the Statute since “notwithstanding his duties as a commander [...] Sefer Halilović did not take effective measures to prevent the killings of civilians in Grabovica” and “did not take steps to carry out a proper investigation to identify the perpetrators of the killings in both Grabovica and Uzdol and as commander of the Operation to punish them accordingly.”²¹

¹⁶ Indictment, para. 15.

¹⁷ Indictment, para. 24.

¹⁸ Indictment, para. 24.

¹⁹ Indictment, paras 27 and 29.

²⁰ Indictment, para. 38.

²¹ Indictment, para. 34.

II. GENERAL CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

11. The Trial Chamber has assessed and weighed the evidence in this case in accordance with the Tribunal's Statute and its Rules of Procedure and Evidence ("Rules"). Where no guidance is given by these sources, it has assessed the evidence in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.²²

12. Article 21(3) of the Statute provides that the Accused shall be presumed innocent until proven guilty.²³ The Prosecution therefore bears the burden of establishing the guilt of the Accused, and, in accordance with Rule 87(A) of the Rules, the Prosecution must do so beyond reasonable doubt.²⁴ In determining whether the Prosecution has done so with respect to the Count in the Indictment, the Trial Chamber has carefully considered whether there is any reasonable interpretation of the evidence admitted other than the guilt of the Accused. Any ambiguity or doubt has been resolved in favour of the Accused in accordance with the principle of *in dubio pro reo*.²⁵

13. Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against himself. In the present case, the Accused exercised his right to remain silent; no adverse inferences were drawn from the fact that he did not testify.

14. Rule 89(C) of the Rules provides that the Trial Chamber "may admit any relevant evidence which it deems to have probative value." The Trial Chamber has carefully considered the charges against the Accused in light of the entire record, including all evidence put forth by the Prosecution and the Defence.

²² Rule 89(B) of the Rules. *See also* Guidelines on the Standards Governing the Admission of Evidence, 16 Feb '05, with Annex ("Guidelines").

²³ This provision is in accordance with all major human rights instruments. *See, e.g.*, European Convention on Human Rights, Art. 6(2); International Covenant on Civil and Political Rights, Art. 14(2).

²⁴ *Krnjelac* Trial Judgement, para. 66. The fact that the Defence has not challenged certain factual allegations contained in the Indictment does not mean that the Trial Chamber has accepted these facts to be proven. The burden of proof remains with the Prosecution for each allegation. The Trial Chamber interprets the standard "beyond reasonable doubt" to mean a high degree of probability; it does not mean certainty or proof beyond the shadow of doubt. *See* Criminal Evidence (4th Ed.), Richard May, London: Sweet & Maxwell Ltd., London, 1999, pp. 64-65.

²⁵ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, dated 15 October 1998, filed 16 October 1998, para. 73, holding that: "[...] any doubt should be resolved in favour of the Appellant in accordance with the principle *in dubio pro reo*"; *Čelebići* Trial Judgement, para. 601: "at the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved"; *Akayesu* Trial Judgement, para. 319: "[...] the general principles of law stipulate that, in criminal matters, the version favourable to the Accused should be selected."

15. As reflected in the Rules, there is a preference for witnesses to give evidence orally.²⁶ In addition to direct evidence, the Trial Chamber has admitted hearsay and circumstantial evidence. Hearsay evidence is evidence of facts not within the testifying witness' own knowledge.²⁷ In evaluating the probative value of hearsay evidence, the Trial Chamber has carefully considered indicia of its reliability and, for this purpose, it has evaluated whether the statement was "voluntary, truthful and trustworthy" and has considered the content of the evidence and the circumstances under which it arose.²⁸ Circumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred.²⁹ In some instances, the Trial Chamber has relied upon circumstantial evidence in order to determine whether or not a certain conclusion could be drawn. The Trial Chamber follows the Appeals Chamber when considering that "[s]uch a conclusion must be established beyond reasonable doubt. [...] It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is [as] consistent with the [innocence of an accused as with his or her guilt], he or she must be acquitted."³⁰

16. Both the Prosecution and Defence made applications under Rule 92 *bis*, which permits parties to tender the evidence of a witness other than through means of *viva voce* testimony. The Trial Chamber permitted the Parties to tender certified written statements or former testimony of witnesses under Rule 92 *bis* in lieu of live testimony.³¹

17. In evaluating the evidence given *viva voce* the Trial Chamber has given due regard, among other things, to the individual circumstances of the witness, including the witness' possible involvement in the events and the risk of self-incrimination, his relationship with the Accused and

²⁶ Rule 89(F) of the Rules. *See also Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, para. 19.

²⁷ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999 ("*Aleksovski* Decision"), para. 14: "the statement of a person made otherwise than in the proceedings in which it is being tendered, but nevertheless being tendered in those proceedings in order to establish the truth of what that person says."

²⁸ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 Aug 1996, para. 16. *See also Aleksovski* Decision, para. 15. The Appeals Chamber in *Aleksovski* case clarified that: "The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is "first-hand" or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a Witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence, *ibid.*, also referred to in Guidelines, Annex, para. 7.

²⁹ *Brdanin* Trial Judgement, para. 35, citing *Criminal Evidence* (3rd Ed.), Richard May, London: Sweet & Maxwell Ltd., London, 1995.

³⁰ *Čelibići* Appeal Judgement, para. 458.

³¹ *See* Procedural History, Annex II, paras 19 and 21.

possible contamination between witnesses' testimonies.³² The Trial Chamber has considered the internal consistency of each witness' testimony and other features of their evidence, as well as whether corroborating evidence exists in the Trial record. Recalling that the evidence presented in this case relates to events that occurred twelve years ago, the Trial Chamber endorses the conclusion of the *Krnojelac* Trial Chamber that it did not treat:

minor discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail. [...] Although the absence of a detailed memory on the part of these witnesses did make the task of the Prosecution more difficult, the lack of detail in relation to peripheral matters was in general not regarded as necessarily discrediting their evidence.³³

However, in cases of repeated contradictions within a witness' testimony, the Trial Chamber has disregarded his or her evidence unless it has been sufficiently corroborated. In light of the factors mentioned above, in particular the risk of self-incrimination and the possible contamination between witnesses' testimonies, the Trial Chamber is not fully satisfied that the evidence it has heard from certain witnesses was entirely reliable.³⁴ The Trial Chamber has therefore treated their testimony with caution and has relied on it only if corroborated by other evidence.

18. In some instances, only one witness has given evidence of an incident for which the Accused has been charged. The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.³⁵ In such a situation, the Trial Chamber has carefully examined the evidence of the witness before making a finding of guilt against the Accused.

19. Before admitting evidence pursuant to Rule 92 *bis*, the Trial Chamber found that each written statement did not go to the acts and conduct of the Accused, was relevant to the present case, had probative value under Rule 89(C) of the Rules, and was cumulative in nature.³⁶ The evidence put forward by the witnesses under Rule 92 *bis* was admitted without cross-examination.

³² The Trial Chamber heard evidence indicating that witnesses had contacts before giving testimony at Trial. Nedžad Mehanović testified that he had contacts with Erdin Arnautović and Witness D in The Hague before and during the time he gave evidence before the Trial Chamber, Nedžad Mehanović, 16 Feb '05, T. 77-93. In relation to possible similarities between parts of these three witnesses' accounts, *see also* Witness D, 21 Feb '05, T. 65-69.

³³ *Krnojelac* Trial Judgement, para. 69. *See also* *Kupreškić* Appeal Judgement, para. 31.

³⁴ The Trial Chamber is referring in particular to Ramiz Delalić, Salko Gušić, Bakir Alispahić, Erdin Arnautović, Nedžad Mehanović, and Witness D.

³⁵ *Tadić* Appeal Judgement, para. 65; *Krnojelac* Trial Judgement, para. 71; *Aleksovski* Appeal Judgement, para. 62; *Kupreškić* Appeal Judgement, para. 33.

³⁶ Oral Decision on Prosecution Motion on admission of statements of witnesses pursuant to Rule 92 *bis*, 18 March '05, T. 79; Oral Decision on Defence Motion on admission of statements of witnesses pursuant to Rule 92 *bis*, 5 July '05, T. 9-12; and Oral Decision on Defence Motion on admission of statements of witnesses pursuant to Rule 2 *bis*, 08 July '05, T. 66-67; and Oral Decision on Defence Motion on admission of abridged statement of Witness pursuant to Rule 92 *bis*, 14 July '05, T. 4-5; Decision on Motion for admission of written

The Trial Chamber recalls the observation of the Appeals Chamber in the *Galić* case that “where the witness who made the statement is not called to give the accused an adequate and proper opportunity to challenge the statement and to question that witness, the evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement”.³⁷ Such “other evidence” may include other witnesses’ testimony, documentary evidence or video evidence.

20. The Trial Chamber has evaluated and considered the agreed facts from the *Galić* and the *Martinović and Naletilić* Trial Judgements, as well as the facts concerning the ABiH military security service.³⁸ Agreed facts were accepted under Rule 65 *ter* (H) of the Rules, and were subjected, as all other evidence, “to the tests of relevance, probative value and reliability,” according to Rule 89 of the Rules.³⁹

21. In order to assess the authenticity of documents, the Trial Chamber considered evidence as to the source and chain of custody. The Trial Chamber did not consider unsigned, undated or unstamped documents, *a priori*, to be void of authenticity. Even when the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts.⁴⁰ The Trial Chamber evaluated this evidence within the context of the Trial record as a whole.⁴¹ In this respect, the Trial Chamber notes that the book titled “Uzdol and all its victims”⁴² has partly been based on data provided by the then registrar of Uzdol, Kazo Zelenika. However, as Kazo Zelenika testified, he limited himself to provide personal data of the victims - such as dates of birth and death, civil status, parents’ names - while “[s]ome of the people who processed the text changed things around” and added information.⁴³ Purportedly this book was published to contribute funds for the construction of a memorial centre.⁴⁴ For these reasons, the Trial Chamber did not rely on the information included in the book unless it is corroborated by other evidence.

statement of deceased Witness pursuant to Rule 92 *bis* (C), 25 July '05; and Decision on Further Defence Rule 92 *bis* Motion, 25 July '05.

³⁷ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis* (C), 7 June '02, fn. 34, referring to Judgements of the European Court for Human Rights.

³⁸ Oral Decision on Motion re Agreed Facts and Motion for Withdrawal of “Motion for Judicial Notice”, 12 May '05, T. 10-11; and Decision on Motion Concerning Further Agreed Facts, 25 July '05.

³⁹ *Simić* Trial Judgement, para. 21.

⁴⁰ Guidelines, Annex, para. 4.

⁴¹ Guidelines, Annex, para. 5.

⁴² Ex. 315, book “Uzdol and all its victims”.

⁴³ Kazo Zelenika, 5 Apr '05, T. 8-11.

⁴⁴ Kazo Zelenika, 5 Apr '05, T. 10.

III. APPLICABLE LAW

A. Law on Article 3 of the Statute

22. The Indictment charges Sefer Halilović with “murder, a violation of the laws or customs of war, punishable under Article 3 of the Statute of the Tribunal and recognised by Article 3(1)(a) of the Geneva Conventions, and Article 7 (3) of the Statute of the Tribunal.”⁴⁵

1. General Requirements of Article 3 of the Statute

23. Article 3 of the Statute has been defined in the jurisprudence of the Tribunal as a general clause covering all violations of humanitarian law not covered by Articles 2, 4 or 5, including violations of Article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”)⁴⁶ and other customary rules on non-international conflict.⁴⁷ The application of Article 3 of the Statute presupposes the existence of an armed conflict and a nexus between the alleged crime and the armed conflict.⁴⁸ Moreover, four additional conditions must be fulfilled for a crime to be prosecuted under Article 3 of the Statute. These conditions are generally known as the *Tadić* conditions.⁴⁹

⁴⁵ Indictment, Count 1.

⁴⁶ Common Article 3, in its relevant parts, reads as follows:

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

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

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

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

⁴⁷ *Prosecutor v. Duško Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 89 (“*Tadić* Jurisdiction Decision”); re-affirmed in *Čelebići* Appeal Judgement, para. 136. The other violations of humanitarian law expressed in these decisions are: “(i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as “grave breaches” by those Conventions; [...] and (iv) violations of agreements binding upon the parties to the conflict, considered *qua* treaty law, *i.e.* agreements which have not turned into customary international law.”

⁴⁸ *Tadić* Jurisdiction Decision, paras 67-70; *Brdanin* Trial Judgement, para. 127.

⁴⁹ *Tadić* Jurisdiction Decision, para. 94. *See also Kunarac* Appeal Judgement, para. 66.

(a) The Existence of an Armed Conflict and Nexus of the Alleged Crimes with the Armed Conflict

24. It is settled in the jurisprudence of the Tribunal that an armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State.”⁵⁰

25. When an accused is charged with violation of Article 3 of the Statute, based on a violation of Common Article 3, it is immaterial whether the armed conflict was international or non-international in nature.⁵¹ Common Article 3 requires the warring parties to abide by certain fundamental humanitarian standards by ensuring “the application of the rules of humanity which are recognized as essential by civilized nations.”⁵² This was confirmed by the International Court of Justice in the *Nicaragua* case, where it held that:

Article 3 which is common to all four Geneva Conventions of 12 August 1949 defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court’s opinion, reflect what the Court in 1949 called “elementary considerations of humanity” (*Corfu Channel, Merits, I.C.J. Reports 1949, p. 22*).⁵³

The provisions of Common Article 3 and the universal and regional human rights instruments share a common “core” of fundamental standards which are applicable at all times, in all circumstances and to all parties, and from which no derogation is permitted.⁵⁴ In light of this general applicability of the provisions of Common Article 3, there is no need for the Trial Chamber to define the nature of the conflict in the present case.⁵⁵

26. The Appeals Chamber in the *Tadić* case held that until a general conclusion of peace or a peaceful settlement is reached, international humanitarian law continues to apply “in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, *whether or not actual combat takes place there*.”⁵⁶

⁵⁰ *Tadić* Jurisdiction Decision, para. 70. The term “protracted” is significant in excluding mere cases of civil unrest or single acts of terrorism in cases of non-international conflicts, *see Kordić and Čerkez* Appeal Judgement, para. 341.

⁵¹ *Tadić* Jurisdiction Decision, para. 137; *Čelebići* Appeal Judgement, paras 140, 150.

⁵² *ICRC Commentaries (GC IV)*, p. 34.

⁵³ *Nicaragua v. U.S.*, Merits, I.C.J. Reports 1986, para. 218.

⁵⁴ *Čelebići* Appeal Judgement, para. 149.

⁵⁵ *Čelebići* Appeal Judgement, paras 147-150 and 420, where the Appeals Chamber held that the provisions of Common Article are applicable to international and non-international conflicts alike.

⁵⁶ *Tadić* Jurisdiction Decision, para. 70 (emphasis added). *See also Kunarac* Appeal Judgement, paras 57, 64. In para. 64, the Appeals Chamber held that: “the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

27. The Defence argued that for the alleged crimes it was not proven that the crimes were not isolated or random acts. The Defence submitted that a crime would be “isolated” or “random” when its occurrence “albeit possibly related to the armed conflict in some respect does not reveal a pattern of criminal conduct on the part of the party to the conflict or where the only relationship between the crime and the armed conflict appears to be a coincidence of time and location.”⁵⁷
28. As regards the crimes in Grabovica,⁵⁸ the Defence submitted that the alleged crimes were “isolated and random crimes committed by a small number of mostly unidentified individuals”, and “were not ‘closely related to the armed conflict’”.⁵⁹ As regards the crimes in Uzdol,⁶⁰ the Defence submitted that “the Prosecution has failed to demonstrate that those crimes – if proved – were sufficiently connected to the hostilities to amount to war crimes, in the sense of having established a ‘direct conjunction’ between the acts of the accused and the armed conflict.”⁶¹ The Trial Chamber notes that the Appeals Chamber considered this matter in *Tadić* and held that the required nexus should be established between the alleged crime and the armed conflict.⁶²
29. As to the precise nature of the nexus, when the crime alleged has not occurred at a time and place in which fighting was actually taking place, the Appeals Chamber has held that “it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”⁶³ The crime “need not have been planned or supported by some form of policy”⁶⁴ and the armed conflict “need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his

⁵⁷ Defence Final Brief, footnote 5, referring to the Statute of the International Criminal Court and the *Ministries* case. The Defence further argued that the Prosecution failed to plead the existence of a sufficient nexus between the conduct of the Accused and the armed conflict and failed to plead any material fact in the Indictment relevant to establishing that nexus. The Defence submitted that it has been prejudiced by the Prosecution failure to plead its case with any precision, which has resulted in an unfairness in that the Defence has had to guess the Prosecution case on that point. *See* Defence Final Brief, para. 6. The Trial Chamber notes in this respect the Decision on Defence Motion for Particulars, 16 December 2003.

⁵⁸ *See infra* Section IV.D.

⁵⁹ Defence Final Brief, para. 8. The Defence argues that the crimes were contrary to the implementation of the overall policy of the ABiH, namely a multi-ethnic country. The Defence further argues that the victims in Grabovica were not limited to Bosnian Croat victims, but also included Bosnian Muslim refugees and a soldier of another ABiH unit, *ibid.*

⁶⁰ *See infra* Section IV.E.

⁶¹ Defence Final Brief, para. 13, referring to *Kayishema* Trial Judgement, para. 623.

⁶² *Tadić* Jurisdiction Decision, para. 70. The Trial Chamber notes that the Defence in its Final Brief argued that the required nexus should be established between the conduct of the Accused and the armed conflict. In this respect, the Trial Chamber notes that generally, in cases before the Tribunal where it has been found that the required nexus ought to be between the acts of the accused and the armed conflict, the accused was directly participating in the crimes, *see, e.g., Vasiljević* Appeal Judgement, para. 27; *Kunarac* Appeal Judgement, para. 58; *Furundžija* Trial Judgement, para. 65.

⁶³ *Kunarac* Appeal Judgement, para. 57; *Tadić* Jurisdiction Decision, para. 70.

⁶⁴ *Kunarac* Appeal Judgement, para. 58.

decision to commit it, the manner in which it was committed or the purpose for which it was committed.”⁶⁵

(b) The Tadić Conditions

30. Article 3 of the Statute confers on the Tribunal jurisdiction over any serious offences against international humanitarian law not covered by Article 2, 4 and 5, provided that four conditions be fulfilled: (i) the violation must constitute an infringement of a rule of international humanitarian law; (ii) the rule must be customary in nature, or, if it belongs to treaty law, the required conditions must be met;⁶⁶ (iii) the violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.⁶⁷

31. The charge of murder as a violation of the laws and customs of war in the present case is based on Common Article 3. It is well established that Article 3 of the Statute encompasses violations of Common Article 3.⁶⁸ It is also well established that Common Article 3 is part of international customary law,⁶⁹ that murder is a serious violation of international humanitarian law, which has grave consequences for the victim⁷⁰ and it also entails individual criminal responsibility.⁷¹

⁶⁵ *Kunarac* Appeal Judgement, para. 58.

⁶⁶ These conditions are that the treaty (i) was unquestionable binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogated from peremptory norms of international law, as are most customary rules of international humanitarian law. *See Tadić* Jurisdiction Decision, para. 143. The Appeals Chamber in *Kordić and Čerkez* upheld the approach of the Trial Chamber in that case, that when it is found that a provision of treaty law is applicable in a case, the question whether that provision reflects customary law at the relevant time is beside the point, *Kordić and Čerkez* Appeal Judgement, paras 41-46.

⁶⁷ *Tadić* Jurisdiction Decision, para. 94. *See also Kunarac* Appeal Judgement, para. 66.

⁶⁸ *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, paras 133-136; *Kunarac* Appeal Judgement, para. 68.

⁶⁹ *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, para. 143; *Kunarac* Appeal Judgement, para. 68.

⁷⁰ *Tadić* Trial Judgement, para. 612, referring to the *Nicaragua* case.

⁷¹ *Tadić* Jurisdiction Decision, para. 129, confirmed by *Čelebići* Appeal Judgement, para 153-174, in particular para. 167; *see also Kordić and Čerkez*, IT-95-14/2-PT, Decision on the Joint Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999, paras 32-33.

2. “Persons Taking no Active Part in the Hostilities” under Common Article 3

32. For the application of any Article 3 charge based on Common Article 3, the Prosecution must also prove that the victim was a person taking no active part in the hostilities⁷² at the time the crime was committed.⁷³

33. In the *Tadić* case, the test applied by the Trial Chamber was to ask whether, at the time of the alleged offence, the alleged victim of the proscribed acts was directly taking part in hostilities, “being those hostilities in the context of which the alleged offences are said to have been committed.”⁷⁴ The Trial Chamber in *Tadić* held that “it is unnecessary to define exactly the line dividing those taking an active part in hostilities and those who are not so involved. It is sufficient to examine the relevant facts of each victim and to ascertain whether, in each individual’s circumstances, that person was actively involved in the hostilities at the relevant time.”⁷⁵

34. The Trial Chamber finds that it is the specific situation of the victim at the moment the crime was committed that must be taken into account in determining his or her protection under Common Article 3.⁷⁶ The Trial Chamber considers that relevant factors in this respect include the activity, whether or not the victim was carrying weapons, clothing, age and gender of the victims at the time of the crime.⁷⁷ While membership of the armed forces can be a strong indication that the

⁷² The Trial Chamber notes that the term “hostilities” is not synonymous to the term “armed conflict.” An armed conflict may continue to exist after the hostilities in an area have ceased. The state of armed conflict ends when a peace agreement has been achieved or – in case of a non-international conflict – if a peaceful settlement has been reached. *See Tadić* Jurisdiction Decision, para. 70: “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; or, in the case of internal conflicts, a peaceful settlement is achieved.” *See also* ICRC Commentaries GC III, p. 37: “Speaking generally, it must be recognised that the conflicts referred to in Article 3 are armed conflicts, with armed forces on either side engaged in hostilities”(emphasis omitted).

⁷³ *Čelebići* Appeal Judgement, para. 420.

⁷⁴ *Tadić* Trial Judgement, para. 615. The Trial Chamber continued with holding that “if the answer to that question is negative, the victim will enjoy the protection of the proscriptions contained in Common Article 3.” *See also Blaškić* Trial Judgement, para. 177, referring to the *Tadić* Trial Judgement.

⁷⁵ *Tadić* Trial Judgement, para. 616. The Trial Chamber notes that ‘[active] participation in hostilities’ has been defined by the delegates as “acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces,” ICRC Commentary to AP I, para. 1944 and ICRC Commentary to AP II, para. 4788. *See also Musema* Trial Judgement, para. 279; *Semanza* Trial Judgement, para. 366. The Trial Chamber further takes note of the Commentaries, where it is stated that “to restrict [the concept of participating directly in hostilities] to combat and to active military operations would be too narrow, while extending it to the entire war effort would be too broad”, ICRC Commentaries to Additional Protocol I, para. 1679. The quoted sentence continues: “as in modern warfare the whole population participates in the war effort to some extent, albeit indirectly,” and that “[active] participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place,” ICRC Commentary to Additional Protocol I, para. 1679.

⁷⁶ *See* ICRC Commentaries GC III, p. 39: “The discussions at the Conference brought out clearly that it is not necessary for an armed force as a whole to have laid down its arms for its members to be entitled to protection under [Article 3]. The Convention refers to individuals and not to units of troops, and a man who has surrendered individually is entitled to the same humane treatment as he would receive if the whole army to which he belongs had capitulated. The important thing is that the man in question will be taking no further part in the fighting.”

⁷⁷ *Galić* Trial Judgement, para. 50.

victim is directly participating in the hostilities, it is not an indicator which in and of itself is sufficient to establish this.⁷⁸ Whether a person did or did not enjoy protection of Common Article 3 has to be determined on a case-by-case basis.⁷⁹

3. Specific Considerations Concerning Murder under Common Article 3

35. The Appeals Chamber in the *Kvočka* case recently defined the crime of murder under Article 3 of the Statute as follows:

- 1) the death of a victim taking no active part in the hostilities;
- 2) the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;
- 3) the intent of the accused or of the person or persons for whom he is criminally responsible:
 - a. to kill the victim; or
 - b. to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.⁸⁰

⁷⁸ The Trial Chamber notes that a person may be listed as a member of an armed force, without being mobilised. Furthermore, it is possible that in a state of war, the civilian police by law become part of the armed forces.

⁷⁹ The Defence submits that “the spontaneous reaction of the population and soldiers living in the area of Uzdol at the time may be said to constitute a *levée en masse*. As such, all members of that *levée* lost their status as civilians which they might otherwise have enjoyed for as long as the *levée en masse* operates”, Defence Final Brief, para. 47. The Trial Chamber notes that “*Levée en masse*” is regulated in Article 4 (A) (6) of GC III, which reads in its relevant parts:

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

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

The Trial Chamber recalls, as stated above, that anyone, who is “taking no active part in the hostilities” is entitled to the protection under Common Article 3, and that it is the specific situation of the victim at the time of the crime, which must be taken into account in determining his or her protection under Common Article 3.

⁸⁰ *Kvočka* Appeal Judgement, para. 261, with further references. The crimes of murder under Article 3 and of wilful killing set forth in Article 85(3) of Additional Protocol I and punishable under Article 2 of the Statute contain similar elements. The Trial Chamber therefore considers that the Commentary to Article 85(3) of Additional Protocol I is relevant. See the Appeals Chamber’s discussion in *Čelebići* concerning cumulative convictions in relation to Articles 2 and 3, paras 414-426. With regard to the word “wilfully” in Article 85(3) of Additional Protocol I, the Commentary reads:

the accused must have acted consciously and with intent, i.e. with his mind on the act and its consequences, and willing them (‘criminal intent’ or ‘malic aforethought’); this encompasses the concepts of ‘wrongful intent’ or ‘recklessness’, viz., the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., when a man acts without having his mind on the act or its consequences.

36. In relation to the *mens rea*, the Trial Chamber notes that the Trial Chamber in the *Galić* case stated, concerning the crime of attacks on civilians set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II, and punishable under Article 3 of the Statute:

[f]or the *mens rea* recognized by Additional Protocol I to be proven, the Prosecution must show that the perpetrator was aware or should have been aware of the civilian status of the persons attacked. In case of doubt as to the status of a person, that person shall be considered to be a civilian. However, in such cases, the Prosecution must show that in the given circumstances a reasonable person could not have believed that the individual he or she attacked was a combatant.⁸¹

The crime of attacks on civilians contains an element in relation to the status of the victims, which is similar to that of the crime of murder presently at issue. The Trial Chamber has previously found that the status of the victims as persons taking no active part in the hostilities is a condition for the applicability of Article 3 of the Statute.⁸² The Trial Chamber agrees with the *Galić* Trial Chamber that the Prosecution must show that the perpetrator was aware or should have been aware of this status of the victim. In other words, the *mens rea* of the perpetrator of murder must encompass the fact that the victims were persons taking no active part in the hostilities.⁸³ The Trial Chamber considers that the factors previously mentioned for determining whether a victim is or is not taking an active part in hostilities⁸⁴ are relevant in this respect.

37. It has been established that it is not necessary that a victim's body has been recovered in order to prove that the victim is dead. The death may be established by circumstantial evidence provided "the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally

In this respect, the Trial Chamber agrees with the Trial Chamber in the *Strugar* case, which found that "[i]t is now settled that the *mens rea* is not confined to cases where the accused has a direct intent to kill or to cause serious bodily harm, but also extends to cases where the accused has what is often referred to as an indirect intent", *Strugar* Trial Judgement, para. 235.

⁸¹ The Defence raised this point in its Final Brief, para. 55, submitting that:

the perpetrators – and, in turn, Mr Halilović – were aware of [the] civilian status [of the victims] at the time of the crime (for the perpetrators) and the time of the alleged failure (in the case of the accused) and that, (ii) with that awareness, the perpetrator killed the victim deliberately and Mr Halilović deliberately failed to prevent/punish them.

However, the Trial Chamber notes that, by referring in this context to the Accused's *mens rea*, the Defence appears to have confused the requirements of Article 7(3) and those of Article 3 of the Statute. The Trial Chamber will therefore, in this context, disregard the Defence submission in relation to the Accused's *mens rea*. The Prosecution did not make any submission with regard to whether the *mens rea* of the direct perpetrator must also include knowledge of the status of the victim as a person taking no active part in hostilities. Rather, the Prosecution limits itself to submitting that "[m]urder under Article 3 requires proof that the victims were persons taking no active part in the hostilities", Prosecution Final Brief, para. 20, footnote excluded.

⁸² See *supra* III.A.2.

⁸³ In this respect, the Trial Chamber notes that the knowledge of the status of the victims is one aspect of the *mens rea* that needs to be proven for the conviction on any Article 3 charge based on Common Article 3.

⁸⁴ See *supra* III.A.2.

responsible.”⁸⁵ In the Trial Chamber’s opinion, relevant factors include, but are not limited to, the coincident or near-coincident time of death of other victims, the fact that the victims were present in an area where an armed attack was carried out, when, where and the circumstances in which the victim was last seen, and the behaviour of soldiers in the vicinity, as well as towards other civilians, at the relevant time.

B. Law on Article 7 (3)

1. Introduction

38. Article 7(3) of the Statute reads:

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.

It is clear that the form of responsibility set out in Article 7(3) of the Statute is based upon the duty of superiors to act, which consists of a duty to prevent and a duty to punish criminal acts of their subordinates.⁸⁶ It is thus the “failure to act when under a duty to do so” which is the essence of this form of responsibility.⁸⁷ As will be seen below, this duty to act arises by virtue of a superior’s possession of effective control over his subordinates.⁸⁸

⁸⁵ *Kvočka* Appeal Judgement, para. 260. *See also Tadić* Trial Judgement, para. 240 (“Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death. However, there must be evidence to link injuries received to a resulting death”) and *Krnjelac* Trial Judgement, para. 326.

⁸⁶ *See* for example *Čelebići* Trial Judgement, para. 334, which reads:

[a]s is most clearly evidenced in the case of military commanders by Article 87 of Additional Protocol I, international law imposes an affirmative duty on superiors to prevent persons under their control from committing violations of international humanitarian law, and it is ultimately this duty that provides the basis for, and defines the contours of, the imputed criminal responsibility under Article 7(3) of the Statute.

⁸⁷ Article 86 of Additional Protocol I to the 1949 Geneva Conventions, entitled “failure to act”, in paragraph 1 imposes responsibility for grave breaches which result from a “failure to act when under a duty to do so”. The Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1986) (“ICRC Commentary onto the Additional Protocols”) states with regards to Article 86 of Additional Protocol I that “responsibility for a breach consisting of a failure to act can only be established if the person failed to act when he had a duty to do so” (p. 1010, para 3537). Similarly the Trial Chamber in the *Čelebići* case noted “criminal responsibility for omissions is incurred only where there exists a legal obligation to act,” citing ILC Commentary on the 1996 Draft Code of Crimes Against the Peace and Security of Mankind, Report of the International Law Commission on the work of its 48th session, UN doc. A/51/10 (“ILC Commentary”). This basis can also be seen in the post-World War II trials, for example, the wording of Count 55 of the Indictment of the International Military Tribunal for the Far East (“Tokyo Trial”) highlights the focus of that trial on the duty of commanders to act. It charged the accused with failure in a duty to act, stating that they “recklessly disregarded *their legal duty* by virtue of their offices to take adequate steps to ensure the observance and prevent breaches of the laws and customs of war”, *The Tokyo Judgement*, The Complete Transcripts of the Proceedings in the International Military Tribunal for the Far East, reprinted in: R. John Pritchard and S. Magbauna Zaide (eds.), *The Tokyo War Crimes Trial*, New-York - London 1981, p. 48, 424, (emphasis added). In a later part of

39. The Trial Chamber recalls that the purpose behind the concept of command responsibility is to ensure compliance with the laws and customs of war and international humanitarian law generally.⁸⁹ The principle of command responsibility may be seen in part to arise from one of the basic principles of international humanitarian law aiming at ensuring protection for protected categories of persons and objects during armed conflicts. This protection is at the very heart of international humanitarian law.⁹⁰ Ensuring this protection requires, in the first place, preventative measures which commanders are in a position to take, by virtue of the effective control which they have over their subordinates, thereby ensuring the enforcement of international humanitarian law in armed conflict.⁹¹ A commander who possesses effective control over the actions of his subordinates is duty bound to ensure that they act within the dictates of international humanitarian law and that the laws and customs of war are therefore respected.

40. The elements of command responsibility are derived from the duties comprised in responsible command,⁹² and those duties are generally enforced through command responsibility.⁹³ For many years the responsibility of commanders for the conduct of their troops has been recognised in domestic jurisdictions.⁹⁴ The concept of responsible command can be seen in the earliest modern codifications of the laws of war. It was incorporated in the 1899 Hague Convention with Respect to the Laws and Customs of War on Land. It was also reproduced in Article 1 of the

the Judgement, this charge was described as “failure to take adequate steps to secure the observance and prevent breaches of conventions and laws of war”, *ibid.* p. 49, 772.

⁸⁸ This interpretation can also be inferred from the ICRC Commentary to Article 86 of Additional Protocol I, which states that “the direct link which must exist between the superior and the subordinate clearly follows from the *duty to act* laid down in paragraph 1.” ICRC Commentary to the Additional Protocols, p. 1013, para. 3544 (emphasis added).

⁸⁹ *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2, Sentencing Judgement, 10 Dec '03 (“*Obrenović* Sentencing Judgement”) para. 100, citing *Prosecutor v. Hadžihasanović et al.* Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 Nov '02 (“*Hadžihasanović* Decision on Joint Challenge to Jurisdiction”), para. 66.

⁹⁰ See also J-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, ICRC, Cambridge University Press, 2005, Vol. I, Introduction, p. XXV; and F. Kalshoven and L. Zegveld, *Constraints on the Waging of War*, ICRC, Mar '01. pp. 53-54.

⁹¹ The ICRC Commentary to Article 87 states that “the role of commanders is decisive[...] the necessary measures for the proper application of the Conventions and the Protocol must be taken at the level of the troops, so that a fatal gap between the undertakings entered into by Parties to the conflict and the conduct of individuals is avoided. At this level everything depends on commanders, and without their conscientious supervision, general legal requirements are unlikely to be effective.” ICRC Commentary to the Additional Protocols, p. 1018, para. 3550. See *infra* paras 81-88.

⁹² *Prosecutor v. Hadžihasanović et al.*, Case No IT-01-47-AR72, Appeals Chamber Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July '03 (“*Hadžihasanović* Appeals Chamber Decision”), para. 22.

⁹³ *Ibid.* para. 23.

⁹⁴ See, e.g., Order of Charles VII of France of 1439 which held that a captain “shall be responsible for the offence as if he had committed it himself and shall be punished in the same way as the offender would have been.” Similarly the Massachusetts Provisional Congress stated in 1775 that any commander who failed to punish his officers or soldiers would be punished “in such a manner as if he himself had committed the crimes or disorders complained of”, cited in Hendin, Stuart E., *Command Responsibility and Superior Orders in the Twentieth Century – A Century of Evolution*, Murdoch University Electronic Journal of Law, 10(2003):1, paras 6-8.

Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 1907 which states:

The laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following criteria:

To be commanded by a person responsible for his subordinates[...]⁹⁵

41. It was only in the aftermath of the Second World War that the concept of command responsibility for failure to act received its first judicial recognition in an international context.⁹⁶ This form of responsibility by omission was formally recognised by Additional Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949. Article 86 of Additional Protocol I affirms this form of responsibility, the basis for which is the duty placed on commanders by Article 87 of the same Protocol to preclude violations of the Geneva Conventions and their Additional Protocols.⁹⁷

⁹⁵ Hague Convention (IV) respecting the Laws and Customs of War on Land and the Regulations annexed thereto, 18 October 1907. In its report presented to the Preliminary Peace Conference in 1919, the International Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties recommended that a tribunal be established for the prosecution of, *inter alia*, all those who “ordered, or with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing violations of the laws or customs of war”. Such a tribunal was never realised. *See* Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties - Report Presented to the Preliminary Peace Conference, Versailles, 29 March 1919, reprinted in 14 AJIL, 95 (1920), p. 121, cited in *Čelebići* Trial Judgement, para. 335.

⁹⁶ *See infra* paras 44-47.

⁹⁷ Article 86, Failure to act:

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 87, Duty of commanders:

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

In this regard, the Trial Chamber notes the finding of the Appeals Chamber in *Hadžihasanović* that Articles 86 and 87 of Additional Protocol I are applicable to both international and non-international armed conflicts, *Hadžihasanović* Appeals Chamber Decision, paras 29-31.

2. The Nature of Command Responsibility in International Law

42. The concept of command responsibility as a form of individual criminal responsibility emerged in the post World War II era in national war crimes legislation, as well as in some post World War II case law. Prior to this, the responsibility of commanders in international law had been connected with the responsibility of states to ensure compliance with the laws of war. However, the post World War II case law contained differing views as to the nature of command responsibility, that is as liability for the crimes of subordinates, or, as a *sui generis* responsibility for dereliction of duty.

43. National legislation enacted in the post World War II period, for example in Canada,⁹⁸ France,⁹⁹ and Britain,¹⁰⁰ considered command responsibility as a form of accomplice liability. In other words, a commander's failure to prevent or repress the breaches of international humanitarian law committed by his subordinates amounted to encouragement or assistance of the subordinates in the commission of the crime.

44. Certain post World War II trials attached liability to commanders for the crimes of their subordinates. For example, in *Re Yamashita*, although the charge was essentially one of breach of Yamashita's duty as a commander, the United States Supreme Court attributed responsibility to Yamashita for having violated the laws of war by *permitting* his troops to commit atrocities.¹⁰¹ They based their imposition of individual responsibility on the concept of responsible command found in Article 1 of Fourth Hague Convention of 1907 and Article 43 of the annex thereto,

⁹⁸ Regulation 10 of the Canadian Act respecting War Crimes 1946 provided (Law Reports, Vol. IV, pp. 128-129):

Where there is evidence that more than one war crime has been committed by members of a formation, unit, body, or group while under the command of a single commander, the court may receive that evidence as prima facie evidence of the responsibility of the commander for those crimes. Where there is evidence that a war crime has been committed by members of a formation, unit, body, or group and that an officer or non-commissioned officer was present at or immediately before the time when such offence was committed, the court may receive that evidence as prima facie evidence of the responsibility of such officer or non-commissioned officer, and of the commander of such commander, unit, body, or group, for that crime.

⁹⁹ Article 4 of the French Ordinance of 28 August 1944 provided (Law Reports, Vol. IV, p. 87):

Where a subordinate is prosecuted as the actual perpetrator of a war crime, and his superiors cannot be indicted as being equally responsible, they shall be considered as accomplices in so far as they have tolerated the criminal acts of their subordinates.

¹⁰⁰ Regulation 8(ii) of the British Royal Warrant of 14 June 1945 (Army Order 81/45) for military courts provided (Law Reports, Vol. I, pp. 108-109):

Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime. In any such case all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court.

¹⁰¹ *In Re Yamashita*, 327 US 1, para. 13.

Article 19 of the Tenth Hague Convention, and Article 26 of the Geneva Red Cross Convention.¹⁰² In his dissenting opinion, Justice Murphy argued that these provisions did not impose individual responsibility on a commander to control his troops, he stated that; “the laws of war heretofore recognized by this nation fail to impute responsibility to a fallen commander for excesses committed by his disorganised troops while under attack.”¹⁰³ He noted that there were cases from the beginning of the 20th Century where commanding officers were found to have violated the laws of war where they knew that a crime was to be committed and where they had the power to prevent it, but failed to exercise that power.¹⁰⁴ However, Justice Murphy’s main argument against the conviction of Yamashita was that there was no knowledge element. He stated “it is quite another thing to say that the inability to control troops under highly competitive and disastrous battle conditions renders one guilty *of a war crime* in the absence of personal culpability. Had there been some element of knowledge or direct connection with the atrocities the problem would be entirely different.”¹⁰⁵ It would seem, therefore, that the Supreme Court, and Justice Murphy in his dissent, did not object to a commander’s liability *for a war crime* committed by his subordinates where he failed in his duty as a commander to control his troops. However, Justice Murphy considered that there must be a knowledge element for a commander to be held responsible.

45. The *Hostage* case, in examining the duty of commanders of occupied territory stated that “the commanding general of occupied territory, having executive authority as well as military command, will not be heard to say that a unit taking unlawful orders from someone other than himself was responsible for the crime and that he is thereby absolved from responsibility.”¹⁰⁶ In examining the individual responsibility of defendant List, the Court stated that “absence from headquarters cannot and does not relieve one from responsibility *for acts committed* in accordance with a policy he instituted or in which he acquiesced.”¹⁰⁷ However, the Court in that case also found that a defendant’s “failure to terminate [...] unlawful killings and to take adequate steps to prevent their recurrence constitutes a serious breach of duty and imposes criminal responsibility.”¹⁰⁸

¹⁰² *Ibid.*, paras 15-16

¹⁰³ *Ibid.*, para. 37.

¹⁰⁴ *Ibid.*, para. 39, citing cases arising out of the Philippine Insurrection in 1900 and 1901.

¹⁰⁵ *Ibid.*, para. 39 (emphasis added). Similarly, Justice Rutledge in his dissent stated (327 US 1, paras 43-44):

mass guilt we do not impute to individuals, perhaps in any case, but certainly in none where the person is not charged or shown actively to have participated in or knowingly to have failed in taking action to prevent the wrongs done by others, having both the duty and the power to do so.

¹⁰⁶ *Hostage* case, p. 1256.

¹⁰⁷ *Ibid.*, p. 1271 (emphasis added).

¹⁰⁸ *Ibid.*, p. 1272.

46. The *High Command* case in examining the liability of defendant Von Leeb for the crimes of those within his area of command¹⁰⁹ stated that to establish the guilt of a defendant from connection with the acts “of the SIPO and SD”¹¹⁰ “by acquiescence,” “not only must knowledge be established, but the time of such knowledge must be established.”¹¹¹ The Court in that case also stated that,

“[c]riminal acts committed by those forces [under his command] cannot in themselves be charged to him on the theory of subordination. The same is true of other high commanders in the chain of command. Criminality does not attach to every individual in this chain of command from that fact alone. There must be a personal dereliction. That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part. In the latter case it must be a personal neglect amounting to a wanton, immoral disregard of the action of his subordinates amounting to acquiescence.”¹¹²

47. The *Toyoda* case considered that the responsibility of a commander was for dereliction of duty, stating;

“in the simplest language it may be said that this Tribunal believes the principle of command responsibility to be that if this accused knew, or should by the exercise of ordinary diligence have learned, of the commission by his subordinates, immediate or otherwise, of the atrocities [...], and, by his failure to take any action to punish the perpetrators, permitted the atrocities to continue, he has failed in his performance of his duty as a commander and must be punished.”¹¹³

48. It may be concluded, therefore, that the post World War II case law was not uniform in its determination as to the nature of the responsibility arising from the concept of command responsibility.

49. Articles 86 and 87 of Additional Protocol I to the Geneva Conventions codified the concept of command responsibility. Article 86(2) provides for a commander’s liability, either criminal or disciplinary, for the crimes of his subordinates where he fails to “prevent or repress” those acts. The Commentary to paragraph 1 of Article 86 notes that responsibility for a breach of the Geneva Conventions consisting of a failure to act can only be established if the person failed to act when under a duty to do so. The Commentary to paragraph 2 of Article 86, which is to be read in conjunction with Article 87,¹¹⁴ acknowledges that this provision is the first in international law to

¹⁰⁹ The Court examined defendant Von Leeb’s responsibility for the crimes of those within his area of command in relation to, for example, crimes against prisoners of war, *High Command* case, pp. 558-559; illegal execution of Red Army soldiers, *ibid.*, pp. 559-560; crimes against civilians, *ibid.*, pp. 561-562. It also noted that in relation to Chiefs of Staff “in the absence of participation in criminal orders or their execution within a command, a chief of staff does not become criminally responsible for criminal acts occurring therein”, *ibid.*, p. 530 (emphasis added).

¹¹⁰ The SD was the “State Security Service of the SS” and the “SIPO” was the “State Security Police”, see *High Command* case. *High Command* case p. 702 “Glossary of Abbreviations and Terms”.

¹¹¹ *Ibid.*, p. 549.

¹¹² *Ibid.* p. 543-544.

¹¹³ *Toyoda* case, p. 5006 (emphasis added). The Tribunal continued; “[i]n determining the guilt or innocence of an accused, charged with dereliction of his duty as a commander, consideration must be given to many factors”, *ibid.*

¹¹⁴ ICRC Commentary to the Additional Protocols, p. 1011, para. 3541.

impose *penal sanctions* for a failure to act.¹¹⁵ The Commentary notes that Article 86 applies both to breaches and to grave breaches, and that the term “penal or disciplinary” applies in the first case, while in the second case the principle of universal jurisdiction, understood as “*aut dedere aut judicare*” applies – that is the duty to extradite or prosecute.¹¹⁶ Thus, Article 86(2) attaches criminal responsibility for grave breaches of the Geneva Conventions. The Article is, however, silent as to the nature of the criminal responsibility – that is; whether it is responsibility for dereliction of duty or responsibility for the crimes of subordinates.

50. With regard to the Statute of the Tribunal, the text of Article 7(3) is not explicit as to whether liability attaches to a commander for the crimes of his subordinates or for dereliction of duty. In this regard the reports submitted to the Security Council prior to the adoption of the Statute may be of assistance.

51. A reading of the Secretary General’s Report concerning Article 7(3) does not exclude the possibility that command responsibility under the Statute of the Tribunal may be responsibility for dereliction of duty.¹¹⁷ The Report states that a commander “should be held responsible for failure to prevent a crime or to deter the unlawful behaviour of his subordinates.”¹¹⁸ It is interesting to note in this respect, the clarification provided by the United Nations Commission of Experts Final Report.¹¹⁹ In examining command responsibility the Commission of Experts stated that superiors are “individually responsible for a war crime or crime against humanity committed by a subordinate”.¹²⁰ The Commission of Experts, in addressing command responsibility in their First Interim Report, stated that “military commanders are under a specific obligation, with respect to members of the armed forces under their command[...] to prevent and[...]suppress”. Having cited the paragraphs from their Interim Report, including the above-mentioned element, the Commission of Experts noted in their Final Report that “Article 7 of the statute of the international tribunal uses an essentially similar formulation”.¹²¹ Thus, the Commission of Experts may have considered that Article 7(3) attached responsibility to commanders for the crimes of their subordinates.

¹¹⁵ *Ibid.*, p. 1011, para. 3540.

¹¹⁶ *Ibid.*, p. 1012, para. 3542.

¹¹⁷ Report of the Secretary General pursuant to paragraph 2 of the Security Council Resolution 808 (1993). UN doc. S/25704 (1993) (“Secretary General’s Report”). However, in this regard, the Trial Chamber notes that the Trial Chamber Judgement in *Čelebići* relied upon the report of the Secretary General to find that command responsibility under Article 7(3) attaches responsibility for the crimes of subordinates. See *Čelebići* Trial Judgement, para. 333.

¹¹⁸ Secretary General’s Report, p. 15

¹¹⁹ Final Report of the Commission of Experts, UN doc. S/1994/674 (“United Nations Commission of Experts Report”), p. 16.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

52. The ILC Commentary, which is based upon Articles 86 and 87 of Additional Protocol I, and 7(3) of the ICTY Statute and Article 6(3) of the ICTR Statute, considered that a military commander may be held criminally responsible for the unlawful conduct of his subordinates if he contributes indirectly to the commission of a crime by failing to prevent or repress that crime.¹²² The ILC Commentary provides that Article 6 confirms the individual criminal responsibility of the superior who is *held accountable for a crime against the peace and security of mankind committed by his subordinate* if certain criteria are met.¹²³ Furthermore, in elaborating the mental element they state that "Article 6 provides two criteria for determining whether a superior is to be held criminally responsible *for the wrongful conduct* of a subordinate."¹²⁴

53. While the post World War II case law was divergent as to the question of the exact nature of command responsibility, and Article 86(2) of Additional Protocol I and Article 7(3) are silent as to the nature of the responsibility of commanders, whether command responsibility is a mode of liability for the crimes of subordinates or responsibility of a commander for dereliction of duty has not been considered at length in the jurisprudence of the Tribunal. However, the consistent jurisprudence of the Tribunal has found that a commander is responsible for the crimes of his subordinates under Article 7(3). For example, the Trial Chamber in *Čelebići* held that "[t]he type of individual criminal responsibility *for the illegal acts of subordinates* ... is commonly referred to as 'command responsibility'".¹²⁵ The Trial Chamber continued; "[t]hat military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary and conventional international law."¹²⁶ It may be noted that in this regard the Trial Chamber cited the Secretary General's Report in support of its determination. The Appeals Chamber in *Čelebići* also held that where a superior has effective control over his subordinates "he could be held responsible for the commission of the crimes if he failed to exercise such abilities of control".¹²⁷ However, the Trial Chamber notes that there are further interpretations of command responsibility before the Tribunal. The Trial Chamber notes that Articles 7(1) and 7(3) are distinct modes of liability, as the Trial Chamber in *Aleksovski* held:

¹²² ILC Commentary to the Additional Protocols, p. 35.

¹²³ *Ibid.*, p. 37 (emphasis added).

¹²⁴ *Ibid.*, p. 36 (emphasis added). The most recent codification of the concept, in Article 28 of the Rome Statute of the International Criminal Court, provides that military commanders and superiors shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his command or control, Rome Statute of the ICC, Article 28.

¹²⁵ *Čelebići* Trial Judgement, para. 331 (emphasis added). This was part of the Trial Chamber's discussion as to whether command responsibility was part of customary international law.

¹²⁶ *Čelebići* Trial Judgement, para. 333.

¹²⁷ *Čelebići* Appeal Judgement, para. 198.

The doctrine of superior responsibility makes a superior responsible not for his acts sanctioned by Article 7(1) of the Statute but for his failure to act. A superior is held responsible for the acts of his subordinates if he did not prevent the perpetration of the crimes of his subordinates or punish them for the crimes.¹²⁸

The Trial Chamber also recalls the Partially Dissenting Opinion of Judge Shahabuddeen in the *Hadžihasanović* Appeals Chamber Decision, stating:

The position of the appellants seems to be influenced by their belief that Article 7(3) of the Statute has the effect, as they say, of making the commander “guilty of an offence committed by others even though he neither possessed the applicable *mens rea* nor had any involvement whatsoever in the *actus reus*.” No doubt, arguments can be made in support of that reading of the provision, but I prefer to interpret the provision as making the commander guilty for failing in his supervisory capacity to take the necessary corrective action after he knows or has reason to know that his subordinate was about to commit the act or had done so.¹²⁹

54. The Trial Chamber finds that under Article 7(3) command responsibility is responsibility for an omission. The commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates. Thus “for the acts of his subordinates” as generally referred to in the jurisprudence of the Tribunal does not mean that the commander shares the same responsibility as the subordinates who committed the crimes, but rather that because of¹³⁰ the crimes committed by his subordinates, the commander should bear responsibility for his failure to act. The imposition of responsibility upon a commander for breach of his duty is to be weighed against the crimes of his subordinates; a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed. The Trial Chamber considers that this is still in keeping with the logic of the weight which international humanitarian law places on protection values.

3. The Elements of Command Responsibility

55. The principle of individual criminal responsibility of commanders for failure to prevent or to punish crimes committed by their subordinates is an established principle of customary international law.¹³¹ Article 7(3) of the Statute is applicable to all acts referred to in Articles 2 to 5 thereof and applies to both international and non-international armed conflicts.¹³²

¹²⁸ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999 (“*Aleksovski* Trial Judgement”), para. 67. The Trial Chamber notes that this statement was not challenged in the Appeals Judgement.

¹²⁹ *Hadžihasanović* Appeals Chamber Decision, para. 32.

¹³⁰ The Trial Chamber notes that different forms of expression than “for” the crimes of subordinates have been used, for example, the *Hadžihasanović* Appeals Chamber Decision, used the term “in respect of”, *ibid.*, para. 18.

¹³¹ *See, e.g., Čelebići* Appeal Judgement para. 195; *Čelebići* Trial Judgement, para. 343.

¹³² For application of the principle of command responsibility to both international and non-international armed conflicts, *see Hadžihasanović* Appeals Chamber Decision, para. 31. The Appeals Chamber has held that

56. To hold a superior responsible under Article 7(3) of the Statute, the jurisprudence of the Tribunal has established that three elements must be satisfied:

- i. The existence of a superior-subordinate relationship;
- ii. the superior knew or had reason to know that the criminal act was about to be or had been committed; and
- iii. the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.¹³³

(a) Superior-Subordinate Relationship

57. It is the position of command over the perpetrator which forms the legal basis for the superior's duty to act, and for his corollary liability for a failure to do so.¹³⁴ As held by the Trial Chamber in *Čelebići*, the doctrine of command responsibility is "ultimately predicated upon the power of the superior to control the acts of his subordinates."¹³⁵

58. The main factor in determining a position of command is the "actual possession or non-possession of powers of control over the actions of subordinates".¹³⁶ In determining the degree of control required by the superior over the subordinate for command responsibility to be applicable, the Appeals Chamber endorsed the concept of "effective control", which it defined as "the material ability to prevent and punish criminal conduct".¹³⁷ In this respect, factors indicative of an accused's position of authority and effective control may include the official position held by the accused, his capacity to issue orders, whether *de jure* or *de facto*, the procedure for appointment, the position of the accused within the military or political structure and the actual tasks that he performed.¹³⁸ The Appeals Chamber in *Blaškić* held that "the indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had

customary international law recognises that there can be command responsibility in respect of some war crimes committed by a member of an organised military force in the course of a non-international armed conflict, *ibid.*, para. 18.

¹³³ *Čelebići* Trial Judgement, para. 346, *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 Jul '04 ("*Blaškić* Appeal Judgement"), para. 484; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement"), para. 72. See also *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 Dec '04 ("*Kordić and Čerkez* Appeal Judgement"), para. 827; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 03 Mar 2000 ("*Blaškić* Trial Judgement"), para. 294; *Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-T, 02 Nov '01 ("*Kvočka* Trial Judgement"), para. 401.

¹³⁴ *Aleksovski* Appeal Judgement, para. 76. See also ICRC Commentary to the Additional Protocols, which states that "responsibility for a breach consisting of a failure to act can only be established if the person failed to act when he had a duty to do so", p. 1010. See also the ILC Commentary, p. 36.

¹³⁵ *Čelebići* Trial Judgement, para. 377. It is well established that command responsibility is applicable to both military and civilian superiors, *Čelebići* Appeal Judgement, paras 195-96 and 240; *Aleksovski* Appeal Judgement, para. 76.

¹³⁶ *Čelebići* Trial Judgement, para. 370.

¹³⁷ *Čelebići* Appeal Judgement, para. 256.

¹³⁸ See *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić and Čerkez* Trial Judgement"), paras 418-424.

the power to prevent, punish, or initiate measures leading to proceedings against the alleged perpetrators where appropriate”.¹³⁹

59. A degree of control which falls short of the threshold of effective control is insufficient for liability to attach under Article 7(3). “Substantial influence” over subordinates which does not meet the threshold of effective control is not sufficient under customary law to serve as a means of exercising command responsibility and, therefore, to impose criminal liability.¹⁴⁰

60. The jurisprudence of the Tribunal has interpreted the concepts of command and subordination in a relatively broad sense. Command does not arise solely from the superior’s formal or *de jure* status,¹⁴¹ but can also be “based on the existence of *de facto* powers of control”.¹⁴² In this respect, the necessity to establish the existence of a hierarchical relationship between the superior and the subordinate does “not [...] import a requirement of *direct* or *formal* subordination”.¹⁴³

61. Command responsibility applies to every commander at every level in the armed forces. This includes responsibility for troops who have been temporarily assigned to that commander.¹⁴⁴ Article 87(1) of Additional Protocol I states that the duty of commanders applies “to the armed forces under their command and other persons under their control”. The ICRC Commentary to Article 87(1) provides;

A commander may, for a particular operation and for a limited period of time, be supplied with reinforcements consisting of troops who are not normally under his command. He must ensure that these members of the armed forces comply with the Conventions and the Protocol as long as they remain under his command.¹⁴⁵

To hold a commander liable for the acts of troops who operated under his command on a temporary basis it must be shown that at the time when the acts charged in the indictment were committed, these troops were under the effective control of that commander.¹⁴⁶

¹³⁹ *Blaškić* Appeal Judgement, para. 69.

¹⁴⁰ *Čelebići* Appeal Judgement, para. 266.

¹⁴¹ *Čelebići* Appeal Judgement, para. 193.

¹⁴² *Čelebići* Appeal Judgement, para. 195. The Appeal Chamber in *Čelebići* stated that a superior vested with *de jure* authority who does not have effective control over his or her subordinates would therefore not incur criminal responsibility pursuant to the doctrine of superior responsibility, whereas a *de facto* superior who lacks formal letters of appointment or commission but, in reality, has effective control over the perpetrators of offences would incur criminal responsibility where he failed to prevent or punish such criminal conduct, *ibid.*, para. 197.

¹⁴³ *Čelebići* Appeal Judgement, para. 303 (emphasis in the original). See also *High Command* case, pp. 543-544.

¹⁴⁴ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković*, Case No. IT-96-22&23-1-T, Judgement, 21 Feb '01, (“*Kunarac* Trial Judgement”), para. 399. The temporary nature of a military unit is not, in itself, sufficient to exclude a relationship of subordination, *ibid.*

¹⁴⁵ ICRC Commentary to the Additional Protocols, para. 3554.

¹⁴⁶ *Kunarac* Trial Chamber para. 399, citing *Čelebići* Appeal Judgement paras 197-198 and 256.

62. The Trial Chamber also recalls that the test of effective control implies that more than one superior may be held responsible for his failure to prevent or punish the same crime committed by a subordinate.¹⁴⁷

63. Consistent with the above reasoning, there is no requirement that the superior-subordinate relationship be direct or immediate in nature for a commander to be found liable for the acts of his subordinate.¹⁴⁸ What is required is the establishment of the superior's effective control over the subordinate, whether that subordinate is immediately answerable to that superior or more remotely under his command.¹⁴⁹ As to whether the superior has the requisite level of control, this is a matter which must be determined on the basis of the evidence presented in each case.¹⁵⁰

¹⁴⁷ *Blaškić* Trial Judgement, para. 303, referring to *Aleksovski* Trial Judgement, para. 106.

¹⁴⁸ *Prosecutor v. Pavle Strugar*, Case No. IT- 01-42-T, Judgement, 31 Jan '05, ("*Strugar* Trial Judgement"), para. 363.

¹⁴⁹ The ICRC Commentary to the Additional Protocols, dealing with the concept of a "superior" within the meaning of Article 86 of Additional Protocol I, which provides the basis for the duty in Article 7(3), emphasises that the term is not limited to immediate superiors. It states that (ICRC Commentary to the Additional Protocols, p. 1013, para. 3544):

[t]his is not a purely theoretical concept covering any superior in a line of command, but we are concerned only with the superior who has a personal responsibility with regard to the perpetrator of the acts concerned because the latter, being his subordinate, is under his control. The direct link which must exist between the superior and the subordinate clearly follows from the duty to act [...]. Furthermore, only that superior is normally in the position of having information enabling him to conclude in the circumstances at the time that the subordinate has committed or is going to commit a breach. However, it should not be concluded from this that this position only concerns the commander under whose direct orders the subordinate is placed [...]. The concept of the superior is broader and should be seen in terms of a hierarchy encompassing the concept of control.

Further support can be found in the judgement in the case against the Japanese Admiral Soemu Toyoda tried in the aftermath of World War II. The military tribunal in that case highlighted that subordination does not have to be direct and stated that (*Toyoda* case, p. 5006, emphasis added):

[i]n the simplest language it may be said that this Tribunal believes the principle of command responsibility to be that, if this accused knew, or should by the exercise of ordinary diligence have learned, of the commission by his subordinates, *immediate* or otherwise, of the atrocities proved beyond a shadow of a doubt before this Tribunal or of the existence of a routine which would countenance such, and, by his failure to take any action to punish the perpetrators, permitted the atrocities to continue, he has failed in his performance of his duty as a commander and must be punished.

See also the following finding of the Military Tribunal in the *Hostage case* in relation to the defendant Dehner (*Hostage case*, p. 1298):

The defendant excuses his indifference to all these killings by saying that it was the responsibility of the division commanders. We agree that the divisional commanders are responsible for ordering the commission of criminal acts. But the superior commander is also responsible if he orders, permits, or acquiesces in such criminal conduct. His duty and obligation is to prevent such acts, or if they have been already executed, to take steps to prevent their recurrence.

Reference may also be made to the ILC Commentary, which uses the term "superiors" in the plural form in order to indicate that the doctrine of command responsibility "applies not only to the immediate superior of a subordinate, but also to his other superiors in the military chain of command or the governmental hierarchy if the necessary criteria are met", *ibid.*, p. 37.

¹⁵⁰ As discussed above, the indicators of effective control depend on the specific circumstances of the case. See *Strugar* Trial Judgement, para. 392.

(b) Mental Element: “Knew Or Had Reason To Know”

64. The mental element required for a superior to be held responsible under Article 7(3) of the Statute is established where the superior knew or had reason to know that the subordinate was about to commit or had committed a crime.

65. Superior responsibility is not a form of strict liability.¹⁵¹ It must be proved either that (1) the superior had actual knowledge that his subordinates were committing or about to commit crimes within the jurisdiction of the Tribunal, or that (ii) he had in his possession information which would at least put him on notice of the risk of such offences, such information alerting him to the need for additional investigation to determine whether such crimes had been or were about to be committed by his subordinates.¹⁵²

(i) Actual Knowledge

66. A superior’s actual knowledge that his subordinates were committing or were about to commit a crime cannot be presumed, but may be established through circumstantial evidence.¹⁵³ Factors which may be considered in this respect include the number, type and scope of illegal acts committed by the subordinates as alleged in the indictment, the time during which the illegal acts occurred, the number and types of troops and logistics involved, the geographical location, whether the occurrence of the acts is widespread, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved, and the location of the commander at the time.¹⁵⁴ In relation to geographical and temporal circumstances, the more physically distant the superior was from the scene of the crimes, the more evidence which may be necessary to prove that he had actual knowledge of them. On the other hand, if the crimes were committed next to the superior’s duty-station this may be an important *indicium* that the superior had knowledge of the crimes, and even more so if the crimes were repeatedly committed.¹⁵⁵ Additionally, the fact that a military commander “will most probably” be part of an organised structure with reporting and monitoring systems has been found to facilitate proof of actual knowledge.¹⁵⁶

(ii) “Had Reason to know”

¹⁵¹ *Čelebići* Appeal Judgement, para. 239.

¹⁵² *Čelebići* Appeal Judgement, paras 223 and 241.

¹⁵³ *Čelebići* Trial Judgement, para. 386.

¹⁵⁴ *Čelebići* Trial Judgement, para. 386, citing United Nations Commission of Experts Report, para. 58. *See also Kordić and Čerkez* Trial Judgement, para. 427 and *Blaškić* Trial Judgement, para. 307.

¹⁵⁵ *Aleksovski* Trial Judgement, para. 80.

¹⁵⁶ *Prosecutor v. Mladen Naletilić (a.k.a. “Tuta”), Vinko Martinović (a.k.a. “Štela”)*, Case No. IT-98-34-T, Trial Judgement, 31 Mar ’03 (“Naletilić Trial Judgement”), para. 73. *See also Kordić and Čerkez* Trial Judgement, para. 428.

67. A commander will be considered to have “had reason to know” only if information was available to him which would have put him on notice of offences committed by his subordinates,¹⁵⁷ or about to be committed. The Appeals Chamber in *Čelebići*, held that:

The phrase, “had reason to know”, is not as clear in meaning as that of “had information enabling them to conclude”, although it may be taken as effectively having a similar meaning. The latter standard is more explicit, and its rationale is plain: failure to conclude, or conduct additional inquiry, in spite of alarming information constitutes knowledge of subordinate offences. Failure to act when required to act with such knowledge is the basis for attributing liability in this category of case.¹⁵⁸

68. The Appeals Chamber in *Čelebići* held that even general information in the possession of the commander which would put him on notice of possible unlawful acts by his subordinates would be sufficient.¹⁵⁹ This information does not need to provide specific information about unlawful acts committed or about to be committed; if a military commander, for example, has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, he may be considered as having the requisite knowledge.¹⁶⁰ The Appeals Chamber also made reference to the Commentary to Additional Protocol I, which refers to “reports addressed to the superior, [...] the tactical situation, the level of training and instruction of subordinate officers and their troops, and their *character traits*” as potentially constituting the information referred to in Article 86(2) of Additional Protocol I.¹⁶¹ A superior may be regarded as having “reason to know” if he is in possession of sufficient information to be on notice of the likelihood of illegal acts by his subordinates, that is, if the information available is sufficient to justify further inquiry.¹⁶² However, the information in fact available to him need not be such that, by itself, it was sufficient to compel the conclusion of the existence of such crimes.¹⁶³ Thus a commander’s knowledge of, for example, the criminal reputation of his subordinates may be sufficient to meet the *mens rea* standard required by Article 7(3) of the Statute if it amounted to information which would put him on notice of the “present and real risk” of offences within the jurisdiction of the Tribunal.¹⁶⁴

¹⁵⁷ *Blaškić* Appeal Judgement, para. 62, citing *Čelebići* Appeal Judgement, para. 241.

¹⁵⁸ *Čelebići* Appeal Judgement, para. 232.

¹⁵⁹ *Čelebići* Appeal Judgement, para. 238.

¹⁶⁰ *Čelebići* Appeal Judgement, para. 238.

¹⁶¹ *Čelebići* Appeal Judgement, para. 238 (emphasis added), citing ICRC Commentary to the Additional Protocols, p. 1014, para. 3545. The factors listed in the United Nations Commission of Experts Report mentioned above have also been considered to be amongst those allowing inferences to be drawn concerning notice to the commander, although these factors are usually used to prove actual knowledge, *Kordić and Čerkez* Trial Judgement, para. 437. *See supra* para. 66.

¹⁶² *Kordić and Čerkez* Trial Judgement, para. 437.

¹⁶³ *Čelebići* Trial Judgement, para. 393.

¹⁶⁴ Prosecutor v. *Radoslav Brdanin*, Case No. IT-99-36-T, Judgement, 1 September 2004 (“*Brdanin* Trial Judgement”) para. 278, referring to *Čelebići* Appeal Judgement, paras 223 and 241. With regard to the criminal reputation of troops, *see also* the Israeli Commission of Inquiry into the Sabra and Shatilla Cases, which, when examining the responsibility of the Chief of Staff of the Israel Defence Forces, held that his knowledge of the

69. A superior is not liable for failing to acquire information in the first place.¹⁶⁵ The Appeals Chamber has held that knowledge cannot be presumed if a person fails in his *duty* to obtain the relevant information of a crime, but it may be presumed where a superior had the *means* to obtain the relevant information and deliberately refrained from doing so.¹⁶⁶ Furthermore, a commander is not permitted to remain “wilfully blind” of the acts of his subordinates.¹⁶⁷

70. The Trial Chamber notes that an assessment of the mental element required by Article 7(3) of the Statute should be conducted in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.¹⁶⁸ This is a factual assessment to be made on the basis of the evidence presented to the Trial Chamber.

71. In conclusion, the Trial Chamber must be satisfied that, pursuant to Article 7(3) of the Statute, the accused either “knew” or “had reason to know”. In this respect, the Trial Chamber notes that the Appeals Chamber has held that criminal negligence is not a basis of liability in the context of command responsibility.¹⁶⁹

feelings of hatred of the particular forces involved towards the Palestinians did not justify the conclusion that the entry of those forces into the camps posed no danger (*Blaškić* Trial Chamber, para. 331, citing Final Report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut, February 7, 1983 (authorised translation), reproduced in 22 *International Legal Materials* 473-520 (1983)). It stated that:

[t]he absence of a warning from experts cannot serve as an explanation for ignoring the danger of a massacre. The Chief of Staff should have known and foreseen – by virtue of common knowledge, as well as the special information at his disposal – that there was a possibility of harm to the population in the camps at the hands of the Phalangists. Even if the experts did not fulfil their obligation, this does not absolve the Chief of Staff of responsibility.

The Trial Chamber also notes the recent finding of the Trial Chamber in *Strugar* which considered that it is not sufficient that the information known to the commander at the time of the offence would have indicated the possibility that such offences *might* occur, but it is required that the information indicated that such crimes *would* occur, *Strugar* Trial Judgement, paras 417-419, 420. The Appeals Chamber in *Krnjelac*, having examined the case-law, found that with regard to a specific offence, the information available to the superior need not contain specific details on the unlawful acts which have been or are about to be committed. It may not, however, be inferred from the case-law that, where one offence has a material element in common with another which contains an additional element not present in the first, it would suffice for the commander to have alarming information regarding the first offence in order to be held responsible for failing to prevent or punish the second. *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 Sept '03. (“*Krnjelac* Appeal Judgement”), para. 155. The Appeals Chamber mentioned the example of offences of cruel treatment and torture where torture subsumes the lesser offence of cruel treatment, *ibid.*, para. 155.

¹⁶⁵ *Čelebići* Appeal Judgement, para. 226; *Blaškić* Appeals Judgement, para. 62.

¹⁶⁶ *Čelebići* Appeal Judgement, para. 226.

¹⁶⁷ The Trial Chamber in *Čelebići* held that (*Čelebići* Trial Judgement, para. 387):

a superior is not permitted to remain wilfully blind to the acts of his subordinates. There can be no doubt that a superior who simply ignores information within his actual possession compelling the conclusion that criminal offences are being committed, or are about to be committed, by his subordinates commits a most serious dereliction of duty for which he may be held criminally responsible under the doctrine of superior responsibility.

¹⁶⁸ *Čelebići* Appeal Judgement, para. 239.

¹⁶⁹ *Blaškić* Appeal Judgement, para. 63, citing *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Judgement, 3 July '02, para. 34-35.

(c) Failure to Prevent or Punish

72. Article 7(3) contains two distinct legal obligations: to prevent the commission of the offence and to punish the perpetrators thereof.¹⁷⁰ The duty to prevent arises when the commander acquires actual knowledge or has reasonable grounds to suspect that a crime is being or is about to be committed, while the duty to punish arises after the commission of the crime.¹⁷¹ A failure to take the necessary and reasonable measures to prevent an offence of which a superior knew or had reason to know cannot be cured simply by subsequently punishing the subordinate for the commission of the offence.¹⁷²

(i) Necessary and Reasonable Measures

73. The question of whether a superior has failed to take all necessary and reasonable measures to prevent the commission of an offence or to punish the perpetrators thereof is intrinsically connected to the question of that superior's effective control. A superior will be liable for a failure to take such measures that are "within his material possibility".¹⁷³ A superior has a duty to exercise the measures possible under the circumstances.¹⁷⁴ Therefore, the question as to whether a superior had explicit legal capacity to take such measures may be irrelevant under certain circumstances if it is proven that he had the material ability to act.¹⁷⁵

74. The determination of what constitutes "necessary and reasonable measures" to prevent the commission of crimes or to punish the perpetrators is not a matter of substantive law but of evidence.¹⁷⁶ These measures are such that can be taken within the material ability of a commander

¹⁷⁰ *Blaškić* Appeal Judgement, para. 83.

¹⁷¹ *Blaškić* Appeal Judgement, para. 83; *Kordić and Čerkez* Trial Judgement, paras 445-446.

¹⁷² *Blaškić* Trial Judgement, para. 336. The *Strugar* Trial Chamber held that (*Strugar* Trial Judgement, para. 373):

[...] if a superior has knowledge or has reason to know that a crime is being or is about to be committed he has a duty to take necessary and reasonable measures to prevent the crime from happening and is not entitled to wait and punish afterwards.

¹⁷³ *Čelebići* Trial Judgement, para. 395.

¹⁷⁴ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement"), para. 95. The Trial Chamber in *Čelebići* stated that "lack of formal legal competence on the part of the commander will not necessarily preclude his criminal responsibility", *Čelebići* Trial Judgement, para. 395.

¹⁷⁵ *Čelebići* Trial Judgement, para. 395 (footnotes omitted). See also *Kordić and Čerkez* Trial Judgement, para. 443.

¹⁷⁶ *Blaškić* Appeal Judgement, para. 72. In this respect the *Čelebići* Trial Chamber stated that (*Čelebići* Trial Judgement, para. 394):

It is the view of the Trial Chamber that any evaluation of the action taken by a superior to determine whether this duty has been met is so inextricably linked to the facts of each particular situation that any attempt to formulate a general standard in abstracto would not be meaningful.

as evidenced by the degree of effective control he wielded over his subordinates.¹⁷⁷ It is well established these measures may “vary from case to case”.¹⁷⁸ When determining whether necessary and reasonable measures have been taken, the relevant factors to be considered include: whether specific orders prohibiting or stopping the criminal activities were issued, what measures to secure the implementation of these orders were taken, what other measures were taken to ensure that the unlawful acts were interrupted and whether these measures were reasonably sufficient in the specific circumstances, and, after the commission of the crime, what steps were taken to secure an adequate investigation and to bring the perpetrators to justice.¹⁷⁹

(ii) Causation

75. In relation to the issue of whether the nexus of causation exists in the concept of command responsibility, the Trial Chamber notes that the *Čelebići* Trial Chamber held:

Notwithstanding the central place assumed by the principle of causation in criminal law, causation has not traditionally been postulated as a *conditio sine qua non* for the imposition of criminal liability on superiors for their failure to prevent or punish offences committed by their subordinates. Accordingly, the Trial Chamber has found no support for the existence of a requirement of proof of causation as a separate element of superior responsibility, either in the existing body of case law, the formulation of the principle in existing treaty law, or, with one exception, in the abundant literature on this subject.¹⁸⁰

This is not to say that, conceptually, the principle of causality is without application to the doctrine of command responsibility insofar as it relates to the responsibility of superiors for their failure to prevent the crimes of their subordinates. In fact, a recognition of a necessary causal nexus may be considered to be inherent in the requirement of crimes committed by subordinates and the superior’s failure to take the measures within his powers to prevent them. In this situation, the superior may be considered to be causally linked to the offences, in that, but for his failure to fulfil his duty to act, the acts of his subordinates would not have been committed.¹⁸¹

76. The *Čelebići* Trial Chamber concluded that the very existence of the principle of superior responsibility for failure to punish, recognised under Article 7(3) and in customary law, demonstrates the absence of a requirement of causality as a separate element of the doctrine of superior responsibility.¹⁸² The *Kordić and Čerkez* Trial Chamber also endorsed this view.¹⁸³

¹⁷⁷ *Blaškić* Appeal Judgement, para. 72. It is a commander’s degree of effective control, his material ability, that may guide a Trial Chamber in determining whether he reasonably took the measures required either to prevent the commission of a crime or to punish the perpetrator thereof. See *Blaškić* Trial Judgement, para. 335.

¹⁷⁸ *Blaškić* Appeal Judgement, para. 72, referring to *Aleksovski* Appeal Judgement, paras 73-74; and *Čelebići* Appeal Judgement, para. 206.

¹⁷⁹ *Strugar* Trial Judgement, para. 378.

¹⁸⁰ *Čelebići* Trial Judgement, para. 398. The one authority cited by the Defence in the *Čelebići* case was M. Cherif Bassiouni, in *The Law of the International Criminal Tribunal for the Former Yugoslavia*, Transnational Publisher, 1996, pp. 350-351, where the author suggests the existence of causation as “the essential element” in cases of command responsibility.

¹⁸¹ *Čelebići* Trial Judgement, para. 399.

¹⁸² *Čelebići* Trial Judgement, para. 400.

¹⁸³ *Kordić and Čerkez* Trial Judgement, para. 445.

77. The Appeals Chamber in *Blaškić* stated that it was “not persuaded by [the argument] that the existence of causality between a commander’s failure to prevent subordinates’ crimes and the occurrence of these crimes, is an element of command responsibility that requires proof by the Prosecution in all circumstances of a case”.¹⁸⁴

78. The Trial Chamber further notes that the nature of command responsibility itself, as a *sui generis* form of liability, which is distinct from the modes of individual responsibility set out in Article 7(1), does not require a causal link. Command responsibility is responsibility for omission, which is culpable due to the duty imposed by international law upon a commander. If a causal link were required this would change the basis of command responsibility for failure to prevent or punish to the extent that it would practically require involvement on the part of the commander in the crime his subordinates committed, thus altering the very nature of the liability imposed under Article 7(3).

(iii) Duty to Prevent

79. According to the jurisprudence of the Tribunal, the duty to prevent should be understood as resting on a superior at any stage before the commission of a subordinate crime if he acquires knowledge that such a crime is being prepared or planned, or has reason to know thereof.¹⁸⁵

80. The duty to prevent may be seen to include both a “general obligation” and a “specific obligation” to prevent crimes within the jurisdiction of the Tribunal. The Trial Chamber notes, however, that only the “specific obligation” to prevent triggers criminal responsibility as provided for in Article 7(3) of the Statute.

a. General obligation

81. The existence of a general obligation to prevent the commission of crimes stems from the duty of a commander, arising from his position of effective control, which places him in the best position to prevent serious violations of international humanitarian law.¹⁸⁶ This obligation can be seen to arise from the importance which international humanitarian law places on the prevention of violations.¹⁸⁷

¹⁸⁴ *Blaškić* Appeal Judgement, para. 77.

¹⁸⁵ *Kordić and Čerkez* Trial Judgement, para. 447.

¹⁸⁶ *See supra* para. 39.

¹⁸⁷ During the third session of the Committee I at the Geneva Conference, the Egyptian delegate (Mr. Abi-Saab) stated that his government always regarded “prevention as the most potent guarantee” of humanitarian law, but that repression had become necessary as a remedial action. *See* Official Records, Vol. IX, printed in Bern, 1978, p. 18, para. 14.

82. In the post World War II jurisprudence, both the *Hostage* and *High Command* cases considered that there was a positive duty on commanders to maintain order and protect the civilian population within their area of command.¹⁸⁸ Similarly, the *Toyoda* judgement explicitly recognised that superiors have “[a] *duty to control*, to take necessary steps to prevent commission [...] of atrocities, and to punish offenders”.¹⁸⁹

83. The codification of the concept of command responsibility in Article 87 of Additional Protocol I also indicates the existence of a prior preventative duty. It imposes a duty on commanders to “ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.”¹⁹⁰ The ICRC Commentary to Article 87 paragraph 3, in examining the issue of the competing needs of respect for the Conventions and the commander’s need to focus on combat, states:

first, the preventive stage, which consists of instructing members of the armed forces and inculcating habits and reflexes which are reconcilable with the requirements of the Conventions, does not take place during combat, but before -- even before war has broken out. Secondly it is appropriate to point out that orders are not only given during combat, but mostly beforehand. All orders given before combat should always and at every level include a reminder of the provisions of the Conventions that are relevant in the particular situation.¹⁹¹

84. There also appears to be a requirement that a commander ensure order and exercise control over troops, which includes, for example, a need to be aware of the condition of troops, and to

¹⁸⁸ The *Hostage* case held Field Marshal List had a positive obligation to maintain the protection of all persons within his territorial jurisdiction whether or not he had tactical command over all of the forces within that geographical area, *ibid.*, p. 1230 and 1272. The subsequent *High Command* case found that that (*ibid.*, p. 547):

One of the functions of an occupational commander endowed with executive power was to maintain order and protect the civilian population against illegal acts. In the absence of any official directives limiting his executive powers as to these illegal acts within his area, he had the right and duty to take action for their suppression.

Similarly, the *Tokyo Judgement* imposed a positive duty on those responsible for prisoners of war to ensure a system was in place to prevent their ill-treatment, *ibid.*, pp. 48, 442 - 48, 444. Similarly, a United States Military Commission found that General Yamashita had failed in a duty to control the actions of his troops during the so-called “rape of Manila”; this was despite evidence that in fact he did not have *de facto* control of his troops and this finding was upheld on appeal to the US Supreme Court, *In Re Yamashita*, 327 US 1, p. 14. However, it may be argued that under the actual state of international humanitarian law the *Yamashita* standard would not be the appropriate standard to be followed since it appears from the circumstances of the case that he had no effective control over his troops and that he did not have knowledge of their crimes, therefore in the current state of international humanitarian law this would be considered as strict liability.

¹⁸⁹ See *Toyoda* case, pp. 5005-5006, (emphasis added).

¹⁹⁰ Additional Protocol I, Article 87, para. 2; *Čelebići* Trial Judgement, para. 771.

¹⁹¹ ICRC Commentary to the Additional Protocols, p. 1023, para. 3563. The ICRC Commentary notes that this duty varies for each level of command, and by way of example, may imply that (*ibid.*, p. 1022, paras 3560-3561):

a lieutenant must mark a protected place which he discovers in the course of his advance, a company commander must ensure that an attack is interrupted when he finds that the objective under attack is no longer a military objective, and a regimental commander must select objectives in such a way as to avoid indiscriminate attacks.

impose discipline.¹⁹² As noted above, the ICRC Commentary to Article 87 of Additional Protocol I states that a commander is required to exercise discipline over his troops to a sufficient degree.¹⁹³

85. The ICRC Commentary further states that it is because military commanders have the means for ensuring respect for the rules of the Conventions that they have the authority “and more than anyone else they can prevent breaches by creating the appropriate frame of mind, ensuring the rational use of the means of combat and by maintaining discipline.”¹⁹⁴ The Commentary to Article 87, paragraph 2 notes the need for commanders to ensure proper training of their troops, considering that account should be taken of the situation or the morale of the troops and, for example, of *the probable presence of civilians* in the neighbourhood of the military objective and the conduct to be observed towards them.¹⁹⁵ It continues “[i]t is in fact 'in order to prevent and suppress breaches' that military commanders are responsible for such instruction and with the duty to supervise it.”¹⁹⁶

86. It transpires from the jurisprudence of the Tribunal that some prior preventative measures may be required of a superior. The Trial Chamber in the *Čelebići* case found that: “an important gap in any preventive efforts made by Mr. Mucić is that he as commander never gave any instructions to the guards as to how to treat the detainees.”¹⁹⁷ The Trial Chamber in *Kvočka* found that: “[t]here was certainly a duty to train and control the guards in the camp, and to prevent and punish criminal conduct.”¹⁹⁸ Similarly, the Trial Chamber in the *Strugar* case found that “[i]t remains relevant [...] that nothing had been done by the Accused before the attack [...] commenced to ensure that those planning, commanding and leading the attack [...] were reminded of the restraints on shelling the Old Town [of Dubrovnik], or to reinforce existing prohibition orders.”¹⁹⁹

87. The Trial Chamber notes that it is well established that international humanitarian law intends to bar not only actual breaches of its norms, but aims also at preventing its potential breaches.²⁰⁰ As noted above, international humanitarian law entrusts commanders with a role of

¹⁹² In examining the knowledge element of Article 86, the ICRC Commentary to the Additional Protocols notes that on the basis of post World War II jurisprudence a superior cannot claim to be ignorant about the level of training and instruction of subordinate officers and their troops, and their character traits and that “examples would be information on lack of any instruction for the troops on the Geneva Conventions and the Protocol”, this may include a preventative duty which attaches prior to knowledge that an offence is about to be committed, p. 1014, para. 3545.

¹⁹³ ICRC Commentary to the Additional Protocols, p. 1018, para. 3550.

¹⁹⁴ *Ibid.*, p. 1022, para. 3560.

¹⁹⁵ *Ibid.*, p. 1021, para. 3558 (emphasis added).

¹⁹⁶ *Ibid.*

¹⁹⁷ *Čelebići* Trial Judgement, para. 773.

¹⁹⁸ *Kvočka* Trial Judgement, para. 412.

¹⁹⁹ *Strugar* Trial Judgement, para. 421.

²⁰⁰ See for example *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 Dec 1998 (“*Furundžija* Trial Judgement”), para. 148 (referring to *Soering v. United Kingdom*, Judgement of 7 July 1989, Eur. Ct. H.R., Series A, No.161, para. 90):

guarantors of laws dealing with humanitarian protection and war crimes, and for this reason they are placed in a position of control over the acts of their subordinates, and it is this position which generates a responsibility for failure to act. It is a natural element of the *preventative* constituent of command responsibility that a commander must make efforts to ensure that his troops are properly informed of their responsibilities in international law, and that they act in an orderly fashion.

88. While it is evident that no criminal liability may attach to the commander for failure in this duty *per se*, it may be an element to be taken into consideration when examining the factual circumstances of the case.²⁰¹ However, the adherence to this general obligation does not suffice by itself to avoid the commanders criminal liability in case he fails to take the necessary appropriate measure under his specific obligation.

b. Specific Obligation

89. As noted above, what the duty to prevent entails in a particular case will depend on the superior's material ability to intervene in a specific situation. In establishing individual responsibility of superiors military tribunals set up in the aftermath of World War II have considered factors such as the superior's failure to secure reports that military actions have been carried out in accordance with international law,²⁰² the failure to issue orders aiming at bringing the relevant practices into accord with the rules of war,²⁰³ the failure to take disciplinary measures to

States are bound to put in place all those measures that may pre-empt the perpetration of torture. As was authoritatively held by the European Court of Human Rights in *Soering*, international law intends to bar not only actual breaches but also potential breaches of the prohibition against torture (as well as any inhuman and degrading treatment). It follows that international rules prohibit not only torture but also (i) the failure to adopt the national measures necessary for implementing the prohibition and (ii) the maintenance in force or passage of laws which are contrary to the prohibition.

²⁰¹ For example, the Trial Chamber in *Strugar* found that a failure on the part of the accused not to give a clarification on an order for attack was not sufficient to give rise to liability under Article 7(3), but that any such clarification would have been merely by way of wise precaution, however, it noted that "it remains relevant, however, when evaluating the events that followed, that no such precaution was taken", *Strugar* Trial Judgement, para. 420.

²⁰² *Hostage* case, p. 1290. The defendant Rendulic was held responsible for acts of his subordinates for reprisals against the population, in the light of, *inter alia*, the fact that he made no attempt to secure additional information (after receiving reports indicating that crimes have been committed). Similarly, in holding the defendant Dehner responsible, the military tribunal considered the fact that the defendant made no effort to require reports showing that hostages and reprisal prisoners were shot in accordance with international law, *ibid.* p. 1271. *See also* p. 1298.

²⁰³ *Hostage* case, p. 1311. With respect to the responsibility of the defendant Lanz for reprisal carried out by his subordinates the military tribunal held (*ibid.*):

[t]his defendant, with full knowledge of what was going on, did absolutely nothing about it. Nowhere an order appears which has for its purpose the bringing of the hostage and reprisal practice within the rules of war (...). As commander of the XXII Corps it was his duty to act and when he failed to do so and permitted these inhumane and unlawful killings to continue, he is criminally responsible.

prevent the commission of atrocities by the troops under their command,²⁰⁴ the failure to protest against or to criticise criminal action,²⁰⁵ and the failure to insist before a superior authority that immediate action be taken.²⁰⁶ The Tokyo Trial held that a superior's duty may not be discharged by the issuance of routine orders and that more active steps may be required.²⁰⁷

90. From the wording of Article 7(3) it is clear that the preventative element of the duty to prevent attaches where the subordinate "was *about* to commit such acts", but before the actual offence has been committed. This interpretation is supported by the ICRC Commentary to Article 86 of Additional Protocol I which notes that paragraph 1 is a "general obligation to *repress or suppress* breaches resulting from a failure to act",²⁰⁸ the use of the term 'repress' in Article 86(1) of Additional Protocol I indicates that the duty only attaches where the subordinate is on the point of committing an offence and from the moment of knowledge on the part of the superior.²⁰⁹ As the Trial Chamber in *Strugar* held:

an accused cannot avoid the intended reach of the provision by doing nothing, on the basis that what he knows does not make it entirely certain that his forces were actually about to commit offences, when the information he possesses gives rise to a clear prospect that his forces were about to commit an offence. In such circumstances the accused must at least investigate, i.e. take steps *inter alia* to determine whether in truth offences are about to be committed, or indeed by that stage have been committed or are being committed.²¹⁰

(iv) Duty to Punish

²⁰⁴ The *Tokyo Judgement*, pp. 49,809. The *Tokyo Judgement* held with respect to the defendant Kimura that "[h]e took no disciplinary measures or other steps to prevent the commission of atrocities by the troops under his command", *ibid.*

²⁰⁵ *High Command* case, p. 623. In finding the defendant Hans von Salmuth responsible, the military tribunal held *inter alia* that "it appears that in none of the documents or the testimony herein that the defendant in anyway *protested against or criticized* the action of the SD or requested their removal or punishment", *ibid.* (emphasis added). Similarly, in the *Hostage* case the military tribunal found the defendant Wilhelm List responsible *inter alia* in the light of the fact that "[n]ot once did he condemn such acts as unlawful. Not once did he call to account those responsible for these inhumane and barbarous acts", *ibid.*, p. 1272.

²⁰⁶ The *Tokyo Judgement* p. 49, 791. The *Tokyo Judgement* found that the defendant Hirota (*ibid.*):

was derelict in his duty in not insisting before the Cabinet that immediate action be taken to put an end to the atrocities, failing any other action open to him to bring about the same result. He was content to rely on assurances which he knew were not being implemented.

²⁰⁷ In particular, the *Tokyo Judgement* found that (*ibid.*, p. 49, 80):

The duty of an Army commander in such circumstances is not discharged by the mere issue of routine orders [...]. His duty is to take such steps and issue such orders as will prevent thereafter the commission of war crimes and to satisfy himself that such orders are being carried out.

²⁰⁸ ICRC Commentary to the Additional Protocols, p. 1007, para. 3528 (emphasis added).

²⁰⁹ ICRC Commentary to the Additional Protocols states that the "prevent or repress" element of paragraph 2 of Article 86 "deals with the central purpose of this paragraph: the superior who is responsible and who is aware of the facts must act to prevent or repress the breach", ICRC Commentary to the Additional Protocols, p. 1015, para. 3547 (emphasis added). Article 86 does not refer to punishment at all, this arises in Article 87. The ICRC Commentary to Article 86(2) continues "the present provision merely poses the principle of the indictment of superiors who have *tolerated breaches* of the law of armed conflict", *ibid.* (emphasis added).

²¹⁰ *Strugar* Trial Judgement, para. 416.

a. Failure to Punish in International Humanitarian Law

91. With regard to the question of whether failure to punish is a separate form of liability in international humanitarian law, some post World War II cases held commanders responsible for a failure in their duty to punish the crimes of their subordinates. It must be noted, however, that in these cases the duty to punish was in general, linked to the duty of a commander to prevent the commission of crimes, as opposed to being a separate duty.²¹¹

92. In the codification of the concept of command responsibility in Article 86 of Additional Protocol I, the phrase “prevent or repress” the crimes of subordinates is used. In examining this element of Article 86(2) the ICRC Commentary on Additional Protocols notes that “the clause requires both preventative and repressive action”. It continues by stating that: “it reasonably restricts the obligation upon superiors to “feasible” measures, since it is not always possible to prevent a breach *or punish* the perpetrators”.²¹² The ILC Commentary also considers the term “repress” to include the duty to punish an offender.²¹³ The duty to punish as a form of liability separate from the duty to prevent has also been reflected in the more recent developments of the concept of command responsibility, that is, in the Statutes of the International Tribunals, and in the Statute of the ICC.

93. With regard to the jurisprudence of the Tribunal, the Appeals Chamber’s in *Blaškić* held that

it is illogical to argue both that “a superior’s responsibility for the failure to punish is construed as a sub-category of his liability for failing to prevent the commission of unlawful acts,” and that “failure to punish only led to the imposition of criminal responsibility if it resulted in a failure to prevent the commission of future crimes.” The failure to punish and failure to prevent involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates.²¹⁴

²¹¹ The *Hostage* case considered that a commander had a duty both to prevent and punish the crimes of his subordinates. The Court in that case stated that: “The primary responsibility for the prevention and punishment of crime lies with the commanding general; a responsibility from which he cannot escape by denying his authority over the perpetrators.” The *Hostage* case, p. 1272. It is also of note that defendant List was found guilty of murder, and not of any different offence of dereliction of his duty as a commander, *ibid.*, p. 1274. That a commander was responsible for failure to punish can also be seen in the *Toyoda* judgement, which explicitly recognised that superiors have “[a] duty to control his troops, to take necessary steps to prevent commission [...] of atrocities, and to punish offenders”, *ibid.*, pp. 5005-5006. However, as noted above, the charge in the *Toyoda* trial was one of dereliction of duty. The *Tokyo Judgement*, in convicting former Prime Minister Tojo stated that “he took no adequate steps to punish offenders and to prevent the commission of similar offences in the future”, *ibid.*, pp. 49, 845. In convicting defendant Kimura, the Judgement stated “he took no disciplinary measures or other steps to prevent the commission of atrocities by the troops under his command”, *ibid.*, p. 49, 809.

²¹² ICRC Commentary to the Additional Protocols, p. 1015, para. 3548 (emphasis added).

²¹³ ILC Commentary, p. 37.

²¹⁴ *Blaškić* Appeal Judgement, para. 83.

The Appeals Chamber concluded that the responsibility of a commander for his failure to punish was recognised in customary law prior to the commission of the crimes relevant to that indictment.²¹⁵

94. The duty to punish is a separate form of liability, distinct from the failure to prevent it has in fact developed from the importance attached to a commander's duty to take preventative actions.

95. The argument that a failure to punish a crime is a tacit acceptance of its commission is not without merit. The Trial Chamber recognises that a commander, as the person in possession of effective control over his subordinates is entrusted by international humanitarian law with the obligation to ensure respect of its provisions. The position of the commander exercising authority over his subordinates dictates on his part to take necessary and reasonable measures for the punishment of serious violations of international humanitarian law and a failure to act in this respect is considered so grave that international law imputes upon him responsibility for those crimes. He has, in the words of the ICRC Commentary to the Additional Protocol "tolerated breaches of the law of armed conflict".²¹⁶

96. Finally, the Trial Chamber considers that punishment is an inherent part of prevention of future crimes. It is insufficient for a commander to issue preventative orders or ensure systems are in place for the proper treatment of civilians or prisoners of war if subsequent breaches which may occur are not punished. This failure to punish on the part of a commander can only be seen by the troops to whom the preventative orders are issued as an implicit acceptance that such orders are not binding.

b. Prerequisites of the Duty to Punish

²¹⁵ *Blaškić* Appeal Judgement, para. 85. This conclusion is based on an analysis of some post-World War II cases, the relevant provisions of Additional Protocol I and the "Regulations concerning the Application of International Law to the Armed Forces of SFRY" (1998) referred to in the *Čelebići* Trial Judgement. The question as to the existence of failure to punish as a separate mode of liability distinct from failure to prevent was considered by the Trial Chamber in its Decision in *Blaškić. Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-PT, Decision on the Defence Motion to Strike Portions of the Amended Indictment Alleging "Failure to Punish" Liability, Case No. IT-95-14-PT, 04 Apr 1997 ("*Blaškić* Decision"). The Trial Chamber determined that failure to punish was a distinct form of responsibility. This finding was later followed in *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-PT, Decision on the Joint Defence Motion to Dismiss for Lack of Jurisdiction of the amended Indictment alleging "Failure to Punish" Liability, 2 Mar 1999 ("*Kordić and Čerkez* Decision on failure to punish"), paras 9-16. It should be noted, however, that the Trial Chamber in *Blaškić*, in dismissing the argument that the words "or punish the perpetrators thereof" should be stricken from the indictment, stated that; "[...] the indictment is not restricted to a narrow charge of failing to punish. It covers rather, and essentially, the failure by the accused of preventing his subordinates from committing the alleged crimes in addition to having instigated, planned and ordered them himself", *Blaškić* Decision, para. 16.

²¹⁶ ICRC Commentary to the Additional Protocols, p. 1015, para. 3547.

97. The duty to punish includes at least an obligation to investigate possible crimes or have the matter investigated, to establish the facts, and if the superior has no power to sanction, to report them to the competent authorities.²¹⁷

98. Military tribunals established after World War II interpreted the superiors' duty to punish as implying an obligation for the superior to conduct an effective investigation²¹⁸ and to take active steps to ensure that the perpetrators will be brought to justice.²¹⁹ Whether the superior has called for a report on the incident and the thoroughness of the investigation could also be relevant in this respect.²²⁰

99. Further guidance as to the duty to punish is provided by Article 87, paragraph 3 of Additional Protocol I, which requires a commander who is aware that his subordinates have committed a breach of the Geneva Conventions or the Protocol "where appropriate to initiate disciplinary or penal action" against them. The ICRC Commentary to Additional Protocol I suggests that this action may include informing their superior officers of the situation, "drawing up a report in the case of a breach, [...] proposing a sanction to a superior as disciplinary power, or – in the case of someone who holds such power himself – exercising it, within the limits of his

²¹⁷ *Kordić and Čerkez* Trial Judgement, para. 446.

²¹⁸ See the *Yamashita* case, Law Reports, p. 35 (emphasis added):

where murder and rape and vicious, revengeful actions are widespread offences and there is no effective attempt by a commander to discover and control the criminal acts, such commander may be held responsible, even criminally liable, for the lawless acts of his troops [...].

The *Tokyo Judgement* found that the defendant Shigemitsu "took *no adequate steps* to have the matter investigated [...] He should have pressed the matter, if necessary to the point of resigning, in order to quit himself of a responsibility which he suspected was not being discharged", *ibid.*, p. 49, 831 (emphasis added).

²¹⁹ *High Command* case, p. 623. When assessing Hans von Salmuth's responsibility for actions by his subordinates, the military tribunal considered the fact that the only punishment inflicted was a 20-day confinement sentence against a member of his own staff for unauthorised participation in this action, *ibid.* In the *Hostage* case, the military tribunal considered the defendant's commitment to conduct an adequate investigation and to bring the perpetrators to justice (*Hostage* case, p. 1309):

[t]he investigation was made, the battle report of the commanding officer was found to be false, and the action of the regimental commander found to be in excess of existing orders. Upon the discovery of these facts the defendant Felmy recommended that disciplinary action be taken against the officer in charge in consideration of the sacrifices of the regiment in the combat area at the time. The defendant testified that he never knew what punishment, if any was assessed against this guilty officer. He seems to have had no interest in bringing the guilty officer to justice.

²²⁰ The *Tokyo Judgement* found defendant Tojo responsible for not taking adequate steps "to punish the offenders and to prevent the commission of similar offences in the future. [...] He did not call for a report on the incident. [...] He made perfunctory inquires about the march but took no action. No one was punished." The *Tokyo Judgement* pp. 49, 846. See also *Strugar* Trial Judgement, para. 376 and jurisprudence cited therein. It is a matter of fact as to whether the efforts made by a commander to investigate crimes were sufficient to meet the standard of "necessary and reasonable measures" within the meaning of Article 7(3). See, e.g., *Blaškić* Trial Judgement, paras 488-495.

competence, and finally, remitting the case to the judicial authority where necessary with such factual evidence which is possible to find.”²²¹

100. The superior does not have to be the person who dispenses the punishment, but he must take an important step in the disciplinary process.²²² He has a duty to exercise all measures possible within the circumstances;²²³ lack of formal legal competence on the part of the commander will not necessarily preclude his criminal responsibility.²²⁴ The duty to punish includes at least an obligation to investigate possible crimes, to establish the facts, and if the superior has no power to sanction, to report them to the competent authorities.²²⁵



²²¹ ICRC Commentary to the Additional Protocols, p. 1023, para. 3562.

²²² *Kvočka* Trial Judgement, para. 316.

²²³ *Krnjelac* Trial Judgement, para. 95.

²²⁴ *Čelebići* Trial Judgement, para. 395.

²²⁵ *Kordić and Čerkez* Trial Judgement, para. 446.

IV. FACTUAL AND LEGAL FINDINGS

A. MILITARY AND CIVILIAN STRUCTURES

1. Army of the Republic of Bosnia and Herzegovina

101. What was later to become the ABiH²²⁶ initially consisted of more or less organised units as well as spontaneously created units, which were not part of any military structure.²²⁷ Under the leadership of Sefer Halilović, the supreme military commander, an attempt was made to transform the various units into a functioning organised army.²²⁸ The result was the Territorial Defence (“TO”), which was formally established on 8 April 1992²²⁹ and which turned into the ABiH on 12 April 1992.²³⁰ In the beginning of its existence, including during the Indictment period, the ABiH was multi-ethnic in character.²³¹ During this time, the ABiH was inadequately funded.²³² A system of ranks was only introduced in late 1993 or 1994.²³³

102. The ABiH gradually became more organised, although in September 1993 it was still not a fully-functional army.²³⁴ There were a number of persons commanding units who did not have any formal military training²³⁵ and the intention was therefore to appoint as commanders those who had military training or a background in the JNA.²³⁶ The evidence shows that there was distrust and even animosity between the commanders with a military background and those who lacked such a background.²³⁷

²²⁶ In B/C/S, *Oružanih Snaga Republika Bosna i Hercegovina*, abbreviated as OS R BiH.

²²⁷ Namik Džanković, 21 Mar '05, T. 62. There is evidence that the commanders of the 10th Mountain Brigade and the Deputy Commander of the 9th Motorised Brigade were selected by the members of those units, Vehbija Karić, Ex. 444, T. 19.

²²⁸ Namik Džanković, 21 Mar '05, T. 63.

²²⁹ Vahid Karavelić, 18 Apr '05, T. 137.

²³⁰ Salko Gušić, 04 Feb '05, T. 69; Jusuf Jašarević, 03 Mar '05, T. 13.

²³¹ Ivan Brigić, Ex. 453, 14 Mar '03, pp. 2-3, 18; Ex. 143, Decision on the organisational structure of the Ministry of Defence and the Army of the Republic of Bosnia and Herzegovina, 18 July 1993, which under III provides that “[t]he Main Staff consists of: [...] three Deputy Commanders (Muslim, Serb and Croat) [...]”. *See also* Mirko Pejanović, Ex. 456, 1 Mar '03, p. 3.

²³² Kemo Kapur, 16 Mar '05, T. 37.

²³³ Salko Gušić, 04 Feb '05, T. 25; Namik Džanković, 21 Mar '05, T. 90; Ex. 102, Decision on the restructuring of the Republic of Bosnia and Herzegovina Supreme Command Headquarters of the armed forces and the appointment of senior officers, 08 June 1993, which provides under VII that “[r]egulations pertaining to the introduction of ranks in the Army of the Republic of Bosnia and Herzegovina shall start to apply. Ranks shall be introduced gradually”. *See also* Erdin Arnautović, 104 Feb '05, T. 44.

²³⁴ Namik Džanković, 21 Mar '05, T. 63, who agreed with Defence counsel’s proposition that the ABiH “was still very much a work in progress.”

²³⁵ Witness F, 08 Mar '05, T. 65; Salko Gušić, 04 Feb '05, T. 69-70; Ramiz Delalić, 17 May '05, T. 13-14.

²³⁶ Ramiz Delalić, 17 May '05, T. 14.

²³⁷ Ramiz Delalić, 17 May '05, T. 15, testifying that:

most of the former JNA officers transferred to the BH Army immediately after the war broke out or up to two months after that. And there was a lot of animosity between them and the ordinary commanders because those who were the former JNA members actually took part in attacking

(a) Structure of the Main Staff of the ABiH

103. The Main Staff²³⁸ was the supreme command of the ABiH and it was headquartered in the Presidency building in Sarajevo.²³⁹ Sefer Halilović served as the supreme ABiH commander until 8 June 1993 and his title was Chief²⁴⁰ of the Main Staff of the ABiH.²⁴¹ On this date, the President of the Republic of Bosnia and Herzegovina, Alija Izetbegović, issued a decision “restructuring [...] the [...] supreme command headquarters of the armed forces” (“8 June 1993 decision”).²⁴² This decision provides:

The post of the Commander of the Main Staff of the Armed Forces of the Republic of Bosnia and Herzegovina shall be established.

The post of the Chief of the Main Staff of the Armed Forces of the Republic of Bosnia and Herzegovina shall be retained.²⁴³

The decision further “appointed” Rasim Delić to the post of Commander of the Main Staff and “appointed” Sefer Halilović as Chief of the Main Staff.²⁴⁴ In addition, the decision established two Deputy Commander positions to which Stjepan Šiber and Jovan Divjak were appointed.²⁴⁵

104. Approximately six weeks later, on 18 July 1993, President Alija Izetbegović issued a decision further restructuring the ABiH (“18 July decision”).²⁴⁶ According to this decision, during a

Sarajevo before they transferred to the BH Army. In addition to that, there was a lot of mistrust among the former JNA officers and the commanders who were ordinary people.

See also Erdin Arnautović, 15 Feb '05, T. 17, and further regarding Ramiz Delalić's opinions on former JNA officers, Kemo Kapur, 16 Mar '05, T. 34; Vahid Karavelić, 19 Apr '05, T. 44.

²³⁸ In B/C/S, *Glavni Štab Vrhovne Komande*, or GŠVK (*see, e.g.*, Ex. 122, Ex. 501, Ex. 502). The GŠVK was also referred to as *Štab Vrhovne Komande*, or ŠVK (*see, e.g.*, Ex. 109, Ex. 146, Ex. 377).

²³⁹ Selmo Cikotić, 24 Feb '05, T. 52; Jusuf Jašarević, 28 Feb '05, T. 4.

²⁴⁰ *Načelnik* in B/C/S. The Trial Chamber notes that the term *načelnik* was used in several ways within the ABiH and the MUP. For instance, in Ex. 388 the term is used to refer, on one occasion, to Sefer Halilović as Chief of the Supreme Command Staff and, on another occasion, to the Chief of Staff of the 6th Corps; in Ex. 143 the term refers to the Chief of the Main Staff as well as the Heads (“Chiefs”) of the various administrations and branches of the ABiH Main Staff (*see* in this respect Ex. 224, Ex. 228, Ex. 229, Ex. 232, Ex. 233, Ex. 237, Ex. 283 and Ex. 213, wherein Jusuf Jašarević, who was Chief of the Main Staff UB, is referred to as Chief/*Načelnik*, and Ex. 296, which Avdulah Kajević, who headed the Main Staff Administration for Organisation and Mobilisation, signed as Chief/*Načelnik*); in Ex. 154, Ex. 230 and Ex. 234 Nermin Eminović, who was Chief of the SVB in the 6th Corps, signed as *Načelnik*; in Ex. 492 Ramo Masleša, who headed the Mostar CSB, signed as Chief/*Načelnik* (*see also* Ex. 493 wherein Munir Alibabić of the Sarajevo CSB signs as *Načelnik Centra* or Chief of the Centre); in the intercepted conversation in Ex. 390, Vahid Karavelić asks the question “Well, where are you chief?” which has been translated using the word *načelnik*.

²⁴¹ Jusuf Jašarević, 28 Feb '05, T. 4, 50 and 04 Mar '05, T. 30; Ramiz Delalić, 17 May '05, T. 15; Witness D, 21 Feb '05, T. 42; Witness F, 09 Mar '05, T. 63; Ex. 144; Ex. 488; Ex. 473; Ex. 220; Ex. 471; Ex. 377; Ex. 243; Ex. 399; Ex. 219; Ex. 378.

²⁴² Ex. 102. *See also* Šefko Hodžić, 24 Mar '05, T. 22; Salko Gušić, 07 Feb '05, T. 63-64; Mirko Pejanović, Ex. 456, 1 Mar '03, p. 3-4.

²⁴³ Ex. 102, p. 1.

²⁴⁴ Ex. 102, p. 2.

²⁴⁵ Ex. 102, p. 2.

²⁴⁶ Ex. 143. The preamble of this decision provides that it was adopted “[p]ursuant to [...] the Decree Law on the Armed Forces of the Republic of Bosnia and Herzegovina [...], at the proposal of the Minister of Defence and the [RBiH] Armed Forces Main Staff Commander [...].”

state of war the Presidency of the Republic was the Supreme Command of the Armed Forces of the Republic.²⁴⁷ The decision provides that “The Republic of Bosnia and Herzegovina Army consists of the Main Staff and eight Corps.”²⁴⁸

(b) Further Evidence On the Position in the Main Staff Held by Sefer Halilović After 8 June 1993

105. The Indictment refers to the positions held by Sefer Halilović in the Main Staff before, during and after the period relevant to the Indictment in the following manner:

After July 1992, he functioned as the Chief of the General Staff of the Army of the Republic of Bosnia and Herzegovina (ABiH). On 18 August 1992 the Presidency formed five corps of the ABiH with Sefer Halilović as Chief of the Supreme Command Staff/ Chief of the Main Staff. On 8 June 1993 [...] Sefer Halilović retained the post of Chief of the Supreme Command Staff of the ABiH until November 1993. Between 18 July 1993 to November 1993 Sefer Halilović held the post of Deputy Commander of the Supreme Command Staff of the ABiH as well as Chief of the Supreme Command Staff.²⁴⁹

At a meeting on 21 to 22 August 1993 in Zenica [...the] Commander of the Supreme Command Staff, Rasim Delić, who was also present, agreed that an Inspection Team headed by his Deputy, Sefer Halilović who was then also Chief of the Supreme Command Staff, would go to Herzegovina [...].²⁵⁰

Sefer Halilović was Chief of the Supreme Command Staff, one of Rasim Delić’s deputies [...].²⁵¹

106. The Trial Chamber also notes that it appears to be the understanding of the Prosecution that the position held by Sefer Halilović within the structure of the Main Staff was that of ‘Chief of Staff of the Main Staff’: “[Sefer Halilović] continued to hold his former title of Chief of the Supreme Command Staff, but he was now the Chief of Staff of the Main Staff, as opposed to being the commander of the ABiH.”²⁵² In its Final Brief, the Defence accepted this submission.²⁵³

107. The Trial Chamber notes the ambiguity which exists in the evidence concerning Sefer Halilović’s position within the structure of the Main Staff following the 8 June and 18 July decisions. This ambiguity may in part be as a consequence of the ABiH not being a fully-functional army. Witnesses referred to Sefer Halilović’s position as being one of ‘chief of staff’.²⁵⁴ However, neither the 8 June decision nor the 18 July decision mentions a separate “staff” component of the

²⁴⁷ Ex. 143. I, referring to the Decree Law on the revision of Amendment LXXXIII of the Constitution of the Republic of Bosnia and Herzegovina, published in the Republic of Bosnia and Herzegovina Official Gazette, no. 9/92.

²⁴⁸ Ex. 143, III.1.

²⁴⁹ Indictment, para. 1.

²⁵⁰ Indictment, para. 3.

²⁵¹ Indictment, para. 36.

²⁵² Prosecution Final Brief, para. 67.

²⁵³ Defence Final Brief, para. 199.

²⁵⁴ See e.g., Salko Gušić, 07 Feb '05, T. 64; Witness D, 21 Feb '05, T. 58; Selmo Cikotić, 23 Feb '05, T. 6; Witness F, 08 Mar '05, T. 46; Nermin Eminović, 10 Mar '05, T. 67; Zakir Oković, 15 Mar '05, T. 55.

Main Staff or a position of “chief of staff”.²⁵⁵ The evidence shows that a Main Staff chief of staff would have been directly in charge of, for instance, the Intelligence Administration, however the 18 July decision plainly put this administration directly under the Commander of the Main Staff, Rasim Delić.²⁵⁶ Therefore, the Trial Chamber finds that after the 18 July decision the *de jure* position held by Sefer Halilović within the Main Staff was not one of chief of staff. The evidence is, however, unclear as to what Sefer Halilović’s position, *de jure* or *de facto*, was within the Supreme Command of the ABiH, the Main Staff.

108. Prior to the 8 June decision, the Main Staff, and therefore the ABiH, had been commanded by Sefer Halilović as Chief of the Main Staff. Importantly, the 8 June decision “established” the post of Commander of the Main Staff while ‘retaining’ the post of Chief of the Main Staff. This retention of the post of Chief of the Main Staff, while establishing the post of Commander, appears to be at odds with the fundamental principle of single authority in command, which was applied in

²⁵⁵ The position of chief of staff is a key post as far as planning, monitoring and control are concerned, Vahid Karavelić, 22 Apr ’05, T. 34. The term ‘control’ in this respect means (Vahid Karavelić, 22 Apr ’05, T. 34):

to have constant oversight of the combat operations [in order that the staff be able] to prepare any kind of decisions, guidelines, directives, in terms of what to do at that point in time, tomorrow, in the future, how to conduct [...] the combat operations. This is prepared by the staff of that command, together with the Chief of Staff, and it’s prepared for the commander of that unit or the commander of the Main Staff.

In other words, a chief of staff participates in coordination, planning and the other four parts of the control process but not in the command process unless he had been given specific authority to do so by his commander (Vahid Karavelić, 22 Apr ’05, T. 98). Thus, solely by virtue of his position a chief of staff does not have the authority to issue combat orders but can only do so if his commander authorises him (Vahid Karavelić, 22 Apr ’05, T. 33; *see also* Salko Gušić, 07 Feb ’05, T. 70-71). In situations when the commander authorises his deputy commander to command, orders by the deputy are signed *zastupa komandanta* which means that the deputy commander is acting on behalf of the commander (Selmo Cikotić, 24 Feb ’05, T. 2). In other words, a chief of staff was not “structurally speaking” in the line of command (Salko Gušić, 07 Feb ’05, T. 41). According to Dževad Tirak, the 6th Corps Chief of Staff, it was his responsibility to know the whereabouts of 6th Corps units (Dževad Tirak, 30 Mar ’05, T. 85). The chief of staff would have a duty or even an obligation to explain and clarify to subordinate units the meaning of orders issued by the commander to whom the chief of staff was subordinated (Vahid Karavelić, 22 Apr ’05, T. 34, testifying that “the orders [...] issued [...] are something that the Chief of Staff would understand the best, because it was the Chief of Staff who prepared that for the commander”; Selmo Cikotić testified that it is one of the important roles of a chief of staff to convey orders of the commander and explain them in detail to the units that will carry out the orders, Selmo Cikotić, 23 Feb ’05, T. 79-80). In order to do this, the chief of staff could issue an order, an instruction or the like, as required by the circumstances (Vahid Karavelić, 22 Apr ’05, T. 35). The chief of staff would have “full command only over the staff within his headquarters” (Vahid Karavelić, 22 Apr ’05, T. 36). In terms of the internal Main Staff chain of command, the 18 July decision provides that the several Main Staff administrations were “directly” linked to the Commander of the Main Staff and “indirectly linked” to the Chief of the Main Staff (Ex. 143, III.3. The only Main Staff organs that were “directly linked” to the Chief of the Main Staff were the Office of the Chief of the Main Staff, the Command Operations Centre, the Headquarters Administration and the Combat Arms Administration). Importantly, a chief of staff could not directly punish soldiers or units for violations of military discipline or law; he could, however, suggest to the commander to take disciplinary measures (Salko Gušić, 07 Feb ’05, T. 71-72). On the other hand, if the chief of staff had been given the authority to command then he could take disciplinary measures (Salko Gušić, 07 Feb ’05, T. 72).

²⁵⁶ Salko Gušić, 07 Feb ’05, T. 67-68, commenting on Ex. 143, III.3.

the ABiH.²⁵⁷ This principle ensures that there can only be one commander at any given level of the military hierarchy.²⁵⁸

109. The 18 July decision made the Chief of the Main Staff²⁵⁹ a Deputy Commander, thus increasing the number of Deputy Commanders to three, and specified that one Deputy Commander would be “Croat”, one “Muslim” and one “Serb”.²⁶⁰ According to the decision, the Deputy Commanders would “assume the duties of the Chief of the Main Staff on rotational basis”.²⁶¹ It appears, therefore, that this decision in practice removed Sefer Halilović from the post of Chief of the Main Staff and, thus, that he was the subject of a demotion. However, the evidence also shows that after the 18 July decision Sefer Halilović continued to sign documents as Chief of the Main Staff of the ABiH.²⁶²

²⁵⁷ Vahid Karavelić, 22 Apr '05, T. 152. The JNA textbook “Command and Control” from 1983 (Ex. 142, p. 28) provides that:

The principle of single authority in command and control implies an inalienable right of a commander to command and control a subordinated command and unit in keeping with the powers deriving from the competence ascribed to a specific level of command and control. This principle ensures that in the process of command and control there is only one superior who issues commands and to whom the others report about the execution of tasks. The commander's authority is stipulated by regulations. It is his right to make decisions, for which he is therefore solely responsible. In his work a commander relies on his aides, the staff and other command organs. The rights and obligations of these organs are stipulated by regulations, and they are responsible for their scope of work. A commander may delegate some of his duties and obligations on the chief of staff, his aides, a staff organ and subordinated commands, but he cannot delegate the responsibility for the situation in the unit and its use. The principle of single authority does not bar a commander from including a wider circle of associates into the decision-making process, or from hearing out their opinions and suggestions. In that way favourable conditions are created for a commander to reach best possible decisions, and for his associates to develop inventiveness and creativity.

Salko Gušić, the Commander of the 6th Corps, testified (Salko Gušić, 07 Feb '05, T. 55-56) that:

[Command and control] consists of the inviolable right of the commander to command and control subordinated units, ensuring the appearance of only one superior in command and control who commands. It is the right of the commander to make decisions, so he alone bears the responsibility for this. The commander can transfer some of his rights and obligations to the Chief of Staff, assistants, or subordinated commanders but he cannot transfer responsibility for the state and use of units. The command relationship is established by the principle of subordination in a military organisation. A command relationship is founded on the duty, right, and responsibility of superiors to make decisions and designate tasks and the duty, right, and responsibility of subordinates to carry out these tasks.

Salko Gušić further testified that the five functions of the concept of ‘command and control’ are planning, organisation, command, coordination and control, Salko Gušić, 07 Feb '05, T. 59. He also testified that ‘control’, or *rukovodjenje*, is more akin to direction or management than command. It means the control of personnel and certain services, for instance by giving guidelines. ‘Control’ does not imply issuing orders. ‘Command’, on the other hand, implies all five elements and means the issuing of tasks to subordinate units, Salko Gušić, 07 Feb '05, T. 60-61.

²⁵⁸ Jusuf Jašarević, 28 Feb '05, T. 24.

²⁵⁹ Referred to in the decision as “Načelnik Glavnog Štaba”.

²⁶⁰ Ex. 143, III.1.

²⁶¹ Ex. 143, III.2.

²⁶² In B/C/S, as *Načelnik Štaba*. See, e.g., Ex. 381, Ex. 138, Ex. 161 (signed both as “Načelnik GŠ VK” and Deputy Commander), Ex. 123 (signed as Ex. 161), Ex. 382, Ex. 122. In the following, when referring to exhibits, the Trial Chamber will therefore note the title in B/C/S with which Sefer Halilović signed documents.

110. The composition of the Main Staff was defined in the following manner by the 18 July decision; the Commander of the Main Staff and his Office, three Deputy Commanders, the Command Operations Centre with a Headquarters Administration, and several specialised administrations.²⁶³ The decision also defined the chain of command in the highest echelons of the ABiH as follows; the Main Staff Deputy Commanders, the chiefs of the various Main Staff administrations and branches, and the ABiH corps commanders were all “directly subordinate” to the Commander of the Main Staff, Rasim Delić.²⁶⁴ With particular regard to ABiH corps commanders, the decision stated that they were to “liaise with the Command Operations Centre and the Chief of the Main Staff on issues determined by the Main Staff Commander.”²⁶⁵

111. The Prosecution did not provide the Trial Chamber with conclusive evidence concerning the *de jure* or *de facto* position of Sefer Halilović within the structure of the Main Staff of the ABiH. The Trial Chamber therefore finds, while bearing in mind the Prosecution submission in its Final Brief that Sefer Halilović was chief of staff of the Main Staff, that the evidence does not give a clear picture of Sefer Halilović’s position within the structure of the Main Staff after the 18 July decision. The Prosecution alleges that:

²⁶³ Ex. 143, III.1. According to IV.1 the administrations were: Combat Arms Administration; Intelligence Administration; Airforce and Anti-aircraft Defence Administration; Personnel Administration; Armed Forces Organisation and Mobilisation Administration; Moral Guidance, Information, Propaganda and Religious Affairs Administration; Security Administration; Training, Education, Rules and Regulations Administration; Logistics Administration; Finance and Army Development Planning Administration; Legal Affairs Administration; and Navy Department.

²⁶⁴ Ex. 143, III.2.

²⁶⁵ Ex. 143, III.5. The B/C/S text of this provision reads (emphasis added):

Komandanti korpusa neposredno su potčinjeni komandantu Glavnog Štaba, a vezu ostvaruju i sa Operativnim centrom komandovanja i načelnikom Glavnog štaba, po pitanjima koja odredi komandanta Glavnog Štaba.

The English translation of this provision reads (emphasis added):

Corps commanders are directly subordinate to the Main Staff Commander. They shall liaise with the Command Operations Centre and the Chief of the Main Staff in issues determined by the Main Staff Command.

The Trial Chamber notes that there is a mistake in the B/C/S original as the word “komandanta” is grammatically incorrect. In order to mean “command”, as the English translation purports, it should have been “komanda” and in order to mean “commander”, it should have been “komandant”. Therefore, on 28 September ’05 the Trial Chamber requested *ex officio* the Tribunal’s Conference and Language Services Section to revise the translation of this provision. The revised translation is Ex. 500 and the revised translation of the provision reads:

Corps commanders are directly subordinate to the Main Staff Commander. They liaise with the Command Operations Centre and the Chief of the Main Staff on issues determined by the Main Staff /?Commander/.

The Trial Chamber finds that it is more logical that the decision’s drafter intended that it read “komandant”. This interpretation is supported not only by the fact that it is more likely that a mistake is made of one letter and not of three, but also by the principle of single authority in command, which applied in the ABiH, Jusuf Jašarević, 28 Feb ’05, T. 24 and 01 Mar ’05, T. 11; Vahid Karavelić, 22 Apr ’05, T. 152. The Trial Chamber therefore considers that the decision in this respect was intended to provide that Corps commanders would “liaise with the Command Operations Centre and the Chief of the Main Staff on issues determined by the Main Staff Commander.”

[a]t all times relevant to the charges in the indictment, by virtue of his position and authority as Commander of the Operation he had effective control over the units subordinated to him. These included the 9th Motorised Brigade, the 10th Mountain Brigade, the 2nd Independent Battalion and the Prozor Independent Battalion.²⁶⁶

As the Prosecution bases its charge of individual criminal responsibility of Sefer Halilović solely on his alleged position as “Commander of the [Neretva-93] Operation”,²⁶⁷ the Trial Chamber finds that it is not necessary to discuss further Sefer Halilović’s *de jure* or *de facto* position within the structure of the Main Staff. The Prosecution allegation that Sefer Halilović was the “Commander of the “Neretva-93 Operation” will be considered below.²⁶⁸

(c) The Military Security Service and the Main Staff Security Administration

112. Within the ABiH, the Military Security Service (“SVB”)²⁶⁹ was represented from the Main Staff level through the corps and brigade levels, down to the battalion level.²⁷⁰ The Main Staff Security Administration (“UB”)²⁷¹ was at the top of the SVB.²⁷² At the time relevant to the Indictment, the Chief of the UB of the Main Staff was Jusuf Jašarević.²⁷³

113. The SVB organs were responsible for “state security” and had three primary functions: counter-intelligence, staff security and the military police.²⁷⁴ With regard to their counter-intelligence function, the task of the SVB was to “create conditions for the fullest possible documentation of [...] war crimes and other criminal offences committed in the aggression against the Republic [...]”²⁷⁵ Jusuf Jašarević testified that while this provision “assumes that war crimes were committed against our own structures by the aggressor [he believed] however, that this can

²⁶⁶ Indictment, para. 38.

²⁶⁷ Indictment, para. 38; Prosecution Final Brief, para. 186. The Trial Chamber notes that in its Pre-trial Brief (paras 203, 207-208), the Prosecution did not contend that the Accused had any *de jure* command authority of the units used during the “Neretva-93 Operation” by virtue of being either “chief of the Supreme Command Staff” or “ABiH deputy commander”.

²⁶⁸ See *infra* Section IV.C.8-9.

²⁶⁹ In B/C/S, *Službe Vojne Bezbjednosti*.

²⁷⁰ Jusuf Jašarević, 28 Feb '05, T. 13-14.

²⁷¹ In B/C/S, *Uprava Bezbjednosti*, see, e.g., Ex. 224.

²⁷² Jusuf Jašarević, 02 Mar '05, T. 30. Attached to the Main Staff UB was a Military Police Battalion, which was in charge of, among other things, guarding the facilities of the Main Staff, including the Vranica, Mladen Stojanović, and Privredna Banka buildings, Witness F, 08 Mar '05, T. 11, 13-14.

²⁷³ Jusuf Jašarević, 28 Feb '05, T. 5, testifying that he was appointed on 17 July 1993 and that his predecessor was Fikret Muslimović (mentioned e.g. in Ex. 243).

²⁷⁴ Jusuf Jašarević, 28 Feb '05, T. 12. See also Ex. 137, Rules for the Military Security Service in the Armed Forces of the Republic of Bosnia and Herzegovina, items 1, 5-7, pp. 4-5, detailing specific tasks for each of these functions.

²⁷⁵ Ex. 137, para. 5(b), p. 4.

also apply [...] to cases where members of our units have committed a crime.”²⁷⁶ The SVB also had duties with regard to criminal proceedings.²⁷⁷

114. Chiefs and members of the SVB were “directly subordinated to the commanding officer of the command, staff, unit or institution in which they [served].”²⁷⁸ However, a specific feature of the SVB was its “dual command”, which existed as a result of its counter-intelligence function.²⁷⁹ The SVB organ would often obtain information that had to be verified by, for instance, documents and other sources in order that it would eventually achieve sufficient quality to be used by the relevant command. This, therefore, required superior levels within the SVB chain to provide “professional guidance” to, and have an influence on, the subordinate level of the SVB.²⁸⁰ However, as Jusuf Jašarević testified: “one has to bear in mind [...] that everything started and finished with the commander of the unit at which the security as a service was developed”.²⁸¹

(d) Rules and Training On the Law Regulating the Conduct of War

115. Selmo Cikotić, the Commander of the Operations Group (“OG”) West, testified that the introduction of rules concerning the application of the Geneva Conventions and the shaping of the ABiH into a regular and accountable army took place while Sefer Halilović was the Supreme Commander of the ABiH.²⁸² Vahid Karavelić, the Commander of the 1st Corps, testified that during 1992 many documents, both with and without force of law, were issued explicitly demanding “absolute, 100 per cent adherence to the international Geneva Conventions”.²⁸³ The Instructions relating to the implementation of the international laws of war in the ABiH, from 1992 and which were available at the ABiH units,²⁸⁴ defined war crimes:

namely, genocide, inhumane acts committed against any civilian population, wounded, sick persons, medical staff; ill-treatment of war prisoners, injuring or killing of persons from the enemy side who have surrendered; summary executions, wanton destruction of public and private

²⁷⁶ Jusuf Jašarević, 28 Feb '05, T. 34.

²⁷⁷ Ex. 137, items 27-44, pp. 7-10. *See infra* Section IV.F.

²⁷⁸ Ex. 137, item 8, p. 5. *See also* Jusuf Jašarević, 28 Feb '05, T. 11.

²⁷⁹ Jusuf Jašarević, 28 Feb '05, T. 24.

²⁸⁰ Jusuf Jašarević, 28 Feb '05, T. 24.

²⁸¹ Jusuf Jašarević, 28 Feb '05, T. 25, testifying that the SVB organ would report to its commander.

²⁸² Selmo Cikotić, 23 Feb '05, T. 31. *See also* Ivan Brigić who stated that when he became Chief of the Main Staff Administration for Moral Guidance, Information and Religious Affairs there were already rules in place concerning the Geneva Conventions and humanitarian law, Ivan Brigić, Ex. 453, 11 Jun '05, p. 3. He also stated that his administration would issue daily reminders to the ABiH to protect civilians and religious buildings, *ibid.* *See also* Mirko Pejanović, who stated that when Sefer Halilović was Supreme Commander of the ABiH he always reacted in a responsible manner to incidents in which local commanders arbitrarily abused their position, and that Sefer Halilović insisted on the accelerated establishment of the military police, the military judiciary and appropriate legislation, Mirko Pejanović, Ex. 456, 1 Mar '03, p. 4.

²⁸³ Vahid Karavelić, 21 Apr '05, T. 94.

²⁸⁴ Salko Gušić, 03 Feb '05, T. 23, testifying that these rules were available electronically at the ABiH units.

property, pollution of wells, violation of ceasefire and disregard of the international insignia for the protection of buildings against military operations.²⁸⁵

The “Decree relating to implementation of international laws of war within the army of Bosnia-Herzegovina”, dated 23 August 1992, provides that:

Both Commanders of armed forces and soldiers are bound to implement the rules of the International Laws of War; the commander is entitled to take legal action against the persons who violate the Provisions of the International Law of War.²⁸⁶

116. International law regulating the conduct of war was taught at the military academies of the former Yugoslavia.²⁸⁷ According to Salko Gušić, Commander of the 6th Corps, this training was given not only to commanders but to “all officers and army members”.²⁸⁸ Salko Gušić also testified that “[e]very army member had the duty of being familiar with the basics”.²⁸⁹ Primary responsibility for informing the soldiers of their obligations lay with the platoon, company and battalion commanders.²⁹⁰ In addition, before an operation “the person leading the troops would speak to the troops about how the task was to be carried out. One of the issues to be discussed was how POWs and civilians and war booty should be treated, how men or people should be evacuated, as well as wounded.”²⁹¹ However, Enes Šakrak, a member of the 9th Motorised Brigade (“9th Brigade), testified that he did not receive any training in the ABiH either on the treatment of civilians and prisoners of war, or generally on the applicability of the Geneva Conventions in warfare.²⁹² Nevertheless, Enes Šakrak stated that he knew that the killing of civilians was illegal.²⁹³

(e) Structure of Relevant ABiH Corps and Independent Units

117. As noted earlier, the 18 July decision provides that “the Republic of Bosnia and Herzegovina Army consists of the Main Staff and eight Corps”.²⁹⁴ The evidence shows, however,

²⁸⁵ Ex. 104, Instructions published in the Official Gazette of the ABiH on 5 December 1992, p. 2; Salko Gušić, 03 Feb '05, T. 23.

²⁸⁶ Ex. 103, The Decree Relating to the Implementation of the International Laws of War Within the Army of the Republic of Bosnia-Herzegovina. The “International Laws of War” are defined as “International Conventions and Treaties signed and ratified by the Republic of Bosnia and Herzegovina”, “Customary International Law of War” and “General Principles of International Law of War”, *ibid*; Salko Gušić, 03 Feb '05, T. 22.

²⁸⁷ Salko Gušić, 03 Feb '05, T. 19.

²⁸⁸ Salko Gušić, 03 Feb '05, T. 19.

²⁸⁹ Salko Gušić, 03 Feb '05, T. 19-20.

²⁹⁰ Vahid Karavelić, 21 Apr '05, T. 95 and 22 Apr '05, T. 147-149. He testified that during this time rules were also introduced on the SVB and military courts and prosecutors, Vahid Karavelić, 21 Apr '05, T. 100.

²⁹¹ Salko Gušić, 03 Feb '05, T. 20. *See also* Mehmed Behlo, 28 Jun '05, T. 39-41.

²⁹² Enes Šakrak, 107 Feb '05, T. 72.

²⁹³ Enes Šakrak, 107 Feb '05, T. 82-83.

²⁹⁴ Ex. 143, III.1, p. 2.

that when the 6th Corps was established by Rasim Delić on 9 June 1993, the day after he was appointed Commander of the Main Staff, only six corps were operational within the ABiH.²⁹⁵

(i) 1st Corps

118. The 1st Corps was established on 1 September 1992²⁹⁶ and was then commanded by Mustafa Hajrulahović (nicknamed “Talijan”) with Vahid Karavelić as deputy commander.²⁹⁷ The 1st Corps was headquartered in Sarajevo.²⁹⁸ Vahid Karavelić succeeded Mustafa Hajrulahović around mid-July 1993.²⁹⁹ The 1st Corps Chief of SVB was Saćir Arnautović. In 1993, the 1st Corps consisted of approximately 75,000 soldiers.³⁰⁰ On 9 June 1993, the Commander of the Main Staff Rasim Delić amended the 1st Corps zone of responsibility to cover areas mainly in and around Sarajevo.³⁰¹ Subordinated to the 1st Corps were a number of units, including the 9th Motorised Brigade (“9th Brigade”), the 10th Mountain Brigade (“10th Brigade”) and the 2nd Independent Battalion.³⁰²

a. 9th Brigade

119. The 9th Brigade was created by merging the 3rd Mountain Brigade, which was under the command of Ramiz Delalić, nicknamed “Ćelo”, and the 7th Mountain Brigade.³⁰³ Vahid Karavelić testified that the Presidency of Bosnia and Herzegovina decided to merge the brigades for two reasons; first, there were complaints that the 3rd Mountain Brigade did not carry out orders consistently and merging the brigades would therefore make it easier for the 1st Corps commander to exercise command and control,³⁰⁴ and secondly, in order to remove Ramiz Delalić from the post of brigade commander, which is why he was made Deputy Commander of the new 9th Brigade.³⁰⁵

²⁹⁵ Ex. 472, Decision on the formation of the 6th Corps of the BH Army and the zones of responsibility of the 1st, 3rd, 4th and 6th Corps of the BH Army, 9 June 1993; Vahid Karavelić, 22 Apr '05, T. 32. Ex. 109, Conclusions and tasks adopted at the meeting of the senior officers of the Main Staff and Corps Commanders, held in Zenica on 21 and 22 August, dated 29 Aug '05, p. 4, shows that the establishment of a 7th Corps was being considered.

²⁹⁶ Ex. 408, Annexes filed to the Motion of Judicial Notice, 15 Apr '05, p. 4.

²⁹⁷ Vahid Karavelić, 18 Apr '05, T. 139.

²⁹⁸ Ex. 237, Ex. 255, Ex. 257, Ex. 270, Ex. 380, Ex. 388, Ex. 400.

²⁹⁹ Vahid Karavelić, 21 Apr '05, T. 103. *See also* Salko Gušić, 03 Feb '05, T. 27 and Zakir Oković, 15 Mar '05, T. 35.

³⁰⁰ Vahid Karavelić, 18 Apr '05, T. 140-141.

³⁰¹ These were: Breza, Centar-Sarajevo, Čajniče, Foča, Goražde, Han Pijesak, Ilidža, Ilijaš, Novi Grad Sarajevo, Novo Sarajevo, Olovo, Pale, Rogatica, Rudo, Sokolac, Stari Grad Sarajevo, Vareš, Višegrad, Vogošća, and Žepa, Ex. 472, Decision on formation of the 6th Corps of the BH Army and the zones of responsibility of the 1st, 3rd, 4th and 6th Corps of the BH Army, 9 June 1993, p. 1.

³⁰² Ex. 404, sketch of the command and composition of the 1st Corps by Vahid Karavelić. The other subordinate brigades were the 1st, 2nd, 9th and 82nd Mountain Brigades and the 1st, 2nd, 4th, 5th, 101st and 102nd Motorised Brigades, *ibid.* *See also* Dževad Tirak, 30 Mar '05, T. 23-24.

³⁰³ Nedžad Mehanović, 16 Feb '05, T. 23; Witness D, 21 Feb '05, T. 77; Vahid Karavelić, 18 Apr '05, T. 150; Ramiz Delalić, 17 May '05, T. 13.

³⁰⁴ Vahid Karavelić, 18 Apr '05, T. 151.

³⁰⁵ Vahid Karavelić, 18 Apr '05, T. 152. Vahid Karavelić further testified that “after several talks with Ramiz Delalić, I do not remember the exact number of these conversations, he actually accepted the post of deputy

Vahid Karavelić was doubtful, however, how effective this removal of Ramiz Delalić was and testified that the soldiers who came from the previous 3rd Mountain Brigade probably respected Ramiz Delalić more than the new commander Sulejman Imsirović, a former JNA colonel.³⁰⁶ Zlatan Okić, an agent with the Ministry of the Interior (“MUP”) State Security Service (“SDB”), testified to this as well, saying that although Ramiz Delalić “was not the commander any longer [...] he was still in charge”.³⁰⁷

120. The new 9th Brigade consisted of around 5,000 soldiers³⁰⁸ and was headquartered in central Sarajevo.³⁰⁹ The brigade Chief of SVB was Tomislav (or Tomo) Jurić.³¹⁰ The 9th Brigade had four combat battalions,³¹¹ one logistics battalion,³¹² a military police company,³¹³ an artillery company and an engineering company.³¹⁴ There was also an assault company,³¹⁵ which was a specially trained unit³¹⁶ numbering 50 or 60 men.³¹⁷ In addition, each combat battalion had a sabotage platoon of 30 soldiers.³¹⁸ The 9th Brigade’s main operative tasks was the defence of a part of Sarajevo.³¹⁹ The brigade was one of the stronger brigades of the 1st Corps in terms of composition, manpower and equipment.³²⁰ Unlike the situation in many other ABiH brigades where only 25 to 30 percent of the soldiers were armed, in the 9th Brigade approximately 65 to 70 percent of the soldiers

commander of that brigade”. Ramiz Delalić however described his appointment in the following words (Ramiz Delalić, 17 May '05, T. 13-14):

I proposed that myself. Since I didn't have a lot of military training and the brigade did number 5,000 men, I suggested [to Vahid Karavelić] that I be appointed deputy commander and [Sulejman Imsirović] be appointed the commander [...] Vahid Karavelic, [was] really [...] quite happy to hear that [because] at that time all the commanders were just regular men who had no particular training for commanders of brigades who had no training in carrying out military operations. And in order to lead a brigade you needed a trained person. So the plan was to let the military personnel who used to be members of the former JNA lead the units.

³⁰⁶ Vahid Karavelić, 18 Apr '05, T. 154-155.

³⁰⁷ Zlatan Okić, 01 Apr '05, T. 33.

³⁰⁸ Ramiz Delalić, 17 May '05, T. 13.

³⁰⁹ Witness D, 21 Feb '05, T. 5; Vahid Karavelić, 18 Apr '05, T. 150.

³¹⁰ Jusuf Jašarević, 1 Mar '05, T. 13; Ramiz Delalić, 17 May '05, T. 35.

³¹¹ Ramiz Delalić, 17 May '05, T. 16; Nedžad Mehanović, 16 Feb '05, T. 99; Witness F, 08 Mar '05, T. 25.

³¹² Ramiz Delalić, 17 May '05, T. 16.

³¹³ Kemo Kapur, 16 Mar '05, T. 22, who in 1993 was the Commander of the military police company of the 9th Brigade.

³¹⁴ Kemo Kapur, 16 Mar '05, T. 49.

³¹⁵ Ramiz Delalić, 17 May '05, T. 23, Erdin Arnautović, 104 Feb '05, T. 31, Witness F, 08 Mar '05, T. 25-26. Before the unit was deployed to Grabovica, the commander of this unit was Malčo Rovčanin, thereafter it was a man nicknamed ‘Žuti’, Erdin Arnautović, 104 Feb '05, T. 31. This company was used when there was heavy fighting or when a breakthrough was necessary, Erdin Arnautović, 104 Feb '05, T. 81-82.

³¹⁶ Nedžad Mehanović, 15 Feb '05, T. 98.

³¹⁷ Witness D, 21 Feb '05, T. 5. The assault company was equipped with rocket-propelled grenades, hand-held launchers and automatic weapons, *ibid.*

³¹⁸ Ramiz Delalić, 17 May '05, T. 23.

³¹⁹ Ramiz Delalić, 17 May '05, T. 16. Ramiz Delalić commented that the depiction in Ex 402 of the area of responsibility of the brigade did not include all of the area and said that the 9th Brigade covered 20-25% of the total frontline in Sarajevo, Ramiz Delalić, 17 May '05, T. 24. *See also* Jusuf Jašarević, 04 Mar '05, T. 64-65; Vahid Karavelić, 18 Apr '05, T. 150.

³²⁰ Witness F, 8 Mar '05, T. 24. *See also* Kemo Kapur, 16 Mar '05, T. 26.

were armed.³²¹ The 9th Brigade was not a mono-ethnic Bosnian Muslim brigade but also contained soldiers of other ethnicities.³²² There is evidence indicating that the 9th Brigade played a fundamental part in the defence of Sarajevo and that it was respected by the citizens of Sarajevo. One company of the 9th Brigade performed well in the battle on Mount Igman.³²³

b. 10th Brigade

121. The 10th Brigade was a slightly smaller unit than the 9th Brigade³²⁴ and was commanded by Mušan Topalović, nicknamed “Caco”.³²⁵ Just like the 9th Brigade, the 10th Brigade participated in the defence of the city of Sarajevo. Its zone of responsibility covered the left bank of the Miljačka river and parts of the city center and the Old Town³²⁶, and bordered the frontline against Bosnian Serb positions on Mount Trebević.³²⁷ The 10th Brigade had three battalions and one 100-man strong assault company.³²⁸

c. Discipline and Behaviour of the 9th Brigade and the 10th Brigade Pre-September 1993

i. Generally

122. As will be seen below, the evidence as to the reputation of the 9th Brigade and the 10th Brigade varies significantly. Vahid Karavelić, the 1st Corps commander and thus the brigades’ superior commanding officer, testified that “not a single member of these units was ever described as a criminal in any way.”³²⁹ Jusuf Jašarević, the Chief of the Main Staff UB, gave a more nuanced opinion and testified that:

³²¹ Ramiz Delalić, 17 May ’05, T. 16-17.

³²² Enes Šakrak, 107 Feb ’05, T. 90; Kemo Kapur, 16 Mar ’05, T. 48. Also Ramiz Delalić, the Deputy Commander of the brigade, testified to this, stating that while the majority of the soldiers were Bosnian Muslims, there were also Bosnian Croats, Roma and Bosnian Serbs, Ramiz Delalić, 17 May 05, T. 21 and 19 May ’05, T. 26. *See also* Vahid Karavelić, who testified that Tomislav Jurić was a Bosnian Croat, 22 Apr ’05, T. 19. However, Vahid Karavelić also testified that in the entire 1st Corps only 5-7 percent were Bosnian Serbs and 3-4 percent were Bosnian Croats, Vahid Karavelić, 22 Apr ’05, T. 156.

³²³ Enes Šakrak, 107 Feb ’05, T. 88 (testifying that “[e]verybody had respect for that unit. Its fighters were good” and agreeing with Defence counsel’s proposition that “[i]t was in fact regarded as an elite unit”: “You can say that, yes, if - you can use that word, ‘elite’”). For the battle on Mt. Igman, *see infra* Section IV.B(d).

³²⁴ Witness F, 8 Mar ’05, T. 68.

³²⁵ Vahid Karavelić, 19 Apr ’05, T. 42-43; Ramiz Delalić, 17 May ’05, T. 34; Vehbija Karić, Ex. 444, T. 15; Ex. 216, Notes on meeting in the Main Staff with the source “Rotor”, 24 Sep 1993.

³²⁶ Witness F, 8 Mar ’05, T. 68; Vahid Karavelić, 18 Apr ’05, T. 150.

³²⁷ Witness F, 8 Mar ’05, T. 27-28; Vahid Karavelić, 18 Apr ’05, T. 150-151.

³²⁸ Witness F, 9 Mar ’05, T. 24.

³²⁹ Vahid Karavelić, 22 Apr ’05, T. 25.

most of the members of these brigades were honest people. A very small number of people were involved in breaches of discipline, and at that time we were dealing with the problem of this lack of discipline, which escalated gradually and contained elements of serious crimes.³³⁰

Jusuf Jašarević further testified that the information he received “mostly pertained to violations of military discipline by individuals or certain parts of these brigades and sometimes their commanders”.³³¹ However, Jusuf Jašarević also testified that “even outside the 1st Corps there were units where there was talk of indiscipline or insubordination”.³³² Namik Džanković, an officer in the Main Staff UB, testified that the 9th and the 10th Brigades as a whole did not have a bad reputation, but rather it was “only parts of those units that had a bad reputation.”³³³ According to Dževad Tirak, the 6th Corps chief of staff, not all members of these units caused incidents or mistreated the general population. He testified that instead it was the two brigade commanders and people around them who caused trouble.³³⁴ Nevertheless, in his opinion these two brigades had the worst reputation in terms of discipline and frequent incidents.³³⁵ Witness E, a soldier in the 1st Corps, also testified that the two brigades did not enjoy a good reputation in Sarajevo.³³⁶ Zlatan Okić’s testimony supports Dževad Tirak’s testimony that it was the commanders and soldiers close to them that caused most incident. Zlatan Okić testified that:

both in the 9th and the 10th Brigades there were 95 per cent of patriots and perhaps only 5 per cent of people who were high-ranking people, but they had a pretty bad reputation. Those commanders surrounded themselves by groups of – well, I don’t know whether I should call them common criminals or semi-criminals, but they were there.³³⁷

Vehbija Karić, a senior officer in the Main Staff, stated that a number of soldiers within the two brigades had a criminal background and acted unpredictably and were undisciplined.³³⁸ Comparing the situation in the two brigades, Jusuf Jašarević believed that the situation was more “drastic” in the 10th Brigade regarding which he received information that people were being physically abused.³³⁹

123. Further with regard to the 9th Brigade, Kemo Kapur, Commander of the brigade’s military police company, testified that the 9th Brigade as a whole enjoyed a good reputation and that it was

³³⁰ Jusuf Jašarević, 28 Feb '05, T. 52-53.

³³¹ Jusuf Jašarević, 1 Mar '05, T. 11. Jusuf Jašarević, could not say if this conduct were common knowledge in Sarajevo, Jusuf Jašarević, 1 Mar '05, T. 18-19.

³³² Jusuf Jašarević, 2 Mar '05, T. 43.

³³³ Namik Džanković, 21 Mar '05, T. 13.

³³⁴ Dževad Tirak, 30 Mar '05, T. 33, 77.

³³⁵ Dževad Tirak, 30 Mar '05, T. 33-34, 37.

³³⁶ Witness E, 07 Mar '05, T. 19-20.

³³⁷ Zlatan Okić, 01 Apr '05, T. 31.

³³⁸ Vehbija Karić, Ex. 444, T. 22.

³³⁹ Jusuf Jašarević, 01 Mar '05, T. 12. Zlatan Okić testified that it was predominantly the 9th Brigade that was involved in criminal activities, Zlatan Okić, 01 Apr '05, T. 32-33. The Trial Chamber notes, however, that the witness several times confused the two brigades (e.g. 01 Apr. '05, T. 33) and therefore finds that it cannot rely on his testimony in this respect.

“absolutely incorrect” to call the unit a criminal brigade.³⁴⁰ He insisted that its reputation was no worse than that of other brigades in Sarajevo at the time³⁴¹ and furthermore that prior to September 1993 he was not aware of any serious criminal offences having been committed by any members of the brigade.³⁴² Kemo Kapur did, however, admit that there probably were some brigade members who were criminal, but that they were very few.³⁴³ The main part of the brigade, however, was admired by many of Sarajevo’s inhabitants.³⁴⁴

ii. Taking Civilians to Dig Trenches

124. Evidence has been presented that persons of all ethnicities, who were not engaged in the defence of Sarajevo, were taken to dig trenches by members of the 9th and the 10th Brigades.³⁴⁵ According to Namik Džanković, this was the main reason for the bad reputation of the 9th and the 10th Brigades.³⁴⁶ It appears that the two brigades acted, at least on occasion, without respect for the official system under which civilians could be enlisted to assist temporarily the military with various non-combat activities.³⁴⁷

125. According to Kemo Kapur, soldiers from the 9th Brigade’s assault company would often surround the *Markale* market place in the Old Town of Sarajevo, introduce themselves as members of the military police company and check the identity cards of civilians. They would release those with military identity cards but would take the rest by truck to the front line to dig trenches. Citizens would usually spend one day digging trenches and before being released.³⁴⁸ Zlatan Okić testified to

³⁴⁰ Kemo Kapur, 16 Mar '05, T. 26-27.

³⁴¹ Kemo Kapur, 16 Mar '05, T. 30.

³⁴² Kemo Kapur, 16 Mar '05, T. 30.

³⁴³ Kemo Kapur, 16 Mar '05, T. 27. Kemo Kapur also testified that certain individuals misused their weapons and went to the market where they robbed goods. However, he also testified that he was only aware of certain individuals being involved in “petty criminal activities” and not of “murders or rapes or serious robberies”, Kemo Kapur, 16 Mar '05, T. 52-53.

³⁴⁴ Mustafa Kadić, 10 Mar '05, T. 20-21.

³⁴⁵ Kemo Kapur, 16 Mar '05, T. 42-43. Erdin Arnautović heard about cases of civilians being taken involuntarily to the front line to dig trenches by units within the 1st Corps, including the 10th Brigade, Erdin Arnautović, 15 Feb '05, T. 78. Dževad Tirak testified that his old geography professor, who at the time was around 60 years old, was taken to dig trenches by members of the 9th Brigade, Dževad Tirak, 30 Mar '05, T. 26; however, Dževad Tirak also testified that the soldiers who took his professor to dig trenches were “Caco’s men”, Dževad Tirak, 30 Mar '05, T. 26. Considering that Tirak several times confused the two brigades and their commanders, the Trial Chamber therefore finds that it cannot rely on his testimony with regard to this incident.

³⁴⁶ Namik Džanković, 21 Mar '05, T. 13.

³⁴⁷ Vahid Karavelić testified about the existence and the structure of such a system, Vahid Karavelić, 19 Apr '05, T. 6-7. Ex. 211 is an SVB report concerning the employment of 40 civilians for digging a road. Vahid Karavelić testified that as the document speaks of the registration of the civilians with the duty officer of the 9th Brigade, this probably indicates that the proper procedure was respected, Vahid Karavelić, 19 Apr '05, T. 12-13. At the time, however, Vahid Karavelić never had occasion to learn that the 9th Brigade was engaging in illegal use of civilians for trench digging, Vahid Karavelić, 19 Apr '05, T. 8.

³⁴⁸ Kemo Kapur, Ex. 276, paras 16-18, pp. 4-5. Kemo Kapur also testified that he considered the taking of civilians to dig trenches at the frontline a “petty crime”, Kemo Kapur, 16 Mar '05, T. 56. He testified that the Criminal Code of Bosnia and Herzegovina by “crimes” implies “serious crimes, such as murders, rapes, robberies, armed robberies, and so on. I just wish to draw a distinction between those kinds of crimes and petty crimes. Petty

having been himself taken to dig trenches for 24 hours by either “Caco’s Brigade” or the 9th Brigade.³⁴⁹ On one occasion members of the 9th Brigade seized a vehicle from a civilian and returned it only after the civilian went to work digging trenches.³⁵⁰ There is also evidence that another civilian, Esad Česko, was taken to dig trenches in early July 1993 after having refused to give the requested amount of money to members of the 9th Brigade.³⁵¹

126. Jusuf Jašarević testified that 10th Brigade members would frequently pick people up on the street and forcibly take them to dig trenches in the clothes and footwear they happened to be wearing at the time. After several days of digging they would be released and brought back to the city.³⁵² The 1st Corps Commander Vahid Karavelić testified that on one occasion, when the 10th Brigade was taking civilians to dig trenches, the son of Rasim Delić was also taken away. Vahid Karavelić, and even President Alija Izetbegović, had to become involved to have him released.³⁵³ Witness F puts this incident in July 1993, “the period when things became critical [...] when they began to arrest people from the army”.³⁵⁴

crimes are also crimes. I’m speaking now as a lawyer. But the sanctions prescribed by the law for such crimes are smaller. If during the war an armed soldier steals a sack of potatoes from a market stall, that is not a serious crime; it’s a petty crime”, Kemo Kapur, 16 Mar ’05, T. 56.

³⁴⁹ Zlatan Okić, 01 Apr ’05, T. 34. The Trial Chamber notes that Zlatan Okić was uncertain as to which brigade took him to dig trenches (Zlatan Okić, 01 Apr ’05, T. 35) and the Trial Chamber is therefore unable to conclude which brigade it was. Zlatan Okić described his experience digging trenches as follows: one day he was surrounded in the street in the centre of Sarajevo by five to six soldiers in uniform and that he and 10-15 other civilians were subsequently taken to dig trenches. Zlatan Okić showed the soldiers his official MUP identity card but without success. They were initially taken to a courtyard in Sarajevo where a soldier said that the soldiers could not dig trenches and that the civilians had to make their contribution to the defence of Sarajevo. Thereafter, they were transported to various locations by van escorted by a car with armed members of the brigade. While digging, Zlatan Okić heard that the Bosnian Serb soldiers were a few hundred meters above him on the hill, however there was no firing as long as he was there. He and the other people were not guarded while digging trenches, but the members of the brigade were a little downhill. The civilians were given dinner and stayed in an abandoned house near the ABiH positions. Zlatan Okić was there for 24 hours and was released the next day at noon. Upon return to Sarajevo, Zlatan Okić walked straight to the MUP and told his superiors and colleagues what had happened, Zlatan Okić, 01 Apr ’05, T. 34-39.

³⁵⁰ Kemo Kapur testified that, as the Commander of the military police, he was informed that Mustafa Hota had seized a vehicle from the civilian Nedžad Burović. He testified that he informed Ramiz Delalić, who agreed to return the vehicle on the condition that Nedžad Burović would go to dig trenches; Nedžad Burović actually went to dig trenches and got his vehicle back, Kemo Kapur, 16 Mar ’05, T. 36 and Ex. 276, para. 15, p. 4.

³⁵¹ Esad Česko, Ex. 455, 29 Apr ’05, p. 1 and 28 Jun ’05, p. 1. *See also* Ex. 415, MUP Report on illegal activities of the Deputy Commander of the 9th Motorised Brigade, 16 October 1993, p. 3.

³⁵² Jusuf Jašarević, 01 Mar ’05, T. 13-14, 26. Jusuf Jašarević testified that the son of Avdo Smajlović, a well-known Sarajevo musician, told him to having been taken to dig trenches by the members of the 10th Brigade, Jusuf Jašarević, 1 Mar ’05, T. 13-14.

³⁵³ Vahid Karavelić, 19 April ’05, T. 48-49.

³⁵⁴ Witness F, 8 Mar ’05, T. 39, 42, testifying that Rasim Delić’s son was “humiliated and abused” by the members of the 10th Brigade who took him to dig trenches. Ramiz Delalić testified that, to his knowledge, Rasim Delić’s son was not taken to dig trenches. However, he does remember that Rasim Delić’s son was “taken into custody in the 10th Mountain Brigade and beaten up there. Everybody knew about that. Nobody intervened and there were even some orders issued to the effect that this is the fate that should befall him”, Ramiz Delalić, 17 May ’05, T. 40. Ramiz Delalić also testified that he was present in the 10th Brigade command Rasim Delić’s son was detained and beaten, and that he later asked Mušan Topalović, who had spoken with someone, who that person was. Ramiz Delalić testified that Mušan Topalović had spoken with “the chief of the Main Staff, Sefer Halilović”, Ramiz Delalić, 17 May ’05, T. 40. The Trial Chamber notes that the testimony of Ramiz Delalić

127. According to Erdin Arnautović, a member of the 9th Brigade, civilians digging trenches in the area of responsibility of the 9th Brigade were mostly volunteers.³⁵⁵ This was however denied by Namik Džanković, an officer in the Main Staff UB.³⁵⁶ A report produced by the SDB dated 6 July 1993³⁵⁷ and an official note from the Main Staff UB dated 1 July 1993³⁵⁸ mention incidents of civilians being taken forcibly to dig trenches.

128. According to Jusuf Jašarević, “the members of the 9th Brigade were a little bit more lenient in this matter than the members of the 10th Brigade”.³⁵⁹ Kemo Kapur testified that members of the 10th Brigade were taking civilians to dig trenches more frequently than members of the assault company of the 9th Brigade.³⁶⁰ According to Erdin Arnautović, civilians digging trenches in the area of responsibility of the 9th Brigade were given the best conditions with a line of soldiers in front protecting them.³⁶¹ Kemo Kapur testified that when people were taken to dig trenches by the 9th Brigade, they were completely protected and given meals and cigarettes: nobody was ever injured during the digging of the trenches.³⁶² Dževad Tirak testified that the area of the front line where civilians were brought to dig trenches was relatively safe; however he pointed out that trench digging was risky because of sudden, haphazard fire by the enemy.³⁶³

129. Ramiz Delalić, Deputy Commander of the 9th Brigade, testified that, while in some other brigades there was a practice to force civilians to dig trenches, in the 9th Brigade that was seldom the case except in certain circumstances.³⁶⁴ He testified that there would be verbal orders to take people, who were not on good terms with persons in the Main Staff or in the Corps, to dig trenches.³⁶⁵ Ramiz Delalić further testified that both Vahid Karavelić and Sefer Halilović,³⁶⁶

needs corroboration. As no corroborating evidence has been presented in this respect, the Trial Chamber does not consider that the incident, as described by Ramiz Delalić, has been proven beyond reasonable doubt.

³⁵⁵ Erdin Arnautović, 104 Feb '05, T. 80-81.

³⁵⁶ Namik Džanković, 21 Mar '05, T. 14.

³⁵⁷ Ex. 430, “Report on certain intelligence connected to the incidents between a number of soldiers from the 10th Mountain Brigade and members of the Bosnia and Herzegovina MUP in the Stari Grad Area”, MUP, 6 July 1993, p. 3, which mainly concerns the 10th Brigade but in this respects includes information regarding the 9th Brigade’s . Bakir Alispahić, the Minister of the Interior, testified that, this being a document of the SDB, it would have been composed on the basis of several sources, the majority of which would have been very reliable, Bakir Alispahić, 23 May '05, T. 45.

³⁵⁸ Ex. 210, official note from the Main Staff UB, 1 July 1993, reporting that on 30 June 1993, the owner of a the restaurant “Amerikanac”, citizens from the area of Breka and Mejtas and a large group of taxi drivers were taken to dig trenches by members of the 9th Brigade.

³⁵⁹ Jusuf Jašarević, 01 Mar '05, T. 18, 26.

³⁶⁰ Kemo Kapur, Ex. 276, para. 21, pp. 5-6.

³⁶¹ Erdin Arnautović, 104 Feb '05, T. 80-81.

³⁶² Kemo Kapur, 16 Mar '05, T. 57; Kemo Kapur, Ex. 276, paras 19-20, p. 5.

³⁶³ Dževad Tirak, 30 Mar '05, T. 26.

³⁶⁴ Ramiz Delalić, 17 May '05, T. 36.

³⁶⁵ Ramiz Delalić, 17 May '05, T. 37.

³⁶⁶ Ramiz Delalić, 17 May '05, T. 39-40 and 19 May '05, T. 20.

including Sefer Halilović's *chef de cabinet* Sadika Omerbegović,³⁶⁷ on several occasions gave orders to take certain persons to dig trenches, including the previously mentioned Esad Česko.³⁶⁸ Ramiz Delalić maintained these allegations even when faced with a statement by Sadika Omerbegović that she "had never had any contacts in relation to this matter with Mr. Ramiz Delalić, nor could I have given any kind of lists for the taking of people to dig trenches."³⁶⁹ The Trial Chamber has found that the testimony of Ramiz Delalić needs corroboration.³⁷⁰ As there is no corroborating evidence, the Trial Chamber cannot rely on Ramiz Delalić's testimony in this respect.

iii. Thefts and General Misappropriation of Property

130. According to Vehbija Karić, a senior officer of the Main Staff, the criminal behaviour of the 9th and the 10th Brigades was indicated by the misappropriation of property in Sarajevo shops and supermarkets.³⁷¹ Witness F testified that he received information "that 'members of the 9th Brigade' in a way terrorised certain citizens by extorting money from them, seizing motor vehicles, property, and so on".³⁷² Witness F specified that it was members of the 9th Brigade's assault company who committed criminal acts.³⁷³ Vahid Karavelić testified that at the time he received information about incidents of racketeering involving some of Ramiz Delalić's soldiers;³⁷⁴ he also received information that from time to time vehicles were seized by members of the 9th Brigade.³⁷⁵ Kemo Kapur testified that a minority of members of the 9th Brigade took it upon themselves to collect money from civilians whom they considered to be war profiteers to pay for weapons and assistance to injured soldiers.³⁷⁶ Civilians who donated money "would receive a receipt or a diploma as a form of gratitude for their donations to the Army of Bosnia and Herzegovina."³⁷⁷ Kemo Kapur received information in the summer of 1993 that soldiers from the 9th Brigade assault company were

³⁶⁷ Ramiz Delalić, 19 May '05, T. 22, testifying that "[m]any people know that [Sadika Omerbegović] practically had a habit of ordering the military police and other organs to take certain individuals to dig trenches."

³⁶⁸ Ramiz Delalić, 17 May '05, T. 39, testifying that "I personally was given an order by Sefer Halilović to take [Esad Česko] to dig trenches. He stayed there about seven days digging trenches."

³⁶⁹ Ramiz Delalić, 19 May '05, T. 21.

³⁷⁰ See *supra* Section II, para. 17.

³⁷¹ Vehbija Karić, Ex. 444, T. 20. Vahid Karavelić testified that "He [Ramiz Delalić] forced people to do various things in order to give voluntary donations to the brigade", Vahid Karavelić, 18 Apr '05, T. 152. As for the 10th Brigade, Vehbija Karić testified that Mušan Topalović badly beat his own uncle, Ibro Zulić, until he managed to get about 10,000 German marks from him, Vehbija Karić, Ex. 444, T. 22.

³⁷² Witness F, 8 Mar '05, T. 25.

³⁷³ Witness F, 8 Mar '05, T. 25-26.

³⁷⁴ Vahid Karavelić, 21 Apr '05, T. 46. During the spring of 1993 Vahid Karavelić was requested to investigate, as corps commander (Vahid Karavelić, 19 Apr '05, T. 16, 47-48; see also Ex. 415):

whether Ramiz Delalić and his men, during the night, in certain sections of the town, were forcing people to give a voluntary donation. This way and this concept of work [...] is called racketeering. [...] However, at the time, no such case could be proved.

³⁷⁵ Vahid Karavelić, 21 Apr '05, T. 48.

³⁷⁶ Kemo Kapur, 16 Mar '05, T. 37-38, 60.

³⁷⁷ Kemo Kapur, 16 Mar '05, T. 38-39.

introducing themselves as military policemen of the 9th Brigade and extorting money from citizens in Sarajevo.³⁷⁸ As a result of the money which was collected by some of those individuals and the weapons which could be purchased with it, the 9th Brigade became one of the most well armed units in Sarajevo.³⁷⁹ Ramiz Delalić testified that the 9th Brigade collected money through voluntary donations of businessmen of Sarajevo, like owners of cafés or restaurants.³⁸⁰ However, Kemo Kapur stated that the businessmen in the 9th Brigade area who refused to give donations to the brigade were taken into custody by the assault company and threatened into handing over money.³⁸¹ A document dated 7 October 1993 from the 1st Corps SVB mentions several incidents involving members of the 9th Brigade concerning the confiscation of goods from private owners or taking money from owners of catering establishments and shops for “protection”.³⁸² A document from the Public Security Station (“SJB”³⁸³) in Sarajevo contains several allegations against Ramiz Delalić; it alleges, *inter alia*, that Ramiz Delalić and a group of 9th Brigade members “carried out illegal requisition of civilians’ property while searching apartments and business premises, estranging the inventory and property of many state-owned and private premises in the territory of the Stari Grad municipality”.³⁸⁴ The document also alleges that Ramiz Delalić forced businessmen in Sarajevo to give money “for the purchase of guns and ammunition from Konjic and Jablanica” and that one individual who refused to pay was taken to dig trenches on 2 September 1993.³⁸⁵

131. Kemo Kapur testified that when this method of acquiring money was discovered it was considered to be unacceptable and an informal three-man commission, which included him, was therefore established to handle voluntary donations.³⁸⁶ Kemo Kapur testified that the voluntary donations were not given to the commission members but directly to the assistant commander for logistics in the 9th Brigade command.³⁸⁷

³⁷⁸ Kemo Kapur, 16 Mar '05, T. 39; Kemo Kapur, Ex. 276, para. 13, p. 3.

³⁷⁹ Kemo Kapur, 16 Mar '05, T. 39.

³⁸⁰ Ramiz Delalić, 17 May '05, T, 19-20.

³⁸¹ Kemo Kapur Ex. 276, para. 15, p. 4; *see also* Ex. 210, p. 1, stating that on the 30 June 1993 members of the 9th Brigade, following a Ramiz Delalić's order, brought to dig trenches the owner of the restaurant “Amerikanac” who had refused to pay “the last racket”.

³⁸² Ex. 217, 1st Corps SVB document, 07 October 1993, p. 3.

³⁸³ In B/C/S, *Stanica Javne Bezbednosti*, Emin Zebić, 17 Mar '05, T. 2.

³⁸⁴ Ex. 415, p. 1. Bakir Alispahić testified that this document has a high degree of accuracy, Bakir Alispahić, 24 May '05, T. 72.

³⁸⁵ Ex. 415, p. 3.

³⁸⁶ Kemo Kapur, 16 Mar '05, T. 39-40.

³⁸⁷ Kemo Kapur, 16 Mar '05, T. 40, also testifying that those who made donations would receive receipts that they had done so.

132. Vahid Karavelić received information that Ramiz Delalić and Mušan Topalović were involved in smuggling activities; however, it was not possible to further investigate this matter or initiate proceedings against them before the Trebević Operation.³⁸⁸

133. Jusuf Jašarević, who was from mid-July 1993 the Chief of the Main Staff UB, was personally involved in solving an incident where members of the 9th Brigade had stolen a vehicle from UNPROFOR. The vehicle was returned after Jusuf Jašarević spoke to the 9th Brigade Chief of the SVB Tomislav Jurić and its Deputy Commander Ramiz Delalić.³⁸⁹

iv. General Undisciplined Behaviour

134. A report dated 2 June sent from the Sarajevo Public Security Centre (“CSB”³⁹⁰) to, among others, the Chief of the Main Staff, the Chief of the Main Staff UB and the 1st Corps commander, reports that Ramiz Delalić insulted the civilian police, who had brought him to the SJB for driving a motor vehicle “without personal identification or vehicle identification papers.” The report also provides that Ramiz Delalić threatened to blow up the SJB.³⁹¹

135. A report dated 28 June sent from the Sarajevo CSB to the Chief of the Main Staff UB reports that on 26 June eight members of the 9th Brigade threatened a civilian police officer because the civilian police had used force and detained a 9th Brigade member for questioning regarding theft of a bicycle.³⁹²

136. During the night of 2 to 3 July 1993, members of both the 9th Brigade and the 10th Brigade blocked several buildings in Sarajevo.³⁹³ The blockade was a reaction to the arrest of the 10th Brigade Deputy Commander Senad Pecar³⁹⁴ on charges of criminal activities by him and persons associated with him.³⁹⁵ Ramiz Delalić testified that Senad Pecar was arrested on the order of the Chief of the Main Staff UB, Fikret Muslimović.³⁹⁶ As a result, Ramiz Delalić together with

³⁸⁸ Vahid Karavelić, 19 Apr '05, T. 27-28, 32-34. Dževad Tirak heard at the time about Ramiz Delalić's involvement in cigarette smuggling, Dževad Tirak, 30 Mar '05, T. 30. Also Zlatan Okić testified that the 9th and the 10th Brigades were involved in smuggling, Zlatan Okić, 01 Apr '05, T. 32-33. Concerning the Trebević operation, *see infra* Section IV.F.4.

³⁸⁹ Jusuf Jašarević, 01 Mar '05, T. 12-13; *see also* Kemo Kapur, Ex. 276, para. 14, p. 3.

³⁹⁰ In B/C/S, *Centar Sluzbi Bezbjednosti*, *see* Emin Zebić, 17 Mar '05, T. 4; Zlatan Okić, 01 Apr '05, T. 44.

³⁹¹ Ex. 204, 02 June 1993.

³⁹² Ex. 429, 28 June 1993. Bakir Alispahić was familiar with the information contained in this document, Bakir Alispahić, 23 May '05, T. 39.

³⁹³ Jusuf Jašarević, 28 Feb '05, T. 53; Witness F, 08 Mar '05, T. 29-30; Bakir Alispahić, 23 May '05, T. 31-32, testifying that also the Delta Brigade was involved.

³⁹⁴ Ramiz Delalić, 17 May '05, T. 48-49.

³⁹⁵ Bakir Alispahić, 23 May '05, T. 31. Kemo Kapur testified that he heard that the incident was triggered by a rumour started by Mustafa Hota and Kenan Foco that the MUP was going to attack the 9th Brigade, Kemo Kapur, 16 Mar '05, T. 47.

³⁹⁶ Ramiz Delalić, 17 May '05, T. 48.

members of the 9th Brigade Assault Company³⁹⁷ blocked the ABiH “operations centre” or “command and control centre” in central Sarajevo.³⁹⁸ The 10th Brigade blocked the building where Main Staff Commander Rasim Delić’s office was located,³⁹⁹ the SJB in the Old Town of Sarajevo,⁴⁰⁰ and a part of the Main Staff which was housed in the building of the Faculty of Sciences.⁴⁰¹ While the blockade of the buildings was lifted within a day⁴⁰² the 9th and the 10th Brigades held the soldiers in custody for up to several days at their respective headquarters, during which time the soldiers were stripped of their uniforms and humiliated.⁴⁰³ There were no fatalities or wounded in this incident.⁴⁰⁴ Witness F’s recollection is that “somebody from the command intervened with Mr. Halilović and asked him to contact Ramiz Delalić and do something about it, and afterwards the blockade was lifted.”⁴⁰⁵ Bakir Alispahić, however, testified that there was a meeting in an “army hall” in Sarajevo to which he and Rasim Delić went and where they met Ramiz Delalić, Mušan Topalović and the Commander of the Delta Brigade. Bakir Alispahić does not remember that Sefer Halilović “was involved in any way [or that he] was present at the meeting.”⁴⁰⁶ According to Kemo Kapur and Witness F, Ramiz Delalić and Mušan Topalović reached an agreement with President Alija Izetbegović, who accepted their demands to replace Fikret Muslimović.⁴⁰⁷

137. A document of the Main Staff UB provides that on the night of 4 July 1993:

around 22:00 hours Ramiz Delalić [...] turned up at the 9th [...] Brigade Police Base, accompanied by his assault company – intervention platoon, and said in front of his close aides: I have been to Sefer’s, he said “LASTE” would attack us tonight. After that, Ramiz Delalić [...] told the

³⁹⁷ Kemo Kapur, Ex. 276, para. 24, p. 6.

³⁹⁸ Jusuf Jašarević 28 Feb '05, T. 53, 64, calling the location “the operative centre of the Main Staff”; Witness F, 08 Mar '05, T. 29, calling the location “the operations centre facility [...] or the command and control centre of the Bosnia and Herzegovina army”. *See also* Kemo Kapur, 16 Mar '05, T. 46; Kemo Kapur, Ex. 276, para. 24, p. 6, stating that it was the “Supreme Command of the ABiH” that was blocked.

³⁹⁹ Witness F, 08 Mar '05, T. 29-30.

⁴⁰⁰ Witness F, 08 Mar '05, T. 30; Vahid Karavelić, 19 Apr '05, T. 39.

⁴⁰¹ Witness F, 08 Mar '05, T. 30; Bakir Alispahić, 23 May '05, T. 31, testifying that also the “main thoroughfares [...] the operative staff of the Supreme Command [and] the army hall was blocked as well”.

⁴⁰² Witness F, 08 Mar '05, T. 31.

⁴⁰³ Witness F, 08 Mar '05, T. 31.

⁴⁰⁴ Jusuf Jašarević 28 Feb '05, T. 64; Bakir Alispahić, 23 May '05, T. 33, referring specifically to the blockade of the SJB in central Sarajevo.

⁴⁰⁵ Witness F, 08 Mar '05, T. 31.

⁴⁰⁶ Bakir Alispahić, 23 May '05, T. 32-33. Ramiz Delalić testified that he and Mušan Topalović contacted Sefer Halilović, who said that he did not know what was going on and that the arrest was ordered by Fikret Muslimović “who Sefer Halilović hated above all.” According to Ramiz Delalić, Sefer Halilović also said that “it could be very likely that we would also be arrested.” In the subsequent contacts with Sefer Halilović during this “rebellion”, Ramiz Delalić and Mušan Topalović “said more or less that we wanted Muslimović’s replacement [...] We demanded this later. And he was replaced later”, Ramiz Delalić, 17 May '05, T. 49.

⁴⁰⁷ Kemo Kapur, 16 Mar '05, T. 46-48; Witness F, 08 Mar '05, T. 69.

combatants to take positions around the Kindergarten Centre in Svetozara Markovića Street and be ready to respond to the “LASTE” attack.⁴⁰⁸

138. Vehbija Karić, a senior member of the ABiH Main Staff, testified that “[a] series of people who were within the 9th and 10th Brigades were drug addicts before the war too, so they continued using drugs because drugs did get into Sarajevo [...] Their behaviour was unpredictable, so this was a difficulty in terms of military discipline”.⁴⁰⁹ This evidence has been confirmed by Witness E, a member of the 2nd Independent Battalion.⁴¹⁰ However, Erdin Arnautović, a member of the 9th Brigade, testified that Ramiz Delalić did not permit alcohol or that the soldiers went into battle drunk.⁴¹¹ Witness D, another member of the 9th Brigade, testified that Ramiz Delalić did not tolerate the use of alcohol or drugs among his troops and that it happened that Ramiz Delalić punished his men for using drugs, or that he involved the military police.⁴¹² Ramiz Delalić testified that while some soldiers of the 9th Brigade “got their hands in different kinds of narcotics, mostly alcohol [...] all these incidents were recorded.”⁴¹³ He also testified that he “banned alcohol and narcotics”.⁴¹⁴

139. According to Kemo Kapur, some of the rumours that were circulating in Sarajevo at the time about the 9th and the 10th Brigades were the result of jealousy and tensions between the ABiH and the MUP. Kemo Kapur also testified that both Ramiz Delalić and Mušan Topalović had been critical of MUP units that did not take part in the defence of the city.⁴¹⁵ Jusuf Jašarević testified that one of the reasons for the dissatisfaction of the two brigades was that their members “thought that members of the MUP were privileged in relation to them, that they were better equipped, and that they were not actually participating in the fighting.”⁴¹⁶ When shown a SDB overview of illegal activities allegedly committed by himself and members of the 9th Brigade, Ramiz Delalić’s comment was that the report was “intended to have a negative effect on Sefer Halilović [who is mentioned in the report] and not [himself] because Sefer Halilović was not on good terms with [the

⁴⁰⁸ Ex. 206, Report, 10 July 1993. Jusuf Jašarević, who received the note, testified that he tasked an operations officer with “checking, in accordance with [the note’s] proposal, what needed to be checked and to act accordingly, to take a statement from this source of information”; however, he did not remember what was the outcome of this, Jašarević, 28 Feb ’05, T. 65.

⁴⁰⁹ Vehbija Karić, Ex. 444, T. 15, 22.

⁴¹⁰ Witness E, 07 Mar ’05, T. 19.

⁴¹¹ Erdin Arnautović, 104 Feb ’05, T. 77.

⁴¹² Witness D, 21 Feb ’05, T. 53-54.

⁴¹³ Ramiz Delalić, 17 May ’05, T. 26.

⁴¹⁴ Ramiz Delalić, 19 May ’05, T. 27.

⁴¹⁵ Kemo Kapur, 16 Mar ’05, T. 30-31, agreeing with Defence counsel’s propositions 1) that “some of the rumours which circulated in Sarajevo as to the reputation of the 9th Brigade were the result of jealousies or tensions between certain brigades and certain units, for instance, of the MUP” and 2) that the rumours “were in fact or in part the result of Caco and Celo having been particularly vocal and critical about some MUP units which did not take much part in the defence of the town, although they were well armed”.

⁴¹⁶ Jusuf Jašarević, 01 Mar ’05, T. 11.

SDB or the SVB].⁴¹⁷ Vahid Karavelić remembered how Sefer Halilović often voiced his opinion that the material and technical potential of the MUP for “war duties” ought to be mobilised to a greater extent than it was done.⁴¹⁸ Vahid Karavelić, the 1st Corps Commander, testified to the jealousy of ABiH units towards the MUP. He said that it was felt that the civilian police “had everything [...] very fancy uniforms, nice boots, good weapons, sufficient ammunitions [but that] their total contribution to the Defence of Sarajevo was quite inadequate.”⁴¹⁹

140. According to several witnesses, the 9th and the 10th Brigades were not completely integrated into the system of military subordination as demonstrated by the lack of discipline of the brigades and the particular attitude of their commanders, who often had to be “persuaded” instead of “ordered”.⁴²⁰ Jusuf Jašarević testified that he would not have proposed the use of the 9th Brigade or the 10th Brigade for an important military task. He explained this position by saying that “[w]e already had information that there were individuals in those brigades whose conduct was undisciplined and that this lack of discipline was quite pronounced, and that is the main reason [...that] would be sufficient for me not to propose and not to take upon such a risk myself.”⁴²¹ However, Jusuf Jašarević also testified that if he needed good soldiers he would be able to get them from these two brigades.⁴²² Furthermore, Jusuf Jašarević testified that he could not have foreseen that these two brigades could do anything like what subsequently happened in Grabovica,⁴²³ and

⁴¹⁷ Ramiz Delalić, 17 May '05, T. 29; Ex. 415, “Overview of security related information regarding illegal activities and abuse of authority of the Deputy Commander of the 9th Motorised Brigade in Sarajevo, Ramiz Delalić aka Čelo, son of Jusuf and Đuza, née Merdović, date of birth 15.2.1963 in Priboj, Serbia”, dated 16 October 1993.

⁴¹⁸ Vahid Karavelić, 21 Apr '05, T. 120.

⁴¹⁹ Vahid Karavelić, 21 Apr '05, T. 118-119. *See also* Witness G, who testified that Enver Buza, the Commander of the Prozor Independent Battalion, “very often complained to [...] the Ministry of the Interior and said that [the police] weren't in fact fighting. He would criticise them and say they were being used away from the front lines. So he would criticise them for being in a safe area”, Witness G, 11 Apr '05, T. 20-21.

⁴²⁰ Jusuf Jašarević, 01 Mar '05, T. 48-49; Vehbija Karić, Ex. 444, T. 20, 37; Witness F, 08 Mar '05, T. 34; Mustafa Kadić, 09 Mar '05, T. 93 and 10 Mar '05, T. 20-21, testifying that some members of these units apparently considered that they could decide at times whether or not to obey orders which came from outside the brigade, Vahid Karavelić, 21 Apr '05, T. 100-101, 112-113. Vahid Karavelić also testified that all the orders issued by the 1st Corps command, which referred to the execution of combat activities, were for the most part carried out by the 9th Brigade so that “there were no real serious problems in respect of the execution of the basic tasks, the basic mission of the brigade”, Vahid Karavelić, 18 Apr '05, T. 156-157. *See also* Vahid Karavelić, 18 Apr '05, T. 158 and 19 Apr '05, T. 2; Kemo Kapur, 16 Mar '05, T. 36-37; Jusuf Jašarević, 01 Mar '05, T. 10-11, 13; Vahid Karavelić, 18 Apr '05, T. 157-158 and 22 Apr '05, T. 16-17. Vehbija Karić, Ex. 444, p. 20 (testifying that Mušan Topalović was “prone to wilfulness. He was undisciplined”), p. 22 (testifying that the 9th and 10th Brigades “weren't completely integrated into a system of military subordination”), and p. 37 (testifying that while these brigades “nevertheless carried out their main task, which was to protect the defence line that they had been assigned as a responsibility [...] They carried out their basic tasks with regard to defending the town”).

⁴²¹ Jusuf Jašarević, 04 Mar '05, T. 61-62. Dževad Tirak testified that he was also rather surprised to learn that the units coming from Sarajevo were the 9th and the 10th Brigades, Dževad Tirak, 30 Mar '05, T. 45. He also testified that, had he been in a position to choose, he would have chosen units with better reputation, Dževad Tirak, 30 Mar '05, T. 71, 73.

⁴²² Jusuf Jašarević, 04 Mar '05, T. 62.

⁴²³ Jusuf Jašarević, 02 Mar '05, T. 35.

that the news of those events was a shock to him.⁴²⁴ Vahid Karavelić testified that, although he was on notice of the breaches of discipline of the two brigades, it never occurred to him that they might commit atrocities against civilians.⁴²⁵ Vehbija Karić testified that it would have been “illogical” to expect that units redeployed from Sarajevo would have committed crimes in Grabovica because the situation in Sarajevo, where there was an atmosphere of unity between the ABiH and the HVO, was unlike that in Herzegovina where there were clashes between the ABiH and the HVO. In Vehbija Karić’s opinion, the Inspection Team never expected that what eventually occurred in Grabovica would ever happen.⁴²⁶

d. 2nd Independent Battalion

141. The 2nd Independent Battalion formed part of the 1st Corps⁴²⁷ and was commanded by Adnan Solaković until October 1993.⁴²⁸ The Deputy Commander was Samir Pezo.⁴²⁹ In 1993, the battalion was comprised of approximately 200 soldiers.⁴³⁰ It was a light mobile, or intervention,⁴³¹ battalion which was based in Sarajevo⁴³² and used to reinforce frontlines. When necessary, the battalion was sent to various locations outside Sarajevo.⁴³³ The battalion had a reputation of being a good fighting unit.⁴³⁴

(ii) 3rd Corps

142. In 1993, the 3rd Corps was commanded by Enver Hadžihasanović.⁴³⁵ The corps was based in Zenica.⁴³⁶ As a result of Rasim Delić’s decision of 9 June 1993, issued the day after he was appointed Main Staff Commander, the zone of responsibility of the 3rd Corp comprised mainly areas in central and northern Bosnia and Herzegovina.⁴³⁷

⁴²⁴ Jusuf Jašarević, 02 Mar '05, T. 36.

⁴²⁵ Vahid Karavelić, 22 Apr '05, T. 88-89.

⁴²⁶ Vehbija Karić, 02 Jun '05, T. 11-12.

⁴²⁷ Mustafa Kadić, 09 Mar '05, T. 85 and 10 Mar '05, T. 12.

⁴²⁸ Nedžad Mehanović, 16 Feb '05, T. 99; Mustafa Kadić, 09 Mar '05, T. 85 and 10 Mar '05, T. 12. In October 1993, Zakir Oković replaced Adnan Solaković as Commander of the 2nd Independent Battalion, Zakir Oković, 15 Mar '05, T. 48; Vahid Karavelić, 18 Apr '05, T. 149. The Trial Chamber notes that Namik Džanković testified that Adnan Solaković’s unit was the “1st Sarajevo Battalion”, Namik Džanković, 21 Mar '05, T. 33.

⁴²⁹ Zakir Oković, 15 Mar '05, T. 16.

⁴³⁰ Mustafa Kadić, 10 Mar '05, T. 11.

⁴³¹ Zakir Oković, 15 Mar '05, T. 19; Vahid Karavelić, 18 Apr '05, T. 148.

⁴³² Enes Šakrak, 17 Feb '05, T. 93-94.

⁴³³ Mustafa Kadić, 10 Mar '05, T. 11.

⁴³⁴ Mustafa Kadić, 10 Mar '05, T. 11.

⁴³⁵ Vahid Karavelić, 22 Apr '05, T. 32.

⁴³⁶ Ex. 472, Decision on the formation of the 6th Corps of the BH Army and the zones of responsibility of the 1st, 3rd, 4th and 6th Corps of the BH Army, 09 June 1993; Mehmed Behlo, 27 Jun '05, T. 63.

⁴³⁷ Ex. 472, listing Banja Luka, Bosanska Gradiška, Bosanska Dubica, Bugojno, Busovača, Čelinac, Donji Vakuf, Jajce, Kakanj, Kotor Varoš, Kupres, Laktaši, Mrkonjić Grad, Novi Travnik, Prnjavor, Skender Vakuf, Srbac, Šipovo, Travnik, Vitez, Zavidovići, Zenica and Žepče.

a. OG West

143. OG West,⁴³⁸ which was commanded by Selmo Cikotić,⁴³⁹ was directly subordinate to the 3rd Corps. OG West consisted of five municipal TO staffs and five brigades, including the 307th, 308th, and 317th Brigades.⁴⁴⁰ During the summer of 1993 and in September, OG West consisted of between 7,000 and 8,000 soldiers.⁴⁴¹ The command post was located in Bugojno and in September 1993 OG West had a forward command post (“IKM”)⁴⁴² near Gornji Vakuf on Mt. Planica.⁴⁴³

(iii) 4th Corps

144. The 4th Corps was commanded by Arif Pašalić and was based in Mostar.⁴⁴⁴ Following Rasim Delić’s 9 June 1993 decision, the zone of responsibility of the 4th Corps was adjusted to cover areas in central, southern and eastern Bosnia and Herzegovina.⁴⁴⁵

(iv) 6th Corps

⁴³⁸ OG *Zapad* in B/C/S. OGs were temporary units within the army structure put together to coordinate and lead combat operations and to “reduce the links towards the corps commander”, Selmo Cikotić, 23 Feb ’05, T. 04, 33; *see also* Salko Gušić, 08 Feb ’05, T. 89. The Commander of the Main Staff, Rasim Delić, could propose the formation of an OG, however this had to be sanctioned by the Presidency of Bosnia and Herzegovina, Vahid Karavelić, 21 Apr ’05, T. 73; *see also* Džemal Najetović, Ex. 459, 13 Jun ’05, p. 2, stating that in order to establish an OG “a specific written order is required and that order must be signed by the highest level of command and control”. In order to establish an OG, two orders would be issued, a resubordination order and an order appointing officers to the various functions in the OG command, Vahid Karavelić, 22 Apr ’05, T. 53-54; *see also* Džemal Najetović, Ex. 459, 13 Jun ’05, p. 2. The orders setting up OGs were normally written but could be given orally, Salko Gušić, 08 Feb ’05, T. 95, and it was important that the orders specified who would command the OG and which units would be under the commander’s control, Selmo Cikotić, 23 Feb ’05, T. 35; *see, e.g.*, Ex. 144, Decision on the temporary organisation and formation of units of the Army of the Republic of Bosnia and Herzegovina, by Alija Izetbegović, dated 20 August 1992, which creates the OG South (or *Jug* in B/C/S) and specifies by name the commander and the other officers comprising the OG command; Ex. 193, which establishes OG Igman and 1) appoints a commander, 2) requests him to submit the names of proposed command members to the Main Staff within ten days, 3) resubordinates units to the OG from the composition of the 1st and the 6th Corps. Selmo Cikotić considered Ex. 193 an example of “an appropriate, adequate and sensible order by which to create a temporary military formation”, Selmo Cikotić, 23 Feb ’05, T. 41. In the military hierarchy, OGs were on the same level as divisions, Vahid Karavelić, 21 Apr ’05, T. 67, *i.e.* between brigades and corps, Džemal Najetović, Ex. 459, 13 Jun ’05, p. 2. The commander of an OG would typically be a person of seniority similar to that of a brigade commander, Selmo Cikotić, 23 Feb ’05, T. 33-34; Vahid Karavelić, 21 Apr ’05, T. 68, and the command of an OG would include more or less the same staff functions as the command of a permanent unit such as a division, Vahid Karavelić, 21 Feb ’05, T. 67; Džemal Najetović, Ex. 459, 13 Jun ’05, p. 2. An OG would have under its control several brigades and could cover several municipalities, Džemal Najetović, Ex. 459, 13 Jun ’05, p. 2. An OG was disbanded by written order, Džemal Najetović, Ex. 459, 13 Jun ’05, p. 2.

⁴³⁹ Selmo Cikotić, 23 Feb ’05, T. 4, 33, testifying that he was the commander of OG West from March 1993 until April 1994.

⁴⁴⁰ Selmo Cikotić, 23 Feb ’05, T. 4-5; Mehmed Behlo, 27 Jun ’05, T. 63 and 28 Jun ’05, T. 3.

⁴⁴¹ Selmo Cikotić, 23 Feb ’05, T. 4-5.

⁴⁴² Further on IKMs, *see infra* Section IV.C.4.

⁴⁴³ Selmo Cikotić, 23 Feb ’05, T. 5.

⁴⁴⁴ Salko Gušić, 03 Feb ’05, T. 25, 66; Ex. 472.

⁴⁴⁵ Bileća, Čapljina, Čitluk, Gacko, Grude, Livno, Ljubinje, Ljubuški, Mostar, Neum, Nevesinje, Posušje, Ravno, Stolac, Široki Brijeg, Tomislav Grad and Trebinje, Ex. 472. *See also* Dževad Tirak, 30 Mar ’05, T. 78.

145. The 6th Corps was established by Rasim Delić's above-mentioned decision of 9 June 1993, which also restructured the zones of responsibility of the 1st, 3rd and 4th Corps.⁴⁴⁶ The 6th Corps headquarters was located in Konjic.⁴⁴⁷ The Commander was Salko Gušić⁴⁴⁸ and the Deputy Commander was Bahrudin Fazlić.⁴⁴⁹ The Chief of Staff was Dževad Tirak⁴⁵⁰ and the Chief of the SVB was Nermin Eminović.⁴⁵¹ The corps zone of responsibility covered the municipalities of Fojnica, Gornji Vakuf, Hadžići, Jablanica, Kalinovik, Kiseljak, Konjic, Kreševo, Prozor, Trnovo, and Visoko.⁴⁵²

146. The 6th Corps was established when the 4th Corps proved unable to withstand the pressure of HVO forces in Herzegovina.⁴⁵³ The situation was chaotic and "it was virtually impossible to have any communication between the defence units [in and around the Mostar area]."⁴⁵⁴

147. The 6th Corps composition changed during the Indictment period due to resubordination orders.⁴⁵⁵ It included, among other units, a military police battalion, the 8th Motorised Brigade,⁴⁵⁶ the 43rd Brigade, the 44th Brigade,⁴⁵⁷ the 45th Brigade, the 49th Brigade, the 81st Mountain Brigade, the 310th Brigade, the Gornji Vakuf municipal staff, and the Prozor Independent Battalion.⁴⁵⁸ The 6th Corps also contained a few independent special detachments and platoons, including the Trnovo Municipal Defence Staff with subordinated units, the *Crni Labudovi* (or "Black Swans")

⁴⁴⁶ Ex. 472.

⁴⁴⁷ Salko Gušić, 08 Feb '05, T. 20.

⁴⁴⁸ Salko Gušić, 03 Feb '05, T. 16; Ex. 102, Decision on the restructuring of the Republic of Bosnia and Herzegovina Supreme Command Headquarters of the armed forces and the appointment of senior officers, 08 June 1993.

⁴⁴⁹ Dževad Tirak, 30 Mar '05, T. 37.

⁴⁵⁰ Dževad Tirak, 30 Mar '05, T. 22.

⁴⁵¹ Nermin Eminović, 10 Mar '05, T. 56.

⁴⁵² Ex. 472. The 6th Corps commander, Salko Gušić, testified that the 6th Corps' zone of responsibility encompassed eleven municipalities and added to the above also Hrasnica, Salko Gušić, 03 Feb '05, T. 24.

⁴⁵³ Dževad Tirak, 30 Mar '05, T. 37-38.

⁴⁵⁴ Dževad Tirak, 30 Mar '05, T. 37-38. *See also* Nermin Eminović, 10 Mar '05, T. 60.

⁴⁵⁵ *See infra* Section IV.C.5.

⁴⁵⁶ Ex. 193, Order on organisational changes in the organic strength of the corps, signed by Rasim Delić, 5 July 1993.

⁴⁵⁷ Salko Gušić, 03 Feb '05, T. 25; Ex. 472. This decision provides that the new 6th Corps would cover Jablanica and that "Manoeuvre units as well as the Municipal Defence Staffs with their headquarters support units are directly subordinated to the Commands of the Corps in whose zones of responsibility they are", meaning that the 44th Brigade in Jablanica therefore became subordinated to the 6th Corps on 9 June 1993. *See also* Dževad Tirak, 30 Mar '05, T. 38.

⁴⁵⁸ Salko Gušić, 03 Feb '05, T. 26; Dževad Tirak, 30 Mar '05, T. 71, testifying that the 6th Corps was responsible for the Prozor Independent Battalion; Mehmed Behlo, 27 Jun '05, T. 76, testifying that the battalion submitted combat reports to the 6th Corps; Witness J, 06 Jul '05, T. 12-13, who also testified that the 6th Corps deputy commander Bahrudin Fazlić would frequently come and visit the Prozor Independent Battalion; Vehbija Karić, Ex. 444, T. 104.

Reconnaissance-Sabotage Detachment, the Silver Fox Independent Platoon, and the Special Purposes Detachment of the Main Staff of the ABiH (“Zulfikar Detachment”).⁴⁵⁹

a. Military Police Battalion

148. In August and September 1993, the Commander of the 6th Corps military police battalion was Nusret Sahić.⁴⁶⁰ The battalion consisted of two companies, based in Jablanica and Konjic, respectively.⁴⁶¹ Each company numbered approximately 60 soldiers⁴⁶² but were not at full strength in September 1993.⁴⁶³ The military police company in Jablanica was co-located in a school building with the command of the 44th Brigade.⁴⁶⁴

b. Zulfikar Detachment

⁴⁵⁹ Ex. 193; Salko Gušić, 03 Feb '05, T. 25-26. The evidence is contradictory with regard to where in the ABiH hierarchy the Zulfikar Detachment belonged before the combat operations in Herzegovina in September 1993. The 6th Corps Commander, Salko Gušić, was unclear on this matter. In his statement to the Sarajevo Cantonal Court on 11 March 1998, Salko Gušić stated that “[t]o tell the truth, the unit was also a part of the 6th Corps under my command” and that “[t]he unit was part of the 6th Corps, and as Commander of the 6th Corps, I was still authorised to provide logistical help to the unit. That was the 6th Corps’s permanent activity that could not have been stopped”, Salko Gušić, 04 Feb '05, T. 40, 42. However, in his testimony before the Tribunal, Salko Gušić said that the Zulfikar Detachment “was always tied to the Supreme Command Staff, and that was part of its title. It was called a special detachment which was within the Supreme Command Staff.” He also testified that officially, it was under the 6th Corps command, “but it was never actually under the corps command”, Salko Gušić, 03 Feb '05, T. 26-27. The 6th Corps Chief of Staff Dževad Tirak testified that when the 6th Corps was established two units that were under the direct control of the ABiH Main Staff, the Zulfikar Detachment and the Black Swans, were present in the area covered by the 6th Corps” and that “[t]here was no real command. Units moved chaotically”, Dževad Tirak, 30 Mar '05, T. 37, 39. Selmo Cikotić testified that the Zulfikar Detachment “by title and position” identified itself as being directly under the ABiH Main Staff, Selmo Cikotić, 23 Feb '05, T. 38; *see also* Selmo Cikotić, 23 Feb '05, T. 19-20, testifying that “[i]n my understanding, [Zulfikar Ališpago] was subordinated to the General Staff, to the commander of the General Staff”. There is however significant evidence that the Zulfikar Detachment was not directly subordinate to the Main Staff, but to Corps. The Trial Chamber notes the provision in the decision of the Main Staff Commander Rasim Delić, which established the 6th Corps (Ex. 472, dated 9 June 1993), that “Manoeuvre units [...] are directly subordinated to the Commands of the Corps in whose zones of responsibility they are” (*cf.* Selmo Cikotić’s testimony that the Zulfikar Detachment was present in the 6th Corps area of responsibility). The Trial Chamber also notes the subsequent order on organisational changes by the Main Staff Commander Rasim Delić, dated 5 July 1993 (Ex. 193), which lists the Zulfikar Detachment as part of the 6th Corps. This order was addressed, *inter alia*, to the 6th Corps Commander. Thus, the evidence is clear that prior to the combat operations in Herzegovina in September 1993, the Zulfikar Detachment formed part of the 6th Corps. As for the specific situation during the combat operations in Herzegovina, *see infra* Section IV.C.1 and IV.C.5.

⁴⁶⁰ Nermin Eminović, 10 Mar '05, T. 66-67.

⁴⁶¹ Nermin Eminović, 10 Mar '05, T. 65.

⁴⁶² Nermin Eminović, 10 Mar '05, T. 65.

⁴⁶³ Salko Gušić, 08 Feb '05, T. 63-64.

⁴⁶⁴ Nermin Eminović, 10 Mar '05, T. 65-66.

149. The Zulfikar Detachment was commanded by Zulfikar Ališpago, nicknamed “Zuka”⁴⁶⁵ and was based in Donja Jablanica.⁴⁶⁶ The Trial Chamber has not been furnished with evidence concerning the composition of this unit.

c. Prozor Independent Battalion

150. The Prozor Independent Battalion was commanded by Enver Buza.⁴⁶⁷ The Deputy Commander was Mustafa Hero and the Chief of SVB was Mustafa Bektaš.⁴⁶⁸ The battalion command post during the summer of 1993 was located in Dobro Polje.⁴⁶⁹ The battalion was established in the south-eastern part of the Prozor municipality, in the areas of Kute and Sčipe,⁴⁷⁰ and was comprised of Bosnian Muslims from these two areas as well as from Skrobucani, Donja Vas, Klek, Lapsun and Prozor town.⁴⁷¹ It consisted of approximately 150 soldiers⁴⁷² most of whom were farmers without military training or experience.⁴⁷³ Many of the battalion’s soldiers had been imprisoned by the HVO when their villages had been occupied.⁴⁷⁴ The battalion was mainly involved in defensive combat activities although it would sometimes also carry out reconnaissance and sabotage duties.⁴⁷⁵

151. Enver Buza was initially considered a good commander, who brought positive changes to the battalion, such as improving its communications system⁴⁷⁶ and by removing the villagers’ influence over the battalion.⁴⁷⁷ However, after a while Enver Buza appeared to see his commanding role as one of absolute power, which resulted in him only accepting advice from two persons in the battalion command whom he trusted.⁴⁷⁸ Enver Buza would take decisions without consulting

⁴⁶⁵ Ex. 377, order of Sefer Halilović concerning transfer of troops, dated 11 March 1993; Salko Gušić, 03 Feb '05, T. 26.

⁴⁶⁶ Emin Zebić, 17 Mar '05, T. 22.

⁴⁶⁷ Salko Gušić, 03 Feb '05, T. 26; Dževad Tirak, 30 Mar '05, T. 66. Enver Buza joined the battalion in May 1993, Witness G, 07 Apr '05, T. 7.

⁴⁶⁸ Witness J, 06 Jul '05, T. 8-9.

⁴⁶⁹ Witness G, 07 Apr '05, T. 9; Witness H, 13 Apr '05, T. 35; Mehmed Behlo, 28 Jun '05, T. 42; Ex. 332, marked photograph. A “military police group” was co-located with the battalion command in Dobro Polje, Witness H, 13 Apr '05, T. 36-37.

⁴⁷⁰ Witness G, 07 Apr '05, T. 4.

⁴⁷¹ Witness G, 07 Apr '05, T. 6-7 and 101 Apr '05, T. 69; Dževad Tirak, 30 Mar '05, T. 67, 69.

⁴⁷² Witness H, 14 Apr '05, T. 45.

⁴⁷³ Dževad Tirak, 30 Mar '05, T. 67.

⁴⁷⁴ Mehmed Behlo, 28 Jun '05, T. 43-44; Witness G, 07 Apr. '05, T. 16-17; Witness J, 06 Jul '05, T. 69-70. In July 1993, during an attempt by ABiH to recapture the town of Prozor, the ABiH, including troops of the Prozor Independent Battalion, were confronted with Bosnian Muslim prisoners who were being used as human shields. Some of the prisoners were wounded but other prisoners were able to escape. Most of those who managed to escape joined the Prozor Independent Battalion, Witness G, 07 Apr. '05, T. 15-17.

⁴⁷⁵ Witness G, 07 Apr '05, T. 12.

⁴⁷⁶ Witness G, 07 Apr '05, T. 8.

⁴⁷⁷ Witness G, 07 Apr '05, T. 8.

⁴⁷⁸ Witness G, 07 Apr '05, T. 8.

subordinates, who may have been more informed than he was, and he would also take unwise decisions, such as using up fuel or disappearing and leaving the unit without a commander.⁴⁷⁹

d. 44th Mountain Brigade

152. The 44th Mountain Brigade (“44th Brigade”) was commanded by Enes Kovačević and was headquartered in a school building in Jablanica.⁴⁸⁰ The Deputy Commander was Senad Džino and the Chief of the SVB was Zajko Siharlić.⁴⁸¹ The brigade was sometimes referred to as the “Jablanica Brigade”.⁴⁸² The 44th Brigade included a military police battalion.⁴⁸³

(v) Handžar Division

153. The *Handžar* Division was commanded by an Albanian called “Dzeki”.⁴⁸⁴ It was made up of Albanian soldiers.⁴⁸⁵ The Trial Chamber has not been furnished with evidence regarding the composition of this unit.

(vi) Igman Wolves

154. The Igman Wolves unit was commanded by Edib Sarić.⁴⁸⁶ This unit was sometimes called “Čedo’s Wolves”.⁴⁸⁷ This unit consisted of about 30 soldiers.⁴⁸⁸

2. MUP units

(a) General information

155. The MUP was located in Sarajevo⁴⁸⁹ and during the time relevant to the Indictment the Minister of the Interior was Bakir Alispahić.⁴⁹⁰ The MUP was divided into two segments, one

⁴⁷⁹ Witness G, 07 Apr '05, T. 85.

⁴⁸⁰ Nermin Eminović, 11 Mar '05, T. 34; Emin Zebić, 16 Mar '05, T. 75 and 17 Mar '05, T. 09; Dževad Tirak, 31 Mar '05, T. 47.

⁴⁸¹ Emin Zebić, 16 Mar '05, T. 94 and 17 Mar '05, T. 9.

⁴⁸² Nermin Eminović, 11 Mar '05, T. 34.

⁴⁸³ Salko Gušić, 08 Feb '05, T. 64.

⁴⁸⁴ Emin Zebić, 17 Mar '05, T. 22.

⁴⁸⁵ Erđin Arnautović, 15 Feb '05, T. 71.

⁴⁸⁶ Emin Zebić, 16 Mar '05, T. 73 and 17 Mar '05, T. 21; Ahmed Salihamidžić, 18 Mar '05, T. 2. According to Namik Džanković, the Commander of the Čedo’s Wolves was called Sarić, Namik Džanković, 21 Mar '05, T. 3, 22. Ex. 226, Report from the 6th Corps SVB to Jusuf Jašarević, Chief of the Main Staff UB, dated 17 Sept 1993. Witness D testified that he thought that the Commander of the Čedo’s Wolves was called Sadić, Witness D, 21 Feb '05, T. 21. See also Šefko Hodžić, 23 Mar '05, T. 48.

⁴⁸⁷ Namik Džanković, 21 Mar '05, T. 22, testifying that “When we arrived there, we found Mr. Zuka and Mr. Edib Sarić, who was the commander of, I think, Cedo’s Wolves”. See also Witness B, 02 Feb '05, T. 24, testifying that he was taken from the house of Stojan Tomić to the hydroelectric power plant in Grabovica where the base of Čedo’s Wolves was located; Witness D, 21 Feb '05, T. 21, testifying that “I think that Cedo’s Wolves were commanded by Mr. Sadić. I believe that was his last name”.

⁴⁸⁸ Witness C, 10 Feb '05, T. 9-10, 39.

managing public security and the other concerned with state security.⁴⁹¹ The public security segment administered the civilian police, which consisted of several CSB each responsible for a region.⁴⁹² Each CSB was responsible for several SJB, effectively police stations, located within the CSB's region.⁴⁹³ The state security segment included the SDB, headed by Jozo Jozić.⁴⁹⁴ This was a powerful institution as the Chief of the SDB enjoyed substantial autonomy to command the work of the secret services.⁴⁹⁵ Bakir Alispahić testified that "in view of the fact that the war had already started, [he] was directly responsible to the Presidency of Bosnia and Herzegovina and in accordance with the then-regulations, there was a system of armed forces, including the Ministry of the Interior, and all of them were subordinated to the Presidency, which had command authority over these services."⁴⁹⁶

156. The Mostar CSB, headed by Ramo Maslesa,⁴⁹⁷ was responsible for, among others, the SJBs in Jablanica, Konjic and Mostar.⁴⁹⁸ The Jablanica SJB was headed by Emin Zebić and his deputy was Ahmed Salihamidžić.⁴⁹⁹ The number of policemen in Jablanica varied from 150 to 200.⁵⁰⁰

(b) The *Laste* Special MUP Unit

157. The civilian police actively participated in the armed effort with the ABiH⁵⁰¹, however there were also special units within the MUP that were used in combat operations.⁵⁰² One such MUP unit was called the *Laste* unit,⁵⁰³ which belonged to the Sarajevo CSB.⁵⁰⁴ This unit was initially composed of about 50 members but gradually grew to between 100 and 150 men.⁵⁰⁵ The *Laste* unit

489 Emin Zebić, 16 Mar '05, T. 68.

490 Bakir Alispahić, 23 May '05, T. 11; Emin Zebić, 17 Mar '05, T. 5. Ex. 143, the 18 July decision by President Alija Izetbegović, lists (at II.2, 3) the Minister of the Interior as a "permanent staff" of the "Supreme Command War Council for Defence".

491 Bakir Alispahić, 23 May '05, T. 12.

492 Emin Zebić, 17 Mar '05, T. 4-5.

493 Emin Zebić, 17 Mar '05, T. 4-5. According to Bakir Alispahić, each CSB would supervise between three to eleven SJBs, Bakir Alispahić, 27 May '05, T. 43.

494 Jusuf Jašarević, 04 Mar '05, T. 18.

495 Bakir Alispahić, 23 May '05, T. 12; Zlatan Okić, 01 Apr '05, T. 44. *See also* Jusuf Jašarević, 02 Mar '05, T. 30-31.

496 Bakir Alispahić, 23 May '05, T. 13.

497 Emin Zebić, 17 Mar '05, T. 8; Bakir Alispahić, 27 May '05, T. 43.

498 Emin Zebić, 17 Mar '05, T. 4.

499 Emin Zebić, 17 Mar '05, T. 5, 7; Ahmed Salihamidžić, 17 Mar '05, T. 96.

500 Emin Zebić, 17 Mar '05, T. 20.

501 Bakir Alispahić, 23 May '05, T. 14.

502 Bakir Alispahić, 23 May '05, T. 14.

503 Džemal Najetović, Ex. 459, 13 Jun '05, p. 2. This unit arrived in Mostar in September 1993 to participate in the defence of that town, Džemal Najetović, Ex. 459, 13 Jun '05, p. 2.

504 Bakir Alispahić, 23 May '05, T. 15. Bakir Alispahić also testified that all CSBs included similar units and that the unit was formed on 15 May 1992, Bakir Alispahić, 23 May '05, T. 16.

505 Bakir Alispahić, 23 May '05, T. 15, also testifying that the *Laste* unit was initially used to protect citizens and property in Sarajevo.

was comprised of highly trained people and had more and better weapons and equipment than the regular police force.⁵⁰⁶

(c) Resubordination of MUP Units to ABiH Units

158. Whenever the special MUP units, such as the *Laste* unit, were used in combat operations they would have to be resubordinated to an ABiH unit.⁵⁰⁷ In principle, the Assistant Minister for Police, after having consulted with Bakir Alispahić, could issue an order of resubordination.⁵⁰⁸ A document would be issued indicating that a MUP unit was subordinated to the ABiH and informing the MUP unit commander to whom he would have to report.⁵⁰⁹ However, in practice MUP units were engaged in combat operations based upon an agreement between the local MUP unit and local ABiH units.⁵¹⁰ The superior MUP unit, *i.e.* the CSB, would be informed of any such agreement.⁵¹¹ In the absence of an order of resubordination, the ABiH commander would not have the power to command the MUP unit.⁵¹²

159. When resubordinated, the ABiH unit commander would command the MUP unit for the purposes of the operation in which the MUP unit participated.⁵¹³ When the operation was finished the MUP unit commander would inform his own superior verbally or in writing and that would end of the MUP unit's engagement with the ABiH.⁵¹⁴

B. Existence of Armed Conflict

160. The Trial Chamber heard evidence on the existence of an armed conflict engaging the ABiH, the HVO, and the army of the Republika Srpska ("VRS"), in the territory of Bosnia and

⁵⁰⁶ Bakir Alispahić, 23 May '05, T. 16,

⁵⁰⁷ Bakir Alispahić, 23 May '05, T. 14. *See also* Witness G, who testified that "[i]t was common knowledge that the Ministry of the Interior and the Ministry of Defence frequently and in other places used forces for operations", Witness G, 11 Apr '05, T. 19.

⁵⁰⁸ Bakir Alispahić, 23 May '05, T. 14.

⁵⁰⁹ Bakir Alispahić, 23 May '05, T. 14.

⁵¹⁰ Selmo Cikotić, 24 Feb '05, T. 20. The order of resubordination could also be given orally, Selmo Cikotić, 24 Feb '05, T. 38. Witness G testified that he never saw any written documentation between the Prozor Independent Battalion and the MUP permitting civilian police to be used in combat, Witness G, 11 Apr '05, T. 19-20.

⁵¹¹ Selmo Cikotić, 24 Feb '05, T. 50-51, also testifying that in 1993 communications were frequently difficult and often official approval was not sought from the superior MUP authorities.

⁵¹² Selmo Cikotić, 24 Feb '05, T. 21.

⁵¹³ Selmo Cikotić, 24 Feb '05, T. 20; Witness G, 11 Apr '05, T. 19 (testifying with regard to the Prozor Independent Battalion, that [t]he use of the police or the deployment of the police was planned by our commander, Enver Buza, because he gave permission to the policemen how they were to move around, when they were to go, when they were to return, and so on").

⁵¹⁴ Selmo Cikotić, 24 Feb '05, T. 38.

Herzegovina, including in the areas of Grabovica, Uzdol,⁵¹⁵ Prozor, Mostar, Sarajevo, Mt. Igman and Jablanica.

161. During the summer of 1993, there were several instances of armed combat between the ABiH and the HVO in BiH.⁵¹⁶ According to Selmo Cikotić, Commander of the OG West,⁵¹⁷ the HVO had material superiority over the ABiH, whereas the ABiH had superiority in manpower and knowledge of the terrain.⁵¹⁸ The tactics of the ABiH was to attack in small fronts, to distract HVO and stretch their front line.⁵¹⁹

(a) Prozor

162. Prozor town lies on one of the main supply routes from the Adriatic coast to the Lašva Valley, Zenica and Tuzla.⁵²⁰ According to Witness G, on 22 October 1992, “HVO or HV units” in the area around Prozor encircled Prozor town.⁵²¹ By 12:00 the following day, these troops had entered the town.⁵²² The ABiH lost control of Prozor.⁵²³

163. In August and September 1993, the OG West was predominantly engaged in combat with the HVO, north of the Prozor Independent Battalion’s area of responsibility.⁵²⁴ Part of the ABiH 6th Corps was engaged in the Fojnica area and was facing great difficulty there. The HVO forces were attempting to cut the only line of communication with Zenica and the ABiH 3rd Corps.⁵²⁵ By September 1993, the HVO had occupied 85 to 90 percent of the territory in the municipality of Prozor.⁵²⁶

⁵¹⁵ The Trial Chamber will discuss the general situation of Grabovica and Uzdol in Sections IV.D and IV.E.

⁵¹⁶ On 29 June 1993, the ABiH forces attacked the HVO northern barracks in Mostar, Ex. 408, Agreed Facts, 22 Apr '05, Annex B, para. 541; On 2 July 1993, upon the request of the 4th Corps, Rasim Delić ordered the 6th Corps to launch an attack against the HVO forces along the Donja Drežnica village-Vrđi village -Golemci village-Planinica axis, Ex. 294, order of 2 July 1993, by Rasim Delić; On 31 July the ABiH destroyed practically all of the front lines of the HVO in the Crni Vrh area and advanced towards the Makljen pass, Witness G, 07 Apr '05, T. 15. In late summer, the ABiH was facing a great deal of difficulty in the Fojnica area. The HVO forces were attempting to cut the only line of communication over to Zenica and the 3rd Corps, Dževad Tirak, 31 Mar '05, T. 5 - 6.

⁵¹⁷ For information about OG West, *see* Section IV.A, para. 143.

⁵¹⁸ Selmo Cikotić, 24 Feb '05, T. 26

⁵¹⁹ Selmo Cikotić, 24 Feb '05, T. 27.

⁵²⁰ Kate Adie, 18 Apr '05, T. 64.

⁵²¹ Witness G, 07 Apr '05, T. 12.

⁵²² Witness G, 07 Apr '05, T. 14. The troops included an armoured vehicle unit with 13 to 14 tanks, *ibid*.

⁵²³ Witness G, 07 Apr '05, T. 14; Mehmed Behlo, 27 Jun '05, T. 66. Witness G stated that the Territorial Defence of Bosnia and Herzegovina lost control of Prozor. In light of the evidence presented, the Trial Chamber notes that in October 1992, the TO had already become the ABiH, *see infra* Section IV.A, para. 101.

⁵²⁴ Selmo Cikotić, 23 Feb '05, T. 5-6.

⁵²⁵ Dževad Tirak, 31 Mar '05, T. 5-6.

⁵²⁶ Out of 7.400 Bosnian Muslims living in the municipality in 1991, 128 Bosnian Muslims remained in the area of Prozor, Witness G, 07 Apr '05, T. 14. During this time there was a list of 181 people who had gone missing and 968 able-bodied men were in camps, Witness G, 07 Apr '05, T. 15.

(b) Jablanica

164. Early in 1993, the ABiH and the HVO were fighting in the region around Jablanica. In April 1993, the HVO launched a large offensive on Jablanica, taking Sovici and Doljani to the west of Jablanica.⁵²⁷ In May 1993, the ABiH took control of Grabovica.⁵²⁸ The HVO advance halted after a cease-fire agreement was negotiated.⁵²⁹ At the end of July 1993, the ABiH retook a part of Doljani.⁵³⁰ In August and September 1993, shelling caused civilian casualties in Jablanica.⁵³¹ Transport to Konjic and to Mostar was very difficult during that period, because Konjic and the main road to Mostar were under HVO artillery fire.⁵³²

(c) Mostar

165. Mostar is the largest town in south-eastern BiH and the historical capital of Herzegovina.⁵³³ According to Sulejman Budaković, chief of staff of the 4th Corps until November 1993, on 16 June 1992, “JNA and the Serbian paramilitary formations” were driven out of Mostar.⁵³⁴ In May 1993, there was combat between the ABiH and the HVO in Mostar. The ABiH, on the east side of Mostar, was being attacked from two sides, by the VRS and by the HVO; there was no possibility to establish communications with ABiH units outside of Mostar.⁵³⁵ According to Sulejman Budaković, the “HVO and the HV” shelled the city on a daily basis.⁵³⁶ There was no water or electricity in the entire area⁵³⁷ and only a minimum amount of humanitarian assistance arrived for the approximately 40,000 civilians in east Mostar.⁵³⁸

⁵²⁷ Ex. 408, Agreed Facts 22 Apr '05, Annex B, para. 30.

⁵²⁸ Witness C, 10 Feb '05, T. 5- 6, 39; Witness A, 01 Feb '05, T. 15-16; Katica Miletić, 09 Feb '05, T. 8; At least from early 1993, the HVO had control of Grabovica, Witness B, 02 Feb '05, T. 5; Witness C, 10 Feb '05, T. 6; *see also* Section IV.D.2.

⁵²⁹ Ex. 408, Agreed Facts, 22 Apr '05, Annex B, para. 36. The Trial Chamber notes that it has not been provided with information as to when this cease-fire agreement was signed. This evidence stems from the Trial Judgement in *Naletilić*. Based on the paragraph of that Judgement which is part of the Agreed Facts, the Trial Chamber notes that the cease-fire agreement must have been signed sometime between May and July 1993.

⁵³⁰ Ex. 408, Agreed Facts, 22 Apr '05, Annex B, para. 36.

⁵³¹ Emin Zebić, 17 Mar '05, T. 14, 67; Ex. 406, report of “Zicro, Rifat and Vehbija” to the Commander of the Supreme Command Staff personally, dated 1 September 1993, detailing that seven 120 mm mortar shells hit Jablanica on 1 August, seriously wounding two persons and slightly wounding fourteen others.

⁵³² Emin Zebić, 17 Mar '05, T. 14, 17, Ahmed Salihamidžić, 18 Mar '05, T. 4. The road to Mostar was blocked, *ibid.*

⁵³³ Ex. 408, Agreed Facts, 22 Apr '05, Annex B, para. 37.

⁵³⁴ Sulejman Budaković, Ex. 458, 07 Jan '03, p. 2.

⁵³⁵ Sulejman Budaković, Ex. 458, 07 Jan '03, p. 2. According to Sulejman Budaković, HV forces were also involved attacking the ABiH in Mostar, *ibid.*; Ex. 408, Agreed Facts, 22 Apr '05, Annex B, para. 39. For more information about the course of conflict in Mostar, *see* Ex. 408, Agreed Facts, 22 Apr '05, Annex B, paras 38-51.

⁵³⁶ Sulejman Budaković, Ex. 458, p. 2.

⁵³⁷ Sulejman Budaković, Ex. 458, 07 Jan '03, p. 3.

⁵³⁸ Sulejman Budaković, Ex. 458, 07 Jan '03, p. 2-3; Ex. 408, Agreed Facts, 22 Apr '05, Annex B, para. 50; The HVO would not allow any humanitarian convoys to get through. Šefko Hodžić, 24 Mar '05, T. 45-46.

166. By August and September 1993, there were indications that the HVO intended to make Mostar the capital city of the new Republic of Herceg-Bosna.⁵³⁹ According to Sulejman Budaković, documentation showed that the aim of the blockade was the military occupation of Mostar and the elimination of Bosnian Muslims from the town in order to incorporate Mostar, Konjic and Jablanica into Herzeg-Bosna.⁵⁴⁰ In an order of 24 August, Sefer Halilović stated that a general tank, artillery and infantry attack on Mostar had been launched early that morning.⁵⁴¹ He further stated that “the attack is being carried out by the extreme HVO/Croatian Defence Council/ wing with the help of the HV/Croatian Army/ [...]”⁵⁴² The ABiH believed the aim of the attack was to take the Mostar hydro-electric plant and to “cut through the free territory from the dam towards Vrapčići.”⁵⁴³ In order to ward off this attack, the 6th Corps was ordered to assist the 4th Corps in the defence of Mostar.⁵⁴⁴

167. The total blockade of Mostar and its surroundings lasted until 21 February 1994.

(d) Sarajevo and Mt. Igman

168. In 1992 and 1993, the Sarajevo Romanija Corps of the VRS laid siege to Sarajevo, with approximately 25,000 to 30,000 Serb forces encircling the city⁵⁴⁵ and the VRS engaged in sniping and heavy shelling in Sarajevo.⁵⁴⁶ The troops of the VRS specifically targeted civilians and civilian structures.⁵⁴⁷

169. In April and May of 1993, the VRS launched a large offensive on Mt. Igman,⁵⁴⁸ which is located approximately 5 to 10 kilometres to the south-west of Sarajevo. In July 1993, another

⁵³⁹ Emin Zebić, 17 Mar '05, T. 15; Šefko Hodžić, 24 Mar '05, T. 45; Sulejman Budaković, Ex. 458, 07 Jan '03, p. 3.
⁵⁴⁰ Sulejman Budaković, Ex. 458, 07 Jan '03, p. 3.

⁵⁴¹ Ex. 138, order of 24 August 1993, signed by Sefer Halilović as “Načelnik Štaba Vrhovne Komande OS R BiH”.
⁵⁴² Ex. 138. Sefer Halilović identified “the HV/Croatian Army/(*Sokolovi/Falcons*/-the 5th Guards Brigade Osijek, *Tigrovi/Tigers*/-the 1st Brigade of the Split ZNG/National Guards Corps/, *Gromovi/Thunderclaps*/-the Sisak Guards Brigade)”.

⁵⁴³ Ex. 138.

⁵⁴⁴ Ex. 138; Ex. 139, order of 26 August 1993, signed by Rasim Delić, in which Rasim Delić ordered the 6th Corps to engage in attack together with the 4th Corps forces on the HVO units on the Vrđi village-Domazet village axis. The “44th and the 45th bbrs/Mountain Brigades” were supposed to engage the HVO units in their zones of responsibility; Dževad Tirak, 31 Mar '05, T. 10. Dževad Tirak found the order of Rasim Delić to be somewhat “unrealistic” as the corps situation did not allow for such operations, Dževad Tirak, 31 Mar '05, T. 11. According to Šefko Hodžić, Sefer Halilović informed Rasim Delić on 3 September 1993 about a report of the Commander of the 4th Corps Arif Pasalić warning that an HVO offensive against Mostar, specifically in the part of the hydroelectric plant, was being planned, Šefko Hodžić, 23 Mar '05, T. 56-57. The 6th Corps had been ordered to assist the 4th Corps along the Donja Dreznica village-Vrđi village-Golemic village-Planinica axis, Ex. 294, order of 2 July 1993, signed by Rasim Delić. According to Dževad Tirak, the 6th Corps was unable to comply with this order, as the Corps was already heavily engaged in bids to secure the road between Konjic and Jablanica and to establish control over the Neretva River Valley, Dževad Tirak, 30 Mar '05, T. 89-91.

⁵⁴⁵ Vahid Karavelić, 22 Apr '05, T. 155-156; Ex. 408, Agreed Facts, 22 Apr '05, Annex A, paras 205.

⁵⁴⁶ Ex. 408, Agreed Facts, 22 Apr '05, Annex A, paras 582, 590.

⁵⁴⁷ Ex. 408, Agreed Facts, 22 Apr '05, Annex A, paras 213, 217, 219 and 584. The VRS also targeted ambulances, *ibid.*

⁵⁴⁸ The attack started at Goražde, then Trnovo, to end at Mt. Igman, Vahid Karavelić, 21 Apr '05, T. 106

offensive started towards the south-east of Sarajevo, with the objective of the encirclement of the city.⁵⁴⁹ The VRS captured several positions to the south-east of Sarajevo, effectively forcing the ABiH to withdraw.⁵⁵⁰ According to Namik Džanković, a member of the Inspection Team, the ABiH was in “a state of dissolution” until they managed to set up lines at Mt. Igman to halt the VRS advance.⁵⁵¹ According to Vahid Karavelić, the 1st Corps commander, Sarajevo would have been placed under a second ring of siege if the VRS had succeeded with this offensive.⁵⁵²

170. In an order issued on 5 July, Rasim Delić formed the OG Igman directly subordinated to the 1st Corps, in order to improve the operational strength of the ABiH units in the territory to the south and south-west of Sarajevo.⁵⁵³ On 30 July, further units were subordinated to the OG Igman.⁵⁵⁴

171. The situation became very difficult for the ABiH during the first two weeks of August.⁵⁵⁵ On 18 August, Vahid Karavelić ordered the further detachment of troops to ensure the consolidation of the defence of Mt. Igman. These reinforcements included one company from 9th Brigade and one company of the 10th Brigade.⁵⁵⁶ The IKM at Mt. Igman was responsible for more than 10,000 troops.⁵⁵⁷ At the end of August or at the beginning of September, the situation at Mt. Igman stabilised.⁵⁵⁸

172. Vahid Karavelić, still concerned about the security of Sarajevo,⁵⁵⁹ on 4 September deployed several officers to the IKM at Mt. Igman, with the aim of improving command and control of that

⁵⁴⁹ Vahid Karavelić, 22 Apr '05, T. 61; Ex 405, transcript of Zenica Meeting, p. 3

⁵⁵⁰ Vahid Karavelić, 22 Apr '05, T. 61; Namik Džanković, 21 Mar '05, T. 66-67.

⁵⁵¹ Namik Džanković, 21 Mar '05, T. 66-67.

⁵⁵² Vahid Karavelić, 22 Apr '05, T. 84-85.

⁵⁵³ Ex. 193, order establishing OG Igman, signed by Rasim Delić, dated 5 July 1993, p. 2. The OG Igman was based in the zone of responsibility of the 1st Corps, *ibid.* Among other units, the Zulfikar Detachment was resubordinated to the OG Igman, Salko Gušić, 3 Feb '05, T. 26; Jusuf Jašarević, 02 Mar '05, T. 69. Other units resubordinated to the OG Igman were the Ilidža Municipal Defence Staff with subordinated units, the 4th Motorised Brigade of the 1st Corps, and the Trnovo Municipal Defence Staff with subordinated units, the “*Crni Labudovi*/Black Swans/Reconnaissance-Sabotage Detachment, the Silver Fox Independent Platoon, the Special Zulfikar Detachment for Special Purposes, VJ/Military Unit/5683, the 8th Motorised Brigade and the 81st Mountain Brigade of the 6th Corps”, *see* Ex. 193, p. 1; Dževad Tirak, 30 Mar '05, T. 79-80.

⁵⁵⁴ Ex. 381, order of 30 July, issued by Sefer Halilović as “Štaba Vrhovne Komande OS R BiH”, assigning one unit of the 9th Brigade to the Zulfikar Detachment and one unit from the 101st Motorised Brigade and one of the 5th Motorised Brigade to the 1st Corps commander, Vahid Karavelić.

⁵⁵⁵ Vahid Karavelić, 21 Apr '05, T. 107

⁵⁵⁶ Ex. 400, order by Vahid Karavelić, dated 18 August 1993, p. 1; Vahid Karavelić, 22 Apr '05, T. 21. Other units sent as reinforcement were one company each of the the 2nd Viteška Brigade, the 101st, 102nd, and the 5th Motorised Brigades and the 2nd Mountain Brigade, *ibid.*

⁵⁵⁷ Vahid Karavelić, 22 Apr '05, T. 114-115. The Igman IKM had to coordinate and exercise control over the 4th Mechanised Brigade and other units, including the 4th Hrasnica Brigade, and the newly established 81st Bosniak Brigade consisting of two Foca Brigades which had fallen apart after the problems on Mt. Igman in July. Under the command of the Igman IKM there was also the 9th Mountain Brigade from Tarčin which came from the Sarajevo Brigade in order to hold the defence line on the wider Igman area, Vahid Karavelić, 22 Apr '05, T. 114.

⁵⁵⁸ Vahid Karavelić, 22 Apr '05, T. 84.

⁵⁵⁹ Vahid Karavelić, 22 Apr '05, T. 84.

IKM.⁵⁶⁰ Following some territorial advances of the ABiH, on 6 September, Vahid Karavelić ordered the company of the 10th Brigade to return to Sarajevo.⁵⁶¹ Eventually, the ABiH prevented the VRS from linking up from two directions, managing even to recapture some positions,⁵⁶² but also losing much of the area to the southwest of Sarajevo.⁵⁶³ Vahid Karavelić stated that the company of the 9th Brigade made a significant contribution at Mt. Igman in preventing the fall of Sarajevo.⁵⁶⁴

173. The Trial Chamber finds that during the Indictment period, there was an armed conflict in the territory of Bosnia and Herzegovina.

C. “Operation Neretva”

174. The Indictment alleges that:

at a meeting on 21 to 22 August 1993 in Zenica, attended by most of the senior military commanders of the ABiH including Rasim Delić, it was decided that the ABiH would conduct a military Operation in Herzegovina. It was called “NERETVA-93”. The main purpose of the Operation was to capture territory held by the Bosnian Croat forces (HVO) from Bugojno to Mostar thereby ending the blockade of Mostar. In order to achieve these aims the ABiH would launch offensives within this area. At the meeting an Operational plan which had been prepared and tabled by Sefer HALILOVIĆ was discussed. The Commander of the Supreme Command Staff, Rasim Delić, who was also present, agreed that an Inspection Team headed by his Deputy, Sefer HALILOVIĆ who was then also Chief of the Supreme Command Staff, would go to Herzegovina to command and co-ordinate the Operation. Units from the 1st, 3rd, 4th and 6th Corps including a unit which was commanded by Zulfikar Ališpago were subordinated to Sefer HALILOVIĆ for the Operation.⁵⁶⁵

175. The Trial Chamber was presented with evidence that there were combat operations in Herzegovina to lift the HVO blockade of Mostar at the time relevant to the Indictment. However, the Trial Chamber is not convinced that these combat operations were called “Operation Neretva”. Except for a map, no other exhibit presented to the Trial Chamber refers to combat operations as “Operation Neretva”.⁵⁶⁶ Moreover, the Trial Chamber notes that several of the witnesses involved with the ABiH at the relevant time, including two Corps Commanders, did not hear the use of this name during the combat operations.⁵⁶⁷ The Trial Chamber will however use the term “Operation

⁵⁶⁰ Ex. 407, order by Vahid Karavelić, dated 4 September 1993. In this order, Vahid Karavelić appointed Nedžad Ajnadžić as commander and Salko Muminović as his deputy commander.

⁵⁶¹ Ex. 257, order for the 1st Corps commander number: 05/7-401 to the IKM on Igman and the 10th bbr Command regarding the return of units from the 10th bbr to Sarajevo; Vahid Karavelić, 22 Apr '05, T. 23-24.

⁵⁶² Šefko Hodžić, 24 Mar '05, T. 12.

⁵⁶³ Dževad Tirak, 31 Mar '05, T. 85. According to Dževad Tirak, the ABiH lost areas around Bjelašnica, Igman, and Treskavica, to the VRS, *ibid*.

⁵⁶⁴ Vahid Karavelić, 18 Apr '05, T. 158.

⁵⁶⁵ Indictment, para. 3.

⁵⁶⁶ Ex. 131, “Operation Neretva” Map in colour, *see infra* paras 268-273.

⁵⁶⁷ *See, e.g.*, Commander of the 1st Corps Vahid Karavelić, 22 Apr '05, T. 70; Commander of the 6th Corps, Salko Gušić, 08 Feb '05, T. 19. Minister of the Interior Bakir Alispahić also testified that he never heard the name “Operation Neretva” during the relevant time period, Bakir Alispahić, 23 May '05, T. 62. Chief of the UB of the

Neretva” to refer to the combat operations which took place in Herzegovina at the relevant time as this is the description used in the Indictment and as the Prosecution charges Sefer Halilović as commander of “Operation Neretva”.

1. Meeting at Zenica

176. Beginning on 21 August,⁵⁶⁸ a meeting of senior officers of the Main Staff and Corps commands was held in the town of Zenica, to the north west of Sarajevo.⁵⁶⁹ The topic of the meeting was “Most Prominent Achievements, Problems and Development Perspectives in the Armed Struggle of the Army of RBH”.⁵⁷⁰ The meeting was attended by the Commander of the Main Staff Rasim Delić, Sefer Halilović,⁵⁷¹ Chief of the Main Staff Operative Command Centre Zičro Suljević, members of the Main Staff Rifat Bilajac and Vehbija Karić, Deputy Chief of Combat Arms Administration Zaim Backović, Chief of Logistics Administration Rašid Zorlak, Chief of Personnel Administration Suljeman Vranj, 1st Corps Commander Vahid Karavelić, 2nd Corps Commander Hazim Šadić, 3rd Corps Commander Enver Hadžihasanović, 4th Corps Commander Arif Pašalić, 6th Corps Commander Salko Gušić and Chief of Combat Arms Administration Mustafa Polutak.⁵⁷² On 21 August, Minister of the Interior of Bosnia and Herzegovina Bakir Alispahić was also present.⁵⁷³ This was the first occasion that Commander

Main Staff Jusuf Jašarević also testified that he did not know of an operation called “Operation Neretva” or “Neretva 93” and that he never saw a document bearing this name, Jusuf Jašarević, 01 Mar '05, T. 71, 73.

⁵⁶⁸ The Trial Chamber notes that there are some differences as to whether the meeting was held for one day or for two days. Bakir Alispahić testified that from his contacts with Rasim Delić he knew that the meeting went on to define everything discussed in the first day, Bakir Alispahić, 23 May '05, T. 58-59. Vahid Karavelić testified that he did not think the meeting went on for a second day but cannot be entirely certain, and he left Zenica on the evening of the first day, Vahid Karavelić, 19 Apr '05, T. 105-107. Vehbija Karić stated that the meeting was “for two or three days”, Vehbija Karić, Ex. 444, T. 11. *See also* Ex. 123, order of 2 September, sent to the 6th Corps Command, reorganising the structure of certain units, signed by Sefer Halilović as “Načelnik GŠVK (Zamjenik Komandanta)”, which refers to the Zenica meeting of 21 August; and Ex. 405, tape and transcript of the meeting (“Transcript of the Zenica Meeting”). There is some debate as to how much of the Zenica meeting this tape shows. Vahid Karavelić testified that he thought the meeting had basically finished by the end of the tape but some extra conversation on less essential elements was continuing, Vahid Karavelić, 22 Apr '05, T. 76. Salko Gušić does not believe this tape reflects all that happened at this meeting, Salko Gušić, 04 Feb '05, T. 66. Mirza Glavaš, the cameraman who videoed the meeting, stated that he recorded the full course of the meeting but there are fragments of the recording missing. He also stated that everything said by Sefer Halilović during that meeting is on the recording, Mirza Glavaš, Ex. 457, 21 Jan '04, p. 2 and 07 Jun '05, p. 1.

⁵⁶⁹ Ex. 109, Conclusions and Tasks Adopted at the meeting of Senior Officers of the Main Staff and Corps Commanders Held in Zenica on 21 and 22 August 1993, Issued by Rasim Delić, dated 29 August 1993 (“Conclusions of the Zenica Meeting”), p. 1.

⁵⁷⁰ Ex. 109, p. 1.

⁵⁷¹ The Transcript of the Zenica meeting refers to Sefer Halilović as “načelnika Glavnog štaba Vrhovne komande”, Ex. 405, p. 1. The Conclusions of the Zenica Meeting refer to Sefer Halilović as “Načelnik”, Ex. 109, p. 1.

⁵⁷² Ex. 109, p. 1; Ex. 405, p. 1. *See also* Salko Gušić, 03 Feb '05, T. 54. All Corps commanders, with the exception of the Commander of the 5th Corps, Ramiz Drešković, were present, Ex. 405, p. 1; Salko Gušić, 03 Feb '05, T. 55-56; Vehbija Karić, Ex. 444, T. 11-13; Vahid Karavelić, 22 Apr '05, T. 78.

⁵⁷³ Ex. 109, p. 1; Bakir Alispahić, 23 May '05, T. 59.

Rasim Delić had assembled Corps commanders to discuss the future directions of the combat activities.⁵⁷⁴

177. The meeting had the character of a briefing.⁵⁷⁵ Corps commanders briefed on their areas of responsibility, and expressed some concerns on “the direction the war had taken”.⁵⁷⁶ Sefer Halilović suggested to “put a stop to the frontal conflict” that had been “forced upon” the ABiH, as soon as possible, by means of infiltration, striking at the flank.⁵⁷⁷ He further spoke of “the urgent creation of small, mobile, sabotage units; consolidating the achieved lines and striking where the enemy least expects them.”⁵⁷⁸ Sefer Halilović argued for an action in Vitez, explaining that “with Vitez the military industry system of the BiH is complete”.⁵⁷⁹

178. Problems with discipline and command structure were also raised. Sefer Halilović was of the view that the subject of military discipline was the subject of the ABiH survival.⁵⁸⁰ He argued that if something was not done quickly to reinforce discipline, order, subordination, single command authority, and the execution of orders, “it was all over”. Addressing the officers present in Zenica, Sefer Halilović stated:

When will we begin shooting people for failure to execute orders? And when shall we start being ashamed and fearing to enter some town or village like fake liberators. And, when we attack we're not different in any way, or we're different in the subtleties, there's no slaughter, no rape, but looting.⁵⁸¹

179. While the evidence shows that structurally speaking the Zulfikar Detachment formed part of the 6th Corps,⁵⁸² Salko Gušić the 6th Corps Commander, expressed concerns about the position and role of the Zulfikar Detachment.⁵⁸³ As an example of the problems with the independent units within in the ABiH, Salko Gušić noted that the 4th Corps Commander Arif Pašalić had “agreed the

⁵⁷⁴ Salko Gušić, 04 Feb '05, T. 63; Vahid Karavelić, 21 Apr '05, T. 108 and 22 Apr '05, T. 78; Ex. 405 states “the objective is to come up with such solutions, to provide for further conduct of the armed combat which will allow us to continue having results,” Ex. 405, p. 1.

⁵⁷⁵ Vehbija Karić, Ex. 444, T. 11; Vahid Karavelić, 19 Apr '05, T. 106.

⁵⁷⁶ Arif Pašalić came with a message from his subordinate commanders that the Neretva Valley was a strategic and operative axis which could not be divided and that all the ABiH units in the Neretva Valley should be placed under one command, Ex. 405, Transcript of Zenica Meeting, p. 7. Rifat Bilajac stated that Konjic was the most important axis at that point in time, Ex. 405, Transcript of Zenica Meeting, p. 10. Bakir Alispahić stated that the ABiH was going to “fail the test” on the subject of Mostar, Jablanica and Konjic and that it would be wise to “freeze all the fronts and move the combat operations down there”, Ex. 405, Transcript of Zenica Meeting, p. 12-13.

⁵⁷⁷ Ex. 405, p. 17.

⁵⁷⁸ Ex. 405, p. 17.

⁵⁷⁹ Ex. 405, p. 20. Sefer Halilović stated at the meeting “If the question would now be: your house is on fire, do you put out the house fire or take Vitez? I would go for Vitez first.” Vahid Karavelić testified that he vaguely remembered something about Sefer Halilović expressing an interest in military operations in the direction of Vitez, Vahid Karavelić, 22 Apr '05, T. 58.

⁵⁸⁰ Ex. 405, p. 18.

⁵⁸¹ Ex. 405, p. 19. The issue of discipline amongst the ABiH units was also addressed in the Conclusions of the Zenica Meeting, Ex. 109, pp. 2-3.

⁵⁸² See *supra* Section IV.A(c).

operation on Vrđi with Zuka”, and that he, as Commander of the 6th Corps, knew nothing of that agreement.⁵⁸⁴ Salko Gušić stated that he was planning combat operations with 500-600 men from all units of the 6th Corps towards the 4th Corps area of responsibility and that after the meeting he would like to be assigned specific tasks. He argued for action to keep the route between Konjic and Jablanica free.⁵⁸⁵

180. Several participants made suggestions as to the resubordination of units. Salko Gušić noted that all the special units⁵⁸⁶ were currently in the 6th Corps zone, and he advocated that they become part of a “single whole”.⁵⁸⁷ He noted the problems with logistics for those units, which, he stated, were undisciplined but continued to conduct combat operations.⁵⁸⁸ Rifat Bilajac, a member of the Main Staff, also proposed the restructuring of the Zulfikar Detachment, the Black Swans, Silver Fox and Delta Units.⁵⁸⁹ Rasim Delić stated that he would issue an order to regulate the position of all existing special units.⁵⁹⁰

181. Sefer Halilović addressed the role of the MUP in the armed struggle. He argued for integration of the capacities of the MUP in combat operations. He stressed that the MUP, together with the SVB, should also put an end to the internal black market in weapons.⁵⁹¹

182. The Trial Chamber heard testimony that Sefer Halilović did not present any military plan for an “Operation” in the direction of Mostar.⁵⁹² Vehbija Karić stated that no detailed military planning was done at the meeting, but there was a general conclusion that it was necessary to help the 4th Corps whose area of responsibility included Mostar.⁵⁹³ Bakir Alispahić testified that the focus of the meeting was on military operations, which ones to carry out, which were realistic and which were

⁵⁸³ He also expressed his concern about units such as the 317th Brigade.

⁵⁸⁴ Ex. 405, p. 9.

⁵⁸⁵ Ex. 405, p. 9.

⁵⁸⁶ He refers to the Zulfikar Detachment, the Black Swans, the *Handžar* Division, the *Akrepi* Special Unit, Ex. 405, Transcript of Zenica Meeting, p. 9. *See supra* Section IV.A.

⁵⁸⁷ Ex. 405, p. 9, Salko Gušić stated “whether they would remain under the ŠVK command I don’t know” he further commented “I would be happy if all these units were to remain part of the 6th Corps,” *ibid*.

⁵⁸⁸ Ex. 405, p. 9.

⁵⁸⁹ Rifat Bilajac proposed that the Zulfikar Detachment and Silver Fox Unit expand into a Reconnaissance and Sabotage Brigade and become part of the 4th Corps, and the Black Swans also expand into a Reconnaissance and Sabotage Brigade and become part of the 6th Corps, Ex. 405, Transcript of Zenica Meeting, p. 10.

⁵⁹⁰ Ex. 405, p. 9.

⁵⁹¹ Ex. 405, p. 21.

⁵⁹² Bakir Alispahić, 27 May '05, T. 35. Bakir Alispahić testified that his understanding was that during the meeting the framework was defined for the operation that was to follow, *ibid*. Mirza Glavaš stated that Sefer Halilović did not mention any operation in Herzegovina and that only Arif Pašalić and Salko Gušić spoke about the situation in Herzegovina, Mirza Glavaš, Ex. 457, 21 Jan '04, p. 1; Salko Gušić did not recall Sefer Halilović referring to any operation related to Mostar or indeed related to Herzegovina, and that it was Arif Pašalić the Commander of the 4th Corps, who presented the situation of Mostar, Salko Gušić, 04 Feb '05, T. 65.

⁵⁹³ Vehbija Karić, Ex. 444, T. 11, 14.

not in terms of what the ABiH could manage.⁵⁹⁴ He further stated that the general assessment was made at the meeting that it was necessary to carry out military activities in the area of Mostar.⁵⁹⁵

183. Mirza Glavaš, the cameraman who filmed the Zenica meeting, stated that “Neretva 93” operation was not spoken about at the meeting, nor did anyone mention Sefer Halilović’s possible commanding role in an “Operation”.⁵⁹⁶ Salko Gušić also testified that no one was appointed to command an operation in Herzegovina and that the name “Operation Neretva” was never raised at this meeting.⁵⁹⁷ Vehbija Karić stated that “Neretva-93 was not referred to at all.”⁵⁹⁸ The Trial Chamber notes that the transcript of the Zenica meeting does not provide any information to prove otherwise. However, Bakir Alispahić stated that while he was in Zenica there was some speculation regarding the name of an operation which he later learned was “Operation Neretva”.⁵⁹⁹ He also testified that after the meeting in Zenica, Rasim Delić told him that Sefer Halilović “personally would be in charge of the operation”, having every authority to mobilise the supplies and equipment as well as the units needed to successfully run the “combat activities”.⁶⁰⁰

184. Salko Gušić, 6th Corps Commander, testified that shortly after the Zenica meeting, on 22 August, he and Vahid Karavelić met with Sefer Halilović at the command post of the 6th Corps in Konjic and commented on the three axes assigned to the 6th Corps. However, they did not attach particular importance to any one of these three.⁶⁰¹

185. Following the Zenica meeting, Rasim Delić issued the “Conclusions and tasks adopted at the meeting of senior officers of the Main Staff and the Corps Commanders, held in Zenica on 21 and 22 August 1993” (“Conclusions of the Zenica Meeting”),⁶⁰² which was disseminated to all units.⁶⁰³ Among the tasks listed in the Conclusions of the Zenica Meeting were measures in relation to organisational and structural issues such as the lack of effective command structure⁶⁰⁴ and changes in the areas of responsibility of certain Corps.⁶⁰⁵

⁵⁹⁴ Bakir Alispahić 23 May '05, T. 60.

⁵⁹⁵ Bakir Alispahić, 23 May '05, T. 60-61 and 27 May '05, T. 36-37.

⁵⁹⁶ Mirza Glavaš, 07 Jun '05 p. 1.

⁵⁹⁷ Salko Gušić, 03 Feb '05, T. 56 and 04 Feb '05, T. 64-65; *see also* Bakir Alispahić, 27 May '05, T. 34-35; Vehbija Karić, Ex. 444, T. 13. Vehbija Karić stated that the participants of the Zenica Meeting did not go into details, *ibid.*

⁵⁹⁸ Vehbija Karić, Ex. 444, T. 90-91.

⁵⁹⁹ Bakir Alispahić, 23 May '05, T. 62 and 27 May '05, T. 33; Vahid Karavelić, 19 Apr '05, T. 107.

⁶⁰⁰ Bakir Alispahić, 24 May '05, T. 7.

⁶⁰¹ Salko Gušić, 07 Feb '05, T. 40.

⁶⁰² Ex. 109.

⁶⁰³ Salko Gušić, 03 Feb '05, T. 55. *See* Ex. 109 Conclusions of the Zenica Meeting; Vahid Karavelić testified that the document was consistent with what he saw and heard at Zenica, Vahid Karavelić, 21 Apr '05, T. 108.

⁶⁰⁴ Ex. 109, p. 3, para. 2.

⁶⁰⁵ Ex. 109, p. 4, para. 10.

186. The Conclusions of the Zenica Meeting brought several independent units which had been operating in the 6th Corps area of responsibility into the line of command under the organic control of Corps.⁶⁰⁶ Task 9 of the Conclusions reads:

By a special order of the Main Staff, the previously independent units “Zulfikar”, “Crni labudovi”, “Silver fox”, “Akrepi”, “Muderiz” and other independent units shall be attached to Corps. If necessary, Corps Commands shall put forward a plan of reforming and enlarging the units in question.⁶⁰⁷

187. Salko Gušić testified that the Conclusions of the Zenica Meeting did not contain a plan of an “Operation”; it was not a preparatory order, rather it was “simply an indication that something should be planned along these axes, and specific plans had to be worked out afterwards.”⁶⁰⁸ The 6th Corps was given three axes along which it was supposed to plan and carry out combat actions.⁶⁰⁹ Pursuant to this document, the 6th Corps Command planned certain activities, including setting up an IKM at Fojnica to stabilise the lines at Mt. Igman and organise combat activities in the direction of Kiseljak, in line with the task listed in the order.⁶¹⁰

188. The Conclusions of the Zenica Meeting also set out changes to the areas of responsibility “for forthcoming combat operations”.⁶¹¹ Salko Gušić further testified that the boundary between the 4th and 6th Corps was adjusted as a result of the Conclusions.⁶¹² The Trial Chamber was provided with a map marked “Conclusions and assignments from the meeting in Zenica, August 1993, of 29 August 1993” setting out the areas of responsibility of the 4th and 6th Corps.⁶¹³ Salko Gušić testified that he had never seen this map before but that the area of responsibility of the 6th Corps is indicated on the upper side of the map.⁶¹⁴ He further testified that the map does not clearly reflect in which area of responsibility Grabovica is situated.⁶¹⁵

189. The Trial Chamber notes that neither the transcript of the Zenica meeting, nor the subsequent Conclusions of the meeting refer to an “Operation Neretva”. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that an “Operation Neretva” or the

⁶⁰⁶ Salko Gušić, 04 Feb '05, T. 75-76.

⁶⁰⁷ Ex. 109, p. 4, para. 9.

⁶⁰⁸ Salko Gušić, 03 Feb '05, T. 58, referring to Ex. 109, p. 4, para. 10.

⁶⁰⁹ Salko Gušić, 03 Feb '05, T. 57-58, referring to Ex. 109, p. 4, para. 10.

⁶¹⁰ Salko Gušić, 03 Feb '05, T. 57, referring to Ex. 109, p. 4, para. 10.

⁶¹¹ Ex. 109, p. 4, para. 11. Changes were made affecting the “zones of responsibility” of the 1st, 2nd, 3rd, 4th and 6th Corps.

⁶¹² Salko Gušić, 04 Feb '05, T. 78-79; Dževad Tirak testified that he never heard about an order to draw a line of demarcation between the 4th and 6th Corps south of Grabovica, Dževad Tirak, 30 Mar '05, T. 82-83.

⁶¹³ Ex. 134, map, dated 29 August 1993. Salko Gušić testified that the village of Grabovica was in the zone of responsibility of the 4th Corps, Salko Gušić, 03 Feb '05, T. 25. However, Salko Gušić’s own Chief of Staff Dževad Tirak testified that while “formally” the village of Grabovica was in the zone of responsibility of the 4th Corps, at the relevant time in 1993 it was the 6th Corps that patrolled that terrain to prevent surprise attacks by the HVO forces because the 4th Corps did not have any units there. He testified that the 6th Corps did not however have any forces stationed in Grabovica itself, Dževad Tirak, 30 Mar '05, T. 82-84.

⁶¹⁴ Salko Gušić, 04 Feb '05, T. 80-81.

question who would be the commander of such an operation was discussed at the meeting in Zenica, nor that any specific and detailed operation to liberate Mostar was planned at that meeting.

2. Orders issued between 24-29 August 1993

190. On 24 August, Sefer Halilović issued an order to the 6th Corps, copied to the 4th Corps for information, concerning combat operations in Mostar.⁶¹⁶ He ordered the 6th Corps to put the closest unit “which can open fire” at the disposal of the 4th Corps and to “pull out troops from part of the front to make up a reinforced battalion and sent them to help the 4th Corps.”⁶¹⁷

191. On 26 August, Rasim Delić ordered the 6th Corps Commander to engage his forces “that have been sent to the defenders of Mostar” as soon as possible in a joint attack with the 4th Corps forces on HVO units on the Vrđi-Domazet axis.⁶¹⁸ Salko Gušić testified that this was the line of attack which was ultimately implemented in the “Neretva Operation”.⁶¹⁹

192. On 29 August, the Operations and Training section of the 6th Corps command proposed to the Corps Commander, Salko Gušić, axes of attack of the Prozor Independent Battalion in the Here-Uzdol area.⁶²⁰

3. Establishment of an Inspection Team

193. The Prosecution, in its Final Brief, alleges that “[t]he evidence proves that the inspection team order of 30 August gave Halilović complete authority to issue binding orders in relation to the Operation which had to be obeyed and were in fact obeyed.”⁶²¹

194. The Trial Chamber notes that it was not provided with any rules or regulations concerning the establishment of inspection teams within the ABiH.

⁶¹⁵ Salko Gušić, 04 Feb '05, T. 80-82.

⁶¹⁶ Ex. 138, Order of Sefer Halilović to 6th Corps, sent to the 4th Corps command for Information, dated 24 August 1993. This order is signed in B/C/S as “Načelnik Staba Vrhovne Komande OS R BiH”.

⁶¹⁷ Ex. 138. Salko Gušić testified that this order could only have been issued by Sefer Halilović as “Chief of Staff” if Sefer Halilović had been authorised to do so by a separate order of Rasim Delić, Salko Gušić, 07 Feb '05, T. 41.

⁶¹⁸ Ex. 139, Order of Rasim Delić to the 6th Corps, to the Commander, personally, dated 26 August 1993, p. 1, point 1.

⁶¹⁹ Salko Gušić, 07 Feb '05, T. 43.

⁶²⁰ Ex. 140, "Proposal for planning and carrying out combat operations", 29 August 1993, addressed to the 6th Corps Commander personally. The proposal was sent by Enes Zukanović, an intelligence officer within the Intelligence section of the 6th Corps command, Salko Gušić, 07 Feb '05, T. 48. The axes of attack covered the villages of Here, Jurići, Glibe, Blace, Sčipe, Uzdol and Kranjčići. Salko Gušić testified that it was logical that the Prozor Independent Battalion was to provide defence in their area of responsibility, Salko Gušić, 07 Feb '05, T. 50.

⁶²¹ Prosecution Final Brief, para. 149.

195. According to 1st Corps Commander Vahid Karavelić, within the ABiH, inspection teams could be set up by the Supreme Command, Main Staff, or, outside the military, the Ministry of Defence.⁶²² When an inspection team was established, its composition, duration, and precise tasks were determined. After establishment, an inspection team would be directly responsible to the authority which established it.⁶²³

196. Vahid Karavelić testified that the authority given to an inspection team depended on the contacts and the agreement between the officer setting up the inspection team and the leader of the team.⁶²⁴ An inspection team could have practically all the powers of the body that established it, however, normally the body that established the team restricted the scope of the inspection.⁶²⁵ Inspection teams could inspect combat readiness.⁶²⁶ Vahid Karavelić also testified that an inspection team could have the right to inspect combat activities. As far as commanding combat activities was concerned, however, the chain of command would have to be more clearly established.⁶²⁷ Selmo Cikotić, Commander of OG West, testified that depending on the definition of its role, an inspection team could also have the power to issue orders.⁶²⁸

197. On 29 August, Rasim Delić issued an order authorising⁶²⁹ several members of the Main Staff – Vehbija Karić, Zičro Suljević, Rifat Bilajac⁶³⁰ and Zahid Hubić – to coordinate combat operations between the 4th and 6th Corps in the Neretva River Valley and between the 3rd and 6th Corps in the Vrbas River Valley and the general Fojnica area.⁶³¹ The order was effective as of 30 August. Salko Gušić testified that this was not an order, but an authorisation for those listed to “coordinate”, which means “to provide a specialist assistance and coordinate actions”.⁶³²

⁶²² Vahid Karavelić, 21 Apr '05, T. 62.

⁶²³ Vahid Karavelić, 21 Apr '05, T. 61-64. *See for example*, Ex. 147, Review of the Situation and Taking Measures to Increase Combat Readiness of the 6th Corps, order issued by Rasim Delić, dated 21 October 1993, together with Authorisation to Members of the Main Staff of the BH Armed Forces, signed by Rasim Delić. *See infra* para 338.

⁶²⁴ Vahid Karavelić, 21 Apr '05, T. 66 and 22 Apr '05, T. 72-74, 128-133.

⁶²⁵ Vahid Karavelić, 21 Apr '05, T. 62-63; Selmo Cikotić, 24 Feb '05, T. 36.

⁶²⁶ Jusuf Jašarević, 01 Mar '05, T. 64.

⁶²⁷ Vahid Karavelić, 21 Apr '05, T. 62-63.

⁶²⁸ Selmo Cikotić, 24 Feb '05, T. 37.

⁶²⁹ In English, this order reads “I Hereby authorize” in the original B/C/S this reads “Ovlašćujem”

⁶³⁰ The Trial Chamber notes that the order states “Rifat Bilajac”, however it can only be concluded that this is a spelling mistake and “Rifat” is meant.

⁶³¹ Ex. 141, Authorisation of Commander Rasim Delić, dated 29 August 1993.

⁶³² Salko Gušić, 07 Feb '05, T. 51.

(a) Order of 30 August 1993

198. On 30 August 1993, Rasim Delić issued an order to form an inspection team (“30 August order”)⁶³³ which reads in its relevant parts:

In accordance with the conclusions reached at a meeting of the officers of the Main Staff and corps commanders, and with the aim of eliminating current shortcomings and weaknesses in the zones of responsibility of the 4th and 6th Corps,

I HEREBY ORDER

1. Form a professional inspection team to coordinate the work and tasks in the zones of responsibility of the 4th and 6th Corps.

The main tasks of the team are as follows:

- review of the combat readiness of the commands and units in the field, and control of combat operations,⁶³⁴
 - an estimate of the capabilities of forces and equipment and their use in keeping with this estimate,
 - resolution of problems of personnel and logistical support in all segments,
 - the functioning of civilian authorities and their co-ordination with the requirements of general security and the war of liberation.
2. – I appoint Sefer HALILOVIĆ, Chief of the Main Staff of the Armed Forces/ GŠ OS/, as team leader, and the following representatives of the GŠ OS as team members:

1. Zićro SULJEVIĆ
2. Rifat BILAJAC
3. Vehbija KARIĆ
4. Džemal NAJETOVIĆ
5. Edin HASANPAHIĆ
6. Namik DŽANKOVIĆ

3. – The Chief-of-Staff of the ŠVK of the Armed Forces should, in keeping with his authority, solve the problems in the field by issuing orders and should regularly report to me on the orders issued. In the case of more drastic proposals and solutions, he must consult with me.

4. –The monitoring should begin on 31 August and be completed by ____ 1993. Submit a written report on return, but report orally on important questions during the inspection.⁶³⁵

⁶³³ Ex. 146, Order issued by the Commander of the Supreme Command Staff, Rasim Delić, establishing an Inspection Team, dated 30 August 1993, p. 1. (“30 August order”). The Trial Chamber notes that Vehbija Karić testified that “the Inspection Team went on 28 August 1993, to carry out Rasim Delić’s order”, Vehbija Karić, Ex. 444, T. 92. However, considering the fact that Vehbija Karić was not sure as to exact dates of the events, the Trial Chamber relies on the date of the written order.

⁶³⁴ In B/C/S this line reads “*sagledavnaje b/g komandi i jedinica konkretno na terenu, i rukovodenje b/d*” The Trial Chamber notes that it was provided with two different translations of the B/C/S word “rukovodjenje”, which was used in this sentence. One translation read “directing combat operations” while the later translation read “control of combat operations”. The translation of the exhibit was subsequently verified and the correct translation was admitted into evidence as Ex. 146, together with an explanation of the translation. The Trial Chamber notes that Vahid Karavelić on 21 April 2005 testified as to the meaning of the B/C/S word “rukovodjenje”, which was then interpreted as “directing.” In light of the verification of the translation, the Trial Chamber will not rely on the part of the testimony of Vahid Karavelić in which he explains the term “rukovodjenje”.

⁶³⁵ The Trial Chamber notes that Džemal Najetović stated that he never became part of the Inspection Team, Džemal Najetović, Ex. 459, 13 Jun '05, p. 1. Jusuf Jašarević testified that he appointed Namik Džanković to the Inspection Team, because Namik Džanković was already in Mostar, Jusuf Jašarević, 01 Mar '05, T. 58, 70; *see*

199. The Trial Chamber notes in particular paragraph 3 of this order which refers to Sefer Halilović and appears to limit the authority given to Sefer Halilović to those matters which are “in keeping with his authority”. The Trial Chamber also notes the use of the term “monitoring” in paragraph 4 of this order.

200. The Trial Chamber heard testimony that the 30 August order was a part of the implementation of the Conclusions of the Zenica meeting.⁶³⁶

201. Salko Gušić testified that functions of coordinating civilian authorities, set out in point 1 of the 30 August order were functions of command, not functions of staff.⁶³⁷ He stated however, that from the terms of the order, the Inspection Team was not able to command troops on the ground.⁶³⁸ He further testified that if he, as 6th Corps Commander, made a different decision from the members of the Inspection Team, they would probably inform “the commander” right away. In his words “that is the role of coordination”. Salko Gušić further stated that he was not bound by the requests of the Inspection Team, and did not have to make decisions in accordance with what they were proposing him, but that the members of the Inspection Team could influence his decisions by reporting to the commander on any decisions which he made.⁶³⁹

(b) Sefer Halilović as Team Leader of the Inspection Team

202. The Trial Chamber heard testimony that the order establishing the Inspection Team does not *per se* answer the question of whether or not Sefer Halilović had the authority to command units during combat operations in “Operation Neretva”.⁶⁴⁰ Selmo Cikotić testified that this order did not appoint Sefer Halilović as a commander of “Operation Neretva”.⁶⁴¹ He further testified that he understood the 30 August order to mean that the authority or powers of Sefer Halilović are those as defined under item 1 of the order, and for any instances where this authority had not been provided

also Ex. 213, Order issued by Jusuf Jašarević to the Security Sector within the 4th and 6th Corps Commands, dated 30 August 1993, to locate Namik Džanković; Jusuf Jašarević testified that he sent this order as he did not know the exact location of Namik Džanković at the time, Jusuf Jašarević, 01 Mar '05, T. 58.

⁶³⁶ Salko Gušić testified that the preamble appears to be consistent with the Conclusions of the Zenica Meeting, Salko Gušić, 07 Feb '05, T. 83. Selmo Cikotić testified that the document is an implementation of the Conclusions of the Zenica Meeting. “This order aims at removing the shortcomings that were mentioned in the conclusions of the General Staff.”, Selmo Cikotić, 23 Feb '05, T. 60; *see also* Vahid Karavelić, 22 Apr '05, T. 130-131.

⁶³⁷ Salko Gušić, 07 Feb '05, T. 86-87.

⁶³⁸ Salko Gušić, 07 Feb '05, T. 52.

⁶³⁹ Salko Gušić, 07 Feb '05, T. 53.

⁶⁴⁰ Vahid Karavelić, 22 Apr '05, T. 72-74. Salko Gušić, 07 Feb '05, T. 82-83 and 08 Feb '05, T. 6; Jusuf Jašarević testified that he concluded that Sefer Halilović was not the commander of an “operation,” because the 30 August order is “absolutely clear that it is inaugurating an inspection team”, Jusuf Jašarević, 04 Mar '05, T. 58-59.

⁶⁴¹ Selmo Cikotić, 23 Feb '05, T. 63-64.

Rasim Delić had to be consulted.⁶⁴² Selmo Cikotić also stated that if the order was meant to appoint Sefer Halilović as commander of an “operation” it would have said so.⁶⁴³

203. According to Vehbija Karić, with the 30 August order the function of command was taken away from Sefer Halilović and the entire Inspection Team and “this was felt in the order itself”. He testified that the members of the Inspection Team “were not in a position to order anything to anyone, given that we knew that this Inspection Team had an inspection function. Its function was to control, to inspect.”⁶⁴⁴

204. Salko Gušić stated that on the basis of the order establishing the Inspection Team, Sefer Halilović, as Team Leader, could issue orders which concerned “the life and work of units, provided that these orders did not affect the actual situation within the unit itself”, “as long as it did not change it radically”.⁶⁴⁵ Salko Gušić considered that this order gave Sefer Halilović a very “limited possibility to command,” and that this possibility to command would only arise where there was a problem to solve.⁶⁴⁶

205. Namik Džanković testified that while he was in Mostar at the end of August, he received an order to immediately report to the command post of the 6th Corps at Jablanica, “as a member of the coordination and inspection team of the General Staff of the Army” headed by Sefer Halilović”.⁶⁴⁷ He was told by Vehbija Karić, Zičro Suljević and Rifat Bilajac that he would be representing the Main Staff UB and that his role in the Inspection Team was counter-intelligence; however, he did not receive any specific task.⁶⁴⁸ Namik Džanković was also told that an action was being prepared to lift the encirclement of Mostar.⁶⁴⁹ He testified that Sefer Halilović, as Team Leader of the Inspection Team, was entitled to give orders to him.⁶⁵⁰

⁶⁴² Selmo Cikotić, 23 Feb '05, T. 63.

⁶⁴³ Selmo Cikotić, 23 Feb '05, T. 62.

⁶⁴⁴ Vehbija Karić, Ex. 444, T. 69-70.

⁶⁴⁵ Salko Gušić, 03 Feb '05, T. 53. Salko Gušić stated that Sefer Halilović could have issued other types of orders which would have had to be executed as the commanders could not be sure if Sefer Halilović had in fact previously consulted with Rasim Delić. However, he stated that on the basis of the reporting mechanism any commander who received an order would report to Sefer Halilović and Rasim Delić that such an order had been received and carried out, as regular reports were provided at the end of every day to the Supreme Command Staff, therefore, if any radical orders had been issued, the commander would have been aware of the fact. Salko Gušić further stated that Rasim Delić “would have found out about it within one day,” *ibid.*

⁶⁴⁶ Salko Gušić, 08 Feb '05, T. 7-8.

⁶⁴⁷ Namik Džanković, 21 Mar '05, T. 4, 71.

⁶⁴⁸ Namik Džanković, 21 Mar '05, T. 8.

⁶⁴⁹ Namik Džanković, 21 Mar '05, T. 8.

⁶⁵⁰ Namik Džanković, 22 Mar '05, T. 24; *see also* Jusuf Jašarević, 01 Mar '05, T. 85.

(c) Report of the Inspection Team

206. Following the end of its mission, on 20 September 1993, Inspection Team members Sefer Halilović, Vehbija Karić, Rifat Bilajac, and Zičro Suljević submitted their final report to the Main Staff (“Final Report”) The preamble to the report reads:

With the approval of 29 August 1993, from the Commander of the ŠVK and his strictly confidential order no.02/1647-1, dated 30 August 1993 an expert team – commission was established in order to co-ordinate combat operations and to carry out all other tasks in the zone of responsibility of the 3rd, 4th and 6th Corps.

[...] The team went to the field on 29 August 1993 and was on mission until 19 September 1993. The contacts with the Commands of the 3rd, 4th and 6th Corps were established. The emphasis was put on the work within the Command of the 6th Corps and its units and on the contact points between the 6th Corps and the 3rd, 4th and 1st Corps With the aim of co-ordinating and executing combat operations, an IKM was set up in Jablanica, where the team planned the operation, which covered the wide front between G. Vakuf and Mostar, in the valleys of the Neretva and Vrbas Rivers, and ensured logistic means for the operation.⁶⁵¹

207. The report enumerated the weaknesses that had been observed within the Command of the 6th Corps as well as bad relations between the Commands of the 1st, 2nd and 4th Corps and the Command of the 6th Corps.⁶⁵² It was also stressed that the situation in the area of responsibility of the 4th Corps was “disturbing” due to the large number of deserters, contacts between some units of the ABiH and the HVO, and the unprofessional behaviour of 4th Corps officers.⁶⁵³

208. Referring to the combat operations the report stated:

Together with the tactical group West from the 3rd Corps, the team has also successfully co-ordinated combat operations in the area of G. Vakuf and Prozor with the units of the 6th Corps. The 317th Mountain Brigade has still not been completely militarised which was shown in the attitude of the soldiers during combat operations. One of their weaknesses was that they abandoned the newly liberated areas and they were not sufficiently responsible when they entered combat, which is the consequence of poor commanding and control at all levels of this unit.

The Independent Prozor Battalion was 24 hours late in starting a joint operation with the 317th Mountain Brigade because of the misconduct of its commander Enver Buza. This had an immediate impact on the course of combat operations of the 317th Brigade whose left flank remained unprotected thus resulting in increased casualties and preventing them from keeping control of the newly liberated facilities in the Crni Vrh area.⁶⁵⁴

209. The Inspection Team made “an estimate of the overall situation in the Neretva Valley,” depicting the area of Konjic as “the most complex” and suggested a number of personnel changes in the highest positions of the 3rd, 4th and 6th Corps commands as well as within their subordinate

⁶⁵¹ Ex. 130, Final Report of the Inspection Team, dated 20 September 1993, p. 1.

⁶⁵² Ex. 130, p. 2, The report states that “the relations of the command of the 1st, 2nd and 4th Corps toward the 6th Corps, as the youngest command are, to put it mildly, not good and not in line with the unity of our struggle,” *ibid.*

⁶⁵³ Ex. 130, p. 2.

⁶⁵⁴ Ex. 130, p. 3.

units.⁶⁵⁵ The Report also suggested initiating criminal proceedings against certain individuals for collaboration with the “Croatian Community of Herzeg-Bosna” and the HVO.⁶⁵⁶

210. The Trial Chamber finds on the basis of the evidence presented that by the 30 August order Sefer Halilović was appointed Team Leader of an Inspection Team set up to coordinate the work and tasks of units in the zones of responsibility of the 4th and the 6th Corps. Furthermore, the Trial Chamber finds that this order did not refer to an “Operation Neretva” and did not appoint Sefer Halilović as the commander of any such “operation”.

4. Alleged Existence of an IKM in Jablanica

211. In the Indictment it is alleged that “the Operation was commanded and co-ordinated from the Forward Command Post in Jablanica.”⁶⁵⁷ In its Final Brief, the Prosecution alleges that “another piece of evidence proving that Halilović commanded Operation Neretva was that of the establishment of a forward command post (an IKM) in Jablanica.”⁶⁵⁸

212. The Trial Chamber notes that it was not provided with any written rules or regulations concerning the establishment of IKMs.⁶⁵⁹ Several witnesses testified that IKMs were used by commanders in order to exercise command when they were in the field.⁶⁶⁰ In other words, IKMs were established in order to be closer to the forces on the ground executing the mission.⁶⁶¹ IKMs were derivative command posts and presupposed the existence of a main command post.⁶⁶² An IKM did not have to reflect fully the structure of the main command post but would contain only the essential officers.⁶⁶³ Depending on the level of difficulty of the task to be carried out, it was

⁶⁵⁵ Ex. 130, pp. 3-4.

⁶⁵⁶ Ex. 130, pp. 4-5. The Trial Chamber notes that the report of the Inspection Team does not mention the events in Grabovica and Uzdol.

⁶⁵⁷ Indictment, paragraph 4.

⁶⁵⁸ Prosecution Final Brief, para. 177.

⁶⁵⁹ In B/C/S “forward command post” is *Istureno komandno mesto*, which is abbreviated to ‘IKM’, Salko Gušić, 04 Feb '05, T. 90-91.

⁶⁶⁰ Salko Gušić, 04 Feb '05, T. 90-91, 96. Salko Gušić further testified that commanders in the ABiH formed IKMs in order to make it easier to command their units, Salko Gušić, 08 Feb '05, T. 99-100; Selmo Cikotić, 23 Feb '05, T. 48, testifying that an IKM was a location from which the commander could issue commands when he was in the field.

⁶⁶¹ Salko Gušić, 08 Feb '05, T. 99-100, testified that when the situation on the ground required a quick reaction or decision-making it was always justified and reasonable to set up an IKM.

⁶⁶² Salko Gušić, 04 Feb '05, T. 95-96; Selmo Cikotić, 23 Feb '05, T. 42-43.

⁶⁶³ Salko Gušić, 04 Feb '05, T. 87; He further testified that “by definition, the forward command post is smaller than a command. It only contains as much personnel and equipment as is necessary to effect these functions of control and command.” Salko Gušić, 08 Feb '05, T. 100; *see also* Vahid Karavelić, 20 Apr '05, T. 109.

possible to send a deputy to the IKM instead of the commander himself being present there.⁶⁶⁴ An IKM existed until an order was issued abolishing it.⁶⁶⁵

213. The Trial Chamber has been furnished with several examples of orders concerning the setting up of IKMs. On 5 September, Vahid Karavelić, 1st Corps Commander, sent an order setting out the personnel who were to staff an IKM at Mt. Igman. This order lists in detail the personnel of the IKM, including the commander of the IKM and subordinate officers, and their respective responsibilities.⁶⁶⁶ Similarly, in April 1993 Sefer Halilović issued an order “activating” an IKM in Zenica. This order lists the personnel and tasks of those staffing the IKM, as well as other logistical specifications.⁶⁶⁷

214. According to the Final Report of the Inspection Team, an IKM was set up in Jablanica with the aim of coordinating and executing combat operations.⁶⁶⁸ It was located in the building of the *Elektroprivreda*, the administrative buildings of the Jablanica hydroelectric plant.⁶⁶⁹ Various members of the Inspection Team were at the IKM every day.⁶⁷⁰ Salko Gušić testified that the IKM was secured by the Zulfikar Detachment.⁶⁷¹ The communication functions of the IKM were handled by the 44th Jablanica Brigade, a local unit, which appears in the headings of the initial documents which were sent from Jablanica.⁶⁷²

215. The Trial Chamber heard testimony that there was no *official* IKM in Jablanica. Namik Džanković stated that an official IKM was not formed in Jablanica,⁶⁷³ although he noted that the Inspection Team called the premises the IKM.⁶⁷⁴ Vahid Karavelić testified that he did not recall

⁶⁶⁴ Vahid Karavelić, 20 Apr '05, T. 109. When forward command posts were set up the stamp used on documents would bear the number “2” Vahid Karavelić, 20 Apr '05, T. 47.

⁶⁶⁵ Salko Gušić, 04 Feb '05, T. 92.

⁶⁶⁶ Ex. 407, Order issued by Vahid Karavelić establishing an IKM at Mt. Igman, dated 5 September 1993.

⁶⁶⁷ Ex. 135, Order issued by Sefer Halilović signed as “Načelnik Štaba Vrhovne Komande OS RBiH” establishing an IKM at Zenica, dated 29 April 1993.

⁶⁶⁸ Ex. 130.

⁶⁶⁹ Emin Zebić, 16 Mar '05, T. 75 and 17 Mar '05, T. 27; Namik Džanković, 21 Mar '05, T. 7; Vehbija Karić, 02 Jun '05, T. 19 and Ex. 444, T. 71. Vehbija Karić testified that the Inspection Team was given two offices which the Municipal Staff had used in that building, so that they could go about their daily tasks, it was in those offices that they were in touch on a daily basis, Vehbija Karić, 02 Jun '05, T. 19. Dževad Tirak testified that Bahrudin Fazlić told him that the IKM was in Jablanica, Dževad Tirak, 30 Mar '05, T. 59-60; Ex. 433, Marked Aerial Photograph of Jablanica.

⁶⁷⁰ Vehbija Karić, 02 Jun '05, T. 19; Namik Džanković testified that he went to the IKM in Jablanica almost every day, but that the rest of the Team were very often out doing reconnaissance and planning the operations, Namik Džanković, 21 Mar '05, T. 11, 72-73.

⁶⁷¹ Salko Gušić, 04 Feb '05, T. 88; Namik Džanković testified however, that there were no police or other guards taking care of the IKM, Namik Džanković, 22 Mar '05, T. 42 – 43.

⁶⁷² However, Salko Gušić testified that soon after its establishment the IKM began using the heading IKM, Salko Gušić, 04 Feb '05, T. 88; Selmo Cikotić testified that for an operation the size of “Operation Neretva” he would expect to see an IKM with proper communication and with a unit or MP’s providing security, Selmo Cikotić, 23 Feb '05, T. 46 and 24 Feb '05, T. 41.

⁶⁷³ Namik Džanković, 21 Mar '05, T. 7.

⁶⁷⁴ Namik Džanković, 22 Mar '05, T. 43. According to Namik Džanković, the Inspection Team referred to the conference room in the administrative buildings of the Jablanica hydroelectric plant as IKM, *ibid*.

ever seeing an order creating an IKM in Jablanica or enumerating the functions of the staff who were to go there.⁶⁷⁵ Vehbija Karić testified that it was not an IKM or a temporary command post “in the traditional sense, with its prerogatives, with its communication centre, with all its organs and the commands.”⁶⁷⁶ Reports were not submitted to them daily and they did not issue ‘dozens’ of orders every day, as is the case when commands have such authority. They used the communication system of another brigade as they did not have their own.⁶⁷⁷ Salko Gušić testified that the IKM did not have all the facilities of a proper command post, but had sufficient resources in terms of accommodation and communications.⁶⁷⁸ They had many of the elements that an IKM has to have, the essential ones such as a communications centre, and their security.⁶⁷⁹ Selmo Cikotić stated that he did not see an IKM of the Main Staff when he was in Jablanica,⁶⁸⁰ and that he was not aware of an IKM being established and that he did not send reports to an IKM there.⁶⁸¹ Zajko Sihirlić, a member of the 44th Brigade, stated that in September he was aware of the presence of an inspection team in Jablanica which was comprised of Sefer Halilović, Vehbija Karić and others but he was not aware that there was an IKM there.⁶⁸²

216. Documentary evidence presented to the Trial Chamber is inconclusive as to the existence of an IKM in Jablanica. Only four documents in evidence were sent from the IKM at Jablanica, and only one of these is sent from Sefer Halilović,⁶⁸³ with two being from members of the Inspection Team Vehbija Karić, Rifat Bilajac, and Zičro Suljević,⁶⁸⁴ and one from Namik Džanković.⁶⁸⁵ Furthermore, three documents were presented in evidence which were sent from the IKM but which do not contain the heading “IKM Jablanica”.⁶⁸⁶ The Trial Chamber received in evidence nine

⁶⁷⁵ Vahid Karavelić, 22 Apr '05, T. 115; Salko Gušić testified that he believes that an order establishing the IKM in Jablanica existed. However, he has never seen it, Salko Gušić, 04 Feb '05, T. 99-100.

⁶⁷⁶ Vehbija Karić, Ex. 444, T. 71.

⁶⁷⁷ *Ibid.*

⁶⁷⁸ Salko Gušić, 04 Feb '05, T. 84, 87; Salko Gušić had an impression that the IKM in Jablanica looked “like quite a decent place”, because his own command was not better furnished or equipped, Salko Gušić, 04 Feb '05, T. 86-87.

⁶⁷⁹ Salko Gušić, 04 Feb '05, T. 84.

⁶⁸⁰ Selmo Cikotić, 23 Feb '05, T. 46.

⁶⁸¹ Selmo Cikotić, 24 Feb '05, T. 52. However he testified that he was 100 kilometres away from Jablanica, which at the time was about a two-day journey, Selmo Cikotić, 24 Feb '05, T. 53.

⁶⁸² Zajko Sihirlić, Ex. 460, p. 1. Suljeman Budaković stated that he heard Sefer Halilović and some units from Sarajevo were in Jablanica, Suljeman Budaković, Ex. 458, 07 Jan '03, p. 3. However, Bakir Alispahić considered it to be “a typical forward command post”, Bakir Alispahić, 27 May '05, T. 28.

⁶⁸³ Ex. 118, Order of Sefer Halilović to the 4th Corps Commander, dated 9 September, concerning a meeting between Bakir Alispahić and Rusmir Mahmutčehajić. The Trial Chamber notes that this document does not bear the signature of Sefer Halilović.

The Trial Chamber notes that this document does not bear the signature of Sefer Halilović.

⁶⁸⁴ Ex. 116, Explanation of Further Work Requested from Chief of the ŠVK of the OS, sent by Members of the ŠVK, dated 5 September; Ex. 117, sent by Members of the ŠVK in Jablanica to Sefer Halilović, stating “explanation required”, dated 5 September.

⁶⁸⁵ Ex. 235, Report by Namik Džanković to Jusuf Jašarević, dated 29 September, concerning events in Grabovica.

⁶⁸⁶ Ex. 161, Order by Sefer Halilović, as “Načelnik GŠVK (zamjenik komandanta) to the 1st Corps Commander, dated 2 September, concerning sending of troops to Herzegovina; Ex. 122, Order issued by Sefer Halilović to the Commanders of the 4th, 6th Corps and the Zulfikar Unit, dated 6 September 1993, concerning

documents sent to the IKM Jablanica, of which eight are from Arif Pašalić, Commander of the 4th Corps,⁶⁸⁷ and one, dated 1 September, is from Rasim Delić.⁶⁸⁸ However, an order sent by Rasim Delić on 12 September does not use the heading IKM.⁶⁸⁹ Similarly a document sent by Vahid Karavelić on 5 September does not use the heading IKM,⁶⁹⁰ although an order sent by Vahid Karavelić to the 2nd Independent Battalion refers in the text to the “ŠVK IKM”.⁶⁹¹ A log book of the 6th Corps for the period 8 to 13 September also refers to one document that the Corps received from the IKM at Jablanica.⁶⁹²

217. The Trial Chamber also heard evidence that it was common practice within the ABiH to call a location where commanders were present an IKM.⁶⁹³ Jusuf Jašarević the Chief of the Main Staff UB in September 1993, stated:

Wherever there was a group of superior officers conducting a series of activities with elements of command, control, of some military activities or control, then this would somehow be termed as a forward command post. However, if you look at the rules, a forward command post is something completely different; it's a more powerful organ with the elements of command. And for a short period of time it's relocated, transferred to some other location for practical reasons.⁶⁹⁴

resubordination of troops from Sarajevo to the Zulfikar Unit. The Trial Chamber notes that one of the addressees of this order was Sefer Halilović; Ex. 123, order by Sefer Halilović, as “Načelnik GŠVK (zamjenik komandanta)”, to the 6th Corps Command, dated 2 September 1993, concerning reorganisation of Zulfikar Detachment, *Handžar* Division and Silver Fox unit.

⁶⁸⁷ Ex. 449, Report of Arif Pašalić to the ŠVK in Sarajevo and the Jablanica IKM, dated 2 September 1993, concerning the arrival of troops in the 4th Corps area of responsibility; Ex. 111, Report of Arif Pašalić to the IKM in Jablanica, dated 3 September 1993, requesting reinforcements; Ex. 121, Order of Arif Pašalić to Zulfikar Ališpago and IKM (for information) concerning Linking Up of the Forces of the 4th Corps of the ABiH establishing North-2 OG, dated 7 September 1993; Ex. 112, Report of Arif Pašalić to the Jablanica IKM concerning future combat activities, dated 7 September 1993; Ex. 113, Report of Arif Pašalić to the Jablanica IKM concerning combat activities, dated 20 September 1993; Ex. 114, Request of Arif Pašalić to the ŠVK IKM, for the attention of Sefer Halilović, dated 1 October 1993; Ex. 115, Report from the Command of the 4th Corps to the ŠVK IKM Jablanica, (Sefer Halilović and Zulfikar Ališpago personally), concerning planned combat activities, dated 5 October 1993; Ex. 129, Report of Arif Pašalić to ŠVK IKM Jablanica, to the attention of Sefer Halilović concerning the situation on the Front Lines, dated 8 October 1993.

⁶⁸⁸ Ex. 120, Order concerning Organisational Changes in the Zone of Responsibility of the 1st, 4th and 6th Corps, issued by Rasim Delić to the Command of the 1st, 4th and 6th Corps, sent to IKM ŠVK OS (for information), dated 1 September 1993, (“Reorganisation Order”).

⁶⁸⁹ Ex. 157, Order of Rasim Delić to ŠVK Jablanica (Chief of Supreme Command Staff, personally) and 6th Corps Command (Commander, personally), concerning re-examination of the decision to carry out combat activities and inquiring into the events in Grabovica, dated 12 September 1993, (“12 September Order”).

⁶⁹⁰ Ex. 290, Response of Vahid Karavelić to the Chief of Staff of the Supreme Command (Sefer Halilović, personally) responding to the order of 2 September 1993 concerning sending troops from Sarajevo to Herzegovina, dated 5 September 1993. Vahid Karavelić testified that he received his documents from Jablanica and sent them to Jablanica, Vahid Karavelić, 20 Apr '05, T. 18.

⁶⁹¹ Ex. 385, Order of Vahid Karavelić to the 2nd Independent Battalion Command (Commander, personally), concerning sending troops to Herzegovina, dated 6 September 1993.

⁶⁹² Ex. 156, Operations Log book of the 6th Corps 8-13 September 1993.

⁶⁹³ Namik Džanković testified that the soldiers called the place the forward command post. He continued that this was the practice of the army, in brigades and smaller units wherever there was a place where there were several officers either from the Brigades or General Staff that would be called the IKM of the Brigade or the IKM of the Main Staff, Namik Džanković, 21 Mar '05, T. 7. *See also* Bakir Alispahić, who testified that he called the place a forward command post as the top military leadership was present there and they were commanding from that location, Bakir Alispahić, 27 May '05, T. 77.

⁶⁹⁴ Jusuf Jašarević, 04 Mar '05, T. 57-58.

Jusuf Jašarević testified that based on information which he later received, he placed in question the very existence of the IKM in Jablanica. He did not see any documents that would indicate that there really was a forward command post – meaning a document bearing the authority of the commander. Except for the reports which arrived from the ground, which came to his hands, all of them bore the heading "Forward Command Post" and this "can be also termed in jargon."⁶⁹⁵ This usage is confirmed by Namik Džanković, an officer in the Main Staff UB and member of the Inspection Team, who testified with reference to the Jablanica IKM that:

An official IKM was not formed. There wasn't any such order. But we did call that place the forward command post. Actually, that was the practice in the army. In the brigades and in smaller units, wherever there was a place where there [were] several officers, whether from the brigade or from the General Staff, that would be called the IKM of the brigade or the IKM of the General Staff. That's how we referred to it. But I didn't see any official order designating that as a forward command post, no.⁶⁹⁶

218. Selmo Cikotić testified that to use the term IKM for the base of an inspection team "is not something a good soldier would do".⁶⁹⁷ Dževad Tirak stated that "Mr. Andrić, a deputy commander of the 6th Corps"⁶⁹⁸ told him that certain information concerning the operation for the lifting of the blockade of Mostar went through the "liaison centre" at Jablanica, and that it was a "command department" of the IKM that was "leading that information".⁶⁹⁹

219. In this regard, the Trial Chamber notes that the term IKM was also used with reference to the base of Zulfikar Ališpago in Donja Jablanica, which is located a few kilometres south of Jablanica. Nermin Eminović, 6th Corps Chief of the SVB, testified that there was an IKM of the "Supreme Command" in Donja Jablanica, in a residential building "right next to" Zulfikar Ališpago's base.⁷⁰⁰ In this IKM there were Vehbija Karić, Zičro Suljević, Rifat Bilajac and Namik

⁶⁹⁵ Jusuf Jašarević, 04 Mar '05, T. 57-58.

⁶⁹⁶ Namik Džanković, 21 Mar '05, T. 7. *See also* in this respect Bakir Alispahić, 27 May '05, T. 76-77, who testified in relation to the alleged Jablanica IKM, that:

based on what I know, and the extent of my knowledge is not tremendous, this was a place where there were only officers present and there were maps hanging and depicting the situation on the ground. I visited the premises. And based on what I saw there, I called them forward command post. Some people refer to it as simply command post.

In addition, Jusuf Jašarević testified that (Jusuf Jašarević, 01 Mar '05, T. 76):

I was particularly confused by the fact that he [Nermin Eminović, the 6th Corps Chief of the SVB] referred to IKM, forward command post, and he continues to use this term. I used the term sometimes too when expressing my opinion. I was prompted by his use of term.

⁶⁹⁷ Selmo Cikotić, 23 Feb '05, T. 49.

⁶⁹⁸ Dževad Tirak, 30 Mar '05, T. 41.

⁶⁹⁹ Dževad Tirak, 30 Mar '05, T. 44.

⁷⁰⁰ Nermin Eminović, 10 Mar '05, T. 68, 71; The Trial Chamber notes that Nermin Erminović also testified that he was not present in Donja Jablanica at the time and that he learned later that there had been an IKM in Donja Jablanica; *see also* Ramiz Delalić, 18 May '05, T. 25. Ramiz Delalić testified "an IKM was located at Zuka's base, if I'm not mistaken," *ibid.* For the Trial Chamber's findings as to the testimony of Ramiz Delalić, *see supra* Section II.

Džanković.⁷⁰¹ Ramiz Delalić stated that it was from the base of the Zulfikar Detachment in Jablanica⁷⁰² that “Operation Neretva” was commanded.⁷⁰³ Namik Džanković testified that at the end of August he arrived at Donja Jablanica where he found Sefer Halilović, Vehbija Karić, Zičro Suljević and Rifat Bilajac at the base of the Zulfikar Detachment.⁷⁰⁴

220. The Trial Chamber heard testimony that the fact that an IKM is established does not mean that there is a combat operation being commanded from that IKM.⁷⁰⁵ A command post, as well as an IKM, is just a location.⁷⁰⁶ However, according to Salko Gušić the “Neretva Operation” was “coordinated and carried out” from the Jablanica IKM and Sefer Halilović was in charge of it.⁷⁰⁷ He believes that this was a command post that was competent and able to lead the forces on the ground.⁷⁰⁸ Salko Gušić testified that the IKM at Jablanica existed until late October just before Operation Trebević.⁷⁰⁹

221. The Trial Chamber finds that the Inspection Team was based in Jablanica. However, the Trial Chamber also finds that while that this location, on occasion, was referred to as an IKM, the evidence does not establish that this location was an IKM in the true sense of the rules applicable in the ABiH as explained to the Trial Chamber by witnesses. In this respect, the Trial Chamber notes that the expression IKM was also used for the Zulfikar Detachment's base in Donja Jablanica. The Trial Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt that an IKM was established for the purpose of commanding an “Operation Neretva”. For the purposes of this Judgement, for clarity, the Trial Chamber will however, continue to use the term IKM for the location of the Inspection Team in Jablanica.

5. Reorganisation and Resubordination of units following the Zenica Meeting

(a) Reorganisation of Units

222. Following the Zenica meeting, a number of organisational changes were carried out concerning the structure of independent units.

⁷⁰¹ Nermin Eminović, 10 Mar '05, T. 68.

⁷⁰² The Trial Chamber notes that the base of the Zulfikar Detachment was in Donja Jablanica.

⁷⁰³ Ramiz Delalić, 18 May '05, T. 25.

⁷⁰⁴ Namik Džanković, 21 Mar '05, T. 4-5.

⁷⁰⁵ Selmo Cikotić, 23 Feb '05, T. 45.

⁷⁰⁶ Salko Gušić, 04 Feb '05, T. 92.

⁷⁰⁷ Salko Gušić, 03 Feb '05, T. 62.

⁷⁰⁸ Salko Gušić, 03 Feb '05, T. 63.

⁷⁰⁹ Salko Gušić, 04 Feb '05, T. 7; The Trial Chamber notes that reports from the Command of the 4th Corps: Ex. 114, Ex. 115, Ex. 129, all refer to ŠVK IKM. *See also* Ex. 474, Cancellation of Order, issued by Rasim Delić to the Command of the 6th Corps, dated 31 October 1993, in which Rasim Delić wrote that “the armed forces ŠVK IKM is not in Jablanica”. *See infra* Section IV.F, paras 713-721.

223. As noted above, the Conclusions of the Zenica Meeting brought several independent units, including the Zulfikar Detachment, *Akrepi* and *Muderiz* Units under the organic control of Corps.⁷¹⁰

224. By order of Rasim Delić of 1 September 1993 the reorganisation of units pursuant to the Conclusions of the Zenica Meeting was put into effect.⁷¹¹ Rasim Delić ordered that the Sabotage-Reconnaissance Brigade from the 3rd Corps, and the Black Swans Unit should form part of the structure of the 6th Corps.⁷¹² The same order stated that the Zulfikar Detachment and Silver Fox Independent Platoon, which, structurally speaking, were part of the 6th Corps, as well as the *Akrepi* Independent Unit and *Muderiz* Independent Unit, should become part of the 4th Corps.⁷¹³ However, the evidence shows that this part of the 1 September order was not implemented.⁷¹⁴ The Trial Chamber also heard testimony that the Zulfikar Detachment was not under the control of the 6th Corps and in fact remained independent.⁷¹⁵ On 5 October, Rasim Delić sent an order to the Command of the 4th Corps acknowledging that the 1 September order subordinating the Zulfikar Detachment to the 4th Corps had not been implemented and urging that this be carried out. The order states in the final paragraph;

Our order on the above units' entry into the 4th Corps force must be implemented and in this case resubordination during combat operations ought to be resolved at the 4th and 6th Corps level, i.e. through coordination between these two Corps.⁷¹⁶

225. Salko Gušić testified that point 7 of the 1 September, order is an order to the officers at the IKM to provide the necessary specialised assistance to the commands of the 4th and 6th Corps in the tasks set forth in the order.⁷¹⁷ He stated that this order is to prepare the units for their future deployment.⁷¹⁸ Point 7 of the 1 September order provides:

7. Officers from the Forward Command Post – Staff of the Supreme Command shall provide the necessary specialised assistance to the commands of the 4th and 6th Corps in executing the tasks set forth in this Order. To this end the commands of the 4th and 6th Corps shall establish the necessary contacts with officers at the Forward Command Post – Staff of the Supreme Command of the BH Armed Forces.⁷¹⁹

⁷¹⁰ See *supra* para 196.

⁷¹¹ Salko Gušić, 04 Feb '05, T. 76, referring to Ex. 120, Reorganisation Order.

⁷¹² Ex. 120, p. 2.

⁷¹³ Ex. 120, p. 2-3.

⁷¹⁴ Ex. 296, Opinion on Proposal by the 6th Corps, sent by the Chief of Administration for Organisation and Mobilisation, Avdulah Kajević, to the ŠVK Commander, dated 15 November 1993, which states that this part of the order of 1 September was not implemented. Salko Gušić testified that the Black Swans Unit never came under the control of the 6th Corps, and the *Akrepi* Unit remained based in Konjic, Salko Gušić, 04 Feb '05, T. 77; Dževad Tirak, 30 Mar '05, T. 39.

⁷¹⁵ Dževad Tirak, 30 Mar '05, T. 39; Vahid Karavelić, 20 Apr '05, T. 40-41. See *supra* Section IV.A, para. 147.

⁷¹⁶ Ex. 443, Order of Rasim Delić to the 4th Corps Command and to Sefer Halilović concerning Order of 1 September on organisational changes, dated 5 October 1993.

⁷¹⁷ Salko Gušić, 03 Feb '05, T. 81.

⁷¹⁸ Salko Gušić, 03 Feb '05, T. 81.

⁷¹⁹ Ex. 120, p. 5.

226. Salko Gušić testified that point 7 is linked to point 4,⁷²⁰ which provides:

4. The commands of the 4th and 6th Corps shall take over the units referred to in items 1 and 2 of this Order, with respect to all elements of combat readiness, combat use, organisation and so forth.⁷²¹

227. On 2 September, Sefer Halilović sent an order to the 6th Corps “[p]ursuant to decision of GŠVK/ Supreme Command Main Staff/ of 21 August 1993 in Zenica.” The aim of the order was “building up the units”, and the order provided that the *Handžar* division and Silver Fox division become part of the Zulfikar Detachment by 20:00 hours on 3 September.⁷²² This order was sent to the Main Staff “for information”.⁷²³ Salko Gušić testified that this was an organisational order aimed at creating larger units out of smaller ones.⁷²⁴ The Trial Chamber was presented with evidence that this order was also not carried out.⁷²⁵

228. On 7 September, the 4th Corps Commander Arif Pašalić issued an order to Zulfikar Ališpago, based on the order of 1 September issued by Rasim Delić.⁷²⁶ This order is entitled “Linking up of the forces of the 4th Corps of the BH Army”.⁷²⁷ Arif Pašalić ordered that the Zulfikar Detachment, the *Muderiz* and *Akrepi* special units and the *Drežnica* Battalion comprise the OG North-2 and assigned the OG the Commander of the Zulfikar Detachment as commander.⁷²⁸ The OG North-2 was ordered to receive its tasks from the “Main Staff IKM” in Jablanica.⁷²⁹

(b) Resubordination of Units

229. The Trial Chamber notes that in addition to the reorganisation mentioned above, resubordination of certain units was also carried out following the Zenica meeting.

230. The Prosecution, in its Final Brief, alleges that “[the] sequence of orders involving [Vahid] Karavelić clearly proves that the inspection team order of 30 August was binding on him and gave [Sefer] Halilović full authority to issue binding orders to all commanders including himself.”⁷³⁰

⁷²⁰ Salko Gušić, 03 Feb '05, T. 81.

⁷²¹ Ex. 120, p. 3. As noted above, “items 1 and 2” of the order refer to the Sabotage-Reconnaissance Brigade, Black Swans unit (*Crni Labudovi*), Zulfikar Detachment, Silver Fox unit, *Akrepi* unit, and *Muderiz* unit.

⁷²² Ex. 123, order by Sefer Halilović, as “Načelnik GŠVK (zamjenik komandanta)”, to the 6th Corps command, dated 2 September.

⁷²³ Ex. 123, p. 1.

⁷²⁴ Salko Gušić, 03 Feb '05, T. 84-85.

⁷²⁵ Ex. 296.

⁷²⁶ Ex. 120, order.

⁷²⁷ Ex. 121, order of Arif Pašalić, 4th Corps Commander, dated 7 September 1993; *see also* Salko Gušić, 03 Feb '05, T. 81.

⁷²⁸ Ex. 121, p. 2. The area of responsibility of the North-2 OG is stated as “Jablanica to the north, up to Salakovac HE/ hydro plant/ to the South, and the border with the enemy to the west and east,” *ibid.*

⁷²⁹ Ex. 121, p. 2.

⁷³⁰ Prosecution Final Brief, para. 159.

231. On 2 September, Sefer Halilović ordered Vahid Karavelić to prepare the Delta Brigade,⁷³¹ parts of the 9th Brigade and 10th Brigade and the 2nd Independent Battalion,⁷³² totalling over 300 soldiers to go to Bradina where the 6th Corps was to take them over. The order stated that the troops were to be sent “no later than on Friday evening (3 September 1993)”.⁷³³ This order was sent to the 1st Corps, the 6th Corps and to the Commander of the Main Staff, Rasim Delić “for information”.⁷³⁴

232. In his order of 2 September, Sefer Halilović stated that if Vahid Karavelić considered that this deployment of troops endangered the defence of Sarajevo that he, Sefer Halilović, was “prepared to bear full responsibility”.⁷³⁵ Vahid Karavelić testified that this sentence followed a conversation between himself and Sefer Halilović in which Vahid Karavelić expressed his concern as to the resubordination of troops from the 1st Corps.⁷³⁶

233. Vahid Karavelić further testified that, in response to the 2 September order of Sefer Halilović requesting the sending of troops from Sarajevo to Herzegovina, he contacted Rasim Delić because Sefer Halilović as “Chief of Staff” could only issue orders with authorisation from the Commander. Rasim Delić confirmed that Vahid Karavelić should act in accordance with Sefer Halilović’s order.⁷³⁷

234. Subsequent to his order requesting troops, Sefer Halilović, also on 2 September, requested information from Vahid Karavelić as to when a unit would move and its strength “so that its reception and transport can be organised.”⁷³⁸ Vahid Karavelić replied to Sefer Halilović at Jablanica on 4 September, that between 160 and 180 troops would be ready that evening at 22:00 in accordance with Sefer Halilović’s order.⁷³⁹

235. Vehbija Karić testified that the decision to select the 9th and the 10th Brigades to participate in the “Operation” was made at a meeting with Rasim Delić, though he does not specify when this

⁷³¹ Vahid Karavelić testified that Delta Brigade did not go to Jablanica, Vahid Karavelić, 22 Apr '05, T. 120-121.

⁷³² The Trial Chamber notes that the text reads “Čolaković’s Unit” and understands that this refers to Adnan Solaković’s unit, the 2nd Independent Battalion.

⁷³³ Ex. 161. Vahid Karavelić testified that he understood this order to mean that he, as Commander of the 1st Corps, was in “command or control” of the troops until the time that they arrived at their destination “and reported to the Supreme Command group” After that “the chain of command [...] which was established in the course of the implementation of the Neretva-93 operation, this chain had command and control over them” and that upon their return from Herzegovina they would return to the 1st Corps chain of command, Vahid Karavelić, 20 Apr '05, T. 26-27; Salko Gušić, 6th Corps commander, testified that he did not receive any order from Sefer Halilović that he was to receive the 1st Corps units that had gone to Bradina, Salko Gušić, 03 Feb '05, T. 60.

⁷³⁴ Ex. 161, p. 2.

⁷³⁵ Ex. 161, point 2.

⁷³⁶ Vahid Karavelić, 19 Apr '05, T. 112.

⁷³⁷ Vahid Karavelić, 20 Apr '05, T. 2-3. He states however, that he did not have access to the 30 August order at the time and only saw it when he came to The Hague. He stated that at that point in time he was not sure why he was supposed to send units to the Neretva Valley and that was the reason why he contacted Rasim Delić, *ibid*.

⁷³⁸ Ex. 382, Request from Sefer Halilović to 1st Corps Commander Vahid Karavelić for Response concerning movement of Units of the 1st Corps, dated 2 September 1993.

meeting took place.⁷⁴⁰ At the meeting the Chiefs of various branches from the Main Staff were present, among them Sefer Halilović as “the chief of the Main Staff”, as well as 1st Corps Commander Vahid Karavelić.⁷⁴¹ They discussed at length which units it would be “easiest to use in the Neretva-93 operation”.⁷⁴² Vehbija Karić testified that neither Sefer Halilović nor any of the others who were present at the meeting raised objections against using troops from the 9th and 10th Brigades.⁷⁴³

236. In early September, a few days before the 2nd Independent Battalion set off for Herzegovina, Adnan Solaković, Commander of the 2nd Independent Battalion, was summoned to the command of the 1st Corps together with Zakir Oković, Operations Officer in the 2nd Independent Battalion. There they met with Sefer Halilović and Vahid Karavelić to discuss sending the 2nd Independent Battalion to Herzegovina.⁷⁴⁴ Following this meeting, Vahid Karavelić issued an order for troops of the 2nd Independent Battalion to be sent to Herzegovina.⁷⁴⁵ Mustafa Kadić, a member of the 2nd Independent Battalion, stated that Adnan Solaković was responsible for the selection of which specific troops would be sent to Herzegovina.⁷⁴⁶

237. With regard to the use of units from the 9th Brigade, Ramiz Delalić testified that:

At the time when this action was being planned, I was called to see Sefer Halilović. The commander of the 1st Corps, Vahid Karavelić, was invited to attend, too. They probably talked before that and I concluded that during a later conversation. Sefer Halilović requested that units of the 9th Motorised Brigade or part of the 9th Motorised Brigade units, the Delta unit, the Adnan Solakovic's Independent Battalion and some units of the 10th Mountain Brigade, around 300 fighters all together, should be completely armed in order to be able to conduct combat operations in the sector of Jablanica. [...] Mr. Karavelić was against issuing such an order because he considered that the lines of defence of Sarajevo would be weakened by such actions and therefore he was categorically against such an order. That is why Sefer Halilović called us in to attend this meeting. He called the commander of the 10th Mountain Brigade, the commander of Delta, Adnan

⁷³⁹ Ex. 384, Reply from the 1st Corps Command to Sefer Halilović and Vehbija Karić, dated 4 September 1993.

⁷⁴⁰ Vehbija Karić, Ex. 444, T. 39-40.

⁷⁴¹ Vehbija Karić, Ex. 444, T. 40.

⁷⁴² Vehbija Karić, Ex. 444, T. 40.

⁷⁴³ Vehbija Karić, Ex. 444, T. 40, According to Vehbija Karić, the meeting took a long time and the participants to the meeting analysed several issues. The participants to the meeting were satisfied that they would be able to maintain the defence of Sarajevo and still have forces, the strength of one battalion from the 9th and 10th Brigades; Vahid Karavelić testified that it was logical to request the Delta Brigade and the 2nd Independent Battalion as they were reserve, mobile units of the 1st Corps and did not hold a defence line, while he believed that the choice of units of the 9th and 10th Brigades was not as logical as these units had their own areas of responsibility and were manning a defence line, Vahid Karavelić, 19 Apr '05, T. 112-113.

⁷⁴⁴ Zakir Oković, 15 Mar '05, T. 17-18; Zakir Oković testified that Sefer Halilović explained the significance of the “Operation” that was being carried out in Herzegovina. He said that the siege of Mostar had to be lifted, and insisted that the 2nd Independent Battalion be sent to Herzegovina, Zakir Oković, 15 Mar '05, T. 18, 19; The Trial Chamber notes that the only reference Vahid Karavelić made to any meetings is his testimony that Sefer Halilović spoke with him by phone about taking units from the 1st Corps, Vahid Karavelić, 19 Apr '05, T. 108-109 and 22 Apr '05, T. 86.

⁷⁴⁵ Zakir Oković, 15 Mar '05, T. 19-20; Ex. 385.

⁷⁴⁶ Mustafa Kadić, 10 Mar '05, T. 13.

Solakovic, and myself, so that we could tell them that we were able to set aside units which could take part in this action, and that's how it was.⁷⁴⁷

238. Ramiz Delalić thought that all these units could afford to allocate some fighters without weakening the lines in their areas of responsibility.⁷⁴⁸

239. Further to the replies of the Commander of the 1st Corps, concerning problems with the ordered deployment, on 5 September Inspection Team members “Amidža, Rifat, Žičo” sent a request for explanation of further work to Sefer Halilović informing him of the reply from Vahid Karavelić and asking “do we continue with preparations or not”.⁷⁴⁹ They sent a subsequent request, also dated 5 September, which states “explanation required”, requesting that Sefer Halilović find another 200 soldiers from Sarajevo in the absence of troops from the 1st Corps.⁷⁵⁰

240. On 6 September Sefer Halilović⁷⁵¹ issued an order from Jablanica which states in the preamble:

With regards to previous 6th Corps unit's tasks-combat operations in the 4th Corps' zone of responsibility, and the engagement of the Zulfikar Reconnaissance-Sabotage Brigade on the axis Vrđi village towards Mostar, the following units are resubordinated to this brigade:

Drežnica Battalion and Units from the 1st Corps.⁷⁵²

Salko Gušić testified that this was a “combat order” in which a combat task is assigned and resubordination carried out.⁷⁵³ Vahid Karavelić testified that this order does not show that Sefer Halilović was able to issue orders to the Zulfikar Detachment; but that Sefer Halilović's ability to command that Detachment depended upon the powers which Rasim Delić had given him.⁷⁵⁴ Vahid Karavelić also testified that at the time the Zulfikar Detachment “directly reported to and was directly subordinated to the Commander of the Supreme Command Staff”.⁷⁵⁵

241. On 7 September Arif Pašalić sent a request to the IKM at Jablanica in which he stated that he had received the strictly confidential document, dated 5 September, and the document dated

⁷⁴⁷ Ramiz Delalić, 17 May '05, T. 50-51.

⁷⁴⁸ Ramiz Delalić, 17 May '05, T. 51.

⁷⁴⁹ Ex. 116.

⁷⁵⁰ Ex. 117.

⁷⁵¹ Vahid Karavelić testified that he assumed that the fact this order was sent to Sefer Halilović meant that he had not been close by when it was drafted, and therefore it was written by his assistants in accordance with Sefer Halilović's general guidelines and instructions. Vahid Karavelić, 21 Apr '05, T. 6; *see* Ex. 122, p. 3.

⁷⁵² Ex. 122.

⁷⁵³ Salko Gušić, 03 Feb '05, T. 83.

⁷⁵⁴ Vahid Karavelić, 20 Apr '05, T. 41.

⁷⁵⁵ Vahid Karavelić, 20 Apr '05, T. 41.

6 September⁷⁵⁶ and that “it cannot be seen from the document when and which units were sent to the area of responsibility of the 4th Corps”.⁷⁵⁷ He stated that:

the battalion units: “*Drežnica*”, “*Zulfikar*”, “*Muderiz*”, “*Akrepi*” and “Silver Foks”[sic] were assigned to the SJEVER-2 OG/ operations group/ of the 4th Corps of the Army of the Republic BiH. Commander of the SJEVER is the commander of the “*Zulfikar*” special unit.⁷⁵⁸

He further suggested a target “with the aim of mopping up the enemy forces in the Neretva Valley.”⁷⁵⁹

242. Selmo Cikotić testified that the OG West was “temporarily engaged” in the “Operation” that was “coordinated” by Sefer Halilović.⁷⁶⁰ However, OG West was never subordinated out of the 3rd Corps.⁷⁶¹

243. Bakir Alispahić, Minister of the Interior, stated that it was “for the purpose of this operation” discussed at the Zenica meeting that he was requested to send the *Laste* Unit of the MUP in order to assist the army.⁷⁶² According to Bakir Alispahić the request was made by Rasim Delić as well as by Sefer Halilović.⁷⁶³ The *Laste* Unit was sent to Konjic with their final destination being Mostar.⁷⁶⁴ Bakir Alispahić stated that he does not know whether the *Laste* Unit was subordinated to Arif Pašalić, Commander of the 4th Corps.⁷⁶⁵

244. The Trial Chamber finds that under the command of Rasim Delić, the Commander of the Main Staff, the reorganisation and resubordination of troops was carried out pursuant to the meeting in Zenica of the Main Staff and Corps commanders, and the Conclusions resulting from that meeting. The Trial Chamber also finds that Sefer Halilović implemented the orders of Rasim Delić in this regard, in keeping with his role as Team Leader of the Inspection Team charged with coordinating and monitoring functions.

⁷⁵⁶ The Trial Chamber has not been furnished with the 5 September document and the evidence is inconclusive about whether or not the 6 September document referred to by Arif Pašalić is Ex. 122.

⁷⁵⁷ Ex. 112, p. 1.

⁷⁵⁸ Ex. 112, p. 1. The Trial Chamber notes that “Sjever” is the B/C/S word for North.

⁷⁵⁹ Ex. 112, p. 2.

⁷⁶⁰ Selmo Cikotić, 23 Feb '05, T. 25.

⁷⁶¹ Selmo Cikotić, 23 Feb '05, T. 52-53, 67.

⁷⁶² Bakir Alispahić, 23 May '05, T. 61.

⁷⁶³ Bakir Alispahić, 23 May '05, T. 61.

⁷⁶⁴ Bakir Alispahić, 23 May '05, T. 67; 27 May '05, T. 45. The unit contained about 50 police members, and was made up of two formations, when these two formations linked up they were sent to Konjic.

⁷⁶⁵ Bakir Alispahić, 27 May '05, T. 54.

6. Chronology of Events in September 1993

245. Salko Gušić testified that at the end of August, members of the Inspection Team Vehbija Karić, Rifat Bilajac, Zićro Suljević arrived in the area of operation of the 6th Corps.⁷⁶⁶ On the night of 31 August, Sefer Halilović and Šefko Hodžić, a journalist, departed from Sarajevo for Herzegovina.⁷⁶⁷

(a) 1 September

246. In his book “a Cunning Strategy”, Sefer Halilović states that “[a] part of the team ([Rifat] BILAJAC, [Zićro] SULJEVIĆ and [Vehbija] KARIĆ) went out on 1 September 1993 together with Namik DŽANKOVIĆ and HASANPAŠIĆ to conduct preparations for stationing units in the Jablanica sector as the plan of the operation envisaged their engagement along the village of Vrde-Lištica axis.”⁷⁶⁸

247. On 1 September, Inspection Team members Vehbija Karić, Rifat Bilajac and Zićro Suljević sent a report addressed to Rasim Delić stating that they had visited the refugee camp in Grabovica and arranged with the authorities in Jablanica to provide hygiene services for refugees in Grabovica.⁷⁶⁹ The report asked Rasim Delić for his decision as to the use of units from Sarajevo and the 3rd Corps in the possible future combat operations.⁷⁷⁰ The report stated:

With Zuka’s unit, we have analysed the situation, deployment and possible future combat operations. We did the same with the Command of the 6th Corps.

We do not know if the proposal that we have sent to use units from Sarajevo and the 3rd Corps met with approval?

We are going to the village of Drežnica in order to review the situation and coordinate combat operations.

248. Also on 1 September, Sefer Halilović and Šefko Hodžić arrived in Jablanica, from where they went to the base of the Zulfikar Detachment in Donja Jablanica.⁷⁷¹ From there Sefer Halilović, Zulfikar Ališpago, Vehbija Karić, and Šefko Hodžić went to Grabovica where they met with some freed detainees from Croatian camps, who were staying in prefabricated huts near to the

⁷⁶⁶ Salko Gušić, 07 Feb '05, T. 50.

⁷⁶⁷ Šefko Hodžić, 23 Mar '05, T. 42-43; They were driven by a member of the Zulfikar Detachment, Šefko Hodžić, 23 Mar '05, T. 43-44.

⁷⁶⁸ Ex. 281, p. 2.

⁷⁶⁹ Ex. 406, Report to Main Staff of the Supreme Command, Commander personally, dated 1 September 1993. This report states in the opening paragraph that “we are expecting Sefer”.

⁷⁷⁰ Ex. 406.

⁷⁷¹ Šefko Hodžić, 23 Mar '05, T. 44-45; *see also* Salko Gušić, 04 Feb '05, T. 48.

hydroelectric plant, and the Igman Wolves.⁷⁷² That night Sefer Halilović returned to Jablanica and stayed at the apartment of Zulfikar Ališpago.⁷⁷³

(b) 2 September

249. As mentioned above, on 2 September Sefer Halilović ordered that troops of the 1st Corps be sent to Bradina and further, requested information from Vahid Karavelić as to when a unit of the 1st Corps would move to Herzegovina and its numerical strength.⁷⁷⁴ Also on 2 September, Arif Pašalić sent a report to the “forward command post of the ŠVK” at Jablanica requesting information as to troops which were to arrive in the 4th Corps area of responsibility so that accommodation, food and other logistics could be arranged.⁷⁷⁵

250. Vehbija Karić testified that on 2 September at a meeting at the “provisional command post” in Jablanica, Zulfikar Ališpago, as the local ABiH commander in Donja Jablanica, was ordered to assume responsibility for the accommodation of the incoming troops from Sarajevo.⁷⁷⁶ The commanders of the local units, the 44th and 45th Brigades were also present as well as “some other people from the municipal staff and Territorial Defence”. Vehbija Karić stated that at that meeting assignments were given specifically concerning accommodation of soldiers.⁷⁷⁷

(c) 3 September

251. On 3 September, Sefer Halilović and Zulfikar Ališpago, accompanied by Šefko Hodžić, went to look for accommodation for troops.⁷⁷⁸ They passed through Grabovica⁷⁷⁹ and arrived at a village called Diva Grabovica in the mountains where there was a hunting lodge.⁷⁸⁰ Sefer Halilović and Zulfikar Ališpago said that the location would be a suitable place for accommodation of the troops.⁷⁸¹ They then returned to the village of Kostajnica in the municipality of Konjic.⁷⁸²

⁷⁷² Šefko Hodžić, 23 Mar '05, T. 48 and 24 Mar '05, T. 35. In September 1993, the Igman Wolves were billeted in the offices of the hydro-electric plant in Grabovica, *see infra* Section IV.B, para. 380.

⁷⁷³ Šefko Hodžić, 23 Mar '05, T. 45.

⁷⁷⁴ *See supra* paras 229-244.

⁷⁷⁵ Ex. 449. The Trial Chamber notes that this report was also sent to the Supreme Command Staff in Sarajevo.

⁷⁷⁶ Vehbija Karić, Ex. 444, T. 48.

⁷⁷⁷ Vehbija Karić, Ex. 444, T. 48.

⁷⁷⁸ Šefko Hodžić, 23 Mar '05, T. 49-50. At the time Šefko Hodžić thought that Zulfikar Ališpago wanted to find accommodation for his troops. Later on, he found out that that was actually meant to be for the accommodation of the troops from Sarajevo.

⁷⁷⁹ Šefko Hodžić testified that the clothing of the people he saw in Grabovica suggested to him that they were Bosnian Croats, Šefko Hodžić, 23 Mar '05, T. 50.

⁷⁸⁰ Šefko Hodžić, 23 Mar '05, T. 49-51; Witness B, 02 Feb '05, T. 47-48, 71-72 (testifying that as far as he knew, Diva Grabovica was not a Bosnian-Croat village. Diva Grabovica was situated about 4 kilometres to the north of Grabovica and known for its hunting lodge).

⁷⁸¹ Šefko Hodžić, 23 Mar '05, T. 49-51. Šefko Hodžić stated that he did not share that opinion as it was difficult to get there and on the way to Diva Grabovica they had encountered some minefields on the way, *ibid.*

(d) 4 September

252. Pursuant to Sefer Halilović's order of 2 September for preparation of soldiers from the 1st Corps,⁷⁸³ on 4 September, Vahid Karavelić issued an order to the Deputy Commander of the 9th Brigade, Ramiz Delalić, to form a company of 50 soldiers and send them to Bradina.⁷⁸⁴ He stated that the assignment of that company would be:

To launch an offensive together with a company from the 10th Mountain Brigade, and in co-operation with units in the field, on orders from the Chief of the Supreme Command Headquarters within seven days of the departure to Jablanica.⁷⁸⁵

253. Vahid Karavelić ordered that the company should leave at 18:30 that night, 4 September, and link up with the 10th Brigade company at Mt. Igman where motorised vehicles organised by the "Chief of the Supreme Command Headquarters" would be waiting for them to transport them to Jablanica. He also ordered that after seven days the company should return to its own unit in the same way.⁷⁸⁶

254. Vahid Karavelić testified that the troops did not leave on 4 September due to bad weather.⁷⁸⁷ He sent a report on 5 September to Sefer Halilović at Jablanica informing him that the departure from Mt. Igman had been put off due to a storm, and that Mušan Topalović and Ramiz Delalić had proposed that the departure be delayed for 24 hours.⁷⁸⁸

⁷⁸² Šefko Hodžić, 23 Mar '05, T. 51-52 and 24 Mar '05, T. 37. On 2 or 3 September Šefko Hodžić met with Selmo Cikotić, Commander of OG West, Šefko Hodžić, 24 Mar '05, T. 36-37. Šefko Hodžić testified that in Kostajnica Sefer Halilović spoke with some of the local population which included some elderly Bosnian Croats who had stayed in that village. Sefer Halilović told them that the ABiH was not a revengeful army and that "no woman and no children should have to cry because of them." Šefko Hodžić, 23 Mar '05, T. 52-53 and 24 Mar '05, T. 38. Ex. 161, *see supra* paras. 231-235.

⁷⁸³ Ex. 383, Order by Vahid Karavelić to Ramiz Delalić, dated 4 September 1993. Vahid Karavelić testified that he thinks the reason the order was addressed to the Deputy Commander and not to the Commander was that he probably had been told by the commander that Ramiz Delalić would be responsible for the implementation of that task, Vahid Karavelić, 20 Apr '05, T. 11.

⁷⁸⁴ Ex. 383. Vahid Karavelić testified that he issued similar orders to the 2nd Independent Battalion, the Delta Brigade and the 10th Brigade, Vahid Karavelić, 20 Apr '05, T. 14; However, he was not sure that the Delta Brigade was subordinated to the 1st Corps at that time, Vahid Karavelić, 20 Apr '05, T. 14.

⁷⁸⁵ Vahid Karavelić, 20 Apr '05, T. 16; Vahid Karavelić testified that the delay in departure was 24 hours, *ibid*.

⁷⁸⁶ Ex. 290, p. 1, paragraph 1; Ramiz Delalić testified that there was not a storm, but that they could not leave because the 1st Corps Commander and the Main Staff could not agree amongst themselves, Ramiz Delalić, 17 May '05, T. 55; He further testified that it was because Vahid Karavelić did not respect the order of Sefer Halilović, Ramiz Delalić, 19 May '05, T. 13; He stated that the conclusion finally reached between Vahid Karavelić and Sefer Halilović was that they would stay only 7 days in Jablanica, Ramiz Delalić, 17 May '05, T. 55; These troops would be subordinated to Zulfikar Ališpago and the chain of command would be the "Sarajevo Unit, Senad Pecar" (who was supposed to be Unit Commander), Zulfikar Ališpago and Sefer Halilović at the top, Ramiz Delalić, 17 May '05, T. 56. Vahid Karavelić testified that he was hesitant to send troops given the situation in Sarajevo at the time. Vahid Karavelić, 19 Apr '05, T. 108-109; The 9th and 10th Brigades had their zones of responsibility and were holding the defence line in Sarajevo, and at the end of August also part of the defence line at Mt. Igman, Vahid Karavelić, 19 Apr '05, T. 113; According to Vahid Karavelić, such a move was illogical and endangered the defence of Sarajevo. Vahid Karavelić, 22 Apr '05, T. 158.

255. On the morning of 4 September, Sefer Halilović, Vehbija Karić and others assembled in front of the house of Safet Ćibo, “President of the War Presidency of Jablanica, Konjic and the Free Part of Prozor” (“Jablanica War Presidency”).⁷⁸⁹ Sefer Halilović was informed by Vehbija Karić that a telegram from Arif Pašalić, 4th Corps commander, would be arriving concerning a planned attack by Bosnian Croat forces on power plants and Sefer Halilović said “we will forestall them”.⁷⁹⁰ It was mentioned that units from Sarajevo would be arriving and that they were planning to attack the HVO “on Wednesday”.⁷⁹¹

256. During the morning of 4 September, Sefer Halilović and Safet Ćibo, accompanied by Šefko Hodžić, went towards Neretvica where the Command of the 45th Brigade was located.⁷⁹² On the way from Jablanica to Konjic they met with Rasim Delić, who was in a jeep coming from the opposite direction.⁷⁹³ Sefer Halilović informed Rasim Delić about the telegram from Arif Pašalić.⁷⁹⁴ Rasim Delić told Sefer Halilović that he had information about the preparation of a Bosnian Serb offensive at Igman and other locations in that direction.⁷⁹⁵ Sefer Halilović, Safet Ćibo and Šefko Hodžić parted from Rasim Delić, and continued towards Neretvica. Šefko Hodžić testified that after they had met Rasim Delić, Sefer Halilović said “Ćibo, tell Delić that I don’t need him here. I am preparing for the offensive and I don’t need him interfering with things here”, and also something to the effect that “Delić has been entrusted with the task of taking away as many powers from me as possible and so that I would only be left with a little bit of management, something really minor.”⁷⁹⁶ Sefer Halilović and Safet Ćibo were supposed to meet with Salko Gušić and the Commander of the *Muderiz* Brigade in Neretvica.⁷⁹⁷ However, Salko Gušić and the *Muderiz* Brigade Commander were not in Neretvica. Instead, Sefer Halilović and Safet Ćibo, accompanied by Šefko Hodžić, met with the Commander of the 45th Brigade, Haso Hakalović, and then left for Donja Jablanica as there was to be a meeting at the base of the Zulfikar Detachment in Donja Jablanica at 12:00.⁷⁹⁸

(i) Meeting with Rasim Delić in Donja Jablanica

⁷⁸⁹ Šefko Hodžić, 23 Mar '05, T. 53.

⁷⁹⁰ Šefko Hodžić, 23 Mar '05, T. 53-54 and 24 Mar '05, T. 44-45.

⁷⁹¹ Šefko Hodžić, 23 Mar '05, T. 54. The Trial Chamber notes that 4 September 1993 was a Saturday and that the Wednesday following was 8 September.

⁷⁹² Šefko Hodžić, 23 Mar '05, T. 56. Šefko Hodžić later testified that the 45th Brigade was in Buturovic Polje, Šefko Hodžić, 24 Mar '05, T. 40.

⁷⁹³ Šefko Hodžić, 23 Mar '05, T. 56.

⁷⁹⁴ Šefko Hodžić, 23 Mar '05, T. 56-57.

⁷⁹⁵ Šefko Hodžić, 23 Mar '05, T. 57.

⁷⁹⁶ Šefko Hodžić, 23 Mar '05, T. 57 and 24 Mar '05, T. 47- 48.

⁷⁹⁷ Šefko Hodžić, 23 Mar '05, T. 57.

⁷⁹⁸ Šefko Hodžić, 23 Mar '05, T. 58; Selmo Cikotić, 23 Feb '05, T. 7.

257. When Sefer Halilović, Safet Ćibo and Šefko Hodžić arrived at the base of Zulfikar Ališpago, Rasim Delić and Vehbija Karić were already there. A meeting was held attended by Rasim Delić, Sefer Halilović, Vehbija Karić and other officers.⁷⁹⁹

258. Vehbija Karić testified that the documents in which the “Operation” was planned, containing maps and directions of action for individual units had been made with assistance of Sefer Halilović, Rifat Bilajac, Zićro Suljević, and Vehbija Karić. Vehbija Karić testified that all the documents for the “Operation”, the plan of action and the working map were “certified by the Commander of the Supreme Staff” on 4 September in Donja Jablanica. He further testified that Rasim Delić, by signing combat orders and documents, and decisions about the “Operation”, “in accordance with military reason, [Rasim Delić] took over command responsibility for the entire operation”.⁸⁰⁰ Sefer Halilović stated in his book “A Cunning Strategy” that the Inspection Team drafted the necessary documentation required for the operation called “Neretva-93” and Rasim Delić approved everything by putting his signature and stamp on it and then they went into the field.⁸⁰¹ After the meeting it was agreed that everyone, including Rasim Delić and Sefer Halilović would go to Konjic.⁸⁰²

(ii) Further Meetings on 4 September

259. A lower-level meeting was also held in Donja Jablanica. Selmo Cikotić testified that an informal meeting was held, attended by Sefer Halilović, Selmo Cikotić,⁸⁰³ Amer Duraković, operations officer for OG West, and Zulfikar Ališpago and Šefko Hodžić.⁸⁰⁴ At that meeting, Sefer Halilović announced to Selmo Cikotić that a combat operation would be taking place in Herzegovina and that preparations should be carried out.⁸⁰⁵ Selmo Cikotić was told that the goal was to reduce the front line and liberate certain roads in the area of the municipalities between

⁷⁹⁹ Šefko Hodžić, 23 Mar '05, T. 59; In his book, Sefer Halilović wrote that all members of the Inspection Team were present in Donja Jablanica on 4 September, together with Rasim Delić, Salko Gušić, Zulfikar Ališpago and Commander of the 45th Brigade, Ex. 281, p. 3. Selmo Cikotić testified that he went to the meeting because he had been issued an order from Sefer Halilović through the 3rd Corps command or the 317th Brigade command to attend, Selmo Cikotić, 23 Feb '05, T. 7, 52.

⁸⁰⁰ Vehbija Karić, Ex. 444, T. 108, 109-110; Salko Gušić testified that Rasim Delić arrived to Herzegovina on 4 September and spent the night in Konjic, Salko Gušić, 04 Feb '05, T. 49.

⁸⁰¹ Ex. 281, p. 2.

⁸⁰² Šefko Hodžić, 23 Mar '05, T. 59.

⁸⁰³ Selmo Cikotić was not sure about the date. He testified that the meeting took place more than one day before the meeting in Dobro Polje on 5 September, possibly on 1 September, Selmo Cikotić, 23 Feb '05, T. 8, 54-55. Selmo Cikotić testified that Sefer Halilović's escort named Sele Halilović and Sefer Halilović's son were in Donja Jablanica.

⁸⁰⁴ Selmo Cikotić, 23 Feb '05, T. 8, 54-55. Selmo Cikotić testified that Sefer Halilović's escort named Sele Halilović and Sefer Halilović's son were in Donja Jablanica.

⁸⁰⁵ Selmo Cikotić, 23 Feb '05, T. 8.

Prozor and Vakuf, closer to the border of Bosnia.⁸⁰⁶ Selmo Cikotić understood that Sefer Halilović was coordinating combat operations within that “Operation”.⁸⁰⁷

260. Selmo Cikotić testified that there was a brief meeting that evening in a military depot near Konjic⁸⁰⁸ between Sefer Halilović, Selmo Cikotić and Salko Gušić. The purpose of the meeting was to “inform” Salko Gušić and Selmo Cikotić who were supposed to cooperate in the forthcoming “Operation” and to introduce them to one another.⁸⁰⁹ Sefer Halilović told Selmo Cikotić that the OG West was to be part of the “Operation”.⁸¹⁰ The specific roles in the “Operation” were not discussed.⁸¹¹

261. There was yet another meeting between the senior commanders on the evening of 4 September. Rasim Delić, Sefer Halilović and Safet Ćibo were in Konjic on the night of 4 September.⁸¹² Sefer Halilović, Rasim Delić and Safet Ćibo had a meeting with Mitko Pitkić the Commander of the 43rd Brigade, and his command.⁸¹³ Vehbija Karić, who was present in Konjic at the time, testified that the same evening, Rasim Delić suggested to Sefer Halilović that he go to Sarajevo as Mušan Topalović, Commander of the 10th Brigade, was making it difficult for “Rasim Delić’s Order” to be implemented. He insisted that Sefer Halilović go and use his “influence” to ensure the 9th and the 10th Brigades would obey “the order”. According to Vehbija Karić, Sefer Halilović went to Sarajevo on 5 September and used his influence to ensure that those units left.⁸¹⁴

⁸⁰⁶ Selmo Cikotić, 23 Feb '05, T. 8. Selmo Cikotić did not specify who told him what the goal of the combat operations was.

⁸⁰⁷ Selmo Cikotić, 23 Feb '05, T. 9. This understanding is based on the fact that Sefer Halilović said that he would be on the ground with a team from the General Staff and that he would be taking a coordinating role, Selmo Cikotić, 23 Feb '05, T. 9, 57. Selmo Cikotić believes that this included issuing specific orders, Selmo Cikotić, 23 Feb '05, T. 9.

⁸⁰⁸ The Trial Chamber notes that Vehbija Karić mentioned a military depot in Konjic, which was named “ARK”, Vehbija Karić, Ex. 444, T. 66; *see also* Bakir Alispahić, who refers to a military depot in Konjic named “Arka,” Bakir Alispahić, 24 May '05, T. 25

⁸⁰⁹ Selmo Cikotić, 23 Feb '05, T. 10, 56.

⁸¹⁰ Selmo Cikotić testified that Sefer Halilović and he did not discuss specific battalions, but discussed the use of only one battalion in addition to a reserve battalion as an optional fresh force. Selmo Cikotić, 23 Feb '05, T. 11-12. After this meeting Selmo Cikotić returned to his IKM on Planica Mountain close to Gornji Vakuf and informed the commander Enver Hadžihasanović about the meeting, Selmo Cikotić, 23 Feb '05, T. 5, 12, 66; Selmo Cikotić testified that he sent Enver Hadžihasanović a written report wherein he reported about his travel and the outcome of the meeting and asked approval to take part in the activities, Selmo Cikotić, 23 Feb '05, T. 52, 66.

⁸¹¹ Selmo Cikotić, 23 Feb '05, T. 11.

⁸¹² Šefko Hodžić, 24 Mar '05, T. 29-30; Salko Gušić testified that in the first ten days of September Rasim Delić arrived in the area and spent the night in Konjic and the next day there was a meeting in Dobro Polje, Salko Gušić, 04 Feb '05, T. 49.

⁸¹³ Šefko Hodžić, 24 Mar '05, T. 29-30; Nermin Eminović testified that he knew that Sefer Halilović made an unannounced visit to the 6th Corps headquarters in Konjic, in late August 1993. There were several brigade commanders there: Mitko Pitkić, the Commander of the 43rd Brigade, was present, and Sefer Halilović was “a bit rough with him”; he is not sure if Salko Gušić was there, Nermin Eminović, 10 Mar '05, T. 67; Nermin Eminović does not think it was a military meeting – in the sense of being a briefing, a debriefing, issuing of tasks, Nermin Eminović, 10 Mar '05, T. 68.

⁸¹⁴ Vehbija Karić, Ex. 444, T. 42-46, 65-67.

Vehbija Karić testified that this was necessary due to “the state of military organisation at the time”.⁸¹⁵

262. On the evening of 4 September, Deputy Commander of the Main Staff, Stjepan Šiber, issued an order to the 6th Corps, on behalf of the Main Staff Commander, Rasim Delić, for the defence of the Jablanica-Prozor axis against the anticipated HVO offensive.⁸¹⁶ This order was not addressed or copied to the Inspection Team or Sefer Halilović.⁸¹⁷

(e) 5 September

263. Witness C testified that the *Handžar* Division arrived in Grabovica on 5 September 1993 and that they went to the right bank of the Neretva river.⁸¹⁸

(i) Meeting in Dobro Polje

264. On 5 September⁸¹⁹ a meeting was held at the command of the Prozor Independent Battalion in Dobro Polje attended by Sefer Halilović, Zičro Suljević, Vehbija Karić, Rifat Bilajac, Selmo Cikotić,⁸²⁰ Salko Gušić,⁸²¹ Enes Kovacević, Haso Hakalović, Enver Buza and Enver Zejnilagić, as well as some operations and intelligence officers from OG West.⁸²² The meeting was chaired by Sefer Halilović.⁸²³

265. Selmo Cikotić testified that the purpose of the meeting was to issue specific tasks for the “Operation” to the participating units.⁸²⁴ Salko Gušić confirmed that the OG West and the 317th

⁸¹⁵ Vehbija Karić, Ex. 444, T. 66.

⁸¹⁶ Ex. 148, Order on Defence Stabilisation Measures, issued by Stjepan Šiber “standing in for the Commander” to the 6th Corps Command, dated 4 September 1993. This order was sent at 19:52 hours.

⁸¹⁷ Ex. 148.

⁸¹⁸ Witness C, 10 Feb '05, T. 41. *See also* Witness B, who testified that the *Handžar* Division was present in Grabovica in September 1993, Witness B, 02 Feb '05, T. 51.

⁸¹⁹ Selmo Cikotić testified that the meeting in Dobro Polje was held on 5 September 1993 and that he did not meet Sefer Halilović again before 26 October of 1993, Selmo Cikotić, 23 Feb '05, T. 57 and 24 Feb '05, T. 5; Šefko Hodžić also gave 5 September 1993 as a date of the meeting in Dobro Polje, Šefko Hodžić, 23 Mar '05, T. 59; Witness G testified that the meeting was held on 4, 5 or 6 September 1993. Witness G stated that Šefko Hodžić came to Dobro Polje with Sefer Halilović. He also testified that Sefer Halilović came to Dobro Polje two or three times during that period and during one of the meetings the area was shelled by the artillery, Witness G, 07 Apr '05, T. 19; Mehmed Behlo testified that the meeting in Dobro Polje had been held about five days before the actual combat began. He testified that Salko Gušić, Selmo Cikotić, Sefer Halilović were there, that the meeting did not last very long and mostly logistical needs were discussed for units that were already in Dobro Polje, Mehmed Behlo, 27 Jun '05, T. 72-73; Witness J testified that the meeting in Dobro Polje took place seven to eight days prior to the combat operations on 14 September 1993, Witness J, 06 Jul '05, T. 19.

⁸²⁰ Selmo Cikotić, 23 Feb '05, T. 15.

⁸²¹ Salko Gušić, 03 Feb '05, T. 87-88; Mehmed Behlo, 27 Jun '05, T. 72-73.

⁸²² Selmo Cikotić, 23 Feb '05, T. 15-16. Selmo Cikotić was accompanied by his officers Amir Duraković and Kenan Dautović. Also present from the OG West were Tahir Granić, Commander of the 307th Brigade from Bugojno, and Enver Zejnilagić, commander of 317th Brigade from Gornji Vakuf, Selmo Cikotić, 23 Feb '05, T. 17; Witness G, 07 Apr '05, T. 19-20, 103-104; Salko Gušić, 03 Feb '05, T. 87-88 and 04 Feb '05, T. 49.

⁸²³ Selmo Cikotić, 23 Feb '05, T. 17.

⁸²⁴ Selmo Cikotić, 23 Feb '05, T. 17.

Brigade “accepted” assignments.⁸²⁵ The task for OG West was to launch an attack from the area of Volica and Planjiste and to seize Vilica Guvno.⁸²⁶ Selmo Cikotić testified that “in relation to this operation his orders came directly from Sefer Halilović”.⁸²⁷ Selmo Cikotić further testified that Sefer Halilović gave orders to the 6th Corps.⁸²⁸ Salko Gušić was included in the discussions and in assigning tasks to the units of the 6th Corps.⁸²⁹ Their main task was to capture the area of Crni Vrh and Makljen.⁸³⁰

266. Salko Gušić testified that the possibility was discussed of using the Prozor Independent Battalion on the axis in the direction of Prozor, jointly with forces of the OG West.⁸³¹ However, at the meeting, Enver Buza, Commander of the Prozor Independent Battalion, stated that he could not carry out this task as his reconnaissance had been spotted.⁸³² Salko Gušić assumed that when Enver Buza had accepted the plan earlier he did not have all the information he needed in order to assess whether he would be able to accomplish the mission.⁸³³ All the members of the Main Staff present at that meeting expressed their displeasure as the whole combat operation had been brought into question by Enver Buza’s attitude. As a consequence no specific tasks could be assigned to the Prozor Independent Battalion.⁸³⁴

267. Selmo Cikotić testified that from this meeting onwards, the name “Operation Neretva” was known to those involved in it.⁸³⁵ After the meeting in Dobro Polje, Selmo Cikotić waited for a signal to start with his part of the “Operation”.⁸³⁶

(ii) Map entitled “Operation Neretva”

268. The Trial Chamber has been provided with a map entitled “Neretva Operation”.⁸³⁷ The map is without scale, and depicts the positions of both the HVO and the ABiH forces in the area

⁸²⁵ Salko Gušić, 03 Feb '05, T. 88.

⁸²⁶ Selmo Cikotić, 23 Feb '05, T. 18; He testified that the 3rd Corps command was not tasked with a role, but that he still perceived his OG to be part of the 3rd Corps, *ibid*.

⁸²⁷ Selmo Cikotić, 23 Feb '05, T. 19.

⁸²⁸ Selmo Cikotić, 23 Feb '05, T. 19.

⁸²⁹ Selmo Cikotić, 23 Feb '05, T. 57.

⁸³⁰ Selmo Cikotić, 23 Feb '05, T. 19 and 24 Feb '05, T. 24. He testified that the 6th Corps might have been involved in a task more to the south, but only this part of the order affected Selmo Cikotić’s tasks. He thinks that Enver Buza was given a general task for the 6th Corps by Sefer Halilović, Selmo Cikotić, 23 Feb '05, T. 19; Salko Gušić testified that “Buza was supposed to infiltrate his forces into the town of Prozor, and they were to begin operations from the rear. He then briefed the general that he was unable to do that,” Salko Gušić, 03 Feb '05, T. 88.

⁸³¹ Salko Gušić, 03 Feb '05, T. 87; Selmo Cikotić, 23 Feb '05, T. 19.

⁸³² Salko Gušić, 03 Feb '05, T. 88-90.

⁸³³ Salko Gušić, 03 Feb '05, T. 90.

⁸³⁴ Salko Gušić, 03 Feb '05, T. 88; However, Selmo Cikotić testified that Enver Buza was given a task by Sefer Halilović, which fell under the general task that was given to the 6th Corps, Selmo Cikotić, 23 Feb '05, T. 19.

⁸³⁵ Selmo Cikotić, 23 Feb '05, T. 57.

⁸³⁶ Selmo Cikotić, 24 Feb '05, T. 16.

⁸³⁷ Ex. 131, “Operation Neretva” map in Colour.

stretching from the area of responsibility of the OG West to the north from Prozor, to the positions taken by the 42nd Brigade south of Mostar. The directions of attack were marked along these lines, specifying the units which were to take part in the “Operation”.⁸³⁸ The map is signed at the top left corner by Rasim Delić as Commander of the Main Staff⁸³⁹ with a note “approved”, and at the bottom right corner by Sefer Halilović as “Načelnik ŠVK OS”.⁸⁴⁰

269. Selmo Cikotić testified that this map was presented at the meeting in Dobro Polje.⁸⁴¹ Apart from this map, Selmo Cikotić had no knowledge of Rasim Delić’s involvement in the “Operation”.⁸⁴² The Trial Chamber recalls the evidence of Vehbija Karić, that on 4 September Rasim Delić signed “all the documents for the operation”, which included the “working map.”⁸⁴³

270. Vahid Karavelić testified that the “Neretva Operation” map is inconclusive as to establishing who was the commander of “Operation Neretva”.⁸⁴⁴ Selmo Cikotić concurred with the

⁸³⁸ These were, starting from the north: OG West, the 317th, 45th, 44th, 47th Brigades, Zulfikar Detachment, 41st, 48th and 42nd Brigades. *See* Ex. 131.

⁸³⁹ In the original B/C/S this reads “Komandant ŠVK OS”

⁸⁴⁰ *See supra* Section IV.A.1(b). The Trial Chamber was provided with a JNA Military Manual including the JNA rules on combat documents (Ex. 106). The Trial Chamber notes that the ABiH for the most part applied the same military organisation rules as the JNA. Paragraphs 493 and 494 of the JNA Manual define maps as combat documents which purpose is to prepare and implement the commander’s decision. Paragraph 498 reads in its relevant parts:

The following information is placed on plans (maps, tables or text): the annotation “I HAVE APPROVED IT” in the upper left-hand corner, and position, rank, first name, last name and the signature of the commanding officer and the time/date (day, month, year and hour) of approval is placed below it; level of confidentiality and registry number in the upper right-hand corner; the name of the plan and its code name and the section (if needed) in the middle. A document is considered to be issued (completed) at the moment when the commanding officer has signed/approved it. [...]

The Manual regulates the competence of the deputy commanders stating in paragraph 501 that the chief of staff, in his capacity as deputy commander, signs documents from the commander’s jurisdiction only if the commander is not there and if, due to the urgency of the matter, it is not possible to wait for his return. It adds that plans are signed by chiefs of organs who worked on them. As to the signature in the lower right-hand corner paragraph 508 reads:

The title, position of the commanding officer (organ) that keeps the map up to date, type of operation, time and confidentiality classification are placed in the middle of the upper margin of the operation map. [...] After the completion of the task or of updating the operation map (for the task as a whole or a part thereof), the map is signed by the commanding officer who has been updating it. He marks the time when the operation map has been completed. The map is signed in the lower right-hand corner.

⁸⁴¹ Selmo Cikotić, 23 Feb ’05, T. 20, 57; However, Salko Gušić testified that he did not see this map at the meeting in Dobro Polje on 5 September, Salko Gušić, 04 Feb ’05, T. 28.

⁸⁴² Selmo Cikotić, 24 Feb ’05, T. 31.

⁸⁴³ *See supra* paras 257-258.

⁸⁴⁴ Vahid Karavelić did not draw any conclusions on the basis of the map, because the map could be indicative of several possibilities, Vahid Karavelić, 20 Apr ’05, T. 99-101 and 22 Apr ’05, T. 150-151; Vahid Karavelić testified that (Vahid Karavelić, 20 Apr ’05, T. 101-102):

the first variant or possibility is that the Chief of Staff drafted this decision, the commander approved the decision, and the Chief of Staff then was charged with personally being in charge of control and command, in terms of the execution of this particular plan of operations. Then again, there could have been a second variant. Namely, the Chief of Staff with his staff drafted this plan

view that the fact that Sefer Halilović signed the map at the bottom means that he signed the map as the leader of the team who had drawn up the map in the first place.⁸⁴⁵ He considered that by signing it, Rasim Delić approved the “Operation”.⁸⁴⁶ Dževad Tirak, Chief of Staff of the 6th Corps, testified that the fact that Rasim Delić signed the “Operation Neretva” map meant that “he must have been formally a commander” of the “Operation”.⁸⁴⁷

271. Salko Gušić stated that “basic concepts could be conveyed on a map [...] but not an order”.⁸⁴⁸ He believed Rasim Delić signed the map “as an idea” as to how operations should be conducted, rather than as an order.⁸⁴⁹ According to Salko Gušić, this was a working map. This idea had to be accompanied by the other combat documents, such as “an attack command, commands about certain elements of combat security, and a number of commands referring to the solving of specific problems”.⁸⁵⁰ Both Salko Gušić and Vahid Karavelić testified that they believe that this map was just an attachment to an order.⁸⁵¹

272. During the meeting in Dobro Polje, Zičro Suljević and Rifat Bilajac explained the specific tasks by pointing to different locations on the map.⁸⁵² The specific assignments for the 317th Brigade were marked on the map separately from OG West.⁸⁵³ Zakir Oković, operations officer with the 2nd Independent Battalion testified that the map depicted the axis of attack of the 2nd Independent Battalion.⁸⁵⁴ According to Witness G, the map depicted what later happened in the sector north of Jablanica.⁸⁵⁵

of operations on orders from the commander. The commander approved it, and as to the question of who will be the chief officer in command, who will be in command, which of course is not that often the case, can be the kind of question that would be dealt with subsequently, after the actual production of such a plan of operations.

⁸⁴⁵ Selmo Cikotić, 23 Feb '05, T. 22-23.

⁸⁴⁶ Selmo Cikotić, 23 Feb '05, T. 23; He stated that in the JNA doctrine there were several options as to who signed such maps, Selmo Cikotić, 23 Feb '05, T. 23.

⁸⁴⁷ Dževad Tirak, 31 Mar '05, T. 22. However, he also testified that the signature on the map does not automatically preclude the possibility that someone else actually ran the operation on the ground pursuant to Rasim Delić's orders or for some other reason, Dževad Tirak, 31 Mar '05, T. 80.

⁸⁴⁸ Salko Gušić, 04 Feb '05, T. 21.

⁸⁴⁹ Salko Gušić, 04 Feb '05, T. 24.

⁸⁵⁰ Salko Gušić, 04 Feb '05, T. 24.

⁸⁵¹ Salko Gušić, 04 Feb '05, T. 26; Vahid Karavelić testified that (Vahid Karavelić, 20 Apr '05, T. 102):

along with a topographic map of this kind which has drawn into it the plan of operations, must necessarily be accompanied by a combat order, written, the text of the combat order, for the actual execution of the operation in question. In its full scope an operation of this kind, which is quite a complex operation, should be accompanied by a written document of at least 50 or up to 100 pages, including the orders for all the arms of service, and the combat orders for all the participants in the execution of such a plan of operations.

⁸⁵² Selmo Cikotić, 23 Feb '05, T. 20.

⁸⁵³ Selmo Cikotić, 23 Feb '05, T. 21-22.

⁸⁵⁴ Zakir Oković, 15 Mar '05, T. 56; Zakir Oković testified that he first saw this map in The Hague, Selmo Cikotić, 15 Mar '05, T. 55.

⁸⁵⁵ Witness G, 07 Apr '05, T. 101.

273. The Trial Chamber finds that on the basis of this map alone it cannot be concluded as to who was the commander of “Operation Neretva”.

274. After the meeting in Dobro Polje, Sefer Halilović, left for Sarajevo accompanied by Šefko Hodžić.⁸⁵⁶

275. Following the Dobro Polje meeting, the Commander of the 2nd Battalion of the 317th Brigade, Mehmed Behlo, with his Commander, Enver Zejnilagić, and Inspection Team member Rifat Bilajac met in the village of Voljevac.⁸⁵⁷ They discussed the preparations and proposed plan of the 317th Brigade, and Rifat Bilajac gave some instructions and clarifications on how that plan could be improved and implemented.⁸⁵⁸

(f) 6 September

276. Pursuant to the order of Sefer Halilović of 2 September,⁸⁵⁹ on 6 September Vahid Karavelić ordered the 2nd Independent Battalion to prepare and send a company of between 100 and 120 soldiers to the area of Jablanica on that day.⁸⁶⁰ The companies were to carry out the stated assignment not longer than seven days after the day of reporting to the “ŠVK IKM forward command post in Jablanica.”⁸⁶¹

277. On the evening of 6 September⁸⁶² a company of 125 soldiers of the 2nd Independent Battalion left Sarajevo for Jablanica.⁸⁶³ The unit was transferred in three vehicles from the region of Hrasnica to the region of Jablanica where they arrived early in the morning.⁸⁶⁴ Zakir Oković, operations officer of the 2nd Independent Battalion, was the commander of the unit as it travelled to Herzegovina.⁸⁶⁵

⁸⁵⁶ Šefko Hodžić, 24 Mar '05, T. 63. As mentioned above, Rasim Delić had insisted that Sefer Halilović use his influence to persuade Mušan Topalović to go to Herzegovina. *See supra* para. 261.

⁸⁵⁷ Mehmed Behlo, 27 Jun '05, T. 72-73.

⁸⁵⁸ Mehmed Behlo, 27 Jun '05, T. 73-74 and 28 Jun '05, T. 5-6.

⁸⁵⁹ Ex. 123.

⁸⁶⁰ Ex. 385. Mustafa Kadić, 10 Mar '05, T. 12-13; The troops were to carry out combat operations with the purpose of liberating the Jablanica-Mostar communication in co-operation with the units of the 4th and 6th Corps in that area. Ex. 385, p. 1.

⁸⁶¹ Ex. 385, p. 1.

⁸⁶² Zakir Oković testified that the troops left on the evening of 7 September, following an order of Vahid Karavelić of 7 September, Zakir Oković, 15 Mar '05, 22-23, 49. He based this date on Ex. 270, Report of the 2nd Independent Battalion from the Field for the Period from 7 September to 20 September, sent to the 1st Corps Command, dated 25 September. The Trial Chamber recalls its earlier finding that Zakir Oković throughout his testimony was uncertain of the exact dates and may have been mistaken on the dates. For this reason, the Trial Chamber will treat the testimony of Zakir Oković, as regards specific dates, with caution and will rely on dates provided by him when corroborated through other evidence. Based on the overall assessment of the evidence the Trial Chamber concludes that the 2nd Independent Battalion left Sarajevo on 6 September.

⁸⁶³ Ex. 270; Zakir Oković, 15 Mar '05, T. 21-22.

⁸⁶⁴ Mustafa Kadić, 09 Mar '05, T. 87; Zakir Oković, 15 Mar '05, T. 23, 49.

⁸⁶⁵ Zakir Oković, 15 Mar '05, T. 22, 49.

(g) 7 September

(i) 2nd Independent Battalion

278. The soldiers of the 2nd Independent Battalion arrived in Herzegovina, they were first received at the base of the Zulfikar Detachment in Donja Jablanica and then billeted in Grabovica.⁸⁶⁶ Mustafa Kadić, a member of the 3rd Company of the 2nd Independent Battalion, testified that they were not told that they would be going to Grabovica until they arrived at the base of the Zulfikar Detachment in Donja Jablanica.⁸⁶⁷ Zakir Oković testified that when units of the 2nd Independent Battalion arrived in Grabovica, Vehbija Karić, Zićro Suljević and Rifat Bilajac toured the location where the 2nd Independent Battalion was staying.⁸⁶⁸ Zakir Oković testified that he met with these three members of the Inspection Team and “they tried to explain how the whole operation would be carried out”, however they did not supply Zakir Oković with information about the location of the enemy and therefore Zakir Oković “insisted” on carrying out reconnaissance.⁸⁶⁹

(ii) Selection of Units to go to Herzegovina

279. On 7 September, Šefko Hodžić met with Sefer Halilović in the Main Staff headquarters in Sarajevo. In the corridor, Šefko Hodžić also met Ramiz Delalić who told him that he would be going to Herzegovina.⁸⁷⁰ Šefko Hodžić went with Sefer Halilović to the 1st Corps IKM in Hrasnica, which is located just outside of Sarajevo.⁸⁷¹ At the IKM they found the 9th Brigade Deputy Commander Ramiz Delalić, the Commander of the 2nd Independent Battalion Adnan Solaković, the Deputy Commander of the 2nd Independent Battalion Samir Pezo, the President of the Jablanica War Presidency Safet Ćibo and the Commander of the 4th Motorised Brigade Fikret Prevljak.⁸⁷² Sefer Halilović was informed that Mušan Topalović did not want to go to Herzegovina.⁸⁷³ Šefko Hodžić testified that Sefer Halilović asked Ramiz Delalić “to help him convince” Mušan Topalović

⁸⁶⁶ Ex. 270, p. 2. The Trial Chamber notes that this document refers to the arrival of the 2nd Independent Battalion on 8 September, however, in light of the other evidence presented to the Trial Chamber concerning the arrival of troops in Herzegovina, the Trial Chamber finds that the 2nd Independent Battalion arrived in the Jablanica area on 7 September.

⁸⁶⁷ Mustafa Kadić, 10 Mar '05, T. 13.

⁸⁶⁸ Zakir Oković, 15 Mar '05, T. 27-28. Vehbija Karić testified that at the beginning of September, the Inspection Team members in the area were reconnoitring in one of the hills to the east of the “M17” road, below Grabovica, and when returning, they went to the barracks where the Igman Wolves were from and they spoke to the former detainees there. The members of the Inspection Team did not cross the bridge over the Neretva River in order to enter Grabovica, Vehbija Karić, Ex. 444, T. 54-55.

⁸⁶⁹ Zakir Oković, 15 Mar '05, T. 28.

⁸⁷⁰ Šefko Hodžić, 23 Mar '05, T. 63; Ramiz Delalić denied this, Ramiz Delalić, 19 May '05, T. 30-31. For Ramiz Delalić's credibility, *see supra* Section II, para. 17; Ramiz Delalić testified that he didn't have any role to play in the “Neretva Operation”, he was not supposed to accompany the troops to Herzegovina, Ramiz Delalić, 17 May '05, T. 62.

⁸⁷¹ Šefko Hodžić, 24 Mar '05, T. 54.

⁸⁷² Šefko Hodžić, 23 Mar '05, T. 63-64.

to go to Herzegovina and that they went together to persuade him.⁸⁷⁴ Mušan Topalović later came to the IKM in Hrasnica.⁸⁷⁵

280. Vahid Karavelić stated that the selection of individual troops was to be done by the organs of the 9th Brigade.⁸⁷⁶ Ramiz Delalić testified that “the command of the 9th Brigade” instructed the battalion commanders to allocate the number of soldiers requested.⁸⁷⁷ On 7 September, Vahid Karavelić summoned soldiers of the 9th Brigade and lined up about 120 of them in front of the 1st Corps Command in Sarajevo.⁸⁷⁸ Erdin Arnautović, a soldier from the 9th Brigade, testified that they were told that they would be involved in an operation to liberate Mostar.⁸⁷⁹ Vahid Karavelić read out an order that they were to go to Jablanica where they would be put under the command of Zulfikar Ališpago, who would be in charge of the operation. They were then given some weapons, some lunch packages, and some cigarettes after which they set out towards Jablanica.⁸⁸⁰ The soldiers were chosen in such a way that they should include reconnaissance men, sabotage men, sappers.⁸⁸¹ All-in-all four or five men were chosen from each unit of the 9th Brigade.⁸⁸²

281. Erdin Arnautović testified that immediately after the line-up, the troops were instructed to go to Hrasnica and from there they would be transported by trucks to Jablanica.⁸⁸³ In Hrasnica there were problems with transportation.⁸⁸⁴ They called for Ramiz Delalić to come to Hrasnica and solve the problem.⁸⁸⁵ Ramiz Delalić testified that he then went with the troops on the road to Bradina to

⁸⁷³ Šefko Hodžić, 23 Mar '05, T. 64; Ramiz Delalić denies that he saw Sefer Halilović in Hrasnica. Ramiz Delalić, 19 May '05, T. 31-32.

⁸⁷⁴ Šefko Hodžić, 24 Mar '05, T. 56-57; Vehbija Karić believes that only Sefer Halilović could have persuaded Mušan Topalović to go and carry out the task to move to Jablanica. Vehbija Karić, Ex. 444, T. 45-46; Later on Vehbija Karić found out that Sefer Halilović had talked to Mušan Topalović in Hrasnica, and he barely managed to convince him that he should leave for Jablanica on that night. Vehbija Karić, Ex. 444, T. 45.

⁸⁷⁵ Šefko Hodžić, 23 Mar '05, T. 65.

⁸⁷⁶ Vahid Karavelić, 22 Apr '05, T. 116-117.

⁸⁷⁷ Ramiz Delalić, 17 May '05, T. 54, 59.

⁸⁷⁸ Erdin Arnautović, 14 Feb '05, T. 31-32, 82; Ramiz Delalić, 17 May '05, T. 54; T. 61; Ramiz Delalić states that Vahid Karavelić personally lined up the unit and halved it and sent them off to the Jablanica Sector. Ramiz Delalić, 17 May '05, T. 54, 61.

⁸⁷⁹ Erdin Arnautović, 14 Feb '05, T. 32.

⁸⁸⁰ Erdin Arnautović, 14 Feb '05, T. 32.

⁸⁸¹ The term “sapper” means a soldier whose responsibility is to dispose of mines, bombs etc, The Concise Oxford Dictionary, 10th Edition, p. 1269.

⁸⁸² Erdin Arnautović, 14 Feb '05, T. 32; Erdin Arnautović, testified that there were no platoon leaders. Erdin Arnautović, 15 Feb '05, T. 7; Ramiz Delalić testified that the commander was supposed to be Senad Pecar. Ramiz Delalić, 17 May '05, T. 55-56; However, Vahid Karavelić, 1st Corps commander, testified that he did not appoint Senad Pecar as the commander of the three units who went to Herzegovina. Vahid Karavelić, 22 Apr '05, T. 118.

⁸⁸³ Erdin Arnautović, 14 Feb '05, T. 33, 83.

⁸⁸⁴ Erdin Arnautović, 14 Feb '05, T. 33.

⁸⁸⁵ Erdin Arnautović, 14 Feb '05, T. 33; Ramiz Delalić, 17 May '05, T. 65; 19 May '05, T. 15-16; Ramiz Delalić testified that he was sent to Hrasnica to prevent the troops returning to Sarajevo, Ramiz Delalić, 19 May '05, T. 33. He stated that he saw Senad Pecar in Hrasnica but did not approach him, Ramiz Delalić, 19 May '05, T. 34.

prevent new problems arising *en route*.⁸⁸⁶ He further testified that at Bradina he left the troops and went back to Konjic by jeep and spent the night there.⁸⁸⁷ However, according to Enes Šakrak, a soldier of the 9th Brigade, Ramiz Delalić had originally come along with his troops as far as Grabovica, but left immediately after they arrived there.⁸⁸⁸

(iii) Preparation for Billeting of Troops

282. Vehbija Karić testified that the members of the Inspection Team, Rifat Bilajac, Zičro Suljević and himself,⁸⁸⁹ selected Grabovica to accommodate troops because there was no accommodation available in the area of Jablanica due to the large number of refugees there.⁸⁹⁰ Furthermore, they knew that the troops coming from Sarajevo would be used in combat “in the area of the hills” and Grabovica was the closest town in that area. On the left bank of the Neretva River were the Igman Wolves and the freed detainees from the “Herceg-Bosna camps” who were accommodated in prefabricated buildings, while on the right bank there were about ten houses with mostly elderly Bosnian Croats who had room to take the soldiers in.⁸⁹¹

283. Vehbija Karić testified that on 7 September, he and Inspection Team members Rifat Bilajac, Zičro Suljević, and Namik Džanković went to Grabovica to see if it was possible to billet troops there.⁸⁹² He testified that Sefer Halilović was not in Jablanica but somewhere in the field and did not go to Grabovica with the rest of the Inspection Team.⁸⁹³ According to Vehbija Karić it was not

⁸⁸⁶ On their way to Herzegovina, the soldiers from the 9th Brigade attacked police officers at a checkpoint near a place called Pazarići and mistreated three police officers, Ex. 207, report from the MUP State Security Service to the Main Staff Security Service, dated 19 September 1993. According to the document, at 04:30 hours on 8 September 1993 Ramiz Delalić and 50 men from the 9th Brigade, who were on their way to Herzegovina, attacked a police checkpoint and mistreated three police officers, one of which was brought to the barracks in Pazarići. Bakir Alispahić stated that he was familiar with the information contained in this document, Bakir Alispahić, 23 May '05, T. 46 and 26 May '05, T. 28. He stated that one policeman was gravely wounded. Bakir Alispahić, 23 May '05, T. 46. He further stated that the policemen were civilian police, but noted that sometimes the checkpoints were manned by both military and civilian police, Bakir Alispahić, 26 May '05, T. 28. *See also* Ex. 208, document from Jusuf Jašarević, the Chief of UB of the Main Staff, to the 1st Corps Chief of the SVB, dated 29 September 1993, tasking the latter to collect evidence and institute criminal proceedings against the perpetrators. Ramiz Delalić testified to remember this incident, Ramiz Delalić, 17 May '05, T. 67. *See also* Erdin Arnautović, 14 Feb '05, T. 35. Proceedings were initiated against Ramiz Delalić by the SVB, Bakir Alispahić, 26 May '05, T. 27. Moving on from there the 9th Brigade stopped next in Jablanica, Erdin Arnautović, 14 Feb '05, T. 35.

⁸⁸⁷ Ramiz Delalić, 17 May '05, T. 66; 19 May '05, T. 36. Erdin Arnautović stated that Ramiz Delalić was not in the truck with the rest of the soldiers, that he went as far as Konjic to purchase weapons and supplies and arrived in the evening, Erdin Arnautović, 14 Feb '05, T. 51. However, this testimony of Ramiz Delalić is conflicting with his own previous statements, *see* Ramiz Delalić, 19 May '05, T. 47-59; 20 May '05, T. 41.

⁸⁸⁸ Enes Šakrak, 17 Feb '05, T. 41.

⁸⁸⁹ According to Vehbija Karić, Sefer Halilović was not present when the decision was made. *See also* Vehbija Karić, 02 Jun '05, T. 6.

⁸⁹⁰ He refers to there being about “10,000 refugees” in Jablanica in September 1993, Vehbija Karić, Ex. 444, T. 47.

⁸⁹¹ Vehbija Karić, Ex. 444, T. 49-50.

⁸⁹² Vehbija Karić, Ex. 444, T. 50-51 and Vehbija Karić, 02 Jun '05, T. 6-7. The Trial Chamber notes that Namik Džanković testified that he was not involved at all with the stationing of units in the Jablanica sector and that at the time he was in Mostar, Namik Džanković, 21 Mar '05, T. 51.

⁸⁹³ Vehbija Karić, 02 Jun '05, T. 6-7, 9, 25.

possible to find accommodation for the soldiers in “camps” nor to avoid them coming into contact with Bosnian Muslims or Bosnian Croat civilians.⁸⁹⁴ On that occasion⁸⁹⁵ the above-mentioned Inspection Team members spoke with the Bosnian Croat inhabitants of Grabovica who told them that they had nothing against receiving the soldiers.⁸⁹⁶ The owners of the houses in Grabovica were assured that nobody would mistreat them and agreed to accommodate the ABiH soldiers because they thought they would be safe if they did it.⁸⁹⁷ The Inspection Team members then returned to Jablanica.⁸⁹⁸

284. According to Vehbija Karić, Rifat Bilajac, Zičro Suljević, Namik Džanković, and himself billeted units of the 9th Brigade and a part of the 10th Brigade⁸⁹⁹ as well as a smaller group from the 2nd Independent Battalion “on the night of 7 and 8 September” in the village of Grabovica.⁹⁰⁰ They considered it to be a normal part of their role as an Inspection Team since they were in the field to deal with the issue of billeting “the people who were going to be placed at our disposal.”⁹⁰¹ Vehbija Karić believed that Sefer Halilović found out about the fact that the units had been billeted in Grabovica only after learning “about the crime that occurred” there.⁹⁰² Vehbija Karić stated that, in the course of his previous contacts, he had talked with Sefer Halilović about the question of billeting the units from Sarajevo. Vehbija Karić was not sure whether “it was said in [Sefer Halilović’s] presence at the time that the soldiers would be billeted in the village of Grabovica because a number of the fighters [had already been] accommodated in Gornja Jablanica in some prefabricated houses or huts, also with the civilian population, and there were no problems at all.”⁹⁰³

285. In the night of 7 September, Sefer Halilović and Šefko Hodžić set off from Hrasnica to Jablanica. They arrived there in the early morning on 8 September.⁹⁰⁴ Sefer Halilović stayed in the apartment of Zulfikar Ališpago.⁹⁰⁵ Vehbija Karić testified that Sefer Halilović returned from

⁸⁹⁴ Vehbija Karić, Ex. 444, T. 56. Vehbija Karić testified that the ABiH did not have the necessary logistics which other armies had, with proper camps and tents, and that the ABiH “never had any of this”, so that for the most part, the soldiers had to stay with the local population, wherever there was room, “along with previous coordination and contacts with the population”. He testified that for a certain amount of time, they would take soldiers in and put them up in barns, sheds, etc. because that was the only available possibility, Vehbija Karić, Ex. 444, T. 49.

⁸⁹⁵ Witness B was told that some agreement as to the billeting of troops in Grabovica was reached with the local inhabitants possibly on 1 September 1993. Witness B, 02 Feb '05, T. 87.

⁸⁹⁶ Vehbija Karić, Ex. 444, T. 51; Vehbija Karić, 02 Jun '05, T. 5.

⁸⁹⁷ Witness B, 02 Feb '05, T. 13-14, 86.

⁸⁹⁸ Vehbija Karić, Ex. 444, T. 51.

⁸⁹⁹ See *infra* Section IV.D.3(c).

⁹⁰⁰ Vehbija Karić, 02 Jun '05, T. 6, 7-8.

⁹⁰¹ Vehbija Karić, 02 Jun '05, T. 11-12.

⁹⁰² Vehbija Karić, 02 Jun '05, T. 10-11.

⁹⁰³ Vehbija Karić, 02 Jun '05, T. 10.

⁹⁰⁴ Šefko Hodžić, 23 Mar '05, T. 70.

⁹⁰⁵ Šefko Hodžić, 23 Mar '05, T. 70.

Sarajevo to Jablanica as early as 7 September,⁹⁰⁶ and that the Inspection Team informed him of everything they had done during his absence including the arrival of troops from Sarajevo and their billeting.⁹⁰⁷ Vehbija Karić further testified that he only assumed that Sefer Halilović knew that Grabovica was inhabited by Croats.⁹⁰⁸

286. On 7 September, Salko Gušić reported to Sefer Halilović that due to the lack of necessary arrangements, the logistic assignments could not be accomplished.⁹⁰⁹ Salko Gušić had been unable to contact Safet Ćibo, who as President of the Jablanica War Presidency, provided logistics in support of the army units.⁹¹⁰

(h) 8 September

(i) Arrival of Troops in Jablanica

287. As noted earlier, Sefer Halilović and Šefko Hodžić arrived in Jablanica in the morning of 8 September. The soldiers from the 9th Brigade arrived in Jablanica in the morning of 8 September.⁹¹¹ They were met by Zulfikar Ališpago and his soldiers in front of the Detachment headquarters in Donja Jablanica.⁹¹² They were addressed by Zulfikar Ališpago.⁹¹³ The soldiers from the 9th Brigade were told by members of the Zulfikar Detachment to go to Grabovica and that they would be billeted there.⁹¹⁴ The soldiers of the 9th Brigade stayed for an hour or two in Donja Jablanica and then went to Grabovica.⁹¹⁵ Nedžad Mehanović, a member of the 9th Brigade, testified that no commander was appointed to be in charge of the soldiers of the 9th Brigade while they were in Grabovica.⁹¹⁶ Members of the 10th Brigade and the 2nd Independent Battalion arrived “in the area” before the 9th Brigade.⁹¹⁷

288. Vehbija Karić testified that Ramiz Delalić brought his unit from Sarajevo and he relinquished it to the company commanders and platoon commanders while he was engaged in

⁹⁰⁶ Vehbija Karić, Ex. 444, 08 Jul '03, T. 52.

⁹⁰⁷ Vehbija Karić, Ex. 444, T. 52-53.

⁹⁰⁸ Vehbija Karić, Ex. 444, T. 53.

⁹⁰⁹ Ex 110, report of Salko Gušić to VK Sarajevo, for the attention of Sefer Halilović, dated 7 September 1993, p. 1; Salko Gušić, 03 Feb '05, T. 61-62. The Trial Chamber notes Vehbija Karić's testimony in this respect, he is unclear at what time he informed Sefer Halilović of the billeting of troops.

⁹¹⁰ Salko Gušić, 03 Feb '05, T. 61.

⁹¹¹ Enes Šakrak, 17 Feb '05, T. 39; Erdin Arnautović, 14 Feb '05, T. 35, 84; Nedžad Mehanović, 15 Feb '05, T. 103; on 8 September Šefko Hodžić saw soldiers from Sarajevo passing through Donja Jablanica, Šefko Hodžić, 23 Mar '05, T. 70, 72. No military police accompanied soldiers in the trucks from Sarajevo on 7 and 8 September, Erdin Arnautović, 14 Feb '05, T. 67-68.

⁹¹² Erdin Arnautović, 14 Feb '05, T. 35.

⁹¹³ Erdin Arnautović, 14 Feb '05, T. 84.

⁹¹⁴ Erdin Arnautović, 14 Feb '05, T. 36.

⁹¹⁵ Erdin Arnautović, 14 Feb '05, T. 37.

⁹¹⁶ Nedžad Mehanović, 16 Feb '05, T. 37.

⁹¹⁷ Erdin Arnautović, 14 Feb '05, T. 32-33.

activities of his own near Konjic.⁹¹⁸ The 10th Brigade Commander Mušan Topalović also relinquished his command over the company he brought from Sarajevo, because he was engaged in certain activities in Jablanica.⁹¹⁹

289. Namik Džanković testified that Members of the Inspection Team held a meeting in the IKM to discuss logistical support of troops in the area.⁹²⁰ Vehbija Karić, Zičro Suljević, Rifat Bilajac, Bakir Alispahić, Enes Kovačević, Namik Džanković and the Mayor of Jablanica municipality were present at that meeting.⁹²¹ Vehbija Karić announced that the units from Sarajevo had arrived in Herzegovina.⁹²² The food for those units during their stay in Grabovica region was discussed, and the “Chief of the Municipality” and Enes Kovačević received the task of securing food for the units which had come from Sarajevo.⁹²³ Namik Džanković testified that Vehbija Karić told those present at the meeting that they should go to Grabovica and visit the troops who had arrived from Sarajevo. He also testified that they left in two vehicles for Donja Jablanica and collected food for the troops who had arrived in Grabovica at the base of the Zulfikar Detachment.⁹²⁴

290. Šefko Hodžić testified that on the morning of 8 September he saw Vehbija Karić, Zičro Suljević and Rifat Bilajac in Donja Jablanica. He thinks that he also saw Sefer Halilović in Donja Jablanica, but is not sure.⁹²⁵

(ii) Briefing in Konjic

291. Zakir Oković testified that on the evening of 8 September there was a briefing in Konjic.⁹²⁶ Zakir Oković was informed by Vehbija Karić, Zičro Suljević and Rifat Bilajac that there would be a reporting session in Konjic and that someone would pick him up and that he should attend.⁹²⁷ A member of the Zulfikar Detachment and brought Zakir Oković to Konjic.⁹²⁸ The meeting took place in the conference room of an old factory in the town.⁹²⁹ It was attended by Sefer Halilović, Vehbija Karić Zičro Suljević, Rifat Bilajac, Salko Gušić, Zulfikar Ališpago, commanders of local units and

⁹¹⁸ Vehbija Karić, Ex. 444, T. 114; Ramiz Delalić testified that he purchased weapons while in Konjic, Ramiz Delalić, 17 May '05, T. 70; Vehbija Karić testified that Ramiz Delalić was buying weapons from deserters and that allegedly he was supposed to take these weapons to Sarajevo, Vehbija Karić, Ex. 444, T. 114.

⁹¹⁹ Vehbija Karić, Ex. 444, T. 114.

⁹²⁰ Namik Džanković, 21 Mar '05, T. 11, 75.

⁹²¹ Namik Džanković, 21 Mar '05, T. 11.

⁹²² Namik Džanković, 21 Mar '05, T. 74.

⁹²³ Namik Džanković, 21 Mar '05, T. 75.

⁹²⁴ Namik Džanković, 21 Mar '05, T. 12.

⁹²⁵ Šefko Hodžić, 23 Mar '05, T. 72-73.

⁹²⁶ Zakir Oković, 15 Mar '05, T. 28-29, 59. Zakir Oković testified that he went to the meeting because Adnan Solaković was not yet in Grabovica, Zakir Oković, 15 Mar '05, T. 62.

⁹²⁷ Zakir Oković, 15 Mar '05, T. 28-29.

⁹²⁸ Zakir Oković, 15 Mar '05, T. 61.

⁹²⁹ Zakir Oković, 15 Mar '05, T. 29, 61.

the Chief of the Konjic Municipality.⁹³⁰ Sefer Halilović was the highest ranking officer and chaired the meeting.⁹³¹ Zakir Oković testified that at this briefing he heard that the 2nd Independent Battalion, as well as members of the 9th and 10th Brigades, were to be resubordinated to the Zulfikar Detachment.⁹³² However, Adnan Solaković and Zakir Oković refused to become part of Zulfikar Detachment, but agreed to perform the task that was assigned to the battalion.⁹³³

292. According to Zakir Oković, when Sefer Halilović was talking about the “Operation” he called it “the Defence of the People’s Rights 93”.⁹³⁴ Zakir Oković testified that Sefer Halilović also said that the “Operation” had been approved by the Main Staff.⁹³⁵ Sefer Halilović did not deal with specific tasks such as “who was to do what and attack along what axis”,⁹³⁶ but only explained the significance of the “Operation”; lower ranking officers gave out the tasks of the “Operation”.⁹³⁷ Zakir Oković testified that “[s]omeone from the Main Staff” read out the tasks, which had already been prepared in advance,⁹³⁸ and that the commanders of the various axes received specific orders; Zakir Oković received the specific tasks for the 2nd Independent Battalion from Zulfikar Ališpago.⁹³⁹ Zakir Oković further testified that this was a preparatory meeting for the implementation of the assignment and the contents of the discussions were on that matter.⁹⁴⁰ The axis of attack of the 2nd Independent Battalion was “the Vrđi axis, at Antena”.⁹⁴¹

(i) 9 September

293. On 9 September, Šefko Hodžić visited a school in Jablanica where about 350 former detainees recently freed from Dretelj were accommodated. The refugees were in a terrible condition.⁹⁴² Šefko Hodžić stated that in the area of Jablanica one could see expelled Bosnian Muslims passing from Herzegovina, carrying their belongings.⁹⁴³

⁹³⁰ Zakir Oković, 15 Mar '05, T. 29, 60.

⁹³¹ Zakir Oković, 15 Mar '05, T. 30 and 16 Mar '05, T. 12.

⁹³² Zakir Oković, 15 Mar '05, T. 30. He testified that Ex. 272, coded message from Adnan Solaković to Vahid Karavelić, dated 11 September 1993, which states “agreement with the Chief is off” probably concerns the problem of the resubordination of the unit to the Zulfikar Detachment, and that “Chief” refers to Sefer Halilović, Zakir Oković, 15 Mar '05, T. 35-36.

⁹³³ Zakir Oković, 15 Mar '05, T. 63; Mustafa Kadić, 10 Mar '05, T. 13; Ex. 270, report from 2nd Independent Battalion to 1st Corps Command, dated 25 September 1993, p. 2; Erdin Arnautović stated that the 2nd Independent Battalion was subordinated to the 9th Brigade, Erdin Arnautović, 15 Feb '05, T. 100.

⁹³⁴ Zakir Oković, 16 Mar '05, T. 12.

⁹³⁵ Zakir Oković, 15 Mar '05, T. 62.

⁹³⁶ Zakir Oković, 15 Mar '05, T. 62.

⁹³⁷ Zakir Oković, 16 Mar '05, T. 12.

⁹³⁸ Zakir Oković, 15 Mar '05, T. 29-30; Zakir Oković testified that he believes either Zičro Suljević, Vehbija Karić, or Rifat Bilajac distributed the tasks that were handed out during the meeting, Zakir Oković, 15 Mar '05, T. 60.

⁹³⁹ Zakir Oković, 15 Mar '05, T. 30, 59, 62-63.

⁹⁴⁰ Zakir Oković, 15 Mar '05, T. 29.

⁹⁴¹ Zakir Oković, 15 Mar '05, T. 30.

⁹⁴² Šefko Hodžić, 23 Mar '05, T. 73-74. *See infra* Section IV.D.2.

⁹⁴³ Šefko Hodžić, 23 Mar '05, T. 71.

294. Šefko Hodžić met Sefer Halilović in the base of the Zulfikar Detachment in Donja Jablanica on the evening of 9 September.⁹⁴⁴ Erdin Arnautović testified that on the evening of 9 September, a meeting was held in Zulfikar Ališpago's headquarters. Sefer Halilović, Zulfikar Ališpago, Ramiz Delalić and officers from the corps were discussing combat operations.⁹⁴⁵ Erdin Arnautović further stated that Zulfikar Ališpago and Ramiz Delalić stayed in the base of the Zulfikar Detachment almost until the morning of 10 September.⁹⁴⁶

295. The Chief of Staff of the 6th Corps, Dževad Tirak, testified that after the "crime occurred" in Grabovica, the Deputy Commander of the 6th Corps, Bahrudin Fazlić, sent him to find Rasim Delić at a school at Visoko.⁹⁴⁷ His task was to report to him and to insist that "those Sarajevo units" should be withdrawn.⁹⁴⁸ Dževad Tirak could not say "to what extent [Rasim Delić] was in effective control of the situation", but he was at the time the Commander of the ABiH and the power was vested in him.⁹⁴⁹ Dževad Tirak testified that Rasim Delić told him "in so many words" that Sefer Halilović was in command of the "Operation". However, Rasim Delić also told him that "he sort of knew that Mr. Halilović was in the area but he said he didn't know exactly what he was doing".⁹⁵⁰

(j) 10 September

296. On 10 September the command of the 2nd Independent Battalion was informed about the plan of an action called "Defence of People's Rights – 93" "in the presence of the Chief of Supreme Command Staff".⁹⁵¹ The Battalion command did not accept any resubordination to the Zulfikar Detachment, but agreed to cooperate with other units taking part in the planned operations, which were units from the Zulfikar Detachment, the 9th and the 10th Brigades.⁹⁵²

297. On 10 September soldiers from the 9th Brigade left Grabovica to go into combat.⁹⁵³ They were supposed to walk to Drežnica and from there to a hill which they were supposed to attack.⁹⁵⁴

298. On the evening of 10 September there was an informal meeting in the flat of Zulfikar Ališpago. Ahmed Salihamidžić, Deputy Chief of the Jablanica SJB, Sead Branković and Namik

⁹⁴⁴ Šefko Hodžić, 23 Mar '05, T. 76-77. *See infra* Section IV.D.9.

⁹⁴⁵ Erdin Arnautović, 14 Feb '05, T. 55.

⁹⁴⁶ Erdin Arnautović, 15 Feb '05, T. 52.

⁹⁴⁷ Dževad Tirak, 30 Mar '05, T. 45-46, 52.

⁹⁴⁸ Dževad Tirak, 30 Mar '05, T. 46.

⁹⁴⁹ Dževad Tirak, 31 Mar '05, T. 88.

⁹⁵⁰ Dževad Tirak, 30 Mar '05, T. 46. Dževad Tirak found it illogical for Rasim Delić not to know what his "Chief of Staff" was doing, Dževad Tirak, 30 Mar '05, T. 59-60.

⁹⁵¹ Ex. 270, report, 25 Sep '93, p. 2.

⁹⁵² *Ibid.*

⁹⁵³ Erdin Arnautović, 14 Feb '05, T. 65; Nedžad Mehanović, 16 Feb '05, T. 18.

⁹⁵⁴ Erdin Arnautović, 14 Feb '05, T. 65.

Džanković went there, Edib Sarić, Commander of the Igman Wolves, was also present.⁹⁵⁵ Zulfikar Ališpago told them about the events in Grabovica.⁹⁵⁶ Suddenly, Ramiz Delalić appeared with an escort.⁹⁵⁷ He threatened to return to Sarajevo with his troops. Zulfikar Ališpago tried to calm Ramiz Delalić down and pleaded with him not to leave.⁹⁵⁸ Zulfikar Ališpago then called Sefer Halilović and told him to come back to Jablanica “in order to deal with the problems”⁹⁵⁹

299. Bakir Alispahić testified that he met with Sefer Halilović and Rusmir Mahmutcehajić, Minister for Energy, in Konjic on the evening of 10 September.⁹⁶⁰

(k) 11 September

300. Witness D, a member of the 9th Brigade, testified that on the morning of 11 September, soldiers from the 9th Brigade trekked up the mountain to Vrđi in order to attack the “Antena elevation”.⁹⁶¹ Nedžad Mehanović, a soldier from the 9th Brigade, testified that, the units returned to a village above Drežnica in the evening, after dark;⁹⁶² after having spent the night there, they went to Mt. Medved to another operation.⁹⁶³ According to Witness D, on 12 September the units attacked Golubić.⁹⁶⁴

301. The Trial Chamber was provided with an order from the 6th Corps issued in Dobro Polje⁹⁶⁵ on 11 September indicating the forces and the plan for the “Operation” for the Prozor Independent Battalion, 45th Brigade and 317th Brigade.⁹⁶⁶ The order bears the title “Commander” but the signature is illegible; Salko Gušić testified that it was probably the signature of Bahrudin Fazlić,

⁹⁵⁵ Emin Zebić, 16 Mar '05, T. 89; 17 Mar '05, T. 57. Ahmed Salihamidzić, 18 Mar '05, T. 19. Ahmed Salihamidzić testified that Namik Džanković was already there when he arrived, Ahmed Salihamidzić, 18 Mar '05, T. 18 and 70.

⁹⁵⁶ Ahmed Salihamidzić, 18 Mar '05, T. 19.

⁹⁵⁷ Ahmed Salihamidzić, 18 Mar '05, T. 19.

⁹⁵⁸ Ahmed Salihamidzić, 18 Mar '05, T. 20, 63-65.

⁹⁵⁹ Ahmed Salihamidzić, 18 Mar '05, T. 22. Ramiz Delalić testified that he went to Zulfikar Ališpago's apartment on the evening of 10 September, but that neither Ahmed Salihamidzić or Namik Džanković or Sead Branković were present; and that Zulfikar Ališpago was drunk, Ramiz Delalić, 19 May '05, T. 92-93. The Trial Chamber notes that Ramiz Delalić's testimony is contradictory to the other reliable evidence before the Trial Chamber in this respect.

⁹⁶⁰ Bakir Alispahić, 24 May '05, T. 20-21, referring to Ex. 118. The Trial Chamber notes that it has been presented with evidence that Bakir Alispahić also met Sefer Halilović in the evening of 9 September, or the morning of 10 September. *See infra* Section IV, para. 520.

⁹⁶¹ Witness D, 22 Feb '05, T. 65.

⁹⁶² Nedžad Mehanović, 16 Feb '05, T. 19.

⁹⁶³ Nedžad Mehanović, 16 Feb '05, T. 19.

⁹⁶⁴ Witness D, 22 Feb '05, T. 65.

⁹⁶⁵ The Prozor Independent Battalion had its base in Dobro Polje.

⁹⁶⁶ Ex. 152, Order to Attack, Op.No.01/1500-27, sent from the 6th Corps (Dobro Polje), signed by a commander (name of the commander was not specified), dated 11 September 1993, concerning combat activities of the Prozor Independent Battalion, 45th and 317th Brigades; Mehmed Behlo, 28 Jun '05, T. 2-3. *See also* Ex. 149, Commander's Report, signed by the Commander of the Prozor Independent Battalion, Enver Buza, sent to the 6th Corps command, dated 20 September 1993, with the preamble “Pursuant to attack order operative number 01/1500-27 of 11 September 1993”.

Deputy Commander of the 6th Corps.⁹⁶⁷ Mehmed Behlo, Commander of the 2nd Battalion of the 317th Brigade, testified that those forces referred to in the order were part of the 6th Corps.⁹⁶⁸ The order states, at point 4, “I have decided to go on the attack”.⁹⁶⁹

302. On 11 September, Zulfikar Ališpago⁹⁷⁰ issued an order to attack to “the units under his command”, which stated in the preamble:⁹⁷¹

I have decided to carry out operation

Defence of People’s Rights

VRDI 93

The main idea is to break the aggressor forces still in their redeployment area by bringing in my forces along two axes.

303. The order goes on to list two axes with the commanders appointed for each axis.⁹⁷² The first axis includes soldiers from the 2nd Independent Battalion and “Ćelo’s”⁹⁷³ unit. Each unit was given a handwritten order specifying its task.⁹⁷⁴

304. On 11 September,⁹⁷⁵ Adnan Solaković sent a request to the Commander of the 1st Corps Vahid Karavelić asking him to withdraw the 2nd Independent Battalion to Sarajevo.⁹⁷⁶ In light of the incidents which had taken place in Grabovica, Adnan Solaković was afraid for the non-Bosnian Muslim soldiers in 2nd Independent Battalion.⁹⁷⁷ However, Vahid Karavelić testified that he could not order the return of the 2nd Independent Battalion without the permission of Sefer Halilović.⁹⁷⁸ This was confirmed by Zakir Oković, operations officer in the 2nd Independent Battalion, who testified that either on 11 or 12 September, he, together with Adnan Solaković and the Security Officer from the 2nd Independent Battalion, went to the base of the Zulfikar Detachment in Donja Jablanica. Adnan Solaković had a meeting there with Ramiz Delalić and Sefer Halilović, which Zakir Oković did not attend. After the meeting, Adnan Solaković conveyed to Zakir Oković that he

⁹⁶⁷ Salko Gušić, 08 Feb '05, T, 46 and 47-48.

⁹⁶⁸ Mehmed Behlo, 28 Jun '05, T. 3.

⁹⁶⁹ Ex. 152, p. 1.

⁹⁷⁰ Zakir Oković, 15 Mar '05, T. 81.

⁹⁷¹ Ex. 503, Order to Attack, issued by the ŠVK PN SO Commander, Zulfikar Ališpago, dated 11 September 1993, concerning operation Defence of the People’s Rights Vrđi 93.

⁹⁷² The order states that Irfan Masleša, a.k.a. Braco, is to be commander of the first axis and that Mehmed Ćorić is to be commander of the second axis.

⁹⁷³ Ex. 503, revised translation p. 2.

⁹⁷⁴ Zakir Oković, 15 Mar '05, T. 79 and 81.

⁹⁷⁵ The Trial Chamber notes that this date can be incorrect. The document has the handwritten date 11 September, however it is not clear if it was actually sent on this date or sent on 10 September.

⁹⁷⁶ See *infra* Section IV.D, para. 423.

⁹⁷⁷ Ex 272, request, p. 1; Vahid Karavelić, 20 Apr '05, T. 67-69; Zakir Oković was concerned not to provoke attacks on his own soldiers, Zakir Oković, 15 Mar '05, T. 76. See *infra* Section IV.D, para. 423.

⁹⁷⁸ Vahid Karavelić, 20 Apr '05, T. 75-76.

had asked that the Battalion be withdrawn, and the “Operation” be ended, but that this had not been accepted.⁹⁷⁹

305. According to a subsequent report of Adnan Solaković and Zakir Oković sent to the 1st Corps, on 11 September, “command reconnaissance of the Vrđi region was performed (which was the goal of the operation)”.⁹⁸⁰

(I) 12 September

306. On 12 September, at 01:00 hours, Vahid Karavelić requested Sefer Halilović to “respect the orders” and return “parts of the 2nd Independent Battalion, the 9th Brigade, and the 10th Brigade to Sarajevo on 12/13 September.”⁹⁸¹ However, the units of the 9th and 10th Brigades did not return in line with his previous order which had stated that they should return to Sarajevo seven days after arriving in Jablanica⁹⁸² but stayed longer.⁹⁸³ The 2nd Independent Battalion stayed in the area until 19 September.⁹⁸⁴

307. On 12 September Commander Rasim Delić issued an order to Sefer Halilović and the Commander of the 6th Corps Salko Gušić, which stated:⁹⁸⁵

The 6th Corps Chief of Staff has informed me about the decision of the Chief of the Supreme Command Staff regarding planned combat actions towards Prozor and Mostar. Pursuant to the above, I hereby

ORDER

Reexamine the decision in the sense of a realistic estimate of forces and possibilities of carrying out the tasks. In accordance with that, amend the decision so that it conforms to real possibilities.

Check the accuracy of information regarding the genocide committed against the civilian population by the members of the 1st Corps 9th bbr/ Mountain Brigade/. If the information is correct, isolate the perpetrators and take energetic measures. Do everything to prevent such actions. Order the 1st Corps 9th Bbr deputy commander to return to Sarajevo immediately in order to solve problems in the unit.

⁹⁷⁹ Zakir Oković, 15 Mar '05, T. 43.

⁹⁸⁰ Ex 270, report dated 25 September 1993, p. 2; Zakir Oković, 15 Mar '05, T. 84.

⁹⁸¹ Ex. 388, request from 1st Corps Commander to Sefer Halilović, dated 12 September 1993, p. 1. *See also* Ex. 272, coded message from Adnan Solaković to Vahid Karavelić, dated 11 September 1993. Ex. 388 is a request from Vahid Karavelić, Commander of the 1st Corps, dated 12 September 1993, addressed to Sefer Halilović, asking him: 1. Based on collected intelligence regarding the aggressor activities in the zone of responsibility of the 1st Corps, “to respect the orders” and if possible to somehow ensure the return of parts of the 2nd Independent Battalion, the 9th and the 10th Brigades on 12/13 September; 2. If he would still need the assistance of the aforementioned units, to enable the company of the 2nd Independent Battalion to return to Sarajevo.

⁹⁸² Ex. 385, order of Vahid Karavelić to the 2nd Independent Battalion Command, dated 6 September 1993, p. 1, para. 3.

⁹⁸³ Vahid Karavelić, 20 Apr '05, T. 106.

⁹⁸⁴ *See infra* para. 324. In the course of 12 September, part of the 2nd Independent Battalion went down to Arapovo hill. Ex 270, p. 3; Zakir Oković, 15 Mar '05, T. 85.

⁹⁸⁵ Ex. 157, 12 September Order.

Immediately inform me about measures that have been taken and tasks that have been carried out.

308. Šefko Hodžić believed that Sefer Halilović showed him this document on 13 September⁹⁸⁶ Šefko Hodžić stated that Sefer Halilović received Rasim Delić's order when he was in Jablanica.⁹⁸⁷ He further testified that Sefer Halilović decided however to follow the original plan.⁹⁸⁸ He stated that when they met up with the other members of the Inspection Team, Vehbija Karić told Sefer Halilović "Sefer, there is a telegram from Delić for you". According to Šefko Hodžić, Sefer Halilović replied "Yes, I know" upon which Vehbija Karić responded, "[n]o, no, no, it's out of the question. We can't scale down the operation." According to Šefko Hodžić, Sefer Halilović then said, "We'll follow the original plan."⁹⁸⁹

309. On 12 September, Sefer Halilović and Šefko Hodžić arrived in Dobro Polje. On the way they were joined by the Commander of the 45th Brigade from Neretvica, Haso Hakalović, and they went to the soldiers of the 45th Brigade.⁹⁹⁰ In Dobro Polje, Sefer Halilović first addressed the soldiers from the 45th Brigade and then the Prozor Independent Battalion.⁹⁹¹ Sefer Halilović, "very briefly", said that the task of "the soldiers from Prozor" should be towards Vilica Guvno and Makljen.⁹⁹² Šefko Hodžić testified that Sefer Halilović repeated everything to the soldiers about "how they should go, like he did in Kostajnica".⁹⁹³ He said that no civilians should be touched.⁹⁹⁴ Witness G testified that Sefer Halilović said that "the chief objective was to crush the HVO and to liberate Prozor" and that the soldiers "were expected to do their utmost and fight to regain Prozor". Sefer Halilović also stated that the men would "enter a settled area, which required a different method of combat. He said this was a far more dangerous type of combat and that the men should be more careful".⁹⁹⁵

310. After addressing the soldiers in Dobro Polje, Sefer Halilović and Šefko Hodžić went to Voljevac, and Sefer Halilović addressed "the fighters" there, and he told them that the plan for them was to go to Crni Vrh. Šefko Hodžić testified that Sefer Halilović felt that he again needed to address the troops from Prozor and Neretvica, and they went again to Dobro Polje on their way

⁹⁸⁶ Ex 157. Šefko Hodžić first testified that this occurred on 12 September, but later corrected himself stating that it was on 13 September, Šefko Hodžić, 23 Mar '05, T. 89., 24 Mar '05, T. 76.

⁹⁸⁷ Šefko Hodžić, 23 Mar '05, T. 89.

⁹⁸⁸ Šefko Hodžić, 23 Mar '05, T. 98-99, 100-101.

⁹⁸⁹ Šefko Hodžić, 23 Mar '05, T. 98-99.

⁹⁹⁰ Šefko Hodžić, 23 Mar '05, T. 105.

⁹⁹¹ Šefko Hodžić, 23 Mar '05, T. 105-106.

⁹⁹² Šefko Hodžić, 23 Mar '05, T. 105.

⁹⁹³ Šefko Hodžić, 23 Mar '05, T. 106 and 24 Mar '05, T. 80; *see also* Šefko Hodžić, 23 Mar '05, T. 52-53; 24 Mar '05, T. 38.

⁹⁹⁴ Šefko Hodžić, 24 Mar '05, T. 80.

⁹⁹⁵ Witness G, 07 Apr '05, T. 48.

back to Jablanica.⁹⁹⁶ Šefko Hodžić testified that after his return, Sefer Halilović realised that for the central, southern part of the front the logistic preparations had not been carried out.⁹⁹⁷

(m) 13 September

311. On the morning of 13 September, combat activities started on the Prozor axis.⁹⁹⁸ However, the “Operation” which was supposed to cover the areas from Bugojno to Mostar, was only partly launched – in the direction of Crni Vrh and in the area of Bugojno.⁹⁹⁹

312. Mehmed Behlo, Commander of the 2nd Battalion of the 317th Brigade, testified that the HVO forces, which were mainly concentrated in Prozor, used the Makljen pass - the road leading to Gornji Vakuf- to provide reinforcements and to deploy their forces in the village of Pidris and in Makljen. From these positions, the HVO artillery shelled Gornji Vakuf.¹⁰⁰⁰

313. Witness G testified that the area of responsibility of the Prozor Independent Battalion during the “Neretva Operation” was situated between the 45th Brigade on the left and the 317th Brigade on the right.¹⁰⁰¹ He also testified that “on the other side of the 317th Brigade there was a borderline with the 6th Corps, and on the other side of that there was a unit attached to the 3rd Corps – namely OG West”.¹⁰⁰²

314. OG West went into battle in accordance with the plans and orders drawn up at the meeting in Dobro Polje on 5 September.¹⁰⁰³ Selmo Cikotić, the OG West Commander, testified that on the day the “Operation” began they received a coded signal from Sefer Halilović that meant the “Operation” was to start.¹⁰⁰⁴ Mehmed Behlo testified that on the night of 12 September and the morning of 13 September the 317th Brigade went into action on Crni Vrh.¹⁰⁰⁵

315. On the morning of 13 September, the sounds of fighting could be heard along the Crni Vrh-Makljen axis from the positions taken by the 45th and the 317th Brigades. The OG West had successfully commenced fighting along its axis.¹⁰⁰⁶ The OG West units under the command of

⁹⁹⁶ Šefko Hodžić, 23 Mar '05, T. 106, 24 Mar '05, T. 79-80.

⁹⁹⁷ Šefko Hodžić, 24 Mar '05, T. 2.

⁹⁹⁸ Šefko Hodžić, 24 Mar '05, T. 2; Vehbija Karić, Ex. 444, T. 113; Witness G, 07 Apr '05, T. 46. Originally the main offensive was supposed to be directed along the Neretva River. Later on, the plan was changed and the main axis of attack was to be in the direction of Prozor, Salko Gušić, 03 Feb '05, T. 87-88.

⁹⁹⁹ Šefko Hodžić, 24 Mar '05, T. 2.

¹⁰⁰⁰ Mehmed Behlo, 27 Jun '05, T. 68.

¹⁰⁰¹ Witness G, 07 Apr '05, T. 93-94. The front line between the ABiH and the HVO was shown by Mehmed Behlo on Ex 445, sketch drawn by Witness , Mehmed Behlo, 27 Jun '05, T. 66-67.

¹⁰⁰² Witness G, 07 Apr '05, T. 94.

¹⁰⁰³ Selmo Cikotić, 23 Feb '05, T. 23, 27.

¹⁰⁰⁴ Selmo Cikotić, 23 Feb '05, T. 24.

¹⁰⁰⁵ Mehmed Behlo, 27 Jun '05, T. 76.

¹⁰⁰⁶ Witness G, 07 Apr '05, T. 46.

Selmo Cikotić went into battle in cooperation with the 317th Brigade.¹⁰⁰⁷ Selmo Cikotić sent reports to Sefer Halilović and “members of his team” for the next few days.¹⁰⁰⁸

316. In the Neretva area Zakir Oković, operations officer of the 2nd Independent Battalion, testified that on 13 September, further reconnaissance was carried out in the area of the “repeater station”.¹⁰⁰⁹

317. On the morning of 13 September, Šefko Hodžić went to see Sefer Halilović who was staying at the flat of Zulfikar Ališpago in Jablanica. They set out to Voljevac and Dobro Polje,¹⁰¹⁰ where Sefer Halilović realised that the Prozor Independent Battalion had not gone into combat.¹⁰¹¹ In Dobro Polje Sefer Halilović met with Enver Buza after which the three of them, together with Bahrudin Fazlić, Deputy Commander of the 6th Corps, went to Voljevac.¹⁰¹² In Voljevac, they met with Vehbija Karić, Rifat Bilajac, Zićro Suljević and Enver Zejnilagić, Commander of the 317th Brigade at a private home.¹⁰¹³ Sefer Halilović told Enver Buza that he had not carried out his order and that he had to go into action the next day. Sefer Halilović also stated that Zićro Suljević was to accompany Enver Buza.¹⁰¹⁴ Šefko Hodžić testified that they all spent almost a whole day there, following the combat operations in the area of Prozor from the “liaison centre” in the basement of the private home.¹⁰¹⁵ Witness G testified that afterwards Sefer Halilović drove off towards Jablanica.¹⁰¹⁶

¹⁰⁰⁷ Selmo Cikotić, 24 Feb '05, T. 23. Selmo Cikotić saw documents mentioning 13 September 1993, as a date when the “operation” started but according to his recollection, the attack started in mid-September. Selmo Cikotić, 23 Feb '05, T. 23. Selmo Cikotić testified that on this first day of combat operations they occupied Vilica Guvno. The offensive stopped there and during the next day, the units were facing HVO counter-attacks, Selmo Cikotić, 24 Feb '05, T. 28. He further testified that the OG West troops remained engaged in combat in that area even after the whole operation finished, Selmo Cikotić, 23 Feb '05, T. 24. Mehmed Behlo testified that the 317th Brigade reinforced by the units from *Sutjeska* Battalion and the Neretvica Battalion attacked Crni Vrh with the aim of capturing its highest peak called Sljeme. After the initial success, the advance was stopped as the Commander of the Neretvica Battalion was killed. At the end of the second day, following the HVO counter-attack, the ABiH were forced to withdraw to their starting positions, Mehmed Behlo, 27 Jun '05, T. 78-79.

¹⁰⁰⁸ Selmo Cikotić, 23 Feb '05, T. 24. Selmo Cikotić sent his reports to the command post of the 317th Brigade, which is where Zićro Suljević and Rifat Bilajac were. They were in contact with Sefer Halilović, Selmo Cikotić, 24 Feb '05, T. 51.

¹⁰⁰⁹ Zakir Oković, 15 Mar '05, T. 85.

¹⁰¹⁰ Šefko Hodžić, 24 Mar '05, T. 2.

¹⁰¹¹ Šefko Hodžić, 24 Mar '05, T. 2.

¹⁰¹² Šefko Hodžić, 24 Mar '05, T. 3.

¹⁰¹³ Šefko Hodžić, 24 Mar '05, T. 4.

¹⁰¹⁴ Šefko Hodžić, 24 Mar '05, T. 4, 76. Witness J testified that he remembered Sefer Halilović saying that Enver Buza would be held accountable for failing to accomplish the task, but that he would postpone dealing with that until everything was over, Witness J, 06 Jul '05, T. 21.

¹⁰¹⁵ Šefko Hodžić, 24 Mar '05, T. 4. In his book, Sefer Halilović wrote that on the afternoon of 13 September he monitored combat operations in the area of Jablanica and in the evening he arrived at the command post of the 317th Brigade. In the village of Voljevac he received a report on the course of combat operations along the axis and on the course of combat operations along the axis held by OG West, Ex. 281, A Cunning Strategy (*Lukava Strategija*), book by Sefer Halilović, 1997, p. 5.

¹⁰¹⁶ Witness G, 11 Apr '05, T. 6.

318. Enver Buza issued a report to the 6th Corps Command dated 20 September, which indicated that during the attack on the area on 13 and 14 September, Sefer Halilović, Vehbija Karić and Zičro Suljević “monitored the whole operation from the observation post”.¹⁰¹⁷

(n) 14 September

319. On 14 September, Sefer Halilović and Šefko Hodžić “returned from Dobro Polje and Prozor” and reached Donja Jablanica where they parted company.¹⁰¹⁸ Šefko Hodžić went to follow the combat activities towards Drežnica.¹⁰¹⁹ Zakir Oković testified that the combat activities in the Drežnica area, which started on 14 September engaged the 2nd Independent Battalion during the following days.

320. On 14 September troops under the command of the ABiH attacked Uzdol.¹⁰²⁰

(o) 15 September

321. On 15 September Sefer Halilović issued an order which provides;

In order to coordinate and join operations in Gornji Vakuf and Prozor Areas, I hereby appoint the 317th Mountain Brigade commander, Enver Zejnilagić, commander on this axis.¹⁰²¹

Mehmed Behlo, the Commander of the 2nd Battalion of the 317th Brigade, testified that this was a supplement to the order of 11 September from the 6th Corps in Dobro Polje.¹⁰²²

322. This order of Sefer Halilović also resubordinated certain units, including the Prozor Independent Battalion, and parts of the 45th Brigade and a part of the *Sutjeska* Brigade to Enver Zejnilagić, Commander of the 317th Brigade, which had failed to take control of Crni Vrh during the first two days of the “Operation”.¹⁰²³ This order also included tasks to be carried out. On the basis of this order, and the order of the 6th Corps of 11 September, on 15 September Enver Zejnilagić ordered that the attack would start on 16 September.¹⁰²⁴

¹⁰¹⁷ Ex. 149, report, p. 2.

¹⁰¹⁸ Šefko Hodžić, 24 Mar '05, T. 101.

¹⁰¹⁹ *Ibid.*

¹⁰²⁰ *See infra* Section IV.E.

¹⁰²¹ Ex. 501, combat order issued by Sefer Halilović to the Commanders of the 45th, 317th Brigades and Prozor Independent Battalion, dated 15 September 1993, concerning combat activities in the areas of Gornji Vakuf and Prozor.

¹⁰²² Mehmed Behlo, 28 Jun '05, T. 2, referring to Ex. 152.

¹⁰²³ Salko Gušić, 03 Feb '05, T. 9. Selmo Cikotić testified that this order is consistent with the map Ex. 131, Selmo Cikotić, 23 Feb '05, T. 27. Two identical orders were issued. One was signed by Sefer Halilović, the second was signed by Vehbija Karić for Sefer Halilović; *see* Ex. 501, order by Sefer Halilović and Ex. 502, order by Vehbija Karić, No. 21-1/15.07.1993, dated 15 September 1993.

¹⁰²⁴ Ex 150, Order to attack, issued by Enver Zejnilagić, dated 15 September 1993, concerning combat activities of the 45th and 317th Brigades, Prozor Independent Battalion, *Sutjeska* Battalion and 2nd Mountain Battalion, p. 2;

7. End of the “Operation” 16-20 September

323. On 16 September, a small group of soldiers tried to reach Crni Vrh but they were not successful.¹⁰²⁵ On 17 September, the 2nd Independent Battalion with the assistance of the members of the 9th Brigade and Zulfikar Detachment reached its target and captured Mt. Golubić.¹⁰²⁶

324. On 18 September the 2nd Independent Battalion, 9th Brigade and Zulfikar Detachment were engaged in combat in the area of Medvjev.¹⁰²⁷ Mustafa Kadić testified that on 18 September the soldiers of the 2nd Independent Battalion, having spent two days and one night in the combat zone on the mountain,¹⁰²⁸ returned to Grabovica during the night. Lorries waiting for them there took them to the base of the Zulfikar Detachment and further on to Sarajevo.¹⁰²⁹ When the 2nd Independent Battalion arrived in Grabovica, the 9th and the 10th Brigades had already left the area.¹⁰³⁰ Zakir Oković testified that Zulfikar Ališpago issued an order for the lines which those units had taken to be fortified and for combat units to be pulled out. He testified that the 2nd Independent Battalion was pulled out following the withdrawal of soldiers from the 9th and the 10th Brigades.¹⁰³¹

325. On 18 September, Sefer Halilović went to Grabovica, accompanied by Šefko Hodžić, in order to try to contact Zulfikar Ališpago, described by Šefko Hodžić as “the commander of this

Salko Gušić, 08 Feb '05, T. 36; Mehmed Behlo, 27 Jun '05, T. 80-81. Enver Zejnilagić's order states in the preamble “on the basis of the order of the NGŠ/ Chief of General Staff and the Command of the Commander of the 6th Corps OP” 01/1500-27 of 11 September”, Ex. 150, p. 1. Witness J testified that he did not know who wrote this order and that he found it illogical given their defeat on Crni Vrh and after Uzdol, it was his impression that there was no activity, Witness J, 06 Jul '05, T. 52. Dževad Tirak testified that in September 1993 he was not aware of the “command of the commander of the 6th Corps” mentioned in the preamble of Enver Zejnilagić's order, Dževad Tirak, 31 Mar '05, T. 51. He further testified, when asked whether the 317th Brigade was under the role of the 6th Corps, that “this was one of the moments that were much debated and also one of the reasons [he] went to Visoko to speak to [Rasim] Delić”, Dževad Tirak, 31 Mar '05, T. 52. According to Dževad Tirak, looking at the number 3 of the document, it appears that the 317th Brigade was within the composition of the 3rd Corps. Dževad Tirak 31 Mar '05, T. 52. However he also testified that, having regard to the introductory paragraph of that order, it appears that Enver Zejnilagić was acknowledging that he derived his authority to issue combat orders in part from a combat order of the 6th Corps commander, Dževad Tirak, 31 Mar '05, T. 52. Dževad Tirak also stated that “it was highly unusual for a brigade commander to issue an order with two units involved that were actually not within his brigade” and that “looking at that order today, it appears another one of those orders that were issued as an alibi throughout the war”, Dževad Tirak, 31 Mar '05, T. 53. Selmo Cikotić testified that in principle orders issued to the 317th Brigade, which was a part of the OG West under Selmo Cikotić, would be issued through him or his command, Selmo Cikotić, 23 Feb '05, T. 27. Selmo Cikotić testified that this order is consistent with the “Operation Neretva map”, Selmo Cikotić, 23 Feb '05, T. 27, referring to Ex. 131. The 317th Brigade, which was supposed to carry out an attack on the village of Glibe axis, could not accomplish its tasks as it encountered a minefield near Glibe, Mehmed Behlo, 27 Jun '05, T. 83-84.

¹⁰²⁵ Witness J, 06 Jul '05, T. 53.

¹⁰²⁶ Zakir Oković, 15 Mar '05, T. 86.

¹⁰²⁷ Zakir Oković, 15 Mar '05, T. 86-87.

¹⁰²⁸ Mustafa Kadić testified that he did not remember the name of this mountain. Mustafa Kadić, 10 Mar '05, T. 8.

¹⁰²⁹ Mustafa Kadić, 10 Mar '05, T. 8, 28.

¹⁰³⁰ Zakir Oković, 15 Mar '05, T. 88; Mustafa Kadić, 10 Mar '05, T. 28.

¹⁰³¹ Zakir Oković, 15 Mar '05, T. 87. Zakir Oković testified that his commander had told him that the 2nd Independent Battalion was supposed to stay in the area, but that they had done their job and should go home, Zakir Oković, 15 Mar '05, T. 88.

whole front line”.¹⁰³² They had previously been unable to contact either Zulfikar Ališpago or his deputy from an artillery position and so went to Grabovica where they met Mušan Topalović, Commander of the 10th Brigade, and some troops.¹⁰³³

326. Šefko Hodžić testified that on 19 September the offensive activities ceased¹⁰³⁴ and Sefer Halilović returned to Sarajevo.¹⁰³⁵ As the offensive was stopped, the lines were fortified and withdrawal of some units was ordered.

327. On 20 September, Sefer Halilović issued an order to Salko Gušić and Zulfikar Ališpago, aiming to coordinate defensive combat activities in Vrđi and Voljevac, including the deployment of additional troops. The order states in the preamble;¹⁰³⁶

The situation in Vrđa is getting very complicated because you failed to obey the order on deployment of a 150 strong unit for the purpose of preserving the currently held line. My perseverance in attempting to meet with you and resolve this and other issues unfortunately gave no result.¹⁰³⁷

328. Following on from this order,¹⁰³⁸ on 20 September Salko Gušić issued an order to the 45th Brigade to take the necessary measures in Vrđi. The preamble to this order provides;

The situation in Vrđi is getting complicated due to your failure to carry out the agreement, reached with the Head of the ŠVK/ Supreme Command Staff/...¹⁰³⁹

This combat order requested the 45th Brigade to send 150 people to secure positions reached during the recent combat operations.¹⁰⁴⁰ These troops were to report to Zulfikar Ališpago, “the ŠVK Special Task Squad Commander” in the Donja Jablanica sector.¹⁰⁴¹

329. In a report from the 6th Corps to Sefer Halilović sent on the same day, Bahrudin Fazlić, Deputy Commander of the 6th Corps, stressed that there were no available forces except of those from the “OG Istak”. The report also provided that the commander of the axis, Enver Zejnilagić, regarded further actions as pointless.¹⁰⁴²

¹⁰³² Šefko Hodžić, 24 Mar '05, T. 10.

¹⁰³³ Šefko Hodžić, 24 Mar '05, T. 10.

¹⁰³⁴ Šefko Hodžić, 24 Mar '05, T. 84.

¹⁰³⁵ Šefko Hodžić, 24 Mar '05, T. 102; Salko Gušić, 04 Feb '05, T. 52.

¹⁰³⁶ Ex 127, Order from Sefer Halilović to Salko Gušić and Zulfikar Ališpago, dated 20 September 1993.

¹⁰³⁷ The document in B/C/S refers to “Vrdima”. This is translated in Ex. 127 as “Vrđa” and in Ex. 126 as “Vrđi”. The Trial Chamber finds that the reference to “Vrđa” in this document is to Vrđi.

¹⁰³⁸ Salko Gušić, 04 Feb '05, T. 5.

¹⁰³⁹ Ex. 126, Order from Salko Gušić to the Commander of the 45th Brigade, dated 20 September 1993. The original B/C/S version states “Načelnikom ŠVK”, Ex. 126, p. 1.

¹⁰⁴⁰ Salko Gušić, 04 Feb '05, T. 4.

¹⁰⁴¹ Ex. 126, para. 1.

¹⁰⁴² Ex 128, Report from 6th Corps Deputy Commander Bahrudin Fazlić to Sefer Halilović, dated 20 September 1993, p. 1; Salko Gušić, 04 Feb '05, T. 5-6.

330. On 20 September, Arif Pašalić sent a report on the situation in Mostar to “the Main Staff IKM” in Jablanica.¹⁰⁴³

331. On 20 September, Inspection Team members Sefer Halilović, Vehbija Karić, Rifat Bilajac and Zićro Suljević reported on the work they had carried out in the Neretva area.¹⁰⁴⁴

8. Continuing Combat Operations and Cease-Fire Agreement

332. On 16 September, the Main Staff of the ABiH issued an order to all units to cease all combat operations against the HVO at 12:00 hours on 18 September, following a Joint Declaration signed by the BiH President Alija Izetbegović and the Croatian President, Franjo Tuđman on 14 September in Geneva.¹⁰⁴⁵

333. On 17 September, Main Staff Deputy Commander Stjepan Šiber issued an order on behalf of Rasim Delić proclaiming a cease-fire between the ABiH, the VRS and the HVO. That document followed the London Conference and Joint Declaration signed in Geneva on 16 September between Alija Izetbegović, Slobodan Milošević, Momir Bulatović and Radovan Karadžić.¹⁰⁴⁶ The cease-fire was ordered effective no later than 18 September.¹⁰⁴⁷

334. Salko Gušić testified that the HVO did not stop shooting on 18 September.¹⁰⁴⁸ However, he could not say who failed to respect the cease-fire, the HVO or the ABiH.¹⁰⁴⁹

335. On 23 September Sefer Halilović ordered the Commander of the 1st Corps to prepare three companies to be sent to the Vrđi front.¹⁰⁵⁰ Vahid Karavelić testified that he began organising this battalion but that they never left due to some difficulties and soon after “Operation Neretva” stopped.¹⁰⁵¹ However, on 24 September, Vahid Karavelić ordered the command of the 9th Brigade to prepare a 125-strong company to be dispatched to Vrđi.¹⁰⁵² Ramiz Delalić testified that he implemented this order and sent troops.¹⁰⁵³

¹⁰⁴³ Ex. 113, report from Arif Pašalić to the IKM in Jablanica, dated 20 September 1993.

¹⁰⁴⁴ Ex. 130, Final Report. *See supra* paras 206-209.

¹⁰⁴⁵ Ex. 160, cease-fire order, signed by the Deputy Commander Stjepan Šiber (for the Commander), dated 16 September 1993, p. 1; Salko Gušić, 04 Feb '05, T. 51-52.

¹⁰⁴⁶ Ex. 391, cease-fire order, signed by the Deputy Commander Stjepan Šiber (for the Commander), dated 17 September 1993, p. 1; Vahid Karavelić, 21 Apr '05, T. 75.

¹⁰⁴⁷ Ex. 391, order, p. 2.

¹⁰⁴⁸ Salko Gušić, 08 Feb '05, T. 88-89.

¹⁰⁴⁹ Salko Gušić, 04 Feb '05, T. 52.

¹⁰⁵⁰ Ex. 389, order issued by Sefer Halilović to the 1st Corps Commander, dated 23 September 1993.

¹⁰⁵¹ Vahid Karavelić, 20 Apr '05, T. 108.

¹⁰⁵² Ex. 395, order by Vahid Karavelić to the Command of the 9th Brigade (for the attention of Ramiz Delalić), dated 24 September 1993.

¹⁰⁵³ Ramiz Delalić, 18 May '05, T. 25.

336. On 29 September, Rasim Delić sent an order to the Commanders of the 4th and 6th Corps, as well as to Sefer Halilović personally, stating that combat operations against the HVO were to cease at 18:00 hours on 30 September.¹⁰⁵⁴

337. On 1 October Rasim Delić issued an order to the Commander of the 6th Corps, Salko Gušić¹⁰⁵⁵ concerning planned combat operations. The order reads:

We received an official document from Mr Sefer HALILOVIĆ, the Chief of the ŠVK OS, on [1] October 1993, in which he states, among other things, that he did not manage to find you although he had an appointment with you in Jablanica on 30 September 1993, and for this reason I hereby

ORDER

1. Immediately contact the Chief of the ŠVK of the BH Armed Forces.
2. Start planning and preparing combat operations based on the idea (plan) by the Chief of the ŠVK OS.
3. Do not carry out combat operations, but everything should be ready for them (forces, weapons, the point of main effort, targets).
4. The Commander of the ŠVK OS will decide if the operations will begin and if a decision is made to go ahead, the time when to begin.
5. Forward reports on the progress of preparations to the Command of the ŠVK OS.¹⁰⁵⁶

338. On 21, October Rasim Delić issued order establishing a team of representatives of the administrations from the Main Staff.¹⁰⁵⁷ Its preamble reads:

In order to review elements of combat readiness in commands and units of the 6th Corps and take urgent measures on the ground in order to improve combat readiness and establish /effective/ Command and Control/ on all levels, I hereby ORDER:

Send a team of representatives of the administrations from the Main Staff of the Armed Forces to the 6th Corps of the ABiH (...)¹⁰⁵⁸

¹⁰⁵⁴ Ex. 469, Order of Rasim Delić to the 4th, 6th Corps and Sefer Halilović, dated 29 September 1993, concerning the cessation of combat operations against HVO.

¹⁰⁵⁵ Ex. 133, Order of Rasim Delić, to Sefer Halilović, and Command of the 6th Corps (Commander personally), dated 1 October 1993. *See also* Ex. 132, telegram from Sefer Halilović to Rasim Delić, the date is unclear, this was sent in response to a document dated 25 September 1993, in which Sefer Halilović wrote:

Although, with your permission, I said to Salko Gušić, the Commander of the 6th Corps, that we would see each other in Jablanica on Saturday, he has not shown up yet or contacted me. This has become his habit. I was looking for him in the area of responsibility of the 6th Corps for four or five days and then met him by chance /?in/ the Command of the 6th Corps [...] I would really like a sincere response and an order to the Commander of the 6th Corps to conduct himself in a proper military way.

¹⁰⁵⁶ Ex. 133. Salko Gušić testified that this refers to defensive operations, Salko Gušić, 04 Feb '05, T. 57-58; According to Salko Gušić this order cannot show that this was a continuation of the "Operation Neretva 93" but can prove that "preparations were not being made to create the conditions for a continuation of combat operations", Salko Gušić, 04 Feb '05, T. 59. He stated that "work was underway in planning new combat operations or even to continue combat operations as part of Neretva 93", Salko Gušić, 04 Feb '05, T. 60.

¹⁰⁵⁷ Ex. 147, Order issued by Rasim Delić, dated 21 October 1993, together with Authorisation to Members of the Main Staff of the BH Armed Forces signed by Rasim Delić; and Report of Asim Džambasović to Commander Rasim Delić and Command Operations Centre, dated 31 October 1993, and Order signed by Asim Džambasović, dated 3 November 1993.

¹⁰⁵⁸ Ex. 147, p. 1.

339. The tasks of the team included giving directives and instructions for future work, proposing to the Corps Commander the urgent measures to be taken and what to regulate by orders immediately in order to remove noted oversights and weaknesses, carrying out the necessary personnel and organisational changes in the units at battalion level, and reviewing the problems related to life and work of the troops and units.¹⁰⁵⁹ Paragraph 5 reads:

Team leader will occasionally send reports to me on the situation on the ground and proposals for orders to improve work. In urgent cases, he will resolve a given situation by issuing an order on the spot.¹⁰⁶⁰

340. This order was accompanied by a separate authorisation to “members of the Main Staff of the ABiH”, giving them permission “to review combat readiness in all commands and units of the 6th Corps.”¹⁰⁶¹

341. On 25 October, Sefer Halilović, in an official letter, asked Rasim Delić and Vahid Karavelić to organise a meeting to discuss the sending of troops from Sarajevo to the front in Herzegovina. After failing to organise a meeting with particular brigade commanders, Sefer Halilović wrote:

I propose a meeting through the chain of command and control (since I do not have the right to issue orders)¹⁰⁶²

9. Command and Control of Sefer Halilović during “Operation Neretva”

342. The Indictment alleges that Sefer Halilović “[a]t all times relevant to the charges in the indictment, by virtue of his position and authority as Commander of the Operation had effective control over the units subordinated to him. These included the 9th Motorised Brigade, the 10th Mountain Brigade, the 2nd Independent Battalion and the Prozor Independent Battalion.” The Prosecution in its Final Brief submits that

“the evidence adduced at trial has proved beyond a reasonable doubt that Halilović planned, organized, commanded, coordinated and inspected Operation Neretva. Halilović had command authority over the units that participated in Operation Neretva. The evidence also establishes that this command authority was effective, and that Halilović’s command was obeyed in practice. Therefore he had effective control of the troops who participated in this military Operation.”¹⁰⁶³

343. Several witnesses testified that Sefer Halilović was “commander” during “Operation Neretva”.

¹⁰⁵⁹ Ex. 147, p. 2.

¹⁰⁶⁰ Ex. 147, p. 3. Salko Gušić testified that he considers this order to be “usual in the case of teams”. Comparing it with the 30 August order he considered the latter as “a bit broader than what is generally understood as the powers of an inspection team”, Salko Gušić, 08 Feb '05, T. 12.

¹⁰⁶¹ Ex. 147, p. 4.

¹⁰⁶² Ex. 260, correspondence of Sefer Halilović to the Commander of the ŠVK of the ABiH and Commander of the 1st Corps of the ABiH, dated 25 October 1993.

¹⁰⁶³ Prosecution Final Brief, para. 186, (footnotes omitted).

344. Salko Gušić, Commander of the 6th Corps, stated that “Sefer Halilović commanded the forces on the ground involved in the operation”,¹⁰⁶⁴ and that Sefer Halilović was the commander at the IKM. According to Salko Gušić, in this capacity Sefer Halilović could issue binding orders to Salko Gušić and those would always be carried out.¹⁰⁶⁵ He further testified that the only obligation of the Corps command was to put certain units at the disposal of the IKM in Jablanica, where Sefer Halilović was in command.¹⁰⁶⁶ Salko Gušić also stated, “what was the reality on the ground was that General Halilović was the real authority there and those units there did not need a written order to enable him to engage them”.¹⁰⁶⁷ However, Salko Gušić acknowledged that he would not know if there had been someone else in command of the “Operation” or whether Sefer Halilović “had to consult General Delić about each one of his decisions and receive approval from him.”¹⁰⁶⁸ The Trial Chamber notes the testimony of Salko Gušić concerning the role of the Inspection Team.¹⁰⁶⁹ Salko Gušić testified that the Inspection Team was not able to command troops on the ground,¹⁰⁷⁰ and that he was not bound by the requests of the Inspection Team.¹⁰⁷¹ Salko Gušić stated that on the basis of the order establishing the Inspection Team, Sefer Halilović, as Team Leader, could issue orders which concerned “the life and work of units, provided that these orders did not affect the actual situation within the unit itself”, “as long as it did not change it radically”.¹⁰⁷² Salko Gušić considered that this order gave Sefer Halilović a very “limited possibility to command,” and that this possibility to command only arose where there was a problem to solve.¹⁰⁷³

345. Some soldiers in the brigades had the impression that Sefer Halilović was commander of the “Operation”.¹⁰⁷⁴ Zakir Oković stated that Zulfikar Ališpago was “probably” resubordinated to the commander of the operation, who he considered to be the most senior-ranking officer there, which

¹⁰⁶⁴ Salko Gušić, 08 Feb '05, T. 78.

¹⁰⁶⁵ Salko Gušić, 03 Feb '05, T. 63-64.

¹⁰⁶⁶ Salko Gušić, 08 Feb '05, T. 70.

¹⁰⁶⁷ Salko Gušić, 08 Feb '05, T. 24-25.

¹⁰⁶⁸ Salko Gušić, 04 Feb '05, T. 57. He stated (*ibid.*):

I'm not denying for a single moment that somebody else was perhaps commanding the operation, but I have no proof of that. I know who was the commander at the Forward Command Post. I know who directly issued tasks to the units on the ground. And whether that's someone – not someone but General Halilović. Whether he had to consult General Delić about each one of his decisions and receive approval from him, it was not General Halilović's duty to inform me of this nor can I claim to know about it.

¹⁰⁶⁹ See *supra* paras 201 and 204.

¹⁰⁷⁰ Salko Gušić, 07 Feb '05, T. 52.

¹⁰⁷¹ Salko Gušić, 07 Feb '05, T. 53.

¹⁰⁷² Salko Gušić, 03 Feb '05, T. 53. Salko Gušić stated that Sefer Halilović could have issued other types of orders and that the commanders could not be sure if he had in fact previously consulted with Rasim Delić, and such an order would have to be executed. However, he stated that on the basis of the reporting mechanism any commander who received an order would report to Sefer Halilović and Rasim Delić that such an order had been received and carried out, as regular reports were provided at the end of every day to the Supreme Command Staff, therefore, if any radical orders had been issued, the commander would have been aware of the fact. Salko Gušić further stated that Rasim Delić “would have found out about it within one day,” *ibid.*

¹⁰⁷³ Salko Gušić, 08 Feb '05, T. 7-8.

at the time was Sefer Halilović.¹⁰⁷⁵ Enes Šakrak, a soldier in the 9th Brigade, testified that the assumption was that Sefer Halilović was the commander, but no one told him “in so many words”.¹⁰⁷⁶ Erdin Arnautović, another member of the 9th Brigade also testified that he heard that the main control of “Operation Neretva” was in the hands of Sefer Halilović, although the soldiers of the 9th Brigade came directly under the control of Zulfikar Ališpago.¹⁰⁷⁷ Witness G thought that Sefer Halilović’s position was commander of the ABiH with his title as “Chief of Staff”.¹⁰⁷⁸ He stated that he considered Sefer Halilović to be a figure of authority despite the fact that Rasim Delić was appointed Commander of the Main Staff.¹⁰⁷⁹ Witness D also testified that Sefer Halilović was the commander of the “Operation.”¹⁰⁸⁰

346. Witness F testified that he heard at the time and was later told that the leader of “those activities” in Herzegovina would be “the Chief of Staff, Sefer Halilović”. He stated however, that “[t]his is what - the information that I had at that time. This was unconfirmed information. I didn't see any paper to that effect or any particulars. I wasn't really informed about the details.”¹⁰⁸¹

347. Bakir Alispahić, Minister of the Interior, testified that it was his understanding that Sefer Halilović was the commander of the “Operation”.¹⁰⁸² He testified that all the other commanders who were with Sefer Halilović displayed the same attitude towards him – they accepted him as the person in charge.¹⁰⁸³ On the basis of what happened after the Zenica meeting and the conversations Bakir Alispahić had with different commanders, including Rasim Delić, he understood that Sefer Halilović was in charge “as far as that area and that particular activity was concerned”.¹⁰⁸⁴ Bakir Alispahić testified that people would address Sefer Halilović as “boss” or “commander” and that “everything they wanted to make sure about”, they would go to Sefer Halilović.¹⁰⁸⁵ The officers “reported to [Sefer Halilović], they briefed him on what was going on, and they listened to what he was saying and ordering.”¹⁰⁸⁶

348. Dževad Tirak, Chief of Staff of the 6th Corps, testified that the 6th Corps command “commanded only a fragment of the operation, as far as the units of the 6th Corps were

¹⁰⁷⁴ The Trial Chamber notes that these were low-ranking soldiers.

¹⁰⁷⁵ Zakir Oković, 15 Mar '05, T. 30-31.

¹⁰⁷⁶ Enes Šakrak, 17 Feb '05, T. 74, 18 Feb '05, T. 43-44.

¹⁰⁷⁷ Erdin Arnautović, 14 Feb '05, T. 70-71.

¹⁰⁷⁸ Witness G, 07 Apr '05, T. 105.

¹⁰⁷⁹ Witness G, 07 Apr '05, T. 21-22.

¹⁰⁸⁰ Witness D, 21 Feb '05, T. 25.

¹⁰⁸¹ Witness F, 08 Mar '05, T. 45.

¹⁰⁸² Bakir Alispahić, 24 May '05, T. 4, 13; 27 May '05, T. 28.

¹⁰⁸³ Bakir Alispahić, 24 May '05, T. 5.

¹⁰⁸⁴ Bakir Alispahić, 24 May '05, T. 5-6.

¹⁰⁸⁵ Bakir Alispahić, 24 May '05, T. 8.

¹⁰⁸⁶ Bakir Alispahić, 24 May '05, T. 13.

involved”.¹⁰⁸⁷ Dževad Tirak testified that when Bahrudin Fazlić, the Deputy Commander of the 6th Corps, ordered the Prozor Independent Battalion to be part of the “Operation” they were “subject to the Forward Command Post” so “at the time the 6th Corps was not in charge of them.”¹⁰⁸⁸ The Trial Chamber notes that this evidence is insufficient to find that Enver Buza and the Prozor Independent Battalion were subordinated to Sefer Halilović at the time the crimes were committed.¹⁰⁸⁹

349. The Trial Chamber also heard testimony as the role of the Inspection Team during the combat operations in Herzegovina. The Trial Chamber heard testimony that the Inspection Team was established and carried out the function of coordination of combat operations between the 4th and the 6th Corps in the Neretva Valley and Fojnica area.¹⁰⁹⁰

350. Vehbija Karić testified that the Inspection Team was tasked with inspection, coordination and cooperation among units in order to redress some of the weaknesses that had manifested themselves.¹⁰⁹¹ The Inspection Team was supposed to carry out an inspection of the units in the Neretva Valley under the 3rd, 4th and 6th Corps.¹⁰⁹² A further task was to ready the units for combat operations.¹⁰⁹³ He also stated that the Inspection Team was not tasked with commanding units.¹⁰⁹⁴ The Inspection Team would have to submit a report to Rasim Delić and then he would have to issue an order if it was necessary to replace someone or to use a certain unit.¹⁰⁹⁵ Vehbija Karić testified that Sefer Halilović issued orders during “Operation Neretva” and the units carried out those orders, but that was all within the “framework” of the orders issued by Rasim Delić with regard to carrying out “Operation Neretva”.¹⁰⁹⁶

351. The Trial Chamber heard testimony that the Inspection Team encountered difficulties in carrying out their functions in the Neretva area. According to Vehbija Karić, the units and commands respected the Team Members as people from the Main Staff. However, on the basis of the 30 August order, they “did not have the authority to command and take command decisions in

¹⁰⁸⁷ Dževad Tirak, 31 Mar '05, T. 75.

¹⁰⁸⁸ Dževad Tirak, 30 Mar '05, T. 71.

¹⁰⁸⁹ Salko Gušić, 03 Feb '05, T. 26; Dževad Tirak, 30 Mar '05, T. 71, testifying that the 6th Corps was responsible for the Prozor Independent Battalion; Mehmed Behlo, 27 Jun '05, T. 75, testifying that the battalion submitted combat reports to the 6th Corps; Witness J, 06 Jul '05, T. 12-13, who also testified that the 6th Corps deputy commander Bahrudin Fazlić would frequently come and visit the Prozor Independent Battalion; Vehbija Karić, Ex. 444, T. 104.

¹⁰⁹⁰ Salko Gušić, 07 Feb '05, T. 54; Vehbija Karić, Ex. 444, T. 9 and 98; Ex. 130, Final Report.

¹⁰⁹¹ Vehbija Karić, Ex. 444, T. 8. Vehbija Karić testified that it was necessary to review the strength of the unit's logistic support, the ammunition situation, discipline, morale, the experience in combat activity, issues which influenced the combat readiness of the units, Vehbija Karić, Ex. 444, T. 102.

¹⁰⁹² Vehbija Karić, Ex. 444, T. 8.

¹⁰⁹³ Vehbija Karić, 02 Jun '05, T. 11-12.

¹⁰⁹⁴ Vehbija Karić, Ex. 444, T. 9, 69-70, 75, 102.

¹⁰⁹⁵ Vehbija Karić, Ex. 444, T. 72.

¹⁰⁹⁶ Vehbija Karić, Ex. 444, T. 75.

those units”.¹⁰⁹⁷ He stated that there were problems with the Commander of the 6th Corps, Salko Gušić, and that “Sefer Halilović himself, over a period of several days, insisted on meeting him, but this man avoided such a meeting”.¹⁰⁹⁸ Vehbija Karić also testified to an instance where the Inspection Team submitted an order to Zulfikar Ališpago for forthcoming combat activities, with a working map and a decision, but that they subsequently discovered that when Zulfikar Ališpago returned to his command post he tore-up the order, working map and decision and wrote an order on his own.¹⁰⁹⁹

352. Witness J, a member of the Prozor Independent Battalion, considered the Inspection Team as a group of officers who had military knowledge and expertise and were there to bring more order to the military units. He considered them as a team which was supposed to “come in and put everything in order.”¹¹⁰⁰

353. Jusuf Jašarević, the Chief of the UB of the Main Staff, testified that the 30 August order set up a team which had to exercise control over certain issues of combat readiness, including the security detail; however, he was not aware of with regard to which combat operations this was to be done. Jusuf Jašarević had never heard of “Operation Neretva” at that point in time,¹¹⁰¹ nor did he know who the commander of such an “Operation” was.¹¹⁰² With regard to the investigations into the incidents in Grabovica, Jusuf Jašarević testified that he made inquiries of Nermin Eminović, Chief of the SVB of the 6th Corps, as well as Namik Džanković. However, with respect to the incidents in Uzdol he only made inquiries to Nermin Eminović, because he was;

part of the chain of command, an institution which has force, physical force. It has a detachment of 16 people and a military police battalion, so this is a stable function. However, [Namik] Džanković is something else. He’s a free shooter [...] He’s simply a member of the inspection team. He’s not an organ of any command which is commanding and which has all the attributes that go with it and can act in that way.¹¹⁰³

Jusuf Jašarević also testified that Namik Džanković “was not in the command. He wasn’t an organ of the command, he was an organ of the inspection team”.¹¹⁰⁴

354. The Trial Chamber notes that the command of the 4th Corps sent reports to the IKM in Jablanica.¹¹⁰⁵ The Trial Chamber further notes that the majority of these reports were being sent after the Inspection Team, including Sefer Halilović, returned to Sarajevo on 19 September 1993,

¹⁰⁹⁷ Vehbija Karić, Ex. 444, T. 70.

¹⁰⁹⁸ Vehbija Karić, Ex. 444, T. 104.

¹⁰⁹⁹ Vehbija Karić, Ex. 444, T. 106.

¹¹⁰⁰ Witness J, 06 Jul '05, T. 21-22.

¹¹⁰¹ Jusuf Jašarević, 01 Mar '05, T. 60-61.

¹¹⁰² Jusuf Jašarević, 01 Mar '05, T. 66.

¹¹⁰³ Jusuf Jašarević, 03 Mar '05, T. 66-67.

¹¹⁰⁴ Jusuf Jašarević, 01 Mar '05, T. 86.

and that the 4th Corps also reported directly to the Main Staff in Sarajevo.¹¹⁰⁶ Furthermore, the evidence presented to the Trial Chamber does not include any combat orders issued to the 4th Corps from the IKM in Jablanica.

355. As to Sefer Halilović's role as a coordinator, Šefko Hodžić testified that from meeting with Sefer Halilović and from their discussions he understood that Sefer Halilović was the commander of the "Operation" and referred to him as such in his reports.¹¹⁰⁷ Sefer Halilović told Šefko Hodžić that he was going to be leading the "Operation" and Šefko Hodžić understood this to mean that he would be the commander.¹¹⁰⁸ However, later when they spoke again, Šefko Hodžić understood that it was not quite the same to command or to direct an operation.¹¹⁰⁹ He noted in his diary "Sefer Halilović – coordination of combat operations from Bugojno to Mostar",¹¹¹⁰ as Sefer Halilović had told him that he was coordinating combat activities, which he found "surprising, even shocking".¹¹¹¹ When he met Sefer Halilović in Konjic, Sefer Halilović used the expression "exercise control".¹¹¹² Later on, on the eve of the "Operation", when Šefko Hodžić interviewed him, Sefer Halilović said that his role was as a coordinator.¹¹¹³

356. Šefko Hodžić testified that he found it surprising that Sefer Halilović said he was a coordinator because it was the first time that there was someone in charge of coordination and he considered that Sefer Halilović was the commander.¹¹¹⁴ But he testified that at the time he did not know of the 30 August order.¹¹¹⁵ He stated that had he known about the 30 August order at the time he would never Sefer Halilović "commander".¹¹¹⁶

357. Šefko Hodžić testified that the first time that he called Sefer Halilović "commander" was on 19 September when they were in Jablanica and Zulfikar Ališpago informed them that it looked like as if the "Operation" was successful. On that occasion Sefer Halilović described himself as "coordinator" of the "Operation".¹¹¹⁷ However, Šefko Hodžić thought that it was ridiculous to refer

¹¹⁰⁵ Ex. 449, Ex. 111, Ex. 112, Ex. 113, Ex. 114, Ex. 115, Ex. 121, Ex. 129. *See supra* para. 216.

¹¹⁰⁶ See Ex. 481, combat report, request for reinforcements sent by Deputy Commander of the 4th Corps Džemal Najetović to the R BH OS ŠVK Centre for Operations Command, dated 13 September 1993.

¹¹⁰⁷ Šefko Hodžić, 23 Mar '05, T. 46.

¹¹⁰⁸ Šefko Hodžić, 23 Mar '05, T. 46.

¹¹⁰⁹ Šefko Hodžić, 23 Mar '05, T. 47.

¹¹¹⁰ Ex. 293, separate page of Šefko Hodžić's diary.

¹¹¹¹ Šefko Hodžić, 24 Mar '05, T. 43.

¹¹¹² Šefko Hodžić, 24 Mar '05, T. 27.

¹¹¹³ Šefko Hodžić, 24 Mar '05, T. 27.

¹¹¹⁴ Šefko Hodžić, 24 Mar '05, T. 102.

¹¹¹⁵ Šefko Hodžić, 24 Mar '05, T. 103. When Šefko Hodžić eventually saw the 30 August order he also saw another order of Rasim Delić, dated 3 August, setting up an Inspection Team for Mt. Igman "to help stabilise the situation over there" of which Sefer Halilović was also the Team Leader, and Zićro Suljević and Rifat Bilajac were some of the members of that inspection team. Šefko Hodžić thought that Rasim Delić was basing himself on this 3 August order when he wrote the 30 August order, *ibid.*

¹¹¹⁶ Šefko Hodžić, 24 Mar '05, T. 103.

¹¹¹⁷ Šefko Hodžić, 23 Mar '05, T. 47.

to Sefer Halilović as a coordinator when fighting was being conducted so in some instances he said that Sefer Halilović was commanding the “Operation” and Sefer Halilović did not say anything to the contrary.¹¹¹⁸

358. However, the Trial Chamber notes that Šefko Hodžić also testified that it appeared to him that Sefer Halilović had to persuade officers to assist him in the combat operations in Herzegovina, and could not issue orders as commanders would ordinarily do. This did not surprise him, however, as that was the situation with the army until the end of the armed conflict.¹¹¹⁹ Šefko Hodžić testified that he did not see Sefer Halilović issuing orders to anyone.¹¹²⁰

359. Vehbija Karić testified that Sefer Halilović’s role was coordination and direction, influencing the effectiveness of the units in the course of combat activity. Sefer Halilović was the most senior officer in the Inspection Team. He had to be in a position to influence commanders, to make them issue certain orders. Sefer Halilović also had to issue certain orders, but, in Vehbija Karić’s words, “this had to remain within the limits of the order issued by the commander of the supreme staff, Rasim Delić.”¹¹²¹ Vehbija Karić testified that as no additional orders in which an individual was designated as the commander of the “Operation” were made, the “Inspection Team” “took it for granted that this should be the most senior member of the Inspection team, and the documents that were compiled, were compiled in this sense”.¹¹²² Vehbija Karić clarified it saying that the members of the Inspection Team “were not in a position to think about the command role”; they “took it for granted that the coordination, the direction of the activity of the operation should be carried out by one person. That was a commander of the General Staff, Sefer Halilović”.¹¹²³

360. Apart from the Order of 15 September, Vahid Karavelić did not see any other document that was a combat order by Sefer Halilović relating to the period in question.¹¹²⁴ Vahid Karavelić was not in a position to discuss with Rasim Delić or Sefer Halilović the combat details of what was going on in the Neretva Valley and could not say what degree of power Rasim Delić actually gave to Sefer Halilović with respect to the combat activities in the Neretva Valley.¹¹²⁵ Vahid Karavelić stated that a superior always has the right to issue orders in writing and orally and that the powers of

¹¹¹⁸ Šefko Hodžić, 23 Mar '05, T. 48.

¹¹¹⁹ Šefko Hodžić, 24 Mar '05, T. 48.

¹¹²⁰ Šefko Hodžić, 24 Mar '05, T. 49.

¹¹²¹ Vehbija Karić, Ex. 444, T. 111.

¹¹²² Vehbija Karić, Ex. 444, T. 110.

¹¹²³ Vehbija Karić, Ex. 444, T. 110.

¹¹²⁴ Vahid Karavelić, 22 Apr '05, T. 70.

¹¹²⁵ Vahid Karavelić, 22 Apr '05, T. 71-72.

Sefer Halilović would be a matter of the relationship and the type of communication between Rasim Delić and Sefer Halilović.¹¹²⁶

361. Selmo Cikotić, commander of OG West, stated that he received his orders from Sefer Halilović.¹¹²⁷ Selmo Cikotić sent his reports to the command post of the 317th Brigade, and he “had information” that Zičro Suljević and Rifat Bilajac were there, and they were in contact with Sefer Halilović.¹¹²⁸ He believed that this was in the latter’s capacity as “Chief of Staff”. He testified that “I did not have any dilemma as to [Sefer Halilović’s] function. He was the Chief of Staff. I believe that in his capacity he was in position to issue orders to me on the ground and I was duty-bound to report to him on the execution of his orders”.¹¹²⁹ He also testified that “Sefer Halilović was the Chief of Staff, the Chief of the General Staff, and my understanding is that Sefer Halilović, in the spirit of general guidelines, orders and authorisations issued by the commander, did have the authority to issue certain orders on the ground.”¹¹³⁰ These “guidelines” included “the active defence and the tasks that the units had to liberate the area. I am also referring to the orders issued by the Main Staff to individual units or commands.”¹¹³¹ With respect to combat orders he believed that “the commander could issue orders for combat and the Chief of Staff could work on the implementation of these orders, on putting these orders to work.”¹¹³²

362. Selmo Cikotić understood that Sefer Halilović was coordinating combat operations within the “Operation”.¹¹³³ He testified that when he met Sefer Halilović in early September, Sefer Halilović told him that he was there, on the ground to coordinate combat activities.¹¹³⁴ Selmo Cikotić understood the authority to coordinate combat operations to include “the authority to issue concrete tasks on the ground” and also “to engage units in a very specific sense”. Selmo Cikotić understood that “behind that idea was the commander of the Main Staff, [Rasim] Delić”.¹¹³⁵

¹¹²⁶ Vahid Karavelić, 22 Apr '05, T. 73-74.

¹¹²⁷ Selmo Cikotić referred to “the orders issued by the Main Staff to individual units or commands”, *ibid.*

¹¹²⁸ Selmo Cikotić, 24 Feb '05, T. 51, 52. He further stated that he did not send his reports to the IKM in Jablanica as he was not aware at the time that there was one, *ibid.*

¹¹²⁹ Selmo Cikotić, 24 Feb '05, T. 49.

¹¹³⁰ Selmo Cikotić, 23 Feb '05, T. 6.

¹¹³¹ Selmo Cikotić, 24 Feb '05, T. 52.

¹¹³² Selmo Cikotić, 23 Feb '05, T. 7.

¹¹³³ Selmo Cikotić, 23 Feb '05, T. 9. This understanding is based on the fact that Sefer Halilović said that he would be on the ground with a team from the Main Staff and that he would be taking a coordinating role, Selmo Cikotić, 23 Feb '05, T. 9, 57. Selmo Cikotić believes that this included issuing specific orders, Selmo Cikotić, 23 Feb '05, T. 9.

¹¹³⁴ Selmo Cikotić, 24 Feb '05, T. 35, 48.

¹¹³⁵ Selmo Cikotić, 24 Feb '05, T. 48, 50.

10. Factual Findings as to the Status of Sefer Halilović during “Operation Neretva”

363. The Trial Chamber has found that the participants of the meeting in Zenica, chaired by the Commander of the Main Staff, Rasim Delić, did not discuss “Operation Neretva”.¹¹³⁶ The Trial Chamber has also found that no one was appointed commander of an “Operation Neretva” or any other operation at this meeting. The Conclusions of the Zenica meeting support this finding.¹¹³⁷ Furthermore, the Trial Chamber has found that the reorganisation and resubordination of units, which was carried out by Sefer Halilović among others subsequent to this meeting and in compliance with its conclusions, was done pursuant to Rasim Delić’s order of 1 September.¹¹³⁸

364. The Trial Chamber further found that the Prosecution failed to establish that Sefer Halilović was appointed as commander of “Operation Neretva” or any other operation by virtue of the 30 August order. Rather, by this order Rasim Delić appointed Sefer Halilović as Team Leader of an Inspection Team. Furthermore, the Trial Chamber found that the 30 August order did not entrust that Inspection Team with command authority, but with coordinating and monitoring functions.¹¹³⁹ At the time relevant to the Indictment the Inspection Team actually carried out a function of coordination amongst the units of the 4th and 6th Corps. In this regard, the Trial Chamber notes in particular, that the reorganisation order of Rasim Delić of 1 September on changes in the zones of responsibility of the 1st, 4th and 6th Corps, expressly provides for the role of the Inspection Team in providing the “necessary specialised assistance to the commands of the 4th and 6th Corps in executing the tasks set forth in this order”.¹¹⁴⁰ Furthermore, the Trial Chamber found that the role of Sefer Halilović, in the implementation of Rasim Delić’s orders concerning the reorganisation and resubordination of troops was consistent with his role as Team Leader of an Inspection Team charged with monitoring and coordinating functions.¹¹⁴¹

365. As to the Prosecution allegation that there was an IKM in Jablanica from where “Operation Neretva” was commanded, the Trial Chamber has found that the evidence presented by the Prosecution is insufficient to support a finding that the location where the Inspection Team was accommodated in Jablanica was an IKM from which an “operation” in Herzegovina was commanded.¹¹⁴² The Trial Chamber notes that the term IKM was used as “jargon” to denote the location of senior officers.¹¹⁴³

¹¹³⁶ See *supra* Section IV.C, para. 189.

¹¹³⁷ See *supra* Section IV.C, para. 189.

¹¹³⁸ See *supra* Section IV.C, para. 244.

¹¹³⁹ See *supra* Section IV.C, para. 210.

¹¹⁴⁰ See *supra* Section IV.C, para. 225.

¹¹⁴¹ See *supra* para. 244.

¹¹⁴² See *supra* Section IV.C, para. 221.

¹¹⁴³ See *supra* Section IV.C, para. 217.

366. The Trial Chamber considers the evidence presented to it as to Sefer Halilović's alleged position as commander of "Operation Neretva" to be inconsistent. The Trial Chamber notes in particular that some of the lower-ranking soldiers who testified before the Trial Chamber considered Sefer Halilović to be commander of "Operation Neretva". However, the Trial Chamber finds that testimony of some lower-ranking soldiers to that effect is only indicative of the respect which Sefer Halilović enjoyed with low-ranking troops as a senior officer and one of the founders of the ABiH. The Trial Chamber cannot find that this evidence *per se* is sufficient to support the Prosecution allegation that Sefer Halilović was commander of "Operation Neretva". The Trial Chamber also recalls the testimony of Bakir Alispahić, Minister of the Interior, who testified that he assumed that Sefer Halilović was commander of "Operation Neretva". The Trial Chamber notes in this regard that Bakir Alispahić testified that he came to this conclusion based on his interpretation of the events taking place following the Zenica meeting.¹¹⁴⁴ However, the Trial Chamber notes that he did not hear that anyone was appointed as commander of an "operation" at the Zenica meeting.¹¹⁴⁵ With regard to the testimony of Salko Gušić, Commander of the 6th Corps, the Trial Chamber notes that there were problems between Salko Gušić and Sefer Halilović in the field, and that Sefer Halilović had to go so far as to contact Rasim Delić to ask that Rasim Delić, as the Commander of the Main Staff, order Salko Gušić to get in contact with Sefer Halilović.¹¹⁴⁶

367. The evidence provided by other, higher-ranking ABiH officers and those who were in close contact with Sefer Halilović at the time, is more consistent in showing that Sefer Halilović was not a commander of an "operation", but rather was tasked with coordinating combat activities.

368. The Trial Chamber also notes that at the meeting on 4 September in Donja Jablanica with Rasim Delić, Rasim Delić signed and approved the documents for the "Operation". Rasim Delić's signature can be seen on a map entitled "Operation Neretva" presented to the Trial Chamber in evidence. The Prosecution alleges that the signatures on this map, Rasim Delić's on the top-left and Sefer Halilović's on the bottom-right, indicates that "Halilović was the commander responsible for the Operation".¹¹⁴⁷ The Trial Chamber has found, however, that contrary to the Prosecution

¹¹⁴⁴ See *supra* Section IV.C, para. 347.

¹¹⁴⁵ Bakir Alispahić, 27 May '05, T. 34.

¹¹⁴⁶ Ex. 132, telegram from Sefer Halilović to Rasim Delić, the date is unclear, this was sent in response to a document dated 25 September 1993, in which Sefer Halilović wrote:

Although, with your permission, I said to Salko Gušić, the Commander of the 6th Corps, that we would see each other in Jablanica on Saturday, he has not shown up yet or contacted me. This has become his habit. I was looking for him in the area of responsibility of the 6th Corps for four or five days and then met him by chance *in* the Command of the 6th Corps [...] I would really like a sincere response and an order to the Commander of the 6th Corps to conduct himself in a proper military way.

¹¹⁴⁷ See also Ex. 132 and Ex. 133, see *supra* Section IV.C, para. 337.
Prosecution Final Brief, para. 170.

allegation, the signatures on this map are inconclusive as to who was commander of the “Operation”.¹¹⁴⁸

369. Having examined the evidence presented as to the role of Sefer Halilović in the field in Herzegovina in September 1993, the Trial Chamber finds that Sefer Halilović carried out tasks consistent with his role as Team Leader of an Inspection Team tasked with reviewing combat readiness and coordinating combat operations, as set out in the 30 August order. The Trial Chamber notes that the authority of Sefer Halilović to issue orders was limited in two ways by the 30 August order: first in that for any “drastic proposals” Sefer Halilović had to consult with Rasim Delić, and secondly, by this order Sefer Halilović only had the power to issue orders “in keeping with his authority”. The Trial Chamber notes, in this regard, that the position of Sefer Halilović within the structure of the Main Staff was circumscribed as a result of the 8 June and 18 July Decisions.¹¹⁴⁹ The Trial Chamber also notes that upon arrival in Herzegovina, Inspection Team Members Vehbija Karić, Zičro Suljević and Rifat Bilajac sent a report to Rasim Delić asking for his decision as to the use of units from Sarajevo and the 3rd Corps in the possible future combat operations.¹¹⁵⁰

370. The Trial Chamber also notes that the ABiH axes of attack were identified in combat orders of Zulfikar Ališpago and of the 6th Corps command from Dobro Polje on 11 September but the evidence does not contain a prior order from Sefer Halilović ordering the start of combat operations on this axis. Furthermore, an analysis of the evidence concerning orders issued by Sefer Halilović and information sent to him from the field indicates that the orders issued by Sefer Halilović were issued under the overall authority of Rasim Delić as Commander of the ABiH, and that orders issued by Sefer Halilović were, in general, implementing the instructions of the Commander. The Trial Chamber also recalls that the 1st Corps Commander Vahid Karavelić did not carry out the order of Sefer Halilović of 2 September as issued, which requested that troops be sent on 3 September, but – and only after confirming Sefer Halilović’s order with the Commander of the Main Staff, Rasim Delić – postponed the departure of the troops until 6 September.¹¹⁵¹ The Trial Chamber notes that on at least one occasion suggestions of the Inspection Team as a whole were not accepted by Zulfikar Ališpago.¹¹⁵²

371. The Trial Chamber notes that the evidence only contains one order concerning combat operations issued by Sefer Halilović after the establishment of the Inspection Team, namely that of 15 September 1993. The Trial Chamber finds that this evidence is in itself insufficient to support a

¹¹⁴⁸ See *supra* para. 273.

¹¹⁴⁹ See *supra* Section IV.A.1(b).

¹¹⁵⁰ See *supra* para. 247.

¹¹⁵¹ See *supra* paras 231 and 252-254.

¹¹⁵² See *supra* para 351.

finding that Sefer Halilović was in overall control of combat operations in Herzegovina. Moreover, the Trial Chamber is of the opinion that this order can be seen as part of the Inspection Team's coordination function. The Trial Chamber also finds that the information reported to Sefer Halilović is in keeping with the finding that the role of the Inspection Team was one of coordination, and therefore does not support the finding that Sefer Halilović was commanding and controlling combat activities.¹¹⁵³

372. In conclusion, the Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Sefer Halilović was either *de jure* or *de facto* commander of the alleged operation called "Operation Neretva" which the Prosecution submit was carried out in Herzegovina in September 1993.

D. Events in Grabovica

1. The Village of Grabovica

373. Grabovica¹¹⁵⁴ is located approximately 30 kilometres north of Mostar, as the crow flies. The village is part of a group of villages and hamlets belonging to the Drežnica commune in Bosnia-Herzegovina.¹¹⁵⁵ Jablanica is located about 12 kilometres north of Grabovica.¹¹⁵⁶ A road connects Grabovica with Jablanica¹¹⁵⁷ in the north and with Drežnica and Mostar in the south.¹¹⁵⁸ The Aleskin Han Bridge is situated about 5 kilometres north from Grabovica, in the direction to Jablanica.¹¹⁵⁹ In August and September 1993, the road from Jablanica to Mostar was cut off south of Drežnica by HVO troops.¹¹⁶⁰

374. About one kilometre south of Grabovica there is a hamlet called Kremenac where only one family lived in 1993.¹¹⁶¹ Further south on the left bank of the Neretva River, at a distance of approximately 4 kilometres from Grabovica, there is a village called Donja Grabovica.¹¹⁶² Also

¹¹⁵³ See *supra* para. 216.

¹¹⁵⁴ The full name of the village is "Gornja Grabovica", but the parties and many witnesses referred to it as "Grabovica", see, e.g., Witness B, 02 Feb '05, T. 45. The Trial Chamber will also refer to Gornja Grabovica as Grabovica.

¹¹⁵⁵ Witness B, 02 Feb '05, T. 45. Nermin Eminović, 11 Mar '05, T. 42. For a map of the area around Grabovica, see Ex. 134.

¹¹⁵⁶ Witness C, 10 Feb '05, T. 39.

¹¹⁵⁷ On the road from Grabovica to Jablanica there are two short tunnels, Ahmed Salihamidžić, 18 Mar '05, T. 41.

¹¹⁵⁸ Emin Zebić, 17 Mar '05, T. 3; Ahmed Salihamidžić, 18 Mar '05, T. 39; Witness D, 22 Feb '05, T. 57-60; Vehbija Karić, Ex. 444, T. 49. This road is called the M17 road.

¹¹⁵⁹ Ahmed Salihamidžić, 18 Mar '05, T. 39.

¹¹⁶⁰ Emin Zebić, 17 Mar '05, T. 3; Ahmed Salihamidžić, 18 Mar '05, T. 4.

¹¹⁶¹ Witness B, 02 Feb '05, T. 45.

¹¹⁶² Witness B, 02 Feb '05, T. 46.

about 4 kilometres south, but on the right bank of the Neretva, is a small village called Copi.¹¹⁶³ About 4 kilometres to the north of Grabovica is the small village of Diva Grabovica.¹¹⁶⁴

375. The Neretva River¹¹⁶⁵ runs south down the middle of the village of Grabovica.¹¹⁶⁶ The two banks of the river are very close.¹¹⁶⁷ On the way into Grabovica, coming north from Jablanica, one would come across an iron bridge which larger vehicles could use to reach the right bank.¹¹⁶⁸ An old iron foot bridge was still in place in Grabovica in early September 1993, but pedestrians did not dare to cross it since it was not in good condition.¹¹⁶⁹

376. In the village, on the right bank of the river, there is an abandoned railway line, with an old railway station.¹¹⁷⁰ Also on the right bank, but further uphill, there is a new railway station and railway line.¹¹⁷¹ The road to Mostar and Jablanica runs through Grabovica on the left bank.¹¹⁷² A dam, a hydroelectric power plant and the administration building of the power plant were situated on the left bank of the Neretva river, in the northern part of the village.¹¹⁷³ Next to the hydroelectric plant there were large huts, which were used by construction workers when the dam was built.¹¹⁷⁴

377. In 1990 about 160 families lived in Grabovica;¹¹⁷⁵ in the first part of 1993 only about 40 families remained there.¹¹⁷⁶ In 1993, Grabovica was inhabited exclusively by Bosnian Croat people,¹¹⁷⁷ who lived on both banks of the river.¹¹⁷⁸

¹¹⁶³ Witness B, 02 Feb '05, T. 47. Further south on the left bank there is a small hamlet called Sjencine, Witness B, 02 Feb '05, T. 47.

¹¹⁶⁴ Witness B, 02 Feb '05, T. 47-48.

¹¹⁶⁵ The Trial Chamber notes that during the testimony, some witnesses referred to a body of water called "the lake." According to Katica Miletić, when referring to the Neretva River, people would also use the word "lake", Katica Miletić, 09 Feb '05, T. 25.

¹¹⁶⁶ Witness C, 10 Feb '05, T. 4; Witness A, 01 Feb '05, T. 15.

¹¹⁶⁷ Witness C testified that on a quiet day, the villagers could talk to one another from the opposite sides, Witness C, 10 Feb '05, T. 8-9, 47-48.

¹¹⁶⁸ Emin Zebić, 17 Mar '05, T. 62. The Trial Chamber notes that witnesses use the term "right bank" to indicate the west bank of the Neretva river, and the term "left bank" to indicate the east bank of the Neretva river. In this judgement, the Trial Chamber will use the terms "right bank" and "left bank".

¹¹⁶⁹ Katica Miletić, 09 Feb '05, T. 44.

¹¹⁷⁰ Zakir Oković, 15 Mar '05, T. 24, 51.

¹¹⁷¹ Zakir Oković, 15 Mar '05, T. 24, 51; Ex. 79, photograph of Grabovica.

¹¹⁷² Witness B, 02 Feb '05, T. 77; Katica Miletić, 09 Feb '05, T. 25.

¹¹⁷³ Šaban Nezirić, 10 Mar '05, T. 37; Ahmed Salihamidžić, 18 Mar '05, T. 39.

¹¹⁷⁴ Witness C, 10 Feb '05, T. 70; Katica Miletić, 09 Feb '05, T. 45; Šefko Hodžić, 24 Mar '05, T. 35. For a picture of the huts, see Ex. 271, photograph marked by Zakir Oković, Zakir Oković, 15 Mar '05, T. 25-26.

¹¹⁷⁵ Witness C, 10 Feb '05, T. 4.

¹¹⁷⁶ Witness B, 02 Feb '05, T. 5.

¹¹⁷⁷ Witness A, 01 Feb '05, T. 15; Witness B, 02 Feb '05, T. 4; Zakir Oković, 15 Mar '05, T. 24; Emin Zebić, 16 Mar '05, T. 69; Dževad Tirak, 30 Mar '05, T. 40.

¹¹⁷⁸ Emin Zebić, 16 Mar '05, T. 70 and 17 Mar '05, T. 21.

2. Capture of Grabovica by ABiH and Accommodation of Troops in Grabovica from May through September 1993

378. In early 1993, Grabovica was under the control of the HVO.¹¹⁷⁹ The HVO military police were based on the left bank of the Neretva River. In May 1993, there were approximately 30 military policemen in Grabovica,¹¹⁸⁰ who were responsible for guarding the hydroelectric power plant.¹¹⁸¹ Around 10 May 1993, the ABiH, at that time still commanded by Sefer Halilović,¹¹⁸² took over Grabovica.¹¹⁸³ During the capture of Grabovica, some of the HVO members based in Grabovica were killed and some of them fled.¹¹⁸⁴ At least two male inhabitants of Grabovica were detained by the ABiH, but were later released.¹¹⁸⁵ Katica Miletić, who lived in Grabovica, recognised Zulfikar Ališpago among the ABiH members who came into Grabovica in May 1993.¹¹⁸⁶ Katica Miletić believed that the soldiers came from Sarajevo.¹¹⁸⁷

379. While Grabovica had been under control of the HVO, many young families had left Grabovica, mostly going towards Mostar.¹¹⁸⁸ After the take-over by the ABiH, even more people left; those who stayed were mostly elderly people and children.¹¹⁸⁹ Only three or four men of military age remained in the village.¹¹⁹⁰ According to Witness C, approximately 80 villagers lived in Grabovica on 9 September 1993.¹¹⁹¹

380. From May through September a number of ABiH units were based in Grabovica; soldiers of the Zulfikar Detachment, the Igman Wolves¹¹⁹² and of the *Handžar* Division.¹¹⁹³ The soldiers from the *Handžar* Division and the Igman Wolves were billeted in the offices of the hydroelectric power

¹¹⁷⁹ Witness B, 02 Feb '05, T. 5; Witness C, 10 Feb '05, T. 5.

¹¹⁸⁰ Witness B, 02 Feb '05, T. 5.

¹¹⁸¹ Witness C, 10 Feb '05, T. 5.

¹¹⁸² For the Trial Chamber's assessment of the evidence on this alleged statement, see Section IV.D.9.(b)

¹¹⁸³ Witness C, 10 Feb '05, T. 5-6; Witness A, 01 Feb '05, T. 15-16; Katica Miletić, 09 Feb '05, T. 8.

¹¹⁸⁴ Witness A, 01 Feb '05, T. 16.

¹¹⁸⁵ Witness A, 01 Feb '05, T. 16-17; Witness B, 2 Feb '05, T. 6.

¹¹⁸⁶ Katica Miletić, 09 Feb '05, T. 8.

¹¹⁸⁷ Katica Miletić, 09 Feb '05, T. 8.

¹¹⁸⁸ Witness C, 10 Feb '05, T. 5.

¹¹⁸⁹ Witness B, 02 Feb '05, T. 7-8; Witness A, 01 Feb '05, T. 15; Witness D, 22 Feb '05, T. 63; Vehbija Karić testified that mostly elderly Bosnian Croat villagers lived in approximately 10 houses on the right bank, Vehbija Karić, Ex. 444, T. 49.

¹¹⁹⁰ Witness B, 02 Feb '05, T. 7-8.

¹¹⁹¹ Witness C, 10 Feb '05, T. 76.

¹¹⁹² These soldiers were billeted in the offices of the hydroelectric power plant in Grabovica, Namik Džanković, 21 Mar '05, T. 75; Witness B, 02 Feb '05, T. 23, 33, 51; Šefko Hodžić, 23 Mar '05, T. 48; and Ahmed Salihamidžić, 17 Mar '05, T. 96, 18 Mar '05, T. 2.

¹¹⁹³ Witness B, 02 Feb '05, T. 51; Katica Miletić, 09 Feb '05, T. 38-39; According to Witness C, the Igman Wolves consisted of about 30 soldiers, who stayed at the hydroelectric plant. She testified that the *Handžar* Division arrived in Grabovica on 5 September 1993 and that they went to the right bank, Witness C, 10 Feb '05, T. 9-10, 39, 41.

plant in Grabovica or in private houses.¹¹⁹⁴ The soldiers of the Zulfikar Detachment were not permanently based in Grabovica, but stayed in Grabovica in shifts.¹¹⁹⁵ According to Vehbija Karić, a senior member of the Main Staff and of the Inspection Team, the Zulfikar Detachment was tasked with reconnaissance and carrying out sabotage activities in the direction of Vrđi, near Drežnica.¹¹⁹⁶ Zulfikar Ališpago set up checkpoints in Grabovica, which were manned by his soldiers.¹¹⁹⁷

381. The relationship between the villagers of Grabovica and the ABiH soldiers who were stationed there from May onwards was good.¹¹⁹⁸ Zulfikar Ališpago organised a doctor to visit the village once a week.¹¹⁹⁹ On the other hand, the soldiers occasionally would go to the houses of villagers and take whatever was of their liking.¹²⁰⁰ They asked for food to be cooked and would sit in the houses of villagers.¹²⁰¹ According to Witness A, there was some looting in his house, but nobody of his family was harmed.¹²⁰² Witness C commented that the soldiers who were in Grabovica on 5 September did “nothing in particular that wasn’t nice.”¹²⁰³ The soldiers did ask for food, but Witness C considered that to be normal.¹²⁰⁴

382. In August 1993, a large number of Bosnian Muslim refugees arrived from HVO-held territory in the Neretva valley.¹²⁰⁵ Some of them had been expelled from villages in eastern Bosnia and Herzegovina, but the majority of them were released from prison camps in southwest Bosnia and Herzegovina.¹²⁰⁶ Most of the refugees were accommodated in Jablanica,¹²⁰⁷ but since there was no possibility to house all of them there, villages in the area also provided housing for them.¹²⁰⁸

¹¹⁹⁴ Witness C, 10 Feb '05, T. 9-10, 12, 39, 69-70; Witness B, 02 Feb '05, T. 51; Šaban Nezirić, 10 Mar '05, T. 42, 45; Katica Miletić, 09 Feb '05, T. 8-10, 45; Zakir Oković, 18 Mar '05, T. 15; Ahmed Salihamidžić, 17 Mar '05, T. 21-22 and 18 Mar '05, T. 2, 15.

¹¹⁹⁵ Witness C, 10 Feb '05, T. 39.

¹¹⁹⁶ Vehbija Karić, Ex. 444, T. 106.

¹¹⁹⁷ Witness C, 10 Feb '05, T. 10, 38-39; Katica Miletić, 09 Feb '05, T. 9. According to Witness C, there were two checkpoints in the village, Witness C, 10 Feb '05, T. 70.

¹¹⁹⁸ Šaban Nezirić, 10 Mar '05, T. 42-43; Witness C, 10 Feb '05, T. 69; Ex. 215, Report by Namik Džanković, dated 13 September, p. 1.

¹¹⁹⁹ Witness B, 02 Feb '05, T. 56-57; Witness C, 10 Feb '05, T. 39-40; Šaban Nezirić, 10 Mar '05, T. 42; Vehbija Karić, Ex. 444, T. 53. Zulfikar Ališpago also promised the villagers that he would arrange a bus so that they could go to Jablanica, but this never happened, Witness B, 02 Feb '05, T. 56; Witness C, 10 Feb '05, T. 40; Katica Miletić, 09 Feb '05, T. 40.

¹²⁰⁰ Witness C, 10 Feb '05, T. 39; Witness A, 01 Feb '05, T. 17.

¹²⁰¹ Witness C, 10 Feb '05, T. 14-15.

¹²⁰² Witness A, 01 Feb '05, T. 17.

¹²⁰³ Witness C, 10 Feb '05, T. 69.

¹²⁰⁴ Witness C, 10 Feb '05, T. 69.

¹²⁰⁵ Witness C, 10 Feb '05, T. 48; Emin Zebić, 17 Mar '05, T. 16; Šefko Hodžić, 23 Mar '05, T. 71 and 24 Mar '05, T. 35; Vahid Karavelić, 22 Apr '05, T. 93-94; Katica Miletić, 09 Feb '05, T. 39, 49; Vehbija Karić testified that there were 10,000 refugees from Prozor and other HVO-held areas in Jablanica, Vehbija Karić, Ex. 444, T. 47.

¹²⁰⁶ Emin Zebić, 17 Mar '05, T. 15.

¹²⁰⁷ Emin Zebić, 17 Mar '05, T. 15-18; Namik Džanković, 21 Mar '05, T. 6-7.

¹²⁰⁸ Emin Zebić, 17 Mar '05, T. 15-18; Witness B, 2 Feb '05, T. 70; Vehbija Karić, 2 Jun '05, T. 14-15, Ex. 444, T. 47; Bakir Alispahić, 23 May '05, T. 73.

383. About 100-150 Bosnian Muslim refugees, both men and women of various ages started arriving in Grabovica from August 1993 and continued to pass through Grabovica from the end of August onwards.¹²⁰⁹ The Bosnian Muslim refugees in Grabovica came mostly from Stolac and Čapljina in south-west Bosnia and Herzegovina.¹²¹⁰ None of the refugees were armed or wore a uniform.¹²¹¹ Most of them were accommodated in prefabricated huts for workers on the left bank.¹²¹² However, some of them were accommodated on the right bank,¹²¹³ both in abandoned houses¹²¹⁴ and in inhabited houses together with the Bosnian Croat owners.¹²¹⁵ The Bosnian Muslim refugees walked around the village and often asked Grabovica inhabitants for food; the villagers shared the food with the refugees to the extent they could, and made efforts to assist them.¹²¹⁶ Emin Zebić described Grabovica as a peaceful place, where the relations between Bosnian Croats and Bosnian Muslims were better than in Jablanica.¹²¹⁷ A number of former camp detainees arrived to Grabovica via Drežnica;¹²¹⁸ they came from the general area of Dubrave, Domanovići and Stolac.¹²¹⁹ Bosnian Muslims who had been detained in Bosnian Croat prisons¹²²⁰ in Gabela, Dretelj and Vitina told members of the Inspection Team Vehbija Karić, Zićro Suljević and Rifat Bilajac that they had been exposed to “severe maltreatment and torture.”¹²²¹ Some of the Bosnian Muslim refugees in Grabovica also told to the ABiH soldiers who arrived after the first week of September about the way they were treated in the camps.¹²²²

384. Documentary evidence has been presented that on the night of 8 September 1993 about 250 former detainees from the Dretelj camp in south-west Bosnia and Herzegovina walked to Grabovica

¹²⁰⁹ Witness B, 02 Feb '05, T. 8-9, 58; Katica Miletić, 09 Feb '05, T. 39; Witness C, 10 Feb '05, T. 48.

¹²¹⁰ Witness C, 10 Feb '05, T. 15, 48; Emin Zebić, 16 Mar '05, T. 69.

¹²¹¹ Witness B, 02 Feb '05, T. 9, 87.

¹²¹² Zakir Oković, 15 Mar '05, T. 24; Witness B, 02 Feb '05, T. 57; Nedžad Mehanović, 16 Feb '05, T. 5-6; Enes Šakrak, 17 Feb '05, T. 74; Witness D, 21 Feb '05, T. 9; Witness E, 07 Mar '05, T. 28; Emin Zebić, 16 Mar '05, T. 70 and 17 Mar '05, T. 21; Šefko Hodžić, 24 Mar '05, T. 35; Vehbija Karić, Ex. 444, T. 54-55.

¹²¹³ Šaban Nezirić, 10 Mar '05, T. 45, 54-55; Emin Zebić, 16 Mar '05, T. 70, 17 Mar '05, T. 21; Witness B, 02 Feb '05, T. 57; Witness E, 07 Mar '05, T. 28; Katica Miletić, 09 Feb '05, T. 40.

¹²¹⁴ Witness C, 10 Feb '05, T. 51.

¹²¹⁵ Witness C, 10 Feb '05, T. 48-52; Witness D, 21 Feb '05, T. 15, 18; Zakir Oković, 15 Mar '05, T. 25-26; Katica Miletić, 09 Feb '05, T. 40.

¹²¹⁶ Witness B, 02 Feb '05, T. 57-58; Katica Miletić, 9 Feb '05, T. 39-40; Witness C, 10 Feb '05, T. 50-52; Enes Šakrak, 17 Feb '05, T. 71; Šaban Nezirić, 10 Mar '05, T. 53-54. The Trial Chamber notes that Dževad Tirak heard that there was a lot of tension between the different ethnic groups, Dževad Tirak, 30 Mar '05, T. 41. However, the Trial Chamber finds that the other evidence presented before the Tribunal does not support that assertion.

¹²¹⁷ Emin Zebić, 17 Mar '05, T. 40.

¹²¹⁸ Šaban Nezirić, 10 Mar '05, T. 46; Nermin Eminović, 11 Mar '05, T. 39; Vehbija Karić, Ex. 444, T. 54-55.

¹²¹⁹ Ex. 406, report of “Zićro, Rifat and Vehbija” to the “commander of the Supreme Command Staff” personally, dated 1 September 1993.

¹²²⁰ These prisons were referred to as prisons of the Croatian Republic of Herzeg-Bosna, Ex. 406.

¹²²¹ Ex. 406.

¹²²² Mustafa Kadić, 10 Mar '05, T. 22; Edin Arnautović, 15 Feb '05, T. 20-21; Nedžad Mehanović, 16 Feb '05, T. 6-8; Šefko Hodžić, 23 Mar '05, T. 48-49, 24 Mar '05, T. 35; *see also* Ex. 406, letter to the commander of the Supreme Command Staff, dated 1 September 1993.

and were later taken to Jablanica by members of the 44th Brigade.¹²²³ However, the witness testimony on the arrival and subsequent departure of this group of Bosnian Muslim refugees is unclear.¹²²⁴

3. Arrival and Billeting of Troops in Grabovica; September 1993

385. As noted above, in the course of 7 and 8 September 1993, soldiers from the 2nd Independent Battalion, the 9th Brigade and the 10th Brigade started arriving in Jablanica.¹²²⁵

386. From the base of the Zulfikar Detachment in Donja Jablanica, the soldiers of the 2nd Independent Battalion and the 9th Motorised Brigade were brought to Grabovica by bus, escorted by logistics personnel of the Zulfikar Detachment.¹²²⁶ On 7 September, the Zulfikar Detachment, the *Handžar* Division and the Igman Wolves were already billeted in Grabovica. The Trial Chamber heard evidence that all units present in Grabovica, at the time relevant to the Indictment, were resubordinated to the Zulfikar Detachment,¹²²⁷ with the exception of the Igman Wolves. The Trial Chamber also heard evidence that an order was issued resubordinating the *Handžar* Division to the Zulfikar Detachment, but that this order was not implemented.¹²²⁸ Furthermore, the Trial Chamber has not been provided with evidence that, at the time of the killings in Grabovica, the Igman Wolves had been sent to the area to participate in the “operation”.¹²²⁹

¹²²³ Ex. 490, report of the Assistant Commander for Security of the 44th Brigade to the 6th Corps Command, dated 8 September 1993, in which it is reported that a group of former detainees from the Dretelj camp had arrived in Drežnica. As the Spanish Battalion of the UNPROFOR did not receive approval of the HVO to transport these refugees, the refugees stayed in Drežnica; Ex. 99, report of Assistant Commander for Security of 44th Brigade to 6th Corps Command, dated 9 September 1993, in which it is reported that the Spanish Battalion still did not receive approval to transport the refugees and that the refugees had walked to Grabovica. They were transported from Grabovica to Jablanica by members of the 44th Brigade; *see also* Ex. 153, handwritten version of Ex. 99.

¹²²⁴ Witness B remembered the arrival of refugees in Grabovica, in late August, but not in September, Witness B, 02 Feb '05, T. 60. However, he also testified that he remembered a large group of refugees en route to Jablanica. Some of those refugees stopped in Grabovica, Witness B, 02 Feb '05, T. 58; He further testified that he saw refugees entering houses on 9 September 1993, while the killings were ongoing, taking whatever they wanted, Witness B, 02 Feb '05, T. 62; Witness C did not see any refugees from the Dretelj camp in Grabovica, but she was told of the arrival of about three or four people she knew, Witness C, 10 Feb '05, T. 49-50; Emin Zebić does not remember the arrival of a large group of refugees on the morning of 9 September 1993, Emin Zebić, 17 Mar '05, T. 26-27.

¹²²⁵ *See supra* Section IV.C, paras 278 and 287

¹²²⁶ Erdin Arnautović, 15 Feb '05, T. 10, 12; Nedžad Mehanović, 15 Feb '05, T. 104; Zakir Oković, 15 Mar '05, T. 23, 50; Witness A, 01 Feb '05, T. 17-18. Witness B, 02 Feb '05, T. 9-11.

¹²²⁷ *See* Section IV.C, paras 291, 302-303.

¹²²⁸ Ex. 269, Request, dated 15 November 1993, of the Chief of Administration for Organisation and Mobilisation to the ŠVK Commander on 6th Corps Proposal No. 14/75-140; *see also* Section IV.C, para. 227

¹²²⁹ The Trial Chamber notes that Namik Džanković testified that a few days after the killings, he saw a group of officers, including Edib Sarić, who were taking part in combat operations in the area, Namik Džanković, 21 Mar '05, T. 33-34. Witness D was confronted with a statement he had made during “Operation Trebević”. In that statement, he said that the Igman Wolves participated in an attack on Mt. Medved with the 9th Brigade. However, when testifying before the Tribunal, Witness D testified: “believe me this is the statement that I deny. They could have written whatever they wanted”, Witness D, 22 Feb '05, T. 70. Witness D testified before the Trial Chamber that the Igman Wolves were among the soldiers who were lined up when Vehbija Karić allegedly made the statement as detailed in para. graph 10 of the Indictment, Witness D, 21 Feb '05, T. 21-27.

387. In the period from 7 to 9 September, the soldiers from Sarajevo arrived in Grabovica¹²³⁰ and were billeted in houses on the right bank.¹²³¹ According to Witness C, rumours started right away that these were “Sefer’s soldiers.”¹²³²

(a) 2nd Independent Battalion

388. The approximately 125 soldiers of the 2nd Independent Battalion¹²³³ were the first of the troops sent from Sarajevo to arrive in Grabovica.¹²³⁴ They arrived in Grabovica in the morning of 7 September.¹²³⁵ Upon the suggestion of the members of the Zulfikar Detachment, Zakir Oković, the operations officer of the 2nd Independent Battalion, set up the command of the battalion in the old railway station on the right bank.¹²³⁶

389. The soldiers of the 2nd Independent Battalion were billeted in three buildings on the right bank;¹²³⁷ the command was accommodated in the old railway station¹²³⁸ and the soldiers were

For the Trial Chamber’s assessment of the evidence on this alleged statement, *see* Section IV.D.9.(b) The Trial Chamber further heard evidence that the Igman Wolves were accommodated sometime between May 1993 (Katica Miletić, 09 Feb ’05, T. 38) and approximately twenty days before the events in Grabovica (Witness C, 10 Feb ’05, T. 41) However, the Trial Chamber has not been provided with evidence as to the reasons why the Igman Wolves were sent to Grabovica or what their tasks were to be while in the area.

¹²³⁰ Witness C testified that all soldiers who arrived on 7 and 8 September came during the night, Witness C, 10 Feb ’05, T. 70; Witness B saw soldiers arriving on 7 and 8 September, Witness B, 02 Feb ’05, T. 9. Witness A saw three buses arriving on 9 September, Witness A, 01 Feb ’05, T. 74.

¹²³¹ Witness C, 10 Feb ’05, T. 12, 16, 44; Ex. 170, photograph of Grabovica; Ex. 182, photograph of Grabovica; Ex. 265, photograph of Grabovica; Ex. 266, photograph of Grabovica. The Trial Chamber notes that all these photographs depict houses situated on the right bank of Grabovica.

¹²³² Witness C, 10 Feb ’05, T. 13.

¹²³³ Mustafa Kadić, 10 Mar ’05, T. 12-13; Mustafa Kadić estimated that approximately 100 to 120 soldiers were sent to Herzegovina. Zakir Oković estimated that less than a hundred soldiers travelled with him to Herzegovina, Zakir Oković, 15 Mar ’05, T. 22. However, page 1 of Ex. 270, combat report of the 2nd Independent Battalion for 7 to 20 September 1993, reads that “a company of 125 soldiers was prepared for sending in the area of Herzegovina”.

¹²³⁴ Ex. 270, combat report of the 2nd Independent Battalion, p. 2; Erdin Arnautović testified that when the 9th Brigade arrived, the 10th Brigade and Adnan Solaković’s unit were already in the area, Erdin Arnautović 14 Feb ’05, T. 32. Witness D testified that when the 9th Brigade arrived, the 2nd Independent Battalion, the Igman Wolves and the *Handžar* Division were in Grabovica, Witness D, 21 Feb ’05, T. 15. According to Mustafa Kadić, the 9th Brigade arrived a day later than the 2nd Independent Battalion, Mustafa Kadić, 9 Mar ’05, T. 88.

¹²³⁵ Zakir Oković, 15 Mar ’05, T. 51. According to Zakir Oković, operations officer of the 2nd Independent Battalion, the battalion arrived in Grabovica in the morning of 8 September. This date is also mentioned in Ex. 270. However, the report states that a company of the battalion set off to Herzegovina, based on an order of Vahid Karavelić, the 1st Corps commander, dated 7 September 1993, Ex. 270, p. 1. The Trial Chamber has the order of Vahid Karavelić ordering the 2nd Independent Battalion to go to Herzegovina in evidence as Ex. 385. This order is dated 6 September. Ex. 270 shows that the battalion started going to Herzegovina on the same day that the order of Karavelić was issued. The Trial Chamber further notes that Zakir Oković repeatedly testified that he was not certain about the exact dates, *e.g.* Zakir Oković, 15 Mar ’05, T. 18, 21, 40; and that Witness B and Witness C testified that the first soldiers arrived in Grabovica on 7 September at around 08:00 in the morning, Witness B, 02 Feb ’05, T. 9, 16; Witness C, 10 Feb ’05, T. 17, 70. The Trial Chamber further notes that it heard evidence that the 2nd Independent Battalion arrived before the 9th Brigade, *see supra* fn 1332

¹²³⁶ Zakir Oković, 15 Mar ’05, T. 24, 51. Adnan Solaković, the Commander of the Battalion, arrived in Grabovica later on, *ibid*; Mustafa Kadić, 09 Mar ’05, T. 91; Witness E, 07 Mar ’05, T. 60-61.

¹²³⁷ Zakir Oković, 15 Mar ’05, T. 23-24, 26, 51; Witness E, 07 Mar ’05, T. 36-38, 40; Mustafa Kadić, 10 Mar ’05, T. 14, 17.

¹²³⁸ Zakir Oković, 15 Mar ’05, T. 24-26; Ex. 249, photograph of Grabovica, on which Witness E indicated with nr 4 where the command of the 2nd Independent Battalion was billeted, Witness E, 07 Mar ’05, T. 36; *see also*

accommodated in two houses on the right bank of Grabovica.¹²³⁹ The old railway station was inhabited by a Bosnian Croat couple and two Bosnian Muslim refugees.¹²⁴⁰

(b) 9th Brigade

390. The soldiers of the 9th Brigade arrived in Grabovica after the 2nd Independent Battalion.¹²⁴¹ According to Enes Šakrak, a member of the 9th Brigade, they arrived in Grabovica at around noon on 8 September.¹²⁴² The soldiers were billeted in at least four houses,¹²⁴³ all on the right bank.¹²⁴⁴ According to Enes Šakrak, when they arrived in Grabovica, the soldiers were told by Ramiz Delalić that they “should occupy” two empty houses.¹²⁴⁵ Witness D testified that the Zulfikar Detachment distributed mattresses and blankets to the soldiers of the 9th Brigade who did not find mattresses and blankets in the houses where they were supposed to stay.¹²⁴⁶ Enes Šakrak testified that these two houses were too small to accommodate the soldiers.¹²⁴⁷ Nihad Vlahovljak, a Company Commander of the 9th Brigade,¹²⁴⁸ “passed on the message” to Enes Šakrak’s platoon to start looking for alternative accommodation.¹²⁴⁹ Nihad Vlahovljak, Enes Šakrak and other soldiers of the 9th Brigade stayed in the house of Pero and Dragica Marić.¹²⁵⁰ Pero Marić initially did not want to have the soldiers in his house, but eventually he “agreed” to allow them to use two rooms.¹²⁵¹

Ex. 265, photograph of Grabovica, marked by Mustafa Kadić. Nr 2 indicates the house where the command was billeted, Mustafa Kadić, 10 Mar '05, T. 9. According to Mustafa Kadić, Adnan Solaković, Samir Pezo, Haris Svračić, nicknamed “Pilot” and possibly also Zakir Oković and Jasmin Panjeta, nicknamed “Pike”, were billeted in the old railway station, Mustafa Kadić, 10 Mar '05, T. 15.

¹²³⁹ Zakir Oković, 15 Mar '05, T. 24, 26. Zakir Oković marked the location of the old railway station and one of the houses in which soldiers were billeted on Ex. 271, Ex. 274 and Ex. 275, Zakir Oković, 15 Mar '05, T. 24-26 and 16 Mar '05, T. 4-7. According to Zakir Oković, the third house was not visible on Ex. 271, Zakir Oković, 15 Mar '05, T. 26. The first house, where Mustafa Kadić and Witness E and about 30 other soldiers of the 2nd Independent Battalion stayed, was empty when they were billeted there, Zakir Oković, 15 Mar '05, T. 26; Witness E, 07 Mar '05, T. 34; Mustafa Kadić, 10 Mar '05, T. 3, 15. to Mustafa Kadić, the remainder of the 2nd Independent Battalion were accommodated in a second house, which was located uphill from where he was billeted, Mustafa Kadić, 10 Mar '05, T. 3, 18. He marked the house on Ex. 266, photograph of Grabovica, Mustafa Kadić, 10 Feb '05, T. 16-18.

¹²⁴⁰ Zakir Oković, 15 Mar '05, T. 25, 52.

¹²⁴¹ Enes Šakrak, 17 Feb '05, T. 42; Mustafa Kadić, 9 Mar '05, T. 91 and 10 Mar '05, T. 4, 25.

¹²⁴² Enes Šakrak, 17 Feb '05, T. 41.

¹²⁴³ As noted, Enes Šakrak was accommodated in the house of Dragica and Pero Marić and Erdin Arnautović was accommodated in an empty house. Nedžad Mehanović indicated on Ex. 177, photograph of Grabovica, that he and approximately 5 other soldiers stayed in the house of Andrija Dreznjak, Nedžad Mehanović, 16 Feb '05, T. 45-49. Witness D indicated on Ex. 184 a total of 5 houses in which the 9th Motorised Brigade stayed, including the engineering unit, Witness D, 21 Feb '05, T. 16-17.

¹²⁴⁴ Ahmed Salihamidžić, 18 Mar '05, T. 57.

¹²⁴⁵ Enes Šakrak, 17 Feb '05, T. 42-43. Enes Šakrak marked those two houses on Ex. 182, photograph of Grabovica, Enes Šakrak, 17 Feb '05, T. 94-95.

¹²⁴⁶ Witness D, 21 Feb '05, T. 61.

¹²⁴⁷ Enes Šakrak, 17 Feb '05, T. 43.

¹²⁴⁸ Enes Šakrak, 17 Feb '05, T. 36.

¹²⁴⁹ Enes Šakrak, 17 Feb '05, T. 43-44 and 18 Feb '05, T. 24-25.

¹²⁵⁰ Enes Šakrak, 17 Feb '05, T. 45.

¹²⁵¹ Enes Šakrak, 17 Feb '05, T. 45-46 and 18 Feb '05, T. 26.

391. According to Erdin Arnautović, a member of the 9th Brigade, the soldiers were told by members of the Zulfikar Detachment to find accommodation and that everything had been arranged with the villagers.¹²⁵² However, Erdin Arnautović testified that unlike the soldiers of the 2nd Independent Battalion, when the soldiers of the 9th Brigade went to look for accommodation, the Bosnian Croat villagers were opposed to the soldiers staying in their houses.¹²⁵³ Erdin Arnautović found accommodation for himself and a few others in an empty house.¹²⁵⁴ Ramiz Delalić testified that when he came to Grabovica on 9 September, he found most of the soldiers just lying around, having no accommodation.¹²⁵⁵

392. Another six soldiers of the 9th Brigade stayed in a house on the right bank in which two Bosnian Croat women and one Bosnian Croat man lived.¹²⁵⁶ This house was situated close to a house where soldiers of the 2nd Independent Battalion stayed.¹²⁵⁷ Ahmed Kaliman, a member of the reconnaissance unit of the 9th Brigade, testified that about 20 members of the 9th Brigade reconnaissance unit, himself included, stayed in a vacant house on the right bank, located several hundred metres from the main part of the village.¹²⁵⁸ According to Ahmed Kaliman, this house either belonged to Marjan Marić or to Ilka Marić.¹²⁵⁹ Nedžad Mehanović, a member of the 9th Brigade, stated that five soldiers of the 9th Brigade stayed in an old house on the right bank that belonged to Andrija Drežnjak.¹²⁶⁰

¹²⁵² Erdin Arnautović, 14 Feb '05, T. 37 and 15 Feb '05, T. 13. According to Nedžad Mehanović, members of Zulfikar Ališpago's unit directed the soldiers to the houses in the village, Nedžad Mehanović, 15 Feb '05, T. 104-105.

¹²⁵³ Erdin Arnautović, 14 Feb '05, T. 37 and 15 Feb '05, T. 13.

¹²⁵⁴ Erdin Arnautović, 14 Feb '05, T. 39. According to Witness D, Erdin Arnautović, Malčo Rovčanin and Ramiz Delalić and another soldier spent one night in an abandoned house without a roof, Witness D, 21 Feb '05, T. 15-16, 61-62. Witness D testified that the abandoned house was the last empty house in the village and that it was dirty and had no electricity, Witness D, 21 Feb '05, T. 62-63. Witness D marked the house with nr 1 on Ex. 184, photograph of Grabovica; Erdin Arnautović marked the house he said he secured for himself with no. 2 on Ex. 170, photograph of Grabovica, Erdin Arnautović, 14 Feb '05, T. 46.

¹²⁵⁵ Ramiz Delalić, 17 May '05, T. 76. Ramiz Delalić testified that he went to Grabovica, along with Zulfikar Ališpago after he found out about the crimes, Ramiz Delalić, 17 May '05, T. 70-73. Ramiz Delalić testified that he was told about the crimes in the afternoon of 8 September, Ramiz Delalić, 17 May '05, T. 70-71. He further testified that the only information available at the time was that civilians in Grabovica had been killed in the course of the previous night. The Trial Chamber notes that it has been established that the killings in Grabovica did not occur before dusk on 8 September. The Trial Chamber therefore finds that Ramiz Delalić must have been mistaken about the date and in fact went to Grabovica on 9 September.

¹²⁵⁶ Erdin Arnautović, 14 Feb '05, T. 47.

¹²⁵⁷ Erdin Arnautović, 14 Feb '05, T. 47.

¹²⁵⁸ Ahmed Kaliman, 22 Mar '05, T. 101.

¹²⁵⁹ Ahmed Kaliman, 22 Mar '05, T. 97. Ahmed Kaliman testified that he could not clearly remember in which house he stayed, but that it was one of the houses which was marked with nr 2 or 3, or 3a on Ex. 78. Those houses are marked on the photograph as being that of Marjan Marić and Ilka Marić.

¹²⁶⁰ Nedžad Mehanović, 15 Feb '05, T. 105 and 16 Feb '05, T. 38, 45, Nedžad Mehanović marked the location of the house on Ex. 177. On that photograph the house is marked as the house of Andrija Drežnjak.

(c) 10th Brigade

393. There is limited, and contradicting, evidence regarding the presence of members of the 10th Brigade in Grabovica at the time of the crimes. Vehbija Karić, a member of the Inspection Team, testified that Zulfikar Ališpažo found some accommodation for about half of the men of the 10th Brigade who had arrived from Sarajevo somewhere in the area of Donja Jablanica, by the “transformer station”.¹²⁶¹ According to Vehbija Karić, the other half was billeted in Grabovica.¹²⁶² Several of the soldiers who were present in Grabovica in September 1993 testified that the 10th Brigade was not present there.¹²⁶³

394. Ramiz Delalić testified that about 100 to 150 soldiers were billeted in Grabovica, but that soldiers from the surrounding area, including soldiers of the 10th Brigade, would come to Grabovica to socialise with the soldiers there.¹²⁶⁴ Namik Džanković, a member of the Inspection Team, testified that he had heard that the 10th Brigade was in Grabovica¹²⁶⁵ but that Mušan Topalović, the Commander of the 10th Brigade, had not even left Sarajevo.¹²⁶⁶ Furthermore, he could not state with certainty that among the soldiers he saw in Grabovica there were members of the 10th Brigade, because he did not know which soldier belonged to which brigade.¹²⁶⁷

395. The Prosecution has alleged that “a small group of the 10th Mountain Brigade was also billeted in Grabovica that afternoon.”¹²⁶⁸ However, in light of the inconsistencies in the Witness testimony, the Trial Chamber concludes that there is insufficient evidence to find beyond reasonable doubt that the 10th Brigade was billeted in Grabovica on 8 September, or any other time relevant to the Indictment.

¹²⁶¹ Vehbija Karić, Ex. 444, T. 48. Vehbija Karić testified that the approximately 200-210 soldiers in Grabovica were soldiers from the 9th Brigade, half of the 10th Brigade and the 2nd Independent Battalion, Vehbija Karić, Ex. 444, T. 50.

¹²⁶² Vehbija Karić, Ex. 444, T. 48 and 02 Jun '05, T. 7. Vehbija Karić stated during the deposition hearing that the troops from Sarajevo were billeted in Donja Grabovica. However, in his subsequent explanation of the location and the reasons behind the choice of location, he refers to the hydroelectric power plant in Grabovica, the fact that the Igman Wolves were billeted in Grabovica and to the prefabricated huts in which refugees had been housed. The Trial Chamber finds that Vehbija Karić can only have been referring to Grabovica, not to Donja Grabovica, which is located further south.

¹²⁶³ Witness E, 07 Mar '05, T. 2; Enes Šakrak, 17 Feb '05, T. 94. Witness D testified that when his unit arrived in Grabovica, there were soldiers from the 2nd Independent Battalion, the Igman Wolves, the Zulfikar Detachment and the *Handžar* Division. He did not mention the 10th Brigade as being present in Grabovica. Witness D, 21 Feb '05, T. 15. Mustafa Kadić, a member of the 2nd Independent Battalion, testified that on the day the soldiers of the 9th Brigade arrived in Grabovica no other unit arrived there, Mustafa Kadić, 10 Mar '05, T. 20.

¹²⁶⁴ Ramiz Delalić, 18 Mar '05, T. 9.

¹²⁶⁵ Namik Džanković, 21 Mar '05, T. 79.

¹²⁶⁶ Namik Džanković, 22 Mar '05, T. 90.

¹²⁶⁷ Namik Džanković, 21 Mar '05, T. 82 and 22 Mar '05, T. 90.

¹²⁶⁸ Indictment, para. 8.

4. Violence Against and Killing of Villagers

(a) 7 and 8 September

396. According to Witness B, an inhabitant of Grabovica, “[7 September 1993] was a good day. There were no problems”.¹²⁶⁹ Other witnesses testified that the soldiers who arrived on 7 September were noisy and were singing.¹²⁷⁰ Occasional bursts of gun fire could be heard and soldiers were shooting into the river.¹²⁷¹ Witness A, who also lived in Grabovica had the impression that the soldiers were celebrating.¹²⁷² The Trial Chamber heard evidence that the soldiers of the 2nd Independent Battalion did not carry weapons when walking around in Grabovica, “because there were no military activities there.”¹²⁷³ According to Mustafa Kadić and Witness E, both members of the 2nd Independent Battalion, the soldiers of the Battalion were received well by the villagers.¹²⁷⁴ However, as Mustafa Kadić further testified, the villagers were hardly visible, as they seldom left their houses.¹²⁷⁵ According to Witness E, the soldiers made an effort to be on friendly terms with the villagers, consistent with the effort to establish a multi-ethnic, tolerant Bosnia-Herzegovina.¹²⁷⁶

397. As more soldiers started arriving on 8 September, the atmosphere changed and acts of violence started to occur.¹²⁷⁷ Two witnesses testified that the atmosphere changed after the arrival of soldiers of the 9th Brigade.¹²⁷⁸ Enes Šakrak, a member of the 9th Brigade, described the atmosphere among the soldiers of the 9th Brigade as “euphoric.”¹²⁷⁹ According to him, the Brigade members were glad to be out of Sarajevo.¹²⁸⁰ Witness C, who lived on the left bank in Grabovica,

¹²⁶⁹ Witness B, 02 Feb '05, T. 14. According to Mustafa Kadić, there was no indication that anything bad was going to happen, Mustafa Kadić, 10 Mar '05, T. 19-20.

¹²⁷⁰ Witness C, 10 Feb '05, T. 17; Witness A, 01 Feb '05, T. 17.

¹²⁷¹ Witness C, 10 Feb '05, T. 17; Witness A, 01 Feb '05, T. 17.

¹²⁷² Witness A, 01 Feb '05, T. 51-52.

¹²⁷³ Witness E, 07 Mar '05, T. 7, 28-29; Mustafa Kadić, 10 Mar '05, T. 25, 31. They kept the weapons and ammunition in the house, Mustafa Kadić, 10 Mar '05, T. 31.

¹²⁷⁴ Mustafa Kadić, 10 Mar '05, T. 16-18; Witness E, 07 Mar '05, T. 35.

¹²⁷⁵ Mustafa Kadić, 10 Mar '05, T. 16-18.

¹²⁷⁶ Witness E, 07 Mar '05, T. 35.

¹²⁷⁷ Witness C, 10 Feb '05, T. 44.

¹²⁷⁸ Witness B testified that soon after a group of soldiers arrived on 8 September, shooting started and did not stop for the whole day. The soldiers were entering the houses, mistreating people and stealing the livestock, Witness B, 02 Feb '05, T. 16-18; Witness E testified that the atmosphere began to change in the afternoon, after the arrival of Ramiz Delalić's unit. Witness E, 07 Mar '05, T. 2-3. However, when he heard the shooting and shouting, he thought the soldiers were just having a good time, and that it was “silly behaviour”, Witness E, 07 Mar '05, T. 3, 29; *see also* Mustafa Kadić, 9 Mar '05, T. 91 and 10 Mar '05, T. 19. The Trial Chamber notes that according to Mustafa Kadić, a member of the 2nd Independent Battalion, the atmosphere changed after Ramiz Delalić himself had addressed the soldiers of the 9th Brigade in the morning after the brigade arrived in Grabovica, Mustafa Kadić, 09 Mar '05, T. 92, 94 and 10 Mar '05, T. 25. Witness C, who lived on the left bank in Grabovica, testified that when the soldiers arrived on 8 September 1993 shooting and celebrations could be heard from the right bank of the river, Witness C, 10 Feb '05, T. 46.

¹²⁷⁹ Enes Šakrak, 18 Feb '05, T. 27.

¹²⁸⁰ Enes Šakrak, 18 Feb '05, T. 27-28.

testified that when the soldiers arrived on 8 September 1993 shooting and celebrations could be heard from the right bank of the river.¹²⁸¹

398. A number of Bosnian Muslim refugees who had arrived in Grabovica in early September were staying with Witness C and her husband on the left bank.¹²⁸² At around 16:00 on 8 September, Marinko Marić came from the right bank to Witness C's house and asked if she and her husband could send some of the Bosnian Muslim refugees staying in their home over to his house.¹²⁸³ Marinko Marić said "some soldiers have arrived. They are making our lives miserable. They are shooting, singing, shouting, yelling. I don't know how we are going to survive all this."¹²⁸⁴ He also asked to be protected by the soldiers who were billeted on the left bank.¹²⁸⁵ Witness C spoke with a soldier named Beco, who told her that he could do nothing with regard to the soldiers on the right bank.¹²⁸⁶ In the evening, a few soldiers that Witness C had never seen before arrived at Witness C's house to eat dinner. Witness C did not like the way the soldiers addressed her. She saw other soldiers around the house as well. Witness C further noticed that the Bosnian Muslim refugees in the house were uncomfortable with the presence of the soldiers in and around the house.¹²⁸⁷

399. In the late afternoon of 8 September, the first killing occurred, when Pero Marić was shot dead.¹²⁸⁸ The circumstances of Pero Marić's death will be discussed below.¹²⁸⁹

400. Mustafa Kadić, a member of the 2nd Independent Battalion, was told by Zdenko Jelisić, also a member of that Battalion, that at around 21:00 on 8 September, some soldiers of the 2nd Independent Battalion were sitting in a meadow,¹²⁹⁰ when a few soldiers of the 9th Brigade came by and told them that they would be hearing some shooting. The members of the 2nd Independent Battalion were told that they should not pay attention to that,¹²⁹¹ "because they had nothing to do with them."¹²⁹² According to Mustafa Kadić, sporadic shooting was not unusual in Grabovica at that time.¹²⁹³

¹²⁸¹ Witness C, 10 Feb '05, T. 46.

¹²⁸² Witness C, 10 Feb '05, T. 51-52.

¹²⁸³ Witness C, 10 Feb '05, T. 54.

¹²⁸⁴ Witness C, 10 Feb '05, T. 16.

¹²⁸⁵ Witness C, 10 Feb '05, T. 16.

¹²⁸⁶ Witness C, 10 Feb '05, T. 16. For further information on Marinko Marić, *see* Section IV.D.7.(d)

¹²⁸⁷ Witness C, 10 Feb '05, T. 52-53.

¹²⁸⁸ Enes Šakrak, 17 Feb '05, T. 47-48.

¹²⁸⁹ *See infra* Section IV.D.7.(a)

¹²⁹⁰ Mustafa Kadić, 10 Mar '05, T. 5, 24.

¹²⁹¹ Mustafa Kadić, 10 Mar '05, T. 5.

¹²⁹² Mustafa Kadić, 10 Mar '05, T. 5.

¹²⁹³ Mustafa Kadić, 10 Mar '05, T. 24.

401. Witness E, a member of the 2nd Independent Battalion,¹²⁹⁴ testified as to the occurrence of a possible rape in the evening of 8 September.¹²⁹⁵ The Trial Chamber further heard hearsay evidence on rapes of Bosnian Muslim women during the period relevant to the Indictment.¹²⁹⁶ When Witness E told other 2nd Independent Battalion soldiers that he had seen a possible rape, the other soldiers said that they had seen local inhabitants taken from their homes.¹²⁹⁷ Witness E believed that the inhabitants were taken away from their homes by 9th Brigade soldiers.¹²⁹⁸ Witness E further believed that the members of the 9th Brigade were under the influence of drugs and alcohol.¹²⁹⁹

402. Throughout the night of 8 September, Katica Miletić, who lived in Grabovica, heard singing as well as occasional gunfire coming from the right bank.¹³⁰⁰ Witness C also described this night:

And then when I went to bed, it was about 10:00. I actually just went to lie down, but I wasn't sleeping. Then I could hear women wailing and crying, and I could hear a woman saying, "Oh, my God. What's the matter with you people? I never did anything wrong to anybody." And that whole night I didn't sleep. I didn't turn the lights on. You're just quiet sitting on the floor and awaiting your fate.¹³⁰¹

Ahmed Kaliman, a member of the 9th Brigade, also testified that he heard sporadic gunfire throughout the night, but did not think this was out of the ordinary, as the soldiers often shot at

¹²⁹⁴ The Trial Chamber notes that Witness E on several occasions during his testimony was inconsistent. Witness E is the only Witness testifying as to a specific rape. As the case against the Accused does not concern any allegations of rape, the Trial Chamber will not make a finding on this particular part of the testimony of Witness E.

¹²⁹⁵ In the evening, at around 21:00, Witness E went to pick tomatoes and peppers with another soldier of his Battalion. They were stopped by a soldier of the 9th Brigade who asked them what they were doing. Witness E noticed that inside the house next to where they were stopped there were soldiers and some distraught women. One woman, about 40 years of age, was crying, the sleeve of her sweater was torn and next to her was a soldier with his trousers down. The 9th Brigade soldier asked the two soldiers of the 2nd Independent Battalion to "join them." Witness E thought that the soldier asked them to join in a rape and possible killing and refused to do so. When Witness E and the other member of the 2nd Independent Battalion left, the 9th Brigade soldier told them that they "hadn't seen anything", Witness E, 07 Mar '05, T. 3-4,4-5, 30, 43.

¹²⁹⁶ Šefko Hodžić, 23 Mar '05, T. 83, Šefko Hodžić spoke with a member of the Igman Wolves on 11 September. That person told him that the persons committing the crimes in Grabovica also attacked four or five Bosnian Muslim women and tried to rape them; Ahmed Salihamidžić testified that Zulfikar Ališpago told him that a "refugee girl" had been raped, Ahmed Salihamidžić, 18 Mar '05, T. 19. In the Official Note that Ahmed Salihamidžić compiled, he reported that he was told of the rape on 10 September of a refugee woman, Ex. 222, official Note by Ahmed Salihamidžić. *See also* Ex. 221, Report to Jusuf Jašarević, date illegible, pp. 2-3, in which it is stated that "a woman was raped and the rape of another woman was attempted on the left bank of the Neretva in the village where the refugees from Čapljina are accommodated."; Ex. 215, report by Namik Džanković, dated 13 September 1993, p. 2; Namik Džanković included the information that he received from the Jablanica SJB as to an alleged rape and an attempted rape in his report of 13 September. He learned that this woman would be interviewed and that a written statement would be taken, Namik Džanković, 22 Mar '05, T. 16-17 and Ex. 215, Report of Namik Džanković, dated 13 September, p. 1.

¹²⁹⁷ Witness E, 07 Mar '05, T. 7.

¹²⁹⁸ Witness E, 07 Mar '05, T. 8.

¹²⁹⁹ Witness E, 07 Mar '05, T. 2, 8. Šefko Hodžić testified that a member of the Igman Wolves told him that the soldiers had been under the influence of drugs and alcohol when they committed the crimes, Šefko Hodžić, 23 Mar '05, T. 83. Enes Šakrak however testified that neither he, nor Kagarić or Rajkić had taken drugs or alcohol at the time they killed the members of the Zadro family, Enes Šakrak, 18 Feb '05, T. 35. For a description on this crime, *see* Section IV.D.7.(f).

¹³⁰⁰ Katica Miletić, 09 Feb '05, T. 12-13. Witness E heard screaming and shooting throughout the night as well, Witness E, 07 Mar '05, T. 8, 55.

targets.¹³⁰² Erdin Arnautović and Witness D, both members of the 9th Brigade, testified that in the night of 8 September they did not hear any screaming or shooting.¹³⁰³ According to Witness D, it was a very peaceful night and that he went quietly to bed, after visiting some people.¹³⁰⁴

403. Zakir Oković, a member of the 2nd Independent Battalion, testified that he returned to Grabovica from a meeting in Konjic late at night on 8 September.¹³⁰⁵ A soldier of the 2nd Independent Battalion standing guard at the old railway station told him that there had been no problems, and that there had only been some shooting.¹³⁰⁶

(b) 9 September

404. Erdin Arnautović testified that on the morning of 9 September, “there were no signs that there were any killings or that anything happened.”¹³⁰⁷ There was no talk about killings amongst the soldiers either.¹³⁰⁸ The Trial Chamber recalls its earlier finding that the testimony of Erdin Arnautović and Witness D requires corroboration by other reliable evidence.¹³⁰⁹

405. Ahmed Salihamidžić, the Deputy Chief of the Jablanica SJB, was told by one of the guards at the hydroelectric power plant that at around 05:00 on 9 September, an elderly Bosnian Croat couple had come to the plant, telling the guard that two elderly Bosnian Croats had been taken from their houses on the left bank.¹³¹⁰ They suggested that “the command be informed of that fact.”¹³¹¹

¹³⁰¹ Witness C, 10 Feb '05, T. 53.

¹³⁰² Ahmed Kaliman, Ex. 285, para. 12. Witness E heard shooting and screams from the village in the night of 8 September, Witness E, 7 Mar '05, T. 55.

¹³⁰³ Witness D, 21 Feb '05, T. 64; Erdin Arnautović, 15 Feb '05, T. 33. Nedžad Mehanović testified that he had gone to Jablanica with Haris Salihović and spent the nights of 8 and 9 September at the Hotel Jablanica, Nedžad Mehanović, 15 Feb '05, T. 106-107 and 16 Feb '05, T. 61, 93. In his statement to the Cantonal Court in Sarajevo on 12 January 1999, Nedžad Mehanović had stated that he spent the night of 8 September as well as the following night in Grabovica, Nedžad Mehanović, 16 Feb '05, T. 67. During his testimony before the Tribunal, he denied having stated this, Nedžad Mehanović, 16 Feb '05, T. 67.

¹³⁰⁴ Witness D, 21 Feb '05, T. 19, 64. Witness D said that, after cleaning the house in which he was billeted, he went across the street. At that house, there were an elderly man, four Bosnian Muslim refugees and a few soldiers of the 9th Brigade. The group “were sitting at a table having coffee and having a laugh”. According to Witness D, the soldiers of the 9th Brigade at that house got a sheep to eat from the elderly man. After this meal Witness D returned to his house to continue cleaning, Witness D, 21 Feb '05, T. 18.

¹³⁰⁵ Zakir Oković, 15 Mar '05, T. 63. *See also* Section IV.C.6.(h).(ii) on this meeting in Konjic.

¹³⁰⁶ Zakir Oković, 15 Mar '05, T. 66. Zakir Oković then went to bed, Zakir Oković, 15 Mar '05, T. 66-67. The Trial Chamber recalls its earlier finding that Zakir Oković throughout his testimony was uncertain of the exact dates and may have been mistaken on that issue. For this reason, the Trial Chamber will not rely on his testimony insofar as it concerns the date of the events he described without corroboration through other sources.

¹³⁰⁷ Erdin Arnautović, 15 Feb '05, T. 43.

¹³⁰⁸ Erdin Arnautović, 15 Feb '05, T. 43.

¹³⁰⁹ *See supra* Section II, para. 17.

¹³¹⁰ Ahmed Salihamidžić, 18 Mar '05, T. 15-16. Ahmed Salihamidžić was told of this later, when he interviewed the guard.

¹³¹¹ Ahmed Salihamidžić, 18 Mar '05, T. 16.

406. On the morning of 9 September, occasional shooting continued in the village.¹³¹² Enes Šakrak, a member of the 9th Brigade, testified that he went outside at around 09:00 or 09:30 together with Sead Karagić¹³¹³ and Haris Rajkić.¹³¹⁴ Nihad Vlahovljak, a Company Commander of the 9th Brigade, was in front of the house in which they were billeted and conveyed the message that an order had been issued that all villagers were to be killed.¹³¹⁵ Enes Šakrak believed that the order came from someone higher up in the chain of command, but “not necessarily from someone at the forward command post.”¹³¹⁶ Enes Šakrak, Sead Karagić and Haris Rajkić collected their weapons and left the house.¹³¹⁷ On their way, Enes Šakrak and the others ran into two other soldiers at the railroad.¹³¹⁸ Enes Šakrak could not say from which unit these soldiers were, because they did not wear any distinguishing insignia.¹³¹⁹ The two soldiers told them that “everything was clear down there,” which Enes Šakrak understood to mean that all the villagers had been killed in that area of Grabovica.¹³²⁰ Enes Šakrak, Sead Karagić and Haris Rajkić continued on their way and came across bodies of killed, mostly elderly people near the railway station.¹³²¹ They continued walking along the railroad, took a path to their left that led uphill and ended up at the house of the Zadro family.¹³²² They killed five members of that family. The killing of this family will be discussed below.¹³²³ At around 13:00 and near the house of Pero Marić, they saw Habib Alić, a 9th Brigade soldier, who said that he had raped and killed a woman.¹³²⁴ Enes Šakrak had heard a shot coming from the direction of the location where Habib Alić was standing, but cannot be sure that Habib Alić was telling the truth,¹³²⁵ nor does he know the name of the person whom he allegedly killed.¹³²⁶

¹³¹² Enes Šakrak, 17 Feb '05, T. 53-54; Katica Miletić, 9 Feb '05, T. 14. At around 09:00, one bullet passed over the house of Katica Miletić, Katica Miletić, 09 Feb '05, T. 15.

¹³¹³ Enes Šakrak is not completely certain about the first name of Karagić. He stated that the name is either Sead or Sejo Karagić, Enes Šakrak, 17 Feb '05, T. 93. For the purposes of this judgement, the Trial Chamber will use the name Sead. The Trial Chamber notes that Enes Šakrak was speaking about one person only and that the Trial Chamber has not been furnished with evidence that another member of the 9th Brigade had an identical or similar name.

¹³¹⁴ Enes Šakrak, 17 Feb '05, T. 54.

¹³¹⁵ Enes Šakrak, 17 Feb '05, T. 54. According to Enes Šakrak, this is not the kind of order that Nihad Vlahovljak would have given on his own accord, Enes Šakrak, 17 Feb '05, T. 54 and 18 Feb 05, T. 82.

¹³¹⁶ Enes Šakrak, 18 Feb '05, T. 83.

¹³¹⁷ Enes Šakrak, 17 Feb '05, T. 55.

¹³¹⁸ Enes Šakrak, 17 Feb '05, T. 55.

¹³¹⁹ Enes Šakrak, 17 Feb '05, T. 55.

¹³²⁰ Enes Šakrak, 17 Feb '05, T. 55-56. Enes Šakrak does not know for certain that these soldiers actually took part in any killing in the village, Enes Šakrak, 18 Feb '05, T. 42.

¹³²¹ Enes Šakrak, 17 Feb '05, T. 57. The Trial Chamber, based on the evidence presented, in particular Ex. 89, on which the house of the Zadro family is marked with nr. 1 and the railway station is marked with nr. 3, finds that Enes Šakrak and the two other soldiers were walking along the new railroad in Grabovica.

¹³²² Enes Šakrak, 17 Feb '05, T. 58-59.

¹³²³ See *infra* Section IV.D.7.(f).

¹³²⁴ Enes Šakrak, 17 Feb '05, T. 67 and 18 Feb '05, T. 36. Enes Šakrak marked the location of the house where they saw Habib Alić on Ex. 179, photograph of Grabovica, Enes Šakrak, 17 Feb '05, T. 76.

¹³²⁵ Enes Šakrak, 18 Feb '05, T. 36.

¹³²⁶ Enes Šakrak, 18 Feb '05, T. 36.

407. Early in the morning of 9 September, a Bosnian Muslim guard, who guarded a bridge in Grabovica, arrived at the house of Witness C, asking whether she and her husband were still alive.¹³²⁷ He told them to stay in their house and said that Franjo Ravlić and Ivan Šarić had been taken from their houses during night.¹³²⁸ At around 09:00, a soldier arrived at the house and had some coffee with Witness C and the refugee women in the house.¹³²⁹ After he left, the refugee women seemed afraid.¹³³⁰ At 11:00, another soldier visited Witness C.¹³³¹ Witness C testified that he said “I have to kill you, why are you a Croat? Go and put on pantaloons if you want me to save you.”¹³³² He said he had to kill her because she was “Ustasha and Croat.”¹³³³ One Muslim woman told the soldier not to be silly.¹³³⁴ The soldier left and did not return.¹³³⁵ Witness C put on pantaloons.¹³³⁶ A Bosnian Muslim girl told Witness C that Bosnian Croat villagers had been killed on the other bank.¹³³⁷ The girl said that she would go on foot to Jablanica, inform the police and to try to save Witness C and her husband.¹³³⁸ Witness C saw many soldiers around her house, bringing livestock from the houses of “people they had first expelled from their homes.”¹³³⁹

408. Šaban Nezirić worked as a guard at the hydroelectric plant in Grabovica in the night of 8 September.¹³⁴⁰ He heard shooting coming from the right bank of Grabovica.¹³⁴¹ When the shooting continued, Zulfikar Ališpago was called by the Commander of the Igman Wolves.¹³⁴² Approximately ten minutes after that telephone call, Šaban Nezirić saw Zulfikar Ališpago’s car appear on the right bank of Grabovica.¹³⁴³ According to Šaban Nezirić, while Zulfikar Ališpago’s car was there, the shooting stopped; however, shortly after the car left the shooting started again.¹³⁴⁴

¹³²⁷ Witness C, 10 Feb '05, T. 18, 55.

¹³²⁸ Witness C, 10 Feb '05, T. 18, 55; Ex. 215, Report by Namik Džanković, dated 13 September 1993, p. 2. The Trial Chamber notes that Franjo Ravlić and Edib Šarić lived on the left bank of Grabovica, Witness C, 10 Feb '05, T. 18, 55; Ex. 82, photograph of left bank in Grabovica. For a description of the circumstances of the disappearance of Franjo Ravlić and Edib Šarić, *see infra* Section IV.D.7.(d).

¹³²⁹ Witness C, 10 Feb '05, T. 19.

¹³³⁰ Witness C, 10 Feb '05, T. 19.

¹³³¹ Witness C, 10 Feb '05, T. 20. Witness C testified that this soldier was a member of the ‘Tigers’, Witness C, 10 Feb '05, T. 75.

¹³³² Witness C, 10 Feb '05, T. 20. The soldier did not tell her who had given the order to kill her, Witness C, 10 Feb '05, T. 76.

¹³³³ Witness C, 10 Feb '05, T. 75.

¹³³⁴ Witness C, 10 Feb '05, T. 76.

¹³³⁵ Witness C, 10 Feb '05, T. 20.

¹³³⁶ Witness C, 10 Feb '05, T. 20.

¹³³⁷ Witness C, 10 Feb '05, T. 19.

¹³³⁸ Witness C, 10 Feb '05, T. 19.

¹³³⁹ Witness C, 10 Feb '05, T. 22. Witness C said that this livestock was brought by soldiers who had arrived 20 days before, *ibid.*

¹³⁴⁰ Šaban Nezirić did not remember the exact date, but stated that he worked with Alija Turkić the night he heard shots, Šaban Nezirić, Ex. 267, p. 2. Ahmed Salihamidžić testified that Alija Turkić worked at the power plant in Grabovica during the night of 8 September, Ahmed Salihamidžić, 18 Mar '05, T. 15.

¹³⁴¹ Šaban Nezirić, Ex. 267, p. 2.

¹³⁴² Šaban Nezirić, 10 Mar '05, T. 38 and Ex. 267, p. 2.

¹³⁴³ Šaban Nezirić, 10 Mar '05, T. 37-38, 47.

¹³⁴⁴ Šaban Nezirić, 10 Mar '05, T. 38. The Trial Chamber notes that Zakir Oković testified that he went on reconnaissance missions with Zulfikar Ališpago twice during the relevant period. Both times, Zakir Oković was

On 9 September, Šaban Nezirić went into Grabovica, to visit an acquaintance of his, named Andrija, who lived on the left bank.¹³⁴⁵ When he got to Andrija's house, he was told by a Bosnian Muslim woman that Andrija and other Bosnian Croat villagers had been taken away by the police for their own safety.¹³⁴⁶ The Bosnian Muslim woman also told Šaban Nezirić that villagers had been killed. Šaban Nezirić saw the body of a dead man in Grabovica on the left bank, not far from the dam.¹³⁴⁷ He recognised the dead man as the brother of Andrija.¹³⁴⁸ He could not see a clear cause of death.¹³⁴⁹

409. Šaban Nezirić went into Grabovica on a number of occasions after 9 September. A few days after 9 September, Šaban Nezirić saw the body of Andrija's brother again, this time burned and with a hole in the skull.¹³⁵⁰ Another time, he saw a human knee protruding from the ground, close to the house of Andrija's sister.¹³⁵¹ On another occasion, when he went to the right bank, together with Osman Kovačević, who also worked as a guard at the hydroelectric plant, they found a human hand coming out of the ground just above the new railway station.¹³⁵² Finally, on yet another occasion, Šaban Nezirić entered the toilets of the new railway station, where he found three human skulls.¹³⁵³

410. At about 09:30 in the morning of 9 September, Witness E, a member of the 2nd Independent Battalion, went for a walk in the village, to see what had happened.¹³⁵⁴ He had spoken with soldiers from his unit, and all of them were very uncomfortable with the killings having taken place.¹³⁵⁵ They could not believe it and wanted to return to Sarajevo immediately.¹³⁵⁶ Witness E made his way towards the iron bridge.¹³⁵⁷ During this walk, he came across the dead bodies of seven people and he saw a piece of skull lying on the road.¹³⁵⁸ He saw an elderly man and an elderly woman lying dead in the river, near the river bank.¹³⁵⁹ A little further ahead, he saw the dead bodies of two men lying in the bushes along the road.¹³⁶⁰ Next to the road, in what he described as "like a canyon," Witness E saw two dead bodies, but was unable to determine whether they were men or

collected from the old railway station in Grabovica by Zulfikar Ališpago early in the morning, Zakir Oković, 15 Mar '05, T. 31, 40, 67-68.

¹³⁴⁵ Šaban Nezirić, 10 Mar '05, T. 48 and Ex. 267, p. 2.

¹³⁴⁶ Šaban Nezirić, 10 Mar '05, T. 48.

¹³⁴⁷ Šaban Nezirić, 10 Mar '05, T. 48.

¹³⁴⁸ Šaban Nezirić, 10 Mar '05, T. 49.

¹³⁴⁹ Šaban Nezirić, 10 Mar '05, T. 49-50.

¹³⁵⁰ Šaban Nezirić, 10 Mar '05, T. 38-39, 50-51.

¹³⁵¹ Šaban Nezirić, Ex. 267, p. 3.

¹³⁵² Šaban Nezirić, Ex. 267, p. 4.

¹³⁵³ Šaban Nezirić, Ex. 267, p. 4.

¹³⁵⁴ Witness E, 07 Mar '05, T. 9, 55.

¹³⁵⁵ Witness E, 07 Mar '05, T. 9.

¹³⁵⁶ Witness E, 07 Mar '05, T. 9, 13, 51.

¹³⁵⁷ Witness E, 07 Mar '05, T. 10.

¹³⁵⁸ Witness E, 07 Mar '05, T. 10-11. Witness E marked the location of all the bodies he saw on Ex. 247, photograph of Grabovica, Witness E, 07 Mar '05, T. 22-23.

¹³⁵⁹ Witness E, 07 Mar '05, T. 10.

¹³⁶⁰ Witness E, 07 Mar '05, T. 10.

women.¹³⁶¹ The woman in her forties he had seen crying the night before, lay dead on the road.¹³⁶² When he returned to the house where he was billeted, at around 10:00, he did not see any Bosnian Muslim refugees, nor hear screaming from the village.¹³⁶³ Back at the house, Witness E learned that the other soldiers had also seen these bodies.¹³⁶⁴

411. At some point on 9 September,¹³⁶⁵ Ahmed Kaliman, a member of the 9th Brigade, and another soldier from the 9th Brigade tried to go to Jablanica, but were stopped at a checkpoint and told to go back to Grabovica.¹³⁶⁶ On his way back, Ahmed Kaliman saw the bodies of approximately five men, lying face down; two or three bodies were floating in the river and one or two bodies lay on the river-bank.¹³⁶⁷ In the house where he was billeted, he heard soldiers saying who had killed people and why; however, he did not recognise the voices of the soldiers who were talking.¹³⁶⁸

412. In the morning of 9 September, Katica Miletić went to see some family members.¹³⁶⁹ When she arrived back home, sometime after 10:00, her brother and sister-in-law were preparing to leave Grabovica.¹³⁷⁰ They had been told by Bosnian Muslim refugees that if they wanted to survive, it would be best if they left.¹³⁷¹ Before they left for Jablanica, a group of armed ABiH soldiers came by the house and told them to leave.¹³⁷² The soldiers were from Sarajevo and they started searching the house, taking whatever they wanted.¹³⁷³ Katica Miletić, her brother and her sister-in-law walked along the main road on the left bank towards the north.¹³⁷⁴ They passed Ilka Miletić's house and Ljubica Mandić's house. At Ilka Miletić's house there was a small orange truck, called a "Tamic".¹³⁷⁵ This truck had Sarajevo license plates and it had been used by the ABiH in the previous months.¹³⁷⁶ There were soldiers and Bosnian Muslim refugees; the soldiers were filming

¹³⁶¹ Witness E, 07 Mar '05, T. 11.

¹³⁶² Witness E, 07 Mar '05, T. 11-12. *See supra* para. 401

¹³⁶³ Witness E, 07 Mar '05, T. 55.

¹³⁶⁴ Witness E, 07 Mar '05, T. 12, 56.

¹³⁶⁵ Ahmed Kaliman, Ex. 285, pp. 3-4. The Trial Chamber notes that in light of the evidence on the location of the bodies and the evidence that on 9 September, bodies of dead villagers were removed from Grabovica, the events Ahmed Kaliman is describing in this part of his statement, must have happened on 9 September.

¹³⁶⁶ Ahmed Kaliman, Ex. 285, p. 3. The other soldier was Suad Čeranić, *ibid*.

¹³⁶⁷ Ahmed Kaliman, 22 Mar '05, T. 102. Ahmed Kaliman marked the location of the bodies on Ex. 287, photograph of Grabovica, Ahmed Kaliman, 22 Mar '05, T. 98-100.

¹³⁶⁸ Ahmed Kaliman, Ex. 285, para. 15.

¹³⁶⁹ Katica Miletić, 09 Feb '05, T. 14-15.

¹³⁷⁰ Katica Miletić, 09 Feb '05, T. 15.

¹³⁷¹ Katica Miletić, 09 Feb '05, T. 15.

¹³⁷² Katica Miletić, 09 Feb '05, T. 10, 12, 15-16; According to Katica Miletić, all soldiers in the village had a rifle over their shoulder; "they wouldn't be a soldier without a weapon," Katica Miletić, 09 Feb '05, T. 12.

¹³⁷³ Katica Miletić, 09 Feb '05, T. 16. Katica Miletić gave them 500 German Marks, Katica Miletić, 09 Feb '05, T. 17.

¹³⁷⁴ Katica Miletić, 09 Feb '05, T. 22-23.

¹³⁷⁵ Katica Miletić, 09 Feb '05, T. 18, 48.

¹³⁷⁶ Katica Miletić, 09 Feb '05, T. 18, 48.

something on the right-hand side of the truck.¹³⁷⁷ Katica Miletić did not dare knock on Ljubica Mandić's door.¹³⁷⁸ A refugee woman told her that they had "all" gone.¹³⁷⁹ On their way to Jablanica, Katica Miletić and her family came across the bodies of Ivan Mandić and Ilka Miletić.¹³⁸⁰

413. Two Bosnian Muslim refugee women went to the Jablanica police station, where they talked to the duty officer.¹³⁸¹ They told him that there had been shots fired throughout the night of 8 September and that villagers were said to have been killed.¹³⁸² At around 15:00 on 9 September, Ahmed Salihamidžić, the Deputy Chief of the Jablanica SJB, and Sead Kurt, the Military Police Commander of the 44th Brigade, went to Grabovica after having heard what the two Bosnian Muslim women had told the duty officer.¹³⁸³ They went to Grabovica in an official police vehicle.¹³⁸⁴ While in Grabovica, Ahmed Salihamidžić heard several shots being fired in the village, on the right bank, in the direction of the railway tracks.¹³⁸⁵

414. At the command of the 2nd Independent Battalion, Ahmed Salihamidžić and Sead Kurt met with the Commander, Adnan Solaković, who told them that in the previous twenty-four hours at least five Bosnian Croat villagers had been killed.¹³⁸⁶ Adnan Solaković warned Sead Kurt and Ahmed Salihamidžić not to go to the other checkpoint 100 metres downriver, which was manned by members of the 9th Brigade, "because he would not be able to guarantee that [they] would come back alive."¹³⁸⁷ Adnan Solaković also told them that they should evacuate two villagers named Ivan and Stoja Pranjić.¹³⁸⁸ Adnan Solaković further said that "they shouldn't try anything with Čelo's unit; otherwise, these people would not stay alive".¹³⁸⁹ According to Adnan Solaković, the killings could only have been stopped by "a fight between his own unit and the unit of Ramiz Delalić".¹³⁹⁰ As they were leaving, a soldier who stood guard at the command of the 2nd Independent Battalion

¹³⁷⁷ Katica Miletić, 09 Feb '05, T. 17-18, 41.

¹³⁷⁸ Katica Miletić, 09 Feb '05, T. 17, 42.

¹³⁷⁹ Katica Miletić, 09 Feb '05, T. 43.

¹³⁸⁰ See *infra* Section IV.D.7.(h).

¹³⁸¹ Emin Zebić, 16 Mar '05, T. 70 and 17 Mar '05, T. 87; Witness C, 10 Feb '05, T. 58.

¹³⁸² Emin Zebić, 16 Mar '05, T. 71; Ahmed Salihamidžić, 17 Mar '05, T. 96; Ex. 222, Official Note by Ahmed Salihamidžić on the events in Grabovica on 8, 9 and 10 September.

¹³⁸³ Ahmed Salihamidžić, 17 Mar '05, T. 97 and 18 Mar '05, T. 3, 36.

¹³⁸⁴ Ahmed Salihamidžić, 18 Mar '05, T. 36. Ahmed Salihamidžić testified that when they arrived at the old railway station, they were stopped at an improvised checkpoint. He and Sead Kurt showed their identification and were allowed to continue, Ahmed Salihamidžić, 18 Mar '05, T. 4. Namik Džanković also mentioned this information in his report of 13 September, saying that the units from Sarajevo had set up an improvised checkpoint at the entrance of the village, where they exercised control over people entering and leaving the village. He further mentioned that Ahmed Salihamidžić and Sead Kurt were asked to show their credentials, upon which they were allowed into Grabovica, Ex. 215, Report by Namik Džanković, dated 13 September, p. 1.

¹³⁸⁵ Ahmed Salihamidžić, 18 Mar '05, T. 9.

¹³⁸⁶ Ahmed Salihamidžić, 18 Mar '05, T. 5.

¹³⁸⁷ Ahmed Salihamidžić, 18 Mar '05, T. 7.

¹³⁸⁸ Ahmed Salihamidžić, 18 Mar '05, T. 7; Ex. 215, Report by Namik Džanković, dated 13 September, p. 1.

¹³⁸⁹ Ahmed Salihamidžić, 18 Mar '05, T. 7.

¹³⁹⁰ Ahmed Salihamidžić, 18 Mar '05, T. 7.

told Ahmed Salihamidžić that he feared for his life because he was not a Bosnian Muslim.¹³⁹¹ Ahmed Salihamidžić went back to Adnan Solaković and suggested that the soldier be moved to prevent anything from happening to him.¹³⁹²

415. On their way back to Jablanica, Ahmed Salihamidžić and Sead Kurt went to look for the body of Marinko Marić, which was said to be lying near the river.¹³⁹³ They went down to the riverbank, but did not find any bodies.¹³⁹⁴ They did not find any traces of blood on the bridge near to where they were searching.¹³⁹⁵ Upon returning to the car, Ahmed Salihamidžić saw another car passing in the direction of Jablanica.¹³⁹⁶ Sead Kurt told him that Ramiz Delalić had just passed.¹³⁹⁷ According to Ahmed Salihamidžić, Ramiz Delalić had stopped next to Sead Kurt and said “[j]ust look at what they’re doing to our people.”¹³⁹⁸ Ahmed Salihamidžić believes that Ramiz Delalić was probably referring to the Bosnian Muslim refugees from the Dretelj camp who had been accommodated on the left bank in Grabovica.¹³⁹⁹ They returned to the police station about an hour to an hour and a half after they had left for Grabovica.¹⁴⁰⁰

416. According to Ramiz Delalić, he and Zulfikar Ališpago went to Grabovica some time between 14:30 and 16:00 on 9 September.¹⁴⁰¹ As soon as they crossed a bridge in Grabovica, they saw a bloody trail along the street on the right bank, about 150 meters from the village.¹⁴⁰² They followed the trail down to the water and found one or two bodies close to the water.¹⁴⁰³ They asked a guard who stood at the entrance of the village if he knew anything about these bodies, but the guard stated that he did not.¹⁴⁰⁴ As Zulfikar Ališpago and Ramiz Delalić walked amongst the soldiers in the village, none of the soldiers were willing to say anything more than that there had been some shooting the previous night.¹⁴⁰⁵ Ramiz Delalić further testified that “people” spoke about the crimes and said that the killings had been committed during the night of 8 September.¹⁴⁰⁶

¹³⁹¹ Ahmed Salihamidžić, 18 Mar '05, T. 10.

¹³⁹² Ahmed Salihamidžić, 18 Mar '05, T. 10.

¹³⁹³ Ahmed Salihamidžić, 18 Mar '05, T. 9-10.

¹³⁹⁴ Ahmed Salihamidžić, 18 Mar '05, T. 10, 34-35; Ex. 279, photograph marked by Ahmed Salihamidžić.

¹³⁹⁵ Ahmed Salihamidžić, 18 Mar '05, T. 38.

¹³⁹⁶ Ahmed Salihamidžić, 18 Mar '05, T. 11, 35, 40.

¹³⁹⁷ Ahmed Salihamidžić, 18 Mar '05, T. 11.

¹³⁹⁸ Ahmed Salihamidžić, 18 Mar '05, T. 11. Ramiz Delalić testified that he did not see a police car in Grabovica on that day, Ramiz Delalić, 19 May '05, T. 74.

¹³⁹⁹ Ahmed Salihamidžić, 18 Mar '05, T. 11.

¹⁴⁰⁰ Ahmed Salihamidžić, 18 Mar '05, T. 11.

¹⁴⁰¹ Ramiz Delalić, 17 May '05, T. 73.

¹⁴⁰² Ramiz Delalić, 17 May '05, T. 74; 19 May '05, T. 77.

¹⁴⁰³ Ramiz Delalić, 17 May '05, T. 74; 19 May '05, T. 77. Ramiz Delalić could not be sure of the number of bodies, because bushes obstructed his view, Ramiz Delalić, 19 May '05, T. 77. They did not see any other bodies while in Grabovica, Ramiz Delalić, 19 May '05, T. 78.

¹⁴⁰⁴ Ramiz Delalić, 17 May '05, T. 74 and 19 May '05, T. 77.

¹⁴⁰⁵ Ramiz Delalić, 17 May '05, T. 74, 76 and 18 May '05, T. 13.

¹⁴⁰⁶ Ramiz Delalić, 18 May '05, T. 11.

417. Witnesses from the 2nd Independent Battalion testified that at some point during their stay in Grabovica the atmosphere became threatening. The soldiers were ordered to stand guard in front of each house where members of the 2nd Independent Battalion were billeted, not to mix with the rest of the soldiers and to have “a bullet ready”¹⁴⁰⁷ in their guns in case they needed to fight with the other soldiers.¹⁴⁰⁸ The soldiers of the 2nd Independent Battalion who were not Bosnian Muslims were given nicknames for their own safety.¹⁴⁰⁹

418. On 9 September, Ahmed Salihamidžić informed Emin Zebić, Chief of the Jablanica SJB, of the situation in Grabovica, who then spoke to the War Presidency in Jablanica. Ahmed Salihamidžić contacted to Zulfikar Ališpago, in order to secure the evacuation of the civilians in Grabovica.¹⁴¹⁰ According to Emin Zebić, Zulfikar Ališpago assisted in the evacuation of the villagers, which was organised by the Jablanica War Presidency and other civilian organisations in Jablanica.¹⁴¹¹ Stoja and Ivan Pranjić, the elderly couple who were at the house in which the command of the 2nd Independent Battalion was billeted, were eventually taken out of Grabovica by their son-in-law later on 9 September.¹⁴¹² Enes Šakrak believes that by the night of 9 September there were no more Bosnian Croat villagers left in Grabovica.¹⁴¹³

419. Witness C, her husband and other villagers were evacuated to Jablanica by members of the SJB and members of the ABiH.¹⁴¹⁴ Witness C saw two soldiers of the ABiH, who helped with the evacuation of the bedridden.¹⁴¹⁵ According to Witness C, there was neither fuel, nor cars in Grabovica.¹⁴¹⁶ A truck in which the villagers were transported had been used daily throughout the summer to transport soldiers.¹⁴¹⁷ Witness C could not clearly state the time of the evacuation,

¹⁴⁰⁷ Witness E, 07 Mar '05, T. 13

¹⁴⁰⁸ Witness E, 07 Mar '05, T. 13, 57; Mustafa Kadić, 10 Mar '05, T. T. 4, 24, 30. Mustafa Kadić testified that because of rising tensions, all non-Muslim soldiers were ordered to come to stay at the command of the 2nd Independent Battalion, Mustafa Kadić, 10 Mar '05, T. 24. Zakir Oković testified that this happened some time on 10 September, Zakir Oković, 15 Mar '05, T. 33, 72-73. However, by that time, most of the soldiers had already moved out towards Drežnica, Zakir Oković, 15 Mar '05, T. 73.

¹⁴⁰⁹ Mustafa Kadić, 10 Mar '05, T. 24, 29; Witness E, 07 Mar '05, T. 13.

¹⁴¹⁰ Emin Zebić, 17 Mar '05, T. 35-36, 42.

¹⁴¹¹ Emin Zebić, 17 Mar '05, T. 36.

¹⁴¹² Emin Zebić, 17 Mar '05, T. 36. The Trial Chamber notes that Namik Džanković wrote in his report of 29 September 1993 that Ivan and Stoja Pranjić were evacuated by members of the 2nd Independent Battalion, Ex. 235, report by Namik Džanković, dated 29 September, p. 1.

¹⁴¹³ Enes Šakrak, 17 Feb '05, T. 71. He testified that he did not see anyone, but that this did not mean that there were no living Bosnian Croats left, *ibid.* Erdin Arnautović testified that when he was in Grabovica on 11 September, there were no more villagers left in Grabovica; “it was as if everyone had vanished”, Erdin Arnautović, 14 Feb '05, T. 67.

¹⁴¹⁴ Witness C, 10 Feb '05, T. 21, 55; Šaban Nezirić, 10 Mar '05, T. 48; *see also* Ex. 222, Official Note, p. 2.

¹⁴¹⁵ Witness C, 10 Feb '05, T. 55. These two soldiers were Serb soldiers in the ABiH. Witness C did not know them personally, but knew that they were Serbs who had joined the ABiH. She saw them assisting in the evacuation of the villagers, *ibid.* The bedridden were carried on blankets, Witness C, 10 Feb '05, T. 23

¹⁴¹⁶ Witness C, 10 Feb '05, T. 23. *See also* Namik Džanković, 22 Mar '05, T. 49 and Emin Zebić, 17 Mar '05, T. 66-67.

¹⁴¹⁷ Witness C, 10 Feb '05, T. 57-58, 73. The truck had a big cat depicted on its side, Witness C, 10 Feb '05, T. 58.

testifying first that the truck arrived around 17:00,¹⁴¹⁸ but in cross-examination, that she may have left for Jablanica at around 15:30.¹⁴¹⁹ The truck broke down regularly during the evacuation and some of the villagers were asked to push it.¹⁴²⁰ During one of the times that the truck broke down, Witness C saw the body of Ilka Miletić lying on the road.¹⁴²¹

420. In Jablanica, the villagers from Grabovica were brought to a camp.¹⁴²² In that camp, Witness C saw other villagers who had left Grabovica on the same day.¹⁴²³ According to Witness C, approximately 16 Grabovica villagers were in the camp on 9 September and this figure increased over the course of two to three days to a total of approximately 21 villagers.¹⁴²⁴ Katica Miletić testified that she, her brother and her sister-in-law walked to Donja Jablanica, where they were picked up by people in a car. They were then brought to a camp in Jablanica.¹⁴²⁵

421. Erdin Arnautović testified that he went back and forth between Grabovica and Jablanica two or three times on 9 September in order to get food for the soldiers of the 9th Brigade.¹⁴²⁶ Nedžad Mehanović testified that he also went to Jablanica on 9 September without authorisation, after Sefer Halilović and Vehbija Karić had visited Grabovica.¹⁴²⁷ Erdin Arnautović and Nedžad Mehanović both testified that they were not in Grabovica at the time the killings took place.¹⁴²⁸ Nedžad

¹⁴¹⁸ Witness C, 10 Feb '05, T. 22.

¹⁴¹⁹ Witness C, 10 Feb '05, T. 58.

¹⁴²⁰ Witness C, 10 Feb '05, T. 23, 63.

¹⁴²¹ Witness C, 10 Feb '05, T. 23. The circumstances of Ilka Miletić's death will be discussed below in Section IV.D.7(h).

¹⁴²² Witness C, 10 Feb '05, T. 66. In his Official Note, Ahmed Salihamidžić wrote that the civilians were brought to the museum in Jablanica, *see* Ex. 222, Official Note, p. 2.

¹⁴²³ Witness C, 10 Feb '05, T. 66. Witness C recalled seeing Ruza Pranjić, Stojan Pranjić, Mira Pranjić and her husband, and Matija Miletić, *ibid*. She further testified that there were a few men in the cellars of the camp "They were treated as soldiers, but they weren't. They were civilians", Witness C, 10 Feb '05, T. 65.

¹⁴²⁴ Witness C, 10 Feb '05, T. 66. The total amount of people in the camp eventually was about 300, which included people from other villages, who had arrived later on, *ibid*. Ex. 221, Report to Jusuf Jašarević, date illegible, p. 2 states that in total 14 adult villagers and two children were evacuated and accommodated in Jablanica; *see also* Ex. 226, report from Nermin Eminović, dated 17 September, reporting that 14 adult villagers and two children were evacuated and accommodated in Jablanica.

¹⁴²⁵ Katica Miletić, 09 Feb '05, T. 19. Katica Miletić was unable to say if the people were soldiers of police. She testified that they "had multi-coloured clothes," Katica Miletić, 09 Feb '05, T. 47. Witness C testified that Katica Miletić had received a lift somewhere on the way to Jablanica, Witness C, 10 Feb '05, T. 65. Ahmed Salihamidžić and Sead Kurt dropped off three people they had picked up on their way back from Grabovica. However, they dropped them off at the house of a relative of theirs in Jablanica, and not in the camp, Ahmed Salihamidžić, 18 Mar '05, T. 41-42.

¹⁴²⁶ Erdin Arnautović, 14 Feb '05, T. 54. He saw people around on the road towards Jablanica, but could not tell if these Bosnian Croats, Bosnian Muslim or former camp detainees, Erdin Arnautović, 15 Feb '05, T. 47.

¹⁴²⁷ Nedžad Mehanović, 16 Feb '05, T. 16, 77. This alleged visit to Grabovica by Sefer Halilović and Vehbija Karić will be discussed in Section IV.D.9.(b)

¹⁴²⁸ Erdin Arnautović, 15 Feb '05, T. 86. Nedžad Mehanović testified that he spent the night of 8 September and the night of 9 September in Jablanica, Nedžad Mehanović, 15 Feb '05, T. 107 and 16 Feb '05, T. 16, 93.

Mehanović testified that he only learned of the killings when he returned from Jablanica on 10 September.¹⁴²⁹

422. Witness D testified that he was told that all villagers had been killed¹⁴³⁰ in the morning following the murder of Pero Marić, therefore on 9 September.¹⁴³¹ As Witness D went outside, he saw corpses and blood next to the road between his house and the command post of the 2nd Independent Battalion at around 09:30.¹⁴³² The killings had been going on all night, but nobody paid attention to this.¹⁴³³ Witness D testified “all those commanders who had been there had done nothing to prevent that crime from happening.”¹⁴³⁴ Witness D believes he personally saw five or six bodies along the road on that day, although he did not actually count the bodies.¹⁴³⁵ He testified that all soldiers were aware of the murders; they were listening to what was going on and all commented on this upon their return to Sarajevo.¹⁴³⁶ On the morning of 9 September, Witness D did not hear shooting, or villagers crying out of fear, nor did he see any Bosnian Croats fleeing Grabovica.¹⁴³⁷ Witness D testified that the last killing occurred sometime in the afternoon of the day after most of the killings had occurred, just before Zulfikar Ališpago arrived in Grabovica, who then set up checkpoints.¹⁴³⁸ However, later during his testimony, Witness D testified that the last killing had occurred by the time he went out of bed, at around 09:30.¹⁴³⁹ According to Enes Šakrak, the shooting in the village stopped in the early afternoon, sometime around noon on 9 September.¹⁴⁴⁰

423. During their stay in Grabovica, the 2nd Independent Battalion had tried to set up communications in the command post at the old railway station.¹⁴⁴¹ When the people at the

¹⁴²⁹ Nedžad Mehanović, 16 Feb '05, T. 96. Upon his return on 10 September, Nedžad Mehanović did not see any bodies in Grabovica, although he did see some blood in a puddle in the road which “you could hardly notice,” Nedžad Mehanović, 16 Feb '05, T. 17, 40.

¹⁴³⁰ Witness D, 21 Feb '05, T. 102-103 and 22 Feb '05, T. 15.

¹⁴³¹ The Trial Chamber notes that Witness D was not certain about dates and testified that Pero Marić was killed on 9 September 1993, and that he saw the bodies on 10 September, Witness D, 21 Feb '05, T. 28, 76, 94, 102. The evidence presented to the Trial Chamber establishes that Pero Marić was killed on 8 September, *see infra* Section IV.5.(a).

¹⁴³² Witness D, 21 Feb '05, T. 30, 94-95 and 22 Feb '05, T. 15, 38. Witness D marked the location of the bodies on Ex. 186, photograph of Grabovica, Witness D, 21 Feb '05, T. 94-95.

¹⁴³³ Witness D, 21 Feb '05, T. 30.

¹⁴³⁴ Witness D, 21 Feb '05, T. 30.

¹⁴³⁵ Witness D, 21 Feb '05, T. 32, 95 and 22 Feb '05, T. 16, 38. At an earlier interview, Witness D stated he only saw one body., Witness D, 21 Feb '05, T. 96-97 and 22 Feb '05, T. 16-17, 33, 52.

¹⁴³⁶ Witness D, 22 Feb '05, T. 101. Witness D testified that some of them even took pride in having seen what happened, because they themselves were looking for revenge for what had happened to their families, Witness D, 22 Feb '05, T. 102. Witness D further testified that two soldiers confessed to the killing of four people. One of those soldiers was Mustafa Hota, Witness D, 21 Feb '05, T. 30.

¹⁴³⁷ Witness D, 22 Feb '05, T. 46-47.

¹⁴³⁸ Witness D, 21 Feb '05, T. 30-31 and 22 Feb '05, T. 48. Witness D's testimony is unclear on the time of arrival of Zulfikar Ališpago. Initially, he testified that Zulfikar Ališpago arrived at 15:00, while later during his testimony, he testified that Zulfikar Ališpago arrived at around noon, Witness D, 21 Feb '05, T. 31 and 22 Feb '05, T. 48.

¹⁴³⁹ Witness D, 22 Feb '05, T. 47.

¹⁴⁴⁰ Enes Šakrak, 18 Feb '05, T. 38.

¹⁴⁴¹ Zakir Oković, 15 Mar '05, T. 70-71, 89-90.

command heard what had happened “down there,” Adnan Solaković and Zakir Oković sent a coded message to Vahid Karavelić, the 1st Corps Commander, requesting to be sent back to Sarajevo.¹⁴⁴² The message reads in its relevant parts:¹⁴⁴³

[...] We carried out reconnaissance for 3 days but it seems that the deal with the Chief is off. [...] Strange things are happening. I'm afraid for my soldiers who are of a different religion. Panic appeared in the unit. People are simply disappearing overnight. Send us back into town anyway you can. If it is necessary go to the Head. [...] The Chief put us under the command of Zuka. I am afraid that a conflict between us might occur, which is most probable. [...] I do not want to take part in these dirty games and it is not as you were told/as stated/. [...]

According to Zakir Oković, the word “Chief” refers to Sefer Halilović.¹⁴⁴⁴ The sentence “strange things are happening” concerns the murders that had happened.¹⁴⁴⁵ Zakir Oković testified that the men were afraid that the people who had already killed the villagers might start to kill the soldiers of a different religion.¹⁴⁴⁶ The words “dirty games” were used as a metaphor to avoid saying what really happened; they meant to say that they did not want to participate in events “where such things were going on.”¹⁴⁴⁷ According to Zakir Oković, the 2nd Independent Battalion never received a reply from Vahid Karavelić.¹⁴⁴⁸ Vahid Karavelić, when confronted with this message, testified that the content of the document is similar to a conversation he had with Adnan Solaković by radio.¹⁴⁴⁹ Vahid Karavelić testified that he believes he eventually contacted Rasim Delić or Sefer Halilović, perhaps a couple of days after Adnan Solaković requested to be sent back to Sarajevo.¹⁴⁵⁰ He further testified that he only heard of the killings after the troops had returned to Sarajevo.¹⁴⁵¹

¹⁴⁴² Zakir Oković, 15 Mar '05, T. 35, 42; Ex. 272, coded message addressed to Commander of the 1st Corps. According to Zakir Oković, the message was sent by the afternoon of 10 September, Zakir Oković, 15 Mar '05, T. 39-40, 91. Before this message was sent, Zakir Oković had learned of the killings. Upon his return to the old railway station, he found Adnan Solaković, Samir Pezo, Mušan Topalović and some of his men at the command. On that night, Zakir Oković was told about the killings by “some of the men who were in the house on the other side”, Zakir Oković, 15 Mar '05, T. 40-41. The Trial Chamber notes that Ahmed Salihamidžić testified that on 9 September, he spoke with Adnan Solaković about the killings in Grabovica, Ahmed Salihamidžić, 18 Mar '05, T. 5. The Trial Chamber further notes that Zakir Oković was not certain about exact dates. The Trial Chamber further notes that on the message, the following text is handwritten “11.9.93. 1700 hours FR3878 Conveyed to “Holivud” /Hollywood/” The Trial Chamber finds that this evidence is insufficiently clear to establish a date on which the message was actually sent to Vahid Karavelić. *See also* Section IV.C, para. 304.

¹⁴⁴³ Ex. 272, coded message addressed to Commander of the 1st Corps.

¹⁴⁴⁴ Zakir Oković, 15 Mar '05, T. 36.

¹⁴⁴⁵ Zakir Oković, 15 Mar '05, T. 36. By that time, the command had already heard about the 5 to 6 bodies being found, *ibid*.

¹⁴⁴⁶ Zakir Oković, 15 Mar '05, T. 37.

¹⁴⁴⁷ Zakir Oković, 15 Mar '05, T. 37.

¹⁴⁴⁸ Zakir Oković, 15 Mar '05, T. 37, 77.

¹⁴⁴⁹ Vahid Karavelić, 20 Apr '05, T. 69-73. Vahid Karavelić testified that he spoke with Adnan Solaković via a Motorola, Vahid Karavelić, 20 Apr '05, T. 69-70.

¹⁴⁵⁰ Vahid Karavelić, 20 Apr '05, T. 75. *See* Ex. 388, request from Vahid Karavelić to Sefer Halilović, dated 12 September 1993, requesting that the troops be sent back to Sarajevo, and if not all troops could be sent back, that at least the members of the 2nd Independent Battalion be sent back to Sarajevo. Vahid Karavelić testified that he only heard about the events in Grabovica much later following the return of the units from the Neretva river valley, Vahid Karavelić, 20 Apr '05, T. 91-92. The Trial Chamber notes that Ramiz Delalić, referring to Ex. 388, testified that on 12 September the 1st Corps commander and the Supreme Command already knew

424. At around 18.30 on 10 September, Ahmed Salihamidžić spoke to Zulfikar Ališpago and Edib Sarić, Commander of the Igman Wolves, at the Jablanica police station.¹⁴⁵² They told him that they had surveyed the area in Grabovica and had established that six bodies had been found on the right bank and that two bodies had been found on the left bank.¹⁴⁵³ Among those killed, there was one child.¹⁴⁵⁴ Zulfikar Alispago also provided Ahmed Salihamidžić with the number of people he had evacuated from Grabovica.¹⁴⁵⁵ Ahmed Salihamidžić did not recall whether Edib Sarić and Zulfikar Ališpago actually saw these bodies.¹⁴⁵⁶

(c) Alleged Killing of a Bosnian Croat ABiH Soldier

425. The Trial Chamber heard evidence about the alleged killing of a Bosnian Croat member of the Zulfikar Detachment. The evidence as to when this soldier was allegedly killed is unclear. Ramiz Delalić also testified about a killed Bosnian Croat soldier of the Zulfikar Detachment, named Ivica Cavlović.¹⁴⁵⁷ According to Ramiz Delalić, the soldier had protested against the crimes. Ramiz Delalić heard Zulfikar Ališpago ordering, in front of Sefer Halilović, to have the soldier removed.¹⁴⁵⁸ According to Ramiz Delalić, the soldier was sent on a reconnaissance mission together with two other soldiers, who killed him during the mission.¹⁴⁵⁹ The Trial Chamber notes that the evidence regarding this order, and the presence of Sefer Halilović while this order was made, is not corroborated by other, reliable evidence.

426. Namik Džanković testified that on 10 September,¹⁴⁶⁰ while he was in Zulfikar Ališpago's apartment, he was told by Zulfikar Ališpago that one of his soldiers, a Bosnian Croat, was missing and that he, Zulfikar Ališpago, assumed that the soldier was dead.¹⁴⁶¹ Ahmed Salihamidžić was informed on 10 September that a member of the Zulfikar Detachment had been killed by members

about the crimes and that the 1st Corps commander ordered that the units should return to Sarajevo in order to question the men, but that the order was not carried out, Ramiz Delalić, 18 May '05, T. 15-16. The Trial Chamber notes that the evidence shows that Rasim Delić was informed about the crimes on 12 September, *see infra* Section IV.F, para. 680. However, the Trial Chamber has not been presented with evidence which clearly establishes when Vahid Karavelić was informed about the events in Grabovica.

¹⁴⁵¹ Vahid Karavelić, 20 Apr '05, T. 91-92.

¹⁴⁵² Ahmed Salihamidžić, 18 Mar '05, T. 16-17.

¹⁴⁵³ Ahmed Salihamidžić, 18 Mar '05, T. 16-17.

¹⁴⁵⁴ Ahmed Salihamidžić, 18 Mar '05, T. 16.

¹⁴⁵⁵ Ahmed Salihamidžić, 18 Mar '05, T. 16-17; Emin Zebić, 17 Mar '05, T. 56.

¹⁴⁵⁶ Ahmed Salihamidžić, 18 Mar '05, T. 17.

¹⁴⁵⁷ Ramiz Delalić, 19 May '05, T. 85.

¹⁴⁵⁸ Ramiz Delalić, 19 May '05, T. 85.

¹⁴⁵⁹ Ramiz Delalić, 19 May '05, T. 85.

¹⁴⁶⁰ Namik Džanković testified that he went to Zulfikar Ališpago's flat either the night of the killings or the following night, Namik Džanković, 21 Mar '05, T. 22. In light of the evidence presented as to the visit of several people to the apartment of Zulfikar Ališpago, the Trial chamber finds that Namik Džanković went there on 10 September.

¹⁴⁶¹ Namik Džanković, 21 Mar '05, T. 23 and 22 Mar '05, T. 13.

of the 9th Brigade.¹⁴⁶² On 13 September, Namik Džanković sent a report to Jusuf Jašarević, the Chief of the Main Staff UB,¹⁴⁶³ in which he reported the killing in Grabovica of a member of the Zulfikar Detachment named Ivica.¹⁴⁶⁴ Zakir Oković was told of a non-Bosnian-Muslim soldier of the Zulfikar Detachment, who had been killed in Grabovica.¹⁴⁶⁵

5. Additional ABiH Checkpoints

427. The Trial Chamber heard evidence of additional checkpoints being set up in Grabovica on 9 or 10 September.¹⁴⁶⁶ These checkpoints were manned by members of the Zulfikar Detachment.¹⁴⁶⁷ According to Ramiz Delalić, a checkpoint was set up right after the killings, based on an order from Sefer Halilović and Zulfikar Ališpago.¹⁴⁶⁸ According to Erdin Arnautović and Ramiz Delalić, the checkpoints were set up in order to prevent the international press from going to Grabovica.¹⁴⁶⁹ Erdin Arnautović testified that entry into Grabovica was restricted to soldiers preparing for combat,¹⁴⁷⁰ while Witness D testified that the soldiers in Grabovica needed permission from Zulfikar Ališpago to leave the village.¹⁴⁷¹ The Trial Chamber has heard evidence that the Bosnian Muslim refugees who lived in Grabovica were allowed to leave Grabovica in the days following the

¹⁴⁶² Ex. 222, Official note of Ahmed Salihamidžić, compiled on 11 September, p. 3. The information available to Ahmed Salihamidžić was that the members of the 9th Brigade asked Ivica for his identity papers and found out that Ivica was a Bosnian Croat. The members of the 9th Brigade then slit Ivica's throat and threw his body into the Neretva River, *ibid.* See also Ahmed Salihamidžić, 18 Mar '05, T. 16-17; Emin Zebić, 17 Mar '05, T. 56.

¹⁴⁶³ Namik Džanković, 21 Mar '05, T. 36; Ex. 215, report by Namik Džanković to Jusuf Jašarević.

¹⁴⁶⁴ Ex. 215, report by Namik Džanković to Jusuf Jašarević, p. 2. This report further contained the information that Namik Džanković had gathered in the course of his investigation into the events in Grabovica.

¹⁴⁶⁵ Zakir Oković, 15 Mar '05, T. 33, 69, 75.

¹⁴⁶⁶ Erdin Arnautović testified that on 10 September, he and Ramiz Delalić brought two boys, who had survived the killing of the Zadro family to the base of the Zulfikar Detachment. When he returned to Grabovica, Erdin Arnautović found that an additional checkpoint had been set up near the bridge on the road from Grabovica to Jablanica, Erdin Arnautović, 14 Feb '05, T. 60, 62-63; Ramiz Delalić also testified that Zulfikar Ališpago set up a checkpoint right after the killings, Ramiz Delalić, 18 May '05, T. 2-3; Witness D testified that Zulfikar Ališpago arrived in the afternoon of 10 September and set up a checkpoint in front of the houses, one at the entry of Grabovica and one checkpoint at the exit of Grabovica, Witness D, 21 Feb '05, T. 31 and 22 Feb '05, T. 48, 50. Witness D marked the location of the checkpoints on Ex. 191, photograph of Grabovica, Witness D, 22 Feb '05, T. 55-56. Nedžad Mehanović did not see a checkpoint on the day after the killings, Nedžad Mehanović, 16 Feb '05, T. 48. The Trial Chamber recalls that Nedžad Mehanović returned to Grabovica in the afternoon of 10 September, after the two boys of the Zadro family had already been found.

¹⁴⁶⁷ Erdin Arnautović, 14 Feb '05, T. 63; Witness D, 21 Feb '05, T. 31 and 22 Feb '05, T. 105. According to Witness D, each checkpoint was manned by two of Zulfikar Ališpago's men, *ibid.*

¹⁴⁶⁸ Ramiz Delalić, 18 May '05, T. 2. Ramiz Delalić testified that "immediately after the crime in Grabovica, an order was issued. Mr Halilović and Zulfikar Ališpago issued the order to set up a checkpoint somewhere at the bridge, because those who managed to flee the massacre had already reached Jablanica and the information was already out about the crime."

¹⁴⁶⁹ Erdin Arnautović, 14 Feb '05, T. 64 and 15 Feb '05, T. 70. According to Erdin Arnautović, the purpose of the checkpoints was to close off all access to Grabovica, to prevent anyone from going in or out because some international press team protected by the UNPROFOR attempted to reach Grabovica. According to Ramiz Delalić, the reason for the checkpoint was that the villagers who had escaped had reached Jablanica and that the news had become known to the international journalists. The soldiers at the checkpoint were to prevent journalists, police and UNPROFOR from entering Grabovica, Ramiz Delalić, 18 May '05, T. 2, 7-8.

¹⁴⁷⁰ Erdin Arnautović, 14 Feb '05, T. 64.

¹⁴⁷¹ Witness D, 21 Feb '05, T. 31 and 22 Feb '05, T. 48.

killings and were also allowed to visit Bosnian Croat villagers of Grabovica who were staying in a camp in Jablanica.¹⁴⁷²

428. Namik Džanković testified that on 9 September, he was prevented from going to Grabovica by soldiers at a checkpoint in Donja Jablanica.¹⁴⁷³ He was told that the area was a combat zone.¹⁴⁷⁴ When he was refused entry into Grabovica, Namik Džanković was driving a civilian car and did not have his identification as an SVB officer with him.¹⁴⁷⁵ Namik Džanković managed to go to Grabovica a few days later, after he told the soldiers at the checkpoint that he was going to visit Samir Pezo, the Deputy Commander of the 2nd Independent Battalion.¹⁴⁷⁶ Erdin Arnautović testified that this checkpoint remained in place until at least 12 September.¹⁴⁷⁷

6. Departure of Troops from Grabovica

429. The 2nd Independent Battalion went towards Drežnica about two days after the events.¹⁴⁷⁸ On the way to Drežnica, Mustafa Kadić and other soldiers saw the body of a woman who Mustafa Kadić believed to be the owner of the house in which he was billeted.¹⁴⁷⁹ Mustafa Kadić saw “pieces of her head” lying on the road.¹⁴⁸⁰ He could not discern whether she had any other injuries.¹⁴⁸¹ A little further on, the soldiers saw the body of a man in civilian clothes, lying by the water, some 15 meters from the road.¹⁴⁸² Mustafa Kadić was told by Miroslav Masal, a member of the 2nd Independent Battalion that he saw the body of a man, wearing civilian clothes, lying across the road near the old railway station.¹⁴⁸³

430. The 9th Brigade also went into battle on 10 September.¹⁴⁸⁴ According to Ahmed Kaliman, the soldiers were lined-up by Ramiz Delalić, who asked for volunteers for combat.¹⁴⁸⁵ Ahmed

¹⁴⁷² See, e.g., Witness C, 10 Feb '05, T. 26, 28, 35.

¹⁴⁷³ Namik Džanković, 22 Mar '05, T. 47-48. Namik Džanković testified that this checkpoint was located just outside Donja Jablanica.

¹⁴⁷⁴ Namik Džanković, 21 Mar '05, T. 30-31.

¹⁴⁷⁵ Namik Džanković, 22 Mar '05, T. 47-48.

¹⁴⁷⁶ Namik Džanković, 21 Mar '05, T. 33.

¹⁴⁷⁷ Erdin Arnautović, 14 Feb '05, T. 67.

¹⁴⁷⁸ Witness E, 07 Mar '05, T. 14, 17. See *supra* para. 305.

¹⁴⁷⁹ Mustafa Kadić, 10 Mar '05, T. 6.

¹⁴⁸⁰ Mustafa Kadić, 10 Mar '05, T. 6.

¹⁴⁸¹ Mustafa Kadić, 10 Mar '05, T. 6.

¹⁴⁸² Mustafa Kadić, 10 Mar '05, T. 6-7. Mustafa Kadić marked the location of the two bodies on Ex. 265, photograph of Grabovica, Mustafa Kadić, 10 Mar '05, T. 9-10.

¹⁴⁸³ Mustafa Kadić, 10 Mar '05, T. 7-8.

¹⁴⁸⁴ Ahmed Kaliman, Ex. 285, para. 16. According to Ahmed Kaliman, the soldiers were lined-up on the second day of their stay in Grabovica, *ibid.* According to Nedžad Mehanović, the 9th Brigade went into battle at around 23:00 on 10 September, Nedžad Mehanović, 16 Feb '05, T. 18. Erdin Arnautović testified that the “fighting men” left Grabovica on the night of 10 September, Erdin Arnautović, 14 Feb '05, T. 66. According to Ramiz Delalić, the offensive started a few days after the events in Grabovica, Ramiz Delalić, 18 May '05, T. 21. Ramiz Delalić does not specify a date as to when the 9th Brigade went into battle. He further testified that the offensive lasted until the 21st or 22nd of September, upon which the troops returned to Sarajevo, Ramiz Delalić, 18 May

Kaliman “felt depressed” because he had seen the bodies of villagers and stayed behind with a few other members of the reconnaissance unit.¹⁴⁸⁶ They stayed in Grabovica until the soldiers who went into battle returned.¹⁴⁸⁷ The soldiers of the 9th Brigade, who went into battle, went on foot towards Vrđi village.¹⁴⁸⁸

7. Victims Listed in the Indictment

431. The Prosecution, in its Indictment, alleges the murder of thirty-three persons in Grabovica. On 20 June 2005, the Prosecution, in a proofing chart, which was filed confidentially, stated that “on the basis of the evidence introduced at trial, it would appear that the murder of certain alleged victims has not been established.”¹⁴⁸⁹ In its Final Brief, the Prosecution conceded that they “did not prove that the following persons as listed in paragraph 21 of the Indictment were murdered; namely Cvitan Lovrić, Jela Lovrić, Marko Marić, Matija Marić, Ruža Marić (1935) and Jozo Ištuk.”¹⁴⁹⁰ The Trial Chamber notes that the Indictment has not been amended in respect of these six alleged victims. However, as the Accused was informed during the presentation of the Defence case that the Prosecution did not consider the alleged murders of the above mentioned six victims to be sufficiently proven, the Trial Chamber can only understand the position of the Prosecution to indicate that the Accused has no case to answer as to the alleged murders of Cvitan Lovrić, Jela Lovrić,¹⁴⁹¹ Marko Marić, Matija Marić,¹⁴⁹² Ruža Marić, born in 1935,¹⁴⁹³ and Jozo Ištuk.¹⁴⁹⁴

¹⁴⁸⁵ '05, T. 21. According to Enes Šakrak, a member of the 9th Brigade, most of the troops who had been accommodated in Grabovica, left for combat in the morning of 10 September, Enes Šakrak, 18 Feb '05, T. 42.

¹⁴⁸⁶ Ahmed Kaliman, Ex. 285, para. 16.

¹⁴⁸⁷ Ahmed Kaliman, Ex. 285, para. 16. Erdin Arnautović testified that he went to Grabovica on 11 September, because there were some soldiers there that might have needed logistical support, Erdin Arnautović, 14 Feb '05, T. 66.

¹⁴⁸⁸ Ahmed Kaliman, Ex. 285, para. 17. Ahmed Kaliman thinks that the other soldiers returned from battle on the same night, *ibid.*

¹⁴⁸⁹ Nedžad Mehanović, 16 Feb '05, T. 18. The Trial Chamber notes that Nedžad Mehanović testified that the village was called “Vrđa.” However, in light of the evidence on combat operations in the area of Vrđi and the fact that the village of Vrđi is in the immediate vicinity of Grabovica (*see* Ex. 131, map), the Trial Chamber finds that the Witness must have been referring to Vrđi village. Nedžad Mehanović testified that he did not return to Grabovica, but continued to the Medved Mount, from where the soldiers returned to Sarajevo, Nedžad Mehanović, 16 Feb '05, T. 19. Ahmed Kaliman testified that the soldiers of the 9th Brigade all returned together to Sarajevo. He did not testify as to whether the soldiers who had gone into battle actually returned to Grabovica, Ahmed Kaliman, 22 Mar '05, T. 106. For the evidence as to when the troops returned to Sarajevo, *see supra* Section IV.C.7.

¹⁴⁹⁰ Prosecution’s submission of Proofing Chart, filed confidentially on 17 June 2005, p. 32.

¹⁴⁹¹ Prosecution Final Brief, para. 236.

¹⁴⁹² The Trial Chamber heard the following evidence as to the murder of Cvitan Lovrić and Jela Lovrić. In September 1993, Cvitan and Jela Lovrić lived in Copi, a village about 4 kilometres from Grabovica, Witness B, 02 Feb '05, T. 76; Witness C, 10 Feb '05, T. 30-31. Witness C saw the couple about twelve days before the events in Grabovica, Witness C, 10 Feb '05, T. 31. Witness B last saw the couple in May 1993, Witness B, 02 Feb '05, T. 39, 77. Witness C was told in the camp in Jablanica that Cvitan and Jela Lovrić were killed and that when soldiers left the house it was burned, Witness C, 10 Feb '05, T. 31. However, Witness C heard that they were killed later in 1993, possibly around 15 September 1993, Witness C, 10 Feb '05, T. 31, 37. The Trial Chamber notes that Witness C is unclear on the exact time of death of Cvitan and Jela Lovrić. However, she is

432. The Trial Chamber notes that of the 27 other victims from Grabovica, listed in the Indictment, five lived on the left bank of the Neretva River, and twenty-two lived on the right bank. The Trial Chamber further notes that the evidence establishes that the soldiers present in Grabovica at the time relevant to the Indictment were all soldiers of the ABiH.¹⁴⁹⁵ The Trial Chamber finds that all alleged victims were Bosnian Croats.¹⁴⁹⁶

433. The Trial Chamber further notes that the Defence in its Final Brief submits that “the Prosecution has [...] failed to exclude the reasonable possibility that some of the refugees, in particular those who had been mistreated by HVO forces, kept in camps and starved, might have taken revenge against the local Croats and that some of them might have partaken in the killing of local civilians.”¹⁴⁹⁷ The Trial Chamber notes that the Prosecution is not obliged to exclude all reasonable possibilities, but rather to prove the alleged events beyond reasonable doubt. If the Trial Chamber finds that the Prosecution proven the allegations beyond reasonable doubt, the Trial Chamber necessarily also finds that the Defence submission as to any other suggested reasonable possibility is excluded.

434. The Trial Chamber notes that, contrary to the Defence submission, it heard evidence that the refugees in Grabovica were not armed.¹⁴⁹⁸ The Trial Chamber also heard evidence that the relations between the Bosnian Muslim refugees and the villagers was very good,¹⁴⁹⁹ that the refugees

clear in her testimony that the pair was killed after the events in Grabovica on 8 and 9 September. Cvitan and Jela Lovrić were not seen again, Witness C, 10 Feb '05, T. 31; Witness B, 02 Feb '05, T. 77.

¹⁴⁹² The Trial Chamber heard the following evidence as to the alleged murders of Marko Marić and Matija Marić. Marko and Matija Marić lived in Kremenac, about one kilometre south of Grabovica, Witness B, 02 Feb '05, T. 45, 74. Marko Marić was an old man, in bad health. He was last seen by Witness B in July 1993. Marko Marić's body was never found. Witness B heard rumours that the couple had been killed a month after the killings in Grabovica. The body of Matija Marić was found and was then buried in Mostar. Witness B, 02 Feb '05, T. 74-75.

¹⁴⁹³ The evidence presented to the Trial Chamber as to the death of Ruža Mandić is as follows. Ruža Mandić was born in 1935, Ex. 166, autopsy report, p. 1. The body of Ruža Marić taken to Split for autopsy, together with other bodies of villagers from Grabovica, Marija Definis-Gojanović, 14 Feb '05, T. 6-7 and Ex. 167, p. 2. The body of Ruža Marić was identified by a family member, Ante Marić, who recognised the clothes and a wristwatch and some jewellery as being Ruža Marić's belongings, Ex. 166, autopsy report, p. 2. Dr. Šimun Anđelinović, a colleague of Dr. Marija Definis-Gojanović, performed the autopsy, Ex. 166, autopsy report, p. 1; Marija Definis-Gojanović, Ex. 167, p. 3. The cause of death of Ruža Marić could not be established, Ex. 166, autopsy report, p. 2. According to Marija Definis-Gojanović, it was not possible to identify a specific time of death. It could only be established that Ruža Marić had been dead for at least some months, Marija Definis-Gojanović, 14 Feb '05, T. 20.

¹⁴⁹⁴ The Trial Chamber heard the following evidence as to the alleged killing of Jozo Ištuk. In 1993, Jozo Ištuk lived in Ominje Drežnica, near Drežnica and south of Copi, Witness B, 02 Feb '05, T. 41, 76. Witness B heard that Jozo Ištuk was killed in July 1993, Witness B, 02 Feb '05, T. 76; Witness C, 10 Feb '05, T. 37. Jozo Ištuk is buried at the cemetery in Copi, Witness B, 02 Feb '05, T. 76.

¹⁴⁹⁵ See *supra* Section IV.D.2-3.

¹⁴⁹⁶ Witness A, 01 Feb '05, T. 15; Witness B, 02 Feb '05, T. 4; Zakir Oković, 15 Mar '05, T. 24; Emin Zebić, 16 Mar '05, T. 69; Dževad Tirak, 30 Mar '05, T. 40; Nedžad Mehanović, 16 Feb '05, T. 41.

¹⁴⁹⁷ Defence Final Brief, para. 91.

¹⁴⁹⁸ Witness B, 02 Feb '05, T. 9, 87.

¹⁴⁹⁹ See *supra* paras 382-383

themselves were scared of or uncomfortable with the soldiers from Sarajevo,¹⁵⁰⁰ and that the Bosnian Muslim refugees tried to protect the villagers of Grabovica, for example by alerting the Jablanica civilian police to the killings in Grabovica. The Trial Chamber therefore finds that the evidence does not support the submission of the Defence as regards a possible participation to the killings by the Bosnian Muslim refugees.

(a) Pero Marić and Dragica Marić

435. Pero and Dragica Marić were an elderly couple of about 80 years of age.¹⁵⁰¹ After the 9th Brigade arrived on the right bank in Grabovica on 8 September, eight soldiers of the brigade stayed in the house of Pero and Dragica Marić, including Company Commander Nihad Vlahovljak.¹⁵⁰² Initially, Pero Marić did not want to accommodate the soldiers, but he finally agreed to allow the soldiers to use two rooms of the house.¹⁵⁰³ There were no problems until around 15:00,¹⁵⁰⁴ when soldiers saw a photograph of the couple's son wearing an HVO uniform.¹⁵⁰⁵ According to Enes Šakrak, the soldiers started verbally abusing Pero Marić inside the house.¹⁵⁰⁶ After a while, the situation calmed down and a group of soldiers sat down with Pero Marić at a table outside the house, having coffee and talking to one another.¹⁵⁰⁷ The soldiers at the table were mostly soldiers from the 9th Brigade, but the composition of the group changed constantly as soldiers were coming and going.¹⁵⁰⁸

436. Enes Šakrak testified that Pero Marić was killed at dusk on 8 September.¹⁵⁰⁹ According to Enes Šakrak, a member of the 9th Brigade named Mustafa Hota¹⁵¹⁰ had arrived at the house together with another soldier.¹⁵¹¹ Mustafa Hota also sat at the table, facing Pero Marić.¹⁵¹² Mustafa Hota was armed with an automatic rifle and suddenly fired two or three rounds at Pero Marić.¹⁵¹³ Pero Marić

¹⁵⁰⁰ See *supra* paras 398 and 407.

¹⁵⁰¹ Enes Šakrak, 17 Feb '05, T. 45.

¹⁵⁰² Enes Šakrak, 17 Feb '05, T. 45; Witness D, 21 Feb '05, T. 28.

¹⁵⁰³ Enes Šakrak, 17 Feb '05, T. 46 and 18 Feb '05, T. 26.

¹⁵⁰⁴ Enes Šakrak, 17 Feb '05, T. 46-47.

¹⁵⁰⁵ Enes Šakrak, 17 Feb '05, T. 46.

¹⁵⁰⁶ Enes Šakrak, 17 Feb '05, T. 47.

¹⁵⁰⁷ Enes Šakrak, 17 Feb '05, T. 47; Witness D, 21 Feb '05, T. 28.

¹⁵⁰⁸ Enes Šakrak, 17 Feb '05, T. 48 and 18 Feb '05, T. 29-30.

¹⁵⁰⁹ Enes Šakrak, 17 Feb '05, T. 47.

¹⁵¹⁰ In its Final Brief, the Defence has argued that Mustafa Hota only formally became a member of the 9th Brigade on 15 September, and therefore at the time of the killing was not yet a member of the 9th Brigade, Defence Final Brief, para. 77. However, later in its Final Brief, the Defence stated: "only four members of the 9th Brigade were identified as perpetrators: [...] and Hota." See Defence Final Brief, para. 93. The Trial Chamber notes that the Defence did not allege that Mustafa Hota *in actual fact* was not a member of the 9th Brigade, nor does the Trial Chamber find that the evidence could support such a finding.

¹⁵¹¹ Enes Šakrak, 18 Feb '05, T. 31-32.

¹⁵¹² Enes Šakrak, 17 Feb '05, T. 48-49.

¹⁵¹³ Enes Šakrak, 17 Feb '05, T. 49, 52.

was hit and Enes Šakrak believed that Pero Marić died instantly.¹⁵¹⁴ The member of the 9th Brigade who had arrived with Mustafa Hota laughed and took a packet of cigarettes from Pero Marić's pocket.¹⁵¹⁵ Enes Šakrak and the other men at the table were shocked.¹⁵¹⁶ Enes Šakrak believed the soldiers got up spontaneously and moved the body of Pero Marić away from the table and covered it with a blanket.¹⁵¹⁷ Meanwhile, Dragica Marić was in the house.¹⁵¹⁸

437. Enes Šakrak testified that at night, when he was sleeping in a room in Pero Marić's house, Dragica Marić was also killed.¹⁵¹⁹ Enes Šakrak heard voices inside the house, one of which he recognised as being the voice of Mustafa Hota, when shots were fired.¹⁵²⁰ In the morning, Enes Šakrak saw Dragica Marić's body lying in her bed.¹⁵²¹ He did not pay attention to the surroundings, such as whether or not there was blood in the room and knew that she was dead because she was not moving.¹⁵²²

438. Witness D also testified as to the killing of Pero Marić. The Trial Chamber notes that Witness D, during his testimony was at times evasive and that his testimony in general requires corroboration. The Trial Chamber notes that parts of the testimony of the Enes Šakrak and Witness D are similar. However, for those parts of the evidence where Witness D differs from the evidence of Enes Šakrak,¹⁵²³ the Trial Chamber relies upon the testimony of Enes Šakrak.

439. On the morning of 9 September, Enes Šakrak killed two members of the Zadro family; these killings will be discussed below. When he returned to the house of Pero Marić, Nihad Vlahovljak "passed on" the order that the bodies of the Bosnian Croat villagers should be buried.¹⁵²⁴ According to Enes Šakrak, Nihad Vlahovljak told him that Vebhija Karić had ordered the burial of the

¹⁵¹⁴ Enes Šakrak, 17 Feb '05, T. 50.

¹⁵¹⁵ Enes Šakrak, 18 Feb '05, T. 32.

¹⁵¹⁶ Enes Šakrak, 17 Feb '05, T. 50.

¹⁵¹⁷ Enes Šakrak, 17 Feb '05, T. 50-51.

¹⁵¹⁸ Enes Šakrak, 17 Feb '05, T. 52.

¹⁵¹⁹ Enes Šakrak, 17 Feb '05, T. 52.

¹⁵²⁰ Enes Šakrak, 17 Feb '05, T. 52-53.

¹⁵²¹ Enes Šakrak, 17 Feb '05, T. 53.

¹⁵²² Enes Šakrak, 17 Feb '05, T. 53.

¹⁵²³ Witness D testified that were sitting at a table outside the house of Pero Marić, some time between 18:00 and 19:00 Witness D testified that a group of about six to ten soldiers had been sitting at the table with Nihad Vlahovljak, a company Commander of the 9th Brigade, for about one hour before another soldier, carrying an automatic rifle, arrived. Witness D further testified that about ten minutes after Pero Marić was killed, Witness D returned to the house in which he was billeted, at around 19:00, Witness D, 21 Feb '05, T. 28-29, 77, 79. The soldier entered Pero Marić's house. According to Witness D, about twenty seconds later, Pero Marić was killed by that soldier in the corridor of the house, Witness D, 21 Feb '05, T. 28-29, 80. Dragica Marić, who had been in a room in the house, started screaming and was killed as well, Witness D, 21 Feb '05, T. 29. According to Witness D, when the soldier left Pero Marić's house, Nihad Vlahovljak asked the soldier if he was crazy and was told that he should not say anything or he would be killed too, Witness D, 21 Feb '05, T. 29. After the soldier left, Nihad Vlahovljak went inside the house, and when he returned told the soldiers at the table that "the madman killed both the man and the woman", Witness D, 21 Feb '05, T. 83.

¹⁵²⁴ Enes Šakrak, 17 Feb '05, T. 69-70.

bodies.¹⁵²⁵ The bodies of Pero and Dragica Marić were lying outside the house.¹⁵²⁶ Enes Šakrak, Sead Karagić and Haris Rajkić and two other members of the 9th Brigade who stayed in the house buried the elderly couple at a place overlooking the house.¹⁵²⁷

440. In 1994, the bodies of Pero and Dragica Marić were brought to Split for autopsy.¹⁵²⁸ The autopsies were performed by Dr. Šimun Andelinović, a colleague of Dr. Marija Definis-Gojanović, who testified before the Trial Chamber.¹⁵²⁹ According to Dr. Šimun Andelinović, the cause of death could not be established for Pero Marić and Dragica Marić.¹⁵³⁰

441. The Trial Chamber finds that the evidence presented establishes beyond reasonable doubt that Pero Marić was killed on 8 September 1993, by a member of the 9th Brigade. The Trial Chamber takes particular note of the callous way in which Pero Marić was killed. The evidence further establishes beyond reasonable doubt that Dragica Marić was killed by a member of the 9th Brigade in the night of 8 September. In this respect, the Trial Chamber notes in particular the evidence that Dragica Marić was killed at night in her house, in which, at that moment, only members of the 9th Brigade were billeted.

(b) Josip Brekalo, Luca Brekalo, Pero Čuljak, Matija Čuljak and Anica Pranjić.

442. Josip Brekalo lived with his wife Luca on the right bank in Grabovica, above the new railway.¹⁵³¹ In 1993, Josip Brekalo was retired.¹⁵³² He was between 55 and 60 years old.¹⁵³³ Pero and Matija Čuljak, Luca Brekalo's parents, used to live in Copi, but went to live with their daughter

¹⁵²⁵ Enes Šakrak, 17 Feb '05, T. 66.

¹⁵²⁶ Enes Šakrak, 17 Feb '05, T. 70.

¹⁵²⁷ Enes Šakrak, 17 Feb '05, T. 70-71 and 18 Feb '05, T. 40.

¹⁵²⁸ Ex. 166, autopsy report, pp. 57, 74. On 20 May 1994, the Firule hospital in Split received a number of bodies from Grabovica, Marija Definis-Gojanović, Ex. 167, p. 2. Dr. Marija Definis-Gojanović and Dr. Šimun Andelinović performed autopsies on the bodies in order to establish the identity of the victims, Marija Definis-Gojanović, 14 Feb '05, T. 7, 11 and Ex. 167, p. 2. It was required by law that a cause of death be noted in the autopsy report, Marija Definis-Gojanović, 14 Feb '05, T. 11 and Ex. 167, p. 2. The bodies were in an advanced state of decomposition. It was very difficult to establish the exact time of death, Marija Definis-Gojanović, 14 Feb '05, T. 16. The pathologist was able to determine that all bodies which were examined on 23 May 1994 could have died either on the same date or close to the same date, Marija Definis-Gojanović, Ex. 167, p. 6. The Trial Chamber has been provided with 13 autopsy reports, identifying ten of the victims listed in the Indictment, Ex. 166, autopsy reports. The Trial Chamber notes that the autopsy which is described in the report numbered 240/94 was performed on 26 June 1994. Dr. Definis-Gojanović testified that the term "violent death of unknown cause" in the autopsy report does not form the diagnosis of the cause of death. However, the term was used "because we were talking about casualties, victims of war, and it was assumed that each one of them died a violent death." Marija Definis-Gojanović, 14 Feb '05, T. 21. *See also* Marija Definis-Gojanović, Ex. 167, p. 6, in which it is explained that the term "violent death of unknown cause" was used and assumed "based on the information received and on their victim's status of having died in a war zone during hostilities."

¹⁵²⁹ Marija Definis-Gojanović, Ex. 167, p. 3; Ex. 166, autopsy report, pp. 57, 74.

¹⁵³⁰ Ex. 166, autopsy report, pp. 57, 74; Marija Definis-Gojanović, 14 Feb '05, T. 20-21. The bodies of Pero and Dragica Marić were in an advanced state of decomposition at the time of the autopsies.

¹⁵³¹ Witness B, 02 Feb '05, T. 79-80; Witness C, 10 Feb '05, T. 31, 35; Ex. 80, photograph of Grabovica.

¹⁵³² Ahmed Salihamidžić, 18 Mar '05, T. 69; Witness A, 01 Feb '05, T. 30.

¹⁵³³ Witness A, 01 Feb '05, T. 29-30.

in Grabovica in August or September 1993.¹⁵³⁴ Anica Pranjić was Josip Brekalo's elderly aunt.¹⁵³⁵ Anica Pranjić had lived on the left bank of the Neretva but moved to live with Josip Brekalo and the three others on the right bank in September 1993.¹⁵³⁶

443. Witness C saw all five family members together on 8 September 1993.¹⁵³⁷ Later, during the night of 8 September, Witness C heard wailing coming from their house.¹⁵³⁸ She recognised the voice of Luca, who was shouting "My God, what's the matter with you people? What have I done to any of you?"¹⁵³⁹ On 9 September 1993, Witness A saw the body of Josip Brekalo lying dead in his own yard.¹⁵⁴⁰ Josip Brekalo was dressed in civilian clothes; his head was covered in blood and had "a big hole" in it.¹⁵⁴¹ Witness C was told by a Muslim refugee woman that the house in which the five family members lived had been burned down.¹⁵⁴² While the body of Josip Brekalo was found, Luca Brekalo, Pero and Matija Čuljak and Anica Pranjić were never seen again.¹⁵⁴³

444. Based on the evidence, the Trial Chamber finds that it has been proven beyond reasonable doubt that Josip Brekalo was killed in Grabovica on 8 or 9 September 1993 by unidentified members of the ABiH. However, the Trial Chamber finds that it has not been established to which of the ABiH units present in Grabovica at the time these soldiers belonged.¹⁵⁴⁴ The Trial Chamber further finds that the Prosecution has failed to prove beyond reasonable doubt that Luca Brekalo, Pero and Matija Čuljak and Anica Pranjić were killed in Grabovica by members of the ABiH at the time relevant to the Indictment.

¹⁵³⁴ Witness C, 10 Feb '05, T. 35; Witness B, 02 Feb '05, T. 78-79. Witness B testified that they lived in Grabovica in the beginning of September 1993, Witness B, 02 Feb '05, T. 38. Witness C testified that they had moved to Grabovica two weeks before they were killed, Witness C, 10 Feb '05, T. 29.

¹⁵³⁵ Witness C, 10 Feb '05, T. 31; Witness B, 02 Feb '05, T. 79.

¹⁵³⁶ Witness B, 02 Feb '05, T. 79. Witness C, 10 Feb '05, T. 31.

¹⁵³⁷ Witness C, 10 Feb '05, T. 35.

¹⁵³⁸ Witness C, 10 Feb '05, T. 33, 35.

¹⁵³⁹ Witness C, 10 Feb '05, T. 17.

¹⁵⁴⁰ Witness A, 01 Feb '05, T. 29, 56-57. Witness A in prior statements has stated that he saw more dead people at the Brekalo house apart from Josip Brekalo. When confronted with his prior statements Witness A stated that he only testified before the Tribunal insofar as he recalls the events.

¹⁵⁴¹ Witness A, 01 Feb '05, T. 29.

¹⁵⁴² Witness C, 10 Feb '05, T. 30, 35.

¹⁵⁴³ Ahmed Salihamidžić, 18 Mar '05, T. 69; Witness C, 10 Feb '05, T. 30; Witness B, 02 Feb '05, T. 38-39, 80.

¹⁵⁴⁴ The Trial Chamber notes that there are indications that the soldiers who killed the villagers of Grabovica were members of the 9th Brigade. However, the Trial Chamber finds that these indications are insufficient for a general finding that it has been established beyond reasonable doubt that the perpetrators of all killings were members of that Brigade.

(c) Ilka Marić, Ruža Marić (Born in 1956), Martin Marić, Marinko Marić and Luca Marić

445. Ilka and Ruža Marić, mother and daughter, were living on the right bank in Grabovica in September 1993.¹⁵⁴⁵ They were neighbours with Martin Marić and his family.¹⁵⁴⁶ Witness B last saw them in their house on 7 September 1993.¹⁵⁴⁷

446. Martin Marić, born in 1911, lived on the right bank in Grabovica in a house below the new railway,¹⁵⁴⁸ together with his son, Marinko Marić and his daughter-in-law, Luca Marić.¹⁵⁴⁹ Martin Marić was paralysed and Luca Marić was taking care of him.¹⁵⁵⁰

447. Witness B last saw Martin Marić sometime in early September 1993.¹⁵⁵¹ Ivan and Stoja Pranjić, the couple who were evacuated from Grabovica by their son-in-law,¹⁵⁵² told Ahmed Salihamidžić, the Deputy Chief of the Jablanica SJB, that they last saw Marinko and Luca Marić on the afternoon of 8 September 1993.¹⁵⁵³ Stoja Pranjić told Ahmed Salihamidžić, that Marinko Marić had visited her on that afternoon, when soldiers passed the house of Stoja and Ivan Pranjić.¹⁵⁵⁴ Soon after, Luca Marić had come to get Marinko because soldiers were driving them out of their house.¹⁵⁵⁵ According to Ahmed Salihamidžić, Stoja Pranjić told him that Marinko and Luca Marić went back to their house and were not seen again by Ivan and Stoja Pranjić.¹⁵⁵⁶ Stoja Pranjić further told Ahmed Salihamidžić that later she and her husband were told by women, who had passed by Marinko Marić's house, that they had seen the bodies of Marinko Marić, Luca Marić, their neighbour Ilka Marić and her daughter Ruža Marić.¹⁵⁵⁷ Nobody could tell Ahmed Salihamidžić where Martin Marić's body was.¹⁵⁵⁸ Witness B did not consider it possible that Martin Marić would have fled: "He could hardly walk, let alone flee."¹⁵⁵⁹

448. Marinko Marić came to see Witness C at around 16:00 on 8 September.¹⁵⁶⁰ He said "some soldiers have arrived. They are making our lives miserable. They are shooting, singing, shouting,

¹⁵⁴⁵ Witness B, 02 Feb '05, T. 82.

¹⁵⁴⁶ Witness B, 02 Feb '05, T. 79; Ahmed Salihamidžić, 18 Mar '05, T. 5.

¹⁵⁴⁷ Witness B, 02 Feb '05, T. 82.

¹⁵⁴⁸ Witness B, 02 Feb '05, T. 79-80. *See also* Ex. 78, photograph of Grabovica.

¹⁵⁴⁹ Witness B, 02 Feb '05, T. 81.

¹⁵⁵⁰ Ahmed Salihamidžić, 18 Mar '05, T. 9. According to Ahmed Salihamidžić, Martin Marić was bedridden, *ibid*.

¹⁵⁵¹ Witness B, 02 Feb '05, T. 79.

¹⁵⁵² *See supra* paras 414 and 418

¹⁵⁵³ Ahmed Salihamidžić, 18 Mar '05, T. 13-14.

¹⁵⁵⁴ Ahmed Salihamidžić, 18 Mar '05, T. 13-14.

¹⁵⁵⁵ Ahmed Salihamidžić, 18 Mar '05, T. 14.

¹⁵⁵⁶ Ahmed Salihamidžić, 18 Mar '05, T. 14.

¹⁵⁵⁷ Ahmed Salihamidžić, 18 Mar '05, T. 5, 14. The Trial Chamber notes that Ahmed Salihamidžić used the name "Ružica" for Ruža Marić. However, as he indicated that his account concerned the daughter of Ilka Marić, the Trial Chamber finds that Ruža and Ružica Marić are the same person.

¹⁵⁵⁸ Ahmed Salihamidžić, 18 Mar '05, T. 9.

¹⁵⁵⁹ Witness B, 02 Feb '05, T. 80.

¹⁵⁶⁰ Witness C, 10 Feb '05, T. 16.

yelling. I don't know how we're going to survive all this."¹⁵⁶¹ Marinko Marić wanted to be protected from the soldiers that were on his side of the river. Witness C reported the situation to a soldier she knew, but that soldier replied that there was nothing he could do.¹⁵⁶² Witness B, however, testified that Marinko Marić had willingly accommodated soldiers in his house.¹⁵⁶³ According to Witness C, Marinko Marić, his wife and his parents¹⁵⁶⁴ were killed in the meadow near their house at around 23:00 on 8 September 1993.¹⁵⁶⁵

449. In the afternoon of 9 September, Ahmed Salihamidžić spoke with Adnan Solaković, Commander of the 2nd Independent Battalion, and with a Bosnian Muslim refugee named “Zulfo”. Ahmed Salihamidžić learned that most probably Martin Marić, Marinko Marić, Luca Marić, Ilka Marić and Ružica Marić were dead.¹⁵⁶⁶ Ahmed Salihamidžić was told that “soldiers of the unit which was billeted about 100 meters downriver towards Mostar had killed those civilians.”¹⁵⁶⁷ In his official note, compiled on 11 September, Ahmed Salihamidžić wrote that he had learned that the soldiers who killed the Marić family were commanded by Ramiz Delalić.¹⁵⁶⁸ Adnan Solaković and Zulfo told Ahmed Salihamidžić that the bodies of Ilka Marić, Ruža Marić and Luca Marić were seen near the house of Marinko Marić and that the body of Marinko Marić lay about 300 meters upriver from the old railway station, towards a place called Crno Vrelo.¹⁵⁶⁹

450. While he was speaking with Adnan Solaković and Zulfo, Ahmed Salihamidžić heard intermittent firing from the direction of the Marić house.¹⁵⁷⁰ For security reasons, Ahmed Salihamidžić and Sead Kurt “did not go to the part of the suburb where Ćelo’s unit was billeted.”¹⁵⁷¹ Ahmed Salihamidžić testified that on his way back from Grabovica to Jablanica on 9 September, he went to look for the body of Marinko Marić, but did not find it.¹⁵⁷² The Trial Chamber notes that the location where Ahmed Salihamidžić went to look for the body is exactly the

¹⁵⁶¹ Witness C, 10 Feb '05, T. 16.

¹⁵⁶² Witness C, 10 Feb '05, T. 16.

¹⁵⁶³ Witness B, 02 Feb '05, T. 14, 64.

¹⁵⁶⁴ Witness C testified that Marinko Marić, “his wife, and his father and mother were killed.” The Trial Chamber notes that the Prosecution has not alleged that the mother of Marinko Marić was in fact killed during the events in Grabovica in September 1993.

¹⁵⁶⁵ Witness C, 10 Feb '05, T. 16-17.

¹⁵⁶⁶ Ahmed Salihamidžić, 18 Mar '05, T. 4, 5.

¹⁵⁶⁷ Ahmed Salihamidžić, 18 Mar '05, T. 6.

¹⁵⁶⁸ Ex. 222, Official Note by Ahmed Salihamidžić, p. 1.

¹⁵⁶⁹ Ahmed Salihamidžić, 18 Mar '05, T. 6; Ex. 222, Official Note by Ahmed Salihamidžić, p. 1.

¹⁵⁷⁰ Ex. 222, Official Note by Ahmed Salihamidžić, p. 1.

¹⁵⁷¹ Ex. 222, Official Note by Ahmed Salihamidžić, p. 1. The Trial Chamber notes that the houses of the Marić families were located in the same direction as the houses where the 9th Brigade were billeted, *see* Ex. 249, photograph of Grabovica, marked by a witness.

¹⁵⁷² Ahmed Salihamidžić, 18 Mar '05, T. 10; Ex. 222, Official Note by Ahmed Salihamidžić, p. 1.

location where Witness E, a member of the 2nd Independent Battalion, had seen bodies.¹⁵⁷³ According to Witness C, to this day, the bodies of these five villagers have not been found.¹⁵⁷⁴

451. The Trial Chamber admitted into evidence an autopsy report by Dr. Šimun Andelinović.¹⁵⁷⁵ This report states that among the bodies which were brought in for autopsy, there was a left leg, which was identified as being the left leg of Martin Marić.¹⁵⁷⁶ The report does not contain any information as to a possible cause of death.¹⁵⁷⁷

452. The Trial Chamber finds that the evidence presented establishes beyond reasonable doubt that Martin Marić was killed by unidentified members of the ABiH who were present in Grabovica on 8 or 9 September.¹⁵⁷⁸ The Trial Chamber further finds that the Prosecution has failed to prove that Ilka Marić, Ruža Marić, Marinko Marić and Luca Marić were killed by members of the ABiH at the time relevant to the Indictment. The Trial Chamber notes in this respect that the information in the official note of Ahmed Salihamidžić is based on hearsay, which is far removed. For this reason, the Trial Chamber, in this instance, finds the evidence insufficient to prove the allegations contained in the Indictment beyond reasonable doubt.

(d) Franjo Ravlić and Ivan Šarić

453. Franjo Ravlić and Ivan Šarić both lived on the left bank in Grabovica.¹⁵⁷⁹ Witness B last saw both of the men in late August 1993.¹⁵⁸⁰ Witness C last saw Franjo Ravlić on 8 September at around 17:00, when he had some tea at her house.¹⁵⁸¹ He went home after his visit to Witness C.¹⁵⁸²

454. The next morning, on 9 September 1993, when Witness C awoke, a Bosnian Muslim guard who had been on duty at a bridge that night, came by and called out the name of her husband.¹⁵⁸³ The guard told Witness C and her husband that Franjo Ravlić and Ivan Šarić had been taken away and had “ended up by the bridge.”¹⁵⁸⁴ A Bosnian Muslim woman, who lived in Franjo Ravlić’s house, also came to Witness C and told her: “Franjo and Ivan Šarić were taken away last night and

¹⁵⁷³ Ex. 247, photograph marked by Witness E; Ex. 279, photograph marked by Ahmed Salihamidžić. *See* para. 410

¹⁵⁷⁴ Witness C, 10 Feb '05, T. 17.

¹⁵⁷⁵ Ex. 166, autopsy report, pp. 84-86.

¹⁵⁷⁶ Ex. 166, autopsy report, p. 85. Dr. Marija Definis-Gojanović stated that the daughter-in-law of Martin Marić identified the body by the nails on the left foot, Marija Definis-Gojanović, Ex. 167, p. 4.

¹⁵⁷⁷ Ex. 166, autopsy report, pp. 84-86.

¹⁵⁷⁸ The Trial Chamber notes that there are indications that the soldiers who killed the villagers of Grabovica were members of the 9th Brigade. However, the Trial Chamber finds that these indications are insufficient for a general finding that it has been established beyond reasonable doubt that the perpetrators of all killings were members of that Brigade.

¹⁵⁷⁹ Witness B, 02 Feb '05, T. 77, 80.

¹⁵⁸⁰ Witness B, 02 Feb '05, T. 77, 80-81.

¹⁵⁸¹ Witness C, 10 Feb '05, T. 34.

¹⁵⁸² Witness C, 10 Feb '05, T. 34.

¹⁵⁸³ Witness C, 10 Feb '05, T. 18, 55. *See also* para. 407.

¹⁵⁸⁴ Witness C, 10 Feb '05, T. 18, 55.

it seems very likely that they had been killed up on the bridge.”¹⁵⁸⁵ On 10 September, Ahmed Salihamidžić was told by Stoja Pranjić, the Bosnian Croat woman who had been taken out of the village by her son-in-law,¹⁵⁸⁶ that Bosnian Muslim refugees had crossed a bridge 200 meters upstream from the junction of the Jablanica-Mostar road towards the dam¹⁵⁸⁷ and that they had seen blood on the bridge, but that they did not see a body.¹⁵⁸⁸ When Ahmed Salihamidžić and Sead Kurt drove across that bridge on 9 September 1993, they did not stop, nor did they see any blood on the bridge from the car.¹⁵⁸⁹

455. The evidence indicates that the body of Franjo Ravlić was pulled out of the water at Drežnica¹⁵⁹⁰ three months later.¹⁵⁹¹ When Witness B, was released on 1 March 1994 from his detention by the ABiH, he spoke with inhabitants of the area of Drežnica. They told him that “they got Franjo Ravlic's body out and buried it, but they couldn't do the same for Ivan Šarić.” They told him that the body of Ivan Šarić had been seen floating in the Neretva River, but his body could not be recovered.¹⁵⁹² Witness C attended the funeral of Franjo Ravlić when his body was brought from Mostar to Grabovica.¹⁵⁹³ The Trial Chamber has not been furnished with evidence that an autopsy was performed on the body of Franjo Ravlić, nor with information on the cause of death of Franjo Ravlić and Ivan Šarić.

456. The Trial Chamber finds that it has been established that both Franjo Ravlić and Ivan Šarić have died. However, the Prosecution has failed to prove beyond reasonable doubt that they were killed by ABiH soldiers, who were present in Grabovica, as alleged in the Indictment. The Trial Chamber notes in this respect that all the evidence regarding the circumstances surrounding the death of these two victims is hearsay evidence, which is unclear, specifically in the part concerning what may have happened on the bridge.

(e) Živko Drežnjak and Ljuba Drežnjak

457. Živko Drežnjak was born in 1933 and Ljuba Drežnjak, his wife, was born in 1932.¹⁵⁹⁴ They lived on the right bank of Grabovica.¹⁵⁹⁵ In the morning of 9 September, two soldiers with “a

¹⁵⁸⁵ Witness C, 10 Feb '05, T. 34.

¹⁵⁸⁶ See *supra* para. 418.

¹⁵⁸⁷ Ahmed Salihamidžić, 18 Mar '05, T. 39.

¹⁵⁸⁸ Ahmed Salihamidžić, 18 Mar '05, T. 14.

¹⁵⁸⁹ Ahmed Salihamidžić, 18 Mar '05, T. 38.

¹⁵⁹⁰ The Trial Chamber recalls that Grabovica belongs to the Drežnica commune, Witness B, 02 Feb '05, T. 45; Nermin Eminović, 11 Mar '05, T. 42. See also *supra* para 373.

¹⁵⁹¹ Witness B, 02 Feb '05, T. 78; Witness C, 10 Feb '05, T. 34.

¹⁵⁹² Witness B, 02 Feb '05, T. 80, 91-92.

¹⁵⁹³ Witness C, 10 Feb '05, T. 35.

¹⁵⁹⁴ Ex. 166, autopsy report, pp. 31, 44.

¹⁵⁹⁵ Ex. 79, marked photograph of Grabovica.

Sarajevo accent” appeared at their house.¹⁵⁹⁶ The soldiers searched the house, took what they wanted, asked for money and jewellery¹⁵⁹⁷ and then left. Later that morning, at around 10:00, three other soldiers arrived at the house and started a conversation with a Bosnian Muslim refugee from Čapljina, named Munevera Repesa.¹⁵⁹⁸ After she spoke with the soldiers, Munevera Repesa asked Witness B to show her the way back to the house in which she was staying.¹⁵⁹⁹ As they were leaving, a third group of about ten armed soldiers appeared at the house of Živko and Ljuba Drežnjak.¹⁶⁰⁰ These soldiers went directly to the house.¹⁶⁰¹ While walking away from the house, Witness B overheard Munevera Repesa telling her daughter “now they are going to kill them all.”¹⁶⁰² Then, as they were about 100 to 150 metres away from the house, Witness B heard shots from inside the house and heard Ljuba Drežnjak screaming.¹⁶⁰³ Witness B never saw Živko and Ljuba Drežnjak again.¹⁶⁰⁴ Witness B was told that the bodies of Živko and Ljuba Drežnjak were found outside their home.¹⁶⁰⁵ The bodies of Živko and Ljuba Drežnjak were taken to Split for autopsy.¹⁶⁰⁶ The pathologist, Dr. Definis-Gojanovica, examined the body of Živko Drežnjak.¹⁶⁰⁷ She was unable to establish the time of death, other than establishing that Živko Drežnjak had been dead for at least a number of months. She was also unable to establish a cause of death.¹⁶⁰⁸ The body of Ljuba Drežnjak was examined by Dr. Šimun Andelinović,¹⁶⁰⁹ who was unable to establish a cause of death.¹⁶¹⁰

458. The Trial Chamber finds that the evidence establishes beyond reasonable doubt that Živko Drežnjak and Ljuba Drežnjak were killed by ABiH soldiers in Grabovica on 9 September. This is supported in particular by the evidence that almost immediately after the third group of armed soldiers arrived at the house, shots were heard inside the house. However, it has not been established beyond reasonable doubt to which of the ABiH units present in Grabovica at the time, these soldiers belonged.¹⁶¹¹

¹⁵⁹⁶ Witness B, 02 Feb '05, T. 18-19. The soldiers arrived at around 09:00, *ibid*.

¹⁵⁹⁷ Witness B, 02 Feb '05, T. 18.

¹⁵⁹⁸ Witness B, 02 Feb '05, T. 19, 67.

¹⁵⁹⁹ Witness B, 02 Feb '05, T. 20.

¹⁶⁰⁰ Witness B, 02 Feb '05, T. 21.

¹⁶⁰¹ Witness B, 02 Feb '05, T. 21.

¹⁶⁰² Witness B, 02 Feb '05, T. 68.

¹⁶⁰³ Witness B, 02 Feb '05, T. 20-21, 69, 93-94.

¹⁶⁰⁴ Witness B, 02 Feb '05, T. 22.

¹⁶⁰⁵ Witness B, 02 Feb '05, T. 22-23.

¹⁶⁰⁶ Ex. 166, autopsy report, pp. 32, 45.

¹⁶⁰⁷ Marija Definis-Gojanović, Ex. 167, p. 3.

¹⁶⁰⁸ Marija Definis-Gojanović, 14 Feb '05, T. 16-17 and Ex. 167, p. 3; Ex. 166, autopsy report, p. 32;

¹⁶⁰⁹ Marija Definis-Gojanović, Ex. 167, p. 3.

¹⁶¹⁰ Marija Definis-Gojanović, 14 Feb '05, T. 20 and Ex. 167, p. 3; Ex. 166, autopsy report, p. 45.

¹⁶¹¹ The Trial Chamber notes that there are indications that the soldiers who killed the villagers of Grabovica were members of the 9th Brigade. However, the Trial Chamber finds that these indications are insufficient for a general finding that it has been established beyond reasonable doubt that the perpetrators of all killings were members of that Brigade.

(f) The Zadro Family: Ivan Zadro, Matija Zadro, Mladen Zadro, Ljubica Zadro and Mladenka Zadro

459. The Trial Chamber heard evidence on the murder of the Zadro family from Enes Šakrak. He has pleaded guilty before a court in Bosnia and Herzegovina to the charge of having murdered Ljubica and Mladenka Zadro and has been convicted for this crime. Enes Šakrak testified that he decided to tell the truth about the murder of the family because he regretted his actions. The Trial Chamber finds Enes Šakrak to be a reliable Witness and further finds that his testimony is corroborated by other evidence presented to the Trial Chamber.

460. The Zadro family lived in two neighbouring houses in Grabovica, on the right bank.¹⁶¹² The family consisted of an elderly couple, Ivan and Matija Zadro, a young couple, Mladen and Ljubica Zadro, and their children, two young boys, Goran and Zoran Zadro and a young girl, Mladenka Zadro.¹⁶¹³ Sometime between noon and 13:30 on 9 September, Enes Šakrak, Sead Karagić and Haris Rajkić, all members of the 9th Brigade, arrived at the houses of the Zadro family.¹⁶¹⁴ They asked to be taken to the livestock.¹⁶¹⁵ Mladen, Ivan and Matija Zadro went with them to the nearby stable.¹⁶¹⁶ Ljubica Zadro stayed at her house.¹⁶¹⁷ Enes Šakrak entered the stable with Mladen Zadro, while Ivan and Matija Zadro stood outside with Sead Karagić and Haris Rajkić.¹⁶¹⁸ Enes Šakrak heard shots from outside and¹⁶¹⁹ Mladen Zadro immediately ran out of the stable, along with Enes Šakrak.¹⁶²⁰ Enes Šakrak saw the bodies of Ivan and Matija Zadro lying outside the stable.¹⁶²¹ Sead Karagić and Haris Rajkić then shot and killed Mladen Zadro as he was exiting the stable.¹⁶²² Enes Šakrak had to step to the side to avoid being hit himself.¹⁶²³

461. The three soldiers returned to the house and found Ljubica Zadro, carrying her young daughter Mladenka.¹⁶²⁴ The soldiers took them to the stable.¹⁶²⁵ Ljubica Zadro was asked to go into the stable and bring them the cow.¹⁶²⁶ When Ljubica Zadro came out of the stable and handed over

¹⁶¹² Witness A, 01 Feb '05, T. 21; *see* Ex. 180, photograph, Enes Šakrak marked with number 2 the Zadro house, Enes Šakrak, 17 Feb '05, T. 78; *see also* Ex. 22 and Ex. 84, photographs of the Zadro house.

¹⁶¹³ Enes Šakrak, 17 Feb '05, T. 58.

¹⁶¹⁴ Enes Šakrak, 17 Feb '05, T. 36, 54, 57, 63; Witness A, 01 Feb '05, T. 18.

¹⁶¹⁵ Enes Šakrak, 17 Feb '05, T. 58-59; Witness A, 01 Feb '05, T. 18; Ramiz Delalić, 17 May '05, T. 83.

¹⁶¹⁶ Witness A, 01 Feb '05, T. 18-19.

¹⁶¹⁷ Witness A, 01 Feb '05, T. 19.

¹⁶¹⁸ Enes Šakrak, 17 Feb '05, T. 59.

¹⁶¹⁹ Enes Šakrak, 17 Feb '05, T. 59.

¹⁶²⁰ Enes Šakrak, 17 Feb '05, T. 59.

¹⁶²¹ Enes Šakrak, 17 Feb '05, T. 59.

¹⁶²² Enes Šakrak, 17 Feb '05, T. 59-60. At the time of the killing, Mladen Zadro was dressed in civilian clothes and was not carrying a weapon, Enes Šakrak, 17 Feb '05, T. 64.

¹⁶²³ Enes Šakrak, 17 Feb '05, T. 60.

¹⁶²⁴ Enes Šakrak, 17 Feb '05, T. 60.

¹⁶²⁵ Enes Šakrak, 17 Feb '05, T. 61.

¹⁶²⁶ Enes Šakrak, 17 Feb '05, T. 61.

the cow, Enes Šakrak shot Ljubica Zadro, who was still carrying her daughter Mladenka Zadro, at close range.¹⁶²⁷ They were both instantly killed.¹⁶²⁸ After this killing, the three soldiers left.¹⁶²⁹

462. The two sons of the family had hidden from the soldiers.¹⁶³⁰ After the killings, the boys wandered around aimlessly in the woods.¹⁶³¹ When the boys were found by two ABiH soldiers¹⁶³² not long afterwards, they told them what had happened.¹⁶³³ The boys asked to be taken to their home, so they could gather some clothes and show the soldiers what had happened.¹⁶³⁴ A soldier warned them not to get close to the stable, because there were corpses there.¹⁶³⁵ The soldier briefly entered the stable, but soon came out again, saying: “Don’t go in here either. There are corpses in here too.”¹⁶³⁶ Šefko Hodžić testified that one of the boys had seen the bodies of Ljubica and Mladenka Zadro, which had been covered with a sheet.¹⁶³⁷ The soldiers then took them to the house of Pero Marić.¹⁶³⁸

463. The bodies of Ivan Zadro and Mladen were identified in 1994.¹⁶³⁹ Due to the state of decomposition of the body of Ivan Zadro, the pathologist could not establish the exact cause of death.¹⁶⁴⁰ Upon examination, the pathologist found that the upper right arm of Ivan Zadro had been burned.¹⁶⁴¹ The pathologist found that the skull of Mladen Zadro was fractured from an unknown cause.¹⁶⁴² The bodies of Matija, Ljubica and Mladenka Zadro were never found.¹⁶⁴³

464. The Trial Chamber finds that it has been proven beyond reasonable doubt that Ivan Zadro, Matija Zadro, Mladen Zadro, Ljubica Zadro and Mladenka Zadro, were killed in Grabovica on 9 September by members of the 9th Brigade. The Trial Chamber takes particular note of callous way in which these killings were carried out.

¹⁶²⁷ Enes Šakrak, 17 Feb '05, T. 61-62. Ahmed Kaliman stated that in 2000, Haris Rajkić told him that he had seen Enes Šakrak shooting a woman and her child, Ahmed Kaliman, Ex. 285, para. 18.

¹⁶²⁸ Enes Šakrak, 17 Feb '05, T. 62.

¹⁶²⁹ Enes Šakrak, 17 Feb '05, T. 63; Witness A, 01 Feb '05, T. 20.

¹⁶³⁰ Witness A, 01 Feb '05, T. 20.

¹⁶³¹ Witness A, 01 Feb '05, T. 28.

¹⁶³² One of the soldiers was called “Rambo”, Witness A, 01 Feb '05, T. 40.

¹⁶³³ Witness A, 01 Feb '05, T. 39; *see* Ex. 25, photograph of the area where, according to Witness A, the two children were found, Witness A, 01 Feb '05, T. 39.

¹⁶³⁴ Witness A, 01 Feb '05, T. 39; Šefko Hodžić, 23 Mar '05, T. 85.

¹⁶³⁵ Witness A, 01 Feb '05, T. 40.

¹⁶³⁶ Witness A, 01 Feb '05, T. 40.

¹⁶³⁷ Šefko Hodžić, 23 Mar '05, T. 85; Witness A, 01 Feb '05, T. 40-41/

¹⁶³⁸ Witness A, 01 Feb '05, T. 41.

¹⁶³⁹ Ex. 166, autopsy report, pp. 21, 67-69.

¹⁶⁴⁰ Ex. 166, autopsy report, p. 21; Marija Definis-Gojanović, 14 Feb '05, T. 15-16.

¹⁶⁴¹ Ex. 166, autopsy report, p. 85. Initially it was believed that this concerned the body of Martin Marić. However, upon further inspection, the pathologist found traces of burns on the right upper arm “indicating that the arm is charred”. Based on the fact that the fabric surrounding the arm matched the fabric worn by Ivan Zadro, whose body was missing the right arm, it was concluded that this was in fact the right upper arm of Ivan Zadro.

¹⁶⁴² Ex. 166, autopsy report, p. 68.

¹⁶⁴³ Witness A, 01 Feb '05, T. 48.

(g) Andrija Drežnjak, Mara Drežnjak and Dragica Drežnjak

465. Andrija and Mara Drežnjak, a married couple, lived on the right bank in Grabovica, together with their daughter Dragica (born in 1953).¹⁶⁴⁴ At around 13:00 on 9 September 1993, Witness C saw Mara and Dragica Drežnjak in front of their house.¹⁶⁴⁵ When Witness B saw the family last, also on 9 September, they were talking to armed ABiH soldiers in front of their house.¹⁶⁴⁶ As far as Witness B knew, no soldiers were billeted in their house.¹⁶⁴⁷ Bosnian Muslim refugees told Witness C, immediately after she arrived at the camp in Jablanica later that day, that the family had been killed.¹⁶⁴⁸ The body of Dragica Drežnjak was taken to Split for autopsy¹⁶⁴⁹ and she was identified by her brother.¹⁶⁵⁰ The pathologist Dr. Šimun Anđelinović could not establish the exact cause of her death.¹⁶⁵¹ As for the time of death, all that could be established is that she had been dead for some months.¹⁶⁵² Andrija and Mara Drežnjak are still missing.¹⁶⁵³

466. The Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Andrija Drežnjak, Mara Drežnjak and Dragica Drežnjak were killed in Grabovica by members of the ABiH, as charged in the Indictment.

(h) Ivan Mandić and Ilka Miletić

467. Ilka Miletić was born in 1927.¹⁶⁵⁴ She lived in Grabovica in September 1993.¹⁶⁵⁵ She was never married and lived on her own.¹⁶⁵⁶

468. Ivan Mandić lived on the left bank in Grabovica in September 1993, next to Mara Mandić.¹⁶⁵⁷ Ivan Mandić was an elderly man suffering from asthma.¹⁶⁵⁸

469. Katica Miletić saw Ilka Miletić alive and well at around 10:00 on the morning of 9 September 1993.¹⁶⁵⁹ Ilka Miletić came to Witness C's house that morning.¹⁶⁶⁰ Soldiers had driven

¹⁶⁴⁴ Witness C, 10 Feb '05, T. 36; Ex. 235, Report of ABiH Security Service, 29 September 1995, listing the inhabitants of Grabovica; Ex. 166, autopsy report, p. 50.

¹⁶⁴⁵ Witness C, 10 Feb '05, T. 36, 54.

¹⁶⁴⁶ Witness B, 02 Feb '05, T. 42. Witness B noted that the situation at that moment was still calm, but tense; Witness B, 02 Feb '05, T. 84.

¹⁶⁴⁷ Witness B, 02 Feb '05, T. 83-84.

¹⁶⁴⁸ Witness C, 10 Feb '05, T. 36.

¹⁶⁴⁹ Witness B, 02 Feb '05, T. 42; *see supra* fn 1527

¹⁶⁵⁰ Witness B, 02 Feb '05, T. 42; Witness C, 10 Feb '05, T. 36; Marija Definis-Gojanović, Ex. 167, p. 3.

¹⁶⁵¹ Marija Definis-Gojanović, 14 Feb '05, T. 20; Ex. 166, autopsy report, p. 51. The pathologist found that the skull of Dragica Drežnjak was fractured. However, it was impossible to determine what caused the fracture; Marija Definis-Gojanović, Ex. 167, p. 3.

¹⁶⁵² Marija Definis-Gojanović, 14 Feb '05, T. 20.

¹⁶⁵³ Witness B, 02 Feb '05, T. 42; Witness C, 10 Feb '05, T. 36.

¹⁶⁵⁴ Katica Miletić, 09 Feb '05, T. 20.

¹⁶⁵⁵ Witness B, 02 Feb '05, T. 39, 40; Katica Miletić, 09 Feb '05, T. 15.

¹⁶⁵⁶ Witness C, 10 Feb '05, T. 24.

¹⁶⁵⁷ Witness B, 02 Feb '05, T. 39.

Ilka Miletić out of her own house.¹⁶⁶¹ Ilka Miletić asked Witness C if she could stay with her, but the soldiers at the house of Witness C told Ilka Miletić to leave.¹⁶⁶²

470. On 9 September 1993, Ivan Mandić also came by Witness C's house, asking to be allowed to stay there.¹⁶⁶³ He was carrying a small bag with his medicines inside.¹⁶⁶⁴ The soldiers present at the house of Witness C did not allow him to stay, whereupon Ivan Mandić left.¹⁶⁶⁵ He started walking on the road toward Jablanica.¹⁶⁶⁶

471. In the evening of 9 September 1993, Witness C talked to her sister in the camp in Jablanica.¹⁶⁶⁷ Her sister told her that she had walked with her husband in front of Ivan Mandić. They encountered two soldiers who, according to Witness C, most likely had crossed the bridge from the right bank of Grabovica and were following villagers on their way to Jablanica.¹⁶⁶⁸ Ivan Mandić called out to Witness C's sister and her husband, asking them to wait for him.¹⁶⁶⁹ They saw how soldiers fired at Ivan Mandić and then saw Ivan Mandić falling on the road.¹⁶⁷⁰

472. When Katica Miletić, her brother and her sister-in-law left on foot toward Jablanica,¹⁶⁷¹ they passed the house of Ilka Miletić.¹⁶⁷² Katica Miletić saw Bosnian Muslim refugees and soldiers in front of and around the house. She also saw "some other people," who were recording something on film, but Katica Miletić did not see Ilka there.¹⁶⁷³ Shortly after, they passed the dead bodies of Ivan Mandić and Ilka Miletić.¹⁶⁷⁴ Both lay on the side of the asphalt road, on the left side of the river towards Jablanica, near to one another.¹⁶⁷⁵ Katica Miletić saw that the body of the woman was that of an elderly female, with grey hair, who was wearing a sheepskin coat.¹⁶⁷⁶ She had seen Ilka Miletić wearing that specific coat before.¹⁶⁷⁷ She had known Ilka for a very long time and was

¹⁶⁵⁸ Katica Miletić, 09 Feb '05, T. 19-20, 36.

¹⁶⁵⁹ Katica Miletić, 09 Feb '05, T. 15.

¹⁶⁶⁰ Witness C, 10 Feb '05, T. 24, 63.

¹⁶⁶¹ Witness C, 10 Feb '05, T. 24.

¹⁶⁶² Witness C, 10 Feb '05, T. 24, 63-64.

¹⁶⁶³ Witness C, 10 Feb '05, T. 26.

¹⁶⁶⁴ Witness C, 10 Feb '05, T. 26.

¹⁶⁶⁵ Witness C, 10 Feb '05, T. 26.

¹⁶⁶⁶ Witness C, 10 Feb '05, T. 26.

¹⁶⁶⁷ Witness C, 10 Feb '05, T. 26. Witness C's sister has since died, *ibid*.

¹⁶⁶⁸ Witness C, 10 Feb '05, T. 26-27.

¹⁶⁶⁹ Witness C, 10 Feb '05, T. 26.

¹⁶⁷⁰ Witness C, 10 Feb '05, T. 26, 27.

¹⁶⁷¹ The Trial Chamber notes that Katica Miletić testified that she saw Ilka Miletić at around 10:00 and that she subsequently went home. Katica Miletić did not specify when the soldiers who came to her house told her to leave and when exactly she, her brother and her sister-in-law went to Jablanica, Katica Miletić, 09 Feb '05, T. 15-16.

¹⁶⁷² Katica Miletić, 09 Feb '05, T. 17.

¹⁶⁷³ Katica Miletić, 09 Feb '05, T. 17-18.

¹⁶⁷⁴ Katica Miletić, 09 Feb '05, T. 19.

¹⁶⁷⁵ Katica Miletić, 09 Feb '05, T. 19, 33.

¹⁶⁷⁶ Katica Miletić, 09 Feb '05, T. 35.

¹⁶⁷⁷ Katica Miletić, 09 Feb '05, T. 48-49.

certain it was her.¹⁶⁷⁸ Katica Miletić also recognised the body of Ivan Mandić.¹⁶⁷⁹ Katica Miletić was afraid and continued walking towards Jablanica.¹⁶⁸⁰ She did not dare take a closer look at the bodies.¹⁶⁸¹ According to Witness C, the same soldiers who killed Ivan Mandić also killed Ilka Miletić.¹⁶⁸²

473. That afternoon, Witness C was being transported by truck to Jablanica.¹⁶⁸³ The truck broke down several times and at one point three people got out of the truck to push it. Witness C got out of the truck.¹⁶⁸⁴ That is when Witness C saw the body of Ilka Miletić.¹⁶⁸⁵ Ilka Miletić was lying on her back with her arms spread out, wearing a sheepskin coat.¹⁶⁸⁶ Witness C saw that one side of the head of Ilka Miletić was bloody.¹⁶⁸⁷ In the words of Witness C: “I didn't really look at it that much. We were just walking. We were afraid It looked as if she had been shot in the head and the blood was on the right side”.¹⁶⁸⁸ Later, two refugee women, who had walked past the body of Ilka Miletić, told Witness C that it looked as if Ilka Miletić had been shot in the head.¹⁶⁸⁹

474. On 11 September, two acquaintances of Witness C, who had been on duty as guards at the dam,¹⁶⁹⁰ came to the camp in Jablanica. They told her that they had seen the half-burnt body of Ivan Mandić along the side of the road and asked her what they should do with his body.¹⁶⁹¹ Witness C's husband suggested that they bury him. Eventually, the Bosnian Muslim refugees who stayed in Witness C's house buried Ivan Mandić in the garden of Witness C, under cover of night “so that nobody would know.”¹⁶⁹² On 5 September 1994, his body was exhumed by IFOR and taken to Split.¹⁶⁹³ His daughters identified him.¹⁶⁹⁴ The bag of medicine had been buried along with Ivan Mandić.¹⁶⁹⁵ The autopsy on his body was performed by Dr. Definis-Gojanović,¹⁶⁹⁶ who found that

¹⁶⁷⁸ Katica Miletić, 09 Feb '05, T. 37.

¹⁶⁷⁹ Katica Miletić, 09 Feb '05, T. 36.

¹⁶⁸⁰ Katica Miletić, 09 Feb '05, T. 19.

¹⁶⁸¹ Katica Miletić, 09 Feb '05, T. 35.

¹⁶⁸² Witness C, 10 Feb '05, T. 26.

¹⁶⁸³ Witness C, 10 Feb '05, T. 22, 23.

¹⁶⁸⁴ Witness C, 10 Feb '05, T. 23.

¹⁶⁸⁵ Witness C, 10 Feb '05, T. 23.

¹⁶⁸⁶ Witness C, 10 Feb '05, T. 25, 63.

¹⁶⁸⁷ Witness C, 10 Feb '05, T. 23.

¹⁶⁸⁸ Witness C, 10 Feb '05, T. 25.

¹⁶⁸⁹ Witness C, 10 Feb '05, T. 25.

¹⁶⁹⁰ Witness C, 10 Feb '05, T. 27. The Trial Chamber notes that Witness C did not state whether or not these acquaintances were soldiers. She testified that “two guards came who had been on duty at the dam, our acquaintances from Jablanica”, *ibid*.

¹⁶⁹¹ Witness C, 10 Feb '05, T. 27.

¹⁶⁹² Witness C, 10 Feb '05, T. 27-28.

¹⁶⁹³ Witness C, 10 Feb '05, T. 28.

¹⁶⁹⁴ Witness C, 10 Feb '05, T. 28. Witness C was present in Split, when the daughters identified Ivan Mandić, *ibid*.

¹⁶⁹⁵ Witness C, 10 Feb '05, T. 28

¹⁶⁹⁶ Marija Definis-Gojanović, 14 Feb '05, T. 8.

parts of his skull and parts of several ribs were burnt.¹⁶⁹⁷ After first being reburied in Mostar, Ivan Mandić was eventually reburied next to his wife in Grabovica.¹⁶⁹⁸

475. Ilka Miletić's body was never found.¹⁶⁹⁹

476. The Trial Chamber finds that it has been established beyond reasonable doubt that Ivan Mandić and Ilka Miletić were killed in Grabovica on 9 September by unidentified members of the ABiH. The evidence is insufficient to establish to which of the ABiH units present in Grabovica at the time, these members of the ABiH belonged.¹⁷⁰⁰

(i) Mara Mandić

477. Mara Mandić lived on the left bank in Grabovica in September 1993.¹⁷⁰¹ She was an 82-year-old widow who had no children.¹⁷⁰² During the evacuation of the villagers from Grabovica to Jablanica on 9 September, an ABiH soldier approached Witness C and told her that Mara Mandić did not want to leave and would not listen to him.¹⁷⁰³ He asked Witness C to try to convince Mara Mandić to come along in the truck to Jablanica.¹⁷⁰⁴ When Witness C spoke to her, Mara Mandić said that she did not have any sons who could have been soldiers, and that she had never hurt anyone.¹⁷⁰⁵ Three days later Witness C heard that Mara Mandić was killed.¹⁷⁰⁶ Edinka Unjić, a Bosnian Muslim refugee who came to the camp in Jablanica to bring Witness C some clothes, told Witness C that she had heard "everything from the soldiers",¹⁷⁰⁷ who were boasting about the crime.¹⁷⁰⁸ Witness C further heard that a Bosnian Muslim neighbour of Mara Mandić had seen that

¹⁶⁹⁷ Ex. 166, autopsy report, p. 88. The report states that the photographs partially correspond to the case. Marija Definis-Gojanović testified that she cannot remember why she used the word "partially" but thinks she probably used that word because the photographs depict more than is evident from the report, Marija Definis-Gojanović, 14 Feb '05, T. 17.

¹⁶⁹⁸ Witness C, 10 Feb '05, T. 28

¹⁶⁹⁹ Katica Miletić, 09 Feb '05, T. 26. Witness B testified that he last saw Katica Miletić at the end of August 1993 and does not know what happened to her after that date. Witness B, 02 Feb '05, T. 82.

¹⁷⁰⁰ The Trial Chamber notes that there are indications that the soldiers who killed the villagers of Grabovica were members of the 9th Brigade. However, the Trial Chamber finds that these indications are insufficient for a general finding that it has been established beyond reasonable doubt that the perpetrators of all killings were members of that Brigade.

¹⁷⁰¹ Witness B, 02 Feb '05, T. 39; Witness C, 10 Feb '05, T. 22; Ex. 82, photograph of Grabovica. According to Witness B, Mara Mandić lived next door to Ivan Mandić. Witness B, 02 Feb '05, T. 39.

¹⁷⁰² Witness C, 10 Feb '05, T. 22, 59.

¹⁷⁰³ Witness C, 10 Feb '05, T. 25. Witness C testified that she was approached by the soldier ten minutes before she left for Jablanica. She could not clearly state the time of the evacuation, saying first that the truck arrived around 17:00 (Witness C, 10 Feb '05, T. 22), while in cross-examination, she said that she may also have left for Jablanica at around 15:30, Witness C, 10 Feb '05, T. 58.

¹⁷⁰⁴ Witness C, 10 Feb '05, T. 25, 59.

¹⁷⁰⁵ Witness C, 10 Feb '05, T. 22, 26, 59.

¹⁷⁰⁶ Witness C, 10 Feb '05, T. 60.

¹⁷⁰⁷ Witness C, 10 Feb '05, T. 60-61.

¹⁷⁰⁸ Witness C, 10 Feb '05, T. 61-62.

Mara Mandić was killed within an hour after Witness C had left¹⁷⁰⁹ and that Mara Mandić's house was burned to the ground.¹⁷¹⁰ Witness C also testified that Dragan Zadro told her that he heard soldiers saying that "Mara's heart had been very tasty".¹⁷¹¹ Dragan Zadro had concluded that the soldiers were talking about Mara Mandić.¹⁷¹²

478. Mara Mandić's body was never found.¹⁷¹³ Contrary to what Witness C was told,¹⁷¹⁴ Witness B later heard that Mara Mandić managed to escape with a man named Stanko Sarić towards Mostar several days before the events in Grabovica.¹⁷¹⁵ However, Witness B has never been contacted by Mara Mandić or by Stanko Sarić, nor has he ever seen her again since August 1993.¹⁷¹⁶

479. The Trial Chamber notes that the only evidence as to the circumstances of the death of Mara Mandić was Witness C's testimony. While the Trial Chamber does not question the reliability or credibility of this witness, the evidence as to the death of Mara Mandić is hearsay evidence, which in part is far removed. The Trial Chamber further notes that the hearsay evidence of Witness C is contradicted by the hearsay evidence of Witness B. The Trial Chamber therefore finds that the Prosecution failed to prove beyond reasonable doubt that Mara Mandić was killed by members of the ABiH, present in Grabovica in September 1993, as charged in the Indictment.

8. Disposal of Bodies

(a) Burial of Bodies

480. A little while after Enes Šakrak returned to the house of Pero and Dragica Marić, having just killed Ljubica and Mladenka Zadro, his Company Commander, Nihad Vlahovljak, conveyed an order, which allegedly came from Vehbija Karić, that the bodies of the killed villagers were to be buried.¹⁷¹⁷ Nihad Vlahovljak told Enes Šakrak that "an UNPROFOR check was coming and that the bodies needŠedĆ to be buried."¹⁷¹⁸

¹⁷⁰⁹ Witness C, 10 Feb '05, T. 26. Witness C heard this from the husband of the Bosnian Muslim woman who saw allegedly that Mara Mandić was killed, *ibid*.

¹⁷¹⁰ Witness C, 10 Feb '05, T. 26, 62.

¹⁷¹¹ Witness C, 10 Feb '05, T. 61. Dragan Zadro told Witness C that he was lying under a soldier's car to repair it, when he overheard the comment, *ibid*.

¹⁷¹² Witness C, 10 Feb '05, T. 61.

¹⁷¹³ Witness C, 10 Feb '05, T. 62.

¹⁷¹⁴ Witness C, 10 Feb '05, T. 62.

¹⁷¹⁵ Witness B, 02 Feb '05, T. 75-76. The Trial Chamber notes that it has been presented with evidence that in Grabovica, there were several persons called Šarić, *see* Ex. 82 and 83, photographs of Grabovica, which indicate the houses of the villagers named Šarić.

¹⁷¹⁶ Witness B, 02 Feb '05, T. 39-40, 76.

¹⁷¹⁷ Enes Šakrak, 17 Feb '05, T. 66, 69-70.

¹⁷¹⁸ Enes Šakrak, 17 Feb '05, T. 70.

481. Šaban Nezirić, a guard at the hydroelectric plant in Grabovica, walked on the right bank of Grabovica after the troops from Sarajevo had left, and discovered a human knee protruding through the ground near one of the houses.¹⁷¹⁹ On another occasion, Šaban Nezirić and Osman Kovačević, another guard at the hydroelectric plant, noticed an unpleasant smell and started digging there. The location was above the new railway station in Grabovica.¹⁷²⁰ They soon found a human hand appearing from the ground.¹⁷²¹ However, Emin Zebić, Chief of the Jablanica SJB, received reports that not all the bodies in Grabovica had been buried.¹⁷²²

(b) Transport of Bodies out of Grabovica

482. According to Witness D, all the bodies of villagers who had been killed were taken out of Grabovica by truck.¹⁷²³ Witness D testified that at around 15:00 on 9 September 1993, Zulfikar Ališpago appeared in the village, set up two checkpoints and ordered the soldiers present in Grabovica not to leave Grabovica.¹⁷²⁴ According to Witness D, Zulfikar Ališpago and his soldiers¹⁷²⁵ collected the bodies and drove off with them.¹⁷²⁶ As far as Enes Šakrak could tell, by mid-afternoon of 9 September 1993, there were no more traces of killings in the village of Grabovica.¹⁷²⁷

(c) Burning of Bodies

483. Šaban Nezirić had seen the body of the brother of his friend Andrija.¹⁷²⁸ When he first saw the body, Šaban Nezirić did not see any wounds on it.¹⁷²⁹ Several days later, Šaban Nerizić saw that the body of this person had been burned and that he now saw that the head had a big hole in it.¹⁷³⁰ Zakir Oković, a member of the 2nd Independent Battalion, testified that he saw Mušan Topalović, Commander of the 10th Brigade, trying to burn a body. Zakir Oković had been to the base of the Zulfikar Detachment with Adnan Solaković,¹⁷³¹ and on their way back to Grabovica, the two men saw Mušan Topalović, another soldier and a civilian.¹⁷³² They pulled over. Mušan Topalović and

¹⁷¹⁹ Šaban Nezirić, Ex. 267, p. 3. For the evidence of Šaban Nezirić on bodies in Grabovica, *see also* para. 408

¹⁷²⁰ Šaban Nezirić, Ex. 267, p. 4.

¹⁷²¹ Šaban Nezirić, Ex. 267, p. 4.

¹⁷²² Emin Zebić, 16 Mar '05, T. 95. For further evidence in this respect, *see infra* Section IV.F, para 696.

¹⁷²³ Witness D, 21 Feb '05, T. 31.

¹⁷²⁴ Witness D, 21 Feb '05, T. 31.

¹⁷²⁵ Witness D, 21 Feb '05, T. 82. Witness D stated that he “wasn’t collecting dead bodies. It was Zuka’s men who did that”, *ibid*.

¹⁷²⁶ Witness D, 21 Feb '05, T. 31, 32, 82.

¹⁷²⁷ Enes Šakrak, 18 Feb '05, T. 40.

¹⁷²⁸ Šaban Nezirić, Ex. 267, p. 3.

¹⁷²⁹ Šaban Nezirić, 10 Mar '05, T. 49 and Ex. 267, p. 3.

¹⁷³⁰ Šaban Nezirić, 10 Mar '05, T. 50-51 and Ex. 267, p. 3.

¹⁷³¹ Zakir Oković, 15 Mar '05, T. 42-44. Zakir Oković testified that this meeting took place either on 11 or 12 September 1993, *ibid*. The Trial Chamber notes that Zakir Oković was not certain about dates throughout his testimony and will therefore not rely on Zakir Oković’s testimony on the date of this event.

¹⁷³² Zakir Oković, 15 Mar '05, T. 44.

the other men were trying to set fire to the dead body of an elderly man.¹⁷³³ Mušan Topalović asked Zakir Oković and Adnan Solaković if they had some gasoline for him, but they refused to give him any.¹⁷³⁴ When Zakir Oković confronted Mušan Topalović about what he was doing, he answered “[y]ou want me to set fire to you too?”¹⁷³⁵ When Mušan Topalović told the civilian to go and get him some petrol, Adnan Solaković and Zakir Oković left.¹⁷³⁶ According to Zakir Oković, this was the first time that he saw Mušan Topalović or any of the men from the 10th Brigade in the area around Grabovica.¹⁷³⁷

484. During the autopsies, Dr. Marija Definis-Gojanović and Dr. Šimun Andelinović noted that the bones of several victims showed signs of being burned.¹⁷³⁸

9. Actual Knowledge of Sefer Halilović of the Crimes

(a) Goran and Zoran Zadro

485. Goran and Zoran Zadro, the two boys who survived the killing of the Zadro family, were taken to Pero Marić’s house in the afternoon of 9 September.¹⁷³⁹ They were given some food and a room to sleep in.¹⁷⁴⁰ The soldiers who were billeted there tried to convince the two boys that their family had been killed by the HVO.¹⁷⁴¹

486. Ramiz Delalić testified that in the afternoon of 9 September, while he was at the base of the Zulfikar Detachment, he was informed by radio that two boys were found in the woods above the railway station in Grabovica.¹⁷⁴² He immediately went to Grabovica together with a logistics person who had arrived at the Zulfikar Detachment’s base to pick up food for the soldiers of the Sarajevo units.¹⁷⁴³ At about 18:00 on 9 September,¹⁷⁴⁴ Ramiz Delalić and another man arrived at Pero

¹⁷³³ Zakir Oković, 15 Mar '05, T. 44.

¹⁷³⁴ Zakir Oković, 15 Mar '05, T. 44.

¹⁷³⁵ Zakir Oković, 15 Mar '05, T. 44.

¹⁷³⁶ Zakir Oković, 15 Mar '05, T. 44.

¹⁷³⁷ Zakir Oković, 16 Mar '05, T. 9.

¹⁷³⁸ Ex. 166, autopsy report, p. 16, where Marija Definis-Gojanović found the remains of two individuals, amongst which there were burned bones and a burned prosthesis; p. 19, where Marija Definis-Gojanović found the remains of two individuals, for whom the cause of death could not be established due to the burning of the bone fragments; p. 85, where Dr. Šimun Andelinović found traces of burns on the right upper arm “indicating that the arm is charred”. It was concluded that this was in fact the right upper arm of Ivan Zadro; Marija Definis-Gojanović, Ex. 167, p. 6.

¹⁷³⁹ See *supra* para. 462.

¹⁷⁴⁰ Witness A, 01 Feb '05, T. 42.

¹⁷⁴¹ Witness A, 01 Feb '05, T. 41-42, 61.

¹⁷⁴² Ramiz Delalić, 17 May '05, T. 74-75.

¹⁷⁴³ Ramiz Delalić, 17 May '05, T. 75.

¹⁷⁴⁴ Witness A, 01 Feb '05, T. 63-64; Ramiz Delalić, 18 May '05, T. 70, 72.

Marić's house and met the children.¹⁷⁴⁵ Ramiz Delalić asked the two boys who they were and what had happened to them.¹⁷⁴⁶ After the boys had answered Ramiz Delalić's questions, he left.¹⁷⁴⁷

487. The Trial Chamber has heard evidence about Ramiz Delalić lining up soldiers in order to have the Zadro boys identify the killers of their family. The testimony concerning the date of this line-up is contradictory. However, the testimony as to what actually happened during the line-up is mostly consistent.

488. Ramiz Delalić testified that immediately after he heard the story of the boys, on 9 September, he took them to see the soldiers in the village and asked them to identify the killers.¹⁷⁴⁸ Witness A, however, testified that the line-up occurred on 10 September.¹⁷⁴⁹ The date of 10 September has been confirmed by Witness D,¹⁷⁵⁰ Erdin Arnautović¹⁷⁵¹ and Šefko Hodžić.¹⁷⁵² The Trial Chamber therefore finds that the line-up happened on 10 September.¹⁷⁵³

489. In the morning of 10 September, soldiers brought the two boys to meet Ramiz Delalić¹⁷⁵⁴ near one of the houses where soldiers were billeted. Ramiz Delalić asked the children whether they recognised any of the soldiers who had killed their family among the soldiers.¹⁷⁵⁵ As the boys were unable to recognise any of them, Ramiz Delalić lined up the soldiers in the meadow near one of the houses in which members of the 9th Brigade were billeted. He threatened to kill the persons who

¹⁷⁴⁵ Witness A, 01 Feb '05, T. 43; Erdin Arnautović testified that on 9 September, at around 18:00, he was with Ramiz Delalić at the bar of Zulfikar Ališpago's base, Erdin Arnautović, 15 Feb '05, T. 50-51. He further testified that Ramiz Delalić met the two boys for the first time on the morning of 10 September, Erdin Arnautović, 14 Feb '05, T. 55-57 and 15 Feb '05, T. 52-53.

The Trial Chamber notes that Erdin Arnautović was confronted with statements he gave to the Cantonal Court on 3 December 1998 and to ICTY investigators on 7 October 1999 which conflict with the testimony he gave before the Tribunal. Erdin Arnautović abided by his testimony given before the Trial Chamber, Erdin Arnautović, 15 Feb '05, T. 53-55, 58-60. Considering the inconsistencies between Erdin Arnautović's testimony and the evidence given by Witness A and Ramiz Delalić, and considering also the discrepancies with Erdin Arnautović's prior statements, the Trial Chamber does not rely on the evidence presented by Erdin Arnautović in this regard.

¹⁷⁴⁶ Witness A, 01 Feb '05, T. 43.

¹⁷⁴⁷ Witness A, 01 Feb '05, T. 43. Ramiz Delalić corroborated Witness A's testimony, Ramiz Delalić, 17 May '05, T. 81-82. However, while Witness A testified that the meeting between Ramiz Delalić and the two boys took place inside Pero Marić's house (Witness A, 01 Feb '05, T. 43), Ramiz Delalić testified to have met the two boys in front of a different house - not far from Pero Marić's house - in which soldiers of the 9th Brigade had been billeted, Ramiz Delalić, 17 May '05, T. 81.

¹⁷⁴⁸ Ramiz Delalić, 18 May '05, T. 73, 74-75.

¹⁷⁴⁹ Witness A, 01 Feb '05, T. 44.

¹⁷⁵⁰ Witness D, 22 Feb '05, T. 47, 63, 107-108.

¹⁷⁵¹ Erdin Arnautović, 14 Feb '05, T. 55-56, 57-58.

¹⁷⁵² Šefko Hodžić testified that on the evening of 10 September, he saw Ramiz Delalić arrive at Zulfikar Ališpago's base, with two boys in his car, Šefko Hodžić, 23 Mar '05, T. 79. In light of the consistent testimony regarding what happened after the line-up, the Trial Chamber finds that the testimony of Šefko Hodžić as to the arrival of the boys at Zulfikar Ališpago's base is circumstantial evidence corroborating the evidence as to the date of the line-up.

¹⁷⁵³ In this respect, the Trial Chamber also notes its earlier finding that the testimony of Ramiz Delalić requires corroboration by other, reliable evidence. *See supra* Section II, para. 17.

¹⁷⁵⁴ Witness A, 01 Feb '05, T. 44.

¹⁷⁵⁵ Witness A, 01 Feb '05, T. 44; Ramiz Delalić, 17 May '05, T. 84.

had killed the Zadro family¹⁷⁵⁶ and then took the children from one soldier to the next.¹⁷⁵⁷ According to Ramiz Delalić, in the line-up there were soldiers from the 9th Brigade and some from the 10th Brigade.¹⁷⁵⁸ They all said that they did not know anything about what had happened and that they had only heard shooting the evening before.¹⁷⁵⁹ The children did not recognise the killers among the soldiers in the line-up.¹⁷⁶⁰

490. Not all of the soldiers were present at the line-up.¹⁷⁶¹ Ramiz Delalić and Erdin Arnautović testified that some of the soldiers had gone out to reconnaissance assignments, and some had gone to Jablanica.¹⁷⁶² Enes Šakrak hid from Ramiz Delalić inside the house with Sead Karagić and Haris Rajkić, and did not take part in the line-up.¹⁷⁶³ Having heard that Ramiz Delalić was very angry because of what had happened,¹⁷⁶⁴ they were afraid that they would be severely punished if the boys identified them.¹⁷⁶⁵

491. According to Witness A, after the line-up Ramiz Delalić asked the two boys if they had any family members, and who they wanted to go to stay with; they indicated that they would like to go to their uncle in Jablanica.¹⁷⁶⁶ On the same day, 10 September, the two boys were brought by Ramiz Delalić and Erdin Arnautović in a car to the headquarters of the Zulfikar Detachment.¹⁷⁶⁷ Šefko Hodžić, who was sitting in front of the base, saw the car arrive.¹⁷⁶⁸

¹⁷⁵⁶ Witness D, 21 Feb '05, T. 32 and 22 Feb '05, T. 56-57; Ramiz Delalić, 17 May '05, T. 84. Ramiz Delalić only inquired about the murder of the Zadro family; he did not make a general inquiry about other murders, Witness D, 22 Feb '05, T. 103.

¹⁷⁵⁷ Ramiz Delalić, 17 May '05, T. 84; Witness D, 21 Feb '05, T. 32 and 22 Feb '05, T. 49.

¹⁷⁵⁸ Ramiz Delalić, 17 May '05, T. 84. According to Witness D only soldiers from the 9th Brigade were lined up, Witness D, 21 Feb '05, T. 33.

¹⁷⁵⁹ Erdin Arnautović, 14 Feb '05, T. 57-58, 76.

¹⁷⁶⁰ Witness D, 21 Feb '05, T. 32 and 22 Feb '05, T. 57; Erdin Arnautović, 14 Feb '05, T. 59-60; Ramiz Delalić, 17 May '05, T. 84-85.

¹⁷⁶¹ Ramiz Delalić, 17 May '05, T. 84 and 20 May '05, T. 13; Witness D referred that of the 50-60 soldiers, only 45 were in the line-up, Witness D, 21 Feb '05, T. 33; According to Erdin Arnautović five or six fighters were missing, Erdin Arnautović, 15 Feb '05, T. 67. Erdin Arnautović testified that Mustafa Hota was not there at the time, Erdin Arnautović, 14 Feb '05, T. 59.

¹⁷⁶² Ramiz Delalić, 17 May '05, T. 84; Erdin Arnautović, 15 Feb '05, T. 67. Nedžad Mehanović testified that his statements given on 23 March 1998 and 12 January 1999, in which he declared that he was present at the line up, are not true, and that he was not lined up but only heard about it, Nedžad Mehanović, 16 Feb '05, T. 17, 94-96; Ahmed Kaliman heard about the line-up, but at the time he was not there, he was on his way towards Jablanica, Ahmed Kalilman, Ex. 285, 21 Mar '05, par. 17.

¹⁷⁶³ Enes Šakrak, 17 Feb '05, T. 68-69 and 18 Feb '05, T. 81.

¹⁷⁶⁴ Enes Šakrak, 18 Feb '05, T. 82.

¹⁷⁶⁵ Enes Šakrak, 17 Feb '05, T. 69 and 18 Feb '05, T. 35-36, 82.

¹⁷⁶⁶ Witness A, 01 Feb '05, T. 45. Ramiz Delalić testified that he only learned that the boys had family in Jablanica after they had been brought to Zulfikar Ališpago's base and after one of them had spoken to the officers there, Ramiz Delalić, 17 May '05, T. 86. For the Trial Chamber evaluation of Ramiz Delalić's credibility, *See supra* Section II, para. 17.

¹⁷⁶⁷ Erdin Arnautović, 14 Feb '05, T. 60; Ramiz Delalić, 17 May '05, T. 85. Witness D heard that Ramiz Delalić took the children to Jablanica, where Sefer Halilović, Zulfikar Ališpago, Vehbija Karić and the Supreme Command were, Witness D, 21 Feb '05, T. 57.

¹⁷⁶⁸ Šefko Hodžić, 23 Mar '05, T. 79 and 24 Mar '05, T. 59. The car stopped in front of the base of the Zulfikar Detachment, Erdin Arnautović, 14 Feb '05, T. 60; Šefko Hodžić, 24 Mar '05, T. 59-60.

492. According to Šefko Hodžić and Erdin Arnautović, Ramiz Delalić exited the vehicle and went into the base,¹⁷⁶⁹ while Erdin Arnautović and the two children remained seated in the car outside the base.¹⁷⁷⁰

493. Šefko Hodžić testified that Ramiz Delalić talked for a few minutes with Nihad Bojadžić, Zulfikar Ališpago's deputy, at the bar in the base.¹⁷⁷¹ According to Ramiz Delalić, he spoke with Zulfikar Ališpago and Nihad Bojadžić at the entrance of the base, briefly told them the story of the children, and was told by Zulfikar Ališpago that he should not have brought the children there but should have killed them *en route*.¹⁷⁷² Erdin Arnautović testified that Ramiz Delalić first went into the coffee bar at the base and then into a room behind the coffee bar.¹⁷⁷³ He also testified that he heard a voice saying "the two of them should be removed",¹⁷⁷⁴ which he interpreted to mean that the boys should be killed so that there would be no witnesses.¹⁷⁷⁵ According to Erdin Arnautović, Ramiz Delalić responded very angrily that nobody should kill the children.¹⁷⁷⁶ The Trial Chamber notes that Šefko Hodžić, who was sitting in front of the base, testified he could not overhear the conversation between Ramiz Delalić and Nihad Bojadžić.¹⁷⁷⁷ The Trial Chamber further notes that Erdin Arnautović and Šefko Hodžić both testified that Erdin Arnautović stayed inside the car with the two children.¹⁷⁷⁸

494. Ramiz Delalić testified that, after having talked with Nihad Bojadžić and Zulfikar Ališpago, he entered the office where Sefer Halilović and several members of the Main Staff were present;¹⁷⁷⁹ Zulfikar Ališpago followed Ramiz Delalić into that office.¹⁷⁸⁰ Erdin Arnautović testified that Zulfikar Ališpago and "Nihko" were in the vicinity of the headquarters at that time; he also testified that Sefer Halilović was probably there as well because his driver was outside with the jeep.¹⁷⁸¹

495. According to Ramiz Delalić, he told the officers that he had brought the two children with him, and that they should determine what should happen with those children.¹⁷⁸² The reaction of Sefer Halilović and the others, according to Ramiz Delalić, was that they did not want to hear

¹⁷⁶⁹ Šefko Hodžić, 23 Mar '05, T. 79 and 24 Mar '05, T. 60-63; Erdin Arnautović, 14 Feb '05, T. 60.

¹⁷⁷⁰ Šefko Hodžić, 23 Mar '05, T. 79 and 24 Mar '05, T. 60, 63; Erdin Arnautović, 14 Feb '05, T. 60. Ramiz Delalić testified that he took the children with him into the base and placed them at a table in front of Zulfikar Ališpago's office, Ramiz Delalić, 17 May '05, T. 85.

¹⁷⁷¹ Šefko Hodžić, 23 Mar '05, T. 79.

¹⁷⁷² Ramiz Delalić, 17 May '05, T. 85.

¹⁷⁷³ Erdin Arnautović, 14 Feb '05, T. 60.

¹⁷⁷⁴ Erdin Arnautović, 14 Feb '05, T. 60.

¹⁷⁷⁵ Erdin Arnautović, 14 Feb '05, T. 61.

¹⁷⁷⁶ Erdin Arnautović, 14 Feb '05, T. 60, 61, 77.

¹⁷⁷⁷ Šefko Hodžić, 23 Mar '05, T. 79-80 and 24 Mar '05, T. 62-63.

¹⁷⁷⁸ *See supra*, para. 492.

¹⁷⁷⁹ Ramiz Delalić, 17 May '05, T. 85.

¹⁷⁸⁰ Ramiz Delalić, 17 May '05, T. 85.

¹⁷⁸¹ Erdin Arnautović, 14 Feb '05, T. 61.

¹⁷⁸² Ramiz Delalić, 17 May '05, T. 85.

anything about the children, and “that the boys should be removed, that dirty laundry ought to be removed and that the offensive ought not to be endangered.”¹⁷⁸³ Ramiz Delalić understood the expression “be removed” to mean that the children had to “end up in the same way that their parents and their family ended up”,¹⁷⁸⁴ and the expression “to remove the dirty laundry” to mean that the crimes had to be concealed.¹⁷⁸⁵ Ramiz Delalić testified that he then brought in one of the boys who repeated his story.¹⁷⁸⁶ According to Ramiz Delalić, when he asked the officers if the children could stay with their uncle in Jablanica, Sefer Halilović, as well as the other officers, “categorically refused, asking that the children either be removed or kept at the base until the end of the offensive”.¹⁷⁸⁷ According to Ramiz Delalić, the officers said that the news of the crimes should not get out, and that “the offensive was supposed to start in few days time” which information should become public, and that “if the children left for Jablanica, that would become known”.¹⁷⁸⁸ Ramiz Delalić further testified that, although he insisted to bring the children to their uncle in Jablanica, it was decided that the two boys should not leave the base until the offensive was over.¹⁷⁸⁹

496. Šefko Hodžić testified that Ramiz Delalić, after having talked to Nihad Bojadžić for a while, came back to the car to take the two boys, brought them into Zulfikar Ališpago’s command, handed them over to Nihad Bojadžić, and returned again to the car.¹⁷⁹⁰ Ramiz Delalić then took Šefko Hodžić into Jablanica town by car.¹⁷⁹¹

497. Witness A testified that the two boys were taken to a house, which was part of the Zulfikar Detachment’s base.¹⁷⁹² Namik Džanković, Šefko Hodžić and Ahmed Kaliman were told by Zulfikar Ališpago that he had placed the two children at his base under the protection of his soldiers.¹⁷⁹³

498. Šefko Hodžić testified that on 12 September, in the morning, he interviewed the two boys who were brought to him by a member of the Zulfikar Detachment.¹⁷⁹⁴ The boys told him the story of what happened to their family.¹⁷⁹⁵ When Sefer Halilović arrived at the base on 12 September the

¹⁷⁸³ Ramiz Delalić, 17 May '05, T. 85-86 and 18 May '05, T. 2, 3. Witness D testified that he heard at the time that there was an order to kill the boys, Witness D, 21 Feb '05, T. 34 and 22 Feb '05, T. 106.

¹⁷⁸⁴ Ramiz Delalić, 18 May '05, T. 3.

¹⁷⁸⁵ Ramiz Delalić, 18 May '05, T. 2, 5.

¹⁷⁸⁶ Ramiz Delalić, 17 May '05, T. 86 and 18 May '05, T. 4, 5.

¹⁷⁸⁷ Ramiz Delalić, 17 May '05, T. 86, 18 May '05, T. 4-6 and 20 May '05, T. 74.

¹⁷⁸⁸ Ramiz Delalić, 18 May '05, T. 5.

¹⁷⁸⁹ Ramiz Delalić, 18 May '05, T. 4-6. When confronted in cross-examination, Ramiz Delalić testified to remember that Nihad Bojadžić took a statement from the Zadro boys, that he got the copy of that statement five or six years later, and that he then gave it to the investigators of the Prosecutor, Ramiz Delalić, 19 May '05, T. 79-80.

¹⁷⁹⁰ Šefko Hodžić, 23 Mar '05, T. 80.

¹⁷⁹¹ Šefko Hodžić, 23 Mar '05, T. 80.

¹⁷⁹² Witness A, 01 Feb '05, T. 45-46; Witness B, 02 Feb '05, T. 31-32.

¹⁷⁹³ Namik Džanković, 21 Mar '05, T. 23; Šefko Hodžić, 23 Mar '05, T. 82; Ahmed Kaliman, 22 Mar '05, T. 14.

¹⁷⁹⁴ Šefko Hodžić, 23 Mar '05, T. 83-84.

¹⁷⁹⁵ Šefko Hodžić, 23 Mar '05, T. 84.

two boys had already been taken away.¹⁷⁹⁶ Šefko Hodžić did not tell Sefer Halilović about his conversation with the children.¹⁷⁹⁷

499. About six days after the arrival of the boys at the Zulfikar Detachment's base they were taken by Zulfikar Ališpago to their house in Grabovica. At that time there were no more dead bodies in the house.¹⁷⁹⁸ Around 22 September the two boys were brought from the base of the Zulfikar Detachment to their uncle in Jablanica.¹⁷⁹⁹

(b) The Alleged Statement of Vehbija Karić

500. In paragraph 10 of the Indictment, the Prosecution alleges that on 8 September 1993, in Grabovica, Vehbija Karić and other members of the Inspection Team received some complaints from the troops that many of the Bosnian Croat civilians would not let them into their houses. The Prosecution alleged that, on this occasion, "Vehbija Karić in word and gesture indicated that the troops should try those Bosnian Croat civilians summarily and throw them into the Neretva River if they did not cooperate". The Prosecution further alleged that Sefer Halilović was present, that he voiced his disapproval about the comment to Vehbija Karić but said nothing to prevent the soldiers from acting on it. The Trial Chamber has heard evidence from several witnesses concerning this allegation, including evidence from Vehbija Karić himself.

501. Witness D, a member of the 9th Brigade, testified that in the early afternoon on 9 September, the troops in Grabovica were visited by Sefer Halilović, Vehbija Karić, Salko Gušić and Zulfikar Ališpago.¹⁸⁰⁰ All the units were lined-up in front of the house where Witness D was billeted, including the 2nd Independent Battalion, Igman Wolves, the *Handžar* Division and soldiers of the Zulfikar Detachment, in total about a hundred to a hundred and fifty soldiers.¹⁸⁰¹ According to Witness D, when the high-ranking officers arrived, they greeted the soldiers and started talking about the "Operation".¹⁸⁰² Sefer Halilović spoke first, "as commander of the operation."¹⁸⁰³

¹⁷⁹⁶ Šefko Hodžić, 23 Mar '05, T. 86.

¹⁷⁹⁷ Šefko Hodžić, 23 Mar '05, T. 86.

¹⁷⁹⁸ Witness A, 01 Feb '05, T. 46.

¹⁷⁹⁹ Witness A, 01 Feb '05, T. 45. Namik Džanković wrote in his report that "two of Mladen Zadro's children are also alive and are now in Jablanica, Ex. 235, report sent from Jablanica by Namik Džanković to Jusuf Jašarević, dated 29 September 1993, p. 1.

¹⁸⁰⁰ Witness D, 21 Feb '05, T. 19-21, 69-70. Witness D is not completely sure of the time, it may have been at around 12:00 but it may also have been at around 15:00, Witness D, 21 Feb '05, T. 73-74.

¹⁸⁰¹ Witness D, 21 Feb '05, T. 19, 21, 25, 69, 71. According to Witness D, it was not exactly a line-up; the soldiers were sitting on the lawn in front of the commanders, Witness D, 21 Feb '05, T. 70. Witness D named a number of people present at the line-up: "Sadić," Commander of the Igman Wolves, Nihad Vlahovljak, "Klos", "Dzigi", "Hajre", Nevzed Sabanović, Sulejman Lujinović, Erdin Arnautović and the Commander of the *Handžar* Division, Witness D, 21 Feb '05, T. 21, 24, 72-73, 75. The Trial Chamber notes that the Commander of the Igman Wolves was named Edib Sarić, *see supra* Section IV.A.1(e)(vi).

¹⁸⁰² Witness D, 21 Feb '05, T. 23.

¹⁸⁰³ Witness D, 21 Feb '05, T. 25. Witness D testified (*ibid.*):

502. Witness D further testified that the second person to speak was Vehbija Karić, who was sitting next to Sefer Halilović.¹⁸⁰⁴ After the “Operation” had been explained to the soldiers,¹⁸⁰⁵ Vehbija Karić asked them about their accommodation.¹⁸⁰⁶ One soldier replied that it was not good.¹⁸⁰⁷ According to Witness D, Vehbija Karić then said: “under summary procedure, throw them all into the river.”¹⁸⁰⁸ Witness D testified that Sefer Halilović responded by asking Vehbija Karić “are you in your right mind?” and made a gesture with his head.¹⁸⁰⁹ In turn, Vehbija Karić replied: “This is what had taken place in Ahmići, what had happened to us in Ahmići.”¹⁸¹⁰ According to Witness D, by making the latter comment Vehbija Karić clarified that the order concerned the Bosnian Croat villagers in Grabovica, the elderly, the women and the children, and not the soldiers of the ABiH.¹⁸¹¹ After this meeting, the high-ranking officers went in the direction of Jablanica.¹⁸¹² Witness D further testified that the villagers were very accommodating and not involved in combat.¹⁸¹³ He felt that perhaps the soldiers were seeking revenge for their own losses.¹⁸¹⁴

503. Nedžad Mehanović, a member of the 9th Brigade, testified that at around lunchtime on 9 September, he and the soldiers in Grabovica were informed that “officers from the Supreme Command” would come and that the soldiers should assemble after lunch.¹⁸¹⁵ When the soldiers assembled in the courtyard at around 14:30-15:00, Sefer Halilović, Vehbija Karić and Zulfikar Ališpago arrived.¹⁸¹⁶ They informed the soldiers about the “operation” and asked them how they were.¹⁸¹⁷ According to Nedžad Mehanović, Sefer Halilović and Zulfikar Ališpago were walking around and talking to the soldiers individually.¹⁸¹⁸

he made it quite clear to all of us, the soldiers there, that he was the commander of the Operation Neretva, that this was to be a very difficult battle to lift the siege of Mostar, that it was going to last for who knows how long, and that we would not return until Mostar had been liberated at any cost, so that we were going to stay there until we basically capture Mostar.

¹⁸⁰⁴ Witness D, 21 Feb '05, T. 26.

¹⁸⁰⁵ Witness D did not clarify who exactly explained the “operation” to the soldiers, Witness D, 21 Feb '05, T. 26.

¹⁸⁰⁶ Witness D, 21 Feb '05, T. 26.

¹⁸⁰⁷ Witness D, 21 Feb '05, T. 26.

¹⁸⁰⁸ Witness D, 21 Feb '05, T. 26.

¹⁸⁰⁹ Witness D, 21 Feb '05, T. 26, 27.

¹⁸¹⁰ Witness D, 21 Feb '05, T. 26, 27. The Trial Chamber notes that the Witness did not specify which kind of gesture Sefer Halilović made.

¹⁸¹¹ Witness D, 21 Feb '05, T. 27.

¹⁸¹² Witness D, 21 Feb '05, T. 28.

¹⁸¹³ Witness D, 21 Feb '05, T. 26-27, 70. Witness D further testified that Vehbija Karić did not have his son with him, *ibid.*

¹⁸¹⁴ Witness D, 21 Feb '05, T. 27.

¹⁸¹⁵ Nedžad Mehanović, 16 Feb '05, T. 5.

¹⁸¹⁶ Nedžad Mehanović, 16 Feb '05, T. 8 and 17 Feb '05, T. 2.

¹⁸¹⁷ Nedžad Mehanović, 16 Feb '05, T. 9.

¹⁸¹⁸ Nedžad Mehanović, 16 Feb '05, T. 12.

504. Nedžad Mehanović further testified that, while the soldiers were assembled, a Bosnian Croat villager stood on a balcony of a nearby house.¹⁸¹⁹ According to Nedžad Mehanović, Vehbija Karić noticed him while the soldiers were complaining about their accommodation.¹⁸²⁰ Vehbija Karić asked who he was and was told by a soldier that the man was “an Ustasha” and that “he was the one who complained the most.”¹⁸²¹ Nedžad Mehanović further testified that Vehbija Karić then replied “well, then you know what to do with him and how you will deal with him”. According to Nedžad Mehanović, this comment was made in a normal conversational tone.¹⁸²² He believed that Sefer Halilović and Zulfikar Ališpago were not able to hear the comment, because they were about 10 meters away from Vehbija Karić when he made the comment.¹⁸²³

505. Erdin Arnautović testified that after the 9th Brigade found accommodation in the various houses across the village, Vehbija Karić and five or six others “from the Corps” came to Grabovica.¹⁸²⁴ His testimony is unclear as regards the date at which the officers came to Grabovica.¹⁸²⁵ According to Erdin Arnautović, soldiers had already complained to him, and he had replied that he would speak to Zulfikar Ališpago about the accommodation.¹⁸²⁶ Erdin Arnautović testified that he “cannot be sure” whether Sefer Halilović was present among the officers¹⁸²⁷ and that he “cannot say that he saw him there”¹⁸²⁸ since he was paying attention to Vehbija Karić.¹⁸²⁹

¹⁸¹⁹ Nedžad Mehanović, 16 Feb '05, T. 9.

¹⁸²⁰ Nedžad Mehanović, 16 Feb '05, T. 13.

¹⁸²¹ Nedžad Mehanović, 16 Feb '05, T. 13.

¹⁸²² Nedžad Mehanović, 16 Feb '05, T. 21.

¹⁸²³ Nedžad Mehanović, 17 Feb '05, T. 22-23. Nedžad Mehanović marked the location where the soldiers assembled on Ex. 174 and Ex. 175, Nedžad Mehanović, 16 Feb '05, T. 11, 22. When confronted with a statement he gave on 23 March 1998, in which he did not mention the presence of Sefer Halilović, indicated a different date, and gave a different version of the events that occurred immediately after the alleged Vehbija Karić's statement, Nedžad Mehanović testified that on that occasion he told the same story that he told the Trial Chamber. He could not explain any discrepancies, Nedžad Mehanović, 16 Feb '05, T. 51-53.

¹⁸²⁴ Erdin Arnautović, 14 Feb '05, T. 39, 43. According to Erdin Arnautović, one of the officers was nicknamed Zico and the officers belonged to the “Herzegovina unit.” He could not remember whether that unit was part of the 4th Corps or the 6th Corps, Erdin Arnautović, 15 Feb '05, T. 91. Erdin Arnautović further stated that “Karić” was called Mehmed Karić, Erdin Arnautović, 14 Feb '05, T. 42. In light of the evidence presented in this case, the Trial Chamber finds that Erdin Arnautović was mistaken about the first name of “Karić”, and was actually referring to Vehbija Karić.

¹⁸²⁵ Erdin Arnautović testified that on 8 September he told Ramiz Delalić and Malčo Rovčanin, another member of the 9th Brigade about the alleged comment made by Vehbija Karić, Erdin Arnautović, 14 Feb '05, T. 53. However, during cross-examination, Erdin Arnautović could not explain the discrepancy between his testimony before the Trial Chamber and a previous statement he had made to investigators from the Office of the Prosecutor in 1999, where he said that Vehbija Karić and the other officers arrived “the next morning” after the soldiers were billeted”, which, in light of the evidence that the 9th Brigade arrived in Grabovica on 8 September, would place this alleged visit by the officers on 9 September, Erdin Arnautović, 15 Feb '05, T. 22-24. Erdin Arnautović further stated that the group of officers arrived on the second day that the soldiers were in Grabovica, which, in light of the evidence that the 9th Brigade arrived in Grabovica on 8 September, would place this alleged visit of the officer on 10 September, Erdin Arnautović, 15 Feb '05, T. 88.

¹⁸²⁶ Erdin Arnautović, 14 Feb '05, T. 41.

¹⁸²⁷ Erdin Arnautović, 14 Feb '05, T. 71.

¹⁸²⁸ Erdin Arnautović, 14 Feb '05, T. 89.

¹⁸²⁹ Erdin Arnautović, 14 Feb '05, T. 71.

506. According to Erdin Arnautović, approximately a hundred soldiers were gathered in front of the house in which he was billeted, including soldiers of the 2nd Independent Battalion.¹⁸³⁰ All were keen to hear what was going to be said.¹⁸³¹ Erdin Arnautović testified that Vehbija Karić stated that he was “the one in charge” and that “they had taken care of accommodation”.¹⁸³² The soldiers present started saying that there was no accommodation available.¹⁸³³ According to Erdin Arnautović, Vehbija Karić replied “don’t pay attention to those who tell you no. Anyone who says a word against it will be thrown into the Neretva summarily.”¹⁸³⁴ In response, some of the soldiers laughed and said no problem.¹⁸³⁵ According to Erdin Arnautović, there were soldiers among those gathered who “were not reluctant to settle personal scores.” He testified that he was concerned because there were many units present, as well as former camp detainees from western Mostar and that “the atmosphere was such that anything could happen.”¹⁸³⁶ After the comment of Vehbija Karić, “people behaved differently.”¹⁸³⁷ Later, Erdin Arnautović told Ramiz Delalić and Malčo Rovčanin, also a member of the 9th Brigade, that there was some sort of misunderstanding about the accommodation; Erdin Arnautović testified that he also conveyed to Ramiz Delalić what Vehbija Karić said about throwing the villagers in the river.¹⁸³⁸

507. Ramiz Delalić testified that after the crime, he learned that Bosnian Croat villagers did not want to allow soldiers in their houses.¹⁸³⁹ He learned that somebody from the Main Staff had come by, and that Vehbija Karić was quite categorical in saying that, if need be, the soldiers should use force to enter the houses.¹⁸⁴⁰ If there were any Bosnian Croats causing problems, they “should be just thrown into the lake.”¹⁸⁴¹ Ramiz Delalić was told by some soldiers that Sefer Halilović and Zulfikar Ališpago were in Grabovica while Vehbija Karić made this statement, but other soldiers told him that Sefer Halilović was not there.¹⁸⁴²

508. Ahmed Salihamidžić testified that, when Ramiz Delalić came to Zulfikar Ališpago’s flat on 10 September, he angrily said to those present that “a fuss had been made about five or six Croats who had been killed” and that Vehbija Karić had told a complaining soldier to “kill them and throw

¹⁸³⁰ Erdin Arnautović, 14 Feb ’05, T. 43. Erdin Arnautović marked the location where the officers stood when the soldiers gathered on Ex. 170, Erdin Arnautović, 14 Feb ’05, T. 48.

¹⁸³¹ Erdin Arnautović, 14 Feb ’05, T. 43.

¹⁸³² Erdin Arnautović, 14 Feb ’05, T. 42.

¹⁸³³ Erdin Arnautović, 14 Feb ’05, T. 42.

¹⁸³⁴ Erdin Arnautović, 14 Feb ’05, T. 42 and 15 Feb ’05, T. 24.

¹⁸³⁵ Erdin Arnautović, 14 Feb ’05, T. 49.

¹⁸³⁶ Erdin Arnautović, 14 Feb ’05, T. 49.

¹⁸³⁷ Erdin Arnautović, 15 Feb ’05, T. 27.

¹⁸³⁸ Erdin Arnautović, 14 Feb ’05, T. 53.

¹⁸³⁹ Ramiz Delalić, 17 May ’05, T. 77.

¹⁸⁴⁰ Ramiz Delalić, 17 May ’05, T. 77.

¹⁸⁴¹ Ramiz Delalić, 17 May ’05, T. 77.

¹⁸⁴² Ramiz Delalić, 17 May ’05, T. 78.

them into the lake or the Neretva.”¹⁸⁴³ Among those present were Namik Džanković and Sead Branković.¹⁸⁴⁴ The statement that Vehbija Karić is alleged to have made was included in the Official Note of the civilian police, compiled by Ahmed Salihamidžić.¹⁸⁴⁵

509. Both Zakir Oković and Witness E have testified that Vehbija Karić and others visited Grabovica. Zakir Oković, operations officer of the 2nd Independent Battalion, however, testified that Vehbija Karić, Zičro Suljević and Rifat Bilajac visited Grabovica when the 2nd Independent Battalion arrived, but before any other troops from Sarajevo had arrived there.¹⁸⁴⁶ According to Zakir Oković, the members of the Main Staff discussed the “operation” with him at the provisional command of the battalion.¹⁸⁴⁷ Zakir Oković testified that they made no threats towards the villagers in his presence; Zakir Oković did not see them in Grabovica again.¹⁸⁴⁸ Witness E testified that he saw Vehbija Karić, Sefer Halilović, and others in Grabovica only one or two days after the killings had occurred.¹⁸⁴⁹

510. Namik Džanković testified that he, Vehbija Karić, Zičro Suljević and Rifat Bilajac visited Grabovica on 8 September.¹⁸⁵⁰ Namik Džanković visited friends of his who were billeted in Grabovica during the hour and a half he spent there.¹⁸⁵¹ Vehbija Karić, Zičro Suljević and Rifat Bilajac walked around and talked to the soldiers.¹⁸⁵² The soldiers were resting, scattered around the houses. Namik Džanković testified that there was no line-up of soldiers¹⁸⁵³ and that Sefer Halilović was not present in Grabovica.¹⁸⁵⁴ Namik Džanković described the relations between the soldiers and the villagers as “idyllic.”¹⁸⁵⁵ According to Namik Džanković, Vehbija Karić was not intolerant or aggressive, nor did any soldiers criticise the Bosnian Croat villagers.¹⁸⁵⁶

511. Namik Džanković’s version of events is largely corroborated by Vehbija Karić. Vehbija Karić testified that he, Rifat Bilajac, Zičro Suljević and Namik Džanković went to Grabovica on

¹⁸⁴³ Ahmed Salihamidžić, 18 Mar ’05, T. 21.

¹⁸⁴⁴ Ahmed Salihamidžić, 18 Mar ’05, T. 22.

¹⁸⁴⁵ Ex. 222, Official Note, compiled by Ahmed Salihamidžić, p. 3. According to Emin Zebić, Sead Branković relayed the incident at Zulfikar Ališpago’s flat to him, Emin Zebić, 17 Mar ’05, T. 77-78.

¹⁸⁴⁶ Zakir Oković, 15 Mar ’05, T. 27, 53 and 16 Mar ’05, T. 11-12.

¹⁸⁴⁷ Zakir Oković, 15 Mar ’05, T. 27-28 and 16 Mar ’05, T. 11-12.

¹⁸⁴⁸ Zakir Oković, 15 Mar ’05, T. 59-60. The Trial Chamber notes that Zakir Oković also testified that he was on reconnaissance missions on two days following his arrival in Grabovica, Zakir Oković, 15 Mar ’05, T. 31, 68 and 15 Mar ’05, T. 40.

¹⁸⁴⁹ Witness E, 07 Mar ’05, T. 14, 90-91. Others told Witness E that the command had gathered after the killings, Witness E, 07 Mar ’05, T. 17.

¹⁸⁵⁰ Namik Džanković, 21 Mar ’05, T. 12, 16, 18.

¹⁸⁵¹ Namik Džanković, 21 Mar ’05, T. 16-18. His friends were members of the 2nd Independent Battalion, *ibid*.

¹⁸⁵² Namik Džanković, 21 Mar ’05, T. 18.

¹⁸⁵³ Namik Džanković, 21 Mar ’05, T. 16-18.

¹⁸⁵⁴ Namik Džanković, 21 Mar ’05, T. 76. See also Enes Šakrak, who testified that he did not see Sefer Halilović visiting Grabovica at that time, Enes Šakrak, 18 Feb ’05, T. 44, 70.

¹⁸⁵⁵ Namik Džanković, 21 Mar ’05, T. 82-83.

¹⁸⁵⁶ Namik Džanković, 21 Mar ’05, T. 83.

8 September, and spoke to individual soldiers. According to Vehbija Karić, the soldiers were not lined up.¹⁸⁵⁷ The group also talked to the villagers, asking them if there were any problems.¹⁸⁵⁸ He testified that the soldiers were in a good mood and were resting after a tiring march.¹⁸⁵⁹ When confronted with the allegation of his statement to the troops encouraging the killing of the villagers of Grabovica, Vehbija Karić denied having made such a statement.¹⁸⁶⁰

512. According to Jusuf Jašarević, Vehbija Karić was a “moral and serious person,” who shared the goals of a multi-ethnic Bosnia and Herzegovina,¹⁸⁶¹ and who was married to a Bosnian Croat woman.¹⁸⁶² Jusuf Jašarević testified that “if he was in his usual, normal state of mind, I don't think that he would be capable of saying anything like that.”¹⁸⁶³ Šefko Hodžić spoke to Vehbija Karić at the time of “Operation Trebević”,¹⁸⁶⁴ at which point Vehbija Karić denied ever having made a comment such as the one alleged in the Indictment.¹⁸⁶⁵

513. The Trial Chamber notes that the Prosecution submitted in its Final Brief that the Trial Chamber “could make a positive finding that Karić gave the soldiers the green light to harm or even kill the civilians”, but that it “does not have to make positive findings one way or the other about this allegation to proceed to convict Sefer Halilović”.¹⁸⁶⁶

514. As is clear from the above discussion, the evidence presented to the Trial Chamber regarding the allegation of Vehbija Karić's statement is inconsistent. The testimony of the three witnesses mentioned above, differs as regard to the date,¹⁸⁶⁷ the words spoken,¹⁸⁶⁸ and the circumstances in which the statement was made.¹⁸⁶⁹ The Trial Chamber recalls its earlier findings

¹⁸⁵⁷ Vehbija Karić, 02 Jun '05, T. 5-6, 8, 23.

¹⁸⁵⁸ Vehbija Karić, 02 Jun '05, T. 9, 14.

¹⁸⁵⁹ Vehbija Karić, 02 Jun '05, T. 8.

¹⁸⁶⁰ Vehbija Karić, 02 Jun '05, T. 24. Vehbija Karić testified (*ibid*):

Who knows how many times over can you not believe honourable people ŠthanĆ some asocial types who provided statements that I said that if there were any problems, you can kill them and throw them into the Neretva River. Two or three asocial drugged persons are believed who committed those crimes and not people who went with me, who are honourable generals.

¹⁸⁶¹ Jusuf Jašarević, 03 Mar '05, T. 19

¹⁸⁶² Šefko Hodžić, 24 Mar '05, T. 65; Vahid Karavelić, 22 Apr '05, T. 82-83.

¹⁸⁶³ Jusuf Jašarević, 04 Mar '05, T. 51.

¹⁸⁶⁴ For a description of Operation Trebević, *see infra* Section IV.F.4.

¹⁸⁶⁵ Šefko Hodžić, 24 Mar '05, T. 68.

¹⁸⁶⁶ Prosecution Final Brief, para. 201.

¹⁸⁶⁷ Witness D testified that the alleged statement was made on 8 September, Nedžad Mehanović testified that the alleged statement was made on 9 September, while Erdin Arnautović was unclear as to on which date the alleged statement was made, *see supra* paras 501, 503, and 505

¹⁸⁶⁸ *See infra* paras 502, 504 and 506.

¹⁸⁶⁹ Witness D testified that the officers addressed the soldiers during a line-up, while Nedžad Mehanović testified that Sefer Halilović and Zulfikar Ališpago were walking around and talking to the soldiers personally. Nedžad Mehanović, further testified about the presence on a balcony of a Bosnian Croat civilian which was not mentioned by the other two witnesses. *See supra* para. 504.

on the credibility of these three witnesses.¹⁸⁷⁰ Furthermore, Namik Džanković denied that Vehbija Karić made any statement such as the one alleged in the Indictment. Soldiers present in Grabovica testified that they did not recall the gathering of troops at which Vehbija Karić allegedly made the statement.¹⁸⁷¹

515. As for Sefer Halilović's alleged knowledge of Vehbija Karić's alleged statement, the evidence furnished to the Trial Chamber is equally inconsistent. Witness D is the sole and uncorroborated Witness who testified that Sefer Halilović visited Grabovica on 8 September and that Sefer Halilović heard Vehbija Karić's alleged comment.¹⁸⁷² Nedžad Mehanović testified that Sefer Halilović was present, but was too far away from Vehbija Karić to have been able to hear that alleged statement. Erdin Arnautović does not even recall Sefer Halilović being present in Grabovica at the time Vehbija Karić allegedly made the statement.¹⁸⁷³ Both Namik Džanković and Vehbija Karić explicitly denied that during their visit to Grabovica on 8 September Sefer Halilović was present.¹⁸⁷⁴ Finally, soldiers present in Grabovica at the relevant time testified that they did not see Sefer Halilović there, and that they did not hear any rumours that he was there.¹⁸⁷⁵

516. Based on the evidence presented, the Trial Chamber finds that the Prosecution has failed to prove the allegation contained in paragraph 10 of the Indictment beyond reasonable doubt.

(c) Sefer Halilović's Notification of the Crimes in Grabovica

517. Ramiz Delalić testified that he was told about the crimes in Grabovica by Zulfikar Ališpago and his deputy, Nihad Bojadzić.¹⁸⁷⁶ According to Ramiz Delalić, he, Zulfikar Ališpago and Nihad Bojadzić went into Zulfikar Ališpago's office, where Sefer Halilović, Vehbija Karić and others were.¹⁸⁷⁷ Ramiz Delalić further testified that the only information available was that some people had killed some civilians in Grabovica in the course of the previous night, and not much attention

¹⁸⁷⁰ See *supra* Section II, para. 17. As for the Prosecution submission that the testimony of these three witnesses regarding Vehbija Karić's alleged statement is substantively the same, the Trial Chamber notes that it has been provided with information which could suggest a possible contamination of the witnesses' testimony.

¹⁸⁷¹ See *supra* para. 510.

¹⁸⁷² See *supra* paras 501-502.

¹⁸⁷³ See *supra* paras 503-504.

¹⁸⁷⁴ See *supra* paras 510-511.

¹⁸⁷⁵ See *supra* paras 509-510.

¹⁸⁷⁶ Ramiz Delalić, 17 May '05, T. 71 and 20 May '05, T. 99. Ramiz Delalić testified that he was told about the crimes in the afternoon of 8 September, Ramiz Delalić, 17 May '05, T. 70-71. He further testified that the only information available at the time was that civilians in Grabovica had been killed in the course of the previous night. The Trial Chamber notes that it has been established that the killings in Grabovica did not occur before dusk on 8 September. The Trial Chamber therefore finds that Ramiz Delalić must have been mistaken about the date and in fact went to Grabovica on 9 September.

¹⁸⁷⁷ Ramiz Delalić, 17 May '05, T. 71.

was paid to the crime.¹⁸⁷⁸ In light of the evidence discussed earlier,¹⁸⁷⁹ the Trial Chamber finds that Ramiz Delalić learned of the crimes on 9 September. According to Ramiz Delalić, some time between 14:30 and 16:00,¹⁸⁸⁰ Sefer Halilović told Zulfikar Ališpago to go to Grabovica to take a look and then report back; Ramiz Delalić asked for and received permission to accompany Zulfikar Ališpago.¹⁸⁸¹ According to Ramiz Delalić, it was possible that Sefer Halilović and the rest of the officers had already found out about the crime during the previous night or early that morning.¹⁸⁸²

518. Ramiz Delalić and Zulfikar Ališpago did not stay long in Grabovica. While there, they saw two bodies lying close to the water.¹⁸⁸³ When Ramiz Delalić and Zulfikar Ališpago returned from Grabovica to the base of the Zulfikar Detachment, they reported to Sefer Halilović that the information that civilians had been killed was correct.¹⁸⁸⁴ According to Ramiz Delalić, he “at no point [...] hear[d] an order being issued to locate the perpetrators of those crimes or to inform the commander of the unit to find those persons and to arrest them.”¹⁸⁸⁵

519. Šefko Hodžić was in Donja Jablanica in the At around 17:00 on 9 September, while he was in Jablanica, Šefko Hodžić was told that a Bosnian Croat family had been killed. He tried to go to Grabovica, but was told “it [was] all closed.” Šefko Hodžić then went to Donja Jablanica, where he stayed during the late afternoon and evening. According to Šefko Hodžić, Sefer Halilović arrived from Neretvica, which is in the area of Konjić, sometime after 18:00.¹⁸⁸⁶ They spoke to one another very briefly.¹⁸⁸⁷ There were too many soldiers around to have a real conversation.¹⁸⁸⁸ Šefko Hodžić testified: “so I kind of whispered to him ‘what happened in Grabovica down there’, and he said ‘yes’”,¹⁸⁸⁹ which Šefko Hodžić understood to mean that Sefer Halilović knew about the crimes.¹⁸⁹⁰ Šefko Hodžić, who thought at the time that the only victims were the members of the Zadro family,

¹⁸⁷⁸ Ramiz Delalić, 17 May '05, T. 71-72. Ramiz Delalić testified that “the conversation did not actually touch upon what had to be done” but “it was more about some grenades, mountain cannon and Howitzers that had to be obtained”, Ramiz Delalić, 17 May '05, T. 72. Erdin Arnautović testified that a meeting was held at Zulfikar Ališpago's base, on the morning of 9 September, where Sefer Halilović, Zulfikar Ališpago, Ramiz Delalić and others “discussed the attacks and all that”, Erdin Arnautović, 14 Feb '05, T. 55.

¹⁸⁷⁹ See specifically Section IV.D.7.(a) on the killing of Pero Marić, who was killed on 8 September.

¹⁸⁸⁰ Ramiz Delalić, 17 May '05, T. 73. Ramiz Delalić testified that he was not sure of the time and that he could speculate about the time, putting the time that he left for Grabovica between 14:30 and 16:00. The Trial Chamber recalls Ahmed Salihamidžić's testimony that Ramiz Delalić passed by him and Sead Kurt in Grabovica in the afternoon of 9 September. Ahmed Salihamidžić returned to the police station shortly after Ramiz Delalić passed him and Sead Kurt. They arrived there some time between 16:00 and 16:30, being an hour to an hour and a half after they left for Grabovica, *see* para. 415

¹⁸⁸¹ Ramiz Delalić, 17 May '05, T. 72-73.

¹⁸⁸² Ramiz Delalić, 17 May '05, T. 72.

¹⁸⁸³ Ramiz Delalić, 17 May '05, T. 74.

¹⁸⁸⁴ Ramiz Delalić, 17 May '05, T. 74.

¹⁸⁸⁵ Ramiz Delalić, 17 May '05, T. 75.

¹⁸⁸⁶ Šefko Hodžić, 23 Mar '05, T. 76-77.

¹⁸⁸⁷ Šefko Hodžić, 24 Mar '05, T. 77-78, 101.

¹⁸⁸⁸ Šefko Hodžić, 23 Mar '05, T. 77 and 24 Mar '05, T. 58.

¹⁸⁸⁹ Šefko Hodžić, 23 Mar '05, T. 77 and 24 Mar '05, T. 59.

¹⁸⁹⁰ Šefko Hodžić, 23 Mar '05, T. 77.

suggested that some of the former prisoners or Bosnian Muslim refugees present in the village could be responsible for the crimes, and Sefer Halilović answered: “well, that’s what I think, too”.¹⁸⁹¹ According to Šefko Hodžić, Sefer Halilović was very “pensive”.¹⁸⁹² After this conversation, Sefer Halilović left in the direction of the town of Jablanica.¹⁸⁹³ The next day, 10 September, Sefer Halilović told Šefko Hodžić that “there were people around whose duty was to investigate these matters. He didn’t refer to Džanković specifically, but he said that there were people looking into that.”¹⁸⁹⁴

520. Emin Zebić testified that between 19:00 and 20:00 on 9 September,¹⁸⁹⁵ at the Jablanica SJB, he was visited by Bakir Alispahić, who was on his way back to Sarajevo from Mostar.¹⁸⁹⁶ Emin Zebić told Bakir Alispahić everything he knew up to that point about what had happened in Grabovica.¹⁸⁹⁷ Bakir Alispahić called the “IKM” from the office of Emin Zebić.¹⁸⁹⁸ Emin Zebić heard Bakir Alispahić ask to speak to Sefer Halilović and then heard Bakir Alispahić relay the information Emin Zebić had just provided to him.¹⁸⁹⁹ However, Bakir Alispahić testified that he arrived in Jablanica only in the morning of 10 September.¹⁹⁰⁰ After he spoke with Sefer Halilović on the telephone, Bakir Alispahić went to the “IKM” in Jablanica.¹⁹⁰¹ Bakir Alispahić told Sefer Halilović what he had heard and proposed that an investigation be conducted.¹⁹⁰² He had the impression that Sefer Halilović was already partially or perhaps even fully informed about what had happened.¹⁹⁰³

521. In the evening of 9 September, Namik Džanković was in a hotel room in Jablanica with Sead Branković, a member of the Mostar CSB,¹⁹⁰⁴ when Sefer Halilović came to see him.¹⁹⁰⁵

¹⁸⁹¹ Šefko Hodžić, 23 Mar '05, T. 77, and 24 Mar '05, T. 59.

¹⁸⁹² Šefko Hodžić, 23 Mar '05, T. 78 and 24 Mar '05, T. 59. Šefko Hodžić stated that “perhaps, if I hadn’t asked him anything, he wouldn’t have said two words”, Šefko Hodžić 23 Mar '05, T. 78.

¹⁸⁹³ Šefko Hodžić, 23 Mar '05, T. 78.

¹⁸⁹⁴ Šefko Hodžić, 24 Mar '05, T. 101.

¹⁸⁹⁵ Emin Zebić, 16 Mar '05, T. 80 and 17 Mar '05, T. 45.

¹⁸⁹⁶ Emin Zebić, 16 Mar '05, T. 80-81 and 17 Mar '05, T. 24. Bakir Alispahić came because a few days earlier, on 6 September, he had taken the *Laste* unit of the MUP to Mostar to assist the Mostar CJB, *ibid.* Emin Zebić did not know that time that Bakir Alispahić would arrive, but it was customary that he would stop by the Jablanica SJB, as one had to pass through Jablanica to reach Sarajevo, Emin Zebić, 16 Mar '05, T. 81 and 17 Mar '05, T. 45-46.

¹⁸⁹⁷ Emin Zebić, 16 Mar '05, T. 81.

¹⁸⁹⁸ Emin Zebić, 16 Mar '05, T. 81, 83-84 and 17 Mar '05, T. 46, 88.

¹⁸⁹⁹ Emin Zebić, 16 Mar '05, T. 82, 84.

¹⁹⁰⁰ Bakir Alispahić, 24 May '05, T. 3.

¹⁹⁰¹ Bakir Alispahić, 24 May '05, T. 10, 14. Bakir Alispahić referred to the hydroelectric plant of Jablanica as the location of the “IKM”, Bakir Alispahić, 24 May '05, T. 10.

¹⁹⁰² Bakir Alispahić, 24 May '05, T. 14.

¹⁹⁰³ Bakir Alispahić, 24 May '05, T. 14.

¹⁹⁰⁴ According to Emin Zebić and Ahmed Salihamidžić, Sead Branković was a member of the Mostar CSB and placed at the Jablanica SJB in August and September 1993, Emin Zebić, 17 Mar '05, T. 7-8; Ahmed Salihamidžić, 18 Mar '05, T. 40. According to Namik Džanković, Sead Branković was from the Mostar SDB, Namik Džanković, 21 Mar '05, T. 10.

¹⁹⁰⁵ Namik Džanković, 21 Mar '05, T. 27; Ex. 215, report, pp. 2-3.

According to Namik Džanković, Sefer Halilović said “Namik, I am not behind that. I do not justify it. I want you to collect as much information as possible and send it and inform the Sarajevo command about it.”¹⁹⁰⁶

522. Vehbija Karić stated that he and the members of the Inspection Team, except Sefer Halilović,¹⁹⁰⁷ were informed about the killings on the morning of 9 September by Namik Džanković.¹⁹⁰⁸ According to Vehbija Karić, the information that Namik Džanković had received from the police in Jablanica was that approximately 19 murders had been committed by the 9th and 10th Brigades in Grabovica.¹⁹⁰⁹ The Trial Chamber further notes that Namik Džanković also testified that he spoke with members of the Inspection Team, Vehbija Karić, Zičro Suljević and Rifat Bilajac in the morning of the “day after the killing.”¹⁹¹⁰ He further stated that by that time, he had already spoken with members of the Jablanica SJB and had sent his first report to Sarajevo.¹⁹¹¹ According to Vehbija Karić, Sefer Halilović was not in Jablanica “on that day” and was informed by Namik Džanković “once he returned from the field on the 9th in the evening”.¹⁹¹²

523. The Prosecution alleged that Sefer Halilović was notified about the killings of the villagers in Grabovica during the night of 8 September.¹⁹¹³ In light of the evidence discussed above, the Trial Chamber finds that this allegation has not been proven beyond reasonable doubt. The Trial Chamber notes that Ramiz Delalić testified that Sefer Halilović was present in Donja Jablanica or Jablanica on the afternoon of 9 September. However, in light of the Trial Chamber’s finding that Ramiz Delalić’s testimony needs corroboration¹⁹¹⁴ and in light of the other, reliable evidence in this respect, the Trial Chamber finds that the evidence of Ramiz Delalić is insufficient to establish the whereabouts of Sefer Halilović on the afternoon of 9 September.

524. The Trial Chamber recalls its findings on the alleged killings in Grabovica. The Trial Chamber notes that latest time established for a proven killing was 13:30 on 9 September. Ahmed Salihamidžić reported hearing shots between 15:00 and 16:00 on 9 September from the direction of

¹⁹⁰⁶ Namik Džanković, 21 Mar '05, T. 28; Ex. 215, report, pp. 2-3. Namik Džanković also testified that in the morning of 9 September, he had gone to the hydroelectric power plant in Jablanica, where Zičro Suljević, Rifat Bilajac and Vehbija Karić were. Namik Džanković asked them if they had heard about the events in Grabovica. They had not. Namik Džanković briefly told “the generals” what happened. Vehbija Karić said “Namik, could you please do your best and continue to collect as much information as you can. Continue to work on it”, Namik Džanković, 21 Mar '05, T. 28-29. *See infra* Section IV.F, para. 661.

¹⁹⁰⁷ Vehbija Karić, Ex. 444, T. 82.

¹⁹⁰⁸ Vehbija Karić, Ex. 444, T. 82-83, 119-120. Vehbija Karić first testified that they were informed by Namik Džanković on the morning of 8 September, but then, after checking his notes, stated that it was in the morning of 9 September, *ibid.*

¹⁹⁰⁹ Vehbija Karić, Ex. 444, T. 83.

¹⁹¹⁰ Namik Džanković, 21 Mar '05, T. 28-29.

¹⁹¹¹ Namik Džanković, 21 Mar '05, T. 29.

¹⁹¹² Vehbija Karić, 02 Jun '05, T. 10.

¹⁹¹³ Indictment, para. 15.

¹⁹¹⁴ *See supra* Section II, para. 17.

the Marić houses.¹⁹¹⁵ This is the last report of shots that the Trial Chamber heard of. Ahmed Salihamidžić did not testify that he saw any killings being committed while he was in Grabovica.

525. Based on the evidence presented by witnesses other than Ramiz Delalić as to the time when Sefer Halilović had notification of the killings occurring, in particular the testimony of Šefko Hodžić, the Trial Chamber finds that it has not been established beyond reasonable doubt that Sefer Halilović knew of the crimes before 18:00 on 9 September. Therefore, the Trial Chamber finds that the Prosecution failed to prove beyond reasonable doubt that Sefer Halilović knew of the killings in Grabovica before the last killings were committed.

E. Events in Uzdol

1. Uzdol in 1993

526. Uzdol is a mountainous area, comprised of several hamlets, most of which have only a few houses, and with a total of about one hundred inhabitants.¹⁹¹⁶ The hamlets include Rajići,¹⁹¹⁷ Cer,¹⁹¹⁸ Križ,¹⁹¹⁹ Bobari,¹⁹²⁰ and Zelenike.¹⁹²¹ Uzdol is primarily a farming and hunting area.¹⁹²² It is part of the Prozor municipality.¹⁹²³ Uzdol is located about 10-15 kilometres from the town of Prozor.¹⁹²⁴

527. In 1993, Uzdol was a Bosnian Croat village.¹⁹²⁵ The area near Uzdol was dotted with hamlets,¹⁹²⁶ some with mixed population, such as Ljubunci, Kranjčići and Donja Vast,¹⁹²⁷ and some

¹⁹¹⁵ Ex. 222, Official Note by Ahmed Salihamidžić.

¹⁹¹⁶ Kazo Zelenika, 04 Apr '05, T. 7 and 30. A number of photographs depicting the village of Uzdol were admitted into evidence; *see, e.g.*, Ex. 319, Ex. 320 (*see* Ivka Stojanović, 06 Apr '05), T. 4; and Ex. 299 (*see* Kazo Zelenika, 04 Apr '05, T. 8). The Trial Chamber notes that some witnesses referred to Uzdol as a "village".

¹⁹¹⁷ Ex. 322, photograph where Ivka Stojanović marked the hamlet of Rajići ("1"), Ivka Stojanović, 06 Apr '05, T. 6; Ex. 340, photograph of the area of Uzdol above the school, where Witness G marked the village of Rajići, Witness G, 07 Apr '05, T. 73.

¹⁹¹⁸ Ex. 299, photograph where Kazo Zelenika marked the school in Cer ("1"), Kazo Zelenika, 04 Apr '05, T. 8; Ex. 340, photograph of the area of Uzdol, where Witness G marked the school building in Cer and said that an accumulation of HVO forces were in the area surrounding the school, Witness G, 07 Apr '05, T. 72.

¹⁹¹⁹ Ex. 320, Ex. 322 and Ex. 326, photographs where Ivka Stojanović marked the hamlet of Križ, Ivka Stojanović, 06 Apr '05, T. 5-6 and 63; Ex. 334 and Ex. 340, photographs where Witness G marked the hamlet of Križ, Witness G, 07 Apr '05, T. 42-43 and 73; Ex. 347, overview of Križ, marked by Janjko Stojanović, Janjko Stojanović, 12 Apr '05, T. 28.

¹⁹²⁰ Ex. 337, photograph where Witness G pointed out the village of Bobari, Witness G, 07 Apr '05, T. 59. The hamlet of Bobari is located at the very beginning of the road that leads from Here to Uzdol, Witness G, 07 Apr '05, T. 60.

¹⁹²¹ Kazo Zelenika, 04 Apr '05, T. 7, 30; Ex. 323, photograph of the hamlet of Zelenike, Ivka Stojanović, 06 Apr '05, T. 10-11; Ex. 340, photograph where Witness G marked the village of Zelenike, Witness G, 07 Apr '05, T. 73.

¹⁹²² Marko Zelić, 13 Apr '05, T. 13.

¹⁹²³ Mehmed Behlo, 28 Jun '05, T. 44.

¹⁹²⁴ Mehmed Behlo, 27 Jun '05, T. 67; Kazo Zelenika, 04 Apr '05, T. 11; Kate Adie, 18 Apr '05, T. 18.

¹⁹²⁵ Kazo Zelenika, 04 Apr '05, T. 13.

¹⁹²⁶ Kate Adie, 18 Apr '05, T. 115.

¹⁹²⁷ Kazo Zelenika, 04 Apr '05, T. 13.

with only Bosnian Muslim population, such as the village of Here, which is located about 5 to 10 kilometres from Uzdol.¹⁹²⁸

528. In July 1993, around Uzdol there were front lines held by the HVO and the ABiH.¹⁹²⁹ The village of Here was under ABiH control.¹⁹³⁰ From 24 October 1992 until 14 September 1993, the HVO fired upon the village of Here mainly from their artillery positions in Prozor, Kranjčići, and Cer.¹⁹³¹ Attacks occurred on a daily basis and sometimes the HVO would fire as many as 500 shells a day.¹⁹³² By September 1993, the village had been destroyed by artillery.¹⁹³³ The ABiH was inferior as far as artillery was concerned.¹⁹³⁴

529. In early July 1993, many civilians left Uzdol and went to Prozor or Rumboci.¹⁹³⁵ Most of the men and elderly people stayed, while most of the younger ones were evacuated.¹⁹³⁶ Sometimes, when the situation appeared to be safe, some women and children would go back to their houses and their land in Uzdol.¹⁹³⁷

530. In early September 1993, the front line of combat between the HVO and the ABiH ran through Uzdol.¹⁹³⁸ In particular, several of the hamlets comprising Uzdol were between the front line and the command post of the HVO 3rd Battalion of the Rama Brigade at the elementary school building in Cer.¹⁹³⁹ The ABiH controlled Here and the villages around it, Kute and Šćipe,¹⁹⁴⁰ while the HVO controlled Uzdol and the surrounding hamlets.¹⁹⁴¹ Between Here and the school in Cer there was a clear front line for most of the time.¹⁹⁴² The HVO was located on the hill of Borak, and

¹⁹²⁸ Kazo Zelenika, 04 Apr '05, T. 13. *See also* Ex. 445: map drawn by Mehmed Behlo, where he indicated the villages of Here, Šćipe and Kute, Mehmed Behlo, 27 Jun '05, T. 66.

¹⁹²⁹ Ivka Stojanović, 06 Apr '05, T. 3. Ex. 322, photograph where Ivka Stojanović recognised where the ABiH front line positions were, Ivka Stojanović, 06 Apr '05, T. 6. According to Witness G, Prozor was a strategically important area for the Republic of Croatia and Bosnia and Herzegovina, Witness G, 07 Apr '05, T. 54.

¹⁹³⁰ Witness G, 07 Apr '05, T. 43. *See also, e.g.,* Ex. 334 and 336 and 337, photographs where Witness G marked the hamlet of Here, Witness G, 07 Apr '05, T. 43-44 and 56.

¹⁹³¹ Witness G, 11 Apr '05, T. 10-11.

¹⁹³² Witness G, 11 Apr '05, T. 11.

¹⁹³³ Witness G, 11 Apr '05, T. 10.

¹⁹³⁴ Witness G, 11 Apr '05, T. 10-11.

¹⁹³⁵ Janjko Stojanović, 12 Apr '05, T. 55. Ivka Stojanović testified that on 3 July 1993, following the killing of a man called Drago Ratkić, "an army" arrived in Uzdol and ordered that all civilians should leave the village. In the evening of 3 July, Ivka Stojanović left her house in Križ and went to Rama Rumboci with her mother, Luca Zelenika, Ivka Stojanović, 06 Apr '05, T. 7-8. *See also* Kazo Zelenika, 04 Apr '05, T. 7.

¹⁹³⁶ Janjko Stojanović, 12 Apr '05, T. 55, Witness J, 06 Jul '05, T. 14.

¹⁹³⁷ Witness J, 06 Jul '05, T. 14 and 07 Jul '05, T. 87.

¹⁹³⁸ Kazo Zelenika, 04 Apr '05, T. 59. Witness H testified that the front line was marked by military outposts and that several of the villages surrounding Uzdol were directly exposed to the front line, Witness H, 14 Apr '05, T. 45.

¹⁹³⁹ Kazo Zelenika, 04 Apr '05, T. 73. Witness J, 06 Jul '05, T. 13-14. The village of Križ was between the front line and the battalion headquarters in Cer, Ivka Stojanović, 06 Apr '05, T. 50.

¹⁹⁴⁰ Witness H, 14 Apr '05, T. 44.

¹⁹⁴¹ Witness H, 14 Apr '05, T. 44.

¹⁹⁴² Witness H, 14 Apr '05, T. 44.

at other fortified positions,¹⁹⁴³ and the ABiH had positions on the hill of Krstiste,¹⁹⁴⁴ and at Konjsko hill.¹⁹⁴⁵

531. Because the front line was close to Uzdol, living in the hamlets in September 1993 was dangerous for civilians.¹⁹⁴⁶ Despite the danger, a number of civilians decided to stay, especially the elderly ones, and some others left but returned later on.¹⁹⁴⁷ There is evidence indicating that at the time civilians, including school-aged children,¹⁹⁴⁸ were living in Rajići, Križ, Cer and Zelenike.¹⁹⁴⁹

532. The evidence is contradictory as to whether villagers had weapons. According to Witness J, a member of the Prozor Independent Battalion, there were weapons in each house in Uzdol.¹⁹⁵⁰ People in Uzdol carried weapons openly.¹⁹⁵¹ Kazo Zelenika, who at that time was the registrar of Uzdol,¹⁹⁵² testified that before the armed conflict there were quite a number of hunters in Uzdol, who had sawn-off shotguns, but very few people had proper hunting rifles.¹⁹⁵³ He said that he had not seen any of the alleged victims in August or September 1993 carrying a weapon.¹⁹⁵⁴ Also Janjko

¹⁹⁴³ See *infra* Section IV.E, paras 535-540.

¹⁹⁴⁴ Ivka Stojanović, 06 Apr '05, T. 42; Ex. 328, photograph where Ivka Stojanović marked the hill of Krstiste, Ivka Stojanović, 06 Apr '05, T. 67; Ex. 334, Ex. 336 and Ex. 339, photographs where Witness G marked the hill of Krstiste, Witness G, 07 Apr '05, T. 43-44 and 61.

¹⁹⁴⁵ Janjko Stojanović, 12 Apr '05, T. 61-62.

¹⁹⁴⁶ Witness I, 15 Apr '05, T. 16.

¹⁹⁴⁷ Witness I, 15 Apr '05, T. 16. The Trial Chamber heard the testimony of Ivka Stojanović who had left at the beginning of July and had moved to Rumboci with her mother Luka Zelenika. On 12 September Ivka Stojanović and her mother returned to their homes in Križ and in Zelenike, respectively, Ivka Stojanović, 06 Apr '05, T. 10-11. Ivka Stojanović's son, Janjko Stojanović, did not want her to stay in Križ, because he feared that she might be attacked by Bosnian Muslim forces while he was on duty in the HVO. He had been told that there was danger of an imminent attack by the ABiH either on 12 or 13 September. He told his mother to leave but she stayed, Janjko Stojanović 11 Apr '05, T. 87-88 and 12 Apr '05, T. 59-60. See also Witness G, a member of the Prozor Independent Battalion, who testified that from what the unit could see from their position, Uzdol was half deserted, there were more soldiers around than civilians, but that they were aware of the fact that there were still some civilians left, Witness G, 07 Apr '05, T. 50.

¹⁹⁴⁸ For example, Marko Zelić, Stjepan Zelić, Marija Zelić (Marko Zelić, 12 Apr '05, T. 83) and Jadranka Zelenika (Kazo Zelenika, 04 Apr '05, T. 22-23) were in Uzdol.

¹⁹⁴⁹ Witness I, 15 Apr '05, T. 32. According to Janjko Stojanović, as of 14 September 1993, about 15 civilians and 10 soldiers were living in the village of Križ. Janjko Stojanović, 12 Apr '05, T. 30 and 54.

¹⁹⁵⁰ Witness J, 06 Jul '05, T. 13-14 and 07 Jul '05, T. 81-83. Witness J explains his conclusion in the following way: the ABiH and the HVO were a single formation from the beginning of the conflict, from April until October 1992 in Prozor, and even longer in some other areas. Each one knew what the other one had; the purchase of weapons was no secret. Moreover, there was a joint action by the army and the HVO against facilities of the former JNA, where a large amount of weapons were seized and were then distributed in proportion to the number of inhabitants between the Bosnian Muslims and the "Croats". He also added that the "Croats" had an organised service to collect funds for the purchase of weapons and all those who were working abroad were obliged to send money to that fund. The Prozor Independent Battalion knew approximately who was buying weapons, how many, who was distributing weapons, and where. They also had general information about who was in the village, where they were, and what weapons and artillery they had, and approximately how many women and children were there, *ibid.*, T. 83-85.

¹⁹⁵¹ Witness J, 07 Jul '05, T. 81-83.

¹⁹⁵² During the war Kazo Zelenika was the registrar in Uzdol and in charge of maintaining records of births, marriages and deaths, Kazo Zelenika, 04 April 05, T. 6-7.

¹⁹⁵³ Kazo Zelenika testified that his father was a hunter and that he and his father had a shotgun, Kazo Zelenika, 04 Apr '05, T. 70-71; Marko Zelić testified that there was a hunting club in Zelenike, and that his father had a hunting rifle in the house, Marko Zelić, 13 Apr '05, T. 13-14.

¹⁹⁵⁴ Kazo Zelenika, 04 Apr '05, T. 43.

Stojanović, an HVO soldier living in Križ, testified that he could not remember any of the elderly people in the village having a rifle.¹⁹⁵⁵ Kazo Zelenika and Janjko Stojanović were not aware of any civilians having hand grenades.¹⁹⁵⁶

533. According to Kazo Zelenika, prior to the ABiH attack on 14 September 1993, there was some random shooting in the area of Uzdol, but no heavy fighting.¹⁹⁵⁷

2. Presence of HVO in Uzdol in September 1993

534. Evidence shows that in September 1993 there was a significant number of HVO soldiers in Uzdol¹⁹⁵⁸ and several HVO positions in and around Uzdol.

(a) HVO positions in Uzdol: school in Cer

535. In September 1993, the HVO 3rd Battalion of the Rama Brigade had its headquarters in the school building in Cer.¹⁹⁵⁹ The commander of this battalion was Josip Prskalo.¹⁹⁶⁰ In the school there was also a communications centre and a kitchen.¹⁹⁶¹ A tank and a mortar were positioned outside the school.¹⁹⁶²

536. Witness G, a member of the Prozor Independent Battalion, testified that the largest number of HVO forces in the area were stationed at the school in Cer.¹⁹⁶³ According to Kazo Zelenika, approximately 10-15 soldiers were also billeted at the school because they were not from Uzdol but from Rama or Prozor and it was too far for them to go back home to spend the night.¹⁹⁶⁴ Witness G also testified that the “intervention units”, which could be deployed right away, were also

¹⁹⁵⁵ Janjko Stojanović, 12 Apr '05, T. 58, 67 and 71. Kazo Zelenika did not know whether some civilians had hand grenades in their homes, Kazo Zelenika, 04 Apr '05, T. 93.

¹⁹⁵⁶ Janjko Stojanović, 12 Apr '05, T. 57; Kazo Zelenika, 04 Apr '05, T. 93.

¹⁹⁵⁷ Kazo Zelenika, 04 Apr '05, T. 71. Ivka Stojanović testified that on 12 September there was fighting in the area of Zelenika and that there was some random shooting in Križ, Ivka Stojanović, 06 Apr '05, T. 12-13.

¹⁹⁵⁸ Kazo Zelenika said that there were between 100 and 200 HVO soldiers, Kazo Zelenika, 04 Apr '05, T. 61. According to Janjko Stojanović there were approximately between 80 and 100 HVO soldiers, Janjko Stojanović, 11 Apr '05, T. 80; Witness H testified that there was approximately “a battalion” of HVO soldiers in the area of Uzdol, Witness H, 14 Apr '05, T. 45.

¹⁹⁵⁹ Witness I, 15 Apr '05, T. 28; Kazo Zelenika, 04 Apr '05, T. 60 and 70; Witness G, 07 Apr '05, T. 72; Witness H, 14 Apr '05, T. 2-4. *See also* Ex. 320, photograph of the village of Uzdol where Ivka Stojanović marked the school, Ivka Stojanović, 06 Apr '05, T. 4; Ex. 299, photograph where Kazo Zelenika marked the school, Kazo Zelenika, 04 Apr '05, T. 8; Ex. 340, photograph of the area of Uzdol above the school, where Witness G marked the school and said that “an accumulation of HVO forces were in th[e] area surrounding the school building”, Witness G, 07 Apr '05, T. 72.

¹⁹⁶⁰ Kazo Zelenika, 04 Apr '05, T. 62; Janjko Stojanović, 12 Apr '05, T. 45.

¹⁹⁶¹ Kazo Zelenika, 04 Apr '05, T. 60; Janjko Stojanović, 11 Apr '05, T. 79-80.

¹⁹⁶² Witness I, 15 Apr '05, T. 18, Kazo Zelenika, 04 Apr '05, T. 61. *See also* Ex. 340, photograph where Witness G marked the positions where the tank and the mortar were, Witness G, 07 Apr '05, T. 73-74; Ex. 341, photograph where Witness G marked the artillery positions in Cer, Witness G, 11 Apr '05, T. 9-10.

¹⁹⁶³ Witness G, 11 Apr '05, T. 67.

¹⁹⁶⁴ Kazo Zelenika, 04 Apr '05, T. 62. According to Kazo Zelenika, the soldiers in the school were all sleeping in their uniform, Kazo Zelenika, 04 Apr '05, T. 91. *See also* Witness I, 15 Apr '05, T. 29.

accommodated in the school building.¹⁹⁶⁵ Many of the soldiers of the HVO 3rd Battalion of the Rama Brigade were local people from the hamlets of Uzdol and they would spend the night in their respective homes.¹⁹⁶⁶ They were not at the front line every day.¹⁹⁶⁷ Those who were not on duty lived in private homes in Uzdol.¹⁹⁶⁸

537. Some local women were helping out at the school in Cer, cooking and cleaning.¹⁹⁶⁹ Some of them would make bread in the school kitchen, some others would do so in their own homes.¹⁹⁷⁰ When the women worked in the kitchen, they never wore a uniform.¹⁹⁷¹ They were not given any weapons and no weapons were brought into the kitchen.¹⁹⁷²

538. There is evidence that at the time the HVO detained Bosnian Muslim civilians in the school in Cer. These were civilians who had been brought over from Prozor and were used as a labour force.¹⁹⁷³ There is also evidence that prisoners of war were detained by the HVO in or around the school in Cer and that they had been used as human shields by the HVO on previous occasions.¹⁹⁷⁴

(b) Other HVO positions around Uzdol

539. The HVO had about ten positions around Uzdol.¹⁹⁷⁵ The soldiers manned these positions in shifts.¹⁹⁷⁶

540. At the position on the hill of Borak¹⁹⁷⁷ there were about five to six soldiers¹⁹⁷⁸ and fixed weaponry.¹⁹⁷⁹ A field telephone was used to communicate between the position on Borak and the

¹⁹⁶⁵ Witness G, 11 Apr '05, T. 67.

¹⁹⁶⁶ Kazo Zelenika, 04 Apr '05, T. 62.

¹⁹⁶⁷ Kazo Zelenika, 04 Apr '05, T. 61.

¹⁹⁶⁸ Witness G, 07 Apr '05, T. 72 and 11 Apr '05, T. 67.

¹⁹⁶⁹ See, e.g., Kazo Zelenika, 04 Apr '05, T. 44 and 05 Apr '05, T. 20- 21; Ivka Stojanović, 06 Apr '05, T. 38; Witness I, 14 Apr '05, T. 92.

¹⁹⁷⁰ Kazo Zelenika, 04 Apr '05, T. 44. According to Kazo Zelenika, women who were mobilised would work in the kitchen and they would take shifts, *ibid.*, T. 44.

¹⁹⁷¹ Witness I, 14 Apr '05, T. 95.

¹⁹⁷² Witness I, 14 Apr '05, T. 95.

¹⁹⁷³ Witness J, 06 Jul '05, T. 14-15. Witness J, a member of the Prozor Independent Battalion, testified that in August and early September 1993, many of the Bosnian Muslims whom had remained in Prozor had been taken to dig trenches in the Uzdol area.

¹⁹⁷⁴ Witness H, 14 Apr '05, T. 47.

¹⁹⁷⁵ See, e.g., Ex. 340 and 341, photographs where Witness G marked some of the HVO positions, including artillery positions, in Bobari, Kranjcici, Gradac, Cer, Witness G, 07 Apr '05, T. 72-75 and 11 Apr '05, T. 8-10. See also Kazo Zelenika, 04 Apr '05, T. 61.

¹⁹⁷⁶ Janjko Stojanović, 11 Apr '05, T. 80-81.

¹⁹⁷⁷ The hill of Borak overlooks the hamlet of Križ, which is situated just at the base of the hill, Ex. 326 and 328, photographs where Ivka Stojanović marked the hill of Borak, Ivka Stojanović, 06 Apr '05, T. 63 and 67. Ex. 340, photograph where Witness G marked Borak, Witness G, 07 Apr '05, T. 73.

¹⁹⁷⁸ Janjko Stojanović, 11 Apr '05, T. 81.

¹⁹⁷⁹ There was a sort of machine gun called Zbrojovka, and heavier weapons such as a mortar, which, however, was not always located there, Janjko Stojanović, 11 Apr '05, T. 82. See also Ex. 340, photograph where Witness G marked mortars on top of the hill Borak, Witness G, 11 Apr '05, T. 10.

base at the school in Cer.¹⁹⁸⁰ About 400-500 meters from Borak, there was a position called Zeljaca.¹⁹⁸¹ At the position in Kranjčići there was usually a tank and several mortars and a multiple-rocket launcher.¹⁹⁸² There were anti-aircraft positions in Gradac.¹⁹⁸³ There were also HVO positions in Komin,¹⁹⁸⁴ Prozor,¹⁹⁸⁵ and Osljani.¹⁹⁸⁶ There were other artillery positions with pieces aimed at the village of Here,¹⁹⁸⁷ which included a multiple-rocket launcher, tanks, and other types of artillery weapons.¹⁹⁸⁸

(c) HVO members living in Uzdol

541. Evidence shows that a number of men from the hamlets of Križ¹⁹⁸⁹ and Zelenike¹⁹⁹⁰ performed duties in the HVO.¹⁹⁹¹ As seen above, there is evidence indicating that those soldiers, when they were not on duty at one of the above-mentioned HVO positions, would go back to their respective homes in Uzdol.¹⁹⁹²

¹⁹⁸⁰ Janjko Stojanović, 11 Apr '05, T. 85.

¹⁹⁸¹ Janjko Stojanović, 12 Apr '05, T. 40; Marko Zelić, 13 Apr '05, T. 11. This position was to the right of Borak looking towards the Bosnian Muslim positions and the nearest position to the left was Gradac with Brdo in between, Janjko Stojanović, 12 Apr '05, T. 40.

¹⁹⁸² Witness G, 11 Apr '05, T. 9. *See also* Ex. 341, photograph where Witness G marked Kranjčići, *ibid.*

¹⁹⁸³ Witness G, 11 Apr '05, T. 9. *See also* Ex. 341, photograph where Witness G marked Gradac and the anti-aircraft positions, *ibid.*

¹⁹⁸⁴ Komin is a hill above Uzdol, between Lisina and Konjsko, Kazo Zelenika, 04 Apr '05, T. 66.

¹⁹⁸⁵ Janjko Stojanović, 11 Apr '05, T. 85; Witness G, 11 Apr '05, T. 10. *See also* Ex. 341, photograph where Witness G drew an arrow in the direction of the Prozor artillery, which is not visible in this photograph, *ibid.*

¹⁹⁸⁶ Witness G, 07 Apr '05, T. 58.

¹⁹⁸⁷ Witness G, 07 Apr '05, T. 74. *See also* Ex. 340, photograph where Witness G marked the village of Here, Witness G, 07 Apr '05, T. 75.

¹⁹⁸⁸ Witness G, 07 Apr '05, T. 74. *See also* Ex. 340, photograph where Witness G drew an arrow to the left of the school in Cer pointing to where these other artillery positions were, Witness G, 07 Apr '05, T. 75.

¹⁹⁸⁹ Among them were Janjko Stojanović, Marko Stojanović, Mato Stojanović, Pero Stojanović, Josip Stojanović, Marinko Stojanović, Mijo Ratkić, Kazo Ratkić, Niko Ratkić, and Drago Ratkić, Ivka Stojanović, 06 Apr '05, T. 2 and 51; Janjko Stojanović, 11 Apr '05, T. 79, and 12 Apr '05, T. 34. Zoran Stojanović and Ivan Stojanović were underage and did not belong to the HVO. They were never seen with weapons in their hands, Ivka Stojanović, 06 Apr '05, T. 47.

¹⁹⁹⁰ Among them were Pavo Zelić, Pavo Grubeša, Pero Kovčalija, Marinko Kovčalija, Ivo Kovčalija, Ante Zelenika, Ivan Zelenika, Mario Zelenika, Witness I, 15 Apr '05, T. 18-19. *See also* Marko Zelić, 13 Apr '05, T. 10-11, 17 and 28.

¹⁹⁹¹ Marko Zelić testified that as far as he knows "they were all in the HVO", however he did not know of the home guard or that the older men in Zelenike were performing patrol duties in September 1993, Marko Zelić 13 Apr '05, T. 11.

¹⁹⁹² In the two days before the attack on 14 September 1993, Janjko Stojanović worked his shift at Borak and spent the nights at home. On the night of 13 September, Janjko Stojanović was at home with his mother: he slept in the room on the first floor, wearing his camouflage uniform, and with his rifle right by the bed, Janjko Stojanović, 11 Apr '05, T. 88 and 94. *See also* Ex. 349, photograph where Janjko Stojanović marked the civilian houses and the soldiers' houses. He also indicated where there were civilians and soldiers living in the same houses, Janjko Stojanović, 12 Apr '05, T. 31-33. In Ex. 350 (photograph) Janjko Stojanović marked (with triangles) the houses where soldiers sometimes stayed, and more in particular: Ilja Kovčalija, Niko Ratkić, Fabio Ratkić, Marko Stojanović, Mijo Stojanović. The soldiers that were in the marked houses were armed, Janjko Stojanović, 12 Apr '05, T. 50-51 and 56. Witness I marked on Ex. 371, (photograph of Zelenike) each house in which an HVO member lived in August and September 1993, as well as the houses of civilians, Witness I, 15 Apr '05, T. 19-21.

542. The Trial Chamber has been provided with evidence on the whereabouts of some of the HVO soldiers on the night of 13 September 1993.¹⁹⁹³

(d) Weapons of HVO soldiers

543. Most of the HVO soldiers in Uzdol had weapons, including semi-automatic weapons.¹⁹⁹⁴ Kazo Zelenika testified that every soldier would sign for a number of hand grenades; however, sometimes there was a shortage and soldiers did not have any hand grenades.¹⁹⁹⁵ Some soldiers also had light rocket-propelled grenades.¹⁹⁹⁶

544. As mentioned above, members of the 3rd Battalion of the Rama Brigade based in the school in Cer were not at the front line every day.¹⁹⁹⁷ HVO soldiers on leave were required to keep their personal weapon and some ammunition with them, in case they were attacked.¹⁹⁹⁸ However, each soldier made his own decision whether or not to be armed at all times with his weapon and ammunition, depending on how safe he felt.¹⁹⁹⁹

(e) Uniforms of HVO soldiers

545. Most of the HVO soldiers in Uzdol wore uniforms.²⁰⁰⁰ The HVO camouflage uniform was different from the ABiH uniform in that the former was somewhat more “green” than the latter,²⁰⁰¹ which was “more the colour of sand and the chequers were a bit smaller”.²⁰⁰² The reason for some of the soldiers not wearing uniforms was probably, according to Witness J, a member of the Prozor Independent Battalion, that there was a shortage of them.²⁰⁰³ Moreover, in the village there were members of the “home guard”, who were plain-clothed.²⁰⁰⁴

¹⁹⁹³ Kazo Zelenika, 04 Apr '05, T. 63-68 and 05 Apr '05, T. 29

¹⁹⁹⁴ Witness J, 06 Jul '05, T. 14. According to Janjko Stojanović, some of the soldiers in Uzdol had semi-automatic rifles, some had sniper rifles, Janjko Stojanović, 11 Apr '05, T. 83.

¹⁹⁹⁵ Kazo Zelenika, 04 Apr '05, T. 92. Janjko Stojanović also testified that he did not personally have any hand grenades, and that he does not think that any other soldier at his position in Borak had any either, Janjko Stojanović, 11 Apr '05, T. 83

¹⁹⁹⁶ Janjko Stojanović, 11 Apr '05, T. 83. According to Janjko Stojanović, the soldiers did not have the heavier rocket-propelled grenades.

¹⁹⁹⁷ Kazo Zelenika, 04 Apr '05, T. 61.

¹⁹⁹⁸ Janjko Stojanović, 12 Apr '05, T. 38; Kazo Zelenika, 04 Apr '05, T. 91.

¹⁹⁹⁹ Janjko Stojanović, 12 Apr '05, T. 56. Janjko Stojanović never saw an order to this effect. He also stated that no one ever asked him to leave his weapon anywhere after his shift was over, and that it was logical to bring the weapon with him home, Janjko Stojanović, 12 Apr '05, T. 56-57.

²⁰⁰⁰ Witness J, 06 Jul '05, T. 14.

²⁰⁰¹ Janjko Stojanović, 12 Apr '05, T. 34. Witness I, however, stated that the uniforms of the HVO soldiers and the soldiers “from the other side” were very similar, Witness I, 15 Apr '05, T. 11.

²⁰⁰² Janjko Stojanović, 11 Apr '05, T. 85-86. According to Marko Zelić, there was no clear distinction between the HVO and the ABiH uniforms, Marko Zelić, 12 Apr '05, T. 87. *See also* Witness I, 15 Apr '05, T. 11.

²⁰⁰³ Witness J, 06 Jul '05, T. 14.

²⁰⁰⁴ Witness J, 06 Jul '05, T. 14.

546. When soldiers were off-duty they still had to be in uniform.²⁰⁰⁵ According to Kazo Zelenika, “a soldier always had to be a soldier”, and they were not allowed to wear civilian clothes at the time.²⁰⁰⁶

(f) “Home guard”

547. The evidence shows that members of the “home guard” were older male citizens of Uzdol who performed local duties for the HVO, such as patrolling crossroads, preventing the planting of land mines and patrolling the village in the evenings.²⁰⁰⁷ Members of the “home guard” were HVO members. They were mostly people aged around 50 or 55.²⁰⁰⁸ However, most of the members of the “home guard” carried rifles²⁰⁰⁹ but did not wear uniforms.²⁰¹⁰ The “home guard” members did not take part in military exercises.²⁰¹¹

548. There were about ten members of the “home guard” around Uzdol.²⁰¹² There is evidence showing that members of the “home guard” were living in Zelenike and in Križ.²⁰¹³

549. There was a “home guard” or “home defenders unit” of the HVO at Kracko Polje, which is near Uzdol.²⁰¹⁴ Members of this unit were younger than the ordinary “home guard” members, aged between 40 and 50, and were people who had not been sent to the front lines, either because they were sick or because they were “not fit to carry firearms”.²⁰¹⁵ They wore uniforms²⁰¹⁶ and had weapons.²⁰¹⁷ They were at the rear, guarding the roads and the junction.²⁰¹⁸

²⁰⁰⁵ Kazo Zelenika, 04 Apr '05, T. 91.

²⁰⁰⁶ Kazo Zelenika, 04 Apr '05, T. 91. Kazo Zelenika wore a uniform too, *ibid.*

²⁰⁰⁷ Kazo Zelenika, 04 Apr '05, T. 45-46 and 67.

²⁰⁰⁸ According to Kazo Zelenika, members of the “home guard” were people who had previously worked in Croatia or in Sarajevo, and once the war began they were out of work, and they returned home, Kazo Zelenika, 04 Apr '05, T. 46, 67.

²⁰⁰⁹ Kazo Zelenika, 04 Apr '05, T. 66; Witness I, 15 Apr '05, T. 24.

²⁰¹⁰ Kazo Zelenika, 04 Apr '05, T. 45.

²⁰¹¹ Kazo Zelenika, 04 Apr '05, T. 46, 67.

²⁰¹² Witness I, 15 Apr '05, T. 24.

²⁰¹³ Amongst them were Pavo Grubeša, Ivan Grubić, Rade Stojanović, Marko Džalta and Ivan Ratkić, Witness I, 15 Apr '05, T. 25-26. Ex. 372, photograph where Witness I marked the house of Ivan Ratkić, Witness I, 15 Apr '05, T. 26-27. Pavo Grubeša, Mara Grubeša's husband, lived in Zelenike. He was a member of the “home guard” and in the morning of 14 September was at Kracko Polje, Kazo Zelenika, 05 Apr '05, T. 29.

²⁰¹⁴ Witness I, 14 Apr '05, T. 79 and 15 Apr '05, T. 23-24. Concerning the location of Kracko Polje the Trial Chamber heard only the testimony of Kazo Zelenika, who testified that on the morning of 14 September 1993, he parked the vehicle “about two or three kilometres from Uzdol itself towards Kracko Polje, between Kolanusici and Kracko Polje”, Kazo Zelenika, 04 Apr '05, T. 13. This unit included Marko Rajić, Pavo Grubeša and Ivan Ljubić, Kazo Zelenika, 04 Apr '05, T. 46 and 05 Apr '05, T. 29. According to Kazo Zelenika there were two or three people standing guard at Kracko Polje at night. Kazo Zelenika, 04 Apr '05, T. 69.

²⁰¹⁵ Kazo Zelenika, 04 Apr '05, T. 45.

²⁰¹⁶ Kazo Zelenika, 05 Apr '05, T. 31.

²⁰¹⁷ Kazo Zelenika, 04 Apr '05, T. 46. Domin Rajić's brother, Franjo Rajić, had a uniform and a rifle, and he was a member of the “home guard”, Kazo Zelenika, 04 Apr '05, T. 46 and 05 Apr '05, T. 29.

²⁰¹⁸ Kazo Zelenika, 04 Apr '05, T. 46. Kazo Zelenika testified that every three or four days some of the people standing guard at Kracko Polje would come over, and Kazo Milicević from Kranjčići, who was the man in

550. All members of the “home guard” in that area had to obey to Josip Prskalo, the Commander of the 3rd Battalion of the Rama Brigade, who would give orders and sometimes he would tour the units.²⁰¹⁹ According to Kazo Zelenika, all members of the HVO in that area, including members of the “home guard”, were part of the 42nd Home Guard Battalion of the Rama Brigade.²⁰²⁰

3. Attack on Uzdol – 14 September 1993

551. As mentioned above, the Prozor Independent Battalion was one of the ABiH units tasked with combat activities on the Prozor axis, as part of the “Operation”.²⁰²¹ The battalion was based in Dobro Polje, which is located about ten kilometers from Uzdol.²⁰²² The evidence presented at trial shows that the attack on Uzdol on 14 September 1993 was carried out by units of the Prozor Independent Battalion, together with some members of the civilian police forces of the MUP, who acted under the orders of Enver Buza, Commander of the Prozor Independent Battalion.²⁰²³

552. The Trial Chamber heard a number of witnesses testify about the attack on Uzdol on 14 September 1993, both members of the ABiH forces and residents of Uzdol at the time. The Trial Chamber was also provided with reports from the relevant period from both the ABiH and the HVO.

charge, “probably” reported to Josip Prskalo, the Commander of the 3rd Battalion of the Rama Brigade, Kazo Zelenika, 04 Apr '05, T. 69.

²⁰¹⁹ Kazo Zelenika, 04 Apr '05, T. 70.

²⁰²⁰ Kazo Zelenika, 05 Apr '05, T. 82.

²⁰²¹ As mentioned above (*see supra* para. 313) Witness G testified that the area of responsibility of the Prozor Independent Battalion during the “Neretva Operation” was situated between the 45th Brigade on the left and the 317th Brigade on the right, Witness G, 07 Apr '05, T. 94. The front line between the ABiH and the HVO was shown on Ex. 445, Mehmed Behlo, 27 Jun '05, T. 66-67.

²⁰²² Witness J, 06 Jul '05, T. 74-75. *See also* Ex. 336, photograph where Witness G drew an arrow in the direction where the Prozor Independent Battalion was. Witness G, 07 Apr '05, T. 44-45.

²⁰²³ Witness G, 11 Apr '05, T. 17-18 (testifying that Dževad Corbadžić, Aziz Bobar, Sabahudin Motika, and a man with the last name Hujdur were members of the MUP and present in Uzdol during the fighting on 14 September 1993; and testifying that “[a]ll I can say is that the army and the police took part together in this operation”), 19 (testifying that the “use of the police or the deployment of the police was planned by our commander, Enver Buza, because he gave permission to the policemen how they were to move around, when they were to go, when they were to return, and so on”), 19-20 (testifying that he never saw any written documentation that passed between the Prozor Independent Battalion and the MUP at the time permitting civilian police to be used in the action), and 68 (testifying that he thinks that “it was considered a moral obligation on the part of policemen to take part in actions of this kind, so that as policemen there was a great pressure being exerted on them to take part, to participate”).

See also Ex. 149, Report that Enver Buza sent to the 6th Corps, dated 20 September 1993 (“Enver Buza’s Report”).

(a) Testimony from members of the ABiH

553. On 14 September 1993, the Prozor Independent Battalion deployed more than 120 soldiers to carry out the attack on Uzdol.²⁰²⁴ Witness G testified that members of the civilian police of the MUP also took part in the attack on Uzdol under the command of Enver Buza, Commander of the Prozor Independent Battalion.²⁰²⁵ The presence of members of the MUP was also confirmed by Enver Buza's report to the 6th Corps command of 20 September 1993.²⁰²⁶

554. Witness G testified that the unit of the Prozor Independent Battalion to which he belonged assembled at midnight on 13 September in Laniste, an area above the village of Here.²⁰²⁷ The main objective in the first stage of the action was to infiltrate the enemy lines without being noticed.²⁰²⁸ Most of the troops infiltrated following an axis²⁰²⁹ that took into consideration the areas which were under the control of the HVO,²⁰³⁰ as well as other surrounding HVO fortified positions.²⁰³¹ After that the units split up: the main units infiltrated the enemy lines by taking a route in the direction of the school in Cer, in order to attack that location. Witness G does not know where the other units went.²⁰³² The main objective at this stage was to destroy any military facilities and "to crush the HVO".²⁰³³ Witness G stated that the ABiH objective was not to kill civilians.²⁰³⁴

²⁰²⁴ Witness G, 07 Apr '05, T. 77 (testifying that 120-130 members of the Prozor Independent Battalion participated) and 11 Apr '05, T. 69-70. Buza's Report provides that "[a] total of 156 soldiers" participated in the attack directed towards the Uzdol sector, the Klupa sector and the Blace village sector, Ex. 149.

²⁰²⁵ Witness G, 11 Apr '05, T. 17-18 and 68.

²⁰²⁶ Ex. 149, Enver Buza's Report, which provides that among the units that participated in the attack, there were a number of platoons belonging to the 1st, 2nd, 3rd and 4th companies, the Military Police, and "part of the Prozor MUP forces".

²⁰²⁷ Ex. 337, photograph where Witness G marked an arrow in the direction of Laniste, Witness G, 07 Apr '05, T. 57. The commander of this unit was Osman Hero, who was in communication by radio with Enver Buza, Commander of the Prozor Independent Battalion, Witness G, 07 Apr '05, T. 63-64. Witness G also added that the army had probably no more than two or three radios, which were assigned to combat group commanders. None of the normal soldiers had radios, Witness G, 11 Apr '05, T. 38.

²⁰²⁸ Witness G, 07 Apr '05, T. 57.

²⁰²⁹ Ex. 339, photograph where Witness G drew a broken line along the axis his unit followed, Witness G, 07 Apr '05, T. 61.

²⁰³⁰ Such as the area of Gradina and an area called Galvica, Witness G, 07 Apr 05, T. 44 and 58. *See also* Ex. 336, photograph where Witness G marked Gradina hill, Witness G, 07 Apr 05, T. 44.

²⁰³¹ Such as those in Borak, Kranjčići, Osljani and Bobari, Witness G, 07 Apr '05, T. 58 and 60.

²⁰³² These other units were supposed to secure contact with the main units, Witness G, 07 Apr '05, T. 58 and 61-62. Ex. 339, photograph where Witness G drew an arrow in the direction of the school where the other unit went when the units split up, Witness G, 07 Apr '05, T. 61-62.

²⁰³³ Witness G, 11 Apr '05, T. 61. Witness G was in combat from about 02:00 in the morning of 14 September until just before day break. He testified that by that time, the entire valley was on fire. At the beginning Witness G participated in a part of the attack on the left flank at a fortified position at Borak. There were no more than ten men in the combat group that Witness G was in. After that, Witness G's group disbanded and he returned along an axis, where there was danger that the HVO forces might cut across the communication lines where the ABiH were located. However, some of the soldiers were wounded and Witness G assisted in taking care of them. Witness G only went up to Borak, Witness G, 07 Apr '05, T. 64-65 and 11 Apr '05, T. 66. He did not enter the villages of Križ, Rajiči, Zelenike and Cer on the 14 September 1993, Witness G, 07 Apr '05, T. 89.

²⁰³⁴ Witness G testified that he did not personally want to take revenge on or kill local Bosnian Croat civilians, Witness G, 07 Apr '05, T. 78-79.

555. Witness H testified that, following an order of Enver Buza, he left Dobro Polje in the evening of 13 September 1993 and went near to the village of Here,²⁰³⁵ in order to join the military police.²⁰³⁶ At Here, Mustafa Hero, Enver Buza's deputy, told him to join the remaining groups and to attack the school in Cer.²⁰³⁷ In the morning of 14 September, Witness H was involved in a military action the purpose of which was to destroy the tank positioned next to the school²⁰³⁸ and the adjacent artillery, and to free the prisoners of war in the school.²⁰³⁹

556. The ABiH units arrived at the school at dawn.²⁰⁴⁰ Immediately after they attacked the school, a group of 10-20 HVO soldiers appeared from the direction of Donja Vast.²⁰⁴¹ The Prozor Independent Battalion's units destroyed the tank and engaged the HVO soldiers in fighting.²⁰⁴² However, they failed to release the prisoners from the school, as the HVO put up resistance from the school itself and from other directions.²⁰⁴³

557. The HVO started shelling shortly after the attack began,²⁰⁴⁴ and from that time the units from the Prozor Independent Battalion were under constant heavy fire.²⁰⁴⁵ The HVO was shelling Uzdol and the ABiH positions with tanks, mortars, howitzers and multiple rocket launchers, from different directions, such as from the villages of Blace and Kranjčići, from the direction of Crni Vrh and of Prozor.²⁰⁴⁶ Both Witness G and Witness H were certain that shelling was coming from HVO

²⁰³⁵ Ex. 361, photograph where Witness H marked the village of Here, Witness H, 14 Apr '05, T. 10.

²⁰³⁶ Witness H, 14 Apr '05, T. 7.

²⁰³⁷ Witness H, 14 Apr '05, T. 2-4 and 8.

²⁰³⁸ Witness H, 14 Apr '05, T. 2-4. He was told that the tank was shelling their units daily, Witness H, 14 Apr '05, T. 12. Ex. 363, photograph where Witness H marked the place where the tank was, Witness H, 14 Apr '05, T. 13-15.

²⁰³⁹ Witness H, 14 Apr '05, T. 2-4. Ex. 361, photograph where Witness H marked the school, Witness H, 14 Apr '05, T. 10. Ex. 363, photograph where Witness H marked the school, Witness H, 14 Apr '05, T. 13-15.

²⁰⁴⁰ On the way to the school, they did not go through any hamlets and villages, and did not see any soldiers or civilians, Witness H, 14 Apr '05, T. 11. *See also* Ex. 361, photograph where Witness H drew the route he took from the village to the school with a dotted line. From Here to the school it was 800 to 900 meters, *ibid.*, T. 11-12. Apart from Witness H and his group, another 15-20 soldiers from the Prozor Independent Battalion were involved in this attack, coming from the same route as Witness H, *ibid.*, T. 15.

²⁰⁴¹ Witness H, 14 Apr '05, T. 12-14 and 65-66. These reinforcements wore HVO uniforms, Witness H, 14 Apr '05, T. 65-66. Ex. 363, photograph where Witness H marked the direction from which HVO reinforcements came, Witness H, 14 Apr '05, T. 13-15.

²⁰⁴² Witness H, 14 Apr '05, T. 12. Witness G also heard that the tank by the school had been destroyed, Witness G, 07 Apr '05, T. 67.

²⁰⁴³ Witness H, 14 Apr '05, T. 67.

²⁰⁴⁴ Witness H, 14 Apr '05, T. 15.

²⁰⁴⁵ According to Witness H, the attack lasted about 40-50 minutes and the shelling started after about half an hour or 45 minutes from the beginning of the attack, Witness H, 14 Apr '05, T. 15 and 52. Witness G testified that 20 or 30 minutes after the beginning of the operation the HVO artillery began to shell, Witness G, 11 Apr '05, T. 65.

²⁰⁴⁶ Witness H, 14 Apr '05, T. 48-49 and 55-56; Witness G, 11 Apr '05, T. 13 and 65. Witness G testified that at least some of the HVO artillery began to shoot in the direction of the Bosnian Croat hamlets of Uzdol. It appeared to Witness G that the shelling was very heavy during the time he was in the area. There was a lot of smoke in Uzdol, which was, according to Witness G, probably caused by explosions of shells combined with burning buildings, Witness G, 11 Apr '05, T. 12-13.

positions, as the ABiH had no such equipment in that area.²⁰⁴⁷ The units of the Prozor Independent Battalion started to pull out of Uzdol towards the village of Here.²⁰⁴⁸ The shelling was very heavy both during the pull out from Uzdol and when they arrived in the village of Here.²⁰⁴⁹ Witness H testified that while pulling out of Uzdol, they did not see any soldiers or civilians,²⁰⁵⁰ and none of their soldiers were killed by the shelling.²⁰⁵¹ The HVO kept firing at the ABiH position in Here even after the ABiH had pulled out.²⁰⁵² Witness H heard that the shelling on the village of Here went on well into the night.²⁰⁵³

558. According to Witness G, the Prozor Independent Battalion could assume that they would possibly be fighting in inhabited areas.²⁰⁵⁴ As the combat operations were intense it was impossible to deliver clear instructions to the units.²⁰⁵⁵ Moreover, Witness G testified that the soldiers of the Prozor Independent Battalion were unaccustomed to fighting in inhabited areas, had no experience in the treatment of civilians in combat activities, and were not given any clear and precise instructions in this respect, either by Sefer Halilović or by Enver Buza when they addressed the troops prior to the attack.²⁰⁵⁶

559. Witness G heard immediately about ABiH members who had been killed.²⁰⁵⁷ He only heard about Bosnian Croat civilian victims on the radio after a day or two.²⁰⁵⁸ Witness H later heard that five Bosnian Muslim soldiers had been killed.²⁰⁵⁹

²⁰⁴⁷ Witness G is quite certain that the firing came from the HVO positions as the ABiH “did not have 2 per cent of the capacities that were used then in that area”, Witness G, 11 Apr '05, T. 10-11 and 65. Witness H testified that the ABiH did not have a tank in the area at the time, Witness H, 14 Apr '05, T. 55. Though several tanks were firing at the Witness H's position, throughout the day Witness H only saw one HVO tank, the one positioned in Uzdol, Witness H, 14 Apr '05, T. 48.

²⁰⁴⁸ Witness H, 14 Apr '05, T. 14; Ex. 363: photograph where Witness H marked the line of retreat, Witness H, *ibid.* It was about 10:00 or 10:30 on the morning of 14 September when Witness H arrived in Here. Witness H, 14 Apr '05, T. 56. Witness G testified that at around 12:00 there was a counter attack by the HVO and after that the ABiH forces withdrew from Uzdol and returned to Here. Witness G returned to the village of Here at about 12:00, Witness G, 07 Apr '05, T. 64-65 and 11 Apr '05, T. 14.

²⁰⁴⁹ Witness H, 14 Apr '05, T. 54. They were also being shot at by small arms fire, and by automatic weapons., Witness H, 14 Apr '05, T. 50, 54. Witness G testified that around 13:00, the HVO started shelling the village of Here, Witness G, 07 Apr '05, T. 65 and 11 Apr '05, T. 14.

²⁰⁵⁰ Witness H, 14 Apr '05, T. 14.

²⁰⁵¹ Witness H, 14 Apr '05, T. 54.

²⁰⁵² Witness H was unable to leave Here for two hours after the pullout due to the heavy artillery fire, Witness H, 14 Apr '05, T. 56. Witness G testified that during the combat the HVO shelled the entire village and area. This lasted for almost the whole day, Witness G, 07 Apr '05, T. 64-65 and 11 Apr '05, T. 14.

²⁰⁵³ Witness H, 14 Apr '05, T. 56.

²⁰⁵⁴ Witness G, 11 Apr '05, T. 61. Witness G testified that from what the unit could see from their position, Uzdol was half deserted, there were more soldiers around than civilians, but that they were aware of the fact that there were still some civilians left, Witness G, 07 Apr '05, T. 50.

²⁰⁵⁵ Witness G, 11 Apr '05, T. 62.

²⁰⁵⁶ Witness G, 07 Apr '05, T. 51, 53-54.

²⁰⁵⁷ Witness G, 07 Apr '05, T. 66. Witness G testified that he heard that the ABiH units had inflicted significant losses on the HVO and the tank which was by the school had been destroyed and other artillery had either been destroyed or damaged, *ibid.*, T. 66-67.

560. The Trial Chamber heard other witnesses, who did not personally participate in the attack, but who nonetheless provided evidence on the events that occurred in Uzdol on 14 September 1993. Witness J, another member of the Prozor Independent Battalion, who on that morning was at the base in Dobro Polje,²⁰⁶⁰ and was informed by soldiers who participated in the attack, gave the following description of the events:

[the ABiH's] intention was to surround the school building where the intervention unit was billeted. They called on them to surrender. They even arrested one person who walked ahead of everyone else, in order to call on the remaining persons there to surrender. This person was killed and then panic ensued. There was random shooting at once and everyone started running in order to take cover. They would run straight through the houses because that was the shortest route out of the village. They were being shot at and they themselves were shooting at others. There was a lot of random shooting. They weren't sure if they had actually hit anyone but they even threw hand grenades. Well, they did whatever they could in order to get away. So the image that I was left with is a chaotic scene of people running for their lives all through the village.²⁰⁶¹

561. Witness J also testified about HVO shelling; in particular he stated that the Prozor Independent Battalion intercepted HVO radio communications and heard an officer from the communications centre in Uzdol telling a soldier at a different position: "stop the bloody shelling you've killed more than ten of our men."²⁰⁶²

562. According to Witness J, some civilians had been killed, but it was difficult to say whether a crime had occurred or not.²⁰⁶³

563. The Trial Chamber also heard the testimony of Nermin Eminović, Assistant Commander for Military Security of the 6th Corps, who stated that in the morning hours of 14 September, "[a] unit mostly comprising of members of the Prozor Independent Battalion"²⁰⁶⁴ approached the school in Cer and at that moment "the conflict broke out".²⁰⁶⁵ He added:

Fire was exchanged. [...] After that [...] there was chaos, which is what can happen in an inhabited area. There were houses with people in that area. There was intensive fire, shelling of that area. And then these forces withdrew. I think that there were some wounded. I don't know if anybody was killed or not. [...].²⁰⁶⁶

²⁰⁵⁸ Witness G, 07 Apr '05, T. 66, 68. Witness G did not go and discuss this information with Enver Buza, *ibid.*, T. 68.

²⁰⁵⁹ Witness H, 14 Apr '05, T. 57. Their bodies were left behind because of the heavy artillery fire, *ibid.*

²⁰⁶⁰ Witness J, 06 Jul '05, T. 73.

²⁰⁶¹ Witness J, 06 Jul '05, T. 39-40. Osman Hero told Witness J that he had thrown a hand grenade into a house because they had been shooting at him from that house. Osman Hero thought there were children in that house, Witness J, 06 Jul '05, T. 40-41.

²⁰⁶² Witness J, 06 Jul '05, T. 41. Witness J is not sure if the person on the radio said "ten" but he did give a figure, *ibid.*

²⁰⁶³ Witness J, 06 Jul '05, T. 40.

²⁰⁶⁴ According to Nermin Eminović this unit was "perhaps numbering the size of a platoon, or a little bit less", Nermin Eminović, 11 Mar '05, T. 25.

²⁰⁶⁵ Nermin Eminović, 11 Mar '05, T. 25.

²⁰⁶⁶ Nermin Eminović, 11 Mar '05, T. 25.

(b) Reports from the ABiH

564. The Trial Chamber notes the report that Enver Buza sent to the 6th Corps command on 20 September 1993.²⁰⁶⁷ The report provides that pursuant to an attack order of 11 September 1993,²⁰⁶⁸ units of the Prozor Independent Battalion infiltrated “into the enemy territory as planned in the night between 13 and 14 September 1993, with the aim of taking control of the general Uzdol sector, Križ, Zelenike and Bobari villages and the school (Cer), where the majority of the intervention company of the Rama Brigade was located.”²⁰⁶⁹ Among the units that participated in the attack, the report indicates a number of platoons belonging to the 1st, 2nd, 3rd and 4th companies, the Military Police, and part of the Prozor MUP forces, with a total of 156 soldiers.²⁰⁷⁰ The reports further states that:

Along the attack axis in the Uzdol sector, the main attack was carried out on the concentrated forces of the intervention unit in the Uzdol school. One tank was destroyed. The hamlets of Križ, Zelenike and Bobari were surrounded and asked to surrender.

From the direction of Kranjčići village and Prozor, the surrounded Ustasha forces received assistance consisting of 200 HVO [...] and HV [...] soldiers [...] supported by two [...] armoured combat vehicle[s], a tank from Ošljani, mortars from Kranjčići and Dobroša and [...] divisional gun[s] and howitzers from Crni Vrh.

The armed soldiers and civilians in the surrounded villages even held armed women in front of themselves and started to put up resistance. Fire was returned. The entire Uzdol, Here, Kute and Šćipe sector was under heavy artillery fire.²⁰⁷¹

[...]

²⁰⁶⁷ Ex. 149, Enver Buza’s Report.

²⁰⁶⁸ The report refers to attack order operative number 01/1500-27 of 11 September 1993, *ibid.*

²⁰⁶⁹ The report further states that in another direction, two platoons were infiltrated into the Klupa sector and the Blace village sector, *ibid.*

²⁰⁷⁰ Those soldiers participated in the overall attack, which included the Uzdol sector, the Klupa sector and the Blace sector. In relation to the attack on the Blace sector the report indicates:

The right wing, whose task was to take control of the general Blace village sector was led by the guide from the 317th bbr of the 2nd bbt/Mountain Battalion/(Voljevac). They ran into a mine field and so one soldier and the company commander were killed and eight soldiers were wounded, some slightly and some seriously. I therefore ordered this unit to withdraw to the sector of its initial position (Predvorci village) because I could not communicate with the right wing and I did not notice any activity of the neighbor on the right-hand side from the observation post in Here village (Glavica).

In this respect, Mehmed Behlo, Commander of the 2nd Battalion of the 317th Brigade, testified that he was not aware that on 14 September the Prozor Independent Battalion was involved in combat in Uzdol; he knew that there was fighting but he did not know exactly where. He was not in direct contact with the Prozor Independent Battalion, but he received some information from his subordinate commanders which indicated that soldiers of the Prozor Independent Battalion suffered a failure, that they had a lot of casualties, and that they had entered a mine field somewhere on the border of the area of responsibility of the two battalions. He did not have any contact with the Prozor Independent Battalion on that day, although they were on his flank, right next to him. They were reporting to their superior command. Mehmed Behlo received some information by his subordinate commanders, who were close to the area of responsibility of the Prozor Independent Battalion, and who were monitoring what was happening, Mehmed Behlo, 28 Jun '05, T. 44-46.

²⁰⁷¹ Ex. 149.

By my estimate, about 65 Croatian soldiers and about 30 civilians, mostly armed, were liquidated during the operation. One should bear in mind that the Ustasha artillery was literally destroying the entire Uzdol sector the whole time.²⁰⁷²

565. The “Supplement” to the Report of 20 September 1993 sent by the “Command of the Prozor Independent Battalion” to the “6th Corps Command, Security Sector” on 31 October 1993,²⁰⁷³ provides that:

Operation Uzdol of 13/14 September 1993 was planned as a secondary axis in order to draw away forces from the main axis of Crni Vrh.

The tasks of the units in Uzdol axis were to encircle the hamlets of Bobari, Križ and Zelenike and capture the command and communications centre in the school. The operation began at dawn.

Immediately on getting through the HVO [...] lines, bus driver Slavko MENDEŠ was captured and sent back with a demand for the others to surrender. As soon as the driver approached the school and passed on the Army’s demand, someone from the school shot at him through a school window and killed him and fierce fire was opened. Hand-to-hand fighting broke out because our soldiers ran into the school and they literally chased each other through the school. In the meantime, a [...] tank near the school was brought into action. It was hit by a [...] grenade and set on fire.

The clash lasted less than an hour. HVO reinforcements started arriving immediately from the neighbouring positions. Our soldiers had to withdraw.

The school is at the edge of the village so they had to pass through the entire village. Most of the [HVO] soldiers were in private homes, so they opened fire at our men from the houses. The fire was returned as much as was possible at that proximity. From the HVO’s neighbouring positions, it could have appeared that the village had been captured or was about to fall, which is most probably the reason why fire was opened from a tank, [...] anti-aircraft guns, [...] mortars and multiple rocket launchers. Shells were falling on the entire village, both on our and on their soldiers, setting quite a few buildings on fire. One group of our soldiers came under fire from the house of Alojzije STOJANOVIĆ or possibly that of his brother. Our men returned fire. At that moment a tank from Osljan (a neighbouring position) opened fire and hit the house. There were probably no survivors. That is one of the examples of what was happening.

The entire action lasted less than two hours, but after our men had pulled out, artillery continued to pound the village for nearly two more hours, not realising that our men were no longer there. In such a lightning action, there was no time for either looting or mutilation, as the Croatian media are trying to portrait it.

[...]

The report concludes by stating that seven of the ABiH soldiers were killed in action, and that the number of killed HVO soldiers was much higher.

²⁰⁷² Ex. 149, (emphasis in the original).

²⁰⁷³ Ex. 236, Supplement to the Report of 20 September 1993, sent by the Command of the Prozor Independent Battalion to the 6th Corps Command, Security Sector on 31 October 1993.

(c) Reports from the HVO

566. The Trial Chamber was provided with a combat report from the HVO on the situation in the morning of 14 September 1993.²⁰⁷⁴ A report describing the situation at 07:00 reads in the relevant part:

[a]round 0600 hrs, we started artillery preparation. While the artillery preparation was going on, the MOS [Muslim Defence Forces] launched a fierce attack on Uzdol. Heavy fighting is underway, our /troops/ are asking for reinforcement, and since we did not have any reserve on this part of the frontline, we have sent out some of the troops which were planned to take part on the assault of the aforementioned axes.²⁰⁷⁵

The report describes the situation at 08:00, in the relevant part, as follows:

[h]eavy fighting is underway in Uzdol. We are opening fire from all artillery and tank pieces. We are sending reinforcements. The MOS [Muslim Defence Forces] are at 50 meters from the school. They are encircling the hamlets of Križ and Zelenika.²⁰⁷⁶

According to the report, the situation at 10:00 was, in the relevant part, as follows:

[i]n the Uzdol sector, fighting is still underway. The MOS/Muslim Defence Forces/ stormed into parts of Križ and Zelenika hamlets. Uzdol was under threat of becoming completely surrounded. After the introduction of fresh troops, the MOS attack subsided in strength. [...] We have casualties (troops and civilians); [...]. We have captured several MOS members. The commander of the Rama Brigade has been ordered to keep them. The situation is improving and MOS attacks are being repelled. Encirclement has been avoided. In the school, where the command and CV /communications centre/ were, an attack was repelled. We are still firing with artillery at the request of the sector command/er/ in Uzdol on selected targets (Here, Kute, Ščipe). [...] ²⁰⁷⁷

(d) Testimony of residents of Uzdol at the time

567. The Trial Chamber heard evidence on the attack on Uzdol from a number of witnesses, including Ivka Stojanović, Janjko Stojanović, Ruža Stojanović, Milan Zelenika and Kazo Zelenika.

568. Ivka Stojanović and her son Janjko Stojanović, an HVO soldier, were awoken by sounds of shooting around 05:30-06:00 in the morning, in their house in Križ.²⁰⁷⁸ The shooting was coming from all sides, and it was close.²⁰⁷⁹ There were a lot of weapons being fired.²⁰⁸⁰ Ivka Stojanović had the impression that the village was being shelled.²⁰⁸¹ Janjko Stojanović went outside with his

²⁰⁷⁴ Ex. 318, Combat report from HVO, sent by Željiko Šiljeg to the Main Staff of the HVO on 14 September 1993. It consists of three interim reports with the situation at 07:00, at 08:00 and at 10:00.

²⁰⁷⁵ Ex. 318, Combat report from HVO, situation at 07:00 (emphasis in the original). Janjko Stojanović was confronted with this document and stated that he had never seen it before and he does not know who wrote it. He does not know who Commander Colonel Željiko Šiljeg is, Janjko Stojanović, 12 Apr '05, T. 45.

²⁰⁷⁶ Ex. 318, Interim report from HVO, situation at 08:00 (emphasis in the original).

²⁰⁷⁷ Ex. 318, Combat report from HVO, situation at 10:00.

²⁰⁷⁸ Ivka Stojanović, 06 Apr '05, T. 13-14; Janjko Stojanović, 11 Apr '05, T. 93-95.

²⁰⁷⁹ Janjko Stojanović, 11 Apr '05, T. 94-95.

²⁰⁸⁰ Janjko Stojanović, 11 Apr '05, T. 94. At the beginning there was very strong shooting from heavy weapons, Janjko Stojanović, 11 Apr '05, T. 95.

²⁰⁸¹ Ivka Stojanović, 06 Apr '05, T. 56.

rifle²⁰⁸² and wearing his uniform.²⁰⁸³ He told his mother to get ready to leave.²⁰⁸⁴ The shooting continued, it increased and at one point he decided to shoot back.²⁰⁸⁵ He fired into the woods, and there was a response to his firing which he thought was coming from automatic weapons.²⁰⁸⁶ He then heard the sound of an anti-aircraft gun being fired from Konjsko hill, where the ABiH had positions.²⁰⁸⁷ When he looked into the village in the direction of the road junction, he saw “a great deal of shooting” there.²⁰⁸⁸

569. Janjko Stojanović saw his neighbour Ivan Stojanović, at the window of his mother Anica Stojanović’s house.²⁰⁸⁹ Janjko Stojanović told him that he should leave the house and run for his life.²⁰⁹⁰ A moment later, Ivan Stojanović was gone.²⁰⁹¹ Janjko Stojanović then saw five soldiers at the neighbour’s house.²⁰⁹² He thought that they were probably ABiH soldiers,²⁰⁹³ they were carrying rifles, had different uniforms and wore green berets.²⁰⁹⁴ At that time he did not see Anica Stojanović.²⁰⁹⁵

570. When the shooting drew closer to the house Janjko Stojanović and his mother decided to leave.²⁰⁹⁶ Janjko Stojanović told his mother to run to a neighbouring house, and that he would try to cover her with fire as much as he could.²⁰⁹⁷ Ivka Stojanović took cover behind a neighbouring house.²⁰⁹⁸ She then was approached by a man who was wearing a green uniform and was armed,²⁰⁹⁹

²⁰⁸² Janjko Stojanović, 11 Apr '05, T. 95. The visibility was quite good. During the few minutes he was outside, Janjko Stojanović tried to determine the direction the bullets came from, Janjko Stojanović, 11 Apr '05, T. 96 and 12 Apr '05, T. 58-59. He did not see people with guns, Janjko Stojanović, 12 Apr '05, T. 5.

²⁰⁸³ Janjko Stojanović, 11 Apr '05, T. 95.

²⁰⁸⁴ Janjko Stojanović, 12 Apr '05, T. 5.

²⁰⁸⁵ Janjko Stojanović, 12 Apr '05, T. 6.

²⁰⁸⁶ Janjko Stojanović, 12 Apr '05, T. 6-7.

²⁰⁸⁷ Janjko Stojanović, 12 Apr '05, T. 61-62. Janjko Stojanović clarified that although he could not state with certainty that it was anti-aircraft gun, he was sure that “it was a gun. It was something stronger than an automatic weapon or a machine gun”, Janjko Stojanović 12 Apr, '05 T. 62.

²⁰⁸⁸ Janjko Stojanović, 12 Apr '05, T. 8-9.

²⁰⁸⁹ Janjko Stojanović, 12 Apr '05, T. 7-8. *See also* Ex. 347, photograph of Križ where Janjko Stojanović marked Ivan Stojanović’s house, Janjko Stojanović, 12 Apr '05, T. 28.

²⁰⁹⁰ Janjko Stojanović, 12 Apr '05, T. 8. *See* Ex. 325, photograph where Ivka Stojanović marked Ivan Stojanović’s house (“2”), Ivka Stojanović, 06 Apr '05, T. 43-46.

²⁰⁹¹ Janjko Stojanović, 12 Apr '05, T. 8, 62.

²⁰⁹² Janjko Stojanović, 12 Apr '05, T. 11.

²⁰⁹³ Janjko Stojanović, 12 Apr '05, T. 11.

²⁰⁹⁴ Janjko Stojanović, 12 Apr '05, T. 11-12.

²⁰⁹⁵ Anica Stojanović was later found shot in front of the house, Janjko Stojanović, 12 Apr '05, T. 63. *See infra* Section IV.E, paras 594-597.

²⁰⁹⁶ Janjko Stojanović, 12 Apr '05, T. 10. They only got two meters from the house, near a low wall, *ibid.*

²⁰⁹⁷ Janjko Stojanović, 12 Apr '05, T. 11. According to Ivka Stojanović’s testimony her son told her: “Mom, go to that orchard behind that abandoned house over there. I’ll cover you and keep shooting into the air. Run and try to save your life”, Ivka Stojanović, 06 Apr '05, T. 14, 57. *See also* Ex. 347, photograph of Križ where Janjko Stojanović marked the place where he stood firing into the air when his mother ran away, Janjko Stojanović 12 Apr '05, T. 29.

²⁰⁹⁸ Ivka Stojanović, 06 Apr '05, T. 14. *See also* Ex 324, photograph where Ivka Stojanović marked her house (“1”), *ibid.*, T. 27, 31. She also marked with a line the route she took once she left her house: the line goes from the house around the back of another house, into some bushes to the upper right of the photograph, *ibid.*, T. 28, 31;

and whom she had the impression was not an HVO soldier.²¹⁰⁰ She tried to take shelter when she felt a burst of fire, and fainted.²¹⁰¹ When Ivka Stojanović regained consciousness she was not able to breath properly and she had a pain in her chest, her throat burned and she could not swallow.²¹⁰² At that moment, she heard a voice yelling “Omer, they have won.”²¹⁰³ She thought the soldiers would either take her away or kill her on the spot.²¹⁰⁴ Ivka Stojanović heard a clamour.²¹⁰⁵ She fainted again and she does not know how long she lay there.²¹⁰⁶ When Ivka Stojanović regained consciousness she heard voices say “This one is dead. [...] Get someone else instead.”²¹⁰⁷ She was lying on her stomach with her eyes closed,²¹⁰⁸ and she did not see any of these individuals.²¹⁰⁹ In the meantime, she could hear shooting and could also smell burning.²¹¹⁰

571. When she heard no more voices she tried to go down to the church, but she could only walk a couple of yards until she reached a bush.²¹¹¹ Then she saw the ABiH soldiers coming across the hill: the soldiers were singing, yelling and shouting all kinds of things, such as “we’ll chase the Ustasha as far down as Split”.²¹¹² There was still shooting, especially near the school.²¹¹³ Ivka Stojanović also noticed smoke.²¹¹⁴ After a while the shooting stopped, there were only some random shots being fired.²¹¹⁵ Ivka Stojanović then saw people walking by with a camera.²¹¹⁶ One of them, Mato Ratkić, recognised her; he was a relative of hers.²¹¹⁷

Ex. 325, photograph where Ivka Stojanović marked the place where she last saw her son Janjko Stojanović when she fled (“3”), *ibid.*, 43-46.

²⁰⁹⁹ Ivka Stojanović, 06 Apr '05, T. 14, 15. *See also* Ex. 324, photograph where Ivka Stojanović marked where the man with the green uniform was (“2”) and where she was (“3”), *ibid.*, T. 29. Ivka Stojanović did not look at the man for very long; it was probably just a sideways glance before she turned her head and started to run away, *ibid.*, T. 60.

²¹⁰⁰ Ivka Stojanović, 06 Apr '05, T. 14, 15.

²¹⁰¹ Ivka Stojanović, 06 Apr '05, T. 14, 60. The shot was fired in the direction of Ivka Stojanović and she fell down before the man actually fired the shot, Ivka Stojanović, 06 Apr '05, T. 19.

²¹⁰² Ivka Stojanović, 06 Apr '05, T. 19.

²¹⁰³ Ivka Stojanović, 06 Apr '05, T. 19.

²¹⁰⁴ Ivka Stojanović, 06 Apr '05, T. 19.

²¹⁰⁵ Ivka Stojanović, 06 Apr '05, T. 20.

²¹⁰⁶ Ivka Stojanović, 06 Apr '05, T. 20, 22.

²¹⁰⁷ Ivka Stojanović, 06 Apr '05, T. 20. *See also* Ex. 324, photograph where Ivka Stojanović marked the place where she fell down and where she was lying when she heard the voices making the comments (“4”), *ibid.*, 29, 31.

²¹⁰⁸ Ivka Stojanović, 06 Apr '05, T. 21. She only heard one male voice, but she did not recognise it as the voice of the person who had called out to her before, Ivka Stojanović, 06 Apr '05, T. 21-22.

²¹⁰⁹ Ivka Stojanović, 06 Apr '05, T. 61.

²¹¹⁰ Ivka Stojanović, 06 Apr '05, T. 22.

²¹¹¹ Ivka Stojanović, 06 Apr '05, T. 22-23.

²¹¹² Ivka Stojanović, 06 Apr '05, T. 23. *See also* Ex 324, photograph where Ivka Stojanović marked the spot in the bushes where she heard the soldiers singing and yelling (“5”), *ibid.*, T. 31.

²¹¹³ Ivka Stojanović, 06 Apr '05, T. 23.

²¹¹⁴ Ivka Stojanović, 06 Apr '05, T. 57.

²¹¹⁵ Ivka Stojanović, 06 Apr '05, T. 24.

²¹¹⁶ Ivka Stojanović, 06 Apr '05, T. 24. As it will be seen above, Kazo Zelenika testified that when he visited Uzdol in the morning of 14 September 1993, he was followed by two cameramen who videotaped everything. *See infra* para. 579.

²¹¹⁷ Ivka Stojanović, 06 Apr '05, T. 24. *See also* Ex. 324, photograph where Ivka Stojanović marked the spot in the bushes where she was when she was found, Ivka Stojanović, 06 Apr '05, T. 31.

572. When she came out of the bushes, and on the way to the church, together with the people recording, Ivka Stojanović saw a number of bodies.²¹¹⁸ While Ivka Stojanović went into the church,²¹¹⁹ the group went to the school, then shooting broke out.²¹²⁰

573. In the meantime, Janjko Stojanović, who was going in the direction of a creek, saw a group of people hiding about 100 meters from Anto Stojanović's house, behind some trees.²¹²¹ The group was a mixture of soldiers and civilians,²¹²² and included Luka Stojanović, Mato Stojanović, Marko Stojanović, Lucija Ratkić and two elderly people, a man and a woman, whose names he cannot remember.²¹²³ At this time, shooting had almost stopped in Križ, but everything was on fire and there was smoke rising.²¹²⁴ Some shooting could be heard from the HVO base in Cer.²¹²⁵ Janjko Stojanović asked the people to come along with him to the creek and they all went.²¹²⁶ On the road they saw soldiers whom they did not recognise.²¹²⁷ Once at the creek, they saw other soldiers, among whom they recognised Ivan Kovcalija, who was Mato Stojanović's cousin.²¹²⁸ They went out to a distance of about 150 meters away to the woods where there were other HVO soldiers from the village.²¹²⁹ The group waited there, they were tired and thirsty, and they tried to find out if there were any people left in the village.²¹³⁰ All this took place before 10:00.²¹³¹

574. Janjko Stojanović was wounded that day.²¹³² He had gone to the house of Rade Stojanović to drink some water.²¹³³ About 50 metres away, there was a clearing where "long bursts of fire" could be heard, and Janjko Stojanović was hit in the chin and in the chest.²¹³⁴ Janjko Stojanović was evacuated from Uzdol at around 11:00, he was taken to Rumboci and then to the hospital in Split,²¹³⁵ where he saw his mother again.²¹³⁶

²¹¹⁸ She saw the bodies of Anica Stojanović, Ante Stojanović, Kata Ratkić and Martin Ratkić, Sima, Mara, Stanko, Lucija, Mijo and Ivka Rajić, Ivka Stojanović, 06 Apr '05, T. 25. *See also* Ex. 312, video where Ivka Stojanović recognised some of the above-mentioned bodies, *ibid.*, T. 36-40.

²¹¹⁹ Ex. 312, video. Ivka Stojanović was present when the video was recorded in the church which is near Rajići. They entered the church so they could film the damage inside, Ivka Stojanović, 06 Apr '05, T. 40.

²¹²⁰ Ivka Stojanović, 06 Apr '05, T. 27. Ivka Stojanović was eventually taken to Rama and Prozor, *ibid.*, T. 27, 61.

²¹²¹ Janjko Stojanović, 12 Apr '05, T. 20-21.

²¹²² Janjko Stojanović, 12 Apr '05, T. 74-75.

²¹²³ Janjko Stojanović, 12 Apr '05, T. 21,73-74.

²¹²⁴ Janjko Stojanović, 12 Apr '05, T. 21.

²¹²⁵ Janjko Stojanović, 12 Apr '05, T. 21.

²¹²⁶ Janjko Stojanović, 12 Apr '05, T. 21.

²¹²⁷ Janjko Stojanović, 12 Apr '05, T. 21-22.

²¹²⁸ Janjko Stojanović, 12 Apr '05, T. 22.

²¹²⁹ Janjko Stojanović, 12 Apr '05, T. 22.

²¹³⁰ Janjko Stojanović, 12 Apr '05, T. 22.

²¹³¹ Janjko Stojanović, 12 Apr '05, T. 23.

²¹³² Janjko Stojanović, 12 Apr '05, T. 23.

²¹³³ Janjko Stojanović, 12 Apr '05, T. 23.

²¹³⁴ Janjko Stojanović, 12 Apr '05, T. 23.

²¹³⁵ Janjko Stojanović, 12 Apr '05, T. 24.

²¹³⁶ Ivka Stojanović, 06 Apr '05, T. 61.

575. According to Janjko Stojanović, on that morning the HVO was not firing with artillery or tanks.²¹³⁷ He does not know about artillery fire landing on Križ and the vicinity of Križ on 14 September.²¹³⁸ Janjko Stojanović thinks it would be “quite stupid” to shell one’s own civilians.²¹³⁹

576. On 14 September 1993, Ruža Stojanović²¹⁴⁰ was in her home in Križ with her son Pero and her two daughters Marica and Ljubica.²¹⁴¹ Ruža Stojanović woke up at about 6:00 in the morning, upon hearing shooting.²¹⁴² She saw the hamlet of Križ on fire.²¹⁴³ She woke up her son Pero Stojanović who was an HVO soldier and told him to go back to the front line.²¹⁴⁴ The ABiH soldiers started shooting at her house.²¹⁴⁵ Ruža Stojanović, together with her daughters and some other civilians ran towards the school in Cer.²¹⁴⁶ While running in that direction they were stopped by four ABiH soldiers, one of whom was Jusuf Hero, a member of the Prozor Independent Battalion.²¹⁴⁷ Jusuf Hero took Ruža, her daughters and the other civilians to the basement of Slavko Mendeš’ house.²¹⁴⁸ All these civilians remained in that basement until the attack ended.²¹⁴⁹

577. On 14 September 1993, Milan Zelenika, who was then 12 years-old, was at home in Zelenike with his aunt Andja and his brother Ivan.²¹⁵⁰ Milan Zelenika was woken up at around 5:30 in the morning by his aunt, who saw the houses in the village on fire.²¹⁵¹ As Milan Zelenika was leaving his room a hand grenade was thrown into the room wounding him on the left side of his neck, his left shoulder and his left leg.²¹⁵² Milan Zelenika, his brother, who was carrying him, and his aunt left their house and were joined by their neighbour Ante Zelenika.²¹⁵³ Dragica Zelenika,

²¹³⁷ Janjko Stojanović did not hear the sound of mortars being used and he does not think that a tank was used, as he would have recognised this, Janjko Stojanović, 12 Apr '05, T. 24, 46.

²¹³⁸ Janjko Stojanović, 12 Apr '05, T. 43.

²¹³⁹ Janjko Stojanović, 12 Apr '05, T. 24-25.

²¹⁴⁰ Ruža Stojanović lived in the hamlet of Križ all her life and Cvita, Franjo and Serafina Stojanović were her closest neighbours, Ruža Stojanović, Ex. 465, p. 5.

²¹⁴¹ Ruža Stojanović, Ex. 465, p. 5.

²¹⁴² Ruža Stojanović, Ex. 465, p. 5.

²¹⁴³ Ruža Stojanović, Ex. 465, p. 5.

²¹⁴⁴ Ruža Stojanović, Ex. 465, p. 5.

²¹⁴⁵ Ruža Stojanović, Ex. 465, p. 5.

²¹⁴⁶ Ruža Stojanović, Ex. 465, p. 5. On their way to the school, Ruža Stojanović saw the body of Franjo Stojanović, which was lying on the ground at a distance of about 5 meters from his house, *ibid.* See *infra* para. 621.

²¹⁴⁷ Ruža Stojanović, Ex. 465, p. 5. Ruža Stojanović knew Jusuf Hero very well because they were neighbours and he attended the same school as her son, Pero Stojanović, *ibid.*

²¹⁴⁸ Ruža Stojanović, Ex. 465, p. 5. The other people who were with Ruža Stojanović and her daughters were: Cvita Stojanović, Sofija Stojanović, Zdenko Đalto, Brigita Đalto and Mijo Đalto. Sofija Stojanović told Ruža Stojanović that some ABiH soldiers took money from her, *ibid.* See also Ex. 236: Supplement to the Report of 20 September 1993, which reads in its relevant part: “[one ABiH] soldier hid women and children in a basement in order to protect them from the shells. This was also confirmed on Radio Rama in an interview with one of the women, except that it was added in a commentary that he had done it for money [...]”.

²¹⁴⁹ Ruža Stojanović, Ex. 465, p. 5.

²¹⁵⁰ Milan Zelenika, Ex. 466, p. 9, para. 1.

²¹⁵¹ Milan Zelenika, Ex. 466, p. 9, para. 2.

²¹⁵² Milan Zelenika, Ex. 466, p. 9, para. 3. He still has a piece of that grenade in his shoulder, *ibid.*

²¹⁵³ Milan Zelenika, Ex. 466, p. 9, para. 4.

Ante Zelenika's mother, tried to come after them, but she could not keep up with them as she was very old.²¹⁵⁴ They went towards Rajići and upon reaching the place above the village, they hid in the forest.²¹⁵⁵ Milan Zelenika testified that from that location he heard the ABiH soldiers shouting "Allahu ekber", while they were attacking the village from the direction of Križ.²¹⁵⁶

578. The Trial Chamber also heard the evidence of Kazo Zelenika, who arrived in Uzdol in the morning of 14 September 1993 after the attack had started. Early in the morning, as soon as he learned that Uzdol was burning, Kazo Zelenika drove to Uzdol from Prozor, where he had spent the previous night.²¹⁵⁷ His parents and daughter lived in Uzdol.²¹⁵⁸ Kazo Zelenika testified after about a kilometre from Prozor, he could see fire and smoke, and hear the sound of shooting in the distance, and sometimes the sound of shells exploding.²¹⁵⁹ He further clarified that the HVO was shelling "Kransko hill, the highest hill above the village and the hill above Here".²¹⁶⁰

579. Kazo Zelenika testified that when he reached Uzdol, at the latest by 10:00,²¹⁶¹ "everyone was dead";²¹⁶² the ABiH had already left in the direction of Here.²¹⁶³ Kazo Zelenika still heard mortar fire.²¹⁶⁴ While he walked through the different hamlets in Uzdol, he was followed by two cameramen whom he did not know.²¹⁶⁵ In his testimony, he gave evidence about the deceased that he saw in the various hamlets, both soldiers and civilians, including members of his family.²¹⁶⁶ Everything was videotaped by these cameramen.²¹⁶⁷

²¹⁵⁴ Milan Zelenika later learned that she was killed, Milan Zelenika, Ex. 466, p. 9, para. 4.

²¹⁵⁵ Milan Zelenika, Ex. 466, p. 9, para. 4.

²¹⁵⁶ Milan Zelenika, Ex. 466, p. 9, para. 5. He personally did not witness any killing nor he did see any dead body in the village, but he did not go through the village when he was fleeing, *ibid*.

²¹⁵⁷ Kazo Zelenika, 04 Apr '05, T. 11-12 and 05 Apr '05, T. 84-85. He went to Uzdol with Rajić and Slavko Zelenika, his driver, Kazo Zelenika, 04 Apr '05, T. 12.

²¹⁵⁸ Kazo Zelenika, 04 Apr '05, T. 7.

²¹⁵⁹ Kazo Zelenika, 04 Apr '05, T. 11-12.

²¹⁶⁰ Kazo Zelenika, 05 Apr '05, T. 88. He also said, while commenting on the HVO shelling on the Uzdol hamlets, that "our men wouldn't fire on their own people", Kazo Zelenika, 05 Apr '05, T. 65.

²¹⁶¹ The exact time of Kazo Zelenika's arrival in Uzdol is not consistent in his testimony; it varies between 7:00, 8:30 and 10:00, Kazo Zelenika, 04 Apr '05, T. 13 and 05 Apr '05, T. 84, 85. However, it is clear that when he arrived "[e]verything was over. They were all dead", Kazo Zelenika, 05 Apr '05, T. 84.

²¹⁶² Kazo Zelenika, 05 Apr '05, T. 85.

²¹⁶³ Kazo Zelenika, 04 Apr '05, T. 74 and 05 Apr '05, T. 2, 63.

²¹⁶⁴ Kazo Zelenika, 04 Apr '05, T. 74.

²¹⁶⁵ Kazo Zelenika does not know who these people were, but he thinks that one of them was from Rama, Kazo Zelenika, 05 Apr '05, T. 58. *See also* Ex. 312, video of the bodies in Uzdol recorded on the morning of 14 September 1993.

²¹⁶⁶ Ex. 314, picture where Kazo Zelenika marked the route he took through the different hamlets. *See also* Kazo Zelenika, 04 Apr '05, T. 75-82. In relation to his testimony concerning the victims listed in the Indictment, *see infra* Section IV.E.4.

²¹⁶⁷ Kazo Zelenika, 05 Apr '05, T. 58. *See also* Ex. 312, video of the bodies in Uzdol recorded on the morning of 14 September 1993.

580. Kazo Zelenika testified that twelve HVO soldiers lost their lives in the morning of 14 September²¹⁶⁸ and that five or six dead ABiH soldiers were given a burial behind the school in Cer.²¹⁶⁹

(e) Findings on the attack

581. On the basis of the evidence presented the Trial Chamber finds that in the early morning of 14 September 1993 the ABiH, consisting of units of the Prozor Independent Battalion and members of the MUP under the command of Enver Buza, attacked Uzdol.²¹⁷⁰ The evidence indicates that the fighting started at the school in Cer and that the killings of the villagers in the houses in the Uzdol hamlets occurred immediately after.

582. The Trial Chamber was also provided with evidence on the HVO shelling both the Uzdol hamlets and ABiH positions on 14 September 1993.²¹⁷¹

583. The Trial Chamber also heard witnesses stating that on the morning of 14 September 1993, the HVO did not use artillery fire on Uzdol.²¹⁷² Another Witness testified that the shelling was limited to targeting ABiH positions and the village of Here.²¹⁷³

584. The Trial Chamber concludes, in light of the evidence presented, that on the morning of 14 September 1993 the area of Uzdol was shelled by HVO artillery.

585. The Trial Chamber further finds that during the attack a number of ABiH and HVO soldiers were killed.²¹⁷⁴ The evidence on the killings of the victims alleged in paragraph 29 of the Indictment is discussed in the following section.

²¹⁶⁸ Kazo Zelenika, 05 Apr '05, T. 56. Three of them were crew of the tank. Pero Lucić was one member of the tank crew who was killed. Josip Marić was killed at the school building. Ilija Cvitanović was in the school building and was killed during the fighting in Uzdol. Pero Kovcalija was at the school, and was killed on 14 September outside Ante Zelić's house. He was wearing a uniform and he was not armed. There was a body of an ABiH soldier not far from him, Kazo Zelenika, 04 Apr '05, T. 63, 65, 67-68.

²¹⁶⁹ Kazo Zelenika, 05 Apr '05, T. 56.

²¹⁷⁰ See *supra* Section IV.E.3(a)-(d).

²¹⁷¹ The evidence includes testimony of members of the ABiH (see *supra* paras 553-563), ABiH and HVO reports (see *supra* paras 564-566), as well as testimony of residents of Uzdol at that time (see *supra* paras 567-580).

²¹⁷² See *supra* para. 575, in particular Janjko Stojanović, 12 Apr '05, T. 24-25, 43, 46. See also Kate Adie, a BBC war correspondent who visited Uzdol on 15 September 1993. She did not notice any remains of an army tank near the school, nor did she hear that there had been one there which had been destroyed the previous day. She testified that there were no major shells or mortar holes, or anything resembling any large, heavy weaponry being fired at all, nor were there any shell damage against the walls of large buildings. There was absolutely no evidence of artillery fire, there was only signs of small-arms fire. When inspecting the houses in Uzdol, she did not see any sign of shelling damage: no craters on the road, no holes in walls or in roofs. She saw two buildings with signs of fire. There was a house with some fire damage on the outside: there were the roof tiles coming off, suggesting that the interior of the house had gone up and that the roof had collapsed, Kate Adie, 18 Apr '05, T. 24-25, 51-52, 76.

²¹⁷³ See *supra* para. 578, in particular Kazo Zelenika, 04 Apr '05, T. 11-12 and 05 Apr '05, T. 65, 88.

4. Killings in Uzdol -14 September 1993

586. There is direct and circumstantial evidence as to the killings of residents of the hamlets comprising Uzdol on 14 September 1993. For each of the victims listed below, the Trial Chamber will examine the circumstances surrounding their death and their status for the purposes of Common Article 3 of the Geneva Conventions, that is whether they were “persons taking no active part in the hostilities”.²¹⁷⁵

587. The Indictment alleges that Slavko Mendeš, an HVO prisoner of war, was “captured and executed”.²¹⁷⁶ The Prosecution, in its Final Brief, submitted that although it adduced evidence that Slavko Mendeš died on 14 September 1993, that evidence was “insufficient to prove that ABiH soldiers had captured and executed him”.²¹⁷⁷ The Prosecution therefore concluded that “the evidence at trial did not prove his murder”, and that “any discussion on this issue [was] now moot”.²¹⁷⁸ As a result of the Prosecution submission, the Defence decided not to further challenge the alleged murder of Slavko Mendeš in the redacted version of its Final Brief filed on 12 September.²¹⁷⁹ The Trial Chamber will therefore consider the alleged murder of Slavko Mendeš not to be part of the Prosecution case and therefore will not make any findings on the alleged murder of Slavko Mendeš.²¹⁸⁰

588. All autopsies were performed by Dr. Šimun Andelinović on 17 September at the Split Clinical Hospital Centre, Pathology Department. All autopsies showed that the victims died on 14 September 1993.²¹⁸¹

²¹⁷⁴ The evidence shows that about 5-7 ABiH soldiers were killed in combat activities in Uzdol on that day, Witness H, 14 Apr '05, T. 56-57; Ex. 236: Supplement to the Report of 20 September 1993. This report states that the number of HVO soldiers killed was “much higher” (than seven). Kazo Zelenika testified that twelve HVO soldiers were killed, Kazo Zelenika, 05 Apr '05, T. 56.

²¹⁷⁵ See *supra* Section III.A.2.

²¹⁷⁶ Indictment, para. 27.

²¹⁷⁷ Prosecution Final Brief, para. 18, fn 20.

²¹⁷⁸ Prosecution Final Brief, para. 18.

²¹⁷⁹ Defence Final Brief. See also Hearing of 30 Aug '05, T. 4.

²¹⁸⁰ The Trial Chamber heard evidence that Slavko Mendeš, an HVO soldier, was captured by ABiH forces who were calling on the HVO intervention unit billeted in the school in Cer to surrender. On the circumstances of his death, the Trial Chamber refers to the evidence mentioned above in relation to the attack on the school in Cer, in particular to Ex. 236: “Supplement” to the Report of 20 September 1993 (see para. 565). See also Nermin Eminović, 11 Mar '05, T. 68-69), and to the testimony of Witness J (see para. 560). Moreover, in response to the information included in the “Supplement” to the Report of 20 September 1993 mentioned above, Witness J specified his account regarding the killing of Slavko Mendeš as follows: “[the ABiH soldiers] walked into a school and they made him walk in front so he could call on the others to surrender. Once he opened the door to the classroom in which the soldiers were billeted, they shot at him and killed him.”, Witness J, 06 Jul '05, T. 39 and 57-58. Kazo Zelenika testified that Slavko Mendeš, who was stationed in front of the school in Cer, was captured by ABiH soldiers, taken to a pharmacy and there he was tied up, Kazo Zelenika saw Slavko Mendeš’s body: he had been killed by a firearm, he wore a uniform, and his hands were tied behind his back by a length of wire, Kazo Zelenika, 04 Apr '05, T. 14 and 68; Ex. 301: diagram where Kazo Zelenika marked the area where he saw the body of Slavko Mendeš, *ibid.*, T. 15-17 and 26.

²¹⁸¹ Ex. 409, autopsy report.

(a) Ruža Zelić, Marija Zelić and Stjepan Zelić

589. In 1993, Marko Zelić, then fifteen years old, lived with his mother Ruža (born in 1943), his thirteen year old sister Marija and his ten year old brother Stjepan in Zelenike.²¹⁸² Early in the morning on 14 September 1993 they were awoken by sounds of automatic weapons being fired near their house.²¹⁸³ They immediately realised that something was wrong and left their house through a window.²¹⁸⁴ The book “Uzdol and all its victims” describes this as “Ruža throws out a hand grenade and jumps out of a window with her children.”²¹⁸⁵ However, Marko Zelić denies that his mother threw a hand grenade at this point.²¹⁸⁶ After having exited the house, Marko Zelić realised that three soldiers were running after them.²¹⁸⁷ The soldiers shouted “Allahu Akbar”, which led Marko Zelić to believe that they were “Muslim soldiers”.²¹⁸⁸ The soldiers were wearing camouflage uniforms and told them to stop running.²¹⁸⁹ Marko Zelić and his family initially ran in the direction of the school in Cer, towards the house of their neighbour, Ivan Zelenika, but saw that an armed soldier was with Ivan Zelenika and that his cowshed was on fire.²¹⁹⁰ Therefore they decided to run to the nearby woods.²¹⁹¹ After a little while, the four of them arrived at a road junction and Marko Zelić, who was ahead of his mother and siblings, managed to hide at the side of the road.²¹⁹² The soldiers caught up with his mother and siblings in the junction.²¹⁹³ From his hide-out, which was six to seven metres from the junction, Marko Zelić could hear his mother begging the soldiers “not to kill them and let them go”.²¹⁹⁴ It then appeared to Marko Zelić that one of the soldiers radioed someone

²¹⁸² Marko Zelić, 12 Apr '05, T. 82. *See also* Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked the Zelić's house, Kazo Zelenika, 04 Apr '05, T. 9.

²¹⁸³ Marko Zelić, 12 Apr '05, T. 83.

²¹⁸⁴ Marko Zelić, 12 Apr '05, T. 83.

²¹⁸⁵ Ex. 315: book “Uzdol and all its victims”, p. 61

²¹⁸⁶ Marko Zelić, 13 Apr '05, T. 20-21. Marko Zelić did remember that his late brother Ivan Zelić, who was a member of the HVO, used to keep two hand grenades in the house. However, Marko Zelić only saw the hand grenades “about a month before” the killings and also testified that his brother never allowed him to come near the hand grenades, *ibid.*, T. 12. Kazo Zelenika testified that he knows “that a hand grenade was thrown near old Ruža Zelić's house” and that he has “no idea who threw the grenade, whether it was the soldiers or someone else”, Kazo Zelenika, 04 Apr '05, T. 93. Kazo Zelenika also testified that while he did compile text for the book “Uzdol and all its victims” (Ex. 315), “certain changes” had been made to the text describing Ruža Zelić, including the text concerning the alleged throwing of the hand grenade, Kazo Zelenika, 05 Apr '05, T. 8-9. In his words, “[s]ome of the people who processed the text changed things around. I provided the data, but then they turned things around.” He also testified that he “never got the information [about the hand grenade throwing]” and that his job was “to provide the data, when people were born, when they died, but they added things later on, so that's why there's actually more than I wrote”, Kazo Zelenika, 05 Apr '05, T. 9. *See also ibid.*, T. 78-79. In relation to the weight given to Ex. 315, *see supra* Section II, para. 21.

²¹⁸⁷ Marko Zelić, 12 Apr '05, T. 87.

²¹⁸⁸ Marko Zelić, 12 Apr '05, T. 87.

²¹⁸⁹ Marko Zelić, 12 Apr '05, T. 87.

²¹⁹⁰ Marko Zelić, 12 Apr '05, T. 84.

²¹⁹¹ Marko Zelić, 12 Apr '05, T. 84.

²¹⁹² Marko Zelić, 12 Apr '05, T. 85.

²¹⁹³ Marko Zelić, 12 Apr '05, T. 88. The road junction is depicted on Ex. 356. *See also* Ex. 355, photograph where Marko Zelić marked the junction, *ibid.*, T. 85-86.

²¹⁹⁴ Marko Zelić, 12 Apr '05, T. 89 and 13 Apr '05, T. 2.

and asked what they should do with his mother and siblings.²¹⁹⁵ The next thing Marko Zelić heard was a voice saying that “all those captured must be killed”.²¹⁹⁶ He heard the soldiers mentioning Eniz Hujdur and Enver Buza. After this, Marko Zelić heard bursts of gunfire as well as individual shots being fired. He stayed in hiding.²¹⁹⁷ Soon after the shooting, Marko Zelić heard the soldiers say that they were going to move “in the direction of the village and towards the school there.”²¹⁹⁸ Once they had left, Marko Zelić went to the junction and saw his mother, brother and sister lying dead on the ground.²¹⁹⁹

590. The autopsy showed that Stjepan Zelić died from gunshot wounds to the chest and abdomen, that Marija Zelić died of gunshot wounds to the chest, and that Ruža Zelić died of gunshot wounds to the chest, abdomen and the upper left leg.²²⁰⁰ The autopsies showed that all three victims died on 14 September 1993.²²⁰¹ All three victims were wearing civilian clothes at the time of their death.²²⁰²

591. The Trial Chamber finds that Ruža Zelić, Marija Zelić and Stjepan Zelić were killed by the three members of units under ABiH command, who pursued them. The Trial Chamber takes particular note of the callous way in which the Zelić family, including the two small children, were killed.

592. The Trial Chamber finds that considering the ages of Marija Zelić and Stjepan Zelić, the fact that they were wearing civilian clothes at the time of their death, and that the evidence does not

²¹⁹⁵ Marko Zelić, 12 Apr '05, T. 89 and 13 Apr '05, T. 2.

²¹⁹⁶ Marko Zelić, 12 Apr '05, T. 89-90.

²¹⁹⁷ Marko Zelić, 13 Apr '05, T. 4.

²¹⁹⁸ Marko Zelić, 13 Apr '05, T. 5.

²¹⁹⁹ Marko Zelić, 13 Apr '05, T. 6. Ex. 357, photograph of the junction where Marko Zelić marked where the bodies were located, “M” for Marija, “S” for Stjepan, and “R” for Ruža. The arrow indicates where Marko Zelić hid during the killings, Marko Zelić, 12 Apr '05, T. 89 and 13 Apr '05, T. 6-7. Also Kazo Zelenika saw the dead bodies and described the scene as follows: “Little Stipo was only in his underpants. Ruža had put a coat of some kind on. She put quite a few clothes on, but she was barefoot. The other young girl was barefoot. They didn't have time to take any clothes”, Kazo Zelenika, 04 Apr '05, T. 25. See also Ex. 312, video where Kazo Zelenika identified Ruža Zelić, Marija Zelić and Stjepan Zelić, Kazo Zelenika, 04 Apr '05, T. 50-51.

²²⁰⁰ Ex. 409, pp. 10-15 (Stjepan Zelić), pp. 16-20 (Ruža Zelić), pp. 109-113 (Marija Zelić). Dr. Šimun Andelinović described how the entry wounds' characteristics differ depending on the distance. An “absolute range wound” is inflicted from 0-5 centimetres from the barrel point of the firearm. This wound will be star-shaped, *i.e.* irregular, and at the bottom of the wound there will be burns and gunpowder residue. This type of wound is normally bigger than its corresponding exit wound. A “relatively close wound” is inflicted at a distance of 5 centimetres and longer. How long depends on the type of firearm; it may be up to a metre. The entry wound will be circular in shape and will be surrounded by gunpowder residue. A “far range wound” is also circular, unless the bullet has turned and entered sideways, in which case the wound is oval. What is characteristic of this type of wounds is the so-called contusion ring, the diameter of which could be 1-2 millimetre. If the wound is oval then the contusion ring is more pronounced on one side of the wound than on the other, Šimun Andelinović, 12 May '05, T. 19-20, T. 67-68.

²²⁰¹ Ex. 409, p. 10 (Stjepan Zelić), p. 16 (Ruža Zelić), p. 109 (Marija Zelić).

²²⁰² Ex. 409, p. 11 (Stjepan Zelić was dressed in a woollen sweater and underpants) p. 17 (Ruža Zelić was dressed in a jacket, a pullover, a long-sleeved sweater, a skirt, long underpants, grey woollen socks and a rubber shoe), p. 110 (Marija Zelić was dressed in a short-sleeved T-shirt, long black trousers, a sleeveless undervest and underpants).

establish that they had any weapons, they were taking no active part in hostilities at the time of their deaths.

593. The Trial Chamber considers that the evidence in the book “Uzdol and all its victims” regarding Ruža Zelić throwing a hand grenade is contradicted by the direct evidence of Marko Zelić. Moreover, no evidence, such as references, has been presented to the Trial Chamber which would authenticate the information contained in the book in this respect.²²⁰³ For these reasons, the Trial Chamber will rely on the information in the book only if corroborated by other evidence. As this is not the case with regard to the information concerning the throwing of a hand grenade, the Trial Chamber finds that the evidence does not support a finding beyond reasonable doubt that Ruža Zelić threw a hand grenade. The Trial Chamber finds that as Ruža Zelić, accompanied by her children, was trying to escape from the attackers, as she was wearing civilian clothes at the time of her death, and as the evidence does not establish that she was carrying a weapon, she was taking no active part in the hostilities at the time of her death.

(b) Anica Stojanović

594. Janjko Stojanović, an HVO soldier, was in his mother Ivka Stojanović’s house in Križ on the morning of 14 September 1993 when the attack on Uzdol had started. He saw her neighbour Anica Stojanović (born in 1949) half-seated on the ground, leaning backwards on her arms,²²⁰⁴ near her own house approximately 15 metres from his vantage point in his mother’s house.²²⁰⁵ She was wearing civilian clothes.²²⁰⁶ A very tall armed soldier, who was wearing a green beret and carrying a “Kalashnikov” and a knife, was standing about three metres away from her.²²⁰⁷ Janjko Stojanović heard how Anica Stojanović cried out “Ivan, my son” and then saw the ABiH soldier kill Anica Stojanović by a single shot to the head.²²⁰⁸ Kazo Zelenika testified that when he was in the hamlet of Perici on 14 September 1993 he met Anica Stojanović’s son, Ivan Stojanović, who was running

²²⁰³ See *supra* Section II, para. 21. Kazo Zelenika did not know who exactly inserted the information about the hand grenade or who edited the book, Kazo Zelenika, 05 Apr '05, T. 8-12 and T. 78-79.

²²⁰⁴ Janjko Stojanović, 12 Apr '05, T. 12-14.

²²⁰⁵ Janjko Stojanović, 12 Apr '05, T. 12-14. Anica Stojanović’s house is indicated on Ex. 303 by the number 3, Kazo Zelenika, 04 Apr '05, T. 28. Janjko Stojanović is not aware if Anica Stojanović had any weapons in her house, and he never saw her in the possession of any weapons, Janjko Stojanović, 12 Apr 05, T. 58.

²²⁰⁶ Janjko Stojanović, 12 Apr '05, T. 14; Kazo Zelenika, 05 Apr '05, T. 40. See also Ex. 409, p. 145 (Anica Stojanović was dressed in a knitted sweater, long-sleeved vest, underwear, nylon stockings, white socks, rubber shoes, and gold-coloured earrings).

²²⁰⁷ Janjko Stojanović, 12 Apr '05, T. 13.

²²⁰⁸ Janjko Stojanović, 12 Apr '05, T. 12-13. Ex. 347, photograph of Križ where Janjko Stojanović marked the place where a soldier shot Anica Stojanović, Janjko Stojanović, 12 Apr '05, T. 28. Ivka Stojanović testified that as she was running away from her house, she saw the body of Anica Stojanović lying on the ground. She later learned that Anica Stojanović was dead, Ivka Stojanović, 06 Apr '05, T. 58, 68. Ivka Stojanović and Janjko Stojanović identified the body of Anica Stojanović in the video Ex. 312, Ivka Stojanović, 06 Apr '05, T. 36, and Janjko Stojanović, 12 Apr '05, T. 27, respectively.

along the road crying. He told Kazo Zelenika that a man called Hero Saban, an ABiH soldier, had killed his mother.²²⁰⁹

595. The autopsy of Anica Stojanović showed that she had been shot in the head, chest and lower right leg.²²¹⁰ Dr. Šimun Andelinović, who performed the autopsy, testified that the first shot was the one to the chest, which, while life-threatening, was not fatal. The gunshot wound to the head shows that it was inflicted while Anica Stojanović was still alive, causing instant death.²²¹¹

596. The Trial Chamber finds that Anica Stojanović was killed by a member of units under ABiH command, who participated in the attack on Uzdol on 14 September 1993. The Trial Chamber notes in particular the execution-style manner in which she was killed. The Trial Chamber is, however, unable to find solely on the basis of the circumstantial evidence presented to it the identity of the perpetrator.

597. Considering that Anica Stojanović, when killed by the shot to the head, had been shot in the chest and was critically injured, was wearing civilian clothes, and as the evidence does not establish that she had any weapons, the Trial Chamber finds that she was taking no active part in the hostilities at the time of her death.

(c) Ivan Zelenika, Jadranka Zelenika and Ruža Zelenika

598. As noted above, when Marko Zelić escaped from his house in Zelenike on 14 September 1993 he saw his neighbour Ivan Zelenika (born in 1930), who was unarmed, standing in front of his house together with an armed soldier.²²¹² The soldier was wearing a camouflage uniform and held a weapon in his hands.²²¹³ “Approximately after 20 seconds or half a minute”,²²¹⁴ as Marko Zelić ran into the woods, he heard firing coming from the direction of Ivan Zelenika’s house.²²¹⁵ Kazo Zelenika, who is Ivan Zelenika’s son, testified that when he arrived at his parents’ house on 14 September he first saw his own daughter Jadranka Zelenika, born in 1981, lying on the ground outside the house.²²¹⁶ Jadranka Zelenika was not dead at this point but was “lying on her back

²²⁰⁹ Kazo Zelenika, 04 Apr '05, T. 12-13 and 05 Apr '05, T. 86, testifying that Ivan Stojanović was “[p]erhaps 13 or 14 years old” at the time, Kazo Zelenika, 05 Apr '05, T. 41. The Trial Chamber considers that this Ivan is the same as the “about 14-15” year-old Ivan Stojanović that Janjko Stojanović refers to at 12 Apr '05, T. 8, *see supra* para. 569. Hero Saban died later in an accident, Kazo Zelenika, 04 Apr '05, T. 12 and 05 Apr '05, T. 86. Kazo Zelenika also identified Anica Stojanović on the video in Ex. 312, Kazo Zelenika, 04 Apr '05, T. 51.

²²¹⁰ Ex. 409, pp. 144-149.

²²¹¹ Šimun Andelinović, 13 May '05, T. 13. *See also* Ex. 409, pp. 146-147.

²²¹² Marko Zelić, 12 Apr '05, T. 84 and 13 Apr '05, T. 22-23.

²²¹³ Marko Zelić, 12 Apr '05, T. 84 and 13 Apr '05, T. 22-23.

²²¹⁴ Marko Zelić, 13 Apr '05, T. 23.

²²¹⁵ Marko Zelić, 13 Apr '05, T. 23. *See also* Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked his and his father’s house, Kazo Zelenika, 04 Apr '05, T. 8.

²²¹⁶ Kazo Zelenika, 04 Apr '05, T. 22-23.

gurgling, sort of trying to say something, but she couldn't. She was gasping for air. She was trying to breathe in and out.”²²¹⁷ She died moments later. When Kazo Zelenika entered the house he saw his father, Ivan, lying dead face down on the floor in the living room.²²¹⁸ He subsequently found his mother Ruža Zelenika (born in 1931) lying dead in her bed.²²¹⁹

599. The autopsy of Ivan Zelenika showed that he died “a violent death due to gunshot wounds inflicted to his head, with resulting brain damage” and that he also suffered a number of gunshot wounds to the back and arms.²²²⁰ The Trial Chamber notes that the entry wound was on the right temple and that the exit wound on the other side of the head was star-shaped, indicating that the head wound was inflicted at absolute range.²²²¹ The autopsy of Jadranka Zelenika showed that she died of four gunshot wounds to the chest “leading to organ damage of such a nature [...] that death resulted”.²²²² The autopsy of Ruža Zelenika showed that she “died a violent death from the cut wounds she received to the head with consequential pulping of the brain matter [...] Such wounds are seen in axe strikes.”²²²³ Ruža Zelenika was also shot four times in the chest and leg. However, while the resulting injuries were “severe and life-threatening”, it was the “cut wounds on the head” which caused the death of Ruža Zelenika.²²²⁴ All three victims wore civilian clothes.²²²⁵

600. While the evidence shows that Ivan Zelenika was last seen alive outside his house and was found dead inside the house, the Trial Chamber finds that it has been proven beyond reasonable doubt that he was killed by the soldier that was standing next to him when Marko Zelić passed Ivan Zelenika's house. The Trial Chamber finds that this soldier was a member of the units under ABiH command, who attacked Uzdol on 14 September 1993. It is unnecessary to speculate as to the exact circumstances in which Ivan Zelenika was shot and killed, however the Trial Chamber notes that the autopsy found that the gunshot entry wounds were on the back of Ivan Zelenika's body. With regard to Ruža Zelenika and Jadranka Zelenika, the Trial Chamber finds that it has been proven beyond reasonable doubt that they were killed by members of units under ABiH command. The Trial Chamber takes particular note of the brutal manner in which Ruža Zelenika was killed and that not even the life of the twelve-year-old girl Jadranka Zelenika was spared.

²²¹⁷ Kazo Zelenika, 04 Apr '05, T. 23-24.

²²¹⁸ Kazo Zelenika, 04 Apr '05, T. 23.

²²¹⁹ Kazo Zelenika, 04 Apr '05, T. 23. Ivka Stojanović identified the bodies of Ivan, Ruža and Jadranka Zelenika in the video in Ex. 312, Ivka Stojanović, 06 Apr '05, T. 34-35.

²²²⁰ Ex. 409, p. 116, *see also* p. 114-118.

²²²¹ Ex. 409, p. 115, *see supra* fn 2200.

²²²² Ex. 409, p. 70, *see also* pp. 68-72.

²²²³ Ex. 409, p. 38. *See also* Šimun Andelinović, 12 May '05, T. 29.

²²²⁴ Ex. 409, p. 38, *see also* pp. 36-40. Dr. Šimun Andelinović clarified that contusions do not appear if the victim is already dead, Šimun Andelinović, 12 May '05, T. 31.

²²²⁵ Ex. 409, p. 37 (Ruža Zelenika was dressed in a short-sleeved dress, a T-shirt, and long underpants), p. 69 (Jadranka Zelenika was dressed in a tracksuit and a short-sleeved T-shirt, trousers, a vest, knickers and gold-coloured earrings), p. 115 (Ivan Zelenika was dressed in a shirt, jeans, longjohns, and socks).

601. Considering the age of Jadranka Zelenika, that she was wearing civilian clothes and that the evidence does not establish that she had any weapons, the Trial Chamber finds that she was taking no active part in hostilities at the time of her death.

602. Considering the fact that Ivan Zelenika was shot in the head at absolute range and in the back, that Ruža Zelenika was killed in her bed, that both victims were wearing civilian clothes, and that the evidence does not establish that they had any weapons, the Trial Chamber finds that neither Ivan Zelenika nor Ruža Zelenika were taking an active part in the hostilities at the time of their deaths.

(d) Mara Grubeša

603. When Kazo Zelenika came to Zelenike on 14 September 1993, he found that the barn of Mara Grubeša was on fire. One Witness testified to seeing ABiH soldiers in the vicinity of the barn.²²²⁶ Mara Grubeša's husband later told Kazo Zelenika that he had found something in the barn, which he claimed was his wife's remains. The alleged remains were later buried together with the other Uzdol victims.²²²⁷

604. The Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Mara Grubeša was killed by members of the units under ABiH command, who attacked Uzdol on 14 September 1993.²²²⁸

(e) Luca Zelenika and Janja Zelenika

605. Luca Zelenika, who was 87 years old (born in 1906), was found dead outside her house in Zelenike.²²²⁹ Her niece, Janja Zelenika (born in 1931) was also found dead outside the house, near one of the walls.²²³⁰ Both were dressed in civilian clothes.²²³¹ The autopsy of Luca Zelenika showed

²²²⁶ Witness I, 14 Apr '05, T. 79.

²²²⁷ Kazo Zelenika, 04 Apr '05, T. 20-21 and 05 Apr '05, T. 27-28. *See also* Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked Mara and Pavo Grubeša's house (nr. 7), Kazo Zelenika, 04 Apr '05, T. 9-10.

²²²⁸ The Trial Chamber has considered the evidence by Witness I.

²²²⁹ Kazo Zelenika, 04 Apr '05, T. 21-22 and 49 (identifying Luca Zelenika on the video in Ex. 312); Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked Luka Zelenika's house (no. 9), Kazo Zelenika, 04 Apr '05, T. 10 (identifying Luca Zelenika on the video in Ex. 312); Ivka Stojanović, 06 Apr '05, T. 33, (identifying Luca Zelenika on the video in Ex. 312).

²²³⁰ Kazo Zelenika, 04 Apr '05, T. 21-22 and 45 (identifying Janja Zelenika on the video in Ex. 312).

²²³¹ Ex. 409, p. 52 (Janja Zelenika was dressed in a headscarf, a sweater, a skirt, underpants, socks, rubber shoes and slipper socks) and p. 74 (Luca Zelenika was dressed in a scarf, a hat, a jumper, a sleeveless coat, an underskirt, a dress, a pullover, socks and slipper-socks).

that she was shot several times in the chest, legs and arms.²²³² The autopsy of Janja Zelenika showed that she suffered a gunshot wound to the head.²²³³

606. The Trial Chamber finds that Luca Zelenika and Janja Zelenika died violent deaths as a result of the gunshot wounds they sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993 as the date of the victims' death and the manner of the killings are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović, described above.²²³⁴ As there were no signs of looting and damage inside the houses, Kate Adie got the impression that there was a pattern of killing: that the soldiers went systematically from house to house, and that the victims had been sought out, looked for in their houses. There was no evidence as to the elderly people having died because of any military action, such as crossfire.

607. Based on the evidence that both Luca Zelenika and Janja Zelenika were wearing civilian clothes at the time of their death, considering the age of Luca Zelenika, and that the evidence does not establish that they had any weapons, the Trial Chamber finds that neither of them was taking an active part in the hostilities.

(f) Dragica Zelenika

608. Kazo Zelenika found the body of Dragica Zelenika (born in 1934) on 14 September 1993 close to the barn next to her house in Zelenike.²²³⁵ She was wearing civilian clothes²²³⁶ and both the house and the barn were on fire. He saw that Dragica Zelenika was lying close to the fire and that she had been badly burnt.²²³⁷ The autopsy established that Dragica Zelenika was shot twice in the back and that the resulting injuries were the cause of death.²²³⁸

²²³² Ex. 409, pp. 73-77, in particular p. 75 (also describing that some wounds had contused edges, indicating that she was shot from a distance, *see supra* fn 2200).

²²³³ Ex. 409, pp. 51-56.

²²³⁴ In this respect, the Trial Chamber notes the testimony of Kate Adie, who stated that when she visited the houses in Uzdol on the day after the killings and she noted that there were no signs of looting and damage, she got the impression that there was a pattern of killing: that the soldiers went systematically from house to house, and that the victims had been sought out, looked for in their houses. There was no evidence as to the victims having died because of any military action, such as crossfire. *See infra* paras 647-648, in particular Kate Adie, 18 Apr '05, T. 122 and 126-127.

²²³⁵ Kazo Zelenika, 04 Apr '05, T. 22; Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked Dragica Zelenika's house (no. 10); Kazo Zelenika, 04 Apr '05, T. 10; Ex. 301, diagram marked by Kazo Zelenika (no. 7 indicates Dragica Zelenika's house); Kazo Zelenika, 04 Apr. '05, T. 22. *See supra* para. 577.

²²³⁶ Ex. 409, p. 63 (Dragica Zelenika was dressed in a T-shirt, a suit of synthetic material and tights).

²²³⁷ Kazo Zelenika, 04 Apr '05, T. 22.

²²³⁸ Ex. 409, pp. 62-67, in particular p. 63, which describes contused edges on both entry wounds on the back.

609. The Trial Chamber finds that Dragica Zelenika died a violent death as a result of the gunshot wounds she sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the date of the victim's death and the manner of the killing are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović described above.

610. Considering that Dragica Zelenika was shot in the back, that she was wearing civilian clothes and that the evidence does not establish that she had any weapons, the Trial Chamber finds that Dragica Zelenika was taking no active part in the hostilities at the time of her death.

(g) Kata Perković

611. Kazo Zelenika found the body of Kata Perković (born in 1922) lying just outside the door of her and her husband Stipo Perković's house in Zelenike.²²³⁹ She was wearing civilian clothes.²²⁴⁰ The autopsy showed that Kata Perković had been shot once in the chest and three times in her legs.²²⁴¹

612. The Trial Chamber finds that Kata Perković died a violent death as a result of the gunshot wounds she sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the date of the victim's death and the manner of the killing are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović, described above.

613. Considering the age of Kata Perković, the fact that she was wearing civilian clothes, and that the evidence does not establish that she had any weapons, the Trial Chamber finds that she was taking no active part in the hostilities at the time of her death.

²²³⁹ Kazo Zelenika, 04 Apr '05, T. 19-20; Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked the house of the Perković family (no. 6); Kazo Zelenika, 04 Apr '05, T. 9 and 48 (identifying Kata Perković on the video in Ex. 312); Ex. 301, diagram marked by Kazo Zelenika (no. 4 indicates Kata Perković's house), Kazo Zelenika, 04 Apr. '05, T. 19.

²²⁴⁰ Ex. 409, p. 22 (Kata Perković was dressed in a dress, underwear, stockings, slipper-socks, and a vest); Kazo Zelenika, 04 Apr '05, T. 19-20.

²²⁴¹ Ex. 409, pp. 21-25.

(h) Martin Ratkić and Kata Ratkić

614. The bodies of Martin Ratkić (born in 1925)²²⁴² and Kata Ratkić (born in 1928)²²⁴³ were found by Kazo Zelenika on 14 September 1993 in the basement of the house of Martin Ratkić's brother, Blasko Ratkić, in Križ.²²⁴⁴ Their own house next door was on fire. Kazo Zelenika testified that it appeared that Martin and Kata Ratkić were holding each other.²²⁴⁵ Both victims were wearing civilian clothes.²²⁴⁶

615. The autopsy of Martin Ratkić showed that he had been shot in the chest, that his right ear was completely missing, and that only the lower part of the left ear remained.²²⁴⁷ The autopsy found that the piece of the left ear had been removed while Martin Ratkić was alive because the wound had contused edges.²²⁴⁸ The autopsy of Kata Ratkić showed that she had been shot several times in the chest, back and head. The autopsy established that there was "a large wound measuring 18x15 cm to the right side of the head" containing "gunpowder particles", which was "most likely a wound caused by the action of a projectile at contact range."²²⁴⁹ The autopsy found that the shot to Kata Rakić's head was the fatal wound.²²⁵⁰

616. The Trial Chamber finds that Martin Ratkić and Kata Ratkić died violent deaths as a result of the gunshot wounds they sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the date of the victims' death and the manner of the killings are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović described above. The Trial Chamber notes in particular the cruel physical treatment of Martin Ratkić prior to his death and the execution-style killing of Kata Ratkić.

²²⁴² Ex. 409, p. 129, the autopsy report describes Martin Ratkić as "Elderly". Ex. 315, the book "Uzdol and all its victims", p. 32, provides that Martin Ratkić was born in 1925. The Trial Chamber finds no reason to doubt that this is an accurate description of Martin Ratkić's age at the time of his death.

²²⁴³ Also Kata Ratkić is described as "Elderly" in the autopsy report (Ex. 409, p. 139). Ex. 315, the book "Uzdol and all its victims", p. 34, provides that Kata Ratkić was born in 1928. The Trial Chamber finds no reason to doubt that this is an accurate description of Kata Ratkić's age at the time of her death.

²²⁴⁴ Kazo Zelenika, 04 Apr '05, T. 32-33. The house of Martin Ratkić and Kata Ratkić is indicated by no. 4 on Ex. 303. No. 5 indicates the house of the brother, Kazo Zelenika, 04 Apr '05, T. 32. Also Ivka Stojanović saw the bodies of Martin and Kata Ratkić, Ivka Stojanović, 06 Apr '05, T. 25. *See also* Ex. 373, video.

²²⁴⁵ Kazo Zelenika, 04 Apr '05, T. 32-33.

²²⁴⁶ Ex. 409, p. 130 (Martin Ratkić was dressed in a jacket, shirt, T-shirt, trousers, underpants, socks and rubber shoes), and p. 140 (Kata Ratkić was dressed in a sleeve-less coat, apron, a dress, underwear, stockings and rubber shoes).

²²⁴⁷ Ex. 409, pp. 129-130; Šimun Andelinović, 12 May '05, T. 34-35.

²²⁴⁸ Šimun Andelinović, 12 May '05, T. 45-49. According to the autopsy report, the right ear had been removed after Martin Ratkić died, Šimun Andelinović, 12 May '05, T. 34, testifying that this could have been done by small animals, like rodents. It also appeared on the video in Ex. 373 (at 01.40) that the right ear was still intact when the video was taken, Šimun Andelinović, 12 May '05, T. 32. *See also* generally concerning difference of wounds inflicted before and after death, Šimun Andelinović, 13 May '05, T. 8.

²²⁴⁹ Ex. 409, p. 140.

²²⁵⁰ Ex. 409, p. 141.

617. Considering the respective ages of Martin Ratkić and Kata Ratkić, that they were wearing civilian clothes, that Kata Ratkić was shot at contact range, that it appeared that the two victims were holding each other, and that they were found in a basement, and that the evidence does not establish that they had any weapons, the Trial Chamber finds that neither Martin Ratkić nor Kata Ratkić were taking an active part in the hostilities at the time of their death.

(i) Anto Stojanović

618. The body of Anto Stojanović (born in 1920) was found 20-30 metres from his house, which was located in Križ, not far from Martin and Kata Ratkić's house.²²⁵¹ Anto Stojanović was wearing civilian clothes but was not wearing any shoes.²²⁵² The autopsy showed that he had been shot four times, in the chest, abdomen and thigh.²²⁵³

619. The Trial Chamber finds that Anto Stojanović died a violent death as a result of the gunshot wounds he sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the time of the victim's death and the manner of the killing are consistent with the direct evidence heard in relation to the killings of Ruža, Marija and Stjepan Zelić, and Anica Stojanović described above.

620. Considering the age of Anto Stojanović, the fact that he was wearing civilian clothes, but neither shoes nor trousers, and that the evidence does not establish that he had any weapons, the Trial Chamber finds that he was taking no active part in the hostilities at the time of his death.

(j) Franjo Stojanović and Serafina Stojanović

621. In the early morning of 14 September 1993, while fleeing from her home in Križ, where there was shooting, towards the school in Cer, Ruža Stojanović saw the body of her neighbour Franjo Stojanović (born in 1916) just outside his house. She later heard that Franjo Stojanović's wife, Serafina (born in 1922),²²⁵⁴ had been killed inside their house by "the Muslims".²²⁵⁵ When

²²⁵¹ Kazo Zelenika, 04 Apr '05, T. 27 and 51 (identifying Anto Stojanović on the video in Ex. 312); Ivka Stojanović, 06 Apr '05, T. 25; *see also* T. 36-39 testifying regarding the video in Ex. 312; Janjko Stojanović, 12 Apr '05, T. 20, who also identified the body of Anto Stojanović in the video Ex. 312, Janjko Stojanović, 12 Apr '05, T. 26. Anto Stojanović's house is indicated on Ex. 307 by no. 1, Kazo Zelenika, 04 Apr '05, T. 28.

²²⁵² Ex. 409, p. 135 (Anto Stojanović was dressed in a shirt, underpants and socks); Kazo Zelenika, 04 Apr '05, T. 27 (also testifying that Anto Stojanović was not wearing any shoes); Janjko Stojanović, 12 Apr '05, T. 20 (testifying that Anto Stojanović was wearing socks, not shoes, and long underpants, not regular trousers).

²²⁵³ Ex. 409, p. 136.

²²⁵⁴ Ex. 409, p. 124, the autopsy report describes Serafina Stojanović as "elderly person". Ex. 315 on p. 22 (the book "Uzdol and all its victims") provides that Serafina Stojanović was born in 1922. The Trial Chamber finds no reason to doubt that this is an accurate description of Serafina Stojanović's age at the time of her death.

²²⁵⁵ Ruža Stojanović, Ex. 465, p. 5.

Kazo Zelenika was in Križ that same day he was unable to go to the house of Franjo and Serafina Stojanović because there was shooting from the Krstiste hill and the house was exposed.²²⁵⁶ Later in the night, however, he saw the dead bodies of Franjo Stojanović and Serafina Stojanović being taken by lorry to the school in Cer.²²⁵⁷

622. The autopsy of Franjo Stojanović showed that he had been shot four times in the chest. The entry wounds were “grouped together in a small area and were caused by the entry of projectiles when the body was at relative rest”.²²⁵⁸ The autopsy of Serafina Stojanović showed that she had two wounds on the back of the head and that she died of “cutting injuries to the head which led to damage to the brain”. The autopsy did not reveal any gunshot wounds. The characteristics of the wounds indicate that she received a “strong blow” to the head with an object having both sharp and blunt parts.²²⁵⁹ Both victims were wearing civilian clothes at the time of their death.²²⁶⁰

623. The Trial Chamber finds that Franjo Stojanović and Serafina Stojanović died violent deaths as a result of the gunshot wounds and cutting wounds, respectively, they sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the time of the victims’ death and the manner of the killings are consistent with the direct evidence heard in relation to the killings of Ruža, Marija and Stjepan Zelić, and Anica Stojanović described above. The Trial Chamber notes in particular the brutal manner in which Serafina Stojanović was killed.

624. Considering the ages of Franjo Stojanović and Serafina Stojanović, that they were wearing civilian clothes, that Franjo Stojanović was shot four times while at “relative rest”, that Serafina Stojanović was not shot, but beaten to death, and that the evidence does not establish that they had any weapons, the Trial Chamber finds that neither of them was taking an active part in the hostilities at the time of their death.

(k) Stanko Rajić, Lucija Rajić, Šima Rajić, Mara Rajić and Jela Džalto

625. Kazo Zelenika testified that he saw the bodies of husband and wife Stanko and Lucija Rajić (born in 1927 and 1933, respectively), together with the bodies of Šima Rajić (born in 1914) and

²²⁵⁶ Kazo Zelenika, 04 Apr '05, T. 33-34. The house of Franjo and Serafina Stojanović is circled on Ex. 309, Kazo Zelenika, 04 Apr '05, T. 35.

²²⁵⁷ Kazo Zelenika, 04 Apr '05, T. 34.

²²⁵⁸ Ex. 409, pp. 150-154, in particular p. 152.

²²⁵⁹ Ex. 409, pp. 124-128, in particular p. 126.

²²⁶⁰ Ex. 409, p. 125 (Serafina Stojanović was dressed in a dress, a vest, a scarf, underpants, socks, and boots) and p. 151 (Franjo Stojanović was dressed in a pullover, a shirt, a T-shirt, trousers, underwear and socks).

her daughter Mara Rajić (born in 1938), lying outside their house in Rajići on 14 September.²²⁶¹ Ivka Stojanović, who was there the same day, also saw the bodies of these victims.²²⁶² The autopsy of Stanko Rajić showed that he was shot at a distance several times in the thorax, legs and arms.²²⁶³ The autopsy of Lucija Rajić showed that she was shot at a distance several times in the thorax, abdomen, chest, arms and legs.²²⁶⁴ The autopsy of Šima Rajić showed that she was killed by a single shot to the left side of her chest.²²⁶⁵ The autopsy of Mara Rajić showed that she was shot several times in the chest, abdomen and legs.²²⁶⁶ All the victims wore civilian clothes at the time of their deaths.²²⁶⁷

626. There is evidence that Jela Džalto, who was living as a refugee with the Prskalo's, who were neighbours of the Rajić's, died when the Prskalo's house burnt down.²²⁶⁸ Kazo Zelenika testified that the sister of Jela Džalto, Sofija, told him that when she and Jela together with Sofija's children tried to escape from the attacking ABiH soldiers on 14 September 1993, Jela Džalto suddenly broke away from the group. "She had forgotten something apparently" and "went back to the house and the house burned down, and she burned down inside the house".²²⁶⁹ Jela Džalto did not return from the house and her remains were never found.²²⁷⁰ Kazo Zelenika testified that he did not know "whether she'd been wounded" prior to running away from the group.²²⁷¹

627. The Trial Chamber finds that Stanko Rajić, Lucija Rajić, Šima Rajić and Mara Rajić died violent deaths as a result of the gunshot wounds they sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the date of the victims' death and the manner of the killings are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović described above. However, the Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Jela Džalto was killed by members of the units under ABiH command, who attacked Uzdol on 14 September 1993.

²²⁶¹ Kazo Zelenika, 04 Apr '05, T. 38 and 52 (identifying Stanko Rajić, Lucija Rajić, Šima Rajić and Mara Rajić on the video in Ex. 312). The locations of the bodies are marked on Ex. 305, Kazo Zelenika, 04 Apr '05, T. 38 and 40.

²²⁶² Ivka Stojanović, 06 Apr '05, T. 25. Ivka Stojanović also identified the bodies on the video in Ex. 312, Ivka Stojanović, 06 Apr '05, T. 36-38.

²²⁶³ Ex. 409, pp. 78-84, noting on p. 80 that there were contusion rings around some of the entry wounds.

²²⁶⁴ Ex. 409, pp. 85-91, noting on p. 87 that there were contusion rings around some of the entry wounds.

²²⁶⁵ Ex. 409, pp. 57-61,

²²⁶⁶ Ex. 409, pp. 119-123.

²²⁶⁷ Ex. 409, p. 58 (Šima Rajić was dressed in a scarf, sweater, a sleeveless cape, long-sleeved T-shirt, an apron, an undershirt, longjohns, stockings and rubber shoes), p. 79 (Stanko Rajić was dressed in a jacket, a sweater, a T-shirt, two pairs of trousers, longjohns, socks and shoes), p. 86 (Lucija Rajić was dressed in a scarf, a sweater, a coat, a pullover, a vest, knickers, socks, slipper-socks and rubber shoes), p. 120 (Mara Rajić was dressed in a pullover, a long-sleeved T-shirt, a bra, a skirt, tights and slippers).

²²⁶⁸ Kazo Zelenika, 04 Apr '05, T. 37; Ivka Stojanović, 06 Apr '05, T. 36-37.

²²⁶⁹ Kazo Zelenika, 05 Apr '05, T. 49-50, recounting what Jela Džalto's sister had told him.

628. In light of the ages of Stanko Rajić and Šima Rajić, due to the fact that Stanko Rajić, Lucija Rajić and Šima Rajić wore civilian clothes, and that the evidence does not establish that they had any weapons, the Trial Chamber finds that they were taking no active part in the hostilities at the time of their deaths.

629. Ivka Stojanovic testified that Mara Rajić worked as a cook in the school in Cer, which was an HVO position.²²⁷² The Trial Chamber has also been furnished with the book “Uzdol and all its victims”, which provides that “[a]t the beginning of the war, Mara Rajić volunteers, becomes a member of the HVO (the Croatian Defence Council), and works in the kitchen as a chef.”²²⁷³ In this context, the Trial Chamber recalls that it will not rely on the information contained in the book unless corroborated by other evidence. Kazo Zelenika testified that Mara Rajić “was just [at the school] in the beginning, but she was part of the war in a way.”²²⁷⁴ The Trial Chamber finds that the above evidence does not establish that Mara Rajić was a member of, or mobilised in, the HVO at the time of her death. Considering that Mara Rajić was killed at her home, was wearing civilian clothes, and that the evidence does not establish that she had any weapon, the Trial Chamber finds that Mara Rajić was taking no active part in the hostilities at the time of her death.

(I) Mijo Rajić and Ivka Rajić (1921)²²⁷⁵

630. Kazo Zelenika discovered the body of Mijo Rajić (born in 1924) on the doorstep to his house in Rajići on 14 September 1993.²²⁷⁶ Mijo Rajić’s wife Ivka Rajić, who was bedridden and unable to walk as a result of a stroke approximately nine years earlier, was found dead in her bed in the house.²²⁷⁷ Both Mijo Rajić and Ivka Rajić were dressed in civilian clothes.²²⁷⁸ The autopsy showed that Mijo Rajić was killed by a shot to the head from “a hand-held firearm from a relatively close range” and that he also suffered gunshot wounds to his thighs.²²⁷⁹ With regard to Ivka Rajić,

²²⁷⁰ Kazo Zelenika, 04 Apr '05, T. 38-39.

²²⁷¹ Kazo Zelenika, 05 Apr '05, T. 49-50.

²²⁷² Ivka Stojanović, 06 Apr '05, T. 38. *See supra* paras 535-538.

²²⁷³ Ex. 315, p. 52.

²²⁷⁴ Kazo Zelenika, 05 Apr '05, T. 54.

²²⁷⁵ There were two women by the name of Ivka Rajić, one born in 1921 and married to Mijo Rajić, and one born in 1934 and married to Domin Rajić (*see infra* para. 634), Kazo Zelenika, 05 Apr '05, T. 72.

²²⁷⁶ Kazo Zelenika, 04 Apr '05, T. 39 and 53 (identifying Mijo Rajić on the video in Ex. 312); Ivka Stojanović, 06 Apr '05, T. 27.

²²⁷⁷ Kazo Zelenika, 04 Apr '05, T. 39-40 and 53 (identifying Ivka Rajić on the video in Ex. 312); Ivka Stojanović, 06 Apr '05, T. 27. Ivka Stojanović also identified the bodies of Mijo Rajić and Ivka Rajić on the video in Ex. 312, 06 Apr '05, T. 38-39.

²²⁷⁸ Ex. 409, p. 32 (Ivka Rajić was dressed in a scarf and a T-shirt), and p. 47 (Mijo Rajić was dressed in a sweater, a shirt, trousers, long underpants, and socks).

²²⁷⁹ Ex. 409, pp. 46-50, see in particular p. 48.

the autopsy showed that she was killed the same day by a shot to the head and two shots in the neck.²²⁸⁰

631. The Trial Chamber finds that Mijo Rajić and Ivka Rajić died violent deaths as a result of the gunshot wounds sustained from being shot at relatively close range. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the date of the victims' death and the manner of the killings are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović, described above.

632. Considering the age of Ivka Rajić, that she was bed-ridden, that she was wearing civilian clothes, and that the evidence does not establish that she had any weapons, the Trial Chamber finds that she was taking no active part in the hostilities at the time of her death.

633. Considering that Mijo Rajić was wearing civilian clothes, his age, and that the evidence does not establish that he had any weapons, the Trial Chamber finds that Mijo Rajić was taking no active part in the hostilities at the time of his death.

(m) Domin Rajić, Ivka Rajić (1934) and Zorka Glibo

634. The house of Domin Rajić (born in 1936) and his wife Ivka Rajić was situated a short distance from the school in Cer.²²⁸¹ On 14 September 1993 Kazo Zelenika found the bodies of Domin and Ivka Rajić, and their son Ivo Rajić, who was an HVO soldier, in the direct vicinity of the house.²²⁸² A few metres away from the house towards the forest line, Kazo Zelenika saw the body of Zorka Glibo (born in 1938), who was from the nearby hamlet of Bobari but who was living with the Rajić's because the frontline had drawn too close to her home.²²⁸³ Domin Rajić, Ivka Rajić and Zorka Glibo were all dressed in civilian clothes.²²⁸⁴

²²⁸⁰ Ex. 409, pp. 31-35. On p. 33 the autopsy report mentions that the exit wound was star-shaped, *see supra* fn 2200.

²²⁸¹ Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked Domin Rajić's house (no. 5); and Ex. 300, sketch of Uzdol drawn by Kazo Zelenika, 04 Apr '05, T. 9 and 15.

²²⁸² Kazo Zelenika, 04 Apr '05, T. 17 and 47-48 (identifying Domin Rajić, Ivka Rajić and Ivo Rajić on the video in Ex. 312; Ivo Rajić (at 17.05), who is dressed in a uniform).

²²⁸³ Kazo Zelenika, 04 Apr '05, T. 18, and 47-48 (identifying Domin Rajić and Zorka Glibo on the video in Ex. 312).

²²⁸⁴ Kazo Zelenika, 04 Apr '05, T. 17-18. Ivo appeared to have been hit over the head with something because "he had a bulge on his head", *ibid*; Ex. 409, p. 99 (Domin Rajić was dressed in a sweater, a shirt, an undershirt, trousers, underpants, socks and shoes), p. 27 (Ivka Rajić (1934) was dressed in a scarf, sweaters, a T-shirt, a vest, a skirt, underwear, socks and rubber shoes), p. 93 (Zorka Glibo was dressed in a sweater, a pullover, a short-sleeved dress, a vest, underwear, socks and slipper-socks).

635. The autopsy of Domin Rajić showed that he was shot twice in the back at long distance.²²⁸⁵ The autopsy of Ivka Rajić showed that she was shot in the chest, abdomen and arms.²²⁸⁶ The autopsy of Zorka Glibo showed that she was shot numerous times at long distance by an automatic weapon and that, while all the injuries she sustained contributed to her death, the fatal shot was to her head.²²⁸⁷

636. The Trial Chamber finds that Domin Rajić, Ivka Rajić and Zorka Glibo died violent deaths as a result of the gunshot wounds they sustained. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993 as the date of the victims' death and the manner of the killings are consistent with the direct evidence heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović described above.

637. The Trial Chamber has been provided with a certificate, issued by the Rama Brigade command, stating that Domin Rajić "was mobilised to serve in the Rama HVO units from 3 April 1992" until his death and that he was "killed in Uzdol by the [ABiH]²²⁸⁸ forces at 06:10 hours on 14.09.1993 [...] while performing a task ordered by Commander Josip Prskalo".²²⁸⁹ The Trial Chamber notes that while the certificate is "for the purpose of establishing the entitlement to the financial aid", it nevertheless states that Domin Rajić was a member of, and mobilised in, the HVO at the time of his death. The Trial Chamber therefore finds that the Prosecution has not proven beyond reasonable doubt that Domin Rajić was taking no active part in the hostilities at the time of his death.

638. Kazo Zelenika testified that Ivka Rajić made bread in her home for the HVO soldiers in Uzdol.²²⁹⁰ However, the evidence is insufficient to conclude that she was a member of, or mobilised in, the HVO. Considering the above, that Ivka Rajić was wearing civilian clothes and that the

²²⁸⁵ Ex. 409, p. 100, "An external examination of the back revealed two entry wounds caused by the action of projectiles fired from a hand-held firearm", also mentioning contused edges of the entry wounds. *See also* pp. 98-102.

²²⁸⁶ Ex. 409, pp. 26-30.

²²⁸⁷ Ex. 409, p. 94, "A defect was observed in the head area, on the left side of the chin [...] with a contused ring [...] The projectile wound was caused by the action of a projectile discharged by a firearm at long range." *See also* pp. 92-97.

²²⁸⁸ In the B/C/S original, "MOS", which means the "Muslim armed forces", Kazo Zelenika, 05 Apr '05, T. 62-63.

²²⁸⁹ Kazo Zelenika, 05 Apr '05, T. 18, referring to Ex. 316. The document is not signed by Josip Prskalo, but by "Commander Ante Pavlović". Kazo Zelenika has never seen it before, Kazo Zelenika, 05 Apr '05, T. 17-18. Kazo Zelenika testified that as far as he knows Domin Rajić was not mobilised in 1993, Kazo Zelenika, 04 Apr '05, T. 45. The Trial Chamber has found that Josip Prskalo was the Commander of the 42nd Home Guard Battalion of the Rama Brigade, *see supra* para. 550.

²²⁹⁰ Kazo Zelenika, 05 Apr '05, T. 20-21, testifying that "[Kata Ljubić] did not have a uniform. She didn't have a weapon. They'd bring in a tonne of flour and they would have to bake the bread, all elderly women. But Kata was there, and there were other women baking the bread too." (*Ivka baked bread too*) (emphasis added).

evidence does not establish that she had any weapons, the Trial Chamber finds that Ivka Rajić was taking no active part in the hostilities at the time of her death.

639. The Trial Chamber notes that Zorka Glibo was staying with the Rajić's as a refugee and that she was wearing civilian clothes at the time of her death. The Trial Chamber therefore finds that she was taking no active part in the hostilities at the time of her death.

(n) Mato Ljubić and Kata Ljubić

640. The house of Mato Ljubić (born in 1923) and Kata Ljubić (born in 1948) was situated across the road from Domin and Ivka Rajić's house near the school in Cer.²²⁹¹ When Kazo Zelenika arrived there on 14 September 1993 their house was on fire.²²⁹² He found Mato Ljubić lying in front of the house and Kata Ljubić behind the house. Both had been killed and were dressed in civilian clothes.²²⁹³ Kazo Zelenika testified that Marko Glibo, who survived the attack on Uzdol, told him that he had seen how Mato Ljubić and Kata Ljubić on 14 September 1993 started fleeing towards the nearby church when ABiH soldiers attacked the village.²²⁹⁴ According to Marko Glibo, Kata Ljubić had entered the house and run out on the other side, which is where she was killed.²²⁹⁵

641. The autopsy of Mato Ljubić showed that he was shot several times in the head, chest and legs. It is of particular note that he was shot in the head at close range.²²⁹⁶ The autopsy of Kata Ljubić shows that she was shot several times in the head, back and legs.²²⁹⁷ Dr. Šimun Andelinović, who performed the autopsy, concluded based on the characteristics of the wound to the head, that Kata Ljubić was alive when that wound was inflicted and that it was inflicted at close range.²²⁹⁸

642. The Trial Chamber finds that Mato Ljubić and Kata Ljubić died violent deaths as a result of the gunshot wounds they sustained. The Trial Chamber notes in particular that the shots were fired at close range. The Trial Chamber finds beyond reasonable doubt that these wounds were inflicted by members of the units under ABiH command, who attacked Uzdol on 14 September 1993, as the date of the victims' death and the manner of the killings are consistent with the direct evidence

²²⁹¹ Ex. 299, photograph depicting the hamlets comprising Uzdol where Kazo Zelenika marked Mato and Kata Ljubić's house (no. 8); and Ex. 300, sketch of Uzdol drawn by Kazo Zelenika, 04 Apr '05, T. 10 and 15.

²²⁹² Kazo Zelenika, 04 Apr '05, T. 18.

²²⁹³ Kazo Zelenika, 04 Apr '05, T. 18-19, and 48 (identifying Mato Ljubić and Kata Ljubić on the video in Ex. 312). *See also* Ex. 409, p. 42 (Kata Ljubić was dressed in a woven pullover, T-shirt, undershirt, a skirt, slipper-socks, and rubber shoes) and p. 104 (Mato Ljubić was dressed in a jacket, a sweater, a shirt, a vest, trousers, socks, and rubber shoes).

²²⁹⁴ Kazo Zelenika, 05 Apr '05, T. 25.

²²⁹⁵ Kazo Zelenika, 04 Apr '05, T. 18 and 05 Apr '05, T. 25.

²²⁹⁶ Ex. 409, pp. 103-108, in particular p. 104-105 noting that there was gunpowder residue around the entry wound.

²²⁹⁷ Ex. 409, pp. 41-45, in particular p. 43.

²²⁹⁸ Šimun Andelinović, 12 May '05, T. 76-77.

heard in relation to the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović, described above.

643. Kazo Zelenika testified that at the beginning of the armed conflict Kata Ljubić made bread for the HVO soldiers and that she ceased doing this after a while.²²⁹⁹ In addition, the book “Uzdol and all its victims” provides that “[a]t the outbreak of the home-defending war, Kata immediately joins the HVO [...]. She works in the kitchen [...]”²³⁰⁰ The Trial Chamber has been provided with an official certificate stating that Kata Ljubić was a member of the 42nd Home Guard Battalion of the Rama Brigade from 3 March 1992 and that she was killed “while carrying out the order on the defence front line”.²³⁰¹ The Trial Chamber notes that Kata Ljubić was wearing civilian clothes at the time of her death, that the evidence does not establish that she had any weapons and that she was killed behind her house. However, the Trial Chamber cannot disregard the clear wording of the certificate that Kata Ljubić was carrying out an order as a member of the HVO at the time of her death. The Trial Chamber therefore finds that the Prosecution has not proven beyond reasonable doubt that Kata Ljubić was taking no active part in the hostilities at the time of her death.

644. Considering the age of Mato Ljubić, the fact that he was wearing civilian clothes, and that the evidence does not establish that he had any weapon, the Trial Chamber finds that Mato Ljubić was taking no active part in the hostilities at the time of his death.

5. Uzdol after the attack

645. Kate Adie, a war correspondent for the BBC, who visited Uzdol on the morning of 15 September 1993, did not notice any combat going on in the area; she testified that it was specifically quiet on that morning.²³⁰² She found that the school in Cer was empty.²³⁰³ There were bloodstains on the walls inside, in the main hall, and quite a lot of bullet marks around.²³⁰⁴

²²⁹⁹ Kazo Zelenika, 04 Apr '05, T. 44 (testifying that “I know that at the beginning of the war she made bread [...] but this didn’t go on for a very long time. After a while we stopped making our own bread and we were again supplied with bread [...] It could have been two or three days; it could have been as long as a month. We made bread ourselves until we got fresh supplies of bread) and 05 Apr '05, T. 20-21 (testifying that she did not have a uniform or a weapon).

²³⁰⁰ Ex. 315, p. 65.

²³⁰¹ Kazo Zelenika, 05 Apr '05, T. 23-24, referring to Ex. 317. The certificate provides that it has been “issued upon finding out the factual situation regarding the cause of death on the basis of the commanding officer’s original report. It will be used for gaining permanent right and cannot be used for any other purposes”, Kazo Zelenika has never seen it before, Kazo Zelenika, 05 Apr '05, T. 24.

²³⁰² Kate Adie, 18 Apr '05, T. 115 and 116-117.

²³⁰³ Kate Adie, 18 Apr '05, T. 25 and 71. Kate Adie added that the school appeared to be virtually empty on the ground floor. There was no communication equipment nor uniformed members of the HVO with radios upstairs at the time because they would not wish to show anything to the British Army, Kate Adie, 18 April 05, T. 71-72.

²³⁰⁴ Kate Adie, 18 Apr '05, T. 25. According to Kate Adie, the bloodstains looked as if someone had attempted to clean the place up, Kate Adie, 18 Apr '05, T. 25. According to Witness G, the Bosnian Muslims who were in the

646. The village appeared to be empty.²³⁰⁵ A number of bodies had been taken to a hall in Prozor, while others were left where they were.²³⁰⁶ When visiting the houses in Uzdol, Kate Adie found the following:

[...] on the steps outside of a house there was a corpse [...]. Then they went into house after house, and they discovered dead people, sometimes one, sometimes two. Sometimes they were lying in the front room, on a sofa, on the floor. In one house there was a body in bed, and the bedclothes were soaked through with blood. In another house, there was a body in the corner, with a huge blood spray up the wall. And all of these people were elderly.²³⁰⁷

647. In the 16 to 17 houses that Kate Adie inspected in Uzdol there were no signs of fight or resistance, and no damage at all.²³⁰⁸ There was nothing to suggest anything other than close-range firing of bullets.²³⁰⁹ Outside of these houses Kate Adie did not see any sign of shelling damage: no craters on the road, no holes in walls or in roofs.²³¹⁰ She saw two buildings with signs of fire.²³¹¹

648. As there were no signs of looting and damage inside the houses, Kate Adie got the impression that there was a pattern of killing: that the soldiers went systematically from house to house,²³¹² and that the victims had been sought out, looked for in their houses.²³¹³ There was no evidence as to the elderly people having died because of any military action, such as crossfire.²³¹⁴

649. Kate Adie testified that she looked for an eyewitness, but she did not meet one.²³¹⁵ According to her “it would be unusual that one would not come forward because it would be to the benefit of the Croat’s cause that an eyewitness spoke to the media”.²³¹⁶

camps in Prozor were engaged a day or two later to clean the school, Witness G, 07 Apr '05, T. 67. Kate Adie did not notice any remains of an army tank near the school, nor did she hear that there had been one there which had been destroyed the previous day, Kate Adie, 18 Apr '05, T. 51-52.

²³⁰⁵ Kate Adie, 18 Apr '05, T. 19-20.

²³⁰⁶ Nobody could explain to her the reason for this, Kate Adie, 18 Apr '05, T. 129. Kate Adie testified that there seemed to be no substantial difference in the state of the bodies that she saw in Prozor and in Uzdol. The bodies in Prozor and in Uzdol were all wrapped in the same type of blankets. According to her, the cause and time of death appeared to be the same, Kate Adie, 18 Apr '05, T. 131-132.

²³⁰⁷ Kate Adie, 18 Apr '05, T. 20-21. Kate Adie said that despite the fact that misleading information was provided by the parties to the conflict, and despite the fact that when she went into the village she was very aware that things could have been arranged, at no point she saw any dramatic, over exaggerated “display of the bodies”. It seemed to her that the bodies were lying where they had been shot, Kate Adie, 18 Apr '05, T. 128-129.

²³⁰⁸ Kate Adie, 18 Apr '05, T. 21 and 23-24.

²³⁰⁹ Kate Adie, 18 Apr '05, T. 24-25.

²³¹⁰ Kate Adie, 18 Apr '05, T. 25. Kate Adie testified that a few buildings were wrecked, they had been burnt, and there was a smouldering building. According to her, there were no major shell or mortar holes, or anything resembling any large, heavy weaponry being fired at all, nor were there any shell damages against the walls of large buildings. There was absolutely no evidence of artillery fire, there was only signs of small-arms fire, Kate Adie, 18 Apr '05, T. 52.

²³¹¹ There was a house with some fire damage on the outside: there were the roof tiles coming off, suggesting that the interior of the house had gone up and that the roof had collapsed, Kate Adie, 18 April 05, T. 76.

²³¹² Kate Adie, 18 Apr '05, T. 122 and 126-127. What she means with “systematically” is that someone must have taken the decision, individually or through an order, and a voice must have been raised saying “kill whoever you can find”, *ibid.*, T. 127.

²³¹³ Kate Adie, 18 Apr '05, T. 127.

²³¹⁴ Kate Adie, 18 Apr '05, T. 27.

²³¹⁵ Kate Adie, 18 Apr '05, T. 119.

6. Media attention on Uzdol

650. During her visit to Uzdol in the morning of 15 September 1993, Kate Adie took extensive video footage, in particular of the victims.²³¹⁷ She also interviewed two EU monitors and a Croat soldier who claimed to have recognised the two elderly people who were found in a barn – Martin and Kata Ratkić.²³¹⁸ The two videos she produced were broadcast on the BBC's six o'clock and nine o'clock news bulletins from London that night.²³¹⁹ These two transmissions also went out on a great number of TV stations around the world with which the BBC had agreements.²³²⁰ According to Kate Adie, in Bosnia at the time, there was virtually no television and the majority of people had no electricity most of the time.²³²¹

651. In September 1993, Radio Rama was a new radio station, which was based somewhere around the town of Prozor.²³²² Mehmed Behlo, Commander of the 2nd Battalion of the 317th Brigade of the ABiH, testified that it was an HVO radio station and was used for propaganda purposes.²³²³ A number of witnesses testified that Radio Rama broadcast the news that "civilians" had been killed in Uzdol.²³²⁴ Witness H, a member of the Prozor Independent Battalion, said that he was not convinced of the story he heard on Radio Rama, as there had been other false information on that station before.²³²⁵

²³¹⁶ Unless, Kate Adie conceded, they knew that there had in fact been quite a few Bosnian Croat soldiers in the village who had shot at Bosnian Muslim soldiers, or who had run away, Kate Adie, 18 Apr '05, T. 119-120.

²³¹⁷ Ex. 373 and 374. The two videos are more or less similar, Kate Adie, 18 Apr '05, T. 29-33.

²³¹⁸ Kate Adie, 18 Apr '05, T. 27-28.

²³¹⁹ Kate Adie, 18 Apr '05, T. 28.

²³²⁰ Kate Adie, 18 Apr '05, T. 28.

²³²¹ Kate Adie, 18 Apr '05, T. 35.

²³²² Mehmed Behlo, 28 Jun '05, T. 6.

²³²³ Mehmed Behlo, 28 Jun '05, T. 6. According to Kate Adie, all warring sides had propaganda outfits. She testified that they used whatever information assisted their cause, even making information up. Often, even false or exaggerated claims about atrocities were put out over those media outlets. They were unreliable, unless one constantly monitored their information and their sources, Kate Adie, 18 Apr '05, T. 107-108.

²³²⁴ Mehmed Behlo, Commander of the 2nd Battalion of the 317th Brigade, which was operating next to the area of the Prozor Independent Battalion, testified that he learned about the killings of villagers in Uzdol several days after the operation on 14 September 1993. He said that he heard this information from his security officer, whom, in his turn, had heard it on Radio Rama. He also said that probably some soldiers had heard it on this radio station, Mehmed Behlo, 28 Jun '05, T. 6-7 and 46-47. Witness H testified that he found out about the killing of Bosnian Croat civilians about a month after the operation of 14th September. He heard about it on Radio Rama. Soldiers in Uzdol said they had heard on Radio Rama that there had been an operation in the village of Uzdol and that some Croat civilians had been killed. Witness H, 14 Apr '05, T. 37. Witness J testified that information about civilians having been killed in Uzdol was probably broadcast on the radio. He said that the first thing he heard was on the Croatian media, which had reported that there had been over 100 civilians killed. Later on, the numbers varied, Witness J, 07 Jul '05, T. 28 and 40-41.

²³²⁵ Witness H, 14 Apr '05, T. 58.

652. Šefko Hodžić testified that until some years after the conflict there was no certainty as to whether those killings had actually been committed in Uzdol, or whether “it was some sort of orchestrated operation in which dead Bosniaks had been put there”.²³²⁶

F. INVESTIGATIONS INTO CRIMES COMMITTED IN GRABOVICA AND UZDOL

1. Rules Concerning Investigations

653. When military personnel were suspected of having killed civilians both the ABiH and the MUP were competent under the law to initiate a criminal investigation.²³²⁷ Rules 40-41 of the Rules for the Military Security Service (“SVB”) of the ABiH regulate the duties of the SVB “in criminal proceedings”:²³²⁸

40. When there is reasonable suspicion that a criminal offence triable [*sic*] by military courts has been committed, officers of the Military Security Service must take the necessary measures to find the perpetrator of the criminal offence, to prevent the perpetrator or his accomplice from going into hiding or escaping, to uncover and protect the evidence and exhibits which can serve as evidence, and to gather all the information useful for successful conduct of the criminal proceedings.

41. On the basis of the information gathered, officers of the Military Security Service in the command of the brigade or a corresponding or higher ranking officer in the Military Security Service shall submit a criminal report to the competent military prosecutor’s office. In cases when it is necessary to carry out certain investigative actions immediately, an authorised officer of the Military Security Service shall immediately inform the competent military prosecutor, and when necessary also the investigating judge of the military court [...].²³²⁹

Article 151 of the Criminal Procedure Code obliges the MUP to initiate an investigation if there are reasonable grounds to suspect that a crime such as murder may have been committed.²³³⁰

Article 151 reads in the relevant part:

[i]f there are reasonable grounds to suspect that a crime prosecuted *ex officio* has been committed, internal affairs organs must take necessary measures to find the perpetrator of the crime, ensure that the perpetrator or accomplice do not go into hiding or flee, find and secure the traces of the

²³²⁶ Šefko Hodžić, 24 Mar '05, T. 7-8. Between the 16th and the 18th Šefko Hodžić learned that some civilians had been killed in Uzdol between 16 and 18 September 1993, from a cousin in Drežnica, who had seen it on CNN or on some other TV station. He also saw excerpts from that report on some TV station, Šefko Hodžić, 24 Mar '05, T. 7 and 9.

²³²⁷ Salko Gušić, 07 Feb '05, T. 14-15 and 20; Emin Zebić, 17 Mar '05, T. 50.

²³²⁸ Salko Gušić, 07 Feb '05, T. 16-19; Jusuf Jašarević, 28 Feb '05, T. 35-36.

²³²⁹ Ex. 137, Rules for the Military Security Service in the Armed Forces of the Republic of Bosnia and Herzegovina, Sarajevo 1992 (emphasis added) The Trial Chamber also notes Article 39 of the Rules for the Military Security Service, which reads:

[t]he work and powers of the internal affairs organs as laid down by the [law on criminal procedure] relate also to the conduct of and action taken by authorised officers of the Military Security Service in pre-trial and criminal proceedings within the frame of their competence.

²³³⁰ Salko Gušić, 07 Feb '05, T. 14-15.

crime and objects that might be used as evidence as well as gather all information that might be of use to the successful conducting of criminal proceedings.²³³¹

654. However, if crimes were committed in an area of combat operations or if the perpetrators were military personnel, the military were in charge of the investigation as the civilian police had no access to the area of combat operations and no authority to arrest military personnel.²³³² Yet, the military organs often requested the assistance of the civilian police because the ABiH did not have enough professionals or adequate equipment to conduct investigations.²³³³ According to Selmo Cikotić, Commander of the OG West, if a member of a MUP unit committed a crime, while subordinated to a military unit, the ABiH unit commander would initiate the investigation. However, the MUP's investigative bodies would be in charge of the investigation.²³³⁴

655. As regulated in the Rules on Military Discipline, in order to prevent breaches of military discipline from spreading in the tense circumstances of an armed conflict, and in order to prevent such breaches from having a negative influence on all the troops²³³⁵ “during a state of war, a disciplinary investigation shall be initiated immediately”.²³³⁶ Disciplinary proceedings were

²³³¹ Ex. 136, Compilation of Rules of Procedure in the Socialist Federative Republic of Yugoslavia, Belgrade 1978. (emphasis added).

²³³² Bakir Alispahić, 23 May '05, T. 72-73 and 24 May '05, T. 47; Emin Zebić, 17 Mar '05, T. 37 and 85.

²³³³ Salko Gušić, 03 Feb '05, T. 41 and 47-48; Jusuf Jašarević, 28 Feb '05, T. 46; Bakir Alispahić, 24 May '05, T. 44. The military police would secure the area and arrest the perpetrators, while the civilian police would assist in carrying out the on-site investigation or take witness statements, if so requested by the ABiH, Bakir Alispahić, 24 May '05, T. 45-49.

²³³⁴ Selmo Cikotić, 24 Feb '05, T. 47.

²³³⁵ Salko Gušić, 03 Feb '05, T. 44; Jusuf Jašarević, 28 Feb '05, T. 49-50.

²³³⁶ Ex. 107, as published in the Official Gazette of RBiH on 13 August 1992, Art. 71 of the Rules on Military Discipline, which also provides that the disciplinary investigation may last for a maximum of three days from the day it commences. Ex. 107 reads in relevant parts:

Article 2: Military discipline is the correct, complete and prompt execution of military duties in the Army, in conformity with the law, service regulations and other regulations and orders of superiors in charge.

Article 3: A serviceman who, in the line of duty or in connection with the performance of duties, breaches military discipline shall be held accountable in disciplinary proceedings for an error of discipline or a disciplinary infraction. An error of discipline constitutes a lesser breach of discipline. A disciplinary infraction constitutes a more serious breach of military discipline.

Article 5: For criminal offences or misdemeanours, servicemen shall be accountable in accordance with the regulations regulating criminal offences or the regulations regulating misdemeanours in the Republic of Bosnia and Herzegovina.

Article 6: The accountability of a serviceman for a criminal offence or misdemeanour does not exclude his being held accountable for the same offence as a breach of military discipline too, if, according to these Rules, such offences constitute a breach of military discipline.

Article 8: An action by a serviceman which is not in line of duty and is incompatible with the duty of serviceman shall be considered a breach of military discipline. This relates in particular to: 1) the commission of a criminal offence for base motives [...] 3) a serious violation of public morals [...]

Article 22: Military superiors in the Army specified under these Rules shall have the authority to establish responsibility for errors of discipline.

Article 44: Military disciplinary courts shall have the authority to try disciplinary infraction [...]

conducted by the commander and did not involve the military security organ, unless the breach of the military discipline bordered on a crime.²³³⁷ Witnesses testified that, based on the same criminal offence, proceedings under the Rules on Military Discipline and criminal proceedings could be initiated simultaneously.²³³⁸

656. If a crime had been committed by a member of the ABiH, all military personnel were duty-bound to inform their superiors.²³³⁹ In turn, the commander on each level was duty-bound to inform his superior in the chain of command of crimes having been committed within his unit, and to initiate or take part in investigative proceedings regarding those crimes.²³⁴⁰ In order to prevent the occurrence of further crimes, the commander must act immediately and inform his superior within a period of 24 hours of the information available to him.²³⁴¹ The commander would also be obliged to ensure that an initial briefing took place during which the commanders of the subordinate units reported on the crimes. Vahid Karavelić testified that, depending on the information received, and if the crime reached the level of a criminal offence, the unit commander would request his chief of the SVB to immediately initiate a joint investigation with the MUP.²³⁴² Vahid Karavelić further testified that “this would be all that a commander would be expected and obliged to do.”²³⁴³

657. At the brigade level and higher up in the military structure, there were military police units specifically assigned with the task of carrying out investigations.²³⁴⁴ The military police acted on

Article 67: The provisions of these Rules shall be applied accordingly in a state of war, provided, that as a rule, in a state of war no measures are pronounced whose execution given the conditions and circumstances under which they are to be carried out, is inapplicable or impossible.

Article 68: Decisions on disciplinary accountability for breaches of military discipline during a state of war shall be taken as a matter of urgency.

²³³⁷ Salko Gušić, 07 Feb '05, T. 9-11 and 08 Feb '05, T. 102; Jusuf Jašarević, 28 Feb '05, T. 46-47 and 49. *See also* Ex. 107, Articles 22-24 and 35.

²³³⁸ Salko Gušić, 07 Feb '05, T. 10 and 19; Salko Gušić testified that the perpetrators of the crimes committed in Grabovica (Salko Gušić, 07 Feb '05, T. 21-22):

would definitely not be punished under a disciplinary procedure. There has to be a criminal proceeding instigated, although there could have been a sort of a disciplinary procedure conducted at the same time for some minor breach that was related to this crime. But definitely the perpetrator of the crime should have been prosecuted, meaning that there would be investigations and prosecutions, both by the civilian MUP and by the military prosecutor's office.

See also Jusuf Jašarević, 03 Mar '05, T. 31-32; Ex. 107, Article 6.

²³³⁹ Jusuf Jašarević, 28 Feb '05, T. 39; Salko Gušić, 03 Feb '05, T. 44. There were instructions issued by the Main Staff stating that each army member was duty-bound to report crimes, Salko Gušić, 03 Feb '05, T. 42. According to Salko Gušić, most often squad or platoon commanders would be the first to learn about crimes committed because they would be in direct contact with the soldiers, Salko Gušić, 03 Feb '05, T. 37.

²³⁴⁰ Salko Gušić, 03 Feb '05, T. 38 and 41-42 and 08 Feb '05, T. 102; Nermin Eminović, 11 Mar '05, T. 54; Jusuf Jašarević, 28 Feb '05 T. 35-36.

²³⁴¹ Salko Gušić, 08 Feb '05, T. 102 .

²³⁴² Vahid Karavelić, 20 Apr '05, T. 95. *See also* Jusuf Jašarević, 28 Feb '05, T. 41.

²³⁴³ Vahid Karavelić, 20 Apr '05, T. 95. *See also* Jusuf Jašarević, 28 Feb '05, T. 41.

²³⁴⁴ Salko Gušić, 03 Feb '05, T. 38.

orders of the unit commander or of the chief of the SVB.²³⁴⁵ If the military police had initiated an investigation they had to inform the security organ and the unit commander.²³⁴⁶ Vahid Karavelić, Commander of the 1st Corps, testified that because of the dual chain of command, the security organ would report to the superior security organ; the unit commander would only be informed to the extent authorised by the superior security organ.²³⁴⁷

658. The security organs would gather evidence in order to identify the perpetrator and write a report in preparation of criminal proceedings.²³⁴⁸ The information collected was relayed to the authorised military prosecutor through an official report.²³⁴⁹

659. The primary responsibility of a commander was to ensure that the combat orders he received were implemented.²³⁵⁰ If a crime was committed during combat operations, in general this would not halt the combat operations.²³⁵¹ If the unit commander wanted to cease combat operations, he needed approval from his superior.²³⁵² However, the unit commander always had to ensure that the SVB conducted an investigation and once it was ascertained that crimes occurred, combat operations would not prevent the SVB from prosecuting those crimes.²³⁵³

²³⁴⁵ Salko Gušić, 03 Feb '05, T. 40; Jusuf Jašarević, 28 Feb '05, T. 41. As a rule, the unit commander could not terminate investigations initiated by either the security organ or the military police, Jusuf Jašarević, 28 Feb '05, T. 41-42.

²³⁴⁶ Jusuf Jašarević, 28 Feb '05, T. 37. The military police could start collecting evidence once they learnt that a crime was committed, but needed the approval of the military prosecutor in order to launch a “full-scale” investigation, *ibid.*

²³⁴⁷ Vahid Karavelić, 20 Apr '05, T. 98. As to the security organ reporting to the superior security organ, *see also* Jusuf Jašarević, 03 Mar '05, T. 37-38.

²³⁴⁸ Salko Gušić, 03 Feb '05, T. 47 and 08 Feb '05, T. 102; Jusuf Jašarević, 03 Mar '05, T. 34-35; Ex. 137, Articles 40-41. Nermin Eminović, Chief of the SVB of the 6th Corps, testified that in the investigation of crimes committed by members of the military he had to discuss with the military police all the information it had collected, to analyse it, and to carry out certain measures that fall under the scope of the military police work. If there was evidence that a crime had been committed, a criminal report would be sent to the military prosecutor or investigating judge. The reports against the perpetrators of crimes were signed by the unit commander, Nermin Eminović, 10 Mar '05, T. 63. The military prosecutor in charge of the case could request the military police and the security organs at the appropriate level to provide additional information, clarifications and case material that might be relevant for taking appropriate steps, Jusuf Jašarević, 28 Feb '05, T. 39.

²³⁴⁹ Jusuf Jašarević, 03 Mar '05, T. 35; Ex. 137, Articles 40-41.

²³⁵⁰ Vahid Karavelić, 20 Apr '05, T. 96-97. Vahid Karavelić testified that “the commander’s mission as it pertains to a given combat task or operation always comes first”, *ibid.*

²³⁵¹ Vahid Karavelić, 20 Apr '05, T. 97. Vahid Karavelić testified that “an operation cannot be stopped simply because an individual, civilian or not, has been killed, or five individuals, or ten individuals, if we are looking at a large scale operation or mission”, *ibid.*

²³⁵² Vahid Karavelić, 20 Apr '05, T. 95-97.

²³⁵³ Vahid Karavelić, 20 Apr '05, T. 96-97.

2. Investigations into Murders Committed in Grabovica

(a) 9 September

660. Namik Džanković, a member of the Main Staff UB and of the Inspection Team,²³⁵⁴ testified that during the night of 8 September,²³⁵⁵ while in the hotel in Jablanica, he heard that civilians had been killed in Grabovica.²³⁵⁶ The next morning, Namik Džanković sent a short report about the events to Jusuf Jašarević, the Chief of the Main Staff UB. He briefly stated that civilians had been killed in Grabovica by members of the ABiH, that “parts of the 10th, 9th, and the independent units were in that area,” and that more information would follow.²³⁵⁷

661. Namik Džanković further testified that on the same morning, 9 September, he went to the hydroelectric power plant in Jablanica where he found Vehbija Karić, Zičro Suljević and Rifat Bilajac. They had not heard about the events yet and Namik Džanković briefly explained what had happened.²³⁵⁸ He told them that he had spoken with members of the Jablanica SJB about the events in Grabovica and that he had sent an initial report to Jusuf Jašarević.²³⁵⁹ According to Namik Džanković, Vehbija Karić then said: “Namik, could you please do your best and continue to collect as much information as you can. Continue to work on it.”²³⁶⁰

662. Also on the morning of 9 September, two Bosnian Muslim women reported at the Jablanica SJB that during the night firing had been heard, mostly on the right bank of the river in Grabovica, and that inhabitants of Grabovica had been killed.²³⁶¹ Around noon, this was confirmed by Edib Sarić, Commander of the Igman Wolves, who came to the Jablanica SJB with his deputy, and told Emin Zebić, Chief of the SJB and his deputy, Ahmed Salihamidžić that civilians had been killed, “most likely” by members of the units from Sarajevo.²³⁶²

²³⁵⁴ Namik Džanković testified that in February 1993, he became a security operative for the Main Staff, *i.e.* a soldier working in the field. He further testified that when he started to work at the Main Staff UB, he learned how to interview people, gather data, and make official notes from more senior colleagues. He did not receive any particular training in crime scene investigation or evidence collection, Namik Džanković, 21 March '05, T. 2-3. For the task of Namik Džanković within the Inspection Team, *see supra* Section IV.C, para. 205.

²³⁵⁵ Namik Džanković testified that during the night after he returned from Grabovica with Vehbija Karić, where they visited the troops that had just arrived from Sarajevo, Namik Džanković, 21 Mar '05, T. 12-13. The Trial Chamber has found that this visit took place on 8 September 1993, *see supra* Section IV.C, para. 289.

²³⁵⁶ Namik Džanković, 21 Mar '05, T. 20.

²³⁵⁷ Namik Džanković, 21 Mar '05, T. 27.

²³⁵⁸ Vehbija Karić first testified that they were informed by Namik Džanković on the morning of 8 September, but then, after checking his notes, stated that it was in the morning of 9 September, Vehbija Karić, Ex. 444, T. 82, 119-120.

²³⁵⁹ Namik Džanković, 21 Mar '05, T. 28-29. The Trial Chamber notes that Namik Džanković's testimony as to when he first spoke with members of the Jablanica SJB is inconsistent with the testimony of Emin Zebić and Ahmed Salihamidžić, *see infra* fn 2403.

²³⁶⁰ Namik Džanković, 21 Mar '05, T. 29.

²³⁶¹ Emin Zebić, 16 Mar '05, T. 70-71. *See supra* Section IV.D, para. 413.

²³⁶² Emin Zebić, 16 Mar '05, T. 73-74; Ahmed Salihamidžić, 18 Mar '05, T. 2.

663. At the time, Grabovica was not within the territorial jurisdiction of the Jablanica SJB, but of the Mostar SJB; however the Mostar SJB police were unable to go to Grabovica because the main road was blocked and exposed to “the fire of the HVO forces”.²³⁶³ Emin Zebić and Ahmed Salihamidžić were of the opinion that Grabovica was within the area of responsibility of the 44th Brigade, which was based in Jablanica and was part of the 6th Corps.²³⁶⁴ The Jablanica SJB had almost daily contacts with the 44th Brigade.²³⁶⁵

664. In September 1993, the Jablanica SJB had a modest amount of technical equipment and trained officers for on-site investigations.²³⁶⁶ According to Emin Zebić and Ahmed Salihamidžić, the Jablanica SJB did not have the means to conduct a proper investigation of what had happened in Grabovica.²³⁶⁷ According to Bakir Alispahić, Minister of the Interior, the civilian police had no access to areas of combat operations and investigations in such areas were normally carried out by the military police.²³⁶⁸ Emin Zebić testified that as they had information that military personnel may have been involved in the commission of the crimes,²³⁶⁹ these crimes fell within the jurisdiction of the SVB.²³⁷⁰ However, Emin Zebić also testified that from a “purely legal and theoretical view”, the civilian police also had to investigate because “civilians were among the victims.”²³⁷¹

665. Emin Zebić and Ahmed Salihamidžić decided to contact Sead Kurt, Commander of the military police of the 44th Brigade, who came with his deputy and “was willing” to go to the scene

²³⁶³ Ahmed Salihamidžić, 18 Mar '05, T. 4 and 31.

²³⁶⁴ Emin Zebić, 16 Mar '05, T. 74.

²³⁶⁵ Emin Zebić, 16 Mar '05, T. 74.

²³⁶⁶ Emin Zebić, 16 Mar '05, T. 90.

²³⁶⁷ Emin Zebić, 17 Mar '05, T. 73; Ahmed Salihamidžić, 18 Mar '05, T. 31. Emin Zebić further testified that in September 1993, there was no pathological specialist in the Jablanica hospital. The nearest pathologist was in Sarajevo, but it was impossible to transport 30 bodies from Grabovica to Sarajevo; however he stated that had anyone requested it and organised it, a pathologist could have come from Sarajevo to Grabovica, Emin Zebić, 17 Mar '05, T. 63 and 83-84. Also Bakir Alispahić testified that for autopsies the services of the hospital centre in Sarajevo were used, because at the time neither the army nor MUP had appropriate services within their own framework, Bakir Alispahić, 24 May '05, T. 48.

²³⁶⁸ Bakir Alispahić, 23 May '05, T. 72-73. Bakir Alispahić testified that it was clear that members of the army had committed the crimes and that Emin Zebić had at least mentioned to him that members of the 9th Brigade having committed the crimes. The civilian police wanted a thorough investigation to be carried out to establish the identity of the perpetrators in order to facilitate the task of the military police and “other judicial system organs.” There was a concern that if the perpetrators were not identified and isolated they might commit further crimes. “In view of the situation and in view of who these people were, they represented a risk for the army”, Bakir Alispahić, 24 May '05, T. 35-37. Bakir Alispahić testified that he insisted that the problem be taken seriously and be resolved, Bakir Alispahić, 24 May '05, T. 35. He further stated that while the SDB had the authority to collect intelligence and security-related information, the SJB had no authority to investigate the events unless requested by the military to assist, Bakir Alispahić, 24 May '05, T. 42. However, as to the body or organ having the authority or power to investigate the murders in Grabovica, Bakir Alispahić testified that he could not be specific and that it would have been the military judicial bodies or the civilian judicial bodies that should have reacted, Bakir Alispahić, 24 May '05, T. 42-43.

²³⁶⁹ Emin Zebić, 17 Mar '05, T. 29.

²³⁷⁰ Emin Zebić, 17 Mar '05, T. 37 and 85.

²³⁷¹ Emin Zebić, 17 Mar '05, T. 50.

of the events together with Ahmed Salihamidžić.²³⁷² Sead Kurt and Ahmed Salihamidžić went in a police vehicle to Grabovica to carry out an on-site investigation.²³⁷³ In Grabovica, they spoke with Adnan Solaković, a Bosnian Muslim refugee and two Bosnian Croat villagers.²³⁷⁴ On their way back, Sead Kurt and Ahmed Salihamidžić looked for bodies of allegedly killed villagers, but did not find any bodies along the road and at the river bank.²³⁷⁵ Upon his return to the Jablanica SJB, approximately an hour and a half after he and Sead Kurt had left Jablanica, Ahmed Salihamidžić informed Emin Zebić, Chief of the Jablanica SJB, of what he had found out in Grabovica and agreed with Emin Zebić that he would write a report.²³⁷⁶

666. Emin Zebić then went to the Jablanica War Presidency, which was responsible for the civil administration in the Jablanica area at the time, and informed Safet Ćibo, the President of the War Presidency, about what had happened in Grabovica.²³⁷⁷ According to Emin Zebić, Safet Ćibo, in his presence, immediately telephoned what Emin Zebić believed to be the “IKM” and asked for further information about the events in Grabovica.²³⁷⁸

667. According to Emin Zebić, between 19:00 and 20:00 on 9 September, Bakir Alispahić arrived at the Jablanica SJB on his way to Sarajevo.²³⁷⁹ The Trial Chamber notes that Bakir Alispahić testified that he met with Emin Zebić on the morning of 10 September.²³⁸⁰ Emin Zebić informed Bakir Alispahić of what had happened in Grabovica.²³⁸¹ Bakir Alispahić asked for a telephone connection with the “IKM” and asked to speak to Sefer Halilović.²³⁸² According to Emin Zebić, Bakir Alispahić conveyed to Sefer Halilović what Emin Zebić had told him about the events in Grabovica and said to Sefer Halilović that the events should be investigated and that other necessary measures should be taken. Bakir Alispahić added that he was willing to involve the civilian police in order to assist the SVB.²³⁸³ Emin Zebić further stated that after the conversation ended, Bakir Alispahić told him that he had spoken to Sefer Halilović and that Sefer Halilović promised that “the case would be investigated.”²³⁸⁴ Bakir Alispahić testified that he told Sefer Halilović that there were problems and he would need to meet him, but he could not recall whether

²³⁷² Emin Zebić, 16 Mar '05, T. 75.

²³⁷³ Ahmed Salihamidžić, 17 Mar '05, T. 97. The vehicle was identified by police markings, Ahmed Salihamidžić, 18 Mar '05, T. 36.

²³⁷⁴ *See supra* Section IV.D, para 408.

²³⁷⁵ *See supra* Section IV.D, para. 411.

²³⁷⁶ Emin Zebić, 16 Mar '05, T. 77-78; Ahmed Salihamidžić, 18 Mar '05, T. 12.

²³⁷⁷ Emin Zebić, 17 Mar '05, T. 12 and 41.

²³⁷⁸ Emin Zebić, 16 Mar '05, T. 78-79. Emin Zebić testified that he did not know with whom Safet Ćibo spoke on the telephone, Emin Zebić, 16 Mar '05, T. 80.

²³⁷⁹ Emin Zebić, 16 Mar '05, T. 80-81.

²³⁸⁰ Bakir Alispahić, 24 May '05, T. 3.

²³⁸¹ Emin Zebić, 16 Mar '05, T. 81 and 17 Mar '05, T. 46.

²³⁸² Bakir Alispahić, 24 May '05, T. 3-4; Emin Zebić, 16 Mar '05, T. 82, 84 and 17 Mar '05, T. 47.

²³⁸³ Emin Zebić, 16 Mar '05, T. 84.

²³⁸⁴ Emin Zebić, 16 Mar '05, T. 85 and 17 Mar '05, T. 83.

they went into any details on the phone. They agreed to meet in the hydroelectric plant in Jablanica, where Bakir Alispahić left for immediately after the phone call.²³⁸⁵

668. Bakir Alispahić testified that at the hydroelectric plant, he told Sefer Halilović of what he had been informed at the Jablanica SJB. Bakir Alispahić further stated that he had the impression that Sefer Halilović already knew at least partially what had happened. Bakir Alispahić realised that Sefer Halilović “saw this as a major problem.”²³⁸⁶ According to Bakir Alispahić, Sefer Halilović told him that the military would resolve the problem with its own resources, that there was no need for the civilian police to interfere and “that it was possible for the perpetrators of the crime to also create an incident with the policemen.”²³⁸⁷ Bakir Alispahić offered whatever assistance the civilian police could provide.²³⁸⁸

669. Before Bakir Alispahić left to go to meet Sefer Halilović, he tasked Emin Zebić with collecting as much information as possible and subsequently informing the MUP.²³⁸⁹ He also ordered him to provide assistance to the SVB if required, but according to Emin Zebić, the Jablanica SJB never received any request for assistance.²³⁹⁰

670. As noted before, on the evening of 9 September, Sefer Halilović came to see Namik Džanković, who was in his hotel room in Jablanica with Sead Branković.²³⁹¹ Namik Džanković testified that Sefer Halilović first asked him whether he had heard what had happened in Grabovica and when he answered in the affirmative, told him: “Namik, I am not behind that. I do not justify it. I want you to collect as much information as possible and send it and inform the Sarajevo command about it.”²³⁹² Namik Džanković then told Sefer Halilović that he had gone to the Jablanica SJB with Sead Branković and that he had already sent a very short initial report to Sarajevo.²³⁹³ Sefer Halilović ordered him to gather as much information as possible, together with other members of

²³⁸⁵ Bakir Alispahić, 24 May '05, T. 10.

²³⁸⁶ Bakir Alispahić, 24 May '05, T. 14.

²³⁸⁷ Bakir Alispahić, 24 May '05, T. 15.

²³⁸⁸ Bakir Alispahić, 24 May '05, T. 15. Bakir Alispahić further testified that in the evening of 10 September, he met with Sefer Halilović and Rusmir Mahmutćehajić, Minister for Energy, in Konjic, Bakir Alispahić, 24 May '05, T. 20-21, referring to Ex. 118, order of Sefer Halilović, dated 9 September 1993, addressed to the 4th Corps command, to inform Bakir Alispahić of the meeting scheduled for 10 September 1993 at 19:00 hours. At the meeting there was also an informal discussion about the events in Grabovica, Bakir Alispahić, 24 May '05, T. 23.

²³⁸⁹ Bakir Alispahić, 23 May '05, T. 73.

²³⁹⁰ Emin Zebić, 16 Mar '05, T. 85 and 17 Mar '05, T. 89; Bakir Alispahić, 26 May '05, T. 32.

²³⁹¹ Namik Džanković, 21 Mar '05, T. 27. Namik Džanković testified that it was “the day after the killings, in the evening”, *ibid.*

²³⁹² Namik Džanković, 21 Mar '05, T. 28.

²³⁹³ Namik Džanković, 21 Mar '05, T. 28. The Trial Chamber notes that Namik Džanković's testimony as to when he first spoke with members of the Jablanica SJB is inconsistent with the testimony of Emin Zebić and Ahmed Salihamidžić, *see infra* fn 2403.

the SVB and MUP.²³⁹⁴ When Namik Džanković told Sefer Halilović that Sead Branković was helping him, Sefer Halilović told him that they should continue working together.²³⁹⁵

671. Namik Džanković testified that he did not receive any assistance from the Inspection Team because that same day or the next day the Inspection Team “left to go to the operation zone for reconnaissance and to plan the operation.”²³⁹⁶ He therefore had no opportunity to meet with them again.²³⁹⁷ According to Namik Džanković, after 9 September, no one from the Inspection Team ever spoke to him again about Grabovica.²³⁹⁸

(b) 10 September

672. According to Emin Zebić, on 10 September the full magnitude of the events was not yet known to the Jablanica SJB.²³⁹⁹ Ahmed Salihamidžić interviewed Ivan and Stoja Pranjić, who provided him with a list of inhabitants of the right bank in Grabovica.²⁴⁰⁰ Ahmed Salihamidžić also interviewed Alija Turkić, a guard at the hydroelectric plant, who had been on duty between 8 and 9 September.²⁴⁰¹

673. In the early evening, the Jablanica SJB and members of the ABiH exchanged information on several occasions. At around 18:30, Zulfikar Ališpago and Edib Sarić, the Commander of the Igman Wolves, came by the Jablanica SJB and provided them with information on the events in Grabovica.²⁴⁰² At 20:30 hours, Sead Branković, a member of the Mostar CSB,²⁴⁰³ and Namik Džanković came to the Jablanica SJB.²⁴⁰⁴ Namik Džanković said that he came to receive all

²³⁹⁴ Ex. 215, Report by Namik Džanković to Jusuf Jašarević, p. 3.

²³⁹⁵ Namik Džanković, 22 Mar '05, T. 26. Emin Zebić testified that Sead Branković informed him that Sefer Halilović appealed to him and Namik Džanković and insisted that an investigation be conducted, but that he could not remember the date, Emin Zebić, 17 Mar '05, 78-79. Šefko Hodžić testified that when he spoke with Sefer Halilović on 9 September and asked him whether he had heard about the killings in Grabovica, Sefer Halilović told Šefko Hodžić that there were people around whose duty was to investigate these matters. *See supra* Section IV.D, para. 519.

²³⁹⁶ Namik Džanković, 21 Mar '05, T. 31.

²³⁹⁷ Namik Džanković, 21 Mar '05, T. 32.

²³⁹⁸ Namik Džanković, 21 Mar '05, T. 40. The Trial Chamber notes that according to Vehbija Karić, Sefer Halilović was informed in detail about the events in Grabovica by Namik Džanković and the other members of the Inspection Team on 10 September, *see supra* Section IV.D, para. 522.

²³⁹⁹ Emin Zebić, 17 Mar '05, T. 49.

²⁴⁰⁰ Ahmed Salihamidžić, 18 Mar '05, T. 12-13 and 56.

²⁴⁰¹ Ahmed Salihamidžić, 18 Mar '05, T. 15. Ahmed Salihamidžić testified that Semsudin Halebić, a member of the 44th Brigade came to the Jablanica SJB and that the two men went to interview Alija Turkić together, *ibid.* *See also* Ex. 222, p. 2.

²⁴⁰² *See supra* Section IV.D, para. 424.

²⁴⁰³ The Trial Chamber notes that according to Emin Zebić and Ahmed Salihamidžić, Sead Branković was a member of the Mostar CSB and placed at the Jablanica SJB in August and September 1993, Emin Zebić, 17 Mar '05, T. 7-8; Ahmed Salihamidžić, 18 Mar '05, T. 40. Namik Džanković testified that Sead Branković was a member of the Mostar SDB, Namik Džanković, 21 Mar '05, T. 10.

²⁴⁰⁴ Emin Zebić, 16 Mar '05, T. 87. Emin Zebić testified that Namik Džanković had been introduced to Emin Zebić by Sead Branković as a member of the SVB, *ibid.*

the information in relation to the events in Grabovica.²⁴⁰⁵ Emin Zebić and Ahmed Salihamidžić gave Namik Džanković all information they had.²⁴⁰⁶ According to Namik Džanković, he always dropped by the police station to exchange information with Emin Zebić and Ahmed Salihamidžić. He received most of his information about the events in Grabovica from them because it was their “home ground”.²⁴⁰⁷

674. Ahmed Salihamidžić, Sead Branković and Namik Džanković then went to Zulfikar Ališpago’s apartment.²⁴⁰⁸ Ahmed Salihamidžić testified that it was not an official meeting and that he went there at the request of Sead Branković.²⁴⁰⁹ At the apartment they discussed with Zulfikar Ališpago and Edib Sarić, what had happened in Grabovica.²⁴¹⁰ Suddenly Ramiz Delalić appeared with an escort.²⁴¹¹ He said that they were making “a fuss”, because some Bosnian Croats had been killed and that he wanted to go back to Sarajevo with his troops. Zulfikar Ališpago tried to calm Ramiz Delalić down and was “begging” him not to leave for Sarajevo.²⁴¹² He called Sefer Halilović in Konjic and told him to come to Jablanica to solve the problems with Ramiz Delalić.²⁴¹³

675. Nermin Eminović, the Chief of the SVB of the 6th Corps, testified that he was first informed of the killings in Grabovica on 10 September by Nusret Sahić, the Commander of the 6th Corps

²⁴⁰⁵ Emin Zebić, 16 Mar '05, T. 89 and 17 Mar '05, T. 51.

²⁴⁰⁶ Emin Zebić, 16 Mar '05, T. 88-89 and 17 Mar '05, T. 53. Namik Džanković testified that during the night after he returned from Grabovica, where he had visited with Vehbija Karić the units that had just arrived from Sarajevo, he heard in the hotel in Jablanica where he was staying, that civilians had been killed in Grabovica, Namik Džanković, 21 Mar '05, T. 12 and 20. The same night, Namik Džanković went together with Sead Branković, who was staying in the same hotel, to the Jablanica SJB in order to find out whether Emin Zebić and Ahmed Salihamidžić had heard about the events in Grabovica, Namik Džanković, 21 Mar '05, T. 20-21. Having already heard about the crimes they discussed how to gather as much information as possible and to see what they should do. They agreed that Namik Džanković, Sead Branković and Ahmed Salihamidžić should talk to Zulfikar Ališpago to see whether he could provide them with more information about the crimes, Namik Džanković, 21 Mar '05, T. 22. Namik Džanković testified that he was not sure whether they went to Zulfikar Ališpago’s apartment that same night or the following night. Namik Džanković, 21 Mar '05, T. 22. Confronted with the chronology of events as described in the official note written by Ahmed Salihamidžić (Ex. 222), Namik Džanković stated that after 12 years, he cannot be a 100 % certain whether a particular meeting was on 8, 9, or 10 September 1993. Ahmed Salihamidžić testified that he met Namik Džanković for the first time on 10 September and does not recall further meetings with him in the SJB, Ahmed Salihamidžić, 18 Mar '05, T. 59-60.

²⁴⁰⁷ Namik Džanković, 21 Mar '05, T. 31.

²⁴⁰⁸ Emin Zebić, 16 Mar '05, T. 89 and 17 Mar '05, T. 57. Ahmed Salihamidžić testified that Namik Džanković was already there when he arrived at Zulfikar Ališpago’s apartment, Ahmed Salihamidžić, 18 Mar '05, T. 18 and 70.

²⁴⁰⁹ Ahmed Salihamidžić, 18 Mar '05, T. 18 and 70.

²⁴¹⁰ Ahmed Salihamidžić, 18 Mar '05, T. 19.

²⁴¹¹ Ahmed Salihamidžić, 18 Mar '05, T. 19.

²⁴¹² Ahmed Salihamidžić, 18 Mar '05, T. 20 and T. 63-65; Namik Džanković, 21 Mar '05, T. 24 and 22 Mar '05, T. 9 and 12. Ramiz Delalić testified that he went to Zulfikar Ališpago’s apartment on the evening of 10 September, but that Ahmed Salihamidžić, Namik Džanković and Sead Branković were not present; and that Zulfikar Ališpago was drunk, Ramiz Delalić, 19 May '05, T. 92-93. The Trial Chamber notes that Ramiz Delalić’s testimony is contradictory to the other reliable evidence before the Trial Chamber in this respect.

²⁴¹³ Ahmed Salihamidžić, 18 Mar '05, T. 22. According to Namik Džanković, he, Sead Branković and Ahmed Salihamidžić spent around an hour in Zulfikar Ališpago’s apartment. When they left, Zulfikar Ališpago and Ramiz Delalić stayed behind, Namik Džanković, 21 Mar '05, T. 25. However, Ahmed Salihamidžić testified that Ramiz Delalić left after he had the discussion with Zulfikar Ališpago about withdrawing his troops to Sarajevo, Ahmed Salihamidžić, 18 Mar '05, T. 20.

military police battalion stationed in Jablanica.²⁴¹⁴ Nermin Eminović told Nusret Sahić to go to the crime scene and find out what had happened and report back to him. He also suggested to him to contact Namik Džanković.²⁴¹⁵

(c) 11 September

676. After his return to Sarajevo, in the morning of 11 September, Bakir Alispahić went to see Rasim Delić and informed him about what he knew of the crimes committed in Grabovica, including that he had been told that members of the 9th Brigade had committed the crimes,²⁴¹⁶ and that he had informed Sefer Halilović about it.²⁴¹⁷ According to Bakir Alispahić, Rasim Delić already knew some of that information, but seemed not to be aware of the full scope of the events. According to Bakir Alispahić, Rasim Delić said that he would personally see to it that there would be an inquiry into the events.²⁴¹⁸ After the meeting with Rasim Delić, Bakir Alispahić informed R BiH President Alija Izetbegović about the events in Grabovica. According to Bakir Alispahić, Alija Izetbegović then spoke with Rasim Delić on the phone and demanded that he “take a serious approach to resolving this problem.”²⁴¹⁹ Bakir Alispahić testified that at the time, he also spoke with Jusuf Jašarević about the events.²⁴²⁰ A few days later, Rasim Delić told Bakir Alispahić that he had issued an order that the crimes be investigated.²⁴²¹

677. According to Ramiz Delalić, it was Sefer Halilović’s duty to order Zulfikar Ališpago to undertake measures and conduct an investigation in order to find the perpetrators of the crime.²⁴²² However, Vehbija Karić testified that the Inspection Team did not have any authority in terms of discovering who the perpetrators were.²⁴²³ He further stated that it was the area of responsibility of the 6th Corps and the Main Staff UB as well as Rasim Delić, as commander, were informed

²⁴¹⁴ Nermin Eminović, 10 Mar ’05, T. 76. Nermin Eminović testified that this was only preliminary information as the information was conveyed to him by an open telephone line, Nermin Eminović, 10 Mar ’05, T. 76. The Trial Chamber also notes Ex. 153, report from the 44th Brigade, dated 9 September 1993, signed by Zajko Siharlić, Assistant Commander for Security and Fadil Kevrić, Assistant Commander for Intelligence and Security, addressed to the 6th Corps SVB, providing information as to killings committed in Grabovica.

²⁴¹⁵ Nermin Eminović, 10 Mar ’05, T. 77.

²⁴¹⁶ Bakir Alispahić, 24 May ’05, T. 37-38.

²⁴¹⁷ Bakir Alispahić, 24 May ’05, T. 27. Bakir Alispahić further testified that he told Rasim Delić that he had talked with the Minister of Energy, Rusmir Ahmutcehajić, about the events while they met in Konjic, *ibid*.

²⁴¹⁸ Bakir Alispahić, 24 May ’05, T. 27-28.

²⁴¹⁹ Bakir Alispahić, 24 May ’05, T. 38-39. *See infra* para. 680.

²⁴²⁰ Bakir Alispahić understood that Jusuf Jašarević was familiar with the case, Bakir Alispahić, 24 May ’05, T. 40-41.

²⁴²¹ Bakir Alispahić, 24 May ’05, T. 28.

²⁴²² Ramiz Delalić, 18 May ’05, T. 10.

²⁴²³ According to Vehbija Karić, until the return of the Inspection Team to Sarajevo, and up until the investigation in the framework of the “Trebević Operation,” towards the end of October 1993, they only knew that the perpetrators were members of the 9th and 10th Brigades, Vehbija Karić, Ex. 444, T. 124.

immediately.²⁴²⁴ According to Vehbija Karić, the Main Staff UB was in charge of collecting all the information about the perpetrators and then handing them over to the military prosecutor.²⁴²⁵

678. Emin Zebić continued gathering information regarding the events in Grabovica through all available sources. He shared this information with the SVB.²⁴²⁶ On 11 September, Ahmed Salihamidžić wrote an “official note”,²⁴²⁷ which contained all the information that Ahmed Salihamidžić had gathered up to that point in time.²⁴²⁸ The official note was provided to Sead Branković on 12 September, who attached his own report and in turn reported to his superiors in the Mostar CSB.²⁴²⁹ Emin Zebić testified that he did not discover the name of a single perpetrator. He further stated that there was a real risk of getting into an armed confrontation with the units in Grabovica if the civilian or military police would have tried to carry out arrests.²⁴³⁰

679. Salko Gušić, Commander of the 6th Corps, testified that, three to four days after the events took place, he heard about killings of civilians in Grabovica from Nermin Eminović, who had sent a military police company to the Grabovica area.²⁴³¹ However, the company did not enter the area because of ongoing combat action. Nermin Eminović told Salko Gušić that “the officer in charge of security affairs at the Jablanica IKM” had said that measures would be taken and organised by the “Jablanica IKM”.²⁴³² Salko Gušić further testified that Nermin Eminović told him that the units from Sarajevo²⁴³³ were involved in the incident. Salko Gušić believed that Nermin Eminović also informed the Main Staff in Sarajevo.²⁴³⁴ According to Salko Gušić, under the rules, investigations into the killings in Grabovica had to be a criminal investigation conducted by the SVB and the civilian police.²⁴³⁵

²⁴²⁴ Vehbija Karić, Ex. 444, T. 120-121. According to Vehbija Karić, the Inspection Team did not have any authority to file criminal reports and initiate court proceedings, *ibid*.

²⁴²⁵ Vehbija Karić, Ex. 444, T. 121.

²⁴²⁶ Emin Zebić, 17 Mar '05, T. 59.

²⁴²⁷ Ex. 222, which consists of the official note drafted by Ahmed Salihamidžić and a report drafted by Sead Branković on 13 September 1993.

²⁴²⁸ Ahmed Salihamidžić, 18 Mar '05, T. 13, 22-24, 51; Emin Zebić, 16 Mar '05, T. 86. The information contained in the report included the interviews with Ivan and Stoja Pranjić and the guard of the hydroelectric plant, Alija Turkić; as well as the informal meeting in Zulfikar Ališpago's apartment, Ahmed Salihamidžić, 18 Mar '05, T. 23-24; Ex. 222.

²⁴²⁹ Ahmed Salihamidžić, 18 Mar '05, T. 53; Emin Zebić, 17 Mar '05, T. 58.

²⁴³⁰ Emin Zebić, 17 Mar '05, T. 60-62.

²⁴³¹ Salko Gušić, 03 Feb '05, T. 73-74. Nermin Eminović, 10 Mar '05, T. 77. Salko Gušić further testified that he did not know what Nermin Eminović's role was in the investigations, Salko Gušić, 08 Feb '05, T. 60. There was no reason for him, as the Commander of the 6th Corps, to know of the correspondence between Jusuf Jašarević and Nermin Eminović as that went along the security chain of command, Salko Gušić, 08 Feb '05, T. 57.

²⁴³² Salko Gušić, 03 Feb '05, T. 73-74.

²⁴³³ Salko Gušić understood the phrase “units from Sarajevo” to refer to the which were parts from the 9th, the 10th and the Delta Brigade, Salko Gušić, 03 Feb '05, T. 75. The Trial Chamber notes that the Delta Brigade did not leave Sarajevo, *see supra* Section IV.C, para 231.

²⁴³⁴ Salko Gušić, 03 Feb '05, T. 73-75.

²⁴³⁵ Salko Gušić, 07 Feb '05, T. 22.

(d) 12 September and later

680. On 12 September 1993, Rasim Delić issued an order to the “Supreme Command Staff-Jablanica, Chief of the Supreme Command/Staff, personally” and the “6th Corps Command-/Commander, personally.”²⁴³⁶ The order was issued in reaction to information from the 6th Corps Chief of Staff, Dževad Tirak, about the decision of the “Chief of the Supreme Command Staff” regarding planned combat actions towards Prozor and Mostar.²⁴³⁷ The order provides as it regards investigations:

Check the accuracy of information regarding the genocide committed against the civilian population by the members of the 1st Corps [9th Brigade]. If the information is correct, isolate the perpetrators and take energetic measures. Do everything to prevent such actions. Order the 1st Corps 9th [Brigade] deputy commander to return to Sarajevo immediately in order to solve problems in the unit.

Immediately inform me about measures that have been taken and tasks that have been carried out.

681. Dževad Tirak testified that he had been ordered by Bahrudin Fazlić, Deputy Commander of the 6th Corps, to speak with Rasim Delić in order to inform him of, among other things, “the entire situation” of the operation and to request that those units from Sarajevo be withdrawn immediately from the area of responsibility of the 6th Corps.²⁴³⁸ At that time, however, Dževad Tirak did not know exactly what had happened in Grabovica, apart from the general information that crimes against civilians had occurred.²⁴³⁹ Rasim Delić said that he would look into the matter and take whatever measures were required.²⁴⁴⁰

682. On 12 September, Emin Zebić attended a meeting with the War Presidency in Jablanica. He testified that the War Presidency was eager to find out what had happened in Grabovica. Emin Zebić testified that the meeting was attended by Senad Džino, Deputy Commander of the 44th Brigade, who reported on what had happened in Grabovica “as the military component”. Senad Džino said at the meeting that some of the officers at the IKM, and in this respect he mentioned

²⁴³⁶ Ex. 157. According to Salko Gušić, Rasim Delić’s order was addressed to him only because Rasim Delić received the information from Dževad Tirak, Salko Gušić, 08 Feb ’05, T. 78. Salko Gušić further testified that Dževad Tirak violated procedure because Salko Gušić did not send him to provide the information to Rasim Delić nor did he give his approval, Salko Gušić, 08 Feb ’05, T. 74-75.

²⁴³⁷ Ex. 157, preamble.

²⁴³⁸ Dževad Tirak, 30 Mar ’05, T. 46 and 51. Salko Gušić was absent at that time, Dževad Tirak, 30 Mar ’05, T. 51-52.

²⁴³⁹ Dževad Tirak, 30 Mar ’05, T. 53. The 6th Corps command asked for the withdrawal of these troops because they believed that those troops could not contribute to any offensive operations, but, knowing of their “bad reputation,” could only cause problems. The news about the crimes committed in Grabovica only reinforced Dževad Tirak’s views in this respect, Dževad Tirak, 30 Mar ’05, T. 66.

²⁴⁴⁰ Dževad Tirak, 30 Mar ’05, T. 58-59 and 31 Mar ’05, T. 45.

Vehbija Karić and Sefer Halilović, had "taken upon themselves the obligation of investigating the events and taking the necessary measures."²⁴⁴¹

683. On 12 September 1993, Jusuf Jašarević issued the following order to Nermin Eminović, Chief of the SVB of the 6th Corps:

We are in possession of unverified information that the unit commanded by Ramiz Delalić a.k.a. Čelo has massacred civilians in some Croatian village in the z/o of the 6th Corps.

Take immediate steps to verify this information and document it.

Carry out an assessment and make a proposal to the commander for the arrest of the persons who are the culprits for this crime, if one has been committed.

Submit a report on these matters urgently to the Supreme Command Staff/Security Administration.²⁴⁴²

684. According to Nermin Eminović, he had no communication with Jusuf Jašarević about Grabovica before he received this order.²⁴⁴³ On 13 September Nusret Sahić, the Commander of the 6th Corps military police battalion, reported to Nermin Eminović.²⁴⁴⁴ In his report, Nusret Sahić stated that he was in Jablanica on 10 September to control and assist the work of the subordinated units *i.e.* "the Jablanica Military Police Company" and "the Military Police Department for Service". On returning to Jablanica, Nusret Sahić consulted Namik Džanković, who told him that the "IKM" was informed and that Namik Džanković had received an order from Vehbija Karić "not to do anything because of the planned operation."²⁴⁴⁵ According to Nermin Eminović, the order from the "IKM" that nothing should be done "referred to arrests and so on".²⁴⁴⁶ However, Namik Džanković testified that he never told anybody that Vehbija Karić or any other member of the Inspection Team ordered him to stop the investigation.²⁴⁴⁷ After having received the report from

²⁴⁴¹ Emin Zebić, 16 Mar '05, T. 94 and 17 Mar '05, T. 63-64. Zajko Sihirlić, Assistant Commander for Security of the 44th Brigade, stated that he was present at the command of the 44th Brigade when a meeting was held in September 1993 with Bakir Alispahić, Senad Džino and representatives of the authorities in Jablanica, where the crimes committed in Grabovica were discussed and Zajko Sihirlić was told that the investigation would be conducted in Sarajevo, Zajko Sihirlić, Ex. 460, p. 2.

²⁴⁴² Ex. 224, order of the Main Staff UB, dated 12 September 1993, signed by Jusuf Jašarević. Jusuf Jašarević testified that he probably had found out about the crimes in the afternoon or evening of 11 September, Jusuf Jašarević, 01 Mar '05, T. 74.

²⁴⁴³ Nermin Eminović, 10 Mar '05, T. 79.

²⁴⁴⁴ Ex. 119, report from the 6th Corps Military Police Battalion to the 6th Corps Security Organ.

²⁴⁴⁵ Nermin Eminović, 10 Mar '05, T. 80-81. In the report, Nusret Sahić further stated that he was told about the "slaughtering" of 20 Bosnian Croat civilians by unknown perpetrators of the ABiH. He had attempted to go to Grabovica, but was told that it was "dangerous" to go to the crime scene and inspect what happened as the units located in that area "kept everything under control", Ex. 119, p. 1.

²⁴⁴⁶ Nermin Eminović, 10 Mar '05, T. 80-81. Nermin Eminović testified that the order from the "IKM" had to be obeyed because of the following reasons: it was an order, the units involved in the operation were not part of the 6th Corps and not under its command, and because there was nothing to be relied on officially as there was nobody Nermin Eminović could communicate with within the Security Service, Nermin Eminović, 10 Mar '05, T. 81-82. According to Nermin Eminović, "the command" could postpone some activities until later if carrying out these activities would cause greater damage, Nermin Eminović, 10 Mar '05, T. 83.

²⁴⁴⁷ Namik Džanković, 21 Mar '05, T. 42, confronted with Ex. 214.

Nusret Sahić, Nermin Eminović requested him to get as much information as possible about the perpetrators and the victims.²⁴⁴⁸

685. Namik Džanković testified that a couple of days after the events, after initially being prevented from going to Grabovica,²⁴⁴⁹ he again tried to go to Grabovica. This time, he was allowed to go there, after he had told the soldiers at the checkpoint that he was going to see Samir Pezo, the Deputy Commander of the 2nd Independent Battalion.²⁴⁵⁰ While he was in Grabovica, soldiers started reporting via Motorola that they had taken Mali and Veliki Medvjed.²⁴⁵¹ Namik Džanković returned to Jablanica without having made any observations related to the alleged crimes. He testified that he left Grabovica because there was nobody for him to talk to at that point in time and it seemed to be out of place to inquire further, as everybody was celebrating the ABiH breakthrough of the HVO lines.²⁴⁵²

686. On 13 September, Namik Džanković sent a second report to Jusuf Jašarević,²⁴⁵³ summarising all the information he had obtained, with the “Official Note” from the Jablanica SJB enclosed.²⁴⁵⁴ The report, amongst other information, stated that the “ŠVK IKM Jablanica” had been

²⁴⁴⁸ Nermin Eminović, 10 Mar '05, T. 79.

²⁴⁴⁹ See *supra* Section IV.D, para. 428.

²⁴⁵⁰ Namik Džanković, 21 Mar '05, T. 33. When Namik Džanković saw Samir Pezo he asked him what exactly had happened, but Samir Pezo told him not to ask. Samir Pezo also said that he was on guard duty around the old railway station where the 2nd Independent Battalion command was billeted, because he was afraid for his soldiers who were of a different ethnicity, *ibid.* Then Adnan Solaković approached them and when he heard what they were talking about, told them to stop thinking about it, and that combat operations had started, Namik Džanković, 21 Mar '05, T. 34. At that point, Ramiz Delalić, together with “Dzeki”, Commander of the *Handžar* Division and Edib Sarić, Commander of the Igman Wolves, arrived in a jeep from the direction of Jablanica, *ibid.* He further testified that his attempt to discuss the events with Samir Pezo and Adnan Solaković “came up against a wall”. They appeared to be unhappy and depressed about what had happened in Grabovica, Namik Džanković, 22 Mar '05, T. 32.

²⁴⁵¹ Namik Džanković, 21 Mar '05, T. 34.

²⁴⁵² Namik Džanković, 21 Mar '05, T. 34-35.

²⁴⁵³ Jusuf Jašarević testified that Namik Džanković only reported to him as it concerned a possible war crime which was an intelligence-related issue and because Sefer Halilović had ordered him to do so, Jusuf Jašarević, 01 Mar '05, T. 85. He further testified that Namik Džanković's proposals were unrealistic and that it was unclear to whom they were addressed, Jusuf Jašarević, 03 Mar '05, T. 3, 8.

²⁴⁵⁴ Ex. 215; Namik Džanković, 21 Mar '05, T. 36-37. The report stated amongst other information, the following: that on 8 September, ABiH units from Sarajevo, commanded by Ramiz Delalić, came to Grabovica within the scope of a planned operation towards Mostar; that the units were “put up” on the right bank in Grabovica in houses owned by Bosnian Croats; that in the night of 8 September, rifle shots were heard in Grabovica almost all night and that in the morning of 9 September the news spread that the Bosnian Croat civilian population had been massacred by ABiH members from Sarajevo; that Edib Sarić, Commander of the Igman Wolves, confirmed that several murders had been committed on the right bank in Grabovica, but that he did not know the scope of the crime nor who the perpetrators were; that the Deputy Chief of the Jablanica SJB went to the crime scene together with the Jablanica military police commander on 9 September, where two inhabitants provided the names of people who probably were killed; that the Deputy Chief of the Jablanica SJB again interviewed these inhabitants about the events on 10 September; that Zulfikar Ališpago wrote a report about the events which he would forward to the Supreme Command in Sarajevo; that according to Namik Džanković, eleven Bosnian Croat civilians were killed and that he assumed that some of the bodies had been thrown into the reservoir of the hydro electric power plant; and that fourteen adults and two children, all Bosnian Croats, had been evacuated from the area to Jablanica. The report further stated that the present situation in Grabovica was under control and the fact that Ramiz Delalić executed one of his soldiers had contributed to this. See also Namik Džanković, 22 Mar '05, T. 21-22. The Trial Chamber notes that Namik Džanković testified that Zulfikar

informed of this event, as well as the civilian authorities and the MUP and that a joint investigation would be conducted by officials of the SVB and of the MUP. The report also stated that a detailed inspection at the crime scene was impossible because of the “attitude” of the 9th Brigade²⁴⁵⁵ and it was feared that attaching “too much importance” to the events would cause the immediate return of the complete unit to Sarajevo, which would jeopardize the planned operation towards Mostar. Furthermore, it stated that it was feared that open conflicts between members of the 9th Brigade and persons who were to conduct the “inspection” and who might try to identify and arrest the perpetrators could occur.²⁴⁵⁶ Namik Džanković concluded the report by stating that “in Jablanica this unfortunate event is being kept a secret as far as possible in order to enable the success of the combat operation currently being prepared” and that Sefer Halilović, who had “dissociated himself” from the crime, had ordered him to work together with other SVB members and MUP officials to collect as much information as possible about the events.²⁴⁵⁷

687. Namik Džanković also proposed a number of measures to be taken:²⁴⁵⁸

1. To continue to collect information in an operative way.
2. By decree to establish a mixed commission consisting of MUP officials and the Military Security Service led by military investigation organs.²⁴⁵⁹ The presence of a doctor and other experts is obligatory in order to exhume the bodies and establish the cause of death. (There are indications of savagery- heart extraction, slaughter).
3. Conduct interviews with members of Adnan Solaković’s unit who were lodged in the direct vicinity and who must have seen at least a part if not all the killings and the perpetrators. (This should be undertaken after the units have returned to Sarajevo for the reasons stated above).
4. Request a report from Zulfikar Ališpago, commander of the Zulfikar unit, who, as he says himself, has written a report and forwarded it to Supreme Command in Sarajevo. Under the prevailing circumstances, Zuka was the only person who could go to the scene of the crime to confirm at least some of the facts without fearing for his life.
5. Request a written report from Commander Ramiz Delalić aka Čelo on the events in Grabovica.

Ališpago told him that he wrote a report, when they were at the apartment of Zulfikar Ališpago, but that he, Namik Džanković was never provided with a copy of that report, Namik Džanković, 22 Mar ’05, T. 7, 9-10.

²⁴⁵⁵ Namik Džanković testified that he intended to convey in that report that it was impossible at the time to carry out an on-site inspection, Namik Džanković, 22 Mar ’05, T. 17.

²⁴⁵⁶ Namik Džanković further stated that he would not have been protected in Grabovica, but also if an investigation team would have gone down there, there would have been a conflict, Namik Džanković, 22 Mar ’05, T. 18, 21. Ramiz Delalić, however, testified that no soldiers were arrested at the time even though it could have been done very easily as most of the soldiers billeted in Grabovica were not in favour of the crimes, Ramiz Delalić, 18 May ’05, T. 9. He further stated that he was not hostile towards an investigation, Ramiz Delalić, 18 May ’05, T. 46.

²⁴⁵⁷ Ex. 215, pp. 2-3.

²⁴⁵⁸ Ex. 215, p. 3.

²⁴⁵⁹ Both Emin Zebić and Ahmed Salihamidžić testified that Namik Džanković’s proposal to establish a mixed commission consisting of MUP officials and the SVB led by military investigation organs never reached the Jablanica SJB, Emin Zebić, 16 Mar ’05, T. 85; Ahmed Salihamidžić, 18 Mar ’05, T. 28, referring to Ex. 215. The Trial Chamber recalls that Grabovica fell under the jurisdiction of the Mostar SJB. *See supra* para. 663.

Exercise strict censorship over the media's reporting of the events in view of the present military and political situation.

688. Namik Džanković testified that he requested an investigative team to be formed because he could not do anything individually and he felt that this case required an investigation, conducted by experts and trained professionals.²⁴⁶⁰ However he never received any assistance.²⁴⁶¹

689. According to Namik Džanković, the possibilities to interview members of the 2nd Independent Battalion were better in Sarajevo and if they were called in by “the Chief of Security” or if they were ordered to, they would have come. According to Namik Džanković, he did not have the authority to order these soldiers himself to come and speak to him.²⁴⁶² In Namik Džanković's opinion, the perpetrators, not the entire units, could be aggressive and dangerous in order to cover up what happened.²⁴⁶³

690. In response to the report of Nusret Sahić which was forwarded by Nermin Eminović on 14 September,²⁴⁶⁴ Jusuf Jašarević sent a request, dated 15 September 1993, to the 6th Corps Command “for Namik Džanković”,²⁴⁶⁵ in which he asked for information regarding the events, including information as to the identity of the ABiH units stationed in Grabovica, their commanders, the tasks of the units involved in the events and measures taken.²⁴⁶⁶

691. Within the 6th Corps, having received Jusuf Jašarević's request of 15 September,²⁴⁶⁷ Nermin Eminović requested Zajko Siharlić, Assistant Commander for Security of the 44th Brigade, to collect information, to report all findings to the 6th Corps Security Service and to meet with and assist Namik Džanković.²⁴⁶⁸ Nermin Eminović testified that he forwarded Jusuf Jašarević's request to

²⁴⁶⁰ Namik Džanković, 21 Mar '05, T. 36. Namik Džanković testified that he had only a small amount of experience as criminal investigator and had never been involved in any major criminal investigation, Namik Džanković, 21 Mar '05, T. 3, 32. It was impossible for Namik Džanković to assemble a team of professionals and experts. Such personnel was not available in Jablanica and he did not have the authority to issue any orders to this effect, Namik Džanković, 22 Mar '05, T. 31.

²⁴⁶¹ Namik Džanković, 21 Mar '05, T. 37.

²⁴⁶² Namik Džanković, 22 Mar '05, T. 32-33.

²⁴⁶³ Namik Džanković, 22 Mar '05, T. 18.

²⁴⁶⁴ Nermin Eminović, 10 Mar '05, T. 79; Ex. 214, communication from 6th Corps SVB, dated 14 September 1993. Jusuf Jašarević testified that he received the report on 15 September, Jusuf Jašarević, 01 Mar '05, T. 75.

²⁴⁶⁵ Jusuf Jašarević testified that he sent the request to Namik Džanković to find out what Namik Džanković could do and to receive information about what actually had happened. He sent the request via the 6th Corps, because he did not know where Namik Džanković was, Jusuf Jašarević, 03 Mar '05, T. 50.

²⁴⁶⁶ Ex. 225, request to report, dated 15 September.

²⁴⁶⁷ Nermin Eminović, 10 Mar '05, T. 85.

²⁴⁶⁸ Nermin Eminović, 10 Mar '05, T. 86 and 11 Mar '05, T. 41-43; Ex. 154, request from 6th Corps SVB, addressed to Zajko Siharlić, Assistant Commander for Security, dated 14 September 1993. Zajko Siharlić stated that he heard about the crimes committed in Grabovica, but that he did not participate in any investigation, Zajko Siharlić, Ex. 460, p. 1. The Trial Chamber notes that the statement of Zajko Siharlić is in contradiction to evidence before the Trial Chamber as to the involvement of members of the 44th Brigade in the investigation, *see supra* paras 663, 665 and 682; *see also infra* para. 696. The Trial Chamber further notes in this respect Ex. 153, report from 44th Brigade, signed by Zajko Siharlić, and Fadil Kevrić, Assistant Commander for Intelligence and Security, addressed to the 6th Corps command, SVB, dated 9 September 1993, providing

Namik Džanković through Zajko Sihirlić.²⁴⁶⁹ Namik Džanković testified that he did not receive this request.²⁴⁷⁰ On 17 September 1993, Nermin Eminović sent a report to Jusuf Jašarević²⁴⁷¹ which contained all the information about the events in Grabovica that had been collected by the 6th Corps military police battalion and Nusret Sahić,²⁴⁷² who in turn received most of the information from the Jablanica SJB.²⁴⁷³

692. On 18 September 1993, Jusuf Jašarević requested from Nermin Eminović that he be sent information as to the events in Grabovica before 12:00 on 19 September, in order to be able to brief the BiH Presidency and the Main Staff.²⁴⁷⁴ Nermin Eminović assumed that Jusuf Jašarević had not received his report of 17 September by then.²⁴⁷⁵ On 19 September 1993, Jusuf Jašarević sent a “warning” to Nermin Eminović because he still had not received the requested information.²⁴⁷⁶ Nermin Eminović testified that he and his service had neither the human nor the material resources to carry out the obligations with the urgency Jusuf Jašarević was insisting on.²⁴⁷⁷ Nermin Eminović responded to Jusuf Jašarević’s warning, explaining that they had sent a report about the events in Grabovica, dated 17 September.²⁴⁷⁸

693. A weekly report of the Main Staff UB, signed by Jusuf Jašarević and dated 19 September, stated that the SVB is “working on the investigation of possible crimes against civilians in the village of Grabovica”.²⁴⁷⁹

694. Jusuf Jašarević testified that he received Namik Džanković’s second report on 20 September.²⁴⁸⁰ Jusuf Jašarević further testified that it transpired from this report that a “proper

information as to murders committed in Grabovica and as to the Jablanica SJB and the military police visiting the site and stating that new information will be provided.

²⁴⁶⁹ Nermin Eminović, 11 Mar ’05, T. 47; Ex. 268, request for a report dated 15 September.

²⁴⁷⁰ Namik Džanković, 21 Mar ’05, T. 37-38. Nermin Eminović also testified that he and Namik Džanković did not report to one another, Nermin Eminović, 11 Mar ’05, T. 53-54

²⁴⁷¹ Ex. 226, Report from 6th Corps SVB, addressed to Main Staff UB, Jusuf Jašarević personally, dated 17 September 1993; Nermin Eminović 10 Mar ’05, T. 86 referring to Ex. 226. The Trial Chamber notes that this report contains almost the same information as Namik Džanković’s second report (Ex. 215). Jusuf Jašarević testified that this report was received on 20 September, Jusuf Jašarević, 03 Mar ’05, T. 54-55. Ex 226 included information that giving prominence to these events would result “in revolt” of the units lead by Ramiz Delalić and their return to Sarajevo.

²⁴⁷² Nermin Eminović testified that maybe some information came also from Namik Džanković, but he did not receive it directly as they did not report each other, Nermin Eminović, 11 Mar ’05, T. 53-54.

²⁴⁷³ Nermin Eminović, 10 Mar ’05, T. 86, 88.

²⁴⁷⁴ Ex. 228. In this request, Jusuf Jašarević also requested information as to the killings in Uzdol, *see infra* para. 704.

²⁴⁷⁵ Nermin Eminović, 11 Mar ’05, T. 12.

²⁴⁷⁶ Ex. 229; Nermin Eminović, 11 Mar ’05, T. 13-14.

²⁴⁷⁷ Nermin Eminović, 11 Mar ’05, T. 16-17.

²⁴⁷⁸ Ex. 230, in which Nermin Eminović refers to the report of 17 September, admitted into evidence as Ex. 226.

²⁴⁷⁹ Ex. 231, Weekly Report, dated 19 September 1993, p. 3; Jusuf Jašarević, 03 Mar ’05, T. 68-69. Jusuf Jašarević testified that the statement in the report, that “cooperation with the MUP/Ministry of the Interior/ has continued and so has the exchange of information with the Intelligence Administration” was probably a general remark, which would not rule out that it also referred to the specific investigations mentioned before, Jusuf Jašarević, 03 Mar ’05, T. 69-70.

professional inspection” was not possible because of the nature of the 9th Brigade. According to Jusuf Jašarević “the only thing that could have been used to resolve the situation was power and authority, enforce an inspection.”²⁴⁸¹ According to Jusuf Jašarević, the Main Staff UB was fully aware that “the task” it faced was a complex one and that much time had elapsed. They realised that Namik Džanković could not handle “this task” on his own and that “the commander of the operation”²⁴⁸² either had to order that the problem be dealt with or create the necessary conditions, if he had the power to do this, to have this problem dealt with.”²⁴⁸³ Jusuf Jašarević further testified that the command of the operation should have co-ordinated the work of the SVB and the MUP,²⁴⁸⁴ and only the command would have had the authority to order an “inspection”, which according to Jusuf Jašarević would have led to “further casualties”.²⁴⁸⁵ Jusuf Jašarević testified that the fact that Sefer Halilović ordered Namik Džanković to investigate together with the SVB and MUP, showed that Sefer Halilović did react. However, taking into account the alleged danger, it was unrealistic, according to Jusuf Jašarević, to expect Namik Džanković to deal with this assignment on his own.²⁴⁸⁶

695. In reaction to Namik Džanković’s report, Jusuf Jašarević ordered his Deputy, Vahid Bogunić, to inform the Chief of the SVB of the 1st Corps,²⁴⁸⁷ to consult a legal expert and to propose measures to be taken as well as to draft a special report. According to Jusuf Jašarević, one measure taken was to send a document to Namik Džanković through the 6th Corps containing certain tasks for Namik Džanković to organise and carry out.²⁴⁸⁸ On 21 September 1993, Jusuf Jašarević sent an order via the 6th Corps Military Security Service, to Namik Džanković personally, in which he ordered Namik Džanković to, among other tasks, gather information, take written statements and establish cooperation with the Jablanica SJB.²⁴⁸⁹ However, according to Namik

²⁴⁸⁰ Jusuf Jašarević, 01 Mar ’05, T. 79, referring to the attachment of Ex. 215.

²⁴⁸¹ Jusuf Jašarević, 01 Mar ’05, T. 82.

²⁴⁸² Jusuf Jašarević testified that he did not know who was the commander of “the operation”, Jusuf Jašarević, 01 Mar ’05, T. 66.

²⁴⁸³ Jusuf Jašarević, 01 Mar ’05, T. 80-81. Jusuf Jašarević referred in his testimony to the authorities present in the area: “chief of staff of the Supreme Command” Sefer Halilović, Minister of Interior, Bakir Alispahić, the commanders of the 4th and 6th Corps and their military police battalions, the President of the Jablanica War Presidency, Safet Čibo, and the Jablanica SJB. Jusuf Jašarević concluded that “quite powerful figures” were in the area who should have been responsible for carrying out an “inspection”, Jusuf Jašarević, 01 Mar ’05, T. 81-83.

²⁴⁸⁴ Jusuf Jašarević, 04 Mar ’05, T. 12-13.

²⁴⁸⁵ Jusuf Jašarević, 01 Mar ’05, T. 83-84.

²⁴⁸⁶ Jusuf Jašarević, 01 Mar ’05, T. 84.

²⁴⁸⁷ Nermin Eminović testified that while the units from Sarajevo were still in Herzegovina, the 6th Corps SVB sought information about the crimes. It considered the possibility of an on-site inspection but concluded that it was impossible and dangerous to conduct it. It was not able to interview the soldiers, because they were involved in combat operations and later left the 6th Corps area of operations and returned to Sarajevo, Nermin Eminović, 11 Mar ’05, T. 60. As it concerned units which were part of the 1st Corps, the SVB of the 1st Corps should then have questioned the soldiers about the events, *ibid.*

²⁴⁸⁸ Jusuf Jašarević, 01 Mar ’05, T. 79-80, referring to Ex. 233.

²⁴⁸⁹ Ex. 233.

Džanković, apart from the order he received from Sefer Halilović on 9 September, he did not receive any further orders from anyone in connection with this investigation.²⁴⁹⁰

696. The Jablanica SJB received information about bodies in Grabovica which had not been buried and from which a terrible smell was emanating. As Grabovica was part of the area of responsibility of the 44th Brigade and combat activities were carried out in the area, on 29 September, Emin Zebić asked the 44th Brigade to secure conditions for carrying out a complete clearing up of the terrain and performing a complete on-site investigation.²⁴⁹¹ Emin Zebić thought that the technical service on the level of the MUP in Sarajevo or the SVB in Sarajevo could have done the inspection once the conditions were secured for doing it. He thought that MUP investigators would be best suited to do this investigation as the Jablanica SJB did not have the necessary resources to conduct a proper investigation into the events.²⁴⁹²

697. On 29 September 1993, Namik Džanković sent a third report to Jusuf Jašarević.²⁴⁹³ The report contained the information Namik Džanković had collected at the time.²⁴⁹⁴ The report concluded that it had been agreed that an on-site investigation and exhumation work would be carried out by the MUP and the “Jablanica Military Police” in cooperation with other professionals.²⁴⁹⁵ However, Namik Džanković testified that no “specific” agreement as to an on-site investigation and exhumation had been reached and that he did not know whether anything was done at a later stage.²⁴⁹⁶ According to Ahmed Salihamidžić, no on-site investigation or exhumation of bodies ever took place.²⁴⁹⁷

²⁴⁹⁰ Namik Džanković, 21 Mar '05, T. 39. Nermin Eminović did not recall having received the order that he was supposed to forward to Namik Džanković, but stated that there is no reason why he would not have done so, Nermin Eminović, 11 Mar '05, T. 20.

²⁴⁹¹ Ex. 277, request by Emin Zebić to the Command of the 44th Brigade, dated 29 September; Emin Zebić, 16 Mar '05, T. 95-96 and 17 Mar '05, T. 72. Emin Zebić testified that he did not contact the IKM at Jablanica, because in contacting someone in the military structure, it is customary to contact the command of the same rank, which in this case was the 44th Brigade, Emin Zebić, 16 Mar '05, T. 96.

²⁴⁹² Emin Zebić, 17 Mar '05, T. 72-73. *See also* Ex. 238, MUP report, signed by Jozo Jozić, addressed to the Main Staff UB, dated 2 October 1993, stating that members of the military police and the Jablanica SJB were unable to conduct an on-site investigation because there were indications that they too could be killed.

²⁴⁹³ Ex. 235, Report from Namik Džanković, sent from the Forward Command Post of the Supreme Command Staff – Jablanica to Jusuf Jašarević, personally, dated 29 September 1993; Namik Džanković, 21 Mar '05, T. 38.

²⁴⁹⁴ Ex. 235. The report included the names of the Bosnian Croat civilians assumed to have been killed as well as other information he had collected in cooperation with the Jablanica SJB, Namik Džanković, 21 Mar '05, T. 38-39. It also stated that there were no eyewitnesses in Jablanica; that the only eyewitnesses that could be found would be members of the 2nd Independent Battalion, who probably witnessed some murders; that Samir Pezo “banned movement and participation in combat operations by any of his [Bosnian] Serb and Croat soldiers for fear that they would be killed by members of Čelo’s ‘Assault Detachment’” and that it would be impossible to obtain statements from, or identify, the perpetrators, because they had returned to Sarajevo immediately after the operation at Vrđi, Ex. 235.

²⁴⁹⁵ Ex. 235.

²⁴⁹⁶ Namik Džanković, 21 Mar '05, T. 39. Emin Zebić testified that the Jablanica SJB never received a request to help, Emin Zebić, 16 Mar '05, T. 94.

²⁴⁹⁷ Ahmed Salihamidžić, 18 Mar '05, T. 30.

698. Jusuf Jašarević testified that he received Namik Džanković's third report on 10 October²⁴⁹⁸ and that he instructed his Deputy, Vahid Bogunić, to task the SVB of the 1st Corps with interviewing Samir Pezo, and send a dispatch to Namik Džanković to return to the Main Staff UB.²⁴⁹⁹ According to Namik Džanković, he returned to Sarajevo at his own initiative, when all the units had returned.²⁵⁰⁰ He did not know if any other ABiH member carried out an investigation.²⁵⁰¹

699. On 13 October 1993, Sefer Halilović spoke to Jusuf Jašarević and asked him whether Namik Džanković had arrived from "down there". When Jusuf Jašarević answered in the affirmative and told Sefer Halilović that he had tasked him with writing everything down, Sefer Halilović repeated that Namik Džanković "must write everything down".²⁵⁰² However, according to Namik Džanković, nobody ever asked him in Sarajevo about what had happened in Grabovica.²⁵⁰³ After the third report, Namik Džanković never filed any further reports in relation to the events in Grabovica.²⁵⁰⁴

700. Witness F, a member of the Main Staff UB, testified that when the respective parts from the 9th and 10th Brigades and the 2nd Independent Battalion returned from Herzegovina it was already decided that something like Grabovica "would not be tolerated in the future" and that serious measures needed to be taken in order to prevent a recurrence. The operative work was intensified. An urgent plan was adopted at the highest level to put an end to "such activity" and also to investigate the events in Grabovica.²⁵⁰⁵ Witness F further testified that Rasim Delić established a "commission [...] to investigate the events, to identify the perpetrators, to conduct interviews,

²⁴⁹⁸ Namik Džanković testified that in a matter such as the investigation of the killings in Grabovica, he was obliged by the rules to report to Jusuf Jašarević. He asked for assistance, and his correspondence was directly with the Main Staff UB of which he was a member, Namik Džanković, 21 Mar '05, T. 88. As a member of the SVB, Namik Džanković had a dual line of responsibility. He had to obey commands of his superior officer, in that case, Sefer Halilović; but he had also an obligation to report up the professional line to Jusuf Jašarević, Namik Džanković, 22 Mar '05, T. 24-25. Namik Džanković testified that all three reports that he sent to Jusuf Jašarević were sent electronically on the "paket veza system", and he assumed that it would take 24 hours to reach the person it was addressed to, Namik Džanković, 22 Mar '05, T. 38-40. The "paket veza system" is similar to the e-mail system, Namik Džanković, 21 Mar '05, T. 39. There was a local telephone network in Jablanica, but it was incapable of ringing Sarajevo. Motorola hand-held radios were the only means that were used in the field, Namik Džanković, 22 Mar '05, T. 44. According to Jusuf Jašarević, Namik Džanković, as a member of the Inspection Team, did not have any authority to suggest or impose any military disciplinary measures, because he had never received an order from "the commander" in this respect, Jusuf Jašarević, 03 Mar '05, T. 32.

²⁴⁹⁹ Jusuf Jašarević, 04 Mar '05, T. 2, 5. Jusuf Jašarević stated that apparently at that time he did not see any need for Namik Džanković, in his function as a member of the Inspection Team, to stay there any longer. However, according to Jusuf Jašarević, this decision was also based on some other documents; otherwise he would not have asked Namik Džanković to return as "he was under the jurisdiction of Mr. Sefer Halilović", Jusuf Jašarević, 04 Mar '05, T. 5-6.

²⁵⁰⁰ Namik Džanković, 21 Mar '05, T. 56.

²⁵⁰¹ Namik Džanković, 21 Mar '05, T. 56.

²⁵⁰² Ex. 436, transcript of intercepted conversation between Jusuf Jašarević and Sefer Halilović, dated 13 October.

²⁵⁰³ Namik Džanković, 21 Mar '05, T. 40.

²⁵⁰⁴ Namik Džanković, 21 Mar '05, T. 39.

²⁵⁰⁵ Witness F, 08 Mar '05, T. 48, 50.

prepare evidence, and punish the perpetrators properly.”²⁵⁰⁶ In light of the above, on 26 October 1993, according to the plan which had been approved by political, military and MUP officials, an operation called Trebević was carried out.²⁵⁰⁷

701. Witness E, a member of the 2nd Independent Battalion, testified that he was never questioned by anyone from either the military or the civilian police as to what he had observed in Grabovica.²⁵⁰⁸ Erdin Arnautović, a member of the 9th Brigade, also testified that nobody was interrogated in September 1993 about the events in Grabovica.²⁵⁰⁹ Only when members of the 9th and 10th brigades were arrested on 26 October, military security asked them some questions about whether they knew anything about the killings in Grabovica.²⁵¹⁰ Enes Šakrak, a member of the 9th Brigade, was not interviewed about the events in Grabovica until 2000 when questioned by ICTY investigators.²⁵¹¹ He testified that several other soldiers were interviewed about Grabovica during “Operation Trebević”, but as far as he knew, none of them, with the exception of Mustafa Hota, were charged with committing a crime in relation to Grabovica.²⁵¹²

3. Investigations into Murders Committed in Uzdol

702. Salko Gušić, Commander of the 6th Corps, testified that in the second half of September 1993, he heard about crimes committed in the Uzdol area on the radio.²⁵¹³ Salko Gušić contacted Enver Buza, Commander of the Prozor Independent Battalion, and asked him what had happened in Uzdol.²⁵¹⁴ According to Salko Gušić, all the information he received from Enver Buza indicated that the news report was an “ideological propaganda activity fabricated by the HVO”.²⁵¹⁵ On 16 September, Salko Gušić included the information provided by Enver Buza in a report he sent to Enver Hadzihasanović, Commander of the 3rd Corps.²⁵¹⁶

²⁵⁰⁶ Witness F, 08 Mar '05, T. 49.

²⁵⁰⁷ Witness F, 08 Mar '05, T. 49-50.

²⁵⁰⁸ Witness E, 07 Mar '05, T. 26.

²⁵⁰⁹ Erdin Arnautović, 14 Feb '05, T. 68-69.

²⁵¹⁰ Erdin Arnautović, 14 Feb '05, T. 69 and 15 Feb '05, T. 90.

²⁵¹¹ Enes Šakrak, 17 Feb '05, T. 35 and 18 Feb '05, T. 44. For several years Enes Šakrak denied having any part in what happened in Grabovica, Enes Šakrak, 18 Feb '05, T. 45-46. The Trial Chamber notes that Enes Šakrak was not registered as a member of the 9th Brigade at the time of the events in Grabovica, Enes Šakrak, 18 Feb 05, T. 66-67; Ex. 181, Excerpt of list of members of 9th Brigade.

²⁵¹² Enes Šakrak, 18 Feb '05, T. 47. Izet Mustafić testified that in 1994, when he became chief of sector for investigation and documentation of war crimes, he spoke informally with Adnan Solaković, who was willing to tell him all he knew about the events in Grabovica. When Izet Mustafić informed his superior Jusuf Jašarević about it, he told him not to inquire any further and forget about the crimes committed in Grabovica, Izet Mustafić, Ex. 463, p. 4.

²⁵¹³ Salko Gušić, 03 Feb '05, T. 92-93. *See supra* Section IV.E, para. 651.

²⁵¹⁴ Salko Gušić, 03 Feb '05, T. 94.

²⁵¹⁵ Salko Gušić, 08 Feb '05, T. 62. Šefko Hodžić testified that “even until the end of the war we were not sure that any crimes had been committed in Uzdol, whether it was some sort of orchestrated operation that they had put dead Bosniaks there [...]”, Šefko Hodžić, 24 Mar '05, T. 7-8.

²⁵¹⁶ Ex. 155; Salko Gušić, 08 Feb '05, T. 61-62. The report stated:

703. Also on 16 September, as a result of reports “in the foreign media” and “the spread of rumours in our country”, Stjepan Šiber, one of the three Deputy Commanders of the Main Staff, requested Salko Gušić to provide information as to “what actually happened in the village of Uzdol”.²⁵¹⁷ Jusuf Jašarević, Chief of the Main Staff UB, ordered the 6th Corps SVB on 16 September to urgently check the information regarding a “massacre of Croatian people” and to immediately report back to the Main Staff UB.²⁵¹⁸

704. On 18 September, Jusuf Jašarević requested to Nermin Eminović, Chief of SVB of the 6th Corps, that he be sent information as to the events in Uzdol before 12:00 on 19 September, in order to be able to brief the BiH Presidency and the Main Staff.²⁵¹⁹ Nermin Eminović testified that he then sent a written request to Mustafa Bektaš, Assistant Commander for Security of the Prozor Independent Battalion, and asked to be provided with all information the Battalion had about the events, because Uzdol was part of its “area of combat operations”.²⁵²⁰ Nermin Eminović testified that he thought he did not receive a reply to his request for information.²⁵²¹

705. Mustafa Bektaš and Erzimana Dzogić, Assistant Commander for Intelligence of the Prozor Independent Battalion, among others, were tasked with taking statements to enable Enver Buza to write an urgent report about what had happened in Uzdol.²⁵²² In the following days, members of the

according to the official operative report from the site of the battles for Uzdol village in Prozor municipality, about 60 HVO/Croatian Defence Council/ members were killed. Among the dead there were civilians who had weapons in their hands, and probably due to a shortage of soldiers, they fired on R BH Army members. All other statements and fabricated facts in the above information are not true.

²⁵¹⁷ Ex. 159, request for information from the Supreme Command Staff, Commander’s office, signed by Deputy Commander Stjepan Šiber, “standing in for the commander”. According to Salko Gušić, this document (Salko Gušić, 08 Feb ’05, T. 86):

does not have the form of a document issued by the deputy. It is a document having the form of a document issued by the commander. So [Stjepan Šiber] was actually signing for the commander at that point. He was acting on the commander's behalf.

Salko Gušić further stated that such requests were made on several occasions, Salko Gušić, 08 Feb ’05, T. 83 and 86.

²⁵¹⁸ Ex. 227; Jusuf Jašarević, 03 Mar ’05, T. 59.

²⁵¹⁹ Ex. 228. The Trial Chamber notes that Jusuf Jašarević in that same document also requested to be provided with information as to the events in Grabovica, *see supra* para. 690. Nermin Eminović testified that he probably learned about the events in Uzdol when he received Jusuf Jašarević’s request of 18 September, Nermin Eminović, 11 Mar ’05, T. 22. Nermin Eminović testified that he did not have access to Croatian media at the time and therefore did not become aware of reports in the Croatian media about the events happened in Uzdol, Nermin Eminović, 11 Mar ’05, T. 53.

²⁵²⁰ Nermin Eminović, 11 Mar ’05, T. 22-23.

²⁵²¹ Nermin Eminović, 11 Mar ’05, T. 23. However, Witness J testified that based on all statements a report was compiled that was sent via packet communication to the 6th Corps around five days after the events, Witness J, 06 Jul ’05, T. 47 and 60. As clarifications were requested further reports were compiled, Witness J, 06 Jul ’05, T. 60-61.

²⁵²² Witness J, 06 Jul ’05, T. 27-28. Witness J, a member of the Prozor Independent Battalion, testified that already in the afternoon of 14 September, he saw Erzimana Dzogić taking statements from soldiers in her office at Dobro Polje. According to Witness J, at this stage there were no allegations as to a massacre of civilians. It was only two to three days later that there were public announcements of a massacre, Witness J, 06 Jul ’05, T. 58-

6th Corps, in particular Nermin Eminović told them to finish their inquiries as soon as possible and as thorough as possible because “Sarajevo”²⁵²³ wanted the report to be delivered.²⁵²⁴ At least 50 to 100 soldiers of the Prozor Independent Battalion were asked about their activities in Uzdol and any potential atrocities committed.²⁵²⁵ The soldiers did not provide many details, but nevertheless, the picture emerged that most likely civilians were killed.²⁵²⁶ According to Witness J, a member of the Prozor Independent Battalion, at the time, it was impossible to go to Uzdol.²⁵²⁷ Moreover, it was unlikely that permission would be given to go to the area of Uzdol.²⁵²⁸

706. On 19 September, Jusuf Jašarević sent a warning to Nermin Eminović, asking again for the requested report as he had not yet received it.²⁵²⁹ Nermin Eminović responded the same day, explaining that they had not managed to produce a report in response to his request of 18 September.²⁵³⁰ Nermin Eminović assured Jusuf Jašarević that this “does not amount to our careless attitude towards [UB] orders, but rather to the fact that it is impossible to communicate with Prozor in any way.”²⁵³¹ A weekly report of the Main Staff UB, dated 19 September and signed by Jusuf Jašarević, stated that the SVB is “working on the investigation of possible crimes against civilians [...] in the village of Uzdol”.²⁵³²

707. On 20 September, Enver Buza sent a combat report to the 6th Corps command regarding the attack on Uzdol.²⁵³³ According to the report, the attack was conducted by the Prozor Independent

59, 07 Jul '05, T. 29. There was no information as to who specifically had been murdered, how many had been murdered, where exactly it happened, or who the perpetrators were, Witness J, 07 Jul '05, T. 68. According to Witness J, most of the statements were taken by Mustafa Bektaš, Witness J, 07 Jul '05, T. 19-20.

²⁵²³ Witness J stated that “[i]n Sarajevo, when we spoke about the main command, the main headquarters and the security, we used these terms to refer to the overall organization of both the civilian and military authorities”, Witness J, 06 Jul '05, T. 38.

²⁵²⁴ Witness J, 06 Jul '05, T. 37-38.

²⁵²⁵ Witness J, 06 Jul '05, T. 36.

²⁵²⁶ Witness J, 07 Jul '05, T. 27-29, 58-59, 96.

²⁵²⁷ Witness J, 06, Jul '05, T. 43. *See also* Nermin Eminović, 11 Mar '05, T. 71, who testified that at that time he did not have the possibility to verify the information contained in a supplementary report, dated 20 September (Ex. 236), because he was not able to go to the hamlets within the area of Uzdol which were under HVO control.

²⁵²⁸ Witness J, 06 Jul '05, T. 43. According to Witness J, a request to local HVO commanders for permission to go there would probably have been denied because any type of contact between ABiH and HVO was considered dangerous, *ibid.*

²⁵²⁹ Ex. 229; Jusuf Jašarević, 03 Mar '05, T. 64. Jusuf Jašarević testified that “the security service was asking for a report from the 6th Corps security service. We have no other way. We cannot order such a report, but we were insisting, requiring, asking to have this information sent to us”, Jusuf Jašarević, 03 Mar '05, T. 64.

²⁵³⁰ Ex. 230. The Trial Chamber notes that Nermin Eminović in this reply also stated that he had already sent a report as to the events in Grabovica, *see supra* para. 691.

²⁵³¹ Ex. 230; Nermin Eminović, 11 Mar '05, T. 17-19. The Trial Chamber concludes from Nermin Eminović’s testimony that “Prozor” as used in the report (Ex. 230) refers to the Prozor Independent Battalion.

²⁵³² Ex. 231, p. 3; *see supra* para. 660.

²⁵³³ Ex. 149. This report stated in relevant parts that:

The armed soldiers and civilians in the surrounded villages even held armed women in front of themselves and started to put up resistance. Fire was returned. The entire Uzdol, Here, Kute and Šćipe sector was under heavy artillery fire.

Battalion and members of the MUP.²⁵³⁴ The report concluded that together with the overall data the report had been made available to the “Supreme Command Staff/Chief Sefer Halilović, Colonel Vehbija Karić and Colonel Zikrija [Ziéro] Suljević,²⁵³⁵ who monitored the whole operation from the observation post.”²⁵³⁶ In his book, Sefer Halilović wrote that “it was only several days later [after the attack] that we learnt that the Prozor Independent Battalion had committed some illegal acts in the village of Uzdol.”²⁵³⁷ Salko Gušić testified that he never saw this particular report before, but that he saw a similar report containing the same information.²⁵³⁸ Nermin Eminović stated that while as a rule he would not receive any reports sent by commanders of subordinate units,²⁵³⁹ he did see Enver Buza’s report.²⁵⁴⁰

708. A “special report” of the Main Staff UB, dated 20 September and signed by Jusuf Jašarević,²⁵⁴¹ concluded that based on “new information on combat operations near Uzdol and Križ” no massacre of civilians had taken place in Uzdol. This “Special Report” stated:²⁵⁴²

[...] In the encircled hamlets, armed soldiers and civilians began to put up resistance, even sending armed women ahead of them. At the same time, HVO artillery pounded the whole area of Uzdol, Here, Kute and Šćipe, which is reflected in the number of casualties among soldiers and civilians.

I could not send assistance/?to /the forward/defence /line and so I ordered the forces to withdraw. This was carried out in the regular combat formation, and seven soldiers were pulled out, some slightly and some seriously wounded. Four soldiers, who were sent to pull out a dead body of a fellow-soldiers, were killed with a PM-84 heavy machine-gun, which fired from a room in Uzdol school where communications were located.

By my estimate, about 65 Croatian soldiers and about 30 civilians, mostly armed, were liquidated during the operation. One should bear in mind that the Ustasha artillery was literally destroying the entire Uzdol sector the whole time.

Nermin Eminović testified that he did not find the report to be a “serious” one, because somebody who writes about 30 armed civilians would need to define such a term, Nermin Eminović, 11 Mar ’05, T. 81. Witness G testified that it did not seem credible that the HVO would use their own civilians as human shields, Witness G, 11 Apr ’05, T. 68. Mehmed Behlo, Commander of the 2nd Battalion of the 317th Brigade, which did not take part in the attack on Uzdol, but was fighting at “the right wing” (see Ex. 149) on another axis, testified that he was never questioned by military police or military security about the events in Uzdol or about activities or the lack of activities of his units in Uzdol, Mehmed Behlo, 28 Jun ’05, T. 49-50.

²⁵³⁴ Ex. 149.

²⁵³⁵ According to Šefko Hodžić, Ziéro Suljević gave an interview explaining that no crime had been occurred, Šefko Hodžić, 24 Mar ’05, T. 79.

²⁵³⁶ Ex. 149, p. 2.

²⁵³⁷ Ex. 281, book published by Sefer Halilović, “Cunning Strategy”, 1997, chapter 16, p. 5. Šefko Hodžić testified that when he arrived together with Sefer Halilović at the base of the Prozor Independent Battalion in Dobro Polje in the early afternoon of 14 September, there was mention that members of the Prozor Independent Battalion had surprised “the Ustashes” asleep in “some school”, but “the impression was that it was a [...] battle which was ok, but they had to withdraw”, Šefko Hodžić, 24 Mar ’05, T. 6-7, 76.

²⁵³⁸ Salko Gušić, 08 Feb ’05, T. 31-32.

²⁵³⁹ The Commander of the Prozor Independent Battalion would send its reports to the Commander of the 6th Corps, Nermin Eminović, 11 Mar ’05, T. 24-25.

²⁵⁴⁰ Nermin Eminović, 11 Mar ’05, T. 26, referring to Ex. 149. According to Nermin Eminović the handwriting at the top left of the document is of Aziz Kadić, Nermin Eminović’s deputy, and it is likely that his deputy explained the substance of the document to him, enabling him to write a report to Jusuf Jašarević, Nermin Eminović, 11 Mar ’05, T. 56-57.

²⁵⁴¹ Ex. 232.

²⁵⁴² Ex. 232 (emphasis in the original).

[...] In the course of the operation, according to an estimate by the commander, about 65 soldiers and 30 mostly armed civilians were liquidated. [...]

According to the above information, it is obvious that no massacre of civilians took place in the village of Uzdol as claimed by the media of the Republic of Croatia and HVO leaders. On the contrary, by launching a story about a massacre they are attempting to cover up for the deadly fire of their artillery and the fact that the majority of civilians were armed and took part in the combat operation of the *Rama* Intervention Company.

709. According to Jusuf Jašarević, special reports were sent to the “superiors, the persons that [the Main Staff UB] reported to.”²⁵⁴³ All information was submitted to “the commander, to the President of the Presidency, to the Ministry of Defence, to the Prime Minister of the government, to the Minister of the Interior, and for the most part to Mr. Ejup Ganić [Deputy of Alija Izetbegović].”²⁵⁴⁴

710. The Trial Chamber heard evidence that while the “Special Report” could have been based on Enver Buza’s report, the information as to the number of casualties or the emphasis placed in the report on women with weapons being used as human shields was not part of the information provided by the soldiers questioned about the events. However, the information that everyone was armed and that the HVO artillery caused most of the devastation was consistent with the information collected.²⁵⁴⁵

711. On 31 October, a “Supplement” to the Report of 20 September was sent by the “Command of the Prozor Independent Battalion” to the “6th Corps Command, Security Sector”.²⁵⁴⁶ The “Supplement” contained information as to how the units on the Uzdol axis tried to capture the HVO command and communications centre in the school in Cer and what happened in the course of the

²⁵⁴³ Jusuf Jašarević, 03 Mar '05, T. 57, 70.

²⁵⁴⁴ Jusuf Jašarević, 28 Feb '05, T. 11. According to Jusuf Jašarević, there were two ways in which the Main Staff UB provided information: in the form of a bulletin on a daily basis, and special information if it had some particular task, *ibid.* Toward the end of September, Witness J spoke with Alija Izetbegović and his Deputy Ejup Ganić, about what happened in Uzdol. Alija Izetbegović asked a series of questions based on which Witness J concluded that he was very familiar with details, Witness J, 06 Jul '05, T. 38-39, 45. According to Witness J, Alija Izetbegović made a comment to his Deputy along the lines of “see how they set it up to make it look like a crime”, Witness J, 06 Jul '05, T. 45.

²⁵⁴⁵ Witness J, 06 Jul '05, T. 56-57 and 07 Jul '05, T. 49-50 and 55-56.

²⁵⁴⁶ Ex. 236, Supplement to Report of 20 September 1993 (Ex. 232), dated 31 October 1993. According to Nermin Eminović, the Supplement was received by the 6th Corps Assistant Commander for Intelligence and then sent to him. Nermin Eminović testified that it was unusual that it was sent to him and that it probably happened because he had asked to receive as much information as possible about what happened in Uzdol. He further stated that the “Supplement” was supposed to be forwarded to Jusuf Jašarević, but that he cannot say with certainty that it was actually sent to him. Nermin Eminović also testified that something could have been added or corrected before the text was supposed to be forwarded, Nermin Eminović, 11 Mar '05, T. 67-69. Jusuf Jašarević testified that he did not remember ever having seen the “Supplement”, Jusuf Jašarević, 04 Mar '05, T. 14. Jusuf Jašarević stated that there were two indicators that he never received this document: he would always when he received a document put in his own handwriting instructions to his subordinates as to what they were supposed to do with regard to the particular document, but there are none on this document; and it did not have a stamp indicating the date of receipt which was common practice, Jusuf Jašarević, 04 Mar '05, T. 14-15.

attack.²⁵⁴⁷ Nermin Eminović testified that based on the information they had at their disposal, it could not be proven that a crime had been committed.²⁵⁴⁸

712. Witness J testified that he was not aware of anyone seeking assistance from the civilian police.²⁵⁴⁹ Jusuf Jašarević testified that he made inquiries to Nermin Eminović and Namik Džanković with respect to the events in Grabovica. However with respect to Uzdol, he only made inquiries to Nermin Eminović, because Nermin Eminović was

part of the chain of command, an institution which has force, physical force. It has a detachment of 16 people and a military police battalion, so this is a stable function. However, [Namik] Džanković is something else. He's a free shooter [...]. He's simply a member of the inspection team. He's not an organ of any command which is commanding and which has all the attributes that go with it and can act in that way."²⁵⁵⁰

4. "Operation Trebević"

713. After the blockade of several institutions in Sarajevo on 2-3 July 1993,²⁵⁵¹ the behaviour of members of the 9th and 10th Brigades was discussed at the Presidency level.²⁵⁵² The Trial Chamber

²⁵⁴⁷ Ex. 236, which reads in the relevant parts:

The school is at the edge of the village so they had to pass through the entire village. Most of the /Croatian/ soldiers were in private homes, so they opened fire at our men from the houses. The fire was returned as much as was possible at that proximity. From the HVO's neighbouring positions, it could have appeared that the village had been captured or was about to fall, which is most probably the reason why fire was opened from a tank, BOFORs/ anti-aircraft guns/, MBs/ mortars/ and VBRs/ multiple rocket launchers/. Shells were falling on the entire village, both on our and on their soldiers, setting quite a few buildings on fire. One group of our soldiers came under fire from the house of Alojzije Stojanović or possibly that of his brother. Our men returned fire. At that moment, a tank from Ošljan (a neighbouring position) opened fire and hit the house. There were probably no survivors. That is one of the examples of what was happening. The entire action lasted less than two hours, but after our men had pulled out, artillery continued to pound the village for nearly two more hours, not realising that our men were no longer there. In such a lightning action, there was no time for either looting or mutilation, as the Croatian media are trying to portray it. /? There is an /example where our soldiers hid women and children in a basement in order to protect them from the shells. This was also confirmed on Radio Rama in an interview with one of the women, except that it was added in a commentary that he had done it for money. Even the exact name of the soldier was mentioned. Seven of our soldiers were killed in action, while on their side the number was much higher, but no one knows exactly how many.

²⁵⁴⁸ Nermin Eminović, 11 Mar '05, T. 58, 79-80. Nermin Eminović stated that "it was impossible at the time to prove what the truth was", Nermin Eminović, 11 Mar '05, T. 58.

²⁵⁴⁹ Witness J, 07 Jul '05, T. 19.

²⁵⁵⁰ Jusuf Jašarević, 03 Mar '05, T. 66-67. Namik Džanković testified that he was not aware of what had happened in Uzdol during the month of September, while he was in Jablanica. He only learned of it when he returned to Sarajevo. He did not receive any communications or assignments in relation to Uzdol, Namik Džanković, 21 Mar '05, T. 43.

²⁵⁵¹ See *supra* Section IV.A, para. 136.

²⁵⁵² Mirko Pejanović, Ex. 456, 03 June '05, p. 1. Witness F, a member of the Main Staff UB, testified that immediately after the incidents of 2-3 July 1993, the Security Service took a more offensive position towards the behaviour of the 9th and the 10th Brigades by gathering more intelligence, Witness F, 08 Mar '05, T. 37 and 71-72. See *supra* para. 700. The information gathered about the activities of the 9th and the 10th Brigades was not shared with Sefer Halilović, Jusuf Jašarević, 02 Mar '05, T. 33-34.

heard evidence that in June 1993, Sefer Halilović had been placed under surveillance.²⁵⁵³ Jusuf Jašarević testified that in late July 1993, a meeting of the “Council for the Protection of Constitutional Order” was held, where the growing problems with respect to the lack of discipline in the ABiH were raised.²⁵⁵⁴ The attention was directed at the 9th and 10th Brigades, because they created much greater problems than some of the smaller units,²⁵⁵⁵ and because their behaviour “could affect other units in the town”.²⁵⁵⁶ According to Jusuf Jašarević, the role of Sefer Halilović and his influence on these brigades was also discussed.²⁵⁵⁷ Rasim Delić, Bakir Alispahić and Jusuf Jašarević were given instructions “to review the plan to be proposed to the President on how to deal with this problem, to advice the Corps commander and to look at the various possibilities to resolve it”.²⁵⁵⁸ However, it was not before October 1993 that it was decided at the political and the military level to put a halt to the activities of the two Brigades.²⁵⁵⁹

714. In order to establish a unified chain of command in the 1st Corps, a plan of an operation named “Trebević”²⁵⁶⁰ was presented to the Presidency.²⁵⁶¹ Jusuf Jašarević testified that its aim was to deal with “deviant conduct” of the 9th and the 10th Brigades, which were outside “the regular command and control system.”²⁵⁶² He further stated that the implementation of the plan was accelerated by the crimes committed in Grabovica and that one of the focuses of “Operation

²⁵⁵³ On 10 June 1993, the State Security Service (“SDB”) proposed that surveillance measures, also referred to as operative measures be taken against Sefer Halilović, Ex. 437, SDB proposal and decision to apply surveillance measures, dated 10 June 1993. According to the SDB, Sefer Halilović started obstructing the decisions of the RBH Presidency, particularly the implementation of decisions and ordered measures. In the presence of several people he spoke about leading RBH military, political and state figures disdainfully and disparagingly, a fact which has been documented, with the aim of creating a sense of distrust among the general public, and in particular the distrust of army members towards the RBH OS command staff, *ibid*. The Trial Chamber was provided with the evidence indicating that the SVB was also engaged in secret surveillance and collection of evidence about “hostile activities of Sefer Halilović,” as well as evidence that could be used to compromise his reputation in the public and amongst his soldiers. Izet Mustafić, stated that he was tasked with surveillance and evidence collection by Šaćir Arnautović, Chief of the SVB of the 1st Corps, Izet Mustafić, Ex. 463, p. 2; Jusuf Jašarević testified that the information about the conduct of Sefer Halilović was collected by the State Security Services, the 1st and the 4th Corps, Jusuf Jašarević, 03 Mar '05, T. 81. Witness F testified that the SVB never had Sefer Halilović under any secret surveillance, Witness F, 09 Mar '05, T. 42. Izet Mustafić was sent to Mt. Igman during the military operation there with the assignment to “completely disable Sefer Halilović from having any actual influence on military units and their commanders.” Izet Mustafić believed that he succeeded in creating a negative image for Sefer Halilović, Izet Mustafić, Ex. 463, p. 2.

²⁵⁵⁴ Jusuf Jašarević, 01 Mar '05, T. 47-48 and 02 Mar '05, T. 26. Jusuf Jašarević testified that among the people present at the meeting were: Mirko Pejanović (presiding), Alija Izetbegović, Rasim Delić, Bakir Alispahić and Jusuf Jašarević himself, Jusuf Jašarević, 01 Mar '05, T. 47-48.

²⁵⁵⁵ Bakir Alispahić, 23 May '05, T. 27; Mirko Pejanović, Ex. 456, 03 Jun '05, p. 1.

²⁵⁵⁶ Jusuf Jašarević, 01 Mar '05, T. 49.

²⁵⁵⁷ Jusuf Jašarević, 01 Mar '05, T. 49.

²⁵⁵⁸ Jusuf Jašarević, 01 Mar '05, T. 54.

²⁵⁵⁹ Witness F, 08 Mar '05, T 38 and 49; Vahid Karavelić testified that without political support the whole operation would have failed, Vahid Karavelić, 21 Apr '05, T. 54; Bakir Alispahić, 24 May '05, T. 33.

²⁵⁶⁰ The name “Operation Trebević” was attached to the general idea of dealing with the problems of leadership of the 9th and the 10th Brigades in late September, early October. That was when more immediate preparations began to implement that operation, Jusuf Jašarević, 02 Mar '05, T. 27.

²⁵⁶¹ Bakir Alispahić, 23 May '05, T. 26 and 26 May '05, T. 14; Namik Džanković, 21 Mar '05, T. 58.

²⁵⁶² Jusuf Jašarević, 02 Mar '05, T. 8.

Trebević” was to investigate the crimes committed in Grabovica.²⁵⁶³ Pursuant to a decision of the Presidency and the Supreme Command, the action was to involve both the ABiH and the MUP.²⁵⁶⁴ “Operation Trebević” was prepared and conducted in absolute secrecy.²⁵⁶⁵

715. “Operation Trebević” was implemented by three teams. The “command and control team” comprised of Rasim Delić, Bakir Alispahić and Vahid Karavelić.²⁵⁶⁶ The second team was in charge of compiling operative data and included Jusuf Jašarević, Nedžad Ugljen, the Chief of the SDB, and Sacir Arnautović the Chief of the 1st Corps SVB. The third team was tasked with “the direct control of the units” which were to take part in the blockade of the commands of the 9th and the 10th Brigades. The team included the Deputy Commander of the 1st Corps, Ismet Dahić, the Commander of the special MUP unit, Dragan Vikić, and the Commander of the Military Police Battalion of the Main Staff, Dževad Rađo.²⁵⁶⁷ Bakir Alispahić testified that Sefer Halilović did not have any role or position in “Operation Trebević.”²⁵⁶⁸

716. On 25 October 1993, based on a decision by Alija Izetbegović,²⁵⁶⁹ Rasim Delić issued an order to form the groups to conduct “Operation Trebević.” The order reads in relevant parts:²⁵⁷⁰

1. Form a group consisting of members of the ŠVK OS, Ministry of the Interior/MUP/, 1st Corps Command/IKK/, Sarajevo CSB /Security Services Centre/ and ŠVK VP /Military Police/ b /Battalion to direct operation *TREBEVIĆ* and *TREBEVIĆ-2*.

Bakir Alispahić, deputy

Vahid Karavelić, member

Jusuf Jašarević, member

Munir Alibabić, member

I shall personally direct operation *TREBEVIĆ* and *TREBEVIĆ-2*.

[...]

²⁵⁶³ Jusuf Jašarević, 02 Mar '05, T. 8, 27 and 37. Jusuf Jašarević testified that the crimes committed in Grabovica also determined the form of the operation, Jusuf Jašarević 04 Mar '05, T. 38-39. Jusuf Jašarević testified that he forwarded reports with information on these crimes to his superiors. He also stated that the 1st Corps SVB was informed about these reports and then “Operation Trebević” was organised, Jusuf Jašarević, 02 Mar '05, T. 4. According to Vahid Karavelić, from a military point of view there was no reason to postpone the investigation of the crimes committed in Grabovica, Vahid Karavelić, 22 Apr '05, T. 145 and 155.

²⁵⁶⁴ Bakir Alispahić, 23 May '05, T. 29; Jusuf Jašarević, 02 Mar '05, T. 8; Vahid Karavelić, 21 Apr '05, T. 52.

²⁵⁶⁵ Bakir Alispahić, 24 May '05, T. 59. Jusuf Jašarević testified that it was very important to keep it confidential, because the enemy forces could use the carrying out of the operation as an opportunity to launch an offensive, Jusuf Jašarević, 02 Mar '05, T. 11; *see also* Vahid Karavelić, 22 Apr '05, T. 12.

²⁵⁶⁶ Jusuf Jašarević, 02 Mar '05, T. 8- 9; Bakir Alispahić, 24 May '05, T. 56 and 26 May '05, T. 15; Witness F, 09 Mar '05, T. 51.

²⁵⁶⁷ Jusuf Jašarević, 02 Mar '05, T. 8- 9. Approximately 5000 men, including the special units of the MUP, the Military Police Battalion of the Main Staff, and units from the 1st Corps, were involved in the operation to ensure superiority in strength in relation to the estimated numbers who would decide to stand by Ramiz Delalić and Mušan Topalović, Vahid Karavelić, 21 Apr '05, T. 53; Witness F, 08 Mar '05, T. 49-50.

²⁵⁶⁸ Bakir Alispahić, 24 May '05, T. 61. Bakir Alispahić testified that Sefer Halilović was asked to use his authority as it concerned Mušan Topalović and Ramiz Delalić because they held him in high esteem, but Sefer Halilović refused, Bakir Alispahić, 24 May '05, T. 61.

²⁵⁶⁹ Ex. 401, decision of the President of the R BiH, Alija Izetbegović, dated 25 October 1993.

²⁵⁷⁰ Ex. 261, order of Rasim Delić, 25 October 1993.

8. Report orally to me after carrying out the plan and submit a report in writing after completely carrying out the plan *TREBEVIĆ* and *TREBEVIĆ-2*. Jusuf JAŠAREVIĆ member of the group for directing, and Ismet DAHIĆ, member of the Command Group shall be responsible for carrying out this task.

With the same order Rasim Delić gave authorisation to use any measures necessary in case of any resistance.²⁵⁷¹

717. In the early morning of 26 October 1993, the units participating in the operation blocked the commands of the 9th and the 10th Brigades.²⁵⁷² Ramiz Delalić surrendered when he was provided with the guarantees that “he would not be killed, nor persecuted”.²⁵⁷³ With regard to the 10th Brigade, the Trial Chamber heard evidence that Mušan Topalović put up resistance which resulted in 15 or 16 people being killed.²⁵⁷⁴ Mušan Topalović was also given assurances that he would not be maltreated and that he would be given a fair trial. He was subsequently taken to the 1st Corps command. Later that night, while being transferred to a prison, he was killed.²⁵⁷⁵

718. Jusuf Jašarević testified that several hundred soldiers were detained that night and the next day.²⁵⁷⁶ After selection, which was done by more than 50 operations officers from the MUP, the 1st Corps²⁵⁷⁷ and the SDB,²⁵⁷⁸ around 50 soldiers were sent to the central prison for further questioning.²⁵⁷⁹ The interrogations of those 50 soldiers took place on the premises of the Main Staff UB.²⁵⁸⁰ The Trial Chamber heard testimony that the questioning focussed on the activities of the 9th and the 10th Brigades in Sarajevo²⁵⁸¹ and the relationship of the commanders of these brigades with Sefer Halilović,²⁵⁸² but that there were also questions as to the crimes committed in Grabovica.²⁵⁸³

²⁵⁷¹ Ex. 261, para. 5.

²⁵⁷² Jusuf Jašarević, 02 Mar '05, T. 11; Witness F, 08 Mar '05.

²⁵⁷³ Jusuf Jašarević, 02 Mar '05, T. 12; Bakir Alispahić, 24 May '05, T. 60; Šefko Hodžić, 24 Mar '05, T. 88. Jusuf Jašarević and Vahid Karavelić testified that no violence was used, Jusuf Jašarević, 02 Mar '05, T. 12; Vahid Karavelić, 21 Apr '05, T. 54. Ramiz Delalić however, testified that on the morning of 26 October, troops killed and wounded several members of the 9th Brigade, Ramiz Delalić, 20 May '05, T. 89.

²⁵⁷⁴ Jusuf Jašarević, 02 Mar '05, T. 12; Vahid Karavelić, 21 Apr '05, T. 53-54.

²⁵⁷⁵ Jusuf Jašarević, 02 Mar '05, T. 13-14. The police report stated that Mušan Topalović tried to escape. The police officers who were escorting him opened fire and at daybreak the next day he was found dead in the park, Jusuf Jašarević, 02 Mar '05, T. 14. Vahid Karavelić testified that Mušan Topalović was “liquidated”, Vahid Karavelić, 21 Apr '05, T. 58.

²⁵⁷⁶ Jusuf Jašarević, 02 Mar '05, T. 12 and 15.

²⁵⁷⁷ Vahid Karavelić, 22 Apr '05, T. 144.

²⁵⁷⁸ Jusuf Jašarević, 02 Mar '05, T. 15. According to Jusuf Jašarević, several hundred statements were take, *ibid*.

²⁵⁷⁹ Witness F, 08 Mar '05, T. 50-52. Jusuf Jašarević testified that throughout the operation, the Military Prosecutor was continuously updated on the ongoing activities, Jusuf Jašarević, 02 Mar '05, T. 18.

²⁵⁸⁰ Namik Džanković, 21 Mar '05, T. 60. Every morning, the investigators received instructions from their superiors in the Main Staff UB as to the direction of questioning. Namik Džanković's tasks were assigned to him by Vahid Bogunić, Deputy of Jusuf Jašarević, Namik Džanković, 22 Mar '05, T. 64-65.

²⁵⁸¹ Namik Džanković, 21 Mar '05, T. 60; Witness D, 22 Feb '05, T. 66-67; Witness F, 08 Mar '05, T. 54.

²⁵⁸² Erdin Arnautović, 15 Feb '05, T. 75; Witness D testified that the interrogators were trying to have a case against Sefer Halilović, Witness D, 22 Feb 05, T. 68; Šefko Hodžić testified that whatever positive he said about Sefer Halilović during the interrogation was not written down; and that his words were turned “into something horrible” by the investigator, Šefko Hodžić, 24 Mar '05, T. 93.

²⁵⁸³ Namik Džanković testified that the soldiers were also interviewed in connection with the killings in Grabovica, but Namik Džanković himself was not assigned to interview any soldier who had been in there at the time of the

There is evidence before the Trial Chamber that soldiers were severely abused in the course of the questioning and that their statements were given under duress.²⁵⁸⁴

719. Jusuf Jašarević testified that on 27 or 28 October he was given the assignment by “the teams running the operation” to inform Sefer Halilović that he would be interviewed by the SDB. Jusuf Jašarević personally took Sefer Halilović to the SDB building.²⁵⁸⁵ The interview lasted about a month.²⁵⁸⁶ Jusuf Jašarević and Bakir Alispahić testified that Sefer Halilović was not arrested.²⁵⁸⁷ However, the Trial Chamber also heard testimony that Sefer Halilović was under house arrest.²⁵⁸⁸ According to Zlatan Okić, Sefer Halilović was being detained under house arrest inside the building of the Main Staff.²⁵⁸⁹

720. According to Zakir Okić, Sefer Halilović was under investigation “for armed uprisings within the 9th and 10th Brigades.”²⁵⁹⁰ Zlatan Okić further stated that his task was to clarify Sefer Halilović’s links with Mušan Topalović and Ramiz Delalić and verify whether Sefer Halilović had asked them to exert pressure on the authorities to reappoint him to the highest post within the ABiH.²⁵⁹¹ Jusuf Jašarević testified that Alija Izetbegović was regularly briefed about the interviews of Sefer Halilović.²⁵⁹² Sefer Halilović was not prosecuted.²⁵⁹³ Sefer Halilović was removed from the post of “chief of the Main Staff (at the same time deputy commander)” on 1 November 1993, by

events, Namik Džanković, 21 Mar '05, T. 60. Witness D testified that during almost 5 months he spent in the prison in Sarajevo, he was interrogated about crimes in Grabovica only once, 22 Feb '05, T. 67. Erdin Arnautović testified that, he was asked the least number of questions regarding the events in Grabovica, Erdin Arnautović, 15 Feb '05, T. 75 and 89. Šefko Hodžić testified that during the 16 hours of his interrogation, the inspector did not show the least interest in finding the perpetrators of the crimes committed in Grabovica, Šefko Hodžić, 24 Mar '05, T. 99.

²⁵⁸⁴ Witness D, 21 Feb '05, T. 92; Kemo Kapur, 16 Mar '05, T. 51; Šefko Hodžić, 24 Mar '05, T. 92-93, 95; Ramiz Delalić, 20 May '05, T. 30-31.

²⁵⁸⁵ Jusuf Jašarević, 02 Mar '05, T. 15-16.

²⁵⁸⁶ Zlatan Okić, 01 Apr '05, T. 86. Sefer Halilović was questioned by Zlatan Okić, an SDB officer, and Hemzo Popović from the SVB at the SDB offices in Sarajevo on a daily basis, Zlatan Okić, 01 Apr '05, T. 51, 55, 57 and 60-61; Jusuf Jašarević, 02 Mar '05, T. 17. Zlatan Okić further testified that Sefer Halilović was questioned 10-12 hours per day, which could put him under psychological pressure, Zlatan Okić, 01 Apr '05, T. 76. Zlatan Okić testified at length regarding the manner in which the interview was conducted, *see* Zlatan Okić, 01 Apr '05, T. 50-86. The Trial Chamber, in its oral rulings of 30 March and 1 April 2005, did not admit into evidence two statements, given by Sefer Halilović to the SDB on 8 and 12 November 1993, which were tendered by the Prosecution.

²⁵⁸⁷ Jusuf Jašarević, 02 Mar '05, T. 16; Bakir Alispahić testified that “as far as the [MUP] was concerned [Sefer Halilović] was not in custody. Every day, or whenever agreed, he would arrive in his own vehicle with his driver at the state security premises, where the interview was conducted”, Bakir Alispahić, 24 May '05, T. 65.

²⁵⁸⁸ Zlatan Okić, 01 Apr '05, T. 64; Witness D, 22 Feb '05, T. 69; Vehbija Karić, 10 Jul '03, T. 122-123; Šefko Hodžić, 24 Mar '05, T. 96, 97. Šefko Hodžić testified that while Sefer Halilović was under house arrest, he went to visit him many times. Sefer Halilović insisted that the reason that he was under house arrest was essentially because of his political disagreement with Alija Izetbegović, Šefko Hodžić, 24 Mar '05, T. 98.

²⁵⁸⁹ Zlatan Okić, 01 Apr '05, T. 64.

²⁵⁹⁰ Zlatan Okić, 01 Apr '05, T. 51 and 60-61.

²⁵⁹¹ Zlatan Okić, 01 Apr '05, T. 51-52.

²⁵⁹² Jusuf Jašarević, 02 Mar '05, T. 17. Bakir Alispahić confirmed that Sefer Halilović was interviewed following a request of the Military Service which was approved by Alija Izetbegović, Bakir Alispahić, 24 May '05, T. 63.

²⁵⁹³ Jusuf Jašarević, 02 Mar '05, T. 17.

order of Alija Izetbegović.²⁵⁹⁴ Some time later, Sefer Halilović retired, prior to which, as a sign of recognition for his work, he had been promoted to the rank of general.²⁵⁹⁵

721. According to Nermin Eminović, around January 1994 an operation called Trebević III took place in the Konjić area. Nermin Eminović testified that during the Trebević III operation, charges against unidentified persons were drafted as it concerned Grabovica; however no work was done as to the events in Uzdol.²⁵⁹⁶ Eventually, individuals arrested during “Operation Trebević” received a presidential pardon for their crimes.²⁵⁹⁷

G. FINDINGS ON CRIMES CHARGED

1. Existence of Armed Conflict and Nexus

722. The Trial Chamber recalls its finding that during the Indictment period there was an armed conflict on the territory of Bosnia and Herzegovina.²⁵⁹⁸

723. The Defence argues that “the Prosecution has failed to exclude the reasonable possibility that the underlying offences [...] do not constitute random or isolated acts.”²⁵⁹⁹ The Defence submits that a crime would be “isolated” or “random” when its occurrence “albeit possibly related to the armed conflict in some respect does not reveal a pattern of criminal conduct on the part of the

²⁵⁹⁴ Ex 263, order, 1 November 1993; Witness F, 09 Mar '05, T. 63. The Trial Chamber notes that Alija Izetbegović on 26 November 1993 stated at a meeting of the Presidency (Ex 435, transcript from the meeting of the Presidency, dated 26 November 1993, p. 24):

As regards Sefer Halilović, for the time being he is assigned to work in the Main Staff, his actual work post is still a question being considered by some people along the lines Ministry of Defence or the Main Staff, I do not know what position he might be assigned to, however, with this we wanted to demonstrate that some major mistakes have not [sic] been established, which are the kind of mistakes that make him unsuitable to stay on as main Chief of Staff/Chief of Main Staff/, but are not such that he should be removed from the army in a way, on the contrary, generally he is deserving and we must not be the kind of people to disregard that, he has made certain mistakes, yes, slip-ups, however, we must give him credit for his contributing to the forming of the army from the very first days, we just marked its second anniversary, so that I think that a balance has been struck between the two.

²⁵⁹⁵ Jusuf Jašarević, 02 Mar '05, T. 17-18.

²⁵⁹⁶ Nermin Eminović, 11 Mar '05, T. 72-73.

²⁵⁹⁷ Mirko Pejanović, Ex. 456, 03 Jun '05, p. 2. Ramiz Delalić was kept in custody about seven and a half months. He was charged of insubordination to the Commander of the 1st Corps and for not executing orders. He was sentenced to three and a half years in prison for failure to execute the order of Ismet Dahić to surrender the barracks. Later on, he was pardoned by the Presidency, Ramiz Delalić, 18 May '05, T. 29 and 20 May '05, T. 88 and 89; Ex. 427, Judgement of the District Military Court in Sarajevo, dated 7 July 1994, convicting Ramiz Delalić for insubordination. Izet Mustafić stated that Ramiz Delalić never stood trial for any alleged offences and was “given amnesty for his criminal activities” by the SVB because of the tasks he performed for the SVB, Izet Mustafić, Ex. 463, p. 4.

²⁵⁹⁸ See *supra* Section IV.B(d), in particular para. 173.

²⁵⁹⁹ Defence Final Brief, para. 7.

party to the conflict or where the only relationship between the crime and the armed conflict appears to be a coincidence of time and location.”²⁶⁰⁰

724. The Trial Chamber recalls that for the existence of the required nexus, the crimes need not have been planned or supported by some form of policy. The Trial Chamber further notes that there is no reason why a single, isolated act, could not constitute a violation of the law and customs of war, when the required nexus has been established.

725. As regards Grabovica, the Defence submits that the crimes allegedly committed were “isolated and random crimes committed by a small number of mostly unidentified individuals,” which, according to the Defence, were “not closely related to the armed conflict” because “they had nothing to do with the military operation which was being prepared” and because they were contrary to the implementation of the overall policy of the ABiH, namely a multi-ethnic country.²⁶⁰¹ As regards the crimes in Uzdol, the Defence submits that “the Prosecution has failed to demonstrate that those crimes were sufficiently connected to the hostilities to amount to war crimes, in the sense of having established a ‘direct conjunction’ between the acts of the accused and the armed conflict.”²⁶⁰² The Defence further submits a number of indicia which it considers to demonstrate the absence of any nexus in the present case.²⁶⁰³

726. The Trial Chamber has already defined the relevant criteria to verify the existence of the nexus between the armed conflict and the offences. It recalls in particular that the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.²⁶⁰⁴ The Defence contention that the Prosecution must establish a “direct conjunction” between the acts of the Accused and the armed conflict cannot hold.

²⁶⁰⁰ Defence Final Brief, footnote 5. The Defence further argued that the Prosecution failed to plead the existence of a sufficient nexus between the conduct of the Accused and the armed conflict and failed to plead any material fact in the Indictment relevant to establishing that nexus. The Defence submitted that it has been prejudiced “by the Prosecution failure to plead its case with any precision, which has resulted an unfairness in that the Defence has had to guess the Prosecution case on that point.” See Defence Final Brief, para. 6. The Trial Chamber notes that this issue has been decided on in the Trial Chamber’s Decision on Defence Motion for Particulars, 16 December 2003.

²⁶⁰¹ Defence Final Brief, para. 8. The Defence further argued that the victims in Grabovica were not limited to Bosnian Croat victims, but also included Bosnian Muslim refugees and a soldier of another ABiH unit.

²⁶⁰² Defence Final Brief, para. 13, referring to *Kayishema* Trial Judgement, para. 623.

²⁶⁰³ Defence Final Brief, para. 13, in which the Defence submits that the crimes did not further in anyway the military operation that was underway (in Uzdol) or about to start (in Grabovica); the perpetrators did not act in an official, military, capacity, but in purely personal capacity and for un-specified reasons; that the targets of the crimes were not people who could be associated with the military enemy; that there is a lack of a “policy, plan, or general acceptance” on the part of Bosnian authorities for the commission of war crimes by their forces; and Sefer Halilović’s ideals of maintaining a unified and multi-ethnic Bosnia and Herzegovina all are factors demonstrating the absence of any nexus.

²⁶⁰⁴ See *supra* Section III.A.1, para. 29

727. As for the crimes committed in Grabovica, the Trial Chambers finds the fact that the ABiH soldiers were billeted in Grabovica in preparation of combat operations in Herzegovina, has played a substantial part in the soldiers' ability to commit the crimes. As for the events of Uzdol, The Trial Chamber finds that the crimes were committed during an attack on Uzdol, which attack was part of military combat operations. The required nexus is therefore clearly established with regard to both Grabovica and Uzdol.

2. Murder

(a) Grabovica

728. The Trial Chamber finds that it has been established beyond reasonable doubt that Pero Marić, Dragica Marić, Ivan Zadro, Matija Zadro, Mladen Zadro, Ljubica Zadro and Mladenka Zadro, all persons taking no active part in hostilities, were killed in Grabovica on 8 and/or 9 September 1993, by members of the 9th Brigade. The Trial Chamber further finds that the 9th Brigade members killed the victims with the intent to kill or to inflict serious bodily harm which the perpetrators should reasonably have known might lead to the death of the victim.²⁶⁰⁵ The Trial Chamber also finds that it has been established beyond reasonable doubt that Josip Brekalo, Martin Marić, Živko Drežnjak, Ljuba Drežnjak, Ivan Mandić and Ilka Miletić, all persons taking no active part in hostilities, were killed in Grabovica some time between 8 and 9 September, by unidentified members of the ABiH. The Trial Chamber further finds that the unidentified members of the ABiH killed the victims with the intent to kill these victims or to cause serious bodily harm which the perpetrators should reasonably have known might lead to the death of the victim.²⁶⁰⁶

729. The Trial Chamber found that the Prosecution failed to prove beyond reasonable doubt that Luca Brekalo, Pero Čuljak, Matija Čuljak, Anica Pranjić, Ilka Marić, Ruža Marić (born 1956), Marinko Marić, Luca Marić, Franjo Ravlić, Ivan Šarić, Andrija Drežnjak, Mara Drežnjak, Dragica Drežnjak and Mara Mandić were killed by members of the ABiH in Grabovica at the time relevant to the Indictment.²⁶⁰⁷

(b) Uzdol

730. The Trial Chamber has found that the following victims, who were killed by members of units under ABiH command in Uzdol on 14 September 1993, were persons taking no active part in the hostilities: Ruža Zelić, Marija Zelić, Stjepan Zelić, Anica Stojanović, Ivan Zelenika, Jadranka

²⁶⁰⁵ See *supra* Section IV.D.7.

²⁶⁰⁶ See *supra* Section IV.D.7.

²⁶⁰⁷ See *supra* Section IV.D.7.

Zelenika, Ruža Zelenika, Luca Zelenika, Janja Zelenika, Dragica Zelenika, Kata Perković, Martin Ratkić, Kata Ratkić, Anto Stojanović, Franjo Stojanović, Serafina Stojanović, Stanko Rajić, Lucija Rajić, Šima Rajić, Mara Rajić, Mijo Rajić, Ivka Rajić (born 1921), Ivka Rajić (born 1934), Zorka Glibo, and Mato Ljubić.²⁶⁰⁸

731. The Trial Chamber has found that the Prosecution failed to prove beyond reasonable doubt that Domin Rajić and Kata Ljubić were taking no active part in the hostilities at the time of their deaths on 14 September 1993. Moreover, the Trial Chamber has found that the Prosecution has failed to prove beyond reasonable doubt that Mara Grubeša and Jela Džalto were killed by members of units under ABiH command, who attacked Uzdol on 14 September 1993.

732. The Defence has submitted that the cause of death of the victims in Uzdol was either shelling by the HVO or that they were caught in the crossfire between the ABiH and the HVO when the ABiH attacked Uzdol on 14 September 1993.²⁶⁰⁹

733. The Trial Chamber has found that the HVO shelled the hamlets comprising Uzdol intensively.²⁶¹⁰ However, the Trial Chamber notes that the autopsy report (Ex. 409) does not contain any evidence that the victims were killed, or even injured, by shrapnel from falling shells.²⁶¹¹ Therefore, the Trial Chamber finds that the evidence does not support the Defence submission in this respect.

734. In relation to the Defence submission that the victims were caught in crossfire, the Trial Chamber notes that the evidence shows that there was heavy fighting between the units under ABiH command and the HVO in the Uzdol area during the attack.²⁶¹² The evidence also shows that the inhabitants of the area tried to save themselves by leaving their homes and running in different

²⁶⁰⁸ See *supra* Section IV.E.4.

²⁶⁰⁹ Defence Final Brief, paras 127-131.

²⁶¹⁰ See *supra* Section IV.E.3, paras 582-584.

²⁶¹¹ In support of its contention that the autopsy report does not establish the cause of death with certainty but that the victims may have died as a result of shelling, the Defence has quoted the testimony of the pathologist, Dr. Šimun Andelinović, that “when I testify at court my assertions are not 100 per cent certain. You always have to be – leave some room for circumstances in life or medicine” (12 May ’05, T. 50)”. The Trial Chamber notes that this statement was given in response to a question by the Defence whether Dr. Andelinović could be certain that the amputation of the right ear of Martin Ratkić was carried out while he was still alive, and not to a general question whether the victims were killed by shelling. The Trial Chamber also notes that the Defence did not put any questions to Dr. Andelinović in this respect. Moreover, the Trial Chamber finds that Dr. Andelinović’s descriptions, on the one hand, of the characteristics of explosive wounds, such as those resulting from shrapnel (13 May ’05, T. 3), and, on the other hand, of the characteristics of gunshot wounds (12 May ’05, T. 19-20, T. 67-68) were very clear. When kept in mind when reading the autopsy report, there is no doubt that the autopsy report only describes gunshot and cutting wounds.

²⁶¹² See *supra* Section IV.E.3.

directions.²⁶¹³ As opposed to the Defence submission, the Trial Chamber finds that the victims were killed intentionally and notes, in particular, the following:

- that several victims were shot at contact or close range,²⁶¹⁴ or in the back,²⁶¹⁵
- that two victims were killed in their beds, one of whom was bedridden,²⁶¹⁶
- that one victim had been mutilated prior to being killed,²⁶¹⁷
- that while some in a group of victims were found dead near each other outside their house, another victim in the same group was found dead further away from the house towards the nearby forest, having been shot at a distance,²⁶¹⁸
- that one victim was killed by being brutally beaten to death over the head with an axe-like weapon after having been first shot in the chest and leg,²⁶¹⁹
- that another victim was not shot at all, but beaten to death over the head with an implement with sharp and blunt edges,²⁶²⁰
- that one victim was shot while “at a relative rest”,²⁶²¹ and
- that children were targeted.²⁶²²

The Trial Chamber also notes the direct evidence concerning the manner of the killings of Ruža Zelić, Marija Zelić, Stjepan Zelić, and Anica Stojanović. In the Trial Chamber's opinion, not only the most reasonable, but in fact the only conclusion is that the direct perpetrators had the intention to kill or to wilfully cause serious bodily harm which they should reasonably have known might lead to the death of the victims.

H. FINDINGS ON THE INDIVIDUAL CRIMINAL RESPONSIBILITY OF SEFER HALILOVIĆ

735. The Indictment alleges that:

²⁶¹³ *Ibid.*

²⁶¹⁴ Ivan Zelenika, Kata Ratkić, Mijo Rajić, Ivka Rajić (1921), Mato Ljubić and Kata Ljubić.

²⁶¹⁵ Ivan Zelenika, Dragica Zelenika, and Domin Rajić.

²⁶¹⁶ Ruža Zelenika and Ivka Rajić (1921).

²⁶¹⁷ Martin Ratkić.

²⁶¹⁸ Domin Rajić, Ivka Rajić (1934) and Zorka Glibo.

²⁶¹⁹ Ruža Zelenika.

²⁶²⁰ Serafina Stojanović.

²⁶²¹ Franjo Stojanović.

²⁶²² Marija Zelić, Stjepan Zelić, and Jadranka Zelenika.

at all times relevant to the charges in the indictment, by virtue of his position and authority as Commander of the Operation [Sefer Halilović] had effective control over the units subordinated to him. These included the 9th Motorised Brigade, the 10th Mountain Brigade, the 2nd Independent Battalion and the Prozor Independent Battalion.²⁶²³

Thus, the Prosecution submits that the criminal liability of Sefer Halilović for the crimes committed in Grabovica and Uzdol arises from his position as “commander of Operation NERETVA-93”. In its Final Brief, the Prosecution contends that:

the evidence adduced at trial has proved beyond a reasonable doubt that Halilović planned, organized, commanded, coordinated and inspected Operation Neretva. Halilović had command authority over the units that participated in Operation Neretva. The evidence also establishes that this command authority was effective, and that Halilović’s command was obeyed in practice. Therefore he had effective control of the troops who participated in this military Operation.²⁶²⁴

736. The Trial Chamber has found that the evidence does not give a clear picture of Sefer Halilović’s position, either *de jure* or *de facto*, within the structure of the Main Staff after the 18 July decision.²⁶²⁵

737. The Trial Chamber recalls that it has not been persuaded as to the existence of a military operation named “Operation Neretva”. It has found, however, that combat operations were carried out by units, which included the 9th Brigade, the 10th Brigade, the 2nd Independent Battalion and the Prozor Independent Battalion, in the areas around Grabovica and Uzdol in September 1993.²⁶²⁶

738. The Trial Chamber recalls its finding that the Zenica meeting and its Conclusions dealt with issues of the organisational structure of the ABiH, in particular with regard to independent units, as well as the “future directions of the war”.²⁶²⁷ The Trial Chamber notes in particular that the issue of the position of the Zulfikar Detachment within the ABiH structure was raised at that meeting.

739. As regards the organisation of combat operations allegedly part of “Operation Neretva”, the Trial Chamber notes that during the Zenica meeting Salko Gušić, Commander of the 6th Corps argued for action to keep the Konjic-Jablanica route free. Salko Gušić also stated that he was working on preparations for offensive operations and that he had a force of 500-600 soldiers “preparing offensive combat operations towards the 4th Corps.” He stated that he “had not envisaged Vrđi being done in these operations immediately” and that he would “like to be assigned specific tasks after this”.²⁶²⁸ The Trial Chamber also notes, in particular, two orders from 26 and 29 August, respectively. On 26 August, the Commander of the Main Staff, Rasim Delić, ordered the 6th Corps Commander to engage his forces in a joint attack with the 4th Corps on HVO units on the

²⁶²³ Indictment, para 38.

²⁶²⁴ Prosecution Final Brief, para. 186 (footnotes omitted).

²⁶²⁵ See *supra* Section IV.A, paras 105-111.

²⁶²⁶ See *supra* Section IV.C, para. 175.

²⁶²⁷ See *supra* para. 189.

Vrdi-Domazet axis. The Trial Chamber heard testimony from the 6th Corps Commander that this was the line of attack which was ultimately implemented.²⁶²⁹ On 29 August, the 6th Corps Operations and Training section sent a proposal to the 6th Corps Commander for axes of attack for the Prozor Independent Battalion on the Here-Uzdol axis.²⁶³⁰ The Trial Chamber notes that also this was an axis of attack which was ultimately carried out by members of the Prozor Independent Battalion.²⁶³¹

740. The Trial Chamber recalls its finding that the Inspection Team was established, with Sefer Halilović as Team Leader, to coordinate the work and tasks in the zones of responsibility of the 4th and 6th Corps, as detailed in the 30 August order.²⁶³² The Trial Chamber also found that the Inspection Team was located in Jablanica, and that while this location was sometimes referred to as an IKM, the evidence provided to the Trial Chamber was insufficient to establish that this was an IKM from which the alleged “Operation Neretva” was commanded.²⁶³³

741. The Trial Chamber also recalls its finding that Sefer Halilović’s role in the reorganisation and resubordination of units following the Zenica meeting was one which was consistent with his role as Team Leader of an Inspection Team charged with coordination functions.²⁶³⁴

742. Evidence was presented to the Trial Chamber that the Commander of the Main Staff, Rasim Delić, certified all the documents in which the alleged “Operation” was planned. The Trial Chamber notes that the documents sent by Sefer Halilović during the time relevant to the Indictment are consistent with his coordination role as Team Leader of the Inspection Team. The Trial Chamber also recalls the testimony of Vehbija Karić, a member of the Inspection Team and a senior member of the Main Staff that the orders issued by Sefer Halilović were all within the “framework” of the orders issued by Rasim Delić.²⁶³⁵

1. Grabovica

743. The Trial Chamber recalls that it has been established that seven of the killings in Grabovica were carried out by members of the 9th Brigade. The Trial Chamber furthermore recalls that for six of the killings it has not been able to determine to which units the members of the ABiH, who committed the crimes, belonged, and that the remainder of the alleged killings have not been proven

²⁶²⁸ See *supra* para. 179.

²⁶²⁹ See *supra* para. 191.

²⁶³⁰ See *supra* para. 192.

²⁶³¹ See *supra* para. 320.

²⁶³² See *supra* para. 210.

²⁶³³ See *supra* para. 221.

²⁶³⁴ See *supra* para. 244.

²⁶³⁵ See *supra* para. 350.

beyond reasonable doubt.²⁶³⁶ The Trial Chamber has been presented with evidence that the 9th and 10th Brigades, and the 2nd Independent Battalion were sent to Herzegovina following the order of Sefer Halilović of 2 September.²⁶³⁷ In this regard, the Trial Chamber notes that the Commander of the 1st Corps, Vahid Karavelić, did not carry out the order of Sefer Halilović as issued, which requested that troops be sent on 3 September, but – and only after confirming Sefer Halilović’s order with the Commander of the Main Staff, Rasim Delić – postponed the departure of the troops until 6 September.²⁶³⁸ Vahid Karavelić testified that at the time he had not seen the 30 August order.²⁶³⁹ However, the Trial Chamber notes that he also testified that Sefer Halilović’s statement in his order of 2 September that “[i]f you consider such redeployment endangers the defence of Sarajevo, I am prepared to bear full responsibility” was a result of a conversation between them held at “the end of August [or] in very early September”.²⁶⁴⁰ The Trial Chamber also notes the evidence that Vahid Karavelić was present at a meeting with Rasim Delić, Sefer Halilović and chiefs of various branches of the Main Staff at which it was discussed which units would be sent to Herzegovina.²⁶⁴¹ The Trial Chamber notes that the above corroborates the testimony of the Deputy Commander of the 9th Brigade, Ramiz Delalić, that “[w]e were not able to leave because the superior command of the corps and the Supreme Staff could not agree amongst themselves.”²⁶⁴² The 9th Brigade did not leave Sarajevo until 7 September. The Trial Chamber notes that Vahid Karavelić ordered the 9th Brigade to return to Sarajevo seven days later²⁶⁴³ and that he had issued similar orders to the 2nd Independent Battalion.²⁶⁴⁴

744. The Trial Chamber also notes that it was not presented with any combat order signed by Sefer Halilović for the Vrđi axis and that the combat order for the start of combat operations on this axis was issued by Zulfikar Ališpago, as commander of the axis.²⁶⁴⁵ The Trial Chamber notes that in particular the unit of the 9th Brigade was under the command of Zulfikar Ališpago. Moreover, evidence presented to the Trial Chamber as to the role of Sefer Halilović in Herzegovina at the time relevant to the Indictment does not establish that Zulfikar Ališpago or the Zulfikar Detachment were subordinated to Sefer Halilović. The Trial Chamber notes in this respect the testimony that

²⁶³⁶ See *supra* Section IV.G, paras 728-729.

²⁶³⁷ See *supra* paras 231-233.

²⁶³⁸ See *supra* paras 231 and 252-254.

²⁶³⁹ See *supra* para. 233.

²⁶⁴⁰ See *supra* para. 232.

²⁶⁴¹ See *supra* para. 235.

²⁶⁴² See *supra* fn 788.

²⁶⁴³ See *supra* para. 253.

²⁶⁴⁴ See *supra* para. 276.

²⁶⁴⁵ See *supra* para. 302.

Zulfikar Ališpago, upon receiving an order from the Inspection Team concerning combat operations, tore up the order and wrote his own.²⁶⁴⁶

745. The Trial Chamber further notes the order of Sefer Halilović of 20 September to the 6th Corps Commander and Zulfikar Ališpago in which Sefer Halilović stated that the situation in Vrđi is “getting very complicated” because of their failure to obey an order for deployment of troops on the front line and their failure to meet with Sefer Halilović.²⁶⁴⁷

746. The Trial Chamber also notes that, in relation to the investigations of the crimes in Grabovica, Sefer Halilović, in the evening of 9 September, instructed Namik Džanković, a member of the Inspection Team and the UB of the Main Staff, to work together with the MUP, as well as with other members of the SVB, and to keep "the Sarajevo command", rather than himself, informed.²⁶⁴⁸ The evidence shows that at this point in time investigations were already under way. The evidence does not show that Sefer Halilović initiated the investigations or that the investigations were in any way carried forward through his actions. The evidence further shows that the 6th Corps SVB, the Military Police Battalion of the 6th Corps and the Military Police of the 44th Brigade were involved in the investigation into the events in Grabovica and that the Chief of the UB of the Main Staff, Jusuf Jašarević, was kept informed of the results of their investigations. The Trial Chamber finds that based on the evidence, it cannot be concluded that Sefer Halilović had the material ability to punish the perpetrators of the crimes committed in Grabovica.

747. Having examined all the evidence presented to it and in light of its factual findings, the Trial Chamber finds that the Prosecution has not proven beyond reasonable doubt that Sefer Halilović had effective control over the troops that were in Grabovica on 8 and 9 September 1993, which the Trial Chamber has found committed the crimes.

2. Uzdol

748. The Trial Chamber has found that the crimes in Uzdol were committed by members of units under ABiH command taking part in the attack on HVO positions in and around Uzdol. The Trial Chamber has found that these units were the Prozor Independent Battalion and members of the MUP, both under the command of the Prozor Independent Battalion Commander, Enver Buza.²⁶⁴⁹

²⁶⁴⁶ See *supra* para. 351.

²⁶⁴⁷ See *supra* para. 327.

²⁶⁴⁸ See *supra* para. 670.

²⁶⁴⁹ See *supra* Sections IV.E.4 and IV.G.2(b).

The Trial Chamber has found that it has not been proven that Enver Buza or the Prozor Independent Battalion were subordinated to Sefer Halilović at the time the crimes were committed.²⁶⁵⁰

749. The Trial Chamber notes in particular that Sefer Halilović personally visited the base of the Prozor Independent Battalion in Dobro Polje because Enver Buza had not gone into combat as ordered by the 6th Corps order of 11 September. On 15 September, Sefer Halilović issued a combat order appointing Enver Zejnilagić commander on this axis. The Trial Chamber finds that this was in line with his coordination function as Team Leader of the Inspection Team. Following this, on 15 September Enver Zejnlagić issued an order to attack. The Trial Chamber notes that Enver Buza's report, dated 20 September and which covered the period of the events in Uzdol, was sent to the 6th Corps.

750. The Trial Chamber considers that the evidence presented does not show that Sefer Halilović had any role in the investigations concerning the crimes committed in Uzdol. These investigations were conducted by the SVB of the 6th Corps and the SVB of the Prozor Independent Battalion²⁶⁵¹ and Jusuf Jašarević was informed of the results of the investigations. The Trial Chamber finds that based on the evidence presented, it cannot be concluded that Sefer Halilović had the material ability to punish the perpetrators of the crimes committed in Uzdol.

751. Having examined all the evidence presented to it and in light of its factual findings, the Trial Chamber finds that the Prosecution has not proved beyond reasonable doubt that Sefer Halilović had effective control over the units under ABiH command, which the Trial Chamber has found committed the crimes in Uzdol.

3. Concluding Findings

752. The Trial Chamber recalls its finding that Sefer Halilović possessed a degree of influence as a high ranking member of the ABiH and as one of its founders.²⁶⁵² However, the Trial Chamber considers that Sefer Halilović's influence falls short of the standard required to establish effective control.²⁶⁵³ It is a principle of international criminal law that a commander cannot be held responsible for the crimes of persons who were not under his command at the time the crimes were committed. The Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Sefer Halilović was either *de jure* or *de facto* commander of an operation called "Operation Neretva", which the Prosecution alleges was carried out in Herzegovina. The Trial Chamber has also found that the Prosecution has failed to establish that Sefer Halilović had

²⁶⁵⁰ See *supra* para. 348.

²⁶⁵¹ See *supra* Section IV.F.3.

²⁶⁵² See *supra* para. 366.

effective control over the troops which committed the crimes in the areas of Grabovica and Uzdol. The Trial Chamber therefore finds that the Prosecution has failed to establish that Sefer Halilović was responsible under Article 7(3) for the crimes committed in Grabovica and Uzdol.

²⁶⁵³ *See supra* Section III.B.3.

V. DISPOSITON

753. Having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings of the Trial Chamber in this Judgement, the Trial Chamber decides as follows:

The Accused **SEFER HALILOVIĆ** is found **NOT GUILTY** and is therefore acquitted of Murder, a Violation of the Laws or Customs of War.

754. Pursuant to Rule 99(A) of the Rules, the Trial Chamber orders that Sefer Halilović be released immediately from the United Nations Detention Unit.

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

Judge Liu Daqun
Presiding

Judge Florence Ndepele Mwachande Mumba

Judge Amin El Mahdi

Dated this sixteenth day of November 2005
At The Hague
The Netherlands

Seal of the Tribunal

VI. ANNEX I – GLOSSARY

A. List of Abbreviations, Acronyms and Short references

ABiH	Army of the Republic of Bosnia and Herzegovina
Accused	Sefer Halilović
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 12 December 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 12 December 1977
BiH	Republic of Bosnia and Herzegovina
Commentary on Geneva Convention (GC) III	Commentary, the Geneva Conventions of 12 August 1949, Geneva Convention III, Relative to the Treatment of Prisoners of War, International Committee of the Red Cross, Geneva, 1960
Commentary on Geneva Convention (GC) IV	Commentary, the Geneva Conventions of 12 August 1949, Geneva Convention IV, Relative to the Protection on Civilian Persons in Time of War, International Committee of the Red Cross, Geneva 1958
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
CSB	Centre for Public Security
Defence	Counsel for the Accused
Doc.	Document
Defence Final Brief	Case No. IT-01-48-T, Defence Final Brief, public redacted version, 12 September 2005
Ex.	Exhibit
fn	Footnote
G/ŠVK	Main Staff of the Supreme Command (in B/C/S: “Glavni Staba Vrhovne Kommande”)
GC III	Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135
GC IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949,

Hague Convention IX	Convention Concerning Bombardment by Naval Forces in Time of War, The Hague, 18 October 1907
Hague Regulations	Hague Convention (IV), Respecting the Laws and Customs of War on Land, and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907
HVO	Croatian Defence Council
ICRC	International Committee of the Red Cross
ICRC Commentary to the Additional Protocols	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva 1987
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
IKM	Forward command post (In B/C/S: “Istureno Komandno Mesto”)
ILC	International Law Commission
ILC Commentary	ILC Commentary on the 1996 Draft Code of Crimes Against the Peace and Security of Mankind, Report of the International Law Commission on the work of its 48 th session, UN doc. A/51/10.
ILC Draft Code	Draft Code of Crimes Against the Peace and Security of Mankind, International Law Commission, 48 th Session, 1996. A/48/10. Also published in ILC Y.B., 1996, vol. II(2)
IMT	International Military Tribunal for the Prosecution and Punishment of the Major German War Criminals, Nuremberg, Germany
IMTFE	International Military Tribunal for the Far-East, Tokyo, Japan
Indictment	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T; 10 September 2001, confirmed on 12 September 2001
International Tribunal	<i>See</i> ICTY
JNA	Yugoslav Peoples’ Army (Army of the Socialist Federal Republic of Yugoslavia)
Kahan Report	Final Report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut, February 7, 1983 (authorised translation), reproduced in 22

	International Legal Materials, 1983
Law Reports	Law Reports of Trials of War Criminals, selected and prepared by the United Nations War Crimes Commission, London, 1949 (reprinted in Buffalo, New York, 1997)
MUP	Ministry of Interior of BiH
Nuremberg Charter	London Agreement and Annexed Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, London, 8 August 1945
Nuremberg Judgement	Trials of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946
Official records	Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-1977
OG	Operations Group
OTP	Office of the Prosecutor
p.	Page
pp.	Pages
para.	Paragraph
paras	Paragraphs
Parties	The Prosecution and the Defence in <i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T.
Principles of International Law	Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal, adopted by the International Law Commission of the United Nations, 1950, UNGA, Official record, 5 th Session, Supp. No. 12, UN doc. A/1316 (1950)
Prosecution	Office of the Prosecutor
Prosecution Final Brief	Case No. IT-01-48-T, Prosecution's Final Trial Brief (with a confidential annex), 25 August 2005
RBiH	Republic of Bosnia and Herzegovina
Rules	Rules of Procedure and Evidence of the ICTY
Rules of Detention	Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the ICTY

Secretary General's Report	Report of the Secretary-General pursuant to paragraph 2 of the Security Council Resolution 808 (1993). UN doc. S/1993/25704
SDB	State Security Service
SJB	Public Security Station
SVB	Military Security Service
Statute	Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827, as amended by Resolution 1481
T.	Transcript page.
TO	Territorial Defence
Tokyo Charter	Charter of the International Military Tribunal for the Far-East, Tokyo, 19 January 1946
Tribunal	<i>See</i> ICTY
UB	Main Staff Security Administration
UN	United Nations
United Nations Commission of Experts Report	Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), UN doc./S/1994/674
UNDU	United Nation Detention Unit
UNPROFOR	United Nations Protection Force
1969 Vienna Convention	Vienna Convention on the Law of Treaties, 22 May 1969, in UN Treaty Series.
VRS	Army of the Republika Srpska
9 th Brigade	9 th Motorised Brigade
10 th Brigade	10 th Mountain Brigade

B. List of cases

1. ICTY

Aleksovski Trial Judgement

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgement, 25 June 1999

Aleksovski Appeal Judgement

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-

	14/1-A, Judgement, 24 March 2000
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Blaškić</i> Decision	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-PT, Decision on the Defence Motion to Strike Portions of the Amended Indictment Alleging “Failure to Punish” Liability, Case No. IT-95-14-PT, 4 April 1997
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blagojević</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005
<i>Brdanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. “Pavo”), Hazim Delić and Esad Landzo (a.k.a. “Zenga”)</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. “Pavo”), Hazim Delić and Esad Landzo (a.k.a. “Zenga”)</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement, 14 December 2003
<i>Hadžihasanović</i> Decision on Joint Challenge to Jurisdiction	<i>Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 November 2002
<i>Hadžihasanović</i> Appeals Chamber Decision	<i>Prosecutor v. Hadžihasanović et al.</i> , Case No IT-01-47-AR72, Appeals Chamber Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003
<i>Kordić and Čerkez</i> Trial Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Kordić and Čerkez</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Kordić and Čerkez</i> , Decision	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-PT, Decision on the Joint Motion to Dismiss the Amended Indictment for Lack of

	Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999
<i>Kordić and Čerkez</i> , Decision on failure to punish	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-PT, Decision on the Joint Defence Motion to Dismiss for lack of jurisdiction of the amended indictment alleging “failure to punish” liability, 2 March 1999
<i>Krstić</i> Trial Judgement	<i>Prosecution v. Radislav Krstić</i> , Case No. IT -98-33-T, Judgement, 2 August 2001
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković</i> , Case No. IT-96-22&23-/1-T, Judgement, 21 February 2001
<i>Kunarac</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-22&23-/1-A, Judgement, 12 June 2002
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-T, Judgement, 2 November 2001
<i>Kvočka</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005
<i>Krnjelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krnjelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilic (a.k.a. “Tuta”) and Vinko Martinovic (a.k.a. “Stela”)</i> , Case No. IT-98-34-T, Judgement, 31 March 2003
<i>Obrenović</i> Sentencing Judgement	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2, Sentencing Judgement, 10 December 2003
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 29 October 2003
<i>Strugar</i> Trial Judgement	Judgement <i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
<i>Tadić</i> Jurisdiction Decision	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Judgement, 14 July 1997
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004

2. ICTR

<i>Bagilishema</i> Appeal Judgement	<i>Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-A, Judgement, 3 July 2002
<i>Musema</i> Trial Judgement	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement, 27 January 2000
<i>Rutaganda</i> Appeal Judgement	<i>Prosecutor v. Rutaganda</i> , Case No. ICTR-96-3-A, Judgement, 26 May 2003
<i>Semanza</i> Appeal Judgement	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, Judgement, 20 May 2005

3. Decisions of other courts

<i>High Command</i> case	<i>United States v. Wilhelm von Leeb et al.</i> , Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, Vol. XI
<i>Hostage</i> case	<i>United States v. Wilhelm List et al.</i> , Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol. XI
<i>Nicaragua</i> case	<i>Nicaragua v. U.S.</i> , Merits, International Court of Justice, Reports 1986
<i>Soering</i> case	<i>Soering v. United Kingdom</i> , Judgement of 7 July 1989, <i>Eur. Ct. H.R., Series A, No.161</i>
<i>Toyoda</i> case	<i>United States v. Soemu Toyoda</i> , Official Transcript of the Record of Trial
<i>Tokyo Judgement</i>	International Military Tribunal for the Far East, <i>Prosecution v. Akaki Sadao et. al.</i> 4 November 1948, in <i>The Tokyo Judgement</i> , The Complete Transcripts of the Proceedings in the International Military Tribunal for the Far East, reprinted in: R. John Pritchard and S. Magbauna Zaide (eds.), <i>The Tokyo War Crimes Trial</i> , New-York-London 1981
<i>Yamashita</i> case	United States Military Commission, Manila, (7 December 1945), Law Reports of Trials of War Criminals, selected and prepared by the United Nations War Crimes Commission, London, 1949 (reprinted in Buffalo, New York, 1997), Vol. IV
<i>In Re Yamashita</i>	<i>In Re Yamashita</i> , 327 US 1 (1946)

C. List of other legal authorities

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VII. ANNEX 2: PROCEDURAL HISTORY

A. Pre-Trial Proceedings

1. Indictment

1. The Indictment against Sefer Halilović was confirmed on 12 September 2001.²⁶⁵⁴ On 13 March 2003, the Defence filed a motion arguing that the Indictment was vague and lacked sufficient particulars, subsequently seeking that the Trial Chamber order the Prosecution to amend it.²⁶⁵⁵ The Trial Chamber denied the motion on 1 April 2003 as the time limit for the filing of the preliminary motions for the Accused had expired on 28 November 2001.²⁶⁵⁶ On 17 November 2003, the Defence filed a motion requesting that the Trial Chamber order the Prosecution to provide certain particulars²⁶⁵⁷ sought by the Defence in previous correspondence with the Prosecution.²⁶⁵⁸ On 16 December 2003, the Trial Chamber denied the motion, repeating that the deadline to file a preliminary motion had expired and further noting that the particulars sought were already in the possession of the Defence or were evidentiary matters to be determined at trial.²⁶⁵⁹ On 23 December 2003, the Defence sought certification for interlocutory appeal of this decision.²⁶⁶⁰ The Defence application was denied on 28 January 2004.²⁶⁶¹

2. On 29 September 2004, the Prosecution sought to amend the Indictment seeking to modify one of its paragraphs.²⁶⁶² On 17 December 2004, the Trial Chamber denied the motion, considering that the proposed amendment included a new charge, which would cause further postponement of the

²⁶⁵⁴ Indictment, Case No. IT-01-48, 10 September 2001. The Indictment was originally filed on 30 July 2001, modified and supplemented by the Prosecution on 10 September 2001 and confirmed by Judge Patricia Wald on 12 September 2001. The Indictment was ordered to be kept under seal until “the arrest warrant was served on the accused or unless further ordered”. *See* Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 12 September 2001.

²⁶⁵⁵ Defence Motion Pursuant to Rule 65 Ter (K) Requesting the Pre-Trial Judge to Grant Relief From Waiver and to Grant Relief Pursuant to Rule 72, 13 March 2003. The Defence argued that the amended indictment should specify in relation to each alleged murder the name, surname and father’s name of the victim, the place and date of the alleged murder, the cause of death, and the identity of the alleged perpetrator. The Defence further argued that the previous counsel for the Accused did not file any preliminary motion as he claimed to have had an agreement with the Prosecution that the indictment would be withdrawn.

²⁶⁵⁶ Decision on Defence Motion Pursuant to Rule 65 Ter (K) Requesting the Pre-Trial Judge to Grant Relief From Waiver and to Grant Relief Pursuant to Rule 72, 1 April 2003. The Trial Chamber further noted that none of the previous defence counsel who represented the Accused raised the issues at hand and that change of counsel is not a reason for making the order sought.

²⁶⁵⁷ The particulars sought by the Defence fall into five categories: general context; elements of the crime charged; alleged role and position of the Accused; alleged perpetrators; and victims. *See* Decision on Defence Motion for Particulars, 16 December 2003.

²⁶⁵⁸ The Defence Motion and the letter of 31 October 2003 are referred to in Decision on Defence Motion for Particulars, 16 December 2003.

²⁶⁵⁹ Decision on Defence Motion for Particulars, 16 December 2003.

²⁶⁶⁰ Motion for Certification, 23 December 2003.

²⁶⁶¹ Decision on Motion for Certification, 28 January 2004.

²⁶⁶² Prosecutor’s Motion Seeking Leave to Amend the Indictment, 29 September 2004. *See also* Response to Prosecution Motion to Amend the Indictment, 18 October 2004.

trial, and that this further postponement would result in a “significant and unfair prejudice”.²⁶⁶³ The Prosecution sought certification for an interlocutory appeal of the decision,²⁶⁶⁴ but the motion was denied.²⁶⁶⁵

2. Voluntary Surrender and Initial Appearance

3. On 25 September 2001, Sefer Halilović surrendered voluntarily to the International Tribunal and was transferred to the United Nations Detention Unit in The Hague (“UNDU”). On the following day the case was assigned to Trial Chamber III.²⁶⁶⁶ At his initial appearance which was held before Judge Fassi Fihri on 27 September 2001, Sefer Halilović pleaded not guilty.²⁶⁶⁷ He was subsequently ordered to be detained on remand.²⁶⁶⁸

3. Assignment of counsel

4. At the initial appearance, Sefer Halilović was represented by Faruk Balijagić,²⁶⁶⁹ assigned by the Registrar as temporary counsel.²⁶⁷⁰ By decision of 12 February 2002, the Registrar assigned Faruk Balijagić as lead counsel.²⁶⁷¹ On 6 June 2002, Sefer Halilović and Faruk Balijagić informed the Trial Chamber seized of the case at the time that the assignment of counsel should be withdrawn due to Faruk Balijagić’s health problems.²⁶⁷²

²⁶⁶³ Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment, 17 December 2004.

²⁶⁶⁴ Prosecution Request for Certification for Interlocutory Appeal of “Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment”, 22 December 2004.

²⁶⁶⁵ Decision on Prosecution Request for Certification for Interlocutory Appeal of “Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment”, 12 January 2005.

²⁶⁶⁶ Order of the President Assigning a Case to a Trial Chamber, 1 October 2001. Trial Chamber III was composed of: Judge Richard May presiding, Judge Patrick Robinson, Judge Mohamed Fassi Fihri. Judge Fassi Fihri was assigned as Pre-Trial Judge. Order Designating a Pre-Trial Judge, 3 October 2001. Due to the expiration of Judge Fassi Fihri’s term of office on 16 November 2001, Judge O-Gon Kwon was assigned as Pre-Trial Judge. See Order of the President on the Composition of a Trial Chamber for a Case, 6 December 2001, and Order Designating a Pre-Trial Judge, 10 December 2001. On 26 February 2004, Judge Albertus Henricus Joannes Swart replaced Judge Richard May. Order Assigning a Judge to a Case before a Trial Chamber, 26 February 2004. On 1 August 2004, Judge Iain Bonomy replaced Judge Albertus Henricus Joannes Swart. Order Assigning a Judge to a Case before a Trial Chamber, 23 July 2004.

²⁶⁶⁷ Initial Appearance, 27 September 2001.

²⁶⁶⁸ Order for Detention on Remand, 27 September 2001.

²⁶⁶⁹ Initial Appearance, 27 September 2001.

²⁶⁷⁰ Decision of the Registrar, 1 October 2001. The counsel was assigned for a period of 120 days, pending the process of verification of Sefer Halilović’s declaration of means by the Registry.

²⁶⁷¹ Decision of the Registrar, 12 February 2002. The Registrar assigned Dijana Kreho as a co-counsel. See Status conference, 12 April 2002, T. 19.

²⁶⁷² Cancellation of Power of Attorney, 6 June 2002. Further reasons for that cancellation were submitted in the correspondence dated 11 June 2002, from the Accused and Mr. Balijagić. See also the letter from the Accused to the Registry, dated 14 June 2002, where the Accused stated that Mr. Balijagić did not represent him as much as required as he was representing at the same time a large number of clients in Bosnia and Herzegovina. The letter is referred to in Decision of the Registrar, 19 June 2002.

5. On 28 May 2002, the Accused requested to have Senad Kreho assigned as counsel.²⁶⁷³ By decision of 19 June 2002, the Registrar noted that a potential conflict of interests could preclude representation by Senad Kreho, and assigned Richard Soyer as counsel for Sefer Halilović.²⁶⁷⁴
6. On 24 June 2002, Sefer Halilović filed an application with the Trial Chamber seised of the case at the time for review of the Registrar's decision of 19 June 2002, seeking as an alternative to have Dijana Kreho assigned as his counsel.²⁶⁷⁵ On 1 August 2002, the Trial Chamber denied the application, considering that the Accused did not have a right to apply to the Trial Chamber for a review of the Registrar's decision assigning "a particular counsel".²⁶⁷⁶ Following the Accused's application, on 23 September 2002 the Registrar withdrew the assignment of Richard Soyer and assigned Bakir Caglar as counsel for the Accused.²⁶⁷⁷ That decision was preceded by a request by Richard Soyer to be withdrawn from the case due to the Accused's "complete and persistent personal refusal to cooperate, meet or even communicate" with him.²⁶⁷⁸
7. On 30 December 2002, Bakir Caglar requested to be withdrawn from the case.²⁶⁷⁹ On 16 January 2003 Sefer Halilović requested the assignment of Ahmet Hodžić as counsel and the reassignment of Bakir Caglar as co-counsel.²⁶⁸⁰ On 18 February 2003 the Registrar withdrew the assignment of Bakir Caglar and assigned Ahmet Hodžić as counsel for the Accused.²⁶⁸¹
8. On 7 July 2003, Ahmet Hodžić filed a motion to withdraw from the case if certain requests were not met by the Trial Chamber, including the request of additional time for the preparation of

²⁶⁷³ This request is referred to in Decision of the Registrar, 19 June 2002.

²⁶⁷⁴ Decision of the Registrar, 19 June 2002. The Registrar considered that Senad Kreho held the position of Chairman of the Military Court in Sarajevo from September 1992 and September 1993 and due to this he had been involved in a case that appeared to be linked to the facts for which the Accused was charged in the indictment. The Registrar also considered that Senad Kreho was also a potential prosecution witness and that his involvement in the above-mentioned case could have been used as evidence by both the Prosecution and the Defence.

²⁶⁷⁵ This application was referred to in Decision on Sefer Halilović's Application to Review the Registrar's Decision of 19 June 2002, 1 August 2002. In a letter dated 11 July 2002, the Accused argued that he wanted to have a counsel who spoke the Bosnian language. *See* letter from Sefer Halilović to Richard Soyer, filed on 25 July 2002.

²⁶⁷⁶ Decision on Sefer Halilović's Application to Review the Registrar's Decision of 19 June 2002, 1 August 2002, referring in particular to Art. 13 (B) of the Directive on Assignment of Defence Counsel, adopted by the Tribunal on 28 July 1994 ("Directive").

²⁶⁷⁷ Decision of the Registrar, 25 September 2002.

²⁶⁷⁸ Request of the Counsel of the Accused to the Registrar for Withdrawal of Counsel pursuant to Article 19 (A0 (i) of the Directive on Assignment of Defence Counsel (Directive No. 1/94), 9 September 2002.

²⁶⁷⁹ Request of Withdrawal from this Case Pursuant to Article 19(A)(1) of Directive no. 1/94, 30 December 2002.

²⁶⁸⁰ This request is referred to in Decision of the Registrar, 18 February 2003. On 21 January 2003, Bakir Caglar agreed to represent the Accused for a period of 30 days in case his assignment as counsel was withdrawn by the Registrar. *See* Decision of the Registrar, 20 February 2003. During the Status Conference on 10 February 2003 Sefer Halilović maintained that he would seek a change of lead counsel. *See* Status Conference, 10 February 2003, T. 91-92. In a letter dated 12 February 2003, and filed on 18 February 2003, the Accused asked for the appointment of Ahmet Hodžić.

²⁶⁸¹ Decision of the Registrar, 20 February 2003.

trial.²⁶⁸² During the pre-trial conference on 15 July 2003, the Trial Chamber granted Defence Counsel a further six months to prepare the case for trial.²⁶⁸³ On 9 September 2003, the Registrar assigned Guenaël Mettraux as co-counsel for the Accused.²⁶⁸⁴

9. On 6 October 2003, Ahmet Hodžić filed a request to withdraw as lead counsel, claiming that he was unable to prepare the case for trial in view of the trial schedule as determined by the Trial Chamber.²⁶⁸⁵ On 7 October 2003, Sefer Halilović requested the withdrawal of Ahmet Hodžić and his replacement by Stefan Kirsch.²⁶⁸⁶ This request was granted on 31 October 2003.²⁶⁸⁷

10. On 5 March 2004, Sefer Halilović requested the withdrawal of Stefan Kirsch, giving as a reason a breakdown in communication.²⁶⁸⁸ On 13 July 2004, the Registrar accepted the Accused's request and suggested three candidates for replacement of lead counsel. On 14 July 2004, Sefer Halilović rejected the Registrar's suggestions and requested the assignment of Peter Morrissey.²⁶⁸⁹ On 10 August 2004 the Registrar withdrew the assignment of Stefan Kirsch and assigned Peter Morrissey as lead counsel for the Accused.²⁶⁹⁰

4. Provisional Release

11. On 28 November 2001, Sefer Halilović filed a motion for pre-trial provisional release.²⁶⁹¹ The Prosecution raised no objection on the condition that certain undertakings and guarantees were provided.²⁶⁹² On 13 December 2001, the Trial Chamber, considering the fact that Sefer Halilović had surrendered voluntarily and that all requested guarantees had been provided both by the

²⁶⁸² This motion is referred to in Decision on Withdrawal of the Defence Counsel Appointment, 28 July 2003.
²⁶⁸³ Pre-trial conference, 15 July 2003. T. 142. *See also* Decision on Withdrawal of the Defence Counsel Appointment, 28 July 2003.
²⁶⁸⁴ Decision of the Registrar, 10 September 2003. The decision followed a request of Ahmet Hodžić in this respect, dated 21 August 2003.
²⁶⁸⁵ Request for Withdrawal from the Case, 6 October 2003, referred to in Decision of the Deputy Registrar, 3 November 2003.
²⁶⁸⁶ Notice of Acceptance of Resignation and Withdrawal of Lead Counsel, 7 October 2003, referred to in Decision of the Deputy Registrar, 3 November 2003.
²⁶⁸⁷ Decision of the Deputy Registrar, 3 November 2003.
²⁶⁸⁸ On 22 March 2004, the Registrar refused to grant the request of the Accused on the basis that Stefan Kirsch and Guenaël Mettraux were fully capable of representing the Accused in a satisfactory manner. However, since no reconciliation was reached between Stefan Kirsch and Sefer Halilović, on 25 March 2004, the Registrar appointed independent counsel, Karim Khan, to assist the Accused in filing an application for review of the Registry decision. In his application for review dated 23 April 2004, the Accused submitted that the Registrar's decision to reject the withdrawal of Mr Kirsch was erroneous. On 24 May 2004, the Registry filed a response in which it presented additional arguments in support of its decision not to withdraw Mr Kirsch, including the assignment of successive lead counsel in the case. On 21 June 2004, the President quashed the decision of the Registry and directed it to reconsider the request of the Accused *de novo*. *See* Decision of the Registrar, 10 August 2004.
²⁶⁸⁹ *See* Decision of the Registrar, 10 August 2004.
²⁶⁹⁰ Decision of the Registrar, 10 August 2004.
²⁶⁹¹ Request for Provisional Pre-Trial Release, 28 November 2001.
²⁶⁹² Prosecution's Response to "Request for Provisional Pre-Trial Release", 6 December 2001. The Netherlands, as host country, did not object to the request of the Accused. *See* Letter from the Dutch Ministry of Foreign Affairs, 10 December 2001.

Accused and by the Federation of Bosnia and Herzegovina, granted the request of the Accused, subject to certain conditions.²⁶⁹³

12. Sefer Halilović was requested to attend a status conference held on 10 February 2003 in order to clarify the issue of his legal representation.²⁶⁹⁴ He was also ordered to attend the pre-trial conference on 15 July 2003.²⁶⁹⁵ The provisional release continued after these conferences under the same conditions set out in the Trial Chamber's decision of 13 December 2001.²⁶⁹⁶

13. The Trial Chamber initially ordered that the trial commence on 19 January 2004.²⁶⁹⁷ However, at the status conference on 15 December 2003, the Trial Chamber informed the parties that the start of the trial would be delayed.²⁶⁹⁸ On 8 December 2004 the Trial Chamber decided that the trial would start on 24 January 2005 and ordered Sefer Halilović to return to the UNDU no later than 17 January 2005.²⁶⁹⁹ Following the application of the Defence, the Trial Chamber changed the date of return to 20 January 2005 in order to allow the Accused to celebrate the Muslim feast of Bajram with his family in Sarajevo.²⁷⁰⁰ The second pre-trial conference was held on 24 and 27 January 2005.

5. Disclosure

14. Copies of the supporting material which accompanied the Indictment were disclosed to the Defence by the Prosecution within 30 days of the initial appearance.²⁷⁰¹ However, on 16 December 2004, the Defence requested disclosure of some remaining material.²⁷⁰² The request was granted and disclosure ordered on 31 January 2005.²⁷⁰³

15. The Trial Chamber ordered the Prosecution to disclose to the Defence all material related to the witnesses the Prosecution intended to call during trial by 15 December 2003.²⁷⁰⁴ Although the Prosecution stated that disclosure was complete by that date,²⁷⁰⁵ it continued to disclose such material, including documents obtained through continued investigation, also after 15 December 2003.²⁷⁰⁶ The Defence objected to this continued disclosure²⁷⁰⁷ and the Trial Chamber, considering

²⁶⁹³ Decision on Request for Pre-Trial Provisional Release, 13 December 2001.

²⁶⁹⁴ Scheduling Order, 24 January 2003,

²⁶⁹⁵ Scheduling Order, 27 June 2003.

²⁶⁹⁶ Scheduling Order, 24 January 2003, Scheduling Order, 27 June 2003.

²⁶⁹⁷ Order Regarding the Start Date of the Trial, 17 October 2003.

²⁶⁹⁸ Status conference, 15 December 2003.

²⁶⁹⁹ Order on Defence Motion for Scheduling of Date for Trial, 9 December 2004.

²⁷⁰⁰ Order on Defence Motion for Variation of Court Order, 14 January 2005.

²⁷⁰¹ Status Conference, 8 January 2002, T. 8-9.

²⁷⁰² Urgent Motion for Immediate Disclosure, 16 December 2004.

²⁷⁰³ Oral Ruling, Trial Hearing, 31 January 2005, T. 53.

²⁷⁰⁴ Pre-Trial Conference, 15 July 2003, T. 142.

²⁷⁰⁵ Status conference, 15 December 2003, T. 165.

²⁷⁰⁶ Defence Objection to Prosecution Continued Disclosure, 12 March 2004.

the aim of balancing the need for expeditious preparation of the case with the interests of justice, ordered that unless otherwise agreed between the parties, any further disclosure would require leave of the pre-trial Judge.²⁷⁰⁸

6. Status Conferences and Pre-Trial Conferences

16. Status conferences were held on 8 January 2002, 12 April 2002, 29 October 2002, 10 February 2003, 22 May 2003, 1 October 2003, 15 December 2003, 9 September 2004 and 11 January 2005. As mentioned above, pre-trial conferences were held on 15 July 2003 and on 24 and 27 January 2005.

7. Pre-Trial Briefs

17. The Prosecution filed its final Pre-Trial Brief on 13 October 2004, while the Defence, on 27 October 2004, notified the Trial Chamber seized of the case at the time that its Pre-Trial Brief filed on 22 March 2003 was its final Pre-Trial Brief.

18. On 20 January 2005, the Defence filed a motion requesting that a number of paragraphs be struck out from the Prosecution Pre-Trial Brief because they allegedly included allegations which went beyond the scope of the pleadings contained in the Indictment, as well as allegations which were not supported by any of the supporting material.²⁷⁰⁹ On 7 February 2005, the Trial Chamber denied the motion, considering, *inter alia*, that the evidence presented by the Prosecution to support the allegations in the Indictment will be disputed at trial and the Defence will have an adequate opportunity to challenge such evidence; that the Trial Chamber will base its findings on what has been pleaded in the Indictment, and that the Prosecution Pre-Trial Brief will be used for reference and clarification purposes.²⁷¹⁰

²⁷⁰⁷ Defence Objection to Prosecution Continued Disclosure, 12 March 2004.

²⁷⁰⁸ Decision on Defence Objection to Prosecution Continued Disclosure, 7 May 2004.

²⁷⁰⁹ Motion for Striking out of Paragraphs in Prosecution Pre-Trial Brief, 20 January 2005. During the Pre-Trial Conference on 24 and 27 January 2005, the Defence clarified its position, by stating that the Prosecution Pre-Trial Brief may indeed provide some further particulars as to the facts which are being pleaded in the Indictment, but that in the present case the Prosecution is in fact attempting to broaden its case, going "beyond the Indictment through the Pre-Trial Brief"; that the evidence which will be led by the Prosecution, might go to facts which are not properly or not sufficiently pleaded in the Indictment; and that, therefore, the aim of the Motion is to avoid the Defence facing a suggestion that it had adequate notice of those facts at the end of the Prosecution case, Pre-Trial Conference, 27 January 2005, T. 293-294.

²⁷¹⁰ Decision on Defence Motion for Striking Out of Paragraphs in Prosecution Pre-Trial Brief, 7 February 2005; *see also* Pre-Trial Conference, 27 January 2005, T. 294. The Trial Chamber notes that on a number of occasions during the proceedings, including in its Final Brief, the Defence raised its concerns about the change in the scope of the Prosecution case.

B. Trial Proceedings

1. Overview

19. The Prosecution case started on 31 January 2005 and concluded on 2 June 2005.²⁷¹¹ During that time the Trial Chamber heard the evidence of 38 live witnesses, two of whom testified by way of video-conference link, and four testified pursuant to Rule 89 (f) of the Rules.²⁷¹² Additionally, one witness was heard by way of a deposition hearing supplemented by testimony received via video-conference link. Two witness statements were admitted into evidence pursuant to Rule 92*bis* of the Rules. The Trial Chamber issued one subpoena and one order for safe conduct for two different witnesses at the request of the Prosecution. Moreover, the Trial Chamber issued one order for the temporary transfer of a detained witness.²⁷¹³ The Trial Chamber admitted 287 exhibits tendered into evidence by the Prosecution.

20. At the close of the Prosecution case, the Defence did not present any submission for acquittal under Rule 98*bis* of the Rules.²⁷¹⁴

21. The Defence case started on 27 June 2005 and concluded on 14 July 2005.²⁷¹⁵ The Trial Chamber heard three live witnesses and admitted into evidence 11 witness statements pursuant to Rule 92*bis* (B) of the Rules. The Trial Chamber also admitted one statement of a deceased witness pursuant to Rule 92*bis* (C) of the Rules.²⁷¹⁶ The Trial Chamber admitted into evidence 207 exhibits tendered into evidence by the Defence.

22. Closing arguments for the Prosecution were heard on 30 August 2005. Closing arguments for the Defence were heard on 31 August 2005.

²⁷¹¹ Trial Hearing, 31 January 2005, T. 1-2; Trial Hearing, 2 June 2005, T. 72-73.

²⁷¹² Concerning the witnesses heard pursuant to Rule 89(F) of the Rules, the following procedure was adopted. The Prosecution read in court a summary of the witness statement, which was later admitted into evidence. The witness was present in court and confirmed that the statement accurately reflected what he or she had said at the time the statement was taken. The witness was available for examination on the most significant points of his or her statement, for cross-examination and questioning by the judges. The procedure pursuant to Rule 89(F) was used only in relation to evidence in written form which did not concern significant acts or conduct of the Accused, did not relate to issues pivotal to the Prosecution case, and did not concern persons or events significantly proximate to the Accused.

²⁷¹³ Decision On Prosecution's Motion For The Temporary Transfer Of Detained Witness Enes Šakrak, 10 February 2005.

²⁷¹⁴ Trial Hearing, 2 June 2005, T. 53-54.

²⁷¹⁵ Trial Hearing, 27 June 2005, T. 1; Trial Hearing, 14 July 2005, T. 19.

²⁷¹⁶ Decision On Motion For Admission Of Written Statement Of Deceased Witness Pursuant To Rule 92 *bis* (C), 25 July 2005, filed confidentially.

2. E-court

23. The trial, as a pilot project within the Tribunal, used an E-court system. This system allowed the simultaneous electronic presentation of documentary and video evidence in-court in several languages. The system also provided for electronic admission and management of documentary evidence. The system ensured that all evidence introduced at trial was available to both parties in electronic form from the moment the evidence was used in court.²⁷¹⁷ The E-court system also facilitated the marking of exhibits by witnesses. One of the main purposes of the E-court system is to improve efficiency of trial proceedings, *inter alia* by reducing the need to rely on hardcopy documents, without causing any prejudice to the rights of the parties.²⁷¹⁸

3. Assignment of a Bench

24. On 17 January 2005, the President of the Tribunal transferred the case to Trial Chamber I, Section A,²⁷¹⁹ consisting of Judge Liu Daqun (China), presiding, Judge Amin El Mahdi (Egypt) and Judge György Szénási (Hungary).²⁷²⁰ On 30 May 2005, Judge György Szénási resigned due to health reasons. On the same day the Accused gave his consent to the continuation of the proceedings with a new judge, pursuant to Rule 15*bis* of the Rules.²⁷²¹ Judge György Szénási was replaced by Judge Florence Ndepele Mwachande Mumba (Zambia) on 31 May 2005.²⁷²²

4. Protective Measures

25. A general decision on non-disclosure was issued 22 January 2004 by the Trial Chamber seized of the case at the time.²⁷²³ By this decision, the Defence was ordered not to disclose to the public any confidential or non-public material disclosed to it by the Prosecution in the present case, pursuant to Rules 66 (A) (i) and (ii), 66 (B) and 68 of the Rules. In an oral ruling on 7 March 2005 with respect to a Prosecution request for protective measures for a witness,²⁷²⁴ the Trial Chamber while recalling the Accused's right to a fair and public hearing, and that in principle all hearings should be conducted in open session, also recognised the need in specific cases, to duly consider

²⁷¹⁷ One of the main advantages of the use of the E-court system is that it allows simultaneous display in-court of documents in several languages, and therefore it allows the Accused and the witness, as well as the parties to view the documents in a language they understand.

²⁷¹⁸ *See also* Decision on Motion for Prosecution Access to Defence Documents Used in Cross-Examination of Prosecution Witnesses, 9 May 2005, in particular paras 14-19.

²⁷¹⁹ President's Order Reassigning a Case to a Trial Chamber, 17 January 2005.

²⁷²⁰ President's Order Assigning Judges to a Case before the Trial Chamber, 25 January 2005.

²⁷²¹ Status Conference, 30 May 2005, T. 2.

²⁷²² President's Order Replacing a Judge in a Case before a Trial Chamber, 31 May 2005.

²⁷²³ Decision on Prosecution's Request for Order of Non-Disclosure, 22 January 2004.

²⁷²⁴ Oral Ruling, Trial Hearing, 07 Mar '05, T. 101-102.

“the potential harms to the witnesses”.²⁷²⁵ Protective measures for witnesses were granted orally during the trial.

26. Nine Prosecution witnesses were granted protective measures: they were examined under a pseudonym and with facial distortion. Pseudonyms were granted to two Defence witnesses, of whom one was heard in closed session, and the other one was heard in open session but with facial distortion.

5. Agreement of the Parties

27. On 29 February 2005, the Defence requested the Trial Chamber to take judicial notice of a number of factual findings from Trial Chamber judgements in *Prosecutor v. Galić* and *Prosecutor v. Naletilić and Martinović*.²⁷²⁶ On 21 April 2005, the Defence and the Prosecution met and agreed upon a number of these facts.²⁷²⁷ The Defence requested to have these facts regarded as agreed upon by the Parties²⁷²⁸ and on 12 May 2005 the Trial Chamber granted the request and accepted those facts under Rule 65ter (H).²⁷²⁹

28. On 14 July 2005, the Defence requested the Trial Chamber to consider four facts concerning the ABiH military security service as agreed upon the parties, and to admit into evidence the Law on District Military Courts.²⁷³⁰ The Prosecution confirmed the agreement²⁷³¹ and the Trial Chamber accepted these facts as agreed by the Parties and admitted the text of the law into evidence on 25 July 2005.²⁷³²

6. Statements of the Accused

29. On 28 April 2005, the Prosecution sought to tender into evidence from the bar table the record of the interview of Sefer Halilović with the Prosecution, which took place between 11 October and 12 December 2001.²⁷³³ On 9 May 2005, the Defence objected to the tendering and admission into evidence of this document.²⁷³⁴ By decision of 20 June 2005, the Trial Chamber admitted the record of the interview into evidence.²⁷³⁵ The Defence subsequently was granted certification from the

²⁷²⁵ Oral Ruling, Trial Hearing, 7 March 2005, T. 101.

²⁷²⁶ Motion for Judicial Notice, 1 March 2005.

²⁷²⁷ See Motion *Re* Agreed Facts and Motion for Withdrawal of “Motion for Judicial Notice”, 22 April 2005.

²⁷²⁸ Motion *Re* Agreed Facts and Motion for Withdrawal of “Motion for Judicial Notice”, 22 April 2005.

²⁷²⁹ Oral Ruling, Trial Hearing, 12 May 2005, T. 10-11.

²⁷³⁰ Motion Concerning Further Agreed Facts, 14 July 2005, see Annex A and B.

²⁷³¹ Trial Hearing, 14 July 2005, T. 4.

²⁷³² Decision on Motion Concerning Further Agreed Facts, 25 July 2005.

²⁷³³ Status conference, 28 April 2005, T. 26.

²⁷³⁴ Response to Prosecution Motion to Tender Record of Interview Obtained in Violation of Statute and Rules, 9 May 2005.

²⁷³⁵ Decision on Admission into Evidence of Interview of the Accused, 20 June 2005.

Trial Chamber to appeal the decision.²⁷³⁶ The Appeals Chamber, by decision of 19 August 2005, rendered the interview inadmissible and ordered the Trial Chamber to expunge the record of interview from the trial record.²⁷³⁷

30. Also on 28 April 2005, the Prosecution sought to tender into evidence the statement of the interview of Sefer Halilović with the Prosecution, held between 23 February and 6 May 1996.²⁷³⁸ On 8 July 2005, the Trial Chamber decided not to admit the statement into evidence.²⁷³⁹ The Prosecution sought certification for interlocutory appeal of the decision;²⁷⁴⁰ however, the Trial Chamber denied the request, as it was made at a very late stage of the proceedings, considering that the Defence closed its case on 14 July 2005 and the Trial Chamber had denied a motion for rebuttal on 21 July 2005.²⁷⁴¹

7. Rebuttal and Re-opening

31. On 14 July 2005, the Prosecution filed a motion to admit evidence in rebuttal and to re-open its case for the limited purpose of introducing evidence partly regarding the issue of whether investigations into the killings in Uzdol were carried out.²⁷⁴² The Trial Chamber denied the motion stressing that the Prosecution should have led the evidence during its case-in-chief as it concerned a matter which was important to the Prosecution case and which did not arise out of the Defence case, and that a failure to do so could not be compensated for by submitting the evidence as rebuttal evidence.²⁷⁴³

8. Provisional Release

32. On 1 April 2005, the Defence filed a confidential motion seeking the provisional release of the Accused during the suspension of the trial proceedings from the end of April 2005 until sometime in early or mid-May 2005. The Prosecution did not object to the motion²⁷⁴⁴ however the Trial Chamber denied the motion, noting that it was not supported by guarantees of the Government of

²⁷³⁶ See Motion for Certification Concerning Admission of Record of Interview of the Accused, 22 June 2005; and Decision on Motion for Certification, 30 June 2005.

²⁷³⁷ *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005.

²⁷³⁸ Status Conference, 28 April 2005, T. 26.

²⁷³⁹ Decision on Motion for Exclusion of Statement of Accused, 8 July 2005.

²⁷⁴⁰ Prosecution Request for Certification for Interlocutory Appeal of “Decision on Motion for Exclusion of Statement of Accused”, 13 July 2005.

²⁷⁴¹ Decision on Prosecution Request for Certification for Interlocutory Appeal of “Decision on Motion for Exclusion of Statement of Accused”, 25 July 2005.

²⁷⁴² Prosecution Motion to Call Rebuttal Evidence, 14 July 2005.

²⁷⁴³ Decision on Prosecution Motion to Call Rebuttal Evidence, 21 July 2005.

²⁷⁴⁴ Trial Hearing, 12 April 05, T. 61.

Bosnia and Herzegovina, and considering that the request had been made while the Prosecution was still presenting its case.²⁷⁴⁵

33. On 7 July 2005, the Defence filed a motion seeking the provisional release of the Accused from the end of the Defence case until the rendering of the judgement.²⁷⁴⁶ The motion was accompanied by the relevant guarantees of the Government of Bosnia and Herzegovina.²⁷⁴⁷ The Prosecution objected to the request.²⁷⁴⁸ The Trial Chamber partially granted the motion and ordered the provisional release of Sefer Halilović under certain terms and conditions until 24 August 2005 in order for the Accused to be present to the closing arguments.²⁷⁴⁹

34. On 22 August, the Defence filed a motion seeking the provisional release of the Accused in the period between the end of the closing arguments and the rendering of the judgement.²⁷⁵⁰ The Trial Chamber granted the motion on 1 September 2005, and ordered the Accused to return to the Tribunal on 7 November 2005.²⁷⁵¹ Following its order of 28 October 2005 wherein the Trial Chamber scheduled the rendering of the Judgement for 16 November 2005, the Trial Chamber modified its decision on provisional release and ordered Sefer Halilović to return to the UNDU on 14 November 2005.²⁷⁵²

²⁷⁴⁵ Decision on Motion for Provisional Release, 21 April 2005.

²⁷⁴⁶ Renewed Motion for Provisional Release, 6 July 2005 (“Renewed Motion for Provisional Release”).

²⁷⁴⁷ See Annex to the Renewed Motion for Provisional Release.

²⁷⁴⁸ Prosecution’s Response to Defence Renewed Motion for Provisional Release, 15 July 2005.

²⁷⁴⁹ Decision on Renewed Motion for Provisional Release, 22 July 2005.

²⁷⁵⁰ Motion for Provisional Release, 22 August 2005. On 29 August 2005, the Defence submitted the guarantees from the government of Bosnia and Herzegovina, Addendum *Re* Motion for Provisional Release, 29 August 2005.

²⁷⁵¹ Decision on Motion for Provisional Release, 1 September 2005. The provisional release of the Accused was granted under the same conditions as the previous decision of the Trial Chamber in that matter.

²⁷⁵² Order Modifying Decision on Provisional Release, 31 October 2005.