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**The War in Yugoslavia in ICTY Judgements:  
The Goals of the Warring Parties and Nature of the Conflict**

Julija Bogoeva





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# The War in Yugoslavia in ICTY Judgements: The Goals of the Warring Parties and Nature of the Conflict

Julija Bogoeva\*

## 1. Introduction

I conducted a five-month review of all International Criminal Tribunal for the former Yugoslavia ('ICTY') judgements<sup>1</sup> in order to determine whether they answer two questions: why was there war in the former Yugoslavia and what kind of a war? More specifically, did the Tribunal establish the goals of the warring parties and the nature of the conflict which destroyed a multi-national, multi-religious European state on the eve of the twenty first century?

Based on evidence presented during 20 years of trials, the Tribunal's judgements do give the answers. That is important because, as with any conflict, the most obvious and fundamental inquiry is what the conflict was about and how it was waged. Interest then may turn to the concrete circumstances or legal matters involved. With the Tribunal at the conclusion of its mandate, its factual and legal findings taken together, as a whole, can be looked to for a better and deeper understanding of what happened in the former Yugoslavia and why. They are also the main source of tested facts, in opposition to distortions and revisionist tendencies.

Even though it is not its task, the ICTY has established the nature of the Yugoslav conflict in the exercise of its function which requires proof of specific elements if the law is to apply. As charges under Article 2 of the Statute (grave breaches of the Geneva Conventions) are conditioned on the existence of international armed conflict, for jurisdictional reasons and as

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<sup>1</sup> Namely, all first-instance and appeal judgements handed down by the end of April 2015. At that point in time, the *Mladić* and *Hadžić* trials were on going. Judgements were pending in the *Šešelj* and *Karadžić* cases.

an element of alleged crimes, the Prosecution has presented evidence, and the Judges have ruled on the international character of the conflict.

That legal classification, however important,<sup>2</sup> does not capture or fully reflect the nature of the conflict. It is necessary to at least also explore whether civilian populations were the object of attack. The review, therefore, focused equally on charges of crimes against humanity, which require proof of a widespread or systematic attack against a civilian population (in particular persecution, because of the requisite discriminatory intent), and genocide, with its specific intent to destroy, in whole or in part, a national, ethnic or religious group as such. If, as in the war in the former Yugoslavia, almost all accused have been found guilty of crimes against humanity including persecution, and some of genocide, there can be no doubt that the civilian population was deliberately targeted. The war was characterised by “a widespread *and* systematic campaign of terror and violence”, to mention but one finding.<sup>3</sup>

The reasons for such an attack can be found in section two of the review which addresses the findings on the goals of the parties to the conflict and their translation into a common criminal purpose, which in turn became determinative of the nature of the conflict, presented in section three.

The review and analysis should be regarded only as a foundation for further in-depth study.

## 2. The Goals of the Warring Parties

The judgements have consistently found, as demonstrated below, that the Serbian and Croatian leaderships in the 1990s saw the break-up of Yugoslavia as an opportunity to achieve antiquated nationalistic goals – a Greater Serbia and a Greater Croatia, expanded nation-states as large and as ethnically pure as possible. The shared desire was the destruction of Bosnia and

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<sup>2</sup> ICTY, *Prosecutor v. Duško Tadić*, Appeals Chamber, Judgement, 15 July 1999, IT-94-1-A, para. 97 (*‘Tadić ACJ’*) (<http://www.legal-tools.org/doc/8efc3a/>) (“Indeed, the legal consequences of the characterisation of the conflict as either internal or international are extremely important. Should the conflict eventually be classified as international, it would *inter alia* follow that a foreign State may in certain circumstances be held responsible for violations of international law perpetrated by the armed groups acting on its behalf.”).

<sup>3</sup> See, e.g., ICTY, *Prosecutor v. Milan Milutinović et al.*, Trial Chamber, Judgement, 26 February 2009, IT-05-87-T, vol. 3, para. 95 (*‘Milutinović et al.’*) (<http://www.legal-tools.org/doc/d79e85/>) (italics in original). [Editor’s note: this case would later be known as *Prosecutor v. Nikola Šainović et al.* on appeal.]



Hercegovina (hereinafter referred to as ‘Bosnia’ or ‘BiH’) by dismemberment. Evidence was admitted that “President Tudjman himself acknowledged to Mr. Ashdown, a U.K. politician, in 1991 that he and Milošević shared an understanding as to how the territory of Bosnia and Herzegovina would be divided between them [...]”.<sup>4</sup> Milošević, based on presented evidence, told Hrvoje Šarinić, on 12 November 1993: “I am telling you frankly that with Republika Srpska in Bosnia, which will sooner or later become part of Serbia, I have resolved ninety percent of Serbia’s national question”; and again in September 1995: “We, Hrvoje, are going to solve our problem, and without the international community. We are each going to annex our part of Bosnia Hercegovina”.<sup>5</sup>

According to the judgements, the expansionist goals were translated into policies that were implemented at various levels through criminal means – campaigns of terror, violence and ethnic cleansing, in Croatia and Bosnia from 1991 through 1995.

Control of territory and ethnic purity was also at play in 1998–99 in Serbia or the Federal Republic of Yugoslavia (‘FRY’)<sup>6</sup> when again the same criminal means were applied against the Albanian population of Kosovo.

## **2.1. The Political Goals: Territorial Expansion, Ethnic Purity (‘Ethnic Cleansing’)**

In *Kupreškić et al.*:

Croatia and Serbia’s designs on the territory of Bosnia appear to be long-standing. When, in April 1992, the Republic of Bosnia and Herzegovina gained its independence, it appears that Serbia and subsequently Croatia put these designs into effect, with the use of their respective Bosnian Serb and Bosnian Croat agents.<sup>7</sup>

In *Delalić*:

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<sup>4</sup> ICTY, *Prosecutor v. Dario Kordić and Mario Čerkez*, Trial Chamber, Judgement, 26 February 2001, IT-95-14/2-T, para. 137 (‘*Kordić and Čerkez*’) (<http://www.legal-tools.org/doc/d4fedd/>).

<sup>5</sup> ICTY, *Prosecutor v. Slobodan Milošević*, Trial Chamber, Decision on Motion for Judgement of Acquittal, 16 June 2004, IT-02-54-T, para. 254 (‘*S. Milošević*’) (<http://www.legal-tools.org/doc/d7fb46/>, <http://www.legal-tools.org/doc/78bb66/>).

<sup>6</sup> Proclaimed on 27 April 1992, comprising Serbia and Montenegro.

<sup>7</sup> ICTY, *Prosecutor v. Zoran Kupreškić et al.*, Trial Chamber, Judgement, 14 January 2000, IT-95-16-T, para. 40 (‘*Kupreškić et al.*’) (<http://www.legal-tools.org/doc/5c6a53/>) (internal footnotes omitted). Hereinafter, internal footnotes are omitted unless otherwise stated.

The political goals of the Serbian authorities in Belgrade appear to have been to carve a new set of territories for the Serbs out of both Croatia and Bosnia and Herzegovina, to be added to Serbia and Montenegro.<sup>8</sup>

There was a clear common purpose between the FRY and the Bosnian Serbs to execute a project conceived of in Belgrade – that of an expanded Serbian State [...].<sup>9</sup>

In *Orić*:

When it appeared increasingly unlikely that BiH would remain within the SFRY [Socialist Federal Republic of Yugoslavia], the Serbian leadership in Belgrade had already embarked upon a project to create the boundaries of a new Serbian state comprising all ethnic Serbs from the territories of the states breaking away from the SFRY (“New State Project”) [a term by an expert witness, James Gow]. This new Serbian state was intended to encompass territories both from Croatia and BiH which were predominantly inhabited by Serbs, as well as areas where the Serbs were a minority. From the outset, the New State Project was to be realised through a campaign of ‘ethnic cleansing’ which included the forcible removal or even the killing of the non-Serb population from the targeted territories in Croatia and BiH.<sup>10</sup>

In *Tadić*:

The objective of Serbia, the JNA and Serb-dominated political parties, primarily the SDS, at this stage was to create a Serb-dominated western extension of Serbia, taking in Serb-dominated portions of Croatia and portions, too, of Bosnia and Herzegovina. This would then, together with Serbia, its two autonomous provinces and Montenegro, form a new and smaller Yugoslavia with a substantially Serb population. However, among obstacles in the way were the very large Muslim and

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<sup>8</sup> ICTY, *Prosecutor v. Zejnil Delalić*, Trial Chamber, Judgement, 16 November 1998, IT-96-21-T, para. 110 (*‘Delalić’*) (<http://www.legal-tools.org/doc/6b4a33/>).

<sup>9</sup> *Ibid.*, para. 262 (ellipsis added). Hereinafter, ellipses enclosed in square brackets are added unless otherwise stated.

<sup>10</sup> ICTY, *Prosecutor v. Naser Orić*, Trial Chamber, Judgement, 30 June 2006, IT-03-68-T, para. 82 (<http://www.legal-tools.org/doc/1c3788/>) (square brackets added). Hereinafter, square brackets are added unless otherwise stated.

Croat populations native to and living in Bosnia and Herzegovina. To deal with that problem the practice of ethnic cleansing was adopted.<sup>11</sup>

It is clear from the evidence that the military and political objectives of the *Republika Srpska* and of the [FRY] were largely complementary. [...] The SDS political leadership of the *Republika Srpska* and their senior military commanders no doubt considered the success of the overall Serbian war effort as a prerequisite to their stated political aim of joining with Serbia and Montenegro as part of a Greater Serbia, unifying as it would the territories in which Serbs lived in the former Yugoslavia.<sup>12</sup>

*In Stanišić and Župljanin:*

[T]he aim of the Bosnian Serb leadership as of 1991 was for Serbs to live in one state with other Serbs in the former Yugoslavia. The Bosnian Serb leadership shared the idea of Greater Serbia. The main way of achieving this goal was through the preservation of Yugoslavia, in one form or another. Hence the view that Serbs from Serbia, Croatia, BiH and Montenegro should live together in one state, which would include territory from each of those republics.<sup>13</sup> What followed were the violent takeovers of those municipalities and the ensuing widespread *and* systematic campaign of terror and violence resulting in crimes that the Chamber has found to have been committed. [...] On the basis of the numerous statements of the Bosnian Serb leadership at the time, as narrated above, the Chamber finds that the goal of these actions was the establishment of a Serb state, as ethnically “pure” as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats.<sup>14</sup>

*In Blagojević and Jokić:*

After the break-up of the SFRY, the Bosnian Serb political leadership, pursuing the goal of creating a unified ethnically

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<sup>11</sup> ICTY, *Prosecutor v. Duško Tadić*, Trial Chamber, Opinion and Judgment, 7 May 1997, IT-94-1-T, para. 84 (*‘Tadić’*) (<http://www.legal-tools.org/doc/0a90ae/>).

<sup>12</sup> *Ibid.*, para. 603 (italics in original).

<sup>13</sup> ICTY, *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Trial Chamber II, Judgment, 27 March 2013, IT-08-91-T, vol. 2, para. 309 (*‘Stanišić and Župljanin’*) (<http://www.legal-tools.org/doc/cbc02a/>).

<sup>14</sup> *Ibid.*, para. 311 (italics in original).

homogenous “Greater Serbia,” had proclaimed the autonomous Serbian Republic of Bosnia and Herzegovina, which later became known as the Republika Srpska, as early as January 1992.<sup>15</sup>

In *Slobodan Milošević*:

Aleksa Buha, Foreign Minister of the RS, stated in May 1994 in the Assembly of Republika Srpska that their “primary option [was] unification with Serbia, and if that doesn’t fly, then independence”. This was reiterated in May 1994 by Milan Martić, President of Republic of Serbian Krajina, who stated in the same session that “we are one and the same nations ... and be sure that before long, whether it pleases someone or not, we will be one state”. Radovan Karadžić had also promoted the idea of unification when he announced in October 1993 that “we must propose the complete unity of the Serbian people, including Yugoslavia, the RSK and the RS”.<sup>16</sup>

In *Martić*:

The President of Serbia, Slobodan Milošević, publicly supported the preservation of Yugoslavia as a federation of which, *inter alia*, the SAO Krajina would form a part. However, Slobodan Milošević covertly intended the creation of a Serb state. Milan Babić testified that Slobodan Milošević intended the creation of such a Serb state through the establishment of paramilitary forces and the provocation of incidents in order to allow for JNA intervention, initially with the aim to separate the warring parties but subsequently in order to secure territories envisaged to be part of a future Serb state.<sup>17</sup> The SAO Krajina, and subsequently the RSK, leadership endorsed Slobodan Milošević’s vision to create a Serb-dominated state.<sup>18</sup> The evidence establishes the existence, as of early 1991, of a political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish a unified territory. Moreover, the evidence establishes that the SAO Krajina, and subsequently the RSK government and authorities

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<sup>15</sup> ICTY, *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Trial Chamber I, Section A, Judgement, 17 January 2005, IT-02-60-T, para. 93 (*‘Blagojević and Jokić’*) (<http://www.legal-tools.org/doc/7483f2/>).

<sup>16</sup> *S. Milošević*, para. 239 (square brackets and ellipsis in original).

<sup>17</sup> ICTY, *Prosecutor v. Milan Martić*, Trial Chamber I, Judgement, 12 June 2007, IT-95-11-T, para. 329 (*‘Martić’*) (<http://www.legal-tools.org/doc/06634c/>).

<sup>18</sup> *Ibid.*, para. 333.

fully embraced and advocated this objective, and strove to accomplish it in cooperation with the Serb leaderships in Serbia and in the RS in BiH.<sup>19</sup>

In *Deronjić*:

In April 1991 a plenary meeting was held in Sarajevo by the Main Board comprising also all the presidents of the SDS municipal boards and the Serb deputies in the assembly, the joint assembly of Bosnia and Herzegovina and the top leadership of the SDS, including President Karadžić. [...] In the course of that meeting, it was stated by Radovan Karadžić that if there was no longer a Socialist Federal Republic of Yugoslavia (hereinafter “SFRY”), Serbs would only have one option left, and that is “Greater Serbia”. After that official meeting, a more informal meeting in a smaller circle took place in the National Restaurant in Sarajevo, where it was stated by Radovan Karadžić that it was agreed that Bosnia and Herzegovina would be divided up.<sup>20</sup> In early May 1991, Miroslav Deronjić and Goran Zekić met Mihalj Kertes in Belgrade where the first arms delivery to Bratunac was agreed upon. Miroslav Deronjić participated personally in this arms delivery. At that meeting Kertes said that the decision of the political and state leadership of SFRY was that an area of 50 kilometres from the Drina would be Serb and Zekić and Miroslav Deronjić accepted this.<sup>21</sup>

In *Krajišnik*:

The SDS party leadership, in agreement with the political establishment in Serbia, began considering options for a break-up of Bosnia-Herzegovina along ethnic lines and a realignment of component parts with neighbouring states. On 14 February 1991 Slobodan Milošević briefed Radovan Karadžić, Biljana Plavšić, and the Accused on the stance of each of the Presidents of the Yugoslav republics with respect to maintaining a federal Yugoslavia. A few days after this meeting, Karadžić gave an interview in which he stated that, should Croatia and Slovenia secede, the “core Yugoslavia” that remained would have to adjust its borders by applying “the eth-

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<sup>19</sup> *Ibid.*, para. 442.

<sup>20</sup> ICTY, *Prosecutor v. Miroslav Deronjić*, Trial Chamber II, Sentencing Judgement, 30 March 2004, IT-02-61-S, para. 52 (“*Deronjić*”) (<http://www.legal-tools.org/doc/95420f/>).

<sup>21</sup> *Ibid.*, para. 54.

nic principle”: to the extent possible Serb villages would remain in Yugoslavia, and Croatian villages would become part of a new Croatian state.<sup>22</sup>

In *Perišić*:

On 8 November 1993, the political and military leadership of the FRY, RS and RSK, including Perišić, Mladić, Novaković, and Slobodan Milošević met in Belgrade. One of the meeting’s conclusions was to start preparing a single war plan involving all three armies (VJ, VRS and SVK).<sup>23</sup> The war plan was finalised on 14 November 1993 and was signed by the President of the SDC,<sup>24</sup> Zoran Lilić. It was formally known as the “Directive for Use of the Yugoslav Army, the Republika Srpska Army, and the Serb Army of Krajina”, and was commonly referred to as the “Drina Plan”. It provided for the creation of a single Serbian State [...]. It envisaged all three armies having a common war objective, military doctrine and military strategy. Its general objective was to:

Defend the territorial integrity of the Serbian states west of the Drina and Danube rivers and the FRY, protect Serbian people from genocide, liberate parts of Serbian territories with Serbian majorities, create conditions for the establishment of a single state of the Serbian people, prevent creation of Greater Croatia and a compact Islamic state on the territory of the former Yugoslavia.<sup>25</sup>

In *Naletilić and Martinović*:

Following the declaration of independence, the BH Serbs attacked different parts of Bosnia and Herzegovina. The state administration of Bosnia and Herzegovina effectively ceased to function having lost control over the entire territory. The BH Serbs were not the only ones with ambitions for territorial

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<sup>22</sup> ICTY, *Prosecutor v. Momčilo Krajišnik*, Trial Chamber I, Judgement, 27 September 2006, IT-00-39-T, para. 50 (*‘Krajišnik’*) (<http://www.legal-tools.org/doc/62a710/>).

<sup>23</sup> The three Serbian armies in the FRY, Bosnia and Herzegovina and Croatia: Army of Yugoslavia (*‘VJ’*), Army of Republika Srpska (*‘VRS’*), Serbian Army of Krajina (*‘SVK’*). ICTY, *Prosecutor v. Momčilo Perišić*, Trial Chamber I, Judgement, 6 September 2011, IT-04-81-T, para. 1303 (*‘Perišić’*) (<http://www.legal-tools.org/doc/f3b23d/>).

<sup>24</sup> The FRY Supreme Defence Council, comprising the FRY President, Zoran Lilić, and the presidents of Serbia and Montenegro, Slobodan Milošević and Momir Bulatović. [Footnote added.]

<sup>25</sup> *Perišić*, para. 1306.

expansion; the BH Croats and their leader Franjo Tuđman also aimed at securing parts of Bosnia and Herzegovina as Croatian. Secret discussions between Franjo Tuđman and Slobodan Milošević on the division of Bosnia and Herzegovina were held as early as March 1991. The policies of the Republic of Croatia and its leader Franjo Tuđman towards Bosnia and Herzegovina were never totally transparent and always included Franjo Tuđman's ultimate aim of expanding Croatia's borders.<sup>26</sup>

In *Blaškić*:

In the light of all the foregoing and, in particular, the Croatian territorial ambitions in respect of Bosnia-Herzegovina detailed above, the Trial Chamber finds that Croatia, and more specifically former President Tuđman, was hoping to partition Bosnia [...].<sup>27</sup> These aspirations for a partition were furthermore displayed during the confidential talks between Franjo Tuđman and Slobodan Milošević in Karadjordjevo on 30 March 1991 on the division of Bosnia-Herzegovina. [...] An interview of the Defence witness Bilandžić published on 25 October 1996 by the Croatian weekly *Nacional* confirms that, following negotiations with Slobodan Milošević, "it was agreed that two commissions should meet and discuss the division of Bosnia and Herzegovina". The agreement entered into by the Serbs and Croats on the partition of Bosnia was reportedly confirmed at a meeting between the Bosnian Serb and Bosnian Croat political leaders, Radovan Karadžić and Mate Boban, in Graz in Austria on 6 May 1992. They allegedly agreed to resort to arbitration to determine whether certain zones would fall within Serbian or Croatian "constituent entities".<sup>28</sup> The aspirations of Franjo Tuđman to annex "Croatian" regions of Bosnia persisted throughout the conflict. On 6 May 1995, during a dinner at which he was sitting beside Mr. Paddy Ashdown, leader of the Liberal Democrat Party in the United Kingdom, who was called as a witness by the Prosecutor, President Tuđman clearly confirmed that Croatia had aspirations to territory in Bosnia. Having sketched on the back

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<sup>26</sup> ICTY, *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Trial Chamber, Judgement, 31 March 2003, IT-98-34-T, para. 14 ('*Naletilić and Martinović*') (<http://www.legal-tools.org/doc/f2cfeb/>).

<sup>27</sup> ICTY, *Prosecutor v. Tihomir Blaškić*, Trial Chamber, Judgement, 3 March 2000, IT-95-14-T, para. 122 ('*Blaškić*') (<http://www.legal-tools.org/doc/e1ae55/>).

<sup>28</sup> *Ibid.*, para. 105.

of a menu a rough map of the former Yugoslavia showing the situation in ten years time, Franjo Tuđman explained to Mr. Ashdown that one part of Bosnia would belong to Croatia and the other part to Serbia. He also said that there would no longer be a Muslim region within the former Yugoslavia, that it would constitute only a “small element of the Croat State”.<sup>29</sup> Furthermore, it appears that the HVO<sup>30</sup> and Croatia shared the same goals. The HVO and some paramilitary or assimilated forces fought for Croatia, defended the “Croatian” people and territory and wanted the territory which they regarded as Croatian to be annexed to the Republic of Croatia.<sup>31</sup>

*In Kordić and Čerkez:*

Having considered all the evidence on this topic, the Trial Chamber [...] finds that the weight of the evidence and all the circumstances point to the conclusion that the HZ H-B<sup>32</sup> was founded with the intention that it should secede from Bosnia and Herzegovina and with a view to unification with Croatia.<sup>33</sup>

*In Prlić et al.:*

[T]he Chamber finds that the ultimate purpose of the HZ(R) H-B leaders and of Franjo Tuđman at all times relevant under the Indictment was to set up a Croatian entity that reconstituted, at least in part, the borders of the Banovina of 1939, and facilitated the reunification of the Croatian people. This Croatian entity in BiH was either supposed to be joined to Croatia directly subsequent to a possible dissolution of BiH, or otherwise, to be an independent state within BiH with close ties to Croatia.<sup>34</sup> It is clear from the evidence that as of December 1991, the leaders of the HZ(R) H-B, including Mate Boban, and leaders of Croatia, including Franjo Tuđman, believed that to achieve the political purpose in the long-term, namely, the establishment of a Croatian entity reconstituting in part the borders of the 1939 Banovina to facilitate the reunification of

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<sup>29</sup> *Ibid.*, para. 106.

<sup>30</sup> Croatian Defence Council, the armed force of the Bosnian Croats. [Footnote added.]

<sup>31</sup> *Blaškić*, para. 108.

<sup>32</sup> Croatian Community of Herzeg-Bosna, the Bosnian Croat entity in Bosnia Herzegovina. [Footnote added.]

<sup>33</sup> *Kordić and Čerkez*, para. 491.

<sup>34</sup> ICTY, *Prosecutor v. Jadranko Prlić et al.*, Trial Chamber III, Judgement, 29 May 2013, IT-04-74-T, vol. 4, para. 24 (*‘Prlić et al.’*) (<http://www.legal-tools.org/doc/202eba/>).



the Croatian people, it was necessary to change the ethnic make-up of the territories claimed to form part of the HR H-B.<sup>35</sup>

In *Naletilić and Martinović*:

There is no doubt that the Republic of Croatia and the HZ-HB were pursuing the same ultimate goals, namely the incorporation of Croatian provinces of Bosnia and Herzegovina into a single Croatian State. In this respect, the Chamber notes the words of President Tudjman himself during a meeting held on 22 October 1993:

[s]everal months ago, I told you about the situation and gave the tasks to the Minister of Defence Mr ŠUŠAK and General BOBETKO, /as regards/ our help and our engagement in Herceg-Bosna. I told them that this was where the future borders of the Croatian state are being resolved. That is when I pointed out that it was very important that they defended the positions and the territory the HVO was holding there [...] The general political situation is such today that very few of the international factors think that the union of Bosnia and Herzegovina will survive.<sup>36</sup>

## 2.2. The ‘Strategic Goals’: Seizing Territories by Criminal Means (Terror, Persecution, Violence)

The *Martić* judgement points out:

The Trial Chamber considers that such an objective, that is to unite with other ethnically similar areas, in and of itself does not amount to a common purpose within the meaning of the law on JCE pursuant to Article 7(1) of the Statute. However, where the creation of such territories is intended to be implemented through the commission of crimes within the Statute this may be sufficient to amount to a common criminal purpose.<sup>37</sup>

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<sup>35</sup> *Ibid.*, para. 43.

<sup>36</sup> *Naletilić and Martinović*, para. 200 (square brackets and ellipsis in original) (citing transcript of conversation between Tudjman and the Minister of Defence held on 22 October 1993 in the Presidential residence).

<sup>37</sup> *Martić*, para. 442.

In *Brđanin*:

In essence, these strategic goals constituted a plan to seize and control territory, establish a Bosnian Serb state, defend defined borders and separate the ethnic groups within BiH.<sup>38</sup> The Trial Chamber is convinced that the six strategic goals [...] constituted the political manifesto of the Bosnian Serb leadership and turned out to be the driving factor behind the actions of the Bosnian Serb armed forces, shaping the events in BiH from May 1992 onwards.<sup>39</sup> The Trial Chamber is satisfied beyond reasonable doubt that the crimes that were committed in the Bosnian Krajina from April 1992 until the end of December 1992 [...] occurred as a direct result of the overarching Strategic Plan. The ethnic cleansing was not a by-product of the criminal activity; it was its very aim and thus an integral part of the Strategic Plan.<sup>40</sup>

In *Stakić*:

The Trial Chamber agrees with the Prosecution's military expert, Ewan Brown, who came to the conclusion that the six strategic goals should be seen as the political direction given by the senior Bosnian Serb leadership regarding the creation of a Bosnian Serb State.<sup>41</sup>

In *Plavšić*:

The SDS and the Bosnian Serb leadership were committed to a primary goal that all Serbs in the former Yugoslavia would remain in a common state [...]. By October 1991, the Bosnian Serb leadership, including Mrs. Plavšić, knew and intended that the separation of the ethnic communities would include the permanent removal of ethnic populations, either by agreement or by force and further knew that any forcible removal

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<sup>38</sup> ICTY, *Prosecutor v. Radoslav Brđanin*, Trial Chamber II, Judgement, 1 September 2004, IT-99-36-T, para. 76 (<http://www.legal-tools.org/doc/4c3228/>).

<sup>39</sup> *Ibid.*, para. 79.

<sup>40</sup> *Ibid.*, para. 118.

<sup>41</sup> ICTY, *Prosecutor v. Milomir Stakić*, Trial Chamber II, Judgement, 31 July 2003, IT-97-24-T, para. 43 ('*Stakić*') (<http://www.legal-tools.org/doc/32ecfb/>).

of non-Serbs [...] would involve a discriminatory campaign of persecution.<sup>42</sup>

In *Stanišić and Župljanin*:

The Bosnian Serb leadership shared the idea of Greater Serbia. [...] Hence the view that Serbs from Serbia, Croatia, BiH, and Montenegro should live together in one state, which would include territory from each of those republics. However, Serb territories in these republics were not defined. Already in 1991, the Bosnian Serb leadership had started to take steps to resolve this situation by establishing SAOs [Serbian autonomous regions] across BiH.<sup>43</sup> What followed were the violent takeovers of those municipalities and the ensuing widespread *and* systematic campaign of terror and violence resulting in crimes that the Chamber has found to have been committed. [...] On the basis of the numerous statements of the Bosnian Serb leadership at the time, as narrated above, the Chamber finds that the goal of these actions was the establishment of a Serb state, as ethnically “pure” as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats.<sup>44</sup>

### 2.3. The Goals on the Ground: Kill Them All

#### 2.3.1. Prijedor

In *Stakić*:

[T]his Trial Chamber regards the takeover by the SDS as an illegal *coup d'état*, which was planned and coordinated a long time in advance with the ultimate aim of creating a pure Serbian Municipality. These plans were never hidden and they were implemented in a coordinated action by the police, the army and politicians.<sup>45</sup> On 7 August 1992, Dr. Stakić stated: “[...] now we reached a state in which the Serbs alone are drawing the borders of their new State. These borders are once

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<sup>42</sup> ICTY, *Prosecutor v. Biljana Plavšić*, Trial Chamber, Sentencing Judgement, 27 February 2003, IT-00-39&40/1-S, para. 11 (*‘Plavšić’*) (<http://www.legal-tools.org/doc/f60082/>) (citing Factual Basis for Plea of Guilt, 30 September 2002, IT-00-39&40-PT, para. 10 (<http://www.legal-tools.org/doc/8e1d4d/>)) (square brackets and ellipses in the Judgement).

<sup>43</sup> *Stanišić and Župljanin*, para. 309.

<sup>44</sup> *Ibid.*, para. 311.

<sup>45</sup> *Stakić*, para. 84.

again being drawn with the blood of the best Serbian sons. [...]”<sup>46</sup>

In *Tadić*:

Most of the non-Serb inhabitants of opština Prijedor were sent to the camps, the horrors of which have already been recounted and, reminiscent of the Second World War, one witness testified to hearing that over 30 freight carriages with women and the elderly had been taken away in an unknown direction. Those who remained were required to wear white armbands to distinguish themselves and were continuously subject to harassment, beatings and worse, with terror tactics being common. Non-Serbs in opština Prijedor were subjected to gross abuses, seemingly as a means of attaining the historical goal of a Greater Serbia.<sup>47</sup>

In *Stakić*:

The Trial Chamber [...] considers that the killings committed in the Municipality of Prijedor during the relevant period of 1992 were part of a campaign of annihilation of non-Serbs carried out by Serb police and military forces [...]. It is proven that acts of extermination were committed by the Accused.<sup>48</sup> The Trial Chamber is convinced that the deportation of the non-Serb population from the territory of the municipality, in accordance with the first two of the six strategic goals of the Serbian people expounded by Radovan Karadžić on 12 May 1992, was the central tool to establish a pure Serbian State.<sup>49</sup>

### 2.3.2. Srebrenica

In *Tolimir*:

The Majority, Judge Nyambe dissenting, finds that, as early as 1992, significant figures in the RS leadership were intent on segregating the ethnic populations of BiH. Over the course of the next three years, this goal developed into a series of

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<sup>46</sup> *Ibid.*, para. 825 (former square brackets and ellipsis in original, latter added).

<sup>47</sup> *Tadić*, para. 466.

<sup>48</sup> *Stakić*, para. 655.

<sup>49</sup> *Ibid.*, para. 710.

actions set forth to eradicate the entirety of the Bosnian Muslim population from the eastern enclaves in BiH.<sup>50</sup>

In *Krstić*:

During the conflict the Central Podrinje region, which included Srebrenica, was an area of significant strategic importance. For the Bosnian Serbs, control of this region was necessary in order to achieve their minimum goal of forming a political entity in Bosnia.<sup>51</sup> The accused himself defined the objective of the campaign in Bosnia during an interview in November 1995, when he explained that the Podrinje region should remain “Serbian for ever, while the Eastern part of Republika Srpska and the Drina river would be an important meeting point for the entire Serbian people from both sides of the Drina”.<sup>52</sup>

In *Obrenović*:

In July 1994, the commander of the Bratunac Brigade, Lieutenant Colonel Slavko Ognjenović, issued a report which stated, in part:

We must continue to arm, train, discipline, and prepare the RS Army for the execution of this crucial task - the expulsion of Muslims from the Srebrenica enclave. There will be no retreat when it comes to the Srebrenica enclave, we must advance. The enemy’s life has to be made unbearable and their temporary stay in the enclave impossible so that they leave the enclave en masse as soon as possible, realising that they cannot survive there.<sup>53</sup>

In *Popović et al.*:

Directive 7 marked the commencement of the attack against the civilian population. In furtherance of the VRS objective to win the war and create a Serbian state, Directive 7 tasked the

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<sup>50</sup> ICTY, *Prosecutor v. Zdravko Tolimir*, Trial Chamber II, Judgement, 12 December 2012, IT-05-88/2-T, para. 702 (*‘Tolimir’*) (<http://www.legal-tools.org/doc/445e4e/>).

<sup>51</sup> ICTY, *Prosecutor v. Radislav Krstić*, Trial Chamber, Judgement, 2 August 2001, IT-98-33-T, para. 12 (*‘Krstić’*) (<http://www.legal-tools.org/doc/440d3a/>).

<sup>52</sup> *Ibid.*, para. 563.

<sup>53</sup> ICTY, *Prosecutor v. Dragan Obrenović*, Trial Chamber I, Section A, Sentencing Judgement, 10 December 2003, IT-02-60/2-S, para. 27 (*‘Obrenović’*) (<http://www.legal-tools.org/doc/3f6409/>).

Drina Corps with creating “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>54</sup> Gvero had detailed knowledge of the strategic aim to remove the Bosnian Muslim population from the enclaves.<sup>55</sup>

In *Krstić*:

The Bosnian Serbs’ war objective was clearly spelt out, notably in a decision issued on 12 May 1992 by Momčilo Krajišnik, then President of the National Assembly of the Bosnian Serb People. The decision indicates that one of the strategic objectives of the Serbian people of Bosnia-Herzegovina was to reunite all Serbian people in a single State, in particular by erasing the border along the Drina which separated Serbia from Eastern Bosnia, whose population was mostly Serbian.<sup>56</sup> The strategic location of the enclave, situated between two Serb territories, may explain why the Bosnian Serb forces did not limit themselves to expelling the Bosnian Muslim population. By killing all the military aged men, the Bosnian Serb forces effectively destroyed the community of the Bosnian Muslims in Srebrenica as such and eliminated all likelihood that it could ever re-establish itself on that territory.<sup>57</sup>

### 2.3.3. Central Bosnia, Vitez

In *Kupreškić et al.*:

The Trial Chamber considers that the Prosecution has adduced convincing evidence to show that the attack on Ahmići on 16 April 1993 was planned by HVO forces and the special unit of the Croatian Military Police called the Jokers.<sup>58</sup> The attackers targeted Muslim civilians and their houses. The Trial Chamber considers it to have been proved that there were no Muslim military forces in Ahmići nor any military establishment belonging to the BiH army.<sup>59</sup> The purpose of the attack was to destroy as many Muslim houses as possible, to kill all the men of military age, and thereby prompt all the others to

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<sup>54</sup> ICTY, *Prosecutor v. Vujadin Popović et al.*, Trial Chamber II, Judgement, 10 June 2010, IT-05-88-T, vol. 1, para. 762 (*‘Popović et al.’*) (<http://www.legal-tools.org/doc/481867/>).

<sup>55</sup> *Ibid.*, para. 2203.

<sup>56</sup> *Krstić*, para. 562.

<sup>57</sup> *Ibid.*, para. 597.

<sup>58</sup> *Kupreškić et al.*, para. 333.

<sup>59</sup> *Ibid.*, para. 335.

leave the village and move elsewhere.<sup>60</sup> The Trial Chamber finds that the Croatian attack of 16 April 1993 in Ahmići was aimed at civilians for the purpose of “ethnic cleansing”.<sup>61</sup> The Trial Chamber is satisfied, on the evidence before it in this case, that this was not a combat operation. Rather, it was a well-planned and well-organised killing of civilian members of an ethnic group. The primary purpose of the massacre was to expel the Muslims from the village, by killing many of them, by burning their houses and their livestock, and by illegally detaining and deporting the survivors to another area. The ultimate goal of these acts was to spread terror among the population so as to deter the members of that particular ethnic group from ever returning to their homes.<sup>62</sup>

It was part of an overall campaign in the Lašva River Valley, intended to bring about “ethnic cleansing” through a systematic and widespread attack as a pre-condition of unrestricted Croat dominance over the area, promoted or at least condoned by the HVO and Military Police, and more generally, by the leadership of Croatia. The reason for this forced expulsion was the achievement of territorial homogeneity by the Croats. The Muslims were identified as the group that was to be expelled.<sup>63</sup>

The herding together of the Muslims, who had survived the killing and shooting, during and after the attack, and their ensuing detention at places such as the Dubravica school, underlines the Croatian objective of making sure that no Muslim was left free to live in the village. The systematic burning of the Muslim houses is proof of a “scorched-earth” policy on the part of the Croats, done in order to further the aim that, as one witness put it, “no Muslim foot shall tread this soil”.<sup>64</sup>

In *Blaškić*:

The Commission on Human Rights noted that all the Muslims had fled from Ahmići. Only a few Croats had remained. According to the witness Kajmović, the Ahmići Muslim population had completely disappeared in 1995. According to the Centre for Human Rights in Zenica, the four Muslim families

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<sup>60</sup> *Ibid.*, para. 336.

<sup>61</sup> *Ibid.*, para. 338.

<sup>62</sup> *Ibid.*, para. 749.

<sup>63</sup> *Ibid.*, para. 760.

<sup>64</sup> *Ibid.*, para. 763.

living in Nadioci had been exterminated. As an overview, the Muslim population in the canton of Vitez dropped from 41.3% in 1991 to 33.83% in 1995. According to witness Kajmović, only 80 Muslims, that is to say 0.49%, were still living in the territory of the Vitez municipality in 1995.<sup>65</sup>

### 3. The Nature of the Conflict

#### 3.1. The Conflict was International

The ICTY Trial Chambers have found that the conflict in the former Yugoslavia was international in nature. Each phase or part of the conflict was ruled to be international: Croatia, Bosnia and Hercegovina, and Kosovo. The legal characterisation of the conflict as international resulted from a legal requirement in cases in which grave breaches of the Geneva Conventions were charged. In the Kosovo *Djordjević* case, the conflict between the forces of Serbia and the Kosovo Liberation Army ('KLA') was found to be international from 24 March 1999 until its conclusion in June 1999 due to the NATO intervention in the FRY.

In all Croatian perpetrator cases (Bosnia and Hercegovina and Croatia), the Chambers have ruled that the conflict was international, including *Gotovina*, where there was no Article 2 charge. Similarly, in Serbian perpetrator cases where grave breaches of the Geneva Conventions were charged, the Chambers concluded that the conflict was international.

The findings were based on evidence of direct and indirect intervention of Croatia and the Serbia/FRY in the conflict in Bosnia and Hercegovina, and of (S)FRY/Serbia in the conflict in Croatia (*Slobodan Milošević, Gotovina*). In the *Delalić* case concerning Muslim perpetrators and Serbian victims, the conflict was also found to be international due to the involvement of Serbia.

There are no findings on the nature of the conflict in the judgements in the three cases against the JNA (the Yugoslav People's Army, SFRY) officers and the highest Serbian RSK leaders for crimes against Croats and other-non Serbs in Croatia, as they were indicted for crimes against humanity and violations of the laws or customs of war. The judgements, however, contain findings on the extensive involvement of Belgrade, including the evidence of RSK President, Milan Babić. Grave breaches were charged, and four such charges confirmed at the 98 *bis* stage in the *Slobodan Milošević* case. In the Decision on Motion for Judgement of Acquittal, the Chamber found "sufficient evidence that Croatia was a state by 8 October

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<sup>65</sup> *Blaškić*, para. 427.



1991 for the purpose of Rule 98 *bis*".<sup>66</sup> The Chamber accepted the Prosecution's case that the armed conflict in Croatia was international from 8 October 1991, the date on which Croatia's declaration of independence became effective. The *Amici Curiae* argued that the conflict became international at a point in time between 15 January 1992, when Croatia was recognized by the European Community ('EC'/'EU'), and 22 May 1992 when it became a UN member. The *Slobodan Milošević* case did not result in a judgement due to his death in March 2006, days before the end of the trial.

While direct intervention of Croatia and Serbia was legally sufficient to qualify the conflict as international, the Chambers also weighed the evidence of indirect involvement. By applying the overall control test, articulated in the *Tadić* Appeal Judgement,<sup>67</sup> the Trial Chambers have invariably found that Croatia and Serbia (FRY) were in conflict with BiH through the HVO and the VRS, which were under their overall control. In other words, it was a war by proxy.

The goal of the Belgrade leadership, the creation of a single Serbian state, shared with the political and military establishments of the Serbs in Bosnia and Croatia, and the forms, nature and extent of FRY/Serbia's assistance to, and involvement with, the VRS and the SVK, were established also in the *Perišić* case, one of the two cases, apart from that of *Slobodan Milošević*, which focused on the role of Belgrade in the 1991–95 war. The *Perišić* judgement does not define the conflict as international since grave breaches were not charged.

While legally qualified as an international armed conflict, in non-legal terms it was a war of aggression: first by Serbia against Croatia, and subsequently by Serbia and Croatia against Bosnia and Hercegovina, concordant with the Serbian and Croatian nationalists' programs of Greater Serbia and a Greater Croatia.

The *Tadić* Judgement refers to a 12 May 1992 document of the Committee of Senior Officials of the Conference for Security and Cooperation

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<sup>66</sup> *S. Milošević*, para. 115.

<sup>67</sup> *Tadić* ACJ, para. 131 ("In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity. Only then can the State be held internationally accountable for any misconduct of the group. However, it is not necessary that, in addition, the State should also issue, either to the head or to members of the group, instructions for the commission of specific acts contrary to international law".)

in Europe declaring that “the aggression against Bosnia and Herzegovina” continued with a “relentless attack on Sarajevo”.<sup>68</sup>

In the Decision to Declare a State of War on 20 June 1992, the BiH Government proclaimed that aggression had been committed against BiH by Serbia, Montenegro, the JNA and SDS.<sup>69</sup> The goal of the BiH Government was defence of the territory and liberation. The Croat-Muslim conflict would erupt less than a year later and the internationally recognized Bosnia and Herzegovina, a UN member, found itself under attack from two sides.

### 3.2. Findings

#### 3.2.1. Croatia

In *Gotovina et al.*:

All the parties agree that an armed conflict existed between the HV [Croatian Army] and the SVK at the beginning of the Indictment period and lasted at least until 8 August 1995. There is also general agreement that Croatia and Serbia (the Trial Chamber notes that Serbia was at the time part of the FRY) were, during this time, engaged more broadly in hostilities. The Prosecution, Gotovina Defence, and Čermak Defence all classify the relevant armed conflict as being international in character and brought to an end by the Erdut Agreement on 12 November 1995.<sup>70</sup> Regarding the first half of the 1990s, prior to the indictment period, the parties agreed to certain facts based on the *Martić* trial judgement.<sup>71</sup> The Trial Chamber received evidence concerning the continued state of hostilities, including military actions between Croatia and Serbian forces, up to 1995. Mate Granić, Deputy Prime Minister of Croatia 1991-2000 and Minister of Foreign Affairs 1993-2000 testified that he participated in the decision on operations by the Croatian armed forces in order to liberate occupied areas [...].<sup>72</sup>

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<sup>68</sup> *Tadić*, para. 121.

<sup>69</sup> The Decision to Declare a State of War, *The Official Gazette of the Republic of Bosnia and Herzegovina*, PR no. 1201/92, res. 158, 20 June 1992, translated in ICTY, *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Trial Chamber, IT-01-47-T, Exhibit P 362e, 7 April 2004.

<sup>70</sup> ICTY, *Prosecutor v. Ante Gotovina et al.*, Trial Chamber I, Judgement, 15 April 2011, IT-06-90-T, vol. 2, para. 1681 (<http://www.legal-tools.org/doc/86922c/>).

<sup>71</sup> *Ibid.*, para. 1683.

<sup>72</sup> *Ibid.*, para. 1684.

The Trial Chamber considered the evidence that from 1991 to 1995 Croatia and Serbian forces conducted military operations against one another. The Trial Chamber also considered the evidence from Dodig, Lazarević, Witness AG-10, and Babić regarding links between the SVK, RSK, JNA and Serbia/FRY, including in the eve of Croatia's transition towards independence and the outbreak of the armed conflict. In particular, the Trial Chamber considered the evidence pertaining to Serbian President Milošević's control and influence over SVK forces and Serbia/FRY's funding, arming and supplying of the Krajina Serbs. Based on the above evidence, the Trial Chamber finds that Serbia/FRY had overall control of the SVK. Recalling the agreement of all the parties that Croatia and Serbia were engaged more broadly in hostilities around the beginning of the Indictment period, the Trial Chamber further finds that the armed conflict that existed at the outset of the Indictment period was international. If it was not already an international armed conflict in 1991, then it became one based on the SVK acting on behalf of Serbia/FRY.<sup>73</sup>

### 3.2.2. Bosnia and Herzegovina

In *Tadić*:

[I]t is clear from the evidence before the Trial Chamber that, from the beginning of 1992 until 19 May 1992, a state of international armed conflict existed in at least part of the territory of Bosnia and Herzegovina. This was an armed conflict between the forces of the Republic of Bosnia and Herzegovina on the one hand and those of the Federal Republic of Yugoslavia (Serbia and Montenegro), being the JNA (later the VJ), working with sundry paramilitary and Bosnian Serb forces, on the other.<sup>74</sup>

The Trial Chamber majority:

There is, in short, no evidence on which this Trial Chamber may confidently conclude that the armed forces of the *Republika Srpska*, and the *Republika Srpska* as a whole, were anything more than mere allies, albeit highly dependent allies, of

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<sup>73</sup> *Ibid.*, para. 1693.

<sup>74</sup> *Tadić*, para. 569.

the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) in its plan to achieve a Greater Serbia from out of the remains of the former Yugoslavia.<sup>75</sup>

In Judge McDonald's Dissenting Opinion:

[T]he creation of the VRS was a legal fiction. [...] There remained the same weapons, the same equipment, the same officers, the same commanders, largely the same troops, the same logistics centres, the same suppliers, the same infrastructure, the same source of payments, the same goals and mission, the same tactics, and the same operations. Importantly, the objective remained the same: to create an ethnically pure Serb State by uniting Serbs in Bosnia and Herzegovina and extending that State from the Federal Republic of Yugoslavia (Serbia and Montenegro) to the Croatian Krajina along the important logistics and supply line that went through opština Prijedor, thereby necessitating the expulsion of the non-Serb population of the opština.<sup>76</sup>

On appeal:

[A]t least between 1992 and 1995, overall political and military authority over the *Republika Srpska* was held by the FRY (control in this context included participation in the planning and supervision of ongoing military operations). Indeed, the fact that it was the FRY that had the final say regarding the undertaking of international commitments by the *Republika Srpska*, and in addition pledged, at the end of the conflict, to ensure respect for those international commitments by the *Republika Srpska*, confirms that (i) during the armed conflict the FRY exercised control over that entity, and (ii) such control persisted until the end of the conflict.<sup>77</sup> [T]he armed forces of the *Republika Srpska* were to be regarded as acting under the overall control of and on behalf of the FRY. Hence, even after 9 May 1992 the armed conflict in [BiH] between the Bosnian Serbs and the central authorities of [BiH] must be classified as an *international* armed conflict.<sup>78</sup>

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<sup>75</sup> *Ibid.*, para. 606.

<sup>76</sup> *Ibid.*, Separate and Dissenting Opinion of Judge McDonald regarding the Applicability of Article 2 of the Statute, para. 7.

<sup>77</sup> *Tadić* ACJ, para. 160.

<sup>78</sup> *Ibid.*, para. 162 (italics in original).

In the Separate Opinion of Judge Shahabuddeen:

The Trial Chamber accepted that, having been itself in direct armed conflict with BH through the Yugoslav People's Army ("JNA"), the FRY established the VRS, trained it, equipped it, supplied it and maintained it. The establishment was done by the FRY, on 19 May 1992, by leaving in BH part of the JNA to function as the VRS, and doing that just days after the Security Council had called on the FRY to withdraw from BH. Senior military officers from the FRY were members of the staff of the VRS. The FRY paid the salaries (and pensions after retirement) of officers of the VRS who came over from the JNA. The headquarters of the VRS had a link with the headquarters of the Yugoslav Army, or VJ, as the Yugoslav portion of the old JNA was now known. The VRS was engaged in carrying out the FRY's plan of ethnic cleansing and of carving out territory of BH to be ultimately added to that of the FRY so as to realise the FRY's ambition to create a "Greater Serbia".<sup>79</sup> Thus, the FRY did more than provide general funds to the VRS. On the basis of *Nicaragua*, I have no difficulty in concluding that the findings of the Trial Chamber suffice to show that the FRY was using force through the VRS against BH, even if it is supposed that the facts were not sufficient to fix the FRY with responsibility for any delictual acts committed by the VRS. The FRY and BH were therefore in armed conflict within the meaning of Article 2 [...].<sup>80</sup>

In *Delalić*:

Despite the attempt at camouflage by the authorities of the FRY and their insistence that all non-Bosnian JNA troops had been removed from Bosnia and Herzegovina by 19 May [...] the United Nations Security Council [...] deplored the fact that its demands for the withdrawal of external armed forces, particularly units of the JNA, from Bosnia and Herzegovina, in resolution 752, had not been fully complied with. It condemned the failure of the authorities of the FRY to take effective measures to implement resolution 752 and also demanded that any elements of the Croatian Army still present in Bosnia and Herzegovina act in accordance with that resolution. The Security Council went further and imposed comprehensive trade sanctions on the FRY for its non-compliance, stating that

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<sup>79</sup> *Ibid.*, Separate Opinion of Judge Shahabuddeen, para. 13.

<sup>80</sup> *Ibid.*, para. 14.

these would remain in place until effective measures were taken to fulfil the requirements of resolution 752.<sup>81</sup>

It further appears that those forces of the former JNA which had been transformed into the VJ continued to play an active role in the Bosnian conflict. The Prosecution expert witness, Dr Gow, testified that, after 19 May 1992 the VJ contributed in terms of personnel and supplies to the execution of the Serbian “new State project” in Bosnia and Herzegovina. It supported the VRS where additional support or special forces were required and it continued to act as one body with the VRS, albeit with a broad degree of operational authority given to the commander in Bosnia and Herzegovina, General Mladić, whose objectives were to execute the armed campaign without bringing Belgrade’s role into question. VJ troops were also specifically identified in a number of locations throughout the conflict, for example during the air operations in 1994 and in the Posavina region.<sup>82</sup> The Government of Bosnia and Herzegovina, for its part, undoubtedly considered itself to be involved in an armed conflict as a result of aggression against that State by Serbia and Montenegro, the Yugoslav Army and the SDS. On 20 June 1992, it proclaimed a state of war, identifying these parties as the aggressors [...].<sup>83</sup> The Trial Chamber’s position accords fully with that taken by Judge McDonald in her Dissent to the majority Judgment in the *Tadić* case.<sup>84</sup>

*In Brđanin:*

The Trial Chamber is thus satisfied that the support the FRY provided to the VRS after 19 May 1992 fulfils the requisites of the first part of the “overall control” test.<sup>85</sup> From 1991 onwards, the main objective of the SDS, as well as of the authorities in Belgrade, was to preserve SFRY as a State and to ensure that Serbs would continue to live in a single State.<sup>86</sup> The Trial Chamber is satisfied that, in the months preceding the period covered in the Indictment, the SFRY was already making preparations to cover-up the “overall control” it planned

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<sup>81</sup> *Delalić*, para. 221.

<sup>82</sup> *Ibid.*, para. 223.

<sup>83</sup> *Ibid.*, para. 225.

<sup>84</sup> *Ibid.*, para. 233.

<sup>85</sup> *Brđanin*, para. 148.

<sup>86</sup> *Ibid.*, para. 150.

to exercise on the Bosnian Serb Army once BiH gained independence and that this plan needed to be put in place as international pressure on Belgrade mounted. [...] The Trial Chamber is satisfied that these factors coupled with the continued payment of the salaries of the VRS officers by Belgrade indicate that, after 19 May 1992, the VRS and the VJ did not constitute two separate armies [citing *Tadić* ACJ, para. 157] and that their aims and objectives remained the same, namely to expand the territory which would form part of the SerBiH and prevent it from being incorporated in an independent BiH [...]. The Trial Chamber also comes to the conclusion that the FRY, despite the purported withdrawal of its armed forces, at the very least, maintained its support of the Bosnian Serbs and the VRS while exerting influence over their operations. [...] The Trial Chamber is thus satisfied that the steps taken to create a VRS independent of the JNA were merely a ploy to fend off any potential accusations that the FRY was intervening in the armed conflict taking place on the territory of BiH [...].<sup>87</sup> [F]rom the very beginning of, and throughout, the armed conflict, the FRY wielded general control over the SerBiH and the Bosnian Serbs.<sup>88</sup> The Trial Chamber thus concludes that the armed conflict that took place in the ARK throughout the entire period of the Indictment was international in nature.<sup>89</sup>

In *Blaškić*:

Ultimately, the evidence demonstrated that, although the HV soldiers were primarily in the Mostar, Prozor and Gornji Vakuf regions and in a region to the east of Čapljina, there is also proof of HV presence in the Lašva Valley. [...] Based on Croatia's direct intervention in BH, the Trial Chamber finds ample proof to characterise the conflict as international.<sup>90</sup> In the light of all the foregoing and, in particular, the Croatian territorial ambitions in respect of Bosnia-Herzegovina detailed above, the Trial Chamber finds that Croatia, and more specifically former President Tudjman, was hoping to partition Bosnia and exercised such a degree of control over the Bosnian Croats and especially the HVO that it is justified to speak of overall control. Contrary to what the Defence as-

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<sup>87</sup> *Ibid.*, para. 151.

<sup>88</sup> *Ibid.*, para. 153.

<sup>89</sup> *Ibid.*, para. 154.

<sup>90</sup> *Blaškić*, para. 94.

serted, the Trial Chamber concluded that the close ties between Croatia and the Bosnian Croats did not cease with the establishment of the HVO.<sup>91</sup> Croatia's indirect intervention would therefore permit the conclusion that the conflict was international.<sup>92</sup> The Trial Chamber concludes that the acts ascribed to Tihomir Blaškić occurred as part of an international armed conflict because the Republic of Croatia exercised total control over the Croatian Community of Herceg-Bosna and the HVO and exercised general control over the Croatian political and military authorities in central Bosnia.<sup>93</sup>

*In Kordić and Čerkez:*

[T]he Chamber concludes that Croatia's support of the Bosnian Croats constitutes Croatian intervention in the struggle between the Bosnian Croats and the Bosnian Muslims.<sup>94</sup> [T]he Chamber finds that the conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina was internationalised by the intervention of Croatia [...].<sup>95</sup> The Trial Chamber finds that President Tudjman harboured territorial ambitions in respect of Bosnia and Herzegovina, and that was part of his dream of a Greater Croatia, including Western Herzegovina and Central Bosnia.<sup>96</sup> Based upon the foregoing, the Chamber is satisfied that Croatia exercised overall control over the HVO through its provision to the HVO of financial and training assistance, military equipment and operational support, and by its participation in the organisation, coordination and planning of military operations of the HVO. The Chamber therefore finds that, on that basis, the conflict between the HVO and the ABiH was rendered international.<sup>97</sup>

*In Naletilić and Martinović:*

The Chamber thus finds that the conflict between the HVO and the ABiH in BiH was internationalised by the intervention

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<sup>91</sup> *Ibid.*, para. 122.

<sup>92</sup> *Ibid.*, para. 123.

<sup>93</sup> *Ibid.*, para. 744.

<sup>94</sup> *Kordić and Čerkez*, para. 108(2).

<sup>95</sup> *Ibid.*, para. 109.

<sup>96</sup> *Ibid.*, para. 142.

<sup>97</sup> *Ibid.*, para. 145.



of the troops of the Republic of Croatia in the conflict.<sup>98</sup> The Chamber is further satisfied that the Republic of Croatia took part in the organisation, planning or co-ordination of military operations conducted in the context of the conflict between the HVO and the ABiH. There is no doubt that the Republic of Croatia and the HZ-HB were pursuing the same ultimate goals, namely the incorporation of Croatian provinces of Bosnia and Herzegovina into a single Croatian state.<sup>99</sup> To allow for the implementation of this common goal, the Croatian leadership issued orders for HVO or HV troop movements and military strategies in BiH. It further ensured control over the HVO by appointing HV officers at the most senior positions in the HVO command structure.<sup>100</sup> For the foregoing reasons, the Chamber finds that the Republic of Croatia exercised overall control over the HVO in the context of the conflict relevant to the present case.<sup>101</sup>

In *Prlić et al.*:

After viewing this evidence, a majority of the Chamber is satisfied beyond a reasonable doubt, with Judge Antonetti dissenting, that the HV was directly involved alongside the HVO in the conflict between the HVO and the ABiH in most of the camps and municipalities to which the Indictment is directed and at all the relevant times.<sup>102</sup> Such direct involvement supports a finding beyond all reasonable doubt that the conflict [...] did indeed have the character of an international armed conflict.<sup>103</sup>

The Chamber admitted evidence supporting a finding by the majority, with Judge Antonetti dissenting, that Croatia did indeed wield overall control over the HVO. This control manifested itself in several ways [...].<sup>104</sup> The Chamber holds by majority, with Judge Antonetti dissenting, that the evidence demonstrates that the HV and the HVO jointly directed the operations in BiH. Therefore the HZ H-B coordinated its military activities with Croatia, according to *Ciril Ribičić*, the HZ

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<sup>98</sup> *Naletilić and Martinović*, para. 196.

<sup>99</sup> *Ibid.*, para. 200.

<sup>100</sup> *Ibid.*, para. 201.

<sup>101</sup> *Ibid.*, para. 202.

<sup>102</sup> *Prlić et al.*, vol. 3, para. 543 (<http://www.legal-tools.org/doc/28c19c/>).

<sup>103</sup> *Ibid.*, para. 544.

<sup>104</sup> *Ibid.*, para. 545.

H-B coordinated its military activities with Croatia.<sup>105</sup> Moreover, some evidence also indicates that commanding officers of the HV issued orders to the units of the HVO for certain military operations.<sup>106</sup> The overall control wielded by Croatia over the HVO and the authorities of HZ(R) H-B had political aspects as well, and was wielded through Croatia's indirect control and influence over the HVO and the HZ(R) H-B.<sup>107</sup> With regard to all the evidence analysed, the Chamber by majority, with Judge Antonetti dissenting, is satisfied beyond a reasonable doubt that the armed conflict was international in nature due both to the direct involvement of the HV in the conflict pitting the HVO and the ABiH against one another and to the overall control wielded by the HV and by Croatia over the HVO.<sup>108</sup>

### 3.2.3. Kosovo

In *Đorđević*:

The Chamber is satisfied that as of the end of May 1998 an armed conflict existed in Kosovo between Serbian forces in particular forces of the VJ and the MUP, and the KLA. This armed conflict continued until at least June 1999.<sup>109</sup> On 24 March 1999 NATO commenced its military operations in the FRY. On the same day the government of the FRY declared a state of war. On this basis the Chamber is satisfied that from 24 March 1999 until the end of hostilities in June 1999 an international armed conflict existed in Kosovo between Serbian forces and the forces of NATO.<sup>110</sup>

### 3.2.4. *Perišić*

Some findings in *Perišić*:

When the JNA withdrew from Croatia and BiH, a number of JNA military personnel remained behind to serve in the SVK and VRS. After the VJ was formed, additional personnel were dispatched by the VJ to the VRS and SVK. [...] there was no

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<sup>105</sup> *Ibid.*, para. 549.

<sup>106</sup> *Ibid.*, para. 550.

<sup>107</sup> *Ibid.*, para. 560.

<sup>108</sup> *Ibid.*, para. 568.

<sup>109</sup> ICTY, *Prosecutor v. Vlastimir Đorđević*, Trial Chamber II, Public Judgement, 23 February 2011, IT-05-87/1-T, para. 1579 ('*Đorđević*') (<http://www.legal-tools.org/doc/653651/>).

<sup>110</sup> *Ibid.*, para. 1580.

legal basis specifically regulating the transfer of VJ military personnel to the VRS and SVK. In March 1993, Mladić sent a letter to Panić, then serving as Chief of VJ General Staff, which illustrates the shortcomings of this arrangement. Mladić complained that military personnel were leaving the VRS to return to the VJ without authorisation from the VRS Main Staff, stating that their deployment to the VRS from the VJ was only temporary. In Mladić's words:

The Main Staff of the [VRS], since its establishment, believed that [...] the [SVK, VRS and VJ] were only separate elements of the combat disposition of a single army. We consider this assumption to be the legal basis for the obligatory engagement of members of the [VJ] regardless of their place of origin in the units of the [VRS] and its combat operations, and the engagement of those whose roots are in the [RS] a moral and patriotic act and an obligation.<sup>111</sup>

The Trial Chamber finds that Perišić had a decisive role in the creation of the PCs [Personnel Centres]. The evidence set out above shows that he conceived and subsequently carefully implemented the idea to create such centres to: (i) regularise the status of all former JNA and VJ military personnel who remained in BiH and Croatia and (ii) to legalise, as far as possible, the deployment of VJ military personnel to the VRS and SVK. In doing so, Perišić intended to meet the requests for military personnel by the VRS and SVK Main Staffs.<sup>112</sup>

In conclusion, the Trial Chamber is satisfied that the PCs' main function was to regulate the status of all those former JNA/VJ officers who remained to serve in the SVK and VRS after the withdrawal of the JNA and to allow the VJ to secretly transfer VJ military personnel to the VRS [...] The Trial Chamber is equally satisfied that all the SDC members, as well as Perišić, intended to keep this function and the VJ involvement in the conflicts secret in order to avoid criticism or risking further sanctions from the international community. [...] The need and intention to keep this function secret was clearly expressed at the SDC session of 11 October 1993 while discussing the order on the establishment of the PCs.

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<sup>111</sup> *Perišić*, paras. 761–62 (first square brackets and ellipsis added, the rest (in block quote) in original).

<sup>112</sup> *Ibid.*, para. 777.

Perišić admitted that the establishment of the PCs had been devised in order to “avoid having anyone criticise us” for the number of former JNA and VJ personnel serving in the VRS and SVK. Momir Bulatović instead expressed his concern that, should the document fall into anybody’s hands, the FRY would face sanctions “for ten years”. Slobodan Milošević too stressed that only a single copy of the proposal should stay with Perišić.<sup>113</sup>

VJ officers who served in the VRS through the 30<sup>th</sup> PC included key personnel such as: Ratko Mladić, Manojlo Milovanović, Djordje Djukić, Radivoje Miletić, Milan Gvero, Zdravko Tolimir, Milenko Živanović, Radislav Krstić, Vinko Pandurević, Vujadin Popović, Ljubiša Beara, Vidoje Blagojević, Dragan Jokić, Dragan Obrenović, Drago Nikolić, Svetozar Andrić, Stanislav Galić, Dragomir Milošević and Čedo Sladoje. In addition, the 30<sup>th</sup> PC regulated the status of Bogdan Subotić, and Dušan Kovačević, RS Minister of Defence from January 1993 until August 1994.<sup>114</sup>

Similarly, key personnel who served in the SVK through the 40<sup>th</sup> PC included Mile Novaković, Milan Čeleketić, Borislav Djukić and Dušan Lončar.<sup>115</sup>

Based on the above, as well as on the evidence discussed in relation to the creation of the PCs, the Trial Chamber finds that the members of the 30<sup>th</sup> and 40<sup>th</sup> PCs remained *de jure* members of the VJ while serving in the VRS and SVK.<sup>116</sup>

The Trial Chamber finds that Momčilo Perišić, as Chief of VJ General Staff, oversaw a system providing comprehensive military assistance to the VRS, and participated in the SDC’s decision to license this aid. The VJ General Staff directly supplied considerable quantities of weaponry comprising a very large part of the VRS’s munition requirements.<sup>117</sup> The VRS’s general state of dependence on VJ support was acknowledged by Perišić himself, as well as Slobodan Milošević, Radovan Karadžić and Ratko Mladić.<sup>118</sup>

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<sup>113</sup> *Ibid.*, para. 787.

<sup>114</sup> *Ibid.*, para. 795.

<sup>115</sup> *Ibid.*, para. 796.

<sup>116</sup> *Ibid.*, para. 840.

<sup>117</sup> *Ibid.*, para. 1234.

<sup>118</sup> *Ibid.*, para. 1236.

Finally, the Trial Chamber notes that important logistical and technical support was provided to the units involved in perpetrating the charged crimes: the Drina Corps, Krajina Corps and SRK. Numerous documents demonstrate that the VJ General Staff gave extensive quantities of weaponry to the Drina Corps [...].<sup>119</sup> Among the weapons left behind by the JNA in the territory of the RSK in 1991 was a sole Orkan rocket system later used in the shelling of Zagreb in May 1995 [...].<sup>120</sup> The complexity of this rocket system required VJ assistance in repairs and maintenance.<sup>121</sup>

Once a month coordination meetings were held at the VJ GS in Belgrade. Perišić had regular meetings with Mladić. Borović testified that Mladić visited Perišić “once a month or less”.<sup>122</sup>

In conclusion, the Majority finds that the VRS depended heavily on FRY and VJ assistance in order to function as an army and to wage war. As shown below, this dependence was not limited to logistical assistance but also encompassed all other forms of assistance provided by the VJ including personnel. The Majority recalls that the crimes charged in the Indictment were an integral part of the VRS’s war strategy. Hence, the evidence leads the Majority to the only reasonable conclusion that by providing vital logistical and technical assistance to the VRS during the war, including to the specific units that perpetrated the crimes, Perišić facilitated the commission of those crimes.<sup>123</sup>

Perišić sustained the very life line of the VRS and created the conditions for it to implement a war strategy that encompassed the commission of crimes against civilians.<sup>124</sup>

### **3.3. The Conflict was a Widespread and Systematic Persecutory Attack against Civilians**

The genocide in Srebrenica is emblematic of the Yugoslav conflict. In the words of the *Popović et al.* judgement:

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<sup>119</sup> *Ibid.*, para. 1237.

<sup>120</sup> *Ibid.*, para. 1248.

<sup>121</sup> *Ibid.*, para. 1249.

<sup>122</sup> *Ibid.*, para. 1412.

<sup>123</sup> *Ibid.*, para. 1602.

<sup>124</sup> *Ibid.*, para. 1623.

The calculated destruction of the Bosnian Muslims of Srebrenica in July 1995 stands out as one of the worst crimes committed in Europe after the Second World War. The extermination of the Bosnian Muslim males from Srebrenica, accompanied by the forcible transfer and persecution of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves all together encompass the gravest of crimes under international criminal law.<sup>125</sup>

According to the *Krstić* judgement:

The events of the nine days from July 10-19 1995 in Srebrenica defy description in their horror and their implications for humankind's capacity to revert to acts of brutality under the stresses of conflict. In little over one week, thousands of lives were extinguished, irreparably rent or simply wiped from the pages of history. The Trial Chamber leaves it to historians and social psychologists to plumb the depths of this episode of the Balkan conflict and to probe for deep-seated causes. [...] the Trial Chamber concentrates on setting forth, in detail, the facts surrounding this compacted nine days of hell and avoids expressing rhetorical indignation that these events should ever have occurred at all. In the end, no words of comment can lay bare the saga of Srebrenica more graphically than a plain narrative of the events themselves, or expose more poignantly the waste of war and ethnic hatreds and the long road that must still be travelled to ease their bitter legacy.<sup>126</sup>

The *Krstić* judgement also states that “acts of discrimination are not confined to the events in Srebrenica alone, but characterise the whole of the 1992-95 conflict between the Bosnian Serbs, Muslims and Croats”.<sup>127</sup>

The genocide in Srebrenica was the culmination of a widespread *and* systematic attack against the civilian population, which, based on the judgements, was the main attribute of the war, with ethnic cleansing the goal, not the consequence of the war.

An illustrative finding of the majority in *Perišić* that “under the VRS's strategy there was no clear distinction between military warfare against BiH forces and crimes against civilians and/or persons not taking active part in hostilities. To the contrary, these crimes were inextricably

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<sup>125</sup> *Popović et al.*, para. 2148.

<sup>126</sup> *Krstić*, para. 2.

<sup>127</sup> *Ibid.*, para. 562.

linked to the war strategy and objectives of the VRS leadership”.<sup>128</sup> And also: “While the Srebrenica enclave was designated as a safe area, the VRS fiercely attacked civilians, as it had previously done in Sarajevo”.<sup>129</sup>

The *Babić* Sentencing Judgement quotes his words of remorse after pleading guilty to a crime of “extreme gravity” – “[t]he crime of persecution”.<sup>130</sup> Babić told the Court:

I come before this Tribunal with a deep sense of shame and remorse. I have allowed myself to take part in the worst kind of persecution of people simply because they were Croats and not Serbs. Innocent people were persecuted; innocent people were evicted forcibly from their houses; and innocent people were killed. Even when I learned what had happened, I kept silent. Even worse, I continued in my office, and I became personally responsible for the inhumane treatment of innocent people.<sup>131</sup>

### 3.4. Findings

#### 3.4.1. Croatia

Earlier in the same Judgement:

From about 1 August 1991 to 15 February 1992, Serb forces comprised of JNA units, local Serb TO units, TO units from Serbia and Montenegro, local MUP police units, MUP police units from Serbia, and paramilitary units attacked and took control of towns, villages, and settlements in the SAO Krajina.<sup>132</sup> After the take-over, in cooperation with the local Serb authorities, the Serb forces established a regime of persecutions designed to drive the Croat and other non-Serb civilian populations from these territories. The regime, which was based on political, racial, or religious grounds, included the extermination or murder of hundreds of Croat and other non-Serb civilians in Dubiĉa, Cerovljanji, Bacĉin, Saborsko, Poljanak, Lipovaĉa, and the neighbouring hamlets of Ŗkabrnja, Nadin, and Bruška in Croatia.<sup>133</sup>

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<sup>128</sup> *PeriŖiĉ*, para. 1588.

<sup>129</sup> *Ibid.*, para. 1821.

<sup>130</sup> ICTY, *Prosecutor v. Milan Babiĉ*, Trial Chamber I, Sentencing Judgement, 29 June 2004, IT-03-72-S, para. 53 (<http://www.legal-tools.org/doc/1f575a/>).

<sup>131</sup> *Ibid.*, para. 83.

<sup>132</sup> *Ibid.*, para. 14.

<sup>133</sup> *Ibid.*, para. 15.

Babić explained that as of August 1991 he shared the intent of others with whom he participated in planning the campaign of persecutions to forcibly resettle the Croat and non-Serb populations from the targeted areas.<sup>134</sup> Babić stated in the proceedings in the *Milošević* case, and in his statements, that his actions were based on “ethno-egoist motives” and that he wanted to preserve his political position despite his knowledge that his actions or omissions would lead to ethnic strife and war, and the associated crimes.<sup>135</sup>

The campaign of persecutions which Babić participated in stretched throughout the self-declared SAO Krajina and involved the murder of more than 230 Croats or other non-Serbs between August and December 1991. [...] Virtually the whole Croat or non-Serb population was expelled, by forcible removal or by being caused to flee through fear of imminent attack.<sup>136</sup> The crime of persecution extended over [...] a large geographical area, and involved the murder of more than 200 civilians, including women and elderly persons, the confinement and imprisonment of several hundred civilians in inhumane conditions, the forcible transfer or deportation of thousands of civilians, and the destruction of homes and public or private property. The crime, which was characterized by ruthlessness and savagery and was committed with the intent to discriminate against non-Serb civilians [...].<sup>137</sup>

Also, in *Martić*:

The Trial Chamber finds that a state of armed conflict existed in the relevant territories of Croatia and BiH during the time relevant to the crimes charged in the Indictment. The Defence’s argument concerning an armed rebellion [aimed at achieving the independence of Croatia] is therefore dismissed. Moreover, the Trial Chamber finds that the crimes charged were committed in the context of the armed conflict.<sup>138</sup> From around June 1991 through December 1991, military operations and raids were carried out against predominantly Croat villages in the SAO Krajina, including by the *Milicija Krajine*, the JNA and the TO. [...] Villagers were left with no choice

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<sup>134</sup> *Ibid.*, para. 26.

<sup>135</sup> *Ibid.*, para. 28.

<sup>136</sup> *Ibid.*, para. 51.

<sup>137</sup> *Ibid.*, para. 53.

<sup>138</sup> *Martić*, para. 347.



but to flee. During or immediately after the attacks, villagers who stayed behind were killed and beaten. Private and public property, including churches and schools, were destroyed and looted. Hundreds of Croat and other non-Serb civilians [...] were detained in Knin and other locations [...].<sup>139</sup>

Acts of violence and intimidation against the Croat and other non-Serb population, including killings, beatings, robbery, theft, harassment and destruction of houses and Catholic churches, were prevalent in the RSK during the period between 1992 and 1995, and resulted in an exodus of the Croat and other non-Serb population from the territory of the RSK.<sup>140</sup> The Trial Chamber finds that there was a widespread and systematic attack directed against the Croat and other non-Serb civilian population in the relevant territories of Croatia and BiH during the time relevant to the crimes charged in the Indictment.<sup>141</sup> Based on the above, the Trial Chamber concludes that by the end of 1991 large numbers of the non-Serb population had been forcibly removed from the territory of the SAO Krajina to territories under the control of Croatia.<sup>142</sup> Based on the substantial evidence referred to above, the Trial Chamber finds that due to the coercive atmosphere in the RSK from 1992 through 1995, almost the entire non-Serb population was forcibly removed to territories under the control of Croatia.<sup>143</sup>

In light of the evidence referred to above, which establishes that acts of killing, mistreatment, deportation, forcible transfer, destruction and other acts of intimidation were carried out with the intent to discriminate on the basis of ethnicity, [...] all the elements of persecution (Count 1) have been met for the period from August 1991 through 1995.<sup>144</sup> [T]he majority of the victims were civilians.<sup>145</sup> [D]ue to the characteristics of the M-87 Orkan and due to the large-scale nature of the attack, the Trial Chamber finds that the shelling constituted a widespread attack directed against the civilian population of Za-

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<sup>139</sup> *Ibid.*, para. 349.

<sup>140</sup> *Ibid.*, para. 351.

<sup>141</sup> *Ibid.*, para. 352.

<sup>142</sup> *Ibid.*, para. 429.

<sup>143</sup> *Ibid.*, para. 431.

<sup>144</sup> *Ibid.*, para. 432.

<sup>145</sup> *Ibid.*, para. 490.

greb. Furthermore, the Trial Chamber considers it proven beyond doubt that Milan Martić was aware of this attack on the civilian population and that his ordering of the shelling formed part of the attack.<sup>146</sup> As President of the RSK, Milan Martić [...] was obligated to prevent the commission of crimes and to ensure that all inhabitants of the territories under his authority enjoyed respect for human rights. [...] the evidence [...] proves beyond reasonable doubt that Milan Martić abused his positions and that he, through continuous and systematic efforts to create an ethnically Serb territory, promoted an atmosphere of mistrust and fear between Serbs and non-Serbs, in particular Croats.<sup>147</sup>

### 3.4.2. Bosnia and Herzegovina

In *Delalić*:

The armed conflict in Bosnia and Herzegovina was the most protracted of all the conflicts which took place during the dissolution of the SFRY. It was characterised by a massive displacement of population as well as the practice of “ethnic cleansing” [...] and other violations of international humanitarian law.<sup>148</sup>

In *Krstić*:

[T]here are obvious similarities between a genocidal policy and the policy commonly known as “ethnic cleansing”. In this case, acts of discrimination are not confined to the events in Srebrenica alone, but characterise the whole of the 1992-95 conflict between the Bosnian Serbs, Muslims and Croats. The Report of the Secretary-General comments that “a central objective of the conflict was the use of military means to terrorise civilian populations, often with the goal of forcing their flight in a process that came to be known as ‘ethnic cleansing’”.<sup>149</sup>

Findings about the Bosnian Serb takeover of power in 35 of the 109 BiH municipalities are found in the *Krajišnik* judgement:

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<sup>146</sup> *Ibid.*, para. 469.

<sup>147</sup> *Ibid.*, para. 498.

<sup>148</sup> *Delalić*, para. 107.

<sup>149</sup> *Krstić*, para. 562.

[T]he Chamber finds that, from 18 March 1992 until the end of the indictment period (30 December 1992) there was an attack directed against the Bosnian-Muslim and Bosnian-Croat civilian population residing in the indictment municipalities. [...] The attack included a wide range of discriminatory measures taken against Bosnian Muslims and Bosnian Croats [...].<sup>150</sup> Although the Chamber finds that this was the general pattern followed in the municipalities, it recognizes that there were differences [...]. In municipalities where Muslims were a majority and had control over local institutions, such as Bratunac, Rogatica, Vlasenica, and Zvornik, local Serb civilians were evacuated, whereupon Serbian paramilitary forces launched attacks, expelling the Muslims and Croats and repopulating the areas with displaced Serbs. In municipalities where Serbs were a majority and had control over the local institutions, such as Banja Luka, Bijeljina, and Bosanski Novi, Serb authorities and armed forces exercised relentless and methodical pressure on Muslims and Croats, which included threats, arrests, and killings, as well as destruction of their religious and cultural institutions, in order to compel them to leave.<sup>151</sup> The Chamber finds that in the present case the attack aimed at forcibly displacing Bosnian Muslim and Bosnian Croats in order to change the ethnic composition of a municipality or smaller area within a municipality. The attack was undertaken throughout the indictment municipalities, and required the involvement of the Bosnian-Serb authorities, on central, regional, and municipal levels. The Chamber therefore finds that the attack was both widespread and systematic. [...] the actions taken, with few exceptions, targeted Bosnian Muslims and Bosnian Croats who were not taking an active part in the hostilities. The Chamber therefore finds that the attack itself was clearly directed against the Bosnian-Muslim and Bosnian-Croat civilian population.<sup>152</sup>

The Bosnian-Serb leadership accepted that destruction of civilian settlements would be swift and vast. [...] Trifko Radić reported to the Bosnian-Serb Assembly on 12 May 1992 that “we have no other solution but to shell and destroy towns. We

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<sup>150</sup> *Krajišnik*, para. 708.

<sup>151</sup> *Ibid.*, para. 709.

<sup>152</sup> *Ibid.*, para. 710.

have destroyed one third of Visoko, maybe tonight another third will go.”<sup>153</sup>

[T]he Chamber finds that approximately 3,000 Muslims and Croats were killed in 30 municipalities during the indictment period. To avoid any misunderstanding, the Chamber notes that this is not a historical finding, but a legal one. [...] This finding does not therefore exclude for the possibility that more Muslims and Croats were killed in these municipalities during the relevant time period. For purposes of this judgement, however, the Chamber may only take into account those specific killings which were proven beyond a reasonable doubt. The number of killings mentioned in this paragraph does not include killings in such incidents where, on the basis of the evidence, the Chamber was unable to assess the definite number of victims.<sup>154</sup> [A]ll the above incidents constitute extermination as a crime against humanity.<sup>155</sup>

The displacement of Muslims and Croats occurred in a similar way in all the above mentioned municipalities. Serb municipal authorities and Serb forces created severe living conditions for Muslims and Croats which aimed, and succeeded, in making it practically impossible for most of them to remain. [...] Once Serb forces had taken over towns and villages, many Muslims and Croats were arrested and interrogated, during which they were often tortured and beaten by their captors. The terrorization of the Muslim and Croat population very often included individual killings and massacres [...]. News of such massacres served to further instil fear among the Muslim and Croat population.<sup>156</sup>

In the same judgement, for discriminatory measures:

By way of example, the Čelinac war presidency adopted a decision conferring special status on the non-Serb population in the municipality. According to the decision, non-Serbs had the right to live unhindered “within the boundaries of their property,” and the right to leave the municipality, provided their departure was conducted in an organized fashion and that the entire household left. They were subject to a curfew from 4 p.m. to 6 a.m., forbidden from selling or exchanging dwellings

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<sup>153</sup> *Ibid.*, para. 974.

<sup>154</sup> *Ibid.*, para. 717.

<sup>155</sup> *Ibid.*, para. 721.

<sup>156</sup> *Ibid.*, para. 729.

without permission of the municipal authority, using any communication systems apart from the post office telephone, “lingering” in public places, or travelling to other towns without permission from the municipal authority. The population of Čelinac consisted overwhelmingly of Serbs [...].<sup>157</sup>

The Chamber has found that Muslims and Croats were forcibly displaced from 32 municipalities, and that this was part of a widespread and systematic attack against the Muslim and Croat civilian population. The Chamber finds that the forcible displacement was discriminatory in fact.<sup>158</sup>

The Chamber finds that Serb authorities detained mainly Muslim, but also Croat civilians in more than 350 detention facilities, the majority of which are referred to in schedule C of the indictment, located in 33 municipalities.<sup>159</sup>

The Chamber finds that acts of destruction of private property belonging to Muslims and Croats, including homes and business premises, were committed in 19 municipalities, namely Banja Luka, Bratunac, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Brčko, Čajniče, Čelinac, Foča, Ilijaš, Ključ, Kotor Varoš, Novi Grad, Pale, Prijedor, Prnjavor, Sanski Most, Trnovo, and Vlasenica.<sup>160</sup>

The Chamber finds that more than 200 cultural or religious sites, mainly mosques, but also Catholic churches, were heavily damaged or destroyed by Serb forces in 26 municipalities, namely Bijeljina, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboј, Foča, Ilijaš, Kalinovik, Ključ, Kotor Varoš, Nevesinje, Novi Grad, Prijedor, Prnjavor, Rogatica, Sanski Most, Sokolac, Teslić, Trnovo, Višegrad, Vogo and Zvor.<sup>161</sup>

In *Plavšić*:

The Bosnian Serb leadership knew that the Serb forces fighting on the side of the Bosnian Serbs were far more powerful militarily than those of the non-Serbs; and Radovan Karadžić warned Muslims that if they sought a sovereign and independent BH, they would be destroyed. The Bosnian Serb

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<sup>157</sup> *Ibid.*, para. 787.

<sup>158</sup> *Ibid.*, para. 807.

<sup>159</sup> *Ibid.*, para. 810.

<sup>160</sup> *Ibid.*, para. 829.

<sup>161</sup> *Ibid.*, para. 836.

forces, collaborating with the JNA, the MUP of Serbia and paramilitary units “to implement the objective of ethnic separation by force”, committed the persecutions in a campaign “that included the acts, events and locations contained in Count 3 [...]” which are acknowledged by the accused to have occurred. The persecutory acts included: killings during attacks on towns and villages; cruel and inhumane treatment during and after the attacks; forced transfer and deportation; unlawful detention and killing, forced labour and use of human shields; cruel and inhumane treatment and inhumane conditions in detention facilities; destruction of cultural and sacred objects; and plunder and wanton destruction.<sup>162</sup>

These acts and events are expanded in Count 3 and the Schedules to the Indictment that set out the results of the persecutory campaign in the 37 municipalities.<sup>163</sup> The Trial Chamber accepts that this is a crime of utmost gravity, involving as it does a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality. The gravity is illustrated by: the massive scope and extent of the persecutions; the numbers killed, deported and forcibly expelled; the grossly inhumane treatment of detainees; and the scope of the wanton destruction of property and religious buildings.<sup>164</sup>

*In Brđanin:*

The Trial Chamber is satisfied beyond reasonable doubt that there was a widespread or systematic attack against the Bosnian Muslim and Bosnian Croat civilian population in the Bosnian Krajina [...]. The attack took many forms. By the end of 1992, nearly all Bosnian Muslims and Bosnian Croats had been dismissed from their jobs in, amongst others, the media, the army, the police, the judiciary and public companies. Numerous crimes were committed against Bosnian Muslims and Bosnian Croats, including murder, torture, beatings, rape, plunder and the destruction of property. Villages were shelled, houses were torched and looted. In the spring of 1992, a number of detention camps where Bosnian Muslim and Bosnian Croat civilians were arrested and detained *en masse* were es-

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<sup>162</sup> *Plavšić*, para. 15 (originally in bullet points).

<sup>163</sup> *Ibid.*, para. 16.

<sup>164</sup> *Ibid.*, para. 52.

established throughout the ARK. In several instances, mass killings of civilians took place. Moreover, a policy of “ethnically cleansing” the ARK of its non-Serb population was systematically implemented by the Bosnian Serbs. Indeed, tens of thousands of Bosnian Muslims and Bosnian Croats were forcibly expelled from the ARK by the Bosnian Serbs and taken in convoys of buses and trains to Bosnian Muslim held territory in BiH or to Croatia. On the basis of the pattern of conduct by which these crimes were committed throughout the Bosnian Krajina, the Trial Chamber is satisfied that they were mostly perpetrated with a view to implement the Strategic Plan[.]<sup>165</sup>

The clearly recognisable pattern of criminal activity allows for only one reasonable conclusion, namely that these crimes were committed with the aim of implementing the Strategic Plan of the Bosnian Serb leadership to take control of the territory claimed for the Serbian State within BiH and to permanently remove most non-Serbs from this territory.<sup>166</sup> The Trial Chamber is satisfied beyond reasonable doubt that the crimes that were committed in the Bosnian Krajina from April 1992 until the end of December 1992 [...] occurred as a direct result of the over-arching Strategic Plan. The ethnic cleansing was not a by-product of the criminal activity; it was its very aim and thus an integral part of the Strategic Plan.<sup>167</sup>

[A]t least 1669 Bosnian Muslims and Bosnian Croats were killed by Bosnian Serb forces, all of whom were non-combatants.<sup>168</sup> [T]here was a coherent, consistent strategy of ethnic cleansing against Bosnian Muslims and Bosnian Croats [...].<sup>169</sup> Military operations were carried out against towns and villages that were not military targets. Bosnian Serb forces carried out attacks in Prijedor, Sanski Most, Bosanski Novi, Ključ, Teslić, and Kotor Varoš, among others. Such military operations were undertaken with the specific purpose to drive Bosnian Muslim and Bosnian Croat residents away.

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<sup>165</sup> *Brđanin*, para. 159.

<sup>166</sup> *Ibid.*, para. 100.

<sup>167</sup> *Ibid.*, para. 118.

<sup>168</sup> *Ibid.*, para. 465.

<sup>169</sup> *Ibid.*, para. 548.

The evidence shows that the displacement of persons was not simply the consequence of military action, but the aim of it.<sup>170</sup>

In *Tadić*:

[T]his Trial Chamber has found that an armed conflict existed in the territory of opština Prijedor at the relevant time and that an aspect of this conflict was a policy to commit inhumane acts against the civilian population of the territory, in particular the non-Serb population, in the attempt to achieve the creation of a Greater Serbia. [...] the acts were directed against a civilian population on discriminatory grounds, they were committed on both a widespread basis and in a systematic fashion pursuant to a policy [...].<sup>171</sup>

In *Kvočka*:

[T]here was “a widespread and systematic attack against notably the Muslim and Croat civilian population; and that there was a nexus between this armed conflict and the widespread and systematic attack on the civilian population and the existence of the Omarska, Keraterm, and Trnopolje camps and the mistreatment of the prisoners therein.”<sup>172</sup> Murder, torture, rape, beatings and other forms of physical and mental violence were strategically and systematically committed against non-Serbs in Omarska. Most of these atrocities appear to have been committed with a premeditated intent to create an atmosphere of violence and terror and to persecute those imprisoned [...].<sup>173</sup> The crimes committed in Omarska were not atrocities committed in the heat of battle; they consisted of a broad mixture of serious crimes committed intentionally, maliciously, selectively, and in some instances sadistically against the non-Serbs detained in the camp.<sup>174</sup>

Omarska was not a place where occasional random acts of cruelty against inmates occurred or where living conditions were simply hard. This was a hellish environment in which men and women were deprived of the most basic needs for their survival and of their humanity [...]. Omarska was a place

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<sup>170</sup> *Ibid.*, para. 549.

<sup>171</sup> *Tadić*, para. 660.

<sup>172</sup> ICTY, *Prosecutor v. Miroslav Kvočka*, Trial Chamber, Judgement, 2 November 2001, IT-98-30/1-T, para. 122 (<http://www.legal-tools.org/doc/34428a/>).

<sup>173</sup> *Ibid.*, para. 197.

<sup>174</sup> *Ibid.*, para. 319.



where beatings occurred daily and with devilish instruments of torture. No one could mistake Omarska for merely a badly run prison; it was a criminal enterprise designed to operate in a way that destroyed the mind, body, and spirit [...].<sup>175</sup>

In *Banović*:

[T]he Keraterm camp was established and operated as part of a joint criminal enterprise, the purpose of which was to imprison non-Serbs in humiliating and dehumanising conditions in order to rid the territory of non-Serbs, because of their ethnicity. The crimes committed by Predrag Banović occurred as part of a widespread and systematic attack on a civilian population, with a discriminatory intent.<sup>176</sup>

In *Mrđa*:

Darko Mrđa [member of the Prijedor Police Intervention Squad] personally and directly participated in the unloading, guarding, escorting, shooting, and killing of the unarmed men at Korićanske Stijene. Except for twelve men who survived the massacre, all of the men from the two buses were murdered.<sup>177</sup> [T]he Trial Chamber considers that the sentence should reflect all the cruelty and inhumanity of Darko Mrđa's direct participation in the shooting of around 200 civilians, of which all but 12 were killed, at Korićanske Stijene.<sup>178</sup> In August 1992, an armed conflict was taking place in Bosnia and Herzegovina. This armed conflict involved a widespread or systematic attack, within the meaning of Article 5 of the Statute, upon the non-Serb civilian population of the municipality of Prijedor. Darko Mrđja acknowledges that the crimes to which he is pleading guilty were part of this widespread and systematic attack.<sup>179</sup>

In *Dragan Nikolić*:

Between late May and October 1992, as many as 8,000 Muslim civilians and other non-Serbs from Vlasenica and the surrounding villages were successively detained in the hangar in

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<sup>175</sup> *Ibid.*, para. 707.

<sup>176</sup> ICTY, *Prosecutor v. Predrag Banović*, Trial Chamber, Sentencing Judgement, 28 October 2003, IT-02-65/1-S, para. 39 (<http://www.legal-tools.org/doc/7323e5/>).

<sup>177</sup> ICTY, *Prosecutor v. Darko Mrđa*, Trial Chamber I, Sentencing Judgement, 31 March 2004, IT-02-59-S, para. 10 (<http://www.legal-tools.org/doc/d61b0f/>).

<sup>178</sup> *Ibid.*, para. 42.

<sup>179</sup> *Ibid.*, para. 10.

Sušica camp. The number of detainees in the hangar at any one time was usually between 300 and 500.<sup>180</sup> Men, women and children were detained in Sušica camp, some being detained as entire families.<sup>181</sup>

The Accused persecuted Muslim and other non-Serb detainees by subjecting them to murders, rapes and torture as charged specifically in the Indictment. In addition, Dragan Nikolić participated in creating and maintaining an atmosphere of terror in the camp through murders, beatings, sexual violence and other physical and mental abuse.<sup>182</sup> This Trial Chamber finds it hard to imagine how murder, torture and sexual violence could be committed in a harsher and more brutal way than employed by the Accused [...].<sup>183</sup>

In *Jelisić*:

The events described in the factual basis very clearly show that the Serbian offensive targeted the non-Serbian population of Brčko.<sup>184</sup> As one of the active participants in this attack, Goran Jelisić must have known of the widespread *and* systematic nature of the attack against the non-Serbian population of Brčko.<sup>185</sup> The testimony heard during the trial shows that the offensive against the civilian population of Brčko, of which the acts of Goran Jelisić formed part, was directed mainly against the Muslim population. A great majority of the persons detained in the collection centres and at Luka camp were Muslim. [...] Most of the victims who were killed during the conflict in Brčko were Muslims.<sup>186</sup>

Goran Jelisić remarked to one witness that he hated the Muslims and wanted to kill them all, whilst the surviving Muslims could be slaves for cleaning the toilets but never have a professional job. He reportedly added that he wanted “to cleanse” the Muslims and would enjoy doing so, that the “balijas” had proliferated too much and that he had to rid the world of them.

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<sup>180</sup> ICTY, *Prosecutor v. Dragan Nikolić*, Trial Chamber II, Sentencing Judgement, 18 December 2003, IT-94-2-S, para. 57 (<http://www.legal-tools.org/doc/f8722c/>).

<sup>181</sup> *Ibid.*, para. 59.

<sup>182</sup> *Ibid.*, para. 67.

<sup>183</sup> *Ibid.*, para. 186.

<sup>184</sup> ICTY, *Prosecutor v. Goran Jelisić*, Trial Chamber, Judgement, 14 December 1999, IT-95-10-T, para. 21 (<http://www.legal-tools.org/doc/b3ece5/>).

<sup>185</sup> *Ibid.*, para. 57.

<sup>186</sup> *Ibid.*, para. 74.

Goran Jelisić also purportedly said that he hated Muslim women, that he found them highly dirty and that he wanted to sterilise them all in order to prevent an increase in the number of Muslims but that before exterminating them he would begin with the men in order prevent any proliferation.<sup>187</sup>

In *Kunarac et al.*:

Not only were the many underlying crimes made possible by the armed conflict, but they were very much a part of it. Muslim civilians were killed, raped or otherwise abused as a direct result of the armed conflict and because the armed conflict apparently offered blanket impunity to the perpetrators.<sup>188</sup> The Trial Chamber is satisfied beyond reasonable doubt that there was an extensive attack by the Serb forces targeting the Muslim civilian population in the area and for the period covered by Indictments. The attack encompassed the municipalities of Foča, Gacko and Kalinovik.<sup>189</sup> All traces of Muslim presence and culture were wiped out of the area. Almost no Muslims remained in Foča. All the mosques of Foča were destroyed. In January 1994, the Serb authorities crowned their complete victory – their “gaining supremacy” over the Muslims as was candidly stated by the Defence – by renaming Foča “Srbinje”, literally “the town of the Serbs”. Almost all the remaining Muslim men and women from all three municipalities were arrested, rounded up, separated and imprisoned or detained at several detention centres like Buk Bijela, Kalinovik High School, Partizan and Foča High School, as well as the KP Dom in Foča, in accordance with a recurring pattern. Some of them were killed, raped or severely beaten. The sole reason for this treatment of the civilians was their Muslim ethnicity.<sup>190</sup>

Dragoljub Kunarac also knew that Muslim women were specifically targeted, as he himself took several of them to his men and raped some of them himself. In the course of one of these rapes, he expressed with verbal and physical aggression his view that the rapes against the Muslim women were one

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<sup>187</sup> *Ibid.*, para. 102.

<sup>188</sup> ICTY, *Prosecutor v. Dragoljub Kunarac et al.*, Trial Chamber, Judgement, 22 February 2001, IT-96-23&23/1-T, para. 568 (<http://www.legal-tools.org/doc/fd881d/>).

<sup>189</sup> *Ibid.*, para. 570.

<sup>190</sup> *Ibid.*, para. 577.

of the many ways in which the Serbs could assert their superiority and victory over the Muslims. While raping FWS-183, the accused Dragoljub Kunarac told her that she should enjoy being “fucked by a Serb”. After he and another soldier had finished, Dragoljub Kunarac laughed at her and added that she would now carry a Serb baby and would not know who the father would be.<sup>191</sup>

Dragoljub Kunarac, Radomir Kovač and Zoran Vuković mistreated Muslim girls and women, and only Muslim girls and women, *because* they were Muslims. They therefore fully embraced the ethnicity-based aggression of the Serbs against the Muslim civilians, and all their criminal actions were clearly part of and had the effect of perpetuating the attack against the Muslim civilian population.<sup>192</sup>

*In Zelenović:*

During and after the take-over of Foča town and its surrounding villages and municipalities, Muslim and other non-Serb inhabitants were subjected to a widespread and systematic pattern of abuses, designed to remove the majority of them from the municipality.<sup>193</sup>

As a consequence of the attack against the civilian population of Foča and its surrounding municipalities, Muslim civilians were to a very large extent expelled from the region. Out of the 52% of the population residing in Foča who were Muslims, only ten persons remained [...].<sup>194</sup> The crimes which Mr. Zelenović has pleaded guilty to were part of a pattern of sexual assaults that took place over a period of several months, and in four different locations, and involved multiple victims. Mr. Zelenović took direct part in the sexual abuse of victims in a number of detention facilities, including the multiple rape of victims FWS-75 and FWS-87. Mr. Zelenović has been found guilty of personally committing nine rapes, eight of which were qualified as both torture and rape. [...] Four of the instances of sexual abuse were gang rapes, committed together with three or more other perpetrators.<sup>195</sup> The victims in

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<sup>191</sup> *Ibid.*, para. 583.

<sup>192</sup> *Ibid.*, para. 592 (italics in original).

<sup>193</sup> ICTY, *Prosecutor v. Dragan Zelenović*, Trial Chamber I, Sentencing Judgement, 4 April 2007, IT-96-23/2-S, para. 19 (<http://www.legal-tools.org/doc/2a9e0b/>).

<sup>194</sup> *Ibid.*, para. 20.

<sup>195</sup> *Ibid.*, para. 38.

this case were arrested and detained under brutal conditions for long periods of time. They were unarmed and defenceless. The victims were therefore in a particularly vulnerable situation [...]. In addition, victim FWS-87, who was raped by Mr. Zelenović on numerous occasions, was about 15 years old at the time of the commission of the crimes.<sup>196</sup>

In *Krnojelac*:

The expulsion, exchange or deportation of non-Serbs, both detainees at the KP Dom and those who had not been detained, was the final stage of the Serb attack upon the non-Serb civilian population in Foča municipality. [...] In late 1994, the last remaining Muslim detainees at the KP Dom were exchanged, marking the end of the attack upon those civilians and the achievement of a Serbian region ethnically cleansed of Muslims.<sup>197</sup> The Trial Chamber is satisfied that a widespread and systematic attack by the Serb forces against the non-Serb civilian population took place in and around Foča [...] the acts which took place at the KP Dom were part thereof. This attack included the systematic rounding up and imprisonment of non-Serb civilians, the burning and destruction of non-Serb, mostly Muslim, properties, the demolition of several mosques in the Foča town and municipality, the unlawful killing of non-Serb civilians, as well as the torture and mistreatment of many male non-Serb detainees at the KP Dom.<sup>198</sup>

In *Vasiljević*:

As a result of this process, by the end of 1992, there were very few non-Serbs left in Višegrad. Hundreds had been killed arbitrarily, while thousands of others had been forcibly expelled or forcibly transferred through violence and fear. Today, most of the people living in Višegrad are of Serb ethnicity. Such dramatic changes in ethnic composition occurred systematically throughout what is now the Republika Srpska, but proportionally the changes in Višegrad were second only to those which occurred in Srebrenica.<sup>199</sup> The Trial Chamber is satisfied upon the evidence before it that there was a widespread

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<sup>196</sup> *Ibid.*, para. 39.

<sup>197</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, Trial Chamber II, Judgement, 15 March 2002, IT-97-25-T, para. 49 (<http://www.legal-tools.org/doc/1a994b/>).

<sup>198</sup> *Ibid.*, para. 61.

<sup>199</sup> ICTY, *Prosecutor v. Mitar Vasiljević*, Trial Chamber II, Judgement, 29 November 2002, IT-98-32-T, para 56 (<http://www.legal-tools.org/doc/8035f9/>).

*and* systematic attack against the non-Serb civilian population of the municipality of Višegrad at the time relevant to the Indictment. The attack took many forms, starting with the Serb take-over of the town and the systematic and large-scale criminal campaign of murders, rapes and mistreatment of the non-Serb population of this municipality, particularly the Muslims, which eventually culminated in one of the most comprehensive and ruthless campaigns of ethnic cleansing in the Bosnian conflict. Within a few weeks, the municipality of Višegrad was almost completely cleansed of its non-Serb citizens, and the municipality was eventually integrated into what is now Republika Srpska.<sup>200</sup>

In *Lukić and Lukić*:

Evidence before the Trial Chamber shows that numerous acts of violence were perpetrated against the Muslim civilian population in Višegrad by the Serb police, members of paramilitary groups and local Serbs [...]. These acts of violence included unlawful arrests and beatings, abductions, rapes, theft and destruction of property, and arbitrary killings. Two mosques in Višegrad were burned down.<sup>201</sup> The Trial Chamber is further satisfied that the attacks were directed in a discriminatory manner against the civilian population; the victims were civilians from Višegrad, many were elderly and women and children, and all were Muslims.<sup>202</sup> The 2005 ICRC list of missing persons provides that 705 persons were reported to have disappeared from Višegrad, a sizeable majority of whom were Muslim. Considerable numbers of Muslim civilians were killed. From mid-May to September or October 1992, Mevsud Poljo and others pulled 170 to 180 bodies out from the Drina river, most dressed in civilian clothes, and whom they then buried. According to Mevsud Poljo, these accounted for only 20 percent of those seen in the river at that time. The bodies of hundreds of Muslim civilians were later exhumed from mass graves around the Višegrad municipality.<sup>203</sup> Consequently, the ethnic composition of Višegrad changed dramatically. When the conflict started, Višegrad was inhabited by almost twice as many Muslims as Serbs. By

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<sup>200</sup> *Ibid.*, para. 58.

<sup>201</sup> ICTY, *Prosecutor v. Milan Lukić and Sredoje Lukić*, Trial Chamber III, Judgement, 20 July 2009, IT-98-32/1-T, para. 890 ('*Lukić and Lukić*') (<http://www.legal-tools.org/doc/af5ad0/>).

<sup>202</sup> *Ibid.*, para. 891.

<sup>203</sup> *Ibid.*, para. 893.

1997, Serbs made up 95.9 per cent of the population and the Muslim population had dropped to below 1 per cent.<sup>204</sup>

In *Simić et al.*:

The Trial Chamber finds that the events, which took place in Bosanski Šamac and Odžak between 17 April 1992 and 31 December 1993, constituted an attack on the civilian population. This attack included the forcible takeover of power in Bosanski Šamac, and the subsequent acts of persecution and deportation against non-Serb civilians.<sup>205</sup>

In *Krstić*:

In July 1995, following the take-over of Srebrenica, Bosnian Serb forces executed several thousand Bosnian Muslim men. The total number of victims is likely to be within the range of 7,000–8,000 men [...].<sup>206</sup> The Trial Chamber has previously determined that a widespread and systematic attack was launched against the Bosnian Muslim population of Srebrenica from 11 July onwards, by reason of their belonging to the Bosnian Muslim group.<sup>207</sup> The humanitarian crisis in Potočari, the burning of homes in Srebrenica and Potočari, the terrorisation of Bosnian Muslim civilians, the murder of thousands of Bosnian Muslim civilians in Potočari or in carefully orchestrated mass scale executions, and the forcible transfer of the women, children and elderly out of the territory controlled by the Bosnian Serbs, constitute persecutory acts.<sup>208</sup>

In *Obrenović*:

Dragan Obrenović has accepted criminal responsibility for his role in the commission of persecutions following the fall of Srebrenica. This horrendous crime, which was carried out by methods including the cold-blooded murder of thousands of Bosnian Muslim men, was one of the darkest moments of the long war in the former Yugoslavia.<sup>209</sup>

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<sup>204</sup> *Ibid.*, para. 894.

<sup>205</sup> ICTY, *Prosecutor v. Blagoje Simić et al.*, Trial Chamber II, Judgement, 17 October 2003, IT-95-9-T, para. 978 (<http://www.legal-tools.org/doc/aa9b81/>).

<sup>206</sup> *Krstić*, paras. 426, 84.

<sup>207</sup> *Ibid.*, para. 536.

<sup>208</sup> *Ibid.*, para. 537.

<sup>209</sup> *Obrenović*, para. 149.

In relation to genocide, in *Blagojević and Jokić*:

The Trial Chamber has found that the widespread and systematic attack against the Bosnian Muslim population in Srebrenica was carried out on the basis of the ethnic, national and religious affiliation of the population. The Trial Chamber recalls in this respect the announcement of General Mladić that “the time has come for us to take revenge upon the Turks in this region.” It further notes that many VRS soldiers were cursing at the Bosnian Muslims and calling them names. VRS soldiers told refugees to leave the area calling it “Serb country” and part of “Greater Serbia”. When Bosnian Muslim prisoners arrived at detention centres they were forced to repeat pro-Serb texts including that “this [area] is Serbia”. The Trial Chamber therefore finds that the circumstances accompanying the terrorising and the cruel and inhumane treatment of the Bosnian Muslim civilians, the subsequent forcible transfer of the women and children and the organised executions of the men substantiate the existence of a discriminatory intent on racial, religious or political grounds of the perpetrators.<sup>210</sup>

The Trial Chamber is convinced that the criminal acts committed by the Bosnian Serb forces were all parts of one single scheme to commit genocide of the Bosnian Muslims of Srebrenica, as reflected in the “Krivaja 95” operation, the ultimate objective of which was to eliminate the enclave and, therefore, the Bosnian Muslim community living there. The forcible transfer was an integral part of this operation, which also included killings and destruction of properties.<sup>211</sup> The Trial Chamber has no doubt that all these acts constituted a single operation executed with the intent to destroy the Bosnian Muslim population of Srebrenica.<sup>212</sup>

In *Popović et al.*:

The Trial Chamber finds that it has been established beyond reasonable doubt that there was a widespread and systematic attack directed against the Bosnian Muslim civilian populations of Srebrenica and Žepa, commencing with the issuance of Directive 7. This attack had various components, including the strangulation of the enclaves through the restriction of humanitarian supplies, the gradual weakening and disabling of

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<sup>210</sup> *Blagojević and Jokić*, para. 619 (square brackets in original).

<sup>211</sup> *Ibid.*, para. 674.

<sup>212</sup> *Ibid.*, para. 677.



UNPROFOR, and a planned military assault on the enclaves, and culminated in the removal of thousands of people from Srebrenica and Žepa. This attack was widespread because of its large scale and number of victims; and it was systematic because of the organised nature of the actions taken against the victims and the improbability of their random occurrence.<sup>213</sup> The plan to force the populations of Srebrenica and Žepa to leave the enclaves was set out in Directive 7. The Directive spelled out that this be done through, *inter alia*, “the planned and unobtrusively restrictive issuing of permits” so as to “reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion”. The Trial Chambers finds this constituted a clear policy on the part of the VRS to restrict aid to the enclaves with the ultimate aim to force the Bosnian Muslims to leave. The Trial Chamber is also satisfied that this included restricting re-supply of UNPROFOR, with the aim of preventing UNPROFOR from performing its tasks, which was centrally to protect these enclaves.<sup>214</sup>

The actions against Srebrenica and Žepa formed part of the same attack. The actions taken against both enclaves were factually, temporally, and geographically closely related. Directive 7 specifically addressed Srebrenica and Žepa, and a similar strategy was implemented against both enclaves after the issuance of Directive 7.<sup>215</sup> It is however not necessary for the Trial Chamber to speculate as to what military action on the part of the VRS may have been justified in relation to the enclaves in fulfilment of these legitimate military aims. Whatever those measures might have been, the full scale, indiscriminate and disproportionate attack levelled by the VRS against these United Nations protected civilian enclaves, was not amongst them. The Trial Chamber is satisfied that the circumstances of the military action, as outlined previously, were such that it alone constituted an illegal attack against a civilian population of a widespread and systematic nature. At the same time, the military assault on the enclaves also formed part of the broader attack initiated against the civilian populations of

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<sup>213</sup> *Popović et al.*, para. 760.

<sup>214</sup> *Ibid.*, para. 766.

<sup>215</sup> *Ibid.*, para. 773.

Srebrenica and Žepa by Directive 7.<sup>216</sup> [T]he physical transportation of the women, children and the elderly from Srebrenica was the culmination and formed part of the widespread and systematic attack.<sup>217</sup>

The Trial Chamber recalls that in Potočari, the men aged between around 15 and 65 years were separated, transported and detained under unbearable conditions, and later executed. [...] the Trial Chamber is satisfied that these men were predominantly civilians and included boys and elderly males. [...] The Trial Chamber finds therefore that the acts committed against these men and boys were intrinsically linked to and formed part of the widespread and systematic attack against the civilian population.<sup>218</sup> Over the course of a few days, the Bosnian Serb Forces systematically executed several thousand Bosnian Muslim males, of whom 5,336 have been identified. These executions were the culmination of a prolonged period of terror for the population of Srebrenica and Žepa.<sup>219</sup> The scale and nature of the murder operation, the targeting of the victims, the systematic and organized manner in which it was carried out, and the plain intention to eliminate every Bosnian Muslim male who was captured or surrendered proves beyond reasonable doubt that members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Branch, intended to destroy the Muslims of Eastern Bosnia as a group.<sup>220</sup> The Trial Chamber finds that the murder operation – from the separations to detention to execution and burial – was a carefully orchestrated strategy to destroy aimed at the Muslim population of Eastern Bosnia.<sup>221</sup>

Thus the Trial Chamber is satisfied that genocide was committed by members of the Bosnian Serb Forces, including members of the VRS Main Staff the VRS Security Branch, such as Popović and Beara, against the Muslims of Eastern Bosnia, as part of the Bosnian Muslims.<sup>222</sup>

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<sup>216</sup> *Ibid.*, para. 755.

<sup>217</sup> *Ibid.*, para. 776.

<sup>218</sup> *Ibid.*, para. 779.

<sup>219</sup> *Ibid.*, para. 837.

<sup>220</sup> *Ibid.*, para. 856.

<sup>221</sup> *Ibid.*, para. 861.

<sup>222</sup> *Ibid.*, para. 863.

Moreover, surrounding the commission of those underlying acts of persecution, there were numerous occasions on which those participating gave expression to their discriminatory intent. The Trial Chamber recalls hearing evidence as to speeches or remarks revealing discriminatory intent such as the announcement of Mladić in Srebrenica that “we give this town to the Serb people as a gift. [...] the time has come for us to take revenge upon the Turks in this region.” Thus, the Trial Chamber finds that all these circumstances provide a consolidated picture of an overall discriminatory design.<sup>223</sup>

In *Tolimir*:

[I]nstead of specifically targeting the AbiH in actions, the Bosnian Serb Forces repeatedly acted against the whole of the Bosnian Muslim population in the Srebrenica and Žepa enclaves.<sup>224</sup> From 2 July 1995, Krivaja 95 set into motion a series of military actions to create the conditions for the elimination of the Srebrenica and Žepa enclaves known to be populated with civilians.<sup>225</sup> The boys and many of the men taken from Potočari or the column were civilians and had never been engaged in armed combat. The remainder of the men were *hors de combat* upon capture or surrender from the column [...] the murder of these men formed an intrinsic part of the attack directed at the Bosnian Muslim population of the Srebrenica and Žepa enclaves.<sup>226</sup> [T]he Chamber is satisfied that there was an attack within the meaning of Article 5 that was primarily directed at the Bosnian Muslim civilian populations of the Srebrenica and Žepa enclaves. The attack was widespread – including thousands of Bosnian Muslims killed over numerous locations, and tens of thousands driven out of the area. As the attack was committed through coordinated actions of the Bosnian Serb Forces in a short period of time, mostly in July 1995, the Chamber also finds that the established crimes were systematic.<sup>227</sup> As a result of the massive and cruel murder operation, the Majority found that at least 5,749 Bosnian Muslim males from Srebrenica were systematically murdered by Bosnian Serb Forces within a period of only several days. Bosnian Serb Forces committed these

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<sup>223</sup> *Ibid.*, para. 1004 (square brackets and ellipsis in original).

<sup>224</sup> *Tolimir*, para. 706.

<sup>225</sup> *Ibid.*, para. 707.

<sup>226</sup> *Ibid.*, para. 708.

<sup>227</sup> *Ibid.*, para. 710.

crimes with the repugnant intent to discriminate and destroy this particular group.<sup>228</sup>

Turning to findings about Bosnian Croat takeovers and attacks in municipalities, regarding Central Bosnia, in *Blaškić*:

In sum, during 1992 discriminatory acts were regularly carried out against the Muslim authorities of Vitez, Busovača and Kiseljak and against the Muslim population of those municipalities.<sup>229</sup>

All that evidence enables the Trial Chamber to conclude without any doubt that the villages of Ahmići, Pirići, Šantići and Nadioci had been the object of a planned attack on the Muslim population on 16 April 1993.<sup>230</sup>

The Trial Chamber observes that the HVO military offensives were merely the ultimate outcome of an overall policy of persecution of the Muslim populations pursued by the Croatian military and political authorities. In agreeing to be the Kiseljak region military commander in April 1992 and then Central Bosnia Operative Zone commander in June of that same year, the accused fully subscribed to this policy from the very moment of his posting.<sup>231</sup> The attacks were thus widespread, systematic and violent and formed part of a policy to persecute the Muslim populations.<sup>232</sup> To achieve the political objectives to which he subscribed, General Blaškić used all the military forces on which he could rely [...].<sup>233</sup>

In *Kordić and Čerkez*:

The Trial Chamber finds that the weight of the evidence points clearly to persecution of the Muslims in the Central Bosnian municipalities taken over by the HVO: Busovača, Novi Travnik, Vareš, Kiseljak, Vitez, Kreševo and Žepče. The persecution followed a pattern in each municipality and demonstrates that the HVO had launched a campaign against the Bosnian Muslims in these municipalities.<sup>234</sup>

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<sup>228</sup> *Ibid.*, para. 1217.

<sup>229</sup> *Blaškić*, para. 366.

<sup>230</sup> *Ibid.*, para. 428.

<sup>231</sup> *Ibid.*, para. 660.

<sup>232</sup> *Ibid.*, para. 751.

<sup>233</sup> *Ibid.*, para. 752.

<sup>234</sup> *Kordić and Čerkez*, para. 520.

The Trial Chamber finds that the overwhelming evidence points to a well-organised and planned HVO attack upon Ahmići with the aim of killing or driving out the Muslim population, resulting in a massacre. [...] Furthermore, the Trial Chamber draws the inference from this evidence (and evidence of other HVO attacks in April 1993) that there was by this time a common design or plan conceived and executed by the Bosnian Croat leadership to ethnically cleanse the Lašva Valley of Muslims. Dario Kordić, as the local political leader, was part of this design or plan, his principal role being that of planner and instigator of it.<sup>235</sup> The Trial Chamber finds that the attack on Stupni Do was a concerted attack by the HVO upon the village, with a view to removing the Muslim population. Whatever the immediate motive, it was part of the HVO offensive against the Muslim population of Central Bosnia and the result was a massacre.<sup>236</sup>

The Trial Chamber finds, on overwhelming evidence, that there was a campaign of persecution throughout the Indictment period in Central Bosnia (and beyond) aimed at the Bosnian Muslims. This campaign was led by the HDZ-BiH and conducted through the instruments of the HZ H-B and the HVO and orchestrated from Zagreb. It took the form of the most extreme expression of persecution, i.e., of attacking towns and villages with the concomitant destruction and plunder, killing, injuring and detaining Bosnian Muslims. [...] The purpose of this campaign was the subjugation of the Bosnian Muslim population.<sup>237</sup>

As for Hercegovina, in *Naletilić and Martinović*:

The evidence thus establishes that there was a widespread and systematic attack against the Muslim part of the civilian population [...]. It further establishes that this campaign had a specific aim: to transform the formerly ethnically mixed area in and around Mostar into BH Croat territory, to be populated by an ethnically pure BH Croat population.<sup>238</sup> The Chamber is satisfied that there was a widespread and systematic attack against the Muslim civilian population in Mostar, Sovići and Doljani [...]. The attack took many forms. It started with the

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<sup>235</sup> *Ibid.*, para. 642.

<sup>236</sup> *Ibid.*, para. 750.

<sup>237</sup> *Ibid.*, para. 827.

<sup>238</sup> *Naletilić and Martinović*, para. 240.

collection and detention of Muslim civilians after the fierce fighting around Sovići and Doljani and their subsequent transfer to detention centres and, later, to territory controlled by the ABiH. The BH Muslim houses in the area were burnt to make sure that there would be no return of the Muslim population. BH Muslim religious sites, like the mosques in the area, were systematically destroyed. Detention facilities for the BH Muslim part of the population were established all over the area. Detained BH Muslim civilians and BH Muslim soldiers *hors de combat* were often subjected to humiliating and brutal mistreatment by soldiers who had unfettered access to the detention facilities.<sup>239</sup> The campaign against the BH Muslim population in the area reached a climax after the attack on Mostar in early May 1993, when following the hostilities, the BH Muslim civilian population was forced out of West Mostar in concerted actions.<sup>240</sup>

In *Prlić et al.*:

The Chamber considers that all the acts described above constituted a widespread attack inasmuch as they were committed extensively – the acts were committed on the territory of eight BiH municipalities over a period of two years, from May 1992 until April 1994 – and resulted in thousands of victims. Moreover, these acts of violence were similar in every one of the municipalities concerned and were carried on in an organised fashion by the military and political forces of the HVO. For this reason, the Chamber finds that the attack was also systematic in nature.<sup>241</sup> The Chamber is satisfied beyond a reasonable doubt that the members of the JCE – the political and military leaders of the HZ(R) H-B, including the Accused and certain leaders from Croatia [...] implemented an entire system for deporting the Muslim population of the HR H-B consisting of the removal and placement in detention of civilians, of murders and the destruction of property during attacks, of mistreatment and devastation caused during eviction operations, of mistreatment and poor conditions of confinement as well as the widespread, nearly systematic use of detainees on the front lines for labour or even to serve as human shields, as well as murders and mistreatment related to this labour and these shields, and, lastly, the removal of detainees and their

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<sup>239</sup> *Ibid.*, para. 238.

<sup>240</sup> *Ibid.*, para. 239.

<sup>241</sup> *Prlić et al.*, vol. 3, para. 646 (<http://www.legal-tools.org/doc/202eba/>).

families outside of the territory of the HZ<sup>®</sup> H-B once they were released.<sup>242</sup>

### 3.4.3. Kosovo

In *Dorđević*:

Following the start of the NATO bombing on 24 March 1999, in the early morning of 25 March 1999 and continuing throughout the Indictment period, Serbian forces, including the VJ and the MUP, mounted attacks on tens of villages, in a number of municipalities, throughout Kosovo. Typically, the forces would first surround the individual villages and then the Serbian forces, in most cases the MUP alone, would take up positions in the village. Buildings, including houses and mosques, during the course of the attack were set on fire and destroyed. As a result of these attacks the Kosovo Albanian villagers were forced to flee. In some villages, when the women and children were ordered to leave, the men were detained by the Serbian forces and then killed. The Chamber has found elsewhere in this Judgement that, throughout the time period relevant to the Indictment, Kosovo Albanian civilians were deported or forcibly transferred by Serbian forces from no less than 13 municipalities. As part of these attacks by Serbian forces on the Kosovo Albanians the Chamber also found the wanton destruction or damage of Kosovo Albanian religious sites in no less than six municipalities. The evidence also established that no less than 729 Kosovo Albanians were murdered by Serbian forces in no less than seven municipalities. The Chamber finds that the individual attacks in each of the municipalities where the crimes were committed were undoubtedly part of the broader attack on the Kosovo Albanian population.<sup>243</sup>

The Chamber finds that the above pattern of events, and in particular the high number of villages attacked, the vast destruction of property, the large number of people murdered and of people forced to leave their homes establishes the widespread nature of the attack in Kosovo in the second half of 1998 and during the time period relevant to the Indictment. Furthermore, the Chamber is satisfied that the attack against the Kosovo Albanian civilian population was also systematic. [...] actions of the Serbian forces, in particular, the VJ and

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<sup>242</sup> *Ibid.*, vol. 4, para. 66.

<sup>243</sup> *Dorđević*, para. 1597.

MUP [...] at a number of locations in a relatively short period of time, were carried out in a coordinated and systematic manner.<sup>244</sup>

There is no evidence suggesting that the Serbian forces attempted to distinguish between KLA members and Kosovo Albanians. The Chamber recalls one telling example of a local villager from Bela Crkva/Bellacërkë in Orahovac/Rahovec municipality trying to explain to MUP forces, “We are simple farmers. We are no KLA” and then immediately following this, the man was shot in the chest and his nephew next to him in the head. Following this the forces went on to kill at least 41 other unarmed men. Such an example is one of many throughout Kosovo during the Indictment period when civilian Kosovo Albanians begged for their lives and attempted to explain to forces prior to being killed that they were civilians. These characteristic actions by Serbian forces reveal that their objective was not just the finding and arrest (or even the killing) of KLA fighters and supporters. As found throughout this Judgement, Serbian forces in the commission of the above mentioned crimes, specifically directed their attacks against Kosovo Albanians because of their ethnicity. [...] The civilian population was the primary, not an incidental, target.<sup>245</sup>

The Chamber has found that the charge of murder as alleged in the Indictment has been established with respect to 10 locations in Kosovo. The Chamber has found that not less than 724 individuals specifically listed in the Schedule to the Judgement were murdered by Serbian forces. In the large majority of cases the victims, including many women and children, were civilians, who were unarmed and not in any way participating in any form of armed conflict. Some of those killed may have been members of the KLA but, virtually universally, these too were prisoners of the Serbian forces, unarmed and unable to participate in any form of armed conflict at the time they were killed.<sup>246</sup>

[T]he Chamber [finds] that the Serbian forces acted not only against terrorist forces and in anticipation of a NATO ground invasion, but consciously and determinedly against the whole Kosovo Albanian population of Kosovo. In the Chamber’s

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<sup>244</sup> *Ibid.*, para. 1598.

<sup>245</sup> *Ibid.*, para. 1600.

<sup>246</sup> *Ibid.*, para. 1780.



finding, the actions of the Serbian forces in Kosovo in the period between March and June 1999 were directed to terrorizing the Kosovo Albanian population, killing large numbers of them and making the remainder leave Kosovo, so that ultimately the whole, or a substantial proportion of the population of Albanian ethnicity would no longer live in Kosovo.<sup>247</sup>

The Chamber notes that the MUP and VJ forces combined outnumbered the KLA by more than 7:1. [...] The Chamber considers these figures to be a further indication of a purpose to the operations going way beyond counter-terrorism.<sup>248</sup> [T]he use of force by VJ, MUP and associated forces in these operations was patently disproportionate. Indeed, in many cases, it would appear as though there was no military objective at all that could offer any legal justification for the actions of the VJ, MUP and associated forces.<sup>249</sup>

It was the desire to regain control over the territory of Kosovo that led the elements of the Serbian and FRY leadership to seek to do this by altering the demographic reality of Kosovo in order that Kosovo Albanians were no longer a majority and ethnic Serbs became the majority group. The Chamber finds that economic, social and political pressures were put upon Kosovo Albanians to move out of Kosovo while Serbs were encouraged to move into Kosovo in order to modify the ethnic balance in favour of Serbs.<sup>250</sup>

Based upon the evidence [...] the Trial Chamber finds that the common purpose of the joint criminal enterprise was to ensure continued control by the FRY and Serbian authorities over Kosovo and that it was to be achieved by criminal means. Through a widespread *and* systematic campaign of terror and violence, the Kosovo Albanian population was to be forcibly displaced both within and without Kosovo. The members of the joint criminal enterprise were aware that it was unrealistic to expect to be able to displace each and every Kosovo Albanian from Kosovo, so the common purpose was to displace a number of them sufficient to tip the demographic balance

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<sup>247</sup> *Ibid.*, para. 2035.

<sup>248</sup> *Ibid.*, para. 2061.

<sup>249</sup> *Ibid.*, para. 2065.

<sup>250</sup> *Ibid.*, para. 2005.

more toward ethnic equality and in order to cow the Kosovo Albanians into submission.<sup>251</sup>

#### 4. Some Specific Aspects of the Attack and Incidents

The conduct of both the Serbian and Croatian warring parties, as shown above, was marked by utter disregard for human life and international humanitarian law. The Chamber in the Srebrenica case of *Momir Nikolić* observed:

At the time that the crimes in this case were committed, the Tribunal had only been fully operational for a little over one year. It only had one indictee in custody. No trials had commenced. [...] International humanitarian law and international criminal law were not seen as enforceable law, but rather aspirational, if not academic, ideals. Thus, expectations of impunity for ones crimes, no matter how egregious, were the norm. A stark example of this expectation of impunity and total disregard for the law in 1995 was provided by Momir Nikolić himself when he was asked during his cross-examination in the *Blagojević* Trial whether he was required to abide by the Geneva Conventions in carrying out his duties in and around Srebrenica in July 1995. Momir Nikolić replied with a mix of incredulity and exasperation:

Do you really think that in an operation where 7,000 people were set aside, captured, and killed that somebody was adhering to the Geneva Conventions? Do you really believe that somebody adhered to the law, rules and regulations in an operation where so many were killed? First of all, they were captured, killed, and then buried, exhumed once again, buried again. Can you conceive of that, that somebody in an operation of that kind adhered to the Geneva Conventions? Nobody [...] adhered to the Geneva Conventions or the rules and regulations. Because had they, then the consequences of that particular operation would not have been a total of 7,000 people dead.<sup>252</sup>

Apart from the genocide, characteristics of the conflict are already mentioned, including detention camps “reminiscent of the Second World

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<sup>251</sup> *Milutinović et al.*, para. 95 (italics in original).

<sup>252</sup> ICTY, *Prosecutor v. Momir Nikolić*, Trial Chamber I, Section A, Sentencing Judgement, 2 December 2003, IT-02-60/1-S, para. 88 (<http://www.legal-tools.org/doc/f90842/>) (former square brackets and ellipsis added, latter (in block quote) in original).

War”, a pattern of rapes established in Foča, and the systematic destruction of places of worship.

The conflict also stands out for burning people alive in Višegrad, some particular killing incidents, the concealment or reburials of bodies, the attack on and siege of cities, and the deliberate destruction of undefended villages and unarmed inhabitants.

#### **4.1. Burning People Alive –Višegrad**

In *Lukić and Lukić*:

The Trial Chamber reiterates that the Pionirska street fire and the Bikavac fires exemplify the worst acts of inhumanity that one person may inflict upon others.<sup>253</sup> By burning the victims and the houses in which they were trapped, Milan Lukić and the other perpetrators intended to obliterate the identities of their victims and, in so doing, to strip them of their humanity. [...] There is a unique cruelty in expunging all traces of the individual victims [...].<sup>254</sup> In total, the Trial Chamber has found Milan Lukić responsible for the deaths of at least 132 people. [...] The victims of the Pionirska street fire and the Bikavac fire were children, women and elderly. Among the victims of the Pionirska street fire were a seventy-five-year-old woman, six children between the ages of two and four years old, and a two-day-old infant. Several of Milan Lukić’s victims were neighbours, individuals with whom he once had attended school, and women who had known him since he was a child.<sup>255</sup>

##### **4.1.1. Kosovo – “Two important cases”**

In *Dorđević*:

Two important cases should be mentioned. On 26 March 1999, at least 45 members of the Berisha family, including women, children and elderly, were killed on or nearby to Raštanski Put and in the pizzeria of the shopping centre in the town of Suva Reka/Suharekë. In the night of 1/2 April 1999, 20 members of the Vejisa and Caka families were killed in the basement of the house of Lulzim Vejisa on Miloš Gilić/Milosh Giliq Street in the town of Djakovica/Gjakovë. The house

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<sup>253</sup> *Lukić and Lukić*, 1061.

<sup>254</sup> *Ibid.*, para. 1062.

<sup>255</sup> *Ibid.*, para. 1064.

was then set on fire, as were other houses on this street. The Berishas were a prominent family in the town of Suva Reka/Suharekë, well known in the community. Lulzim Vejsa was the owner of a pool bar where many people used to gather. People knew him and his family well. In the Chamber's finding, the effect of these killings of prominent Kosovo Albanian civilians was to arouse fear and cause many others to leave.<sup>256</sup>

## 4.2. Concealment of Bodies – Reburials

### 4.2.1. Srebrenica

In *Popović et al.*:

As previously found, Bosnian Muslim men were buried in July at Branjevo Military Farm, Kozluk, the Petkovci Dam, Orahovac and Glogova. During September and October 1995, primary graves at these locations were exhumed and bodies were reburied in secondary graves.<sup>257</sup>

In the area of the Bratunac Brigade, the exhumation and transfer of corpses from Glogova to Zeleni Jadar took place at night over a period of time. [...] The reburial operation was termed “*asanacija*” in BCS, meaning hygiene and sanitation measures. According to Momir Nikolić, “*asanacija*” normally involved the removal and burial of the dead from a battlefield, however, in this particular case, the term referred to the relocation of the bodies buried in Glogova to smaller secondary graves in the area surrounding Srebrenica. The operation was supposed to be a covert one but everything was done openly and publicly and required the involvement of a lot of people, resources, assets, and vehicles.<sup>258</sup> Momir Nikolić requested Miroslav Deronjić to secure the assistance of the civilian authorities with regard to the reburial operation. [...] Bodies from primary graves in Glogova were reburied in secondary graves in the area around Zeleni Jadar sometime between 24 August and 23 October 1995. An excavator loader and a backhoe excavator were used for the digging and four to five trucks were used to transport the bodies from Glogova to Zeleni Jadar.<sup>259</sup>

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<sup>256</sup> *Dorđević*, para. 2032.

<sup>257</sup> *Popović et al.*, para. 600.

<sup>258</sup> *Ibid.*, para. 603.

<sup>259</sup> *Ibid.*, para. 604.

In the Zvornik Brigade's area of responsibility, the exhumation and relocation of bodies from the primary gravesites was conducted during several nights, in September and October 1995. Milorad Trbić coordinated the operation. Photographic evidence was presented to the Trial Chamber showing activity on the sites between 7 September and 2 October 1995.<sup>260</sup> Machine operators of the Engineering Company of the Zvornik Brigade who conducted the initial burials were asked to exhume the bodies at Branjevo Military Farm, Kozluk and Orahovac, together with additional machine operators from other units of the Zvornik Brigade. [...] The truck carrying the corpses passed through Zvornik leaving an unbearable stench and upsetting the local population.<sup>261</sup> The Trial Chamber considers that this evidence strengthens the conclusion that the plan to murder included a plan to conceal the fact that it was taking place.<sup>262</sup>

In *Perišić*:

Between August 1995 and October 1995, the VRS reburied many victims of the mass executions in remote secondary locations to hide the evidence. This reburial operation was ordered by the VRS Main Staff, directed by Colonel Beara, Chief of Security of the Main Staff, and Lieutenant Colonel Popović, Assistant Commander for Security of the Drina Corps. On the ground, the operation was carried out by the Bratunac and Zvornik Brigades.<sup>263</sup>

#### 4.2.2. Kosovo

In *Milutinović et al.*:

[T]here can be no doubt that a clandestine operation involving the exhumation of over 700 bodies originally buried in Kosovo and their transportation to Serbia proper took place during the NATO bombing. The main personalities involved in organising this large scale operation were the Minister of Interior, Vlastimir Đorđević; the President of the FRY, Slobodan Milošević; and the Head of the RJB at the time, Vlastimir Đorđević, all of whom are also, in this Indictment, named members of the joint criminal enterprise. The events described

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<sup>260</sup> *Ibid.*, para. 605.

<sup>261</sup> *Ibid.*, para. 606.

<sup>262</sup> *Ibid.*, para. 1067.

<sup>263</sup> *Perišić*, para. 649.

above are very damning of the MUP and many of its employees, who not only worked to exhume, transport, and rebury the bodies, but also participated in the institutional cover-up of the truck containing many bodies discovered in the Danube river.<sup>264</sup>

The Chamber is convinced that the purpose of this operation was to conceal over 700 bodies scattered throughout Kosovo from both citizens of the FRY and Serbia, and from the international community, including this Tribunal and NATO ground forces, whose presence on the ground in Kosovo was anticipated following the NATO bombing. The fact that the persons involved felt this concealment to be necessary in the first place also leads the Chamber to conclude that they knew that the great majority of the corpses moved were victims of crime, as opposed to combatants or people who perished during legitimate combat activities, such as the victims from the area of Meja and from Suva Reka/Suhareka town.<sup>265</sup>

*In Đorđević:*

During the course of April and early May 1999 several trucks loaded with corpses arrived at the Batajnica SAJ Centre, located in the vicinity of Belgrade. The SAJ was an organizational unit within the RJB and the Accused was chief of the RJB. The Centre consisted of a number of buildings and a firing range, and served as a training ground of the SAJ.<sup>266</sup>

As instructed by Vlastimir Đorđević, a hole was dug at the training field; this was in the most remote part of the Batajnica SAJ Centre, beyond the 300 metre firing range. Once the hole had been dug, one of the two MUP drivers reversed a truck containing the bodies down the decline created by K87 as he dug the hole. The rear door of the trailer was open and the driver braked heavily, so that bodies slid from the trailer into the hole without anyone handling them. The smell of the decomposing corpses was so strong that those present had to wear gas masks. The two trucks at the Centre were emptied immediately into the mass grave one after the other.<sup>267</sup> The Chamber is satisfied, on the basis of the above evidence, that the bodies emptied from these two trucks into the hole at the

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<sup>264</sup> *Milutinović et al.*, vol. 2, para. 1356 (<http://www.legal-tools.org/doc/d79e85/>).

<sup>265</sup> *Ibid.*, para. 1357.

<sup>266</sup> *Đorđević*, para. 1325.

<sup>267</sup> *Ibid.*, para. 1333.

Batajnica SAJ Centre were the bodies that had been discovered in the refrigerated truck in the Danube at Tekija.<sup>268</sup>

It is K87's evidence that at some point during the process of the repeated burials of bodies at the Batajnica SAJ Centre, he again went to see Vlastimir Đorđević. K87 asked Đorđević whether it was possible to stop bringing bodies to the Centre, because K87 found this disturbing.<sup>269</sup>

The Chamber is satisfied, on the basis of its above findings, that from the second week of April 1999, on at least six occasions over a period of several weeks carrying over into May of 1999, trucks containing bodies of Kosovo Albanians killed by Serbian forces in Kosovo arrived at the Batajnica SAJ Centre. At least two further deliveries of bodies were made to the Petrovo Selo PJP Centre. The drivers of the trucks transporting the bodies were MUP employees. The instructions to deliver the bodies to the Batajnica SAJ Centre and the Petrovo Selo PJP Centre were, on each occasion, given by high-ranking MUP officials including Petar Zeković, head of the Administration of Joint Affairs and Assistant Minister, as well as, in the case of the first two trucks delivered to the Batajnica SAJ Centre, directly by the Accused, Vlastimir Đorđević. Prior to the arrival of each truckload of bodies to the Batajnica SAJ Centre, the personnel at the Centre were informed of the arrival by the Accused, and were instructed by him as to the procedure they were to follow.<sup>270</sup>

The information provided to the Working Group had led them to mass gravesites at the Batajnica SAJ Centre.<sup>271</sup> Exhumation of the bodies and autopsies followed. As dealt with in more detail elsewhere in this Judgement, among the bodies and remains recovered from mass graves at the Batajnica SAJ Centre near Belgrade, were individuals last seen alive in Suva Reka/Suharekë on 26 March 1999 and Đakovica/Gjakovë municipality in March and April of 1999. Both of these locations are in Kosovo, each approximately some 450 kilometres from Batajnica.<sup>272</sup> The Working Group's investigation also revealed the existence of further mass graves at the Petrovo

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<sup>268</sup> *Ibid.*, para. 1334.

<sup>269</sup> *Ibid.*, para. 1343.

<sup>270</sup> *Ibid.*, para. 1356.

<sup>271</sup> *Ibid.*, para. 1375.

<sup>272</sup> *Ibid.*, para. 1376.

Selo PJP Centre, and at Lake Perućac near Bajina Bašta on the territory of the Užice SUP. Amongst the remains exhumed from Petrovo Selo, included 31 victims of the massacre that occurred on 28 March 1999 in Izbica/Izbicë, Srbica/Skenderaj municipality.<sup>273</sup> Between 9 and 14 September 1999, as a result of an order of the Užice District Court for investigations and exhumations at a mass grave site at Lake Perućac near Bajina Bašta, human remains were exhumed, together with parts of a burnt refrigerated truck.<sup>274</sup>

The combination of circumstances as reviewed by the Chamber satisfies it that the transportation of bodies from Kosovo, to Batajnica and Petrovo Selo for clandestine burial in mass graves, as well as the burial of bodies, on-site, found in a refrigerated truck freight compartment in Lake Perućac, was undertaken as part of a coordinated operation to clear the terrain in Kosovo of evidence of crimes by Serbian forces against Kosovo Albanians during the Indictment period. This operation was conducted, in the Chamber's view, under the direction of the Accused, with Dragan Ilić, on the direction of Minister Stojiljković, and pursuant to an order of President Milošević of the FRY.<sup>275</sup>

### 4.3. Attack and Siege of Cities and Towns

#### 4.3.1. Vukovar

In *Mrkšić et al.*:

[A]n armed conflict existed in the broader area of the municipality of Vukovar and elsewhere in Croatia, at the material time. The conflict had commenced by the end of August 1991 and continued until after the events charged in the Indictment.<sup>276</sup> [F]rom 23 August 1991 until 18 November 1991 the town of Vukovar and its surroundings were increasingly subjected to shelling and other fire: it came to be almost on a daily basis. The damage to the city of Vukovar was devastating. [...] By 18 November 1991, the city had been more or less totally destroyed. It was absolutely devastated.<sup>277</sup> The battle

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<sup>273</sup> *Ibid.*, para. 1378.

<sup>274</sup> *Ibid.*, para. 1379.

<sup>275</sup> *Ibid.*, para. 1980.

<sup>276</sup> ICTY, *Prosecutor v. Mile Mrkšić et al.*, Trial Chamber II, Judgement, 27 September 2007 IT-95-13/1-T, para. 422 (<http://www.legal-tools.org/doc/32111c/>).

<sup>277</sup> *Ibid.*, para. 465.



for Vukovar caused a large number of casualties, both dead and wounded, combatants and civilians.<sup>278</sup> 938 people were exhumed. Of the 938, 800 bodies were identified; 644 of these were Croatian, with 358 classified as civilians.<sup>279</sup> There can be no question that the Serb forces were, in part, directing their attack on Vukovar [...]. [...] the Serb attack was also consciously and deliberately directed against the city of Vukovar itself and its hapless civilian population, trapped as they were by the Serb military blockade of Vukovar and its surroundings [...]. [...] The events, when viewed overall, disclose an attack by comparatively massive Serb forces, well armed, equipped and organised, which slowly and systematically destroyed a city and its civilian and military occupants to the point where there was a complete surrender of those that remained. While the view is advanced before the Chamber that the Serb forces were merely liberating besieged and wronged Serb citizens who were victims of Croatian oppressiveness and discrimination, this is a significant distortion of the true position as revealed by the evidence, when reviewed impartially.<sup>280</sup> The terrible fate that befell the city and the people of Vukovar was but one part of a much more widespread action against the non-Serb peoples of Croatia and the areas of Croatia in which they were substantial majorities. The declaration by Croatia of its independence of the Yugoslav Federation and the associated social unrest within Croatia was met with determined military reaction by Serb forces. It was in this political scenario that the city and people of Vukovar and those living in its close proximity in the Vukovar municipality became a means of demonstrating to the Croatian people, and those of other Yugoslav Republics, the harmful consequences to them of their actions. In the view of the Chamber the overall effect of the evidence is to demonstrate that the city and civilian population of and around Vukovar were being punished, and terribly so, as an example to those who did not accept the Serb controlled Federal government in Belgrade, and its interpretation of the laws of SFRY, or the role of the JNA for which the maintenance of the Yugoslav Federation was a fundamental element in the continued existence of the JNA.<sup>281</sup> It is in this setting that the Chamber finds that, at the time relevant to the

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<sup>278</sup> *Ibid.*, para. 468.

<sup>279</sup> *Ibid.*, para. 469.

<sup>280</sup> *Ibid.*, para. 470.

<sup>281</sup> *Ibid.*, para. 471.

Indictment, there was in fact, not only a military operation against the Croat forces in and around Vukovar, but also a widespread and systematic attack by the JNA and other Serb forces directed against the Croat and other non-Serb civilian population in the wider Vukovar area. The widespread nature of the attack is indicated by the number of villages in the immediate area around Vukovar which was damaged or destroyed and the geographical spread of these villages, as well as by the damage to the city of Vukovar itself. The systematic character of the attack is also evidenced by the JNA's approach to the taking of each village or town and the damage done therein and the forced displacement of those villagers fortunate enough to survive the taking of their respective villages. The extensive damage to civilian property and civilian infrastructure, the number of civilians killed or wounded during the military operations and the high number of civilians displaced or forced to flee clearly indicate that the attack was carried out in an indiscriminate way, contrary to international law. It was an unlawful attack. Indeed it was also directed in part deliberately against the civilian population.<sup>282</sup>

#### 4.3.2. Dubrovnik

In *Miodrag Jokić*:

According to the parties, from 8 October 1991 through 31 December 1991, Miodrag Jokić, acting individually or in concert with others, conducted a military campaign, launched on 1 October 1991 and directed at the territory of the then Municipality of Dubrovnik [...].<sup>283</sup> [D]uring military operations directed at Srđ Hill and the wider Dubrovnik Region, Yugoslav forces (JNA) under the command of Miodrag Jokić fired hundreds of shells which struck the Old Town of Dubrovnik (the "Old Town").<sup>284</sup> Jokić was aware of the Old Town's status, in its entirety, as a [UNESCO] World Cultural Heritage site [...].<sup>285</sup> As a result of the shelling, two civilians were killed [...]. Six buildings in the Old Town were destroyed in their entirety and many more buildings suffered damage. Institutions dedicated to religion, charity, education, and the arts and

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<sup>282</sup> *Ibid.*, para. 472.

<sup>283</sup> ICTY, *Prosecutor v. Miodrag Jokić*, Trial Chamber I, Sentencing Judgement, 18 March 2004, IT-01-42/1-S, para. 21 (<http://www.legal-tools.org/doc/02d838/>).

<sup>284</sup> *Ibid.*, para. 22.

<sup>285</sup> *Ibid.*, para. 23.

sciences, and historic monuments and works of art and science were damaged or destroyed.<sup>286</sup> The shelling attack on the Old Town was an attack not only against the history and heritage of the region, but also against the cultural heritage of humankind. Moreover, the Old Town was a “living city” [...].<sup>287</sup> The Trial Chamber finds that, since it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site, such as the Old Town, constituted of civilian buildings and resulting in extensive destruction within the site. Moreover, the attack on the Old Town was particularly destructive. Damage was caused to more than 100 buildings, including various segments of the Old Town’s walls, ranging from complete destruction to damage to non-structural parts. The unlawful attack on the Old Town must therefore be viewed as especially wrongful conduct.<sup>288</sup>

In *Strugar*:

The Chamber has already found that on 6 December 1991 there was an attack launched by the JNA forces against the Old Town of Dubrovnik. It is also the finding of the Chamber, as recorded earlier, that there were no military objectives within the Old Town and the attack was not launched or maintained in the belief that there were.<sup>289</sup> [O]ne apparent objective of the JNA blockade of Dubrovnik was to force capitulation of the Croatian defending forces by the extreme hardship the civilian population was being compelled to endure by virtue of the blockade.<sup>290</sup> The Chamber has found that the Old Town was extensively targeted by JNA artillery and other weapons on 6 December 1991 and that no military firing points or other objectives, real or believed, in the Old Town were targeted by the JNA. Hence, in the Chamber’s finding, the intent of the perpetrators was to target civilians and civilian objects in the Old Town. [...] the Chamber has found there was also extensive targeting of non-military objectives outside the Old Town in the wider city of Dubrovnik.<sup>291</sup> In the

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<sup>286</sup> *Ibid.*, para. 27.

<sup>287</sup> *Ibid.*, para. 51.

<sup>288</sup> *Ibid.*, para. 53.

<sup>289</sup> ICTY, *Prosecutor v. Pavle Strugar*, Trial Chamber II, Judgement, 31 January 2005, IT-01-42-T, para. 284 (<http://www.legal-tools.org/doc/927ba5/>).

<sup>290</sup> *Ibid.*, para. 286.

<sup>291</sup> *Ibid.*, para. 288.

present case, the essential criminal conduct was an artillery attack against the Old Town inhabited by a civilian population. In the course of that attack civilians were killed and injured.<sup>292</sup>

### 4.3.3. Sarajevo, the Capital of BiH

In *Galić*:

In sum, the Majority finds that a series of military attacks on civilians in ABiH-held areas of Sarajevo and during the Indictment Period were carried out from SRK-controlled territories with the aim to spread terror among that civilian population. The Majority accepts the Prosecution's stand that as such, these attacks carried out with a specific purpose, constituted a campaign of sniping and shelling against civilians.<sup>293</sup> The Majority has also found that a campaign of sniping and shelling was conducted against the civilian population of ABiH-held areas of Sarajevo with the primary purpose of spreading terror.<sup>294</sup>

The gravity of the offences committed by General Galić is established by their scale, pattern and virtually continuous repetition, almost daily, over many months. Inhabitants of Sarajevo - men, women, children and elderly persons - were terrorized and hundreds of civilians were killed and thousands wounded during daily activities such as attending funerals, tending vegetable plots, fetching water, shopping, going to hospital, commuting within the city, or while at home. The Majority of the Trial Chamber also takes into consideration the physical and psychological suffering inflicted on the victims. Sarajevo was not a city where occasional random acts of violence against civilians occurred or where living conditions were simply hard. This was an anguishing environment in which, at a minimum hundreds of men, women, children, and elderly people were killed, and thousands were wounded and more generally terrorized.<sup>295</sup>

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<sup>292</sup> *Ibid.*, para. 450.

<sup>293</sup> ICTY, *Prosecutor v. Stanislav Galić*, Trial Chamber I, Judgement and Opinion, 5 December 2003, IT-98-29-T, para. 594 (<https://www.legal-tools.org/doc/eb6006/>).

<sup>294</sup> *Ibid.*, para. 597.

<sup>295</sup> *Ibid.*, para. 764.

In *Dragomir Milošević*:

The Trial Chamber finds that in the period covered by this Indictment, Sarajevo was effectively besieged by the SRK. If, by virtue of the limited possibilities offered by the tunnel, this was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterised by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace. The purpose of the siege of Sarajevo was to compel the BiH Government to capitulate.<sup>296</sup> Gen. Smith testified that, with the exception of countering a specific attack, it was his understanding that shelling and sniping of civilian areas in Sarajevo was “essentially to terrorise, to wear down the resolve of the defender, to hold the presence of the Serb pressure evidently in the minds of people on a daily basis.” David Harland found it “particularly alarming” that Radovan Karadžić and his associates directly said “we will use this Serbian-supported war machine to make life impossible for the civilians”, to “terrorise” the civilians in order to reach a particular political goal. Similarly, Lt. Col. Fortin said that it was his assessment that in Sarajevo sniping was used by the SRK “as a terrorist tactic” more than anything else “since the Bosnian Serbs had nothing to gain militarily and a lot to lose politically.”<sup>297</sup> Every incident of sniping resulting in death or injury is an example of terror.<sup>298</sup> Terror was committed by SRK forces by use of modified air bombs - indiscriminate weapon.<sup>299</sup> Deliberate targeting of civilians with mortars constitutes terror.<sup>300</sup> In short, the features of the campaign - the 24 proven scheduled incidents of sniping and shelling, the unscheduled incidents of sniping and shelling, the other evidence pertaining to shelling and sniping, the large number of persons targeted by the shelling and sniping, the structure and pattern evident in the shelling and sniping, the clear correlation between conflict in BiH as a whole

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<sup>296</sup> ICTY, *Prosecutor v. Dragomir Milošević*, Trial Chamber III, Judgement, 12 December 2007, IT-98-29/1-T, para. 751 (<http://www.legal-tools.org/doc/e706e2/>).

<sup>297</sup> *Ibid.*, para. 755.

<sup>298</sup> *Ibid.*, para. 911.

<sup>299</sup> *Ibid.*, para. 912.

<sup>300</sup> *Ibid.*, para. 913.

and the shelling of Sarajevo by the SRK - provide a classical illustration of a large-scale and organised attack, that is, a widespread and systematic attack.<sup>301</sup> The crime of terror is a specific crime, with an intent that is particularly indicative of a disregard for human life and integrity. The acts of the SRK troops were geared to striking persons at the very core of their being, by instilling a sense of insecurity and fear that affected every aspect of their lives. The civilians in Sarajevo were subjected to acts of violence that were aimed at depriving them of any sense of security. The evidence shows that they suffered immensely as a result of the campaign of sniping and shelling.<sup>302</sup> By planning and ordering the crimes of terror, murder and inhumane acts, the Accused made the entire civilian population of Sarajevo the direct target of countless acts of violence, and acted in direct breach of the basic principles of international humanitarian law.<sup>303</sup>

#### 4.3.4. Mostar

In *Prlić et al.*:

The Chamber finds that [...] from June 1993 to April 1994, East Mostar was under siege by the HVO. The Chamber finds that although East Mostar was not completely surrounded by the HVO because the roads to the north and the south were open, the town was indeed besieged in the sense that it was the target of a prolonged military attack by the HVO over several months that included intense constant shooting and shelling, including sniper fire, on a cramped densely-populated residential zone with the result that many inhabitants of East Mostar were injured or killed. Furthermore, the population could not leave East Mostar of its own free will and had to live under extremely harsh conditions, without food, water, electricity and appropriate medical care. The Chamber also notes that the HVO hindered and at times completely blocked the arrival of humanitarian aid and deliberately targeted the members of the international organisations, killing and wounding some of them. Lastly, the HVO destroyed the Old Bridge and also destroyed or significantly damaged ten mosques in East Mostar.<sup>304</sup> Jadranko Prlić also supported the

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<sup>301</sup> *Ibid.*, para. 928.

<sup>302</sup> *Ibid.*, para. 992.

<sup>303</sup> *Ibid.*, para. 994.

<sup>304</sup> *Prlić et al.*, vol. 2, para. 1378 (<http://www.legal-tools.org/doc/888712/>).

HVO campaign of fire and shelling against East Mostar and its impact on the civilian population of East Mostar and accepted the crimes directly linked to the HVO military operations against East Mostar. While the Muslim population of East Mostar was living under appalling conditions subjected to fire and shelling, Jadranko Prlić personally contributed to blocking the delivery of humanitarian aid to that part of the town from June 1993 to at least December 1993 by obstructing such deliveries and then restricting them. The Chamber deems that he thus knowingly contributed to causing serious bodily harm to the inhabitants of East Mostar and to a serious attack on their human dignity.<sup>305</sup>

#### 4.3.5. Zagreb, the Capital of Croatia

In *Martić*:

In the mid-morning on 2 May 1995, without warning, Orkan rockets hit Zagreb. Rockets struck the centre of the city, including: Štrossmayer Square, Matica Hrvatska Street, Petrinjska Street, Boškovićeve Street and Mrazovićeve Street as well as Draškovićeve Street, the intersection of Vlaška and Draškovićeve Streets and a school building in Križanićeve Street, the village of Pleso near Zagreb/Pleso airport, and the airport itself.<sup>306</sup> Five persons were killed during these rocket attacks.<sup>307</sup> The Trial Chamber finds that as a result of the shelling on 2 May 1995, Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač and Ivan Brodar were killed, and at least 160 people were injured.<sup>308</sup> At midday on 3 May 1995, Zagreb was again shelled by Orkan rockets on the following locations: Mažuranićeve Square, Marshall Tito Square where the Croatian National Theatre was located, and Klaićeve Street Children's Hospital.<sup>309</sup> Two people were killed in this attack.<sup>310</sup> In total, 54 persons were injured as a result of the shelling on Zagreb on 3 May 1995.<sup>311</sup> In a meeting on 24 October 1994 with Peter Galbraith, the United States Ambassador to Croatia, Milan Martić threatened to shell Zagreb. Milan

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<sup>305</sup> *Ibid.*, vol. 4, para. 272.

<sup>306</sup> *Martić*, para. 305.

<sup>307</sup> *Ibid.*, para. 306.

<sup>308</sup> *Ibid.*, para. 308.

<sup>309</sup> *Ibid.*, para. 309.

<sup>310</sup> *Ibid.*, para. 310.

<sup>311</sup> *Ibid.*, para. 312.

Martić stated “in effect that attacking civilian targets in Zagreb, attacking the city itself was an option, a way in which the RSK could respond to [...] a Croatian attack on the RSK”. Peter Galbraith warned Milan Martić that a rocket attack on Zagreb would be a crime.<sup>312</sup> On 10 February 1995, Milan Martić, in a speech to the commanding officers of the SVK stated emphatically that “[n]o one can stop us to fire at Zagreb, Osijek, Vinkovci, Zadar, Karlovac, Split”.<sup>313</sup>

In a radio interview on 5 May 1995, Milan Martić stated:

That order was given by me, personally, as a retaliation to Franjo Tuđman and his staff for the order he had given to commit aggression against the Western Slavonia [...].

At a meeting in Knin on 5 May 1995 with UN Special Envoy, Yasushi Akashi, Milan Martić stated in response to Yasushi Akashi’s condemnation of the rocket attacks on Zagreb that “[h]ad I not ordered the rocket attacks [...] they would have continued to bomb our cities”. Milan Martić threatened to resume the shelling of Zagreb if their conditions were not met, and spoke of “massive rocket attacks on Zagreb which would leave 100,000 people dead”.<sup>314</sup> In light of the totality of the evidence, the Trial Chamber finds beyond reasonable doubt that Milan Martić ordered the shelling of Zagreb on 2 and 3 May 1995.<sup>315</sup>

[A]s will be shown below, the presence or otherwise of military targets in Zagreb is irrelevant in light of the nature of the M-87 Orkan.<sup>316</sup> The M-87 Orkan is a non-guided projectile, the primary military use of which is to target soldiers and armoured vehicles. [...] The evidence shows that rockets with cluster warheads containing bomblets were launched in the attacks on Zagreb on 2 and 3 May 1995.<sup>317</sup> The evidence shows that the M-87 Orkan was fired on 2 and 3 May 1995 from the Vojnić area, near Slavsko Polje, between 47 and 51 kilometres from Zagreb. However, the Trial Chamber notes [...] that the weapon was fired from the extreme of its range. Moreover,

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<sup>312</sup> *Ibid.*, para. 316 (square brackets and ellipsis in original).

<sup>313</sup> *Ibid.*, para. 317.

<sup>314</sup> *Ibid.*, para. 320 (square brackets and ellipses in original).

<sup>315</sup> *Ibid.*, para. 460.

<sup>316</sup> *Ibid.*, para. 461.

<sup>317</sup> *Ibid.*, para. 462.



the Trial Chamber notes the characteristics of the weapon, it being a non-guided high dispersion weapon. The Trial Chamber therefore concludes that the M-87 Orkan, by virtue of its characteristics and the firing range in this specific instance, was incapable of hitting specific targets. For these reasons, the Trial Chamber also finds that the M-87 Orkan is an indiscriminate weapon, the use of which in densely populated civilian areas, such as Zagreb, will result in the infliction of severe casualties. By 2 May 1995, the effects of firing the M-87 Orkan on Zagreb were known to those involved. Furthermore, before the decision was made to once again use this weapon on Zagreb on 3 May 1995, the full impact of using such an indiscriminate weapon was known beyond doubt as a result of the extensive media coverage on 2 May 1995 of the effects of the attack on Zagreb.<sup>318</sup>

#### **4.4. Deliberate Destruction of Villages, Killing of Unarmed Inhabitants**

##### **4.4.1. Glogova**

In *Deronjić*:

The majority of the population in the Municipality of Bratunac, including the village of Glogova, was Bosnian Muslims.<sup>319</sup> [T]he population of Glogova in 1991 consisted of 1,913 residents, of whom 1,901 were Bosnian Muslims, 6 were Bosnian Serbs, 4 identified themselves as Yugoslavs, 1 as Bosnian Croat, and 1 as belonging to another unspecified ethnic group.<sup>320</sup>

On 30 September 2003, Miroslav Deronjić pleaded guilty to the crime of persecutions of non-Serb civilians in the village of Glogova, committed through the following underlying acts: ordering to attack the village of Glogova on 9 May 1992, burning it down in part, and forcibly displacing of Bosnian Muslim residents from the village. As a result, 64 Muslim civilians from the village were killed, Bosnian Muslim homes, private property, and the mosque were destroyed, and a substantial part of Glogova was razed to the ground.<sup>321</sup> In spring of 1992, an armed conflict between Serbs and non-Serbs

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<sup>318</sup> *Ibid.*, para. 463.

<sup>319</sup> *Deronjić*, para. 50.

<sup>320</sup> *Ibid.*, para. 51.

<sup>321</sup> *Ibid.*, para. 44.

broke out in the Republic of Bosnia and Herzegovina, including the Municipality of Bratunac. As part of the conflict, Bosnian Serb, JNA, and paramilitary forces carried out widespread and systematic attacks on the civilian population of this region.<sup>322</sup> As part of the process of ensuring that the Municipality of Bratunac would become ethnic Serb territory, “volunteers” from the SFRY, with the co-operation of the SFRY authorities, crossed the Drina River on 14 or 15 April 1992 and entered the village of Skelani in Srebrenica Municipality. Their purpose for entering Bosnia and Herzegovina was to assist the Bosnian Serbs in taking over power and forcibly removing Muslims from the area.<sup>323</sup> [E]fforts to expel the Bosnian Muslim population from the Municipality of Bratunac were undertaken. This ethnic cleansing included the intimidation and random killings of Bosnian Muslims by “volunteers” and others, and the looting of Muslim homes and businesses.<sup>324</sup> On an unknown date near the end of April 1992, the Bosnian Muslim population of Glogova was directed to appear at a meeting at the community building in Glogova where they were told to turn in their weapons.<sup>325</sup> On or about 27 April 1992, the aforementioned group returned to Glogova in order to collect weapons. Milutin Milošević, Chief of the Serb SUP, told the villagers that Glogova would not be attacked because they had turned over their weapons. The fact that Milutin Milošević added that he was speaking on behalf of Miroslav Deronjić is not disputed by the Accused. [...] From then on, Glogova was to be regarded as a disarmed and undefended village.<sup>326</sup> The disarming of the Bosnian Muslims in Glogova and in other Muslim villages was an important element in ensuring and facilitating the permanent removal of Bosnian Muslims from Glogova, the town of Bratunac, Suha and Voljavica and achieving the objectives set forth by the Bosnian Serb leadership.<sup>327</sup> On the evening of 8 May 1992 at the session of the Crisis Staff, Miroslav Deronjić, in his capacity as President of the Crisis Staff of Bratunac, gave the order to the Bratunac TO, including the police forces in Bratunac, to

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<sup>322</sup> *Ibid.*, para. 67.

<sup>323</sup> *Ibid.*, para. 69.

<sup>324</sup> *Ibid.*, para. 71.

<sup>325</sup> *Ibid.*, para. 75.

<sup>326</sup> *Ibid.*, para. 76.

<sup>327</sup> *Ibid.*, para. 79.

attack the village of Glogova, burn part of it down, and forcibly displace its Bosnian Muslim residents. Miroslav Deronjić was aware on 8 May 1992 that he was ordering the attack on an undefended and disarmed village.<sup>328</sup>

The attack on Glogova was a joint operation. The attacking forces were comprised of members of the JNA (Reljić's unit), the Bratunac TO, the Bratunac police, and paramilitary "volunteers" from Serbia (hereinafter "attacking forces"). Miroslav Deronjić confessed that he co-ordinated and monitored the attack on Glogova.<sup>329</sup> In the early morning hours of 9 May 1992, in particular members of the Bratunac TO, the Bratunac police, the JNA and paramilitaries, working in concert together, surrounded the village of Glogova. Thereafter, in accordance with what was agreed with the Accused, the attacking forces entered the village on foot and took control of it. The Bosnian Muslim villagers, who previously had been disarmed, offered no resistance. Miroslav Deronjić was present during the attack on Glogova and entered the village after the assault.<sup>330</sup> During the gathering of the Bosnian Muslim villagers of Glogova from their homes, members of the attacking forces shot and killed the Bosnian Muslim villagers Medo Delić, Čećo Ibišević, his wife Zlatija, and Adem Junuzović outside their homes.<sup>331</sup>

During the course of the attack, members of the attacking forces executed a group of approximately nineteen (19) Bosnian Muslim men on the main road near the centre of the village where the Glogova villagers were gathered.<sup>332</sup> After the execution [...], members of the attacking forces ordered other Muslim villagers to carry these and other bodies to the river. After all of the bodies were dumped into the river, those Bosnian Muslim villagers who had been ordered to carry the bodies were lined up by the river and executed.<sup>333</sup> Later during the attack on Glogova, members of the attacking forces gathered a group of approximately twenty (20) Bosnian Muslim men by the market in Glogova. These Bosnian Muslim men were ordered to walk to the river where they were executed

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<sup>328</sup> *Ibid.*, para. 87.

<sup>329</sup> *Ibid.*, para. 90.

<sup>330</sup> *Ibid.*, para. 92.

<sup>331</sup> *Ibid.*, para. 93.

<sup>332</sup> *Ibid.*, para. 94.

<sup>333</sup> *Ibid.*, para. 95.

by members of the attacking forces on the order of Najdan Mladjenović, a member of the Bratunac TO.<sup>334</sup>

A total of 64 unarmed Bosnian Muslim residents from Glogova were executed by members of the attacking forces during the 9 May 1992 attack.<sup>335</sup> The Accused launched a meticulously planned attack on Glogova in order to facilitate a scheme of creating Serb-ethnic territories by forcefully displacing Bosnian Muslim population from the entire municipality of Bratunac that was designed by the Bosnian Serb leadership already in 1991.<sup>336</sup>

#### 4.4.2. Ahmići

In *Bralo*:

Bralo and others participated in a surprise attack on the village of Ahmići, with instructions to ethnically cleanse the village, to kill the Muslim men of military age, to burn all Muslim residences, and to expel all the Muslim residents from the village.<sup>337</sup> Persecutions charged in the Indictment were part of a widespread and systematic attack on the civilian population, principally the Bosnian Muslim population of Vitez municipality in the Republic of Bosnia and Herzegovina, and Miroslav Bralo had knowledge of the wider context in which his conduct occurred.<sup>338</sup> There can therefore be little doubt that Bralo was a willing participant in one of the most brutal attacks upon a community in the entire conflict in Bosnia and Herzegovina. [...] A clearer example of “ethnic cleansing” would be difficult to find.<sup>339</sup>

In *Blaškić*:

Although the village of Ahmići had no strategic importance which justified the fighting, it was however of particular significance for the Muslim community in Bosnia. Many imams and mullahs came from there. For that reason, Muslims in

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<sup>334</sup> *Ibid.*, para. 96.

<sup>335</sup> *Ibid.*, para. 97.

<sup>336</sup> *Ibid.*, para. 222.

<sup>337</sup> ICTY, *Prosecutor v. Miroslav Bralo*, Trial Chamber, Sentencing Judgement, 7 December 2005, IT-95-17-S, para. 12 (*‘Bralo’*) (<http://www.legal-tools.org/doc/e10281/>).

<sup>338</sup> ICTY, *Prosecutor v. Miroslav Bralo*, Office of the Prosecutor, Factual Basis, 18 July 2005, IT-95-17-PT, para. 6 (<http://www.legal-tools.org/doc/ed181d/>).

<sup>339</sup> *Bralo*, para. 30.

Bosnia considered Ahmići to be a holy place. In that way, the village of Ahmići symbolised Muslim culture in Bosnia. The witness Watters was certain that Ahmići had been chosen as a target for that reason.<sup>340</sup> Most of the men were shot at point blank range.<sup>341</sup> Twenty or so civilians were also killed in Donji Ahmići as they tried to flee the village. [...] Military experts concluded that they had been shot by marksmen.<sup>342</sup> Other bodies were found in the houses so badly charred they could not be identified and in positions suggesting that they had been burned alive. The victims included many women and children. The British UNPROFOR battalion reported that: “Of the 89 bodies which have been recovered from the village, most are those of elderly people, women, children and infants”.<sup>343</sup> According to the ECMM report, at least 103 people were killed during the attack on Ahmići.<sup>344</sup> According to the Centre for Human Rights in Zenica, 180 of the existing 200 Muslim houses in Ahmići were burned during the attack.<sup>345</sup> Several religious edifices [including mosques] were destroyed.<sup>346</sup> The Trial Chamber notes that that mosque [in Donji Ahmići] had just been built. The inhabitants of Ahmići had collected the money to build it and were extremely proud of its architecture.<sup>347</sup> The methods of attack and the scale of the crimes committed against the Muslim population or the edifices symbolising their culture sufficed to establish beyond reasonable doubt that the attack was aimed at the Muslim civilian population. An ECMM observer noted that, further to his visit to Ahmići on 22 April 1993, “apart from the systematic destruction and the religious edifices that had been dynamited, what was most striking was the fact that certain houses remained intact, inhabited even, and one wondered how those islands had been able to survive such a show of violence”. Several international observers who went to the village a few

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<sup>340</sup> *Blaškić*, para. 411.

<sup>341</sup> *Ibid.*, para. 414.

<sup>342</sup> *Ibid.*, para. 415.

<sup>343</sup> *Ibid.*, para. 416.

<sup>344</sup> *Ibid.*, para. 417.

<sup>345</sup> *Ibid.*, para. 418.

<sup>346</sup> *Ibid.*, para. 419.

<sup>347</sup> *Ibid.*, para. 422.

days after the attack on Ahmići reported finding “a phenomenon of a ferocity and a brutality almost impossible to describe”.<sup>348</sup>

#### 4.4.3. Stupni Do

In *Rajić*:

At all times relevant to the Amended Indictment, including on 21 October 1993 and following, Ivica RAJIĆ knew that HVO units under his command, including the Maturice and Ban Josip Jelačić Brigade, had participated in several earlier operations against Bosnian Muslims villages in Kiseljak municipality and committed crimes against Bosnian Muslims, including murder, rape, destruction of property, arbitrary arrest and physical assault. [...] Ivica RAJIĆ knew, for example, that commanders and members of Maturice, including Miroslav Anić aka “Firga,” mutilated Bosnian Muslims and hung their heads in the “open market” in Kiseljak town. During the same time, Dominik Iljašević aka “Como” drove around Kiseljak with a cut off Muslim ear attached to the antenna of his car.<sup>349</sup> Ivica Rajić ordered HVO forces, including the Kakanj soldiers, to attack Stupni Do and Bogos Hill and to arrest and detain military-aged Muslim men in Vareš town.<sup>350</sup> In Stupni Do, HVO commanders and soldiers under Ivica Rajić’s command forced Bosnian Muslim civilians out of their homes and hiding places, robbed them of their valuables, wilfully killed Muslim men, women and children and sexually assaulted Muslim women. Twelve Muslim villagers were forced into a shed which HVO soldiers then set on fire (but from which the villagers were able to escape). The HVO attack on Stupni Do commanded by Ivica Rajić resulted in the deaths of at least thirty-seven Bosnian Muslim men, women, elderly and children (approximately six of whom were combatants). On 23-24 October 1993, most of the village was either wholly or partially destroyed.<sup>351</sup> The Prosecution finally submits that the victims in Stupni Do included five children and at least fourteen women. Of these victims, men and women were executed in front of relatives, young women were sexually abused and

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<sup>348</sup> *Ibid.*, para. 425.

<sup>349</sup> ICTY, *Prosecutor v. Ivica Rajić*, Trial Chamber I, Sentencing Judgement, 8 May 2006, IT-95-12-S, para. 38 (<http://www.legal-tools.org/doc/b50857/>).

<sup>350</sup> *Ibid.*, para. 41.

<sup>351</sup> *Ibid.*, para. 49.

one victim lost most of his family.<sup>352</sup> [T]he Trial Chamber finds that the crimes were not only committed on a large scale, but were also of a particularly violent nature.<sup>353</sup>

*In Kordić and Čerkez:*

The Trial Chamber finds that the attack on Stupni Do was a concerted attack by the HVO upon the village, with a view to removing the Muslim population. Whatever the immediate motive, it was part of the HVO offensive against the Muslim population of Central Bosnia and the result was a massacre. Some defence was offered but there was no justification for the attack.<sup>354</sup>

*In Prlić et al.:*

The village of Stupni Do had 70 houses, and between 220 and 250 inhabitants. In October 1993, the village of Stupni Do was protected by a “village guard”. It consisted of about 43 guards, aged between 18 and 60, some of whom were not wearing a uniform. They had not received any training, except for those who had served in the former JNA. They were under the authority of the ABiH, probably of the 322<sup>nd</sup> *Dabravine* Brigade, according to witness *Kemal Likić*.<sup>355</sup> The HVO offensive on Stupni Do began at around 0800 hours on 23 October 1993.<sup>356</sup> The Chamber therefore finds that during the attack on the village of Stupni Do by the members of the *Maturice* and/or *Apostoli* special units, 38 people, Muslim inhabitants of the village of Stupni Do, died; that of the 38 people, 36 were killed by the members of the *Maturice* and/or *Apostoli* special units and that of those 36 people, 11 were members of the village guard and/or the ABiH. For three other persons from among the 38, the Chamber does not know if they belonged to the ABiH or not, but the Chamber finds that one of them, Medina Likić, was killed after she had been disarmed by the HVO members.<sup>357</sup> The testimony heard by the Chamber shows that during the attack on Stupni Do on 23 October 1993, the HVO soldiers systematically stole property in the houses in the village and confiscated livestock, money, jewellery and other

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<sup>352</sup> *Ibid.*, para. 113.

<sup>353</sup> *Ibid.*, para. 86.

<sup>354</sup> *Kordić and Čerkez*, para. 750.

<sup>355</sup> *Prlić et al.*, vol. 3, para. 415 (italics in original).

<sup>356</sup> *Ibid.*, para. 417.

<sup>357</sup> *Ibid.*, para. 464 (italics in original).

valuables from villagers.<sup>358</sup> The Chamber finds that all the houses and adjacent buildings, such as stables and sheds, in the village of Stupni Do were destroyed during and following the attack on the village by the *Maturice* and/or *Apostoli* special units. It also finds that the same units robbed the villagers of their property.<sup>359</sup>

## 5. Conclusion

The review allows the conclusion that the ICTY judgements leave to present generations and to posterity well established facts about the causes of the war in the former Yugoslavia, its main protagonists, its victims and the gross human rights violations and violations of the laws of war which characterised it throughout. Without the ICTY, most of those facts would not have been known to this day.

The facts were determined on the basis of authentic, contemporaneous, meritorious documents of the most important state organs and bodies of the warring parties, other primary documentary evidence, the testimony of some of the highest-ranking participants and decision-makers and many hundreds of victims and witnesses. Prosecution evidence in each of the cases was vigorously contested by the Defence, which presented a contrary interpretation of the reasons for the war, the sequence of events, the motives and goals of the warring parties and the perpetrators and victims of the committed crimes. On the totality of the evidence, the judgements establish that the conflict was expansionist and international in nature, and that its main attribute was a widespread *and* systematic attack against the civilian population, with ethnic purity, that is ethnic cleansing, as the *goal*, not the *consequence* of the war.

That is a crucial contribution of the ICTY to the historical record and to the truth as an essential part of justice. These ICTY findings can and should be relied on in a comprehensive effort to comprehend the conflict and forge a peaceful future in the former Yugoslavia and the Balkans based on honesty and trust.

The ICTY judgements and trial record are sobering chronicles of the absurdity of nationalism-chauvinism and the effectiveness of the never changing pattern of propaganda and other methods of manipulation of populations. They document in vivid detail the senselessness, extreme cruelty and suffering of violent conflict, the waste of war, as noted in one of the

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<sup>358</sup> *Ibid.*, para. 465.

<sup>359</sup> *Ibid.*, para. 467 (italics in original).



judgements.<sup>360</sup> The many lessons they offer, if learned, could serve to prevent future wars, instead of their eternal repetition.

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<sup>360</sup> *Krstić*, para. 2.



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