

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

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**Case No. IT-04-74-T**  
Original: English

**TRIAL CHAMBER III**

**Before: Judge Jean-Claude Antonetti, Presiding**  
**Judge Arpad Prandler**  
**Judge Stefan Trechsel**  
**Reserve Judge Antoine Kesia-Mbe Mindua**

**Registrar: Mr. John Hocking**

**Filed: 31 March 2011**

**THE PROSECUTOR**

v.

**JADRANKO PRLIĆ**  
**BRUNO STOJIĆ**  
**SLOBODAN PRALJAK**  
**MILIVOJ PETKOVIĆ**  
**VALENTIN ČORIĆ**  
**BERISLAV PUŠIĆ**

**REDACTED PUBLIC VERSION**

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**SLOBODAN PRALJAK'S REDACTED FINAL TRIAL BRIEF**

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**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

Case No. IT-04-74-T  
*Prosecutor v. Jadranko Prlić at al*

**SLOBODAN PRALJAK'S REDACTED FINAL TRIAL BRIEF**

1. Pursuant to the Trial Chamber's instruction that all parties should submit a redacted, public draft of their final trial briefs before 1 April 2011, the Praljak Defence respectfully hereby submits a redacted version of Slobodan Praljak's Final Trial Brief, incorporating corrigenda<sup>1</sup> and redacting reference to all information that should not be made public to the best of its ability.<sup>2</sup>

Respectfully submitted,

By



Božidar Kovačić and Nika Pinter  
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<sup>1</sup> The Prosecution noted apparent references to various documents not admitted in the initial draft, generally due to typographical errors. In addition, the Praljak Defence notes that the last sentence of paragraph 110 was left off of previous submissions due to a drafting error, and notes the correction of various minor typographical errors. The Praljak Defence regrets all errors.

<sup>2</sup> The Praljak Defence thanks all parties with their assistance with the difficult task of redacting all reference to the substance of confidential material, and takes responsibility for any error.

**Case No. IT-04-74-T****THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

REDACTED PUBLIC VERSION

**FINAL TRIAL BRIEF  
OF THE ACCUSED SLOBODAN PRALJAK**

*Slobodan Praljak's Final Trial Brief - Redacted*

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**GLOSSARY - FREQUENTLY USED TERMS AND ABBREVIATIONS**

<b>ABiH</b>	Armed Forces of the Republic of Bosnia and Herzegovina (Army of Republic of Bosnia and Herzegovina)
<b>Accused</b>	Unless otherwise specified, the Accused Slobodan Praljak
<b>BiH</b>	Bosnia and Herzegovina. It is also used as an adjective for “Bosnian and Herzegovina Croats, Muslims or Serbs”. It is also used to mean the Republic of Bosnia and Herzegovina (from 6 March 1992).
<b>Bosnian</b>	A national of Bosnia and Herzegovina.
<b>Dayton Agreements</b>	Agreements between BiH, Croatia and the FRY, initialed in Dayton on 21 November 1995 and signed in Paris on 14 December 1995
<b>Defence</b>	Unless otherwise specified, the Praljak Defence
<b>EC</b>	European Community
<b>ECMM</b>	European Community Monitoring Mission
<b>GSHVO</b>	Main Staff of Croatian Defence Council
<b>HDZ</b>	Croatian Democratic Union
<b>HOS</b>	Croatian Defence Force
<b>HR-HB</b>	Croatian Republic of Herceg-Bosna
<b>HV</b>	Army of the Republic of Croatia
<b>HVO</b>	Croatian Defence Council
<b>HZ-HB</b>	Croatian Community of Herceg-Bosna
<b>Indictment</b>	Second Amended Indictment
<b>JCE</b>	Joint Criminal Enterprise
<b>JNA</b>	Yugoslav People’s Army (Referring to the former Socialist Federal Republic of Yugoslavia)
<b>MP</b>	Military Police
<b>MORH</b>	Ministry of Defense of Republic of Croatia
<b>Praljak</b>	Unless otherwise specified, the Accused Slobodan Praljak
<b>OZ</b>	Operative Zones
<b>RBiH</b>	The Republic of Bosnia and Herzegovina (from 6 March 1992).
<b>RH</b>	Republic of Croatia
<b>SDA</b>	Party of Democratic Action (Party of BiH Muslims)
<b>SDS</b>	Serbian Democratic Party
<b>SE OZ</b>	South-East Operative Zone
<b>SFRY</b>	Socialist Federal Republic of Yugoslavia

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<b>SIS</b>	Security and Information Service – the HVO intelligence service
<b>SRBiH</b>	Socialist Federal Republic of Bosnia and Herzegovina
<b>SPABAT</b>	Spanish Battalion of UNPROFOR
<b>TO</b>	Territorial Defence
<b>UNPROFOR</b>	United Nations Protection Force
<b>VOPP</b>	Vance–Owen Peace Plan
<b>VRS</b>	Armed forces of Republic of Srbska (Vojska Republike Srbske). In some documents referred as the BSA.



## **I. INTRODUCTION**

1. The Praljak Defence respectfully submits that the evidence demonstrates the following legal conclusions to be true, and the hypotheses of the Prosecution to be meritless and unproven.<sup>1</sup>
2. There was no Joint Criminal Enterprise. The Prosecution failed to show the existence of the joint criminal enterprise specifically alleged in the Indictment. It remains unproven that the specific alleged criminal purpose was held by any of the alleged members of the JCE listed in the Indictment, let alone all of them, especially deceased persons who were not able to defend themselves.<sup>2</sup> Specifically, there was no shared intent by the alleged members of the JCE to enter into a criminal conspiracy to militarily subjugate, permanently remove, and ethnically cleanse Bosnian Muslims and other non-Croats.<sup>3</sup> Particularly in regards to “other non-Croats” nothing has been presented, and should never have been alleged. Having been alleged, it must be specifically proven. The Prosecution must do more than prove each part of the above intent amongst the alleged members. It must *also* prove that the alleged members shared the intent to join in a criminal conspiracy to forcibly annex part of Bosnia and Herzegovina into part of “Greater Croatia.”<sup>4</sup> In fact, the actions of the alleged members of the JCE were to save Bosnia and Herzegovina and its people, the direct opposite of what is alleged.
3. Slobodan Praljak has no criminal culpability under Articles 7.1 or 7.3 of the Statute. This includes culpability under the JCE alleged. He did not join any such JCE, and in no way contributed to this conjecture of the Prosecution. Nothing proves that Slobodan Praljak planned, instigated, ordered, committed or otherwise aided and abetted any of the crimes alleged. This is for the simple reason that Slobodan Praljak’s only relationship to crimes committed during the conflict was to strive with all of his effort to stop and mitigate these crimes. Real crimes committed during the conflict include the crime of aggression, committed by the JNA/VRS, which was the driving engine of the conflict—a subject

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<sup>1</sup> It is not the responsibility of the Praljak Defence to prove these legal conclusions, although the Praljak Defence respectfully submits that the evidence does prove them. Rather, it is the obligation of the Prosecution to disprove each of these statements beyond all reasonable doubt.

<sup>2</sup> Indictment para. 16 lists deceased persons: Dr. Franjo Tuđman, Gojko Šušak, Janko Bobetko and Mate Boban. In addition, the Indictment charges; “members of the HZ-HB/HVO leadership and authorities”, “members of HZ-HB/HVO government and political structures at all levels, including municipal governments and local organizations”, “leaders and members of HDZ and HDZ-BiH at all levels” etc..

<sup>3</sup> Indictment, para. 15. Note the use of “and”—the specific allegation is that military subjugation, permanent removal *and* ethnic cleansing was the aim. One is not sufficient.

<sup>4</sup> *Ibid.*

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which the Prosecution almost entirely avoids in an effort to portray identified and unidentified ethnic Croats as the drivers of the conflict. Slobodan Praljak strove to the best of his ability to prevent and punish any criminal or evil act under his command, but being a mere mortal, lacked the power and omniscience to prevent every crime, know of every crime, or punish every crime.

4. Slobodan Praljak is charged with criminal responsibility for institutions, facilities, and activities he had nothing to do with. Nowhere is this truer than with the detention facilities. He had no authority over these facilities—not over their creation,<sup>5</sup> their operation,<sup>6</sup> or their maintenance. All charges against Slobodan Praljak which rely upon the operation of these facilities must be dismissed.
5. Despite the Indictment charging Slobodan Praljak for every mode of liability for every alleged crime throughout Bosnia and Herzegovina for the entire duration of the conflict, the proper scope of plausible liability can easily be defined. He served in the military, and had no authority over the civilian HVO. Crimes alleged attributable to the civilian HVO cannot be properly attributed to him. His military service lasted; (a) from 10 April until 15 May 1992, and (b) from 24 July until 07:30 a.m. of 9 November 1993.<sup>7</sup> Alleged crimes committed before or after these periods cannot be laid at his feet. Within that limited, appropriate scope of potential liability, Slobodan Praljak committed no crime.
6. His liability as a commander is limited. A proper examination of the state of the HVO military reveals he had no actual power to prevent and punish crimes when he was not physically present. The Prosecution failed to prove he was informed of a crime over which he had authority and failed to act. His actions and orders were in no way criminal, but rather legal and reasonable responses to the circumstances.
7. Slobodan Praljak's character, as evidenced by his pattern of conduct, is clear. From preventing massacres of Serbs in Sunja,<sup>8</sup> to hosting and caring for Muslim refugees in his own home,<sup>9</sup> he sought to minimize suffering, regardless of the ethnicity of the potential victim. His actions and character contradict the false suggestion that he discriminated, let

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<sup>5</sup> Exh. P00452; P00515; P00861; P00893; P02679.

<sup>6</sup> Exh. P03171; P03209; P03293; P03334; P03349; P03468; P03518; P03525; P03596; P03633; P03681; P03788.

<sup>7</sup> See e.g. Exh. P06556, 9 November 1993; 3D00280, 8 November 1993; P6556, 9 November 1993.

<sup>8</sup> E.g., T. 45091:14-25, 22 September 2009, Witness Alojz Arbutina.

<sup>9</sup> E.g., Exh. 3D03652, Witness Fatima Tanović.

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- alone that he joined into a transnational bigoted conspiracy to persecute the people of Bosnia and Herzegovina.
8. Slobodan Praljak's intent was clear—to defend Bosnia and Herzegovina and to prevent or minimize death and suffering, particularly with respect to civilians. His intent was the intent of patriot of Bosnia and Herzegovina, defending Bosnia and Herzegovina in a horrible and bewildering context. He was born in Grabovina, Bosnia and Herzegovina. His parents lived there. He saw the continuing aggression of the JNA/VRS. He returned home to help defend Bosnia and Herzegovina, the country that he loved, his birthplace, and the home of those he loved. He served not only as a volunteer soldier for the HVO, but as a member of the ABiH.<sup>10</sup> He returned home to help defend Bosnia and Herzegovina but also the Republic of Croatia from the Serbia controlled JNA and its local servants who were executing a unique plan to conquer the territories of both Republics. Praljak understood too well that there was only one true enemy—the JNA and its local supporters. The Prosecution cannot prove that his intent was not the honorable intent of a man bent on defending the innocent, because it is was. All of the evidence is consonant with this straightforward, common-sense understanding of his intentions.
  9. Slobodan Praljak did not act with an eye towards protecting himself. He could have stayed at home. Knowing he could not prevent all evils, and perhaps knowing that he might be subject to unfounded allegations, he could have let the innocent victims of aggression die. He served as a patriotic volunteer, who defended the innocent as a leader as best he was able, in the context of a chaotic situation that he could not fully control. If this position is *de facto* criminalized, the result will not be superhuman patriotic volunteers, who act with divine knowledge and virtual omnipotence.
  10. Rather, if leadership is criminalized, only criminals will lead. The evils which humanitarian law and human rights law seeks to minimize will strike with full force, unhindered by those who would volunteer to defend the innocent.
  11. The Praljak Defence respectfully submits that the Trial Chamber should acquit Slobodan Praljak on every count. Conviction would be unjust and unjustifiable. Further, it would enshrine a jurisprudence that would deter people of good will from service, leaving the field of leadership open only to criminals.

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<sup>10</sup> 3D03510; T. 40672:29-40676:1, 25 May 2009, Witness Slobodan Praljak.

12. If history was replayed, with the precedent set that risking one's life to aid to the people Bosnia and Herzegovina was seen as the perfidious, two-faced act of a criminal, the Praljak Defence respectfully submits that the forces of the JNA/VRS would have piled tens of thousands more corpses upon the fields—men, women, and children left undefended due to the deterrence of the misplaced concerns of well-meaning but mistaken jurists.

## **II. GENERAL CRITIQUE OF THE INDICTMENT**

### *b. Quasi Res Ipsa Loquitur*

13. The core of the Prosecution's case amounts to a wholly insupportable quasi *res ipsa loquitur* theory. *Res ipsa loquitur* is a common law tort concept entirely out of place in a criminal case requiring proof beyond a reasonable doubt. The events do not “speak for themselves”—they require context to be properly understood. The events at issue took place in the context of disintegration of the SFRY, the brutal JNA attack on Republic of Croatia and the JNA/VRS aggression against both the BiH Muslim and Croat communities in BiH, and in the ensuing civil war between these two erstwhile allies. There was a wartime context—one where the central government was besieged and rendered wholly ineffective in most of the country outside Sarajevo; where law and order broke down completely; where chaos frequently reigned; and where rampant criminal activity was commonplace and widespread. There is overwhelming evidence that there were individuals and groups on all sides that were out of any effective civilian or military control during the entire period, facts well known to the Prosecutor from the *Blaškić*, *Kordić*, *Naletilić* and other cases—facts supported by solid evidence in this trial. Yet the Prosecutor asserts “that various persons, including all six Accused, established and participated in a Joint Criminal Enterprise to politically and militarily subjugate, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats from the territories which were claimed to be part of the Croatian Community (and later Republic) of Herceg-Bosna, and to join these areas as part of a Greater Croatia”.<sup>11</sup> This thesis simply ignores the wartime conditions just noted—“surrounding facts” of the sort that the Prosecutor had just claimed must be taken into account, but then did not.<sup>12</sup> There is perfectly clear evidence that demonstrate that some of the actions alleged to be predicate offenses involved totally random, unplanned violence of a sort that was common

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<sup>11</sup> See Indictment, para. 15.

<sup>12</sup> See e.g. Prosecution Pre-Trial Brief, 19 January 2006, partially confidential, para. 18.

on both sides.<sup>13</sup> The Prosecutor is well aware that there were independent groups of rebels or criminals that presented themselves as freedom fighters, under all of the involved flags that operated freely on their own will and were not under *effective* control of higher commands. Neither were they a product of any kind of JCE.

**c. *The "Nobody Else Could Have Done It" Argument***

14. The Prosecution is attempting to offer the conclusions based on "upside-down" technique. The Prosecution was first looking to the consequences of the BiH conflict (including committed crimes) and then it made a conclusion that the JCE participants (various entities, legal and physical persons) must have had some evil plan and must have implemented it. Any possibility of other concurrent reasons or natural chain of causes/consequences is carefully avoided. In fact, the Prosecution maintains the *Nobody Else Could Have Done It* argument—an argument that is not permissible in criminal proceedings.

**d. *The Implicit Assumption That the BiH Is Primarily a Muslim State***

15. The Indictment assumes the SRBiH/BiH is essentially a Muslim-owned or a state that belongs only to "Bosnian Muslims" as the Prosecution called them. This is wrong as the Trial Chamber learned very early in the trial. Pursuant to the Constitutions of both the SRBiH and BiH, the SRBiH/BiH was a republic of three constituent peoples: Croats, Muslims, and Serbs.<sup>14</sup> A conflict in which one group identifies itself as ethnically Muslim does not mean that a conflict with that group is an attack on BiH as a whole. (This is particularly the case when the other group is part of the armed forces of BiH responding to aggressive attacks).

16. The Prosecution has largely assumed without proof that the HVO attacked the Muslim civilian population. The Prosecution has completely disregarded that there were at least two parties in the conflict by definition, and in reality three with the JNA/VRS shelling both sides and attempting to instigate trouble between the armed forces of BiH.

17. By the logic of the Indictment, the HVO was attacking civilians (and was destroying civilian properties) for a period of about two years. Despite those attacks, the HVO did not

<sup>13</sup> Exh: 4D00825; 5D00477(HOS); 5D01013; P05979; 3D00331 (Final Report of the UN Commission of Experts; All three warring parties are included in this report.)

<sup>14</sup> Exh.1D02994 – Constitution of SRBiH 1982; Basic principals; Article 1; The SRBiH is a socialist state .... *the nations of Bosnia and herzegovina - Moslems, Serbs and Croats, members of others....* ; 1D01236; The Decision on Ratfying text of the constitution of The Republic of Bosnia and Herzegovina - Revised text 24 Feb 1993 (Article 1).

acquire a centimeter of a territory where the Croats were not originally living. If the conflict with the third party, i.e. the JNA/VRS, is put aside for a moment, the evidence clearly shows that there were two armed belligerent forces who were allies (in period until May 1993), then allies and enemies in the same time (from May 1993 – early 1994). Thus, there was no *Croat v. Muslim* war in 1992 (as implied by the Indictment), only a conflict between two armed forces, *the ABiH and HVO* after May 1993 as ample evidence demonstrates. Based on the assumption of a *Croat v. Muslim* war, in several instances the Indictment claims that the HVO was attacking certain villages only because those were Muslim villages.<sup>15</sup> The fact that armed belligerent forces were positioned in a village was not taken into account, because that tends to contradict the assumption of an attack by ethnic Croats on Muslim civilians.

*e. The Prosecution Assumption as to Who Started the Conflict*

18. There is another important example of the "upside down" technique of the Prosecution worth highlighting at the outset. In the section "Statements of the Facts" the Indictment provides the alleged intentions of the alleged JCE participants as well as an outline of development of the conflict in BiH. Without going into all submissions that are inadequately called "the facts," the Praljak Defence finds it necessary to submit that the Prosecution failed to recognize that the HVO-ABiH alliance in resistance of the Serbian aggression on BiH failed in fact because of the political plans of the SDA leadership that were executed by ABiH. After some locally isolated skirmishes in late 1992 and early 1993 (Novi Travnik, Vitez, Busovača, Prozor, Vakuf), the conflict between the HVO and the ABiH was broadened in the spring of 1993 because of the ABiH's stronger offensive actions. This ABiH offensive commenced with attacks on the HVO and Croat civilians in Konjic/Jablanica area in March, than in April in Sovići and Central Bosnia and, than in Mostar on 9 May (West Mostar – Vranica bldg.) and 30 June (Northern Barracks and Bijelo polje), than in Bugojno and Dubrava in June when a large offensive "Neretva 1993" began, then in Grabovica and Uzdol in September (which corresponds to a pick of the ABiH's offensive in Neretva River Valley).<sup>16</sup>
19. The entire conflict in BiH was a confusing affair, difficult to understand. Within the voluminous literature on the conflict, the best observation is found in a letter of Major

<sup>15</sup> See e.g. Indictment, paras. 46, 48, 51, 53, 63, 66, 76, 206, 298, 211..

<sup>16</sup> See Section "The ABiH Offensive 1993" *infra*.

Bryan Watters (UNPROFOR). He wrote to his father in an effort to inform him about the complexity of the conflict.

*“... It is all too easy to apportion blame to a specific faction prosecuting its particular military or political advantage. It is convenient to identify the culprit and level the blame in his direction. It is comfortable but too simplistic. There are no “good guys and bad guys” in this bitter civil war, there are only victims. ...*

*... There is a dispute between the Croats and Muslims over the positioning of their respective flags. Two Muslims were shot dead last night and one Croat earlier this evening. These are of course allies, but than again this is Bosnia.<sup>17</sup> ...*

**f. Basic Facts Refuting the Alleged JCE**

20. The Trial Chamber has had extensive opportunities to recognize the Prosecution’s erroneous approach with respect to the alleged JCE. Nevertheless, the Praljak Defence believes it is important to present several proven facts at the beginning of this brief regarding the JCE charges and the alleged plans of the JCE participants. These facts clearly demonstrate the general policy and acts of the leadership of the Republic of Croatia and other alleged members of the alleged JCE—facts that directly contradict the thesis that the leadership of the Republic of Croatia and other alleged participants in the JCE had the plan alleged in para. 15 of the Indictment (ethnic cleansing and annexation of the territory).
21. It is entirely reasonable to believe that there were complex motivations behind the actors in the conflict without subscribing to the Prosecution’s convenient assertion that all humanitarian and charitable acts of the leadership of the Republic of Croatia and the HVO can only be explained by criminal perfidy. Historians may generalize about the perfidious nature of an administration or an institution. Historical generalizations, however, are simply not the task of this honorable chamber. Individual criminal responsibility cannot stem from generalizations about the perfidious nature of one institution or another, largely staffed by one ethnic group.

**A) The Events Encompassed by the Indictment Must Be Considered Within the Broader Context of the Events That Took Place In SFRY During the Critical Period (General Framework)**

- a. The SFRY fell apart (1990 – 1991). The SFRY did not disintegrate suddenly and unexpectedly on a bright sunny day. This was a process that commenced in 1988

<sup>17</sup> Exh. 3D00461, T. 8592:23-8594:3, 17 October 2006, Witness Andrew Williams.

and 1989. Milestone moments included: Serb nationalists gaining power in the Communist party in Serbia, the famous Milošević's speech at Gazimestan, the League of Communists of SFRY ceasing to exist – the famous 14 Congress of the party, the Presidency of SFRY being blocked in decision making, free elections, the Republics of Slovenia and Croatia requested reorganization of Federation and sought loose Federation, and the JNA intervened in civil police action against Serb rebels in Croatia.<sup>18</sup>

- b. The Serb-controlled JNA attempted to take certain territories of Croatia and BiH and to include them in Greater Serbia.<sup>19</sup>
- c. During later part of 1991, the JNA, assisted by local Serb rebels, established control over almost all parts of Croatia that JNA planned to occupy (approximately 1/3 of the country). Croatia declared its independence on 25 June 1991, but on request of foreign powers, postponed implementation of that decision until 15 January 1992 when it was internationally recognized as an independent state.
- d. In late 1991 and early 1992 the JNA, assisted by local Serbs, started military actions to take control of certain territories in BiH.<sup>20</sup> During 1990 and 1991 the JNA took a great deal of armaments belonging to the BiH TO, municipalities, and companies. BiH was formally still a republic in the SFRY and became an independent state only in April 1992. At that time, a great deal of the country was already under control of the JNA and Serb nationalists.
- e. In 1991 and until May 1992, the BiH Government had no material means to defend the country. The country was deeply divided by ethnic lines:
  - i. Many ethnically BH Serbs (organized as the *Srpska Demokratska Stranka* or SDS party) along with the JNA wanted separation of “their” parts of BiH;
  - ii. Many ethnically BH Muslims (the SDA party) wanted a new independent BiH (even though many hoped for some kind of Yugoslavia for too long a time, which explains in part the lack of defence preparations);

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<sup>18</sup> Exh. 3D03140; 3D03720; T. 44733:1-44734:16, 14 September 2009, Witness Josip Jurcevic.

<sup>19</sup> Exh. 3D00871; 3D03741; 3D03742; 3D03744.

<sup>20</sup> Village of Ravno on 15 September 1991 and 6 October 1991, Uništa on 10 May 1991; Exh. 3D00432.



*Slobodan Praljak's Final Trial Brief - Redacted*

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- iii. Many ethnically BH Croats (the HDZ party) opted for an independent BiH that ensured they would enjoy the rights as one of the three constituent peoples living in BiH (as it was the case in SR BiH). It is important to understand that Croats of Bosnian and Herzegovina participated in March 1992 referendum on the independence of BiH (prompted by political propaganda of Croatia and HDZ). Without that participation the referendum could have not succeeded. Consequently an independent BiH would not have come into existence.<sup>21</sup>
  
- f. Not only was the BiH government unable to defend the country from JNA aggression, but the government was generally not functioning in any respect, including with respect to such issues as control of borders, taxes, schools, medical institutions, administration, and monetary elements. The BiH government functioned only in Sarajevo, which was encircled by the JNA.<sup>22</sup>
  
- g. The Croatian population commenced preparation for defence against the JNA aggression in 1991 *before* the BiH was actually attacked by the JNA, particularly after the first demonstrations of the power and intentions of the JNA.<sup>23</sup> The Croats were able to do so because:
  - i. In the Socialist Republic of BiH system the municipalities were important element of governance and relatively independent from central government in many affairs. Many governmental powers were vested in the municipalities. Thus, municipal administration was able to function, at least partially, despite the lack of central governance.<sup>24</sup>
  
  - ii. Generally, Croats were much more aware and interested in the war that was going on in Croatia as this war was seen as a war against the Croatian people generally regardless of the borders of the republics. For that reason many Croats from BiH voluntarily joined Croatian forces in

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<sup>21</sup> Exh. 1D00410. *Also See*; Prof. Dr. Sc. Josip Jurčević Expert report 3D03720 and generally the testimony of Zoran Buntić, [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> Village of Ravno on 15 September 1991 and 6 October 1991, Uništa on 10 May 1991; Exh. 3D00432, P10451 (Izetbegović's statement "*this is not our war*").

<sup>24</sup> [REDACTED].

defence of the Croatia and later returned to BiH when the war in Croatia was stopped but commenced in BiH.<sup>25</sup>

- iii. An extraordinarily large number of Bosnian-Herzegovina Croats were migrant workers employed in Croatia, Slovenia or other European states. This fact in itself demonstrates economic interest in affairs outside of BiH as well as attention to what is going in the countries where they are earning for living.
- h. Several municipalities founded the HZ-HB on 18 November 1991 (the HVO as executive civil “government” and HVO as military force was established in May 1992). The *ratio* for the establishment of that entity was to compensate to the limited extent possible for the lack of governmental functions at that time and also to be stronger in defence. The founding documents and other formal acts of HZ-HB clearly show that it is temporary organization and the reasons for its founding.<sup>26</sup> Those municipalities had a majority (absolute or relative) Croatian population, and were those where the HDZ alone, or in a coalition with SDA, formed the municipal governments after the 1990 elections.
- i. Some other municipalities where the Croats were a minority also formed various alliances, e.g. Tuzla and some in the Posavina area.<sup>27</sup>
- j. Thus, when the JNA with local Serbs (soon to be VRS) started the aggression, only municipalities that were members of HZ-HB and a few of the other municipalities were able to mount a resistance to the JNA/VRS. Izetbegović officially declared a state of war emergency in April 1992,<sup>28</sup> but at this point, more than half of the country was already under control of the JNA. In May he appointed commanders of TO.<sup>29</sup> Izetbegović formed the TO without ethnic Croatian officers and did not include the areas where the HVO was already defending the country.

<sup>25</sup> T. 43078:11-43081:3, 14 July 2009; T. 40068:25-40070:4, 13 May 2009.

<sup>26</sup> T. 30277:24-30296:7, 7 July 2008.

<sup>27</sup> See e.g. 1D02261; statutory decision to establish HVO HZ of Bosanska Posavina of 11 May 1992, 1D10736; Orašje Municipality joining HZ Bosanska Posavina dated 6 June 1992.

<sup>28</sup> Exh. 1D01218, 8 April 1992, Decision on the Proclamation on an Immediate Threat of War ; P00274, 20 June 1992 Decree Declaring a State Of War Signed By Alija Izetbegovic.

<sup>29</sup> Exh. 3D00450, 27 May 1992; and the same document 3D00420.

**B) Concrete Actions of the Croatian Government Leadership, and Other Alleged Participants in the JCE.**

- a. Essentially all armaments (arms, ammunition and other military equipment) to the HVO, the TO and the ABiH was delivered either *by* or *through* Croatia. A very small portion of armament was obtained from TO storages or was taken from JNA barracks.<sup>30</sup>
- b. Croatian and Muslim citizens of BiH residing in Croatia were organized, equipped and allowed to go into BiH to fight in defence with the knowledge and active assistance of the Croatian Government.<sup>31</sup>
- c. Though the first isolated skirmishes between local units of the TO/ABiH and the HVO happened in late 1992 and than more frequently after May 1993, those parties continue to function as allies in some areas until the end of the conflict in defending the country against the JNA/VRS.<sup>32</sup>
- d. The MORH (Ministry of Defence of Croatia) allowed volunteers (Croats and Muslims) to go to BiH with preservation of their rights based on their employment with the MORH, including employment time for pension, allowance for family members, health insurance, and salaries.<sup>33</sup>
- e. Refugees from BiH were provided care and assistance in Croatia. The Republic of Croatia was the first to provide this aid. No international help was provided at first. This aid included health care and a special school curriculum where requested by parents.<sup>34</sup>
- f. The Republic of Croatia officially recognized BiH as soon as independence was declared.
- g. Diplomatic relationships were established shortly thereafter.<sup>35</sup>
- h. In addition to the activities of the Embassy of BiH in Zagreb, three logistical centers of ABiH HQ were allowed to freely operate in Croatia.<sup>36</sup>

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<sup>30</sup> Exh. P01502; 3D02463; T. 40114:1-40115:1, 14 May 2009; T. 40116:4-21, 14 May 2009.

<sup>31</sup> Exh. 3D03011; 3D00299.

<sup>32</sup> Exh. P02680; P02726; P03539; P04690; P05938; 3D01091, 3D01092.

<sup>33</sup> See *e.g.* Exh. 3D00299.

<sup>34</sup> Exh. 2D00120; 2D00566; 3D01034; 3D02633; 1D02610.

<sup>35</sup> Exh. 3D00186.

<sup>36</sup> Exh. 3D02633; 3D03008.

- i. Various cargos (not only humanitarian relief) passed through the harbors of Croatia, particularly Ploče harbor, which is nearest to BiH and traditionally served business in BiH.<sup>37</sup>
  - j. There were constant meetings and a great number of agreements between the highest representatives of Croatia and BiH throughout entire period (1991–1994, including the Washington Agreement).<sup>38</sup>
  - k. None of the traditional measures were imposed by the Government of Croatia with an aim to control or restrict activities of BiH entities, military and/or citizens or nationals of BiH in Croatia (monetary, political, informative, propaganda, etc.).<sup>39</sup>
  - l. Croatia even made it possible for BiH sport teams to participate in Winter Olympic Games and Mediterranean Games (organizationally, financially, and logistically).<sup>40</sup>
  - m. The closest families of the BiH highest political and governmental officials resided legally in Croatia. They were allowed their own armed security allowed. Officials were welcomed guests in luxury hotels (chiefly paid by the Government of Croatia).<sup>41</sup>
22. Lastly, because of limited space, the Praljak Defence will drastically limit its discussion of the issue of JCE in the following portions of this brief.
23. The Praljak Defence expects to join the relevant chapters of *Prlić* Defence Final Trial Brief discussing the JCE as a form of liability.

### **III. THE PROSECUTION FAILED TO PROVE THE SPECIFIC JOINT CRIMINAL ENTERPRISE ALLEGED**

24. The Prosecution has framed a single *and specific* overarching theory of Joint Criminal Enterprise. This specific allegation is flawed beyond repair. It is not the responsibility of the Trial Chamber to compensate for the errors of the Prosecution. Unless the Prosecution has proved every element of every aspect of the single, specific theory of Joint Criminal Enterprise alleged beyond a reasonable doubt, this mode of liability must be discarded.

<sup>37</sup> Exh. 1D01145; 1D01287; 2D01041; 3D02633.

<sup>38</sup> Exh. P00339; P05938; 1D01530; 1D01532; 1D01935; 3D00647; 4D01234; 3D00320.

<sup>39</sup> Exh. 2D00185; 3D02633.

<sup>40</sup> Exh. 3D02633; 3D01520; T.40246:10-40249:7, 18 May 2009, Witness Slobodan Praljak.

<sup>41</sup> T. 7994:10-7996:7, 9 October 2006, Witness Stjepan Kljujić.

25. Every aspect or element of the specific JCE alleged must be proven in full, as charged, to have any inculpatory effect. Unlike Trial Chambers at the International Criminal Court, this Trial Chamber may not recharacterize the charges based on the facts alleged.
26. The Prosecution must do more than prove beyond all reasonable doubt every element of the following: that every person listed<sup>42</sup> established *and* participated in the joint criminal enterprise alleged to politically *and* military subjugate *and* permanently remove *and* ethnically cleanse the Bosnian Muslims claimed to be a part of Herceg-Bosna. It must also prove beyond all reasonable doubt that every person listed did so to join these areas as part of a “Greater Croatia.”<sup>43</sup> It must also prove that this was done by force *and* fear of force *and* persecution *and* imprisonment *and* detention *and* forcible transfer *and* deportation *and* appropriation *and* destruction of property *and* other means.<sup>44</sup> It must also prove that the territorial ambition of the joint criminal enterprise was to establish a Croatian territory with the borders of the Croatian Banovina of 1939 to 1941, no more and no less.<sup>45</sup> It must prove each and every aspect alleged in paragraphs 15-17.1 of the Indictment.
27. The Prosecution must not and cannot be rewarded for casting the widest net it could imagine. Had the Prosecution decided to make a narrow, more prudent, more provable allegation, but failed to prove it, the Trial Chamber would not reward them by amending the allegation to an alternative theory not alleged. If the Prosecution had alleged a series of local Joint Criminal Enterprises to explain the crimes alleged in each municipality, but failed to prove them, the Trial Chamber would not save the Prosecution’s case by retroactively *de facto* amending the Indictment and convicting on alternative allegations for each alleged JCE.
28. The worst plausible jurisprudential development imaginable to emerge from this case would be for the Prosecution to be rewarded for throwing every fancy into one grandiose theory of joint criminal enterprise and hoping the Trial Chamber sorts it out for them. That is simply not the job of the Trial Chamber. The Prosecution did not allege in the alternative that some aspects of the Joint Criminal Enterprise were true and some aspects were false. Alternative theories were not presented. The Prosecution presented one

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<sup>42</sup> See *e.g.* Indictment paras. 16, 16.1.

<sup>43</sup> *Ibid.*, para. 15.

<sup>44</sup> *Ibid.*, para. 15.

<sup>45</sup> *Ibid.*, para. 15.

theory, and in this instance, the Prosecution has failed to prove that theory. Perhaps if the Prosecution was allowed to try again, it would try a narrower, more prudent theory, one that would not have taken years of trial and years of dubious detention. The Prosecution cannot try again with these Accused, but prudent Prosecutors in future international criminal law practices should look at this case and post as internal rules: do not ask the Trial Chamber to reformulate an overblown theory of JCE. Only charge specific, provable, necessary theories of JCE. Do not simply copy a theory of Joint Criminal Enterprise modeled after the strongest power in a conflict and apply it to those who lead the resistance to the aggression of that power.

29. Slobodan Praljak was charged with perpetration of every crime the Prosecution could possibly identify throughout a series of local conflicts through a single theory. The Praljak Defence has shown that theory to be false, and certainly not to be proven with respect to every element beyond all reasonable doubt.
30. The Prosecution has not proven beyond reasonable doubt the specific alleged common criminal purpose among all of the members alleged. If there had been such a common criminal purpose, the alleged JCE participants would not have called upon the Croats to vote to create an independent BiH. But they did. If there was a criminal plot to forcibly annex or control specific parts of Bosnia and Herzegovina, it would be logical for the HVO (with or without support of HV and Croatia generally) to commence military offensive actions against the TO/ABiH during 1992 and early 1993 when the HVO was by far a superior military power. But that didn't happen. Every aspect of the wider history of the conflict recounted *supra* tends to show that there are reasonable explanations for the events in the indictment that do not depend on the members alleged sharing the alleged common criminal purpose. Indeed, the only logical conclusion for a fair reading of events is to conclude that the Prosecution's theory is in error.
31. The Prosecution has not proven beyond reasonable doubt that Slobodan Praljak significantly contributed to the common plan, design, or purpose. The Praljak Defence will describe *infra* the errors of the Prosecution's allegations in para. 17.3 of the Indictment. Slobodan Praljak did his utmost to defend and support the only independent, fair and strong BiH he believed in—one that prepared for JNA aggression and guaranteed the rights of all its constituent peoples.

32. The Prosecution has not proven beyond a reasonable doubt that Slobodan Praljak agreed with any other individual to perpetrate the specifically alleged Joint Criminal Enterprise. While the Prosecution's allegations could be read to cast criminal responsibility on every ethnic Croatian man, woman, and child throughout the Republic of Croatia and Bosnia and Herzegovina—this does not prove beyond a reasonable doubt that a plurality of persons, including Slobodan Praljak, actually launched the specific Joint Criminal Enterprise imagined by the Prosecution.
33. The Prosecution failed to prove beyond a reasonable doubt that Slobodan Praljak ever intended to do anything but reduce the evils in a war he did not want, but was forced to play a role in because he felt to shirk his responsibility to minimize evil was immoral.

#### **IV. INHERENT WEAKNESSES OF THE EVIDENCE**

##### ***a. Terminology – The Weakness of Using Standard Associations and Assumptions***

34. Trials before the ICTY (or any other international *ad hoc* Court) require consideration of specific cultural and evidentiary concerns.<sup>46</sup> Some of these specific concerns should be considered during final deliberations. One of the specifics is a reflective cultural association of certain terms for certain things. For example, when a witness states that he/she was talking to a *general* of the HVO or ABiH, the Trier of facts may normally but erroneously assume that the noun "*General*" means a high ranking, experienced, trained person who by definition is in a position to impose his commands to the subordinated officers and who can control, correct and sanction the actions of his subordinates. Is this a correct association in the realities of events that took place in BiH in early 1990s? Most probably not, when it comes to a description of a "*General*" of the HVO or ABiH in the early 1990s in BiH. The Judges have heard sufficient (collateral and/or indirect) evidence for conclusion that such terminology must be understood *cum grano sali*. Equally demonstrating example would be usage of the word "*Army*" (either ABiH or HVO). "*Army*" would normally means an army (from Latin *armata* "armed (things)" via Old French *armée*, "armed"), in the broadest sense, is the land-based military of a nation or

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<sup>46</sup> See e.g. on the principle of *nullum crimen sine lege*: "Crimen sine lege: judicial lawmaking at the intersection of laws and morals," by B. van Schaack, *Expresso*, 2008, available at [http://works.bepress.com/beth\\_van\\_schaack/1/](http://works.bepress.com/beth_van_schaack/1/); "Genocide, crimes against humanity, war crimes: nullum crimen sine lege and the subject matter jurisdiction of the International Criminal Court," by M. Boot, *Intersentia*, School of Human Rights Research, Vol. 12, January 2002, ISBN 978-90-5095-216-3, p. 223-304; "Nullum crimen, nulla poena sine lege principle and the ICTY and the ICTR," by G. Endo, *15.1 Revue québécoise de droit international* 2002, p. 205-220.

state.<sup>47</sup> Was the HVO or ABiH the *army* in the sense of traditional meaning of this word? There is plenty of evidence demonstrating that this was not a case in BiH during this unfortunate conflict.

35. The Prosecution has put forth almost no evidence supporting their unexamined assumption that the terms used by witnesses can carry the weight of the cultural baggage necessary to support the Prosecution's allegations.

**b. *The Weak Probative Value and Low Evidentiary Weight of Certain Foreign/International Evidence***

36. One of the specific concerns in the ICTY trials is the unusual type and nature of certain evidence. Many "important" witnesses would not qualify for as a witness in many national jurisdictions. In ICTY proceedings such witnesses are frequently heard regardless of their inherent inability to deliver more than "opinions", "understanding" or "impression". Often, the Prosecution witnesses in this trial were unable to offer material facts on any specific relevant detail. This was particularly true for "international" witnesses, such as members of ECMM, UNPROFOR, various UN Agencies, foreign reporters, and diplomats. *A priori*, such witnesses seem to have been considered as important, credible, and impartial, at least by the Prosecution. However, in many instances such witnesses were disappointingly unable to present the hard facts.<sup>48</sup> Similarly, many questionable pieces of documentary evidence consists of documents (mainly reports or information) authored by "international" persons. The ECMM was particularly "productive" and produced a particularly poor quality product. Many such documents lack significant probative value. There were many objective (but also subjective) factors that substantially limited the ability of these foreign observers to recognize, collect, evaluate and understand some basic facts. Some of the limiting factors included: lack of any knowledge about local people, culture, and customs; a lack of knowledge about administrative, governmental and ethnic structure of population; an ability to observe only very limited portions (isolated incidents) of the bigger picture, as observers were moving around by main roads only during daylight, in areas without current clashes; poor communications with interlocutors via (frequently) unqualified interpreters; and an inability to evaluate received information

<sup>47</sup> Within a national military force, the word Army may also mean a field army - an army composed of full-time career soldiers who 'stand over', in other words, who do not disband during times of peace. They differ from army reserves that are activated only during such times as war or natural disasters.

<sup>48</sup> See e.g. T. 1642:25-1645:20, 9 May 2006, Witness Ed Vulliamy; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; T. 19714:22-19718:21, 7 June 2007, Witness Bo Pellnas.



by means of other sources. Despite these critical weaknesses, many "international" reports contains information that *prima facie* looks reasonably coherent but in fact proves misleading when juxtaposed with other evidence, particularly evidence provided by local people or by other "international" observer.

*c. The Weakness of Hearsay Evidence*

37. The ICTY has accepted on multiple occasion so-called "hearsay" evidence as evidence, despite the fact that the use of these testimonies is controversial in many domestic jurisdictions. In most common law countries hearsay evidence is as a rule inadmissible. Judge Pal explained in his dissention opinion to the Tokyo IMT Judgment that hearsay evidence is usually "excluded, because the possible infirmities with respect to the observation, memory, narration and veracity of him who utters the offered words, remain untested when the deponent is not subjected to cross-examination."<sup>49</sup> For this reason, he deemed it necessary to be extremely careful when according any substantial weight to these testimonies.
38. Although many civil law countries allow the admission of hearsay evidence, the European Court of Human Rights has consistently held in its case-law that in case "a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees [of a fair trial] provided by art. 6 [of the European Convention on Human Rights and Fundamental Freedoms]."<sup>50</sup> According to the former Judge at the ICTY, Patricia Wald, this is the minimum standard the ICTY should abide in order to provide the Accused with a fair trial.<sup>51</sup>
39. The Praljak Defence submits that evidence central to the Prosecution's case is not only hearsay, but often multiple hearsay of the most dubious sort. This is a critical flaw. The Trial Chamber may, if it chooses, take note of this evidence, but this evidence *may not be*

<sup>49</sup> Judge Pal, quoted in "Trends in international criminal evidence: Nuremberg, Tokyo, The Hague and Arusha," by R. May and M. Wierda, *37 Colum. J. Transnat'l L. 1998-1999*, p. 745.

<sup>50</sup> *Luca vs. Italy*, ECHR 27 February 2001, Application no. 33354/96, para. 40. This phrase has been repeated in *Al-Kwawaja and Tahery vs. the United Kingdom*, ECHR, 20 January 2009, Application no. 26766/05 and 22228/06, para. 36.

<sup>51</sup> "Fair trials for war criminals," by P. Wald, *International Commentary on Evidence*: Vol. 4, iss.1, art. 6, 2006, p. 7-8, available at <<http://www.bepress.com/ice/vol4/iss1/art6/>>.

“*decisive*” in conviction.<sup>52</sup> The conviction must be able to stand wholly without such evidence. In practical terms, it serves as the evidentiary equivalent of *obiter dicta*. The ICTY, as an International Tribunal, should rise above the “minimum standard”<sup>53</sup> required in order to avoid causing human rights violations. It should demonstrate a robust skepticism of evidence that would be wholly disregarded in many jurisdictions.

**d. *The Weakness of Testimony Based on 15 Year-Old Memories***

40. It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one.<sup>54</sup> This trial has been about events that happened in 1991–1994 period. Thus, the witnesses were testifying about events that took place in average approximately 15 years before. It suffices to say that such testimonies were at least of dubious accuracy. When this fact is connected to the reality that a large majority of the evidence is quite circumstantial in nature, it becomes obvious that such evidence should be given minimal weight at most, and in many instances no any value at all.<sup>55</sup> In process of evaluation of evidence presented during trial this must be seriously considered.

**e. *The Weakness of Translated and Interpreted Evidence***

41. It is a well-established fact that in criminal proceedings it is sometimes critically important to grasp even a small nuance of language or a slight variation in terminology to get a just and accurate impression about witness statement. In ICTY trials where the testimonies are simultaneously interpreted, a trier of facts is often deprived of that important possibility. There were numerous instances during the trial where interpretation

<sup>52</sup> Again, *see* Luca vs. Italy, ECHR 27 February 2001, Application no. 33354/96, para. 40. This phrase has been repeated in Al-Kwawaja and Tahery vs. the United Kingdom, ECHR, 20 January 2009, Application no. 26766/05 and 22228/06, para. 36.

<sup>53</sup> “Fair trials for war criminals,” by P. Wald, *International Commentary on Evidence*: Vol. 4, iss.1, art. 6, 2006, p. 7-8, available at <<http://www.bepress.com/ice/vol4/iss1/art6/>>.

<sup>54</sup> *See e.g.* “Eyewitness testimony” by Elizabeth Loftus, Harvard University Press, 1979, ISBN 0-674-28777-0; “The “general acceptance” of psychological research on eyewitness testimony; A survey of the Experts,” by S.M. Kassin, P.C. Ellsworth and V.L. Smith *American Psychologist August 1989*, p. 1089-1098; “Retention interval and eyewitness memory for events and personal identifying attributes,” E.B. Ebbesen and C.B. Rienick, *Journal of Applied Psychology 1998*, vol.83, No. 5, at p. 745-762.

<sup>55</sup> *See e.g.* T. 40899:4- 40899:12, 28 May 2009, Witness Slobodan Praljak:

*A. No, Mrs. Pinter. Unfortunately, the Prosecutor brought not a single person from any military structures, whether from the BH Army or the HVO. And all the documents that we received and looked through, there were discussions with Siljeg for hours and hours, with Mico Lasic for hours, and with other people, but nobody either from the BH Army, except the fire brigade or whatever, the firefighters. So during my examination of witnesses - - or Prosecution witnesses, I didn't have a valid collocutor. I didn't have anybody to talk about the conflict and the army and so on and so forth...*

and/or linguistic problems were quite obvious.<sup>56</sup> Despite of the best efforts of the interpreters and the party's reactions in case of some noticeable errors in interpretation, slight errors went unnoticed not to mention that some nuances of language that could not have been grasped properly. Similarly, this was the case with written translations, which required many corrections. Because of such problems sometimes the Trial Chamber is simply not in a position to fully apprehend some details of the testimony that could be critically important for proper evaluation of the evidence.

42. Combined with all other factors mentioned in previous paragraphs above, a realistic ability to fully comprehend the evidence is seriously impaired. The Defence submits that for the said reasons the Trial Chamber must be extremely careful in making conclusions based on evidence that is not directly supported or corroborated with some other evidence.

43. In effect, as a functionally foreign court where many of the jurists cannot natively read or understand the original evidence, the meaning of “reasonable doubt” must incorporate the doubt inherent in distance from the original evidence. A reasonable finder of fact, aware of the difficulties of translation and interpretation, cannot unreasonably pretend these difficulties have been fully solved. Lingering doubts that might not amount to “reasonable doubt” in an ordinary domestic court will frequently amount to “reasonable doubt” for an objective judge at the ICTY.

#### **V. THE FALSITY OF PARAGRAPH 17.3 OF THE INDICTMENT CONTRASTED WITH THE REALITY OF SLOBODAN PRALJAK’S ROLE**

44. In para. 17 the Indictment generally charges all six Accused for participating and supporting the alleged JCE (described in preceded paragraphs of the Indictment) and in

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<sup>56</sup> T. 23108:7 – 23108:17, 3 October 2007, Witness DW:

*MR. KOVACIC: I'm sorry, I apologise but now I recognise the problem. Judge Trechsel asked me why do I think that the question was capricious? Because this is the terms as my Croatian was translated. It was wrongly translated. I used a term in Croatian "kapciozno" which in our theory includes -- which in our theory -- which in our theory means leading, because there is a response included in the question. So this word which is here in translation, capricious, is absolutely wrong. Sorry, Judge. It's a misunderstanding on this part.*

*JUDGE TRECHSEL: Yes, and I'm very happy.*

*MR. KOVACIC: I do think your question was leading.*

*JUDGE TRECHSEL: I accept that and I apologise.-*

T. 44256:25 – 44257:6, 2 September 2009:

*JUDGE ANTONETTI: [Interpretation] Mr. Praljak, let me add something so you can know what my position is. The difficulty we all have here is that we're working in several languages, and each language has its own nuances, and sometimes there's storms in the teacup just because of translation problems. The words expressed by one person are not necessarily completely translated into another language with all its nuances, and sometimes there could be misinterpretation.*

[REDACTED]

further individualized paragraphs explains various acts and/or activities of the Accused in furtherance of their intent. Para. 17.3 is devoted to the Accused Praljak. For reasons of methodology, the Defence provides basic defence arguments refuting those claims as follows.

**a. Par. 17.3 (a)**

45. The Praljak Defence has stipulated from the outset that the Accused Slobodan Praljak exercised *de jure* command in two periods; (a) from 10 April until 15 May 1992, and (b) 24 July until 9 November 1993.<sup>57</sup> The Praljak Defence also stipulates that the Accused played a limited, positive role in HZ-HB/HR-HB during times he was not *de jure* commander. More precisely, his role was the prevention to the degree possible of ABiH–HVO conflicts and strengthening the alliance between those two defence forces in order to win a war against the JNA/VRS aggression.
46. The Prosecution has not tendered evidence that would show beyond reasonable doubt that at any time (regardless of *de jure* position) the Accused ordered any attack on Muslim civilians or objects or any other order that could be understood as a contribution to implementation of the alleged JCE plan. In times when the Accused was *de jure* commander he did not exercise effective control over subordinated troops and he had no legitimate authority to punish perpetrators of the crimes.<sup>58</sup> There is no evidence submitted that would provide sufficient base for a finding that at any time the Accused either ordered an unlawful action or that he received information that the crime has been committed by the troops subordinated to him. In some instances there is remote evidence that "the Croats" or "the HVO soldiers" committed certain crimes. However, in such instances there is no evidence that the crimes were committed by the persons subordinated to the Accused and that the Accused had at least *de facto* command and/or control over such persons. In many such instances the perpetrators were or might have been civilians, freelancers, members of independent local units, or HOS. The Prosecution has the burden of proof, even with respect to a military official. It must prove that (a) a specific criminal act was committed, (b) by person/persons who were member of a regular HVO unit, i.e. that a perpetrator is subordinated to the Accused, (c) that the Accused must have learned

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<sup>57</sup> See e.g. Exh. 3D00280, 8 November 1993; P06556, 9 November 1993.

<sup>58</sup> Under the legal system that was in force at a time, the commander was only under obligation to inform proper authorities when it was about criminal offences (military or civil police, SIS and/or the Prosecutor military or civil, depending on situation) that the crime has been committed and if the perpetrator was known to a commander, the name of the perpetrator had to be reported.

that the crime was committed, (d) that the Accused failed to do anything; failed to initiate criminal proceedings. The Prosecution failed to provide required evidence on any specific event and maintained a general, broad position that many crimes were committed by the HVO troops who must have been subordinated to the Accused and that the Accused must have known about the crimes and the perpetrators but failed to punish them. This is simply not sufficient.

47. It is beyond any dispute that the HVO military did not exist before 8 April 1992 when the HZ-HB decided to establish "*a supreme defence body*".<sup>59</sup> It is also clear from the evidence that in substance the members of the HVO were volunteers despite of some rudimental drafting system. To all practical purposes there were no working mechanisms that could enforce the draft.<sup>60</sup> The system of command and subordination requires structured, organized system that includes a well-functioning chain of command, a system of communication, and discipline. This requires trained and equipped troops, and sufficient time to construct a system. Every objective observer, given the evidence presented, would understand that the HVO was not and could not have been structured in a satisfactory manner under the circumstances, particularly not by Slobodan Praljak. Some standards and elements of organization were never achieved and some were achieved fragmentally only later in 1993, but generally the HVO was far from an established "army". The Accused was able to impose command, control and discipline only in instances *where he was personally present*.<sup>61</sup> Even that was not because of military organization, but because of personal ability of the Accused to impose himself as a leader, primarily based on his background, personal characteristics and status of a senior person which is respected in the local culture. Consequently, where the Accused was personally present there was discipline and order. There is no evidence that any crime was committed in a place and time when Slobodan Praljak was at the location of the crime. Slobodan Praljak cannot be held liable for doings of others that were perhaps on "the Croatian side" but were not within his effective control.

48. None of the Accused's acts could be accurately characterized as an implementation of the alleged JCE plans. His intent was to defend Croats who were under attack of the

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<sup>59</sup> Amended Indictment, para. 25.

<sup>60</sup> See T. 45439:5-45440:11, 30 September 2009, Witness Zrinko Tokić.

<sup>61</sup> Exh. 3D02860; P04640; 3D01100; P01622; P01852.

JNA/VRS and later also attacked by ABiH. No military action was conducted in order to implement any of the alleged plans of JCE.

49. With respect to "reason to know" there is no evidence that Praljak had information, and that specific information was available to him. There is no evidence that Praljak got notice of offences committed or about to be committed by his subordinates. It is submitted that this is essential in order to establish responsibility of Praljak.
50. The allegation that the Accused "*should have known*" puts a burden of proof to the Prosecution. It must present the evidence that there was information available to the Accused which would have put him on notice of offences committed by his subordinates. The Prosecution did not submit such evidence. To the contrary, it was the Defence who presented documents showing that Praljak did all possible measures to prevent, and to punish when he got notice that a crime is committed. The Accused's duty, as a supreme commander, was to inform the SIS and/or Military police that a crime has been committed and under the law it was their duty to conduct an investigation.<sup>62</sup> Neither the SIS nor the Military Police was subordinated to the military commander.<sup>63</sup>

**b. Par. 17.3 (b)**

51. The Defence will argue here only the second portion of the Indictment's paragraph (from the words "*As examples*" on). Two specific meetings at Presidential offices of RH are mentioned in this paragraph. Many so called "Presidential Transcripts" of the various meetings held in the offices of late president of RH, Dr. Franjo Tuđman, were admitted into evidence. Generally, the Prosecution is submitting this type of evidence by a "cherry picking" method – sentences or group of sentences is selected out of the context of entire topic discussed on a meeting and regardless of the dynamic developments of the events in reality.
52. Although an integral reading of the texts of the "Presidential transcripts" does not reveal anything dishonorable or politically unacceptable, there is a great possibility of a wrong matching of a person who allegedly said certain words with the name attached to a recorded text. There are no means to check authenticity since neither the audio recordings of the meetings nor original transcripts exists. The Defence did not only oppose to the

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<sup>62</sup> See *e.g.* Exh. 5D04168.

<sup>63</sup> More about authority over SIS and or MP is provided under 17.3(g) *infra* and Annex section 17.3(G). However, in order to avoid any misunderstanding the Defence submits that the Accused Praljak had authority to command the Military Police units in cases when such units were subordinated to him to act as *fighting* units on the lines.

admission of the Presidential Transcripts because the Prosecution filed these documents at a late stage of the criminal proceedings. The main reason for the Defence to object to the inclusion of these exhibits, regards the nature of this evidence.

53. The Defence has argued that the authenticity of the Presidential Transcripts cannot be verified. It remains uncertain how and under what conditions these documents were generated, and whether the control mechanisms were of a sufficient quality. It appeared from several testimonies of Prosecution witnesses in the Kordić and Čerkez case that no audio tape was kept, that the original electronic transcript was destroyed, that the transcripts had no verification process, and that the chain of custody for the copies of the transcripts has not been established. For this reason, the accuracy of the transcripts cannot be determined. The Prosecution's submission that the Presidential Transcripts were at a certain moment in time added to a State archive does not alter this.
54. In addition, the Defence has emphasized that the Presidential Transcripts as filed by the Prosecution merely concern a selection of the available transcripts. The Prosecution only translated those fragments of the Presidential Transcripts into English which contributed to establishing its case. It did not provide for a complete translation of each Presidential Transcript it wanted to add to its Exhibit List. The Defence has previously submitted that either the Prosecution should translate the entire documents or, in case the Prosecution is of the opinion that certain parts are irrelevant to the present case, should substantiate why it did not translate the complete transcripts. Not only did the Prosecution fail to explain why only fragments of the Presidential Transcripts were translated, it appears that it completely disregarded the principle of fairness and the contextual integrity when selecting the parts of the Presidential Transcripts for translation. This was for example the case with regard to Exhibit P01158 which can only be understood by reading the entire transcript. In addition, in both Exhibits P00822 and P10254 the Prosecution failed to translate an essential fragment. Finally, the pages of Exhibits P00037 and P00524 have not been submitted in the correct order. The parts of the Presidential Transcripts that were translated often were interpreted to the advantage of Prosecution. This was for instance the case with respect to Exhibits P00414, P00068, P00524, P00699 and P10258.
55. For these reasons the Defence submits the Presidential Transcripts lack probative value.<sup>64</sup>

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<sup>64</sup> See Joint Defence Response to Prosecution Motion to Add Exhibits to its Exhibit Lists (Presidential Office) and for Admission of Such Exhibits, 25 September 2007. Joint Defence Response to Prosecution Motion to Admit Presidential Transcript Evidence, 27 November 2007. [REDACTED].

56. It must be noted that a speech within a family, a speech in a closed session, a speech on free seminars of free universities, a speech in an editorial room of a newspapers, a speech on carnivals, a speech in the deliberation of judges, etc.—all that is speech which carries in itself the freedom of what is said as a thesis, a possibility, contrary to the real thinking as a means of seeking the truth, examining all the possibilities, speech as a possible provocation, speech as a game. Therefore, such speech is not the expression of real thought that one expresses publicly and that shapes person's acts in reality. It suffices to say that there is a huge difference in meaning between what has been said—word accompanied by intonation, accentuation, gesture, word accompanied by laughter and ironic smile, sarcasm, flattery, word spoken with a feigned anger, word of imitation, and all of that transcribed into a text. Thousands of Final Trial Brief pages would not be sufficient to show examples in Presidential transcripts. Thus, it is extremely difficult if not impossible (at least in some instances) to rely on the letter of the Presidential transcripts without seeing the persons, without understanding the context and the agenda, without linkage to actual events at a time of a discussion. Accordingly, the Defence submits that if the Presidential transcripts are going to be evaluated as evidence they have to be read as a whole. Only than a probative value and real meaning of the recorded statements could be determined.
57. Regarding the allegation linked with 11 September 1992 meeting (P00466), the Defence submits that nothing that was allegedly said in this exhibit supports the Prosecution's theory of the alleged JCE. It seems that according to the Prosecution there is a JCE as soon as any higher political or military figure in Croatia discusses anything concerning Croats in BiH. The topic of the meeting was Serb aggression and how to stop the war. Muslims are seen as allies. BiH is considered as a separate country. The Banovina is a territory but within the BiH, it is description of the territory where the Croats are living. The Posavina area is mentioned as being under attack of VRS. There is nothing connected to the Muslims. It is topic that was and will be discussed on conference with other people. Franjo Tuđman said: "... it is a moment that Muslims with our help break up Serbs and JNA".<sup>65</sup> The tenor of the recorded discussion shows that HZ-HB did not want the war. Tuđman hoped that UNPROFOR would reinstate constitutional order.
58. In those days, the ABiH and HVO are undoubtedly allies in that time without any exception. Further, at that time Travnik was under JNA/VRS attack and there was military

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<sup>65</sup> BCS ERN-01862965, ET p. 55.



production which was important for both, Muslim and Croats in BiH but also for RH who imported some military goods from Travnik "Bratstvo" factory.<sup>66</sup> During the meeting the cooperation with Islamic world was discussed. All of these details cited above, as well as others, directly contradict the Prosecution's interpretation of the meeting. It seems that the Accused Praljak tried to explain that there is no possibility to return the refugees and expelled persons because of heavy artillery of JNA from the other side of river Dunav.<sup>67</sup> It seems that Praljak also tried to explain that displaced persons would be safer in the rest of Europe because there was no war there. Indeed Praljak understood that both, Croatian and BiH territory was in fact the same battle zone since the enemy (JNA/Serbs) is trying to conquer the territory regardless of the republics' borders. Consequently, the refugees and displaced persons should not be kept in a war-affected zone. He also mentioned creation of demographic misbalance due to a sudden forced movement of huge number of people. One should understand the context in which the discussion took place: approximately 1/3 of the territory of Croatia was occupied by the JNA and local Serbs at a time of the meeting<sup>68</sup> and there were about 600.000 refugees and displaced persons in Croatia. It was almost impossible to bear such burden; the European countries were barely providing any assistance. In short, there is nothing dishonorable or unacceptable emerging from the said meeting as a whole, except if one is taking unrelated sentences out of context with the purpose to prove that in fact river Dunav is in BiH and the Praljak wishes Muslims refugees out of the country.

59. Regarding Praljak's presence at the HVO civil administration's meetings, the Praljak Defence admits that Praljak was present at a few in a capacity of Commander of the HVO military force requesting the authorities to do more in mobilization or giving a general information about situation on field. There was nothing about subjugating the Muslims; rather, it included the defence against the ABiH offensive.
60. Regarding allegations linked with 26 September 1992 meeting (P00524), the Praljak Defence asserts that the meeting is about an Annex to the Agreement of Cooperation signed by Izetbegovic and Tuđman in July 1992. It is not clear to what the Prosecution is referring when it alleges a great conspiracy here. Tuđman is clearly for peaceful, political

<sup>66</sup> Exh. P00316; 4D01485; 1D02446.

<sup>67</sup> The Dunav river is not in BiH, it is in bordering area between Croatia and Serbia.

<sup>68</sup> The Prosecution states that it was "one-fourth to one-third" of the territory (Prosecution Pre-Trial Brief, 19 January 2006, partially confidential, para. 18). All relevant public sources cite that 1/3 of the territory was occupied by late 1992.

solutions, he begs for efforts to prevent conflict between Muslims and Croats but he seems to be opposing Izetbegović's position that Croats/Muslims would first win the war against Serbs and then they would discuss how the BiH would be organized internally. Tuđman also said that the Croats have to defend their positions together with the Muslims and suggests that a commission should be formed in accordance to the above mentioned Agreement.<sup>69</sup>

61. Praljak spoke about people who were expelled by Serbs and came to Travnik; this caused a change of ethnic structure. He was not speaking about people's domiciles. He is speaking about ethnic cleansing done by Serbs. People who came to Travnik, if they stayed, then Serbs' ethnic cleansing would be rewarded. Everything was said in conditional form. Now, the question is whether those words (only summarized here) were in support of the specifically alleged JCE? Everything that Praljak said were facts already in existence. They were not caused by alleged members of the alleged JCE or by Praljak personally. Praljak is also offering his view of Muslims' position. He thinks that they are not yet willing to go against Serbs, and they decided to go against the HVO as the weaker enemy.<sup>70</sup> Again, the question is whether this analysis of Praljak constitute his (or anybody else's) intent to ethnic cleansing or annexation of the territory. At the same meeting Praljak is appointed as a member of a commission tasked with preventing a possible conflict with Muslims.<sup>71</sup>

**c. Par. 17.3 (c)**

62. No evidence has been submitted that proves that the Accused Praljak was "a conduit" between RH and HB-HZ/HVO. The Defence admits that the Accused was actively engaged in the defence of both Republics. His interest is natural and legitimate. He was born in BiH. Part of his closest family was living there. He was citizen of both countries. He served in both the HVO and the ABiH.<sup>72</sup> He understood that there were *not* two separate aggressions of the JNA to Croatia and BiH; he understood that it was *one unique Serbian plan regarding the territory* regardless of the Republics' borders.<sup>73</sup> He knew that

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<sup>69</sup> Exh. P00524; BCS ERN 01862845.

<sup>70</sup> Exh. 3D02873.

<sup>71</sup> Exh. P00524; BCS ERN 01862888 refers to BCS ERN 01862845.

<sup>72</sup> 3D03510; T. 40672:29-40676:1, 25 May 2009, Witness Slobodan Praljak.

<sup>73</sup> It should go without saying that an international armed conflict somewhere at sometime *does not provide sufficient nexus between the specifically alleged international armed conflict and the alleged crimes*. The ABiH-HVO conflict was not an international armed conflict, and many of the crimes alleged were bottom-up events only tangentially related to the wider conflict.

the same enemy has to be fought in both countries. His intentions were honest and legitimate. There was nothing sinister or criminal in his mind or words. Regarding the HVO-ABiH conflict in BiH, all he was doing was building joint defence against Serbs and trying to prevent conflict between Muslims and Croats.<sup>74</sup> His actions do not substantiate the allegation that he was conduit in advancing, facilitating and carrying out JCE. Quite to the contrary, he did everything what he could to secure support to those who were ready to stand up against aggression against the BiH regardless of the ethnicity.

63. Contacts with Šušak and Tuđman were not in function of supporting the alleged JCE. Praljak never received an order from Šušak or Tuđman regarding military operations to be performed while Praljak was commander in BiH. There is no evidence to substantiate such an allegation. Praljak's involvement in defence of BiH was requested by Izetbegović and Tuđman who were both interested in defence of BiH and bringing the peace there.<sup>75</sup> The best evidence on those issues has been provided by Praljak's testimony. That includes the testimony about so called "ultimatum" of 15 January 1993.<sup>76</sup> Praljak brought a paper containing text agreed between Boban and Izetbegović from Zagreb to Mostar where he gave it to Prlić and others.<sup>77</sup> The text was negotiated in details on conference in Tuđman's office previous day. The intention of this document was to prevent a conflict, to ensure that armies be withdrawn to its provinces as agreed during the meeting in Zagreb.<sup>78</sup> Thus, the intention was honest, legitimate and in accordance with results of preceded peace conference. The Prosecution could not point to any evidence that would refute Praljak's testimony but could only try to extract a few words from Presidential transcripts in order to combine a new, imaginary jigsaw picture.<sup>79</sup>

**d. Par. 17.3 (d)**

64. It is true that Praljak requested, arranged facilitated and participated in obtaining military and logistical support for both the HVO and ABiH to enable the defence of BiH. There is ample evidence that with or without Praljak's participation a great quantities of armament and other military equipment was provided by Croatia to the ABiH equally as it was

<sup>74</sup> [REDACTED]; T. 7136:14-7137:7, 21 September 2006; T. 7049:6-7050:12, 20 September 2006, Witness BM; P00708; P00727; 3D00418; P00776; 3D00419; 3D03510.

<sup>75</sup> T. 40570 – 40571, 21 May 2009, Witness Slobodan Praljak.

<sup>76</sup> T. 40568:16 – 40582:3, 21 May 2009, Witness Slobodan Praljak; T. 44053:10 – 44063:11, 31 August 2009, Witness Slobodan Praljak.

<sup>77</sup> T. 40569:18-19, 21 May 2009, Witness Slobodan Praljak; See Annex P01158, p. 25, 37, 51 and 53.

<sup>78</sup> Detailed argument regarding the "15 January 1993 Ultimatum" is provided under section "Par. 17.3(e)" below.

<sup>79</sup> See Annex – "Par. 17.3.(c)".

provided to the HVO. Even after the broader conflict commenced between the ABiH and HVO, supply of armaments for the ABiH did not cease. In trial, the Prosecution argued that armaments from Croatia to ABiH were supplied only to the areas of the BiH that the HZ-HB/HVO did not plan to take—as though the bullets and other equipment received by the ABiH contained devices that would prevent the ABiH to use it in fighting the HVO. Once an armament was in possession of the ABiH it could be moved and used against the HVO as well. However, this risk was known and accepted by alleged participants of the alleged JCE.

65. The Prosecution's explanation for the alleged JCE participants arming the alleged JCE throughout the period of the Indictment directly contradicts the specific JCE alleged—a JCE which did not flare up here and there from time to time but comprised the entire territory alleged for the entire time.
66. In order to better understand relationship between Praljak and Šušak, it is important to stress that Šušak and Praljak were school mates and were friends from childhood. Their relationship has nothing to do with the alleged JCE.
67. Praljak requested military support from RH exclusively for the HVO when it was needed to defend Croats in Prozor and Vakuf in 1993, but he did not received it.<sup>80</sup> Was this proof of a JCE against Croats by Croats? Temporary interruptions in supplies during conflict do not require transnational conspiracy theories.
68. The “elephant in the room” requiring explanation is *not* the absence of materiel from time to time but the supply of materiel by alleged JCE leaders to the alleged JCE victims. This “elephant in the room” has not been explained away by the Prosecution, they have merely pointed at a corner of the room where the elephant has not been proven to occupy consistently.

**e. Par. 17.3 (e)**

69. The Prosecution did not tender any order or similar document issued by Praljak, or the GSHVO, in which a commission of crimes against Bosnian Muslims was ordered explicitly or implicitly. Here, the Prosecution again ignores the reality that the HVO was not in conflict with all Bosnian Muslims but with the *ABiH*, which was an armed force composed of troops who were Muslims by ethnicity. Praljak did not issue any order against the Muslim civilian population; he exclusively issued orders relating to armed

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<sup>80</sup> Exh. P05702; P06009. Also See: Annex "Par. 17.3.(d)".

conflict with the ABiH - with another army of the same country. The HVO and ABiH were two equal components of the armed forces of BiH,<sup>81</sup> regardless of the fact that unfortunately those two components were in conflict during a portion of the time they jointly operated against the VRS. In a capacity of the HVO Commander, Praljak has legal right and obligation to issue military orders for defense of his troops, positions, and for the protection of civilians as well.

70. Regarding the repetitive claims about the 15 January 1993 "ultimatum", the Defence refers to the discussion provided under section "Par. 17.3(c)" *supra*.<sup>82</sup> Regarding the alleged "*local ultimatum*" in Gornji Vakuf the Defence refers to the section "Gornji Vakuf" *infra*.

*i. 15 January 1993 "Ultimatum"*

71. As asserted previously,<sup>83</sup> Praljak brought a paper containing text agreed between Tuđman and Izetbegović from Zagreb to Mostar where he gave it to Stojić, Prlić and Petković. A document was drafted based on the agreement that had been reached in Geneva on 2 January 1993.<sup>84</sup> A detailed text of the paper that the Prosecution calls "ultimatum" was negotiated and agreed by the parties in Zagreb on 13 and 14 of January 1993. The contents of the paper had been discussed and agreed with Alija Izetbegovic on meetings in Zagreb (in Tuđman's office and in Esplanade Hotel).<sup>85</sup> Alija Izetbegovic, Dr. Franjo Tuđman, Mate Boban, Gojko Šušak, Lord Owen, Cyrus Vance<sup>86</sup> and some other persons participated in those negotiations.<sup>87</sup> Based on the paper brought by Praljak from Zagreb to

<sup>81</sup> 1D00507; 2D00628; 4D00410. *See also* 3D003510; T. 40672:29-40676:1, 25 May 2009, Witness Slobodan Praljak.

<sup>82</sup> The Indictment also deals with the issue of alleged "ultimatum" in paras. 30 and 31 (Section; Statements of the Case).

<sup>83</sup> See Annex "Par.17.3.(c)."

<sup>84</sup> T. 40568:23-40570:19, 21 May 2009, Witness Slobodan Praljak; T. 40573:23-40576:19, 21 May 2009, Witness Slobodan Praljak.

<sup>85</sup> See Annex "Par. 17.3."

<sup>86</sup> Exh. P01158, Croatian presidential transcript; Šušak speaks on p. 0132-2243-51 about the Croatian version and 0132-2243 ET-51.

<sup>87</sup> Exh. P01158 – Presidential Transcripts of the meeting held in Zagreb on 15 January 1993; T. 40568:23-40570:19, 21 May 2009, Witness Slobodan Praljak; T. 40573:23-40576:19, 21 May 2009, Witness Slobodan Praljak.

Mostar, Prlić signed the HR-HB/HVO decision<sup>88</sup> and Petković signed a military order<sup>89</sup> that was directly linked to similar order issued by Stojić.<sup>90</sup>

72. Those documents are fully in accordance of the agreed text that Praljak brought from Zagreb. Since Petković had attended conference in Geneva in early January 1993,<sup>91</sup> it would be difficult to believe that he would sign the order if it was not in accordance with agreements reached in Geneva. Similarly, Prlić and Stojić were also fully informed about results of Geneva and Zagreb's meetings. Thus, it would be highly illogical that Prlić, Stojić and Petković would act with intention to blackmail the Muslim-led BiH government and the ABiH by issuing the said documents. Their intent was honest and precise; cease of the conflict as soon as possible. The said documents signed by Prlić, Stojić and Petković did not press the other party to *"unilateral implementation of their views of the Vance-Owen proposals"*<sup>92</sup> as the Prosecution asserts. Those documents (Decision and two orders), based on the additional talks in Zagreb, do not request the ABiH units to subordinate themselves to the HVO command as the Prosecution implicitly asserts, but those documents foresees that all units in certain territories should be subordinated to the HVO command and units in other territories should be subordinated to the ABiH command.
73. In addition, and more importantly, the Petković's order (item 5.) explicitly defines that: *"Officers of the Army of BH shall enter the Command of the Armed Forces of the HVO at the level of Operations Zones and Brigades, in **proportion** to the number of soldiers that are at the front line"*. This clearly demonstrates the HVO intent to include ABiH officers in command of the HVO forces who, on the certain territories, are fighting the common adversary - the VRS.<sup>93</sup> In the same time, Decision signed by Prlić clearly declares that *"**This decision is deemed temporary and shall remain in force until the Geneva agreement on the organization of Bosnia and Herzegovina and peace in Bosnia and Herzegovina is finally signed.**"* It is quite clear that the goal was to have the armed forces at least under some sort of control in this manner until a final political solution is reached.

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<sup>88</sup> Exh. P01155.

<sup>89</sup> Exh. P01139.

<sup>90</sup> Exh. P01140.

<sup>91</sup> Exh. 4D02512.

<sup>92</sup> Indictment, para. 31.

<sup>93</sup> See T. 44162:17 – 44167:15, 1 September 2009, Witness Slobodan Praljak.

74. The similar Order was also issued by Božo Rajić, Minister of Defence in BiH Government, on 16 January 1993.<sup>94</sup> This order was annulled by Izetbegovic's order of 20 January 1993.
75. In regards to the Prosecution's assertion in para. 31 of the Indictment that after the ultimatum date expired the HB-HZ/HVO undertook "... military and violent actions to enforce the ultimatum, attacking *and pressing the Muslims at a number of locations, including at Novi Travnik, Gornji Vakuf and Busovača, ...*" the Defence submits that this assertion is without any foundation and no evidence has been tendered to back up this thesis. This is simply not true. By inserting a word "*including at*" the Prosecution is clearly implying that there were other locations where "*military and violent actions*" were taken by the HVO. There were no *other locations* as the Prosecution falsely asserts. Discussing the locations; Novi Travnik, Gornji Vakuf and Busovača mentioned by the Prosecution, the Defence submits that the Prosecution is contradicting its own presentation of events provided under paras. 63 – 64 of the Indictment where it is asserted that local clashes between Croats and Muslims in Gornji Vakuf commenced as early as late October 1992 and again on 6 January 1993. According to the Prosecution, it must be that the Croats and/or Muslims in Gornji Vakuf predicted that the HZ-HB/HVO would issue an "ultimatum" a week after 6 January 1993. In regards to other two mentioned locations, Novi Travnik and Busovača, there is nothing in the evidence that would confirm these allegations. Furthermore, it is submitted that the entire thesis is wrong because even if the "ultimatum" caused fighting in the mentioned three locations, which the Defence does not admit, it should be noticed that there were no any reactions in many other areas that already had some, even minor, Muslim – Croat tensions, like e.g. Vitez, Travnik, Žepče, Vareš, Mostar, but also Posavina, Tuzla and other areas where Croats and Muslims were jointly fighting the enemy.
76. The fact is that those documents issued by the HZ-HB/HVO but also by the BiH government did not cause any damage, conflicts in the field or any negative consequences. Quite to the contrary, those who saw the documents at that time mostly understood them as good news.

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<sup>94</sup> Exh. 2D01409; P01201.

*ii. April 1993 "Ultimatum"*

77. The Praljak Defence first asserts that the Accused Praljak had nothing to do with that "ultimatum." He did not participate in the event; he was not the HVO's commander at that time. Furthermore, the Defence submits that the HZ-HB/HR-HB/HVO had never issued any ultimatum to the Muslim-led Presidency of the BiH or to the ABiH, particularly not in April 1993 as the Prosecution claims.<sup>95</sup> The "ultimatum story" is nothing more than the Prosecution's unfounded interpretation of the events based exclusively on the media reports.<sup>96</sup> There is no document issued by any Croatian entity or person that would show or confirm that the HVO issued an ultimatum to the "Bosnian Muslims" (the term used in the relevant para. of the Indictment). Such document simply did not exist.
78. In support of the fact that the HZ-HB/HR-HB/HVO had not issued April ultimatum, the Praljak Defence points to the fact that after the VOPP agreement had been signed in New York on 3 March 1993 the parties undertook many activities aimed to establish a peaceful solution to the rising Muslim–Croat tensions that might have lead to a more serious conflict.<sup>97</sup> There was couple of meetings, mainly about the issues related to implementation of VOPP.<sup>98</sup> In that context, on 2 April 1993, Boban drafted a Joint Statement but Izetbegović did not sign it.<sup>99</sup> In fact, Izetbegović did nothing; he did not refuse to sign, he did not propose any changes; he did not act at all. It is quite clear that the purpose of that document was to lay down principles that would prevent spreading of the conflict and enable fast implementation of the VOPP. It appears that this statement was based on results of understanding reached during the Izetbegović-Tuđman meeting in Zagreb on 27 March 1993. Regardless of the fact that Izetbegović did not sign the proposed document, a positive and constructive dialogue between the parties continued despite the media's opinion that the Croats issued an ultimatum to the Muslims. Among

<sup>95</sup> See T. 48941, 26 January 2010, Witness Radmilo Jasak; T. 37072, 17 February 2009, Witness Veso Vegar.

<sup>96</sup> Exh. P01804 and P01808.

<sup>97</sup> *E.g.* Praljak went in BiH to calm down the situation; see Presidential transcripts P01739 (3D00561) p. ERN 01322421 where Šušak is talking to Izetbegović telling him that Praljak is going around with Jasmin Jaganjac, etc.; also at the next page where Tuđman reveals what Praljak told him and Izetbegović's statement that he believes Praljak and plans to contact him and Jaganjac.

<sup>98</sup> *E.g.* the meeting between Izetbegović and Tuđman in Zagreb on 27 March, Exh. P01739 (3D00561) and P01738.

<sup>99</sup> Exh. P01792 (It should be pointed that Boban is proposing a joint statement during discussion on 27 March 1993 meeting in Zagreb, see P01739 and 3D00561 ERN p. 01322426 last paragraph.)



other contacts, Boban and Izetbegović met in Zagreb on 18 April, and than on 24 April 1993 Tuđman, Izetbegović and Lord Owen met in Zagreb.<sup>100</sup>

79. In conclusion, there was no "April ultimatum." Quite to the contrary, both parties were seeking peaceful solution for the problem and both parties sought means to implement VOPP Agreement. The discussion on the 24 April 1993 meeting in Presidential offices in Zagreb demonstrates with particular force that in fact Izetbegović reluctantly respected the principles of VOPP.

**f. Par. 17.3 (f)**

80. The Defence submits that the claims of this section of the Indictment are particularly absurd. Praljak was a commander and it was his duty to direct military operations and actions, providing that they were legitimate. All activities and orders issued by the Accused were legal and militarily justified. The conflict was ongoing. In a conflict, commanders issue orders. None of the orders issued by the Accused included the commission of crimes. The Prosecution ignores the existence of the ABiH: the belligerent armed force. The Prosecution false thesis and misleading presentation of evidence indicating that only civilians were attacked is simply wrong. The evidence shows that from May 1993 the ABiH initiated an offensive against the HVO. Thus, two belligerent armed forces were parties to the conflict—not the HVO on one side and the Muslim civilians on the other side.

**g. Par. 17.3 (g)**

81. This issue was extensively debated during the trial. The Military Police of the HVO was a division of Defence department of the HVO executive branch (the civilian government). There is clear and unambiguous evidence on this issue.<sup>101</sup> During a very critical portion of time in a pick of the ABiH offensive in August 1993, the Accused allowed subordinated operational zones commanders to temporarily employ (and command) smaller units of MP on critical positions. Thus, during some shorter period of time some MP units were temporarily re-subordinated under command of zone or brigade commanders who were in chain of command subordinated to the Accused. Thus, such MP units were *operationally* subordinated to military HVO within a specifically defined task.<sup>102</sup> The Defence submits

<sup>100</sup> Exh. P01983; P02059; P02078 and P02091.

<sup>101</sup> Exhibits are listed in Annex "Par. 17.3(g)."

<sup>102</sup> Exhibits are listed in Annex "Par. 17.3(h)." Please note that the MP units are addressing their reports to Valentin Čorić - not to the GSHVO.

that in such exceptional situations regular police functions (duties) of the members of the re-subordinated MP were not altered. The MP personnel were still under obligation to perform their regular police duties providing that it was possible in light of the engagement. The Accused was aware that by engaging MP units on front-lines their ability to perform their regular police duties would be hampered but he was also aware that there will be no police investigations at all if the HVO did not survive those critical moments. As the commander, the Accused was under obligation to decide and he decided by picking the option he believed to be less harmful. This was a justified legal decision of the Accused demanded by necessity. Choosing the best of bad options is no evidence of a guilty mind. It should be noted that objectively, in such situation the MP's criminal investigations were considerably slowed down but still possible as soon as they were released from duties on the front-lines.<sup>103</sup>

**h. Par. 17.3 (h)**

82. The detention facilities were managed and supervised by the HVO executive branch (civilian branch) – not by the HVO military. There is no evidence that the Accused Praljak had any relation, personal or related to his military functions, with establishing, managing or supervising the HVO detention facilities. The very fact that there is no document dealing with arrests of Muslims (the HVO soldiers or civilians) and/or detained persons that would be send to Praljak personally or to the GSHVO while he was *de jure* commander, demonstrate that the Accused Praljak was not included in the management of the detention facilities nor he might have knew anything about conditions in the detention facilities.<sup>104</sup>
83. In regards to claim about "forced labor", the Praljak Defence submits that there is no evidence that would link the Accused with that. The Accused Praljak has never ordered any person, including the detained persons, to perform any kind of work that could be construed as "forced labor". Quite to the contrary, the Accused forbade use of detainees

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<sup>103</sup> Exh. P03778; 5D04168; 1D02577; 4D1456; T. 40986:11 – 40989:16, 2 June 2006, Witness Slobodan Praljak. Particularly exhibit 5D04168 demonstrates that a formal criminal proceedings for crime committed in August 1993 were initiated as late as in 1994, but the proceedings were initiated nevertheless. Exhibit 1D02577 demonstrates that arrests of the suspects and criminal proceeding was initiated as late as in September 1994 for crimes committed during 1993 and 1994 (20 persons were arrested) but it is important the criminal proceedings were initiated. Exhibit 4D01456 shows similar situation; proceedings in March 1994 for events that took place earlier.

<sup>104</sup> Exhibits are listed in Annex "Par. 17.3(h)."

for forced labor as soon as he got only fragmental information that this is happening.<sup>105</sup> Though the Accused had no relation with the "forced labor" it is submitted that the Prosecution did not show instances where it would be clear that a specific person was a civilian (not a Muslim soldier of the HVO) and that a nature and/or location of the work was dangerous and/or that a person was forced to perform labors, i.e. that he/she did not voluntarily go to work.

84. These allegations originate from the Prosecution's false premise that there was a conflict between the HVO on one side and Muslim people on the other side.<sup>106</sup> Consequently, the allegation<sup>107</sup> are not sufficiently precise because the used term "Bosnian Muslims" or "Muslim detainees" do not define whether the detained persons were one of the following categories: (a) POW's, (b) civilians, (c) the HVO soldiers of Muslim ethnicity, (d) persons under criminal investigation in remand detention, (e) sentenced persons, or (f) potential ABiH soldiers, i.e. not yet drafted but military able persons. It is well proved that during 1992 and a good part of 1993 not only Croats but the Muslims as well were members of the HVO. After the HVO was betrayed by its ally, the ABiH, on 30 June 1993, Muslim members of the HVO were arrested by the MP. The Prosecution did not tendered sufficient evidence that the detainees were exclusively or substantially civilian. Documents show that Muslim soldiers of the HVO were detained. Isolation of "traitors" was necessary and legitimate. Detained Muslims who were members of the HVO military branch were subject to a different legal regime than civilians. The law of armed conflict does not protect members of the armed groups from acts of violence directed against them by their own forces. This does not constitute a war crime.
85. The OTP claims that the victims of grave breaches of the Geneva Conventions were persons protected under the relevant provisions and that all acts and omissions charged as grave breaches of the Geneva Conventions. In regard to members of the HVO of Muslim ethnicity this can not apply. Muslim members of the HVO were fully incorporated in the HVO until 30 June 1993 and war crimes could not have been committed against them. The relevant law is domestic law. Crimes against humanity can only be directed against

<sup>105</sup> Exhibits are listed in Annex "Par. 17.3(h)." Again, the jurisprudential results of finding culpability because of an order forbidding forced labour would be to criminalize leadership and clear the field of leadership of all but criminals. Praljak should be rewarded, not imprisoned, for his efforts to end forced labor in other sections of the HVO over which he had no effective control.

<sup>106</sup> See the discussion in section "c. **Implicit assertion that the BiH belongs to Muslims only.**"

<sup>107</sup> Repeated under the Indictment section "Counts."

civilians. The Prosecution did not tender evidence to prove that detention was directed against civilians. In fact, it seems that all detainees (possibly there were few exceptions for whatever reason) were militarily able men – mobilized or not yet mobilized but without doubt in potential combatant status.

**i. Par. 17.3 (i)**

86. Contrary to the charges, the Defence tendered evidence showing that neither the Accused, nor the HZ-HB/HR-HB/HVO obstructed (or encouraged obstruction) of humanitarian aid deliveries to BiH generally and/or to East Mostar specifically.<sup>108</sup> The Accused testified about passage of humanitarian aids convoys.<sup>109</sup> Regarding the alleged siege of Mostar, the Defence submits that there was no siege of Mostar since this part of the town have had unobstructed access from north and south directions and the aid might be delivered by those two routes. In one instance the Accused personally enforced a passage of the convoy that was blocked for days by angry civilians who insisted on fair distribution that would include them as well.<sup>110</sup> Everybody was lacking a food as well as many other necessities, not only Muslims. There is no evidence that Praljak personally or his subordinates forbade any humanitarian convoy to pass through areas controlled by the HVO.
87. The HVO controlled the passage of convoys in order to maintain some order and particularly to prevent smuggling of the arms and/or import of medicine with long expired time of use.<sup>111</sup> Nevertheless, this did not prevent convoys to reach its final destinations. With or without some problems or delays not caused by the HVO, it is the fact that *all* humanitarian convoys reached their destinations. There is no evidence that any convoy was definitively prevented in their mission.
88. All humanitarian convoys for Muslims, Croats and all others who lived in non-occupied parts of BiH were permitted by the HZ-HB/HR-HB/HVO to pass through; all were loaded in one of Croatian ports and all were organized by some of the 270 registered humanitarian organizations in Croatia. The RH permitted all humanitarian organizations to freely operate in Croatia with aim to provide humanitarian assistance to peoples of BiH.<sup>112</sup> This included many organizations from Islamic countries that unfortunately

<sup>108</sup> See e.g. Exh. 3D00366 and the Exhibits listed Annex "Par. 17.3(i) and 17.3(c)."

<sup>109</sup> See Annex: - humanitarian convoys - Related to Siege of Mostar.

<sup>110</sup> T. 5721:3-5724:17, 29 August 2006, Witness BJ; T. 26196:5-26208:2, 14 January 2008, Witness Cedric Thornberry. See also *infra* in section "Mostar – introduction."

<sup>111</sup> Exhibits are listed in Annex "Par. 17.3(i)."

<sup>112</sup> T. 6599, 13 September 2006, Witness Peter Galbraith.

misused this generosity to enable Islamic fighters to travel to BiH where they fought as Mujahidin against Serbs and Croats as well.

89. No one was ever hungry in these areas, except the people in Sarajevo part of the time. The smuggling of arms, smuggling of food, smuggling of medicines whose validity expired, smuggling of narcotics, smuggling of cigarettes and alcohol, depositing of hazardous waste, all of this, understandably caused the disapproval of the fighters and occasional unauthorized stopping of the convoy. However, every such case was resolved and the convoy reached its destination.

90. Pursuant to the Geneva Conventions for the Protection of War Victims and Additional Protocols (Article 23)<sup>113</sup>, the HZ-HB/HR-HB/HVO was not under obligation to allow distribution of aid that was intended for members of the ABiH. The HVO was very well aware that the food and other goods delivered as humanitarian aid would be used for ABiH needs as well. However, that was not reason to halt the convoys simply because that would cause retroactive actions of the ABiH that would result in lack of food for Croat population in Croatian enclaves surrounded by the ABiH (e.g. several municipalities in Central Bosnia).

**j. Par. 17.3 (j)**

91. No evidence has been tendered that proves that Praljak or his subordinates seized any property and transferred ownership to the HZ-HB.

**k. Par. 17.3 (k)**

92. Regarding destruction of "cultural and religious" properties that were destroyed during the Accused's *de jure* position of the HVO commander, only the Old Bridge in Mostar could be discussed. A discussion on that issue is provided in section "Destructions of Mosques and Old Bridge" below. The Defence will not discuss destruction of mosques because there is no evidence that any particular mosque or other religious structure was intentionally destroyed by the HVO during the time when Praljak was the HVO commander. The only exception seems to be the mosque in Višići but there is no sufficient evidence about alleged perpetrators (*see* section: Destruction of Mosque in Višići below).

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<sup>113</sup> Article 23 of the Fourth Geneva Convention of 1949: *Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.*

93. Regarding "looting of private property" there is no evidence tendered that the HVO soldiers under Praljak's effective control did anything like that. Quite to the contrary there is evidence that shows that Praljak ordered that home appliances and other stuff must be found and returned to the owners.<sup>114</sup> Praljak has never encouraged such activities of his troops. It should be noticed that the properties are inevitably destroyed in war especially it was a case in many instances when members of the village based ABiH units were fighting from their houses. In such a case those houses are considered to be military objects and could be legally attacked and even destroyed if it is militarily justified. There is neither the evidence that Praljak personally or his subordinates (with a knowledge or approval of Praljak) approved, or ordered looting, nor is there evidence that such crimes were committed by the HVO troops subordinated to Praljak.

**1. Par. 17.3 (l)**

94. It seems that the Prosecution here only implies that Praljak is responsible as participant in the alleged JCE. There is no evidence that would be sufficient to charge Praljak under Art. 7.1 or 7.3 for described criminal activities. Nevertheless if the Prosecution here implies Praljak's discussions on 11 and 26 September 1992 meetings (P00466 and P00524), the defence incorporates the relevant portion of argument provided in section "Par. 17.3(b) above.

95. While Praljak was commander of the HVO, transfer of civilians on Dubrava plateau did happen. Praljak never ordered the transfer of these civilians; he only learned about it later. In addition, the reason for the transfer was to protect the civilian population from harm because military actions were planned in this area. It was choosing between two evils: either transfer the population out of the combat zone in order to prevent any harm to them or leave them in the battle zone and be liable for possible injuries or death. (*See* section "Stolac" *infra*).

**m.Par. 17.3 (m)**

96. The Prosecution claims that the victims were persons protected under the relevant provisions of the Geneva Conventions and that all acts and omissions charged constitutes the grave breaches of the Geneva Conventions. In regard to members of the HVO of Muslim ethnicity who were detained this does not apply. Muslim members of the HVO were full members of the HVO until 30 June 1993 and the said crime cannot be

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<sup>114</sup> Exh. P05530. See also other exhibits listed in Annex section "Par. 17.3(k)."

committed against them. The relevant law is domestic law. (Also see section "Par. 17.3. (h)" above).

97. Praljak was not in charge of the detention centers. There is ample evidence that the HVO under Praljak's command took steps to educate the officers and troops about their obligations under Geneva Conventions.<sup>115</sup>
98. The Accused Praljak believed that Dretelj is a regular military prison. Accordingly he issued an order that the HVO soldiers (sentenced for disciplinary act or omission) should serve their time in Dretelj prison.<sup>116</sup> It could be concluded from this that he obviously has no knowledge that Dretelj is used as detention camp for arrested Muslim civilians.
99. The Prosecution did not tender evidence that the Accused Praljak has anything to do with the detention facilities.

**n. Par. 17.3 (n)**

100. This is just a statement without any evidence (documentary or witness statement). The Accused has acted properly throughout the time of his mandate in instances when he learned that a crime has been committed. No awarding, no promoting, not a single document tendered by the Prosecution that Praljak promoted soldier who committed crimes and that Praljak knew it, or had reason to know. In addition, Praljak put his subordinates on notice that perpetrators of crimes will be punished.<sup>117</sup>

**VI. REBUTTAL OF CERTAIN ALLEGEDLY "INCUPLATORY" EVIDENCE**

**a. [REDACTED]<sup>118</sup>**

101. [REDACTED].<sup>119</sup> [REDACTED].<sup>120</sup> [REDACTED].<sup>121</sup>

**b. Destruction of Mosque in Višići<sup>122</sup>**

102. The witnesses CO and CP testified, *inter alia*, about destruction of the Mosque in village of Višići. The witness CO stated that there were two incidents in which the Mosque was damaged and finally destroyed on 19 July 1993. She than said that she saw

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<sup>115</sup> Exhibits are listed in Annex "Par. 17.3(m)."

<sup>116</sup> Exh. P05412; [REDACTED].

<sup>117</sup> Exhibits are listed in Annex "Par. 17.3(n)."

<sup>118</sup> [REDACTED]

<sup>119</sup> [REDACTED].

<sup>120</sup> T. 40401:7-40420:17, 20 May 2009, Witness Slobodan Praljak.

<sup>121</sup> Exh. 3D01538 (Defence letter dated 19 January 2007 and 3D29-1458 response letter dated 8 February 2007).

<sup>122</sup> Indictment, para. 181.

the Accused passing by the ruined Mosque by car *after* it was destroyed making hand gesture towards the ruins of the Mosque. It seems that she implied the Accused was showing the results of his action. Other witness CP (husband of the witness CO) who testified a day after CO appearance, said that the HVO forces destroyed the Mosque and that the Accused was seen *before* destruction of the mosque making a hand sign meaning "down". When cross examined about this portion of his statement he admitted that in fact he does not know when that happened and that he only knows what his wife, witness CO, told him. Thus, it was not only confusing and contradicting testimony; it is also classical hearsay evidence. It must be noted that the Mosque was located by the crossroads in the village of Višići that is located on the main road from Mostar to the south; to RH (Route E-73). Accordingly, it may not be excluded that the Accused might have passed by this road on or about the critical date, though the Accused does not admit that. Nevertheless, the discussed evidence is definitively not sufficient for a conclusion that there is any linkage of the Accused with the destruction of the Mosque. Not only that the witnesses CO and CP are contradicting each other regarding the time when the Accused is allegedly seen there (*before* or *after*) but also it is hearsay evidence in case of the witness CP testimony. Even if the Accused has passed by the mosques (on the main road) and even if he made a described hand gesture that could have many various meanings. There is no any other (even remote and/or circumstantial) evidence that would show that the Accused had any relation to the destruction of the Mosque in Višići.

**c. Witness Mustafa Hadrović erroneously claimed that he saw Praljak in Heliodrom.**

103. The witness stated that in one instance he had seen the Accused Praljak in a canteen that is located in Heliodrom complex. This response prompted further questions about Praljak and the witness produced 2 photos of Praljak, Pašalić and some other persons taken in Mostar in April 1992.<sup>123</sup> The Defence submits that the witness gave confusing answers and generally it was quite confusing testimony that included topics such as destructions, location of tank in relation to Old Bridge, etc. The Presiding Judge made a comment about that the confusing nature of the testimony.<sup>124</sup> Josip Praljak, warden of Heliodrom facilities, stated that the Accused Praljak had never been to Heliodrom.<sup>125</sup> The witness Josip Praljak would have remembered if his cousin Slobodan Praljak visited the

<sup>123</sup> Exh. IC00443; IC00444.

<sup>124</sup> T. 14599, 22 February 2007.

<sup>125</sup> T. 15002:13-15002:15, 1 March 2007, Witness Josip Praljak; T. 14891:19-14892:1, 28 February 2007, Witness Josip Praljak.



Heliodrom facilities, particularly if the visit relates to the part of the complex that was used as detention facilities. Even if the Accused visited Heliodrom complex, which he did not, that is a huge area with many locations<sup>126</sup> within that complex, while only a small part was used as detention facilities, it would not indicate that the Accused had anything to do with the detention facilities and/or with authorities related to this.

**d. Forged Document P06937**

104. P06937, which was admitted by the 5 December 2007 decision, was presented through witness Josip Praljak. This is a form (template) document signed by Mijo Jelić approving the use of detainees.<sup>127</sup> There are several similar documents admitted into evidence.<sup>128</sup> However, P06937 is the *only one* that bears not only Jelić's signature (as all others do) but additionally and inexplicably Slobodan Praljak's signature pasted under Jelić's signature, which is on the usual place on the document. Josip Praljak, who was the addressee of such documents, could not remember this document despite its exceptional appearance. Not only is it unique in that it has two signatures, but one signature is a signature he has never seen before on such a document but would certainly have remembered – his cousin, Slobodan Praljak's signature! Josip Praljak twice confirmed that he had never seen this document before it being presented to him in court.<sup>129</sup> Josip Praljak was unable to provide the Chamber information in court about the authenticity and reliability of the document. The Praljak Defence respectfully submits that there is no reason whatsoever presented by the Prosecution to doubt Josip Praljak's sworn *viva voce* testimony that he had never seen this document before. If he, the purported recipient, had never seen it before, it is a forgery.<sup>130</sup>

105. The Defence disputed authenticity of the document from a moment it was used for the first time. The Prosecution has failed to produce the original, tendering only a photocopy that would be disregarded in the most reputable courts given the highly dubious nature of the authenticity of the document. The Praljak Defence has demonstrated the ease with

<sup>126</sup> Exh. 2D00136; IC00453.

<sup>127</sup> There is nothing in the document that would assist the trier of facts to make findings regarding (a) whether the listed detainees are POWs, (b) whether the detainees volunteered for works outside the camp, (c) whether the detainees performed works that are forbidden or legally permitted works, etc..

<sup>128</sup> See Annex "17.3.h."

<sup>129</sup> See with regard to this issue: T.14896:6 – 12, 28 February 2007, Witness Josip Praljak; T. 14897:4 – 7, 28 February 2007, Witness Josip Praljak.

<sup>130</sup> See T. 14895:20-14903:20, 28 February 2007, Witness Josip Praljak; T. 44532:23-44534:21, 8 September 2009, Witness Slobodan Praljak; T. 41533:9-41534:19, 16 June 2009, Witness Slobodan Praljak; T. 41269:23-41270:22, 8 June 2009, Witness Slobodan Praljak.

which the photocopy of a forged document could have been made.<sup>131</sup> The burden of proof as to the genuine nature of P06937 remains with the Prosecution, and in the face of good reason to doubt P06937's authenticity the Prosecution has utterly failed to prove its authenticity. Inexplicably, the Prosecution failed to even attempt to prove the authenticity of P06937 during their extensive cross-examination of Witness NO on 22 and 23 March 2010.

106. Not only does the putative "authenticator" reject the authenticity of the document, and not only has the original never been produced, but the chain of custody is utterly absent between its putative creation through its deposit by unknown persons at an unknown time into the archive from which it was photocopied. At least three intelligence agencies controlled the HVO's archives from 1994 to 2000 when the HVO's archives finally reached Croatian Archives in Zagreb. The Prosecution would have the Trial Chamber believe that these intelligence agencies are pure as the driven snow, and could not possibly have perpetrated or been party to a simple forgery. For the Prosecution, this is unthinkable—if it ruins the Prosecution's shoddy evidence.

107. There is no explanation or justification for the inclusion of Slobodan Praljak's signature on the photocopied document. In all other similar orders there is *no* additional signatory. Josip Praljak confirmed the order would have been carried out without this entirely superfluous and unnecessary putative signature of Slobodan Praljak.<sup>132</sup> And why would Slobodan Praljak, the day before being relieved at his own request from his duties as Commander of the General Staff, inexplicably sign this routine order? The Prosecution is silent, as this is the only shred of "evidence" with which they hope to link Slobodan Praljak to detainee labour. In fact, it is worth noting that P06937 offers no information regarding the category of work the detainees were supposedly assigned to, such as permissible works within Heliostrom, or other impermissible work.

108. Slobodan Praljak was not in the location indicated (Mostar), as falsely indicated in P06937. In fact, he was relieved of duty on 9 November 1993, and was in the areas of Citluk and Livno dealing with the formalities of handing over the duty of Commander of the Main Staff to Ante Roso.<sup>133</sup> 4D00834, a letter signed by Slobodan Praljak in Citluk on

<sup>131</sup> See Objection Of Slobodan Praljak To Admission Of Exhibit P06937 (Witness Josip Praljak), 06 March 2007.

<sup>132</sup> See T. 14899:11-19, 28 February 2007, Witness Josip Praljak.

<sup>133</sup> Exh. P06556; 3D00948; 3D00280; T. 39664:10-39666:2, 6 May 2009, Witness Slobodan Praljak; T. 39659:3-39664:9, 6 May 2009, Witness Slobodan Praljak.

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8 November 1993, proves that Slobodan Praljak was not in the area of Mostar at the time. The Prosecution has put forth no evidence to disprove the authenticity of 4D00834.

109. P02642, an undated, unsigned document (without the usual HVO record number) in no way authenticates P06937, being merely an *ex post facto* list of documents archived at some unknown point in time.<sup>134</sup>
110. The only contemporaneous document which might have authenticated P06937 instead directly contradicts it. P06777 is a handwritten logbook of detainees taken out of Heliodrom, as explained by Josip Praljak.<sup>135</sup> No detainees were sent to work outside the premises on 8 November 1993 in the manner described by P06777.
111. There is no reason to rebut the presumption that Slobodan Praljak's sworn testimony that he did not sign the document presented as P02642 was untrue.<sup>136</sup>

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<sup>134</sup> T. 44534:21-44535:16, 8 September 2009, Witness Slobodan Praljak:

21 Q. Okay. General, now, to stay with this specific order, I want to  
 22 take you to the next exhibit, P02642, 2642. And, General, this is a  
 23 log-book referencing orders for the release of POWs to work, and I'd like  
 24 to direct your attention, General, to item 407 in this log-book, which in  
 25 your version is on the page ending with the number 7502. Page 17 of the  
 1 English, item 407.

2 So, General, we can go back and look at the previous document,  
 3 the order itself, and the order bears the file number 02-717/93, and  
 4 indeed, General, what we see in this log-book now is a specific reference  
 5 to this order among lots of other orders that are contained in this book.

6 So, General, the fact is that whoever allegedly forged this order  
 7 on taking the prisoners to work would also have had to somehow modify or  
 8 forge the HVO's own logbooks setting out all the orders for prisoners to  
 9 work; isn't that true?

10 A. No. No. This is -- I don't know when this log-book was created.  
 11 It's the log-book of the military police administration, and it is quite  
 12 probable that somebody brought this order of this kind here and then just  
 13 made the entry, the appropriate entry, but this has nothing to do with  
 14 it. On that day, I was not in the Main Staff at the relevant time, and  
 15 in the 422 or 500 -- well, on the 8th -- on the 8th when I was not there,  
 16 somebody planted this one on me. No, Mr. Stringer.

<sup>135</sup> See *e.g.* with regard to the logbooks: T. 14758:16-20, 27 February 2007, Witness Josip Praljak; T. 14759:12-20, 27 February 2007, Witness Josip Praljak.

<sup>136</sup> T. 41269:23-41271:21, 8 June 2009; T. 41532:24-41535:25, 16 June 2009; T. 41842:10-41843:4, 23 June 2009; T. 44684:23-44686:12, 10 September 2009.

112. P06937 is a forgery. Convicting Slobodan Praljak on the basis of P06937 would make Alfred Dreyfus spin in his grave, and the Émile Zolas of modern times condemn the injustice done.

## **VII. PROZOR IN 1992 (paras 43 – 50 of the Indictment)**

### **a. Prozor: Introduction**

113. Everything has been alleged against Slobodan Praljak with regards to Prozor, as with the rest of the Indictment. He allegedly planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of every alleged crime. Nothing has been proven. No document shows planning. No evidence shows instigation. No order has been produced. The allegation of criminal liability rings utterly hollow. The Prosecution asks too much of the Trial Chamber, to leap from the paltry evidence proffered to a finding of *specific* criminal liability for Slobodan Praljak.

114. Given the lack of any direct evidence connecting Slobodan Praljak to any alleged crimes, the Prosecution presumably hopes that the specific joint criminal enterprise alleged will serve to bridge the chasm between evidence and allegations in Prozor. The Praljak Defence respectfully submits that the specific joint criminal enterprise is too weak a structure, stretching as it does across countries and years, to bridge the gap.

115. The evidence from Prozor, properly considered as a whole, not only fails to demonstrate criminal liability for Slobodan Praljak. Additionally, it tends to demonstrate Slobodan Praljak's laudable and non-criminal character and intents, and weakens the Prosecution's already weak "proofs" of the specific joint criminal enterprise alleged. The contrast between what the Prosecution presented and what the Prosecution must hope the Trial Chamber ignores weighs heavily against the credibility of the Prosecution's entire presentation of facts, which supposedly justifies a theory that attempts to connect Slobodan Praljak to each and every evils throughout the region and the period of conflict.

116. The Praljak Defence has no particular desire or obligation to put the leadership of the SDA/JNA/TO on trial. The Praljak Defence has no need to play Prosecutor. Because the Prosecution's presentation of facts regarding the alleged joint criminal enterprise and Prozor has been so one-sided and misleading, however, the Praljak Defence has no choice but to provide a broader perspective as a corrective.

**b. Prozor: Pre-October 23 1992**

117. It is worth remembering that the HDZ was the democratically elected majority party in the Prozor municipality. To quote the Prosecution witness Omer Hujdur:

*Q. Which party obtained the majority or had the most votes?*  
*A. The HDZ absolutely secured the majority vote.<sup>137</sup>*

118. According to 1D00920 the HDZ received a 31/48 mandate in the 1990 election.<sup>138</sup> The SDA received less than half that amount, 14/48.<sup>139</sup>

119. The SDA refused to accept the election results in Prozor. While superior in manpower, they were late to organize for the conflict with the VRS/JNA. When they did organize, they covered a small line and carried a small burden against the JNA/VRS. One may reasonably surmise that many in the SDA, particularly extremists, viewed the BiH as a Muslim state since the Serbs and Croats were seen to have their own states in the neighborhood. This would explain why so much organizing was done against their allies in the conflict with the JNA/VRS rather than against the JNA/VRS themselves. After the tension and small-scale local confrontations over stockpiles of arms, munitions, supplies, facilities, lines of communication and position, and with the introduction of mujahidin, it is understandable that conflict erupted. The acts of the SDA/ABiH/TO were consistent with a plan for an all-out offensive against the HVO.

120. The context of the formation of the ABiH must be kept in mind. As demonstrated by 3D00420, dated 27 May 1992, the leadership of the ABiH was exclusively ethnically Muslim, with ethnic Croats entirely excluded. The ABiH was also late in formation on paper, and even later in reality. Were it not for the HVO, the Muslim and Croatian populations would have been crushed by the JNA/Serbian aggressors. It is unclear whether the Prosecution even contests this basic fact.

121. P00413, dated 28 August 1992, an ABiH order, clearly demonstrates that the ABiH was preparing for conflict with the HVO, ordering the withdrawal of all ABiH forces under the Prozor Municipal Staff from the joint positions to form a line immediately below the town in the direction of the "expected enemy" in light of the increasing number of problems between the HVO and the ABiH.

<sup>137</sup> T. 3478, 20 June 2006, regarding the elections of November 1990 in the Prozor municipality.

<sup>138</sup> 1D00920, 1D30-135, p. 15.

<sup>139</sup> *Ibid.*

122. From 19 October 1992 to 23 October 1992, the ABiH/TO gathered forces around Prozor.<sup>140</sup> 2D00061, a daily report from the ABiH Main Staff to Sefer Halilovic dated 21 October 1992, records that Jablanica directed a platoon towards Prozor, and all forces around Prozor are in full combat readiness.<sup>141</sup> The Travnik platoon was instructed to move towards Prozor.<sup>142</sup> A military police platoon along with an armored vehicle went to Prozor.<sup>143</sup>
123. On 20 October 1992 Ivica Stojak, commander of the HVO brigade, was assassinated.<sup>144</sup> This made the situation worse. The same day, the ABiH/TO established a roadblock of the main road through Lašva Valley and refused to let the HVO pass to reinforce the defence of the Jajce pass.<sup>145</sup> The apparent final trigger of the conflict in Prozor in October 1992 was the killing of yet another HVO member by the ABiH/TO.<sup>146</sup>
124. 3D00048, dated 22 October 1992, noted apparent preparations for conflict in Prozor by the ABiH. 4D00897, dated 22 October 1992, reports troublesome information on the ABiH throughout the area.
125. P00712, dated 6 November 1992, sheds further light on the situation. It is a report by Zdenko Andabak on events in Prozor and Gornji Vakuf municipalities since 21 October 1992<sup>147</sup> On 21 October 1992 members of the 1<sup>st</sup> and 2<sup>nd</sup> Companies of the 2<sup>nd</sup> Military Police Battalion were stopped at the Karamusfafić checkpoint by the ABiH, who denied them passage.<sup>148</sup> They were returned to Makljen.<sup>149</sup> On 22 October 1992 two buses of armed members of the ABiH came to the Jablanica area to the village of Voljevac, led by the commander of MP of ABiH Hindić, aka Božo.<sup>150</sup> On 23 October 1992 due to the grouping of ABiH forces, all HVO units were put under the full combat readiness.<sup>151</sup> At the same time a meeting was being held between the ABiH and the HVO in order to calm

<sup>140</sup> Exh. 2D00061; 3D00048; 4D00897.

<sup>141</sup> Exh. 2D00061, 2D08-0005, p. 1.

<sup>142</sup> *Ibid.*.

<sup>143</sup> *Ibid.*.

<sup>144</sup> Exh. 4D00897; 3D02473.

<sup>145</sup> Exh. 3D00484. On 22 October 1992, the roadblock was removed.

<sup>146</sup> *Inter alia*, 2D00054.

<sup>147</sup> Exh. P00712, ET 0154-8795-8799, p. 1; L0068457.

<sup>148</sup> *Ibid.*, p. 2., L0068458.

<sup>149</sup> *Ibid.*.

<sup>150</sup> *Ibid.*.

<sup>151</sup> *Ibid.*.

down the situation.<sup>152</sup> When news of the ABiH's killing of two members of the HVO was received, an armed clash erupted.<sup>153</sup>

126. P00716<sup>154</sup> is useful to provide general context for the situation before 23 October 1992. HVO units from Rama took their combat positions on 22 March 1992.<sup>155</sup> For the next two months, the number of Muslims in the HVO increased.<sup>156</sup> Two months later the TO was organized, which was later renamed the Army of BiH and then the Armed Forces (Oružane Snage - OS) of BiH for Prozor.<sup>157</sup> Tensions grew.<sup>158</sup> Muslim HVO members were threatened and attacked because of their membership.<sup>159</sup> For example, Behudin Bajorić beat Mirsad Pilav unconscious because Mr. Pilav refused to leave his HVO unit.<sup>160</sup> While the HVO provided common logistical support, including materiel, equipment, food, and fuel; the orders from separate commands were not synchronized.<sup>161</sup> The work at the frontline was carried out by the HVO.<sup>162</sup> The disparate burden, and the perception that the HVO was defending the town against the JNA/Serb aggressors while the Muslim forces were planning an offensive against the Croats, irritated ethnic Croats.<sup>163</sup> The SIS noted the trenches around the town.<sup>164</sup> On 22 October 1992, a military police unit was forced to turn back by the ABiH as they attempted to enter Gornji Vakuf.<sup>165</sup>

127. [REDACTED].<sup>166</sup> [REDACTED].<sup>167</sup>

128. Rasim Pilav had a private army, and was a soldier participating in the conflict.<sup>168</sup> There were hundreds of TO/ABiH soldiers in Prozor.<sup>169</sup> Any assumptions of what was

<sup>152</sup> *Ibid.*. See also P00687.

<sup>153</sup> *Ibid.*. One HVO member was killed quickly, the other died shortly thereafter.

<sup>154</sup> A report by Ilija Petrović dated 1 November 1992.

<sup>155</sup> Exh. P00716, ET 0156-9878-0156-9881, p. 1.

<sup>156</sup> *Ibid.*.

<sup>157</sup> *Ibid.*, p. 2.

<sup>158</sup> *Ibid.*.

<sup>159</sup> *Ibid.*.

<sup>160</sup> *Ibid.*.

<sup>161</sup> *Ibid.*.

<sup>162</sup> *Ibid.*.

<sup>163</sup> *Ibid.*.

<sup>164</sup> *Ibid.*, p. 3.

<sup>165</sup> *Ibid.*.

<sup>166</sup> "SO" is common abbreviation for Municipal Assembly (Skupština Općine).

<sup>167</sup> [REDACTED]

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being used solely by civilians during the conflict, or who was in fact a civilian, must be proven rather than merely alleged by the Prosecution.

129. Efforts to prevent conflict can also be seen on 7 October 1992 in the document 3D00045. 3D00045 notes that Rasim Pilav caused a great number of crimes and thereby caused conflict between Croats and Muslims.<sup>170</sup> Criminal reports were filed against Mr. Pilav for unauthorized possession of weapons and explosive materials and disarming military police officers.<sup>171</sup> He repeatedly came into conflict with ethnic Croats and members of the HVO.<sup>172</sup> It was emphasized that his activities, threatening the peace, must be suppressed and prevented in order for him to stop causing conflicts between Croats and Muslims.<sup>173</sup>

130. [REDACTED].<sup>174</sup> [REDACTED].<sup>175</sup>

131. ABiH documents also document that the episodic conflict involved violence from both sides.<sup>176</sup>

132. Contemporaneous reports demonstrate the provocative steps taken by the ABiH/TO before late October 1992. 3D00046, dated 16 October 1992, documents several provocations. On 3 October 1992 Muslim members of the armed forces captured the main elevation above Tošćanica village, where no Serb operations existed but where the heavy weapons deployed could fire upon villages of largely Croatian ethnicity.<sup>177</sup> On 13 September 1992, a false flag operation by militant Muslims was staged to increase tensions.<sup>178</sup> A couple of days before 16 October 1992 an explosive device was thrown into the school where the HVO Military Police and Bruno Bušić Company command were housed.<sup>179</sup> Muslim forces attacked ethnically Muslim shops with explosives and weapons

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<sup>168</sup> See P00687.

<sup>169</sup> T. 3506:3-11, 20 June 2006.

<sup>170</sup> Exh. 3D00045; 3D03-0046, 7 October 1992.

<sup>171</sup> *Ibid.*.

<sup>172</sup> *Ibid.*.

<sup>173</sup> *Ibid.*.

<sup>174</sup> [REDACTED].

<sup>175</sup> [REDACTED].

<sup>176</sup> Exh. 2D00055, p. 2: "Relations with HVO are not at satisfactory level, which was best displayed in the night of August 27<sup>th</sup>/28<sup>th</sup> 1992, when it even came to conflict, on that occasion, in the town of Prozor, in which conflict **there were wounded on both sides.**" (Emphasis added.)

<sup>177</sup> Exh. 3D00046, p. 1.

<sup>178</sup> *Ibid.*.

<sup>179</sup> *Ibid.*.



fire if the shops did not accept Bosnian dinars.<sup>180</sup> Many others were killed by Muslim forces.<sup>181</sup> Muslim forces erected barricades and checkpoints.<sup>182</sup>

133. [REDACTED].<sup>183</sup> [REDACTED].<sup>184</sup>

134. [REDACTED].<sup>185</sup> [REDACTED].<sup>186</sup> [REDACTED].<sup>187</sup> [REDACTED].<sup>188</sup>

135. 4D00897 notes that the situation in Prozor as of 21 October 1992 was tense and that there could be conflict at any moment.<sup>189</sup> Communications were poor, with poor packet connections.<sup>190</sup> Again, no vast criminal conspiracy amongst the ethnic Croats is necessary to explain how conflict could break out.

**c. Prozor: On and around 23-24 October 1992**

136. All agree that a meeting was held. All agree that a proposal by the elected officials of Prozor to calm the situation was tendered. The Prosecution's witness, Omer Hujdur, noted that a consensus was reached at the meeting before the break.<sup>191</sup> The meeting was productive.

137. P00716, inter alia, records that talks were held to try to defuse the situation in Prozor.<sup>192</sup> After three hours of talks failed to produce an agreement.<sup>193</sup> The HVO suggested a reasonable joint solution.<sup>194</sup> During a break for consultations, it was learned that an HVO member, Franjo Zadro, was killed by the OS BiH and that sporadic fire had

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<sup>180</sup> *Ibid.*, p. 2.

<sup>181</sup> *Ibid.*, pp. 1-2.

<sup>182</sup> *Ibid.*.

<sup>183</sup> [REDACTED]

<sup>184</sup> [REDACTED]

<sup>185</sup> [REDACTED]

<sup>186</sup> [REDACTED]

<sup>187</sup> [REDACTED]

<sup>188</sup> [REDACTED]

<sup>189</sup> Exh. 4D00897, 4D23-0059, 03028012, p. 1.

<sup>190</sup> *Ibid.*. See also P00612, dated 21 October 1992, trying to let the HVO presidency work on calming the situation down.

<sup>191</sup> T. 3504:12, 20 June 2006.

<sup>192</sup> Exh. P00716, p. 3.

<sup>193</sup> *Ibid.*.

<sup>194</sup> *Ibid.*.

already broken out in the town.<sup>195</sup> The sporadic fire developed into an open conflict on the evening of 23 October 1992.<sup>196</sup>

138. Omer Hujdur admitted that if 2D00054 was an authentic document, which no one questions, then his story that the killing of Franjo Zadro was a ruse was false.<sup>197</sup> This allegation is false. It was not a ruse. In making this admission, Mr. Hujdur also effectively confirmed that ABiH units in Gornji Vakuf/Uskoplje were massing, which matches perfectly with the Plan Beta to take Prozor by force in violation of the will of the people of the municipality as reflected in the 1990 election.

139. It bears emphasizing, Mr. Omer Hujdur's allegation, upon which the Prosecution heavily relies, that the meeting was interrupted on a *pretence* is entirely undercut by 2D00054, which supports the theory that the meeting was interrupted due to a murder.<sup>198</sup>

140. Everyone agrees a conflict erupted. [REDACTED].<sup>199</sup>

141. 3D00126 is another roughly contemporaneous report documenting that "the conflict between the ABiH Defence Forces and the HVO started after the unexpected and treacherous killing of HVO member Franjo Zadro that occurred during the negotiations between the two sides about the ways to overcome the current situation."<sup>200</sup> An "arsenal of modern weapons that had never been used against Chetniks" was used against the HVO.<sup>201</sup>

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> T. 3620-3622, 21 June 2006.

<sup>198</sup> T. 3620-3622, 21 June 2006. See particularly T. 3620:3, and T. 3622:17-25:

Q. If this document is correct and you're challenging its authenticity, whereas I tell you that it is authentic, so if this is indeed from a death certificate, does it change your opinion as to how the conflicts began between the HVO and the TO on that particular day? Do you still maintain what you said, that they left the meeting because something incorrect, a false event had been used as a pretext to leave the meeting and start the attack? Does it change your opinion had you known about this?

A. **Yes, of course**, but everything had to be checked out first

<sup>199</sup> [REDACTED.]

<sup>200</sup> Exh. 3D00126.

<sup>201</sup> *Ibid.*

142. During the course of the night, a truce was offered on several occasions to the OS BiH Commander, Muharem Šabić.<sup>202</sup> Commander Šabić responded by laughing.<sup>203</sup> 5 HVO members were killed and 18 were wounded, with 11 OS BiH members killed.<sup>204</sup> In short, the ABiH Command in Prozor put in jeopardy the defence of the Republic of BiH by withdrawing their soldiers from the front line and forbidding passage of materiel and Croatian and Muslim troops who came to the aid of Jajce.<sup>205</sup> The ABiH destroyed the municipal building, the post office, burned down Croat houses and cut the throat of a 50-year old Croat.<sup>206</sup> P00716 documents the true perspective of those seeking to defend the RBiH under extremely difficult conditions. It does not comport with the one-sided theory put forth by the Prosecution.
143. With respect to the events around 23 October 1992, three documents in particular must be read together to understand the viewpoint of the HVO: P00687, [REDACTED], and P00702. As P00687<sup>207</sup> makes clear, the ABiH was implementing “Plan Beta”, getting ready to organize a mutiny within and against the HVO Prozor. This is authenticated not only through the extensive evidence referred to within P00687, [REDACTED]. P00702<sup>208</sup> confirms the prosecution of instigators of Plan Beta.
144. Similarly, 3D00124, dated 24 October 1992, indicates that ABiH/TO armed forces were being sent to Prozor from Jablanica before 24 October 1992, but the planned task was unable to be carried out.<sup>209</sup> On 25 October 1992, the ABiH/TO ordered units to break through to the core of Prozor town and to dislocate the civilian population.<sup>210</sup>
145. Returning to P00687; the report contains descriptions of findings, collected by the SIS employees during the talks with the detainees.<sup>211</sup> The statement of Ekrem Hubijar is cited

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<sup>202</sup> Exh. P00716, p. 3.

<sup>203</sup> *Ibid.*, p. 4.

<sup>204</sup> *Ibid.*.

<sup>205</sup> *Ibid.*.

<sup>206</sup> *Ibid.*.

<sup>207</sup> Dated 1 November 1992.

<sup>208</sup> Dated 3 November 1992.

<sup>209</sup> Exh. 3D00124, 3D04-0014, p. 1.

<sup>210</sup> Exh. 3D00127, 3D04-0023, p. 1. Also worth noting on this document is point 8, which commands that ABiH members may not comment on the “statements or other *media performance* of the Supreme Command, especially to accept the declarative statements and releases as Orders.” *Ibid.*, 3D04-0024, p. 2. This may be to calm the situation, but given the inflammatory products flowing from the ABiH afterwards, it may have more to do with the *questionable* nature of the ABiH media performance on this issue, upon which the Prosecution has relied.

<sup>211</sup> Exh. P00687, p. 1.

in the report.<sup>212</sup> He describes a meeting with the unit commanders, a meeting led by Mustafa Hero.<sup>213</sup> Hero gave out tasks.<sup>214</sup> At the time of the conflict there was a smaller unit from Prozor on Crni Vrh, having the task to reconnoiter and be a guide for units coming from the villages of Voljevac and Boljkovac.<sup>215</sup> The unit from the village of Pridvorci would attack the HVO on the Menjik crossing and take the village of Glibe.<sup>216</sup> Members of the Armed forces of the BH from the villages Kute and Ščiipe had the task to take the village of Jurići and allow units from those villages to go to Prozor and break through towards Uzdol.<sup>217</sup> Rasim Pilav indicated that the commander of a private unit should control the road between Jablanica and Prozor and neutralize the Croatian part of Krančiči village.<sup>218</sup> Units from Gornji Vakuf under Paraga's command, as well as units from Konjic and Jablanica, were included in the plan.<sup>219</sup>

146. Units from the villages of Bolkovo and Voljevo partially succeeded, taking part of Makljen and killing HVO members.<sup>220</sup> The unit from the village of Pridvorci, a very strong one broke the checkpoint Menjik held by the HVO, took the village of Glibe and set part of it on fire.<sup>221</sup> In Glibe, one HVO member lost his life, and two were captured.<sup>222</sup> Other units took the village of Jurići and set fire to some buildings.<sup>223</sup> 100 soldiers came from Konjic.<sup>224</sup>

147. During the conflict, criminals and thieves could not always be controlled, and they robbed flats and stores of ethnic Muslims and Croatians.<sup>225</sup> Cars and other equipment were stolen.<sup>226</sup>

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<sup>212</sup> *Ibid.*

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*, pp. 1-2.

<sup>218</sup> *Ibid.*, p. 2.

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*

<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*, p. 4.

<sup>226</sup> *Ibid.*

148. In sum, these internal documents of both the HVO and ABiH227 demonstrate, at a minimum, reasonable doubt in the Prosecution's misleading and entirely one-sided portrayal of events.
149. On 24 October, an operation was mounted to clear the town of snipers and disarm members of the ABiH.<sup>228</sup> Two HVO members were wounded on 24 October 1992.<sup>229</sup> Arrested persons (participants and the BH Army combatants) were turned over to SIS to be processed.<sup>230</sup> A machine guns nest in Kula above the town was taken, while fighting continued in the localities of Here, Voljevac and Crni Vrh.<sup>231</sup> Individuals with HOS insignia became drunk and smashed store windows, stole cigarettes and other goods.<sup>232</sup> Commander Franjić said those were not the HOS members but only individuals who wore the HOS insignia as a disguise.<sup>233</sup> In any case, the HOS units in Prozor were subordinated to the Tactical Group Command of the ABiH on 15 August 1992.<sup>234</sup> The damage, then, was largely done by combatants responsible to the ABiH or those impersonating them – not the HVO and its leadership.
150. P00712 records that there was damage from street fighting in the town.<sup>235</sup> On 26 and 27 October 1992, civilians from both sides returned to the town.<sup>236</sup>
151. P04247 is of no substantial value in determining the facts at issue. It includes a list of people allegedly killed between 23 October 1992 and 17 August 1993. No proof was given that any person was a civilian, or that they did not die naturally, or if killed that they were killed in 1992, or that they were killed intentionally, or that they were killed in a disproportionate action. If they died later in 1993, as is possible, they may have been killed during the fierce offensive of the ABiH, which the Prosecution leaves entirely out of the narration of events as it contradicts the overall thesis and theme of the Prosecution's case.

<sup>227</sup> Exh. P00687; [REDACTED]; and P00702.

<sup>228</sup> *Ibid.*, p. 3, L0068459.

<sup>229</sup> *Ibid.*.

<sup>230</sup> *Ibid.*. See also P00702 and 3D02206.

<sup>231</sup> *Ibid.*.

<sup>232</sup> *Ibid.*.

<sup>233</sup> *Ibid.*.

<sup>234</sup> Exh. 5D00130.

<sup>235</sup> Exh. P00712, p. 3.

<sup>236</sup> Exh. P00712, p. 4, L0068460.

152. [REDACTED], as well as P09207, are admittedly upsetting. The Praljak Defence merely wants to point to the fact that the Chamber did not receive from the Prosecution a complete or clear picture regarding the events in Paljike. While upsetting, these documents are filled with multiple hearsay and speculation of little or no probative value with respect to criminal culpability of Slobodan Praljak. The evidence suggests that there was some shooting in the village of Paljike, that members of TO/ABiH and HVO were there, and that two people lost their lives. It was not established whether those persons were soldiers or civilians. The witness BQ could not have seen who threw the grenade; just as those who did throw a grenade could not have seen him. Witness Osman Osmić (P09207) was a member of the TO/ABiH. He was with other TO/ABiH members in Paljike. He heard shooting from two isolated houses, which he could not see. He and his fellow combatants wore civilian clothes and were armed. Armin Imamović had a PAM anti aircraft weapon. Mr. Osmić confirms that while captured they were *not* subjected to any inhuman or humiliating conduct by HVO soldiers. Their detention was temporary, around a week long. There is simply no reliable evidence that can prove beyond a reasonable doubt that crimes were committed as alleged in counts 2, 3, 10, 11, 15, 16, 17, 19 and 20.

153. 3D01271, dated 24 October 1992, characterizes the conflict in Prozor as a “fierce battle” between the HVO and the ABiH which lasted all night.<sup>237</sup> It notes that a meeting was sought, but the opposite side had not agreed to talks.<sup>238</sup> It notes the two dead and four wounded HVO members.<sup>239</sup> It confirms there were attempts to calm down the situation pursuant to the order of the main staff, but that there were no results thus far.<sup>240</sup> This again speaks to the chaotic nature of the situation, the military-on-military nature of the incident, and the efforts of the leadership to calm down the situation, even though they could not control the situation.

154. 3D02131, dated 25 October 1992, reporting on 24 October 1992, notes that the conflict in Prozor had not stopped.<sup>241</sup> There was information regarding a massacre in the Croatian village of Mejnik by Muslim forces.<sup>242</sup>

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<sup>237</sup> Exh. 3D01271, 3D29-0478, p. 1.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> *Ibid.*

<sup>241</sup> Exh. 3D02131, 3D31-0552, p. 1.

155. [REDACTED].
156. It is clear that HVO leaders were attempting to stop the conflict. For example, P00644, the cease fire order of 24 October 1992, ordered the recipients to establish contact with the conflicting party and agree to an unconditional ceasefire, stop movements of units in areas where there are no conflicts, establish a mixed group for monitoring the situation and solving any problems, and report back every one to three hours.<sup>243</sup>
157. [REDACTED].<sup>244</sup> [REDACTED]<sup>245</sup>[REDACTED].<sup>246</sup>
158. [REDACTED].<sup>247</sup> On 14 November 1992, Slobodan Praljak continued to try to calm the situation by ordering that all vehicles taken by the HVO be handed over to the General and the Traffic Military Police Section in Ljubuški who will return the vehicles to their owners by noon on 17 November 1992.<sup>248</sup> The Praljak Defence does not question that there was a temporary confiscation of vehicles which in some cases violated the law, but notes that there is no evidence whatsoever that this was part of a plan, order, or acceptance by the HVO leadership. On the contrary, it appears the HVO leadership did their best to prevent confiscation of property and return the vehicles to their owners. Property of Croats was also confiscated or stolen.<sup>249</sup> This is part of the chaotic situation which the HVO leadership did their best to control. Godlike control is not a requirement of international criminal law, as understood at the time.
159. [REDACTED].<sup>250</sup>
160. Similarly, the Prosecution's misleading allegations regarding allegedly illegal detention fall apart upon cursory examination, [REDACTED].<sup>251</sup>
161. The unreliability of documents such as P01564 is clear. No dates are given. No direct physical perpetrators are identified. Whether the properties were caught up in fighting is unclear. Partisan statements such as the Facility of HE Rama, "headquarters of the

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<sup>242</sup> *Ibid.*

<sup>243</sup> Exh. P00644, ET 0154-2583-0154-2583, L0046239, p. 2.

<sup>244</sup> [REDACTED]

<sup>245</sup> [REDACTED]

<sup>246</sup> [REDACTED]

<sup>247</sup> [REDACTED]

<sup>248</sup> Exh. 3D00424, p. 1.

<sup>249</sup> *See e.g.* 3D00424; P00679; P00687; P00712; 3D00126.

<sup>250</sup> [REDACTED]

<sup>251</sup> [REDACTED]

Government and Presidency which hired and brought Ustashas, robbers, arsonists and killers to the people of Prozor – has been partly damaged.”<sup>252</sup> What is the allegation here? That the HVO attacked itself? The defensive tone is noteworthy. This is, after all, the democratically elected government being discussed. The offensive term Ustashas is used throughout. Some spaces are even identified as what one might presume are legitimate military targets in an armed conflict, such as the headquarters of the Army of RBiH Prozor<sup>253</sup> or the location of the Staff of the Army of the RBiH Prozor.<sup>254</sup>

162. As shown by documents such as 4D01179, dated 26 October 1992, the HVO was not the only one firing. 4D01179 records that on 24 October 1992 the ABiH/TO was firing 120 mm mortars at the town and snipers were active.<sup>255</sup>

163. P00744 notes that there were no civilian victims during the night of 23 October 1992.<sup>256</sup> This is a remarkable achievement of the HVO, under the conditions. This admission is from a document which is clearly written after the fact in an effort to frame the HVO in a negative light. This effectively demolishes the suggestion that this attack was directed against the civilian population, an element of every charge of crimes against humanity, including persecution.

**d. Prozor: Post-October 24 1992**

164. [REDACTED].<sup>257</sup> [REDACTED].<sup>258</sup> [REDACTED].<sup>259</sup> [REDACTED].<sup>260</sup>

165. The Military Police established checkpoints and a curfew in order to prevent theft by combatants or disorder.<sup>261</sup> P00712 demonstrates the perspective of the HVO, that the conflict was primed by the massing of the ABiH forces and triggered by the killing by the ABiH army forces of HVO members. Order was restored, despite individuals with HOS insignia causing damage. Efforts were made to prevent and punish crime, even under

<sup>252</sup> P01564, ET 0103-4278-0103-4284, p. 6.

<sup>253</sup> *Ibid.*, item 73.

<sup>254</sup> *Ibid.*, p. 5, item 58.

<sup>255</sup> Exh. 4D01179, p. 1.

<sup>256</sup> P00744, ET 0092-0329-0092-0333, p. 3.

<sup>257</sup> [REDACTED]

<sup>258</sup> [REDACTED]

<sup>259</sup> [REDACTED]

<sup>260</sup> [REDACTED]

<sup>261</sup> P00712, p. 4.



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these difficult circumstances. [REDACTED]. It is utterly contradicted by contemporaneous reports.

166. [REDACTED].<sup>262</sup> [REDACTED].<sup>263</sup> [REDACTED].<sup>264</sup> [REDACTED].<sup>265</sup>  
[REDACTED].<sup>266</sup>
167. 3D00423, dated 25 October 1992, shows that Slobodan Praljak reported that the ABiH and HVO should be distanced from each other in order to avoid conflict. This is further evidence that Slobodan Praljak was trying to avoid conflict and manage tensions.
168. Again, as demonstrated by P00670, dated 29 October 1992, Slobodan Praljak saw conflict between the HVO and the TO as an impediment to the critical task of defending against the JNA/Serb aggressors. He was occupied with reinforcing the line against the JNA/VRS in Jajce, and wished for the HVO to do their utmost to smooth out any disagreements in Novi Travnik and Fojnica.<sup>267</sup>
169. Slobodan Praljak tried to keep the situation as peaceful as possible.<sup>268</sup> Other documents, such as 3D00289, dated 29 October 1992, demonstrate the extreme challenges facing the HVO due to the actions of ABiH/TO units, with HVO units being barred from approaching Jajce. Slobodan Praljak worked creatively to try to resolve problems, such as sending joint HVO and SDA representatives together with HVO and TO units to resolve problems.<sup>269</sup> Slobodan Praljak's creative, collaborative approach to resolving problems are also demonstrated with documents such as 3D00419, dated 6 November 1992, which ordered joint HVO and ABiH checkpoints, with the location jointly agreed.<sup>270</sup>
170. On 4 November 1992, 3D00418, an ABiH report, prove that Slobodan Praljak was working with the ABiH to try to calm the situation in Prozor. HVO and SDA officers went to Prozor together, and approached a group in the centre of town, but "*not even*

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<sup>262</sup> [REDACTED]

<sup>263</sup> [REDACTED]

<sup>264</sup> [REDACTED]

<sup>265</sup> [REDACTED]

<sup>266</sup> [REDACTED]

<sup>267</sup> P00670, p. 2.

<sup>268</sup> 3D00289, (29 October 1992 request for the situation to be made calm, particularly in Novi Travnik and Fojnica); 3D00131 (Ban on burning buildings).

<sup>269</sup> 3D00289, p. 2.

<sup>270</sup> 3D00419, p. 1.

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*PRALJAK had the authority to make them listen to him.*<sup>271</sup> Any suggestion that Slobodan Praljak had effective control over these individuals is disproved by this document. It also demonstrates that Slobodan Praljak did not join the Joint Criminal Enterprise alleged in the Indictment. The ABiH report is extremely laudatory of General Praljak – noting he wants to include Muslims in command, focusing on individual ability and not nationality.<sup>272</sup> He strove for coordinated command.<sup>273</sup> The general impression of him is that he takes “a broader and more democratic view of the joint struggle in BH” than others.<sup>274</sup> Slobodan Praljak is noted to have caused a captured soldier to have been released, as promised.<sup>275</sup> It is noted with gratitude that Slobodan Praljak unhesitatingly responded to the request to arrange a meeting with the refugees from Prozor.<sup>276</sup> The position of the HVO as presented by Slobodan Praljak was considered *acceptable* in this ABiH document.<sup>277</sup>

171. [REDACTED]. Similarly, 3D02206 demonstrate the criminal proceedings against a detained person, including a decision on custody. This does not resemble the unlawful confinement or persecution of civilians, but rather the lawful confinement of BH Army members who attacked and betrayed their fellow defenders of BiH.

172. What of Slobodan Praljak’s role? 3D00291, a contemporaneous report, notes Slobodan Praljak arrived in Prozor in December 1992.<sup>278</sup> He immediately ordered the release of prisoners, including Witness BM, commander of the ABiH.<sup>279</sup> Witness BM was beaten by the inhabitants of the town of Uzdol, an act which revolted Slobodan Praljak and caused Slobodan Praljak to interrupt a town meeting and schedule a new meeting with eminent representatives present.<sup>280</sup> The emphasis at the meeting was the improvement of relations between Croats and Muslims and the return of the Muslim people.<sup>281</sup> Unfortunately, the chaotic situation remained difficult. On 8 December 1992,

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<sup>271</sup> 3D00418, p. 1.

<sup>272</sup> *Ibid.*, p. 2.

<sup>273</sup> *Ibid.*.

<sup>274</sup> *Ibid.*.

<sup>275</sup> *Ibid.*, p. 3.

<sup>276</sup> *Ibid.*.

<sup>277</sup> *Ibid.*.

<sup>278</sup> 3D00291, 3D11-0024, p. 1.

<sup>279</sup> *Ibid.*.

<sup>280</sup> *Ibid.*.

<sup>281</sup> *Ibid.*.

Ivan Baketarić put a gun against the HVO President Mijo Jozić's temple, and later shoots at Brigade Commander Ilija Franjić.<sup>282</sup>

**e. Prozor: Conclusion**

173. If any blame must be placed for the unfortunate conflict between allies in Prozor, it cannot be laid at the feet of Slobodan Praljak. Slobodan Praljak did nothing but strive for a firm line against the JNA/VRS, and peace between the multi-ethnic HVO and their Muslim allies.
174. The evidence in Prozor tends to show that the democratically elected government of Prozor and the HVO leadership reacted, with limited communications and effective control, to try to keep the peace. The evidence points to the exact opposite of the specific joint criminal enterprise alleged.
175. As important as what the evidence demonstrates, are the elements of crimes that the evidence has utterly failed to demonstrate.
176. There was no nexus between the crimes alleged in Prozor 1992 and an international conflict—it was strictly a local issue.
177. No evidence proves that the Muslims did not accept the HZ-HB/HVO proposal of 23 October 1992 by Mijo Jozić, President of the municipality of Prozor.<sup>283</sup>
178. The allegedly criminal nature of any damage or violence from 20 to 30 October 1992 has not been proven. Damage can occur in conflict without being criminal, or even intentional, in nature. Partial descriptions of damaged establishments without specifying the circumstances of any particular damage cannot support an allegation of criminality, or even intentionality. One cannot simply wave generally at a scene and rely on an implicit *quasi res ipsa loquitur* logic. Some establishments are clearly legitimate military targets in a conflict, such as the ABiH headquarters in the communal enterprise.
179. Paragraph 47 of the Indictment makes a number of claims. With the Annex, it suggests Hazim Kulagić was detained and beaten, although this was not proven. The individuals allegedly detained have not been proven to be civilians. There was no attack against the civilian population. The elements of crimes alleged that rely upon paragraph 47, including counts 1, 10, 11, 15, 16, and 17 remain unproven.

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<sup>282</sup> *Ibid.*, p. 2.

<sup>283</sup> *Contra* Indictment, para. 45.

180. In framing the allegations found in paragraphs 43-49 of the Indictment, it is clear to the Praljak Defence that the Prosecution proceeded in an improper and backwards manner, picking a side, deciding the HVO was solely responsible, and searching for evidence that supported their view. If all relevant evidence was collected, rationally analyzed, and objectively presented to the Trial Chamber, the picture would have been very different than the one-sided story presented.
181. There is also no direct, reliable evidence whatsoever establishing any HV participation in this conflict or any of the crimes alleged. The requirement for a sufficient nexus with international armed conflict, necessary for charges under Article 2 of the statute, is unproven and unfulfilled.
182. No evidence proved that there was extensive destruction of property by the HVO, that the destruction was not justified by military necessity, or that it was carried out unlawfully and wantonly, all of which are required for count 19.
183. Similarly, count 20 is unfounded, as there was no wanton destruction of cities, town or villages or devastation, nor was there any effort to show that any damage was not proportional to military necessity. Rather than providing a rigorous demonstration to prove the elements necessary, the Prosecution again appears to rely on a pseudo *res ipsa loquitur* theory of proof, which is simply too much to ask of the Trial Chamber to accept if the basis for a legitimate criminal conviction is to be established.
184. If one is looking for criminal liability for Slobodan Praljak, one will not find it in Prozor. Prozor is a good place to look, however, if one wishes to underline the distorted half-truths behind the Prosecution's allegations. The Prosecution asks too much of the Trial Chamber, requesting findings that the evidence does not support.

### **VIII. PROZOR IN 1993 (Paras. 50 – 59 of the Indictment)**<sup>284</sup>

185. The argument provided under section "Prozor in 1992 – Introduction" is *mutatis mutandis* incorporated here.
186. The summary of the defence case regarding the claims related to events in Prozor in 1993 is as follows;
- i. Praljak came to Prozor area on 24 July 1993 and spent much of his time in the broader area of Vakuf–Prozor leaving the area a couple of times.

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<sup>284</sup> Indictment, paras. 51-59.

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- ii. Almost all charged crimes took place *before* Praljak's arrival in the area, during a period in which he had no formal status in the HVO.
- iii. Almost the entire time while Praljak was there he was out on the field on the defence lines with ABiH.
- iv. Battles in the Prozor–Vakuf area were part of the ABiH broader military offensive that took place in other areas of the BiH with the goal to reach the Dalmatian coast.
- v. As a Commander of GSHVO Praljak had no authority whatsoever over detention facilities or prisons of the HVO.
- vi. Praljak's presence in Prozor area (not in the town of Prozor) was intended only to consolidate the defence and to try to improve the HVO organization, to put halt on a chaotic situation caused primarily by huge influx of the Croatian population that ran away or was expelled from other areas.
- vii. While in the area of Prozor, Praljak was never informed about the crimes that were allegedly committed there, nor that some crimes might have been committed by his subordinates.
- viii. Some crimes were committed by persons or groups that were not part of the HVO military and were not under command or control of Praljak or his immediate superior officers.<sup>285</sup>
- ix. During his time in the Prozor area in some instances Praljak made decisions out of necessity and under pressure. Confronted with impossible dilemmas he had to choose between two bad options that were the only options under the circumstances.

187. When Praljak came to GSHVO as a commander on 24 July 1993 he was briefed by former commander, the Accused Milivoj Petković and other officers, he assessed the situation and on the very same day left for the Prozor-Vakuf area. He did this because he had established that this is the most critical area of conflict.<sup>286</sup> He also took first steps to improve the discipline in the HVO.<sup>287</sup>

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<sup>285</sup> *E.g.* Exh. 4D01456: Though the investigation was launched in March 1994 it shows that the SIS and MP were trying to do their job.

<sup>286</sup> T. 41045:11-21, 2 June 2009, Witness Slobodan Praljak:

188. He immediately decided to go to the field personally because he realized that the advance of the ABiH offensive towards south (to the Adriatic coast) was strongly advancing<sup>288</sup> and that was essential to halt it in the Prozor/Rama area. Praljak understood that nothing would stop the ABiH from further advance towards south if it is not stopped in Prozor–Vakuf area. In fact his judgment was correct; the serious fighting continues up to November 1993 (though with some calmer periods) and casualties were enormous for both sides, including unfortunately civilian casualties as well.<sup>289</sup> In addition to this critical military situation, the other problems and weaknesses of the HVO culminated at that time.<sup>290</sup>

189. In this context it is impossible to agree with the Prosecution claim that the events in Prozor were planned and/or part of the JCE, nor it is possible to believe that the consequences of the JCE plan were to be foreseen by Praljak or anybody there. Praljak is a normal person; a mortal. Nobody, not even military analysts or think-tank groups in western countries or very experienced diplomats such as Cyrus Vance or Lord Owen or many other high profile persons who were dealing with this unfortunate conflict, could have predicted that; (a) the allies in 1992; Muslims and Croats, would become enemies in 1993, and (b) that the ABiH would grow sufficiently strong to launch an extraordinary strong military offensive on axis from Central BiH towards south aiming to occupy part of the Dalmatian coast around the Neretva River estuary.

190. The HVO was not attacking the Muslims in the Prozor–Vakuf area but were instead defending the area from the ABiH advance. At the same time, defence lines towards VRS south–west from Vakuf were also held because the VRS did not give up their plan to advance further toward the Vakuf–Prozor area. The HVO merely attempted to keep the

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*... And they did not achieve their strategic objective, which was to reach their western borders and to reach the sea. So I did not issue any orders for attack. There are only orders to defend ourselves. And here in Mostar, in Vrđi, and in the south, we defended ourselves. And when I say "defended ourselves," by that, I mean we won. And that is why I remained there in spite of everything lest we should lose. And that meant that we won. Because even when we fought Serbs, we didn't go towards the Drina, to Nevesinje, to defeat the Serbs. We did not fight to defeat the Serbs. We fought not to lose or to prevent them from implementing their objective, which was to achieve a Greater Serbia. ...*

T. 41042:15-18, 2 June 2009, Witness Slobodan Praljak:

*... I kept them alive. I kept them fighting, simply because 90 percent of my waking hours were spent with one unit, another unit, the 15th unit, in the trenches, fighting side by side with them. And that's simply how it was.*

<sup>287</sup> Exh. 3D01202; 3D01206; P04399.

<sup>288</sup> Exh. 1D01654. Also see Third Amended Indictment in the *Hadzihasanovic* case, para. 26.

<sup>289</sup> Exh. 3D02057; T. 41126:11-41127:14, 3 June 2009, Witness Slobodan Praljak.

<sup>290</sup> Exh. P03418; P03515; P03516; 3D01460.

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territory where the Croats are living and protect civilians therein without any plan to expel others or to connect this territory with RH.

191. During June 1993, before Praljak became the GSHVO commander, the ABiH already took the town of Kakanj. As a result, 15.000 civilians, a certain number of HVO soldiers amongst them, escaped to Croatian enclaves (a certain number of them went to Prozor).<sup>291</sup> In the same month, between 8 and 12 June 1993, the ABiH imposed total control over Travnik; another 15.000–20.000 Croats were either expelled or fled to various parts of the BiH or abroad. About 1.500 of the Croats from Travnik municipality went by foot over Vlašić Mountain through VRS controlled territory towards the south.<sup>292</sup> More importantly for events in Prozor; about 15.000 Croat civilians, HVO soldiers amongst them, were displaced from or fled from Bugojno as soon as the ABiH was about to take the town and surroundings. All of those people came to Prozor.<sup>293</sup> This trend continued in early July when about 1.000 persons fled from Fojnica and Klis (Konjic municipality) who went over Bokševica Mountain.<sup>294</sup> Mildly put, the situation was chaotic<sup>295</sup> and militarily wise the HVO was in desperate situation.<sup>296</sup>

192. [REDACTED].<sup>297</sup>

193. As Bokševica Mountain is mentioned it should be noted that Praljak personally spent days in June and July there in an effort to secure a free passage for the civilians before the escape route was closed. Praljak was there as an ordinary soldier, volunteer without having any formal position within the HVO.<sup>298</sup>

194. In sum, Praljak took over the duty of the GSHVO commander at a time when the HVO was under extreme hardship. The ABiH offensive was getting stronger; in addition

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<sup>291</sup> Exh. 3D00837; T. 40955:7-10, 28 May 2009, Witness Slobodan Praljak:

*"... This is a mass of a crowd which was completely out of any conceivable control. Conscripts from Central Bosnia, military conscripts, are freely roaming around Croatia. In Rama/Prozor in July 1993, there were 15.000 of which 1.500 soldiers who had lost the will to fight This is a huge crowd of people no longer organised. Regrettably, you have no legal basis to do anything about this at all."*

<sup>292</sup> Exh. 3D01731; 2D01407; 3D 01914; P10718 and 3D02873 – that contains Sefer Halilović's statements showing further intention of the ABiH.

<sup>293</sup> Exh. 3D02632; 3D02775; 3D02777; [REDACTED]; P03831.

<sup>294</sup> T. 50001:12 – 50003:16, 24 February 2010, Milovoj Petković.

<sup>295</sup> Exh. P09630; 3D01202.

<sup>296</sup> Exh. 3D02425.

<sup>297</sup> [REDACTED]

<sup>298</sup> T. 39868:8-24, 11 May 2009, Witness Slobodan Praljak; T. 40771:17-40778:4, 26 May 2009, Witness Slobodan Praljak; Exh. P03246.

to Croatian enclaves in Central Bosnia (Vitez, Busovača, Travnik) the ABiH is attacking Vakuf, Bugojno Vareš, Mostar and Valley of Neretva River,<sup>299</sup> the HVO is losing territory, and thousands of Croat civilians and soldiers are on the run. On top of that the HVO was poorly organized, trained and equipped, the soldiers' morale was falling apart, cases of desertion were increasing rapidly, and the process of mobilization was less than satisfactory, brigades are organized and primarily function as municipal units—there are no mobile troops worth mentioning and on top far inferior in terms of numbers of troops to the ABiH.

195. Even though Praljak spent a considerable time in various areas of BiH before he became commander of the GSHVO, he was never in a position to learn something about general organization and details regarding the HVO military internal organization or to fully understand how the HVO functions internally.
196. Under those circumstances, Praljak decided to go to the front, to work directly with HVO troops to save what could be saved. He understood that the ABiH offensive towards south (to Tomislavgrad, Mostar and further to south) must be halted in the Vakuf–Prozor area.<sup>300</sup> In earlier periods he was engaged in an attempt to calm down the situation in Vakuf and Prozor (late 1992 and early 1993) and in June 1993 he was engaged as volunteer in military operations on and around Bokševica Mountain. During meetings in the GSHVO on 24 July 1993, for the first time he got better information about internal organization of the HVO and situation on the field.<sup>301</sup>
197. After arriving in Prozor, Praljak learned that the defence lines are not satisfactory manned; there were gaps on the lines and that consequently the ABiH units could easily infiltrate the HVO area. In fact, such things happened and civilians were captured or killed as well as HVO soldiers, armaments and supplies. The ABiH was about to completely take Bugojno, (on distance of less than 40 km by road); the situation was extremely difficult.<sup>302</sup>
198. Regarding the specific charges described in para. 56 of the Indictment (where on or about 31 July allegedly the detainees were tied together with telephone cable near the

<sup>299</sup> Exh. 3D02790; 3D02779.

<sup>300</sup> [REDACTED].; T. 45477:21-45479:2, 30 September 2009, Witness Zrinko Tokić; T. 40954:24-40955:19, 28 May 2009, Witness Slobodan Praljak; T. 40956:3-23, 28 May 2009, Witness Slobodan Praljak.

<sup>301</sup> Exh. 3D01206, P04399.

<sup>302</sup> T. 40989:24-40990:12, 2 June 2009, Witness Slobodan Praljak.



confrontation line at Makljen Crni Vrh) Praljak has never even heard about that, let alone contemporaneously receiving any military report or information about that crime. On 31 July 1993 Praljak was on the defence lines in Gornji Vakuf and the next day, 1 August 1993 he was directly engaged in an action of retaking the positions lost in previous days also in Gornji Vakuf area.

199. There is no evidence presented that would show that Praljak ordered that the POWs or civilians could or should be used as hostages or human shields, neither there is any indication that Praljak might have learned about such crime. [REDACTED].<sup>303</sup> [REDACTED].<sup>304</sup> [REDACTED].
200. In the one and only instance when Praljak was informed about use of prisoners for engineering works he reacted immediately and requested immediate withdrawal of prisoners.<sup>305</sup> Praljak never saw prisoners performing labour despite of the fact that he spent most of his time on lines with his troops.<sup>306</sup> Pursuant to the domestic law Praljak as a military commander has no power or authority to process the perpetrators of criminal offences. The military commander has only power and authority to punish the subordinates for *disciplinary offences* where a maximum sentence is 30 days of prison. In regards to criminal offences, commanders are only obliged to inform proper authorities if those authorities are not already informed about occurrence of event that may be qualified as crime under the law. The competent authorities were the Military Police and the SIS for investigation and filing of the criminal report to the Military prosecutor who under the law decides whether there is a ground for indictment that is normally filed before Military District Courts.<sup>307</sup> Thus, HVO officers, Praljak included, were not responsible for processing and punishing of the soldiers who might have committed the criminal offences.
201. Even before Praljak became the commander of the GSHVO, Milivoj Petković was doing his best to improve the situation. He decided to try by establishing of the smaller sectors within Operative Zones (OZ) hoping that this measure would enable better communication and control.<sup>308</sup>

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<sup>303</sup> [REDACTED].

<sup>304</sup> [REDACTED].

<sup>305</sup> Exh. P04260; P04285 and T. 41046:10-41048:14, 2 June 2009, Witness Slobodan Praljak.

<sup>306</sup> *Ibid.*.

<sup>307</sup> *E.g.* Exh. P03356 demonstrates a model of process.

<sup>308</sup> Exh. P03384.

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202. Nevertheless, the situation in late July and August, particularly in the Vakuf–Prozor area had not changed much—if anything it was getting worse because of the lost battles and influx of displaced persons from Bugojno. Praljak sought solutions. When he established that there was a serious shortage of troops and that the defence lines would inevitably fall soon if he would not do something, he decided to mobilize the members of the civil police to strengthen the defence.<sup>309</sup> He was perfectly aware that he has no authority to do so, but he faced a dilemma; to lose the last defence line and fail in his defence of civilians against an aggressive attack or to mobilize civil police to increase defence ability. Praljak was also aware that this measure would hamper civil police in their work but he understands that there would not be *any* police work if the ABiH is not halted there. He also knew that criminal investigations could be continued in any time regardless that this would be most probably slower and more difficult. In fact, the evidence shows that this was the case.<sup>310</sup> He was so desperate that he even threatens the civil police men that he would beat them and put them in front of the firing squad if they would disobey his order on mobilization. These were empty threats but it worked – the civil police did contribute to maintenance of the defence lines.<sup>311</sup>

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<sup>309</sup> Exh. 3D01527.

<sup>310</sup> E.g. Exh. 4D01456; SIS and MP are planning broad police operation in March 1994 regarding "a number of independent units that were not subordinated to nobody" (Kinder platoon is also mentioned). Similarly Exh. 1D02577.

<sup>311</sup> T. 40985:1-40986:10, 2 June 2009, Witness Slobodan Praljak:

*A. Yes. This is an order that I wrote. This is the situation on the 28th and over the following period. The situation wasn't entirely bad. As far as the army was concerned, I was the commander, the commander of the Main Staff. In the simplest of terms, I refused to lose this war. The chief duty of any commander in any army is not to lose in a battle or war.*

*At this point in time, for me, it was important not to lose Gornji Vakuf or Rama, so what I'm doing here is I'm mobilising all civilian police officers into HVO units, and I am making threats to the effect that I would beat them black and blue or have them shot, which was an exaggeration, needless to say. But the circumstances too were excessive, exaggerated. Obviously, the shooting would not have occurred, needless to say. It's just a threat that I'm making here in a bid to convey this to the civilian police officers, and making a threat to the effect that I would have them shot.*

*And it's absolutely true, Your Honours, that as far as this document on mobilisation was concerned, I'm not sure if I had a legal basis to actually pass anything like this, in terms of sending civilian policemen to the front-line. But at the moment, they, too, were part of the armed forces, and they were armed; whereas I had no intention of losing out. I'd lost Bugojno, but I refused to lose Vakuf and all the rest because these forces that were attacking us at the time were on their way to, as they said, sweep everything clear all the way up to Croatia's border. And I certainly didn't need any sweeping cleared by the BH Army. I was no occupier in those parts. A year or so before, we had fought alongside each other against Republika Srpska. It's true that I'd made these threats, but that's all they were, empty threats, of course.*

*You see, Your Honour Judge Mindua, once you've scared someone like this, then you go and have a talk in Travnik, such as the one you saw in the other document. You try to raise their morale, you try to talk to them, tell them what would happen; that there would be refugees, that they would be expelled, and so on and so forth.*

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203. Despite all efforts, militarily the situation deteriorated further. 31 July 1993 was perhaps the worst day. The night before, the entire front-line held by the HVO in Gornji Vakuf had fallen.<sup>312</sup> Praljak threatened Commander Vrgoc that he would be removed and made to answer under the military law. The commander of the sector, Vrgoc, simply failed to carry out the orders.
204. This demonstrates that the HVO was not an organized military force. Nobody called Slobodan Praljak as a commander of the GSHVO; the commander who was near in the area to propose or request a permission to retreat. This surely shows that there was no way to command and control his subordinates.
205. Regarding the activity of the Military Police in the area (and elsewhere) the Praljak Defence submits that the Military Police was under Ministry of Defence and was not subordinated to the HVO commanders. Military police did not address their regular reports to Slobodan Praljak as the commander of GSHVO.<sup>313</sup> There were exceptional situations of resubordination of MP units but this is special situation that required permission of the Defence Department–MP Administration. Those were rare situations where Praljak requested and was permitted to use certain smaller MP units as fighting units on the frontline. In such occasions the MP units would have direct line of command attached to the HVO military commander, but their police duties and authorities would not be disposed off; they were expected to perform regular police duties providing their military obligation allowed it. For example, if a military police soldier sees that an offence is in progress while he is off duty as a combatant, he should act as a police officer should according to the law.
206. Another situation in which Praljak acted under duress was his decision to evacuate civilians from the battle zone. It happened in August during fighting around villages of Pidriš and Mačkovac in the area of operations Vakuf–Prozor. The area was under artillery attack and there were some civilian casualties when Praljak decided to move the civilians out of the area to prevent more causality.<sup>314</sup> Praljak ordered that the civilians should be moved with their farm animals because he was not sure that the civilian authorities would

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See also T. 40988:9-24, 2 June 2009, Witness Slobodan Praljak; T. 40989:10-16, 2 June 2009, Witness Slobodan Praljak.

<sup>312</sup> T. 40998:4-9, 2 June 2009, Witness Slobodan Praljak; T. 41013:24-41015:5, 2 June 2009, Witness Slobodan Praljak.

<sup>313</sup> T. 41032:25-41033:1, 2 June 2009, Witness Slobodan Praljak.

<sup>314</sup> Exh. 3D00639.

be able to take proper care of those people.<sup>315</sup> The Defence submits that such decision of the commander in the field was legal, justified, and compelled by necessity—it saved the lives.

207. Conclusion: During July and August 1993 Praljak was *de jure* commander and in order to avoid total defeat and the inevitable subsequent catastrophe for civilians, he spent a lot of time on the field in area of Prozor–Vakuf. The Defence also submits that Praljak had *no effective control* over all of his troops during entire time—it was simply impossible under the circumstances (strong offensive of the ABiH, configuration of terrain, chaos, lack of communications and information about crimes, etc.). However, he was not personally present at the locations where at a time some crimes were allegedly committed by the HVO soldiers. Praljak was never informed about these alleged crimes thus, he could not react by punishing the committers or at least by requesting proper authorities to initiate investigation and prosecute perpetrators.

## **IX. GORNJI VAKUF MUNICIPALITY (Paras. 61 – 72 of the Indictment)**

### **a. Introduction**

208. The Defence submits that the Accused had no position within the HVO at a time defined with this section of the Indictment. He was neither *de jure* nor *de facto* commander at the time. Nevertheless, pursuant to the Tuđman–Izetbegović request, the Accused was in the area of Gornji Vakuf 16 – 22 January 1993 attempting to calm down the tensions that has arose between the TO/ABiH and HVO who were allies and jointly fought JNA/VRS forces who threatened Vakuf area from Kupres direction.<sup>316</sup> This action of the Accused was an attempt to assist political peace talks within VOPP that were getting some positive results at this time. The intention was to prevent spreading of conflict between the ABiH and HVO since obviously that would harm the peace plans.<sup>317</sup> Shortly after the peace was established Praljak left the area.<sup>318</sup>

<sup>315</sup> T. 41058:16-41059:24, 2 June 2009, Witness Slobodan Praljak. In particular T. 41059:15-21:

*JUDGE TRECHSEL: Mr. Praljak, could you tell the Chamber whether the population of these two villages was mainly or exclusively Croat or Muslim?*

*THE WITNESS: [Interpretation] Judge Trechsel, Your Honour, as far as I remember, there were Muslims, too. But I didn't really pay attention to these ethnic matters. I asked that everybody be dealt with in the same way, according to the same principle.*

<sup>316</sup> T. 34299:16-34299:21, 10 November 2008, Witness Zdravko Batinić.

<sup>317</sup> T. 40568:16-40582:3, 21 May 2009, Witness Slobodan Praljak.

<sup>318</sup> Exh. P01205.

209. It is symptomatic that the Prosecution charges the Accused, in regards to the Gornji Vakuf events, only with January 1993 despite of the fact that the tensions and limited conflicts commenced as early as June 1992.<sup>319</sup> The Defence submits that in fact the TO/ABiH was the party who not only provoked the HVO but also took many active steps in order to impose a total domination in the municipality regardless of the joint efforts on the front towards the JNA/VRS forces.
210. In the chaotic war situation without a proper government on place, the conflict flourished on rumors, mistrust, suspicions and accusations. For example, Witness Tokić states that only after the HVO entered Kupres in 1994 it was revealed that the two HVO officers ambushed and killed in June 1992 were not assassinated by the Muslims as the Croats believed in 1992.<sup>320</sup> Seemingly minor incident could have triggered a serious fighting. This was confirmed by the incidents related to the flag. However, even under such difficult circumstance beyond anybody's control, the parties were able to cooperate in defending the territory from JNA aggression until mistrust eventually grow out of proportions and the conflict commenced.
211. Tension between the TO/ABiH and HVO started as early as in June 1992, and continued on an ongoing basis for the duration of the clashes between the HVO and the TO/ABiH. During all this time, there were talks between the local forces of the TO/ABiH and HVO mainly on the initiative of the HVO aiming to prevent and later to stop the conflict.<sup>321</sup> The UNPROFOR was engaged in the negotiations. A critical topic was the issue of the trenches that were constructed on some tactical elevations around the town by the TO/ABiH, behind the back of HVO. Those trenches had no military justification related to defence from Serbs. The defence line against Serbs was at Raduški Kamen, more than 10 kilometers away from the town.<sup>322</sup> Representatives of the HVO tried to talk to Bosniak side in order to convince them to work with the HVO and to eliminate trenches around the town and more importantly to join forces against the Serbs and advance towards Kupres.<sup>323</sup>

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<sup>319</sup> T. 34295:23-34296:7, 10 November 2008, Witness Zdravko Batinić.

<sup>320</sup> T. 45352:24-45355:5, 29 September 2009, Witness Zrinko Tokić.

<sup>321</sup> See Annex – Gornji Vakuf.

<sup>322</sup> T. 45388:11-14, 29 September 2009, Witness Zrinko Tokić.

<sup>323</sup> T. 9443:6-9446:8, 2 November 2006, Witness Fahrudin Agić.

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212. During the negotiations the HVO was consistently proposing that the trenches on the elevations around the town should be abandoned, that all forces brought in from other areas should leave the area and that some kind of joint control should be organized. It is important to note that in fact all that was accepted but unfortunately only *after* the conflict was halted by the HVO order of 20 January 1993.<sup>324</sup>
213. In December 1992 preparations to reconnoiter in the direction of Kupres against the JNA/VRS had begun. The HVO men felt that trenches behind the HVO lines produce destabilization in the HVO and fear for families who were left alone, while members of brigade were stationed on frontline towards the JNA/VRS.
214. During the TO/ABiH-HVO negotiations in December 1992, Šiljeg, Andrić and Praljak represented the HVO. Praljak was there upon request of Franjo Tuđman *and Alija Izetbegović*. He was asked to assist local military and political leaders to calm down tensions and to resolve situation, *inter alia*, in Gornji Vakuf /Uskoplje area.<sup>325</sup> In December 1992, the TO/ABiH had already erected all of its positions in all the hills around the town of Vakuf and in the Vakuf itself.<sup>326</sup>
215. The HVO officer, Andrić Miro, Milivoj Petković's deputy, and the commander of the operational zone Željko Šiljeg on the request of Slobodan Praljak went to a number of meetings with the TO/ABiH Command in Gornji Vakuf. The reason for meetings was to solve problems in order to secure full cooperation on defence, because the line facing the JNA/VRS was only 10-15 kilometers away. The ABiH manned a proportionally small area of the defence line while at the same time it kept two brigades in Gornji Vakuf /Uskoplje. The ABiH also dug trenches on places which were not for the defence against JNA/VRS.
216. Despite of the talks between the parties, the situation in December 1992 and in January 1993 escalated to such a degree that the Vakuf HVO commander, Zrinko Tokić

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<sup>324</sup> Exh.P01205; T. 9474:20- 9475:3, 2 November 2006, Witness Fahrudin Agić:

*Q. Yes, this is my basic thesis. It is said in the report of the 3rd Corps about the ultimatum. Their express position of the HVO as they state, I can go back to document but I like the term, the filling in the trenches and the return of units which do not hail from that period to go home, and this is the only position. And when the cease-fire was signed, exactly that is stated in the cease-fire agreement. Units to be sent home and the trenches to be filled in. And we've heard that in testimony of several witnesses. Is that true?*

*A. We did that after the 14th of February with great difficulties*

<sup>325</sup> T. 40575:5-40578:23, 21 May 2009, Witness Slobodan Praljak; T. 40579:6-40581:24, 21 May 2009, Witness Slobodan Praljak; T. 40585:10-40586:25, 25 May 2009, Witness Slobodan Praljak..

<sup>326</sup> IC01060; 3D00464.

was not able to pass through some parts of the area to reach his headquarters except being driven in an APC by UNPROFOR.<sup>327</sup>

217. It appears that by the claims provided under para. 62 of the Indictment the Prosecution is implicitly asserting that all troubles and crimes that happened in Gornji Vakuf were a direct *consequence* of HZ-HB's 18 November 1991 decision. There is no evidence that supports this claim. Regarding the claim in the same paragraph about the "*Bosnian Croats (and) set up various checkpoints to control population movement in the municipality*", the Praljak Defence submits that the evidence shows that in fact both, the HVO and the TO/ABiH set checkpoints to control movement of all persons and traffic through the municipality area<sup>328</sup> (not to mention the checkpoints organized by other individual groups for various reasons). In addition, some checkpoints were set up and manned jointly by the HVO and TO/ABiH.<sup>329</sup> The evidence clearly shows that: (a) there was a war going on in the BiH, Gornji Vakuf municipality included; (b) Muslims and Croats were defending their respective territories from JNA/VRS offensive to occupy planned territory and (c) it was a chaotic situation - general lack of law and order due to non-existence of the government. The evidence also shows that the defense was primarily organized within municipalities and by municipalities' leaderships. Under those circumstances it is quite obvious that in fact the checkpoints were justified and well intended (except some of those that were set up by individual groups) providing that the checkpoints are not causing any harm to the allies. There is no evidence presented in that direction.

#### **b. October 1992**

218. The Prosecution *admits* that on 24 – 25 October 1992 a conflict between *two belligerent armed forces* commenced in Gornji Vakuf<sup>330</sup> but claims that this was a consequence of the HVO attack on "Bosnian Muslims"<sup>331</sup> in neighboring Prozor municipality.

<sup>327</sup> T. 45364:20-45365:9, 29 September 2009, Witness Zrinko Tokić.

<sup>328</sup> T. 9250:5-9251:5, 31 October 2006, Witness Fahrudin Agić; T. 9507:5-9, 2 November 2006, Witness Fahrudin Agić; T. 34298:19 – 34299:7, 10 November 2008, Witness Zdravko Batinić; T. 34378:19-34379:10, 11 November 2008, Witness Zdravko Batinić; T. 34299:16-34299:21, 10 November 2008, Witness Zdravko Batinić.

<sup>329</sup> *Ibid.*.

<sup>330</sup> Indictment, para. 63; "... *Herceg-Bosna/HVO and ABiH forces engaged in fighting ...*".

<sup>331</sup> The Defence asserts that the used phrase "*Bosnian Muslims*" could be interpreted only as "*Civilians of Muslim ethnicity*".

219. Obviously, this portion of the said paragraph of the Indictment could and should not be seen as the grave breaches of the Geneva Conventions since the claim is that the HVO, as an armed force, attacked the ABiH, another armed force. Thus, this act as alleged is not a crime.
220. The Prosecution failed to prove the assertion that events that took place in Vakuf on 24-25 October 1992 were indeed a *consequence* of events in Prozor that took place days before.<sup>332</sup> It seems that the Prosecution built this assertion on a quasi *res ipsa loquitur* theory.<sup>333</sup>
221. In regards to last assertion of the paragraph 63 of the Indictment, the Defence submits that there is no crime in the HVO taking the mentioned socially-owned objects (a factory and the MUP building). There was no fighting for those objects—and nobody was pushed out of those objects—no civilians resided in those structures, nor were they used by anybody. In addition, the HVO seized those objects in performing a militarily justified defence action.<sup>334</sup> Besides, those objects were in the part of the town where the local HVO brigade "Ante Starčević" was based since the commencement of the hostilities in the BiH, more precisely, used by those units of the brigade that were in preparation to take a shift on the front line against the JNA/VRS.<sup>335</sup>
222. Since June 1992, when Hanefija Prijic, alias Paraga,<sup>336</sup> a commander of the Green Beret unit, initiated the first armed clash in Gornji Vakuf there were tensions in the town. The local HZ-HB/HVO was doing its best to defuse the tensions in order to preserve ability to fight the JNA/VRS on the lines not far from the city. In fact, the HVO was not alone in this effort. The representatives of the SDA and TO joined in that effort.<sup>337</sup>
223. In two fighting incidents that occurred in October 1992 between two armed forces both being component of the BiH defence forces, civilians were neither victims nor civilians were forced out of the area. Thus, the events that took place on 24 – 25 October 1992 in Gornji Vakuf could not serve as a factual base for the crime of persecution charges (Count 1).

<sup>332</sup> Regarding Prozor, see section "Prozor".

<sup>333</sup> See *supra* para. 13.

<sup>334</sup> T. 45350:10-45351:15, 29 September 2009, Witness Zrinko Tokić.

<sup>335</sup> T. 45350:10-45351:15, 29 September 2009, Witness Zrinko Tokić.

<sup>336</sup> T. 34295:23-34296:7, 10 November 2008, Witness Zdravko Batinić.

<sup>337</sup> T. 34454:23-34455:7, 11 November 2008, Witness Zdravko Batinić; T. 34300:22-34301:9, 10 November 2008, Witness Zdravko Batinić.



**c. January 1993**

224. It appears that by the claims provided under para. 64 of the Indictment the Prosecution is again, as in para. 62, implicitly asserting that all troubles and crimes that happened in Gornji Vakuf were direct *consequence* of HZ-HB Boban's 18 November 1991 decision. It is again a quasi *res ipsa loquitur* theory.<sup>338</sup>
225. The Prosecution developed entire thesis on this point (par. 64) on a *false* hypothesis that the HZ-HB/HVO caused the clashes by "*raising of Croatian flag*" that provoked the predominantly Muslim population in Gornji Vakuf. There were many discussions and evidence in trial about a traditional (customary) flag of one of the constituent people living in BiH—the Croats, not the flag of Republic of Croatia, as the Prosecution implicitly claims.
226. To make the error of the Prosecution in this instance even more obvious, the Praljak Defence submits that in fact "*the flag*" in this particular case was the HOS flag<sup>339</sup>—not the traditional flag of Croatian people in BiH and not the flag of the RH but a flag of militia of political party; the HOS. There is ample evidence that the HOS was not under control of the HVO. In fact, after some incidents between the HVO and HOS in early 1992, the HOS disintegrated; some residual units that operated locally remained in several areas; one of them a small HOS group in Gornji Vakuf and some HOS units were integrated in the ABiH.<sup>340</sup>
227. An attempt to hold Slobodan Praljak liable as commander of the HVO in mid 1993 for the raising of a HOS flag in early 1993 can only be explained by factual error (such as ignorance of the flag or the difference between the HVO and the HOS), belief at some level in collective guilt (setting aside the multi-ethnic nature of the HVO and ascribing supposed bad deeds of one ethnically Croatian Bosnian to all ethnically Croatian Bosnians) or some combination of the two.
228. Since the Prosecution went so far to claim that a flag that had a certain emotional value for Croats in BiH *provoked* the conflict simply by being publicly hoisted, the relevant question that must be put here is: who is to be blamed for incident that was allegedly caused by raising a flag? Was it the person or persons who hoisted the flag, or

<sup>338</sup> *Res ipsa loquitur* is a common law tort concept entirely out of place in a criminal case requiring proof beyond a reasonable doubt.

<sup>339</sup> T. 45351:18-45352:8, 29 September 2009, Witness Zrinko Tokić.

<sup>340</sup> Exh. 3D00454.

was it the person or persons who responded violently to the existence of a flag? Whatever the answer might be, it is a common knowledge that in wars the armies are carrying the flags. The Croats in the BiH conflict flew their traditional flags as well but without intention to impose their solution on other ethnic groups in BiH. The flag did not imply any aspirations; it did not send any negative message. The only symbolic message was that the Croats are there; one of the constituent peoples of BiH. Position of some individuals or political groups of Muslims was different, and this position shows that certain individuals did not recognize Croats as a people with equal rights within the BiH.<sup>341</sup> Such people were burning the other people flags. It must be noticed that there was no BiH state official flag at that time. The former SRBiH flag was abandoned – the new BiH flag has yet to be defined and actually it was defined only after Dayton Agreements. In the meantime during the conflict Muslims, Serbs and Croats had their respective flags.

229. In conclusion, the Defence submits that the January conflict was not caused or provoked by raising the "Croatian flag". The Prosecution claim is based on an erroneous premise and no evidence could support asserted conclusion.

230. In regards to the claim that on 11 – 12 January 1993 "... *open fighting between the HVO and ABiH broke out and continued in Gornji Vakuf town and several surrounding villages, including Dusa, Hrasnica, Uzricje and Zdrimci*"<sup>342</sup>, the Defence submits that there are no elements of any crime in this claim. Fighting between belligerent armed forces is not a crime *per se*. The Defence submits that in all mentioned locations (Gornji Vakuf, Dusa, Hrasnica, Uzricje and Zdrimci) the armed forces were stationed and certain objects were defended and attacked by both forces. There is ample evidence about those facts.<sup>343</sup> The Prosecution admits that there was fighting between the HVO and ABiH.

231. Fighting in Gornji Vakuf, Dusa, Hrasnica, Uzricje and Zdrimci were initiated before January by the ABiH who was attempting to secure the best tactical position in town and surroundings. In January the HVO followed with the same aim.

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<sup>341</sup> Exh. 1D01786, T. 34303:20-34305:5, 10 November 2008, Witness Zdravko Batinić; T. 34382:2-34383:18, 11 November 2008, Witness Zdravko Batinić; T. 45397:6-45399:14, 29 September 2009, Witness Zrinko Tokić; T. 45498:22-45500:12, 30 September 2009, Witness Zrinko Tokić; T. 45503:11-45505:3, 30 September 2009, Witness Zrinko Tokić.

<sup>342</sup> Indictment, para. 64, second part..

<sup>343</sup> Exh. 1D00207; T. 34395:6-34396:25, 11 November 2008, Witness Zdravko Batinić; Exh. IC1058; T. 45346:10-45349:20, 29 September 2009, Witness Zrinko Tokić.

232. The beginning of fighting was on 6 January and then on 11 January 1993. During the battle, which lasted for over a month, the front line moved, and the TO/ABiH (being the stronger force) pushed the HVO forces from Gornje Voljice, while the TO/ABiH had to retreat from the territory of the village of Kuta due to the HVO's superiority there. TO/ABiH forces also backed down at Uzričje and Duša (via positions Kuka and Stublići). The ABiH forces managed to pull out towards upper parts of the town of Gornji Vakuf where they joined forces with TO. On the territory of Ždrimci village the Muslim forces pulled out and regrouped at Vrs village. Within Bistrica part of the HVO forces pulled out from the territory of Gornja Bistrica (facilities near the Post Office which leads towards Novi Travnik), that is, towards the route Bistrica – Pavlovica – Novi Travnik. Within Hrasnica, TO forces pulled out from Krasnica towards the positions at Dražev dolac.<sup>344</sup> In this manner the HVO forces from Pavić polje were able to communicate with the HVO forces at Vilić polje. This confrontation, which lasted until 20 January, was halted by agreement reached by the higher commanders, i.e. by general Petković, colonel Šiljeg, "Rama" brigade commander, brigade commander of Vakuf and TO's commander of 3<sup>rd</sup> corps Džemo Merdan, and the commander of the Operative Group West (OG-Z) Selmo Cikotić who represented the commander of the ABiH 4<sup>th</sup> corps major Arif Pašalić.<sup>345</sup>
233. There is no evidence that the HVO intentionally targeted civilians or captured TO/ABiH soldiers. There were certain victims but as a result of combat in populated areas, i.e. collateral victims, or in some cases as a result of activities of individuals or groups that were not under control of the HVO or ABiH.
234. Regarding the claims under paragraph 65 of the Indictment, the Defence submits that nothing in that paragraph is a crime under the ICTY Statute.<sup>346</sup> This paragraph is referenced in Count 1 (Persecution) in para. 229 of the Indictment but it does not include elements of persecution.
235. General Praljak came to Prozor on 16 January 1993. He met Šiljeg and Miro Andrić. He was informed that every time the HVO halted animosities, the ABiH continued to fight including use of sniper fire in the town, and that several Croat civilians and member of the HVO were killed or wounded. No signs of resolving the situation in a peaceful manner were visible. The problem in Vakuf started a long time before that, and it escalated

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<sup>344</sup> T. 45395:19-45397:1, 29 September 2009, Witness Zrinko Tokić; Exh. IC1060 (based on 3D00376).

<sup>345</sup> See Annex – section G. Vakuf.

<sup>346</sup> Regarding the "15 January demand of the HVO" see supra.

gradually. However, the tensions were calmed down during certain periods of time. In the evening of Praljak's first day in Prozor, he was fully briefed about the situation by the HVO officers: the ABiH had cut off all the roads, and the HVO was threatened by the ABiH's digging of the trenches around the town. In short, the position that the HVO found itself was dangerous from a military point of view.

236. Based on all information it was obvious to Praljak that the ABiH felt that it had the position of strength and that it was a part of its plan to impose a control of the roads towards Bugojno and Central Bosnia, because they obstructed passage through town on all roads. In short, HVO was blocked and threatened by the ABiH's actions.

237. Nevertheless, the negotiations continued. During the talks on 16 January the HVO again insisted that the soldiers should withdraw from town of Vakuf, that no rifles are carried by the troops when in town, that the joint police should be set up, and that the joint checkpoints should be set up again.

**d. From 18 January 1993 Onwards**<sup>347</sup>

238. BRITBAT Commander Col. Robert Stewart wrote that the conflict in Vakuf commenced spontaneously and that it was not established which side initiated it.<sup>348</sup> This supports the Praljak Defence thesis that the HVO was not *planning* to take over a control of the city or to expel the Muslims from the city.

239. The HVO did not attack the town with heavy artillery as the prosecution claims.<sup>349</sup> Witness Z. Tokić testified that the HVO artillery was at the positions that did not enable it to fire at town of Gornji Vakuf.<sup>350</sup>

240. The conflict between the TO/ABiH and HVO in Gornji Vakuf was an armed conflict between two belligerent parties. The Prosecution admits that fact.<sup>351</sup> Both parties, the HVO and the TO/ABiH were stationed in town of Gornji Vakuf but also in the surrounding villages, depending on the majority of the population; the TO/ABiH was in

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<sup>347</sup> Indictment, para. 66.

<sup>348</sup> "Broken Leaves", 3D00462.

<sup>349</sup> Indictment, para. 66.

<sup>350</sup> T. 45394:6-10, 29 September 2009, Witness Zrinko Tokić:

*A. General, this deployment does not ensure targeting the town because it's out of the range, but what they wanted to target, the people who deployed the artillery know about that.*

*They can target the axes into town, but they cannot reach the town, itself. That would be beyond its range.*

<sup>351</sup> See Indictment, paras. 63-65.

the villages where majority were Muslims and vice versa. During this conflict, which commenced on 11 January and lasted until 23 January 1993, both forces attacked and retreated to establish militarily advantageous positions. All activity of the HVO was aimed at achieving a tactically better position to be able to defend itself from the stronger opponent. The HVO did not attack civilians, nor was the civilian property intentionally destroyed. Where the villages were attacked by the HVO it was always attack on the military positioned in such village.<sup>352</sup> However, many of the battles were fought in populated areas because the troops were positioned there for tactical or other reasons. Sometimes that inevitably caused collateral victims. The mere fact that there were civilian victims is insufficient for a conclusion that those were victims of HVO intentional activity or a sinister plan. There is no evidence that would demonstrate that the HVO intentionally targeted civilians. Such evidence could not be produced because that simply did not happen.

241. As a result of the January 1993 conflict the main road M-62 that passed through the town of Gornji Vakuf /Uskoplje was cut off by the TO/ABiH. Only a path via village of Pidriš was available to the HVO.<sup>353</sup>
242. Regarding events on 18 January 1993, when the conflict erupted again, the HVO succeeded to take position on the Repeater and Krc Hill, which were two tactically important elevations. Whoever had them under control would be in a military favorable position.<sup>354</sup>
243. Despite of the considerable improvement of militarily position, the HVO halted all battle activities on 20 January 1993 when Petković's order P01205 regarding cease of fire was received in Vakuf. At that time the HVO had military advantage and could have taken control of the entire town—but did not do so because the peace was priority. It should be noted that P01205 was issued in accordance with the agreement reached in Geneva (VOPP).<sup>355</sup> This clearly demonstrates that the HVO did not plan to take over Gornji Vakuf but only reacted to the situation imposed by the TO/ABiH.

<sup>352</sup> See Annex "Gornji Vakuf".

<sup>353</sup> T. 45347:25-45348:11, 29 September 2009, Witness Zrinko Tokić.

<sup>354</sup> See Annex "Gornji Vakuf." See also T. 45388:2-10, 29 September 2009, Witness Zrinko Tokić; T. 45388:15-45389:13, 29 September 2009, Witness Zrinko Tokić; T. 9443:6-9446:8, 2 November 2006, Fahrudin Agić.

<sup>355</sup> Exh. P01211 and see Annex "Gornji Vakuf."

244. In addition to killed or wounded soldiers of both forces, unfortunately, there were civilian victims as well but none was intentional. There was an ABiH unit in every village that was under the HVO attack. This unfortunately caused collateral victims. Though the Prosecution did have access to entire HZ-HB/HVO archives, it has not produced any HVO document that would show unlawful intent or plan on the side of the HVO. There is no such evidence simply because there was no document that would include such instructions.
245. In regards to fighting in the village of Duša there is clear evidence that Duša was the ABiH stronghold. An ABiH unit of 25 men was based in an underground cabin near the big house in the village and the HVO soldiers had been shot at from there.<sup>356</sup> Unfortunately, during the HVO attack on the ABiH position in the village, the big house in the village adjacent to the underground cabin with the ABiH soldiers was hit by a HVO grenade resulting in civilian victims. This is a typical example of a case of collateral damage when fighting occurred in populated area under chaotic conditions.
246. The report P01213 that reports on the fact that the houses were burned in the village of Duša also contains the information that the inhabitants of the village organized an armed defence of the village on an ongoing basis. Those reasonably believe to have become combatants or who were taking an active role in hostilities may be legitimately targeted. The Prosecution has not carried its heavy burden of proof to show beyond all reasonable doubt that civilians not reasonably believed to be taking an active part in hostilities were intentionally targeted. This burden is particularly difficult given that an ABiH unit was already in the village.
247. The Prosecution witness denies that the ABiH soldiers were positioned in Duša.<sup>357</sup> The Defence submits that; (a) the witness has no opportunity to directly observe fighting in Duša, (b) it is merely his opinion about events in Duša thus a hearsay testimony, and (c) his testimony is directly contradicted by the documents.<sup>358</sup> Accordingly, one could not take this testimony as a proof beyond any reasonable doubt that the HVO was attacking civilians in the village of Duša.
248. Furthermore, the JNA was “throwing gas on the fire” by shelling villages during the time of the TO/ABiH–HVO conflict. It is difficult or impossible to establish whether

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<sup>356</sup> Exh. 3D00527.

<sup>357</sup> T. 9323:20-9324:4, 1 November 2006, Witness Fahrudin Agić.

<sup>358</sup> Exh. 3D00527; P01213.

some houses were damaged or destroyed during battles between those parties or whether the damage was caused by JNA shells, or whether houses were intentionally burned without military necessity by soldiers under effect control after battle (as the Prosecution appears to assume but fails to prove).<sup>359</sup>

249. The evidence clearly shows that there was a TO/ABiH unit in the village of Uzričje.<sup>360</sup> Hadzihasanovic's report (P01226) dated 19 January dealing with events in Vakuf from 17–19 January 1993 refers to a full evacuation of civilians from Uzričje to Gornji Vakuf. Thus, there were no known civilians in the village of Uzričje at a time of fighting and the TO/ABiH soldiers were stationed in the village. This also shows that the inhabitants of the village were not expelled by the HVO but were evacuated by the ABiH.

250. Regarding events in the villages Hrasnica and Ždrimci, the Prosecution has not presented evidence that would be sufficient to prove that the charged crimes were committed there. Furthermore there is no evidence that Praljak was informed about any alleged crime that possibly might have happened there. Even if he was, he was still not responsible since during his days in Vakuf he was neither *de jure* nor *de facto* commander. His role there was different—he was there trying to calm down the heated situation that might have negatively effected progress in talks about VOPP.

## **X. MOSTAR (Paras. 88 – 118 of the Indictment)**

### **a. Mostar - introduction**

251. The events in Mostar are a major focus of the Indictment. Some basic assertions are first provided in the sections "JCE"<sup>361</sup> and "Statement of the Case",<sup>362</sup> and then an entire section titled "Mostar Municipality"<sup>363</sup> provides detailed charges related to that location.

252. The Praljak Defence submits that Slobodan Praljak bears no responsibility whatsoever for any charged crime committed in Mostar and the surroundings area. Neither did he contribute in any manner to the alleged JCE concerning events in Mostar. *De jure* Praljak had no commanding authority except in periods from 10 April till 15 May 1992 (when the HVO and TO jointly defended Mostar from the JNA's forceful attacks) and from 24 July

<sup>359</sup> T. 9428:1 – 11, 2 November 2006, Witness Fahrudin Agić.

<sup>360</sup> T. 9323:20-9324:4, 1 November 2006, Witness Fahrudin Agić, ("... we had soldiers in the village of Uzričje" ...).

<sup>361</sup> Indictment, para. 17 d) "..... and that Mostar was the rightful capital of Herceg-Bosna".

<sup>362</sup> Amended Indictment, paras. 22, 27, 35 – 37 and 39 (b).

<sup>363</sup> Amended Indictment, paras. 88 – 118.

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till 9 November 1993 early morning.<sup>364</sup> There are no specific charges regarding Mostar before 9 May 1993.<sup>365</sup> In the period from 24 July till 9 November 1993 the Accused Praljak had no *effective control* over *all* HVO troops in Mostar area at all times and consequently he was no in a position to impose any command or control over individuals or groups of Croats who were operating independently or at least were not subjected to the HVO Main Staff such as the Military Police,<sup>366</sup> the Convicts Battalion, and similar groups.<sup>367</sup>

253. The evidence shows that Praljak made personal efforts beyond what is expected from commander, including risking his for own life and health, to secure free passage for a humanitarian convoy headed for East Mostar on 25 August 1993.<sup>368</sup> It should be mentioned that in previous days various dignitaries intervened with the same intent but without result (e.g. Mate Boban and Granić).<sup>369</sup> Thus, it would be difficult to conclude that at the same time the Accused was risking his life to save the people of Eastern Mostar, he was participating in the alleged JCE or had the intent to commit, aid, or abet any crime charged in relation to Mostar. Evidence regarding Praljak's effort to secure passage of the humanitarian convoy is not circumstantial but rather direct, which is unfortunately all too rare in this trial.

254. The episode of Slobodan Praljak's personal intervention securing the passage of the humanitarian convoy on 25 August 1993 is also a perfect example of the general lack of law and order and specifically the lack of normal, professional, reliable command and control over the troops and civilians who blocked the passage of the convoy. If one "rolled the dice" again in the same situation, Slobodan Praljak might have been injured

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<sup>364</sup> See ANNEX – Section "Evidence Regarding Paragraph 17.3. of the Indictment."

<sup>365</sup> The claims mentioned in paras. 89 – 93 (dealing with period before 9 May 1993) are referenced only in Count 1 (*Persecutions on political, racial and religious grounds*) and in addition para. 93 is referenced in Counts 6 – 9. In any event the Accused Praljak has no *de jure* or *de facto* position of a commander in that time.

<sup>366</sup> See e.g. Exh. P02626; 5D01013; P04645; 3D02617; 3D01171; P06942; P03960; 3D02766; P05478; T. 1700:16 – 1702:17, 9 May 2006. Also see ANNEX – Section "Evidence Regarding Paragraph 17.3. of the Indictment".

<sup>367</sup> E.g. Exh. 4D01456.

<sup>368</sup> See; 3D00366 (video); Exh.4D00770; P04619; 3D02021; T. 5719:16-5724:17, 29 August 2006, Witness BJ; T. 5710:1-5711:15, 29 August 2006, Witness BJ; T. 5594:11-5595:17, 28 August 2006, Witness BJ; T. 5596:11-5601:2, 28 August 2006, Witness BJ; T. 42623:7 – 42623:20, 7 July 2009, Witness Slobodan Praljak; [REDACTED]; [REDACTED]; [REDACTED]; T. 23038:8-11, 2 October 2007, Witness DV.

<sup>369</sup> T. 5726:21-5728:15, 29 August 2006, Witness BJ; T. 5821:12-5825:19, 30 August 2006, Witness BJ; T. 26196:5-26208:2, 14 January 2008, Witness Cedric Thornberry.



and Slobodan Praljak might have failed as did Mate Boban and Granić. All he could do was try.

255. During the period from 24 July until 9 November 1993 (when Praljak was Commander of the HVO) the offices of the HVO Main Staff (GSHVO) were located in Čitluk the majority of the time. In addition, because the militarily critical situation required Praljak's personal presence in critical locations, out of GSHVO office, Slobodan Praljak lacked information on situation in other locations. Praljak had no opportunity to acquire relevant information about the situation in Mostar in a direct, timely, and regular fashion.<sup>370</sup>

**b. Alleged Siege of Mostar**<sup>371</sup>

256. To fully understand the “story of Mostar siege” one must see the broader context of the events that were in one way or other closely related to this issue. The ABiH initiated the conflict in Mostar on 30 June 1993. It would be naive to believe that the local ABiH units simultaneously initiated the conflict as a coincidence without a general plan. There was a plan: an offensive plan of the ABiH to expand its area of control from the Central Bosnia area to the Mostar area with the ultimate goal to reach the Adriatic coast. The HZ-HB/HR-HB/HVO was an obstacle in the realization of this plan, particularly the HVO strength and position in Mostar. The Mostar area could not have been simply bypassed—the Neretva Valley was in fact the natural and the best route to the coast. At the same time peace talks under the guidance of the international community intensified and the parties (all three ethnic groups) were well aware that the negotiating positions would depend on the territory that they would be able to include under the control. There is abundant evidence to that effect.<sup>372</sup>

257. Under paragraph 36 of the indictment the Prosecution recognized that the ABiH attacked the HVO on 30 June 1993. There is ample evidence that shows that the ABiH did not only attack the Northern Barracks as the Prosecution admits, but also attacked Bijelo Polje and adjacent areas on north side of Mostar as well. The entire operation of the ABiH was in fact a general attack on the HVO – the ally until then. Consequently, if the ABiH initially attacked the HVO then it is obvious that the HVO could not have *planned* a

<sup>370</sup> The issue of “3 C” theory is discussed *infra*.

<sup>371</sup> Indictment, paras. 110, 112-116.

<sup>372</sup> See e.g. T. 21376:22-21377:13, 16 August 2007, Witness Larry Forbes; Exh. P03030; 3D00837; P02760; 3D02536; 4D01042; 3D02425; 3D02424; 3D02423; 3D01746; 3D02388.

“siege” of Mostar.<sup>373</sup> It is obvious that a “siege” cannot be executed without an adequate plan (both general and detailed). There should be some evidence to demonstrate that the HVO was at least attempting to cut off all roads from and to East Mostar—but there is none.

258. [REDACTED].<sup>374</sup>

259. According to the Indictment the "Siege of Mostar" qualifies as "Cruel treatment" (Count 26). While the Defence submits that the siege of Mostar could not be qualified as cruel treatment because of lack of proof of all elements of the crime, the Defence will not further argue this legal point mainly because the Defence submits that the Prosecution failed to tender the evidence that would be sufficient for a safe conclusion that there was a physical blockade—a siege of Mostar imposed by the HVO.

260. The Praljak defence submits that there was no "Siege of Mostar" *per se*. As argued *infra*, East Mostar was not under siege as the Prosecution claims. There is abundant evidence clearly demonstrating that the East Mostar was not besieged by the HVO.<sup>375</sup> When all pieces of evidence related to Mostar situation are taken together it is entirely clear that the HVO did not surround a city of East Mostar, a stronghold of the ABiH armed forces, in order to bring about its surrender or capture. None of the actions of the HVO were taken to that effect—no such order was ever issued to the HVO units in the area.

261. The Defence submits that a “siege” story was a political–tactical propaganda action that created the *image* of a “siege”.<sup>376</sup> Sadly enough, the Prosecution based its position on “public knowledge,” rumors, and political positions instead of the hard facts.

262. After the unsuccessful ABiH attack on the HVO on 9 May 1993, the ABiH again unexpectedly attacked the HVO in Mostar area on 30 June 1993.<sup>377</sup> Thereon the conflict between the ABiH and HVO in Mostar area continued practically until early 1994. Despite of this situation in Mostar, but also in some other areas of BiH, the same forces continued to closely cooperate in some other areas of BiH in defending the country from

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<sup>373</sup> T. 48228:12-48229:4, 12 January 2010.

<sup>374</sup> [REDACTED].

<sup>375</sup> See Annex – sections re Siege of Mostar and Exper Report of Milan Gorjanc; 4D01731 p. 4D28-1182-1189.

<sup>376</sup> See *e.g.* P03030 dated 30 June 1993 where, *inter alia*, Pašalić pleaded to Halilović “to undertake efforts to support the TV ....”; See also Exh. P04619.

<sup>377</sup> Indictment, para. 103 (The Prosecution admits that fact).

JNA/VRS forces. Because of various interests, the RH, with agreement and cooperation of the HZ-HB/HR-HB/HVO, continued supply of weaponry, ammunition, oil and food to the ABiH and Muslim civilian population. All needed goods for functioning of the ABiH and for survival of the civilians were coming either *from* Croatia or *through* Croatia by consent and/or active assistance of the HZ-HB/HR-HB/HVO. There were no other available supply routes except from Croatia. This is a notorious fact. A mere look at the geographical map clearly shows that.<sup>378</sup>

263. The Trial Chamber has access to voluminous evidence about positions of belligerent forces in and around Mostar.<sup>379</sup> In substance, the separation lines were so complicated, and in many instances militarily illogical, that a question of which side was encircled by other side and to what extent is impossible to answer. Nevertheless, there is ample evidence confirming that there was no "siege" of East Mostar. At a minimum, the ABiH had at least two major access routes from and to East Mostar, i.e. to the north in the direction of Konjic - Jablanica (which was under complete control of ABiH), and to the southeast where ABiH controlled the territory (Blagaj area).<sup>380</sup>

264. The issue of existence or non-existence of the supply routes to/from East Mostar is certainly a critical fact for determination whether there was (or was not) siege of East Mostar. During the trial one of the available routes, with the northern route via Bijela Bridge as the most prominent point on that route, has been extensively discussed. Abundant evidence has been admitted and several witnesses were heard on this fact.<sup>381</sup> The Defence submits that the route between East Mostar and Jablanica–Konjic area, including the Bijela Bridge, was under control of the ABiH and was used for supply of armament, and also could have been used for humanitarian aid if needed, as well as for a passage of civilians providing that the ABiH authorities permitted civilians to leave East Mostar.<sup>382</sup> The characteristics of that point on the northern route varied to some extent during the relevant period but the bridge was in function and under control of the ABiH from mid-April 1993 until end of the conflict in early 1994. The bridge was partially damaged in JNA/VRS attacks in 1992 but one lane of the bridge was functional until the

<sup>378</sup> See e.g. Annex section "Evidence Regarding Paragraph 17.3. Of the Indictment – Paragraph 17.3(d)."

<sup>379</sup> See ANNEX – Section "*Siege of Mostar*."

<sup>380</sup> Exh. 4D00770; T. 44386:20-44387:12, 3 September 2009, Witness Slobodan Praljak; ANNEX – Section "*Siege of Mostar*."

<sup>381</sup> T. 44386:20-44387:12, 3 September 2009, Witness Slobodan Praljak; See Annex "*Siege of Mostar*".

<sup>382</sup> See e.g. T. 41862:12-41863:14, 23 June 2009, Witness Slobodan Praljak; [REDACTED]; ANNEX – Section "*Siege of Mostar*"

ABiH destroyed the second lane in autumn 1993. Thereafter, an adjacent bypass (inlet) was used, but the passage was still possible for smaller vehicles, and pedestrians.<sup>383</sup> In addition to that route, a route called the "mountain road" was also used by the ABiH.

265. There is no doubt that the ABiH was positioned in East Mostar. The ABiH was not only a military force but also held executive administrative power in the area. [REDACTED].<sup>384</sup> This is the main reason why the civilians were collateral victims of the fighting. The ABiH did not respect the humanitarian law requirement to move the civilian population out of a battle zone. Quite to the contrary, the ABiH authorities intentionally kept the civilians in the battle zone for propaganda reasons.

266. There was a division line with JNA/VRS at the back side of East Mostar area. This front was not active since late 1992 thus there were no fighting activities but both sides (ABiH and JNA/VRS) were guarding the line. There is evidence that in a few instances the ABiH got JNA/VRS artillery support in fighting the HVO or generally shelling the west side of Neretva valley.<sup>385</sup> There were also instances when a projectile would be fired from JNA/VRS side towards any position in Mostar only to provoke instant reactions of the ABiH and HVO who always believed that they are under attack.

267. It is indicative of the caliber of the Prosecution's evidentiary case that the Prosecution has not presented one document that would show that the Accused Praljak as the highest officer of GSHVO ever ordered action to conquer certain territory—especially not the East Mostar territory, except some limited areas that the HVO lost before and tried to retake it.<sup>386</sup>

<sup>383</sup> Exh. IC01148, T. 47963:14-47965:15, 9 December 2009, Witness Bozo Perić; 3D03794, T. 47974:1-47977:12, 9 December 2009, Witness Bozo Perić; P06568, T. 23211:9 – 23212:9, 4 October 2007, Witness DW; T. 23213:9-22, 4 October 2007, Witness DW; P03298, T. 20634:20-20635:14, 27 June 2007, Witness Klaus Johan Nissen; T. 48216:2-48218:7, 12 January 2010, Witness Vinko Marić; ANNEX – Section "Siege of Mostar."

<sup>384</sup> See e.g. [REDACTED].

<sup>385</sup> T. 10154:18-10155:22, 14 November 2006, Witness CB; T. 2834:4-2835:11, 30 May 2006, Witness Milivoj Gagro.

<sup>386</sup> See Annex – section "Par. 17.3."

c. **Public Utility Services in Mostar**<sup>387</sup>

i. **Electric power**<sup>388</sup>

268. The Prosecution did not submit sufficient evidence that would support claim that the HVO intentionally "*cut off or failed to repair power supplies.*" There is simply no evidence that would even roughly show; (i) *when* disconnection of power supply of East Mostar was ordered and/or executed, (ii) *in which manner* the disconnection was done; e.g. by disconnection of a power plant (and which power plant), by disconnection of transformer (and which transformer), by redirection of distribution facilities (and which facilities), by disconnection of power lines (and which power lines), etc..

269. Unfortunately by such undefined and foggy claims, the Prosecution appears to incorrectly attempt to shift the burden of proof is shifted to the Defence. Consequently the Defence submits following argument rebutting the said charges.

270. The HVO bears no criminal culpability with respect to electric power in Mostar. During 1992 the JNA/VRS caused damages on electrical power facilities having destroyed the electric power plant in Raštani, Čule and Rudnik, as well as by destruction of the 400 kV, 220 kV, 110 kV and 35 kV power lines and the pertinent transformers which enable the distribution of electricity toward Mostar, Jablanica, Konjic, Stolac, Čapljina, Čitluk and Široki Brijeg.<sup>389</sup> Some of the damaged hardware was partly repaired successfully by the HZ-HB/HVO with substantial help and/or cooperation of the RH's public utility companies, who were interested in this because generally the power systems of BiH and RH were parts of a technologically united system. The repairs and maintenance of the systems was extremely difficult to perform under the circumstances of armed conflict.<sup>390</sup> As an example: the biggest consumer of electrical power in the area was aluminum plant near Mostar and HZ-HB wanted to save the hardware of the plant (the furnaces that must work without interruptions). Based on the "know-how" advice from a French producer of the furnaces and thanks to the skillful engineers and courage of the HVO soldiers the plant's furnace was successfully conserved in the summer of 1992.<sup>391</sup>

<sup>387</sup> Amended Indictment, paras. 112 and 114.

<sup>388</sup> Amended Indictment, para. 112..

<sup>389</sup> T. 39531:21-39536:8, 4 May 2009, Witness Slobodan Praljak.

<sup>390</sup> Exh. 3D02565; 3D02826.

<sup>391</sup> T. 39531:21-39536:8, 4 May 2009, Witness Slobodan Praljak.

271. After the 30 June 1993 betrayal of the HVO, synchronized with the attacks of the ABiH on the HVO in Mostar and the Neretva Valley, the Muslims took the control over all electric power plants on the Neretva River. As a result, the only remained source of the electric power in the area was one small capacity reversible electric power plant south of Čapljina and additional power should have been transmitted from RH.<sup>392</sup> This was quite unreliable and vulnerable system that does not provide a safe and constant supply of the power.

272. If after 30 June 1993, there was no electricity in East Mostar (and it seems that was frequently the case), it was a consequence of the decisions and acts of Muslims and the ABiH. There was no technical possibility for the HVO to turn off the power for area of East Mostar, particularly because all electric power-plants were under control of ABiH.<sup>393</sup> [REDACTED]. This witness confirmed that the long-distance transmission lines were passing through Bijelo Polje and that a permanent cease-fire was a precondition for any repair. At the same time, the ABiH would have to ensure electric power supplies to the Croatian zone too because of the very fact that ABiH caused interruption in the electricity supply.

*ii. Water for East Mostar*

273. The Prosecution claims that the HZ-HB/HVO cut off, or failed to repair, the water supply to the eastern part of the town of Mostar, which had no water supply since 30 June 1993.<sup>394</sup>

274. The Prosecution completely failed to provide any details, nor did it present evidence, as to; (i) *when* and *who* made the decision to cut off the water supply to the East Mostar, or (ii) about *who implemented* this decision, and (iii) *how* was it technically feasible. The Prosecution's logic is very simple; *there was no water supply of East Mostar, thus the HB-HZ/HVO must have done it.*<sup>395</sup>

275. Again, the Prosecution appears to attempt to shift burden of proof to the Defence. It seems that because of a broad, vague and unspecified Indictment, the Defence has to show *who*, and on which *locations* and *how* the water pipeline network was damaged, and what

<sup>392</sup> Exh. 3D02155; T. 39531:21-39536:8, 4 May 2009, Witness Slobodan Praljak; T. 5773:17-5777:24: 30 August 2006, Witness BJ.

<sup>393</sup> T. 5773:17-5777:24, 30 August 2006, Witness BJ.

<sup>394</sup> Indictment, para. 112.

<sup>395</sup> See section "*Nobody Else Could Have Done It argument*" above.

was its *technical* condition; *how old pipeline* the network was before the conflict; what quantities of water were lost usually due to a poor condition of the main pipelines before the artillery attacks of the JNA on Mostar in 1992; how much water could be obtained during summer season from existing two sources (especially in the very hot summer of 1993); what was the pressure of water in the pipelines and why the compressors were needed for pumping the water to the upper floors of the buildings; how the water pipelines were being filled after having been empty and what was the technical the health care procedure to start the pipeline. In addition, it seems that the Defence should explain that water supply depended on electricity so that the water can be pumped from the Studenac water source.<sup>396</sup> If there was no electricity at the Studenac source, the pumps could not function at all.<sup>397</sup> This is simply a scientific fact.

276. The Prosecution should have proved that the water supply was cut off *intentionally* by the HZ-HB/HVO. Before that, as a *precondition*, it should also prove that the existing system (pipeline network and the water sources) was technically able to function (especially in an unusually hot summer).

277. The Defence has shown<sup>398</sup> that the system could not function without pumps because of the nature of the terrain, specifically the difference in altitude. Without electricity, the higher parts of town could not have had a regular water supply because electricity was needed for operation of the pumps. The town of Mostar has two sources of water; one gravitational, and the other wells where pumps were needed to pump the water up and to push it under pressure into town. In addition, there is a River Radobolja source that normally dries out in the summertime and consequently the system is unable to supply the town with water, which is why the other source, where the pumps are used, has to be brought in.

278. The main town pipeline bringing the water from the source to the town passes through the settlement of Raštani,<sup>399</sup> and along its entire length the pipeline was exposed to fire from the ABiH positions.<sup>400</sup> For that reason any repairs or maintenance work on the

<sup>396</sup> See part of FB «water supply».

<sup>397</sup> Exh. 1D 01568; T. 32299:24-32300:10, 17 September 2008, Witness Borislav Puljić.

<sup>398</sup> Exh.3D00723; 1D01569; [REDACTED].

<sup>399</sup> Until 24 August 1993 the ABiH controlled the source in Raštani.

<sup>400</sup> Exh.P02598; T. 18153:22-18156:15, 8 May 2007, Witness Grant Finlayson.

pipeline was impossible.<sup>401</sup> The frequent changes in a regime of the work of the system caused many ruptures on the pipeline because of a sudden increase of the water pressure in the pipes.<sup>402</sup>

279. The mentioned water sources Radobolja in Mostar and Studenac in Raštani were seriously damaged during the JNA/VRS attacks in 1992. Important water pipelines were under the bridges in Mostar, especially important for supplying the East portion of the town, and the bridges were destroyed<sup>403</sup> at that time—long before the ABiH–HVO conflict commenced.<sup>404</sup>

280. The HZ-HB/HVO never attempted to prevent a supply of water to the residents of the East Mostar. On the contrary, the HZ-HB/HVO tried to set up the whole water supply system. Since the bridges were knocked down, basically there were no technical possibilities for the left bank to be supplied with water. In order to get it to the Neretva River left bank the pipes had to cross the river; bridges or some other construction had to be built. Lastly, the West side of the town had also very serious difficulties with water supply. The water was not available always and in all parts of the city. Vague, unproven conspiracy theories are not necessary or helpful in this instance.

#### d. Sniping Civilians and Members of International Organizations<sup>405</sup>

281. In order to firmly establish relevant facts to conclude that HVO soldiers, or any other person *under the possible effective control of the Accused*, were intentionally targeting civilians and the UN peacekeepers minimally the following facts must be proved; (a) from where a projectile came, (b) that the location of the projectile's firing was exclusively held by the HVO, (c) who was shooting, (d) was the shooting ordered or tolerated by the Accused or his subordinates, (e) was the Accused informed about the incident, (f) did the Accused fail to take appropriate measures to punish or to prevent the shooting. The Defence submits that there is not *one case of "sniping of civilians or UN peacekeepers"* where all required, relevant facts would have been proved beyond any reasonable doubt.

<sup>401</sup> Exh. 1D01569: Report on the problems regarding damaged pipeline in Studenac water source, dated 26/07/1993; 1D01566; [REDACTED]; T. 32222:17-32226:19, 16 September 2008, Witness Borislav Puljić; T. 32227:9-32228:5, 16 September 2008, Witness Borislav Puljić.

<sup>402</sup> T. 32222:17-32226:19, 16 September 2008, Witness Borislav Puljić; Exh. 1D 01566; P02598; T. 42919:17-42921:23, 13 July 2009, Witness Slobodan Praljak; T. 1439:8-1439:24, 5 May 2006, Witness Ratko Pejanović.

<sup>403</sup> T. 32400:18-32401:6, 18 September 2008, Witness Borislav Puljić; T. 48226:2-9, 12 January 2010, Witness Vinko Marić.

<sup>404</sup> Exh. 1D01567; T. 32295:22-32299:22, 17 September 2008, Witness Borislav Puljić; [REDACTED]; T. 37021:2-37022:24, 17 February 2009, Witness Veso Vegar.

<sup>405</sup> Indictment, paras. 111, 112, 114 and 115.



282. There were civilian casualties from shooting in East Mostar, as there were similar victims all over Mostar (West and East) and other towns in BiH. The conflict was ongoing. Unfortunately the conflict included urban areas, and even more unfortunately there were civilian victims. However, there is no evidence that the HVO soldiers were *intentionally* shooting civilians. There is simply no evidence about that, unless the Prosecution argument *Nobody Else Could Have Done It*—is accepted but that is not permissible in criminal proceedings. Having in mind the situation on field, the relatively long line of confrontation of two belligerent forces, the intensity of the conflict, the fact that the population was also in the area, as well as many other factors, it was inevitable to have a certain number of civilian victims. In addition, there was a general inability on both to perform full investigations in regards to such incidents as is usually done in peace time, notwithstanding a few instances where some minimal investigation was performed.

283. The Prosecution claims that the HVO used snipers to shoot the civilian population. Were that true, there should be at least some evidence that the HVO trained expert riflemen and possessed the required hardware that would be needed according to the Prosecution's expert witness Lt. Patric van der Wijden. The expert witness report provide a list of weapons allegedly used by the HVO<sup>406</sup> that include two types of "sniper rifle" where one of those is described as "widely used by HVO" whatever that could means. Nevertheless, there is no evidence that such weapon was ever present in Mostar area or the evidence that a particular HVO soldier ever fired from such weapon to the civilians in East Mostar. Again, this could possibly be the case at some point amidst the chaotic situation, but at least some evidence should be offered to demonstrate a concrete instantiation of that possibility, to say nothing of proof beyond a reasonable doubt. Similarly, there is no evidence that there were trained sniper shooters within the HVO ranks. If the HVO intentionally targeted civilians some traces should have been found in the HVO documents. The Prosecution has access to the entire HVO archives for years. No such document has been produced and no such document ever existed.

284. The Prosecution expert witness Lt. Patric van der Wijden report and testimony dealt with 14 cases of *possible* sniping incidents. The Praljak Defence has no interest to provide a full analysis of all of those incidents, and instead concentrates only with respect to incidents that allegedly took place in time when the Accused was commander. The expert

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<sup>406</sup> See Expert report submitted on 15 December 2001, p.28161.

witness, *inter alia*, asserts that the position of snipers were probably at locations Glass building, Ledara, Stotina and Spanish Square.

285. The expert witness was not in the Glass Building (the blue-green building of the bank), which was allegedly a sniper position; he could only conclude that from a high-rise position it was possible to have a view, because the building dominated a neighborhood. However, the expert witness didn't know that Glass Building was on the confrontation line, nor did the expert witness know where the confrontation line was. The expert witness did not even know that from the Glass Building the alleged sniper victims could not be hit, because there is no line of sight to site where the victims were allegedly hit. The same argument applies with respect to the two alleged sniper incidents where Ledara is asserted as a shooting position.
286. Regarding the Spanish Square, which was not a dominating position, according to the expert-witness, there was a possibility to shoot at anybody who is somewhere down the street. According to the expert witness, there could have been a mobile sniper position in the square. The square is completely open and the ABiH positions were only 50 meters away. The Defence showed that a sniper position on the frontline or near to the frontline, without cover is virtually impossible. The evidence also shows that there is no possibility to target and hit person on the East side of Mostar from the Spanish Square because there is no line of sight from any HVO positions near or on the Square to that the positions of the victims.
287. Regarding the alleged position at Stotina, according to the expert witness, a hypothetical sniper must have been there for extended period of time (based on dates of incidents). If in the house on Stotina a sniper position was placed for extended period of time, an average sniper shooter of the ABiH would be able to eliminate it even from a long distance. It is also noticed that pictures of a suspected building on Stotina visibly show that the building was shoot at. That would make it impossible for the alleged sharpshooter to stay there for any time because of his or her own security. Thus it is difficult to accept even a possibility that a sniper shooter could have operated from Stotina for some longer time.
288. The indictment claims in paragraph 114 that the HVO soldier killed women washing their clothes. It appears that this refers to a video clip<sup>407</sup> that was discussed with witness

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<sup>407</sup> Exh. P06365.

Jeremy Bowen. A scene of a dead woman's body on the right bank of Neretva River was discussed.<sup>408</sup> The witness said that woman was shot by a HVO sniper. Leaving aside that the witness did not see the shooting himself but was told by some other persons that this was the case, the Defence submits that Neretva River runs through a deep canyon through the town of Mostar—the banks are very steep.<sup>409</sup> The HVO positions were some 350 meters from the right bank of the Neretva River. There was no position under the control of HVO from which a sniper or a holder of an ordinary rifle could hit a woman washing clothes on the Neretva at this position considering the angle and line of possible shooting. The witness did not check the angle at which the woman could have been hit. The witness did not evaluate a possibility that women might have been hit or not by the HVO, nor did he check from which position a projectile might have come, and more importantly—why should he do that as he is only a journalist? He is not a forensic expert.

289. During the period when General Praljak was a Commander, allegedly there were 7 victims of sniping.

290. *Expert Report - Sniping incident 4 victim Arif Gosto P100046.* The witness was shot in the lower part of the leg while he was helping the fire brigade to put out a fire in the Saric Harem cemetery. According to the expert report: possible shooting position could be on Stotina, but because of the tombstones and trees on the eastern side "it would be difficult for sniper to get a shot from there." "Could be" but "difficult to imagine" does not amount to proof in a criminal case.

291. *Expert Report - Sniping incident 6 - victim Omer Dilberovic.* Witness was hit in the right leg when he was crossing an open space, a 20-metre-long open space. He said that he had heard the detonation of the bullet and that the bullet came from the western side of Mostar, but he cannot really say where the shot came from or who was shooting at him. According to the expert report the shoot must have come from Ledara building, located 677 meters from where the victim was hit, because this is the building that gives the best

<sup>408</sup> T. 12857:16-12859:24, 24 January 2007, Witness Jeremy Bowen.

<sup>409</sup> Witness Vinko Marić (T. 48234:5-48241:21, 12 January 2010), who is familiar with Mostar, Neretva and its banks, testified:

*THE WITNESS: [Interpretation] Yes, Your Honour. You couldn't hit anyone on the right bank, not even the left bank, but especially not the right bank, because it's evident from this image that the victim is on the right bank of the Neretva River. The Neretva flows from the north to the south. ....*

*... . Well, General, I gave an oath to say what I know, and I confirm that it is true. It was impossible from HVO positions, even in peacetime when you could choose your position, it's impossible to see the right bank of the Neretva.*

view of the site the sharpshooter must have positioned on the upper floors of the building. The Defence submits that this scenario is not possible. The Ledara building is at considerably higher altitude than the witness was standing when he was hit. Accordingly, the entry and exit wound should have reflected this difference in altitude but it doesn't. The witness indicates very clearly that the exit wound was higher than the entry wound.<sup>410</sup> That would indicate that the projectile could not have come from Ledara building. In addition, the sketch made by the expert witness does not correspond to a photo which shows a place where the witness was hit. Thus, no conclusion is possible at the required standard of certainty.

292. *Expert Report - Sniping incident 7- victim Alija Jakupovic and witness Elvir Demic.*

According to the expert, the shot *probably* originated from upper floors of the Ledara building that was located 786 meters from where the victim was hit. On cross-examination the witness Demic said that a shot came from West at an angle that does not correspond to line from Ledara building. There is a noticeable discrepancy; the witness stated that a shot came from "some buildings" while the expert in fact concludes that this must have been Ledara building. Furthermore, the description of the direction of the projectile is absolutely dubious. A photo shows that the projectile hit the rear window of the truck while, according to the given positions, if it came from direction of Ledara building, it should have come under an angle of roughly 90 degrees; meaning that the truck rear window might not be hit and the victim's wound could not be on the back side of his head. There is a possibility that the victim turned his head on the side—thus it is explainable why the wound is on back side of the head, but the truck could not turned because direction was determined by direction of the road. Thus, the only possible conclusion is that the projectile could not have come from the Ledara building as suggested possible but not definite by the expert.

293. *Expert Report - Sniping incident 8 – witness DB.* The Prosecution expert concluded that the position from which the shot originated was Spanish Square from a 1,8 m high platform located among the trees on the western side of the Spanish square about 600 meters from where the incident occurred. The Defence asserts that an elevated, mobile shooting position wouldn't have the stability needed for long-range firing. An elevated platform is more likely and could easily have been constructed between the trees.

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<sup>410</sup> T. 13270:9-13272:20, 31 January 2007, Witness Omer Dilberović.

294. [REDACTED].<sup>411</sup> On cross, the witness was shown several pictures that were taken from alleged shooting position.<sup>412</sup> [REDACTED].<sup>413</sup> In addition, there was no evidence that a platform the expert believes was the shooter position was actually there in time of the incident. The Spanish Square was a place of fierce combat between the HVO and the ABiH thus it is almost impossible to presume that a shooter would be operating from the platform where he would be directly exposed to enemy fire.<sup>414</sup>

295. *Expert Report - Sniping incident 9 – Victim Damir Katica.* The Praljak Defence submits that the evidence contradicts the expert conclusion and the witness' opinion that the projectile (that hit the witness Katica and his friend Mackic) was fired from Stotina position. If the victims were running in direction described by the witness, and there is no reason to doubt that, the wounds would be on the right side of the bodies—not on the left side as evidence shows. During cross-examination, the witness confirms that there was a line of sight from the location he was hit to locations of Hum, Stotina and Fortica and that Fortica was on his left side when he was hit. The witness then confirmed that the Serbs were stationed on Fortica.<sup>415</sup> This clearly shows that the projectile could not have been fired from Stotina position but also tends to show that the bullet might as well come from Hum or Fortica locations. In fact, nobody knows where from the bullet came. It should be also noted that the witness did not actually know the moment between when he reached the end of the alley and the moment of arrival to the infirmary he was actually wounded.<sup>416</sup> In short, there is not sufficient evidence that the HVO soldier was shooting the victims.

296. *Expert Report - Sniping incident 10 - Munib Klaric.* The witness first asserted that the bullet that hit him must have come from Hum or Stotina, but believes it was from Stotina as it was closer to the place where he was hit. Witness was shot in the heel with an exit wound on the sole of his foot, thus there might be some conclusions drawn about the direction of projectile. Nevertheless, when questioned the witness said that he was facing the opposite direction when he was hit; "... so I can't know where the but came from. All I know is that I was wounded. As to the angle, as to where it came from, I don't know. My

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<sup>411</sup> [REDACTED]

<sup>412</sup> From IC00284 to IC00295.

<sup>413</sup> [REDACTED]

<sup>414</sup> T. 41919:4-41933:18, 24 June 2009, Witness Slobodan Praljak.

<sup>415</sup> T. 13494:5-13495:13, 5 February 2007, Witness Damir Katica.

<sup>416</sup> T. 13485:1-13491:3, 5 February 2007, Witness Damir Katica.

*heel is the corpus delicti*".<sup>417</sup> The questions and responses by the expert in regards to angle of projectile's direction provide for the conclusion that it is not really clear from which direction the bullet came.<sup>418</sup> Again, there is not sufficient evidence that an HVO soldier shot the victims.

297. *Expert Report - Sniping incident 11- victims Stojan Kacic and Enver Dziho, Witness Dzemal Barakovic.*

298. The Praljak Defence submits that there is no line of sight from western Mostar, more specifically from the Glass building, to the location where the victims were hit.<sup>419</sup> Furthermore, it has been also established that both victims were wearing military clothing (Kacic was wearing military trousers and Dziho military shirt) and thus could have been considered as a soldiers even if they were shot at by an HVO soldier.<sup>420</sup> The witness also provided an illustrative response relevant for all shooting incidents that were dealt with in the expert report – he said: *"Well, yes. It was a town. Everybody could shoot at everybody else."*

299. With regards to charges about the HVO shooting of *"Members of international organizations"* and *"UN peacekeepers"* (par. 115), the Prosecution attached an Annex to the Indictment supposedly providing more information about such incidents and/or victims of shooting. The only alleged victim of the HVO shooting of "internationals" listed in the related Annex is Grant Finlayson who appeared as a witness in the trial. The witness states that he was *not* victim of shooting despite of being in BiH for about a year and that none of the 25 persons in his group was shot at.<sup>421</sup>

300. One would think that with years of incidents to cherry pick from, better cherries would have been picked.

#### e. **Shelling of East Mostar**<sup>422</sup>

301. There was an ongoing conflict between belligerent parties. Both sides were armed military forces. Both sides attacked the other side.<sup>423</sup> There is also clear evidence that

<sup>417</sup> T. 13546:10 -13547:3, 5 February 2007, Witness Munib Klarić.

<sup>418</sup> T. 16288:1-16288:23, 26 March 2007, Witness Partick van der Weijden; T. 16288:24-16290:1, 26 March 2007, Witness Patrick van der Weijden; Exh. 3D00769, p. 3D23-0906..

<sup>419</sup> T. 13919:18-13921:1, 12 February 2007, Witness Dzemal Baraković; Exh. IC 00391; IC00392.

<sup>420</sup> T. 13914:25-13916:12, 12 February 2007, Witness Dzemal Baraković.

<sup>421</sup> T. 18225:12-18225:7, 9 May 2007, Witness Grant Finlayson.

<sup>422</sup> Indictment, paras. 25, 112 and 114..

<sup>423</sup> See Annex – Shelling of Mostar.

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along the main street in East Mostar (Marshall Tito's street) and in surrounding areas several legitimate military targets were positioned: the Command of the 4<sup>th</sup> corps of the ABiH, the Military Police HQ of the ABiH, the Command of the 1<sup>st</sup> Mostar brigade of the ABiH, the Commands of the ABiH battalions, the military kitchen, ammunition depots, and other military logistical facilities.<sup>424</sup>

302. It was frequently impossible to distinguish a soldier from a civilian. The intermingling of the ABiH soldiers and civilian residents was routine. Large numbers of civilians wore military clothes.

303. In addition, the ABiH's artillery was located in a populated area among civilian or public structures. The ABiH randomly moved around their mortars and fired from them towards the HVO or generally towards West Mostar. Among other locations, the mortars were positioned and used very near to the East Mostar Hospital.<sup>425</sup> The HVO did not strike back by targeting those weapons near the hospital and consequently the hospital was never directly hit—which demonstrates that the HVO did not fire into East Mostar unselectively. The Defence does not dispute that the HVO has fired numerous shells into

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<sup>424</sup> T. 23187:2-23187:15, 3 October 2007, Witness DW:

..... Tell me, please, is it the right of every command, would the command of the 4th Corps be a legitimate military target, and is there a right in war to target that legitimate military target? That would be my first question.

A. Allow me to say that it would be a military objective, full stop.

Q. Thank you. The command of the 1st -- 41st Brigade, was it also a military target?

A. True.

Q. And what about every possible mortar position that you can find in that same part of Mostar? Would these also be legitimate military targets?

A. Yes, that too is true.

<sup>425</sup> T. 10249:18-10249:24, 15 November 2006, Witness CB:

Q. But do you agree that it was mortars on the eastern side to hit the western side? Would you agree with that? Was that what you were saying? Mortars at the hospital were supposed to target the western side; is that correct?

A. Mortars around the hospital were aiming at the western side of Mostar.

T. 10158:9-20, 14 November 2006, Witness CB:

JUDGE TRECHSEL: Witness, have you ever noted, do you know anything about, a mortar of the ABiH being in position near the hospital in East Mostar? Does that mean something to you?

THE WITNESS: [Interpretation] Yes, we observed a position. We saw some mortars in East Mostar. Near the hospital? Well, yes, relatively near the hospital. We, at that time, had the impression that - again, I repeat, from a military point of view - we thought these mortars were positioned where they could be located. Their presence at the hospital, well, they weren't right behind the hospital or right next to it. They were relatively close to the hospital. But, really, in the East Mostar area, there was very little space available to -- very little space for positioning a weapon of that size.

[REDACTED]; [REDACTED]; T. 23215:23-23216:22, 4 October 2007, Witness DW; T. 23226:17-23228:9, 4 October 2007, Witness DW; T. 23240:18-23242:5, 4 October 2007, Witness DW; T. 23105:1-23108:17, 3 October 2007, Witness DW.

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the East Mostar area but those were fired at military justifiable targets and the fire was selective and minimal by all military standards.<sup>426</sup> Throughout the same period (particularly after 24 July 1993 when Praljak took over *de jure* command) the ABiH carried out offensive activities not only in Mostar area but in other areas as well.

304. The Defence submits that there is no precise information on quantity of the shells fired by the HVO to the ABiH positions and vice versa. It would be impossible to establish the quantity *post facto* since it was not possible to precisely establish the number of the shells even for SPABAT who were professional soldiers who were in relatively good position to observe, but despite of that could not verify that each shell was fired by the HVO, or to distinguish the side from which a shell was fired (HVO, ABiH or VRS).<sup>427</sup>

305. During the fighting in Mostar (from 30 June 1993 on) the VRS positioned behind the ABiH Mostar area further to the East, was launching artillery projectiles to entire city of Mostar from time to time.<sup>428</sup> Since it was not possible for military personnel of the ABiH and/or HVO to immediately establish who is really firing, this VRS fire frequently caused immediate firing between the ABiH and HVO who always believed that they are under attack. Furthermore, there is evidence that in many instances the ABiH got JNA/VRS

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<sup>426</sup> Exh. 3D00455; [REDACTED]; T. 48220:5-48223:14, 12 January 2010; T. 48220:5-48223:14, 12 January 2010.

<sup>427</sup> T. 10154:18-10155:22, 14 November 2006, Witness CB:

*JUDGE ANTONETTI: [Interpretation] Sir, a question that the Judges are highly interested in: Was there any technical possibility for the Serbs -- that the Serbs could have shot at Mostar, targeted Mostar?*

*THE WITNESS: [Interpretation] Well, in our reports, they did reflect the fact that at times we observed impacts whose origin was actually difficult to identify, but it seemed to be that these impacts were caused by firing from the Serbian lines. And this coincided with periods of relative calm in the city, which led us to believe that, obviously, after these impacts, activity in the city increased and there*

*was a greater exchange of fire between both parties. This led us to believe that the Serbs, who had a dominant position over the city of Mostar, were following and monitoring activities in the city, and when activity increased, they tried to stir up these conflicts even more by firing as much at one side as the other. So they would fire just as much into the east side as the west side.*

*JUDGE ANTONETTI: [Interpretation] This is a hypotheses that the headquarters of the Spanish Battalion put forward, or do you say that on the basis of indisputable elements, that this could have been the case? Because you've just told us that the Serbs saw that between the Muslims*

*and the Croats there was less tension; then they would ignite tensions by firing a few shots, by well-targeted action. Is that what you mean to say?*

*THE WITNESS: [Interpretation] The only way to determine a force is to carry out a detailed analysis of the impact, and what we were living through at that particular time made it impossible for us to conduct this kind of detailed analysis. However, the data that we did have concerning these specific impacts led us to believe that they had not come from the Croatian defence forces' positions, nor from the armija. So the only logical conclusion was that one, that they came from afar. For us, it was clear.*

<sup>428</sup> Exh. 3D00919; P05750; P06200.



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artillery support in fighting the HVO or generally shelling the west side of Neretva valley.<sup>429</sup>

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<sup>429</sup> T. 10154:18-10155:22, 14 November 2006, Witness CB;

T.13703:1-13705:20, 7 February 2007, Witness Enes Vukotić:

*Q. Let's go back to 1992. Who destroyed all the bridges over the Neretva? Apart from the old bridge, who did that?*

*A. Well, believe me, I'd like to know who was responsible for that. The assumption is that the Serbs destroyed the bridges when the ABiH and the HVO fighting together. The assumption is that the Serbs did that. I wouldn't want to say something that's not correct.*

*Q. In 1992 and 1993, was there constant shelling of Mostar from the Serbian positions?*

*A. Well, to be quite frank, if you want my opinion - my opinion -there was far more shelling from the Croatian side than from the Serbian side.*

*Q. Mr. Vukotic, that's not something I was claiming. All I wanted to know is whether throughout that period there was shelling from the Serbian positions. I'm not asking you whether one side shelled the town more than another, but was there shelling from those positions?*

*A. Yes.*

*Q. As far as military uniforms are concerned, some people had trousers, some people had jackets, some people didn't have anything. Was it very varied, as I have described it?*

*A. Yes, yes, that's correct.*

*THE ACCUSED PRALJAK: [Interpretation] Thank you very much.*

*JUDGE ANTONETTI: [Interpretation] Sir, this question is one that deals with an important issue that the judges will have to decide about. You have just confirmed that during this period of time the Serbs shelled Mostar, the Serbs also shelled Mostar.*

*THE WITNESS: [Interpretation] Yes, yes.*

*JUDGE ANTONETTI: [Interpretation] You are quite certain about that?*

*THE WITNESS: [Interpretation] I'll repeat what I have said, that the ABiH and HVO were allies at the beginning. I will also repeat that most of the shells came from the Serbian side. I myself was on guard in Podvezlje. Not that frequently, that's true, so I could observe the shells flying above our heads, and then out of curiosity we observed Mostar from our positions in order to see where the shells would fall and I can claim that I personally experienced this.*

*JUDGE ANTONETTI: [Interpretation] We will try to be more precise. On the 9th of May, 1993, you know what happened on that date. What I would like to know is what happened after the 9th of May. Did the Serbs shell Mostar after the 9th of May?*

*THE WITNESS: [Interpretation] Yes, they did. But far less frequently, quite seldom.*

*JUDGE ANTONETTI: [Interpretation] Let's take an example at random. When a shell fell at location X in the town, how did one know that the shell came from Serbian positions or Croatian positions or positions held by the ABiH? You, as an inhabitant and as a member of the ABiH, what did you do to establish that the shell had come from such-and-such a location, such-and-such a sector.*

*THE WITNESS: [Interpretation] A minute ago I said that I was rarely on guard in Podvezlje, and I observed those shells that flew over our heads and hit Mostar. These shells arrived from Serbian positions. As far as shells coming in from the Croatian side are concerned, I was on -- at a location when, for example, the old bridge was targeted from a mountain, from Planinica, I think, and then from Stotina or Abauce [phoen], they shelled the bridge from both sides and I personally saw shells being fired from Croatian positions on that occasion, on such occasions. If I may continue. May I continue?*

*THE ACCUSED PRALJAK: [Interpretation]*

*Q. You said seldom or not as frequently. Not as frequently in comparison to 1992, but was the shelling from Serbian positions really not as frequent than in 1992? What would you say, Mr. Vukotic?*

*A. As I said, I was seldom on guard in Podvezlje, my colleagues were also on guard in Podvezlje, and that is information that they conveyed to us, to the company when returning from guard duty. What I have seen, I*

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306. Regarding the Defence position that the HVO's artillery fire to East Mostar was minimal, and far from excessive as the Prosecution claims, the evidence shows that according of to the commonly accepted artillery standards the HVO might have used incomparably bigger number of the artillery projectiles in attacking certain ABiH targets in Mostar.<sup>430</sup> Common military standards also envisage that a mortar grenade hit 50 meters away from the target is considered a hit.<sup>431</sup> When those standards are taken into account, it is obvious that the HVO artillery fire in direction of East Mostar area was selective and minimal, i.e. permissible and militarily justified since the ABiH military forces were positioned in the same area.

307. [REDACTED]. As the Spanish officers testified, even for them (being trained soldiers) it was difficult to establish exactly where from the shells were coming or which side and fired first. [REDACTED]. He is certainly neither qualified nor was he realistically able to establish that in fact the HVO was reacting on the ABiH's initial firing and forceful attack in Mostar north sector.<sup>432</sup> [REDACTED].<sup>433</sup>

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*have told you about, what I have heard from others I have also told you about. My conclusion was that there were far more shells from the Croatian side than from the Serbian side. I told you that we had Podvezljeje under our control, that is the line between the ABiH and the Serbs. And the each and every shell fired from the Serbian position flew over our heads. You could hear the sound, I mean.*

<sup>430</sup> Exh. 3D00455; T. 21376:22-21377:13, 16 August 2007, Witness Larry Forbes;

T. 48220:5-48223:14, 12 January 2010 Witness Vinko Marić:

*Q. Now, Brigadier Maric, look at these tables here. If I were doing my duty, and Mico Lasic, too, if we gave orders to the artillery to destroy the installations of the BH Army which was attacking us, as you said, their military installations in the town of Mostar, wouldn't we have had to expend thousands and thousands and thousands of shells to achieve an 80-per-cent destruction of these installations?*

*A. Correct, General.*

*Q. If, from whatever neutral international source that was counting the shells falling on the other side, you were to find out that during five and a half months in the second half of 1993 the eastern side of Mostar was hit by 850 shells, would you consider that random, excessive shelling, or would you say as an artillery shelling that it was the absolute minimum under the circumstances of the BH Army attack?*

*A. Well, that's -- yes. I can't say less than minimum, but it is the minimum.*

*Q. Now it's --*

*MS. ALABURIC: [Interpretation] I would like to correct the record. I'd like the interpreters to say exactly the way he says it.*

*THE WITNESS: [Interpretation] I'm saying I don't have another word to replace your term, "the minimum of the minimum," to make it even more picturesque. But we didn't even have the minimum of the minimum to approach any standards to destroy the military targets on the BH Army side.*

*MR. PRALJAK: [Interpretation]*

*Q. Did observers of the artillery report that the BH Army, firing from mortars, multiple rocket launchers, et cetera, was active from the very centre of the town, near the hospital, near other civilian facilities?*

*A. All observers and all monitoring services reported*

<sup>431</sup> Exh. 3D00455.

<sup>432</sup> Exh. 2D03037.

308. The Prosecution claims that “the HVO *shelling* of East Mostar killed or wounded hundreds of Bosnian Muslim civilians”.<sup>434</sup> In the next sentence the Prosecution claims “Herceg-Bosna/HVO *gunfire* killed or wounded at least 135 civilians ...”. It seems that the Prosecution does not claim specifically that “at least 135 civilians” were killed or wounded as a result of shelling since this number refers only to the victims of “the HVO *gunfire*.” This dilemma is not resolved even after the Expert Reports of the Prosecution’s experts Ewa Tabeau and Svetlana Radovanović testimonies were presented. This evidence brings quite different numbers of victims. Nevertheless, this evidence could not provide base for the conclusion about number of victims of the HVO shelling. Many different numbers could be extracted from this evidence. Nevertheless, whatever the number is of killed or wounded victims of the HVO shelling, the Defence asserts that this figure supports the Defence case, *not the Prosecution case*. Having in mind the circumstances mentioned *supra* and the length of time and intensity of the West–East Mostar conflict, the only reasonable conclusion would be that there should be spectacularly larger number of victims if the HVO had shelled East Mostar with the intent to harm civilians. Analysis indeed shows that the number of killed and/or wounded civilians does not point to the HVO intentional shelling of the civilians. The Prosecution appears to take a strict liability approach to casualties on their favored side—a stance that makes a mockery of humanitarian law.
309. The officers of the SPABAT were physically present in the town of Mostar and they kept a record of shelling. Those reports do not provide a base for a conclusion that the HVO was shelling the East Mostar unselectively and beyond the military necessity.<sup>435</sup>
310. Other Prosecution witnesses, especially “internationals” provided some pieces of testimony regarding shelling of East Mostar. It must be noted that evidence provided by those witnesses is far from reliable evidence. It should not be given any substantial weight. They provide merely their subjective understanding of the events. This is far from hard evidence. Only the professional soldiers, as e.g. SPABAT officers were sufficiently qualified and able to offer anything close to the facts. Even qualified, in many instances, according to their testimonies, they were not able to precisely established wherefrom a projectile was coming.

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<sup>433</sup> [REDACTED]

<sup>434</sup> Indictment, para. 114.

<sup>435</sup> Exh. IC00559; Annex section “Shelling”; [REDACTED].

311. In conclusion, there is no evidence that certain number of civilians were victims of the HVO shelling. There is evidence that certain number of persons was killed by the HVO shells. However, there is no evidence that would provide a distinction between the killed combatants and civilians. The needed facts for such conclusions have not been proven.
312. Similarly there is no evidence that Praljak in his capacity of GSHVO commander, or any of his subordinated officers, ever issued an order that would include shelling of civilians or shelling without military necessity.
313. The Defence is not claiming that HVO did not fire at positions of ABiH in East Mostar, but insist that the number of shells which were fired over more than 6 months was dramatically lower than a standard artillery battalion of any modern army would spend for preparation of an artillery attack only. The HVO light artillery fire on the targets in East Mostar was military justified and strictly within the limits of "military necessity".

**f. Destruction of Mosques**

314. The Prosecution claims that *"As part of and in the course of East Mostar siege the HB/HVO forces deliberately destroyed or significantly damaged the following mosques or religious properties in East Mostar"* and than 12 mosques are listed. In addition in the same paragraph the destruction of Mostar Old Bridge is mentioned as *"an international landmark"*.<sup>436</sup>
315. The fact that all mosques listed in para. 116 were destroyed long before commencement of the Muslim – Croat conflict in Mostar area is well established. There is ample evidence that the mosques were destroyed by JNA/VRS in early 1992.<sup>437</sup> There is not one single piece of evidence that would even remotely show that the HB/HVO deliberately destroyed any mosques in Mostar area, at least not in time of Praljak's commandership. Many other objects were destroyed by the JNA attacks during 1992 (all bridges except Old Bridge, public houses, private houses, apartments houses, etc.).<sup>438</sup>

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<sup>436</sup> Amended Indictment, para. 116 - Counts 19, 20, 21.

<sup>437</sup> Exh. 3D00784;

T. 21754:19-21754:21, 28 August 2007, Witness Marita Virhevuori:

*Q. Thank you. Thank you. Now, do you know that of the 14 mosques which existed, 12 were partially or completely destroyed by Serb shelling?*

*A. Yes, I know that it was destroyed by Serb shelling.*

<sup>438</sup> Exh. 3D00785; T. 37015:10-37022:8, 17 February 2009, Witness Veso Vegar; T. 37022:25-37024:10, 17 February 2009, Witness Veso Vegar.

**g. Destruction of the Old Bridge, 9 November 1993**

***i. Stari Most: Introduction***

316. Slobodan Praljak cannot be convicted for the destruction of the Old Bridge (Stari Most) because he did not order its destruction, he was not in command when it was destroyed, the cause of the destruction was not HVO shelling, and because its destruction could not have been a criminal act. Each of these points is addressed *infra*.

***ii. Slobodan Praljak did not order the destruction of the Old Bridge.***

317. The Prosecution has failed to produce a record of Slobodan Praljak ordering the destruction of the Old Bridge. This is simply a fact.

318. In fact, as Slobodan Praljak swore under oath, he did not order the destruction of the Old Bridge.<sup>439</sup> He had nothing to do with its destruction, only with its protection.<sup>440</sup>

319. The Old Bridge was never targeted under orders of the HVO leadership.<sup>441</sup> If it had been, the Old Bridge would have been shelled from Hum Hill, and the result would have been nearly instantaneous, not the murky subject of speculation and rumor.<sup>442</sup> To believe the opaque theory put forth by the Prosecution requires a stunning suspension of logic, that the HVO leadership wanted to destroy the Old Bridge but decided to do so not in a straightforward fashion near the Old Bridge but from far away, by tank or by mysterious German mercenaries that the Prosecution without explanation refuses to call as actual witnesses.

***iii. Slobodan Praljak was not in command when the Old Bridge was destroyed***

320. Slobodan Praljak ceased to be commander of the Main Staff of the HVO as of 07:45 9 November 1993.<sup>443</sup> He had the document dissolving his duties in his hand.<sup>444</sup> He was close to Zagreb, Croatia, when he heard about the Old Bridge, which occurred after his command ended.<sup>445</sup>

321. There is simply no evidence whatsoever that Slobodan Praljak planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or

<sup>439</sup> *Inter alia*, T. 39567:24-39568:2, 5 May 2009, Witness Slobodan Praljak.

<sup>440</sup> *Inter alia*, T. 39563:7-11, 5 May 2009, Witness Slobodan Praljak.

<sup>441</sup> T. 39566:4, 5 May 2009, Witness Slobodan Praljak.

<sup>442</sup> T. 39566:4:9, 5 May 2009, Witness Slobodan Praljak.

<sup>443</sup> T. 39567:17-19, 5 May 2009, Witness Slobodan Praljak.

<sup>444</sup> T. 39567:25-39568:2, 5 May 2009, Witness Slobodan Praljak.

<sup>445</sup> T. 39567:17-20, 5 May 2009, Witness Slobodan Praljak.

- execution of the destruction of the Old Bridge, despite the fact that the Prosecution alleges that he did all of the above. No order has been produced, no direct perpetrator has been identified and interviewed, and no plan has been conjured up. Again, the Prosecution appears to rely upon a *quasi res ipsa loquitur* theory in lieu of actual evidence.
322. According to the binding law of the Tribunal, a superior-subordinate relationship at the time of the commission of the crime is an element of command responsibility. Slobodan Praljak lacked this relationship of command, and cannot be held responsible under this theory of criminal responsibility. Further, it should go without saying that lacking command, he could not punish. In reality, there was a trial for a renegade HVO tank crew for firing in the direction of the Old Bridge.<sup>446</sup>
323. Knowledge of the commander must be proven beyond all reasonable doubt to sustain a conviction of command responsibility. There is no evidence whatsoever that Slobodan Praljak knew of any plot to cause the collapse of the Old Bridge, so it would be absurd to hold him responsible via a theory of command responsibility or by any other theory of criminal culpability. Both law and logic, when applied to the facts, forbid conviction on anything relating to the Old Bridge collapse.
324. The Prosecution has failed to allege or prove with any particularity, when Slobodan Praljak first heard of the Old Bridge's collapse as a civilian approaching Zagreb, what necessary and reasonable measures he was supposed to take to avoid criminal liability as a commander. The Praljak Defence respectfully submits that the Prosecution must prove in each case that specific steps were available, within the specific competence of a Slobodan Praljak as evidenced by the degree of control he wielded in the chaos, for a conviction based on his command to be sustained.<sup>447</sup> To pose the question in this case is to underline the futility of the Prosecution's task—as Slobodan Praljak was not in command, had no power over the situation, and could take no steps.
325. Slobodan Praljak cannot be held criminally liable for an act that happened when he was no longer in command.

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<sup>446</sup> T. 18837:4-10, 21 May 2007, Witness Philip Roger Watkins.

<sup>447</sup> *Blaskić* Appeal Judgment, para. 72. See also in the same sense: *Delalić* Trial Judgment, para. 395; *Strugar* Trial Judgment, para. 372; *Naletilić* Trial Judgment, para. 76; *Blagojević* Trial Judgment, para. 793; *Delić* Trial Judgment, para. 76, 541.

***iv. The cause of the Old Bridge collapse was not HVO shelling***

326. [REDACTED].<sup>448</sup> [REDACTED]<sup>449</sup> [REDACTED]<sup>450</sup> [REDACTED]<sup>451</sup>
327. To arrive at the truth of the Old Bridge collapse, the Trial Chamber must examine other parties.
328. Although the Prosecution refuses to address the issue, the Praljak Defence respectfully submits that it is uncontroversial that in the spring of 1992, JNA artillery and explosives destroyed the post office in Mostar, the main switchboard, and all of the bridges in and around Mostar, excepting the Old Bridge.<sup>452</sup> The Old Bridge was not destroyed, but was extensively damaged.<sup>453</sup>
329. In June 1992, the HVO, with ABiH/TO units helping, set up a guard around the Old Bridge.<sup>454</sup> The JNA was no more than 150 to 200 meters away.<sup>455</sup> On the night of 15 June 1992, Slobodan Praljak ordered the Old Bridge to be protected.<sup>456</sup> Under Slobodan Praljak's command, the HVO built a thick protection around the Old Bridge with seven centimeters thick planks, brought by several lorries.<sup>457</sup> This was necessary to absorb the mortal shells from inflicting further damage, given the extensive damage already present.<sup>458</sup>
330. The JNA continued to shell Mostar after 9 May 1993.<sup>459</sup>
331. By 24 June 1993, the Old Bridge was already heavily damaged, possibly on an ongoing basis due to water leaking on the bridge foundation from a broken water pipe.<sup>460</sup>

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<sup>448</sup> [REDACTED]

<sup>449</sup> [REDACTED]

<sup>450</sup> [REDACTED]

<sup>451</sup> [REDACTED]

<sup>452</sup> T. 39530:24-39531:3, 4 May 2009, Witness Slobodan Praljak.

<sup>453</sup> T. 1285:10-1285:15, 4 May 2006, Witness Ratko Pejanovic; T. 2734:13-2735:6, 29 May 2006, Witness Milivoj Gagro; T. 39530:24-39531:3, 4 May 2009, Witness Slobodan Praljak; T. 39563:14-20, 5 May 2009, Witness Slobodan Praljak.

<sup>454</sup> T. 39563:7-11, 5 May 2009, Witness Slobodan Praljak.

<sup>455</sup> T. 39563:7-11, 5 May 2009, Witness Slobodan Praljak.

<sup>456</sup> T. 14270:10-13, 19 February 2007, Witness Miro Salcin.

<sup>457</sup> T. 39563:11-14, 5 May 2009, Witness Slobodan Praljak.

<sup>458</sup> T. 39563:14-20, 5 May 2009, Witness Slobodan Praljak.

<sup>459</sup> T. 13704:16, 7 February 2007.

<sup>460</sup> T. 21054:21-21055:4, 10 July 2007, Witness Antoon van der Grinten; [REDACTED]

332. During the attacks of the ABiH Army during May-October 1993, the HVO commanders of the operative zone, brigade commanders, and the artillery subordinated to them, received clear instructions from Slobodan Praljak not to target civilian targets or military targets located among civilian targets.<sup>461</sup>
333. Again, the Old Bridge was never targeted under orders of the HVO leadership.<sup>462</sup> If it had been, the Old Bridge would have been shelled from Hum Hill, and the result would have been nearly instantaneous, not the murky subject of speculation and rumor.<sup>463</sup>
334. It is unclear whether the Prosecution has recognized the importance of the SPABAT report of 9 November 1993, P06554. It notes that the Old Bridge was destroyed after two direct impacts by tank missiles, *one from the north and one from the south*.<sup>464</sup> It is impossible that the HVO fired on the Old Bridge from the north. No one saw the crew of the tank who allegedly fired from the south.<sup>465</sup> The alleged direct perpetrators remain unidentified.
335. The destruction of Stari Most was a propaganda coup for the ABiH, one they used to demonize Slobodan Praljak and unfairly try him in the court of public opinion.
336. The Prosecution has failed to produce an original copy of any video evidence regarding the collapse of the Old Bridge, much to the frustration of the Praljak Defence. The video in P01040 was edited together by unknown persons to make it look as though HVO firing caused the collapse.<sup>466</sup> The Prosecution has apparently failed to investigate the production, editing, and extensive propaganda use of the video, as nothing has been disclosed on those points. The Praljak Defence respectfully submits that something rather more than made for television propaganda and hearsay is required for criminal conviction.
337. [REDACTED].<sup>467</sup> [REDACTED]<sup>468</sup> [REDACTED]<sup>469</sup> [REDACTED].
338. [REDACTED].<sup>470</sup> [REDACTED].

<sup>461</sup> T. 39565:20-39566:3, 5 May 2009, Witness Slobodan Praljak.

<sup>462</sup> T. 39566:4, 5 May 2009, Witness Slobodan Praljak.

<sup>463</sup> T. 39566:4-9, 5 May 2009.

<sup>464</sup> P06554, R016-8182-R016-8186, p. 4.

<sup>465</sup> See T. 14256:13-14, 15 February 2007, Witness Miro Salcin.

<sup>466</sup> See e.g. T. 18895:20-18896:6, 22 May 2007, Witness Philip Roger Watkins.

<sup>467</sup> [REDACTED]

<sup>468</sup> [REDACTED]

<sup>469</sup> [REDACTED]



339. 3D03208, the Expert Report by Dr. Muhamed Suceška, Dr. Slobodan Janković and Dr. Aco Sikanić, was rigorously tested by the Prosecution and the Trial Chamber, and finally admitted as relevant and probative. Slobodan Janković testified in court extensively about all aspects of the Report.
340. The Report established that, according to the video available, the dents made from apparent HVO fire *could not* have been the cause of the collapse.<sup>471</sup> The projectiles shown on the videos were not designed to destroy structures.<sup>472</sup> The firing was not concentrated on one spot, as it would have been if the aim was to destroy a structure.<sup>473</sup> The available video shows that the main damage done by the projectiles was to the protective structures placed by the HVO.<sup>474</sup> These conclusions were in no way contradicted by the Prosecution's cross-examination or the Trial Chamber's Expert Report.
341. The video available demonstrated that there was something before the collapse that looked like a detonating cord, lit from the ABiH controlled eastern bank of the Neretva River.<sup>475</sup> The so-called *water wall* was not caused by a projectile.<sup>476</sup> All bridges in the former Yugoslavia were fitted to be demolished if need be.<sup>477</sup> This was in no way contradicted by the Prosecution's cross-examination or the Trial Chamber's Expert Report.
342. The issue with which the Prosecution seemed to express its concern was whether the apparent detonating cord immediately caused the destruction of the bridge. With an elaborate presentation, the Prosecution presented a video that showed the bridge standing for a period after the apparent detonating cord ignition. This in no way

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<sup>470</sup> [REDACTED]

<sup>471</sup> T. 30083:18-30084:25, 30 June 2008, Witness Dr. Slobodan Janković. The Expert Report, 3D03208, states that it is a high probability that the destruction of the Old Bridge was caused by either explosive charge or mine explosive means. See 3D03208, p. 11 and 14.

<sup>472</sup> T. 30085:16-30087:19, 30 June 2008, Witness Dr. Slobodan Janković.

<sup>473</sup> T. 30088:16-30088:24, 30 June 2008, Witness Dr. Slobodan Janković.

<sup>474</sup> T. 30106:11-30106:21, 30 June 2008, Witness Dr. Slobodan Janković.

<sup>475</sup> T. 30085:1-30085:15, 30 June 2008, Witness Dr. Slobodan Janković; 3D03208, p. 9, 11 and 14.

<sup>476</sup> T. 30104:7-30104:15, 30 June 2008, Witness Dr. Slobodan Janković; 3D03208, p. 14: It was explained in the Expert Report that the water pillar was most probably "caused by a detonation of the detonating cord set up in the water. The expansion of gasses, which are a product of the cord detonation underneath the water, led to the raising of a water pillar in form of a characteristic "water fountain" which dimension depends upon the type and quantity of explosive charge and the depth where it is placed."

<sup>477</sup> T. 30107:6-30107:16, 30 June 2008, Witness Dr. Slobodan Janković.

contradicted the above conclusions, but merely suggested to Dr. Janković that the first detonation attempt may have failed, and required a subsequent successful attempt.<sup>478</sup>

343. In fact, the Prosecution was so intensely focused on demonstrating that the videos available to the Praljak Defence did not show the moment before the Old Bridge's collapse, that the Prosecution apparently did not realize *that the exact same analysis demonstrates the incredible weakness of the evidence supposedly justifying the allegations against Slobodan Praljak*. It is not the responsibility of the Praljak Defence to prove beyond all reasonable doubt that the ABiH destroyed the bridge, alone or in combination with the Serb shelling and the water damage to the foundation. It is the Prosecution's duty to *prove* that *every* conclusion reached in Dr. Janković's report is false. Not only has the Prosecution failed to prove that the dents from apparent HVO fire could not have been the cause of the collapse, and failed to prove that the water wall was not the result of a detonating cord, they have failed to provide any evidence or argument that contradicts this evidence. The Prosecution simply points at the fact of the collapsed bridge and says, once again, the thing speaks for itself. It appears the Croats simply must have done it, according to the Prosecution. No video is available to show directly what happened immediately before the collapse—that video segment has been edited out by unknown parties who turned the video into anti-HVO propaganda.
344. The Praljak Defence respectfully submits the reason why the Prosecution has failed to produce proof that the cause of the Old Bridge collapse was HVO shelling, was because *the cause of the Old Bridge collapse was not HVO shelling*.

***v. The Old Bridge was a legitimate military target for the HVO while the ABiH used it for military purposes***

345. The Praljak Defence notes that Slobodan Praljak has been charged for the destruction of the Old Bridge under Count 19 concerning “extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly” and Count 20 regarding “wanton destruction of cities, towns or villages, or devastation, not justified by military necessity.” The absence of military necessity is an element of both these crimes.

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<sup>478</sup> T. 30180:4-30180:16, 1 July 2008, Witness Dr. Slobodan Janković; T. 30205:12-30205:24, 1 July 2008, Witness Dr. Slobodan Janković.

346. It is settled case-law of the Tribunal that the Prosecution bears the burden of proof to demonstrate that the destruction was not justified by military necessity. The Prosecution cannot just presume that this was the case.<sup>479</sup> An assessment “considering all direct and circumstantial evidence” must be made of “the factual context within which the destruction occurred.”<sup>480</sup> In addition, the Prosecution must establish that the destroyed property did not concern a military objective pursuant to article 52 of Additional Protocol I to the Geneva Conventions.<sup>481</sup>
347. The Praljak Defence respectfully submits that the Prosecution has failed to establish whether the destruction of the Old Bridge was not justified by military necessity. It did not demonstrate how and why the Old Bridge was destroyed. In addition, the Prosecution also failed to explain why the Old Bridge does not constitute a legitimate military target.
348. ABiH soldiers crossed the Old Bridge carrying weapons, ammunition and military equipment on an ongoing basis.<sup>482</sup> No one disputes this. Putting aside the question of whether the Old Bridge was ultimately destroyed by the unquestioned damage done by the JNA, by the consequent foundation damage caused by water, by a later JNA shell, by the efforts to detonate explosives from the ABiH controlled bank of the Neretva River, or some other unknown cause, perhaps on some video clip not included on the propaganda produced against the HVO and apparently believed by the Prosecution—putting that question aside, the destruction would thus have offered “a definite military advantage” because of the manner in which the BH Army used the Bridge. For this reason the Praljak Defence respectfully submits that the Old Bridge clearly constituted a military objective within the meaning of Article 52 (2) of Additional Protocol I to the Geneva Conventions.
349. The fact that the Old Bridge was a cultural monument does not alter this. It is consistent case law of the Tribunal that cultural property will lose the special protection it enjoys

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<sup>479</sup> See e.g. *Kordić and Čerkez* Appeal Judgment, para.495. *Brđinin* Appeal Judgment, para. 337. *Šainović et al* Trial Judgment, para. 208.

<sup>480</sup> *Brđinin* Appeal Judgment, para. 337.

<sup>481</sup> *Ibid.*

<sup>482</sup> T. 14252:10-19, 15 February 2007, Witness Miro Salcin; T. 18716:23-18717:4, 17 May 2007, Witness Enes Delalić; T. 39566:13-16, 5 May 2009, Witness Slobodan Praljak.

- in case it is being used for military purposes.<sup>483</sup> The jurisprudence is based on Article 27 of the Hague Regulations concerning the Laws and Customs of War on Land of 1907 which states that *inter alia* “historic monuments” are protected “provided they are not being used at the time for military purposes.” According to the Trial Chamber in the Kordić and Čerkez case this rule is of customary status.<sup>484</sup>
350. It is also worth mentioning that the second paragraph of Article 27 of the aforementioned Hague Regulations of 1907 requires a “distinctive” and “visible” sign to be present on the protected building. In the present case, no UNESCO flag was hosted on the Old Bridge to indicate it was a protected monument.<sup>485</sup>
351. Putting aside the question of whether the Old Bridge was ultimately destroyed by the unquestioned damage done by the JNA, by the consequent foundation damage caused by water, by a later JNA shell, by the efforts to detonate explosives from the ABiH controlled bank of the Neretva, or some other unknown cause, perhaps on some video clip not included on the propaganda produced against the HVO and apparently believed by the Prosecution—putting that question aside, *the only possible crime even by analogy was the ABiH’s use of the Old Bridge for military purposes*. Article 4 (1) and 9 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict forbade the ABiH from any use of such property or its surroundings for military purposes.
352. More to the point for the instant charges, the only charges the Trial Chamber may consider, the ABiH’s choice to use the Old Bridge for military purposes, clearly makes counts 19 and 20 laughable with respect to the destruction of the Old Bridge. There was no grave breach of the Geneva Conventions of 1949 here, nor was there a violation of the laws or customs of war. This should never have been charged. Much time and effort would have been saved had the Prosecution only charged crimes that were actually crimes. Slobodan Praljak awaits the day when the fair and unbiased application of justice results in a charging of the ABiH command for their unquestioned military

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<sup>483</sup> *Blaškić* Trial Judgment, para. 185. *Kordić & Čerkez* Trial Judgment, para. 362. *Naletilić* Trial Judgment, para. 922. *Brđinin* Trial Judgment, para. 598. *Strugar* Trial Judgment, para. 310. *Šainović et al.*, Trial Judgment, para. 208, fn. 377.

<sup>484</sup> *Kordić & Čerkez* Trial Judgment, para. 362.

<sup>485</sup> T. 18714:22-18715:1, 17 May 2007, Witness Enes Delalić. The emblem established by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was also not put on the Old Bridge.

use of the Old Bridge, the full videos discovered, and the videographers properly investigated.

**vi. Stari Most: Conclusion**

353. Slobodan Praljak did not order the destruction of the Old Bridge. He protected it, at risk to his troops.
354. Slobodan Praljak was not in command when the Old Bridge was destroyed. There is no legitimate theory by which he can be held criminally responsible for what he heard about as a civilian approaching Zagreb, Croatia.
355. There is no conceivable way, given the facts presented, the shelling reported from the northern side,<sup>486</sup> the lighting of a detonating cord from the eastern bank, the expert report and testimony, and the absence of video showing what happened immediately before the collapse, that the Trial Chamber can find beyond all reasonable doubt that the HVO caused the Old Bridge's collapse.
356. Finally, it is worth noting that, in light of the despicable military use of the Old Bridge by the ABiH, which the Prosecution surely knew about after its thorough investigations, the destruction of the Old Bridge should not have been charged against any member of the HVO in the first place.
357. There is no basis for any criminal culpability for Slobodan Praljak, the proven protector of the Old Bridge, with respect to its destruction. There is certainly insufficient evidence for conviction.

**h. Mostar: 9 and 10 May 1993**

358. The Defence case is that, contrary to the Prosecution thesis, it was the ABiH who attacked the HVO in Mostar on 9 May 1993. First, there is powerful evidence directly on point: orders of Arif Pašalić and Hujdur in the eve of the 9 May 1993 incident.<sup>487</sup> Second, various activities of the ABiH in the preceding days<sup>488</sup> clearly demonstrate that the ABiH planned to take over at least a bigger area around Vranica building. Third, a complete lack of evidence that the HVO took any preparations for such ambitious plan to conquer Vranica building—the Headquarters of the ABiH in Mostar that was well

<sup>486</sup> P06554, R016-8182-R016-8186, p. 4.

<sup>487</sup> Exh. P01962; P01970; P01978; P02000; 2D00472; IC00219.

<sup>488</sup> T. 12529:18-12532:17, 18 January 2007, Witness CV; T. 12626:1-7, 22 January 2007, Witness CV; Exh. 5D00491; T. 20586:24-20627:24, 27 June 2007, Witness Klaus Johan Nissen; T. 23042:7-23043:2, 2 October 2007, Witness DV; T. 19711:23-19728:22, 7 June 2007, Witness Bo Pellnas.

defended. It is reasonable and quite obvious that for such operation some preparatory activities would have been needed. Were there any such activities this would surely be seen, remembered and recorded by somebody. However, there is no such evidence. There is evidence about the HVO's tank coming to Mostar on 9 May 1993. This was several hours after the fighting around Vranica commenced. Why the HVO would bring its heavy armament into Mostar after the conflict started? There is no any military logic in that. If the HVO planned this attack the tank should be in the area *before* the attack started – not *after*.<sup>489</sup> The Prosecution evidence, analyzed correctly, supports the Praljak Defence case. In addition, many documents issued by Mića Lasić (the commander of the SE OZ at a time) issued on 9 and 10 May 1993 shows that he is in fact crying for a help after being unexpectedly attacked by the ABiH.<sup>490</sup> Despite the tension between the ABiH and HVO that was growing, there were some actions taken in order to resolve the problems and lowered the tensions in preceded days. For example, meetings were held and mixed military patrols were arranged.<sup>491</sup>

359. The Praljak Defence submits regarding the alleged 9 May attack of the HVO on the ABiH that Slobodan Praljak was not the Commander of the HVO in that time. In preceding days he personally took some steps in order to contribute to mutual trust between Muslims and Croats in Mostar. He visited SDA offices and talked with Arif Pašalić and in addition walked through Mostar with Muslim dignitaries to show to the other people that there is a trust and cooperation between Croats and Muslims.<sup>492</sup> Shortly before this incident Praljak was lobbying in Croatian Parliament to get a political interest regarding the Serbian aggression in BiH. As a result a parliamentary delegation visited the BiH in a fact-finding mission.<sup>493</sup> Praljak invested a lot of his energy in activities that he believed would bring peace in BiH and would strengthen Croat – Muslim alliance against Serb aggression.
360. Praljak was also in Mostar on 11 May 1993; attending meeting in HZ-HB offices (where Tuta was present) and when leaving from the town bumped in the HVO patrol

<sup>489</sup> 3D00916; T.20612:9-20616:1, 27 June 2007, Witness Klaus Johan Nissen.

<sup>490</sup> See e.g. Exh. 3D01017; 3D01012; 3D01019; 3D01014; 3D01005; 3D01006; 3D01007; 3D01008; 3D01009; 3D01010; 3D01011; 3D01021; 3D01023.

<sup>491</sup> T. 50653:1-50668:22, 9 March 2010, Witness Milivoj Petkovic.

<sup>492</sup> Exh. IC 00443; IC 00444; See also Section "Witness Mustafa Hadrović claimed that he saw Praljak in Heliodrom" above.

<sup>493</sup> Exh. 3D00566; 3D01091.

controlling SPABAT's APC carrying wounded Spanish soldier where he intervened as a human person - not as a commander.<sup>494</sup>

**i. 30 June 1993**

361. The Prosecution recognized that the ABiH attacked and conquered the HVO's "Tihomir Mišić" Barracks (also called "Northern Barracks") on 30 June 1993. However, this ABiH action was not limited only to the Northern Barracks but includes broader territory north of the town including the village of Bijelo Polje. This action seems to be "point of no return" in the HVO–ABiH relationship. This action has all elements of traditional betrayal and/or military mutiny because Muslim soldiers in the HVO units were asked to sabotage the HVO at the moment that the ABiH commenced serious attacks. As a result many HVO Muslim soldiers were arrested and detained.

**j. Raštani late August 1993<sup>495</sup>**

362. The Prosecution's starting position is entirely wrong; fighting in Raštani (northern surroundings of Mostar) was not an attack on the civilians. It was a clean military operation of the HVO attempting to recapture the Raštani area—a battle between two belligerent forces. The ABiH occupied Raštani area during attack to the HVO positions on 30 June 1993. The ABiH intentions are obvious—to continue advance through the Neretva Valley towards the Adriatic coast.<sup>496</sup>

363. There were about 60-70 ABiH soldiers in the village when in late August the HVO launched an operation to recapture this position that was militarily important for defence of Mostar. This was a time when the ABiH had the initiative and a strong offensive towards south was at its peak.<sup>497</sup> This was a militarily justified action; the HVO stationed in Mostar was threatened by the ABiH pressure coming from the north having the area Bijelo Polje – Raštani as a stronghold that may become a launching point for further attacks on Mostar.

<sup>494</sup> T. 3760:14-3763:4, 22 June 2006, Witness BJ.

<sup>495</sup> Indictment, para. 108.

<sup>496</sup> Exh. P03030: 30 June 1993 Interim Report (8). The HVO recorded conversation between Arif Pašalić and Sefer Halilović:

**Arif Pašalić:** "... our forces are somewhere in the area of Ravne-Rošci, they have taken Salakovac and Bijelo Polje, Vrapčići and Sjeveni Logor barracks, that is, T. Mišić barracks."

**Safer Halilović:** "... My congratulations for successes, my condolences for the death of our hero Hujka"

**Arif Pašalić:** "... I am gathering some forces for further activities" ...

**Safer Halilović:** "... We shall not stop until there is a single Ustasha left" ...

<sup>497</sup> See section "The ABiH Offensive" below.

364. [REDACTED]:<sup>498</sup>

[REDACTED]

365. According to the exhibit P04547, interview of Ibrahim Žuškić<sup>499</sup> performed on 27 August 1993, only the ABiH soldiers were in Raštani at a time of the battle. Those were not only the local ABiH unit troops; there are other units that came from other areas.

366. The Praljak Defence submits that persons killed during the fight for Raštani were soldiers of the ABiH that were killed during battle. On 27-28 August 1993, after the battle, the HVO performed sanitary clearing of the terrain and 18 corpses were found and buried. Information regarding the identification of the corpses was transmitted to Mostar HVO Military Police.<sup>500</sup> The Prosecution failed to follow that lead in order to investigate whether the killed persons were soldiers or not but instead decided to baselessly assert that those are civilians.

367. In time of battle for Raštani, Praljak was in Vakuf–Prozor area. He has not received any information about misconduct of the HVO during battle for Raštani. There is no evidence presented that would show that Praljak or his immediate subordinates would be informed that anything suspicious took place during the battle for Raštani.

## **XI. ČAPLJINA (Paras. 172 – 186 of the Indictment)**

### **a. Basic Points**

368. The summary of the defence case regarding the charges related to Municipality of Čapljina is as follows;

- i. Almost all charged crimes took place *before* Praljak became commander of GSHVO on 24 July 1993.
- ii. Though there were some offensive operations of lesser intensity of the ABiH and diversion/terror type operations of the ABiH, the area Čapljina/Stolac was at a time less important for the GSHVO commander in comparison with Prozor – Vakuf area.

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<sup>498</sup> [REDACTED].

<sup>499</sup> The Annex to the Indictment contains the name of this person. Thus it shows that this person was a combatant.

<sup>500</sup> Exh. P04653.



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- iii. Praljak did not visit Čapljina area in the critical times to the Indictment except at one occasion on or about 15 August 1993.<sup>501</sup> He spent almost all his time as commander of the GSHVO in Prozor/Vakuf, Mostar and Čitluk areas.
- iv. Praljak was never informed about the crimes that were committed there particularly that some crimes might be committed by his subordinates. He learned that some crimes were committed there only few years after the war.
- v. As a Commander of GSHVO Praljak had no any duties and/or authority to impose law and order in the areas out of the battle zone or over detention facilities or prisons of the HVO. The HVO civil authorities were duty bound for maintenance of law and order. (The Defence is not going into the argument whether the civil authority could have performed their duties under the circumstances).<sup>502</sup>

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<sup>501</sup> T. 40419:17-40420:6, 20 May 2009, Witness Slobodan Praljak:

*-Q. And my last question: In 1993, when you were the commander of 18-the Main Staff of the HVO, did you ever go to Capljina and Stolac 19-municipalities and their territories as the commander of the Main Staff 20-of the HVO?*

*21-A. In 1993?*

*22-Q. Yes, in 1993.*

*23-A. Only on one occasion, at one point in time, which was on the 15th 24-of August, 1993, or, rather, between the 14th and the 15th, when an 25-attack of the BH Army was underway against the territory of Buna and when 40420/1-they had recorded some successes at the beginning, at the time when the 2-convoys could not pass through to Mostar because this was going on. In 3-that round of fighting, I went there as a commander. I participated in 4-restoring and returning the territory that we had lost. And I remember 5this very well, because the 15th of August is our ladies' day, which is 6-the ladies very much revered by the Catholics in Herzegovina*

<sup>502</sup> T. 11782:23-11783:18, 14 December 2006, Witness Sejfo Kajmovic:

*Q. Do you know that despite this decision of the Pope, Catholic believers in Capljina walled in the church, surrounded it with barbed wire and defended it with arms? Do you know anything about that?*

*A. Yes. I think the door was really walled in. I don't know anything about the rest.*

*Q. I'm telling you this because we need to understand the people who lived there, those people who believe in that church, you know that Catholics are good believers, go to church regularly, as far as you know, is that true?*

*A. Yes, I know most of the people are good church-goers.*

*Q. You also know that the decisions of the Holy See are final and not subject to appeal. When Rome speaks, that is final?*

*A. Yes. I know it's something like that although it's not really scripture.*

- vi. Praljak's behavior does not support a finding that Praljak possessed the required culpable *mens rea* for the charged crimes in light of the fact that in early summer 1992 he organized relocation of population (mostly Muslims but the Croats as well) from Stolac and Dubrava plateau to Čapljina to protect them from the JNA/VRS forces advancing towards west bank of Neretva River.
369. The Prosecution claims that the HVO persecuted Muslims in 1992 and 1993.<sup>503</sup> There is clear evidence that there perhaps might be some tension between the two ethnic groups in some limited locations in late 1992, but absolutely nothing shows that the HVO was implementing a consistent, planned persecution campaign in 1992 and nothing shows that that was a case in Čapljina municipality. Thus, the Defence will not discuss the events in 1992 as this is irrelevant to the charges. There is also Annex to the Indictment related to this paragraph that includes name of a person that was allegedly a victim of the alleged persecution but this name was never mentioned in trial.
370. In Paragraph 185 of the Indictment, the Prosecution claims that "the *Herceg-Bosna/HVO authorities* expelled and forcibly transferred or deported thousands of Bosnian Muslim civilians from Capljina Municipality". The HVO military is not mentioned. Thus, it seems that there is no clear allegation that Praljak might be liable under Art. 7.1 or 7.3 of the Statute.
371. All that Praljak did in Čapljina in 1992 was to defend and help the people of Čapljina, not to persecute them. The evidence is clear on this point. During 1992 and through a good part of 1993, men of Muslim ethnicity participated in the joint efforts to defend BiH from JNA aggression. Croats and Muslims, organized by the HZHB/HVO, and assisted by the HV in bordering area with RH, fought the JNA in 1992 and in early 1993. Those efforts were successful since the JNA failed to occupy western Herzegovina as it had planned to do. All militarily-capable men who wanted to defend BiH took up arms and joined the defence operations. At the beginning, more Croats participated, and then after there were more and more Muslims.

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*Q. And despite that, do you know that the Franciscans are still in Capljina to date and they won't be thrown out?*

*A. I don't know who is in Capljina. I know there are Franciscans there. I suppose they are in Capljina as well.*

*Q. This little debate had a purpose and the purpose was to show whether it was really possible to exert effective control over the population of Herzegovina who won't even listen to the Pope.*

<sup>503</sup> Indictment, para. 173.

372. During the earlier part of 1992 the Presidency of the BiH did not organize a single defence force on this territory, except the independent battalion that was called "Mostar." The HZ-HB recognized that fact and accordingly all conscripts could choose the unit in which they wanted to be included. The Sarajevo-based Government organized some smaller units and brigades, but they were all located in Central Bosnia around Bihac but nothing in area of Herzegovina.<sup>504</sup> This demonstrates that Izetbegovic and his Sarajevo-based government recognized and accepted the HVO as a defence force that would defend Herzegovina from JNA/VRS aggression.<sup>505</sup> Before the summer of 1992 the JNA/Serb forces occupied the Dubrovnik area in RH, and military action was necessary in the sector of Mostar, Bijelo Polje, the Dubrava Plateau, as well as the municipality of Stolac, in order to allow HV army to block any attempt of the JNA to progress further in this area of RH and BiH.<sup>506</sup> Thus a certain temporary presence of the HV on BiH soil has nothing to do with the TO/ABiH–HVO fight in 1993.<sup>507</sup>
373. There is ample evidence that many persons voluntarily joined the defence of BiH coming from various countries but dominantly from RH. Praljak was only one of them. He was born in the BiH, and his family is still living there.<sup>508</sup> The situation in BiH was nothing more than chaos.<sup>509</sup> The government was not functioning, the only organized defence was one organized by the HZ-HB/HVO.<sup>510</sup>
374. As a volunteer, Praljak was restlessly trying to find proper solutions. His main concern was human life. He did not come to the BiH to fight unless it would be necessary for the defence of his homeland. His first actions related to Grabovine JNA barracks near Čapljina are indicative.<sup>511</sup>

<sup>504</sup> Exh. 3D 00450.

<sup>505</sup> T. 49355:24-49356:7, 11 February 2010, Witness Milivoj Petković.

<sup>506</sup> T. 40359:2-3, 19 May 2009, Witness Slobodan Praljak.

<sup>507</sup> Exh. IC01175; 3D03050 (25th of May, 1992, signed by Momcilo Perisic); 3D02855; 3D03064.

<sup>508</sup> T. 39959:8-39959:12, 12 May 2009, Witness Slobodan Praljak.

<sup>509</sup> T. 40359:19-40360:1, 19 May 2009, Witness Slobodan Praljak.

<sup>510</sup> T.40360:18-20, 19 May 2009, Witness Slobodan Praljak.

<sup>511</sup> T. 40365:21-40366:11, 19 May 2009, Witness Slobodan Praljak.; T. 40366:17-20, 19 May 2009, Witness Slobodan Praljak. ; T. 40383:18-40384:24, 19 May 2009, Witness Slobodan Praljak. ; 3D03131; T. 40384:25-40388:5, 19 May 2009, Witness Slobodan Praljak.; 5D00477; [REDACTED]; [REDACTED]; 3D03759 (Witness Dragan Ćurčić statement, p. 1-18 English).

**b. There is no Nexus between Praljak and charged acts**

375. Regarding the charges described in paragraphs 178–182 of the Indictment, the Praljak Defence submits that Slobodan Praljak was never informed about the crimes that were committed there, and certainly not informed that crimes were committed by his subordinates. He learned from other persons that some crimes were actually committed there only years after the conflict.
376. The Prosecution asserts that the Muslim population was expelled from the area in order to provide lodging and resources generally to the displaced Croats who also came into the area. The Defence opposes that thesis and asserts that displaced Croats had the same problems with lodgings and humanitarian assistance as the Muslims had. Thus, the problems arose because there were not sufficient resources available to provide the needed assistance to entire population in the area; regardless of their ethnicity. For example, the 17 September 1993 letter drafted by Stjepan Kosmo (Kakanj municipality commission) provides an insight to the situation.<sup>512</sup> It should be noticed that this letter is addressed to Mate Boban Darinko Tadic and Pero Markovic (the HZ-HB/HVO government – civil affairs) but not to Praljak. Nobody from the civil sector forwarded the letter to Praljak. There was no reason to inform Praljak about problems with displaced persons.
377. The situation in Čapljina municipality could not be seen in isolation from the context of the situation on ground. The ABiH military offensive towards south in July and August increased in force resulting, *inter alia*, in a dramatic increase of displaced persons moving generally from north to south. Resources were insufficient. Those people were frustrated, angry and desperate and at the same time the municipal authorities were powerless. The municipal authorities could not secure law and public order. They could not provide food and shelter to everybody in need. The result: crimes, revenge, robberies, and chaos.
378. Praljak was not in the area. He could not have seen with his own eyes what was going on and nobody ever informed him about the situation. And why should he be informed? This was not within the capacity or responsibility of the HVO military. The HVO military, focused on repelling ongoing aggression, had no duty or capacity to serve as a welfare agency and provide assistance to displaced persons or to serve as civilian police

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<sup>512</sup> Exh. P05151.

and maintain law and public order outside of the limited zone of frontline combat. In sum, there is no evidence that Praljak might have known about deportations of the Muslim population.

379. Regardless of the lack of any connection of Praljak with the events in the Čapljina-Stolac area, the Defence points to the fact that the claims about numbers of the expelled persons are exaggerated. The Defence does not assert deportations did not occur, but merely points to the fact that this demonstrates that the Indictment is not founded on the hard facts needed for successful criminal prosecution, but rather on the common perceptions of events. According to the Indictment and available statistics there were approximately 18.000 thousand ethnically Muslim persons residing in Čapljina and Stolac municipalities before the commencement of the war in BiH.<sup>513</sup> At the same time, the Prosecution claims that 18.000 Muslims were expelled from the area.<sup>514</sup> This is impossible. There is no doubt that a huge number of the people in this area, both Muslims and Croats, left without being deported in the very early days of the war. In addition, there must have been a certain number of Muslim conscripts who joined the TO/ABiH and left the area. Accordingly it is impossible that 18.000 were expelled. [REDACTED].<sup>515</sup> [REDACTED].
380. [REDACTED].<sup>516</sup> There were reports about killed and massacred HVO soldiers.<sup>517</sup> That meant that Čapljina Stolac area could soon have become a combat zone.
381. The HVO brigade "Knez Domagoj" under command of Nedjeljko Obradović was stationed on the Čapljina – Stolac territory. There are several orders of that commander admitted into evidence. The Defence submits that actions of that brigade were taken with only purpose to protect the population and the territory as well. There is nothing that would support the claim that the orders were motivated with or a resulting from alleged plan to expel the Muslim population from the territory. Most importantly, none of the Obradović's orders or reports that would provide even a hint about deportation of the Muslims was addressed to the GSHVO – or Praljak personally. The Obradović's

<sup>513</sup> Indictment, paras. 154 and 172. Exh. P08559.

<sup>514</sup> [REDACTED]; P04264 p. 0155-365516.

<sup>515</sup> [REDACTED].

<sup>516</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>517</sup> [REDACTED]; Exh. P04971; [REDACTED] (27 September 1993 – INTREP p. 308); P4971; P04689; T.10238:10-10239:6, 15 November 2006, Witness CB; T. 45831:1-45833:7, 12 October 2009 Witness Dragan Čurčić; P08648; T. 10833:19-10837:15, 28 November 2006, Witness CG; Exh. 2D00276.

documents that Praljak received were dealing with military actions (of defence nature) and there is nothing about actions that could provide knowledge about civilian affairs or deportations.<sup>518</sup>

382. In addition to the HVO municipal government's inability to maintain the law and public order in the said chaotic situation, there were also the problems in relationship between Military Police, Civil police, the HVO military and municipal authorities.<sup>519</sup> For example, the Obradović's order P03940, under item 5, says that, should people resist, they should be shot at. It must be noticed that at the beginning the document mentioned "*pursuant to the oral command of the command of the 1st Brigade Knez Domagoj, dated 3rd of August 1993.*" Thus, that clearly points to a conclusion that the commander of that brigade did not wanted to leave any written trail of that order. How could the commander of the GSHVO, Praljak, know about such orders if those are not transmitted to him? There are other examples of the documents that perhaps should have been sent to the GSHVO but were not. For example P05917 was not addressed the commander of the brigade or commander of the Operative Zone or to the GSHVO. Thus, military chain of command was kept in dark. Similarly, P03905 was not sent to Operative Zone or GSHVO – it is addressed only to the commander of the 1st brigade, commander of MP and to the head of SIS. Again, the higher military instances, the OZ and GSHVO are kept in the dark. There are other examples in evidence.<sup>520</sup> The Defence would not speculate whether that manipulation with documents distribution was intentional or this was merely on oversight. Nevertheless, it seems that there are too many oversights to consider them as simple errors.
383. In addition to gaps in communication lines between different levels of command, there were also interferences in the military line of command. For example, the 20 September 1993 Bruno Stojić (Head of the Defence Department) order requested that all human resources (including military) must be engaged in hunting infiltrated terrorist groups.<sup>521</sup> However, Praljak is not making problems with this unauthorized interference. Realizing

<sup>518</sup> T. 40398:3-40401:6, 20 May 2009, Witness Slobodan Praljak; Exh. P04071; [REDACTED] and related portion of T. 44224:7-44225:18, 1 September 2009, Witness Slobodan Praljak.

<sup>519</sup> Exh. P03960 (the document is not addressed to Praljak or GSHVO); P04266 (not addressed to OZ or GSHVO).

<sup>520</sup> Exh. P03970.

<sup>521</sup> Exh. P05232.

the problem he complied with the order.<sup>522</sup> This was happening in time when Mostar was strongly attacked by the ABiH and shortly before the ABiH is performing terrorist type actions in Dubrave plateau.

384. Regardless of the fact that some Muslim persons were deported and/or expelled from the area in the said time, it is very probable that a much larger evil was prevented by this act. The Defence does not assert that the people should have been removed by force from the territory, but if that was the only solution to save lives and minimize human suffering then those acts could be partially justified. Again, this is one of the tragic dilemmas that commanders are faced with in the wars: to choose between two evils. There is no good or bad decision—there is only a decision that appears to be less bad solution in that very moment under the circumstances that is difficult to understand many years after.

**c. Conclusion**

385. There is no evidence that would provide a safe conclusion that Praljak as the GSHVO commander could have known anything about forceful deportations of Muslims from the Čapljina – Stolac area. There is also no evidence that the GSHVO or OZ command that was directly subordinated to GSHVO commander, ever issued any command that would allow deportation of civilians. Deportation of Muslim population was not performed by the HVO military under command of Praljak. There are indications that the 1st HVO brigade (that operated locally as a municipal brigade) overstepped its standard military authorities but it must be recognized that a military able man may in certain circumstances have been considered or mistaken as a belligerent combatant when groups of enemy forces were performing terrorist-style operations on the field. However, the higher commands, i.e. the OZ command and the GSHVO, were never informed about such actions. Lastly, no proof about Praljak's mens rea has been submitted. Neither could a negative inference on mens rea be drawn from the admitted evidence, particularly when Praljak's activities in the very same area in early 1992 are juxtaposed with events in later part of 1993.

**XII. STOLAC – DUBRAVE PLATEAU (Paras. 154 – 171 of the Indictment)**

386. As stated, Praljak was commander of the GSHVO from 24 July until 9 September 1993. Thus, only the specific events described in paras. 165, 166 and 169 of the Indictment

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<sup>522</sup> Exh. P05236.

- took place during time of Praljak's command. The claim in para. 164 is not defined by time ("late July") thus it does not provide sufficient notice in regards of time when allegedly the crime was committed. Similarly events described in paras. 167 and 168 also do not provide time frame and there is nothing in para. 170 that would give sufficient explanation about specific charges contained there.
387. Charges within "Stolac" chapter of the Indictment correspond to very similar charges provided under "Čapljina" section of the Indictment. Time-frame and charges are practically the same. In addition, those are neighboring municipalities located south from Mostar, one on the east side of Neretva, another one on the west side of Neretva River. Accordingly, the Defence incorporates here by reference the argument provided under the section "Čapljina" of this brief.
388. The Prosecution's charges are based on an erroneous presumption provided under para. 155 of the Indictment. The Prosecution here claims that "*When Bosnian Serb forces and much of the Serb population left Stolac town in mid-1992, the Herceg-Bosna/HVO authorities took control of the town*". Two facts are entirely wrong here. First; it is implied that the Serbs left the town by their own wish—as though they put their hands in their pockets on a bright sunny day and decided to walk away. Second, it is implied that the HZ-HB/HVO took control of the town from Muslims because they so decided unilaterally.
389. The Defence submits that the occupying JNA did not simply leave town but were forced out by military force through a HVO organized action which was performed jointly by ethnic Croats and Muslims.<sup>523</sup>
390. [REDACTED].<sup>524</sup> [REDACTED].<sup>525</sup>
391. When in early 1992 the JNA advanced towards the town of Stolac and Dubrave Plateau, practically all of the Muslims and Croats as well were evacuated to the west bank of Neretva River; to the territory of Čapljina municipality. This was done by and admirable efforts of the HVO, many volunteers, the citizens of Čapljina municipality and Praljak personally took part in this action to save lives.<sup>526</sup> Many of those people has

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<sup>523</sup> Exh. 3D03064.

<sup>524</sup> [REDACTED].

<sup>525</sup> [REDACTED].

<sup>526</sup> T. 40401:7-40420:17, 20 May 2009, Witness Slobodan Praljak; T. 10808:24-10823:4, 28 November 2006; 3D00595; 3D03624 (R92bis statement of Žarko Pavlović).



- returned to Stolac and Dubrave Plateau when in June 1992 the HVO liberated this area and pushed JNA back to east.<sup>527</sup>
392. [REDACTED].<sup>528</sup> The defence line towards the JNA was maintained by the HVO and later some sectors by the TO/ABiH. The Serbs did not abandon their plan to occupy the territory up to the eastern bank of Neretva River.
393. Contrary to the Prosecution claims, there was no a trace of persecution in 1992 and first part of 1993. There were certain tensions that were gradually growing but not out of proportions and not as a consequence of the HZ-HB/HVO plan because there was no such plan. However, the tensions were mostly triggered by Muslim SDA politicians who planned to organize a military force without the Croats to be able to impose its own ideas about internal structure of the BiH. Clandestine activities organized by TO/ABiH started within the HVO.<sup>529</sup> At the same time the HVO was still trying to convince the Muslims to take their part of the burden in fighting the JNA/VRS.<sup>530</sup>
394. Praljak's behavior and actions in 1992 does not support a finding of a the requisite guilty *mens rea* for the charged crimes in light of the fact that in early summer 1992 he organized a relocation of population (mostly Muslims but the Croats as well) from Stolac and Dubrava plateau to Čapljina to protect them from the JNA/VRS forces advancing towards west bank of Neretva River. Why would Praljak invest all the efforts for the defence of the BiH and particularly in assisting the Muslims to cross the Neretva River from east to west in order to escape the JNA tyranny in 1992 and then do quite the opposite in 1993? Regardless of the change of circumstances, this would be highly illogical and impossible to explain or understand.
395. There is not one piece of evidence tendered that would allow conclusion that the Accused ordered or tacitly permitted deportation or expulsion of the Muslim civilians out of Stolac – Čapljina area. Despite the fact that all war archives were available to the Prosecution, such a document was not found. Despite the witnesses who could want revenge, there was no witness who would confirm that Praljak has anything to do with

<sup>527</sup> [REDACTED]; Exh. 1D02563; 3D03624 (R92bis statement of Žarko Pavlović); 4D00908 (P00492); 4D00932.

<sup>528</sup> [REDACTED].

<sup>529</sup> Exh. 4D01461. Please note that the name of the person, Muharem Dizdar is also found on the second page of exh. P00998 where he is listed as a detainee. This demonstrates that he is not civilian. He was formally a HVO soldier, but worked against it.

<sup>530</sup> Exh. 3D03228.

those expulsions. The Prosecution was not able to present such evidence simply because such evidence does not exist; Praljak did not commit, abet, or aid such crimes.

396. Regarding the events described under paragraphs 165, 166, and 169, the Defence submits that Praljak has never received any report or information about those specific events from his subordinates or from anybody else. Everything he learned regarding those events he learned many years after the conflict, and not in detail. As submitted under section "Čapljina" above, there is no evidence that would support the safe conclusion that Praljak as the GSHVO commander could have known anything about forceful deportations of Muslims from the Čapljina–Stolac area. There is also no evidence that the GSHVO or OZ command that was directly subordinated to the GSHVO commander ever issued any command that would allow deportation of civilians. Deportation of Muslim population was not performed by the HVO military under Praljak's command. There are indications that the 1st HVO brigade (that operated locally as a municipal brigade) overstepped its standard military authorities but it must be recognized that a military able man may in certain circumstances have been considered or mistaken as a belligerent combatant when groups of enemy forces were performing terrorist-style operations on the field. However, the higher commands, i.e. the OZ command and the GSHVO, were never informed about such actions. Lastly, no proof about Praljak's mens rea has been submitted. Neither could a negative inference on mens rea be drawn from the admitted evidence, particularly when Praljak's activities in the very same area in early 1992 are juxtaposed with events in later part of 1993.

### **XIII. VAREŠ (Paras. 204 – 217 of the Indictment)**

#### **a. Vareš – generally**

397. In Vareš Municipality, the Croats (organized in the HZ-HB/HR-HB/HVO) and the Muslims (organized in TO/ABiH) were jointly defending the municipality against the JNA/VRS aggression until sometime in early summer 1993 when the ABiH started to implement a hostile policy and actions against the HVO. This coincided with the ABiH general offensive plan against the HVO over a broader area but partially also with the VRS increasing pressure to neighboring municipality of Kakanj, Žepče, Tuzla and some others north-east from Vareš.<sup>531</sup> The general situation in Vareš was chaotic<sup>532</sup> mainly because of: (a) the arrival of a huge number of angry and frustrated expelled people

<sup>531</sup> Exh. IC00718.

<sup>532</sup> [REDACTED]; Exh. 4D00825.

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mainly from Kakanj, Žepče,<sup>533</sup> but from other locations as well, (b) lack of cooperation between civil and military leaders of the HVO, (c) the inability of the authorities to efficiently maintain law and order,<sup>534</sup> (d) extremely limited supply of needed goods for survival of both civilians and soldiers, and (e) the military threat from VRS. Militarily this was a critical time for the HVO.

398. As a commanding officer of the HVO, the Accused Praljak made some organizational measures aiming to "... maintain command and control of combat operations of directly subordinate commands and units".<sup>535</sup> In accordance with his order of 29 September 1993 (3D01161), on 21 October 1993 the Accused ordered that his deputy, Milivoj Petković would be "a commander of the team" from 22 till 29 October 1993.<sup>536</sup> [REDACTED]<sup>537</sup> thus, the Accused Praljak was confident that Petković, being a competent and experienced officer, would be able to oversee and control the situation in Vareš and Central BiH generally.

399. The Prosecution failed to prove the charges provided in paras. 207 – 217 of the Indictment. Regardless of several incidents and crimes that the Prosecution claims were committed by the HVO, there is no basis reliable for the conclusion that in fact those acts were committed by HVO soldiers, nor any evidence that GSHVO was informed about any particular crime that would require the reaction of the higher command outside of Vareš area. In regards to events in Stupni do, Praljak properly reacted as soon as he was informed that possibly some crimes were committed there on 23 October morning; and in that case an investigation was launched.

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<sup>533</sup> See Indictment, para. 206.

<sup>534</sup> Exh. 3D00803; 3D00804.

<sup>535</sup> Exh. 3D01161; P05476; P05468 - Order of Slobodan Praljak of 29 September 1993: "... to organize duty operational shifts in all HRHB OS staffs from GSHVO to the brigade staff, staff commanders shall regulate the general and specific duties of duty operations officers, in order to maintain command and control combat operations of directly subordinate commands and units. Deputy of Commander of GSHVO shall be responsible for the implementation of Order ..."

<sup>536</sup> Exh. 3D02756, 21 October 1993 - Order by Slobodan Praljak that duty operative team (3D01161; P05476; P05468) from 22 October till 29 October 1993 will consist of the Commander of the team Milivoj Petković, Deputy commander of the team Žarko Keža, and list of officers of the duty team. Special affairs shall be regulated by the commander of the duty team. See also T. 41135:7-21, 3 June 2009, Witness Slobodan Praljak.

<sup>537</sup> [REDACTED].

**b. Stupni Do 23 October 1993 (par. 209)<sup>538</sup>**

400. It seems that the Prosecution in fact implies that the Accused Praljak directly ordered commitment of crimes to his subordinates in Vareš by ordering them to "show no mercy to anyone". The Defence submits that: (a) the Accused is not responsible for whatever happened in Vareš on or about 23 October 1993 or in the following days until the HVO on the 2/3 November pushed out of the area, and (b) the Accused took appropriate measures to investigate and to punish perpetrators of the crimes committed in Stupni Do or elsewhere, as explained below.
401. Slobodan Praljak was about 200 kilometers away from Vareš in October/November 1993.<sup>539</sup> His Deputy, Milivoj Petković, was in Kiseljak from about 17 October 1993.<sup>540</sup> The Accused was confident that his deputy, an experienced officer, would be able to act adequately to whatever might happen in Vareš. In addition, based on the previously issued orders, Milivoj Petković was supposed to act as *de jure de facto* top commander in the area.<sup>541</sup>
402. On 23 October 1993 in the morning on 06:40 hours Ivica Rajić (commander of Operative Group 2 – OG2) reports to the HVO brigade Bobovac commander, Krešo Božić, that he approves Božić's proposal to execute a military operation on the Bogoš Hill and village of Stupni do.<sup>542</sup> According to the document,<sup>543</sup> reinforcement from Kiseljak is to be included in the zone of responsibility of the unit which covers Bogoš and Stupni Do locations. Rajić ordered that fortified military targets should be neutralized by mortars and also ordered neutralization of everything which is on Bogoš hill and in Stupni do, and which can jeopardize units and people in the area of Vareš - Majdan. Rajić also warned that the units of MOS, to which UNPROFOR gave some weapons, are positioned in the area. This document is *not* addressed to nor copied to the GSHVO or Praljak personally. It is merely a communication at the OG2 HVO level.

<sup>538</sup> In the following text only the crucial documents are directly cited as exhibits in the body of the text or in the footnotes. However, there is a section in the Annex titled "Vareš – Stupni do" where many other relevant exhibits are listed for the convenience of the Trial Chamber.

<sup>539</sup> By E-73 the distance from Mostar to Vareš is 173 km. However, since the shortest route was not available one needed to travel at least 200 km .

<sup>540</sup> T. 49606:24-49608:23, 17 February 2010, Witness Milivoj Petković.

<sup>541</sup> Exh. 3D01161 (P5476; P5468) and 3D02756; see *supra*.

<sup>542</sup> Exh. 3D00823, p. 3D23-0072.

<sup>543</sup> *Ibid.*

403. On the same day, at 11:45 hours, Emil Harah, commander of the Bobovac Brigade (subordinated to Rajić in this action) upon specific request by Rajić sent a Report<sup>544</sup> on the situation in the area of responsibility to the Accused Praljak.<sup>545</sup> According to this Report; the ABiH 3<sup>rd</sup> Corps carried out a strong artillery and infantry attacks on the defence lines of Bobovac Brigade from the direction of Zenica, Kakanj and Breze towards Vareš. As of morning hours, they are intensively shelling the town and they intend to take control over the HVO and required support of 2<sup>nd</sup> Corps forces. The Report concludes that for the time being, forces of the HVO successfully resisted attack and adds that Muslim village nearby the town is mopped up. This is the substance of the first information that Praljak received on events in Vareš in the early afternoon of 23 October. There is nothing awkward or sinister in this report—it appears as a usual report of the military units from the field.
404. Later during the very same day (23 October 1993) Milivoj Petković issued an order<sup>546</sup> to the HVO Vareš that; "... in order to put situation under control Pejčinović, Dužnović and Gavran has to be removed from their positions". Furthermore, an investigation in regards to the question of "... who is responsible for the situation in Muslim and Croat villages, in which, according to not complete information ethnic cleansing was carried out" was requested by the same order. Thus, on 23 October 1993, several hours earlier than receiving anything from the Accused Praljak, Milivoj Petković ordered removal of three persons and requested investigation on situation in Muslim and Croat villages. It appears that this order was justified by the critical situation in Vareš and surroundings.
405. During the day (23 October), Ivica Rajić, sent Information about combat activities in Vareš that was addressed to Dario Kordić, Milivoj Petković, Tihomir Blaškić and Mario Bradara.<sup>547</sup> Again, the Information was neither addressed nor copied to GSHVO—thus, Praljak may not know about it. The information dealt with actions that took place earlier in the morning. Rajić wrote:

*"... I made assessment and in the morning hours I carried out attack on Stupni do and Bogos. The Bogos feature was taken by our forces, and about twenty armed members of MOS and some civilians remained in the village of Stupni do, which was completely surrounded. A large number of members of MOS and some*

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<sup>544</sup> Exh. P06020.

<sup>545</sup> Exh 3D00809, authored by Emil Harah provides good insight of the events in Vareš and it is useful for not only a general context of the events but also for some very critical details.

<sup>546</sup> Exh. P06022.

<sup>547</sup> Exh. 3D00823, p. 3D23-0071.

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*civilians were killed, while our losses were two killed and seven wounded, all of them in stable condition.*

*The town of Vareš has been mopped up and Muslim of military age placed under surveillance.*

*Because they attempt to obstruct the planned activities, I have placed into isolation Messrs. Anto Pejcinović, Zvonko Dužnović and Ivica Gavran. The brigade commander is seriously depressed and unable to perform his duties. I enclose the letter I received two days ago from Commander Emil Harah."*

406. Slobodan Praljak was *not*, prior of action taken by the HVO (including units Maturice and Apostoli from Kiseljak), informed about assessment of Ivica Rajić, nor was he informed which action the HVO forces are taking. When the Accused *did* receive the Information (3D00823) of Ivica Rajić on 23 October 1993 it was later that day or in the evening. After receiving this information, the Accused Praljak reacted promptly: on the same day at 23:10 hours he sent a message to Petković<sup>548</sup> [REDACTED].<sup>549</sup> [REDACTED].<sup>550</sup> Further, if the entire text written by hand of the Accused Praljak is viewed in its whole, it is obvious that the words "*without mercy to anyone*" are referring to the Vareš Croat community because in the same text Praljak is stressing that a persons "*who are up to time and task*" must be found to perform the important duties within the HVO. Accordingly, the Defence submits that the Prosecution thesis that Praljak's words "*without mercy to anyone*" caused "*arresting of several Vareš HVO officials and more that 250 Bosnian Muslim men*" is only an unsubstantiated attempt to present this internal note (between Praljak and Petković) as a trigger of all the evils that happened in Vareš Municipality. This is simply not the case.
407. Consequently, [REDACTED] and the document 3D00823<sup>551</sup> sent to Mladen Tolo (Head of Police administration of Travnik) did not confirm that OG2 commander Rajić acted in accordance with the Accused Praljak's orders simply because this "Praljak's order" was merely a piece of advice or suggestion offered to the HVO highest ranking officer in the area (Petković)—not to Rajić as claimed, and second; this "Praljak's order" was sent from GSHVO more than 12 hours *after* occurrence of the critical events thus, it could not have caused the critical events.<sup>552</sup>

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<sup>548</sup> Exh.3D00823; P06025.

<sup>549</sup> [REDACTED].

<sup>550</sup> Exh. 3D01161; (P05476; P05468); 3D02756; and P06408.

<sup>551</sup> Attachment 6 - 3D23-0076 (The same document is also included in P06291).

<sup>552</sup> Exh. P06042 dated 23.10.1993 with title "Vareš 23.10.1993", is Information about events in Vareš on 23 October 1993. According to the document, extreme elements of the HVO on 23 October 1993 arrested 300 Muslim civilians and at the same time robbed them. Units that in the early morning on 23 October 1993 arrested

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408. In conclusion, the Accused was not informed about planned actions of the HVO in Vareš, particularly on Bogoš Hill and Stupni Do on 23 October 1993 *prior* to that action. When Praljak did eventually have some skeleton information late in the evening of 23 October, he immediately advised Petković, his deputy who was on the field, what to do. Nevertheless, that advice was unnecessary—what Praljak suggested was already executed in the morning hours (removal of Pejčinović, Dužnović and Gavran).
409. In regards to commander's duty to investigate and punish the perpetrators of the crime, it is obvious that during the following days Praljak must have learned more details about crimes possibly committed in Stupni Do or generally in Vareš area. However, the Accused also knew that an investigation is definitively initiated by the proper authorities<sup>553</sup> and since he has not yet received any information about results of the investigation he inquired about the results. It must be noted that this is the very last document that the Accused Praljak's issued before he is relieved of his duty on 9 November 1993.<sup>554</sup>
410. Even though the Defence does not challenge the fact that some crimes were committed shortly after the HVO (Rajić's units) neutralized the ABiH resistance in the village of Stupni do, on 23 October 1993 in the morning, the defence submits that charges regarding those crimes are seriously exaggerated by some. There is a great deal of unreliable information regarding the number of persons killed in the village during and after the fighting. There are no sufficient data to correctly distinguish collateral unarmed victims from the armed soldiers who died during the fighting in the village. Some information is *prima facie* dubious, e.g. number of the dead bodies taken to autopsy on 31 October 1993; *eight* days after fighting are over. There is also conflicting information regarding *who* were the persons that entered some of the Muslim owned houses in Vareš area or took valuable things from the houses or from the arrested persons.

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Muslims were members of Apostoli and Maturice from Kiseljak under command of Rajić and all that was performed at least 12 hours earlier than Praljak's note addressed to Petković ("*no mercy*") was even created.

<sup>553</sup> The Prosecution recognized that the investigation was initiated – See Indictment, para. 215. In addition, see e.g. Exh. P06131; P06144; P06140; 1D02080.

<sup>554</sup> Exh. 4D00834. Praljak applied for a position in the HV on 20 October 1993, which is before the events in the Prozor/Stupni do area. See 3D00363 and P05973.

**XIV. MLADIĆ DOCUMENTS**<sup>555</sup>

411. The Defence submits that the so-called "Mladić documents" lack probative value. They are unreliable evidence. The Trial Chamber admitted those documents into evidence, but it should not attach any probative value to them in final deliberations.
412. The Defence challenged the authenticity of the documents allegedly written by Ratko Mladić but the Trial Chamber admitted the documents. Despite that decision the Defence still maintains that there are no sufficient indicia of authenticity, let alone a proof that the documents are in fact authentic. In a domestic court of a country with a well-run judiciary, the defence should have received an original handwriting of Mladic, an expert should have authenticated the handwriting, and the expert should have been subject to cross-examination.
413. Nor are the unverified partial notes of a treacherous and allegedly criminal enemy to the people of BiH reliable.
414. The Praljak Defence respectfully submits that, despite the it is improper for counsel to, as it were, attest in Slobodan Praljak's stead, and say what he would have sworn to had he been permitted to testify in his own defence on these documents.
415. The Praljak Defence submits the Trial Chamber faces a number of problems when considering these incomplete hearsay scribbblings, authenticated only by an out-of-court non-expert witness who thinks the handwriting looks familiar and remembers that Mladic did take notes.
416. The Trial Chamber does not know if Slobodan Praljak was present at the meeting. Nothing verifies this suggestion.
417. The Trial Chamber does not know, if present, what capacity Praljak was present. If he was present as the Assistant Minister of Defence of the Republic of Croatia, as indicated, there is no indication whatsoever that he had a connection to the HZHB or HVO.
418. The Trial Chamber does not know if the author of the notes was indeed Mladic.
419. The Trial Chamber does not know if the author of the notes took the notes at the meeting or afterwards from memory or from a tape.

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<sup>555</sup> Exh. P11376; P11377; and P11380.



420. The Trial Chamber does not know the intonation, complete sentences, or nuances of speech involved.
421. The Trial Chamber can however look at the admitted evidence, to discover the circumstances that brought about the alleged meetings.
422. With respect to P11376, by the time this meeting takes place in Pécs on 5 October 1992, the conflict in BiH has been ongoing for several months.
423. The issues and events raised during the meeting were both notorious and imminently pressing: (a) the exchange of prisoners,<sup>556</sup> (b) the shelling of Slavonski Brod (in Croatia) by the VRS, and (c) the need to resolve the conflict around Jajce due in part to its hydro-electric plant – a prize which the VRS / RS authorities coveted.
424. The Posavina is common reference for the area around the renowned Sava River. Bosanski Brod in BiH and Slavonski Brod in the Republic of Croatia are adjacent to each other, separated by the Sava River. Prior to the break up of Yugoslavia, the towns of Bosanski and Slavonski Brod, the population of which since time immemorial have been predominantly Croats, was divided by an administrative border, separating the Yugoslavian republics of SRBiH and Republic of Croatia. The two towns were separated by the Sava River and linked by a bridge. These two towns physically constituted a single living space. Once Bosanski Brod came under attack by the VRS lead by Mladic, the conflict spilled over across the Sava River and onto Slavonski Brod, i.e., the Republic of Croatia.
425. The reasons of the meeting and the initiative for the meeting came from the EC and international organizations.<sup>557</sup>
426. There is evidence showing that Mladic's forces were shelling the Croats of Slavonski Brod<sup>558</sup>, as can be seen by Mladic's Order of 6 October 1992, where in he orders "The cease fire is to be realized as parts of the front near Bosanski Brod ... The cease fire also means no fire at Slavonski Brod, the left bank of the Sava river..." As a result of

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<sup>556</sup> P00854; P00665; P00677.

<sup>557</sup> 1D01540; 1D02435.

<sup>558</sup> T. 39459-39460, 4 May 2009, Opening Statement Slobodan Praljak; T. 40095-40097, 13 May 2009, Witness Slobodan Praljak; T. 41340-41341, 8 June 2009, Witness Slobodan Praljak.

the shelling by Mladic's forces, a flooding of Croat refugees coming to the Republic of Croatia from Bosanski Brod.<sup>559</sup>

427. There is no evidence to support conclusions that the State authorities of RBiH, headed by Alija Izetbegovic as the President of the Presidency made any meaningful efforts to suppress or contain the VRS from attacking the Croats in either Bosanski Brod or Slavonski Brod.<sup>560</sup> Moreover, there is no evidence that Alija Izetbegovic or any of his collaborators, made any efforts on behalf of BiH, to negotiate with the VRS concerning these attacks.<sup>561</sup>
428. With respect to P11380, it would appear that this document refers to the discussions of 5 October 1992, which led to Mladic's Order of 6 October 1992, wherein it reflects what had been agreed upon: As noted above, Bosanski Brod fell to Mladic's forces the very next day after he had concluded the Pecs agreement.
429. The evidence before the Trial Chamber shows that Jajce was defended by units of both the HVO and the TO (Muslim forces). The evidence also shows that when Jajce came under attack by Mladic's forces subsequent to the agreements reached on 5 October 1992: a) the HVO sent reinforcements to repel the attack, and b) Muslim forces from Travnik and Central Bosnia prevented the reinforcements from defending Jajce.<sup>562</sup>

<sup>559</sup> T. 27890:25-27893:14, 13 May 2008, Witness Damir Zoric; T. 39459:19-39460:11, 4 May 2009, Opening Statement Slobodan Praljak; 1D02585, The number of refugees from Bosnia and Hercegovina according to the information provided by the regional offices of Republic of Croatia, signed by A. Rebic, 11 September 1992; 3D00859, Resolution 713, map 1. Operational development of SFRY 1992, map 2. Deployment of forces in BiH, 25 September 1991; 1D02479.

<sup>560</sup> T. 4014-4019, 27 June 2006, Witness Kljucic Stjepan; [REDACTED]; 3D00281.

<sup>561</sup> 1D02238 (Interview of Izetbegovic to Mostarsko jutro, referring to Brod).

<sup>562</sup> Exh. 2D01028, Telegram of support for Municipality Staff of HVO Jajce for their bravery in fight with Serbs issued by Bruno Stojic on 27 October 1992; Exh. 2D01335, Approval for safe passage to Jajce signed by Bruno Stojic and Slobodan Praljak 28 October 1992; Exh. 3D01669, Permission given to soldiers to pass freely to the Jajce position, issued by Slobodan Praljak, 28 October 1992; Exh. 3D00484, Report on attempt to provide aid to Jajce, Ante Prkacin, 28 October 1992; Exh. P00670, Memo by Praljak Slobodan and Stojic Bruno to Blaskic Tihomir and Stjepan Blazevic regarding: Muslim units would not let HVO unit pass to Jajce, 29 October 1992; Exh. 3D03527, Report on the organisation and conduct of evacuation of the wounded from Jajce, issued by Ivan Bagaric, 31 October 1992.

T. 1541-1542, 8 May 2006, Witness Edward Vulliamy.

430. Despite the “agreement” and Mladic’s order, one day after this meeting on 27 October 1992, Jajce was attacked by Mladic’s forces, resulting in an unprecedented exodus of Croats and Muslims, as Jajce falls into Mladic’s hands on 29 October 1992<sup>563</sup>.

431. If agreement was reached then there was no need for the VRS to continue its attack on Jajce in order to secure the uninterrupted flow of electricity; once the plant is repaired by the Croats and the water supply is made available by the Serbs, electricity will begin flowing. Mladic’s Order of 6 October 1992 stated:

*2. Create conditions for enabling repairs of the “Jajce 2” power plant: consequently, stop the activities of all weapons during the repairs, to last no less than four hours. The Croatian side should turn on the electricity for Republika Srpska.*

*3. After the completion of the repairs and after the electricity has been turned on, we should release the water needed for the operation or the other power plants, no later than three hours after the electricity has been turned on.*

432. The real value for Mladic and the VRS was total control of Jajce.<sup>564</sup>

433. The Prosecution is focusing on a line from Mladic’s alleged diary where General Praljak is alleged to have said words to this effect: “The goal is Banovina 1939; if not, we will continue the war.” In doing so, the Prosecution attempts to advance its theory as reflected in the Indictment that there was a JCE, the purpose of which was, inter alia, to reconstitute the geographical borders of the Republic of Croatia to accord with the borders of the Banovina Hrvatska. The raw language itself, when examined in context does not support that the other non-Serb participants of the meeting were there to negotiate, plead or advance the alleged JCE.

434. One doesn’t know who was present at the 26 October 1992 meeting on behalf of VRS, save Mladić who writes notes. There are no records by any other collocutors, so it seems that only Croatian delegation had its monologue. If the meeting had been the indicator of will, there wouldn’t have been so many dead or wounded on the side of HVO. There were not only Croats in Jajce, nor Muslims only, they were both there and fought together.

<sup>563</sup> Exh. 3D03527, Report on the organisation and conduct of evacuation of the wounded from Jajce, issued by Ivan Bagaric, 31 October 1992.

<sup>564</sup> 4D01671; P00658; 2D01028.

435. While reading such incomplete and reduced notes, one can conclude the following: The Croatian side respected the 5 October 1992 agreement because it means the cessation of hostilities and the Serbian side, despite what has been agreed, took Brod and severely pounded Jajce. They did not respect the agreement.<sup>565</sup> The 5 October 1992 agreement apparently had nothing to do with any political options, but merely with solutions of humanitarian issues.

**XV. THE ABiH OFFENSIVE<sup>566</sup>**

**a. Introduction**

436. The Indictment is constructed on a false premise that the HVO was in conflict with "Bosnian Muslims" (as the Prosecution calls citizens of BiH of Muslim ethnicity). This misleading term clearly implies the HVO was fighting civilians. Only in rare instances, the Indictment does mention "the ABiH". Having in mind specific charges, it is of course relevant to establish whether there were belligerent armed forces or the HVO was attacking civilians. The Prosecution failed to allege or prove the civilian nature of those affected by the conflict. This failing does not shift the burden to the Praljak Defence or the Trial Chamber to sort out the mess. It simply means acquittal on most counts.

437. In addition, HVO activities cannot be fully understood without context. For this reason, in the following section, the Praljak Defence discusses the evidence that shows: (a) that the ABiH was a belligerent party to the conflict, and (b) that the ABiH for a good part of 1993 was executing a political and military plan to overpower the HVO and consequently establish Muslim controlled BiH. Thus, it is not a *tu quoque* argument. It is an argument about the activities of the ABiH that caused a *reaction* of the HVO at the same time demonstrating that the HVO was *reacting* to the events not executing the alleged JCE plan. The Praljak Defence submits that if the evidence described *infra* is objectively considered, the Prosecution's allegation of culpability through the specifically alleged JCE must be rejected.

**b. The HVO was attacked by the ABiH.**

438. The Muslim political leaders and the ABiH had a plan to reach the Adriatic coast. That means that a military offensive had to be launched from Central Bosnia towards

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<sup>565</sup> 4D01671; P00677.

<sup>566</sup> Many exhibits are included in this section, either by reference or in the body of the text. In addition, there is also a section titled "The ABiH offensive in 1993" in the Annex.

- south.<sup>567</sup> The ABiH choose this option instead of fighting the real aggressor, the VRS, jointly with the HVO as was done until the summer 1993.
439. Instead of concentrating their efforts to liberate (with or without the HVO), Sarajevo, Banja Luka, Posavina and particularly areas east from Sarajevo, i.e. the parts of BiH which were under the control of VRS, the ABiH decided to attack the weaker side,<sup>568</sup> the HVO, in order to conquer the territory that would in turn enhance their negotiating position in peace talks.
440. The Prosecution did not present evidence on the offensive operations of the HVO that would demonstrate that the HVO had plans to occupy any portion of the BiH territory rather than defend territory where one constituent nation, the Croats, was largely living. When this is juxtaposed with the fact that the ABiH was executing a broad offensive towards the south, meaning the territory with a Croatian majority, it becomes quite obvious that the ABiH had offensive plans in mind.
441. As early as on 20 January 1993 Enver Hadžihasanović, wrote to the command of Bugojno Defence:

“We appreciate your opinions and proposals; however we turn your attention to execution of given tasks in the zone of responsibility. Do not handle with issues outside of your domain. Submit reports in order to reflect the combat situation instead of submitting the political lessons. **It is too early for the conflict in all towns of Herceg-Bosnia, although this option is envisaged.** Do the best you can do as well as to help Vakuf.”<sup>569</sup> (Emphasis added)

**c. Konjic area: Period March – April 1993**

442. The ABiH planned to take control over north-east area of Herzegovina; areas of Konjic, Jablanica, Mostar and north-west areas of Prozor, Vakuf and Bugojno. Control of these territories would enable the ABiH to get a control over all main communication routes further to south.<sup>570</sup>

<sup>567</sup> Exh. 3D02591; 3D02873; 3D2438.

<sup>568</sup> Exh. 3D02873.

<sup>569</sup> Exh. 3D00501.

<sup>570</sup> Exh. 2D00253.

443. The HVO was not aware of the ABiH plan. On 16 January 1993 Petar Zelenika, the HVO commander of SE OZ Herzegovina wrote to Jasmin Jaganjac:<sup>571</sup>

“.... enemy is counting on a Croatian-Muslim conflict and that it has significant number of collaborators in the ABiH. We have evidence that the conflict in area of Gornji Vakuf was planned much earlier.”<sup>572</sup>

444. Combat readiness was raised by order of Arif Pašalić. Most of the ABiH units had already turned their gun barrels around and were looking for targets in the west. This indicates that the ABiH was not aiming at easing the tensions nor that it intended to accept the agreements already agreed upon concerning the command of the armed forces in the area of HZ-HB and BiH.<sup>573</sup>

445. On 28 January 1993 Safer Halilović ordered Arif Pašalić to expose the personnel that allegedly agreed to assist implementation of "a policy of Great Croatia". Some persons belonging to the leadership of Konjic municipality are labeled as suspicious: the names of president of Konjic war presidency, head of Konjic MUP, commander of Police station in Hadžići and commander of the 7<sup>th</sup> Konjic brigade are mentioned.<sup>574</sup>

446. After the agreement between Izetbegović and Boban was signed in New York in March 1993,<sup>575</sup> Muslim leaders in Jablanica, Konjic and Rama elected in the last elections were dismissed by the higher BiH authorities. Dr. Safet Ćibo was appointed as a commissioner on 13 March 1993.<sup>576</sup> The Konjic War Presidency criticized this and sent a letter to the Presidency of the BiH regarding appointment of Ćibo Safet dated 25 March 1993. The Konjic War presidency asserted that there is no legal foundation for issuance of the decision appointing Safet Ćibo to the position of President of War Presidency.<sup>577</sup> Nevertheless, the Muslim members of the Konjic War Presidency, legally and democratically elected representatives, who were willing to fight the JNA/VRS

<sup>571</sup> 1D02432; 3D02666; 3D02233. See also [REDACTED]; T. 2606:11-2606:21, 25 May 2006, Witness Seid Smajkić; [REDACTED]. [REDACTED].

<sup>572</sup> Exh. 3D02081.

<sup>573</sup> Exh. P00708; P00727; 1D01424.

<sup>574</sup> Exh. 2D00249.

<sup>575</sup> Exh. 1D02853.

<sup>576</sup> Exh. P10668. It must be noted that only Konjic and Jablanica are mentioned in this decision – the document submitted by the Prosecution. See, however, also Exh. P10667; the decision of the BiH Presidency dated 14 December 1993 published on 13 December 1993 (Official Gazette 27). This decision refers to the decision included in P10668 that was issued on 21 March 1993. It appears from the reference that has been made that Ćibo was appointed for Konjic, Jablanica and Prozor as the Defence claims.

<sup>577</sup> Exh. 1D02777.

- jointly with the HVO, were seen as an obstacle in realization of already made plans about “liberation” of Konjic, Jablanica and Prozor from Croats and were consequently removed.
447. In accordance with the Decision of the Presidency of the BiH, Sefer Halilović assigned Safet Ćibo to military duty in the 4th Corps.<sup>578</sup> Safet Ćibo is also appointed as war commander<sup>579</sup> and included to SDA Regional Board.<sup>580</sup> Thus, governmental, administrative, political and military functions were given to one person—the person singled out by Sarajevo Muslim government despite the opposition of local leaders who were democratically elected.
448. A meeting of police and military commanders of the ABiH was held on 20 March 1993.<sup>581</sup> It is stated under point 7 of the document that the line of defence against the “aggressor” shall be fortified, full control over the area Jablanica-Kute-Here-Šćipe shall be secured, and forces there shall liaise with the ABiH in neighboring municipalities. The “aggressor” is the HVO. The mentioned locations are on the territories of both the Jablanica and Prozor municipalities.
449. The attack of the ABiH on the HVO in the municipalities of Konjic and Jablanica commenced on 23 March 1993. The main forces were directed to attack the villages in area bordering the municipalities of Fojnica and Prozor/Rama. The aim was to split the area of Neretvica River from Central Bosnia region. Exhibit IC00188 is a map showing this plan. Accordingly, the ABiH attacked in municipality of Konjic in March and April 1993 took place *before* the combats in Vitez and surroundings (Central Bosnia) and Sovići later in April 1993. This confirms the Defence assertion that the HVO was *reacting* on previously prepared actions of the ABiH.
450. The village of Klis was attacked in March 1993.<sup>582</sup> 1D02243 shows how the village of Klis was attacked by the ABiH unit on 23 March 1993 and village of Orlište on 25 March 1993.

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<sup>578</sup> Exh. 1D02756.

<sup>579</sup> Exh. 1D02758; 3D02438.

<sup>580</sup> Exh. 1D02757.

<sup>581</sup> Exh. 2D00253.

<sup>582</sup> Exh. 4D00872; 2D00641.

**d. Konjic area: April 1993**

451. The difference in number of soldiers and overall strength between the ABiH and the HVO was in favor of the ABiH. There was the HVO brigade “Herceg Stjepan” in Konjic with military power comparable with one HVO battalion in town (or on the lines towards the VRS) and one HVO battalion in Kostajnica (in total 600-700 soldiers). There was also the HVO battalion in Doljani, in the municipality of Jablanica, which was a part of Herceg Stjepan brigade. The ABiH had significantly more troops in the area.<sup>583</sup>
452. Document 1D02243 provides a short chronology and an overview of war crimes committed by the ABiH members and paramilitary Muslim forces in Mostar Konjic, Jablanica and Prozor. The Herceg Stjepan Brigade had about 2.000 soldiers. The brigade was active in the zone of responsibility of Konjic and Jablanica municipalities. At the same time three brigades of the ABiH numbering around 7000 soldiers in total were deployed in this area. In the course of the war another 5.000 to 6.000 soldiers of the ABiH arrived in this area (Zuka’s unit, Crni Swans, Handzar Division, Hrasnica brigade, a large number of foreign mujahidin, units sent from Pazarići, Travnik, Zenica and Gornji Vakuf). It is extremely difficult to believe that the HVO would initiate fighting in this situation.
453. 1D02243 also provides information about the ABiH attack on village of Buščak on 14 April 1993 and village of Trusina on 16 April 1993 (in which 22 civilians were killed).
454. The document 2D01439 provides detailed information in regards to events in Konjic in the period from 9–12 April 1993. It is also about the inauguration of Safet Ćibo and transition of office from former officials. The authors realized that troubles were coming and noted the following:

“We think that mentioned soldiers (sic. Zuka's soldiers) will be involved in pushing back our units from Ljubina and putting the

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<sup>583</sup> T. 20594:8-20596:17, 27 June 2007, Witness Klaus Johan Nissen, particularly T. 20596:13-17: *THE WITNESS: [Interpretation] I cannot give any figures, but I knew and I'm also convinced that the armija forces were quite a lot stronger. I'm referring to observations at the beginning of April when I also had contacts with a brigade commander and when he told me about the situation there and the fighting.*



pressure on our villages under Ljubina (Zabrdje, Zaslavlje and Turija)."<sup>584</sup>

455. 3D00775 is Zdravko Šagolj's report on the situation in Konjic on 13 April 1993. It was noted that there are no available information about the faith of captured and wounded men in village of Buščak.
456. In P01874 dated 13 April 1993, Milivoj Petković notes that there is information about deteriorating situation in Konjic. Specifically, the villages of Parasovići, Solakova Kula, Kruščica and Vratna Gora are mentioned.
457. [REDACTED]<sup>585</sup> [REDACTED].
458. 4D00453 is a request of Zdravko Šagolj dated 15 April 1993.<sup>586</sup> He wrote:
- “... forces that arrived from Bradina and Igman have attacked Konjic... Strong pressure is being exerted from Jablanica (they have encircled our forces in Doljani and Sovići) but we cannot do anything effective on our own. Zlatar and Bokševica are in encirclement and cannot hold out. Pokojište, Konjic, Čelebići and Radešine ARE BURNING, help...”
459. On 17 April 1993 commander of the HVO Herceg Stjepan brigade reported by wire communication that 21 civilians were killed in the village of Trusina and that Buturočić Polje was surrounded.<sup>587</sup>
460. All mentioned locations in the previous paragraphs had a certain strategically important value for the force that plans to establish the control over the territory.<sup>588</sup>
461. The HVO attack on ABiH positions in Sovići and Doljani was discussed in trial. However, the above presented evidence shows that the HVO was trying to recapture the positions lost in previous days. Those were militarily important positions. Thus, again, the HVO was *reacting*—it did not execute a previously prepared plan.
- e. Mostar area: April 1993**
462. On 17 April 1993 Arif Pašalić ordered all units of the ABiH's 4th Corps to continue so-called “defensive” combat activities.<sup>589</sup> The word “defensive” is mere rhetoric: there is

<sup>584</sup> Exh. 2D01439.

<sup>585</sup> [REDACTED]

<sup>586</sup> Exh. 4D00082.

<sup>587</sup> Exh. P01932.

<sup>588</sup> Exh. 3D03724 - Map 6, p. 3D03724-3D42-6498. This map shows the distribution to the forces of the ABiH and the HVO in April 1993.

no need to order "a continuation of defensive combat activities" if all the ABiH was attempting to do was defend rather than continue to aggressively attack. The evidence mentioned *supra* demonstrates that the plan of attack to the HVO territory was already being implemented. The ABiH positions north of Mostar were secured; the time had come to attack in the Mostar area.

463. On 19 April 1993 the ABiH commander Midhat Hujdur issued the following order:<sup>590</sup>

"1. All units of the 41st Motorized Brigade and parts of units from the 4th Corps shall take positions for persistent defence /with/ the task to defend the assigned sectors as follows:

1.1 The 1st Battalion has the task to take positions for defence in the South Camp sector, /and/ close the axis from Rodoč village towards Mostar in terms of anti-armour /combat/. After conditions have been fulfilled, launch an attack towards the junction of the Mostar-Buna /and/ the Mostar-Blagaj roads, take positions for defence and close the Air Force Bridge for passage. In subsequent combat operations, try to link up with the Blagaj Independent Company in the Buna village sector. Transfer part of the forces to the right bank of the Neretva River and put them under the command of the 2nd Battalion commander.

1.2 The 2nd Battalion has the task to take positions for defence in its zone of responsibility, /and/ close the axis from Rodoč~ village towards Mostar in the ^ekrk sector. Try to occupy the following line of defence: ^ekrk - main road - [e/?m/ovac - Boulevard - Dr. S. Muji}a Street - bank (new) - Vaha café - garrison dispensary - old hospital - dairy - Centre 2. In the rear of the lines reached, block HVO forces and neutralise them. Send part of the forces from the 4th Company towards the 41st Motorised Brigade command to reinforce defence. In subsequent operations, attack from the wing along the following axes: Šemovac - Podhum - Balinovac and Centre 2 - Rudnik.

A The 3rd Battalion has the task to take positions for defence in its zone of responsibility, close the axis from Vrapčići towards Mostar in the Sutina sector and prevent any crossing of the Mostar HE /hydro-electric power plant/, and block the North Camp barracks completely and take it. Transfer part of the troops (30 men) with weapons to the right side and put them under the command of the 2nd Battalion commander. Send a complete crew with the OSA RBR /hand-held anti-artillery rocket launcher/ and containers, and a crew with the RPG /hand-held rocket launcher/, to the command. The crews should be trained for targeting from the pieces they operate. In subsequent operations, the battalion shall advance towards Vrapčići and Potoci villages.

Sign the seizing of Hum hill to part of the forces.

The Nevesinje Battalion shall be put under the command of the 3rd Battalion commander and receive its task from him, while part of the troops (30 soldiers with weapons) shall be transferred to the right bank and put up in the Pupils' Home and the Economics School, where they shall take

<sup>589</sup> Exh. P01929.

<sup>590</sup> Exh. 3D00014. See also P01962.

positions for defence. The commander leading the troops to the right bank must report to the 41st Motorised Brigade command to receive further precise tasks.

1.7 The Blagaj Independent Company has the task to take positions for defence in its zone of responsibility, and, after conditions have been fulfilled, launch an attack along the Blagaj - Kosor - Buna axis and seize the bridges on the Buna river along the Mostar - Čapljina and Mostar - Domanovići roads, and by persistent defence prevent HVO units from breaking through from the direction of Čapljina and Domanovići towards Mostar. Try to link up with the forces of the 1st Battalion.

1.8 The RBH MUP /Ministry of the Interior/ has the task to take positions and defend the Old Bridge and the newly built bridge at Musala, and with part of the forces attack the premises of the MUP of the HZ /Croatian Community/ and the Mostar Police Station; seize them and persistently defend them. Try to keep the Surgery building in our zone of defence. Have the troops for the attack on the MUP building and the Mostar PS /Police Station/ on standby at the Mostar hotel.

2. Readiness for defence by 1700 hours on 19 April 1993, when the transfer of troops and hardware from one bank of the Neretva River to another must be finished.

5. While taking positions for defence and conducting b/d /combat operations/, use radio communications only when using communications documents, and send coded messages.

6. While taking positions, mask the movement of units, and reduce movement to a minimum after taking positions."

464. No explanation of the meaning of the cited order is needed. It is more than obvious that a broad and detailed plan of attack on the HVO forces in and around the town of Mostar was planned. The execution of the plan would commence at 1700 hours on 19 April 1993.

465. P01961, Milivoj Petković's 19 April 1993 report, confirms that there were offensive activities of the ABiH in Central Bosnia on the 18 April 1993. This report includes the following observations:

"Muslim extremist forces continue their attacking activities with objective to destroy completely HVO, to expel Croatian population from area of Lašva valley and to link up the areas of Konjic-Jablanica-G.Vakuf-Bugojno with the area of Zenica, Kakanj and Visoko.

Due to specific tasks and propaganda activities, the Muslim forces create impression among certain number of neutral observers that they are defending themselves and that they have been attacked."

466. It is interesting that the same report (P01961) notes that the VRS shelled Mostar and Stolac during the same morning.

467. An official note drafted by personnel of Police station in Mostar, signed by Jurica Božidar, contains the following findings:

Soldiers of BH Army set the sniper positions in early morning on 19 April 1993 at ship bank in A. Zuanica street, at the top of the Revija building near the Bristol Hotel and at the top of the building in Oreškovića street above the café bar. ABiH fortified a “*nest with usage of machine guns in front of the administrative building APRO entrance ..*”<sup>591</sup>

468. This detail confirms that the ABiH planned offensive was in motion—plans were being executed.

469. On the following day, i.e. on 20 April 1993 Midhat Hujdur wrote the order # 4D00089:

“... prepare men for the decisive defence of the taken territory as well as carrying out the attack in the direction of Hotel Mostar and the Command of the 4-th motorized brigade for the purpose of connecting the forces in one whole.

470. Despite this, on 20 April 1993 two opposing commanders, Arif Pašalić and Petar Zelenika jointly issued "Joint Public Announcement"<sup>592</sup> and then another one the day after (21 April 1993).<sup>593</sup> In addition, on 21 April 1993 a report regarding the "mixed patrol of the ABiH and HVO is issued."<sup>594</sup> The ABiH planned attack was briefly paused. However, May 1993 would show continuation of the plan.

**f. Mostar: May 1993**

471. On 9 May 1993 the ABiH attacked the HVO in Mostar. Among abundant evidence about 9 May battle over Vranica building, the map 3D03724 (p. 3D42-6499 – map # 7) shows the best opportunity to observe the positions of the ABiH in Mostar in that time. The map shows that the ABiH held positions north from Mostar up to Konjic, and south up to Blagaj. The situation was the same on 30 June 1993 when a stronger attack on Mostar northern area was executed. The results of fighting in Mostar on 9 May 1993 did not provide any considerable result; none of the parties got any tangible results.

472. It should be noticed that on the same day, i.e. 9 May 1993, it was reported that Sefer Halilović stated:<sup>595</sup>

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<sup>591</sup> Exh. 3D00023.

<sup>592</sup> Exh. 3D00676.

<sup>593</sup> Exh. 3D00016.

<sup>594</sup> Exh. 3D00025.

<sup>595</sup> Exh. 3D02873.

“The third corps must reinforce offensive and informative activities on Travnik and Lašva valley, Busovača, Vitez and Novi Travnik. The 3-rd Corps will receive reinforcement when UN works off the demilitarized zones in eastern Bosnia; *that will be the moment of final reckoning with Ustashas in this area and path to Croatia or under the black ground.*”  
(emphasis added)

**g. Mostar from June 1993**

473. The Prosecution recognized that the ABiH attacked and conquered the HVO's "Tihomir Mišić" Barracks (also called "Northern Barracks") on 30 June 1993.<sup>596</sup> However, this ABiH action was not limited only to the Northern Barracks as the Prosecution asserts, but includes broader territory north of the town, particularly the Bijelo Polje area. This action seems to be "point of no return" in the HVO–ABiH relationship. This action has every indication of mutiny, because Muslim soldiers in the HVO units were asked to sabotage the HVO at the moment that the ABiH commenced serious attacks. As a result, many the HVO Muslim soldiers were arrested and detained.<sup>597</sup>

474. P00309 is the Željko Šiljeg document dated 30 June 1993 that transmits the Jadranko Prlić and Bruno Stojić document containing an appeal to all defence forces:

“Following the renewed attacks of the Muslim forces on HVO positions and the Croatian people in these regions which constitute a continuation of the war of conquest that began in Central Bosnia...”

475. HVO military intelligence (VOS) provided several pieces of information that demonstrate the fact that the ABiH was on the offensive against the HVO forces. For example:

“After the DTG inserted in the Doljani and Pisvir sector carried out successful actions, we can expect MOS to use the same tactic in the southern sectors, probably in the Vrđi - Đubrani sector with the goal of destabilizing the defence lines and capturing strategic positions, important for the control of the bridge in Bijela and control of the Drežnica - Bijelo Polje road.”<sup>598</sup>

“... on 20 August, a meeting of commanders of all MOS corps will be held in Bradina, and the agenda was ordered by Rasim Delić ... The MOS are transporting MTS and equipment by helicopter and MTS for the 4th Corps in unloaded in the Croatian village of Obri – Klis ... The Muslim are very

<sup>596</sup> Indictment, para. 36.

<sup>597</sup> Exh. P03029; [REDACTED].

<sup>598</sup> Exh. 3D02425, 29 July 1993, Daily Intelligence report.

meticulously and expertly compiling photomontages of war crimes committed against Muslims”<sup>599</sup>

“... At 1000 hours on 21 August 1993 a meeting was held in Zenica between commanders of the 3rd, 4th and 6th Corps. The meeting was organized by the 3rd Corps and it was chaired by Rasim Delić, Commander of ŠVK. A conclusion was presented at the meeting to appoint Arif Pašalić coordinator between 3rd 4th and 6th Corps and the command post in Jablanica, the main goal of which is to link up the Corps and lay groundwork for the continuation of offensive operations and for reaching the area of Neum”<sup>600</sup>

#### h. Travnik: June 1993

476. 1D01654 (Hadžihasanovic et al. Indictment, para. 40) includes the following claims:

“... in April 1993 and in early summer 1993, ABiH 3<sup>rd</sup> Corps units launched a series of heavy attacks against the HVO including, but not limited to, the areas of the municipalities of Bugojno, Busovača, Kakanj, Maglaj, Novi Travnik, Travnik, Vareš.... The ABiH operations culminated in a massive attack between 7 and 13 June 1993 within the territories of, *inter alia*, the municipalities of Kakanj, Travnik and Zenica.”

477. Thus, even the Prosecution agrees with assertion that the ABiH performed offensive operations in some areas of the ABiH, Central Bosnia specifically. The Prosecution apparently failed to understand that this offensive in Central Bosnia was only a part of the broader offensive. The Defence submits that those actions were part of the ABiH plan to open a free path to its forces to advance through the Neretva Valley in its endeavor to reach the Adriatic coast.

478. The progress of the ABiH offensive is best shown on map 3D03724, map # 8. It also shows that from the 4 to 10 of June 1993, the ABiH attacked the HVO in Travnik, took control of Travnik, and soldiers and civilians fled across Serb portions.

479. 2D00595, an operational report on situation in the OZ Central Bosnia, issued on 8 June 1993, *inter alia*, contains the following information:

“...all out attack had begun against HVO positions, at the territory of Lasva region ...ratio between HVO and ABiH forces is 1:9 in favor of Muslim...”

480. On 9 June 1993, Tihomir Blaškić, OZ SB commander, reports from Central Bosnia (2D01407):

<sup>599</sup> Exh. 3D02423, 18 August 1993, Daily Intelligence report.

<sup>600</sup> Exh. 3D01746, 1 September 1993, Intelligence report.

”Muslim forces and mujahidin had committed open aggression against Croatian territories, region Lašva. ... This attack by Muslim forces and mujahidin had completely destroyed and expelled Croats from county Travnik... heavily attacked Guča Gora from direction of Zenica. 39 villages are completely emptied, about 25000 Croats... Travnik brigade in difficult position .... in saving lives of civilians, evacuation of civilian population.

Part of Croats from Travnik, found themselves between Serbian barrels and mujahedin’s knives, and they choose to flee and seek salvage on the hills of Vlašić .... in the monastery Guča Gora there are 800 civilians imprisoned. Their safety is guaranteed by UN”

481. As the village of Guča Gora is mentioned here (Blaškić's report 2D01407), the Defence uses this opportunity to point to evidence regarding the events in that village in the Travnik area. These events were discussed in light of the Prosecution’s erroneous claim that the ethnically Croatian population mass movements were caused by HZ-HB/HR-HB/HVO propaganda aimed to change the ethnic ratio in certain areas in the south region of the BiH. The Praljak Defence has opposed this assertion and has claimed that the mass movements commenced spontaneously initiated by fear and knowledge about committed atrocities.<sup>601</sup>

482. 3D02638 is an excerpt from the book written by Mehmed Alagić, the ABiH high officer. In the chapter “The war in Central Bosnia”, he said: "Ambassador Thebault visited me then, Vance-Owen plan being current. *“The plan will go down here, Mr. Thebault”* – I told him. *“Herceg-Bosnia will fall here”*."

**i. Kakanj: June 1993**

483. In accordance with the plan, the ABiH attacked Kakanj and took control of it between the 13 and 15 June 1993. In the period from 1 to 30 June 1993 the ABiH continued to attack the Konjic area. The civilian population and many of the soldiers ran away from the area, except for small groups in two small enclaves.

484. On 16 June 1993 the HVO Kakanj issued the following announcement:

“Gentlemen, the Croats in Kakanj municipality, around 15,000 of them, have lived through their greatest exodus following the aggression of the so-called Army of BH /Bosnia and Herzegovina/. They are currently in the small mining town of Vareš. In spite of the maximum of efforts put in by

<sup>601</sup> [REDACTED];

T. 5437:15-5443:20, 23 August 2006, Witness Christopher Beese, particularly T. 5443:15-20:

... But your yes and no to the question of whether it is true that your main conclusion about Guca Gora was that it was just purely HVO propaganda regardless of the dimensions of the event. You keep maintaining that it was HVO propaganda, nothing more. Yes or no? A. No.

the Vareš HVO and its inhabitants the living conditions are extremely unfavorable, the future uncertain. Conscious of their tragic fate so far and the complete exhaustion of all the political leadership and army and people have decided to continue with their Via Dolorosa to the territory of HB /Herceg-Bosna/ on Friday 18 June 1993 at 1000 hours. This time we are not asking for a reply, we are moving out. If you wish to help us there is still time; if not you will find us dead on our Via Dolorosa.”<sup>602</sup>

485. P03337 is Emil Harah's 9 July 1993 report that confirms the events in Kakanja in previous days. It is about movement of 15.000 civilians and soldiers who went from Kakanj to neighboring Vareš and then to Grude.

486. 3D01914 is a report written by Zvonko Vuković on 14 June 1993 concerning Novi Travnik, Vareš, and Kakanj;

“In the Stjepan Tomašević Novi Travnik brigade zone of responsibility the situation is extremely dramatic. During the night and previous day, the Muslim forces launched combat operations throughout the municipality on all defence lines. They attacked the Croatian villages of Ruda, Pecine, Brkanove Kuce, Buduci, Zubici, Rastovci and the Stojkovići Logistics Base. The mass move of both the Croatian and Muslim population to safer places continues in Fojnica. To date we have received no reports from Fojnica and do not know what happened during the night.

In the Kotromanić Brigade Kakanj zone of responsibility, the situation is as follows:

- The Command of the Kotromanić Brigade has abandoned the ZM /Command Post/ and arrived in the village of Planinica where it has joined forces of the Bobovac Brigade. More than 300 soldiers arrived with the Command while the rest are arriving and working on getting the Croatian population out towards Vareš.

Assessment: The defence of the Croatian part of Kakanj has fallen.”

487. 3D03724 (p. #10) is a map showing situation on ground on the 30 June 1993. The BH Army had taken control of Travnik on the 10 June and Kakanj on 15 June. The ABiH attacked along the 200 kilometer-long axis for several months.

**j. Bugojno: July 1993**

488. The ABiH attack on Bugojno commenced in mid July 1993. As soon as the ABiH positions in Bugojno area were secured, the offensive continued towards Gornji Vakuf .

489. 3D02632, dated 24 July 1993, is the response of Željko Šiljeg to the GSHVO. He describes difficult situation on the Bugojno battlefield that negatively reflex to situation in Gornji Vakuf . He said that local HVO forces are not able to resist the:

<sup>602</sup> Exh. 3D00837.



"... severe attacks of the outnumbering forces of the green from all directions, while the help from Prozor is aggravated due to communication blockade"

490. 3D02775, dated 26 July 1993, is the Daily Report drafted by Ivica Lučić from Bugojno to "Eugen Kvaternik" brigade. He writes:

"The general situation is no longer critical but chaotic. There is defeatism among army and civilians. The army does not want to fight, leaves guns, takes off uniforms, escapes from trenches and from positions. It thinks only about retreat, escape, even surrender. We had two killed and several wounded combatants today. Additional problems are civilians, mostly the families of combatants that do not wish to split. Panic and misinformation have their way. The general situation is unsustainable."

491. 3D02777 is another report drafted by Ivica Lučić from Bugojno on 27 July 1993. It states:

"Today is the 10th day of fights; MOS attacks our remaining areas. The fights are in process since morning. Vučipolje, headquarters building, artillery positions and Crnički Podovi are attacked. We have killed and wounded combatants. The moral is bad. While we are reporting on this, the fights are in progress. In this area we have got thousands of civilians that must be evacuated. The army does not want to separate from civilians. If we get the civilians going, the army will leave with them and we must get them going. We are trying to do everything to consolidate the situation. Fear and panic have their way. Groups of civilians self willingly leave to the Serbian territory."

492. 3D02778 is third report drafted by Ivica Lučić from Bugojno on 28 July 1993. It states:

28 July 1993 Report by Ivica Lučić from Bugojno:  
 In the course of today MOS was attacking our positions in Vučipolje, the headquarters building, Crnički Podovi and artillery positions. The attacks were rejected, followed by major efforts and difficulties. We had killed and wounded combatants. We think that we have already presented the situation and condition in a substantial number of reports. It is even worse today, in comparison to all what we have said so far.  
 MANY THINGS DO NOT MATTER ANY MORE.  
 The general situation is hardly sustainable. Nobody has responded anything regarding our queries from today or request for information and instructions so far (it is 00:30 hrs).  
 Make arrangement with "the reds" – acceptance of our civilians on direction Crnički Podovi-village of Mračaj (which is held by the reds).  
 Tell us if you have something to tell. Everything matters."

493. 3D03724 (map # 11) is a map that shows areas under ABiH control and HVO control—the situation on the ground on 30 July 1993. The HVO was still in Vitez and Busovača, Kiseljak and Kreševo, Vareš, Zepče, Usora, and small enclaves around Konjic but the

HVO is not anymore present in Bugojno, Konjic, Kakanj, Fojnica, Zenica and Travnik. Those towns are now under control of the ABiH.

494. IC00427 was presented by Praljak. It reflexes information provided by documents 3D00740 and 3D00736; axis of the ABiH actions and positions of the ABiH 4th Corps and some other units on 15 September 1993 as well as other units included in the offensive.

**k. Vrđi - the ABiH Operation Neretva 1993**

495. There is abundant evidence that confirms the plan and execution of the ABiH military offensive "Neretva 1993." This was part of general plan to move the forces from the north (Central Bosnia) towards the south (to the Adriatic coast). A book written by one of the participants, Šefko Hodžić titled "Unsealed Envelope" provides a good insight to plans and modes of operation.<sup>603</sup> Other evidence is self-explanatory. It clearly shows what the operation aim was and how it progressed.<sup>604</sup>

496. 3D00939 is Sefer Halilović Order dated 6 September 1993 concerning combat operations in the 4<sup>th</sup> Corps zone of responsibility. Engagement of the Zulfikar reconnaissance-sabotage unit on the axis Vrđi - Goranci towards Mostar is planed.

497. 3D00932 is Arif Pašalić's response, dated 7 September 1993, to IKM Jablanica. It contains the following text:

"... as agreed , one or two companies of the 7th Muslim Brigade of the 3rd Corps of R BiH Army are supposed to be sent to the zone of the 4th Corps.... ... The battalion units "Drežnica, "Zulfikar" "Muderiz, "Akrepi" and Silver Fox, were assigned to the SJEVER-2-OG... ...Commander of the SJEVER is the commander of the "Zulfikar" special unit. ....  
For the purpose of the planned assignments and with the aim of mopping up the enemy forces in the Neretva valley, I propose that one of the aim of the dominant targets to be attacked be the HVO forces in the Čordina Kula – Jedrenje Sector... give us a timely sign of their beginning, that is, when you start with them because of our activities."

498. The ABiH documents 2D00016 and 3D02591 perfectly demonstrate a profile of the officers and the units that are involved in the operation. The first document, 2D00016 provides information about mujahidin unit Muderiz. It is said that it has about 300 soldiers situated in Konjic but it is also said that there were similar "jihad" units in every bigger town occupied by the ABiH. The second document 3D02591 is a special

<sup>603</sup> Exh. 3D00942, pp. 1, 2, 11, 12, 27, 29-33, 36, 40-45, 52 ET.

<sup>604</sup> Exh. 3D00941; 4D00794; 3D02591; 4D00772.

report dated 21 September 1993, authored by Apollo addressed to Zuka and Alija Izetbegović. It reads as follows:

"Mr. President, we will soon meet, but I would like to tell you, I think it would be a happy piece of news for you, and as far as Stolac and those parts down there are concerned, Dubrava, et cetera, and the rest, rest assured that we have the force and strength, and not only that, we also have the strength for Neum, and if they are impertinent, behave improperly, we will take Grude and Listica from them. We will take everything from them, Mr. President. We're not far away from Listica, Mr. President. We can do it, and we see that we can do it."<sup>605</sup>

499. [REDACTED].
500. 3D00952 is the ABiH Supreme Command 9 June 1993 decision on forming of the 6th Corps. It is also about division of territory between 1st, 3rd, 4th, and 6th Corpses. This document shows the strength of the forces that were included in the Neretva 93 Operation (directly or indirectly).
501. 3D00965, dated 11 September 1993, is a coded message from Adnan Solakovic to Vahid Karavelic showing the combat intentions of the ABiH.
502. Exhibit 3D02155 is the ABiH 11 September 1993 order to launch an attack to location Vrđi signed by commander Ališpago.
503. [REDACTED].
504. IC00042 and IC00427 provide a visual presentation of the situation on the ground. It shows that in this period an operation was performed from Gornji Vakuf on the northern end to south of Mostar on the southern end. In the said period the ABiH achieved many of its goals but failed to reach the Dalmatian coast and failed to push out the HVO from Mostar.<sup>606</sup>
505. Some facts and evidence related to the subject matter of the ABiH offensive is included in sections Prozor, Vakuf and Vareš.

#### **1. Conclusion**

506. Whatever happened in BiH in the timeframe of the indictment, including the crimes that were committed at the local level by all sides, was not a result of the alleged JCE master

<sup>605</sup> See also on the same subject matter: T. 44662:1- 44664:25, 10 September 2009, Witness Slobodan Praljak.

<sup>606</sup> See Exh. 4D00795 and 4D00800.

- plan by the alleged members of the JCE. Neither side could have planned anything like the alleged JCE in this unfortunate conflict.
507. The war in RH and BiH was initiated by nationalistic political forces of Serbia. It was executed by the JNA that was gradually transformed to the VRS. In addition, considerable Serb forces were recruited in BiH and RH as the war progressed. Regarding the BiH there is no doubt that both, Croats and Muslims were primarily victims of the JNA/VRS aggression.
508. There is no doubt that the HVO and the TO/ABiH were jointly defending BiH from the JNA/VRS attacks throughout 1992 and until the early summer of 1993. After that they remained allies in some areas of the BiH. There is no doubt that the central government of the BiH did not function and was not able to perform the most basic duties of the government. There is no doubt that the HZHB was organized with the intention to respond to a lack of any governance and to organize defence from the JNA attacks.
509. However, there is a dispute in regards to the reasons that caused allies in 1992 to gradually become enemies in 1993. The Prosecution simplifies the issue and decides that there must have been some sinister criminal plan on the side of the entire Croatian leadership if not the entire Croatian population. As there is no evidence about the existence of such a plan, the Prosecution decided to interpret the evidence by a method that is not permissible in criminal law. In addition, the Prosecution constructed a theory of conspiracy and then added a bit of alleged historical aspirations of the Croatian politicians to support the JCE theory.
510. The Defence does not intend to attempt to prove beyond a reasonable doubt the cause of the ABiH-HVO conflict in 1993. The Prosecution has burden to prove that this conflict was the result of the JCE, as alleged. By arguing that the ABiH was a party which initiated the conflict and performed the offensive operation throughout good portion of 1993, the Defence merely intends to demonstrate that there were other reasons that caused the conflict – that the conflict could not be simply categorized as a consequence of the sinister, criminal plan on the side of Croats in the BiH and RH. The Prosecution did not offer the evidence that would directly support the Prosecution's thesis about reasons for the conflict. Accordingly, alternative causes and explanations must be evaluated.

511. From the outset of these proceedings, the Praljak Defence argued that there were many other reasons that contributed to commencement of the conflict. If the above discussed evidence is carefully evaluated and juxtaposed with other admitted evidence, the trier of facts should accept that at minimum that the HZ-HB/HR-HB/HVO was not planning to subjugate the Muslims and to take part of the country. The discussed evidence points to a different conclusion: the HZ-HB/HR-HB/HVO was *reacting* to the circumstances—it did not plan in advance to fight against Muslims. It welcomed Muslims into its ranks and leadership, and worked to ally with available allies as much as possible against the JNA/VRS threat.
512. The evidence discussed in this section of the brief is also relevant with respect to the Prosecution's erroneous thesis that the HZ-HB/HR-HB/HVO utilized propaganda and false rumors to cause a mass movement of the Croat population from the areas that the ABiH took to the areas where the Croats were not the majority with the aim to achieve a dominating majority of Croats.<sup>607</sup> The Defence submits that those movements of the Croat population were natural consequences of the conflict. People have fled from conflict-affected areas throughout history. Rumors about victims and atrocities spread fast, and may have been naturally and understandably exaggerated by ordinary people in the process. Human fear is a strong natural motivator. The Praljak Defence submits that the mass movement of the Croats from Travnik, Vareš, Blagaj and other areas was caused by fear not by planned propaganda or false rumors spread by the HZ-HB/HR-HB/HVO. The Prosecution did not present any evidence that would support its thesis.

## **XVI. COMMAND RESPONSIBILITY; COMMAND, CONTROL, AND COMMUNICATION**

### **a. Command Responsibility and the “Three C’s”: Introduction**

513. There are numerous references to “command,” “control,” and “communications” throughout the sworn testimony and the admitted evidence. These references taken together allow only one simple legal and common-sense inference: Slobodan Praljak cannot be criminally responsible for events out of his control. Analysis of the so-called “three Cs” leads to the conclusion that Slobodan Praljak cannot be held criminally responsible for the crimes alleged under Article 7.3 of the Statute.

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<sup>607</sup> Indictment, paras. 17(d) and 39(a).

514. Command responsibility has three elements. First, the Prosecution must prove a superior-subordinate relationship between the Accused and the specific physical perpetrator, including effective control. Second, the Prosecution must prove specific knowledge of the Accused. Third, the Prosecution must prove omission to take necessary and reasonable measures, measures “that can be taken within the competence of a commander as evidenced by the degree of effective control he wielded over his subordinates.”<sup>608</sup>

515. Each of these elements is discussed below. In each case, an analysis of the “Three Cs” leads an objective trier of fact to the conclusion that the Prosecution failed to carry its burden of proof. Due to space constraints and the overly broad approach chosen by the Prosecution—in which every Accused is alleged to have Article 7.3 responsibility for every criminal act, despite the patent absurdity of that claim—command responsibility will not be examined for each alleged act throughout the war. Fortunately for the Trial Chamber, large categories of the Prosecution’s allegation can be dismissed fairly efficiently, in the Praljak Defence’s respectful submission.

**b. Command Responsibility and the “Three C’s”: There was rarely if ever Superior-Subordinate Relationship (including Effective Control) between Slobodan Praljak and a physical perpetrator of a charged crime.**

516. A superior-subordinate relationship requires both a pre-existing position of authority and effective control, in the sense of material ability to prevent or punish the crimes of subordinates. Both of these elements must be the only reasonable conclusion from the evidence for criminal liability under a theory of command responsibility.

517. Slobodan Praljak had limited *de jure* authority. The only relevant *de jure* authority alleged by the Prosecution is his period as commander of the Main Staff of the HVO. This was authority only over HVO armed service members, not over civilians or civilian run institutions, such as detention centers or the military police. It applied only to a limited geographic area. Most importantly, it applied only to the limited period from 10

<sup>608</sup> *Blaškić* Appeal Judgment, para. 72. See also in the same sense *Delalić* Trial Judgment, para. 395; *Strugar* Trial Judgment, para. 372; *Naletilić* Trial Judgment, para. 76; *Blagojević* Trial Judgment, para. 793; *Delić* Trial Judgment, para. 76, 541.

April 1992 to 15 May 1992; and from 24 July 1993 to 07:45 9 November 1993.<sup>609</sup> *De jure* authority cannot be found outside of these limited bounds.

518. As explained above, the HVO came into being on 8 April 1992. Especially during the first year, the HVO lacked a well-functioning chain of command, a system of communication and discipline due to the absence of trained and equipped troops.<sup>610</sup> For this reason Slobodan Praljak lacked, particularly in the period between 10 April 1992 to 15 May 1992, *de facto* authority.

519. Slobodan Praljak had no relevant *de facto* authority in the sense required outside of his limited *de jure* authority. *De facto* authority for the purposes of command responsibility requires the equivalent to that required in the case of *de jure* command.<sup>611</sup> A critical indication of *de facto* authority is proof of the expectation that insubordination will be sanctioned.<sup>612</sup> There is no proof to that effect. The Prosecution may gesture towards efforts made by Slobodan Praljak to secure the peace and protect people as evidence of *de facto* command. This approach errs. There is no evidence whatsoever that Slobodan Praljak could have sanctioned or expected sanctions if others did not follow his efforts outside of his *de jure* authority. The Trial Chamber should not punish Slobodan Praljak for making efforts beyond his authority to preserve peace and protect human rights. The clear result of such a misguided effort would be to discourage such actions in the future.

**c. Command Responsibility and the “Three C’s”: Slobodan Praljak Lacked Effective Control Unless He Was Physically Present.**

520. Effective control of the specific physical perpetrator is a vital component of command responsibility, which must be proven beyond all reasonable doubt for any alleged crime to carry with it any criminal liability for the commander under Article 7.3.<sup>613</sup> The degree of control necessary to support a finding of effective control is a high one, which excludes many in a position of some sort of authority and power. This is shown, *inter alia*, by the *Halilović* Appeals Judgment. A position of “over-all command” is *insufficient* to find that

<sup>609</sup> T. 39567:17-19, 5 May 2009, Witness Slobodan Praljak.

<sup>610</sup> See *supra* section “Par. 17.3.a.”

<sup>611</sup> *Čelibići* Appeal Judgment, para. 197; *Kordić* Trial Judgment, para. 416; *Bagilishema* Appeal Judgment, paras. 51-5; *Kajelijeli* Appeal Judgment, para. 87.

<sup>612</sup> *Čelibići* Trial Judgment, para. 87; *Bagilishema* Appeal Judgment, para. 53.

<sup>613</sup> See *Naletilić* Trial Judgment, para. 67; *Delalić* Appeal Judgment, para. 256.

the person who possessed that authority had effective control of the perpetrators and had a duty to act.<sup>614</sup>

521. Effective control is “the power to effect, not any result in relation to any matter, but the power and ability to take effective steps to prevent and punish crimes.”<sup>615</sup> Nothing less will suffice.

522. It is not the duty of an accused to prove that he lacked effective control even when he was in a command position and had the legal authority to exercise control.<sup>616</sup> It remains the obligation of the Prosecution, an obligation which the Praljak Defence respectfully submits the Prosecution has failed to discharge.

523. In *Halilović*, the Appeals Chamber denied the existence of a superior-subordinate relationship because the ability of the accused to investigate, to author reports, and suggest that criminal proceedings be initiated were *not* sufficient to prove a very limited degree of effective control.<sup>617</sup> The Praljak Defence respectfully submits that application of the *Halilović* standard to Slobodan Praljak will clearly demonstrate that he lacked effective control regarding the crimes alleged. He could do more than the accused in *Halilović* was proven to do, and *Halilović* could not be found guilty as a matter of binding law. If the *Halilović* standard is not applied, the double standard will be plainly evident to the people of the former Yugoslavia, as well as the Appeals Chamber.

524. As noted by Milan Gorjanc, if a wartime army is created from the bottom-up in a decentralized way, the process starts with small units which are not linked up to a unity of command, and with no communication between units.<sup>618</sup> 4D01731, Milan Gorjanc’s expert report, particularly Section 4, “Wartime Army”, discusses this extensively.<sup>619</sup> The HVO did not have an effective system of command and control until the end of 1993 or early 1994.<sup>620</sup> The Praljak Defence will not recapitulate 4D01731, but rather incorporates it by reference.

<sup>614</sup> *Halilović* Appeal Judgment, para. 214.

<sup>615</sup> *Naletilić* Trial Judgment, para. 67; *see also* a similar wording in *Delalić* Appeal Judgment, para. 256.

<sup>616</sup> Wrongly applied in the *Hadžihasanović* Trial Judgment, para. 86. For the clarification, *see Hadžihasanović* Appeal Judgment, para. 21.

<sup>617</sup> *Halilović* Appeal Judgment, paras. 194, 214.

<sup>618</sup> T. 46043:13-17, 27 October 2009, Witness Milan Gorjanc.

<sup>619</sup> 4D01731, 4D28-1097-4D28-1111, pp. 10-24, paras. 9-39. *See* in particular p. 13, para. 17.

<sup>620</sup> T. 46365:15-20, 2 November 2009, Witness Milan Gorjanc.



525. P03642, dated 22 July 1993, sets the stage for the conditions facing Slobodan Praljak upon the beginning of his service at the Main Staff on 24 July 1993. This report from Milivoj Petković states under “Problems” that:

We still do not have such an army – with a modern organization that is technically well equipped with a resolved command system. In order to create such an army, the authorities must do far more at all levels and this must be their primary task. Practice tells us that the army is becoming privatized – every municipality, every town and village have their “own” army.<sup>621</sup>

526. Milivoj Petković testified that the army was not-well-trained, organized, or well equipped.<sup>622</sup> They were unable to achieve anything with respect to creating a unified chain of command in the more important, financially stronger municipalities.<sup>623</sup> The executive structures were powerless against the municipalities if there was a conflict, given the superior financial strength of the municipalities and the fact that the municipalities paid the soldiers and provided them with services such as health care.<sup>624</sup>

527. The chief of the Main Staff was not in a position to issue a decision to bring an offender before a military disciplinary court.<sup>625</sup> He had no power over issues within the remit of the Military Police, the SIS, or the IPD.<sup>626</sup> He had no power over criminal proceedings, prosecution, or other elements of military justice.<sup>627</sup> He had no power over managing or controlling prisons, detention facilities, or detention centers.<sup>628</sup> He had no authority over issues of public law and order.<sup>629</sup>

528. [REDACTED].<sup>630</sup>

529. The orders admitted into evidence have no inculpatory value. The mere existence of an order shows only that it has been issued. For orders to bear on effective control, they must satisfy at least five conditions.

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<sup>621</sup> P03642, p. 3 (ET).

<sup>622</sup> T. 49404:12, 15 February 2010, Witness Milivoj Petković.

<sup>623</sup> T. 49404:13-17, 15 February 2010, Witness Milivoj Petković.

<sup>624</sup> T. 49405:2-15, 15 February 2010, Witness Milivoj Petković.

<sup>625</sup> P00293; T. 49407:15, 15 February 2010, Witness Milivoj Petković.

<sup>626</sup> T. 49408:14-21, 15 February 2010, Witness Milivoj Petković.

<sup>627</sup> T. 49408:23-49409:1, 15 February 2010, Witness Milivoj Petković.

<sup>628</sup> T. 49409:6-11, 15 February 2010, Witness Milivoj Petković.

<sup>629</sup> T. 49409:10-13, 15 February 2010, Witness Milivoj Petković.

<sup>630</sup> See e.g. [REDACTED].

530. First, they must be binding <sup>631</sup>orders from the accused himself (without the intervention or involvement of a third party<sup>632</sup> or an implementation of another's orders<sup>633</sup>) to the specifically identified perpetrators. The power to issue orders generally or to third persons is not relevant. <sup>634</sup>
531. Second, orders must pertain to the time when the alleged crime was committed to have bearing on effective control. To hold a commander liable for the acts of alleged subordinates it must be proven that effective control existed at the moment the act was committed. <sup>635</sup>
532. Third, the order must be obeyed by the identified alleged perpetrators to have bearing on effective control. "[P]roof is required that the accused was not only able to issue orders but that the orders were actually followed."<sup>636</sup>
533. Fourth, it must be shown that the identified perpetrator acted *because of* and *in compliance* with the order, not merely due to willingness to act in line with the order. In *Kordić*, for example, Dario Kordić possessed sufficient authority to order troops to commit certain acts and could therefore be liable for *ordering* those acts under Article 7.1 but *lacked effective control* over them and was therefore not liable under Article 7.3. <sup>637</sup>
534. Fifth, the order must be indicative of the commander's power to prevent or punish by those to whom the order is directed. <sup>638</sup>
535. None of the orders in evidence satisfy all of these tests. There is no evidence that Slobodan Praljak had effective control over perpetrators of crimes at the time a crime was committed. Accordingly, he cannot be held liable under a theory of command responsibility.
536. The Praljak Defence cannot examine every exhibit which may be construed by the Prosecution as an order. What follows are a few examples that demonstrate that the evidence does not demonstrate effective control over perpetrators over the alleged crimes.

<sup>631</sup> *Hadžihasanović* Appeal Judgment, paras. 200, 209, 213, and 214.

<sup>632</sup> *Halilović* Appeal Judgment, paras. 206-207.

<sup>633</sup> *Čelibići* Trial Judgment, paras. 671-3 and 695-7.

<sup>634</sup> See generally *Delalić* Appeal Judgment; *Halilović* Appeal Judgment; *Boškoski* Appeal Judgment.

A Chamber seeks to establish effective control through orders directed to other sub-units.

<sup>635</sup> *Hadžihasanović* Article 7.3 Appeals Chamber Decision, para. 37. This has been affirmed repeatedly, see e.g., *Aleksovski* Appeal Judgment, para. 76. For an extensive treatment of this issue, see "Die Vorgesetztenverantwortlichkeit im völkerrechtlichen Straftatsystem," by Boris Burhardt, Berlin 2008, p. 126.

<sup>636</sup> *Blašić* Appeal Judgment, para. 69. See also *Hadžihasanović* Trial Judgment, paras. 847, 851, 1034, 1202, 1286, 1744, 1848, 1878, 1945; *Orić* Trial Judgment, paras. 312, 700; *Brdjanin* Trial Judgment, para. 281.

<sup>637</sup> *Kordić* Trial Judgment, para. 834, 839-841.

<sup>638</sup> See e.g. *Blaškić* Appeal Judgment, para. 69.

They also frequently demonstrate Slobodan Praljak's efforts to calm the situation and bring order out of a chaos.

537. 3D02860, dated 23 March 1992, is a request from Slobodan Praljak for a report regarding possible inappropriate conduct of Croatian soldiers and commanders. It has no inculpatory value, and only questionably constitutes an order. Alone, it fails all five of the criteria *supra*. It does however demonstrate Slobodan Praljak's concern regarding potentially inappropriate conduct.

538. 3D00640<sup>639</sup> is an order dated 25 July 1993, the day after Slobodan Praljak began his service as commander of the Main Staff. It should be read in conjunction with 3D01272, dated 24 July 1993, and the testimony of 28 May 2009.<sup>640</sup> 3D01272 reports water shortages, food shortages, breakdowns in communication, nervous and disoriented commanders, slack soldiers on the front line, a shortage of manpower operating artillery pieces, a lack of weapons, a lack of radio communications, a lack of telephone equipment, a lack of ammunition, and problems with accommodation.<sup>641</sup> Ultimately, 3D01272 reports that the situation was a complete shambles, and that very important hardware was likely to be withdrawn from the zone.<sup>642</sup> Slobodan Praljak explained that an armored company had left because there was no replacement, and that the absence of the T12 anti-tank cannon referred to in 3D01272<sup>643</sup> was an example of a constant insurmountable problem—that “you couldn't do anything if the people didn't respond to the mobilization call-up. You weren't able to do anything if the men left the line. And you couldn't do anything either if they don't come to take up their shifts.”<sup>644</sup> Men were not replying to calls to join the army, but were rather fleeing.<sup>645</sup> As noted by His Honor Judge Trechsel, there is an enormous wealth of evidence tending to prove that there was no effective control over alleged perpetrators.<sup>646</sup> On 25 July 2009, Slobodan Praljak testified that after the fall of Bugojno it was hellish in the Vakuf area, militarily speaking.<sup>647</sup> Soldiers were

<sup>639</sup> Also introduced as P03700.

<sup>640</sup> T. 40945:5-40961:4, 28 May 2009, Witness Slobodan Praljak.

<sup>641</sup> 3D01272, 3D20-0484, p. 3 (ET).

<sup>642</sup> *Ibid.*.

<sup>643</sup> *Ibid.*.

<sup>644</sup> T. 40947:6-9, 28 May 2009, Witness Slobodan Praljak.

<sup>645</sup> T. 40955:3-6, 28 May 2009, Witness Slobodan Praljak.

<sup>646</sup> T. 40953:14-17, 28 May 2009, Witness Slobodan Praljak.

<sup>647</sup> T. 40959:16-17, 28 May 2009, Witness Slobodan Praljak.

deserting<sup>648</sup>. All of Slobodan Praljak's lines were down.<sup>649</sup> Slobodan Praljak ordered a unit to go to Rama and Prozor, where there were terribly few soldiers.<sup>650</sup> But he knew there was the strong possibility that this order would be disobeyed. This is shown in 3D00640. A well-run military with effective control between titular superior and subordinate does not require pre-emptive threats insubordinate "subordinates," particularly threats to arrest them, strip them of their uniform, and suspend meals until the superior can show up in person.<sup>651</sup> This document demonstrates that the existence of an order can demonstrate the *absence* of effective control. Further, none of the criteria *supra* are satisfied with respect to this document.

539. P03706, dated 25 July 1993, again demonstrates the completely chaotic situation in which Slobodan Praljak was operating. It states plainly "The orders of the Chief of the HVO Main Staff on sending units to Prozor are not being carried out."<sup>652</sup> The commanders are threatened.<sup>653</sup> The difficulties in communications are evident in the repeated references to the post office that must be reopened immediately so that military lines may operate.<sup>654</sup> Again, none of the criteria *supra* are satisfied with respect to this document.

540. 3D00967, dated 31 July 1993, again demonstrates Slobodan Praljak's efforts, from the outset of his command, to ensure UNPROFOR vehicles are protected, assisted, and not stopped or searched. It does note that humanitarian aid convoys may be searched, but then they must be allowed to pass. Again, this document does not demonstrate effective control over alleged perpetrators at the time an alleged crime was perpetrated.

541. A month later, on 30 August 1993, the situation remained chaotic. P04640 was another order, ordering a commander to carry out a previous order, and ordering an explanation of why an order has not been carried out. This is further evidence that Slobodan Praljak's limited *de jure* authority did not translate into effective control in general, and certainly not with respect to particular specified perpetrators of crimes alleged in the indictment.

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<sup>648</sup> T. 40959:25-40960:3, 28 May 2009, Witness Slobodan Praljak.

<sup>649</sup> T. 40960:5, 28 May 2009, Witness Slobodan Praljak.

<sup>650</sup> T. 40960:6, 28 May 2009, Witness Slobodan Praljak.

<sup>651</sup> 3D00640; P03700.

<sup>652</sup> P03706, L0037374, p. 3 (ET).

<sup>653</sup> P03706, L0037375, p. 4 (ET).

<sup>654</sup> P03706, L0037374-L0037375, pp. 3-4 (ET).

542. 3D00793 demonstrates that this chaotic state of affairs continued until the end of Slobodan Praljak's brief period of service as commander. By 7 November 1993, immediately before Slobodan Praljak's service as commander ended and he returned to civilian status at 07:30 on 9 November 1993, the situation remained in chaos. A meeting between the commander of the Main Staff, the commanders of Tomislavgrad and Mostar, and individual troops was held on 7 November 1993.<sup>655</sup> All of the relevant commanders, including brigade commanders and operational zone commanders were present.<sup>656</sup> The chaos had worsened, and the commanders were no longer able to deal with the situation caused by the lack of structure, smuggling, and drunkenness.<sup>657</sup> This was the situation Slobodan Praljak inherited, and not being superhuman, could not single-handedly cure over a period of a few months.

543. The outcome of the meeting was a communication; now exhibit 3D00793, sent to President Mate Boban and other leaders. His Honor Judge Antonetti noted that Item 6 in 3D00793 was an essential, fundamental piece of the evidence.<sup>658</sup> Item 6 noted it was essential to "Establish one and only command line." There was not only one line of command, reaching to Slobodan Praljak, but others in the municipality structures.<sup>659</sup> Other structures interfered with the army.<sup>660</sup> At times, commanders were powerless to organize the structure of their brigade.<sup>661</sup> Individuals would refuse to carry out orders, and if pressed would simply leave.<sup>662</sup> The HVO had been aggressively attacked, and the troops were exhausted.<sup>663</sup> Their materiel was spent.<sup>664</sup> 3D00793 clearly indicated that the municipal HVO commissioners were acting independently,<sup>665</sup> that the HVO military was understaffed, not in combat readiness, and that there were fluctuations of men and merchandise.<sup>666</sup> 3D00793 is an extremely valuable exculpatory document vital for understanding the truth, not, as His Honor Judge Trechsel dismissively appeared to

<sup>655</sup> 3D00793, 3D22-1035, p. 1.

<sup>656</sup> T. 41219:7-9, 4 June 2009, Witness Slobodan Praljak.

<sup>657</sup> T. 41219:13-19, 4 June 2009, Witness Slobodan Praljak.

<sup>658</sup> T. 41219:24-41220:1, 4 June 2009, Witness Slobodan Praljak.

<sup>659</sup> T. 41220:8-13, 4 June 2009, Witness Slobodan Praljak.

<sup>660</sup> T. 41220:25-41221:6, 4 June 2009, Witness Slobodan Praljak.

<sup>661</sup> T. 41221:3-6, 4 June 2009, Witness Slobodan Praljak.

<sup>662</sup> T. 41221:14-16, 4 June 2009, Witness Slobodan Praljak.

<sup>663</sup> T. 48327:16-19, 13 January 2010, Witness Vinko Maric.

<sup>664</sup> *Ibid.*

<sup>665</sup> 3D00793, Point 2; T. 41224:3-41226:15, 4 June 2009, Witness Slobodan Praljak.

<sup>666</sup> 3D00793, Points 3, 5.

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conclude, "Blah-blah-blah."<sup>667</sup> Whether or not the situation improved after 3D00793 was issued, it is powerful evidence that at that moment, as before, the situation was chaotic and devoid of effective control. The Praljak Defence respectfully submits that the 3D00793, in combination with other documents, proves that for the entire 3.5 months of Slobodan Praljak's command, he had no effective control over the alleged perpetrators. Given this proof of chaos, reasonable doubt with respect to effective control is a certainty.<sup>668</sup>

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<sup>667</sup> T. 41225:16-18, 4 June 2009, Witness Slobodan Praljak.

<sup>668</sup> One transcript reference is worth quoting at length to this effect. T. 41146:15-41149:14, 3 June 2009, Witness Slobodan Praljak:

Q. All right. Now would you take a look at the next document, which is 3D00975, and the date is the 12th of October, 1993. It is the Rama Brigade, the Deputy Commander Petar Kolakusic. What can you tell us about that document?

A. Yes, it was signed by Petar Kolakusic. But it was compiled based on my explicit request for this type of meeting to be held, and the reason is set out here; because inter-human relations had been upset, there were incidents breaking out in town, and the situation was out of control using the normal means and resources open to the civilian authorities or military authorities or whatever. It was out of control. And then I requested that this meeting be convened, and here we have who attended; Guardian, et cetera, the chief, the commander of the military police, the commander of the operations zone, the president of the HVO, Mr. Jozic, who was in jeopardy over there because people kept threatening him. And I'll address that in due course. Well, I can tell you now. Anyway, this is a very good document for that.

Your Honours, those who fled abroad from Rama, for example, then the people who stayed on would set fire to their houses, and this happened to four or five houses, Croats setting fire to Croatian houses. That is to say, a fighter, a combatant, would utter some expletives and swear and say he's fled abroad. And they were powerless to do anything else, but they did set their houses on fire. And then they would threaten, asking for money, threaten him with a pistol, ask for money; Mr. Jozic, that is. And then when Mr. Jozic was threatened by this one person who demanded 30.000 marks on the spot or he'd kill him, he called me up, and I sent the command of the military police because the civilian police force wasn't functioning properly. I sent him out to take that man into custody, whereas he asked me for 30.000 marks with a pistol pointed at me, and that's how things were.

Now, I managed -- well, the man was quite mad and drunk, and I managed to appease him.

JUDGE TRECHSEL: Excuse me. The sentence on lines 14, 15, up to

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16, is not clear. It reads:

"I sent him out," and him, that's the command of the military police, or the commander, "to take that man into custody, whereas he asked me for 30.000 marks with a pistol pointed at me, and that's how things were."

Who asked 30.000 marks from you; the police commander?

THE WITNESS: [Interpretation] No, no. I was speaking much too fast. When the command of the military police went over there, then that man told -- put a pistol to the police chief's head and brought him to my office in Rama-Prozor. And then he threatened me as well and said that he was to be brought 30.000 Deutschmarks on the spot, or he'd kill us all, he'll kill me.

Now, a little while after that, the president of the municipality, this man Jozic, Mr. Jozic, once again -- well, he just lost it. He couldn't take the situation anymore. And he got into his car, switched the engine on, and drove off to Germany and never returned. Now, I understand the man. But some people, despite all those terrible problems, had to remain. And the person who had to remain seems to be to blame now for having stayed.

So that is the report on that event. And just like the events in Travnik, I filmed all this, and I'll show what it looks like when some idiot is threatening to shoot you with a pistol unless you give him 30.000 marks on the spot.

MS. PINTER: [Interpretation]

Q. General, what were the circumstances under which this meeting was held? Did you have any private --

A. Well, at this meeting and another meeting, when I managed to gather a much broader circle of people together, I stayed on despite the fact that I was told that my father had died. And I had to go to Zagreb and see to the paperwork so that his bodily remains be brought to Herzegovina. But despite that, I stayed on. I didn't go to Zagreb. I postponed going. I asked them to wait for me because the problems in Rama had exceeded what was acceptable. They'd gone beyond what was acceptable. People were doing all sorts of things during the day and during the night. So I composed this group of people. Then I added more people. I did that, and then you can't issue orders. You can talk to the people and treat them, explain them, request things of them, ask them to do something, ask them to be more involved, from the priests, everyone, to take part and to help out, things that have nothing to do with the conduct of the army and military establishment.

That's the truth of it. Now, how you're going to understand this and interpret it, I really don't know. I'm telling you how the facts were, the bare facts, naked facts, in human terms.

**d. Command Responsibility and the “Three C’s”: Slobodan Praljak lacked knowledge of potential or actual specific criminal acts alleged due to poor communications.**

544. As prosecution witness Andrew Pringle stated: “As I’ve said in my report, communications are an essential part of command and control. You cannot execute command and you cannot coordinate control if you have an ineffective communication system.”<sup>669</sup>

545. P09549, Mr. Pringle’s expert report, emphasized the extreme importance of information to a commander. “Without information, a commander can not exercise command.”<sup>670</sup> Despite being used by the Prosecution as a vehicle for the introduction of 82 documents, 72 of which were admitted, Mr. Pringle noted that he is not an expert in the detailed organization of the HVO, or any sort of expert in the HVO.<sup>671</sup>

546. It is difficult to document the absence of communication – it leaves no trace as such.

547. 3D01099 is an example of the type of communications which did exist within the HVO military structure. In a report from a brigade chief to his superior, the brigade chief states:

In relation to your order dated the 5th of December, 1993, I herewith report: Where do you get the nerve and courage to order something? If I wanted to correspond with you, I should come down to a level which is intellectually and morally adequate to you. You idiot!<sup>672</sup>

548. This was not an isolated incident. Slobodan Praljak testified it happened dozens upon dozens of times.<sup>673</sup>

549. As stated by Radmilo Jasak, this type of communication ends co-operation between titular superior and titular subordinate.<sup>674</sup> In general, “everyone did as they saw fit.”<sup>675</sup> The Main Staff could not reliably command the brigade in, for example, Livno.<sup>676</sup> The

<sup>669</sup> T. 24204:4-6, 7 November 2007, Witness Andrew Pringle.

<sup>670</sup> P09549, p. 17, para. 58.

<sup>671</sup> T. 24199:25, 24208:15-16, 7 November 2007, Witness Andrew Pringle.

<sup>672</sup> 3D01099. That is almost the entire text of the report.

<sup>673</sup> T. 42392:12, 1 July 2009, Witness Slobodan Praljak.

<sup>674</sup> T. 48522:12-16, 18 January 2010, Witness Radmilo Jasak.

<sup>675</sup> T. 48522:20-21, 18 January 2010, Witness Radmilo Jasak.

<sup>676</sup> T. 48524:1-9, 18 January 2010, Witness Radmilo Jasak.



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municipal brigades would not cooperate with each other.<sup>677</sup> “Command was: Let’s discuss it.”<sup>678</sup> The HVO was established out of nothing in the midst of war.<sup>679</sup> Radmilo Jasak testified it would have taken four years at a minimum to have a proper system of command and control.<sup>680</sup>

550. Again, as noted by Milan Gorjanc, if a wartime army is created from the bottom-up in a decentralized way, the process starts with small units without communication between units.<sup>681</sup>

551. The communications within the HVO military were exceptionally poor.<sup>682</sup> Every time there was some line of communication it was constantly disrupted by the other side.<sup>683</sup> Troops could have left their posts en masse and there was nothing commanders could do in response.<sup>684</sup> Commanders could not remain together and issue orders; they had to go into the field.<sup>685</sup> Commanders did not have the authority to appoint brigade commanders – only Mate Boban could do that.<sup>686</sup> There were elements that were impossible to control, such as General Blaškić who was in Vitez enclave, completely surrounded and isolated and because of that Boban granted him special authorities.<sup>687</sup>

552. Many documents are notable in proving what Slobodan Praljak *did not* know at the time. For example, P05283 and P05279 prove that he had no knowledge that Dretelj was anything other than an ordinary military prison. He instructed convicted HVO soldiers to be housed there.<sup>688</sup>

553. In the spring of 1992, JNA artillery destroyed the post office in Mostar and a main switchboard.<sup>689</sup> The phone exchanges in Bosnia and Herzegovina were destroyed by the

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<sup>677</sup> *Ibid.*

<sup>678</sup> T. 48525:13-14, 18 January 2010, Witness Radmilo Jasak.

<sup>679</sup> T. 48526:1-3, 18 January 2010, Witness Radmilo Jasak.

<sup>680</sup> T. 48526:10-13, 18 January 2010, Witness Radmilo Jasak.

<sup>681</sup> T. 46043:13-17, 27 October 2009, Witness Milan Gorjanc.

<sup>682</sup> T. 44122:4, 31 August 2009, Witness Slobodan Praljak.

<sup>683</sup> T. 44122:5-6, 31 August 2009, Witness Slobodan Praljak.

<sup>684</sup> T. 44123:23-24, 31 August 2009, Witness Slobodan Praljak; 3D02062, General Praljak wrote: *Only a fool could send men into the field without communications.*”

<sup>685</sup> T. 44379:5-9, 3 September 2009, Witness Slobodan Praljak.

<sup>686</sup> T. 43937:1011-, 26 August 2009, Witness Slobodan Praljak; P03363; P03582; P04234.

<sup>687</sup> *See e.g.* T. 40627:12-40628:4, 25 May 2009, Witness Slobodan Praljak; P 00280; P6000, Blaškić appoint a brigade Commander according to special authority of the Supreme Commander.

<sup>688</sup> *See also* T. 41110:14-19, 3 June 2009, Witness Slobodan Praljak.

<sup>689</sup> T. 39530:24-25, 4 May 2009, Witness Slobodan Praljak; 1D02672.

JNA to the point where they could only function in the closest proximity.<sup>690</sup> Phones were very unreliable.<sup>691</sup> Telephones may have functioned in the vicinity of Split, but were very often down otherwise.<sup>692</sup> There were limited communications between posts. There was no telephone communication between Citluk and Siroki Brijeg, for example.<sup>693</sup> The phone served more as a decoration than a practical tool.<sup>694</sup> For a hundred meters or so there might be coverage, and then for kilometers there would be no coverage.<sup>695</sup> Packet communication also often went down.<sup>696</sup>

554. Knowledge cannot simply be inferred from the position Slobodan Praljak held.<sup>697</sup> This is particularly true due to Slobodan Praljak's time in July August, and September of 1993 on the front line.<sup>698</sup> It was a necessity for him to do so.<sup>699</sup> It was also the only way for him to get any direct information.<sup>700</sup> Even if he had been sitting at his desk at the centre of an efficient communication system, knowledge would have to be proven. With him at the front lines, his knowledge was necessarily but unfortunately limited. Praljak did what he could under the circumstances and his presence on the ground caused him to make attempts to improve the situation.<sup>701</sup>

**e. Command Responsibility and the “Three C’s”: Slobodan Praljak took what measures he could within the limited effective control he had.**

555. When Slobodan Praljak became commander, he faced a situation not of his making. The conflict with the ABiH had already broken out. He inherited a military that barely functioned. He had no control over the division of responsibilities between civilian and military structures, and remained without authority over civilian institutions.

<sup>690</sup> T. 50126:24-50127:17, 1 March 2010, Witness Milivoj Petković.

<sup>691</sup> *Ibid.*

<sup>692</sup> T. 41138:9-11, 3 June 2009, Witness Slobodan Praljak.

<sup>693</sup> T. 40363:12-13, 19 May 2009, Witness Slobodan Praljak; 3D02759: “These means are necessary for better management and commanding.”

<sup>694</sup> T. 50127:13, 1 March 2010, Witness Milivoj Petković.

<sup>695</sup> T. 50127:13-15, 1 March 2010, Witness Milivoj Petković.

<sup>696</sup> T. 41138:8-9, 3 June 2009, Witness Slobodan Praljak.

<sup>697</sup> *See e.g. Prosecutor v. Brima, Kamara, and Kanu*, Special Court for Sierra Leone, Case No. SCSL-04-16-T, Trial Chamber Judgment, 20 June 2007, para. 792.

<sup>698</sup> *See e.g.* T. 45202:7, 24 September 2009, Witness Zvonimir Skender.

<sup>699</sup> T. 45202:25, 24 September 2009, Witness Zvonimir Skender.

<sup>700</sup> T. 45203:1, 24 September 2009, Witness Zvonimir Skender.

<sup>701</sup> Exh. P05476; 3D02756.

556. The law is specific with respect to omission to take reasonable and necessary measures. A measure is necessary when it is: “appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish)” and is reasonable when it “reasonably fall[s] within the material powers of the superior.”<sup>702</sup>
557. Further, necessary and reasonable measures are measures “that can be taken within the competence of a commander as evidenced by the degree of effective control he wielded over his subordinates.”<sup>703</sup> As detailed *supra*, due to the chaotic situation and the failures of command, control and communication that were beyond his control, Slobodan Praljak has not been shown to wield effective control over any specifically identified physical perpetrator who was not subject to preventive or disciplinary action.
558. As stated in *Orić*, “a superior is duty bound only to undertake what appears appropriate under the given conditions.”<sup>704</sup> The kind and extent of measures to be taken depend on the degree of effective control over the subordinates at the time a superior is expected to act.<sup>705</sup>
559. The Praljak Defence respectfully submits that reasonable and necessary measures only constitute measures within the sphere of competence of the accused. It does not require *criminal* or *ultra vires* action.<sup>706</sup>
560. Slobodan Praljak’s efforts to bring order out of chaos is exemplified by P05530, a document that demonstrates that even with units who had survived the grueling fight against aggression from the very beginning, even when it was difficult to control people who had served under great pressure, Slobodan Praljak tried his best to prevent troops to carry off loot.<sup>707</sup>

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<sup>702</sup> *Halilović* Appeal Judgment, para. 63; *Orić* Appeal Judgment, para. 177.

<sup>703</sup> *Blaskić* Appeal Judgment, para. 72. See also in the same sense *Delalić* Trial Judgment, para. 395; *Strugar* Trial Judgment, para. 372; *Naletilić* Trial Judgment, para. 76; *Blagojević* Trial Judgment, para. 793; *Delić* Trial Judgment, paras. 76, 541.

<sup>704</sup> *Orić* Trial Judgment, para. 329.

<sup>705</sup> *Ibid.*.

<sup>706</sup> See e.g. *Halilović* Appeal Judgment, paras. 210-214; *High Command* case, 11 Trial of War Criminals before the Nuremberg Tribunal under Control Council Law No 10, Nuremberg, Oct. 1946 Nov. 1949, in particular, at 554-5 (1951); 1950 ILC Draft Code of Offences against the Peace and Security of Mankind, A/CN.4/25 26 April 1950, para. 100: “Any person in an official position, whether civil or military, who fails to take the appropriate measures in his power *and within his jurisdiction*, in order to prevent or repress punishable acts under the draft code [...] shall be responsible therefore under international law and liable to punishment.” (Emphasis added.)

<sup>707</sup> P05530, ET 0157-8381-0157-8384, p. 5.

561. Another example of Slobodan Praljak's efforts to minimize conflict and protect Muslim civilians took place in Prozor in September 1993. [REDACTED]<sup>708</sup> and Prosecution witness Rudy Gerritsen<sup>709</sup> [REDACTED].<sup>710</sup> It was, in the words of one third party report, a "systematic slaughter" in Uzdol once the ABiH drove out the HVO.<sup>711</sup> In the wake of this atrocity, Slobodan Praljak protected the Imam of Prozor, and kept the people of Prozor from abusing the Muslim community.<sup>712</sup> He protected the mosque with an armed guard.<sup>713</sup> Violence was expected by Rudy Gerritsen, but did not occur.<sup>714</sup> Slobodan Praljak took a situation where violence would have happened without his action, and kept the peace, saving uncounted lives of Muslim civilians.<sup>715</sup> A second massacre was prevented.<sup>716</sup> To the Praljak Defence's knowledge, the Prosecution does not contest Slobodan Praljak's life-saving actions towards the Muslims of Prozor.

562. The Prosecution, having numerous examples of Slobodan Praljak doing his utmost to prevent harm and create stability, may attempt to portray him as universally powerful, almost superhuman. Attempting to use good works as inculpatory evidence has no basis in reason or law. A powerful personality, or charitable acts, not backed by proof of effective control over specifically identified perpetrators at the time of the alleged crime, is no basis for a finding of a superior-subordinate relationship.<sup>717</sup> The mere *possibility* of acting, including the *possibility* of punishing errant titular subordinates, does not suffice to demonstrate an accused had effective control over subordinates—a sure ability to do so must be proven.<sup>718</sup> Even an influential individual, whose role or personality gives him power to sway and influence many chaotic situations, cannot be said to have effective control over every perpetrator in every chaotic situation based on the power of his persona and previous good works.<sup>719</sup> There is no intermediate level of control, short of effective

<sup>708</sup> [REDACTED]

<sup>709</sup> T. 19342:15-19343:13, 30 May 2007, Witness Rudy Gerritsen.

<sup>710</sup> [REDACTED]; T. 44666:2, 10 September 2009, Witness Slobodan Praljak.

<sup>711</sup> T. 19346:15, 30 May 2007, Witness Rudy Gerritsen.

<sup>712</sup> [REDACTED]; T. 19342:15-19343:13, 30 May 2007, Witness Rudy Gerritsen.

<sup>713</sup> T. 44666:7, 10 September 2009, Witness Slobodan Praljak.

<sup>714</sup> [REDACTED]; T. 19342:15-19343:13, 30 May 2007, Witness Rudy Gerritsen.

<sup>715</sup> T. 44665:3-44666:20, 10 September 2009, Witness Slobodan Praljak.

<sup>716</sup> T. 40912:18, 28 May 2009, Witness Slobodan Praljak.

<sup>717</sup> See *e.g.*, *Halilović* Trial Judgment, paras. 342 *et seq.* and 743-752; *Kvočka* Trial Judgment, paras. 368–372, 410–412.

<sup>718</sup> See *Hadžihanović* Appeal Judgment, para. 220.

<sup>719</sup> See *e.g.* *Mucić et al.* Appeal Judgment, paras. 266-268.

control over the specific alleged perpetrator at the time of the alleged crime that is relevant to culpability pursuant to the doctrine of superior responsibility.<sup>720</sup> With regards to the element of omission, the Prosecution must specifically identify steps—which it has proven an individual in Slobodan Praljak’s position could actually take—that *would have, not probably could have*, prevented or punished alleged crimes (by specific perpetrators) of which Slobodan Praljak specifically knew.

563. The Prosecution has failed to show that Slobodan Praljak failed to prevent a crime or failed to subsequently discipline a criminal in a situation where he was legally obliged to do so. Actions or inactions must be understood given what Slobodan Praljak knew and was capable of at the time.

564. The Prosecution has failed to allege, let alone prove, that there were *specific* necessary and reasonable measures that Slobodan Praljak failed to take with respect to crimes known to him, during his brief period of command.

#### f. Command Responsibility and the “Three C’s”: Conclusion

565. As stated in *Orić*, A superior is not obliged to do the impossible.<sup>721</sup> Slobodan Praljak did not create the state of command, control, and communication that awaited him. Although he did his best, he could not have fixed it in the 3.5 months he was in titular command.

566. It is trite law that command responsibility, properly applied, is not a form of strict liability.<sup>722</sup> The Praljak Defence respectfully submits that a conviction of Slobodan Praljak pursuant to command responsibility under the circumstances described *supra* would clearly indicate to an objective third party that there was no substantial functional difference between strict liability and command responsibility, as had actually been applied in this instance.

567. The Prosecution has charged Slobodan Praljak with command responsibility for every crime alleged in the entirety of the conflict.<sup>723</sup> The implications of this are absurd.

<sup>720</sup> *Baglishema* Appeal Judgment, para. 56.

<sup>721</sup> *Orić* Trial Judgment, para. 329.

<sup>722</sup> *Mucić et al.* Appeal Judgment, para. 239; *Mucić et al.* Trial Judgment, para. 383 (“The doctrine of superior responsibility does not establish a standard of strict liability for superiors for failing to prevent or punish the crimes committed by their subordinates”); *Halilović* Trial Judgment, para. 65: “Superior responsibility is not a form of strict liability.”); *Boškoski* Trial Judgment, para. 65 (“Strict liability does not attach to the principle of command responsibility.”).

<sup>723</sup> Indictment, para. 228.

According to the Prosecution, he was godlike. He had authority over everything. He had effective control over everyone. He knew everything. He could have prevented and punished any crime. The implausibility of the Prosecution's allegation in the Indictment is obvious, and with the greatest respect, taints the credibility of whatever specific allegation the Prosecution makes in its final trial brief, if indeed it chooses to make a more plausible and focused allegation.

568. The Prosecution failed to prove a true superior subordinate relationship, including effective control, between Slobodan Praljak and a specifically identified physical perpetrator of a charged crime.
569. The Prosecution failed to prove Slobodan Praljak had knowledge of potential or actual specific criminal acts alleged. In reality, he lacked such knowledge due to poor communications and the chaos of the conflict.
570. The Prosecution failed to prove Slobodan Praljak omitted to take reasonable and necessary measures, given the limited effective control he had.
571. Slobodan Praljak was not the type of person to do nothing when he could act. He strove with all his effort to prevent crimes and evils. It was impossible to prevent every crime and evil in the conflict. He cannot be punished for failure to achieve the impossible.

## **XVII. PERSECUTION**

### **a. Introduction**

572. The crime of persecution has a large number of elements. Many of these elements, such as proof of specific intent, are difficult to prove. In a complex situation with countervailing evidence it can be almost impossible to determine that the only inference in the requisite *mens rea*. Nonetheless, all elements must be proven beyond all reasonable doubt to permit criminal conviction.
573. It is settled case-law of the ICTY that:

the crime of persecution consists of an act or omission which:  
discriminates in fact and which denies or infringes upon a  
fundamental right laid down in customary international law or treaty  
law (the *actus reus*); and

was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).<sup>724</sup>

574. In addition to the requirements set for the crime of persecution, the Prosecution also needs to demonstrate that the elements of the underlying offences have been satisfied and that the general requirements of crimes against humanity have been fulfilled.<sup>725</sup>

575. The Praljak Defence respectfully submits that the Prosecution has been unable to prove beyond a reasonable doubt, in many cases, that the underlying offences were committed, or to specifically identify the alleged physical perpetrator. The Prosecution has also been unable to prove in any case the specific nexus with armed conflict and the nexus between an alleged individual criminal act and a widespread and systematic attack on a civilian population.

576. The Praljak Defence respectfully submits that there is not a trace of the alleged persecution during 1992. The Prosecution was for this reason not able to point to any example of the persecution committed prior to 1993.

577. In addition, the Praljak Defence respectfully submits that several of the alleged acts mentioned in the indictment, cannot amount to the crime of persecution. It seems that the Prosecution questioned in several paragraphs whether the resort to armed force by the HVO was justified.<sup>726</sup> In several paragraphs of the indictment the Prosecution holds the Accused responsible for the fighting between the HVO and the ABiH.<sup>727</sup> Furthermore, with regard to destruction of several mosques, the Prosecution relies on the *quasi res ipsa loquitur* theory by failing to demonstrate that the HVO directed attacks against these religious buildings.<sup>728</sup> Finally, certain paragraphs are clearly added by the Prosecution by mistake. This is for instance the case with the paragraphs on the demographic composition

<sup>724</sup> See *Krnjelac* Appeal Judgment, para. 185. *Vasiljević* Appeal Judgment, para. 113. *Blaškić* Appeal Judgment, para. 131. *Kordić and Čerkez* Appeal Judgment, para. 101.

<sup>725</sup> These include specific nexus with armed conflict, and nexus between a criminal individual act and a widespread and systematic attack on a civilian population.

<sup>726</sup> Indictment, paras. 21-25.

<sup>727</sup> Indictment, paras. 29-32, 36, 63-65, 74-76, 91-92, 111, 206-208.

<sup>728</sup> Indictment, paras. 116, 163, 165 and 166.

of municipalities before the conflict,<sup>729</sup> the advice to Bosnian Croats to leave Vareš,<sup>730</sup> and the signing of a peace agreement.<sup>731</sup>

578. With regard to the *actus reus* of the crime of persecution, the Prosecution has failed to demonstrate that the acts or omissions of a specifically identified physical perpetrator discriminated in fact in instances in which a fundamental right has been denied or infringed upon.

579. With respect to the *mens rea* element, the Trial Chamber in *Šainović et al.* recently held that, in order to determine whether the crime of persecution has been committed at all, either the physical perpetrator or the accused must have possessed the requisite discriminatory intent.<sup>732</sup>

580. The Praljak Defence respectfully submits that the Prosecution has in many instances failed to demonstrate that either the physical perpetrator or the Accused had the required state of mind for this charge. Even if there is some indications that an alleged perpetrator acted with discriminatory intent (e.g. in Prozor or Mostar area) that could not be placed on the Praljak's shoulders unless there is a clear proof that Praljak knew about the act or should have known that it took place. Such proof was not presented.

581. In paragraph 233 of the indictment the Prosecution states: “Acts, omissions or conduct charged as persecution were committed, omitted or carried out with discriminatory intent, with the intention to discriminate on political, racial, ethnical or religious grounds.” The Prosecution did not specify who possessed the discriminatory intent required for the crime of persecution, let alone establish that either accused or the physical perpetrators had or shared the *mens rea*. It therefore appears that the Prosecution, instead of specifically alleging and proving a specific named person had the requisite state of mind with respect to a specific act, has tried to avoid in many cases the difficulty of demonstrating that this core element has been satisfied by arguing that someone, presumably of ethnic Croatian heritage, must have had some sort of discriminatory intent at some point. Otherwise, the Indictment appears to suggest, how could all of these evils occur? With respect, this is insufficient to lead to criminal conviction. Once again, it is an implicit reliance on a *quasi res ipsa loquitur* theory. It asks too much of the Trial Chamber.

<sup>729</sup> Indictment, paras. 43, 61, 73, 88, 144, 154, 172 and 204.

<sup>730</sup> Indictment, para. 212.

<sup>731</sup> Indictment, para. 117.

<sup>732</sup> *Šainović et al* Trial Judgment, para. 181.



582. In addition, the Praljak Defence respectfully submits that the Prosecution cannot reasonably infer from the ethnical background of the victims that the alleged crimes have been committed with the specific intent required by the definition of persecution. The parties to the conflict did not fight each other because of their different ethnical backgrounds. The conflict was about territory. If the parties would have had the same ethnical background, the Accused would not have acted any differently.

**b. The broadness of the case and the too tenuous link between Slobodan Praljak and the relevant physical perpetrators**

583. The Praljak Defence would like to point out the extraordinarily broad nature of the crime of persecution Slobodan Praljak is charged with. According to the indictment, the Prosecution wants the Trial Chamber to consider whether the Accused can be held accountable for almost every conceivable underlying offence of persecution. The Praljak Defence respectfully submits that the Prosecution failed to show that Slobodan Praljak knew or should have known that all these crimes were, or were about to be, committed in such a large part of Bosnia-Herzegovina. Nor did it demonstrate that these crimes were reasonably foreseeable to him. The Prosecution was also not capable to provide evidence that Slobodan Praljak contributed in any sort of way to these crimes.

584. In addition, the Praljak Defence respectfully submits that the Prosecution has failed to identify many of the relevant physical perpetrators. In those instances, it cannot be established what the link is between Slobodan Praljak and the persons who physically committed the crime. It even remains uncertain whether there existed such a link at all.

585. In the cases where the Prosecution was able to identify a physical perpetrator, the Praljak Defence wishes to emphasize the physical and structural remoteness between that person and Slobodan Praljak.

586. Slobodan Praljak testified in Court that he did not have any form of contact with the soldiers who physically committed the crimes.<sup>733</sup> For knowledge of these crimes, Slobodan Praljak completely depended upon the information he received from his officers and therefore ordered them to report all criminal offences so that criminal proceedings

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<sup>733</sup> T. 41174:12-13, 4 June 2009, Witness Slobodan Praljak.

could be undertaken.<sup>734</sup> Slobodan Praljak was only competent himself to address disciplinary infractions.<sup>735</sup> Criminal offences were to be tried by a court.<sup>736</sup>

587. The Appeals Chamber in the Brđanin case felt that where the link between an accused and the physical perpetrator of a crime is too tenuous, it would be inappropriate to impose criminal liability on the accused.<sup>737</sup> A conviction cannot be based upon “guilt by association.”<sup>738</sup>

588. The Praljak Defence respectfully submits that the Prosecution has failed to demonstrate that there was a sufficiently strong link between Slobodan Praljak and the physical perpetrators in order to impose criminal responsibility on the Accused. The only link there appeared to be between Slobodan Praljak and certain physical perpetrators, was that they served in the same army. In the cases where the Prosecution was not capable to identify the physical perpetrators, it must even be doubted that there existed such a link. The Praljak Defence therefore respectfully submits that this link is too tenuous and would amount to “guilt by association.”

**c. Slobodan Praljak lacked the specific discriminatory intent required.**

589. The Praljak Defence notes that several of the modes of liability the Accused is charged with require that the Accused himself had the specific intent required by the crime of persecution.<sup>739</sup> To the extent the modes of liability demand that the Accused possessed the discriminatory intent, the Praljak Defence respectfully submits that the Prosecution has failed to establish the Accused had the requisite *mens rea*. On the contrary, there is much evidence available that makes it highly unlikely that the Accused has ever had this intent.

590. The evidence demonstrates that General Praljak had deep respect for the Geneva Conventions of 1949 and their Additional Protocols of 1977. Not only did Slobodan Praljak demand and insist on full compliance with and instruction in the laws and customs

<sup>734</sup> T. 42585:18-22, 6 July 2009, Witness Slobodan Praljak.

<sup>735</sup> T.41174:16-19, 4 June 2009, Witness Slobodan Praljak; T. 42585:25-42586:1, 6 July 2009, Witness Slobodan Praljak.

<sup>736</sup> T.41174:16-19, 4 June 2009, Witness Slobodan Praljak; T. 42586:1-4, 6 July 2009, Witness Slobodan Praljak.

<sup>737</sup> *Brđanin* Appeal Judgment, para. 418.

<sup>738</sup> *Ibid.*, para. 428.

<sup>739</sup> The discriminatory state of mind is required for liability on the basis of commission, the Basic Joint Criminal Enterprise and the Systemic Joint Criminal Enterprise.

of war,<sup>740</sup> he himself strictly observed international humanitarian law as well. This appears for instance from the fact that Slobodan Praljak made sure the booklets of the Red Cross and the magazine, “Croatian Soldier”, were freely distributed to all levels of the HVO.<sup>741</sup> Furthermore, Slobodan Praljak ordered on multiple occasions the organization of Red Cross seminars, because he wanted to ensure that every HVO soldier, NCO and officer was fully aware of the rules and customs of war.<sup>742</sup> In addition Witness BM testified that in November 1992 Slobodan Praljak, immediately upon his arrival, ordered the release of 16 Muslims who had been illegally arrested the day before.<sup>743</sup>

591. This lack of specific intent is demonstrated *inter alia* by Slobodan Praljak’s approach with respect to humanitarian aid and assistance intended for the Muslim population. A striking example in this regard is that of Ms. Sally Becker, also known as the Angel of Mostar. The evidence reveals that Slobodan Praljak issued several orders allowing Ms. Becker “to cross the checkpoints and depart to the left side of Mostar controlled by Muslim forces...”<sup>744</sup> It was Ms. Becker’s intension to collect ill children and other powerless people and bring them back with her. Slobodan Praljak ordered his subordinates to assist Ms. Becker while undertaking this humanitarian action.<sup>745</sup> In addition, Slobodan Praljak arranged on several occasions police protection for Ms. Becker<sup>746</sup> and once offered her a sanitary vehicle of the HVO.<sup>747</sup>

592. Several Witnesses testified that on 25 August 1993 General Praljak intervened when a humanitarian convoy intended for East Mostar was stopped in Citluk. Bosnian refugees had obstructed the passage for a UN convoy and the civilian population tried to attack the vehicles. Immediately after General Praljak heard of the problems in Citluk, he took the initiative and personally resolved the situation. Slobodan Praljak spoke to the crowd and persuaded the civilians to let the convoy pass. He personally escorted the humanitarian

<sup>740</sup> E.g. 3D02898; 3D02322; 3D02763; P 03829.

<sup>741</sup> T. 43756:16-43757:6, 24 August 2009, Witness Slobodan Praljak.

<sup>742</sup> E.g. T. 41625:2-7, 17 June 2009 Witness Slobodan Praljak; T. 42225:11-17, 30 June 2009, Witness Slobodan Praljak; T.43632:18-20, 20 August 2009, Witness Slobodan Praljak; T. 44682:21-44683:4, 10 September 2009, Witness Slobodan Praljak.

<sup>743</sup> T. 7048:13-7050:18, 20 September 2006, Witness BM; 3D 00291.

<sup>744</sup> T. 12828:15-17, 24 January 2007; 3D00673.

<sup>745</sup> T. 12828:18-21, 24 January 2007; 3D00673.

<sup>746</sup> T. 12829:16-24, 24 January 2007; 3D00696; T. 12829:25-12830:7, 24 January 2007; 3D00697.

<sup>747</sup> T. 12829:25-12830:7, 24 January 2007; 3D00697.

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convoy to a checkpoint of the ABiH at the entrance of Mostar.<sup>748</sup> It is worth mentioning that the Prosecution did not contest the description of the events at Citluk.<sup>749</sup>

593. On 4 September 1993 a female doctor from East Mostar, Mira Camidzic, got seriously injured. Slobodan Praljak personally took her to a HVO hospital where she was operated and from there transferred her to Split. Unfortunately Dr. Camidzic died, despite all the efforts.<sup>750</sup>

594. Slobodan Praljak personally helped a family with an ill child from Rama to be transferred to Split. Because the child needed medical treatment, Slobodan Praljak helped them obtain the Croatian nationality so that they could rely for the medical costs on the Croatian social insurance. This allowed the family to travel in Switzerland so that the child could undergo medical treatment there.<sup>751</sup>

595. Not just wounded and ill civilians received medical treatment. Slobodan Praljak was also actively involved in the transfer of wounded enemy combatants from the ABiH. He made sure the wounded soldiers got the medical treatment they needed in Croatia.<sup>752</sup>

596. In addition to ordering compliance with the Geneva Conventions, Slobodan Praljak replaced brigade commanders who refused to let humanitarian convoys pass<sup>753</sup> and insisted several times on the punishment of persons who refused to let humanitarian aid go through.<sup>754</sup>

597. Slobodan Praljak even went beyond what is required by the Geneva Conventions by permitting humanitarian aid to pass which was intended for the ABiH.<sup>755</sup> In addition, Slobodan Praljak allowed weapons to be transported to the Armed Forces of Bosnia-Herzegovina so that the Muslim forces were able to protect themselves.<sup>756</sup>

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<sup>748</sup> T. 5594:11-5595:17, 28 August 2006, Witness BJ; T. 5596:11-5601:2, 28 August 2006, Witness BJ. T. 5719:16-5724:17, 29 August 2006, Witness BJ. T. 23038: 8-11, 2 October 2007, Witness DV; 3D0036.

<sup>749</sup> T. 5720:6-12, 29 August 2006, Mr. Scott.

<sup>750</sup> T. 12930:24-12931:1, 25 January 2007, Witness Jovan Rajkov; T. 40176:8-11, 14 May 2009, Witness Slobodan Praljak; Document P. 04857.

<sup>751</sup> T. 40175:18-40176:5, 14 May 2009, Witness Slobodan Praljak; T. 39810:3-39811, 7 May 2009, Witness Slobodan Praljak [REDACTED].

<sup>752</sup> T. 40175:18-40176:15, 14 May 2009, Witness Slobodan Praljak.

<sup>753</sup> T. 44502:23-24, 7 September 2009, Witness Slobodan Praljak.

<sup>754</sup> T. 39605:20-22, 5 May 2009, Witness Slobodan Praljak.

<sup>755</sup> T. 39605:23-25, 5 May 2009, Witness Slobodan Praljak.

<sup>756</sup> T. 39606:13-39607:22, 5 May 2009, Witness Slobodan Praljak.

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598. The manner in which he interacted with the HVO is also clear evidence that Slobodan Praljak lacked the specific intent required for the crime of persecution. Under General Praljak's command many Muslims joined the HVO.<sup>757</sup>
599. In addition, many Muslims willingly joined forces with the HVO. This was especially the case after the events of 15 May 1992 when the HVO transferred around 15,000 Muslims from East Mostar and Stolac to Čapljina. These refugees were trying to escape the violence caused by the Serbian forces. Slobodan Praljak issued the orders to organize the transport of these people, because the Serbs were not willing to let them pass. About 400 to 500 Muslim men decided to cooperate with the HVO. They were trained and armed by the HVO, and they formed the Bregava Brigade.<sup>758</sup>
600. As has been demonstrated by testimony and 3D03131, in April 1992 Slobodan Praljak risked his life in order to save Muslim and Serbian civilians, including a pregnant woman, who were being attacked. These people had come to visit their relatives who were held in the Grabovina barracks.<sup>759</sup>
601. Witness Alojz Arbutina testified that Slobodan Praljak often told him to make sure that all civilians, regardless of their ethnical background, had enough to eat. For this reason several elderly Serbs received regularly food and provisions.<sup>760</sup> No Croatian, Serbian or Muslim family suffered from a food shortage and during the winter elderly people given fuel, free of charge, for the heating of their homes.<sup>761</sup>
602. Witness Azra Krajsek testified that she knew that Slobodan Praljak lodged 13 Muslim refugees in his weekend cottage during the war.<sup>762</sup> Slobodan Praljak stated that he paid all their bills.<sup>763</sup>
603. [REDACTED].<sup>764</sup> [REDACTED].<sup>765</sup>

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<sup>757</sup> T. 40367:6-11, 19 May 2009, Witness Slobodan Praljak.

<sup>758</sup> T. 30669:5-30671:19, 14 July 2008, Witness Zoran Buntic; T. 40401:7-40403:3, 20 May 2009, Witness Slobodan Praljak; T. 40509:3-40510:12, 21 May 2009, Witness Slobodan Praljak.

<sup>759</sup> T. 40365:18-40366:22, 19 May 2009, Witness Slobodan Praljak; T. 40369:14-40374:18, 19 May 2009, Witness Slobodan Praljak. See also Exh. 3D3666, (92bis Witness Zurovac); 3D3707, (92bis Witness Goran Moro).

<sup>760</sup> T. 45091:14-25, 22 September 2009, Witness Alojz Arbutina.

<sup>761</sup> T. 45102:1-10, 22 September 2009, Witness Alojz Arbutina.

<sup>762</sup> T. 20324:3-6, 21 June 2007, Witness Azra Krajsek.

<sup>763</sup> T. 41679:12-14, 18 June 2009, Witness Slobodan Praljak.

<sup>764</sup> [REDACTED].

<sup>765</sup> [REDACTED].

604. These were not the only persons that Slobodan Praljak stayed in his house. Several dozens of Muslims lived for a period of time in his flat in Zagreb.<sup>766</sup> Amongst these people were also Fatima Tanović and her husband. In her statement Mrs. Tanović declared that she contacted Slobodan Praljak in late 1993, because she and her husband were in need for identification documents and passports in order to travel to Germany. Mrs. Tanović and her husband stayed for two or three days at Slobodan Praljak's flat in Zagreb until all their documents were ready.<sup>767</sup>

605. The Praljak Defence is respectfully of the opinion that the Prosecution's allegation that Slobodan Praljak had the discriminatory state of mind required by the crime of persecution is contradicted by the evidence. In addition, the Praljak Defence respectfully submits that the Prosecution has failed to demonstrate that any of the orders issued by Slobodan Praljak were directed against the civilian population. The evidence reveals that Slobodan Praljak only approved of acts in accordance with the Geneva Conventions undertaken against enemy combatants.

**d. The Extended Joint Criminal Enterprise and the specific intent requirement**

606. The Praljak Defence notes that the case law of the ICTY on the question whether the third category of joint criminal enterprise also requires the Accused to have had the specific intent required by the crime of persecution has not been consistent.<sup>768</sup> Many scholars have severely criticized the notion that persecution convictions do not always require discriminatory intent. The trend of authority and scholarly opinion is to require specific intent in all cases.

607. Most of the arguments given by the literature as to why the Accused should have possessed the specific intent himself, relate to the fact that criminal liability under the Extended Joint Criminal Enterprise is a form of commission. "The highest degree of participation in a crime"<sup>769</sup> as the Trial Chamber in the *Simić* case pointed out. The scholars are of the view that, in case it does need to be demonstrated that the accused possessed the requisite *dolus specialis*, it would be "as allowing the Prosecution to

<sup>766</sup> T. 41623:6-9, 17 June 2009, Witness Slobodan Praljak.

<sup>767</sup> 3D03652.

<sup>768</sup> The Trial Chambers in the *Stakić et al.* and *Brđanin* cases answered this question in the affirmative. Whereas the Appeals Chamber in the *Brđanin* case and the Trial Chambers in the *Slobodan Milošević* and *Šainović et al* cases answered this question negatively. *Stakić et al* Trial Judgment, para. 437. *Brđanin* Trial Judgment, para. 57. *Brđanin* Appeal Judgment, para. 5. *Slobodan Milošević* Trial Decision on motion of judgment for acquittal, 16 June 2004, para. 291. *Šainović et al*, Trial Judgment, para. 110.

<sup>769</sup> *Simić et al* Trial Judgment, para. 137.

circumvent the proper *mens rea* requirements...<sup>770</sup> Kai Ambos pointed out that this could lead to a situation where “an aider and abettor would do more than a co-perpetrator”<sup>771</sup> under an extended JCE. It has also been questioned whether the third category JCE, not requiring the establishment of the specific *mens rea* requirement of the crime, is still in accordance with article 7 (1) of the ICTY Statute and the case-law of the Tribunal on the JCE as a form of commission.<sup>772</sup>

608. The Praljak Defence shares the concerns expressed by the literature and is therefore of the opinion that the Prosecution must, in the context of the third extended form of Joint Criminal Enterprise, demonstrate that the Accused had the discriminatory intent as required by the crime of persecution. The Praljak Defence respectfully submits that the Prosecution has failed to do so.

609. It is worth mentioning that the Extraordinary Chambers in the Courts of Cambodia have recently rejected the Extended Joint Criminal Enterprise.<sup>773</sup> It held that the ICTY Appeals Chamber in the Tadić case did not rely on sufficient authority “...to conclude that JCE III formed part of customary international law...”.<sup>774</sup> Criminal responsibility based upon the Extended Joint Criminal Enterprise therefore runs contrary to the principle of legality.<sup>775</sup>

#### **e. Persecution: Conclusion**

610. Slobodan Praljak’s sympathies, and the sympathies of the Praljak Defence, lie with the victims of the conflict, regardless of ethnicity or creed. The Praljak Defence in no way seeks to deny or minimize the genuine suffering of any of the victims of the conflict. The Praljak Defence merely respectfully submits that for an individual criminal conviction of persecution, it is not enough to point out that some ethnic Muslims, some participating in the conflict, some not, suffered. The Prosecution must prove beyond all reasonable doubt

<sup>770</sup> “An introduction to international criminal law and procedure,” by Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmschurst, Cambridge University Press, ISBN 978-0-521-13581-8, 2010, p. 373.

<sup>771</sup> “Joint criminal enterprise and command responsibility in modern case-law: the basics,” by Kai Ambos, *Journal of International Criminal Justice*, 2007, p. 13.

<sup>772</sup> “The development of the concept of joint criminal enterprise at the International Tribunal for the Former Yugoslavia,” by Verena Haan, *5 International Criminal Law Review* 167, 2005, p. 200-201. Reference has been made to *Šainović et al*, Trial Decision on Dragoljub Ojdanić’s motion challenging jurisdiction – joint criminal enterprise, 21 May 2003, para. 20.

<sup>773</sup> Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), Extraordinary Chambers in the Courts of Cambodia, Criminal Case File No. 002/19-09-2007-ECCC/OCIJ (PTC38), D97/15/9, 20 May 2010, paras. 75-89.

<sup>774</sup> *Ibid.*, para. 83.

<sup>775</sup> *Ibid.*, para. 87.

that Slobodan Praljak, himself, committed persecution. The Prosecution has failed to prove this because it is not true. Slobodan Praljak did not discriminate, nor did he intend to discriminate. He was not party to the crime of persecution. His acts point in the exact opposite direction. The Praljak Defence respectfully submits that the charge of persecution should be dismissed.

#### **XVIII. GENERAL BEHAVIOR AND PERSONAL ACTS OF PRALJAK**

611. Slobodan Praljak acted to protect others, not himself. He did not have to volunteer. He could have let the victims of aggression in Bosnia and Herzegovina die. He served as best he was able, in the context of chaotic situation that he could not fully control. He knew he could not prevent all evils. He knew he might be subject to unfounded allegations. If the position of the volunteer standing up to aggression in a chaotic situation is *de facto* criminalized, the result will not be superhuman volunteers, who act with divine knowledge and virtual omnipotence.
612. As submitted above, there was no Joint Criminal Enterprise. The Accused Praljak has never participated in any meeting, conference or any kind of public or secret gathering in The Republic of Croatia or Bosnia and Herzegovina where any kind of criminal plans were discussed explicitly or implicitly. There is simply no evidence that would provide a base for a conclusion that Praljak has ever participated in creation or implementation of anything that would be against the law.
613. Slobodan Praljak's character, as evidenced by his pattern of conduct, is clear. From preventing massacres of Serbs in Sunja,<sup>776</sup> to hosting and caring for Muslim refugees in his own home,<sup>777</sup> or in Grabovine and Zurovci he sought to minimize suffering, regardless of the ethnicity of the potential victim. His actions and character contradict unfounded suggestion that he discriminated, let alone that he joined into a transnational bigoted conspiracy to persecute the people of Republic of Croatia and Bosnia and Herzegovina.
614. Slobodan Praljak's intent was clear—to defend Republic of Croatia and Bosnia and Herzegovina and to prevent or minimize death and suffering, particularly with respect to civilians. His intent was the intent of patriot of not only Bosnia and Herzegovina but the Republic of Croatia as well, defending those countries in a horrible and bewildering

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<sup>776</sup> E.g., T. 45091:14-25, 22 September 2009, Witness Alojz Arbutina.

<sup>777</sup> E.g., Exh. 3D03652, Fatima Tanović.



context. He was born in Grabovina, Bosnia and Herzegovina. His parents lived there. He lived better part of his life in Croatia. He saw the continuing aggression of the JNA/VRS on those countries—he saw that the JNA plan was to occupy the territory regardless of the borders. He returned home to help defend Bosnia and Herzegovina, the country that he loved, his birthplace, and the home of those he loved. He served not only as a volunteer soldier for the HVO, but as a member of the ABiH.<sup>778</sup> He returned home to help defend Bosnia and Herzegovina from the Serbian controlled JNA and its local servants. Praljak understood too well that there was only one true enemy—the JNA and its local supporters. All of the evidence is consonant with this straightforward, common-sense understanding of his intentions.

615. Slobodan Praljak invested all of his will, knowledge, and energy, to laudable goals and actions throughout the entire period of the conflict, particularly:

- i. to protect civilians;
- ii. to enable humanitarian convoys to pass through HVO-controlled territory;
- iii. to enable journalists to move freely throughout the territory;
- iv. to assist in the transfer of wounded or sick people, soldiers, and civilians, to the hospitals in BiH or in RH;
- v. to prevent possible revenge actions of HVO members in circumstances where such actions were reasonably expected or possible;
- vi. to ensure that troops received appropriate training regarding humanitarian law (both in Croatia and BiH); and
- vii. to protect the UN and other international forces from any harm and assist them in their missions;

616. Even though the Accused Praljak in some instances acted unkindly or strictly towards his subordinates, he did so with good reason, and never did so towards opposing combatants or civilians.

617. Regarding his attitude and behavior related to persons of other ethnicities, his acts in Sunja, Grabovine, and Zurovci confirm that he is not ethnically-biased person. He

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<sup>778</sup> 3D03510; T. 40672:29-40676:1, 25 May 2009.

protected Serbs and their properties in Sunja as well as in Grabovine and other places. He always behaved in an exemplary manner in that respect. Praljak undertook tremendous efforts in a titanic effort to transfer and shelter refugees from Stolac and the Dubrave Plateau to the right bank of the Neretva River in the spring of 1992.

618. When he was informed about forced labour of detainees, he reacted promptly by demanding the cessation of any use of detainees for any kind of labour.

619. Slobodan Praljak did not shelter himself in security of the HVO headquarters. Quite to the contrary, he repelled aggression on the field with his men—while fighting in Croatia and later in BiH. No crime of any sorts has been committed by Praljak's subordinates when he was nearby. Because his strict moral standards were easily recognized by people in his surrounding, his mere presence prevented the crimes; either minor thefts or the most serious crimes.

620. The Prosecution has not met its heavy burden, and asks too much from the Trial Chamber to convict on the basis of the evidence before it. Acquittal is the only response for an overly-broad Indictment, full of claims not supported by the evidence. Had an objective investigating judge framed the Indictment, the Indictment might have been focused on accused and counts justified by the evidence. The Prosecutor staked out a maximalist position, a proud position, but ultimately a weak position. It is not the responsibility of the Trial Chamber to save the pride or correct the poor choices of the Prosecutor.

621. The Praljak Defence respectfully submits that the Trial Chamber should acquit Slobodan Praljak on every count. While inevitably surrounded by legal niceties, the simple message that conviction would send is that in a chaotic situation, leadership is criminalized. Where leadership is criminalized, only criminals will be leaders. Conviction would enshrine a jurisprudence that would deter people of good will from service, leaving the field of leadership open only to criminals. If one accepts that criminal law has a deterrent effect, conviction would worsen the next conflict.

622. Most importantly, conviction would be unjust. Slobodan Praljak is innocent of the charges against him.

#### **XIX. FINAL PROPOSITION OF THE DEFENCE**

623. The Praljak Defence respectfully submits that the Trial Chamber should acquit Slobodan Praljak on every count. Conviction would be unjust and unjustifiable.

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Respectfully submitted,

By

A handwritten signature in black ink, appearing to be a stylized combination of the names Božidar Kovačić and Nika Pinter.

Božidar Kovačić and Nika Pinter  
Counsel for the Accused Slobodan Praljak