ICTY, Prosecutor v. Radovan Karadzic

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: ICTY, The Prosecutor v. Radovan Karadzic, IT-95-5/18-T, Trial Chamber, 24 March 2016, available at: http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf (footnotes omitted)]

[…]

I. INTRODUCTION

A. THE ACCUSED AND CHARGES AGAINST HIM

1. This case relates to events alleged to have occurred from October 1991 to November 1995 in various locations in BiH [Republic of Bosnia and Herzegovina], including Sarajevo, Srebrenica, and 20 municipalities of the ARK [Autonomous Region of Karjina], the Sarajevo region, and eastern BiH ("Municipalities").

2. The Accused [Radovan Karadzic] was born on 19 June 1945 in the municipality of Šavnik, Republic of Montenegro. He was a founding member of the SDS [Serbian Democratic Party] and served as its President from 12 July 1990 to 19 July 1996. The Accused also acted as President of the National Security Council of SerBiH [Serbian Republic of Bosnia and Herzegovina, renamed *Republika Srpska* on 12 August 1992], which was created on 27 March 1992 and held sessions until around May 1992. On 12 May 1992, the Accused was elected as the President of the three-member Presidency of SerBiH. At the beginning of June 1992, the Presidency increased to five members, and the Accused continued as President of that Presidency. From 17 December 1992, he was sole President of the RS [*Republika Srpska* (before 12 August 1992, named SerBiH)] and Supreme Commander of the RS armed forces.

3. In the Indictment, the Accused is charged under Article 7(1) of the Statute for his alleged participation in four related JCEs [Joint Criminal Enterprise] in BiH. The Prosecution alleges the following:

i) From at least October 1991 to 30 November 1995, the Accused participated in an "overarching" JCE, the objective of which was to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb claimed territory in BiH through the crimes charged therein ("Overarching JCE");

ii) Between April 1992 and November 1995, the Accused participated in a JCE to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo, the primary purpose of which was to spread terror among the civilian population ("Sarajevo JCE");

iii) Between the days preceding 11 July 1995 and 1 November 1995, the Accused participated in a JCE to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men from Srebrenica ("Srebrenica JCE"); and

iv) Between approximately 26 May and 19 June 1995, the Accused participated in a JCE to take hostage over 200 UN peacekeepers and military observers in order to compel NATO to abstain from conducting air strikes against Bosnian Serb military targets ("Hostages JCE").

4. In addition, the Accused is charged for having planned, instigated, ordered, and/or aided and abetted the crimes in the Indictment. He is also charged as a superior pursuant to Article 7(3) of the Statute for these crimes.

5. The Indictment charges the Accused with 11 Counts as follows:

[…]
vi) Count 6: murder, a violation of the laws or customs of war (in relation the Municipalities, Sarajevo, and Srebrenica);
[…]
ix) Count 9: acts of violence the primary purpose of which is to spread terror among the civilian population, a violation of the laws or customs of war (in relation to Sarajevo);
x) Count 10: unlawful attacks on civilians, a violation of the laws or customs of war (in relation to Sarajevo); and
xi. Count 11: taking of hostages, a violation of the laws or customs of war.

[…]

II. GENERAL OVERVIEW

A. HISTORICAL CONTEXT

32. BiH, which was known as the SRBiH [Socialist Republic of Bosnia and Herzegovina (1945-1992)] prior to the conflict, was one of the six republics that once constituted the SFRY [Socialist Federal Republic of Yugoslavia]. Before the conflict, the situation of the SRBiH was unique in that, unlike the other republics, it possessed no single majority ethnic grouping and thus there was no recognition of a distinct “Bosnian nation”.

33. Throughout the SFRY during the 1980s, opposition between the various national movements steadily grew, fuelled by a growing economic crisis and an increasingly dysfunctional political system in the wake of the death of Marshal Josip Broz Tito in 1980. The JNA [Yugoslav People’s Army (*Jugoslavenska Narodna Armija)*] was the only military formation with an integrated command structure and large numbers of heavy weapons and aircraft, and was constitutionally mandated to “defend the homeland” and preserve the SFRY. The JNA was an entirely federal force, with its headquarters in Belgrade, and with the SFRY Presidency as its “supreme command and control organ”.

34. On 23 January 1990, upon the departure of the Slovene delegation, the Congress of the League of Communists of Yugoslavia was postponed indefinitely, paving the way for the organisation of multi-party elections in each of the six republics.

3. Towards disintegration of the SFRY

44. […] The disintegration of multi-ethnic SFRY was swiftly followed by the disintegration of multi-ethnic BiH, and the prospect of war in BiH increased.

[…]

47. […] On 9 and 10 November 1991, a plebiscite was held to determine whether Serbs in BiH wished to remain in a joint state of Yugoslavia, together with Serbia, Montenegro, the SAOs [Serbian Autonomous Region *(Srpska Autonomna Oblast)*] of Krajina, Slavonia, Baranja and Western Srem, and “any others who decide in favour of such a survival”. The overwhelming majority of Serbs voted in favour of remaining in Yugoslavia. By that time, in the wake of Croatia’s declaration of independence, JNA forces were withdrawing from Croatia into SRBiH. On 11 December 1991, Krajišnik, on behalf of the Assembly of the Serbian People in BiH, formally requested the JNA “to protect, with all available means the territories of [BiH]”.

48. On 17 December 1991, foreign ministers in the EC [European Community] created a commission composed of EC judges, known as the Badinter Commission, to assess applications for independence from the republics of the SFRY based on their adherence to certain guidelines. On 20 December 1991, the SRBiH Presidency […] voted to apply to the Badinter Commission for the recognition of SRBiH as an independent state.

[…]

50. The members of the Assembly of the Serbian People in BiH met on 21 December 1991, expressed their strong opposition to the Badinter Commission process, and approved preparations for the formation of a

Serb Republic. On 9 January 1992, the Assembly of the Serbian People in BiH proclaimed the SerBiH, which on 12 August 1992 was renamed RS.

[…]

53. On 15 January 1992, the Badinter Commission recommended that SRBiH be required to hold a referendum to determine the will of its people regarding independence. On 20 January, the SRBiH Assembly voted to hold such a referendum on 29 February and 1 March 1992. At its 26 January 1992 session, members of the SerBiH Assembly denounced the decision as illegal. On 28 February 1992, the SerBiH Assembly unanimously adopted the Constitution of the SerBiH.

54. The referendum on the question of independence was held on 29 February and 1 March 1992. It was largely boycotted by the Bosnian Serbs and yielded an overwhelming majority of votes in favour of independence.

[…]

56. The EC and the USA recognised the independence of BiH in April 1992. BiH was admitted as a State member of the UN, following decisions adopted by the Security Council and the General Assembly on 22 May 1992.

[…]

C. BOSNIAN SERB MILITARY AND POLICE STRUCTURES

159. During the time period relevant to the Indictment, the armed forces in the RS consisted of the VRS [Army of *Republik Srpska* (*Vojska Republike Srpske)*] and Bosnian Serb MUP [Ministry of Internal Affaires (*Ministarstvo Unutrasnjih Poslova*)] personnel. The Prosecution defines the “Serb Forces” as “members of the MUP, VRS, JNA, VJ [Army of the Federal Republic of Yugoslavia (this came into existence after the JNA in BiH became the VRS (*Vojska Jugoslavije*)], TO [Territorial Defence (*Teritorijalna Odbrana*)], the Serbian MUP, Serbian and Bosnian Serb paramilitary forces and volunteer units, and local Bosnian Serbs”. The Prosecution further defines the “Bosnian Serb forces” as members of “the VRS, the TO, the MUP and Bosnian Serb paramilitary forces and volunteer units”. […] The structure of the respective components of these forces will be addressed in turn in this section.

1. VRS

a. Establishment and composition of the VRS

160. On 12 May 1992, the Bosnian Serb Assembly decided to establish the Army of SerBiH. On 12 August 1992, when SerBiH was renamed RS, the denomination of the army also changed from Army of SerBiH to the VRS. The Accused, in his capacity as President of the RS, was also the Supreme Commander of the VRS. Ratko Mladić was appointed the Commander of the Main Staff. Manojlo Milovanović was appointed as both the Chief of Staff and Deputy Commander of the Main Staff.

161. The VRS was formed from parts of the JNA, TO, and volunteer units. Each of the former JNA corps in BiH retained most of its personnel and weaponry. The VRS inherited both officers and other ranks from the JNA, many of whom were of Bosnian Serb origin, as well as a substantial amount of weaponry and equipment. In places where there were no former JNA infantry units, the VRS created units. Weapons from the former JNA were distributed to the infantry units by officers and SDS members. The official withdrawal of the JNA was announced on 5 May 1992 and by 19 May 1992 it was said to be nearly completed. On 21 May 1992, the Accused, in his capacity as President of the Presidency, issued an order on general mobilisation.

162. According to the Defence Act, the Accused, as the President, had the power to organise and implement plans for defence, order mobilisation, command and control the army, and define the basis for the organisation and size of the police force. The Accused, as President, also had the power to issue orders for the deployment of the police during the war.

[…]

164. The basic structure and principles of the VRS, including the warfare doctrine, command and control principles, operational and tactical methods, and regulations followed those of the JNA. Organs and branches of the VRS were specifically directed to comply with the existing regulations of the SFRY, including the SFRY Law on All People's Defence, until regulations for the VRS were published.

[…]

2. Territorial Defence

210. As part of the SFRY military doctrine known as the "All People's Defence", the TO was comprised of organised armed formations that were not part of the JNA or the police. The TO was comprised of units, institutions, staff, and other organisations of individuals "for a general popular armed resistance" that could be mobilised during times of war. The TO was organised with staff at both the republic level and the municipal level.

[…]

3. Bosnian Serb MUP

1. Establishment and structure

215. On 28 February 1992, the Bosnian Serb Assembly passed the Law on Internal Affairs, which established the MUP, effective 31 March 1992.651 […]

[…]

c. Re-subordination of MUP personnel to the VRS

229. On 22 April 1995, the Accused issued an order clarifying the MUP re-subordination to the VRS. He ordered that the Main Staff must precisely and concretely define their requests for engagement and employment of MUP units in combat. The order reiterated that police units shall participate in combat operations by order of the Supreme Commander and the MUP. While the police units are engaged in combat activities, they "shall be subordinated to the commander of the unit in whose area of responsibility they are conducting combat operations".

230. On 15 May 1992, Mićo Stanišić issued an order that the MUP personnel would be organised into "war units" for the purpose of defending the territory. It authorised all the chiefs of the CSBs to organise the MUP personnel in their territory accordingly. This order formalised the cooperation of the MUP with the VRS. Stanišić further ordered that while participating in combat activities, the units of the MUP would be subordinated to the command of the VRS. However, these units would be directly commanded by MUP officials. Reserve police officers were made available for transfer to the frontlines and assignment into the VRS. In 1992, over 50% of policemen were engaged in combat activities through their re-subordination to the VRS. Units of the MUP were engaged in specialist operative duties, such as "neutralising sabotage and terrorist groups, organised criminal activities of armed individuals" in co-operation with the VRS.

4. Paramilitaries

231. In December 1991, it was reported that Serbian paramilitary groups were operating in the RS. According to a Main Staff report in July 1992, the paramilitaries lacked a cohesive unity, expressed hatred of non-Serbs, were motivated by war profiteering or looting, had links to corrupt political leaderships, and were not affiliated with the SDS but with opposition parties from Serbia (e.g., the Serbian Renewal Movement or Serbian Radical Party). It further reported that the paramilitaries did not partake in directly fighting with the enemy, but instead operated behind the lines of the regular VRS units, engaging in the killing of civilians as well as in looting and burning property.

[…]

238. In the spring of 1992, some paramilitary formations worked in co-ordination with the TO and municipal Crisis Staffs. The Bosnian Serb leadership and military commanders increasingly expressed opposition to having units that were outside of the command and control of the army. This led to various VRS and Bosnian Serb MUP leaders attempting to control paramilitary groups in the RS territory. The Main Staff recommended that every armed Serb should be placed under the exclusive command of the VRS, or else be disarmed with "legal measures taken". The MUP also attempted to integrate paramilitaries into the existing police units where it was possible.

239. On 13 June 1992, the Accused banned the formation and operation of armed groups and individuals on the territory of the RS which were not under the control of the VRS. The Accused also stated that he disowned groups that continued independent operation and those groups would suffer the strictest sanctions for their operations. […]

240. On 28 July 1992, Mladić ordered the disarming of paramilitaries. He noted that paramilitaries engaged in looting were operating in all territories under Bosnian Serb control and ordered that all paramilitary formations with “honest” intentions be placed under the command of the VRS. No individual or group responsible for crimes was to be incorporated into the army, and any member of a paramilitary unit who refused to submit to the unified command of the VRS was to be disarmed and arrested.

5. Volunteers

243. The SFRY Law on All People’s Defence specifically provided that volunteers were “persons not subject to military service who have been accepted in and joined in the Armed Forces at their own request”. Article 9 of the Law on the Army provided that during a state of war, imminent threat of war, or state of emergency, the army may be replenished with volunteers who were defined as “persons joining the Army at their own request” and enjoying the same rights and duties as members of the military.

244. The term “volunteers” was also used by individuals in paramilitary formations when referring to themselves. Nevertheless according to the Law on the Army, volunteers were individuals who placed themselves under the command of the army without a wartime assignment, while paramilitary formations were groups outside of anyone’s control at least in the early days of the war. VRS commanders used the concept of volunteers to integrate members of paramilitary formations into VRS operative units.

[…]

E. INTERNATIONAL PEACE NEGOTIATIONS

312. From 1991 until the end of 1995, there were numerous attempts made by the international community to broker a negotiated peace settlement in BiH. Over the course of four years, talks were held in various cities across Europe and a number of cease-fires were agreed upon. However, it was only with the Dayton Agreement signed on 14 December 1995 that peace was formally established in BiH.

[…]

III. APPLICABLE LAW

A. REQUIREMENTS AND ELEMENTS OF THE CRIMES CHARGED

1. Article 3 of the Statute of the Tribunal

438. The Accused is charged with four counts of violations of the laws or customs of war pursuant to Article 3 of the Statute. Under Counts 6 and 11, the Accused is charged, respectively, with murder and the taking of hostages, both recognised by Common Article 3 of the 1949 Geneva Conventions (“Common Article 3”). Count 9 charges the Accused with acts of violence, the primary purpose of which is to spread terror among

the civilian population. Finally, Count 10 charges the Accused with unlawful attacks on civilians.

439. The Chamber will first assess the general requirements for offences charged under Article 3 of the Statute before proceeding with its analysis of the elements in relation to each of these offences.

a. General requirements for violations of the laws or customs of war

440. Article 3 of the Statute provides that the Tribunal "shall have the power to prosecute persons violating the laws or customs of war", and its sub-paragraphs identify a non-exhaustive list of offences that qualify as such violations. Accordingly, Article 3 is a general clause which confers jurisdiction over any serious violation of international humanitarian law not covered by Articles 2, 4, or 5 of the Statute, in addition to those expressly listed under Article 3.

441. For Article 3 to apply, two preliminary requirements need to be fulfilled, namely there must be an armed conflict and the crime must be closely related to that armed conflict ("nexus requirement"). In relation to the requirement that there exist an armed conflict, the Appeals Chamber in the *Tadić* case articulated the test as follows: "[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized groups or between such groups within a State". To determine the existence of an armed conflict, both the intensity of the conflict and the organisation of the parties to the conflict must be considered on a case-by-case basis. It is immaterial whether the armed conflict was international in nature or not.

442. In relation to the nexus requirement, while there must be a connection between the alleged offences and the armed conflict, the Prosecution need not establish that the armed conflict was causal to the commission of the crime. However, it needs to be shown that the conflict played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed. To find a nexus, it is sufficient that the alleged crimes be closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.

443. In addition to these two preliminary requirements, the Tribunal's jurisprudence has established the following general requirements for the application of Article 3 of the Statute, also known as the "*Tadić* Conditions":

a) the violation must constitute an infringement of a rule of international humanitarian law;

b) the rule must be customary in nature or, if conventional, the treaty must be unquestionably binding on the parties at the time of the alleged offence and not in conflict with or derogating from peremptory norms of international law;

c) the violation must be serious, namely it must constitute a breach of a rule protecting important values and the breach must involved grave consequences for the victim; and

d) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.

444. Where a crime punishable under Article 3 of the Statute derives from protections found in Common Article 3, the victims of the alleged violation must have taken no active part in the hostilities at the time the crime was committed. Such victims include members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause. In addition, the Chamber must be satisfied that "the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed".

b. Murder as a violation of the laws or customs of war

445. Under Count 6 of the Indictment, the Accused is charged with murder as a violation of the laws or customs of war, punishable under Article 3 of the Statute. Murder is not explicitly listed in Article 3 but stems from the prohibition in Common Article 3(1)(a) of the Geneva Conventions, which provides that:

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

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely […]
To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
(a) violence to life and person, in particular murder of all kinds […].

i. *Actus reus*

446. The *actus reus* of murder is an act or omission resulting in the death of an individual. It is not necessary that proof of a dead body be produced if the victim's death can be inferred circumstantially from other evidence which has been presented to the Chamber. With regard to the requisite causal nexus, the requirement that death must have occurred "as a result of" the perpetrator's act or omission does not require this to be the sole cause for the victim's death; it is sufficient that the "perpetrator's conduct contributed substantially to the death of the person".

ii. *Mens rea*

447. In order to satisfy the *mens rea* of murder, the Prosecution must prove that the act was committed, or the omission was made, with an intention to kill (*animus necandi*) or to wilfully cause serious injury or grievous bodily harm which the perpetrator should reasonably have known might lead to death.

448. Thus, the *mens rea* of murder includes both direct intent (*dolus directus*), which is a state of mind in which the perpetrator desired the death of the individual to be the result of his act or omission, and indirect intent (*dolus eventualis*), which is knowledge on the part of the perpetrator that the death of a victim was a

probable consequence of his act or omission.

c. Unlawful attacks on civilians as a violation of the laws or customs of war

449. In Count 10 of the Indictment, the Accused is charged with criminal responsibility for unlawful attacks on civilians as a violation of the laws or customs of war, punishable under Article 3 of the Statute. While Article 3 does not explicitly prohibit "unlawful attacks on civilians" as such, the Appeals Chamber has held that attacks on the civilian population or individual civilians meet the threshold requirements for war crimes and are therefore covered by Article 3 of the Statute. In so ruling, Chambers of the Tribunal have relied on Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, both of which read in relevant parts that the civilian population and individual civilians shall not be the object of attack. Thus, the targeting of civilians has been deemed by this Tribunal to be absolutely prohibited at all times and, as such, cannot be justified by military necessity or by the actions of the opposing side.

450. As for the elements of the offence of unlawful attacks on civilians, they consist of (i) acts of violence directed against the civilian population or individual civilians not taking a direct part in hostilities causing death or serious injury to body or health within the civilian population (*actus reus*) and (ii) the offender wilfully making the civilian population or individual civilians not taking a direct part in hostilities the object of those acts of violence (*mens rea*).

i. *Actus reus*

451. Article 49 of Additional Protocol I defines "attacks" as "acts of violence against the adversary, whether in offence or defence". Accordingly, the issue of who made use of force first is irrelevant.

452. The meaning of civilian for the purposes of unlawful attacks on civilians stems from Article 50(1) of Additional Protocol I which provides that a "civilian is any person who does not belong to one of the categories of persons referred to in Article 4(A)(1), (2), (3) and (6) of the Third [Geneva] Convention and in Article 43 of [Additional] Protocol [I]." This is a negative definition of "civilian" as it includes anyone who is not a member of the armed forces or an organised military group belonging to a party to the conflict. Article 50(1) of Additional Protocol I also provides that in case of doubt whether a person is a civilian, that person shall be considered to be a civilian. The protection from attack afforded to individual civilians by Article 51 of Additional Protocol I continues until such time as they take direct part in hostilities, that is until they engage in acts of war which, by their very nature and purpose, are likely to cause actual harm to the personnel or materiel of the enemy forces. Thus, in order to establish that unlawful attacks against civilians have been committed, the Chamber has to find that the victims of these attacks were civilians and that they were not participating in the hostilities.

453. The jurisprudence is also clear that the presence of individual combatants within the civilian population attacked does not necessarily change the fact that the ultimate character of the population remains a civilian one. In determining whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave, must be examined.

454. As stated above, for the attack to constitute an unlawful attack on civilians, the Prosecution has to show

that it was directed against individual civilians or the civilian population. Whether this is the case can be determined from a number of factors, including the means and methods used in the course of the attack, the status and the number of victims, the distance between the victims and the source of fire, the ongoing combat activity at the time and location of the incident, the presence of military activities or facilities in the vicinity of the incident, the nature of the acts of violence committed, the indiscriminate nature of the weapons used, and the extent to which the attacking force has complied or attempted to comply with the precautionary requirements of the law of war. In this respect, the jurisprudence is also clear that both indiscriminate attacks and disproportionate attacks may qualify as attacks directed against civilians or give rise to an inference that an attack was directed against civilians. This is to be determined on a case-by-case basis, in light of the available evidence.

455. Finally, before criminal responsibility can be incurred for the unlawful attacks on the civilian population or individual civilians, the Chamber has to find that they have resulted in the death or serious injury to body or health of the victims in question.

ii*. Mens reas*

456. For unlawful attacks on civilians to be established, the Prosecution must show that the perpetrator wilfully made the civilian population or individual civilians the object of the acts of violence. In other words, the perpetrator has to act consciously and with intent, willing the act and its consequences. This encompasses the concept of recklessness but not negligence.

457. For the *mens rea* to be established, the Prosecution must also show that the perpetrator was aware, or should have been aware, of the civilian status of the persons attacked. In cases of doubt as to the status of those persons, the Prosecution must show that a reasonable person could not have believed that the individuals attacked were combatants. In addition, it is not required to establish the intent to attack particular civilians; rather, it is prohibited to make the civilian population as such, as well as individual civilians, the object of an attack.

d. Terror as a violation of the laws or customs of war

458. In Count 9 of the Indictment, the Accused is alleged to be criminally responsible for acts of violence the primary purpose of which was to spread terror among the civilian population of Sarajevo as a violation of the laws or customs of war, punishable under Article 3 of the Statute. While Article 3 does not explicitly refer to the offence of terror as such, the Appeals Chamber has held that this offence meets the threshold requirements for war crimes and is therefore covered by Article 3 of the Statute. The prohibition of terror stems from Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, both of which prohibit “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” and both of which have been deemed by the Appeals Chamber to be part of customary international law.

459. The following elements need to be established before the Chamber can enter a conviction for terror:

(a) acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities;

(b) the perpetrator wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence;

(c) the above was committed with the primary purpose of spreading terror among the civilian population.

i. *Actus reus*

460. The *actus reus* of terror consists of acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities. As such, it is similar to the *actus reus* of unlawful attacks on civilians. Accordingly, as is the case with unlawful attacks on civilians, the acts or threats of violence constituting terror need not be limited to direct attacks on civilians or threats thereof, but may include indiscriminate or disproportionate attacks. In addition, they do not include legitimate attacks against combatants.

461. The nature of the acts or threats of violence directed against the civilian population or individual civilians can vary. The Appeals Chamber has held that causing death or serious injury to body or health represents only one of the possible modes of commission of terror and thus is not an element of the offence per se. What is required—for this offence to fall under the jurisdiction of the Tribunal—is that the victims suffer grave consequences resulting from the acts or threats of violence, which may include but are not limited to death and/or serious injury to body or health. However, while “extensive trauma and psychological damage form part of the acts or threats of violence”, the actual infliction of terror on the civilian population is not a legal requirement of this offence.

462. The definition of civilians and civilian population has already been discussed by the Chamber in the preceding section and, therefore, shall not be repeated here.

ii. *Mens rea*

463. The *mens rea* of terror consists of both general intent and specific intent. As in the case of unlawful attacks on civilians, to have the general intent the perpetrator must wilfully make the civilian population or individual civilians the object of acts or threats of violence. The Chamber has already discussed the definition of “wilfully” in the context of unlawful attacks on civilians above, and shall therefore not repeat it here.

464. The specific intent for this offence is the intent to spread terror among the civilian population. The prohibition on terror also excludes terror which is not intended by the perpetrator but is merely an incidental effect of acts of warfare which have another primary object and are in all other aspects lawful. Accordingly, the particular circumstances must be taken into account in determining whether the perpetrator intended to spread terror among the civilian population or individual civilians.

465. The fact that the spreading of terror is referred to as the “primary purpose” does not mean that the

infliction of terror is the only objective of the acts or threats of violence. Accordingly, the co-existence of other purposes behind the acts or threats of violence would not disprove the charge of terror, so long as the intent to spread terror was the “principal among the aims”.

466. The intent to spread terror can be inferred from the circumstances surrounding the acts or threats of violence, including their nature, manner, timing, and duration. While, as stated above, the actual infliction of terror on the civilian population is not a legal requirement of this offence, the evidence of actual terrorisation may contribute to establishing other elements of the offence, including the specific intent to terrorise. The Appeals Chamber has also affirmed that the indiscriminate nature of an attack can be a factor in determining specific intent for terror.

e. Taking of hostages as a violation of the laws or customs of war

467. Count 11 charges the Accused with the taking of hostages as a “violation of the laws or customs of war, as recognised by Common Article 3(1)(b), and punishable under Article 3 of the Statute”. The crime of hostage-taking is not explicitly mentioned as one of the offences listed under Article 3 but stems from the provision in Common Article 3(1)(b), which protects “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause” from a list of prohibited acts, including hostage-taking. The plain text of Common Article 3 indicates that the prohibition on hostage-taking is both absolute and without exception.

468. In addition to fulfilling the chapeau requirements for Article 3, the offence of hostage taking requires the following elements. The *actus reus* of this offence is the detention of persons and the use of a threat concerning the detained persons, including a threat to kill, injure or continue to detain, in order to obtain a concession or gain an advantage. The Appeals Chamber has held that the prohibition on the taking of hostages pursuant to Common Article 3 applies to “all detained individuals, irrespective of whether their detention is explicitly sought in order to use them as hostages and irrespective of their prior status as combatants”. The *mens rea* required for hostage-taking is the intention to compel a third party to act or refrain from acting as a condition for the release of the detained persons. Because the essential feature of the offence of hostage taking is the use of a threat to detainees to obtain a concession or gain an advantage, which may happen at any time during the detention, the requisite intent may be formed at the time of the detention or it may be formed at some later time, after the person has been detained. The erroneous belief that detained combatants are not entitled to Common Article 3 protections is not a defence should the elements of hostage-taking be met.

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IV. FINDINGS

A. MUNICIPALITIES COMPONENT

1. Facts

592. The Prosecution alleges that from at least October 1991 until 30 November 1995, the Accused participated in an overarching JCE to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from the territories of BiH claimed as Bosnian Serb territory by means which included the commission of the following crimes: genocide, persecution, extermination, murder, deportation, and inhumane acts (forcible transfer). In this component, the Prosecution refers to the following municipalities: Bijeljina, Bratunac, Brčko, Foča, Rogatica, Višegrad, Sokolac, Vlasenica, and Zvornik (in relation to Eastern BiH); Banja Luka, Bosanski Novi, Ključ, Prijedor, and Sanski Most (in relation to the ARK [Autonomous Region of Krajina (*Autonomna Regija Krajina*)]); Hadžići, Ilidža, Novi Grad, Novo Sarajevo, Pale, and Vogošća (in relation to the Sarajevo area).

593. The Prosecution alleges that under the direction of the Accused and the Bosnian Serb leadership, civilian, military, and paramilitary organs collaborated to take over municipalities and territories throughout BiH in order to establish Serb control and permanently remove non-Serbs by force or threat of force. It is alleged that the physical take-overs of the Municipalities began in late March 1992 and that during and after these take-overs, Serb Forces and authorities, acting under the direction of the Accused, killed and mistreated thousands of individuals and expelled hundreds of thousands, while others fled in fear of their lives.

[…]

595. The Chamber will examine the allegations with respect to each of these Municipalities in turn.

[…]

vi. Vogosca

[…]

(d) Scheduled Incident B. 19. 1

2431. The indictment alleges the killing of “a number of detainees” who were taken out from Planjo’s House in Svrake between August and September 1992 in order to carry out forced labour and to serve as human shields.

2432. On 29 August 1992, Vlačo reported that eight detainees were taken to work at Žuč and that one of them was “wounded by an enemy sniper while working”. In the second half of September 1992, pursuant to an order issued by Trifunović, 50 detainees, including Mustafa Fazlić and Bego Selimović, were selected by Vlačo, divided in groups, and taken to Žuč in order to look for mines, dig trenches and serve as human shields. Trifunović ordered that on 26 September 1992, 30 detainees be transported to Žuč by military vehicles in order to carry out construction

work and be given food by the Vogošća Brigade Command. Near the end of September, detainees were again taken to Žuč and at one point ordered to walk close by a Serb tank that was, together with a number Serb infantry troops, engaged in combat activities. As a result, a number of detainees were seriously wounded. At one point, the tank lost control and slipped down a hill near the Bosnian Muslim positions. Some of the remaining detainees were made to retrieve the ammunition from the tank. During this operation, several detainees were killed by Muslim fire.

2433. At least 16 non-Serbs were killed at Žuč and other locations while carrying out work or serving as human shields during August and September 1992.

2434. Based on the foregoing, the Chamber finds that as a result of the detainees in Planjo's House being forced by Serb Forces to carry out labour at the frontlines or to serve as human shields, at least 16 detainees were killed and a number were wounded during August and September 1992.

[…]

2. Legal findings on crimes

a. Chapeau requirements for Articles 3 and 5 of the Statute

2439. In the Municipalities component of the case, in addition to a count of genocide under Article 4 of the Statute, the Accused is charged with a count of violations of the laws or customs of war under Article 3 of the Statute, namely murder, as well as with five counts of crimes against humanity under Article 5 of the Statute, namely persecution, murder, extermination, deportation, and forcible transfer as an inhumane act. The Prosecution alleges that there was a state of armed conflict at all times relevant to the Indictment.

i. *Article 3 of the Statute*

2440. Based on the evidence set out in detail above regarding the events related to this case, the Chamber finds that there was an armed conflict in BiH throughout the period relevant to the crimes alleged in the Indictment. At the latest, the armed conflict in BiH started in early April 1992. In the wake of the referendum on the independence of BiH on 29 February and 1 March 1992, armed clashes between Serb Forces on the one hand and Bosnian Muslim and/or Bosnian Croat forces on the other ensued. These armed clashes intensified and in early April 1992, municipalities starting with those in Eastern BiH were taken over by Serb Forces.

2441. For murder charged under Article 3 of the Statute, the Chamber has examined whether it was closely related to the armed conflict and made such findings where relevant in this Judgement.

2442. In relation to the four so called "*Tadić* Conditions", the Chamber refers to the applicable law sections of this Judgement, which expanded on the legal basis for each of the crimes charged in the Indictment under Article 3 of the Statute. In relation to murder, the prohibition stems from Common Article 3 which is deemed to be part of customary international law. Further, the Appeals Chamber has confirmed that violations of the provisions of Common Article 3 entail individual criminal responsibility. The Chamber is therefore satisfied

that the four *Tadić* Conditions are met, and consequently that the chapeau requirements for Article 3 of the Statute are fulfilled, in relation to murder.

[…]

b. Crimes

i. *Murder : Counts 5 and 6*

(A) Killing incidents

[…]

(B) Intent of perpetrators

2449. The Chamber recalls its findings that the death of the victims for each of the incidents identified above was a result of the acts of Serb Forces. The Chamber finds that the perpetrators of each of these incidents acted with the intent to kill the victims or at least wilfully caused serious bodily harm, which they should reasonably have known might lead to death.

2450. In reaching that conclusion, the Chamber had regard to the circumstances and the manner in which the victims were killed. With respect to the Schedule A killing incidents, the Chamber found that many of the victims were deliberately shot. In other incidents, while the Chamber did not have evidence that the victims were deliberately shot, the Chamber did find that they were killed during or after the take-over of towns or villages by Serb Forces and is satisfied considering the surrounding circumstances that these killings were deliberate.

2451. With respect to killings in scheduled detention facilities […], the Chamber found that the victims (i) were shot by Serb Forces during their detention; (ii) died as a result of severe beatings by Serb Forces during their detention; or
(iii) were taken away from the detention facilities by Serb Forces and killed.

2452. The Chamber recalls its finding that in Vogošća and Ilidža a number of detainees were taken from their place of detention by Serb Forces and killed while carrying out work on the frontlines or while being used as human shields. The victims died as a result of the actions of Serb Forces who used them for work on the front-lines or as human shields. In using the victims for work on the front-lines or as human shields, the members of the Serb Forces deliberately took the risk that they would be killed. The Chamber finds that in using them as human shields or in forcing them to work on the frontlines, the perpetrators wilfully caused the victims serious bodily harm, which they should reasonably have known might lead to death.

2453. With respect to victims who died as a result of cruel and inhumane treatment at detention facilities, the Chamber found that the victims died in circumstances which showed an intent by the perpetrators to kill or at least wilfully cause them serious bodily harm, which they should reasonably have known might lead to death.

For example the Chamber found that the detainees were severely beaten *inter alia* with chains and metal rods. Others were subjected to such conditions that they died from starvation, exhaustion, lack of medical care, intense heat, or suffocation.

(C) Status of victims

2454. The Chamber also finds that the victims of each of these incidents were civilians or had been rendered hors de combat at the time of their killing. Many of the victims were executed or killed after being captured by Serb Forces; some were killed while trying to escape from Serb Forces while others were killed after being detained by Serb Forces in scheduled detention facilities.

(D) Conclusion

2455. The Chamber has found that there was an armed conflict in BiH throughout the period relevant to the Indictment. As demonstrated by the Chamber's factual findings explained above, the Chamber finds that the killings referred to in this section were closely related to that armed conflict and thus constitute murder as violation of the laws or customs of war.

[…]

B. SARAJEVO COMPONENT

1. Facts

a. Chronology of events in Sarajevo

3526. In this section of the Judgement the Chamber will discuss the situation in the city of Sarajevo and the relevant events that occurred therein during the conflict in BiH. The section also refers to various shelling and sniping incidents, including the casualties resulting therefrom. […]

3527. The city of Sarajevo, capital of BiH, lies in a valley, stretching from east to west along both banks of Miljacka River. Hills and mountains overlook Sarajevo to the south and the north; from these elevations, it is possible to have unobstructed and clear views of the distinguishable features of the city and to see into its streets.

[…]

3531. While nationalist propaganda increased during the course of 1991, up until late 1991, the inhabitants of Sarajevo lived relatively peacefully together. Inter-ethnic tensions started to appear in late 1991 and gradually escalated.

[…]

b. Sniping

3615. The Prosecution alleges that the Accused, together with a number of others, participated in a joint criminal enterprise to establish and carry out a campaign of sniping against the civilian population of Sarajevo between April 1992 and November 1995 the primary purpose of which was to spread terror among the civilian population. In order to illustrate that campaign the Prosecution presented, *inter alia*, detailed evidence in relation to 16 sniping incidents listed in Schedule F of the Indictment. These incidents included sniping of trams as well as sniping of individual victims who found themselves on the streets of Sarajevo, all alleged to have been perpetrated by the "Sarajevo Forces". In addition, the Prosecution also brought general evidence going to the nature of sniping in Sarajevo and a number of unscheduled sniping incidents, in order to establish a pattern of conduct by the Bosnian Serb military and political authorities.

3616. In response, the Accused argues that there is no evidence that the SRK was tasked with opening sniper fire against civilians; instead the SRK sniping practice was strictly "military on military" and the victims of sniping incidents were simply caught in the exchange of fire and shot by stray bullets. The Accused does concede, however, that civilian deaths may have occurred during the war due to "uncontrolled sniper[s]" but argues that there was an attempt by the SRK not to harm civilians. In addition, the Accused claims that ABiH [Army of the Republic of Bosnia Herzegovina (*Armija Bosne I Hercegovine*)]snipers opened fire on their own civilians. The Prosecution argues in turn that the Accused's suggestions that ABiH forces fired on their own civilians are implausible and not supported by reliable evidence, while his claims that the victims were caught in exchanges of fire are also unsupported by the evidence.

[…]

c. Shelling

3974. The Prosecution alleges that the Accused, together with a number of others, participated in a joint criminal enterprise to establish and carry out a campaign of shelling against the civilian population of Sarajevo between April 1992 and November 1995, the primary purpose of which was to spread terror. To illustrate that campaign the Prosecution presented, *inter alia*, detailed evidence in relation to 15 shelling incidents listed in Schedule G of the Indictment. These incidents allegedly included opening mortar fire on residential areas in the city and using modified air bombs later in the conflict. As with the scheduled sniping incidents, they are all alleged to have been perpetrated by the Sarajevo Forces. In addition, the Prosecution brought general evidence on the nature of heavy weapon fire in Sarajevo and referred to a number of unscheduled shelling incidents to establish a pattern of conduct by the Bosnian Serb military and political authorities.

3975. In response, the Accused denies that the SRK deliberately shelled civilians, stating that there were military targets deep in ABiH-held territory in the city and that the ABiH units "abused for military purposes premises of civilian and protected buildings", including UN facilities. Nevertheless, according to the Accused, the SRK units took precautionary measures to prevent opening fire on civilians, such as 24-hour observation by artillery scouts and using more precise weapons when "returning fire on urban areas". Further, the Accused submits that the SRK units were informed of the provisions of international humanitarian law and the laws of war, and that orders were issued requiring soldiers to act in accordance with these laws. Finally,

the Accused claims that ABiH units targeted their own civilians by opening mortar fire on them in order to bring about international intervention in BiH.

2. Legal findings

a. Chapeau requirements for Articles 3 and 5 of the Statute

4606. In the Sarajevo component of the case, the Accused is charged with three counts of violations of the laws or customs of war under Article 3 of the Statute, namely murder, terror, and unlawful attacks on civilians, as well as with one count of crimes against humanity under Article 5 of the Statute, namely murder. The Prosecution alleges that there was a state of armed conflict at all times relevant to the Indictment. It also claims that all acts and omissions charged as crimes against humanity that formed part of the sniping and shelling campaign were part of a widespread or systematic attack directed against the civilian population of Sarajevo.

i. *Article 3*

4607. The Chamber found that there was an armed conflict in BiH throughout the period relevant to the crimes alleged in the Indictment. In Sarajevo, at the latest by early April 1992, heavy firing had erupted in and around the city, and my mid-April shelling had begun.

[…]

b. Crimes

[…]

ii. *Unlawful attack on civilians: Count 9*

(A) Acts of violence causing death or serious injury to body or health

4620. The Chamber recalls its findings in Sections IV.B.1.b: Sniping and IV.B.1.c: Shelling above that individuals were injured and/or killed in Sarajevo by sniping or shelling by Serb Forces, specifically the SRK. The Chamber finds that these constitute acts of violence causing death or serious injury to body or health. For example, the Chamber recalls shelling incidents that took place in Markale market on 5 February 1994 and 28 August 1995 and during which horrific injuries were caused to a large number of people as illustrated by the video footage of those incidents.

[…]

(B) Directed against a civilian population or individual civilians

4622. The Chamber recalls its findings that, with the exception of Scheduled Incidents F.5 and F.7, the victims of sniping were deliberately targeted by the SRK. In reaching this conclusion, the Chamber

considered, for example, that the distance between the incident site and the location from which the shot was fired would have required a skilful shot on the part of the shooter. For some incidents, there were additional shots after the victims had been hit, such as for example when the victims were being driven to the hospital. Similarly, in relation to Scheduled Incidents F.8, F.11, F.14, F.15, and F.16, respectively, the Chamber considered, inter alia, that the tram was struck by one bullet only; the tram concerned and the tram behind it were shot and struck in the same location and then fire was opened again in that same location at a number of people trying to leave the area; SRK snipers in the relevant area either had an unobstructed view of the incident site or there was sufficient visibility between the location from which the shot was fired and the incident site.

4623. The Chamber also found that, with the exception of Scheduled Incident G.6, the victims of shelling were deliberately targeted by the SRK or were victims of indiscriminate or disproportionate attacks. In reaching this conclusion, the Chamber considered, for example, in relation to Scheduled Incidents G.5 and G.9 that only one or two shells were fired and landed in a civilian area and there was no military target nearby. In relation to Scheduled Incident G.7, the shells exploded in a residential neighbourhood where humanitarian aid was being distributed and a large number of people had gathered waiting for the aid; there was no combat or military presence at the time. Similarly, in relation to Scheduled Incidents G.8 and G.19, a large number of civilians had gathered to buy goods and there were no military targets in the vicinity of the incident sites. For all the incidents that involved indiscriminate or disproportionate fire by the SRK, the Chamber is satisfied that the only reasonable inference that can be made is that the attacks were directed against civilians.

4624. The Chamber further found that the large majority of the victims of the Scheduled Incidents were civilians who were not taking direct part in hostilities at the time of the incidents. In relation to Scheduled Incident F.15, the Chamber did not consider the presence of one ABiH soldier on the tram to change the fact that on the day of the incident the tram was a civilian vehicle used to transport civilians. The Chamber recalls that the casualties of Scheduled Incident G.4 included ABiH soldiers but that they were off-duty and involved in or watching a football game together with a large number of civilians. Similarly, one casualty in Scheduled Incident G.19 was found to have been a soldier who was at the Markale market together with a large number of civilians. Accordingly, the presence of these soldiers did not change the character of the population at the game and in the market, respectively, and thus does not undermine the Chamber's conclusion that the attacks in those two incidents were directed against a civilian population.

[…]

(C) Intent of perpetrators

4626. The Chamber found that the perpetrators of the Scheduled Incidents were aware or should have been aware of the civilian status of the persons attacked and/or the lack of military targets in the areas subjected to mortar and artillery fire. In reaching these conclusions in relation to Scheduled Sniping Incidents, the Chamber considered, for example, that the victim's appearance, location, and/or activity—such as a child wearing civilian clothes standing in the doorway or front yard of her house, an adult woman collecting water at a river, a woman in civilian clothes cycling, or a woman with two children crossing a street during a period

of cease-fire—and the sight and distances involved in the given Sniping Incident, would have made the victim or victims identifiable as civilians to the shooter. For the Sniping Incidents in which the target was a tram, the Chamber found that the shooter would have known that the tram was a civilian vehicle carrying civilians. With respect to the Scheduled Shelling Incidents, the Chamber considered that the nature of the area, with no military targets in the immediate vicinity of the incident sites such as in the case of Markale market for example, and the activities in which the victims were engaged therein would have identified them as civilian objects and/or individual civilians. In addition, the Chamber is satisfied that in the case of indiscriminate and/or disproportionate attacks, such as those involving modified air bombs for example, the perpetrators who opened fire should have known that that the attack would result in civilian casualties.

4627. The Chamber finds that the perpetrators in the Scheduled Incidents above wilfully carried out the acts of violence referred to above and made the civilian population or individual civilians not taking direct part in hostilities the object thereof.

(D) Conclusion

4628. In addition to the findings in this section, the Chamber refers to its finding that there was an armed conflict in BiH during the period relevant to the Indictment. The Chamber further finds that the acts of violence referred to above are closely related to that armed conflict. As such, the Scheduled Incidents discussed above constitute unlawful attacks on civilians as a violation of the laws or customs of war.

iii. *Terror: Count 10*

(A) Acts of violence directed against a civilian population or individual civilians

4629. The Chamber refers to its findings above that the cited Scheduled Incidents, with the exception of F.5, F.7, and G.6, constitute acts of violence directed against a civilian population or individual civilians causing serious injury to body or health and/or death.

4630. The Chamber also recalls its finding that the civilian population of Sarajevo and individual civilians therein experienced extreme fear, anxiety, and other serious psychological effects resulting from the campaign of sniping and shelling by the SRK. Indeed, the Chamber found above that the citizens of Sarajevo in fact felt terrorised during the siege of their city. The Chamber finds that this psychological harm formed part of the acts of violence directed against a civilian population or individual civilians in Sarajevo.

(B) Intent of perpetrators

4631. The Chamber recalls that the crime of terror requires both general and specific intent. With respect to general intent, the Chamber refers to its findings above in relation to unlawful attacks that the perpetrators wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of acts of violence in the form of the cited Scheduled Incidents.

4632. The Chamber also finds that the perpetrators intended to spread terror among the civilian population of Sarajevo and that the infliction of terror was the primary purpose of the acts of violence directed against the

civilian population upon which the Chamber has made findings above. In reaching that conclusion, the Chamber had regard to the nature, manner, timing, location, and duration of the acts of violence, as well as its finding that the civilians in Sarajevo were in fact terrorised by the SRK. The Chamber considered that some sniping and shelling attacks were carried out during times of cease-fire or during quiet periods, when civilians thought it was safe to walk around and when trams were operating. In some instances, individual civilians were targeted while at their homes and there was no fighting in the area at the time, or while they walked or cycled about the streets with no fighting in the area at the time. The Chamber also considered that civilians were targeted at sites known to be areas where civilians went to or gathered for activities, such as collecting water, receiving humanitarian aid, commercial activity, and, in the case of trams, taking public transportation.

4633. In determining the existence of the intent to spread terror, the Chamber also considered the indiscriminate nature of some of the shelling attacks. For example, the Chamber recalls its finding that the SRK launched highly destructive modified air bombs on the city, the indiscriminate nature of which was known to the SRK units, as described earlier. These bombs were used in Scheduled Incidents G.10, G.11, G.12, G.13, G.14, and G.15. The Chamber also recalls that it found, in relation to Scheduled Incidents G.1 and G.2 that the SRK launched disproportionate and indiscriminate shelling attacks on the city resulting in a number of casualties. Further, the Chamber also found, in relation to Scheduled Incident G.5, that firing two shells, which are designed to suppress activity over a wide area, at a football match where a large number of civilians were gathered to watch, and at a time when there was no ongoing combat, constituted deliberate targeting of a civilian area or at the very least indiscriminate fire.

4634. The intent to spread terror was also demonstrated by the duration of the campaign of sniping and shelling, which started in late May 1992 and continued through much of 1995 and many other incidents of shelling and sniping recounted in Section IV.B.1.a. It was also demonstrated through the evidence of a multitude of witnesses on the general nature and pattern of the SRK’s sniping and shelling practices in the city.

(C) Conclusion

4635. In addition to the findings in this section, the Chamber refers to its finding that there was an armed conflict in BiH during the period relevant to the Indictment. The Chamber further finds that the acts of violence referred to above were closely related to that armed conflict. The Chamber therefore finds that the Scheduled Incidents above constitute terror.

[…]

D. HOSTAGES COMPONENT

5852. In Count 11, the Accused is charged with taking hostages as a violation of the laws or customs of war punishable under Article 3 of the Statute and Common Article 3. The Indictment alleges that on 25 and 26 May 1995, in response to shelling attacks on Sarajevo and other locations in BiH by the Bosnian Serb Forces, NATO carried out air strikes against Bosnian Serb military targets. It is further alleged that between

26 May and 19 June 1995, over 200 UN peacekeepers and military observers in various locations across BiH were taken hostage by Bosnian Serb Forces. According to the Indictment, the purpose of taking the UN personnel hostage was to compel NATO to abstain from conducting further air strikes against Bosnian Serb military targets. The Accused is charged both under Article 7(1) of the Statute for having committed in concert with others, through his participation in a JCE, planned, instigated, ordered, and/or aided and abetted the taking of these hostages, and under Article 7(3) as a superior for failing to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

1. Facts

a. NATO airstrikes

5853. As stated earlier, the situation in Sarajevo and BiH deteriorated further in May 1995. In Sarajevo in early May 1995, tensions between the VRS and the ABiH increased. […] The VRS used weapons from the Osijek WCP [weapons collection point] to break through the ABiH defence. […]

5854. On 22 May 1995, the activity of NATO jets flying overhead in Goražde increased. The VRS had removed heavy weapons from the WCPs near Sarajevo, as did the ABiH, and fighting escalated.

5855. On 24 May 1995, there was intense shooting in Grbavica and NATO planes flew over the area. The VRS removed more heavy weapons from the WCP following an increase in the fighting and refused to return them. Smith [General Rupert Smith, Commander of UNPROFOR] called Mladić to express his concern that, in and around Sarajevo, weapons were not being returned to the WCPs and that heavy weapons were being fired from there. Smith stated that he would issue a warning to both parties and release it to the press. The warning was that if the weapons were not returned to the WCPs by 12 p.m. on 25 May 1995, then NATO air strikes would commence. Smith told Mladić that they should meet as soon as possible to discuss a way in which the Sarajevo TEZ [Totale Exclusion Zone] could be respected. Mladić agreed to meet but reiterated that the use of force by the UN would lead to a further escalation of the conflict.

5856. On 25 May 1995, after the failure of the VRS to return heavy weapons to the WCPs, NATO was authorised by the UN to launch air strikes against Bosnian Serb military targets in Pale. Smith stated that the purpose behind the air strikes was to re-impose the TEZ and the WCP regime, which were both breaking down. Two air strikes were conducted: the first at 4 p.m. striking Jahorinski Potok and the second at 4:25 p.m. striking Ravna Planina.

b. VRS response

5857. On 25 May 1995, the Accused ordered Milovanović to “activate” a decision made the previous year ordering the VRS to “arrest everything foreign in RS territory and to treat military personnel as prisoners of war and hold them as hostages till the end of the war”. Consequently, Živanović issued an order to all units of the Drina Corps that following the NATO air strikes, the VRS should respond by conducting operations against selected targets and “if UNPROFOR [United Nations Protection Forces] continues its operations against our military and civilian targets, all units of the Corps must be on stand-by for action against UNPROFOR checkpoints and bases”. It further ordered the prevention of all movement of UNPROFOR

vehicles and of all other international organisations in the area and to fire on UNPROFOR if fired upon.

5858. On the evening of 25 May 1995, the VRS shelled all the safe areas, which also included an attack on Tuzla and Goražde that killed approximately 70 civilians and injured 150 others. The following day, NATO air strikes started again around 10 a.m. in Pale and continued until 12 p.m. The VRS fired weapons from the Bare, Ilidža, Osijek, and Polinje WCPs in the afternoon, after the expiration of the deadline to return those weapons. There were 44 reported incidents involving firing of heavy weapons within the Sarajevo TEZ. Negotiations between UNPROFOR and the SRK commander for the return of the weapons continued.

5859. On 26 May 1995, Dragomir Milošević issued an order to all units of the SRK to immediately establish a full blockade of UN forces at check-points and on all roads in the "entire zone of the Corps" and to "use additional forces if the blockade is detected by the UN forces".

5860. On 27 May 1995, the VRS Main Staff issued an order, approved by the Accused, to the commands of the 1st Krajina Corps, 2nd Krajina Corps, SRK, Eastern Bosnia Corps, Herzegovina Corps, Drina Corps, as well as other VRS units, stating that based on information that NATO will continue its air strikes on important targets in the RS, captured UNPROFOR personnel were to be disarmed and placed in "the areas of command posts, firing positions and other potential targets that may come under the air strike". The order provided for the exact number of UNPROFOR personnel to be detained, the location where they should be sent, the manner in which they should be transported, as well as an instruction that "they are to be treated properly with military respect, treat them as prisoners of war and provide them with food and water like the VRS troops".

5861. On the same day, an urgent message was sent from the Intelligence and Security Sector of the VRS Main Staff, recommending the 1st Krajina Corps, 2nd Krajina Corps, the SRK, the Eastern Bosnian Corps, and the Herzegovina Corps to place the "captured members of UN forces" in areas of possible NATO air strikes. The next morning, the VRS again shelled Tuzla.

5862. As will be explained in further detail below, on 26 May 1995 following the NATO air strikes, a number of UNPROFOR and UNMO [United Nations Military Observers] personnel throughout BiH were detained by the VRS. Some were taken from their posts or WCPs to various locations in the RS, such as the Bijeljina Barracks, the Lukavica Barracks, Jahorinski Potok, or Banja Luka. Others were simply detained at their locations by the VRS.

5863. By 29 May 1995, UNPROFOR estimated that approximately 347 UN personnel, including 32 UNMOs, were detained as "hostages" at their OPs [UNPROFOR Observation Point] and WPCs or held in isolated detachments, surrounded by Bosnian Serb Forces. Some of the UN personnel were held in locations of military significance for the VRS.

c. Detention and treatment of UN personnel

i. General observations

5864. UNPROFOR and UNMO personnel were stationed throughout BiH. However, the charges in the Indictment under Count 11 focus on the UNPROFOR and UNMO teams located in Sector Sarajevo, in particular in the areas of Pale, Sarajevo, Banja Luka, and Goražde.

5865. As mentioned earlier, UNPROFOR's responsibilities included monitoring the DMZ [Demilitarised Zone] and the TEZ, and reporting any incoming or outgoing fire. UNPROFOR teams in Sarajevo were also tasked with escorting UNHCR convoys into the city and overseeing the supply of water, gas, and electricity. Further responsibilities included observing the parties, reporting any cease-fire violations, controlling traffic, and ensuring free passage for all UN vehicles.

5866. The role of the UNMO teams included working with the parties to the conflict, monitoring the implementation of cease-fire agreements, monitoring WCPs, reporting on any incoming or outgoing shelling, and drafting investigating reports about shooting incidents. All UNMO teams were unarmed.

5867. In 1995 in the city of Sarajevo, there were approximately 5,000 UNPROFOR personnel comprised of troops mainly from France, Russia, Ukraine, and Egypt. Sector Sarajevo UNPROFOR had six battalions and one detachment in charge of the Sarajevo airport. In Goražde, the UNPROFOR team was comprised of approximately 400 members of BritBat and one Ukrainian company of approximately 100 men.

5868. It was estimated that approximately 260 UNPROFOR personnel in Sector Sarajevo were taken and detained by the VRS. […]

[…]

5870. The Chamber will now examine in more detail the sequence of events in relation to some of these UNMO and UNPROFOR teams.

[…]

c. Detention and treatment of UN personnel

[…]

iii. Evidence from the UNMO team in Kasindo

5873. The UNMO team in Kasindo, south of Sarajevo, had six members, including Marcus Helgers, Ahmad Manzoor, and Gunnar Westlund, the acting team leader. On 25 May 1995, after the first NATO air strike, a uniformed man claiming to be a VRS security officer entered the accommodations of the UNMO team in Kasindo. He informed them that there had been a NATO air strike against the Bosnian Serbs and that the UNMO team was under house arrest. […]

[…]

5875. The UNMOs eventually arrived in Grbavica, where they were taken to the basement of a civilian high-rise building where ten armed VRS soldiers were sitting. A stolen UN vehicle
that had been painted black arrived and three armed men came out. The two soldiers who arrested the UNMO team appeared wearing stolen UN blue helmets and flak jackets; they were under the command of these three armed men. […] The two soldiers who arrested the UNMO team drove away in the two UN vehicles taken from the UNMO office. The UNMO team was placed in the back of the black vehicle and driven towards Pale. Around 7 p.m., the vehicle reached the police station in Pale where the leader went inside; he then took them to a cafe in downtown Pale. There, the UNMO team was ordered to get out of the vehicle and line up on the pavement. Westlund saw many drunken VRS soldiers standing outside the cafe wearing stolen UN equipment. They also saw members of the 7 Lima UNMO team from Pale who had been captured earlier that day. Ribić told them: "You are now our prisoners and we are going to take you to the radar station where you will be locked-up to protect it". Ribić further stated that if there were any more NATO air strikes, one of the UNMOs would be shot, and if there was an air strike on the Mount Jahorina radar station, any of the UNMOs who survived would be executed afterwards. The UNMO team was then ordered to get into another stolen UN vehicle that had arrived at the cafe.

5876. Between 8 and 8:30 p.m., Westlund, Helgers, Manzoor, and other members of the UNMO team were driven to the Mount Jahorina ski resort and stopped en route at a cabin. The officer in charge came out of the cabin with three armed VRS soldiers. The officer spoke to Ribić and Ribić ordered Westlund to call the UNMO headquarters by radio and instructed him as follows: "Tell them that we will shoot you one by one if NATO does not stop the air strikes. Tell them that you are going to the Jahorina radar station where you will be locked up". […] When UNMO headquarters acknowledged the call, Ribić grabbed the radio, identified himself as a VRS soldier and then repeated the message. […] The three remaining VRS soldiers […] drove Westlund, Helgers, and the UNMOs up the mountain towards the Mount Jahorina radar station, which was approximately 50 metres from the main radar tower. […]

[…]

5878. On 13 June 1995, Westlund was told that he would be released but that Manzoor would
not. Westlund was released in Pale where he met a member of his team and eight UNMOs from other teams. There were members of the BritBat and FreBat teams who had also been released. Helgers, Manzoor, and other members of the UNMO team were released over the next few days.

[…]

d. Negotiations and release

5932. Communication between the UN and the Bosnian Serbs on negotiating the release of the UN personnel began shortly after the first group was detained. […]

5933. By 3 June 1995, 120 UNPROFOR personnel had been released by the VRS and handed over to the Serbian authorities. […]

5934. By 9 June 1995, due to “increased shelling on Bosnian Serb positions in Trskavica, Majevica, Kalenik and Livansko Polje,” the Bosnian Serbs were refusing to release the remaining UN personnel. […]

[…]

5936. By 13 June 1995, additional UNPROFOR personnel were released. On 16 June 1995, the Security Council passed resolution 998 demanding the immediate and unconditional release of all remaining UN personnel. By 18 June 1995, all remaining UNPROFOR and the remaining 15 UNMOs were released. […]

e. Conclusion

5937. The Chamber finds that on 25 and 26 May 1995, following the NATO air strikes on Bosnian Serb military targets, over 200 UNPROFOR and UNMO personnel in BiH were detained by Bosnian Serb Forces and taken to various locations throughout BiH. Some of the UN personnel were taken from their locations and driven to locations of military significance for the barracks, Bijeljina barracks, Višegrad barracks, Jahorinski Potok, and Koran barracks. Others were simply detained at their locations, including OPs and WCPs. Threats were made by the VRS against the UN personnel, that they would be killed if NATO launched further air strikes and these threats were communicated to the UN.

2. Legal findings on crimes

a. Chapeau requirements for Article 3

[…]

b. Crime of hostage-taking : Count 11

i. *Actus reus of hostage-taking*

5941. The Chamber refers to its findings above that on 25 and 26 May 1995, following the NATO air strikes on Bosnian Serb military targets, over 200 UNPROFOR and UNMO personnel in BiH were detained by Bosnian Serb Forces and taken to various locations in BiH. Some of the UN personnel were taken to locations of military significance for the VRS, such as the Banja Luka barracks, Mount Jahorina radar station, Pale barracks, Lukavica barracks, Bijeljina barracks, Višegrad barracks, Jahorinski Potok, and Koran barracks. Others were simply detained at their locations, including OPs and WCPs.

5942. The Accused has argued throughout the case, that the status of the UN personnel at the time of the alleged hostage taking was determinative for a finding on the existence of the crime. He argued that due to the NATO air strikes, the UN personnel were transformed into persons taking active part in the hostilities and thus not entitled to the protections of Common Article 3.

5943. The Chamber finds the Accused’s argument in this regard to be unconvincing. As a preliminary matter, the Chamber recalls that the UN and its associated peacekeeping forces were not a party to the conflict.

UNPROFOR was established and deployed pursuant to Security Council Resolution 743 as “an interim arrangement to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis”. While the details of its operations were enlarged and strengthened over the course of the conflict in order to preserve the security of its personnel and enable the implementation of its mandate, it remained a peacekeeping force. Accordingly, at the time the UN personnel were detained on 25 and 26 May 1995, they were persons taking no active part in the hostilities and, as such, were afforded the protection of Common Article 3. The NATO air strikes of 25 and 26 May 1995 did not transform the status of all of the UN personnel in BiH into that of persons taking active part in the hostilities. However, even if the UN personnel had been combatants prior to their detention, as the Accused argues, they were in any event rendered hors de combat by virtue of their detention and thus were also entitled to the minimum protections guaranteed by Common Article 3. As confirmed by the Appeals Chamber in this case, Common Article 3 applies to the detained UN personnel irrespective of their status prior to detention. Therefore, the Chamber finds that all UN personnel who were detained by the Bosnian Serb Forces were entitled to the protections under Common Article 3, including the prohibition against hostage-taking.

5944. While the UNPROFOR and UNMO personnel were detained, Bosnian Serb Forces threatened to kill, injure, or continue to detain them unless NATO ceased its air strikes. These threats were communicated by the Bosnian Serb Forces to the detained UN personnel and to UNMO and UNPROFOR headquarters.

5945. The Chamber therefore finds that between 25 May and 18 June 1995, UNPROFOR and UNMO personnel were detained by Bosnian Serb Forces and threats were used against them in order to obtain a concession, namely that NATO cease its air strikes against Bosnian Serb military targets in BiH.

ii. *Mens rea of hostage taking*

5946. The Chamber finds that the detention of the UNPROFOR and UNMO personnel by Bosnian Serb Forces was intentionally carried out to compel NATO to refrain from conducting further air strikes on Bosnian Serb military targets. In reaching this conclusion, the Chamber has had regard to orders and reports from the VRS, threats made to the UN personnel and communicated to UNMO and UNPROFOR headquarters, and statements made by the Accused, Mladić, Zametica, and Krajišnik.

5947. In addition, the Chamber finds that members of the Bosnian Serb Forces knew or should have been aware that when the crime of hostage-taking was committed, the detained UN personnel were taking no active part in the hostilities.

iii. *Special defence : reprisals*

5948. The Accused submits that even if the Chamber finds that the elements of hostage-taking are met, the conduct of the Bosnian Serbs was justified by the defence of reprisals. The Prosecution submits that detainees may never be subjected to reprisals and therefore, the unlawful act of threatening detainees so as to obtain a concession cannot be justified as a reprisal.

5949. In the law of armed conflict, a belligerent reprisal is an act that would otherwise be unlawful but, in exceptional circumstances and if strict conditions are met, is considered lawful when it is used as an

enforcement measure in reaction to unlawful acts of an adversary. However, the prohibition of reprisals against protected persons is absolute and can therefore not be used as a defence for the crime of taking protected persons hostage.

5950. Therefore, the Chamber finds that the taking of UN personnel hostage cannot be justified as a lawful reprisal and the Accused's argument in this regard is dismissed.

iv. *Conclusion*

5951. The Chamber therefore finds that the detention of UN personnel by the Bosnian Serb Forces in order to compel NATO to cease its air strikes against Bosnian Serb military targets constitutes the crime of taking hostages, as a violation of the laws or customs of war.

E. SUMMARY OF FINDINGS

5995. In the previous sections of the Judgement, the Chamber has made findings on the charges related to each of the four components of this case and on the Accused's responsibility in relation thereto. The Chamber will now summarise these findings, first in relation to each of the alleged JCEs and second with regard to each of the Counts of the Indictment.

a. Summary of findings on the four alleged JCEs

[…]

b. Summary of findings of the Counts of Indictment

[…]

vi. *Count 6 (murder, a violation of the laws or customs of war)*

6005. In relation to the Municipalities and Sarajevo components, the Chamber found that the Accused bears individual criminal responsibility pursuant to Article 7(1) on the basis of his participation in the Overarching JCE and the Sarajevo JCE. For the Srebrenica component, the Chamber found that the Accused bears responsibility pursuant to Article 7(1), on the basis of his participation in the Srebrenica JCE, and pursuant to Article 7(3) for having failed to punish the killings committed by his subordinates prior to the evening of 13 July 1995.

[…]

ix. *Count 9 (terror, a violation of the laws or customs of war)*

6008. In relation to Count 9, terror, a violation of the laws or customs of war, the Chamber found that the Accused bears individual criminal responsibility pursuant to Article 7(1) on the basis of his participation in the

Sarajevo JCE.

x. *Count 10 (unlawful attacks on civilians, a violation of the laws or customs of war)*

6009. The Chamber found that the Accused bears individual criminal responsibility pursuant to Article 7(1) on the basis of his participation in the Sarajevo JCE.

xi. *Count 11 (hostage taking, a violation of the laws or customs of war)*

6010. The Chamber found that the Accused bears individual criminal responsibility pursuant to Article 7(1) on the basis of his participation in the Hostages JCE.

[…]

Discussion

I. Classification of the Conflict and Applicable Law:

1. (Paras 3, 32-56, 161, 441, 2440, 5996) How would you classify the situation in Bosnia Herzegovina? When the JNA reservists entered the territory of the Socialist Republic of Bosnia and Herzegovina (SRBiH) during the summer of 1991? (see *para. 45*) In October 1991, when the "overarching" joint criminal enterprise (JCE) to remove Bosnian Muslims and Bosnian Croats from Bosnian Serb territory started? (see *paras 3, 5996)* After the declaration of independence of the Republic of Bosnia Herzegovina (BiH) in March 1992? (see *para. 54)* When the JNA officially withdrew from Bosnia Herzegovina by 19May 1992? (see *para. 161)* When the European Community and US recognised the independence of BiH in April 1992 and the latter became a State member of the UN on 22 May 1992? (see *para. 56*) Was there an international or non-international armed conflict? What IHL rules applied? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)

2. (Paras 159-244, 441)

a. According to the Prosecution, the "Bosnian Serb forces" consisted of members of "the VRS, the TO, the MUP and Bosnian Serb paramilitary forces and volunteer units". (see *para. 159*) Do the "Bosnian Serb forces" constitute an armed group for the purposes of IHL? What elements can be taken into account to determine whether the different forces were part of an armed group?
b. Do you think the members of the TO were part of such an armed group? Considering it was composed of "reserve men who carried out their regular jobs and who, in case of war, were called to defend a certain territory"? (see *para. 212)* If yes, did they become members after their integration into the VRS, or before?
c. Do you think the members of the paramilitary forces were part of such an armed group? Considering that they were "outside anyone's control at least in the early days of the war"? (see *para. 244*) Did they constitute an armed group by themselves? If not, does that mean that IHL does not apply to the looting of property and killing of civilians by the paramilitary forces? In what ways could IHL apply to acts of persons who are not part of an armed group or the armed forces?

d. What about the members of the MUP? Could they be involved in combat activities? If the police were not involved in combat activities, what legal regime applies to regulate their use of force? Does this regime contradict or complement IHL? With regards to the degree of force and weapons that can be used?
e. Some components of the “Bosnian Serb forces” were also part of the “Serb forces”, including members of the VRS which were formed from parts of the JNA, the army of the Socialist Federal Republic of Yugoslavia (SFRY). (see *para. 159*) Was the VRS under the overall control of SFRY? Considering that “the VRS inherited both officers and other ranks from the JNA […], as well as substantial amount of weaponry and equipment” (see *para. 161*) and “the basic structure and principles of the VRS, including warfare doctrine, command and control principles, operational and tactical methods, and regulations followed those of the JNA” (see *para. 164*). What implications could that have on the qualification of the conflict? (see ICTY, The Prosecutor v. Tadić, Part C., paras98-145)

3. (Paras 5856, 5864-5867, 5942-5943) Did the involvement of UNPROFOR alter the nature of the conflict in Bosnia Herzegovina? Can the UN be a party to an IAC or an NIAC? In what circumstances? Was the UNPROFOR a party to the conflict in Bosnia Herzegovina? Considering that NATO was authorised by the UN to launch air strikes against Bosnian Serb military targets in Pale? (see *para.* 5856) If yes, what rules of IHL apply to regulate an armed conflict with an international organisation? Are they the same as when States or armed groups are involved? Does the conflict become an internationalised internal armed conflict? Does this expression have any meaning in IHL?
4. (Paras 440-444) Does the qualification of the conflict in Bosnia Herzegovina matter with regards to the war crimes Radovan Karadzic (the Accused) is alleged to have committed in this case? When does Article 3 of the ICTY Statute apply? What is meant by “laws or customs of war”? What are the preliminary and general requirements that need to be fulfilled? (UN, Statute of the ICTY)

II. Municipalities component

5. *(Paras 445-448, 2446-2455)*

a. What is the legal basis for the prohibition of murder under IHL? Who is protected by this prohibition? Can it include members of the Bosnian army or the VRS? In what circumstances? What about the detainees who tried to escape from Serb Forces? (see *para. 2454*) Can the latter still be considered *hors de combat* and protected by IHL? Does your answer change if the person trying to escape is a civilian or a combatant? (GC I-IV, Art. 3; P I, Art. 41(1); CIHL, Rules 89 and 47)
b. Does the prohibition of murder under IHL constitute a war crime? What are the *actus reus* and *mens rea* elements? Are those two elements satisfied in this case? With regards to the detainees that were used for labour and as human shields, can we really talk about an intention to kill? What degree of intention or knowledge is required for a person to be charged of murder under IHL?

6. *(Paras 2431-2434)* The VRS are accused of using detainees to carry out “forced labour” and serve as human shields (for the discussion on human shields, see Question 13 below). Is it prohibited to use detainees to work under IHL? In what conditions? Do these conditions vary whether the prisoner is a combatant or a civilian? In an IAC or NIAC? (GC III, Arts 49, 50, 51 and 52; GC IV, Arts 51, 52 and 95; CIHL, Rule 95)

III. Sarajevo component

7. *(Paras 3, 4606)* What happened at Sarajevo during the Indictment period? What is the Accused charged of concerning the Sarajevo JCE? With regards to Article 3 of the ICTY Statute?

8. *(Paras 449-457)*

a. What constitutes an "attack" under IHL? What is the legal basis for the prohibition of attacks on civilians? Does it constitute a war crime punishable under Article 3 of the ICTY Statute? What are the *actus reus* and *mens rea* elements of the crime? (P I, Arts 49 and 51(2); P II, Art. 13(2); CIHL, Rule 1)

b. Who is considered to be a civilian protected from attack? In IACs? In NIACs? Did the presence of an ABiH soldier in the tram change the status of the civilians within it? Were the ABiH soldiers that were "off duty" and watching a football game also protected from attack? Does the Chamber say so? (P I, Art. 50(1); CIHL, Rule 5)

c. What elements can be taken into account to determine whether an attack was directed against civilians? (see *para. 454)* Do you agree with the Trial Chamber that disproportionate attacks "may qualify as attacks directed against civilians"? Doesn't the attack have to be directed at a military objective for the principle of proportionality to apply? Do you think that the *mens rea* requirement of attacking the civilian population is satisfied in such circumstances? How? What is the definition of "wilfully" in the context of unlawful attacks on civilians? (P I, Arts 51(4) and 51(5)(b); CIHL, Rules 11 and 14)

9. *(Para. 4623)* How did the Chamber assess whether an attack was indiscriminate or proportionate in this case? What factors did it take into account? Do you agree with its approach for both principles?

10. *(Paras 458-466, 4629-4635)* What is the legal basis for the prohibition of violence the primary purpose of which is to spread terror among the civilian population? Does it constitute a war crime punishable under Article 3 of the ICTY Statute? What are the *actus reus* and *mens rea* elements? May the *actus reus* consist of an attack against a military objective or combatants if the specific intent exists? Do threats of violence suffice? What are the two types of intent required? Were those satisfied in this case? What factors did the Chamber take into account to demonstrate this? (P I, Art. 51(2); P II, Art. 13(2); CIHL, Rule 2)

IV. Hostages component

11. *(Paras 3, 5852-5863, 5932-5936)* What is the Accused charged with concerning the Hostage JCE? Why did the Bosnian Serb Forces take UN peacekeepers as hostages? Did NATO respond to the threat? Were the hostages freed?

12. *(Para. 5858)* Following the NATO airstrikes, the VRS shelled all the "safe areas" and a number of heavy weapons were fired within the Sarajevo Total Exclusion Zone (TEZ). What is the status of safe and demilitarised zones under IHL? How are they established and monitored? What happens if such zones come under attack? Do they cease to be specially protected? By attacking the safe zones, did the VRS commit a

grave breach? A war crime? (GC I, Art. 23; GC IV, Arts 14 and 15; P I, Arts 60, 85(3)(d); CIHL, Rules 35 and 36)

13. *(Paras 5860-5861)* To prevent future airstrikes, the captured members of the UN forces were placed in "the areas of command posts, firing positions and other potential targets that may come under the airstrike". For example, the UNMO team in Kasindo was taken to a radar station (see *paras 5874-5876).* Is such behaviour permitted by IHL? Can persons be used to shield a military objective from attack? Despite the presence of UN forces, could NATO attack the Bosnian Serb military targets? What principle of IHL could prevent such an attack? If the attack is permitted, what other rules of IHL could apply to minimise the harm suffered by the UN hostages? (GC III, Art. 23; GC IV, Art. 28; P I, Arts 51(5)(b), 51(7) and 57; CIHL, Rules 14, 15 and 19; ICC Statute, Art. 8(2)(b)(xxiii))

14. *(Para. 5860)* According to a VRS order, the UN hostages were to be treated properly as "prisoners of war". Were the UN detainees prisoners of war? If we consider that the UN was a party to the armed conflict? What does prisoner of war status imply under IHL? Would the VRS forces be allowed to detain the UN peacekeeping forces? For how long? Could POWs have been detained in military objectives? (GC III, Arts 4, 21, 23 and 118)

15. *(Paras 467-468, 5941-5951)*

a. What is the legal basis for the prohibition of hostage taking? Is it a crime? What are the *actus reus* and *mens rea* elements? Are those two elements satisfied in this case? Does the status of the UN personnel matter to determine whether a person can be qualified as a hostage? According to the Accused? According to the Trial Chamber? (GC I-IV, Art. 3; CIHL, Rule 96)

b. Does the defence of reprisals justify the hostage-taking of the UN peacekeeping forces by the Bosnian Serbs? Why not? Were the NATO airstrikes an unlawful act justifying the use of reprisals? Can reprisals be taken against "protected persons"? (see *para.* 5949) What is meant by this term in the context of reprisals? Can reprisals be used in IACs and NIACs? In what "exceptional circumstances" and under what "strict conditions" can the defence of reprisals be applied? (GC I, Art. 46; GC II, Art. 47; GC III, Art. 13(3); GC IV, Art. 33(3); P I, Arts 51(6), 52, 53, 54, 55 and 56; Hague Convention for the Protection of Cultural Property, Art. 4(4); CIHL, Rules 146 and 147)