

**UNITED  
NATIONS**



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

Case No. IT-01-47-T  
Date: 15 March 2006  
Original: ENGLISH  
French

**IN THE TRIAL CHAMBER**

**Before:** Judge Jean-Claude Antonetti  
Judge Vonimbolana Rasoazanany  
Judge Bert Swart

**Registrar:** Mr Hans Holthuis

**Judgement of:** 15 March 2006

**THE PROSECUTOR**

v.

**ENVER HADŽIHASANOVIĆ  
AMIR KUBURA**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr Daryl A. Mundis  
Ms Tecla Henry-Benjamin  
Mr Stefan Waespi  
Mr Matthias Neuner

**Counsel for the Defence:**

Ms Edina Rešidović and Mr Stéphane Bourgon for Enver Hadžihasanović  
Mr Fahrudin Ibrišimović and Mr Rodney Dixon for Amir Kubura

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## I. INTRODUCTION

### A. The Accused

#### 1. The Accused Hadžihasanović

1. The Accused Hadžihasanović was born on 7 July 1950 in Zvornik, Zvornik municipality, Republic of Bosnia and Herzegovina (“RBiH”).<sup>1</sup> The Accused Hadžihasanović is a former officer in the Yugoslav People’s Army (“JNA”)<sup>2</sup> who, after graduating from the Belgrade Land Forces Military Academy in 1973, was assigned to JNA posts in Tuzla and Sarajevo.<sup>3</sup> In 1988, he was appointed Chief of Staff of the 49<sup>th</sup> Motorised Brigade and was later appointed its commander in late 1989. While in that position, Hadžihasanović achieved the rank of Lieutenant Colonel.<sup>4</sup>

2. After leaving the JNA, the Accused Hadžihasanović joined the Territorial Defence (“TO”) of the RBiH<sup>5</sup> in early April 1992 and was subsequently appointed Chief of Staff of the 1<sup>st</sup> Corps of the Army of Bosnia and Herzegovina (“ABiH”) on 1 September 1992.<sup>6</sup> Sefer Halilović first sent him to Zenica to organise troops to lift the siege of Sarajevo.<sup>7</sup> The Accused Hadžihasanović was then tasked with consolidating and organising, from Zenica, units in Central Bosnia to face the Serbian military aggression on the RBiH. He was appointed Commander of the 3<sup>rd</sup> Corps by Sefer Halilović some time in mid-November 1992,<sup>8</sup> a post he held until 1 November 1993, when he was promoted to Chief of the ABiH Supreme Main Command Staff. He was replaced in the post by Mehmed Alagić.<sup>9</sup>

3. In December 1993, the Accused Hadžihasanović was promoted to the rank of Brigadier General and became a member of the Joint Command of the Army of the Federation of Bosnia and Herzegovina.

<sup>1</sup> Initial appearance, 9 August 2001, French transcript of proceedings (“T(F)”) p. 2.

<sup>2</sup> Joint Statement on the Agreement of Facts, Annex A.

<sup>3</sup> *Ibid.*

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

<sup>5</sup> *Ibid.*

<sup>6</sup> Defence Exhibit for Hadžihasanović (“DH”) 451.

<sup>7</sup> Muradif Mekić, T(F) p. 9950.

<sup>8</sup> Prosecution Exhibit (“P”) 245; DH 2088 (Report by military expert Vahid Karavelić), paras. 317, 367, and 377; Hadžihasanović Defence Final Brief, para. 28; Joint Statement on the Agreement of Facts, Annex A.

<sup>9</sup> Joint Statement on the Agreement of Facts, Annex A; p. 209 and p. 278.

## 2. The Accused Kubura

4. The Accused Kubura was born on 4 March 1964 in Kakanj, Bosnia and Herzegovina.<sup>10</sup> He is a former professional officer of the JNA who, after completing training at the Academy for Ground Forces, served for five years as a JNA officer in Đakovica. In 1992, he left the JNA, holding the rank of Captain.<sup>11</sup>

5. In 1992, the Accused Kubura joined the newly created ABiH as the Deputy Commander of a detachment in Kakanj. Later, he was appointed Commander of an ABiH mountain battalion in the same area.<sup>12</sup> On 11 December 1992, Kubura was assigned to the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Brigade and posted as Assistant Chief of Staff for Operations and Instruction Matters.<sup>13</sup> On 12 March 1993, Sefer Halilović ordered that the Accused Kubura be appointed Chief of Staff and Deputy Commander of the 7<sup>th</sup> Brigade.<sup>14</sup> By order dated 6 August 1993, Rasim Delić, Commander of the ABiH Supreme Main Command Staff, appointed Kubura Commander of the 7<sup>th</sup> Brigade.<sup>15</sup> Evidence we will examine at a later stage, however, will show that the Accused Kubura was the *de facto* Commander of the 7<sup>th</sup> Brigade well before he was formally appointed to that post.

6. On 16 March 1994, the Accused Kubura, then a colonel, was appointed Commander of the ABiH 1<sup>st</sup> Corps 1<sup>st</sup> Muslim Mountain Brigade.<sup>16</sup> On 16 December 1995, he was appointed Commander of the ABiH 4<sup>th</sup> Corps 443<sup>rd</sup> Brigade. In June 1999, he became a member of the Command Staff of the ABiH 1<sup>st</sup> Corps.<sup>17</sup>

### **B. Charges Against the Accused**

7. The Prosecution submits that, in 1993 and up until 18 March 1994, the ABiH was engaged in an armed conflict with the Croatian Defence Council (“HVO”) in Central Bosnia, particularly in the municipalities of Travnik, Zenica, Bugojno, Kakanj and Vareš.<sup>18</sup> The Prosecution alleges that units subordinated to the 3<sup>rd</sup> Corps, including the 7<sup>th</sup> Brigade commanded by the Accused Kubura, attacked towns and villages mainly inhabited by Bosnian Croats. As a result of the attacks,

<sup>10</sup> Initial appearance, 9 August 2001, T(F) p. 2.

<sup>11</sup> Joint Statement on the Agreement of Facts, Annex A.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Defence Exhibit for Kubura (“DK”) 62, Annex A.

<sup>15</sup> DK 25; p. 498.

<sup>16</sup> Joint Statement on the Agreement of Facts, Annex A.

<sup>17</sup> *Ibid.*

<sup>18</sup> Indictment, para. 26.

predominately Bosnian Croat but also Bosnian Serb civilians were allegedly subjected to wilful killings and serious injury.<sup>19</sup>

8. The Prosecution further alleges that predominately Bosnian Croats but also Bosnian Serbs were unlawfully imprisoned or otherwise detained in facilities controlled by units subordinated to the Accused. While imprisoned, the Bosnian Croats and Serbs were allegedly subjected to physical and psychological abuse. Prison conditions were allegedly overcrowded and unsanitary, and detainees lacked medical care and were inhumanely deprived of food, water, and clothing.<sup>20</sup>

9. The Prosecution also alleges that units subordinated to the Accused plundered and destroyed Bosnian Croat and Bosnian Serb property without military justification. In addition, Bosnian Croat buildings, sites, and institutions dedicated to religion were allegedly destroyed or otherwise damaged or violated.<sup>21</sup>

10. The Prosecution submits that the Accused knew or had reason to know that their subordinates were about to commit such acts or had done so, and that they failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

11. By those omissions, the Accused are alleged to be criminally responsible for: murder and cruel treatment, violations of the laws or customs of war punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by Article 3(1)(a) of the Geneva Conventions;<sup>22</sup> wanton destruction of towns or villages not justified by military necessity, a violation of the laws or customs of war punishable under Articles 3(b) and 7(3) of the Statute of the Tribunal;<sup>23</sup> plunder of public or private property, a violation of the laws or customs of war punishable under Articles 3(e) and 7(3) of the Statute of the Tribunal;<sup>24</sup> and destruction of or wilful damage to institutions dedicated to religion, a violation of the laws or customs of war punishable under Articles 3(d) and 7(3) of the Statute of the Tribunal.<sup>25</sup>

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<sup>19</sup> *Ibid.*, para. 27.

<sup>20</sup> *Ibid.*, para. 28.

<sup>21</sup> *Ibid.*, para. 29.

<sup>22</sup> *Ibid.*, paras. 39-43.

<sup>23</sup> *Ibid.*, paras. 44 and 45.

<sup>24</sup> *Ibid.*, paras. 44 and 45.

<sup>25</sup> *Ibid.*, para. 46.



## II. APPLICABLE LAW

### A. Conditions for the Applicability of Article 3 of the Statute

12. The Indictment charges crimes defined by the provisions of Article 3 of the Statute, such as count 5 (wanton destruction of towns and villages not justified by military necessity), count 6 (plunder of public or private property), and count 7 (destruction of or wilful damage to institutions dedicated to religion). It also charges other crimes set out in Article 3 of the Statute, but which are themselves based on common Article 3 of the Geneva Conventions of 1949 (counts 1 and 3: murder, and counts 2 and 4: cruel treatment).

13. Two preliminary conditions must be satisfied for Article 3 of the Statute to apply. First, an armed conflict (internal or international) must exist and, second, there must be a close nexus between the crimes alleged and the conflict.<sup>26</sup> Tribunal case law has repeatedly established that Article 3 of the Statute applies whatever the nature of the armed conflict.<sup>27</sup>

14. In the *Tadić* Jurisdiction Decision, the Appeals Chamber held that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.<sup>28</sup> It is sufficient to determine that an armed conflict exists in an area of which the municipality in question forms a part.<sup>29</sup> International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.<sup>30</sup>

15. Furthermore, the Appeals Chamber in *Tadić* held: “Even if substantial clashes were not occurring [in a given region] at the time and place the crimes allegedly were committed [...] international humanitarian law applies. It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”<sup>31</sup>

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<sup>26</sup> *Tadić* Jurisdiction Decision, paras. 67-70. Prosecution’s Submissions Concerning Armed Conflict and Elements of Crimes, 2 July 2004, paras. 3-8.

<sup>27</sup> *Tadić* Jurisdiction Decision, paras. 94 and 137; *Strugar* Trial Judgement, para. 216.

<sup>28</sup> *Tadić* Jurisdiction Decision, para. 70.

<sup>29</sup> *Čelebići* Trial Judgement, para. 185.

<sup>30</sup> *Tadić* Jurisdiction Decision, para. 70.

<sup>31</sup> *Tadić* Jurisdiction Decision, para. 70; reaffirmed by the Appeals Chamber in the *Kunarac* Appeal Judgement, para. 57.

16. As to the requisite clear or close nexus between the armed conflict and the commission of the crime, the Appeals Chamber in *Kunarac* specified that it is sufficient to establish that “the perpetrator acted in furtherance of or under the guise of the armed conflict”.<sup>32</sup> In that regard, it noted that the armed conflict need not have been causal to the commission of the crime, but that the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.<sup>33</sup>

17. As regards the Chamber’s jurisdiction over crimes covered by common Article 3 of the Geneva Conventions of 1949, we recall that, in its Decision on Jurisdiction, the Appeals Chamber determined that Article 3 of the Statute functions as a residual clause designed to ensure that no serious violation of international humanitarian law is taken away from the jurisdiction of the International Tribunal.<sup>34</sup> In that regard, the Appeals Chamber specified the conditions to be fulfilled for an offence to be subject to prosecution before the International Tribunal under Article 3 of the Statute:

- “(i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;
- (iii) the violation must be "serious", that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim [...]
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.”<sup>35</sup>

18. Accordingly, for a chamber to have jurisdiction over an offence, those conditions must be fulfilled, regardless of whether the crime is expressly stipulated in Article 3 of the Statute.<sup>36</sup> The Appeals Chamber further noted that it does not matter whether the offence was committed within the context of an international or an internal armed conflict, so long as the requirements set out above are met.<sup>37</sup> As such, the scope of Article 3 of the Statute covers common Article 3 of the Geneva Conventions (in respect of counts 1-4), which applies to situations of non-international armed conflicts.

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<sup>32</sup> *Kunarac* Appeal Judgement, para. 58.

<sup>33</sup> *Ibid.*, para. 58.

<sup>34</sup> *Tadić* Jurisdiction Decision, paras. 91 and 94; *Strugar* Trial Judgement, para. 218. The Appeals Chamber found that its jurisprudence is binding on Chambers, see *Aleksovski* Appeal Judgement, para. 113.

<sup>35</sup> *Tadić* Jurisdiction Decision, para. 94.

<sup>36</sup> *Strugar* Trial Judgement, para. 218 (footnotes omitted).

<sup>37</sup> *Tadić* Jurisdiction Decision, paras. 94 and 137.

19. Moreover, common Article 3 of the Geneva Conventions applies when it is established that the victims of the crime were not actively taking part in the armed conflict.<sup>38</sup> That condition is also a requirement in the preamble of common Article 3, which refers to “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.”<sup>39</sup> The application of those provisions to the instant case will be addressed in the part of this Judgement on the factual findings for each of the counts.

1. Examination of the Existence of an Armed Conflict in the Area and during the Period  
Material to this Case

20. The Chamber considers that there is sufficient evidence to find that during the period material to the Indictment, an armed conflict between the HVO and the ABiH raged in the municipalities referred to in this case.

Some witnesses stated that as of late 1992 there were already confrontations between the two armies in the Lašva Valley,<sup>40</sup> Gornji Vakuf,<sup>41</sup> Busovača,<sup>42</sup> Prozor,<sup>43</sup> Novi Travnik,<sup>44</sup> and Kiseljak.<sup>45</sup> Those confrontations carried on into January 1993 and then spread to other municipalities in Central Bosnia.<sup>46</sup> Orders and cease-fire agreements between the ABiH and HVO in late January 1993 indicate that there was an armed conflict between those two armies at that time.<sup>47</sup>

21. The Chamber also recalls that, pursuant to a request by the Defence for Hadžihasanović and the Defence for Kubura, it took judicial notice of certain facts established in the *Aleksovski* case which deal with the existence of an armed conflict between the ABiH and HVO in the Lašva Valley:

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<sup>38</sup> On the crime of murder, see *Stakić* Trial Judgement, para. 581; on the crime of cruel treatment, see *Čelebići* Appeal Judgement, para. 424, and *Blaškić* Appeal Judgement, para. 595.

<sup>39</sup> See common Article 3(1).

<sup>40</sup> ZP, T(F) pp. 8799, 8800, 9010 and pp. 9011-9013.

<sup>41</sup> Zdravko Žulj, T(F) p. 3635; Bryan Watters, T(F) pp. 7526-7527; DH 579; DH 648; ZP, T(F) p. 9010 (but he does not specify the date of the confrontation).

<sup>42</sup> Dragan Radić, T(F) p. 3568; Bryan Watters, T(F) pp. 7526-7527.

<sup>43</sup> Bryan Watters, T(F) pp. 7526-7527; Witness ZP, T(F) p. 9010 (but he does not specify the date of the confrontation).

<sup>44</sup> Bryan Watters, T(F) pp. 7526-7527; DH 551.

<sup>45</sup> Bryan Watters, T(F) pp. 7526-7527.

<sup>46</sup> Witness ZN, T(F) p. 5290; DH 579; DH 648; DH 551; Džemal Merdan, T(F) pp. 13024-13026, p. 13032 (Busovača), p. 13042 (Vitez) and pp. 13050-13052 (Bila Valley), as well as the following documents: DH 557, DH 558, DH 559, DH 561, DH 562, DH 564, DH 565, DH 566, DH 568, DH 576, DH 577, DH 578, DH 581, DH 589, DH 592, DH 600, DH 604, DH 615, DH 620, DH 705 (Gornji Vakuf).

<sup>47</sup> P 127; The Joint Statement on the Agreement of Facts, Annex A, bears witness to that: “The ABiH and the HVO signed a United Nations brokered cease-fire on 30 January 1993.”

“Towards the end of January 1993, there was an outbreak of open hostilities between the HVO and BH army and Bosnian Muslim men were rounded up by the HVO in the town of Busovaca, as well as in surrounding villages, around 24 January 1993. Approximately four hundred of these men were taken to be detained at the nearby detention facility at Kaonik for about two weeks.”<sup>48</sup>

22. From January to June 1993, fighting between the ABiH and the HVO continued with varying degrees of intensity.<sup>49</sup> Some witnesses referred to the ongoing conflict from January to April 1993 between the HVO and the ABiH in Busovača and Gornji Vakuf, with sporadic fighting elsewhere.<sup>50</sup> According to the same witnesses, in April 1993, conflict erupted in Vitez, Travnik, Kakanj, and Zenica municipalities.<sup>51</sup> Then, in June 1993, the conflict between the two armies in Central Bosnia escalated.<sup>52</sup> The Chamber notes that one fact the Parties agree about was that on 8 June 1993 there was a confrontation between the ABiH and the HVO in Maline.<sup>53</sup> During the summer and autumn of 1993, fighting between the ABiH and the HVO continued.<sup>54</sup> The Chamber also notes that in their testimony many witnesses referred to the “conflict”, “hostilities”, or “war” between the HVO and the ABiH.<sup>55</sup>

23. Furthermore, cease-fire orders issued by the general staffs of both armies and the political leaders representing the two parties to the conflict imply that there was an armed conflict between the two armies on the date of the agreements.<sup>56</sup> The fact that representatives from international organisations were there attempting to broker and enforce cease-fire agreements is additional evidence making it possible to infer that there was in fact an armed conflict in the municipalities and during the period referred to in the Indictment.<sup>57</sup> The repeated failed attempts to form a joint

<sup>48</sup> Final Decision on Judicial Notice of Adjudicated Facts, 20 April 2004, p. 7, referring to the *Aleksovski* Trial Judgement, para. 23. Witness ZP nevertheless testified that the armed conflict began in June 1992 in Bosnia and Herzegovina, T(F) p. 8784.

<sup>49</sup> Joint Statement on the Agreement of Facts, Annex A (attack in Ahmići, 16 April 1993), Annexes B.14 and B.15 (fighting in Dusina).

<sup>50</sup> Džemal Merdan, T(F) pp. 13024-13026 and p. 13269.

<sup>51</sup> Džemal Merdan, T(F) pp. 13270-13271; ZP, T(F) p. 9010 (but he does not specify the date of the confrontation); DH 204; DH 205.

<sup>52</sup> Džemal Merdan, T(F) p. 13277; Fikret Čuskić, T(F) p. 12071 (Travnik) and p. 12122.

<sup>53</sup> Joint Statement on the Agreement of Facts, Annex C.

<sup>54</sup> Fikret Čuskić, T(F) pp. 12146-12147; DK 13; p. 671; Chamber Exhibit (“C”) 11 (on 5 September 1993); C18 (on 5 September 1993); P 440; C 11, p. 252 and p. 253 and C 13, p. 73 and p. 74 (on 6 September 1993); C 11, p. 264 and C 11, p. 268 (on 7 September 1993); C 13, p. 78; C 11, p. 276 (on 9 September 1993); P 482; C 11, p. 9 and C 13, p. 88 (on 18 September 1993); C 11 (on 9 October 1993); P 492; DK 15; P 656; C 13 and C 11 (on 27 October 1993); P 925-4 (formerly P 711); P 931; P 495; C 13, p. 183 (on 18 January 1994); C 13, p. 192 (on 19 January 1994).

<sup>55</sup> See in particular the testimony of Ivo Mršo, Zdravko Žulj, Ivan Tvrtković, Dragan Radić, Witness ZN, Franjo Križanac, Bryan Watters, Nenad Bogeljić, Ranko Popović, and Hakan Birger.

<sup>56</sup> The Joint Statement on the Agreement of Facts, Annex A, bears witness to such agreements: “On 18 April 1993, Alija Izetbegovic and HZ-FIB leader Mate Boban signed an agreement in Zagreb ordering an immediate end to fighting between the ABiH and HVO”; see also Annex B.7 of the Joint Statement on the Agreement of Facts; DH 205.

<sup>57</sup> Bryan Watters, T(F) pp. 7483-7575; Vaughan Kent-Payne, T(F) pp. 4761-4949.

command between the HVO and the ABiH only underscore the fact that there was an ongoing armed conflict in the Lašva Valley during the period in question.<sup>58</sup>

24. The Chamber recalls that one of the Accused also referred to the armed conflict in the Lašva Valley from 1992 to 1993 in one of his submissions.<sup>59</sup>

25. Consequently, the Chamber finds that an armed conflict between the HVO and the ABiH existed during the period relevant to the Indictment up until the Washington Agreement was signed in February 1994.<sup>60</sup>

## 2. Examination of the Nexus between the Offences and the Conflict in View of the Facts of the Case

26. As regards the close nexus which must exist between the crimes charged and the conflict, the Chamber is of the opinion that there is sufficient evidence to find that such a nexus did exist. This finding is based in particular on evidence establishing that many people were detained either following an attack, following ABiH searches for people with weapons or radios, or for any other reason.<sup>61</sup> The destruction of towns or villages and of institutions dedicated to religion, as well as the plunder or confiscation of personal or military property, were all linked to the ongoing fighting in the Lašva and Bila valleys during the period in question.<sup>62</sup>

## 3. Nature of the Conflict: Internal Armed Conflict

27. The Indictment does not characterise the nature of the conflict raging in Central Bosnia and Herzegovina at the time of the events, but indicates only that “at all times relevant to this indictment, an armed conflict existed in the territory of Bosnia and Herzegovina.”<sup>63</sup> On several occasions, the Parties debated the issue of the nature of the armed conflict and its implications.<sup>64</sup> Adopting the reasoning of the Appeals Chamber in a pre-trial decision,<sup>65</sup> the Chamber found that the armed conflict in the case before it was, by default, of an internal nature.<sup>66</sup> In 2003, the Appeals

<sup>58</sup> Džemal Merdan, T(F) p. 13045.

<sup>59</sup> See Kubura Defence Pre-Trial Brief, para. 13: “However, he was not a 'desk' officer – he was most often away from his headquarters in the town of Zenica, and involved in heavy combat both with the VRS and HVO forces in parts of Central Bosnia and other areas during the course of 1992 and 1993” (emphasis added).

<sup>60</sup> Džemal Merdan, T(F) pp. 13269-13270.

<sup>61</sup> See in particular the testimony of Ivanka Tavić, Zrinko Alvir, Nenad Bogeljić, Ranko Popović, Dalibor Adžaić, Ivan Josipović and Vinko Tadić.

<sup>62</sup> See for example *infra* paras. 1792, 1824, 1998-2002, and 2019.

<sup>63</sup> Indictment, para. 8.

<sup>64</sup> See *infra* para. 273 and IX, Annex III: Procedural Background.

<sup>65</sup> Decision Pursuant to Rule 72(E) as to Validity of Appeal, Appeals Chamber, 21 February 2003.

<sup>66</sup> Decision on Defence Motion Regarding Cross-Examination of Witnesses by the Prosecution, 9 December 2004.

Chamber ruled that “if the prosecution wishes to rely upon an international armed conflict, even if only in the alternative, it must plead as a material fact that the armed conflict was international in character and state the basis upon which such an assertion is made.”<sup>67</sup> The Appeals Chamber held that “following the withdrawal of both the Article 2 charges and the express allegation in the original indictment that the armed conflict was international in character, the prosecution should not be permitted to rely upon the imprecision of its current pleading in order to put forward a case that the armed conflict was international in character without a further amendment to its indictment to make this expressly clear.”<sup>68</sup>

28. Basing itself on that decision, the Chamber considered that since the Indictment does not explicitly indicate the existence of an international armed conflict in Central Bosnia in 1993, evidence about the possible international nature of that conflict has no direct relationship with any specific charges in the Indictment. In that regard, the Chamber noted in its decision that the Prosecution did not present evidence during its case-in-chief which would establish that the armed conflict in Central Bosnia in 1993 was international in nature.<sup>69</sup> Ruling on the evidence produced by the Prosecution in cross-examination and finding that it would be admissible only insofar as it provides further details about the general context of this case and that it cannot serve to establish the international nature of the conflict in respect of the applicable law,<sup>70</sup> the Chamber recognises that it is in fact dealing with an internal armed conflict.

#### 4. Examination of the *Tadić* Conditions as Applied to this Case

29. To determine whether the crimes of murder and cruel treatment based on common Article 3 of the Geneva Conventions satisfy the conditions set out in the *Tadić* Appeals Judgement, the Chamber adopts the reasoning of the Chamber in *Strugar*, namely that the violations breach a rule protecting important values and involving grave consequences for the victims and that common Article 3 forms part of customary international law and entails individual criminal responsibility.<sup>71</sup> Accordingly, the Chamber finds that since the *Tadić* conditions are met, the crimes of murder and cruel treatment based on common Article 3 apply.<sup>72</sup>

<sup>67</sup> *Ibid.*, pp. 4-5 (citing the Decision Pursuant to Rule 72(E) as to Validity of Appeal, Appeals Chamber, 21 February 2003).

<sup>68</sup> Decision on Defence Motion Regarding Cross-Examination of Witnesses by the Prosecution, 9 December 2004, p. 5, citing the Decision Pursuant to Rule 72(E) as to Validity of Appeal, Appeals Chamber, 21 February 2003, para. 12.

<sup>69</sup> Decision on Defence Motion Regarding Cross-Examination of Witnesses by the Prosecution, 9 December 2004, p. 5.

<sup>70</sup> *Ibid.*, p. 6.

<sup>71</sup> *Strugar* Trial Judgement, para. 219.

<sup>72</sup> *Ibid.*

## **B. Definition and Constituent Elements of Crimes Against Persons**

### **1. Murder**

30. The Chamber has already established that common Article 3 of the Geneva Conventions is covered by the scope of Article 3 of the Statute, and that common Article 3 applies when it is established that the victims of the crime were not actively taking part in the armed conflict.<sup>73</sup>

31. Since the elements of the crime of murder under common Article 3 of the Geneva Conventions were not disputed by the Parties during the trial, the Chamber recalls its findings in that respect in its Decision on Motions for Acquittal.<sup>74</sup> The crime of murder as a violation of the laws or customs of war under Article 3 of the Statute is clearly defined by the case law of the Tribunal.<sup>75</sup> For the crime of murder to be established, the death must be the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible, and it must be committed with the intent to kill the victim or to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.<sup>76</sup> As to the *mens rea* element required under common Article 3 of the Geneva Conventions, the Chamber subscribes to the definition of the Chamber in *Stakić* according to which:

“... both a *dolus directus* and a *dolus eventualis* are sufficient to establish the crime of murder under Article 3 [...] The technical definition of *dolus eventualis* is the following: if the actor engages in life-endangering behaviour, his killing becomes intentional if he “reconciles himself” or “makes peace” with the likelihood of death. Thus, if the killing is committed with ‘manifest indifference to the value of human life’, even conduct of minimal risk can qualify as intentional homicide.”<sup>77</sup>

### **2. Cruel Treatment**

32. The Chamber considers that Tribunal case law has defined the crime of cruel treatment, a violation of the laws or customs of war under Article 3 of the Statute, as an intentional act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity.<sup>78</sup>

33. To determine the seriousness of an act, all the factual circumstances must be taken into account, “including the nature of the act or omission, the context in which it occurs, its duration

<sup>73</sup> See *supra* paras. 18-19.

<sup>74</sup> Decision on Motions for Acquittal, para. 37.

<sup>75</sup> See *Kvočka* Appeal Judgement, para. 261.

<sup>76</sup> *Kvočka* Appeal Judgement, para. 261 (footnotes omitted).

<sup>77</sup> *Stakić* Trial Judgement para. 587.

<sup>78</sup> *Čelebići* Appeal Judgement, para. 424; *Blaškić* Appeal Judgement, para. 595.

and/or repetition, the physical, mental and moral effects of the act on the victim and the personal circumstances of the victim, including age, sex and health.”<sup>79</sup>

34. In *Krnojelac* the Chamber stressed:

“The required *mens rea* is met where the principal offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless as to whether such suffering or attack would result from his act or omission.”<sup>80</sup>

35. On the basis of the definition established by Tribunal case law, beating or detaining persons in difficult conditions may constitute cruel treatment if they cause great suffering or physical or mental harm, or are a serious attack on human dignity.<sup>81</sup> Article 5(1) of Additional Protocol II to the Geneva Conventions may assist in establishing the seriousness of the conditions of detention. That article obliges parties to the Additional Protocol II to respect certain minimum conditions of detention with regard to persons deprived of their liberty for reasons related to an armed conflict. It provides *inter alia* that persons deprived of their liberty shall be provided with the same basic needs as the local population:

“In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained: [T]he persons referred to in this paragraph shall, **to the same extent as the local civilian population**, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;”<sup>82</sup>

In that regard, the type of subsistence given to the guards of people deprived of their liberty may serve as a measure to evaluate whether the minimum subsistence conditions are being respected.<sup>83</sup>

36. In the case where these minimum standards of treatment cannot be maintained, the detaining authority may not continue to detain those persons deprived of their liberty without possibly incurring criminal responsibility.

37. The Prosecution bears the burden of proving that the conditions of detention were sufficiently bad to constitute cruel treatment of the prisoners within the meaning of Article 3 of the Statute. If, in his defence, the Accused argues that the local civilian population was affected by conditions similar to those of the prisoners, he must bring evidence to that effect. The Accused must therefore demonstrate that a food or drinking water shortage in the region where the detention

<sup>79</sup> *Krnojelac* Trial Judgement, para. 131.

<sup>80</sup> *Krnojelac* Trial Judgement, para. 132.

<sup>81</sup> *Čelebići* Trial Judgement, paras. 554-558, 1015-1018, 1112-1119.

<sup>82</sup> Additional Protocol II, Article 5(1)(b) (emphasis added).

<sup>83</sup> Commentary on Additional Protocol II, para. 4573.



centre was located equally affected the local civilian population as well as the prisoners of war and detained civilians.

### **C. Definition and Constituent Elements of Crimes Against Property**

#### **1. Jurisdiction of the Chamber to Try Counts 5, 6, and 7**

38. In its Decision on Motions for Acquittal of 27 September 2004, the Chamber held that, in the context of non-international armed conflicts, customary international law prohibits the wanton destruction of towns or villages,<sup>84</sup> the plunder of public or private property,<sup>85</sup> and the destruction of institutions dedicated to religion.<sup>86</sup> The Chamber also considered that the elements of the above-mentioned crimes under Article 3 of the Statute were identical, regardless of whether the crimes were committed in an international or non-international conflict.<sup>87</sup> The Appeals Chamber affirmed the Chamber's findings with regard to customary international law's prohibition of crimes stipulated in Article 3(b), (d) and (e) of the Statute, when they are committed in the context of an internal armed conflict, but did not make any determination as to the elements of those crimes.<sup>88</sup>

#### **2. Wanton Destruction of Towns and Villages not Justified by Military Necessity**

39. The Chamber is of the view that the crime of wanton destruction of towns and villages not justified by military necessity under Article 3(b) of the Statute is constituted when: (i) the destruction of property occurs on a large scale; (ii) the destruction is not justified by military necessity, and (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.<sup>89</sup>

40. The Chamber considers that the *mens rea* element of the destruction is established when the perpetrator of the crime acted "consciously and with intent, i.e., with his mind on the act and its

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<sup>84</sup> Decision on Motions for Acquittal, para. 104.

<sup>85</sup> *Ibid.*, para. 125.

<sup>86</sup> *Ibid.*, para. 147.

<sup>87</sup> *Ibid.*, paras. 107, 128, and 150.

<sup>88</sup> *Ibid.*, paras. 30, 37 and 47; *See Kordić Appeal Judgement*, paras. 75-78, and 92.

<sup>89</sup> *See Kordić Trial Judgement*, para. 346; *Strugar Trial Judgement*, para. 292; *See Prosecution Final Brief*, para. 29, in which the Prosecution recalls the constituent elements of wanton destruction of towns and villages not justified by military necessity as defined in the *Kordić Trial Judgement*. In their submissions, neither the Defence for Hadžihasanović nor the Defence for Kubura raised any objections regarding the constituent elements of the crime of wanton destruction of towns or villages.

consequences, and willing them<sup>90</sup> or acted in reckless disregard of the likelihood of the destruction.<sup>91</sup>

41. The Chamber notes that the offence stipulated in Article 3(b) of the Statute is similar to that stipulated by Article 2(d) of the Statute, namely wanton destruction of property not justified by military necessity and carried out unlawfully or wantonly on a large scale.<sup>92</sup> That similarity was underscored in the *Naletilić* Trial Judgement where the Chamber considered that the offence of destruction of property within the meaning of Article 2(d) of the Statute is constituted when: (a) the general requirements of Article 2 of the Statute are fulfilled; (b) the property destroyed carries general protection under the Geneva Conventions; (c) the destruction is carried out on a large scale; (d) the destruction is not justified by military necessity, and (e) the perpetrator acted with the intent to destroy the property or the property was destroyed on account of his recklessness.<sup>93</sup> Consequently, if the general test for applying Articles 2 and 3 of the Statute with regard to the nature of the armed conflict<sup>94</sup> is applied to crimes stipulated by Articles 2(d) and 3(b) of the Statute, respectively, the elements of the crimes of destruction under Articles 2(d) and 3(b) of the Statute are identical. It follows that, in the case where the armed conflict is internal in nature and bears a close relationship to the alleged offence, the crime of destruction may be punishable under Article 3(b) of the Statute.<sup>95</sup>

42. Given the similarity between the offences stipulated in Articles 2(d) and 3(b) of the Statute, the Chamber considers that wanton destruction of towns and villages not justified by military necessity applies, in the same manner as the offence stipulated in Article 2(d) of the Statute, to movable and non-movable property.<sup>96</sup>

43. It should be recalled that in order to establish that devastation is on a large scale, the Chamber in *Strugar* required a showing that many objects were damaged or destroyed but did not require that a town or village be destroyed in its entirety.<sup>97</sup> According to the Judgement in *Blaškić*, the concept of "extensive" must be evaluated in relation to the facts of the case.<sup>98</sup> One single act,

<sup>90</sup> See ICRC Commentary on Article 85 of Additional Protocol I, para. 3474.

<sup>91</sup> See Prosecution's Submissions Concerning Armed Conflict and Elements of Crimes, para. 28, in which the Prosecution points out that the Accused must have acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.

<sup>92</sup> See *Blaškić* Trial Judgement, para. 183. The Chamber found that the destruction of property is similar to the offence stipulated in Article 3(d) of the Statute.

<sup>93</sup> *Naletilić* Trial Judgement, para. 577.

<sup>94</sup> See *Naletilić* Trial Judgement, paras. 176 and 225.

<sup>95</sup> *Kordić* Appeal Judgement, para. 74.

<sup>96</sup> See ICRC Commentary on Article 147 of the Geneva Conventions; *Brdjanin* Trial Judgement, para. 586; *Blaškić* Trial Judgement, para. 157.

<sup>97</sup> *Strugar* Trial Judgement, para. 294.

<sup>98</sup> *Blaškić* Trial Judgement, para. 157.

such as the destruction of a hospital, may in fact suffice to characterise an offence as being large scale.<sup>99</sup> The Chamber finds that destruction is large scale either when a large quantity of property has been destroyed or when the value of a single destroyed object is sufficiently great.<sup>100</sup>

44. The question arises as to whether acts of partial destruction can constitute an offence punishable under Article 3(b) of the Statute. The Chamber takes note of national practice here and observes that many military manuals and national criminal codes prohibit the partial or total destruction of property when it is not justified by military necessity.<sup>101</sup> The Chamber considers that, absent any indication to the contrary in the Statute and Tribunal case law, the partial destruction of property falls within the ambit of Article 3(b) of the Statute. Moreover, the Chamber is of the view that although the criteria for determining whether an offence is large scale must be evaluated on a case-by-case basis, they will usually be met when the acts of partial destruction are committed on a large scale.

45. The protection offered by Article 3(b) of the Statute is, however, limited by the exception of military necessity. The Chamber finds that collateral damage to civilian property may be justified by military necessity and may be an exception to the principles of protection of civilian property. Relying primarily on the principles set out in Articles 57 and 58 of Additional Protocol I, the Chamber in *Kupreškić* held that the protection of civilians and civilian property provided by modern international law may cease entirely, or be reduced or suspended, when the target of a military attack is comprised of military objectives and belligerents cannot avoid causing collateral damage to civilians.<sup>102</sup> These principles form part of customary international law.<sup>103</sup>

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<sup>99</sup> *Ibid.*

<sup>100</sup> See Prosecution's Submissions Concerning Armed Conflict and Elements of Crimes, para. 26: the Prosecution maintains that the concept of large scale requires proof that the quantity or value of the property was sufficiently large and that this concept must be evaluated according to the facts of the case. See Kubura Defence Final Brief, para. 181: the Defence for Kubura notes that, considering the large scale element of the offence, limited incidents of damage must be ruled out.

<sup>101</sup> See Canada, LOAC Manual (1999), p. 12-8; Netherlands, Military Manual (1993), p. IX-6; New Zealand, Military Manual (1992), para. 1335; UK, Military Manual (1958), para. 588; Ghana, Armed Forces Act (1962), Section 18 (d); Iraq Military Penal Code (1940), Art. 113; Jordan, Military Criminal Code (1952), Art. 12 (2); Malaysia, Armed Forces Act (1972), Section 46 (c); Nicaragua, Military Penal Code (1996), art. 59; Norway, Military Penal Code (1902), paras. 103 and 108; Paraguay, Military Penal Code (1980), Art. 282-283; Romania, Penal Code (1968), art. 359; Spain, Military Criminal Code (1985), Art. 73; Sri Lanka, Army Act (1949), Section 96 (b); Uganda, National Resistance Army Statute (1992), Section 35 (c); Vietnam, Penal Code (1990), Art. 274. Cited in *Customary International Humanitarian Law*, ICRC, Volume II, pp. 1004-1021.

<sup>102</sup> *Kupreškić* Trial Judgement, para. 522.

<sup>103</sup> *Ibid.*, para. 524. The Chamber found that the provisions of Articles 57 and 58 of Additional Protocol I form part of customary international law because they specify general pre-existing norms and because no State seems to contest them.

46. The Chamber considers that wanton destruction need not be committed within the context of military action to constitute an offence punishable by Article 3 of the Statute. It is sufficient for the crimes stipulated by Article 3(b) of the Statute to be closely related to the hostilities.<sup>104</sup>

47. The Chamber recalls that the crime of wanton destruction of towns and villages must satisfy the conditions for applying Article 3 of the Statute, particularly the condition regarding the gravity of the offence. That last condition is met when the crime of wanton destruction of towns and villages constitutes a breach of the rules protecting important values and involves grave consequences for the victim.<sup>105</sup> The Chamber notes that one of the elements of the offence of destruction has to do with its severity, and considers that acts of destruction committed on a large scale undoubtedly have grave consequences for their victims.<sup>106</sup> It follows that commission on a large scale is both an element of the crime of destruction and a condition for the applicability of Article 3 of the Statute.

48. The Chamber finds that the offence of wanton destruction of towns and villages is constituted when acts of destruction not justified by military necessity are committed deliberately and on a large scale. The criterion of large scale must be evaluated according to the facts of the case.

### 3. Plunder of Public or Private Property

49. The Chamber considers that the elements of the offence of plunder exist when public or private property is acquired illegally and deliberately.<sup>107</sup> This crime covers “all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as ‘pillage’”<sup>108</sup> and extends to

<sup>104</sup> See *Tadić* Jurisdiction Decision, para. 70; See *Naletilić* Trial Judgement, para. 589, in which the Chamber found that the destruction was not justified by military necessity because it took place after the shelling had stopped; See *Customary International Humanitarian Law*, ICRC, Volume I, Rule 50, pp. 176-177.

<sup>105</sup> See *Tadić* Jurisdiction Decision, para. 94. The Appeals Chamber found that for a crime to be prosecuted before the Tribunal under Article 3 of the Statute, “the violation must be ‘serious’, that is to say, it must constitute a breach of a Rule protecting important values, and the breach must involve grave consequences for the victim.”

<sup>106</sup> See *Strugar* Trial Judgement, para. 231.

<sup>107</sup> See *Naletilić* Trial Judgement, para. 612; *Kordić* Appeal Judgement, para. 84; See Prosecution Final Brief, para. 31, in which the Prosecution expressly repeats this definition. See Prosecution’s Submissions Concerning Armed Conflict and Elements of Crimes, para. 35: the Prosecution points out that “the perpetrator acquires the property ‘wilfully’ if, by holding, selling, consuming, destroying or passing it on, the perpetrator either intends to deprive the victim of his or her effective possession of that property, or consciously disregards a substantial and unjustifiable risk that his or her conduct will cause the rightful owner to lose his or her effective possession.” See Hadžihasanović Defence Final Brief, paras. 384, 467, 554, 591, and 663: the Defence for Hadžihasanović considers that the Prosecution needed to prove that civilian property was plundered or unlawfully appropriated and that the plunder was deliberate.

<sup>108</sup> *Čelebići* Trial Judgement, para. 591

“both widespread and systematised acts of dispossession and acquisition of property in violation of the rights of the owners and isolated acts of theft or plunder by individuals for their private gain.”<sup>109</sup>

50. The *mens rea* element of the offence of plunder of public or private property is established when the perpetrator of the offence acts with the knowledge and intent to acquire property unlawfully, or when the consequences of his actions are foreseeable.<sup>110</sup>

51. Treaty and customary law does, however, provide for exceptions to the principle of protection of public and private property enshrined in Article 3(e) of the Statute. In the context of international armed conflicts, the taking of war booty and the requisition of property for military use may constitute limitations to that principle. As early as 1863, the Lieber Code laid down the principle that war booty belongs to the party who seized it.<sup>111</sup> According to national practices, war booty includes enemy property or military equipment captured on the battlefield. Personal effects belonging to prisoners of war are an exception.<sup>112</sup> In the case of an occupation, the Hague Regulations leave open, in some cases, the possibility for the occupying power to requisition property “for the needs of the occupation army”.<sup>113</sup>

52. The Chamber notes, however, that in non-international conflicts such regulations authorising or prohibiting war booty and requisitions have not been identified.<sup>114</sup> In such cases, national law must settle those issues.<sup>115</sup> In its submissions, the Defence for Hadžihasanović refers to “authorised war booty, [and] confiscation of items where a receipt is given.”<sup>116</sup> The regulations governing war booty, as defined by the Supreme Command Staff of the ABiH, specify which property may be considered war booty and spell out the procedures for registering it.<sup>117</sup> Those regulations authorise the ABiH to seize enemy public property captured on the battlefield.<sup>118</sup> Property which may be considered war booty includes weapons, ammunition, equipment, or any other materials with military applications, communications equipment, vehicles, and other means of

<sup>109</sup> *Kordić* Trial Judgement, para. 352.

<sup>110</sup> *The Prosecutor v. Naser Orić*, Decision on Defence Motions for Acquittal, 8 June 2005, T(F) p. 9027.

<sup>111</sup> Instructions for the Government of Armies of the United States in the Field (Lieber Code), 1863, Article 45

<sup>112</sup> See Argentine, Law of War Manual (1969), para. 1020; Australia, Commanders’ Guide (1994), paras. 712 and 967; Canada, LOAC Manual (1999), paras. 27 and 48; Germany, Military Manual (1992), paras. 706 and 707; Kenya LOAC Manual (1997), pp. 7 and 8; Netherlands, Military Manual (1993), p. IV-5; New Zealand, Military Manual (1992), paras. 526 and 527; US Field Manual (1956), para. 59; UK Military Manual (1958), para. 615. Cited in *Customary International Humanitarian Law*, ICRC, Volume II, pp. 992-998.

<sup>113</sup> The Hague Regulations, Art. 52.

<sup>114</sup> See *Customary International Humanitarian Law*, ICRC, Volume I, pp. 174, 181-182.

<sup>115</sup> *Ibid.*, p. 182.

<sup>116</sup> Hadžihasanović Defence Final Brief, paras. 727, 734, and 549.

<sup>117</sup> DH 1469.

<sup>118</sup> DH 1469.

transportation.<sup>119</sup> The personal effects of prisoners of war, however, may not be considered war booty.<sup>120</sup> Those regulations also provide that weapons, ammunition, and any other materials which have direct military applications, even if they are private property, may be seized as war booty.<sup>121</sup> Such property must be handed over to the competent authorities and may not be appropriated by individuals.<sup>122</sup> The property must be registered.<sup>123</sup> This Chamber is of the opinion that the property mentioned above, which has military applications and has been registered, may be considered war booty. In fact, those regulations seek to implement customary international law and treaty law in those areas. According to international law, the regulations do not allow arbitrary and unjustified plunder for army purposes or for the individual use of army members, even if the property seized can be used collectively or individually. This is explicitly acknowledged in documents from the 3<sup>rd</sup> Corps Command which prohibit the plunder of movable property belonging to the civilian population.<sup>124</sup>

53. The Chamber is of the view that, in the context of an actual or looming famine, a state of necessity may be an exception to the prohibition on the appropriation of public or private property. Property that can be appropriated in a state of necessity includes mostly food, which may be eaten *in situ*, but also livestock.<sup>125</sup> To plead a defence of necessity and for it to succeed, the following conditions must be met: (i) there must be a real and imminent threat of severe and irreparable harm to life existence; (ii) the acts of plunder must have been the only means to avoid the aforesaid harm; (iii) the acts of plunder were not disproportionate and, (iv) the situation was not voluntarily brought about by the perpetrator himself.<sup>126</sup>

54. The Chamber considers that to constitute an offence punishable by Article 3 of the Statute, the plunder of public or private property need not be carried out in the context of military action. It suffices for the offence stipulated in Article 3(e) of the Statute to be closely linked to the hostilities.<sup>127</sup>

55. The Chamber recalls that the crime of plunder of public or private property must satisfy the conditions for applying Article 3 of the Statute, particularly the condition regarding the gravity of

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<sup>119</sup> DH 1469.

<sup>120</sup> DH 1469.

<sup>121</sup> DH 1469.

<sup>122</sup> DH 1469.

<sup>123</sup> DH 1469.

<sup>124</sup> See for example, p. 283/ DH 917.

<sup>125</sup> *The Prosecutor v. Naser Orić*, Decision on Motions for Acquittal, 8 June 2005, T(F) p. 9031.

<sup>126</sup> *Ibid.*, T(F) p. 9027.

<sup>127</sup> See *Tadić* Jurisdiction Decision, para. 70; *Naletilić* Trial Judgement, para. 589.

the offence.<sup>128</sup> That last condition is met when the plundered property is of sufficient value that its unlawful appropriation involves grave consequences for the victims.<sup>129</sup> In *Tadić*, the Appeals Chamber illustrated the concept of gravity by explaining that although the fact that a combatant's appropriation of a loaf of bread in an occupied village might fall under the principle laid down in Article 46 of the Hague Regulations whereby private property must be respected by any army occupying an enemy territory, that act would not amount to a serious violation of international humanitarian law.<sup>130</sup> The Chamber agrees with the opinion expressed in *Naletilić* that the crime of plunder can result not only from the fact the "victim suffers severe economic consequences," but also from "the reiteration of the acts and from their overall impact".<sup>131</sup> The seriousness of the violation must be ascertained on a case-by-case basis, taking into consideration the circumstances of the crime.<sup>132</sup>

56. The Chamber finds that the offence of plunder of public or private property is constituted when property has been unlawfully and deliberately appropriated. The property must be sufficiently valuable to entail grave consequences for the victim. Property seized as war booty, requisitioned, or whose seizure is justified by necessity are exceptions to the principle of protection of public and private property.

#### 4. Destruction or Wilful Damage of Institutions Dedicated to Religion

57. The Chamber subscribes to the definition of the *Kordić* Chamber according to which the crime of destruction or wilful damage to institutions dedicated to religion is constituted when "the destruction or damage is committed wilfully and the accused intends by his acts to cause the destruction or damage of institutions dedicated to religion [...] and not used for a military purpose."<sup>133</sup>

58. The Chamber considers that the elements of the offence of destruction or wilful damage to institutions dedicated to religion exist under Article 3(d) of the Statute when: (i) a religious institution is destroyed or damaged; (ii) the damaged or destroyed property was not used for

<sup>128</sup> See *Tadić* Jurisdiction Decision, para. 94. The Appeals Chamber found that for a crime to be prosecuted before the Tribunal under Article 3 of the Statute, "the violation must be 'serious', that is to say, it must constitute a breach of a Rule protecting important values, and the breach must involve grave consequences for the victim."

<sup>129</sup> See *Čelebići* Trial Judgement, para. 1154. See Prosecution's Submissions Concerning Armed Conflict and Elements of Crimes, para. 32: the Prosecution points out that the "plunder must be serious" and that "certain cases of petty property misappropriation may not rise to the level of 'serious violations of international humanitarian law.'" See Hadžihasanović Defence Final Brief, paras. 384, 467, 554, 591, and 663: the Defence for Hadžihasanović considers that the plundered property must be sufficiently valuable to involve grave consequences for the victim.

<sup>130</sup> *Tadić* Jurisdiction Decision, para. 95.

<sup>131</sup> *Naletilić* Trial Judgement, para. 614.

<sup>132</sup> *Kordić* Appeal Judgement, para. 82.

<sup>133</sup> *Kordić* Trial Judgement, para. 361, citing the *Blaškić* Trial Judgement, para. 185.

military purposes and, (iii) the act was carried out with the intent to damage or destroy the property in question.<sup>134</sup>

59. The Chamber considers the wilful nature of the destruction or damage to be established when the perpetrator acted intentionally, with the knowledge and will of the proscribed result, or in reckless disregard of the likelihood of the destruction.<sup>135</sup>

60. The Chamber notes that it is sufficient for the damaged or destroyed institution to be an institution dedicated to religion, and that there is no need to establish whether it represented the cultural heritage of a people.<sup>136</sup> The Hague Regulations of 1907, which form part of customary international law<sup>137</sup> and provide the basis for Article 3 of the Statute,<sup>138</sup> afford protection to “buildings dedicated to religion, art, science, or charitable purposes, historic monuments [...] provided they are not being used at the time for military purposes”, without requiring that these buildings represent the cultural heritage of a people.<sup>139</sup>

61. The Chamber considers that the provisions of the Hague Convention of 1954 and the Additional Protocol dealing with cultural property have scopes of application different from Article 3(d) of the Statute. Unlike the Statute, Article 53 of the Additional Protocol I and Article 1 of the Hague Convention of 1954 afford protection solely to property which “constitute[s] the cultural or spiritual heritage of peoples”<sup>140</sup> or which is “of great importance to the cultural heritage of every people”.<sup>141</sup> Moreover, the protection afforded by the Hague Convention of 1954 and by Additional Protocol I is broader than that afforded by Article 3(d) of the Statute. While Tribunal case law at times waives the principle of protection of religious institutions when they are used for military purposes,<sup>142</sup> Additional Protocol I prohibits all acts of hostility against protected property, thereby

<sup>134</sup> See *Strugar* Trial Judgement, para. 312.

<sup>135</sup> See *Brdjanin* Trial Judgement, para. 599.

<sup>136</sup> See Hadžihasanović Defence Final Brief, para. 592. Regarding the Guča Gora monastery, the Defence for Hadžihasanović argues that the Prosecution must prove that the institution damaged or destroyed represented the cultural heritage of a people.

<sup>137</sup> Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, S/25704, para. 35; See *Kordić* Appeal Judgement, para. 92.

<sup>138</sup> Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, S/25704, paras. 41 and 44.

<sup>139</sup> Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Articles 27 and 56.

<sup>140</sup> Article 53 of Additional Protocol I; See ICRC Commentary, paras. 2063-2067.

<sup>141</sup> Article 1 of the Hague Convention of 1954; See ICRC Commentary on Article 53 of Additional Protocol I, paras. 2063-2067.

<sup>142</sup> See *Blaškić* Trial Judgement, para. 185; *Kordić* Trial Judgement, para. 361; *Naletilić* Trial Judgement, para. 605.



providing no such waiver.<sup>143</sup> The Hague Convention of 1954 waives the obligation to protect only in cases where military necessity imperatively requires such a waiver.<sup>144</sup>

62. The Chamber is of the opinion that to constitute an offence punishable by Article 3 of the Statute, the destruction of or damage to institutions dedicated to religion need not be carried out in the context of military action. It is sufficient for the offence stipulated in Article 3(d) of the Statute to be closely linked to the hostilities.<sup>145</sup>

63. The Chamber recalls that the crime of destruction or wilful damage to institutions dedicated to religion must satisfy the conditions for applying Article 3 of the Statute, particularly that dealing with the gravity of the offence.<sup>146</sup> That condition is met when the damage or destruction constitutes a breach of a rule protecting important values and involves grave consequences for the victim. The Chamber notes that while civilian property is afforded general protection under customary international law, special attention is paid to certain property, namely religious buildings, owing to their spiritual value. Because those values go beyond the scope of a single individual and have a communal dimension, the victim here must not be considered as an individual but as a social group or community. The Chamber considers that the destruction of or damage to the institutions referred to in Article 3(d) of the Statute constitutes grave breaches of international law when the destruction or damage is sufficiently serious to constitute desecration. The Chamber considers that the seriousness of the crime of destruction of or damage to institutions dedicated to religion must be ascertained on a case-by-case basis, and take much greater account of the spiritual value of the damaged or destroyed property than the material extent of the damage or destruction.

64. The Chamber finds that the offence of destruction of or damage to institutions dedicated to religion is constituted when a religious building not being used for military purposes has been wilfully damaged or destroyed. Religious institutions are protected under Article 3(d) of the Statute, regardless of whether they are part of the cultural heritage of peoples.

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<sup>143</sup> Additional Protocol I, Article. 53; *See* ICRC Commentary on Article 53 of Additional Protocol I, paras. 2069-2073.

<sup>144</sup> The Hague Convention of 1954, Art. 4.

<sup>145</sup> *Tadić* Jurisdiction Decision, para. 70; *Naletilić* Trial Judgement, para. 589.

<sup>146</sup> *See Tadić* Jurisdiction Decision, para. 94. The Appeals Chamber found that for a crime to be prosecuted before the Tribunal under Article 3 of the Statute, “the violation must be ‘serious’, that is to say, it must constitute a breach of a Rule protecting important values, and the breach must involve grave consequences for the victim.”

## **D. Criminal Responsibility within the Meaning of Article 7(3) of the Statute**

### **1. Command Responsibility in an Internal or International Armed Conflict**

65. In the pre-trial phase of this case, the Chamber found that command responsibility was an integral part of customary international law at the time of the events, to the extent that it applied to war crimes committed in the context of an internal or international armed conflict.<sup>147</sup> The Appeals Chamber also subscribed to that opinion.<sup>148</sup>

### **2. Nature of Command Responsibility**

66. The purpose behind the principles of responsible command and command responsibility is to promote compliance with the rules of international humanitarian law and to protect the people and property covered by those rules.<sup>149</sup> As emphasised in the Commentary on Additional Protocol I, the role of commanders is decisive in ensuring the proper application of the Conventions and Additional Protocol I, so that a fatal gap between the undertakings entered into by Parties to the conflict and the conduct of individuals under their orders is avoided.<sup>150</sup> By virtue of the authority vested in them, commanders are qualified to exercise control over troops and the weapons they use; more than anyone else, they can prevent breaches by creating the appropriate frame of mind, ensuring the rational use of the means of combat, and by maintaining discipline.<sup>151</sup>

67. Command responsibility under Article 7(3) of the Statute is derived from the obligations of responsible command.<sup>152</sup> Failure to fulfil those obligations results in criminal responsibility. In this case, the Appeals Chamber noted:

“The Appeals Chamber recognizes that there is a difference between the concepts of responsible command and command responsibility. The difference is due to the fact that the concept of responsible command looks to the duties comprised in the idea of command, whereas that of command responsibility looks at liability flowing from breach of those duties. But, as the foregoing shows, the elements of command responsibility are derived from the elements of responsible command.”<sup>153</sup>

<sup>147</sup> Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility paras. 11 and 31; *see also* Customary International Humanitarian Law, Vol I, Rule 153, pp. 559 and 560.

<sup>148</sup> Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, paras. 29 and 31.

<sup>149</sup> Decision on Joint Challenge to Jurisdiction, para. 66; *Halilović* Trial Judgement, para. 39.

<sup>150</sup> Commentary on Additional Protocol I, para. 3550.

<sup>151</sup> *Halilović* Trial Judgement, para. 85, citing Commentary on Additional Protocol I, Art. 87, para. 3560.

<sup>152</sup> Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, paras. 22 and 23.

<sup>153</sup> *Ibid.*, para. 22.

68. In that regard, the question arises as to whether a commander who has failed in his obligation to ensure that his troops respect international humanitarian law is held criminally responsible for his own omissions or rather for the crimes resulting from them. The question arises in particular in this case, since the Accused are alleged to have incurred responsibility solely on the basis of Article 7(3) of the Statute. As such, the Indictment does not allege that the Accused participated in crimes committed by their purported subordinates, but that they failed in their obligation to take the necessary and reasonable measures to prevent crimes or punish the perpetrators of those crimes.

69. Except for the Chamber in *Halilović*, Tribunal case law has never analysed the question of determining the object of command responsibility; the superior's omission or the crimes which resulted from it. This is because before *Halilović*, the cases at this Tribunal dealt with both individual criminal responsibility under Article 7(3) and responsibility under Article 7(1) of the Statute. Allegations against accused persons were based on both omission and participation in crimes.

70. Some Chambers have issued rulings on the nature of command responsibility. For example, the Chamber in *Čelebići* noted that “the type of individual criminal responsibility for the illegal acts of subordinates [...] is commonly referred to as ‘command responsibility’”.<sup>154</sup> There, the Chamber seems to indicate that a superior will be held responsible for the acts of his subordinates. Nevertheless, as the Chamber in *Halilović* emphasised in its Judgement, the Chamber in *Čelebići* did not have to consider the matter at issue before this Chamber. Instead, that Chamber focused on the question of whether command responsibility was an integral part of customary international law at the time of the events and examined the conditions for applying Article 7(3) of the Statute.<sup>155</sup>

71. Accordingly, the Chamber in *Halilović* examined national legislation, post-World War II case law, the Additional Protocols to the Geneva Conventions, and Tribunal case law to establish whether responsibility under Article 7(3) of the Statute is “*sui generis*” or responsibility for the crimes of subordinates.<sup>156</sup> That examination shows that post-World War II case law diverges on the issue.<sup>157</sup> Similarly, the Additional Protocols to the Geneva Conventions make no determination as to the nature of command responsibility.<sup>158</sup>

<sup>154</sup> *Čelebići* Trial Judgement, para. 331 (emphasis added).

<sup>155</sup> *Čelebići* Trial Judgement, para. 333 ff; *Halilović* Trial Judgement para. 53, footnote 125.

<sup>156</sup> *Halilović* Trial Judgement, para. 42 ff.

<sup>157</sup> *Ibid.*, para. 48.

<sup>158</sup> *Ibid.*, para. 49.

72. The analysis by the Chamber in *Halilović* shows that most Chambers of this Tribunal have determined that a superior is responsible for the acts of his subordinates under Article 7(3) of the Statute. There are, however, a few exceptions.<sup>159</sup> The Chamber in *Aleksovski* made a distinction between individual responsibility under Articles 7(1) and 7(3) of the Statute:

“The doctrine of superior responsibility makes a superior responsible not for his acts sanctioned by Article 7(1) of the Statute but for his failure to act. A superior is held responsible for the acts of his subordinates if he did not prevent the perpetration of the crimes of his subordinates or punish them for the crimes.”<sup>160</sup>

73. Similarly, the Appeals Chamber in *Krnjelac* found:

“It cannot be overemphasised that, where superior responsibility is concerned, an accused is not charged with the crimes of his subordinates but with his failure to carry out his duty as a superior to exercise control.”<sup>161</sup>

74. The *Halilović* Chamber found that command responsibility under Article 7(3) of the Statute is responsibility for an omission. According to that Chamber, the commander is responsible for failing to prevent and punish crimes committed by his subordinates.

“The Chamber finds that under Article 7(3) command responsibility is responsibility for an omission. The commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates. Thus “for the acts of his subordinates” as generally referred to in the jurisprudence of the Tribunal does not mean that the commander shares the same responsibility as the subordinates who committed the crimes, but rather that because of the crimes committed by his subordinates, the commander should bear responsibility for his failure to act. The imposition of responsibility upon a commander for breach of his duty is to be weighed against the crimes of his subordinates; a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed. The Chamber considers that this is still in keeping with the logic of the weight which international humanitarian law places on protection values.”<sup>162</sup>

75. The Chamber subscribes to the findings of the *Halilović* Chamber. Since command responsibility under Article 7(3) of the Statute is the corollary of a commander’s obligation to act, that responsibility is responsibility for an omission to prevent or punish crimes committed by his

<sup>159</sup> *Ibid.*, para. 53.

<sup>160</sup> *Aleksovski* Trial Judgement, para. 67 (footnotes omitted).

<sup>161</sup> *Krnjelac* Appeal Judgement, para. 171.

<sup>162</sup> *Halilović* Trial Judgement para. 54 (footnotes omitted).

subordinates. The responsibility is “*sui generis*”, distinct from that defined in Article 7(1) of the Statute.

### 3. Elements of Article 7(3) of the Statute

#### (a) Superior-Subordinate Relationship

##### (i) Effective Control

76. Application of command responsibility under Article 7(3) of the Statute presupposes that the Accused was the superior of the perpetrators of the crime at the time it was committed, i.e. that a superior-subordinate relationship existed. In that regard, the Appeals Chamber in *Čelebići* underscored the need to demonstrate that the Accused, by virtue of his position in the formal or informal hierarchy, is senior to the perpetrator of the crime.<sup>163</sup>

77. Tribunal case law has consistently held that a superior-subordinate relationship exists under Article 7(3) of the Statute when a superior exercises effective control over his subordinates, that is, when he has the material ability to prevent or punish their acts.<sup>164</sup> As the Chamber held in *Čelebići*:

“Accordingly, it is the Chamber’s view that, in order for the principle of superior responsibility to be applicable, it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences.”<sup>165</sup>

78. The formal title of commander is neither required nor sufficient to entail superior responsibility. Responsibility under Article 7(3) of the Statute may derive from a person’s *de facto*, as well as *de jure*, position as commander so long as he has the material ability to prevent or punish.

“[...] it is the Chamber’s opinion that a position of command is indeed a necessary precondition for the imposition of command responsibility. However, this statement must be qualified by the recognition that the existence of such a position cannot be determined by reference to formal status alone. Instead, the factor that determines liability for this type of criminal responsibility is the actual possession, or non-possession, of powers of control over the actions of subordinates.

<sup>163</sup> *Čelebići* Appeal Judgement, para. 303; see also *Čelebići* Trial Judgement, para. 647, which noted: “The law does not know of a universal superior without a corresponding subordinate. The doctrine of command responsibility is clearly articulated and anchored on the relationship between superior and subordinate, and the responsibility of the commander for actions of members of his troops. It is a species of vicarious responsibility through which military discipline is regulated and ensured. This is why a subordinate unit of the superior or commander is a *sine qua non* for superior responsibility.”

<sup>164</sup> *Čelebići* Trial Judgement, paras. 377 and 378; see also *Čelebići* Appeal Judgement, paras. 197 and 256; *Blaškić* Appeal Judgement, para. 67; *Halilović* Trial Judgement, para. 58. (footnotes omitted).

Accordingly, formal designation as a commander should not be considered to be a necessary prerequisite for command responsibility to attach, as such responsibility may be imposed by virtue of a person's *de facto*, as well as *de jure*, position as a commander."<sup>166</sup>

79. In *Čelebići*, the Appeals Chamber found that a showing of effective control is required in cases involving both *de jure* and *de facto* superiors.<sup>167</sup> In that regard, it should be noted that the Appeals Chamber in *Čelebići* starts with the assumption that the official position of commander comes with effective control:

"In general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced."<sup>168</sup>

(ii) Insufficiency of Substantial Influence

80. Since command responsibility is predicated on a superior's power to control the acts of his subordinates, a superior may only be held criminally responsible if he has the necessary powers of control, i.e. if he exercises effective control over his subordinates. The simple exercise of powers of influence over subordinates does not suffice. The *Čelebići* Appeals Chamber held:

"It is clear, however, that substantial influence as a means of control in any sense which falls short of the possession of effective control over subordinates, which requires the possession of material abilities to prevent subordinate offences or to punish subordinate offenders, lacks sufficient support in State practice and judicial decisions."<sup>169</sup>

81. It is fitting to recall here the distinction the *Čelebići* Appeals Chamber made between commanders in occupied and unoccupied territory.<sup>170</sup> While the authority of a commander in occupied territory is territorial, the authority of one in unoccupied territory is limited to the soldiers under his command. It follows that the duties of a commander in occupied territory are broader than those of commanders in general. While a commander in occupied territory may incur responsibility by virtue of his substantial influence, it must be kept in mind that the same does not hold for a

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<sup>165</sup> *Čelebići* Trial Judgement, para. 378.

<sup>166</sup> *Čelebići* Trial Judgement, para. 370.

<sup>167</sup> *Čelebići* Appeal Judgement, para. 196.

<sup>168</sup> *Čelebići* Appeal Judgement, para. 197.

<sup>169</sup> *Čelebići* Appeal Judgement, para. 266.

<sup>170</sup> *Čelebići* Appeal Judgement, paras. 258 and 267.

commander in unoccupied territory. Similarly, Tribunal case law does not hold a commander in unoccupied territory responsible for crimes committed in his area of responsibility.<sup>171</sup>

(iii) Indicators of Effective Control

82. According to Tribunal case law, “the indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent, punish, or initiate measures leading to proceedings against the alleged perpetrators where appropriate.”<sup>172</sup>

83. Tribunal case law has identified several elements which make it possible to establish whether there is effective control, including: the official position of an accused, even if “actual authority, however, will not be determined by looking at formal positions only;”<sup>173</sup> the power to give orders and have them executed;<sup>174</sup> the conduct of combat operations involving the forces in question;<sup>175</sup> the authority to apply disciplinary measures;<sup>176</sup> the authority to promote or remove soldiers,<sup>177</sup> and the participation of the Accused in negotiations regarding the troops in question.<sup>178</sup>

84. A few observations are in order regarding the cooperation of troops in battle who, *de jure*, fall under different chains of command. The question arises as to the extent commanders of different units engaged in combat may be held criminally responsible for the acts of soldiers not under their *de jure* command. The Chamber considers that mere participation in joint combat operations is not sufficient to find that commanders of different units exercise effective control over all the participants in a battle. Although such cooperation might be an indicator of effective control, it is appropriate to determine on a case-by-case basis what authority an accused commander actually had over the troops in question.

85. Finally, it is appropriate to discuss whether there can be effective control in the case where a commander cannot prevent a purported subordinate from committing a crime other than by the use of force. The Defence for Hadžihasanović submits that in such cases the commander does not exercise effective control without, however, providing reasons for that argument.<sup>179</sup>

<sup>171</sup> *Kordić and Čerkez* Appeal Judgement, paras. 842-849, which require an element of effective control to hold an Accused criminally responsible.

<sup>172</sup> *Blaškić* Appeal Judgement, para. 69 (footnotes omitted).

<sup>173</sup> *Kordić and Čerkez* Trial Judgement, para. 418.

<sup>174</sup> *Kordić and Čerkez* Trial Judgement, para. 421; *Strugar* Trial Judgement, paras. 394-396, 406 and 408.

<sup>175</sup> *Strugar* Trial Judgement, para. 394.

<sup>176</sup> *Čelebići* Trial Judgement, para. 767; *Strugar* Trial Judgement, paras. 406 and 408.

<sup>177</sup> *Čelebići* Trial Judgement para. 767; *Strugar* Trial Judgement, paras. 404, 411 and 413.

<sup>178</sup> *Strugar* Trial Judgement, para. 398.

<sup>179</sup> Hadžihasanović Defence Final Brief, para. 1170.

86. That issue is particularly important in this case, in the context of a *de jure* superior-subordinate relationship. The Chamber recalls that, by virtue of his official position, it is assumed that a commander exercises effective control. The Chamber considers that the assumption is not automatically refuted in cases where commanders are compelled to use force to control their troops. Instead, such matters should be looked at on a case-by-case basis. If a commander has the material ability to use force to enforce international humanitarian law, he may be compelled to do so if the circumstances leave him no other choice.

87. The Chamber recalls that, for an army to even function, troops must obey given orders. As such, a commander must ensure compliance with his orders. He will not hesitate to use force against his own troops in cases where they refuse to obey a combat order. In times of war and in exceptional circumstances, a commander may find himself in a position where he must order the execution of soldiers who refuse to obey his orders or who desert. The obligation to ensure compliance with orders is not limited to combat orders but encompasses all orders given by a commander to his troops, including those intended to ensure compliance with international humanitarian law.

88. The Chamber is aware of the fact that a commander with only a limited number of soldiers and materials may find it difficult to use force against his own troops. He may lack sufficient troops to discipline soldiers who have breached the rules of international humanitarian law. That issue must be assessed on a case-by-case basis and may lead to a determination that a commander does not have the material ability to enforce international humanitarian law.

89. Finally, the Chamber will make a few remarks regarding the case where a commander intends to use undisciplined soldiers to defend the front lines. In that regard, it is important to recall that commanders have a fundamental role in ensuring that international humanitarian law is correctly enforced. Commanders, by virtue of their authority, are qualified to exercise control over their troops and the weapons they use, thus ensuring that persons and objects afforded protection by international humanitarian law are in fact protected. A commander who knows or has reason to know that the troops he uses in combat have committed acts prohibited by international humanitarian law runs the risk of later being held criminally responsible for crimes committed by those troops. If a commander uses soldiers while knowing or having reason to know that there is a serious risk they will not obey his orders, especially orders to comply with international humanitarian law, he may not claim to have lacked effective control over them in order to avoid his responsibility under Article 7(3) of the Statute. A commander may not exonerate himself by



claiming to lack effective control if his conduct before the crimes were committed demonstrates that he accepted the possibility that subsequently he might not be able to control his troops.

(iv) Identity of Subordinates

90. The Defence submits that the identity of the alleged perpetrators is of crucial importance when establishing whether a superior-subordinate relationship existed between the perpetrator and the commander.<sup>180</sup> The Chamber recalls the observation made by the Chamber in *Krnjelac*: “if the Prosecution is unable to identify those directly participating in such events by name, it will be sufficient for it to identify them at least by reference to their ‘category’ (or their official position) as a group”.<sup>181</sup> Accordingly, to establish the existence of a superior-subordinate relationship, the Chamber finds it sufficient to specify to which group the perpetrators belonged and to show that the Accused exercised effective control over that group.

(b) Mental Element: the Superior Knew or Had Reason to Know

91. The mental element required by Article 7(3) of the Statute has been established when the superior knew or had reason to know that his subordinates were about to commit a crime or had done so.

92. The theory of command responsibility does not impose strict responsibility on a superior who failed to prevent his subordinates from committing crimes or to punish them for having done so. The Prosecution must instead demonstrate that the superior actually knew that his subordinates had committed a crime or were about to do so, or that he had in his possession information of a nature which would at least put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed.<sup>182</sup>

(i) Actual Knowledge

93. The Trial Chamber in *Kordić and Čerkez* defined actual knowledge as “the awareness that the relevant crimes were committed or were about to be committed”.<sup>183</sup>

<sup>180</sup> Hadžihasanović Defence Final Brief, para. 1171; Kubura Defence Final Brief, para. 8.

<sup>181</sup> *The Prosecutor v. Milorad Krnjelac*, Case no. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 46; see also *Blaškić* Appeal Judgement, para. 217, citing paragraphs 19 and 46 of that Decision.

<sup>182</sup> *Čelebići* Appeal Judgement paras. 223, citing para. 383 of the *Čelebići* Trial Judgement, and 241.

<sup>183</sup> *Kordić and Čerkez* Trial Judgement, para. 427.

94. Actual knowledge may be established through direct or circumstantial evidence but cannot be presumed.<sup>184</sup> To determine whether the superior in fact had actual knowledge of the acts of his subordinates, the Chamber may take into account factors such as the number, type, and scope of unlawful acts, the time during which they occurred, the number and type of troops involved, the logistics involved, if any, the geographical location of the acts, their widespread occurrence, the tactical tempo of the operations, the *modus operandi* of similar unlawful acts, the officers and staff involved, and the location of the commander at the time the acts were committed.<sup>185</sup> As for the factors of time and place, the Trial Chamber in *Aleksovski* held that the more physically distant the commission of the acts, the more difficult it will be, in the absence of other indicia, to establish that the superior had knowledge of them. Conversely, the commission of a crime in the immediate proximity of the place where the superior ordinarily carried out his duties would suffice to establish a significant indicium that he had knowledge of the crime, *a fortiori* if the crimes were repeatedly committed.<sup>186</sup> The Appeals Chamber in *Blaškić*, however, noted that the proximity of the scene of the crime to a commander's headquarters cannot be the determining factor in establishing a superior's command responsibility.<sup>187</sup> Additionally, it may be easier to prove the actual knowledge of a military commander if, *a priori*, he is part of an organised structure with established reporting and monitoring systems. The standard of proof will be higher, however, for a commander exercising *de facto* authority over a more informal military structure.<sup>188</sup>

(ii) Mental Element: Had Reason to Know

a. Applicable Legal Criteria

95. The Appeals Chamber in *Čelebići*, as well as subsequent case law, have accepted the *Čelebići* Trial Chamber's interpretation of "had reason to know", that is, a superior may be held criminally responsible through the principles of superior responsibility only if specific information was available to him which would have put him on notice of offences committed or about to be committed by his subordinates.<sup>189</sup> It is clear from the Appeals Chamber's finding that the mental element for "had reason to know" is determined only by reference to the information in fact

<sup>184</sup> *Čelebići* Trial Judgement, para. 386. See also *Krnjelac* Trial Judgement, para. 94; *Kordić and Čerkez* Trial Judgement, para. 427; *Brdanin* Trial Judgement, para. 278; *Strugar* Trial Judgement, para. 368.

<sup>185</sup> *Čelebići* Trial Judgement, para. 386, citing the final report of the United Nations Commission of Experts, p. 17. See also *Blaškić* Trial Judgement, para. 307; *Kordić and Čerkez* Trial Judgement, para. 427; *Strugar* Trial Judgement, para. 368.

<sup>186</sup> *Aleksovski* Trial Judgement, para. 80.

<sup>187</sup> *Blaškić* Appeal Judgement, footnote 1284.

<sup>188</sup> *Kordić and Čerkez* Trial Judgement, para. 428.

available to the superior<sup>190</sup> and that it is sufficient for the information to be of a nature which, at least, would put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were or were about to be committed.<sup>191</sup>

96. By adopting that interpretation, the Appeals Chamber rejected the stricter criteria of “should have known”, and held that a superior cannot be held criminally responsible for neglecting to acquire knowledge of the acts of subordinates, but only for failing to take the necessary and reasonable measures to prevent or to punish.<sup>192</sup> The Appeals Chamber in *Blaškić* noted that a superior may be held responsible for deliberately refraining from finding out, but not for negligently failing to find out.<sup>193</sup>

#### b. Scope of Knowledge

97. The Appeals Chamber in *Čelebići* considered that the *mens rea* requirement under Article 7(3) is sufficiently satisfied when it is shown that a superior had some general information of a nature to put him on notice of possible unlawful acts by his subordinates. The information in the superior’s possession need not necessarily be of a nature such that it alone establishes that crimes took place. Additionally, the information need not contain specific details about the unlawful acts which had been or were about to be committed.<sup>194</sup>

98. While the Appeals Chamber in *Krnjelac* concurred with that opinion, it further qualified its position, considering that it could not be inferred from this case law that, where one offence has a material element in common with another, but the second offence contains an additional element not present in the first, it suffices that the superior has alarming information regarding the first offence in order to be held responsible for the second on the basis of Article 7(3) of the Statute.<sup>195</sup>

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<sup>189</sup> *Čelebići* Appeal Judgement, para. 241; *Blaškić* Appeal Judgement, paras. 62-64; *Kordić and Čerkez* Trial Judgement, para. 437; *Krnjelac* Trial Judgement, para. 94; *Brdanin* Trial Judgement, para. 278; *Strugar* Trial Judgement, para. 369.

<sup>190</sup> *Čelebići* Appeal Judgement, paras. 238 and 239; *Strugar* Trial Judgement, para. 369.

<sup>191</sup> *Čelebići* Appeal Judgement paras. 223, citing para. 383 of the *Čelebići* Trial Judgement, and 241.

<sup>192</sup> *Čelebići* Appeal Judgement para. 226.

<sup>193</sup> *Blaškić* Appeal Judgement, para. 406. See also *Čelebići* Trial Judgement para. 387. The Chamber notes that the Appeals Chamber affirmed that criminal negligence may not constitute a basis for command responsibility: *Blaškić* Appeal Judgement, para. 63, citing *Bagilishema* Appeal Judgement, paras. 34-35.

<sup>194</sup> *Čelebići* Appeal Judgement, para. 238. See also *Krnjelac* Appeal Judgement, paras. 59, 154-155, 169; *Kordić and Čerkez* Trial Judgement, paras. 436-437; *Strugar* Trial Judgement, paras. 369-370.

<sup>195</sup> *Krnjelac* Appeal Judgement, para. 155. The Appeals Chamber gave the example of cruel treatment and torture which, despite having a material element in common with cruel treatment, requires an additional material element in respect of cruel treatment.

99. According to the ICRC Commentary on Additional Protocol I, superiors may not claim to ignore information such as reports addressed to them, the tactical situation, the level of training and instruction of subordinate officers and their troops, and their character traits.<sup>196</sup> The ICRC Commentary on Additional Protocol I also specifies that such information available to a superior may enable him to conclude either that breaches have been or are about to be committed, and gives as an example information such as the troops' lack of any instruction on the Geneva Conventions and Additional Protocol I.<sup>197</sup>

100. The case law of this Tribunal has identified examples of information of a general nature which informs a superior that his subordinates are about to commit a crime. The Appeals Chamber in *Čelebići* thus found that a military commander has the required knowledge when he has been informed that some of the soldiers under his command have a violent or unstable character, or were drinking prior to being sent on a mission.<sup>198</sup> The Chamber in *Kordić and Čerkez* includes information such as the level of training, and the character traits or habits of the subordinates.<sup>199</sup>

101. The Appeals Chamber in *Čelebići* noted that the mental element required by Article 7(3) of the Statute must be evaluated in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.<sup>200</sup> In particular, as indicated in the ICRC Commentary on Additional Protocol I, that evaluation must distinguish between the time the information was available to the superior and the time the breach was committed.<sup>201</sup>

### c. Prior Knowledge

102. The Chamber will now examine whether a superior's knowledge of an offence previously committed by his subordinates is sufficient to alert him that another offence is about to be committed.

<sup>196</sup> ICRC Commentary on Additional Protocol I, para. 3545 referring to Article 86 of Additional Protocol I. See *Čelebići* Appeal Judgement, para. 238 citing that passage.

<sup>197</sup> ICRC Commentary on Additional Protocol I, para. 3545, referring to Article 86 of Additional Protocol I.

<sup>198</sup> *Čelebići* Appeal Judgement, para. 238.

<sup>199</sup> *Kordić and Čerkez* Trial Judgement, para. 437. According to the criteria identified by the *Čelebići* Appeals Chamber, the fact that a superior takes general preventive measures, such as giving orders to comply with international humanitarian law, is not of a nature to demonstrate that a superior knew or had reason to know that his subordinates were about to commit crimes. The Appeals Chamber in *Blaškić* found that such orders are "not relevant to the issue of his liability, if any, under Article 7(3) of the Statute, unless the reference to them is premised on the fact that he knew or had reason to know that his subordinates were about to commit crimes subject to the jurisdiction of the International Tribunal", *Blaškić* Appeal Judgement, para. 486.

<sup>200</sup> *Čelebići* Appeal Judgement, para. 239. See also *Krnjelac* Appeal Judgement, para. 156.

<sup>201</sup> ICRC Commentary on Additional Protocol I, para. 3545 referring to Article 86 of Additional Protocol I.

103. The Prosecution submits that the prior commission of criminal acts is, *per se*, evidence of the existence of “an unacceptable degree of risk” triggering a duty to take all the necessary and reasonable steps to prevent the recurrence of similar crimes.<sup>202</sup> The Prosecution further submits that the Appeal Judgement in *Krnojelac* supports the argument that when a superior has knowledge that crimes have already been committed by his subordinates, he is put on notice of a *risk* that crimes will be committed in the future, and has a duty to intervene to prevent them.<sup>203</sup> The Prosecution also refers to its submissions in its Appeal Brief in the *Strugar* case.<sup>204</sup>

104. In its Closing Arguments, the Defence for the Accused Hadžihasanović opposed the Prosecution’s view that a superior has reasons to know from the moment he is put on notice of the simple risk that unlawful acts might be committed.<sup>205</sup> Relying on the Judgement in *Strugar*, the Defence for Hadžihasanović submitted that Article 7(3) does not require that a commander had to have knowledge of the possibility an offence might be committed by his subordinates, but requires that the information available to him enable him to conclude that there is a clear prospect an offence might be committed.<sup>206</sup>

105. The Defence for the Accused Kubura did not make any submissions on this specific issue.

106. The Chamber notes that the Prosecution acknowledges an initial limitation on the scope of prior knowledge, namely that the alleged criminal acts must be similar.<sup>207</sup>

107. The Prosecution, however, does not deal with the issue of whether a superior’s prior knowledge of crimes committed by his subordinates gives him reason to know that the *same* subordinates are preparing to commit similar crimes, or if that prior knowledge extends to similar criminal acts by *all* of his subordinates. By failing to raise the issue, the Prosecution implicitly accepts that a superior’s prior knowledge of crimes committed by a given group of subordinates is sufficient to give him reason to know that *all* of his subordinates are about to commit crimes of the same nature.

108. In its analysis in *Krnojelac*, the Appeals Chamber endeavoured to ascertain whether the Accused Krnojelac knew or had reason to know that his subordinates had committed or were about to commit beatings for one of the purposes mentioned in the prohibition against torture.<sup>208</sup>

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<sup>202</sup> Prosecution Final Brief, para. 43.

<sup>203</sup> *Ibid.*

<sup>204</sup> *The Prosecutor v. Pavle Strugar*, Case no. IT-01-42-A, Prosecution Appeal Brief, 17 May 2005, paras. 2.49-2.69.

<sup>205</sup> Hadžihasanović Defence Closing Arguments T(F) p. 19176.

<sup>206</sup> *Ibid.*, T(F) p. 19178.

<sup>207</sup> Prosecution Final Brief, para. 43.

109. The Appeals Chamber first examined the agreed facts admitted by the Trial Chamber relating to the context in which beatings at the KP Dom (Penal and Correctional Facility) in Foča were committed and to the widespread nature of their commission.<sup>209</sup> The Appeals Chamber found that Krnojelac admitted to knowing that non-Serbs were being detained precisely because they were non-Serbs, to having knowledge about the detention conditions under which the non-Serbian prisoners were being held, and to knowing that the Muslim detainees were being beaten and generally mistreated.<sup>210</sup> The Appeals Chamber then examined the agreed facts admitted by the Trial Chamber relating to Krnojelac's authority over his subordinates who had committed the beatings.<sup>211</sup> The Appeals Chamber found that Krnojelac supervised the KP Dom in Foča, that he had jurisdiction over the detainees there, and that he was there practically every day.<sup>212</sup> Finally, the Appeals Chamber examined the agreed facts admitted by the Trial Chamber relating to the frequency of the interrogations and to the punishments inflicted upon the detainees.<sup>213</sup> It held that the interrogations were conducted frequently and that punishment was inflicted as a common practice.<sup>214</sup> Moreover, the Appeals Chamber found that Krnojelac witnessed the beating of a detainee, Ekrem Zeković, on 8 July 1993, ostensibly inflicted for the prohibited purpose of punishing him for his failed escape, and that Krnojelac was aware that punishment was being inflicted because of Ekrem Zeković's escape.<sup>215</sup>

110. After having come to those conclusions, the Appeals Chamber held that "taken as a *whole*, these facts constitute a sufficiently alarming body of information to put him on notice of the risk of torture".<sup>216</sup> The Appeals Chamber however seems to consider Ekrem Zeković's beating, which Krnojelac witnessed on 8 July 1993, and which was ostensibly inflicted for the prohibited purpose of punishing him for his failed escape, as the temporal element triggering Krnojelac's duty to act. The Appeals Chamber held that by witnessing that beating on 8 July 1993, the Accused incurred responsibility for the count of torture pursuant to Article 7(3) of the Statute for having "failed to take the necessary and reasonable measures to prevent the acts of torture committed subsequent to

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<sup>208</sup> The Trial Chamber in *Strugar* also examined this issue in its factual analysis but did not consider the criteria set out in the *Krnojelac* Appeal Judgement: *Strugar* Trial Judgement, paras. 415-418. The Appeals Chamber in *Blaškić* was seized of this matter but its findings do not make it possible to determine the weight it attached thereto in its reasons: *Blaškić* Appeal Judgement, paras. 488-490.

<sup>209</sup> *Krnojelac* Appeal Judgement, para. 163.

<sup>210</sup> *Ibid.*, para. 166.

<sup>211</sup> *Ibid.*, para. 164.

<sup>212</sup> *Ibid.*, para. 167.

<sup>213</sup> *Ibid.*, para. 165.

<sup>214</sup> *Ibid.*, para. 168.

<sup>215</sup> *Ibid.*, paras. 169-170.

<sup>216</sup> *Ibid.*, para. 166 (emphasis added).

those inflicted on Ekrem Zeković and for having failed to investigate the acts of torture committed prior to those inflicted on Ekrem Zeković”.<sup>217</sup> The Chamber will examine the mental element of the duty to intervene in order to prevent the recurrence of unlawful acts in the next chapter of this Judgement which discusses necessary and reasonable measures.<sup>218</sup>

111. The conclusions of the Appeals Chamber call for several observations.

112. First, considering the facts in their entirety, namely the external context and the internal workings of the Foča detention centre, it is clear that the acts of torture inflicted upon Ekrem Zeković could not have been isolated events but were rather the result of the detention conditions of which Krnojelac had knowledge. Considering the atmosphere of terror which reigned at the KP Dom in Foča, that act of torture put the Accused on notice that it must have been preceded by other acts of the same nature. As such, Krnojelac’s prior knowledge of certain criminal acts derived from a combination of circumstances which made it impossible for those acts to have been isolated events.

113. The Appeals Chamber then found that the acts of torture inflicted upon Ekrem Zeković taken in the aforementioned context, were of a nature to alert the Accused Krnojelac that other acts of torture were being committed. Stated otherwise, it was not sufficient that the Accused had alarming information about beatings committed by his subordinates; he had to have information to alert him of beatings being inflicted for one of the prohibited purposes of torture.<sup>219</sup> By drawing that conclusion, it is clear that the Appeals Chamber limited the Accused Krnojelac’s prior knowledge to similar criminal acts. *A contrario*, it could be argued that since the crime of torture subsumes the lesser offence of cruel treatment,<sup>220</sup> if a superior has alarming information that his subordinates are committing acts of torture, this would be sufficient to alert him of the risk that they might commit acts of cruel treatment.

114. Finally, it is clear that the Accused Krnojelac’s prior knowledge of the crimes committed by the guards at the KP Dom in Foča gave him reason to know that members of that same group of subordinates, namely the guards at the KP Dom in Foča, were about to commit crimes of the same nature. The reasons underpinning that limitation to the same group are obvious. First, the commission of the alleged criminal acts occurred in the same geographical setting, that is, the Foča detention centre. Second, that group of subordinates was under the authority and supervision of one

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<sup>217</sup> *Ibid.*, para. 172; see also paras. 169 and 170. The principles identified in the Appeals Chamber Judgement and their implications in respect of a superior’s duty to take the necessary and reasonable measures to prevent crimes or punish the perpetrators will be discussed in the part of this Judgement dealing with the law applicable to measures.

<sup>218</sup> See *infra* paras. 133 and 166.

<sup>219</sup> *Ibid.*, para. 155.

same prison warden. In view of those circumstances, it follows that the guards at the KP Dom in Foča formed one identifiable group of subordinates.

115. The Chamber notes that the Prosecution did not take this aspect into account. On the contrary, the Prosecution's position implicitly seeks to extend a commander's prior knowledge to criminal acts of the same nature committed by all of his subordinates, regardless of whether they belong to the same group. In this case, that would amount to saying that since the Accused Hadžihasanović had knowledge of the existence of previous cases of a brigade's criminal conduct, this would put him on notice of the risk that other brigades were about to commit similar criminal acts. To adopt such a position misconstrues the reasoning of the *Krnojelac* Appeals Chamber, in that it is silent about taking into account one same group of subordinates and the geographical aspects related to that group (for example, the location of a subordinate unit), which fall within the scope of *Krnojelac*'s prior knowledge.

116. Moreover, by attempting to extend the Accused Hadžihasanović's prior knowledge to the crimes committed by all his subordinates, regardless of their positions in the 3<sup>rd</sup> Corps zone of responsibility, the Prosecution is attempting to reintroduce a criterion already dismissed by the Appeals Chamber in *Čelebići*, namely a superior's "general duty to know", the breach of which would have been sufficient to entail his responsibility for crimes committed by his subordinates.<sup>221</sup> In that Judgement, the Appeals Chamber in fact determined that customary law did not impose such obligations on military commanders.<sup>222</sup> Indeed, that position has since been reaffirmed.<sup>223</sup> The Prosecution's position is therefore discordant with the case law and, in addition, the Prosecution failed to offer any arguments to support it.

117. Accordingly, the Chamber is of the view that in this case the "identifiable group of subordinates" must be interpreted, given the structure and operations of the 3<sup>rd</sup> Corps, as a brigade or brigade battalion, assuming that a battalion has a geographical location different from that of the other units of the brigade to which it belongs. Consequently, the Chamber dismisses the Prosecution's argument in this case which seeks to extend the reasoning elaborated in the *Krnojelac* Appeal Judgement to cover all the subordinates of the Accused, regardless of whether they belong to the same group.

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<sup>220</sup> *Ibid.*, para. 155.

<sup>221</sup> *Čelebići* Appeal Judgement, para. 230.

<sup>222</sup> *Ibid.*, paras. 228-240.

<sup>223</sup> *Blaškić* Appeal Judgement, paras. 61-62.



118. As a result, the Chamber considers that a superior's prior knowledge must be interpreted narrowly in that it derives from a situation of recurrent criminal acts and from circumstances where those acts could not be committed in isolation by a single identifiable group of subordinates.

119. It should be noted that the theory of prior knowledge is of little interest if, as the Trial Chamber in *Strugar* held,<sup>224</sup> the threshold of a superior's duty to act is considered to have been met only when a crime is already in the process of being committed. For the reasons set out in this part of the Judgement, the Chamber disagrees with that position and, accordingly, considers that the position of the Defence for Hadžihasanović, as expressed in its Closing Arguments, lacks foundation.

120. The implications of prior knowledge, as circumscribed above, relating to a superior's duty to take the necessary and reasonable measures to prevent crimes or punish the perpetrators, will be discussed in the next part of this Judgement.

(c) Necessary and Reasonable Measures

121. The failure in the duty to prevent or punish which triggers individual command responsibility pursuant to Article 7(3) of the Statute presupposes that the superior exercises effective control over his subordinates.<sup>225</sup> Similarly, a superior's knowledge that his subordinates were preparing to commit crimes or had done so is another element underpinning the duty to take measures.<sup>226</sup>

(i) Material Ability of a Superior to Act

122. Regarding the obligation to prevent or punish, the case law of the Tribunals first notes that a superior cannot be obliged to perform the impossible.<sup>227</sup> To determine whether a superior has discharged his duty, the case law has sought to assess whether the superior took the measures in his powers and to define which measures must be considered to be within the superior's powers in that sense.<sup>228</sup> In *Čelebići*, the Chamber concluded that a superior should be held responsible for failing to take the measures within his material possibility.<sup>229</sup> In certain cases, the superior need not possess

<sup>224</sup> *Strugar* Trial Judgement, paras. 415-418.

<sup>225</sup> See *Strugar* Trial Judgement para. 526; *Halilović* Trial Judgement para. 73; *Blaškić* Trial Judgement, para. 335.

<sup>226</sup> *Kajelijeli* Trial Judgement, para. 777, citing *Semanza* Trial Judgement, para. 405, *Bagilishema* Trial Judgement, para. 46, and *Čelebići* Trial Judgement, paras. 384-386.

<sup>227</sup> *Čelebići* Trial Judgement, para. 395.

<sup>228</sup> *Ibid.*, para. 395.

<sup>229</sup> *Ibid.*, para. 395.

the formal legal competence to take the necessary measures if it is proved that he has the material ability to act.<sup>230</sup>

123. The case law of the International Tribunals has consistently held that the assessment of measures taken, in view of the material ability of the superior, must be evaluated on a case-by-case basis. In *Aleksovski* for example, the Trial Chamber applied the concept of a superior's "material possibility" to act and held that "such a material possibility must not be considered abstractly but must be evaluated on a case-by-case basis depending on the circumstances".<sup>231</sup>

124. The Trial Chamber in *Čelebići* also noted that the evaluation of the measures taken by a superior to determine whether he has met his duty is inextricably linked to the facts of each particular situation; any general standard would not be meaningful.<sup>232</sup> Accordingly, the evaluation of measures taken is more a matter of evidence than of substantive law.<sup>233</sup>

(ii) Two Distinct Duties: Prevent and Punish

125. Tribunal case law has clearly established that Article 7(3) of the Statute distinguishes between two different duties of a superior. The Trial Chamber in *Strugar* recently reaffirmed this distinction unambiguously by holding that Article 7(3) does not provide a superior with two alternative options but contains two distinct legal obligations: (1) to prevent the commission of the crime and (2) to punish the perpetrators. The duty to prevent arises for a superior from the moment he acquires knowledge or has reasonable grounds to suspect that a crime is being or is about to be committed, while the duty to punish arises after the commission of the crime.<sup>234</sup>

126. As for the duty to prevent, a superior clearly has a limited time to perform it. Once the crime has been committed by his subordinates, it is too late and the superior has failed in his duty. The duty to punish the subordinates arises after the crimes have already been committed. In no case may the superior "make up" for the failure to act by punishing the subordinates afterwards.<sup>235</sup> Accordingly, if it is established that a superior did nothing to prevent his subordinates from committing a crime, an examination of the measures taken to punish them serves no purpose. He has failed in his duty to prevent and therefore entails responsibility.<sup>236</sup>

<sup>230</sup> *Strugar* Trial Judgement, para. 73, citing *Čelebići* Trial Judgement, para. 395.

<sup>231</sup> *Aleksovski* Trial Judgement, para. 81; see also *Krstić* Appeal Judgement, footnote 250.

<sup>232</sup> *Čelebići* Trial Judgement, para. 394.

<sup>233</sup> *Strugar* Trial Judgement, para. 73 citing *Blaškić* Appeal Judgement, para. 72.

<sup>234</sup> *Strugar* Trial Judgement, para. 373.

<sup>235</sup> *Blaškić* Trial Judgement, para. 336.

<sup>236</sup> *Kayishema and Ruzindana* Trial Judgement, para. 515.

127. The case law makes an unequivocal distinction between the duty to prevent and the duty to punish: the first arises prior to the commission of the criminal offence by the subordinate and the second, after. Nevertheless, the duty to “suppress” is recognised by the case law and seems to be included in the duty to prevent, even though it arises while the unlawful act is in the process of being committed. The duty to suppress should be considered part of the superior’s duty to prevent, as its aim is to prevent further unlawful acts.<sup>237</sup> In its Judgement in *Strugar*, the Trial Chamber refers to the duty to suppress by stating that: “the Accused did not take necessary and reasonable measures to ensure at least that the unlawful shelling of the Old Town be stopped.”<sup>238</sup> Similarly, the Trial Chamber in *Kajelijeli* found that: “the Accused failed to prevent or stop the killings of early to mid April 1994 in Mukingo, Nkli and Kigombe communes.”<sup>239</sup>

(iii) Failure to Punish and Recurrence of Unlawful Acts

128. While the duty to prevent is distinct from the duty to punish, there are situations where both duties have a causal link and one may be the consequence of the other. This reasoning appears in the Prosecution’s written submissions on the issue of prior knowledge,<sup>240</sup> which deals with both the definition of a superior’s knowledge and, once that knowledge has been established, the superior’s duty to intervene.

129. According to the Prosecution, the prior commission of criminal acts is *per se* evidence of the existence of an “unacceptable degree of risk” which triggers a superior’s duty to take all the necessary and reasonable steps to prevent the recurrence of similar crimes.<sup>241</sup> The Prosecution refers to its Appeal Brief in *Strugar*, where it provides a more comprehensive explanation of its reasoning which relies on post-World War II case law and the *Krnojelac* and *Blaškić* Appeal Judgements which, it submits, support this argument.<sup>242</sup> In its Closing Arguments, the Defence for Hadžihasanović contests the Prosecution position which seeks to establish command responsibility from the moment the superior has been alerted of the risk that unlawful acts might be committed.<sup>243</sup> Citing the *Strugar* Judgement, the Defence for Hadžihasanović considers that a superior may incur

<sup>237</sup> See *Halilović* Trial Judgement para. 87 (footnotes omitted).

<sup>238</sup> *Strugar* Trial Judgement, para. 446 (emphasis added); see also *Kajelijeli* Trial Judgement, para. 740. The duty to suppress, implicitly part of a superior’s duty, is mentioned in the ICRC Commentary on Additional Protocol I regarding Articles 86 and 87 thereof. Furthermore, the commentary addresses the following issue: “In trials following the Second World War, Allied tribunals had indeed convicted several persons in cases where they had not intervened to prevent a breach or to put a stop to it” (emphasis added). See ICRC Commentary on Additional Protocol I, Article 86, para. 3525.

<sup>239</sup> *Kajelijeli* Trial Judgement, para. 740 (emphasis added).

<sup>240</sup> Prosecution Final Brief, para. 43; see *supra* para. 102 *ff.*

<sup>241</sup> Prosecution Final Brief, para. 43. The Prosecution refers to its Appeal Brief in the *Strugar* case, where it gives a more comprehensive explanation of its reasoning. *The Prosecutor v. Pavle Strugar*, Case no. IT-01-42-A, Prosecution Appeal Brief, 17 May 2005, paras. 2.49-2.69.

<sup>242</sup> *The Prosecutor v. Pavle Strugar*, Case no. IT-01-42-A, Prosecution Appeal Brief, 17 May 2005, paras. 2.49-2.69.

<sup>243</sup> Hadžihasanović Defence Closing Arguments, English transcript of proceedings (“T(E)”), p. 19176.

responsibility only when he has specific information that breaches have been committed by one of his subordinates.<sup>244</sup> The Defence for Kubura did not make submissions on this specific issue.

130. The applicable law on measures was touched on only marginally in the *Čelebići* Judgement, in a passage dealing with a causal link, and in the *Halilović* Judgement.<sup>245</sup>

131. This issue is closely linked to knowledge and to the definition of a superior's duty to "know or have reason to know" as explained above.<sup>246</sup> For the purposes of clarity, the Chamber recalls only the conclusions of the Trial Chamber in *Čelebići* regarding the interpretation of these terms:

"[...] a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes."<sup>247</sup>

132. In its factual assessment, the Appeals Chamber in *Krnjelac* relied on the *Čelebići* Trial Chamber's conclusions regarding the knowledge of superiors who should "know or have reason to know," to determine whether an Accused has sufficient information on the crime of torture and to ascertain whether the Accused Krnjelac had alarming information (which need not necessarily be specific) which would have alerted him of the risk that acts of torture might be committed by his subordinates.<sup>248</sup>

133. The Appeals Chamber in *Krnjelac* considered all the evidence admitted by the Trial Chamber to determine that "taken as a whole, these facts constitute a sufficiently alarming body of information to put him on notice of the risk of torture".<sup>249</sup> Nevertheless, the Appeals Chamber seems to consider the beating of Ekrem Zeković, which Krnjelac witnessed on 8 July 1993, as the temporal element triggering the responsibility of the Accused to act. Moreover, the Appeals Chamber held that by witnessing the beating on 8 July 1993, the Accused incurred criminal responsibility for the count of torture under Article 7(3) of the Statute for "having failed to take the necessary and reasonable measures to prevent the acts of torture committed subsequent to those

<sup>244</sup> *Ibid.*, T(E) p. 19177.

<sup>245</sup> See *Čelebići* Trial Judgement, para. 400, which reads: "In contrast, while a causal connection between the failure of a commander to punish past crimes committed by subordinates and the commission of any such future crimes is not only possible but likely [...]"; see *Halilović* Trial Judgement para. 96: "Finally, the Trial Chamber considers that punishment is an inherent part of prevention of future crimes [...] This failure to punish on the part of a commander can only be seen by the troops to whom the preventative orders are issued as an implicit acceptance that such orders are not binding."

<sup>246</sup> See *supra* para. 102 ff.

<sup>247</sup> *Čelebići* Trial Judgement, para. 393.

<sup>248</sup> *Krnjelac* Appeal Judgement, para. 155. The Trial Chamber in *Strugar* also examined this issue but distanced itself from the criteria identified in the *Krnjelac* Appeal Judgement. See *Strugar* Trial Judgement, paras. 416-417 and *The Prosecutor v. Pavle Strugar*, Case no. IT-01-42-A, Prosecution Appeal Brief, 17 May 2005, para. 2.19.

<sup>249</sup> *Krnjelac* Appeal Judgement, para. 166.

inflicted on Ekrem Zeković [...]”.<sup>250</sup> Accordingly, the knowledge of Ekrem Zeković’s beating entails Krnojelac’s responsibility for failing to punish those who tortured Zeković. Additionally, as the Appeals Chamber did not specify which elements it considered to establish Krnojelac’s responsibility, the Chamber, considering the facts of this case, interprets Krnojelac’s failure to act as an endorsement of those actions which resulted in subsequent acts of torture being committed. The Chamber thus infers that, in particular, the failure to punish the acts committed against Zeković constitutes negligence in the duty to prevent other similar acts (of torture).<sup>251</sup> Over and beyond the conclusions of the Appeals Chamber, the Chamber is of the opinion that by failing to take measures to punish crimes of which he has knowledge, the superior has reason to know that there is a real and reasonable risk those unlawful acts might recur.<sup>252</sup>

134. The Appeals Chamber goes further in its reasoning by determining that, after that event, Krnojelac is also guilty for having failed to investigate the acts of torture committed prior to those inflicted on Ekrem Zeković and, if need be, punish the perpetrators.<sup>253</sup> Accordingly, the Appeals Chamber affirms that, according to the circumstances of a case, prior knowledge of certain facts entails the retroactive duty of a superior.

135. At a later point in that Judgement, the Appeals Chamber reapplies that principle to the murders committed at the KP Dom in Foča. The Appeals Chamber considered that from the moment a certain amount of information was available to Krnojelac which, taken as a whole, was sufficiently alarming and such as to alert him to the risk of murders being committed inside the prison, he had an obligation to intervene and at the least should have carried out an investigation.<sup>254</sup> That duty resulted from the fact that he was aware of the beatings and suspicious disappearances and that he saw the bloodstains and the bullet holes on the walls. On that basis, the Appeals Chamber found Krnojelac guilty for having failed to take the necessary and reasonable measures to prevent the murders committed subsequent to the disappearances of which he had knowledge and for having failed to investigate the murders committed prior to those disappearances and, if need be, punish the perpetrators of the murders, of whom he was the superior.<sup>255</sup>

136. The aspects of the duty to prevent and punish will be examined later in the sections of the Judgement dealing with those distinct duties.

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<sup>250</sup> *Ibid.*, para. 172.

<sup>251</sup> *Ibid.*, paras. 170 and 172.

<sup>252</sup> *See also infra* para 193.

<sup>253</sup> *Ibid.*, para. 172 (emphasis added).

<sup>254</sup> *Ibid.*, paras. 178-179.

<sup>255</sup> *Ibid.*, para. 180.

(iv) Obligations Under National Law

137. To determine measures a superior must take, an examination of national law is relevant. The Commentary on Additional Protocol I states that the concept of the duty to act raises the complex problem of the attribution of powers and duties, which is not a matter of international law but is governed by the national law of the Parties to the Protocol.<sup>256</sup> The Commentary on Additional Protocol I states that once national law has attributed powers, the duty resulting therefrom with regard to international humanitarian law has to be interpreted in the light of treaty instruments.<sup>257</sup> In other words, the national law of a State establishes the powers and duties of civilian or military representatives of that State, but international law lays down the way in which they may be exercised within the area governed by it.<sup>258</sup>

138. As such, we may infer that national law provides the framework for the authority attributed to a superior, but Chambers must evaluate the duty to act, which stems from that authority, in view of international law.<sup>259</sup>

139. In order to determine the scope of the measures a superior could take to determine his responsibility under Article 7(3) of the Statute, the Tribunal's case law has relied on the national law and/or regulations of one or both of the armed forces in conflict.

140. In its examination of the responsibility of the Accused as a superior, the *Aleksovski* Trial Chamber considered the fact that the law of Bosnia and Herzegovina imposed a civic duty on all its citizens to report any unlawful acts to the judicial authorities.<sup>260</sup>

141. Similarly, in the *Blaškić* Judgement, the Trial Chamber relied on Article 60 of the HVO Rules on Military Discipline to determine that the Accused had failed in his duty to punish the actions of his subordinates.<sup>261</sup> The Appeals Chamber in *Blaškić* considered this reference useful for determining that the Accused had failed to take reasonable measures.<sup>262</sup>

142. Again in *Blaškić*, the Appeals Chamber noted that the Trial Chamber also relied on the Regulations Concerning the Application of International Law to the Armed Forces of SFRY, in order to point out that a superior's responsibility for his failure to punish is a distinct form of

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<sup>256</sup> ICRC Commentary on Additional Protocol I, Article 86, para. 3537.

<sup>257</sup> *Ibid.*

<sup>258</sup> *Ibid.*

<sup>259</sup> See *Aleksovski* Trial Judgement, paras. 135-136.

<sup>260</sup> *Ibid.*, paras. 91 and 136.

<sup>261</sup> See *Blaškić* Trial Judgement, para. 488: "Nor did he take any measures to seal off the area and ensure that evidence was preserved, despite being required to do so by Article 60 of the military discipline regulations."

<sup>262</sup> *Blaškić* Appeal Judgement, para. 414.

responsibility.<sup>263</sup> The Appeals Chamber relied on those regulations to establish that commanders were required to report offences to the competent authorities.<sup>264</sup>

(v) Components of the Duty to Prevent

143. As set out in the Commentary on Additional Protocol I, the role of a commander is decisive for the proper application of the Conventions and Additional Protocol I and to avoid a fatal gap between the undertakings entered into by parties to the conflict and the conduct of individuals under their orders.<sup>265</sup> A superior must therefore provide structure for his subordinates to ensure they observe the rules of armed conflict and must also prevent the violation of these norms.<sup>266</sup>

144. As noted in the *Halilović* Judgement, a commander's overall obligation to prevent the commission of crimes by his subordinates arises from the importance which international humanitarian law places on the prevention of violations of its norms.<sup>267</sup> Nevertheless, at the outset, a distinction must be made between general measures taken by a commander to provide structure for his subordinates and those ordered to prevent specific crimes of which he has knowledge. By failing to take the first, the commander runs the increased risk that his subordinates will engage in unlawful acts, although this will not necessarily entail his criminal responsibility. Failure to take the second will result in criminal sanctions.

a. General Measures

145. The Commentary on Additional Protocol I recalls that armed forces must be subject to an internal disciplinary system enforcing compliance with the rules of international law applicable in armed conflict; commanders are responsible for carrying out this task.<sup>268</sup> In this respect, commanders have a duty to disseminate those rules and to include the study thereof in their programmes of military instruction.<sup>269</sup> Legal advisers must be available to advise military commanders on the instruction to be given to the armed forces on the subject of the application of the Conventions and Additional Protocol I.<sup>270</sup> The purpose of such instruction is to ensure that the

<sup>263</sup> *Ibid.*, para. 84; *Blaškić* Trial Judgement, para. 338.

<sup>264</sup> *Blaškić* Appeal Judgement, paras. 630 and 632.

<sup>265</sup> ICRC Commentary on Additional Protocol I, para. 3550.

<sup>266</sup> Decision on Joint Challenge to Jurisdiction, para. 66; *Halilović* Trial Judgement, para. 81.

<sup>267</sup> *Halilović* Trial Judgement, para. 81.

<sup>268</sup> ICRC Commentary on Additional Protocol I, Article. 87, para. 3550 referring to Article 43 of Protocol I.

<sup>269</sup> ICRC Commentary on Additional Protocol I, Article. 87, para. 3557 referring to Article 83 of Protocol I.

<sup>270</sup> ICRC Commentary on Additional Protocol I, Article. 87, para. 3557 referring to Article 82 of Protocol I.

members of the armed forces under their command are aware of their obligations under the Conventions and Additional Protocol I.<sup>271</sup>

146. As noted by the Trial Chamber in *Halilović*, commanders, by virtue of the authority vested in them, are qualified to exercise control over troops and the weapons they use; more than anyone else, they can prevent breaches by creating the appropriate frame of mind, ensuring the rational use of the means of combat, and by maintaining discipline.<sup>272</sup> That control, a component of troop instruction, may be exercised either periodically or expressly before an engagement by drawing particular attention, where necessary, to the sort of action to be avoided, taking into account the situation or the morale of the troops.<sup>273</sup>

147. The Chamber concurs with the Trial Chamber in *Halilović* as regards the general measures which were not taken and which have been raised by other Trial Chambers.<sup>274</sup> Although international law intends to bar not only actual but also potential breaches, the fact remains that a commander's failure to take general preventive measures does not entail the same consequences for his criminal responsibility as the failure to act in a specific circumstance where a crime of which he has knowledge is about to be committed.

148. The Commentary on Additional Protocol I is only marginally helpful in this regard, although it does indicate that the protocol also condemns commanders for their failure to act in cases where there are grave breaches as well as in cases where the breaches are not grave, but notes that, in the case where the breaches are not grave, the sanctions can only be disciplinary.<sup>275</sup> The distinction between breaches that are grave and breaches that are not grave is not clearly set out.

149. Tribunal case law has also distinguished between the failure to take "general" measures to control troops and those measures directly related to the commission of a crime. The Appeals Chamber in *Čelebići* held that "although a commander's failure to remain apprised of his subordinates' action, or to set up a monitoring system may constitute a neglect of duty which results in liability within the military disciplinary framework, it will not necessarily result in criminal liability."<sup>276</sup>

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<sup>271</sup> ICRC Commentary on Additional Protocol I, Article. 87, para. 3557.

<sup>272</sup> *Halilović* Trial Judgement para. 85 citing ICRC Commentary on Additional Protocol I, Article. 87, para. 3560.

<sup>273</sup> *Halilović* Trial Judgement para. 85 citing ICRC Commentary on Additional Protocol I, Article. 87, para. 3558.

<sup>274</sup> *Halilović* Trial Judgement, para. 86.

<sup>275</sup> See ICRC Commentary on Additional Protocol I, para. 3542: "It should be clearly noted that this paragraph condemns failure to act of superiors in case of breaches which are not grave breaches as well as in case of grave breaches. In the first case the sanction can be disciplinary or penal, while universal jurisdiction understood as 'aut dedere aut judicare' applies in the second case, i.e., in case of a grave breach."

<sup>276</sup> *Čelebići* Appeal Judgement, para. 226; see also *Halilović* Trial Judgement, para. 88 citing *Strugar* Trial Judgement, para. 420.



150. Similarly, the Appeals Chamber in *Bagilishema* held that a superior's failure in his duty may entail disciplinary rather than criminal sanctions,<sup>277</sup> but it did not provide the elements to distinguish between which failures result in disciplinary sanctions and which failures result in criminal sanctions. The Appeals Chamber held that an abstract approach cannot be envisaged in this particular case:

“The line between those forms of responsibility which may engage the criminal responsibility of the superior under international law and those which may not can be drawn in the abstract only with difficulty [...]”<sup>278</sup>

151. Additionally, it is important to note that a commander who has taken all the general measures prescribed by Additional Protocol I is not relieved of criminal responsibility if he fails to take specific measures to prevent acts of which he is aware.<sup>279</sup> Those general measures will, however, be taken into consideration in the factual analysis and evaluation of efforts made by the Accused to fulfil their obligation to prevent, in view of the circumstances of the case.<sup>280</sup> In fact it is much less foreseeable for violations of international humanitarian law to occur when a commander has taken a series of general preventive measures to instil order and discipline in his troops than when a commander has not taken care to put in place a system which instils respect for the law and discipline. The taking of general measures is also decisive in the evaluation of mitigating circumstances.<sup>281</sup>

#### b. Specific Measures

152. Clearly the duty to intervene to prevent the commission of a crime is defined by the material ability of a commander to act; his duties will vary according to his rank and the powers vested in him.<sup>282</sup>

153. To provide a basis for that duty, the Trial Chamber in *Strugar* relied on the case law of the post-World War II Tribunals which set out, *inter alia*, the following factors: a superior's failure to secure reports that military actions have been carried out in accordance with international law; the failure to issue orders aimed at bringing the relevant practices into accord with the rules of war; the failure to protest against or to criticise criminal action; the failure to take disciplinary measures to prevent the commission of atrocities by the troops under their command, and the failure to insist

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<sup>277</sup> *Bagilishema* Appeal Judgement, para. 36.

<sup>278</sup> *Ibid.*

<sup>279</sup> *Halilović* Trial Judgement para. 88.

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

<sup>281</sup> *See infra* para. 2080.

<sup>282</sup> ICRC Commentary on Additional Protocol I, Article 87, para. 3561; *Strugar* Trial Judgement, para. 375; *Bagilishema* Trial Judgement, para. 48.

before a superior authority that immediate action be taken.<sup>283</sup> Moreover, the *Strugar* Chamber noted that the International Military Tribunal for the Far East held that a superior's duty may not be discharged by the issuance of "routine" orders and that more active steps must be required.<sup>284</sup>

154. Moreover, the Trial Chamber in *Blaškić* held that a commander may fulfil his duty to prevent by reporting the "matter" to the competent authorities.<sup>285</sup>

155. On the basis of that case law, the Chamber finds that the necessary and reasonable measures a superior must take to prevent the commission of a crime must be evaluated on a case-by-case basis in view of the particular facts of the case. It must be noted, however, that the measures must be specific and closely linked to the acts they are intended to prevent.

c. Duty to Intervene to Prevent the Recurrence of Unlawful Acts

156. As explained above, the Appeals Chamber in *Krnjelac* held that a superior has a duty to punish the acts of his subordinates as soon as he is alerted of the risk that they will be committed. Failure in that duty to intervene entails the superior's responsibility, since his passiveness condones subsequent similar acts. Accordingly, by failing to punish, the superior (Krnjelac) did not prevent subsequent criminal acts.<sup>286</sup> Nevertheless, to evaluate the scope of the *Krnjelac* Appeal Judgement, the Chamber would make several observations.

157. It should be pointed out that, in this case, the Prosecution acknowledges an initial limitation on a superior's duty to prevent the recurrence of criminal acts by stating that the acts must be similar.<sup>287</sup>

158. The Prosecution, however, does not deal with the question of whether the duty to intervene to prevent similar acts concerns only the acts of the same group of subordinates who perpetrate the unlawful acts or if it applies to all of a superior's subordinates. By failing to raise that issue, the Prosecution implicitly extends the duty to prevent the recurrence of similar acts to cover those committed by all of a superior's subordinates.<sup>288</sup> The Defence for Hadžihasanović and the Defence for Kubura did not raise that specific issue in their final written submissions or closing arguments.

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<sup>283</sup> *Strugar* Trial Judgement, para. 374; *Halilović* Trial Judgement, para. 89.

<sup>284</sup> *Strugar* Trial Judgement, para. 375.

<sup>285</sup> *Blaškić* Trial Judgement, para. 335; *Stakić* Trial Judgement para. 461.

<sup>286</sup> *Krnjelac* Appeal Judgement, para. 172.

<sup>287</sup> Prosecution Final Brief, para. 43.

<sup>288</sup> Emphasis added.

159. First, and in view of the case law established by the Appeals Chamber in *Krnojelac*, the Chamber agrees with the Prosecution's position which limits to similar acts a superior's duty to punish unlawful acts in order to prevent their recurrence. In *Krnojelac*, the Appeals Chamber relied on the repetitive nature of the mistreatment inflicted on a discriminatory basis to define a superior's responsibility to prevent unlawful acts from recurring. That same reasoning is applied later in that Judgement as regards the murders committed by the guards at the KP Dom.<sup>289</sup> Furthermore, post-World War II case law supports that position.<sup>290</sup>

160. Conversely, the Chamber is of the opinion that an extension of a superior's duty to include preventing the recurrence of unlawful acts by all of his subordinates would be inconsistent with the *Krnojelac* Appeal Judgement and previously-established Appeals Chamber case law.

161. To respond to the Prosecution position, the Chamber would first note the lack of consistency in its interpretation of the *Krnojelac* Appeal Judgement. The Prosecution acknowledges the limitations on the duty to prevent the recurrence of unlawful acts as set out in the *Krnojelac* Appeal Judgement, in that it is triggered only when acts of the same nature are committed again. The Prosecution, however, neither analyses nor takes a position on the fact that, in the *Krnojelac* Appeal Judgement, the duty to prevent the recurrence of similar unlawful acts concerned only those committed by the guards at the KP Dom in Foča, who had already committed prior abuse.

162. As such, the Prosecution's approach does not limit the Accused Hadžihasanović's duty to punish the recurrence of subsequent acts committed by a same identifiable group of subordinates as did *Krnojelac*, but extends his duty instead to acts of a similar nature committed by all of his subordinates, who were members of the 3<sup>rd</sup> Corps.

163. Nevertheless, the reasoning of the Appeals Chamber in *Krnojelac* concerns a situation where a same identifiable group of subordinates, that is the guards at the KP Dom in Foča, repeatedly committed acts of abuse. *Krnojelac*'s "prior" knowledge arose from a context where the *modus operandi* of his subordinates was known.

164. It follows that the duty to prevent the recurrence of similar acts must be limited to the acts of subordinates who form part of an "identifiable group", some members of which have already committed similar acts. That limitation bears a relationship to the very nature of the duty to prevent, which is based on the risk of a recurrence of similar acts. In fact, such responsibility can be

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<sup>289</sup> *Krnojelac* Appeal Judgement, paras. 178-180.

<sup>290</sup> See for example the *Trial of Major Karl Rauer and Six Others*; Law Reports of Trials of War Criminals [1947] (London: Published for the United Nations War Crimes Commission by His Majesty's stationary office) 1947, vol. 4,

established only when the recurrence is foreseeable, since it is premised on the fact that the failure to punish encourages soldiers – who have already committed unlawful acts – to commit those acts once again. The failure to intervene results in the foreseeable consequence of such conduct being repeated.

165. The *Trial of Major Karl Rauer and Six Others* is a good illustration of that issue. The case concerned Major Rauer, the commander of an aerodrome, and his responsibility for the summary executions of prisoners of war on three occasions, namely on 22, 24, and 25 March 1945, by the same group of subordinates. On 22 March 1945, four prisoners from the group captured the day before were shot in cold blood. Rauer received a report explaining that they had been killed while attempting to escape. During his trial, the accused pleaded that he did not have the time to order an investigation into the incident. On 24 March 1945, a second group of prisoners was sent out to fill holes on the aerodrome runway; seven or eight of them were shot by Rauer's subordinates. Regarding that second element, Rauer could not find the time to question the soldier who had escorted the prisoners. Another report justifying the executions and stating that the prisoners had been shot while trying to escape was sent to the high command. On 25 March 1945, a wounded prisoner of war was taken out of the aerodrome in a motorcycle side-car and shot by the same subordinates. The Accused was acquitted of the first executions of 22 March 1945 but convicted of the two others. Commentary on the case suggests that the accused should have taken measures after the first wave of executions in order to prevent further executions from occurring.<sup>291</sup>

166. This case clearly supports the argument that a superior's failure to intervene makes it possible to foresee a recurrence of unlawful acts. This case also supports the proposition that by failing to punish crimes of which he has knowledge, the superior has reason to know that there is a real and reasonable risk that the unlawful acts will be committed again. The case also backs the argument that punishing for the purpose of preventing other unlawful acts presupposes that the subordinates draw conclusions from the superior's intervention and, in so doing, are aware of the measures taken.

167. By attempting to extend Hadžihasanović's duty to prevent the recurrence of unlawful acts committed by all his subordinates, regardless of their position in the 3<sup>rd</sup> Corps zone of responsibility, the Prosecution is attempting to reintroduce a criterion already dismissed by the Appeals Chamber in *Čelebići*, namely "a general duty to know upon commanders or superiors," the

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Case number 23, and the *Hostage Case (United States v. Wilhem List et al., Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol. XI.*

breach of which would be sufficient to entail his responsibility for crimes committed by his subordinates.<sup>292</sup> In that Judgement, the Appeals Chamber determined that customary law did not impose such an obligation on military commanders,<sup>293</sup> which position has since been reaffirmed.<sup>294</sup> The Prosecution's position is therefore discordant with the case law of this Tribunal. Moreover, the Prosecution failed to offer any arguments to support it.

168. Accordingly, the Chamber is of the view that in this case the "identifiable group of subordinates" must be interpreted, given the structure and operation of the 3<sup>rd</sup> Corps, as a brigade or given battalion. Consequently, the Chamber dismisses the Prosecution's argument which seeks to extend the principles set out in the *Krnojelac* Appeal Judgement to all the subordinates of the Accused, regardless of whether they belong to a same group.

169. To conclude, the Chamber finds that the duty to prevent the recurrence of similar acts, which is based on a superior's prior knowledge, must be interpreted as applying to an identifiable group of subordinates who have already committed such acts in the past. In this case, that is equivalent to a specific brigade operating in the same limited geographical area and to detention centres which fall under the authority and control of the same supervisory power.

(vi) Components of the Duty to Punish

170. Case law has always endeavoured to determine whether a superior had the material ability to act. Appropriate measures are gauged by considering that power of a superior.

a. Principles Underlying the Duty to Punish

171. The duty to punish is in keeping with military practice whose purpose is to establish the internal order and discipline necessary to run the armed forces. In *Bagilishema*, the Trial Chamber drew inferences from a superior's failure to act and clarified the basis of such a principle, by noting that a superior's responsibility forms part of military practice whereby superiors, because they have the power to punish, create an environment of discipline and respect for the law:

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<sup>291</sup> *The Trial of Karl Rauer and Six Others*, pp. 113-117, cited in the Prosecution's Appeal Brief in *The Prosecutor v. Pavle Strugar*, paras. 2.50-2.51.

<sup>292</sup> *Čelebići* Appeal Judgement, para. 230.

<sup>293</sup> *Ibid.*, paras. 228-240.

<sup>294</sup> *Blaškić* Appeal Judgement, paras. 61-62.

“The Chamber is of the view that, in the case of failure to punish, a superior’s responsibility may arise from his or her failure to create or sustain among the persons under his or her control, an environment of discipline and respect for the law [...]”,<sup>295</sup>

172. Most of the Chambers do not provide a detailed list of examples of necessary and reasonable measures, but recall a few general principles in this regard.

b. Examples of Punitive Measures in Case Law

173. In *Blaškić*, the Trial Chamber held that a commander may discharge his duty to prevent or punish by reporting the matter to the competent authorities, especially when he does not have broader powers.<sup>296</sup> Additionally, the Trial Chamber in *Kvočka* noted that a superior need not be the person who dispenses the punishment, but he must take an important step in the disciplinary process.<sup>297</sup>

174. In *Kordić and Čerkez*, the Trial Chamber pointed out that this duty includes at the very least an obligation to investigate the crimes, to establish the facts, and to report them to the competent authorities if the superior does not have the power to sanction himself.<sup>298</sup> Relying on the ICRC Commentary, the Trial Chamber in *Kordić and Čerkez* also noted that military commanders will usually have the duty only to start an investigation.<sup>299</sup>

175. The Trial Chamber in *Strugar* also considered the duty to investigate an example of a reasonable measure a superior could take to fulfil his duty to punish.<sup>300</sup> That Trial Chamber recalled the case law of the post-World War II military tribunals to further describe the elements defining the duty to punish. Those tribunals interpreted that duty as implying an obligation for the superiors to conduct an effective investigation and to take active steps to secure that the perpetrators will be brought to justice. Additionally, those tribunals considered whether the superior called for a report on the incident and the thoroughness of the investigation as relevant aspects in determining if a superior has fulfilled his duty to act.<sup>301</sup>

176. The Trial Chamber in *Strugar* also recalled the elements drawn from the ICRC Commentary on Article 87(3) of Additional Protocol I with regard to the duty to punish. The ICRC notes that the article requires that any commander “where appropriate”, will “initiate disciplinary or penal action

<sup>295</sup> *Bagilishema* Trial Judgement, para. 50.

<sup>296</sup> *Blaškić* Trial Judgement, para. 335; *Blaškić* Appeal Judgement, para. 72; see also *Blagojević and Jokić* Trial Judgement, para. 793.

<sup>297</sup> *Kvočka* Trial Judgement, para. 316; *Halilović* Trial Judgement, para. 100.

<sup>298</sup> *Kordić and Čerkez* Trial Judgement, para. 446.

<sup>299</sup> *Kordić and Čerkez* Trial Judgement, para. 446, footnote 623.

<sup>300</sup> *Strugar* Trial Judgement, para. 376; *Halilović* Trial Judgement, para. 98.

<sup>301</sup> *Strugar* Trial Judgement, para. 376; *Halilović* Trial Judgement, para. 98.

against violators”. The ICRC commentary suggests that this action may include informing his superior officers of the situation, drawing up a report in the case of a breach, [...] proposing a sanction to a superior who has disciplinary power, or – in the case of someone who holds such power himself – exercising it, within the limits of his competence, and finally, remitting the case to the judicial authority where necessary with such factual evidence as it was possible to find.<sup>302</sup>

177. Responding to the Prosecution’s argument that disciplinary measures would have been insufficient to punish certain acts, the Chamber recalls that the appropriateness of sanctions is measured in view of what is necessary and reasonable considering the particular facts of each case.

178. From this angle, the Trial Chamber in *Kayishema and Ruzindana* held that a superior’s duty does not end where the sanction he has the power to impose is insufficient with respect to the crime committed (the massacre of Tutsi refugees at the Mubuga church), and stressed the Accused’s complete failure to take measures. In that case the Defence argued that the only power Prefect Kayishema had to punish the perpetrators of the crimes was to incarcerate them for a period not exceeding 30 days. While the Chamber acknowledged that such a derisory punishment would have been insufficient, it recalled that up until his departure from Rwanda three months later, Kayishema took no action to punish the alleged perpetrators.<sup>303</sup>

### c. Retroactive Duty to Punish Based on Prior Knowledge

179. In its factual analysis in *Krnojelac*, the Appeals Chamber defined a superior’s retroactive duty to punish to cover acts committed prior to the one the Appeals Chamber considered decisive when determining that the Accused had knowledge of unlawful acts, namely, the beating of Ekrem Zeković as regards mistreatment,<sup>304</sup> and the disappearance of detainees as regards murders. Accordingly, the Appeals Chamber affirmed that according to the circumstances of a case, prior knowledge of certain facts entails the retroactive duty of a superior.

180. First, the Chamber finds that this retroactive duty cannot be conceived solely in cases where similar acts are committed by the same troops, for the reasons explained above which also apply here.<sup>305</sup> The Chamber further considers that this retroactive duty to punish must have further limitations in its application.

<sup>302</sup> *Strugar* Trial Judgement, para. 377.

<sup>303</sup> *Kayishema and Ruzindana* Trial Judgement, para. 514

<sup>304</sup> *Krnojelac* Appeal Judgement, para. 172 (emphasis added).

<sup>305</sup> *See supra* paras. 157-169.

181. The Chamber would note that the *Krnojelac* Appeals Chamber reiterated that the evaluation of the mental element required by Article 7(3) of the Statute should be conducted in view of the specific circumstances of each case, taking into account the specific situation of the superior in question at the time of the events.<sup>306</sup>

182. It is thus necessary to recall the particular nature of the *Krnojelac* case with regard to both mistreatment and murders. As for the Accused's knowledge of mistreatment, the Chamber noted that he supervised the KP Dom in Foča and that his presence there had been verified.<sup>307</sup> Moreover, it was also clearly established that the Accused knew that ethnically-motivated beatings of non-Serbs were widespread and systematic in nature, that he was aware of the intent of the principal offenders, and that he had knowledge of the unwritten "rules" on communication between detainees, violators of which were subjected to, *inter alia*, mistreatment.<sup>308</sup>

183. Regarding the Accused's knowledge of murders committed by his subordinates, the Chamber recalled that he went to the KP Dom in Foča practically every day of the working week, that he had knowledge of beatings and suspicious disappearances, and that he could see the bloodstains and bullet holes on the walls of the entrance to the administration building.<sup>309</sup>

184. Those facts make it clear that the beatings or disappearances could not have been isolated events but were the result of the detention conditions of which the Accused had knowledge. In that context, after *Krnojelac* was informed of Ekrem Zeković's beating and the disappearances, an investigation of previously committed acts was required. Given the atmosphere of terror that prevailed at the KP Dom in Zenica, those acts alerted the Accused that they must have been preceded by other acts of the same nature.

185. Judging from those circumstances, the Chamber infers that prior knowledge cannot entail the responsibility of the perpetrator for failing to investigate and punish past acts unless those acts are of a similar nature and that the subordinates committing a series of repeated acts of the same nature form part of a same identifiable group of subordinates. In this case, the group is a brigade or given battalion, operating in a defined geographical area and in detention centres which fell under the authority and control of the same supervisory power. Moreover, for that retroactive duty to apply, the circumstances surrounding those acts have to be such that the acts could not have occurred in isolation.<sup>310</sup>

<sup>306</sup> *Krnojelac* Appeal Judgement, para. 156 citing *Čelebići* Appeal Judgement, para. 238.

<sup>307</sup> *Krnojelac* Appeal Judgement, para. 167.

<sup>308</sup> *Krnojelac* Appeal Judgement, para. 163.

<sup>309</sup> *Ibid.*, para. 178.

<sup>310</sup> *Ibid.*, paras. 162-168.



(d) Causal Link and the Duty to Prevent

186. In its written submissions, the Prosecution notes that the existence of causality between a commander's failure to act and his subordinates' crimes need not be established.<sup>311</sup> The Trial Chamber in *Čelebići* responded in part to the question of whether there must be a nexus between the superior's omission and the cause of the offence. In that case, the Defence argued that if the superior's failure to act did not cause the commission of the offence, the commander could not be held criminally responsible for the acts of his subordinates.<sup>312</sup> That Chamber held that a causal link has not traditionally been considered as a *conditio sine qua non* for the imposition of criminal responsibility on superiors for their failure to prevent or punish offences committed by their subordinates.<sup>313</sup> Accordingly, that Trial Chamber relied on relevant case law to consider that there was no support for the existence of a requirement of proof of causation as a separate element of superior responsibility.<sup>314</sup>

187. Nevertheless, the *Čelebići* Chamber did recognise that the requirement of crimes committed by subordinates and the superior's failure to take the measures to prevent them is recognition of a necessary causal link.<sup>315</sup> The *Čelebići* Chamber further held that in such cases the superior may be considered to be causally linked to the offences in that, but for his failure to act, the offences would not have been committed.<sup>316</sup> That Chamber found that a causal connection between the failure of a commander to punish past crimes committed by subordinates and the commission of any such future crimes is not only possible but likely.<sup>317</sup>

188. While that position may prove correct, it may not be turned into a requirement that the Prosecution prove a causal link to impose command responsibility.<sup>318</sup> As the Chamber in *Čelebići* held, no causal link can possibly exist between an offence committed by a subordinate and the subsequent failure of a superior to punish the perpetrator of that same offence.<sup>319</sup>

<sup>311</sup> Prosecution Final Brief, para. 35 citing *Blaškić* Appeal Judgement, para. 77.

<sup>312</sup> *Čelebići* Trial Judgement, para. 396.

<sup>313</sup> *Čelebići* Trial Judgement, para. 398.

<sup>314</sup> *Ibid.*, para. 398.

<sup>315</sup> *Ibid.*, para. 399.

<sup>316</sup> *Ibid.*, para. 399.

<sup>317</sup> *Ibid.*, para. 400.

<sup>318</sup> This position is in fact always present in customary international law. *Čelebići* Trial Judgement, paras. 398-400; see also *Ford v. Garcia*, 11th Circuit, No. 99-08359 (2002). In *Ford v. Garcia*, the U.S. 11th Circuit Court of Appeals, citing the Decision in *Hilao v. Estate of Marcos*, 103 F.3d 767, 766 to 778 (9th Circuit 1996), in which the U.S. 9th Circuit Court of Appeals specifically rejected the argument that "proximate cause is a required element of the doctrine [of command responsibility]", notes that the Tribunal made the same findings as the Court in *Hilao*. The 11th Circuit Court of Appeals recalls the position of the Trial Chamber in *Čelebići* stating that "proof of causation is not an independent requirement for the imposition of command culpability". See *Čelebići* Trial Judgement, paras. 398-400.

<sup>319</sup> *Čelebići* Trial Judgement, para. 400. Similarly, see *Kordić and Čerkez* Appeal Judgement, para. 832.

189. The *Blaškić* Appeals Chamber recalled the finding of the *Čelebići* Trial Chamber, which dismissed the idea of causality between the subordinate's offence and the failure to act by holding that "the very existence of the principle of superior responsibility for failure to punish, therefore, recognised under Article 7(3) and customary law, demonstrates the absence of a requirement of causality as a separate element of the doctrine of superior responsibility."<sup>320</sup> The Appeals Chamber added that it was "therefore not persuaded [...] that the existence of causality between a commander's failure to prevent subordinates' crimes and the occurrence of these crimes, is an element of command responsibility that requires proof by the Prosecution in all circumstances of a case."<sup>321</sup>

190. When analysing the nexus between the failure to punish and the commission of subsequent crimes, the Appeals Chamber Judgement in *Krnjelac* should also be noted. There, the Appeals Chamber gave an illustration of the approach it would later adopt explicitly in *Blaškić*. In *Krnjelac*, the Appeals Chamber first noted that the Appellant had received information which gave him reason to know that his subordinates were committing or were about to commit acts of torture on the detainees. The Appeals Chamber then noted that in spite of that knowledge, the Appellant failed to take measures to punish the perpetrators of the crimes already committed and to prevent those crimes from recurring. The Appeals Chamber finally noted that at least one detainee was subsequently the repeated victim of acts of torture. Those circumstances were sufficient for the Appeals Chamber to find that the Appellant was responsible for failing to prevent the new crime.<sup>322</sup> The Appeals Chamber did not discuss the potential causal link between the Appellant's omission and the new acts of torture, nor did it discuss the prosecutorial duty to adduce evidence thereof.

191. The *Halilović* Chamber sought to explain why it is not necessary to establish the existence of a causal link between a superior's failure to act and the crime committed by a subordinate. The Chamber noted that criminal command responsibility under Article 7(3) of the Statute, as it is *sui generis* and different from the forms of responsibility under Article 7(1), does not require a causal link. According to that Chamber, a superior's responsibility is responsibility for an omission, which flows from his obligations under international law. Requiring a causal link would change the basis of command responsibility for failure to prevent or punish to the extent that it would practically require involvement on the part of the commander in the crime his subordinates committed, thus

<sup>320</sup> *Blaškić* Appeal Judgement, para. 77 citing *Čelebići* Trial Judgement, para. 400. See also *Halilović* Trial Judgement, paras. 75-78.

<sup>321</sup> *Blaškić* Appeal Judgement, para. 77 citing *Čelebići* Trial Judgement, para. 400.

<sup>322</sup> *Krnjelac* Appeal Judgement, paras. 170-172.

altering the very nature of the responsibility imposed under Article 7(3).<sup>323</sup> This Chamber agrees with that interpretation of the Statute.

192. The Chamber would, however, note that command responsibility may be imposed only when there is a relevant and significant nexus between the crime and the responsibility of the superior accused of having failed in his duty to prevent. Such a nexus is implicitly part of the usual conditions which must be met to establish command responsibility. As such, a superior may not be held responsible for crimes committed by subordinates who are not under his effective control, nor is he responsible if he did not know or have reason to believe that his subordinates had committed or were about to commit crimes. The superior is not responsible when he lacks the necessary means to prevent or punish crimes. Finally, the superior is not responsible for failing to prevent crimes committed before he assumed command over the perpetrators of the crimes.

193. Considering the foregoing, the Chamber makes the following findings as regards a superior's failure to prevent his subordinates from committing crimes. Firstly, a superior who exercises effective control over his subordinates and has reason to know that they are about to commit crimes, but fails to take the necessary and reasonable measures to prevent those crimes, incurs responsibility, both because his omission created or heightened a real and reasonably foreseeable risk that those crimes would be committed, a risk he accepted willingly, and because that risk materialised in the commission of those crimes. In that sense, the superior has substantially played a part in the commission of those crimes. Secondly, it is presumed that there is such a nexus between the superior's omission and those crimes. The Prosecution therefore has no duty to establish evidence of that nexus. Instead, the Accused must disprove it.

#### 4. A Superior's Responsibility After Leaving His Position

194. In some situations a commander's responsibility after he has finished exercising his command must be determined. That question is intrinsically linked to a superior's duty to take the necessary and reasonable measures to punish the perpetrators of a crime.

195. As indicated in the chapter of this Judgement discussing necessary and reasonable measures,<sup>324</sup> Article 7(3) of the Statute provides that a commander has the duty to prevent his

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<sup>323</sup> *Halilović* Trial Judgement, para. 78. "The Trial Chamber further notes that the nature of command responsibility itself, as a *sui generis* form of liability, which is distinct from the modes of individual responsibility set out in Article 7(1), does not require a causal link. Command responsibility is responsibility for omission, which is culpable due to the duty imposed by international law upon a commander. If a causal link were required this would change the basis of command responsibility for failure to prevent or punish to the extent that it would practically require involvement on the part of the commander in the crime his subordinates committed, thus altering the very nature of the liability imposed under Article 7(3)."

<sup>324</sup> *See supra* paras. 125-127.

subordinates from committing crimes when he knows or has reason to know that they are about to commit them and also has a duty to punish the perpetrators of crimes when he knows or has reason to know that his subordinates have already committed them. In fact, these are two distinct obligations which apply at different times. The duty to prevent the commission of a crime arises when the commander knows or has reason to know that a crime is being or is about to be committed, while the duty to punish arises when a crime has already been committed.

196. The duty to prevent the commission of crimes may arise only in cases where a superior was already in command at the time his subordinates were about to commit a crime. The duty to punish exists only after a crime has been committed. There are, however, situations where a crime is committed shortly before one commander leaves and another arrives to assume command. In such cases, reports on the commission of the crime may not reach the superior who was in command at the time the crime was committed and may be received only by the new superior who has taken up duties.

197. In that scenario, the superior in command at the time the crime was committed would not incur criminal responsibility under Article 7(3) of the Statute. When the reports that a crime has been committed reach his successor, he no longer exercises effective control over the perpetrators of the crime. As such, he is no longer in a position where he has the authority to punish the subordinates in question. As indicated above,<sup>325</sup> the power to punish depends on a commander's ability to exercise effective control.

198. The Appeals Chamber has held that the new commander may not incur criminal responsibility under Article 7(3) of the Statute for crimes committed by his subordinates before they were under his command.<sup>326</sup> To reach that conclusion, a majority of the Appeals Chamber found that there is no state practice, nor any *opinio juris* that would sustain the proposition that a commander can be held responsible for crimes committed by a subordinate prior to assuming command over that subordinate.<sup>327</sup> The Appeals Chamber further held that there are in fact indications that militate against the existence of a customary rule establishing such criminal responsibility.<sup>328</sup> It found that an Accused may be held criminally responsible only if the crime charged was clearly established under customary international law at the time the events in issue occurred.<sup>329</sup> In case of doubt, the Appeals Chamber added, criminal responsibility cannot be found

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<sup>325</sup> See *supra* para. 121.

<sup>326</sup> Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, para. 51.

<sup>327</sup> *Ibid.*, paras. 44 and 45.

<sup>328</sup> *Ibid.*, paras. 46-50.

<sup>329</sup> *Ibid.*, para. 51.

to exist, thereby preserving full respect for the principle of legality.<sup>330</sup> Judges Shahabuddeen and Hunt each attached dissenting opinions to the majority decision.

199. Although the reasons given by the dissenting Judges merit further examination, the Chamber will limit itself to espousing a pragmatic consideration set out by Judge Shahabuddeen. Since the commanders of troops change on a regular basis in times of war, there is a serious risk that a gap in the line of responsibilities will be created as the changes occur. Considering the aforementioned case, if the superior in command at the time a crime is committed is replaced very soon after its commission, it is very likely that the perpetrators of that crime will go unpunished and that no commander will be held criminally responsible under the principles of command responsibility. It must be recognised that in such a case military practice, whose purpose is to establish the internal order and discipline necessary to run the armed forces, and from which the power to punish flows, falls short of achieving its objective.

#### **E. Burden to Prove the Failure to Take Measures**

200. The Defence for Hadžihasanović and the Prosecution debated extensively the issue of proving the failure to take measures. For the sake of clarity, the Chamber believes it necessary to recall at this stage the basis and source of the debate which had significant effects on this case. The issues it raised arose following the testimony of Prosecution Witness General Reinhardt.<sup>331</sup> On the basis of information provided to him by the Office of the Prosecutor, the witness had drafted an expert report in which he concluded that Enver Hadžihasanović and Amir Kubura<sup>332</sup> only once punished soldiers of the 3<sup>rd</sup> Corps (specifically of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion) for their criminal acts.<sup>333</sup>

201. During the cross-examination of General Reinhardt, the Defence for Hadžihasanović produced a large number of documents which dealt with measures taken by Enver Hadžihasanović, of which that witness was unaware.<sup>334</sup> This had several effects. Firstly, after the documents were

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<sup>330</sup> *Ibid.*, para. 51.

<sup>331</sup> Klaus Reinhardt testified before the Chamber from 3 May to 7 May 2004. (T(F) pp. 6462-6551).

<sup>332</sup> Later, the debate on this issue would be primarily between the Prosecution and the Hadžihasanović Defence.

<sup>333</sup> See P108, paras. 9.4.13 and 9.5.1; Klaus Reinhardt, T(F) pp. 6505-6506: A: In one case, in Kakanj, where the 3<sup>rd</sup> Battalion of the 7<sup>th</sup> Mountain Brigade was looting and destroying property of the civilian population, he even ordered the brigade commander of the 7<sup>th</sup> Mountain Brigade to relieve the battalion commander and company commanders [...]. Q: General Reinhardt, based on your review of the materials provided to you, on how many other occasions did the Corps Commander take similar steps? A: "I don't know, sir. I really don't know. This is the only document which I found in the stack of documents provided to me. There might have been different cases, but this is the only one which I have found." Q: "Did you find any similar instances of situations where the commander of the 7<sup>th</sup> Muslim Mountain Brigade, the accused Kubura, took similar steps with respect to subordinate units under his command?" A: "No, sir, I did not" (emphasis added).

<sup>334</sup> Klaus Reinhardt, T(F) pp. 6747- 6761. It would appear those documents include DH 154, DH 155, DH 156, DH 157, DH 158, DH 159, DH 160, DH 161, DH 162, and DH 163.

tendered into evidence, the witness acknowledged that it was necessary to revise his opinion and concluded that the Accused Hadžihasanović had taken much more than one measure.<sup>335</sup> Secondly, the Prosecution stated that after the Defence for Hadžihasanović tendered those documents concerning measures the Accused Hadžihasanović had taken, its position on his responsibility had changed.<sup>336</sup>

202. During the hearing of 19 May 2004, the Prosecution announced it had changed its position, explaining that despite having argued prior to General Reinhardt's appearance that the Accused Hadžihasanović failed to take any reasonable measures, except for the one mentioned by General Reinhardt, it now believed the situation had changed entirely.<sup>337</sup> The Prosecution acknowledged that the Accused Hadžihasanović did in fact take measures and conduct investigations, but that none of those steps were taken with respect to the crimes alleged in the Indictment.<sup>338</sup>

203. Consequently, while the Prosecution acknowledged that it did not have possession of the documents tendered into evidence by the Defence for Hadžihasanović, it raised the possibility of submitting an affidavit from the investigations team leader to shed light on the steps taken by the Prosecution to discover any records from the courts operating at that time or from the Security Service.<sup>339</sup> Accordingly, on 28 and 29 June 2004, the Prosecution called Peter Hackshaw, the investigations team leader who had worked on this case and undertaken a research mission from 2 to 5 June 2004 at the relevant courts.<sup>340</sup>

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<sup>335</sup> Klaus Reinhardt, T(F) p. 6808: A. "As I have stated in my statement, I found only one case until now. Now in those binders I found many other cases, and therefore I would revise my opinion that this was a singularly [*sic*] action. I would say that having seen all this material it shows that he has taken much more of his responsibility [...]" (emphasis added).

<sup>336</sup> Daryl Mundis, Senior Trial Attorney, T(F) pp. 7705-7709.

<sup>337</sup> Daryl Mundis, Senior Trial Attorney, T(F) p. 7706: "As a result of those documents -- which again, your Honours might recall when they were first produced the Prosecution was not aware of those documents -- clearly have put us in a situation where unlike our prior position which was the accused did nothing other than General Reinhardt being able to identify one instance where based on the documents the Prosecution had it appeared that the accused took the appropriate and reasonable steps, to a situation where it is quite clear that on a number of occasion it is 3<sup>rd</sup> Corps Security Service conducted investigations and referred cases to the direct military courts for action. That's as far as his duty went. Once the Accused or a commander has conducted an investigation and referred the matter to the relevant court authorities, his duty ends".

<sup>338</sup> Daryl Mundis, Senior Trial Attorney, T(F) p. 7706: "[...] notwithstanding the large number of investigations and referrals that were done, no such investigations and referrals were done with respect to the crimes alleged in our indictment."

<sup>339</sup> Daryl Mundis, Senior Trial Attorney, T(E) pp. 7704-7705: "Mr. Withopf mentioned earlier, or perhaps it was late last week, that we were in the process of working on an affidavit or statement by the investigative team leader to put some evidence before your Honours with respect to precisely what steps were taken by the Prosecution to discover any court records or Security Service records relating to the charges in our Indictment, or the crimes committed in our Indictment."

<sup>340</sup> T(F) pp. 9677-9844; T(E) p. 8598.

## 1. Arguments of the Parties

204. In its written submissions, the Prosecution first stated that the trite proposition that an Accused is presumed innocent until proven guilty is of little assistance to a trier of fact seeking to determine in a specific case whether or not sufficient evidence has been presented during the course of a trial to displace that legal presumption.<sup>341</sup> The Prosecution then argued that in a case founded on command responsibility, proof of an omission essentially requires the Prosecution to prove a negative.<sup>342</sup> The Prosecution submitted that this can be done in several ways, through direct evidence or by way of circumstantial evidence in stages. It argued in the latter case that, as illustrated in these proceedings, the Prosecution must present sufficient evidence to demonstrate, *prima facie*, that the Accused Hadžihasanović failed in his duty to act.<sup>343</sup> Once that showing has been made, the Defence for Hadžihasanović has a case to answer with respect to that issue.<sup>344</sup>

205. The Prosecution acknowledges that in order to prove a negative, it must adduce *some* evidence so that the Defence for Hadžihasanović can answer the charges against its client. According to the Prosecution, however, once it has put forth sufficient evidence of the omission, it is for the Defence for Hadžihasanović to show during its case which steps were taken to satisfy the duty to act.<sup>345</sup> The Prosecution thus concludes that it is immaterial if it has not exhaustively proved the content of every available court record or military prosecutor's file.<sup>346</sup> The question, asserts the Prosecution, is rather whether the Prosecution has "done enough" in terms of attempting to locate evidence of the steps taken by the Accused. The Prosecution further submits that if the answer is in the affirmative, the Accused must be required to point out the appropriate steps taken following the crimes set forth in the Indictment.<sup>347</sup> The Prosecution argues that this situation calls for the burden of proof to be shifted.<sup>348</sup>

206. The Prosecution's Final Brief and the Senior Trial Attorney's Closing Arguments on this issue seek to further support that position.<sup>349</sup> The Prosecution first notes the extent to which it was

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<sup>341</sup> Prosecution Response to Motions for Acquittal, para. 15.

<sup>342</sup> *Ibid.*, para. 16.

<sup>343</sup> *Ibid.*, para. 16.

<sup>344</sup> *Ibid.*, para.16. Prosecution Response to Motions for Acquittal, para. 16 citing Richard May and Marieke Wierda, *International Criminal Evidence* (Transnational Publishers, 2002), paras. 4.62-4.65, pp. 121-123.

<sup>345</sup> Prosecution Response to Motions for Acquittal, para. 18.

<sup>346</sup> *Ibid.*, para. 19.

<sup>347</sup> *Ibid.*, para. 19. Although the Prosecution refers to both Accused in that passage, the debate over the burden of proof was primarily between the Prosecution and the Defence for Hadžihasanović.

<sup>348</sup> Prosecution Response to Motions for Acquittal, footnote 29.

<sup>349</sup> Prosecution Final Brief, paras. 47-50; Prosecution Closing Arguments, T(F) pp. 19109-19110: "Your Honours have heard the evidence - and I'm not going to go through it again - or the steps taken by the Office of the Prosecutor to prove a negative." T(E) p. 19106. "You've heard Investigator Hackshaw testify about that. It's been raised on a number of occasions. We will point out one final aspect of this component of the case, if you will: By no means - by no means - is the Office of the Prosecutor suggesting that a burden shifts or that any burden shifts with respect to what we are

sufficiently thorough in fulfilling its obligations to “adequately search”.<sup>350</sup> The Prosecution then points out that both Parties had access to the archives and that the documents produced by the Defence for Hadžihasanović during General Reinhardt’s testimony were obtained as a result of such searches through them.<sup>351</sup>

207. The Prosecution then requested the Chamber to draw inferences from the fact that the Defence for Hadžihasanović did not produce documents showing that the Accused Hadžihasanović took measures in relation to the crimes specifically referred to in the Indictment. To do so, the Prosecution noted that the Defence for Hadžihasanović, like the Prosecution, searched through the relevant archives.<sup>352</sup> This reasoning therefore implies that if the Accused Hadžihasanović had taken the necessary and reasonable measures, his Defence would have produced documents to support it.

208. The Defence for Hadžihasanović fully grasped the *a contrario* argument put forth by the Prosecution and provided a response in its written submissions; the Defence for Kubura made no reference to the position. The Defence for Hadžihasanović recalled that all accused persons are presumed innocent until proved guilty pursuant to the provisions of the Statute. It further noted that pursuant to Rule 87(A) of the Rules, an Accused may be found guilty only when his guilt has been proved beyond a reasonable doubt.<sup>353</sup>

209. The Defence for Hadžihasanović went on to explain that, generally speaking, and pursuant to Article 16(1) of the Statute, the Prosecutor is responsible for prosecuting persons responsible for violations which fall within the *ratione materiae* jurisdiction of the International Tribunal. As such, the Defence for Hadžihasanović states that the Prosecution must prove beyond a reasonable doubt each of the essential elements in the charges against the Accused Hadžihasanović.<sup>354</sup>

210. The Defence for Hadžihasanović notes that the corollary of the presumption of innocence is the Accused’s fundamental right to remain silent. It argues that it would contravene the rights of the Accused to suggest that he must present a defence in the event that evidence for a single one of the essential elements of a charge is lacking or insufficient.<sup>355</sup>

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required to prove.” The Senior Trial Attorney, however, goes further, somewhat emphatically: “The parties have been through the archives. The parties have been through the archives,” T(F) p. 19110.

<sup>350</sup> Prosecution Closing Arguments, T(F) pp. 19109-19110.

<sup>351</sup> *Ibid.*

<sup>352</sup> *Ibid.*

<sup>353</sup> Enver Hadžihasanović’s Motion for Acquittal, para. 1.

<sup>354</sup> Enver Hadžihasanović’s Motion for Acquittal, para. 2.

<sup>355</sup> *Ibid.*, para. 13.



211. The Defence for Hadžihasanović states that after the Prosecution announced its change of position on 19 May 2004, it dispatched a team of investigators to Bosnia and Herzegovina to prove that the Accused Hadžihasanović had not taken a single measure specifically relating to the violations alleged in the Indictment. Following the testimony of Team Nine's acting Chief Investigator, the Defence for Hadžihasanović argued that the Prosecution mission had failed because it did not make it possible to demonstrate the inexistence, in the archives which had been consulted, of criminal complaints or other relevant documents linked to the violations alleged in the Indictment.<sup>356</sup>

212. The Defence for Hadžihasanović argues that the reversal of the burden of proof requested by the Prosecution is contrary to the most basic principles of international criminal law.<sup>357</sup> In response to the Prosecution's argument that the Accused Hadžihasanović must indicate the appropriate measures taken after a showing by the Prosecution of due diligence in its research, the Defence for Hadžihasanović argues that the Prosecution confuses the notion of "evidential burden of proof" with that of "persuasive burden of proof," whereas to oblige the Defence "to show, during its case, the steps taken to satisfy the duty to act" amounts to shifting the persuasive burden of proof.<sup>358</sup> The Defence for Hadžihasanović recalls that the persuasive burden of proof remains with the Prosecution throughout the international criminal trial.<sup>359</sup> It further notes that Article 67(1)(i) of the Rome Statute of the ICC states that the Accused has a right not to have imposed on him any reversal of the burden of proof or any onus of rebuttal.<sup>360</sup>

213. As for the burden which may rest on the Accused Hadžihasanović, his Defence acknowledges there is a need for an Accused to adduce evidence in some circumstances in order to avoid being convicted. The Defence for Hadžihasanović recalls that the evidence adduced to meet this burden may come from a Prosecution witness, a co-defendant during his examination-in-chief, or in any other way.<sup>361</sup>

214. Consequently, the Defence for Hadžihasanović reiterates that for the Accused Hadžihasanović to be held criminally responsible for any of the violations alleged in the Indictment, the Prosecution must prove that he failed to take measures to prevent his subordinates from committing violations or to punish them if they had done so.<sup>362</sup>

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<sup>356</sup> *Ibid.*, paras. 68-69; Hadžihasanović Defence Final Brief, paras. 167-169.

<sup>357</sup> Reply of Enver Hadžihasanović to Prosecution's Response to Defence Motions for Acquittal, para. 1(a).

<sup>358</sup> *Ibid.*, para. 3.

<sup>359</sup> *Ibid.*, para. 4.

<sup>360</sup> Reply of Enver Hadžihasanović to Prosecution's Response to Defence Motions for Acquittal, para. 4.

<sup>361</sup> *Ibid.*, para. 5.

<sup>362</sup> Hadžihasanović Defence Final Brief, para. 159.

215. Recalling that investigator Hackshaw's mission had failed, in its Closing Arguments the Defence for Hadžihasanović submitted that the mission did, however, help to prove beyond a reasonable doubt that no claim could be made that steps were not taken in relation to each of the charges against the Accused Hadžihasanović. Furthermore, by alluding to the Prosecution's statement on what inferences could be drawn from the fact that both Parties had examined the archives, the Defence reiterated that the burden of proof rests with the Prosecution:

“It's not sufficient to say that the parties have visited the archives. The Prosecution had the burden of proof and they have failed to prove their case.”<sup>363</sup>

## 2. Examination by the Chamber

216. The question of the burden of proof flows from the principle of the presumption of innocence. Unless they plead guilty, all accused persons are presumed innocent; that presumption may be overcome by adducing evidence of a nature to establish their guilt.<sup>364</sup> It follows therefore that the plaintiff, in other words the Prosecution, bears the burden to prove that an Accused has committed the crimes with which he is charged, and that burden remains with the Prosecution throughout the trial.<sup>365</sup>

217. At the Tribunal as well as in common law jurisdictions, the standard of proof required to overcome the presumption of innocence of an accused in a criminal trial is that of “reasonable doubt”; the trier of fact makes a finding of guilt “beyond a reasonable doubt”.<sup>366</sup> The Prosecution must meet this criteria and prove the Accused's guilt beyond a reasonable doubt, as the Accused enjoys the presumption of innocence.<sup>367</sup> Accordingly, it follows that the Accused has no onus to prove his innocence.<sup>368</sup> The Prosecution, however, can meet this burden and satisfy the reasonable doubt standard through inferences.<sup>369</sup>

218. Mindful of that principle, it should be observed that the Prosecution must prove each element of an Accused's guilt beyond a reasonable doubt. Moreover, the Appeals Chamber in *Blaškić* recalled that in order to establish superior responsibility, the following elements must be proved beyond a reasonable doubt: the existence of a superior-subordinate relationship; the fact that the superior knew or had reason to know that the criminal act was about to be or had been committed; and the fact that the superior failed to take the necessary and reasonable measures to

<sup>363</sup> Hadžihasanović Defence Closing Arguments, T(F) p. 19254.

<sup>364</sup> Renton and Brown, *Criminal Procedure*, 24-01 (W. Green & Son Ltd. Eds., 2005).

<sup>365</sup> *Bagilishema* Trial Judgement, Separate Opinion of Judge Asoka de Zoysa Gunawardana, paras. 5 and 6 citing *Woolmington v. DPP* (1935) AC. 462, (HL), pp. 481-482.

<sup>366</sup> See *Kordić* Appeal Judgement, para. 834.

<sup>367</sup> See *Kordić* Appeal Judgement, para. 834.

<sup>368</sup> See *Vasiljević* Trial Judgement, para. 12.

prevent the criminal act or punish the perpetrator thereof.<sup>370</sup> It follows that in a case where command responsibility under Article 7(3) of the Statute is alleged, the Prosecution must prove the elements of that article beyond a reasonable doubt, including the superior's failure to prevent or punish the unlawful acts of his subordinates.

219. It should be noted that civil law systems also enshrine the principle of the presumption of innocence.<sup>371</sup> Such is the case in the French system, whose Code of Criminal Procedure provides that "every person suspected or prosecuted is presumed innocent as long as his guilt has not been established".<sup>372</sup> Although the criteria used in French law to determine the guilt of an Accused is based on "intimate conviction",<sup>373</sup> which distinguishes it from the widely-adopted criterion of "beyond a reasonable doubt" in the common law systems, French law, like those systems, recognises that the burden to overcome that presumption lies with the prosecuting party.<sup>374</sup>

220. In *Barberà, Messegué and Jabardo v. Spain*, the European Court of Human Rights also recalled the principle of the presumption of innocence,<sup>375</sup> as well as the prosecution's burden to overcome that presumption:

"[Article 6(2) of the Convention] embodies the principle of the presumption of innocence. It requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused."<sup>376</sup>

221. Nevertheless, while the principle that the prosecution bears the burden to prove the guilt of an Accused is a cardinal principle of criminal law, very limited areas where this burden shifts to the Defence do exist; in such cases the Defence must overcome a presumption of guilt.

222. French law, for example, recognises that Article 9 of the Declaration of the Rights of Man and of the Citizen of 1789 provides that, in principle, no legislation may institute the presumption of guilt in criminal matters. In exceptional cases, however, such presumptions (of fact or of law)

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<sup>369</sup> See *Kordić* Appeal Judgement, para. 834.

<sup>370</sup> *Blaskić* Appeal Judgement, para. 484 citing *Aleksovski* Appeal Judgement, para. 72 and *Čelebići* Appeal Judgement, para. 346.

<sup>371</sup> For German law, see Christoph Safferling, *Towards an International Criminal Procedure*, p. 257, Oxford University Press, 2001.

<sup>372</sup> Code of Criminal Procedure, Dalloz, 45<sup>th</sup> edition, Preliminary Article (2004); Declaration of the Rights of Man and of the Citizen, Article 9 (1789).

<sup>373</sup> Code of Criminal Procedure, Dalloz, 45<sup>th</sup> edition, Article 353 (2004).

<sup>374</sup> *Ibid.*, Preliminary Article, notes 47 and 48 (2004).

<sup>375</sup> See also Article 14 of the International Covenant and Article 8 of the American Convention on Human Rights.

<sup>376</sup> *Barberà, Messegué and Jabardo v. Spain* [1994] IIHRL 43 (June 1994), para. 77.

may be established if they take into account the importance of what is at stake and fully maintain the rights of the Defence.<sup>377</sup>

223. In the cases of *Salabiaku v. France* and *Pham Hoang v. France*, both regarding customs offences and the smuggling of prohibited goods, the European Court of Human Rights held that such presumptions are admissible when they are not of an irrebuttable nature.<sup>378</sup> In fact, the European Court held that Article 6(2) of the European Convention is therefore not indifferent to presumptions of fact or of law provided for in the criminal statutes.<sup>379</sup> It requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence.<sup>380</sup> Moreover, when deciding those cases, the Court held that it need not consider in the abstract how the provisions of domestic law conform to the Convention, but that its task was to determine whether they were applied to the applicant in a manner compatible with the presumption of innocence.<sup>381</sup>

224. In the case of *Porras v. Netherlands*, which concerned offences relating to the intentional importation of cocaine, the applicant argued that “[...] the burden of proof had been reversed by imposing on him an obligation, which he found impossible to discharge, to prove that he was not and could not have been aware that persons unknown to him had hidden a significant quantity of the drug in his luggage”. The European Court rejected this complaint, holding that no irrebuttable presumption of guilt had been applied. Although accepting a normal assumption that a person who packs his own luggage and takes it with him knows of the contents, the Dutch court had regard to the possibility that this might not be so, had considered all the circumstances, had weighed all the evidence, and had not therefore relied automatically on any presumption.<sup>382</sup>

225. In a more recent decision, the European Court noted that any use of presumptions in criminal law must be proportionate to the intended objective:

"In employing presumptions in criminal law, the Contracting States are required to strike a balance between the importance of what is at stake and the rights of the defence; in other words, the means employed have to be reasonably proportionate to the legitimate aim sought to be achieved".<sup>383</sup>

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<sup>377</sup> Declaration of the Rights of Man and of the Citizen, Article 9 (1789), Code of Criminal Procedure, Dalloz, 45<sup>th</sup> Edition, Preliminary Article and note 52 of the Preliminary Article (2004).

<sup>378</sup> *Salabiaku v. France*; 10519/83 [1988] ECHR 19 (1998) (“*Salabiaku*”), para. 29; *Pham Hoang v. France*; 13191/87 [1992] ECHR 61(1992) (“*Pham Hoang*”), paras. 34-36.

<sup>379</sup> Article 6(2) of the European Convention of Human Rights provides: “Anyone charged with an offence is presumed innocent until proved guilty according to law.”

<sup>380</sup> *Salabiaku*, para. 28.

<sup>381</sup> *Pham Hoang*, para. 33 citing *Salabiaku*, para. 28.

<sup>382</sup> *Porras v. The Netherlands*, 49226/99 [2000]. Unofficial translation.

<sup>383</sup> *Janosević v. Sweden*, 34619/97 [2002] EHR 618 (2002), para. 101.

226. English law also provides statutory exceptions which erode the principle of the presumption of innocence.<sup>384</sup> For example, in cases of terrorism,<sup>385</sup> counterfeiting,<sup>386</sup> and drug use, possession, or trafficking,<sup>387</sup> the law allows some presumptions of fact or of law which shift the burden of proof in criminal matters.<sup>388</sup> Nonetheless, any limitations on that principle, even in areas where the law seeks to facilitate the work of the prosecuting authority as part of criminal policy, include safeguards for the rights of the Defence, particularly in view of European Court case law.<sup>389</sup>

227. In addition to those circumscribed areas where the purpose of legislative intervention is to help the prosecution more easily secure convictions in order to establish public order (even international public order), during a criminal trial the burden to prove certain elements may fall to the defence.

228. Subject to any statutory exceptions, the House of Lords noted that it is the duty of the prosecution to prove the guilt of an accused, which burden it bears throughout the trial, except in cases involving a defence of insanity.<sup>390</sup>

229. Moreover, it appears that in indictment-based trials, despite unclear case law, the British courts make a distinction between the legal burden (or burden of persuasion) and the evidential burden. The legal burden is the prosecution's duty to prove to the standard beyond a reasonable doubt. The evidential burden rests with the defence, and is an obligation to prove on the preponderance of the evidence or on the balance of probabilities. In this case, it is not a burden of proof or even a burden to produce evidence. The evidential burden simply means that before any plea can be considered, the jury must have sufficient material in support of it, bearing in mind that the onus is always on the Prosecution to disprove the plea once it is raised. The material in question may come from the Prosecution case.<sup>391</sup>

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<sup>384</sup> See *Woolmington v. DPP* [1935] A.C. 462; *R v. Hunt* [1987] A.C. 352.

<sup>385</sup> *R v. DPP, ex parte Kebilene* (1999) 4 All E.R. 801 (Prevention of Terrorism Act (Temporary Provisions) Act 1989, Section 16 (A), Possession of Articles for Suspected Terrorist Purposes).

<sup>386</sup> *R v. Johnstone* [2003] HL 28 (Trade Marks Act 1994, s. 92).

<sup>387</sup> *R v. Hunt* (1987) A.C. 352 (Misuse of Drugs (Amendment) Regulations 1983); *R v. Lambert* (2002) A.C. 545.

<sup>388</sup> See Lewis P., *The Human Rights Act 1998: Shifting the Burden* [2000] Crim. L.R. 667 (in which the author states that in British law at least 29 statutory provisions shift the burden of proof).

<sup>389</sup> *R v. DPP, ex parte Kebilene* (1999) 4 All E.R. 801; *R v. Lambert* [2002] A.C. 545.

<sup>390</sup> See *Woolmington v. DPP* [1935] A.C. 462 at 481, HL; *R v. Hunt* [1987] A.C. 352; Archbold, Sweet & Maxwell, Ltd., p. 4-380 (2004); M'Naughton's case (1843), 4 St. Tr. (N.S.) 847; *Rex v. Oliver Smith* (1910) 6 Cr. App R. 19.

<sup>391</sup> *R v. Hunt*, at 355 (It is not a burden of proof, nor even an obligation to produce evidence. This simply supposes that before a plea is considered fit to be left before a jury for consideration, evidence must be presented to support it, but the onus is always on the Prosecution to disprove the plea once it is raised. Such evidence may come from the Prosecution case.); *R v. Burke* (1978) 67 Cr. App R. 220; see *R v. Spurge* [1961] 2 Q.B. 205 (regarding this application to defence pleas in common law); *R v. Burke* (1978) 67 Cr. App R. 220; see Richard May and Marieke Wierda, *International Criminal Evidence* [2002] (Transnational Publishers).

230. Accordingly, as Judge Gunawardana noted in the *Bagilishema* Judgement, as regards defences such as self-defence, duress, alibi, automatism (involuntary uncontrollable reflexes), and provocation, the Accused must raise them either through the cross-examination of witnesses or by adducing other evidence, and thus bears an evidential burden, which must then be disproved by the Prosecution. Regarding the defence of insanity, a higher burden is placed on the defendant, in which case he is required to adduce sufficient evidence to establish the cogency of such a defence on the balance of probabilities.<sup>392</sup>

231. In the United States, where the Supreme Court recognises that the Prosecution is constitutionally bound to prove every element of an offence,<sup>393</sup> the law may shift the burden of persuasion when certain defences are raised, namely affirmative defences, such as insanity and self-defence.<sup>394</sup>

232. The United States Supreme Court ruled that a statute which places the burden of persuasion on a defendant, requiring him to prove that he acted in the heat of passion upon sudden provocation, was not unconstitutional, as that defence did not serve to negate any facts of the crime which the State of New York had to prove in order to convict for murder under its statutes.<sup>395</sup> In such a case, it should be noted that the defendant must prove his defence by a preponderance of the evidence, a standard more easily met than that of “beyond a reasonable doubt”, which is required to rebut the presumption of innocence.<sup>396</sup>

233. This is the issue the Defence for Hadžihasanović emphasises in its written submissions. Referring to a shift in the burden, the Defence for Hadžihasanović argues that the Prosecution confuses the notion of the “evidential burden” with that of the “persuasive burden,” and that by

<sup>392</sup> *Bagilishema* Trial Judgement, Separate Opinion of Judge Asoka de Zoysa Gunawardana, para. 7.

<sup>393</sup> *In re Winship*, 397 U.S. 358, 364 [1970]; See the Due Process Clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the Constitution of the United States of America, which provide:

(5<sup>th</sup> Amendment): “No person [...] shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law [...]”

(14<sup>th</sup> Amendment): “[...] nor shall any state deprive any person of life, liberty, or property, without due process of law [...]” (emphasis added).

<sup>394</sup> *Patterson v. New York*, 432 US 197 (1977); see also Black’s Law Dictionary, 8<sup>th</sup> ed. (Westgroup, 2004) which defines *affirmative defense* as follows: “A defendant’s assertion of facts and arguments that, if true, will defeat the plaintiff’s or prosecution’s claim, even if all the allegations in the complaint are true. The defendant bears the burden of proving an affirmative defense. Examples of affirmative defenses are duress (in a civil case) and insanity and self-defense (in a criminal case).”

In addition to statutory law, common law in the United States recognises the same principle, see *Mullaney v. Wilbur*, 421 US 684 (1975); 4 W. Blackstone, Commentaries 201; M. Foster, Crown Law 255 (1762).

<sup>395</sup> *Patterson v. New York*, 432 US 266 (1977); *McMillan v. Pennsylvania*, 477 US 79, 86 (1986); *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).

<sup>396</sup> *Patterson v. New York*, 432 US 266 (1977); see also *Leland v. Oregon*, 343 US 790 (1952); *Mullaney v. Wilbur*, 421 US 684 (1975); *Rivera v. Delaware*, 429 US 877 (1976).

requiring the Defence “to show, during its case, the steps taken to satisfy the duty to act,” it shifts the burden of proof.<sup>397</sup>

234. The Defence for Hadžihasanović relies on Judge May’s work on international criminal tribunals in which he takes note of a distinction between the legal and the evidential burden of proof.<sup>398</sup> Judge May wrote that the legal (or persuasive) burden is the obligation of the Prosecution to prove all the facts necessary to establish the guilt of the Accused, whereas the evidential burden is the obligation on either the Prosecution or Defence to establish the facts of a particular case.<sup>399</sup>

235. Judge May explained that in international criminal trials, the persuasive burden of proof always remains with the Prosecution; this is a consequence of the presumption of innocence encapsulated in Articles 21(3) of the Statute and Article 67(1) of the Rome Statute.<sup>400</sup> The evidential burden, in fact, is not a true burden, but rather refers to the practical requirement of a party to call evidence in order to establish certain defences. Judge May noted, however, that this shift in the evidential burden has no impact on the persuasive burden of proof.<sup>401</sup>

236. After this analysis of the principle of the presumption of innocence and its limitations, the Chamber notes that while there are areas and defences where the presumption of innocence is somewhat eroded, there are no such limitations in the case at hand; the Prosecution must overcome that presumption beyond a reasonable doubt in order to prove its case.

237. In this case, the fact that the Defence for Hadžihasanović presented evidence on the measures taken flows from a burden all defendants have to answer charges and adduce evidence. This is a practical reality the Defence must deal with if it wishes to avoid a conviction.<sup>402</sup>

238. The Defence for Hadžihasanović points to that reality in its Reply to the Prosecution’s Response to Motions for Acquittal.<sup>403</sup> Additionally, the case of *John Murray v. United Kingdom* before the European Court demonstrates the limitations on an Accused’s right to silence, arguing implicitly that a passive defence can lead to a conviction. In that case, the Accused refused to answer throughout the trial. While the European Court held that silence in itself cannot be regarded as an indication of guilt, it noted that it must be ascertained in each particular case whether the

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<sup>397</sup> Reply of Enver Hadžihasanović to Prosecution’s Response to Defence Motions for Acquittal, para. 3.

<sup>398</sup> See Richard May and Marieke Wierda, *International Criminal Evidence* [2002] (Transnational Publishers), para. 4.62.

<sup>399</sup> *Ibid.*, para. 4.62.

<sup>400</sup> *Ibid.*, para. 4.63.

<sup>401</sup> *Ibid.*, para. 4.67.

<sup>402</sup> See McWilliams, Peter K McWilliams, *Canadian Criminal Evidence* Š2003Ć (Canadian Law Books eds.) citing *R v. Burdett* (1820), 4 B. & Ald. 95, 106 E.R. 873.

<sup>403</sup> Reply of Enver Hadžihasanović to Prosecution’s Response to Defence Motions for Acquittal, paras. 3 and 4.

evidence adduced by the prosecution is sufficiently strong to require an answer.<sup>404</sup> An Accused clearly may not rely on a passive defence without risking conviction, especially when the gravity of the charges “requires an answer”.

239. From this vantage point, the Defence for Hadžihasanović has a duty to answer the charges against its client and may, in order to discharge that duty, produce documents attesting to the measures he took in order to provide, for example, a context for the case or to show that the military criminal justice system was functioning. Nevertheless, the production of such documents should in no way prejudice the Accused. While it is recognised that an Accused must answer the charges against him, the burden of proof may not be shifted, as the Prosecution suggests, where it would put the Defence for Hadžihasanović in a dead-end situation: should it produce some documents attesting to the measures taken, the Prosecution would take advantage of the weaknesses in its presentation, and should it opt for a passive defence and fail to produce documents on the measures taken, the Prosecution would use that to argue that the Accused Hadžihasanović failed to take any measures, since the Defence failed to produce any documents attesting to them.

240. The onus is clearly on the Prosecution to first prove a failure to take measures; it may not make up for its failure to discharge that duty by using “weaknesses” in the Hadžihasanović Defence case.

241. The Chamber notes that the application of the law to the facts by the Chambers of the Tribunal and the ICTR has embodied the principle according to which the Prosecution must fulfil its duty to prove an omission and in no case may rely on the Defence case to make its own.

242. Accordingly, in the case of *The Prosecutor v. Juvénal Kajelijeli*, the Trial Chamber held that the Accused’s testimony did not establish that he failed to punish the attackers. The Chamber also found that the Prosecution did not prove that the situation prevailing at the end of 1994 was such that the Accused, as the new burgomaster, would have had the material ability to punish the perpetrators of the massacres. The Chamber thus did not find that the Accused failed to punish the perpetrators of the massacres.<sup>405</sup>

243. Similarly, the Appeals Chamber in *Blaškić* applied the principle according to which the Defence is obligated to present Defence evidence only if the Prosecution has successfully

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<sup>404</sup> *John Murray v. United Kingdom*, EHR, 41/1994/488/570 [1996], paras. 48 and 51.

<sup>405</sup> *Kajelijeli* Trial Judgement, para. 741.



discharged its duty to prove the omission. Accordingly, for the crimes related to detention, the Appeals Chamber upheld the findings of the Trial Chamber in *Blaškić*<sup>406</sup> which had found:

“...The evidence demonstrated that the accused did not duly carry out his duty to investigate the crimes and impose disciplinary measures or to send a report on the perpetrators of these crimes to the competent authorities.”<sup>407</sup>

244. To arrive at that conclusion, the Trial Chamber relied on testimony referenced in footnote 1648 of the *Blaškić* Judgement, according to which Blaškić failed to take measures systematically to punish the crimes related to detention centres. Moreover, Blaškić himself and a deputy prosecutor who both appeared as witnesses acknowledged those facts. The Trial Chamber clearly did not rely on Blaškić’s testimony to find him guilty but considered that Blaškić had not succeeded in rebutting the evidence adduced by the Prosecution through the testimony of its witnesses. The Appeals Chamber confirmed the reasoning of the Trial Chamber:

“...the Trial Chamber’s conclusion that the Appellant knew or had reason to know that these practices were extant in those locations, and that he failed to punish the personnel responsible who were under his effective command and control, was a conclusion that a reasonable trier of fact could have made.”<sup>408</sup>

245. On a different occasion during that case, the Appeals Chamber recalled the principle that the onus was on the Prosecution to establish that Blaškić had failed to take measures to punish following the attack of Vitez on 16 April 1993.<sup>409</sup>

246. The Chamber considers that the Prosecution may submit any relevant evidence which has probative value in order to meet its burden to prove a negative.<sup>410</sup> Furthermore, to establish guilt beyond a reasonable doubt for failure to act, the Prosecution may rely on inferences.<sup>411</sup>

247. In this regard, the Prosecution may, as this Chamber recalls elsewhere in this Judgement, rely on the testimony of a witness when that witness’s credibility has not been impeached, on the content of a document tendered into evidence, or even on inferences based on a particular situation, such as a promotion given to the perpetrators of unlawful acts, or any other reward given to such subordinates. Similarly, the Chamber is of the view that conclusions from an investigation may

<sup>406</sup> *Blaškić* Appeal Judgement, paras. 623-634, in particular para. 628.

<sup>407</sup> See *Blaškić* Trial Judgement, footnote 1648; Witness Marin, PT (“Provisional Transcript”) pp. 8898-8901 and p. 10189, and Witness Blaškić, PT pp. 15159-15161.

<sup>408</sup> *Blaškić* Appeal Judgement, para. 628.

<sup>409</sup> *Blaškić* Appeal Judgement, para. 507 (dealing with crimes committed in Vitez municipality, other than those in Ahmići.)

<sup>410</sup> Rule 89(C), Statute.

<sup>411</sup> See *Kordić* Appeal Judgement, para. 834.

have probative value if the methodology used during the investigation is sufficiently reliable to satisfy the requirements for a fair trial.<sup>412</sup>

248. The Chamber would, however, point out that should the methodology used prove faulty and insufficiently reliable, the Defence for Hadžihasanović may in no way be expected to prove his innocence. Later in this Judgement, the Chamber will analyse the different evidence adduced by the Prosecution to ascertain whether it met its burden to prove that the Accused Hadžihasanović failed to take the necessary and reasonable measures.<sup>413</sup>

### 3. Duty to Prosecute Crimes Defined by International Law at the Time of Events

249. Later in this Judgement, the Chamber analyses the steps taken by the Prosecution to see whether it discharged its duty to prove its case concerning the Accused's failure to take measures. For example, the Prosecution sent letters to the Zenica Cantonal Court and the Cantonal Prosecutor's Office in Travnik, which keep archives from the Zenica District Military Court and the Travnik District Military Prosecutor's Office.

250. Those letters were not tendered into evidence, but the responses thereto do form part of the trial record. Exhibits P 771 and P 773 are responses from the Zenica Cantonal Court and Travnik Cantonal Prosecutor's Office to letters from the Tribunal Office of the Prosecutor. In both documents, the judicial authorities answer the Prosecution query about how many cases involving ABiH members implicated for "war crimes," pursuant to Article 142 of the SFRY Code, went before the Zenica District Military Court and the Travnik District Military Prosecutor's Office.<sup>414</sup>

251. Later in this Judgement the Chamber will examine whether, in view of the law applied by the district military courts, that query could show if measures were taken with regard to the acts which form the basis of the Indictment.<sup>415</sup>

252. Consideration should now be given, in view of customary international humanitarian law, to the meaning and scope of the question from the Tribunal's Office of the Prosecutor about the involvement of ABiH members in "war crimes". The analysis will therefore deal with the issue of whether, at the time material to the Indictment, States, and in particular the Republic of Bosnia and Herzegovina, were obligated to prosecute serious violations of international humanitarian law only on the basis of international criminal law, setting aside charges of violations of ordinary law included in their domestic criminal codes.

<sup>412</sup> Rule 89(C) of the Rules; *see infra* para. 970.

<sup>413</sup> *See infra* paras. 970-1000.

253. The 2005 ICRC study on customary international law,<sup>416</sup> considered an authoritative source on the subject, says nothing about whether a State is obligated to prosecute war crimes *per se*. It would be logical to infer from the absence of such an analysis that there is no customary rule requiring States to rely on the characterisation of international law as the only basis for prosecution.

254. To prove the existence of a customary rule, the two constituent elements of the custom must be established, namely, the existence of sufficiently consistent practices (material element), and the conviction of States that they are bound by this uncodified practice, as they are by a rule of positive law (mental element).

255. In this case, considering their judicial practice, state practice seems to be more than divided, and would even tend to suggest that they have no obligation to prosecute war crimes solely on the basis of international humanitarian law. Admittedly, there are cases where state courts, relying on provisions in their domestic law, considered that they did not have jurisdiction to prosecute violations.<sup>417</sup> Moreover, the Statutes of the International Tribunals do not take into account national prosecutions of war crimes characterised as ordinary crimes, according to an evaluation of the principle of *ne bis in idem*,<sup>418</sup> which suggests that the Tribunals do not regard such prosecutions as valid responses to international crimes.

256. Nevertheless, since the end of World War II, majority practice seems to provide more than enough freedom in prosecuting international crimes solely under domestic criminal law as ordinary

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<sup>414</sup> P 771 refers specifically to Article 142; P 773 does not.

<sup>415</sup> See *infra* paras. 977-982.

<sup>416</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Vol. I, Rules* (Cambridge University Press, 2005). See nonetheless the discussion on Rule 158 (pp. 607-610). The study examines the duty of States to investigate war crimes and prosecute the suspects thereof. In this regard, it acknowledges the difficulty of determining whether that duty is based on an obligation or a right. The study does not, however, deal with the question of the basis of such prosecutions.

<sup>417</sup> For example, the Colombian Constitutional Court rejected the ordinary crimes approach in 2001. See Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005), p. 208, footnote 1202. Similarly, Belgium amended its legislation on core crimes to criminalise genocide and crimes against humanity in its domestic law. See Belgian Senate, Report of the Justice Commission on the Law for the Punishment of Genocide, enforcing the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, 1 December 1998, No. 1-749/3, para. II, (A) and (B): “It [the inclusion of a criminalisation of genocide in national criminal law] is important because of its symbolic value, in the sense that the perpetrators of a genocide will be punished for committing that specific offence, obviating the need for the criminal Judge to convict on the basis of other characterisations such as criminal homicide or murder. The effect of a conviction for genocide and its preventative nature will be reinforced [...] The introduction of a specific offence regarding crimes of genocide and other crimes against humanity is simply a confirmation of existing law, which achieves better visibility and draws attention to the specific nature of those acts and the need to prosecute them, and the need to prosecute them as such”, as cited by Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 209, footnote 1203. It must, however, be noted that this example is of little interest in this case as it does not seem to concern war crimes.

<sup>418</sup> See Article 10(2) of the Statute of the Tribunal and Article 9(2) of the Statute of the ICTR. See also the Separate Opinion of Judge Sidhwa, para. 83, in *The Prosecutor v. Duško Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995.

criminal offences. As such, many defendants have been prosecuted in national jurisdictions for ordinary crimes, although they were committed in the context of armed conflicts and therefore liable to be characterised as war crimes.<sup>419</sup> In the United States in 1973, an army lieutenant was convicted for murder and assault, not war crimes, for his involvement in the *My Lai* massacre during the Vietnam War.<sup>420</sup>

257. International criminal law was likewise ignored in the trial of a Russian colonel accused of raping and murdering a Chechen civilian<sup>421</sup> during the conflict between Russia and Chechnya.<sup>422</sup> Similarly, American soldiers accused of abusing detainees in Iraq in 2004 were court martialled and convicted for ordinary crimes.<sup>423</sup> In 2001, an Argentine court ruled explicitly that core crimes could be charged as ordinary crimes.<sup>424</sup> Several States have also stated that they regarded their ordinary criminal law as a sufficient basis for the prosecution of war crimes. Finally, unlike prevailing practice at the Tribunal and at the ICTR, the Rome Statute of the International Criminal Court provides that, in its relations with national jurisdictions, the principle of *ne bis in idem* will block a second prosecution if an Accused has already been tried in a national court for conduct also proscribed under the Statute.<sup>425</sup> In so doing, the Statute of the International Criminal Court leaves the characterisation of the crimes open to national courts.

258. Regarding the mental element, it can be inferred from the absence of sufficiently consistent practice that a majority of States do not consider themselves bound under international law to prosecute and try grave breaches of international humanitarian law solely on the basis of international criminal law.

259. Looking at the various international instruments governing humanitarian law and criminal law, it would appear that there is no written rule which obligates States to prosecute serious breaches of international humanitarian law on the basis of the international laws on war crimes. As such, States generally refuse to initiate proceedings solely on the basis of customary international

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<sup>419</sup> See Matthew Lippman, "Prosecutions of Nazi War Criminals before Post-World War II Domestic Tribunals", 8 *University of Miami International and Comparative Law Review* 1 (1999-2000), as cited by Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 30, footnote 86.

<sup>420</sup> See Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 31, footnote 88.

<sup>421</sup> See Richard Van Elst, "Implementing Universal Jurisdiction Over Grave Breaches of the Geneva Conventions", 13 *Leiden Journal of International Law* (2000) 827-828.

<sup>422</sup> See Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 31, footnote 89.

<sup>423</sup> See S.D. Murphy, "Contemporary Practice of the United States Relating to International Law", 98 *American Journal of International Law* (2004) 595.

<sup>424</sup> *Simon, Julio, Del Cerro, Juan Antonio s/ sustracción de menores de 10 años*, Case no. 8686/2000, Buenos Aires Federal Court, 6 March 2001, as cited by Ward Ferdinandusse in *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 210, footnotes 1209 and 1210.

<sup>425</sup> Rome Statute of the International Criminal Court, Article 20(3). See Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 210, footnote 1212.

law.<sup>426</sup> In fact, none of the provisions in the Geneva Conventions and Additional Protocols would lead to a conclusion that such a rule exists. Even Section II, Part V of the Additional Protocol I to the Geneva Conventions, which deals with the “Repression of Breaches of the Conventions and of this Protocol,”<sup>427</sup> is silent as to the existence of such a rule. Moreover, the Rome Treaty itself would seem to argue for more state freedom in the prosecution of offences characterised as war crimes.<sup>428</sup>

260. As such, there is no rule, either in customary or in positive international law, which obligates States to prosecute acts which can be characterised as war crimes solely on the basis of international humanitarian law, completely setting aside any characterisations of their national criminal law.

261. Consequently, at the time the acts alleged in the Indictment were committed, there was no binding obligation on States, and therefore on the courts in the Republic of Bosnia and Herzegovina, to prosecute individuals for war crimes under customary international law.<sup>429</sup>

#### **F. Duty to Inform an Accused of the Nature and Cause of the Charges Against Him**

262. The Chamber will now examine issues related to the interpretation of the Indictment and their possible implications on the rights of the Accused. As the formal charging document, the Indictment guides the deliberations of the Chamber which must vote separately on each charge it contains.<sup>430</sup> In this case, the arguments and evidence put forth by the Prosecution during the trial lead the Chamber to consider to what extent it can base its assessment of the guilt or innocence of the Accused on facts which were not, or were but only implicitly, set out in the Indictment.

263. Each Accused has the right to a fair trial pursuant to Articles 20(1) and 21(2) of the Statute. Pursuant to Article 21(4)(a) of the Statute, each Accused has the right “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. Article 18(4) of the Statute provides that an Indictment must contain a concise statement of the facts and the crime or crimes with which the Accused is charged under the Statute. Rule 47(C) of the Rules provides, *inter alia*, that an Indictment shall set forth “a concise statement of the facts of the case and of the crime with which the suspect is charged”.

264. The Appeals Chamber in *Kupreškić* affirmed that the aforementioned provisions of the Statute and Rules require the Prosecution to set forth in the Indictment the material facts which

<sup>426</sup> See Antonio Cassese, *International Criminal Law* (Oxford 2003) pp. 303-304.

<sup>427</sup> Articles 85-91. See in particular Articles 85, 86 and 87.

<sup>428</sup> Rome Statute of the International Criminal Court, Articles 17 and 20(3). See Ward Ferdinandusse, *Direct Application of International Criminal Law in National Courts* (Amsterdam 2005) p. 210, footnote 1212.

<sup>429</sup> See *infra* paras. 959-969.

form the basis of the charges against the Accused.<sup>431</sup> The Prosecution must set out the material facts with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.<sup>432</sup> The Appeals Chamber in *Kupreškić* noted that “the materiality of a particular fact cannot be decided in the abstract” and that “a decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused.”<sup>433</sup> According to the Appeals Chamber in *Rutaganda*, the prejudice which may be caused to the Accused must be examined before holding that a fact charged is not material:

“Before holding that an event charged is immaterial or that there are minor discrepancies between the indictment and the evidence presented at trial, a Chamber must normally satisfy itself that no prejudice shall, as a result, be caused to the accused. An example of such prejudice is the existence of inaccuracies likely to mislead the accused as to the nature of the charges against him. Depending on the specific circumstances of each case, the question to be determined is whether an accused was reasonably able to identify the crime and criminal conduct alleged in each of the paragraphs of the Indictment.”<sup>434</sup>

265. The Appeals Chamber in *Blaškić* held that the following essential facts, *inter alia*, must be set out in the Indictment when charging an Accused with responsibility under Article 7(3) of the Statute: “(i) that the accused is the superior of (ii) subordinates sufficiently identified, (iii) over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and (iv) for whose acts he is alleged to be responsible”.<sup>435</sup> These material facts must be pleaded with sufficient particularity.<sup>436</sup> Regarding the identity of the subordinates alleged to have committed the crimes, the *Blaškić* Appeals Chamber endorsed the finding of the *Krnjelac* Trial Chamber which held that “if the prosecution is unable to identify those directly participating in such events by name, it will be sufficient for it to identify them at least by reference to their ‘category’ (or their official position) as a group.”<sup>437</sup>

266. Regarding the degree of specificity with which the material facts must be pleaded in the Indictment, Tribunal case law has established that the Indictment “is to be read as a whole, not as a series of paragraphs existing in isolation,”<sup>438</sup> meaning that “each of the material facts must usually

<sup>430</sup> Rule 87(B) of the Rules.

<sup>431</sup> *Kupreškić* Appeal Judgement, para. 88.

<sup>432</sup> *Kupreškić* Appeal Judgement, para. 88.

<sup>433</sup> *Kupreškić* Appeal Judgement, para. 89; see also *Ntakirutimana* Appeal Judgement, para. 25.

<sup>434</sup> *Rutaganda* Appeal Judgement, para. 303.

<sup>435</sup> *Blaškić* Appeal Judgement, para. 218.

<sup>436</sup> *Blaškić* Appeal Judgement, para. 229.

<sup>437</sup> *Blaškić* Appeal Judgement, para. 217; *The Prosecutor v. Milorad Krnojelac*, Case no. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 46.

<sup>438</sup> *The Prosecutor v. Mile Mrkšić*, Case no. IT-95-13/1-PT, Decision on Form of the Indictment, 19 June 2003, para. 28; see also *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case no. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001, para. 38; *The Prosecutor v. Milorad Krnojelac*, Case no. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 7.

be pleaded expressly, although it may be sufficient in some circumstances if it is expressed by necessary implication.”<sup>439</sup>

267. Tribunal case law has adopted a two-step approach: first, it determines whether the Indictment sufficiently pleaded the material facts of the case and, second, it determines whether the Prosecution’s failure in that duty renders the trial unfair, which should not be presumed.<sup>440</sup> The Appeals Chamber in *Kupreškić* did not exclude the possibility that a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him.<sup>441</sup> Nevertheless, it noted that there can only be a limited number of cases that fall within that category.<sup>442</sup>

268. The Chamber concurs with Tribunal case law according to which the identity of subordinates is a material fact of a charge brought under Article 7(3) of the Statute. It must be pleaded with sufficient detail to enable the Accused to prepare his defence. The Chamber notes that not all of the facts regarding the identity of the perpetrators may be characterised as material, and recalls that the materiality of a particular fact cannot be decided in the abstract. Generally speaking, the Indictment must sufficiently inform the Accused of the military unit or armed group to which the perpetrator of the crime allegedly belonged, but it is not necessary that it provide the name of the perpetrator or the exact position of the implicated unit within the chain of command.

269. The Chamber notes that the *Kupreškić* Appeals Chamber adopted a two-step approach to determine whether the rights of the Accused had been violated. Nonetheless, this Chamber notes that the above case law dealt with a lack of specificity in the Indictment, and not errors regarding the material facts of the case. When an Indictment is imprecise, its language lends itself to several interpretations and leaves the Accused uncertain of the charges against him. Although not wrong, it does lack specificity. Conversely, when the material facts pleaded in the Indictment do not correspond with those presented by the Prosecution during the trial, there is an error. While a defective indictment lacking specificity can be cured if the Prosecution provides the accused with timely, clear, consistent information detailing the material facts of the case, an indictment that is defective because it contains an error of material fact cannot be cured in the same manner. In that case, the Prosecution must request leave of the Chamber to amend the Indictment, failing which the Chamber does not consider itself seized of the facts pleaded by the Prosecution during the trial.

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<sup>439</sup> *The Prosecutor v. Mile Mrkšić*, Case no. IT-95-13/1-PT, Decision on Form of the Indictment, 19 June 2003, para. 12.

<sup>440</sup> *Kupreškić* Appeal Judgement, paras. 87 and 120; *Blaškić* Appeal Judgement, paras. 221 and 238; *Rutaganda* Appeal Judgement, para. 303; *Krnojelac* Appeal Judgement, para. 133.

<sup>441</sup> *Kupreškić* Appeal Judgement, para. 114.

<sup>442</sup> *Kupreškić* Appeal Judgement, para. 114.

Should the Prosecution fail to make such a request, the Chamber would rule only on the facts pleaded in the Indictment. As the Prosecution made no attempt to prove those facts, but different ones not pleaded in the Indictment, the Chamber would have to acquit the Accused of the facts alleged therein.



### III. EVIDENCE

270. The Chamber considers it appropriate to explain the approach it adopted to assess evidence and determine its probative value, whether such evidence was supported by documentary or visual aids, or if it came in the form of testimony of witnesses called by the Prosecution, Defence, or even the Chamber.

#### A. Scope of Direct and Cross-Examination

##### 1. Broad Scope of Cross-Examination

271. From the day the trial began, the Chamber adopted a broad approach with regard to the scope of direct examinations and especially cross-examinations. Accordingly, in its Decision on the Defence Motion for Clarification of the Oral Decision of 17 December [...], the Chamber recalled that, pursuant to Rule 90(H), cross-examinations are not limited to issues raised in direct examination, and that questions going to the credibility of witnesses and to the case of the cross-examining party are permitted.<sup>443</sup> On that basis, the Chamber exercised its control and admitted questions intended to establish the historical, political, and military context at the time of the events, provided that the cross-examining party explain the objective and relevance of such questions to the Chamber before putting them to the witness.<sup>444</sup>

272. Mindful that these contextual questions could result in testimony being described as “hearsay” or “indirect”, the Chamber recalled that Rule 89(C) applies equally to direct and indirect evidence. In cases where testimony was based on hearsay, the Chamber noted that to assess its probative value, it wished to know the source of the information, that is, insofar as possible, the identity of the initial source, how he might have learned of the facts, and the number of intermediaries through which the testimony had passed.

##### 2. Restrictions

###### (a) Decision on Defence Motion regarding Cross-Examination of Witnesses by the Prosecution

273. The Chamber placed some restrictions on its flexible approach to questions that could be raised in cross-examination, in view of the stage of the trial and the content of the Indictment. Accordingly, in its Decision on Defence Motion regarding Cross-Examination of Witnesses by the

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<sup>443</sup> Decision on Defence Motion for Clarification of the Oral Decision of 17 December 2003 Regarding the Scope of Cross-Examination Pursuant to Rule 90(H) of the Rules, 28 January 2004, p. 3.

<sup>444</sup> *Ibid.*, p. 4.

Prosecution, the Chamber did not permit the Prosecution to put questions to defence witnesses in cross-examination seeking to establish the international character of the armed conflict in Central Bosnia in 1993. The Chamber relied on the fact that the Indictment does not explicitly indicate that an international armed conflict existed in Central Bosnia in 1993 and that, consonant with the Indictment, the Prosecution did not present evidence which would establish that the nature of the armed conflict in Central Bosnia in 1993 was international when it presented its case in chief.<sup>445</sup>

274. Conversely, the Chamber allowed the Prosecution to make limited references to the nature of the armed conflict during the period and in the places relevant to the Indictment during its cross-examination of Defence witnesses, if those witnesses referred to the nature of the armed conflict during their examination by the Defence. Evidence thus produced would, however, be admitted only insofar as it provided further details about the general factual context of this case, and could not serve to establish the international nature of the conflict in respect of the applicable law.<sup>446</sup>

275. Still with regard to the evaluation of the context of the case, the Chamber's decision also granted the Prosecution leave to refer, during its cross-examination of defence witnesses, to the possible unlawful detention of persons in places under the control of the ABiH during the period covered by the Indictment, even though the Indictment did not charge unlawful detention of persons in ABiH facilities.<sup>447</sup>

(b) Decision on Motion of the Accused Hadžihasanović regarding the Prosecution's Examination of Witnesses on Alleged Violations Not Covered by the Indictment<sup>448</sup>

276. In its Decision on the Motion of the Accused Hadžihasanović regarding the Prosecution's Examination of Witnesses on Alleged Violations Not Covered by the Indictment, the Chamber limited the scope of the Prosecution's cross-examination of prosecution witnesses. In its Motion, the Defence for the Accused Hadžihasanović requested the Chamber to find that the Indictment did not contain any charges that people were used to dig trenches on the front lines, whether such charges were brought directly or indirectly under Article 3(1)(a) of the Geneva Conventions; that any questions from the Prosecution to witnesses regarding the use of people to dig trenches on the front lines were irrelevant, and to deny the Prosecution leave to amend the Indictment in order to

<sup>445</sup> Decision on Defence Motion Regarding Cross-Examination of Witnesses by the Prosecution, 9 December 2004. See also Decision Pursuant to Rule 72(E) as to Validity of Appeal, Appeals Chamber, 21 February 2003.

<sup>446</sup> Decision on Defence Motion Regarding Cross-Examination of Witnesses by the Prosecution, 9 December 2004, p. 6.

<sup>447</sup> Decision on Defence Motion Regarding Cross-Examination of Witnesses by the Prosecution, 9 December 2004, pp. 6 and 7. In this Decision the Chamber noted that the Indictment expressly alleges that "Bosnian Croats, but also Bosnian Serbs, were unlawfully imprisoned and otherwise detained in ABiH detention facilities", and refers to the "imprisonment" of persons, to "detainees", and to "prisoners".

<sup>448</sup> Decision on Motion of the Accused Hadžihasanović Regarding the Prosecution's Examination of Witnesses on Alleged Violations Not Covered by the Indictment, 16 March 2004.

add a charge that people were forced to dig trenches, even though such a charge was withdrawn from the Initial Indictment by the Prosecution, *proprio motu*.<sup>449</sup> In the Prosecution Filing Pursuant to the 18 February 2004 Oral Order of the Trial Chamber regarding Evidence Concerning Trench-Digging, the Prosecution requested the Chamber to admit evidence of trench-digging on the front lines.

277. The Chamber found that an examination of the Indictment and its background shows that it did not include allegations of inhuman treatment because of the use of detainees to carry out forced labour. Accordingly, the Chamber denied the Prosecution's request to adduce evidence in relation to those charges.<sup>450</sup>

(c) Oral Decision of 29 November 2004

278. Another restriction was set by the Chamber in its oral decision of 29 November 2004 concerning the Prosecution's use of documents on a limited basis, during its cross-examination of defence witnesses when those documents were not already part of the trial record. The Prosecution was authorised to question defence witnesses on those documents, but only in order to attack their credibility or to refresh their memory.<sup>451</sup>

3. Questions from the Judges

279. Pursuant to Rule 85(B) of the Rules, a Judge may at any stage put any question to a witness, be it during direct examination or cross-examination.<sup>452</sup> The Chamber frequently exercised that power in the interests of justice during the trial, either to seek clarification on issues that remained unclear after a witness was examined by one of the Parties, or when there was a contradiction between witness statements, or when a witness statement contradicted or differed from the content of one or several documents in evidence. Finally, the Chamber sought explanations from some witnesses regarding the contents of certain documents.<sup>453</sup>

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<sup>449</sup> Motion of the Accused Hadžihasanović Regarding the Prosecution's Examination of Witnesses on Alleged Violations Not Covered by the Indictment, 23 February 2004.

<sup>450</sup> Decision on Motion of the Accused Hadžihasanović Regarding the Prosecution's Examination of Witnesses on Alleged Violations Not Covered by the Indictment, 16 March 2004, p. 3.

<sup>451</sup> Oral Decision of 29 November 2004, T(F) pp. 12521-12527.

<sup>452</sup> See Decision on [Hadžihasanović] Defence Motion Seeking Clarification of the Trial Chamber's Objective in its Question Addressed to Witnesses, 4 February 2005.

<sup>453</sup> See for example Kubura Defence Final Brief, noting the Judges' interventions in respect of paras. 56, 36, 55 and 49.

## **B. Admissibility of Evidence**

### 1. Flexible Approach of the Chamber

#### (a) Decision of 16 July 2004 on Admissibility of Documents<sup>454</sup>

280. The Chamber also adopted a flexible approach for the admission of documents into evidence. In its Decision of 16 July 2004, the Chamber had to rule on a Prosecution request to tender documents as it closed its case, as the Defence objected to the admission of most of the documents. By admitting virtually all the documents submitted by the Prosecution, including those whose purported author was not called to testify, or whose purported author did testify but did not remember them, or admitting documents the witnesses were supposed to remember in some other capacity but did not, the Chamber set out the few principles guiding its decision.<sup>455</sup>

281. The Chamber recalled that the criteria for relevance and probative value cannot necessarily be defined clearly and simply in the absence of context, and that the application of those criteria depends mostly on the specific circumstances of a case and the nature of the documents whose admission is being requested. The Chamber thus recalled the specific facts of the case, particularly that it is based solely on criminal command responsibility under Article 7(3) of the Statute, and that the Indictment refers to a great many different events which could entail the criminal responsibility of the Accused.<sup>456</sup> Consequently, the Chamber considered that the specific nature of the case because of those two points required that the concepts of relevance and probative value be applied in a circumspect and flexible manner, and that admission of a document should not be too hastily refused.<sup>457</sup>

282. The Chamber gave additional reasons in support of such an approach, including the complexities of an army's functioning in wartime, or the fact that a document which at first sight appears insignificant and marginally relevant might assume much greater importance when considered in light of other documents or testimony.<sup>458</sup> The Chamber also noted that a document admitted during the Prosecution's case may subsequently be contradicted by witnesses or documents produced by the Defence, and concluded that the end of the trial would be the time for the Judges to assess the evidence and attribute to it greater or lesser weight when deliberating in

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<sup>454</sup> Decision of 16 July 2004 on the Admissibility of Certain Challenged Documents and Documents for Identification (confidential) (Decision of 16 July 2004 on Admissibility of Documents). The decision was made public on 27 July 2004 and 2 August 2004, *see* Decision to Unseal Confidential Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, Case no. IT-01-47-T, 2 August 2004.

<sup>455</sup> *Ibid.*, para. 44.

<sup>456</sup> *Ibid.*, para. 34.

<sup>457</sup> *Ibid.*, para. 35.

<sup>458</sup> Decision of 16 July 2004 on Admissibility of Documents, para. 35.

Chambers.<sup>459</sup> Accordingly, in this Judgement the Chamber has endeavoured to explain its approach to the admission of documents into evidence and to attaching weight thereto.

283. In that Decision, the Chamber recalled that during the trial it had always demonstrated a liberal approach in its determination of the admissibility of documents, as a function of their relevance on the ground that knowledge of the context surrounding certain events or an armed conflict in general is necessary in order to understand such events properly.<sup>460</sup>

284. The Chamber followed Tribunal case law in its deliberations, recalling that reliability is a requirement for admissibility under Rule 89(C) of the Rules.<sup>461</sup> To ensure that the documents produced were reliable, on 17 May 2004 the Chamber ordered the Prosecution to provide, *inter alia*, information regarding the documents furnished by governments, to call as witnesses the archivists in charge of the Sarajevo and Zenica archives, to inform the Chamber, to the extent possible, of any material it had in its possession that proved that these documents were sent and received, and to call as a witness a former high-ranking member of the ABiH to testify about the drafting of orders in that army.<sup>462</sup> Similarly, Witness ZP appeared before the Chamber and recognised personal notes he had written (whose admission was challenged) and also provided some explanations regarding other challenged documents.<sup>463</sup>

285. Following that request and in addition to the information provided by the Prosecution, on 21 and 22 June 2004 the Chamber heard archivists Adam Omerkić and Sabahudin Smriko as witnesses.<sup>464</sup> On 30 June and 1 July 2004, the Chamber heard witnesses Senad Selimović and Muradif Mekić regarding the drafting, recording and transmission of orders within the ABiH. It is the Chamber's view that those witnesses provided information on the reliability of the documents which, during its examination of the original versions,<sup>465</sup> helped the Chamber determine some indicia of their reliability, in particular the appearance and provenance of the challenged documents.<sup>466</sup>

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<sup>459</sup> *Ibid.*, para. 35.

<sup>460</sup> *Ibid.*, para. 37.

<sup>461</sup> *Ibid.*, para. 29.

<sup>462</sup> *Ibid.*, para. 7.

<sup>463</sup> Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, para. 42.

<sup>464</sup> Decision of 16 July 2004 on Admissibility of Documents, para. 27.

<sup>465</sup> The Chamber examined all of the original versions of the challenged documents, *Ibid.*, para. 56.

<sup>466</sup> *Ibid.*, para. 30.

(b) Decision on the Admissibility of Documents of the Defence for Hadžihasanović

286. The Chamber adopted the same flexible approach in its Decision on the Admissibility of Documents of the Defence for Hadžihasanović.<sup>467</sup>

(c) Decisions on Judicial Notice of Adjudicated Facts Admitted in Other Cases

287. In its Decision of 20 April 2004, the Chamber ruled on an initial Defence motion regarding judicial notice of adjudicated facts admitted in other cases.<sup>468</sup> Applying the criteria set out in *The Prosecutor v. Momčilo Krajišnik*,<sup>469</sup> the Chamber examined proposed facts from the cases of *The Prosecutor v. Zlatko Aleksovski*, *The Prosecutor v. Zoran Kupreškić et al.*, *The Prosecutor v. Tihomir Blaškić*, and *The Prosecutor v. Dario Kordić and Mario Čerkez* with a view of taking judicial notice of those facts pursuant to Rule 94(B) of the Rules.

288. In the Decision, the Chamber recalled the principle of broadly interpreting the relevance of evidence when it relates to the historical, political or military context at the time of the facts, while noting that the application of such a principle could not prejudge the probative value the Chamber might, in the course of the trial and, if necessary, decide to attribute to a fact of which judicial notice had been taken.<sup>470</sup> After determining their relevance, the Chamber thus decided to take judicial notice of four facts admitted in other cases. The Chamber further noted that it had proceeded from the assumption that such facts were accurate and that they did not need to be re-established at trial but that, because this was an assumption, such judicial notice could be challenged at trial.<sup>471</sup>

289. The Chamber adopted a similar approach in its second decision on previously adjudicated facts, in which it took judicial notice of 39 facts admitted in other cases.<sup>472</sup>

<sup>467</sup> Decision on the Admissibility of Documents of the Defence for Enver Hadžihasanović, 22 June 2005, paras. 22-26.

<sup>468</sup> Final Decision on Judicial Notice of Adjudicated Facts, 20 April 2004.

<sup>469</sup> The Trial Chamber in the case of *The Prosecutor v. Momčilo Krajišnik* held that for a fact to be admissible under Rule 94(B) of the Rules, it should be truly adjudicated in previous Judgements in the sense that: (i) it is distinct, concrete and identifiable; (ii) it is restricted to factual findings and does not include legal characterisations; (iii) it was contested at trial and forms part of a judgement which has either not been appealed or has been finally settled on appeal; or (iv) it was contested at trial and now forms part of a judgement which is under appeal, but falls within issues which are not in dispute during the appeal; (v) it does not attest to criminal responsibility of the Accused; (vi) it is not the subject of (reasonable) dispute between the parties in the present case; (vii) it is not based on plea agreements in previous cases, and (viii) it does not impact on the right of the Accused to a fair trial. See *The Prosecutor v. Momčilo Krajišnik*, case no. IT-00-39, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92 bis, 28 February 2003, para. 15.

<sup>470</sup> Final Decision on Judicial Notice of Adjudicated Facts, 20 April 2004, p. 9.

<sup>471</sup> *Ibid.*, p. 7.

<sup>472</sup> Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadžihasanović and Kubura on 20 January 2005, 14 April 2005, p. 8.

## 2. Restrictions

290. The Chamber recalls three major restrictions on its flexible approach: one stems from its aforementioned Oral Decision of 29 November 2004; another from its Decision on the Prosecution's Application to Re-Open its Case,<sup>473</sup> and the last from its Decision on the Motion to Strike the Testimony of Witness ZI.<sup>474</sup>

291. In its oral decision of 29 November 2004, the Chamber reiterated the principle that the Prosecution is required to present all of its evidence during its case-in-chief and therefore may not, in cross-examination of defence witnesses, adduce new evidence that has not already been admitted in an effort to strengthen its case-in-chief or to introduce new elements relating to the criminal responsibility of the Accused. The Chamber then granted the Prosecution leave to produce and request the admission of documents not previously admitted into evidence during such cross-examinations, but under more restricted conditions, namely only to impeach the credibility of the witness in question or to refresh the witness' memory.<sup>475</sup>

292. Another limitation on the Chamber's flexible approach appears in its Decision on the Prosecution's Application to Re-Open its Case, in which the Chamber denied the Prosecution's request to tender 24 documents into evidence after the presentation of the Defence case, on the ground that the Prosecution had failed to demonstrate the required due diligence to identify and produce the 24 documents before the close of its case on 23 July 2004.<sup>476</sup>

293. The final restriction on the Chamber's flexible approach appears in its Decision regarding the testimony of Witness ZI. On that occasion, the Defence for the Accused Hadžihasanović filed a motion requesting the Chamber to order an investigation into Witness ZI's activities in an HVO commission set up to collect exculpatory evidence for Croats indicted by the Tribunal. It also requested that the testimony of Witness ZI and Prosecution Exhibits P81 to P89 be struck from the record in this case.<sup>477</sup> In support of its allegations, the Defence for the Accused Hadžihasanović filed six documents from the archives of the Republic of Croatia which it claimed showed the

<sup>473</sup> Decision on the Prosecution's Application to Re-Open its Case, 1 June 2005.

<sup>474</sup> Decision on the Motion to Strike the Testimony of Witness ZI, 11 July 2005.

<sup>475</sup> The restricted admission of Prosecution evidence regards the following exhibits: P 931, P 935, P 942, P 943, P 944, P 945, P 946, P 947, P 948, P 949, P 950, and P 951. The Chamber recalls that in its Decision of 16 July 2004 on Admissibility of Documents, Exhibits P 103 and P 106 were admitted only for the purpose of testing the credibility of Witness Jasmin Eminović. *See* Decision of 16 July 2004 on Admissibility of Documents, para. 99.

<sup>476</sup> Decision on the Prosecution's Application to Re-Open its Case, 1 June 2005, para. 109.

<sup>477</sup> Decision on the Motion to Strike the Testimony of Witness ZI, 11 July 2005, p. 2.

involvement of Witness ZI in the activities of that commission, as well as the correspondence on this matter between the Defence for the Accused Hadžihasanović and the Prosecution.<sup>478</sup>

294. The Chamber found that the Defence for the Accused Hadžihasanović had made its application after the conclusion of the Defence case and that the Defence was requesting the Chamber to rule on the credibility of Prosecution Witness ZI's testimony on the basis of information in six "new documents". The Chamber considered that while the Defence for the Accused Hadžihasanović had not expressly requested leave to re-open its case, its request to strike the testimony of Witness ZI and to withdraw exhibits previously admitted on the basis of information in new documents was tantamount to a request to re-open its case. The Chamber then recalled that, according to its Decision on the Prosecution's Application to Re-open its Case, such requests had to be subject to stringent conditions of admissibility.<sup>479</sup> In denying the Defence motion, the Chamber determined that when the conditions required for re-opening a case were applied, the Defence for the Accused Hadžihasanović had not demonstrated the required due diligence in obtaining the six documents it sought to admit before the end of its case.<sup>480</sup>

### 3. Order on Admission of Chamber Exhibits

295. On 22 June 2005, the Chamber ordered that the war diaries be admitted in full as Chamber exhibits, except for the Prosecution exhibits already admitted in the proceedings.<sup>481</sup> During its case-in-chief, the Prosecution submitted ten war diaries and operations logbooks to the Chamber, requesting, however, that only some excerpts from the war diaries be admitted. During its examination of the Prosecution's request to admit the documents, the Chamber held that the documents presented sufficient indicia of reliability, relevance and probative value.<sup>482</sup> Moreover, during the hearing of 27 April 2004, the Defence argued that the war diaries should be tendered in their entirety. Accordingly, considering that the war diaries in full would be useful in bringing out the truth and might, in particular, help to shed light on the content of other previously admitted exhibits and to follow the sequence of events in 1993, the Chamber ordered that, except for those already admitted as Prosecution exhibits, the full war diaries be tendered into the record.

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<sup>478</sup> *Ibid.*, p. 2.

<sup>479</sup> *Ibid.*, p. 3.

<sup>480</sup> *Ibid.*, p. 5.

<sup>481</sup> Order on Admission of Chamber Exhibits, 22 June 2005, p. 3.

<sup>482</sup> *Ibid.*, p. 2, citing the Decision of 16 July 2004 Regarding the Admissibility of Documents, para. 63.



### C. Findings of the Chamber on Evidence

#### (a) General Remarks on Evidence

296. The Chamber wishes to provide a few indications about its approach to documents put into evidence by the Parties, as many of them were tendered either without going through a witness, or a witness failed to recognise one or several of them, or the content of one document or a series of documents seemed to contradict certain witness testimony.

297. The Chamber obviously attached more weight to documents witnesses explained in convincing fashion than to documents admitted in isolation, and therefore without a witness's comments or observations.

298. Nonetheless, the Chamber did attach certain weight to documents which, although not tendered through or put before a witness, were part of a series of orders or reports which formed part of a set of related documents whose content there was no reason to question.

299. The Chamber was, however, somewhat cautious with regard to isolated documents which lacked the support of a witness's explanation, and could therefore be misinterpreted. This was the case for documents which could be misleading for readers in respect of certain municipalities in Central Bosnia.<sup>483</sup>

300. The Chamber considered that the date a document was drafted was a criterion in assessing the reliability of its content. In fact, documents written contemporaneously with the events they describe are presumed to be reliable since at the time they were written the author's knowledge of the facts had not been affected by gaps in memory and, in principle, the author had no reason to wish to distort the facts. Accordingly, the Chamber has based its findings in this Judgement on the primary meaning of documents written contemporaneously with the facts as they occurred.

301. In its Final Brief, the Prosecution asked the Chamber to exercise extreme care when it assessed the credibility of most of the Defence witnesses, giving two main reasons for that statement. First, a large number of the witnesses called by the Accused were former 3<sup>rd</sup> Corps officers or troops, and, second, some of the witnesses called by the Defence were, unbeknownst to them, suspects or were being investigated by the local courts in Bosnia and Herzegovina, in particular for their involvement in crimes committed by the Mujahedin.<sup>484</sup> The Defence for the

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<sup>483</sup> Such is the case for references to Orašac in Exhibits P 500 and P 501. *See* Hadžihasanović Defence Closing Arguments, T(E) pp. 19129-19130. The same is true for references to Zagradje. Hadžihasanović Defence Closing Arguments, T(E) p. 19130, *see* DK 24 and Prosecution Pre-Trial Brief, para. 56.

<sup>484</sup> Prosecution Final Brief, paras. 7-11.

Accused Hadžihasanović responded to that allegation by explaining that the witnesses who were members of the ABiH are the only people who witnessed the events firsthand, whereas international observers generally lacked knowledge of Bosnia and Herzegovina prior to their arrival and quite frequently did not understand the events and their causes as they unfolded on the ground.<sup>485</sup>

302. The Chamber set aside the testimony of Prosecution and Defence witnesses whose credibility seemed suspect at trial. Such was the case with Witness XE, for example. Whenever the testimony of a witness unconvincingly contradicted a logical series of documents, the Chamber accorded more weight to the documentary evidence.

303. Finally, the Chamber would note with regard to witnesses who were members of international organisations during the relevant period, that while in principle they had vowed to be impartial, this cannot be verified and also that their knowledge of how events unfolded was at times limited. Nevertheless, whenever the testimony of international observers contradicted that of other witnesses, the Chamber attached more weight to the version of the observers, to the extent that it was supported by other evidence.<sup>486</sup>

(b) Linguistic Matters

304. The Chamber has some observations with regard to linguistic matters which are of crucial importance in this case. First, before it could rely on statements made by witnesses contained in the court transcripts, the Chamber attempted to compare the French and English versions of those texts. In the case where there were discrepancies between the transcripts, the Chamber relied on the English interpretation in the transcripts rather than the French, considering the English versions more reliable as they are more accurate. In the case where the two versions were incompatible, the Chamber, *proprio motu*, requested the Tribunal's language section (CLSS) to provide a new interpretation from the B/C/S (Bosnian/Croatian/Serbian) recording.<sup>487</sup>

305. Several factors have led the Chamber to make such a choice, which is unfortunate given that French is its working language. First, during the trial, the Chamber noted that the French interpretation of statements made in B/C/S by a witness was often by "relay" of the English interpretation, which was interpreted directly from B/C/S. Second, the Chamber recalls that during the proceedings, the Chamber and the Parties have access to the transcripts in English, which allows them to point out errors in interpretation immediately, whereas the Chamber has access to

<sup>485</sup> Hadžihasanović Defence Closing Arguments, T(E) p. 19123.

<sup>486</sup> See *infra* para. 1978 (Vareš), *infra* paras. 1190 and 1220 (Music School); *infra* paras. 1413-1422 (Orašac).

<sup>487</sup> See Memorandum of 13 January 2006 from the Chamber's Legal Officer to the Head of the Interpretation Unit, CLSS, and the response from that section the same day.

transcripts in French, at best, only the following day. Finally, the Chamber was surprised to note that, despite the succinct nature of the English language, the French transcripts are systematically shorter than the English version.

306. Furthermore, during the trial, the interpretation of certain terms contained in the documents tendered into evidence was subject to frequent debate, giving rise to requests to the translation section for its opinion. Each opinion given by the translation section on the basis of such requests has been tendered into evidence.<sup>488</sup>

(c) Restricted Admissibility during Cross-Examination: Lack of Independent Probative Value

307. The Chamber recalls that, according to the above-mentioned decisions, a number of documents tendered into evidence lack independent probative value. Such is the case for Exhibits P 103 and P 106, which were admitted only for the purpose of determining the credibility of the witness to whom the exhibits in question referred,<sup>489</sup> or Exhibits P 931, P 935, P 942, P 943, P 944, P 945, P 946, P 947, P 948, P 949, P 950 and P 951, which could be used only to refresh the memory or impeach the credibility of the witness in question.<sup>490</sup> Accordingly, any reading of one or several paragraphs of a document by a witness during his testimony in no way means that those passages have been tendered into evidence in this case. Similarly, those paragraphs may not be used to corroborate other evidence.<sup>491</sup>

(d) Inferences

308. In its Closing Arguments<sup>492</sup> and Final Brief,<sup>493</sup> the Defence for the Accused Kubura argued that the Prosecution's case was based on a "pyramiding of inferences", which consists of drawing one inference from a series of inferences and prejudices the Accused Kubura.<sup>494</sup> The Defence for the Accused Kubura thus characterised the Prosecution's approach as a drive to get a legal conclusion based on various inferences.<sup>495</sup>

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<sup>488</sup> C3-C10.

<sup>489</sup> P 103 and P 106 were admitted restrictively following the Decision of 16 July 2004 Regarding the Admissibility of Documents, para. 99.

<sup>490</sup> The restricted admission of Prosecution exhibits following the oral decision of 29 November 2004, concerns the following documents: P 931, P 935, P 942, P 943, P 944, P 945, P 946, P 947, P 948, P 949, P 950 and P 951, T(F) pp. 12521-12527.

<sup>491</sup> See *infra* para. 475.

<sup>492</sup> Kubura Defence Closing Arguments, T(E) pp. 19266, 19275, 19282 and 19283.

<sup>493</sup> Kubura Defence Final Brief, paras. 71 and 124

<sup>494</sup> Kubura Defence Closing Arguments, T(E), p. 19266: "We say in many critical areas their case is riddled with what might be termed pyramiding of inferences, which is drawing an inference upon another inference upon another inference upon another inference".

<sup>495</sup> Kubura Defence Closing Arguments, T(E) p. 19275.

309. The Defence for Kubura argued that circumstantial evidence must be examined “narrowly”, as the possibilities for errors, for fabricating false evidence, and for inaccuracies are more prominent. The fundamental test is that where evidence in a trial is circumstantial, before a finding of guilt may be made the Court must conclude that the circumstances were both consistent with an inference of guilt and would not lead to any other reasonable inference.<sup>496</sup> As such, if there is another rational explanation or other inferences that are consistent with the innocence of an Accused, then the inference “has not been established beyond reasonable doubt”.<sup>497</sup>

310. The Defence for the Accused Hadžihasanović made similar submissions in its Closing Arguments.<sup>498</sup>

311. The Chamber subscribes to the idea that although an inference can be made from direct or circumstantial evidence, it must be reasonable and narrowly construed. Consequently, the Chamber rejects any inferences based on a series of inferences. In addition, in cases where several inferences may be made on the basis of the same evidence and are equally plausible, the Chamber considered that it could not hold the most prejudicial evidence against the Accused, except in cases where the inference most favourable to the Accused cannot be upheld in view of the facts of the case.

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<sup>496</sup> *Ibid.*, T(E) p. 19282.

<sup>497</sup> *Ibid.*, T(E) p. 19283.

<sup>498</sup> Hadžihasanović Defence Closing Arguments, T(E) p. 19118.

## IV. ABIH 3<sup>RD</sup> CORPS

### A. Creation, Hierarchy and Structure of the 3<sup>rd</sup> Corps

#### 1. Creation of the ABiH

312. On 23 June 1992, a decision of the Republic of Bosnia and Herzegovina (“RBiH”) Presidency created the RBiH Army (“ABiH”) to protect the RBiH from the fighting that had broken out on its territory<sup>499</sup>. Between 8 April and 23 June 1992, the RBiH Presidency organised the defence of the territory using already existing Territorial Defence (“TO”) units.<sup>500</sup>

313. On 8 April 1992, with the declaration of an imminent threat of war and the creation of the Republic of Bosnia and Herzegovina following the dissolution of the Socialist Republic of Bosnia and Herzegovina, the RBiH TO Staff was established and the former TO Staff was dissolved.<sup>501</sup> On 9 April 1992, a presidential Decision ordered all armed individuals and units to report to the staffs of municipal, regional (district) and town [Sarajevo] TO units, with the exception of members of the Yugoslav People’s Army (“JNA”) and Ministry of the Interior (“MUP)), in order to put them under a single command.<sup>502</sup>

314. A state of war and mobilisation were declared in the RBiH on 20 June 1993.<sup>503</sup> As of 23 June 1992, the RBiH TO was renamed the “RBiH Army”<sup>504</sup> and the TO Main Staff became the Main Staff of the RBiH Armed Forces<sup>505</sup>. In Central Bosnia, certain TO units at the district, and particularly municipal, level would be dissolved much later, but until they disbanded they would remain a support force following ABiH orders.<sup>506</sup>

315. Following an amendment to the RBiH Constitution by presidential decree, the RBiH Presidency became the RBiH Armed Forces Supreme Command for the duration of the state of

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<sup>499</sup> DH 2104.

<sup>500</sup> See *infra* paras. 337-339.

<sup>501</sup> DH 386 (*Official Gazette of the RBiH* No. 1, 9 April 1992); DH 1650.

<sup>502</sup> DH 1651.

<sup>503</sup> P 362 (*Official Gazette of the RBiH* No. 7, 20 June 1992); DH 420.

<sup>504</sup> DH 2104.

<sup>505</sup> DH 2104.

<sup>506</sup> See *infra* paras. 337-339 regarding the role of the TO within the 3<sup>rd</sup> Corps.

war.<sup>507</sup> During that same period, the General Staff of the RBiH Armed Forces became the Supreme Command Main Staff.<sup>508</sup>

## 2. Supreme Command Main Staff and Creation of the ABiH Corps

316. The ABiH Main Staff, the highest organ in the ABiH hierarchy,<sup>509</sup> had its headquarters in Sarajevo.<sup>510</sup> The Rules on Corps of the JNA Ground Forces gives a general idea of the traditional JNA corps subdivisions.<sup>511</sup> This document delineates the tasks of an army corps command covering the following areas: command/staff; political/legal; self-protection issues; security; personnel; logistics (support); and general affairs. Each area corresponded to a specific organ in the army corps structure: staff; political and legal affairs; security services; and development planning and finance. Self-protection was the responsibility of all organs of the Corps Command as part of their official duties.<sup>512</sup>

317. The Chamber notes that the ABiH Supreme Command Main Staff consisted of the following organs: Operations and Training including the Operations Command Centre,<sup>513</sup> Combat Arms Administration, Logistics Administration,<sup>514</sup> Personnel Administration,<sup>515</sup> Administration for Morale, Information and Propaganda, and Religious Affairs,<sup>516</sup> Intelligence Administration, Security Administration,<sup>517</sup> and Legal Administration. In view of the evidence, it would appear that the staffs of the 3<sup>rd</sup> Corps, the operations groups and brigades had the same composition but with reduced personnel.<sup>518</sup>

318. In 1992, Sefer Halilović commanded the Supreme Command Main Staff, holding the position of Chief of the ABiH Main Staff.<sup>519</sup> On 8 June 1993, Rasim Delić was appointed head of the Main Staff with the rank of Supreme Command Main Staff Commander; Sefer Halilović

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<sup>507</sup> DH 428.

<sup>508</sup> DH 429.

<sup>509</sup> DH 210.

<sup>510</sup> See for example DH 211; DH 446; P 206; DH 1185.

<sup>511</sup> P 799 (“Rules on the Corps of the JNA Ground Forces”).

<sup>512</sup> P 799, paras. 64-76.

<sup>513</sup> DH 1416.

<sup>514</sup> DH 1416.

<sup>515</sup> DH 1416.

<sup>516</sup> P 209.

<sup>517</sup> DH 1416; P 244, para. 45.

<sup>518</sup> P 498 (brigades); DH 2088, Annexes 93 and 94.

<sup>519</sup> DH 2088, para. 243; see also *Halilović* Trial Judgement, para. 103.

retained his title as Chief of the Main Staff.<sup>520</sup> Stjepan Šiber and Jovan Divjak were appointed Supreme Command Main Staff deputy commanders.<sup>521</sup>

319. By presidential decision of 18 August 1992, the territory of the Republic of Bosnia and Herzegovina was to be divided into five zones of military responsibility, each covered by an army corps answering to the ABiH Supreme Command Main Staff.<sup>522</sup>

320. Based on this decision, army corps were established over the entire territory of Bosnia and Herzegovina. The 3<sup>rd</sup> Corps, which was to include the municipality of Banja Luka where, it would appear, it was to establish its headquarters, temporarily set up headquarters in the town of Zenica on 18 August 1992.<sup>523</sup>

321. On 29 September 1992, pursuant to the Presidency Decision of 18 August 1992,<sup>524</sup> the Supreme Command Main Staff ordered that the district TO staffs (“*OkšO*”) be re-subordinated to the corps, which meant that the *OkšO* of Zenica and Banja Luka would be subordinated to the 3<sup>rd</sup> Corps.<sup>525</sup> The municipal defence staffs (“*OpšO*”) were to be subordinated to the ABiH units in their respective zone of responsibility.<sup>526</sup> Because of combat operations in part of the territory of Bosnia and Herzegovina, the 3<sup>rd</sup> Corps zone of responsibility changed slightly and the 3<sup>rd</sup> Corps set up permanent headquarters in Zenica.<sup>527</sup>

### 3. 3<sup>rd</sup> Corps

#### (a) Zone of Responsibility

322. On 9 November 1992, the Chief of the Supreme Command Main Staff, Sefer Halilović, ordered the creation of specific types of units within the 3<sup>rd</sup> Corps in order to counter the fighting that raged in certain municipalities and also to allow various TO headquarters and units to merge.<sup>528</sup> He appointed Enver Hadžihasanović head of the 3<sup>rd</sup> Corps around mid-November 1992.<sup>529</sup> The

<sup>520</sup> DH 1891; *see also Halilović Trial Judgement*, paras. 1 and 103.

<sup>521</sup> P 295; DH 1891; P 431; *Halilović Trial Judgement*, para. 103.

<sup>522</sup> P 121. A 6<sup>th</sup> Corps was created in June 1993; *see* DH 1172.

<sup>523</sup> P 121. On 18 August 1992, the zone of responsibility of the 3<sup>rd</sup> Corps included the following municipalities: Banja Luka, Bugojno, Bosanska Dubica, Bosanska Gradišta, Busovača, Čelinac, Donji Vakuf, Gornji Vakuf, Jajce, Kakanj, Kotor Varoš, Kupreš, Laktaši, Mrkonjić Grad, Novi Travnik, Prnjavor, Srbac, Skender Vakuf, Šipovo, Travnik, Vitez, Zavidovići, Zenica and Žepče.

<sup>524</sup> *See also* P 121, under III.

<sup>525</sup> P 748/DH 215.

<sup>526</sup> P 748/DH 215.

<sup>527</sup> DH 220; P 245; DH 2019; P 336.

<sup>528</sup> P 123; *Indictment*, para. 15.

<sup>529</sup> P 245 (18 November 1992); DH 2088, paras. 317, 367, 377 (18 November 1992); Hadžihasanović Defence Final Brief, para. 28 (18 November 1992); Joint Statement on the Agreement of Facts, Annex A (14 November 1992).

following municipalities were to be included in the 3<sup>rd</sup> Corps zone of responsibility: Banja Luka, Bosanska Dubica, Bosanska Gradiška, Bugojno, Busovača, Čelinac, Donji Vakuf, Gornji Vakuf, Jajce, Kakanj, Kotor Varoš, Kupreš, Laktaši, Mrkonjic Grad, Novi Travnik, Prnjavor, Skender Vakuf, Srbac, Šipovo, Travnik, Vitez, Zavidovići, Zenica and Žepče.<sup>530</sup> Owing to combat operations, this zone of responsibility was slightly changed and reduced, although the municipality of Vareš was subsequently added to it.<sup>531</sup>

(b) 3<sup>rd</sup> Corps Command Staff

323. The 3<sup>rd</sup> Corps Command Staff, based in Zenica,<sup>532</sup> consisted of several organs.<sup>533</sup> The 3<sup>rd</sup> Corps Command Staff had the same structure as the Main Staff.

324. For the purposes of this Judgement, certain organs within the 3<sup>rd</sup> Corps Command Staff should be mentioned: the Operations Centre, the Communications Centre and the Military Security Service.

325. The Operations Centre collected all information about the 3<sup>rd</sup> Corps zone of responsibility originating in civilian structures, subordinated units, the superior command and the MUP, and transmitted important information to the Corps Commander.<sup>534</sup> The Centre was the sole repository of information<sup>535</sup> and operated 24 hours a day.<sup>536</sup> The 3<sup>rd</sup> Corps Command sent a daily report compiled by the centre to the Main Staff Command.<sup>537</sup>

326. The Communications Centre was headed by Witness Senad Selimović.<sup>538</sup> It was an administrative organ in charge of planning and organising all communications within the Command.<sup>539</sup> The decoding service was part of the Centre.<sup>540</sup> The communications centre also operated 24 hours a day.

327. The 3<sup>rd</sup> Corps Military Security Service was headed by Ramiz Dugalić.<sup>541</sup> This Service had ultimate responsibility for counter-intelligence activities, the work of the military police, and the

<sup>530</sup> Joint Statement on the Agreement of Facts, Annex B.

<sup>531</sup> The zone of responsibility of the 3<sup>rd</sup> Corps included henceforth the municipalities of Breza, Visoko, Ilijas, Vareš, Fojnica and Kiseljak, DH 716; DH 2088, para. 462.

<sup>532</sup> See for example P 245; DH 2019; P 336.

<sup>533</sup> Regarding the sections of the 3<sup>rd</sup> Corps Staff, see DH 2088, Annex 91.

<sup>534</sup> Sakib Žiko, T(F) pp. 14557, 14558, 14583; Vezir Jusufspahić, T(F) p. 13994; Džemal Merdan, T(F) p. 13501.

<sup>535</sup> Sakib Žiko, T(F) p. 14558.

<sup>536</sup> Sakib Žiko, T(F) p. 14557.

<sup>537</sup> Vezir Jusufspahić, T(F) p. 13993.

<sup>538</sup> P 245; P 296; C 16 dated 23 June 1993; Senad Selimović, T(F) pp. 9859-9862.

<sup>539</sup> Senad Selimović, T(F) p. 9861.

<sup>540</sup> Senad Selimović, T(F) p. 9922.

<sup>541</sup> Fehim Muratović, T(F) p. 14948; P 923/7; DH 2086; P 656.



work of securing headquarters and other vital facilities.<sup>542</sup> The Military Security Service answered to a double chain of command: one from the military command headed by the Chief of the Main Staff and one from the military security headed by the Minister of Defence.<sup>543</sup> Within the context of this double chain of command, assistant commanders for security were in charge of transmitting information to their units and to the 3<sup>rd</sup> Corps chiefs of security regarding the situation in their zone of responsibility, along with any intelligence having to do with military security.<sup>544</sup>

(c) Enver Hadžihasanović

(i) Training

328. The Accused Hadžihasanović was a professional military officer who had graduated from the Land Forces Military Academy in Belgrade. Promoted to the rank of Captain First Class, he continued his training at the Staff Officers' College. When he finished, he took over the command of a Military Police Battalion within the JNA 7<sup>th</sup> Army Military Police. In this position he was promoted to the rank of "commander".<sup>545</sup>

329. Witness Merdan testified that this training and experience in the JNA would not have qualified the Accused Hadžihasanović to command a 30,000-strong army corps, but given the JNA structure, to head a brigade with a maximum of two to three thousand soldiers.<sup>546</sup>

330. In early April 1992, after leaving the JNA, the Accused Hadžihasanović joined the RBiH TO<sup>547</sup> and was appointed Chief of Staff of the ABiH 1<sup>st</sup> Corps on 1 September 1992.<sup>548</sup> He was first mandated by Sefer Halilović to go to Zenica to organise troops to lift the blockade of Sarajevo.<sup>549</sup> His next mission was to consolidate and organise the units in Central Bosnia, based in Zenica, in order to counter the Serbs' military aggression in Bosnia and Herzegovina. Consequently, Sefer Halilović appointed him 3<sup>rd</sup> Corps Commander in mid-November 1992,<sup>550</sup> a position he retained until 1 November 1993 when he was succeeded by Mehmed Alagić.<sup>551</sup>

<sup>542</sup> Fehim Muratović, T(F) p. 14949.

<sup>543</sup> Edib Zlotrg, T(E) p. 14981.

<sup>544</sup> Edib Zlotrg, T(F) pp. 14998-14999.

<sup>545</sup> Joint Statement on the Agreement of Facts, Annex B.

<sup>546</sup> Džemal Merdan, T(F), p. 13237, DH 155.3, p. 2.

<sup>547</sup> Joint Statement on the Agreement of Facts, A3-A5.

<sup>548</sup> DH 451.

<sup>549</sup> Muradić Mekić, T(F) p. 9950.

<sup>550</sup> P 245 (18 November 1992); DH 2088, paras. 317, 367, 377 (18 November 1992); Hadžihasanović Defence Final Brief, para. 28 (18 November 1992); Joint Statement on the Agreement of Facts, Annex A (14 November 1992).

<sup>551</sup> P 209; P 278.

331. The 3<sup>rd</sup> Corps set up permanent headquarters in Zenica.<sup>552</sup> According to his closest associate at the time, Džemal Merdan, the Accused Hadžihasanović was a commander respected by his troops who also had a good reputation among international observers.

(ii) Communicating Information to the Accused Hadžihasanović

332. The Accused Hadžihasanović depended on the 3<sup>rd</sup> Corps' military hierarchy for information regarding the situation on the ground and the actions of his troops. In addition, Džemal Merdan, 3<sup>rd</sup> Corps Deputy Commander, systematically informed the Accused Hadžihasanović of any incidents and developments. Hadžihasanović appointed Merdan to represent the 3<sup>rd</sup> Corps Command in joint commissions with the HVO ("Croatian Defence Council"). As part of his duties, Merdan moved about the terrain and reported back to Hadžihasanović on the situation, something he did regularly and whenever an incident occurred.<sup>553</sup> At 3<sup>rd</sup> Corps headquarters, Merdan's office was adjacent to that of the Accused Hadžihasanović.<sup>554</sup> The international observers also concluded that Džemal Merdan was Hadžihasanović's "eyes and ears".<sup>555</sup> The Chamber considers that whenever Merdan had knowledge of a fact, the Accused Hadžihasanović did too.

333. Such an inference, however, cannot be made based on the military security chain of command. The military security service to which the military police units and the Military Police Battalion were attached, had a double chain of command.<sup>556</sup> Following the vertical chain of command, the military security service of a corps obeyed the orders and instructions of the Supreme Command Main Staff Chief of Security.<sup>557</sup> This same chain meant that the Security Service of a corps had the command of the security units subordinated to it.<sup>558</sup> Following the horizontal chain of command, the 3<sup>rd</sup> Corps Security Service<sup>559</sup> obeyed the orders of the 3<sup>rd</sup> Corps Commander.<sup>560</sup> Witness HF explained that the vertical chain of command whereby the military security service of a corps obeyed the Supreme Command Main Staff was based on the fact that military security services were primarily responsible for counter-intelligence activities.<sup>561</sup> In fact, in limited cases, especially counter-intelligence, the security organs were not obliged to report their activities to

<sup>552</sup> See e.g.: P 245; DH 2019; P 336.

<sup>553</sup> Džemal Merdan, T(F), pp. 13229-13230.

<sup>554</sup> Džemal Merdan, T(F), p. 13580; Cameron Kiggell, T(F) p. 4979.

<sup>555</sup> Džemal Merdan, T(F), p. 13231.

<sup>556</sup> Witness HF, T(F) pp. 17166-17167.

<sup>557</sup> Fikret Muslimović was the first chief of the Main Staff Military Security Service; he was replaced by Jusuf Jašarević; see Witness HF, T(F) p. 17224.

<sup>558</sup> Witness HF, T(F) p. 17153.

<sup>559</sup> Ramiz Dugalić was appointed head of the 3<sup>rd</sup> Corps Military Security Service in mid-March 1993. Fehim Muratović, T(F) p. 14948; P 923/7; DH 2086; P 656.

<sup>560</sup> Witness HF, T(F) pp. 17129 and 17167.

<sup>561</sup> Witness HF, T(F) p. 17152.

either the corps commander, brigade commander, or commander of the operations group.<sup>562</sup> Within this context, Witness Fehim Muratović testified that some intelligence was not reported to either the brigade commands or the 3<sup>rd</sup> Corps Command.<sup>563</sup> While the Chamber considers it cannot find that when Ramiz Dugalić or Salko Beba had knowledge of a fact, the Accused Hadžihasanović necessarily had the same knowledge, the fact remains nevertheless that except for activities related to counter-intelligence,<sup>564</sup> the military security service executed the orders of Enver Hadžihasanović and had the duty to inform him about the situation on the ground.<sup>565</sup>

(d) 3<sup>rd</sup> Corps Military Police and the Civilian Police

334. In late November 1992, the 3<sup>rd</sup> Corps wanted to set up a joint military police with the HVO.<sup>566</sup> This, however, was never implemented.<sup>567</sup> The 3<sup>rd</sup> Corps Military Police Battalion was created in December 1992<sup>568</sup> and initially consisted of four companies<sup>569</sup> of 75-80 men.<sup>570</sup> In the second half of 1993, a new company was created to fight terrorist activities.<sup>571</sup> In addition to the Military Police Battalion, a military police platoon or company comprising some thirty men, was attached to each of the brigades mentioned in the Indictment.<sup>572</sup> As far as the Chamber can ascertain, the OG (Operations Group) *Bosanska Krajina* was the only operations group with a military police unit during the period in question.<sup>573</sup>

335. Sometimes members of the Military Police Battalion or other military police unit took part in combat when the commander of their brigade or operations group felt it would be useful.<sup>574</sup> In a later part of the Judgement, the Chamber will discuss the fact that the Military Police Battalion and the different military police units were tasked, *inter alia*, with investigating offences committed by members of the ABiH and reporting them to the district military prosecutors.<sup>575</sup> The role of the military police is discussed in more detail in another part of this Judgement.<sup>576</sup>

<sup>562</sup> Witness HF, T(F) p. 17289.

<sup>563</sup> Fehim Muratović, T(F) pp. 15046 and 15062.

<sup>564</sup> Witness HF, T(F) p. 17289.

<sup>565</sup> Witness HF, T(F) pp. 17129 and 17167; Edib Zlotrg, T(F) p. 14981.

<sup>566</sup> DH 2081.

<sup>567</sup> Zaim Mujezinović, T(F) pp. 17424-17425.

<sup>568</sup> *See infra* para. 875.

<sup>569</sup> Each company consisted of a command and three platoons, Zaim Mujezinović, T(F) p. 17408.

<sup>570</sup> Zaim Mujezinović, T(F) p. 17409.

<sup>571</sup> Zaim Mujezinović, T(F) p. 17407.

<sup>572</sup> Izet Mahir, T(E) p. 16814.

<sup>573</sup> DH 1920; DH 1922. The Chamber did not receive evidence that the other OG (*Bosna, Lašva, Zapad* and *Istok*) also had military police units.

<sup>574</sup> Zaim Mujezinović, T(F) pp. 17417 and 17466.

<sup>575</sup> *See infra* paras. 892 and 920.

<sup>576</sup> *See infra* paras. 860-899.

336. The civilian police were not subordinated to the ABiH and answered to the MUP.<sup>577</sup> Nevertheless, on several occasions, civilian police units were subordinated to the military police in order to take part in specific missions. Relations between the “two police” revolved primarily around cooperation in conducting investigations.<sup>578</sup>

## B. 3<sup>rd</sup> Corps Units

### 1. TO Units

337. Until the dissolution of Yugoslavia in 1991, the country’s armed forces consisted of the Yugoslav People’s Army (“JNA”) and the Territorial Defence (“TO”) whose members were part of the reserve troops. The TO was part of the doctrine of All-People’s Defence (“ONO”) and social self-protection (“DSZ”) intended to counter external aggression against the territory.<sup>579</sup> The TO did not exist on a federal level but was organised, *inter alia*, at the level of the republic, district and municipality.<sup>580</sup> The TO had both staffs and units.<sup>581</sup>

338. As Bosnia and Herzegovina was about to declare war, the TO in Central Bosnia was abandoned by most of the Bosnian Serbs. Following the creation of the HVO, the Bosnian Croats abandoned it too.<sup>582</sup> Consequently, in Central Bosnia, the TO was the only armed force already in place capable of rallying those who did not wish to respond to the call of the JNA or HVO. Its ranks were primarily filled with Bosnian Muslims. The TO preceded the ABiH in organising the defence of Bosnia and Herzegovina’s territory.

339. With the creation of the ABiH, the TO was initially maintained with the subordination of its different units to the ABiH; TO units provided logistics support<sup>583</sup> and/or military support.<sup>584</sup> Then the ABiH began to progressively dismantle these units in the 3<sup>rd</sup> Corps zone of responsibility by incorporating them into 3<sup>rd</sup> Corps units. District TO staffs (“*OkŠO*”) were dissolved first, while municipal defence staffs (“*OpŠO*”) remained operational until the autumn of 1993.<sup>585</sup> On 16 April 1993, the Accused Hadžihasanović gave the order to dissolve the *Zenica OkŠO* and subordinate all

<sup>577</sup> Zaim Mujezinović, T(F) p. 17450; Osman Menković, T(F) p. 14677. According to constitutional expert Kasim Trnka, it was possible to subordinate the civilian police to the army within the framework of a specific operation, but this could happen only in exceptional circumstances and required a special decision by the RBiH Presidency. Such a decision had to contain precise information on the operation and units involved. *See* Kasim Trnka, T(F) pp. 16567-16568.

<sup>578</sup> *See infra* paras. 887-890.

<sup>579</sup> DH 2088, paras. 27-29, 46 and 47. *See Blagojević* Trial Judgement, para. 85.

<sup>580</sup> DH 2088, para. 59.

<sup>581</sup> DH 2088, para. 58.

<sup>582</sup> DH 2088, paras. 66-70 and para. 234.

<sup>583</sup> P 125.

<sup>584</sup> P 210; P 403; P 200; P 507.

the 3<sup>rd</sup> Corps zone's *OpŠO* to the 3<sup>rd</sup> Corps Command. Most of these were placed under the command of operations groups.<sup>586</sup> In September 1993, the Main Staff mentioned preparations to dissolve the 3<sup>rd</sup> Corps *OpŠO* and transfer their powers to the corps and brigade commands.<sup>587</sup> Following the Accused Hadžihasanović's proposal of 20 October 1993, an order to dissolve most of the *OpŠO* operating in the 3<sup>rd</sup> Corps zone was issued on 21 October 1993.<sup>588</sup>

## 2. Operations Groups

340. In February 1993, the Accused Hadžihasanović proposed the creation of operations groups ("OG") to ensure a more rational functioning of the chain of command between the area units and the 3<sup>rd</sup> Corps Command.<sup>589</sup> Operations groups were subsequently created on 8 March 1993.<sup>590</sup> The OG *Bosanska Krajina*, headquartered in Travnik, was in charge of the 7<sup>th</sup> Brigade<sup>591</sup> and the 17<sup>th</sup> Brigade, among others. In June 1993, the 306<sup>th</sup> Brigade<sup>592</sup> and the 325<sup>th</sup> Brigade<sup>593</sup> were also placed under its command. When OG *Bosanska Krajina* was created on 8 March 1993, Mehmed Alagić was appointed its commander, a position he held until 1 November 1993 when he was appointed 3<sup>rd</sup> Corps Commander, replacing the Accused Hadžihasanović.<sup>594</sup>

341. The OG *Lašva* had its headquarters in Kakanj and the 309<sup>th</sup>, 325<sup>th</sup><sup>595</sup> and 333<sup>rd</sup> Brigades were subordinated to it. The OG *Bosna* had its headquarters in Žepče or Zavidovići<sup>596</sup> and was in command of the 318<sup>th</sup> and 319<sup>th</sup> Brigades. The OG *Zapad* had its headquarters in Bugojno and the commands of the 306<sup>th</sup><sup>597</sup>, 307<sup>th</sup>, 308<sup>th</sup>, 312<sup>th</sup> and 317<sup>th</sup> Brigades were subordinated to it. Selmo Čikotić became the Commander of OG *Zapad* on 8 March 1993.<sup>598</sup> As of 17 March 1993, OG

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<sup>585</sup> DH 610; P 192, p. 13.

<sup>586</sup> DH 2088, Annex 76; P 192; DH 153; DH 1381.

<sup>587</sup> See P 197.

<sup>588</sup> DH 1504 (Order to dissolve the following *OpŠO*: Zavidovići, Kakanj, Novi Travnik, Travnik, Vitez, Jajce, Žepče, Busovača, Gornji Vakuf).

<sup>589</sup> DH 2088, para. 482.

<sup>590</sup> P 144/DH 768.

<sup>591</sup> The 7<sup>th</sup> Brigade, however, was put back under the direct command of the 3<sup>rd</sup> Corps in mid-July 1993; see DH 1322; P 747; P 215; DH 1363.

<sup>592</sup> The 306<sup>th</sup> Brigade was subordinated to OG *Zapad* until early June 1993, after which time it was re-subordinated to OG *Bosanska Krajina*, see in particular DH 1873; C 13 dated 5 June 1993; DH 1119; DH 1322/P 710.

<sup>593</sup> The 325<sup>th</sup> Brigade was first subordinated to OG *Lašva* and then re-subordinated to OG *Bosanska Krajina* on 25 June 1993; DH 1322/P 710.

<sup>594</sup> P 209; P 278.

<sup>595</sup> The 325<sup>th</sup> Brigade was subordinated to OG *Bosanska Krajina* on 25 June 1993; DH 1322/P 710.

<sup>596</sup> P 144/DH 768. It is not clear from the evidence whether OG *Bosna* was based in Žepče or Zavidovići.

<sup>597</sup> The 306<sup>th</sup> Brigade was subordinated to OG *Zapad* until the beginning of June 1993 when it was re-subordinated to OG *Bosanska Krajina*, see in particular DH 1873; C 13, 5 June 1993; DH 1119; DH 1322/P 710.

<sup>598</sup> P 144; Zijad Čaber, T(E) p. 10351; before this position, Selmo Čikotić was deputy to the chief of staff of the intelligence service in the 3<sup>rd</sup> Corps Command; P 245.

*Visoko*, which was originally subordinated to the 1<sup>st</sup> Corps, was re-subordinated to the 3<sup>rd</sup> Corps.<sup>599</sup> In April 1993, OG *Visoko* was renamed OG *Istok*.<sup>600</sup> At the end of August 1993, OG *Istok* was re-subordinated to the 6<sup>th</sup> Corps.<sup>601</sup>

342. The 301<sup>st</sup>, 303<sup>rd</sup> and 314<sup>th</sup> Brigades answered directly to the 3<sup>rd</sup> Corps Command.<sup>602</sup>

### 3. Brigades

#### (a) 7<sup>th</sup> Brigade

##### (i) Creation

343. Following a proposal on 18 December 1992 by the Commander of the Zenica District TO staff (“*OkšO*”)<sup>603</sup> and the Accused Hadžihasanović<sup>604</sup> in the Main Staff, the 7<sup>th</sup> Brigade was created out of Muslim forces located on the Mt Vlašić plateau.<sup>605</sup> According to this document, the soldiers on Mt Vlašić insisted that the 7<sup>th</sup> Mountain Brigade be characterised as “Muslim”,<sup>606</sup> a request granted by the Chief of the Supreme Command Main Staff in the order setting up the 7<sup>th</sup> Brigade dated 19 November 1992.<sup>607</sup>

##### (ii) Composition of the 7<sup>th</sup> Brigade

#### a. Battalions

344. The headquarters and command of the 7<sup>th</sup> Brigade were in Bilimište on the outskirts of Zenica, in one of the buildings of the Technical School.<sup>608</sup> The 7<sup>th</sup> Brigade consisted of three battalions: the 1<sup>st</sup> Battalion headquartered in Travnik;<sup>609</sup> the 2<sup>nd</sup> Battalion in the Bilimište barracks in Zenica;<sup>610</sup> and the 3<sup>rd</sup> Battalion in Kakanj.<sup>611</sup> The total number of soldiers comprising all three

<sup>599</sup> DH 779; DH 780.

<sup>600</sup> DH 834 (11 April 1993); the headquarters of OG *Istok* were in Breza.

<sup>601</sup> DH 1416.

<sup>602</sup> DH 153; P 144/ DH 768.

<sup>603</sup> P 124; this document dated 18 November 1992 was signed by Witness Džemal Merdan while he was Commander of the Zenica *OkšO*. The same day he was appointed Deputy Commander of the 3<sup>rd</sup> Corps; *see* P 245.

<sup>604</sup> The Accused Hadžihasanović did not sign this document while he was 3<sup>rd</sup> Corps Commander; he was promoted to that rank the same day, *see* P 245.

<sup>605</sup> *See supra* para. 622.

<sup>606</sup> P 124.

<sup>607</sup> P 125.

<sup>608</sup> Witness ZN, T(F) p. 5276; Džemal Merdan, T(F) p. 13189.

<sup>609</sup> Naim Horo, DK 61, para. 3.

<sup>610</sup> P 693; P 724; P 562; Kasim Podžić, T(F) p. 18636.

<sup>611</sup> DK 55; Džemal Merdan, T(F) p. 13189; Joint Statement on the Agreement of Facts, Annex A.

battalions was approximately 1,500.<sup>612</sup> For the purposes of this Judgement, it is important to note that the 1<sup>st</sup> Battalion had four companies.<sup>613</sup>

345. It is not very clear who commanded the 1<sup>st</sup> Battalion from mid-December 1992 to mid-June 1993.<sup>614</sup> It even seems that this Battalion had no command in April 1993.<sup>615</sup> Starting in mid-June 1993, Witness Safet Junuzović assumed its command.<sup>616</sup> Šerif Patković was 2<sup>nd</sup> Battalion Commander from late 1992 until 21 July 1993<sup>617</sup> when he was succeeded by Kasim Podžić.<sup>618</sup> Witness Kasim Alajbegović was the first commander of the 3<sup>rd</sup> Battalion.<sup>619</sup> He left this position in February 1993<sup>620</sup> and was replaced by Nihad Čatić from 6 February 1993 until 20 June 1993.<sup>621</sup> Subsequently, Mustafa Hadžihafinzbegović took over command of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion.<sup>622</sup>

b. 7<sup>th</sup> Brigade Military Police Battalion

346. As of 15 January 1993, the 7<sup>th</sup> Brigade had a Military Police Battalion<sup>623</sup> with headquarters in the Music School in Zenica.<sup>624</sup> It seems that its commander was Jusuf Karalić.<sup>625</sup> The unit consisted of some thirty soldiers.<sup>626</sup> The double chain of command that applied to the 7<sup>th</sup> Brigade Military Police Battalion is worth noting. The fact remains that the 7<sup>th</sup> Brigade Military Police Battalion was required to execute the orders of the 7<sup>th</sup> Brigade Commander.<sup>627</sup>

<sup>612</sup> P 449; P108, para. 3.4; DH 153.

<sup>613</sup> Naim Horo, DK 61, para. 3.

<sup>614</sup> *See supra* para. 669.

<sup>615</sup> *Ibid.*

<sup>616</sup> Safet Junuzović, T(F) p. 18507 (Safet Junuzović was Commander of the 1<sup>st</sup> Battalion from 17 June 1993 to 9 December 1993).

<sup>617</sup> P 498.

<sup>618</sup> P 498; according to this document, Šerif Patković was Commander of the 2<sup>nd</sup> Battalion from 11 December 1992 to 21 July 1993. Kasim Podžić succeeded him in this position. It should be noted that Elvedin Čamdžić was Commander of the 2<sup>nd</sup> Battalion 3<sup>rd</sup> Company from 5 January 1993 until his death on 26 January 1993 (P 498; P 131; P 135).

<sup>619</sup> Kasim Alajbegović, T(F) p. 18692. After this date, he became deputy commander of the 3<sup>rd</sup> Battalion until June 1993 (T(F) pp. 18684, 18693).

<sup>620</sup> Kasim Alajbegović, T(F) pp. 18684, 18693.

<sup>621</sup> Kasim Alajbegović, T(F) p. 18709; P 498. It should be noted that in March 1993, Witness Fuad Kulović was transferred to the 3<sup>rd</sup> Battalion as an intelligence officer (Fuad Kulović, T(F) p. 18807).

<sup>622</sup> P 498.

<sup>623</sup> P 405.

<sup>624</sup> P 143; Džemal Merdan, T(F) p. 13194.

<sup>625</sup> P 727; P 706; P 708.

<sup>626</sup> P 405; P 708.

<sup>627</sup> *See infra* paras. 377-379.

(iii) 7<sup>th</sup> Brigade Commanda. Formal Appointments

347. When the 7<sup>th</sup> Brigade was being formed, Enver Hadžihasanović appointed Mahmut Karalić to the position of 7<sup>th</sup> Brigade Commander in a document dated 18 November 1992, which also appointed Asim Koričić 7<sup>th</sup> Brigade Chief of Staff.<sup>628</sup> An order by Enver Hadžihasanović dated 11 December 1992 appointed Amir Kubura to the position of Assistant Chief of Staff for Operations and Training.<sup>629</sup>

348. In an order dated 12 March 1993, Sefer Halilović, Chief of the ABiH Supreme Command Main Staff, appointed Asim Koričić the new 7<sup>th</sup> Brigade Commander while Amir Kubura became 7<sup>th</sup> Brigade Chief of Staff and Deputy Commander.<sup>630</sup> Then, in an order dated 6 August 1993, Rasim Delić, Commander of the ABiH Supreme Command Main Staff, appointed Amir Kubura 7<sup>th</sup> Brigade Commander.<sup>631</sup> Nevertheless, the evidence which will be reviewed later bears witness to the fact that Amir Kubura exercised *de facto* command of the 7<sup>th</sup> Brigade well before his formal appointment to this position.

349. The Chamber points out that Amir Kubura was a career military officer, a former officer of the JNA. After his training at the Academy for Ground Forces he served five years in the JNA in Djakovica. In 1992 he held the rank of captain.<sup>632</sup>

b. Amir Kubura's *De Facto* Command Between 12 April and 6 August 1993

350. The Prosecution argues that the Accused Kubura exercised *de facto* command of the 7<sup>th</sup> Brigade between 12 April 1993 at the latest, the date Commander Asim Koričić left, and the official appointment of the Accused Kubura to the position of 7<sup>th</sup> Brigade Commander on 6 August 1993.<sup>633</sup> It recalls the military principle whereby the highest ranking officer always heads his unit in the absence of the *de jure* commander and submitted that it was incumbent upon the Accused Kubura as 7<sup>th</sup> Brigade Deputy Commander and Chief of Staff to lead the 7<sup>th</sup> Brigade in the absence of Commander Asim Koričić.<sup>634</sup>

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<sup>628</sup> P 124.

<sup>629</sup> DK 26.

<sup>630</sup> DK 62, Annex A.

<sup>631</sup> DK 25; P 498.

<sup>632</sup> Joint Statement on the Agreement of Facts, Annex A.

<sup>633</sup> Prosecution Final Brief, para. 56.

<sup>634</sup> Prosecution Final Brief, para. 57.



351. The Defence for the Accused Kubura argues that the Prosecution did not prove that the Accused Kubura was *de facto* commander in the absence of Asim Koričić because he assumed all the functions of commander in every circumstance. It contends that the Accused Kubura signed documents as chief of staff until August 1993, was designated chief of staff and held the position of chief of staff in Bilimište.<sup>635</sup> It also contends that it was impossible for the Accused Kubura to exercise the duties of commander since he had already been appointed and carried out the functions of deputy commander and chief of staff.<sup>636</sup> Moreover, the Defence for the Accused Kubura argues that the Accused Kubura did not have effective control of the 7<sup>th</sup> Brigade security, including its military police, and recalls the double chain of command within the ABiH.<sup>637</sup>

352. The Chamber heard several witnesses who were former members of the 7<sup>th</sup> Brigade. They were asked about their knowledge regarding if and when Asim Koričić left the RBiH, and whether the Accused Kubura commanded the 7<sup>th</sup> Brigade during the absence of its official commander. The witnesses agreed that Asim Koričić left the RBiH in early April 1993. According to Witness Safet Junuzović, former commander of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, Asim Koričić left the RBiH in April 1993 and no longer exercised the command functions after his departure.<sup>638</sup> As of that moment, Amir Kubura was allegedly responsible for the daily operations of the 7<sup>th</sup> Brigade, allegedly signed all documents “for” Asim Koričić and allegedly presided at 7<sup>th</sup> Brigade Command meetings.<sup>639</sup> Witness Safet Junuzović also underlined the principle of single command.<sup>640</sup> Witness Suad Jusović, former commander of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 2<sup>nd</sup> Company, confirmed that Asim Koričić left the RBiH in April 1993.<sup>641</sup> Witness Kasim Podžić, former member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion confirmed this also.<sup>642</sup> Witness Semir Terzić, former member of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Command, recalled that Asim Koričić went abroad in early 1993, in April at the latest.<sup>643</sup> As of that time, Semir Terzić allegedly did not receive any orders or missions from Asim Koričić.<sup>644</sup> After Koričić departed, the Accused Kubura was allegedly responsible for the 7<sup>th</sup> Brigade as chief of staff.<sup>645</sup> He assigned missions and gave instructions together with his assistant commanders.<sup>646</sup>

<sup>635</sup> Kubura Defence Final Brief, para. 29.

<sup>636</sup> Kubura Defence Final Brief, para. 31.

<sup>637</sup> Kubura Defence Final Brief, paras. 35-37.

<sup>638</sup> Safet Junuzović, T(F) pp. 18499 and 18557.

<sup>639</sup> Safet Junuzović, T(F) pp. 18500, 18554, 18557, 18558 and 18559.

<sup>640</sup> Safet Junuzović, T(F) p. 18558.

<sup>641</sup> Suad Jusović, T(F) p. 18442.

<sup>642</sup> Kasim Podžić, T(F) p. 18667.

<sup>643</sup> Semir Terzić, T(F) pp. 18279 and 18293.

<sup>644</sup> Semir Terzić, T(F) p. 18279.

<sup>645</sup> Semir Terzić, T(F) p. 18280.

<sup>646</sup> Semir Terzić, T(F) p. 18280.

Witness Semir Terzić referred to him using the title “Chief of Staff”.<sup>647</sup> The written statement of Halil Brzina, former member of the 7<sup>th</sup> Brigade Command, also indicates that Asim Koričić left the 7<sup>th</sup> Brigade in April 1993.<sup>648</sup>

353. Exhibit P 410, a letter from the 7<sup>th</sup> Brigade Command dated 12 April 1993, signed “for” Commander Asim Koričić”, indicates that the Brigade Commander was away on official business.<sup>649</sup> The only exhibits indicating the presence of Asim Koričić in the RBiH after 12 April 1993 are Exhibits DK 11 dated 15 April 1993 and P 791 dated 26 April 1993. These exhibits, however, mention that Asim Koričić had been summoned by the 3<sup>rd</sup> Corps Commander, without making it possible to establish whether Koričić was in the RBiH at the time he was summoned.

354. In view of this evidence, the Chamber considers that Asim Koričić left the RBiH in early April 1993 at the latest and no longer exercised the functions of command as of that time.

355. The Chamber notes that Article 78 of the Decree-Law on Service in the RBiH Army and Article 14 of the Rules on Service in the RBiH Army regulate the exercise of command in the absence of the commander.<sup>650</sup> Article 78 of the Decree-Law on Service in the RBiH Army provides the following:

“A stand-in shall be assigned for a commander who is temporarily unable to perform his duties. A stand-in may also be appointed to a temporarily vacated establishment position. The deputising positions from paragraphs 1 and 2 of this Article may last no longer than six months, and by decision of the second-level superior -- up to one year from the date the duty is assumed.”

Article 14 of the Rules on Service in the RBiH Rules provides the following:

“If a unit-command is suddenly left without a superior officer, the command shall be taken over by his deputy or the most senior officer in that unit-command until a new commander of the unit-command is appointed by a superior commanding officer.”

356. While Article 78 of the Decree-Law on Service in the RBiH Army deals with the official appointment of a successor and is therefore not relevant here, Article 14 of the Rules on Service in the RBiH Army covers the hypothetical situation when the command of a unit is suddenly left without its hierarchical superior. When Expert Witness Vahid Karavelić appeared before the Chamber, he stated that this provision did not apply to the departure of Asim Koričić, as it was only

<sup>647</sup> Semir Terzić, T(F) p. 18286.

<sup>648</sup> DK 62, para. 6.

<sup>649</sup> P 410; “Our Brigade Commander is away on official business and is unable to accept your invitation.”

<sup>650</sup> P 120, p. 21; P 243, p. 39.

intended for an extraordinary situation in which the commander was killed or captured.<sup>651</sup> Nevertheless, during cross-examination, he admitted that someone had to command the 7<sup>th</sup> Brigade in the absence of its commander.<sup>652</sup>

357. The Chamber finds it almost unimaginable that a unit as important as the 7<sup>th</sup> Brigade was abandoned by its commander and was without a commander for four months, particularly in a time of war when it was frequently engaged in combat.<sup>653</sup> In view of the principle of single command, the Chamber also finds it difficult to believe that the command of the 7<sup>th</sup> Brigade was exercised by all members of the Command, as suggested by Witness Semir Terzić. It seems instead that it was incumbent upon the Accused Kubura, 7<sup>th</sup> Brigade Deputy Commander,<sup>654</sup> to exercise this function.<sup>655</sup>

358. These general observations notwithstanding, the Chamber considers it necessary to analyse the circumstances in this instance to determine whether the Accused Kubura was *de facto* commander of the 7<sup>th</sup> Brigade between early April and 6 August 1993.

359. To this end, the Chamber examined the exhibits signed by the Accused Kubura after the departure of Asim Koričić. First, 14 exhibits signed “for Commander Asim Koričić” between 12 April and 6 August 1993 were examined. With the exception of one,<sup>656</sup> all the exhibits signed “for Commander Asim Koričić” were signed by the Accused Kubura.<sup>657</sup>

360. To reach this conclusion, the Chamber compared the signature of the Accused Kubura with the signatures on these 14 exhibits. The Accused Kubura’s signature was identified from documents whose authenticity was never contested and which were tendered into evidence by the Defence for the Accused Kubura. These include two documents signed by him as 7<sup>th</sup> Brigade Chief of Staff,<sup>658</sup>

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<sup>651</sup> Vahid Karavelić, T(F) pp. 17933 and 17934.

<sup>652</sup> Vahid Karavelić, T(E) pp. 17992-17993; “Q. That is most likely the case, sir. But my point is simply that during that period someone had to be in command of the 7<sup>th</sup> Muslim Mountain Brigade. In the absence of the commander, if he's gone, someone must be in charge. A. Generally speaking you're absolutely right because the brigade is a living organism. A brigade are people. It is not a vehicle that you can just turn the engine off and you abandon it in the middle of the road. You have to work with people. And obviously what Amir Kubura did was what was supposed to be done and he did it and continued doing it. However, if I had been in his shoes, I would have pestered my superior and I would insist on him dealing with my status. I would have wanted things to be legal.”

<sup>653</sup> See *infra* paras. 663, 667, 670, 679-681, 685, 689, 699-707.

<sup>654</sup> DK 62, Annex A; see *supra* para. 37.

<sup>655</sup> Safet Junuzović, T(F) p. 18558; P 901, p. 28; DK 62, Annex A; Article 14 of the Rules on Service in the RBiH Army.

<sup>656</sup> P 564, 22 May 1993, signed by an unidentified person.

<sup>657</sup> P 410, 12 April 1993; P 816, 12 April 1993; P 727, 14 April 1993; P 916, 16 April 1993; P 917, 18 April 1993; P 729, 9 May 1993; P 562, 17 May 1993; P 566, 30 May 1993; P 426, 20 June 1993; P 775, 20 June 1993; P 427, 20 June 1993; P 475, 22 June 1993; P 605, 14 July 1993.

<sup>658</sup> DK 23, 10 June 1993; DK 24, 11 June 1993.

one document he signed as Commander before his official appointment in August 1993,<sup>659</sup> and three orders signed by him as 7<sup>th</sup> Brigade Commander after his official appointment in August 1993.<sup>660</sup> These documents were tendered into evidence by witnesses for the Defence for the Accused Kubura.<sup>661</sup>

361. The Chamber notes that the 13 exhibits signed “for Commander Asim Koričić” by the Accused Kubura deal with different matters. Some of them, such as a proposal for appointments within the 7<sup>th</sup> Brigade,<sup>662</sup> seem to come within the remit of a chief of staff, while others are clearly matters for a brigade commander. The Accused Kubura signed three orders engaging the 7<sup>th</sup> Brigade in combat “for Commander Asim Koričić”.<sup>663</sup>

362. Aside from the exhibits signed “for Commander Asim Koričić”, the Accused Kubura signed four exhibits as “Commander Amir Kubura” before his official appointment in August 1993. The first is Exhibit DK 41, a reconnaissance plan dated 5 June 1993, authorised by the Accused Kubura; the second is Exhibit P 472 dated 25 July 1993, an order dealing with security matters; the third is Exhibit P 503 dated 4 August 1993, an interim combat report; and the fourth Exhibit, P 502 dated 28 July 1993, deals with the organisation of the *NASR* Tactical Group (“TG”). This last exhibit is signed by the Accused Amir Kubura as both “Commander of the *NASR* TG” and “Commander of the 7<sup>th</sup> Muslim Mountain Brigade”.

363. In addition, between 12 April and 6 August 1993, the Accused Kubura signed one exhibit as TG Commander<sup>664</sup> and two exhibits as Chief of Staff. One of them, Exhibit DK 24, is a combat order.<sup>665</sup>

364. Finally, four exhibits were signed “for” the Accused Kubura during the absence of Asim Koričić, either as Chief of Staff or as TG Commander.<sup>666</sup>

365. Analysis of these exhibits shows that the Accused Kubura exercised the function of 7<sup>th</sup> Brigade Commander during the absence of the commander *de jure*, Asim Koričić. This is established by the fact that he signed 13 of the 14 exhibits “for Commander Asim Koričić” and he

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<sup>659</sup> DK 41, 5 June 1993.

<sup>660</sup> DK 43, 2 November 1993; DK 44, 4 November 1993; DK 59, 11 November 1993.

<sup>661</sup> DK 23 and DK 24 were introduced by Witness Džemal Merdan, T(F) pp. 13212 and 13213; DK 41 by Safet Junuzović, T(F) p. 18512; DK 43 and DK 44 also by Safet Junuzović, T(F) pp. 18527-18535; DK 59 by Osman Hasanagić, T(F) pp. 18876 and 18877.

<sup>662</sup> P 475.

<sup>663</sup> P 916; P 917; P 729.

<sup>664</sup> P 420, 5 June 1993.

<sup>665</sup> DK 23, 10 June 1993; DK 24, 11 June 1993.

<sup>666</sup> P 577, 6 June 1993; P 811, 18 June 1993; P 500, 7 July 1993; P 501, 20 July 1993.

signed “Commander Amir Kubura” well before his official appointment on 6 August 1993. Furthermore, several exhibits signed either by or for Amir Kubura are combat orders: exhibits P 916 and P 917 regarding combat in the Zenica area in mid-April 1993, and Exhibits P 420 and P 577 regarding combat in the Ovnak area at the beginning of June 1993. Combat order DK 24 dated 11 June 1993 is another example.

366. This finding is confirmed by a document dated 23 July 1993, in which Mahmut Karalić proposes that the 3<sup>rd</sup> Corps Command appoint the Accused Kubura to the position of 7<sup>th</sup> Brigade Commander.<sup>667</sup> One sentence written by hand indicates that the commander of the 7<sup>th</sup> Brigade is abroad and unable to return. It is proposed to appoint the designated commander, the Accused Kubura, after the commander returns.<sup>668</sup>

367. Furthermore, evidence from international observers indicates that the Accused Kubura was perceived as the commander of the 7<sup>th</sup> Brigade during the period in question.<sup>669</sup>

368. The influence that other members of the 7<sup>th</sup> Brigade Command had on the operations of the 7<sup>th</sup> Brigade after the departure of Asim Koričić should also be examined, in other words, whether the command function was shared.<sup>670</sup> When examining the exhibits from the period 12 April to 6 August 1993, the Chamber was able to identify the signature of another person. This unknown person signed one document “for” Asim Koričić during his absence,<sup>671</sup> and three documents “for” Amir Kubura in June and July 1993.<sup>672</sup> Nevertheless, given the number of exhibits signed by the Accused Kubura, this other person seems to have had only secondary importance.

369. There is also cause to mention Mahmut Karalić, commander *de jure* of the 7<sup>th</sup> Brigade from 18-19 November 1992 to 12 March 1993, who played an important role within the 7<sup>th</sup> Brigade, even after his command ended. He signed Exhibit P 436 dated 23 July 1993, which is a proposal addressed to the 3<sup>rd</sup> Corps to appoint several people to command positions in the 7<sup>th</sup> Brigade. In the English version of this exhibit, the author is denoted as “Brigade Commander Mahmut Karalić” although the original calls him “Brigade Emir Mahmut Karalić”. The same observation can be made about Exhibit P 558 dated 18 May 1993. The English version mentions Mahmut Karalić, “the *emir* /Commander/ of the 7<sup>th</sup> Muslim Brigade” whereas the original mentions only “*emir* of the 7<sup>th</sup> Muslim Brigade”. The Chamber considers this to be a translation error, since the term “emir” refers

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<sup>667</sup> P 436.

<sup>668</sup> P 436; “The commander is on an authorised trip abroad; since he cannot return, this is delayed, and on his return, the appointed commander will be appointed within the Corps.”

<sup>669</sup> P 99; P 163; P 233; *see also* P 791.

<sup>670</sup> Kubura Defence Final Brief, para. 30.

<sup>671</sup> P 564, 22 May 1993.

<sup>672</sup> P 811, 18 June 1993; P 500, 7 July 1993, and P 501, 20 July 1993.

to a religious counsellor and not the commander of a unit.<sup>673</sup> Consequently, these two exhibits raise no doubts about the fact that the Accused Kubura acted alone as the Commander of the 7<sup>th</sup> Brigade in the absence of Asim Koričić.

370. Based on the above, the Chamber concludes that it has been established beyond a reasonable doubt that the Accused Kubura was *de facto* Commander of the 7<sup>th</sup> Brigade as of 12 April 1993 and until the time he was officially appointed to the position of commander on 6 August 1993.

371. The Chamber furthermore considers that as *de facto* commander, the Accused Kubura exercised effective control over the entire 7<sup>th</sup> Brigade, including its security organ and military police.

372. Consequently, following combat in Bila Valley in early June 1993, Amir Kubura prohibited members of the 7<sup>th</sup> Brigade from arresting civilians and destroying or plundering public and private property.<sup>674</sup> He also gave the order to respect the Geneva Conventions and to take firm measures against soldiers violating these rules, and ordered that written reports be submitted to him in this regard.<sup>675</sup>

373. Exhibits P 475, P 544 and P 429 show that following Amir Kubura's proposal, Nihad Catić, Commander of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion, was relieved of his duties on 23 June 1993 for having failed to execute an order to prevent any offences or plundering. The Accused Kubura also issued an order to his assistant commander for security in which he detailed which measures were to be taken to identify the perpetrators of disciplinary offences in the 3<sup>rd</sup> Battalion.<sup>676</sup>

374. The minutes of a meeting of 7<sup>th</sup> Brigade battalion commanders also demonstrate that Amir Kubura was aware of disciplinary problems in the 7<sup>th</sup> Brigade and that he was responsible for deciding the procedure to follow in cases of desertion.<sup>677</sup>

375. Orders P 816 and P 562 show that the security organ in the 7<sup>th</sup> Brigade was subordinated to the 7<sup>th</sup> Brigade Commander, the Accused Kubura in this instance.

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<sup>673</sup> Kasim Alajbegović, T(F) p. 18742; P 498.

<sup>674</sup> P 427; *see also* P 426.

<sup>675</sup> P 427; "5. Take firm measures against anyone violating the above — from detention to criminal prosecution in military and special courts. Written reports regarding the above should be submitted to me."

<sup>676</sup> P 472.

<sup>677</sup> P 500, p. 3; "Amir KUBURA: You need to build and strengthen the military formation and obedience of your subordinates in this field. The main reason why we met today is desertion. At the next briefing, bring lists of soldiers and officers who have left their positions without authorisation. The following procedure is to be applied while bringing in soldiers who have left their unit without authorisation: N. Talić receives the order to bring them in, the battalion commander interviews them and brings them to me, and I will decide what will be done next."

376. Witness Osman Hasanagić, former legal officer in the 7<sup>th</sup> Brigade Command, a position he held as of 7 July 1993, stated that he submitted proposals to the Accused Kubura concerning security measures to take against members of the 7<sup>th</sup> Brigade and that the Accused Kubura signed them.<sup>678</sup>

377. Finally, the Chamber notes that the Rules for the Work of the Military Security Service within the RBiH Armed Forces states that the members of the Security Service are subordinated to the commander of their unit:

“Members of the Military Security Service shall be responsible for their work to the commander of the unit in which they serve.”<sup>679</sup>

378. Similarly, the Regulations of the Work of the Military Police within the RBiH Armed Forces state that the military police are subordinated to the commander of the unit to which they are attached:

“7. The military police are commanded and controlled by the senior officer of the military unit or institution incorporating the unit of the military police, to which it is attached.

8. Professionally, the military police are headed by the senior officer of the military security service in which the unit of the military police is incorporated or to which it is attached. He is responsible for the combat readiness of the military police unit. Decisions on the combat use of a military police unit shall be taken by the unit commander at the proposal of the competent senior officer of the military security service.”<sup>680</sup>

379. This has been confirmed by witnesses.<sup>681</sup>

380. It follows that the Accused Kubura was authorised to handle disciplinary matters and it was incumbent upon him to ensure respect for the Geneva Conventions. The Chamber rejects the argument of the Defence for the Accused Kubura that the assistant commander for security in the 7<sup>th</sup> Brigade Command answered to the 3<sup>rd</sup> Corps security organ alone. It concludes that the assistant commander for security also answered to the Accused Kubura as *de facto* Commander of the 7<sup>th</sup> Brigade.

(iv) Superior-Subordinate Relationship

381. From its creation in November 1992 until April 1993, the 7<sup>th</sup> Brigade was directly subordinated to the 3<sup>rd</sup> Corps Command.<sup>682</sup> Then, with the creation of operations groups, it was

<sup>678</sup> Osman Hasanagić, T(F) pp. 18883 and 18884.

<sup>679</sup> P 244, Article 9.

<sup>680</sup> P 328, Articles 7 and 8.

<sup>681</sup> Zaim Mujezinović, T(E) pp. 17413-17415; Izet Mahir, T(E) pp. 16784 and 16785.

subordinated to OG *Bosanska Krajina* from mid-April 1993 until mid-July 1993.<sup>683</sup> Subsequently, the 7<sup>th</sup> Brigade once again received its orders directly from the 3<sup>rd</sup> Corps Staff.<sup>684</sup>

(b) 303<sup>rd</sup> Brigade

382. In December 1992, the 1<sup>st</sup> Brigade from Zenica became the 303<sup>rd</sup> Mountain Brigade.<sup>685</sup> It was based in Zenica<sup>686</sup> and had 1,846 soldiers.<sup>687</sup> Džemal Najetović was appointed Commander of the 303<sup>rd</sup> Brigade on 18 November 1992.<sup>688</sup> He was then replaced in this position by Suad Hasanović.<sup>689</sup>

383. An order dated 30 December 1992 engaged this brigade in the battle against the siege of Sarajevo and to this end re-subordinated it temporarily to OG *Visoko* of the ABiH 1<sup>st</sup> Corps.<sup>690</sup> Similarly, during a joint action on 16 July 1993, some units of the 303<sup>rd</sup> Brigade were re-subordinated to OG *Bosna* on that date.<sup>691</sup> With the exception of several limited operations, however, the brigade seems to have been independent and subordinated directly to the 3<sup>rd</sup> Corps Command during the period in question.<sup>692</sup>

384. The 303<sup>rd</sup> Brigade had a military police company also based in Zenica. One part of the company was in the Mechanical Engineering School and the other was based in town in the offices of *Jugoplastika*.<sup>693</sup> According to Witness Izet Mahir, the 303<sup>rd</sup> Brigade Military Police Company was comprised of 27 to 31 men.<sup>694</sup>

(c) 17<sup>th</sup> Brigade

385. The 17<sup>th</sup> Brigade was created on 19 November 1992 out of two existing units: the 1<sup>st</sup> and 7<sup>th</sup> Brigades from Krajina.<sup>695</sup> Its headquarters were in Travnik in the former JNA Barracks.<sup>696</sup> It

<sup>682</sup> P 192; Džemal Merdan, T(F) pp. 13191, 13192.

<sup>683</sup> P 141, P 142, P 144, DH 1322, P 747, P 215; DH 1363.

<sup>684</sup> DH 1322, P 747, P 215; DH 1363.

<sup>685</sup> Sreto Tomašević, T(F) p. 14168.

<sup>686</sup> C 16, 11 July 1993.

<sup>687</sup> P 330.

<sup>688</sup> DH 497; P 330.

<sup>689</sup> Witness Sreto Tomasević was the chief of staff of this brigade from December 1992 to January 1993 (Sreto Tomasević, T(F) p. 14184).

<sup>690</sup> DH 1704.

<sup>691</sup> DH 1313.

<sup>692</sup> P 144; DH 153; P 372; DH 1426.

<sup>693</sup> Semir Sarić, T(F) p. 17336; Izet Mahir, T(E) p. 16814.

<sup>694</sup> Izet Mahir, T(E) p. 16814.

<sup>695</sup> P 125, P 378, DH 446, DH 458; DH 493.

<sup>696</sup> Fikret Čuskić, T(F) p. 12050; C 16.



consisted primarily of volunteers and refugees from Krajina.<sup>697</sup> It was a “manoeuvre” brigade within the 3<sup>rd</sup> Corps and took part in actions all over the territory of Bosnia and Herzegovina.<sup>698</sup> From November 1992 to April 1993, it had 900 men.<sup>699</sup> In view of certain evidence, it seems to have consisted of four battalions.<sup>700</sup>

386. In December 1992, the 17<sup>th</sup> Brigade was subordinated to OG *Visoko* of the ABiH 1<sup>st</sup> Corps.<sup>701</sup> In January 1993, the 17<sup>th</sup> Brigade was put directly under 3<sup>rd</sup> Corps Command.<sup>702</sup> When OG *Bosanska Krajina* was created, the 17<sup>th</sup> Brigade was subordinated to it.<sup>703</sup>

387. From the date the 17<sup>th</sup> Brigade was created until 7 April 1994, Witness Fikret Čuskić was its Commander.<sup>704</sup> Esad Grudić was 17<sup>th</sup> Brigade Assistant Commander for Security.<sup>705</sup>

388. At the end of June 1993, when the OG *Bosanska Krajina* Military Police Company was created, most of the soldiers from the 17<sup>th</sup> Brigade military police were transferred to the military police company of OG *Bosanska Krajina*,<sup>706</sup> which was also based in the former JNA Barracks in Travnik.<sup>707</sup>

(d) 306<sup>th</sup> Brigade

389. The 306<sup>th</sup> Brigade was formed in November and December 1992<sup>708</sup> and consisted of four battalions, a military police platoon<sup>709</sup> and several other units.<sup>710</sup> In March 1993, the brigade had 1,974 soldiers.<sup>711</sup>

390. The brigade’s headquarters were three kilometres from Han Bila, in the mine administration building in Rudnik.<sup>712</sup> The 1<sup>st</sup> Battalion was based in the elementary school in Mehurići. The 2<sup>nd</sup>

<sup>697</sup> Fikret Čuskić, T(F) p. 12052.

<sup>698</sup> Fikret Čuskić, T(F) p. 12052.

<sup>699</sup> C 16 of 11 July 1997 (*sic*), p. 173.

<sup>700</sup> DH 897; DH 1940; C 11 dated 5 September 1993; DH 1246.

<sup>701</sup> DH 1704, DH 779; DH 780.

<sup>702</sup> C 19 (January 1993).

<sup>703</sup> P 142; P 141 (proposal by the Accused Hadžihasanović to create OG *Bosanska Krajina*).

<sup>704</sup> Fikret Čuskić, T(F) p. 12050.

<sup>705</sup> DH 1246; DH 1392; DH 1506.

<sup>706</sup> DH 1922; DH 1920; on 26 June 1993, Witness Osman Menković was also transferred from his position in the 17<sup>th</sup> Brigade military police and attached to the military police of OG *Bosanska Krajina*, T(F) pp. 14665-14666.

<sup>707</sup> Osman Menković, T(F) p. 14674; Witness HE, T(F) pp. 17020-17021.

<sup>708</sup> Munir Karić, T(F) p. 11438; the brigade was operational in December 1993, *see* P 403.

<sup>709</sup> This military police platoon included some 29 police, Asim Delalić, T(F) pp. 16372, 16350.

<sup>710</sup> DH 730; DH 1749; Esed Sipić, T(F) p. 14749.

<sup>711</sup> DH 1749.

<sup>712</sup> Derviš Suljić, T(E) p. 11304; Esed Sipić, T(F) p. 14749; Dragan Radić, T(F) p. 3539; Munir Karić, T(F) p. 11444; Ferid Jasarević, T(F) p. 11543; DH 572.

Battalion was stationed in Krpeljići. The 3<sup>rd</sup> Battalion was deployed in the elementary school in Han Bila. The 4<sup>th</sup> Battalion was in the village of Višnjevo.<sup>713</sup>

391. From November 1992 until March 1993, the 306<sup>th</sup> Brigade was subordinated to the 3<sup>rd</sup> Corps.<sup>714</sup> In March 1993, when operations groups were created, the 306<sup>th</sup> Brigade was subordinated to OG *Zapad*.<sup>715</sup> Then, according to certain witnesses, since the zone of responsibility of the 306<sup>th</sup> Brigade was too broad,<sup>716</sup> it was subordinated to OG *Bosanska Krajina* in early<sup>717</sup> June 1993.<sup>718</sup>

392. From 18 November 1992 until mid-August 1993<sup>719</sup> Witness Esed Sipić headed the 306<sup>th</sup> Brigade.<sup>720</sup> Remzija Šiljak was Chief of Staff until December 1993.<sup>721</sup> Witness Asim Delalić was 306<sup>th</sup> Brigade Assistant Commander for Security.<sup>722</sup> Witness Munir Karić was 306<sup>th</sup> Brigade Assistant Commander for Logistics.<sup>723</sup> From November 1992 until early November 1993, Witness Halim Husić was 306<sup>th</sup> Brigade Assistant Commander for Moral Guidance, Information, Propaganda and Religious Affairs.<sup>724</sup>

(e) 307<sup>th</sup> Brigade

393. This brigade was created in late 1992.<sup>725</sup> It was based in Bugojno<sup>726</sup> and consisted of at least four battalions<sup>727</sup> and a military police unit.<sup>728</sup> The evidence suggests that the 307<sup>th</sup> Brigade also had anti-sabotage units.<sup>729</sup>

<sup>713</sup> Esed Sipić, T(F) p. 14749.

<sup>714</sup> Esed Sipić, T(F) p. 14754.

<sup>715</sup> C 18, 10 March 1993; Esed Sipić, T(F) p. 14755.

<sup>716</sup> DH 1043; DH 1873.

<sup>717</sup> DH 1873; C 13, 5 June 1993; DH 1119.

<sup>718</sup> According to Witness Esed Sipić, the 306<sup>th</sup> Brigade was re-subordinated to OG *Bosanska Krajina* in mid-June 1993, Esed Sipić, T(F) pp. 14755, 14817; according to Witness HE, the 306<sup>th</sup> Brigade was part of OG *Bosanska Krajina* at the end of June 1993 and not at the beginning of June 1993; Witness HE, T(F) p. 16980.

<sup>719</sup> Esed Sipić, T(F) p. 14800; DH 776/DK 62, Annex A.

<sup>720</sup> DH 497.

<sup>721</sup> Remzija Šiljak, T(F) p. 10643; DH 497; DH 776/DK 62, Annex A; P 656.

<sup>722</sup> Asim Delalić, T(F) p. 16348; Asim Delalić took up his duties as soon as the 306<sup>th</sup> Brigade was formed on 22 December 1992 and remained in this position until 14 February 1996, Asim Delalić, T(F) pp. 16381-16382; DH 547; DH 723; DH 803; DH 1392; Witness Asim Delalić testified on 18 February 2005 for the Hadžihanović Defence.

<sup>723</sup> Munir Karić, 11425; DH 723.

<sup>724</sup> Halim Husić, T(F) pp. 10864, 10877.

<sup>725</sup> DH 497.

<sup>726</sup> P 144/DH 768; C 16, 11 July 1993 (the date on the document is "11 July 1997", but the war diary C 16 describes only one period in 1993); P 378.

<sup>727</sup> P 768; C 16, dated 11 July 1993 (the date on the document is "11 July 1997", but the war diary C 16 describes only one period in 1993).

<sup>728</sup> DH 708; C 16, dated 31 May 1993.

<sup>729</sup> P 768.

394. From 18 November until the end of October 1993, the 307<sup>th</sup> Brigade was headed first by Tahir Granić,<sup>730</sup> and then by Farouk Aganović, aka Jupi.<sup>731</sup> As of 8 March 1993, the 307<sup>th</sup> Brigade was subordinated to the OG *Zapad*.<sup>732</sup>

(f) 314<sup>th</sup> Brigade

395. The 314<sup>th</sup> Brigade was created towards the end of 1992.<sup>733</sup> In December 1992, several units of the Mehurići detachment joined the ranks of the 314<sup>th</sup> Brigade, in particular the Patriotic League of Gluha Bukovica, a company from Zagrade and a platoon from Skomorje.<sup>734</sup> The 314<sup>th</sup> Brigade was based in Zenica<sup>735</sup> and consisted of four battalions.<sup>736</sup> Between November 1992 and April 1993 it had 1,800 soldiers.<sup>737</sup> On 8 October 1993, the 314<sup>th</sup> Brigade, which was a motorised brigade, became a mountain brigade and lost some of its men.<sup>738</sup>

396. The 314<sup>th</sup> Brigade was an “independent” brigade subordinated to 3<sup>rd</sup> Corps Command.<sup>739</sup> On 16 December 1993, the 314<sup>th</sup> Brigade 1<sup>st</sup> Battalion was subordinated to OG *Visoko* from the ABiH 1<sup>st</sup> Corps.<sup>740</sup> On 16 July 1993, the 314<sup>th</sup> Brigade 1<sup>st</sup> Battalion was subordinated to OG *Bosna*.<sup>741</sup>

397. From late 1992 until the end of October 1993, Fuad Smailbegoivić was Commander of the 314<sup>th</sup> Brigade.<sup>742</sup> Witness Hamid Suljić was Commander of the 4<sup>th</sup> Battalion 3<sup>rd</sup> Company from December 1992 until 11 May 1993. Then he was appointed 314<sup>th</sup> Brigade Assistant Commander for Intelligence.<sup>743</sup>

<sup>730</sup> DH 497; P 180.

<sup>731</sup> DH 1522; P 180; Tomislav Mikulić, T(F) p. 4494.

<sup>732</sup> P 144/DH 768.

<sup>733</sup> The Chamber did not receive the document establishing this brigade; the brigade is first mentioned in a document dated 18 November 1993, DH 497.

<sup>734</sup> DH 526; instead of joining the 306<sup>th</sup> Brigade, the Patriotic League of Gluho Bukovica preferred to join the 314<sup>th</sup> Brigade: Remzija Šiljak, T(F) p. 10474; Asim Delalić, T(F) p. 16348; Esed Sipić, T(F) pp. 14744-14745; Hamid Suljić T(F) p. 11904.

<sup>735</sup> Derviš Suljić, T(F) p. 11349; Halim Husić, T(F) p. 10878; C 16, 11 July 1993.

<sup>736</sup> DH 1037; C 15, dated 11 April 1993; Hamid Suljić, T(F) p. 11877.

<sup>737</sup> C 16, p. 174; DH 1620 (this exhibit indicates that in May 1993 the number increased to 2,000 men).

<sup>738</sup> DH 1482; Osman Menković, T(F) pp. 14711-14712; according to Witness Osman Menković, a motorised brigade was a formation with a regulation military police platoon, Osman Menković, T(F) pp. 14711-14712.

<sup>739</sup> DH 153; DH 773; P 197.

<sup>740</sup> DH 1645; DH 1699; DH 1700; on the subordination of OG *Visoko* to the 1<sup>st</sup> Corps, see DH 779; DH 780.

<sup>741</sup> DH 1313.

<sup>742</sup> DH 497; P 656; P 330.

<sup>743</sup> Hamid Suljić, T(F) pp. 11905-11906.

398. The 314<sup>th</sup> Brigade had a military police platoon that was based in Zenica at the Mechanical Engineering School where the 303<sup>rd</sup> Brigade Military Police Platoon was also based.<sup>744</sup> According to Witness Izet Mahir, the 314<sup>th</sup> Brigade Military Police Platoon had from 27-31 men.<sup>745</sup>

(g) El Mujahedin Detachment

399. This unit was created by Rasim Delić's order dated 13 August 1993, following a proposal by the Accused Hadžihasanović. In another section of this Judgement, the Chamber establishes that this detachment was indeed created, that it was directly subordinated to the 3<sup>rd</sup> Corps, and that it was based in Zenica, while its training camp was located in Mehurići. During combat operations in September, October and December 1993, however, the unit was placed under the command of OG *Bosanska Krajina*. It consisted of foreign volunteer combatants and was initially headed by Abu Haris.<sup>746</sup>

**C. Difficulties Confronting the 3<sup>rd</sup> Corps**

1. Massive Influx of Refugees

400. Many witnesses mentioned the difficulties confronting the ABiH and particularly the 3<sup>rd</sup> Corps as soon as armed conflicts broke out on the territory of Bosnia and Herzegovina. First of all, because the VRS ("Army of Republika Srpska") had occupied its territory, there was a massive influx of refugees to the 3<sup>rd</sup> Corps zone of responsibility. Thirty thousand refugees arrived in the municipality of Travnik, primarily from Banja Luka, Prijedor and Kotor Varoš.<sup>747</sup> The town of Zenica took in the largest number of refugees, up to 50,000 during the period in question.<sup>748</sup> In the middle of 1992, thousands of Muslim refugees<sup>749</sup> who had been expelled from Donji Vakuf, Prozor and other regions, arrived in Bugojno.<sup>750</sup>

401. In addition, owing to combat in Central Bosnia and roads that were closed, it was difficult to get food supplies.<sup>751</sup> It should be noted that while Muslim refugees fled to the municipalities of Travnik and Zenica in order to escape the fighting, the Croatian population deserted certain villages

<sup>744</sup> Semir Sarić, T(F) p. 17336; Izet Mahir, T(F) p. 16813.

<sup>745</sup> Izet Mahir, T(E) p. 16814.

<sup>746</sup> See *infra* paras. 814 and 438.

<sup>747</sup> Ahmed Kulenović, T(F) p. 13877.

<sup>748</sup> DH 1593; Semir Sarić, T(F) p. 17315; Martin Garrod, T(F) p. 8285; Ramiz Džaferović, T(F) p. 14210.

<sup>749</sup> According to Witness Tomislav Mikulić, in April 1992 some 12,000 Bosnian refugees arrived in Bugojno from Donji Vakuf; in October 1992, a large number of refugees arrived in Bugojno from Jajce, Tomislav Mikulić, T(F) p. 4491.

<sup>750</sup> Zdravko Žulj, T(F) p. 3633; Tomislav Mikulić, T(F) p. 4491.

<sup>751</sup> DH 1009.

of the Bila and Lašva Valleys.<sup>752</sup> Some refugees had problems with the local population<sup>753</sup> and moved into the Croats' abandoned houses.<sup>754</sup> Although feeding and lodging refugees was the responsibility of the civilian authorities, they were unable to fulfil this role properly because of the influx of such a large number.<sup>755</sup> Furthermore, many battalions were made up of refugees.<sup>756</sup>

## 2. Problematic Organisation and Insufficient Equipment

402. Many witnesses described the ABiH's difficulties because combat had already started in the territory of Bosnia and Herzegovina before the Army was set up. From the viewpoint of military equipment, supplies and manpower, the ABiH was clearly at a disadvantage compared to the HVO, which benefited from Croatia's support.<sup>757</sup> These issues will be considered in several parts of the Judgement.

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<sup>752</sup> A report from the 3<sup>rd</sup> Corps security organ dated 13 June 1993 mentions that 9,000 Muslim refugees arrived in Vareš, whereas 17,000 Croats left Vareš on 23 June 1993 (DH 1913).

<sup>753</sup> DH 2088, para. 430.

<sup>754</sup> Jozo Marković, T(F) p. 4434 (example of Šušanj); DH 1008.

<sup>755</sup> Mirsad Mešić, T(F) pp. 12890-12891. Osman Hasanagić, T(F) pp. 18881-18882.

<sup>756</sup> See in particular the 306<sup>th</sup> Brigade; Asim Delalić, T(F) p. 16350 and Fahir Čamdžić, T(F) p. 11698; regarding the 17<sup>th</sup> Brigade; Fikret Čuskić, T(F) p. 12052 and Tomislav Rajić, T(F) p. 2869; Witness Osman Hasanagić explained that most of the soldiers in the 7<sup>th</sup> Brigade were refugees. Since there were no barracks to accommodate them, he had to contact the civilian authorities to find lodgings. See Osman Hasanagić, T(F) pp. 18881-18882.

<sup>757</sup> Alistair Duncan, T(F) pp. 736-7365; Mark Bower, T(F) pp. 5183-5184; Peter Williams, T(F) p. 5950; Semir Sarić, T(F) p. 17315; Edib Zlotrg, T(F) p. 14990; Haris Jusić, T(F) p. 11279; DH 831.

## V. MUJAHEDIN

### A. Introduction

403. This case is the first before the Tribunal in which the Prosecution alleges the participation of foreign mujahedin or foreign Muslim fighters in the crimes committed in Central Bosnia during 1992 and 1993. The Chamber is aware that the mujahedin phenomenon may well incite interest, particularly in view of the events in the world after 1993. The Chamber, however, will deal with their presence and alleged participation in the events in Central Bosnia only insofar as they impact the charges against the two Accused.

404. The Indictment alleges the participation of foreign mujahedin in some of the crimes with which the Accused are charged: murder, cruel treatment, destruction and plundering in the vicinity of Travnik, Zenica and in the Bila Valley in Central Bosnia.

405. The mujahedin's participation in these crimes will be discussed in the sections of the Judgement dealing with the crimes, whereas this chapter deals with the mujahedin's subordination to the Accused. The Chamber will examine the relationship between the Accused and the mujahedin. To this end, it will first analyse the period preceding the creation of the *El Mujahedin* detachment as a 3<sup>rd</sup> Corps unit on 13 August 1993. It will then examine the relationship between the mujahedin and the 3<sup>rd</sup> Corps after the creation of this detachment. The Chamber appreciates that an analysis of evidence dealing with the relevant crimes is necessary in order to answer the question of whether the mujahedin were subordinated to the Accused. The question will be treated from two different aspects.

406. Before the Chamber considers the relationship between the mujahedin and the 3<sup>rd</sup> Corps at the material time, it will clarify certain points concerning the arrival of the mujahedin in Central Bosnia in 1992, their goals and activities, their camps and their main leaders.

#### 1. Arrival and Country of Origin

##### (a) Definition of the Term "Mujahedin"

407. An examination of different exhibits contemporary to the material time reveals that the term "mujahedin" was not used uniformly. In some cases, the term "mujahedin" was used to designate foreign Muslim fighters coming from Arab countries. In other cases, particularly as understood by Croatian witnesses who appeared before the Chamber, the "mujahedin" also included local Bosnian

fighters who joined the foreigners from Arab countries and tried to resemble them, especially in their manner of dress. The HVO (Croatian Defence Council), however, often used the term “mujahedin” or MOS (Muslim Armed Forces) to designate the ABiH (Army of Bosnia-Herzegovina) or even the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Brigade.

408. The Indictment uses the term “mujahedin” solely in reference to the foreign Muslim fighters.<sup>758</sup>

409. The Chamber will use the term “mujahedin” to designate both foreign Muslim fighters and the locals who joined them. As explained below,<sup>759</sup> the group of fighters based in Poljanice Camp included locals in its ranks – former members of the Travnik Muslim Forces, deserters from the ABiH, those who had never joined the army, and even minors. The terms “foreign mujahedin” or “foreign Muslim fighters” will be used to designate foreign fighters who came to Central Bosnia in 1992 and 1993.

410. Many documents, particularly those from the HVO, use the term “Muslim Armed Forces” (MOS) or “Muslim forces”. Like the term “mujahedin”, “MOS” is used in various ways. It is used to designate the ABiH<sup>760</sup> and to designate a specific unit of the ABiH, the 7<sup>th</sup> Brigade.<sup>761</sup> Finally, some exhibits originating in the ABiH or from international observers mention the term “MOS” to make a distinction between the mujahedin and the ABiH.<sup>762</sup> For the purposes of the Judgement, the Chamber shall not use the term “MOS”.

(b) Arrival of Foreign Mujahedin in Central Bosnia

411. Witnesses for both the Prosecution and Defence agreed that the foreign mujahedin began to arrive in Zenica and Travnik during 1992, particularly in the second half of the year.<sup>763</sup>

412. At that time, the borders of the RBiH (Republic of Bosnia and Herzegovina) were controlled by the organs of Republika Srpska or HVO authorities,<sup>764</sup> which made it very difficult for the RBiH legal authorities, more specifically the MUP (Ministry of the Interior), to control the entry and

<sup>758</sup> See e.g. paras. 18-20 of the Indictment.

<sup>759</sup> See *infra* paras. 419-426.

<sup>760</sup> P 625; P 632; P 561; P 637; P 805; P 903.

<sup>761</sup> P 543.

<sup>762</sup> DH 167.7; DH 207; DH 208.

<sup>763</sup> Witness BA, T(F) p. 715; Franjo Križanac, T(F) pp. 1090 and 1091; Ivanka Tavić, T(F) p. 1155; Witness AH, T(F) p. 1244; Witness XC, T(F) p. 1679; Nenad Bogeljić, T(F) pp. 2096 and 2097; Ivo Fišić, T(F) p. 2238; Witness ZA, T(F) p. 2311; Dalibor Adžaić, T(F) p. 2394; Tomislav Rajić, T(F) p. 2807; Živko Totić, T(F) p. 3128; Sulejman Ribo, T(F) p. 11066; Enes Ribić, T(F) p. 11378; Munir Karić, T(F) p. 11435.

<sup>764</sup> Režib Begić, T(F) p. 12493.

movements of foreigners in the RBiH.<sup>765</sup> Foreign mujahedin reached Bosnia via the Republic of Croatia and via Herzegovina where the HVO had established power.<sup>766</sup> They frequently arrived as members of humanitarian organisations and did not register with the RBiH authorities.<sup>767</sup>

(c) Country of Origin and Physical Appearance of Foreign Mujahedin

413. Most of the foreign mujahedin came from the countries of North Africa, the Near East and the Middle East, i.e. Algeria, Afghanistan, Saudi Arabia, Qatar, Egypt, Iran, Pakistan, Tunisia, Turkey and Yemen.<sup>768</sup> Some also came from European countries, but how many is not known.<sup>769</sup>

414. Foreign mujahedin were easily recognisable by their traditional clothing and dark complexion.<sup>770</sup> They had long beards and wore turbans or hats. Some wore camouflage uniforms or parts of camouflage uniforms, while others wore long white robes.<sup>771</sup> There were also those with scarves around their head and neck.<sup>772</sup> Most of them did not know the Bosnian language and spoke only Arabic.<sup>773</sup> The foreign mujahedin carried automatic rifles and rocket launchers. Some had sabres or long knives.<sup>774</sup> Some witnesses recognised the insignia the foreign mujahedin wore on their shoulders.<sup>775</sup>

2. Goals and Activities

415. According to the evidence characterising the position of the foreign mujahedin, the term “mujahedin” refers to Muslims fighting a *jihad*, or holy war.<sup>776</sup> The foreign mujahedin went to Bosnia in order to help their Muslim brothers defend themselves against the Serbian aggressor<sup>777</sup> and intended to leave the country once peace had been re-established.<sup>778</sup> According to these same

<sup>765</sup> Režib Begić, T(F) p. 12492.

<sup>766</sup> Džemal Merdan, T(F) p. 13146; Witness HF, T(F) p. 17208; P 220.

<sup>767</sup> Režib Begić, T(F) p. 12494; P 626.

<sup>768</sup> P 482, P 112, P 352; Mark Bower, T(F) pp. 5136 and 5137; Guy Chambers, T(F) p. 6036.

<sup>769</sup> P 368, P 482.

<sup>770</sup> Franjo Križanac, T(F) p. 1090; Munir Karić, T(F) p. 11435; Anda Pavlović, T(F) p. 1306; Witness XC, T(F) p. 1679; Witness XD, T(F) p. 1746; Ivo Fišić, T(F) p. 2238; Tomislav Rajić, T(F) p. 2813; Mirko Ivkić, T(F) p. 4578.

<sup>771</sup> Witness AH, T(F) p. 1244; Tomislav Rajić, T(F) pp. 2812 and 2813; Dalibor Adžaić, T(F) p. 2395; Ivo Mršo, T(F) p. 2484; Witness ZR, T(F) p. 3070; Živko Totić, T(F) p. 3176; Mirko Ivkić, T(F) p. 4575; Vaughan Kent-Payne, T(F) pp. 4796, 4808 and 4889; Witness ZO, T(F) p. 7745; Andrew Hogg, T(F) pp. 7868 and 7869; P 92 (under seal), para. 4.

<sup>772</sup> Franjo Križanac, T(F) pp. 1091, 1116 and 1104; Witness AH, T(F) p. 1244; Witness XA; Tomislav Rajić, T(F) p. 2813; Mirko Ivkić, T(F) p. 4578.

<sup>773</sup> Katica Kovačević, T(F) p. 906; Witness AH, T(F) p. 1244; Vaughan Kent-Payne, T(F) p. 4778.

<sup>774</sup> Witness XA, T(F) p. 1421; Witness XD, T(F) p. 1747; Mirko Ivkić, T(F) pp. 4575 and 4576; Cameron Kiggell, T(F) p. 4981; Mark Bower, T(F) p. 5137.

<sup>775</sup> Witness XD, T(F) pp. 1748-1750, recognised insignia numbers 1 and 22 on Exhibit P 4; Cameron Kiggell, T(F) p. 4981, recognised insignia numbers 9 and 15 on Exhibit P 4.

<sup>776</sup> P 112, pp. 2 and 6; P 482, p. 9.

<sup>777</sup> P 112, p. 3; P 482, p. 9.

<sup>778</sup> P 112, p. 3.



sources, the foreign mujahedin also wanted to spread their beliefs, which they felt were the most faithful expression of Islamic texts.<sup>779</sup>

416. Most foreign mujahedin in Central Bosnia seem to have arrived as members of humanitarian organisations. Defence witnesses agreed that during the first phase they were involved in humanitarian activities.<sup>780</sup> They provided quite significant aid to the local Muslim population, particularly food, and organised classes in religious instruction.<sup>781</sup>

417. Starting in the second half of 1992 when conflicts broke out in Central Bosnia, foreign mujahedin became fighters.<sup>782</sup> They furnished the local population with weapons and uniforms and provided military training.<sup>783</sup> As explained below, the foreign mujahedin took part systematically in combat side by side with the ABiH.<sup>784</sup>

418. Given their humanitarian involvement, the foreign mujahedin initially enjoyed a degree of trust and had the support of the local population.<sup>785</sup> Young men, even minors, joined them. ABiH soldiers deserted their own units to join the ranks of the foreign mujahedin, especially in order to benefit from their material support.<sup>786</sup> Some of the mujahedin married girls from the region.<sup>787</sup> Over time, however, the foreign mujahedin tried to promote their view of fundamental Islam. They ordered the Bosnian women to cover their heads, condemned the consumption of alcohol and insisted that the local Muslims practice their religion. The foreign mujahedin burst into cafés and restaurants that served alcohol and if they saw a woman or young girl dressed in what they considered inappropriate fashion, they voiced their strong opposition. As a result of this rigid attitude, relations between the foreigners and the local population deteriorated.<sup>788</sup>

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<sup>779</sup> P 112, p. 7.

<sup>780</sup> Halim Husić, T(F) p. 10875; Derviš Suljić, T(F) pp. 11305 and 11332; Munir Karić, T(F) pp. 11435 and 11437; Fikret Čuskić, T(F) p. 12137; Esed Sipić, T(F) p. 14788.

<sup>781</sup> Halim Husić, T(F) p. 10875.

<sup>782</sup> Enes Ribić, T(F) pp. 11378 and 11379; Ferid Jašarević, T(F) p. 11551; Witness HF, T(F) p. 17226.

<sup>783</sup> Halim Husić, T(F) pp. 10876 and 10929; Sulejman Ribó, T(F) p. 11041.

<sup>784</sup> See *infra* paras. 529-546.

<sup>785</sup> Halim Husić, T(F) pp. 10875 and 10884.

<sup>786</sup> Munir Karić, T(F) p. 11437; Sulejman Ribó, T(F) p. 11041; Fahir Čamdžić, T(F) pp. 11703, 11755 and 11756; Esed Sipić, T(F) p. 14789; see *infra* paras. 600-604.

<sup>787</sup> Sejad Jusić, T(F) p. 11122; Enes Ribić, T(F) pp. 11380 and 11405; Munir Karić, T(F) p. 11450; Witness HB, T(F) p. 12588.

<sup>788</sup> Guy Chambers, T(F) pp. 6036 and 6110; Vlado Adamović, T(F) pp. 9490 and 9491; Remzija Šiljak, T(F) pp. 10489 and 10664; Halim Husić, T(F) p. 10885; Sulejman Ribó, T(F) p. 11043; Witness HF, T(F) p. 17205; Munir Karić, T(F) p. 11437; Ferid Jašarević, T(F) p. 11549; Fikret Čuskić, T(F) p. 12137; Esed Sipić, T(F) p. 14788; Asim Delalić, T(F) p. 16376 and 16377; Sejad Jusić, T(F) pp. 11122 and 11123; see also Exhibit DH 271.

### 3. Mujahedin Camps

#### (a) Poljanice Camp

419. Poljanice Camp was located next to the village of Mehurići in the northern part of the Bila River Valley.<sup>789</sup> The Bila Valley is north-west of Travnik, north of the main road linking the towns of Zenica and Travnik.<sup>790</sup> It was part of the 306<sup>th</sup> Brigade's zone of responsibility.<sup>791</sup>

420. The foreign mujahedin arrived in Mehurići in the second half of 1992.<sup>792</sup> The War Presidency of the community of Mehurići, which was a civilian authority, allowed around a dozen foreign mujahedin to occupy the second and third floors of the elementary school on the grounds that they were representatives of humanitarian organisations providing aid to the civilian population, namely food and other essential items.<sup>793</sup> These mujahedin left the primary school when the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion took up residence there in late 1992 or early 1993.<sup>794</sup> Nevertheless, they kept one or two offices in the school.<sup>795</sup>

421. They then moved to the Savić houses in Poljanice, a hamlet about 500 metres from the village of Mehurići.<sup>796</sup> This mujahedin camp seems to have consisted of at least one house and a stable,<sup>797</sup> and there was also a large meadow used by the mujahedin for exercise and prayer.<sup>798</sup> There was no ramp or barricade at the camp, just some sort of wooden fence.<sup>799</sup> Nevertheless,

<sup>789</sup> P 936.

<sup>790</sup> P 98; P 936; DH 82; DK 28.

<sup>791</sup> See *infra* paras. 581-582.

<sup>792</sup> Fahir Čamdžić, T(F) p. 11693; Sulejman Ribo, T(F) p. 11066; P 482, T(F) p. 8520.

<sup>793</sup> Fahir Čamdžić, T(F) pp. 11694-11696; Halim Husić, T(F) p. 10873; Sulejman Ribo, T(F) p. 11039; Sejad Jusić, T(F) p. 11121; Derviš Suljić, T(F) pp. 11305 and 11332; Munir Karić, T(F) pp. 11436 and 11437; Ferid Jašarević, T(F) pp. 11547 and 11548; Hamid Suljić, T(F) pp. 11879 and 11880; Salim Tarakčija, T(F) p. 11793; Esed Sipić, T(F) pp. 14787, 14803, 14825; Asim Delalić, T(F) p. 16354; Remzija Šiljak, T(F) pp. 10608-10610.

<sup>794</sup> Halim Husić, T(F) pp. 10883 and 10910; Derviš Suljić, T(F) pp. 11306 and 11307; Ferid Jašarević, T(F) p. 11549; Fahir Čamdžić, T(F) pp. 11697 and 11764; Esed Sipić, T(F) pp. 14787, 14803 and 14825; Asim Delalić, T(F) pp. 16354 and 16382; Hamid Suljić, T(F) p. 11912; Salim Tarakčija, T(F) p. 11793; Suad Menzil, T(F) p. 14098; Esed Sipić, T(F) pp. 14787, 14803 and 14825.

<sup>795</sup> Remzija Šiljak, T(F) pp. 10488, 10611-10612.

<sup>796</sup> P 934, map of Mehurići (Witness Sulejman Ribo put a number four on the spot where the Poljanice Camp was located; see Sulejman Ribo, T(F) p. 11086); Remzija Šiljak, T(F) p. 10489; Halim Husić, T(F) pp. 10883 and 10910; Sulejman Ribo, T(F) pp. 11042, 11077 and 11078; Sead Jusić, T(F) p. 11121; Derviš Suljić, T(F) pp. 11306-11308; Ferid Jašarević, T(F) p. 11549; Fahir Čamdžić, T(F) p. 11697; Hamid Suljić, T(F) pp. 11881 and 11912; Salim Tarakčija, T(F) p. 11793; Suad Menzil, T(F) pp. 14098, 14138 and 14141; Esed Sipić, T(F) pp. 14787, 14803 and 14825; Asim Delalić, T(F) p. 16354.

<sup>797</sup> Anda Pavlović, T(F) p. 1329 (witness detained in the camp after the attack on Miletici); DH 2092, para. 9 (statement by Dedo Suljić, detained in the camp after the attack on Miletici); Esed Sipić, T(F) p. 14794; Ahmed Kulenović, T(F) p. 13924, who spoke about a wooden shack; Vezir Jusufspahić, T(F) p. 14042, who spoke about a cottage; Asim Delalić, T(F) p. 16385, who spoke about two houses and a hut; Witness HE, T(F) p. 17011, who spoke about two or three houses and a garage; (yet these witnesses never entered the camp).

<sup>798</sup> Witness HE, T(F) p. 17011.

<sup>799</sup> Ahmed Kulenović, T(F) p. 13924; Esed Sipić, T(F) p. 14794.

according to witnesses who tried to enter the camp, there was an armed guard at the entrance who prevented any access.<sup>800</sup>

422. Testimony about the number of mujahedin based at the camp is quite divergent. The witnesses all mentioned how difficult it was to evaluate the number of fighters, particularly because they moved about a great deal and wore traditional Arab clothing, making it hard for the locals to identify them.<sup>801</sup> Witness Sulejman Ribo stated that during the last six months of 1992 there were around 100 foreign mujahedin in Mehurići. He estimated that their number increased during 1993 and that a number of local men joined their ranks.<sup>802</sup> He personally knew of a dozen local Muslims from the Mehurići area who joined the foreign mujahedin.<sup>803</sup> In addition, a large number of refugees expelled from other parts of BiH came to the municipality of Travnik and joined the foreign mujahedin at Poljanice Camp.<sup>804</sup> Witness HB thought that there were around 150 fighters in the camp, while Witness HE mentioned 50 foreign fighters and 50 local fighters.<sup>805</sup> Witnesses Esed Sipić and Asim Delalić, both former members of the 306<sup>th</sup> Brigade, mentioned that members of the 306<sup>th</sup> Brigade deserted in order to join the foreign mujahedin. They estimated that there were about 50 deserters.<sup>806</sup> When Witness Ahmed Kulenović went to the camp with Mehmed Alagić in August 1993, he saw five or six armed individuals and eight to ten uniformed unarmed persons.<sup>807</sup> He did not know if there were any other fighters.<sup>808</sup>

423. The Chamber notes that according to these witnesses there were different groups of fighters in the camp. First, there was the group of foreign Muslim fighters, most often described by the witnesses as “mujahedin”; then there were the Bosnians, either from the local area or other regions of BiH. The locals included those who had been part of the ABiH and had left their units to join the mujahedin and those who had never been in the army, among them minors, and joined the soldiers at Poljanice Camp directly.<sup>809</sup> Former members of the Travnik Muslim Forces were also in the

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<sup>800</sup> Esed Sipić, T(F) p. 14794; Asim Delalić, T(F) p. 16359.

<sup>801</sup> Sulejman Ribo, T(F) p. 11070; Sejad Jusić, T(F) p. 11144.

<sup>802</sup> Sulejman Ribo, T(F) p. 11070.

<sup>803</sup> Sulejman Ribo, T(F) p. 11073.

<sup>804</sup> Sulejman Ribo, T(F) pp. 11073 and 11074.

<sup>805</sup> Witness HB, T(F) p. 12615; Witness HE, T(F) p. 17031.

<sup>806</sup> Esed Sipić, T(F) p. 14820; Asim Delalić, T(F) pp. 16355, 16356, 16385 and 16386; *see also* Fahir Čamdžić, T(F) pp. 11702, 11756 and 11757.

<sup>807</sup> Ahmed Kulenović, T(F) p. 13921.

<sup>808</sup> Ahmed Kulenović, T(F) p. 13972.

<sup>809</sup> The problem of desertions will be discussed in greater detail in the section on the *de jure* superior-subordinate relationship, and in the section on the 306<sup>th</sup> Brigade and the mujahedin. *See infra* paras. 486-487 and 600-604.

camp, both those who had been in regular ABiH units and those who joined the mujahedin at the camp directly.<sup>810</sup>

424. A number of witnesses recalled the names of some of the mujahedin based at the camp. Several mentioned a man called Ramadan in Mehurići who spoke B/C/S and served as an interpreter. According to Witness Sulejman Ribo, a man named Osman Tahirović worked at the camp as a cook.<sup>811</sup> He also recalled that Ramo Durmiš was one of the first to join the ranks of the mujahedin in Mehurići and could enter and leave the camp at will.<sup>812</sup>

425. All the witnesses mentioned that the mujahedin moved about the region frequently, most often in Toyota all-terrain vehicles. They rarely went on foot.<sup>813</sup> Witness Sulejman Ribo estimated that the mujahedin had ten vehicles.<sup>814</sup> These vehicles did not have registration plates.<sup>815</sup> Several witnesses stated that they did not see any insignia on the mujahedin based at the camp.<sup>816</sup>

426. The mujahedin at the camp were involved in different activities.<sup>817</sup> Among other things, they provided military training for volunteers who agreed to stay at the camp.<sup>818</sup> They also went on reconnaissance missions and fought on the front lines against the Serbian and Croatian forces, which made it difficult to estimate the number of mujahedin who were present in the Mehurići area.

(b) Orašac Camp

427. In 1993, the village of Orašac was part of the municipality of Travnik, which was in the zone of responsibility of the ABiH 3<sup>rd</sup> Corps.<sup>819</sup> According to Witness HE, Orašac Camp was located in the zone of responsibility of OG *Bosanska Krajina*.<sup>820</sup> Orašac was a small Croatian village with 35 houses.<sup>821</sup> The Croatian villagers seem to have left Orašac between 24 April 1993

<sup>810</sup> Fikret Čuskić, T(F) pp. 12085, 12086 and 12107; *see also* DK 15; P 695; P 576.

<sup>811</sup> Sulejman Ribo, T(F) pp. 11075 and 11076.

<sup>812</sup> Sulejman Ribo, T(F) pp. 11076 and 11088.

<sup>813</sup> Andrew Hogg, T(F) pp. 7835 and 7836; Sulejman Ribo, T(F) pp. 11069 and 11072; Derviš Suljić, T(F) p. 11304; Witness HB, T(F) pp. 12615 and 12616; Ahmed Kulenović, T(F) pp. 13934 and 13935; Asim Delalić, T(F) p. 16390.

<sup>814</sup> Sulejman Ribo, T(F) p. 11071.

<sup>815</sup> Sulejman Ribo, T(F) p. 11072.

<sup>816</sup> Sulejman Ribo, T(F) p. 11072; Ahmed Kulenović, T(F) p. 13935; Esed Sipić, T(F) p. 14803.

<sup>817</sup> *See infra* paras. 530-540 and 590-596.

<sup>818</sup> Halim Husić, T(F) pp. 10876 and 10929. According to this witness, the training was not on a high level, but rather learning how to handle a weapon; P 482, T(F) p. 8522, *see also* p. 8542 referring to the period after the creation of the *El Mujahedin* unit.

<sup>819</sup> Joint Statement on Agreement of Facts No. 7 (Annex B).

<sup>820</sup> Witness HE, T(F) p. 10732.

<sup>821</sup> Tomislav Rajić, T(F) p. 2813; P 760 (admitted with only descriptive comment).

and 8 June 1993, following the murders committed in Miletići on 24 April 1993.<sup>822</sup> They left to find a larger village where they hoped to be safe from attack.<sup>823</sup>

428. The mujahedin moved to Orašac in the second half of 1993.<sup>824</sup> They constructed a four-story building made of breeze blocks.<sup>825</sup> They also moved into the houses of Croatian villagers.<sup>826</sup> Videocassette P 761 showed the different buildings that were used by the mujahedin at this camp, including a building for meetings and prayers, and a detention centre.<sup>827</sup>

429. During their detention in Orašac Camp in October 1993, witnesses Ivo Fišić, Z12 and Z13 saw both foreign and local mujahedin there.<sup>828</sup> It is not clear how many mujahedin stayed at the camp.

430. The mujahedin maintained their camp in Orašac until at least 1996.<sup>829</sup>

(c) Travnik

431. Several witnesses stated that they saw foreign mujahedin in the town of Travnik starting in the second half of 1992.<sup>830</sup> Foreign mujahedin were noticed in several places in town, particularly in the offices of different humanitarian organisations they had created and in the vicinity of the mosques.<sup>831</sup>

(d) Zenica

432. The witnesses who appeared before the Chamber also mentioned the presence of foreign mujahedin in the town of Zenica.<sup>832</sup> They were spotted at Travnička Street no. 34.<sup>833</sup>

<sup>822</sup> Tomislav Rajić, T(F) p. 2813.

<sup>823</sup> Tomislav Rajić, T(F) pp. 2813 and 2814.

<sup>824</sup> Tomislav Rajić, T(F) p. 2814 (Rajić went to Orašac for the first time in 1996 and it was only then that he saw the mujahedin, p. 2894. Nevertheless, he knew of the mujahedin's presence in Orašac in 1993 through his work and conversations with representatives of the international community, p. 2995); Witness HE, T(F) pp. 17010 and 17011; P 394 (under seal), para. 11.

<sup>825</sup> Tomislav Rajić, T(F) p. 2814.

<sup>826</sup> Tomislav Rajić, T(F) p. 2814.

<sup>827</sup> P 761 (admitted only with descriptive comment); P 52 is a photograph of the village.

<sup>828</sup> Ivo Fišić, T(E) p. 2252; P 394 (under seal), paras. 12, 14 and 17; P 395 (under seal), paras. 16, 26, 31, 33 and 36.

<sup>829</sup> Tomislav Rajić, T(F) p. 2835. Witness Tomislav Rajić testified to having seen mujahedin during a visit to Orašac in 1996.

<sup>830</sup> Ivanka Tavić, T(F) pp. 1155 and 1156; Witness AH, T(F) p. 1244; Ivo Fišić, T(F) p. 2238; Witness XD, T(F) p. 1746; Remzija Šiljak, T(F) pp. 10579 and 10608; Hamed Mesanović, T(F) p. 10724.

<sup>831</sup> Ivanka Tavić, T(F) p. 1156; Tomislav Rajić, T(F) pp. 2811 and 2812; Dalibor Adžaić, T(F) p. 2395; Mirko Ivkić, T(F) p. 4577; Andrew Hogg, T(F) p. 7830; Samir Konjalić, T(F) pp. 12777, 12778 and 12813; Ahmed Kulenović, T(F) pp. 13900, 13915 and 13916.

<sup>832</sup> Nenad Bogeljić, T(F) pp. 2096 and 2097; Mijo Marković, T(F) p. 2362; Živko Totić, T(F) pp. 3125-3127; Witness ZN, T(F) p. 5271; Witness ZP, T(F) pp. 8812 and 8813; Fehim Muratović, T(F) p. 15048; *See* also Exhibits P 430; P 431; P 585. *See* DH 104 for a detailed map of Zenica.

433. Furthermore, foreign mujahedin were observed at the Zenica Music School.<sup>834</sup> In late April 1993, Witness XA stated that he saw three or four foreigners on the upper floor of the school speaking Arabic. They wore full beards and carried rifles.<sup>835</sup> Scarves with Arabic letters were on the butts of the rifles.<sup>836</sup> There were inscriptions in Arabic above the door of what seemed to serve as a dormitory; the witness was able to read *Hezbollah* in Latin script.<sup>837</sup> Thanks to the intelligence service of his unit, Živko Totić learned that some of the foreign mujahedin were based at the Zenica Music School.<sup>838</sup> They were armed, wore uniforms and came from North Africa, Syria, Saudi Arabia and Jordan.<sup>839</sup> According to this witness, they were seen in Zenica from late 1992 until 1993.<sup>840</sup> Other witnesses spoke of local mujahedin at the school who wore long beards.<sup>841</sup>

434. After the fighting on 18 April 1993, the mujahedin also moved into the *Vatrostalna* building in Podbrežje in the vicinity of Zenica, former headquarters of the *Jure Frančetić* Brigade Command.<sup>842</sup> Later on, this building seems to have been the base of the *El Mujahedin* unit.<sup>843</sup> Since the mujahedin moved about a great deal, it is very difficult to know how many were based in this building.<sup>844</sup>

(e) Arnauti

435. Starting sometime around October 1992, there was also a training camp run by Turkish mujahedin in Arnauti, about twenty kilometres from Zenica.<sup>845</sup> It seems that the mujahedin based in this camp took part in fighting on Mt Zmajevac south of Zenica on 18 April 1993.<sup>846</sup>

(f) Bijelo Bučje

436. Throughout 1993, the mujahedin were also present in Bijelo Bučje.<sup>847</sup> They seem to have been part of the group of mujahedin stationed in Poljanice and Zenica.<sup>848</sup>

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<sup>833</sup> Witness ZA, T(F) p. 2315.

<sup>834</sup> Nenad Bogeljić, T. 2098; P 401 (under seal), para. 16; see P 7 for a photograph of the Music School.

<sup>835</sup> Witness XA, T(F) pp. 1444 and 1445.

<sup>836</sup> Witness XA, T(F) pp. 1444 and 1447.

<sup>837</sup> Witness XA, T(F) p. 1445.

<sup>838</sup> Živko Totić, T(F) pp. 3126 and 3127.

<sup>839</sup> Živko Totić, T(F) p. 3127.

<sup>840</sup> Živko Totić, T(F) p. 3128.

<sup>841</sup> P 402 (under seal), paras. 20, 21 and 23.

<sup>842</sup> Fehim Muratović, T(F) p. 15055; P 782. See DH 2080, a detailed map of Zenica marked by Witness Semir Sarić.

<sup>843</sup> Fehim Muratović, T(F) p. 15055; P 482, T(F) p. 8542.

<sup>844</sup> Fehim Muratović, T(F) p. 15056.

<sup>845</sup> Witness BA, T(F) pp. 715 and 716; Živko Totić, T(F) pp. 3126 and 3127; Cameron Kiggell, T(F) pp. 5005, 5006, 5008 and 5078; P 371, Annex G of 8 May 1993; P 352, p. 17; P 100.

<sup>846</sup> P 462; P 558.

(g) Ravno Rostovo

437. Apparently there were mujahedin in Ravno Rostovo northeast of Bugojno, although the Chamber does not know precisely which group it was.<sup>849</sup>

4. Leaders of the Mujahedin

438. According to Exhibit P 482, Abu Abdel Aziz, originally from the Arabian Peninsula, was the first leader of the foreign mujahedin in Central Bosnia in 1992.<sup>850</sup> He left BiH at the beginning of 1993 in order to find funds to support the mujahedin. At that time, Wahiudeen, an Egyptian, allegedly took over command of the mujahedin.<sup>851</sup> According to the same Exhibit P 482, after the abduction of Živko Totić on 15 April 1993, Wahiudeen handed over the command of the mujahedin to Abu Haris, originally from Libya, so he could concentrate on military affairs. Abu Haris negotiated a prisoner exchange with representatives of the ECMM (European Community Monitoring Mission) and the HVO.<sup>852</sup> He then became head of the *El Mujahedin* unit in the summer of 1993, and Wahiudeen was its military commander.<sup>853</sup> Wahiudeen was killed in an HVO ambush near Novi Travnik in early October 1993.<sup>854</sup> Abu Haris was killed in Žepče in 1995.<sup>855</sup> At some point, Abu Mali became the commander of the mujahedin.<sup>856</sup>

439. The names of other mujahedin, both foreign and local, are known, in particular Ramo Durmiš, Ramadan El-Suri and Maktauf. These men and their involvement in the facts of this case will be discussed below.<sup>857</sup>

5. Nature of the Allegations Against the Two Accused(a) Scope of the Indictment

440. Firstly, the Chamber has before it the question of whether the mujahedin, whom the Indictment alleges took an active part in certain crimes, were the perpetrators of these crimes and

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<sup>847</sup> P 775; DH 1360; C 5; DK 15.

<sup>848</sup> DK 15; P 482, p. 22.

<sup>849</sup> Witness HF, T(F) p. 17239; P 574; P 543.

<sup>850</sup> P 482; T(F) p. 8520; P 112.

<sup>851</sup> P 482, T(F) p. 8535.

<sup>852</sup> P 482, T(F) p. 8537.

<sup>853</sup> P 482, T(F) p. 8542 and T(E) p. 8538; *see also* P 656.

<sup>854</sup> P 482, T(F) p. 8547; DK 15. This incident preceded the abductions that led to the detention of several civilians at Orašac Camp in mid-October 1993.

<sup>855</sup> Witness HE, T(F) p. 10736.

<sup>856</sup> Witness HF, T(F) pp. 17253 and 17254; P 296.

<sup>857</sup> *See infra* paras. 593, 625-641, 745, 779-781, 1077 and 1452.

were subordinated to the Accused. Counts 3 and 4 allege that mujahedin participated in the cruel treatment at the Zenica Music School and Orašac Camp, including the beheading of Dragan Popović at Orašac Camp. In addition, count 7 of the Indictment charges the mujahedin with regard to damage to the church in Travnik.

441. Secondly, the Indictment does not specifically mention the participation of mujahedin in the commission of certain crimes. From the very beginning of the case, the Prosecution has alleged that mujahedin took part in acts of violence as members of the 7<sup>th</sup> Brigade, and submitted evidence to support this assertion. Several examples of this type include: the allegations of murder committed in Miletići and Maline in count 1, paragraphs 39(b), 39(c) and 40 of the Indictment,<sup>858</sup> the allegations of destruction and plunder committed in Miletići and Maline in counts 5 and 6, paragraphs 44 and 45 of the Indictment,<sup>859</sup> and the allegations of destruction and wilful damage to institutions dedicated to religion committed in Guča Gora as set out in count 7, paragraph 46 of the Indictment.<sup>860</sup>

442. The key question in this case is whether the Indictment sets out with sufficient clarity that mujahedin took part in the crimes in Miletići, Maline and Guča Gora while subordinated to the Accused.

443. It should be recalled that the Indictment must be read and interpreted as a whole and not as a series of isolated paragraphs.<sup>861</sup> Paragraphs 39(b), 39(c), 44, 45 and 46 must therefore be interpreted in view of the part of the Indictment dealing with the context.

444. There is good reason to quote paragraphs 18, 19 and 20 of the Indictment:

18) Foreign Muslim fighters, who referred to themselves as "Mujahedin" or "Holy Warriors", began arriving in Bosnia and Herzegovina sometime during the middle of 1992. The "Mujahedin",

<sup>858</sup> Paragraph 39(b) of the Indictment states that the murders alleged against the Accused in count 1 took place on 24 April 1993 in Miletići "after troops of both the 7<sup>th</sup> Muslim Mountain Brigade and the 306<sup>th</sup> Mountain Brigade had launched the attack on Miletići...". Although the paragraph does not mention mujahedin, the Prosecution alleged at trial that they took part in the attack against Miletići and in the murders committed there; Prosecution Opening Statement, T(F), pp. 383, 386 and 387; Prosecution Response to Motions for Acquittal, paras. 60, 147, 149, 154, 156, 158, 161 and 163; Prosecution Final Brief, para. 189.

<sup>859</sup> Paragraph 39(c) of the Indictment states that the murders alleged against the Accused in Count 1 took place on 8 June 1993 in Maline/Bikoši and that the forces of the 7<sup>th</sup> Muslim Mountain Brigade and the 306<sup>th</sup> Mountain Brigade took part. During trial, however, the Prosecution asserted that units of the 7<sup>th</sup> Brigade and 306<sup>th</sup> Brigade, with mujahedin operating in association with these brigades, were the direct perpetrators of the massacres in Maline and Bikoši; Prosecution Response to Motions for Acquittal, paras. 62 and 64; Prosecution Final Brief, para. 194.

<sup>860</sup> In paragraph 46 of the Indictment, the Accused Hadžihasanović is charged with destruction or wilful damage to institutions dedicated to religion in two places. It is alleged that the 7<sup>th</sup> Muslim Mountain Brigade, the 306<sup>th</sup> Mountain Brigade and the 17<sup>th</sup> Krajina Mountain Brigade were implicated in the incident in Guča Gora (Travnik municipality) in June 1993. During trial, however, the Prosecution presented evidence to prove that mujahedin were the perpetrators of this destruction; Prosecution Response to Motions for Acquittal, para. 109.

<sup>861</sup> See *supra* paras. 266-269.



who were principally from Islamic countries, were prepared to conduct a "Jihad" or "Holy War" in Bosnia and Herzegovina against the enemies of the Bosnian Muslims.

19) After its formation on 19 November 1992, the 7<sup>th</sup> Muslim Mountain Brigade incorporated and subordinated "Mujahedin" within its structure.

20) The "Mujahedin" were heavily involved in the 7<sup>th</sup> Muslim Mountain Brigade's combat activities and frequently spearheaded its operations.

445. Paragraphs 18 to 20 allege that mujahedin were incorporated into and subordinated to the 7<sup>th</sup> Brigade after it was created and were extensively associated with its combat operations. A joint reading of the paragraphs dealing with the crimes and those dealing with the background makes it clear that mujahedin allegedly participated in the crimes charged in paragraphs 39(b), 39(c), 44, 45 and 46 since they were purportedly part of the 7<sup>th</sup> Brigade.

446. It should also be noted that the Accused were aware of the allegations against them even before the beginning of the trial. In their respective pre-trial briefs, they responded to the accusations that mujahedin were subordinated to them.<sup>862</sup> Moreover, submissions filed during the trial showed that the Defence was neither surprised nor prejudiced since it responded to the allegations that mujahedin were the perpetrators of the crimes committed in Miletići, Maline and Guča Gora. The Accused systematically denied they had any control over the mujahedin who were presumed to be the perpetrators of these crimes.<sup>863</sup>

447. The Chamber therefore finds that the Accused were sufficiently aware that all references to the 7<sup>th</sup> Brigade in the Indictment refer equally to the mujahedin, particularly for the crimes alleged in paragraphs 39(b), 39(c), 44, 45 and 46 of the Indictment. Conversely, any reference in the Indictment to other 3<sup>rd</sup> Corps units does not imply the participation of mujahedin in the crimes charged.

(b) Identity of the Mujahedin

448. The allegations implicating mujahedin raise another question for the Chamber. The Defence contends that the identity of the alleged perpetrators was not established with enough precision to determine whether they were subordinated to the Accused and were actually under their authority.<sup>864</sup> The Defence for the Accused Hadžihasanović criticises the Prosecution for its "simplistic and naïve approach to the *mujahedin phenomenon*", since mujahedin in Central Bosnia in the period covered by the Indictment cannot be seen as a distinct group of individuals present in

<sup>862</sup> Hadžihasanović Defence Pre-Trial Brief, paras. 46 and 47; Kubura Pre-Trial Brief, paras. 30 and 31.

<sup>863</sup> Amir Kubura's Motion for Acquittal, paras. 22, 27, 32 and 33; Reply of Enver Hadžihasanović to the Prosecution's Response to the Motions for Acquittal, para. 24; Hadžihasanović Defence Final Brief, paras. 203, 231, 243, 252, 256, 408, 477, 593, 642 *ff.* and 658 (b); Kubura Defence Final Brief, paras. 7, 13, 51, 53, 113 and 114.

that territory for the same reasons, with the same goals, in a coordinated effort.<sup>865</sup> In similar fashion, the Defence for the Accused Kubura criticises the Prosecution for its lack of precision with regard to which of the foreign fighters were allegedly incorporated into and subordinated to the 7<sup>th</sup> Brigade.<sup>866</sup>

449. The Chamber does in fact note that the Indictment does not set out precisely which mujahedin or groups of mujahedin allegedly committed the crimes charged. With the exception of information in paragraphs 18 to 20 cited above, the Indictment furnishes no information regarding the origin, identity or organisation of the mujahedin in Central Bosnia.

450. As an examination of the evidence by the Chamber will subsequently show, several groups of mujahedin were active in Central Bosnia at the material time.<sup>867</sup> The Chamber will primarily concentrate on the group of mujahedin based at Poljanice Camp near Mehurići, in Bijelo Bučje close to Travnik, in Orašac in the valley of the Bila, and in Zenica.<sup>868</sup> An examination of the evidence will show that this group of mujahedin was the one implicated in the crimes the Chamber must judge.

(c) Alleged Relationship Between the Mujahedin and the ABiH

451. The Prosecution alleges a specific relationship between the mujahedin and 3<sup>rd</sup> Corps units. With regard to the crimes committed in Miletići, Maline, the Zenica Music School and Guča Gora, it alleges explicitly or implicitly that the mujahedin who committed these crimes were subordinated to the 7<sup>th</sup> Brigade.<sup>869</sup> As to the crimes committed in Orašac, it alleges the participation of mujahedin subordinated to “ABiH 3<sup>rd</sup> Corps OG *Bosanska Krajina*”.<sup>870</sup> Finally, the Prosecution alleges that the destruction in Travnik was the work of “mujahedin subordinated to [the] ABiH 3<sup>rd</sup> Corps and/or 17<sup>th</sup> Krajina Mountain Brigade”.<sup>871</sup>

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<sup>864</sup> Hadžihasanović Defence Final Brief, paras. 134 *ff.*, particularly 150, 183 *ff.*; Kubura Defence Final Brief, paras. 7-9.

<sup>865</sup> Reply of Enver Hadžihasanović to the Prosecution’s Response to the Motions for Acquittal, para. 27.

<sup>866</sup> Amir Kubura’s Motion for Acquittal, paras. 23 and 24; Kubura Defence Final Brief, paras. 7-9.

<sup>867</sup> See *infra* para. 545.

<sup>868</sup> It seems that this same group of mujahedin also had a base in Ravno Rostovo, at least if the HVO allegations are correct that the four Croatian officers abducted on 13 April 1993 were taken to Ravno Rostovo by mujahedin; see *infra* para. 502. The evidence dealing with the abduction of Croatian officers in April 1993 shows that the group of mujahedin based at Poljanice was responsible. See the section about with the abduction of Živko Totić. See *infra* paras. 505-514.

<sup>869</sup> Paras. 39(b), 39(c), 40, 41(a) and 42(a), and 46 of the Indictment.

<sup>870</sup> Paras. 41(b) (bc) and 42(e), 43(e) of the Indictment.

<sup>871</sup> Para. 46 of the Indictment.

452. The Chamber must therefore establish whether the group of mujahedin at Poljanice Camp, among other places, took part in the crimes alleged in the Indictment and whether that group was subordinated to the Accused at the material time, i.e. subordinated to 3<sup>rd</sup> Corps units which the Indictment alleges took part in the crimes.

#### 6. Different Sources Concerning the Mujahedin

453. The Chamber has examined extensive evidence on the mujahedin, particularly concerning their relations with the 3<sup>rd</sup> Corps and the two Accused. The number of exhibits tendered and witnesses who appeared before the Chamber makes it impossible for this Judgement to discuss each exhibit and analyse each testimony. At this phase, several general remarks are called for on the different sources of the evidence.

454. First, the Chamber notes that not a single witness belonging to the mujahedin camp at Poljanice or the *El Mujahedin* unit was summoned to appear before the Chamber and no internal document of the *El Mujahedin* unit was tendered into evidence. The Chamber has seen only a few exhibits indicating the mujahedin's position: a videocassette and the transcript of a conversation between Abu Abdel Aziz, the first leader of the mujahedin, and Witness Andrew Hogg in late 1992.<sup>872</sup> These two exhibits deal, *inter alia*, with the different individuals engaged in combat in BiH, the "martyrs" who lost their lives, the training camps and the combat activity of foreign mujahedin. The only piece of evidence originating from foreign mujahedin is a letter concerning the abduction of Živko Totić.<sup>873</sup> The Chamber considers that this lack of information originating from the mujahedin has prevented it from gaining an overview of the mujahedin's involvement in BiH and their relations with the ABiH during 1992 and 1993.

455. The Chamber heard witnesses of Croatian ethnicity who were often the victims of crimes alleged in the Indictment. At the material time, most of them were low-ranking HVO members. Others were civilians, very often farmers. While these witnesses were in general completely credible with regard to the sequence of events where they were present, they had limited knowledge of the internal structures of the ABiH and the status of the mujahedin. Most could make no distinction between members of the ABiH and the mujahedin, particularly those mujahedin whose physical appearance was the same as that of ABiH soldiers. According to the Croatian witnesses, every Muslim soldier was a member of the ABiH.

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<sup>872</sup> P 482 and P 112. See also P 598.

<sup>873</sup> P 109/P 417. See also DK 15, which is a statement given to the HVO by a local mujahedin.

456. The exhibits from the HVO impart the same confusion. They frequently use the term “mujahedin”, “MOS”, “ABiH” and “7<sup>th</sup> Brigade” interchangeably. While Croatian sources seem to have had information on the structure of the ABiH, at times they seemed unwilling to give a faithful description of the facts. Documents from the HVO must be evaluated in view of the tension that existed between the HVO and ABiH at the time. The documents show a propensity for propaganda and thus depict the ABiH in a poor light.<sup>874</sup> As shown by Exhibit DH 1175, the HVO made a conscious decision to characterise the ABiH as “Muslim forces”.

457. The documents from the ABiH provide a varied and contradictory picture of the degree of cooperation that existed between the mujahedin and the ABiH. Without going into the difficulties of interpreting these exhibits at this point, the Chamber considers them to be a reliable source of information, particularly since they were written at the material time. The Defence called many witnesses who were former members of the ABiH in order to explain the contents of these exhibits to the Chamber. Their testimony helped the Chamber to better understand the relations between the ABiH and the mujahedin. Nevertheless, on more than one occasion the Chamber was confronted with the situation of witnesses maintaining the opposite of what was indicated in an exhibit.<sup>875</sup>

458. Finally, the Prosecution and the Defence for the Accused Hadžihasanović both called international observers to testify, particularly members of UNPROFOR and ECMM. Additionally, the Chamber admitted into evidence reports from international organisations. The scope and probative value of this evidence will be discussed later.<sup>876</sup>

## **B. Mujahedin and the ABiH - Arguments of the Parties**

459. The arguments of the Parties have guided the Chamber in analysing the evidence. Given the large number of submissions presented by the Parties, however, the Chamber will not systematically discuss each one in detail, but will limit itself to recalling the main arguments.

### 1. Arguments of the Prosecution

460. The Prosecution claims that mujahedin provided support to the ABiH from their arrival in Central Bosnia in mid-1992 and throughout the period covered by the Indictment.<sup>877</sup> It asserts that mujahedin were incorporated into and subordinated to 3<sup>rd</sup> Corps units, particularly the 7<sup>th</sup> Brigade, after its creation on 19 November 1992, and that mujahedin were finally brought together in a

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<sup>874</sup> See for example P 649.

<sup>875</sup> See *infra* paras. 736, 740, 1413-1422.

<sup>876</sup> See *infra* paras. 566-579.

<sup>877</sup> Indictment, paras. 18-21; Prosecution Final Brief, para. 86.

single unit subordinated to the 3<sup>rd</sup> Corps, the *El Mujahedin* detachment.<sup>878</sup> According to the Prosecution, the Accused exercised *de facto* control over the mujahedin before the creation of the *El Mujahedin* unit.<sup>879</sup> Once it was created on 13 August 1993, the *El Mujahedin* unit is alleged to have become a formation under the *de jure* responsibility of the 3<sup>rd</sup> Corps Command.<sup>880</sup>

## 2. Arguments of the Defence for the Accused Hadžihasanović

461. The Defence for the Accused Hadžihasanović denies any subordination of the mujahedin to the 3<sup>rd</sup> Corps,<sup>881</sup> both before and after the creation of the *El Mujahedin* detachment,<sup>882</sup> and maintains, *inter alia*, that the identity of the mujahedin presumed to be the perpetrators of the crimes alleged in the Indictment was not established with enough precision to determine whether they were subordinated to the Accused Hadžihasanović and came under his effective authority.<sup>883</sup> According to the Defence for the Accused Hadžihasanović, the identity of the real perpetrators or the group to which they belonged was not established.<sup>884</sup> It criticises the Prosecution for having adopted a “simplistic and naïve approach to the *mujahedin phenomenon*”, i.e. the mujahedin in Central Bosnia during the period covered by the Indictment cannot be seen as a distinct group of individuals present in this territory for the same reasons, with the same goals, in a coordinated effort.<sup>885</sup>

## 3. Arguments of the Defence for the Accused Kubura

462. Like the Defence for the Accused Hadžihasanović, the Defence for the Accused Kubura denies any subordination of the mujahedin to the Accused Kubura.<sup>886</sup> It criticises the Prosecution for not having stated its case regarding the alleged subordination of the mujahedin to the ABiH and for having presented four different versions of this subordination. It points to the lack of precision in the arguments regarding the identity of the mujahedin involved.<sup>887</sup> The Defence for the Accused Kubura asserts that this case is concerned solely with the mujahedin in Mehurići Camp, since it will

<sup>878</sup> Indictment, paras. 18-21; Prosecution Final Brief, paras. 87, 94, 102, 129 and 142.

<sup>879</sup> Nevertheless, the Chamber notes that the Prosecution’s theory regarding the mujahedin’s participation in the combat operations of the 3<sup>rd</sup> Corps was not always clear. While the Indictment alleges that the mujahedin were incorporated into and subordinated to the 7<sup>th</sup> Brigade, the Prosecution Response to the Motions for Acquittal speaks only of cooperation between 3<sup>rd</sup> Corps units and the mujahedin. Prosecution Response to the Motions for Acquittal, paras. 60 and 64.

<sup>880</sup> Indictment, paras. 33-35 and 37-38; Prosecution Final Brief, paras. 87, 88 and 142.

<sup>881</sup> Hadžihasanović Defence Final Brief, paras. 186, 187 and 190.

<sup>882</sup> Hadžihasanović Defence Final Brief, paras. 272, 277 and 282.

<sup>883</sup> Hadžihasanović Defence Final Brief, paras. 134 *ff.*, particularly 150 and 183.

<sup>884</sup> Hadžihasanović Defence Final Brief, paras. 150, 183-186.

<sup>885</sup> Reply of Enver Hadžihasanović to the Prosecution’s Response to the Motions for Acquittal, para. 27.

<sup>886</sup> Kubura Defence Final Brief, paras. 8, 108-111 and 113-125.

<sup>887</sup> Kubura Defence Final Brief, paras. 6-9.

be established that the alleged crimes were committed from there.<sup>888</sup> Consequently, it argues that it is incumbent upon the Prosecution to prove that the mujahedin in Mehurići Camp, presumed to be the perpetrators of the alleged crimes, were subordinated to the Accused Kubura, either as members of the 7<sup>th</sup> Brigade or as groups or individuals.<sup>889</sup> It maintains that the Prosecution could support its argument only by showing that all the mujahedin in Central Bosnia were under the effective control of the Accused Kubura during the period covered by the Indictment.<sup>890</sup>

**C. Mujahedin and the 3<sup>rd</sup> Corps – De Jure Nexus Before the Creation of the *El Mujahedin* Detachment**

1. Introduction

463. As explained above, the group of fighters at Poljanice Camp near Mehurići in 1993 comprised several categories of individuals.<sup>891</sup> First, there were foreign Muslim fighters primarily from Islamic countries. A second category consisted of former members of the Travnik Muslim Forces. Third, there were those who had left the regular units of the ABiH, particularly the 306<sup>th</sup> and 7<sup>th</sup> Brigades. And last, there were Bosnians who had never joined the ABiH. It must be determined whether the first three groups were *de jure* part of the ABiH, and more specifically the 7<sup>th</sup> Brigade, before the creation of the *El Mujahedin* unit in August 1993. The Chamber's analysis will start with foreign Muslim fighters.

2. Foreign Muslim Fighters

(a) The Expression “Volunteers in Our Armies”

464. A number of ABiH documents use the term “foreigner volunteers” or similar expressions to describe foreign fighters coming from Islamic or other countries. In a letter to Tihomir Blaškić dated 2 April 1993, the Accused Hadžihasanović protested against “violent treatment of foreign nationals, volunteers in the BH Army, by members of the HVO”.<sup>892</sup> Blaškić's reply of 3 April 1993 clearly indicates that four mujahedin were involved.<sup>893</sup> The first paragraph of the Accused Hadžihasanović's letter of protest contains the following general preliminary remarks:

“In the course of the defensive war waged in Bosnia and Herzegovina so far, a considerable number of volunteers from countries of Europe and the world have sided with the defence forces,

<sup>888</sup> Kubura Defence Final Brief, para. 113.

<sup>889</sup> Kubura Defence Final Brief, paras. 108-111 and 114-125 (123).

<sup>890</sup> Kubura Defence Final Brief, para. 123.

<sup>891</sup> See *supra* paras. 422-423.

<sup>892</sup> P 541.

<sup>893</sup> P 541.

particularly with the Army of the Republic of Bosnia and Herzegovina. The majority of volunteers joined the armed resistance against the aggressor, and a certain number of them were involved in providing humanitarian, medical and all other forms of aid needed for waging a defensive war and survival of the population under blockade.”<sup>894</sup>

The letter then refers again to “volunteers from other countries, who had either joined the BH Army or were favourably disposed towards it”, “foreign nationals – members of the BH Army” and “BH Army volunteers”.<sup>895</sup> In a report dated 13 June 1993 addressed to the ABiH Supreme Command Main Staff, the Accused Hadžihasanović drew the Main Staff’s attention to difficulties the 3<sup>rd</sup> Corps was having with some of the foreigners. He mentions “volunteers from foreign countries (Arabs and Turks)”.<sup>896</sup> Rasim Delić’s response of 16 June 1993 uses the same formulation.<sup>897</sup> On 12 August 1993, the Accused Hadžihasanović proposed to the Supreme Command Main Staff the creation of the *El Mujahedin* detachment. This proposal speaks of the need to organise “foreign volunteers in the RBiH Army in the zone of responsibility of the 3<sup>rd</sup> Corps.”<sup>898</sup> Delić’s corresponding order of 13 August 1993 mentions “foreign volunteers currently on the territory of the 3<sup>rd</sup> Corps zone of responsibility”.<sup>899</sup> Then in a letter signed on behalf of Hadžihasanović dated 24 (or 26) August 1993 addressed to subordinated units, the 3<sup>rd</sup> Corps Command asks for information about a Tunisian allegedly sent in October 1992 with a group of mujahedin from Italy to RBiH, where he signed up as a volunteer for the RBiH Army.<sup>900</sup>

465. Several documents from the 7<sup>th</sup> Brigade may also be cited to support the fact that the ABiH used the term “foreign volunteers”. For example, a report from the assistant commander for morale of this brigade mentions that the HVO arrested “foreign citizens who are members of the BH Army, i.e. volunteers who are in our unit”.<sup>901</sup>

466. The Chamber notes several differences in the formulation used in the above-mentioned documents, and in other documents as well. While all these documents, except one, speak of foreign volunteers, they vary with regard to the relations between these foreign volunteers and the ABiH. Three categories of documents can be distinguished. First, there are documents that mention foreign volunteers but explicitly deny that they are part of the ABiH. The report by the Accused Hadžihasanović dated 13 June 1993 is one such example. It mentions that foreign volunteers had

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<sup>894</sup> P 541.

<sup>895</sup> P 541.

<sup>896</sup> DH 165.1.

<sup>897</sup> P 270/DH 165.2.

<sup>898</sup> P 438/DH 165.5.

<sup>899</sup> P 439/DH 165.6.

<sup>900</sup> P 615.

<sup>901</sup> P 461. *See also* P 409 and P 523.

been in the Zenica area since the beginning of the war and adds “who have not entered the ranks of the BH Army, in spite of being invited to”.<sup>902</sup> Further on, the report says “[t]hey do not want to make public the decision regarding [...] their eventual entry into the RBH Army’s ranks”.<sup>903</sup> Similarly, authorisation granted by the ABiH Supreme Command to Sakib Mahmuljin dated 23 July 1993 speaks of negotiations with representatives of the “*Mujahedin* unit” on incorporating this unit in the ABiH, which seems to imply that the unit was not part of the ABiH at this point.<sup>904</sup> A second category of documents explicitly confirms that foreign volunteers were part of the ABiH. The letter of protest from the Accused Hadžihasanović to Colonel Blaškić dated 2 April 1993 speaks of “foreign nationals – members of the BH Army” and “volunteers in the BH Army”.<sup>905</sup> Another example is the proposal by the Accused Hadžihasanović dated 12 August 1993 which mentions “all foreign volunteers in the RBH Army”.<sup>906</sup> Finally, a third category consists of documents that make no explicit reference to relations between foreign volunteers and the ABiH. These are two orders by Rasim Delić dated 16 June 1993 and 13 August 1993.<sup>907</sup>

467. All these texts give rise to the question of whether foreigners could serve in the ABiH and under which conditions.

(b) Legislation on Foreign Volunteers

468. Pursuant to Article 3 of the Decree-Law of 1 August 1992 on service in the ABiH, only citizens of RBiH had the right and duty to serve in the national army.<sup>908</sup> Article 31 of this Decree-Law, however, provided that foreigners may join the ranks of the army in times of war.<sup>909</sup> Article 4 of the Decree-Law of 14 April 1993 amended this article and sets out that foreigners may be promoted to higher ranks.<sup>910</sup> Article 46 of the Decree dated October 1992 dealt more specifically with the procedure for incorporating foreign volunteers into the army.<sup>911</sup> This article provided that a municipal secretariat for national defence was to determine the position a volunteer would hold in

<sup>902</sup> DH 165.1.

<sup>903</sup> DH 165.1.

<sup>904</sup> DH 165.4.

<sup>905</sup> P 541.

<sup>906</sup> P 438/DH 165.5. See also P 409 and P 461, two documents from the 7<sup>th</sup> Brigade.

<sup>907</sup> P 270/ DH 165.2; P 439/DH 165.6.

<sup>908</sup> P 120/DH 437, Decree-Law on Service in the Army of the Republic of Bosnia and Herzegovina, *Official Gazette* 11/92.

<sup>909</sup> This article seems to refer particularly to citizens of other republics of the former SFRY; see for example Džemal Merdan, T(F) pp. 13740-13741, Munir Karić, T(F) pp. 11542-11533, and Hajrudin Hubo, T(F) p. 15589. A state of war was proclaimed on 20 June 1992, P 362/DH 420.

<sup>910</sup> P 145, Decree-Law on Changes and Amendments to the Decree-Law on Military Service in the Republic of Bosnia and Herzegovina. Accordingly, on 5 August 1994 five members of the *El Mujahedin* unit were promoted to the rank of captain; P 296.

<sup>911</sup> DH 2015, Decree on the Criteria and Standards for the Assignment of Citizens and Material Resources to the Armed Forces and for Other Defence Needs, *Official Gazette* 19/1992.



times of war after having received a written and signed statement that he wanted to join the army of his own accord. The municipal secretariat would then enter the volunteer in the register of conscripts and issue him a service book with his wartime duty station. The word "volunteer" was to be clearly indicated on it.

469. It is of interest to note that foreigners could obtain Bosnian citizenship by means of naturalisation, pursuant to Articles 8-12 of the Decree-Law on Citizenship dated 6 October 1992.<sup>912</sup> An amendment to the Decree-Law dated 23 April 1993, however, stipulates that foreign members of the army "... shall acquire citizenship of the Republic of Bosnia and Herzegovina by birth ...,"<sup>913</sup> which implies that they no longer needed to satisfy the requirements of Article 8 of the Decree-Law on Citizenship dated 6 October 1992.

(c) Engaging Foreign Volunteers in the Army

470. With regard to documents mentioning foreign volunteers and the procedure allowing them to be incorporated into the ABiH (and even become naturalised Bosnians), it would be useful at this point to consider whether foreign Muslim fighters at Poljanice Camp actually went to the municipal TO offices<sup>914</sup> or other competent authorities during 1992 or later and signed up as volunteers, thus officially joining the ABiH.

471. Some of the evidence suggests such an integration. Most of the above-cited documents mentioning "foreign volunteers"<sup>915</sup> seem to suggest that Muslim fighters had officially joined the army. A videocassette recorded by these foreign fighters says that in 1992 "[t]he mujahedin began by joining the civil defence units, due to the lack of an independent military leadership at that time."<sup>916</sup> A report by the HVO military police dated 9 March 1993 mentions that two mujahedin holding military identity cards issued by the ABiH had been taken prisoner.<sup>917</sup> A daily operations report of 1<sup>st</sup> April 1993 signed by the commander of the 3<sup>rd</sup> Corps 306<sup>th</sup> Brigade mentions discovering the body of a foreign citizen wearing an ABiH uniform the day before near Zabilje.<sup>918</sup> Witness Živko Totić spoke of an incident where a mujahedin wearing TO insignia was killed by

<sup>912</sup> DH 476, Decree-Law on Citizenship of the Republic of Bosnia and Herzegovina, *Official Gazette* 18/1992. Article 29 of the Decree-Law, however, offered special possibilities for citizens of other republics of the former SFRY to obtain RBH citizenship. See also DH 2044, para. 54.

<sup>913</sup> DH 994, Decree-Law on the Amendment of the Decree-Law on Citizenship of the Republic of Bosnia and Herzegovina, *Official Gazette* 11/1993. See also DH 2044, para. 54.

<sup>914</sup> See *infra* para. 482.

<sup>915</sup> See *supra* paras. 464-467.

<sup>916</sup> P 482 p. 10, T(F) p. 8521.

<sup>917</sup> P 626.

<sup>918</sup> P 660. This incident is also mentioned in Hadžihasanović's letter of protest addressed to Blaškič on 2 April discussed *supra* para. 464.

HVO members at a check-point.<sup>919</sup> He also stated that in late 1992 and early 1993 mujahedin were seen driving cars with TO registration plates.<sup>920</sup>

472. Conversely, as confirmed by several witnesses, the mujahedin seem to have had access to false papers. Witnesses HE, Suad Menzil, and Fehim Muratović, for example, noted that the mujahedin were provided with a wide variety of identity cards.<sup>921</sup> An HVO military police report of 9 March 1993 notes the same thing, adding that these documents were often forged. Several exhibits tendered during the trial clearly show that false papers were frequently used in Central Bosnia in 1993.<sup>922</sup>

473. The Chamber also notes that witnesses who were former members of the Mobilisation and Personnel Section within the 3<sup>rd</sup> Corps Staff opposed the integration of foreigners into the ranks of the army. Witness Hajrudin Hubo stated that he had received no information during the second half of 1993 indicating that foreign fighters were part of municipal TO units or other 3<sup>rd</sup> Corps units.<sup>923</sup> He added that during that period no one in the Personnel Section was specifically tasked with obtaining information on foreigners.<sup>924</sup> Witness Mustafa Poparić stated that before his departure in November 1993 he had never received or seen lists of members of the *El Mujahedin* detachment or lists containing “Arab” names.<sup>925</sup>

474. Other members of the 3<sup>rd</sup> Corps testified that it was difficult to obtain information about the identity or other personal information about foreign Muslim fighters.<sup>926</sup> Several witnesses who held leadership positions in the Travnik Municipal TO from April 1992 to March 1993 stated that no foreign Muslim fighter had joined that institution.<sup>927</sup>

475. Witness Hajrudin Hubo, however, confirmed the existence of a list of names of members of the *El Mujahedin* unit that he compiled on 7 May 1995. He allegedly drew it up in his capacity as Head of Personnel within the 3<sup>rd</sup> Corps Staff. The list was submitted to the witness by the

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<sup>919</sup> T(F) p. 3128. Owing to the fact that the document and the witness both noted a joint commission tasked to investigate the incident, it probably concerns the same event. According to Živko Totić, Džemal Merdan who was a member of this joint commission, stated that the victim was not part of the army; Živko Totić, T(F) p. 3128.

<sup>920</sup> Živko Totić, T(F) p. 3128

<sup>921</sup> Witness HE, T(F) pp. 17027-8, saw foreigners carrying UNHCR identity cards. On another occasion, Abu Džafer showed him four or five passports. Suad Menzil, T(F) p. 14102, saw Croatian identity cards. Fehim Muratović, T(F) p. 14959, noted that some of them had Danish or British passports.

<sup>922</sup> DH 161.5; DH 1456; DK 30; Witness ZA, T(F) pp. 2341, 2350.

<sup>923</sup> Hajrudin Hubo, T(F) pp. 15627, 15642 and 15645.

<sup>924</sup> Hajrudin Hubo, T(F) p. 15628.

<sup>925</sup> Mustafa Poparić, T(F) pp. 14492, 14517-8.

<sup>926</sup> Witness HD, T(F) pp. 15488, 14591-14592; Witness HF, T(F) pp. 17201-17203. See also the requests for information from 3<sup>rd</sup> Corps units of 24 August 1993, P 797, and 10 December 1993, P 294.

Prosecution during his appearance before the Chamber on 4 February 2005, that is about six months after the Prosecution finished its case. Pursuant to an oral decision by the Chamber on 29 November 2004 concerning the admission of new Prosecution documents at that stage of the trial, the list was not admitted into evidence.<sup>928</sup> It was admitted only to refresh the witness's memory or to impeach his credibility.<sup>929</sup> In this regard, any reading of one or several paragraphs of the document by Witness Hubo during his court appearance does not mean that the passages were tendered into evidence. Similarly, these paragraphs cannot be used as corroboration.<sup>930</sup>

476. Witness Hajrudin Hubo testified that he had compiled the list at the request of the 3<sup>rd</sup> Corps Security Service and submitted it to them.<sup>931</sup> He stated that the list contained the names of 252 members of the *El Mujahedin* detachment with their date of entry and registration in the army. According to the dates mentioned, some of the members joined the army in 1992 and 1993. The witness expressed doubts, however, regarding the accuracy of the list.<sup>932</sup> The list was allegedly copied from a list obtained from a representative of the *El Mujahedin* detachment<sup>933</sup> which, according to the witness, did not have a personnel section.<sup>934</sup> In addition, the information received from the *El Mujahedin* detachment seems to be much less detailed than similar information from other units. It only mentioned pseudonyms instead of establishing the actual identity of the individuals and provided no other information.<sup>935</sup> Finally, the witness was unable to verify any information provided by the *El Mujahedin* detachment representative, such as dates of entry into the army or dates of registration, from information in the army archives or other official archives.<sup>936</sup>

477. Among the evidence suggesting that foreign Muslim fighters actually did enter the ranks of the ABiH before the creation of the *El Mujahedin* detachment, documents from the army referring

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<sup>927</sup> Ahmed Kulenović T(F) p. 13900; Hamed Mesanović, T(F) p. 10725; Haso Ribo, T(F) pp. 10805, 10827-10828; Remzija Šiljak, T(F) pp. 10469-10470. Zijad Čaber, T(F) pp. 10387-10388, noted the presence of several Arabs among the Travnik Muslim Forces who were not part of the Territorial Defence. *See also infra* para. 644.

<sup>928</sup> Oral decision of 29 November 2004, T(F) pp. 12521-12527. *See also supra* para. 278.

<sup>929</sup> Exhibit P 950 limited access.

<sup>930</sup> Paragraphs 94-98 of the Prosecution Final Brief attach too much importance to document P 950.

<sup>931</sup> Hajrudin Hubo, T(F) pp. 15641, 15646.

<sup>932</sup> Hajrudin Hubo, T(F) p. 15632.

<sup>933</sup> Hajrudin Hubo, T(F) pp. 15630, 15645.

<sup>934</sup> Hajrudin Hubo, T(F) p. 15635.

<sup>935</sup> Hajrudin Hubo, T(F) pp. 15623, 15646 and 15647.

<sup>936</sup> Hajrudin Hubo, T(F) p. 15648. In its Closing Arguments, T(F) pp. 19243-19244, the Defence for the Accused Hadžihasanović seems to suggest that a number of the dates of entering and being registered in the ABiH mentioned in the list of Witness Hubo were falsified in order to make it easier for foreign soldiers to obtain Bosnian citizenship pursuant to the Decree-Law of 23 April 1993 amending the Decree-Law on Citizenship of 6 October 1992; *see also* T(F) pp. 15649-15650. It is the Chamber's opinion, however that the Decree-Law of 23 April 1993 did not require that a foreign volunteer had to have joined the ABiH or be registered before the date that this Decree-Law went into force on 10 May 1993.

to the existence of “foreign volunteers” are the most important by far.<sup>937</sup> Nevertheless, it is not easy to determine just how important they are. The report of 13 June 1993 from the Accused Hadžihasanović to the Supreme Command Main Staff is one example. After mentioning that foreign volunteers had been in the Zenica area since the beginning of the war, the report states that they did not join the ranks of the ABiH although they had been invited to do so.<sup>938</sup> Further on, the report says that these volunteers did not want to make their decision public regarding any eventual entry into the ranks of the ABiH.<sup>939</sup> At first glance, these remarks seem to contradict each other: how could they be “foreign volunteers” without joining the army? Given the fact that Article 46 of the Decree of 26 October 1992 uses the term “foreign volunteers” to designate individuals who wanted to join the army,<sup>940</sup> it seems contradictory to speak of “foreign volunteers” who do not want to join the army. Furthermore, the Chamber has already noted that documents bearing on the presence of foreign volunteers in Central Bosnia formulate the relations of these persons with the ABiH in a variety of ways.<sup>941</sup>

478. It is not impossible that such texts endeavour to make a distinction between foreigners who became *de jure* members of the ABiH without joining 3<sup>rd</sup> Corps units and foreigners who did join those units. It is also not impossible that these texts use expressions such as “foreign volunteers” in a more factual than legal sense. The Chamber did not hear witnesses who were able to resolve these interpretation problems. Finally, it has no official documents from the material time, such as military identity cards issued pursuant to Article 46 of the Decree of 26 October 1992,<sup>942</sup> or official enrolment lists dating from the time of the events that show that foreign Muslim fighters were enrolled as volunteers with competent authorities in 1992 and 1993 before the creation of the *El Mujahedin* detachment. The Chamber bears in mind the doubts of Witness Hajrudin Hubo regarding the reliability of the list compiled in May 1995, which seem to be grounded.

(d) Conclusion

479. In view of all the above evidence, the Chamber cannot find beyond a reasonable doubt that the foreigners at Poljanice Camp became *de jure* members of the ABiH before the creation of the *El Mujahedin* detachment.

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<sup>937</sup> See *supra* paras. 464-467.

<sup>938</sup> DH 165.1, “who have not entered the ranks of the BH Army, in spite of being invited to.”

<sup>939</sup> DH 165.1, “They do not want to make public the decision regarding [...] their eventual entry into the RBH Army’s ranks.”

<sup>940</sup> DH 2015, Decree on the Criteria and Standards for the Assignment of Citizens and Material Resources to the Armed Forces and for Other Defence Needs, *Official Gazette* 19/1992, Article 46. See also *supra* para. 468.

<sup>941</sup> See *supra* para. 466.

<sup>942</sup> DH 2015, Decree on the Criteria and Standards for the Assignment of Citizens and Material Resources to the Armed Forces and for Other Defence Needs, *Official Gazette* 19/1992, Article 46. See also *supra* para. 468.

### 3. Former Members of the Travnik Muslim Forces

480. On 10 May 1992, a unit called the Travnik Muslim Forces was created in Travnik.<sup>943</sup> A list of 80 individuals who were allegedly members of these forces was sent to the Travnik Municipal TO on 15 September 1992.<sup>944</sup> It seems, however, that the Travnik Municipal TO commander knew of the existence of the Travnik Muslim Forces as of July 1992 at the latest, when he informed the district TO in Zenica of the formation of a “*paramilitary unit*” operating in Travnik under the name “Muslim Forces”.<sup>945</sup> The first commander of the Travnik Muslim Forces was Asim Koričić, who would later become the commander of the 7<sup>th</sup> Brigade. When Asim Koričić left the Travnik Muslim Forces, Emir Redžić aka “Major Tara”<sup>946</sup> succeeded him as commander.

481. In order to determine whether former members of the Travnik Muslim Forces at Poljanice Camp joined the ABiH and more specifically the 7<sup>th</sup> Brigade *de jure*, and as such were subordinated to the two Accused, the relations between these forces and the Travnik Municipal TO during 1992 must be examined. Then the question arises as to whether these individuals joined the 7<sup>th</sup> Brigade after its creation on 19 November 1992, or other 3<sup>rd</sup> Corps units.<sup>947</sup>

482. On 9 April 1992, several days after the European Community recognised the RBiH,<sup>948</sup> the RBiH government adopted a decision concerning the integration of the armed forces on its territory.<sup>949</sup> This decision stipulated that all units and armed individuals were to present themselves to municipal or district TO staffs in order to be placed under a single command and receive the same military insignia. The individuals or formations that did not respond to the call would be considered paramilitary formations and be liable to sanctions. Municipal TO staffs were to register any group or individual that appeared and assign them positions. Pursuant to the Decree of 4 July 1992, TO staffs became an integral part of the ABiH.<sup>950</sup>

483. Witness Semir Terzić stated that the Travnik Muslim Forces were incorporated into the Travnik Municipal TO.<sup>951</sup> After a videocassette was shown, he testified that it was an oath taking ceremony which was allegedly ordered by the Travnik TO Staff and had taken place on 21 August

<sup>943</sup> Semir Terzić, T(F) pp. 18230, 18234.

<sup>944</sup> P 695.

<sup>945</sup> P 701; Haso Ribo, T(F) pp. 10808-10810, 10820-10822, 10857-10860.

<sup>946</sup> Haso Ribo, T(F) pp. 10809-10810, 10822-10823; Semir Terzić, T(F) pp. 18235, 18268.

<sup>947</sup> P 125.

<sup>948</sup> DH 2088, para. 288.

<sup>949</sup> DH 1651, Decision on the Integration of All Armed Forces on the Territory of the Republic of Bosnia and Herzegovina.

<sup>950</sup> DH 210.

<sup>951</sup> Semir Terzić, T(F) p. 18230.

1992.<sup>952</sup> Several people with positions in this Staff at the time, however, appeared before the Chamber and denied that members of the Travnik Muslim Forces joined the ranks of the TO during this period.<sup>953</sup> Their testimony was corroborated by two documents from that time.<sup>954</sup> Nevertheless, it seems there was some degree of military cooperation between these forces and the Travnik TO, particularly in the combat in November 1992 in the area of Karaula.<sup>955</sup>

484. Following a proposal by Witness Džemal Merdan, Commander of the Zenica District TO at the time,<sup>956</sup> on 19 November 1992 the ABiH Supreme Command Main Staff issued an order to create the 7<sup>th</sup> Brigade.<sup>957</sup> The order stipulated that the brigade would be formed out of ABiH units engaged on the Mt Vlasić plateau. Merdan's proposal spoke of "Muslim forces" engaged on the plateau. Several witnesses testified that neither the proposal nor the order made it possible to conclude that members of the Travnik Muslim Forces were automatically incorporated into the 7<sup>th</sup> Brigade. For example, Witness Merdan stated that his proposal was not aimed at the Travnik Muslim Forces but used the expression "Muslim forces" in a less specific sense.<sup>958</sup> Several witnesses confirmed that a considerable number Travnik Muslim Forces members actually did join the 7<sup>th</sup> Brigade, while others joined other brigades.<sup>959</sup> Some never joined the ranks of the ABiH.<sup>960</sup> Witness Semir Terzić estimated that about 40 to 60 per cent of the members of the Travnik Muslim Forces joined the 7<sup>th</sup> Brigade. He also mentioned several members of these forces who did not join the 7<sup>th</sup> Brigade.<sup>961</sup>

485. Based on the aforesaid, the Chamber finds that it has not been established that the Travnik Muslim Forces were part of the Travnik Municipal TO before the formation of the 7<sup>th</sup> Brigade in November 1992 nor has it been established that all those who were part of the Travnik Muslim Forces joined either the 7<sup>th</sup> Brigade after it was created or other 3<sup>rd</sup> Corps units. It follows, therefore, that the mere fact that a mujahedin at Poljanice Camp was a member of the Travnik Muslim Forces in 1992 does not necessarily lead to the conclusion that he became a member of the 3<sup>rd</sup> Corps or 7<sup>th</sup>

<sup>952</sup> P 762; Semir Terzić, T(F) pp. 18235-18236 and 18294.

<sup>953</sup> Zijad Čaber, T(F) pp. 10296, 10397-10398; Hamed Mesanović, T(F) pp. 10725-10726; Haso Ribo, T(F) pp. 10808-10811. *See also* Džemal Merdan, T(F) pp. 13190-13191.

<sup>954</sup> DH 1663 (list of units under the command of the Travnik Territorial Defence dated 20 May 1992. This list does not mention the MOS). *See also* P 701.

<sup>955</sup> Zijad Čaber, T(F) pp. 10397-10398; Fikret Čuskić, T(F) pp. 12085, 12156-12158; Semir Terzić, T(F) p. 18274. *See also supra* para. 531.

<sup>956</sup> P 124.

<sup>957</sup> P 125.

<sup>958</sup> Džemal Merdan, T(F) p. 13191.

<sup>959</sup> Zijad Čaber, T(F) pp. 10411, 10415-10416; Haso Ribo, T(F) pp. 1810-1811.

<sup>960</sup> Zijad Čaber, T(F) pp. 10411, 10415-10416; Fikret Čuskić, T(F) pp. 12116, 12155; Haso Ribo, T(F) pp. 1810-1811, 10819; Remzija Šiljak, T(F) p. 10630.

<sup>961</sup> Semir Terzić, T(F) pp. 18234, 18236, 18266.

Brigade, and was thus *de jure* subordinated to the 3<sup>rd</sup> Corps Commander or the 7<sup>th</sup> Brigade Commander.

#### 4. Persons Who Left ABiH Regular Units

486. As previously established,<sup>962</sup> a number of persons who left 3<sup>rd</sup> Corps regular units were at Poljanice Camp. Although some witnesses for the Defence for the Accused Hadžihasanović stated that the soldiers who deserted the ABiH no longer fell under the responsibility of the ABiH, the relevant texts present a completely different picture. Articles 88 to 92 of the Decree-Law on Service in the ABiH do not specify that absence without leave unit or desertion are offences justifying the demobilisation of a soldier.<sup>963</sup> According to RBiH legislation, absence from a unit without leave and desertion are crimes within the remit of military courts.<sup>964</sup>

487. The Chamber may therefore find in both these situations that a person remains under the *de jure* command of the unit he left, even if he is no longer under its effective control.

#### 5. Conclusion

488. In view of all the evidence analysed above, the Chamber finds that it has not been established beyond a reasonable doubt that the foreign Muslim fighters at Poljanice Camp became *de jure* members of the ABiH before the creation of the *El Mujahedin* detachment. As for former members of the Travnik Muslim Forces at Poljanice Camp, the Chamber finds the mere fact that a mujahedin present at Poljanice Camp was a member of the “Travnik Muslim Forces” in 1992, does not make it possible to conclude that he automatically became a member of the 3<sup>rd</sup> Corps or 7<sup>th</sup> Brigade and was thus subordinated *de jure* to the 3<sup>rd</sup> Corps Commander or the 7<sup>th</sup> Brigade Commander. With regard to soldiers who were absent from their unit without leave or deserted 3<sup>rd</sup> Corps units to join the mujahedin at Poljanice Camp, the Chamber finds that they remained *de jure* subordinated to the commander of the unit they left.

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<sup>962</sup> See *supra* paras. 422-423.

<sup>963</sup> P 120/DH 437, Decree-Law on Service in the Army of the Republic of Bosnia and Herzegovina.

<sup>964</sup> Asim Delalić, T(F) p. 16386.

**D. Mujahedin and the 3<sup>rd</sup> Corps - *De Facto* Nexus Before the Creation of the *El Mujahedin* Unit**

1. Mujahedin and the 3<sup>rd</sup> Corps

(a) Mujahedin Arrested by the HVO and the Abduction of Živko Totić

489. The Prosecution maintains that mujahedin were *de facto* subordinated to the 3<sup>rd</sup> Corps and 7<sup>th</sup> Brigade as of late 1992. In support of its case, it puts forward the fact that the 3<sup>rd</sup> Corps and 7<sup>th</sup> Brigade complained about the HVO's treatment of foreigners in their zone of responsibility.<sup>965</sup> It also states that the abduction of Živko Totić, Commander of the *Jure Francetić* Brigade, by the mujahedin shows that they were incorporated into ABiH units.<sup>966</sup>

490. The Chamber will first examine the sequence of events dealing with this argument. The relevant period starts in February 1993 when the HVO first arrested some mujahedin and ends on 17 May 1993, the day that mujahedin were exchanged for Živko Totić. The Chamber will then determine whether these events prove beyond a reasonable doubt that the mujahedin were subordinated to the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade.

(i) Arrest of Mujahedin and Abduction of HVO Soldiers

491. On 16 February 1993, the HVO arrested three foreign nationals, two Tunisians and an Algerian, who were travelling from Travnik to Split.<sup>967</sup> The Accused Hadžihasanović lodged a complaint with the HVO about the treatment of the foreigners, requesting their immediate release. His letter of protest noted that these three foreigners, residents of Milan, were in Bosnia as civilians working for humanitarian organisations. He asserted that they had passports and other documents allowing them to stay, and that they did not carry weapons.<sup>968</sup> In a letter dated 2 March 1993 addressed to the 3<sup>rd</sup> Corps, Ahmet Adilović, 7<sup>th</sup> Brigade Assistant Commander for Morale, Information and Propaganda, and Religious Affairs, referred to this same incident and requested that the 3<sup>rd</sup> Corps use its authority to obtain the release of the three foreigners.<sup>969</sup>

492. On 10 March 1993 in Vitez, the HVO arrested and detained Jusuf Abdulah, originally from Kuwait.<sup>970</sup> The Accused Hadžihasanović responded by sending a letter of protest to the HVO<sup>971</sup> in

<sup>965</sup> Prosecution Final Brief, paras. 156-159.

<sup>966</sup> Prosecution Final Brief, paras. 108-114.

<sup>967</sup> P 575.

<sup>968</sup> P 575.

<sup>969</sup> P 531.

<sup>970</sup> DH 770.

<sup>971</sup> DH 770.



which he indicated that Jusuf Abdulah was part of a mission seeking to re-establish peace and did not deserve such treatment. The Accused Hadžihasanović demanded his immediate release.

493. On 31 March 1993, four foreign nationals were arrested at an HVO check-point. They were allegedly beaten there and then taken to the prison in Busovača.<sup>972</sup> The same day, the body of one of the foreigners was found between the villages of Zabilje and Pokrajčiči.<sup>973</sup> On 2 April 1993, the Accused Hadžihasanović sent a letter of protest to Tihomir Blaškić.<sup>974</sup> This letter is entitled “Violent treatment of foreign nationals, volunteers in the BH Army, by members of the HVO”. It mentions that a considerable number of foreign volunteers had sided with the BiH defence forces, in particular the ABiH, and indicated that most of these foreign volunteers had joined the armed resistance against the aggressor,<sup>975</sup> while others were involved in humanitarian aid. The Accused Hadžihasanović complained that following the outbreak of fighting between the ABiH and HVO, HVO members had “persecuted” foreign volunteers who had either joined the ABiH or sided with it. In his response on 3 April 1993, Tihomir Blaškić mentioned that the death of one of the foreign mujahedin on 31 March 1993 resulted from the fact that the foreign mujahedin had refused to allow their car to be inspected at the Putićevo check-point and had brandished their weapons. Then one of the mujahedin attacked a member of the HVO and was killed. Tihomir Blaškić proposed that the question of the mujahedin be resolved through the official institutions of the HVO and ABiH.<sup>976</sup>

494. On 2 April 1993, Asim Koričić, 7<sup>th</sup> Brigade Commander, also sent a letter of “warning” to Dario Kordić in which he complained about the HVO’s treatment of foreign nationals who were volunteers in the army, particularly those from Arab countries. He asked that all detained foreign nationals, either civilians or members of the ABiH, be released and said that if they were not, Dario Kordić could expect retaliatory measures.<sup>977</sup>

495. On 7 April 1993, the HVO again arrested three “Arab” nationals and took them to Kaonik.<sup>978</sup> In reply, on 12 April 1993 Ahmet Adilović submitted a report to the commission for talks with HVO representatives<sup>979</sup> entitled “Report on members of our brigade taken prisoner by HVO members”. In the report, Ahmet Adilović complained that the HVO had been arresting

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<sup>972</sup> P 541.

<sup>973</sup> P 541 and P 660.

<sup>974</sup> P 541.

<sup>975</sup> The contents of the letter indicate that this is the Serbian aggressor.

<sup>976</sup> P 541.

<sup>977</sup> P 409.

<sup>978</sup> P 461.

<sup>979</sup> P 461.

foreign nationals who were either members of the ABiH or volunteers in the 7<sup>th</sup> Brigade.<sup>980</sup> He summarized the events that had taken place during previous months and sought the release of these foreigners, whom he listed by name and country of origin. According to the report, the foreign nationals were from Pakistan, Algeria, Tunisia, Egypt, Saudi Arabia, Kuwait and Albania. There were also “three Iranians (or Turks)”.<sup>981</sup>

496. On 13 April 1993, four Croatian officers, member of the *Stjepan Tomašević* Brigade, were abducted in Novi Travnik.<sup>982</sup>

497. Then, on 15 April 1993, Witness Živko Totić, Commander of the *Jure Francetić* Brigade, was abducted in Zenica. During this incident, his four bodyguards and one civilian were killed.<sup>983</sup>

498. Several days later, the Zenica radio station was attacked and two Croatian journalists were taken hostage.<sup>984</sup>

499. As of 15 April 1993, the HVO held the 7<sup>th</sup> Brigade and the 3<sup>rd</sup> Corps responsible for these abductions.<sup>985</sup> In several exhibits, the HVO alleged that the 7<sup>th</sup> Brigade or “MOS” was responsible for these abductions and that their ranks included foreign mujahedin. According to the exhibits, the 3<sup>rd</sup> Corps claimed it was unable to control the mujahedin, something the HVO felt did not reflect the truth.<sup>986</sup>

500. In response to these events, the ABiH, HVO, mujahedin and international community engaged in negotiations that resulted in the exchange of seven Croatian prisoners for 11 mujahedin prisoners on 17 May 1993.

(ii) Efforts to Find the Croatian Hostages

501. On 13 and 14 April 1993, the Accused Hadžihasanović issued orders to create a military police patrol composed of ABiH and HVO members and to set up joint commissions tasked with finding the abducted soldiers, and arresting and detaining the perpetrators of the abductions.<sup>987</sup>

<sup>980</sup> P 461, “Recently there have been an increasing number of cases of HVO members at certain check-points unlawfully taking prisoner foreign citizens who are members of the BH Army, i.e. volunteers who are in our unit.”; see also P 662 and C 8.

<sup>981</sup> P 461.

<sup>982</sup> P 194; P 218; P 625; P 680.

<sup>983</sup> Živko Totić, T(F), pp. 3140, 3141, 3142, 3162 and 3168; Dieter Schellschmidt, T(F), p. 7905; DH 2080; DH 340; DH 42.

<sup>984</sup> P 155.

<sup>985</sup> Witness HF, T(F) pp. 17174; P 594, P 543, P 805.

<sup>986</sup> P 543, P 594 and P 805.

<sup>987</sup> P 194; P 857.

502. The joint commission of Busovača consisted of Witness Džemal Merdan and Franjo Nakić, an HVO representative, and Witness Lars Baggesen and Juan Valentin, both representatives of the ECMM. The commission travelled to all the places where the HVO claimed the Croatian hostages might have been taken.<sup>988</sup> According to Witness Džemal Merdan, the 3<sup>rd</sup> Corps was not involved in the abductions.<sup>989</sup> In order to help the international community and the HVO find the Croatian hostages, the 3<sup>rd</sup> Corps provided access to all the places the joint commission wanted to visit.<sup>990</sup> Among other places, on 14 April 1993 the joint commission went to Ravno Rostovo where a company of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion was stationed.<sup>991</sup> The investigation team found no trace of the hostages.<sup>992</sup>

503. On 15 April 1993, the military court investigating judge and the Zenica district military prosecutor, along with members of the Zenica CSB (Security Services Centre), the 3<sup>rd</sup> Corps and HVO military police, visited the place where Živko Totić had been abducted.<sup>993</sup> Subsequently, the investigating judge compiled a report of the visit and requested that other investigation measures be undertaken.<sup>994</sup>

(iii) Combat on Mt Zmajevac

504. While representatives of the HVO, ABiH and the international community tried to find the Croatian hostages and resolve the crisis set off by arresting the mujahedin and abducting the Croatian officers, on 18 April 1993 the ABiH attacked the HVO on Mt Zmajevac south of Zenica.<sup>995</sup> The ABiH came out the winner of this attack.<sup>996</sup> As will be explained below, foreign mujahedin were engaged on the side of the ABiH during the combat.<sup>997</sup>

(iv) Negotiating an Exchange

505. On 19 April 1993, two mujahedin contacted ECMM headquarters in Zenica and delivered a letter stating that mujahedin were responsible for the abductions. It also said they wanted the release of “their brothers” placed in detention by the HVO.<sup>998</sup> In the letter, the mujahedin made the ECMM responsible for the prisoner exchange and declared that if the exchange could not take place, the

<sup>988</sup> Lars Baggesen, T(F), pp. 7012, 7053-7055 and 7091; Džemal Merdan, T(F), pp. 13152 and 13153.

<sup>989</sup> Džemal Merdan, T(F), p. 13152.

<sup>990</sup> Dieter Schellschmidt, T(F), pp. 7924 and 7925; Džemal Merdan, T(F), pp. 13152, 13153 and 13157.

<sup>991</sup> Džemal Merdan, T(F), pp. 13409 and 13410.

<sup>992</sup> Džemal Merdan, T(F), pp. 13153, 13409.

<sup>993</sup> Semir Sarić, T(F), pp. 17326, 17327, 17328, 17354 and 17379; Zaim Mujezinović, T(F), p. 17479; DH 340.

<sup>994</sup> DH 340.

<sup>995</sup> P 550; *see infra* para. 532.

<sup>996</sup> P 550 and P 782.

<sup>997</sup> P 462 and P 558.

ECMM would be responsible for the death of the Croatian officers.<sup>999</sup> The two messengers left the name of a contact, Abu Haris, and a telephone number.<sup>1000</sup>

506. The ECMM immediately informed all interested parties: its own headquarters, the 3<sup>rd</sup> Corps, the 3<sup>rd</sup> Corps Military Police, HVO headquarters in Vitez, the president of the HDZ (Croatian Democratic Union) in Zenica, the British Battalion in Vitez and the ICRC in Zenica.<sup>1001</sup> The ECMM proposed to act as mediator. The mujahedin and the HVO agreed to exchange lists of prisoners, letters and videocassettes via the ECMM.<sup>1002</sup> Furthermore, two representatives of the ECMM, a Greek observer and Witness Dieter Schellschmidt, held several meetings with the mujahedin at Hotel *Internacional* in Zenica, the ECMM headquarters.<sup>1003</sup> The representative of the mujahedin, a man of Arab origin who, according to Witness Dieter Schellschmidt, was very learned, distinguished and polite, never revealed his name.<sup>1004</sup> According to the ECMM observers, the vehicle that brought the mujahedin to the negotiations at Hotel *Internacional* had been seen at 7<sup>th</sup> Brigade headquarters.<sup>1005</sup>

507. On 21 April 1993 at 3<sup>rd</sup> Corps headquarters, Sefer Halilović raised several issues regarding the mujahedin with 3<sup>rd</sup> Corps officers, including the Accused Hadžihasanović, Džemal Merdan and officers of subordinated units.<sup>1006</sup>

508. The 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade informed the HVO and the international observers that they were not involved in the abduction of the Croats.<sup>1007</sup> Nevertheless, the 3<sup>rd</sup> Corps proposed to act as mediator through the 7<sup>th</sup> Brigade liaison officer.<sup>1008</sup>

509. Several letters and videocassettes were exchanged between the HVO and the mujahedin via the 3<sup>rd</sup> Corps and the ECMM.<sup>1009</sup> The ECMM warned the 3<sup>rd</sup> Corps that it would be held responsible for the actions of the mujahedin and should make an effort to negotiate the release of

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<sup>998</sup> Lars Baggesen, T(F), pp. 7013, 7014 and 7064; P 109; P 155; DH 193.

<sup>999</sup> Lars Baggesen, T(F), p. 7014; P 109.

<sup>1000</sup> Lars Baggesen, T(F), pp. 7061 and 7062.

<sup>1001</sup> Džemal Merdan, T(F), p. 13154; P 155.

<sup>1002</sup> P 155.

<sup>1003</sup> Lars Baggesen, T(F), pp. 7016, 7017 and 7064; Dieter Schellschmidt, T(F), pp. 7907 and 7908.

<sup>1004</sup> Dieter Schellschmidt, T(F), p. 7908.

<sup>1005</sup> Lars Baggesen, T(F) p. 7017 and 7018; P 155.

<sup>1006</sup> P 923.7.

<sup>1007</sup> Dieter Schellschmidt, T(F), p. 7954; Robert Stewart, T(F), p. 15186; P 155; *see also* the following Croatian documents: P 543, P 623, DH 923, P 805.

<sup>1008</sup> P 155.

<sup>1009</sup> P 155.

the hostages. In answer to a question from the ECMM, the 3<sup>rd</sup> Corps replied that the mujahedin were not authorised to speak on behalf of the ABiH.<sup>1010</sup>

510. On the evening of 11 May 1993, a mujahedin messenger proposed an exchange to the ECCM: the five HVO officers and two Croatian journalists taken hostage for 11 Arab prisoners. He proposed that the exchange be made simultaneously at three different locations. The HVO was to propose the dates, hours and places for the exchange.<sup>1011</sup> He asked that the HVO, the ABiH, the “Arab group”, the ICRC, UNPROFOR and ECCM be present at the exchange.<sup>1012</sup>

511. This proposal was presented to the HVO on 12 May 1993 and it was agreed that the exchange would take place on 17 May 1993 at the following locations: in front of Hotel *Internacional* in Zenica, in front of the PTT building in Travnik and at the steelworks close to the prison in Kaonik.<sup>1013</sup> The ECMM acted as mediator protected by the UNPROFOR British Battalion.<sup>1014</sup>

512. Witness Dieter Schellschmidt supervised the exchange of the Arab fighters for Živko Totić and the two Croatian journalists in front of Hotel *Internacional* in Zenica.<sup>1015</sup> During the exchange he noted that there were no members of the military police or civilian police to provide security. Conversely, there was a large number of soldiers mostly wearing masks but without military insignia.<sup>1016</sup> They were armed “to the teeth”, equipped with light arms, anti-tank rocket launchers and a 20 mm triple-barrel gun mounted on a five-ton truck.<sup>1017</sup> According to Witness Dieter Schellschmidt and his colleagues at ECMM, this materiel belonged to the 7<sup>th</sup> Brigade.<sup>1018</sup> In addition, Dieter Schellschmidt saw green flags on one of the vehicles that brought the Croatian hostages to these places. This colour was allegedly used by the 7<sup>th</sup> Brigade to show they were faithful to Islam.<sup>1019</sup>

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<sup>1010</sup> P 155.

<sup>1011</sup> P 155.

<sup>1012</sup> P 155.

<sup>1013</sup> Lars Baggesen, T(F), p. 7019 and 7020; Dieter Schellschmidt, T(F), pp. 7908 and 7909; P 155.

<sup>1014</sup> Dieter Schellschmidt, T(F), p. 7911.

<sup>1015</sup> Dieter Schellschmidt, T(F), pp. 7909 and 7910; P 483; DH 182; P 155.

<sup>1016</sup> Dieter Schellschmidt, T(F), p. 7910; P 155.

<sup>1017</sup> P 155; nevertheless, during his testimony Witness Dieter Schellschmidt spoke of a four-barrel gun: T(F), pp. 7910 and 7911.

<sup>1018</sup> Dieter Schellschmidt, T(F), pp. 7911 and 7945; *see also* P 155.

<sup>1019</sup> Dieter Schellschmidt, T(F), p. 7946.

513. After the Arab hostages had been released and handed over to the Arab group, they got into two trucks and headed in the direction of the 7<sup>th</sup> Brigade barracks.<sup>1020</sup> The Croatian hostages were handed over to the ECMM.<sup>1021</sup>

514. The next day, Witness Dieter Schellschmidt was visited by a representative of the Arab group who thanked him for the proper conduct of the exchange.<sup>1022</sup>

(v) The Chamber's Analysis of These Events

515. Witness Dieter Schellschmidt testified that the 7<sup>th</sup> Brigade was probably implicated in the abduction of Živko Totić and the other Croatian officers.<sup>1023</sup> He based this conclusion on what he observed during the exchange in front of Hotel *Internacional* in Zenica.<sup>1024</sup>

516. Dieter Schellschmidt admitted, however, that the investigation into the abduction of the Croatian officers did not indicate a link with the 7<sup>th</sup> Brigade. This is reflected in paragraph 2 of his report where he notes that four Croatian officers were kidnapped by “unknown persons.”<sup>1025</sup>

517. In addition, Dieter Schellschmidt admitted that he never visited 7<sup>th</sup> Brigade headquarters or barracks<sup>1026</sup> and so acknowledged that he never saw the 20 mm triple-barrel gun at 7<sup>th</sup> Brigade facilities, but rather on the streets of Zenica.<sup>1027</sup> He reached the conclusion that the gun belonged to the 7<sup>th</sup> Brigade following conversations with his colleagues at ECMM.<sup>1028</sup>

518. The Chamber notes that Exhibits P 462 and P 558, reporting on combat on Mt Zmajevac, indicate that the 7<sup>th</sup> Brigade was unable to remove and register all the war booty owing to the chaos that reigned.<sup>1029</sup> According to Exhibit P 462, “the Turks were driving off whatever they wanted”.<sup>1030</sup> Exhibit P 558 from the 7<sup>th</sup> Brigade mentions that a triple-barrel gun had not been reported and had disappeared. It says that “Arabs did not permit access to one ammunition and explosives depot” and concludes, *inter alia*, that “[all] these problems are the result of the presence of Turks, Arabs and

<sup>1020</sup> Dieter Schellschmidt, T(F), pp. 7911 and 7944.

<sup>1021</sup> Dieter Schellschmidt, T(F), p. 7911.

<sup>1022</sup> Dieter Schellschmidt, T(F), p. 7011.

<sup>1023</sup> *See supra*, para. 512.

<sup>1024</sup> *See supra*, para. 512.

<sup>1025</sup> Dieter Schellschmidt, T(F), p. 7942; P 155, paragraph 2, “On the 14th of April 4 (four) HVO officers returning from the front line were kidnapped by unknown persons in the area of Travnik”.

<sup>1026</sup> Dieter Schellschmidt, T(F), p. 7955.

<sup>1027</sup> Dieter Schellschmidt, T(F), p. 7956.

<sup>1028</sup> Dieter Schellschmidt, T(F), p. 7956.

<sup>1029</sup> P 462 and P 558.

<sup>1030</sup> P 462.

Guerrillas.”<sup>1031</sup> These exhibits raise doubts that the materiel used by the mujahedin in Zenica belonged to the 3<sup>rd</sup> Corps or the 7<sup>th</sup> Brigade. It is possible that the mujahedin removed this materiel after the HVO defeat on Mt Zmajevac and that it did not pass by 7<sup>th</sup> Brigade facilities.<sup>1032</sup>

519. As regards the green flags seen by Witness Dieter Schellschmidt during the exchange in front of Hotel *Internacional*, the Chamber observes that, according to this same witness, the colour green was used by several units in Bosnia at the time, not only by the 7<sup>th</sup> Brigade.<sup>1033</sup>

520. It should also be noted that representatives of the ECMM started to look for links between the abduction of the Croats and the 7<sup>th</sup> Brigade only after allegations by the HVO. Witness Lars Baggesen testified that the HVO claimed the mujahedin were a group from the 7<sup>th</sup> Brigade and the ECMM representatives had tried in vain to establish a link between them.<sup>1034</sup> The only link they managed to identify was the vehicle that brought the mujahedin to the negotiations in Zenica. The vehicle had been seen in front of 7<sup>th</sup> Brigade headquarters,<sup>1035</sup> although Witness Baggesen could not remember the details of where it was seen.<sup>1036</sup> During cross-examination he did not remember having seen the car himself or having heard about it during a discussion with his colleagues.<sup>1037</sup>

521. The evidence, including that from the HVO, demonstrates that the 3<sup>rd</sup> Corps denied all involvement in events as soon as the first abduction took place. It shows that the role played by the 3<sup>rd</sup> Corps during the exchange negotiations was very limited and was more that of a mediator. The 3<sup>rd</sup> Corps did not make any requests, did not compile any list of prisoners to be exchanged and did not attend the meetings between the ECMM and the mujahedin at Hotel *Internacional* in Zenica.<sup>1038</sup>

522. According to a videocassette from the mujahedin, Exhibit P 482, the abductions were carried out by mujahedin in Zenica under the command of Wahiudeen as a reaction to the HVO’s arrest and detention of some mujahedin.<sup>1039</sup> It indicates that the mujahedin first contacted “Bosnian Muslim Forces”<sup>1040</sup> and the UN to discuss how to obtain the prisoners’ release but that “there was

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<sup>1031</sup> P 558.

<sup>1032</sup> On the implication that mujahedin took part in ABiH combat, *see infra* para. 532.

<sup>1033</sup> Dieter Schellschmidt, T(F) p. 7960.

<sup>1034</sup> Lars Baggesen, T(F) pp. 7019 and 7092.

<sup>1035</sup> P 155.

<sup>1036</sup> Lars Baggesen, T(F) pp. 7018, I can remember that it was discussed later on because the same car that was used by the two mujahedin was later on observed at one of the 7<sup>th</sup> Muslim Brigade's – I can't recall if it was at the headquarters or their compound at the music school in Zenica or if it was in Ravno Rostovo, but at one of those places this vehicle was observed in front of the -- the building"; *see also* T(F), pp. 7090 and 7091.

<sup>1037</sup> Lars Baggesen, T(F) p. 7091.

<sup>1038</sup> Lars Baggesen, T(F), pp. 7091 and 7092; Dieter Schellschmidt, T(F), p. 7942; P 155.

<sup>1039</sup> P 482 and T(F) pp. 8535 and 8536.

<sup>1040</sup> P 482 and T(F) p. 8535.

no response.”<sup>1041</sup> The mujahedin therefore decided to carry out special training to put their abduction tactic into practice.<sup>1042</sup> Then they were divided into two groups.<sup>1043</sup> The first group abducted the four Croatian officers, who were members of the *Stjepan Tomasević* Brigade, in Novi Travnik on 13 April 1993.<sup>1044</sup> The second group abducted Witness Živko Totić in Zenica on 15 April 1993.<sup>1045</sup>

523. Exhibit P 482 also mentions the following:

"The UN accused the Mujahedin of being terrorists and war criminals. The command then came from the Bosnian Army to release the Croatian prisoners but it was not obeyed."<sup>1046</sup>

524. The Chamber therefore finds that the involvement of the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade in the abduction of the Croats has not been proved. The Prosecution's submission that the abduction of Živko Totić demonstrated the mujahedin's subordination to the 3<sup>rd</sup> Corps does not hold up under analysis.

525. The Chamber, however, finds it difficult to reconcile the lack of ABiH involvement in negotiating the exchange with the exhibits that mention "foreign nationals, volunteers in the BH Army".

526. The detention of foreign nationals by the HVO provoked strong reactions from the ABiH. The Chamber considers that these bear witness to a preoccupation with the fate of the detained foreigners. Furthermore, the letters and reports sent by the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade suggest that the foreigners were part of the ABiH. In his letter of protest dated 2 April 1993, the Accused Hadžihasanović indicated that a considerable number of foreign volunteers had taken up arms with the ABiH.<sup>1047</sup> Similarly, the letter sent to Dario Kordić by Asim Koričić on 2 April 1993 mentions "foreign nationals, volunteers in our ranks, particularly those from Arab countries."<sup>1048</sup> Finally, the report by Ahmet Adilović of 12 April 1993 mentions "foreign citizens who are members of the BH Army, i.e. volunteers who are in our unit."<sup>1049</sup>

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<sup>1041</sup> P 482 and T(F) p. 8535.

<sup>1042</sup> P 482 and T(F), p. 8536.

<sup>1043</sup> P 482 and T(F), p. 8536.

<sup>1044</sup> P 482 and T(F), p. 8536; P 194; P 218; P 625; P 680.

<sup>1045</sup> Živko Totić, T(F), pp. 3140, 3141, 3142, 3162 and 3168; Dieter Schellschmidt, T(F), p. 7905; P 482 and T(F), pp. 8536 and 8537; DH 2080; DH 340; DH 42;.

<sup>1046</sup> P 482 and T(F) pp. 8536 and 8537.

<sup>1047</sup> P 541; *see supra* para. 493.

<sup>1048</sup> P 409; *see supra* para. 494.

<sup>1049</sup> P 461; *see supra* para. 495.



527. These exhibits show that there was a close relationship between the foreign Muslim fighters and the ABiH in February, March and April 1993. They indicate that the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade valued foreign mujahedin as fighters. As will be explained in the section of the Judgement on joint combat, the foreign mujahedin took part in battle on the side of the ABiH as of late 1992. At first they fought against the Serbian forces and then, when conflicts broke out between the ABiH and the HVO, they also fought against the HVO. There is good reason to take note of combat on 18 April 1993 on Mt Zmajevac south of Zenica. As far as the Chamber is able to ascertain, this was the first time that foreign mujahedin joined the ABiH in fighting against the HVO.

528. After the abduction of the Croats, the ABiH started to deny any links with them. Indeed, this about-face does not seem very credible. The Chamber recalls, however, that there is a difference between cooperation during combat and the subordination of certain elements to the army. In order for there to be *de facto* subordination pursuant to Article 7(3) of the Statute, it must be established that the Accused exercised effective control over the mujahedin.<sup>1050</sup> Effective control cannot be assumed, but must be proved beyond a reasonable doubt. The use of the term “foreign volunteers” in the exhibits from the 3<sup>rd</sup> Corps and 7<sup>th</sup> Brigade indicates that the foreigners’ participation was opportune. It is possible that the 3<sup>rd</sup> Corps hoped to place them under its control or did not have the determination needed to do so. The Chamber finds that merely using the term “foreign volunteers” for foreign mujahedin does not mean that the 3<sup>rd</sup> Corps or the 7<sup>th</sup> Brigade had effective control over them.

(b) Joint Combat

529. The Prosecution maintains that the mujahedin took part in combat operations with 3<sup>rd</sup> Corps units from the time of their arrival in Central Bosnia in the summer of 1992 until at least December 1993.<sup>1051</sup> The Defence for the Accused Hadžihasanović denies any such joint actions and maintains that a joint combat action does not in and of itself imply subordination between the participants.<sup>1052</sup>

530. In this Judgement, the Chamber notes that on 18 April 1993, the HVO and ABiH armed forces fought each other on Mt Zmajevac south of Zenica and that the mujahedin fought side by side with the ABiH.<sup>1053</sup> This was not an isolated action. The Chamber has examined a large number of exhibits indicating that foreign and local mujahedin took part in combat with ABiH units as of the second half of 1992. It is thus appropriate to discuss the evidence dealing with the combat carried out jointly by the ABiH and the mujahedin before the creation of the *El Mujahedin* unit in

<sup>1050</sup> See *supra* paras. 76-89.

<sup>1051</sup> Prosecution Final Brief, paras. 115 and *ff.*; Prosecution Closing Arguments, T(F) pp. 18986-19002.

<sup>1052</sup> Hadžihasanović Defence Closing Arguments, T(F) pp. 19186-19190.

August 1993. The Chamber would also note that mujahedin continued to take part in combat after August 1993 and their participation even intensified.<sup>1054</sup>

531. Some of the evidence indicates that mujahedin took part in combat before the period relevant to the Indictment. Furthermore, an Arab national named Abu Sahar was allegedly killed during combat at Visoko in the summer of 1992.<sup>1055</sup> Then, in November 1992, between 15 and 20 mujahedin from the village of Gradina took part in defending Karaula against the Serbian forces.<sup>1056</sup> In December 1992, the 7<sup>th</sup> Brigade fought at Visoko against the Serbian forces.<sup>1057</sup> Exhibits P 513, P 514 and P 519, all documents from the 7<sup>th</sup> Brigade, note the participation of Arabs and Turks in combat. Exhibit P 513 is a combat report from the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion 1<sup>st</sup> Company and states that “the Travnik people were advancing fast with the Arabs down towards the *Gerila* where they linked up”.<sup>1058</sup> The Prosecution claims that the expression “Travnik people” refers to members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion stationed in Travnik under the command of Ramo Durmiš, Commander of the 1<sup>st</sup> Company.<sup>1059</sup> This allegation is supported by Exhibit P 514, a report by Ramo Durmiš on combat at Visoko<sup>1060</sup> in which he describes how several fighters, including “Arabs”, acted on their own initiative, and that the “Arabs” and “Turks” disobeyed the order to withdraw.<sup>1061</sup> In Exhibit P 519, a document dealing with the operation at Visoko and signed on behalf of Asim Koričić, 7<sup>th</sup> Brigade Commander, the 7<sup>th</sup> Brigade asked the 3<sup>rd</sup> Corps to return DM 40,000, claiming “the money was found on the mujahedin (Arabs and Turks who were killed)” and had been stolen by members

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<sup>1053</sup> See *supra* para. 504.

<sup>1054</sup> Combat from the period after the creation of *El Mujahedin* unit will be discussed in another part of the Judgement; see *infra* paras. 823-831.

<sup>1055</sup> Džemail Ibranović, T(F) p. 18415.

<sup>1056</sup> Fikret Čuskić, T(F) pp. 12048, 12049, 12084, 12085, 12156, 12157 and 12178; Džemal Merdan, T(F) p. 13146; Zijad Čaber, T(F) pp. 10396-10398. These witnesses explained to the Chamber that although at the time the mujahedin were not under the chain of command of the TO, they complied with its discipline and courageously fought the Serbian forces; Fikret Čuskić, T(F) p. 12085; Džemal Merdan, T(F) p. 13146.

<sup>1057</sup> P 408.

<sup>1058</sup> P 513 “I heard on the radio that Višegrad had also fallen and that the Travnik people were advancing fast with the Arabs down towards the *Gerila* where they linked up, as I found out later.”

<sup>1059</sup> Prosecution Final Brief para. 116, footnote 346.

<sup>1060</sup> See also Exhibit P 498, a list of the composition of the 7<sup>th</sup> Brigade mentioning that at the time Ramo Durmiš was the Commander of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> Company.

<sup>1061</sup> P 514, “Some Mujahids, including Arabs, moved towards the elevation 744 and/ text missing / without my order. Then they came down to the village and started torching. I caught up with two Mujahids and informed emir Heldić that he and the Mujahids must withdraw. However, the Arabs went even further to the right. Emir Heldić and his group returned before midday, but Abu Talha (deceased) with the Arabs and the Turks remained deep on the right side.” The Chamber notes that in this exhibit Ramo Durmiš used the term “mujahedin” in a general sense to designate all the members of the 1<sup>st</sup> Company, both local and foreign members.

of the Visoko municipal TO at the end of combat.<sup>1062</sup> These exhibits thus demonstrate that foreign mujahedin took part in combat at Visoko side by side with the 7<sup>th</sup> Brigade in late 1992.<sup>1063</sup>

532. On 18 April 1993, 7<sup>th</sup> Brigade units attacked the HVO on Mt Zmajevac south of Zenica.<sup>1064</sup> On 25 April 1993, the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion Assistant Commander for Security sent a report to his superiors about war booty taken during this combat operation.<sup>1065</sup> In it he complains about the conduct of 7<sup>th</sup> Brigade members who allegedly removed war booty for themselves and also mentions “Turks” taking away whatever they wanted.<sup>1066</sup> The distribution of war booty was also discussed at a meeting of 7<sup>th</sup> Brigade commanders and soldiers on 13 May 1993<sup>1067</sup> when members of the 7<sup>th</sup> Brigade Command raised the issue of war booty being stolen. According to the 7<sup>th</sup> Brigade Command, all these problems resulted from the presence of “Turks”, “Arabs” and “Guerrillas”.<sup>1068</sup> During the meeting, Ahmed Adilović was tasked with holding talks with the “Arabs” about the war booty they had taken.<sup>1069</sup> Nevertheless, it is interesting to note that the 3<sup>rd</sup> Corps war diary does not mention foreign Muslim fighters on 18 April 1993.<sup>1070</sup>

533. Several Prosecution and Defence witnesses recalled combat in the Bila Valley and the surroundings of Ovnak in early June 1993.<sup>1071</sup> The mujahedin’s participation in this combat will be discussed in the section of the Judgement dealing with the respective counts of the Indictment.<sup>1072</sup>

534. Around 16 June 1993, combat took place between the ABiH 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, the 17<sup>th</sup> Brigade and the 312<sup>th</sup> Brigade against the HVO and Serbian forces in the Bijelo Bučje sector.<sup>1073</sup> Exhibits P 775 and DH 1360 provide evidence that mujahedin took part in this combat. Exhibit P 775, a 7<sup>th</sup> Brigade report dated 20 June 1993, notes that “[d]uring the action, four soldiers – foreign citizens, Arabs – were killed, as well as three soldiers from the 312<sup>th</sup> Motorised Brigade and one soldier from the 17<sup>th</sup> Brigade 3<sup>rd</sup> Battalion”.<sup>1074</sup> Exhibit DH 1360 is a report dated 2 August 1993 on an inspection of the 312<sup>th</sup> Brigade by the 3<sup>rd</sup> Corps Command Operations and Training. At

<sup>1062</sup> P 519.

<sup>1063</sup> This is also confirmed by Exhibit P 482, T(F) p. 8529.

<sup>1064</sup> C 15, pp. 120 and 121; P 782 and P 550.

<sup>1065</sup> P 462.

<sup>1066</sup> P 462, “It was impossible to keep everything under control because the Turks were driving off whatever they wanted [...]”

<sup>1067</sup> P 558.

<sup>1068</sup> P 558, “All these problems are the result of the presence of Turks, Arabs and Guerrillas.”

<sup>1069</sup> P 558, “Effendi Ahmed Adilović is charged with holding talks with the Arabs about the war booty which they took.”

<sup>1070</sup> C 15, pp. 120 and 121.

<sup>1071</sup> Witness HF, T(F) pp. 17238-17240; Berislav Marjanović, T(F) p. 2699; P 397 (under seal), para. 7; Drago Peša, T(F) p. 1872; Witness XB, T(F) p. 1640; Witness ZA, T(F) p. 2329.

<sup>1072</sup> See *infra* paras. 1115-1127 and 2002-2006.

<sup>1073</sup> Fikret Čuskić, T(F) pp. 12072, 12073 and 12122; Suad Jusović, T(F) pp. 18464, 18466; P 586, P 775 and C 13, p. 9.

the time, the brigade had a command post in Bijelo Bučje. The following is noted under the title "Proposed Measures":

"Given that a relatively small unit (30 soldiers) of Arabs (who remained behind after the 7<sup>th</sup> Muslim Mountain Brigade left this area) is operating autonomously in the Bijelo Bučje sector, the proper people from 3<sup>rd</sup> Corps Command and the officers of the OG *Bosanska Krajina* should hold talks with these soldiers and propose their re-subordination to the 312<sup>th</sup> Motorised Brigade; or if not, pull this unit out of the 312<sup>th</sup> Motorised Brigade's zone of responsibility."<sup>1075</sup>

Witness HF also confirmed that mujahedin were at the front line in Bijelo Bučje.<sup>1076</sup>

535. On 24 June 1993, ABiH units, that is the 307<sup>th</sup> Brigade, 308<sup>th</sup> Brigade, 17<sup>th</sup> Brigade and 7<sup>th</sup> Brigade, fought against Croatian and Serbian forces in the Mravinjac sector.<sup>1077</sup> A report signed by Selmo Čikotić, Commander of OG *Zapad*, refers to "one killed (foreigner from the 7<sup>th</sup> Muslim Mountain Brigade)".<sup>1078</sup> The report also indicates that a tank was captured during the action. The involvement of the mujahedin on Mravinjac is corroborated by Exhibit P 598, which mentions that "[t]he Arabs on Mravinjac captured a tank."<sup>1079,1080</sup>

536. Exhibit P 924.3 and its revised version C 3 also deal with combat in the Mravinjac sector. This is an extract from the 3<sup>rd</sup> Corps war diary dated 23 June 1993 stating that a meeting by 3<sup>rd</sup> Corps officers had been held on 23 June 1993. During this meeting, the Accused Kubura informed the 3<sup>rd</sup> Corps of the fact that the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion was preparing an attack on Mravinjac. Later on, under the title "Hiring foreign nationals," he asks the following:

"Will we continue to hire them because they receive ammunition? Will they go to Mount Igman or will they continue to conduct combat operations in the zone of operations of the 3<sup>rd</sup> Corps?"

537. Other exhibits testify to the fact that mujahedin took part in combat with 3<sup>rd</sup> Corps units, in particular the 7<sup>th</sup> Brigade. In early July 1993, the 333<sup>rd</sup> Brigade conducted combat operations at Kaćuni south-east of Busovača.<sup>1081</sup> All the exhibits dealing with this indicate that the 333<sup>rd</sup> Brigade needed reinforcements and asked the 3<sup>rd</sup> Corps Command for authorisation to use a unit composed of foreign mujahedin. Exhibit P 603 dated 10 July 1993, which is the reply of the Accused Hadžihasanović to this request, stipulates that "[s]ince the mentioned unit is not part of the BH

<sup>1074</sup> P 775.

<sup>1075</sup> The revised version of DH 1360 was submitted as evidence under reference number C 5.

<sup>1076</sup> Witness HF, T(F) p. 17227, "Yes. Well, there were some in the Bijelo Bučje area, because it was a very difficult part of the front line. They would go there on their own initiative and carry out some operations that were of more disadvantage to us than any real use, because they would only provoke artillery fire and such like."

<sup>1077</sup> Fikret Čuskić, T(F) pp. 12122 and 12123; P 790; C 3, p. 5.

<sup>1078</sup> P 790, "According to the reports which our units sent directly to the command post, we have one missing (yesterday afternoon), one killed (foreigner from the 7<sup>th</sup> Muslim Mountain Brigade) and six wounded."

<sup>1079</sup> P 598.

<sup>1080</sup> The war diary of OG *Bosanska Krajina* dated 24 June 1993 also mentions the fact that a tank was captured during the seizure of the Mravinjac elevation, although without mentioning the presence of Arab fighters; C 13, p. 9.

Army, we cannot issue any orders to it”.<sup>1082</sup> Nevertheless, later on in Exhibit P 603, the Accused Hadžihasanović gave his authorisation to use the unit and asked the 333<sup>rd</sup> Brigade to submit reports should the unit be engaged.<sup>1083</sup> In Exhibit P 924.4, a report dated 11 July 1993, the 333<sup>rd</sup> Brigade informed the 3<sup>rd</sup> Corps that it did not have sufficient manpower to retake control of the lost territory and had asked “Arabs” to resolve the problem.<sup>1084</sup> Finally, in Exhibit P 434 dated 12 July 1993, the Accused Hadžihasanović asked the 7<sup>th</sup> Brigade if it had reserve troops, in particular the 3<sup>rd</sup> Battalion 3<sup>rd</sup> Company, that could be engaged in the zone of responsibility of the 333<sup>rd</sup> Brigade.<sup>1085</sup> The exhibit indicates that the 333<sup>rd</sup> Brigade needed reinforcements, that the “Arabs” were ready to conduct combat operations in the zone of responsibility of the 333<sup>rd</sup> Brigade, but that their engagement depended on the presence of a 7<sup>th</sup> Brigade unit, namely the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion 3<sup>rd</sup> Company.<sup>1086</sup>

538. Furthermore, during a 7<sup>th</sup> Brigade meeting on 24 July 1993, the Accused Kubura said that “[t]he *AbduLatif* platoon does not feel like participating in this operation.”<sup>1087</sup> According to Exhibit P 789, minutes of a 7<sup>th</sup> Brigade meeting on 2 July 1993, the *Abdul Atif* platoon<sup>1088</sup> was subordinated to the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion.<sup>1089</sup> According to Exhibit P 656 of 21 October 1993, which is an HVO document, the *Abdul Atif* unit was stationed at Visoko and consisted of mujahedin.<sup>1090</sup>

539. Exhibit P 610 dated 4 August 1993, a report by Ahmet Adilović, 7<sup>th</sup> Brigade Assistant Commander for Morale, Information and Propaganda, and Religious Affairs, speaks clearly of the engagement of mujahedin side by side with the 7<sup>th</sup> Brigade:

“To date they have got used to the Arabs (and also some Turks) taking part in combat operations with them. Their presence makes them more secure, and the Arabs were frequently of decisive importance for the success of an action, so the soldiers of the 7<sup>th</sup> Muslim Mountain Brigade 1<sup>st</sup> Battalion want them engaged again in combat operations with members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion.”

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<sup>1081</sup> P 924.4.

<sup>1082</sup> P 603.

<sup>1083</sup> P 603, “We approve the use of this unit on the mentioned axis as previously agreed.”

<sup>1084</sup> P 924.4.

<sup>1085</sup> P 434.

<sup>1086</sup> P 434.

<sup>1087</sup> P 500, “The *AbduLatif* platoon does not feel like participating in this operation. It will be investigated whether this is due to fear or maybe lack of combat experience, and certain measures will be taken.” It is not clear which combat operation is involved, perhaps one in the vicinity of Visoko.

<sup>1088</sup> This platoon is spelled in several ways: *Abdul Atif* (P 656), *AbduLatif* (P 500) and *ABULATIF*» (P 789).

<sup>1089</sup> P 789, “‘ABULATIF’ detachment: We number 25 people, reconnaissance conducted along the Visoko-Kiseljak route, especially elevation Obješenjak. The detachment is subordinated to 7<sup>th</sup> Muslim Mountain Brigade 3<sup>rd</sup> Battalion.”

<sup>1090</sup> According to this document, the *Abdul Atif* platoon operated within the 3<sup>rd</sup> Corps and included 400 soldiers, both locals and foreigners. It was commanded by *Abdul Atif*. The Command consisted of foreign nationals from Arab countries. The *Igasa* humanitarian organisation and the Iranian embassy in Zenica allegedly took care of equipping and financing the unit.

540. A combat report by the Accused Hadžihasanović dated 9 August 1993 addressed to the Supreme Command Main Staff indicates that a joint combat action had been planned for 8 August 1993 on the Petrovići-Mišići-trig point 323 axis.<sup>1091</sup> The report goes on to say that the mujahedin from Travnik and Zavidovići were supposed to take part in the action with units of the 314<sup>th</sup> Brigade. The Accused Hadžihasanović, however, explains that he had to order the action stopped since “[t]he Muslim forces or mujahedin brought from Travnik as well as the part of Muslim forces from Zavidovići did not want to carry out a [combat] order”.<sup>1092</sup> The mujahedin had allegedly initially taken part in reconnaissance activities without giving any sign that they might refuse to carry out the task they had been assigned. Suddenly, on the evening of 8 August 1993, they refused to engage in combat at night. The next morning they again refused to carry out the combat order and stated they did not have confidence in the army and were afraid they would be betrayed. In his report, the Accused Hadžihasanović says that he planned to send the mujahedin back where they came from.

541. The exhibits cited above testify to the mujahedin’s engagement side by side with the ABiH, the 7<sup>th</sup> Brigade in particular. Nevertheless, they do not make it possible to conclude beyond a reasonable doubt that mujahedin took part in combat as subordinated to the Accused. Mention of mujahedin in ABiH documents is most often accompanied by complaints about them. For example, in Exhibit P 514 Ramo Durmiš says that the “Arabs” and “Turks” disobeyed the order to withdraw. Exhibits on the combat on Mt Zmajevac and the distribution of war booty show that 7<sup>th</sup> Brigade commanders had no authority whatsoever over the mujahedin, who took whatever they wanted.<sup>1093</sup> It is interesting to note that the 7<sup>th</sup> Brigade Command tasked Ahmet Adilović with “holding talks” with the “Arabs” about the war booty they had taken. The choice of words indicates an approach which is not particularly authoritarian. Exhibit P 603 on combat operations conducted by the 333<sup>rd</sup> Brigade in July 1993 provides another example in which the Accused Hadžihasanović expressly states that the mujahedin were not part of the ABiH and that he could not give them orders. Furthermore, the choice of words in Exhibit P 500 on the participation of the *Abdul Latif* platoon in a combat operation indicates that the mujahedin were not incorporated into the hierarchy of the 7<sup>th</sup> Brigade. The exhibit states that the platoon “did not want” to take part in an operation. Exhibit DH 1360 dated 2 August 1993 should also be noted, as it suggests “holding talks” with the Arab unit in the Bijelo Bučje sector and “proposing” that it be subordinated to the 312<sup>th</sup> Brigade. Again, the words seem too weak to suggest that the mujahedin were subordinated to the ABiH. Finally,

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<sup>1091</sup> P 477.

<sup>1092</sup> P 477.

<sup>1093</sup> P 462 and P 558.

Exhibit P 477, a combat report by the Accused Hadžihasanović dated 9 August 1993, states that the mujahedin refused to carry out orders from the 3<sup>rd</sup> Corps.

542. Several witnesses for the Defence confirmed that the mujahedin joined the ABiH in combat against the Serbian and Croatian forces. Witness Fikret Čuskić stated that in 1992, the mujahedin took part in combat with TO units and fought courageously against the Serbs.<sup>1094</sup> According to Witness Sulejman Ribo, the mujahedin were present in the Mehurići sector where they carried out military activities such as training and reconnaissance. They even took part in combat sometimes.<sup>1095</sup> More generally, Witness HF testified that the mujahedin went to the front line to join ABiH combat operations, both offensive and defensive.<sup>1096</sup> Witness ZA was a member of a unit based in Zenica that was incorporated into the 3<sup>rd</sup> Corps in late 1992 or early 1993.<sup>1097</sup> He stated that mujahedin took part in combat with the 3<sup>rd</sup> Corps,<sup>1098</sup> and that they brought him radios, transmission material, antennas and other equipment to be repaired, both before the creation of the 3<sup>rd</sup> Corps in 1992 and after its creation in 1993.<sup>1099</sup> Before military operations he would recharge their batteries.<sup>1100</sup> The 3<sup>rd</sup> Corps also lent them loudspeakers.<sup>1101</sup>

543. Nonetheless, except for Witness ZA, these witnesses all denied that the mujahedin were incorporated into the ABiH. Witness HF said that he did not know how the mujahedin were informed about ABiH combat actions, since these were not joint actions planned in advance, and noted that the mujahedin even wanted to put members of the ABiH under their control so that they would fight according to mujahedin principles.<sup>1102</sup> Witness Fikret Čuskić stated that the mujahedin were not part of the TO structure and that the ABiH had no information regarding their number or their commanders.<sup>1103</sup> Witness Sulejman Ribo noted that the mujahedin did not want to be subordinated to the ABiH and said they operated as independent groups.<sup>1104</sup>

544. The Chamber notes the absence of evidence indicating that the mujahedin sent combat reports or other reports on their activities to people in command of the combat in which they had participated. The Chamber also notes an almost total lack of any reference to the military activities

<sup>1094</sup> Fikret Čuskić, T(F) p. 12085.

<sup>1095</sup> Sulejman Ribo, T(F) pp. 11067 and 11068; Witness HF, T(F) Šnumber omittedĆ.

<sup>1096</sup> Witness HF, T(F) pp. 17203, 17232, 17235 and 17238.

<sup>1097</sup> Witness ZA, T(F) pp. 2310 and 2311.

<sup>1098</sup> Witness ZA, T(F) p. 2315.

<sup>1099</sup> Witness ZA, T(F) pp. 2317, 2318 and 2334.

<sup>1100</sup> Witness ZA, T(F) p. 2317.

<sup>1101</sup> Witness ZA, T(F) pp. 2318 and 2319.

<sup>1102</sup> Witness HF, T(F) pp. 17203, 17235, 17236, 17241 and 17242.

<sup>1103</sup> Fikret Čuskić, T(F) pp. 12085 and 12086.

<sup>1104</sup> Sulejman Ribo, T(F) p. 11067.

of the mujahedin in the war diaries and operations books, which is a notable contrast to the situation prevailing after the formation of the *El Mujahedin* detachment in August 1993.<sup>1105</sup>

545. The Chamber furthermore observes that the evidence relating to joint combat seems to indicate different groups of mujahedin. While most of the mujahedin engaged in combat seem to have belonged to the group of mujahedin based at Poljanice, Zenica and Travnik, the Chamber is not certain about the mujahedin stationed in Arnauti who took part in combat on Mt Zmajevac or the *Abdul Atif* platoon that was based at Visoko. In addition, the report by the Accused Hadžihasanović dated 9 August 1993 mentions mujahedin from Zavidovići.<sup>1106</sup> As the Chamber is concerned primarily with the group of mujahedin based at Poljanice and Travnik, the probative value of the evidence dealing with other mujahedin engagement in combat is limited.

546. It should also be noted that with the exception of Exhibits P 514 and P 477,<sup>1107</sup> none of the evidence on joint combat mentions any orders addressed to the mujahedin. Moreover, the mujahedin refused to carry out the orders referred to in these two exhibits.<sup>1108</sup>

(c) Involvement of the 3<sup>rd</sup> Corps in the Creation of the *El Mujahedin* Detachment

547. Both the Prosecution and the Defence for the Accused Hadžihasanović refer to the developments leading to the creation of the *El Mujahedin* detachment to support their case.<sup>1109</sup> In the view of the Prosecution, the creation of the *El Mujahedin* detachment, which it attributes to the 3<sup>rd</sup> Corps, demonstrates the close relationship between them. The Defence for the Accused Hadžihasanović considers that the order to create this unit was no more than an attempt by the ABiH to put the mujahedin under the control of the 3<sup>rd</sup> Corps.<sup>1110</sup>

548. The Chamber will now examine the evidence dealing with the order to create the *El Mujahedin* detachment dated 13 August 1993. In view of the quantity of this evidence, in particular witness testimony, the Chamber cannot mention everything it examined and evaluated. It will briefly summarise the initial developments leading to the creation of the *El Mujahedin* detachment

<sup>1105</sup> See *infra* paras. 826-831.

<sup>1106</sup> P 477.

<sup>1107</sup> Exhibit P 514 relates to the combat operation at Visoko in December 1992, see *supra* para. 531, whereas Exhibit P 477 is a report by the Accused Hadžihasanović dated 9 August 1993 on a combat operation on the Petrovići-Mišići-trig point 323 axis, see *supra* para. 540.

<sup>1108</sup> See *supra* paras. 531 and 540.

<sup>1109</sup> Prosecution Final Brief, paras. 129-143; Hadžihasanović Defence Final Brief, paras. 231-291.

<sup>1110</sup> Hadžihasanović Defence Final Brief, para. 269.



and then focus on exhibits from June, July and August 1993, several of which mention “foreign volunteers”.<sup>1111</sup>

(i) Developments Leading to the Creation of the *El Mujahedin* Detachment

549. The abduction of Živko Totić and other Croatian officers in mid-April 1993 was followed by four murders in Miletići on 24 April 1993.<sup>1112</sup> Both crimes were attributed to the mujahedin.<sup>1113</sup> According to witnesses who were former members of the ABiH, as of that moment the risk posed by the mujahedin became a concern to the 3<sup>rd</sup> Corps and the ABiH Supreme Command.<sup>1114</sup> During a meeting of ABiH commanders that included the Accused Hadžihasanović and Džemal Merdan at 3<sup>rd</sup> Corps headquarters on 21 April 1993, Sefer Halilović raised certain questions about the mujahedin.<sup>1115</sup> In addition, the mujahedin issue was apparently broached as well during a meeting of the 3<sup>rd</sup> Corps Command and the ABiH Supreme Command Main Staff in Zenica in late April 1993.<sup>1116</sup> The 3<sup>rd</sup> Corps security organ had apparently intensified its search for information on the mujahedin.<sup>1117</sup> In May 1993, there was another meeting of 3<sup>rd</sup> Corps and Supreme Command representatives in Zenica in which it was suggested that two members of the Supreme Command Main Staff be charged with resolving the mujahedin problem.<sup>1118</sup>

550. There is also cause to mention the visit to Poljanice Camp by members of the 306<sup>th</sup> Brigade Command.<sup>1119</sup> On 11 May 1993, witnesses Esed Sipić and Asim Delalić went to Poljanice to contact the mujahedin and discuss their destructive behaviour.<sup>1120</sup> The mujahedin refused to meet with them and let them know that they were in the process of negotiating the formation of an 8<sup>th</sup> Muslim Brigade with the highest representatives of the ABiH.<sup>1121</sup>

551. On 23 May 1993 at the latest, Sefer Halilović, commander of the ABiH at the time, tasked Rasim Delić with making sure that the mujahedin left Zenica via Mt Igman within 48 hours. Sakib Mahmujin was to provide assistance.<sup>1122</sup>

<sup>1111</sup> DH 165/1, 13 June 1993; DH 165/2, 16 June 1993; DH 165/5, 12 August 1993; DH 165/6, 13 August 1993; P 615, 24 or 26 August 1993.

<sup>1112</sup> See paras. 496-500 and 1068-1074.

<sup>1113</sup> See paras. 496-500 and 1068-1074.

<sup>1114</sup> Džemal Merdan, T(F) p. 13150; Witness ZP, T(F) pp. 8886, 8891, 8892 and 9065; Witness HF, T(F) p. 17174; Witness HD, T(F) pp. 15484 and 15486.

<sup>1115</sup> P 923.7.

<sup>1116</sup> Witness ZP, T(F) pp. 8880, 8885, 8886, 8891, 8892 and 9036.

<sup>1117</sup> Witness HF, T(F) p. 17174; Witness HD, T(F) pp. 15484 and 15486.

<sup>1118</sup> Džemal Merdan, T(F) pp. 13158 and 13159; Witness ZP, T(F) pp. 9067 and 9068.

<sup>1119</sup> The Chamber recalls that Poljanice Camp was in the 306<sup>th</sup> Brigade zone of responsibility.

<sup>1120</sup> Esed Sipić, T(F) pp. 14794, 14802; Asim Delalić, T(F) pp. 16359 and 16360.

<sup>1121</sup> Esed Sipić, T(F) p. 14795; Asim Delalić, T(F) p. 16360; DH 1007.

<sup>1122</sup> Witness ZP, T(F) pp. 8881, 8882, 9068 and 9147; P 431.

552. On 13 June 1993, in a written report to Rasim Delić, Commander of the Supreme Command Main Staff,<sup>1123</sup> and Sefer Halilović, Chief of Staff,<sup>1124</sup> the Accused Hadžihasanović noted “there have been volunteers from foreign countries (Arabs and Turks), as well as a group of Bosnians trained by them, the so-called Gerila /Guerrillas/, who have not entered the ranks of the BH Army, in spite of being invited to.”<sup>1125</sup> In the report, the Accused Hadžihasanović indicated that “foreign volunteers” and the Muslims allied with them wished to communicate exclusively with top officials of the ABiH and not with the 3<sup>rd</sup> Corps.<sup>1126</sup> The Accused Hadžihasanović spoke of their unlawful combat methods and said he did not want to be held accountable for their actions. He asked the Supreme Command for its views and opinions on how to solve the problem.<sup>1127</sup> The Accused Hadžihasanović maintained it was a well-known fact that these persons had the support of certain state organs and high-ranking clergymen.<sup>1128</sup>

553. The remarks in this letter deal with the unlawful combat methods of the mujahedin and the Accused Hadžihasanović wrote that he did not want to be held accountable for their actions. By making this declaration, he seemed to be alluding to the crimes (international or other) that had been committed or might be committed by the mujahedin. In fact, the Accused Hadžihasanović had knowledge of the abduction of Živko Totić by the mujahedin and the murder of four men on 15 April 1993.<sup>1129</sup> He was also informed that the mujahedin had committed murders in Miletići on 24 April 1993.<sup>1130</sup> Several days after 9 June 1993, 3<sup>rd</sup> Corps Deputy Commander Džemal Merdan met the mujahedin in Guča Gora at which time they declared their intention to demolish the monastery.<sup>1131</sup> Nevertheless, the Chamber is unable to establish that as of 13 June 1993, the Accused Hadžihasanović knew that it was the mujahedin who had committed the murders in Maline

<sup>1123</sup> He was appointed commander on 8 June 1993.

<sup>1124</sup> DH 73/DH 165.1.

<sup>1125</sup> DH 73/DH 165.1 “In the general area of Zenica municipality since the beginning of the war there have been volunteers from foreign countries (Arabs and Turks), as well as a group of Bosnians trained by them, the so-called Gerila /Guerrillas/, who have not entered the ranks of the BH Army, in spite of being invited to.”

<sup>1126</sup> DH 73/DH 165.1, “They do not want to make public the decision regarding their actions and eventual entry into the RBH Army's ranks and wish to communicate exclusively with top officials of the RBH Army Staff, and not with the 3<sup>rd</sup> Corps commander, whose only duty, in their opinion, is to arrange for them a meeting with the said people.”

<sup>1127</sup> DH 73/DH 165.1, “They were in this territory even before the formation of the 3<sup>rd</sup> Corps. In fighting to date they have been acting outside the usual context and lawful methods of combat, which is directly detrimental to the BH state, and especially to the RBH Army. ... In this connection, I am requesting YOUR STANCES AND OPINIONS regarding the solution to this problem, since these units are situated in the zone of responsibility of the 3<sup>rd</sup> Corps, and I do not want to be held accountable for the consequences of their actions.”

<sup>1128</sup> DH 73/DH 165.1, “It is a known fact that some state organs and high-ranking Muslim clergymen are behind them.”

<sup>1129</sup> See *supra* paras. 501-503 and 505-507.

<sup>1130</sup> See *infra* para. 1085.

<sup>1131</sup> See *infra* para. 2002.

on 8 June 1993.<sup>1132</sup> In his testimony, Witness Džemal Merdan did not confirm or was unable to confirm the accuracy of such an interpretation.<sup>1133</sup>

554. On 16 June 1993, Rasim Delić ordered the 3<sup>rd</sup> Corps Commander:

“Send these groups [of foreign volunteers and a group of Muslims] to Igman and merge them with the Supreme Command Staff independent detachment in Zuka’s unit. In case they do not accept it, show them no hospitality and eventually disarm them.”<sup>1134</sup>

555. In a telephone conversation on 16 June 1993, the Accused Hadžihasanović told Sefer Halilović that he could not carry out this order in full because disarming the mujahedin would mean opening up a third front. He asked Halilović to send only the first part of the order about transferring the foreigners to Mt Igman.<sup>1135</sup>

556. On 23 July 1993, Rasim Delić authorised Sakib Mahmuljin, on behalf of the Commander of the ABiH Supreme Command Main Staff, to undertake negotiations and implement the necessary measures with representatives of the “*Mujahedin* unit” of Zenica in order to incorporate it into the ABiH, engage it in joint combat against the Serbs and re-subordinate it to the 3<sup>rd</sup> Corps Command.<sup>1136</sup>

557. On 12 August 1993, the 3<sup>rd</sup> Corps Command sent a proposal to the Supreme Command Main Staff suggesting to “[o]rganise all foreign volunteers in the RBH Army in the zone of responsibility of the 3<sup>rd</sup> Corps into a detachment.”<sup>1137</sup> In the proposal, the Accused Hadžihasanović

<sup>1132</sup> See *infra* paras. 1129-1133.

<sup>1133</sup> Džemal Merdan, T(F) pp. 13692-13696, 13830.

<sup>1134</sup> DH 165.2/P 270, “Since the beginning of the war, volunteers from foreign countries and a group of Bosnians, united in a so-called GERILA /guerrilla/ unit, have been staying on the territory of Zenica.[...], I hereby ORDER 1. Send these groups to Igman and merge them with the ŠVK independent detachment in Zuka’s unit. In case they do not accept it, show them no hospitality and eventually disarm them. 2. [...]”

<sup>1135</sup> DH 165.3/P 807; “Đ: All right, all right. Regarding the information that we have received about those foreigners ... S: Yes? Đ: It cannot be done that way. S: Really? Đ: No way. It is my third front line. S: No, no, but try. It is ordered, here, two of them have signed it, go. Do you understand me? Đ: Try to send one order without that second part, ordering only to send them up there.

S: Yeah.” “Đ” is for Đedo, the nickname of the Accused Hadžihasanović.

<sup>1136</sup> DH 165.4/P 202; “Authorising Mr. Sakib MAHMULJIN, a member of the 3<sup>rd</sup> Corps Command, to carry out, on behalf of the commander of the RBH Armed Forces General Staff, necessary negotiations and arrangements with the representatives (commanders) of the *Mujahedin* unit from Zenica regarding the following issues: 1. The inclusion of the *Mujahedin* unit in the RBH Army. 2. The use of the unit in joint struggle against the Chetniks and the manner of its re-subordination to the 3<sup>rd</sup> Corps Command. The authorization is issued with the aim of solving problems on the territory of Zenica in connection with the above-mentioned formation, and cannot be used for other purposes.”

<sup>1137</sup> DH 165.5/P 438; “Proposal: formation of a detachment of foreign citizens. Given the need to organise and make use of foreign volunteers, as well as their written request to 3<sup>rd</sup> Corps Command, and on the basis of your authorisation no. 1/297-54 of 23 July 1993, we are sending you the following PROPOSAL: 1. Organise all foreign volunteers in the RBH Army in the zone of responsibility of the 3<sup>rd</sup> Corps into a detachment. We will submit a proposed establishment for this unit shortly, 2. Mobilisation collection point for this detachment would be in the village of Mehurići, Travnik municipality, 3. The name of the detachment is *El Mujahedin*; its number and VJ /?military unit/ number are to be determined by the Supreme Command Staff, 4. Logistics support will be regulated by the logistics services of the 3<sup>rd</sup> Corps, 5. We request urgency.”

refers to the “need to organise and make use of foreign volunteers”, to the written request of the foreign volunteers sent to 3<sup>rd</sup> Corps Command, and to the authorisation given by Rasim Delić on 23 July 1993. He proposed the village of Mehurići as the mobilisation assembly point and to call the new detachment *El Mujahedin*.

558. Based on this proposal, on 13 August 1993 the Supreme Command Main Staff ordered the creation of the *El Mujahedin* detachment in the 3<sup>rd</sup> Corps zone of responsibility.<sup>1138</sup> The order says:

“Replenish the “El Mujahedin” detachment with foreign volunteers currently on the territory of the 3<sup>rd</sup> Corps zone of responsibility. These people keep the weapons and other equipment which has already been issued to them.”<sup>1139</sup>

The order clearly states that the task is to be put into effect immediately and completed no later than 31 August 1993.

(ii) Analysis of the Events by the Chamber

559. The Chamber will now determine the conclusions to be drawn from the relationship between the 3<sup>rd</sup> Corps and the mujahedin in respect of the developments discussed above.

560. The first question that arises is whether or not the “foreign volunteers” or “volunteers from foreign countries” mentioned in five different documents belonged to the ABiH. An analysis of the five documents reveals contradictions. Two indicate that the mujahedin were not part of the army before the creation of the *El Mujahedin* detachment. In letter DH 165.1 dated 13 June 1993, the Accused Hadžihasanović says explicitly that the “volunteers from foreign countries” and the locals allied with them had not joined the ranks of the ABiH.<sup>1140</sup> The fact that on 23 July 1993 Rasim Delić authorised Sakib Mahmuljin to initiate negotiations with the “*Mujahedin* unit” in order to incorporate it in the ABiH, disproves that the unit already formed part of the ABiH at the time.<sup>1141</sup> Conversely, the 3<sup>rd</sup> Corps proposal of 12 August 1993 on the creation of the *El Mujahedin* unit speaks of “foreign volunteers **in the RBH Army** in the zone of responsibility of the 3<sup>rd</sup> Corps” (emphasis added),<sup>1142</sup> which would seem to indicate that the mujahedin were part of the ABiH and it was only a matter of regrouping them in a unit of their own. Finally, the two orders by Rasim Delić dated 16 June and 13 August 1993 do not explicitly deal with the question of whether these volunteers joined the ranks of the army. The Supreme Command and 3<sup>rd</sup> Corps position on whether the foreign volunteers were part of the ABiH is therefore not clear from the five documents, the first

<sup>1138</sup> DH 165.6/P 439.

<sup>1139</sup> DH 165.6/P 439.

<sup>1140</sup> See *supra* para. 552.

<sup>1141</sup> DH 165.4/P 202.

<sup>1142</sup> DH 165.5/P 438.

and second of which contradict the third. These five documents do not allow the Chamber to draw any conclusions as to the relationship between the 3<sup>rd</sup> Corps and the mujahedin.

561. The authorisation given to Sakib Mahmuljin again speaks of “re-subordination”<sup>1143</sup> of the *El Mujahedin* detachment to the 3<sup>rd</sup> Corps.<sup>1144</sup> The Prosecution maintains that the term “re-subordination” indicates that the unit had been previously subordinated to the 3<sup>rd</sup> Corps.<sup>1145</sup> The Chamber does not agree with this interpretation, which is contradicted by many other documents using the same term and the explanations of this term by several witnesses. Analysis of the evidence leads the Chamber to find that the use of the term “re-subordination” in the text of the authorisation given to Sakib Mahmuljin does not necessarily imply that the unit had been previously subordinated to the 3<sup>rd</sup> Corps.<sup>1146</sup> The term “re-subordination” in the text of this authorisation indicates that a unit was to be created within the ABiH and that Mahmuljin would determine how the unit would be made available to the 3<sup>rd</sup> Corps.

562. Finally, the order to create the *El Mujahedin* detachment dated 13 August 1993 stipulated that the foreign volunteers in the 3<sup>rd</sup> Corps zone of responsibility were to keep the weapons and equipment previously issued to them.<sup>1147</sup> It is hard to understand why the ABiH would have issued weapons and equipment to the mujahedin if they were not part of the ABiH, particularly given the fact that the ABiH did not have enough weapons to arm its own soldiers. Indeed, Witness Mustafa Poparić, author of the 3<sup>rd</sup> Corps proposal to the Supreme Command dated 12 August 1993, said he had been informed that the foreigners had their own weapons, and the army did not have weapons for them.<sup>1148</sup> Witness Džemal Merdan stated that he did not know who had issued weapons to these people.<sup>1149</sup>

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<sup>1143</sup> DH 165.4.

<sup>1144</sup> *See supra* para. 556.

<sup>1145</sup> Prosecution Final Brief, para. 135, footnote 420.

<sup>1146</sup> An analysis of the documents and testimony leads the Chamber to find that in the terminology used by the ABiH the term “re-subordination” is not differentiated from the term “subordination”. The difference between them is something else. In standard ABiH terminology, the term “re-subordination” refers to a situation in which a unit not normally subordinated to another unit is put under the latter’s command for a limited time and a specific purpose. Thus, the company of a brigade can be “re-subordinated” to another brigade for a certain time in order to take part in combat operations, without becoming a company of that brigade. This explains, for example, why the *El Mujahedin* detachment was “re-subordinated” to the 306<sup>th</sup> Brigade and then OG *Bosanska Krajina* in August and September 1993, without ever having been previously subordinated to these formations; *see* P 792/DH 165.7 and P 440. Other examples are found in documents P 704 and P 736. *See* in particular the testimony of Remzija Šiljak, T(F) pp. 10624-10627.

<sup>1147</sup> DH 165.6/P 439. The translation of this exhibit was confirmed by the Conference and Language Services Section; *see* C9.

<sup>1148</sup> Mustafa Poparić, T(F) p. 14490.

<sup>1149</sup> Džemal Merdan, T(F) pp. 13669-13700.

563. Several witnesses were asked to comment on Exhibit DH 165.1.<sup>1150</sup> For Witnesses ZP and Robert Stewart, this letter clearly indicates that the Accused Hadžihasanović had no direct contact with the mujahedin, that they came under an authority superior to the 3<sup>rd</sup> Corps, and that the Accused Hadžihasanović was asking for the Supreme Command's assistance in resolving the problems related to the mujahedin. Conversely, for Witness Alastair Duncan, the document suggests 3<sup>rd</sup> Corps subterfuge.<sup>1151</sup> According to him, the Accused Hadžihasanović used the mujahedin to step up attacks and make breakthroughs.<sup>1152</sup> The Chamber also heard witnesses on Exhibit DH 165.2, the order by Rasim Delić dated 16 June 1993.<sup>1153</sup> According to Witness Džemal Merdan, Zuka's unit referred to in the exhibit was part of the Supreme Command, not the 3<sup>rd</sup> Corps. He said that Zuka's unit was attached to the ABiH Supreme Command Main Staff.<sup>1154</sup> Exhibits DH 165.4 and DH 165.5 raised the question of who was behind the proposal to create the *El Mujahedin* detachment (DH 165.5). The proposal came from the 3<sup>rd</sup> Corps and bore the name of the Accused Hadžihasanović, but Witness Mustafa Poparić asserted that Sakib Mahmuljin was the inspiration behind the document.<sup>1155</sup> He was part of the Supreme Command, not the 3<sup>rd</sup> Corps.<sup>1156</sup> Finally, several Defence witnesses claimed that Exhibit DH 165.6, the order to create the *El Mujahedin* detachment, showed that "foreign volunteers" were present in the 3<sup>rd</sup> Corps zone of responsibility but were not part of the army when Rasim Delić issued the order on 13 August 1993.<sup>1157</sup>

564. The Chamber also examined Exhibit P 482, which is filmed footage from the mujahedin. According to this exhibit, the mujahedin took part in combat operations with the 3<sup>rd</sup> Corps before the creation of the *El Mujahedin* unit. Then in mid-June 1993, the mujahedin decided to stop taking part in combat operations with the ABiH until such time as they were recognised as an independent battalion.

"The Mujahedin leadership got together to establish the reasons for the defeats and withdrawals. They found that the main reason was the lack of correct and sound Islamic belief amongst the members of the Bosnian Army. In addition to this there were traitors amongst the ranks of the army, a lack of good military planning and chaotic organisation during operations. The Shura Council for the Mujahedin decided to stop taking part with the Army in any of the military

<sup>1150</sup> Alastair Duncan, T(F) pp. 7388-7393; Witness ZP, T(F) pp. 9069 and 9070; Robert Stewart, T(F) pp. 15333 and 15334.

<sup>1151</sup> Witness ZP, T(F) pp. 9069 and 9070; Robert Stewart, T(F) pp. 153333 and 15334; Alastair Duncan, T(F) pp. 7386-7390; P 101.

<sup>1152</sup> Alastair Duncan, T(F) pp. 7298 and 7299.

<sup>1153</sup> Alastair Duncan, T(F) pp. 7393-7396; Džemal Merdan, T(F) pp. 13163 and 13164.

<sup>1154</sup> Džemal Merdan, T(F) pp. 13163 and 13164.

<sup>1155</sup> Mustafa Poparić, T(F) pp. 14484, 14485 and 14508.

<sup>1156</sup> Mustafa Poparić, T(F) p. 14482; Džemal Merdan, T(F) p. 13165.

<sup>1157</sup> Witness ZP, T(F) p. 9072; Džemal Merdan, T(F) p. 13168; Mustafa Poparić, T(F) p. 14489.

operations until the Mujahedin were recognised as an independent Battalion within the Bosnian Army."<sup>1158</sup>

It should be noted that the exhibit speaks of taking part in military operations "with" the ABiH and not "as part of the ABiH", which would seem to indicate that the mujahedin did not consider themselves subordinated to the ABiH. Nevertheless, since the Chamber does not know its origin, the probative value of this exhibit is limited.

565. The evidence discussed above leads the Chamber to find that it has not been established that the mujahedin were members of the ABiH and the 3<sup>rd</sup> Corps. Furthermore, in view of the ambiguities in Exhibits DH 165.1 to DH 165.6, the witness testimony regarding them and the contents of Exhibit P 482, the Chamber is not satisfied that the developments leading to the creation of the *El Mujahedin* detachment show that the 3<sup>rd</sup> Corps exercised *de facto* effective control of the mujahedin before the creation of the *El Mujahedin* unit.

(d) Observations of International Observers

566. The Chamber heard the witness testimony of 18 members of international organisations stationed in Central Bosnia in 1993, primarily members of the UNPROFOR British Battalion (Britbat) and the ECMM (European Community Monitoring Mission). These witnesses gave their personal observations on the presence of the mujahedin in Central Bosnia at the time they were stationed there and shared their conclusions with the Chamber in respect of the relations that existed between the mujahedin and the ABiH. The Chamber is unable to repeat all the testimony at this time and will limit itself to several examples.

567. Witness Robert Stewart was the first Britbat commander in Central Bosnia between August 1992 and May 1993.<sup>1159</sup> According to him, the mujahedin were not part of the ABiH and had not been placed under the control of the 3<sup>rd</sup> Corps.<sup>1160</sup> He stated that he received his information from a reliable source but refused to disclose the identity of the source.<sup>1161</sup> This person apparently met the mujahedin twice, once in the sector north of Vitez and once east of Zenica. They were in groups of

<sup>1158</sup> P 482 and T(F) p. 8542. The exhibit continues: "The Bosnian Army acknowledged the role that the Mujahedin had played so far, and their need for men of this kind. Therefore the Bosnian Army leadership agreed to their request, and recognised the Mujahedin Battalion, as a part of the Bosnian Army, over which the banner of /inaudible/ could be raised. This gave them the ability to choose their soldiers, based on the Islamic Sharia. Thus began a new stage in the war, with an increasing responsibility, and a need for planning and organisation. The Head Office for the Battalion was in Zenica. The training camp was /inaudible/ training camp, in the village of Mehurići. The leader of the battalion was Abul-Harith the Libyan, may Allah have Mercy upon him."

<sup>1159</sup> Robert Stewart, T(F) pp. 15130 and 15138.

<sup>1160</sup> Robert Stewart, T(F) pp. 15193 and 15336.

<sup>1161</sup> Robert Stewart, T(F) p. 15194.

15 to 20 accommodated in civilian houses and wore civilian dress. The witness said his source did not see any ABiH soldiers in the vicinity.<sup>1162</sup>

568. Witness Bryan Watters was the Britbat deputy commander from early February to mid-May 1993.<sup>1163</sup> He had the impression that the mujahedin were concentrated within the 7<sup>th</sup> Brigade that adhered to a strict interpretation of Islam.<sup>1164</sup> He did not know if the mujahedin were part of the 3<sup>rd</sup> Corps, but they seemed to share its same military objectives and worked parallel with it.<sup>1165</sup> He stated, however, that he never met the mujahedin or commanders of the 7<sup>th</sup> Brigade personally.<sup>1166</sup> He received information through discussions with his colleagues and through representatives of the HVO and ABiH.<sup>1167</sup>

569. Witness Alastair Duncan was the second Britbat commander. He was stationed in Central Bosnia from mid-May to November 1993.<sup>1168</sup> During his appearance before the Chamber, he stated that when he was assigned to BiH, he received reports that local and foreign mujahedin were operating in the zone of responsibility of the 3<sup>rd</sup> Corps.<sup>1169</sup> Of all the information he received, he said that information on the mujahedin was the most difficult to verify and prove.<sup>1170</sup> He was at the command post and never met any foreign mujahedin.<sup>1171</sup> He did not know how they had arrived in BiH, whether they had anything to do with Muslim leaders in Bosnia, or how they were financed.<sup>1172</sup> He had heard nothing about Abu Haris or the *El Mujahedin* unit.<sup>1173</sup> He could not get a clear picture of the relations between the mujahedin and the 3<sup>rd</sup> Corps.<sup>1174</sup> At the time, it was said that the mujahedin and their operations were uncontrollable and that they were not under the command of the 3<sup>rd</sup> Corps.<sup>1175</sup> Nevertheless, the witness was of the opinion that the mujahedin were in fact under the control of the 3<sup>rd</sup> Corps since it supplied them with resources, food and ammunition.<sup>1176</sup>

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<sup>1162</sup> Robert Stewart, T(F) p. 15193.

<sup>1163</sup> Bryan Watters, T(F) pp. 7480, 7481 and 7486.

<sup>1164</sup> Bryan Watters, T(F) p. 7513.

<sup>1165</sup> Bryan Watters, T(F) p. 7562.

<sup>1166</sup> Bryan Watters, T(F) pp. 7512, 7513 and 7568.

<sup>1167</sup> Bryan Watters, T(F) pp. 7513 and 7567.

<sup>1168</sup> Alastair Duncan, T(F) pp. 7258-7260.

<sup>1169</sup> Alastair Duncan, T(F) pp. 7293, 7294 and 7380.

<sup>1170</sup> Alastair Duncan, T(F) pp. 7293 and 7294.

<sup>1171</sup> Alastair Duncan, T(F) p. 7293.

<sup>1172</sup> Alastair Duncan, T(F) pp. 7381-7383.

<sup>1173</sup> Alastair Duncan, T(F) p. 7407.

<sup>1174</sup> Alastair Duncan, T(F) p. 7294.

<sup>1175</sup> Alastair Duncan, T(F) pp. 7294 and 7295.

<sup>1176</sup> Alastair Duncan, T(F) p. 7295.



570. Witness Vaughan Kent-Payne, a member of Britbat in Central Bosnia for seven months starting in mid-April 1993, reached the conclusion that the foreign mujahedin were used as the spearhead for all 3<sup>rd</sup> Corps attacks. He thought they were part of the 7<sup>th</sup> Brigade.<sup>1177</sup> Even though they were undisciplined and out of control, they acted as part of the 3<sup>rd</sup> Corps.<sup>1178</sup> The witness said he received information from the military information cell that gathered intelligence from patrols on the ground.<sup>1179</sup> He did not have direct contact with 7<sup>th</sup> Brigade officers and met its members only once.<sup>1180</sup>

571. Witness Cameron Kiggell was the Britbat officer responsible for liaising between Britbat and the 3<sup>rd</sup> Corps in Zenica between May and August 1993 and had regular contacts with 3<sup>rd</sup> Corps officers.<sup>1181</sup> He met the Accused Hadžihasanović, his second-in-command Džemal Merdan, and other members of 3<sup>rd</sup> Corps Command almost on a daily basis at 3<sup>rd</sup> Corps headquarters in Zenica.<sup>1182</sup> He also met the Accused Kubura.<sup>1183</sup> The witness met foreign mujahedin on three occasions. The first time was in a café in Zenica in May 1993. Then, at the end of May 1993, he met three mujahedin from Turkey.<sup>1184</sup> Finally, in early June 1993, he attended a meeting between a Norwegian humanitarian organisation and the mujahedin in Arnauti during which he learned that the mujahedin had a training camp in the area.<sup>1185</sup> He did not enter the camp, however, and did not know who was being trained there.<sup>1186</sup> The witness thought that the mujahedin were under the effective control of the 3<sup>rd</sup> Corps because they were found at places where the 3<sup>rd</sup> Corps was concentrating its efforts.<sup>1187</sup> He believed that labelling the mujahedin as uncontrollable was a convenient means of deflecting criticism away from the 3<sup>rd</sup> Corps.<sup>1188</sup> Nevertheless, he did not think that the three Turkish mujahedin he met in May 1993 were under the control of the ABiH.<sup>1189</sup> With regard to the mujahedin in Arnauti, he stated that he did not see any insignia or other elements

<sup>1177</sup> Vaughan Kent-Payne, T(F) pp. 4816 and 4817.

<sup>1178</sup> Vaughan Kent-Payne, T(F) p. 4817.

<sup>1179</sup> Vaughan Kent-Payne, T(F) pp. 4829-4832, 4862, 4867, 4872 and 4922.

<sup>1180</sup> Vaughan Kent-Payne, T(F) p. 4922.

<sup>1181</sup> Cameron Kiggell, T(F) pp. 4972, 4973 and 5101.

<sup>1182</sup> Cameron Kiggell, T(F) p. 4978.

<sup>1183</sup> Cameron Kiggell, T(F) p. 4979.

<sup>1184</sup> Cameron Kiggell, T(F) p. 5065; DH 108.

<sup>1185</sup> Cameron Kiggell, T(F) pp. 5005-5008.

<sup>1186</sup> Cameron Kiggell, T(F) p. 5079.

<sup>1187</sup> Cameron Kiggell, T(F) pp. 5022 and 5023; *see also* P 101.

<sup>1188</sup> Cameron Kiggell, T(F) pp. 5023 and 5024; *see also* P 101.

<sup>1189</sup> Cameron Kiggell, T(F) p. 5065; DH 108.

attaching them to the ABiH.<sup>1190</sup> None of the mujahedin he encountered made it possible to connect them to the 7<sup>th</sup> Brigade.<sup>1191</sup>

572. Witness Mark Bower, also a member of Britbat in the Zenica area from 24 April to 6 November 1993, testified to the presence of foreign mujahedin in the area and said that they were in the ranks of the 7<sup>th</sup> Brigade<sup>1192</sup> and acted as a well-formed unit within the 7<sup>th</sup> Brigade.<sup>1193</sup> The witness met them frequently on the ground. The foreign mujahedin were constantly on the move and it was impossible to predict where they were going to be.<sup>1194</sup> Members of Britbat had the impression that the foreign mujahedin within the 7<sup>th</sup> Brigade were a mobile force, a main effort force used to spearhead the main effort attack.<sup>1195</sup> They reached this conclusion after seeing how the situation started to appear and how the overall campaign was being conducted.<sup>1196</sup> In addition, the 3<sup>rd</sup> Corps took part in organising the exchange of foreign mujahedin, both prisoners and deceased.<sup>1197</sup> Towards the end of his mission in Central Bosnia the witness noted that the mujahedin were exchanged for HVO soldiers at the same time as other ABiH soldiers.<sup>1198</sup>

573. Witness Peter Williams was the Britbat commander from mid-November 1993 to May 1994. The witness never discussed the issue of the mujahedin directly with ABiH representatives, but reference was often made to uncontrollable elements.<sup>1199</sup> According to him, there was a group of foreign mujahedin within the 7<sup>th</sup> Brigade.<sup>1200</sup> The witness stated that, at the time, members of Britbat assumed that all the groups calling themselves “operations group” or “brigade” fell within the formal the structure of the army and that the 7<sup>th</sup> Brigade was subordinated to the 3<sup>rd</sup> Corps.<sup>1201</sup> He explained that it was very difficult, if not impossible, for members of Britbat to consider that there could be a well-armed, well-motivated unit such as the 7<sup>th</sup> Muslim Brigade, or mujahedin, operating within the 3<sup>rd</sup> Corps zone of responsibility without being directly subordinated to the 3<sup>rd</sup> Corps Commander.<sup>1202</sup> The witness admitted, however, that he never spoke to the mujahedin or to any 7<sup>th</sup> Brigade Commander.<sup>1203</sup>

<sup>1190</sup> Cameron Kiggell, T(F) p. 5106.

<sup>1191</sup> Cameron Kiggell, T(F) pp. 5097-5099.

<sup>1192</sup> Mark Bower, T(F) pp. 5135 and 5136.

<sup>1193</sup> Mark Bower, T(F) p. 5136.

<sup>1194</sup> Mark Bower, T(F) p. 5137.

<sup>1195</sup> Mark Bower, T(F) p. 5138.

<sup>1196</sup> Mark Bower, T(F) pp. 5180 and 5211.

<sup>1197</sup> Mark Bower, T(F) pp. 5141, 5192, 5193 and 5227.

<sup>1198</sup> Mark Bower, T(F) pp. 5224 and 5227.

<sup>1199</sup> Peter Williams, T(F) p. 5925.

<sup>1200</sup> Peter Williams, T(F) p. 5972.

<sup>1201</sup> Peter Williams, T(F) p. 5973.

<sup>1202</sup> Peter Williams, T(F) pp. 5975 and 5976.

<sup>1203</sup> Peter Williams, T(F) pp. 5997 and 6001.

574. Witness Guy Chambers was stationed in Central Bosnia as a military information officer at UNPROFOR headquarters from September 1993 to April 1994.<sup>1204</sup> He also stated that the mujahedin were part of the 7<sup>th</sup> Brigade.<sup>1205</sup> According to his testimony, the mujahedin were accommodated in Mehurići and placed under the command of a man named “Abuh Hamza” who in turn was under the command of the 7<sup>th</sup> Brigade.<sup>1206</sup> The witness admitted, however, that he had no hard evidence of this.<sup>1207</sup> He recognised that the information about who commanded the mujahedin was imprecise and that some of the mujahedin may have been under the command of the 3<sup>rd</sup> Corps without being under its effective control.<sup>1208</sup> The witness explained that he received information from the members of Britbat and other international representatives on the ground and that he had no knowledge of the internal structure of the 7<sup>th</sup> Brigade.<sup>1209</sup> He stated that UNPROFOR was only an observer of the war in Central Bosnia and, as it was not directly involved in the conflict, remained unconcerned with the intentions of the warring factions.<sup>1210</sup> He thought he had an overview of the “mujahedin question” but stated that the command and control element was still unresolved in his mind.<sup>1211</sup>

575. Witness Martin Garrod, director of EMMC centres in Mostar and Zenica from June 1993 to April 1994, expressed a more doubtful opinion regarding the status of the mujahedin within the 3<sup>rd</sup> Corps. According to him, the 3<sup>rd</sup> Corps Command claimed that the mujahedin were under its control, but he was not personally convinced of this.<sup>1212</sup>

576. The picture painted by international witnesses varies considerably. Most of them established a link between the mujahedin and the 7<sup>th</sup> Brigade, but they could not confirm that the mujahedin were under the command and effective control of the 3<sup>rd</sup> Corps. Nevertheless, the witnesses noted that the mujahedin operated in the 3<sup>rd</sup> Corps zone of responsibility and seemed to have been used as a spearhead.

577. The Chamber notes that the international witnesses were present in Central Bosnia as neutral observers and that consequently their testimony is not biased. As stated by Witness Guy Chambers, international observers were not involved in the war in Central Bosnia. While this neutral position

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<sup>1204</sup> Guy Chambers, T(F) pp. 6025 and 6026.

<sup>1205</sup> Guy Chambers, T(F) p. 6037. He seems to use the terms mujahedin and 7<sup>th</sup> Brigade interchangeably at times, T(F) pp. 6130 and 6131.

<sup>1206</sup> Guy Chambers, T(F) p. 6037.

<sup>1207</sup> Guy Chambers, T(F) pp. 6135 and 6136.

<sup>1208</sup> Guy Chambers, T(F) pp. 6136 and 6101.

<sup>1209</sup> Guy Chambers, T(F) pp. 6035, 6036, 6046, 6047, 6092, 6134-6139.

<sup>1210</sup> Guy Chambers, T(F) p. 6130.

<sup>1211</sup> Guy Chambers, T(F) p. 6130.

<sup>1212</sup> Sir Martin Garrod, T(F) pp. 5674, 5675, 8253, 8254 and 8275.

makes the witnesses very credible, it is short on detailed information about the internal organisation of the ABiH and HVO, particularly the chain of command.

578. The witnesses explained to the Chamber the information gathering system put in place by UNPROFOR.<sup>1213</sup> Its information came from observations on the ground, or from what was learned from representatives of the warring factions. The international observers did not have access to the archives of the warring parties, the headquarters of the 7<sup>th</sup> Brigade or the mujahedin camps. They had very little contact with 7<sup>th</sup> Brigade commanders and were unable to observe their combat operations up close. In addition, with rare exceptions, international observers did not attend meetings where the mujahedin were present.

579. The witnesses have differing opinions as to the relations between the 3<sup>rd</sup> Corps and the mujahedin. The international observers are uncertain about the nature of these relations. Consequently, a distinction should be made between facts directly observed by the witnesses appearing before the Chamber and their conclusions regarding relations between the mujahedin and the ABiH. These conclusions will be primarily taken into account when they have been corroborated by other evidence.

(e) Conclusion

580. The evidence analysed in this section of the Judgement on the relationship between the mujahedin and the 3<sup>rd</sup> Corps is not sufficient in itself to conclude that the mujahedin at, *inter alia*, Camp Poljanice were *de facto* subordinated to the 3<sup>rd</sup> Corps Command.

2. Mujahedin and the 306<sup>th</sup> Brigade

(a) Introduction

581. The Chamber examined a great deal of evidence testifying to the presence of mujahedin in the zone of responsibility of the 306<sup>th</sup> Brigade, particularly at Poljanice Camp in Mehurići.<sup>1214</sup> This evidence indicates that the mujahedin carried out various military activities there, ranging from recruitment and training soldiers, to reconnaissance missions and mine clearing. The Prosecution claims that this evidence is proof of a relationship between the 306<sup>th</sup> Brigade and the mujahedin.<sup>1215</sup>

<sup>1213</sup> Robert Stewart, T(F) pp. 15195, 15204, 15205, 15254 and 15293; Bryan Watters, T(F) pp. 7492-7500, 7546 and 7566; Mark Bower, T(F) pp. 5125, 5126, 5172, 5174 and 5179; Peter Williams, T(F) pp. 5910, 5912, 5913, 5920, 5943, 5495 and 5958-5960; Guy Chambers, T(F) pp. 6029, 6030, 6146, 6151, 6154 and 6155.

<sup>1214</sup> See *supra* paras. 419-421.

<sup>1215</sup> See Prosecution Final Brief, paras. 105 and 107 and Prosecution Response to Motions for Acquittal, para. 48. The Prosecution submits that the mujahedin equipped and trained 3<sup>rd</sup> Corps soldiers in their training camps, particularly Poljanice Camp in Mehurići. It maintains that men in the 306<sup>th</sup> Brigade zone of responsibility went to the mujahedin to receive training, weapons and uniforms before going back to their respective units. This allegedly proves that there

The Chamber notes that the Indictment does not allege that mujahedin were incorporated into and subordinated to the 306<sup>th</sup> Brigade. Close cooperation between the mujahedin and members of the 306<sup>th</sup> Brigade, however, could assist the Chamber in understanding the involvement of the 306<sup>th</sup> Brigade in the crimes committed in Miletići and Maline, and more generally, the attitude of the 3<sup>rd</sup> Corps Command towards the mujahedin.

(b) Units Present in Mehurići during 1992 and 1993

582. In 1992, the village of Mehurići was part of the territory under the command of the Travnik TO. A nine-member unit of the TO staff and a company of 176 men were based there.<sup>1216</sup> Fahir Čamdžić was the commander.<sup>1217</sup> The Travnik District TO Staff occupied part of the elementary school in Mehurići.<sup>1218</sup> With the creation of the 306<sup>th</sup> Brigade at the end of the year, Mehurići became the base of this brigade's 1<sup>st</sup> Battalion. Members of the 306<sup>th</sup> Brigade stayed in the elementary school until July or August 1993.<sup>1219</sup>

583. As explained in the section of the Judgement on Poljanice Camp, the mujahedin arrived in Mehurići in the second half of 1992 and were first accommodated in the elementary school. Once the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion moved there in early 1993, the mujahedin left for Poljanice, a neighbouring village.<sup>1220</sup>

(c) Evidence of a General Nature

584. The Chamber heard testimony from many former members of the 306<sup>th</sup> Brigade, all called by the Defence for the Accused Hadžihasanović. These witnesses agreed that there was no connection between the 306<sup>th</sup> Brigade and the mujahedin regardless of the fact that the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion was based near the mujahedin.

585. Witness Esed Sipić, commander of the 306<sup>th</sup> Brigade during the first part of 1993, stated that the mujahedin were never under the control of the 306<sup>th</sup> Brigade,<sup>1221</sup> and that the brigade's command never issued orders to them.<sup>1222</sup> He said he never received any reports from the

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were strong ties between, *inter alia*, 306<sup>th</sup> Brigade soldiers and the mujahedin at Poljanice Camp. Conversely, the Defence for the Accused Hadžihasanović disputes any relationship between the 3<sup>rd</sup> Corps, including the 306<sup>th</sup> Brigade, and the mujahedin; see Hadžihasanović Defence Final Brief, paras. 229 *ff*.

<sup>1216</sup> DH 1663.

<sup>1217</sup> Fahir Čamdžić, T(F) p. 11686.

<sup>1218</sup> DH 1663; Fahir Čamdžić, T(F) pp. 11687, 11694.

<sup>1219</sup> Halim Husić, T(F) p. 10883; Derviš Suljić, T(F) pp. 11303-11304; Vezir Jusufspahić, T(F) pp. 14044-14045.

<sup>1220</sup> See *supra* paras. 419-421.

<sup>1221</sup> Esed Sipić, T(F) pp. 14798-14799.

<sup>1222</sup> Esed Sipić, T(F) p. 14903.

mujahedin<sup>1223</sup> and that the 306<sup>th</sup> Brigade had no foreigners in its ranks.<sup>1224</sup> Other witnesses confirmed these statements. Witness Remzija Šiljak, 306<sup>th</sup> Brigade chief of staff during the same period, said that the 306<sup>th</sup> Brigade had “nothing to do” with the mujahedin<sup>1225</sup> and that they were never subordinated to the 306<sup>th</sup> Brigade before the creation of the *El Mujahedin* unit.<sup>1226</sup> Witnesses Hasan Zukanović,<sup>1227</sup> 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Assistant Commander for Security, and Fahir Čamdžić,<sup>1228</sup> 2<sup>nd</sup> Battalion Commander, both affirmed that the mujahedin were not part of their respective units. Witnesses Ferid Jašarević,<sup>1229</sup> Munir Karić,<sup>1230</sup> Derviš Suljić,<sup>1231</sup> and Salim Tarakčija,<sup>1232</sup> all former members of the 306<sup>th</sup> Brigade, testified in similar fashion.

586. Documents contemporary to the facts of the case that deal with the 306<sup>th</sup> Brigade and the mujahedin generally corroborate the testimony of these witnesses and make an explicitly or implicitly clear distinction between the 306<sup>th</sup> Brigade and the mujahedin.<sup>1233</sup> This distinction underscores the fact that the mujahedin were not part of the 306<sup>th</sup> Brigade, and were neither subordinated to it nor placed under its control.

587. One exception to this assertion, however, appears in a handwritten excerpt from the 3<sup>rd</sup> Corps war diary of 24 April 1993.<sup>1234</sup> The excerpt concerns the 306<sup>th</sup> Brigade and says that “[t]he HVO opened fire at our patrol, wounding a member of the unit, an Arab” from the Simulje sector.<sup>1235</sup> Later the diary says that “[a]fter the wounding, about 30 abandoned the unit, heading for the village of Orašac”.<sup>1236</sup> The terms employed in the excerpt suggest that the 306<sup>th</sup> Brigade and the mujahedin conducted joint patrols.

588. The Chamber notes that none of the former members of the 306<sup>th</sup> Brigade called to testify before it on the events in Miletići on 24 April 1993 was questioned by the Parties in order to explain this excerpt. The 306<sup>th</sup> Brigade war diary says only that an Arab was wounded in the stomach on 24

<sup>1223</sup> Esed Sipić, T(F) p. 14904.

<sup>1224</sup> Esed Sipić, T(F) pp. 14841-14842.

<sup>1225</sup> Remzija Šiljak, T(F) pp. 10614, 10632.

<sup>1226</sup> Remzija Šiljak, T(F) pp. 10545, 10553, 10667.

<sup>1227</sup> Hasan Zukanović, DH 2091, para. 8.

<sup>1228</sup> Fahir Čamdžić, T(F) p. 11702.

<sup>1229</sup> Ferid Jašarević, T(F) p. 11551.

<sup>1230</sup> Munir Karić, T(F) p. 11526.

<sup>1231</sup> Derviš Suljić, T(F) p. 11339.

<sup>1232</sup> Salim Tarakčija, T(F) p. 11833.

<sup>1233</sup> P 663, P 664, P 665, P 666, DH 923, DH 1007, DH 1053, DH 2078 (under seal).

<sup>1234</sup> P 557/P 923.6.

<sup>1235</sup> This incident preceded events in Miletići on the same day and probably provoked them. *See infra* para. 1067.

<sup>1236</sup> P 557/P923.6, “The HVO opened fire at our patrol wounding a member of the unit, / ? an Arab/ from the / place name illegible / sector, tt 870. After the wounding, about 30 / word illegible/ abandoned the unit, heading for the village of /? Orašac/.”

April 1993.<sup>1237</sup> It should likewise be noted that a combat report from OG *Bosanska Krajina* written on the evening of 24 April 1993 requested that the 3<sup>rd</sup> Corps put the mujahedin under its immediate control.<sup>1238</sup>

589. An initial observation may be made based on these elements: one document only, an excerpt from the 3<sup>rd</sup> Corps war diary, makes a link between the 306<sup>th</sup> Brigade and the mujahedin, and no other evidence corroborates its contents.

(d) Military Activity of the Mujahedin in the 306<sup>th</sup> Brigade Zone of Responsibility

590. Several witnesses testified about military activity in the vicinity of Mehurići carried out by the mujahedin from Poljanice Camp.

591. Witness Sulejman Ribo, a member of the 312<sup>th</sup> Brigade doing his military service on part of the front against the Serbian forces not far from Mehurići, noted that mujahedin sometimes took part in combat as autonomous groups and did not want to be put under the chain of command in the area of Mehurići. The witness also stated that the mujahedin did not want to take a zone of responsibility and acted primarily as irregulars.<sup>1239</sup>

592. As explained elsewhere in the Judgement, the mujahedin took part in fighting between the ABiH and the HVO, on the side of the ABiH, in the Bila Valley in early June 1993.<sup>1240</sup> Witness Remzija Šiljak, however, said that little information was available on how the mujahedin conducted combat operations and that one of their common practices was to go straight to the areas liberated by the army to take war booty.<sup>1241</sup>

593. The mujahedin took part in reconnaissance operations and mine clearing. First, Witness Esed Sipić told the Chamber that the mujahedin conducted reconnaissance missions of certain positions held by the HVO around 17 April 1993.<sup>1242</sup> Second, a report dated 5 May 1993 addressed to the 3<sup>rd</sup> Corps and signed by Witness Esed Sipić, refers to “arbitrary acts” committed by the mujahedin, among others,<sup>1243</sup> such as daily instances of opening fire on the HVO and then retreating. The report also states that the status of the mujahedin was not known. Third, according to another report by Witnesses Esed Sipić dated 24 May 1993, the HVO issued a protest against the mujahedin’s initiative to clear a minefield near HVO positions, which would have led to an armed

<sup>1237</sup> P 556/P 926.1/C 18, “An Arab was wounded in the stomach in the area of Lacin, above Suhi Dol.”

<sup>1238</sup> DH 915.

<sup>1239</sup> Sulejman Ribo, T(F) pp. 11067-11068. See also T(F) pp. 11093, 11907-11099.

<sup>1240</sup> See *infra* para. 1070.

<sup>1241</sup> Remzija Šiljak, T(F) p. 10643.

<sup>1242</sup> Esed Sipić, T(F) pp. 14844-14845.

confrontation between the mujahedin and the HVO.<sup>1244</sup> Witness Remzija Šiljak explained that it had been an independent initiative by the mujahedin.<sup>1245</sup> Finally, a report dated 28 May 1993 by Witness Asim Delalić speaks of a confrontation between the mujahedin and the HVO on 25 May 1993 following an unauthorised reconnaissance mission by the mujahedin from Mehurići. The report indicates the mujahedin from Mehurići were not under the control of the 306<sup>th</sup> Brigade and answered to the command of Ramo Durmiš.<sup>1246</sup>

594. The Chamber finds that these examples testify to spontaneous and independent initiatives by the mujahedin who had received neither the authorisation nor the approval of the 306<sup>th</sup> Brigade. Furthermore, the Chamber notes that the initiatives were destabilising factors that threatened relations between the HVO and the ABiH. It was therefore not in the interests of the 306<sup>th</sup> Brigade to encourage such actions.<sup>1247</sup>

595. Bearing this context in mind, the above incident from the 3<sup>rd</sup> Corps war diary of 24 April 1993<sup>1248</sup> might also indicate a spontaneous and independent initiative by the mujahedin in spite of the fact that the diary speaks of “our patrol” and a “member of the unit”.

596. Witness Remzija Šiljak stated that during the day of 24 April 1993 a group of mujahedin left to carry out reconnaissance on the terrain above Poljanice Camp that had been mined by the HVO. The witness made no reference to members of the 306<sup>th</sup> Brigade in this regard.<sup>1249</sup>

(c) Logistical Support

597. Several former members of the 306<sup>th</sup> Brigade denied that the 306<sup>th</sup> Brigade received logistical support from the mujahedin. Witness Munir Karić, 306<sup>th</sup> Brigade Assistant Commander for Logistics, stated that he never observed the mujahedin providing the 306<sup>th</sup> Brigade with logistical support. He also denied that the 306<sup>th</sup> Brigade provided material support to the mujahedin based at Poljanice Camp.<sup>1250</sup>

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<sup>1243</sup> P 663.

<sup>1244</sup> DH 1053. *See also infra* para. 746.

<sup>1245</sup> Remzija Šiljak, T(F) p. 10660.

<sup>1246</sup> DH 1071.

<sup>1247</sup> *See* P 664; DH 1503.

<sup>1248</sup> *See supra* paras. 587-588.

<sup>1249</sup> Remzija Šiljak, T(F) pp. 10652-10654.

<sup>1250</sup> Munir Karić, T(F) p. 11459; similar statements were made by witnesses Fahir Čamdžić, T(F) p. 11697, and Derviš Suljić, T(F) p. 11339.



(f) Training

598. A report by Vezir Jusufspahić<sup>1251</sup> dated 2 August 1993 on an inspection of the 306<sup>th</sup> Brigade indicated that “[a] communication was also sent to all villages from the Muslim forces stationed in Mehurići village, calling soldiers for a 40-day training”.<sup>1252</sup> Witnesses Vezir Jusufspahić<sup>1253</sup> and Remzija Šiljak<sup>1254</sup> both explained that this was not an invitation intended for the 306<sup>th</sup> Brigade but for the local population, and that the 306<sup>th</sup> Brigade was not at all behind this initiative. Witness Halim Husić also confirmed that the foreigners in Poljanice Camp were not involved in training the 306<sup>th</sup> Brigade.<sup>1255</sup> The fact that members of the 306<sup>th</sup> Brigade joined the mujahedin independently and on an individual basis to receive military training will be discussed below.<sup>1256</sup>

(g) Access to Poljanice Camp

599. All the witnesses who were former members of the 306<sup>th</sup> Brigade agreed that the 306<sup>th</sup> Brigade had practically no access to Poljanice Camp and infrequent contacts with its inhabitants.<sup>1257</sup>

(h) Recruitment of Local Men by the Mujahedin

600. More than one testimony and several documents dealt with both the mujahedin’s recruitment of young civilians and ABiH soldiers, and the weapons and training they received in Poljanice Camp. In spite of some divergence among the witness statements with regard to the extent and importance of this recruitment and its consequences for the 306<sup>th</sup> Brigade, the witnesses agreed that the recruitment did not indicate that there was cooperation between the 306<sup>th</sup> Brigade and the mujahedin.

601. Witness Esed Sipić spoke of a recruitment campaign conducted by the mujahedin in the villages of the 306<sup>th</sup> Brigade zone of responsibility<sup>1258</sup> in which they were looking to recruit young men, and sometimes even minors who were promised money, weapons and other goods.<sup>1259</sup> Ferid Jašarević also asserted that the mujahedin recruited young men by offering them military training after which they would receive rifles.<sup>1260</sup> Sulejman Ribo who was originally from the Mehurići area

<sup>1251</sup> He succeeded Esed Sipić as 306<sup>th</sup> Brigade Commander.

<sup>1252</sup> P 491/DH 270/C 10.

<sup>1253</sup> Vezir Jusufspahić, T(F) p. 14052.

<sup>1254</sup> Remzija Šiljak, T(F) pp. 10657-10658.

<sup>1255</sup> Halim Husić, T(F) p. 10933.

<sup>1256</sup> See *infra* paras. 600-604.

<sup>1257</sup> See for example Fahir Čamdžić, T(F) p. 11697; Asim Delalić, T(F) p. 16359; Vezir Jusufspahić, T(F) p. 14037; Remzija Šiljak, T(F) p. 10489; Hasan Zukanović, DH 1091, para. 9.

<sup>1258</sup> Esed Sipić, T(F) p. 14789.

<sup>1259</sup> Esed Sipić, T(F) p. 14789.

<sup>1260</sup> Ferid Jašarević, T(F) p. 11551.

had the opportunity to speak with these recruits and recalled that they were motivated to associate with the mujahedin by the desire to receive training, uniforms and weapons.<sup>1261</sup>

602. According to witnesses Ferid Jašarević and Sulejman Ribo, a number of young men recruited by the mujahedin went back to their original units after finishing their training.<sup>1262</sup> Fahir Čamdžić,<sup>1263</sup> Asim Delalić,<sup>1264</sup> and Remzija Šiljak,<sup>1265</sup> however, asserted that few of these recruits went back to their original unit.

603. The witnesses agreed that the 306<sup>th</sup> Brigade was not behind the mujahedin's recruitment campaign. Esed Sipić explained that the mujahedin made direct contact with the local population without the intermediary of 306<sup>th</sup> Brigade members<sup>1266</sup> and that the mujahedin's recruitment of soldiers had a negative impact on the 306<sup>th</sup> Brigade.<sup>1267</sup> He estimated that about 50 soldiers had left the ranks of the 306<sup>th</sup> Brigade to join the mujahedin based at Poljanice Camp or other units<sup>1268</sup> and that it had been practically impossible to find these soldiers in order to arrest them.<sup>1269</sup> Similarly, Asim Delalić confirmed that there had been some 40 or 50 desertions in the 306<sup>th</sup> Brigade, which effectively diminished its manpower.<sup>1270</sup> He added that a number of criminal complaints had been lodged against the deserters with the District Military Court in Travnik,<sup>1271</sup> although the court did not follow up.<sup>1272</sup> Finally, a number of exhibits written at the time also signal the harmful consequences of 306<sup>th</sup> Brigade deserters who joined the mujahedin.<sup>1273</sup>

604. In view of the varying testimony and exhibits, the recruitment of young men in the 306<sup>th</sup> Brigade zone of responsibility by the mujahedin does not imply that there was a connection between the mujahedin and the 306<sup>th</sup> Brigade.

<sup>1261</sup> Sulejman Ribo, T(F) p. 11041, referring to the second half of 1992. Hamid Suljić, T(F) pp. 11909, 11929-11930, gives the example of a man named Avdija Kadrić who underwent training in mid-1993.

<sup>1262</sup> Sulejman Ribo, T(F) p. 11041, who stated that young recruits joined the units of the Mehurići detachment; Ferid Jašarević, T(F) p. 11551.

<sup>1263</sup> Fahir Čamdžić, T(F) pp. 11756-11757.

<sup>1264</sup> Asim Delalić, T(F) p. 16386.

<sup>1265</sup> Remzija Šiljak, T(F) pp. 10489-10490, 10665.

<sup>1266</sup> Esed Sipić, T(F) pp. 14789 and 14819.

<sup>1267</sup> Esed Sipić, T(F) p. 14840.

<sup>1268</sup> Esed Sipić, T(F) p. 14820.

<sup>1269</sup> Esed Sipić, T(F) pp. 14820 and 14840.

<sup>1270</sup> Asim Delalić, T(F) pp. 16355, 16356, 16385 and 16386.

<sup>1271</sup> Asim Delalić, T(F) p. 16386.

<sup>1272</sup> Asim Delalić, T(F) p. 16386. He added that later some of the deserters rejoined 306<sup>th</sup> Brigade units.

<sup>1273</sup> DH 1007; DH 2078; P 491/DH 270/ C 10. On the last document, *see* Vezir Jusufspahić, T(F) pp. 14052-14057.

(i) Conclusion

605. The Chamber finds that the evidence discussed above does not show that the mujahedin were part of the 306<sup>th</sup> Brigade or under the brigade's effective command or control nor does it establish the existence of close links between the 306<sup>th</sup> Brigade and the mujahedin.

3. Mujahedin and the 17<sup>th</sup> Brigade

606. In paragraph 46 of the Indictment, the Prosecution alleges that the mujahedin were subordinated to the 3<sup>rd</sup> Corps and/or the 17<sup>th</sup> Brigade. The Prosecution, however, has presented no evidence to substantiate the fact that the mujahedin were subordinated to the 17<sup>th</sup> Brigade. Its Final Brief is silent on this matter.

607. The 17<sup>th</sup> Brigade was created on 27 November 1992 and was stationed in Travnik.<sup>1274</sup> Witness Fikret Čuskić was appointed commander of the brigade, a position he held from its creation until 7 April 1994.<sup>1275</sup> The 17<sup>th</sup> Brigade was composed of Bosnian volunteers residing in Western Europe and displaced persons from Krajina.<sup>1276</sup>

608. Witness Fikret Čuskić explained that the 17<sup>th</sup> Brigade had little contact with the mujahedin. In November 1992, that is before the creation of the 17<sup>th</sup> Brigade, 15 to 20 foreign mujahedin fought with the men commanded by Fikret Čuskić in the defence of Karaula,<sup>1277</sup> although he indicated that he had not given them any orders. He had had no communication with the mujahedin, who had fought in an isolated manner.<sup>1278</sup>

609. As regards the allegations in paragraph 46 of the Indictment, the Chamber has noted elsewhere in the Judgement that the destruction of the church in Travnik was the work of the mujahedin<sup>1279</sup> and no evidence has incriminated the members of the 17<sup>th</sup> Brigade or any other 3<sup>rd</sup> Corps unit.

610. In October 1993, the 17<sup>th</sup> Brigade had problems with the mujahedin when one of its members was captured by the mujahedin for having drunk alcohol. He was detained at Poljanice Camp for several days and mistreated.<sup>1280</sup> Fikret Čuskić was only able to obtain his release by sending a message through the Mufti of Travnik, Nusret Efendija Avdibegović. The message

<sup>1274</sup> Fikret Čuskić, T(F) pp. 12049 and 12050.

<sup>1275</sup> Fikret Čuskić, T(F) p. 12050.

<sup>1276</sup> Fikret Čuskić, T(F) p. 12054; *see also* P 330.

<sup>1277</sup> Fikret Čuskić, T(F) pp. 12157, 12178 and 12084.

<sup>1278</sup> Fikret Čuskić, T(E) pp. 12157 and 12158.

<sup>1279</sup> *See infra* para. 2016.

<sup>1280</sup> Fikret Čuskić, T(F) p. 12088.

indicated that the 17<sup>th</sup> Brigade would attack the camp if the mujahedin did not release the soldier.<sup>1281</sup>

611. Finally, the 17<sup>th</sup> Brigade took part in combat with the *El Mujahedin* unit on Mt Igman in the area of Vitez on 18 September 1993.<sup>1282</sup> Fikret Čuskić said that it was his first and only experience with the *El Mujahedin* unit.<sup>1283</sup>

612. The Chamber finds that it has not been established that the 17<sup>th</sup> Brigade included mujahedin in its ranks or that mujahedin were subordinated to it.

#### 4. Mujahedin and the 7<sup>th</sup> Brigade

##### (a) Introduction

613. The Chamber recalls that the Indictment accuses the 7<sup>th</sup> Brigade of having committed crimes in Miletići, Maline and Guča Gora, which are located in the Bila Valley. As shown in the sections of the Judgement dealing with each of these counts, the perpetrators of the crimes were the mujahedin at Poljanice Camp, also located in the Bila Valley.

614. The Chamber has previously established that the mujahedin at Poljanice Camp were not *de jure* part of the 7<sup>th</sup> Brigade and/or 3<sup>rd</sup> Corps. Nevertheless, some members of the 3<sup>rd</sup> Corps had left their units to join the mujahedin at the camp while remaining *de jure* subordinated to the ABiH. An analysis should thus be made of whether the mujahedin were *de facto* subordinated to the 3<sup>rd</sup> Corps. To do so, the Chamber will view the situation from several angles.

615. The Chamber will first analyse the composition of the 7<sup>th</sup> Brigade by origin. This analysis is intended to establish which of the “local” mujahedin at Poljanice Camp had left the 7<sup>th</sup> Brigade and also allows a general examination of the links between the 7<sup>th</sup> Brigade and another category of mujahedin, namely foreign Muslim fighters.

616. Second, based on testimony from former members of the 7<sup>th</sup> Brigade and documents from this brigade, the Chamber will determine whether 7<sup>th</sup> Brigade units were present in the Bila Valley in the first six months of 1993. Although this analysis includes testimony from former members of the 7<sup>th</sup> Brigade, the Chamber will focus on analysing the documents. Since the Parties paid only limited attention to this matter, a rigorous and methodical analysis of the composition, manpower and movements of 7<sup>th</sup> Brigade units by means of these documents is essential.

<sup>1281</sup> Fikret Čuskić, T(F) pp. 12088, 12089, 12126 and 12127. See also Exhibits DH 1515 and P 223.

<sup>1282</sup> Fikret Čuskić, T(F) p. 12158.

<sup>1283</sup> Fikret Čuskić, T(F) p. 12151.

617. Third, the Chamber will focus briefly on several pieces of evidence from the international observers present in Central Bosnia in 1992 and 1993 and will limit itself more specifically to those dealing with the presence of the 7<sup>th</sup> Brigade and the mujahedin in the Bila Valley during this period.

618. Fourth, the Chamber will analyse the testimony of former members of the 306<sup>th</sup> Brigade and brigade documents. Such an analysis is necessary because the mujahedin camp at Poljanice was in the 306<sup>th</sup> Brigade zone of responsibility.

619. Lastly, based on the above, the Chamber will evaluate all the evidence in order to answer the question as to whether the mujahedin at Poljanice Camp were part of the 7<sup>th</sup> Brigade or were under the effective control of the brigade's military commanders.

(b) Formation, Structure and Composition by Origin of the 7<sup>th</sup> Brigade

(i) Formation, Structure and Manpower of the 7<sup>th</sup> Brigade

620. The 7<sup>th</sup> Brigade was formed on 19 November 1992 by order of Sefer Halilović, Chief of the ABiH Supreme Command Main Staff at the time.<sup>1284</sup> The order followed a proposal from the Zenica District TO dated 18 November 1992.<sup>1285</sup>

621. The 7<sup>th</sup> Brigade had its headquarters in Zenica<sup>1286</sup> and consisted of three battalions. In mid-March 1993, the 7<sup>th</sup> Brigade had between 1,431 and 1,439 men.<sup>1287</sup> As to its manpower from mid-March 1993 to the end of June 1993, the only evidence available to the Chamber deals with the manpower of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion.

(ii) Composition of the 7<sup>th</sup> Brigade

a. Composition of the 7<sup>th</sup> Brigade by Origin

622. The order by Sefer Halilović dated 19 November 1992 establishing the 7<sup>th</sup> Brigade clearly stated that it was to be composed of armed forces then engaged on the Mt Vlašić plateau near Travnik,<sup>1288</sup> approximately 1,200 soldiers.<sup>1289</sup>

<sup>1284</sup> P 125. See also *supra* paras. 343 and 484.

<sup>1285</sup> P 124.

<sup>1286</sup> See *supra* para. 344.

<sup>1287</sup> P 536; P 693; DK 33. Based on Exhibit DK 32, there were 1,174 men in February 1993; P 746 says that there were 2,260 men in March.

<sup>1288</sup> P 125.

<sup>1289</sup> P 124.

623. The Chamber would recall at this point that in late 1992 the forces on the Mt Vlašić plateau consisted of at least four groups of fighters. Some were part of the Travnik municipal TO, others belonged to previously formed units of the 3<sup>rd</sup> Corps, and others were members of the Travnik Muslim Forces. There were also foreign fighters.<sup>1290</sup> In the section of the Judgement dealing with the *de jure* subordination of the mujahedin to the 7<sup>th</sup> Brigade, the Chamber has previously established that some members of the Travnik Muslim Forces became incorporated into the 7<sup>th</sup> Brigade, whereas others joined the mujahedin at Poljanice Camp or other units of the ABiH.<sup>1291</sup> Witnesses Džemal Ibranović and Semir Terzić were among those who became incorporated into the 7<sup>th</sup> Brigade.<sup>1292</sup> Others also joined the 7<sup>th</sup> Brigade, such as Ahmed Adilović, 7<sup>th</sup> Brigade Assistant Commander for Troop Morale, Information, Propaganda and Religious Affairs,<sup>1293</sup> Fadil Hadžić who seems to have commanded the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion in early 1993,<sup>1294</sup> and Ramo Durmiš, Commander of the 1<sup>st</sup> Battalion 1<sup>st</sup> Company in December 1992.<sup>1295</sup>

624. The question of whether the foreign Muslim fighters became members of the 7<sup>th</sup> Brigade will be discussed below.<sup>1296</sup>

b. Departure of Some Members of the 7<sup>th</sup> Brigade after its Formation

625. In the section of the Judgement on the *de jure* subordination of the mujahedin at Poljanice Camp to the ABiH before the creation of the *El Mujahedin* unit, the Chamber has established that some members of the ABiH, including members of the 7<sup>th</sup> Brigade, left their brigades to join the mujahedin at Poljanice Camp.<sup>1297</sup>

626. Two documents from the 306<sup>th</sup> Brigade lead to the conclusion that Ramo Durmiš, who was a member of the 7<sup>th</sup> Brigade, joined the mujahedin at Poljanice Camp. They allow the Chamber to consider that Durmiš commanded the “Bosnians” who were among the mujahedin in Mehurići.<sup>1298</sup> In addition, Witness Sulejman Ribo thought that Durmiš was among the first Bosnians to join the ranks of the mujahedin, saying that he had seen him in Mehurići.<sup>1299</sup> During his testimony before

<sup>1290</sup> See *supra* para. 423.

<sup>1291</sup> See *supra* para. 484.

<sup>1292</sup> P 695.

<sup>1293</sup> P 695; P 498; DH 776.

<sup>1294</sup> P 695; DK 29. See also *infra* para. 669.

<sup>1295</sup> P 695; P 498.

<sup>1296</sup> See *infra* paras. 642-657.

<sup>1297</sup> See *supra* paras. 422-423.

<sup>1298</sup> DH 1007 and DH 1071. See also *infra* para. 745.

<sup>1299</sup> Sulejman Ribo, T(F) pp. 11076-11077.

the Chamber, Ribo said, "I remember Durmiš. We all knew that he often passed that way and entered their [the mujahedin] camp."<sup>1300</sup>

627. The military career of Ramo Durmiš will now be examined more closely in order to answer the question of whether he maintained a *de facto* link with the 7<sup>th</sup> Brigade after he joined the mujahedin at the camp.

628. In 1992, Ramo Durmiš was part of the Travnik Muslim Forces.<sup>1301</sup> After the formation of the 7<sup>th</sup> Brigade in November 1992, he joined it and became commander of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> Company.<sup>1302</sup>

629. Several former members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion asserted that both the 1<sup>st</sup> Battalion and Ramo Durmiš took part in the battle at Visoko in late December 1992,<sup>1303</sup> which is confirmed by a document written by Durmiš himself.<sup>1304</sup> The 2<sup>nd</sup> Battalion also took part in the fighting.<sup>1305</sup>

630. The battle at Visoko was a defeat for the ABiH. An analysis of the battle by the Accused Hadžihasanović indicated that the units were surrounded and there were many casualties.<sup>1306</sup> The report dated 4 March 1993 by Ahmed Zubača, member of the 7<sup>th</sup> Brigade, says that part of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, some 200 to 250 soldiers, were deeply troubled at the considerable losses from the Visoko operation.<sup>1307</sup> Several witnesses stated that the conduct of this battle and the losses that resulted led to conflict between Ramo Durmiš and some of the leaders of ABiH units and that he had even assaulted or menaced army officers.<sup>1308</sup> According to some witnesses, Durmiš allegedly left the 7<sup>th</sup> Brigade in the first half of January 1993<sup>1309</sup> and a number of soldiers followed him.<sup>1310</sup> The witnesses did not say how many soldiers joined him or which 1<sup>st</sup> Battalion companies they were from.

<sup>1300</sup> Sulejman Ribo, T(F) p. 11088.

<sup>1301</sup> P 695. His name is number 16 on the list of members. On the Travnik Muslim Forces, *see supra* paras. 480-485.

<sup>1302</sup> P 498; Džemal Ibranović, T(F) pp. 18397, 18399; Suad Jusović, T(F) p. [number omitted], Semir Terzić, T(F) p. 18243.

<sup>1303</sup> Witnesses Enver Adilović, T(F) pp. 18319, 18321, Džemal Ibranović, T(F) pp. 18397-18398, and Suad Jusović, T(F) p. 18440, all former members of the 1<sup>st</sup> Battalion, took part in this battle. P 514 mentions the names of Adilović and Terzić.

<sup>1304</sup> P 514.

<sup>1305</sup> P 408.

<sup>1306</sup> P 408. *See also* Enver Adilović, T(F) p. 18321.

<sup>1307</sup> P 746, "The rest of the battalion, gathered together, 200-250 men, is experiencing great internal turmoil caused by significant losses in the operation at Visoko."

<sup>1308</sup> Witness HF, T(F) pp. 17255-17256; Džemal Ibranović, T(F) pp. 18398-18399; Semir Terzić, T(F) p. 18282. Witness BA, T(F) pp. 719-721, 864, also spoke of conflicts between different groups. Document P 515, a report by the Accused Hadžihasanović of 29 December 1992, mentions a problem that the Visoko Operations Group had with part of the 7<sup>th</sup> Brigade in the Visoko and Ilijaš sectors. *See also* P 513; P 514; P 519; P 746.

<sup>1309</sup> Enver Adilović, T(F) pp. 18310, 18320; Džemal Ibranović, T(F) pp. 18397, 18399; Suad Jusović, T(F) p. 18439; Semir Terzić, T(F) p. 18243.

<sup>1310</sup> Džemal Ibranović, T(F) pp. 18399-18340; Semir Terzić, T(F) pp. 18281-18282.

631. In order to determine whether Ramo Durmiš maintained *de facto* links with the 7<sup>th</sup> Brigade after the battle at Visoko, the transcript of a conversation on 20 June 1993 between Witness ZP and a person presenting himself as Ramo Abu Džihad should be examined.<sup>1311</sup> During the conversation this person said that the group he belonged to had been part of the 7<sup>th</sup> Brigade but that the 7<sup>th</sup> Brigade had disowned it,<sup>1312</sup> and also that a 7<sup>th</sup> Brigade detachment had wanted to join his group but that he had been against it until the legality or illegality of his group had been decided.<sup>1313</sup> Irrespective of the doubts expressed by the Defence for the Accused Hadžihasanović<sup>1314</sup> and the Defence for the Accused Kubura,<sup>1315</sup> the Chamber considers that Ramo Abu Džihad was in fact Ramo Durmiš.<sup>1316</sup> It is not impossible to assume that the person keeping the first name of “Ramo” would replace his last name of “Durmiš” by “Abu Džihad” to show his commitment to the “holy war”. Nevertheless, the Chamber does not deem it necessary to rule on the veracity of all the claims made by Ramo Abu Džihad during this conversation.

632. The report of 4 August 1993 by Ahmed Adilović, Assistant Commander for Morale in the 7<sup>th</sup> Brigade, echoes this document since it deals with the situation that prevailed in the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion. It notes that a number of experienced and courageous soldiers had decided to follow Ramo Durmiš and Malik Basić after they left the 1<sup>st</sup> Battalion and that soldiers from the 1<sup>st</sup> Battalion wanted them to return if possible.<sup>1317</sup> The document confirms the fact that Durmiš left the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, without indicating the date of his departure.

633. Finally, an order dated 17 August 1993 signed by Nesib Talić, 7<sup>th</sup> Brigade Assistant Commander for Security, forbade members of the 7<sup>th</sup> Brigade from letting Durmiš and his group

<sup>1311</sup> P 598.

<sup>1312</sup> P 598, “We were part of the 7<sup>th</sup> Muslim Brigade, but it disowned us.”

<sup>1313</sup> P 598, “A detachment of the 7<sup>th</sup> Muslim Brigade wants to join us, but I won’t allow this until it is cleared up whether we are legal or illegal.”

<sup>1314</sup> Hadžihasanović Defence Final Brief, para. 228.

<sup>1315</sup> Reply of Amir Kubura to the Prosecution’s Response to the Motions for Acquittal, paras. 13-19.

<sup>1316</sup> ZP was not sure himself; T(F) pp. 8900, 9125. The Chamber bases its assumption that Ramo Durmiš and Ramo Abu Džihad were one and the same person on three arguments.

First there are the remarks by Ramo Abu Džihad about the battle at Visoko in which he said they had been betrayed by Kadir Jusić who had given the Serbs their artillery positions on Ilijaš, and they wanted to execute him. Ramo Abu Džihad’s statement about Visoko indicated that he actually did participate in the battle. His remarks on the betrayal of the officers and the intention to kill one of them reflect the testimony of witnesses BA, HF, Džemal Ibranović and Semir Terzić on the events after the battle. Kadir Jusić was Commander of the Visoko Operations Group; P 408. Document P 515, a report by the Accused Hadžihasanović dated 29 December 1992, refers to “problems” between the Visoko Operations Group and part of the 7<sup>th</sup> Brigade in the Visoko and Ilijaš sectors. Second, Ramo Abu Džihad affirmed during this conversation that he “had a camp” in Mehurići. According to documents tendered into evidence, the Chamber notes that Ramo Durmiš had full access to Poljanice Camp and commanded the local inhabitants there. *See supra* para. 626.

Last, the Chamber notes that the name *Ramo Abu Džihad* recalls the name *El Džihad*, which was used by the inhabitants of Poljanice Camp for a while to indicate the unit. This name was also used at times by the 3<sup>rd</sup> Corps to describe the *El Džihad* unit. *See* P 4; P 115; P 477; P 491/ DH 270/ C 10.

<sup>1317</sup> P 610, “A number of experienced and exceptionally good soldiers broke away from our unit with Ramo Durmiš and Malik Basić, and the soldiers of the 1<sup>st</sup> Battalion, 7<sup>th</sup> Brigade want them to return to our force if that is at all possible.”



enter the barracks and other 7<sup>th</sup> Brigade facilities in Zenica.<sup>1318</sup> The order noted that civilians had complained about Durmiš' conduct, saying "he is a member of the 7<sup>th</sup> Muslim Brigade". Nevertheless, Nesib Talić denied this affiliation in the document.

634. Most of the evidence discussed above indicates that Ramo Durmiš left the 7<sup>th</sup> Brigade in 1993.

635. Nevertheless, two documents seem to suggest that Ramo Durmiš did not leave the 7<sup>th</sup> Brigade, or at any rate not after the battle at Visoko. The first document, Exhibit P 498, is a list of 7<sup>th</sup> Brigade officers with their functions and the period in which they exercised them. It was compiled in 1994 and states that Durmiš was commander of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> Company as of 28 October 1992.<sup>1319</sup> The list does not mention the date of his departure, thus seeming to indicate that Ramo Durmiš never left the 7<sup>th</sup> Brigade. Exhibit DK 29, however, dated 19 February 1993, indicates that Muhamed Basić was the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> Company commander on that date<sup>1320</sup> but makes no mention of Ramo Durmiš. The reliability of the list of 19 February 1993 was not questioned by the witnesses to whom it was submitted during their appearance before the Chamber.<sup>1321</sup>

636. Exhibit P 727 dated 14 April 1993 is the second document that seems to suggest Ramo Durmiš did not leave the 7<sup>th</sup> Brigade after the battle at Visoko.<sup>1322</sup> It is a decision by the 7<sup>th</sup> Brigade Command to reward individual soldiers of the 7<sup>th</sup> Brigade or units of the brigade collectively on the occasion of the 1<sup>st</sup> anniversary of the ABiH. The rewards were either monetary or the gift of a copy of the Koran, or public recognition of the valour of certain soldiers or units.<sup>1323</sup> The "1<sup>st</sup> Battalion 1<sup>st</sup> Company and its commander Ramo Durmiš" are among the units mentioned in the list.

637. Nevertheless, when Witnesses Suad Jusović and Semir Terzić, whose names are on the list as members of the 7<sup>th</sup> Brigade, were questioned about the contents of Exhibit P 727, they asserted that rewards and honourable citations were given to all the soldiers and all the units that had taken part in battle at Visoko in December 1992.<sup>1324</sup> Therefore, the fact that the document mentions an honourable citation presented to the "[7<sup>th</sup> Brigade 1<sup>st</sup> Battalion] 1<sup>st</sup> Company and its commander" at a ceremony on 14 April 1993, does not mean that Ramo Durmiš was still part of the 7<sup>th</sup> Brigade at

<sup>1318</sup> DK 35.

<sup>1319</sup> P 498. The Chamber notes that the 7<sup>th</sup> Brigade was not created until 19 November 1992; *see* P 125.

<sup>1320</sup> DK 29.

<sup>1321</sup> Džemal Ibranović, T(F) pp. 18401-18402; Suad Jusović, T(F) pp. 18439-18440; Semir Terzić, T(F) p. 18244.

<sup>1322</sup> P 727.

<sup>1323</sup> *See* also the following exhibits on these ceremonies: P 791; DK 11; DK 12; DK 62. *See* DH 1651 for the Decision of the Presidency of the RBiH of 9 April 1992 on the integration of all armed forces on the territory of the RBiH.

<sup>1324</sup> Suad Jusović, T(F) pp. 18440-18441, 18457; Semir Terzić, T(F) pp. 18285-18286.

that date. The role of his company in the battle at Visoko could have been recognised on this occasion even though he had already left the ranks of the 7<sup>th</sup> Brigade.

638. The Prosecution asserts that the reference at this ceremony to the 1<sup>st</sup> Company and its commander must be linked to other actions by the unit (and its commander), since the battle at Visoko was a disaster for the ABiH,<sup>1325</sup> although it provided no evidence to support its assertion. The Chamber thus notes that based on the evidence tendered, it would seem that the battle at Visoko was the major event of this period since it led to public recognition for the 1<sup>st</sup> Company and its commander at the ceremony in April 1993.

639. In view of the evidence discussed above, the Chamber finds that Ramo Durmiš left the 7<sup>th</sup> Brigade in 1993.

640. As to the specific date that Durmiš left the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, several witnesses stated that it was in early January 1993, after the battle at Visoko. Since there is nothing in the other evidence contradicting this assertion, the Chamber has no reason to believe that this testimony is anything but the truth.<sup>1326</sup> After its analysis, the Chamber finds that Ramo Durmiš left the 7<sup>th</sup> Brigade in early January 1993.

641. As to whether Ramo Durmiš or other members of the 7<sup>th</sup> Brigade who had joined the mujahedin at Poljanice Camp maintained a *de facto* link of subordination to the 7<sup>th</sup> Brigade, the Chamber considers it relevant to examine evidence from the 306<sup>th</sup> Brigade and 7<sup>th</sup> Brigade on the presence of the 7<sup>th</sup> Brigade in the Bila Valley where Poljanice Camp was located.

(c) 7<sup>th</sup> Brigade and Foreign Muslim Fighters

(i) Introduction

642. The Chamber will now examine whether foreign Muslim fighters were among the ranks of the 7<sup>th</sup> Brigade and whether they had any links to the foreign mujahedin at Poljanice Camp.

643. Much of the testimony and many documents tendered into evidence dealt with whether foreign Muslim fighters were part of the 7<sup>th</sup> Brigade in the period preceding the formation of the *El Mujahedin* detachment in August 1993.

<sup>1325</sup> Prosecution Final Brief, para. 153.

<sup>1326</sup> The Chamber did not take into account document "P 941 limited access" since it was used only to refresh the witness's memory or to impeach his credibility, and the contents of the document were not confirmed by Witness Mustafa Poparić, T(F) pp. 14513-14516. For the probative value of this category of documents, *see supra* para. 278.

(ii) Testimony

644. Elsewhere in its Judgement, the Chamber has examined the relations between the Travnik Muslim Forces and the 7<sup>th</sup> Brigade.<sup>1327</sup> It noted that many of these forces joined the 7<sup>th</sup> Brigade after it was formed in November 1992. The composition of the Travnik Muslim Forces is relevant, that is whether it consisted solely of Bosnians or also included foreign Muslim fighters who might have subsequently joined the 7<sup>th</sup> Brigade. In an interview dated 1 January 1995, Fadil Hadžić, former member of the Travnik Muslim Forces,<sup>1328</sup> noted that a considerable number of mujahedin from Muslim countries had come to join the unit and that their presence gave the soldiers moral support during combat.<sup>1329</sup> Witness Zijad Čaber, first commander and then chief of staff of the Travnik Municipal Territorial Defence in 1992, remembered having seen two or three “Arab” type individuals who were part of the Travnik Muslim Forces.<sup>1330</sup> Conversely, Witness Semir Terzić, another former member of the Travnik Muslim Forces, did not recall that the forces received any assistance from foreigners and said they had not been trained by these individuals.<sup>1331</sup> Witness Haso Ribo, commander of the Travnik Municipal Territorial Defence after Čaber, was of the opinion that the Travnik Muslim Forces were composed solely of Bosnians.<sup>1332</sup> Witness Fikret Čuskić supposed that there were also foreigners, but did not know whether they had been truly incorporated into the unit.<sup>1333</sup> Lastly, the list of members of the Travnik Muslim Forces dated 15 September 1992 does not contain any foreign names.<sup>1334</sup> Bearing in mind the discrepancies in the witness statements, it is not possible to reach any conclusion on whether foreign Muslim fighters were part of the 7<sup>th</sup> Brigade.

645. During the trial, the Chamber heard testimony from 11 former members of the 7<sup>th</sup> Brigade. Some ruled out the fact that foreign Muslim fighters belonged to the 7<sup>th</sup> Brigade, particularly former members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion whose headquarters were in Travnik. Witnesses Enver Adilović, Džemail Ibranović and Suad Jusović asserted that the 1<sup>st</sup> Battalion did not have any foreign members.<sup>1335</sup> Witness Elvedin Omić said that the same was true for the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion.<sup>1336</sup>

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<sup>1327</sup> See *supra* paras. 480-485.

<sup>1328</sup> P 695, no. 13.

<sup>1329</sup> P 763.

<sup>1330</sup> Zijad Čaber, T(F) pp. 10387-10388.

<sup>1331</sup> Semir Terzić, T(F) pp. 18274-18275.

<sup>1332</sup> Haso Ribo, T(F) p. 10829.

<sup>1333</sup> Fikret Čuskić, T(F) p. 12177.

<sup>1334</sup> P 695.

<sup>1335</sup> Enver Adilović, T(F) p. 18324; Džemail Ibranović, T(F) pp. 18402-18403; Suad Jusović, T(F) pp. 18442, 18452.

<sup>1336</sup> Elvedin Omić, T(F) pp. 18620-18621.

646. In addition, there is reason to recall at this point the testimony of the international observers in this regard.<sup>1337</sup> Some of the international observers were convinced that there were close ties between the 7<sup>th</sup> Brigade and the mujahedin, but they were uncertain as to the nature of these links or whether foreign Muslim fighters were part of or subordinated to the 7<sup>th</sup> Brigade.

(iii) Documents

647. A great variety of documents touch on relations between the 7<sup>th</sup> Brigade and the foreign Muslim fighters.

648. Many of these documents have been analysed in the section of the Judgement on the mujahedin and the factual conclusions should be recalled here. The analysis of the HVO arrest of the mujahedin and the abduction of the Croatian officers showed that there were links between the 7<sup>th</sup> Brigade and the foreign Muslim fighters, although the 7<sup>th</sup> Brigade was not involved in the abduction of Živko Totić and other HVO officers by the foreign Muslim fighters.<sup>1338</sup> The Chamber's analysis of the mujahedin's participation in ABiH combat before the formation of the *El Mujahedin* detachment showed that the mujahedin frequently took part in such combat, although it is not possible to establish beyond a reasonable doubt that they were subordinated to the 7<sup>th</sup> Brigade or the 3<sup>rd</sup> Corps.<sup>1339</sup>

649. Several isolated documents on this matter and on the role of Ahmed Adilović and Nusret Abdibegović, intermediaries between the mujahedin at Poljanice Camp and the 7<sup>th</sup> Brigade, should also be analysed.

650. A report from the 7<sup>th</sup> Brigade commander dated 15 March 1993<sup>1340</sup> on the movements and deployment of 7<sup>th</sup> Brigade units and their manning levels mentions, *inter alia*, that “[a]dditionally, there are around 60 Arabs and Turks who are also not included in this total” without specifying whether the foreign Muslim fighters were part of the 7<sup>th</sup> Brigade.<sup>1341</sup> According to the report, the 7<sup>th</sup> Brigade had a total of 1,439 troops, of which some 325 were in the 1<sup>st</sup> Battalion. It is interesting to compare this document with two other documents from the 7<sup>th</sup> Brigade Command dated 13 and 14 March 1993,<sup>1342</sup> that provide information on the manning level of the 7<sup>th</sup> Brigade, putting it at 1,431, with 329 in the 1<sup>st</sup> Battalion. It is possible to conclude that the 60 foreigners mentioned in the report dated 15 March 1993 are not part of the 7<sup>th</sup> Brigade troops. Nevertheless, at a later point the

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<sup>1337</sup> See *supra* para. 579.

<sup>1338</sup> See *supra* para. 524.

<sup>1339</sup> See *supra* paras. 541-546.

<sup>1340</sup> P 536.

<sup>1341</sup> P 536.

<sup>1342</sup> P 693; DK 29.

Chamber will make a more detailed analysis of the 7<sup>th</sup> Brigade's manning levels when it discusses the presence of the 7<sup>th</sup> Brigade in the Bila Valley in the first half of 1993.

651. Another document that drew the Chamber's attention is an order dated 13 July 1993 by Mehmed Alagić, commander of OG *Bosanska Krajina*,<sup>1343</sup> in which he speaks about an incident in the village of Guča Gora where members of the "so-called mujahedin unit" opened fire on UNPROFOR vehicles.<sup>1344</sup> Alagić's order required that all brigade and municipal TO commanders as well as MUP chiefs and the grand imam of Travnik explain to their soldiers that they should never open fire on UNPROFOR vehicles. The order contains a list of addressees that includes the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and Nusret *effendi* Abdibegović.

652. The testimony of several witnesses indicated that Nusret *effendi* Abdibegović was the mufti of Travnik in 1992 and 1993.<sup>1345</sup> He was seen during an oath-taking ceremony by members of the Travnik Muslim Forces in 1992.<sup>1346</sup> One witness also saw him at the ceremony after the formation of the *El Mujahedin* detachment on 13 August 1993.<sup>1347</sup> Finally, two witnesses stated that in October 1993 the mufti acted as intermediary between the *El Mujahedin* detachment and OG *Bosanska Krajina* when the Croats from Travnik were abducted and a member of the 17<sup>th</sup> Brigade was detained by the detachment.<sup>1348</sup> Given this evidence, it is not so very surprising to see that the mufti of Travnik was a recipient of Alagić's order along with the "units" belonging to OG *Bosanska Krajina*.

653. It should be noted, however, that Alagić's order makes a distinction between the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and the mujahedin unit in the list of addressees. The document does not necessarily mean that the mujahedin were part of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion.

654. Ahmed Adilović, Assistant Commander for Troop Morale and Propaganda in the 7<sup>th</sup> Brigade, should also be mentioned.<sup>1349</sup> He is the author of four documents dealing with relations between the 7<sup>th</sup> Brigade and the mujahedin, two of which contain protests against the arrest of foreign Muslim fighters by the HVO.<sup>1350</sup> A third document, P 610, is a report dated 4 August 1993 in which he notes that members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion had become used to "Arabs (and

<sup>1343</sup> P 435.

<sup>1344</sup> P 435, "On 11 July 1993, in the evening, an armed incident occurred in the village of Guča Gora, where the members of the so-called Mujahedin unit opened fire on UNPROFOR vehicles."

<sup>1345</sup> Witness HE, T(F) p. 17065; Fikret Čuskić, T(F) p. 12127; Semir Terzić, T(F) pp. 18270-18271.

<sup>1346</sup> Witness HE, T(F) p. 17065; Semir Terzić, T(F) pp. 18270-18271. *See also* videocassette P 762.

<sup>1347</sup> Witness HE, T(F) p. 17070. On this ceremony, *see also infra* para. 816.

<sup>1348</sup> Fikret Čuskić, T(F) pp. 12126-12127; Ivo Fišić, T(F) p. 2289, T(E) p. 2289. *See also infra* paras. 1448, 1452.

<sup>1349</sup> On the function of Ahmed Adilović in the 7<sup>th</sup> Brigade *see* P 498; P 527; DH 723; DH 776/ DK 62, Annex A. P 498 indicates that Adilović left this position on 1 December 1993; *see also* Safet Junuzović, T(F) pp. 18555-18556.

<sup>1350</sup> P 461; P 531. *See also supra* paras. 491 and 495.

also some Turks)” taking part in combat, whose presence made the members feel more secure and was often decisive, leading to victory during combat. According to the document, for the reasons cited above, members of the 1<sup>st</sup> Battalion wanted the mujahedin to fight with them again.<sup>1351</sup> The last document compiled by Adilović is a request dated 27 August 1993 addressed to the 3<sup>rd</sup> Corps in which he asked for a helicopter to transport 11 persons of Arab or Turkish origin who wanted to go to Mt Igman.<sup>1352</sup> Lastly, in the minutes of a 7<sup>th</sup> Brigade meeting held on 13 May 1993 on the distribution of war booty, it is noted that *effendi* Ahmed Adilović was tasked with talking to the “Arabs” about the war booty they had taken”.<sup>1353</sup>

655. Several witnesses stated that they knew and still know Adilović as the imam of Travnik and director of the town’s madrasah.<sup>1354</sup>

656. The contents of these five documents suggest that Ahmed Adilović, a member of the 7<sup>th</sup> Brigade, sometimes acted as the intermediary between the foreign Muslim fighters and the ABiH. In spite of the apparent link between the foreign Muslim fighters and a member of the 7<sup>th</sup> Brigade (Adilović) that can be drawn from the documents, the detailed analysis in another section of the Judgement does not support the argument that the Muslim fighters were *de facto* subordinated to the 7<sup>th</sup> Brigade.

(iv) Conclusion

657. None of the documents that were just examined supports the argument that foreign Muslim fighters were part of the 7<sup>th</sup> Brigade or *de facto* subordinated to it. Nevertheless, the Chamber will consider this issue again after examining the testimony and documents that deal with the presence of the 7<sup>th</sup> Brigade in the Bila Valley in the first six months of 1993.

(d) Presence of the 7<sup>th</sup> Brigade in the Bila Valley

(i) Introduction

658. In this section of the Judgement, the Chamber will first deal with the question of whether the 7<sup>th</sup> Brigade was present in the Bila Valley, starting with the testimony of former members of the 7<sup>th</sup> Brigade and documents from the brigade, from OG *Bosanska Krajina*, and from the 3<sup>rd</sup> Corps. Then, with the same focus, several documents from UNPROFOR’s British Battalion will be

<sup>1351</sup> P 610, “To date they have got used to the Arabs (and also some Turks) taking part in combat actions with them. Their presence makes them more secure, and the Arabs were frequently of decisive importance for the success of an action, so the soldiers of the 7<sup>th</sup> Brigade 1st Battalion want them engaged again in combat with them.”

<sup>1352</sup> P 616/C 7.

<sup>1353</sup> P 558.

<sup>1354</sup> Witness HE, T(F) p. 17604; Fikret Čuskić, T(F) pp. 12160-12161; Džemal Merdan, T(F) pp. 13321-13322.

examined. Lastly, the Chamber will analyse the testimony of former members of the 306<sup>th</sup> Brigade regarding the presence of the 7<sup>th</sup> Brigade in the Bila Valley in view of documents from the 306<sup>th</sup> Brigade or documents compiled using information from its members. Such an analysis is essential, since the mujahedin camp at Poljanice on the outskirts of Mehurići and the Bila Valley were in the zone of responsibility of the 306<sup>th</sup> Brigade.

(ii) Evidence regarding the Presence of the 7<sup>th</sup> Brigade in the Bila Valley

a. Introduction

659. The question of whether the 7<sup>th</sup> Brigade was in the Bila Valley is extremely complex and requires an extensive analysis of all the evidence dealing with the brigade's composition, troop strength, and movements during combat. This study will lead to the conclusion that some 90 persons who seemed to be linked to the 1<sup>st</sup> Battalion were in the Bila Valley, but will not make it possible to establish decisively that the group belonged to and was under the control of the 7<sup>th</sup> Brigade.

660. As noted above, the 7<sup>th</sup> Brigade consisted of three battalions.<sup>1355</sup> It is relevant to examine the composition of the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions and where they were located in the first six months of 1993. The Chamber will then concentrate on the 1<sup>st</sup> Battalion and its four companies.

b. 2<sup>nd</sup> Battalion

661. The headquarters of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion was at the Bilimište barracks in Zenica.<sup>1356</sup> It was commanded by Šerif Patković in the first part of 1993.<sup>1357</sup>

662. Around mid-March 1993, the battalion consisted of some 600 men.<sup>1358</sup>

663. In late January 1993, the 2<sup>nd</sup> Battalion was engaged in combat at Dusina.<sup>1359</sup> In early March 1993, units of the battalion were in Kralupi, Busovača, Žepa and Begov Han.<sup>1360</sup> The battalion took part in combat at Visoko the same month.<sup>1361</sup> In April 1993, part of the battalion was in the Ahmići

<sup>1355</sup> See *supra* para. 621.

<sup>1356</sup> P 693; P 724; P 562; Kasim Podžić, T(F) p. 18636.

<sup>1357</sup> P 498.

<sup>1358</sup> P 746; P 693; DK 33; P 536; DK 32, a 7<sup>th</sup> Brigade report dated 23 February 1993, refers to 550 troops.

<sup>1359</sup> See *infra* paras. 1024-1026.

<sup>1360</sup> P 746; P 693; P 536.

<sup>1361</sup> P 536; P 693.

sector.<sup>1362</sup> In the same period, the battalion fought on Mt Zmajevac and in the area around Zenica.<sup>1363</sup> Mention is made of the battalion being present at Dusina, Vrhovine and Kakanj in May 1993.<sup>1364</sup> On 8 June 1993, the battalion took part in combat in the sectors of Čukle, Novo Selo, Šusanj, Brajkovići and Grahovčići.<sup>1365</sup> After this combat, the battalion left for Kakanj.<sup>1366</sup>

664. No document indicates the presence of 2<sup>nd</sup> Battalion units in Mehurići or the Bila Valley in the first six months of 1993. No witness has stated that 7<sup>th</sup> Brigade units were there during this period.

c. 3<sup>rd</sup> Battalion

665. The headquarters of the 3<sup>rd</sup> Battalion was in Kakanj.<sup>1367</sup> From 6 February to 20 June 1993 it was commanded by Nihad Čatić.<sup>1368</sup>

666. It seems that in February 1993 the battalion had some 153 men.<sup>1369</sup> Three documents from March 1993 indicate that its manning level was either 173 or 180 men.<sup>1370</sup>

667. In January and February 1993, part of the battalion was engaged at Bijelo Bučje,<sup>1371</sup> and in March 1993 part of the battalion was deployed on the Visoko front.<sup>1372</sup> In April 1993, the battalion provided assistance to the 2<sup>nd</sup> Battalion in combat on Mt Zmajevac and in the area around Zenica.<sup>1373</sup> On 8 June 1993, the 3<sup>rd</sup> Battalion took part in combat in the sectors of Čukle, Novo Selo, Šusanj, Brajkovići and Grahovčići,<sup>1374</sup> after which it went to Kakanj.<sup>1375</sup>

668. No document indicates the presence of 3<sup>rd</sup> Battalion units in Mehurići or the Bila Valley during the first six months of 1993. No witness has stated that 7<sup>th</sup> Brigade units were there during this period.

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<sup>1362</sup> P 909; P 782.

<sup>1363</sup> P 782; P 550; P 462; P 558.

<sup>1364</sup> P 681.

<sup>1365</sup> P 419; P 420; Kasim Podžić, T(F) pp. 18638-18645; Elvedin Omić, T(F) pp. 18598-18600.

<sup>1366</sup> DK 21; DK 41; Kasim Podžić, T(F) pp. 18646-18647; Elvedin Omić, T(F) p. 18600.

<sup>1367</sup> DK 55.

<sup>1368</sup> P 498.

<sup>1369</sup> DK 32.

<sup>1370</sup> P 693; DK 33; P 536.

<sup>1371</sup> Kasim Alajbegović, T(F) p. 18694.

<sup>1372</sup> P 536.

<sup>1373</sup> P 909; P 782; P 462; P 558.

<sup>1374</sup> P 419; P 420; Kasim Alajbegović, T(F) pp. 18698-18700.

<sup>1375</sup> DK 21; DK 41; Kasim Alajbegović, T(F) pp. 18701-18702.



d. 1<sup>st</sup> Battalion

i. General Information

669. The 1<sup>st</sup> Battalion had its headquarters in Travnik<sup>1376</sup> and its troops were lodged in the madrasah.<sup>1377</sup> It is not completely clear who commanded this battalion between late 1992 and mid-June 1993 since documents mention different names.<sup>1378</sup> It seems that the battalion had no official commander as of late April 1993.<sup>1379</sup> Towards mid-June 1993, Safet Junuzović took command.<sup>1380</sup> At that time the battalion consisted of four companies.<sup>1381</sup>

ii. Zone of Responsibility

670. The battalion's zone of responsibility was on the Bijelo Bučje front in the municipality of Turbe, west of Travnik.<sup>1382</sup> Nevertheless, an examination of the movements of the four companies will show that during the first part of 1993 or even earlier, the 1<sup>st</sup> Battalion took part in combat or was located in places other than those mentioned above.<sup>1383</sup> Indeed, by December 1992, it fought outside its zone of responsibility during the battle at Visoko on 28 December 1992.<sup>1384</sup>

671. The former members of the 1<sup>st</sup> Battalion who testified before the Chamber stated that there were no 1<sup>st</sup> Battalion units in Mehurići or in the Bila Valley before the fighting on 8 June 1993.<sup>1385</sup>

iii. 1<sup>st</sup> Battalion Troops

672. Several documents from the 7<sup>th</sup> Brigade Command provide information on the manning level of the 1<sup>st</sup> Battalion during the first three months of 1993. A report dated 23 February 1993 puts

<sup>1376</sup> Horo Naim, DK 61, para. 3.

<sup>1377</sup> P 829; DK 20; Fikret Čuskić, T(F) p. 12108.

<sup>1378</sup> P 498 is a list of names compiled in 1994 and refers to three successive commanders: Osman Ibrahimspahić, Semir Terzić, and Osman Zubača. DK 29, a document dated 19 February 1993, indicates that Fadil Hadžić is the commander of this battalion. P 539, a report dated 29 March 1993, indicates that Zubača is the commander. Conversely, P 829, a report dated 15 March 1993, refers to the name of Hadžić.

<sup>1379</sup> Horo Naim, DK 61, para. 5.

<sup>1380</sup> Safet Junuzović, T(F) p. 18502; Horo Naim, DK 61, para. 5.

<sup>1381</sup> Horo Naim, DK 61, para. 3.

<sup>1382</sup> P 471; P 586; Horo Naim, DK 61, para. 4; Suad Jusović, T(F) pp. 18426-18427; Semir Terzić, T(F) p. 18290. For the geography, see also DK 37.

<sup>1383</sup> See *infra* paras. 678-682, 685-686, 689-690, 699-707.

<sup>1384</sup> See *supra* paras. 629-630.

<sup>1385</sup> Džemal Ibranović, T(F) pp. 18363-18364, 18394; Safet Junuzović, T(F) pp. 18507-18508; Suad Jusović, T(F) p. 18429, Semir Terzić, T(F) pp. 18246, 18284.

it at 290 men,<sup>1386</sup> while three other reports from mid-March 1993 note respectively that the battalion had 329, 329, and 325 men.<sup>1387</sup>

673. Several documents from the 1<sup>st</sup> Battalion provide information about its manning level in May and June 1993. The first is a report dated 22 May 1993 by Semir Terzić, although it is not signed, which refers to a troop count of 380 men.<sup>1388</sup> A second report by Safet Junuzović with the hand-written date of 16 June 1993 notes that the total manpower of the four companies was 363.<sup>1389</sup>

674. The third document, also written by Safet Junuzović, is an assessment of the forces of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion on 21 June 1993.<sup>1390</sup> The Chamber's first observation is that the document does not state the total number of members in the 1<sup>st</sup> Battalion. The Chamber will proceed by deduction to calculate the number of soldiers in this battalion. Based on the report by Safet Junuzović, it appears that the manpower of three of the 1<sup>st</sup> Battalion's companies, i.e. the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> companies, was 213 men. The document also notes that *another company*, whose manpower is not mentioned, was allegedly engaged on the front line at Bijelo Buče. According to the testimony of Suad Jusović, commander of the 1<sup>st</sup> Battalion 2<sup>nd</sup> Company,<sup>1391</sup> this *other company* deployed on the Bijelo Buče front line was his company, the 2<sup>nd</sup> Company.<sup>1392</sup> According to the witness, the 2<sup>nd</sup> Company had 60 to 70 men in June 1993.<sup>1393</sup> It follows that according to the report by Junuzović of 21 June 1993,<sup>1394</sup> the total manpower of the 1<sup>st</sup> Battalion's four companies was between 273 and 283 men in June 1993.

675. It is interesting to note that the report by Junuzović also mentions 90 soldiers without specifying whether they belonged to one or several of the 1<sup>st</sup> Battalion's companies. If we add this number to the other numbers mentioned in his report, the total becomes 363 to 373 men.

<sup>1386</sup> DK 32. According to Witness Semir Terzić, T(F) p. 18240, this number reflects the situation at that time.

<sup>1387</sup> P 693; DK 33; P 536. Exhibit P 746, a report dated 4 March 1993, is the only document to note the much higher number of 460 men. The reason for this is not quite clear, although the author of the document might have included units in the troop count that strictly speaking were not part of the battalion. Owing to the consistency of the information in other reports, the Chamber will not take it into account.

<sup>1388</sup> P 474.

<sup>1389</sup> P 586.

<sup>1390</sup> P 471.

<sup>1391</sup> Suad Jusović, T(F) p. 18426.

<sup>1392</sup> The report by Safet Junuzović (P 471) indicates this other company that had allegedly "been engaged in the zone of operations has had constant combat operations since 2 June 1993 and was previously at full combat readiness." Suad Jusović, Commander of the 2<sup>nd</sup> Company (Suad Jusović, T(F) p. 18426) testified that his unit had been at combat readiness since 27 or 28 May 1993, had taken part in combat at Hajdareve Njive in early June 1993, and stayed in the sector until 9 June 1993. According to him, the company was sent to Bijelo Buče afterwards to take part in combat (Suad Jusović, T(F) pp. 18430, 18435-18436, 18464; document P 775 confirms the combat on 16 June 1993). Bearing this evidence in mind, the Chamber may reasonably find that the company mentioned as being at Bijelo Buče in Safet Junuzović's report was the 2<sup>nd</sup> Company.

<sup>1393</sup> Suad Jusović, T(F) p. 18427. Document P 775 mentions a unit of 70 men that was sent to Bijelo Buče on 16 June 1993.

<sup>1394</sup> P 491.

676. At first glance, based on the three 1<sup>st</sup> Battalion reports, it seems justified to conclude that the battalion had from 360 to 380 soldiers in May and June 1993. Several problems of interpretation linked to these documents, however, will be discussed later. These relate directly to the issue of whether the 7<sup>th</sup> Brigade was present in the Bila Valley in the first half of 1993.<sup>1395</sup>

iv. 1<sup>st</sup> Battalion 2<sup>nd</sup> Company

*Command and Composition*

677. In the first half of 1993, the 1<sup>st</sup> Battalion 2<sup>nd</sup> Company was commanded by Suad Jusović<sup>1396</sup> who took over command in December 1992.<sup>1397</sup> He testified that his company was primarily composed of refugees from numerous municipalities in Bosnia and Herzegovina.<sup>1398</sup>

*Troops*

678. Until the fighting in early June 1993, it seems that the 2<sup>nd</sup> Company had from 60 to 70 men.<sup>1399</sup> A 1<sup>st</sup> Battalion report dated 16 June 1993 notes the higher number of 90 soldiers.<sup>1400</sup> The Chamber considers that the explanation for the difference in these numbers is not clear.

*Locations*

679. Witness Suad Jusović testified that his company was present in the Travnik area during the first half of 1993 and had been engaged on the front line at Bijelo Bučje from 12 February to 23 May 1993.<sup>1401</sup>

680. Back at the barracks in Travnik, on 27 or 28 May 1993, Suad Jusović received an order from Alagić, commander of OG *Bosanska Krajina*, asking him to “be in the reserve force”.<sup>1402</sup> According to the evidence, on 5 June 1993 the 1<sup>st</sup> Battalion 2<sup>nd</sup> Company left for Hajdareve Njive, which was 600 to 800 metres from Travnik.<sup>1403</sup> About 25 soldiers from the 1<sup>st</sup> Company were attached to the

<sup>1395</sup> See *infra* paras. 708-718.

<sup>1396</sup> P 498; DK 29; Suad Jusović, T(F) p. 14826.

<sup>1397</sup> Suad Jusović, T(F) p. 18426. See also DK 29.

<sup>1398</sup> Suad Jusović, T(F) pp. 18471-18472.

<sup>1399</sup> Suad Jusović, T(F) p. 18427. See also P 474, under “B. Bučje”. Semir Terzić, T(F) p. 18256, notes the presence of a company in Travnik in early June 1993.

<sup>1400</sup> P 586.

<sup>1401</sup> Suad Jusović, T(F) p. 18428.

<sup>1402</sup> Suad Jusović, T(F) p. 18430.

<sup>1403</sup> Suad Jusović, T(F) p. 18435. See also P 465; DK 18; DK 19; DK 20; DK 34.

2<sup>nd</sup> Company there, since the 1<sup>st</sup> Company was absent.<sup>1404</sup> The evidence indicates that they stayed there until the morning of 9 June 1993.<sup>1405</sup>

681. A combat report from the 1<sup>st</sup> Battalion dated 16 June 1993 notes that the 2<sup>nd</sup> Company was on the Han Bila-Nova Bila axis with 90 soldiers.<sup>1406</sup> Towards mid-June 1993, the 2<sup>nd</sup> Company seems to have been stationed once again in Bijelo Bučje.<sup>1407</sup>

682. Based on the above, it is clear that the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 2<sup>nd</sup> Company, assuming that it had from 60 to 70 members, was neither based in nor passed through the Bila Valley before the fighting on 8 June 1993.

v. 1<sup>st</sup> Battalion 3<sup>rd</sup> Company

*Command and Composition*

683. Of all the 1<sup>st</sup> Battalion's companies, the 3<sup>rd</sup> seems to have been the smallest and least mobile. In February 1993, it was commanded by Faik Podojak.<sup>1408</sup> The evidence does not make it possible to establish from which part of Bosnia and Herzegovina its members came.

*Troops*

684. In early 1993, the company had some 35 members,<sup>1409</sup> a number that later rose to 53.<sup>1410</sup>

*Locations*

685. The company was established in the Ravno Rostovo zone. A set of eight documents covering the entire first six months of 1993 suggests that the company never left this zone during this period.<sup>1411</sup>

686. There is thus no reason to believe that the 3<sup>rd</sup> Company was stationed in the Bila Valley, since it did not even transit through it in the first six months of 1993.

<sup>1404</sup> Suad Jusović, T(F) p. 18430.

<sup>1405</sup> Suad Jusović, T(F) pp. 18435-18436. For the conduct and locations of these battles, *see* also P 465; DK 18; DK 19; DK 20; DK 34; DK 42. For the testimony of Remzija Šiljak on the presence of the company, *see infra* para. 730.

<sup>1406</sup> P 586.

<sup>1407</sup> Witness Suad Jusović stated that his company left once again for Bijelo Bučje without, however, specifying the date of departure (Suad Jusović, T(F) p. 18464). The report of 21 June 1993 by Safet Junuzović, 1<sup>st</sup> Battalion Commander as of mid-June (P 498; Safet Junuzović, T(F) p. 18502) confirms the presence at Bijelo Bučje of a company that had continuously taken part in operations since early June 1993, and had been at combat readiness before this period (P 471).

<sup>1408</sup> DK 29.

<sup>1409</sup> P 693; P 536.

<sup>1410</sup> P 586; P 471; P 429. *See* also P 474, under "R. Rostovo".

<sup>1411</sup> P 406; P 746; P 693; P 536; P 586; P 471; P 429. *See* also Suad Jusović, T(F) p. 18437; P 474, under "Vitez".

vi. 1<sup>st</sup> Battalion 4<sup>th</sup> Company*Command and Composition*

687. The 1<sup>st</sup> Battalion 4<sup>th</sup> Company was generally known as the “Vitez Company” because its members were from that town.<sup>1412</sup> Asim Bektaš was its first commander and<sup>1413</sup> Enver Adilović succeeded him in this position in mid-February, 1993<sup>1414</sup>

*Troops*

688. The 4<sup>th</sup> Company had around 100 men.<sup>1415</sup>

*Locations*

689. On 18 February 1993, when the company was in the area of Počulica between Zenica and Vitez,<sup>1416</sup> it received the order to go to Travnik.<sup>1417</sup> It was then engaged on the front line at Bijelo Bučje where it alternated with other units.<sup>1418</sup> Right after the events in Ahmići in mid-April 1993, the 4<sup>th</sup> Company went back to the area of Vitez<sup>1419</sup> and was then deployed on the Preočica-Počulica axis.<sup>1420</sup> In late June or early July 1993, the company returned to Travnik.<sup>1421</sup>

690. It is clear from the above that the 4<sup>th</sup> Company was not based in the Bila Valley and did not even pass through it before the fighting on 8 June 1993.

vii. 1<sup>st</sup> Battalion 1<sup>st</sup> Company

691. Although the Chamber was able to reach several useful conclusions regarding the troops and movements of the 1<sup>st</sup> Battalion 2<sup>nd</sup> Company, 3<sup>rd</sup> Company and 4<sup>th</sup> Company, this is not the case for the 1<sup>st</sup> Company.

<sup>1412</sup> Enver Adilović, T(F) pp. 18305, 18319.

<sup>1413</sup> P 724; DK 29.

<sup>1414</sup> Enver Adilović, T(F) p. 18328; DK 29.

<sup>1415</sup> Enver Adilović, T(F) p. 18313; Horo Naim, DK 61, para. 6; P 474; P 586.

<sup>1416</sup> P 724. For the geography *see* DH 90; DH 103.

<sup>1417</sup> P 724.

<sup>1418</sup> P 746. On the system of rotation, *see* Enver Adilović, T(F) p. 18304; Suad Jusović, T(F) p. 18428.

<sup>1419</sup> P 782; P 909; Enver Adilović, T(F) pp. 1836-1838; Suad Jusović, T(F) pp. 18439, 18436; Horo Naim, DK 61, para. 6.

<sup>1420</sup> P 909.

<sup>1421</sup> P 586; Enver Adilović, T(F) p. 18309; Horo Naim, DK 61, para. 6.

*Command and Composition*

692. It seems that the 1<sup>st</sup> Company was composed primarily of refugees from the Jajce area<sup>1422</sup> although some of its members were from Travnik.<sup>1423</sup>

693. The Chamber would first note that the leader of the 1<sup>st</sup> Company in the first half of 1993 is not clear. A document dated 1994 tendered into evidence presents a list of 7<sup>th</sup> Brigade officers with their positions and the periods in which they held them. The name of Ramo Durmiš appears on the list as the commander of the 1<sup>st</sup> Company 1<sup>st</sup> Detachment as of 28 October 1992.<sup>1424</sup> The list does not mention the date that Ramo Durmiš left the unit. Another list dated 19 February 1993, however, indicates that the company commander was Muhamed Bašić.<sup>1425</sup> Elsewhere in this part of the Judgement, the Chamber already considered the matter of when Ramo Durmiš commanded the 1<sup>st</sup> Company and found that, according to the evidence at its disposal, he left the unit in early January 1993.<sup>1426</sup>

*Troops*

694. The only document that provides clear and precise information on the troops of the 1<sup>st</sup> Battalion 1<sup>st</sup> Company is a report by Safet Junuzović dated 16 June 1993<sup>1427</sup> stating that the company had 120 soldiers, while the entire 1<sup>st</sup> Battalion had 363 soldiers.

695. The report of 22 May 1993 by Semir Terzić,<sup>1428</sup> 7<sup>th</sup> Brigade operations officer, dealing with the manning level of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, notes that the 1<sup>st</sup> Battalion had a total of 380 soldiers.<sup>1429</sup> It also contains a list of the locations of the different 1<sup>st</sup> Battalion units and their manpower, without, however, giving details about the companies. A comparison of these locations and figures with the information available on the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> companies suggests that a group of 92 soldiers stationed in Mehurići and 60 soldiers based in Travnik did not belong to the 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> company.<sup>1430</sup> The question then arises as to whether these two groups belonged to the 1<sup>st</sup> Company. An examination of the testimony below seems to show that the 1<sup>st</sup>

<sup>1422</sup> Suad Jusović, T(F) pp. 18436-18437.

<sup>1423</sup> Suad Jusović, T(F) p. 18430.

<sup>1424</sup> P 498.

<sup>1425</sup> DK 29.

<sup>1426</sup> See *supra* paras. 625-641.

<sup>1427</sup> P 586.

<sup>1428</sup> The Chamber recalls that the document bore the 7<sup>th</sup> Brigade seal and stamp and was written by Semir Terzić, although it is not signed. See P 474 and *supra* para. 673.

<sup>1429</sup> P 474.

<sup>1430</sup> The report mentions 70 men for the Bijelo Bučje sector, which corresponds to the testimony of Suad Jusović, T(F) pp. 18427-18428, on the troops of the 2<sup>nd</sup> Company and its presence in Bijelo Bučje in May 1993; see *supra* para. 678. For the Ravno Rostovo sector, the report mentions 53 men, which corresponds to the information on the 3<sup>rd</sup> Company discussed *supra* para. 684. For the Vitez sector, the report mentions 105 men. This information corresponds to the information on the 4<sup>th</sup> Company discussed *supra* para. 688.

Company contained 55 to 60 men, which would support the assumption that the 60 men based in Travnik belonged to the 1<sup>st</sup> Company. It has not been established, however, that the 92 soldiers based in Mehurići belonged to one of the 1<sup>st</sup> Battalion companies.

696. Witness Suad Jusović stated that during the week before 8 June 1993, 20 members of the 1<sup>st</sup> Company were on leave in Nemila, near Zenica, 10 others were in Kljaci in the Bila Valley,<sup>1431</sup> and some 25 to 30 men were at the Travnik Barracks.<sup>1432</sup> Although it is not clear from the French and English transcripts of the witness testimony whether this includes the total number of troops in the 1<sup>st</sup> Company, the Chamber considers this hypothesis very plausible.<sup>1433</sup> The 1<sup>st</sup> Company would thus contain from 55 to 60 men, an interpretation corroborated by the testimony of Witness Enver Adilović who stated that the 4<sup>th</sup> Company had 100 soldiers, whereas the other three companies had from 50 to 60 soldiers each.<sup>1434</sup>

697. The report by Safet Junuzović of 21 June 1993 also contains information on the manning levels of the 1<sup>st</sup> Battalion.<sup>1435</sup> The Chamber was previously able to note by deduction that the report mentions, *inter alia*, the 2<sup>nd</sup> Company which, according to the testimony of Suad Jusović and Enver Adilović, contained 60 to 70 men.<sup>1436</sup> The report also notes the presence of a company with 53 men at Ravno Rostovo. This must have been the 3<sup>rd</sup> Company.<sup>1437</sup> Then the report notes the engagement of two companies whose combined strength was 160 soldiers. This could have been the 4<sup>th</sup> Company, which had about 100 soldiers,<sup>1438</sup> and the 1<sup>st</sup> Company which, according to the testimony of Suad Jusović and Enver Adilović, had 55 to 60 men.<sup>1439</sup> Finally, the report mentions 90 soldiers without explaining whether they belonged to one of the 1<sup>st</sup> Battalion companies.

698. The analysis of the manpower of the 1<sup>st</sup> Company raises two questions. The first is whether this company consisted of 120 soldiers, as suggested by Safet Junuzović's report of 16 June 1993, or of 55 to 60 men, as stated by witnesses Suad Jusović and Enver Adilović. The documents dated 22 May 1993 and 21 June 1993 do not answer this question, but rather raise another question

<sup>1431</sup> Džemal Ibranović, T(F) p. 18362, indicated that he was in Kljaci with 20 members of the 1<sup>st</sup> Battalion between mid-April and mid-June 1993. T(E) p. 18362, however, mentions 10 men, which is a better match with the testimony of Suad Jusović. *See also infra* para. 728.

<sup>1432</sup> Suad Jusović, T(E) p. 18436. The French transcript, p. 18436, gives the figure of 120 for Nemila. This is an error in translation, *see* the memorandum of the Chamber's legal officer to the Translation Unit of 13 January 2006, and the Unit's response the same day.

<sup>1433</sup> *See* Suad Jusović, T(F), pp. 18428, 18430, 18436; T(E) pp. 18428, 18430, 18436. It might be possible to infer from this testimony that other members of the 1<sup>st</sup> Company were on leave elsewhere.

<sup>1434</sup> Enver Adilović, T(F) p. 18313.

<sup>1435</sup> P 471.

<sup>1436</sup> *See supra* para. 674.

<sup>1437</sup> *See supra* para. 684.

<sup>1438</sup> *See supra* para. 688

<sup>1439</sup> *See supra* para. 696

regarding the 90 soldiers in Mehurići whose attachment to one of the four 1<sup>st</sup> Battalion companies cannot be established immediately from a review of the 1<sup>st</sup> Battalion manpower.

#### *Locations*

699. The Chamber first notes the lack of information directly referring to the locations of the 1<sup>st</sup> Company in the first half of 1993. Based on a review of the evidence and the movements of the brigades, the Chamber will initially attempt to determine to which company the group of 90 men mentioned in the preceding paragraph should be attached.

700. The only document dealing directly with the subject is the report by Safet Junuzović dated 16 June 1993 that notes the presence of the 1<sup>st</sup> Company on the Počulica-Sivrino Selo-Vitez axis.<sup>1440</sup>

701. Regarding the period from early January to late May 1993, it is possible that the company or its parts were part of the rotation system that existed on the Bijelo Bučje front which, according to Witness Suad Jusović, consisted of two companies relieving two other companies every two weeks.<sup>1441</sup> The same witness, however, stated that his company had stayed at the Bjelo Bučje front line for the entire period from 12 February to 25 May 1993 without being relieved. The rotation system had been unable to operate because the HVO was blocking roads and the members of other companies could not get back to Travnik after their leave.<sup>1442</sup>

702. A reported dated 22 May 1993, unsigned but bearing the seal and stamp of the 7<sup>th</sup> Brigade and the name of Terzić, mentions 1<sup>st</sup> Battalion units in five locations: Bijelo Bučje, Ravno Rostovo, Vitez, Mehurići and Travnik. In May 1993, the 2<sup>nd</sup> Company was in Bijelo Bučje,<sup>1443</sup> the 3<sup>rd</sup> Company was in Ravno Rostovo,<sup>1444</sup> and the 4<sup>th</sup> Company was in the Vitez area.<sup>1445</sup> Assuming that every member of the 1<sup>st</sup> Battalion belonged to one of the four companies, the 1<sup>st</sup> Company was thus based in Mehurići and Travnik.

703. Another document that might provide information on the deployment of the 1<sup>st</sup> Company is an order by the commander of the 1<sup>st</sup> Battalion dated 27 May 1993<sup>1446</sup> asking the 1<sup>st</sup> Company commander to send 20 soldiers from the Mehurići sector to Radojčići to support troops based in that village. The order also says that the 20 members of the 1<sup>st</sup> Company will be “attached” to the 306<sup>th</sup>

<sup>1440</sup> P 586. This might indicate that the 1<sup>st</sup> Company relieved the 4<sup>th</sup> Company, *see supra* para. 689.

<sup>1441</sup> Suad Jusović, T(F) p. 18428.

<sup>1442</sup> Suad Jusović, T(F) p. 18428.

<sup>1443</sup> *See supra* para. 679.

<sup>1444</sup> *See supra* para. 685.

<sup>1445</sup> *See supra* para. 689.

<sup>1446</sup> P 481.



Brigade, which will provide logistics support. Radojčići is in the Bila Valley, two or three kilometres from Guča Gora.<sup>1447</sup> The order does not mention the author and is not signed, although it bears the seal and stamp of the 7<sup>th</sup> Brigade.

704. Several former members of the 306<sup>th</sup> Brigade commented on this document. Esed Sipić claimed he had never seen this text before and that it was a forgery, because it was completely impossible for the commander of a battalion to attach part of his troops to another brigade since he did not have the authority to do it.<sup>1448</sup> Munir Karić, former Assistant Commander for Logistics in the 306<sup>th</sup> Brigade, also stated that he had never seen this document. He added that he was not aware that the 1<sup>st</sup> Company had been in the area of Radojčići, and that no 7<sup>th</sup> Brigade unit depended on 306<sup>th</sup> Brigade logistics.<sup>1449</sup> Derviš Suljić also asserted that no member of the 7<sup>th</sup> Brigade had been in the Mehurići sector.<sup>1450</sup>

705. Reference should again be made to the report of 21 June 1993 by Safet Junuzović, 1<sup>st</sup> Battalion commander,<sup>1451</sup> which is an evaluation of the battalion's forces and also mentions the presence of four companies and a group positioned in five different places without, however, explaining which companies they were. One company was in Bijelo Bučje and the Chamber has already found that this was the 2<sup>nd</sup> Company.<sup>1452</sup> Another company consisting of 53 soldiers was in Ravno Rostovo, which the Chamber considers must have been the 3<sup>rd</sup> Company.<sup>1453</sup> The report also mentions the engagement of two other companies with a total of 160 men deployed on the front against the HVO in the Vitez area. One company was in the Kruščica sector and the other on the Počulica-Preočica-Bukve-Kljaci axis. Given that witnesses Suad Jusović and Enver Adilović judged the manpower of the 1<sup>st</sup> Company to be between 55 and 60 men in early June 1993<sup>1454</sup> and that the 4<sup>th</sup> Company had some 100 men,<sup>1455</sup> it would be logical to conclude that these two companies are the ones mentioned in this part of the report. Finally, the report mentions the presence of a group of 90 soldiers in the Mehurići sector without indicating whether the soldiers belonged to one of the four battalion companies. The number seems to correspond to the 90 men in Mehurići noted in the report of 22 May 1993 that was not signed by Witness Terzić.<sup>1456</sup> In addition, the report notes that the battalion was having serious problems with these soldiers, which it was unable to resolve by

<sup>1447</sup> Munir Karić, T(F) p. 11498.

<sup>1448</sup> Esed Sipić, T(F) pp. 14880-14881.

<sup>1449</sup> Munir Karić, T(F) pp. 11497-11498, 11500.

<sup>1450</sup> Derviš Suljić, T(F) p. 11343.

<sup>1451</sup> p 471.

<sup>1452</sup> *See supra* para. 679.

<sup>1453</sup> *See supra* para. 685.

<sup>1454</sup> *See supra* para. 688

<sup>1455</sup> *See supra* para. 696.

<sup>1456</sup> *See supra* para. 702.

itself, but that the 7<sup>th</sup> Brigade Command had become involved in resolving the evident and serious problems.<sup>1457</sup>

706. The last document dealing with the possible presence of the 1<sup>st</sup> Battalion in Mehurići is another report by commander Safet Junuzović dated 19 July 1993.<sup>1458</sup> The report says that the unit in the camp at Mehurići was not part of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and that the 1<sup>st</sup> Battalion commander thus had no right to command it.<sup>1459</sup>

707. Based on the preceding, conclusions can be made on the 55 to 60 men who were part of the 1<sup>st</sup> Battalion 1<sup>st</sup> Company, according to witnesses Suad Jusović and Enver Adilović. In the period before 8 June 1993, they were deployed as follows: 20 members of the 1<sup>st</sup> Company were on leave in Nemila near Zenica, 10 others were in Kljaci, which is in the Bila Valley,<sup>1460</sup> and some 25 to 30 men were in Travnik at the end of May 1993 and had allegedly joined the 2<sup>nd</sup> Company during the fighting at Hajdereve Njive in early June 1993.<sup>1461</sup> It can thus be determined that of the 55 to 60 members in the 1<sup>st</sup> Company, ten of them were in the Bila Valley before the fighting in June 1993, while 45 to 50 members of the company were stationed outside the Bila Valley.

#### viii. Probative Value of Two Documents

708. During its analysis of the presence of the 7<sup>th</sup> Brigade in the Bila Valley, the Chamber relied on a number of documents, including Exhibits P 474, a report by Semir Terzić dated 22 May 1993, and P 471, a report by Safet Junuzović dated 21 June 1993. The Chamber wishes to make several observations regarding their reliability and the probative value they should be accorded.

709. Exhibit P 474 is a collection of 7<sup>th</sup> Brigade reports and documents containing the report by Semir Terzić of 22 May 1993 that has drawn the Chamber's attention. There are two copies of

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<sup>1457</sup> P 471, "The Battalion has serious problems with soldiers who are from the wider Mehurići sector and is unable to resolve it itself, but Brigade Command has become involved to resolve the evident and serious problems. There are about 90 soldiers in this area."

<sup>1458</sup> DH 269.

<sup>1459</sup> DH 269, "We are not able to fulfill your request no. 01/700-2 of 5 July 1993 because, as we have officially informed on several occasions, those units do not belong to the 1<sup>st</sup> Battalion of the 7<sup>th</sup> Mbbr, and we have no right to command the unit in the Mehurići camp." This report is a response to a request for information from OG *Bosanska Krajina* dated 5 July 1993. Witness Safet Junuzović explained that during a meeting held shortly before 24 June 1993, Alagić, Commander of OG *Bosanska Krajina*, had asked the commanders who were present whether they had any soldiers in the camp or whether there were any men being trained there; Safet Junuzović, T(F) pp. 18509-18511.

<sup>1460</sup> Džemal Ibranović, T(F) p. 18362, stated that he was in Kljaci with 20 members of the 1<sup>st</sup> Battalion from mid-April to mid-June 1993. The T(E), p. 18362, however, notes there were 10 men, which is more consistent with the testimony of Witness Suad Jusović.

<sup>1461</sup> Suad Jusović, T(E) p. 18436. The French transcript, p. 18436, gives the figure of 120 for Nemila. This is an error in translation, *see* the memorandum of the Chamber's legal officer to the Translation Unit of 13 January 2006, and the Unit's response the same day.

Terzić's report,<sup>1462</sup> one signed by him, the other not. The Chamber's examination above was based on the unsigned document that contains a detailed list of 1<sup>st</sup> Battalion troops. This information is not contained in the signed version of the document. During his appearance in court, Witness Terzić stated that he had no knowledge of the unsigned document and that there were no 7<sup>th</sup> Brigade units in the Bila Valley in May 1993.<sup>1463</sup>

710. Nevertheless, in spite of the witness's claims, the Chamber has given this document a certain amount of weight. It should first be noted that the unsigned document is identical to the signed one except for the list of troops. Furthermore, they both bear identical 7<sup>th</sup> Brigade incoming stamps and received the same registration number. Lastly, the witness acknowledged that he wrote the signed document.<sup>1464</sup>

711. The Chamber notes that both the signed and unsigned documents mention sporadic fire in the Han Bila sector in the Bila Valley, information it considers to support the data in the unsigned document regarding the presence of 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion troops in the Bila Valley.

712. This choice was based on the fact that the information in the document on the presence of troops from the 1<sup>st</sup> Battalion 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> companies in May 1993, is corroborated by other sources,<sup>1465</sup> including the report by Safet Junuzović of 21 June 1993 which refers to the presence of 90 soldiers in the Mehurići sector.<sup>1466</sup> Hence, there is no reason to doubt the list of troops contained in the unsigned document.

713. Other problems of interpretation arise if a comparison is made between the combat report by Safet Junuzović of 16 June 1993<sup>1467</sup> and another one by him dated 21 June 1993, in which he makes an assessment of 1<sup>st</sup> Battalion forces.<sup>1468</sup> At first glance, the two reports seem to contradict each other on two points. The first report estimates that the 1<sup>st</sup> Company had 120 soldiers, while the second report seems to state that the company consisted of about 60 men,<sup>1469</sup> which corresponds to the testimony of witnesses Suad Jusović and Enver Adilović on the company's manpower.<sup>1470</sup> Secondly, the report of 16 June 1993 mentions four companies and indicates the four sectors where they were located, without mentioning the sector of Mehurići. Conversely, the report of 21 June

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<sup>1462</sup> At the material time, this witness was the 7<sup>th</sup> Brigade Command operations officer.

<sup>1463</sup> Semir Terzić, T(F) p. 18284.

<sup>1464</sup> Semir Terzić, T(F) p. 18284.

<sup>1465</sup> See *supra* paras. 678-680, 684-685, 688-689.

<sup>1466</sup> P 471; see *supra* paras. 697, 705. The issue of the probative value that the Chamber granted this document is discussed *infra* in paras. 713-714.

<sup>1467</sup> P 586.

<sup>1468</sup> P 471.

<sup>1469</sup> See *supra* para. 694.

<sup>1470</sup> See *supra* para. 696.

1993 mentions that there were four companies and a group in five different sectors, one of them Mehurići. Witness Safet Junuzović was not invited to comment on the discrepancies between these two reports and it is thus impossible for the Chamber to know how he would have explained the differences in their content.

714. Given the fact that during Witness Safet Junuzović's appearance in court he was not invited to comment on his report of 21 June 1993, he did not clarify other points that remain unclear, such as the serious problems that the 1<sup>st</sup> Battalion was having because of the conduct of the 90 soldiers in the Mehurići sector. Furthermore, he did not indicate which interpretation should be given to the questions that seem to be raised by comparison of the contents of the documents of 21 June 1993 and 19 July 1993. One question left unanswered from this exercise is the fact that the document of 21 June 1993 mentions 90 soldiers who were causing serious problems in the greater Mehurići sector, while the witness's response of 19 July 1993 indicates that the unit in the camp at Mehurići did not belong to the 1<sup>st</sup> Battalion and that "we have no right to command [it]".<sup>1471</sup>

e. Conclusions of the Chamber on the Presence of the 7<sup>th</sup> Brigade in the Bila Valley Based on Evidence from the 7<sup>th</sup> Brigade

715. Certain conclusions based on the above can now be drawn. The record contains no evidence proving that 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion units were in Mehurići or the Bila Valley before the fighting in early June 1993.<sup>1472</sup> The same can be said for the 3<sup>rd</sup> Battalion.<sup>1473</sup> Then, with regard to the 1<sup>st</sup> Battalion's companies, it is clear from the testimony of Suad Jusović and Enver Adilović that the 60 to 70 men who made up the 2<sup>nd</sup> Company, the 53 men in the 3<sup>rd</sup> Company and the 100 or so members of the 4<sup>th</sup> Company were not stationed or even present in the Bila Valley.<sup>1474</sup> Lastly, the same conclusion can be drawn for the 55 to 60 men who made up the 1<sup>st</sup> Battalion 1<sup>st</sup> Company, according to these same witnesses.<sup>1475</sup>

716. Conversely, it remains uncertain as to what interpretation should be given to the fact that witnesses Suad Jusović and Enver Adilović stated that the manning level of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> Company was between 55 and 60 men, while the report by Safet Junuzović of 16 June 1993 notes 120 soldiers, a difference of 60 to 65 men.<sup>1476</sup> The same question arises with regard to the 1<sup>st</sup> Battalion 2<sup>nd</sup> Company's troops. Several pieces of evidence reported 60 to 70 members,

<sup>1471</sup> DH 269; *see supra* para. 706.

<sup>1472</sup> *See supra* paras. 661-664.

<sup>1473</sup> *See* paras. 665-668.

<sup>1474</sup> *See* paras. 678-681, 685-686, 689-690.

<sup>1475</sup> *See* para. 707.

<sup>1476</sup> P 586. *See supra* paras. 694, 696.

while the report of Junuzović of 16 June 1993 notes a group of 90 men, a difference of 20 to 30 men.<sup>1477</sup> The variation between the posited manpower of these two companies is a difference of 80 to 95 men.

717. The identity of the 90 or so men who, according to the 7<sup>th</sup> Brigade reports of 22 May 1993 and 21 June 1993, were in the Mehurići sector is also not clear.<sup>1478</sup> The question is whether they are the same men as the 80 to 95 men constituting the difference in manning levels mentioned in several exhibits and who would represent the number of soldiers in the 1<sup>st</sup> and 2<sup>nd</sup> companies and the men noted in the report of 16 June 1993 by Safet Junuzović.

718. In an effort to find answers to these questions, the Chamber will first consider the evidence from the Britbat and then examine the evidence from the 306<sup>th</sup> Brigade and other sources.

(iii) Evidence from the British Battalion on the Presence of the 7<sup>th</sup> Brigade in the Bila Valley

719. The mujahedin from Poljanice and other groups of mujahedin were often the subject of observations, reflections and speculations by the international observers in Central Bosnia in 1992 and 1993. Among these observers, the British Battalion (Britbat) deserves special attention since it conducted military analyses, although of a limited scope, on the conflict between the ABiH and the HVO.

720. Many Britbat documents deal with the presence of the mujahedin and the 7<sup>th</sup> Brigade in the Bila Valley, particularly in Mehurići. Several documents assume that the mujahedin from Poljanice were part of the 7<sup>th</sup> Brigade,<sup>1479</sup> while some say they were part of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion established in Travnik.<sup>1480</sup>

721. Two Britbat milinfosums estimate the number of mujahedin in Mehurići. One document dated 15 May 1993 states that a group of 100 ABiH soldiers, “including a number of foreign appearance” had prohibited the passage of a Britbat patrol at a check-point near Han Bila.<sup>1481</sup> Britbat observations confirmed that at the end of the same month passage was refused to another

<sup>1477</sup> See *supra* para. 678.

<sup>1478</sup> See *supra* paras. 675, 697, 705.

<sup>1479</sup> P 163; P 223; P 355; P 358; P 378; DH 133.

<sup>1480</sup> P 163; P 223; DH 133.

<sup>1481</sup> P 370. For a description of this incident see Vaughan Kent-Payne, T(F) pp. 4772-4784. According to this witness, T(F) p. 4776, the check-point was at Fazlići, not far from Mehurići. For the geography see DK 36.

Britbat patrol at a check-point on the road between Stara Bila and Fazlići.<sup>1482</sup> The members of the Britbat put the number of mujahedin there at about 80.

722. This evidence calls to mind the reports by Semir Terzić and Safet Junuzović on the presence of 90 members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion in the Mehurići sector and seems at first glance to corroborate it.<sup>1483</sup> Nevertheless, three points argue for a careful, reserved approach. First, none of the documents provides grounds for the assertion that those staying in Mehurići were members of the 7<sup>th</sup> Brigade. Second, it must be pointed out that once an assertion has been included in a Britbat milinfosum, it is often repeated in subsequent milinfosums.<sup>1484</sup> Finally, in one way or another all the former members of Britbat heard by the Chamber stated that they could not be absolutely sure that their assertions were correct and that they had not had direct contact with 7<sup>th</sup> Brigade commanders.<sup>1485</sup>

(iv) Evidence from the 306<sup>th</sup> Brigade on the Presence of the 7<sup>th</sup> Brigade in the Bila Valley

a. Testimony

723. Former members of the 306<sup>th</sup> Brigade who appeared before the Chamber agreed on two issues. First, there were no 7<sup>th</sup> Brigade units stationed in Mehurići or in the Bila Valley in the period preceding 8 June 1993. Second, the men in the camp at Poljanice were neither members of the 7<sup>th</sup> Brigade nor subordinated to it.<sup>1486</sup> Nevertheless, according to the witnesses, during the period from mid-April to early June 1993, an isolated group of ten members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Company was in the zone of responsibility of the 306<sup>th</sup> Brigade at Kljaci.<sup>1487</sup> The same witnesses stated that members of the 7<sup>th</sup> Brigade transited through this zone of responsibility to leave or rejoin their units, or because they were on furlough,<sup>1488</sup> but that from late April or early May 1993 until 8 June 1993, they had not been able to rejoin their units because the Bila Valley was cut off during this period.<sup>1489</sup> Finally, according to witness testimony, it seems that these were either persons who

<sup>1482</sup> P 99.

<sup>1483</sup> See *supra* paras. 702, 705, 708-714.

<sup>1484</sup> See for example P 378 compared to P 163. See also Guy Chambers, T(F) p. 6130.

<sup>1485</sup> See for example Guy Chambers, T(F) pp. 6051, 6135-6136; Vaughan Kent-Payne, T(F) pp. 4921-4922. See also *supra* paras. 576-579.

<sup>1486</sup> Fahir Čamdžić, T(F) pp. 11726-11727; Halim Husić, T(F) p. 10926; Haris Jusić, T(F) pp. 11231, 11238, 11283-11284; Munir Karić, T(F) pp. 11463-11464, 11492; Remzija Šiljak, T(F) p. 10632; Esed Sipić, T(F) pp. 14801-14802, 14803-14804; Derviš Suljić, T(F) pp. 11329, 11343; Hamid Suljić, T(F) pp. 11899-11900.

<sup>1487</sup> Halim Husić, T(F) p. 10929; Esed Sipić, T(F) pp. 14878-14880, 14913-14914. See also the testimony of Džemal Ibranović, T(F) pp. 18362-18363, 18366, and Suad Jusović, T(F) pp. 18436-18437, two members of the 7<sup>th</sup> Brigade. Even though Džemal Ibranović, T(F) p. 18362, mentions that the total number of members in the 1<sup>st</sup> Battalion was 20, T(E), p. 18362, mentions 10.

<sup>1488</sup> Halim Husić, T(F) pp. 10925, 10927; Esed Sipić, T(F) p. 14860.

<sup>1489</sup> Munir Karić, T(F) p. 11493; Esed Sipić, T(F) p. 14766; Derviš Suljić, T(F) p. 11350. See also P 664.

had never belonged to the 7<sup>th</sup> Brigade<sup>1490</sup> or persons believed to have been 7<sup>th</sup> Brigade members but who in fact had defected and were outside its control.<sup>1491</sup>

b. Documents

724. A considerable number of documents from the 306<sup>th</sup> Brigade itself or based on intelligence from the 306<sup>th</sup> Brigade directly or indirectly deal with the presence of the 7<sup>th</sup> Brigade in the 306<sup>th</sup> Brigade zone of responsibility and on 7<sup>th</sup> Brigade relations with the inhabitants of Poljanice Camp.

725. The vast majority of the documents that should be analysed mention the presence of 7<sup>th</sup> Brigade members in the Bila Valley. The Chamber will first examine several general documents that note the presence of the brigade in this territory and then focus on the documents describing specific incidents involving members of the 7<sup>th</sup> Brigade.

i. General Documents on the Presence of the 7<sup>th</sup> Brigade in the Bila Valley

726. In a report to the 7<sup>th</sup> Brigade Command dated 6 April 1993, Esed Sipić complains about the unacceptable conduct of some members of the 7<sup>th</sup> Brigade in Kljaci (Bila Valley).<sup>1492</sup> Two days later, the 7<sup>th</sup> Brigade Command responded with an order prohibiting this kind of conduct.<sup>1493</sup> Witnesses Remzija Šiljak and Esed Sipić both declared that Sipić's report was based on a misunderstanding and that after the order had been issued, 7<sup>th</sup> Brigade Command was informed by its troops that there were no members of the 7<sup>th</sup> Brigade at Kljaci in early April 1993.<sup>1494</sup> Witness Šiljak submitted that the mujahedin stationed in Mehurići were responsible for this unacceptable conduct.<sup>1495</sup>

727. The minutes of the meeting of a joint task force consisting of members of the *Frankopan* Brigade and the 306<sup>th</sup> Brigade held on 8 May 1993 should also be noted. The minutes were sent to the Joint Command in Travnik.<sup>1496</sup> One of the subjects broached by the task force was the presence of foreigners in the 306<sup>th</sup> Brigade zone of responsibility and it concluded that such persons were found only in the ranks of the 7<sup>th</sup> Brigade. The task force asked 3<sup>rd</sup> Corps Command to remove

<sup>1490</sup> Remzija Šiljak, T(F) pp. 10629-10630.

<sup>1491</sup> Esed Sipić, T(F) pp. 14872 and 15855.

<sup>1492</sup> P 661.

<sup>1493</sup> P 460.

<sup>1494</sup> Remzija Šiljak, T(F) pp. 10633-10634; Esed Sipić, T(F) p. 14857. *See also supra* para. 723.

<sup>1495</sup> Remzija Šiljak, T(F) p. 10633.

<sup>1496</sup> P 665.

them from the 306<sup>th</sup> Brigade zone of responsibility or place them under its command.<sup>1497</sup> A letter from the Joint Command dated 9 May 1993 signed by Džemal Merdan and the deputy commander of the HVO follows up the conclusions of the task force.<sup>1498</sup> The letter notes the fact that the Joint Command had recommended that 3<sup>rd</sup> Corps Command attach to the 306<sup>th</sup> Brigade “parts” of the 7<sup>th</sup> Brigade operating in the 306<sup>th</sup> Brigade zone of responsibility “to execute combat tasks”.<sup>1499</sup> None of the witnesses was questioned about these two documents and the Chamber does not know what follow-up was given to the Joint Command’s recommendation.

728. According to a document dated 13 May 1993, Esed Sipić ordered part of the 7<sup>th</sup> Brigade stationed in the village of Kljaci subordinated to the unit from the village.<sup>1500</sup> During his appearance before the Chamber, Witness Esed Sipić explained that these were members of the 7<sup>th</sup> Brigade who had been unable to rejoin their units and had made themselves available to the 306<sup>th</sup> Brigade Command. They had thus been allowed to take part in defending the village.<sup>1501</sup>

729. Furthermore, a report by Commander Sipić dated 19 May 1993 noted the presence of 7<sup>th</sup> Brigade “forces” in the Bila Valley. The document is a response to a request from the 3<sup>rd</sup> Corps which wished to consider various combat strategies in case of attacks by Serbian or Croatian forces in his zone of responsibility.<sup>1502</sup> Sipić proposed three different action plans, two of which included the participation of “part of the forces of the 7<sup>th</sup> Muslim Mountain Brigade” in the fighting.<sup>1503</sup> This document was shown to Witness Esed Sipić who explained that the 7<sup>th</sup> Brigade “forces” mentioned in the document were those that could not rejoin their units because the Bila Valley had been cut off.<sup>1504</sup>

730. The last document that should be noted is an order to attack issued by Esed Sipić in the first week of June 1993 after combat operations in the Bila Valley that ended its isolation.<sup>1505</sup> The order is about an attack that the 306<sup>th</sup> Brigade was to launch on 13 June 1993 on HVO positions in the Gostunj sector and pertains to the participation of a 7<sup>th</sup> Brigade company in the attack led from Bukovica. During his appearance in court, Witness Remzija Šiljak referred to his encounter on 12

<sup>1497</sup> P 665, “The problem of the foreigners in the area of responsibility of the Brigade was also discussed. It was concluded that there are such persons only in the 7<sup>th</sup> Muslim; the Command of the 3<sup>rd</sup> Corps was requested to either have them removed from the area of responsibility of the 306<sup>th</sup> Brigade or to put them under their command.”

<sup>1498</sup> P 738.

<sup>1499</sup> P 738.

<sup>1500</sup> P 704.

<sup>1501</sup> Esed Sipić, T(F) pp. 14878-14880. *See also* the testimony of Džemal Ibranović, T(F) pp. 18362-18363, 18366, and Suvad Jusović, T(F) pp. 18436-18437, two members of the 7<sup>th</sup> Brigade.

<sup>1502</sup> P 418. The presence of a 7<sup>th</sup> Brigade unit is also suggested in the war diary of the 306<sup>th</sup> Brigade, C 18 p. 11. On 29 May 1993, the diary cites a report from Radojčići stating that a 7<sup>th</sup> Brigade scout had disappeared.

<sup>1503</sup> P 418.

<sup>1504</sup> Esed Sipić, T(F) pp. 14772, 14883-14884.

<sup>1505</sup> P 690. According to Witness Fahir Čamdžić, T(F) pp. 11716-11717, 11753-11754, the order was not carried out.



June 1993 with members of a 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion unit during which the attack on Gostunj hill was mentioned.<sup>1506</sup> According to the testimony of Suad Jusović, a member of the 7<sup>th</sup> Brigade, this was clearly the 1<sup>st</sup> Battalion 2<sup>nd</sup> Company that had arrived in Bukovica after a series of combat operations at Hajdareve Njive near Travnik that began on 5 June 1993.<sup>1507</sup> Bukovica and Gostunj are located in the southern part of the Bila Valley.<sup>1508</sup>

ii. Sale of Weapons to “Muslim Forces”

731. A report dated 16 March 1993 by Esed Sipić, 306<sup>th</sup> Brigade commander, mentions the sale of weapons by his subordinates to the “Muslim forces” stationed in the 306<sup>th</sup> Brigade zone of responsibility financed by people from Arab countries.<sup>1509</sup> According to Witness Remzija Šiljak, the expression “Muslim forces” in this document refers not to the 7<sup>th</sup> Brigade, but to people from the area who had previously been part of the Muslim forces but had not wanted to join the 7<sup>th</sup> Brigade when it was formed, making common cause instead with the Arab foreigners.<sup>1510</sup> Witness Esed Sipić maintained that the expression referred to the mujahedin and not the 7<sup>th</sup> Brigade.<sup>1511</sup>

iii. Arrest of Foreign Muslim Fighters

732. Two documents from the 306<sup>th</sup> Brigade deal with the death and arrest of mujahedin by the HVO in March and April 1993. They touch on the issue of relations between the mujahedin and the 7<sup>th</sup> Brigade.

733. The first document dated 1 April 1993 notes that the body of a foreign national dressed in an ABiH uniform had been found the day before near the village of Zabilje and noted, *inter alia*, that “the case caused [...] disgust among some members of the 7<sup>th</sup> Muslim Brigade”.<sup>1512</sup> This event had to do with the arrest of three “Arabs” and their driver at an HVO check-point during which one of them, Abu Senar, was killed. The three other persons were exchanged for members of the HVO on 17 May 1993.<sup>1513</sup>

<sup>1506</sup> Remzija Šiljak, T(F) pp. 10540-10541.

<sup>1507</sup> Suad Jusović, T(F) pp. 18431-18436. *See also supra* para. 680.

<sup>1508</sup> For the geography, *see* P 937.

<sup>1509</sup> P 679.

<sup>1510</sup> Remzija Šiljak, T(F) pp. 10629-10630, T(E) p. 10628. The Chamber understands that the witness is referring to the Travnik Muslim Forces discussed elsewhere in the Judgement; *see supra* paras. 480-485.

<sup>1511</sup> Esed Sipić, T(F) pp. 14849-14852.

<sup>1512</sup> P 660.

<sup>1513</sup> *See* P 155; P 409; P 541; P 461. *See also supra* paras. 493, 511-512.

734. In order to explain this document, Witness Esed Sipić stated that the disgust recounted in the document was not felt by members of the 7<sup>th</sup> Brigade but by individuals who were mistakenly taken for members of the brigade who were actually “renegades.”<sup>1514</sup>

735. The second document dated 8 April 1993 alludes more generally to the mistreatment of “members of the 7<sup>th</sup> Muslim Brigade, in other words *mujahedin*” at HVO check-points.<sup>1515</sup> Other evidence supports the fact that this document deals more specifically with the HVO’s arrest on 7 April 1993 of three other Arabs who were also exchanged for members of the HVO on 17 May 1993.<sup>1516</sup>

736. The document has been the subject of repeated discussion between the Parties and several consultations by the Chamber with the Tribunal’s translation unit. The dispute is whether the word *odnosno* in the original should be translated as *in other words* or *and*. The former translation is preferred by the translation unit,<sup>1517</sup> but Witness Esed Sipić explained that he had used the word *odnosno* in the latter sense. He added that his report referred to the mistreatment of both the mujahedin and members of the 7<sup>th</sup> Brigade, insisting on the fact that when he wrote the text he had no intention of indicating that the mujahedin were part of the 7<sup>th</sup> Brigade.<sup>1518</sup> As to 7<sup>th</sup> Brigade members who had been mistreated, the witness said they were probably persons who were “from the Travnik Brigade” and were on their way home.<sup>1519</sup> The witness seemed to mean that they were members of the 7<sup>th</sup> Brigade residing in the Bila Valley who were on leave and trying to reach their homes.

737. The report of 10 May 1993 written by the 3<sup>rd</sup> Corps Assistant Commander for Security also deals with the actions of HVO soldiers at their check-points in the Bila Valley. The report was written using information from the 306<sup>th</sup> Brigade<sup>1520</sup> and makes an explicit distinction between the Muslims and the ABiH members who passed its check-points, which suggests that the Muslims were not part of the ABiH.

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<sup>1514</sup> Esed Sipić, T(F) p. 14855.

<sup>1515</sup> P 662/C8.

<sup>1516</sup> P 155, P 461. *See also supra* paras. 495, 511-512.

<sup>1517</sup> T(F) pp. 14857-14866, 15342-15348, 15452-15453, 16145-16152, 16689-16690, 17147-17150.

<sup>1518</sup> Esed Sipić, T(F) pp. 14857, 14859-14861, 14866-14869.

<sup>1519</sup> Esed Sipić, T(F) p. 14860. Travnik was the headquarters of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion; *see supra* para. 669.

<sup>1520</sup> DH 2078 (under seal).

iv. Miletići

738. Three documents from the 306<sup>th</sup> Brigade dated early May 1993 touch on the events in Miletići on 24 April 1993.<sup>1521</sup> These documents deal with both the mujahedin and members of the 7<sup>th</sup> Brigade.

739. The first document is a report to the 3<sup>rd</sup> Corps from Esed Sipić dated 5 May 1993 in which he complains about the behaviour of soldiers in the 306<sup>th</sup> Brigade zone of responsibility who were not from the brigade's units:

“Soldiers of other units who have ‘gotten out of line’ of their superior commands represent a security problem of particular concern in our zone of responsibility. They are mainly members of the 7<sup>th</sup> Muslim Brigade and we do not fully know the status of the mujahedin. They and the members of the 314<sup>th</sup> Motorised Brigade have committed arbitrary acts which further aggravate the already tense situation with the HVO units.”<sup>1522</sup>

The report gives examples of violent acts committed by “these troops,” such as the attack on Gornji Miletići. At the end of the report, Sipić asks that the status of the mujahedin and members of the 7<sup>th</sup> Brigade quartered in Mehurići be “resolved”.<sup>1523</sup>

740. When cross-examined about this document, Witness Esed Sipić first explained that his report covered a period of three weeks and dealt with all the problems that had arisen during that period. The first problem was the behaviour of the mujahedin in Miletići. The second was that some members of the 7<sup>th</sup> Brigade who were in the 306<sup>th</sup> Brigade zone of responsibility had not been able to rejoin their units during this period. The last problem was that 7<sup>th</sup> Brigade members whose identity was unknown to the witness were in the 306<sup>th</sup> Brigade zone of responsibility and were outside the control of the 7<sup>th</sup> Brigade.<sup>1524</sup> During cross-examination, when the witness was questioned about the fact that his report mentioned the problems of the mujahedin and the 7<sup>th</sup> Brigade under the same proposal, he replied that it was a technical issue.<sup>1525</sup> There was no special importance in asking to have the status of the mujahedin resolved at the same time as that of the 7<sup>th</sup> Brigade members quartered in Mehurići. According to him, “These could have been two different proposals”.<sup>1526</sup> Questioned once again by the Chamber about having presented the problems of the mujahedin and members of the 7<sup>th</sup> Brigade under the same proposal, he offered a rather confused and surprising explanation:

<sup>1521</sup> See *infra* paras. 1063 *ff.*

<sup>1522</sup> P 663.

<sup>1523</sup> P 663, “We propose.- to resolve the status of the mujahedin and members of the 17<sup>th</sup> Muslim brigade quartered in Mehurići.” Witness Esed Sipić, T(F) p. 14871, stated that it was a typographical error and that the 7<sup>th</sup> Brigade, not the 17<sup>th</sup> Brigade, was meant.

<sup>1524</sup> Esed Sipić, T(F) p. 14872.

<sup>1525</sup> Esed Sipić, T(F) pp. 14873-14874.

<sup>1526</sup> Esed Sipić, T(F) pp. 14873-14874.

“Here what is meant is the status of the mujahedins and the status of the 7<sup>th</sup>. [...] So what is meant is the renegade groups, the 7<sup>th</sup> Muslim brigade, to resolve their status because they had left the 7<sup>th</sup> but remained in that area. So this was to see whether the superior command would decide where they would be mobilised or for the 7<sup>th</sup> to give us lists of who these people were so that we could resolve their status so that we would stop them from walking around, without any control, without knowing why.”<sup>1527</sup>

741. The second report, written on 6 May 1993 by Halim Husić and sent to the 3<sup>rd</sup> Corps, gives a more detailed description of what happened in Miletići.<sup>1528</sup> At the end of the report, Husić also notes the problems caused by the presence of members of other units in the 306<sup>th</sup> Brigade zone of responsibility and says that the presence of a considerable number of foreigners, mostly Arabs, in Mehurići is extremely problematic and that his brigade is unable to oppose their behaviour and that of groups from the 7<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade:

The presence of a large number of foreigners, mostly Arabs, in Mehurići is extremely problematical. We are unable to oppose their arbitrary behaviour or that of groups from the 7<sup>th</sup> Muslim and the 314<sup>th</sup> Motorised Brigade.”<sup>1529</sup>

The report concludes by asking for these problems to be resolved “so that we do not have another Miletići or an even graver incident”.

742. The third report, sent by Halim Husić to the 3<sup>rd</sup> Corps on 9 May 1993, asks that a solution be found to the problem posed by the presence and operations of groups and individuals belonging to other ABiH units located in Mehurići in particular.<sup>1530</sup>

743. When Witness Halim Husić was questioned about the fact that these documents mentioned the presence of 7<sup>th</sup> Brigade members, he stated that he had written them based on unofficial information he had received and that another report written at a later date contained more precise information.<sup>1531</sup> He added that it later turned out that the two reports had been based on incorrect information and that subsequent investigations into the murders in Miletići indicated that the 7<sup>th</sup> Brigade had not been involved.<sup>1532</sup>

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<sup>1527</sup> Esed Sipić, T(E) p. 14920.

<sup>1528</sup> P 664.

<sup>1529</sup> P 664.

<sup>1530</sup> P 666, “The presence and operation of groups and individuals from other BH Army units in our zone of responsibility is seriously damaging the political and security situation, particularly in Mehurići, where something must be done as a matter of urgency to avoid any uncontrolled or willful action by the large forces that enjoy support among the local population.”

<sup>1531</sup> Halim Husić, T(F) p. 10916.

<sup>1532</sup> Halim Husić, T(F) pp. 10915-10916 and p. 10929.

v. Other Documents from the 306<sup>th</sup> Brigade

744. Five other documents shed light on the relationship that existed between the mujahedin and the 7<sup>th</sup> Brigade and merit analysis.

745. Two of them are reports by Asim Delalić, Assistant Commander for Security in the 306<sup>th</sup> Brigade. The first report dated 13 May 1993 notes that there were many Bosnians in the mujahedin camp in Mehurići who were led by Ramo Durmiš.<sup>1533</sup> Witness Asim Delalić explained that he had received this information through Hrustan Zelkanović, his assistant for security in the Brigade's 4<sup>th</sup> Battalion.<sup>1534</sup> The second report of 28 May 1993 mentions conflict between the HVO and a group of mujahedin commanded by this same Ramo Durmiš.<sup>1535</sup>

746. The third document is a report by Esed Sipić dated 24 May 1993 and refers to information from the *Frankopan* Brigade, an HVO unit,<sup>1536</sup> about an attack led by mujahedin against the village of Postinje. The incident allegedly occurred when seven members of the 7<sup>th</sup> Brigade went to Simulje for a mine clearing operation.<sup>1537</sup> According to the document, the HVO seems to be referring to 7<sup>th</sup> Brigade soldiers as mujahedin. Witness Remzija Šiljak, however, maintained that the 7<sup>th</sup> Brigade was not at all involved in the incident as it was not in Mehurići at the time. He concluded that the HVO tended to confuse the mujahedin and the 7<sup>th</sup> Brigade.<sup>1538</sup>

747. The report by Vezir Jusufspahić of 2 August 1993 should also be noted as a document establishing a link between the mujahedin and the 7<sup>th</sup> Brigade.<sup>1539</sup> This document speaks of "Muslim forces" stationed in Mehurići and proposes to resolve the problem of the *El Džihad* formation by either incorporating it into an ABiH structure or proclaiming it a paramilitary.<sup>1540</sup> The report does not mention the 7<sup>th</sup> Brigade. Witness Vezir Jusufspahić stated that the report was talking about foreign fighters.<sup>1541</sup> Witness Remzija Šiljak, however, stated that the persons mentioned in

<sup>1533</sup> DH 1007.

<sup>1534</sup> Asim Delalić, T(F) pp. 16361, 16386.

<sup>1535</sup> DH 1071. On Ramo Durmiš *see supra* paras. 625-641. On his activities in the Bila valley, *see also* P 673; DH 1951; DH 1955.

<sup>1536</sup> DH 1053.

<sup>1537</sup> The war diary of the 306<sup>th</sup> Brigade, C 18 p. 8, and of the 3<sup>rd</sup> Corps, C 16 pp. 19-67, also mention an attempt by seven soldiers from the 7<sup>th</sup> Brigade to clear mines on the same day.

<sup>1538</sup> Remzija Šiljak, T(F) pp. 10659-10663. On this report, *see also* para. 593.

<sup>1539</sup> P 491; DH 270; C 10. *See also supra* para. 598.

<sup>1540</sup> P 491; DH 270; C 10, "Resolve the problem of the *El Džihad* formation in Mehurići village, in terms of their place in the establishment of some of the existing Brigades, or proclaim them paramilitaries."

<sup>1541</sup> Vezir Jusufspahić, T(F) pp. 14051-14052.

the document were part of the former Muslim forces who had not joined the 7<sup>th</sup> Brigade after it was formed.<sup>1542</sup>

748. Finally, in a report from the UNPROFOR Britbat dated 7 August 1993, a liaison officer refers to a conversation he had with Esed Sipić, Commander of the 306<sup>th</sup> Brigade, about the presence of mujahedin at the school in Mehurići.<sup>1543</sup> During the conversation, Sipić allegedly stated that this 7<sup>th</sup> Brigade group contained a considerable number of foreigners and advised his British interlocutor that given the hostility of these persons towards international observers, he would do well to cross through Mehurići accompanied by an ABiH commander.<sup>1544</sup> During the hearing, Witness Esed Sipić explained that he regularly advised members of international organisations who wanted to meet the mujahedin to contact the superior command because he, Sipić, could not guarantee their safety.<sup>1545</sup> The Chamber considers that the report seems to suggest that the mujahedin based at the school in Mehurići were part of the 7<sup>th</sup> Brigade and that an ABiH commander was therefore in a position to control them. Nevertheless, it is not clear whether the document is based on statements by Esed Sipić or merely reflects the prevailing opinion in Britbat at the time.

(c) Evaluation of the Evidence

(i) Introduction

749. After the above examination of most of the evidence dealing with the relations between the mujahedin at Poljanice Camp and the 7<sup>th</sup> Brigade during the first half of 1993, the Chamber must now evaluate these relations. To this end, the Chamber will also bear in mind the evidence regarding relations between the mujahedin and the 7<sup>th</sup> Brigade as discussed in the above paragraphs.<sup>1546</sup>

(ii) Contradictory Evidence

750. First, the Chamber notes the great contrasts in the evidence, which initially might even be called contradictory.

<sup>1542</sup> Remzija Šiljak, T(F) pp. 10657-10658.

<sup>1543</sup> P 355.

<sup>1544</sup> P 355, "Sipić also spoke on the subject of the 'mujahadeen' based in the school at Mehurići (GR 181057). This grouping of the 7<sup>th</sup> Muslim Brigade apparently contains a sizable percentage (precise figure not given) of foreign nationals. Sipić claimed that any UN personnel approaching this group would be guaranteed a hostile response and that a BiH commander should accompany any C/Ss wishing to move through the village."

<sup>1545</sup> Esed Sipić, T(F) pp. 14882-14883.

<sup>1546</sup> See *supra* paras. 622-641, 642-657.

751. Some of the evidence could support the thesis that there was a superior-subordinate relationship between the mujahedin and the 7<sup>th</sup> Brigade Command in the first half of 1993. This evidence consists almost exclusively of documents originating primarily from the 7<sup>th</sup> Brigade and the 306<sup>th</sup> Brigade.

752. With regard to 7<sup>th</sup> Brigade documents, several reports citing the manpower of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion should be noted. The first report dated 22 May 1993 puts the Battalion's manpower at 380 men, 92 of whom were located in Mehurići in the Bila Valley.<sup>1547</sup> The second is a report dated 21 June 1993 saying that some 90 soldiers were in the Mehurići sector and that the Battalion was having serious problems with them.<sup>1548</sup> In addition to these documents, another two indicate there was command power over the 7<sup>th</sup> Brigade in the Bila Valley. The first is an order from the 7<sup>th</sup> Brigade Command dated 8 April 1993<sup>1549</sup> prohibiting the members of the 7<sup>th</sup> Brigade from committing extremist actions against the local population, such as those in the village of Kljaci. The second document is from the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Command to the 1<sup>st</sup> Battalion 1<sup>st</sup> Company Command dated 27 May 1993 ordering it to send 20 soldiers from the Mehurići sector to Radojčići in order to assist troops positioned in the village.<sup>1550</sup>

753. A considerable number of documents from the 306<sup>th</sup> Brigade also suggest the presence of 7<sup>th</sup> Brigade units or members in the Bila Valley, particularly in Mehurići.<sup>1551</sup> On 6 April 1993, Esed Sipić, 306<sup>th</sup> Brigade commander, complained to the 7<sup>th</sup> Brigade Command about the unacceptable behaviour of some of its members in the village of Kljaci.<sup>1552</sup> Two days later, he noted the mistreatment of 7<sup>th</sup> Brigade members at HVO check-points.<sup>1553</sup> On 5 May 1993, Sipić complained about 7<sup>th</sup> Brigade members stationed in Mehurići.<sup>1554</sup> On 9 May 1993, the joint ABiH and HVO Command recommended to the 3<sup>rd</sup> Corps Command that it attach to the 306<sup>th</sup> Brigade parts of the 7<sup>th</sup> Brigade operating in the 306<sup>th</sup> Brigade zone of responsibility.<sup>1555</sup> On 13 May 1993, Sipić gave the order to attach part of the 7<sup>th</sup> Brigade stationed in the village of Kljaci to the unit in the village.<sup>1556</sup> On 19 May 1993, Sipić proposed combat plans to the 3<sup>rd</sup> Corps that included parts of the

<sup>1547</sup> P 474. For a detailed discussion of the report *see supra* paras. 673, 695, 708-712.

<sup>1548</sup> P 471. For a detailed discussion of the report *see supra* paras. 674, 697, 713-714.

<sup>1549</sup> P 460. *See supra* para. 726.

<sup>1550</sup> P 481. *See supra* paras. 703-704.

<sup>1551</sup> In chronological order: P 661; P 662/C11; P 663; P 664; P 738; P 704; P 418; P 665; DH 1053.

<sup>1552</sup> P 661. *See supra* para. 726.

<sup>1553</sup> P 662/C 11. *See supra* paras. 735-736.

<sup>1554</sup> P 663. *See supra* paras. 739-740. *See also* P 664.

<sup>1555</sup> P 738. *See supra* para. 727. *See also* P 665.

<sup>1556</sup> P 704. *See supra* para. 728.

7<sup>th</sup> Brigade.<sup>1557</sup> Finally, a report by Sipić dated 24 May 1993 refers to a mine clearing operation in Postinje carried out by members of the 7<sup>th</sup> Brigade.<sup>1558</sup>

754. A number of documents from the 306<sup>th</sup> Brigade make note of a link between the 7<sup>th</sup> Brigade and the mujahedin in general, or the foreign Muslim fighters in particular. A report by Sipić dated 1 April 1993 mentions the disgust felt by several 7<sup>th</sup> Brigade members about the death of a foreign Muslim fighter.<sup>1559</sup> Another report by Sipić dated 8 April 1993 mentions the mistreatment of “members of the 7<sup>th</sup> Brigade” adding “in other words *mujahedin*”.<sup>1560</sup> On May 1993 Sipić requested that the 3<sup>rd</sup> Corps resolve the status of the mujahedin and 7<sup>th</sup> Brigade members quartered in Mehurići.<sup>1561</sup> Finally, a report by Sipić dated 24 May 1993 on a mine clearing operation in Postinje carried out by seven members of the 7<sup>th</sup> Brigade implies that these men were mujahedin.<sup>1562</sup>

755. An isolated reading of the documents mentioned above and several others would allow the conclusion that during the first half of 1993, some 90 members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> and 2<sup>nd</sup> companies were stationed in the Bila Valley, particularly in Mehurići, and that the troops consisted partly of foreign Muslim fighters who received orders from both the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and the 306<sup>th</sup> Brigade.

756. Conversely, testimony from former members of the 7<sup>th</sup> Brigade and 306<sup>th</sup> Brigade argued that there was no effective command and control relationship.

757. The testimony of former members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion should be mentioned first. Several of them stated that there were no foreigners in the ranks of the 1<sup>st</sup> Battalion.<sup>1563</sup> Several of them also mentioned that there were no units of this battalion in the Bila Valley before the combat that started on 8 June 1993.<sup>1564</sup> Their assertions are supported by several documents.<sup>1565</sup>

758. Former members of the 306<sup>th</sup> Brigade testified that there were no 7<sup>th</sup> Brigade units stationed in Mehurići or in the Bila Valley in the period prior to 8 June 1993.<sup>1566</sup> They also asserted that the

<sup>1557</sup> P 418. *See supra* para. 729.

<sup>1558</sup> DH 1053. *See supra* para. 746.

<sup>1559</sup> P 660. *See supra* paras. 733-734.

<sup>1560</sup> P 662/C11. *See supra* paras. 735-736.

<sup>1561</sup> P 663. *See supra* paras. 739-740.

<sup>1562</sup> DH 1053. *See supra* para. 746.

<sup>1563</sup> *See supra* para. 645

<sup>1564</sup> *See supra* para. 671.

<sup>1565</sup> P 435; P 536; DH 269. *See supra* paras. 649, 650, 706.

<sup>1566</sup> *See supra* para. 723.



persons staying at Poljanice Camp were neither official members of the 7<sup>th</sup> Brigade nor subordinated to it.<sup>1567</sup> A number of documents support their claims.<sup>1568</sup>

759. Bearing in mind these contradictions, a more detailed analysis of all the evidence is essential.

(iii) 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Troops and the Bila Valley

760. The Chamber's examination of 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion troops has provided certain indications with regard to the 90 or so of its men in the Bila Valley in May and June 1993.<sup>1569</sup> These indications follow from two 1<sup>st</sup> Battalion documents in particular. The first is a report dated 22 May 1993 bearing the name Semir Terzić that notes the presence of 92 persons in Mehurići.<sup>1570</sup> The second is a report by Safet Junuzović dated 21 June 1993 stating that about 90 soldiers were in the Mehurići sector.<sup>1571</sup> The question that now arises is what conclusions can be drawn from these documents regarding the Poljanice inhabitants' membership of the 7<sup>th</sup> Brigade and 7<sup>th</sup> Brigade Command's effective control over them.

761. The "phenomenon" of the 7<sup>th</sup> Brigade members who were isolated in the Bila Valley should thus be recalled. Several witnesses stated that the fact that the Bila Valley had been cut off from mid-April to early June 1993 had prevented some of the 7<sup>th</sup> Brigade members, particularly those from the 1<sup>st</sup> Battalion, from rejoining their units.<sup>1572</sup> Ten or so members of the 1<sup>st</sup> Battalion had thus been in the Bila Valley at Kljaci since mid-April 1993.<sup>1573</sup> Several witnesses who were former members of the 306<sup>th</sup> Brigade also stated that other isolated members of the 7<sup>th</sup> Brigade had been unable to rejoin their units.<sup>1574</sup> These witnesses, however, did not state how many individuals were involved or which 7<sup>th</sup> Brigade units they came from.

762. The presence of ten members of the 1<sup>st</sup> Battalion in Kljaci clearly explains Esed Sipić's order of 13 May 1993 to attach several members of the 7<sup>th</sup> Brigade to the local unit in the village of Kljaci.<sup>1575</sup> Other documents from the 306<sup>th</sup> Brigade and 7<sup>th</sup> Brigade might also deal with isolated members of the 7<sup>th</sup> Brigade in the Bila Valley. One document supporting this thesis could be Sipić's 19 May 1993 proposal to use "part of the forces of the 7<sup>th</sup> Muslim Mountain Brigade" in future

<sup>1567</sup> See *supra* para. 723.

<sup>1568</sup> P 663; P 664; DH 1007; DH 1071. See *supra* paras. 740-742, 745.

<sup>1569</sup> See *supra* paras. 712-714, 717.

<sup>1570</sup> P 474. See *supra* paras. 673, 695, 702, 708-712.

<sup>1571</sup> P 471. See *supra* paras. 674, 697, 705, 713-714.

<sup>1572</sup> See *supra* paras. 696, 707, 723, 728.

<sup>1573</sup> See *supra* paras. 707, 723, 728.

<sup>1574</sup> See *supra* para. 728.

<sup>1575</sup> P 704. See *supra* para. 728.

combat.<sup>1576</sup> When Witness Esed Sipić testified in court, he explained that the order was intended for such a category of isolated troops.<sup>1577</sup> Another document that might also support this hypothesis is the order of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Commander dated 27 May 1993 asking the 1<sup>st</sup> Battalion 1<sup>st</sup> Company Commander to send 20 soldiers from the Mehurići sector to Radojčići,<sup>1578</sup> although there is no other evidence that substantiates this theory. Nevertheless, it does not seem very probable that the 90 or so men mentioned in the documents of 22 May 1993 and 21 June 1993 were isolated members of the 7<sup>th</sup> Brigade, since the documents do not mention that any members of the 1<sup>st</sup> Battalion had been isolated in the Bila Valley. Furthermore, none of the witnesses who were former members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion suggested that some 90 members of the 1<sup>st</sup> Battalion had been isolated in the Bila Valley in May and June 1993 and were unable to rejoin their units.

763. Since the question of the identity of the 90 or so 7<sup>th</sup> Brigade soldiers mentioned in the two documents by Semir Terzić and Safet Junuzović remains unanswered, a comment on these two documents is called for. The 90 or so soldiers causing the 1<sup>st</sup> Battalion “serious problems” might actually have been the mujahedin from Poljanice Camp who committed international crimes in Miletići, Maline and Guča Gora in April and June 1993, as proved beyond a reasonable doubt by other evidence. For the following reasons, however, such a connection can hardly be established.

764. First, the two documents do not provide any specific information on the 90 or so persons, except for the fact that the 1<sup>st</sup> Battalion was having “serious problems” with them. They do not indicate which (1<sup>st</sup> Battalion) company they were from or why they were stationed in the Mehurići sector, which was not part of the 1<sup>st</sup> Battalion zone of responsibility, or the nature of the difficulties they were causing the 1<sup>st</sup> Battalion. They also provide no information on the composition of the 90 or so men, particularly whether they included foreign Muslim fighters. When Witness Safet Junuzović, former commander of the 1<sup>st</sup> Battalion as of late June 1993 and author of one of these documents, appeared before the Chamber, he was not asked to explain any of these questions.

765. Furthermore, the evidence dealing with the occupants of Poljanice Camp does not make it possible to determine with certainty the number that usually resided there. The evidence also indicates that the composition of the inhabitants was mixed and included Bosnians who had left the 7<sup>th</sup> Brigade, those who had left other brigades, e.g. the 306<sup>th</sup> Brigade, and those who had never joined a 3<sup>rd</sup> Corps brigade. With regard to the foreign mujahedin based at the camp, in spite of any

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<sup>1576</sup> P 418. *See supra* para. 729.

<sup>1577</sup> *See supra* para. 729.

<sup>1578</sup> P 481. *See supra* paras. 703-704.

relations they might have had with the 7<sup>th</sup> Brigade, there is no proof that they were “members” of this brigade’s structural organisation.<sup>1579</sup>

766. Even if the contents of the document of 8 April 1993 by Esed Sipić may be used to identify the mujahedin as being part of the 7<sup>th</sup> Brigade,<sup>1580</sup> during Witness Sipić’s testimony he stated that he had not used the word *odnosno* in the document in this sense, but rather in a sense that implies a distinction between the Poljanice mujahedin and members of the 7<sup>th</sup> Brigade.<sup>1581</sup> This interpretation is substantiated by two other documents that do in fact make such a distinction between these two groups, as did the explanation of these texts provided by their authors during their appearance. The first is a report by Esed Sipić dated 5 May 1993<sup>1582</sup> and the second is a report by Halim Husić dated 6 May 1993.<sup>1583</sup> Another document that makes a distinction between the mujahedin and the 7<sup>th</sup> Brigade is an order by Mehmed Alagić dated 13 June 1993 addressed to both the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Commander and to Nusret *effendi* Abdibegović, the mufti of Travnik.<sup>1584</sup>

767. The Chamber has expressed its reservations above about the documents and opinions of Britbat members on the relationship between the mujahedin and the 7<sup>th</sup> Brigade in the Bila Valley.<sup>1585</sup> For this reason, the Chamber gives greater weight to evidence from the 306<sup>th</sup> Brigade than to the observations and assertions of the Britbat regarding relations between the 7<sup>th</sup> Brigade and the 80 to 100 mujahedin in the Bila Valley. Consequently, the analysis of documents dealing with the 7<sup>th</sup> Brigade’s manpower cannot lead beyond a reasonable doubt to the conclusion that the 90 or so members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion were mujahedin from Poljanice Camp.

768. Finally, it must be noted that an analysis of documents dealing with the manpower of a battalion and the units that compose it is not in itself sufficient to reach a conclusion on the existence of the effective control of the brigade command to which the battalion and its units belong.

769. As it is unable to find that the 90 or so members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion were mujahedin from Poljanice Camp, the Chamber will now examine other evidence dealing with relations between the mujahedin and the 7<sup>th</sup> Brigade.

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<sup>1579</sup> See *supra* para. 670.

<sup>1580</sup> P 662/C 11. See *supra* para. 735.

<sup>1581</sup> See *supra* para. 736.

<sup>1582</sup> P 663. See *supra* paras. 738-739.

<sup>1583</sup> P 664. See *supra* paras. 741-742.

<sup>1584</sup> P 435. See *supra* paras. 651-653.

<sup>1585</sup> See *supra* para. 722.

(iv) 7<sup>th</sup> Brigade Command and Effective Control of the Mujahedin at Poljanice Campa. Foreign Muslim Fighters

770. In the following paragraphs, the Chamber will “succinctly” summarise the most important evidence that might suggest or disprove that the 7<sup>th</sup> Brigade commanded and exercised effective control over the foreign Muslims residing at Poljanice Camp during the first six months of 1993.

771. In another part of the Judgement, the Chamber noted that there is no evidence allowing to find beyond a reasonable doubt that the foreign Muslim fighters were *de jure* members of the 3<sup>rd</sup> Corps.<sup>1586</sup>

772. The former members of the 7<sup>th</sup> Brigade agreed that there were no foreign Muslim fighters in their ranks in the first half of 1993. Former members of the 306<sup>th</sup> Brigade asserted that the foreigners at Poljanice Camp were not part of the 7<sup>th</sup> Brigade.

773. Most of the documentary evidence from the 306<sup>th</sup> Brigade cannot support the thesis that the foreign Muslim fighters were under the effective control of the 7<sup>th</sup> Brigade. Even if the report of 8 April 1993 by Esed Sipić seems to suggest that these foreigners were part of the 7<sup>th</sup> Brigade, the Chamber has noted above that the testimony of its author and two other reports demonstrate that the report could reasonably be given a different interpretation.<sup>1587</sup> Several documents from the 306<sup>th</sup> Brigade raise doubts about whether the ABiH had effective control over the foreign fighters. In such documents the author notes that he does not know the exact status of the mujahedin and proposes that the 3<sup>rd</sup> Corps resolve their status.<sup>1588</sup> Finally, several other documents indicate more or less explicitly that the mujahedin were not under the effective control of the 3<sup>rd</sup> Corps.<sup>1589</sup>

774. A number of documents from the 7<sup>th</sup> Brigade argue against the thesis that the foreign fighters were part of the brigade or under its effective command. The Chamber would recall that the analysis of the brigade’s manpower suggests that the fighters were not “members” of the brigade’s organic structure.<sup>1590</sup> The Chamber would also recall the order of 13 July 1993 by Mehmed Alagić that makes a distinction between the mujahedin and the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion.<sup>1591</sup> Finally, the report of 19 July 1993 by Safet Junuzović, 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Commander, expressly indicates

<sup>1586</sup> See *supra* para. 488.

<sup>1587</sup> See *supra* para. 766.

<sup>1588</sup> P 663; P 491/DH 270/C 10. See *supra* paras. 739-740, 747.

<sup>1589</sup> DH 1007; DH 1071. See *supra* para. 745.

<sup>1590</sup> See *supra* para. 650.

<sup>1591</sup> P 435. See *supra* paras. 651-653.

that the unit at the Mehurići Camp is not part of the 1<sup>st</sup> Battalion and that he does not have the right to command it.<sup>1592</sup>

775. Regarding the set of documents from the 7<sup>th</sup> Brigade and other sources dealing with military cooperation between the mujahedin and the 7<sup>th</sup> Brigade, it must be pointed out that such cooperation was frequent during the period preceding the formation of the *El Mujahedin* detachment in August 1993. Such frequent cooperation testifies to the military importance of the foreign fighters in the eyes of the 7<sup>th</sup> Brigade and 3<sup>rd</sup> Corps. Nevertheless, these documents do not lead beyond a reasonable doubt to the conclusion that the foreign fighters were subordinated to the 7<sup>th</sup> Brigade or under its effective control. In addition, other documents and testimony on the arrest of foreign fighters by the HVO and the abduction of Živko Totić and HVO officers by the mujahedin cast doubt on such a relationship.<sup>1593</sup> Finally, the testimony of international observers on the ties between the 7<sup>th</sup> Brigade and the mujahedin shows that the observers were not really sure of the nature of the ties or whether the foreign Muslim fighters were members of or subordinated to the 7<sup>th</sup> Brigade.<sup>1594</sup>

776. In view of all the evidence, the Chamber finds that it has not been established beyond a reasonable doubt that the foreign Muslim fighters who used Poljanice Camp were integrated into the 7<sup>th</sup> Brigade or under the effective control of its command.

b. “Local” Mujahedin

777. It must now be determined whether the “local” mujahedin who joined the foreign Muslim fighters at Poljanice Camp belonged to the 7<sup>th</sup> Brigade or were *de facto* under its control.

778. The Chamber recalls once again that the “local” mujahedin who resided at Poljanice Camp or maintained contact with the camp were a mixed group including not only Bosnians who had left the 7<sup>th</sup> Brigade but also those who had left other brigades, e.g. the 306<sup>th</sup> Brigade, and individuals who had never joined a 3<sup>rd</sup> Corps brigade.<sup>1595</sup>

779. Although all the former members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion denied the fact that battalion members were in Mehurići or elsewhere in the Bila Valley, several of them did state that after the battle at Visoko in December 1992, a number of soldiers, including Ramo Durmiš, left the

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<sup>1592</sup> DH 269. *See supra* para. 706.

<sup>1593</sup> *See supra* para. 524.

<sup>1594</sup> *See supra* paras. 576-579.

<sup>1595</sup> *See supra* para. 423.

1<sup>st</sup> Battalion.<sup>1596</sup> Consequently, their remarks on the absence of 1<sup>st</sup> Battalion members in Mehurići and the Bila Valley can be interpreted as referring solely to persons who had not left the 1<sup>st</sup> Battalion. Other evidence confirms the presence of Ramo Durmiš in the Bila Valley and Mehurići.<sup>1597</sup>

780. Furthermore, many documents from the 306<sup>th</sup> Brigade attest to the presence of 7<sup>th</sup> Brigade members in Mehurići or the Bila Valley. Two documents mention Ramo Durmiš as the commander of the Bosnians residing with the mujahedin at Poljanice Camp.<sup>1598</sup> A third document from the 306<sup>th</sup> Brigade notes in general the presence of 7<sup>th</sup> Brigade members in Mehurići who had “‘gotten out of line’ of their superior commands” and whose status needed to be resolved.<sup>1599</sup> Other documents along the same line have been discussed above in the part of the Judgement about the 306<sup>th</sup> Brigade.<sup>1600</sup> Several former members of this brigade confirmed the presence in Mehurići and elsewhere in the Bila Valley of 7<sup>th</sup> Brigade members who had escaped the control of their command, or who were thought to be members of this brigade, although they in fact were not.<sup>1601</sup>

781. The documents and testimony about 7<sup>th</sup> Brigade members who had left their units and maintained contact with the Muslim fighters at Poljanice Camp raise the question of whether they were still under the effective control of the 7<sup>th</sup> Brigade Command. It should first be noted that former members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion who appeared before the Chamber confirmed that the battalion no longer had contact with Ramo Durmiš after his break with the 1<sup>st</sup> Battalion in early January 1993 or even with the soldiers who had followed him.<sup>1602</sup> Second, 306<sup>th</sup> Brigade documents and the testimony of some of its former members mentioned in the above paragraph also indicate that the 7<sup>th</sup> Brigade did not have effective control over these individuals. The fact that the Bila Valley was cut off from mid-April to 8 June 1993 might have contributed to the 7<sup>th</sup> Brigade’s lack of command control over these soldiers.

782. Furthermore, the close ties between the foreign mujahedin and the local mujahedin at Poljanice Camp argue against the existence of 7<sup>th</sup> Brigade effective control over the latter. Having already noted that the foreign fighters at Poljanice Camp were not under the effective control of this brigade, the Chamber finds it unlikely that the situation would have been different for the local mujahedin.

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<sup>1596</sup> See *supra* para. 630.

<sup>1597</sup> See *supra* paras. 626, 745.

<sup>1598</sup> DH 1007; DH 1071. See also *supra* paras. 626, 745.

<sup>1599</sup> P 663. See *supra* paras. 739-740.

<sup>1600</sup> P 664; P 666; DH 1007; DH 1071. See *supra* paras. 741-742, 745. See also P 673; DH 1951; DH 1955.

<sup>1601</sup> See *supra* paras. 722, 726, 734, 746.

<sup>1602</sup> See *supra* para. 630.

783. Two orders from the 7<sup>th</sup> Brigade seem to refute this hypothesis. The first one is an order dated 8 April 1993 prohibiting brigade members from the conduct already observed in the village of Kljaci.<sup>1603</sup> Nevertheless, the document is refuted by the testimony of witnesses Remzija Šiljak and Esed Sipić who both stated that the report by Sipić dated 6 April 1993 and the order dated 8 April 1993 were based on a misunderstanding: after having issued the order, 7<sup>th</sup> Brigade Command was allegedly informed by its troops that there were no 7<sup>th</sup> Brigade members at Kljaci in early April 1993.<sup>1604</sup> Witness Šiljak contended that the mujahedin stationed in Mehurići were responsible for this unacceptable conduct.<sup>1605</sup>

784. The second order is from the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Command dated 27 May 1993, asking the 1<sup>st</sup> Company Command to send 20 soldiers from the Mehurići sector to the village of Radojčiči.<sup>1606</sup> In the absence of 1<sup>st</sup> Battalion witnesses to explain this document and, as its reliability has been criticised by various witnesses who were former members of the 306<sup>th</sup> Brigade, the Chamber can only give this document limited weight.<sup>1607</sup>

785. In addition, two documents from the 306<sup>th</sup> Brigade that assume the existence of command power over the 7<sup>th</sup> Brigade members in the Bila Valley should also be discussed. The first is an order dated 13 May 1993 by Esed Sipić, 306<sup>th</sup> Brigade Commander, that attaches a number of members of the 7<sup>th</sup> Brigade to a local unit in the village of Kljaci.<sup>1608</sup> As the Chamber has already noted, this order might reasonably be explained by the presence in this village of ten members of the 1<sup>st</sup> Battalion who were unable to rejoin their units.<sup>1609</sup>

786. Another document written by Esed Sipić dated 19 May 1993 notes the presences of 7<sup>th</sup> Brigade “forces” in the Bila Valley. It is a response to a request from the 3<sup>rd</sup> Corps and describes different combat strategies devised in case of attack by Serbian or Croatian forces in his zone of responsibility. Sipić proposed three different strategies of which two included the participation of “part of the forces of the 7<sup>th</sup> Muslim Mountain Brigade”.<sup>1610</sup> When shown this document, Witness Esed Sipić explained that the 7<sup>th</sup> Brigade “forces” mentioned in the document were those who were

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<sup>1603</sup> P 460. *See supra* para. 726.

<sup>1604</sup> *See supra* para. 726.

<sup>1605</sup> Remzija Šiljak, T(F) p. 10633.

<sup>1606</sup> P 481. *See supra* paras. 703-704.

<sup>1607</sup> *See supra* para. 704.

<sup>1608</sup> P 704. *See supra* para. 728.

<sup>1609</sup> *See supra* para. 762.

<sup>1610</sup> P 418. *See supra* para. 729.

unable to rejoin their units because the Bila Valley was cut off.<sup>1611</sup> Since this explanation is clearly not without foundation, the Chamber considers there is reason to accept it.

787. In view of all the evidence, the Chamber is not convinced beyond a reasonable doubt that the 7<sup>th</sup> Brigade members residing at Poljanice Camp or maintaining contact with the camp were under the effective control of 7<sup>th</sup> Brigade Command.

(f) Conclusions on the Mujahedin and the 7<sup>th</sup> Brigade

788. The Chamber is not convinced beyond a reasonable doubt that the foreign and local mujahedin at Poljanice Camp were under the effective control of the 7<sup>th</sup> Brigade Command.

5. Conclusion on the Mujahedin and the 3<sup>rd</sup> Corps - De Facto Link Before the Creation of the El Mujahedin Detachment

(a) Introduction

789. In the preceding paragraphs, the Chamber analysed several aspects of the factual links between the 3<sup>rd</sup> Corps and the mujahedin at Poljanice Camp before the creation of the *El Mujahedin* unit.

790. The Chamber began by examining the overall *de facto* relations between the 3<sup>rd</sup> Corps and the mujahedin from four different vantage points. First, the Chamber reviewed the events relating to the arrest of the mujahedin by the HVO and the abduction of HVO officers by the mujahedin in order to determine the role of the 3<sup>rd</sup> Corps in these events. Second, it analysed the combat operations in which the mujahedin fought side by side with 3<sup>rd</sup> Corps units in the period preceding the formation of the *El Mujahedin* detachment in August 1993. Third, the Chamber examined the role played by the 3<sup>rd</sup> Corps in the process that culminated in the formation of this detachment. And fourth, it analysed the testimony of international observers on the relations between the 3<sup>rd</sup> Corps and the mujahedin.

791. The Chamber then considered the *de facto* relations between three different 3<sup>rd</sup> Corps brigades and the mujahedin, analysing the relations between the 306<sup>th</sup> Brigade and the mujahedin, between the 7<sup>th</sup> Brigade and the mujahedin. This was followed by an identical analysis of the relations between the 17<sup>th</sup> Brigade and the mujahedin.

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<sup>1611</sup> See *supra* para. 729.



792. The conclusions of these partial analyses must now be summarised in order to come to a general finding on the issue of whether the mujahedin were under the effective control of the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade .

(b) Summary of the Partial Conclusions

(i) Mujahedin and the 3<sup>rd</sup> Corps

793. The analysis of relations between the 3<sup>rd</sup> Corps and the mujahedin has led to the following conclusions.

794. With regard to the arrest of the mujahedin by the HVO and the abduction of Croatian officers by the mujahedin, the following has been observed. The evidence does not make it possible to conclude that the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade were involved in the abduction of Živko Totić and the other HVO officers.<sup>1612</sup> With regard to the arrest of the mujahedin by the HVO, in the Chamber's opinion the evidence shows that the 3<sup>rd</sup> Corps and 7<sup>th</sup> Brigade demonstrated an explicit and pronounced concern for the fate of the foreign mujahedin, designated by the ABiH as "volunteers in our units" or "foreign volunteers" in documents of that period from the 3<sup>rd</sup> Corps and 7<sup>th</sup> Brigade dealing with their arrest.<sup>1613</sup> The Chamber also notes that several days after the abduction of Živko Totić in Zenica by the mujahedin on 15 April 1993, that is at the height of the crisis created by the sequence of arrests and abductions, the mujahedin fought side by side with the 7<sup>th</sup> Brigade against the HVO in the environs of Zenica.<sup>1614</sup> Nevertheless, the Chamber has not been able to find that the 3<sup>rd</sup> Corps' reaction to the arrest of the mujahedin by the HVO showed that the 3<sup>rd</sup> Corps or the 7<sup>th</sup> Brigade had effective control over them.<sup>1615</sup>

795. The analysis of 3<sup>rd</sup> Corps combat operations in which the mujahedin participated shows the importance and frequency of this cooperation. The Chamber was able to note that the mujahedin regularly took part in combat conducted by the 3<sup>rd</sup> Corps from late 1992 until the formation of the *El Mujahedin* detachment in August 1993.<sup>1616</sup> Nevertheless, this frequent cooperation in itself does not allow the conclusion that the mujahedin were subordinated to the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade and were under their effective control. Firstly, there is no documentary evidence showing that orders were given to the mujahedin or that they carried out any orders.<sup>1617</sup> Secondly, other documents shed light on the fact that 3<sup>rd</sup> Corps commanders did not believe they had the authority

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<sup>1612</sup> See *supra* para. 524.

<sup>1613</sup> See *supra* paras. 493-495.

<sup>1614</sup> See *supra* para. 504.

<sup>1615</sup> See *supra* para. 528.

<sup>1616</sup> See *supra* paras. 530-540.

<sup>1617</sup> See *supra* paras. 541, 546.

to give orders to the mujahedin.<sup>1618</sup> Thirdly, several exhibits show that the mujahedin reserved the right to decide for themselves whether or not to join combat.<sup>1619</sup> Fourthly, other evidence expresses annoyance with the mujahedin's behaviour during and after the fighting.<sup>1620</sup> Fifthly, there is no evidence indicating that the mujahedin sent combat reports or other reports on their activities to those in charge of the combat in which they took part.<sup>1621</sup> Finally, the Chamber notes the almost total absence of references to the mujahedin's military activity in the war diaries and operations books, which is quite different from the situation after the formation of the *El Mujahedin* detachment in August 1993.<sup>1622</sup>

796. The Chamber then considered the process that led to the formation of the *El Mujahedin* detachment by the ABiH Supreme Command in August 1993. The Chamber noted that the 3<sup>rd</sup> Corps played a crucial role in this process, which started one week after the abduction of Živko Totić on 15 April 1993.<sup>1623</sup> It nonetheless believes that the analysis of this process did not indicate that those who would later become members of the *El Mujahedin* detachment were under the effective control of the 3<sup>rd</sup> Corps.<sup>1624</sup>

797. Finally, during the trial, the Chamber heard many international observers who were present in Central Bosnia in 1993. In addition, many documents from international organisations were tendered into evidence. The relations between the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade on the one hand and with the mujahedin on the other gave rise to numerous observations, reflections and assertions by the members of international organisations.<sup>1625</sup> An analysis of the evidence showed that the international observers were divided over the question of whether the mujahedin were under the effective control of the 3<sup>rd</sup> Corps and 7<sup>th</sup> Brigade. Moreover, none of them was in fact certain that this was really the case.<sup>1626</sup>

(ii) Mujahedin and the 3<sup>rd</sup> Corps Brigades

798. The Chamber then examined the relations between the mujahedin and three different 3<sup>rd</sup> Corps brigades.

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<sup>1618</sup> See *supra* para. 541.

<sup>1619</sup> See *supra* para. 541.

<sup>1620</sup> See *supra* para. 541.

<sup>1621</sup> See *supra* para. 544.

<sup>1622</sup> See *supra* paras. 544, 826-829.

<sup>1623</sup> See *supra* paras. 549-558.

<sup>1624</sup> See *supra* para. 565.

<sup>1625</sup> See *supra* paras. 566-575.

<sup>1626</sup> See *supra* paras. 576-579.

799. The first is the 306<sup>th</sup> Brigade whose zone of responsibility included the mujahedin camp at Poljanice. An analysis of the relations between the brigade and the mujahedin does not establish the existence of close links between the 306<sup>th</sup> Brigade and the mujahedin at Poljanice Camp.<sup>1627</sup>

800. The Chamber then turned its attention to the 17<sup>th</sup> Brigade and noted the total absence of evidence suggesting that the mujahedin were under the effective control of the brigade.<sup>1628</sup>

801. The Chamber supplemented its examinations of the three 3<sup>rd</sup> Corps brigades with a detailed analysis of the relations between the 7<sup>th</sup> Brigade and the mujahedin. It began by analysing the composition of the 7<sup>th</sup> Brigade when it was formed and the departure of a number of its members at a later stage.<sup>1629</sup> It then examined the general relations between the 7<sup>th</sup> Brigade and the foreign mujahedin.<sup>1630</sup>

802. The Chamber subsequently conducted a rigorous, systematic analysis of the composition, manpower and movements of 7<sup>th</sup> Brigade units during the first six months of 1993.<sup>1631</sup> The aim of this long analysis was to determine whether during this period brigade units were present in the Bila Valley where the mujahedin camp of Poljanice was located.

803. The Chamber also analysed evidence from former members of Britbat and the 306<sup>th</sup> Brigade on the mujahedin and members of the 7<sup>th</sup> Brigade in the Bila Valley.<sup>1632</sup>

804. Finally, based on all these analyses, the Chamber proceeded to evaluate all the evidence dealing with the relations between the 7<sup>th</sup> Brigade and the mujahedin.<sup>1633</sup> The evaluation led to three conclusions. First, the Chamber could not determine beyond a reasonable doubt that the mujahedin at Poljanice Camp were members of the 7<sup>th</sup> Brigade (1<sup>st</sup> Battalion).<sup>1634</sup> Second, the Chamber is not convinced beyond a reasonable doubt that the foreign mujahedin at Poljanice Camp were under the effective control of the 7<sup>th</sup> Brigade.<sup>1635</sup> Finally, the Chamber arrived at the same conclusion with regard to the local mujahedin at the camp.<sup>1636</sup>

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<sup>1627</sup> See *supra* para. 605.

<sup>1628</sup> See *supra* para. 612.

<sup>1629</sup> See *supra* paras. 620-641.

<sup>1630</sup> See *supra* paras. 642-657.

<sup>1631</sup> See *supra* paras. 658-718.

<sup>1632</sup> See *supra* paras. 719-722 and 723-748.

<sup>1633</sup> See *supra* paras. 749-787.

<sup>1634</sup> See *supra* paras. 760-769.

<sup>1635</sup> See *supra* paras. 770-776.

<sup>1636</sup> See *supra* paras. 777-787.

(c) Final Conclusion

805. Based on the above conclusions, the Chamber finds that it has not been established beyond a reasonable doubt that the mujahedin at Poljanice Camp were under the effective control of the Accused Hadžihasanović and the Accused Kubura before the creation of the *El Mujahedin* detachment.

**E. Relations Between the ABiH and the Mujahedin after the Creation of the *El Mujahedin* Detachment**

1. Arguments of the Parties

806. In its Final Brief, the Prosecution alleges that once the *El Mujahedin* Detachment was created on 13 August 1993, it became a *de jure* formation under 3<sup>rd</sup> Corps Command. It submitted that the Accused Hadžihasanović exercised effective control over the unit at the time of the abductions in October 1993 and the detention of the Orašac hostages in October 1993, in the sense that he had the material ability to prevent the crimes that were committed and to punish their perpetrators.<sup>1637</sup>

807. The Defence for Hadžihasanović maintains that the *El Mujahedin* detachment had not been formed, that the mujahedin refused to be placed under the command of the 3<sup>rd</sup> Corps and that they were not under its effective control.<sup>1638</sup>

2. Discussion

(a) History of the Formation of the *El Mujahedin* Detachment

808. In another part of the Judgement, the Chamber discussed the events that led to the initiative to create the *El Mujahedin* detachment.<sup>1639</sup> The process of forming the unit will now be analysed in detail.

809. On 13 August 1993, Rasim Delić, Commander of the ABiH Main Staff, ordered 3<sup>rd</sup> Corps Command to proceed with the formation of the *El Mujahedin* detachment in its zone of responsibility.<sup>1640</sup> The order was preceded by two other initiatives. First, on 23 July 1993, Rasim Delić authorised Sakib Mahmuljin to enter into negotiations with representatives of the mujahedin

<sup>1637</sup> Prosecution Final Brief, paras. 142-143.

<sup>1638</sup> Defence Final Brief, paras. 272-292.

<sup>1639</sup> See *supra* paras. 547-565.

on behalf of the ABiH Main Staff.<sup>1641</sup> After they took place, on 12 August 1993 the 3<sup>rd</sup> Corps Command submitted a proposal to the ABiH Main Staff regarding a formation to be called *El Mujahedin*.<sup>1642</sup>

810. The Main Staff's authorisation dated 23 July 1993 gave Sakib Mahmuljin the mandate to negotiate directly with representatives of a "mujahedin unit" in Zenica.<sup>1643</sup> The negotiations were to cover two points. The first was the incorporation of the unit into the ABiH and the second was the use of the unit in combat and the conditions of its attachment to the 3<sup>rd</sup> Corps.

811. It seems that the negotiations led to an agreement, although the conditions are not known. In late July or early August 1993, Sakib Mahmuljin contacted 3<sup>rd</sup> Corps Command to go over a proposal to form a mujahedin detachment. The proposal had been drafted by Mustafa Poparić, a member of the 3<sup>rd</sup> Corps, who worked closely with Sakib Mahmuljin. Mustafa Poparić wrote the proposal based on information provided by Mahmuljin and his suggestions.<sup>1644</sup>

812. The 3<sup>rd</sup> Corps proposal of 12 August 1993<sup>1645</sup> mentions two reasons to justify the formation of a detachment of foreign nationals in the Corps zone of responsibility: the need to organise and make use of foreign volunteers, and the foreigners' written request to 3<sup>rd</sup> Corps Command.<sup>1646</sup> The proposal was to establish a detachment to be called *El Mujahedin*. The village of Mehurići would be its mobilisation collection point and it would be provided logistical support by the 3<sup>rd</sup> Corps.

813. Following this proposal, on 13 August 1993 the ABiH Supreme Command Main Staff decided to proceed with the establishment of the *El Mujahedin* detachment.<sup>1647</sup> General Rasim Delić's order of this same day instructs the 3<sup>rd</sup> Corps Command to form the *El Mujahedin*

<sup>1640</sup> P 439/DH 165.6/C 9. The name should be *El Mujahed* in Arabic but appears under the erroneous form *El Mujahedin* in documents DH 165.4, DH 165.5, P 435, P 440, and P 451. Thus, for the purpose of historical exactitude, the Chamber has used the ungrammatical form *El Mujahedin*.

<sup>1641</sup> P 202/DH 165.4.

<sup>1642</sup> P 438/DH 165.5.

<sup>1643</sup> P 202/DH 165.4. Videocassette P 482 confirms the presence of a "head office" in this unit in Zenica; T(F) p. 8542.

<sup>1644</sup> Mustafa Poparić, T(F) pp. 14483-14486.

<sup>1645</sup> P 438/DH 165.5: "Given the need to organise and make use of foreign volunteers, as well as their written request to the 3<sup>rd</sup> Corps Command, and on the basis of your authorisation No. 1/297-54 of 23 July 1993, we are sending the following PROPOSAL: 1. Organise all foreign volunteers in the RBH Army in the zone of responsibility of the 3<sup>rd</sup> Corps into a detachment. We will submit a proposed establishment for this unit shortly. 2. Mobilisation collection point for this detachment would be in the village of Mehurić, Travnik municipality. 3. The name of the detachment is *El Mujahedin*; its number and VJ /?military unit/ number are to be determined by the Supreme Command Staff. 4. Logistics support will be regulated by the logistics services of the 3<sup>rd</sup> Corps. 5. We request urgency."

<sup>1646</sup> The text of videocassette P 482 also speaks of a request by the mujahedin; T(F) p. 8542.

<sup>1647</sup> P 439/DH, 165.6/C 9 "To form in the 3<sup>rd</sup> Corps zone of responsibility the *El Mujahedin* detachment according to proposed establishment, which you must submit to this Staff for approval. The newly formed detachment shall be given the code number T-30030 and the military unit (MU) number 5689. Mobilisation duration is 12 hours, and the mobilisation plan is administered by the 3<sup>rd</sup> Corps Command."

detachment in accordance with a proposal which the 3<sup>rd</sup> Corps was to submit to the Main Staff for approval. The order gives the “newly formed detachment” a code number and military unit number.

814. Delić’s order stipulates that the detachment will be composed of foreign volunteers in the 3<sup>rd</sup> Corps zone of responsibility and adds that they will keep their weapons and other equipment which have already been issued to them.<sup>1648</sup> Witness Mustafa Poparić explained that these men were not from 3<sup>rd</sup> Corps units.<sup>1649</sup> With regard to weapons and other equipment, the witness stated that he had been told that the foreigners had their own weapons and the army did not have weapons for them.<sup>1650</sup> The order also stipulates that the detachment will receive logistical support from the 3<sup>rd</sup> Corps.

815. Delić’s order indicates that the new detachment was to be directly under the authority of the 3<sup>rd</sup> Corps, since the detachment depended on the Corps for logistics. Another factor showing this direct link is that the 3<sup>rd</sup> Corps called it “independent detachment *El Mujahedin*”.<sup>1651</sup> This link is also confirmed by the fact that the 3<sup>rd</sup> Corps decided to assign it to combat operations.<sup>1652</sup>

816. According to Witness Fikret Čuskić, Mehmed Alagić, the commander of OG *Bosanska Krajina*, was present at a ceremony held in the mujahedin camp when the detachment was formed and the unit lined up.<sup>1653</sup> The witness did not specify the exact date of this event. Two other witnesses identified Alagić and Mahmuljin on a videocassette showing the “Recognition of the Mujahideen Battalion with the Bosnian Army”.<sup>1654</sup> The Chamber finds that this must be the same event.

(b) Subsequent Developments

817. Delić’s order of 13 August 1993 states that it is to be carried out by the 3<sup>rd</sup> Corps Command no later than 31 August 1993 and that a written report is to be sent to the Supreme Command Main Staff before 6 September 1993.

<sup>1648</sup> P 439/DH, 165.6/C 9: “Replenish the *El Mujahedin* detachment with foreign volunteers currently on the territory of the 3<sup>rd</sup> Corps zone of responsibility. These people keep the weapons and other equipment which have already been issued to them.”

<sup>1649</sup> Mustafa Poparić, T(F) p. 14489.

<sup>1650</sup> Mustafa Poparić, T(F) p. 14490. Witness Džemal Merdan, T(F) pp. 13699-13700, stated that he did not know who had issued them weapons.

<sup>1651</sup> See P 792/DH 165.7 and P 440.

<sup>1652</sup> See *infra* paras. 824, 825, 830.

<sup>1653</sup> Fikret Čuskić, T(F) p. 12086.

<sup>1654</sup> Witness ZP, T(F) pp. 9134-9136; HE, T(F) p. 17071. This is videocassette P 482. The part showing the two people bears the following text in English: Recognition of the Mujahideen Battalion with the Bosnian Army. Witness HE, T(F) p. 17071, thinks he also noticed the presence of Abu Haris and identified the Travnik mufti, Nusret effendi Abdibegović, T(F) p. 17070. See also *supra* paras. 651-652.

818. Witness Mustafa Poparić stated that he did not know how many men were to be in the *El Mujahedin* detachment or their names or its commander<sup>1655</sup> and that he never received a report from the detachment with the particulars of its formation.<sup>1656</sup> He also did not receive any feedback from the ABiH Main Staff regarding his proposals for the formation of a detachment pursuant to Delić's order,<sup>1657</sup> although he did not hear anyone say that the order had not been executed.<sup>1658</sup> His conclusion was that the unit had not been established and did not officially exist.<sup>1659</sup>

819. Nevertheless, information on the detachment from early 1994 can be found in a report dated 26 February 1994 from the 3<sup>rd</sup> Corps Security Service<sup>1660</sup> mentioning that the detachment consisted of a command and two companies with 59 foreigners and 152 locals. All the commanders of the unit and companies were foreigners.<sup>1661</sup>

820. The 3<sup>rd</sup> Corps seems to have had constant difficulties in its efforts to incorporate the detachment fully into the Army. Witnesses HF and Džemal Merdan testified to a number of initiatives taken by the 3<sup>rd</sup> Corps to integrate them more completely<sup>1662</sup> that resulted in a meeting between Rasim Delić and representatives of the detachment in early 1994.<sup>1663</sup> According to Witness HF, during this meeting the detachment representatives did not accept any of the six conditions he put forward to subordinate the detachment to 3<sup>rd</sup> Corps Command.<sup>1664</sup> The witness did not explain the contents of these six conditions during his appearance in court, although it is probable that one of them was for the detachment members to give the particulars of their real identity. They hesitated to accept this condition, however, because they feared it would cause trouble for their families in their home country.<sup>1665</sup> Another condition seems to have been to agree to abide by local laws. During a conversation on 10 February 1994 between the 3<sup>rd</sup> Corps Assistant Commander for Security and Abu Haris, the detachment representative, it was proposed that all the foreign members take an oath that they would obey the RBiH laws, would not interfere in the internal politics of the RBiH and would only participate in combat pursuant to the path traced by *Allah*.<sup>1666</sup>

<sup>1655</sup> Mustafa Poparić, T(F) pp. 14484, 14492.

<sup>1656</sup> Mustafa Poparić, T(F) p. 14491.

<sup>1657</sup> Mustafa Poparić, T(F) pp. 14489, 14526-14527.

<sup>1658</sup> Mustafa Poparić, T(F) p. 14518.

<sup>1659</sup> Mustafa Poparić, T(F) pp. 14518-14519. *See also* Hajrudin Hubo, T(F) p. 15609.

<sup>1660</sup> DH 272.

<sup>1661</sup> P 656, a report by Ivica Zeko, member of the HVO, dated 18 October 1993 mentions the existence of an independent unit *El Mujahedin* at Mehurići that had from 350-400 members and was commanded by Haris Abul.

<sup>1662</sup> Witness HF, T(F) pp. 17204-17209, 17249-17251; Džemal Merdan, T(F) pp. 13172-13173.

<sup>1663</sup> The text of DH 165.8 shows that the meeting was held before 10 February 1994.

<sup>1664</sup> Witness HF, T(F) p. 17207.

<sup>1665</sup> DH 165.8.

<sup>1666</sup> DH 165.8.

821. With regard to respecting local laws, one witness gave the example of a member of the *El Mujahedin* detachment who had been prosecuted by the Travnik District Military Court and sentenced for having run the witness' wife out of the village of Kljaci in the fall of 1993 because she was the offspring of a mixed marriage.<sup>1667</sup>

822. Finally, there is reason to mention a decision by Alija Izetbegović, president of the RBiH, dated 5 August 1994 on promotions awarded to members of the ABiH.<sup>1668</sup> The decision states that five members of the *El Mujahedin* detachment were among those who received this recognition. Abu Mali, denoted in the decision as detachment commander, was promoted to the rank of senior captain, and the following were promoted to the rank of captain: Abu Ejmen, Assistant Commander for Security, Abul Haris, Assistant Commander for Moral and Religious Affairs, Fadil Al-Hamdani, Assistant Commander for Logistics, and Bellah Muatez, Detachment Deputy Commander.

(c) Combat

823. It seems that the first example of the desire to use the new detachment in combat dates from 16 August 1993, only three days after Delić issued his order. That day, the 3<sup>rd</sup> Corps Commander sent a letter to the commander of OG *Bosanska Krajina* informing him that 50 members of the *El Mujahedin* detachment were ready to go to the front at Zavidovići.<sup>1669</sup> The 3<sup>rd</sup> Corps Commander asked the commander of the Operations Group if he wanted the group to be sent to him and asked for a reply the next day. The Chamber is unaware of any follow-up to this letter.

824. Then, on 28 August 1993,<sup>1670</sup> the Accused Hadžihasanović sent an order to OG *Bosanska Krajina*, the 306<sup>th</sup> Brigade and the *El Mujahedin* independent detachment to re-subordinate the detachment to the 306<sup>th</sup> Brigade in order to effectively coordinate combat operations. It seems that the order was not carried out as the detachment was unwilling to obey the 306<sup>th</sup> Brigade Command.<sup>1671</sup>

825. Following another order<sup>1672</sup> signed by Merdan<sup>1673</sup> dated 6 September 1993 addressed to OG *Bosanska Krajina* and the *El Mujahedin* independent detachment, the detachment was re-

<sup>1667</sup> Remzija Šiljak, T(F) pp. 10614, 10634, 10642.

<sup>1668</sup> P 296.

<sup>1669</sup> P 671.

<sup>1670</sup> P 792/DH 165.7.

<sup>1671</sup> Vezir Jusufspahić, T(F) pp. 14028, 14046-14049; Džemal Merdan, T(F) p. 13170; Remzija Šiljak, T(F) pp. 10611, 10627-10628.

<sup>1672</sup> P 440.

<sup>1673</sup> Mustafa Poparić, T(F) p. 14538.



subordinated directly to OG *Bosanska Krajina* owing to imminent combat operations and pursuant to the Operations Group's plans.

826. In the period between 5 and 7 September 1993, the *El Mujahedin* detachment did in fact take part in combat operations in the zone of responsibility of OG *Bosanska Krajina*,<sup>1674</sup> particularly in the sectors of Zabilje – Ograde – Pokrajčiči and Grbavica where the detachment was fighting in the zones of responsibility of the 27<sup>th</sup>, 306<sup>th</sup> and 325<sup>th</sup> Brigades. On 5 September 1993, the 306<sup>th</sup> Brigade led a coordinated attack with the 27<sup>th</sup> Brigade, the 325<sup>th</sup> Brigade and the *El Mujahedin* detachment.<sup>1675</sup> That evening, the 306<sup>th</sup> Brigade received the order to carry out reconnaissance missions together with the commander of the *El Mujahedin* detachment.<sup>1676</sup> The next day, the four units engaged in the two combat sectors estimated the number of dead and wounded. The detachment had two dead and ten wounded, while the other three units had approximately the same number of dead and wounded.<sup>1677</sup> On 7 September 1993, the 325<sup>th</sup> Brigade experienced serious difficulties in the Grbavica sector and requested assistance from the *El Mujahedin* detachment to repel an HVO attack.<sup>1678</sup> The OG *Bosanska Krajina* organised the means to assist them. Sipić and Beba left in order to position the OG's military police at the same time as the mujahedin in order to assist the 325<sup>th</sup> Brigade.<sup>1679</sup> On 9 September 1993, the commander of the *El Mujahedin* detachment visited 306<sup>th</sup> Brigade headquarters.<sup>1680</sup>

827. Several witnesses testified about the combat on 18 September 1993 in the Krušica sector, not far from Vitez, in which the *El Mujahedin* detachment was engaged. One of them, Witness Fikret Čuskić, stated that Alagić, commander of OG *Bosanska Krajina*, ordered the mujahedin to fight in the combat operations alongside the 17<sup>th</sup> Brigade.<sup>1681</sup> In the ten days that followed, the witness had several contacts with representatives of the detachment, in particular Abu Haris who also served as interpreter.<sup>1682</sup> The witnesses concurred that the operations were not an outright success. Indeed, the ABiH sustained heavy losses because of the mujahedin's combat methods.<sup>1683</sup> Witness Fikret Čuskić recounted that there were 16 dead and 78 wounded,<sup>1684</sup> while Witness

<sup>1674</sup> P 482; P 617; C 11, pp. 1-2, 13; C 12, pp. 12-15; C 18, p. 37. For the conduct of these operations, see also P 851, a combat report from the Accused Hadžihasanović to the Supreme Command.

<sup>1675</sup> C 18, p. 37.

<sup>1676</sup> C 12, p. 12.

<sup>1677</sup> C 11, pp. 1-2; C 12, p. 13. Videocassette P 482 mentions two dead; T(F) p. 8543.

<sup>1678</sup> C 11, p. 13; C 12, p. 15. For the HVO attack, see also P 851.

<sup>1679</sup> C 12, p. 15.

<sup>1680</sup> P 617.

<sup>1681</sup> Fikret Čuskić, T(F) p. 12129. The transcript is not clear as to whom this order was given.

<sup>1682</sup> Fikret Čuskić, T(F) p. 12128.

<sup>1683</sup> Fikret Čuskić, T(F) pp. 12151-12152, 12158; Ahmed Kulenović, T(F) p. 13905; Džemal Merdan, T(F) pp. 13170-13171.

<sup>1684</sup> Fikret Čuskić, T(F) p. 12152.

Ahmed Kulenović stated that the number was 12 dead and 80 or 90 wounded.<sup>1685</sup> The OG *Bosanska Krajina* operational logbook notes 15 dead and 70 wounded, of whom 4 of the dead and 16 wounded belonged to the *El Mujahedin* detachment.<sup>1686</sup>

828. On 9 October 1993, the commander of OG *Zapad* asked the 3<sup>rd</sup> Corps Commander in writing for permission to use part of the *El Mujahedin* detachment in operations in the Gornji Vakuf region.<sup>1687</sup> His letter adds that the representatives of the detachment had stated that they were ready to take part in combat but that they believed this required an order from the 3<sup>rd</sup> Corps.<sup>1688</sup> In his response of 10 October 1993, the Accused Hadžihasanović explains that the detachment was still attached to OG *Bosanska Krajina* and engaged in combat operations in the Lašva Valley.<sup>1689</sup> The operational logbook of the Operations Group notes on 9 October 1993 that the mujahedin were not yet ready to take part in upcoming combat.<sup>1690</sup>

829. The war diary and operational logbook of OG *Bosanska Krajina* again mention combat by the 308<sup>th</sup> Brigade and the *El Mujahedin* detachment in the Novi Travnik – Gornji Vakuf region on 24 October 1993.<sup>1691</sup> In the morning of that day, an attack was launched during which the commander of the *El Mujahedin* detachment was wounded. The HVO counterattacked in the afternoon. The result of the combat was 4 dead and 17 wounded for the 308<sup>th</sup> Brigade, and 3 dead and 8 wounded for the detachment.

830. In an order dated 4 December 1993 addressed to the commands of OG *Bosanska Krajina* and the *El Mujahedin* detachment, the 3<sup>rd</sup> Corps Commander once again re-subordinated the *El Mujahedin* detachment to OG *Bosanska Krajina*.<sup>1692</sup> This re-subordination order is more detailed than the order of 6 September 1993 and asks the detachment commander to report to the commander of OG *Bosanska Krajina*. Furthermore, the commander of the Operations Group was to resolve all the problems connected to the detachment's participation in combat, particularly with regard to its logistical support, communications, required reporting, and the planning of combat operations in which the detachment would be deployed.

831. The subsequent developments are not well known. Nevertheless, Witness Remzija Šiljak spoke of an operation that was prepared in December 1993 to help the Bosnians who were

<sup>1685</sup> Ahmed Kulenović, T(F) p. 13905.

<sup>1686</sup> C 12, p. 13. Videocassette P 482 mentions only one dead and several wounded; T(F) p. 8545.

<sup>1687</sup> P 618.

<sup>1688</sup> P 618; "Representatives of detachment *El Mudžahedin* visited me today and stated their readiness to engage a part of their unit in activities in the area of G. Vakuf. According to them, it is conditioned with your order."

<sup>1689</sup> P 492.

<sup>1690</sup> C 11, p. 66.

<sup>1691</sup> P 925.4, p. 4; C 13, pp. 64-65.

surrounded in Stari Vitez and in which the *El Mujahedin* unit was supposed to take part.<sup>1693</sup> In the course of these preparations he “came across the *El Mujahedin* as a unit”.<sup>1694</sup> A report to the Supreme Command Staff dated 24 December 1993 from the 3<sup>rd</sup> Corps Commander on the activities of OG *Bosanska Krajina* mentions that the continuation of combat operations in which the *El Mujahedin* detachment was taking part with other units had been postponed for a day because of reconnaissance missions still under way.<sup>1695</sup>

(d) Combat Conditions and Methods

832. Several former 3<sup>rd</sup> Corps members recounted the conditions imposed by members of the *El Mujahedin* detachment before they would take part in combat as well as their combat methods.

833. Two witnesses stated that the detachment members were anxious to maintain their independence and reserved the right to decide whether they would take part in combat operations. Given that they “never wanted to be placed under our command”, they had to be convinced to carry out a “mission”<sup>1696</sup> and groups of negotiators had to be used to determine if they would take part in combat.<sup>1697</sup> Communication with the detachment was all the more difficult since no one had access to their camps or was well received there.<sup>1698</sup> Thus, a visit by the commander of OG *Bosanska Krajina* to Poljanice Camp in August 1993 did not have the expected outcome.<sup>1699</sup> This vow of independence had significant repercussions on how the *El Mujahedin* detachment took part in combat. According to witness testimony, the detachment demanded that it be assigned a “special mission”. It was difficult to tell what happened during the combat they led because they would simply leave the combat zone without reporting on what had been accomplished in the operations.<sup>1700</sup>

834. This vow of independence recalls evidence on how the mujahedin took part in combat before the formation of the *El Mujahedin* detachment,<sup>1701</sup> a striking fact that is also evidenced by a letter from a member of the detachment.<sup>1702</sup> He says: “We are now one unit, we have our own body

<sup>1692</sup> P 451. See also Džemal Merdan, T(F) pp. 13171-13172.

<sup>1693</sup> Remzija Šiljak, T(F) pp. 10625-10626, 10639-10640. The witness was chief of staff of OG *Bosanska Krajina* at the time; T(F) pp. 10639-10640.

<sup>1694</sup> Remzija Šiljak, T(F) p. 10639.

<sup>1695</sup> P 495.

<sup>1696</sup> Ahmed Kulenović, T(F) p. 13921. T(E), p. 13921, speaks of a “mission”.

<sup>1697</sup> Fikret Čuskić, T(F) pp. 12087, 12130-12131.

<sup>1698</sup> Fikret Čuskić, T(F) p. 12087; Ahmed Kulenović, T(F) pp. 13907, 13915, 13924.

<sup>1699</sup> Ahmed Kulenović, T(F) p. 13921.

<sup>1700</sup> Ahmed Kulenović, T(F) p. 13920.

<sup>1701</sup> P 434; P 447. See also *supra* para. 541.

<sup>1702</sup> DH 271.

which is formally under the control of the Army, but the Army cannot order us to engage in actions against our will.”<sup>1703</sup> This recognition of the detachment’s independence might have been the result of an agreement between Sakib Mahmuljin and representatives of the mujahedin after 23 July 1993.<sup>1704</sup>

835. The order of the 3<sup>rd</sup> Corps Command dated 4 December 1993 on re-subordinating the *El Mujahedin* unit to OG *Bosanska Krajina* discussed above<sup>1705</sup> reflects the 3<sup>rd</sup> Corps’ desire to restrain the detachment’s freedom to act, since its author expressly states that the commander of OG *Bosanska Krajina* will plan combat operations and the deployment of the detachment in combat.<sup>1706</sup>

### 3. Conclusions

#### (a) De Jure Command

836. The Chamber draws the following conclusions based on the above.

837. Two different reasons lay behind the decision by competent authorities of the ABiH to create a special formation that would turn the mujahedin into members of the Army. First, it was motivated by the desire to use the mujahedin in the fight against Serbian forces and the HVO. The 3<sup>rd</sup> Corps proposal dated 12 August 1993 even speaks of the “need” to use them. Second, as discussed elsewhere in the Judgement, the decision was intended to put an end to a group of irregular fighters who used “unlawful combat methods” for which the 3<sup>rd</sup> Corps did not want to be held accountable.<sup>1707</sup>

838. The mujahedin expressed their desire to become officially part of the ABiH, which was reflected by a written request to the 3<sup>rd</sup> Corps.<sup>1708</sup> This was either the outcome of previous negotiations between Sakib Mahmuljin and the mujahedin or a desire which existed prior to these talks and was given concrete expression at that time.

839. The ABiH and the mujahedin found common ground and reached a basic agreement to incorporate the mujahedin into the 3<sup>rd</sup> Corps. This agreement led to the proposal by 3<sup>rd</sup> Corps Command dated 12 August 1993 and the order of the ABiH Main Staff dated 13 August 1993. The agreement was symbolised by a ceremony at the mujahedin camp to mark the creation of the

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<sup>1703</sup> DH 271.

<sup>1704</sup> See *supra* paras. 810-811.

<sup>1705</sup> See *supra* para. 830.

<sup>1706</sup> P 451; Džemal Merdan, T(F) pp. 13171-13172.

<sup>1707</sup> See *supra* para. 552.

<sup>1708</sup> P 438/DH 165.5. Videocassette P 482, T(F) p. 8542, says that “the Bosnian Army leadership agreed to their request”.

detachment which was attended by Mehmed Alagić, commander of OG *Bosanska Krajina*, and Sakib Mahmuljin, intermediary in the negotiations.

840. The outcome of the agreement was that as of mid-August 1993 a mujahedin unit started to operate directly under the authority of the 3<sup>rd</sup> Corps Command, which could re-subordinate it to 3<sup>rd</sup> Corps operational formations.

841. The contents of the three orders dated late August to early December 1993 by which 3<sup>rd</sup> Corps Command re-subordinated the *El Mujahedin* detachment to other formations and the language used in these documents leave no doubt about the detachment's official existence. The same can be said about the Accused Hadžihasanović's letter dated 16 August 1993 to the command of OG *Bosanska Krajina* and letters exchanged by the command of OG *Zapad* and 3<sup>rd</sup> Corps Command in October 1993.<sup>1709</sup> Lastly, President Alija Izetbegović's decision dated 8 August 1994 regarding the promotion of ABiH members confirms this existence. It seems quite impossible to promote five members of a formation that does not officially exist.

842. The Chamber recalls the testimony of Mustafa Poparić who stated that not all the rules that applied to the formation of units in the ABiH seem to have been observed. Nevertheless, these rules appear to have been more administrative than constitutive. All the parties concerned, including the mujahedin, seem to have considered Delić's order of 13 August 1993 as an act that *de jure* established the *El Mujahedin* detachment. This is why the detachment was able to be re-subordinated to other 3<sup>rd</sup> Corps formations on three occasions. The 3<sup>rd</sup> Corps engaged the detachment in combat operations even though the administrative procedure regarding the creation of the unit had not been followed. This also explains why President Izetbegović was able to promote five members of the detachment.

843. The Chamber finds that the *El Mujahedin* detachment was *de jure* under the command of the Accused Hadžihasanović as of 13 August 1993.

(b) Effective Control

844. The Chamber will now examine the question of whether the *El Mujahedin* detachment was under the effective control of the Accused Hadžihasanović.

845. It is appropriate to recall the *Čelebići* Appeal Judgement, which says the following about the relationship between *de jure* command and effective control:

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<sup>1709</sup> P 671; P 618; P 492.

“In general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced.”<sup>1710</sup>

846. What must be established is whether the presumption noted in the Appeal Judgement has been reversed in this case by the evidence.

847. The Chamber notes that 3<sup>rd</sup> Corps Command ordered the *El Mujahedin* detachment re-subordinated to other Corps formations on three occasions so that it could take part in combat operations. Although the detachment members refused to obey the order attaching them to the 306<sup>th</sup> Brigade, this was certainly not the case for the other two orders re-subordinating the detachment to OG *Bosanska Krajina*.

848. During the detachment’s first re-subordination to OG *Bosanska Krajina*, it took part in several combat operations along with other units in the Operations Group. These operations took place in September and October 1993 and all were under the command of OG *Bosanska Krajina*. There are no indications that the detachment fought outside the framework established by the Operations Group commanders. On the contrary, when representatives of the detachment encountered the commander of another Operations Group, they indicated that they needed the authorisation of the 3<sup>rd</sup> Corps Commander in order to take part in combat conducted by another Operations Group. The conclusion can thus be drawn that the detachment operated within the framework of OG *Bosanska Krajina* and did not conduct independent operations on its own initiative.

849. Nevertheless, it is true that the detachment held an exceptional position within the 3<sup>rd</sup> Corps. It reserved the right to make its own decision on whether or not to join combat. Contact and communication with its members were difficult. They demanded special missions and sometimes left the battlefield without submitting reports on the outcome of combat. In addition, there was no information on the identity of the detachment members and other aspects of its operations.

850. It must be noted, however, that this exceptional position was in fact accepted by the 3<sup>rd</sup> Corps, insofar as it did not in effect prevent the 3<sup>rd</sup> Corps and its units from using the detachment in combat and benefiting militarily from its existence. It should also be noted that nothing forced the 3<sup>rd</sup> Corps commanders to use the detachment in combat. In so doing, they accepted all the consequences of their decisions and inevitably assumed full responsibility for them.

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<sup>1710</sup> Čelibići Appeal Judgement, para. 197.

851. In the case law of this Tribunal, several indicia have been developed to determine the existence of a commander's effective control over his forces.<sup>1711</sup> In the present case, the following indicia, *inter alia*, have been satisfied:

- the power to give orders and have them executed;
- the conduct of combat operations involving the forces in question;
- the absence of any other authority over the forces in question.

Despite the special position this detachment held within the 3<sup>rd</sup> Corps, however, there is no evidence that might reverse the presumption of effective control formulated by the Appeals Chamber in the *Čelebići* Appeal Judgement.

852. To summarise, the Chamber finds that in the reality of the armed conflict in Central Bosnia after the creation of the *El Mujahedin* detachment, a superior-subordinate relationship existed between the detachment and 3<sup>rd</sup> Corps Command.<sup>1712</sup> The Chamber recalls the words of Witness Džemal Merdan who, in describing this period, accepted at least in principle that "the moment a breach of discipline takes place and the Corps Command learns of that or there is a suspicion that a crime was committed by a member of the *El Mujahedin* detachment, he would be treated the same as any other member of the 3<sup>rd</sup> Corps."<sup>1713</sup> The Chamber also recalls the example of the criminal prosecution of a member of the detachment before the Travnik District Military Court.<sup>1714</sup>

853. The Chamber finds that as of 13 August 1993, the Accused Hadžihasanović exercised effective control over the members of the *El Mujahedin* detachment.

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<sup>1711</sup> *See supra* paras. 82-84.

<sup>1712</sup> *Čelebići* Appeal Judgement, para. 303.

<sup>1713</sup> Džemal Merdan, T(F) pp. 13834-13835.

<sup>1714</sup> *See supra* para. 821.

## VI. MEANS TO PREVENT AND PUNISH AVAILABLE TO THE ACCUSED

854. The Chamber recalls that an analysis of the measures taken by the Accused will lead to a determination of their responsibility. To this end, the context in which the Accused acted and the means available to them to act must be examined in detail. From this perspective, the means available to the Accused as well as measures of a general nature taken by the Accused should be recalled. Indeed, measures of a general nature do not exonerate a superior in terms of criminal responsibility if he failed to take specific measures to prevent or punish an act of which he had knowledge. They are nevertheless a factor in appreciating how the Accused attempted to discharge their duties in the prevailing circumstances and in determining any mitigating circumstances.

855. Thus, in this part of the Judgement, the Chamber will first analyse the means available to the Accused to prevent and punish the unlawful acts and the actions taken by the Accused in order to determine their degree of responsibility.

### A. Training

856. According to the testimony heard by the Chamber and the documents tendered into evidence, the Chamber notes that after the Accused Hadžihasanović's appointment he attempted to stress the importance of training for his troops, although the 3<sup>rd</sup> Corps was in difficult circumstances owing to the shortage of manpower and weapons, and the ongoing combat in Bosnia and Herzegovina.<sup>1715</sup> This desire to train new recruits as rapidly as possible is found in quite a few orders from the Supreme Command.<sup>1716</sup> Commands at the level of operations groups and brigades also stressed the training of recruits.<sup>1717</sup>

857. The Accused Hadžihasanović organised the distribution of the Geneva Conventions and drew his troops' attention to the obligations they entailed.<sup>1718</sup> The Presidency of the Republic of Bosnia and Herzegovina insisted that international conventions based on international humanitarian

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<sup>1715</sup> Hadžihasanović Defence Final Brief, paras. 91-101.

<sup>1716</sup> P 348; P 249; P 672; DH 154.2; DH 154.11

<sup>1717</sup> Remzija Šiljak, T(F) pp. 10554, 10555, 10560-10561; Džemal Merdan, T(F) pp. 12973 and 12974.

<sup>1718</sup> P 282; P 316; DH 160.5; Džemal Merdan, T(F) p. 13298.



law be respected and adopted texts and issued orders to this effect.<sup>1719</sup> The Supreme Command, in charge of carrying them out, did likewise.<sup>1720</sup>

858. The Accused Hadžihasanović also created a Legal Department, part of whose mission was to instruct officers in the legal obligations to which they were bound and distribute legal officers among the members of the brigades during armed conflicts.<sup>1721</sup>

859. The Chamber also notes that the Accused Hadžihasanović endeavoured to train his troops in military discipline, which implied respecting orders<sup>1722</sup> and the constant communication of information within the military hierarchy.<sup>1723</sup> The Presidency of the Republic of Bosnia and Herzegovina provided the legislative framework to ensure that military discipline was respected in the ranks of the ABiH.<sup>1724</sup> The Supreme Command issued orders to ensure that discipline prevailed within the ABiH and requested that reports be made on certain actions which came to its attention.<sup>1725</sup> The Chamber furthermore notes that it has very little information on the measures taken by Amir Kubura in order to train his troops and teach them the legal obligations that bound them.<sup>1726</sup>

## **B. Military Police**

860. Military police units existed within the 3<sup>rd</sup> Corps and the different brigades subordinated to the 3<sup>rd</sup> Corps. These units had the task of preventing criminal acts and if so required sending reports to the brigade commands and/or district military prosecutors so that they could take the necessary punitive measures against the perpetrators of offences. Military police units also took part in combat. The Chamber will see that the military police encountered problems in carrying out their tasks due to the limited number of men, the lack of appropriate materiel and the situation on the ground. In addition, the means put in place to prevent crimes were thwarted by the fact that some of the military police were involved in criminal activities.

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<sup>1719</sup> P 511; P 120; P 361; DH 1407 and P 243.

<sup>1720</sup> P 266; P 316.

<sup>1721</sup> Hadžihasanović Final Brief, para. 101; *see for example* P 324; P 335; DH 158/2; DH 158/3; P 282; P 300; P 326; P 255.

<sup>1722</sup> *See for example* P 293.

<sup>1723</sup> P 255; P 271.

<sup>1724</sup> P 120; P 243; P 250 and Džemal Merdan, T(F) p. 13298.

<sup>1725</sup> DH 2108; P 512; P 348; P 249.

<sup>1726</sup> *See infra* paras. 1162 and 1164.

## 1. Organisation

### (a) Status, Role and Jurisdiction

861. The activities of the military police were subject to the Rules of Service for the ABiH Military Police<sup>1727</sup> enacted on 8 September 1992, and by directives from the 3<sup>rd</sup> Corps Command and the Law on Criminal Procedure.<sup>1728</sup>

862. Pursuant to the Rules of Service for the ABiH Military Police, the main mission of the military police was to ensure the protection of vital elements in the system of command, particularly against all terrorist or saboteur actions. The military police's task was to prevent and if need be to uncover all criminal activity in which members of the armed forces or other citizens took part, but only when the crime involved military property or fell within the jurisdiction of the military courts.<sup>1729</sup>

863. These tasks were carried out by the different services that composed the military police. The security service was in charge of protecting the vital command components by undertaking measures to protect vital facilities, in particular headquarters, military prisons and their access routes.<sup>1730</sup> In this context, the Military Police Battalion had the task of securing the prisoner of war reception centre at the KP Dom (Penal and Correctional Facility) in Zenica.<sup>1731</sup>

864. The search service implemented tactical and technical measures and military police actions further to the Law on Criminal Procedure (or on orders from a superior officer to conduct an investigation into living or deceased individuals or property<sup>1732</sup>).

865. The patrol service, *inter alia*, protected persons and military facilities, and oversaw the security of military traffic. In addition, it found and detained perpetrators of crimes under the jurisdiction of the military courts.<sup>1733</sup> The service also escorted arrested persons, and in wartime, prisoners of war.

866. The service for prisoner escort included carrying out the measures and procedures for guarding detained persons, and seizing documents and property, from the moment of reception until

<sup>1727</sup> Zaim Mujezinović, T(F) pp. 17402,17403 and 17416.

<sup>1728</sup> Zaim Mujezinović, T(F) pp. 17403 and 17416.

<sup>1729</sup> P 328, para. 1; Semir Šarić, T(F) p. 17304; Izet Mahir, T(F) p. 16775.

<sup>1730</sup> P 328, para. 26.

<sup>1731</sup> Zaim Mujezinović, T(F) pp. 17470-17471.

<sup>1732</sup> P 328, para. 30.

<sup>1733</sup> P 328, para. 36.

they were handed over to the competent organs.<sup>1734</sup> In the case at hand, should the 3<sup>rd</sup> Corps Chief of Security consider that there were many prisoners of war or they were “of special importance”, military police units could be used to escort them to a prisoner of war reception centre.<sup>1735</sup> Thus, in January 1993, a military police company was sent to the Lašva region to escort prisoners of war to the KP Dom in Zenica.<sup>1736</sup>

867. The military police duty service had the task of collecting data on unlawful actions by members of the armed forces committed outside the performance of their duties and illegal acts within the jurisdiction of the military courts.<sup>1737</sup> In the case before the Chamber, this service received and transmitted information to duty services in the other military police units 24 hours a day.<sup>1738</sup>

868. The military traffic and transport security service executed tasks intended to ensure the unhindered movement of military traffic on the roads.<sup>1739</sup>

869. The military police crime prevention service undertook measures and actions that, according to the criminal procedure in place, were the responsibility of MUP (Ministry of the Interior) organs and covered crimes within the jurisdiction of the district military courts.<sup>1740</sup>

870. In the performance of their duties, members of the military police had the power to take a number of measures including in particular checking identities, compiling and filing reports, and arresting and detaining people.<sup>1741</sup> In theory, the military police units had these same powers and used them against citizens who were not members of the armed forces or foreign nationals without diplomatic status when their activity was directed against the armed forces.<sup>1742</sup>

871. In the present case, the military police exercised its jurisdiction not only with regard to the members of the ABiH but also with regard to civilians when the crimes committed were within the jurisdiction of the district military courts, i.e. when the crimes were prejudicial to the vital interests of the ABiH.<sup>1743</sup> Conversely, if the crimes committed by civilians were not within the jurisdiction of

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<sup>1734</sup> P 328, para. 38.

<sup>1735</sup> Zaim Mujezinović, T(F) pp. 17471,17472 and 17474; Izet Mahir, T(F) p. 16799.

<sup>1736</sup> Semir Šarić, T(F) p. 17319.

<sup>1737</sup> P 328, para. 41.

<sup>1738</sup> Zaim Mujezinović, T(F) p. 17403; P 328, para. 42.

<sup>1739</sup> P 328, para. 43.

<sup>1740</sup> P 328, para. 49.

<sup>1741</sup> See DH 1996, DH 1997, DH 1998, DH 1999, DH 1938, DH 1939.

<sup>1742</sup> P 328, para. 24.

<sup>1743</sup> Zaim Mujezinović, T(F) p. 17404; Semir Šarić, T(F) pp. 17304-17305.

the district military courts, the military police did not have the right to act and Ministry of the Interior services were to intervene.<sup>1744</sup>

872. On several occasions, the 3<sup>rd</sup> Corps Command reminded the members of the military police of their obligation to take all necessary measures to detect and prevent criminal activities.<sup>1745</sup>

(b) Double Chain of Command

873. The military police were commanded by the commander of the unit that incorporated it.<sup>1746</sup> The command was carried out via the security service to which the military unit was attached.<sup>1747</sup> In brigades and operations groups, military police platoons or companies were headed by a military police commander whose superior was the assistant commander for security of the respective brigade or operations group.<sup>1748</sup> Likewise, the Military Police Battalion was commanded by the 3<sup>rd</sup> Corps Commander through the 3<sup>rd</sup> Corps Chief of Security.<sup>1749</sup>

874. The military police units were required to report their activities to the military security service to which they were attached.<sup>1750</sup> Thus, military security services received information concerning the activities of the military police units. They directed the activities of the military police and had the task of informing the brigade commander about these activities so as to receive further orders or instructions.<sup>1751</sup> Nevertheless, in limited cases such as counter-intelligence, the security services did not have to report to either the 3<sup>rd</sup> Corps Command or the brigade or operations group command.<sup>1752</sup> The commanders of the brigades, operations groups or 3<sup>rd</sup> Corps Command were the only ones with authority to engage military police units in combat activities.<sup>1753</sup>

(c) Number of Police

(i) 3<sup>rd</sup> Corps Military Police Battalion

875. When the Military Police Battalion was formed on 1 December 1992,<sup>1754</sup> it consisted primarily of one military police company.<sup>1755</sup> During the first half of 1993, the 3<sup>rd</sup> Corps Military

<sup>1744</sup> Zaim Mujezinović, T(F) p. 17405.

<sup>1745</sup> DH 1002.

<sup>1746</sup> P 328, para. 7; Zaim Mujezinović, T(F) p. 17413.

<sup>1747</sup> P 328, para. 8; Zaim Mujezinović, T(F) pp. 17413-17414; Semir Šarić, T(F) p. 17337.

<sup>1748</sup> Zaim Mujezinović, T(F) pp. 17416-17417.

<sup>1749</sup> Witness HF, T(F) pp. 17166-17167.

<sup>1750</sup> Semir Šarić, T(F) pp. 17336-17337; DH 1135, para. 7.

<sup>1751</sup> Zaim Mujezinović, T(F) p. 17415.

<sup>1752</sup> Witness HF, T(F) p. 17289.

<sup>1753</sup> Zaim Mujezinović, T(F) pp. 17415 and 17417.

<sup>1754</sup> Zaim Mujezinović, T(F) p. 17425.

Police Battalion had from 200 to 250 members and with the development of the military police tasks, this number reached 400 to 450 in the second half of 1993.<sup>1756</sup> For example, the crime prevention service, initially formed as a squad, later became a platoon with some two dozen men<sup>1757</sup> including eight or ten inspectors tasked with repressing crime, four lawyers, two criminologists and six to eight police.<sup>1758</sup>

876. The 3<sup>rd</sup> Corps Military Police Battalion had a command and several military police companies. The Battalion Command consisted of a commander and various sectors whose role was to ensure the proper functioning of the Military Police Battalion.<sup>1759</sup> The commander was aided by an assistant for personnel, an assistant for security, an assistant for operations and training, and an assistant for logistics.<sup>1760</sup> The Military Police Battalion also had military police companies. The 1<sup>st</sup> Company was in charge of patrols and escorts, the 2<sup>nd</sup> Company took care of security, the 3<sup>rd</sup> Company went into combat on the ground and the 4<sup>th</sup> Company was in charge of traffic and transport.<sup>1761</sup> During the second half of 1993, an anti-terrorist company was formed.<sup>1762</sup> Every company had a command and three platoons, each with three eight-man squads. Consequently, every company had from 75 to 80 men.<sup>1763</sup>

(ii) Military Police Units in the Brigades and Operations Groups

877. Every brigade had a military police platoon or company, which enabled the military police to undertake activities within their area of jurisdiction wherever the ABiH was deployed.<sup>1764</sup> Every mountain brigade had a military police platoon and every motorised brigade had a military police company.<sup>1765</sup> Military police platoons had from 27 to 31 men,<sup>1766</sup> while military police companies had up to 100 or 120 members.<sup>1767</sup> These platoons or companies were commanded by a military

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<sup>1755</sup> Zaim Muzejinović, T(E) p. 17407.

<sup>1756</sup> Zaim Muzejinović, T(F) p. 17408; Semir Šarić, T(F) pp. 17338 and 17373; Izet Mahir, T(F) p. 16782.

<sup>1757</sup> Zaim Muzejinović, T(E) pp. 17408-17409; Izet Mahir, T(F) p. 16782.

<sup>1758</sup> Semir Šarić, T(F) p. 17309.

<sup>1759</sup> Zaim Muzejinović, T(F) p. 17405.

<sup>1760</sup> Zaim Muzejinović, T(F) pp. 17405-17406.

<sup>1761</sup> Zaim Muzejinović, T(F) pp. 17406-17407; Semir Šarić, T(F) p. 17304; Izet Mahir, T(F) p. 16781.

<sup>1762</sup> Zaim Muzejinović, T(F) pp. 17406-17407.

<sup>1763</sup> Zaim Muzejinović, T(F) pp. 17408-17409.

<sup>1764</sup> Zaim Muzejinović, T(F) p. 17416; Izet Mahir, T(F) p. 16787.

<sup>1765</sup> Osman Menković, T(F) pp. 14711-14712. Zaim Muzejinović, T(E), p. 17415. Military police companies had 75-80 men while platoons had three eight-man squads, Zaim Muzejinović, T(F) pp. 17408-17409.

<sup>1766</sup> Izet Mahir, T(E) p. 16814; Asim Delalić, T(F) p. 16350; P 405; P 708.

<sup>1767</sup> Osman Menković, T(F) p. 14709.

police commander whose superior was the brigade's assistant commander for security. The brigade commander was in charge of engaging military units in combat.<sup>1768</sup>

878. Operations groups in general did not have military police companies.<sup>1769</sup> Nevertheless, due to an increase in crime, a military police company of about one hundred men was attached to OG *Bosanska Krajina* on 26 June 1993 in order to repress crime in OG *Bosanska Krajina*'s entire zone of responsibility.<sup>1770</sup> This military police company consisted of three platoons.<sup>1771</sup> The OG *Bosanska Krajina* Military Police Company used the forces not engaged in combat operations to organise patrols and establish check-points in order to prevent the commission of unlawful acts throughout the Operations Group's zone of responsibility.<sup>1772</sup> The Company also had the task of training military police within the Operations Group's brigades.<sup>1773</sup> The Chamber notes that to its knowledge, the OG *Bosanska Krajina* was the only operations group to have a military police unit.

(iii) Relations Between the 3<sup>rd</sup> Corps Military Police Battalion and Military Police Units within the Brigades and Operations Groups: Re-subordination Orders

879. The 3<sup>rd</sup> Corps Military Police Battalion was not the superior of the military police units within the brigades or operations groups and was therefore not in a position to issue them orders. Nevertheless, this did not exclude the possibility of coordination in the field between the 3<sup>rd</sup> Corps Military Police Battalion and other military police units in handling certain crisis situations or in searching for the perpetrators of crimes.<sup>1774</sup> Thus, when a military police unit was unable to handle a situation in the field because it lacked manpower or equipment, for example, the 3<sup>rd</sup> Corps Commander issued an order, usually at the suggestion of the 3<sup>rd</sup> Corps Chief of Security, to engage members of the Military Police Battalion as support to act in concert with the military police company in question.<sup>1775</sup> Such orders were issued based on an evaluation of the situation in the field<sup>1776</sup> and contained instructions about the command to which the Military Police Battalion members were to be subordinated.

<sup>1768</sup> Zaim Muzejinović, T(F) p. 17417.

<sup>1769</sup> Osman Menković, T(E) p. 14666.

<sup>1770</sup> Osman Menković, T(E) pp. 14666,14702, 14695 and 14696; DH 1920; Witness HE, T(F) pp. 16966 and 17019.

<sup>1771</sup> Osman Menković, T(F) pp. 14696, 14717 and 14718. A military police company had between 75 and 80 men, Zaim Muzejinović, T(F) pp. 17408-17409.

<sup>1772</sup> Osman Menković, T(E) p. 14673.

<sup>1773</sup> Osman Menković, T(E) p. 14670; DH 1920.

<sup>1774</sup> Zaim Muzejinović, T(F) p. 17417; Witness HF, T(F) p. 17156; Izet Mahir, T(F) pp. 16787-16788.

<sup>1775</sup> Zaim Muzejinović, T(F) p. 17418; Semir Šarić, T(F) pp. 17312-17313.

<sup>1776</sup> Zaim Muzejinović, T(F) p. 17423.

880. Members of the 3<sup>rd</sup> Corps Military Police Battalion could be either re-subordinated to the unit in whose territory they were deployed<sup>1777</sup> or act independently.<sup>1778</sup> In these situations, the military police unit was to draft daily or weekly reports which were then transferred through the Military Police Battalion to the 3<sup>rd</sup> Corps Security Service.<sup>1779</sup> On several occasions, the 3<sup>rd</sup> Corps Military Police Battalion was deployed in sectors outside its customary zones of activity<sup>1780</sup> in order to prevent undesirable activities<sup>1781</sup> and help prevent indiscipline, plundering and arson.<sup>1782</sup>

881. In addition, the 3<sup>rd</sup> Corps Military Police Battalion helped train police units within the brigades or operations groups and provided them with necessary equipment, as much as they could.<sup>1783</sup>

(d) Recruitment and Training

882. The recruitment of personnel in the military security service was subject to general and specific conditions.<sup>1784</sup> The criteria had to do with the applicants' abilities, personal qualities and membership in the former JNA (Yugoslav People's Army).<sup>1785</sup> Nevertheless, these criteria were difficult to respect in the recruitment process<sup>1786</sup> since the absence of a unified database covering the territory of Bosnia and Herzegovina affected the possibility of verifying the level of the applicants' skills and training.<sup>1787</sup> In addition, even when this information was available, it was difficult to find enough competent men to turn them into military police.<sup>1788</sup> Finally, the recruited men's lack of skills had a harmful effect on discipline in the military police units<sup>1789</sup> that took the form of an increase in criminality within their own ranks.<sup>1790</sup>

883. Training the military police was the responsibility of the military security section within the army corps and the assistant commanders for security within each brigade.<sup>1791</sup> Training organised for the military police included instruction in the missions to be carried out, actions to take and

<sup>1777</sup> See DH 161.4; DH 161.13.

<sup>1778</sup> Zaim Muzejinović, T(F) p. 17421.

<sup>1779</sup> Zaim Muzejinović, T(E) pp. 17417-17418.

<sup>1780</sup> Zaim Muzejinović, T(F) pp. 17420-17421; DH 161.4; DH 161.13.

<sup>1781</sup> Zaim Muzejinović, T(F) p. 17423.

<sup>1782</sup> DH 161.4; DH 161.13.

<sup>1783</sup> Semir Šarić, T(F) p. 17311.

<sup>1784</sup> DH 2084.

<sup>1785</sup> DH 2084.

<sup>1786</sup> Zaim Muzejinović, T(F) pp. 17434-17435.

<sup>1787</sup> Zaim Muzejinović, T(F) p. 17436.

<sup>1788</sup> Zaim Muzejinović, T(F) p. 17436.

<sup>1789</sup> Zaim Muzejinović, T(E) p. 17446.

<sup>1790</sup> Zaim Muzejinović, T(F) p. 17444; DH 1002.

<sup>1791</sup> Witness HF, T(F) p. 17154; Edib Zlotrg, T(F) p. 14979.

fitness training.<sup>1792</sup> This training also included instruction on respect for the Geneva Conventions and obligations stemming from the laws of war.<sup>1793</sup> The 3<sup>rd</sup> Corps Command drew the units' attention to the need to respect the principle of legality and the norms of military police conduct.<sup>1794</sup> In the field of forensic activities, cooperation was in place with the Security Centre in Zenica whereby members of the military police were sent to the Criminology Department to be trained in this area.<sup>1795</sup>

(e) Difficulties Encountered by the Military Police

884. The military police units suffered from a lack of sufficiently qualified manpower. Their numbers were insufficient,<sup>1796</sup> all the more so because the intense combat meant that military police units were often engaged on the front and could not carry out the tasks that were their formal responsibility.<sup>1797</sup> Likewise, the personnel making up the military police was not sufficiently qualified<sup>1798</sup> and there were very few military police with prior training in this field of activity.<sup>1799</sup>

885. The military police also lacked equipment, particularly that needed for crime investigation.<sup>1800</sup> The shortage of fuel affected the military police's ability to go to crime scenes and carry out an investigation.<sup>1801</sup> This shortage meant that the military police would sometimes reach the site with delay and not find any material proof to support their investigation.<sup>1802</sup>

886. The military police faced problems that were compounded by the context in which they had to work. First, there was the problem of the influx of refugees from different parts of Bosnia and Herzegovina who often wore uniforms without insignia, making it difficult for the military police to control the situation. For example, Zenica ordinarily had 100,000 inhabitants but, at the time, accommodated 50,000 refugees.<sup>1803</sup> Second, a large number of houses and buildings had been

<sup>1792</sup> Osman Menković, T(F) p. 14670.

<sup>1793</sup> Zaim Muzejinović, T(E) p. 17447; DH 160.5; Osman Menković, T(F) p. 14671.

<sup>1794</sup> Zaim Muzejinović, T(E) pp. 17446-17450;

<sup>1795</sup> Zaim Muzejinović, T(E) pp. 17447-17448; DH 160.6.

<sup>1796</sup> Asim Delalić, T(F) p. 16371.

<sup>1797</sup> Sead Žerić, T(F) p. 5546.

<sup>1798</sup> Semir Šarić, T(F) p. 17314; Zaim Muzejinović, T(F) p. 17424; Osman Menković, T(F) p. 14670; Režib Begić, T(E) p. 12499.

<sup>1799</sup> Semir Šarić, T(F) p. 17314; Zaim Muzejinović, T(F) p. 17424; Izet Mahir, T(F) p. 16783.

<sup>1800</sup> Semir Šarić, T(F) p. 17315; Režib Begić, T(E) p. 12499.

<sup>1801</sup> Semir Šarić, T(F) p. 17315; Režib Begić, T(E) p. 12499.

<sup>1802</sup> DH 155.3.

<sup>1803</sup> Semir Šarić, T(F) pp. 17315-17316.



abandoned after combat and there were not enough military police to protect the property from being plundered.<sup>1804</sup>

## 2. Relationship with the Civilian Police and Civilian Protection

### (a) Relationship with the Civilian Police

887. No hierarchy existed between the military and civilian police.<sup>1805</sup> The relationship between them was that of partners ensuring respect for the law and implementation of the law.<sup>1806</sup> It could happen, however, that the civilian police were re-subordinated to the military police for specific missions when they did not have sufficient manpower. Thus, following an order from 3<sup>rd</sup> Corps Command dated 18 June 1993, MUP units were re-subordinated to the 306<sup>th</sup> Brigade to carry out joint patrols and set up check-points with military police units subordinated to the 306<sup>th</sup> Brigade in order to prevent plundering and arson.<sup>1807</sup>

888. Cooperation between the civilian and military police generally involved investigations and crime prevention. Thus, in the investigation following a crime, the military police cooperated directly with the MUP when a civilian committed a crime that was within the jurisdiction of district military courts or when a civilian was involved in criminal activity along with a member of the military. The military police could act independently, however, when a member of the ABiH committed a crime falling within the jurisdiction of the district military courts.<sup>1808</sup>

889. In addition, joint actions were undertaken by the two police forces in order to prevent crimes and violations of the law and public order. This included joint patrols and setting up joint check-points.<sup>1809</sup> To give an example, owing to the large number of men wearing uniforms but not belonging to military formations, 3<sup>rd</sup> Corps Command ordered that patrols composed of members of the MUP and military police were to check identities in the town of Zenica.<sup>1810</sup> Likewise, the military police lacked manpower to secure places that were primarily uninhabited and protect the property belonging to civilians. With the cooperation of the civilian police, military police units set up check-points and went on patrols.<sup>1811</sup> For example, during August 1993, the 3<sup>rd</sup> Corps Military

<sup>1804</sup> Asim Delalić, T(F) p. 16373; Osman Menković, T(F) p. 14685.

<sup>1805</sup> Semir Šarić, T(F) p. 17314; Zaim Muzejinović, T(F) p. 17450.

<sup>1806</sup> Zaim Muzejinović, T(F) p. 17450.

<sup>1807</sup> P 204; Asim Delalić, T(F) pp. 16372 and 16401.

<sup>1808</sup> Semir Šarić, T(E), pp. 17306-17307; T(F) pp. 17314 and 17352; Zaim Muzejinović, T(F) p. 17451; P 328, para. 2.

<sup>1809</sup> Zaim Muzejinović, T(F) pp. 17451; DH 881; DH 161.7; P 204.

<sup>1810</sup> DH 746; Zaim Muzejinović, T(F) pp. 17451-17452.

<sup>1811</sup> Osman Menković, T(F) pp. 14685-14686.

Police Battalion in cooperation with the MUP checked 1,500 vehicles at check-points and during joint patrols.<sup>1812</sup>

890. There was continuous cooperation between the military police and the civilian police. Owing to their respective authority and their materials, the effectiveness of their actions required cooperation in different areas.<sup>1813</sup> On the one hand, the military police lacked forensic equipment to conduct on-site investigations when crimes had been committed. But the Security Service Centre in Zenica had the necessary materials to take fingerprints at crime scenes, and make ballistics analyses and paraffin tests.<sup>1814</sup> Thus, owing to a shortage of equipment to carry out certain operations during investigations, the OG *Bosanska Krajina* Military Police Company had to cooperate with the public security stations in Travnik.<sup>1815</sup> On the other hand, authorised military police had the right to use data and information from MUP criminal reports when carrying out their own criminal investigations.<sup>1816</sup> Finally, owing to the respective areas of competence of the military police and the civilian police regarding the perpetrators of the crimes, cooperation between them was necessary to verify the identification of those who had broken the law and take measures against them.<sup>1817</sup>

(b) Relationship with the Civilian Protection

891. The role of the Civilian Protection was to provide protection for persons, and for private and cultural property in times of accidents, natural disasters, wars or imminent threat of war. The main task of the Civilian Protection was to guarantee security,<sup>1818</sup> and it was in this area that cooperation was established between the Civilian Protection and the military police. Thus, the Civilian Protection and the military police acted jointly to secure towns and villages after combat operations. Normally the role of providing security was the responsibility of the Civilian Protection, but since it did not have any weapons, the military police lent their assistance to carry out this task.<sup>1819</sup> Furthermore, the Civilian Protection had the duty of making written reports to the military units in their sector to inform them of the tasks they were carrying out.<sup>1820</sup> Thus, following information

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<sup>1812</sup> DH 155.3; *See* P 187.

<sup>1813</sup> Zaim Muzejinović, T(F) pp. 17457-17458.

<sup>1814</sup> Zaim Muzejinović, T(F) p. 17458; Semir Sarić, T(F) p. 17314; Izet Mahir, T(F) p. 16789; Režib Begić, T(E) p. 12499.

<sup>1815</sup> Osman Menković, T(F) p. 14675.

<sup>1816</sup> P 328, para. 73.

<sup>1817</sup> Zaim Muzejinović, T(F) pp. 17458-17459.

<sup>1818</sup> Mustafa Hočkić, T(F) p. 11599; Samir Konjalić, T(F) p. 12757; Mirsad Mesić, T(F) p. 12841

<sup>1819</sup> Osman Menković, T(E) pp. 14685, 14726 and 14727.

<sup>1820</sup> Mustafa Hočkić, T(F) p. 11630.

from the Civilian Protection that certain buildings had been set on fire in Guča Gora,<sup>1821</sup> the 306<sup>th</sup> Brigade military police took depositions and statements in order to prevent arson.<sup>1822</sup>

### 3. Investigation Results

892. The commission of an offence could be brought to the attention of military police units by the victims, by witnesses or by observations made by the police.<sup>1823</sup> When an offence was committed that fell within the jurisdiction of the district military courts, the authorised military police had to gather the necessary information on the offence and perpetrator and make a report<sup>1824</sup> which was to be sent to the district military prosecutors with information on the evidence found and the measures and actions undertaken.<sup>1825</sup> The criminal report had to include information on the perpetrator, the place and date of the offence, a description of the facts, the evidence and the identity of the witnesses or persons who could provide information on the offence or perpetrator.<sup>1826</sup>

893. When a military police unit was informed that an offence had been committed, it also sent a report to the commander of the brigade to which it was attached. Military police units carried out investigations, particularly when members of the ABiH abandoned their positions, sold weapons or committed robberies. Following this, the brigade commander took disciplinary measures against the perpetrators of those offences.<sup>1827</sup>

894. The territorial jurisdiction of the military police units was determined by the place where the crime was committed. When an offence was committed in a brigade's zone of responsibility, the brigade's military police secured the crime scene.<sup>1828</sup>

895. The military police had trouble properly carrying out their investigations and gathering information on the perpetrators. Problems related to poor communications or the fact that the military police could not go to a crime scene promptly because of a shortage of fuel or men, had repercussions on how fast the military police intervened to collect information or evidence about an offence.<sup>1829</sup> Furthermore, when fires were set close to combat operations in abandoned or empty

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<sup>1821</sup> Asim Delalić, T(F) pp. 16375 and 16380; DH 1411.

<sup>1822</sup> Asim Delalić, T(F) p. 16375.

<sup>1823</sup> Osman Menković, T(F) p. 14683.

<sup>1824</sup> P 328, para. 50; Osman Menković, T(F) pp. 14704-14705.

<sup>1825</sup> P 328, para. 67.

<sup>1826</sup> P 328, para. 69; *See* DH 972, DH 283, DH 1127, DH 1289, DH 1432, DH 1452, DH 1453, DH 1477, DH 1481, DH 1553, DH 121, DH 118, DH 1994, DH 1995, DH 788.

<sup>1827</sup> Witness HB, T(F) pp. 12584-12585.

<sup>1828</sup> Zaim Muzejinović, T(F) p. 17419.

<sup>1829</sup> Zaim Muzejinović, T(F) p. 17469; Haris Jusić, T(F) p. 11228.

buildings,<sup>1830</sup> it was difficult to determine whether the fires were the result of criminal activity or combat.<sup>1831</sup> In addition, fires generally broke out at night when the military police were unable to verify the situation.<sup>1832</sup> Lastly, owing to the influx of refugees, it was difficult for the military police to establish the identity or place of residence of some suspects or witnesses.<sup>1833</sup>

896. Witnesses who were members of the ABiH military police nonetheless testified that in spite of the difficulties the military units had to deal with – shortages of manpower and appropriate materiel or owing to special incidents on the ground – the units took numerous measures to identify the perpetrators of unlawful acts, recover stolen property and find evidence to make their reports to the district military prosecutors.<sup>1834</sup> According to Witness Semir Šarić, the military police were able to identify a very high percentage of perpetrators.<sup>1835</sup>

897. The military police units filed numerous criminal complaints with the military prosecutors for offences committed by members of the ABiH, HVO or civilians. The 3<sup>rd</sup> Corps Military Police Battalion was responsible for filing most of the complaints with the district military prosecutors.<sup>1836</sup> From 14 September 1992 to 1 March 1994, the 3<sup>rd</sup> Corps Military Police Battalion filed 377 criminal reports involving 804 identified and 20 unidentified persons.<sup>1837</sup> The 17<sup>th</sup> Brigade filed some 30 complaints for crimes committed by its members.<sup>1838</sup>

898. The complaints covered different offences, ranging from theft, aggravated theft, usurpation of identity, manslaughter, murder, rape, insubordination, falsification of official documents, abuse of power, fraud or desertion.<sup>1839</sup> The complaints received by the Military Prosecutor's Office in Travnik were essentially crimes against the armed forces but also crimes against property and persons (murder).<sup>1840</sup> According to Witness Sead Žerić, the District Military Prosecutor's office in Travnik did not receive any reports from the ABiH regarding arson, war crimes or crimes against humanity committed by its soldiers or on ABiH soldiers mistreating prisoners. Witness Sead Žerić

<sup>1830</sup> Osman Menković, T(F) p. 14684.

<sup>1831</sup> Osman Menković, T(E) p. 14684.

<sup>1832</sup> Asim Delalić, T(F) p. 16375.

<sup>1833</sup> Vlado Adamović, T(F) p. 9524.

<sup>1834</sup> Zaim Muzejinović, T(F) pp. 17484-17485; Asim Delalić, T(F) pp. 16374-16375.

<sup>1835</sup> Semir Šarić, T(F) p. 17319.

<sup>1836</sup> Mladen Veseljak, T(E) p. 16121.

<sup>1837</sup> DH 155.2.

<sup>1838</sup> Fikret Čuskić, T(F) p. 12093. The dates these complaints were filed have not been identified.

<sup>1839</sup> DH 155.2.

<sup>1840</sup> Sead Žerić, T(F) p. 5522. According to Witness Sead Žerić, 99% of the accused were members of the ABiH, Sead Žerić, T(F) p. 5523.

explained, *inter alia*, that a limited number of reports concerned the murder of Croats or HVO soldiers by ABiH soldiers.<sup>1841</sup>

899. It did happen, however, that following investigations by military police units, no complaint was filed with the district military prosecutors but that disciplinary measures were taken instead by the commander of the brigade to which the offender belonged. The follow-up to these investigations might depend on the gravity of the offence or the situation on the ground. Thus, according to Witness Osman Menković, minor offences resulted in disciplinary measures taken by the brigade commander, while more serious crimes were the subject of a report filed by the military police with the military prosecutor.<sup>1842</sup> Furthermore, owing to the Travnik District Military Court's lack of efficiency and difficult communications with Travnik caused by combat, the 306<sup>th</sup> Brigade military police undertook disciplinary measures more often than it filed complaints with the District Military Prosecutor in Travnik.<sup>1843</sup>

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<sup>1841</sup> Sead Žerić, T(F) pp. 5524-5526.

<sup>1842</sup> Osman Menković, T(F) p. 14705.

<sup>1843</sup> Asim Delalić, T(F) pp. 16374, 16375, 16399 and 16400.

### C. Military and Civilian Justice

900. The Chamber considers it appropriate at this stage to use the evidence to describe the operations of the judicial institutions in Central Bosnia during the period material to the Indictment in order to assess the mechanism of the measures available to the Accused to prevent and punish unlawful actions by members of the ABiH, and to analyse the method followed by the Prosecution to discharge its burden to prove that no measures were undertaken.

901. By decision of the Presidency of the Republic of Bosnia and Herzegovina, district military courts were created in late 1992 primarily to try the unlawful actions of members of the ABiH.<sup>1844</sup> At the same time, the Croatian Community of Herceg-Bosna put in place a parallel system of military courts.<sup>1845</sup> Originally, the military court and its military prosecutor were installed in Travnik. Then, as of June 1993, these institutions had their headquarters in Vitez and operated in the zones controlled by the HVO.<sup>1846</sup>

902. The creation of military disciplinary courts to try disciplinary offences by all soldiers including those with the rank of officer (or higher rank) for dishonourable conduct was planned in 1992 by the Presidency of Bosnia and Herzegovina and put in place within the 3<sup>rd</sup> Corps in May 1993.<sup>1847</sup>

903. At the same time, the Presidency of Bosnia and Herzegovina adopted a decree-law to set up special military courts that could be put in place by order of the commander of a brigade or a higher rank to punish army members who committed offences linked to the performance of their duties. These courts were to be established when the situation did not allow the case to be handed over to the appropriate district military court and the gravity of the act necessitated that proceedings be instigated immediately.<sup>1848</sup>

<sup>1844</sup> See P 327 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992, amended by DH 1703 (Decree with Law Force on Amendments to the Decree with Law Force on District Military Courts), *Official Gazette of the RBiH* no. 23 dated 24 December 1992); see also Vlado Adamović, T(F) pp. 9943-9945; and Mladen Veseljak, T(E) p. 15985. Nevertheless, as will be noted later on, these courts had the authority to try civilians in certain limited cases, as well as actions by HVO soldiers or prisoners of war (See P 327, Art. 11 and DH 444, (Regulation Act as Statutory Provision on Amending the Regulation Statutory Act on Armed Forces of Republic of Bosnia-Herzegovina, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Art. 1).

<sup>1845</sup> Sulejman Kapetanović, T(E) pp. 3816-3817; Sead Žerić, T(E) p. 5534.

<sup>1846</sup> Sulejman Kapetanović, T(E) pp. 3816-3817 and p. 3839; Sead Žerić, T(E), p. 5534.

<sup>1847</sup> P 325 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 44, 45 and 46 and 8 and P 335; DH 158.5, DH 158.8 and P 549.

<sup>1848</sup> See P 325 (Decree-Law on Special Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992).

904. It should also be noted that the brigade commanders and 3<sup>rd</sup> Corps Command punished soldiers' misconduct by disciplinary sanctions.<sup>1849</sup>

905. In addition, during the period material to the Indictment, the civilian courts of Central Bosnia continued their activities in spite of combat.<sup>1850</sup>

906. Finally, with regard to the period material to the Indictment, both military and civilian courts operated according to continental law.<sup>1851</sup>

## 1. Different Military Judicial Authorities in Central Bosnia

### (a) Zenica and Travnik District Military Courts

907. Two military courts were established in Central Bosnia in 1992 for the duration of the war, primarily to try unlawful acts by members of the ABiH: the Zenica District Military Court<sup>1852</sup> and the Travnik District Military Court.<sup>1853</sup> The Zenica District Military Court with its seat in Zenica was established by the Decree-law Law on District Military Courts adopted by the Presidency of the Republic of Bosnia and Herzegovina.<sup>1854</sup> The Travnik Court with its seat in Travnik was created by an amendment to the Decree-Law on the Establishment and Work of Districts passed on 7 October 1992.<sup>1855</sup> The Travnik District Military Prosecutor's Office and the Zenica District Military Prosecutor's Office were established along the same lines as the organisation of the district military courts.<sup>1856</sup> These courts were operational throughout the war and their activities ended in 1996.<sup>1857</sup> The district military prosecutors' offices were dissolved earlier the same year.<sup>1858</sup>

<sup>1849</sup> Sead Žarić, T(E) p. 16267; Hilmo Ahmetović, T(E) p. 16267.

<sup>1850</sup> Ragib Hadžić, T(E), p. 15083.

<sup>1851</sup> Vlado Adamović, T(E) p. 9469.

<sup>1852</sup> The Chamber notes that the transcript in French often uses the term "tribunal militaire" (military tribunal) for "*military court*". For the sake of clarity, the Chamber prefers the translation "cour militaire" (military court).

<sup>1853</sup> We will refer to the Zenica District Military Court and the Travnik District Military Court under the common name "district military courts".

<sup>1854</sup> P 327 (Decree-Law on District Military Courts, *Official Gazette of the R BiH*, no. 12 dated 13 August 1992).

<sup>1855</sup> See DH 445 (Decree-Law on the Forming and Work of Districts, *Official Gazette of the R BiH*, no. 12 dated 13 August 1992); DH 477 (Decree-Law on Amendments to the Decree-Law on the Establishment and Work of Districts, *Official Gazette of the R BiH*, no.18 dated 7 October 1992); P 327.

<sup>1856</sup> P 325 (Decree Having the Force of Law on the District Military Prosecutor's Office, *Official Gazette of the R BiH*, no. 12 dated 13 August 1992) and DH 116 (Decree Having the Force of Law on Amendment on the District Military Prosecutor's Office, *Official Gazette of the R BiH*, no. 21 dated 23 November 1992). We will refer to the Zenica District Military Prosecutor and the Travnik District Military Prosecutor under the joint name "district military prosecutors".

<sup>1857</sup> Sulejman Kapetanović, T(F) p. 3829.

<sup>1858</sup> Sead Žerić, T(F) p. 5527.

908. Parallel military courts in the areas controlled by the HVO operated in the municipalities of Vitez, Busovača, Novi Travnik, Kiseljak,<sup>1859</sup> in part of Gornji Vakuf and in the municipality of Žepče.<sup>1860</sup>

(i) Ratione Personae and Ratione Loci Jurisdiction of the District Military Courts and District Military Prosecutors

a. Ratione Personae Jurisdiction

909. District military courts were established primarily to try offences committed by military personnel.<sup>1861</sup> They also had the jurisdiction to try civilians employed in the ABiH for offences committed in the performance of their duties and for taking part in an offence whose co-perpetrators were members of the ABiH. They could judge civilians who were not employed by the ABiH but who had committed offences pursuant to Article 7 of the Decree-Law on District Military Courts.<sup>1862</sup> Cases involving civilians submitted to the district military courts were most often the refusal to respond to a mobilisation call-up.<sup>1863</sup> According to witnesses heard by the Chamber, however, the number of cases tried by these courts involving civilians was negligible.<sup>1864</sup> It should likewise be noted that the district military courts had the jurisdiction to try HVO members<sup>1865</sup> and all prisoners of war.<sup>1866</sup>

910. In addition, according to witness testimony, Croatian refugees filed criminal complaints before the Travnik Military Court seated in Vitez operating as a parallel court serving the Croatian Community of Central Bosnia. The complaints were against some of the actions by ABiH soldiers in the territories they controlled.<sup>1867</sup>

<sup>1859</sup> Kruno Rajić, T(F) p. 1850; DK 6, p. 5.

<sup>1860</sup> Sulejman Kapetanović, T(E) p. 3840.

<sup>1861</sup> P 327, Art. 6 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992).

<sup>1862</sup> P 327, Art. 7 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992).

<sup>1863</sup> Vlado Adamović (T(E) p. 9445 and p. 9451); P 327, Art. 6 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992, citing Article 214 of the SFRY Criminal Code).

<sup>1864</sup> Vlado Adamović, T(E) p. 16185; Sead Žerić, T(F) p. 5525.

<sup>1865</sup> DH 444 (Regulation Act as Statutory Provision on Amending the Regulation Statutory Act on Armed Forces of Republic of Bosnia-Herzegovina, *Official Gazette of the RBiH* no. 12 dated 13 August 1992), Art. 1.

<sup>1866</sup> P 327, Art. 11 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992).

<sup>1867</sup> Hilmo Ahmetović, T(E) p. 16190, pp. 16268-16270; Sulejman Kapetanović, T(E) pp. 3816-3817; Kruno Rajić, T(F) p. 1850; DK 6, p. 5.



b. Ratione Loci Jurisdiction

911. The territorial jurisdiction of the Zenica District Military Court and the Zenica District Military Prosecutor's Office initially included the municipalities of Kakanj, Zavidovići, Zenica and Žepče.<sup>1868</sup> Following the siege of Sarajevo and during the period material to the Indictment, it extended to the municipalities of Visoko, Breza, Vareš, Olovo and part of the municipality of Busovača.<sup>1869</sup>

912. The territorial jurisdiction of the Travnik District Military Court and the Travnik District Military Prosecutor's Office included the municipalities of Bugojno, Busovača, Donji Vakuf, Jajce, Novi Travnik, Travnik and Vitez.<sup>1870</sup> Owing to combat, however, their jurisdiction changed slightly because the Travnik District Military Court and the Travnik District Military Prosecutor's Office could not conduct investigations in the municipalities of Jajce, Novi Travnik, Vitez and part of Busovača. With the exception of Jajce, a military judicial system had been put in place in these municipalities by the Croatian Community of Herceg-Bosna.<sup>1871</sup>

(ii) Establishment, Composition and Closure of the Zenica District Military Court and the Zenica District Military Prosecutor's Office

913. The Zenica District Military Court and the Zenica District Military Prosecutor's Office were located in the centre of Zenica on different floors of the same building.<sup>1872</sup> These judicial authorities were guarded by the military police.<sup>1873</sup> The building was located close to the Music School.<sup>1874</sup> Three of the eight judges appointed to the court appeared as witnesses before the Chamber.<sup>1875</sup> Conversely, no member of the Zenica District Military Prosecutor's Office testified before the Chamber.

<sup>1868</sup> See P 771; DH 445 (Decree-Law on the Forming and Work of Districts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992); DH 477 (Decree-Law on Amendments to the Decree-Law on the Establishment and Work of Districts, *Official Gazette of the RBiH*, no. 18 dated 7 October 1992); P 327.

<sup>1869</sup> P 771; Hilmo Ahmetović, T(F) p. 16254. It should be noted that due to combat and the front line, investigations could not be conducted in certain municipalities. See Sead Žerić T(E), p. 5534.

<sup>1870</sup> P 772; DH 445 (Decree-Law on the Forming and Work of Districts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992); DH 477 (Decree-Law on Amendments to the Decree-Law on the Establishment and Work of Districts, *Official Gazette of the RBiH*, no. 18 dated 7 October 1992); P 327. It should be noted that due to combat and the front line, investigations could not be conducted in certain municipalities. (See Sead Žerić T(E), p. 5534).

<sup>1871</sup> Sulejman Kapetanović, T(E) p. 3840.

<sup>1872</sup> Vlado Adamović, T(E) p. 9579.

<sup>1873</sup> Vlado Adamović, T(E) p. 9592.

<sup>1874</sup> Vlado Adamović, T(E) p. 9480.

<sup>1875</sup> Vlado Adamović testified on 24 and 25 June 2004, T(F) pp. 9440-9630, Mladen Veseljak on 14 and 15 February 2005, T(F) pp. 16052-16069 and Hilmo Ahmetović on 16 and 17 February 2005, T(F) pp. 16153-16325. The other judges who were members of this court were Zahid Kovač (president), Mirsad Strika, Hidajet Halilović, Muhamed Čolaković, Armin Zečo and Atko Huseinbašić. See P 771.

914. Following the instructions of the Federal Ministry of Justice in Sarajevo, in 1996 the archives of the Zenica District Military Court and the Zenica District Military Prosecutor's Office were transferred respectively to the Zenica Cantonal Court (formerly the "High Court of Zenica") and the Zenica Cantonal Public Prosecutor's Office.<sup>1876</sup>

(iii) Establishment, Composition and Closure of the Travnik District Military Court and the Travnik District Military Prosecutor's Office

915. The Travnik District Military Court and the Travnik District Military Prosecutor's Office were located in the town of Travnik and seem to have occupied the same premises approximately 200 metres from the former JNA Barracks.<sup>1877</sup> None of the judges from this court was called to testify before the Chamber,<sup>1878</sup> although the former deputy prosecutor, Sead Žerić, appeared as a witness for the Prosecution.<sup>1879</sup>

916. At the end of the war, complying with the same instructions as the military judicial authorities in Zenica, those in Travnik transferred their archives respectively to the Travnik Cantonal Court and the Travnik Cantonal Public Prosecutor's Office.<sup>1880</sup>

917. It is difficult to know exactly what happened to the archives of the Travnik District Military Court seated in Vitez that had been created by the Croatian Community of Herceg-Bosna. The judicial institutions that received the archives of the district military courts and the district military prosecutors after the conflict do not know what happened to the archives of the Vitez District Military Court or of the Vitez District Military Prosecutor's Office.<sup>1881</sup> Nevertheless, according to Witness Sulejman Kapetanović, after cantons were established in 1996, the courts operating in the zones controlled by the HVO and those operating in the municipalities of Travnik and Zenica exchanged some case files and indictments.<sup>1882</sup>

<sup>1876</sup> P 771; Sulejman Kapetanović, T(E) p. 3828; Ragib Hadžić, T(F) p. 15091.

<sup>1877</sup> Sead Žerić, T(E) p. 5636.

<sup>1878</sup> The lawyers who held positions as judges at the Travnik District Military Court were Jasmin Điko (president), Darmin Avdić, Bekir Ferizović, Senad Dautović, Irsan Kukić and Ibrahim Ramčić. *See* P 773.

<sup>1879</sup> Sead Žerić testified before the Chamber on 5 and 6 April 2004, T(E) pp. 5513-5639.

<sup>1880</sup> P 773.

<sup>1881</sup> P 774.

<sup>1882</sup> Sulejman Kapetanović, T(E) p. 3816.

(iv) Proceedings before the District Military Courtsa. Filing Criminal Reports with the District Military Prosecutors

918. Upon receiving a criminal report, the Zenica or Travnik District Military Prosecutor instituted proceedings and conducted the pre-trial phase as *dominus litis*.<sup>1883</sup> He was the only authority who could determine whether there were grounds to believe that a crime had been committed pursuant to the evidence gathered after the criminal report was filed and could decide to initiate criminal proceedings.<sup>1884</sup> He also had the power to drop the charges if he considered that the act did not constitute a crime or if there were other circumstances that precluded prosecution.<sup>1885</sup> In addition, the prosecutor could decide not to prosecute if there were no indicia that a crime had been committed.<sup>1886</sup> If he decided to undertake proceedings, he submitted a request for a preliminary examination to the investigating judge.<sup>1887</sup> Without such a request, the investigating judge did not have the authority to act.<sup>1888</sup>

919. Criminal reports or complaints submitted to district military prosecutors could come from the following sources: the military police, the civilian police, civilians or members of ABiH brigade commands (or of a higher rank). It should be noted, however, that the number of criminal reports filed by organs other than the Military Police Battalion was negligible.<sup>1889</sup>

i. Criminal Reports from the ABiH Military Police and Security Service

920. The military police were responsible for identifying the perpetrators of criminal offences within the ABiH (or the HVO) and were the organ which filed most of the reports on criminal actions by members of the ABiH.<sup>1890</sup> The ABiH internal military security organs also submitted criminal reports to the district military prosecutors.<sup>1891</sup>

<sup>1883</sup> P 325 (Decree Having the Force of Law on the District Military Prosecutor's Office, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 2 and 5; Mladen Veseljak, T(E) p. 15991; Hilmo Ahmetović, T(E) p. 16170; DH 337 (Law on Criminal Procedure of the SFRY adopted by RBiH by decree-law on 11 April 1992, *Official Gazette 2/92*; see DH 390), see Chapter IV (The Public Prosecutor) and Articles 17 and 18 (on initiating proceedings).

<sup>1884</sup> Mladen Veseljak, T(F), p. 15992; DH 337, Art. 153, para. 1.

<sup>1885</sup> DH 337, Art. 153, para. 1.

<sup>1886</sup> DH 337, Art. 18.

<sup>1887</sup> Hilmo Ahmetović, T(E) p. 16164; DH 337, Art. 158.

<sup>1888</sup> Hilmo Ahmetović, T(E), p. 16164, Vlado Adamović, T(E), p. 9472; DH 337, Art. 158.

<sup>1889</sup> Mladen Veseljak, T(E) p. 16121.

<sup>1890</sup> Vlado Adamović, T(F) pp. 9467-9468; Mladen Veseljak, T(E) p. 16121; P 328 (Rules of Service for the Military Police of the Armed Forces of the Republic of Bosnia-Herzegovina), Art. 1.

<sup>1891</sup> See P 244, Art. 41 (Rules of Operation for the Military Security Service in the Armed Forces of the Republic of Bosnia and Herzegovina); P 774.

ii. Criminal Reports from the Civilian Police

921. The civilian police or Public Security Centre (CSB) could also submit reports to the district military prosecutors.<sup>1892</sup> Furthermore, according to witness Vlado Adamović, the military police and the civilian police were on an equal footing with regard to the filing of criminal reports with the district military prosecutors.<sup>1893</sup> The civilian police were under the CSB, which in turn was under the Ministry of the Interior (MUP).<sup>1894</sup>

iii. Complaints or Reports Filed by Civilians

922. Pursuant to the law in Bosnia and Herzegovina at the time, every citizen had the duty to report all unlawful actions to the judicial authorities.<sup>1895</sup> Furthermore, when there was a *partie civile*, civilians could file complaints with the prosecutor.<sup>1896</sup> In the present case, there were instances when civilians went to the district military courts to report criminal acts.<sup>1897</sup> The investigating judge would tell them to report the incidents to the district military prosecutors' offices that registered the complaints and asked the police to investigate the allegations to check their veracity.<sup>1898</sup>

iv. Reports from the ABiH Command

923. The Decree-Law on District Military Courts required the commander of a military unit to inform his superior or the district military prosecutor of any criminal activity.<sup>1899</sup>

924. In practice, according to Witness Vlado Adamović, if people were killed outside of combat action or if illegal actions were committed during combat, these actions and incidents were documented in an ABiH file which was then transmitted to the military prosecutor for his further action.<sup>1900</sup> According to the same witness, commanders reported suspected criminal acts to the military police who transmitted the file to the district military prosecutors.<sup>1901</sup> Witness Mladen

<sup>1892</sup> Vlado Adamović, T(F) pp. 9551-9553.

<sup>1893</sup> Vlado Adamović, T(F) p. 9552.

<sup>1894</sup> Vlado Adamović, T(F) p. 9552.

<sup>1895</sup> DH 337, Articles 148-150; Mladen Veseljak, T(E) p. 16075; *see also Aleksovski Trial Judgement*, paras. 91 and 136.

<sup>1896</sup> DH 337, Art. 17(2) and Articles 52-66.

<sup>1897</sup> *See* DH 337, Art. 149.

<sup>1898</sup> Vlado Adamović, T(E) pp. 9470-9471.

<sup>1899</sup> P 327 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 27 and 148.

<sup>1900</sup> Vlado Adamović, T(F) pp. 9487-9489.

<sup>1901</sup> Vlado Adamović, T(E) pp. 9490-9492.

Veseljak also explained this internal ABiH procedure which was to verify whether there were reasons to believe that an offence had been committed, and if so, to pass on the results of the internal investigation to the district military prosecutors.<sup>1902</sup> With regard to this procedure, Witness Hilmo Ahmetović confirmed that unit commanders submitted reports on the actions of their brigade members to the military prosecutor, expressly referring to the commands of the 309<sup>th</sup> Brigade and the 7<sup>th</sup> Brigade.<sup>1903</sup>

b. Investigations of the Investigating Judge

925. Once the prosecutor submitted a request to the investigating judge for a preliminary investigation pursuant to Chapter 16 of the Republic of Bosnia and Herzegovina Law on Criminal Procedure, the investigating judge carried out the complete investigation independently.<sup>1904</sup> It was his duty to examine the evidence and submit a report to the prosecutor.<sup>1905</sup> The report was usually sent to the police as well.<sup>1906</sup>

926. To do so, the investigating judge could go to the crime scene or to locations relevant to the investigation.<sup>1907</sup> He could order photographs to be taken and other examinations made, such as a paraffin test<sup>1908</sup> or an autopsy<sup>1909</sup> or any other measure to facilitate the investigation.<sup>1910</sup> He alone had the power to question witnesses or suspects.<sup>1911</sup> Thus, no actions could be undertaken other than those prescribed by the judge.<sup>1912</sup> Furthermore, if any other judicial authority questioned witnesses during the investigation, their statements were removed from the case file.<sup>1913</sup>

927. The military police and the civilian police carried out all the investigating judge's requests or orders.<sup>1914</sup> In general, the investigating judge called upon the military police or the 3<sup>rd</sup> Corps Military Police Battalion for all transport to the crime scene<sup>1915</sup> and the military police secured the

<sup>1902</sup> Mladen Veseljak, T(F) p. 16051 and T(E) p. 16076.

<sup>1903</sup> Hilmo Ahmetović, T(E) p. 16263.

<sup>1904</sup> DH 337, Articles 157-181; Mladen Veseljak, T(E) p. 15995.

<sup>1905</sup> Mladen Veseljak, T(E) p. 15995; DH 337, Art. 174.

<sup>1906</sup> Mladen Veseljak, T(E) p. 15995. The witness did not state whether this was the military or civilian police.

<sup>1907</sup> DH 337, Art. 238.

<sup>1908</sup> P 341.

<sup>1909</sup> DH 1638; DH 337, Articles 242, 252 and 256.

<sup>1910</sup> Ragib Hadžić, T(E), p. 15113 and pp. 15121-15122.

<sup>1911</sup> Mladen Veseljak, T(E) p. 16063; Ragib Hadžić, T(E) p. 15122.

<sup>1912</sup> Zaim Mujezinović, T(F) pp. 17411, 17540-17541; Hilmo Ahmetović, T(F) pp. 16169 and 16258.

<sup>1913</sup> Mladen Veseljak, T(E) p. 16063; DH 337, Art. 83.

<sup>1914</sup> Mladen Veseljak, T(E) pp. 15994-15995.

<sup>1915</sup> Mladen Veseljak, T(E) p. 16029; Hilmo Ahmetović, T(E) pp. 16166-16167.

territory covered by the investigation.<sup>1916</sup> The investigating judge used the services of the civilian police for expert reports because it was better equipped for this than the military police.<sup>1917</sup>

928. In practice, it might happen that the investigating judge was unable to conduct an on-site investigation because of combat, because the ABiH refused access, or because evidence from the crime scene had been destroyed or removed.<sup>1918</sup> In addition, a district military court investigating judge could not conduct investigations in territory controlled by the HVO where a parallel judicial system was in place.<sup>1919</sup>

929. It should also be noted that according to witness testimony before the Chamber, district military court investigating judges and district military prosecutors often went to the crime scene together.<sup>1920</sup>

#### c. Special Role of the Duty Judge

930. All the judges of the district military courts took one-week turns as “duty judge,” acting as investigating judge outside the working hours of the district military courts.<sup>1921</sup> The designation of the duty judge was made by decision of the president of a district military court and was communicated to the military and civilian police.<sup>1922</sup> The duty judge could conduct preliminary investigations or deal with a case directly as investigating judge.<sup>1923</sup>

#### d. Prosecutor’s Pre-Trial Case Management

931. After receiving the investigation report from the investigating judge, the Zenica District Military Prosecutor or the Travnik District Military Prosecutor was not bound by the findings of the investigating judge.<sup>1924</sup> At this phase, in view of the evidence produced, the district military prosecutors could prepare an indictment, drop the charges or file a motion for additional inquiries from the investigating judge.<sup>1925</sup> The district military prosecutors could involve the military police

<sup>1916</sup> Mladen Veseljak, T(E) p. 16029.

<sup>1917</sup> Mladen Veseljak, T(E) p. 16029.

<sup>1918</sup> Mladen Veseljak, T(E) p. 16033; DH 280; Ragib Hadžić, T(E) p. 15114.

<sup>1919</sup> Mladen Veseljak, T(E) p. 16124.

<sup>1920</sup> Vlado Adamović, T(E) p. 9623; Hilmo Ahmetović, T(E) p. 16258; P 333.

<sup>1921</sup> Vlado Adamović, T(E) p. 9614; Mladen Veseljak, T(E) p. 16022; Hilmo Ahmetović, T(E) p. 16168.

<sup>1922</sup> Mladen Veseljak, T(E) p. 16084.

<sup>1923</sup> DH 337, Art. 155 and 156.

<sup>1924</sup> Mladen Veseljak, T(E), pp. 16002; DH 337, Art. 174.

<sup>1925</sup> Mladen Veseljak, T(E) p. 15993; Hilmo Ahmetović, T(E) p. 16170; DH 337, Art. 174.

in any part of the investigation.<sup>1926</sup> Conversely, the military police could not conduct an autonomous investigation.<sup>1927</sup>

932. Once the indictment was prepared, it was sent to the Travnik District Military Court or the Zenica District Military Court along with the case file. A copy of the indictment was sent to the accused and his counsel.<sup>1928</sup>

933. If the prosecutor decided to drop the charges, he had to inform the victims.<sup>1929</sup>

e. Special Case: Direct Referral to an Investigating Judge

934. In case of an emergency, the investigating judge could be seized of a case directly, contrary to the customary procedure whereby the prosecutor, upon receipt of a criminal report, issued the investigating judge a request for an investigation.<sup>1930</sup> Article 156 of the SFRY Law on Criminal Procedure made provisions for the case when an investigating judge could launch an immediate enquiry before receiving a decision to conduct an investigation from the prosecutor, if it would be risky to postpone the investigation.<sup>1931</sup> Likewise, Article 41 of the Rules of Operation for the Military Security Service in the Armed Forces of the Republic of Bosnia and Herzegovina made provisions for the direct referral to a district military court investigating judge when there was an emergency situation.<sup>1932</sup>

935. In the context of this emergency procedure, the investigating judge could be seized only by the military or civilian police.<sup>1933</sup> He was nevertheless bound to inform the Travnik District Military Prosecutor or the Zenica District Military Prosecutor, depending on the case.<sup>1934</sup> The duty judge

<sup>1926</sup> Mladen Veseljak, T(E) p. 15092.

<sup>1927</sup> Mladen Veseljak, T(E) p. 15077.

<sup>1928</sup> Hilmo Ahmetović, T(E) p. 16172; DH 337, Articles 73 and 123.

<sup>1929</sup> Mladen Veseljak, T(E) pp. 16087-16088; DH 337, Art. 60.

<sup>1930</sup> Vlado Adamović, T(E) pp. 9520-9521 and p. 9615; Mladen Veseljak, T(E) p. 15994.

<sup>1931</sup> DH 337, Articles 155 and 156. Article 156 para. 1 provides: “The investigating judge of the competent court and the investigating judge of the lower court in whose jurisdiction the crime was committed may take certain investigatory actions whose postponement would be risky even before a decision to conduct an inquiry has been made, but the competent public prosecutor must be informed of everything that is done (emphasis added). See also, Vlado Adamović, T(E) pp. 9520-9521.

<sup>1932</sup> P 244, Art. 41 (Rules of Operation for the Military Security Service in the Armed Forces of the Republic of Bosnia and Herzegovina) “On the basis of the information gathered, officers of the military security service in the command of the brigade or a corresponding or higher ranking officer in the military security service, shall submit a criminal report to the competent military prosecutor’s office. In cases when it is necessary to carry out certain investigative actions immediately, an authorised officer of the military security service shall immediately inform the competent military prosecutor, and when necessary also the investigating judge of the military court” (emphasis added).

<sup>1933</sup> Vlado Adamović, T(E) pp. 9612-9614; Mladen Veseljak, T(E) p. 15994.

<sup>1934</sup> Vlado Adamović, T(E) p. 9521.

sent his investigation report to the Zenica District Military Prosecutor or the Travnik District Military Prosecutor who decided on the follow-up of the case.<sup>1935</sup>

(v) Independence of the District Military Courts

936. On the institutional level, district military courts were initially under the Ministry of Defence.<sup>1936</sup> As of July 1994, they were attached to the Ministry of Justice,<sup>1937</sup> although even when they were attached to the Ministry of Defence, in exercising their judicial functions they were independent of the ABiH, except for logistical matters.<sup>1938</sup> District military prosecutors enjoyed the same independence, although they depended on the Ministry of Defence for the payment of their salaries or any other question dealing with logistics.<sup>1939</sup>

937. These courts were never part of the 3<sup>rd</sup> Corps. The military security services and the 3<sup>rd</sup> Corps Military Police, however, were at the disposal of the district military courts when exercising their judicial powers.<sup>1940</sup> According to the legal experts who appeared as witnesses before the Chamber, the 3<sup>rd</sup> Corps Command did not put any pressure on the judges or military prosecutors when carrying out their functions in these judicial institutions.<sup>1941</sup> Furthermore, Enver Hadžihasanović had little contact with the judges or military prosecutors. Witness Mladen Veseljak referred to a single courtesy visit when Enver Hadžihasanović met the district military court judges and prosecutors. Likewise, Witness Vlado Adamović stated that the only time he met Enver Hadžihasanović was during a meeting organised by ECMM.<sup>1942</sup> Furthermore, once the proceedings were opened by the district military prosecutors, no other military, police or judicial institution could influence them.<sup>1943</sup> In addition, military organs did not have the power to give orders to investigating judges.<sup>1944</sup> Witness Mladen Veseljak asserted that as soon as a case was in the hands of the military courts, the military authorities did not have the right to act contrary to the instructions of the judicial authorities or to conduct parallel criminal investigations.<sup>1945</sup>

<sup>1935</sup> Mladen Veseljak, T(E) p. 15993; Hilmo Ahmetović, T(E) p. 16170.

<sup>1936</sup> Vlado Adamović, T(E) p. 9453; Hilmo Ahmetović, T(E) p. 16160.

<sup>1937</sup> Hilmo Ahmetović, T(F) 16160; Vlado Adamović, T(E) p. 9505.

<sup>1938</sup> P 327 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 2, 37 and 38; Vlado Adamović, T(E), p. 9453 and p. 9477.

<sup>1939</sup> P 325 (Decree Having the Force of Law on the District Military Prosecutor's Office, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 15, 16 and 17.

<sup>1940</sup> Mladen Veseljak, T(E) p. 15982.

<sup>1941</sup> Mladen Veseljak, T(E) p. 15982.

<sup>1942</sup> Mladen Veseljak, T(E) p. 15982; Vlado Adamović, T(E) p. 9483.

<sup>1943</sup> Mladen Veseljak, T(E) p. 15992; Hilmo Ahmetović, T(E) p. 16170.

<sup>1944</sup> Hilmo Ahmetović, T(E) p. 16166.

<sup>1945</sup> Mladen Veseljak, T(E) pp. 16077-16078.



938. The district military courts, however, submitted monthly reports on their activities to the Ministry of Defence.<sup>1946</sup> It seems that such reports were also submitted to the Corps commands.<sup>1947</sup>

(b) Military Disciplinary Courts

939. The Rules on Military Discipline set up first instance military disciplinary courts and the High Military Disciplinary Court as of 1992.<sup>1948</sup> These courts had the jurisdiction to try the “disciplinary infractions or errors” not only of all the soldiers but also those of officer (or higher) rank for all “breaches of military discipline”.<sup>1949</sup> Military disciplinary courts of first instance were set up at district territorial defence headquarters and their operations were apparently under the district territorial defence staff.<sup>1950</sup> Then these courts were to be organised by the Corps commands.<sup>1951</sup>

940. According to the exhibits tendered into evidence, setting up these courts in the 3<sup>rd</sup> Corps had been envisaged as of March 1993 in order to prosecute 3<sup>rd</sup> Corps members who had contravened military discipline.<sup>1952</sup> According to document P 303, 18 persons were proposed for the position of judge at the 3<sup>rd</sup> Corps first instance military disciplinary court.<sup>1953</sup> Jusuf Halilagić was appointed president, Ramiz Omeragić secretary, and Emina Halilović prosecutor.<sup>1954</sup>

941. The first instance military disciplinary court seems to have been established on 8 May 1993.<sup>1955</sup> The Chamber notes that according to the exhibits, this court was attached to the 3<sup>rd</sup> Corps and seems to have sat during the period material to the Indictment.<sup>1956</sup> Nevertheless, the Chamber would observe that it has very little information on the effective role of this court, since the Parties did not call any witnesses who took part in its activities.

<sup>1946</sup> DH 275.

<sup>1947</sup> Vlado Adamović, T(E) p. 9539; DH 274.

<sup>1948</sup> See P 325 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 44, 45 and 46.

<sup>1949</sup> P 325 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Articles 44, 45 and 46 and 8; P 335; DH 158.5, DH 158.8 and P 549. A disciplinary error was considered to be a minor violation of military discipline, while a disciplinary offence was a severe violation of military discipline. See P 120 (Decree-Law on Service in the Army of the Republic of Bosnia-Herzegovina, *Official Gazette of the RBiH*, no. 11 dated 1 August 1992), Art. 65, providing that: An error of discipline is a minor breach of military discipline. A disciplinary offence is a severe breach of military discipline.

<sup>1950</sup> See P 325 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Art. 46; P 694.

<sup>1951</sup> P 300; P 335.

<sup>1952</sup> P 694; P 299.

<sup>1953</sup> P 303.

<sup>1954</sup> P 303; P 326.

<sup>1955</sup> DH 158.8.

<sup>1956</sup> P 316; P 284.

(c) Special Military Courts

942. The Decree-Law on Special Military Courts made provisions for the creation of special military courts during a state of war, better known as “courts-martial.” They could be established by the commander of a brigade or a higher rank if he considered that conditions did not exist that would allow proceedings to be conducted before the competent district military court.<sup>1957</sup> These special military courts were set up for exceptional circumstances because of combat or for security reasons.<sup>1958</sup> They were intended to punish, *inter alia*, insubordination, desertion and abandoning one’s post.<sup>1959</sup>

943. An order by Enver Hadžihasanović dated 9 December 1992 set up these “courts-martial” in the brigades.<sup>1960</sup> Similarly, an order dated 8 June 1993 by Mehmed Alagić required the immediate formation of such courts within the 17<sup>th</sup>, 312<sup>th</sup> and 306<sup>th</sup> Brigades.<sup>1961</sup> In another order dated 11 June 1993, Mehmed Alagić required that the deputy commander of the 312<sup>th</sup> Brigade 2<sup>nd</sup> Battalion form a special court to try Amir Halilović and other officers for abandoning their post.<sup>1962</sup>

944. During the same period, among the punishments anticipated by Enver Hadžihasanović for soldiers guilty of reprehensible acts was that they would be tried by a “court-martial” or a “special court” in order to prevent and punish plundering or the destruction of dwellings, to ensure that the ABiH soldiers respected the Geneva Conventions with regard to the treatment of the civilian population and prisoners of war, and to protect places of worship.<sup>1963</sup>

945. In spite of these orders, it seems that such courts were rarely set up.<sup>1964</sup> Indeed, Witness Vlado Adamović noted only one case when a unit commander set up such a court when his unit was in the region of Brza, 30 or 40 kilometres from Sarajevo.<sup>1965</sup> Likewise, Witness Hilmo Ahmetović could remember only one case when the commander of the 1<sup>st</sup> Corps 126<sup>th</sup> Brigade, Ilijaš, set up a special military court,<sup>1966</sup> and the case was transferred to the Zenica District Military Court during proceedings.<sup>1967</sup> Witness Zijad Čaber also mentioned that special military courts were set up within

<sup>1957</sup> P 325 (Decree-Law on Special Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 March 1992), Art. 2.

<sup>1958</sup> Vlado Adamović, T(F) p. 9451.

<sup>1959</sup> P 325 (Decree-Law on Special Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 March 1992), Art. 3.

<sup>1960</sup> DH 158.1.

<sup>1961</sup> DH 1132; Fikret Čuskić, T(E) p. 12097.

<sup>1962</sup> P 187.

<sup>1963</sup> DH 161.10; DH 1215.

<sup>1964</sup> P 316; P 284, p. 4.

<sup>1965</sup> Vlado Adamović, T(F) pp. 9456-9460.

<sup>1966</sup> Hilmo Ahmetović, T(F) p. 16163.

<sup>1967</sup> Hilmo Ahmetović, T(F) p. 16163.

the brigades to resolve the lack of discipline, but it is not clear if he was referring to these special military courts or military disciplinary courts.<sup>1968</sup>

946. The Chamber notes that in view of the evidence in the case file, special military courts did not play an important role as an instrument for suppressing the actions of the ABiH soldiers.

## 2. Disciplinary Power of the Military Commanders

### (a) Jurisdiction

947. Military superiors derived their disciplinary power from the Rules on Military Discipline.<sup>1969</sup> This power covered all breaches of military discipline<sup>1970</sup> and could be exercised against soldiers of all ranks.<sup>1971</sup> Among the disciplinary sanctions provided in the laws, a superior could sentence a soldier to 30 or even 60 days in prison.<sup>1972</sup>

### (b) Exercise of Power

948. In view of the documents admitted into evidence, the Chamber finds that sanctions were used by superiors in order to curb acts of desertion, abandoning one's post, refusing to fight or disobeying orders.<sup>1973</sup> Furthermore, some exhibits note requests for investigations, the detention of soldiers or "severe" sanctions within certain brigades with regard to soldiers involved in "illegal activities", influence peddling, theft or smuggling.<sup>1974</sup>

949. Some witnesses recalled disciplinary sanctions taken by ABiH commanders against their soldiers. During his testimony, Witness HE said that on at least two occasions he ordered disciplinary sanctions against ABiH soldiers for mistreating captured HVO soldiers.<sup>1975</sup> The same witness also mentioned that dozens of ABiH soldiers had been put in detention for plundering.<sup>1976</sup>

<sup>1968</sup> Zijad Čaber, T(E) p. 10322.

<sup>1969</sup> See P 325, Articles 22-28 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992); P 335; P 120 (Decree-Law on Service in the Army of the Republic of Bosnia-Herzegovina, *Official Gazette of the RBiH*, no. 11 dated 1 August 1992); P 288.

<sup>1970</sup> P 325 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992 amended by P 243, Rules on Amendments to the Rules on Military Discipline, *Official Gazette of the RBiH*, no. 2 dated 5 December 1992), Art. 7.

<sup>1971</sup> P 325 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Art. 10.

<sup>1972</sup> See P 325, Art. 13, and Articles 11 and 12 (Rules on Military Discipline, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992); see also P 120 (Decree-Law on Service in the Army of the Republic of Bosnia-Herzegovina, *Official Gazette of the RBiH*, no. 11 dated 1 August 1992), Art. 66.

<sup>1973</sup> See P 505, P 526, P 829, P 360, P 306 and DH 547.

<sup>1974</sup> P 798; P 472.

<sup>1975</sup> HE, T(E) pp. 17082-17083.

<sup>1976</sup> HE, T(F) p. 16979.

950. Asim Delalić, Assistant Commander in charge of the 306<sup>th</sup> Brigade Military Security Service, also reported disciplinary sanctions within the 306<sup>th</sup> Brigade, in particular days in detention (from 30 to 60 days) for soldiers who plundered or destroyed dwellings. He explained that since the combat was close to Travnik, it had been difficult to submit criminal reports to the district military courts and so disciplinary sanctions were decided on the spot.<sup>1977</sup> Another member of the 306<sup>th</sup> Brigade, Fahir Čamdžić, also spoke of disciplinary sanctions against soldiers guilty of plundering.<sup>1978</sup>

951. During his testimony, Witness Sead Žerić referred to the 3<sup>rd</sup> Corps system of internal discipline which could put soldiers in detention as a disciplinary measure.<sup>1979</sup> In this regard, Witness Hilmo Ahmetović made an explicit reference to the 303<sup>rd</sup> Brigade Command that put soldiers from its own units in special detention premises for unlawful actions.<sup>1980</sup> He stated that the detention period could be up to 60 days.<sup>1981</sup>

952. Even if the Chamber notes that a system of internal discipline existed in the 3<sup>rd</sup> Corps, it observes that it has little information which would allow it to assess its importance as a means of preventing or punishing the unlawful actions referred to in the Indictment.

### 3. Civilian Courts

953. Civilian courts operated in Central Bosnia throughout the war<sup>1982</sup> and were independent of the ABiH.<sup>1983</sup> They were divided into municipal courts and municipal public prosecutors, and high courts and high public prosecutors. The high court is currently called the cantonal court.<sup>1984</sup> Municipal courts had jurisdiction to try cases with penalties of up to ten years and the high court prosecuted cases with a penalty of over ten years.<sup>1985</sup> The Chamber heard two witnesses who held the posts of high prosecutor and municipal public prosecutor.<sup>1986</sup>

<sup>1977</sup> Asim Delalić, T(E), p. 16374, pp. 16398-16400 and p. 16409.

<sup>1978</sup> Fahir Čamdžić, T(E), p. 11726, pp. 11737-11739 and pp. 11766-11769.

<sup>1979</sup> Sead Žerić, T(E) p. 5638.

<sup>1980</sup> Hilmo Ahmetović, T(E) p. 16267.

<sup>1981</sup> Hilmo Ahmetović, T(E) p. 16267.

<sup>1982</sup> Sulejman Kapetanović, T(E) p. 3799.

<sup>1983</sup> Sulejman Kapetanović, T(E) p. 3823 and p. 3930.

<sup>1984</sup> Sulejman Kapetanović, T(E) p. 3797.

<sup>1985</sup> Sulejman Kapetanović, T(E) p. 3798.

<sup>1986</sup> Sulejman Kapetanović, former high public prosecutor testified on 2 and 3 March 2004, T(E) pp. 3791-3933. Ragib Hadžić, former municipal public prosecutor, testified on 28 January 2005, T(F) pp. 15079-15128.

(a) Jurisdiction(i) Ratione Personae Jurisdiction

954. Civilian courts had the jurisdiction to try criminal offences committed both by civilians and in certain cases by soldiers.<sup>1987</sup> If a soldier and a civilian were co-perpetrators of a criminal offence, the civilian court having jurisdiction to hear the case against the civilian also had jurisdiction to try the soldier.<sup>1988</sup> If the criminal offence was committed by the soldier in the performance of his duties, however, both the soldier and the civilian would be tried by a district military court.<sup>1989</sup>

(ii) Ratione Loci Jurisdiction

955. Following the siege of Sarajevo and the occupation of part of the territory of Central Bosnia by the HVO, the Zenica-Doboj civilian courts had the jurisdiction to prosecute individuals at the level of both the high court and the municipal court in the following municipalities: Tesanj, Zenica, Kakanj, Zavidovići, Kakanj, Žepče, Travnik, Gornji Vakuf, Donji Vakuf, Bugojno, Breza, Olovo, Vareš and Visoko.<sup>1990</sup>

(iii) Prosecution

956. Prosecutorial procedure was identical to that of the district military courts.<sup>1991</sup> Nevertheless, a civilian court prosecutor could take on a case only after a complaint had been filed by the civilian police or the CSB (Security Services Centre).<sup>1992</sup>

(b) Ties with Military Courts

957. In practice, there was a great deal of cooperation between the military and civilian courts. Military investigating judges often went to crime scenes together with civilian judges in order to determine which of the two courts had jurisdiction owing to the individuals involved.<sup>1993</sup> Should the

<sup>1987</sup> Mladen Veseljak, T(E) p. 15984.

<sup>1988</sup> P 327 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Art. 9; Mladen Veseljak, T(E) p. 15984; Ragib Hadžić, T(E) p. 15086; DH 298.

<sup>1989</sup> P 327 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Art. 9, para. 2

<sup>1990</sup> Ragib Hadžić, T(E) p. 15083. Nevertheless, territorial jurisdiction changed somewhat due to combat. *See* Sulejman Kapetanović, T(E) p. 3838 and p. 3840.

<sup>1991</sup> Ragib Hadžić, T(E) p. 15113.

<sup>1992</sup> Sulejman Kapetanović, T(E) p. 3813; Vlado Adamović, T(E) p. 9469.

<sup>1993</sup> Mladen Veseljak, T(E) p. 16007.

civilian court have jurisdiction over co-accused in which there were soldiers and civilians, the military police assisted the civilian police conducting the investigation.<sup>1994</sup>

#### **D. Law Applied by Military and Civilian Courts in International Law Crimes**

958. During the period material to the Indictment, both the military and civilian courts applied the same texts on criminal law and criminal procedure originating in the former Yugoslavia.<sup>1995</sup>

##### **1. Substantive Law and Procedure**

959. In April 1992, after the Republic of Bosnia and Herzegovina became independent, the Presidency of RBiH adopted by decree-law the SFRY Criminal Code as republican law.<sup>1996</sup> The Criminal Code of the Socialist Republic of Bosnia and Herzegovina, adopted in 1977, was still in force after the declaration of independence, but following the decree-law on the official change of the name of the state, it was known as the Criminal Code of RBiH.<sup>1997</sup> Then, with the onset of hostilities, the Republic of Bosnia and Herzegovina again passed legislation so that the SFRY Criminal Code and the RBiH Criminal Code would be in effect as republican law during an imminent threat of war or state of war.<sup>1998</sup> The district military courts applied these texts when trying the cases before them.<sup>1999</sup>

960. The Criminal Code of RBiH dealt with ordinary offences.<sup>2000</sup> Other decree-laws were passed to increase the penalties provided by the Code for certain crimes, for example robbery with violence to retain stolen goods or aggravated theft (Articles 151 and 148 respectively of the RBiH Criminal Code) when they were committed in abandoned or damaged buildings or were committed by soldiers.<sup>2001</sup> Likewise, the commission of a crime inspired by “national hatred” became an aggravating element of a crime.<sup>2002</sup>

<sup>1994</sup> Sead Žerić, T(E) p. 5545.

<sup>1995</sup> Vlado Adamović, T(E) p. 9446 and p. 9503; Sulejman Kapetanović, T(E) p. 3804; Mladen Veseljak, T(E) p. 15985.

<sup>1996</sup> DH 389 (Decree-Law on the Adoption of the Criminal Code of the Socialist Federative Republic of Yugoslavia, *Official Gazette of the RBiH*, no. 2 dated 11 April 1992), para. 1.

<sup>1997</sup> DH 386 (Decree-law on Changing the Official Name of the State, *Official Gazette of the RBiH*, no. 1 dated 9 April 1992), Art. 1, available only in B/C/S; DH 1650 (Minutes of the 65<sup>th</sup> Session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 4, 5, 6 and 8 April 1992, no. 02-011-354/92).

<sup>1998</sup> DH 414 (Decree-Law on Applying the Criminal Code of the Republic of Bosnia-Herzegovina and the Criminal Code of the Socialist Federative Republic of Yugoslavia Adopted as Republican Law in Time of an Imminent Threat of War or in Time of a State of War, *Official Gazette of the RBiH*, no. 6 dated 15 June 1992), Art. 1.

<sup>1999</sup> Vlado Adamović, T(E) p. 9446 and p. 9503; Sulejman Kapetanović, T(E) p. 3804; Mladen Veseljak, T(E) p. 15985.

<sup>2000</sup> See DH 338 (Chapter 6: Criminal Acts Against Life and Limb; Art. 36: Murder; Art. 37: Voluntary Manslaughter; Art. 38: Negligent Homicide; Art. 42: Grievous Bodily Harm, and Chapter 15: Criminal Acts Against Property; Art. 147: Theft; Art. 148: Aggravated Theft; Art. 149: Theft in the Nature of a Robbery; Art. 150: Robbery).

<sup>2001</sup> DH 2043, Art. 2 (Decree Having the Force of Law on Changes and Amendments of the Decree Having the Force of Law on Changes of the Crimes Code of the Republic of Bosnia-Herzegovina and the Crimes Code of the SFRY Taken Over as the Law of the Republic During Immediate War Danger or During the State of War (*sic*), *Official Gazette of the*

961. The SFRY Criminal Code, on the other hand, had a chapter dealing with crimes against humanity and international law, of which Article 142 covered “war crimes against the civilian population”, Article 143 “war crimes against the wounded and sick” and Article 144 “war crimes against prisoners of war”.<sup>2003</sup>

962. It is important to note that in spite of the heavier penalties provided by the decree-laws that amended articles of the RBiH Criminal Code as war approached, the minimum penalties provided by Chapter 16 Article 142 of the SFRY Criminal Code for “comparable” offences were more severe. Article 142 provided five years in prison as the minimum sentence for plundering or unlawful destruction not justified by military necessity.<sup>2004</sup> After the amendments were adopted, aggravated theft (Article 148 of the RBiH Code) and “grave offences against the public safety of persons and property” aimed at destruction by arson or explosion (Article 177 of the RBiH Code) brought a minimum penalty of 3 years in prison (with the death penalty as the maximum penalty).<sup>2005</sup>

963. With regard to criminal procedure, the SFRY Law on Criminal Procedure was adopted as a republican law by decree-law on 11 April 1992.<sup>2006</sup> Its application was then extended to cover an imminent threat of war or state of war.<sup>2007</sup> The district military courts were also based on the SFRY Law on Criminal Procedure, adopted as an RBiH law.<sup>2008</sup>

## 2. Characteristics of Crimes Based on Ordinary Law

964. According to witnesses heard by the Chamber, both civilian and military legal experts characterised crimes exclusively on the basis of ordinary law and not on Chapter 16 of the SFRY

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*RBiH*, no. 21 dated 23 November 1992); DH 414 (Decree Law on Applying the Criminal Code of the Republic of Bosnia-Herzegovina and the Criminal Code of the SFRY Adopted as Republican Law in Time of an Imminent threat of War or in Time of a State of War, *Official Gazette of the RBiH*, no. 6 dated 15 June 1992).

<sup>2002</sup> DH 2050, Art. 6a (Decree Law Having the Force of Law on Changes and Amendments of the Decree Having the Force of Law on Applicability of the Criminal Code of the Republic of Bosnia-Herzegovina and the Criminal Code of the SFRY Adopted as Republican Law in Time of an Imminent Threat of War or in Time of a State of War, *Official Gazette of the RBiH*, no. 11 dated 1 August 1992).

<sup>2003</sup> See P 342.

<sup>2004</sup> P 342. The maximum sentence was the death penalty.

<sup>2005</sup> DH 2043 (Decree Having the Force of Law on Changes and Amendments of the Decree Having the Force of Law on Changes of the Crimes Code of the Republic of Bosnia-Herzegovina and the Crimes Code of the SFRY Taken Over as the Law of the Republic During Immediate War Danger or During the State of War (*sic*), *Official Gazette of the RBiH*, no. 21 dated 23 November 1992).

<sup>2006</sup> DH 390 (Decree-Law on Adopting the Law on Criminal Procedure, *Official Gazette of the RBiH*, no. 2 dated 11 April 1992); Vlado Adamović, T(E) p. 9517; Sulejman Kapetanović, T(E) p. 3804.

<sup>2007</sup> DH 415 (Decree-Law on Applying the Law on Criminal Procedure Adopted as Republican Law in Time of Imminent Threat of War or in Time of a State of War), Art. 1.

<sup>2008</sup> P 327 (Decree-Law on District Military Courts, *Official Gazette of the RBiH*, no. 12 dated 13 August 1992), Art. 25.

Criminal Code covering war crimes.<sup>2009</sup> Sead Žerić, for example, stated that the personnel of the Travnik District Military Prosecutor's Office had almost no knowledge of Chapter 16 of the SFRY Criminal Code.<sup>2010</sup>

965. Furthermore, Witness Mladen Veseljak, former judge at the Zenica District Military Court, asserted that the theft of property from abandoned Croatian houses did not constitute a violation falling under Article 142 of the SFRY Criminal Code, and that it was "very hard to imagine theft as a war crime".<sup>2011</sup> Sead Žeric, former Travnik District Military Prosecutor, also asserted that aggravated theft could not be characterised as a war crime.<sup>2012</sup> He also explained that setting fire to a residence or destroying it with explosives was characterised at the time as "criminal acts against public safety".<sup>2013</sup> The Travnik District Military Prosecutor's Office considered plundering to be "theft".<sup>2014</sup> Hilmo Ahmetović stated that murder did not exist as a war crime.<sup>2015</sup> Similarly, Sulejman Kapetanović recalled that in his position as prosecutor at the High Cantonal Court in Zenica at the time, he conducted many investigations of Bosnians for murder, rape, aggravated theft and robbery, but he never considered these acts as war crimes pursuant to Chapter 16 of the SFRY Criminal Code.<sup>2016</sup>

966. The Chamber notes that pursuant to Article 346 of the SFRY Law on Criminal Procedure, both civilian and military courts were bound by the "factual characterisation" issued by the prosecutor, but not bound by his "legal characterisation".<sup>2017</sup> Nevertheless, according to Sead Žerić, the Travnik District Military Court never re-characterised an ordinary law crime into a crime of international law.<sup>2018</sup> Hilmo Ahmetović, judge at the Zenica Military Court, also asserted that there was no such re-characterisation at the Zenica District Military Court, as it would have been contrary to the principle of *reformatio in peius*.<sup>2019</sup> Vlado Adamović made the same type of observation concerning the re-characterisation of murder into a war crime.<sup>2020</sup>

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<sup>2009</sup> Sead Žerić, T(E) p. 5557 and T(F) p. 5619; Hilmo Ahmetović, T(E) p. 16182. This is confirmed by the Chamber's analysis of a number of criminal cases concerning the plundering of abandoned Croatian houses; *see* para. 2036.

<sup>2010</sup> Sead Žerić, T(F) p. 5616.

<sup>2011</sup> Mladen Veseljak, T(E) p. 16013 and p. 16099.

<sup>2012</sup> Sead Žeric, T(E) p. 5557.

<sup>2013</sup> Sead Žeric, T(E) p. 5563 and p. 5622; DH 124; *see* DH 338 (Criminal Code of the Republic of Bosnia and Herzegovina), Articles 172 and 177.

<sup>2014</sup> Sead Žeric, T(F) p. 5622.

<sup>2015</sup> Hilmo Ahmetović, T(E) p. 16312; DH 155.8.

<sup>2016</sup> Sulejman Kapetanović, T(F) pp. 3875-3876.

<sup>2017</sup> Sulejman Kapetanović, T(F) p. 3873.

<sup>2018</sup> Sead Žeric, T(E) p. 5625.

<sup>2019</sup> Hilmo Ahmetović, T(E) pp. 16182 and 16320.

<sup>2020</sup> Vlado Adamović, T(E) p. 9603.



967. Another hypothesis that might explain why the judges at the time preferred to rely on the provisions of ordinary law rather than those in Chapter 16 of the SFRY Criminal Code lies in the fact that the minimum penalties provided by ordinary law were less severe than those in Chapter 16 for “comparable” acts and thus offered more flexibility in applying the penalties.<sup>2021</sup> Nevertheless, none of the witnesses made any observations in this regard.

968. Sulejman Kapetanović was part of a commission charged with collecting information to document war crimes and acts of genocide committed against the Bosnian (Muslim) population exclusively.<sup>2022</sup> Documents P 771, P 772 and P 773 confirm that the district military courts heard only three cases during their entire mandate dealing with crimes pursuant to Chapter 16 of the SFRY Criminal Code (Article 142). Two of the three accused were members of the HVO, while the army affiliation of the third accused was not specified.

969. In view of the testimony and the exhibits tendered into the case, the Chamber notes that both civilian and military courts characterised crimes referred to in the Indictment as a war crime pursuant to Chapter 16 of the SFRY Criminal Code only exceptionally, preferring to base their decisions on the provisions provided by ordinary law when trying cases involving ABiH soldiers.

## **E. Factual Conclusions regarding the Burden to Prove the Failure to Take Measures**

### **1. Methodology Used by the Prosecution May Constitute Evidence**

970. The Chamber recalls, as developed in the part on the applicable law on the burden to prove the failure to take action, the Prosecution must prove the failure to take punitive measures. To this effect, it may rely on any evidence with probative value,<sup>2023</sup> be it the testimony of a witness whose credibility has not been challenged,<sup>2024</sup> a document tendered into evidence or by inference from a particular situation, for example a promotion given to the perpetrators of unlawful acts<sup>2025</sup> or a reward to such subordinates.<sup>2026</sup>

971. In order to prove that the Accused, in particular the Accused Hadžihasanović, failed to take punitive measures, the Prosecution called its investigator Peter Hackshaw as a witness. He asserted that during the investigation he conducted in June 2004 in the archives of the district military

<sup>2021</sup> The two texts, however, provide for the death penalty as the maximum sentence.

<sup>2022</sup> Sulejman Kapetanović, T(F) p. 3815.

<sup>2023</sup> See *supra* paras. 246-248.

<sup>2024</sup> See the testimony of Sead Žerić, T(F) pp. 5513-5648.

<sup>2025</sup> See the *Strugar* Judgement, para. 437.

<sup>2026</sup> P 447; BA, T(F) p. 809.

prosecutors, he found no case linked to the Indictment.<sup>2027</sup> This testimony is part of the Prosecution's strategy to show its diligence in trying to find proof that the Accused failed in their obligation to punish.<sup>2028</sup> The Prosecution's argument lies in the fact that once they showed due diligence in their investigation and saw that no measures had been taken, it was up to the Accused to present the measures they took with regard to the crimes set out in the Indictment.<sup>2029</sup>

972. The Defence for Hadžihasanović responded to this argument by stating that the Prosecution's reversal of the burden of proof is against the most basic principles of international criminal law.<sup>2030</sup> With regard to the investigation conducted by Peter Hackshaw, the Defence for Hadžihasanović declared that the mission failed since it did not show the inexistence in the archives consulted of criminal reports or other relevant documents linked to the violations alleged in the Indictment.<sup>2031</sup>

973. The Chamber considers that the conclusions drawn from an investigation noting the absence of open cases dealing with the crimes underlying the Indictment may have probative value if the methodology used during the investigation at the Zenica and Travnik judicial bodies was sufficiently reliable to satisfy the requirements of a fair trial.<sup>2032</sup>

974. The Chamber would also recall that should the methodology employed not be sufficiently reliable, the Prosecution may by no means prove its case based on "weaknesses" in the presentation by the Defence for Hadžihasanović.<sup>2033</sup>

975. During Witness Hackshaw's appearance in court, the Defence put Exhibits P 771 and P 772, which are replies to letters from the Tribunal's Office of the Prosecutor, before him and asked if they had led him to conclude that the Accused Hadžihasanović had taken few measures to prevent or punish war crimes.<sup>2034</sup> After countless objections by the Prosecution, the witness replied

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<sup>2027</sup> Peter Hackshaw, T(E) pp. 9692-9693.

<sup>2028</sup> Daryl Mundis, T(E) pp. 7704-7705; Prosecution Response to Motions for Acquittal, paras. 19 and 22-26; Peter Hackshaw, T(E) p. 9741.

<sup>2029</sup> Prosecution Response to Motions for Acquittal, footnote 29.

<sup>2030</sup> Reply of Enver Hadžihasanović to the Prosecution's Response to the Motions for Acquittal, para. 1(a). The Kubura Defence does not refer to this matter in its written submissions. It should be noted that the Prosecution initially mentioned both Accused in its Response to Motions for Acquittal (para. 19), but debate on this question involved only the Defence for Hadžihasanović and the Prosecution.

<sup>2031</sup> Hadžihasanović Defence Final Brief, paras. 167-169.

<sup>2032</sup> Articles 89 and 95 of the Rules.

<sup>2033</sup> *See supra* paras. 200-215.

<sup>2034</sup> Peter Hackshaw, T(E) p. 9723.

evasively that the documents, of which he had knowledge, would have caused him to further explore the issue of referrals of cases to the district military prosecutors.<sup>2035</sup>

976. Thus, in analysing the methodology used by the Prosecution, the Chamber will rely in particular on Exhibits P 771, P 772 and P 773<sup>2036</sup> and on the testimony of Peter Hackshaw regarding the investigation of 2 to 5 June 2004 in the civilian cantonal public prosecutors' offices, where the archives of the district military prosecutors are located.

## 2. Exhibits P 771, P 772 and P 773

977. Exhibits P 771, P 772 and P 773 show the Prosecution's first step to establish the absence of measures taken by the Accused.<sup>2037</sup> Exhibit P 771 is a letter from the president of the Zenica Cantonal Court, Exhibit P 772 is from the president of the Travnik Cantonal Court, and P 773 is from the Travnik Cantonal Public Prosecutor's Office. All three are replies to letters sent by the Tribunal's Office of the Prosecutor, which were not tendered into evidence.<sup>2038</sup> These documents provide the names of the district military court judges and prosecutors. Exhibit P 772 notes the number of cases that involved ABiH soldiers heard by the Travnik District Military Court in 1993 and 1994. Furthermore, the presidents of the Travnik and Zenica cantonal courts offered to make the district military court registers available to the Tribunal's Office of the Prosecutor<sup>2039</sup>

978. In addition, Exhibits P 771 and P 773 provide responses by the Zenica Cantonal Court and the Travnik Cantonal Public Prosecutor's Office to the Tribunal's Office of the Prosecutor's query as to the number of cases heard by the Zenica District Military Court and the Travnik District Military Prosecutor's Office involving ABiH members for "war crimes" pursuant to Article 142 of the SFRY Code.<sup>2040</sup> According to Exhibit P 771, the Zenica District Military Court rendered only three judgements for "war crimes", of which two involved members of the HVO and one a person whose affiliation to a specific army is not mentioned but whose reprehensible acts were committed outside the period material to the Indictment. According to Exhibit P 773, no reports on the commission of alleged "war crimes" by members of the ABiH were filed by the Travnik District Military Prosecutor's Office.

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<sup>2035</sup> Peter Hackshaw, T(E) p. 9725.

<sup>2036</sup> Although not cited by the Defence for Hadžihasanović in its cross-examination of the witness, this exhibit is closely connected to Exhibits P 771 and P 772 in that it is part of the same approach used by the ICTY Office of the Prosecutor.

<sup>2037</sup> Peter Hackshaw, T(E) p. 9727.

<sup>2038</sup> See P 771 alluding to a letter from the Tribunal's Office of the Prosecutor dated 28 March 2002; P 772 refers to a letter from the Tribunal's Office of the Prosecutor dated 18 March 2002; P 773 refers to a letter from the Tribunal's Office of the Prosecutor that seems to have been dated 19 February 2002.

<sup>2039</sup> P 771 and P 772.

<sup>2040</sup> P 771 mentions Article 142; P 773 does not cite it explicitly.

979. In spite of these claims, the three letters (P 771, P 772 and P 773) are not conclusive as to the inexistence of measures taken and do not have probative value in this regard. Indeed, it should be noted that both the district military courts and the district military prosecutors relied solely on the provisions of ordinary law in their proceedings against ABiH soldiers and not on the provisions of Article 16 of the SFRY Criminal Code, including Article 142.<sup>2041</sup>

980. With regard to the cases heard by the Zenica District Military Court referred to in Exhibit P 771, mention is made only of judgements (constituting *res judicata* when the judgement is given or its enforcement can no longer be suspended by appeal) rendered by the Zenica District Military Court for “war crimes”. Letter P 771 does not take into account the possibility of criminal reports having effectively been filed with the Zenica District Military Prosecutor who then decided to drop the charges.<sup>2042</sup> Thus, it would have been better to question the Zenica Cantonal Public Prosecutor’s Office on the criminal reports filed with the Zenica District Military Prosecutor.<sup>2043</sup>

981. Finally, the Chamber would recall that the query – which we assume from the contents of the responses in Exhibits P 771 and P 773 – should not have been formulated that way, since at the material time of the Indictment, states did not have the obligation to prosecute individuals for war crimes and it was not their usual practice to undertake such proceedings.<sup>2044</sup>

982. Thus, the conclusions provided by Exhibits P 771, P 772 and P 773 cannot be admitted as having decisive probative value showing that the Prosecution discharged its burden of proof regarding the inexistence of punitive measures taken by the Accused.

### 3. Investigation Conducted by Peter Hackshaw

983. The investigation conducted by a team of investigators of the Tribunal’s Office of the Prosecutor in the offices of the Travnik and Zenica cantonal prosecution services in June 2004 and the testimony of Peter Hackshaw,<sup>2045</sup> investigator of the Tribunal’s Office of the Prosecutor as team leader during this visit, are other evidence tendered by the Prosecution to provide proof that the Accused, and the Accused Hadžihasanović in particular, failed in their duty to punish.<sup>2046</sup>

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<sup>2041</sup> See *supra* paras. 959-969.

<sup>2042</sup> See *supra* paras. 931-933.

<sup>2043</sup> *Ibid.*

<sup>2044</sup> See *supra* paras. 249-261 and paras. 958-969.

<sup>2045</sup> Peter Hackshaw was called by the Prosecution to testify on 28 and 29 June 2004 (T(F) pp. 9677-9844).

<sup>2046</sup> Peter Hackshaw, T(F) p. 9741: “Q. And the objective was you’d review the records and you’d attempt to identify any records of crimes alleged in the Indictment for which some kind of report would have been referred to the district military prosecutor. A. Yes, that is correct. Q. I can rephrase the question. Please do not hesitate to tell me if you do not understand my questions.

984. During his testimony before the Chamber, Peter Hackshaw explained the methodology that he and his team used during their mission from 2 to 5 June 2004.<sup>2047</sup> First, the witness explained the choice of the location for the investigation: the offices of the Zenica and Travnik cantonal prosecution services, since they had the archives of the Public Prosecutor from the civilian and military courts operating during the material time of the Indictment. Then he stated that the mission concentrated on the Public Prosecutor's archives because, according to the information he had, the reports on alleged criminal offences were "referred" through the Travnik or Zenica military prosecutor's office.<sup>2048</sup> Then the witness explained the choice of the archives to be examined given the short duration of the mission: two days in the Zenica Cantonal Public Prosecutor's Office and only one day in the Travnik Cantonal Public Prosecutor's Office. He concluded during the examination-in-chief that he found no case in Travnik or in Zenica that corresponded to the crimes referred to in the Indictment.<sup>2049</sup>

(a) Searching the Registers

985. Witness Hackshaw explained how the team conducted the investigation. At the Zenica Cantonal Public Prosecutor's Office, the team first proceeded to examine the cases referred to the Zenica District Military Prosecutor and the Senior Public Prosecutor, in light of the Indictment.<sup>2050</sup> The team was able to observe that only case files with known perpetrators ("KT") were made available to them<sup>2051</sup> although a number of them were missing. Case files with unknown perpetrators ("KTN") were not made available to them. This, as Witness Hackshaw readily acknowledged, presented a serious flaw in the examination process. As a result, the team preferred to consult the "KT" and "KTN" registers in which the cases were logged upon receipt and then numbered, because they also included victim details.<sup>2052</sup> The team analysed the registers in light of the Indictment to determine if the information from these two sources matched.<sup>2053</sup> Based on the information contained in the registers, the team verified if the missing case files were for crimes

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Now, would I be right in taking it that your investigation assumption was as follows: If you find a file about an event alleged in the indictment which was referred to the military prosecutor, this would mean that General Hadžihasanović did take measures; and if you do not find such a file, it would mean that General Hadžihasanović did not take measures to punish? Was that your investigation assumption? A. In very broad terms, I would say that's part of it."

<sup>2047</sup> The investigation of June 2004 was conducted by Peter Hackshaw, Alasdair McCloud and Michael Koehler, assisted by two translators. Peter Hackshaw, T(E) p. 9740.

<sup>2048</sup> Peter Hackshaw, T(E) p. 9688.

<sup>2049</sup> Peter Hackshaw, T(E) pp. 9692 and 9693.

<sup>2050</sup> Peter Hackshaw, T(E) p. 9690. For matters involving both soldiers and civilians for which the civilian courts had jurisdiction, *see supra* para. 954.

<sup>2051</sup> Peter Hackshaw, T(E) p. 9690.

<sup>2052</sup> Peter Hackshaw, T(E) p. 9691.

<sup>2053</sup> Peter Hackshaw, T(E) pp. 9692 and 9693.

referred to in the Indictment.<sup>2054</sup> In its searches in Zenica, the team concentrated on crimes against persons.<sup>2055</sup>

986. In Travnik, the team proceeded a little differently in that it consulted the registers directly and searched only for cases concerning serious crimes against persons.<sup>2056</sup> Then, once the cases were identified through the registers, the team tried to find the case files they referred to. If this was not possible, the investigators recorded the victim details from the register.<sup>2057</sup>

(b) Search Criteria

987. The Chamber notes that according to Witness Hackshaw, owing to time constraints and the large number of important case files referred to the Zenica District Military Prosecutor's Office, the Zenica High Public Prosecutor and the Travnik District Military Prosecutor's Office, the team chose to concentrate solely on crimes against persons in the registers.<sup>2058</sup> Witness Hacksaw explained that serious crimes against persons were, for example, murder and manslaughter.<sup>2059</sup> The witness seemed to indicate that for his team, crimes against persons also included aggravated robbery and threats of physical violence.<sup>2060</sup>

988. Peter Hackshaw acknowledged that the search through the registers was made using the names of the victims contained in the Indictment,<sup>2061</sup> adding that the team focused solely on cases in which the victim died.<sup>2062</sup> The witness acknowledged that since the Indictment does not contain the names of victims of mistreatment, a search could not be conclusive in respect of these counts.<sup>2063</sup> The witness also explained that the team did not direct its searches to cases which might fall under counts 5, 6 and 7 because the Indictment does not mention the names of the victims and the team did not know how crimes against property were identified in the registers.<sup>2064</sup> Therefore, owing to time constraints, the team decided to centre its searches solely on crimes against persons.<sup>2065</sup> The

<sup>2054</sup> Peter Hackshaw, T(E) p. 9692.

<sup>2055</sup> Peter Hackshaw, T(E) p. 9692.

<sup>2056</sup> Peter Hackshaw, T(E) p. 9693.

<sup>2057</sup> Peter Hackshaw, T(E) p. 9693.

<sup>2058</sup> Peter Hackshaw, T(E) pp. 9692, 9693, 9804 and 9812.

<sup>2059</sup> Peter Hackshaw, T(E) pp. 9747, 9800-9802.

<sup>2060</sup> Peter Hackshaw, T(E) pp. 9802 and 9803.

<sup>2061</sup> Peter Hackshaw, T(E) p. 9806.

<sup>2062</sup> Peter Hackshaw, T(E) p. 9809.

<sup>2063</sup> Peter Hackshaw, T(E) pp. 9806-9807, p. 9756.

<sup>2064</sup> Peter Hackshaw, T(E) p. 9805.

<sup>2065</sup> Peter Hackshaw, T(E) p. 9812.

witness furthermore stated that all the plundering of abandoned houses constituted crimes against property and not crimes against persons.<sup>2066</sup>

989. In view of these parameters, Peter Hackshaw stated that the team did not find any cases either in Travnik<sup>2067</sup> or Zenica<sup>2068</sup> that corresponded to the offences in the Indictment.

(c) Searches Not Conducted

990. Witness Hackshaw explained that his team did not make any searches in military police or civilian police registers.<sup>2069</sup> He could not confirm that any searches had been made of files referred to the special military courts or the military disciplinary court.<sup>2070</sup> Likewise, he acknowledged not knowing if an investigation had been conducted in the archives of the relevant brigades.<sup>2071</sup>

(d) Conclusions of the Chamber

991. The Chamber considers that the conclusions drawn from this investigation that the Accused, and in particular the Accused Hadžihasanović, took no measures to punish the unlawful actions of their subordinates, must be examined in view of the methodology employed.

(i) Conclusions on the Failure to Take Measures against Murders Committed by Subordinates

992. The Chamber notes that the conclusions in respect of the failure to take measures to punish murders committed by 3<sup>rd</sup> Corps soldiers have probative value because, although imperfect,<sup>2072</sup> the methodology employed by the investigating team is sufficiently reliable.

993. The Indictment mentions the names of the victims of murder committed by 3<sup>rd</sup> Corps soldiers. Thus, studying the district military prosecutor registers might well reveal, with a certain degree of certainty, whether reports implicating ABiH soldiers for murder had been referred to the military judicial authorities. Furthermore, these registers would also indicate whether the district military prosecutors, after receiving a report on an unlawful act, had decided to “drop the

<sup>2066</sup> Peter Hackshaw, T(E) pp. 9803-9804: Judge Swart: And if you take goods from a person who is not present, he's away, he's not in his house or whatever? A. That's -- Judge Swart: Then that would not be a crime against the person, then. A. No, sir. I would categorise that as a theft or a burglary.

<sup>2067</sup> Peter Hackshaw, T(E) p. 9693.

<sup>2068</sup> Peter Hackshaw, T(E) p. 9692.

<sup>2069</sup> Peter Hackshaw, T(E) p. 9816.

<sup>2070</sup> Peter Hackshaw, T(E) pp. 9771-9772.

<sup>2071</sup> Peter Hackshaw, T(E) p. 9772.

<sup>2072</sup> Admittedly, it would have been preferable if the investigators had consulted each one of the files as well as the registers of the district military courts. It is clear that the team did not consult the archives of the district military courts because Peter Hackshaw did not recognise the registers of these courts. *See* Peter Hackshaw, T(E) p. 9789.

charges”.<sup>2073</sup> This information would not have been revealed by an examination of the case files in the district military courts.

994. Thus, the Chamber accepts that Peter Hackshaw’s claim that no case files on murders committed by members of the ABiH were opened has probative value since it is based on an investigation whose methodology is sufficiently reliable.

(ii) Conclusions on the Failure to Take Measures against Cruel Treatment (count 4) and Crimes against Property (counts 5, 6 and 7)

995. Conversely, the witness acknowledged that no searches were made in the district military prosecutors’ archives of case files on cruel treatment (count 4) or acts included in counts 5, 6 and 7. In addition, military police, civilian police, and district military court registers were not consulted.<sup>2074</sup> The witness also acknowledged that he did not know if an investigation had been conducted of the relevant brigade archives or the archives of the military disciplinary court and special military courts.<sup>2075</sup> The Chamber notes that no other investigations were conducted by the Prosecution to fill in the gaps left by the investigation of 2 to 5 June 2004.

996. Thus, the conclusions of Witness Hackshaw that no measures were taken to punish actions pursuant to counts 4, 5, 6 and 7 cannot have probative value. The fact that the Prosecution has no case file attesting to measures taken by the Accused with regard to these counts does not prove that no measures were taken.

997. The methodology used to investigate whether measures were taken with regard to these counts is not sufficiently reliable to satisfy the requirements for a fair trial.

998. Therefore, in order to prove its case, the Prosecution cannot rely on an *a contrario* argument intended to use the “weaknesses” of the Defence for Hadžihasanović to fill these gaps, which would amount to shifting the burden of proof to the Defence for Hadžihasanović.<sup>2076</sup>

999. The Chamber finds with regard to counts 4, 5, 6 and 7 that the conclusions of Witness Hackshaw cannot be admitted as having probative value.

1000. Thus, in the parts of the Judgement dealing with the counts of murder, the Chamber will give weight to the testimony of Witness Hackshaw in determining the case advanced by the

<sup>2073</sup> See *supra* paras. 931-933.

<sup>2074</sup> Peter Hackshaw, T(E) pp. 9789 and 9816.

<sup>2075</sup> Peter Hackshaw, T(E) p. 9772.

<sup>2076</sup> See *supra* paras. 200-215 and 240.



Prosecution. Conversely, in the examination of counts 4, 5, 6 and 7, the Chamber will not give probative value to Exhibits P 771, P 772 and P 773 or to Witness Hackshaw's conclusions. The Chamber's analysis of the existence or inexistence of measures taken with regard to these counts by the Accused will rely on other evidence stemming particularly from documentary proof or the testimony of witnesses for the Defence or the Prosecution in their examination-in-chief or cross-examination.<sup>2077</sup> Nevertheless, in cases where the Prosecution did not submit any other evidence to meet its burden of proof other than the conclusions of Witness Hackshaw, the Chamber finds that the Prosecution has failed to prove its case. This failure is therefore a ground for acquittal.<sup>2078</sup>

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<sup>2077</sup> See the testimony of Witness Sead Žerić on the lack of measures taken against plundering, (T(E) p. 5525) or cruel treatment, (T(E) p. 5605).

<sup>2078</sup> See *infra* paras. 1546-1549 and 1553.

## VII. FINDINGS AND CONCLUSIONS

### A. Crimes against Persons – Violation of the Laws or Customs of War

#### 1. Count 1: Murders in Dusina, Miletići and Maline

##### (a) Dusina

1001. In paragraphs 39 (a), (aa), (ab) and 40 of the Indictment, it is alleged that the Accused Hadžihasanović failed to take the necessary and reasonable measures to prevent the murders of Vojislav Stanišić, Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić, Augustin Radoš and Zvonko Rajić in Dusina on 26 January 1993 or to punish the perpetrators. He is accused of murder, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by common Article 3(1)(a) of the Geneva Conventions.<sup>2079</sup>

##### (i) Arguments of the Parties

1002. The Prosecution maintains that Vehid Subotić and Šerif Patković, two members of the 7<sup>th</sup> Brigade, are responsible for these murders.<sup>2080</sup> The Prosecution alleges that the Accused Hadžihasanović knew about the murders committed by his subordinates and that he failed to take the necessary and reasonable measures to punish the perpetrators.<sup>2081</sup>

1003. The Defence for the Accused Hadžihasanović does not deny that the murders alleged in paragraph 39(a) of the Indictment occurred<sup>2082</sup> but does deny that the identity of the perpetrator or perpetrators of the murder of Zvonko Rajić has been established.<sup>2083</sup> As regards the conditions set out in Article 7(3) of the Statute, it denies that the Accused Hadžihasanović knew or had reason to know that the crimes were about to be committed.<sup>2084</sup> It maintains, furthermore, that the Accused Hadžihasanović took the necessary and reasonable measures to punish the perpetrators of the crimes.<sup>2085</sup>

<sup>2079</sup> In its Decision on Motions for Acquittal, the Chamber noted that the Prosecution only intended to charge the two Accused under count 2 of the Indictment, for the events which occurred in Maline on 8 June 1993. The Chamber noted that the offences of cruel treatment alleged to have occurred in Dusina on 26 January 1993 are not supported by any evidence, and acquitted the Accused Hadžihasanović of this charge.

<sup>2080</sup> Indictment, para. 39(a) (ab); Prosecution Closing Arguments, para. 185; Prosecution Final Brief, T(E), p. 19016.

<sup>2081</sup> Prosecution Final Brief, paras. 170-173 and 176.

<sup>2082</sup> Hadžihasanović Defence Final Brief, para. 307.

<sup>2083</sup> Hadžihasanović Defence Final Brief, para. 307; Hadžihasanović Closing Arguments, T(F) p. 19213.

<sup>2084</sup> Hadžihasanović Defence Final Brief, para. 307.

<sup>2085</sup> Hadžihasanović Defence Final Brief, para. 307.

(ii) Findings of the Chamber regarding the Murders Committed in Dusinaa. Sequence of Events of 26 January 1993 in Dusina

1004. Owing to the armed conflict between the HVO and the ABiH in Central Bosnia at the start of 1993, units under the 3<sup>rd</sup> Corps and the HVO were engaged in combat in Dusina in the municipality of Zenica on the morning of 26 January 1993.<sup>2086</sup>

1005. As regards the troops of the 3<sup>rd</sup> Corps implicated in the events that day in Dusina, paragraph 39(a) of the Indictment mentions the 7<sup>th</sup>, the 303<sup>rd</sup> and the 17<sup>th</sup> Brigades. It is important to know which troops were present in Dusina at the time of the acts charged and to which troops the perpetrators of the crimes committed belonged.

1006. According to Witness BA, who participated in the fighting in Dusina as a member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion, units from the 2<sup>nd</sup> Battalion arrived at the point where the Bosna and the Lašva meet on around 24 January 1993.<sup>2087</sup> The Chamber considers that the testimony of Witness BA in relation to the presence of 7<sup>th</sup> Brigade units in Dusina on 26 January 1993 is credible. In the night of 25 to 26 January 1993, all the 7<sup>th</sup> Brigade soldiers who were present moved towards the Muslim part of Dusina where they took up their positions.<sup>2088</sup> Early in the morning of 26 January 1993, they received orders to occupy the positions all around Dusina.<sup>2089</sup> A reconnaissance and sabotage unit of the 7<sup>th</sup> Brigade, the Blue Falcons, under the command of Šerif Patković<sup>2090</sup> was also present.

1007. Early in the morning also, part of the 2<sup>nd</sup> Battalion 2<sup>nd</sup> Company moved towards Brdo where it thought that the HVO had established its headquarters.<sup>2091</sup> Brdo is a hamlet situated between

<sup>2086</sup> DH 1992; Ivica Kegelj, T(F) p. 4218; Dragan Radoš, T(F) pp. 1049 and 1050; Željko Cvijanović, T(F) p. 409; *see* also the parts of the Judgement referring to the general conditions under which Article 3 of the Statute applies and on the conduct of the fighting between the ABiH and the HVO. The Defence for the Accused Hadžihasanović presented and cited in its Final Brief a host of evidence on the question of who was behind the tension and how the conflict broke out that day. Hadžihasanović Defence Final Brief, paras. 308-317. The question is immaterial as regards the allegations against the Accused Hadžihasanović.

<sup>2087</sup> DH 1992; Witness BA, T(F) pp. 724 and 726.

<sup>2088</sup> Witness BA, T(F) pp. 726-728 and 746; *see* also DH 1992.

<sup>2089</sup> Witness BA, T(F) p. 729; *see* also Milica Kegelj, T(F) p. 579, and Exhibits P 130 and P 131 which refer to units of the 7<sup>th</sup> Brigade 2<sup>nd</sup> battalion participating in the fighting: P 130: "The 2<sup>nd</sup> Company of the 2<sup>nd</sup> Battalion under the command of Zenica Municipal Defence Staff is on a combat task. The 1<sup>st</sup> Company of the 2<sup>nd</sup> Battalion was engaged in combat action until 0600 hrs according to plan in the region of villages Merdani and Dusine." (*See* also Joint Statement on the Agreement of Facts, Annex B, p. 9, admitted facts no. 16); P131: "In the period from 0100 hrs to 0500 we captured elevation 852 above the village of Lašva. The task was performed by the 2<sup>nd</sup> Company of the 2<sup>nd</sup> Battalion."

<sup>2090</sup> Witness BA, T(F) pp. 743-745.

<sup>2091</sup> Witness BA, T(F) pp. 747-749; DH 1992.

Lašva and Dusina.<sup>2092</sup> According to Witness BA, the aim of this action was to negotiate the release of two 7<sup>th</sup> Brigade soldiers who had been taken prisoner earlier.<sup>2093</sup> The HVO soldiers, under the command of Zvonko Rajić, had retreated to one of the houses in Brdo. When the Commander of the 2<sup>nd</sup> Company, Elvedin Čamdžić, approached in order to invite the HVO to negotiate, he was shot dead.<sup>2094</sup> The 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion 2<sup>nd</sup> Company riposted in order to retrieve its commander and two wounded men.<sup>2095</sup> The exchange of shots between the 7<sup>th</sup> Brigade and the unit under Zvonko Rajić's command carried on for some time.<sup>2096</sup>

1008. While the fighting was going on in Brdo, the village of Dusina had already been taken by the 7<sup>th</sup> Brigade.<sup>2097</sup> Towards 0500 or 0600 hours, Witness Ivica Kegelj, who was in Dusina, was woken by the sound of shots.<sup>2098</sup> He could see that the forces of the 7<sup>th</sup> Brigade coming from the north were expelling the Croatian and Serbian civilians from their homes and taking them to Stipo Kegelj's house.<sup>2099</sup> At around 0600 hours, Witness Ivica Kegelj and three other HVO soldiers, including Augustin Radoš, gave themselves up to the 7<sup>th</sup> Brigade.<sup>2100</sup>

1009. Witness Ivica Kegelj, the other HVO soldiers who had given themselves up with him and the civilian Croatian population of Dusina were then taken to the crossroads separating the Croatian part of Dusina from the Muslim part.<sup>2101</sup> Towards 1000 or 1030 hours some of the prisoners were ordered to go back to the Croatian part of the village and to go to Stipo Kegelj's house, whereas Witness Ivica Kegelj, the other HVO soldiers and around 20 civilians were taken towards Brdo.<sup>2102</sup>

1010. When the group of Croatian prisoners had reached Brdo, negotiations started again between the 7<sup>th</sup> Brigade soldiers and Zvonko Rajić's unit. The 7<sup>th</sup> Brigade used the Croatian prisoners to force

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<sup>2092</sup> DH 1992.

<sup>2093</sup> Witness BA, T(F) pp. 748.

<sup>2094</sup> Witness BA, T(F) pp. 749-751; P 131 and P 135: according to these exhibits, Elvedin Čamdžić was killed by Željko Cvijanović, a member of the unit led by Zvonko Rajić.

<sup>2095</sup> Witness BA, T(F) p. 750.

<sup>2096</sup> Witness BA, T(F) p. 752; Željko Cvijanović, T(F) pp. 420 and 421.

<sup>2097</sup> Ivica Kegelj, T(F) pp. 4220-4222.

<sup>2098</sup> Ivica Kegelj, T(F) p. 4218.

<sup>2099</sup> Ivica Kegelj, T(F) pp. 4218 and 4219; P 389 (under seal), paras. 3 and 4. Witness BA identified the ABiH soldiers present in Dusina as belonging to the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion, T(F) pp. 726-728, 746 and 754; P6, which is a photo taken from Dusina, showing Stipo Kegelj's house.

<sup>2100</sup> Ivica Kegelj, T(F) pp. 4220 and 4222.

<sup>2101</sup> Ivica Kegelj, T(F) p. 4223; Milica Kegelj, T(F) p. 582; P 6.

<sup>2102</sup> Milica Kegelj, T(F) pp. 582 and 583; Ivica Kegelj, T(F) pp. 4224 and 4225; P 389 (under seal), para. 5; Witness BA, T(F) p. 754.

the HVO<sup>2103</sup> to surrender. The witnesses, who were members of the HVO, agree that Edin Hakanović threatened to execute the prisoners if Zvonko Rajić's unit did not surrender.<sup>2104</sup>

1011. Following these threats, Zvonko Rajić's unit and the 7<sup>th</sup> Brigade agreed to remove their magazines and to go to Lašva in order to resolve the question of the prisoners.<sup>2105</sup> It was around 1100 hours.<sup>2106</sup> Zvonko Rajić and six other soldiers from his unit, namely Perica Radoš, Jozo Krišto, Srećko Krišto, Viktor Rajić, and Witnesses Franjo Batinić and Dragan Radoš set off towards Lašva, together with ten or so 7<sup>th</sup> Brigade soldiers.<sup>2107</sup> On the way, the 7<sup>th</sup> Brigade soldiers, fearing an ambush, started to get nervous. They did not believe that the HVO would abide by the agreement they had reached. First of all they trained their weapons on the HVO soldiers, disarmed them and ordered them to return to Brdo.<sup>2108</sup>

1012. After a few hundred metres, Zvonko Rajić could no longer endure the psychological pressure and tried to escape.<sup>2109</sup> The 7<sup>th</sup> Brigade soldiers, including Witness BA, opened fire on him, wounding him in the upper body and in the leg.<sup>2110</sup> Since Zvonko Rajić could not walk, the 7<sup>th</sup> Brigade soldiers ordered the HVO soldiers to take turns carrying him.<sup>2111</sup> When they put him on the ground to change around, a group of 7<sup>th</sup> Brigade soldiers arrived running.<sup>2112</sup> Zvonko Rajić begged them for medical treatment but the 7<sup>th</sup> Brigade soldiers taunted, mistreated and kicked him.<sup>2113</sup> Then one of the 7<sup>th</sup> Brigade soldiers pulled out his automatic pistol, a scorpion, and killed Zvonko Rajić with several bullets.<sup>2114</sup>

1013. After Zvonko Rajić's death, the 7<sup>th</sup> Brigade soldiers tied the hands of the six other Croatian soldiers, took off their jackets and escorted them to the meeting point of the Lašva and the

<sup>2103</sup> Milica Kegelj, T(F) pp. 582 and 583; Ivica Kegelj, T(F) pp. 4224-4226; Željko Cvijanović, T(F) p. 423; Franjo Batinić, T(F) pp. 507-508; Dragan Radoš, T(F) pp. 1053, 1054; Witness BA, T(F) pp. 754-757.

<sup>2104</sup> Željko Cvijanović, T(F) pp. 422-423; Franjo Batinić, T(F) p. 508; Dragan Radoš, T(F) pp. 1053-1054; Witness BA implicitly recognised that the 7<sup>th</sup> Brigade was trying to bring about the surrender of HVO soldiers by threatening the prisoners, Witness BA, T(F) p. 757.

<sup>2105</sup> Witness BA, T(F) pp. 752; Dragan Radoš, T(F) pp. 1052, 1053 and 1054; Franjo Batinić, T(F) p. 508; P 131.

<sup>2106</sup> Ivica Kegelj, T(F) pp. 4227-4228.

<sup>2107</sup> DH 1992; P 13 (under seal); Željko Cvijanović, who was a member of Zvonko Rajić's unit and stayed behind on one of the hills, could follow the sequence of events as they unfolded: T(F) pp. 425, 427; Franjo Batinić, T(F) pp. 508, 509 and 554; Dragan Radoš, T(F) p. 1054; Witness BA, T(F) pp. 752-753.

<sup>2108</sup> Witness BA, T(F) p. 758; Franjo Batinić, T(F) p. 509.

<sup>2109</sup> Franjo Batinić, T(F) pp. 510-511; Witness BA, T(F) pp. 758-759.

<sup>2110</sup> Witness BA, T(F) pp. 759-760; Franjo Batinić, T(F) pp. 510 and 554; Dragan Radoš, T(F) pp. 1055-1056.

<sup>2111</sup> Witness BA, T(F) pp. 760-761; Franjo Batinić, T(F) p. 511 ; Dragan Radoš, T(F) p. 1056.

<sup>2112</sup> Dragan Radoš, T(F) p. 1056; *see also* the testimony of Witness Željko Cvijanović, HVO soldier, who was on a hill at a distance of 50 to 70 metres as the crow flies and who could see and hear the events unfolding: Željko Cvijanović, T(F) pp. 429-430.

<sup>2113</sup> Dragan Radoš, T(F) p. 1056; Željko Cvijanović, T(F) p. 430; Franjo Batinić, T(F) p. 511.

<sup>2114</sup> Željko Cvijanović, T(F) p. 430; Franjo Batinić, T(F) pp. 511-513; Dragan Radoš, T(F) pp. 1056-1057.

Bosna<sup>2115</sup> where there was large group of ABiH soldiers.<sup>2116</sup> The soldiers mistreated the six Croatian prisoners, hit them and insulted them.<sup>2117</sup> Then, with their hands still tied, Perica Radoš, Jozo Krišto, Srećko Krišto, Viktor Rajić, and Witnesses Franjo Batinić and Dragan Radoš were placed in a bus and taken to the Zenica Music School, where the 7<sup>th</sup> Brigade had set up a detention unit.<sup>2118</sup>

1014. At the same time, Ivica Kegelj and the other Croatian prisoners who had been used to negotiate the agreement between Zvonko Rajić's unit and the 7<sup>th</sup> Brigade were taken back to Stipo Kegelj's house in the Croatian part of Dusina.<sup>2119</sup> The 7<sup>th</sup> Brigade was holding about 45 soldiers and civilian prisoners there.<sup>2120</sup> Witness Ivica Kegelj described how he was taken out of his house several times to be interrogated.<sup>2121</sup> One of the soldiers put a rifle to his head and threatened him.<sup>2122</sup>

1015. Between 1500 and 1600 hours on 26 January 1993, Niko Stipo and Vinko Kegelj, Pero Ljubičić, Augustin Radoš, Vojislav Stanišić, Ivica Kegelj and Witness Z7 were taken to Ivica Kegelj's house and forced to line up in front of it.<sup>2123</sup> There were ten or so ABiH soldiers.<sup>2124</sup> According to testimony, someone called Vehid Subotić, aka Geler, was the commander of these soldiers.<sup>2125</sup> He ordered the prisoners to surrender their weapons. The prisoners all replied the same way, that is to say that they had already done so.<sup>2126</sup>

1016. After that reply, Vehid Subotić first of all pointed to Augustin Radoš, ordered him to be taken out of the column and gave the order for his execution. Hit by bullets, Augustin Radoš fell to the ground, next to Witness Ivica Kegelj.<sup>2127</sup> As Augustin Radoš was still alive, Vehid Subotić

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<sup>2115</sup> Franjo Batinić, T(F) pp. 512-513; *see also* Exhibit P 314, a Zenica Municipal TO report of the fighting dated 28 January 1993, which mentions 31 Croatian prisoners being taken in Dusina and distinguishes between 25 soldiers who were taken to the KP Dom in Zenica and other Croatian prisoners (their number is not legible) taken by MOS soldiers: "Both sides suffered losses in manpower. The information gathered on 28 January 1993 shows that HVO suffered a loss of /illegible/ soldiers and two were wounded. The total of 31 HVO soldiers had been taken prisoner of whom 25 have been taken over by the Military Police and accommodated in the Penitentiary Facility. Six soldiers have been taken by the Moslem Force soldiers."

<sup>2116</sup> Dragan Radoš, T(F) pp. 1058-1059; Franjo Batinić, T(F) p. 512.

<sup>2117</sup> Franjo Batinić, T(F) p. 513; Dragan Radoš, T(F) p. 1059.

<sup>2118</sup> Franjo Batinić, T(F) pp. 512, 513 and 525; Dragan Radoš, T(F) p. 1059-1060; Krno Rajić, T(F) pp. 1796 and 1843; P 405, P 314, P 206 and P 744. As regards the 7<sup>th</sup> Brigade setting up a detention unit, *see also infra* para. 1175.

<sup>2119</sup> Ivica Kegelj, T(F) p. 4226; Milica Kegelj, T(F) p. 585.

<sup>2120</sup> P 389 (under seal), paras. 4 and 5; Ivica Kegelj, T(F) p. 4229.

<sup>2121</sup> Ivica Kegelj, T(F) pp. 4229-4230.

<sup>2122</sup> Ivica Kegelj, T(F) p. 4230.

<sup>2123</sup> Ivica Kegelj, T(F) pp. 4230, 4231 and 4234; P 389 (under seal), paras. 6 and 7; P 6.

<sup>2124</sup> Ivica Kegelj, T(F) p. 4231;

<sup>2125</sup> Ivica Kegelj, T(F) pp. 4231, 4232, 4238; P 389 (under seal), paras. 6 and 9.

<sup>2126</sup> Ivica Kegelj, T(F) pp. 4231-4232.

<sup>2127</sup> Ivica Kegelj, T(F) p. 4232; P 389 (under seal), paras. 6 and 7.

ordered that he be killed by a further round of machine gun fire.<sup>2128</sup> Vehid Subotić ordered that the body be removed and placed on the other side of the road, where there was a little embankment, “so that it didn't obstruct the road.”<sup>2129</sup> Witness Ivica Kegelj thought that his turn was next because he was second in the row. Geler asked him a question about his weapons and punched him in the head, stomach and legs.<sup>2130</sup> Then Vehid Subotić asked Niko, Stipo and Vinko Kegelj where they had hidden their weapons. When they replied that they no longer had any weapons, Vehid Subotić forced them to move away and had them killed by bursts of machine gun fire in the back.<sup>2131</sup> Then it was the turn of Vojislav Stanišić and Pero Ljubičić, who were also killed on the orders of Vehid Subotić.<sup>2132</sup> When it was the turn of Witness Z7, he said “I am a civilian. I don't belong to the HVO. I'm a civilian and I come from another village.”<sup>2133</sup> That is when Vehid Subotić, aka Geler, stopped.<sup>2134</sup>

1017. Subsequently, Vehid Subotić ordered Witnesses Z7 and Ivica Kegelj to pick up the bodies of the men killed and to put them in Ivica Kegelj's garage.<sup>2135</sup> Vehid Subotić told them that if they told anyone about what they had seen, he would give them “special treatment” and kill them in the most horrible manner imaginable.<sup>2136</sup>

1018. Then Witnesses Z7 and Ivica Kegelj were taken to the school in Lašva, where the ABiH soldiers were holding all the Croatian soldiers and civilians taken prisoner that day in Dusina and the surrounding area, apart from the six soldiers who had already been taken to the Zenica Music School.<sup>2137</sup> From there, the 3<sup>rd</sup> Corps Military Police transported Ivica Kegelj and 24 other HVO soldiers to the KP Dom in Zenica, whereas Witness Z7 was allowed to return home.<sup>2138</sup> Ivica Kegelj spent 13 days in detention at the KP Dom in Zenica before being exchanged with all the other Croatian prisoners in Dusina around 12 February 1993.<sup>2139</sup> After his release, he went to Busovača

<sup>2128</sup> Ivica Kegelj, T(F) p. 4232 ; P 389 (under seal), paras. 6 and 7.

<sup>2129</sup> Ivica Kegelj, T(F) pp. 4232-4233.

<sup>2130</sup> Ivica Kegelj, T(F) pp. 4232-4233.

<sup>2131</sup> Ivica Kegelj, T(F) pp. 4236-4237; P 389 (under seal), paras. 6 and 7.

<sup>2132</sup> Ivica Kegelj, T(F) p. 4237; P 389 (under seal), paras. 6 and 7.

<sup>2133</sup> Ivica Kegelj, T(F) p. 4237.

<sup>2134</sup> Ivica Kegelj, T(F) p. 4237; P 389 (under seal), para. 8.

<sup>2135</sup> Ivica Kegelj, T(F) p. 4240; P 389 (under seal), para. 11.

<sup>2136</sup> Ivica Kegelj, T(F) p. 4239.

<sup>2137</sup> Ivica Kegelj, T(F) pp. 4241-4242; Milica Kegelj, T(F) p. 589; P 389 (under seal), para. 16.

<sup>2138</sup> Ivica Kegelj, T(F) p. 4244; Mahir Izet, T(F) pp. 16799, 16820 and 16821; Semir Sarić, T(F) pp. 17319, 17320 and 17343; P 389 (under seal), para. 16; P 314 and P 744.

<sup>2139</sup> P 206 and P 744.

where he made statements about the events he had lived through.<sup>2140</sup> Witness Z7 and his wife decided to leave Dusina and to go to Busovača.<sup>2141</sup>

1019. On 27 January 1993, the bodies of the people killed were taken to the morgue in Zenica by the Civilian Protection, which was also responsible for health and safety and for burying the dead.<sup>2142</sup> There were 10 bodies in all.<sup>2143</sup>

b. Murder of Zvonko Rajić, Paragraph 39 (a) (ab) of the Indictment

1020. The Chamber considers that it has been proved beyond a reasonable doubt that Zvonko Rajić was killed on 26 January 1993 in the vicinity of Dusina.<sup>2144</sup> Since he had laid down his weapons and had been put out of action as a result of his wounds, Zvonko Rajić had acquired the status of prisoner of war afforded the protection offered by the laws or customs of war as recognised by common Article 3(a) of the Geneva Conventions.<sup>2145</sup>

1021. As regards the perpetrator of the murder of Zvonko Rajić, the witnesses, members of the HVO, are at one in stating that Zvonko Rajić was killed by Šerif Patković, Commander of the 7<sup>th</sup> Muslim Mountain Brigade (Mbbr) 2<sup>nd</sup> Battalion.<sup>2146</sup> Franjo Batinić and Dragan Radoš acknowledged, however, that they did not know Šerif Patković personally at the time and did not know what his name was until some time after the murder.<sup>2147</sup> It is not absolutely clear whether or not Željko Cvijanović knew Šerif Patković. He stated that he had not met Šerif Patković personally but that he thought at the time that he belonged to the 7<sup>th</sup> Brigade and was in command of it.<sup>2148</sup> The witness also averred that he had seen Šerif Patković at the Lašva school, where he introduced himself as such.<sup>2149</sup> Hazim Baručija, however, who was the headmaster of the Lašva school and a member of the ABiH, stated that he had seen Šerif Patković in front of the school in the afternoon of 26 January 1993, although he added that Šerif Patković had not entered the school.<sup>2150</sup> Witness BA claimed that he had not seen Šerif Patković or other members of the Blue Falcons when the members of the 7<sup>th</sup> Brigade escorted the six Croatian prisoners and the wounded Zvonko Rajić in

<sup>2140</sup> Ivica Kegelj, T(F) pp. 4256-4257.

<sup>2141</sup> P 389 (under seal), para. 17.

<sup>2142</sup> P 334; Mirsad Mesić, T(F) pp. 12846, 12878 and 12880.

<sup>2143</sup> Mirsad Mesić, T(F) pp. 12845, 12846 and 12879.

<sup>2144</sup> Željko Cvijanović, T(F) p. 430; Franjo Batinić, T(F) pp. 511-513; Dragan Radoš, T(F) pp. 1056-1057.

<sup>2145</sup> Witness BA, T(F) pp. 758-760; Franjo Batinić, T(F) pp. 509, 510 and 554; Dragan Radoš, T(F) pp. 1055-1056.

<sup>2146</sup> Željko Cvijanović, T(F) pp. 430 and 432; Franjo Batinić, T(F) p. 511; Dragan Radoš, T(F) pp. 1056-1057; Joint Statement on the Agreement of Facts, Annex A.

<sup>2147</sup> Dragan Radoš, T(F) pp. 1057 and 1058; Franjo Batinić, T(F) p. 511.

<sup>2148</sup> Željko Cvijanović, T(F) p. 432.

<sup>2149</sup> Željko Cvijanović, T(F) p. 432.

<sup>2150</sup> Hazim Baručija, T(F) pp. 12442, 12443 and 12444.



the direction of Brdo.<sup>2151</sup> The Chamber takes note, moreover, of the fact that criminal proceedings were initiated a few years later in the Cantonal Court of Zenica against another person for killing people in Dusina on 26 January 1993.<sup>2152</sup>

1022. The Chamber finds that Šerif Patković was present in the region of Lašva on that day,<sup>2153</sup> but concludes nevertheless that it has not been proved beyond a reasonable doubt that he murdered Zvonko Rajić.

1023. It has, however, been proved beyond a reasonable doubt – and this has not been contested by the Defence for the Accused Hadžihasanović – that the perpetrator of the murder was part of the troops subordinated to the Accused Hadžihasanović, more specifically those of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion.

1024. First, Witnesses BA and Franjo Batinić both stated that the soldiers present in the vicinity of Dusina belonged to the 7<sup>th</sup> Brigade.<sup>2154</sup>

1025. Exhibits P 130 and P 131 prove that the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion was the main unit engaged in the fighting in Dusina at the material time.<sup>2155</sup> Although the exhibits also show that the 303<sup>rd</sup> Brigade and the 17<sup>th</sup> Brigade were also present in the region<sup>2156</sup>, Witnesses Hasim Baručija, Deputy Commander of the 3<sup>rd</sup> Corps 2<sup>nd</sup> Anti-Sabotage Detachment, and Fikret Čuskić, 17<sup>th</sup> Brigade Commander, deny that these brigades were involved in the fighting which resulted in the murders committed in Dusina.<sup>2157</sup> The same applies to the units of the TO, which are not mentioned in the Indictment but were present in the vicinity of Dusina on that day.<sup>2158</sup>

1026. The circumstances surrounding the murder of Zvonko Rajić also point to the involvement of the 7<sup>th</sup> Brigade. Accordingly, Zvonko Rajić's murder occurred after that of Elvedin Čamdić, Commander of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion 2<sup>nd</sup> Company.<sup>2159</sup> Zvonko Rajić's murder could therefore be interpreted as an act of revenge. In addition, following Zvonko Rajić's murder, the members of his unit were taken to the Zenica Music School. As will be explained in more detail in

<sup>2151</sup> Witness BA, T(F) pp. 761-762.

<sup>2152</sup> Jasmin Šarić, T(F) p. 15943; Džemal Merdan, T(F) p. 13573; Semir Šarić, T(F) p. 17325; Hilmo Ahmetović, T(F) pp. 16189 and 16190.

<sup>2153</sup> P 479; P 498; Hasim Baručija, T(F) pp. 12442 and 12443.

<sup>2154</sup> Witness BA, T(F) pp. 726-729, 743-746, 754, 759 and 760; Franjo Batinić, T(F) pp. 512-513.

<sup>2155</sup> P 130 and P 131.

<sup>2156</sup> P 128 (Joint Statement on the Agreement of Facts, Annex B, p. 8, agreed fact No 11) and P 129 (Joint Statement on the Agreement of Facts, Annex B, p. 8, agreed fact No 12).

<sup>2157</sup> Hasim Baručija, T(F) pp. 12421, 12426 and 12427; Fikret Čuskić, T(F) pp. 12064-12065.

<sup>2158</sup> P 200 and P 310; Witness BA, T(F) pp. 724 *ff.*, who refers only to the 7<sup>th</sup> MBBR being involved in the fighting.

the part of the Judgement relating to the Zenica Music School, the school was a detention centre set up by the 7<sup>th</sup> Brigade, where the prisoners were subjected to cruel treatment.<sup>2160</sup>

1027. The Chamber concludes that the *mens rea* required by common Article 3(a) of the Geneva Conventions has also been established. At the time Zvonko Rajić was killed, he was on the ground with a wounded leg. His attempt to flee had clearly failed, since the gunshots by the soldiers of the 7<sup>th</sup> Mbbbr had stopped it. Consequently, the fact that Zvonko Rajić was fired upon again clearly shows the intention to kill him.

1028. On the basis of the foregoing, the Chamber finds that the crime of murder has been proved as far as Zvonko Rajić is concerned. That crime can be ascribed to members of the 7<sup>th</sup> Brigade.

c. Murders of Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić, Augustin Radoš and Vojislav Stanišić, Paragraph 39(a) (aa) of the Indictment

1029. The Chamber finds that Vojislav Stanišić, Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić and Augustin Radoš were executed in Dusina on 26 January 1993.<sup>2161</sup> The civilian status of Vojislav Stanišić is proved by the testimony of Ivica Kegelj.<sup>2162</sup> The five other victims had surrendered their weapons and had been taken prisoner by the ABiH.<sup>2163</sup> Consequently, they were all protected persons by virtue of the laws or customs of war as recognised by common Article 3(a) of the Geneva Conventions.

1030. As regards the perpetrator or perpetrators of the murders, Witness Ivica Kegelj and eyewitness Z7 stated that the order to execute was given by Vehid Subotić, aka Geler.<sup>2164</sup> This is not contested by the Defence for the Accused Hadžihasanović. The witnesses identified Vehid Subotić, aka Geler, not only by his glass eye, but also because he had told them he was the commander of the unit and was called Geler.<sup>2165</sup> The exhibits tendered into evidence show that

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<sup>2159</sup> P 131 and P 135.

<sup>2160</sup> See *infra* paras. 1173-1200.

<sup>2161</sup> Ivica Kegelj, T(F) pp. 4232, 4236 and 4237; P 389 (under seal), para. 7.

<sup>2162</sup> Ivica Kegelj, T(F) pp. 4229-4236.

<sup>2163</sup> Ivica Kegelj, T(F) pp. 4228, 4229, 4232 and 4237.

<sup>2164</sup> Ivica Kegelj, T(F) pp. 4232, 4236 and 4237; P 389 (under seal), paras. 6 and 9.

<sup>2165</sup> Ivica Kegelj, T(F) p. 4231: "And then one of the soldiers said that he was the commander of that unit. He said that his nickname was Geler, or 'shrapnel'. And he pointed to a glass eye that he had. He had lost an eye in Croatia a year or two ago, a year or two earlier. He issued orders himself. He asked us to hand over our weapons." P 389 (under seal), para. 9. Their account of the events is not called in question by Exhibit P 906. Exhibit P 906, a request for an investigation from the Prosecutor's Office in Travnik accuses one Ahmed Helvida, a member of the ABiH, of having

Vehid Subotić, aka Geler, was part of the 7<sup>th</sup> Mbbr 2<sup>nd</sup> Battalion.<sup>2166</sup> The Chamber therefore concludes that it has been proved beyond a reasonable doubt that the murder of the six Croats was committed by soldiers belonging to the 7<sup>th</sup> Mbbr under the command of the Accused Hadžihasanović.

1031. Since the Chamber entertains no doubts as to the existence of the *mens rea* for murder, it concludes that the elements of the crime of murder have been established as concerns Vojislav Stanišić, Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić and Augustin Radoš.

(iii) Findings of the Chamber regarding the Responsibility of the Accused Hadžihasanović

1032. Having reached its conclusions in fact and in law as to the murders committed in Dusina on 26 January 1993, the Chamber will now consider the question of the responsibility of the Accused Hadžihasanović under Article 7(3) of the Statute.

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1033. The Chamber found that the murders alleged in paragraphs 39(a) and 40 of the Indictment were committed by members of the 7<sup>th</sup> Mbbr 2<sup>nd</sup> Battalion. Since the 7<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time,<sup>2167</sup> it is presumed that the Accused Hadžihasanović exercised effective control over that unit and over the perpetrators of the murders who belonged to it.<sup>2168</sup>

1034. Moreover, the evidence shows that the 7<sup>th</sup> Brigade carried out the orders of the Accused Hadžihasanović. Accordingly, on 19 January 1993, the Accused Hadžihasanović ordered that all the units of the 3<sup>rd</sup> Corps maximise their readiness for combat. Following this order, the Commander of

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killed the six Croats in Dusina. This does not contradict the testimony of the witness who did not say anything about the question as to which members of the ABiH had carried out Vehid Subotić's order. Consequently, it is not ruled out that Ahmed Helvida was the person who carried out the order to execute.

<sup>2166</sup> P 542, P 713, P 720 and P 906.

<sup>2167</sup> *See supra* para. 381.

<sup>2168</sup> *See supra* para. 79.

the 7<sup>th</sup> Brigade, Asim Koričić, ordered all the units of the 7<sup>th</sup> Brigade to maximise their readiness for combat.<sup>2169</sup> That order was carried out by Šerif Patković, the Commander of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion, who, in turn, ordered all the companies and components of the 2<sup>nd</sup> Battalion to maximise their readiness for combat.<sup>2170</sup> These exhibits prove that the orders of the Accused Hadžihasanović went down the chain of command.<sup>2171</sup>

1035. Furthermore, the Defence for the Accused Hadžihasanović has not contested the fact that the 7<sup>th</sup> Mbbr was subordinated to the Accused Hadžihasanović and has not adduced any evidence to refute that presumption.

1036. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the murders and that there was a superior-subordinate relationship within the meanings of Article 7(3) of the Statute.

b. Knowledge of the Accused Hadžihasanović

1037. As far as the knowledge of the Accused Hadžihasanović is concerned, a distinction should be made between knowledge before the event and knowledge after the event. The Defence for the Accused Hadžihasanović contests only his knowledge before the event, that is, that the Accused Hadžihasanović knew or had reason to know that his subordinates were about to commit crimes.<sup>2172</sup> The Prosecution did not attempt to show that he had such prior knowledge. No evidence was adduced in this regard. The Prosecution merely adduced evidence as to his knowledge after the event, namely that the Accused Hadžihasanović knew or had reason to know that his subordinates had committed crimes in Dusina on 26 January 1993.<sup>2173</sup>

1038. In view of the above, the Chamber considers that it has not been proved beyond a reasonable doubt that the Accused Hadžihasanović knew or had reason to know that members of the 7<sup>th</sup> Brigade were about to commit murders.

1039. Conversely, the Accused Hadžihasanović was aware of the allegations of murder as early as the afternoon of 26 January 1993. On 26 January 1993, a meeting took place in Kiseljak between

<sup>2169</sup> P 480: “Pursuant to the Order of the 3<sup>rd</sup> Corps Command strictly confidential number 02/33-176 of 19 January 1993 [...]”.

<sup>2170</sup> P 479.

<sup>2171</sup> The exhibits also show that the information went back up the chain of command; *see* P 825 of 22 January 1993, P 714 of 25 January 1993, P 828 of 26 January 1993, P 130 of 26 January 1993 and P 131 of 26 January 1993, all combat reports of the 7<sup>th</sup> Brigade addressed to the 3<sup>rd</sup> Corps.

<sup>2172</sup> Hadžihasanović Defence Final Brief, para. 307.

<sup>2173</sup> Prosecution Final Brief, para. 170 *ff.*; Prosecution Closing Arguments, T(E), p. 19018.

the delegations of the HVO, the ABiH and representatives of the international community, with a view to bringing to an end the fighting in the region of Busovača. Witness Džemal Merdan represented the ABiH, while Tihomir Blaškić represented the HVO. Members of UNPROFOR were also present, in particular Witnesses Roderick Cordy-Simpson and Robert Stewart. Tihomir Blaškić interrupted the meeting to inform Witness Džemal Merdan and the others present that crimes had been perpetrated in the village of Dusina.<sup>2174</sup>

1040. Following his return from Kiseljak, Witness Džemal Merdan went immediately to the buildings of the 3<sup>rd</sup> Corps Command in Zenica and made this information known to the Accused Hadžihasanović.<sup>2175</sup> The Accused Hadžihasanović then informed the Supreme Command of the ABiH that the meeting in Kiseljak had been interrupted on account of the death of the seven members of the HVO killed in Dusina.<sup>2176</sup>

1041. On 28 January 1993, the Accused Hadžihasanović informed the Supreme Command of the allegations broadcast on Croatian radio and television and stated, “We reject all the lies spread by the HTV about the alleged massacres of the Croatian population, as well as the lie about the alleged killing of seven unarmed HVO soldiers. We claim responsibly that all the HVO soldiers killed lost their lives in combat, in attacks on Muslim villages, and our units opened fire only in defence, as were their strict orders.”<sup>2177</sup>

### c. Measures Taken

1042. As it has been proved beyond a reasonable doubt that the Accused Hadžihasanović was aware of the allegations of murders committed in Dusina by his subordinates, he had the duty to take the necessary and reasonable measures to punish the perpetrators.

1043. According to the testimony of Džemal Merdan, from 26 January 1993, he and the Accused Hadžihasanović tried to obtain as much information as possible about the events in Dusina. From the records and reports of that day they had concluded that the losses were the result of combat operations and not of crimes.<sup>2178</sup> This is information they passed on to Tihomir Blaškić at a second meeting held at UNPROFOR headquarters in Kiseljak on 27 January 1993.<sup>2179</sup> Tihomir Blaškić

<sup>2174</sup> Džemal Merdan, T(F) pp. 13057-13058; Robert Stewart, T(F) p. 15170; Roderick Cordy-Simpson, T(F) pp. 15799, 15831 and 15832.

<sup>2175</sup> Džemal Merdan, T(F) p. 13058.

<sup>2176</sup> P 133.

<sup>2177</sup> P 134, Joint Statement on the Agreement of Facts, Annex B, p. 9, agreed fact No 19.

<sup>2178</sup> Džemal Merdan, T(F) p. 13059.

<sup>2179</sup> Džemal Merdan, T(F) pp. 13088-13089; Robert Stewart, T(F) pp. 15173 and 15176.

seems to have been satisfied with that information, since he agreed to continue negotiations with the ABiH.<sup>2180</sup>

1044. On that day, the parties reached a cease-fire agreement<sup>2181</sup> further to which the Busovača Joint Commission was set up.<sup>2182</sup> It was chaired by Jeremy Fleming, a member of the ECMM based in Busovača and had the task of investigating all complaints and going to any point of tension to ensure that the cease-fire was respected.<sup>2183</sup>

1045. On either 28 or 29 January 1993, Jeremy Fleming, Witness Džemal Merdan and Franjo Nakić went to Dusina in connection with the Busovača Joint Commission to inquire into the allegations of a massacre.<sup>2184</sup> According to Witness Džemal Merdan, the visit confirmed that the dead had been killed in fighting.<sup>2185</sup>

1046. At the same time, more specifically on 27 January 1993, the duty officer of the 3<sup>rd</sup> Corps Military Police Battalion contacted the investigating judge of the Zenica Military Court, Mirsad Strika. He informed the judge that the Civilian Protection had brought six corpses from Dusina to the morgue in Zenica on 27 January 1993.<sup>2186</sup> That approach was in accordance with Article 41 of the Rules of operation of the military security service of the Armed Forces of the Republic of Bosnia-Herzegovina, which provided that in an emergency an authorised officer of the military security service had to inform the military prosecutor or the investigating judge at the military court.<sup>2187</sup>

1047. Following this information, Judge Mirsad Strika set up an investigation team consisting of members of the Zenica Security Services Centre (CSB)<sup>2188</sup> pursuant to Article 156 of the SFRY Criminal Code.<sup>2189</sup> Witness Režib Begić, Chief of the Zenica CSB, explained that the military police was not in a position to identify the bodies and carry out a physical examination of them

<sup>2180</sup> Roderick Cordy-Simpson, T(F) p. 15800.

<sup>2181</sup> Robert Stewart, T(F) p. 15172; Roderick Cordy-Simpson, T(F) pp. 15804 and 15833.

<sup>2182</sup> Robert Stewart, T(F) pp. 15175 and 15178; Roderick Cordy-Simpson, T(F) pp. 15803 and 15804; DH 664.

<sup>2183</sup> Robert Stewart, T(F) pp. 15175 and 15178; Roderick Cordy-Simpson, T(F) pp. 15803 and 15804; DH 664.

<sup>2184</sup> Robert Stewart, T(F) p. 15175; DH 2094, para. 11.

<sup>2185</sup> Džemal Merdan, T(F) p. 13816.

<sup>2186</sup> Zaim Mujezinović, T(E), pp. 17474-17475; Semir Sarić, T(F) p. 17322; P 334. Civilian Protection was also responsible for clearing the ground and burying the dead; Mirsad Mesić, T(F) pp. 12846, 12848, 12878 and 12880.

<sup>2187</sup> P 244 (Rules of Operation of the Military Security Service); *see supra* para. 934.

<sup>2188</sup> Zaim Mujezinović, T(E), pp. 17475 and 17476; Semir Sarić, T(F) p. 17322; Režib Begić, T(F) pp. 12500 and 12501; Ermin Husejnagić, T(F) pp. 12684 to 12689.

<sup>2189</sup> *See supra* para. 934.

because it did not have the necessary technical resources.<sup>2190</sup> This is why the investigating judge asked the Zenica CSB to carry out the requisite examinations.<sup>2191</sup>

1048. At the request of Mirsad Strika, the Zenica CSB carried out several examinations on 28 and 29 January 1993.<sup>2192</sup> First, the Zenica CSB identified the ten dead men.<sup>2193</sup> Since the bodies had been brought to the Zenica morgue, the identification team identified them in Zenica.<sup>2194</sup> The identification team included pathologist Faruk Turkić, investigating judges Mirsad Strika and Vlado Adamović, a prosecutor from the Zenica Military Court and the forensic doctor of the Zenica CSB.<sup>2195</sup> In addition, there was Witness Ermin Husejnagić and his colleagues Redžo Hadžić and Enes Šarić, all members of the Zenica CSB.<sup>2196</sup> Acting on the order of Mirsad Strika, pathologist Faruk Turkić carried out an external physical examination of the bodies and recorded his observations in writing.<sup>2197</sup> In addition, Redžo Hadžić carried out a paraffin test on all the bodies with the exception of that of Vojislav Stanišić.<sup>2198</sup> Photographs were also taken.<sup>2199</sup>

1049. The Zenica CSB drafted several official notes on the results of these examinations and sent them to the Zenica District Military Court on 1 February 1993.<sup>2200</sup> The file sent to the Military Court included Faruk Turkić's report of 28 January 1993 on the external description of the bodies,<sup>2201</sup> two official notes of 29 January 1993 on the identification of the bodies,<sup>2202</sup> the report on the paraffin test of 29 January 1993<sup>2203</sup> and the photographs taken of the ten bodies.<sup>2204</sup>

1050. Witnesses, who were members of the military police, stated that they received an order from the investigating judge and the 3<sup>rd</sup> Corps security organ to take statements from the Croatian

<sup>2190</sup> Režib Begić, T(F) pp. 12499, 12500 and 12538.

<sup>2191</sup> Režib Begić, T(F) pp. 12500-12511.

<sup>2192</sup> Režib Begić, T(F) pp. 12499, 12500 and 12511; Ermin Husejnagić, T(F) pp. 12686 and 12698.

<sup>2193</sup> P 333 and P 334.

<sup>2194</sup> The investigating judge merely carried out the examinations of the bodies at the Zenica morgue. Because of war operations, he did not order the investigation team to go to Dusina to visit where the events occurred. Ermin Husejnagić, T(F) pp. 12706-12707; P 333 and P 334.

<sup>2195</sup> Režib Begić, T(F) p. 12502; Ermin Husejnagić, T(F) pp. 12684, 12686 and 12691; P 333 and P 334.

<sup>2196</sup> Ermin Husejnagić, T(F) pp. 12683, 12687-12689 and 12691.

<sup>2197</sup> Ermin Husejnagić, T(F) pp. 12691 and 12712; DH 1638.

<sup>2198</sup> Ermin Husejnagić, T(F) pp. 12689, 12695 and 12698; P 341.

<sup>2199</sup> Ermin Husejnagić, T(F) p. 12687; DH 1639.

<sup>2200</sup> P 332; Ermin Husejnagić, T(F) pp. 12687, 12690, 12691 and 12708.

<sup>2201</sup> DH 1638.

<sup>2202</sup> P 333 and P 334. The Chamber notes that Exhibit P 332 mentions only an official note dated 29 January 1993. The Chamber considers that this is a typographical error insofar as there are two official notes dated 29 January 1993, P 333 and P 334.

<sup>2203</sup> P 341.

<sup>2204</sup> DH 1639.

prisoners brought from Dusina to the KP Dom in Zenica about their “participation in combat and the way they were captured.”<sup>2205</sup>

1051. The Prosecution maintains, however, that no serious investigation was carried out by the 3<sup>rd</sup> Corps which should have done *in situ* investigations and questioned Croatian eyewitnesses and the members of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion.<sup>2206</sup> It asserts that the 3<sup>rd</sup> Corps had the resources necessary for this purpose and that the location was perfectly accessible.<sup>2207</sup> It further maintains that the investigating judge, Mirsad Strika, did not play a major role.<sup>2208</sup>

1052. The Chamber finds that on 27 January 1993 the 3<sup>rd</sup> Corps Military Police duty officer informed the investigating judge of the Zenica Military Court that 10 bodies had been taken to the morgue in Zenica.<sup>2209</sup> The Chamber has no reason to doubt the veracity of this finding and considers that the fact that the 3<sup>rd</sup> Corps Military Police informed the investigating judge of the events in Dusina shows that it considered the possibility that a crime had been committed by members of the 7<sup>th</sup> Brigade.

1053. Further to the information communicated by the military police, the investigating judge, Mirsad Strika, set up an investigation team consisting of members of the Zenica CSB.<sup>2210</sup> The Chamber considers that once the matter had been referred to Judge Mirsad Strika, the 3<sup>rd</sup> Corps was no longer in a position to intervene in the investigation without a prior request of the investigating judge. The operation of the judicial system in the ABiH in 1993 has been explained in detail in the part of the Judgement relating to the functioning of civil and military justice in the RBiH.<sup>2211</sup> The witnesses who were judges in the Zenica District Military Court or members of the military police or of the Zenica CSB at the time explained that the investigating judge was the authority with exclusive competence to carry out an investigation. Mladen Veseljak and Hilmo Ahmetović stressed that the investigating judge was totally independent of the army as regards the measures to be taken. Nobody could instruct him how he had to undertake an investigation. It was the investigating judge who set up an investigation team, decided on its composition on a case-by-case basis and gave instructions as to how the investigation should proceed on-site. To that end, he could

<sup>2205</sup> Zaim Mujezinović, T(E), pp. 17475 and 17543; Semir Sarić, T(F) pp. 17323 and 17348.

<sup>2206</sup> Prosecution Final Brief, paras. 176, 178, 181 and 182.

<sup>2207</sup> Prosecution Final Brief, paras. 176, 178, 181 and 182.

<sup>2208</sup> Prosecution Final Brief, footnote 580.

<sup>2209</sup> Zaim Mujezinović, T(E), p. 17475; *see also* Semir Sarić, T(F) p. 17322.

<sup>2210</sup> Zaim Mujezinović, T(E), p. 17475; Semir Sarić, T(F) p. 17322; Režib Begić, T(F) pp. 12500-12501; Ermin Husejnagić, T(F) pp. 12684-12685.

<sup>2211</sup> *See supra* para. 900 *ff.*



ask the military or the civilian police to make men available to him.<sup>2212</sup> Witness Mladen Veseljak stated that once a case was in the hands of a military judicial authority, the military authorities were not entitled to act contrary to the instructions of the military judicial authority or to carry out parallel criminal investigations.<sup>2213</sup>

1054. The Chamber further finds that an on-site investigation was possible at the morgue to which the bodies of the people killed had been taken. Moreover, since the investigating judge was under a duty to draw up the *post mortem* report, he was obliged to go to where the bodies were located.

1055. The Chamber finds that once the investigation had been finished and all its findings presented to the investigating judge, the judge forwarded the evidence to the appropriate prosecutor. Like the investigating judge, the military prosecutor was completely independent of the army and the military police.<sup>2214</sup> The prosecutor had exclusive authority to decide what action to take on this information.<sup>2215</sup> In this instance, however, the Chamber does not know what action the prosecutor took in respect of the case in question.

1056. There are some doubts as to whether the military police took statements from the Croatian prisoners brought to the KP Dom in Zenica. Following the case brought before this Tribunal against Tihomir Blaškić, the Dusina case was re-examined in Zenica in 2000.<sup>2216</sup> During the re-examination, Witness Ragib Hadžić did not find any information to suggest that there had been any witnesses to the events in Dusina. Indeed, the file of the Zenica Public Prosecutor's Office of January 1993 contained no witness statements.<sup>2217</sup>

1057. This may be explained either by the fact that the 3<sup>rd</sup> Corps Military Police did not take any witness statements or by the fact that the eyewitnesses did not dare to make a statement to the Muslim authorities or had left the territory controlled by the ABiH. The Chamber heard a number of eyewitnesses and retraced what happened to them after the murders.

1058. As far as the murder of Zvonko Rajić is concerned, two of the eyewitnesses heard by the Chamber, Franjo Batinić and Dragan Radoš, were taken to the Zenica Music School, a detention

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<sup>2212</sup> Hilmo Ahmetović, T(F) pp. 16167 and 16169-16170; Mladen Veseljak, T(F) pp. 15993, 15996, 15997 and 16071; *see also* Režib Begić, T(F) pp. 12503, 12561 and 12562; Zaim Mujezinović, T(F) pp. 17476 and 17543; *see also supra* paras. 925-929.

<sup>2213</sup> Mladen Veseljak, T(E) pp. 16077-16078.

<sup>2214</sup> *See also supra* para. 931.

<sup>2215</sup> Mladen Veseljak, T(F) pp. 15996 and 15997; *see also supra* paras. 931-933.

<sup>2216</sup> Ragib Hadžić, T(F) pp. 15092-15094 and 15098.

<sup>2217</sup> Ragib Hadžić, T(F) p. 15103.

centre where the prisoners underwent cruel treatment.<sup>2218</sup> The third eyewitness heard by the Chamber, Željko Cvijanović, was taken directly to the Zenica KP Dom. When he was being moved from the Lašva school to the KP Dom, he was allegedly mistreated by 3<sup>rd</sup> Corps Military Police soldiers.<sup>2219</sup>

1059. It could be not established from the statements of Franjo Batinić, Dragan Radoš and Željko Cvijanović whether they had been questioned by the soldiers of the 3<sup>rd</sup> Corps or on what subject. The Chamber considers that, in view of the circumstances at the time, it would not be surprising if these eyewitnesses had remained silent when questioned by the 3<sup>rd</sup> Corps Military Police.

1060. As regards the murders of Vojislav Stanišić, Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić and Augustin Radoš, the Chamber heard two eyewitnesses. Ivica Kegelj was taken to the KP Dom in Zenica and spoke only of what he experienced once he had been exchanged and had arrived in territory controlled by the HVO.<sup>2220</sup> Witness Z7 succeeded in returning home and did not make any statement to the Muslim authorities out of fear.<sup>2221</sup>

1061. The Chamber finds that the Accused Hadžihasanović was unable to carry out his own criminal investigation or to influence how the case was dealt with by Judge Mirsad Strika or the competent prosecutor. Given that the 3<sup>rd</sup> Corps Military Police informed the investigating judge of the arrival of the bodies at the Zenica morgue, thereby referring the matter to the appropriate military judicial authority, it cannot be concluded that the Accused Hadžihasanović did not take the necessary and reasonable measures under Article 7(3) of the Statute.

(iv) Conclusions of the Chamber

1062. The Chamber considers that there is no evidence that the Accused Hadžihasanović knew or had reason to know that his subordinates were preparing to commit crimes in Dusina on 26 January 1993. The fact that there was a judicial investigation shows that the Accused did not fail in his duty to take the necessary and reasonable measures to punish the perpetrators. As a result, the Accused Hadžihasanović cannot be held to be criminally responsible for the offence referred to in count 1, paragraphs 39(a) and 40 of the Indictment.

<sup>2218</sup> Franjo Batinić, T(F) pp. 512, 513 and 525; Dragan Radoš, T(F) pp. 1059-1060; Kruno Rajić, T(F) pp. 1796 and 1843.

<sup>2219</sup> Željko Cvijanović, T(F) p. 440; Ivica Kegelj, T(F) p. 4243.

<sup>2220</sup> Ivica Kegelj, T(F) pp. 4256 and 4257.

<sup>2221</sup> P 389 (under seal), paras. 16 and 17.

(b) Miletići

1063. In paragraphs 39(b) and 40 of the Indictment, the Accused Hadžihasanović and Kubura are accused of not having taken the necessary and reasonable measures to prevent the murders of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović in Miletići on 24 April 1993 or to punish the perpetrators.<sup>2222</sup> They are accused of murder, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute and recognised by common Article 3(1)(a) of the Geneva Conventions.

(i) Arguments of the Parties

1064. The Prosecution maintains that the forces of the 306<sup>th</sup> Brigade and the 7<sup>th</sup> Brigade, in particular the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion 1<sup>st</sup> Company under the command of Ramo Durmiš were responsible for the murders committed in Miletići on 24 April 1993.<sup>2223</sup> It asserts, moreover, that the forces of the ABiH involved in the attack on Miletići operated in conjunction with the mujahedin.<sup>2224</sup> The Prosecution alleges that the Accused had knowledge of the murders committed by their subordinates and that they failed to take the necessary and reasonable measures to punish the perpetrators of the murders.<sup>2225</sup>

1065. The Defence for the Accused Hadžihasanović does not dispute the fact that the murders alleged in paragraph 39(b) of the Indictment were committed.<sup>2226</sup> Nevertheless, it does dispute the allegation that the identity of the perpetrators of the murders has been established.<sup>2227</sup> As regards the superior-subordinate relationship required under Article 7(3) of the Statute, the Defence for the Accused Hadžihasanović disputes that units subordinated to the 3<sup>rd</sup> Corps were involved in the crimes committed in Miletići on 24 April 1993. It maintains that the murders were committed by foreign mujahedin and local mujahedin who were neither subordinated to the 3<sup>rd</sup> Corps nor placed under its effective control.<sup>2228</sup> The Defence for the Accused Hadžihasanović asserts that the Prosecution failed to prove beyond a reasonable doubt that the Accused Hadžihasanović knew or

<sup>2222</sup> In its Decision on the Motions for Acquittal, the Chamber found that the Indictment was intended only to charge the two Accused, under count 2 of the Indictment, with the events at Maline on 8 June 1993. The Chamber found that the offences of cruel treatment which were allegedly committed in Miletići on 24 April 1993 were not supported by any evidence, and acquitted the Accused under this count.

<sup>2223</sup> Indictment, para. 39(b); Prosecution Final Brief, paras. 187 and 190.

<sup>2224</sup> Prosecution Final Brief, para. 189.

<sup>2225</sup> Prosecution Final Brief, paras. 192 and 193; nevertheless, it should be noted in this regard that the Prosecution Final Brief adduces no evidence to substantiate the alleged knowledge of the Accused Kubura; *see* paras. 192 and 193.

<sup>2226</sup> Hadžihasanović Defence Final Brief, para. 391.

<sup>2227</sup> Hadžihasanović Defence Final Brief, para. 391.

<sup>2228</sup> Hadžihasanović Defence Final Brief, para. 408.

had reason to know that the crimes were about to be committed and that he failed to take the necessary and reasonable measures to punish the perpetrators.<sup>2229</sup>

1066. The Defence for the Accused Kubura denies that units or members of the 7<sup>th</sup> Brigade were present in Miletići on 24 April 1993 and involved in the crimes committed.<sup>2230</sup> It disputes the allegation that the Accused Kubura had effective control over the perpetrators of the crimes committed in Miletići on that day.<sup>2231</sup> It argues that the events in Miletići were not part of any military operation carried out by the ABiH in the region but constituted an isolated incident.<sup>2232</sup> It further maintains that no unit of the 7<sup>th</sup> Brigade was stationed in the Bila Valley at that time, and that the presence of individual members of the 7<sup>th</sup> Brigade was due to the fact that they were there permanently and could not get back to their respective units on account of the blockade of the Bila Valley.<sup>2233</sup>

(ii) Findings of the Chamber regarding the Murders Committed in Miletići

a. Sequence of Events in Miletići on 24 April 1993

i. The Wounded Foreign Mujahed

1067. Witness Suad Menzil, a former member of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion medical service, stated that when leaving Mehurići at around 1000 hours on 24 April 1993, he was stopped by two foreign mujahedin, two armed “Arabs”. They asked him to tend to a third foreign mujahed who had been seriously shot and was lying on the road.<sup>2234</sup> In view of the seriousness of his wounds, he had to be taken to the hospital in Zenica.<sup>2235</sup> It appears from the 3<sup>rd</sup> Corps and 306<sup>th</sup> Brigade war diaries that day that the “Arab” in question had been wounded by the HVO near Suvi Dol, which is to the west of Miletići in the Bila Valley.<sup>2236</sup>

<sup>2229</sup> Hadžihasanović Defence Final Brief, para. 391.

<sup>2230</sup> Kubura Defence Final Brief, para. 61 *ff.*

<sup>2231</sup> Kubura Defence Final Brief, paras. 66 and 73.

<sup>2232</sup> Kubura Defence Final Brief, para. 67.

<sup>2233</sup> Kubura Defence Final Brief, para. 80.

<sup>2234</sup> Suad Menzil, T(F) pp. 14099, 14136.

<sup>2235</sup> Suad Menzil, T(F) p. 14100.

<sup>2236</sup> C 15, p. 167; *see also* C 18, p. 24, war diary of the 306<sup>th</sup> Brigade of 24 April 1993, which mentions that “an Arab was wounded in the stomach in the area of Lacin above Suvi Dol”.

ii. Taking of the Village of Miletići, Arrest and Detention of the Villagers

1068. Miletići is a small village in the Bila Valley in the municipality of Travnik.<sup>2237</sup> At the material time, the village consisted of two parts: Gornji Miletići, the Croatian part of the village, and Donji Miletići, the Muslim part.<sup>2238</sup> Gornji Miletići had some 13 Croatian houses and Donji Miletići three Muslim houses.<sup>2239</sup> The village of Miletići is about three kilometres from Mehurići, where the Elementary School housed the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion, and a few kilometres from Luka, a hamlet of Zgrade, where the 314<sup>th</sup> Brigade 4<sup>th</sup> Battalion 3<sup>rd</sup> Company was located.<sup>2240</sup>

1069. In the afternoon of 24 April 1993, Dedo Suljić, a Muslim villager who lived in Donji Miletići, learned that foreign mujahedin were approaching the village of Miletići. Witness Dedo Suljić, together with his two brothers, Akif and Avdo Suljić, and his uncle, Haso Suljić, went towards the Croatian part of the village to inform their Croatian neighbours and to reassure them.<sup>2241</sup> Once they had arrived at Gornji Miletići, Franjo Pavlović and Avdo Suljić agreed to leave together to inform the ABiH Command of the arrival of the mujahedin and of the fact that the villagers were worried about the consequences of their arrival.<sup>2242</sup>

1070. The witnesses stated that, shortly after, mujahedin, some of whom were masked, arrived in the village.<sup>2243</sup> When the Croatian villagers saw the soldiers approaching and heard gunshots, they took shelter in the houses of Stipo and Ivo Pavlović.<sup>2244</sup> Witness Bozo Pavlović was the only one who went off to hide in the forest.<sup>2245</sup> About 10 people sought shelter in the house of Stipo Pavlović, including Witnesses Katica Kovačević, Anda Pavlović and Witnesses Z10 and Z14.<sup>2246</sup> Those witnesses stated that Stipo Pavlović had remained in the hallway of his house, armed with a rifle, while the other villagers had taken refuge in an adjacent room.<sup>2247</sup> When the soldiers started to bang on the door, Stipo Pavlović fired at the door, killing one of the attackers.<sup>2248</sup> At this, the

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<sup>2237</sup> P 933.

<sup>2238</sup> Anda Pavlović, T(F) p. 1306; Bozo Pavlović, T(F) p. 2068; Hamid Suljić, T(F) p. 11878.

<sup>2239</sup> P 392 (under seal), para. 3; P 396 (under seal), para. 1.

<sup>2240</sup> Esed Sipić, T(F) p. 14749; Derviš Suljić, T(F) 11303, 11304 and 11337; Hamid Suljić, T(F) pp. 11881, 11898 and 11933; P933.

<sup>2241</sup> DH 2092, para. 3; Anda Pavlović, T(F) p. 1313; P 392 (under seal), para. 6; P 396, para. 2.

<sup>2242</sup> DH 2092, para. 4; Anda Pavlović, T(F) p. 1314; P 396 (under seal), para. 4.

<sup>2243</sup> DH 2092, para. 4; Anda Pavlović, T(F) p. 1315.

<sup>2244</sup> Katica Kovačević, T(F) pp. 906 and 907; Anda Pavlović, T(F) p. 1315; P 392 (under seal), para. 7; P 396 (under seal), para. 4.

<sup>2245</sup> Bozo Pavlović, T(F) p. 2072.

<sup>2246</sup> Katica Kovačević, T(F) p. 907; Anda Pavlović, T(F) p. 1319; P 392 (under seal), para. 8; P 396 (under seal), para. 4.

<sup>2247</sup> Anda Pavlović, T(F) pp. 1319 and 1320; P 392 (under seal), para. 8; P 396, (under seal), para. 5.

<sup>2248</sup> Katica Kovačević, T(F) p. 907; Anda Pavlović, T(F) pp. 1320, 1322 and 1323.

soldiers threw a grenade into the house, which killed Stipo Pavlović.<sup>2249</sup> They then entered the house and made the villagers go outside.<sup>2250</sup> Upon leaving the house, Vlado Pavlović began to run in order to escape. One of the soldiers posted in front of the house gave him a blow on the head and forced him to kneel.<sup>2251</sup> According to the Prosecution witnesses, there were around a dozen foreign mujahedin and between 20 to 30 masked local soldiers wearing camouflage uniforms.<sup>2252</sup> They were all armed.<sup>2253</sup>

1071. A soldier called “Ramadan”, who spoke B/C/S badly, ordered the assembled villagers to go and collect their weapons and those who had weapons did so.<sup>2254</sup> It was at this moment that Franjo Pavlović and Avdo Suljić returned to the village. Although Dedo Suljić tried to warn them and told them to go away, Franjo Pavlović was stopped and forced to kneel, his hands tied behind his back. Avdo Suljić managed to escape.<sup>2255</sup>

1072. The soldiers separated Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović from the other villagers and forced them to kneel.<sup>2256</sup> One of the soldiers said that they ought to be five, but when another indicated the house where Stipo Pavlović had been killed, the first soldier was satisfied.<sup>2257</sup> The soldiers bound the hands of Dedo Suljić and the Croatian villagers with the exception of the old women and three children and ordered them to set off on the road to Poljanice/Mehurići.<sup>2258</sup> Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović stayed behind, kneeling.<sup>2259</sup> The four men were in civilian clothes.<sup>2260</sup> It was the last time the villagers saw them alive.

1073. When the villagers were walking to Poljanice, Witness Hamid Suljić, the son of Akif Suljić and a member of the ABiH 314<sup>th</sup> Brigade, encountered the column.<sup>2261</sup> When he appeared before

<sup>2249</sup> Katica Kovačević, T(F) pp. 907 and 908; Anda Pavlović, T(F) p. 1320.

<sup>2250</sup> Anda Pavlović, T(F) pp. 1320 and 1321; P 392 (under seal), para. 9; P 396 (under seal), para. 5.

<sup>2251</sup> Katica Kovačević, T(F) p. 911.

<sup>2252</sup> Anda Pavlović, T(F) pp. 1323 and 1324; P 396 (under seal), para. 7; P 392 (under seal), para. 10, 11 and 16; P 393 (under seal), para. 5.

<sup>2253</sup> P 396 (under seal), para. 7.

<sup>2254</sup> Anda Pavlović, T(F) pp. 1323, 1324 and 1325; P 392 (under seal), para. 13; P 396 (under seal), para. 8; DH 2092, para. 6.

<sup>2255</sup> Anda Pavlović, T(F) p. 1326; P 392 (under seal), para. 13; P 396 (under seal), para. 9; DH 2092, para. 6.

<sup>2256</sup> Katica Kovačević, T(F) pp. 911-913; Anda Pavlović, T(F) pp. 1326 and 1327; P 392 (under seal), paras. 13 and 14; P 393 (under seal), para. 7; P 396 (under seal), para. 9.

<sup>2257</sup> Anda Pavlović, T(F) p. 1326.

<sup>2258</sup> Anda Pavlović, T(F) p. 1327; P 392 (under seal), paras. 14 and 15; P 393 (under seal), para. 8; P 396 (under seal), para. 9; DH 2092, para. 6.

<sup>2259</sup> Katica Kovačević, T(F) pp. 914 and 1275; P 392 (under seal), paras. 13 and 14; P 393 (under seal), para. 8; DH 2092, para. 6.

<sup>2260</sup> P 396 (under seal), para. 9.

<sup>2261</sup> Hamid Suljić, T(F) p. 11884; DH 2092, para. 7.

the Chamber, Hamid Suljić stated that the mujahedin, wearing camouflage uniforms, masked and armed with automatic rifles, surrounded the villagers.<sup>2262</sup> In his deposition, the witness mentioned that the mujahedin spoke a language that he did not understand and wore no insignia.<sup>2263</sup> He recalled that all the men, apart from his uncle Haso Suljić, who used a stick to walk, had their hands tied.<sup>2264</sup> When he approached the column of villagers, one of the masked men indicated to him that he should leave.<sup>2265</sup> Dedo Suljić also gestured to him not to come near.<sup>2266</sup> Hamid Suljić then went off in the direction of Mehurići.<sup>2267</sup>

1074. During the afternoon of 24 April 1993, the duty officer of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion in Mehurići informed Witness Derviš Suljić, the son of Dedo Suljić and a member of the 306<sup>th</sup> Brigade at the material time, that the mujahedin had started to arrest people in Miletići.<sup>2268</sup> Becoming afraid for his family, Derviš Suljić drove to Miletići.<sup>2269</sup> On the way, he saw his father, his uncle, his father's uncle and Croatian neighbours who were tied up and seemed to be moving towards Mehurići.<sup>2270</sup> He found himself confronted with the column of prisoners. When he shouted from far off his father began to weep. Derviš Suljić wanted to draw closer to the group, but he was prevented by a masked soldier carrying a weapon.<sup>2271</sup> According to the witness, about ten guards were guarding the prisoners.<sup>2272</sup> Derviš Suljić then decided to join up again with the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion at Mehurići.<sup>2273</sup>

1075. The villagers were all taken to the camp at Poljanice.<sup>2274</sup> The witnesses concur in stating that foreign mujahedin and local Muslims separated the men from the women, subsequently putting the women in Savo Savić's house and the men in the cowshed.<sup>2275</sup>

<sup>2262</sup> Hamid Suljić, T(F) p. 11885.

<sup>2263</sup> Hamid Suljić, T(F) pp. 11886, 11887, 11916 and 11900.

<sup>2264</sup> Hamid Suljić, T(F) pp. 11885 and 11925.

<sup>2265</sup> Hamid Suljić, T(F) p. 11886.

<sup>2266</sup> DH 2092, para. 7.

<sup>2267</sup> Hamid Suljić, T(F) p. 11887.

<sup>2268</sup> Derviš Suljić, T(F) pp. 11308, 11309 and 11329.

<sup>2269</sup> Derviš Suljić, T(F) p. 11309.

<sup>2270</sup> Derviš Suljić, T(F) p. 11309.

<sup>2271</sup> Derviš Suljić, T(F) pp. 11309, 11310, 11336 and 11355.

<sup>2272</sup> Derviš Suljić, T(F) p. 11355.

<sup>2273</sup> Derviš Suljić, T(F) p. 11311.

<sup>2274</sup> For a description of the camp, *see supra* paras. 419-426. P 934 is a map with an enlarged view of the village of Mehurići and its immediate surroundings, including the camp at Poljanice.

<sup>2275</sup> Anda Pavlović, T(F) p. 1329; P 392 (under seal), paras. 16-18; P 393 (under seal), para. 9; P 396 (under seal), para. 11; DH 2092, para. 9.

iii. Release of the Villagers

1076. A number of witnesses, former members of the ABiH at the material time, testified to the negotiations which they attended in the evening of 24 April 1993 with a view to releasing the Muslim and Croatian prisoners from Poljanice Camp.<sup>2276</sup> Apart from some minor discrepancies, all the witnesses present stated that the release of the prisoners had been negotiated by Witness Sulejman Ribo, a member of the 312<sup>th</sup> Brigade, and Mirza Lubenović, Commander of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion.<sup>2277</sup>

1077. In the afternoon of 24 April 1993, Sulejman Ribo was in Mehurići Elementary School talking with Mehmed Musanović, Deputy Commander of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion, when he learned that a large number of mujahedin had left Mehurići making for Miletici.<sup>2278</sup> Mehmed Musanović reacted immediately and informed the commander of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion, Mirza Lubenović.<sup>2279</sup> Several persons assembled in the main room of the command, including Sulejman Ribo, Derviš Suljić, Suad Menzil and Hasan Zukanović.<sup>2280</sup> They were informed that the mujahedin had brought villagers under duress from the village of Miletici in the direction of Poljanice camp.<sup>2281</sup> Derviš Suljić told the other persons present that three members of his family had been arrested and were in the column.<sup>2282</sup> At about 1900 or 1930 hours, Mirza Lubenović arrived at the school and took control of the situation with a view to finding a solution and getting the prisoners freed.<sup>2283</sup> He tried to make contact with the chief of the mujahedin at Poljanice camp, Abu Haris, and sent some men there.<sup>2284</sup> Abu Haris, however, refused to take part in any talks whatsoever.<sup>2285</sup> Then, the members of the ABiH decided to call upon "Ramadan", an Arab who spoke some B/C/S and frequently visited the school.<sup>2286</sup> They asked him to act as an intermediary

<sup>2276</sup> Sulejman Ribo, a member of the 312<sup>th</sup> Brigade; Hamid Suljić, a member of the 314<sup>th</sup> Brigade, stationed at Zagrade; Derviš Suljić, Assistant Commander for Intelligence at 306<sup>th</sup> Brigade Command; Hasan Zukanović, Assistant Commander for Security in the 306<sup>th</sup> Brigade 1st Battalion; Suad Menzil, a member of the medical service of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion.

<sup>2277</sup> Sulejman Ribo, T(F) p. 11056; Derviš Suljić, T(F) pp. 11311-11313; Hamid Suljić, T(F) pp. 11888 and 11889; Suad Menzil, T(F) pp. 14103 and 14104; DH 2091, para. 6.

<sup>2278</sup> Sulejman Ribo, T(F) pp. 11049, 11050 and 11060.

<sup>2279</sup> Sulejman Ribo, T(F) pp. 11050 and 11051; DH 2091, para. 6.

<sup>2280</sup> Sulejman Ribo, T(F) p. 11051; Derviš Suljić, T(F) p. 11311; Suad Menzil, T(F) p. 14103; DH 2091, para.6.

<sup>2281</sup> Sulejman Ribo, T(F) p. 11051.

<sup>2282</sup> Sulejman Ribo, T(F) pp. 11051 and 11052; Derviš Suljić, T(F) p. 11311.

<sup>2283</sup> Sulejman Ribo, T(F) p. 11053; Derviš Suljić, T(F) p. 11312; DH 2091, para. 6.

<sup>2284</sup> Sulejman Ribo, T(F) p. 11054; Suad Menzil, T(F) p. 14104. It is not completely clear who was the emir of the mujahedin, referred to by those two witnesses. Whereas Sulejman Ribo mentioned Abu Haris, Suad Menzil thought that the emir at the material time was Wahiudin: Sulejman Ribo, T(F) p.11054; Suad Menzil, T(F) pp. 14141-14143; see also *supra* paras. 438-439.

<sup>2285</sup> Sulejman Ribo, T(F) p. 11054.

<sup>2286</sup> Sulejman Ribo, T(F) p. 11053; Suad Menzil, T(F) p. 14104; DH 2091, para. 6. The witness stated that at the time the mujahedin still had two rooms on the first floor of the Mehurići Elementary School, where they kept food. Ramadan



and to put them in touch with Abu Haris. After hesitating at first, Ramadan finally came back at about 2130 hours with Abu Haris, who was escorted by two or three armed Arab men.<sup>2287</sup> It was at this point that negotiations began between Mirza Lubenović and Abu Haris.<sup>2288</sup>

1078. During the negotiations Abu Haris set all sorts of conditions. He sought to avoid the Croatian prisoners fleeing after they were freed and asked for them to be guarded.<sup>2289</sup> It was therefore agreed to place the Croatian prisoners in Luka in the house of Witness Sulejman Ribo and in two other houses.<sup>2290</sup>

1079. At about 2200 hours on 24 April 1993 the Muslim villagers, Dedo, Akif and Haso Suljić, were released and brought to Mehurići Elementary School, where a foreigner who spoke a little B/C/S ordered an Arab man to take them to Luka.<sup>2291</sup> Once they arrived in Luka, the three Suljićs were reunited with their families in the house of Witness Sulejman Ribo.<sup>2292</sup> Lastly, after 2230 hours the Croatian prisoners were also released from Poljanice Camp and taken to Luka.<sup>2293</sup>

#### iv. Return to the Village of Miletići Following the Attack

1080. On the day after these events, 25 April 1993, Bozo Pavlović returned to the village of Miletići.<sup>2294</sup> When he appeared before the Chamber, he described the condition of the bodies of Franjo, Vlado, Tihomir Pavlović and Anto Petrović which he found upon his return. He found Tihomir Pavlović seated on a sofa in Stipo Pavlović's house,<sup>2295</sup> his hands tied behind his back. Signs of bullet impact could be seen on his body.<sup>2296</sup> He also saw the body of Franjo Pavlović, lying face down.<sup>2297</sup> The deceased's head was in a saucepan containing blood which had drained from the

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was responsible for their logistics: Sulejman Ribo, T(F) pp. 11053, 11088 and 11089; Suad Menzil, T(F) p. 14140; *see also supra* para. 420.

<sup>2287</sup> Sulejman Ribo, T(F) pp. 11053 and 11054; Suad Menzil, T(F) p. 14104; DH 2091, para. 6.

<sup>2288</sup> Sulejman Ribo, T(F) p. 11054; Suad Menzil, T(F) p. 14104.

<sup>2289</sup> Sulejman Ribo, T(F) p. 11056 (T(E) p. 11055).

<sup>2290</sup> Sulejman Ribo, T(F) pp. 11056, 11057 and 11090. Witness Sulejman Ribo explained to the Chamber that at the material time there was incessant rifle fire two or three kilometres from Mehurići. The members of the ABiH present during the negotiations were afraid that the mujahedin would kill the Croatian prisoners held in their camp if a mujahedin were injured, let alone killed, in that rifle fire: Sulejman Ribo, T(F) p. 11055.

<sup>2291</sup> Sulejman Ribo, T(F) p. 11055; Derviš Suljić, T(F) p. 11312 and 11313; Hamid Suljić, T(F) p. 11888; DH 2092, para. 9.

<sup>2292</sup> Sulejman Ribo, T(F) p. 11057; DH 2092, para. 9.

<sup>2293</sup> Katica Kovačević, T(F) p. 1278; Anda Pavlović, T(F) p. 1330; P 392 (under seal), paras. 19 and 20; P 396 (under seal), paras. 12 and 13; Sulejman Ribo, T(F) p. 11056 and 11057; DH 2091, para. 6.

<sup>2294</sup> Bozo Pavlović, T(F) p. 2073.

<sup>2295</sup> P 21.

<sup>2296</sup> Bozo Pavlović, T(F) pp. 2073 and 2074; P 24.1.

<sup>2297</sup> Bozo Pavlović, T(F) p. 2074; P 25.1.

cranium.<sup>2298</sup> Just behind the body of Franjo Pavlović, the witness noticed Vlado Pavlović, whose body was curled up.<sup>2299</sup> Bozo Pavlović then went into Ivo Pavlović's house,<sup>2300</sup> where he found Anto Petrović dead.<sup>2301</sup> His body lay on the floor and there was something resembling branches with thorns in his mouth. There was also a television set shattered into a thousand pieces alongside the dead man's head.<sup>2302</sup>

1081. On 26 April 1993, Witness Andre Kujawinski, a member of the British UNPROFOR Battalion, and a representative of the HCR went to Miletići to inquire into the allegations of a massacre.<sup>2303</sup> When he appeared before the Chamber, Andre Kujawinski stated that they found traces of blood in a "pink house".<sup>2304</sup> There was a pink sofa with large traces of blood and cushions pierced with holes which had leaked feathers. On the ground there were clots of blood and fragments of bone.<sup>2305</sup>

1082. On 26 April 1993 other villagers, including Witnesses Katica Kovačević and Anda Pavlović, returned to Miletići. They had been warned by UNPROFOR that the four men who had stayed in Miletići had been killed.<sup>2306</sup> They had found them in the house of Ivo Pavlović.<sup>2307</sup> According to those witnesses, the bodies of the deceased showed various signs of mistreatment, most often in the neck region.<sup>2308</sup>

1083. On 27 April 1993, the British UNPROFOR Battalion and representatives of the HCR returned to Miletići.<sup>2309</sup> They found the bodies of the deceased placed alongside each other aligned on the ground in Ivo Pavlović's house.<sup>2310</sup> Some of the bodies had cuts in the region of the throat.<sup>2311</sup> They took them to the church in Brajkovići.<sup>2312</sup>

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<sup>2298</sup> Bozo Pavlović, T(F) pp. 2074 and 2075.

<sup>2299</sup> Bozo Pavlović, T(F) p. 2075; P 23.1.

<sup>2300</sup> P 22.

<sup>2301</sup> Bozo Pavlović, T(F) pp. 2075 and 2076; P 26.1.

<sup>2302</sup> Bozo Pavlović, T(F) p. 2076.

<sup>2303</sup> Andre Kujawinski, T(F) p. 5440.

<sup>2304</sup> Andre Kujawinski, T(F) p. 5443. It seems to have been Stipo Pavlović's house, which was in fact painted pink. P 21.

<sup>2305</sup> Andre Kujawinski, T(F) p. 5445; *see also* Andrew Hogg, T(F) pp. 7850 to 7852 and 7858; DH 181.

<sup>2306</sup> Katica Kovačević, T(F) p. 1278; Anda Pavlović, T(F) pp. 1330-1332; P 393 (under seal), paras. 12 and 13; P 396 (under seal), paras. 14 and 15.

<sup>2307</sup> Katica Kovačević, T(F) p. 1279; Anda Pavlović, T(F) p. 1332; P 392 (under seal), para. 25.

<sup>2308</sup> Anda Pavlović, T(F) p. 1332; P 392 (under seal), para. 25; P 396 (under seal), para. 16.

<sup>2309</sup> Andre Kujawinski, T(F) p. 5447.

<sup>2310</sup> Andre Kujawinski, T(F) p. 5449.

<sup>2311</sup> Andre Kujawinski, T(F) p. 5449 and T(E) p. 5447; *see also* the testimony of Witness ZQ, T(F) p. 987 and Franjo Križanac, T(F) p. 1096.

<sup>2312</sup> Andre Kujawinski, T(F) p. 5450; Witness ZQ, T(F) p. 985; Franjo Križanac, T(F) pp. 1094 and 1096; P 375.

1084. On 27 April 1993, 23 Croatian villagers were transported from Miletići to Nova Bila.<sup>2313</sup>

v. Investigations Carried out Following the Massacre

1085. On 25 April 1993, representatives of the Busovača Joint Commission, including Džemal Merdan and Franjo Nakić, went to Miletići to inspect the scene.<sup>2314</sup> From conversations with local people they reached the conclusion that the massacre had been committed by foreign mujahedin and local Muslims who supported them.<sup>2315</sup>

1086. On 25 April 1993, Asim Delalić, the 306<sup>th</sup> Brigade Assistant Commander for Security, was informed of the events which had taken place in Miletići by Derviš Suljić and he ordered Hasan Zukanović, 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Assistant Commander for Security, to investigate these events and report back to him.<sup>2316</sup> Hasan Zukanović informed him that the incident was attributable to mujahedin.<sup>2317</sup> The information was transmitted to the 3<sup>rd</sup> Corps security officer.<sup>2318</sup>

1087. The 3<sup>rd</sup> Corps security officer apparently also tried to obtain information about the foreign mujahedin. He contacted the chief of police in Zenica, Asim Fazlić, with a view to pooling their efforts to find the perpetrators of the crime.<sup>2319</sup> According to the information available to the 3<sup>rd</sup> Corps, a very mobile group of foreigners continually on the move was involved.<sup>2320</sup> According to Witness Džemal Merdan, the 3<sup>rd</sup> Corps did not have enough men to find out any more and to deal with the problems created by the mujahedin.<sup>2321</sup>

1088. The civilian police was informed of the massacre. It drew up an official note based on what the population and some members of the ABiH had recounted. The note was sent to Travnik. Witness Sejad Jusić, a police officer in Mehurići at the material time, received no reaction following the dispatch of the official note.<sup>2322</sup>

<sup>2313</sup> P 396 (under seal), para. 18; P 375.

<sup>2314</sup> Remzija Šiljak, T(F) pp. 10545 and 10546, 10644; Sulejman Ribo, T(F) p. 11058; Hamid Suljić, T(F) pp. 11890 and 11920; Džemal Merdan, T(F) pp. 13110 and 13197; Esed Sipić, T(F) p. 14790; DH 2091, para.7.

<sup>2315</sup> Džemal Merdan, T(F) pp. 13112, 13114, 13823, 13609 and 13610; P 148.

<sup>2316</sup> Asim Delalić, T(F) p. 16356 and T(E) pp. 16356 and 16357; DH 2091, para. 7.

<sup>2317</sup> Asim Delalić, T(F) p. 16356; DH 2091, paras. 7 and 8.

<sup>2318</sup> Asim Delalić, T(F) p. 16357; Esed Sipić, T(F) pp. 14791 and 14792.

<sup>2319</sup> Witness HF, T(E) pp. 17267, 17268, T(F) p. 17270; Džemal Merdan, T(F) p. 13156.

<sup>2320</sup> Džemal Merdan, T(F) pp. 13157 and 13158.

<sup>2321</sup> Džemal Merdan, T(F) pp. 13157 and 13158.

<sup>2322</sup> Sejad Jusić, T(F) pp. 11183, 11184 and 11187.

b. Murders of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović and Anto Petrović, Paragraph 39(b) of the Indictment

1089. In view of the foregoing, the Chamber finds that it has been established beyond a reasonable doubt that Franjo, Tihomir and Vlado Pavlović and Anto Petrović were executed in Miletići on the evening of 24 April 1993. The crime of murder has been established. Since they had been taken prisoner and were not involved in the fighting, they qualified for the protection afforded by the laws or customs of war as recognised by common Article 3(a) of the Geneva Conventions.

1090. As for the question of who were the perpetrators of the crime of murder, the Prosecution alleges that Ramo Durmiš and Ramadan El Suri were involved.<sup>2323</sup> The Chamber notes that the name of Ramadan was mentioned by Prosecution witnesses. As will be discussed later, however, none of them made the link with the ABiH 7<sup>th</sup> Brigade or 306<sup>th</sup> Brigade.

1091. The Prosecution states, moreover, that the names of several suspects were known at the time. In this regard, it refers to documents from the HVO which mention names of suspects.<sup>2324</sup> As far as the persons mentioned in those documents are concerned, the Chamber notes that at least one was part of the Muslim Forces of Travnik.<sup>2325</sup> In accordance with the Chamber's conclusions in the part of the Judgement relating to the mujahedin, however, the mere fact that a person was a member of the Muslim Forces of Travnik in 1992 does not enable it to be inferred *ipso facto* that the person became a member of the 3<sup>rd</sup> Corps or even of the 7<sup>th</sup> Brigade.<sup>2326</sup> When he appeared before the Chamber, Witness Semir Terzić, a former member of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion, stated that the persons mentioned in the documents from the HVO had never been part of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion.<sup>2327</sup>

1092. As far as the Chamber is aware, there are no eyewitnesses to the murders.<sup>2328</sup> Nevertheless, the Chamber considers that the only reasonable conclusion to be inferred from the evidence of the events of 24 April 1993 in Miletići is that Franjo, Tihomir and Vlado Pavlović and Anto Petrović were killed by the soldiers who attacked the village of Miletići and forced them to kneel, their

<sup>2323</sup> Prosecution Final Brief, paras. 187 and 191.

<sup>2324</sup> Prosecution Final Brief, footnote 628, quoting P 576 and P 687; Prosecution Closing Arguments, T(F) pp. 19025 and 19026.

<sup>2325</sup> P 695.

<sup>2326</sup> *See supra* para. 485.

<sup>2327</sup> Semir Terzić, T(F) p. 18248.

<sup>2328</sup> Witness Bozo Pavlović is the only villager to run away and hide in the forest. All the other villagers were taken to Poljanice. Bozo Pavlović, however, did not see the murder of the four men: Bozo Pavlović, T(F) pp. 2072 and 2073.

hands tied behind their backs. The question is whether the soldiers, the perpetrators of the murders, belonged to the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Brigade and/or 306<sup>th</sup> Brigade.<sup>2329</sup>

1093. The soldiers who attacked the village of Miletići on 24 April 1993 were described by most of the Prosecution witnesses as mujahedin (foreigners<sup>2330</sup>) and local Muslims who were masked and, according to some witnesses, belonged to the “ABiH” or to the “Muslim army”. Thus, Katica Kovačević stated that Miletići was attacked by the mujahedin and the Muslim army. The mujahedin were dressed in black, bearded and could not speak B/C/S well.<sup>2331</sup> Witness Katica Kovačević did not recognise any insignia on the local Muslims.<sup>2332</sup> Witness Anda Pavlović described the attackers as mujahedin and members of the Muslim army. She also recalls having heard the name of Ramadan.<sup>2333</sup> She stated that she saw an armband marked “Politia” and another marked “ABiH”.<sup>2334</sup> Witness Bozo Pavlović stated that the ABiH had attacked the village. Some Muslim soldiers wore white clothes while others wore camouflage uniforms.<sup>2335</sup>

1094. In her statement, Witness Z10 describes the attackers as matt-skinned foreigners who did not speak B/C/S well and as ABiH soldiers.<sup>2336</sup> She stated that the attackers spoke of themselves as members of the MOS and that some wore green berets. She also maintained that Dedo Suljić had warned her that “some of the Muslim extremists who had separated themselves from the ABiH” were going to attack the village.<sup>2337</sup> She did not see any insignia, however.<sup>2338</sup> She mentioned the name of Ramadan.<sup>2339</sup> In her deposition, Witness Z14 stated that she saw 12 mujahedin and about 20 to 30 ABiH soldiers in front of Stipo Pavlović’s house. The ABiH soldiers wore black socks covered with mud over their heads.<sup>2340</sup> She recognised the soldier killed by Stipo Pavlović as a neighbour from the village of Mehurići.<sup>2341</sup> However, she did not recognise any insignia that day.<sup>2342</sup>

<sup>2329</sup> Paragraphs 39(b) and 40 of the Indictment.

<sup>2330</sup> Generally, the Prosecution witnesses use the term “mujahedin” to denote foreign mujahedin.

<sup>2331</sup> Katica Kovačević, T(F) pp. 906 and 908.

<sup>2332</sup> Katica Kovačević, T(F) p. 1295.

<sup>2333</sup> Anda Pavlović, T(F) pp. 1315 and 1321 and 1324.

<sup>2334</sup> Anda Pavlović, T(F) p. 1321.

<sup>2335</sup> Bozo Pavlović, T(F) pp. 2071 and 2077.

<sup>2336</sup> P 392 (under seal), paras. 9, 11, 14 and 16.

<sup>2337</sup> P 392 (under seal), para. 6.

<sup>2338</sup> P 392 (under seal), para. 12.

<sup>2339</sup> P 392 (under seal), para. 13.

<sup>2340</sup> P 396 (under seal), para. 7.

<sup>2341</sup> P 396 (under seal), paras. 5 and 6.

<sup>2342</sup> P 396 (under seal), para. 7. Witness Z14 returned to Miletići some days after the massacre. On that occasion, she saw some 50 soldiers wearing the insignia of the *fleur-de-lys*; P 396 (under seal), para. 17. The Chamber notes that these were 306<sup>th</sup> Brigade soldiers, who had been ordered to secure Miletići following the commission of the crime on 24

1095. In her deposition, Witness Z11 stated that Muslim soldiers attacked the village of Miletići but makes it clear that she did not know to what army they belonged. She maintained that some of the soldiers looked like local Muslims, while others were mujahedin.<sup>2343</sup> She did not recall any insignia.<sup>2344</sup>

1096. The Chamber notes that none of the Prosecution witnesses who witnessed the events stated that they had seen the 7<sup>th</sup> Brigade or 306<sup>th</sup> Brigade insignia. Some of them stated that the attackers were of the ABiH or the Muslim army, but it seems that they drew this inference solely from the fact that the soldiers were Muslim and not members of the HVO.<sup>2345</sup> With the exception of Anda Pavlović, none of the witnesses saw ABiH insignia. It should be noted, moreover, that several witnesses mentioned that they were panic-stricken and in shock.<sup>2346</sup> As for the statements of Witnesses Z10 and Z14, it should be noted that they were not cross-examined. It does not appear from their written statements how they reached the conclusion that the attackers belonged to the ABiH, in particular given that they stated not having seen any insignia on the soldiers.<sup>2347</sup>

1097. The witnesses for the Defence for Hadžihasanović concur in stating that Miletići was attacked by foreign mujahedin and local Muslims from Mehurići who had no link with the ABiH.<sup>2348</sup> The witnesses for the Defence for Kubura, who belonged to the 7<sup>th</sup> Brigade, claimed that no 7<sup>th</sup> Brigade unit was present in Miletići on 24 April 1993.<sup>2349</sup>

1098. Their words are borne out by an ECMM report dated 25 April 1993 which quotes eyewitnesses and indicates that the massacre was carried out by 15 men who spoke Arabic whose leader was called Ramadan.<sup>2350</sup> An UNPROFOR report of the same date indicates that local people questioned during a reconnaissance mission said that the four Croatian men had been killed by

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April 1993. Contrary to the line of argument pursued by the Prosecution, this does not show that members of the 306<sup>th</sup> Brigade were involved in the events of 24 April 1993; *see* Prosecution Final Brief, para. 188, footnote 603.

<sup>2343</sup> P 393 (under seal), paras. 3, 4 and 5.

<sup>2344</sup> P 393 (under seal), para. 7.

<sup>2345</sup> Bozo Pavlović, T(F) p. 2077.

<sup>2346</sup> Katica Kovčević, T(F) pp. 906, 1294, 1295 and 1296; *see also* Anda Pavlović, T(F) pp. 1320 and 1321, who stated that she was crying and screaming when the mujahedin forced their way into Stipo Pavlović's house.

<sup>2347</sup> P 396 (under seal), para. 7.

<sup>2348</sup> As far as the witnesses who witnessed the events which took place in Miletići and Mehurići on 24 April 1993 are concerned, *see*: Sulejman Ribo, T(F) p. 11050; Derviš Suljić, T(F) pp. 11308 and 11329; Hamid Suljić, T(F) pp. 11885, 11900, 11915 and 11916; Suad Menzil, T(F) pp. 14103 and 14105; DH 2091, para. 8; DH 2092, para. 11. As far as the members of the 306<sup>th</sup> Brigade and 3<sup>rd</sup> Corps Command who were informed of the events subsequently are concerned, *see*: Remzija Šiljak, T(F) pp. 10644, 10645, and 10655; Halim Husić, T(F) pp. 10895, 10896 and 10916; Džemal Merdan, T(F) pp. 13112, 13198 and 13823; Vezir Jusufspahić, T(F) p.14015; Esed Sipić, T(E) p. 14790, T(F) pp. 14790, 14791 and 14810; Asim Delalić, T(F) p. 16356; Witness HF, T(F) p. 17177.

<sup>2349</sup> Semir Terzić, T(F) p. 18246; Džemail Ibranović, T(F) p. 18397; Suad Jusović, T(F) p. 18429; DK 61 para. 13.

<sup>2350</sup> P 148.

fundamentalists and not by regular ABiH troops.<sup>2351</sup> Even the HVO reports indicate that the massacre was committed by foreign mujahedin and local fundamentalist Muslims.<sup>2352</sup> In this respect, Exhibit P 687, a report drawn up by the civilian police of Busovača on 18 February 1994 addressed to the Vitez District Military Prosecutor should also be noted. The report indicates that 12 unidentified Arabs and 5 local men, whose names are given in the report, were responsible for the attack on Miletići. The report mentions neither the 7<sup>th</sup> nor the 306<sup>th</sup> Brigade.

1099. The only report involving the ABiH is one by the Special Rapporteur of the UN Human Rights Commission, Tadeusz Mazowiecki, dated 17 November 1993.<sup>2353</sup> In that report, Tadeusz Mazowiecki indicates that he received reports to the effect that Croatian civilians in Miletići had allegedly been killed by soldiers acting for the government of the RBiH. In his written statement, however, Payan Akhavan, a member of the Human Rights Commission in 1993, mentions that he went to Miletići on 4 May 1993 to inquire into allegations of a massacre and that he had been unable to determine whether the perpetrators of the massacre belonged to the ABiH or whether individuals independent of the army were involved.<sup>2354</sup>

1100. The Chamber therefore considers that Franjo, Tihomir and Vlado Pavlović and Anto Petrović were killed by foreign and local mujahedin based at Poljanice camp.<sup>2355</sup> In contrast, it finds that none of the evidence discussed above alleges that the 7<sup>th</sup> Brigade or the 306<sup>th</sup> Brigade took part in the attack on Miletići and in the subsequent massacre.<sup>2356</sup> The mere fact that local Muslims participated in the attack does not mean that it can be inferred that they were members of the ABiH.

(iii) Findings of the Chamber regarding the Responsibility of the Accused

1101. As will be explained in part of the Judgement relating to the mujahedin, the foreign and local mujahedin based at Poljanice Camp were not placed under the effective control of either the

<sup>2351</sup> P 149: "People in the area were keen to emphasise that the soldiers were extremists and not regular BiH troops."; see also: P 371, page 11, Annex R of a report of the ECMM dated 15 May 1993, repeating that information; P 806, Amnesty International report of 14 May 1993, which indicates that irregular troops were responsible for the massacre; DH 2099 (under seal), which is based on statements of eyewitnesses and confirms that the perpetrators of the massacre did not belong to the ABiH.

<sup>2352</sup> P 289 dated 25 April 1993; P 416 dated 25 April 1993; DH 923 dated 26 April 1993; P 576 dated 27 April 1993. Although a number of reports from the HVO incriminate the ABiH (P 593, P 629 and P 707), the Chamber points out that the probative value of those documents is limited insofar as the HVO used the terms "ABiH", "Muslim Armed Forces" and "mujahedin" interchangeably; see *supra* paras. 455-456.

<sup>2353</sup> P 366.

<sup>2354</sup> DH 2097.

<sup>2355</sup> It is possible that Ramadan and Ramo Durmiš took part in the attack on Miletići; see *supra* P 598 and paras. 779-780. Nevertheless, it has not been proved that they took part in the murder.

<sup>2356</sup> The Chamber notes that Exhibit P 663 tends to incriminate the 7<sup>th</sup> Brigade. However, as explained in the part of the Judgement relating to the subordination of the mujahedin based at Poljanice Camp to the 7<sup>th</sup> Brigade, that exhibit does not enable it to be proved beyond a reasonable doubt that members of the 7<sup>th</sup> Brigade took part in the murders.

7<sup>th</sup> Brigade or the 306<sup>th</sup> Brigade.<sup>2357</sup> The Chamber finds that the perpetrators of the murders committed in Miletići on 24 April 1993 were not under the effective control of the Accused. Consequently, the Accused were not bound to carry out an investigation or to take any measures with regard to them.<sup>2358</sup>

(iv) Conclusions of the Chamber

1102. As a result, the Accused cannot be held criminally responsible for the offence mentioned in count 1, paragraphs 39(b) and 40 of the Indictment.

(c) Maline

1103. In paragraphs 39(c) and 40 of the Indictment, the Accused Hadžihasanović and Kubura are accused of failing to take the necessary and reasonable measures to prevent the murders of Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matic, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić and Ivo Volić in Maline on 8 June 1993 or to punish the perpetrators. They are accused of murder, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute and recognised by common Article 3(1)(a) of the Geneva Conventions.<sup>2359</sup>

(i) Arguments of the Parties

1104. The Prosecution maintains that troops subordinated to the Accused, namely the 306<sup>th</sup> Brigade and the 7<sup>th</sup> Brigade, committed murders at the end of the attack launched against Maline on 8 June 1993.<sup>2360</sup> In its Final Brief, it states, moreover, that mujahedin operating with the 7<sup>th</sup> and the 306<sup>th</sup> Brigades took part in the massacre.<sup>2361</sup> It alleges that there was a “high degree of coordination and cooperation between those units and the mujahedin”.<sup>2362</sup> The Prosecution alleges that the

<sup>2357</sup> See *supra* paras. 605 and 788.

<sup>2358</sup> The Chamber also points out that once the investigating judge has been informed of a crime, it is incumbent on him and not on the military commander to carry out the investigation; see *supra* para. 925.

<sup>2359</sup> In its Decision on the Motions for Acquittal, the Chamber found that there was not enough evidence to indicate that cruel treatment occurred at Maline on 8 June 1993 within the meaning of Article 3 of the Statute. The Chamber acquitted the two Accused of the crime of cruel treatment referred to in count 2 of the Indictment as regards the crime committed at Maline.

<sup>2360</sup> Indictment, paras. 39(c) and 40; Prosecution Final Brief, para. 194.

<sup>2361</sup> Prosecution Final Brief, paras. 194 and 196.

<sup>2362</sup> Prosecution Final Brief, para. 196.



Accused were aware of the murders committed by their subordinates and that they did not take the necessary and reasonable measures to punish the perpetrators.<sup>2363</sup>

1105. The Defence for the Accused Hadžihasanović does not dispute that the murders alleged in paragraph 39(c) of the Indictment were committed.<sup>2364</sup> It does, however, deny that the identity of the perpetrators of the murders has been established and that the perpetrators of the massacre were placed under the effective control of the Accused Hadžihasanović.<sup>2365</sup> It maintains that the murders were committed by foreign mujahedin and local Muslims who were neither subordinated to the 3<sup>rd</sup> Corps nor placed under its effective control.<sup>2366</sup> The Defence for the Accused Hadžihasanović maintains that the Prosecution has not proved beyond a reasonable doubt that the Accused Hadžihasanović knew or had reason to know that the crimes were about to be committed and that he failed to take the necessary and reasonable measures to prevent them from being committed.<sup>2367</sup>

1106. The Defence for the Accused Kubura denies that units or members of the 7<sup>th</sup> Brigade were present in Maline on 8 June 1993 and involved in the crimes committed.<sup>2368</sup> It maintains that no unit of the 7<sup>th</sup> Brigade was stationed in the Bila Valley at that time, and that the presence of individual members of the 7<sup>th</sup> Brigade was due to the fact that they were on leave and could not return to their respective units on account of the blockade of the Bila Valley.<sup>2369</sup> It denies the allegation that the Accused Kubura exercised effective control over the perpetrators of the crime, that is, the foreigners based in Mehurići camp.<sup>2370</sup>

(ii) Findings of the Chamber regarding the Murders in Maline

a. Events Preceding the Attack on Maline

1107. The village of Maline is in the Bila Valley in the municipality of Travnik.<sup>2371</sup> In 1992 and early 1993, its citizens were ethnically mixed. There were about 100 Croatian households and between 150 and 200 Muslim households.<sup>2372</sup> The village was divided into two parts, Gornje

<sup>2363</sup> Prosecution Final Brief, paras. 198 and 200; in this regard, however, it should be noted that the Prosecution Final Brief does not adduce any evidence to support the allegation that the Accused Kubura was so aware.

<sup>2364</sup> Hadžihasanović Defence Final Brief, para. 477.

<sup>2365</sup> Hadžihasanović Defence Final Brief, para. 474.

<sup>2366</sup> Hadžihasanović Defence Final Brief, paras. 477 and 478.

<sup>2367</sup> Hadžihasanović Defence Final Brief, para. 475.

<sup>2368</sup> Kubura Defence Final Brief, para. 61.

<sup>2369</sup> Kubura Defence Final Brief, para. 80.

<sup>2370</sup> Kubura Defence Final Brief, paras. 111 and 114.

<sup>2371</sup> P 933.

<sup>2372</sup> Ivanka Tavić, T(F) p. 1154.

Maline, the upper part of the village, where the Croats lived, and Donje Maline, the lower part of the village, where the Muslims lived.<sup>2373</sup> The village of Maline is about ten kilometres from Mehurići, where the Elementary School housed the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion.<sup>2374</sup>

1108. In late May and early June 1993, it was very difficult to move in the Bila Valley because the HVO had blocked the main roads and set up check-points.<sup>2375</sup> Part of the 306<sup>th</sup> Brigade Command was encircled at Krpeljići next to Guča Gora, where the 2<sup>nd</sup> Battalion HQ was located.<sup>2376</sup>

1109. On 4 June 1993, the HVO issued an ultimatum to the villagers of Velika Bukovica, situated to the west of Maline, to surrender. The villagers refused and the HVO attacked the village on 6 June 1993.<sup>2377</sup> Information filtered through about the attack suggesting that there had been numerous dead and injured; consequently, the ABiH attempted to dislodge the HVO.<sup>2378</sup> In order to do so, 306<sup>th</sup> Brigade units carried out an attack from Mehurići and Suhi Dol in the direction of Maline on 8 June 1993.<sup>2379</sup> According to Witness Salim Tarakčija, the Deputy Commander of the 306<sup>th</sup> Brigade 2<sup>nd</sup> Battalion of the, the attack was carried out by the 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions.<sup>2380</sup>

b. Sequence of Events of 8 June 1993

i. Taking of the Village of Maline and Arrest of Villagers

1110. Very early in the morning of 8 June 1993, ABiH soldiers encircled the village of Maline.<sup>2381</sup> While the Defence witnesses are at one in stating that the attack was carried out solely by the 306<sup>th</sup> Brigade forces without the involvement of foreign combatants,<sup>2382</sup> the Prosecution witnesses are divided as to whether there were foreign Muslim combatants among the attackers. Several

<sup>2373</sup> Ivanka Tavić, T(F) p. 1154.

<sup>2374</sup> Witness HB, T(F) p. 12592.

<sup>2375</sup> Munir Karić, T(F) p. 11448;

<sup>2376</sup> Remzija Šiljak, T(F) pp. 10527-10529; Halim Husić, T(F) p. 10889; Munir Karić, T(F) pp. 11448 and 11501; Esed Sipić, T(F) pp. 14775 and 14779. The following were encircled there: Commander Esed Sipić, Chief of Staff Remzija Šiljak, Assistant Commander for Troop Morale Halim Husić, and Assistant Commander for Finance Mujo Husanović.

<sup>2377</sup> Asim Delalić, T(F) p. 16362.

<sup>2378</sup> Asim Delalić, T(F) pp. 16362 and 16363; Munir Karić, T(F) p. 11451.

<sup>2379</sup> Asim Delalić, T(F) pp. 16363, 16380 and 16381; Esed Sipić, T(F) pp. 14775-14776; Munir Karić, T(F) pp. 11450-11452 and 11464; Fikret Čuskić, T(F) p. 12112, who says that the 306<sup>th</sup> Brigade was the only brigade involved in this combat operation; Witness HB, T(F) p. 12589.

<sup>2380</sup> Salim Tarakčija, T(F) pp. 11850-11853 and 11861.

<sup>2381</sup> Ivanka Tavić, T(F) p. 1158; Witness AH, T(F) pp. 1216 and 1217; Zdravko Pranješ, T(F) pp. 1363-1365; Witness XB, T(F) pp. 1636 and 1640; Witness XC, T(F) p. 1686; Berislav Marjanović, T(F) p. 2699; P 397 (under seal), para. 1; P 92 (under seal), para. 8.

witnesses stated that, during the attack, they saw matt-skinned mujahedin who spoke Arabic and had long beards and wore scarves around their heads.<sup>2383</sup> Other witnesses maintain that the foreign mujahedin did not arrive in Maline until later, after the village had been taken and the HVO soldiers had rendered up.<sup>2384</sup>

1111. Part of the population of Maline and HVO soldiers sheltered in the Maline infirmary.<sup>2385</sup> Subsequently, they gave themselves up and surrendered their weapons to the ABiH soldiers.<sup>2386</sup> According to Witnesses AH and Ivanka Tavić, one of the ABiH soldiers, who introduced himself as Ibrahim and as being the commander of the soldiers, promised them that nothing would happen to them.<sup>2387</sup> He promised that the wounded in the infirmary would be transported to the hospital in Zenica.<sup>2388</sup> The Croatian villagers gradually assembled in the centre of the village.<sup>2389</sup>

1112. According to Witnesses HB and Adnan Gunić, former members of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Military Police, around 10 members of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Military Police arrived in Maline at about 1000 hours on 8 June 1993.<sup>2390</sup> Their aim was to evacuate and protect the civilians in the liberated villages.<sup>2391</sup> They found the villagers assembled in the centre of the village. Men of an age to bear arms had already handed in their weapons.<sup>2392</sup> The villagers, including some who were wounded, were frightened.<sup>2393</sup>

1113. At about 1400 hours on 8 June 1993, the military police commander decided that four police should stay in the village while about five soldiers should escort the Croatian villagers to Mehurići.<sup>2394</sup> According to Witness HB, the intention was to take the villagers to Mehurići in order to protect them from the mujahedin and the fighting.<sup>2395</sup>

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<sup>2382</sup> Munir Karić, T(F) pp. 11459, 11460 and 11464; Fikret Čuskić, T(F) p. 12112; Witness HB, T(F) pp. 12589 and 12652; P 465.

<sup>2383</sup> P 397 (under seal), para. 4; P 929 (under seal), statement 19 April 2000, p. 2.

<sup>2384</sup> Ivanka Tavić, T(F) pp. 1185-1186; Witness AH, T(F) pp. 1247-1248; P 92 (under seal), para. 19.

<sup>2385</sup> Witness AH, T(F) pp. 1245-1246; Witness XB, T(F) pp. 1641-1642.

<sup>2386</sup> Ivanka Tavić, T(F) pp. 1161-1162; Witness AH, T(F) pp. 1217 and 1246; Zdravko Pranješ, T(F) p. 1365; Witness XB, T(F) pp. 1642 and 1656; Berislav Marjanović, T(F) p. 2700.

<sup>2387</sup> Ivanka Tavić, T(F) pp. 1166 and 1184; Witness AH, T(F) pp. 1217 and 1256.

<sup>2388</sup> Witness AH, T(F) p. 1217.

<sup>2389</sup> Ivanka Tavić, T(F) p. 1184.

<sup>2390</sup> Witness HB, T(F) pp. 12590, 12613, 12621, 12623; DH 2090, para. 6.

<sup>2391</sup> Witness HB, T(F) pp. 12589-12590.

<sup>2392</sup> Witness HB, T(F) pp. 12621 and 12624; DH 2090, para. 6.

<sup>2393</sup> Witness HB, T(F) pp. 12590-12591.

<sup>2394</sup> Witness HB, T(F) pp. 12590-12591; DH 2090, para. 7.

<sup>2395</sup> Witness HB, T(F) pp. 12649 and 12652; *see also* P 92 (under seal), para. 17. Witness HB admitted that the other reason was to exchange the Croatian prisoners for HVO prisoners: Witness HB, T(F) p. 12649.

ii. Departure of Approximately 200 Croatian Villagers for Mehurići

1114. At about 1430 hours or 1500 hours, approximately 200 villagers, soldiers and civilians, set out towards Mehurići in columns.<sup>2396</sup> According to Witness HB, the villagers set off for Mehurići voluntarily, whereas the Prosecution witnesses stated that they left under duress.<sup>2397</sup> The wounded remained behind to be transported to Mehurići on board a truck.<sup>2398</sup> The villagers were escorted by about five members of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Military Police: the commander marched at the head of the column, two police were in the middle and two others followed the column.<sup>2399</sup> As far as the road taken is concerned, the witnesses indicated that the column took the road in the direction of Bikoši<sup>2400</sup> and passed via the Vranjača hill.<sup>2401</sup> According to Witness ZK, they crossed Poljanice, where mujahedin had set up in the former houses of the Savići family, a Serbian family which had abandoned its houses.<sup>2402</sup> Witness Zdravko Pranješ stated that the members of the military police had protected the Croatian villagers from Muslim civilians en route to Mehurići.<sup>2403</sup>

iii. Loading the Wounded Croats onto a Truck and Their Abduction by Mujahedin

1115. While the column of approximately 200 villagers took the road to Mehurići on foot, Ivanka Tavić and Witness AH organised the transport of several seriously wounded persons by truck.<sup>2404</sup> According to those witnesses, the soldier Ibrahim authorised that transport.<sup>2405</sup> They had the following persons board the truck: Stipo Tavić, Mara Jurić, Luka Balta, Jozo Balta,<sup>2406</sup> Predrag Pušelja, Anto Matić, Srećo Bobaš and Marijan Bobaš.<sup>2407</sup> According to Witness Ivanka Tavić,

<sup>2396</sup> Ivanka Tavić, T(F) pp. 1162-1163; Zdravko Pranješ, T(F) p. 1370; Witness XB, T(F) p. 1644; Berislav Marjanović, T(F) p. 2701; P 92 (under seal), para.19; Witness HB, T(F) pp. 12590 and 12626.

<sup>2397</sup> Witness HB, T(F) pp. 12590, 12591 and 12595; Witness AH, T(F) p. 1220; Zdravko Pranješ, T(F) p. 1371; Berislav Marjanović, T(F) p. 2709; P 92 (under seal), para. 18.

<sup>2398</sup> See below.

<sup>2399</sup> DH 2090, para. 8.

<sup>2400</sup> Berislav Marjanović, T(F) p. 2701; P 92 (under seal), para. 20.

<sup>2401</sup> P 92 (under seal), para. 21.

<sup>2402</sup> P 92 (under seal), paras. 24 and 26; see also *supra* para. 421.

<sup>2403</sup> Zdravko Pranješ, T(F) p. 1396.

<sup>2404</sup> Ivanka Tavić, T(F) pp. 1163-1164; Witness AH, T(F) pp. 1219 and 1248; P 929 (under seal), statement 15 September 2000, p. 2, and statement 19 April 2000, p. 2.

<sup>2405</sup> Ivanka Tavić, T(F) p. 1185; Witness AH, T(F) pp. 1217, 1234 and 1235.

<sup>2406</sup> P 31 (under seal); nevertheless, when he appeared before the Chamber, Witness AH stated that Jozo Balta had already died at the Maline infirmary and that he was not placed in the truck and taken off by the mujahedin: Witness AH, T(F) p. 1216.

<sup>2407</sup> Ivanka Tavić, T(F) p. 1165; Witness AH, T(F) pp. 1235, 1237 and 1241; P 31 (under seal).

Ibrahim allowed her and Witness AH to accompany the wounded on the truck.<sup>2408</sup> Ibrahim asked them to hurry because he was afraid that mujahedin would arrive. He gave them to understand that he could not guarantee their safety once the mujahedin arrived.<sup>2409</sup> While Ivanka Tavić was in the back of the truck to settle the wounded there, a group of five men came down a slope.<sup>2410</sup> According to Ivanka Tavić, the men were three foreigners, a local mujahed and an interpreter.<sup>2411</sup> They were bearded, dressed very differently from local people and were shouting.<sup>2412</sup> According to her, Ibrahim began to talk with them, forbidding them to approach.<sup>2413</sup> Nevertheless, the mujahedin took the truck and left in the direction of Bikoši without allowing Ivanka Tavić or Witness AH to accompany them.<sup>2414</sup> They even made gestures of cutting their throats when Witness AH wanted to board the truck.<sup>2415</sup>

iv. Interception of the Column of Villagers by Mujahedin

1116. Leaving to one side for the present the wounded taken off in the truck, the Chamber will consider the fate of the villagers who were taken on foot towards Mehurići. Not far from the mujahedin camp at Poljanice, the column of villagers was intercepted by soldiers.<sup>2416</sup> According to the eyewitnesses, several of those soldiers, whom they termed “mujahedin”, wore hoods.<sup>2417</sup> According to Witness ZK, the men were seven ABiH soldiers, two of whom resembled foreign mujahedin,<sup>2418</sup> three others were masked and spoke B/C/S without an accent, and the last two were wearing the conventional outfits of the ABiH soldiers.<sup>2419</sup> Witness HB stated that he saw two men wearing black hoods, camouflage clothing, bearing long-barrelled automatic weapons and speaking B/C/S.<sup>2420</sup> He also noticed three foreigners wearing camouflage uniforms, long shawls and green

<sup>2408</sup> Ivanka Tavić, T(F) p. 1186.

<sup>2409</sup> Ivanka Tavić, T(F) p. 1185; Witness AH, T(F) pp. 1247-1248.

<sup>2410</sup> Ivanka Tavić, T(F) p. 1186; Witness AH, T(F) pp. 1248-1249.

<sup>2411</sup> Ivanka Tavić, T(F) p. 1186.

<sup>2412</sup> Ivanka Tavić, T(F) p. 1186.

<sup>2413</sup> Ivanka Tavić, T(F) p. 1186.

<sup>2414</sup> Ivanka Tavić, T(F) pp. 1163, 1165, 1186 and 1187; Witness AH, T(F) pp. 1219, 1248 and 1249.

<sup>2415</sup> Ivanka Tavić, T(F) p. 1187; Witness AH, T(F) pp. 1219, 1248 and 1249; *see also* P 929 (under seal), statement of 19 April 2000, p. 2.

<sup>2416</sup> Zdravko Pranješ, T(F) p. 1372; Witness XB, T(F) pp. 1645, 1669 and 1670; Berislav Marjanović, T(F) p. 2701; Witness HB, T(F) p. 12638; P 92 (under seal), paras. 24 and 26; DH 2090, para. 9.

<sup>2417</sup> Zdravko Pranješ, T(F) p. 1372; Berislav Marjanović, T(F) p. 2701; Witness HB, T(F) pp. 12593 and 12629; DH 2090, para. 9.

<sup>2418</sup> Witness ZK uses the term “mujahedin” to designate foreign mujahedin.

<sup>2419</sup> P 92 (under seal), paras. 24 and 25.

<sup>2420</sup> Witness HB, T(F) pp. 12629, 12630 and 12593.

ribbons with inscriptions resembling Arabic.<sup>2421</sup> They were bearded and had matt skin.<sup>2422</sup> These three foreigners did not wear masks.<sup>2423</sup>

1117. Subsequently, other soldiers came out from the woods. They wore camouflage uniforms and masks, and were all armed.<sup>2424</sup>

1118. The mujahedin then separated 20 men of fighting age from the column, including Witnesses XB, Zdravko Pranješ and Berislav Marjanović.<sup>2425</sup> There was also Ana Pranješ, a girl wearing an armband with a red cross.<sup>2426</sup>

1119. The testimony differs as to whether members of the military police took part in the selection of Croats. Witnesses HB, Zdravko Pranješ and Adnan Gunić agree that the mujahedin asked to take over the control of the column by threatening the members of the military police.<sup>2427</sup> According to Witness HB, one of the mujahedin put the muzzle of his weapon into the mouth of the witness when he refused to allow the mujahedin to take over the control of the column.<sup>2428</sup> Witness XB stated that the mujahedin asked for the women and children to be separated from the men.<sup>2429</sup> Witness Berislav Marjanović stated that he saw the members of the military police and the mujahedin speaking together, but he did not know what was said since he was walking at the end of the column.<sup>2430</sup> Witness Z15 stated that “the ABiH soldiers and the mujahedin” separated the column.<sup>2431</sup> At this juncture, the Chamber notes that none of the witnesses stated that they saw insignia on the soldiers who intercepted the column at Poljanice.

1120. The mujahedin turned back and escorted the group of 20 Croatian men and Ana Pranješ to Bikoši, while the group of villagers escorted by the 306<sup>th</sup> Brigade Military Police continued to

<sup>2421</sup> Witness HB, T(F) pp. 12634, 12647 and 12648.

<sup>2422</sup> Witness HB, T(F) p. 12634.

<sup>2423</sup> Witness HB, T(F) p. 12634.

<sup>2424</sup> Witness HB, T(F) p. 12635; DH 2090, para. 9.

<sup>2425</sup> Zdravko Pranješ, T(F) pp. 1372 to 1374; Witness XB, T(F) pp. 1645, 1646 and 1669; Witness HB, T(F) pp. 12594, 12636 and 12637; P 92 (under seal), paras. 24-27; P 397 (under seal), para. 4; DH 2090, para. 9. Witness Zdravko Pranješ, Witness ZK and Witness Z 15, however, spoke of 30 to 40 men. In view of the number of men subsequently executed, and the number of people who escaped from the massacre, the number of 20 men seems more probable.

<sup>2426</sup> Zdravko Pranješ, T(F) pp. 1374 and 1375; P 92 (under seal), para. 27.

<sup>2427</sup> Zdravko Pranješ, T(F) pp. 1373, 1374 and 1397; Witness HB, T(F) pp. 12593, 12594, 12596, 12632 and 12645; DH 2090, para. 9.

<sup>2428</sup> Witness HB, T(F) pp. 12593, 12594 and 12632; *see also* Adnan Gunić: DH 2090, para. 9.

<sup>2429</sup> Witness XB, T(F) pp. 1645 and 1646.

<sup>2430</sup> Berislav Marjanović, T(F) p. 2733.

<sup>2431</sup> P 397 (under seal), para. 4.

Mehurići.<sup>2432</sup> The latter arrived in Mehurići at around 1700 or 1800 hours and the police took them to the Elementary School.<sup>2433</sup>

v. Meeting between the Group of Croatian Men and Wounded Persons

1121. Returning now to what happened to the wounded taken off by truck from Maline in the direction of Bikoši, the Chamber will consider what emerges from the testimony. According to Witness Z21, who is the only witness to have been taken off on the truck, an Arab mujahed was on the back of the truck with the wounded. He was armed with an automatic rifle.<sup>2434</sup> When the truck arrived at Bikoši, the mujahedin ordered the wounded to get down and to proceed to Mehurići on foot.<sup>2435</sup> When Witness Z21 got down from the truck, he saw foreign mujahedin and local soldiers.<sup>2436</sup> Five or six Muslim soldiers then escorted the wounded to Mehurići. Witness Z21 does not recall having seen any insignia on those soldiers.<sup>2437</sup>

1122. After going some 100 metres towards Mehurići, the wounded noticed a group of captured Croats coming from the direction of Mehurići escorted by about five foreign mujahedin and five local soldiers.<sup>2438</sup> Three or four of the local soldiers wore green or black masks.<sup>2439</sup> The soldiers ordered all the prisoners, that is, the wounded, the 20 captured Croats and Ana Pranješ, to walk in the direction of Bikoši.<sup>2440</sup> The local soldiers gave the order in B/C/S, whereas the foreign mujahedin indicated the way with hand gestures.<sup>2441</sup> Mara Jurić remained behind, lying on a

<sup>2432</sup> Zdravko Pranješ, T(F) p. 1380; Witness XB, T(F) p. 1646; Berislav Marjanović, T(F) p. 2701; P 92 (under seal), para. 28; Witness HB, T(F) pp. 12594 and 12637.

<sup>2433</sup> Witness HB, T(F) p. 12638; *see also infra* para. 1307.

<sup>2434</sup> P 929 (under seal), statement of 19 April 2000, p. 2, and statement of 15 September 2000, p. 3.

<sup>2435</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 3.

<sup>2436</sup> P 929 (under seal), statement of 15 September 2000, p. 3; Witness Z 21 refers to mujahedin and "other Muslim soldiers". It is clear from the context that the witness uses the term "mujahedin" to designate Arab men; *see* P 929 (under seal), statement of 19 April 2000, p. 3.

<sup>2437</sup> P 929 (under seal), statement of 15 September 2000, p. 3.

<sup>2438</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 3; Zdravko Pranješ, T(F) pp. 1375 and 1380; Berislav Marjanović, T(F) p. 2702. This was the group of 20 Croatian men and Ana Pranješ, who had been separated from the other Croatian villagers at Poljanice; *see supra* paras. 116-120.

<sup>2439</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 3; Zdravko Pranješ, T(F) p. 1380. Witness Z 21 also recalls seeing them wearing insignia and green and black berets; P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 3.

<sup>2440</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 3; Berislav Marjanović, T(F) p. 2702; Witness XB, T(F) p. 1652; according to Witness Zdravko Pranješ, T(F) pp. 1375 and 1380, the two groups remained separated.

<sup>2441</sup> P 929 (under seal), statement of 15 September 2000, p. 3.

stretcher.<sup>2442</sup> The group of prisoners then walked towards Bikoši, guarded by the foreign mujahedin and the local soldiers, all of whom were armed.<sup>2443</sup>

vi. Massacre of 24 Croats in Bikoši on 8 June 1993

1123. Witness Z21 recalls that the local soldiers ordered the Croatian soldiers to take off their jackets and hand them over to the Muslim soldiers, stating that they would no longer need them.<sup>2444</sup> The prisoners were walking towards Bikoši and Witness Z21 was at the back of the group alongside Niko Bobaš. One of the masked soldiers pointed his gun at him and the witness remembers feeling that they were all going to be killed.<sup>2445</sup> When the group of prisoners arrived at Bikoši, the prisoner Mijo Tavić had an epileptic fit and began to scream.<sup>2446</sup> Upon this, the Muslim soldiers began to fire on the prisoners. Witness Z21 remembers dropping to the ground to cover himself. At the beginning, the soldiers fired bursts of sub-machine gun fire; subsequently they fired single shots.<sup>2447</sup> At a certain moment, one of the Muslim soldiers was wounded, which attracted the attention of the other Muslim soldiers. Witness Z21 saw Željko Pušelja, Darko Pušelja and Witnesses XB and Berislav Marjanović get up and run away and he did the same.<sup>2448</sup> When he got up, he heard the groaning of prisoners who had been hit by bullets. Many of them were still alive, but were too seriously wounded to run away.<sup>2449</sup>

1124. Witness Z21's words are confirmed by Berislav Marjanović.<sup>2450</sup> When the soldiers began to fire on the prisoners, Witness Berislav Marjanović also lay down on the ground, where he was hit by a bullet in his left leg.<sup>2451</sup> While lying on the ground, he noticed that a young man who was trying to run away was shot dead.<sup>2452</sup> He also saw the Muslim soldiers kill, by single shots to the head, Croats lying on the ground who were still moving.<sup>2453</sup> In the end, he ran away with four other people towards the village of Postinje.<sup>2454</sup> At one point, he was arrested by two armed persons who called on the five escapees to give themselves up. Berislav Marjanović turned around immediately

<sup>2442</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 3.

<sup>2443</sup> P 929 (under seal), statement of 19 April 2000, p. 3; Zdravko Pranješ, T(F) p. 1380; Berislav Marjanović, T(F) pp. 2702 and 2703.

<sup>2444</sup> P 929 (under seal), statement of 19 April 2000, p. 3.

<sup>2445</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 4.

<sup>2446</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 4.

<sup>2447</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 4.

<sup>2448</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 5.

<sup>2449</sup> P 929 (under seal), statement of 19 April 2000, p. 3, and statement of 15 September 2000, p. 5.

<sup>2450</sup> Berislav Marjanović, T(F) pp. 2703, 2704, 2733 and 2734.

<sup>2451</sup> Berislav Marjanović, T(F) p. 2703.

<sup>2452</sup> Berislav Marjanović, T(F) p. 2703.

<sup>2453</sup> Berislav Marjanović, T(F) pp. 2703 and 2704.



and ran off towards Orašac and Guča Gora.<sup>2455</sup> Later, he was transported to the hospital in Nova Bila by members of the HVO.<sup>2456</sup>

1125. According to Witness Zdravko Pranješ, the Muslim soldiers opened fire on the group of prisoners when two prisoners tried to escape by jumping over a stone wall.<sup>2457</sup> They first fired on the two fugitives and then on the whole group.<sup>2458</sup> The witness threw himself to the ground to protect himself, but was wounded.<sup>2459</sup> Another Croatian man, Jakov Tavić, fell on top of him dead and Zdravko Pranješ tried to hide.<sup>2460</sup> When everything was quiet, he ran off into the woods.<sup>2461</sup>

1126. Witness XB, who also escaped the massacre, recalls that the prisoners were walking towards Bikoši, their heads lowered, surrounded by soldiers, when suddenly the soldiers opened fire on them.<sup>2462</sup> While he was prostrate on the ground, the body of his cousin fell on him.<sup>2463</sup> He subsequently ran off towards the village of Postinje with four other escapees.<sup>2464</sup>

1127. The Chamber finds that on 8 June 1993 local and foreign mujahedin opened fire on the group of Croatian prisoners, killing the following persons: Anto Balta, Ivo Balta, Jozo Balta,<sup>2465</sup> Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matić, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić and Ivo Volić.<sup>2466</sup>

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<sup>2454</sup> Berislav Marjanović, T(F) p. 2704.

<sup>2455</sup> Berislav Marjanović, T(F) p. 2705.

<sup>2456</sup> Berislav Marjanović, T(F) p. 2707.

<sup>2457</sup> Zdravko Pranješ, T(F) pp. 1381-1383.

<sup>2458</sup> Zdravko Pranješ, T(F) p. 1382.

<sup>2459</sup> Zdravko Pranješ, T(F) p. 1382.

<sup>2460</sup> Zdravko Pranješ, T(F) pp. 1382-1383.

<sup>2461</sup> Zdravko Pranješ, T(F) pp. 1382-1384.

<sup>2462</sup> Witness XB, T(F) pp. 1647-1648.

<sup>2463</sup> Witness XB, T(F) p. 1648.

<sup>2464</sup> Witness XB, T(F) p. 1652.

<sup>2465</sup> When he appeared before the Chamber, Witness AH stated that Jozo Balta had already died at Maline infirmary and was therefore not placed on the truck; Witness AH, T(F) p. 1216. On the other hand, Exhibit P 31 (under seal) indicates that Jozo Balta was loaded onto the truck of wounded. Since this list was drawn up by Witness AH at the material time, the Chamber gives credence to it.

<sup>2466</sup> P 755; P 31 (under seal); P 929 (under seal), statement of 15 September 2000, p. 4, and Zdravko Pranješ, T(F) pp. 1374 and 1380; *see* also Joint Statement on the Agreement of Facts, Annex C.

c. Meeting of the 306<sup>th</sup> Brigade Command on 12 June 1993

1128. On 12 June 1993, after about two weeks during which they had had no contact with each other, part of the 306<sup>th</sup> Brigade Command succeeded in meeting.<sup>2467</sup> Those present included Esed Sipić, Munir Karić, Asim Delalić, Derviš Suljić and Halim Husić. At the meeting they learned through Asim Delalić, the security officer attached to the 306<sup>th</sup> Brigade Command, that mujahedin had abducted and executed several Croats.<sup>2468</sup> On the same day, the 306<sup>th</sup> Brigade informed the 3<sup>rd</sup> Corps Command of this in writing.<sup>2469</sup>

d. Investigation into the Events of 8 June 1993

1129. The 3<sup>rd</sup> Corps security officer and the 306<sup>th</sup> Brigade Commander asked Asim Delalić to collect as much information as possible about the abduction and the murder of the Croats.<sup>2470</sup> In compliance with that request, Asim Delalić asked Hasan Zukanović, the Assistant Commander for Security in the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion, to conduct an investigation.<sup>2471</sup> All the members of the military police who had witnessed the events wrote reports.<sup>2472</sup> Witness HB added information subsequently received by Željko Pušelja, one of those who had escaped the massacre.<sup>2473</sup>

1130. The investigation lasted more than 10 or 15 days.<sup>2474</sup> The military police reports indicated that no member of the 306<sup>th</sup> Brigade had taken part in the massacre, but that the massacre was carried out by foreign and local mujahedin based at Poljanice camp.<sup>2475</sup> Asim Delalić communicated that information to Esed Sipić and to the 3<sup>rd</sup> Corps Command security organ.<sup>2476</sup> The organ responsible for security in the 3<sup>rd</sup> Corps Command was probably informed on about 27 June 1993.<sup>2477</sup> That officer subsequently informed the security organ of the ABiH Supreme Command.<sup>2478</sup> He does not recall, however, whether he informed the 3<sup>rd</sup> Corps Commander.<sup>2479</sup>

<sup>2467</sup> Halim Husić, T(F) p. 10894; Esed Sipić, T(F) p. 14779.

<sup>2468</sup> Halim Husić, T(F) p. 10894 and T(E) p. 10899; Derviš Suljić, T(F) pp. 11324, 11330 and 11340; Munir Karić, T(F) p. 11510; Esed Sipić, T(F) pp. 14892-14893.

<sup>2469</sup> DH 1903; Esed Sipić, T(F) p. 14894; Witness HF, T(F) pp. 17182 and 17280.

<sup>2470</sup> Witness HF, T(F) p. 17182; Esed Sipić, T(F) pp. 14796, 14797, 14892 and 14893.

<sup>2471</sup> Asim Delalić, T(F) pp. 16364 and 16393.

<sup>2472</sup> Witness HB, T(F) pp. 12599 and 1260; DH 2091, para. 11.

<sup>2473</sup> Witness HB, T(F) pp. 12600, 12605, 12639, 12640 and 12643.

<sup>2474</sup> Esed Sipić, T(F) p. 14797; Asim Delalić, T(F) p. 16366.

<sup>2475</sup> Esed Sipić, T(F) pp. 14797 and 14893; Asim Delalić, T(F) p. 16366; DH 2090, para. 10; DH 2091, para. 11.

<sup>2476</sup> Asim Delalić, T(F) pp. 16365 and 16366.

<sup>2477</sup> Esed Sipić, T(F) p. 14894.

<sup>2478</sup> Witness HF, T(F) p. 17184.

<sup>2479</sup> Witness HF, T(F) p. 17264.

1131. According to the Defence witnesses for Hadžihasanović, the 306<sup>th</sup> Brigade's investigation was not continued because its members had no access to the mujahedin camp.<sup>2480</sup>

e. Knowledge of the Accused Hadžihasanović

1132. In early June 1993, Fikret Čuskić, Commander of the 17<sup>th</sup> Brigade stationed in Travnik, received information that a group of HVO members had been abducted and killed by mujahedin. He informed the Accused Hadžihasanović in writing on 17 June 1993.<sup>2481</sup> Exhibit DH 1224 of 20 June 1993 is the answer of the Accused Hadžihasanović, in which he informed Fikret Čuskić that an investigation into the events at Maline had been initiated.<sup>2482</sup>

“I completely agree with the views expressed in the above communication and we support them fully. An investigation into the events in the village of Maline has been launched and I hope that the competent organs will be rigorous, which will be my request. We can win only by behaving and acting with dignity.”<sup>2483</sup>

1133. During a conversation with Witness ZP that very day, however, the Accused Hadžihasanović denied that he had known about the massacre in Maline.<sup>2484</sup>

f. Report Drawn up by the Civilian Police

1134. Witness Sejad Jusić, a police officer in Mehurići, stated that he had drawn up a report relating to the events in Maline and that he had sent it to the police station in Travnik about one month after those events.<sup>2485</sup> The information available to him indicated that mujahedin had made a number of Croats leave the column and that they had subsequently disappeared.<sup>2486</sup> He had, however, been unable to check that information since civilian police could not enter the mujahedin camp in Poljanice.<sup>2487</sup> Sejad Jusić never received a reply from the police station in Travnik.<sup>2488</sup>

<sup>2480</sup> Asim Delalić, T(F) pp. 16366 and 16367; Witness HF, T(F) pp. 17183-17184; DH 2091, para. 11.

<sup>2481</sup> Fikret Čuskić, T(F) p. 12101.

<sup>2482</sup> Fikret Čuskić, T(F) p. 12101.

<sup>2483</sup> DH 1224.

<sup>2484</sup> P 589: Verbal questions to the 3<sup>rd</sup> Corps Commander: “Do you know [...] that on 8 June 1993, in /?Bikoši/ village near Guča Gora, about 35 people were executed by a firing squad. They were selected from the large number of arrested men because they were younger (four survived by chance)? They are all from Maline village and they were detained in the Mehurići collection centre.” (The answer to both questions was: “I did not know”); Witness ZP, T(F) pp. 8834, 8817 and 8818.

<sup>2485</sup> Sejad Jusić, T(F) pp. 11137, 11184 and 11185.

<sup>2486</sup> Sejad Jusić, T(F) pp. 11137 and 11185.

<sup>2487</sup> Sejad Jusić, T(F) p. 11137.

<sup>2488</sup> Sejad Jusić, T(F) p. 11186.

g. Site Visit by Representatives of the ECMM

1135. On 3 August 1993, representatives of the ECMM visited Maline and Bikoši, accompanied by Džemal Merdan and Father Stjepan.<sup>2489</sup> They visited a ditch where some thirty Croats had been buried. When the members of the ABiH claimed that the bodies were solely those of soldiers killed in combat, Father Stjepan Radić alleged that they were both soldiers and civilians.<sup>2490</sup>

h. Report of UN Special Rapporteur Tadeusz Mazowiecki

1136. Witness ZO spoke with Džemal Merdan on 23 September 1993. During that meeting, he confronted Džemal Merdan with the allegations relating to the massacre in Maline/ Bikoši on 8 June 1993.<sup>2491</sup> The latter denied that it was actually possible that such an act could have been committed.<sup>2492</sup> On 24 September 1993, Witness ZO succeeded in going to Bikoši and visiting the place where the massacre occurred.<sup>2493</sup> That place had been described to him by eyewitnesses to the massacre.<sup>2494</sup> There he found two heaps of freshly dug earth. An ABiH soldier sought to persuade him that the heaps of earth had been dug up seven years before, but Witness ZO did not believe this.<sup>2495</sup> Witness ZO, convinced that a massacre had occurred at that place, proposed to the Special Rapporteur for the former Yugoslavia, Tadeusz Mazowiecki, that he send a letter to the authorities of the BiH with a view to investigating the massacre.<sup>2496</sup>

1137. By letter of 15 October 1993, Tadeusz Mazowiecki sent a report on the massacre committed in Maline to the President of the RBiH, Alija Izetbegović.<sup>2497</sup> The letter indicated that a massacre had been committed by mujahedin integrated into the 7<sup>th</sup> Brigade. Tadeusz Mazowiecki asked what measures had been taken in order to subordinate irregular troops to the command of the ABiH and in order to ensure that discipline was respected.

“Eyewitnesses to the atrocities at Maline and Doljani have claimed that in both incidents so-called Mojahedin troops were involved, reportedly incorporated in the 7<sup>th</sup> Brigade of the Army of Bosnia and Herzegovina. At this juncture I would appreciate learning from you precisely what procedures

<sup>2489</sup> Džemal Merdan, T(F) p. 13129; P 164.

<sup>2490</sup> P 164.

<sup>2491</sup> Witness ZO, T(F) pp. 7739 and 7741; P 168 (under seal), pp. 4 and 5.

<sup>2492</sup> Witness ZO, T(F) pp. 7741-7742.

<sup>2493</sup> Witness ZO, T(F) p. 7744; P 168 (under seal), pp. 7-9.

<sup>2494</sup> P 168 (under seal), p. 8.

<sup>2495</sup> Witness ZO, T(F) p. 7747; P 168 (under seal), p. 9.

<sup>2496</sup> Witness ZO, T(F) p. 7749; P 168 (under seal), pp. 9 and 16.

<sup>2497</sup> P 170; *see* also the Seventh Periodic Report on the human rights situation in the territory of the former Yugoslavia, submitted by Tadeusz Mazowiecki on 17 November 1993, P 366 or E/CN.4/1994/47.

are in force to subordinate irregular troops to the command structure of the Army of Bosnia and Herzegovina, and what measures are used to ensure that discipline is observed".<sup>2498</sup>

1138. Following that letter, Rasim Delić asked the 3<sup>rd</sup> Corps Command on 17 October 1993 to provide information about the massacre and about the troops who had taken part in the fighting.<sup>2499</sup> The Chamber notes, however, that that request for information does not reproduce all the information provided by Tadeusz Mazowiecki. For instance, it does not mention that mujahedin said to be members of the 7<sup>th</sup> Brigade were alleged to have been involved in the events.<sup>2500</sup>

"The President of the Presidency of the Republic of Bosnia and Herzegovina, Mr. Alija IZETBEGOVIC, received a letter from special rapporteur for the former Yugoslavia Mr Tadeusz Mazowiecki containing claims about an alleged massacre of 25 Bosnian Croats (civilians) in the village of Majjine (*sic*) on 8 July 1993. It also alleges that 3000 Croatian villagers were expelled from that area".<sup>2501</sup>

1139. On 17 October 1993, the Accused Hadžihasanović forwarded this request to the OG *Bosanska Krajina*.<sup>2502</sup>

1140. On 19 October 1993 a report signed on behalf of Asim Delalić was sent to the 3<sup>rd</sup> Corps and OG *Bosanska Krajina* Command.<sup>2503</sup> It indicates that all the persons killed at Maline/ Bikoši were in uniforms and had been killed during fighting.<sup>2504</sup>

"In the period from 8 June 1993 until 10 June 1993 on the above mentioned area 25 bodies of persons of Croatian nationality, which were not identified due to the fact that they did not have IDs, were collected. All persons were in uniforms. Abovementioned NN persons were buried in the location between Bikosi and Maline, on the place called "PJESCARA". Please note that all persons were killed during the combat activities."<sup>2505</sup>

When he appeared before the Chamber, Asim Delalić denied having drawn up or signed that report. Nor did he recognise the signature appended thereto.<sup>2506</sup>

1141. On 21 October 1993, Džemal Merdan, Deputy Commander of the 3<sup>rd</sup> Corps, sent a report to the Supreme Command in which he denied that HVO soldiers or Croatian civilians had been executed.<sup>2507</sup> He maintained that 25 soldiers and civilians had died in fighting:

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<sup>2498</sup> P 170.

<sup>2499</sup> P 171.

<sup>2500</sup> In this regard, the Chamber notes that the Supreme Command of the ABiH had also been informed by other sources that mujahedin were involved; *see* P 430 and P 431.

<sup>2501</sup> P 171.

<sup>2502</sup> P 111/ P 444.

<sup>2503</sup> DH 1498/ DK 17.

<sup>2504</sup> DH 1498/ DK 17.

<sup>2505</sup> DH 1498.

<sup>2506</sup> Asim Delalić, T(F) pp. 16418-16420.

“During the combat actions, there was no massacre of civilians by the members of RBH Army, nor were HVO soldiers executed. After the end of combat actions, the regular clearing up of the battlefield was done. All Croats killed by bullets and shells (a total of 25 soldiers and civilians) were collected in one spot and buried in two graves between the villages /illegible/ and Maline at the place known as the Pješčara /sand pit/, of which HVO representatives were informed.”<sup>2508</sup>

1142. When he appeared before the Chamber, Džemal Merdan stated that his report was based on information received by subordinated units, namely the OG *Bosanska Krajina* and the 306<sup>th</sup> Brigade.<sup>2509</sup> He claimed that it was also based on his professional experience, especially since he had had the opportunity to visit the place in question with the mixed commission in August 1993.<sup>2510</sup>

1143. This information was relayed to the Ministry of Foreign Affairs through the ABiH Supreme Command on 23 October 1993<sup>2511</sup> and to Tadeusz Mazowiecki on 25 November 1993. It seems, however, that the latter was not convinced that the information was true.<sup>2512</sup>

1144. The Chamber notes that the information passed on to Tadeusz Mazowiecki conflicts with the evidence discussed above. It is surprised that Džemal Merdan forwarded that information to the Supreme Command. The 306<sup>th</sup> Brigade had sent two reports to the 3<sup>rd</sup> Corps Command to the effect that Croatian civilians had been executed by mujahedin. Moreover, Fikret Čuskić had contacted the Accused Hadžihasanović on 17 June 1993 to inform him of the allegations of a massacre. In addition, Witnesses ZO and ZP had confronted the 3<sup>rd</sup> Corps Command with the allegations of a massacre. The 3<sup>rd</sup> Corps Command therefore had precise information that mujahedin had executed Croatian civilians in Maline. It is astonishing that Džemal Merdan did not take the time to consult that information before approaching the Supreme Command.

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<sup>2507</sup> P 174.

<sup>2508</sup> P 174.

<sup>2509</sup> Džemal Merdan, T(F) pp. 13201, 13638, 13659-13661.

<sup>2510</sup> Džemal Merdan, T(F) pp. 13129, 13131, 13132 and 13202; P 164.

<sup>2511</sup> P 175.

<sup>2512</sup> P 183; *see also* the Sixth Periodic Report on the human rights situation in the territory of the former Yugoslavia, submitted by Mr Tadeuz Mazowiecki on 23 February 1993, E/CN.4/1994/111, p. 7: “In response to a letter from the Special Rapporteur to the Prime Minister of Bosnia and Herzegovina, dated 15 October 1993, the Minister for Foreign Affairs replied, on 25 November 1993, that government troops were not responsible for alleged massacres at Maline in June and at Uzdol in September (see E/CN/1994/47, paras. 29-33). He stated that the deaths occurred during fighting and, furthermore, that the expulsion of Croats from the area was perpetrated by the HVO. However, given the many testimonies to the contrary, the Special Rapporteur continues to pursue an investigation of this matter.”

i. Murder of 24 Croats, Paragraph 39(c) of the Indictment

1145. In view of the foregoing, the Chamber finds that it has been proved beyond a reasonable doubt that Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barač, Davor Barač, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srečo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matić, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić and Ivo Volić were executed in Maline/Bikoši on 8 June 1993. The murder of those persons has been established. Since they had been taken prisoner and had surrendered their weapons, they qualified for the protection afforded by the laws or customs of war as recognised by common Article 3(a) of the Geneva Conventions.

1146. The Chamber considers that it has been proved beyond a reasonable doubt that the perpetrators of the crime were some ten foreign and local Muslim soldiers based in Poljanice camp.<sup>2513</sup>

1147. As to whether those soldiers formed part of the 7<sup>th</sup> Brigade or the 306<sup>th</sup> Brigade as alleged in the Indictment, the Chamber first notes that none of the witnesses who escaped from the massacre identified insignia on those soldiers.<sup>2514</sup> Witness Z21 remembers having seen green and black insignia, but that description is too vague to enable the unit concerned to be identified beyond a reasonable doubt.<sup>2515</sup> Moreover, it does not match the insignia of the ABiH or the insignia of the 7<sup>th</sup> Brigade as set forth in Exhibit P 4.<sup>2516</sup>

1148. Although the attack on Maline was carried out by units of the 306<sup>th</sup> Brigade, the Chamber has not seen any evidence tending to show that the perpetrators of the massacre belonged to that brigade. Moreover, even if foreign Muslim combatants fought alongside the ABiH in the Bila Valley on 8 June 1993, the Chamber has not been able to establish any link whatsoever between the mujahedin and the 306<sup>th</sup> Brigade.<sup>2517</sup> It seems that the mujahedin took part in the fighting without having been subordinated to one of the units of the 3<sup>rd</sup> Corps.<sup>2518</sup>

<sup>2513</sup> See *supra* paras. 1122 and 1130.

<sup>2514</sup> See *supra* paras. 1121 and 1122.

<sup>2515</sup> P 929 (under seal), statement of 15 September 2000, p. 3; P 4.

<sup>2516</sup> P 4.

<sup>2517</sup> See *supra* para. 605.

<sup>2518</sup> See *supra* paras. 533 and 805.

1149. In order to establish whether the perpetrators of the massacre could have belonged to the 7<sup>th</sup> Brigade, it must be determined whether members of the 7<sup>th</sup> Brigade were present in the Maline region on 8 June 1993. According to the Defence witnesses, the 306<sup>th</sup> Brigade was the only unit engaged in the fighting in Maline and no unit of the 7<sup>th</sup> Brigade took part in the combat operations.<sup>2519</sup> The Defence witnesses for the Accused Kubura stated, moreover, that no unit of the 7<sup>th</sup> Brigade was stationed in the Bila Valley before the fighting on 8 June 1993.<sup>2520</sup>

1150. Witness ZK, however, a witness for the Prosecution, stated that he saw members of the 7<sup>th</sup> Brigade when he was walking towards Mehurići in the column of villagers.<sup>2521</sup> When he reached the top of Vranjača hill, he saw a group of 50 to 100 soldiers in camouflage uniforms. On their belt buckles he could make out the words “7<sup>th</sup> Muslim Brigade” and “MOS”.<sup>2522</sup> According to Witness ZK, the soldiers looked at the villagers in silence and remained behind on the hill.<sup>2523</sup> Witness XB also considers that members of the 7<sup>th</sup> Brigade took part in the attack on Maline and stated that he saw insignia.<sup>2524</sup> During cross-examination, however, he admitted that at the material time he did not know the different brigades or the insignia of the ABiH.<sup>2525</sup> He seems to have based his conclusion on the fact that the 7<sup>th</sup> Brigade was stationed in the municipality of Travnik.<sup>2526</sup> Witness XC saw the insignia of the 7<sup>th</sup> Brigade on one of the persons who attacked Maline.<sup>2527</sup> He pointed out, however, that this did not allow it to be concluded with certainty that the soldier in question belonged to the 7<sup>th</sup> Brigade. He explained that at the time anybody could wear the uniform.<sup>2528</sup> He even saw one of the attackers wearing “a helmet with a chequer-board insignia that he must have taken from one of our [HVO] fallen soldiers”.<sup>2529</sup>

1151. As explained in the part of the Judgement relating to the mujahedin, among the mujahedin of Poljanice Camp were former members of the Muslim Forces of Travnik, sometimes known as

<sup>2519</sup> Fikret Čuskić, T(F) p. 12112; Remzija Šiljak, T(F) pp. 10572-10573; Munir Karić, T(F) p. 11464; Derviš Suljić, T(F) pp. 11330-11331; Fahir Čamdžić, T(F) pp. 11728-11729; Džemal Merdan, T(F) p. 13209; Suad Jusović, T(F) pp. 18437 and 18438; Naim Horo, DK 61, para. 13.

<sup>2520</sup> Džemal Ibranović, T(F) pp. 18363-18364, 18394; Safet Junuzović, T(F) pp. 18507-18508; Suad Jusović, T(F) p. 18429, Semir Terzić, T(F) pp. 18246, 18284.

<sup>2521</sup> P 92 (under seal), para. 21.

<sup>2522</sup> P 92 (under seal), para. 21. This Witness was summoned to appear for cross-examination. Nevertheless, the Defence did not ask any questions about the recognised insignia.

<sup>2523</sup> P 92 (under seal), para. 21.

<sup>2524</sup> Witness XB, T(F) pp. 1643 and 1644.

<sup>2525</sup> Witness XB, T(F) p. 1666.

<sup>2526</sup> Witness XB, T(F) pp. 1643 and 1668.

<sup>2527</sup> Witness XC, T(F) p. 1689.

<sup>2528</sup> Witness XC, T(F) p. 1690.

<sup>2529</sup> Witness XC, T(E) p. 1691.



“MOS” and also deserters from the 7<sup>th</sup> Brigade.<sup>2530</sup> The Chamber therefore considers that the mere fact that Witnesses ZK and XC identified the insignia of the 7<sup>th</sup> Brigade on some soldiers does not prove that those soldiers were placed under the command and effective control of the 7<sup>th</sup> Brigade. Moreover, at the material time there was frequent wrongful use of insignia. Consequently, the Chamber concludes that it has not been proved beyond a reasonable doubt that units of the 7<sup>th</sup> Brigade were present in the Maline region on 8 June 1993 and were involved in the massacre.

(iii) Findings of the Chamber regarding the Responsibility of the Accused

1152. The question remains as to whether the mujahedin stationed at Poljanice Camp were subordinated to the 7<sup>th</sup> Brigade and whether the Accused exercised effective control over them. As will be explained in another part of the Judgement, the Chamber cannot conclude beyond a reasonable doubt that the mujahedin at Poljanice Camp were placed under the effective control of the Accused before the *El Mujahedin* detachment was created on 13 August 1993.<sup>2531</sup> As a result, the Chamber concludes that the perpetrators of the massacre committed in Maline on 8 June 1993 were not placed under the effective control of the Accused.

(iv) Conclusions of the Chamber

1153. The Accused therefore cannot be held criminally responsible for the crime set out in count 1, paragraphs 39(c) and 40 of the Indictment.

2. Counts 3 and 4: Murders and Cruel Treatment

1154. This part of the Judgement deals with the crimes connected with the detention which are the subject of counts 3 and 4 of the Indictment. According to the Prosecution, the ABiH detained Bosnian Croats and Bosnian Serbs in different places of detention throughout 1993 and during their detention the prisoners regularly underwent mistreatment and, in some cases, died as a result of that treatment. The facts and conclusions reached by the Chamber will follow the order in which those places of detention are set out in the Indictment. The Zenica Music School and the Motel *Sretno* are common to the counts concerning the two accused, while the five other places of detention (the former JNA Barracks in Travnik, Mehurići Elementary School, Mehurići Blacksmith Shop, Orašac Camp and detention centres in Bugojno) appear solely in counts of the Indictment relating to the Accused Hadžihasanović.

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<sup>2530</sup> See *supra* para. 423.

<sup>2531</sup> See *supra* para. 805.

(a) Introduction

1155. As far as the factual context is concerned, the Chamber would recall that from 31 October 1992, a commission for the exchange of prisoners of war was set up which would operate during the period in question in order to facilitate the transfer to the HVO of members of the its armed forces and of the Croatian civilians captured by the ABiH in exchange for the release of soldiers of the ABiH (or of mujahedin) held by the HVO.<sup>2532</sup> Prisoners were detained generally following fighting. Accordingly, it is appropriate to refer to “waves” of detentions as a result of fighting, with the exception of the Orašac camp, where the detention of prisoners resulted from a policy of the mujahedin of kidnapping HVO soldiers and non-Muslim civilians with a view to exchanging them for mujahedin captured by the HVO, or the former JNA Barracks where the detentions were not necessarily connected with the fighting.

1156. In Zenica, prisoners of war were detained on three occasions: the first time after the fighting in Dusina in January 1993, the second time after the fighting in the region of Zenica, Vitez and Busovača in the second half of April 1993 and the third time after the outbreak of the conflict at Kakanj in June 1993. Officially, prisoners of war captured by the ABiH during combat were sent to the KP Dom in Zenica. In view of the evidence, however, it is clear that while the majority of prisoners of war were in fact sent to the KP Dom in Zenica in order to be exchanged subsequently, others were placed in detention at the Zenica Music School, which functioned as an unofficial detention centre. The perpetrators of the cruel treatment were 7<sup>th</sup> Brigade soldiers, for the most part military police subordinated to the 7<sup>th</sup> Brigade, and who were subordinated to the Accused Hadžihasanović and the Accused Kubura.

1157. As regards the detention on 18 and 19 May 1993 of prisoners of war and civilians at the Motel *Sretno* in Kakanj, it appears that that detention was carried out in a spirit of reprisal following an ambush of the HVO in which a group of 7<sup>th</sup> Brigade Military Police had been taken prisoner. The 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion was stationed at that time in Kakanj at Motel *Sretno*.

1158. The detentions at Bugojno were the consequence of the beginning of the fighting between the ABiH and the HVO which broke out in Bugojno in July 1993. Given that there was no proper prison at Bugojno, the War Presidency in Bugojno had designated numerous places of detention to serve as prisons to accept prisoners captured by the ABiH. Accordingly, most of the HVO soldiers and civilians captured on 24 July 1993 and 19 September 1993 by members of the 307<sup>th</sup> Brigade

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<sup>2532</sup> P 243 (*Official Gazette* No. 22 dated 5 December 1992); see for example P 260; DH 163.1; DH 1430, DH 2066, P 700/DH1447.

were transferred to the various places of detention identified in the Indictment, in particular to *Iskra Stadium*.

1159. As far as the detentions at Mehurići are concerned, Bosnian Croat civilians and HVO soldiers were detained at the Mehurići Elementary School and at the Mehurići Blacksmith Shop on two occasions by 306<sup>th</sup> Brigade soldiers: the first time on 6 June 1993 following sporadic fighting at Velika Bukovica and Ričice and the second time on 8 June 1993 following a fresh outbreak of fighting between the HVO and the ABiH in Maline.<sup>2533</sup>

1160. As regards the detentions at the former JNA Barracks in Travnik, it would seem that some HVO were detained after they had given themselves up. Croatian civilians from the Travnik region, however, were also imprisoned there. The periods of detention varied a great deal; some HVO soldiers were detained in the barracks for only a brief period before being transferred to the KP Dom in Zenica,<sup>2534</sup> other prisoners of war were detained for six months.<sup>2535</sup> As a result, in the case of the barracks, it is harder to correlate arrests and detentions with periods of fighting.

(b) General Measures

1161. In view of the documents produced in the proceedings, the Chamber notes that the Supreme Command was keen to draw attention to the legal framework within which detentions of prisoners had to be carried out and therefore required compliance with the relevant Geneva Conventions.<sup>2536</sup> From this point of view, the Accused Hadžihasanović reminded his subordinates that they were under a duty to comply with the provisions of the Geneva Conventions and other instruments of international humanitarian law relating to the detention of prisoners of war.<sup>2537</sup>

1162. Some documents attest to the fact that this obligation was emphasised to subordinated members of the 3<sup>rd</sup> Corps brigades by the command of those brigades or operations groups.<sup>2538</sup> As regards the 7<sup>th</sup> Brigade, the Chamber notes Exhibits P 427 and P 467 which require compliance with the Geneva Conventions when prisoners of war are detained and prohibit the detention of

<sup>2533</sup> On the fighting at Velika Bukovica and Ričice in early June 1993: *see* Haris Jusić, T(E) p. 11256; Witness ZK, T(F), p. 4366; Munir Karić, T(F) pp. 11450-11452; Remzija Šiljak, T(F) p. 10514; Sejad Jusić, T(E) 11133. On the outbreak of fighting at Maline on 8 June 1993: *see* para. 1109 *ff.* The soldiers of the 306<sup>th</sup> Brigade were subordinates of the Accused Hadžihasanović during the period in question.

<sup>2534</sup> Samir Sefer, T(F) p. 11988; Jasenko Eminović, T(F) p. 5762.

<sup>2535</sup> Witness XD rejoined the ranks of the HVO brigade in Vitez in June 1993, Witness XD, T(F) pp. 1744-1745; Witness XD, T(F) pp. 1752, 1754, 1760 and 1761.

<sup>2536</sup> *See* for example P 266; P 316; P 473; P 307.

<sup>2537</sup> *See* for example P 138; P 282; P 186/DH 64/ DH161.10; DH 1183; DH 65/DH 161.16/DH 1215; P 161/DH 161.18; DH 160.5; P 193.

<sup>2538</sup> DH 263; DH 1366; DH 710; DH 711; DH 874; P 889; P 308; P 865; P 191/DH 270; DH 1550; DH 1368.

civilians.<sup>2539</sup> Witness BA also confirmed when he testified before the Chamber that the 7<sup>th</sup> Brigade Command and 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion Command had given orders on several occasions prohibiting in particular any unlawful act, and that he had been put on notice of the need to obey the Geneva Conventions.<sup>2540</sup> Mention should also be made of the prohibition on torturing and brutalising prisoners of war as referred to in the Instructions for the Muslim Fighter, even though there were limits to that prohibition.<sup>2541</sup>

1163. Furthermore, the Accused Hadžihasanović gave orders on several occasions prohibiting the detention of civilians and mistreatment of prisoners of war on pain of sanctions.<sup>2542</sup> Following those orders, subordinated commanders drew attention to that prohibition.<sup>2543</sup>

1164. Moreover, the Accused Hadžihasanović asked for investigations to be initiated in some brigades in order to establish whether unlawful detentions or mistreatment had taken place and to inform the 3<sup>rd</sup> Corps Command of the findings.<sup>2544</sup> On some occasions, he gave an order that all information relating to the detention of prisoners be given to him.<sup>2545</sup> The initiatives intended to document the treatment of prisoners also emanated from the military security service.<sup>2546</sup> The commands of the TO, operations groups and brigades also issued similar orders.<sup>2547</sup> The Chamber would draw attention to Exhibit P 467 issued by the 7<sup>th</sup> Brigade designed to secure punishment for persons guilty of detention and mistreatment and requiring instances of such to be reported to the person who signed the order (Šerif Patković).<sup>2548</sup>

1165. Pursuant to cease-fire agreements with the HVO, the Accused Hadžihasanović ordered prisoners of war and, in particular, civilians to be released.<sup>2549</sup> The orders were given following those by the Supreme Command of the ABiH.<sup>2550</sup>

1166. Representatives of the ICRC made several visits to the *Iskra* Stadium in Bugojno.<sup>2551</sup> Thus, on 14 September 1993, the Accused Hadžihasanović ordered the commands of the OG *Zapad* and

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<sup>2539</sup> P 427; P 467.

<sup>2540</sup> Witness BA, T(F) p. 867.

<sup>2541</sup> P 11.

<sup>2542</sup> P 138; P 194; DH 161.2; P 186/DH 64/DH 161.10.

<sup>2543</sup> DH 874; P 427 (7<sup>th</sup> Brigade).

<sup>2544</sup> P 364; P 138; DH 65/DH 161.16/DH 1215.

<sup>2545</sup> P 157.

<sup>2546</sup> P 260.

<sup>2547</sup> DH 263; DH 710, DH 711; P 467 (7<sup>th</sup> Brigade).

<sup>2548</sup> P 467.

<sup>2549</sup> P 137; P 206; P 139; P 205; DH 163.2; DH 161.3; DH 163.6; P 190/DH 161.17/DH 163.12; DH 163.13.

<sup>2550</sup> DH 161.3; DH 163.6; P 266; DH 163.9.; DH 163.10; DH 165.3; DH 161.11; P208; P 430.

<sup>2551</sup> Mijo Marijanović, T(F) p. 2773; Zoran Gvozden, T(F) p. 3679; P 386 (under seal), para. 38.

the 307<sup>th</sup> Brigade to authorise the visit by a delegation of the ICRC scheduled for 20 and 21 September 1993.<sup>2552</sup>

1167. Two orders from Rasim Delić to the 3<sup>rd</sup> Corps Command required access to be granted to the representatives of the ICRC to all detention centres,<sup>2553</sup> more particularly the Zenica Music School.<sup>2554</sup> The Chamber notes that any action taken on those orders is not available to it.

(c) Zenica Music School

1168. In the Indictment it is alleged that Bosnian Croats and Bosnian Serbs were held in the Zenica Music School in the town of Zenica, which was guarded and run by members of the 7<sup>th</sup> Brigade from around 26 January 1993 until at least January 1994, and were regularly subjected to mistreatment there. The detainees were allegedly beaten and subjected to physical and psychological abuse by 7<sup>th</sup> Brigade soldiers, primarily military police and mujahedin subordinated to the 7<sup>th</sup> Brigade. The detention conditions, including the food and hygiene, were allegedly inadequate. From around 26 January 1993 to 31 October 1993 and from 1 April 1993 to at least January 1994, the Accused Hadžihasanović and the Accused Kubura, respectively, knew or had reason to know that the members of that unit, placed under their command and effective control, were about to commit crimes of mistreatment or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>2555</sup>

1169. The Accused Hadžihasanović and the Accused Kubura are therefore allegedly guilty of cruel treatment, violations of the laws or customs of war punishable under Articles 3 and 7(3) of the Statute and recognised by common Article 3 of the Geneva Conventions.<sup>2556</sup>

(i) Arguments of the Parties

1170. The Prosecution claims that members of the 7<sup>th</sup> Brigade mistreated detainees at the Zenica Music School, which was under the control of the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade.<sup>2557</sup> The Prosecution adds that the two Accused had knowledge of the mistreatment inflicted on the detainees<sup>2558</sup> that

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<sup>2552</sup> P 441.

<sup>2553</sup> DH 1490.

<sup>2554</sup> P 670.

<sup>2555</sup> Indictment, paras. 41(a) and 42(a).

<sup>2556</sup> By Decision on the Motions for Acquittal (para. 65 and p. 65 of the disposition), the Chamber acquitted the Accused Hadžihasanović and the Accused Kubura of the part of count 3 of the Indictment relating to the murder of Jozo Maračić at the Zenica Music School on 18 June 1993 as regards their individual criminal responsibility under Article 7(3) of the Statute.

<sup>2557</sup> Prosecution Final Brief, paras. 212-213; Prosecution Closing Arguments, T(F) p. 19095.

<sup>2558</sup> Prosecution Final Brief, para. 224.

they failed to take the necessary and reasonable measures to prevent the commission of the mistreatment or to punish the perpetrators.<sup>2559</sup>

1171. The Defence for the Accused Hadžihasanović maintains that there is a doubt as to the detention and hence as to the mistreatment allegedly suffered by members of the HVO at the Zenica Music School in January 1993.<sup>2560</sup> In contrast, the Defence for the Accused Hadžihasanović has not challenged in any way the factual allegations set out in the Indictment in this connection as regards the period from late April until June 1993. In addition, the Defence for the Accused Hadžihasanović maintains that the Prosecution has not proved that mujahedin took part in the mistreatment, that the Accused Hadžihasanović was apprised of the mistreatment and that the Accused Hadžihasanović failed to take the necessary and reasonable measures to prevent the commission of those crimes or to punish the perpetrators.<sup>2561</sup>

1172. The Defence for the Accused Kubura does not challenge the allegation that mistreatment was meted out at the Zenica Music School.<sup>2562</sup> In contrast, the Defence for the Accused Kubura states that the Accused Kubura did not know or have reason to know of the actions allegedly committed there<sup>2563</sup> and that he had neither the power nor the duty to prevent or punish the alleged crimes.<sup>2564</sup>

(ii) Findings of the Chamber regarding Mistreatment at the Zenica Music School

a. Description of the Facts from Late January 1993 to Late August or September 1993

1173. The Zenica Music School<sup>2565</sup> is located in the centre of the town of Zenica,<sup>2566</sup> a few hundreds metres from the former Zenica District Military Court<sup>2567</sup> and the former headquarters of

<sup>2559</sup> *Ibid.*, paras. 235 and 239.

<sup>2560</sup> Hadžihasanović Defence Final Brief, para. 890.

<sup>2561</sup> *Ibid.*, paras. 881 and 958.

<sup>2562</sup> Opening statement of the Accused Kubura, T(F) pp. 18222-18223.

<sup>2563</sup> Kubura Defence Final Brief, paras. 127 and 138; Kubura Defence Closing Arguments, T(F) p. 19324.

<sup>2564</sup> Kubura Defence Final Brief, para. 147-152.

<sup>2565</sup> See photograph P 7.1 (confidential) and videocassettes P 761 and P 802.

<sup>2566</sup> Ramiz Džaferović, T(F) p. 14226; Hamdija Kulović, T(F) pp. 14292-14293.

<sup>2567</sup> Vlado Adamović, T(F) pp. 9477-9478; Hilmo Ahmetović, T(F) pp. 16216-16217.

the 3<sup>rd</sup> Corps,<sup>2568</sup> and approximately two kilometres from the 7<sup>th</sup> Brigade Command, which was located at the time in Bilmište.<sup>2569</sup>

1174. Since the second half of January 1993, the building of the Zenica Music School had housed the military police section of the 7<sup>th</sup> Brigade.<sup>2570</sup> Moreover, several witnesses mentioned the presence of 7<sup>th</sup> Brigade soldiers at the Music School during the period in question.<sup>2571</sup>

1175. In accordance with an order of 15 January 1993 from the Commander of the 7<sup>th</sup> Brigade, a military detention unit for members of the 7<sup>th</sup> Brigade was set up at the Zenica Music School.<sup>2572</sup> The Music School was mainly used, however, as an ABiH detention centre for more than a hundred prisoners of war and civilian detainees between 26 January 1993 and 20 August 1993 or 20 September 1993.<sup>2573</sup> A number of circumstances make the Chamber consider that the Music School served as an ABiH unofficial detention centre. The official policy of the 3<sup>rd</sup> Corps was to order prisoners of war captured in fighting to be sent to the KP Dom in Zenica.<sup>2574</sup> While the ABiH, as a result, sent hundreds of prisoners of war to the KP Dom in Zenica after the fighting in Dusina in January 1993 and the fighting in the Lašva Valley in the second half of April 1993,<sup>2575</sup> the 7<sup>th</sup> Brigade, in parallel and at the same time, was arresting and taking some prisoners to the Music School. Of the former prisoners detained in the School who testified before the Chamber, none declared that he had been registered upon his arrival at the School.<sup>2576</sup> Additionally, the detainees held at the Music School were systematically sent to the KP Dom in Zenica before being exchanged.<sup>2577</sup> Lastly, even though the military police was authorised by the service regulations of

<sup>2568</sup> Witness HF, T(F) pp. 17187-17188.

<sup>2569</sup> Osman Hasanagić, T(F) p. 18889; Witness XA, T(F) p. 1461; DH 2080 (*see* in relation to DH 2080: Semir Šarić, T(F) p. 17333).

<sup>2570</sup> P 143; P 405; DK 62 para. 22; Witness ZA, T(F) p. 2324. Jusuf Karalić, Commander of a 7<sup>th</sup> Brigade Military Police unit (P 727), was present on the premises during the period in question (Kruno Rajić, T(F) p. 1855; P 401 (under seal), para. 18) in the same capacity as members of the Military Police special unit (P 401 (under seal), para. 19).

<sup>2571</sup> Kruno Rajić, T(F) pp. 1799-1800; Witness XA, T(F) p. 1430; Alija Podrug, T(F) p. 4294; P 401 (under seal), para. 7; P 402 (under seal), paras. 17-27, 23 and 32-36. By way of example, Jasmin Isić, a member of the 7<sup>th</sup> Brigade (DK 5 (under seal); DK 6 (under seal); DK 14 (under seal); Annex B (under seal) of P 371), was present and conducted interrogations at the Music School (Franjo Batinić, T(F) p. 517; Kruno Rajić, T(F) 1799-1800; Ranko Popović, T(F) pp. 1554-1555). The presence of Vehid Subotić, aka Geler, a member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion (P 542; P 713), was also observed (Dragan Radoš, T(F) p. 1067). Some witnesses mentioned the presence of foreigners who did not speak the Bosnian language (Witness XA, T(F) p. 1445; P 401 (under seal), para. 16) and wore clothing habitually worn by the mujahedin (Lars Baggessen, T(F) p. 7036).

<sup>2572</sup> P 405; DK 62 para. 22; Osman Hasanagić, T(F) p. 18889.

<sup>2573</sup> As it will be considered subsequently, no witness stated before the Chamber that he had been detained at the Music School beyond 20 August 1993 or 20 September 1993.

<sup>2574</sup> DH 874; Edib Zlotrg, T(F) p. 14982; *see* also P 551; DH 176; Witness HF, T(F) pp. 17197-17198.

<sup>2575</sup> Ivica Kegelj, T(F), pp. 4243-4244; Mahir Izet, T(F), pp. 16799, 16819-16820; Semir Sarić, T(F), pp. 17319, 17320 and 17343; P 389 (under seal), para. 16; P 314; P 744; DH 874; DH 163/8; DH 163/9; P 264 (under seal).

<sup>2576</sup> *See* P 353, para. 2828.

<sup>2577</sup> Ivan Tvrtković, T(F) pp. 1508 and 1521; Alija Podrug, T(F) p. 4296; Kruno Rajić, T(F) p. 1823; Witness XA, T(F) p. 1459; P 398 (under seal), paras. 21-24; P 401 (under seal), para. 26; P 402 (under seal), para. 45.

the military policy of the armed forces of the RBiH to detain any person suspected of having committed a criminal act falling within the jurisdiction of military justice for a period not exceeding three days,<sup>2578</sup> the Chamber finds that no witness it heard referred to a such a ground for detention and that, mostly, non-Muslim civilians and prisoners of war were held there for a period very frequently exceeding the legal maximum of three days.<sup>2579</sup>

1176. Bosnian Croat and Bosnian Serb civilian men and members of the HVO were placed in detention in the Music School on three occasions: the first time after the fighting in Dusina in January 1993, the second time following the fighting in the region of Zenica, Vitez and Busovača in the second half of April 1993 and the third time following the outbreak of fighting at Kakanj in June 1993, that is, a few days after the departure of the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions from the sector of Ovnak towards Kakanj on about 8 or 9 June 1993.<sup>2580</sup> In January 1993, ten or so persons were imprisoned in the basement of the Music School<sup>2581</sup> while between the second half of April and August 1993 the number of detainees at the Music School varied continually between 15 and 46.<sup>2582</sup>

1177. As indicated earlier in the Judgement, on 26 January 1993 following the fighting in Dusina and the murder of Zvonko Rajić, the 3<sup>rd</sup> Corps Military Police transferred 25 captured HVO soldiers to the KP Dom in Zenica. On the same day, 7<sup>th</sup> Brigade soldiers took six prisoners who were members of the HVO, namely Witnesses Dragan Radoš and Franjo Batinić together with Viktor Rajić, Jozo Krišto, Srečko Krišto and Perica Radoš to the Zenica Music School by force.<sup>2583</sup>

<sup>2578</sup> P 328, para. 62; Zaim Mujezinović, T(F) p. 17511; Witness HF, T(F) pp. 17185-17186.

<sup>2579</sup> The length of the detention of former prisoners held in the Music School who were heard by the Chamber varied between 2 and 75, and even 105, days: Franjo Batinić stated that he was detained for 3 and a half or four days (T(F) p. 525); Dragan Radoš stated that he was detained between 2 and 5 days (T(F) 1067); Krno Rajić, 23 April 1993-10 June 1993 (T(F) pp. 1795 and 1823; P 41); Witness XA, night of 21/22 April 1993-5 May 1993 (T(F) pp. 1426 and 1459); Witness Z16, 18 April 1993-20 April 1993 (P 398 (under seal), paras. 2 and 21-24); Witness Z20, 22 April 1993-4 May 1993 (P 402 (under seal), paras. 10 and 45); Witness Z19, 25 April 1993-11 June 1993 (P 401 (under seal), paras. 4 and 26); Ivan Bohutinski, 29 April 1993-18 May 1993 (T(F) pp. 4662, 4664, 4668 and 4678); Ivan Tvrtković, 15 June 1993-20 August 1993 or 20 September 1993 (T(F) pp. 1499-1503, 1508 and 1521); Ranko Popović, 21 June 1993-20 August 1993 (T(F) pp. 1543 and 1546); Alija Podrug, 27 July 1993-2 August 1993 (T(F) pp. 4291-4292 and 4296).

<sup>2580</sup> Safet Junuzović, T(F) pp. 18518-18519; Kasim Alajbegović, T(F) p. 18702.

<sup>2581</sup> In addition to the six prisoners who were members of the HVO brought to the School on 26 January, three prisoners had been brought there the day before: Franjo Batinić, T(F) p. 524; Dragan Radoš, T(F) pp. 1062-1063.

<sup>2582</sup> Ivan Tvrtković, T(F) p. 1505; Krno Rajić, CFR p. 1802; Witness XA, T(F) p. 1431; P 353; P 366 (Fifth Periodic Report of 17 November 1993 of the United Nations Commission on Human Rights on the human rights situation in the territory of former Yugoslavia).

<sup>2583</sup> Dragan Radoš, T(F) pp. 1059-1061; Franjo Batinić, T(F) pp. 513 and 524-525; Krno Rajić, T(F) pp. 1796 and 1843; P 314; P 744; *see also supra* paras. 1013 and 1026.



1178. Once they arrived at the Music School, the HVO prisoners were interrogated one by one before being taken down to the cell in the basement of the building.<sup>2584</sup> The witnesses stated that the detainees were beaten with rifle stocks and wooden sticks as they were escorted to the interrogation office and during the interrogation.<sup>2585</sup> After these first beatings Franjo Batinić's shoulders and chest were covered with bruises and the arch of his eyebrows had been split open.<sup>2586</sup> On the following night, Viktor Rajić and Dragan Radoš were mistreated in turn by two soldiers, including the one known as "Geler", in the basement of the school.<sup>2587</sup> Dragan Radoš states that Viktor Rajić was kicked and punched and that the beating did not end until his face began to bleed copiously.<sup>2588</sup> Following this, Dragan Radoš was kicked and punched by the two soldiers, after which his hands were tied up high behind his back, and he was hit with a wooden stick in his ribs until they were fractured.<sup>2589</sup> After that he could barely walk or breathe.<sup>2590</sup> According to Franjo Batinić, all the other detainees were beaten in the same way.<sup>2591</sup> It was not specified, however, whether the beatings of the other prisoners were carried out on that same night or whether they were repeated throughout their detention. After three or four days, the prisoners were transferred to the KP Dom in Zenica to be exchanged on 10 February 1993 in Busovača.<sup>2592</sup>

1179. Following the abduction of Živko Totić and a new outbreak of fighting between the HVO and the ABiH in the region of Zenica, Vitez and Busovača,<sup>2593</sup> a second wave of arrests and transfers to the Zenica Music School took place in the second half of April 1993. Whereas some 270 HVO soldiers who had been taken prisoner were transferred by the ABiH to the KP Dom in Zenica,<sup>2594</sup> Bosnian Croat and Bosnian Serb civilians and members of the HVO, including Witness XA, Kruno Rajić, Ivan Bohutinski and three other witnesses, were arrested in Zenica by 7<sup>th</sup> Brigade Military Police and taken to the Music School.<sup>2595</sup>

<sup>2584</sup> Franjo Batinić, T(F) p. 514; Dragan Radoš, T(F) p. 1061. The basement cell was a former classroom approximately 4 metres by 3 metres; see photograph P 8 and videocassettes P 761 and P 802; Kruno Rajić, T(F) p. 1811; Ivan Tvrčković, T(F) pp. 1503-1505.

<sup>2585</sup> Franjo Batinić, T(F) pp. 515-516; Dragan Radoš, T(F) pp. 1061-1062.

<sup>2586</sup> Franjo Batinić, T(F) p. 515.

<sup>2587</sup> Franjo Batinić, T(F) p. 515; Dragan Radoš, T(F) p. 1063. Vehid Subotić, aka Geler, was also present at Dusina on 26 January 1993; Ivica Kegelj, T(F), pp. 4231, 4232 and 4237-4238; P 389 (under seal), paras. 6 and 9.

<sup>2588</sup> Dragan Radoš, T(F) p. 1063.

<sup>2589</sup> Dragan Radoš, T(F) pp. 1063-1064 and 1066-1067.

<sup>2590</sup> Dragan Radoš, T(F) pp. 1066-1067.

<sup>2591</sup> Franjo Batinić, T(E) pp. 515-517.

<sup>2592</sup> Franjo Batinić, T(F) p. 525; Dragan Radoš, T(F) pp. 1067-1068; Kruno Rajić, T(F) p. 1843; P 744.

<sup>2593</sup> See *supra* paras. 491-528.

<sup>2594</sup> P 264 (under seal).

<sup>2595</sup> Witness XA, T(F) pp. 1426-1427; Kruno Rajić, T(F) pp. 1795-1796; Ivan Bohutinski, T(F) pp. 4662, 4664, 4677 and 4678; P 398 (under seal), para. 2; P 401 (under seal), para. 4; P 402 (under seal), paras. 10-13.

1180. All the Prosecution witnesses are consistent in stating that, throughout their detention in the Music School, they repeatedly underwent cruel treatment and lived in a permanent state of anxiety. Thus, upon their arrival at the School, the detainees were almost systematically kicked and beaten with rubber cable and wooden shovel handles by the soldiers and guards of the School before they were taken to the basement cell.<sup>2596</sup> Witness XA recounts that upon his arrival he was hit on the head with a wooden stick when he was climbing the stairs and lost consciousness; when he came to, 15 to 20<sup>th</sup> Brigade soldiers were questioning him while continuing to hit him about the head, on the back and in the stomach, causing him to pass again out. He states that he was subjected to that treatment every day for eight days.<sup>2597</sup> The beatings caused him to sustain two fractures of the skull.<sup>2598</sup> Another witness recounts that after having lost and regained consciousness several times in the same circumstances, he was forced by a Muslim soldier to eat a military insignia after being threatened with having a rubber cable thrust down his throat if he did not do so.<sup>2599</sup>

1181. Witness Kruno Rajić explained that at night the detainees were brought upstairs one by one and, with the lights out, had to pass through the middle of a column of soldiers in two rows who struck them with wooden shovel handles. The soldiers would say to them “We are going to teach you to sing”, which meant that they would listen while the detainees screamed while being hit with the shovel handles.<sup>2600</sup> Another witness related that from the basement cell he could hear detainees cry out begging them to stop, and that when they returned downstairs they would be covered with bruises and blood.<sup>2601</sup> There is evidence that soldiers and guards played loud music in order to cover up the screams and cries of detainees being beaten.<sup>2602</sup>

1182. The interrogations, often conducted by Jasmin Isić during the night, were regularly accompanied by beatings of ten minutes or so administered by wooden shovel handles.<sup>2603</sup> The blows rained down on the detainee under interrogation whenever his answers did not satisfy the interrogator or interrogators or even whenever a prisoner opened his mouth to answer.<sup>2604</sup> The detainees were also regularly hit by the guards in the basement cell.<sup>2605</sup> On one occasion, for

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<sup>2596</sup> P 398 (under seal), paras. 4-17; Kruno Rajić, T(F) p. 1797; P 401 (under seal), para. 10.

<sup>2597</sup> Witness XA, T(F) pp. 1430-1432 and 1434.

<sup>2598</sup> Witness XA, T(F) p. 1435.

<sup>2599</sup> P 398 (under seal), para. 13.

<sup>2600</sup> Kruno Rajić, T(F) p. 1802. The testimony of Witness ZP echoes that of Witness Kruno Rajić insofar as Witness ZP stated that he heard that people were brought to the Music School and that “even those who had no ear for music very soon learned to sing”, T(F) p. 8846.

<sup>2601</sup> P 402 (under seal), paras. 24-28; *see also* Ivan Bohutinski, T(F) pp. 4670-4671.

<sup>2602</sup> P 402 (under seal), para. 18; P 353, para. 2832.

<sup>2603</sup> Kruno Rajić, T(F) p. 1800; P 401 (under seal), para. 15.

<sup>2604</sup> Kruno Rajić, T(F) p. 1800.

<sup>2605</sup> P 402 (under seal), para. 36.

instance, a military police officer ordered Franjo Rajić to hit his mentally handicapped son, Marko Rajić, and when Franjo Rajić refused to comply with the order, the police officer ordered another detainee to hit Franjo Rajić, which he did. However, because the military police officer considered that the blows were not hard enough, he began to hit a prisoner, who already had a broken arm, with a truncheon.<sup>2606</sup> Likewise, a witness stated that one day several 7<sup>th</sup> Brigade soldiers came down to the basement, ordered the detainees to line up and face the wall and threatened them with a beating if they turned around. Nevertheless the prisoners were all beaten until the soldiers unleashed their blows on detainee Dragan Jonjić alone, kicking him and hitting him with shovels. Dragan Jonjić fell to the ground and, while the soldiers asked him to explain why he had dared to turn around, the assault on him resumed more violently. At this point Dragan Jonjić was in such bad condition that that he could no longer stand up afterwards. The detainees were so terrorised that after the soldiers had gone away they did not dare to move from the wall for 20 minutes.<sup>2607</sup>

1183. According to the witness who testified before the Chamber, the civilian prisoners and members of the HVO Drago Pandža, Jure Babić, Slavko Miletić, Ivo Miletić, Nikola Tavić, Ivica Botić, Nikola Botić, Jozo Tolić, Jozo Mišković, Drago Lovrinović, Vinko Tavić, Drago Grubešić, Ivo Akrapović, Jozo Akrapović, Mio Martulović, Vlatko Ivanković, Dragan Jerković, Zoran Totić, Dragan Gelić, Marko Rajić, Franjo Rajić, Drago Pandža, a minor, and Ante Visković were also beaten frequently throughout their detention.<sup>2608</sup>

1184. One witness stated that since the beatings at the School he has not recovered full sight in one eye.<sup>2609</sup> Kruno Rajić stated that he had his hands broken because he had used them to protect himself against blows to the head.<sup>2610</sup> Another witness recounts that following the treatment he received at the School, he had four broken ribs and a fracture of the hip, for which he had to have an operation to fit a plastic hip.<sup>2611</sup>

1185. Lastly, several witnesses stated that they had been threatened on several occasions with death or the worst physical violence against them or their families.<sup>2612</sup> In this way, two 7<sup>th</sup> Brigade

<sup>2606</sup> Kruno Rajić, CFR pp.1805-1806.

<sup>2607</sup> P 402 (under seal), paras. 39-41.

<sup>2608</sup> Kruno Rajić, T(F) pp. 1804-1806 and 1810-1811; P 398 (under seal), paras. 6-8, 18 and 30; P 401 (under seal), para. 11; P 402 (under seal), paras. 17-18, 24-26 and 33; Ivan Bohutinski, T(F) pp. 4667 and 4670; Witness ZN, T(F) pp. 5272-5278.

<sup>2609</sup> P 401 (under seal), para. 21.

<sup>2610</sup> Kruno Rajić, T(F) p. 1801.

<sup>2611</sup> P 398 (under seal), para. 27.

<sup>2612</sup> Witness XA, T(F) pp. 1436-1437; P 398 (under seal), para. 8; P 402 (under seal), para. 43.

military police made Witness XA and another prisoner go outside the School where they forced them to dig a ditch, telling them it was their own grave and sharpening knives in front of them.<sup>2613</sup>

1186. The great majority of the detainees at the School who had been arrested in April were kept in detention for a period ranging from a few days to two to six weeks and were gradually transferred to the KP Dom in Zenica.<sup>2614</sup> Pursuant to the agreement of 10 June 1993 between the HVO and the ABiH on the cessation of hostilities,<sup>2615</sup> 198 detainees at the KP Dom, including several prisoners from the Music School, were exchanged on about 19 June 1993.<sup>2616</sup>

1187. As from the second half of June 1993, however, a third wave of arrests and transfers to the School was carried out by the 7<sup>th</sup> Brigade soldiers and the ABiH. In fact, following the outbreak of the fighting at Kakanj in June 1993, more precisely a few days after the departure of the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions from the sector of Ovnak to Kakanj on about 8 or 9 June 1993,<sup>2617</sup> a group of Bosnian Croats and Bosnian Serbs, including Witnesses Ivan Tvrtković and Ranko Popović, who were civilians, was arrested at Kakanj and transferred, after transiting at Motel *Sretno* in Kakanj, to the Zenica Music School.<sup>2618</sup> On 27 July 1993, Alija Podrug, a Muslim civilian, was arrested by the 7<sup>th</sup> Brigade in Kakanj and taken to the Music School.<sup>2619</sup>

1188. Ivan Tvrtković and Ranko Popović stated that they were subjected to the same type of physical and psychological abuse as that described by the witnesses arrested in April. Thus, upon his arrival, Ranko Popović was beaten up at the entrance to the basement by some ten soldiers forming a “hedge” using cables, rifle butts and kicks.<sup>2620</sup> The interrogations, conducted by Jasmin Isić, were also accompanied by beatings consisting of blows with rifle butts and kicks.<sup>2621</sup> Ranko Popović came out of them covered with bruises and was barely able to walk.<sup>2622</sup> According to the witnesses, the ten other prisoners held in the basement, including Ilija Cicak, Ivica Andrijević, Ivica Tvrtković, Franci Zupancić, Dane Majić together with a person named Cvijanović and another

<sup>2613</sup> Witness XA, T(F) pp. 1437-1438; P 402 (under seal), paras. 17-18.

<sup>2614</sup> Kruno Rajić, T(F) p. 1823; Witness XA, T(F) p. 1459; P 398 (under seal), paras. 21-24; P 401 (under seal), para. 26; P 402 (under seal), para. 45.

<sup>2615</sup> DH 163.3.

<sup>2616</sup> P 190; P 208; P 41; P 401 (under seal), para. 28; Kruno Rajić, T(F) p. 1823; Witness XA, T(F) p. 1459. On 14 June 1993, several prisoners from the Music School were registered, among 203 HVO soldiers, at the reception centre for prisoners of war: DH 163.8.

<sup>2617</sup> DK 23; DK 24; Safet Junuzović, T(F) pp. 18517-18519 and 18578; Kasim Alajbegović, T(F) pp. 18701-18702.

<sup>2618</sup> Ivan Tvrtković, T(F) pp. 1499-1503; Ranko Popović, T(F) pp. 1532-1533 and 1543.

<sup>2619</sup> Alija Podrug, T(F) pp. 4290-4293 and 4302.

<sup>2620</sup> Ranko Popović, T(F) pp. 1543-1545.

<sup>2621</sup> Ivan Tvrtković, T(F) pp. 1507-1508; Ranko Popović, T(F) pp. 1547-1548 and 1554-1555.

<sup>2622</sup> Ranko Popović, T(F) pp. 1548-1549.

Markić, had the same type of wounds to their bodies and were also victims of violent assaults.<sup>2623</sup>

Alija Podrug stated that he did not see any other prisoners since he had been locked away in a room alone.<sup>2624</sup>

1189. Ranko Popović was detained at the Music School until 20 August 1993<sup>2625</sup> while Ivan Tvrtković was kept there until 20 August 1993 or 20 September 1993 before being transferred to the KP Dom in Zenica.<sup>2626</sup> Ivan Tvrtković remained at the KP Dom until 23 November 1993, the date on which he was exchanged.<sup>2627</sup> Alija Podrug was locked up for seven days at the Music School before being transferred to the KP Dom on 2 August 1993.<sup>2628</sup>

1190. It appears from many accounts by former prisoners at the Music School that, from 18 April 1993 until 20 August 1993, the basement of the Music School consistently housed a number between about ten and around thirty detainees, so that each prisoner leaving was systematically replaced by a newly arrived prisoner.<sup>2629</sup> Nevertheless, between 11 June and 15 June 1993, nobody seems to have been imprisoned at the Music School.<sup>2630</sup> Moreover, that four-day period corresponds precisely to the period in respect of which Witness Lars Baggessen informed the Chamber that he had visited the School and found no detainees there.<sup>2631</sup>

1191. In addition, many witnesses heard by the Chamber referred to the disastrous detention conditions between April and June 1993. Accordingly, several witnesses concur in describing, each in their own manner, the food distributed to the detainees as consisting mainly of small amounts of bread or rice, together with vegetable soup sometimes.<sup>2632</sup> Some witnesses stated that detainees did

<sup>2623</sup> Ivan Tvrtković, T(F) p. 1510; Ranko Popović, T(F) pp. 1548-1549.

<sup>2624</sup> Alija Podrug, T(F) p. 4294.

<sup>2625</sup> Ranko Popović, T(F) p. 1546.

<sup>2626</sup> Ivan Tvrtković, T(F) pp. 1508 and 1521.

<sup>2627</sup> Ivan Tvrtković, T(F) p. 1508.

<sup>2628</sup> Alija Podrug, T(F) p. 4296.

<sup>2629</sup> Kruno Rajić, T(F) p. 1802; Ivan Tvrtković, T(F) p. 1505; P 401 (under seal), para. 17. The periods of detention between 18 April 1993 and 20 August or 20 September 1993 of the former prisoners at the Music School who were heard by the Chamber are as follows: Kruno Rajić, 23 April 1993-10 June 1993 (T(F) pp. 1795 and 1823; P 41); Witness XA, night of 21/22 April 1993-5 May 1993 (T(F) pp. 1426 and 1459); Witness Z16, 18 April 1993-20 April 1993 (P 398 (under seal), paras. 2 and 21-24); Witness Z20, 22 April 1993-4 May 1993 (P 402 (under seal), paras. 10 and 45); Witness Z19, 25 April 1993-11 June 1993 (P 401 (under seal), paras. 4 and 26); Ivan Bohutinski, 29 April 1993-18 May 1993 (T(F) pp. 4662, 4664, 4668, 4677 and 4678); Ivan Tvrtković, 15 June 1993-20 August 1993 (T(F) pp. 1499-1503 and 1521); Ranko Popović, 21 June 1993-20 August 1993 (T(F) pp. 1543 and 1546); Alija Podrug, 27 July 1993-2 August 1993 (T(F) pp. 4290-4292 and 4296). Each witness stated that during his period of imprisonment he shared the basement cell with a number of fellow detainees whose number varied between about ten and about thirty: Kruno Rajić, 1802; Witness XA, T(F) p. 1439; P 398 (under seal), para. 6; P 402 (under seal), paras. 23 and 31; P 401 (under seal), para. 11; Ivan Bohutinski, T(F) p. 4667; Ivan Tvrtković, 1505; Ranko Popović, T(F) pp. 1545 and 1549.

<sup>2630</sup> Witness Z19 was transferred on 11 June 1993 from the Music School to the KP Dom in Zenica and Ivan Tvrtković arrived at the Music School on 15 June 1993.

<sup>2631</sup> Lars Baggessen, T(F) p. 7033.

<sup>2632</sup> Kruno Rajić, T(F) p. 1812; Witness XA, T(F), p. 1439; P 401 (under seal), para. 20; P 402 (under seal), para. 44.

not receive anything to eat for the first two days.<sup>2633</sup> The lack of sufficient and proper food weakened the detainees considerably: Kruno Rajić stated that he lost about 30 kilos during his detention, while another detainee stated that he lost 22 kilos.<sup>2634</sup> Moreover, several witnesses stated that nothing was provided for the detainees to sleep on.<sup>2635</sup> Accordingly, prisoners were obliged to sleep on a few planks of wood and benches, while others had to sleep sitting down.<sup>2636</sup> As for hygiene, several witnesses testified that there were toilets on the upper floor, but that in order to avoid the inevitable beating if they went upstairs, detainees tried to hold themselves in or had to make do with a plastic bucket instead of a toilet.<sup>2637</sup> In addition, detainees were not permitted to take a shower or to wash<sup>2638</sup> and prisoners did not receive medical care or the least medical treatment.<sup>2639</sup>

1192. Lastly, a particular aspect of the Music School was its limited access for international organisations.<sup>2640</sup> Several pieces of evidence, including an ICRC report, show that the 7<sup>th</sup> Brigade consistently refused the ICRC access to the Music School between May and August 1993, with the exception of a visit in May 1993.<sup>2641</sup> On 14 August 1993, Rasim Delić, intervened with the Accused Hadžihasanović and informed him of the ICRC's complaints in this regard. In particular, he indicated in his letter as follows:

"[T]he Zenica ICRC has attempted on several occasions to visit the prisoners who fall under the jurisdiction of the 7<sup>th</sup> Brigade of the BH Army 3<sup>rd</sup> Corps, and are detained in the prison in the former Secondary Music School in Zenica. Except for one visit in May 1993, the ICRC has constantly been denied access to the prisoners detained with the 7<sup>th</sup> Brigade.

The International Committee of the Red Cross also claims that visits to prisoners in the aforementioned prison that had been planned for 4 and 9 August this year were prevented in spite of the fact that that the ICRC asked the Third Corps to make them possible."<sup>2642</sup>

<sup>2633</sup> Witness XA, 1438; Kruno Rajić, T(F) p. 1812; P 353, para. 2832; P 366 (5<sup>th</sup> Periodic Report of 17 November 1993 of the United Nations Human Rights Commission on the human rights situation in the territory of the former Yugoslavia), para. 41.

<sup>2634</sup> Kruno Rajić, T(F) p. 1813; P 401 (under seal), para. 20.

<sup>2635</sup> Ivan Bohutinski, T(F) p. 4667; Ivan Tvrtković, T(F) p. 1504.

<sup>2636</sup> Kruno Rajić, T(F) p. 1811; Witness XA, T(F) p. 1438.

<sup>2637</sup> Kruno Rajić, T(F) pp. 1813-1814 ; Witness XA, T(F) p. 1431; Ivan Bohutinski, T(F) p. 4668; P 401 (under seal), para. 20.

<sup>2638</sup> Ivan Bohutinski, T(F) p. 4668 ; P 401 (under seal), para. 20 ; P 353.

<sup>2639</sup> Witness XA, T(F) p. 1436; Ivan Bohutinski, T(F) p. 4667; P 398 (under seal), para. 17-21.

<sup>2640</sup> P 168 (Report of 4 October 1993 of the United Nations Human Rights Centre), pp. 6 and 9; P 366 (5<sup>th</sup> Periodic Report of 17 November 1993 of the United Nations Human Rights Commission on the human rights situation in the territory of the former Yugoslavia), para. 41.

<sup>2641</sup> A; Annex C (under seal) of P 371; P 165, p. 00080589. Accordingly, the Chamber cannot give credence of the statements of Witness Ramiz Džaferović on this point. He denied that the ICRC was refused access to the Music School and stated that in fact the international organisations refused to visit the Music School: T(F) pp. 14232-14234.

<sup>2642</sup> P 670.

He ended his letter by ordering the Accused Hadžihasanović to issue an order to the 7<sup>th</sup> Brigade allowing the next visit of the ICRC, scheduled for 18 August 1993 to take place.<sup>2643</sup> Lastly, two witnesses stated that, before the visit of the ICRC, all the detainees, with the exception of three, were moved to Bilmište and brought back to the basement of the Music School after the visit.<sup>2644</sup> Džemal Merdan, however, denied that the detainees held at the School were moved before the ICRC arrived.<sup>2645</sup>

b. Mistreatment, Paragraph 42(a) of the Indictment

1193. The Chamber cannot accept the argument of the Defence for the Accused Hadžihasanović to the effect that, on the basis of the testimony of Jasmin Šarić, there is still a doubt about the detention of six members of the HVO imprisoned at the Music School from 26 January 1993 and hence about the mistreatment they allegedly suffered.<sup>2646</sup> There is cogent evidence to show that, following the murder of Zvonko Rajić on 26 January 1993, six Croatian soldiers taken prisoner by the ABiH, namely Perica Radoš, Jozo Krišto, Srečko Krišto, Viktor Rajić and Witnesses Franjo Batinić and Dragan Radoš, were placed on a bus by members of the 7<sup>th</sup> Brigade and taken to the Zenica Music School.<sup>2647</sup> What is more, the precise, consistent testimony of Franjo Batinić and Dragan Radoš proves beyond a reasonable doubt that the six aforementioned prisoners underwent repeated physical abuse at the Music School such as to cause great suffering or physical or mental pain.<sup>2648</sup>

1194. The Chamber heard no witness, however, as to the detention conditions obtaining in the Music School in January 1993, with the result that it dismisses as unfounded the allegation made by the Prosecution to the effect that living conditions during the detention in January 1993 were insufficient.

1195. As described above, numerous pieces of evidence as to the physical and psychological abuse constantly endured by Bosnian Croats and Bosnian Serbs and prisoners of war at the Music School from the second half of April until 20 August 1993 or 20 September 1993 were presented to the

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<sup>2643</sup> P 670.

<sup>2644</sup> Kruno Rajić, CFR p. 1822; P 401 (under seal), paras. 23-25. The Chamber notes that Witness Z19 stated that the detainees were moved from the School before the ICRC arrived on two occasions, the first in early June and the second 10 days later: P 401 (under seal), para. 24.

<sup>2645</sup> Džemal Merdan, T(F) p. 13633.

<sup>2646</sup> Hadžihasanović Defence Final Brief, paras. 889-890.

<sup>2647</sup> Franjo Batinić, T(F) pp. 512, 513 and 525; Dragan Radoš, T(F), pp. 1059-1061; Kruno Rajić, T(F), pp. 1796 and 1843; P 314; P 206; P 744; *see also supra* paras. 1013 and 1026.

<sup>2648</sup> Dragan Radoš, T(F) pp. 1061-1067; Franjo Batinić, 513-515.

Chamber in the course of the proceedings. That evidence suffices to prove beyond a reasonable doubt that defenceless victims were constantly subjected to the cruellest physical abuse, often in front of the other detainees. Apart from that mistreatment, witnesses gave an account of the fear that they felt during their detention and stated that the guards and soldiers at the Music School often threatened the detainees with death, thereby heightening their feelings of insecurity and anxiety. In addition, on the basis of the aforementioned testimony, the Chamber concludes that, during the period of the crimes committed between April and June 1993, the lack of food, the lack of access to adequate sanitary facilities and medical care, together with the fact that it was impossible to sleep in acceptable conditions, are punishable as cruel treatment insofar as they were intended to cause great suffering or serious injury to body and health.

1196. The Chamber concludes that it appears from the testimony of the former prisoners held at the Music School that the perpetrators of the cruel treatment were undeniably motivated by the intention to inflict serious pain and suffering on the prisoners held at the Music School.

1197. As regards the perpetrators of the mistreatment, the witnesses who testified before the Chamber identified Vehid Subotić aka Geler,<sup>2649</sup> a member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion,<sup>2650</sup> Našid Delalić,<sup>2651</sup> a member of the 7<sup>th</sup> Brigade Special Military Police,<sup>2652</sup> and Sabahudin Saraljić,<sup>2653</sup> also a member of the 7<sup>th</sup> Brigade Special Military Police.<sup>2654</sup> Moreover, it appears from the testimony of many witnesses that the interrogations, accompanied by beatings, were often carried out by Jasmin Isić,<sup>2655</sup> a 7<sup>th</sup> Brigade soldier.<sup>2656</sup> In addition, the combination of the statements by witnesses in which they recognised their tormentors as 7<sup>th</sup> Brigade soldiers or military police<sup>2657</sup> together with evidence proving that the unit present at the School belonged to the 7<sup>th</sup> Brigade Military Police<sup>2658</sup> satisfies the Chamber beyond a reasonable doubt that the perpetrators of the cruel treatment were 7<sup>th</sup> Brigade soldiers, mostly military police subordinated to the 7<sup>th</sup> Brigade, and were subordinated to the Accused Hadžihasanović and the Accused Kubura.

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<sup>2649</sup> Dragan Radoš, T(F) p. 1067.

<sup>2650</sup> P 542; P 713.

<sup>2651</sup> P 401 (under seal), para. 19.

<sup>2652</sup> P 708.

<sup>2653</sup> P 402 (under seal), para. 28.

<sup>2654</sup> P 708. The presence of Sabahudin Saraljić at the Music School was confirmed by Witness Z19: P 401 (under seal), paras. 4-6.

<sup>2655</sup> Franjo Batinić, T(F) p. 517; Krno Rajić, T. 1799, 1800 and 1859; Ranko Popović, T(F) pp. 1547-1548 and 1554-1555.

<sup>2656</sup> DK 5 (under seal); DK 6 (under seal); DK 14 (under seal); Annex B (under seal) to P 371.

<sup>2657</sup> Witness XA, T(F) pp. 1431-1432; P 402 (under seal), paras. 32 and 34.

<sup>2658</sup> P 143; P 405; DK 62, para. 22; Witness ZA, T(F) p. 2324.



1198. Conversely, the Chamber finds that there is no evidence to support the Prosecution's allegation that mujahedin subordinated to the 7<sup>th</sup> Brigade took part in the cruel treatment meted out to the victims in the Music School. Consequently, the Chamber cannot accept that allegation.

1199. The Chamber finds that the victims of the cruel treatment were not participating directly in the hostilities. The six HVO soldiers brought to the School on 26 January 1993 had been taken prisoner previously by the ABiH at the end of the fighting in Dusina.<sup>2659</sup> Moreover, the evidence produced in the proceedings shows that the people arrested and transferred to the Music School between April and June 1993 had the status of Bosnian Croat or Bosnian Serb civilians<sup>2660</sup> or of prisoners of war,<sup>2661</sup> or were unarmed members of the HVO in civilian dress at the time of their arrest.<sup>2662</sup> Consequently, they were all protected persons by virtue of the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1200. On the basis of the foregoing, the Chamber concludes that the elements of the crime of cruel treatment at the Zenica Music School have been established for the period from 26 January 1993 to 20 August 1993 or 20 September 1993, as far as the serious physical and psychological abuse is concerned, and from April to June 1993, as regards the conditions of detention.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1201. The Chamber concludes that the cruel treatment alleged in paragraphs 41(a) and 42(a) of the Indictment was committed by soldiers of the 7<sup>th</sup> Brigade, for the most part by military police subordinated to the 7<sup>th</sup> Brigade. Given that the 7<sup>th</sup> Brigade was subordinated *de jure* to the 3<sup>rd</sup> Corps at the material time,<sup>2663</sup> it is presumed that the Accused Hadžihasanović exercised effective control over that unit and over the perpetrators of the mistreatment belonging to it.<sup>2664</sup>

1202. Moreover, the evidence shows that the 7<sup>th</sup> Brigade, in particular the 7<sup>th</sup> Brigade Military Police, was carrying out the orders of the Accused Hadžihasanović. By way of example, the

<sup>2659</sup> Witness BA, T(F) p. 758; Franjo Batinić, T(F) p. 509.

<sup>2660</sup> Kruno Rajić, T(F) p. 1793; P 401 (under seal), para. 2.

<sup>2661</sup> Ivan Bohutinski, T(F) pp. 4675-4677.

<sup>2662</sup> Witness XA, T(F) pp. 1420-1422 and 1468; P 398 (under seal), para. 2; P 402 (under seal), paras. 7-8.

<sup>2663</sup> *See supra* para. 381.

<sup>2664</sup> *See supra* para. 79.

Accused Hadžihasanović ordered the 7<sup>th</sup> Brigade to release a prisoner from the Music School.<sup>2665</sup> Likewise, the Accused Hadžihasanović authorised certain international observers to visit the Music School.<sup>2666</sup> Witness Džemal Merdan and Witness HF, senior officers of the 3<sup>rd</sup> Corps Command, stated that they went to the Music School on several occasions.<sup>2667</sup> That evidence testifies to a relationship of subordination with the 7<sup>th</sup> Brigade soldiers located at the Music School.

1203. Likewise, the Defence for the Accused Hadžihasanović did not contest the claim that the 7<sup>th</sup> Brigade was subordinated to the Accused Hadžihasanović and presented no evidence in rebuttal of that presumption.

1204. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the mistreatment, and that there was a superior-subordinate relationship within the meaning of Article 7(3) the Statute.

b. Knowledge of Enver Hadžihasanović

1205. The Defence for the Accused Hadžihasanović submits that the Accused Hadžihasanović did not have knowledge of the mistreatment which allegedly took place in January 1993.<sup>2668</sup> Conversely, as regards the crimes allegedly committed between April and June 1993, the Defence for the Accused Hadžihasanović does not deny that the Accused Hadžihasanović was aware of allegations of mistreatment but maintains that he took a number of immediate measures to check on the allegations in question.<sup>2669</sup> In this way, the Defence for the Accused Hadžihasanović maintains that Džemal Merdan, the 3<sup>rd</sup> Corps Deputy Commander, inspected the School on several occasions between April and June 1993.<sup>2670</sup> It further contends that Nesib Talić, Assistant Commander for Security in the 7<sup>th</sup> Brigade, was asked to carry out an investigation into the allegations of mistreatment, and that Witness HF went to the Music School in person on several occasions.<sup>2671</sup> According to the Defence for the Accused Hadžihasanović, however, the visits made by Džemal Merdan and Witness HF did not turn up any evidence of prisoners at the School and the investigation did not find any evidence of the existence of detainees, other than persons suspected of having committed a criminal act falling within the jurisdiction of military justice who could

<sup>2665</sup> Witness ZN, T(E) p. 5278.

<sup>2666</sup> Annex D (under seal) to P 371; Lars Baggesen, T(F) pp. 7031-7032.

<sup>2667</sup> Džemal Merdan, T(F) pp. 13194-13196; Witness HF, T(F) pp. 17187-17188.

<sup>2668</sup> Hadžihasanović Defence Final Brief, para. 891.

<sup>2669</sup> *Ibid.*, para. 895.

<sup>2670</sup> *Ibid.*, paras. 896-900.

<sup>2671</sup> *Ibid.*, paras. 902-910.

legally be imprisoned for 72 hours, or of the existence of mistreatment at the Zenica Music School.<sup>2672</sup>

1206. The Chamber cannot agree with the reasoning of the Defence for the Accused Hadžihasanović for the following reasons.

1207. The Chamber considers that since late April or early May 1993 the Accused Hadžihasanović had been aware that the Zenica Music School was used as a detention centre for non-Muslim civilians and HVO soldiers. Following the capture of Witness Kruno Rajić on 23 April 1993, the wife of Kruno Rajić tried to procure the release of her husband and telephoned Džemal Merdan, the 3<sup>rd</sup> Corps Deputy Commander, to this end, asking him to go to the Zenica Music School. He answered that the 7<sup>th</sup> Brigade was not at the Music School.<sup>2673</sup> During his testimony, however, Džemal Merdan stated that he had never been contacted by Kruno Rajić's wife.<sup>2674</sup> There is evidence, however, that the 3<sup>rd</sup> Corps Command was in fact the military authority called upon to release the civilians and HVO soldiers imprisoned at the Music School. Accordingly, following a complaint from the wife of Anto Visković, the former head of the security services in Zenica and Sarajevo, that her husband had been arrested and imprisoned in the Zenica Music School, a member of the MUP contacted the Accused Hadžihasanović in order to so inform him. Shortly after this intervention, Anto Visković was released from the Music School.<sup>2675</sup> Likewise, on 6 May 1993, the headquarters of the local Civil Defence and the Roman Catholic parish of Čajdraš approached the 3<sup>rd</sup> Corps Commander in order to complain that several persons had been abducted by the 7<sup>th</sup> Brigade and that it was possible that some of them were at the Music School.<sup>2676</sup>

1208. Subsequently, the information which came to the knowledge of the Accused Hadžihasanović became more specific and, on 7 May 1993, Tihomir Blaškić sent a letter, in particular to the 3<sup>rd</sup> Corps Command and to the ECMM, in which he complained, in particular, that he had no access and no information about the number of detainees held in the Zenica Music School, and about the existence of "extreme maltreatment" there.<sup>2677</sup> The Chamber notes that the letter does not indicate the nature of the maltreatment at the School in respect of whether it consisted of physical violence or poor detention conditions, or both.

<sup>2672</sup> *Ibid.*, paras. 898-910.

<sup>2673</sup> Kruno Rajić, T(F) pp. 1815-1816.

<sup>2674</sup> Džemal Merdan, T(E) pp. 13632-13633.

<sup>2675</sup> Witness ZN, T(E) p. 5278.

<sup>2676</sup> Appendix 1 (under seal) of Annex E to P 371. Likewise, on 26 May 1993 Tihomir Blaškić sent to the 3<sup>rd</sup> Corps Commander, among others, a complaint relating to its failure to comply with the agreement of 18 May 1993 between

1209. On the same day, that is 7 May 1993, most probably prompted by the letter from Tihomir Blaškić, an ECMM representative visited the head of the ICRC in Zenica, Mr Noverraz. He asked him about access to the Music School, and Mr Noverraz answered that he had no access to the Zenica Music School or to the MUP. Later that day, Witness HI, an ECMM international observer, met the Accused Hadžihasanović and asked him about access to the prisoners in the School. The Accused Hadžihasanović told him that he had no knowledge of prisons such as the Music School and the MUP. The Accused Hadžihasanović went on to add that access to the Music School was not a problem but that he would first have to make a telephone call. He advised him in the end to meet a member of the command in order to go into this question in greater detail.<sup>2678</sup>

1210. On the following day, 8 May 1993, Witness HI, accompanied by two priests and Witness HF, a senior 3<sup>rd</sup> Corps Command officer, went to the KP Dom in Zenica to meet the HVO soldiers detained there. The ECMM daily report on this visit mentions that, of the HVO soldiers detained at the KP Dom, “some of them [...] claimed that they were arrested by the Military Police of the 7<sup>th</sup> Muslim brigade and mistreated. HRC visited the location of this unit, in the secondary music school in the centre of Zenica.”<sup>2679</sup> The ECMM daily report went on to mention that, on the occasion of the visit to the Music School, “everything had been obviously be prepared in the meantime and only three prisoners were there”, and that “they were extremely afraid and, without witness, claimed also that they were beaten regularly.”<sup>2680</sup>

1211. The Defence for the Accused Hadžihasanović argues, on the basis of the testimony of Witness HF and Witness HI, that Exhibit P 264, admitted under seal, does not seem to be related to the aforementioned visit to the Music School on 8 May 1993.<sup>2681</sup> In order to rule on the probative value of sealed Exhibit P 264, the Chamber examined the following evidence.

1212. First, Witness HI states in a stipulation that, when he visited the Music School with Witness HF, there was only one prisoner, a Bosnian Croat. He spoke to him confidentially and the prisoner told him that he was frightened about what was going to happen to him but that he was not treated

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the HVO and the ABiH on the mutual release of civilians, in which he complained, *inter alia*, of the imprisonment of civilians in the Zenica Music School, without mentioning the mistreatment there: P 385; *see* also P 383.

<sup>2677</sup> P 593.

<sup>2678</sup> Annexes C and D (under seal) to P 371.

<sup>2679</sup> P 264 (under seal).

<sup>2680</sup> P 264 (under seal).

<sup>2681</sup> Hadžihasanović Defence Final Brief, para. 907 and footnote 1285.

badly. Nevertheless, Witness HI stated that he could not explain the content of sealed Exhibit P 264, though it appeared to him to be connected with that visit of 8 May 1993. Lastly, he did not rule out the possibility that he observed that the place seemed to have been well prepared, but acknowledged that he went to the School as soon as he obtained information in this connection from Witness HF.<sup>2682</sup>

1213. Second, Witness HF reported that he visited the Music School with Witness HI, that he found a detainee there who did not complain of mistreatment, and that he proposed to Witness HI that he interview this prisoner confidentially. Witness HF stated that, following this interview, Witness HI did not intimate to him that the prisoner in question had informed him of mistreatment.<sup>2683</sup> When questioned by the Defence for the Accused Hadžihasanović about sealed Exhibit P 264, however, Witness HF denied that he had visited the Music School with Witness HI under the circumstances described in sealed Exhibit P 264.<sup>2684</sup>

1214. Third, Witness Kruno Rajić stated before the Chamber that, before a visit by international representatives, which he placed around 16 May 1993, all the prisoners held in the Music School were moved to another place and that the three remaining prisoners, including himself, were placed on the first floor. During that visit, they were asked if they were subjected to beatings and, despite the presence of microphones in the room, he stated that it happened some times.<sup>2685</sup>

1215. Fourth, the author of sealed Exhibit P 264 states that what is set out in that document reflects the visit of 8 May 1993.<sup>2686</sup>

1216. After analysing the aforementioned evidence, the Chamber considers that credence should be given to sealed Exhibit P 264. This is because that document, dating from 8 May 1993, is contemporaneous with the visit in question, whereas the statement of Witness HI was made 12 years after the events. In addition, the deposition of Witness HI, recorded by way of stipulation, has less probative value than a statement made under oath at the hearing, since it reflects what the

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<sup>2682</sup> DH 2098 (under seal), para. 12.

<sup>2683</sup> Witness HF, T(F) pp. 17186-17188.

<sup>2684</sup> Witness HF, T(F) pp. 17189-17191.

<sup>2685</sup> Kruno Rajić, T(F) pp. 1822 and 1846-1847. The Chamber points out, however, that in the part of Kruno Rajić's testimony relating to that visit, he initially mentioned a visit by the ICRC, and not by the ECMM, and, subsequently, in answer to the questions put by the Defence for the Accused Hadžihasanović, a visit by "two international organisations": T(F) pp. 1846-1847. Consequently, the Chamber considers, without being certain, that it is possible that the visit mentioned by Kruno Rajić is the one described in Exhibit P 264 (under seal).

<sup>2686</sup> Dieter Schellschmidt, T(F) pp. 7938-7939.

witness would probably state if he had to appear before the Chamber. Lastly, the content of sealed Exhibit P 264 seems to be corroborated by the testimony of Witness Kruno Rajić and, according to its author, faithfully reflects the visit of 8 May 1993. Consequently, the Chamber is convinced that the document accurately describes the visit of 8 May 1993 as it actually took place.

1217. It appears from sealed Exhibit P 264 that the three prisoners in the Music School questioned by Witness HI stated, in the absence of witnesses, that they were regularly beaten. The fact that that interview took place in the absence of witnesses is moreover borne out by Witness HI, who states that he had a confidential conversation with a prisoner.<sup>2687</sup> It appears therefrom that Witness HF was therefore not present during the interview conducted by Witness HI with that prisoner and that, therefore, he could not know on the basis of that interview that mistreatment was meted out at the Music School. The Chamber finds, however, that sealed Exhibit P 264 also indicates that, among the HVO prisoners visited by Witness HI and Witness HF to the KP Dom in Zenica, “some of them [...] claimed that they were arrested by the Military Police of the 7<sup>th</sup> Muslim Brigade and mistreated,” with the result that the ECMM observer “visited the location of this unit, in the secondary music school in the centre of Zenica.”<sup>2688</sup> It clearly appears from that passage that the prisoners at the KP Dom in Zenica complained *in the presence of Witness HF* and of Witness HI that they had been mistreated by the 7<sup>th</sup> Brigade Military Police based at the Zenica Music School and that it was those statements by HVO prisoners which prompted Witness HF and Witness HI to go to the premises of the Music School.

1218. Consequently, on the basis of sealed Exhibit P 264, as corroborated by the aforementioned evidence, by the letter from Blaškić of 7 May 1993 to the 3<sup>rd</sup> Corps Command, and by the fact that, following his interview of 7 May 1993 with Witness HI, the Accused Hadžihasanović instructed Witness HF to go to the Music School,<sup>2689</sup> the Chamber is convinced beyond a reasonable doubt that from 8 May 1993 the Accused Hadžihasanović had reason to know that crimes of cruel treatment, namely physical abuse, were committed by his subordinates at the Zenica Music School. It should be noted that this evidence provides no information about the detention conditions obtaining at the Music School.

1219. The Defence for the Accused Hadžihasanović asserts that when, between late April 1993 and June 1993, the Accused Hadžihasanović was informed of rumours that persons were detained at

<sup>2687</sup> DH 2098 (under seal), para. 12.

<sup>2688</sup> P 264 (under seal).

<sup>2689</sup> Appendix 1 (under seal) of Annex E to P 371.

the Music School and were being mistreated there, his Deputy Commander, Džemal Merdan, and Witness HF, together with members of his staff, went to the Zenica Music School to inspect all its facilities. Despite their repeated visits, however, which included an inspection of all the rooms of the School, the persons in question never saw prisoners there, except on one occasion when Witness HF, accompanied by Witness HI, saw a detainee there, who did not complain of mistreatment. The Defence for the Accused Hadžihasanović cites the depositions of the Defence Witnesses Džemal Merdan and HF in support of his claims.<sup>2690</sup>

1220. After reconstituting the chronology of the occupation of the Music School by prisoners between April and June 1993 on the basis of the statements of the many witnesses who were imprisoned there, the Chamber questions the exactitude of the statements made by Džemal Merdan and witness HF concerning their respective visits to the Music School. As has been shown, it appears from the testimony of the former prisoners held at the Music School that between 18 April 1993 and 20 August 1993, the basement of the School constantly held between about ten and about 30 detainees, which means that each prisoner was systematically replaced by an arrival<sup>2691</sup> with the exception of the period between 11 June and 15 June 1993.<sup>2692</sup> Moreover, neither Džemal Merdan nor Witness HF mentioned specific dates for their respective visits. Džemal Merdan stated that he visited the Music School on two occasions between April and June 1993, the first in the company of representatives of the international community, the second having been improvised at the insistence of the international community.<sup>2693</sup> Witness HF stated that he went to the Music School for the first time with Witness HI around April or May 1993 and subsequently went on his own two or three times on unspecified dates.<sup>2694</sup> He added that he frequently instructed his staff to inspect the Music School, although he gave no indication of the period when those inspections took place.<sup>2695</sup> Consequently, even though the large number of visits by the two persons in question and of their staff cannot be precisely dated, in view of the evidence discussed above, including the statements of the two persons concerned, it is impossible that the visits were concentrated between 11 June and 15 June 1993. As a result, the Chamber considers that, on the assumption that the two witnesses in question visited the Music School, it is surprising, to say the least, that they never saw detainees at the Zenica Music School.

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<sup>2690</sup> Hadžihasanović Defence Final Brief, paras. 895-901 and 905-910.

<sup>2691</sup> *See supra* para. 1190.

<sup>2692</sup> *See supra* para. 1190.

<sup>2693</sup> Džemal Merdan, T(F) p. 13632.

<sup>2694</sup> Witness HF, T(F) pp. 17187-17188 and 17214-17215.

<sup>2695</sup> Witness HF, T(F) pp. 17188 and 17259.

1221. The fact that the Accused Hadžihasanović knew that the Zenica Music School was used as a detention centre for non-Muslim civilians and HVO soldiers and that he had reason to know that they were mistreated is further borne out by the testimony of Vlado Adamović, investigating judge at the Zenica District Military Court in 1993 and 1994. Witness Vlado Adamović stated before the Chamber that he unofficially received complaints from several persons at the Military Court who maintained that persons close to them had been arrested and taken to the Zenica Music School.<sup>2696</sup> Since, as investigating judge, he had no authority to initiate proceedings, he sent the citizens in question to the Zenica District Military Prosecutor's Office in order to lodge a complaint in accordance with the proper procedure. He tried on several occasions to go to the Music School but the ABiH did not authorise him to enter the building.<sup>2697</sup> At a meeting at the Hotel *Internacional* in Zenica chaired by members of the ECMM and the President of the Zenica District Military Court at the time, Vlado Adamović spoke to the Accused Hadžihasanović and warned him about the Zenica Music School. He informed him what civilians had confided to him, that is that the army brought people to the Music School and that they were beaten there with shovel handles and other objects.<sup>2698</sup> The Accused Hadžihasanović replied that he "had heard that himself, that he either had investigated the matter or the investigation was under way".<sup>2699</sup> Once again, it should be noted that the warnings by Vlado Adamović referred to physical abuse suffered by prisoners at the School and not to the poor detention conditions obtaining there.

1222. The Defence for the Accused Hadžihasanović and the Defence for the Accused Kubura each maintain that Vlado Adamović's warning to the Accused Hadžihasanović related only to the rumours about the Music School going around the town at the time. The Defence for the Accused Kubura adds that mere knowledge of the rumours does not satisfy the *mens rea* requirement in Article 7(3) of the Statute.<sup>2700</sup>

1223. The Chamber shares the view of the Defence for the Accused Kubura insofar as the information relating to mere rumours circulating in the streets does not suffice to constitute the *mens rea* of command responsibility within the meaning of Article 7(3) of the Statute. On the other hand, the Chamber finds in this case that Witness Vlado Adamović's conversation with the Accused Hadžihasanović did not specifically relate to rumours but to complaints of arrests and mistreatment at the Music School submitted unofficially to an investigating judge at the Zenica District Military

<sup>2696</sup> Vlado Adamović, T(F) p. 9477.

<sup>2697</sup> Vlado Adamović, T(F) pp. 9477-9478.

<sup>2698</sup> Vlado Adamović, T(F) pp. 9480-9481, 9580 and T(E) p. 9483.

<sup>2699</sup> Vlado Adamović, T(F) p. 9481.

<sup>2700</sup> Hadžihasanović Defence Final Brief, paras. 915-917 and 944; Kubura Defence Final Brief, paras. 128-138.



Court by persons close to those who had disappeared.<sup>2701</sup> The Chamber considers that, in view of its content and source, the information was of a nature to at least put the Accused Hadžihasanović on notice that there was a real and current likelihood that mistreatment was being or was about to be inflicted by his subordinates at the Music School and that it should have prompted an additional investigation on his part in order to verify whether such crimes had been or were about to be committed.

1224. While Vlado Adamović's warning about the mistreatment at the Music School enabled the Accused Hadžihasanović to conclude that his subordinates were committing or were about to commit mistreatment, the Chamber finds it difficult to date the meeting between Vlado Adamović and the Accused Hadžihasanović. Vlado Adamović stated that he cannot recall the date of the meeting, but remembers that it took place in 1993 in the presence of Witness HI.<sup>2702</sup> Since Witness HI arrived in Zenica in February 1993,<sup>2703</sup> the meeting in question must have logically taken place after then. Moreover, the fact that the unofficial complaints made by relatives of Vlado Adamović reporting a large number of arrests suggests that they must have followed a period of fighting between the HVO and the ABiH in the Zenica region. A study of the evidence adduced by the Parties in the proceedings, however, does not indicate any period of fighting between the HVO and the ABiH in that geographical area between February 1993 and the second half of April 1993,<sup>2704</sup> but that there was a new outbreak of hostilities between the two armies, and the subsequent arrests of HVO soldiers by the ABiH, in the region of Zenica, Vitez and Busovača starting from the second half of April 1993.<sup>2705</sup> In addition, the Chamber did not hear any witness alleging that he was detained between February 1993 and the second half of April 1993.<sup>2706</sup> Consequently, the Chamber considers it highly probable that the conversation between Vlado Adamović and the Accused Hadžihasanović took place around late April 1993 or in the course of May 1993.

1225. The Chamber will now consider whether the circumstances surrounding the release of Anto Visković, the former head of the MUP security services, allow the conclusion that the Accused

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<sup>2701</sup> Consequently, the Chamber does not share the view of Witness Alastair Duncan that a commander has the duty to initiate an investigation both where information comes from his chain of command and when its source is in the public sphere, for instance radio or television: T(E) pp. 7419-7420.

<sup>2702</sup> Vlado Adamović, T(F) pp. 9480 and 9580.

<sup>2703</sup> DH 2098 (under seal), para. 1.

<sup>2704</sup> The Chamber notes that on the basis of the evidence produced by the Parties, the only fighting by the 3<sup>rd</sup> ABiH Corps in Central Bosnia between February and April 1993 occurred around Visoko and Bijelo Bučje against the Serbs in March 1993: P 720; P 746; P 737 and P 538. Since those two geographical areas are remote from the Zenica region, the Chamber takes the view that it is very unlikely that the complaints made in Zenica to an investigating judge from the Zenica District had anything to do with the arrests which took place following fighting around Visoko and Bijelo Bučje.

<sup>2705</sup> The tension between the HVO and the ABiH resumed on 13 April 1993 in the Travnik region; *see*, in particular, P 218; P 315; P 620; P 623 and P 594.

Hadžihasanović knew or had reason to know that mistreatment was being committed at the Music School. As mentioned above,<sup>2707</sup> following the abduction of Anto Visković, his wife contacted the MUP and informed it that her husband was imprisoned at the Music School. The MUP then tried unsuccessfully to contact Halil Brzina, 7<sup>th</sup> Brigade Assistant Commander for Logistics, and sent a report thereon to the 3<sup>rd</sup> Corps Military Police Commander. A member of the 3<sup>rd</sup> Corps replied to him that this information would be checked. However, in the absence of any further news from the 3<sup>rd</sup> Corps and without any news from the 7<sup>th</sup> Brigade, the MUP contacted the Accused Hadžihasanović personally. Following this intervention, Anto Visković was released around the end of May 1993.<sup>2708</sup> Once he had been released, Anto Visković informed the MUP that he had been detained in the basement of the Music School, where he had been humiliated and beaten. Anto Visković also wished to thank the Accused Hadžihasanović since he considered that he was released as a result of his intervention.<sup>2709</sup> Following the release of Anto Visković, the detention conditions at the Music School improved temporarily. At the time the person concerned was released, Jusuf Karalić, although he had been present at the Music School before his release, introduced himself for the first time as the 7<sup>th</sup> Brigade Military Police Commander and assured the detainees that from then on they no longer had any reason to be concerned.<sup>2710</sup> Following that intervention, a guard who had gone back into the cell to beat the detainees was punished and three new guards were stationed in turn in front of the door of the cell in order to prevent the other Muslim soldiers at the Music School from entering to beat the detainees.<sup>2711</sup> Jusuf Karalić also carried out an investigation into the alleged thefts of property from the detainees and returned the property to the prisoners when it had been found.<sup>2712</sup> In addition, the detainees were authorised to receive clothing and food from their families.<sup>2713</sup>

1226. On the basis of those facts, the Defence for the Accused Hadžihasanović alleges that although Jusuf Karalić was the commander of the centre at the Music School since the arrival of

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<sup>2706</sup> See *supra* footnote 2592.

<sup>2707</sup> See *supra* para. 1207.

<sup>2708</sup> Kruno Rajić stated that Anto Visković was released about one month after his arrival at the School: T(F) p. 1813. Kruno Rajić arrived at the Music School on 23 April 1993: T(F) p. 1795.

<sup>2709</sup> Witness ZN, T(F) pp. 5277-5878; see also Annex B (under seal), P 371, p. 2.

<sup>2710</sup> Kruno Rajić, T(F) pp. 1844 and 1857-1858; P 401 (under seal), paras. 17-18. Jusuf Karalić was a 7<sup>th</sup> Brigade Military Police Commander: P 727; P 708; P 706.

<sup>2711</sup> Kruno Rajić, T(F) p. 1845; P 401 (under seal), paras. 17-18.

<sup>2712</sup> Kruno Rajić, T(F) pp. 1812, 1845 and 1853-1854; P 401 (under seal), para. 18.

<sup>2713</sup> Kruno Rajić, T(F) p. 1845.

Kruno Rajić, that is, since 23 April 1993, he was unaware that the detainees were undergoing mistreatment at the Music School until Anto Visković was released.<sup>2714</sup>

1227. The Chamber has heard testimony from only one witness, Kruno Rajić, as to the presence of Jusuf Karalić at the Music School before Anto Visković's release. Kruno Rajić stated that between his arrival at the Music School and before the release of Anto Visković, he often saw Jusuf Karalić who was in a position to see the injuries suffered by the detainees as a result of the beatings carried out at night.<sup>2715</sup> Kruno Rajić, however, contradicted himself when he stated that he thought that Jusuf Karalić was not aware of mistreatment before Anto Visković was released.<sup>2716</sup> Since that testimony is not corroborated by any other evidence and is contradictory in that respect, the Chamber considers that it should not be given credence as to whether or not Jusuf Karalić knew about the mistreatment at the Music School before he took the aforementioned measures in late May 1993. The Chamber has questions, however, about the reasons which prompted Jusuf Karalić to take those measures. It is possible that Jusuf Karalić spontaneously decided to punish the previous excesses committed by his subordinates. Alternatively, the Chamber finds that the steps taken by Jusuf Karalić to improve the lot of the detainees immediately followed the release of Anto Visković, which was made possible by the intervention of the Accused Hadžihasanović. It is conceivable that Jusuf Karalić was reprimanded by one of his superiors. The evidence adduced in the proceedings, however, is not such as to allow the Chamber to conclude that the 3<sup>rd</sup> Corps Command reprimanded Jusuf Karalić, such that it cannot be considered beyond a reasonable doubt, on the basis of the evidence considered in this paragraph alone, that the Accused Hadžihasanović knew or had reason to know that mistreatment was about to be committed or had been committed by his subordinates at the Music School.

1228. The Chamber will now consider the position put forward by the Defence for the Accused Hadžihasanović that a small group of 7<sup>th</sup> Brigade soldiers, including Jasmin Isić, concealed from the Accused Hadžihasanović and the 3<sup>rd</sup> Corps Command the fact that the detainees at the Music School had been arrested and subjected to mistreatment.<sup>2717</sup>

1229. Several witnesses before the Chamber described the subterfuges used by soldiers at the Music School to conceal what was happening there. One detainee explained that before he was transferred to the KP Dom in Zenica, military police ordered him to wash off the blood with which

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<sup>2714</sup> Hadžihasanović Defence Final Brief, paras. 923-925.

<sup>2715</sup> Kruno Rajić, T(F) pp. 1844, 1856-1858 and 1860-1861.

<sup>2716</sup> Kruno Rajić, T(E) p. 1826.

<sup>2717</sup> Hadžihasanović Defence Final Brief, paras. 935-943.

he was covered.<sup>2718</sup> Another witness stated likewise that detainees were given time to “recover” before they were transferred to the KP Dom in Zenica.<sup>2719</sup> In addition, the interrogations of detainees conducted by Jasmin Isić and the mistreatment inflicted on them during the interrogations took place during the night<sup>2720</sup> and the guards had loud music played in order to cover up the screams of the detainees being beaten.<sup>2721</sup> Moreover, Witness Vlado Adamović testified about a visit which he made to the Music School accompanied by ECMM observers who were looking for one Marković. On that day the observers did not find the person in question, but a month later one of them informed Vlado Adamović that they had found the person they were looking for and that he had in fact been detained at the Music School during the first visit but that he had been hidden in the School attic.<sup>2722</sup> Likewise, two witnesses testified that before the visit of the ICRC, all the detainees, with the exception of three, had been moved to another location and brought back to the basement of the Music School after their visit.<sup>2723</sup> The Chamber notes in this regard that the witnesses stated that movements of detainees outside the School were organised only during the visits of international organisations and not during the visits of members of the 3<sup>rd</sup> Corps Command in person. Lastly, several pieces of evidence tend to show that the international organisations had very limited access to the Music School.<sup>2724</sup> For example, the ICRC was constantly refused access to the Music School, except for one visit in May 1993.<sup>2725</sup>

1230. Although the evidence set out above is indicative of an intention on the part of the soldiers present at the School to conceal the mistreatment inflicted on the detainees, the Chamber considers that this has no bearing on the criminal responsibility of the Accused Hadžihasanović insofar as he was informed, as described above,<sup>2726</sup> by sources outside the 7<sup>th</sup> Brigade, namely the ECMM, the HVO, Judge Vlado Adamović and Witness HF, a senior officer of the 3<sup>rd</sup> Corps Command, that his subordinates were committing mistreatment at the Music School. Consequently, the Chamber rejects the claim of the Defence for the Accused Hadžihasanović with regard to this point.

<sup>2718</sup> Witness XA, T(F) pp. 1456-1457.

<sup>2719</sup> Kruno Rajić, T(F) p. 1826.

<sup>2720</sup> Kruno Rajić, T(F) p. 1800; P 401 (under seal), para. 15.

<sup>2721</sup> P 402 (under seal), para. 18; P 353, para. 2832.

<sup>2722</sup> Vlado Adamović, T(F) pp. 9482-9483.

<sup>2723</sup> Kruno Rajić, CFR p. 1822; P 401 (under seal), paras. 23-25.

<sup>2724</sup> P 168 (Report of 4 October 1993 of the United Nations Centre for Human Rights), pp. 6 and 9; P 366 (5<sup>th</sup> Periodic Report of 17 November 1993 of the Commission on Human Rights on the human rights situation in the territory of the former Yugoslavia), para. 41.

<sup>2725</sup> P 670; Annex C (under seal), to P 371; P 165, p. 00080589.

<sup>2726</sup> *See supra* paras. 1218 and 1223.

c. Measures Taken

1231. Since it has been proved beyond a reasonable doubt that, as of 8 May 1993, the Accused Hadžihasanović had reason to know that his subordinates were committing mistreatment at the Zenica Music School, in the form of physical abuse and not of poor conditions of detention, he was under a duty to take the necessary and reasonable measures to stop the violence, punish the perpetrators and prevent further mistreatment.

1232. Having concluded that it has been proved that the Accused Hadžihasanović had effective control over the perpetrators of the crimes committed at the School, the Chamber considers that there is no doubt that the Accused Hadžihasanović had the power to prevent any violations of international humanitarian law at the Music School. The Chamber recalls that the Defence for the Accused Hadžihasanović has not sought to maintain otherwise.

1233. The Defence for the Accused Hadžihasanović maintains that he took all such preventive measures as were reasonable in order to ensure that the civilian population and the prisoners of war were treated in accordance with the rules of international humanitarian law.<sup>2727</sup> It argues that once the Accused Hadžihasanović became aware of allegations of mistreatment he immediately took steps to verify those allegations: the 3<sup>rd</sup> Corps Assistant Commander for Military Security asked Nesib Talić, 7<sup>th</sup> Brigade Assistant Commander for Military Security, to report to him on the situation in the School and Witness HF, like Džemal Merdan, inspected the Music School on several occasions.<sup>2728</sup> Lastly, the Defence argues that when the mistreatment at the Music School was discovered in December 1993, Nesib Talić was relieved of his duties.<sup>2729</sup>

1234. The Chamber would first recall, as it concluded above, that in view of the establishment of a sanctioning military system coupled with general measures taken by the Accused Hadžihasanović, notably with a view to having his subordinates respect the provisions of the Geneva Conventions and other instruments of international humanitarian law relating to the treatment of prisoners of war and the civilian population, the Accused Hadžihasanović sought to lay down disciplinary rules within the 3<sup>rd</sup> Corps designed to prevent and punish the unlawful actions of his subordinates.<sup>2730</sup> Having made this finding, the Chamber will now consider whether the Accused took the necessary and reasonable measures to prevent the crimes and punish the perpetrators.

<sup>2727</sup> Hadžihasanović Defence Final Brief, paras. 882-884.

<sup>2728</sup> *Ibid.*, paras. 895-912.

<sup>2729</sup> *Ibid.*, para. 942.

<sup>2730</sup> *See supra* paras. 856-859 and 1161-1167.

1235. The Defence for the Accused Hadžihasanović maintains that, among the measures allegedly taken by the Accused Hadžihasanović, the 3<sup>rd</sup> Corps Assistant Commander for Military Security ordered Nesib Talić, the 7<sup>th</sup> Brigade Assistant Commander for Military Security, to report to him on the situation in the Music School.<sup>2731</sup> It adds that, pursuant to this order, Nesib Talić informed the 3<sup>rd</sup> Corps security officer that people were being taken to the School to gather information, but that the length of their detention did not exceed the three days prescribed by law, therefore suggesting that they had been arrested for a legitimate reason,<sup>2732</sup> and that they were not being subjected to any mistreatment.<sup>2733</sup>

1236. The Chamber finds that Witness HF, a senior officer in the 3<sup>rd</sup> Corps Command, described the measure in question in the terms used by the Defence for the Accused Hadžihasanović.<sup>2734</sup> The Chamber notes, however, that the testimony of Witness HF is not corroborated by any evidence. Additionally, the Chamber finds that at the time Nesib Talić reported on the findings of the investigation, the Accused Hadžihasanović had already been informed by various sources outside his chain of command that people were being abducted in Zenica by 7<sup>th</sup> Brigade soldiers and taken to the Music School for reasons which had nothing to do with any legitimate suspicion that they had committed an illegal act and hence had been the subject of arbitrary arrests.<sup>2735</sup> Knowledge of this information which was alarming in itself and the fact that he had been informed on several occasions by various sources placed him under a duty not to content himself with the conclusions of the report. What is more, as has already been concluded, the Accused Hadžihasanović had alarming information as of 8 May 1993 on the commission of mistreatment by his subordinates at the Music School, with the result that he could not in any event be satisfied with Nesib Talić's investigation alone. As for the argument put forward by the Defence for the Accused Hadžihasanović to the effect that, after the investigation, Džemal Merdan and Witness HF took the necessary and reasonable measures to verify the allegations of mistreatment by visiting the School, the Chamber refers to the conclusions set out above in this connection in the part of the Judgement dealing with

<sup>2731</sup> Witness HF, T(F) para. 17185.

<sup>2732</sup> *See supra* para. 1175.

<sup>2733</sup> Witness HF, T(F) p. 17185.

<sup>2734</sup> Witness HF, T(F) pp. 17185-17186.

<sup>2735</sup> Kruno Rajić, T(F) pp. 1815-1816 (complaint by Kruno Rajić's wife to Džemal Merdan); Witness ZN, T(E) p. 5278 (complaint by Anto Visković's wife to the MUP and the MUP's subsequent intervention before the Accused Hadžihasanović); Appendix 1 (under seal) to Annex E to P 371 (complaint of 6 May 1993 by the local Civil Defence Staff and the Roman Catholic parish of Čajdraš to the 3<sup>rd</sup> Corps Command ); P 685 (complaint of 26 May 1993 by Colonel Blaškić made in particular to 3<sup>rd</sup> Corps Command ); P 593 (complaint of 7 May 1993 by Colonel Blaškić addressed in particular to the 3<sup>rd</sup> Corps Command ). The Chamber notes that while Witness HF did not specify when Nesib Talić handed over the findings of his investigation, his testimony indicates that they directly preceded Witness HF's first visit to the Music School on 8 May 1993: Witness HF, T(F) pp. 17185-17187.

the knowledge of the Accused Hadžihasanović.<sup>2736</sup> On the basis of these conclusions, the Chamber rejects the arguments of the Defence for the Accused Hadžihasanović with regard to this point.

1237. Next, the Chamber finds that while Nesib Talić, 7<sup>th</sup> Brigade Assistant Commander for Military Security, was in fact relieved of his duties, that measure was taken very late in December 1993, that is, more than six months after the Accused Hadžihasanović had been informed of the mistreatment meted out to the detainees at the Music School.<sup>2737</sup>

1238. Moreover, several witnesses stated before the Chamber that the 3<sup>rd</sup> Corps Command did not initiate any proceedings, whether disciplinary or criminal, against the perpetrators of the acts in question. Thus, Osman Hasanagić, the 7<sup>th</sup> Brigade officer responsible for legal affairs, stated that his section never had to deal with offences committed by members of the 7<sup>th</sup> Brigade against civilians either since he took up his duties or before that time.<sup>2738</sup> Next, Vlado Adamović, an investigating judge at the Zenica District Military Court from 1993 to 1994, stated that he was not aware of a single case ever being opened as a result of unofficial complaints by civilians relating to mistreatment at the Zenica Music School.<sup>2739</sup> Hilmo Ahmetović, a judge in the Zenica District Military Court between October 1993 and July 1996, likewise stated that he had never received any criminal report concerning the Music School.<sup>2740</sup> Witness HF confirmed that 3<sup>rd</sup> Corps Command had not lodged any criminal complaint against the perpetrators of cruel treatment at the School.<sup>2741</sup>

1239. Lastly, the absence of any appropriate investigation by the 3<sup>rd</sup> Corps or the 7<sup>th</sup> Brigade is borne out by the fact that the judicial authorities did not bring an action against Jasmin Isić for his acts in the context of the Music School until 2001, that is, more than seven years after the events.<sup>2742</sup> The Chamber would stress that, unlike what the Defence for the Accused Kubura maintains, the proceedings brought against Jasmin Isić are not the consequence of efforts made by the 7<sup>th</sup> Brigade or the ABiH. The Defence for the Accused Kubura submits, on the basis of sealed exhibits DK 5 and DK 6 and the testimony of Vlado Adamović and Sulejman Kapetanović, that in 1993 the complaints from civilians relating to the Music School were brought before the Zenica District Military Prosecutor.<sup>2743</sup> Indeed, analysis of the evidence adduced in the proceedings shows that many files registered at the Zenica District Military Prosecutor's Office originate in the

<sup>2736</sup> See *supra* para.1220.

<sup>2737</sup> Safet Junuzović, T(F) p. 18556; P 498.

<sup>2738</sup> Osman Hasanagić, T(F) pp. 18900-18901 and 18907.

<sup>2739</sup> Vlado Adamović, T(F) p. 9482.

<sup>2740</sup> Hilmo Ahmetović, T(F) p. 16217.

<sup>2741</sup> Witness HF, T(F) p. 17259.

<sup>2742</sup> DK 5 (under seal); DK 6 (under seal); Kruno Rajić, T(F) p. 1854; Osman Hasanagić, T(F) p. 18902.

<sup>2743</sup> Kubura Defence Final Brief, para. 158.

registries of the public prosecutor working in the areas formerly controlled by the HVO,<sup>2744</sup> according to an exchange of files which took place following the signature of the Dayton Agreements and the establishment of the cantons in 1996.<sup>2745</sup> The files so exchanged in 1996 include the file relating to the investigation of Jasmin Isić on account of his conduct in the context of the Music School.<sup>2746</sup> That file therefore showed that until 1996, an office of the military prosecutor in Vitez, and not its counterpart in Zenica, was responsible.<sup>2747</sup> What is more, evidence indicates that in 1993 and 1994 the complaints relating to the Music School were lodged in the municipalities of Vitez and Kiseljak by Bosnian Croat refugees.<sup>2748</sup> On the basis of this analysis, the Chamber concludes that it is not possible that the criminal complaints relating to violence suffered at the Music School were lodged at the initiative of the 7<sup>th</sup> Brigade or the 3<sup>rd</sup> Corps.

1240. In conclusion, the Chamber is convinced beyond a reasonable doubt that since the Accused Hadžihasanović had reason to know as of 8 May 1993 that his subordinates were committing cruel treatment, namely physical abuse, at the Music School, the Accused Hadžihasanović failed in his duty as a superior to take the reasonable measures necessary to punish the perpetrators and prevent such acts. The Accused Hadžihasanović did not make genuine efforts to initiate an appropriate investigation into the allegations of cruel treatment whereas such an investigation would have enabled him to discover the identity of the persons responsible for the violence. Moreover, he did not fulfil his obligation as commander to take every appropriate measure to put an end to the violence that his subordinates were inflicting on the detainees. Nor did he fulfil his obligation to punish the soldiers who would have been identified, had he held an investigation, as responsible for the violence or to take steps to ensure that they were punished. Lastly, it cannot be stressed enough that by failing to punish the perpetrators of the crimes committed, the Accused Hadžihasanović failed in his duty to prevent the subsequent commission at the Music School of crimes of cruel treatment against Bosnian Croat and Bosnian Serb civilians and against prisoners of war detained there.

<sup>2744</sup> The municipalities of Vitez, Žepče, Busovača, Novi Travnik, Kiseljak and part of Gorji Vakuf.

<sup>2745</sup> Sulejman Kapetanović, T(E) p. 3816 and T(F) pp. 3895-3896, 3913-3914. *See also supra* paras. 901 and 917.

<sup>2746</sup> Sulejman Kapetanović, T(F) pp. 3895-3896, 3913-3914 and 3921-3922.

<sup>2747</sup> DK 5 (under seal); DK 6 (under seal), p. 5; Sulejman Kapetanović, T(F) pp. 3913-3914, 3921-3922

<sup>2748</sup> DK 6 (under seal), p. 5; Sulejman Kapetanović, T(E) pp. 3816-3817. In January 1994, Kruno Rajić lodged a complaint for mistreatment at the Music School in Kiseljak with the competent authorities of the HVO, T(F) p. 1850.



(iv) Findings of the Chamber regarding the Responsibility of Amir Kuburaa. Effective Control of Amir Kubura over the Perpetrators of the Crime

1241. The Chamber has concluded that the cruel treatment alleged in paragraph 42(a) of the Indictment was committed by 7<sup>th</sup> Brigade soldiers, mostly military police subordinated to the 7<sup>th</sup> Brigade. Having concluded that the Accused Kubura had *de facto* command of the 7<sup>th</sup> Brigade, including the 7<sup>th</sup> Brigade Military Police, from 12 April 1993,<sup>2749</sup> the Chamber refers to the discussion set out earlier on this subject in the Judgement.

1242. For example, the Accused Kubura was responsible for deciding on the disciplinary measures to be taken against the members of the 7<sup>th</sup> Brigade.<sup>2750</sup> It was also the task of the Accused Kubura to ensure compliance with international humanitarian law among the members of the 7<sup>th</sup> Brigade and to take severe measures in the event of any violation of those rules.<sup>2751</sup> Moreover, he exercised effective control over the military security service and the military police of the 7<sup>th</sup> Brigade.

1243. Consequently, the Chamber concludes that the Accused Kubura exercised effective control over the perpetrators of the mistreatment during the period starting on 12 April 1993, and that there was a superior-subordinate relationship within the meaning of Article 7(3) of the Statute.

b. Knowledge of Amir Kubura

1244. The Prosecution alleges that the Accused Kubura knew or had reason to know that his subordinates were about to commit crimes at the Music School or had done so. It sets out two submissions to this effect.

1245. First, it alleges that the 7<sup>th</sup> Brigade Command was informed of the cruel treatment inflicted upon detainees at the Music School.<sup>2752</sup> It supports its contention by the fact that Anto Visković's wife met Halil Brzina to inform him of her husband's detention at the Music School<sup>2753</sup> and that it was ultimately as a result of the intervention of the Accused Hadžihasanović that Anto Visković was released.<sup>2754</sup> The Chamber notes, however, on the basis of the evidence adduced, that the

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<sup>2749</sup> See *supra* paras. 350-380.

<sup>2750</sup> P 472; P 500 p. 3; Osman Hasanagić, T(F) pp. 18883 and 18884.

<sup>2751</sup> P 426; P 427.

<sup>2752</sup> Prosecution Final Brief, para. 237.

<sup>2753</sup> Witness ZN, T(F) p. 5277.

<sup>2754</sup> Witness ZN, T(F) pp. 5277-5878.

discussion between Anto Visković's wife and Halil Brzina related to the abduction of her husband and not to the mistreatment he suffered. Likewise, the Chamber finds that it was not until he was released that Anto Visković reported the mistreatment that he had endured to the MUP.<sup>2755</sup> Lastly, Halil Brzina himself testified that he had never heard about mistreatment at the Music School.<sup>2756</sup> Consequently, in view of that evidence, the Chamber is unable to conclude that Halil Brzina was informed of the violence inflicted on Anto Visković at the Music School and therefore rejects the first Prosecution submission.

1246. Second, the Prosecution states that officers subordinated to the Accused Kubura saw that detainees were being mistreated at the Music School.<sup>2757</sup> It refers to the testimony of Witness XA and another witness who stated that they had seen three persons at the Music School “wearing better-quality uniforms” and “Jasmin Isić and his boss”.<sup>2758</sup> The Chamber observes, however, that while the testimony of those two witnesses mentioned the presence of persons who seemed to them to be officers, it does not make it possible to establish positively that members of the 7<sup>th</sup> Brigade Command were present at the School and they could have seen the injuries sustained by the detainees. Likewise, the Prosecution submits, on the basis of the testimony of Ivan Bohutinski, that Mahmut Karalić, the emir of the 7<sup>th</sup> Brigade, was present at the Music School and he had extorted money from him. However, Ivan Bohutinski stated only that he had spoken to “Mr Karalić” in the context of negotiations connected with his exchange.<sup>2759</sup> Nevertheless, it has already been shown that “Jusuf Karalić”, the 7<sup>th</sup> Brigade Military Police Commander, was present at the School. Consequently, given the absence of supporting evidence, the Chamber considers that the presence of the 7<sup>th</sup> Brigade emir Mahmut Karalić at the Music School has not been demonstrated. The Chamber rejects therefore the Prosecution’s second submission.

1247. The Defence for the Accused Kubura denies that he knew or had reason to know of mistreatment on the basis of the following arguments. First, the Prosecution bases the knowledge of the Accused Kubura on the existence of widespread rumours, whereas the evidence relating to the alleged rumours is contradictory and the rumours do not suffice to establish the *mens rea* of a commander under Article 7(3) of the Statute.<sup>2760</sup> Second, many visits, both by 3<sup>rd</sup> Corps Command officers and by international organisations, were made to the Music School, but none of the visitors

<sup>2755</sup> Witness ZN, T(F) pp. 5277-5278.

<sup>2756</sup> DK 62, para. 23.

<sup>2757</sup> Prosecution Final Brief, para. 238.

<sup>2758</sup> Witness XA, T(E) p. 1456; P 401 (under seal), paras. 7 and 15.

<sup>2759</sup> Ivan Bohutinski, T(F) p. 4680 and T(E) p. 4683.

<sup>2760</sup> Kubura Defence Final Brief, paras. 128-138; Kubura Defence Closing Arguments, T(F) p. 19321.

spoke to the Accused Kubura.<sup>2761</sup> Third, the allegations of mistreatment were limited both geographically and temporally.<sup>2762</sup> Lastly, the information relating to the violence was concealed from the Accused Kubura by those responsible for operating the Music School.<sup>2763</sup>

1248. As to the argument of the Defence for the Accused Kubura with regard to the rumours circulating about mistreatment at the Music School, the Chamber refers to its previous conclusions on that subject in the part of the Judgement dealing with the knowledge of the Accused Hadžihasanović.<sup>2764</sup>

1249. The Chamber attaches importance to the fact that, of the witnesses who visited the Music School in Zenica,<sup>2765</sup> none mentioned having made personal contact with the Accused Kubura with a view to visiting the Music School, initiating an investigation, lodging a complaint or reporting the situation. The witnesses who were international observers stated that they approached, or were referred to, the 3<sup>rd</sup> Corps Command in order to obtain information about the School or to have access to it.<sup>2766</sup> That observation could be due to the hierarchical structure obtaining in the organisation of the 3<sup>rd</sup> Corps as regards matters connected with military security. Indeed, as mentioned earlier,<sup>2767</sup> the military security service had a dual hierarchical chain of command. In accordance with a “vertical” chain of command, the corps’ military security service obeyed the orders and instructions of the Supreme Command Main Staff Chief of Security. This same chain of command meant that the security service of the corps had the command of the security units subordinated to it. In accordance with a “horizontal” chain of command, the corps’ security service obeyed the orders of the corps commander. Thus, within the 7<sup>th</sup> Brigade, Nesib Talić, Assistant Commander for Military Security, was responsible not only to the 7<sup>th</sup> Brigade Commander but also to the 3<sup>rd</sup> Corps Commander for the Military Security Service. In limited cases, the security bodies were not under a duty to report to the corps commander, to the brigade commander or to the commander of the operations group. Thus in the case in question, Nesib Talić was instructed by the 3<sup>rd</sup> Corps Assistant Commander for Security to carry out an investigation into the Music School and to notify him of the result of that investigation.<sup>2768</sup> That chain of communication therefore did not

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<sup>2761</sup> Kubura Defence Final Brief, paras. 139-140.

<sup>2762</sup> Kubura Defence Final Brief, para. 143; Kubura Defence Closing Arguments, T(F) p. 19322.

<sup>2763</sup> Kubura Defence Final Brief, paras. 156-157.

<sup>2764</sup> *See supra* para. 1223.

<sup>2765</sup> The Chamber refers principally to Vlado Adamović, Lars Baggesen, Džemal Merdan, Witness HF and Witness HI.

<sup>2766</sup> Lars Baggessen, T(F) p. 7032; Vlado Adamović, T(F) pp. 9479-9483; DH 2098 (under seal), para. 12.

<sup>2767</sup> *See supra* paras. 327 and 333.

<sup>2768</sup> Witness HF, T(F) p. 17185.

necessarily mean that the Accused Kubura was informed of the investigation into the Music School or *mutatis mutandis* of any other question falling within the scope of the vertical chain of command.

1250. Having examined the relevant evidence as to the possible knowledge of the Accused Kubura, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt that, as from 12 April 1993, the Accused Kubura knew or had reason to know that his subordinates were about to carry out mistreatment, or had done so, at the Zenica Music School. Consequently, the Chamber cannot conclude that the Accused Kubura is criminally responsible within the meaning of Article 7(3) of the Statute. As a result, there is no reason for it to consider the other factors constituting command responsibility under the Statute.

(v) Conclusions of the Chamber

1251. The Chamber considers that there is no proof that the Accused Kubura knew or had reason to know that his subordinates were about to commit crimes at the Zenica Music School. The Accused Kubura therefore cannot be held responsible for the offence mentioned in count 4, paragraphs 41(a) and 42(a) of the Indictment. Conversely, the Chamber concludes that the Accused Hadžihasanović had reason to know, as of 8 May 1993, that his subordinates were committing cruel treatment, namely physical abuse, at the Zenica Music School and that he failed in his duty as a commander to initiate an appropriate investigation into the previous commission of mistreatment, to put an end to violations, to punish the perpetrators and to prevent the subsequent commission of mistreatment at the Zenica Music School. It has not been proved, however, that the Accused Hadžihasanović had knowledge of the poor detention conditions obtaining at the Music School. The Accused Hadžihasanović is therefore held criminally responsible for the cruel treatment, with the exception of the poor detention conditions, charged in count 4, paragraphs 41(a) and 42(a) of the Indictment.

(d) Former JNA Barracks in Travnik

1252. The Indictment alleges that members of the 17<sup>th</sup> Brigade murdered a Bosnian Croat detainee in May 1993 in the former JNA Barracks in Travnik.<sup>2769</sup> The Chamber notes that, in its Response to Defence Motions for Acquittal, the Prosecution admits that it was unable to prove that a Croatian detainee was beaten to death in May 1993.<sup>2770</sup> Consequently, the Chamber refers to its Decision on Motions for Acquittal of 27 September 2004, in which it considered that the Accused

<sup>2769</sup> Indictment, paras. 41(b) and 43(a).

<sup>2770</sup> Prosecution's Response to Defence Motions for Acquittal, 1 September 2004, footnote 189.

Hadžihasanović should be acquitted of the crime of murder as far as the former JNA Barracks are concerned.<sup>2771</sup>

1253. The Indictment alleges that Bosnian Croats and Bosnian Serbs were detained at the former JNA Barracks in the town of Travnik, which was guarded and administered by members of the 17<sup>th</sup> Mountain Krajina Brigade of the OG *Bosanska Krajina* from about May 1993 to 31 October 1993, and that they were regularly mistreated there. The detainees were allegedly regularly beaten by soldiers of the 17<sup>th</sup> Brigade. The Indictment alleges that the Accused Hadžihasanović knew or had reason to know that members of that unit, placed under his command and effective control, were about to plan, prepare for, or commit cruel treatment, or had done so, and that he failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>2772</sup>

1254. It is therefore alleged that the Accused Hadžihasanović committed cruel treatment, a violation of the laws or customs of war punishable by Articles 3 and 7(3) of the Statute and recognised by common Article 3 of the Geneva Conventions.

(i) Arguments of the Parties

1255. The Prosecution maintains that prisoners were held in the basement of a building of the former JNA Barracks in Travnik which was used as the headquarters of the 17<sup>th</sup> Brigade, and were regularly beaten by members of that brigade or by members of its military police.<sup>2773</sup> The Prosecution further maintains that the Accused Hadžihasanović had knowledge that he was under an obligation to find out about, or even had actual knowledge of, the criminal conduct of his subordinates in the former JNA Barracks<sup>2774</sup> and took no steps to initiate an investigation.<sup>2775</sup>

1256. The Defence for the Accused Hadžihasanović submits that the Prosecution failed to prove that cruel treatment was meted out to the detainees in the former JNA Barracks and that the Accused Hadžihasanović was informed of the said mistreatment. The Defence for the Accused Hadžihasanović adds that, throughout 1993, the 3<sup>rd</sup> Corps took steps to prevent the commission of such crimes and to punish the perpetrators.<sup>2776</sup>

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<sup>2771</sup> Decision on Motions for Acquittal, 27 September 2004, para. 65.

<sup>2772</sup> Indictment, paras. 41(b) and 42(b).

<sup>2773</sup> Prosecution Final Brief, para. 203.

<sup>2774</sup> *Ibid.*, paras. 206 and 209.

<sup>2775</sup> *Ibid.*, paras. 207, 209 and 210.

<sup>2776</sup> Hadžihasanović Defence Final Brief, para. 811.

(ii) Findings of the Chamber regarding Mistreatment at the Former JNA Barracksa. Description of the Facts from May 1993 to Late October 1993 at the Former JNA Barracks in Travnik

1257. The military barracks in Travnik, which were used by the JNA before the war,<sup>2777</sup> were two or three hundred metres from the Travnik Military Court<sup>2778</sup> and a few hundred metres from Travnik hospital and the *Orient* Hotel.<sup>2779</sup> Following the creation of the 17<sup>th</sup> Brigade, its command was installed in these barracks.<sup>2780</sup> The OG *Bosanska Krajina* Command, together with the military police company of the operations group, which was created in late June 1993,<sup>2781</sup> were also stationed at the Barracks in 1993.<sup>2782</sup> Salko Beba, the OG *Bosanska Krajina* Assistant Commander for Security, and Fikret Čuskić, the Commander of the 17<sup>th</sup> Brigade and later of the OG *Bosanska Krajina*, had their offices in the Barracks.<sup>2783</sup>

1258. The basement of the former JNA Barracks housed the district military prison and the 17<sup>th</sup> Brigade detention centre.<sup>2784</sup> Those two entities were distinct and separated by an iron fence.<sup>2785</sup> The district military prison came under the sole responsibility of the military court: the 17<sup>th</sup> Brigade and the OG *Bosanska Krajina* had no control over it.<sup>2786</sup> In contrast, the 17<sup>th</sup> Brigade detention centre was placed under the authority of the 17<sup>th</sup> Brigade Military Police and, from late June 1993,<sup>2787</sup> the OG *Bosanska Krajina* Military Police Company.<sup>2788</sup>

1259. The principal purpose the 17<sup>th</sup> Brigade detention centre was to hold persons suspected of having committed offences. The period of remand could not exceed 72 hours, until a criminal complaint was submitted by the military police, after which the prisoners held had to be transferred to the district military prison.<sup>2789</sup> Secondly, the centre was used to detain members of the 17<sup>th</sup>

<sup>2777</sup> Witness XD, T(F) p. 1756 ; Ivo Fišić, T(F) p. 2269.

<sup>2778</sup> Sead Žerić, T(F) p. 5633.

<sup>2779</sup> Hendrik Morsink, T(F) p. 8025.

<sup>2780</sup> Fikret Čuskić, T(F) pp. 12049, 12050 and 12123.

<sup>2781</sup> *See supra* para. 878.

<sup>2782</sup> Samir Sefer, T(F) p. 11988; Osman Menković, T(F) p. 14674; Fikret Čuskić, T(F) pp. 2123-12124; Hendrik Morsink, T(F) p. 8025.

<sup>2783</sup> Ivo Fišić, T(F) p. 2270; P 399 (under seal), para. 11; Jasenko Eminović, T(F) p. 584.

<sup>2784</sup> Osman Menković, T(F) pp. 14656 and 14658; Sead Žerić, T(F) p. 5634; Fikret Čuskić, T(F) p. 12076.

<sup>2785</sup> Osman Menković, T(F) p. 14658.

<sup>2786</sup> Osman Menković, T(F) pp. 14657 and 14659.

<sup>2787</sup> The OG *Bosanska Krajina* Military Police Company was set up in late June 1993. *See supra* para. 878.

<sup>2788</sup> Osman Menković, T(E) pp. 14659-14660 and 14698-14700; Fehim Muratović, T(F) p. 14967.

<sup>2789</sup> Osman Menković, T(E) pp. 14660-14661.

Brigade ordered to undergo disciplinary measures.<sup>2790</sup> The military authorities could place a soldier in detention for a maximum of 30 days, which could be extended by decision of the investigating judge.<sup>2791</sup> Lastly, the detention centre housed prisoners of war.<sup>2792</sup> HVO prisoners of war were to be held in the Barracks only for a brief period before being transferred to the KP Dom in Zenica.<sup>2793</sup>

1260. ABiH and HVO soldiers and also civilians were held in the detention centre located in the basement of the former JNA Barracks for greatly varied periods. Witness XE<sup>2794</sup> stated that he was brought to the Barracks in May 1993<sup>2795</sup> in order to be mobilised in the ranks of the ABiH 17<sup>th</sup> Brigade.<sup>2796</sup> Since he was opposed to being mobilised, he was locked in a room with Muslims and Croats<sup>2797</sup> for seven or eight days.<sup>2798</sup> Witness Ivo Fišić was detained in the Barracks between 6 November 1993 and 30 or 31 January 1994.<sup>2799</sup> Witness XD,<sup>2800</sup> who surrendered on 18 or 19 September 1993 to the forces of the ABiH,<sup>2801</sup> was brought to the Barracks five or six days after his surrender.<sup>2802</sup> During his period of detention, which lasted six months as of the end of September 1993,<sup>2803</sup> Witness XD was placed in three different cells with ABiH soldiers held for theft, murder or desertion,<sup>2804</sup> Croats belonging to the HVO and one civilian.<sup>2805</sup> Witness Dalibor Adžaić<sup>2806</sup> was arrested by members of the ABiH in about mid-June 1993 and taken to the Barracks.<sup>2807</sup> He remained in a cell for 11 days in the company of 20 other detainees, all of whom were catholic Croats from the region of Travnik and most of whom were civilians.<sup>2808</sup> Witness Z17<sup>2809</sup> was captured near Travnik in about mid-June 1993 by the *Krajišnici* Brigade, even though he was armed

<sup>2790</sup> Osman Menković, T(E) pp. 14660; Fikret Čuskić, T(F) pp. 12076-12077.

<sup>2791</sup> Sead Žerić, T(F) p. 5640.

<sup>2792</sup> Osman Menković, T(E) p. 14660.

<sup>2793</sup> Samir Sefer, T(F) p. 11988; Jasenko Eminović, T(F) p. 5762.

<sup>2794</sup> The Chamber will not take account of the statements of Witness XE, which do not afford sufficient guarantees of reliability.

<sup>2795</sup> Witness XE, T(E) 1936-1937.

<sup>2796</sup> Witness XE, T(E) 1939.

<sup>2797</sup> Witness XE, T(E) 1939-1940.

<sup>2798</sup> Witness XE, T(E) 1949-1950.

<sup>2799</sup> Ivo Fišić, T(F) pp. 2268 and 2274-2275. The Chamber notes that Witness Ivo Fišić was held outside the period material to in the Indictment. As a result, the Chamber will not take into account the statements of Witness Ivo Fišić. Likewise, Ivo Rajković was released from Orašac Camp and transferred to the Barracks on 6 November 1993, at the same time as Witness Ivo Fišić: Ivo Fišić, T(F) pp. 2268-2269.

<sup>2800</sup> Witness XD joined the ranks of the HVO brigade located at Vitez in June 1993: Witness XD, T(F) pp. 1744-1745.

<sup>2801</sup> Witness XD, T(F) p. 1752.

<sup>2802</sup> Witness XD, T(F) p. 1754.

<sup>2803</sup> Witness XD, T(F) pp. 1754, 1760 and 1761.

<sup>2804</sup> Witness XD, T(F) p. 1764.

<sup>2805</sup> Witness XD, T(F) pp. 1758-1760.

<sup>2806</sup> Witness Dalibor Adžaić became a member of the HVO in June 1992: Dalibor Adžaić, T(F) pp. 2393-2394.

<sup>2807</sup> Dalibor Adžaić, T(F) pp. 2395-2396. The circumstances of the arrest of Witness Dalibor Adžaić are not specified.

<sup>2808</sup> Dalibor Adžaić, T(F) pp. 2396-2397.

<sup>2809</sup> Witness Z17 joined the ranks of the HVO brigade at Travnik in 1992: P 399 (under seal), para. 2.

and was wearing camouflage uniform,<sup>2810</sup> and was subsequently taken to the Barracks.<sup>2811</sup> Witness Z17 was detained in a cell at the Barracks until 13 July 1993<sup>2812</sup> with Croats he did not know and other members of the HVO.<sup>2813</sup> The neighbouring cell to that of Witness Z17 housed Muslims who refused to fight for the ABiH.<sup>2814</sup> Witness Ivan Josipović<sup>2815</sup> was arrested by ABiH police on 7 August 1993 near Travnik when he was returning from work in his own vehicle, and taken to the Barracks,<sup>2816</sup> where he was detained until 24 December 1993, when he was transferred to the KP Dom in Zenica.<sup>2817</sup> The witness was kept in a room for 30 or 40 days with ABiH soldiers and subsequently in another room with 12 HVO soldiers.<sup>2818</sup> According to Witness Fikret Čuskić, the number of HVO prisoners of war held in the Barracks varied between 20 and 40, depending on developments in the fighting.<sup>2819</sup>

1261. Immediately or shortly after they arrived at the detention centre, the HVO prisoners were interrogated by officers of the ABiH,<sup>2820</sup> in particular military police.<sup>2821</sup> Some detainees were interrogated by Salko Beba, OG *Bosanska Krajina* Assistant Commander for Security.<sup>2822</sup>

1262. The witnesses who were held in the former JNA Barracks described the guards of the detention centre as wearing uniforms of the army of Bosnia-Herzegovina,<sup>2823</sup> that is, uniforms with white belts and fleur-de-lys insignia on the sleeves.<sup>2824</sup>

1263. The detainees were locked up in cells<sup>2825</sup> in the detention centre which were next to each other and measured approximately five or six metres long by four metres wide.<sup>2826</sup> The number of

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<sup>2810</sup> P 399 (under seal), para. 3.

<sup>2811</sup> P 399 (under seal), para. 6.

<sup>2812</sup> P 399 (under seal), para. 14.

<sup>2813</sup> P 399 (under seal), paras. 8-9.

<sup>2814</sup> P 399 (under seal), para. 8.

<sup>2815</sup> Ivan Josipović was the investigating officer of the HVO 4<sup>th</sup> Battalion Military Police: Ivan Josipović, T(F) pp. 2436-2437.

<sup>2816</sup> Ivan Josipović, T(F) pp. 2437-2438.

<sup>2817</sup> Ivan Josipović, T(F) p. 2452.

<sup>2818</sup> Ivan Josipović, T(F) pp. 2449-2450.

<sup>2819</sup> Fikret Čuskić, T(E), 12076.

<sup>2820</sup> P 399 (under seal), para. 7; Dalibor Adžaić, T(F) p. 2397; Ivo Fišić, T(F) pp. 2269-2270; Ivan Josipović, T(F) pp. 2444, 2446 and 2447.

<sup>2821</sup> Ivan Josipović, T(F) pp. 2444-2445.

<sup>2822</sup> Ivo Fišić, T(F) pp. 2269-2270; P 399 (under seal), para. 7.

<sup>2823</sup> Witness XD, T(F) p. 1757.

<sup>2824</sup> Ivan Josipović, T(F) p. 2439.

<sup>2825</sup> Witness XD, T(F) p. 1757. Witness XD referred to four cells. Jasenko Eminović, T(F) p. 5778. Witness Jasenko Eminović remembers having seen two or three rooms.

<sup>2826</sup> Witness XD, T(F) p. 1757; Witness XE, T(F) p. 1942.



detainees in each cell generally varied between five and ten.<sup>2827</sup> Witness Jasenko Eminović, who visited the Travnik detention centre in connection with the exchange commission, does not think that there could have been more than ten detainees in each cell<sup>2828</sup> and 20 detainees in the detention centre.<sup>2829</sup> Witness Dalibor Adžaić stated, however, that the cell in which he was detained held around 20 persons,<sup>2830</sup> while Witness Ivan Josipović was held in a cell with 12 other soldiers.<sup>2831</sup>

1264. The detainees slept on military beds,<sup>2832</sup> each being provided with a mattress and blankets.<sup>2833</sup> They were given three meals a day.<sup>2834</sup> The detainees could walk around in a green area provided for the purpose.<sup>2835</sup> They could also attend mass and celebrate their religious festivities and received free cigarettes.<sup>2836</sup> There was also a dispensary providing medical care at the detention centre.<sup>2837</sup>

1265. When Witnesses Fehim Muratović and Edib Zlotrg went to the Barracks on 16 August 1993<sup>2838</sup> to find out about the course of the investigation into detainee Ivan Josipović,<sup>2839</sup> they found that the detention conditions were better than good.<sup>2840</sup> Witness Edib Zlotrg stated that the conditions were the same as those found today in a normal prison and that they satisfied, or even exceeded, the requirements of the Geneva Conventions.<sup>2841</sup> On this occasion, those two witnesses spoke with detainees, who had no complaints about the detention conditions.<sup>2842</sup>

1266. Witness Fikret Čuskić stated that the prisoners of war held at the detention centre at the former JNA Barracks enjoyed exactly the same conditions as the 17<sup>th</sup> Brigade's prisoners in respect of hygiene and food in particular. The witness had instructed his assistant responsible for morale to

<sup>2827</sup> Witness XD, T(F) pp. 1759-1760. Witness XD was held in three different cells and stated that there were between 7 and 10 detainees in the first, about 10 in the second and nine in the third; Witness XE, T(F) p. 1941; Jasenko Eminović, T(F) p. 5849.

<sup>2828</sup> Jasenko Eminović, T(F) p. 5849.

<sup>2829</sup> Jasenko Eminović, T(F) p. 5778.

<sup>2830</sup> Dalibor Adžaić, T(F) p. 2396.

<sup>2831</sup> Ivan Josipović, T(F) p. 2450.

<sup>2832</sup> P 399 (under seal), para. 11.

<sup>2833</sup> Edib Zlotrg, T(F) p. 15004.

<sup>2834</sup> Edib Zlotrg, T(F) p. 15004; P 399 (under seal), para. 11; Fikret Čuskić, T(F) p. 12077.

<sup>2835</sup> Edib Zlotrg, T(F) p. 15004.

<sup>2836</sup> Fikret Čuskić, T(F) p. 12077.

<sup>2837</sup> Angus Hay, T(F) p. 8100.

<sup>2838</sup> Fehim Muratović, T(F) pp. 14960 and 14967 ; Edib Zlotrg T(F) pp. 14991-14992 ; DH 1392.

<sup>2839</sup> Edib Zlotrg T(F) p. 14992; DH 1392.

<sup>2840</sup> Fehim Muratović, T(F) p. 14967.

<sup>2841</sup> Edib Zlotrg, T(F) pp. 15005-15006.

<sup>2842</sup> Fehim Muratović, T(F) p. 14968; Edib Zlotrg T(F) p. 14994.

check that the detention conditions satisfied international standards and international conventions.<sup>2843</sup>

1267. As part of his tasks in UNPROFOR,<sup>2844</sup> Witness Angus Hay had the opportunity to visit the detention centre in Travnik<sup>2845</sup> and found that the detention conditions there were satisfactory.<sup>2846</sup>

1268. The ICRC had access to the detention centre and was entitled to visit the detainees. In this way, an ICRC delegation went to the detention centre in particular on 10 June 1993<sup>2847</sup> and 9 July 1993.<sup>2848</sup> Both Witness Fikret Čuskić and Witness Osman Menković stated that the ICRC had free, regular access to the detainees held at the Barracks and could monitor the detention conditions<sup>2849</sup> and Witness Fikret Čuskić stated that the ICRC praised the detention centre.<sup>2850</sup>

1269. Moreover, Witness Z17 stated that he had been satisfied by his detention conditions. Witness Z17 stated that living conditions were tolerable in the detention centre<sup>2851</sup> but that he did not receive medical attention for his injuries even though he asked for it every three days. Still, he did receive treatment for his leg.<sup>2852</sup>

1270. It appears from the testimony, however, that some of the witnesses were beaten on one or more occasions during their detention at the former JNA Barracks. Some were beaten with various objects and were punched and kicked.<sup>2853</sup>

1271. Witness XD was beaten once during his detention and stated that the other Croatian detainees were treated much worse than he. The beatings took place in the morning when the detainees went upstairs to wash. They were then received by members of the Black Coyotes of the *Krajisnici* unit under the command of Mehmed Alagić.<sup>2854</sup>

<sup>2843</sup> Fikret Čuskić, T(F) p. 12077.

<sup>2844</sup> Witness Angus Hay belonged to the British Battalion and his tour of duty in Bosnia lasted approximately seven months between May 1993 and October or November 1993, Angus Hay, T(F) pp. 8093-8094.

<sup>2845</sup> Angus Hay, T(F) p. 8100. Witness Angus Hay did not specify the date on which he visited the military barracks at Travnik.

<sup>2846</sup> Angus Hay, T(F) p. 8100.

<sup>2847</sup> DH 1189.

<sup>2848</sup> P 399 (under seal), paras. 12-14.

<sup>2849</sup> Osman Menković, T(F) p. 14689; Fikret Čuskić, T(F) p. 12077.

<sup>2850</sup> Fikret Čuskić, T(F) p. 12077. *See* Fehim Muratović, T(F) p. 14968; Edib Zlotrg, T(F) p. 14994.

<sup>2851</sup> P 399, para. 11. Witness Ivo Fišić stated that the detention conditions at the centre were very good; Ivo Fišić, T(F) pp. 2271-2272. Although Witness Ivo Fišić arrived after the period material to the Indictment, the Chamber considers that the statements of Witness Ivo Fišić with regard to the conditions are corroborated by other testimony.

<sup>2852</sup> P 399, para. 10.

<sup>2853</sup> Witness XD, T(F) pp. 1762-1763; Ivan Josipović, T(F) pp. 2440-2443 and 2450 to 2451; P 399 (under seal), para. 9.

<sup>2854</sup> Witness XD, T(F) pp. 1762-1763. Mehmed Alagić was OG *Bosanska Krajina* Commander from March 1993 to November 1993. *See* P 144 and P 209.

1272. Witness Ivan Josipović was physically and mentally mistreated, beginning on his first night at the detention centre. Three or four soldiers wearing white belts beat him with various objects and punched and kicked him. When he passed out, the soldiers revived him with cold water and gave him some clothes.<sup>2855</sup> That abuse continued virtually every evening over the first 50 days of his detention. The beatings inflicted by the guards generally took place during the interrogations of the witness or in the evening.<sup>2856</sup> As a result of this abuse, the witness was allegedly still suffering, in 2004, from frequent, serious headaches, which caused him to have regular recourse to sedatives.<sup>2857</sup> In addition, Witness Ivan Josipović recalls that other detainees who were members of the HVO also suffered mistreatment, in particular detainee Kruno Bonić, who was beaten on several occasions by a guard named Mujo, and the detainee Ivo Rajković<sup>2858</sup> who, on one occasion, was punched and kicked by an ABiH soldier.<sup>2859</sup> During his detention, the witness found out that those responsible for the mistreatment belonged to the Krajska police.<sup>2860</sup>

1273. Witness Z17 was not subjected to mistreatment but stated that detainees sharing his cell, who were members of the HVO, were beaten. For instance, Frano Žabić and Željko Šakić were each taken to the room where the guards were to be beaten: from his cell, Witness Z17 could hear the noise of the beating and their crying and moans. During the period Witness Z17 was in detention, Kruno Bonić was beaten around ten times.<sup>2861</sup>

1274. As part of his duties in the exchange commission in Travnik, Witness Jasenko Eminović went regularly – once or twice a week – to the former JNA Barracks to speak to Salko Beba.<sup>2862</sup> During one of his visits to the barracks,<sup>2863</sup> Witness Jasenko Eminović learned that a young man of 16 from the HVO named Krunoslav Bonić had been arrested and had been found with the severed ears of an ABiH combatant.<sup>2864</sup> The witness immediately went to the basement of the Barracks,

<sup>2855</sup> Ivan Josipović, T(F) pp. 2440-2441.

<sup>2856</sup> Ivan Josipović, T(F) pp. 2442-2443.

<sup>2857</sup> Ivan Josipović, T(F) pp. 2452-2453.

<sup>2858</sup> The Chamber notes that that detainee Ivo Rajković was released from Orašac Camp and transferred to the Barracks on 6 November 1993: Ivo Fišić, T(F) pp. 2268-2269 and Witness HE, T(F) pp. 17008-17009. The Chamber concludes that the detainee Ivo Rajković was kicked and punched after 6 November 1993, which was outside the material time of the Indictment. Consequently, the Chamber will not take account of the statements of Witness Ivan Josipović concerning the detainee Ivo Rajković.

<sup>2859</sup> Ivan Josipović, T(F) pp. 2450-2451.

<sup>2860</sup> Ivan Josipović, T(F) p. 2442. *See* P 378, which mentions the 17<sup>th</sup> Krajina Brigade as forming part of the 3<sup>rd</sup> Corps.

<sup>2861</sup> P 399 (under seal), para. 9.

<sup>2862</sup> Jasenko Eminović, T(F) pp. 5760-5761.

<sup>2863</sup> The Witness did not mention the date he went to the barracks in Travnik and witnessed the beating of the detainee Krunoslav Bonić.

<sup>2864</sup> Jasenko Eminović, T(F) pp. 5760-5761.

where Bonić was being held.<sup>2865</sup> He saw a soldier hit the detainee Bonić several times.<sup>2866</sup> The witness did not have any other contacts with prisoners in the detention centre.<sup>2867</sup>

1275. Witness Mešud Hadžialić ran the OG *Bosanska Krajina* transmission centre,<sup>2868</sup> located in the basement of the Barracks.<sup>2869</sup> The witness never heard of any mistreatment or saw or heard anything unusual.<sup>2870</sup> The witness did not, however, enter the cells where the detainees were held.<sup>2871</sup> During their visit to the Barracks on 16 August 1993,<sup>2872</sup> Witnesses Fehim Muratović and Edib Zlotrg observed that the detainees<sup>2873</sup> had not undergone any mistreatment<sup>2874</sup> and that they did not complain about the conduct of members of the military police.<sup>2875</sup> As Commander of the OG *Bosanska Krajina* Military Police Company, Witness Osman Menković never received any complaints about mistreatment from detainees, members of their families or the ICRC.<sup>2876</sup>

1276. As regards the detainee Ivan Josipović, Witnesses Fehim Muratović and Edib Zlotrg stated that he had been injured when he was arrested because he resisted arrest, and added that the detainee had been given medical attention before he was transferred to the Travnik detention centre and that disciplinary sanctions had been imposed on the two 17<sup>th</sup> Brigade police responsible for injuring Ivan Josipović.<sup>2877</sup> Witness Edib Zlotrg stated that Ivan Josipović had not suffered mistreatment when he was detained at the Barracks.<sup>2878</sup>

b. Mistreatment, Paragraphs 41(b)(ba) and 42(b) of the Indictment

1277. The Chamber finds that the Indictment does not raise the question of detention conditions at the former JNA Barracks in Travnik and does not allege that they constituted mistreatment. Accordingly, since the Chamber is not seized of the question of the detention conditions, it will make no finding as to the detention conditions at the Barracks.

<sup>2865</sup> Jasenko Eminović, T(F) p. 5761.

<sup>2866</sup> Jasenko Eminović, T(F) p. 5844.

<sup>2867</sup> Jasenko Eminović, T(F) pp. 5761 and 5846-5847.

<sup>2868</sup> Mešud Hadžialić, T(F) p. 12254.

<sup>2869</sup> Mešud Hadžialić, T(F) p. 12255.

<sup>2870</sup> Mešud Hadžialić, T(F) pp. 12256-12257.

<sup>2871</sup> Mešud Hadžialić, T(F) pp. 12257 and 12273.

<sup>2872</sup> Fehim Muratović, T(F) pp. 14960 and 14967; DH 1392.

<sup>2873</sup> Fehim Muratović, T(F) pp. 14967-14968; Edib Zlotrg, T(F) pp. 14992-14994 and 15003-15004; DH 1392. When they visited the detention centre in Travnik, Witnesses Fehim Muratović and Edib Zlotrg saw three detainees, whose names were Josipović, Bonić and Baškarad.

<sup>2874</sup> Fehim Muratović, T(E) pp. 14967 and 14968.

<sup>2875</sup> Edib Zlotrg, T(F) p. 14994.

<sup>2876</sup> Osman Menković, T(F) pp. 14690 and 14699.

<sup>2877</sup> Fehim Muratović, T(F) pp. 14967-14968; Edib Zlotrg, T(F) pp. 14992-14993.

<sup>2878</sup> Edib Zlotrg, T(F) p. 14993.

1278. The Chamber notes a contradiction between the statements of the Prosecution witnesses and those of the Defence witnesses as regards the treatment of the prisoners of war. As regards the Defence witnesses who were members of the 3<sup>rd</sup> Corps at the material time, the Chamber finds that they deny that mistreatment was meted out to certain detainees in the former JNA Barracks.<sup>2879</sup> The Chamber first notes, however, that the fact that those 3<sup>rd</sup> Corps officers did not receive any information about mistreatment inflicted in the Barracks does not mean that mistreatment did not take place and that guards did not beat detainees. Second, the Chamber takes note of the statements of Prosecution Witness Jasenko Eminović who, as a member of the exchange commission in Travnik, was subordinated to Salko Beba and saw the detainee Kruno Banić beaten in the barracks.<sup>2880</sup> As regards the statements of the Prosecution witnesses detained in the Barracks, the Chamber notes that, far from being contradictory, the statements corroborate one another, in particular as regards the beatings suffered by Kruno Bonić.<sup>2881</sup>

1279. In view of the above evidence and in particular the testimony of persons who were detained at the former JNA Barracks in Travnik, the Chamber finds that cruel treatment was inflicted on civilians and prisoners of war held at the detention centre in the Barracks during the whole of the period at issue. It appears from the testimony, therefore, that detainees were beaten during the period material to the Indictment.<sup>2882</sup> The detainees in question were beaten, sometimes for several hours, with various objects and kicked and punched.<sup>2883</sup>

1280. The Chamber further finds that such beatings were carried out repeatedly. Witness Ivan Josipović was also beaten almost every evening during the first 50 days of his detention.<sup>2884</sup> As for Kruno Bonić, it appears from the testimony that he was beaten on several occasions over a period of several months.<sup>2885</sup>

1281. The Chamber concludes that, from the testimony of former detainees at the former JNA Barracks in Travnik, it appears that the perpetrators of the cruel treatment undeniably intended to cause the detainees held in the Barracks serious pain and suffering.

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<sup>2879</sup> Mešud Hadžialić, T(F) pp. 12256-12257; Fehim Muratović, T(E) p. 14967; Osman Menković, T(F) pp. 14690 and 14699.

<sup>2880</sup> Jasenko Eminović, T(F) p. 5844.

<sup>2881</sup> P 399 (under seal), para. 9; Ivan Josipović, T(F) pp. 2450-2451.

<sup>2882</sup> Ivan Josipović, T(F) pp. 2439 to 2443. Witness Ivan Josipović was beaten as of his first night in detention, 7 August 1993, and regularly during the first 50 days of his detention. That witness stated that other detainees were beaten. Witness XD, T(F) pp. 1754, 1760-1763. Witness XD was beaten once during his detention from September 1993 to March 1994 and stated that other detainees were beaten. P 399 (under seal), paras. 3, 9 and 14. Witness Z17, who was detained between mid-June 1993 and July 1993 stated that several detainees were beaten during that period.

<sup>2883</sup> Ivan Josipović, T(F) pp. 2440-2441.

<sup>2884</sup> Ivan Josipović, T(F) pp. 2442-2443.

1282. As regards the perpetrators of the mistreatment, the Chamber first finds that the guards of the detention centre in the former JNA Barracks in Travnik were part of the 17<sup>th</sup> Brigade Military Police Unit and from June 1993, also the OG *Bosanska Krajina* Military Police Company.<sup>2886</sup> Second, the Chamber finds that the witnesses stated that the mistreatment suffered by the detainees was inflicted by the guards of the detention centre<sup>2887</sup> or, more specifically, by members of the 17<sup>th</sup> *Krajina* Brigade.<sup>2888</sup> The Chamber therefore considers that the perpetrators of the mistreatment belonged to the 17<sup>th</sup> Brigade Military Police. Moreover, the Chamber does not rule out the possibility that members of the *Bosanska Krajina* Military Police Company participated in the mistreatment of the detainees. The Chamber notes, however, that the Indictment refers to the mistreatment only insofar as it was inflicted by members of the 17<sup>th</sup> Brigade and finds therefore that it is not seized of the question of the mistreatment which might have been inflicted by the OG *Bosanska Krajina* military police.<sup>2889</sup>

1283. As regards the victims of the cruel treatment at the former JNA Barracks, the Chamber finds that, because of their detention, they were not directly involved in the hostilities and were therefore protected persons under the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1284. On the basis of the foregoing, the Chamber concludes that the elements of the crime of cruel treatment at the former JNA Barracks have been established for the material period between May 1993 and October 1993.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crimes

1285. The Chamber concludes that the cruel treatment alleged in paragraph 41(b) of the Indictment was committed by military police subordinated to the 17<sup>th</sup> Brigade. Given that the 17<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time, it is presumed that the

<sup>2885</sup> P 399 (under seal), para. 9; Ivan Josipović T(F) pp. 2450-2451.

<sup>2886</sup> See Osman Menković, T(E) pp. 14659-14660 and 14698-14700; Fehim Muratović, T(F) p. 14967.

<sup>2887</sup> P 399 (under seal), para. 9.

<sup>2888</sup> Witness XD, T(F) pp. 1762-1763. Witness XD stated that the perpetrators of the beatings were members of the *Krajina* unit. Ivan Josipović, T(F) p. 2442. Witness Ivan Josipović stated that the perpetrators of the mistreatment were members of the *Krajina* police.

<sup>2889</sup> Reference to the part on the duty to obtain information.

Accused Hadžihasanović exercised control over that unit and over the perpetrators of the mistreatment belonging to it.

1286. Moreover, the evidence shows that the 17<sup>th</sup> Brigade carried out the orders of the Accused Hadžihasanović and answered to the 3<sup>rd</sup> Corps Command for the actions it undertook and the activities it carried out. In accordance with an order from the 3<sup>rd</sup> Corps Command relating to regularity in submitting reports, the 17<sup>th</sup> Brigade sent a report to the 3<sup>rd</sup> Corps Command, dated 23 June 1993, in which it gave an account of the patrols carried out by the military police, criminal reports submitted to the military prosecutor and disciplinary measures taken against soldiers.<sup>2890</sup>

1287. The Defence for the Accused Hadžihasanović does not dispute the subordination of the 17<sup>th</sup> Brigade to the Accused Hadžihasanović and has adduced no evidence to rebut such a presumption.

1288. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the mistreatment and that there was a superior-subordinate relationship within the meaning of Article 7(3) of the Statute.

b. Knowledge of Enver Hadžihasanović

1289. The Prosecution submits that the Accused Hadžihasanović had actual knowledge, or knowledge such as to put him under an obligation to obtain more information on the mistreatment inflicted on detainees at the former JNA Barracks in Travnik.<sup>2891</sup> First, the Prosecution relies on a report of the president of the Travnik Military Court (Exhibit P 622), addressed to the Accused Hadžihasanović, which gave an account of the increase in criminal activities by the ABiH in Travnik. The Prosecution asserts that on 1 June 1993, Colonel Blaškić complained to the Accused Hadžihasanović about the criminal conduct of the 3<sup>rd</sup> Corps soldiers and that the question of the problems which had arisen with the Croatian detainees in Travnik was broached on 19 June 1993 at a joint meeting between the Accused Hadžihasanović and Colonel Blaškić. The Prosecution adds that, following that meeting, the Accused Hadžihasanović agreed to restore discipline among the criminal elements of the 3<sup>rd</sup> Corps.<sup>2892</sup> Third, the Prosecution submits that the Accused Hadžihasanović, who took part in a meeting on 24 August 1993 at the former JNA Barracks with Merdan, Alagić, Čuskić, Beba, and Delić, had the possibility to obtain information about and

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<sup>2890</sup> DH 1246.

<sup>2891</sup> Prosecution Final Brief, paras. 206 and 209.

<sup>2892</sup> *Ibid.*, para. 206.

investigate the allegations relating to the abuse of the prisoners.<sup>2893</sup> Lastly, the Prosecution submits that since the officers of the OG *Bosanska Krajina*, Mehmed Alagić and Salko Beba, had approved a list drawn up by Witness Sefer containing the names of HVO soldiers held at the barracks who were to be exchanged in July 1993, they were aware that HVO soldiers were being held at the Barracks.<sup>2894</sup>

1290. The Defence for the Accused Hadžihasanović alleges that the Prosecution has failed to prove that the Accused Hadžihasanović was informed about the said mistreatment meted out to detainees at the former JNA Barracks.<sup>2895</sup> The Defence for the Accused Hadžihasanović submits that Exhibit P 622, used by the Prosecution to argue that the Accused Hadžihasanović had been informed about an upsurge in the number of crimes committed by ABiH soldiers,<sup>2896</sup> shows that the 3<sup>rd</sup> Corps Command had asked the judicial authorities to increase their effectiveness.<sup>2897</sup>

1291. The Chamber first notes the Prosecution's argument that the officers of the OG *Bosanska Krajina*, Mehmed Alagić and Salko Beba, knew that HVO soldiers were being held in the former JNA Barracks in Travnik.<sup>2898</sup> The Chamber considers that mere knowledge of the fact that HVO soldiers were detained does not imply knowledge of the mistreatment suffered by those detainees.

1292. The Chamber finds that on 20 May 1993 the President of the Travnik District Military Court, Kemal Poričanin, sent a report to the 3<sup>rd</sup> Corps Command in which he reported on the procedure concerning the criminal reports submitted by the 17<sup>th</sup> Brigade. That document also mentioned the report sent by the OG *Bosanska Krajina* Commander, Mehmed Alagić to the 3<sup>rd</sup> Corps Command, describing the increase in criminal activities on the part of members of the ABiH in the Travnik district:

“The commander of the Operations Group Bosnian Krajina, Mr Mehmed ALAGIC informed you in his written /?report/ number 09/66-1 dated 2 May 1993 of certain problems related to the rise in crimes committed by members of the Armed Forces of the BH Army in Travnik District. With regard to that problem, it was baselessly and unscrupulously stated that the cause of the increase in criminal activities performed by members of the Armed Forces was the slow and dilatory work of Travnik District Military Court.”<sup>2899</sup>

The Chamber finds that the document refers generally to the criminal activities of ABiH soldiers in Travnik district and not, more specifically, to the cases of mistreatment at the former JNA Barracks.

<sup>2893</sup> *Ibid.*, para. 207.

<sup>2894</sup> *Ibid.*, para. 208.

<sup>2895</sup> Hadžihasanović Defence Final Brief, para. 811.

<sup>2896</sup> *Ibid.*, para. 807.

<sup>2897</sup> *Ibid.*, para. 809.

<sup>2898</sup> See Prosecution Final Brief, para. 208.

<sup>2899</sup> P 622.



Contrary to what the Prosecution affirms, the Chamber considers that this document does not prove that the Accused Hadžihasanović had knowledge of the mistreatment inflicted on the detainees at the former JNA Barracks in Travnik.

1293. The Chamber also notes that the letter of 1 June 1993 sent by Tihomir Blaškić to the 3<sup>rd</sup> Corps Command does not mention any cases of mistreatment at the Barracks, but arrests and expulsions of Croats and the plunder of their property. That letter also reports an incident on 31 May 1993 when members of the ABiH accosted three HVO soldiers in the street, mistreated them and seized their weapons and their vehicle:

“Muslim gentlemen, this is what you are doing in Travnik:

- You arrest prominent Croats in their flats, such as Dr. Markunović, Šimić and Solomun,
- You break into flats, loot them and expel the Croats, or force them by threats to move out without delay
- You disrupt road communications by setting up illegal checkpoints at which you maltreat the Croats and seize their vehicles,
- On 31 May 1993, you accosted on the street the HVO officers who were returning from a joint Croat-Muslim meeting, maltreated them, and seized their weapons and their vehicle...”<sup>2900</sup>

Consequently, the Chamber finds that the letter from Tihomir Blaškić of 1 June 1993, which does not refer to the mistreatment suffered by detainees at the Barracks, does not prove knowledge on the part of the Accused Hadžihasanović.

1294. The Chamber finds that on 19 June 1993 a meeting took place in Vitez between representatives of the HVO, the ABiH and the international community in order to discuss, among other things, the release of prisoners. The Accused Hadžihasanović, Stjepan Šiber and Džemal Merdan represented the ABiH, while Tihomir Blaškić, among others, represented the HVO. Jean-Pierre Thébault of the ECMM and Alastair Duncan of UNPROFOR were also present.<sup>2901</sup> According to the report drawn up by the ECMM after that meeting, the representatives of the two armed forces complained of mistreatment of the prisoners:

“To date the BIH have released 201 prisoners from Zenica and the HVO 66 and 33 from Kiseljak and Kaonic respectively, both sides complained of maltreatment of prisoners.”<sup>2902</sup>

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<sup>2900</sup> P 486.

<sup>2901</sup> P 904.

<sup>2902</sup> P 213.

When questioned about this report, however, Witness ZP stated that those complaints were general in nature and that no particular place of detention was mentioned in connection with the issue of mistreatment:

“Q. And the reproaches from the HVO side, did they relate to the KP Dom in Zenica or to other places or to places outside Zenica, maybe? I don't know.

A. As far as I can remember, these were complaints of a general nature. They probably had in mind some other locations as well. So that is my opinion.

Q. So may I conclude that no specific places were mentioned and no specific names were given? Is that a proper conclusion?

A. Yes, absolutely.”<sup>2903</sup>

Moreover, the decision taken at the end of the meeting to control the criminal elements in the respective areas of responsibility of the two commands was taken in the context of the problems connected with displaced persons and not in the context of the mistreatment meted out to the prisoners of war.<sup>2904</sup> In reporting on the decisions taken at the meeting of 19 June 1993, that document also does not mention the question of the mistreatment of the detainees held in the former JNA Barracks in Travnik.<sup>2905</sup> Consequently, the Chamber considers that the documents relating to the meeting of 19 June 1993 do not make it possible to establish that the Accused Hadžihasanović had knowledge of the mistreatment suffered by detainees in the Barracks.

1295. Lastly, the Chamber considers that the fact that the Accused Hadžihasanović took part in a meeting at the Barracks on 24 August 1993<sup>2906</sup> does not prove as such that he had knowledge of the mistreatment suffered by the detainees at the detention centre at the Barracks.

1296. In addition, the Chamber takes note of the Prosecution argument that the Accused Hadžihasanović had information such that he was under a duty to apprise himself and that his presence at the Travnik Barracks on 24 August 1993 gave him an opportunity to inquire into the allegations of mistreatment inflicted on the prisoners.<sup>2907</sup> The Chamber considers that the Accused Hadžihasanović did not have information alerting him that his subordinates had mistreated or were about to mistreat the detainees at the Barracks, and therefore rejects that argument put forward by the Prosecution.

<sup>2903</sup> Witness ZP, T(F) pp. 8849-8851.

<sup>2904</sup> P 208, para. 5 (c).

<sup>2905</sup> P 208.

<sup>2906</sup> P 354.

<sup>2907</sup> Prosecution Final Brief, paras. 206, 207 and 209.

1297. As regards mistreatment in other places of detention, the Chamber notes that the Prosecution has put forward the theory of prior knowledge, according to which the prior commission of criminal acts by a group of subordinates suffices in itself to prove the risk of subsequent commission of similar unlawful acts by another group of subordinates.<sup>2908</sup> The Chamber observes that the Prosecution has not applied this theory to the mistreatment in the Barracks, but makes it clear nevertheless that the knowledge of mistreatment inflicted previously by a group of subordinates in other detention centres does not as such imply knowledge of mistreatment inflicted by the 17<sup>th</sup> Brigade Military Police at the Travnik Barracks.<sup>2909</sup>

1298. Having considered the relevant evidence relating to the possible knowledge of the Accused Hadžihasanović, the Chamber concludes that the Prosecution has not proved beyond a reasonable doubt that the Accused Hadžihasanović knew or had reason to know that his subordinates were preparing to commit mistreatment at the former JNA Barracks or had done so. Accordingly, the Chamber cannot conclude that the Accused Hadžihasanović is criminally responsible within the meaning of Article 7(3) of the Statute. As a result, there is no need to consider the other constituent elements of command responsibility under the Statute.

(iv) Conclusions of the Chamber

1. The Chamber considers that there is no evidence that the Accused Hadžihasanović knew or had reason to know that his subordinates were about to commit, or had committed, crimes of mistreatment at the former JNA Barracks in Travnik. The Accused Hadžihasanović cannot therefore be held criminally responsible for the offence mentioned in count 4, paragraphs 41(b)(ba) and 42 (b) of the Indictment.

(e) Village of Mehurići: Mehurići Elementary School and Mehurići Blacksmith Shop

1299. The Indictment alleges that Bosnian Croats and Bosnian Serbs were detained at Mehurići Elementary School, which was guarded and administered by members of the ABiH 3<sup>rd</sup> Corps OG *Bosanska Krajina* 306<sup>th</sup> Brigade, from around 6 June 1993 until at least 24 June 1993, and at the Mehurići Blacksmith Shop, also guarded and administered by members of the ABiH 3<sup>rd</sup> Corps OG *Bosanska Krajina* 306<sup>th</sup> Brigade, from around 6 June 1993 until at least 13 July 1993. During their detention, those Bosnian Croats and Bosnian Serbs were allegedly regularly subjected to mistreatment. It is alleged that they were beaten and physically and/or mentally abused by 3<sup>rd</sup> Corps 306<sup>th</sup> Brigade soldiers. The detention conditions were allegedly inadequate in terms of food and

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<sup>2908</sup> See *supra* paras. 1748-1749.

hygiene. From around 26 January 1993 to 31 October 1993, the Accused Hadžihasanović knew or had reason to know that members of that unit, who were placed under his command and effective control, were about to commit the crimes of mistreatment or had done so, and he failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>2910</sup>

1300. It is therefore alleged that the Accused Hadžihasanović committed cruel treatment, a violation of the laws or customs of war, punishable by Articles 3 and 7(3) of the Statute and recognised by common Article 3 of the Geneva Conventions.

(i) Arguments of the Parties

1301. The Prosecution maintains that mistreatment was inflicted both on the detainees held in the School during the interrogations carried out by three members of the Zenica police and on the detainees held at the Blacksmith Shop during the interrogations carried out at the School by “military police of Zenica” and outside the school building.<sup>2911</sup> It submits that the School and Blacksmith Shop were guarded and administered by the 306<sup>th</sup> Brigade and the ABiH.<sup>2912</sup> It adds that the living and sanitary conditions during the imprisonment at the School and Blacksmith Shop were completely unsuitable and inadequate<sup>2913</sup> and that the mujahedin were a constant threat to the detainees.<sup>2914</sup> The Prosecution maintains that the Accused Hadžihasanović had knowledge of the mistreatment meted out to the detainees<sup>2915</sup> and that he failed to take the necessary and reasonable measures to prevent mistreatment from being committed or to punish the perpetrators.<sup>2916</sup>

1302. The Defence for the Accused Hadžihasanović maintains that more than 250 persons were taken to the Mehurići School for their protection and that, although the 306<sup>th</sup> Brigade Military Police protected them for the first four or five days, the civilian police subsequently took charge of them in collaboration with the 306<sup>th</sup> Brigade.<sup>2917</sup> According to the Defence, the living conditions at

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<sup>2909</sup> *See supra* paras. 102-120.

<sup>2910</sup> Third Amended Indictment, paras. 41(bb) and 42(c) and (d).

<sup>2911</sup> Prosecution Final Brief, paras. 246 and 248.

<sup>2912</sup> *Ibid.*, paras. 250-251.

<sup>2913</sup> *Ibid.*, paras. 244 and 252.

<sup>2914</sup> *Ibid.*, paras. 244 and 249-252.

<sup>2915</sup> *Ibid.*, paras. 250 and 253-256.

<sup>2916</sup> *Ibid.*, para. 257.

<sup>2917</sup> Hadžihasanović Defence Final Brief, paras. 826 and 831; Hadžihasanović Defence Closing Arguments, T(F) p. 19233.

the School were satisfactory and the people placed in the School did not suffer mistreatment.<sup>2918</sup> It also maintains that the HVO soldiers held at the Blacksmith Shop were treated well given the prevailing circumstances at the time and that they were not mistreated.<sup>2919</sup> In addition, the Defence for the Accused Hadžihasanović submits that the Prosecution has not proved that the Accused Hadžihasanović was informed of the mistreatment allegedly inflicted on persons housed in the School and the Blacksmith Shop<sup>2920</sup> and, lastly, that the Accused Hadžihasanović failed to take the necessary preventive measures throughout the year 1993.<sup>2921</sup>

(ii) Findings of the Chamber regarding Mistreatment Committed at Mehurići Elementary School and Mehurići Blacksmith Shop

a. Sequence of Events from 6 June 1993 to 4 July 1993 at Mehurići School and Mehurići Blacksmith Shop

1303. Two detention centres were set up in the village of Mehurići,<sup>2922</sup> in Mehurići Elementary School<sup>2923</sup> and in the smithy, known as Mehurići Blacksmith Shop.<sup>2924</sup> The School took in approximately 250 Bosnian Croat civilians between 6 June and 24 June 1993,<sup>2925</sup> while the Blacksmith Shop held 20 to 30 Bosnian Croat civilians and HVO soldiers between 6 June 1993 and 4 July 1993.<sup>2926</sup>

1304. Initially, in the autumn of 1992, the Mehurići Elementary School housed the Mehurići detachment of the TO.<sup>2927</sup> Later in the year, following an order of the War Presidency to the headmaster of the School to authorise the presence of representatives of humanitarian organisations, some 10 mujahedin occupied the upper floor of the School.<sup>2928</sup> Those mujahedin left the School

<sup>2918</sup> Hadžihasanović Defence Final Brief, paras. 829-845 and 851-854; Hadžihasanović Defence Closing Arguments, T(F) p. 19233.

<sup>2919</sup> Hadžihasanović Defence Final Brief, paras. 833-858.

<sup>2920</sup> *Ibid.*, para. 872.

<sup>2921</sup> Hadžihasanović Defence Final Brief, paras. 822-824, 862-863, 865, 868 and 872.

<sup>2922</sup> See photograph P 934.

<sup>2923</sup> See photographs P 28 and P 28.1 (under seal).

<sup>2924</sup> See photographs P 42; P 43; P 44; P 45; P 46 and P 47.

<sup>2925</sup> P 430; P 431; DH 167.7; DH 243 (under seal); Witness HE, T(F) p. 16982; Witness AH, T(F) p. 1221; Witness ZL, T(F) p. 4393; Witness XC, T(F) pp. 1691-1693.

<sup>2926</sup> Vinko Tadić, T(F) p. 1893; Witness XC, T(F) pp. 1709-1710; Asim Delalić, T(F) p. 16397.

<sup>2927</sup> DH 1663; Haso Ribo, T(F) p. 10806; Sulejman Ribo, T(F) p. 11039; Derviš Suljić, T(F) p. 11302; Hamid Suljić, T(F) p. 11875; Fahir Čamdžić, T(F) pp. 11692-11693; Remzija Šiljak, T(F) pp. 10608-10609.

<sup>2928</sup> Fahir Čamdžić, T(F) pp. 11694-11695; Halim Husić, T(F) p. 10873; Sulejman Ribo, T(F) p. 11039; Sejad Jusić, T(F) p. 11121; Derviš Suljić, T(F) pp. 11305-11306; Munir Karić, T(F) p. 11436; Ferid Jašarević, T(F) pp. 11547-11548; Hamid Suljić, T(F) pp. 11879 and 11881; Salim Tarakčija, T(F) p. 11793; Esed Sipić, T(F) pp. 14787, 14803, 14825; Asim Delalić, T(F) p. 16354; Remzija Šiljak, T(F) pp. 10608-10609.

when the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion was installed there in late 1992 or early 1993.<sup>2929</sup> They then moved to Poljanice, a hamlet some 500 metres from the village of Mehurići,<sup>2930</sup> although they retained one or two offices upstairs in the School in Mehurići.<sup>2931</sup> The 1<sup>st</sup> Battalion 306<sup>th</sup> Brigade occupied the School until July or August 1993.<sup>2932</sup>

1305. Bosnian Croat civilians and HVO soldiers were detained in the Mehurići Elementary School and in the Mehurići Blacksmith Shop on two occasions: first, on 6 June 1993 following the sporadic fighting in Velika Bukovica and Ričice and, second, on 8 June 1993 following a fresh outbreak of fighting between the HVO and ABiH in Maline.<sup>2933</sup>

i. Mehurići School

1306. According to Witness Vinko Tadić, a Bosnian Croat civilian, a group of 13 or 14 armed soldiers wearing camouflage uniforms arrived in Konjska, on the slope of Mount Vlasić, early in the morning of 6 June 1993.<sup>2934</sup> The day before, Vinko Tadić had rejoined his family in Konjska in order to tend to a flock of sheep with other shepherds.<sup>2935</sup> He stated that he was unable to identify the military unit to which the group of soldiers belonged but said that some of them wore a green armband with a badge marked “MOS”.<sup>2936</sup> The soldiers then assembled and arrested a group of villagers that included men, women and children.<sup>2937</sup> The prisoners included Vinko Tadić and the members of his family, Jozo Tadić, Ferdo Tadić and Mato Tadić, together with Nikola Volić, Dragan Volić, Frano Volić, his wife Ljuba Volić, Mladen Volić, another person identified as Frano

<sup>2929</sup> Halim Husić, T(F) pp. 10883 and 10910; Derviš Suljić, T(F) pp. 11306-11307; Ferid Jašarević, T(F) p. 11549; Fahir Čamdžić, T(F) p. 11764; Esed Sipić, T(F) pp. 14787, 14803 and 14825; Asim Delalić, T(F) pp. 16354 and 16382; Hamid Suljić, T(F) p. 11912; Salim Tarakčija, T(F) p. 11793; Suad Menzil, T(F) pp. 14097-14098; Esed Sipić, T(F) pp. 14787, 14803 and 14825.

<sup>2930</sup> Halim Husić, T(F) pp. 10883 and 10910; Ferid Jašarević, T(F) p. 11549; Fahir Čamdžić, T(F) p. 11697; Salim Tarakčija, T(F) p. 11793; Suad Menzil, T(F) p. 14138; Esed Sipić, T(F) pp. 14787, 14803 and 14825; Asim Delalić, T(F) p. 16354.

<sup>2931</sup> Sulejman Ribo, T(F) p. 11053; Suad Menzil, T(F) pp. 14098 and 14141; Remzija Šiljak, T(F) pp. 10611-10612, 10488 and 10668; P 355. The Chamber notes, however, that Witness HB does not recall seeing any mujahedin at the School between January and June 1993: T(F) pp. 12620-12621.

<sup>2932</sup> Halim Husić T(F) pp. 10883, 10897 and 10910; Derviš Suljić, T(F) 11303-11304; Sulejman Ribo, T(F) p. 11092; Esed Sipić, T. 14749; Witness HB, T(F) p. 12583; Munir Karić, T(F) p. 11448. Vezir Jusufspahić, 306<sup>th</sup> Brigade Commander between August and November 1993, stated that no 306<sup>th</sup> Brigade Battalion was stationed at the School during the period when he commanded the 306<sup>th</sup> Brigade: T(F) 14044-14045.

<sup>2933</sup> As regards the fighting at Velika Bukovica and Ričice in early June 1993, *see* Haris Jusić, T(E) p. 11256; Witness ZK, T(F) p. 4366; Munir Karić, T(F) pp. 11450-11452; Remzija Šiljak, T(F) p. 10514; Sejad Jusić, T(E) 11133. For the outbreak of fighting at Maline on 8 June 1993, *see supra* paras. 1110-1127.

<sup>2934</sup> Vinko Tadić, T(F) pp. 1887-1889, 1910 and T(E) p. 1889.

<sup>2935</sup> Vinko Tadić, T(F) pp. 1887-1888.

<sup>2936</sup> Vinko Tadić, T(F) pp. 1890-1891.

<sup>2937</sup> Vinko Tadić, T(F) pp. 1889 and 1893.

Volić and Mijo Jelović.<sup>2938</sup> Next, on the order of a soldier named Hadžija, the soldiers brought them to the village of Mehurići.<sup>2939</sup> When they arrived in Mehurići, the villagers were taken to Mehurići Elementary School and installed in its sports room.<sup>2940</sup> After about an hour, the men, including Vinko Tadić, were separated from the women and children and taken to the Mehurići Blacksmith Shop about 100 metres from the school gymnasium.<sup>2941</sup>

1307. As indicated previously in the Judgement, on 8 June 1993, following a fresh outbreak of fighting between the HVO and the ABiH in Maline, 306<sup>th</sup> Brigade military police escorted a column of approximately 250 prisoners, consisting of Bosnian Croat civilians and HVO soldiers, who had surrendered previously, to Mehurići Elementary School.<sup>2942</sup> The civilian prisoners and at least one member of the HVO, including Witness Ivanka Tavić, Witness AH, Witness XC, Witness ZF, Witness ZK, Witness ZL, Witness Z 11 and Witness Z 15, were installed in the sports room of the School,<sup>2943</sup> while a few other prisoners were taken to the Mehurići Blacksmith Shop.<sup>2944</sup> The Chamber will first consider the situation at the School and subsequently that at the Mehurići Blacksmith Shop.

1308. Most of the detainees assembled in the school sports room were elderly people, women and children, including very young children and pregnant women.<sup>2945</sup> According to the witnesses, all the prisoners were Bosnian Croats<sup>2946</sup> who came mainly from the village of Maline but also from neighbouring villages such as Postinje, Miletići, Brajkovići, Podovi, Čukle or even Orašac.<sup>2947</sup> Some witnesses stated that the civilians were locked up in the School in order to protect them from the mujahedin, given the proximity of their camp in Poljanice,<sup>2948</sup> or to safeguard the civilian population in view of the intensifying fighting in the region,<sup>2949</sup> while other witnesses mentioned as

<sup>2938</sup> Vinko Tadić, T(F) pp. 1889 and 1893; P 92 (under seal), para. 33.

<sup>2939</sup> Vinko Tadić, T(F) pp. 1889 and 1891-1892.

<sup>2940</sup> Vinko Tadić, T(F) p. 1892. *See* photograph P 29.

<sup>2941</sup> Vinko Tadić, T(F) pp. 1892-1893. Witness AH confirmed that a group of shepherds was held at the Blacksmith Shop after being arrested before his arrival, that is, before 8 June 1993, at Mount Vlasić: T(F) p. 1224. Witness ZK confirmed that he saw members of the Volić family in the Blacksmith Shop and learned that they had been arrested on a hill near Krpeljići where they were looking after their livestock: P 92 (under seal), para. 33.

<sup>2942</sup> *See supra* para. 1120.

<sup>2943</sup> Ivanka Tavić, T(F) pp. 1167 and 1175; Witness AH, T(F) pp. 1220-1221; P 393 (under seal), para. 18.

<sup>2944</sup> Vinko Tadić, T(F) p. 1905.

<sup>2945</sup> Ivanka Tavić, T(F) p. 1175; Suad Menzil, T(F) p. 14149; Witness XC, T(F) pp. 1691 and 1693; Lars Baggesen, T(F) p. 7037; Sejad Jusić, T(F) p. 11133; P 387 (under seal), para. 20, and DH 167.7.

<sup>2946</sup> Ivanka Tavić, T(F) p. 1172; Witness AH, T(F) p. 1222; Sejad Jusić, T(E) p. 11134.

<sup>2947</sup> P 277; Ivanka Tavić, T(F) p. 1172; Witness AH, T(F) p. 1222.

<sup>2948</sup> Witness HB, T(F) 12652; Sejad Jusić, T(F) 11132; Haris Jusić, T(F) pp. 11222-11223.

<sup>2949</sup> Remzija Šiljak, T(F) pp. 10551 and 10668; Munir Karić, T(F) pp. 11454 and 11530; Witness HB, T(F) p. 12652.

a reason the ABiH's intention to exchange those prisoners for Muslim prisoners captured by the HVO.<sup>2950</sup>

1309. During the first days following the arrival of the civilians at the School, 306<sup>th</sup> Brigade soldiers, including 306<sup>th</sup> Brigade military police, guarded the detainees in the School.<sup>2951</sup> Subsequently, according to Sejad Jusić, head of the civilian police in Mehurići, and Witness HB, the civilian police provided the guard until the prisoners were exchanged on 24 June 1993.<sup>2952</sup> However, while some witnesses stated that the prisoners were guarded solely by the civilian police,<sup>2953</sup> others testified that the guard was organised in collaboration with the 306<sup>th</sup> Brigade.<sup>2954</sup>

1310. Two witnesses testified before the Chamber to the existence of mistreatment, during their interrogations, of some men detained in the gymnasium. Witness XC, an HVO soldier, stated that initially he was interrogated virtually every night, somewhat informally, by soldiers he knew, and that the interrogations were made official following the arrival of three members of the ABiH from Zenica.<sup>2955</sup> While he awaited his turn at the door of the interrogation office of the soldiers from Zenica, Witness XC heard another detainee being hit.<sup>2956</sup> When his turn came, he was questioned about subjects of a military nature and then threatened with being beaten and handed over to the mujahedin for further interrogation.<sup>2957</sup> Those threats, however, were not carried out.<sup>2958</sup> Ivanka Tavić, a civilian detainee, then stated that some of the men held in the sports room underwent interrogations and returned with visible marks of mistreatment.<sup>2959</sup> In contrast, Witness AH, a civilian detainee, testified that, although the detainees were taken for interrogation in groups of three or four, they returned after two or three hours without any signs of blows or other mistreatment.<sup>2960</sup>

1311. The fact that the interrogations were conducted by the 306<sup>th</sup> Brigade and by officers of the Zenica 3<sup>rd</sup> Corps is corroborated by Witness Haris Jusić, an officer in the 306<sup>th</sup> Brigade Military Security Service. Haris Jusić received an order from Asim Delalić, 306<sup>th</sup> Brigade Assistant

<sup>2950</sup> Witness HB, T(E) p. 12597 and T(F) p. 12649; Haris Jusić, T(F) pp. 11222-11223. The Chamber notes that Haris Jusić stated that the main reason for detaining Croatian civilians at the School was to exchange them for Muslim civilians from Velika Bukovica held by the HVO.

<sup>2951</sup> Ivanka Tavić, T(F) p. 1175; P 92 (under seal), para. 35; Sejad Jusić, T(F) p. 11158; Witness HB, T(F) p. 12603.

<sup>2952</sup> Sejad Jusić, T(F) (pp. 11131-11132), pp. 11158, (11178 and 11191); Witness HB, T(F) p. 12603.

<sup>2953</sup> Witness HE, T(F) p. 16989; Enes Ribić, T(F) pp. 11387 and 11420; Suad Menzil, T(F) p. 14116.

<sup>2954</sup> (Halim Husić, T(F) pp. 10899-10900; Sejad Jusić, 11158).

<sup>2955</sup> Witness XC, T(F) p. 1700.

<sup>2956</sup> Witness XC, T(F) p. 1701.

<sup>2957</sup> Witness XC, T(F) p. 1701.

<sup>2958</sup> Witness XC, T(F) p. 1701.

<sup>2959</sup> Ivanka Tavić, T(F) p. 1177.

<sup>2960</sup> Witness AH, T(F) p. 1223.



Commander for Military Security, to take statements from Croatian men of weapon-bearing age imprisoned in Mehurići.<sup>2961</sup> In compliance with this order, he arrived in Mehurići after 8 June 1993 and interrogated about 20 to 30 Croatian men aged 20 to 60 over a period of about a week.<sup>2962</sup> He testified that he knew most of the detainees he interrogated and asked them questions of a military nature, such as whether they belonged to the HVO, the names of the HVO commanders, or the type of weapons available to the Croatian forces.<sup>2963</sup> He stressed that he never used force during these interrogations<sup>2964</sup> and added that, while he was carrying out his tasks at the School, two 3<sup>rd</sup> Corps officers from Zenica, whom he regarded as his superiors, arrived at the School to take statements from certain persons.<sup>2965</sup> The officers from Zenica remained for one or two days before returning to Zenica.<sup>2966</sup>

1312. Among the former detainees at the School gymnasium, Witness ZK and Witness ZL stated that they had been treated properly during their incarceration in the gymnasium.<sup>2967</sup> Likewise, Witness Z 11 did not mention having been mistreated during his detention.<sup>2968</sup>

1313. Most of the former prisoners in the School agree in stating that mujahedin were present at the School and that they adopted a threatening attitude towards the detainees held in the gymnasium.<sup>2969</sup> Witness XC stated that on one occasion one of the mujahedin pointed a weapon at him, shouting “Ustasha, Ustasha, I’ll shoot you.”<sup>2970</sup> Likewise, Witness ZK stated that one day one of the mujahedin entered the gymnasium and played dangerously with his firearm in front of the prisoners.<sup>2971</sup> The witnesses heard by the Chamber stated, however, that the local ABiH soldiers present in the School protected the civilians from the mujahedin. For example, Witness AH testified that when he arrived at the School, he was escorted to the sports room by a soldier, who recommended that for safety reasons he hide behind him should they meet mujahedin.<sup>2972</sup> Witness ZL also mentioned that on one occasion, one of the mujahedin tried to enter the gymnasium but was

<sup>2961</sup> Haris Jusić, T(F) p. 11218; Asim Delalić, T(E) p. 16395.

<sup>2962</sup> Haris Jusić, T(F) pp. 11219 and 11221; Asim Delalić, T(E) pp. 16395-16397. The Chamber notes that Haris Jusić began his interrogations on 10 or 11 June 1993: DH 2091, para. 10; Asim Delalić, T(E), pp. 16395-16396; Haris Jusić, T(F) p. 11218.

<sup>2963</sup> Haris Jusić, T(F) pp. 11219-11220.

<sup>2964</sup> Haris Jusić, T(F) pp. 11220 and 11256.

<sup>2965</sup> Haris Jusić, T(F) pp. 11255-11257 and 11264, T(E) p. 11260.

<sup>2966</sup> Haris Jusić, T(F) p. 11256.

<sup>2967</sup> P 92 (under seal), para. 35; Witness ZL, T(E) p. 4405.

<sup>2968</sup> P 393 (under seal), paras. 18-21.

<sup>2969</sup> For the presence of mujahedin at the School, *see* Witness ZF, T(F) p. 3596; Witness ZL, T(F) pp. 4394-4395 and 4405; P 92 (under seal), para. 36; Vinko Tadić, T(F) pp. 1908-1909. Vinko Tadić stated that they were located on the third floor of the School; T(F) p. 1908.

<sup>2970</sup> Witness XC, T(F) p. 1700.

<sup>2971</sup> P 92 (under seal), para. 36.

<sup>2972</sup> Witness AH, T(F) p. 1221.

prevented from doing so by the gymnasium guards, who had been given orders by their commander to kill any mujahedin entering the sports room.<sup>2973</sup> However, Sejad Jusić, a civilian police officer from Mehurići, denied that there were any mujahedin at the School during the period when the civilians were imprisoned there, but admits that on one occasion they tried to enter the gymnasium.<sup>2974</sup>

1314. Moreover, many witnesses heard by the Chamber raised the issue of the detention conditions at the School. Some 250 civilians were installed in the sports room, which was 10 metres wide by 15 metres long, such that there was not enough room.<sup>2975</sup> The food rations distributed to the detainees were limited and of poor quality.<sup>2976</sup> During the first days, therefore, the detainees had to make do with a few pieces of cheese and bread made from flour intended for cattle feed.<sup>2977</sup> Subsequently, the prisoners received two meals a day, generally consisting of a large loaf of bread and a large tin of jam for six or seven prisoners to share in the morning, and a piece of bread together with a spoonful of boiled rice in the afternoon.<sup>2978</sup> Sufficient drinking water was available<sup>2979</sup> and small children received powdered milk daily.<sup>2980</sup> Several witnesses for the Defence for the Accused Hadžihasanović stated that the civilians received the same food as the soldiers at the School.<sup>2981</sup> The food rationing was organised on the basis of an exhaustive register of the prisoners' details.<sup>2982</sup> Lastly, both the Civilian Protection and villagers brought in food for the civilians, particularly the children, imprisoned in the School.<sup>2983</sup>

1315. Some witnesses for the Defence for the Accused Hadžihasanović testified that straw, blankets, mattresses and beds were made available to the detainees.<sup>2984</sup> Witness XC, however,

<sup>2973</sup> Witness ZL, T(F) pp. 4405-4406. This episode was corroborated by Sejad Jusić, T(F) p. 11134.

<sup>2974</sup> Sejad Jusić, T(F) pp. 11134, 11158 and 11177-11178.

<sup>2975</sup> Witness AH, T(F) p. 1221.

<sup>2976</sup> Ivanka Tavić, T(F) pp. 1175-1176; Witness XC, T(F) p. 1699; Witness ZF, T(F) p. 3599; P 92 (under seal), para. 37.

<sup>2977</sup> Ivanka Tavić, T(F) pp. 1175-1176.

<sup>2978</sup> Witness XC, T(F) p. 1699; P 92 (under seal), para. 37.

<sup>2979</sup> P 92 (under seal), para. 37; P 393 (under seal), para. 19.

<sup>2980</sup> Suad Menzil, T(F) p. 14149; Witness XC, T(F) p. 1699.

<sup>2981</sup> Sejad Jusić, T(F) p. 11133; Haris Jusić, T(F) p. 11221

<sup>2982</sup> Witness AH, T(F) p. 1222.

<sup>2983</sup> Witness HB, T(F) p. 12603; Witness ZK, T(F) p. 4368; Witness XC, T(F) pp. 1699 and 1728. The Chamber notes that Exhibits DH 1241, DH 1247, DH 1248, DH 1249, DH 1497, DH 1621 and DH 1622 deal with the shipment of goods, including rations, from the Civilian Protection of the municipality of Travnik intended for the Mehurići Elementary School and that they provide evidence that a certain quantity of goods and rations were lost during transport to Mehurići.

<sup>2984</sup> Enes Ribić, T(F) p. 11386; Witness HB, T(F) p. 12597; Suad Menzil, T(F) p. 14119.

explained that there were not enough blankets for all the detainees and that, for that reason, the blankets were given to the oldest persons.<sup>2985</sup>

1316. As for sanitation, there was only one toilet, accessible between 0700 and 1900 hours.<sup>2986</sup> The fact that there was only one toilet for approximately 250 detainees meant that it was blocked and that there was a long queue to use it.<sup>2987</sup> According to Witness XC, the detainees had no facilities to wash, whereas according to Witness HB, a witness for the Defence for the Accused Hadžihasanović, access to the shower was restricted to civilians.<sup>2988</sup> Ivanka Tavić testified that the detainees received five litres of hot water per day to bathe the small children and to clean prisoners' wounds.<sup>2989</sup> According to Witness HE, diapers were provided for the infants.<sup>2990</sup>

1317. Several witnesses, including Dr Enes Ribić, a doctor temporarily assigned to the School in Mehurići, and Suad Menzil, an administrator of the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion medical service, described to the Chamber the medical care provided to the detainees at the School. Dr Enes Ribić worked in a dispensary about 150 metres from the School in Mehurići and went there three times to assess the conditions in which the civilians were housed.<sup>2991</sup> Dr Enes Ribić did not however treat prisoners at the School directly and acted as a stand-in doctor.<sup>2992</sup> According to Dr Enes Ribić and Suad Menzil, a woman doctor present among the civilian detainees was made responsible for administering the necessary treatment to the civilians and was assisted in this task by Suad Menzil.<sup>2993</sup> They stated that they had made the medical services and medical equipment in their possession available to her.<sup>2994</sup> Witness ZK and Witness XC, former detainees at the School, confirmed that the ABiH medical personnel had given the woman doctor the medicine they had<sup>2995</sup> and Witness AH confirmed that Dr Ribić collaborated with the woman doctor.<sup>2996</sup> Suad Menzil stated that he visited the prisoners at the School four or five times, each time accompanied by the woman doctor.<sup>2997</sup>

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<sup>2985</sup> Witness XC, T(F) p. 1698.

<sup>2986</sup> P 393, (under seal), para. 19; Witness HB, T(F) p. 12602.

<sup>2987</sup> Ivanka Tavić, T(F) pp. 1173 and 1176; Witness XC, T(F) p. 1699.

<sup>2988</sup> Witness HB, T(F) p. 12602.

<sup>2989</sup> Ivanka Tavić, T(F) p. 1176.

<sup>2990</sup> Witness HE, T(F) p. 17082.

<sup>2991</sup> Enes Ribić, T(F) pp. 11397 and 11420.

<sup>2992</sup> Enes Ribić, T(F) p. 11397.

<sup>2993</sup> Enes Ribić, T(F) p. 11397; Suad Menzil, T(F) p. 14109.

<sup>2994</sup> Enes Ribić, T(F) p. 11386; Suad Menzil, T(F) p. 14109.

<sup>2995</sup> Witness XC, T(F) p. 1727; Witness ZK, T(F) p. 4367.

<sup>2996</sup> Witness AH, T(F) p. 1249.

<sup>2997</sup> Suad Menzil, T(F) pp. 14156-14157.

1318. According to Witness XC, Davo Tajić, a man who was already ill when he arrived at the gymnasium, died while in detention.<sup>2998</sup> Furthermore, a young pregnant woman stated that she had a miscarriage and fell seriously ill, as a result of which she was very debilitated at the end of her period of detention.<sup>2999</sup>

1319. According to the ICRC report, on 19 June 1993 representatives of the ICRC visited a detention centre in the village of Mehurići and registered 27 prisoners.<sup>3000</sup> Witness XC stated that before the ICRC visit, civilian police entered the gymnasium with a list and took away a number of prisoners whose names were on it, including Witness XC, to another building not far from the School.<sup>3001</sup> In that other building, the detainees brought there met the representatives of the ICRC and were given registration cards and questionnaires intended to inform their families.<sup>3002</sup> Witness XC met other Croatian detainees there who were imprisoned in the sports room, including some women and children, who were subsequently taken to the gymnasium.<sup>3003</sup> In contrast, after that visit, Witness XC together with other prisoners was taken to the Mehurići Blacksmith Shop.<sup>3004</sup> According to some Defence witnesses, however, the ICRC representatives met the civilians in the sports room, or drew up lists of the persons held in the gymnasium.<sup>3005</sup> According to Ferid Jašarević, a 306<sup>th</sup> Brigade soldier, the ICRC representatives made no remarks concerning the conditions in which the civilians were housed at the School.<sup>3006</sup>

## ii. Mehurići Blacksmith Shop

1320. On the basis of the evidence adduced the Chamber will now consider the situation obtaining at the Mehurići Blacksmith Shop. The Blacksmith Shop, or former smithy, is a brick building about one hundred metres from the Mehurići School gymnasium and consists of six rooms, two of which were used as places of detention.<sup>3007</sup> Prisoners were held there on three different occasions: the first time following the arrests on Mount Vlasici on 6 June 1993,<sup>3008</sup> the second time following the

<sup>2998</sup> Witness XC, T(F) p. 1698.

<sup>2999</sup> Witness ZF, T(F) pp. 3599 and 3610.

<sup>3000</sup> P 165.

<sup>3001</sup> Witness XC, T(F) pp. 1707 and 1716.

<sup>3002</sup> Witness XC, T(F) pp. 1707 and 1716.

<sup>3003</sup> Witness XC, T(E), p. 1707.

<sup>3004</sup> Witness XC, T(F) pp. 1707-1708.

<sup>3005</sup> Ferid Jašarević, T(F) p. 11591; Suad Menzil, T(F) pp. 14116-14117; Witness HE, T(F) pp. 16982 and 17094.

<sup>3006</sup> Ferid Jašarević, T(F) p. 11561.

<sup>3007</sup> Vinko Tadić, T(F) p. 1893; Sejad Jusić, T(F) pp. 11165-11166. *See* photographs P 42; P 43; P 44; P 45; P 46 and P 47 and videocassette P 761.

<sup>3008</sup> Vinko Tadić, T(F) pp. 1892-1893; Witness AH, T(F) p. 1224.

outbreak of fighting between the HVO and the ABiH in Maline on 8 June 1993,<sup>3009</sup> and the third time following the visit by the ICRC on 19 June 1993.<sup>3010</sup> On 6 June 1993, the two detention rooms at the Blacksmith Shop housed some ten detainees<sup>3011</sup> but after the events in Maline on 8 June 1993, the number of detainees in each of the two rooms increased to about 10 or 15, totalling 20 to 30 persons.<sup>3012</sup> The detainees brought to the Blacksmith Shop were mainly HVO soldiers but also Bosnian Croat civilians, including a woman and a minor.<sup>3013</sup> Among them were Witness XC, Witness Vinko Tadić, Zejko Pušelja, Jozo Tadić, Ferdo Tadić, Mato Tadić, Nikola Volić, Dragan Volić, Frano Volić, his wife Ljuba Volić, Mladen Volić, another person identified as Frano Volić, Mijo Jelović, Ivica Janković, Stipo Pesa and Seljo Jurić.<sup>3014</sup>

1321. The witnesses are consistent in saying that the prisoners at the Blacksmith Shop were guarded by the civilian police. Accordingly, Witness XC stated that the civilian police guarded the Blacksmith Shop and escorted the detainees held there to the School building, where the army then took charge of them.<sup>3015</sup> Several witnesses for the Defence for the Accused Hadžihasanović, including Sejad Jusić, the chief of the civilian police in Mehurići, stated that the role of the civilian police was to protect the persons detained at the smithy.<sup>3016</sup> Sejad Jusić made it clear that the civilian police did not interrogate the detainees and had the sole task of guarding them.<sup>3017</sup>

1322. The Chamber heard two former prisoners held in the Blacksmith Shop, Witness XC and Vinko Tadić, testify about the mistreatment suffered by the detainees held at the Blacksmith Shop. They drew a distinction between two periods in which the detainees underwent such treatment. The first period was during the interrogations carried out by members of the Zenica Military Police, that is, two or three days between 10 and 20 June 1993.<sup>3018</sup> The second period related to the end of their imprisonment at the Blacksmith Shop, that is, after the exchange of civilians on 24 June 1993 and before their departure from the Blacksmith Shop on 4 July 1993.

<sup>3009</sup> Vinko Tadić, T(F) p. 1905.

<sup>3010</sup> Witness XC, T(F) pp. 1707-1708.

<sup>3011</sup> Vinko Tadić, T(F) pp. 1893 and 1905; P 92 (under seal), paras. 32 and 33.

<sup>3012</sup> Vinko Tadić, T(F) pp. 1905-1906; Witness XC, T(F) pp. 1709-1710; Asim Delalić, T(F) p. 16397.

<sup>3013</sup> Witness XC, T(F) pp. 1708-1710 and 1713; P 92 (under seal), para. 33.

<sup>3014</sup> Vinko Tadić, T(F) pp. 1889, 1893 and T(E) p. 1911; Witness XC, T(F) pp. 1709-1710; P 92 (under seal), para. 33.

<sup>3015</sup> Witness XC, T(F) p. 1729.

<sup>3016</sup> Sejad Jusić, T(F) p. 11165; Asim Delalić, T(F) p. 16407; Witness HE, T(F) p. 16989.

<sup>3017</sup> Sejad Jusić, T(E) p. 11189.

<sup>3018</sup> The Chamber notes that the interrogations carried out by members of the Zenica police took place during the two days or so when Haris Jusić was present at the School to take statements from Croatian detainees: Haris Jusić, T(F) 11219-11220 and 11256. As mentioned earlier in the Judgement (*see supra* para. 1311), Haris Jusić started his mission on 10 or 11 June 1993 and ended his mission approximately one week later: Haris Jusić, T(F) p. 11221 ; Asim Delalić, T(E) p. 16397.

1323. As regards the first period, Vinko Tadić described the manner in which the interrogations were organised. Over two or three consecutive days, the detainees were taken one by one to a building where two men in military uniform with white belts were waiting for them.<sup>3019</sup> The two soldiers were introduced to him as military police from Zenica.<sup>3020</sup> One of them threatened him with a knife<sup>3021</sup> while they asked him questions of a military nature, such as the position of the Croatian forces, of which he was completely ignorant.<sup>3022</sup> Although he did not claim that he personally had been abused during the interrogations, Vinko Tadić stated that the interrogations were calculated to harass, intimidate and physically assault the detainees.<sup>3023</sup> He illustrated this by stating that a young detainee, Ivica Janković, sustained a serious head wound during one of these interrogations.<sup>3024</sup>

1324. As regards the second period, Witness XC and Vinko Tadić testified to the Chamber that several detainees held at the Blacksmith Shop had been beaten on three other occasions: first, during the interrogations; second, during the cleaning work and, third, on the way to the toilets. First, even though he was not an eyewitness of the events, Witness XC described how two of his fellow detainees, Stipo Pesa and Zeljo Jurić, were subjected to physical violence during the interrogations at the end of their period of detention.<sup>3025</sup> He stated that, after admitting that he knew where a weapon was hidden, Stipo Pesa was taken to the place he indicated, but since the weapon was no longer there, he was beaten all the way back while his hands were tied behind his back.<sup>3026</sup> According to Witness XC, when Pesa returned to the Blacksmith Shop, his back was covered with bruises.<sup>3027</sup> He likewise stated that Zeljo Jurić was forced to reveal where a sum of money was hidden and that when the money was not found, he was beaten, somewhat less violently this time.<sup>3028</sup> Witness XC made it clear that he himself was never mistreated.<sup>3029</sup> Lastly, Ivanka Tavić stated that a detainee housed at the Blacksmith Shop, Željko Pušelja, was seriously injured in the arm and that his health worsened after each interrogation.<sup>3030</sup> She stated that Željko Pušelja became

<sup>3019</sup> Vinko Tadić, T(F) p. 1907. The Chamber notes that, in view of the information provided by Witness Vinko Tadić about the place where the interrogations took place, this could only be the Mehurić School building: T(F) pp. 1897 and 1900.

<sup>3020</sup> Vinko Tadić, T(E) p. 1907.

<sup>3021</sup> Vinko Tadić, T(E) p. 1907.

<sup>3022</sup> Vinko Tadić, T(E) p. 1907.

<sup>3023</sup> Vinko Tadić, T(E) p. 1911.

<sup>3024</sup> Vinko Tadić, T(E) p. 1911.

<sup>3025</sup> Witness XC, T(F) p. 1713.

<sup>3026</sup> Witness XC, T(F) pp. 1711-1712.

<sup>3027</sup> Witness XC, T(E) p. 1711.

<sup>3028</sup> Witness XC, T(E) p. 1711.

<sup>3029</sup> Witness XC, T(F) p. 1726.

<sup>3030</sup> Ivanka Tadić, T(F) p. 1177. The Chamber notes that Željko Pušelja is a survivor of the executions of Maline in which he was seriously injured: Vinko Tadić, T(F) p. 1908; DH 10 (confidential). The Chamber further notes that Haris Jusić stated that he interrogated Željko Pušelja and observed that his arm was bandaged up to the elbow and his condition seemed to be normal: T(F), pp. 11261-11262.

an invalid as a result of the violence he suffered at the School.<sup>3031</sup> Second, Vinko Tadić stated that, after the exchange of civilians on 24 June 1993, he was forced to do cleaning work, which is when he went to the first floor of the School. There, all the detainees in his group, himself included, were beaten with wooden sticks by soldiers in the corridor.<sup>3032</sup> Third, Witness XC stated that on the last day of their detention, a group of detainees was taken away and came back to the Blacksmith Shop covered with bruises caused by blows.<sup>3033</sup>

1325. Several Defence witness, however, such as Witness HE, Dr Enes Ribić and Suad Menzil, stated that they never heard about mistreatment meted out to detainees held at the Blacksmith Shop.<sup>3034</sup> Dr Enes Ribić emphasised that he never heard cries or groans coming from the Blacksmith Shop.<sup>3035</sup> Suad Menzil stated that he could see personally that the detainees held at the Blacksmith Shop did not show any signs of mistreatment, but admits that they seemed to be terrified.<sup>3036</sup>

1326. Next, Witness XC and Vinko Tadić testified about the detention conditions in which the prisoners held at the Blacksmith Shop lived. In each of the two detention rooms, some 10 to 15 detainees were confined in an area of two or three metres by three metres.<sup>3037</sup> The rooms were unlit, since the only opening of thirty centimetres in diameter, initially intended to ventilate each room, was blocked with a piece of cloth.<sup>3038</sup> As for the conditions in which the detainees had to sleep, practically nothing was provided: three wooden benches were made available, the floor was concrete, and there was only one blanket for all the detainees.<sup>3039</sup> The overcrowding in each of the two rooms was such that the detainees were unable to sleep.<sup>3040</sup> Witness XC heard that in the other room of the Blacksmith Shop the detainees had to remain seated, and that there was no room for

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<sup>3031</sup> Ivanka Tadić, T(F) p. 1177.

<sup>3032</sup> Vinko Tadić, T(E) p. 1913. The Chamber notes that Vinko Tadić stated that the soldiers on the first floor were members of the ABiH, T(F) p. 1909.

<sup>3033</sup> Witness XC, T(E) p. 1713.

<sup>3034</sup> Enes Ribić, T(F) p. 11390; Witness HE, T(F) p. 16988; Suad Menzil, T(F) p. 14148.

<sup>3035</sup> Enes Ribić, T(F) pp. 11404-11405. The Chamber notes that Dr Enes Ribić stated that he saw silhouettes of persons through the window of the Blacksmith Shop without entering it and that he did not treat persons from the Blacksmith Shop; T(F) pp. 11389-11390, 11399 and 11404.

<sup>3036</sup> Suad Menzil, T(F) p. 14116 and T(E) p. 14157.

<sup>3037</sup> Witness XC, T(F) p. 1710; Vinko Tadić, T(F) pp. 1893-1894; Witness AH, T(F) p. 1224.

<sup>3038</sup> Vinko Tadić, T(F) pp. 1893-1894; Witness AH, T(F) p. 1224.

<sup>3039</sup> Witness XC, T(F) p. 1710; Vinko Tadić, CFR pp. 1893, 1901 and 1905-1906.

<sup>3040</sup> Witness XC, T(F) p. 1710;

them to extend their legs in order to rest.<sup>3041</sup> Witness XC stated that the detainees were allowed to go outside the Blacksmith Shop only rarely.<sup>3042</sup>

1327. During the first three or four days of incarceration at the Blacksmith Shop, the detainees were virtually deprived of food and water.<sup>3043</sup> After the first three or four days, they received a can of food and a loaf of bread from time to time to share between detainees.<sup>3044</sup> That under-nourishment caused the detainees to lose weight: Vinko Tadić stated that he lost 26 kilos during his incarceration.<sup>3045</sup> Nevertheless, Asim Delalić, 306<sup>th</sup> Brigade Assistant Commander for Military Security, stated that the prisoners held at the Blacksmith Shop were given three meals a day.<sup>3046</sup> As for the sanitary conditions, Vinko Tadić stated that at the beginning of the detention, the detainees had to make do with a slop pail for a toilet and that, later, the detainees were accompanied to a toilet.<sup>3047</sup>

1328. Several witnesses raised the question of prisoners' access to medical treatment at the Blacksmith Shop. Defence Witnesses Asim Delalić and Suad Menzil stated that medical treatment was given and, in support of that statement, Suad Menzil mentioned that he went to the Blacksmith Shop five or six times and that, following a complaint of high blood pressure, a sick detainee was given medical treatment.<sup>3048</sup> He added that during his visits he did not notice any injured persons, although the prisoners seemed to be terrified.<sup>3049</sup> In contrast, Vinko Tadić states that following an interrogation, a fellow detainee, Ivica Janković, was seriously injured in the head and was refused treatment, with the result that the detainees had to manage themselves to staunch the flow of blood from his injuries.<sup>3050</sup> Likewise, Ivanka Tavić stated that Željko Pušelja had a serious injury to his arm, that the arm was fractured and that he had lost a lot of blood, with the result that the woman doctor present among the detainees at the School asked that he be transferred immediately to the hospital in Zenica, which was refused. Instead, Željko Pušelja was taken repeatedly to the interrogation office and each time he returned, his health deteriorated.<sup>3051</sup> Dr Enes Ribić explained

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<sup>3041</sup> Witness XC, T(F) p. 1710.

<sup>3042</sup> Witness XC, T(F) p. 1711.

<sup>3043</sup> Vinko Tadić, T(F) p. 1906.

<sup>3044</sup> Vinko Tadić, T(F) p. 1906.

<sup>3045</sup> Vinko Tadić, T(F) p. 1910. Vinko Tadić stated that he had psychological and physical side effects as a result of the mistreatment he suffered at the Mehurići Blacksmith Shop and was 70 % invalid. The Chamber notes that Vinko Tadić stated that this was not only the result of the violence he suffered during his incarceration but also of the injuries he received after his detention at the Blacksmith Shop: T(F) pp. 1910 and 1912.

<sup>3046</sup> Asim Delalić, T(E) p. 16369.

<sup>3047</sup> Vinko Tadić, T(F) p. 1906.

<sup>3048</sup> Asim Delalić, T(E) p. 16369; Suad Menzil, T(F) p. 14153. *See also* Haris Jusić, T(F) 11221-11222.

<sup>3049</sup> Suad Menzil, T(F) p. 14116.

<sup>3050</sup> Vinko Tadić, T(F) p. 1911.

<sup>3051</sup> Ivanka Tavić, T(F) p. 1177.



that he had not treated the detainees at the Blacksmith Shop.<sup>3052</sup> Lastly, several witnesses agree that ICRC representatives visited and registered the detainees held at the Blacksmith Shop.<sup>3053</sup>

1329. In the meantime on 12 June 1993, following an agreement reached on 10 June 1993 in Kiseljak between the HVO and the ABiH on the cessation of hostilities between the two armed forces,<sup>3054</sup> the Accused Hadžihasanović forwarded to the subordinated units an order of 11 June 1993 from the ABiH Supreme Command relating to the creation of a joint humanitarian commission for supervising the release of all prisoners.<sup>3055</sup> On 13 June 1993, the Accused Hadžihasanović ordered the subordinate units to provide him, by no later than 14 June 1993, the list of detention centres, the number of prisoners and the status (civilian or HVO soldier) of the persons detained by those units.<sup>3056</sup> On 14 June 1993, pursuant to that order, Mehmet Alagić authorised Enes Adžemović, a member of the OG *Bosanska Krajina* Command, to carry out an inspection of the ABiH units in the village of Mehurići to collect information about the captured members of the HVO and Croatian civilians.<sup>3057</sup>

1330. On the same day, 14 June 1993, Rasim Delić, acting pursuant to the agreement of 10 June 1993, ordered Stjepan Šiber to release all the prisoners who had not committed crimes likely to be prosecuted, and stated that this distinction would fall within the jurisdiction of a joint humanitarian commission composed of representatives of the two armed forces, the ICRC, the HCR, the European Community and UNPROFOR.<sup>3058</sup> On 16 June 1993, Stjepan Šiber asked the 3<sup>rd</sup> Corps Command to guarantee free and safe passage for the released prisoners and the ICRC representatives in the territory under its control.<sup>3059</sup> Pursuant to that order and to the order to release the prisoners, Ramiz Dugalić, the 3<sup>rd</sup> Corps Assistant Commander for Military Security, ordered the subordinate unit commanders to permit the passage of the released prisoners, the representatives of the ICRC and UNPROFOR.<sup>3060</sup> Next, on 20 June 1993, the Accused Hadžihasanović informed the subordinated units *inter alia* that the exchange would be guaranteed by the formation of a commission which would visit all the towns where prisoners were held.<sup>3061</sup>

<sup>3052</sup> Enes Ribić, T(F) pp. 11399 and 11404.

<sup>3053</sup> Vinko Tadić, T(F) pp. 1911-1912; Suad Menzil, T(F) pp. 14116-14117; Witness HE, T(F) pp. 16988-16989.

<sup>3054</sup> DH 163.3; DH 163.4.

<sup>3055</sup> DH 163.6.

<sup>3056</sup> P 157.

<sup>3057</sup> P 425.

<sup>3058</sup> DH 163.7.

<sup>3059</sup> DH 163.9.

<sup>3060</sup> DH 163.11.

<sup>3061</sup> DH 163.12.

1331. On 23 June 1993, the joint humanitarian commission, consisting in particular of Ivan Negotević and Fadil Alihodžić for the ABiH, and Lars Baggesen for the ECMM, went to the village of Skradno in the municipality of Busovača, where approximately 90 Muslim civilians from the village of Velika Bukovica were detained by the HVO, and also to the village of Mehurići, with Salko Beba, where they found that 247 Croatian civilians were being held in the gymnasium of the Mehurići School.<sup>3062</sup> On 24 June 1993, following an exchange agreement reached between the ABiH and the HVO, the Croatian civilians held at the Mehurići School were exchanged for Muslim civilians held in Skradno, while a few men were taken to the KP Dom in Zenica.<sup>3063</sup>

1332. The detainees held at the Blacksmith Shop remained incarcerated until they were transferred to the KP Dom in Zenica on 4 July 1993.<sup>3064</sup> On that day, Mehmet Alagić ordered Asim Delalić, 306<sup>th</sup> Brigade Assistant Commander for Military Security, to assemble the prisoners of war from the ABiH prisons in Krpeljići, Mehurići and Han Bila by 1800 hours and to take them at that time to the KP Dom in Zenica.<sup>3065</sup> The transfer to the KP Dom, under the terms laid down in the order of 4 July 1993, is confirmed by Witness HE and Asim Delalić, who stated that the transport to the KP Dom in Zenica was ultimately by bus.<sup>3066</sup> Witness XC stated that he was incarcerated in the KP Dom in Zenica until 16 October 1993, when he was exchanged with another group of captured HVO soldiers.<sup>3067</sup>

b. Mistreatment, Paragraph 42(c) and (d)

1333. After careful consideration of that evidence, the Chamber finds that none of the nine persons held in the School gymnasium who testified before the Tribunal stated that he had personally suffered mistreatment during his stay. One of those witnesses, however, stated that he heard that another detainee had been hit during an interrogation,<sup>3068</sup> and another that he saw signs of mistreatment on one of the detainees returning from interrogation.<sup>3069</sup> Three witnesses, however, made no mention of any physical violence,<sup>3070</sup> three stated that they were treated properly during their detention,<sup>3071</sup> and one stated that he had seen no signs of mistreatment on the men returning

<sup>3062</sup> DH 167.7; P 430/DH 243 (under seal).

<sup>3063</sup> Witness ZL, T(F) p. 4368; P 393 (under seal), para. 21; Witness AH, T(F) p. 1222; DH 1915 and DH 167.8.

<sup>3064</sup> Vinko Tadić, T(F) p. 1909; Witness XC, T(F) pp. 1708 and 1715.

<sup>3065</sup> P 104.

<sup>3066</sup> Asim Delalić, T(F) pp. 16370 and 16409.

<sup>3067</sup> Witness XC, T(F) pp. 1730-1731.

<sup>3068</sup> Witness XC, T(F) p. 1701.

<sup>3069</sup> Ivanka Tavić, T(F) p. 1177.

<sup>3070</sup> Witness ZF, T(F) p. ; P 396 (under seal); P 397 (under seal).

<sup>3071</sup> P 92 (under seal), para. 35; Witness ZL, T(E) p. 4405; P 393 (under seal), paras. 18-21.

from interrogation.<sup>3072</sup> Moreover, with regard to the persons held in the gymnasium, Witness Lars Baggesen stated that “during the circumstances, we think that they were well treated”<sup>3073</sup> and did not mention any mistreatment.

1334. Accordingly, the Chamber finds that two cases of mistreatment were reported, one by Witness XC, the other by Ivanka Tavić, and that both cases related to mistreatment during interrogations.<sup>3074</sup> The evidence indicates that the interrogations were carried out solely on captured HVO soldiers or on Croatian detainees of weapon-bearing age likely belonging to the HVO who were detained, except for a very small number of cases, in the Blacksmith Shop, and not on Croatian civilians detained in the gymnasium not suspected of having directly participated in the hostilities.<sup>3075</sup> That finding is borne out by the fact that Witness XC was a soldier in the HVO<sup>3076</sup> and the person he heard being beaten was very probably detained at the Blacksmith Shop.<sup>3077</sup> Furthermore, the Chamber notes that the testimony of Ivanka Tavić is contradicted by Witness AH, who stated that he saw no signs of mistreatment on detainees returning from interrogation.<sup>3078</sup>

1335. On the basis of the foregoing, the Chamber considers that since the testimony relating to mistreatment of detainees held in the gymnasium comes from a small number of witnesses and is uncorroborated, it does not prove beyond a reasonable doubt that serious physical violence was used against Croatian civilian detainees imprisoned in the sports room.

1336. As for the conditions of detention, the Chambers finds that while the 10-by-15 metre gymnasium was too small to accommodate approximately 250 prisoners, the witnesses did not generally complain of lack of space or overcrowding in the sports room. Furthermore, even though the food was of poor quality and distributed in small amounts, the testimony is not such as to establish that there was a serious lack of food at the School. The detainees were fed and received food from the Civilian Protection and villagers of Mehurići. The School had running water in the toilets to which the detainees had access. Witness Lars Baggesen stated, moreover, that during his visit on 23 June 1993, “we spoke with [the persons detained in the gymnasium] and they said, ‘Okay, we have something to drink, we have something to eat. We can have fresh air.’”<sup>3079</sup> In

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<sup>3072</sup> Witness AH, T(F) p. 1223.

<sup>3073</sup> Lars Baggesen, T(F) p. 7071.

<sup>3074</sup> Witness XC, T(F) p. 1701; Ivanka Tavić, T(F) p. 1177.

<sup>3075</sup> Haris Jusić, T(F) pp. 11218-11219; Asim Delalić, T(F) pp. 16369 and 16395-16396; DH 2091, para. 10; Witness XC, T(F) pp. 1700-1701, 1711-1712 and 1728; Vinko Tadić, T(F) pp. 1907 and 1911.

<sup>3076</sup> Witness XC, T(F) p. 1678.

<sup>3077</sup> Witness XC, T(F) pp. 1701 and 1709.

<sup>3078</sup> Witness AH, T(F) p. 1223.

<sup>3079</sup> Lars Baggesen, T(F) p. 7071.

addition, the testimony does not show that there was any intention to starve the people detained or that there was any difference of treatment between the detainees and the soldiers present at the School. In contrast, blankets were not distributed to the detainees in sufficient numbers. As for the sanitary conditions, the witnesses generally agree in stating that the sanitary facilities, namely only one toilet, were insufficient in view of the large number of detainees. Conversely, the testimony is inconsistent as regards access to a shower. Next, the witness statements show that, in general, medicine and medical personnel, including a doctor, a military reservist doctor and a medical assistant, were made available to the detainees. Moreover, no witness from the School complained of not having received medical treatment. Lastly, during the 17 days of detention, the ICRC was authorised to visit the detainees held at the School.

1337. In conclusion, even though the detention conditions at the School could most probably be regarded as inadequate during normal times, the general situation of the detainees housed in the School gymnasium does not appear to the Chamber to have been so serious as to evidence a deliberate intention to harm or damage the physical integrity or health of the persons concerned. Consequently, the Accused Hadžihasanović cannot be held responsible for the count of mistreatment on this basis.

1338. Conversely, the Chamber finds that the detainees held at the Blacksmith Shop were treated very differently. The testimony as to physical violence suffered by detainees at the Blacksmith Shop is specific, consistent and detailed and, as a result, the Chamber finds it credible. The Chamber considers that, despite the fact that only two Prosecution witnesses, Witness XC and Vinko Tadić, were called by the Prosecution to testify about the physical violence inflicted on the detainees at the Blacksmith Shop, their testimony is supported to a certain extent by Ivanka Tavić, even though she named only one specific victim, and is such as to convince the Chamber that repeated cruel treatment was meted out to the detainees at the Blacksmith Shop. The Chamber concludes, moreover, that it appears from that testimony that the perpetrators of the cruel treatment intended to cause the prisoners at the Blacksmith Shop serious pain and suffering.

1339. As far regards the perpetrators of the mistreatment, a distinction should be made between the two above-mentioned periods during which the crimes of mistreatment were committed.<sup>3080</sup> As regards the first period, the testimony of Vinko Tadić shows that the interrogations accompanied by beatings were carried out by members of the Zenica Military Police.<sup>3081</sup> Moreover, as previously indicated in the Judgement, Haris Jusić informed the Chamber that two officers of the Zenica 3<sup>rd</sup>

<sup>3080</sup> See *supra* para. 1322.

<sup>3081</sup> Vinko Tadić, T(E) p. 1907.

Corps, whom he regarded as his superiors, arrived at the School in Mehurići to take statements from certain persons.<sup>3082</sup> He did not mention the arrival at the School of other officers from Zenica responsible for interrogating the detainees. Consequently, in the Chamber's opinion, the perpetrators of the mistreatment meted out during the interrogations in question can belong only to the ABiH 3<sup>rd</sup> Corps Military Police. Paragraph 42(d) of the Indictment, however, alleges that mistreatment was inflicted on detainees by ABiH 3<sup>rd</sup> Corps 306<sup>th</sup> Brigade soldiers. As a result, the Chamber finds that, as regards the first period indicated, the evidence adduced by the Prosecution during the trial does not correspond to the material fact set out in the Indictment relating to the identity of the subordinates. In line with its previous finding,<sup>3083</sup> the Chamber considers the Indictment is vitiated by an error which should have prompted the Prosecution to apply to the Chamber for leave to amend the Indictment accordingly. Since no such application has been received by the Chamber, it concludes that it need not rule on this matter.

1340. As for the second period, the Chamber finds that with regard to the mistreatment of the detainees in the Blacksmith Shop on the occasion of the cleaning work, Vinko Tadić testified to the Chamber that the treatment was meted out on the first floor of the School by soldiers in the corridor.<sup>3084</sup> He stated that he already knew some of those soldiers by sight and that they were not civilian police.<sup>3085</sup> As for the beatings of the detainees at the Blacksmith Shop during the interrogations and on the way to the toilets, as described by Witness XC, the Chamber finds that he gave no indication of the identity of the attackers. The Chamber notes, however, that the witnesses systematically stated that the interrogations were carried out in the building of the Mehurići Elementary School.<sup>3086</sup> The Chamber considers that the aforementioned testimony of Vinko Tadić, combined with the finding that during this period the only ABiH soldiers present at the School responsible for interrogating Croatian detainees belonged to the OG *Bosanska Krajina* 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion,<sup>3087</sup> is such as to prove beyond a reasonable doubt that the perpetrators of the mistreatment in question were members of the 3<sup>rd</sup> Corps 306<sup>th</sup> Brigade.

1341. As to the detention conditions at the Blacksmith Shop, while it appears from consideration of the evidence that the amount of the rations varied somewhat over the period in question, the

<sup>3082</sup> Haris Jusić, T(F) pp. 11255-11257 and 11264, T(E) p. 11260.

<sup>3083</sup> See the part of the Judgement relating to the duty to inform an accused of the nature of and the reasons for the charges brought against him.

<sup>3084</sup> Vinko Tadić, T(E) p. 1913. The Chamber notes that Vinko Tadić stated that the soldiers on the first floor belonged to the ABiH, T(F) p. 1909.

<sup>3085</sup> Vinko Tadić, T(F) p. 1914.

<sup>3086</sup> Witness XC, T(F) pp. 1712-1713 and 1728; Vinko Tadić, T(F) pp. 1897, 1900 and 1907.

<sup>3087</sup> Witness XC, T(F) p. 1696; Halim Husić T(F) pp. 10883, 10897 and 10910; Derviš Suljić, T(F) pp. 11303-11304; Sulejman Ribo, T(F) p. 11092; Esed Sipić, T(F) p. 14749; Witness HB, T(F) p. 12583; Munir Karić, T(F) p. 11448.

Chamber has no doubt that the food given to the detainees was in any event insufficient. Moreover, the testimony leaves no doubt as to the small amount and therefore definite inadequacy of the space available for 10 to 15 detainees per cell and the degree of discomfort in which the detainees were forced to sleep. The detainees did not have blankets, beds or even mattresses on which to sleep, and there were too many detainees to allow them all to lie down. Furthermore, even though the testimony is inconsistent as to access to medical care at the Blacksmith Shop, the Chamber is not convinced by the efforts of the Defence for the Accused Hadžihasanović to show that the detainees at the Blacksmith Shop were properly cared for. It finds that, of the two Defence witnesses who stated that medical treatment was provided to the prisoners at the Blacksmith Shop, Suad Menzil and Asim Delalić, the latter did not mention having seen a detainee at the Blacksmith Shop, except on one occasion for a few minutes at an interrogation,<sup>3088</sup> and hence, in the Chamber's opinion, that testimony is not reliable on this point. Lastly, the fact that the prisoners at the Blacksmith Shop were confined in a room without any light persuades the Chamber that the detainees were exposed to conditions such as clearly to violate their human dignity, punishable as cruel treatment. In addition, the Chamber concludes that these privations and conditions were the result of a deliberate decision and not the result of necessity insofar as the conditions obtaining at the School – albeit insufficient in normal times – were much better than those at the Mehurići Blacksmith Shop. Lastly, the OG *Bosanska Krajina* and the 306<sup>th</sup> Brigade were *de facto* the authorities with the power to decide on the detention of the persons incarcerated at the Blacksmith Shop and on maintaining the detention and transferring those prisoners.<sup>3089</sup> Consequently, responsibility for the detainees held at the Blacksmith Shop was borne entirely by the ABiH. The fact that the civilian police guarded the prisoners at the Blacksmith Shop is evidence solely of coordination between the civil and the military authorities and is capable in no case of affecting the conclusion that the detainees at the Blacksmith Shop came under the sole responsibility of the ABiH.

1342. The Chamber finds that the victims of the cruel treatment at the Blacksmith Shop were not directly involved in the hostilities. Indeed, the evidence adduced in the proceedings shows that the prisoners transferred to the Blacksmith Shop had the status of Bosnian Croat civilians<sup>3090</sup> or prisoners of war.<sup>3091</sup>

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<sup>3088</sup> Asim Delalić, T(F) pp. 16395-16397.

<sup>3089</sup> See *supra* paras. 1306, 1307 and 1332.

<sup>3090</sup> Vinko Tadić, T(F) p. 1910.

<sup>3091</sup> Witness XC, T(F) pp. 1678 and 1689; P 104.

1343. On the basis of the foregoing, the Chamber concludes that the elements of the crime of cruel treatment at the Mehurići Blacksmith Shop have been established for the period running from 6 June 1993 to 4 July 1993.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1344. The Chamber has concluded that the cruel treatment alleged in paragraph 42(c) and (d) of the Indictment was committed by soldiers of the OG *Bosanska Krajina* 306<sup>th</sup> Brigade. Since that Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time,<sup>3092</sup> it is presumed that the Accused Hadžihasanović exercised effective control over that unit and the perpetrators of the mistreatment belonging to it.<sup>3093</sup>

1345. Moreover, the evidence shows that the 306<sup>th</sup> Brigade was carrying out the orders of the Accused Hadžihasanović through the intermediary of the OG *Bosanska Krajina*. For example, following an order by the Accused Hadžihasanović on 13 June 1993 to the subordinated units to provide him with a list of detention centres and the number and status of the prisoners held by those units,<sup>3094</sup> Mehmet Alagić, the OG *Bosanska Krajina* Commander, ordered one of its members, Enes Adžimović, to inspect the units stationed at Mehurići School in order to gather information about the members of the HVO and the Croatian civilians who had been captured.<sup>3095</sup>

1346. Likewise, the Defence for the Accused Hadžihasanović does not dispute the fact that the 306<sup>th</sup> Brigade was subordinated to the Accused Hadžihasanović and adduced no evidence to rebut that presumption.

1347. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the mistreatment and that there was a superior-subordinate relationship within the meaning of Article 7(3) of the Statute.

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<sup>3092</sup> See *supra* para. 391.

<sup>3093</sup> See *supra* para. 79.

<sup>3094</sup> P 157.

<sup>3095</sup> P 425.

b. Knowledge of Enver Hadžihasanović

1348. The Prosecution submits that the Accused Hadžihasanović had reason to know and knew that his subordinates were committing crimes at the Mehurići Blacksmith Shop. First, it submits that following the detention of the persons at the Blacksmith Shop, the Accused Hadžihasanović had knowledge such that he was under a duty to obtain information about the said detention conditions there. It bases itself on the fact that Mehmet Alagić asked for information about the detention centres and the persons imprisoned in Mehurići and released a civilian held captive in his zone of control.<sup>3096</sup> Second, it alleges, on the basis of Exhibit P 904, that the Accused Hadžihasanović was actually informed of the situation during a meeting held on 19 June 1993 in the presence of, among others, Tihomir Blaškić.<sup>3097</sup> Third, it submits, by reference to Exhibit P 589 and the testimony of Witness ZP, that the Accused Hadžihasanović was questioned by Witness ZP, his superior, about the detainees at the camp in Mehurići, and that the Accused Hadžihasanović answered that he would find out about the arrest of those detainees.<sup>3098</sup> Lastly, the Prosecution argues on the basis of Exhibit P 431, in which Witness ZP informed the Presidency of the Republic of Bosnia and Herzegovina and the ABiH Supreme Command Main Staff Commander about specific problems within the 3<sup>rd</sup> Corps, notably in connection with the mistreatment of civilians in Mehurići.<sup>3099</sup>

1349. The Defence for the Accused Hadžihasanović submits that the Accused Hadžihasanović had no knowledge of the alleged mistreatment.<sup>3100</sup> In support of this submission, the Defence argues that, while Salko Beba was informed, further to the report from Enes Adžemović, that there were 10 to 15 HVO soldiers held at the Mehurići Blacksmith Shop, he was not informed of any mistreatment against them.<sup>3101</sup> Moreover, it alleges that weight should not be given to the documents from Witness ZP, in as much as Witness ZP himself recognised at the time he wrote his reports that he did not have good information.<sup>3102</sup>

1350. First, the Chamber finds that on 19 June 1993, a meeting took place between representatives of the HVO, the ABiH and the international community in Vitez in order to discuss in particular the release of the prisoners. Stjepan Šiber, the Accused Hadžihasanović and Džemal Merdan represented the ABiH and Tihomir Blaškić in particular represented the HVO. ECOMM

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<sup>3096</sup> Prosecution Final Brief, para. 253.

<sup>3097</sup> *Ibid.*, para. 254.

<sup>3098</sup> *Ibid.*, para. 255.

<sup>3099</sup> *Ibid.*, para. 256.

<sup>3100</sup> Hadžihasanović Defence Final Brief, para. 872.

<sup>3101</sup> *Ibid.*, paras. 866-867.



representative Jean-Pierre Thébault and UNPROFOR representative Alastair Duncan were also present. On this occasion, Tihomir Blaškić complained that the agreement on the release of prisoners was not being respected and emphasised the problem of the detainees held in Travnik, Mehurići and elsewhere. The 3<sup>rd</sup> Corps Commander responded to this complaint by stating that some of the towns mentioned were not in his zone of responsibility.<sup>3103</sup> In the absence of any other indication, the Chamber considers that the intervention of Tihomir Blaškić, like the response of the Accused Hadžihasanović, had to do only with the problems connected with the fact that the agreement concluded between the parties on the release of prisoners was not being respected and not, as the Prosecution alleges, with any mistreatment at Mehurići. This being so, the Chamber observes that, according to the ECMM report drafted after that meeting, the representatives of the two armed forces complained about the mistreatment of prisoners.<sup>3104</sup> When questioned about the report, however, Witness ZP stated that those complaints consisted of general criticisms and that no specific place of detention had been mentioned in connection with the issue of mistreatment.<sup>3105</sup> Consequently, the Chamber rejects the Prosecution's allegation with regard to this point as unfounded.

1351. Second, the Chamber notes that on 20 June 1993, Witness ZP put a series of questions orally to the Accused Hadžihasanović on the situation obtaining in his zone of responsibility. Among the list of questions recorded in Exhibit P 589, the second and third are as follows:

“2. [Do you know] [t]hat on 8 June 1993, in/? Bikoši/village near Guča Gora, about 35 people were executed by a firing squad. They were selected from the large number of arrested men because they were younger (four survived by chance) ? They are all from Maline village and they were detained in the Mehurići collection centre. (The answer to both questions was : 'I did not know'.)

3. Do you or your security organs know how many people have been arrested and are currently in the camp in Mehurići ? (The answer is : 'I do not know but I will check' )”<sup>3106</sup>

It appears from these passages that, while the questions sought to find out from the Accused Hadžihasanović what he knew about the existence and the number of prisoners held in Mehurići, it must be observed that they were not designed to inform him about the mistreatment suffered by the prisoners at Mehurići. Moreover, when questioned by the Chamber about the content of Exhibit P 589, Witness ZP merely stated that he remembered his conversation with the Accused

<sup>3102</sup> *Ibid.*, para. 869.

<sup>3103</sup> P 904.

<sup>3104</sup> P 213.

<sup>3105</sup> Witness ZP, T(F) pp. 8849-8851.

<sup>3106</sup> P 589.

Hadžihasanović and that it had taken place face to face in the Accused's office.<sup>3107</sup> Consequently, in the Chamber's opinion, there is no doubt that, on the basis of this evidence, the Accused Hadžihasanović could neither have known nor had reason to know that his subordinates were committing or were about to commit crimes of mistreatment against the prisoners held at the Mehurići Blacksmith Shop. Accordingly, the Chamber does not give credence to the Prosecution's argument on this point.

1352. Third, the Chamber finds that on 25 June 1993, following the conversation he had on 20 June 1993 with the Accused Hadžihasanović<sup>3108</sup> and a report of 23 June 1993 from the members of the joint humanitarian commission,<sup>3109</sup> Witness ZP sent the Presidency of the RBiH and the ABiH Supreme Command Main Staff Commander a report complaining of acute problems in the 3<sup>rd</sup> Corps and recommending changes of personnel within the 3<sup>rd</sup> Corps. The problems identified by Witness ZP included the following:

“On 22 June 1993, members of the Commission for the release of prisoners, Alihodžić and Negovetić learnt from Salko Beba from Operations group West, that on the previous day the mujahedin executed about 50 civilians in the vicinity of the village Mehurići near Vlašić. Salko Beba's unit is guarding 247 civilians in that village against the so-called “Death Brigade”, which is mistreating even the local Muslim population, looting and killing. On the same day mujahedin from that “Death Brigade”, who are attracting our soldiers with money, almost shot at UNPROFOR vehicles carrying the Commission members with Zolja and Osa/handheld rocket launchers/.

I emphasise: looting and crime prevail. Soldiers from the “positions” are carrying bags full of goods through Zenica, and I have received information that some refuse to go to positions unless there is something to loot (the 309<sup>th</sup> bbr/Mountain Brigade/). The police of certain brigades are still arresting and beating up civilians in basements. The MUP/Ministry of the Interior/, that is, the Security Services Centre, and the 3<sup>rd</sup> Corps security service are not cooperating whatsoever, as was seen by Mr. Ganić during his meeting at the 3<sup>rd</sup> Corps on 15 May 1993.”<sup>3110</sup>

When questioned by the Chamber about Exhibit P 431, Witness Džemal Merdan stated that he did not know how Witness ZP had that information.<sup>3111</sup> As for the content of the document, the Chamber would observe that the information set out in the first passage does not report crimes of mistreatment by subordinates of the Accused Hadžihasanović against the civilian population detained in Mehurići and also that the information set out in the second passage related to crimes of

<sup>3107</sup> Witness ZP, T(F) pp. 8816-8817. When Witness ZP gave evidence, the Chamber further questioned him on Exhibit P 589. The Chamber notes, however, that the additional remarks did not relate to the substance of his conversation on 20 June 1993 with the Accused Hadžihasanović or to the knowledge of the Accused Hadžihasanović about mistreatment inflicted on the detainees imprisoned in Mehurići. In making those additional remarks, Witness ZP stated that he had received oral information about mistreatment from Jean-Pierre Thébault but recognised that, while Jean-Pierre Thébault probably mentioned the names of certain places of detention, he no longer remembered them, T(F) pp. 8852-8854. In addition, the Chamber notes that Exhibit DH 1257, cited by the Defence for the Accused Hadžihasanović in footnote 831 of its Final Brief, was not produced in the proceedings as an admitted document.

<sup>3108</sup> P 589.

<sup>3109</sup> P 430/DH 243 (confidential).

<sup>3110</sup> P 431.

mistreatment by the police of some brigades in basements in Zenica. Consequently, that document could not serve in any way to substantiate the knowledge of the Accused Hadžihasanović of the physical violence inflicted on the persons detained at the Mehurići Blacksmith Shop.

1353. After considering the relevant evidence as to the possible knowledge of the Accused Hadžihasanović, the Chamber concludes that the Prosecution has not proved beyond a reasonable doubt that the Accused Hadžihasanović knew or had reason to know that his subordinates were preparing to commit, or had committed, mistreatment at the Mehurići Blacksmith Shop. As a result, it cannot conclude that the Accused Hadžihasanović is criminally responsible within the meaning of Article 7(3) of the Statute. Consequently, the Chamber need not consider the other constituent elements of command responsibility under the Statute.

(iv) Conclusions of the Chamber

1354. The Chamber considers that the evidence does not prove beyond a reasonable doubt that crimes of mistreatment were committed against Bosnian Croats detained at the Mehurići Elementary School. In addition, the Chamber concludes that there is no proof that the Accused Hadžihasanović knew or had reason to know that his subordinates were preparing to commit, or had committed, crimes of mistreatment at the Mehurići Blacksmith Shop. The Accused Hadžihasanović cannot therefore be held criminally responsible for the offence mentioned in count 4, paragraphs 41(bb) and 42(c) and (d) of the Indictment.

(f) Village of Orašac: Mistreatment of Prisoners and Beheading of Dragan Popović at Orašac Camp

1355. The Indictment alleges that Bosnian Croats and Bosnian Serbs were detained at Orašac camp, which was guarded and administered by mujahedin subordinated to the ABiH 3<sup>rd</sup> Corps OG *Bosanska Krajina*, from around 15 October 1993 to 31 October 1993, and were regularly subjected to mistreatment there. Allegedly, those detainees were seriously beaten and subjected to physical and psychological abuse inflicted by mujahedin subordinated to the OG *Bosanska Krajina*. The Indictment also alleges that mujahedin subordinated to the OG *Bosanska Krajina* committed the crime of murder, by ritually decapitating Dragan Popović, a Bosnian Serb civilian, on 20 October 1993 at Orašac camp. From around 26 January 1993 to 31 October 1993, the Accused Hadžihasanović knew or had reason to know that those mujahedin, placed under his command and

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<sup>3111</sup> Džemal Merdan, T(F) pp. 13750-13752.

effective control, were about to commit crimes of mistreatment, or had done so, and he failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>3112</sup>

1356. The Accused Hadžihasanović is therefore alleged to have committed cruel treatment and murder, violations of the laws or customs of war, punishable by Articles 3 and 7(3) of the Statute and recognised by common Article 3 of the Geneva Conventions.

(i) Arguments of the Parties

1357. The Prosecution alleges that the *El Mujahedin* unit administered a detention centre in Orašac from around 15 October 1993 to December 1993, that members of that unit abducted Bosnian Croats and Bosnian Serbs on two occasions, 15 October 1993 and 18 or 19 October 1993, and held them at Orašac camp.<sup>3113</sup> According to the Prosecution, they mistreated and threatened the prisoners and executed Dragan Popović, a Bosnian Serb civilian, by beheading him at Orašac camp.<sup>3114</sup> The Prosecution submits that the perpetrators of those crimes were under the effective control of the Accused Hadžihasanović<sup>3115</sup> and that the Accused Hadžihasanović had reason to know that his subordinates were about to commit the crimes of mistreatment and the murder of Dragan Popović and that subsequently he knew that his subordinates had committed those crimes.<sup>3116</sup> It maintains that he did not, however, take the necessary and reasonable measures to prevent the mistreatment and the murder or to punish the perpetrators.<sup>3117</sup>

1358. The Defence for the Accused Hadžihasanović does not dispute that the crimes of mistreatment and murder were committed by mujahedin, but alleges that they were perpetrated in an unknown place.<sup>3118</sup> It states, however, that the Accused Hadžihasanović did not exercise control over the mujahedin in Orašac<sup>3119</sup> and that he had knowledge neither of the abduction of Bosnian Croats and Bosnian Serbs nor of the crimes of mistreatment and murder.<sup>3120</sup> Lastly, it submits that, even though the mujahedin were not placed under the effective control of the 3<sup>rd</sup> Corps, the military authorities took every possible measure to ensure that the prisoners were released.

<sup>3112</sup> Third Amended Indictment, paras. 41(bc), 42(e) and 43(e).

<sup>3113</sup> Prosecution Final Brief, paras. 260 and 262-263.

<sup>3114</sup> *Ibid.*, paras. 260, 262 and 267.

<sup>3115</sup> *Ibid.*, paras. 270-271.

<sup>3116</sup> Prosecution Final Brief, paras. 259, 265-266 and 274; Prosecution Closing Arguments, T(F) pp. 19074-19078.

<sup>3117</sup> Prosecution Final Brief, paras. 266, 269 and 273-274; Prosecution Closing Arguments, T(F) pp. 19078-19079.

<sup>3118</sup> Hadžihasanović Defence Final Brief, paras. 1087, 1091, 1099 and 1122.

<sup>3119</sup> Hadžihasanović Defence Final Brief, paras. 1112-1114, 1124-1126, 1131, 1137-1139, 1142-1144 and 1145.

<sup>3120</sup> Hadžihasanović Defence Final Brief, paras. 1117, 1139, 1141 and 1145; Hadžihasanović Defence Closing Arguments, T(F) pp. 19242-19243.

(ii) Findings of the Chamber regarding the Mistreatment and Murder Committed at Orašac Camp

a. Sequence of Events between early October 1993 and January 1994

1359. As indicated previously,<sup>3121</sup> Orašac was a Croatian village in the municipality of Travnik consisting of 35 houses.<sup>3122</sup> The Croatian villagers seem to have left Orašac between 24 April 1993 and 8 June 1993 following the murders in Miletići on 24 April 1993.<sup>3123</sup> The mujahedin set up in Orašac in the second half of 1993<sup>3124</sup> and built a four-storey breeze-block building there.<sup>3125</sup> They also set up in the Croatian villagers' houses.<sup>3126</sup>

1360. On 3 October 1993, five members of the *El Mujahedin* detachment drove through an area controlled by the HVO near Novi Travnik. Following an ambush by the HVO, four of them, including Wahiudeen, the military commander of the mujahedin,<sup>3127</sup> were killed, and Emsud Kadirić, who was wounded, was taken prisoner and taken to the prison in Kaonik.<sup>3128</sup>

1361. After that incident, Abu Džafer, a mujahedin,<sup>3129</sup> went on several occasions to the premises of the exchange commission in Travnik to request the exchange of Emsud Kadirić. Salko Beba, OG *Bosanska Krajina* Assistant Commander for Military Security<sup>3130</sup> and the president of the State municipal exchange commission,<sup>3131</sup> explained to him how the proper procedure for exchanges worked but, from the outset, Abu Džafer threatened him with abducting as many Croats as necessary to procure that exchange.<sup>3132</sup> Salko Beba explained to him that prisoners of war could be exchanged but that in no case could Croats be collected in the manner Abu Džafer described.<sup>3133</sup>

<sup>3121</sup> See *supra* paras. 427-430.

<sup>3122</sup> P 760; Tomislav Rajić, T(F) pp. 2813-2814.

<sup>3123</sup> Tomislav Rajić, T(F) pp. 2813-2814.

<sup>3124</sup> Tomislav Rajić, T(F) p. 2814; Witness HE, T(F) pp. 17010 and 17011; P 394 (under seal), para. 11.

<sup>3125</sup> Tomislav Rajić, T(F) p. 2814.

<sup>3126</sup> Tomislav Rajić, T(F) p. 2814. Videocassette P 761 shows the various facilities used by the mujahedin in the camp, including a building for meetings and prayers and a detention centre. See photograph P 52.

<sup>3127</sup> P 482, T(E) p. 8538.

<sup>3128</sup> Witness HE, T(F) p. 16998; DK 15; P 216; P 379; P 709; C 13 (entry: 3 October 1993).

<sup>3129</sup> P 461; Witness HE, T(F) pp. 17043-17046. The Chamber notes that Abu Džafer himself had been exchanged for HVO soldiers, including Živko Totić, on 17 May 1993; P 155.

<sup>3130</sup> Jasenko Eminović, T(F) p. 5806; Ivo Fišić, T(F) pp. 2269-2270.

<sup>3131</sup> Samir Sefer, T(F) p. 11958; Jasenko Eminović, T(F) pp. 5732 and 5742.

<sup>3132</sup> Witness HE, T(F) pp. 16998-17000.

<sup>3133</sup> Witness HE, T(E) p. 16999.

1362. Salko Beba reported those threats to his higher command and informed UNPROFOR, the ECMM and the ICRC in Zenica.<sup>3134</sup> Mehmed Alagić threatened the mujahedin and told them not to do anything which might involve civilians.<sup>3135</sup>

1363. On 7 October 1993, a meeting was held in Zenica between the ABiH 3<sup>rd</sup> Corps exchange commission and the HVO exchange commission, when Salko Beba announced that nothing would be settled unless the prisoner of war Emsud Kadirić was exchanged immediately. Salko Beba added that unless Emsud Kadirić was released, 20 innocent Croats would be arrested in Travnik every day.<sup>3136</sup>

1364. On 15 October 1993, in spite of all the warnings of commander Alagić and the measures taken by Fikret Čuskić to forestall any harmful action by Abu Džafer, the mujahedin carried out their threats.<sup>3137</sup> At around 1100 hours, four or five armed mujahedin entered the offices of the humanitarian organisation “Caritas” in Travnik and abducted six Croatian civilians: Father Vinko Vidaković, Sister Ljubica Šekerija, Zvonko Kukrić, Živko Gašo, Witness Z12 and Witness Z13.<sup>3138</sup> They forced them to board a truck and to cover their heads with their jackets, with the exception of Živko Gašo, who managed to escape,<sup>3139</sup> and drove the remaining five Croatian civilians to Orašac camp.<sup>3140</sup> After her arrival at Orašac camp, Sister Ljubica Šekerija was promptly released.<sup>3141</sup>

1365. Witnesses Z12 and Z13 described to the Chamber the treatment and threats to which Father Vinko Vidaković, Zvonko Kukrić and they themselves had been subjected at Orašac Camp during their incarceration.

1366. Thus, upon their arrival at the camp, the prisoners were forced to tread on a rosary after having answered the question whether they were Christians in the affirmative.<sup>3142</sup> Witness Z13 stated that he was careful not to step on the cross and Witness Z12 said that when Father Vinko Vidaković refused to comply, the mujahedin did not try to force him.<sup>3143</sup> According to Witness Z12, the detainees were also given Muslim names.<sup>3144</sup> Next, with their heads covered with jackets and

<sup>3134</sup> Witness HE, T(F) pp. 16999-17000 and T(E) 17000.

<sup>3135</sup> Witness HE, T(E) p. 17000.

<sup>3136</sup> P 709. *See also* Witness HE, T(F) p. 17001.

<sup>3137</sup> Witness HE, T(F) p. 17002 and T(E) p. 17001.

<sup>3138</sup> P 394 (under seal), para. 6; P 395 (under seal), paras. 12-16; P 740 (under seal). *See also* Witness HE, T(F) p. 17002.

<sup>3139</sup> P 394 (under seal), paras. 7 and 9; P 395 (under seal), paras. 17-18 and 22.

<sup>3140</sup> The Chamber notes that Witnesses Z12 and Z13 learned after they were released that they had been detained in the village of Orašac: P 394 (under seal), para. 11; P 395 (under seal), para. 45. *See also infra* the discussion in para. 1391.

<sup>3141</sup> P 394 (under seal), para. 12.

<sup>3142</sup> P 394 (under seal), para. 10; P 395 (under seal), para. 24.

<sup>3143</sup> P 394 (under seal), para. 10; P 395 (under seal), para. 24.

<sup>3144</sup> P 394 (under seal), para. 15.

their hands tied behind their backs, Witnesses Z12, Z13 and Zvonko Kukrić were taken to a room, where they were detained, and Father Vinko Vidaković was locked up in another room.<sup>3145</sup> During the night, Witness Z12, who suffered acutely from prostate trouble, begged to be allowed to go to the toilet, but his request was refused.<sup>3146</sup> Witness Z13 stated that he heard cries from Father Vinko Vidaković until the morning and inferred from this that he was being mistreated and beaten.<sup>3147</sup>

1367. The next day, Witness Z12 was allowed to go to the toilet under escort and he passed by Father Vinko Vidaković, whose nose he observed was covered with blood.<sup>3148</sup> Next, a guard hit Witness Z12 in the stomach because he was unable to answer a question.<sup>3149</sup> Witness Z13 states that he was ordered to suck Zvonko Kukrić's penis. When the latter had unbuttoned his trousers, however, the guards told him that he did have to do so, but imitate fellatio while Zvonko Kukrić's trousers were not open.<sup>3150</sup> Subsequently, Witness Z13 was taken to the room where Father Vinko Vidaković was detained, and ordered to hit him while Father Vinko Vidaković was lying on the ground with his hands tied behind his back and his legs tied. When he refused to do so, the guards pointed rifles in his direction and forced him to strike him. He stated, however, that he only struck lightly and did not cause Father Vinko Vidaković any pain.<sup>3151</sup> Lastly, the former prisoners at Orašac Camp consistently maintained that from time to time the guards kicked them and threatened to cut their ears off with a knife.<sup>3152</sup> They add, however, that the threats were not carried out and they were not beaten.<sup>3153</sup>

1368. In the evening of 16 October 1993, Witnesses Z12 and Z13 were released.<sup>3154</sup> They were taken to the office of the exchange commission in Travnik, where they were received by Salko Beba.<sup>3155</sup> Witness HE adds that after releasing them, the mujahedin went to the office of the OG *Bosanska Krajina* Command to offer their apologies.<sup>3156</sup>

<sup>3145</sup> P 394 (under seal), para. 12; P 395 (under seal), paras. 25-28.

<sup>3146</sup> P 394 (under seal), para. 13; P 395 (under seal), paras. 28 and 35.

<sup>3147</sup> P 395 (under seal), para. 35.

<sup>3148</sup> P 394 (under seal), para. 13.

<sup>3149</sup> P 394 (under seal), para. 14.

<sup>3150</sup> P 395 (under seal), para. 38.

<sup>3151</sup> P 395 (under seal), para. 39.

<sup>3152</sup> P 394 (under seal), para. 15; P 395 (under seal), paras. 32 and 36-37.

<sup>3153</sup> P 394 (under seal), para. 15; P 395 (under seal), paras. 37-38.

<sup>3154</sup> P 394 (under seal), para. 18; P 395 (under seal), paras. 40-41. Witness HE stated that the five Croatian civilians were all released by the mujahedin two days later: T(E) p. 17002. Nevertheless, the depositions of Witnesses Z12 and 13 are consistent in stating that they were the only prisoners released on 16 October 1993: P 394 (under seal), para. 18; P 395 (under seal), paras. 40-41. The evidence analysed *infra*, however, shows that Father Vinko Vidaković and Zvonko Kukrić were not released until the night of 19 to 20 October 1993 or on 20 October 1993.

<sup>3155</sup> P 394 (under seal), para. 19; P 395 (under seal), para. 43.

<sup>3156</sup> Witness HE, T(F) pp. 17001-17002.

1369. According to Witness HE, before the prisoners were released, a member of the OG *Bosanska Krajina* Command put pressure on the mujahedin and threatened to attack them with mortar fire. He added that, as a result of this pressure and the threats, the mujahedin released the abducted prisoners.<sup>3157</sup> While Witness HE did not specify the date on which those threats were made, the time frame he described strongly suggests that they were made before Witnesses Z12 and Z13 were released on 16 October 1993.<sup>3158</sup>

1370. On 18 October 1993, a representative of UNPROFOR showed representatives of the foreign mujahedin based in Mehurići a videocassette proving that four of their fellows had been killed in an ambush set by the HVO near Novi Travnik.<sup>3159</sup> On that, the representatives of the *El Mujahedin* unit intimated that it was their intention to release the two Croats held in detention.<sup>3160</sup>

1371. In the evening of 19 October 1993, the mujahedin abducted five prominent members of the Croatian and Serbian community of Travnik<sup>3161</sup> in the *Amerikanka* quarter in Travnik, near the seat of the ABiH exchange commission.<sup>3162</sup> Witness Ivo Fišić; Witness Dalibor Adžaić; Kazimir Pobrić;

<sup>3157</sup> Witness HE, T(F) p. 17007 and T(E) p. 17007.

<sup>3158</sup> Witness HE puts these threats before the release of the first five prisoners: T(F) p. 17007 and T(E) 17007. He puts their release at two days after their abduction: T(E) p. 17002. Moreover, given that Witness HE indicates that those first threats had a measure of success it is highly unlikely that they were made between the release of the first prisoners on 16 October 1993 and the release of the last two prisoners on 20 October 1993, insofar as five additional hostages had been abducted on 19 October 1993.

<sup>3159</sup> P 216. The Chamber notes that Angus Hay, Britbat officer, received from the HVO the video recording of the bodies of the four mujahedin following the ambush set by the HVO near Novi Travnik: Angus Hay, T(F) pp. 8116-8117 and 8120.

<sup>3160</sup> P 216.

<sup>3161</sup> In 1981, Ivo Fišić, a Bosnian Croat, was elected president of the Travnik Municipal Executive Committee and, before the war, participated in the formation of the HVO government in Travnik: Ivo Fišić, T(F) pp. 2279-2281; P 740 (under seal). Dalibor Adžaić, a Bosnian Croat, was a member of the HVO in Travnik: Dalibor Adžaić, T(F) pp. 2393 and 2400. Kazimir Pobrić, a Bosnian Croat, worked for the territorial defence of the municipality of Travnik: Ivo Fišić, T(F) p. 2248. Ivo Rajković, a Bosnian Croat, was a teacher and headmaster at the school and seems to have taken part in the formation of the HVO government in Travnik: Ivo Fišić, T(F) p. 2251; P 740 (under seal); Witness HE, T(F) p. 17003. Dragan Popović was the offspring of a mixed marriage, with a Serbian father and a Croatian mother, but because of his name "Dragoljub" he was regarded as a Serb. He was the financial manager of a company and, before that, had worked for the civilian police in Travnik: P 496; P 380; Ivo Fišić, T(F) p. 2252. According to Witness HE, Dragan Popović had worked before the war in the reserves of the State Security Service: Witness HE, T(F) p. 17003.

<sup>3162</sup> Witness HE, T(F) p. 17002-17003.



Ivo Rajković and Dragan Popović.<sup>3163</sup> They covered their heads with blankets and took them in an all-terrain vehicle to Orašac camp<sup>3164</sup> where they were all imprisoned in the same room.<sup>3165</sup>

1372. Witnesses Ivo Fišić and Dalibor Adžaić raised before the Chamber the physical and psychological violence they underwent throughout their detention at Orašac camp. Thus, from their arrival in the evening of 19 October 1993, the detainees were subjected to beatings.<sup>3166</sup> Ivo Fišić stated that the beatings were directed by an Arab trained in karate and that a group of soldiers punched and kicked them.<sup>3167</sup> He stated that Dragan Popović was beaten more severely than the other detainees.<sup>3168</sup> Next, the prisoners were given nicknames to go with their physical appearance or ethnic origin, such as “fat pig” or “Serb pig”. The beatings then resumed and stopped or continued, depending on whether or not the detainees used their nicknames.<sup>3169</sup> Dalibor Adžaić states that the guards came into the room in which they were held in turns and hit the prisoners with anything that came to hand.<sup>3170</sup>

1373. The two former detainees at Orašac Camp are consistent in stating that the physical violence continued during the night of 19 to 20 October 1993 and the day of 20 October 1993, sometimes during interrogations.<sup>3171</sup> Ivo Fišić stated that, during that night, he heard cries and groans from the next room and recognised the voice of one of his neighbours and colleagues, “Zvonko”, who had been abducted at the same time as the Travnik parish priest.<sup>3172</sup>

<sup>3163</sup> Dalibor Adžaić, T(F) pp. 2400-2403; P 496; P 740 (under seal); Witness HE, T(F) pp. 17002-17003; Ivo Fišić, T(F) pp. 2246, 2248 and 2250-2252. The Chamber notes that Witness Ivo Fišić stated that he had been arrested on 18 October 1993. In his statement, however, Ivo Fišić constantly refers to days of the week which correspond, according to the calendar for October 1993, to dates coming after the dates he mentions. The reasons why five more persons were abducted after the initial wave of abductions of five persons are not clear. It cannot be ruled out that it was linked to the fact that on 18 October 1993, the mujahedin saw a videocassette proving the death of four of their fellows, including Wahiudeen, the military commander of the mujahedin: P 216. That explanation, however, is confounded by the fact that at the time of the second wave of abductions on 19 October 1993, the mujahedin were still holding two Croatian civilians and did not release them until 20 October 1993: *see infra* para. 1374.

<sup>3164</sup> Ivo Fišić, T(F) pp. 2249-2250 and 2256; Dalibor Adžaić, T(F) pp. 2401-2402. The Chamber notes that Ivo Fišić recognised the place where he was detained on photograph P 52, T(F) pp. 2257-2260. Dalibor Adžaić indicated that he was held in a village probably located among the Croatian villages to the north of Guča Gora, Maline and Mehurići: T(F) p. 2403. *See infra* para. 1391.

<sup>3165</sup> Dalibor Adžaić, T(F) p. 2403; Ivo Fišić, T(F) p. 2250.

<sup>3166</sup> Dalibor Adžaić, T(F) pp. 2403-2404; Ivo Fišić, T(F) pp. 2250-2251.

<sup>3167</sup> Ivo Fišić, T(F) p. 2251.

<sup>3168</sup> Ivo Fišić, T(F) pp. 2251 and 2253-2254.

<sup>3169</sup> Ivo Fišić, T(F) p. 2251.

<sup>3170</sup> Dalibor Adžaić, T(F) pp. 2403-2405.

<sup>3171</sup> Dalibor Adžaić, T(F) pp. 2403-2405; Ivo Fišić, T(F) pp. 2253-2254 and 2263.

<sup>3172</sup> Ivo Fišić, T(F) p. 2253. The Chamber concludes that the person in question must be Zvonko Kukrić.

1374. In the night of 19 October 1993 to 20 October 1993 or on 20 October 1993, Zvonko Kukrić and Father Vinko Vidaković seem to have been released.<sup>3173</sup> On 20 October 1993, Ivo Fišić entered the room in which “Zvonko” had been. He did not see him but noticed blood on the walls.<sup>3174</sup>

1375. In the meantime, the OG *Bosanska Krajina* Command had learned of the abduction of this second group of civilians.<sup>3175</sup> According to Witness HE, after the exchange commission and the civilian police had confirmed the news, Mehmed Alagić summoned the chief of the Travnik civilian police and ordered the members of the command to take every step to identify the persons who carried out the abduction and the place where the hostages had been taken. Following these measures, it was discovered that the mujahedin were behind the abduction.<sup>3176</sup> Witness HE added that when he learned the news, a member of the OG *Bosanska Krajina* Command spoke about it to the ICRC, the ECMM and the HCR in order to give them a list of persons abducted, and that the representatives of those international organisations went to Travnik.<sup>3177</sup>

1376. According to Samir Sefer, the president of the OG *Bosanska Krajina* commission for prisoner of war exchanges,<sup>3178</sup> there was a rumour that the mujahedin had abducted Croatian civilians in order to exchange them for mujahedin taken prisoner by the HVO.<sup>3179</sup> He stated that he contacted the HVO exchange commission but that it told him it was holding no imprisoned or dead mujahedin.<sup>3180</sup>

1377. On 20 October 1993, Mehmed Alagić ordered the mujahedin to release the prisoners who had been abducted the day before.<sup>3181</sup> According to Witness HE, a member of the OG *Bosanska Krajina* Command went to the mujahedin camp in Poljanice, where he met Abu Haris, the head of the *El Mujahedin* unit,<sup>3182</sup> and Abu Džafer, and gave them Mehmed Alagić’s order to release the prisoners immediately.<sup>3183</sup>

<sup>3173</sup> Ivo Fišić, T(F) pp. 2253-2254. *See also* P 173, which indicates that on 20 October 1993, instead of releasing their last two Croatian hostages, the mujahedin captured three other hostages.

<sup>3174</sup> Ivo Fišić, T(F) pp. 2253-2254.

<sup>3175</sup> Witness HE, T(F) pp. 17002-17003.

<sup>3176</sup> Witness HE, T(F) pp. 17003-17004.

<sup>3177</sup> Witness HE, T(F) p. 17004.

<sup>3178</sup> Samir Sefer, T(F) p. 11956.

<sup>3179</sup> Samir Sefer, T(F) pp. 11972-11973.

<sup>3180</sup> Samir Sefer, T(F) p. 11973.

<sup>3181</sup> P 173; P 376. *See also* Witness HE, T(F) pp. 17003-17004.

<sup>3182</sup> P 482, T(F) p. 8542 and T(E) p. 8538; *see also* P 656.

<sup>3183</sup> Witness HE, T(F) pp. 17004 and 17011, T(E) p. 17003.

1378. Witnesses Ivo Fišić and Dalibor Adžaić described to the Chamber the circumstances of the death of Dragan Popović. On the morning of 21 October 1993<sup>3184</sup> the guards took Ivo Fišić, Dalibor Adžaić, Kazimir Pobrić and Dragan Popović, hands tied, out of the house where they were detained.<sup>3185</sup> A considerable number of uniformed soldiers took them to a meadow not far from their place of detention, which was accessible by means of an asphalted road.<sup>3186</sup> When they arrived in the meadow, between 50 and 100 uniformed soldiers formed a semi-circle around a ditch, shouting incessantly “*Tekbir; Allah-u-Akbar*”.<sup>3187</sup> The prisoners were taken near the ditch and their hands untied.<sup>3188</sup> At this moment, a soldier brought Dragan Popović up to the edge of the ditch and another soldier tripped him up. Dragan Popović fell on to the side of the ditch.<sup>3189</sup> A soldier standing in front of the group of soldiers called a soldier named “Hasan” and gave him a hatchet.<sup>3190</sup> Hasan knelt down to be level with Dragan Popović and cut his throat.<sup>3191</sup> Hasan was given the order to cut the head from the body, but when he failed to do so, another soldier came up and carried out the task.<sup>3192</sup> That soldier held up the head of Dragan Popović proudly and the other soldiers started to shout.<sup>3193</sup> He then came up to the prisoners and made them kiss the dead man’s head, which they did.<sup>3194</sup> The prisoners were ordered to bury the body and the head of the dead man. While they did so, the soldiers started shouting even louder.<sup>3195</sup> The two witnesses stated that the scene of the execution of Dragan Popović suggested a ritual.<sup>3196</sup>

1379. Subsequently, the prisoners were escorted to the house where they had been detained.<sup>3197</sup> Once the detainees arrived there, a guard informed Ivo Fišić that it would be his turn the next day and Kazimir Pobrić was forced to give a detailed account of the ritual execution to Ivo Rajković,

<sup>3184</sup> Dalibor Adžaić refers in his deposition to the “second or third morning” following his arrest, which corresponds to 21 or 22 October 1993: T(F) p. 2405. Ivo Fišić refers to “Thursday 20<sup>th</sup> [October 1993]”, T(F) p. 2254. Nevertheless, according to the calendar for October 1993, Thursday of the week in question was 21 October 1993. The Chamber therefore considers that it is very likely that the execution of Dragan Popović took place on 21 October 1993.

<sup>3185</sup> Dalibor Adžaić, T(F) p. 2405; Ivo Fišić, T(F) pp. 2254-2255. Ivo Rajković stayed in the house where the prisoners were detained: Ivo Fišić, T(F) p. 2255; Dalibor Adžaić, T(F) p. 2405.

<sup>3186</sup> Dalibor Adžaić, T(F) p. 2405; Ivo Fišić, T(F) pp. 2254-2255. Witness Ivo Fišić recognised the place where Dragan Popović was executed: *see* photograph P 52; Ivo Fišić, T(F) pp. 2258-2260.

<sup>3187</sup> Dalibor Adžaić, T(F) pp. 2405-2407; Ivo Fišić, T(F) pp. 2254-2255 and 2257.

<sup>3188</sup> Dalibor Adžaić, T(F) p. 2405; Ivo Fišić, T(F) p. 2255.

<sup>3189</sup> Dalibor Adžaić, T(F) p. 2406; Ivo Fišić, T(F) p. 2255.

<sup>3190</sup> Dalibor Adžaić, T(F) pp. 2406 and 2408; Ivo Fišić, T(F) p. 2255.

<sup>3191</sup> Dalibor Adžaić, T(F) p. 2406; Ivo Fišić, T(F) p. 2255.

<sup>3192</sup> Dalibor Adžaić, T(F) pp. 2406 and 2408; Ivo Fišić, T(F) p. 2256.

<sup>3193</sup> Dalibor Adžaić, T(F) p. 2406.

<sup>3194</sup> Dalibor Adžaić, T(F) p. 2406; Ivo Fišić, T(F) p. 2256.

<sup>3195</sup> Dalibor Adžaić, T(F) p. 2406; Ivo Fišić, T(F) p. 2256.

<sup>3196</sup> Dalibor Adžaić, T(F) p. 2408; Ivo Fišić, T(F) p. 2256.

<sup>3197</sup> Dalibor Adžaić, T(F) p. 2408 ; Ivo Fišić, T(F) p. 2256.

who was not present.<sup>3198</sup> Ivo Fišić stated that each time Kazimir Pobrić omitted a detail, he was struck and had to start his account again from the beginning.<sup>3199</sup>

1380. Witness Ivo Fišić mentions that in the afternoon of the day of Dragan Popović's execution, Hasan and the soldier who finished off the execution ordered him to say which of them had executed the dead man. Considering it better not to answer that question, Ivo Fišić merely said that he did not recognise them as being the persons who carried out the execution. That answer did not satisfy the two soldiers, who beat Ivo Fišić so violently that he fell and lost consciousness.<sup>3200</sup> Ivo Fišić went on by stating that on the following day a guard ordered him to strike Ivo Rajković with a stick. When he took hold of it, however, Ivo Fišić realised that it was a heated metal bar and burned his hand. Ivo Fišić added that the guard saw this as a joke and did not insist on his picking up the metal bar again.<sup>3201</sup> Ivo Fišić stated that the detainees received no medical attention during their detention.<sup>3202</sup>

1381. On 22 or 23 October 1993,<sup>3203</sup> Kazimir Pobrić was released from Orašac camp. According to Witness HE, he was released after Mehmed Alagić, the OG *Bosanska Krajina* Commander, spoke with the circle of Muslim clerics and naturalised Bosnian Muslims with a view to influencing the mujahedin.<sup>3204</sup> Witness HE stated that after his release, Kazimir Pobrić was not prepared to make a statement to the members of the OG *Bosanska Krajina* Command, insofar as he was concerned about his safety and merely informed them that the other prisoners were still alive.<sup>3205</sup> Ivo Fišić stated that from the day Kazimir Pobrić was released, the mistreatment at Orašac Camp became less intense.<sup>3206</sup>

1382. According to Witness HE, a member of the OG *Bosanska Krajina* Command went to Poljanice Camp in order to later summon Abu Haris to the office of the OG *Bosanska Krajina* Commander. Since Abu Haris was not at the camp when he visited it, he went back there the following day, when he was able to speak with Abu Haris. On that occasion, Abu Haris stated that

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<sup>3198</sup> Ivo Fišić, T(F) p. 2257.

<sup>3199</sup> Ivo Fišić, T(F) p. 2257.

<sup>3200</sup> Ivo Fišić, T(F) p. 2263.

<sup>3201</sup> Ivo Fišić, T(F) p. 2264.

<sup>3202</sup> Ivo Fišić, T(F) p. 2261.

<sup>3203</sup> Witness Dalibor Adžaić stated that Kazimir Pobrić was released "two days after the incident [involving Popović]", which works out as 23 October 1993: T(F) p. 2408. Ivo Fišić refers to "Friday 21<sup>st</sup> [October 1993]": T(F) p. 2263-2265. According to the calendar for October 1993, the Friday of the week in question was 22 October 1993. See also P 496.

<sup>3204</sup> Witness HE, T(F) p. 17008.

<sup>3205</sup> Witness HE, T(E) p. 17008.

<sup>3206</sup> Ivo Fišić, T(F) p. 2265.

Abu Džafer had abducted persons without his authorisation, that they would soon be released, and that he would be giving an explanation to Mehmed Alagić.<sup>3207</sup>

1383. On 29 October 1993, a meeting took place between Abu Haris and Mehmed Alagić in Alagić's office.<sup>3208</sup> Witness HE stated that on this occasion Mehmed Alagić threatened Abu Haris that if the mujahedin did not release the abducted Croats, he would be obliged to disarm and attack them, and told him that they should leave the region of Mehurići.<sup>3209</sup>

1384. On one occasion between 20 and 29 October 1993, a representative of the ICRC tried, with the help of an officer from the OG *Bosanska Krajina* Command, to pay a visit to the abducted civilians being held in detention.<sup>3210</sup> To this end, they went to the entrance of the mujahedin camp,<sup>3211</sup> but when the officer announced the visit of the ICRC, they were refused admission.<sup>3212</sup>

1385. Witness Ivo Fišić testified that on 5 November 1993, Mehmed Alagić informed the witness' wife that he could no longer do anything to free Ivo Fišić or the other detainees.<sup>3213</sup>

1386. On 6 November 1993, Ivo Fišić and Ivan Rajković were released from Orašac Camp and transferred to the former JNA Barracks in Travnik,<sup>3214</sup> the seat of the ABiH 3<sup>rd</sup> Corps 17<sup>th</sup> Brigade Command,<sup>3215</sup> where they were received by Salko Beba.<sup>3216</sup> Ivo Fišić and Ivo Rajković received medical treatment.<sup>3217</sup> Two or three days later<sup>3218</sup> or about mid-November 1993,<sup>3219</sup> Ivo Fišić made a statement to Salko Beba, in Beba's office and subsequently to Fikret Čuskić, the 17<sup>th</sup> Brigade Commander, about the mistreatment of the prisoners and the beheading of Dragan Popović at Orašac camp.<sup>3220</sup> He added that, on those two occasions, Salko Beba and Fikret Čuskić made it clear that they were unhappy with this<sup>3221</sup> and that Fikret Čuskić expressed an intention to inform the RBiH President, Alija Izetbegović, about it. According to Fikret Čuskić, Mehmed Alagić

<sup>3207</sup> Witness HE, T(F) pp. 17007-17008.

<sup>3208</sup> P 177 ; P 179; Witness HE, T(F) pp. 17047-17049.

<sup>3209</sup> Witness HE, T(F) pp. 17047 and 17049-17050.

<sup>3210</sup> P 177, p. 2; Witness HE, T(F) pp. 17004-17005.

<sup>3211</sup> Neither Witness HE nor Exhibit P 177 mention whether they tried to visit the mujahedin camps at Poljanice or Orašac. Witness HE stated, however, that the officer in question of the OG *Bosanska Krajina* Command never went to Orašac Camp: T(F) p. 17034. Consequently, it is more likely that the two persons in question went to the camp at Poljanice.

<sup>3212</sup> P 177, p. 2; Witness HE, T(F) pp. 17004-17005.

<sup>3213</sup> Ivo Fišić, T(F) p. 2268.

<sup>3214</sup> Ivo Fišić, T(F) pp. 2268-2269; P 496; Witness HE, T(F) p. 17008.

<sup>3215</sup> Fikret Čuskić, T(F) p. 12050; C 16 (entry: 11 July 1993. The document indicates the date of "11 July 1997", but the war diary C 16 describes only one period of 1993).

<sup>3216</sup> Ivo Fišić, T(F) pp. 2268-2269.

<sup>3217</sup> Ivo Fišić, T(F) p. 2270.

<sup>3218</sup> Ivo Fišić, T(F) p. 2269.

<sup>3219</sup> Witness HE, T(F) p. 17010.

<sup>3220</sup> Ivo Fišić, T(F) pp. 2269-2272; Fikret Čuskić, T(F) pp. 12167-12169.

<sup>3221</sup> Ivo Fišić, T(F) pp. 2268-2270.

contacted the President of the RBiH.<sup>3222</sup> In about mid-November 1993, Alija Izetbegović did in fact go to the former JNA Barracks in Travnik.<sup>3223</sup> Ivo Fišić was kept in detention in the former JNA Barracks until late January 1994.<sup>3224</sup>

1387. Dalibor Adžaić was released from Orašac Camp and transferred to the former JNA Barracks in Travnik on about 7 December 1993.<sup>3225</sup> He states that he was there for one night before being taken to the KP Dom in Zenica, where he was kept in detention until 21 March 1994.<sup>3226</sup>

1388. After he received a letter dated 11 December 1993 from the wife of Dragan Popović asking for information about what had happened to her husband,<sup>3227</sup> Peter Williams, a Britbat officer, met Mehmed Alagić, the then ABiH 3<sup>rd</sup> Corps Commander, to raise this matter.<sup>3228</sup> Although he was aware of the death of Dragan Popović, Mehmed Alagić informed him that the news about Dragan Popović was not satisfactory and that he preferred not to answer his wife rather than to lie to her.<sup>3229</sup> By letter of 1 January 1994, Martin Garrod replied to the letter from Dragan Popović's wife, in which he stated that he had met Mehmed Alagić on two occasions and that Alagić had assured him that he would do everything in his power to find out what had happened to her husband.<sup>3230</sup>

1389. Ivo Fišić stated that following the mistreatment he underwent at Orašac camp, he had broken ribs, a broken nose and bruises over his entire body.<sup>3231</sup> He added that, owing to the many blows he received to his head, he still suffered from headaches.<sup>3232</sup>

1390. According to Samir Sefer, Emsud Kadirić was exchanged in early 1994.<sup>3233</sup>

b. Mistreatment, Paragraph 42(c) of the Indictment

1391. The Chamber first finds that the two groups of prisoners, abducted, in the case of the first group, on 15 October 1993 and, in the case of the second, on 19 October 1993, were taken to Orašac camp, a mujahedin base not far from Mehurići, and not to an unknown location as the

<sup>3222</sup> Fikret Čuskić, T(F) p. 12169.

<sup>3223</sup> Fikret Čuskić, T(F) p. 12169; Ivo Fišić, T(F) pp. 2271 and 2278.

<sup>3224</sup> Ivo Fišić, T(F) pp. 2274-2275.

<sup>3225</sup> Dalibor Adžaić, T(F) p. 2409; P 496; P 309.

<sup>3226</sup> Dalibor Adžaić, T(F) pp. 2409-2410.

<sup>3227</sup> P 496.

<sup>3228</sup> Peter Williams, T(F) p. 5922.

<sup>3229</sup> Peter Williams, T(F) p. 5923. *See also* P 381.

<sup>3230</sup> P 182.

<sup>3231</sup> Ivo Fišić, T(F) pp. 2261 and 2262.

<sup>3232</sup> Ivo Fišić, T(F) p. 2261.

<sup>3233</sup> Samir Sefer, T(F) pp. 11992 and 12007.

Defence for the Accused Hadžihasanović suggests in its Final Brief.<sup>3234</sup> Witness Ivo Fišić stated that he was held in Orašac, recognised the building in which he was detained and the place where Dragan Popović was executed on photograph P 52, and mentioned that he had subsequently returned to the place in question with the Prosecution's investigators.<sup>3235</sup> Next, even though they learned of this information after their period of incarceration, Witnesses Z12 and Z13 stated that they were detained in Orašac.<sup>3236</sup> The Chamber notes that this recognition after the event may be due to the fact that the prisoners were systematically kept from seeing during their journeys to and from Orašac. Lastly, a member of the OG *Bosanska Krajina* Command also stated that the prisoners were taken to the mujahedin camp in Orašac.<sup>3237</sup>

1392. The Chamber notes at this juncture that it appears from many pieces of evidence that the purpose of the two waves of abductions of five Croatian civilians by the mujahedin was to secure the exchange of Emsud Kadirić, mujahedin wounded and detained by the HVO following an ambush carried out by the HVO in early October 1993, or even the exchange of the bodies of the four mujahedin, including that of Wahiudeen, who were killed in that ambush.<sup>3238</sup> The fact that five Croats were abducted symbolically bears out the conclusion that the mujahedin wanted to exchange them for five of their fellows.<sup>3239</sup>

1393. Next, as far as the first group of prisoners is concerned, the Chamber is convinced, on the basis of the depositions of Witnesses Z12 and Z13, that on several occasions the mujahedin threatened Witnesses Z12, Z13 and Zvonko Kukrić with physical injury and kicked them. The Chamber is also convinced that the mujahedin humiliated the detainees, whether by forcing them to tread on a rosary or by ordering Witness Z13 to simulate fellatio on Zvonko Kukrić without the latter exposing his genitals. Although that treatment was without any doubt dishonouring and painful, the Chamber is not convinced that the abuse was sufficiently serious to constitute cruel treatment within the meaning of Article 3 of the Statute. As for Father Vinko Vidaković, the Chamber notes that there was no eyewitness to what he suffered in the night of 15 to 16 October 1993 and that, aside from the deposition of Witness Z12, to the effect that he saw Father Vinko Vidaković the next day with his nose covered in blood, there is no indication of the nature and seriousness of the violence inflicted on him. Consequently, the Chamber considers that the violence

<sup>3234</sup> Hadžihasanović Defence Final Brief, paras. 1091 and 1099.

<sup>3235</sup> Ivo Fišić, T(F) pp. 2256-2260 and 2273.

<sup>3236</sup> P 394 (under seal), para. 11; P 395 (under seal), para. 45.

<sup>3237</sup> Witness HE, T(F) p. 17011.

<sup>3238</sup> P 216; P 176; P 177 p. 2; P 376; P 379; P 381; P 740 (under seal); Samir Sefer, T(F) pp. 11972-11973; P 394 (under seal), para. 16; P 395 (under seal), para. 40.

<sup>3239</sup> It is recalled that on 15 October 1993 the mujahedin took five Croatian civilians to Orašac after one civilian succeeded in escaping: *see supra* para. 1364.

inflicted on Father Vinko Vidaković, albeit without any doubt painful, did not attain the degree of seriousness required for cruel treatment punishable under Article 3 of the Statute.

1394. As regards the second group of prisoners, the Chamber considers that the testimony of Ivo Fišić and Dalibor Adžaić, former detainees held in Orašac camp, about the physical and psychological abuse of the prisoners during their detention is specific, consistent and detailed and, hence, credible. It proves beyond a reasonable doubt that the detainees were subjected to particularly violent and frequent beatings between their arrival at the camp on 19 October 1993 and 22 or 23 October 1993, the date on which Kazimir Pobrić was released, and that after that date the mistreatment diminished in intensity.<sup>3240</sup> The Chamber notes that, on top of the physical violence, there were death threats, harassment of every type and the trauma of having seen the particularly violent murder of Dragan Popović. The Chamber further considers that the aforementioned testimony shows that such cruel treatment was inflicted deliberately and was designed to inflict serious pain and suffering on the prisoners.

1395. The evidence adduced demonstrates that the perpetrators of the mistreatment in question were members of the *El Mujahedin* detachment. Accordingly, after mentioning that he had been abducted by mujahedin and taken by them to a place of detention, Dalibor Adžaić stated that the mistreatment was inflicted by the guards of that place, that is, soldiers of the Muslim forces, to which the mujahedin belonged.<sup>3241</sup> Next, Ivo Fišić stated that he found out after his detention that the perpetrators of the mistreatment were “from the camp of El Mujahed forces. In that camp there were some foreign citizens, but there were also local lads”.<sup>3242</sup> He added that this was a military unit.<sup>3243</sup> That testimony and the fact that the village of Orašac was used as a camp by members of the *El Mujahedin* detachment at the material time,<sup>3244</sup> leave no doubt that the perpetrators of the cruel treatment belonged to the *El Mujahedin* detachment.

1396. The Chamber finds that the victims of the mistreatment were not participating directly in the hostilities. Indeed, the evidence adduced during the proceedings shows that they had the status of Bosnian Croat or Bosnian Serb civilians or were members of the HVO who were unarmed or in civilian dress at the time of their arrest.<sup>3245</sup>

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<sup>3240</sup> See *supra* para. 1381.

<sup>3241</sup> Dalibor Adžaić, T(F) pp. 2401, 2404 and 2407.

<sup>3242</sup> Ivo Fišić, T(F) pp. 2252-2253.

<sup>3243</sup> Ivo Fišić, T(F) p. 2253.

<sup>3244</sup> See *supra* paras. 427-430.

<sup>3245</sup> Dalibor Adžaić, T(F) pp. 2393 and 2400-2403; P 496; Witness HE, T(F) p. 17003; Ivo Fišić, T(F) pp. 2246, 2248 and 2250-2252; P 740 (under seal).



1397. On the basis of the foregoing, the Chamber concludes that the elements of the crime of cruel treatment at Orašac Camp have been established beyond a reasonable doubt for the period at issue between 19 October 1993 and 31 October 1993.

c. Murder, Paragraph 43(e) of the Indictment

1398. The Chamber considers that the testimony of Ivo Fišić and Dalibor Adžaić, eyewitnesses to the death of Dragan Popović as described above, proves beyond a reasonable doubt that Dragan Popović died on 21 October 1993 as a result of having been decapitated near the mujahedin camp in Orašac. Apart from a few minor discrepancies, those witnesses are consistent with each other and provide many details about the beheading of Dragan Popović. The Chamber notes in this respect that the murder of Dragan Popović seems to have been organised in accordance with a ritualistic ceremony and that it cannot be ruled out that his murder was an act of retaliation following the death a few weeks before of Wahiudeen, the Commander of the *El Mujahedin* detachment.

1399. As for the perpetrators of the crime, it appears from the evidence that the beheading was carried out by members of the *El Mujahedin* detachment. Witness Dalibor Adžaić stated that the soldiers present at the execution of Dragan Popović were the same as those guarding him at the place of detention, that is, soldiers of the Muslim forces of which the mujahedin formed part.<sup>3246</sup> Witness Ivo Fišić stated that the soldiers were members of the military unit present on the site, namely members of the “El Mujahed forces”.<sup>3247</sup> That testimony, coupled with the fact that the village of Orašac served as a camp for the members of the *El Mujahedin* detachment at the material time,<sup>3248</sup> leaves no doubt that the perpetrators of this crime were members of the *El Mujahedin* detachment.<sup>3249</sup>

1400. As for the status of the victim, the evidence indicates that Dragan Popović, a Bosnian Serb, was a member of the civilian police in Travnik at the time of his arrest.<sup>3250</sup> The Chamber concludes that he had the status of a civilian afforded the protection offered by the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1401. On the basis of the foregoing, the Chamber concludes that the elements of the crime regarding the murder of the civilian Dragan Popović have been established beyond a reasonable doubt.

<sup>3246</sup> Dalibor Adžaić, T(F) pp. 2401, 2404 and 2407.

<sup>3247</sup> Ivo Fišić, T(F) pp. 2252-2253 and 2257.

<sup>3248</sup> See *supra* paras. 427-430.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanovića. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1402. The Defence for the Accused Hadžihasanović submits that the Accused Hadžihasanović did not exercise effective control over the *El Mujahedin* detachment in Orašac.<sup>3251</sup> In support of its assertion, the Defence for the Accused Hadžihasanović submits that (1) the “mujahedin question” came under and had to be dealt with by the political leaders of the RBiH,<sup>3252</sup> (2) communications with the mujahedin were carried out through certain persons, in particular through the intermediary of the religious authorities, (3) the only way for the ABiH to resolve the question of the mujahedin was to use military assets,<sup>3253</sup> (4) the mujahedin had no structure and no chain of command,<sup>3254</sup> and (5) the lack of effective control on the part of the 3<sup>rd</sup> Corps over the mujahedin was also perceived by UNPROFOR and the ECMM.<sup>3255</sup>

1403. As indicated in the part of the Judgement dealing with the links between the ABiH and the mujahedin following the creation of the *El Mujahedin* unit,<sup>3256</sup> the Chamber concluded that the *El Mujahedin* detachment was, *de jure* and *de facto*, under the command of the Accused Hadžihasanović as from 13 August 1993.

1404. By way of example, it has been established that the *El Mujahedin* detachment carried out two orders from the 3<sup>rd</sup> Corps dated 6 September 1993 and 4 December 1993, attaching the detachment to the OG *Bosanska Krajina* in order to take part in combat operations. Next, in September and October 1993 the detachment took part in fighting on several occasions alongside other units under the OG *Bosanska Krajina* Command. Lastly, criminal proceedings were initiated in autumn 1993 in the Travnik court against a member of the detachment for driving out Witness Remzija Šiljak’s wife on the ground that she was the child of a mixed couple.

1405. The Chamber recognised, however, that the detachment held a special position within the 3<sup>rd</sup> Corps, for instance, insofar as it reserved the right to decide whether or not to take part in the

<sup>3249</sup> The detachment was subordinated to OG *Bosanska Krajina*: P 440. See also *supra* paras. 824-829.

<sup>3250</sup> P 496; P 380; Ivo Fišić, T(F) pp. 2275-2276.

<sup>3251</sup> Hadžihasanović Defence Final Brief, paras. 1112-1114, 1124-1126, 1131, 1137-1139 and 1142-1144.

<sup>3252</sup> Hadžihasanović Defence Final Brief, paras. 1124-1125 and 1131.

<sup>3253</sup> *Ibid.*, paras. 1124-1125 and 1131

<sup>3254</sup> *Ibid.*, paras. 1112-1114.

<sup>3255</sup> *Ibid.*, paras. 1142-1144.

<sup>3256</sup> See *supra* discussion in paras. 808-853.

fighting and communications with its members were precarious. Yet, as has been seen, its special position was fully accepted by the 3<sup>rd</sup> Corps.

1406. As for the argument put forth by the Defence for the Accused Hadžihasanović that the need to use military assets to settle the “mujahedin question” confirms the lack of effective control over the *El Mujahedin* detachment, the Chamber recalls that the presumption of the exercise of effective control associated with the *de jure* authority of a commander is not rebutted automatically by the fact that a commander needs to use force to control his troops.<sup>3257</sup> It cannot be overemphasised that a commander has the duty to ensure that the laws and customs of international humanitarian law are respected, even when that would involve the use of force against his own subordinates. The Chamber considers that this is a question of fact and that, if a commander has the material ability to use force, he is under a duty to do so as a last resort.

1407. The Chamber will subsequently consider the material ability of the Accused Hadžihasanović. The Chamber notes at this juncture that the Defence for the Accused Hadžihasanović has not put forward any argument in support of its defence plea.

b. Knowledge of Enver Hadžihasanović

i. Did the Accused Hadžihasanović Have Actual Knowledge?

1408. The Chamber finds that no evidence has been adduced by the Parties to show that the crimes of the murder of Dragan Popović and of mistreatment of the prisoners taken to Orašac Camp were brought to the actual knowledge of the OG *Bosanska Krajina* Command and the 3<sup>rd</sup> Corps Command prior to 31 October 1993, that is, before the Accused Hadžihasanović left his post as 3<sup>rd</sup> Corps Commander.<sup>3258</sup>

1409. According to the testimony of Witness HE, following the release of Kazimir Pobrić on 22 or 23 October 1993, the latter did not make any statement to members of the OG *Bosanska Krajina* Command about the treatment suffered and seen at Orašac Camp and merely informed them that the other prisoners were still alive.<sup>3259</sup> Following the release of Ivo Fišić and Ivo Rajković, however, Ivo Fišić gave a detailed statement to Salko Beba and Fikret Čuskić concerning the mistreatment of

<sup>3257</sup> See *supra* paras. 85-88.

<sup>3258</sup> The Accused Hadžihasanović was appointed Chief and Deputy Commander of the ABiH Supreme Command Main Staff by order of 1 November 1993 of President Alija Izetbegović: P 209; P 278.

<sup>3259</sup> Witness HE, T(E) p. 17008.

the prisoners and the beheading of Dragan Popović at Orašac camp.<sup>3260</sup> The witnesses, however, all place that statement in the first half of November 1993.<sup>3261</sup> Since the Accused Hadžihasanović had given up his duties on 31 October 1993, he could not have known before that date that crimes of mistreatment and murder had been committed by his subordinates.

ii. Did the Accused Hadžihasanović Have Reason to Know?

1410. The Chamber will now consider whether the Accused Hadžihasanović had reason to know that his subordinates were about to commit or had committed those crimes. In making this analysis, the Chamber finds that several pieces of evidence must first be discussed.

1411. First, an UNPROFOR milinfosum dated 18 October 1993 (Exhibit P 216) reports on an interview that an UNPROFOR officer had with the Accused Hadžihasanović in Zenica on that day. After reviewing various subjects discussed with the Accused, that document states as follows:

"Questioned on the actions of Muslim extremists towards remaining Croat minorities in BiH controlled areas Hadžihasanović side-stepped the issue completely. He did not acknowledge that there was a problem."<sup>3262</sup>

When questioned on that report, after stating that he was the officer who had that conversation with the Accused Hadžihasanović,<sup>3263</sup> Witness Alastair Duncan replied in the affirmative to the question of whether the content of the conversation reflected the Accused Hadžihasanović's attitude towards the mujahedin.<sup>3264</sup>

1412. The question as to precisely what was meant by "actions of Muslim extremists towards remaining Croat minorities in BiH controlled areas," as put by Alastair Duncan in his conversation with the Accused Hadžihasanović, is not clear. The milinfosum of 18 October 1993 mentions such actions not only in Travnik but also in Bugojno. Accordingly, as far as the zone of Travnik is concerned, it mentions that two Croats were kept in detention by the mujahedin and the intention expressed by the representatives of the mujahedin to release them, after the showing of a videocassette proving that four of their fellows had been killed in an ambush held near Novi Travnik.<sup>3265</sup> As for the zone of Bugojno, it mentions the lack of confidence of the 2,500 Croats residing in Bugojno in the assurances of security given by the Muslim authorities in view of the

<sup>3260</sup> Ivo Fišić, T(F) pp. 2269-2272; Fikret Čuskić, T(F) pp. 12167-12169.

<sup>3261</sup> Ivo Fišić, T(F) p. 2269; Witness HE, T(F) 17010; Fikret Čuskić, T(F) pp. 12166-12168.

<sup>3262</sup> P 216.

<sup>3263</sup> Alastair Duncan, T(F) p. 7290.

<sup>3264</sup> Alastair Duncan, T(F) pp. 7297-7298.

<sup>3265</sup> P 216, p. 1.

fact that they were constantly victims of “Muslim extremist actions”.<sup>3266</sup> Consequently, even if it is highly likely that the questions put by Alastair Duncan to the Accused Hadžihasanović related to the abductions of Croats by mujahedin in Travnik and other mujahedin actions with regard to Croats in Bugojno, the Chamber nevertheless considers that this has not been formally established, especially since it is not ruled out that other actions of this type may have taken place in other places.

1413. Second, an UNPROFOR milinfosum dated 22 October 1993, marked as P 226, sets out the content of the conversation conducted on the same day between Alastair Duncan<sup>3267</sup> and Džemal Merdan. According to that report, Džemal Merdan informed Alastair Duncan “[t]hat 3 Corps had tasked Alagić, commander OPs Group “Bosanska Krajina”, to resolve the *ongoing* problems with the 'Mujahadeen' in Travnik”.<sup>3268</sup> The Chamber heard both parties to that conversation, Witnesses Džemal Merdan and Alastair Duncan, on what interpretation should be given to the passage.

1414. When asked by the Chamber about this milinfosum, Witness Džemal Merdan stated:

Q. But do you remember having said to a member of BritBat that Alagic was charged by the 3rd Corps to solve the problems of -- the ongoing problems with the mujahedin in Travnik?

A. Your Honours, I can't remember that event very precisely. This occurred in October. [...]. I remember that around that time, we issued an order stating that the El mujahedin detachment should be subordinated - not subordinated, resubordinated, the difference is important - to the Bosanska Krajina OG. At the time, the commander of the Bosanska Krajina OG was General Alagic.

[...]

Q: May we not assume that you were aware of the kidnappings of a number of Croats in Travnik in October, or weren't you?

A. No, Your Honour, I wasn't aware of that.”<sup>3269</sup>

Subsequently, Witness Džemal Merdan stated:

“A. Your Honour, I can claim with full responsibility before this Trial Chamber that Colonel Alistair Duncan never informed me of some Croats having been kidnapped in Travnik. Similarly, [...], I claim with full responsibility that I signed an order, or perhaps even two orders, on behalf of the 3rd Corps commander according to which the El mujahedin detachment was to be resubordinated to the Bosanska Krajina OG, which was led by the late General Alagic. So if I said that Colonel Alistair Duncan probably paraphrased what I said, but I would like to emphasise the fact that Colonel Alistair Duncan never told me that Croats had been kidnapped in Travnik.”<sup>3270</sup>

<sup>3266</sup> P 216, p. 3.

<sup>3267</sup> Alastair Duncan stated that code "CO 1 PWO" designated him in his capacity as the number one command officer of the Britbat, Alastair Duncan, T(F) p. 7290.

<sup>3268</sup> P 226 (italics added).

<sup>3269</sup> Džemal Merdan, T(F) pp. 13673-13674.

<sup>3270</sup> Džemal Merdan, T(F) pp. 13675-13676.

Džemal Merdan therefore stated to the Chamber that the conversation with Alastair Duncan on the ongoing problems referred to in the milinfosum of 22 October 1993 did not refer to the abduction of the Croats in Travnik but to the difficulties in attaching the *El Mujahedin* detachment to the OG *Bosanska Krajina*.

1415. Next, under examination, Witness Alastair Duncan recalled that on one occasion Džemal Merdan told him that he had instructed Mehmed Alagić to deal with the question of the mujahedin in Travnik.<sup>3271</sup> Subsequently, when cross-examined by the Defence for the Accused Hadžihasanović on that conversation with Džemal Merdan, Duncan answered as follows:

Q. Now, if I turn, General [...] you met with Mr. Merdan and you made reference to this conversation yesterday when you were told by Mr. Merdan that the commander of the Operational Group Bosanska Krajina or OGBK, that is, Mehmet Alagic, had been given instructions to deal with the Mujahedin problem in Travnik. Do you recall this event?

A. Yes. It was the 22nd of October.

Q. The 22nd of October. Now, would you agree with me that this specific -- what Mr. Merdan was referring to at that time had nothing to do with what we are talking about now of resubordination but actually dealt with five Croats which had been kidnapped by unknown Mujahedin elements in Travnik? Would that recall some souvenirs for you?

A. Yes. Yeah.<sup>3272</sup>

It appears from this passage that, according to Alastair Duncan, the conversation on 22 October 1993 between Džemal Merdan and himself dealt with the abduction of five Croats in Travnik at that time by mujahedin, and not with difficulties in attaching the mujahedin to the operations group.

1416. In view of those contradictory interpretations, the Chamber would state the following:

1417. First, as indicated earlier in the Judgement,<sup>3273</sup> while the members of the *El Mujahedin* detachment refused to carry out the order given by the Accused Hadžihasanović on 28 August 1993 to attach themselves to the 306<sup>th</sup> Brigade, this was manifestly not the case with the two orders to attach themselves to the OG *Bosanska Krajina* given on 6 September 1993 and 4 December 1993, respectively, by the 3<sup>rd</sup> Corps Command. On the contrary, the evidence proves that the *El Mujahedin* detachment fought and operated under the OG *Bosanska Krajina* Command in September and October 1993 and that the detachment did not mount any independent operations

<sup>3271</sup> Alastair Duncan, T(F) p. 7296.

<sup>3272</sup> Alastair Duncan, T(F) p. 7403.

<sup>3273</sup> See *supra* paras. 823-831 and 847.

outside that command.<sup>3274</sup> The order to become attached to the OG *Bosanska Krajina* was therefore carried out.

1418. Assuming, however, as Witness Džemal Merdan indicates, that there were difficulties in attaching the detachment to the operations group, the respective dates of the orders to become attached suggest instead that those difficulties occurred at times considerably before or subsequent to the conversation between Alastair Duncan and Džemal Merdan.

1419. Moreover, even if the problems mentioned by Džemal Merdan were not confined to those periods, consideration of the two milinfosums preceding that of 22 October 1993, dated 18 October 1993 and 20 October 1993, respectively,<sup>3275</sup> shows that the only problems relating to the mujahedin in Travnik raised between the army and UNPROFOR at that time had to do with the persecution by the mujahedin of the Croatian population and the abductions of Croatian civilians, and not with problems of attaching the *El Mujahedin* detachment to the OG *Bosanska Krajina*.

1420. In view of these factors, the Chamber considers that there is no evidence to suggest that, at the time of the conversation in question, the tension with the mujahedin had to do with the problems of attaching the detachment to the operations group.

1421. Second, the Chamber finds that, as far as it knows, on 22 October 1993 the only “ongoing problems” in Travnik regarding the mujahedin had to do with the abduction of five Croatian and Serbian Civilians three days before, that is, on 19 October 1993 in Travnik and that, as appears from the statement of the facts set out above, this was already known both to the OG *Bosanska Krajina* Command and the international organisations, including UNPROFOR, on 20 October 1993, that is, two days before the conversation in question. It should also be noted that Witness Džemal Merdan did not highlight any other ongoing problems in Travnik at that time.

1422. The Chamber therefore concludes that the only reasonable interpretation to give to Exhibit P 226 is the one put forward by Witness Alastair Duncan, that is, that the discussion between the UNPROFOR representative and the deputy of the Accused Hadžihasanović on 22 October 1993 related to the abduction of five civilians by the mujahedin three days earlier. Consequently, with respect to the fact that the milinfosum indicates that on 22 October 1993 Džemal Merdan *had* instructed Alagić to resolve the ongoing problems with the mujahedin and that on 20 October 1993 Mehmed Alagić did in fact order the mujahedin to release the five civilians abducted the previous

<sup>3274</sup> See *supra* paras. 825-829 and 848.

<sup>3275</sup> P 173; P 216.

day, the Chamber is convinced beyond a reasonable doubt that Džemal Merdan was aware, by 20 October 1993 at the latest, of the abduction of the second group of Serbian and Croatian civilians.

1423. Third, when Witness HE appeared before the Court, the Defence for the Accused Hadžihasanović questioned him as to whether the representatives of the ABiH could have taken other steps to save the lives of the persons detained in Orašac. Witness HE answered in the following terms:

Q. And finally [...] could you tell me, given these dramatic circumstances in Travnik following the 19th of October, could you tell us whether Commander Alagić [...] or any other representative of the army of Bosnia-Herzegovina could have done anything more to save these persons' lives, or whether you could have done anything to investigate the information and possibly punish the perpetrators after you learned about the killing of Mr. Popović?

A. [...] all the reasonable measures that could have been applied at that time were applied. Commander Alagić, Commander Cuskić did the same. We also were supported by Mr. Dugalić and by the corps commander in what we were doing. Nothing else reasonable could have been done [...].<sup>3276</sup>

Witness HE stated that the OG *Bosanska Krajina* Commander, Mehmed Alagić, and the 17<sup>th</sup> Brigade Commander Fikret Čuskić had obtained the support of Ramiz Dugalić and of the Army Corps Commander in the steps taken right after the civilians had been abducted. It therefore emerges clearly from this answer that the OG *Bosanska Krajina* Command informed, and kept informed, the 3<sup>rd</sup> Corps Command, including the Accused Hadžihasanović, of the measures taken after the civilians in Travnik were abducted, as soon as such measures were taken.

1424. On the basis of the foregoing, the Chamber draws the following conclusions. It has been proved beyond a reasonable doubt, on the basis of Exhibit P 226 and the testimony of Alastair Duncan, that Witness Džemal Merdan was informed, at the latest by 20 October 1993, of the abduction of the second group of civilians the day before. Knowledge on the part of the 3<sup>rd</sup> Corps Command, including Ramiz Dugalić and the Accused Hadžihasanović, of the abductions is further borne out by the statements of Witness HE appraised above. Consequently, the Chamber is convinced beyond a reasonable doubt that the Accused Hadžihasanović knew, as of 20 October 1993, that five Croatian and Serbian civilians had been abducted by mujahedin the previous day.<sup>3277</sup>

1425. In addition, the Chamber is convinced that the Accused Hadžihasanović knew, as of 20 October 1993, what measures and steps had already been taken by the OG *Bosanska Krajina* Command to try to resolve the crisis brought about by the abductions. As will be considered in the

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<sup>3276</sup> Witness HE, T(F) p. 17012.



following chapter relating to the measures, when the Accused Hadžihasanović made the decision on 20 October 1993 not to use force against his subordinates, he could do so only in view of the measures and steps already taken. As concluded before,<sup>3278</sup> the *El Mujahedin* detachment came under the OG *Bosanska Krajina* Command, as regards combat operations when it was attached to that operations group, but came directly under the authority and control of the 3<sup>rd</sup> Corps as regards the other aspects of its military existence. Thus, the detachment depended on the logistical support of the 3<sup>rd</sup> Corps. Next, the 3<sup>rd</sup> Corps called the detachment the “*El Mujahedin* independent unit”. Moreover, the 3<sup>rd</sup> Corps decided to assign the detachment to combat operations. It followed that any step and measure to compel the detachment by force could be undertaken only with the consent of the 3<sup>rd</sup> Corps. Furthermore, the fact that the Accused Hadžihasanović knew, as of 20 October 1993, what steps the OG *Bosanska Krajina* had taken before 20 October 1993 follows from the statements of Witness HE as analysed above.

1426. Consequently, the Chamber is convinced beyond a reasonable doubt that, as of 20 October 1993, the Accused Hadžihasanović knew that, in response to the threats made by Abu Džafer, Mehmed Alagić had forbidden the mujahedin to abduct civilians. He also knew that, in spite of that prohibition, the mujahedin had carried out their threats and abducted five Croatian civilians on 16 October 1993. He further knew that, following those first abductions, the OG *Bosanska Krajina* Command had threatened the mujahedin that they would attack them.

1427. The Chamber will now consider the question of whether, because he knew of the abductions carried out by the mujahedin, the Accused Hadžihasanović had reason to know that his subordinates were about to commit, or had committed, the crimes of mistreatment and murder against Croats.

1428. In this regard, the Chamber notes that at the time the Accused Hadžihasanović had knowledge of the abductions, he in fact had several pieces of information at his disposal such as to put him on notice of the imminent violations of the kind alleged in the Indictment.

1429. First, as has already been considered in detail in the part of the Judgement dealing with the *de facto* subordination of the mujahedin to the 3<sup>rd</sup> Corps, on 15 April 1993, the mujahedin abducted Živko Totić, the HVO *Jure Francetić* Brigade Commander, in Zenica and killed his four bodyguards in the course of his abduction. The abduction was carried out in reaction to the HVO’s arrest and detention, independent any combat situation, of foreign nationals from Arab countries. The mujahedin’s claimed aim for this operation was to secure the release of “their brothers”, who

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<sup>3277</sup> See also *supra* para. 332.

had been detained by the HVO. It was shown that given its albeit limited role as mediator in the negotiations connected with this exchange, the 3<sup>rd</sup> Corps Command had knowledge of those events.<sup>3279</sup>

1430. Second, as has been shown previously, on 24 April 1993, the mujahedin and local Muslims based at Poljanice Camp killed four Croatian civilians in retaliation for the serious injuries inflicted on one of their fellows by the HVO independent of the fighting. The evidence showed, moreover, that as a result of the inquiries carried out after those incidents, the 3<sup>rd</sup> Corps Command was informed of the murders and of the fact that they were the work of mujahedin.<sup>3280</sup>

1431. Third, as established above, on 8 June 1993, some 10 mujahedin based at Poljanice camp, consisting of foreign and local Muslim soldiers, killed 24 Croats who had been taken prisoner and had surrendered their weapons after the ABiH took the village of Maline that day. The investigation by the 306<sup>th</sup> Brigade following those events and subsequent communications between the Accused Hadžihasanović and Fikret Čuskić on this subject made it possible to establish that the Accused Hadžihasanović had knowledge of the massacre of 24 Croats, of the fact that the mujahedin had carried out the massacre, and of the fact that the victims were not killed in the fighting.<sup>3281</sup>

1432. In the Chamber's opinion, that evidence shows beyond a reasonable doubt that the Accused Hadžihasanović knew, mainly when they were made aware of the loss or detention of one of their fellows as a result of HVO action in a situation independent of the fighting, that the mujahedin were capable of particularly violent actions against the Croatian population, in complete violation of international law. Consequently, in this case the Accused Hadžihasanović knew that so long as the HVO did not release or exchange Emsud Kadirić, the mujahedin were capable of violent reprisals against the civilian detainees.

1433. Furthermore, the Chamber finds that, in view of the evidence available to it, there is no indication that, at the time they joined the ABiH, the mujahedin had been the subject of disciplinary or criminal sanctions on account of the unlawful conduct on the occasion of the abduction of Živko Totić and the massacres in Maline and Miletici. Indeed, as it appears from the conclusions of the Judgement on the murders committed in those two villages,<sup>3282</sup> those crimes were not brought to the attention of either the military police or the military judiciary operating in the areas controlled by

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<sup>3278</sup> See *supra* para. 815.

<sup>3279</sup> See *supra* paras. 501-503, 506 and 521.

<sup>3280</sup> See *supra* paras. 1085-1088.

<sup>3281</sup> See *supra* paras. 1129-1133 and 1135-1144.

<sup>3282</sup> See *supra* paras. 1085-1088 and 1128-1134.

the ABiH. It was very unlikely that those crimes were brought to the attention of the civilian judiciary and the civilian police, considering the conditions of war, the inaccessibility of Poljanice Camp and, particularly in the case of Miletići, its geographical isolation in the Bila Valley. Consequently, there was a risk that the mujahedin were not punished for those crimes.

1434. The Chamber also notes that, according to the evidence adduced by the Parties, there is no indication that, as from when the *El Mujahedin* detachment was integrated into the ABiH 3<sup>rd</sup> Corps on 13 August 1993, the Accused Hadžihasanović promoted the teaching and dissemination of international law among the troops of that detachment. The appraisal of the general orders given by the Accused Hadžihasanović to ensure that his subordinates were trained in international law shows that, after 13 August 1993, the Accused Hadžihasanović issued only one order, on 18 September 1993, with a view to prohibiting the capture of unarmed civilians.<sup>3283</sup> In addition, that order was a general order to all the brigades of the operations groups and to all the independent units.<sup>3284</sup> Furthermore, since the mujahedin were not integrated into the ABiH before 13 August 1993, they obviously could not have received the instruction given and the orders issued prior to that by the Accused Hadžihasanović with a view to ensuring compliance with international humanitarian law. The Accused Hadžihasanović could therefore not have been unaware of the detachment's lack of training in customary international humanitarian law, the Geneva Conventions and the Additional Protocols to which the RBiH was a party.<sup>3285</sup>

1435. The Chamber is convinced beyond a reasonable doubt that all the information just discussed, which was available to the Accused Hadžihasanović at the time he became aware of the abduction of Croatian and Serbian civilians, must have put him on notice of the real and present risk that the mujahedin were about to commit criminal acts similar to those they had already carried out on several occasions in similar circumstances, such as the murder and the mistreatment alleged in paragraphs 42(e) and 43(e) of the Indictment.<sup>3286</sup>

<sup>3283</sup> See *supra* paras. 1161-1167.

<sup>3284</sup> P 193.

<sup>3285</sup> DH 461. See also P 361.

<sup>3286</sup> As a result, the Chamber cannot give credence to the argument of the Accused Hadžihasanović, based on the testimony of Witness HE, to the effect that the authorities in Travnik and the ABiH had no information or evidence suggesting that any of the hostages might be killed: Hadžihasanović Defence Final Brief, para. 1117; See Witness HE, T(F) p. 17007. The Chamber notes, moreover, that Witness HE contradicted himself in his statement. When questioned about the measures taken in relation to the abductions, he acknowledged that if the army had attacked the mujahedin, innocent people could have been killed: Hadžihasanović Defence Final Brief, para. 17012. The Chamber notes that, while the English transcript of Witness HE's statement does not refer to the lives of the five hostages: T(E) p. 17012, the French transcript suggests that Witness HE was referring to the lives of the hostages detained in Orašac Camp: T(F) p. 17012.

c. Measures Taken

1436. Having concluded that the Accused Hadžihasanović had reason to know that his subordinates were about to commit the crimes of murder and cruel treatment against the abducted civilians, the Chamber will now consider whether the Accused Hadžihasanović took the necessary and reasonable measures to prevent those crimes from being committed.

1437. To that end, the Chamber will first consider what preventive measures were taken by the Accused Hadžihasanović and the OG *Bosanska Krajina* Command once he had reason to know that his subordinates were about to commit criminal acts, that is as of 20 October 1993 and before he left his post as 3<sup>rd</sup> Corps Commander on 31 October 1993. It will then consider whether those measures were reasonable and necessary.

i. Preventive Measures Taken by the Accused Hadžihasanović between 20 October 1993 and 31 October 1993

1438. On 20 October 1993 at the latest, Džemal Merdan ordered Mehmed Alagić to resolve the issue of the abductions in Travnik.<sup>3287</sup>

1439. On the same day, Mehmed Alagić ordered the mujahedin to release the prisoners who had been abducted the day before.<sup>3288</sup> To this end, it appears that a member of the OG *Bosanska Krajina* Command went to Poljanice Camp in order to pass on to Abu Haris and Abu Džafer the order to release the prisoners immediately.<sup>3289</sup>

1440. On 22 or 23 October 1993, Kazimir Pobrić was released.<sup>3290</sup>

1441. Between 20 October 1993 and 29 October 1993, at the initiative of the ICRC, a member of the OG *Bosanska Krajina* Command and a representative of the ICRC tried to visit the mujahedin camp but were refused entry.<sup>3291</sup>

1442. Lastly, on 29 October 1993, after a member of the OG *Bosanska Krajina* Command had gone to Poljanice Camp to summon Abu Haris to Mehmed Alagić's office,<sup>3292</sup> Alagić met Abu

<sup>3287</sup> P 226; Alastair Duncan, T(F) pp. 7296 and 7403. *See supra* the discussion of the interpretation of Exhibit P 226, paras. 1413-1422.

<sup>3288</sup> P 173; P 376. *See also* Witness HE, T(F) pp. 17003-17004.

<sup>3289</sup> Witness HE, T(F) pp. 17004 and 17011, T(E) p. 17003.

<sup>3290</sup> Dalibor Adžaić, T(F) p. 2408; Ivo Fišić, T(F) pp. 2263-2265; P 496.

<sup>3291</sup> P 177 p. 2; Witness HE, T(F) pp. 17004-17005.

<sup>3292</sup> Witness HE, T(F) pp. 17007-17008.

Haris.<sup>3293</sup> According to Witness HE, on that occasion Mehmed Alagić threatened Abu Haris that unless he released the civilians who had been abducted, he would be obliged to attack the mujahedin and they would have to leave the region of Mehurići.<sup>3294</sup> As appears from the description of the facts, however, those threats were not carried out.

1443. At this stage, the Chamber makes the following observations on the foregoing.

1444. The Chamber observes first that the release of Kazimir Pobrić on 22 or 23 October 1993 was most probably not attributable to the order transmitted on 20 October 1993 by the OG *Bosanska Krajina* Command insofar as, had the order been carried out, the life of Dragan Popović, who was executed on 21 October 1993, namely the day after Mehmet Alagić's order, would most probably have been saved and the three other civilians would have been released. This observation seems to bear out the testimony of Witness HE, who maintained that the Kazimir Pobrić's release was due to the influence brought to bear on the mujahedin by the circle of Muslim clerics and naturalised Bosnian Muslims.<sup>3295</sup>

1445. Second, as has just been mentioned, Witness HE stated that at the meeting between Abu Haris and Mehmed Alagić, Alagić threatened the mujahedin with force if they did not release the civilians who had been abducted. As appears from the description of the facts, Witness HE also stated that, before the first civilian prisoners were released, that is, very probably before Witnesses Z12 and Z13 were released on 16 October 1993, the OG *Bosanska Krajina* Command had already once threatened the mujahedin with a mortar attack if they did not release the civilians who had been abducted.<sup>3296</sup> Witness HE added that the army had contemplated the possibility of attacking the mujahedin.<sup>3297</sup>

1446. The Chamber finds, however, that there is a fundamental difference between the intention to use force as expressed by the army to the mujahedin and the real intention of the army to use force against them. Indeed, when he appeared before the Chamber, Witness HE mentioned that the ABiH did not wish to open a third front against the mujahedin insofar as the ABiH already had to face two armed forces, the "Serbian Montenegrin aggressor" and the HVO.<sup>3298</sup> By acknowledging that the ABiH did not wish to open a third front, Witness HE revealed that the threats by the ABiH to the mujahedin to use force against them were not followed up by action. Moreover, subsequent events

<sup>3293</sup> P 177; P 179; Witness HE, T(F) 17047-17048.

<sup>3294</sup> Witness HE, T(F) pp. 17047 and 17049-17050.

<sup>3295</sup> Witness HE, T(F) p. 17008. *See also* the testimony of Ivo Fišić, according to which Nusret Efendija Avdibegović had been contacted by the family of Ivo Fišić with a view to obtaining his release: Ivo Fišić, T(F) p. 2289.

<sup>3296</sup> Witness HE, T(F) pp. 17007 and T(E) p. 17007. *See also supra* para. 1369.

<sup>3297</sup> Witness HE, T(E) p. 17005.

show that despite the deterioration of the situation, the army never acted in conformity with what it had announced to the mujahedin in that it never used force against them to secure the release of the prisoners who had been abducted. On the contrary, even when Salko Beba and Fikret Čuskić were informed by Ivo Fišić that Dragan Popović had been decapitated by the mujahedin, the army did not use its military assets to secure the release of Dalibor Adžaić. Lastly, as indicated earlier,<sup>3299</sup> the OG *Bosanska Krajina* Command was using *at the same time* and continued to use – *despite* the two waves of abductions of civilians - the members of the *El Mujahedin* detachment to fight against the HVO.<sup>3300</sup> Consequently, contrary to the claims of the Defence for the Accused Hadžihasanović,<sup>3301</sup> the Chamber considers that the intention of attacking the mujahedin, as expressed by the army to the *El Mujahedin* detachment, did not reflect any real intention on the part of the army to attack them, insofar as the army had no internal intention to do so.

1447. The lack of any intention to use force as a means to pressure the mujahedin leads the Chamber to conclude that the 3<sup>rd</sup> Corps Command gave preference to using negotiations with its subordinates in order to try to secure the release of the Croatian and Serbian civilians. An analysis of the facts reveals that on 20 October 1993 the 3<sup>rd</sup> Corps Command, through the intermediary of Džemal Merdan, ordered Mehmed Alagić to resolve the issue of the abductions in Travnik and that, on the same day, Mehmed Alagić transmitted an order to the *El Mujahedin* detachment to release the abducted civilians. It was not until the meeting between Mehmed Alagić and Abu Haris on 29 October 1993 that the talks materialised.

1448. Consequently, on 20 October 1993, the 3<sup>rd</sup> Corps Command made the decision not to use force against the *El Mujahedin* detachment. Moreover, that decision could only come from the 3<sup>rd</sup> Corps Command. Indeed, as already indicated on several occasions,<sup>3302</sup> the *El Mujahedin* detachment fell under the OG *Bosanska Krajina* Command as regards combat operations when it was attached to that group, but came directly under the authority and control of the 3<sup>rd</sup> Corps as regards the other aspects of its military existence. It followed that the decision to use extreme means

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<sup>3298</sup> Witness HE, T(F) p. 17047.

<sup>3299</sup> *See supra* para. 829.

<sup>3300</sup> It is recalled that on 10 October 1993, the Accused Hadžihasanović informed the OG *Zapad* Command that the detachment was engaged in combat operations in the Lašva Valley under the OG *Bosanska Krajina* Command: P 492. Likewise, the war diary and the operations book of OG *Bosanska Krajina* mention fighting by the detachment and the 308<sup>th</sup> Brigade in the Novi Travnik – Gornji Vakuf region on 24 October 1993, following which the detachment had three dead and eight wounded: P 925.4 p. 4; C 13 (entry: 27 October 1993, pp. 126-127).

<sup>3301</sup> Hadžihasanović Defence Final Brief, paras. 1110-1111.

<sup>3302</sup> *See supra* para. 815.

of pressure such as the use of force against its direct subordinates could be taken only with the consent of the 3<sup>rd</sup> Corps.<sup>3303</sup>

1449. Third, the Chamber notes that nine days elapsed without any other meeting or substantial measure to resolve the ongoing problems between the time Mehmed Alagić transmitted the order to release the prisoners and that meeting. The void of any substantial action during that period is highlighted by an ECMM report dated 27 October 1993, which comments on a meeting that day between an ECMM representative and Salko Beba on the question of the release of the prisoners held in detention by the mujahedin. That report states as follows:

“After asking Mr Beba, the BiH Chief of Security in Travnik, for advice concerning the release of Croatian hostages in Travnik, he responded by saying that he could do nothing for the moment.”<sup>3304</sup>

And later,

“Presently, Alagić, O[perational] com[an]d[er] has other concerns. When these are over, he will demand control.”<sup>3305</sup>

1450. The Chamber will now consider whether the measures so taken by the Accused Hadžihasanović were necessary and reasonable.

ii. Were the Preventive Measures Taken by the Accused Hadžihasanović Necessary and Reasonable?

1451. The Chamber will first consider the argument of the Prosecution in its Final Brief that the basic units of the 3<sup>rd</sup> Corps, such as the 17<sup>th</sup> Brigade and OG *Bosanska Krajina*, had the material ability to secure the release of the persons detained by the *El Mujahedin* detachment insofar as they had succeeded in having an ABiH soldier detained by the mujahedin released.<sup>3306</sup>

1452. The facts of that incident are as follows. According to an official note dated 25 June 1993 from the 17<sup>th</sup> Brigade legal officer, in the night of 23 October 1993, members of the *El Mujahedin* detachment arrested Emir Kuduzović, a 17<sup>th</sup> Brigade soldier who was drunk and on his way to Krpeljići to buy cigarettes. They placed him in detention in Mehurići and mistreated him.<sup>3307</sup> Fikret Čuskić, the 17<sup>th</sup> Brigade Commander, sent one of his officers to the mufti of Travnik, Nusret

<sup>3303</sup> See *supra* para. 1425.

<sup>3304</sup> P 176.

<sup>3305</sup> P 176.

<sup>3306</sup> Prosecution Final Brief, para. 269.

<sup>3307</sup> DH 1515; Fikret Čuskić stated that the content of Exhibit DH 1515 is correct: T(F) p. 12088.

Efendija Avdibegović,<sup>3308</sup> with a message that he was going to attack the camp in Mehurići if Emir Kuduzović was not released.<sup>3309</sup> On 27 October 1993 a delegation from the camp in Mehurići, composed of Abu Haris, Maktauf and an emir, went to Fikret Čuskić. They held a meeting, in the presence of the Mufti of Travnik and the president of the municipality, at the end of which the mujahedin agreed to release Emir Kuduzović and made apologies.<sup>3310</sup> The war diary and the OG *Bosanska Krajina* operations log for 27 October 1993 state that the mujahedin did not release the soldier in spite of Alagić's order, that the mujahedin were waiting for the signature of one of their commanders, that Salko Beba took steps to obtain it and, lastly, that the mujahedin released Emir Kuduzović.<sup>3311</sup>

1453. The Chamber considers, contrary to the Prosecution's claims, that the case described above may be compared to the case at issue only to a minor extent. First, the abductions of the Croatian civilians took place in the context of a precarious situation connected with the death of four mujahedin, including the military commander of the *El Mujahedin* detachment, and the detention by the HVO of one of their fellows, Emsud Kadirić, whereas no such situation obtained in the case of Emir Kuduzović. Second, the evidence shows that the reason for the 17<sup>th</sup> Brigade soldier's abduction was that he was drunk,<sup>3312</sup> whereas the reason for the Croats' abduction was to secure the exchange of Emsud Kadirić and the bodies of the four killed mujahedin. Third, Emir Kuduzović was a Bosnian Muslim, whereas the hostages of 15 and 19 October 1993 were all Bosnian Croats. Consequently, what was at stake with the detention of the Croatian civilians was much greater than in the case of the detention of Emir Kuduzović. Consequently, the Chamber considers that few inferences can reasonably be drawn from the means used to secure Emir Kuduzović's release as regards the case of the detention of the Croatian civilians. The Chamber therefore rejects the Prosecution argument on this point.

1454. It has been proved, on the basis of Exhibit P 226 and the statements of Alastair Duncan and Witness HE, that the Accused Hadžihasanović knew, as of 20 October 1993, that the mujahedin had abducted five Croatian and Serbian civilians the day before. It has also been proved, in particular on the basis of the statement of Witness HE, that the Accused Hadžihasanović knew, as of 20 October 1993, what measures and steps had already been taken by the OG *Bosanska Krajina* Command to try to resolve the crisis caused by the abductions. Consequently, the Accused Hadžihasanović knew,

<sup>3308</sup> The Chamber notes that, according to Witness Ivo Fišić, Nusret Efendija Avdibegović had been contracted by Ivo Fišić's family with a view to securing his release: Ivo Fišić, T(F) p. 2289.

<sup>3309</sup> Fikret Čuskić, T(F) pp. 12088-12089 and T(E) p. 12126. See also P 179.

<sup>3310</sup> Fikret Čuskić, T(F) pp. 12088-12089 and T(E) pp. 12126-12127.

<sup>3311</sup> C 11 (entry: 27 October 1993); C 13 (entry: 27 October 1993).

<sup>3312</sup> Fikret Čuskić, T(F) pp. 12088 and T(E) p. 12125; P 179; DH 1515.



from that time, that Mehmed Alagić, acting in response to the threats of Abu Džafer, had prohibited the mujahedin from abducting civilians. He also knew that, in spite of that prohibition, the mujahedin had carried out their threats and abducted five Croatian civilians on 16 October 1993. He further knew that, after those first abductions, the OG *Bosanska Krajina* Command had threatened to attack the mujahedin. Lastly, he knew that, despite those extreme threats, the mujahedin had abducted five other civilians on 19 October 1993.

1455. Admittedly, after the first threats to use force made by the OG *Bosanska Krajina* Command, the mujahedin had released two prisoners, Witnesses Z12 and Z13, on 16 October 1993. It must be observed, however, that, in spite of those extreme threats from their commander, the mujahedin kept two other prisoners in detention and, what is more, worsened the crisis by abducting five other civilians, with the result that in the evening of 19 October 1993, seven Croatian and Serbian civilians were detained by the mujahedin in Orašac camp.

1456. Consequently, when, on 20 October 1993 at the latest, the Accused Hadžihasanović learned that his subordinates had abducted five Croatian and Serbian civilians, the situation which he had to evaluate had the following aspects. First, by abducting civilians, his subordinates had committed a crime of infringement of individual liberty, which was punishable under ordinary domestic law and military rules.<sup>3313</sup> Second, his subordinates had twice transgressed the instructions of their commander and ignored his threat to use military assets against them. Third, he knew that as long as the HVO did not release or exchange Emsud Kadirić, the mujahedin were capable of violent reprisals against the Croats detained, as in the case of the crimes committed in Miletići and Maline. Last, he knew that there was a risk that the mujahedin had not been punished for those crimes and that they had not had the benefit of any training in international humanitarian law. Consequently, on 20 October 1993, he had reason to know that his subordinates were preparing to commit the crimes of murder and mistreatment against their prisoners.

1457. Consequently, once he knew of the abductions, a reasonable commander placed in the circumstances as described had to make immediate use of force as the measure which was necessary and reasonable to bring the crimes of abduction to an end and to prevent the crimes of murder and mistreatment his subordinates were about to commit.

1458. A reasonable commander placed in such circumstances could not merely issue an order to release the prisoners and again threaten his subordinates with attack. Indeed, the members of the *EL*

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<sup>3313</sup> In making this finding, the Chamber is conscious of the fact that the crime of abduction is not alleged in the Indictment.

*Mujahedin* detachment had already failed twice to obey the orders of their commander. What was even more alarming was that the first threats to use force against his own subordinates had not had the deterrent effect counted on. On the contrary, the mujahedin had stepped up their criminal actions by abducting another five civilians. Consequently, it was unreasonable to think that fresh threats of the same kind would meet with success. What is more, fresh threats would have deprived the first threats of any credibility. An additional reason prevented a reasonable commander placed in those circumstances from satisfying himself with talks. The seriousness of the offences concerned and the lack of discipline shown by the *El Mujahedin* detachment were such that the initiation of talks would have discredited his power of action and control with regard to his other subordinated troops and hence encouraged his other subordinated troops to be undisciplined.

1459. For all the reasons set out above, the Chamber considers that the only way in which the 3<sup>rd</sup> Corps could deal with the situation it faced was to use military assets against the *El Mujahedin* detachment immediately. The Chamber notes, moreover, that the Defence for the Accused Hadžihasanović seems to share this view in its written submissions.<sup>3314</sup>

1460. Nevertheless, despite all the alarming facts of which he was aware on 20 October 1993, the Accused Hadžihasanović decided not to use force as a means of exerting pressure and made another decision, which would have great consequences, that is, to negotiate passively the release of the civilians with his subordinates. The aftermath of those events, that is, the absence of any practical approaches between 20 and 29 October 1993 with a view to releasing the abducted prisoners and the talks on 29 October 1993 with the commander of the *El Mujahedin* detachment, shows that the Accused Hadžihasanović constantly maintained that position until the time he gave up his duties on 1 November 1993. Later, and while this consideration applies only to Mehmed Alagić, who took over on 1 November 1993 from the Accused Hadžihasanović, even the announcement by Ivo Fišić of the beheading of Dragan Popović did not bring about a change of the position of the 3<sup>rd</sup> Corps, even though Dalibor Adžaić was still in the hands of the *El Mujahedin* detachment. The fact that the 3<sup>rd</sup> Corps persisted in maintaining this position in spite of the deterioration of the situation shows, in the Chamber's view, that the 3<sup>rd</sup> Corps' policy was set as from the onset of the crisis: it was necessary to confine action to negotiating the release of the civilians and not to use military assets against the *El Mujahedin* detachment.

1461. The Chamber considers that, by deciding not to use force against his subordinated troops and by deciding, on the contrary, to adopt a passive attitude towards resolving the ongoing crisis,

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<sup>3314</sup> Hadžihasanović Defence Final Brief, para. 1138. See also *supra* the discussion in paras. 85-88.

the Accused Hadžihasanović failed to take the necessary and reasonable measures, in view of the circumstances of the case, in order to prevent the crimes of murder and mistreatment which he had reason to believe about to be committed.

1462. Before finding the Accused Hadžihasanović criminally responsible, however, it should be asked both whether Accused Hadžihasanović could have prevented the crimes of murder and mistreatment by using force and whether the Accused Hadžihasanović had the material ability to use force against the *El Mujahedin* detachment.

iii. Effectiveness of Using Force

1463. The Chamber has ruled that, on 20 October 1993, the Accused Hadžihasanović should have used military assets against the *El Mujahedin* detachment to secure the release of the abducted civilians. Nevertheless, the execution of Dragan Popović occurred the next day, 21 October 1993. Taking into account the short period of time to intervene, can the Accused Hadžihasanović be held criminally responsible for failing to prevent the murder of Dragan Popović if a reasonable commander placed in the same circumstances fails to prevent that murder?

1464. This question raises the issue of the relevance of the causal link between the commander's failure to act in order to prevent the commission of an offence and the subordinate's offence in the determination of command responsibility. One could argue, in fact, that if the commission of the offence cannot be prevented by a commander, there is no reason to allege the criminal responsibility of that commander for failing to prevent that offence.

1465. Nevertheless, as found previously,<sup>3315</sup> the Chamber considers that the existence of a link between the failure to act to prevent a crime and the commission of that crime is implicit and therefore presumed. Accordingly, the Prosecution need not prove the success of the necessary and reasonable preventive measures that were required in view of the circumstances of the case. On the contrary, it is the Accused who must refute that presumption.

iv. Material Ability of the Accused Hadžihasanović to Use Force  
Against his Subordinates to Prevent Crimes

1466. The Chamber first notes that from the evidence submitted by the Parties it is not possible to establish that, prior to 6 November 1993, the OG *Bosanska Krajina* Command or any other basic

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<sup>3315</sup> See *supra*, para. 193.

unit in the 3<sup>rd</sup> Corps knew that Croatian civilians had been brought to the mujahedin camp in Orašac. Witnesses Z12 and Z13 only learned after the fact that they had been detained at Orašac, and did not specify in their evidence whether they had so informed the ABiH. Another witness indicated that the OG *Bosanska Krajina* Command knew where the hostages were being held only when Ivo Fišić and Ivo Rajković made their statements<sup>3316</sup> in the first half of November 1993.

1467. Nonetheless, in view of the evidence studied in the introductory section on the mujahedin,<sup>3317</sup> two mujahedin camps existed in the area of Travnik; Poljanice Camp, near Mehurići, and Orašac Camp, some 10 kilometres from Poljanice Camp.<sup>3318</sup> Additionally, the OG *Bosanska Krajina* and the 17<sup>th</sup> Brigade were well aware of the existence and location of the two mujahedin bases.<sup>3319</sup>

1468. The ABiH also knew approximately how many mujahedin combatants were based at Poljanice Camp. Several witnesses estimated their numbers at 100 and 150.<sup>3320</sup> At the material time, however, there would have logically been fewer men at Poljanice Camp, since the *El Mujahedin* detachment was engaged in combat operations in the Novi Travnik – Gornji Vakuf region on 24 October 1993.<sup>3321</sup>

1469. Witness HE stated that the ABiH did not know what type of weapons the mujahedin had or used.<sup>3322</sup> Admittedly, as indicated above, it appears that the mujahedin had their own weapons which did not belong to the army.<sup>3323</sup> The Chamber notes, however, that several witnesses said that the mujahedin were armed with automatic rifles and rocket launchers and that some of them had sabres or long knives.<sup>3324</sup> Furthermore, the ABiH must have known which type of weapons the mujahedin had since, as demonstrated above, the mujahedin fought alongside the ABiH on several occasions before the *El Mujahedin* detachment was integrated into the ABiH 3<sup>rd</sup> Corps in August 1993<sup>3325</sup> and right after its integration, the *El Mujahedin* detachment also fought with other units several times against the HVO, under the OG *Bosanska Krajina*'s command in September and October 1993.<sup>3326</sup>

<sup>3316</sup> Witness HE, T(F) p. 17011.

<sup>3317</sup> See *supra* paras. 419-430.

<sup>3318</sup> Witness HE, T(F) p. 17032.

<sup>3319</sup> Witness HE, T(F) pp. 17011 and 17032; P 438; P 925.4 (entry: 27 October 1993); Fikret Čuskić, T(F) p. 12088; DH 1515.

<sup>3320</sup> Witness HB, T(F) p. 12615; Witness HE, T(F) p. 17031.

<sup>3321</sup> P 925.4 p. 4; C 13 (entry: 27 October 1993, pp. 126-127).

<sup>3322</sup> Witness HE, T(F) p. 17006.

<sup>3323</sup> Mustafa Poparić, T(F) p. 14490. See also P 439/DH 165.6/C9.

<sup>3324</sup> Witness XA, T(F) p. 1421; Witness XD, T(F) p. 1747; Mirko Ivkić, T(F) pp. 4575 and 4576; Cameron Kiggell, T(F) pp. 4981-4982; Mark Bower, T(F) p. 5137.

<sup>3325</sup> See *supra* paras. 529-540.

<sup>3326</sup> See *supra* paras. 825-829.

1470. Moreover, the OG *Bosanska Krajina* had the military assets to intervene to attack the mujahedin. On 20 October 1993, the former JNA Barracks in Travnik, which housed the 17<sup>th</sup> Brigade,<sup>3327</sup> the OG *Bosanska Krajina* Command, and the operations group Military Police Company<sup>3328</sup> included more staff than it had had for several weeks.<sup>3329</sup> While it is difficult to estimate the number of staff actually available on 20 October 1993 due to the ongoing combat operations, the evidence indicates that the OG *Bosanska Krajina* had in principle a total of more than 6,000 troops available.<sup>3330</sup> Furthermore, the OG *Bosanska Krajina* and its basic units had enough heavy and light artillery available at the time to prepare an attack on a camp equipped with automatic rifles and rocket launchers. The heavy artillery munitions included portable rocket-launchers, 60, 82 and 120 mm shells, mines,<sup>3331</sup> and anti-aircraft weapons, howitzers, mortars,<sup>3332</sup> and at least one missile launcher.<sup>3333</sup> The light weapons ammunition included essentially 7.62 mm calibre rounds for pistols, semi-automatic and automatic rifles, and 7.9 mm calibre rounds for the M-48 rifles.<sup>3334</sup>

1471. The Chamber further notes that the ABiH Supreme Command Staff had considered engaging a third front of the 3<sup>rd</sup> Corps against the mujahedin in June 1993. As indicated, on 16 June 1993, Rasim Delić ordered the 3<sup>rd</sup> Corps Command to send the mujahedin to Mt Igman and to merge them with an independent detachment from the Supreme Command Staff and, unless the mujahedin accepted this, to disarm them.<sup>3335</sup> In a telephone conversation the same day after Rasim Delić gave the order, however, the Accused Hadžihasanović told Sefer Halilović that he could not fully execute it because disarming the mujahedin would mean opening a third front.<sup>3336</sup> While the opening of a third front seems to have been an argument against sending the mujahedin to Mt Igman in June 1993, it cannot be used here to justify the refusal to use force against the mujahedin. In fact, in this case, the use of force was intended only to secure the release of a few civilians who had been abducted and not to disarm all the mujahedin.

<sup>3327</sup> Fikret Čuskić, T(F) pp. 12049, 12050 and 12123.

<sup>3328</sup> Samir Sefer, T(F) p. 11988; Osman Menković, T(F) p. 14674; Fikret Čuskić, T(F) pp. 12123-12124; Hendrik Morsink, T(F) p. 8025.

<sup>3329</sup> P 173, p. 1.

<sup>3330</sup> C 16 (entry: 11 July 1993); DH 1620; P 192.

<sup>3331</sup> P 192, pp. 24 and 25.

<sup>3332</sup> Fikret Čuskić, T(F) p. P 179.

<sup>3333</sup> C 11 (entries: 8 July 1993, 5 September 1993, 20 September 1993, 24 September 1993, 28 September 1993 and 4 October 1993).

<sup>3334</sup> To be read in conjunction with P 272; C 11 (entries: 1 September 1993, 6 September 1993, 7 September 1993, 24 September 1993); C 13 (entry: 17 July 1993); C 18 (entries: 20 September 1993, 21 September 1993).

<sup>3335</sup> DH 165.2/P 270. *See also supra* para. 554.

<sup>3336</sup> DH 165.3/P 807. *See also supra* para. 555.

1472. Based on the above, the Chamber considers that the 3<sup>rd</sup> Corps had the material ability to use force to prevent the crimes of mistreatment and murder that the subordinates of the Accused Hadžihasanović were about to commit.

v. Time Needed to Implement a Decision to Use Force

1473. The Chamber considers the issue of how much time the OG *Bosanska Krajina* needed to implement the military measures at its disposal to have relative relevance here.<sup>3337</sup>

1474. In fact, it has been established that as of 20 October 1993, the Accused Hadžihasanović decided against using force and to adopt instead a passive attitude in order to resolve the ongoing crisis. It has also been established that the Accused Hadžihasanović maintained that passive attitude until he left his post on 31 October 1993. It is therefore clear that the necessary and reasonable measures required were not taken, in view of the circumstances of the case, and that the 3<sup>rd</sup> Corps had no intention of considering a military action against the mujahedin. Consequently, since the Accused Hadžihasanović never even attempted to organise such an operation, the time needed to carry it out cannot be measured.

1475. Nevertheless, had the 3<sup>rd</sup> Corps decided to use its military assets on 20 October 1993, the Chamber does not rule out the possibility that concrete and specific threats, combined with clear preparations for an attack on Poljanice Camp, would have intimidated the *El Mujahedin* detachment before Dragan Popović was executed on 21 October 1993. For example, a specific ultimatum to release the abducted civilians and the threat of shelling from artillery pointed at Poljanice Camp, is one substantial measure that could have been taken within the time frame set.<sup>3338</sup>

1476. Given these considerations, the Chamber is of the view that a decision to use force against the detachment would have had a fair chance of success, also from a temporal standpoint.

<sup>3337</sup> The Chamber notes that while this temporal aspect may prove problematic for the murder of Dragan Popović, it is much less so as regards mistreatment at Orašac Camp. In fact, as the Chamber found, the mistreatment of Croatian and Serbian civilians continued after 21 October 1993 up until 22 or 23 October 1993 and, to a lesser extent, between 23 October 1993 and 31 October 1993: *See supra* paras. 1394 and 1397.

<sup>3338</sup> The Chamber notes that to secure the release of the 17<sup>th</sup> Brigade soldier, 17<sup>th</sup> Brigade Commander Fikret Čuskić pointed his artillery towards Mehurići Camp and threatened the mujahedin, through Nusret Efendija Avdibegović, that he would attack Mehurići Camp if they did not release Emir Kuduzović. In two days, the mujahedin had released Emir Kuduzović: Fikret Čuskić, T(F) pp. 12088-12089 and T(E) pp. 12126-12127; P 179; C 11 (entry: 27 October 1993); C 13 (entry: 27 October 1993); P 925.4; DH 1515. The Chamber nevertheless recalls that the stakes were much higher in the case of the detained Croatian civilians than they were in the case of Emir Kuduzović's detention, so that for the case of the Croatian civilians, few conclusions can be reasonably drawn from the means used to free Kuduzović. *See supra* paras. 1451-1453.

vi. Conclusions on Preventive Measures

1477. The Chamber considers that the 3<sup>rd</sup> Corps' choice to negotiate the release of the Croatian civilians with its subordinates does not constitute a necessary and reasonable measure given the circumstances of this case. As soon as the Accused Hadžihasanović learned of the abductions, he had the power and the duty to order the OG *Bosanska Krajina* to step in with military force immediately to prevent the crimes of mistreatment and murder he had reason to know were about to be committed. Consequently, the Accused Hadžihasanović must incur criminal responsibility for failing to take the necessary and reasonable measures to prevent the crimes of cruel treatment and the murder of Dragan Popović.

1478. On the basis of a more general analysis of the situation, the Chamber makes the following remarks.

1479. As established above, the Accused Hadžihasanović knew that members of the *El Mujahedin* detachment had a dangerous and violent temperament well before the detachment was integrated into the ABiH. In fact he knew those troops had already committed heinous crimes, specifically the massacre of 24 Croats in Maline in June 1993 and the execution of four Croatian civilians in Miletići in April 1993, in breach of international humanitarian law.

1480. The Accused Hadžihasanović also had information that the *El Mujahedin* detachment had not received training in international humanitarian law. He obviously knew that before they were integrated into the ABiH, members of the detachment had not received the training or received orders from the 3<sup>rd</sup> Corps to comply with international humanitarian law. Moreover, as soon as the detachment was integrated into the ABiH, he failed to make sure that an internal disciplinary system was set up to ensure compliance with the rules of international law applicable in armed conflicts.

1481. Consequently, as soon as the detachment entered his ranks, the Accused Hadžihasanović had all the information permitting him to conclude that there was a real risk his subordinates would commit crimes similar to those they had committed in the past. As that information was at his disposal, the Accused Hadžihasanović was therefore aware that there was a real and reasonably foreseeable risk that the members of the *El Mujahedin* detachment would commit violations of international humanitarian law.<sup>3339</sup>

1482. In spite of the considerable risk, the Accused Hadžihasanović nevertheless decided, with full knowledge of what he was doing, to use the existence of the *El Mujahedin* detachment to military

advantage, when in fact the 3<sup>rd</sup> Corps was under no obligation to use the detachment in combat. Furthermore, he accepted the special status of the *El Mujahedin* detachment, as soon as it began working within the ABiH. By deciding to derive military benefit from the *El Mujahedin* detachment in those conditions, despite the body of alarming information at his disposal, the Accused Hadžihasanović must have foreseen, well before the Croatian civilians were abducted in October 1993, the potential consequences of that abduction.<sup>3340</sup>

1483. By acting in that manner, even though international humanitarian law forbade him from using those troops in combat operations so long as he had not received assurances that they had received training in customary international humanitarian law, the Geneva Conventions and Additional Protocol, to which the RBiH was a party, the Accused Hadžihasanović allowed, or even created, all of the conditions conducive to the repeated commission of crimes not unlike those already committed. As a result, assuming that the Accused Hadžihasanović lacked the time needed to attack the mujahedin camp before 21 October 1993, the fact remains that as soon as the *El Mujahedin* detachment was integrated into his ranks, he had already put himself into a situation where he risked being incapable of taking the necessary and reasonable measures that might be required.<sup>3341</sup>

1484. On those grounds also, the Chamber considers that the Accused Hadžihasanović must bear the criminal responsibility for the mistreatment of the civilians at Orašac Camp and for the murder of Dragan Popović.

#### vii. Punitive Measures

1485. Since the 3<sup>rd</sup> Corps Command acquired actual knowledge of the mistreatment and of Dragan Popović's murder in the first half of November 1993 at a time when the Accused Hadžihasanović had already left his position as 3<sup>rd</sup> Corps Commander, the Chamber need not assess the possible punitive measures taken after that knowledge was acquired. The Chamber acquits the Accused Hadžihasanović of the charges that he failed in his duty to punish the perpetrators of the mistreatment and of Dragan Popović's murder.<sup>3342</sup>

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<sup>3339</sup> See *supra* paras. 99 and 193.

<sup>3340</sup> See *supra* paras. 849-850.

<sup>3341</sup> See *supra* para. 89.

<sup>3342</sup> See *supra* paras. 194-197.



(iv) Conclusions of the Chamber

1486. The Chamber is convinced beyond a reasonable doubt that although the Accused Hadžihasanović had reason to know that his subordinates were about to commit the crimes of cruel treatment and murder against detainees under their control, he failed to take the necessary and reasonable measures to prevent the commission of those crimes. The Chamber accordingly convicts the Accused Hadžihasanović of the crime of cruel treatment committed between 19 and 31 October 1993, and of the murder of Dragan Popović, referred to in count 4, paragraphs 41(bc), 42(e) and 43(e) of the Indictment. Conversely, the Chamber acquits the Accused Hadžihasanović of charges that he failed in his duty to punish the perpetrators of the mistreatment and of the murder of Dragan Popović.

(g) Motel Sretno

1487. The Indictment alleges that Bosnian Croats and Bosnian Serbs were detained at Motel *Sretno* in the town of Kakanj, which was guarded and operated by members of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion from around 15 May 1993 until at least 21 June 1993, and were physically abused and threatened. Soldiers from the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion allegedly beat and physically and psychologically abused those detainees. From around 26 January 1993 until 31 October 1993, and from 1 April 1993 until at least January 1994, respectively, the Accused Hadžihasanović and the Accused Kubura knew or had reason to know that the members of that unit, under their supervision and effective control, were about to commit the crimes of mistreatment or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed and to punish the perpetrators.<sup>3343</sup>

1488. The Accused Hadžihasanović and the Accused Kubura are therefore alleged to have committed cruel treatment, a violation of the laws or customs of war, punishable by Articles 3 and 7(3) of the Statute and recognised by common Article 3 of the Geneva Conventions.

(i) Arguments of the Parties

1489. The Prosecution argues that members of the 7<sup>th</sup> Brigade's 2<sup>nd</sup> battalion *Gerila* unit, military police from Zenica, and members of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion severely beat the detainees<sup>3344</sup> at Motel *Sretno*, which was operated by the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion.<sup>3345</sup> The Prosecution adds that the

<sup>3343</sup> Third Amended Indictment, paras. 41(c) and (b) and 42(f).

<sup>3344</sup> Prosecution Final Brief, paras. 275, 279-281, 286 and footnotes 897 and 902.

<sup>3345</sup> Prosecution Final Brief, paras. 275 and 280.

Accused knew that detainees were being mistreated<sup>3346</sup> but failed to take the necessary and reasonable measures to prevent the mistreatment from being committed and to punish the perpetrators.<sup>3347</sup>

1490. The Defence for the Accused Hadžihasanović does not seem to dispute that mistreatment took place at Motel *Sretno* on 18 and 19 May 1993, but argues that members of the 7<sup>th</sup> Brigade Military Police and not the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion were responsible for it.<sup>3348</sup> The Defence for the Accused Hadžihasanović made no objection to the factual allegations set out in the Indictment regarding the alleged mistreatment between 18 and 21 June 1993. The Defence for the Accused Hadžihasanović then argues that the Prosecution failed to prove that the Accused Hadžihasanović knew or had reason to know that the detainees at Motel *Sretno*<sup>3349</sup> were mistreated and that he failed to take the necessary and reasonable measures to prevent the commission of those crimes or to punish the perpetrators.<sup>3350</sup>

1491. The Defence for the Accused Kubura submits that the Accused Kubura did not know or have reason to know about the alleged mistreatment at Motel *Sretno*,<sup>3351</sup> and that he did not have the power or the duty to prevent or punish the alleged crimes.<sup>3352</sup>

(ii) Findings of the Chamber regarding Mistreatment at Motel Sretno

a. Sequence of Events of 18 and 19 May 1993

1492. Kakanj municipality lies to the southeast of Zenica municipality. In 1991, the population there was approximately 56% Muslim, 29% Croat and 8 to 9% Serb.<sup>3353</sup>

1493. As early as late March 1993, the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion was stationed at Motel *Sretno* in Kakanj.<sup>3354</sup> In April 1993, the building housed 55 soldiers from the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion.<sup>3355</sup> At the material time, Nihad Čatić was the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion Commander and Kasim Alajbegović

<sup>3346</sup> Prosecution Final Brief, paras. 279, 282-285 and 289; Prosecution Closing Arguments, T(F) pp. 19040, 19042 and 19044.

<sup>3347</sup> Prosecution Final Brief, paras. 284 and 288-289.

<sup>3348</sup> Hadžihasanović Defence Final Brief, paras. 967 and 981.

<sup>3349</sup> Hadžihasanović Defence Final Brief, paras. 991-1005 and footnotes 1415 and 1416; Hadžihasanović, Defence Closing Arguments T(F) pp. 19141-19142.

<sup>3350</sup> Hadžihasanović Defence Final Brief, para. 1007.

<sup>3351</sup> Kubura Defence Final Brief, paras. 128-129 and 161-163; Kubura Defence Closing Arguments, T(F) pp. 19273-19279.

<sup>3352</sup> Kubura Defence Final Brief, paras. 147-152.

<sup>3353</sup> DH 345.2; Ranko Popović, T(F) p. 1527.

<sup>3354</sup> P 153; P 728; P 560; Kasim Alajbegović, T(F) pp. 18690-18691; Fuad Kulović, T(F) p. 18816. *See* photographs P 10; P 50 and P 51. *See* also videocassette P 761.

<sup>3355</sup> P 728.

the Deputy Commander.<sup>3356</sup> The 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion offices, including that of Kasim Alajbegović, were on the ground floor of the Motel *Sretno* building behind the reception desk.<sup>3357</sup>

1494. On 18 May 1993, representatives from the HVO and the ABiH signed a cease-fire agreement in Medugorje.<sup>3358</sup> That same day, however, new incidents broke out between the HVO and ABiH in Kakanj.

1495. Witnesses Kasim Alajbegović, Deputy Commander of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion, and Fuad Kulović, Assistant Commander of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion for intelligence and security,<sup>3359</sup> stated that on 18 May 1993 three or four members of the 7<sup>th</sup> Brigade Military Police came to Motel *Sretno* to alert the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers that a group of 7<sup>th</sup> Brigade Military Police had been caught in an HVO ambush and that they were the only ones who had escaped.<sup>3360</sup> As a result, several members of the 7<sup>th</sup> Brigade Military Police went on patrol in Kakanj that day in an effort to arrest some of the 7<sup>th</sup> Brigade deserters.<sup>3361</sup> While crossing through a village called Rampa near Čatići, they were caught off guard by HVO members who then took them prisoner.<sup>3362</sup> According to Fuad Kulović, the HVO ambush caused panic among the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers.<sup>3363</sup>

1496. Between noon and 1800 hours, 14 Croatian and Bosnian Serb civilians, an HVO soldier, and an HVO TO member were arrested in or right around Kakanj and taken and detained in Motel *Sretno*. Witnesses Niko Petrović, Nenad Bogeljić, and Marinko Marušić were among the persons arrested and detained.<sup>3364</sup>

1497. The evidence adduced by the Parties differs as to which 7<sup>th</sup> Brigade units captured and detained those 16 people. According to Kasim Alajbegović and Fuad Kulović, the members of the 7<sup>th</sup> Brigade Military Police who had escaped made the arrests on their own initiative.<sup>3365</sup> Kasim Alajbegović added that no 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion members participated in the arrests and

<sup>3356</sup> P 498; P 728; P 475; Kasim Alajbegović, T(F) pp. 18684, 18693 and 18709-18710; Fuad Kulović, T(F) pp. 18816-18817.

<sup>3357</sup> Kasim Alajbegović, T(F) pp. 18713-18715 and 18747.

<sup>3358</sup> P 684.

<sup>3359</sup> P 498; Fuad Kulović, T(F) pp. 18806-18807.

<sup>3360</sup> Fuad Kulović, T(F) p. 18808. The Chamber notes that Fuad Kulović said that he had seen the police wearing military police insignia, that is white belts and regular uniforms: T(F) p. 18819.

<sup>3361</sup> Fuad Kulović, T(F) pp. 18839 and 18807; Kasim Alajbegović, T(F) p. 18695.

<sup>3362</sup> Fuad Kulović, T(F) pp. 18808 and 18810; Kasim Alajbegović, T(F) pp. 18695, 18757 and 18759.

<sup>3363</sup> Fuad Kulović, T(F) p. 18820.

<sup>3364</sup> Niko Petrović, T(F) p. 1565; Nenad Bogeljić, T(F) pp. 2106-2108; Marinko Marušić, T(F) pp. 1592-1593;

<sup>3365</sup> Fuad Kulović, T(F) pp. 18810 and 18831; Kasim Alajbegović, T(F) pp. 18696 and 18715.

detention of those people.<sup>3366</sup> Witness Niko Petrović, however, stated that he saw a group of ten armed men in camouflage uniforms arresting civilians on that day,<sup>3367</sup> and Witness Nenad Bogeljić, a former HVO member, noted that he was arrested by 4 or 5 soldiers from the 7<sup>th</sup> Brigade who were stationed at Motel *Sretno* and not wearing ABiH military police insignia.<sup>3368</sup> Furthermore, a report drafted at 2330 hours on 18 May 1993 by the 7<sup>th</sup> Brigade duty officer indicates that the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion had reinforcements from a 7<sup>th</sup> Brigade 2<sup>nd</sup> battalion guerrilla unit and additional police forces.<sup>3369</sup> Finally, an HVO report dated 21 May 1993 indicates that the arrest of 15 civilians on 18 May 1993 was the work of ABiH units led by the 7<sup>th</sup> Brigade from Zenica.<sup>3370</sup>

1498. In view of this evidence, the Chamber finds that the three or four members of the 7<sup>th</sup> Brigade Military Police who escaped with the assistance of local soldiers from the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion, arrested and detained 16 Bosnian Croats and Bosnian Serbs and that, later on the day of 18 May 1993, and in any case before 2330 hours, those troops were reinforced by 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion soldiers and additional 7<sup>th</sup> Brigade Military Police forces.

1499. Following the arrest of those 16 people, the representatives of the armed forces of the ABiH and HVO in Kakanj began negotiating the release of their prisoners.<sup>3371</sup> Fuad Kulović and Kasim Alajbegović thus stated that after the military police who had escaped arrived at Motel *Sretno*, they each contacted Džemal Hadžić, ABiH 3<sup>rd</sup> Corps 309<sup>th</sup> Brigade Commander, who attempted to negotiate with Nevin Marić, HVO Commander in Kakanj, the release of the prisoners each side was holding.<sup>3372</sup>

1500. Witnesses Niko Petrović, Nenad Bogeljić and Marinko Marušić described to the Chamber how they were mistreated at Motel *Sretno* from the time of their arrest on 18 May 1993 until the early morning of 19 May 1993. Niko Petrović and Marinko Marušić indicated that they were beaten on four separate occasions during that short period.<sup>3373</sup>

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<sup>3366</sup> Kasim Alajbegović, T(F) pp. 18716 and 18747. Kasim Alajbegović said that the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion had two or three police but that they were mostly in charge of securing the building, the entrance, and reception desk at Motel *Sretno*: T(F) p. 18716.

<sup>3367</sup> Niko Petrović, T(F) p. 1565.

<sup>3368</sup> Nenad Bogeljić, T(F) pp. 2106-2107, 2142-2143 and 2149-2150.

<sup>3369</sup> P 563. Nenad Bogeljić's statements also refer to the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion's presence at Motel *Sretno*. He indicated that one of the jailers present at the time he says he was being beaten was nicknamed "Geler": T(F) pp. 2120-2121. Vehid Subotić, a.k.a. Geler, was a member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion: P 542; P 713.

<sup>3370</sup> P 684. The Chamber will discuss the probative value of this document in the chapter dealing with the knowledge of the Accused Hadžihasanović.

<sup>3371</sup> P 563.

<sup>3372</sup> Fuad Kulović, T(F) pp. 18809-18810, 18822 and 18837; Kasim Alajbegović, T(F) p. 18696.

<sup>3373</sup> Niko Petrović, T(F) pp. 1569-1573; Marinko Marušić, T(F) pp. 1597 and 1599.

1501. Niko Petrović stated that after his arrest he was taken to a basement room in Motel *Sretno* where there were 15 other detainees.<sup>3374</sup> He explained that the room included a narrow area where the detainees were locked up and a wider area where interrogations were carried out. The layout of the room was such that whenever a detainee was interrogated, the other detainees could see what was happening.<sup>3375</sup> The witness stated that he was the first prisoner to be interrogated and he was ordered to sit on a chair, surrounded by three soldiers standing, one to his left who was armed, another to his right, and the last in front of him. The soldier in front of him threatened him by saying he wanted to “see how bad [his] Ustasha blood smell[ed]”.<sup>3376</sup> The soldier to his right then kicked him in the side of the head with his boot, the soldier to his left hit him with the butt of his rifle, and the soldier in front of him kicked him in the chest.<sup>3377</sup> Niko Petrović then staggered and was dragged back to the cell. He stated that afterwards, the soldiers called the detainees one by one and that he saw them receive the same treatment.<sup>3378</sup>

1502. Niko Petrović said that after the initial beatings a group of ten armed soldiers took the prisoners out of their cell and ordered them to beat one another. Petrović gave examples of how two brothers were ordered to slap each other in the face, and how he had to slap the person standing next to him. Since Petrović could not bring himself to do it, a member of the “MOS” hit him in the back with the butt of his rifle and ordered him to comply. The soldiers then ordered the prisoners to hit each other harder, this time in the stomach.<sup>3379</sup> Niko Petrović’s testimony was corroborated by Marinko Marušić, who stated that he was the person Niko Petrović was ordered to beat during that incident. He added that they were ordered to beat one another on two separate occasions. First, they had to slap and punch one other, and each time the guards thought that the blows were not hard enough, they would beat the prisoners themselves. The guards then ordered Niko Petrović to lie on the ground, and ordered Marinko Marušić to kick him in the kidneys. Marušić, however, wanted to avoid kicking him there or in the ribs, so he targeted his thighs. Since the soldiers were dissatisfied with Marinko Marušić’s approach, they ordered him to lie down on the ground. One of the soldiers then jumped on his ribcage and began to kick him, saying that was the only way to do it.<sup>3380</sup>

1503. Niko Petrović continued his testimony, stating that when night fell, the prisoners were subjected to a third round of mistreatment, which he described as the most violent. The soldiers lined up along the walls in a corridor and, after another prisoner was summoned and beaten, Niko

<sup>3374</sup> Niko Petrović, T(F) pp. 1566-1567.

<sup>3375</sup> Niko Petrović, T(F) pp. 1567-1569.

<sup>3376</sup> Niko Petrović, T(F) p. 1567.

<sup>3377</sup> Niko Petrović, T(F) pp. 1567-1568 and T(E) pp. 1567-1568.

<sup>3378</sup> Niko Petrović, T(F) p. 1568.

<sup>3379</sup> Niko Petrović, T(F) p. 1570.

<sup>3380</sup> Marinko Marušić, T(F) p. 1599.

Petrović had to walk through the line of soldiers. He was hit in the back with the butt of a rifle and immediately afterward, each soldier, one after the other, kicked him. The beating became increasingly violent as the soldiers beat him with the butts of their rifles. Niko Petrović fell to the ground and, before losing consciousness, took 14 truncheon blows to the head.<sup>3381</sup> Nenad Bogeljić described undergoing a similar beating which lasted 45 minutes. The soldiers trampled him, beat him with the butts of their rifles and, finally, hit him in the back with a truncheon. Despite his begging the soldiers not to hit him in his right kidney, the soldiers were ordered to land their blows specifically there.<sup>3382</sup>

1504. Niko Petrović stated that after he regained consciousness, he realised that two soldiers, including one of his former schoolmates, had locked the cell door in an attempt to prevent further beatings. When other soldiers arrived and noticed they could not get into the cell, however, they ordered the prisoners to put their heads between the cell bars. The soldiers picked up pieces of wood and told the prisoners they were going to give them one last treatment before night came. Niko Petrović added that the prisoners were then beaten one last time.<sup>3383</sup> Nenad Bogeljić described the same beating and pointed out that after he was hit in the back of the neck, all of the other prisoners were beaten.<sup>3384</sup>

1505. Marinko Marušić and Nenad Bogeljić pointed out that the soldiers used various instruments to beat the prisoners, such as wooden sticks, rifle butts, an S-shaped iron hook, and the back of a metal chair.<sup>3385</sup> The three other former detainees stated that the 16 prisoners at Motel *Sretno*, including Ljubisa Vucenović, Josip Marušić, Zeljko Krkeljas and Mladenko Krkeljas, were all beaten at that time.<sup>3386</sup>

1506. Nenad Bogeljić mentioned that he received death threats,<sup>3387</sup> and stated, like the other two former prisoners, that the prisoners were forced on many occasions to shout the words “*Allah-u-akbar*” whenever the soldiers shouted “*Tekbir*”.<sup>3388</sup>

1507. The beatings described above stopped at around 0400 hours on the morning of 19 May 1993.<sup>3389</sup> A person introducing himself to the prisoners as an officer representing the ABiH then

<sup>3381</sup> Niko Petrović, T(F) pp. 1571-1572.

<sup>3382</sup> Nenad Bogeljić, T(F) pp. 2114-2115.

<sup>3383</sup> Niko Petrović, T(F) p. 1573.

<sup>3384</sup> Nenad Bogeljić, T(F) pp. 2119-2120.

<sup>3385</sup> Marinko Marušić, T(F) pp. 1596-1597 and T(E) pp. 1597-1598; Nenad Bogeljić, T(F) p. 2114.

<sup>3386</sup> Niko Petrović, T(F) p. 1569; Marinko Marušić, T(F) p. 1600; Nenad Bogeljić, T(F) pp. 2119-2120.

<sup>3387</sup> Nenad Bogeljić, T(F) pp. 2116-2117.

<sup>3388</sup> Niko Petrović, T(F) p. 1573; Marinko Marušić, T(F) p. 1600; Nenad Bogeljić, T(F) p. 2120.

<sup>3389</sup> Marinko Marušić, T(F) p. 1602; Nenad Bogeljić, T(F) p. 2121.

arrived and asked the prisoners to give him their personal information.<sup>3390</sup> Two witnesses specified that the officer could see the prisoners had been injured.<sup>3391</sup> The prisoners were then released during the day on 19 May 1993.<sup>3392</sup>

1508. Niko Petrović explained that after his release, he went to see a doctor at the Kakanj dispensary. The medical certificate from his visit on 19 June 1993 lists an open wound in the back of the head, 5-centimetres long and down to the bone, purple bruises on his back, a bruised collarbone, and scratches on his elbows and legs.<sup>3393</sup> The certificate suggests that the patient required additional examinations but indicates that the dispensary was not in a position to transport him to the regional medical centre.<sup>3394</sup> Niko Petrović added that on the same day he was nevertheless transferred to the HVO hospital in Haljinići, where he received further treatment and medication, and he began treatment with a neuropsychiatrist in 1997.<sup>3395</sup>

1509. Marinko Marušić stated that as a result of being mistreated at Motel *Sretno*, he suffered a completely bruised back, damage to his eyes, and an injury to the head. Subsequent medical examinations revealed that he had an enlarged liver, bruised ribs, and an increased sedimentation rate.<sup>3396</sup> He is still suffering from the effects of a damaged liver and increased sedimentation rate today.<sup>3397</sup>

1510. Finally, Nenad Bogeljić stated that on 20 May 1993 he and several other prisoners went to the medical centre in Kakanj. There he learned that he had six broken ribs, dislocated kidneys, and bruises to one of his kidneys.<sup>3398</sup> He explained that on the same day, their injuries were filmed at the Haljinići medical centre and that he recognised six video clips showing the injuries that he and three fellow prisoners had sustained.<sup>3399</sup> Three months later, he visited a hospital in Croatia and learned that his spine was also damaged.<sup>3400</sup>

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<sup>3390</sup> Niko Petrović, T(F) p. 1574; Nenad Bogeljić, T(F) p. 2121.

<sup>3391</sup> Niko Petrović, T(F) p. 1575; Nenad Bogeljić, T(F) p. 2121.

<sup>3392</sup> Niko Petrović, T(F) p. 1574-1575; Nenad Bogeljić, T(F) pp. 2122 and 2145; Marinko Marušić, T(F) p. 1605; Kasim Alajbegović, T(F) pp. 18697 and 18748.

<sup>3393</sup> DK 3. *See also* Niko Petrović, T(F) p. 1574.

<sup>3394</sup> DK 3.

<sup>3395</sup> Niko Petrović, T(F) p. 1581.

<sup>3396</sup> Marinko Marušić, T(F) p. 1600 and T(E) p. 1601.

<sup>3397</sup> Marinko Marušić, T(F) pp. 1601-1602.

<sup>3398</sup> Nenad Bogeljić, T(F) pp. 2122-2123.

<sup>3399</sup> Nenad Bogeljić, T(F) pp. 2123-2126; P 63.

<sup>3400</sup> Nenad Bogeljić, T(F) p. 2122.

b. Sequence of Events from 18 to 21 June 1993

1511. Witness Ranko Popović, a Serbian civilian, stated that he was arrested in Kakanj on 18 June 1993 by 7<sup>th</sup> Brigade soldiers who took him to Motel *Sretno*.<sup>3401</sup> He indicated that he was beaten on two occasions. When he arrived at Motel *Sretno*, he was taken to the basement of the building where six soldiers were waiting in camouflage, wearing distinctive insignia, which he later learned designated the 7<sup>th</sup> Brigade.<sup>3402</sup> The soldiers punched and kicked him, and also beat him with cables.<sup>3403</sup> He described the basement as a kind of foyer containing a number of small “boxes” enclosed with bars.<sup>3404</sup> The next day, a soldier ordered him to put his head between the cell bars and beat him with a wooden board until it shattered.<sup>3405</sup> He explained that as a result of the beating his head was covered in blood, and that he still has scars from the blows on his head.<sup>3406</sup>

1512. Ranko Popović added that when he arrived, there were no other prisoners at Motel *Sretno* but that another civilian was brought there later. He pointed out that the civilian was not mistreated.<sup>3407</sup> He did recall, however, that the soldier who beat him the second time ordered the two men to beat one another. The prisoners did so, but for the most part faked it.<sup>3408</sup> Ranko Popović stated that he remained at Motel *Sretno* until 21 June 1993, when he was taken to the Zenica Music School.<sup>3409</sup>

c. Mistreatment, Paragraph 42(f) of the Indictment

1513. Based on the above, the Chamber finds that 16 Bosnian Croats and Bosnian Serbs were physically and psychologically abused throughout their detention at Motel *Sretno*, specifically from their arrival on the afternoon of 18 May 1993 until the early morning of 19 May 1993. The Chamber bases its finding on the specific and consistent evidence from three former detainees at Motel *Sretno*, namely Niko Petrović, Nenad Bogeljić and Marinko Marušić. Their testimony is consistent in stating that the detainees were repeatedly subjected to the most terrible brutality, sometimes in front of other detainees, that the detainees were forced to beat one another and to frequently shout “*Allah-u-akbar*”, and that they were brutalised with objects ranging from wooden sticks, to clubs, to rifle butts, if not with punches or kicks. The Chamber also accepts the videotape

<sup>3401</sup> Ranko Popović, T(F) pp. 1532-1535.

<sup>3402</sup> Ranko Popović, T(F) pp. 1536-1537.

<sup>3403</sup> Ranko Popović, T(F) p. 1537.

<sup>3404</sup> Ranko Popović, T(F) p. 1536.

<sup>3405</sup> Ranko Popović, T(F) p. 1539.

<sup>3406</sup> Ranko Popović, T(F) p. 1540.

<sup>3407</sup> Ranko Popović, T(F) pp. 1537-1538 and 1541.

<sup>3408</sup> Ranko Popović, T(F) p. 1541.

<sup>3409</sup> Ranko Popović, T(F) pp. 1537-1538 and 1542.



of the injuries suffered by the four former detainees at Motel *Sretno*,<sup>3410</sup> filmed, on 20 May 1993, the day after the events, which leaves no doubt as to the seriousness of the bodily harm inflicted on the detainees. The Chamber also finds, on the basis of the testimony of the three former detainees, that the perpetrators of the mistreatment intended to cause the prisoners at Motel *Sretno* serious pain and suffering.

1514. The Defence for the Accused Hadžihasanović argues that the 7<sup>th</sup> Brigade Military Police, not the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion, was responsible for the mistreatment of the prisoners at Motel *Sretno*.<sup>3411</sup> It bases that assertion on the testimony of Fuad Kulović alone, who indicated that on 19 May 1993 he learned from members of his battalion that the 7<sup>th</sup> Brigade Military Police were responsible for beating the detainees.<sup>3412</sup>

1515. The Prosecution alleges that in addition to the members of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion and the 7<sup>th</sup> Brigade Military Police, members of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion also took part in the mistreatment of the detainees at Motel *Sretno*.<sup>3413</sup>

1516. Consistent with its findings above,<sup>3414</sup> the Chamber would first recall that the 16 Croatian and Serbian men were detained as part of an arrest operation conducted by at least three or four members of the 7<sup>th</sup> Brigade Military Police and 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers, and that later during the day of 18 May 1993, in any case before 2330 hours, those men were reinforced by 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion soldiers and additional 7<sup>th</sup> Brigade military police. Consequently, at the material time, 7<sup>th</sup> Brigade military police, 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion soldiers, and local 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers were present at Motel *Sretno*.

1517. The Chamber also notes that Witness Fuad Kulović was not at Motel *Sretno* when the prisoners were mistreated. In fact, Fuad Kulović stated that he left Motel *Sretno* on 18 May 1993 at around 1500 or 1600 hours, and returned only the next day at around noon, when the detainees had already been exchanged.<sup>3415</sup>

1518. The Chamber finds that while Witness Niko Petrović stated that the perpetrators of the mistreatment were “MOS” soldiers in camouflage uniforms,<sup>3416</sup> without giving any specific indication as to which unit or battalion they belonged, Nenad Bogeljić did point out that the same

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<sup>3410</sup> P 63.

<sup>3411</sup> Hadžihasanović Defence Final Brief, paras. 967 and 981.

<sup>3412</sup> Fuad Kulović, T(F) p. 18812.

<sup>3413</sup> Prosecution Final Brief, para. 279 and footnote 897.

<sup>3414</sup> *See supra* para. 1498.

<sup>3415</sup> Fuad Kulović, T(F) pp. 18812-18813, 18822 and 18830.

<sup>3416</sup> Niko Petrović, T(F) pp. 1570-1571.

soldiers, that is local soldiers based at Motel *Sretno*, had brought him there.<sup>3417</sup> Likewise, Marinko Marušić indicated that the perpetrators of the beatings were local soldiers wearing military uniforms and “MOS” insignia on their belts.<sup>3418</sup> Furthermore, Nenad Bogeljić identified Vehid Subotić, aka Geler,<sup>3419</sup> a member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion,<sup>3420</sup> as being present during one beating.

1519. The fact that two victims described the perpetrators of the beatings as local soldiers, combined with the fact that 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers were at Motel *Sretno* at the material time, is sufficient to convince the Chamber beyond a reasonable doubt that 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers were among the perpetrators of the cruel treatment alleged. With respect to the allegations that the 7<sup>th</sup> Brigade Military Police and/or 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion also committed those crimes, the Chamber first notes that they are not mentioned in the Indictment. In fact, Paragraph 42(f) of the Indictment alleges that ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers mistreated the detainees. Consequently, the Chamber finds that the evidence adduced by the Prosecution during the trial corresponds only partially to the alleged material fact set out in the Indictment which is the identity of the subordinates. For this reason, in line with its previous findings,<sup>3421</sup> the Chamber considers the Indictment defective because of an error which should have prompted the Prosecution to request the leave of the Chamber to amend it accordingly. Since the Chamber was seized of no such request, it is of the view that it need not rule on the alleged commission of acts of which the 7<sup>th</sup> Brigade Military Police and/or 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion are accused.<sup>3422</sup>

1520. As regards mistreatment at Motel *Sretno* between 18 and 21 June 1993, the Chamber heard only one witness, Ranko Popović. According to his testimony, the only other detainee at Motel *Sretno* at that time was not physically abused. Ranko Popović’s statement is however extremely specific and both his description of the place of detention and the type of mistreatment inflicted on two occasions are consistent with the descriptions provided by the witnesses who had been detained at Motel *Sretno* on 18 and 19 June 1993. The Chamber therefore finds his testimony credible and is

<sup>3417</sup> Nenad Bogeljić, T(F) pp. 2106-2107, 2114, 2142-2143 and 2149-2150.

<sup>3418</sup> Marinko Marušić, T(F) p. 1597.

<sup>3419</sup> Nenad Bogeljić, T(F) pp. 2120-2121.

<sup>3420</sup> P 542; P 713.

<sup>3421</sup> *See supra* para. 269.

<sup>3422</sup> Assuming it is established that members of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion and/or 7<sup>th</sup> Brigade military police committed certain crimes of mistreatment, the Chamber notes that the possibility that the local detaining authorities, namely Nihad Čatić or Kasim Alajbegović, participated in those crimes must be considered. The local detaining authority is under an obligation, by virtue of its authority in that capacity, to ensure the safety and well-being of detainees in its custody. If that authority has knowledge that criminal acts have been committed against prisoners in its custody and fails to take measures to stop those detainees from being mistreated, that authority plays a significant part in the commission of those crimes. Nevertheless, evidence adduced in this case does not establish beyond a reasonable doubt that Nihad Čatić or Kasim Alajbegović knew that the crimes had been committed. Consequently, no conclusion can be drawn as to what form of responsibility those two persons incurred in this case.

convinced beyond a reasonable doubt that cruel treatment was committed between 18 and 21 June 1993.

1521. The Chamber notes, however, that Ranko Popović was not able to specify to which 7<sup>th</sup> Brigade unit the perpetrators of the beatings belonged. In fact, at the material time, in June 1993, conflict between the HVO and the ABiH had broken out in Kakanj and both the 7<sup>th</sup> Brigade's 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were deployed in Kakanj and its sector.<sup>3423</sup> Moreover, since Ranko Popović was taken to the Zenica Music School on 21 June 1993,<sup>3424</sup> and the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion was based in Zenica,<sup>3425</sup> it cannot be ruled out that the 2<sup>nd</sup> Battalion dealt with Ranko Popović on their own before taking him to Zenica. Consequently, in the absence of any other information, it cannot be established beyond a reasonable doubt that members of the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion were responsible for mistreating Ranko Popović

1522. Regarding the victims of the mistreatment, the evidence admitted at trial demonstrates that Ranko Popović and the other people arrested and transferred to Motel *Sretno* on 18 May 1993 were Bosnian Croat or Bosnian Serb civilians, or prisoners of war,<sup>3426</sup> or unarmed HVO members in civilian clothing at the time they were arrested.<sup>3427</sup> Consequently, they were all protected persons pursuant to the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1523. On the basis of the above, the Chamber finds that the elements of the crime of cruel treatment at Motel *Sretno* have been established for the material periods from 18 to 19 May 1993 and 18 to 21 June 1993. Nevertheless, since it has not been established beyond a reasonable doubt that the perpetrators of the mistreatment between 18 and 21 June 1993 belonged to the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion, the Chamber acquits the Accused Hadžihasanović and the Accused Kubura of the charges of mistreatment for the period 18 to 21 June 1993.

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<sup>3423</sup> DK 23; DK 24; Safet Junuzović, T(F) pp. 18517-18519; Kasim Alajbegović, T(F) pp. 18701-18702.

<sup>3424</sup> Ranko Popović, T(F) p. 1543.

<sup>3425</sup> See *supra* para. 344.

<sup>3426</sup> Marinko Marušić, T(F) pp. 1588-1589; Nenad Bogeljić, T(F) p. 2119; Ranko Popović, T(F) pp. 1528-1532 and 1541.

<sup>3427</sup> Niko Petrović, T(F) pp. 1563, 1565 and 1579; Nenad Bogeljić, T(F) pp. 2106-2107.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanovića. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1524. The Chamber has found that the cruel treatment alleged in paragraph 42(f) of the Indictment was committed on 18 and 19 May 1993 by 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers. Since the 7<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time,<sup>3428</sup> it is assumed that the Accused Hadžihasanović exercised effective control over the unit and its members who committed the mistreatment.<sup>3429</sup>

1525. Moreover, the evidence has demonstrated that the 7<sup>th</sup> Brigade followed the orders of the Accused Hadžihasanović. For example, the 7<sup>th</sup> Brigade Command submitted to the 3<sup>rd</sup> Corps Command proposals for disciplinary measures against and appointments of 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion members.<sup>3430</sup> Similarly, the 7<sup>th</sup> Brigade Command reported to the 3<sup>rd</sup> Corps Command on the progress of the combat operations and the prevailing situation in the Kakanj sector. This is evidenced by the minutes of two meetings on 21 June 1993 and 23 June 1993, during which the Accused Kubura reported to the 3<sup>rd</sup> Corps Command on the combat situation in Kakanj and the disciplinary measures taken within the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion.<sup>3431</sup>

1526. The Defence for the Accused Hadžihasanović also did not challenge the fact that the 7<sup>th</sup> Brigade was subordinated to the Accused Hadžihasanović, and adduced no evidence to reverse that presumption.

1527. Consequently, the Chamber finds that the Accused Hadžihasanović exercised effective control over the perpetrators of the mistreatment at Motel *Sretno* on 18 and 19 May 1993, and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

b. Knowledge of Enver Hadžihasanović

1528. The Prosecution submits that the Accused Hadžihasanović knew about the mistreatment of the detainees at Motel *Sretno* on 18 and 19 May 1993. The Prosecution argues that the Accused Hadžihasanović was in Kakanj on 18 May 1993<sup>3432</sup> and then relies on two protest letters drafted by

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<sup>3428</sup> See *supra* para. 381.

<sup>3429</sup> See *supra* para. 79.

<sup>3430</sup> P 475.

<sup>3431</sup> P 924.2; P 924.3.

<sup>3432</sup> Prosecution Final Brief, paras. 279 and 289; Prosecution Closing Arguments, T(F) p. 19040.

Tihomir Blaškić on 20 May 1993 and 21 May 1993 (documents P 682 and P 684, respectively), the first asking the Joint Command, and the second asking the Joint Command, and specifically the 3<sup>rd</sup> Corps Command, for their reaction to the events of 18 and 19 May 1993 in Kakanj.<sup>3433</sup> The Prosecution adds that the Joint Command was already operational at the time to the extent that the HVO and the ABiH used it as a post-box to write messages back and forth to one another.<sup>3434</sup> Finally, the Prosecution uses the presence of the Accused Hadžihasanović at a meeting on 21 June 1993 between the HVO and the ABiH, during which the issue of Kakanj was raised, to draw the conclusion that he had knowledge of the offence charged.<sup>3435</sup>

1529. The Defence for the Accused Hadžihasanović submits that the Accused Hadžihasanović did not know or have reason to know that the detainees at Motel *Sretno* had been mistreated. In support of that assertion it submits, first, that the Accused Hadžihasanović was not in Kakanj on 18 and 19 May 1993<sup>3436</sup> and, second, that the reports which constitute P 682 and P 684 were not addressed to the Joint Command because it was not yet operational in May 1993 and because the documents do not bear any stamps indicating that they were sent or received.<sup>3437</sup> Third, according to the Defence, the 3<sup>rd</sup> Corps did not receive the report marked Exhibit P 684, because the information in it was not recorded in the 3<sup>rd</sup> Corps war diary or operations log book, and because there were only four copies of the report, when in fact six addressees are mentioned.<sup>3438</sup> Fourth, the Defence argues that the Accused Hadžihasanović never knew about the internal report of 18 May 1993 marked Exhibit P 563<sup>3439</sup> drafted by the 7<sup>th</sup> Brigade duty officer to the 3<sup>rd</sup> Corps Operations Centre or about the HVO report of 19 May 1993, marked Exhibit P 643.<sup>3440</sup> Fifth, it adds that the Prosecution did not tender Exhibits P 563, P 682, P 684, P 643 and P 689 through a witness during deposition, even though it could have done so.<sup>3441</sup> Sixth and last, the Defence for Hadžihasanović submits that the report of the meeting on 21 June 1993 between the HVO and the ABiH did not focus on one detention centre specifically and therefore did not deal with the incidents at Motel *Sretno*.<sup>3442</sup>

1530. The Chamber will first consider the question of whether the Accused Hadžihasanović was in Kakanj at the material time. The Prosecution bases its argument that the Accused Hadžihasanović

<sup>3433</sup> Prosecution Final Brief, para. 285.

<sup>3434</sup> Prosecution Closing Arguments, T(F) p. 19044.

<sup>3435</sup> Prosecution Final Brief, para. 285.

<sup>3436</sup> Hadžihasanović Defence Final Brief, paras. 991-995.

<sup>3437</sup> Hadžihasanović Defence Final Brief, paras. 990 and 999 and footnote 1416.

<sup>3438</sup> Hadžihasanović Defence Final Brief, para. 1000; Hadžihasanović Defence Closing Arguments T(F) pp. 19141-19142.

<sup>3439</sup> Hadžihasanović Defence Final Brief, para. 1001.

<sup>3440</sup> Hadžihasanović Defence Final Brief, para. 998 and footnote 1415.

<sup>3441</sup> Hadžihasanović Defence Final Brief, para. 1002.

<sup>3442</sup> Hadžihasanović Defence Final Brief, para. 1005.

was present on statements from Prosecution Witness Milenko Borovčanin, an ABiH soldier living in Kakanj. Borovčanin told the Chamber that he saw the Accused Hadžihasanović speaking with several soldiers in Kakanj on 19 May 1993.<sup>3443</sup> The witness pointed out that he saw him from a distance of 70 to 200 metres but that he did not hear any of the conversation.<sup>3444</sup> The Chamber notes, however, that Witness Milenko Borovčanin's testimony is indicative of an extremely approximate, even erroneous, knowledge of the Accused Hadžihasanović. Indeed, Milenko Borovčanin stated that although the Accused Hadžihasanović lives close to him, he has never met him personally.<sup>3445</sup> The witness then explained that the first 3<sup>rd</sup> Corps Commander was Mehmed Alagić, and that he was later replaced by the Accused Hadžihasanović.<sup>3446</sup> Finally, while being cross-examined by the Hadžihasanović Defence on a statement he made on 17 September 2001, the witness described the Accused Hadžihasanović in the following terms:

“Q. You can look at the statement in B/C/S. Is it true that you gave this statement on 17th September 2001?”

A. Correct.

Q. Can you please look at page 4, the last paragraph on that page ?

Here you give a detailed description of Enver Hadžihasanović. You say that you think that he was of about your age, that he was about 1.80 metres tall, and that he is of strong build. Is that correct?

A. Yes. I would repeat the same thing today.”<sup>3447</sup>

The Chamber notes that this description is very general, says nothing distinctive about the Accused Hadžihasanović, and is based on faulty knowledge of who he is.<sup>3448</sup> The Chamber is of the view that those inaccuracies and ambiguities with regard to the identification of the Accused Hadžihasanović cast doubt on the reliability of Milenko Borovčanin's testimony, such that the Chamber is not convinced beyond a reasonable doubt that Witness Milenko Borovčanin saw the Accused Hadžihasanović in Kakanj on 19 May 1993. The Chamber further notes that no other witness stated that the Accused Hadžihasanović was at or near Motel *Sretno* on the days of the events. On the contrary, Witness Kasim Alajbegović stated that he never met the Accused Hadžihasanović in

<sup>3443</sup> Milenko Borovčanin, T(F) p. 2185.

<sup>3444</sup> Milenko Borovčanin, T(F) pp. 2212-2213.

<sup>3445</sup> Milenko Borovčanin, T(F) pp. 2183 and 2208-2210.

<sup>3446</sup> Milenko Borovčanin, T(F) p. 2207.

<sup>3447</sup> Milenko Borovčanin, T(F) pp. 2200-2201.

<sup>3448</sup> For example, the Chamber notes that Witness Milenko Borovčanin was born on 6 February 1940: Milenko Borovčanin, T(F) p. 2178. The Accused Hadžihasanović, however, was born on 7 July 1950: Joint Statement on Agreement of Facts, Annex A; P 113 (under seal). As such, there is ten years' age difference between the two. Another distinctive feature of the Accused Hadžihasanović is that he wears eyeglasses: DH 190; Torbjorn Junhov, T(F) pp. 8402-8404.

Kakanj.<sup>3449</sup> In view of that evidence, the Chamber considers that it has not been sufficiently established that the Accused Hadžihasanović was in Kakanj at the material time.<sup>3450</sup>

1531. The Chamber next observes that on 20 May 1993, Tihomir Blaškić wrote a letter to the Joint Command based in Travnik, indicating that:

“At the request of the Kakanj HVO representative you, the joint command, are requested to visit and alleviate the situation in Kakanj, where BH Army troops have been capturing, mistreating and imprisoning Croatian citizens, as this could lead to a wider conflict.”<sup>3451</sup>

The next day, 21 May 1993, Tihomir Blaškić wrote a protest letter, this time to the Joint Command and particularly to the ABiH 3<sup>rd</sup> Corps Command, condemning the violation of the cease-fire agreements of 18 May 1993, and more specifically the incidents in Kakanj on 18, 19 and 20 May 1993, in the following terms:

“In the afternoon of 18 May, BH Army units led by the 7th Muslim Brigade from Zenica brought in fifteen Croatian and Serbian civilians from the Povezice suburb and kept them detained in the *Sretno* hotel for 24 hours. They were dealt with in keeping with Muslim humanitarian law: their extremities were broken, stabbed in the neck and the body with knives, and underwent other examples of physical torture as well as psychological torture intended to exalt Islam.

Audio, photos and video evidence of this merciless behaviour of the BH Army’s ‘elite’ units towards innocent civilians solely because they are ‘infidel’, will be made available to the public at home and abroad.”<sup>3452</sup>

Tihomir Blaškić’s letter ends as follows:

“We request that the Muslim side conduct an investigation into the incidents in Kakanj and raise the question of personal responsibility for the violation of the rules of international humanitarian law. We would also request the international officials to react urgently and undertake all measures at their disposal to protect the Croats and other people in Kakanj municipality.”<sup>3453</sup>

1532. The Defence for the Accused Hadžihasanović put forth several arguments to counter the weight attached to the two reports. Its main argument is that the Joint Command, to which the two reports are written, was not yet operational in May 1993 and that, as a result, it did not receive the

<sup>3449</sup> Kasim Alajbegović, T(F) p. 18708.

<sup>3450</sup> With regard to the Prosecution argument that the Accused Hadžihasanović lived in Kakanj (Prosecution Final Brief, para. 289), the Chamber first notes that it lacks sufficient information on that fact. Only Witness Milenko Borovčanin stated that the Accused Hadžihasanović lived in Kakanj with his family: T(F) pp. 2208-22010, 2213-2214. Nevertheless, since there is lingering doubt as to whether this witness identified the Accused Hadžihasanović, and since this witness did not see Hadžihasanović inside or in front of the home he claims belongs to him, or go inside the home himself, the Chamber considers that the fact has not been proved beyond a reasonable doubt. Moreover, even if the Chamber were to assume the fact to be established, it does not believe that would change its findings on whether the Accused Hadžihasanović was at Motel *Sretno* at the material time. Regarding the Prosecution argument that the documents from the 3<sup>rd</sup> Corps Command, dated 18 to 20 May 1993, bear either a typewritten signature of the Accused Hadžihasanović or the signature of someone replacing him (Prosecution Closing Arguments, T(F) p. 19040), the Chamber finds the argument relevant only if the Accused Hadžihasanović’s presence at or near Motel *Sretno* were demonstrated. Since that is not the case, the Chamber is of the view that it need not examine the issue.

<sup>3451</sup> P 682

<sup>3452</sup> P 684

<sup>3453</sup> P 684

reports. Conversely, the Prosecution argues that as of May 1993, the HVO and the ABiH used the Joint Command as a post-box to exchange messages. The Chamber recalls that the Central Bosnia Joint Command, to which Džemal Merdan and the Accused Hadžihasanović belonged as members of the ABiH, was set up following an agreement made in Zagreb on 25 April 1993 between Alija Izetbegović and Mate Boban to set up a joint HVO-ABiH command to control the operations of the military districts for which they were responsible.<sup>3454</sup> The Defence for the Accused Hadžihasanović and the Prosecution each presented documents in their written submissions intended to support or refute the arguments on the organisational functioning of the Joint Command at the material time.

1533. Having closely examined the documents, the Chamber makes the following observations. First, documents DH 1031 and DH 1040, referred to in the Hadžihasanović Defence Final Brief<sup>3455</sup> and the Prosecution Closing Arguments,<sup>3456</sup> were withdrawn from the proceedings following a decision by the Chamber on 22 June 2005.<sup>3457</sup> Likewise, Exhibit DH 1032, to which the Prosecution refers in its Closing Arguments,<sup>3458</sup> was withdrawn from the proceedings pursuant to the same decision.<sup>3459</sup> Conversely, two other documents (DH 1045, DH 1048),<sup>3460</sup> letters from the 3<sup>rd</sup> Corps dated 22 May 1993, to which the Prosecution refers in its Closing Arguments, attest to the fact that 3<sup>rd</sup> Corps correspondence was addressed to the Joint Command at the material time. Exhibit P 738, which is a letter dated 9 May 1993 signed by Džemal Merdan himself, states that the Joint Command addressed correspondence to the HVO and to the 3<sup>rd</sup> Corps. While those three letters do not indicate any dysfunction within the organisational structure of the Joint Command, Exhibit DH 1081, to which both Parties refer in their submissions,<sup>3461</sup> does say that there was a problem of HVO participation in the Joint Command. The Chamber notes however that the document from the Joint Command merely criticises the refusal of the HVO representatives to be available to the Joint Command on 25, 27 and 29 May 1993. That functional problem therefore arose *after* Tihomir Blaškić wrote the two protest letters referred to in the preceding paragraph. Consequently, none of the evidence adduced by the Parties in support of their arguments allows the Chamber to find that the Joint Command was not operating, at least on an organisational level, when the two letters were written, that is, as the Chamber recalls, on 20 and 21 May 1993. The Chamber further notes that the

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<sup>3454</sup> DH 159/1; DH 958.

<sup>3455</sup> Hadžihasanović Defence Final Brief, footnote 1400.

<sup>3456</sup> Prosecution Closing Arguments, T(F) p. 19044.

<sup>3457</sup> Decision on the Admissibility of Documents of the Defence of Enver Hadžihasanović, Case No. IT-01-47-T, 22 June 2005, Annex 2. In this Decision, the Chamber in fact noted the Defence's withdrawal of documents DH 1031 and DH 1040.

<sup>3458</sup> Prosecution Closing Arguments, T(F) p. 19044.

<sup>3459</sup> Decision on the Admissibility of Documents of the Defence of Enver Hadžihasanović, Case No. IT-01-47-T, 22 June 2005, Annex 2. In this Decision, the Chamber in fact noted the Defence's withdrawal of documents DH 1032.

<sup>3460</sup> Prosecution Closing Arguments, T(F) p. 19044.

<sup>3461</sup> Prosecution Closing Arguments, T(F) p. 19044; Hadžihasanović Defence Final Brief, footnote 1400.



statements by Witness Džemal Merdan, the ABiH representative of the Central Bosnian Joint Command after it was officially created in late April 1993,<sup>3462</sup> do not confirm the Hadžihasanović Defence argument that the Joint Command was not yet operational at the material time. In fact, Džemal Merdan merely told the Chamber that the Joint Command was not operational from a *military* standpoint because the conflict between the HVO and ABiH armed forces had escalated in June 1993,<sup>3463</sup> but said nothing of the organisational dysfunction shortly after it was set up, in other words, at the material time. Consequently, the Chamber dismisses the argument on this point put forth by the Defence for the Accused Hadžihasanović.

1534. The Chamber now turns to the question of whether Tihomir Blaškić's two reports were received by the Joint Command (in the case of document P 682) and by the Joint Command and 3<sup>rd</sup> Corps Command (in the case of document P 684). The Defence for the Accused Hadžihasanović gave three reasons explaining why the answer to that question is negative. First, the two reports do not bear a date-received stamp. Next, the information contained in the report of 21 May 1993 (Exhibit P 684) did not appear in the 3<sup>rd</sup> Corps war diary covering the period between 16 May 1993 and 28 July 1993 or in the 3<sup>rd</sup> Corps operations log covering the period between 6 February 1993 and 22 June 1993.<sup>3464</sup> Finally, the same report includes six addressees, when in fact only four copies were made and sent.<sup>3465</sup>

1535. The Chamber would state the following about the arguments put forth by the Defence for the Accused Hadžihasanović.

1536. First, as to the absence of a date-received stamp on document P 684, one plausible explanation is that the document was most certainly taken from the HVO archives since it bears the stamp of the Croatian State Archives in Zagreb.

1537. Second, the Chamber is not convinced that because the information in Tihomir Blaškić's protest letters is not mentioned in the 3<sup>rd</sup> Corps war diary or operations log, this means that the information was not brought to the 3<sup>rd</sup> Corps' attention. In fact, the purpose of those two military logbooks was to record the information obtained from inside the ABiH itself, such as information on combat operations, and was not to keep a record of the content of correspondence exchanged with or received from external elements. The Chamber observes in passing that the logbooks are not

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<sup>3462</sup> DH 159/1; DH 958; Džemal Merdan, T(F) p. 13043.

<sup>3463</sup> Džemal Merdan, T(F) pp. 13044 and 13049. Džemal Merdan referred to a series of documents to illustrate that from a military standpoint the situation had deteriorated between the HVO and the ABiH. Among these documents, he refers to the document marked Exhibit DH 1045: Džemal Merdan, T(F) p. 13045. The Chamber notes that the Prosecution submitted this last document to illustrate how the HVO and ABiH used the Joint Command as a post-box.

<sup>3464</sup> C 16; C 20.

<sup>3465</sup> P 684.

necessarily exhaustive, to the extent that there is no entry in the 3<sup>rd</sup> Corps operations logbook, for example, between 4 May 1993 and 26 May 1993, which is the period in question.<sup>3466</sup>

1538. Third, the Chamber recalls that the Joint Command was operational from at least 8 May 1993 and that much correspondence had already been exchanged within it.<sup>3467</sup>

1539. For all the foregoing reasons, the Chamber is of the opinion that document P 682 was sent to and received by the Joint Command, and that document P 684 was in fact sent to and received by at least the ABiH 3<sup>rd</sup> Corps Command or the ABiH and HVO Joint Command, or even both military authorities.

1540. The Defence for the Accused Hadžihasanović also argues that the probative value of documents P 682 and P 684 must be assessed in view of the fact that they were not tendered through a witness deposition, even though the Prosecution had an opportunity to do so. As it explained in its previous decisions on the admissibility of documents for the Prosecution and the Defence for the Accused Hadžihasanović, the Chamber considers, in line with Tribunal case law, that there is no principle which automatically excludes a document merely because its alleged author was not called to testify during the trial.<sup>3468</sup> Nevertheless, the Chamber shares the view of the Trial Chamber in the *Delalić* case according to which the probative value of a document may be diminished if it is not subject to the scrutiny involved in the cross-examination of a witness.<sup>3469</sup> In this case, the Chamber notes that no evidence has cast doubt or invalidated the veracity of the information contained in documents P 682 and P 684. On the contrary, as shown above, much Prosecution evidence corroborating the content of the reports was submitted to the Chamber during the trial. The Chamber therefore considers the reports to have sufficient probative value.

1541. In view of the foregoing and on the basis of Exhibits P 682 and P 684, the Chamber considers that the Accused Hadžihasanović knew that acts of mistreatment had been committed against civilian Croatian and Serbian detainees on 18 and 19 May 1993 at Motel *Sretno*.

1542. The Chamber further notes that on 19 June 1993 there was a meeting in Vitez between representatives of the HVO, the ABiH, and the international community, the main purpose of which was to discuss the release of the prisoners. Stjepan Šiber, the Accused Hadžihasanović and Džemal

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<sup>3466</sup> C 20, p. 154.

<sup>3467</sup> P 738; DH 1045; DH 1048; DH 1081.

<sup>3468</sup> Decision on the Admissibility of Documents of the Defence of Enver Hadžihasanović, Case No. IT-01-47-T, 22 June 2005, para. 33; Decision to Unseal Confidential Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, Case No. IT-01-47-T, 2 August 2004, para. 18 (footnotes omitted).

<sup>3469</sup> Decision on the Admissibility of Documents of the Defence of Enver Hadžihasanović, Case No. IT-01-47-T, 22 June 2005, para. 33, citing *The Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, Decision on the Motion of the Prosecution for Admissibility of Evidence, 19 January 1998, para. 22.

Merdan represented the ABiH, while Tihomir Blaškić represented the HVO. ECMM representative Jean-Pierre Thébault and UNPROFOR representative Alastair Duncan were also present.<sup>3470</sup> According to the ECMM report drafted after the meeting, representatives of the two armed forces complained of the mistreatment of the prisoners.<sup>3471</sup> After being questioned about the report, however, Witness ZP stated that the complaints were general in nature and that no specific place of detention had been mentioned as regards the issue of mistreatment.<sup>3472</sup> According to the ECMM report, the parties present then discussed, on the basis of the HCR report, the security concerns raised by the refugees in Kakanj:

“None wanted to return to their homes because they were not convinced by assurances of security from the BiH. They did claim that it was external extremist units and not regular BiH soldiers from Kakanj who had been responsible. Hadžihasanović in response claimed that it was the HVO who had provoked the hostilities in Kakanj but did not try to refute the findings of the UNHCR.”<sup>3473</sup>

Contrary to Prosecution allegations, this passage does not relate to the mistreatment of prisoners at Motel *Sretno*. As such, the Chamber considers the Prosecution allegation on this point to lack foundation and accordingly dismisses it.<sup>3474</sup>

1543. Finally, the Chamber considers that the knowledge the Accused Hadžihasanović had, as of 8 May 1993, that mistreatment had been committed at the Music School by 7<sup>th</sup> Brigade members,<sup>3475</sup> most of them military police subordinated to the 7<sup>th</sup> Brigade, does not entail his responsibility for having failed to prevent the recurrence of similar acts perpetrated at Motel *Sretno* by 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion members. In fact, the perpetrators of those unlawful acts belonged to distinct groups of subordinates, since they had a geographically distinct position and, in respect of the detention centre, fell under the authority and control of a distinct supervisory power.

c. Measures Taken<sup>3476</sup>

1544. Since it has been established beyond a reasonable doubt that the Accused Hadžihasanović had knowledge of the mistreatment committed by his subordinates at Motel *Sretno*, it was his duty to take the necessary and reasonable measures to punish the perpetrators.

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<sup>3470</sup> P 904.

<sup>3471</sup> P 213.

<sup>3472</sup> Witness ZP, T(F) pp. 8849-8851.

<sup>3473</sup> P 213

<sup>3474</sup> The Chamber will examine the arguments put forth by the Defence for the Accused Hadžihasanović in relation to Exhibits P 643 and P 563 in the next chapter setting out the Chamber’s findings on the responsibility of the Accused Kubura.

<sup>3475</sup> See *supra* para. 1218.

<sup>3476</sup> With regard to the examination of general measures taken by the Accused Hadžihasanović in relation to the detention of prisoners, the Chamber refers to its findings in paras. 856-859 and 1161-1167.

1545. The Prosecution alleges that the Accused Hadžihasanović failed to take any punitive measures in this regard. On the basis of Exhibit P 544, the Prosecution argues that if some 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion officers were relieved of their duties in late June 1993, the punishment was because they failed in their duty to prevent acts of plundering, not because of the mistreatment committed at Motel *Sretno*.<sup>3477</sup>

1546. Before discussing the evidence relating to punitive measures which might have been submitted by the Parties, the Chamber must first examine whether the Prosecution discharged its duty to prove that the Accused Hadžihasanović failed to act with respect to his responsibility for the offences alleged at Motel *Sretno*.

1547. The Chamber recalls that Kakanj municipality fell within the *ratione loci* jurisdiction of the Zenica District Military Court and the Zenica District Military Prosecutor's Office.<sup>3478</sup> Consequently, as the Chamber explained in the section of this Judgement dealing with its factual findings on the duty to prove the failure to take measures, the Prosecution could rely on two pieces of evidence to prove that no measures were taken to punish the mistreatment committed at Motel *Sretno*, specifically, a letter from the president of the Zenica Cantonal Court (Exhibit P 771), and the investigation conducted by Witness Peter Hackshaw.<sup>3479</sup>

1548. The Chamber, however, did not consider the conclusions provided by Exhibit P 771 to have the decisive probative value for demonstrating that the Prosecution had met its burden to prove its case that the Accused Hadžihasanović failed to take any punitive measures. Regarding the conclusions of Peter Hackshaw's investigation, the Chamber has reached the same conclusion with respect to the crimes of mistreatment alleged in count 4 of the Indictment.<sup>3480</sup>

1549. Consequently, the Chamber must now analyse whether the Prosecution adduced any other evidence that might prove its case. As indicated above, relying on Exhibit P 544, the Prosecution merely argued that while punitive measures were taken against some 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion officers in late June 1993, the measures bore no relation to the mistreatment committed at Motel *Sretno*.

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<sup>3477</sup> Prosecution Final Brief, para. 288.

<sup>3478</sup> *See supra* para. 911.

<sup>3479</sup> *See discussion supra* paras. 970-976.

<sup>3480</sup> *See discussion supra* paras. 977-1000.

1550. The Chamber notes that on 25 June 1993, the Accused Hadžihasanović wrote a letter to Stjepan Šiber, following, among other things, a letter Šiber had written about the problems caused by the escalating conflict with the HVO.<sup>3481</sup> Hadžihasanović wrote:

“Further to your letters [...], we are sending you a report on the measures taken with respect to the problems at issue:

On the strength of reports about crimes being committed and buildings looted, all members of the SVB/military security service/and military police were ordered to take measures to prevent such occurrences during and after combat operations and clashes between the BH Army and HVO/Croatian Defence Council/units in the Kakanj and Kraljeva Sutjeska area.

A military police unit from the bvp/Military Police battalion/ has been attached in order to prevent crime and monitor the territory.

Nesib Talić and Azer Bektaš belong to the 7<sup>th</sup> Muslim Brigade /(M) br/ and their conduct is currently under investigation, that is to say, the allegation that they looted property from a monastery is being verified.

Pursuant to the order of the 7<sup>th</sup> (M) br Command, a battalion commander, company commander and several other 7<sup>th</sup> (M) br battalion officers were relieved of their duties in Kakanj on 23 June 1993 for failing to carry out an order to prevent crime and looting.

Sweeping measures continue to be undertaken in order to expose and prevent looting by members of the BH Army.”<sup>3482</sup>

1551. The dismissal of several 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion officers at the end of June 1993, emphasised in this letter, is confirmed by various pieces of evidence, including an information chart (Exhibit P 498)<sup>3483</sup> on the length of service of and posts occupied by 7<sup>th</sup> Brigade members. The chart indicates that on 20 June 1993, the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion Commander, Nihad Čatić, the Commander of that Battalion’s 2<sup>nd</sup> Company, Refik Husika, and several 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion officers, including Kasim Alajbegović and Fuad Kulović, left their positions.

1552. The Chamber notes that Witness Kasim Alajbegović stated that he was unaware of the reasons behind these various dismissals.<sup>3484</sup> Witness Fuad Kulović stated that he knew that Nihad Čatić had left for Zenica in June 1993 but not that Nihad Čatić had been relieved of his duties.<sup>3485</sup> The aforementioned letter from the Accused Hadžihasanović dated 25 June 1993, however, strongly suggests that several 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion officers were punished following acts of plunder in the regions of Kakanj and Kraljeva Sutjeska. An examination of the contemporaneous ABiH documents regarding Kakanj reveals that the problems prevailing there at the time had to do with increased acts of plunder in the municipality and its immediate vicinity, specifically the plunder of

<sup>3481</sup> DH 159.4

<sup>3482</sup> P 544/DH 161.19

<sup>3483</sup> P 475; P 924.

<sup>3484</sup> Kasim Alajbegović, T(E) pp. 18735 and 18738.

<sup>3485</sup> Fuad Kulović, T(F) pp. 18817-18818.

the Franciscan monastery of Kraljeva Sutjeska by 7<sup>th</sup> Brigade members.<sup>3486</sup> The Chamber further notes that none of this evidence condemns specifically the mistreatment of the Croatian and Serbian prisoners detained at Motel *Sretno* on 18 and 19 May 1993. Consequently, the Chamber is of the opinion that the evidence tendered at trial does not make it possible to conclude beyond a reasonable doubt that the punitive measures taken against several 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion members in late June 1993 were to punish the mistreatment committed at Motel *Sretno*.

1553. Having resolved that issue, the Chamber notes that the Prosecution failed to adduce any evidence with sufficient probative value to prove that the Accused Hadžihasanović failed to take punitive measures after the crimes were committed at Motel *Sretno*.<sup>3487</sup> Accordingly, the Chamber considers that the Prosecution failed to meet its burden to prove that the Accused Hadžihasanović failed to act with respect to the alleged offences at Motel *Sretno*. It has not therefore been established beyond a reasonable doubt that the Accused Hadžihasanović failed to take the necessary and reasonable measures to punish the perpetrators of the crimes committed at Motel *Sretno*.

1554. To conclude, the Chamber acquits the Accused Hadžihasanović of the crime of mistreatment for the period of 18 to 19 May 1993, alleged in paragraph 42(f) of the Indictment.

(iv) Findings of the Chamber regarding the Responsibility of Amir Kubura

a. Effective Control of Amir Kubura over the Perpetrators of the Crime

1555. The Chamber has found that the cruel treatment alleged in 42(f) of the Indictment was committed by 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion soldiers. Since the Chamber has found that the Accused Kubura was the *de facto* commander of the 7<sup>th</sup> Brigade,<sup>3488</sup> it refers to its discussion of these matters in a previous section of this Judgement.

1556. Moreover, the evidence demonstrates that the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion members followed orders from the 7<sup>th</sup> Brigade Command. For example, as indicated previously, the 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion Commander and several 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion officers were dismissed on 20 June 1993 as a result of criminal acts of plunder. This followed an order from the 7<sup>th</sup> Brigade Command.<sup>3489</sup>

<sup>3486</sup> DH 161/14; P 924.2; DH 257; P 861; P 470; Zaim Mujezinović, T(F) pp. 17476-17478.

<sup>3487</sup> The Chamber notes that Witness Fuad Kulović stated that he did *not know* whether there was an investigation into the beatings at Motel *Sretno* because no one informed him. He further explained that he was not questioned on those incidents: Fuad Kulović, T(F) pp. 18832 and 18835.

<sup>3488</sup> See discussion *supra* paras. 350-380.

<sup>3489</sup> P 544; P 475; P 429. See also Osman Hasanagić, T(E) p. 18884.

1557. Consequently, the Chamber finds that the Accused Kubura exercised effective control over the perpetrators of the mistreatment during the period which began on 12 April 1993, and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

b. Knowledge of Amir Kubura

1558. The Prosecution alleges that the Accused Kubura knew that his subordinates had committed mistreatment at Motel *Sretno*. In support of its allegations, the Prosecution first argues, on the basis of Exhibit P 563, that the Accused Kubura was at Motel *Sretno* on 18 May 1993.<sup>3490</sup> The Prosecution then submits, on the basis of the testimony of Witness Nenad Bogeljić and Exhibit P 643, that on 19 May 1993 the Accused Kubura was directly informed of the crimes committed by his subordinates during a meeting between the HVO and the ABiH, attended by representatives of UNPROFOR.<sup>3491</sup>

1559. The Defence for the Accused Kubura submits that the Accused Kubura did not know or have reason to know about the alleged mistreatment at Motel *Sretno*.<sup>3492</sup> It argues that there is no evidence that Kubura was at or near Motel *Sretno* at the material time and that Exhibit P 563 lacks probative value.<sup>3493</sup> The Kubura Defence argues that, on the basis of Prosecution evidence, there is lingering doubt as to whether the Accused Kubura was at the alleged meeting of 19 May 1993.<sup>3494</sup> Finally, the Defence for the Accused Kubura claims that the Accused Kubura received no oral or written report on the alleged incidents and that no evidence shows that he should have had reason to know that the alleged crimes had taken place.<sup>3495</sup>

1560. The Chamber first notes that on 18 May 1993, at 2330 hours, the 7<sup>th</sup> Brigade duty officer informed the 3<sup>rd</sup> Corps Operations Centre of the prevailing situation in Kakanj, specifically that “[t]he unit is at full readiness and the NŠ/Chief of Staff/, a guerrilla unit of [the] 2<sup>nd</sup> battalion of the 7th Mbbr and additional police forces are in the 3<sup>rd</sup> Battalion of the 7th Mbbr”.<sup>3496</sup> The Prosecution submits that “Chief of Staff” in this document can refer only to the 7<sup>th</sup> Brigade Chief of Staff, that is the Accused Kubura, since the battalions did not have chiefs of staff. The Prosecution concludes that the Accused Kubura was therefore at Motel *Sretno* on 18 May 1993.

<sup>3490</sup> Prosecution Final Brief, paras. 282-283; Prosecution Closing Arguments, T(F) p. 19042.

<sup>3491</sup> Prosecution Final Brief, para. 284.

<sup>3492</sup> Kubura Defence Final Brief, paras. 128-129 and 161-163; Kubura Defence Closing Arguments, T(F) pp. 19273-19279.

<sup>3493</sup> Kubura Defence Final Brief, para. 162; Kubura Defence Closing Arguments, T(F) pp. 19273-19278.

<sup>3494</sup> Kubura Defence Closing Arguments, T(F) p. 19279.

<sup>3495</sup> Kubura Defence Final Brief, paras. 128-129 and 163.

<sup>3496</sup> P 563

1561. The Chamber notes, however, that Witnesses Kasim Alajbegović and Fuad Kulović disagree that the Accused Kubura was at Motel *Sretno* at the material time. Kasim Alajbegović states that the Accused Kubura did not come to Motel *Sretno* on 18 and 19 May 1993, adding that according to procedure, the battalion command would be informed of the arrival of a superior officer from the brigade and that it would be impossible for such an officer to arrive without advance notice.<sup>3497</sup> For his part, Fuad Kulović states that the Accused Kubura was in Zenica and that he did not see him on 18 and 19 May 1993.<sup>3498</sup> The weight to be attached to Fuad Kulović's testimony, however, is diminished by the fact that he also states that he left Motel *Sretno* on 18 May 1993 at around 1500 or 1600 hours and that he returned only the next day at around noon.<sup>3499</sup>

1562. Witness Nenad Bogeljić, a former detainee at Motel *Sretno*, testified that on 19 May 1993, that is the day after he left Motel *Sretno*, he accompanied Pavo Sljivić, an HVO officer, to a meeting between the ABiH and the HVO. He pointed out that during the meeting there were three men in camouflage uniforms on one side and HVO representatives on the other, along with a French colonel assisted by an officer and an interpreter.<sup>3500</sup> Nenad Bogeljić explained that Pavo Sljivić took the floor and said: "Look, yesterday you killed one of our men and now sixteen men have almost been beaten to death", and "Kubura, look what your men are doing. And we are negotiating a truce and covering up our trenches."<sup>3501</sup> Nenad Bogeljić stated that he then took off his T-shirt and everyone at the meeting could see the injuries he had sustained.<sup>3502</sup> Nenad Bogeljić's testimony therefore suggests that the Accused Kubura was at the meeting of 19 May 1993. The Chamber also notes, however, that Witness Nenad Bogeljić stated that he did not know anyone at the meeting apart from Pavo Sljivić, and that he did not know whether the person who answered to the name of Kubura was an ordinary soldier or an officer.<sup>3503</sup> It follows that Witness Nenad Bogeljić heard Kubura's name being called out but that he did not recognise who the Accused Kubura was.

1563. The Chamber further notes that the presence of the ABiH at the 19 May 1993 meeting was contradicted by an HVO report drafted on 19 May 1993 at 1800 hours. The report (Exhibit P 643) indicates that after the ABiH had made some arrests in Kakanj the previous day, the HVO asked for a meeting the same day at 1900 between the Main Command Staff, the European Community, and

<sup>3497</sup> Kasim Alajbegović, T(F) pp. 18697-18698.

<sup>3498</sup> Fuad Kulović, T(F) p. 18813.

<sup>3499</sup> Fuad Kulović, T(F) p. 18822.

<sup>3500</sup> Nenad Bogeljić, T(F) pp. 2127-2128.

<sup>3501</sup> Nenad Bogeljić, T(F) p. 2128.

<sup>3502</sup> Nenad Bogeljić, T(F) pp. 2128-2129.

<sup>3503</sup> Nenad Bogeljić, T(F) pp. 2128-2129.



UNPROFOR at the Canadian Battalion's headquarters.<sup>3504</sup> While the report indicates that three parties, namely the HVO, UNPROFOR, and the European Community, were to participate in the meeting, it must be noted that no mention is made of the ABiH's presence.

1564. These various observations indicate that the evidence adduced by the Parties is contradictory as to whether the Accused Kubura was at Motel *Sretno* on 18 and 19 May 1993 and also whether he was at the 19 May 1993 meeting at which Nenad Bogeljić showed his injuries. Accordingly, the Chamber is of the opinion that there is lingering doubt as to the Accused Kubura's knowledge of the alleged acts at Motel *Sretno*.<sup>3505</sup> Consequently, the Chamber cannot find that the Accused Kubura entailed criminal responsibility within the meaning of Article 7(3) of the Statute for the charges set out in paragraph 42(f) of the Indictment. The Chamber therefore need not examine the other constituent elements of command responsibility under the Statute.

(v) Conclusions of the Chamber

1565. The Chamber considers that it cannot be established beyond a reasonable doubt that the mistreatment of Ranko Popović between 18 and 21 June 1993 was committed by 7<sup>th</sup> Brigade 3<sup>rd</sup> Battalion members. Accordingly, the Chamber acquits the Accused Hadžihasanović and the Accused Kubura of allegations of mistreatment for the period of 18 to 21 June 1993.

1566. The Chamber considers that although the Accused Hadžihasanović knew his subordinates had committed mistreatment at Motel *Sretno* on 18 and 19 May 1993, it is not established beyond a reasonable doubt that the Accused Hadžihasanović failed to take the necessary and reasonable measures to punish the perpetrators of those crimes. Accordingly, the Chamber acquits the Accused Hadžihasanović of the crime of cruel treatment, referred to in count 4, paragraphs 41(c) and 42(f) of the Indictment.

1567. Regarding the Accused Kubura, the Chamber is not convinced beyond a reasonable doubt that he knew or had reason to know that his subordinates had committed crimes at Motel *Sretno*. The Accused Kubura therefore may not be held criminally responsible for the offence referred to in count 4 paragraphs 41(b) and 42(f) of the Indictment.

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<sup>3504</sup> P 643.

<sup>3505</sup> Regarding the Prosecution argument that the Accused Kubura lived in Kakanj (Prosecution Final Brief, para. 289), the Chamber first notes that the Accused Kubura stated that he came to Kakanj in May 1992 to be with his family: Opening Statement of the Accused Kubura, T(F) pp. 18215 and 18217. The Chamber notes, however, that the Accused Kubura did not say whether he actually resided in Kakanj or how long he remained with his family. Even assuming that the Accused Kubura lived in Kakanj at the material time, the Chamber does not consider that this fact would alter its findings as to whether the Accused Kubura was at Motel *Sretno* at the material time or at the meeting of 19 May 1993.

(h) Bugojno Municipality: Murders of Mladen Havranek (Slavonija Furniture Salon in Bugojno) and Mario Zrno (Bugojno Convent) and the Mistreatment of Prisoners

1568. The Indictment alleges that Bosnian Croats and Bosnian Serbs were detained and regularly mistreated in various places of detention in Bugojno, including: the *Gimnazija* School Building, from on or about 18 July 1993 to at least 13 October 1993; the Bugojno Convent Building from on or about 24 July 1993 to at least early August 1993; the *Slavonija* Furniture Salon from on or about 24 July 1993 to at least 18 August 1993; the FC *Iskra* Stadium from on or about 30 July 1993 to 31 October 1993; the *Vojin Paleksić* Elementary School from on or about 31 July 1993 to at least September 1993, and *BH Banka* from about September 1993 to 31 October 1993. The detainees were allegedly beaten and subjected to physical and psychological abuse administered by ABiH 3<sup>rd</sup> Corps OG *Zapad* Military Police and 307<sup>th</sup> Brigade soldiers from the same operations group. It is alleged that the detention conditions, including the available space, food, and sanitary conditions for the detainees, were sorely inadequate. The Indictment alleges that one of the detainees, Mladen Havranek, an HVO soldier, died on 5 August 1993 at the Furniture Salon as a result of being beaten by members of the ABiH 3<sup>rd</sup> Corps OG *Zapad* military police. Furthermore, HVO soldier Mario Zrno is also alleged to have died as a result of mistreatment by members of the ABiH 3<sup>rd</sup> Corps OG *Zapad* Military Police in early August 1993, after being taken outside the Convent Building in Bugojno to do forced labour. From on or around 26 January 1993 to 31 October 1993, the Accused Hadžihasanović knew or had reason to know that the members of those units, under his command and effective control, were about to commit the crimes of mistreatment and murder, or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed and to punish the perpetrators.<sup>3506</sup>

1569. The Accused Hadžihasanović is therefore alleged to have committed murder and cruel treatment, violations of the laws or customs of war, punishable by Articles 3 and 7(3) of the Statute and recognised by common Article 3 of the Geneva Conventions.

(i) General Arguments of the Parties

1570. According to the Prosecution, from 18 July 1993 until late October 1993, ABiH units under the authority of the Accused Hadžihasanović detained, in various locations in Bugojno, HVO soldiers who had been captured or who had surrendered, as well as Bosnian Croat civilians. The Prosecution submits that the detention centres in Bugojno were essentially guarded by ABiH 3<sup>rd</sup>

<sup>3506</sup> Third Amended Indictment, paras. 41(d), 42(g) and 43(c) and (d).

Corps OG *Zapad* Military Police units and by 307<sup>th</sup> Brigade soldiers subordinated to that operations group.<sup>3507</sup>

1571. The Prosecution argues that the detainees were regularly subjected to serious physical and psychological abuse and, in some cases, died as a result of the mistreatment.<sup>3508</sup> The Prosecution further submits that the detention conditions, including the available space in the cells, the food, and the sanitary conditions, were sorely inadequate.<sup>3509</sup> The Prosecution adds that observers from international organisations were barred access to the detention centres.<sup>3510</sup>

1572. The Prosecution submits that the Accused Hadžihasanović was informed that ABiH soldiers had previously committed crimes of mistreatment in other detention centres controlled by the 3<sup>rd</sup> Corps, such as the Zenica Music School, Motel *Sretno* and in Mehurići and that, in spite of that knowledge, he still set up a similar detention system in Bugojno.<sup>3511</sup> The Prosecution further submits that the mistreatment was a “common practice” in Bugojno and that the Accused Hadžihasanović knew that crimes were being committed there.<sup>3512</sup>

1573. According to the Prosecution, despite the information at his disposal, the Accused Hadžihasanović failed in his duty to put a stop to crimes committed by his subordinates in those detention centres, to prevent the crimes, and to punish the perpetrators.<sup>3513</sup>

1574. The Defence for the Accused Hadžihasanović argues that the detention conditions in the temporary detention facilities were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that the incidences of beatings in the various detention centres were rare.<sup>3514</sup>

1575. The Defence for the Accused Hadžihasanović submits that the Accused Hadžihasanović did not exercise effective control over the subordinates who allegedly committed the crimes.<sup>3515</sup> The War Presidency in Bugojno allegedly exercised complete control over the town and had significant

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<sup>3507</sup> Prosecution Final Brief, para. 291.

<sup>3508</sup> Prosecution Final Brief, para. 292.

<sup>3509</sup> Prosecution Final Brief, para. 292.

<sup>3510</sup> Prosecution Final Brief, para. 305.

<sup>3511</sup> Prosecution Final Brief, paras. 303-304.

<sup>3512</sup> Prosecution Final Brief, para. 304.

<sup>3513</sup> Prosecution Final Brief, paras. 304-305.

<sup>3514</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

<sup>3515</sup> Hadžihasanović Defence Final Brief, para. 1077.

influence over the military structure.<sup>3516</sup> By way of example, the War Presidency allegedly issued orders to the military units.<sup>3517</sup>

1576. The Defence for the Accused Hadžihasanović also submits that the Accused Hadžihasanović did not know about the murders and mistreatment that occurred in Bugojno.<sup>3518</sup> It argues that the OG *Zapad* and 3<sup>rd</sup> Corps Command were not expecting the conflict that broke out in Bugojno, which explains why the OG *Zapad* Commander was not in Bugojno when it erupted.<sup>3519</sup> The Defence for the Accused Hadžihasanović points out that there was a large distance between Bugojno and the 3<sup>rd</sup> Corps headquarters<sup>3520</sup> and that the communications between Zenica and Bugojno were very difficult.<sup>3521</sup>

1577. According to the Defence for the Accused Hadžihasanović, the 3<sup>rd</sup> Corps Command did take measures to prevent and punish. Accordingly, as soon as it was announced on 24 July 1993 that civilians and HVO soldiers had been captured by the ABiH, the Accused Hadžihasanović allegedly ordered the OG *Zapad* to send him a detailed list of the prisoners.<sup>3522</sup> Witness HF then allegedly went to Bugojno to conduct an inspection with the aim of taking measures to protect the civilian population and Croatian property.<sup>3523</sup> When information of mistreatment reached the 3<sup>rd</sup> Corps Command, Fehim Muratović and Edib Zlotrg, 3<sup>rd</sup> Corps military security service officers, were allegedly sent to Bugojno on around 16 August 1993 to investigate the crimes and to make sure that all captured enemy soldiers were transferred to the KP Dom detention facility in Zenica.<sup>3524</sup> The 307<sup>th</sup> Brigade allegedly informed Fehim Muratović and Edib Zlotrg on-site that six prisoners of war detained at the Furniture Salon had been beaten by two 307<sup>th</sup> Brigade members and that one of them, Mladen Havranek, died as a result of the beating.<sup>3525</sup> The 307<sup>th</sup> Brigade allegedly informed them that it had arrested and imprisoned the perpetrators of the crime and initiated legal proceedings against them.<sup>3526</sup> There was allegedly no need for Fehim Muratović and Edib Zlotrg to doubt the veracity of the 307<sup>th</sup> Brigade's report, to conduct a further investigation, or to visit the detention facilities.<sup>3527</sup> Upon their return to the 3<sup>rd</sup> Corps Command, Fehim Muratović and Edib Zlotrg allegedly gave the Accused Hadžihasanović an inspection report on the prevailing situation,

<sup>3516</sup> Hadžihasanović Defence Final Brief, paras. 1062-1070.

<sup>3517</sup> Hadžihasanović Defence Final Brief, para. 1067.

<sup>3518</sup> Hadžihasanović Defence Final Brief, para. 1077.

<sup>3519</sup> Hadžihasanović Defence Final Brief, para. 1028.

<sup>3520</sup> Hadžihasanović Defence Final Brief, para. 1023.

<sup>3521</sup> Hadžihasanović Defence Final Brief, para. 1025.

<sup>3522</sup> Hadžihasanović Defence Final Brief, para. 1034.

<sup>3523</sup> Hadžihasanović Defence Final Brief, paras. 1035-1036.

<sup>3524</sup> Hadžihasanović Defence Final Brief, paras. 1037-1038.

<sup>3525</sup> Hadžihasanović Defence Final Brief, para. 1042.

<sup>3526</sup> Hadžihasanović Defence Final Brief, para. 1042.

particularly in Bugojno, indicating that the 307<sup>th</sup> Brigade had taken measures against the two soldiers who abused the prisoners of war.<sup>3528</sup> The Accused Hadžihasanović allegedly expressed satisfaction that such punitive measures had been taken.<sup>3529</sup>

1578. The Defence for the Accused Hadžihasanović adds that while it was the 3<sup>rd</sup> Corps' policy to ensure the transfer of all captured enemy soldiers to the KP Dom in Zenica, the 3<sup>rd</sup> Corps had received information that such a transfer could not take place because there were snipers on the road from Bugojno to Zenica, in addition to a risk of putting a large number of prisoners within range of artillery fire.<sup>3530</sup>

1579. Finally, the Defence for the Accused Hadžihasanović argues that representatives of international organisations were authorised to visit the detention facilities in Bugojno, thereby further guaranteeing respect for the Geneva Conventions.<sup>3531</sup>

(ii) Sequence of Events from July 1993 to March 1994

1580. Bugojno municipality is relatively far from and to the southwest of the town of Zenica. The road between Bugojno and Zenica was not easily accessible due to the fighting between the HVO and ABiH in the area of Bugojno.<sup>3532</sup>

1581. The 307<sup>th</sup> Brigade, which includes the 307<sup>th</sup> Brigade Military Police, was the only ABiH brigade stationed in Bugojno.<sup>3533</sup> It was subordinated to the OG *Zapad* whose headquarters were also in Bugojno.<sup>3534</sup>

1582. In mid-1992, thousands of Muslim refugees, driven out of Donji Vakuf, Prozor, and other regions, arrived in Bugojno, thereby changing its demographic makeup.<sup>3535</sup> Beginning in late 1992,<sup>3536</sup> there was an increasing number of incidents between the HVO and the ABiH, especially

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<sup>3527</sup> Hadžihasanović Defence Final Brief, para. 1045.

<sup>3528</sup> Hadžihasanović Defence Final Brief, para. 1046.

<sup>3529</sup> Hadžihasanović Defence Final Brief, para. 1046.

<sup>3530</sup> Hadžihasanović Defence Final Brief, para. 1039.

<sup>3531</sup> Hadžihasanović Defence Final Brief, paras. 1050-1052 and footnote 1464.

<sup>3532</sup> Vaughan Kent-Payne, T(F) pp. 4849-4850; Edib Zlotrg, T(E) p. 14991; Witness HF, T(F) p. 17198.

<sup>3533</sup> Tomislav Mikulić, T(F) pp. 4493-4494 and 4521; C 16 (entry: 11 July 1993); DH 708. *See also supra* para. 393.

<sup>3534</sup> P 144; P 899; P 768; DH 1343.

<sup>3535</sup> Zdravko Žulj, T(F) p. 3633; Mijo Marijanović, T(F) 2778. According to a 1991 census, Bugojno municipality included 19,697 Bosnians, 16,031 Croats, and 8,673 Serbs: DH 345.21; *see also* Tomislav Mikulić, T(F) p. 4491.

<sup>3536</sup> Zdravko Žulj, T(F) p. 3634; Rudy Gerritsen, T(F) pp. 7152-7153.

in Gornji Vakuf, Prozor, and Vrbanja, which lasted until July 1993 when the conflict between the two armed forces broke out in Bugojno.<sup>3537</sup>

1583. On 24 July 1993, 100 HVO soldiers and 150 civilians were captured by the 307<sup>th</sup> Brigade members in front of the *Kalin* Hotel in Bugojno.<sup>3538</sup> After being captured, many of the prisoners of war were transferred to various locations in Bugojno. Since there was no permanent prison facility there, the Bugojno War Presidency designated various detention centres to serve as prisons to hold prisoners captured by the ABiH.<sup>3539</sup>

1584. On 14 August 1993, the ABiH authorities reported to the ECMM that 98 percent of the Croatian civilians detained in Bugojno had been released, but that some members of the Croatian civilian police had been arrested by the civilian police in Bugojno.<sup>3540</sup>

1585. On 19 September 1993, the Accused Hadžihasanović was informed by the OG *Zapad* Commander that the ABiH had captured 470 “HVO members”, 383 of whom had the status of “prisoner of war”.<sup>3541</sup> Among the 383 “prisoners of war”, 66 were released because there were no grounds to keep them in custody.<sup>3542</sup> The Chamber notes that the other 87 “HVO members” who remained in custody and were not considered prisoners of war, were considered by the ABiH to be irregular combatants.

1586. Most of the prisoners were transferred from one detention facility to another in Bugojno.<sup>3543</sup> Some were detained in practically all the detention facilities mentioned in this section of the Judgement.<sup>3544</sup> *Iskra* Stadium was open the longest of any of the detention facilities, and the last detainees in Bugojno were released from there on 19 March 1994.<sup>3545</sup> Many of those detainees were

<sup>3537</sup> Zdravko Žulj, T(F) pp. 3635-3636; Zrinko Alvir, T(F) p. 2616; Witness ZB, T(F) p. 2976; Tomislav Mikulić, T(F) p. 4493. The Chamber notes that on 18 July 1993, the ABiH arrested many HVO soldiers: Mijo Marijanović, T(F) pp. 2744-2746; Witness ZC, T(F) pp. 3323-3325; Zoran Gvozden, T(F) pp. 3655, 3657 and 3689.

<sup>3538</sup> P 437; C 16 (entry: 24 July 1993); P 608; Tomislav Mikulić, T(F) p. 4496; Zrinko Alvir, T(F) p. 2616.

<sup>3539</sup> DH 63; DH 176.

<sup>3540</sup> P 356; DH 171.2.

<sup>3541</sup> P 442.

<sup>3542</sup> P 442.

<sup>3543</sup> For example, the following witnesses were transferred from one detention facility to another: 1) from the *Gimnazija* School Building to the *Slavonija* Furniture Salon: Mijo Marijanović, T(F) p. 2751; Witness ZC, T(F) p. 3330; Tomislav Mikulić, T(F) pp. 4505-4506; 2) from the *Slavonija* Furniture Salon to the *Vojin Paleksić* Elementary School: Zdravko Žulj, T(F) 3642; Tomislav Mikulić, T(F) p. 4508; 3) from the *Vojin Paleksić* Elementary School to the FC *Iskra* Stadium: Tomislav Mikulić, T(F) pp. 4517-4518; 4) from the *Slavonija* Furniture Salon to the FC *Iskra* Stadium: Zoran Gvozden, T(F) pp. 3672-3673; Mijo Marijanović, T(F) pp. 2761-2762.

<sup>3544</sup> For example, Witnesses Tomislav Mikulić, ZB and ZX were imprisoned at the *Gimnazija* School Building, *Slavonija* Furniture Salon, *Vojin Paleksić* Elementary School, and FC *Iskra* Stadium.

<sup>3545</sup> The following witnesses were among them: Mijo Marijanović; Witness ZB; Witness ZC; Zdravko Žulj; Zoran Gvozden; Witness ZH; Tomislav Mikulić; Vinko Zrno; Witness Z4; Witness Z9.

held in various detention facilities in Bugojno for up to eight months. On 19 March 1994, there were still 292 detainees at *Iskra* Stadium.<sup>3546</sup>

(iii) Limitations on the Scope of the Judgement

1587. The Chamber heard many witnesses testify about how Croatian prisoners were forced to dig trenches and do forced labour in Bugojno on the line of separation between the ABiH and the Serbs<sup>3547</sup> in Gornji Vakuf,<sup>3548</sup> Pajić Polje,<sup>3549</sup> Podripci,<sup>3550</sup> Šugine Bare, and Pernice close to Gornji Vakuf,<sup>3551</sup> Vrbanja,<sup>3552</sup> Kupreš,<sup>3553</sup> and Garački Podovi.<sup>3554</sup>

1588. The Chamber recalls that the Initial Indictment contained allegations of “unlawful confinement of civilians” and of “unlawful labour,” but that the Prosecution withdrew those charges from the Third Amended Indictment.

1589. In a Decision of 16 March 2004, the Chamber ruled that it could find only that the Third Amended Indictment did not include the count of inhuman treatment consisting of the use of detainees to do forced labour. For the purposes of this Judgement, therefore, the Chamber does not consider itself seized of this issue.<sup>3555</sup>

1590. The Chamber also heard many Prosecution witnesses testify about the “disappearance” of around 21 to 25 prisoners in Bugojno.<sup>3556</sup> Those people were allegedly abducted by the ABiH soldiers from the detention facilities in Bugojno and subsequently murdered. The Chamber notes that the Prosecution never seized it of the question of the disappearance of the prisoners in Bugojno and, as such, cannot rule on this point.

1591. The Chamber will now examine the factual allegations of mistreatment and murder for each detention facility in Bugojno. The Chamber will then examine the constituent elements of the Accused Hadžihasanović’s responsibility for all the detention facilities in a separate and distinct chapter.

<sup>3546</sup> Ivo Mršo, T(F) p. 2525; Witness ZH, T(F) p. 3758; P 391 (under seal), para. 42.

<sup>3547</sup> Zoran Gvozden, T(F) pp. 3677-3678.

<sup>3548</sup> Witness ZC, T(F) p. 3349; Mijo Marijanović, T(F) p. 2763.

<sup>3549</sup> Witness ZC, T(F) pp. 3350-3352.

<sup>3550</sup> Witness ZC, T(F) pp. 3348-3350; P 386, (under seal), para. 30.

<sup>3551</sup> P 391 (under seal), para. 39.

<sup>3552</sup> Witness ZC, T(F) p. 3363.

<sup>3553</sup> Witness ZC, T(F) p. 3350.

<sup>3554</sup> P 391 (under seal), para. 38.

<sup>3555</sup> Decision on Motion of the Accused Hadžihasanović Regarding the Prosecution's Examination of Witnesses on Alleged Violations not Covered by the Indictment, Case No. IT-01-47-T, 16 March 2004.

<sup>3556</sup> Vinko Zrno, T(F) p. 10087; Zoran Gvozden, T(F) p. 3708; Witness ZC, T(F) p. 3347; P 386 (under seal), para. 39.

(iv) Slavonija Furniture Salon in Bugojno: Mistreatment of Prisoners and the Murder of Mladen Havranek

a. Arguments of the Parties

1592. According to the Prosecution, the detention conditions in the basement of the Furniture Salon were sorely inadequate. The Prosecution backs that assertion by explaining that the Furniture Salon's basement was flooded and dark, and that the detainees were forced to sleep on wooden pallets or on the concrete floor. The Prosecution further argues that the prisoners at the Furniture Salon were violently beaten on a daily basis at night. One of them, Mladen Havranek, is alleged to have died as a result of the beating.<sup>3557</sup>

1593. As for the arguments put forth by the Prosecution on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3558</sup>

1594. The Defence for the Accused Hadžihasanović argues that the conditions at the Furniture Salon were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that incidences of beatings were rare.<sup>3559</sup> It also disputes the assertion that the basement in the building was flooded.<sup>3560</sup> Conversely, it does not dispute that six prisoners of war were mistreated by 307<sup>th</sup> Brigade members and that one of them, Mladen Havranek, died as a result.<sup>3561</sup>

1595. As for the arguments put forth by the Defence for the Accused Hadžihasanović on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3562</sup>

<sup>3557</sup> Prosecution Final Brief, paras. 295-299.

<sup>3558</sup> See *supra* paras. 1572-1573.

<sup>3559</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

<sup>3560</sup> Hadžihasanović Defence Final Brief, footnote 1479.

<sup>3561</sup> Hadžihasanović Defence Final Brief, paras. 1042 and 1045.

<sup>3562</sup> See *supra* paras. 1575-1577.



b. Findings of the Chamber on the Mistreatment of Prisoners and the Murder of Mladen Havranek

i. Sequence of Events from 24 July 1993 to 23 August 1993

1596. The *Slavonija* Furniture Store or “Salon” was really a furniture warehouse.<sup>3563</sup> Between 24 July 1993 and 23 August 1993,<sup>3564</sup> 50 to 200 people were locked in the Furniture Salon basement.<sup>3565</sup> Some of the prisoners were Bosnian Croat and Bosnian Serb civilians, but most were HVO soldiers captured by the ABiH.<sup>3566</sup>

1597. Several former detainees described the prevailing detention conditions at the Furniture Salon to the Chamber. The building’s basement was a 15 by 20 metre room<sup>3567</sup> which had no light.<sup>3568</sup> The ground was partly flooded with 10 to 20 centimetres of water.<sup>3569</sup> A former detainee stated that the sewage pipes had burst and that excrement was in the water, making the stench unbearable.<sup>3570</sup> The prisoners used wooden pallets and old furniture to stay dry and to lie down.<sup>3571</sup> As for the sanitary conditions, the prisoners had severely restricted access to the toilets<sup>3572</sup> which, according to one witness, were constantly clogged and out of order.<sup>3573</sup> One detainee stated that when they were first taken into custody, the prisoners did not have permission to go to the toilet, and had to relieve themselves on the basement floor.<sup>3574</sup> During the first days, the detainees received nothing to eat.<sup>3575</sup>

<sup>3563</sup> See photograph P 65.

<sup>3564</sup> Witnesses Zrinko Alvir, Zdravko Žulj and Z9 were among the first prisoners held at the Furniture Salon as of 24 July 1993, while Witnesses Mijo Marijanović and ZC were transferred to other detention facilities in Bugojno on 23 August 1993: Zrinko Alvir, T(F) pp. 2616-2617 and 2640; Zdravko Žulj, T(F) pp. 3620-3621; P 391 (under seal), para. 3.

<sup>3565</sup> Witness ZR, T(F) p. 3068; Zdravko Žulj, T(F) p. 3621; P 391, para. 8; Zoran Gvozden, T(F) p. 3668; Witness ZB, T(F) p. 2988; DH 170.6. See photograph P 66.

<sup>3566</sup> Mijo Marijanović, T(F) p. 2754; Witness ZB, T(F) p. 2989; Zrinko Alvir, T(F) pp. 2616-2618; Tomislav Mikulić, T(F) p. 4506-4507; P 386 (under seal), para. 17; Zoran Gvozden, T(F) p. 3672. The Chamber recalls that the ABiH considered the prisoners in Bugojno as prisoners of war or, more specifically, as regular and irregular combatants: P 442 and *supra* para. 1585.

<sup>3567</sup> P 391 (under seal), para. 4.

<sup>3568</sup> Mijo Marijanović, T(F) p. 2758; Zoran Gvozden, T(F) p. 3666; P386 (under seal), para. 17; Witness ZB, T(F) p. 2985.

<sup>3569</sup> Tomislav Mikulić, T(F) pp. 4506-4507; Mijo Marijanović, T(F) pp. 2752-2753; Zdravko Žulj, T(F) p. 3622; Zrinko Alvir, T(F) pp. 2617-2618; P 391, (under seal), para. 4; P 386, (under seal), para. 17; Witness ZB, T(F) p. 2985. The Defence for the Accused Hadžihasanović, in footnote 1479 of its Final Brief, refers to the testimony of Peter Hauenstein, who stated that he saw “puddles of water” in the basement of the Furniture Salon: T(E) pp. 7607-7608. The Chamber notes that the witnesses mentioned by the Defence for the Accused Hadžihasanović in that same footnote confirm that there were indeed 10 to 20 centimetres of water in the basement: Witness ZR, T(F) pp. 3068-3069; Witness ZC, T(F) p. 3330; Zoran Gvozden, T(F) p. 3666.

<sup>3570</sup> Tomislav Mikulić, T(F) p. 4506.

<sup>3571</sup> Zdravko Žulj, T(F) p. 3622; P 391, (under seal), para. 4; Witness ZC, T(F) p. 3330.

<sup>3572</sup> Mijo Marijanović, T(F) p. 2758.

<sup>3573</sup> Witness ZC, T(F) p. 3331.

<sup>3574</sup> Zrinko Alvir, T(F) p. 2618; P 391 (under seal), para. 4.

<sup>3575</sup> P 391 (under seal), para. 10; Zdravko Žulj, T(F) p. 3622.

The amounts of food distributed later were so meagre that the prisoners suffered from malnutrition.<sup>3576</sup> From time to time, some guards allowed civilians to bring the detainees food,<sup>3577</sup> but others did not.<sup>3578</sup> Witness Z9 stated that between 20 to 30 prisoners were forced to give blood and were taken to a hospital to do so.<sup>3579</sup>

1598. The Chamber also heard several witnesses speak about how the prisoners were physically abused. Virtually every night, the guards at the Furniture Salon called some detainees one by one and made them go upstairs in the building.<sup>3580</sup> When they got upstairs, the prisoners were beaten with weapons including wooden implements, clubs, and iron rods.<sup>3581</sup> At times the prisoners were forced to wear bags over their heads so they would not recognise their attackers.<sup>3582</sup>

1599. Witness Zrinko Alvir stated that on his first night in custody, the guards called him and he went upstairs to the ground floor of the building. He was forced to lie face down and to spread out his arms and legs. The soldiers beat him and, as they interrogated him about the HVO organisational chart, walked on his fingers.<sup>3583</sup>

1600. The night of 5 August 1993 was especially violent. Detainees Zrinko Alvir, Franc Kosak, Mijo Marijanović, Dragan Brečić and Mladen Havranek were called one by one and severely beaten.<sup>3584</sup> Zrinko Alvir recalled being beaten with iron pipes for about 40 minutes. As a result of the mistreatment, the back of his body was covered in bruises and two of his ribs were broken, requiring him to be hospitalised.<sup>3585</sup> As will be illustrated subsequently, Mladen Havranek died as a result of the mistreatment he suffered that night.

1601. On 6 August 1993, Witness ZE went to the dispensary, a medical unit of the Muslim army's War Hospital in Bugojno, to visit four detainees, namely Franc Kosak, Mijo Marijanović, Zrinko Alvir and Dragan Brečić, who had been hospitalised as a result of being mistreated at the Furniture

<sup>3576</sup> Witness ZR, T(F) pp. 3068-3069; P 386, (under seal), para. 7; P 391, (under seal), para. 10.

<sup>3577</sup> Zoran Gvozden, T(F) p. 3698; Mijo Marijanović, T(F) p. 2758.

<sup>3578</sup> P 391 (under seal), para. 10.

<sup>3579</sup> P 391 (under seal), para. 9.

<sup>3580</sup> Zdravko Žulj, T(F) p. 3622; Zrinko Alvir, T(F) p. 2621; Witness ZB, T(F) p. 2989; P 386 (under seal), para. 17; Witness ZC, T(F) pp. 3333-3334.

<sup>3581</sup> Mijo Marijanović, T(F) pp. 2758-2760; Zrinko Alvir, T(F) p. 2621; Witness ZC, T(F) p. 3335; Zoran Gvozden, T(F) p. 3672.

<sup>3582</sup> Mijo Marijanović, T(F) pp. 2758 and 2760; Zoran Gvozden, T(F) p. 3700; Zdravko Žulj, T(F) pp. 3640-3641. The Chamber notes that Witness Zdravko Žulj personally was not beaten, and that other prisoners told him what had happened.

<sup>3583</sup> Zrinko Alvir, T(F) pp. 2620-2621.

<sup>3584</sup> Zrinko Alvir, T(F) pp. 2622-2623; Zoran Gvozden, T(F) p. 3669. Nevertheless, the Chamber notes that Mijo Marijanović stated that he was mistreated only once when he was forced to do cleaning work, T(F) p. 2793.

<sup>3585</sup> Zrinko Alvir, T(F) pp. 2619-2624 and T(E) p. 2625.

Salon the previous night. Witness ZE noticed that Brečić's legs bowed at the knees, and that he lacked the strength to stretch them out or to turn over on his stomach to have his back examined.<sup>3586</sup>

1602. On the night of 9 or 10 August 1993, Witness ZC was himself called and went upstairs where four or five men were waiting for him in the dark. He sat down and the men began to beat him, one with a club, and the others with their fists. He was beaten for a few minutes and then sent back to the basement.<sup>3587</sup>

1603. Witness Tomislav Mikulić testified that in early August 1993, the guards from the Furniture Salon took him and a few detainees to the villages of Crniče and Vrbanja to do forced labour. While the prisoners were working, the guards hit them with clubs on the head, back, shoulders, and kidneys, and when the guards wanted to take a break, they forced the prisoners to beat each another. Sometimes the guards threw fist-sized stones at the detainees. After being hit in the head by one of the stones, Tomislav Mikulić fell to his knees and began to cry. One of the guards picked up a shovel to hit him again, but another detainee stood between them to stop the guard and, as a result, received more blows himself. The prisoners were then taken back to the Furniture Salon. Tomislav Mikulić is still suffering the after-effects of that mistreatment, which include joint pain and severe headaches.<sup>3588</sup>

1604. According to the witnesses, the following prisoners were also frequently physically abused while in detention: Drago Žulj;<sup>3589</sup> Mladen Barnjak;<sup>3590</sup> Dragan Brečić;<sup>3591</sup> Frank Kosak;<sup>3592</sup> Stipo Zelić;<sup>3593</sup> Josip Čubela;<sup>3594</sup> Mljenko Bagarić; Zrinko Arazina; a person called Dadić;<sup>3595</sup> Milenko Behara; Mario Miloš; Tomislav Knezević; Perica Jarčević; Niko Džaja;<sup>3596</sup> and Marijan Glisić.<sup>3597</sup>

1605. On 28 July 1993, Witnesses Rudy Gerritsen and Peter Hauenstein, ECMM observers, visited the Furniture Salon and *Gimnazija* School Building.<sup>3598</sup> Although the report from the visit indicates that the prisoners held at those locations seemed to be in good condition but lacked basic necessities

<sup>3586</sup> Witness ZE, T(F) pp. 3479 and 3485-3486. See also Zrinko Alvir, T(F) p. 2624.

<sup>3587</sup> Witness ZC, T(F) p. 3335.

<sup>3588</sup> Tomislav Mikulić, T(F) pp. 4511-4516.

<sup>3589</sup> Witness ZC, T(F) pp. 3331-3332.

<sup>3590</sup> Zoran Gvozden, T(F) p. 3700; Witness ZB, T(F) p. 2989.

<sup>3591</sup> Zdravko Žulj, T(F) p. 3623; P 391 (under seal), para. 6; Zoran Gvozden, T(F) pp. 3669, 3671 and 3700; Witness ZE, T(F) pp. 3485-3486.

<sup>3592</sup> Witness ZE, T(F) p. 3486; Zoran Gvozden, T(F) pp. 3669 and 3671.

<sup>3593</sup> Zdravko Žulj, T(F) p. 3623; P 391 (under seal), para. 7. According to witnesses.

<sup>3594</sup> Zdravko Žulj, T(F) p. 3623.

<sup>3595</sup> Zdravko Žulj, T(F) p. 3623.

<sup>3596</sup> P 391, (under seal), para. 12.

<sup>3597</sup> Witness ZB, T(F) p. 2989.

<sup>3598</sup> DH 170.6; Rudy Gerritsen, T(F) pp. 7134-7137; Peter Hauenstein, T(F) pp. 7607-7609.

such as beds, sheets, soap, and toilet paper,<sup>3599</sup> the testimony of the two international observers paints a more sombre picture of how the prisoners were treated and of the detention conditions that prevailed. Rudy Gerritsen and Peter Hauenstein testified that the basement of the Furniture Salon was dark, that the floor was covered with water or puddles of water, and that the accommodation and sanitary conditions were substandard.<sup>3600</sup> The witnesses also agreed that they had the strong impression that the prisoners were fearful and could not express themselves freely, since guards were present during their conversations with them.<sup>3601</sup> Rudy Gerritsen added that it was obvious the prisoners had been physically abused,<sup>3602</sup> and Peter Hauenstein stated that urgent measures needed to be taken at the Furniture Salon.<sup>3603</sup>

ii. Mistreatment, Paragraph 42(g) of the Indictment

1606. As described above, during the proceedings the Chamber heard much evidence relating to the physical violence inflicted upon the Bosnian Croat civilians and prisoners of war at the Furniture Salon between 24 July 1993 and late August 1993. That specific and corroborated evidence is sufficient to prove beyond a reasonable doubt that the victims were repeatedly subjected to physical abuse while in detention and that the perpetrators of the mistreatment had the intent to cause serious pain and suffering to the prisoners at the Furniture Salon.

1607. Regarding the detention conditions, the Defence for the Accused Hadžihasanović submits as a defence that the prevailing conditions in the temporary detention facilities in Bugojno were satisfactory, considering the difficult circumstances which prevailed in Bugojno at the material time. In support of its assertion, the Defence argues that there were no appropriate detention facilities to accommodate a large number of detainees and that there was a lack of basic necessities, including water and humanitarian assistance, and that the roads controlled by the HVO were blocked.<sup>3604</sup>

1608. The Chamber recalls that persons deprived of their liberty for reasons related to an armed conflict must be provided the same level of basic necessities, such as potable water and food, as

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<sup>3599</sup> DH 170.6.

<sup>3600</sup> Rudy Gerritsen, T(F) p. 7134-7137; Peter Hauenstein, T(F) pp. 7607-7608.

<sup>3601</sup> Rudy Gerritsen, T(F) p. 7135; Peter Hauenstein, T(F) pp. 7608-7609.

<sup>3602</sup> Rudy Gerritsen, T(F) p. 7135.

<sup>3603</sup> Peter Hauenstein, T(F) p. 7610.

<sup>3604</sup> Hadžihasanović Defence Final Brief, paras. 1054-1057.

those provided to the local civilian population. Furthermore, persons deprived of their liberty for reasons related to an armed conflict must be afforded safeguards for their health and hygiene.<sup>3605</sup>

1609. In this case, the Chamber notes that various documents submitted by the Defence for the Accused Hadžihasanović indicate that in August 1993, it became difficult to supply Bugojno with water because a water valve had been shut off in the area controlled by the HVO, and that getting food to Bugojno was a source of concern for the town's political officials.<sup>3606</sup> In view of the foregoing, the Chamber is of the opinion that although the documents depict a difficult situation with regard to the supplying of basic necessities, they do not establish that the situation and shortages had become so serious, in the war context of the time, that they affected equally the local civilian population and civilian detainees and prisoners of war. That evidence also fails to demonstrate that, in spite of the difficult conditions, the supply lines for the ABiH soldiers stationed in Bugojno were affected and that their food was rationed or that they lacked food in a way comparable to that of ABiH prisoners in Bugojno.<sup>3607</sup>

1610. The Chamber is not convinced that, from a health and hygiene perspective in the detention facilities, any other location in Bugojno would have offered more humane conditions. For example, once the ABiH forces stormed the *Kalin* Hotel in late July 1993, it was completely empty as of 12 August 1993<sup>3608</sup> and could have been requisitioned to accommodate a large number of prisoners of war captured by the ABiH. In any case, the Chamber notes that the Defence for the Accused Hadžihasanović made no attempt to demonstrate the absence of alternative solutions to remedy the problem of insufficient detention facilities it alleges existed.<sup>3609</sup>

1611. Moreover, the Chamber cannot consider the argument put forth by the Defence for the Accused Hadžihasanović according to which the lack of appropriate detention facilities able to accommodate a large number of prisoners is a reason to excuse the very limited, and even inexistent, access to the toilets when those facilities are equipped with them, or maintaining unsanitary conditions, such as a flooded floor in a basement and the absence of light. These facts, established by the aforementioned testimony, clearly indicate that such detention conditions were either the product of a deliberate policy or were allowed to happen, and not the product of necessity.

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<sup>3605</sup> See *supra* para. 35.

<sup>3606</sup> DH 1351; DH 1949; DH 171.1; DH 171.2; DH 171.4; DH 171.5; DH 171.6; DH 171.8; Rudy Gerritsen, T(F) pp. 7171-7172.

<sup>3607</sup> See Rudy Gerritsen, T(F) pp. 7173-7174.

<sup>3608</sup> DH 1948.

<sup>3609</sup> The Chamber notes that footnote 1480 of the Hadžihasanović Defence Final Brief, which seeks to support the argument by the Defence for the Accused Hadžihasanović that there was no appropriate detention facility to accommodate a large number of detainees, refers to paragraph 30 of the Hadžihasanović Defence Final Brief, which does not deal with this issue.

1612. To conclude, the Chamber rejects the argument put forth by the Defence for the Accused Hadžihasanović regarding the living conditions which prevailed in Bugojno at the material time. The Chamber finds that the deplorable and inappropriate detention conditions at the Furniture Salon, described by the aforementioned witnesses, which include insufficient, even deprivation of food, very limited and even inexistent access to toilets, maintenance of unsanitary conditions, such as the flooded basement floor, the absence of light, and the inability of the detainees to sleep in acceptable conditions, constitute cruel treatment.

1613. Regarding the perpetrators of the mistreatment, the witnesses who testified before the Chamber were often unable to identify their attackers, since they were frequently forced to wear bags over their heads.<sup>3610</sup> The witnesses nevertheless agree that the beatings were administered by ABiH soldiers guarding the Furniture Salon.<sup>3611</sup> Some witnesses specified that the guards of the Furniture Salon were members of the 307<sup>th</sup> Brigade, which included the 307<sup>th</sup> Brigade Military Police.<sup>3612</sup> Moreover, the testimony of Fehim Muratović, Edib Zlotrg, and Witness HF, who were witnesses for the Defence for the Accused Hadžihasanović, and the inspection report drafted by Fehim Muratović after his visit to Bugojno, attest to the fact that 307<sup>th</sup> Brigade members beat six detainees at the Furniture Salon, which caused the death of one of them.<sup>3613</sup> The above-mentioned evidence, combined with the fact the 307<sup>th</sup> Brigade, which includes the 307<sup>th</sup> Brigade Military Police, was the only ABiH unit stationed in Bugojno,<sup>3614</sup> convinces the Chamber beyond a reasonable doubt that the perpetrators of the alleged cruel treatment were 307<sup>th</sup> Brigade members, including 307<sup>th</sup> Brigade Military Police.

1614. The Chamber finds that the victims of the cruel treatment were not directly participating in the hostilities. In fact, the evidence adduced at trial demonstrates that the people arrested and transferred to the Furniture Salon had the status of Bosnian Croat or Bosnian Serb civilians or

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<sup>3610</sup> Mijo Marijanović, T(F) p. 2758 and 2760; Zoran Gvozden, T(F) p. 3700; Zdravko Žulj, T(F) p. 3640-3641. The Chamber notes that Witness Zdravko Žulj was not personally beaten and that he learned this information from other prisoners. The Chamber also notes that Witness Zrinko Alvir indicated that the two perpetrators of the mistreatment administered during the night of 5 August 1993 were named Edin Vrban and Sacir Duraković: T(E) p. 2644.

<sup>3611</sup> Zrinko Alvir, T(F) p. 2620-2622; Zoran Gvozden, T(F) p. 3671; Witness ZC, T(F) p. 3341-3342; Mijo Marijanović, T(F) p. 2759; Witness ZB, T(F) p. 2990.

<sup>3612</sup> Zrinko Alvir, T(F) p. 2622; Zoran Gvozden, T(F) p. 3671. Among the guards at the Furniture Salon, Witness Tomislav Mikulić identified Enes Sijimija who, according to him, belonged to the military police of an ABiH unit: T(F) p. 4507. Enes Sijimija was an ABiH officer in Bugojno: DH 51. Witness Z9 stated that on one occasion, his fellow detainee, Stipica Zelić, Commander of the HVO Military Police, was called upstairs by Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security: P 391 (under seal), para. 7.

<sup>3613</sup> Fehim Muratović, T(F) pp. 14963-14964; Edib Zlotrg, T(F) pp. 14987 and 15015; Witness HF, T(F) p. 17196; DH 1392.

<sup>3614</sup> *See supra* para. 393.

prisoners of war.<sup>3615</sup> Consequently, they were all protected persons pursuant to the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1615. Based on the above, the Chamber finds that the elements of the crime of cruel treatment at the Furniture Salon have been established for the period of 24 July 1993 to 23 August 1993.

iii. Murder of Mladen Havranek, paragraph 43(c) of the Indictment

1616. Witnesses Zoran Gvozden, Mijo Marijanović, Zrinko Alvir, and Witness ZC, former prisoners at the Furniture Salon, described to the Chamber the circumstances of Mladen Havranek's death.<sup>3616</sup> During the night of 5 August 1993, four detainees were beaten by the guards at the Furniture Salon before Mladen Havranek himself was called upstairs. From the basement, the aforementioned detainees could hear Mladen Havranek moaning and screaming, and begging the guards to stop beating him. Mladen Havranek could no longer walk, so the prisoners dragged him down the stairs to the basement cell. Mladen Havranek quickly lost consciousness and the prisoners called the guards for help. He was taken by ambulance to a clinic. According to what Mijo Marjanović heard, Mladen Havranek died on the way to the hospital,<sup>3617</sup> while Zoran Gvozden states that Mladen Havranek was already dead in the cell before help arrived.<sup>3618</sup>

1617. Mladen Havranek's death by beating is confirmed in a report of 20 August 1993 that Senad Dautović, chief of the civilian police in Bugojno, sent to the 307<sup>th</sup> Brigade military security organ, among others. Mladen Havranek's name appears on a list entitled "Croats against whom war crimes have been committed".<sup>3619</sup> The list notes that Mladen Havranek was beaten and tortured to death. A handwritten notation describes the information as "true".<sup>3620</sup>

1618. As for the cause of death, Mladen Havranek's death certificate notes that he died on 5 August 1993 as a result of contusions to his head and thorax.<sup>3621</sup> On 6 August 1993, Witness ZE, a former attorney and friend of Mladen Havranek's parents, learned that Mladen Havranek was

<sup>3615</sup> Mijo Marijanović, T(F) p. 2754; Witness ZB, T(F) p. 2989; Zrinko Alvir, T(F) p. 2616-2618; Tomislav Mikulić, T(F) p. 4506-4507; P 386 (under seal), para. 17; P 442; Rudy Gerritsen, T(F) p. 7137; Peter Hauenstein.

<sup>3616</sup> Mijo Marijanović, T(F) p. 2758-2761; Witness ZC, T(F) pp. 3342-3343; Zoran Gvozden, T(F) pp. 3669-3672; Zrinko Alvir, T(F) p. 2623-2624.

<sup>3617</sup> Mijo Marjanović, T(F) pp. 2760-2761.

<sup>3618</sup> Zoran Gvozden, T(F) pp. 3670-3671.

<sup>3619</sup> P 203.

<sup>3620</sup> P 203.

<sup>3621</sup> P 71 (confidential).

beaten to death and, on his own initiative, examined Havranek's body before it was buried. His examination of the body revealed that Havranek died as a result of a fractured temporal bone.<sup>3622</sup>

1619. For the reasons set out in the section of the Judgement dealing with the perpetrators of mistreatment at the Furniture Salon, the Chamber has no reason to doubt that the perpetrators of that crime were 307<sup>th</sup> Brigade members, including 307<sup>th</sup> Brigade Military Police.<sup>3623</sup> Regarding the fact that paragraph 43(c) of the Indictment alleges that the perpetrators of the murder of Mladen Havranek were members of the OG *Zapad* Military Police, the Chamber also refers to its conclusions in that same section of the Judgement.

1620. The evidence indicates that Mladen Havranek's status was that of an HVO soldier and that he was arrested by the ABiH in front of the *Kalin* Hotel on 24 July 1993, at the same time as several hundred other HVO soldiers, before he was detained at the Furniture Salon.<sup>3624</sup> Mladen Havranek therefore acquired the status of a prisoner of war afforded the protection offered by the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1621. The Chamber has no doubt as to the existence of the *mens rea* for murder in this case and therefore finds that the elements of the crime of the murder of Mladen Havranek on 5 August 1993 have been established.

(v) Bugojno Convent: Mistreatment of Prisoners and Murder of Mario Zrno

a. Arguments of the Parties

1622. The Prosecution argues that from 24 July 1993 until early August 1993, the Convent was used as a detention facility under the control of 3<sup>rd</sup> Corps units, particularly the 307<sup>th</sup> Brigade, and that those units subjected the detainees to mistreatment. The Prosecution also alleges that in early August 1993, Mario Zrno, an HVO soldier imprisoned at the Convent, was taken to Vrbanja by ABiH soldiers to do forced labour and that while he was carrying out the assigned tasks, he was severely beaten by ABiH soldiers and died as a result.<sup>3625</sup> The Prosecution, however, submits that even assuming the perpetrators of Mario Zrno's murder had only the status of civilians, the ABiH soldiers had a duty to stop the civilians from mistreating the prisoners under their guard.<sup>3626</sup>

<sup>3622</sup> Witness ZE, T(F) pp. 3479-3481 and T(E) pp. 3479-3480.

<sup>3623</sup> *See supra* para. 1613.

<sup>3624</sup> P 391 (under seal), para. 17; P 442.

<sup>3625</sup> Prosecution Final Brief, para. 294.

<sup>3626</sup> Prosecution Final Brief, footnote 1009.



1623. As to the Prosecution's submission on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3627</sup>

1624. The Defence for the Accused Hadžihasanović argues that the detention conditions at the Convent were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that the incidences of beatings were rare.<sup>3628</sup>

1625. As for the arguments put forth by the Defence for the Accused Hadžihasanović on the constituent elements of responsibility under Article 7(3) of the Statute regarding the alleged mistreatment at the Convent, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3629</sup>

1626. As for the alleged murder of Mario Zrno, the Defence for the Accused Hadžihasanović submits that the perpetrators were not under the effective control of the Accused Hadžihasanović, since civilians were responsible for the beating which led to Mario Zrno's death.<sup>3630</sup> The Defence adds that the Accused Hadžihasanović was not aware of Mario Zrno's alleged murder,<sup>3631</sup> and that measures were taken against the perpetrators of the crime.<sup>3632</sup>

b. Findings of the Chamber on the Mistreatment of Prisoners and the Murder of Mario Zrno

i. Sequence of Events Between 25 July 1993 and the End of July 1993

1627. Bugojno Convent,<sup>3633</sup> which used to house an elementary school and a centre for Marxist studies, was used as a detention facility for a few days between 25 July 1993 and the end of July 1993.<sup>3634</sup> The detainees were held in classrooms upstairs,<sup>3635</sup> on the ground floor,<sup>3636</sup> and in the basement of the building.<sup>3637</sup> According to the witnesses, the prisoners brought to the Convent were

<sup>3627</sup> See *supra* paras. 1572-1573.

<sup>3628</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

<sup>3629</sup> See *supra* paras. 1575-1577.

<sup>3630</sup> Hadžihasanović Defence Final Brief, paras. 1058 and 1060.

<sup>3631</sup> Hadžihasanović Defence Final Brief, para. 1060.

<sup>3632</sup> Hadžihasanović Defence Final Brief, paras. 1059-1060.

<sup>3633</sup> See photograph P 56.

<sup>3634</sup> Ivo Mršo, T(F) p. 2505; Witness ZE, T(F) p. 3473; Witness ZR, T(F) p. 3075.

<sup>3635</sup> Witness ZE, T(F) p. 3476; Ivo Mršo, T(F) p. 2493.

<sup>3636</sup> Witness ZE, T(F) p. 3476.

<sup>3637</sup> Ivo Mršo, T(F) pp. 2494 and 2497; Witness ZR, T(F) p. 3075. See photograph P 57.

HVO soldiers and Bosnian Croat civilians, some of whom were minors aged 14 to 16.<sup>3638</sup> Witness Ivo Mršo counted 73 prisoners in the Convent basement<sup>3639</sup> while during his visit to the Convent, Witness ZR counted some 20 prisoners, in addition to the 15 to 20 prisoners upstairs.<sup>3640</sup>

1628. Witness Ivo Mršo, a former prisoner at the Convent, and Witness ZR spoke about the prevailing detention conditions in the Convent basement. The room was used as a cell and was poorly lit.<sup>3641</sup> As for the sanitary conditions, Ivo Mršo noted that the room was dirty<sup>3642</sup> and that the prisoners had to make do with a slop pail to relieve themselves.<sup>3643</sup> Regarding the accommodations, witnesses did not say that there were mattresses or blankets, but spoke only about a few boards.<sup>3644</sup> During his visit to the Convent, Witness ZR heard the prisoners say they were hungry and noticed that they indeed looked starved.<sup>3645</sup> Later, during the visit of a delegation including two doctors, a lawyer, a nun, and a priest, the detainees were given sandwiches and medicine.<sup>3646</sup>

1629. The Chamber heard the same two witnesses describe the recourse to physical violence inflicted on the prisoners. Ivo Mršo stated that the first night in detention, three soldiers who were guarding the Convent took one of his fellow detainees, Marko Glisić, out of the cell and began to beat him once he walked through the door.<sup>3647</sup> He added that since the soldiers did not bother to shut the cell door, the prisoners could hear Marko Glisić being beaten and screaming.<sup>3648</sup> Furthermore, during his visit to the Convent, Witness ZR first noticed that all the detainees in the basement had bandages on one of their arms or legs.<sup>3649</sup> He then approached a prisoner whose head was bruised and noticed his back was also covered in bruises. While asking him how he got the bruises, the other prisoners told him that the detainees were beaten at random during the night.<sup>3650</sup> He also noticed that the prisoner in question had difficulty walking correctly.<sup>3651</sup>

1630. Witness Vinko Zrno, a former prisoner at the *Gimnazija* School Building, who was also Mario Zrno's cousin, and Witness Ivo Mršo, to a lesser extent, provided testimony to the Chamber

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<sup>3638</sup> Ivo Mršo, T(F) pp. 2494-2495; Witness ZR, T(F) pp. 3075-3076. The Chamber recalls that the ABiH considered the prisoners in Bugojno as prisoners of war or, more specifically, as regular and irregular combatants: P 442.

<sup>3639</sup> Ivo Mršo, T(F), p. 2494.

<sup>3640</sup> Witness ZR, T(F) p. 3075.

<sup>3641</sup> Witness ZR, T(F) 3077.

<sup>3642</sup> Ivo Mršo, T(F) p. 2495.

<sup>3643</sup> Ivo Mršo, T(F) p. 2495.

<sup>3644</sup> Witness ZR, T(F) p. 3077.

<sup>3645</sup> Witness ZR, T(F) pp. 3076-3077.

<sup>3646</sup> Ivo Mršo, T(F) p. 2501; Witness ZR, T(F) p. 3078.

<sup>3647</sup> Ivo Mršo, T(F) pp. 2498-2499.

<sup>3648</sup> Ivo Mršo, T(F) pp. 2498-2499.

<sup>3649</sup> Witness ZR, T(E) pp. 3076-3077.

<sup>3650</sup> Witness ZR, T(F) pp. 3076-3077.

<sup>3651</sup> Witness ZR, T(F) p. 3078.

about the circumstances surrounding Mario Zrno's death. Ivo Mršo stated that one day, three soldiers from the Convent called for a few volunteers among the prisoners to do some type of work and that was how Mario Zrno was taken out of the Convent.<sup>3652</sup> Vinko Zrno stated that on 30 July 1993, ten detainees, including himself, were taken from the *Gimnazija* School Building to the Vrbanja village cemetery to dig graves and bury bodies, and that at the cemetery he saw other detainees, including Dragan Keskić, Željko Miloš, and Mario Zrno.<sup>3653</sup> Vinko Zrno stated that as they were doing the forced labour, he and Mario Zrno were beaten in turn, so that whenever Vinko Zrno lost consciousness, Mario Zrno was beaten and vice-versa.<sup>3654</sup> Vinko Zrno pointed out that the attackers rained blows on Mario Zrno several times with the butts of their guns, their boots, and stones.<sup>3655</sup> Vinko Zrno explained that after those beatings, he and his cousin were thrown into a truck which took off towards the *Gimnazija* School Building.<sup>3656</sup>

1631. During an interview with the Office of the Prosecutor on 16 February 2004, Željko Miloš, a former prisoner captured by the ABiH, stated that while he was digging ditches in Crniče in early August 1993, one of the Velagić brothers, Safet or Heko, hit Mario Zrno twice with a shovel and that, as a result of the blows, Mario Zrno lost consciousness.<sup>3657</sup>

1632. Witnesses disagree as to the exact date of Mario Zrno's death. Vinko Zrno stated that according to fellow detainees in the truck, his cousin died on the road shortly after the vehicle took off.<sup>3658</sup> Ivo Mršo, however, said that Mario Zrno was taken back to the Convent after the forced labour, and that he was still alive but covered in blood, unable to stand and with a very frightened look about him.<sup>3659</sup> Mršo went on to say that the detainees taken back to the Convent at the same time as Mario Zrno told him they had been taken to the village of Vrpeč or Crniče to bury some bodies and that there, soldiers and local inhabitants beat them with shovels and threw stones at them.<sup>3660</sup>

ii. Mistreatment, Paragraph 42(g) of the Indictment

1633. The Chamber considers that, as a result of its corroborative nature, the evidence presented heretofore, although limited, is sufficient to demonstrate beyond a reasonable doubt that Bosnian

<sup>3652</sup> Ivo Mršo, T(F) p. 2504.

<sup>3653</sup> Vinko Zrno, T(F) p. 10066.

<sup>3654</sup> Vinko Zrno, T(F) p. 10077.

<sup>3655</sup> Vinko Zrno, T(F) p. 10080.

<sup>3656</sup> Vinko Zrno, T(F) pp. 10053 and 10077-10078.

<sup>3657</sup> DH 341.

<sup>3658</sup> Vinko Zrno, T(F) p. 10077.

<sup>3659</sup> Ivo Mršo, T(E) p. 2504.

<sup>3660</sup> Ivo Mršo, T(E) p. 2504.

Croat civilians and HVO soldiers were beaten repeatedly while they were detained at the Convent, and that the perpetrators of the mistreatment acted with the intention of causing the prisoners at the Furniture Salon serious pain and suffering.

1634. Moreover, regarding the detention conditions at the Convent, the Chamber is convinced beyond a reasonable doubt that, despite the visit of the aforementioned delegation, and even though the Convent operated as a detention facility only for a few days and that as a result the prevailing situation there did not deteriorate to the point where conditions became as difficult as those described at other places of detention such as the Furniture Salon or *Iskra* Stadium as will be examined subsequently, the accumulation of the poor detention conditions in which the prisoners of war and the civilian detainees, including minors, lived, such as insufficient food and the absence of accommodation and access to appropriate sanitary facilities, constitutes mistreatment.<sup>3661</sup>

1635. Regarding the perpetrators of the mistreatment at the Convent, while Witness ZR provided no details,<sup>3662</sup> Witness Ivo Mršo told the Chamber that soldiers guarding the Convent were responsible for beating Marko Glisić.<sup>3663</sup> Even though Ivo Mršo did not know to which brigade the guards at the Convent belonged, he pointed out that during his incarceration, Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security,<sup>3664</sup> visited the prisoners at the Convent once and assured them that everything would be fine and that they should not be afraid.<sup>3665</sup> That testimony, coupled with the fact that the 307<sup>th</sup> Brigade was the only ABiH unit stationed in Bugojno,<sup>3666</sup> convinces the Chamber beyond a reasonable doubt that the perpetrators of the cruel treatment at the Convent were 307<sup>th</sup> Brigade members.

1636. As regards the perpetrators of the mistreatment of Mario Zrno when he was taken outside of the Convent, the Chamber finds that the evidence presented in this respect is contradictory.

1637. First, Vinko Zrno's statements to the Chamber were contradictory. In response to questions from the bench, he indicated that his cousin was mistreated by four or five soldiers in ABiH uniforms including, he said, military police officer Safet Velagić and his brother Muhko Velagić,

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<sup>3661</sup> As for the defence put forth by the Defence for the Accused Hadžihasanović regarding the detention conditions, arguing that the circumstances prevailing in Bugojno at the material time were difficult, the Chamber refers to its conclusions on that subject in the section of this Judgement dealing with the Furniture Salon: *see supra* paras. 1608-1612.

<sup>3662</sup> Witness ZR, T(F) p. 3076.

<sup>3663</sup> Ivo Mršo, T(F) pp. 2498-2499.

<sup>3664</sup> P 912; DK 62, Annex A/ DH 776.

<sup>3665</sup> Ivo Mršo, T(F) pp. 2499-2500.

<sup>3666</sup> *See supra* para. 393.

whom he referred to as their supervisor.<sup>3667</sup> When cross-examined by the Defence for the Accused Hadžihasanović, however, Witness Vinko Zrno stated the following:

Q. While you were digging the graves, there was an armed guard accompanying you, and he treated you fairly; is that correct?

A. Yes, someone who fled from us five minutes after he had taken us there.

Q. After 10 or 15 people from Vrbanja came and started to beat you, you soon lost consciousness, as you were weak, so you were in fact not really aware of what actually happened there; is that correct?

A. Well, I know quite a few things and there are quite a few things that I don't know.<sup>3668</sup>

Later, Witness Vinko Zrno was cross-examined by the Defence for the Accused Hadžihasanović on the statements of Perica Sistrov, Dragan Keskić and Željko Miloš, detainees who, like he, had done work at the same cemetery and witnessed what happened to him.<sup>3669</sup> Witness Vinko Zrno told Counsel:

Q. If I were to put to you that Perica Sistrov in his statement that he gave to the lawyer mentioned that while you worked you were guarded by six guards -- actually, while the six of you worked, there were two guards with you and that these two did not provoke you, did not ill-treat you in any way, they gave you water and cigarettes, would that be correct?

A. No. No.

Q. If Perica Sistrov would also say that at the time when the other 14 prisoners came, amongst whom Mario Zrno, that at that time or a bit later some other men, Muslim men came, amongst whom Zilhad Hodžić from Vrbanja, whose father worked in the gas station, and also Mujo Pelagić [phon] who was the owner of a restaurant. That's when the ill-treatment started, and the only person who did not ill-treat you was Zilhad Hodžić. He didn't do that because we worked together and he took a distance from the group and only observed what was going on. "I can't confirm who were the persons beating Mario, because -- Zrno -- because I didn't know these people or I knew them only superficially. I believe that those people who lived with them in Vrbanja could confirm that because they knew them." And if I told you that Perica Sistrov said all that, would that be the correct description of what happened?

A. Yes, this is a correct description, because they turned our backs to the guards. They were ordered not to look in their faces.

Then with regard to Dragan Keskić's statement, Vinko Zrno stated:

"Q. Mr. Zrno, if Dragan Keskić described the same event in the following way: 'Members of the Muslim army and civilians who had died during the conflicts and whose bodies had to be buried, obviously this was the area of conflict and it was not easy to tell who was a soldier, who was a civilian, and who was shooting and who was not. Our men were sent there. Mario Zrno was one of them. During the burial of their graves [as interpreted], Mario was killed with shovels, axes, and other things that these people who were there had in their hands. So what is important is that the brigade policeman who was there and who were supposed to guard us simply could not offer us

<sup>3667</sup> Vinko Zrno, T(F) pp. 073-10075. Vinko Zrno pointed out that three days before the conflict in Bugojno broke out, he had a conversation with Safet Velagić: Vinko Zrno, T(F) 10074.

<sup>3668</sup> Vinko Zrno, T(E) p. 10066.

<sup>3669</sup> Vinko Zrno, T(F) p. 10082.

any protection. And Mario Zrno was beaten by everybody, by the women who arrived there, by grandmothers, by the elderly who were grieving the deaths of their close family.<sup>3670</sup>

Would this be the correct description of what had happened in the Crniče cemetery? And this description was provided by Dragan Keskić.

A. Yes, that is correct.

[...]

Finally, with regard to the statement by Željko Miloš, Vinko Zrno stated:

“Q. If Željko Miloš in his statement to the Prosecution on the 16th February 2004 at 10.00 said as follows: ‘While Mr. Miloš was digging graves in Crniče at the beginning of August 1993 as a prisoner of the BiH army, one of the two brothers, the Velagić brothers, Safet and Muhko, one of the two brothers hit Marko Zrno twice with a shovel. As a result of that, Mr. Zrno fainted, said Miloš, and Mr. Zrno did not come back with Mr. Miloš and the other detainees to the furniture salon where he had been put previously. The brothers that Željko Miloš named are the Velagić brothers, both Bosniak Muslims. They were both civilians, said Miloš, and in the cemetery they attended the burial of the dead bodies.’ Would this statement given by Željko Miloš represent a correct description of the incident?

A. Mr. Muhko Velagić wore the uniform of the BiH army. I guarantee you that.”<sup>3671</sup>

1638. The following findings are the result of those statements. First, it appears that while Vinko Zrno was already doing forced labour at the cemetery, another group of prisoners arrived, including Mario Zrno. Next, the testimony suggests that men and women at the cemetery began to beat the prisoners, including Mario Zrno. Nevertheless, the witness confirms that Perica Sistov and other prisoners could not see exactly who was beating Mario and Vinko Zrno because they were ordered to turn their backs to the guards as they dug the graves. Finally, the testimony suggests that at the time of those incidents, one or several police officers were there to guard the detainees, but offered them no protection whatsoever.

1639. Later, Witness Tomislav Mikulić, a former prisoner at the Furniture Salon, stated that on 1 August 1993 he was taken from the Furniture Salon to Crniče village to dig graves and that after finishing, he and three other prisoners were taken to the village of Vrbanja by someone called Velagić who, according to Mikulić, was a member of the ABiH military police, and by Muhko Velagić’s cousin.<sup>3672</sup>

1640. Furthermore, as indicated above, during an interview with the Prosecution on 16 February 2004, Željko Miloš said that the perpetrators of the mistreatment, the brothers Safet and Heko Velagić, were Bosnian Muslim civilians at the time they attended the funerals at Crniče

<sup>3670</sup> Vinko Zrno, T(E) p. 10084.

<sup>3671</sup> Vinko Zrno, T(F) pp. 10082-10085.

<sup>3672</sup> Tomislav Mikulić, T(F) pp. 4511-4514.

cemetery.<sup>3673</sup> Nevertheless, in an interview with the Prosecution on 17 April 2000, Željko Miloš stated that when he saw Safet Velagić at Crniče cemetery when Mario Zrno was beaten to death, he was wearing a uniform like that of an ABiH soldier.<sup>3674</sup>

1641. Finally, Witness Ivo Mršo, a former prisoner at the Convent, stated that the detainees brought back to the Convent at the same time as Mario Zrno told him that they were taken to bury bodies in Vrpeč or Crniče village, where soldiers and local inhabitants beat them with shovels and threw stones at them.<sup>3675</sup>

1642. Bearing this contradictory evidence in mind, the Chamber considers that there is lingering doubt as to whether those perpetrators of the mistreatment of Mario Zrno and Vinko Zrno, among others, had civilian or military status. The aforementioned evidence is in fact inconsistent and imprecise as to whether only the local inhabitants, or only the military police on site were responsible for the beatings, or if both the local inhabitants and military police together committed the beatings. Specifically, assuming that Muhko and Safet Velagić beat the victims, the Chamber does not have sufficient information about whether Muhko and Safet Velagić belonged to the 307<sup>th</sup> Brigade Military Police at the time the crime was committed. Accordingly, the Chamber cannot find beyond a reasonable doubt that members of the 307<sup>th</sup> Brigade are responsible for the mistreatment of Mario Zrno.

1643. In view of the aforementioned testimony, in particular that of Vinko Zrno, and assuming that civilians alone were responsible for the mistreatment, the Chamber would be of the view that by failing to intervene to prevent the civilians from committing mistreatment when they had a duty to protect the prisoners under their guard, the guards of the prisoners, who were present when the crimes were committed, to a great extent permitted and abetted the commission of those crimes. Nevertheless, as indicated in the previous paragraph, it is not possible to establish from the evidence presented that the guards would have been in a position to protect Mario Zrno from being beaten by the civilians. Consequently, no findings may be made with respect to the form of responsibility incurred in this case.

1644. Regarding the status of the victims, the Chamber finds that they were not directly participating in the hostilities. In fact, the evidence admitted at trial demonstrates that the persons arrested and transferred to the Convent had the status of Bosnian Croat civilians or prisoners of

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<sup>3673</sup> DH 341.

<sup>3674</sup> DH 341.

<sup>3675</sup> Ivo Mršo, T(E) p. 2504.

war.<sup>3676</sup> Consequently, they were all protected persons under the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1645. For the foregoing reasons, the Chamber considers that the elements of the crime of mistreatment of Bosnian Croat civilians and prisoners of war detained at the Convent have been established for the period between 25 July 1993 and the end of July 1993. Nevertheless, the Chamber considers that it has not been established beyond a reasonable doubt that those responsible for mistreating the prisoners taken outside the Convent belonged to the 307<sup>th</sup> Brigade and that it has not been established that the 307<sup>th</sup> Brigade guards at the scene of the crime could have prevented the commission of those crimes.

iii. Murder of Mario Zrno, Paragraph 43(d) of the Indictment

1646. As described above, the testimony of Ivo Mršo and Vinko Zrno as well as the statement by Željko Miloš to the Office of the Prosecutor make it possible to establish that Mario Zrno died as a result of being beaten when he was being taken outside the Convent. Mario Zrno's death by beating was further confirmed by a report dated 20 August 1993 that Senad Dautović, chief of the civilian police in Bugojno, sent to the 307<sup>th</sup> Brigade military security service organ, among others. In the report, Mario Zrno's name appears on a list entitled "Croats against whom war crimes have been committed".<sup>3677</sup> The list notes that Mario Zrno was beaten and tortured to death. A handwritten notation describes the information as "true".<sup>3678</sup>

1647. Regarding the perpetrators of the crime, the Chamber refers to its conclusions in the section of this Judgement dealing with the mistreatment of detainees outside of the Convent, and finds that it has not been established beyond a reasonable doubt that 307<sup>th</sup> Brigade members were responsible for Mario Zrno's death.

1648. The Chamber notes that the evidence differs with respect to the date of Mario Zrno's death. While the statement by Željko Miloš places the event in early August 1993,<sup>3679</sup> the testimony of

<sup>3676</sup> Ivo Mršo, T(F) pp. 2494-2495; Witness ZR, T(F) pp. 3075-3076; P 203.

<sup>3677</sup> P 203.

<sup>3678</sup> P 203. The Chamber notes, however, that this document indicates that after a meeting on 19 August 1993 attended by the municipal prosecutor and European Community observers, it was concluded that the alleged acts described on the list in question were not war crimes but individual incidents of violent conduct.

<sup>3679</sup> DH 341.



Vinko Zrno and Ivo Mršo suggests instead that Mario Zrno died on 30 July 1993 or, in any case, in late July 1993.<sup>3680</sup>

1649. Regarding the status of the victim, the Chamber notes that Željko Miloš told the Office of the Prosecutor that Mario Zrno was an HVO soldier.<sup>3681</sup> Furthermore, the Chamber notes that the ABiH considered him as prisoner of war.<sup>3682</sup> The Chamber is of the view that, as a result of being detained, Mario Zrno acquired the status of prisoner of war afforded the protection offered by the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1650. The Chamber has no doubt as to the existence of the *mens rea* for the crime of murder in this case, and therefore is of the view that the elements of the crime of murder of the prisoner of war Mario Zrno have been established beyond a reasonable doubt. Nevertheless, the Chamber considers that it has not been established beyond a reasonable doubt that Mario Zrno's murderers belonged to the 307<sup>th</sup> Brigade, and it has not been established that the 307<sup>th</sup> Brigade guards present at the scene of the crime could have prevented the crime from being committed.

(vi) Gimnazija School Building

a. Arguments of the Parties

1651. The Prosecution argues that the School was used as a detention facility from 18 July 1993 until 13 October 1993 and that it was guarded by 307<sup>th</sup> Brigade soldiers.<sup>3683</sup> The Prosecution submits that members of that unit severely beat the prisoners detained at the School and that the detention conditions there were sorely inadequate.<sup>3684</sup>

1652. As for the arguments put forth by the Prosecution on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3685</sup>

1653. The Defence for the Accused Hadžihasanović argues that the detention conditions at the School were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that incidences of beatings were rare.<sup>3686</sup>

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<sup>3680</sup> Vinko Zrno, T(F) p. 10066. Witness Ivo Mršo did not give a date but his testimony places the events during the time he was in detention at the Convent, that is at some time between 25 July 1993 and 30 July 1993: T(F) pp. 2485, 2492-2493 and 2505.

<sup>3681</sup> DH 341.

<sup>3682</sup> P 203.

<sup>3683</sup> Prosecution Final Brief, para. 293.

<sup>3684</sup> Prosecution Final Brief, para. 293.

<sup>3685</sup> *See supra* paras. 1572-1573.

1654. As for the arguments put forth by the Defence for the Accused Hadžihasanović on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3687</sup>

b. Findings of the Chamber regarding Mistreatment at the *Gimnazija* School Building

i. Sequence of Events from 18 July 1993 to 8 October 1993

1655. The *Gimnazija* School,<sup>3688</sup> also known as the *Mahmut Busatlija* School,<sup>3689</sup> was a secondary school near the old town centre of Bugojno.<sup>3690</sup> Between 18 July 1993 and 8 October 1993,<sup>3691</sup> more than a hundred persons were imprisoned in three cells in the School basement,<sup>3692</sup> each holding between 35 to 50 detainees.<sup>3693</sup>

1656. According to several witnesses, the ABiH military police unit in Bugojno ran and guarded the School.<sup>3694</sup> Witness Tomislav Mikulić specified that the unit was the 307<sup>th</sup> Brigade Military Police.<sup>3695</sup> Three witnesses indicated that the guards of the School were under the command of Nijaz Bevrnja, a member of the Military Police Command which controlled the School.<sup>3696</sup>

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<sup>3686</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

<sup>3687</sup> See *supra* paras. 1575-1577.

<sup>3688</sup> See photograph P 58.

<sup>3689</sup> Witness ZH, T(F) p. 3731; Tomislav Mikulić, T(F) pp. 4498, 4501-4503; Ivo Mršo, T(F) p. 2507.

<sup>3690</sup> Rudy Gerritsen, T(F), p. 7138.

<sup>3691</sup> Witnesses Zoran Gvozden and Mijo Marijanović were among the first prisoners detained at the School as of 18 July 1993, while Witness ZH was one of 39 prisoners at the School who were all transferred to *Iskra* Stadium on 8 October 1993: Zoran Gvozden, T(F) p. 3655; Mijo Marijanović, T(F) p. 2744; Witness ZH, T(F) pp. 3748 and 3755-3756. In a letter dated 12 October 1993, Senad Dautović, chief of the civilian police in Bugojno, informed the Secretariat for Social Affairs, Department of Education, Bugojno Municipal Defence Staff, that the MUP (Ministry of Interior) would hand over the *Gimnazija* building on 14 October 1993: DH 53.

<sup>3692</sup> See photographs P 59 and P 64.

<sup>3693</sup> Mijo Marijanović, T(F) pp. 2745-2746; Ivo Mršo, T(F) pp. 2507-2508; Witness ZE, T(F) p. 3473; Zoran Gvozden, T(F), p. 3657 and 3691; Witness ZH, T(F) pp. 3744-3748; Vinko Zrno, T(F) pp. 10049-10050; Witness ZC, T(F) p. 3324-3325; Witness ZB, T(F) p. 2978. The Chamber notes that two witnesses stated that they were imprisoned for a limited time upstairs in the School gym, where conditions seemed relatively better: Witness ZB, T(F) pp. 2978-2979 and 3026-3027; Vinko Zrno, T(F) p. 10051.

<sup>3694</sup> Witness ZH, T(F) p. 3750 and 3754; Vinko Zrno, T(F) p. 10065; Witness ZC, T(F) p. 3324; P 391 (under seal), paras. 2-3.

<sup>3695</sup> Tomislav Mikulić, T(E) pp. 4501-4506. The Chamber notes that Witness Tomislav Mikulić noticed 307<sup>th</sup> Brigade insignia on the uniforms of the School guards and additional 307<sup>th</sup> Brigade Military Police insignia: T(F) p. 4506.

<sup>3696</sup> Vinko Zrno, T(F) p. 10065; Tomislav Mikulić, T(F) pp. 4500-4503; Witness ZH, T(F) pp. 3737-3738 and 3750. The Chamber notes that Witness ZH pointed out that Nijaz Bevrnja was the deputy of Besim Hodžić and that Besim Hodžić was the commander of the military police unit that controlled the School: Witness ZH, T(F) pp. 3737-3738, 3750, 3754 and 3777; P 391 (under seal), para. 3. The Chamber also notes that during the cross-examination of Witness Tomislav Mikulić, the Defence for the Accused Hadžihasanović asked him if he knew that Nijaz Bevrnja was the

1657. The detainees at the School were HVO soldiers who were either captured by or who had surrendered to the ABiH after combat, but also included Bosnian Croat civilians,<sup>3697</sup> at least two of whom were women.<sup>3698</sup>

1658. Former prisoners at the School spoke about the prevailing detention conditions in the cells of the building's basement. In each cell, between 35 and 50 detainees were confined in spaces ranging from three by three to three by eight metres,<sup>3699</sup> so that the detainees could not lie down and had to remain seated with their legs curled up to sleep.<sup>3700</sup> The cells did not have a window or any other light source, and so the detainees were plunged into darkness.<sup>3701</sup> Despite the hot summer temperatures, there was absolutely no ventilation.<sup>3702</sup>

1659. Regarding sanitary conditions, some of the former detainees mentioned that they had limited access to the toilets,<sup>3703</sup> while others stated that they had a slop pail in the cell.<sup>3704</sup> The detainees received no, or little, water for washing and also did not have access to a water faucet.<sup>3705</sup> One witness described the place as being extremely dirty.<sup>3706</sup>

1660. Regarding food supplies, generally all of the witnesses complained that too little food was handed out.<sup>3707</sup> On the first days after the arrests on 18 July 1993, a few loaves of bread were passed out every day for 40 detainees to share.<sup>3708</sup> Witness Mijo Marijanović stated, however, that he did not receive anything to eat during the few days he was incarcerated.<sup>3709</sup> According to Witnesses ZC

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commander of the Bugojno special civilian police force reserve. Witness Tomislav Mikulić responded in the negative: T(E) p. 4532.

<sup>3697</sup> Zoran Gvozden, T(F) p. 3658; Witness ZB, T(F) pp. 2978 and 3026; Tomislav Mikulić, T(F) p. 4502. The Chamber recalls that the ABiH considered the prisoners in Bugojno as prisoners of war, or more specifically as regular and irregular combatants: P 442.

<sup>3698</sup> Mijo Marijanović, T(F) p. 2745; Vinko Zrno, T(F) pp. 10049-10050; Witness ZH, T(F) p. 3746; Ivo Mršo, T(F) p. 2508.

<sup>3699</sup> Namely, the wife and daughter of Witness Mijo Marijanović: Mijo Marijanović, T(F) p. 2745; Witness ZH, T(F) pp. 3744-3746; Vinko Zrno, T(F) pp. 10049-10050; Witness ZC, T(F) p. 3325; Ivo Mršo, T(F) pp. 2508 and 2511.

<sup>3700</sup> Tomislav Mikulić, T(F) p. 4500; Zoran Gvozden, T(F) pp. 3657-3658; Witness ZC, T(F) p. 3325; Ivo Mršo, T(F) p. 2508.

<sup>3701</sup> Witness ZC, T(F) pp. 3325-3326; Zoran Gvozden, T(F) p. 3657; Mijo Marijanović, T(F) p. 2746.

<sup>3702</sup> Witness ZH, T(F) pp. 3744 and 3748; Mijo Marijanović, T(F) p. 2747; Zoran Gvozden T(F) p. 3657; Vinko Zrno, T(F) p. 10049. The Chamber notes that according to Witness Ivo Mršo, boards blocked the basement window: T(F) p. 2508.

<sup>3703</sup> Zoran Gvozden, T(F) pp. 3657, 3691-3692; Witness ZC, T(F) p. 3327.

<sup>3704</sup> Vinko Zrno, T(F) pp. 10049-10050; Witness ZC, T(F) p. 3327. The Chamber notes that Witnesses Mijo Marijanović and Ivo Mršo both testified that there were no toilets: Mijo Marijanović, T(F) p. 2747; Ivo Mršo, T(F) p. 2508.

<sup>3705</sup> Mijo Marijanović, T(F) p. 2747; Ivo Mršo, T(F) p. 2508.

<sup>3706</sup> Ivo Mršo, T(F) p. 2508.

<sup>3707</sup> Witness ZC, T(F) pp. 3726-3727; Mijo Marijanović, T(F) p. 2747; Zoran Gvozden, T(F) pp. 3658 and 3689.

<sup>3708</sup> Witness ZC, T(F) p. 3326-3327; Zoran Gvozden, T(F) p. 3658.

<sup>3709</sup> Mijo Marijanović, T(F) p. 2747.

and Zoran Gvozden, after a few days the food situation improved somewhat because, in addition to the bread, the prisoners received a second “meal” of soup with a few beans.<sup>3710</sup> Witness Vinko Zrno, however, who arrived at the School on 23 July 1993, stated that the food was distributed once per day only to those prisoners who dared to come out of their cells. He explained that for three days he did not want to come out of his for fear of being beaten. Starving, at the end of the three days he came out of his cell and ate a piece of bread and some noodles.<sup>3711</sup> Some witnesses stated that water was distributed only when the guards felt like it,<sup>3712</sup> whereas Witness Zoran Gvozden stated that, considering the heat, the detainees were given enough water.<sup>3713</sup>

1661. Finally, Witness Zoran Gvozden stated that during his incarceration he was taken to the Bugojno war hospital where he was forced to give blood since he had the same blood type as a wounded ABiH military police officer.<sup>3714</sup>

1662. The former prisoners at the School told the Chamber about how the prisoners locked up in the basement were subjected to physical violence upon their arrival or during their detention at the School. For example, Witness ZH stated that on 23 July 1993, the day he was arrested, ABiH soldiers took him to the School. When he got to the entrance hall at the School, ABiH soldiers, lined up on both sides of the hall with their rifles in hand, began to beat him with the butts of their weapons. After being kicked in the stomach, the witness fell to the ground and was then kicked in the right kidney. He then lost consciousness. Witness ZC pointed out that for a few days after the beating, there was blood in his urine.<sup>3715</sup> Witness ZB mentioned that when he arrived at the School on 25 July 1993, he was beaten in a way similar to that described by Witness ZH.<sup>3716</sup>

1663. Moreover, the former detainees stated that while they were detained, the guards would regularly come into the cells and call one or two of them by name and have them come upstairs to one of the rooms or to the School gymnasium so that they could beat them.<sup>3717</sup> Witness Mijo

<sup>3710</sup> Witness ZC, T(F) pp. 3326-3327; Zoran Gvozden, T(F) p. 3658.

<sup>3711</sup> Vinko Zrno, T(F) pp. 10049-10050. Witness ZH stated that between 30 or 31 August 1993 and 8 October 1993, in spite of the heat, the approximately 40 prisoners in his cell were given four and a half litres of water for a 24-hour period. He added that the prisoners gave one and a half litres to a prisoner with diabetes, another litre and a half to the prisoner who had been beaten, and that they used the third bottle to moisten their lips and mouths to keep their lips from cracking as a result of their thirst: T(F) pp. 3748-3749.

<sup>3712</sup> Witness ZC, T(F) p. 3327; Mijo Marijanović, T(F) p. 2747.

<sup>3713</sup> Zoran Gvozden, T(F) p. 3691.

<sup>3714</sup> Zoran Gvozden, T(F) pp. 3662-3663. The Chamber notes that Witness ZH indicated that the detention conditions during his second period of incarceration, namely from 30 or 31 August 1993 to 8 October 1993, were identical to those during his first, which lasted from 23 July 1993 to 31 July 1993: T(F) pp. 3746-3748.

<sup>3715</sup> Witness ZH, T(F) pp. 3738-3741.

<sup>3716</sup> Witness ZB, T(F) p. 3026. Witness ZB added that later he was taken into the School gymnasium where he was hit with an iron bar and beaten on the back.

<sup>3717</sup> Witness ZH, T(F) pp. 3749-3753; Vinko Zrno, T(F) pp. 10050-10051; Mijo Marijanović, T(F) p. 2747. *See* photograph P 78.

Marijanović explained that between late July and early August 1993, he was taken twice to the teachers' lounge to be beaten. The ABiH soldiers punched him, and used wooden and rubber clubs to beat him in the chest, back, and stomach.<sup>3718</sup>

1664. Several witnesses indicated that they could hear the screams of some prisoners who were being beaten, and could see the marks left by the beatings on the bodies of the detainees who came back downstairs.<sup>3719</sup> The witnesses agree that the beatings of Franjo Jesidžić, Vinko Ivković, Mario Subasić and Goran Rajić were particularly frequent and violent.<sup>3720</sup> For example, Witness Vinko Zrno described how on one occasion Mario Subasić was violently pushed down the stairs and fell to the ground. He could see that Mario Subasić's eye had come out of its socket and that his face was covered in blood.<sup>3721</sup>

1665. Witness ZH stated that he was beaten again on 17 September 1993. After he was taken to the School gymnasium, ABiH soldiers used cables to beat him for 10 to 15 minutes in the chest, back, and kidneys. On that occasion he noticed that the ground and walls of the gymnasium were covered in blood which, according to him, was a clear indication of what had already happened there.<sup>3722</sup>

1666. Witness ZH pointed out that following his beating at the School, he had a broken collarbone, lost 60 percent of his right kidney function, and suffered two stomach hernias which required surgery.<sup>3723</sup>

1667. On 28 July 1993, Witnesses Rudy Gerritsen and Peter Hauenstein, ECMM observers, visited the *Gimnazija* School Building.<sup>3724</sup> While Rudy Gerritsen did not provide other specifics about the prevailing detention conditions at the School than that the conditions seemed better than those at the Furniture Salon,<sup>3725</sup> Peter Hauenstein did indicate that it seemed to him that the prisoners he saw at the School had been treated well, and had adequate space and blankets.<sup>3726</sup>

1668. For his part, Witness ZR went to the School three times to visit the prisoners but was turned away twice. When he was authorised to enter the School, he saw HVO 2<sup>nd</sup> Battalion Commander

<sup>3718</sup> Mijo Marijanović, T(F) pp. 2747-2749.

<sup>3719</sup> Tomislav Mikulić, T(F) pp. 4504-4405; Witness ZH, T(F) p. 3749; Vinko Zrno, T(F) p. 10050; Witness ZC, T(F) pp. 3327-3329.

<sup>3720</sup> Zoran Gvozden, T(F) p. 3659; Witness ZH, T(F) p. 3749-3750; Witness ZC, T(F) p. 3327-3328; Vinko Zrno, T(F) p. 10051; Tomislav Mikulić, T(F) p. 4504.

<sup>3721</sup> Vinko Zrno, T(E) p. 10051.

<sup>3722</sup> Witness ZH, T(F) pp. 3750-3752.

<sup>3723</sup> Witness ZH, T(F) pp. 3739-3740.

<sup>3724</sup> DH 170.6; Rudy Gerritsen, T(F) pp. 7134-7137; Peter Hauenstein, T(F) pp. 7607-7609.

<sup>3725</sup> Rudy Gerritsen, T(F) pp. 7138-7139 and 7164.

<sup>3726</sup> Peter Hauenstein, T(F) pp. 7605-7606.

Dragan Erkapić among the prisoners. Erkapić told him in particular that the prisoners were crammed into a dark cell, one on top of the other, that the heat was unbearable, and that the prisoners were hungry. Erkapić added that the detainees were severely beaten when a Muslim guard called “Sabić”, along with several of his men, took the prisoners out of the cell.<sup>3727</sup>

ii. Mistreatment, Paragraph 42(g) of the Indictment

1669. After closely examining the great amount of aforementioned testimony and documents, the Chamber is convinced beyond a reasonable doubt that the prisoners locked in the School basement were repeatedly subjected to grave physical violence, and that those acts were intentional and caused serious physical or mental suffering.

1670. Moreover, the Chamber heard many witnesses describe the deplorable detention conditions in which the prisoners were held in the School basement. On that basis, the Chamber finds that the cells in the School basement were overcrowded, that the food was insufficient and inappropriate, that the detainees’ access to the toilets at the School was unjustifiably limited, and that the prisoners were deprived of light and ventilation. In the view of the Chamber, there is no doubt that, cumulatively, such detention conditions, which did not meet minimum requirements, constitute a serious attack on the human dignity of those men and women.<sup>3728</sup>

1671. Regarding the testimony of Peter Hauenstein and Rudy Gerritsen and the report from their visit describing the detention conditions at the School as good, the Chamber considers that the information in it has less probative value than the specific information given by the many detainees at the School and by Witness ZR, who all agree that the detention conditions at the School were sorely insufficient.

1672. Regarding the perpetrators of the beatings, one witness indicated that Nijaz Bevrnja, a member of the Military Police Command which controlled the School,<sup>3729</sup> took part in the beatings

<sup>3727</sup> Witness ZR, T(E) pp. 3077-3081.

<sup>3728</sup> As for the defence put forth by the Defence for the Accused Hadžihasanović regarding the detention conditions, pointing out that the circumstances prevailing in Bugojno at the material time were difficult, the Chamber refers to its conclusions on that subject in the section of this Judgement dealing with the Furniture Salon: *see supra* paras. 1608-1612.

<sup>3729</sup> Vinko Zrno, T(F) p. 10065; Tomislav Mikulić, T(F) pp. 4500-4503; Witness ZH, T(F) pp. 3737-3738 and 3750. The Chamber notes that Witness ZH specified that Nijaz Bevrnja was the deputy of Besim Hodžić, commander of the military police unit controlling the School: Witness ZH, T(F) pp. 3737-3738, 3750, 3754 and 3777; P 391 (under seal), para. 3. The Chamber also notes that in cross-examination the Defence for the Accused Hadžihasanović asked Witness Tomislav Mikulić if he knew that Nijaz Bevrnja was the commander of the Bugojno special civilian police force reserve. Witness Tomislav Mikulić responded in the negative: T(E) p. 4532.

of the prisoners at the School<sup>3730</sup> and that someone else was present when the witness regained consciousness after being beaten.<sup>3731</sup> Several witnesses stated that their attackers were uniformed ABiH soldiers.<sup>3732</sup> Those statements, combined with the fact that an ABiH military police unit ran and guarded the School<sup>3733</sup> and that the 307<sup>th</sup> Brigade, including the 307<sup>th</sup> Brigade Military Police, was the only ABiH unit stationed in Bugojno<sup>3734</sup> leave no doubt that the perpetrators of the alleged acts were members of the 307<sup>th</sup> Brigade, which included the 307<sup>th</sup> Brigade Military Police.

1673. Regarding the status of the victims of the mistreatment, the Chamber finds that they were not directly participating in the hostilities. In fact, the evidence demonstrates that the persons arrested and transferred to the School from July to October 1993 had the status of Bosnian Croat civilians<sup>3735</sup> or prisoners of war,<sup>3736</sup> or were unarmed HVO members in civilian clothing at the time they were arrested.<sup>3737</sup> Consequently, they were all protected persons pursuant to the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1674. On the basis of the foregoing, the Chamber finds that the elements of the crime of cruel treatment at the *Gimnazija* School Building are established for the period of 18 July 1993 to 8 October 1993.

(vii) *Vojin Paleksić* Elementary School

a. Arguments of the Parties

1675. The Prosecution argues that the School was used as a detention facility from 31 July 1993 until at least the end of September 1993, and that it was guarded by soldiers of the 307<sup>th</sup> Brigade.<sup>3738</sup> The Prosecution submits that members of that unit inflicted serious injuries on the prisoners at the School and that, even though the detention conditions were better there than in other detention facilities in Bugojno, they were still insufficient.<sup>3739</sup>

<sup>3730</sup> Tomislav Mikulić, T(F) pp. 4504-4505. The Chamber notes that this witness received the information from another prisoner.

<sup>3731</sup> Witness ZH, T(F) p. 3740. The Chamber notes that Witness ZH specified that most of the time, Nijaz Bevrnja called the detainees and had them taken out of their cell: T(F) p. 3754.

<sup>3732</sup> Mijo Marijanović, T(F) pp. 2748-2749; Witness ZH, T(F) p. 3750.

<sup>3733</sup> See *supra* para. 1656.

<sup>3734</sup> See *supra* para. 393.

<sup>3735</sup> Ivo Mršo, T(F) pp. 2477 and 2545; Witness ZH, T(F) pp. 3726 and 3731.

<sup>3736</sup> Tomislav Mikulić, T(F) pp. 4493-4496; Witness ZB, T(F) p. 2977; Witness ZC, T(F) p. 3359; Zoran Gvozden, T(F) p. 3689; Vinko Zrno, T(F) p. 10051.

<sup>3737</sup> Mijo Marijanović, T(F) pp. 2745 and 2775.

<sup>3738</sup> Prosecution Final Brief, para. 301

<sup>3739</sup> Prosecution Final Brief, para. 301.

1676. As for the arguments put forth by the Prosecution on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3740</sup>

1677. The Defence for the Accused Hadžihasanović argues that the detention conditions at the School were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that incidences of beatings were rare.<sup>3741</sup>

1678. As for the arguments put forth by the Defence for the Accused Hadžihasanović on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3742</sup>

b. Findings of the Chamber regarding Mistreatment at the *Vojin Paleksić* Elementary School

i. Sequence of Events Between Late July 1993 and Late August 1993

1679. The *Vojin Paleksić* School was an elementary school in Bugojno which housed the headquarters of the HVO 1<sup>st</sup> Battalion *Eugen Kvaternik* Brigade before the conflict broke out between the armed forces of the HVO and ABiH.<sup>3743</sup> Between late July 1993 and late August 1993, about 250 to 280 people<sup>3744</sup> were imprisoned in the School's gymnasium.<sup>3745</sup> The detainees in the gymnasium were HVO soldiers and Bosnian Croat civilians<sup>3746</sup> and included two women, two minors aged 16, and one person aged approximately 75 years.<sup>3747</sup>

1680. According to several witnesses, the guards at the School wore ABiH uniforms or were ABiH soldiers,<sup>3748</sup> and were under the command of Faruk Aganović,<sup>3749</sup> aka "Jupi",<sup>3750</sup> a 307<sup>th</sup>

<sup>3740</sup> See *supra* paras. 1572-1573.

<sup>3741</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

<sup>3742</sup> See *supra* paras. 1575-1577.

<sup>3743</sup> Zdravko Žulj, T(F) p. 3642; Witness ZB, T(F) 2990; Zoran Gvozden, T(F) p. 3673. See photograph P 60.

<sup>3744</sup> Tomislav Mikulić, T(F) p. 4509; P 386 (under seal), para. 18; Zdravko Žulj, T(F) p. 3626.

<sup>3745</sup> Ivo Mršo, T(F) pp. 2517-2518; Witness ZE, T(F) p. 3477; Tomislav Mikulić, T(F) pp. 4516-4517; P 386 (under seal), para. 18. See photograph P 61.

<sup>3746</sup> Ivo Mršo, T(F) p. 2519; DH 170.7.

<sup>3747</sup> Ivo Mršo, T(F) p. 2520; Mijo Marjanović, T(F) p. 2745; Tomislav Mikulić, T(F) p. 4509. The Chamber recalls that the ABiH considered the prisoners in Bugojno as prisoners of war or, more specifically, as regular and irregular combatants; P 442.

<sup>3748</sup> Zdravko Žulj, T(F) p. 3624-3625; Ivo Mršo, T(F) p. 2519; Witness ZB, T(F) p. 2993. The Chamber notes that Witness Zdravko Žulj added that at the School he saw people in camouflage uniforms, black uniforms, and civilian clothes, but that he believed most of the insignia were from the army.

<sup>3749</sup> Witness ZR, T(F) p. 3083; P 386 (under seal), para. 21.

<sup>3750</sup> Tomislav Mikulić, T(F) p. 4494; P 702; P 180; P 386 (under seal), para. 21.



Brigade officer.<sup>3751</sup> A former prisoner indicated that he heard from a fellow detainee that Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security,<sup>3752</sup> conducted the interrogations at the School.<sup>3753</sup> Moreover, according to the testimony of Witness ZR, requests for permission to visit prisoners at the School went or were transited through Tahir Grahić,<sup>3754</sup> 307<sup>th</sup> Brigade Commander.<sup>3755</sup>

1681. Regarding the prevailing detention conditions at the School, all of the former detainees there who appeared before the Chamber complained of the shortage and poor quality of the food.<sup>3756</sup> According to two witnesses, on the first day or two in custody, the prisoners were denied food.<sup>3757</sup> Later, the approximately 250 to 280 detainees had to share a large pot of soup and a few loaves of bread.<sup>3758</sup> Witness ZR stated that one detainee told him that the food situation at the School was such that the prisoners fought each other over loaves of bread.<sup>3759</sup> Witness Tomislav Mikulić indicated that water was distributed in insufficient quantities, but that the problem of water supply was widespread everywhere.<sup>3760</sup> As for sanitary conditions, one witness stated that there were no toilets or water in the gymnasium, and that the detainees had to ask the guards for permission to use the toilets located outside the School gymnasium.<sup>3761</sup> One witness compared the detention conditions at the School and the Furniture Salon, and stated that at least the prisoners at the School had light and that conditions were dry.<sup>3762</sup>

1682. Those same witnesses also stated that the prisoners were frequently subjected to threats and physical abuse, either when they arrived at the School, or during their period of incarceration. For example, a witness indicated that upon his arrival at the School, ABiH soldiers lined up in the entrance to the building and kicked some prisoners and slapped others.<sup>3763</sup> Moreover, two witnesses

<sup>3751</sup> P 180; DH 1976; DH 1522.

<sup>3752</sup> P 912; DK 62, annex A/ DH 776.

<sup>3753</sup> P 386 (under seal), para. 22.

<sup>3754</sup> Witness ZR, T(F) pp. 3085-3086.

<sup>3755</sup> P 180; DH 497; Witness ZR, T(F) p. 3085.

<sup>3756</sup> Zdravko Žulj, T(F) pp. 3626 and 3643; P 391 (under seal), para. 14; P 386 (under seal), para. 19; Ivo Mršo, T(F) pp. 2515-2516; Tomislav Mikulić, T(F) p. 4510.

<sup>3757</sup> P 386 (under seal), para. 19; Ivo Mršo, T(F) pp. 2515-2516.

<sup>3758</sup> Zdravko Žulj, T(F) p. 3626; Tomislav Mikulić, T(F) p. 4510. Witness Z4 stated that, on the first day of detention, the prisoners received nothing to eat and that on the second day, the approximately 282 prisoners at the School received 5 kilograms of bread and some stew that was impossible to get out of its container. Later, 7 kilograms of bread were distributed for the same number of prisoners: P 386 (under seal), para. 19. For his part, Ivo Mršo indicated that during the first two days in detention, the prisoners were given nothing to eat and that at the end of the second day, they were given a 10-litre pot of food and 5 or 6 loaves of stale bread: T(F) pp. 2515-2516.

<sup>3759</sup> Witness ZR, T(F) pp. 3084-3085.

<sup>3760</sup> Tomislav Mikulić, T(F) pp. 4509-4510.

<sup>3761</sup> Ivo Mršo, T(F) p. 2515.

<sup>3762</sup> Zdravko Žulj, T(F) p. 3625.

<sup>3763</sup> Zdravko Žulj, T(F) pp. 3624-3625. Witness Z9 indicated that upon arriving with a group of prisoners at the School gymnasium, soldiers chose a few prisoners and took them out of the gymnasium, and that despite the fact that the

described that after they arrived at the School, ABiH soldiers fired a salvo of gunfire, most likely in order to intimidate the new arrivals.<sup>3764</sup>

1683. The former detainees at the School who testified before the Chamber explained how they noticed, often during the night, that some detainees were called by the School guards and then taken to be beaten.<sup>3765</sup> The witnesses stated that they could hear the screams of the prisoners who were taken away<sup>3766</sup> and could see when the prisoners returned that they had been beaten.<sup>3767</sup> Ivo Mršo indicated that on one occasion, a detainee called Anto Bakula was beaten so violently that he nearly died of his injuries.<sup>3768</sup> Several witnesses agree that a fellow detainee, Ante Akrap, was very severely beaten on several occasions.<sup>3769</sup> Witness ZB specified that Ante Akrap was so badly abused that on one occasion he lost consciousness.<sup>3770</sup>

1684. The Chamber notes that none of the witnesses who testified said that they personally had been physically abused.<sup>3771</sup> Conversely, according to the witnesses, Niko Džaja<sup>3772</sup>, Franjo Jezidžić, Ivan Kescić<sup>3773</sup>, Miroslav Fabulić, Ozren Gvozdrenović, Josip Škaro, Zoran Galić,<sup>3774</sup> Mario Subašić<sup>3775</sup> and Poric Milicević were among the other detainees who were mistreated.<sup>3776</sup>

1685. On 29 July 1993, Witnesses Rudy Gerritsen and Peter Hauenstein visited the School.<sup>3777</sup> Nevertheless, while Peter Hauenstein limits himself to saying that the detention conditions at the School were better than at *Iskra* Stadium or at the Furniture Salon, Rudy Gerritsen stated that he could not recall what the detention conditions there were like.<sup>3778</sup>

1686. Witness ZR stated that he went to the School in August 1993 to visit the prisoners, but that Faruk Aganović refused him access and crumpled up his laissez-passer. The witness did, however,

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soldiers were playing loud music, most probably to drown out the screams of the detainees being beaten, the other prisoners could make out their screams: P 391 (under seal), para. 13.

<sup>3764</sup> Ivo Mršo, T(F) pp. 2513-2514; Zdravko Žulj, T(F) p. 3624-3625.

<sup>3765</sup> Zdravko Žulj, T(F) pp. 3643-3644; Ivo Mršo, pp. 2518-2519; Witness ZB, T(F) pp. 2993-2994; P 386 (under seal), para. 20.

<sup>3766</sup> Ivo Mršo, T(F) p. 2518; Witness ZB, T(F) p. 2993;

<sup>3767</sup> P 386 (under seal), para. 20.

<sup>3768</sup> Ivo Mršo, T(F) p. 2518.

<sup>3769</sup> Witness ZB, T(F) p. 2994; P 391, (under seal), para. 13.

<sup>3770</sup> Witness ZB, T(F) p. 2994.

<sup>3771</sup> Witness ZB, T(F) p. 3030; Ivo Mršo, T(F) p. 2601; Zdravko Žulj, T(F) pp. 3643-3644; P 391 (under seal), para. 13.

<sup>3772</sup> P 391, (under seal), para. 13; P 386 (under seal), para. 20; Witness ZB, T(F) p. 2993.

<sup>3773</sup> Witness ZB, T(F) p. 2993.

<sup>3774</sup> P 391, (under seal), para. 13.

<sup>3775</sup> Witness Z4, para. 20 (P 386, under seal).

<sup>3776</sup> Ivo Mršo, T(F) pp. 2518-2519.

<sup>3777</sup> DH 170.7.

<sup>3778</sup> Peter Hauenstein, T(F) pp. 7604 and 7610; Rudy Gerritsen, T(F) p. 7141.

have time to see one detainee who told him that the quantities of food being handed out were sorely insufficient. Witness ZR made it known that he intended to see Senad Dautović to inform him of the incident regarding his visitation pass, but a guard at the School advised him to see Tahir Grahić instead. Witness ZR met Tahir Grahić and was informed two days later that Grahić would make sure that his future visits would go unfettered. Witness ZR indicated that afterwards he was able to resume his visits.<sup>3779</sup>

ii. Mistreatment, Paragraph 42(g) of the Indictment

1687. The aforementioned evidence establishes beyond a reasonable doubt that although the detention conditions prevailing at the School were relatively better than those at other locations such as the Furniture Salon or *Iskra* Stadium, they were still inappropriate and insufficient, especially as regards food, and therefore constitute mistreatment.<sup>3780</sup>

1688. The Chamber is also of the view that the aforementioned testimony, considering how much there was and the fact that it was consistent, is sufficient to demonstrate beyond a reasonable doubt that detainees at the School were regularly subjected to physical abuse during their incarceration, and that the perpetrators of the mistreatment acted with the intent to cause the prisoners at the School serious pain and suffering.

1689. The witnesses did not identify the perpetrators of the mistreatment of the other detainees, but some did point out that ABiH soldiers guarding the prisoners or otherwise present at the School were responsible.<sup>3781</sup> That testimony, in conjunction with serious indications that the guards at the School were under the command of 307<sup>th</sup> Brigade officer Faruk Aganović, aka “Jupi”, and that permission to visit the School was granted by 307<sup>th</sup> Brigade Commander Tahir Grahić,<sup>3782</sup> is sufficient to convince the Chamber beyond a reasonable doubt that the perpetrators of the alleged acts belonged to the 307<sup>th</sup> Brigade.

1690. Finally, the Chamber finds that the victims of the cruel treatment at the School were not directly participating in the hostilities. In fact, evidence establishes that the people transferred to the

<sup>3779</sup> Witness ZR, T(F) pp. 3083-3086.

<sup>3780</sup> As for the defence put forth by the Defence for the Accused Hadžihasanović regarding the detention conditions, pointing out the prevailing circumstances in Bugojno at the material time were difficult, the Chamber refers to its conclusions on that subject in the section of this Judgement dealing with the Furniture Salon: *see supra* paras. 1608-1612.

<sup>3781</sup> Ivo Mršo, T(F) p. 2519; Witness ZB, T(F) p. 2993; Zdravko Žulj, T(F) p. 3625. According to Witness Z9, they were “Muslim soldiers”: P 391 (under seal), para. 13.

<sup>3782</sup> *See supra* paras. 394 and 1680.

School had the status of Bosnian Croat civilians or prisoners of war.<sup>3783</sup> Consequently, they were all protected persons pursuant to the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1691. On the basis of the above, the Chamber finds that the elements of the crime of cruel treatment at the *Vojin Paleksić* Elementary School have been established for the period between late July 1993 and late August 1993.

(viii) FC Iskra Stadium

a. Arguments of the Parties

1692. The Prosecution argues that *Iskra* Stadium was used as a detention facility between 30 July 1993 until at least October 1993, and that ABiH 3<sup>rd</sup> Corps OG *Zapad* soldiers and military police continuously guarded the facility.<sup>3784</sup> The Prosecution submits that the prisoners were regularly subjected to physical abuse and that the detention conditions at the Stadium were sorely inadequate.<sup>3785</sup>

1693. As for the arguments put forth by the Prosecution on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3786</sup>

1694. The Defence for the Accused Hadžihasanović argues that the detention conditions at *Iskra* Stadium were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that incidences of beatings were rare.<sup>3787</sup>

1695. As for the arguments put forth by the Defence for the Accused Hadžihasanović on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3788</sup>

<sup>3783</sup> Ivo Mršo, T(F) p. 2519; DH 170.7; P 391 (under seal), para. 12; Witness ZB, T(F) p. 2993.

<sup>3784</sup> Prosecution Final Brief, para. 300.

<sup>3785</sup> Prosecution Final Brief, para. 300.

<sup>3786</sup> See *supra* paras. 1572-1573.

<sup>3787</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

<sup>3788</sup> See *supra* paras. 1575-1577.

b. Findings of the Chamber regarding the Mistreatment Committed at the FC  
*Iskra Stadium*

i. Sequence of Events Between August 1993 and 31 October 1993

1696. In a decision of 24 August 1993, the War Presidency in Bugojno municipality decided to use the facilities beneath the stands at *Iskra Stadium* to detain civilians and soldiers until the communication channels between the KP Dom in Zenica and the Travnik military prison could be established.<sup>3789</sup> Several witnesses described how *Iskra Stadium*, formerly used by the Bugojno football team, was turned into a prison camp complete with a sentry box, fence, and trenches around the building.<sup>3790</sup>

1697. *Iskra Stadium*<sup>3791</sup> was used as a detention facility beginning in the second half of August 1993<sup>3792</sup> until 19 March 1994.<sup>3793</sup> For the purposes of this Judgement, however, the Chamber will limit its examination to the period running from August 1993 to 31 October 1993, the date when the Accused Hadžihasanović left his duties as commander of the 3<sup>rd</sup> Corps.

1698. The evidence presented by the Parties indicates that *Iskra Stadium* fell under the responsibility of the civilian authorities and the ABiH, more specifically, the 307<sup>th</sup> Brigade, and the Bugojno TO. Accordingly, in its decision of 24 August 1993, the War Presidency decided that *Iskra Stadium* would be administered by a director, a security commander, and 12 guards, six with civilian and six with military status, and tasked the Executive Council of Bugojno municipality, the 307<sup>th</sup> Brigade Command, and the TO in Bugojno with carrying out the decision.<sup>3794</sup> Several pieces of evidence indicate that Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security, was the security commander for *Iskra Stadium*.<sup>3795</sup> Several witnesses stated that *Iskra Stadium* was initially under the command of Meho Sadiković,<sup>3796</sup> an official of the War Presidency,<sup>3797</sup> who was

<sup>3789</sup> DH 176.

<sup>3790</sup> Witness ZC, T(F) p. 3343; Tomislav Mikulić, T(F) pp. 4518-4519; Witness ZB, T(F) p. 2996.

<sup>3791</sup> See photographs P 62 and P 67.

<sup>3792</sup> Tomislav Mikulić, T(F) p. 4517; Zrinko Alvir, T(F) p. 2642; DH 171.2.

<sup>3793</sup> The following witnesses were among them: Mijo Marijanović, Witness ZB, Witness ZC, Zdravko Žulj, Zoran Gvozden, Witness ZH, Tomislav Mikulić, Vinko Zrno, Witness Z4, Witness Z9.

<sup>3794</sup> DH 176.

<sup>3795</sup> DH 1503; Witness ZH, T(E) pp. 3759-3760; Ivo Mršo, T(F) pp. 2527-2529. The Chamber notes that Ivo Mršo testified about attempts to negotiate better detention conditions at *Iskra Stadium* with Dževad Mlaco, president of the War Presidency in Bugojno, who told him that such matters were not in his purview but that of Enes Handžić. When Ivo Mršo was finally able to meet with Enes Handžić, Handžić told him that he was not in charge of *Iskra Stadium*, but that Tahir Granić was. When Ivo Mršo met with Tahir Granić in December 1993, Granić told him that in fact Enes Handžić was in charge of such matters.

<sup>3796</sup> DH 63.

<sup>3797</sup> Witness ZB, T(F) pp. 3016-3017; Mijo Marijanović, T(F) p. 2773.

followed by an ABiH soldier called “Gasal”,<sup>3798</sup> and that the guards at the Stadium were under the command of a soldier called “Kukavica”.<sup>3799</sup> According to several witnesses, the guards at *Iskra* Stadium were ABiH soldiers, in particular military police, who wore camouflage uniforms or black uniforms.<sup>3800</sup>

1699. As indicated previously,<sup>3801</sup> many prisoners were transferred from one detention centre to another in Bugojno. From August 1993, the great majority of the detainees held by the ABiH were transferred to *Iskra* Stadium, which became the last place they were held before being exchanged or released.<sup>3802</sup>

1700. Between the second half of August 1993 and early November 1993, *Iskra* Stadium held more than 400 detainees,<sup>3803</sup> most of whom were HVO soldiers but also included Bosnian Croat civilians and, to a lesser extent, Bosnian Serb civilians.<sup>3804</sup>

1701. The prisoners were locked up in various places within *Iskra* Stadium, including in a room beneath the stands that was between 70 to 100 square metres,<sup>3805</sup> in the locker rooms, approximately 16 square metres, also beneath the stands,<sup>3806</sup> and in a small restroom.<sup>3807</sup>

1702. The Chamber heard many witnesses describe the detention conditions that prevailed at *Iskra* Stadium. Several detainees complained of cramped detention quarters, considering their large numbers.<sup>3808</sup> For example, Witness ZH stated that on one occasion, 17 prisoners, including himself, were locked into a restroom so small that when they lay down, the feet of some would overlap the heads of others. They were forced to remain there for three days, squeezed against one another.<sup>3809</sup>

<sup>3798</sup> P 386 (under seal), para. 37; P 391 (under seal), para. 41; Witness ZB, T(F) pp. 3016-3017; Witness ZC, T(E) p. 3345; Witness ZH, T(E) 3759.

<sup>3799</sup> P 391 (under seal), para. 41; Witness ZC, T(E) p. 3345; Mijo Marijanović, T(F) p. 2764.

<sup>3800</sup> Zdravko Žulj, T(F) pp. 3629-3630; Tomislav Mikulić, T(F) pp. 4519-4520 and 4523-4525; Vinko Zrno, T(F) pp. 10056-10057; Mijo Marijanović, T(F) p. 2764; Witness ZH, T(F) p. 3760. The Chamber notes that Zoran Gvozden stated that most of the guards at *Iskra* Stadium were 307<sup>th</sup> Brigade Military Police, but that there were also civilian police. Nevertheless, he pointed out that he did not see any of the military police wearing 307<sup>th</sup> Brigade insignia: T(F) pp. 3676-3677 and T(E) 3704-3705.

<sup>3801</sup> See *supra* para. 1586.

<sup>3802</sup> Tomislav Mikulić, T(F) pp. 4517-4518; P 273.

<sup>3803</sup> Fehim Muratović, T(F) pp. 14963-14965; Mijo Marijanović, T(F) pp. 2763; P 442; Witness ZC, T(F) p. 3344; Ivo Mršo, T(F) p. 2524; Witness ZH, T(F) p. 3758.

<sup>3804</sup> Mijo Marijanović, T(F) pp. 2763-2764; Zoran Gvozden, T(F) pp. 3674-3675; Witness ZB, T(F) p. 2995; Witness ZH, T(F) p. 3761; Tomislav Mikulić, T(F) p. 4518. The Chamber recalls that the ABiH considered the prisoners in Bugojno as prisoners of war or, more specifically, as regular and irregular combatants: P 442.

<sup>3805</sup> Witness ZR, T(F) p. 3089; Witness ZB, T(F) p. 2996; Tomislav Mikulić, T(F) p. 4520; P 386 (under seal), para. 24.

<sup>3806</sup> Witness ZC, T(F) p. 3343; P 391, (under seal), para. 25.

<sup>3807</sup> Witness ZH, T(F) p. 3757.

<sup>3808</sup> P 391 (under seal), para. 26; Tomislav Mikulić, T(F) p. 4520; Witness ZB, T(E) pp. 2995-2996; Vinko Zrno, T(F) p. 10055.

<sup>3809</sup> Witness ZH, T(F) p. 3757.

1703. Several former detainees at *Iskra* Stadium also complained that the food distributed to them was wholly insufficient and of very poor quality.<sup>3810</sup> The detainees were fed in large part thanks to the civilians in the region who brought them food.<sup>3811</sup> According to two witnesses, however, the guards let the prisoners have the food only after they had served themselves.<sup>3812</sup> Even when food was given to the detainees, it generally consisted of watery stock and loaves of bread.<sup>3813</sup> Witness Tomislav Mikulić recalled that one guard advised him not to eat the food in the containers since the guards used the same containers to relieve themselves.<sup>3814</sup> Several witnesses stated that after eating the food that was distributed, the detainees came down with diarrhoea and abdominal pain.<sup>3815</sup> The food situation was so precarious that the prisoners lost considerable weight. Witness Z4, for example, stated that he lost 22 kilograms while he was detained at *Iskra* Stadium, while Witness Tomislav Mikulić stated that he lost 25.<sup>3816</sup>

1704. Regarding health and sanitary conditions, the witnesses agree that early in the period of their incarceration, the approximately 400 prisoners had to make do with one toilet that did not flush.<sup>3817</sup> Later, they explained, three additional latrines were set up outside but that access to them was limited.<sup>3818</sup> Witness Zdravko Žulj stated that each morning, after roll call, the prisoners were allowed to wash.<sup>3819</sup> Nevertheless, Witness Z4 complained that the prisoners were not able to wash or change their clothes for several months,<sup>3820</sup> and Witness Vinko Zrno stated that as of September 1993, the detainees were infested with lice and had to be shaved and disinfected.<sup>3821</sup>

1705. Early on, no provision was made for accommodations, and the detainees were forced to sleep on the concrete floor or on planks.<sup>3822</sup> Later, some blankets were handed out, but not enough for all the detainees.<sup>3823</sup>

<sup>3810</sup> Tomislav Mikulić, T(F) pp. 4521-4522; Witness ZR, T(F) pp. 3089-3090; P 391 (under seal), para. 35;

<sup>3811</sup> Mijo Marijanović, T(F) p. 2767; Zdravko Žulj, T(F) p. 3647; Vinko Zrno, T(F) p. 10055; Witness ZC, T(F) p. 3363; Witness ZE, T(F) p. 3476.

<sup>3812</sup> P 386 (under seal), para. 35; Zdravko Žulj, T(F) p. 3647.

<sup>3813</sup> P 386 (under seal), para. 35; Tomislav Mikulić, T(F) p. 4521; Vinko Zrno, T(F) p. 10055.

<sup>3814</sup> Tomislav Mikulić, T(F) p. 4521.

<sup>3815</sup> Vinko Zrno, T(F) p. 10055; P 386 (under seal), para. 36; Tomislav Mikulić, T(F) p. 4521. The Chamber notes however that Witness Z4 pointed out that a diarrhoea epidemic broke out only in late December 1993; P 386 (under seal), para. 36.

<sup>3816</sup> Tomislav Mikulić, T(F) p. 4522; P 386 (under seal), para. 40.

<sup>3817</sup> Witness ZH, T(F), p. 3759; Tomislav Mikulić, T(F) p. 4520; Mijo Marijanović, T(F) p. 2767; Zdravko Žulj, T(F) p. 3646; Vinko Zrno, T(F) p. 10055.

<sup>3818</sup> P 386 (under seal), para. 24; Zdravko Žulj, T(F) p. 3646; Tomislav Mikulić, T(F) p. 4520.

<sup>3819</sup> Zdravko Žulj, T(E) p. 3647.

<sup>3820</sup> P 386 (under seal), para. 35.

<sup>3821</sup> Vinko Zrno, T(F) p. 10055.

<sup>3822</sup> Mijo Marijanović, T(F) p. 2767; Tomislav Mikulić, T(F) pp. 4520-4521.

<sup>3823</sup> Mijo Marijanović, T(F) p. 2767; Tomislav Mikulić, T(F) pp. 4520-4521. The Chamber notes, however, that Witness Vinko Zrno pointed out that each prisoner had a blanket: T(F) p. 10055.

1706. Many witnesses stated that detainees were beaten on a regular basis, either inside *Iskra* Stadium, or while being interrogated at *BH Banka* outside *Iskra* Stadium.<sup>3824</sup> Several former detainees said that when night fell, the detainees were called out and taken outside their cells to be beaten.<sup>3825</sup> They could sometimes hear the detainees screaming, and could see marks from the beatings on the bodies of returning prisoners.<sup>3826</sup> Some witnesses spoke about the constant anxiety about being the next person to be called out, taken away, and beaten, just like other detainees.<sup>3827</sup>

1707. While Witness Tomislav Mikulić pointed out that the number of prisoner beatings depended on which guards made up a team,<sup>3828</sup> Vinko Zrno stated that the beatings were most intense during the first month of incarceration.<sup>3829</sup> Tomislav Mikulić added that, at times, some guards tried to prevent the violence inflicted on the prisoners.<sup>3830</sup>

1708. Witness Vinko Zrno stated that after spending 25 days in the Bugojno military hospital as a result of being severely beaten at Vrbanja cemetery, he was taken to *Iskra* Stadium and, just like all the detainees from the military hospital, placed in what was called the “shock” room, with all the other prisoners who had been beaten. In the evening, the detainees were called by name and taken out of the room with a plastic bag over their head. They were then taken to the Stadium itself where they were given a beating before being sent back to the “shock room”.<sup>3831</sup>

1709. Witness Mijo Marijanović stated that he was beaten on two occasions, once in the stands and the second time on his way to the toilet. He pointed out that, in general, the attackers feared that visitors to *Iskra* Stadium would suspect mistreatment there, which is why the guards did not carry clubs and therefore did not use such instruments to beat the prisoner, and also why they took the prisoners into the stands so they could not be seen.<sup>3832</sup>

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<sup>3824</sup> The Chamber will examine the allegations of mistreatment at “*BH Banka*” in the following section.

<sup>3825</sup> Tomislav Mikulić, T(F) pp. 4521-4522; Witness ZH, T(F) p. 3759; Witness ZC, T(F) p. 3345; Vinko Zrno, T(E) pp. 10053-10054. The Chamber notes that apart from Mijo Marijanović and Vinko Zrno, the former detainees heard by the Chamber stated that they were not personally beaten at *Iskra* Stadium or did not mention that: P 391 (under seal), para. 34; Zdravko Žulj, T(F) p. 3648; Zoran Gvozden, T(F) p. 3704.

<sup>3826</sup> P 391 (under seal), para. 35; Zdravko Žulj, T(F) p. 3648; Vinko Zrno, T(E) p. 10054.

<sup>3827</sup> Vinko Zrno, T(F) p. 10056; P 391 (under seal), para. 35.

<sup>3828</sup> Tomislav Mikulić, T(F) p. 4523.

<sup>3829</sup> Vinko Zrno, T(F) p. 10058.

<sup>3830</sup> Tomislav Mikulić, T(F) pp. 4524 – 4525.

<sup>3831</sup> Vinko Zrno, T(F) pp. 10053-10054.

<sup>3832</sup> Mijo Marijanović, T(E) p. 2764.



1710. According to witnesses, Dragan Erkapić, Željko Spremo,<sup>3833</sup> Ivo Lozančić, Miroslav Dilber, Branko Gavranović, Oleg Boričić, Ivica Bartulović, Niko Bartulović,<sup>3834</sup> Ivica Lozančić, Niko Visković, Željko Lozić and Kazimir Kaić were among the prisoners who were beaten.<sup>3835</sup>

1711. ICRC representatives visited *Iskra* Stadium on several occasions.<sup>3836</sup> As such, on 14 September 1993, the Accused Hadžihasanović ordered the OG *Zapad* and 307<sup>th</sup> Brigade Commands to authorise a visit from an ICRC delegation planned for 20 and 21 September 1993.<sup>3837</sup> Similarly, on 20 October 1993, Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security, gave ICRC representatives permission to visit *Iskra* Stadium the same day.<sup>3838</sup>

1712. On 9 and 24 August 1993, Witnesses Rudy Gerritsen and Peter Hauenstein, ECMM observers, went to *Iskra* Stadium.<sup>3839</sup> The report of their 9 August 1993 visit indicates that although the detention conditions had improved, the detainees were still crammed together and had only planks to sleep on.<sup>3840</sup> The report of the 24 August 1993 visit indicates that the delegation composed of three Muslim representatives from Prozor and local authorities expressed its satisfaction after the visit.<sup>3841</sup>

1713. Finally, Witness ZR was able to visit the prisoners at *Iskra* Stadium on several occasions up until the end of October 1993, when Enes Handžić restricted his visits to contact with the prisoners' guards. Prior to that restriction, detainees told Witness ZR that the prisoners were beaten at night and that they were starving.<sup>3842</sup>

ii. Mistreatment, Paragraph 42(g) of the Indictment

1714. From the foregoing, the Chamber has heard very compelling testimony from many former detainees regarding the inhuman conditions in which they had to live, sometimes for months, while they were imprisoned at *Iskra* Stadium. It is apparent that the prisoners were confined into spaces which were too small considering their large numbers and had to sleep on the concrete floor or on planks without sufficient blankets for all the detainees. From the testimony especially, it is clear that food was deliberately rationed, was grossly insufficient, inappropriate, and of mediocre quality, and

<sup>3833</sup> Witness ZH, T(F) p. 3759; P 391 (under seal), para. 34.

<sup>3834</sup> Witness ZH, T(F) p. 3759.

<sup>3835</sup> P 391 (under seal), para. 34. The Chamber notes that Witness Z4, with the help of a few Croats detained with him at *Iskra* Stadium, drew up a list of people who had been beaten there: P 391 (under seal), Annex 1.

<sup>3836</sup> Mijo Marijanović, T(F) p. 2773; Zoran Gvozden, T(F) p. 3679; P 386 (under seal), para. 38.

<sup>3837</sup> P 441.

<sup>3838</sup> DH 1503.

<sup>3839</sup> Rudy Gerritsen, T(F) pp. 7195-7196; Peter Hauenstein, T(F) pp. 7609-7610.

<sup>3840</sup> DH 171.2.

<sup>3841</sup> DH 1958.

that the detainees fell ill or became considerably weaker as a result of being subjected to that poor diet.<sup>3843</sup> In addition to those physical deprivations, the detainees suffered the anxiety of physical abuse, which was administered repeatedly, arbitrarily, and mostly at night.

1715. For these reasons, relying on the aforementioned evidence, the Chamber finds that the material deprivations forced on the prisoners at *Iskra Stadium*, in conjunction with the climate of anxiety in which they lived, were such that those men and women were pushed to the limits of their physical and psychological endurance. Furthermore, the Chamber finds that the victims were repeatedly subjected to physical violence while they were detained, and that the perpetrators of the mistreatment acted with the intent to cause serious pain and suffering to the prisoners at *Iskra Stadium*.

1716. A few witnesses indicated that it was difficult to identify the perpetrators of the mistreatment, since the perpetrators wore masks or, alternatively, made the detainees put bags on their heads so that they would not recognise their attackers.<sup>3844</sup> Other witnesses indicated that the guards at *Iskra Stadium* were responsible for the beatings.<sup>3845</sup> As stated previously,<sup>3846</sup> according to several witnesses, the guards were ABiH soldiers, including military police, who wore camouflage uniforms or black uniforms. Nevertheless, the Chamber notes that no witnesses identified the attacker or attackers as belonging to the 307<sup>th</sup> Brigade and that the War Presidency's decision of 24 August 1993 provided that *Iskra Stadium* would be monitored by six civilian and six military guards.<sup>3847</sup> While the Chamber therefore cannot exclude the possibility that some of the perpetrators may have not been members of the ABiH 307<sup>th</sup> Brigade, it nevertheless considers that, given the fact that the 307<sup>th</sup> Brigade, including the 307<sup>th</sup> Brigade Military Police, was the only ABiH unit stationed in Bugojno<sup>3848</sup> and that the 307<sup>th</sup> Brigade played a role in administering *Iskra Stadium*,<sup>3849</sup> there are serious indications that at least some of the perpetrators of the mistreatment of the

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<sup>3842</sup> Witness ZR, T(F) p. 3088-3093 and 3109.

<sup>3843</sup> As for the defence put forth by the Defence for the Accused Hadžihasanović regarding the detention conditions, arguing that the circumstances prevailing in Bugojno at the material time were difficult, the Chamber refers to its conclusions on that subject in the section of this Judgement dealing with the Furniture Salon: *see supra* paras. 1608-1612.

<sup>3844</sup> Zdravko Žulj, T(F) p. 3648; P 391 (under seal), para. 34; Vinko Zrno, T(F) p. 10053.

<sup>3845</sup> Zdravko Žulj, T(F) pp. 3648 and 3629; Tomislav Mikulić, T(F) pp. 4521-4524; Vinko Zrno, T(F) pp. 10056-10057; Witness ZR, T(F) pp. 3089-3090 and 3109; Zoran Gvozden, T(F) p. 3705.

<sup>3846</sup> *See supra* para. 1698.

<sup>3847</sup> DH 176.

<sup>3848</sup> *See supra* para. 393.

<sup>3849</sup> *See supra* para. 1698.

prisoners at *Iskra* Stadium belonged to the 307<sup>th</sup> Brigade, which included the 307<sup>th</sup> Brigade Military Police.<sup>3850</sup>

1717. The Chamber finds that the victims of the mistreatment were not directly participating in the hostilities.<sup>3851</sup> Consequently, they were all protected persons pursuant to the laws or customs of war as recognised by common Article 3 of the Geneva Conventions.

1718. On the basis of the above, the Chamber finds that the elements of the crime of cruel treatment at *Iskra* Stadium have been established for the period between August 1993 and 31 October 1993.

(ix) *BH Banka*

a. Arguments of the Parties

1719. The Prosecution submits that the Bank was used as a detention facility from September 1993 until 31 October 1993, that the prisoners there were frequently subjected to physical abuse and the detention conditions there were sorely inadequate.<sup>3852</sup>

1720. As for the arguments put forth by the Prosecution on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the part of this Judgement dealing with the general arguments of the Parties.<sup>3853</sup>

1721. The Defence for the Accused Hadžihasanović argues that the detention conditions at the Bank were satisfactory, considering the prevailing circumstances in Bugojno at the material time, and that incidences of beatings were rare.<sup>3854</sup>

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<sup>3850</sup> As will be discussed subsequently, the ABiH 3<sup>rd</sup> Corps was responsible for the prisoners incarcerated in detention centres set up in Bugojno, which included *Iskra* Stadium. Assuming that civilian guards also mistreated the prisoners at *Iskra* Stadium, the question of the possible participation of the local detaining authority, in this case Enes Handžić, in the commission of these crimes should also be considered. Given his authority in that capacity, the local detaining authority had a duty to ensure the well-being and safety of detainees in his custody. In the case where he has knowledge that criminal acts have been committed against prisoners in his custody, and where he fails to take measures to put a stop to the mistreatment of them, he plays a significant role in the commission of those crimes. Nevertheless, the evidence presented in this case does not make it possible to establish beyond a reasonable doubt that civilians guards were responsible for the mistreatment or that Enes Handžić knew that those crimes had been committed. Accordingly, no conclusion may be drawn as to the form of responsibility incurred by Enes Handžić in this case.

<sup>3851</sup> Mijo Marijanović, T(F) pp. 2745 and 2774-2775; Vinko Zrno, T(F) pp. 10069-10071.

<sup>3852</sup> Prosecution Final Brief, para. 302.

<sup>3853</sup> *See supra* paras. 1572-1573.

<sup>3854</sup> Hadžihasanović Defence Final Brief, paras. 1053-1057.

1722. As for the arguments put forth by the Defence for the Accused Hadžihasanović on the constituent elements of responsibility under Article 7(3) of the Statute, the Chamber refers to the section of this Judgement dealing with the general arguments of the Parties.<sup>3855</sup>

b. Findings of the Chamber regarding the Mistreatment at BH Banka

1723. Several witnesses stated that between late September 1993 and at least late October 1993,<sup>3856</sup> prisoners were taken from *Iskra* Stadium to the Bank to be interrogated and beaten.<sup>3857</sup> Some witnesses indicated that certain prisoners who were taken away never returned or disappeared thereafter.<sup>3858</sup> Witness Mijo Marijanović, a former detainee at *Iskra* Stadium, specified that some of the detainees who returned from the Bank had difficulty walking and bruises all over their bodies.<sup>3859</sup> Witness Z9, also a former detainee at *Iskra* Stadium, indicated in his testimony that he learned that Željko Miloš and Jadranko Gvozden had been beaten at the Bank.<sup>3860</sup>

1724. Witness ZE indicated that the Bank housed an interrogation centre headed by Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security.<sup>3861</sup>

1725. As the Chamber indicated previously,<sup>3862</sup> it has heard many Prosecution witnesses testify about the “disappearance” of around 21 to 25 prisoners in Bugojno. Most of those people were allegedly taken from *Iskra* Stadium to the Bank, never to be seen again. The Chamber reiterates that the Prosecution never seized it of the issue of the disappearance of the prisoners in Bugojno. Accordingly, the Chamber cannot make findings on that issue.

1726. Conversely, the Chamber heard only two witnesses, Mijo Marijanović and Witness Z9, about mistreatment at the Bank. The Chamber nevertheless finds that this testimony is circumstantial and says nothing of the nature of the abuse, the perpetrators thereof, or of the detention conditions at the Bank. Consequently, the Chamber considers that the testimony is not sufficient to establish that mistreatment was committed at the Bank.

1727. Under those conditions, the Chamber considers it appropriate to acquit the Accused Hadžihasanović of the allegations of the crime of mistreatment at the Bank.

<sup>3855</sup> See *supra* paras. 1575-1577.

<sup>3856</sup> P 391 (under seal), paras. 29 and 32; P 386 (under seal), T(F) p. 39.

<sup>3857</sup> Witness ZC, T(F) pp. 3345-3347; Mijo Marijanović, T(F) pp. 2764 -2765; Ivo Mršo, T(F) p. 2528; Vinko Zrno, T(F) p. 10056.

<sup>3858</sup> Witness ZE, T(F) p. 3474; Ivo Mršo, T(F) p. 2528; Witness ZC, T(F) pp. 3345-3347; Vinko Zrno, T(F) p. 10056.

<sup>3859</sup> Mijo Marijanović, T(F) pp. 2764-2765.

<sup>3860</sup> P 391 (under seal), para. 32.

<sup>3861</sup> Witness ZE, T(F) p. 3474

(x) Interpretation of the Indictment

1728. The Chamber notes that paragraph 42(g) of the Indictment alleges that mistreatment was committed not only by ABiH 3<sup>rd</sup> Corps OG *Zapad* 307<sup>th</sup> Brigade soldiers, but also by OG *Zapad* military police. Likewise, paragraphs 43(c) and 43(d) of the Indictment allege that members of the OG *Zapad* military police were responsible for the murders of Mladen Havranek and Mario Zrno. The evidence demonstrates, however, that the only military police in Bugojno was the military police directly subordinated to the 307<sup>th</sup> Brigade,<sup>3863</sup> which was itself subordinated to the OG *Zapad*, and not the OG *Zapad* military police.

1729. The Chamber first notes that this issue goes to the identification of the subordinates who perpetrated the crimes, an essential element of a charge brought under Article 7(3) of the Statute. The Chamber next notes that although the Indictment is vague with regard to the military unit of the alleged perpetrators of the offence charged, the fact remains that the Defence for the Accused Hadžihasanović was sufficiently informed in a timely fashion that the charges against the Accused Hadžihasanović regarding Bugojno are based on the offences committed by the 307<sup>th</sup> Brigade Military Police in particular, not the OG *Zapad* military police, and that, as a result, that lack of clarity did not seriously prejudice the preparation of his defence.

1730. Consequently, in its Final Brief, the Defence for the Accused Hadžihasanović argued from the outset that, with regard to allegations of the crimes in Bugojno, the OG *Zapad* did not have a military police unit, contrary to the Prosecution's assertion.<sup>3864</sup> Nevertheless, the Defence for the Accused Hadžihasanović did not submit that this lack of clarity prejudiced the preparation of its Defence. It is worth adding that since the OG *Zapad* Military Police did not exist, and that the police force was in fact that of the 307<sup>th</sup> Brigade, the same subordinates were therefore concerned.<sup>3865</sup>

1731. The Chamber therefore finds that the references in the Indictment to the OG *Zapad* Military Police instead of the 307<sup>th</sup> Brigade Military Police satisfies the requirement to set out clearly the membership in an identifiable group, and that the Defence for the Accused Hadžihasanović did not suffer prejudice in its preparations for the trial.

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<sup>3862</sup> See *supra* para. 1590.

<sup>3863</sup> C 16 (entry: 31 May 1993); DH 708.

<sup>3864</sup> See para. 1017, Hadžihasanović Defence Final Brief.

<sup>3865</sup> The Chamber notes that this particular case differs from those examined in relation to Motel *Sretno* and Mehurići Blacksmith Shop, where the evidence adduced by the Prosecution during the trial showed that a different 3<sup>rd</sup> Corps unit from the one alleged in the Indictment had, in conjunction with that unit, committed the crimes alleged therein.

(xi) Particular Aspect Linked to the Context

1732. The Defence for the Accused Hadžihasanović submits that the 3<sup>rd</sup> Corps' policy was to transfer the prisoners of war as quickly as possible to the KP Dom in Zenica.<sup>3866</sup> Nevertheless, it adds that the 3<sup>rd</sup> Corps received information indicating that in Bugojno such a transfer was not possible, because the front lines were close, the danger of putting a large number of prisoners within range of artillery fire, and the absence of logistical assets.<sup>3867</sup>

1733. Admittedly, several pieces of evidence suggest that ABiH troops working in Bugojno attempted to implement the 3<sup>rd</sup> Corps' policy of transferring the prisoners of war to the KP in Zenica.<sup>3868</sup> Certain witnesses for the Defence for the Accused Hadžihasanović also mentioned that the transfer of the prisoners of war to the KP Dom in Zenica was not possible because of security or material reasons, such as the lack of an available vehicle able to handle the road up to Zenica.<sup>3869</sup> Nevertheless, the Chamber is of the view that even assuming the situation was as difficult as described by the witnesses for the Defence for the Accused Hadžihasanović, the fact remains that the minimum requirements must be respected as regards the treatment of persons deprived of their freedom for reasons linked to armed conflict, from the moment a person is deprived of freedom of movement, and that no one may depart from this rule. Consequently, the Chamber considers that the aforementioned allegations of the Defence for the Accused Hadžihasanović do not in any way alter its findings.

<sup>3866</sup> Hadžihasanović Defence Final Brief, paras. 1021 and 1038.

<sup>3867</sup> Hadžihasanović Defence Final Brief, para. 1039.

<sup>3868</sup> Witness HF stated that, during their visit to Bugojno, Edib Zlotrg and Fehim Muratović gave the order to transfer the HVO soldiers to the KP Dom in Zenica: Witness HF, T(F) p. 17198. On 19 September 1993, after being informed by the OG *Zapad* Commander that the ABiH was detaining, among others, 23 HVO members who had committed particularly serious crimes (P 442), the Accused Hadžihasanović ordered the OG *Zapad* Commander to transfer those 23 prisoners of war to the KP Dom in Zenica: P 443. On 7 October 1993, the Accused Hadžihasanović renewed the order to the OG *Zapad* Commander: P 274. According to Witness HF and Witness Fehim Muratović, however, that transfer, or any other transfer of prisoners to Zenica, never took place: Fehim Muratović, T(F) pp. 15042-15043; Witness HF, T(F) p. 17198. See also Rudy Gerritsen, T(F) pp. 7178-7179 and DH 171.7. Later, Witness Zaim Kablar, Vice-President of the 3<sup>rd</sup> Corps prisoner exchange commission, testified that during the period between 25 August 1993 until the end of 1993, he received information that 253 HVO soldiers were being detained at *Iskra* Stadium in Bugojno, and added that the exchange of those prisoners was an issue raised two or three times within the exchange commission: Zaim Kablar, T(F) pp. 14622-14626.

<sup>3869</sup> Witness HF and Witness Edib Zlotrg stated that there were snipers along the road from Bugojno to Zenica, and that the vehicles transporting the prisoners were within range of HVO artillery: Witness HF, T(F) p. 17198; Edib Zlotrg, T(F) pp. 14985-14986. Witness Fehim Muratović stated that, from a security standpoint, moving 400 prisoners by bus was not a viable option, that the road from Bugojno to Zenica was impassable for an ordinary vehicle, and that several buses broke down: Fehim Muratović, T(F) p. 14965. Witness HF added that according to the OG *Zapad*, there were not sufficient assets to make such a transfer possible: Witness HF, T(F) p. 17198. Finally, a report sent by the OG *Zapad* on 17 August 1993 to the 3<sup>rd</sup> Corps Command stated that there was a plan to transport prisoners to Zenica but that it was postponed a day due to a vehicle breakdown: DH 1391.

(xii) Findings of the Chamber regarding the Responsibility of the Accused Hadžihasanović

i. Effective Control of the Accused Hadžihasanović over the Perpetrators of the Crime

1734. The Chamber has found that 307<sup>th</sup> Brigade members, including the OG *Zapad* 307<sup>th</sup> Brigade Military Police, committed cruel treatment at the Furniture Salon, the Convent, the Elementary School, the Secondary School Building, and *Iskra* Stadium, and the murder of Mladen Havranek as alleged respectively in paragraphs 42(g) and 43(c) of the Indictment. Since the OG *Zapad* 307<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time,<sup>3870</sup> it is presumed that the Accused Hadžihasanović exercised effective control over that unit and its members who were the perpetrators of the mistreatment and the murder.<sup>3871</sup>

1735. The Defence for the Accused Hadžihasanović argues as a defence that the War Presidency in Bugojno had total control of the city and exercised real power over the military structures. It submits that the War Presidency dealt with the matters related to the prisoners, and that it rendered several decisions to regulate the internal organisation of temporary detention centres and appoint staff in them. The Defence points out that, in order to carry out its decisions, the War Presidency assumed the right to give orders to the 307<sup>th</sup> Brigade and the TO in Bugojno, even though it did not have such power from a legal standpoint. The Defence for the Accused Hadžihasanović adds that the civilian police also played a decisive role in the functioning of the detention centres in Bugojno. The Defence for the Accused Hadžihasanović concludes that the War Presidency's interference in military matters had an impact on the 3<sup>rd</sup> Corps' supervision and command of its subordinate units deployed in the region, such that no finding may be made beyond a reasonable doubt that the Accused Hadžihasanović exercised effective control over the subordinates alleged to have committed crimes.<sup>3872</sup>

1736. The Chamber first notes that the Defence for the Accused Hadžihasanović presented several pieces of evidence indicating that the War Presidency and the civilian police in Bugojno municipality provided significant logistical assets to the ABiH in relation to the detention centres in Bugojno. For example, on 28 July 1993, the War Presidency in Bugojno municipality appointed Mehmed Sadiković head of the temporary detention centre in Bugojno, charged him with regulating

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<sup>3870</sup> See *supra* paras. 393-394.

<sup>3871</sup> See *supra* para. 79.

<sup>3872</sup> Hadžihasanović Defence Final Brief, paras. 1062-1074 and 1077.

its organisation and appointing the staff.<sup>3873</sup> Similarly, on 24 August 1993, the War Presidency decided to convert the *Iskra* Stadium premises into a temporary detention facility, and for that purpose, regulated the Stadium's internal organisation, by providing for the appointment of its warden, security commander, and guards. On that occasion, the War Presidency tasked the Executive Council of Bugojno municipality, the 307<sup>th</sup> Brigade Command, and the TO Command in Bugojno with carrying out the decision.<sup>3874</sup> Furthermore, on 12 October 1993, Senad Dautović, chief of the civilian police in Bugojno, informed the Main Staff of the Municipal Defence in Bugojno that the MUP would hand over the Secondary School Building on 14 October 1993 insofar as it no longer needed it.<sup>3875</sup>

1737. The Chamber finds, however, that the ABiH, more specifically the ABiH 307<sup>th</sup> Brigade and OG *Zapad*, organised and carried out the arrests of the HVO soldiers and the Bosnian Croat and Bosnian Serb civilians after the conflict broke out in July 1993 in Bugojno. On 18 July 1993, therefore, the ABiH made its first arrests of HVO soldiers in Bugojno.<sup>3876</sup> Later, on 24 July 1993, although Witness Z9 stated that Senad Dautović was in charge of arresting the civilians and the HVO soldiers on that day,<sup>3877</sup> much evidence establishes that the OG *Zapad* and the 307<sup>th</sup> Brigade oversaw and organised the arrests of 100 HVO soldiers and 150 civilians in front of the *Kalin* Hotel on that date.<sup>3878</sup> Specifically, a report from the OG *Zapad* Commander Selmo Cikotić informed the Accused Hadžihasanović on 19 September 1993 that the army had arrested 470 "HVO members" while fighting in Bugojno.<sup>3879</sup> After their capture, the ABiH transferred a large number of the prisoners to the various detention facilities discussed in this section of the Judgement.

1738. The Chamber further notes that on 27 July 1993, that is three days after the arrests by the ABiH in front of the *Kalin* Hotel, Rasim Delić ordered the Accused Hadžihasanović to ensure that the captured prisoners of war were treated in compliance with the Geneva Conventions.<sup>3880</sup>

1739. As evidenced by an order dated 14 September 1993 to the OG *Zapad*, 307<sup>th</sup> Brigade and TO commands in Bugojno, the Accused Hadžihasanović was the person with the authority to authorise the ICRC visits to the detention facilities set up in Bugojno.<sup>3881</sup>

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<sup>3873</sup> DH 63.

<sup>3874</sup> DH 176.

<sup>3875</sup> DH 53.

<sup>3876</sup> Mijo Marijanović, T(F) pp. 2744-2746; Witness ZC, T(F) pp. 3324-3325; Zoran Gvozden, T(F) pp. 3655, 3657 and 3689

<sup>3877</sup> P 391 (under seal), para. 3.

<sup>3878</sup> P 437; C 16 (entry: 24 July 1993); P 608; Tomislav Mikulić, T(F) p. 4496; Zrinko Alvir, T(F) p. 2616.

<sup>3879</sup> P 442.

<sup>3880</sup> P 473.

<sup>3881</sup> P 441.



1740. The Chamber further finds, in view of the evidence adduced, that the 3<sup>rd</sup> Corps decided on the transfer of the prisoners incarcerated in Bugojno to the KP Dom in Zenica. For example, Witness HF stated that, during their visit to Bugojno, Edib Zlotrg and Fehim Muratović, 3<sup>rd</sup> Corps Military Security Service agents, gave the order to transfer the HVO soldiers imprisoned in Bugojno to the KP Dom in Zenica.<sup>3882</sup> Similarly, on 19 September 1993, after being informed by the OG *Zapad* Commander that the ABiH was holding, among others, 23 HVO members who had committed particularly serious crimes,<sup>3883</sup> the Accused Hadžihasanović ordered the OG *Zapad* commander to transfer the 23 prisoners of war to the KP Dom in Zenica.<sup>3884</sup> On 7 October 1993, the Accused Hadžihasanović renewed the order to the OG *Zapad* commander.<sup>3885</sup>

1741. Finally, various documents from the ECMM attest to the fact that the international observers from the ECMM considered that the ABiH was responsible for the civilian detainees and the prisoners of war incarcerated in Bugojno.<sup>3886</sup> The Chamber notes that Witnesses Rudy Gerritsen and Peter Hauenstein indicated that while initially the civilian police were responsible for the prisoners of war, as of 5 August 1993 the ABiH military police in Bugojno took over that responsibility.<sup>3887</sup>

1742. All these findings lead the Chamber to conclude that the ABiH 3<sup>rd</sup> Corps was the *de facto* authority with the power to take decisions as to the detention of the persons incarcerated in the alleged detention centres discussed in this section of the Judgement, keeping those detainees in detention, and transferring them. Consequently, the Chamber is of the opinion that the 3<sup>rd</sup> Corps was responsible for the prisoners incarcerated in the detention facilities set up in Bugojno. The fact that the War Presidency and civilian police provided logistical assets to the ABiH with respect to the detention centres such as *Iskra* Stadium, the Secondary School Building, and the Furniture Salon, and that the civilian authorities and ABiH 3<sup>rd</sup> Corps were responsible for running *Iskra* Stadium, may in no way alter that finding, and indicates only that there was coordination, or even partial delegation of responsibility among the civilian and military authorities in order to settle certain material issues regarding the functioning of the detention system set up in Bugojno.

1743. Consequently, the Chamber cannot lend credence to the Hadžihasanović Defence argument that the interference of the War Presidency and civilian police in the functioning of the detention

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<sup>3882</sup> Witness HF, T(F) p. 17198. *See also* DH 1391 and DH 1392.

<sup>3883</sup> P 442.

<sup>3884</sup> P 443.

<sup>3885</sup> P 274.

<sup>3886</sup> P 305; DH 170.6; DH 171.2; P 356; DH 171.4; P 273.

<sup>3887</sup> P 273; Rudy Gerritsen, T(F) pp. 7185-7186 and 7191-7194; Peter Hauenstein, T(F) pp. 7604-7605.

centres in Bugojno altered the command that the Accused Hadžihasanović exercised over the OG *Zapad* and 307<sup>th</sup> Brigade. Accordingly, the Chamber rejects that argument.

1744. The evidence further demonstrates that the 307<sup>th</sup> Brigade carried out the orders of the Accused Hadžihasanović and reported to the 3<sup>rd</sup> Corps Command on combat operations in the Bugojno sector. For example, on 14 September 1993, the Accused Hadžihasanović ordered the OG *Zapad* and 307<sup>th</sup> Brigade Commands to allow an ICRC delegation to visit the HVO members detained in Bugojno on 20 and 21 September 1993.<sup>3888</sup> The 307<sup>th</sup> Brigade in fact authorised the visit to *Iskra* Stadium.<sup>3889</sup> On 19 September 1993, Selmo Cikotić, OG *Zapad* Commander, then reported back to the Accused Hadžihasanović on combat operations in Bugojno.<sup>3890</sup>

1745. To conclude, the Chamber finds that the Accused Hadžihasanović exercised effective control over the perpetrators of the mistreatment at the Furniture Salon, Convent, Elementary School, Secondary School Building, and *Iskra* Stadium, and of the murder of Mladen Havranek, and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

1746. Conversely, the Chamber considers that it cannot find beyond a reasonable doubt that the perpetrators of Mario Zrno's murder and the mistreatment inflicted upon the prisoners taken outside of the Convent belonged to the 307<sup>th</sup> Brigade. The Chamber also considers that it has not been established that the 307<sup>th</sup> Brigade guards present at the scene of the crime could have prevented the crimes from being committed. Since the superior-subordinate relationship required by Article 7(3) of the Statute is lacking, the Chamber finds that the Accused Hadžihasanović cannot be held criminally responsible for the murder of Mario Zrno by beating as alleged in paragraph 43(d) of the Indictment, and for the cruel treatment inflicted upon the prisoners outside of the Convent.

ii. Knowledge of the Accused Hadžihasanović

1747. Since the Chamber has found that there was no superior-subordinate relationship as regards the perpetrators of the murder of Mario Zrno and the mistreatment of prisoners taken outside of the Convent, it will limit its examination to the Accused Hadžihasanović's knowledge of the crimes of mistreatment committed at the Furniture Salon, Convent, Elementary School, Secondary School Building and *Iskra* Stadium, and of the murder of Mladen Havranek.

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<sup>3888</sup> P 441.

<sup>3889</sup> Mijo Marijanović, T(F) p. 2773; Zoran Gvozden, T(F) p. 3679; P 386 (under seal), para. 38.

<sup>3890</sup> P 442.

1748. The Chamber will first respond to the Prosecution argument according to which the mistreatment administered by 3<sup>rd</sup> Corps soldiers at the detention centres at the Zenica Music School, Mehurići School, and Motel *Sretno*, of which the Accused Hadžihasanović had knowledge, were such as to alert him to the possibility that mistreatment would subsequently be committed in the detention centres set up in Bugojno later that year.<sup>3891</sup> In other words, the Prosecution submits that the prior commission of criminal acts by a group of subordinates in itself is sufficient to prove the existence of a risk that another group of subordinates would commit similar unlawful acts in the future.

1749. In law as in fact, the Chamber must reject that argument. As the Chamber noted in the section of this Judgement on the applicable law, it considers it appropriate to adopt a narrow interpretation of the theory of prior knowledge.<sup>3892</sup> Accordingly, depending on the circumstances of the case, that theory will only apply if the crimes alleged are of a similar nature and are committed by a same identifiable group of subordinates who have already committed such crimes in the past. The Chamber has considered that the concept of a “same identifiable group of subordinates” must be understood as a group of subordinates whose unit shares the same geographical position and, in respect of a detention centre, falls under the authority and control of the same supervisory power. In this case, given the structure and operations of the 3<sup>rd</sup> Corps, that “identifiable group of subordinates” must be interpreted as a brigade or brigade battalion, assuming that a battalion has a geographical position different from the other units of the brigade to which it belongs.

1750. In this case, however, the troops subordinated to the Accused Hadžihasanović implicated in the Indictment with regard to the detention centres at the Zenica Music School, Mehurići Elementary School, Former JNA barracks, and Motel *Sretno* did not belong to the 307<sup>th</sup> Brigade, so that, assuming that the crimes of mistreatment committed in those places of detention and the Accused Hadžihasanović’s knowledge of them have been established, the Accused Hadžihasanović did not necessarily have reasons to think that members of the 307<sup>th</sup> Brigade were about to commit crimes of mistreatment in the detention centres subsequently set up in Bugojno. Consequently, the Chamber rejects this Prosecution argument.

1751. The Chamber finds that, after receiving information that crimes of mistreatment had been committed in Bugojno, and by order of the 3<sup>rd</sup> Corps Command, Fehim Muratović and Edib Zlotrg, ABiH 3<sup>rd</sup> Corps military security service agents, went to see the 307<sup>th</sup> Brigade and OG *Zapad* commands on 16 August 1993 to verify the information and check on the conduct of members of

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<sup>3891</sup> Prosecution Final Brief, paras. 303-304.

<sup>3892</sup> See *supra* para. 118.

those units.<sup>3893</sup> During the meeting, Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security,<sup>3894</sup> informed them that two 307<sup>th</sup> Brigade members had brutalised six prisoners of war at the Furniture Salon, and that one of them did not survive the mistreatment of which he was a victim.<sup>3895</sup>

1752. These words were put down in an inspection report drafted by Edib Zlotrg and signed by Fehim Muratović, the relevant passage of which reads as follows: “Handžić said he had a problem with two soldiers who had beaten up six HVO prisoners of whom one died”.<sup>3896</sup> The said report was then addressed to the 3<sup>rd</sup> Corps Command on 18 August 1993.<sup>3897</sup>

1753. Fehim Muratović stated that in response to his report, he had a verbal discussion over the incident with the Accused Hadžihasanović, during which he stated:

“Q. You said yesterday that upon your return to Zenica you sent this report to your superior. Is this Mr. Dugalić, just for clarification?”

A. When I went to Bugojno with my colleague, Mr. Dugalić happened to be sick, and he was at home recuperating. I addressed my report to the commander of the 3rd Corps.

Q. And did you ever receive a response from the commander of the 3rd Corps in relation to that incident?

A. I never received a written response, but in a conversation that I had with him, the commander said that what we did up there was well done, that we did a good job.

... it was a good thing that steps, legal steps, were taken against the persons who committed what they did against the members of the HVO, because those people who entered the furniture salon and beat up those HVO members were punished.”<sup>3898</sup>

1754. The Chamber notes that the Defence for the Accused Hadžihasanović did not dispute that the Accused Hadžihasanović was informed of the fact that two 307<sup>th</sup> Brigade soldiers severely physically abused HVO members detained at the Furniture Salon, and that one of them died as a result of the abuse.<sup>3899</sup>

1755. On the basis of that evidence, the Chamber finds that it has been proved beyond a reasonable doubt that as of 18 August 1993, the Accused Hadžihasanović knew that the crimes of mistreatment against six prisoners of war and the murder of one of them had been committed by his subordinates at the Furniture Salon.

<sup>3893</sup> Edib Zlotrg, T(F) pp. 14987 and 15000; Fehim Muratović, T(F) pp. 15036-15037; Witness HF, T(F) 17196; DH 1392.

<sup>3894</sup> P 912; DK 62, Annex A/ DH 776.

<sup>3895</sup> Fehim Muratović, T(F) pp. 14963-14966, 15037-15038; Edib Zlotrg, T(F) p. 15015.

<sup>3896</sup> DH 1392:

<sup>3897</sup> DH 1392; Fehim Muratović, T(F) pp. 14964 and 15039.

1756. The question which now arises is whether, on the basis of the information available to him as of 18 August 1993, the Accused Hadžihasanović had reason to know that his subordinates had committed other crimes of mistreatment besides those inflicted on six prisoners of war at the Furniture Salon of which he had knowledge, not only at the Furniture Salon but also in other detention locations controlled by the 307<sup>th</sup> Brigade in Bugojno.

1757. The Chamber first finds that the report of 18 August 1993, signed by Fehim Muratović and addressed to the Accused Hadžihasanović, contains no indication that prisoners had been beaten on other occasions at the Furniture Salon or at the other detention centres operating as such in Bugojno.<sup>3900</sup>

1758. According to the statements of Witness Fehim Muratović, his conversation with the Accused Hadžihasanović in response to his report of 18 August 1993 dealt only with the beatings by two soldiers of six prisoners of war at the Furniture Salon, and the measures taken to punish those acts.<sup>3901</sup>

1759. Finally, the Chamber notes that no other evidence was presented which would allow it to find that the Accused Hadžihasanović had alarming information that would have warned him that other similar criminal acts had been committed by 307<sup>th</sup> Brigade soldiers at the detention centres set up in Bugojno.

1760. Consequently, the Chamber is not convinced beyond a reasonable doubt that, as of 18 August 1993, when the Accused Hadžihasanović learned that his subordinates had committed the crimes of mistreatment at the Furniture Salon against six prisoners of war, and the murder of one of them, he had reason to know that his subordinates had committed other crimes of mistreatment, other than those inflicted upon the six prisoners of war, of which he had knowledge, not only at the Furniture Salon but also at the other detention locations controlled by the 307<sup>th</sup> Brigade in Bugojno. The Chamber notes that the information available to the Accused Hadžihasanović on 18 August 1993 did not reveal a repeated practice of mistreatment but rather a serious incident which had taken place on one occasion, on 5 August 1993, which in itself was not enough for the Accused Hadžihasanović to believe that those serious criminal acts had been preceded or followed by other criminal acts of the same nature.

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<sup>3898</sup> Fehim Muratović, T(F) p. 15039.

<sup>3899</sup> Hadžihasanović Defence Final Brief, para. 1042 and footnote 1459.

<sup>3900</sup> DH 1392.

<sup>3901</sup> Fehim Muratović, T(F) p. 15039.

1761. The Accused Hadžihasanović may not therefore be held responsible for the crimes of mistreatment committed prior to 18 August 1993, namely those committed at the Furniture Salon, Convent, Secondary School Building, Elementary School, and *Iskra* Stadium, except for those committed against the six prisoners of war at the Furniture Salon and the crime of the murder of Mladen Havranek, of which the examination of the measures taken with respect to those crimes will be dealt with in the next section.<sup>3902</sup>

1762. Finally, the Chamber finds that no evidence was presented which would allow it to find that the Accused Hadžihasanović had knowledge of the poor detention conditions prevailing in the detention centres set up in Bugojno. Fehim Muratović's inspection report of 18 August 1993 dealt with the crimes of the physical mistreatment of six detainees at the Furniture Salon, but said nothing of the inadequate detention conditions in which the prisoners at the Furniture Salon or the other alleged detention centres were forced to live. Consequently, the Accused Hadžihasanović may not be held responsible for the detention conditions which prevailed at the Furniture Salon, Convent, Elementary School, Secondary School Building, or *Iskra* Stadium.

iii. Measures Taken<sup>3903</sup>

1763. The Chamber has found that, as of 18 August 1993, the Accused Hadžihasanović knew that the crimes of mistreatment against six prisoners of war, and the murder of one of them, had been committed by his subordinates at the Furniture Salon. Conversely, the Chamber considers that the Accused Hadžihasanović did not have reason to know as of 18 August 1993 that his subordinates had committed other crimes of mistreatment besides those of which he had knowledge, at the Furniture Salon and in the other detention locations controlled by the 307<sup>th</sup> Brigade. The Chamber has also found that the Accused Hadžihasanović did not have knowledge of the prevailing detention conditions at the Furniture Salon, Convent, Elementary School, Secondary School Building, and *Iskra* Stadium. Consequently, the Chamber will limit its examination to the punitive measures the Accused Hadžihasanović may have taken in relation to the acts of mistreatment and the murder of Mladen Havranek perpetrated at the Furniture Salon.

1764. The Chamber heard testimony from Fehim Muratović and Edib Zlotrg, two witnesses for the Defence for the Accused Hadžihasanović, about punitive measures effectively taken after the incidents at the Furniture Salon. As mentioned above, on 16 August 1993, Enes Handžić reported to

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<sup>3902</sup> The Chamber will examine the Accused Hadžihasanović's knowledge of the crimes committed after 18 August 1993 in the next section.

<sup>3903</sup> As for the examination of general measures taken by the Accused Hadžihasanović regarding the detention of the prisoners, the Chamber refers to its conclusions in paragraphs 856-859 and 1161-1167.

Fehim Muratović and Edib Zlotrg that two 307<sup>th</sup> Brigade soldiers had come into the Furniture Salon and beaten six prisoners, who were HVO members, and that one of them died as a result of the beating. On that occasion, Enes Handžić added that he took measures accordingly and that the perpetrators of the crimes were prosecuted.<sup>3904</sup>

1765. Fehim Muratović put this information in his inspection report of 18 August 1993 to the 3<sup>rd</sup> Corps Command, which indicated, with regard to the perpetrators of the mistreatment: “These soldiers were taken into custody and proceedings were instituted against them.”<sup>3905</sup>

1766. Witness HF was also informed that the two security agents had instituted legal proceedings.<sup>3906</sup>

1767. As regards the nature of the punishment of the perpetrators of the mistreatment, it should first be pointed out that neither the report of 18 August 1993 nor Witness HF make explicit what kind of disciplinary or criminal action was taken against the perpetrators.

1768. Witness Edib Zlotrg seems to indicate that the action taken against the perpetrators was criminal in nature:

“So the assistant commander of the 307th Brigade informed us that there was an incident in which two members of the army entered certain premises and beat up six members of the HVO, one of whom succumbed as a result, unfortunately. He also informed us that those two persons were arrested and that they were being charged, that they had been charged for their actions.”<sup>3907</sup>

The Chamber notes that Edib Zlotrg did not say whether he spoke with the Accused Hadžihasanović about the incident at the Furniture Salon.

1769. Conversely, questioned about the measures taken against the two perpetrators of the crimes in question, Witness Fehim Muratović specified that the measures were disciplinary in nature:

“Q. Are you aware that a trial against these two perpetrators was ever conducted?”

A. Yes. They were brought before the military disciplinary organ in Bugojno and were punished. That’s what the report said that we received.

Q. When did you receive that report? About, approximately.

<sup>3904</sup> Fehim Muratović, T(F) pp. 14963-14964, 15037-15041; Edib Zlotrg, T(F) p. 14987.

<sup>3905</sup> DH 1392.

<sup>3906</sup> Witness HF, T(F) p. 17196.

<sup>3907</sup> Edib Zlotrg, T(E) p. 14987.

A. We received an oral report when we were in Bugojno. At that time, we were told that the legal proceedings were under way and that these persons were in detention, in military detention in Bugojno, these two persons who beat up the members of the HVO.”<sup>3908</sup>

1770. As indicated previously,<sup>3909</sup> in response to his report of 18 August 1993, Fehim Muratović spoke with the Accused Hadžihasanović about how two soldiers beat six prisoners of war at the Furniture Salon and, on that occasion, the Accused Hadžihasanović informed him that he was satisfied with the measures taken against those two 307<sup>th</sup> Brigade soldiers.<sup>3910</sup>

1771. All of Fehim Muratović’s aforementioned statements indicate that the measures about which the Accused Hadžihasanović expressed his satisfaction during their conversation were the disciplinary measures Fehim Muratović learned of during his visit to Bugojno on 16 August 1993.

1772. The testimony of Sead Žerić, Peter Hackshaw and Zrinko Alvir confirms that after the alleged incidents there was no investigation or criminal prosecution of the perpetrators of those crimes.

1773. Sead Žerić, Travnik District Military Prosecutor from December 1992 to February 1996, stated that he never received a criminal complaint alleging that ABiH soldiers killed or mistreated prisoners of war or civilian detainees in his zone of responsibility, which included Bugojno.<sup>3911</sup>

1774. Prosecution investigator Peter Hackshaw testified that he consulted the registers from the Travnik District Military Prosecutor’s Office. In neither the registers of known and unknown suspects did he find the name of a victim named in the Indictment.<sup>3912</sup>

1775. Zrinko Alvir, who was also beaten on the same evening as Mladen Havranek and who identified the two perpetrators in question, stated that in November 1994 he made a statement against the two perpetrators of the mistreatment on 5 August 1993 to the police authorities in Bugojno, but that he was heard by the judicial authorities based in Vitez and in Travnik as a witness in the criminal proceedings against the two perpetrators only in 2004.<sup>3913</sup>

1776. On the basis of this evidence, the Chamber is convinced beyond a reasonable doubt that following the mistreatment of six prisoners of war at the Furniture Salon, and the murder of one of them, Mladen Havranek, the 3<sup>rd</sup> Corps initiated no investigation or criminal proceedings against the perpetrators of those acts. The Chamber is, however, convinced beyond a reasonable doubt that the

<sup>3908</sup> Fehim Muratović, T(E) pp. 15039-15040.

<sup>3909</sup> *See supra* para. 1753.

<sup>3910</sup> Fehim Muratović, T(F) pp. 15039-15040. *See supra* para. 1753.

<sup>3911</sup> Sead Žerić, T(F) p. 5525.

<sup>3912</sup> Peter Hackshaw, T(E) pp. 9692-9693.

<sup>3913</sup> Zrinko Alvir, T(F) pp. 2644-2645.



307<sup>th</sup> Brigade took disciplinary measures against them and that the Accused Hadžihasanović was aware of those measures. The Chamber further notes that in its Final Brief, the Defence for the Accused Hadžihasanović indicated that the measures taken after the alleged incidents were disciplinary in nature.<sup>3914</sup>

1777. The Chamber considers that the exercise of disciplinary power to punish the crimes of murder and mistreatment of prisoners of war is not sufficient punishment of the perpetrators of those crimes. The Chamber cannot overemphasise that in international law, a commander has a duty to take the necessary and reasonable measures to punish those who violate the laws or customs of war. Faced with the crimes of murder and mistreatment committed in a detention location controlled by his troops, offences falling within the *ratione materiae* jurisdiction of the Travnik district military court, the Accused Hadžihasanović could not consider as acceptable punishment the disciplinary sanction of a period of detention not exceeding 60 days. He had the duty to take specific measures to ensure that the perpetrators were prosecuted and to report accordingly to the Travnik District Military Prosecutor. Consequently, the Chamber is convinced beyond a reasonable doubt that, although he knew that his subordinates had committed the crimes of murder and mistreatment against six prisoners of war at the Furniture Salon, the Accused Hadžihasanović failed in his duty to take the appropriate and necessary measures to punish the perpetrators.

1778. The Chamber further considers that by failing to take the reasonable and appropriate measures to punish the perpetrators of the crimes committed at the Furniture Salon, the Accused Hadžihasanović failed in his duty to prevent the acts of mistreatment committed after 18 August 1993. The Chamber firmly recalls that the basis of a commander's duty to punish is to create and maintain an environment of discipline and respect for the law among those under his command. By failing to take the appropriate measures to punish the most serious crimes, a commander adopts a pattern of conduct which may in fact encourage his subordinates to commit further acts of mistreatment and, as a result, may entail his responsibility.

1779. In this case, by failing to punish appropriately the members of the 307<sup>th</sup> Brigade who committed the crimes of mistreatment and murder at the Furniture Salon, the Accused Hadžihasanović created a situation which encouraged the repeated commission of similar criminal acts, not only at the Furniture Salon but also in all of the other detention locations controlled by the members of the 307<sup>th</sup> Brigade, as of 18 August 1993. By failing to take the appropriate measures with respect to the crimes of which he had knowledge, the Accused Hadžihasanović had reason to know that there was a real and reasonable risk that those unlawful acts would be repeated in the

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<sup>3914</sup> Hadžihasanović Defence Final Brief, footnote 1459.

future, especially since the detention centres set up in Bugojno were established in geographic proximity to one another and were administered and controlled by the same 307<sup>th</sup> Brigade leaders.<sup>3915</sup> The Chamber considers that the absence or inadequacy of punitive measures against the guards in one detention centre in Bugojno necessarily had an impact on the other guards operating in different detention facilities in Bugojno.

1780. Consequently, the Chamber is of the opinion that the Accused Hadžihasanović must be held criminally responsible, under Article 7(3) of the Statute, for the cruel treatment of six prisoners of war committed at the Furniture Salon on 5 August 1993, for the murder of Mladen Havranek on 5 August 1993, and for the mistreatment committed after 18 August 1993 at the Furniture Salon, Elementary School, Secondary School Building, and *Iskra* Stadium.

(xiii) Findings of the Chamber

1781. The Chamber considers that there is insufficient evidence to establish beyond a reasonable doubt that mistreatment was committed at the Bank. Accordingly, the Chamber acquits the Accused Hadžihasanović of the charge of mistreatment committed at the Bank.

1782. The Chamber cannot find beyond a reasonable doubt that the perpetrators of the murder of Mario Zrno and of the mistreatment of the prisoners taken outside the Convent were under the effective control of the Accused Hadžihasanović. The Chamber also considers that it has not been established that the 307<sup>th</sup> Brigade guards present at the scenes of the crime outside of the Convent could have prevented the commission of those crimes. Accordingly, the Chamber acquits the Accused Hadžihasanović of the murder by beating of Mario Zrno, alleged in paragraph 43(d) of the Indictment, and of the mistreatment of the prisoners taken outside of the Convent. Conversely, the Chamber finds that the perpetrators of the mistreatment at the Furniture Salon, Convent, Elementary School, Secondary School Building, and *Iskra* Stadium and of the murder of Mladen Havranek were subordinated to and under the effective control of the Accused Hadžihasanović.

1783. The Chamber is convinced beyond a reasonable doubt that as of 18 August 1993, the Accused Hadžihasanović knew that the crimes of mistreatment of six prisoners of war and the murder of Mladen Havranek had been committed by his subordinates at the Furniture Salon. Nevertheless, the Chamber is not convinced beyond a reasonable doubt that, as of 18 August 1993, the Accused Hadžihasanović had reason to know that his subordinates had committed crimes of

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<sup>3915</sup> For example, Enes Handžić, 307<sup>th</sup> Brigade Assistant Commander for Military Security, was at various detention centres. As such, several pieces of evidence indicate that Enes Handžić was the security commander in charge of *Iskra* Stadium: DH 1503; Witness ZH, T(E) pp. 3759-3760; Ivo Mršo, T(F) pp. 2527-2529. Witness Ivo Mršo later saw Enes Handžić at the Bugojno Convent: T(F) pp. 2499-2500. Moreover, Witness Z4 heard that Enes Handžić was conducting interrogations at the Elementary School: P 386 (under seal), para. 22. See also *supra* paras. 133, 166 and 193.

mistreatment other than those of which he had knowledge, not only at the Furniture Salon but also at the Convent, Elementary School, Secondary School Building, and *Iskra* Stadium. Likewise, the Chamber is not convinced beyond a reasonable doubt that the Accused Hadžihasanović had knowledge of the poor detention conditions at the Furniture Salon, Convent, Elementary School, Secondary School Building, and *Iskra* Stadium, meaning that the Accused Hadžihasanović may not be held criminally responsible under Article 7(3) of the Statute with respect to the conditions of detention constituting mistreatment at the Furniture Salon, Convent, Elementary School, Secondary School Building, and *Iskra* Stadium.

1784. The Chamber finds that in spite of his knowledge of the mistreatment of six prisoners of war at the Furniture Salon and of the murder of one of them, the Accused Hadžihasanović failed to take the necessary and reasonable measures to punish the perpetrators of those crimes. Consequently, the Accused Hadžihasanović had reason to know that there was a risk that the unlawful acts of which he had knowledge could happen again in the future. Accordingly, by not punishing the crimes committed, he failed in his duty to prevent the acts of mistreatment committed after 18 August 1993, namely those perpetrated at the Furniture Salon, Elementary School, Secondary School Building, and *Iskra* Stadium.

1785. To conclude, the Accused Hadžihasanović is found criminally responsible under Article 7(3) of the Statute for the cruel treatment, with the exception of the poor conditions of detention, committed at the Furniture Salon against six prisoners of war on 5 August 1993, and committed after 18 August 1993 at the Furniture Salon, Elementary School, Secondary School Building, and *Iskra* Stadium, alleged in paragraphs 41(da), (dc), (dd), (de) and 42(g) of the Indictment, and of the murder by beating of Mladen Havranek alleged in paragraph 43(c) of the Indictment.

## **B. Findings and Conclusions regarding Crimes Against Property**

### **1. Count 5: Wanton Destruction of Towns and Villages not Justified by Military Necessity in the Municipalities of Zenica, Travnik and Vareš – Violations of the Laws or Customs of War**

#### **(a) Dusina**

1786. The Chamber recalls that the Prosecution withdrew its charges against the Accused Hadžihasanović for the crime of wanton destruction of towns and villages in Dusina in January

1993.<sup>3916</sup> In its Decision on Motions for Acquittal of 27 September 2004, the Chamber noted the Prosecution's withdrawal of the allegations in that count in relation to Dusina.<sup>3917</sup>

(b) Miletići

1787. In its Decision on Motions for Acquittal of 27 September 2004, the Chamber considered that there was no evidence that the wanton destruction of towns and villages not justified by military necessity took place in Miletići in April 1993 within the meaning of Article 3(b) of the Statute. Accordingly, the Chamber found that the Accused should be acquitted, as regards Miletići, of the crime of wanton destruction referred to in count 5.<sup>3918</sup>

(c) Guča Gora

1788. The Indictment alleges that members of the 7<sup>th</sup> Brigade,<sup>3919</sup> 306<sup>th</sup> Brigade and 17<sup>th</sup> Brigade committed unlawful and arbitrary destruction not justified by military necessity against dwellings, buildings and civilian personal property belonging to Bosnian Croats and Bosnian Serbs, in Guča Gora in June 1993.<sup>3920</sup> The Indictment states that the Accused Hadžihasanović knew or had reason to know that the members of those units, placed under his command and effective control, were about to commit acts of destruction or had done so, and that he failed to take the necessary and reasonable measures to prevent those acts from being committed or from punishing the perpetrators.<sup>3921</sup> The Accused Hadžihasanović is therefore charged with wanton destruction of towns and villages not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

1789. The Chamber notes that although the Indictment mentions the 7<sup>th</sup> Brigade in relation to the destruction committed in Guča Gora in June 1993, the Indictment does not allege the responsibility of the Accused Kubura for the destruction committed by his subordinates.

(i) Arguments of the Parties

1790. The Prosecution argues that beginning on 9 June 1993, 3<sup>rd</sup> Corps soldiers set fire to houses and barns belonging to Croats, and that these fires continued until December 1993.<sup>3922</sup> The

<sup>3916</sup> Prosecution Pre-Trial Brief, para. 135

<sup>3917</sup> Decision on Motions for Acquittal, 27 September 2004, para. 111.

<sup>3918</sup> *Ibid.*, para. 112.

<sup>3919</sup> See Indictment, paras. 18-20. According to the Indictment, the 7th Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>3920</sup> Indictment, para. 44.

<sup>3921</sup> Indictment, para. 45.

<sup>3922</sup> Prosecution Final Brief, para. 308.

Prosecution adds that the Accused Hadžihasanović had knowledge of the crimes committed in Guča Gora<sup>3923</sup> and that he failed to take any measures to punish the perpetrators of those crimes.<sup>3924</sup>

1791. The Defence for the Accused Hadžihasanović does not dispute that houses in Guča Gora were damaged, but points out that the damage in question was not caused gratuitously and that the village was not destroyed without reason. The Defence for the Accused Hadžihasanović adds that while some damage was caused during the fighting, most was caused afterwards, and notes that the cause of the damage during and after the fighting has not been established. The Defence for the Accused Hadžihasanović further submits that the Prosecution failed to prove that the subordinates of the Accused Hadžihasanović participated in the criminal activities in question.<sup>3925</sup>

(ii) Findings of the Chamber regarding Wanton Destruction in Guča Gora

1792. On 8 June 1993, the 306<sup>th</sup> Brigade forces reached the front line connecting the villages of Maline, Guča Gora, Mosor and Bukovica.<sup>3926</sup> Late in the afternoon of 8 June 1993, the soldiers of the 306<sup>th</sup> Brigade 2<sup>nd</sup> Battalion joined the forces of the 306<sup>th</sup> Brigade 3<sup>rd</sup> Battalion and occupied positions overlooking Guča Gora.<sup>3927</sup> The combat operations between the HVO and ABiH units continued until 10 June 1993, when the ABiH forces entered the village of Guča Gora.<sup>3928</sup> That same day, the 306<sup>th</sup> Brigade units received the order to move towards the villages of Mosor and Radojčići.<sup>3929</sup> The presence of foreign mujahedin in Guča Gora was observed around mid-June 1993.<sup>3930</sup> On 16 June 1993, the 306<sup>th</sup> Brigade Military Police, tasked with securing Guča Gora sector,<sup>3931</sup> went to the monastery<sup>3932</sup> and remained there until August 1993.<sup>3933</sup> During the summer of 1993, the 306<sup>th</sup> Brigade Command moved into the monastery in order to provide it better protection.<sup>3934</sup>

1793. Contrary to what is asserted by the Prosecution,<sup>3935</sup> the Chamber considers that neither the 7<sup>th</sup> nor the 17<sup>th</sup> Brigades were in Guča Gora during the combat operations. The evidence demonstrates that the 7<sup>th</sup> Brigade 1<sup>st</sup> battalion conducted combat operations in Hajdareve Njive on 8

<sup>3923</sup> *Ibid.*, para. 348.

<sup>3924</sup> *Ibid.*, para. 348.

<sup>3925</sup> Hadžihasanović Defence Final Brief, para. 656.

<sup>3926</sup> DK 22.

<sup>3927</sup> Salim Tarakčija, T(F) p. 11805.

<sup>3928</sup> Fahir Čamdžić, T(F) p. 11713; Esed Sipić, T(E) p. 14778.

<sup>3929</sup> Salim Tarakčija, T(F) p. 11805.

<sup>3930</sup> Vaughan Kent-Payne, T(F) pp. 4794-4795; Džemal Merdan, T(F) pp. 13139-13140; DH 71.

<sup>3931</sup> DH 161.13.

<sup>3932</sup> Mahir Izet, T(F) pp. 16805-16806.

<sup>3933</sup> Mahir Izet, T(F) p. 16804.

<sup>3934</sup> Munir Karić, T(F) p. 11457; Asim Delalić, T(F) p. 16404.

<sup>3935</sup> Indictment, para. 44; *see* para. 339, Prosecution Final Brief, which makes no mention of the 17<sup>th</sup> Brigade.

June 1993<sup>3936</sup> together with the 17<sup>th</sup> Brigade,<sup>3937</sup> while the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions operated in Ovnak sector.<sup>3938</sup> On 9 June 1993, the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and 17<sup>th</sup> Brigade units were engaged in Sibicara and Okuka,<sup>3939</sup> a few kilometres from Travnik.<sup>3940</sup> Only the 306<sup>th</sup> Brigade was involved in the combat operations in Guča Gora between 8 and 10 June 1993.<sup>3941</sup>

1794. Following the claims by the HVO that Guča Gora was burning,<sup>3942</sup> Witness Hendrik Morsink, together with other ECMM members, UNPROFOR representatives and ABiH officers, went to the Guča Gora monastery on 8 June 1993.<sup>3943</sup> The witness did not notice any significant damage to the houses near the monastery.<sup>3944</sup> ECMM observers noticed only three or four houses burning on 8 June 1993.<sup>3945</sup> Witness Dragan Radić was at the *Frankopan* Brigade headquarters<sup>3946</sup> in Nova Bila on 8 June 1993, and stated that late in the afternoon, through his binoculars, he saw three houses on fire in Guča Gora.<sup>3947</sup> On 8 and 9 June 1993, Witness ZJ was able to see from Čifluk that, apart from one or two houses that had burned down, the rest of the houses had remained intact.<sup>3948</sup> On 9 June 1993, as he travelled through Guča Gora,<sup>3949</sup> Witness Tomislav Rajić saw only a cowshed burning but that the houses were intact.<sup>3950</sup> Officers from the 306<sup>th</sup> Brigade who entered the village of Guča Gora on 10 June 1993 did not notice any damage<sup>3951</sup> or damaged buildings,<sup>3952</sup> apart from a few cowsheds that had apparently burned down during the fighting.<sup>3953</sup> Likewise, after returning to Guča Gora on 13 June 1993,<sup>3954</sup> Witness Vaughan Kent-Payne noticed that aside from some collateral damage caused by the fighting, the village was intact.<sup>3955</sup>

<sup>3936</sup> Remzija Šiljak, T(F) pp. 10572-10573; Semir Terzić, T(F) p. 18256; Safet Junuzović, T(F) pp. 18505-18508; Suad Jusović, T(F) pp. 18435-18437; DK 18; DK 19; DK 34; P 465.

<sup>3937</sup> Safet Junuzović, T(F) p. 18505.

<sup>3938</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>3939</sup> DK 42; Safet Junuzović, T(F) pp. 18505-18506.

<sup>3940</sup> Safet Junuzović, T(F) p. 18506.

<sup>3941</sup> Fikret Čuskić, T(F) p. 12112; P 465.

<sup>3942</sup> Vaughan Kent-Payne, T(F) p. 4949; Hendrik Morsink, T(F) p. 8057.

<sup>3943</sup> Vaughan Kent-Payne, T(F) pp. 4949-4950; Hendrik Morsink, T(F) p. 8059.

<sup>3944</sup> Hendrik Morsink, T(F) p. 8059.

<sup>3945</sup> DH 186.

<sup>3946</sup> Dragan Radić, T(F) p. 3556.

<sup>3947</sup> Dragan Radić, T(F) pp. 3551, 3552, 3556 and 3557. The witness stated that he saw the houses of Danica Lujanović, Niko Neimarević, and Nikola Marković burning. The witness also stated that the houses burning were about two or two and a half kilometres from his position. T(F) p. 3558. According to Witness Dragan Radić, it was possible to see the burning houses with the naked eye. T(F) p. 3559.

<sup>3948</sup> Witness ZJ, T(F) pp. 4174-4175.

<sup>3949</sup> Tomislav Rajić, T(F) p. 2820.

<sup>3950</sup> Tomislav Rajić, T(F) p. 2822.

<sup>3951</sup> Fahir Čamdžić, T(F) p. 11715.

<sup>3952</sup> Salim Tarakčija, T(F) p. 11807.

<sup>3953</sup> Fahir Čamdžić, T(F) p. 11715.

<sup>3954</sup> Vaughan Kent-Payne, T(F) p. 4940.

<sup>3955</sup> Vaughan Kent-Payne, T(F) p. 4941; DH 71.

1795. According to Witness Tomislav Rajić, it was only later, after the fighting, that the village of Guča Gora burned down.<sup>3956</sup> From the positions he occupied in Nova Bila in the days after the fighting, Witness Tomislav Rajić could see, with the naked eye or with binoculars, which houses had been set on fire.<sup>3957</sup> He was not able to tell who specifically had set the houses on fire, but asserted that they were 306<sup>th</sup> Brigade members.<sup>3958</sup> Two or three days after Guča Gora fell, Witness Dragan Radić stated that, from Čifluk, he could see that the houses had been set alight<sup>3959</sup> by Muslim civilians and soldiers.<sup>3960</sup> The fires mostly occurred at night.<sup>3961</sup> According to Dragan Radić, four houses caught fire on 12 and 13 June 1993.<sup>3962</sup> He estimated that between 8 and 25 June 1993, 15 to 20 houses, along with their cowsheds and outbuildings, burned down.<sup>3963</sup> According to Witness ZJ, 200 to 250 houses in Guča Gora were destroyed over the 15 days after the beginning of the attack<sup>3964</sup> by ABiH members.<sup>3965</sup>

1796. On 26 July 1993, the Civilian Protection in Guča Gora drafted a report in which it noted that 46 houses were burned or destroyed in Guča Gora.<sup>3966</sup> Witness Dragan Radić estimated that between the day of the attack and 24 December 1993, the day the witness' house was set on fire,<sup>3967</sup> 50 houses burned to the ground.<sup>3968</sup> In April 2002, Witness ZI went to Guča Gora to gather information about houses that had been destroyed in June 1993.<sup>3969</sup> Following that visit, Witness ZI drew sketches of Guča Gora indicating that 59 houses were destroyed or damaged.<sup>3970</sup>

1797. In view of the above evidence, the Chamber finds that a limited number of houses were destroyed during the fighting and that the destruction was caused by shelling or incendiaries. As regards the observations of Witness Dragan Radić, the Chamber points out that it has not been established that he was in a position to see houses burning in Guča Gora from the positions he

<sup>3956</sup> Tomislav Rajić, T(F) p. 2822, T(E) p. 2821.

<sup>3957</sup> Tomislav Rajić, T(F) pp. 2822-2823.

<sup>3958</sup> Tomislav Rajić, T(F) p. 2825.

<sup>3959</sup> Dragan Radić, T(F) p. 3552.

<sup>3960</sup> Dragan Radić, T(F) p. 3553. Witness Dragan Radić, however, was not able to tell who set fire to the houses, T(F), p. 3579.

<sup>3961</sup> Dragan Radić, T(F) p. 3552.

<sup>3962</sup> Dragan Radić, T(F) p. 3557.

<sup>3963</sup> Dragan Radić, T(F) p. 3553.

<sup>3964</sup> Witness ZJ, T(F) pp. 4202-4203.

<sup>3965</sup> Witness ZJ believed that the perpetrators of the destruction were ABiH members since, after the ABiH seized Guča Gora, no other unit could have been in the village. This is, however, only an inference the witness has drawn, since he was unable to make out the people he saw in Guča Gora, T(F) pp. 4177, 4197 and 4198.

<sup>3966</sup> DH 1345.

<sup>3967</sup> Dragan Radić, T(F) p. 3554.

<sup>3968</sup> Dragan Radić, T(F) p. 3553.

<sup>3969</sup> P 80 (under seal).

<sup>3970</sup> P 86 (under seal).

occupied in Nova Bila.<sup>3971</sup> The Chamber finds that between 8 and 13 June 1993, the international observers noticed only very little damage, with at most three or four houses destroyed.<sup>3972</sup> On 13 June 1993, Witness Vaughan Kent-Payne did not notice any attempts to destroy Croatian houses in Guča Gora and considered that the damage was collateral and caused by the fighting.<sup>3973</sup> The witness pointed out that the weapons used during the fighting in Guča Gora were not heavy enough to destroy buildings,<sup>3974</sup> and that the damage was caused by shrapnel.<sup>3975</sup> The Civilian Protection in Guča Gora pointed out that five houses were destroyed as a result of the combat activities and that two houses had burned to the ground on 8 June and 9 June 1993.<sup>3976</sup> Consequently, the Chamber finds that the acts of destruction which occurred during the fighting do not constitute large-scale destruction not justified by military necessity.

1798. The Chamber finds that destruction also occurred after the fighting, but that the identity of the perpetrators of that destruction has not been established. Accordingly, the report of 26 July 1993 from the Civilian Protection in Guča Gora notes that houses were destroyed outside any context of combat operations but provides no information about the identity of the perpetrators.<sup>3977</sup> The time the destruction took place is indicated for only four houses which were damaged between 10 and 12 July 1993. The Chamber notes, however, that those estimates include destruction which took place after the time material to the Indictment, namely from 1 to 30 June 1993.<sup>3978</sup> Regarding the statements of Witness ZI and the sketches and photographs attached to those statements, the Chamber recalls its Decision on the Admissibility of Certain Challenged Documents and Documents for Identification of 27 July 2004, in which it found that the statements of Witness ZI were based on hearsay<sup>3979</sup> and in which the Chamber decided to use those documents only to corroborate other evidence.<sup>3980</sup> The Chamber noted that the sketches and statements of Witness ZI were based on statements of persons who did not appear during the trial,<sup>3981</sup> and also that the sketches and photographs reflect the situation which prevailed in 2002 but offer no direct response

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<sup>3971</sup> See DH 1978; DH 2055; Abid Izmirlić, T(F) p. 16733, which demonstrates that there is no visibility between Nova Bila and Guča Gora, because of the 5,850 metres separating the two towns and because the hill obstructs any possible view.

<sup>3972</sup> Hendrik Morsink, T(F) p. 8059; Vaughan Kent-Payne, T(F) p. 4941; DH 71; DH 1345.

<sup>3973</sup> Vaughan Kent-Payne, T(F) p. 4941, T(E) p. 4941.

<sup>3974</sup> Vaughan Kent-Payne, T(F) p. 4942.

<sup>3975</sup> Vaughan Kent-Payne, T(F) p. 4941.

<sup>3976</sup> DH 1345.

<sup>3977</sup> DH 1345.

<sup>3978</sup> See Indictment, para. 44

<sup>3979</sup> Decision of 16 July 2004 on the Admissibility of Certain Challenged Documents and Documents for Identification, para. 94.

<sup>3980</sup> *Ibid.*, para. 95.

<sup>3981</sup> *Ibid.*, para. 94.



in relation to the destruction which allegedly took place in June 1993.<sup>3982</sup> Accordingly, the Chamber considers that the observations of Witness ZI,<sup>3983</sup> who mentions many more incidents of destruction than the Civilian Protection in Guča Gora, do not constitute evidence with sufficient probative value.

(iii) Conclusions of the Chamber

1799. The Chamber is of the view that the Prosecution failed to prove that the destruction which took place during the fighting in Guča Gora in June 1993 was carried out on a large scale, or that the destruction was not justified by military necessity. The Prosecution also failed to demonstrate that the perpetrators of the destruction after the fighting were members of the ABiH 3<sup>rd</sup> Corps, with the understanding that the 7<sup>th</sup> Brigade and 17<sup>th</sup> Brigade were not at the site, contrary to what is alleged in the Indictment. The Accused Hadžihasanović therefore may not be held responsible for acts of destruction committed in Guča Gora in June 1993.

(d) Maline

1800. The Indictment alleges that members of the 7<sup>th</sup> Brigade<sup>3984</sup> and 306<sup>th</sup> Brigade carried out the unlawful and arbitrary destruction not justified by military necessity of dwellings, buildings, and civilian personal property belonging to Bosnian Croats and Bosnian Serbs in Maline in June 1993.<sup>3985</sup> Likewise, the Indictment alleges that the Accused knew or had reason to know that the members of those units, under their command and effective control, were about to commit acts of destruction, or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>3986</sup> The Accused Hadžihasanović and the Accused Kubura are therefore accused of wanton destruction of towns and villages not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

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<sup>3982</sup> *Ibid.*, para. 93.

<sup>3983</sup> P 80 (under seal); P 86 (under seal). According to the sketches by Witness ZI, dated 8 April 2002, 59 houses were destroyed in Guča Gora.

<sup>3984</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>3985</sup> Indictment, para. 44.

<sup>3986</sup> Indictment, para. 45.

(i) Arguments of the Parties

1801. The Prosecution argues that the 3<sup>rd</sup> Corps units were in Maline on 8 June 1993 and that buildings were on fire at the time of the attack.<sup>3987</sup> The Prosecution submits that although the 3<sup>rd</sup> Corps Command had been informed of those acts, the Accused Hadžihasanović nonetheless failed to take measures to punish the perpetrators.<sup>3988</sup>

1802. The Defence for the Accused Hadžihasanović submits that it has not been established that the damage reached the necessary threshold and that the destruction was not justified by military necessity. The Defence for the Accused Hadžihasanović further submits that the Prosecution failed to prove that the alleged destruction was caused by members of the ABiH or that the Accused Hadžihasanović was informed of the destruction.<sup>3989</sup>

1803. The Defence for the Accused Kubura submits that the Prosecution failed to prove that the Accused Kubura exercised control over the perpetrators of the crimes allegedly committed in Maline in June 1993.<sup>3990</sup> The Defence for the Accused Kubura argues that no evidence indicates that members of the 7<sup>th</sup> Brigade were in Maline and participated in crimes committed there<sup>3991</sup> and that the evidence demonstrates that the 7<sup>th</sup> Brigade units were elsewhere at the material time.<sup>3992</sup>

(ii) Findings of the Chamber regarding Wanton Destruction in Maline

1804. On 7 June 1993, the village of Maline was attacked from HVO positions.<sup>3993</sup> In the early hours of the morning of 8 June 1993, the HVO and ABiH exchanged fire.<sup>3994</sup> Only when the HVO stopped resisting did the ABiH troops, composed of the 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions, enter Maline.<sup>3995</sup> At 1000 hours on 8 June 1993, the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Military Police arrived in Maline to assist in evacuating the civilian population.<sup>3996</sup> Part of the battalion escorted 200 inhabitants towards Mehurići while the rest of the battalion remained in Maline to protect the

<sup>3987</sup> Prosecution Final Brief, para. 309.

<sup>3988</sup> *Ibid.*, para. 310. The Prosecution does not mention the Accused Kubura in relation to knowledge of measures taken.

<sup>3989</sup> Hadžihasanović Defence Final Brief, para. 548.

<sup>3990</sup> Kubura Defence Final Brief, para. 66.

<sup>3991</sup> *Ibid.*, paras. 61 and 99.

<sup>3992</sup> *Ibid.*, para. 99.

<sup>3993</sup> Salim Tarakčija, T(F) p. 11803.

<sup>3994</sup> P 387 (under seal), para. 7; Salim Tarakčija, T(F) pp. 11804, 11850 and 11851.

<sup>3995</sup> Salim Tarakčija, T(F) p. 11804.

<sup>3996</sup> Witness HB, T(F) pp. 12589-12590; DH 2090, para. 6.

property of the villagers.<sup>3997</sup> The column of villagers, escorted by the military police, was intercepted not far from Poljanice by a group of mujahedin who took some men towards Bikoši.<sup>3998</sup>

1805. Contrary to the allegations of the Prosecution,<sup>3999</sup> the 7<sup>th</sup> Brigade did not participate in the combat operations in Maline. The evidence in fact demonstrates that the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion conducted combat operations in Hajdareve Njive,<sup>4000</sup> located about 12 kilometres from Maline,<sup>4001</sup> while the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions operated in Ovnak sector at the time of the alleged events.<sup>4002</sup>

1806. Witness ZK was in Maline when the fighting began on the morning of 8 June 1993 at 0330 hours.<sup>4003</sup> The fighting lasted until 0700 hours and the witness saw his cowshed as well as a house and another cowshed catch fire after shots and shells were fired.<sup>4004</sup> During the attack on Maline, Witness ZL saw the Muslim army burn down many houses.<sup>4005</sup> At around 1700 or 1800 hours on 8 June 1993,<sup>4006</sup> Witness Z5 saw a cowshed and a house on fire.<sup>4007</sup> That same day, Witness Z15 saw three cowsheds on fire. The witness did not see who set the fires but assumed the perpetrators were soldiers from the ABiH, since the village was under that army's control.<sup>4008</sup> According to Witness Salim Tarakčija, a number of buildings inhabited by the Croats had burned down and had been damaged on 8 June 1993 in the course of the fighting.<sup>4009</sup> Witness HB, who was in Maline on 8 June 1993 between 0900 or 1000 hours and 1300 or 1400 hours, noticed that smoke was coming from some houses, but did not see any soldiers deliberately set fires.<sup>4010</sup> After receiving information that the mujahedin had committed the crimes, Witness Vaughan Kent-Payne went to Maline on 13 June 1993.<sup>4011</sup> The witness stayed in the village of Maline for 35 to 40 minutes and never left the

<sup>3997</sup> Witness HB, T(F) p. 12592; DH 2090, para. 7; Witness ZF, T(F), pp. 3604-3605; Witness XB, T(F) pp. 1644-1645; Berislav Marjanović, T(F) pp. 2700-2701.

<sup>3998</sup> Ivanka Tavić, T(F) p. 1165; Zdravko Pranješ, T(F) pp. 1372 and 1380; Witness HB, T(F) pp. 12637-12638; Witness XB, T(F) pp. 1645-1646.

<sup>3999</sup> Prosecution Final Brief, paras. 194-196.

<sup>4000</sup> Remzija Šiljak, T(F) pp. 10572-10573; Semir Terzić, T(F) p. 18256; Safet Junuzović, T(F) pp. 18505, 18507-18508; Suad Jusović, T(F) pp. 18435-18437; DK 18; DK 19; DK 34; P 465.

<sup>4001</sup> Remzija Šiljak, T(F) pp. 10575-10576.

<sup>4002</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>4003</sup> P 92 (under seal), para. 8.

<sup>4004</sup> P 92 (under seal), para. 10.

<sup>4005</sup> Witness ZL, T(F) pp. 4384-4385. Witness ZL saw the house of Mekudić on fire after it had been shelled. His own houses and cowsheds caught fire that morning, as did the house of his brother, and the houses of Kramar, Stipo Djaković, Tavić Smilja, Marko Jurić, Drago Jurić, and Kate Sarić.

<sup>4006</sup> P 387 (under seal), para. 9.

<sup>4007</sup> P 387 (under seal), para. 10.

<sup>4008</sup> P 397 (under seal), para. 6.

<sup>4009</sup> Salim Tarakčija, T(F), p. 11806.

<sup>4010</sup> Witness HB, T(F) pp. 12596-12597.

<sup>4011</sup> Vaughan Kent-Payne, T(F) p. 4794.

main roads.<sup>4012</sup> During that visit, he noticed that three houses had caught fire but that the other houses had not been damaged. Nonetheless, the witness was not able to establish the date, the cause, or the perpetrators of the damage.<sup>4013</sup> On 28 June 1993, the Civilian Protection in Travnik municipality noted that 29 houses and cowsheds had been partially or totally destroyed.<sup>4014</sup> Well after the end of the fighting, when Witness Z15 returned to Maline on 10 April 1994, he could see that all the Croatian houses had burned, except for five or six houses inhabited by Muslims.<sup>4015</sup> In April 2002, Witness ZI went to Maline to gather information about the houses which had been destroyed in June 1993.<sup>4016</sup> Following that visit, the witness drew sketches of Maline indicating that 49 houses were damaged or destroyed.<sup>4017</sup>

1807. In view of the above evidence, the Chamber finds that certain property was damaged or destroyed during the fighting. According to the report from the Civilian Protection in Travnik municipality, on 7 June 1993 two cowsheds and four houses were damaged or destroyed from HVO positions.<sup>4018</sup> The report also indicates that 12 houses and cowsheds were destroyed or damaged on 8 June 1993 as a result of the fighting between the HVO and the ABiH.<sup>4019</sup> The Civilian Protection in Travnik municipality was able to determine, in certain cases, whether the houses had been destroyed or damaged from the positions held by one army or the other.<sup>4020</sup> Nevertheless, regarding most of the destruction, the Civilian Protection in Travnik municipality was not able to establish the identity of the perpetrators.<sup>4021</sup> The Chamber concludes that the destruction may have been caused by the HVO units and those of the ABiH as a result of the combat operations in Maline, but that this does not constitute destruction committed on a large scale not justified by military necessity.

1808. The Chamber finds that destruction was also caused after the fighting, but that the evidence does not establish the identity of the perpetrators. The report from the Civilian Protection in Travnik municipality notes that houses were burned down in June 1993, once the combat operations had ceased but does not provide any indication as to the cause or perpetrators of the destruction.<sup>4022</sup> The Chamber also notes that while other property was damaged after June 1993,<sup>4023</sup> it may not be included in the period set out in the Indictment, which runs from 1 to 30 June 1993. Regarding the

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<sup>4012</sup> Vaughan Kent-Payne, T(F), p. 4800.

<sup>4013</sup> Vaughan Kent-Payne, T(F) pp. 4894-4895.

<sup>4014</sup> DH 1214.

<sup>4015</sup> P 397 (under seal), para. 11.

<sup>4016</sup> P 80 (under seal).

<sup>4017</sup> P 87 (under seal).

<sup>4018</sup> DH 1214.

<sup>4019</sup> DH 1214.

<sup>4020</sup> DH 1214.

<sup>4021</sup> DH 1214.

<sup>4022</sup> DH 1214.

statements of Witness ZI as well as the sketches and photographs attached to those statements, the Chamber recalls its Decision on the Admissibility of Certain Challenged Documents and Documents for Identification of 27 July 2004, in which it found that the statements of Witness ZI were based on hearsay,<sup>4024</sup> and in which the Chamber decided to use those documents only to corroborate other evidence.<sup>4025</sup> The Chamber noted that the sketches and statements given by Witness ZI were based on the statements of persons who did not appear during the trial,<sup>4026</sup> and also that the sketches and photographs reflect the situation which prevailed in 2002 and offer no direct response as to the destruction which allegedly took place in 1993.<sup>4027</sup> Accordingly, the Chamber considers that the observations of Witness ZI,<sup>4028</sup> who mentions many more incidents of destruction than the Civilian Protection in Travnik municipality, do not constitute evidence with sufficient probative value.

(iii) Conclusions of the Chamber

1809. The Chamber considers that the evidence supports the finding that the 7<sup>th</sup> Brigade was not in Maline in June 1993. Accordingly, the Chamber considers that the perpetrators of the destruction committed in Maline were not under the effective control of the Accused Kubura and that as a result he cannot be held responsible for those crimes.

1810. Regarding the Accused Hadžihasanović, the Chamber considers that the Prosecution failed to prove that the acts of destruction which occurred during the fighting in Maline in June 1993 were committed on a large scale, or that the acts were not justified by military necessity. The Prosecution also failed to demonstrate that the perpetrators of the destruction caused after the fighting were members of the ABiH 3<sup>rd</sup> Corps 306<sup>th</sup> Brigade. The Chamber concludes that the Accused Hadžihasanović cannot be held responsible for the acts of destruction committed in Guča Gora in June 1993.

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<sup>4023</sup> P 397 (under seal), para. 7.

<sup>4024</sup> Decision of 16 July 2004 on the Admissibility of Certain Challenged Documents and Documents for Identification, para. 94.

<sup>4025</sup> *Ibid.*, para. 95.

<sup>4026</sup> *Ibid.*, para. 94.

<sup>4027</sup> *Ibid.*, para. 93.

<sup>4028</sup> P 80 (under seal); P 87 (under seal). According to the sketches by Witness ZI, dated 8 April 2002, 49 houses in Maline were destroyed.

(c) Čukle

1811. The Indictment alleges that members of the 7<sup>th</sup> Brigade<sup>4029</sup> and 306<sup>th</sup> Brigade caused unlawful and arbitrary destruction not justified by military necessity of dwellings, buildings, and civilian personal property belonging to Bosnian Croats and Bosnian Serbs in Čukle in June 1993.<sup>4030</sup> The Indictment alleges that the Accused Hadžihasanović knew or had reason to know that the members of those units, under his command and effective control, were about to commit acts of destruction or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4031</sup> The Accused Hadžihasanović is therefore accused of the crime of wanton destruction of towns and villages not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

(i) Arguments of the Parties

1812. The Prosecution argues that on 8 June 1993, during the attack, 3<sup>rd</sup> Corps soldiers set fire to houses in Čukle.<sup>4032</sup> The Prosecution adds that the Accused Hadžihasanović and the Accused Kubura knew that property belonging to Croatian civilians had been burned in the sectors of Guča Gora, Šušanj and Ovnak, and points out that the Accused failed to take the necessary and reasonable measures to stop the crimes committed in Čukle or to punish the perpetrators.<sup>4033</sup> The Chamber notes, however, that the Indictment contains no charge against the Accused Kubura for the destruction committed in Čukle in June 1993 and that, as a result, it may not be seized of the question of his responsibility in relation to the destruction committed in Čukle in June 1993.

1813. The Defence for the Accused Hadžihasanović does not dispute that houses were damaged, but argues that the damage in question was not caused gratuitously and that the village was not destroyed without reason. The Defence for the Accused Hadžihasanović adds that while some damage may have been caused during the fighting, most was caused afterwards, and notes that the cause of the damage during and after the fighting has not been established. The Defence for the

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<sup>4029</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4030</sup> Indictment, para. 44.

<sup>4031</sup> Indictment, para. 45.

<sup>4032</sup> Prosecution Final Brief, para. 313.

<sup>4033</sup> *Ibid.*, para. 319.

Accused Hadžihasanović further submits that the Prosecution failed to prove that the subordinates of the Accused Hadžihasanović participated in the criminal activities in question.<sup>4034</sup>

(ii) Findings of the Chamber regarding Wanton Destruction in Čukle

1814. On 5 June 1993, units of the 7<sup>th</sup> Brigade received the order to launch an attack on the Vrselje-Crni Vrh-Ušice-Čukle-Brajkovići axis and to take control of the villages of Čukle and Novo Selo.<sup>4035</sup> At around 0430 hours on the morning of 8 June 1993, the village of Čukle was attacked.<sup>4036</sup> During that offensive, the HVO front line, which was in the village of Čukle in the hamlet of Mrkonje Kuće, was breached.<sup>4037</sup> HVO units then headed in the direction of Ovnak and Grahovčići.<sup>4038</sup> The inhabitants of the village of Čukle also withdrew towards Ovnak.<sup>4039</sup>

1815. Contrary to the allegations of the Prosecution,<sup>4040</sup> the Chamber finds that it has not been established beyond a reasonable doubt that the 306<sup>th</sup> Brigade took part in the attack on Čukle. The evidence in fact demonstrates that on 8 June 1993, the brigade was headed towards the Maline-Guča Gora-Mosor-Bukovica axis.<sup>4041</sup> The 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions were fighting in Maline,<sup>4042</sup> while the unit's 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were in Guča Gora.<sup>4043</sup>

1816. When the attack began on 8 June 1993, Witness Jozo Erenda heard many shots fired and saw the Muslim army set fire to houses belonging to Croats.<sup>4044</sup> The witness was not, however, able to see the insignia worn by the people who were firing or able to establish the identity of those who had set fire to the houses.<sup>4045</sup> At around 0400 hours on the morning of 8 June 1993, Witness ZM was in Ovnak and noticed that four or five houses were burning in the hamlet of Mrkonje Kuće in Čukle.<sup>4046</sup> The witness was not, however, in a position to identify the perpetrators of those fires or to determine what methods the perpetrators used to burn the dwellings.<sup>4047</sup> When the Muslims attacked Čukle,<sup>4048</sup> Witness ZD could see houses burning in the village and on the road to Ovnak.<sup>4049</sup>

<sup>4034</sup> Hadžihasanović Defence Final Brief, para. 584.

<sup>4035</sup> P 419; P 420.

<sup>4036</sup> Jozo Erenda, T(F) p. 4265.

<sup>4037</sup> Witness ZM, T(F) p. 4699.

<sup>4038</sup> Jozo Erenda, T(F) pp. 4266 and 4272.

<sup>4039</sup> Ivo Kolenda, T(F) p. 4469; P 384 (under seal), para. 5.

<sup>4040</sup> See Indictment, para. 44; Prosecution Final Brief, paras. 311 and 312.

<sup>4041</sup> DK 22.

<sup>4042</sup> Salim Tarakčija, T(F), p. 11804.

<sup>4043</sup> Salim Tarakčija, T(F), p. 11805.

<sup>4044</sup> Jozo Erenda, T(F) p. 4266

<sup>4045</sup> Jozo Erenda, T(F) pp. 4272-4273.

<sup>4046</sup> Witness ZM, T(F) pp. 4699-4700.

<sup>4047</sup> Witness ZM, T(F) p. 4733.

<sup>4048</sup> Witness ZD, T(F) pp. 3385-3386.

<sup>4049</sup> Witness ZD, T(F) pp. 3384-3386.

and could hear soldiers shouting “*Allah-u-akbar*”.<sup>4050</sup> According to Witness Ivo Kolenda, on the day of the attack five houses had already caught fire before dawn.<sup>4051</sup> From Pješčara, the witness could see through his binoculars one to three houses burning each night, until all the houses were destroyed.<sup>4052</sup> This continued until 11 or 12 June 1993.<sup>4053</sup> He believed that it was soldiers from the 3<sup>rd</sup> Corps, especially the 7<sup>th</sup> Brigade,<sup>4054</sup> but admitted that he was not in a position to see who was setting fire to the houses or to determine how they caught fire.<sup>4055</sup> Witness Z2 saw houses burning at 0700 hours on the morning of 8 June 1993 and the following evening, but did not see who set them on fire.<sup>4056</sup> The day of the attack, Witness Z3 saw three houses burning<sup>4057</sup> on her way towards Gornje Čukle.<sup>4058</sup> She did not see the people who started those fires but pointed out that the village was under ABiH control.<sup>4059</sup> Then, during her detention in the village of Bare from 8 to 12 June 1993, Witness Z3 saw that ABiH soldiers were setting fire to houses which belonged to the Croats in Čukle.<sup>4060</sup> From the position he occupied in Strmac,<sup>4061</sup> Witness Žarko Jandrić noticed, in the early morning, that the houses in Čukle had been burned down.<sup>4062</sup> In April 2002, Witness ZI went to Čukle to gather information about the houses that had been destroyed in June 1993.<sup>4063</sup> Following that visit, the witness drew some sketches of Čukle indicating that 62 houses in Donje Čukle had been destroyed or damaged and that 60 houses had been destroyed in Gornje Čukle.<sup>4064</sup>

1817. The Chamber finds that houses were destroyed in Čukle in 1993. Several witnesses saw houses on fire during the attack of 8 June 1993.<sup>4065</sup> With regard to Žarko Jandrić’s observations, the Chamber considers that it has not been established that he was in a position to see houses burning in Čukle.<sup>4066</sup> The United Nations Centre for Human Rights in Zagreb noted on 18 June 1993 that 32

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<sup>4050</sup> Witness ZD, T(F) p. 3386.

<sup>4051</sup> Ivo Kolenda, T(F) p. 4469.

<sup>4052</sup> Ivo Kolenda, T(F) pp. 4471 and 4484.

<sup>4053</sup> Ivo Kolenda, T(F) p. 4485.

<sup>4054</sup> Ivo Kolenda, T(F) p. 4472. The witness believed it was the 7<sup>th</sup> Brigade since that brigade had already attempted to attack HVO forces in Usiće and Grahovčići.

<sup>4055</sup> Ivo Kolenda, T(F) p. 4482. Pješčara was located seven or eight kilometres from Čukle and from that distance the witness could only see smoke.

<sup>4056</sup> P 384 (under seal), paras. 6 and 16.

<sup>4057</sup> P 385 (under seal), para. 5.

<sup>4058</sup> P 385 (under seal), paras. 5-6.

<sup>4059</sup> P 385 (under seal), para. 5.

<sup>4060</sup> P 385 (under seal), para. 7.

<sup>4061</sup> Witness Žarko Jandrić, T(F) p. 950.

<sup>4062</sup> Witness Žarko Jandrić, T(F) p. 953.

<sup>4063</sup> P 80 (under seal).

<sup>4064</sup> P 88 (under seal); P 89 (under seal).

<sup>4065</sup> Jozo Erenda, T(F) p. 4266; Witness ZM, T(F) pp. 4699-4700; Witness ZD, T(F) pp. 3384-3386; Ivo Kolenda, T(F) pp. 4484-4485; P 384 (under seal), paras. 6 and 16; P 385 (under seal), para. 5.

<sup>4066</sup> See DH 1978; Abid Izmirlić, T(F) pp. 16725-16727, which demonstrate that Strmac is not visible from Gornje Čukle and vice versa; C 21, pp. 10-11.



houses had burned to the ground.<sup>4067</sup> On 23 July 1993, the staff from the Civilian Protection in Han Bila went to Čukle and noted that, of 173 houses, two had burned, 25 had caught on fire, and eight had broken windows. The remaining houses were in good condition.<sup>4068</sup> Neither the report of the United Nations Centre for Human Rights in Zagreb nor that of the Civilian Protection in Han Bila specify the date on which the houses were destroyed. Furthermore, the Chamber notes that those reports were drafted in late July 1993 and consequently those estimates may include destruction that was caused after the period material to the Indictment, which runs from 1 to 30 June 1993. Regarding the statements of Witness ZI as well as the sketches and photographs attached to those statements, the Chamber recalls its Decision on the Admissibility of Certain Challenged Documents and Documents for Identification of 27 July 2004, in which it found that the statements of Witness ZI were based on hearsay<sup>4069</sup> and in which the Chamber decided to use those documents only to corroborate other evidence.<sup>4070</sup> The Chamber noted that the sketches and statements given by Witness ZI were based on the statements of persons who did not appear during the trial<sup>4071</sup> and also that the sketches and photographs reflect the situation which prevailed in 2002 and offer no direct response as to the destruction which allegedly took place in June 1993.<sup>4072</sup> Accordingly, the Chamber considers that the observations of Witness ZI,<sup>4073</sup> who mentions many more incidents of destruction than the Civilian Protection in Han Bila, do not constitute evidence with sufficient probative value.

1818. The Chamber considers that the circumstances under which the destruction was carried out have not been established, as witnesses stated that they could not determine how the houses had caught on fire.<sup>4074</sup> As regards the perpetrators of the destruction, witnesses stated that they were members of the Muslim army<sup>4075</sup> of the ABiH,<sup>4076</sup> or more specifically, of the 3<sup>rd</sup> Corps.<sup>4077</sup> Witnesses, however, acknowledged that they had not been in a position to identify the perpetrators of the destruction.<sup>4078</sup> The reports of the Civilian Protection in Han Bila<sup>4079</sup> and the United Nations

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<sup>4067</sup> P 277.

<sup>4068</sup> DH 1337.

<sup>4069</sup> Decision of 16 July 2004 on the Admissibility of Certain Challenged Documents and Documents for Identification, para. 94.

<sup>4070</sup> *Ibid.*, para. 95.

<sup>4071</sup> *Ibid.*, para. 94.

<sup>4072</sup> *Ibid.*, para. 93.

<sup>4073</sup> P 80 (under seal); P 88 (under seal); P 89 (under seal).

<sup>4074</sup> Witness ZM, T(F) p. 4733; Ivo Kolenda, T(F) p. 4482.

<sup>4075</sup> Jozo Erenda, T(F) p. 4266.

<sup>4076</sup> P 385 (under seal), paras. 7-8.

<sup>4077</sup> Ivo Kolenda, T(F) p. 4472.

<sup>4078</sup> Jozo Erenda, T(F) pp. 4272-4273; Witness ZM, T(F) p. 4733; Ivo Kolenda, T(F) p. 4482; P 384, paras. 6 and 16; P 385 (under seal), para. 5.

<sup>4079</sup> DH 1337.

Centre for Human Rights in Zagreb<sup>4080</sup> provide no further details as to the identity of the perpetrators of the destruction or its cause.

(iii) Conclusions of the Chamber

1819. The Chamber considers that the Prosecution has failed to demonstrate that the destruction in June 1993 in Čukle was caused by members of the 3<sup>rd</sup> Corps. Consequently, the Accused Hadžihasanović cannot be held responsible for the crimes committed in Čukle in June 1993. Moreover, in spite of the allegations of the Prosecution in its Final Brief,<sup>4081</sup> the Chamber considers that it may not be seized of the question of the responsibility of the Accused Kubura, since he is not charged in the Indictment with the destruction committed in Čukle in June 1993.

(f) Šušanj/Ovnak/Brajkovići/Grahovčići

1820. The Indictment alleges that members of the 7<sup>th</sup> Brigade, 306<sup>th</sup> Brigade, and 314<sup>th</sup> Brigade carried out the unlawful and arbitrary destruction not justified by military necessity of dwellings, buildings, and civilian personal property belonging to Bosnian Croats and Bosnian Serbs in Šušanj, Ovnak, Brajkovići, and Grahovčići in June 1993.<sup>4082</sup> The Indictment alleges that the Accused knew or had reason to know that the members of those units, under their command and effective control, were about to commit acts of destruction, or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4083</sup> The Accused Hadžihasanović and the Accused Kubura are therefore accused of wanton destruction of towns and villages not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

(i) Arguments of the Parties

1821. The Prosecution alleges that during and immediately after the attacks launched by 3<sup>rd</sup> Corps units of the 7<sup>th</sup> Brigade, 306<sup>th</sup> Brigade and 314<sup>th</sup> Brigade, buildings were destroyed, some by 7<sup>th</sup> Brigade soldiers.<sup>4084</sup> The Prosecution adds that the Accused were informed of the crimes committed by their subordinates, but took no measures. The only exception consisted of written

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<sup>4080</sup> P 277.

<sup>4081</sup> Prosecution Final Brief, para. 319.

<sup>4082</sup> Indictment, para. 44.

<sup>4083</sup> *Ibid.*, para. 45.

<sup>4084</sup> Prosecution Final Brief, para. 320.

orders to prohibit the commission of crimes, to prevent crimes, or to punish the perpetrators of crimes.<sup>4085</sup>

1822. The Defence for the Accused Hadžihasanović does not dispute that property was damaged in Čukle but argues that the damage was not significant enough. The Defence for the Accused Hadžihasanović adds that the Prosecution failed to prove that the destruction was not justified by military necessity and also failed to prove when the alleged destruction occurred. The Defence for the Accused Hadžihasanović further submits that the Prosecution failed to demonstrate that the Accused Hadžihasanović was aware of those acts of destruction and argues that the 3<sup>rd</sup> Corps took measures to prevent and punish the acts in question throughout 1993.<sup>4086</sup>

1823. The Defence for the Accused Kubura submits that the damage caused during the attack was the result of legitimate military operations and that the acts of destruction occurred after June 1993, outside of the period material to the Indictment.<sup>4087</sup> The Defence for the Accused Kubura points out that limited acts of destruction must be excluded, since the first constituent element of the offence referred to in Article 3(b) of the Statute requires that acts of destruction be committed on a large scale.<sup>4088</sup> The Defence for the Accused Kubura further submits that the Prosecution failed to prove the identity of the perpetrators of the destruction.<sup>4089</sup>

(ii) Findings of the Chamber regarding Wanton Destruction in Šušanj/Ovnak/Brajkovići/Grahovčići

1824. In early June 1993, combat operations spread towards the Bila Valley.<sup>4090</sup> The ABiH decided to attack the Ovnak pass which was occupied by the HVO forces, given the tactical and operational significance that sector represented.<sup>4091</sup> Since the 306<sup>th</sup> Brigade found itself in a difficult position vis-à-vis the HVO forces, a decision was made to use other 3<sup>rd</sup> Corps units in Ovnak sector to assist the 306<sup>th</sup> Brigade.<sup>4092</sup> A tactical group composed of 7<sup>th</sup> Brigade<sup>4093</sup> and 314<sup>th</sup> Brigade units was given the mission to take control of Ovnak sector.<sup>4094</sup> On 8 June 1993, in the early morning

<sup>4085</sup> Prosecution Final Brief, para. 322.

<sup>4086</sup> Hadžihasanović Defence Final Brief, para. 733.

<sup>4087</sup> Kubura Defence Final Brief, para. 179.

<sup>4088</sup> *Ibid.*, para. 181.

<sup>4089</sup> *Ibid.*, paras. 164 and 180.

<sup>4090</sup> Džemal Merdan, T(F) p. 13125.

<sup>4091</sup> Džemal Merdan, T(F) p. 13126.

<sup>4092</sup> Džemal Merdan, T(F) pp. 13125-13126; P 420

<sup>4093</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4094</sup> P 420; P 419.; Mirsad Ibraković, T(F) pp. 14373-14374.

hours, fighting began between the HVO and the ABiH forces.<sup>4095</sup> The 7<sup>th</sup> Brigade<sup>4096</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Battalions intervened in Ovnak on 8 June 1993<sup>4097</sup> and the fighting lasted until mid-afternoon.<sup>4098</sup> The village of Brajkovići was attacked in the late morning.<sup>4099</sup> Šušanj, which was deserted by its inhabitants, had not been included in the combat operations.<sup>4100</sup> In fact, the 7<sup>th</sup> Brigade units did not enter the villages of Brajkovići, Grahovčići and Šušanj.<sup>4101</sup> After receiving orders to move towards Kakanj,<sup>4102</sup> the 7<sup>th</sup> Brigade units left Ovnak sector on 9 June 1993.<sup>4103</sup>

1825. Contrary to the allegations of the Prosecution,<sup>4104</sup> the evidence demonstrates that the 306<sup>th</sup> Brigade did not take part in the attack on the villages of Šušanj, Ovnak, Brajkovići and Grahovčići. On 8 June 1993, that brigade was positioned along the Maline-Guča Gora-Mosor-Bukovica axis.<sup>4105</sup> The 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions were conducting combat operations in Maline,<sup>4106</sup> while the 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were in Guča Gora.<sup>4107</sup>

1826. After arriving in Šušanj on 9 June 1993, Witness Ivo Vuleta could see that Tomo Marković's house had caught fire during the fighting because of a shell and that the doors of houses in the village were damaged.<sup>4108</sup> On 10 June 1993, Witness Mijo Marković went to Šušanj for the Civil Defence.<sup>4109</sup> He saw several houses burning but did not know how the fires started.<sup>4110</sup> When Witness Jozo Marković returned to Šušanj, in around mid-June 1993, he could see young people aged 16 or 17 breaking windows of the houses.<sup>4111</sup> The United Nations Centre for Human Rights in Zagreb noted on 18 June 1993 that two houses and two cowsheds had burned to the ground.<sup>4112</sup> In April 2002, Witness ZI went to Šušanj to gather information about houses that had been destroyed

<sup>4095</sup> Franjo Križanac, T(F) pp. 1099-1101; P 400 (under seal), para. 6.

<sup>4096</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>4097</sup> Kasim Alajbegović, T(F) p. 18699; Elvedin Omić, T(F) pp. 18598-18599; Safet Junuzović, T(F) p. 18514.

<sup>4098</sup> Kasim Alajbegović, T(F) p. 18700; Safet Junuzović, T(F) p. 18517.

<sup>4099</sup> Franjo Križanac, T(F) p. 1101; P 400, para. 7.

<sup>4100</sup> Safet Junuzović, T(F) p. 18516.

<sup>4101</sup> Safet Junuzović, T(F) p. 18516.

<sup>4102</sup> Safet Junuzović, T(F) p. 18517.

<sup>4103</sup> Safet Junuzović, T(F) p. 18517; Kasim Alajbegović, T(F) pp. 18701-18702.

<sup>4104</sup> Prosecution Final Brief, para. 320.

<sup>4105</sup> DK 22; Džemal Merdan, T(F) p. 13125.

<sup>4106</sup> Salim Tarakčija, T(F), p. 11804.

<sup>4107</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4108</sup> Ivo Vuleta, T(F) pp. 4452-4453.

<sup>4109</sup> Mijo Marković, T(F) p. 2365.

<sup>4110</sup> Mijo Marković, T(F) p. 2372.

<sup>4111</sup> Jozo Marković, T(F) p. 4423.

<sup>4112</sup> P 277.

in June 1993.<sup>4113</sup> Following that visit, the witness drew sketches of Šušanj indicating that 28 houses had been destroyed or damaged.<sup>4114</sup>

1827. During the fighting in Ovnak, Witness Kasim Podžić did not see any burning buildings but recalled seeing buildings which had been damaged before the operations began.<sup>4115</sup> On the morning of 8 June 1993, Witness Elvedin Omić did not see any damage other than the bullet holes on houses in Ovnak.<sup>4116</sup> On 11 June 1993, Witness Franjo Križanac went all around the village of Ovnak and could see that all of the houses had been heavily damaged.<sup>4117</sup> He later noticed that the number of burning buildings was increasing.<sup>4118</sup> The United Nations Centre for Human Rights in Zagreb noted on 18 June 1993 that two houses had burned to the ground.<sup>4119</sup> In April 2002, Witness ZI went to Ovnak to gather information about houses that had been destroyed in June 1993.<sup>4120</sup> Following that visit, the witness drew sketches of Ovnak which indicated that 41 houses had been destroyed or damaged.<sup>4121</sup>

1828. Witness Franjo Križanac was in the parish church during the attack on Brajkovići on 8 June 1993.<sup>4122</sup> Around noon, a shell hit the church tower and, later, another fell in the cemetery.<sup>4123</sup> In the evening of 8 June 1993 Witness Z18 learned that the house of Nikica Josipović was burning.<sup>4124</sup> The ECMM observers went to Brajkovići on 10 June 1993 and observed that all of the houses were intact. The church in Brajkovići had also sustained no damage.<sup>4125</sup> On 14 June 1993, UNPROFOR staff noted that houses in Brajkovići village had been ransacked and those which had burned had been shelled.<sup>4126</sup> The United Nations Centre for Human Rights in Zagreb noted on 18 June 1993 that six houses had burned to the ground.<sup>4127</sup> Around 10 July 1993,<sup>4128</sup> Witness Z18 noticed that some thirty houses in Gornji Brajkovići had been damaged by fires.<sup>4129</sup> In April 2002, Witness ZI

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<sup>4113</sup> P 80 (under seal).

<sup>4114</sup> P 82 (under seal).

<sup>4115</sup> Kasim Podžić, T(F) p. 18665.

<sup>4116</sup> Elvedin Omić, T(F), p. 18604.

<sup>4117</sup> Franjo Križanac, T(F) p. 1108.

<sup>4118</sup> Franjo Križanac, T(F) pp. 1108-1109.

<sup>4119</sup> P 277.

<sup>4120</sup> P 80 (under seal).

<sup>4121</sup> P 81 (under seal).

<sup>4122</sup> Franjo Križanac, T(F) p. 1100.

<sup>4123</sup> Franjo Križanac, T(F) p. 1101.

<sup>4124</sup> P 400 (under seal), para. 9.

<sup>4125</sup> DH 196.

<sup>4126</sup> DH 72, para. 11.

<sup>4127</sup> P 277.

<sup>4128</sup> P 400 (under seal), para. 24. Witness Z18 was imprisoned from 9 or 10 June and was given a pass to go out after one month of imprisonment.

<sup>4129</sup> P 400 (under seal), para. 25.

went to Brajkovići to gather information about houses destroyed in June 1993.<sup>4130</sup> Following that visit, the witness drew sketches of Brajkovići indicating that three houses had been destroyed or damaged.<sup>4131</sup>

1829. During the evening of 8 June 1993, Witness ZD could see the houses in Grahovčići burning from the cave where she had taken refuge.<sup>4132</sup> From the positions he occupied in Strmac,<sup>4133</sup> Witness Žarko Jandrić was able to watch the fighting in Grahovčići which began at around 1100 hours on the morning of 8 June 1993 and continued until the early evening.<sup>4134</sup> He noticed that houses were catching fire as soon as soldiers approached them and that others were burning as a result of incendiary ammunition that was used.<sup>4135</sup> While he was not able to tell which insignia the soldiers were wearing, Witness Žarko Jandrić believed that the fires were started by ABiH soldiers.<sup>4136</sup> That witness believed that of 200 houses, only 5% remained intact, since most had burned down or were completely destroyed during or shortly after the war.<sup>4137</sup> On 10 June 1993, however, ECMM observers saw the village of Grahovčići which appeared intact.<sup>4138</sup> Witness Vaughan Kent-Payne went to Grahovčići on 14 June 1993, in the late afternoon, accompanied by a United Nations observer.<sup>4139</sup> That witness stayed in the village for 40 or 50 minutes<sup>4140</sup> and noticed that some buildings had been damaged as a result of the fighting.<sup>4141</sup> That same day, the UNPROFOR staff noted that the houses in the village of Grahovčići had been ransacked and that the houses which had burned had been shelled.<sup>4142</sup> The United Nations Centre for Human Rights in Zagreb noted on 18 June 1993 that 23 houses had been burned to the ground.<sup>4143</sup> On 23 July 1993, the Civilian Protection in Han Bila noted the damage in Grahovčići village: 32 houses and 10 cowsheds totally destroyed, 30 houses partially destroyed; 10 houses partially burned, and the remaining houses damaged and uninhabitable (with shattered windows and walls with bullet holes and shrapnel marks).<sup>4144</sup> In April 2002, Witness ZI went to Grahovčići to gather information about

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<sup>4130</sup> P 80 (under seal).

<sup>4131</sup> P 84 (under seal).

<sup>4132</sup> Witness ZD, T(F) p. 3387.

<sup>4133</sup> Žarko Jandrić, T(F) p. 950.

<sup>4134</sup> Žarko Jandrić, T(F) pp. 950-951.

<sup>4135</sup> Žarko Jandrić, T(F) p. 954.

<sup>4136</sup> Žarko Jandrić, T(F) p. 955.

<sup>4137</sup> Žarko Jandrić, T(F) p. 956.

<sup>4138</sup> DH 196. ECMM observers did not, however, visit the village.

<sup>4139</sup> Vaughan Kent-Payne, T(F) pp. 4811-4812.

<sup>4140</sup> Vaughan Kent-Payne, T(E) p. 4814.

<sup>4141</sup> Vaughan Kent-Payne, T(F) p. 4812.

<sup>4142</sup> DH 72, para. 11.

<sup>4143</sup> P 277.

<sup>4144</sup> DH 1337.

houses that had been destroyed in June 1993.<sup>4145</sup> Following that visit, the witness drew sketches of Grahovčići indicating that 97 houses had been destroyed or damaged.<sup>4146</sup>

1830. In view of the above evidence, the Chamber finds that buildings were damaged or destroyed in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići during combat operations. In fact, both the report of the Civilian Protection in Han Bila<sup>4147</sup> and that of the United Nations Centre for Human Rights in Zagreb<sup>4148</sup> mention damage in those villages. Moreover, the Chamber notes that the international observers stated that the damage was caused by the military operations. Witness Vaughan Kent-Payne believed that the damage in Grahovčići was caused by shelling and not by fires set deliberately.<sup>4149</sup> According to the UNPROFOR observers, the few houses that were burned to the ground were destroyed as a result of shelling.<sup>4150</sup> Consequently, the Chamber concludes that the acts of destruction which occurred during the fighting do not constitute large-scale destruction not justified by military necessity.

1831. The Chamber finds that the destruction was spread out over time and that some destruction also took place after the fighting. The Chamber considers, however, that the evidence neither establishes the identity of the perpetrators of the destruction nor the circumstances in which the destruction took place. Accordingly, both the report of the Civilian Protection in Han Bila and that of the United Nations Centre for Human Rights in Zagreb fail to provide information regarding the perpetrators of the destruction or the circumstances under which it occurred.<sup>4151</sup> The Chamber also notes that the estimates of the Civilian Protection in Han Bila cover a period which extends up to the end of July 1993 and therefore may include some destruction that took place after the period material to the Indictment, which runs from 1 to 30 June 1993. Regarding the statements of Witness ZI as well as the sketches and photographs attached to those statements, the Chamber recalls its Decision on the Admissibility of Certain Challenged Documents and Documents for Identification of 27 July 2004, in which it found that the statements of Witness ZI were based on hearsay<sup>4152</sup> and in which the Chamber decided to use those documents only to corroborate other evidence.<sup>4153</sup> The Chamber noted that the sketches and statements given by Witness ZI were based on the statements

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<sup>4145</sup> P 80 (under seal).

<sup>4146</sup> P 85 (under seal).

<sup>4147</sup> DH 1337.

<sup>4148</sup> P 277.

<sup>4149</sup> Vaughan Kent-Payne, T(F) p. 4916.

<sup>4150</sup> DH 72.

<sup>4151</sup> See DH 1337; P 277.

<sup>4152</sup> Decision of 16 July 2004 on the Admissibility of Certain Challenged Documents and Documents for Identification, para. 94.

<sup>4153</sup> *Ibid*, para. 95.

of persons who did not appear during the trial<sup>4154</sup> and also that the sketches and photographs reflect the situation which prevailed in 2002 and offer no direct response as to the destruction which allegedly took place in June 1993.<sup>4155</sup> Accordingly, the Chamber considers that the observations of Witness ZI,<sup>4156</sup> who mentions many more incidents of destruction than the Civilian Protection in Han Bila, do not constitute evidence with sufficient probative value.

(iii) Conclusions of the Chamber

1832. The Chamber considers that the Prosecution has failed to prove that the acts of destruction which occurred during the fighting in June 1993 in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići, were committed on a large scale and that the acts were not justified by military necessity. The Prosecution has also failed to demonstrate that the perpetrators of the destruction which was caused after the fighting were part of the ABiH 3<sup>rd</sup> Corps. Accordingly, the Accused Hadžihasanović and the Accused Kubura cannot be held responsible for the acts of destruction committed in Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993.

(g) Vareš

1833. The Indictment alleges that members of the 7<sup>th</sup> Brigade<sup>4157</sup> carried out the unlawful and arbitrary destruction not justified by military necessity of dwellings, buildings, and civilian personal property belonging to Bosnian Croats and Bosnian Serbs in Vareš in November 1993.<sup>4158</sup> The Indictment alleges that the Accused Kubura knew or had reason to know that the members of that unit, under his command and effective control, were about to commit acts of destruction or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4159</sup> The Accused Kubura is therefore charged with wanton destruction of towns and villages not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

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<sup>4154</sup> *Ibid.*, para. 94.

<sup>4155</sup> *Ibid.*, para. 93.

<sup>4156</sup> P 80 (under seal); P 81 (under seal); P 82 (under seal); P 84 (under seal); P 85 (under seal).

<sup>4157</sup> *See* Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4158</sup> Indictment, para. 44.

<sup>4159</sup> *Ibid.*, para. 45.



(i) Arguments of the Parties

1834. The Prosecution submits that the destruction in Vareš was caused on a large scale by soldiers of the 7<sup>th</sup> Brigade.<sup>4160</sup> The Prosecution further argues that the Accused Kubura failed in his duty to prevent the crimes and to punish the perpetrators.<sup>4161</sup>

1835. The Defence for the Accused Kubura does not dispute the presence of the 7<sup>th</sup> Brigade units in Vareš on 4 November 1993,<sup>4162</sup> but submits that the evidence fails to demonstrate that destruction was carried out in November 1993.<sup>4163</sup> The Defence for the Accused Kubura points out that the cross-fire into buildings by soldiers moving into Vareš for the first time, conducted according to the rules of combat,<sup>4164</sup> cannot be characterised as acts of devastation of a town committed on a large scale.<sup>4165</sup>

(ii) Findings of the Chamber regarding Wanton Destruction in Vareš

1836. The operations in Vareš were conducted jointly by the ABiH 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Corps.<sup>4166</sup> On 3 November 1993, the 7<sup>th</sup> Brigade received the order to attack and liberate the town of Vareš, under the command of the OG *Istok*.<sup>4167</sup> At 0800 hours on the morning of 4 November 1993, the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions entered the town of Vareš, which was deserted,<sup>4168</sup> and then rejoined the 2<sup>nd</sup> Corps units.<sup>4169</sup> The 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion did not go further than Vareš Majdan<sup>4170</sup> located outside of Vareš.<sup>4171</sup> Since the HVO forces had already withdrawn, heavy fighting did not take place.<sup>4172</sup> The soldiers did, however, fire into the air, first to uncover any potential ambushes, and then as a celebration.<sup>4173</sup> The units of the 7<sup>th</sup> Brigade withdrew from the town that day.<sup>4174</sup>

<sup>4160</sup> Prosecution Final Brief, para. 329.

<sup>4161</sup> *Ibid.*, para. 337.

<sup>4162</sup> Kubura Defence Final Brief, para. 187.

<sup>4163</sup> *Ibid.*, para. 192.

<sup>4164</sup> *Ibid.*, para. 193.

<sup>4165</sup> *Ibid.*, para. 194.

<sup>4166</sup> DH 1513; P 217.

<sup>4167</sup> P 674.

<sup>4168</sup> P 468; Safet Junuzović, T(F) p. 18529.

<sup>4169</sup> P 676; P 468; Kasim Podžić, T(F) p. 18676.

<sup>4170</sup> Safet Junuzović, T(F) pp. 18531-18534.

<sup>4171</sup> See DK 38.

<sup>4172</sup> Džemail Ibranović, T(F) p. 18371; Safet Junuzović, T(F) p. 18530; DK 62, para. 17.

<sup>4173</sup> Kasim Podžić, T(F) pp. 18652-18654; Safet Junuzović, T(F) p. 18530; Sir Martin Garrod, T(F) p. 5692; Rolf Weckesser, T(F) p. 7237; Hakan Birger, T(F) p. 5385.

<sup>4174</sup> DK 50; P 468; DK 62, para. 19; DK 44; Kasim Podžić, T(F) p. 18656; Safet Junuzović, T(F) pp. 18533-18534; Elvir Mušija, T(F) p. 18778.

1837. When they arrived at the outskirts of the town of Vareš Majdan on 4 November 1993, a few members of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Command went into the town of Vareš.<sup>4175</sup> Witness Džemail Ibranović, the Assistant Commander for Morale and Religious Affairs,<sup>4176</sup> walked towards the high ground around the city and saw two recently-built houses on fire.<sup>4177</sup> According to his information, the HVO had set fire to the houses during their retreat.<sup>4178</sup> Moreover, Witness Safet Junuzović, the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion Commander,<sup>4179</sup> noticed when the fog lifted at around 1000 hours the same day that a building was burning, but the witness believed that the fire was the result of the combat activities conducted by the ABiH troops,<sup>4180</sup> since, when they entered Vareš, the units did not use any projectiles that could have set the building on fire.<sup>4181</sup>

1838. Witness Kasim Podžić, the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion Commander,<sup>4182</sup> described the prevailing situation in the town as chaotic and noticed as he left the town that a building made of concrete and wood was on fire.<sup>4183</sup> The report of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion on the combat operations conducted in Vareš between 31 October 1993 and 6 November 1993, notes that buildings were burned and destroyed by the HVO.<sup>4184</sup>

1839. The reports of the OG *Istok* describe a chaotic situation in Vareš on 4 November 1993.<sup>4185</sup> According to the report of 4 November 1993, 7<sup>th</sup> Brigade soldiers plundered and burned everything as soon as they entered the town. The report specifies that members of other brigades also participated in those criminal activities.<sup>4186</sup> According to the report of 10 November 1993 on the operations conducted in Vareš, the 7<sup>th</sup> Brigade soldiers in particular shattered store windows and destroyed cars as they entered the town of Vareš. That report notes that it was impossible to control the units and to prevent the destruction of property after Vareš was liberated on 4 November 1993.<sup>4187</sup>

1840. The ECMM report described the prevailing situation in Vareš on 4 November 1993 also as chaotic.<sup>4188</sup> When Witness Martin Garrod<sup>4189</sup> arrived in the town of Vareš on 4 November 1993 at

<sup>4175</sup> Džemail Ibranović, T(F) p. 18372.

<sup>4176</sup> Džemail Ibranović, T(F) p. 18359.

<sup>4177</sup> Džemail Ibranović, T(F) p. 18372.

<sup>4178</sup> Džemail Ibranović, T(F) p. 18407.

<sup>4179</sup> Safet Junuzović, T(F) p. 18502.

<sup>4180</sup> Safet Junuzović, T(F) p. 18530.

<sup>4181</sup> Safet Junuzović, T(F) p. 18566.

<sup>4182</sup> Kasim Podžić, T(F) p. 18632.

<sup>4183</sup> Kasim Podžić, T(F) p. 18655.

<sup>4184</sup> P 468.

<sup>4185</sup> P 445; P 676.

<sup>4186</sup> P 676.

<sup>4187</sup> P 448.

<sup>4188</sup> P 198.

around 0930 or 1000 hours,<sup>4190</sup> he noticed much damage, including shattered windows and broken-down doors, but he was not in a position to determine whether the damage was caused by the arrival of the ABiH or the withdrawal of the HVO.<sup>4191</sup> Witness Rolf Weckesser<sup>4192</sup> saw the smoke coming from shots fired but did not see any destroyed buildings.<sup>4193</sup>

1841. Members of UNPROFOR, who were in Vareš on 4 November 1993, noticed that the soldiers first opened fire to uncover any potential ambushes, and continued to fire after being informed that the HVO had withdrawn from Vareš.<sup>4194</sup> Witness Ulf Henricsson<sup>4195</sup> noted that many windows had been shattered and that the 7<sup>th</sup> Brigade soldiers were stealing everything they could get their hands on.<sup>4196</sup> According to Witness Hakan Birger,<sup>4197</sup> 7<sup>th</sup> Brigade soldiers<sup>4198</sup> shattered the windows and shopfronts of practically all the shops in order to commit acts of plunder.<sup>4199</sup> Witness Ulf Henricsson stated that buildings had been set on fire by Croats in the days preceding 4 November 1993.<sup>4200</sup> Witness Hakan Birger did not, however, notice that houses had been set on fire on 4 November 1993.<sup>4201</sup>

1842. In view of the above evidence, the Chamber considers that buildings were wholly or partially damaged and destroyed in Vareš in early November 1993.

1843. First, the Chamber finds that buildings were burned by the HVO troops as they withdrew from the town of Vareš. In fact, the members of the 7<sup>th</sup> Brigade and UNPROFOR noticed that the fires had been started by the HVO.<sup>4202</sup>

1844. Second, the Chamber finds that the 7<sup>th</sup> Brigade troops also caused damage when they arrived in Vareš on 4 November 1993. The Chamber first considers that shots fired by 7<sup>th</sup> Brigade

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<sup>4189</sup> Witness Martin Garrod joined the ECMM in June 1993, Martin Garrod, T(F) p. 5651.

<sup>4190</sup> Martin Garrod, T(F) p. 5693.

<sup>4191</sup> Martin Garrod, T(F) p. 5692.

<sup>4192</sup> Witness Rolf Weckesser joined the ECMM in May 1993, Rolf Weckesser, T(F) p. 7205.

<sup>4193</sup> Rolf Weckesser, T(F) p. 7236.

<sup>4194</sup> Ulf Henricsson, T(F) pp. 7669-7670; Hakan Birger, T(F) pp. 5385 and 5388.

<sup>4195</sup> Witness Ulf Henricsson was commander of the 1<sup>st</sup> Nordic Battalion between September 1993 and April 1994, Ulf Henricsson, T(F) pp. 7660 and 7663.

<sup>4196</sup> Ulf Henricsson, T(F) p. 7670.

<sup>4197</sup> Witness Hakan Birger was Commander of the 8<sup>th</sup> Mechanised Company, Nordic Battalion, Hakan Birger, T(F) pp. 5366-5368.

<sup>4198</sup> Hakan Birger, T(F) pp. 5384-5385.

<sup>4199</sup> Hakan Birger, T(F) pp. 5385-5389.

<sup>4200</sup> Ulf Henricsson, T(E) pp. 7669-7670.

<sup>4201</sup> Hakan Birger, T(F) p. 5392.

<sup>4202</sup> Džemail Ibranović, T(F) pp. 18372 and 18407; Safet Junuzović, T(F) pp. 18530 and 18566; P 468; Ulf Henricsson, T(E) pp. 7669-7670.

soldiers caused damage to buildings and houses.<sup>4203</sup> Additionally, the Chamber notes that the UNPROFOR members who were in Vareš on 4 November 1993 noticed that the 7<sup>th</sup> Brigade soldiers shattered windows and broke down doors.<sup>4204</sup> Finally, the report of the OG *Istok* dated 10 November 1993 notes that 7<sup>th</sup> Brigade soldiers shattered shopfronts and windows in Vareš.<sup>4205</sup>

1845. The Chamber considers that the acts of destruction were on a large scale. The extent of the destruction was noted in particular by Witness Hakan Birger, according to whom practically all of the shops had shattered windows.<sup>4206</sup> The Chamber therefore considers that the damage caused reached the necessary threshold to be considered acts of destruction committed on a large scale.

1846. The Chamber further notes that this destruction was caused deliberately by the 7<sup>th</sup> Brigade soldiers and was not justified by military necessity. First, the Chamber finds that the 7<sup>th</sup> Brigade soldiers continued to shoot, outside the framework of any combat operations, even though the 7<sup>th</sup> Brigade units knew the HVO had withdrawn.<sup>4207</sup> Second, the Chamber notes that the 7<sup>th</sup> Brigade soldiers destroyed doors and windows with the sole purpose of committing acts of plunder.<sup>4208</sup>

(iii) Findings of the Chamber regarding the Responsibility of Amir Kubura

a. Effective Control of Amir Kubura over the Perpetrators of the Crime

1847. The Chamber has found that the destruction in Vareš in November 1993 was committed in particular by members of the 7<sup>th</sup> Brigade. Since the 7<sup>th</sup> Brigade was subordinated to the Accused Kubura at the material time, it is presumed that he exercised effective control over the members of the 7<sup>th</sup> Brigade and over the perpetrators who belonged to that brigade.

1848. Moreover, the evidence demonstrates that the 7<sup>th</sup> Brigade units followed the orders of the Accused Kubura. As such, following orders from the OG *Istok*,<sup>4209</sup> on 4 November 1993 the Accused Kubura himself ordered the 7<sup>th</sup> Brigade units operating in Vareš to withdraw from the town,<sup>4210</sup> which they did on the same day.<sup>4211</sup>

<sup>4203</sup> Rolf Weckesser, T(F) p. 7236; Ulf Henricsson, T(F) pp. 7669-7670; Hakan Birger, T(F) pp. 5385 and 5388.

<sup>4204</sup> Ulf Henricsson, T(F) p. 7670; Hakan Birger, T(F) pp. 5384 to 5389.

<sup>4205</sup> P 448.

<sup>4206</sup> Hakan Birger, T(F) pp. 5384-5389; Sir Martin Garrod, T(F) p. 5692; Ulf Henricsson, T(F) p. 7670.

<sup>4207</sup> Hakan Birger, T(F) pp. 5385 and 5388; Ulf Henricsson, T(F) pp. 7669-7670.

<sup>4208</sup> Ulf Henricsson, T(F) p. 7670; Hakan Birger, T(F) pp. 5384-5389.

<sup>4209</sup> P 675

<sup>4210</sup> DK 50; *See* P 478.

<sup>4211</sup> P 468; DK 62, para. 19; Kasim Podžić, T(F) p. 18656; Safet Junuzović, T(F) pp. 18533-18534; Elvir Mušija, T(F) p. 18778.

1849. Consequently, the Chamber finds that the Accused Kubura exercised effective control over the perpetrators of the plunder and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

b. Knowledge of Amir Kubura

1850. First, the Chamber finds that the Accused Kubura was in Vareš sector between 3 and 5 November 1993. Witness Elvir Mušija went with the Accused Kubura to Striježevo on 3 November 1993.<sup>4212</sup> On 4 November 1993, they went together in the direction of Vareš Majdan and remained at the check-point manned by the military police before returning to Striježevo.<sup>4213</sup> On 5 November 1993, the Accused Kubura went into the town of Vareš for two or three hours to attend a celebration.<sup>4214</sup> The Chamber considers that it is not established that the Accused Kubura could see the destruction from the route he took on 5 November 1993. Consequently, the Chamber considers that the Accused Kubura's presence in Vareš is not sufficient in itself to establish his knowledge of the destruction beyond a reasonable doubt.

1851. Second, the Chamber finds that on 4 November 1993, the 6<sup>th</sup> Corps OG *Istok* Command issued an order recalling that all unlawful activity in the town of Vareš must come to a stop and that measures must be taken to prevent property from being removed from Vareš. It also points out that the 7<sup>th</sup> Brigade Commander was responsible for carrying out the order.<sup>4215</sup> The Chamber notes, however, that while the order explicitly refers to activities of plunder and the need to prevent them, it does not mention acts of destruction.

1852. Third, the Chamber notes that the combat report of the 6<sup>th</sup> Corps OG *Istok* Command of 4 November 1993 mentions fires started by the 7<sup>th</sup> Brigade soldiers right after their arrival in Vareš, and requests the 3<sup>rd</sup> Corps to send military police units.<sup>4216</sup> The Chamber finds that while the report is addressed, among others, to the 3<sup>rd</sup> Corps Command, the 7<sup>th</sup> Brigade is not mentioned as one of the recipients of the report.<sup>4217</sup> The Chamber notes, however, that the 3<sup>rd</sup> Corps Command sent a report to the OG *Istok* informing it that, following the information received on the prevailing situation in Vareš in the special combat report of 4 November, the brigades were ordered to use the military police forces to prevent chaos and the destruction of property.<sup>4218</sup> The Chamber notes that

<sup>4212</sup> Elvir Mušija, T(F) p. 18773.

<sup>4213</sup> Elvir Mušija, T(F) pp. 18774-18775.

<sup>4214</sup> Elvir Mušija, T(F) pp. 18776-18777.

<sup>4215</sup> P 675.

<sup>4216</sup> P 676.

<sup>4217</sup> P 676.

<sup>4218</sup> P 446.

this order from the 3<sup>rd</sup> Corps Command seems to refer to and follow up on the 4 November 1993 order from the OG *Istok*,<sup>4219</sup> particularly by sending military police forces. Moreover, the Chamber considers that while the 3<sup>rd</sup> Corps Command order does not specify which brigades were to receive orders to send military police units, the 7<sup>th</sup> Brigade must have received such orders since it was subordinated to the 3<sup>rd</sup> Corps and present in Vareš. The Chamber considers that is also possible that the 3<sup>rd</sup> Corps Command may have expressed its concerns to the Accused Kubura after it received information that 7<sup>th</sup> Brigade soldiers were starting fires in the town of Vareš. Nevertheless, the Chamber is of the opinion that while it is possible that the Accused Kubura may have been informed of the acts of destruction committed by 7<sup>th</sup> Brigade soldiers, those orders do not, however, establish his knowledge with certainty.

(iv) Conclusions of the Chamber

1853. The Chamber considers that the Prosecution failed to prove that the Accused Kubura knew or had reason to know that his subordinates were about to commit or had committed acts of destruction in Vareš in November 1993. The Accused Kubura therefore may not be held criminally responsible for the offence set out in count 5, paragraph 44 of the Indictment.

2. Count 6: Plunder of Public or Private Property in Towns and Villages in the Municipalities of Zenica, Travnik and Vareš

(a) Miletići

1854. The Indictment alleges that the 7<sup>th</sup> Brigade<sup>4220</sup> and 306<sup>th</sup> Brigade plundered dwellings, buildings, and personal property belonging to Bosnian Croats and Bosnian Serbs in Miletići in April 1993.<sup>4221</sup> The Indictment mentions that the Accused knew or had reason to know that the members of those units, under their command and effective control, were about to commit acts of plunder, or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4222</sup> As such, it is alleged that the Accused committed the plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

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<sup>4219</sup> P 676.

<sup>4220</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4221</sup> Indictment, para. 44.

<sup>4222</sup> *Ibid.*, para. 45.

(i) Arguments of the Parties

1855. The Prosecution argues that the 3<sup>rd</sup> Corps soldiers were in Miletići on 24 April 1993 when that village was attacked and that the 306<sup>th</sup> Brigade was in Miletići until at least late April 1993. It submits that, during that period, the houses of the inhabitants in Miletići were plundered<sup>4223</sup> and that the Accused Hadžihasanović<sup>4224</sup> had knowledge of those crimes but failed to take the appropriate and reasonable measures to punish the perpetrators.<sup>4225</sup>

1856. The Defence for the Accused Hadžihasanović submits that the evidence fails to indicate the time when the plunder took place and the extent of that plunder. This evidence also does not allow the assertion that the plunder was not justified by military necessity. The Defence for the Accused Hadžihasanović notes that the identity of the perpetrators has not been established. Moreover, the Defence for the Accused Hadžihasanović argues that the 3<sup>rd</sup> Corps took all the necessary and reasonable measures to prevent the plunder of the villages and the potential recurrence of such acts, and to punish the perpetrators once their identity had been established.<sup>4226</sup>

1857. The Defence for the Accused Kubura argues that the Prosecution failed to prove that the Accused Kubura exercised control over the perpetrators of the crimes allegedly committed in Miletići in April 1993.<sup>4227</sup> According to the Defence for the Accused Kubura, there is no evidence to demonstrate that the 7<sup>th</sup> Brigade soldiers were in Miletići or participated in the crimes committed there.<sup>4228</sup>

(ii) Findings of the Chamber regarding Plunder of Public or Private Property in Miletići

1858. On 24 April 1993, at around 1700 hours, the Suljić brothers came to alert their neighbours that foreign mujahedin were heading towards Miletići.<sup>4229</sup> Some villagers then took refuge in the houses of Stipo Pavlović and Ivo Pavlović,<sup>4230</sup> while others remained in the centre of the village.<sup>4231</sup> When the mujahedin arrived in the village of Miletići, they tied the hands of the villagers<sup>4232</sup> and

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<sup>4223</sup> Prosecution Final Brief, para. 306.

<sup>4224</sup> *Ibid.*, para. 307. The Prosecution refers only to the Accused Hadžihasanović and does not mention the Accused Kubura.

<sup>4225</sup> *Ibid.*, para. 307.

<sup>4226</sup> Hadžihasanović Defence Final Brief, para. 461.

<sup>4227</sup> Kubura Defence Final Brief, para. 66.

<sup>4228</sup> *Ibid.*, para. 61.

<sup>4229</sup> P 392 (under seal), para. 6; P 396 (under seal), para. 2; Katica Kovačević, T(F) pp. 901-903; DH 2092, para. 3.

<sup>4230</sup> P 392 (under seal), para. 7; P 396 (under seal), para. 4; Katica Kovačević, T(F) p. 906.

<sup>4231</sup> P 396 (under seal), para. 4; P 393 (under seal), para. 5.

<sup>4232</sup> P 392 (under seal), para. 14; P 393 (under seal), para. 8; P 396 (under seal), para. 9; Katica Kovačević, T(F) p. 910; DH 2092, para. 6.

took them to Mehurići.<sup>4233</sup> The 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Commander was informed of those events and went to Mehurići to start negotiations with the mujahedin.<sup>4234</sup> The villagers were finally released at around 2230 hours and were transported by bus to Luka, where they remained for two days.<sup>4235</sup>

1859. Contrary to what is asserted by the Prosecution,<sup>4236</sup> the ABiH soldiers did not participate in the attack on the village of Miletići. The evidence, particularly witness testimony, demonstrates that neither the 306<sup>th</sup> Brigade<sup>4237</sup> nor the 7<sup>th</sup> Brigade<sup>4238</sup> were in Miletići on 24 April 1993, and that they did not participate in that day's events.<sup>4239</sup> Only after the events in Miletići of 24 April 1993 did members of the 306<sup>th</sup> Brigade go on-site to investigate the events which had transpired and to protect the Croatian inhabitants of Miletići.<sup>4240</sup>

1860. Upon their return to Miletići on 26 April 1993,<sup>4241</sup> villagers noticed that property had been stolen from them. When Witness Z10 arrived in Miletići at around 0700 hours,<sup>4242</sup> she found the livestock roaming free, the house doors open, and houses turned upside down.<sup>4243</sup> Witnesses Z11<sup>4244</sup> and Z14<sup>4245</sup> noticed that the livestock belonging to them and other villagers had been stolen. Witness Z14 stated, however, that no property inside his house had been plundered.<sup>4246</sup> Other villagers, however, were robbed of their valuables,<sup>4247</sup> and according to Witness Katica Kovačević, several houses in Miletići had been broken into.<sup>4248</sup>

<sup>4233</sup> P 392 (under seal), para. 16; P 393 (under seal), para. 9; Katica Kovačević, T(F) p. 1273; DH 2092, para. 7.

<sup>4234</sup> Sulejman Ribo, T(F) p. 11053; Derviš Suljić, T(F) p. 11312.

<sup>4235</sup> P 393 (under seal), para. 10; P 396 (under seal), para. 13; P 392 (under seal), para. 19; Katica Kovačević, T(F) p. 1278; Sulejman Ribo, T(F) pp. 11055-11057; Derviš Suljić, T(F) p. 11313.

<sup>4236</sup> Indictment, para. 44; Prosecution Final Brief, para. 187.

<sup>4237</sup> Esed Sipić, T(F) pp. 14790-14791; Sulejman Ribo, T(F) pp. 11049-11050

<sup>4238</sup> Esed Sipić, T(F) p. 14810; Derviš Suljić, T(F) p. 11330; Sulejman Ribo, T(F) pp. 11060-11061; Suad Jusović, T(F) p. 18429; Džemal Merdan, T(F) p. 11399; DK 61, para. 13.

<sup>4239</sup> *See supra* para. 1100.

<sup>4240</sup> Džemal Merdan, T(F) pp. 13120, 13198 and 13199; P 396 (under seal), para. 17; P 392 (under seal), para. 26.

<sup>4241</sup> P 393 (under seal), paras. 10-12; P 396 (under seal), para. 15; P 392 (under seal), paras. 6 and 25; Katica Kovačević, T(F) p. 1288

<sup>4242</sup> P 392 (under seal), paras. 18-25.

<sup>4243</sup> P 392 (under seal), para. 25.

<sup>4244</sup> P 393 (under seal), para. 13.

<sup>4245</sup> P 396 (under seal), para. 18.

<sup>4246</sup> P 396 (under seal), para. 18.

<sup>4247</sup> P 396 (under seal), para. 18.

<sup>4248</sup> Katica Kovačević, T(F) pp. 1288-1289.



1861. In view of the above evidence, the Chamber finds that plunder was committed in Miletići in April 1993. The Chamber notes that witnesses stated that they had been robbed of their livestock and had been victims of burglary.<sup>4249</sup>

1862. The Chamber finds that the 3<sup>rd</sup> Corps soldiers, specifically the 7<sup>th</sup> Brigade and 306<sup>th</sup> Brigade members, were not in Miletići on 24 April 1993 and, therefore, did not participate in the plunder which occurred in there. On the contrary, the evidence demonstrates that mujahedin were in Miletići on 24 April 1993 and that they carried out an attack against the villagers.<sup>4250</sup> Witnesses described the mujahedin's arrival in Miletići as well as the route they took towards Mehurići.<sup>4251</sup> The Chamber further notes that, upon his return to Miletići, Witness Z14 learned that his personal property had been stolen by Muslim neighbours.<sup>4252</sup> Noting that civilians may have been responsible for the acts of plunder, the Chamber is therefore not in a position to establish beyond a reasonable doubt, on the basis of the evidence, the identity of the perpetrators of the plunder and, as a result, the participation of the 7<sup>th</sup> Brigade and 306<sup>th</sup> Brigade in the alleged acts.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

1863. The Chamber has found that neither the 306<sup>th</sup> Brigade nor the 7<sup>th</sup> Brigade were in Miletići at the time of the alleged events and that, as a result, they did not participate in the plunder committed in Miletići.<sup>4253</sup> Furthermore, the Chamber has found that the mujahedin were not part of the 7<sup>th</sup> Brigade and were not subordinated to the 3<sup>rd</sup> Corps at the time of the alleged events.<sup>4254</sup> The Chamber therefore concludes that the Accused Hadžihasanović did not exercise effective control over the perpetrators of the plunder committed in Miletići in April 1993.

(iv) Findings of the Chamber regarding the Responsibility of Amir Kubura

1864. The Chamber has found that the 7<sup>th</sup> Brigade was not in Miletići at the time of the alleged events and that, as a result, it did participate in the plunder committed in Miletići.<sup>4255</sup> Furthermore, the Chamber has found that the mujahedin were not part of the 7<sup>th</sup> Brigade and were not subordinated to it at the time of the alleged events. The Chamber therefore concludes that the

<sup>4249</sup> P 392 (under seal), para. 25; P 393 (under seal), para. 13; P 396 (under seal), para. 18; Katica Kovačević, T(F) pp. 1288-1289.

<sup>4250</sup> P 148; DH 915; P 289; P 416; DH 923.

<sup>4251</sup> P 392 (under seal), paras. 9, 10, 11 and 16; P 393 (under seal), para. 5; P 396 (under seal), paras. 5 and 9; Katica Kovačević, T(F) p. 906.

<sup>4252</sup> P 396 (under seal), para. 21.

<sup>4253</sup> *See supra* para. 1859.

<sup>4254</sup> *See supra* para. 805.

<sup>4255</sup> *See supra*, para. 1859.

Accused Kubura did not exercise effective control over the perpetrators of the plunder committed in Miletići in April 1993.

(v) Conclusions of the Chamber

1865. The Chamber first concluded that the identity of the perpetrators of the plunder committed in Miletići in April 1993 has not been established. Furthermore, it has found that neither the 7<sup>th</sup> Brigade nor the 306<sup>th</sup> Brigade were in Miletići at the material time. Finally, the Chamber has determined that the mujahedin were not under the effective control of the 7<sup>th</sup> Brigade in April 1993. Consequently, the Chamber concludes that neither the Accused Hadžihasanović nor the Accused Kubura can be held responsible for the plunder committed in Miletići in April 1993.

(b) Guča Gora

1866. The Indictment alleges that the 7<sup>th</sup> Brigade,<sup>4256</sup> 306<sup>th</sup> Brigade and 17<sup>th</sup> Brigade plundered dwellings, buildings and personal property belonging to Bosnian Croats and Bosnian Serbs in Guča Gora in June 1993.<sup>4257</sup> The Indictment alleges that the Accused Hadžihasanović knew or had reason to know that the members of those units under his command and effective control were about to commit acts of plunder or had done so, and that he failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4258</sup> The Accused Hadžihasanović is therefore accused of the plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

1867. The Chamber notes that while the Indictment mentions the 7<sup>th</sup> Brigade in relation to the plunder committed in Guča Gora in June 1993, the Prosecution does not allege that the Accused Kubura incurred responsibility for the plunder committed by his subordinates.

(i) Arguments of the Parties

1868. The Prosecution submits that as of 9 June 1993, the 3<sup>rd</sup> Corps soldiers<sup>4259</sup> plundered houses belonging to Croats in Guča Gora and took away their war booty.<sup>4260</sup> The Prosecution argues that

<sup>4256</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4257</sup> Indictment, para. 44.

<sup>4258</sup> Indictment, para. 45.

<sup>4259</sup> See Prosecution Final Brief, para. 308. The Prosecution does not specify which brigades are alleged to have participated in the plunder in Guča Gora in June 1993.

<sup>4260</sup> Prosecution Final Brief, paras. 308 and 340.

the Accused Hadžihasanović knew that crimes had been committed<sup>4261</sup> and failed to take measures to punish the perpetrators of those crimes.<sup>4262</sup>

1869. The Defence for the Accused Hadžihasanović submits that the evidence does not make it possible to know whether the activities observed constituted plunder and to affirm that the personal property that was plundered was of sufficient value that being deprived of it would have grave consequences for its owners. The Defence for the Accused Hadžihasanović adds that the identity of the perpetrators of the alleged plunder was not established. Moreover, the Defence for the Accused Hadžihasanović submits that General Hadžihasanović took measures to prevent and put an end to the plunder and to ensure that his subordinates who allegedly committed plunder would be handled in accordance with the laws in force.<sup>4263</sup>

(ii) Findings of the Chamber regarding the Plunder of Public or Private Property in Guča Gora

1870. On 8 June 1993, the 306<sup>th</sup> Brigade forces reached the front line connecting the villages of Maline, Guča Gora, Mosor, and Bukovica.<sup>4264</sup> Late in the afternoon of 8 June 1993, the 306<sup>th</sup> Brigade 2<sup>nd</sup> Battalion soldiers joined the 306<sup>th</sup> Brigade 3<sup>rd</sup> Battalion forces and occupied positions overlooking Guča Gora.<sup>4265</sup> The combat operations between the HVO and ABiH units continued until 10 June 1993, when the ABiH forces entered the village of Guča Gora.<sup>4266</sup> The same day, the 306<sup>th</sup> Brigade units received the order to move towards the villages of Mosor and Radojčići.<sup>4267</sup>

1871. The presence of foreign mujahedin in Guča Gora was noticed in around mid-June 1993.<sup>4268</sup> On 16 June 1993, the 306<sup>th</sup> Brigade and 3<sup>rd</sup> Corps Military Police tasked with securing Guča Gora sector<sup>4269</sup> went to the monastery and remained there until August.<sup>4270</sup> Over the summer, the 306<sup>th</sup> Brigade Command moved into the monastery in order to provide it better protection.<sup>4271</sup>

1872. Contrary to what is asserted by the Prosecution,<sup>4272</sup> neither the 7<sup>th</sup> Brigade nor the 17<sup>th</sup> Brigade were in Guča Gora during the combat operations. The evidence demonstrates that the 7<sup>th</sup>

<sup>4261</sup> Prosecution Final Brief, para. 348.

<sup>4262</sup> Prosecution Final Brief, para. 349.

<sup>4263</sup> Hadžihasanović Defence Final Brief, para. 657.

<sup>4264</sup> DK 22.

<sup>4265</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4266</sup> Fahir Čamdžić, T(F) p. 11713; Esed Sipić, T(E) p. 14778.

<sup>4267</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4268</sup> Vaughan Kent-Payne, T(F) pp. 4794-4795; Džemal Merdan, T(F) pp. 13139-13140; DH 71.

<sup>4269</sup> DH 161.13.

<sup>4270</sup> Mahir Izet, T(F) p. 16804.

<sup>4271</sup> Munir Karić, T(F) p. 11457; Asim Delalić, T(F) p. 16404.

<sup>4272</sup> Prosecution Final Brief, para. 339.

Brigade 1<sup>st</sup> Battalion conducted combat operations in Hajdareve Njive on 8 June 1993<sup>4273</sup> together with the 17<sup>th</sup> Brigade,<sup>4274</sup> while the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were operating in Ovnak sector.<sup>4275</sup> On 9 June 1993, the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and 17<sup>th</sup> Brigade units were engaged in Sibirara and Obuka,<sup>4276</sup> which are located a few kilometres from Travnik.<sup>4277</sup> The 306<sup>th</sup> Brigade was the only brigade involved in combat operations in Guča Gora between 8 and 10 June 1993.<sup>4278</sup>

1873. From the positions he occupied in Čifluk, Witness ZJ noted that from 8 to 18 June 1993,<sup>4279</sup> civilian trucks were moving around in Guča Gora.<sup>4280</sup> Witness ZJ assumed that the persons engaging in the plunder were ABiH members.<sup>4281</sup> On 9 June 1993, when Witness Tomislav Rajić went to Guča Gora,<sup>4282</sup> he could see that the houses had not been plundered.<sup>4283</sup> Only later during the conflict<sup>4284</sup> was this witness' house burned and plundered. His Muslim neighbours alerted him that his clothes and household appliances had been stolen before his house was set on fire.<sup>4285</sup> On 12 June 1993, while he was in Čifluk, Witness Dragan Radić watched<sup>4286</sup> through his binoculars as cars and tractors<sup>4287</sup> entered Guča Gora, loaded the property that was inside the houses, and then left in the direction of Maline and Krepeljici.<sup>4288</sup> Those who packed up the large objects, refrigerators, and furniture<sup>4289</sup> into their trucks and trailers were men in military uniforms<sup>4290</sup> and Muslim women in baggy trousers.<sup>4291</sup> Since the village of Guča Gora had been deserted, Witness Dragan Radić believed that the soldiers who were in the village on 12 and 13 June 1993 must have belonged to the ABiH.<sup>4292</sup> Witness Dragan Radić stated that he was in contact with Rasid Dautović, one of his

<sup>4273</sup> Remzija Šiljak, T(F) pp. 10572-10573; Semir Terzić, T(F) p. 18256; Safet Junuzović, T(F) pp. 18505-18508; Suad Jusović, T(F) pp. 18435-18437; DK 18; DK 19; DK 34; P 465.

<sup>4274</sup> Safet Junuzović, T(F) p. 18505.

<sup>4275</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>4276</sup> DK 42.

<sup>4277</sup> Safet Junuzović, T(F) p. 18506.

<sup>4278</sup> Fikret Čuskić, T(F) p. 12112; P 465.

<sup>4279</sup> Witness ZJ, T(F) pp. 4175-4176. The witness saw trucks moving around Guča Gora in the ten days following 8 June 1993.

<sup>4280</sup> Witness ZJ, T(F) pp. 4175-4176.

<sup>4281</sup> Witness ZJ, T(F) pp. 4197-4198.

<sup>4282</sup> Tomislav Rajić, T(F) p. 2820.

<sup>4283</sup> Tomislav Rajić, T(F) p. 2822.

<sup>4284</sup> Tomislav Rajić, T(F) p. 2822. The exact date when the witness' house was plundered and then burned is not specified, but the witness stated that it was not 8 or 9 June 1993.

<sup>4285</sup> Tomislav Rajić, T(F) p. 2822.

<sup>4286</sup> Dragan Radić, T(F) p. 3557.

<sup>4287</sup> See DH 1978 and DH 2055, which demonstrate that it is possible to distinguish between different types of cars from a distance of 2550 metres, the distance between Čifluk and Guča Gora.

<sup>4288</sup> Dragan Radić, T(F) pp. 3545-3546.

<sup>4289</sup> Dragan Radić, T(F) pp. 3546 and 3547. See DH 1978 and DH 2055 which demonstrate that it is possible to identify objects being loaded onto a truck from a distance of 2550 metres, the distance between Čifluk and Guča Gora.

<sup>4290</sup> Dragan Radić, T(F) pp. 3546 to 3548.

<sup>4291</sup> Dragan Radić, T(F) p. 3546.

<sup>4292</sup> Dragan Radić, T(F) p. 3548.

friends who was an ABiH member and worked as the head of communications within the unit stationed at the time at the Guča Gora monastery.<sup>4293</sup> Rasid Dautović told Witness Dragan Radić that he went into Dragan Radić's room and took rings, gold chains, and a jogging suit which belonged to Witness Dragan Radić.<sup>4294</sup> In June 1993,<sup>4295</sup> after the ABiH attack on Guča Gora, Witness Mark Bower went through Guča Gora to go to Maline.<sup>4296</sup> He saw that houses had been searched and that furniture was sitting outside.<sup>4297</sup> He also saw people in military uniforms carrying household appliances.<sup>4298</sup> According to Witness ZA, right after the village of Guča Gora fell,<sup>4299</sup> the 7<sup>th</sup> Brigade Military Police brought in trucks requisitioned from civilians<sup>4300</sup> and seized technical equipment, household appliances, building materials and food.<sup>4301</sup> According to Witness ZA, the 7<sup>th</sup> Brigade was followed by a military police unit from the 314<sup>th</sup> Brigade which also committed acts of plunder.<sup>4302</sup>

1874. In view of the above evidence, the Chamber finds that plunder was committed repeatedly and extensively in Guča Gora in June 1993. The Chamber notes that household appliances, furniture, and clothing were stolen from the houses belonging to the inhabitants of Guča Gora.<sup>4303</sup> Contrary to the allegations of the Defence for the Accused Hadžihasanović,<sup>4304</sup> the Chamber considers that the value of the plundered property and the repeated acts of plunder make it possible to conclude that the offence was serious.

1875. The Chamber finds that property such as household appliances, furniture, and clothing was stolen.<sup>4305</sup> Although the rules on war booty authorised the ABiH to seize private property that could be used directly for military purposes,<sup>4306</sup> the Chamber considers that household appliances, furniture and clothing do not fall into the category of property having direct military use. Additionally, contrary to the rules on war booty established by the ABiH Supreme Command, the evidence does not demonstrate that receipts were given in exchange for the confiscation of this

<sup>4293</sup> Dragan Radić, T(F) pp. 3548-3549.

<sup>4294</sup> Dragan Radić, T(F) pp. 3548-3549.

<sup>4295</sup> Mark Bower, T(F) p. 5142; Vaughan Kent Payne, T(F) p. 5794: on 13 June, Witness Vaughan Kent-Payne went to Guča Gora with Witness Mark Bower.

<sup>4296</sup> Mark Bower, T(F) p. 5142.

<sup>4297</sup> Mark Bower, T(F) pp. 5145 and 5233.

<sup>4298</sup> Mark Bower, T(F), pp. 5233-5234.

<sup>4299</sup> Witness ZA, T(F) p. 2331.

<sup>4300</sup> Witness ZA, T(F) p. 2332.

<sup>4301</sup> Witness ZA, T(F) pp. 2330-2332.

<sup>4302</sup> Witness ZA, T(F) p. 2332.

<sup>4303</sup> Tomislav Rajić, T(F) p. 2822; Dragan Radić, T(F) pp. 3546-3547; Mark Bower, T(F) pp. 5233 and 5235.

<sup>4304</sup> *See* Hadžihasanović Defence Final Brief, para. 657: "It cannot be established that the alleged plunder was of sufficient value to involve grave consequences."

<sup>4305</sup> Tomislav Rajić, T(F) p. 2822; Dragan Radić, T(F) pp. 3546 and 3547; Mark Bower, T(F) pp. 5233 and 5235.

<sup>4306</sup> *See* DH 1469.

property.<sup>4307</sup> The Chamber therefore concludes that the property in question was unlawfully and deliberately appropriated and that such appropriation went beyond the scope of war booty.

1876. With regard to the perpetrators of the plunder, the Chamber finds that the property and houses were plundered by civilians and ABiH soldiers. The Chamber notes that witnesses stated that they had seen soldiers and civilians transporting property that was inside the houses in Guča Gora. Witness Dragan Radić, who was in Čifluk on 12 June 1993,<sup>4308</sup> and Witness Mark Bower, who was in Guča Gora on 13 June 1993,<sup>4309</sup> were able to identify men in military uniforms. With regard to the participation of the ABiH in the alleged acts, the Chamber concludes that plunder was committed by soldiers of the 306<sup>th</sup> Brigade, which was the only brigade in Guča Gora during the events in June 1993.<sup>4310</sup> The Chamber also takes note of the statements of Witness ZA<sup>4311</sup> and considers that it is not impossible that the 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade Military Police participated in the plunder in Guča Gora. The Chamber notes, however, that those statements were not corroborated by other testimony and that, as a result, it cannot conclude beyond a reasonable doubt that members of the 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade Military Police committed acts of plunder.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1877. The Chamber finds that the plunder committed in Guča Gora in June 1993 was the work in particular of the members of the 306<sup>th</sup> Brigade. Given that the 306<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time, it is assumed that the Accused Hadžihasanović exercised effective control over the members of the 306<sup>th</sup> Brigade and over the perpetrators of the plunder belonging to the 306<sup>th</sup> Brigade.

1878. Furthermore, the evidence shows that the 306<sup>th</sup> Brigade carried out the orders of the Accused Hadžihasanović. On 16 January 1993 the Accused Hadžihasanović ordered the 306<sup>th</sup> Brigade Command to use part of its military police unit to secure Guča Gora sector in order to

<sup>4307</sup> DH 1469. The ABiH rules governing war booty provide that a certificate be given in exchange for the confiscation of certain private property.

<sup>4308</sup> Dragan Radić, T(F) pp. 3546-3548. *See* DH 1978 and DH 2055 which demonstrate that it is possible to see, with binoculars, civilians and soldiers from a distance of 2550 metres, the distance between Čifluk and Guča Gora.

<sup>4309</sup> Mark Bower, T(F), pp. 5233-5234.

<sup>4310</sup> Fikret Čuskić, T(F) p. 12112; P 465. The 306<sup>th</sup> Brigade was the only brigade in Guča Gora at the time of the alleged events.

<sup>4311</sup> Witness ZA, T(F) pp. 2330-2332.

prevent plunder and burning.<sup>4312</sup> Following that order, the 306<sup>th</sup> Brigade Commander ordered the military police to take measures to prevent the plunder and burning.<sup>4313</sup> These documents prove that the orders of the Accused Hadžihasanović reached the end of the chain of command.

1879. Furthermore, the Defence for the Accused Hadžihasanović does not dispute the fact that the 306<sup>th</sup> Brigade was subordinated to the Accused Hadžihasanović.

1880. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the plunder and that there was a superior-subordinate relationship within the meaning of Article 7(3) of the Statute.

b. Knowledge of Enver Hadžihasanović

1881. The Prosecution alleges that the Accused Hadžihasanović had been informed of the crimes committed in Guča Gora by officers under his command. The Prosecution further argues that the orders prohibiting plunder given by the Accused Hadžihasanović demonstrate that he was aware of the serious crimes that had been committed against property.<sup>4314</sup> The Defence for the Accused Hadžihasanović does not deny the fact that the Accused Hadžihasanović was informed that soldiers were returning from Guča Gora with bags full of plundered property.<sup>4315</sup>

1882. The Chamber considers that the Accused Hadžihasanović had knowledge of the plunder committed in Guča Gora. A combat report of 11 June 1993 from the 3<sup>rd</sup> Corps Command, signed by the duty officer and addressed to the Supreme Command, notes that plunder had been committed in the village of Guča Gora.<sup>4316</sup> On 16 June 1993, General Hadžihasanović gave an order to the 306<sup>th</sup> Brigade Command, in which he pointed out that the plunder of property belonging to the Croatian population had been committed on a large scale in Guča Gora sector, during and after the fighting. The order notes that this plunder, committed by soldiers preoccupied with war booty, might give rise to misinterpretations of the armed struggle conducted by the ABiH. General Hadžihasanović further insisted on the need to punish the perpetrators of such actions.<sup>4317</sup> The Chamber further notes that during a meeting with Witness ZP on 20 June 1993, the Accused Hadžihasanović

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<sup>4312</sup> P 158.

<sup>4313</sup> P 204.

<sup>4314</sup> Prosecution Final Brief, para. 348.

<sup>4315</sup> Hadžihasanović Final Brief, para. 632.

<sup>4316</sup> P 422.

<sup>4317</sup> P 158.

acknowledged that he knew that soldiers were returning to Zenica with bags filled with property plundered in Guča Gora.<sup>4318</sup>

c. Measures Taken

1883. The Prosecution alleges that punitive measures<sup>4319</sup> were not taken against the perpetrators of the plunder; the perpetrators were not punished or prosecuted.<sup>4320</sup> Conversely, the Defence for the Accused Hadžihasanović alleges that the Accused Hadžihasanović took both preventive and punitive measures,<sup>4321</sup> and refers to an order dated 16 June 1993 in which the 3<sup>rd</sup> Corps Command ordered military police units to take control of the region of Guča Gora in order to prevent the plunder.<sup>4322</sup>

1884. With regard to preventive measures, the Chamber notes that the Accused Hadžihasanović issued orders on 10<sup>4323</sup> and 19 June 1993,<sup>4324</sup> generally prohibiting acts of the plunder of property, regardless of who owned the property or whether that property was in houses that had been abandoned. The Accused Hadžihasanović also took specific measures to prevent crimes in Guča Gora by ordering, on 16 June 1993, the 306<sup>th</sup> Brigade military police, in concert with part of the military police units of the 312<sup>th</sup> Brigade and 3<sup>rd</sup> Corps, to secure Guča Gora sector and to prevent plunder from being committed.<sup>4325</sup> Those orders were followed by measures taken by the subordinates of the Accused Hadžihasanović. On 18 June 1993, the 306<sup>th</sup> Command demanded that the military police take certain measures, such as establishing check-points on the road into and out of Guča Gora, imposing a curfew from 2200 to 0500 hours, and setting up daily patrols, all in order to avoid the plunder of property by civilians and ABiH members.<sup>4326</sup>

1885. The Chamber considers that measures intended to punish the perpetrators of the plunder were also taken. In the context of the measures of a general nature intended to prevent the plunder, the Accused Hadžihasanović ordered on 10 and 19 June 1993, that severe punishment be meted out to the perpetrators of such acts, which could include the officer being dismissed, detained, or

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<sup>4318</sup> Witness ZP, T(F) p. 8863; P 589.

<sup>4319</sup> Prosecution Final Brief, para. 348. The Prosecution mentions the absence of punitive measures and does not raise the issue of preventive measures.

<sup>4320</sup> Prosecution Final Brief, para. 348.

<sup>4321</sup> Hadžihasanović Defence Final Brief, para. 657.

<sup>4322</sup> *Ibid.*, para. 631.

<sup>4323</sup> P 186.

<sup>4324</sup> DH 65.

<sup>4325</sup> P 158.

<sup>4326</sup> P 204.



brought before military courts.<sup>4327</sup> On 16 June 1993, the Accused Hadžihasanović ordered that commissions or persons within the brigades be appointed to investigate acts of plunder, to identify and prosecute the perpetrators of the crimes and to return the plundered property. With regard to the measures dealing more specifically with the crimes committed in Guča Gora, the order of 16 June 1993 specifies that the perpetrators of the plunder in Guča Gora sector must be punished.<sup>4328</sup> Some of the other measures taken by the Accused Hadžihasanović are discussed later in this Judgement.<sup>4329</sup>

(iv) Conclusions of the Chamber

1886. The Chamber considers that the Accused Hadžihasanović knew that plunder had been committed in Guča Gora in June 1993 by members of the 306<sup>th</sup> Brigade. The Chamber finds that the Accused Hadžihasanović took preventive measures to prevent acts of plunder and measures intended to punish the perpetrators. Consequently, the Accused Hadžihasanović cannot be held responsible for the plunder committed in Guča Gora in June 1993.

(c) Maline

1887. The Indictment alleges that members of the 7<sup>th</sup> Brigade<sup>4330</sup> and 306<sup>th</sup> Brigade plundered dwellings, buildings, and personal property belonging to Bosnian Croats and Bosnian Serbs in Maline in June 1993.<sup>4331</sup> The Indictment indicates that the Accused knew or had reason to know that the members of those units, under their command and effective control, were about to commit acts of plunder, or had done so, and failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4332</sup> The Accused Hadžihasanović and the Accused Kubura are accused of plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

(i) Arguments of the Parties

1888. The Prosecution alleges that 3<sup>rd</sup> Corps units were in Maline on 8 June 1993 and that 3<sup>rd</sup> Corps soldiers committed acts of plunder.<sup>4333</sup> The Prosecution submits that the Accused

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<sup>4327</sup> P 186; DH 65.

<sup>4328</sup> P 158.

<sup>4329</sup> Para. 2018 *ff.*

<sup>4330</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4331</sup> *Ibid.*, para. 44.

<sup>4332</sup> *Ibid.*, para. 45.

<sup>4333</sup> Prosecution Final Brief, para. 309.

Hadžihasanović had been informed of those crimes and that he failed to take measures to punish the perpetrators.<sup>4334</sup>

1889. The Defence for the Accused Hadžihasanović alleges that based on the evidence it is not possible to know if plunder was committed or to know the value of the allegedly plundered property. The evidence also does not demonstrate whether the plunder was unlawful and not justified by military necessity. The Defence for the Accused Hadžihasanović adds that the identity of the perpetrators of the alleged plunder has not been established. Furthermore, it submits that the 3<sup>rd</sup> Corps took all the necessary and reasonable measures to prevent the plunder, to avoid the repetition of the plunder and to punish the perpetrators once their identity had been established.<sup>4335</sup>

1890. The Defence for the Accused Kubura submits that the Prosecution failed to prove that the Accused Kubura exercised control over the perpetrators of the crimes allegedly committed in Maline in June 1993.<sup>4336</sup> According to the Defence for the Accused Kubura, there is no proof that the members of the 7<sup>th</sup> Brigade were present in Maline or had participated in crimes committed there,<sup>4337</sup> and the evidence demonstrates that the 7<sup>th</sup> Brigade units were elsewhere at the material time.<sup>4338</sup>

(ii) Findings of the Chamber regarding Plunder of Public or Private Property in Maline

1891. On 7 June 1993, the village of Maline was attacked from HVO positions.<sup>4339</sup> In the early hours of the morning of 8 June 1993, the HVO and the ABiH exchanged fire.<sup>4340</sup> Only when the HVO stopped resisting did the ABiH troops, composed of the 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions, enter Maline.<sup>4341</sup> At 1000 hours on 8 June 1993, the 306<sup>th</sup> Brigade 1<sup>st</sup> Battalion Military Police arrived in Maline in order to assist in the evacuation of the civilian population.<sup>4342</sup> Part of the battalion escorted 200 inhabitants towards Mehurići, while the rest of the battalion remained in Maline to protect the villagers' property.<sup>4343</sup> The column of villagers, escorted by the military

<sup>4334</sup> *Ibid.*, para. 310.

<sup>4335</sup> Hadžihasanović Defence Final Brief, para. 549.

<sup>4336</sup> Kubura Defence Final Brief para. 66.

<sup>4337</sup> *Ibid.*, paras. 61 and 91.

<sup>4338</sup> *Ibid.*, para. 91.

<sup>4339</sup> Salim Tarakčija, T(F) p. 11803.

<sup>4340</sup> P 387 (under seal), par 7; Salim Tarakčija, T(F) pp. 11804, 11850 and 11851.

<sup>4341</sup> Salim Tarakčija, T(F) p. 11804.

<sup>4342</sup> Witness HB, T(F) pp. 12589-12590; DH 2090, para. 6.

<sup>4343</sup> Witness HB, T(F) p. 12592; DH 2090, para. 7; Witness ZF, T(F), pp. 3604 and 3605; Witness XB, T(F) pp. 1644-1645; Berislav Marjanović, T(F) pp. 2700 and 2701.

police, was intercepted not far from Poljanice by a group of mujahedin who took some villagers in the direction of Bikoši.<sup>4344</sup>

1892. Contrary to the allegations of the Prosecution,<sup>4345</sup> the 7<sup>th</sup> Brigade did not participate in the combat operations in Maline. In fact, the evidence shows that the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion conducted combat operations in Hajdareve Njive,<sup>4346</sup> located about 12 kilometres from Maline,<sup>4347</sup> while at the time of the alleged events the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were operating in Ovnak sector.<sup>4348</sup>

1893. On 8 June 1993, at around 0900 or 1000 hours, Witness HB went to Maline in order to help in the evacuation of the civilian population<sup>4349</sup> and to prevent the plunder.<sup>4350</sup> The witness went back in the direction of Mehurići at around 1430 or 1500 hours,<sup>4351</sup> accompanied by a column of 200 villagers.<sup>4352</sup> Witness ZK, who was in the column of villagers, did not see any plundering in Maline, before his departure in the direction of Mehurići.<sup>4353</sup> Before being transferred to Mehurići on 8 June 1993,<sup>4354</sup> Witness Ivanka Tavić went through the village of Maline and saw soldiers entering and exiting houses. When she returned home in 1996, Witness Ivanka Tavić saw that even the door to her house had disappeared.<sup>4355</sup> According to Witness ZF, soldiers plundered her house and carried away objects belonging to her in their truck.<sup>4356</sup> Witness ZL, who was captured by the Muslim army,<sup>4357</sup> had the opportunity to return home before being taken in the direction of Mehurići.<sup>4358</sup> Muslim soldiers were in the process of searching the witness' house and took his bicycle, and some tobacco, coffee, and flour.<sup>4359</sup> On the road on his way towards Mehurići, Witness Z15 saw his Muslim neighbours plundering household appliances from Croatian homes and saw ABiH soldiers stealing cars, tractors, and trucks.<sup>4360</sup> Witness Zdravko Pranješ saw ABiH soldiers<sup>4361</sup>

<sup>4344</sup> Ivanka Tavić, T(F) p. 1165; Zdravko Pranješ, T(F) pp. 1372 and 1380; Witness HB, T(F) pp. 12637-12638; Witness XB, T(F) pp. 1645-1646.

<sup>4345</sup> Prosecution Final Brief, paras. 194-196.

<sup>4346</sup> Remzija Šiljak, T(F) pp. 10572-10573; Semir Terzić, T(F) p. 18256; Safet Junuzović, T(F) pp. 18507-18508; Suad Jusović, T(F) pp. 18435-18437; DK 18; DK 19; DK 34; P 465.

<sup>4347</sup> Remzija Šiljak, T(F) p. 10575.

<sup>4348</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>4349</sup> Witness HB, T(F) p. 12589.

<sup>4350</sup> Witness HB, T(F) p. 12596.

<sup>4351</sup> Witness HB, T(F) p. 12592.

<sup>4352</sup> Witness HB, T(F) p. 12593.

<sup>4353</sup> P 92, para. 18.

<sup>4354</sup> Ivanka Tavić, T(F) pp. 1161-1163.

<sup>4355</sup> Ivanka Tavić, T(F) pp. 1166-1167.

<sup>4356</sup> Witness ZF, T(F) pp. 3594 and 3595. *See* Hadžihasanović Defence Final Brief, para. 538: the Defence for the Accused Hadžihasanović questions the credibility of Witness ZF because of her memory lapses during her testimony.

<sup>4357</sup> Witness ZL, T(F) p. 4384.

<sup>4358</sup> Witness ZL, T(F) p. 4385.

<sup>4359</sup> Witness ZL, T(F) pp. 4385 and 4386.

<sup>4360</sup> P 397 (under seal), para. 9.

take motorised vehicles that were in the village.<sup>4362</sup> In the late afternoon of 8 June 1993,<sup>4363</sup> ABiH soldiers stole two lambs which belonged to Witness Z5.<sup>4364</sup> The next day, in the morning, Witness Z5 watched civilian Muslims, mainly his Muslim neighbours from Donje Maline, plunder the Croatian houses in Maline. According to the witness, they also plundered his house and took household appliances and food away with them. The witness did not remember seeing ABiH soldiers take part in the plunder, but pointed out that the army did nothing to put a stop to it.<sup>4365</sup> When he went to Gornje Maline 20 to 25 days after the attack of 8 June 1993, Witness Salim Tarakčija noticed that the houses belonging to Croats had been plundered.<sup>4366</sup> Likewise, the ECMM observers noted on 3 August 1993 that the village of Maline had been plundered.<sup>4367</sup>

1894. In view of the above evidence, the Chamber finds that plunder was committed extensively and repeatedly in Maline on 8 and 9 June 1993. The Chamber notes that the witnesses who lived in Maline noticed on 8 June 1993 that houses and property belonging to Croatian inhabitants had been plundered.<sup>4368</sup> This plunder continued during the day of 9 June 1993,<sup>4369</sup> and household appliances,<sup>4370</sup> cars,<sup>4371</sup> food,<sup>4372</sup> and livestock<sup>4373</sup> were plundered. The Chamber considers that the value of the plundered property and the repeated acts of plunder make it possible to conclude that the offence was serious.

1895. The Chamber finds that property such as household appliances,<sup>4374</sup> cars,<sup>4375</sup> food<sup>4376</sup> and livestock<sup>4377</sup> was stolen. Although the rules on war booty authorised the ABiH to seize private property that could be used directly for military purposes,<sup>4378</sup> the Chamber considers that household appliances, food, and livestock do not fall within the category of property having direct military

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<sup>4361</sup> Zdravko Pranješ, T(F) p. 1368.

<sup>4362</sup> Zdravko Pranješ, T(F) p. 1369.

<sup>4363</sup> P 387 (under seal), para. 9.

<sup>4364</sup> P 387 (under seal), para. 11.

<sup>4365</sup> P 387 (under seal), para. 15.

<sup>4366</sup> Salim Tarakčija, T(F) p. 11860.

<sup>4367</sup> P 164.

<sup>4368</sup> Witness ZF, T(F) pp. 3594-3595; Witness ZL, T(F) pp. 4385-4386; P 397 (under seal), para. 9; Zdravko Pranješ, T(F) p. 1369; P 387 (under seal), paras. 11 and 15.

<sup>4369</sup> P 387 (under seal), para. 15.

<sup>4370</sup> P 397 (under seal), para. 9; P 387 (under seal), para. 15.

<sup>4371</sup> P 397 (under seal), para. 9; Zdravko Pranješ, T(F) p. 1369.

<sup>4372</sup> Witness ZL, T(F) pp. 4385 and 4386; P 387, para. 15.

<sup>4373</sup> P 387 (under seal), para. 11.

<sup>4374</sup> P 397 (under seal), para. 9; P 387 (under seal), para. 15.

<sup>4375</sup> P 397 (under seal), para. 9; Zdravko Pranješ, T(F), p. 1369.

<sup>4376</sup> Witness ZL, T(F) pp. 4385-4386; P 387 (under seal), para. 15.

<sup>4377</sup> P 387 (under seal), para. 11.

<sup>4378</sup> See DH 1469.

use. Additionally, contrary to the rules on war booty established by the ABiH Supreme Command, the evidence does not demonstrate that receipts were given in exchange for the confiscation of this property.<sup>4379</sup> The Chamber therefore concludes that the property in question was unlawfully and deliberately appropriated and that such appropriation went beyond the scope of war booty.

1896. With regard to the perpetrators, the Chamber finds that the property was plundered by civilians and by ABiH soldiers. The Chamber notes that witnesses stated that they saw Muslim soldiers and civilians entering and exiting houses, taking with them property belonging to the Croatian inhabitants of Maline.<sup>4380</sup> Contrary to what the Prosecution alleges,<sup>4381</sup> the Chamber considers that, with regard to the participation of the ABiH, plunder was committed by 306<sup>th</sup> Brigade members and not by 7<sup>th</sup> Brigade units, which were not in Maline at the material time.<sup>4382</sup>

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crimes

1897. The Chamber finds that the plunder in Maline in June 1993 was committed in particular by members of the OG *Bosanska Krajina* 306<sup>th</sup> Brigade.<sup>4383</sup> Since the OG *Bosanska Krajina* 306<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time, it is presumed that the Accused Hadžihasanović exercised effective control over the members of the 306<sup>th</sup> Brigade and over the perpetrators of the plunder who belonged to the 306<sup>th</sup> Brigade.

1898. Furthermore, the evidence shows that the 306<sup>th</sup> Brigade carried out the orders of the Accused Hadžihasanović through the OG *Bosanska Krajina*. For example, following a request from the Accused Hadžihasanović on 17 October 1993<sup>4384</sup> for information about the events which occurred in Maline, the 306<sup>th</sup> Brigade sent a report to the 3<sup>rd</sup> Corps Command on 19 October 1993 which provided information about the execution of 25 persons of Croatian nationality.<sup>4385</sup>

<sup>4379</sup> DH 1469. The ABiH rules governing war booty provide that a certificate be given in exchange for the confiscation of certain private property.

<sup>4380</sup> Ivanka Tavić, T(E) p. 1166; Witness ZF, T(F) pp. 3594-3595; Witness ZL, T(F) pp. 4385-4386; P 397 (under seal), para. 9; Zdravko Pranješ, T(F) p. 1368; P 387 (under seal), para. 15.

<sup>4381</sup> See Indictment, para. 44.

<sup>4382</sup> Remzija Šiljak, T(F) pp. 10572-10573; Semir Terzić, T(F) p. 18256; Safet Junuzović, T(F) pp. 18507-18508; Suad Jusović, T(F) pp. 18435-18437; DK 18; DK 19; DK 34; P 465; Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>4383</sup> See P 710/DH 1322: the 306<sup>th</sup> Brigade was subordinated to the OG *Bosanska Krajina*.

<sup>4384</sup> P 111.

<sup>4385</sup> DH 1498.

1899. Furthermore, the Defence for the Accused Hadžihasanović does not dispute that the 306<sup>th</sup> Brigade was subordinated to the Accused Hadžihasanović.

1900. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the plunder and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

b. Knowledge of Enver Hadžihasanović

1901. The Chamber finds that, as of 10 June, the Accused Hadžihasanović issued several orders to all the units subordinated to him, in which he explicitly mentioned the plunder that was committed following the combat operations, and in which he recalled that the perpetrators of those acts must be punished.<sup>4386</sup> The Chamber first notes that the Accused Hadžihasanović repeatedly raised the issue of the plunder throughout the month of June 1993. The Chamber also notes that while those orders do not expressly make reference to the village of Maline, they do mention acts of plunder committed in sectors where fighting or combat activities between the HVO and ABiH took place. Accordingly, the Chamber considers that the Accused Hadžihasanović had knowledge of the problems associated with the plunder in all the zones in which his troops were engaged, including the village of Maline. Moreover, the Chamber considers that the presence of Džemal Merdan in Maline alongside ECMM observers on 3 August 1993 and their observations that the village of Maline had been plundered<sup>4387</sup> make it possible to establish, beyond a shadow of a doubt, that the Accused Hadžihasanović had knowledge of the plunder committed in Maline in June 1993.

c. Measures Taken

1902. The Chamber considers that the Accused Hadžihasanović took measures of a general nature prohibiting the plunder and also issued orders intended to prevent the plunder and punish the perpetrators. As the issue of the measures taken by the Accused Hadžihasanović is developed in the part “Findings of the Chamber on Measures Taken by the Accused Hadžihasanović regarding Destruction and Plunder”, the Chamber refers to the relevant paragraphs of the Judgement.<sup>4388</sup>

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<sup>4386</sup> P 186; P 189; DH 65.

<sup>4387</sup> P 164.

<sup>4388</sup> See *infra* paras. 2018-2063.

(iv) Findings of the Chamber regarding the Responsibility of Amir Kubura

1903. The Chamber found that the 7<sup>th</sup> Brigade units did not participate in the plunder committed in Maline but that the crimes were committed by members of the 306<sup>th</sup> Brigade and by civilians. Since the units from the 306<sup>th</sup> Brigade were not subordinated to the Accused Kubura, the Chamber finds that he did not exercise effective control over the perpetrators of the crimes committed in Maline in June 1993.

(v) Conclusions of the Chamber

1904. The Chamber considers that the Accused Hadžihasanović knew that plunder had been committed in Maline in June 1993 by members of the 306<sup>th</sup> Brigade. Nevertheless, the Chamber finds that the Accused Hadžihasanović took both preventive measures to prevent acts of plunder and measures intended to punish the perpetrators. Consequently, the Accused Hadžihasanović cannot be held responsible for the plunder committed in Maline in June 1993.

1905. The Chamber further finds that the 7<sup>th</sup> Brigade units were not in Maline in June 1993. Accordingly, the Chamber considers that the perpetrators of the plunder committed in Maline were not under the effective control of the Accused Kubura and that he cannot be held responsible for the crimes committed.

(d) Čukle

1906. The Indictment alleges that 7<sup>th</sup> Brigade soldiers<sup>4389</sup> and 306<sup>th</sup> Brigade soldiers plundered dwellings, buildings, and personal property belonging to Bosnian Croats and Bosnian Serbs in Čukle in June 1993.<sup>4390</sup> The Indictment alleges that the Accused Hadžihasanović knew or had reason to know that the members of those units, under his command and effective control, were about to commit acts of plunder or had done so, and that he failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators.<sup>4391</sup> The Accused Hadžihasanović is charged with plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

1907. Although the Indictment mentions the 7<sup>th</sup> Brigade in relation to the plunder committed in Čukle in June 1993, the Chamber notes that it does not allege the responsibility of the Accused Kubura for the plunder committed by his subordinates.

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<sup>4389</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

(i) Arguments of the Parties

1908. The Prosecution alleges that on the day of and the day following the attack, the 3<sup>rd</sup> Corps soldiers plundered the property of the Croatian inhabitants of Čukle.<sup>4392</sup> Moreover, the Prosecution asserts that the Accused Hadžihasanović and the Accused Kubura knew that property belonging to civilian Croats had been plundered in the sectors of Guča Gora, Šušanj and Ovnak, and points out that the Accused failed to take measures to stop the crimes committed in Čukle and to punish the perpetrators.<sup>4393</sup> The Chamber notes, however, that the Indictment contains no charge against the Accused Kubura for the plunder committed in Čukle in June 1993 and that, as a result, it may not be seized of the question of his responsibility as regards the plunder committed in Čukle in June 1993. Accordingly, the Chamber will not elaborate upon the Prosecution's arguments dealing with the knowledge of and the measures taken by the Accused Kubura as regards the plunder committed in Čukle in June 1993.

1909. The Defence for the Accused Hadžihasanović does not dispute that plunder was committed on the day of the fighting, but argues that most of the plunder was committed after the fighting was over. The Defence for the Accused Hadžihasanović adds that it has not been established that the plundered property was of sufficient value that being deprived of it involved grave consequences. With regard to the perpetrators of the plunder, the Defence for the Accused Hadžihasanović argues that while soldiers may have been involved in individual acts of plunder, most of the plunder was the work of civilians. Furthermore, the Defence for the Accused Hadžihasanović submits that General Hadžihasanović took measures to prevent the plunder, to stop the plunder, and to ensure that the subordinates who committed plunder would be dealt with in accordance with the laws in force.<sup>4394</sup>

(ii) Findings of the Chamber regarding Plunder of Public or Private Property in Čukle

1910. On 5 June 1993, the units of the 7<sup>th</sup> Brigade received the order to launch an attack on the Vrselje-Crni Vrh-Ušice-Čukle-Brajkovići axis and to take control of the villages of Čukle and Novo Selo.<sup>4395</sup> At around 0430 hours on the morning of 8 June 1993, the village of Čukle was attacked.<sup>4396</sup> During that offensive, the HVO front line, located at the village of Čukle in the hamlet

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<sup>4390</sup> Indictment, para. 44.

<sup>4391</sup> Indictment, para. 45.

<sup>4392</sup> Prosecution Final Brief, para. 313.

<sup>4393</sup> *Ibid.*, para. 319.

<sup>4394</sup> Hadžihasanović Defence Final Brief, para. 585.

<sup>4395</sup> P 419; P 420.

<sup>4396</sup> Jozo Erenda, T(F) p. 4265.



of Mrkonje Kuće, was breached.<sup>4397</sup> The HVO units thus left in the direction of Ovnak and Grahovčići.<sup>4398</sup> The inhabitants of the village also withdrew towards Ovnak.<sup>4399</sup>

1911. Contrary to the allegations of the Prosecution,<sup>4400</sup> the 306<sup>th</sup> Brigade did not take part in the attack on Čukle. The evidence in fact shows that on 8 June 1993, that brigade was moving towards the Maline-Guča Gora-Mosor-Bukovica axis.<sup>4401</sup> In fact, the 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions were fighting in Maline<sup>4402</sup> while the 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were in Guča Gora.<sup>4403</sup>

1912. When the attack on Čukle began on 8 June 1993, Witness ZD fled towards the forest,<sup>4404</sup> and from there he could see the Muslim troops<sup>4405</sup> plundering property and seizing objects such as tractors.<sup>4406</sup> Right before he left the village of Čukle at around noon on 8 June 1993, in the direction of Grahovčići,<sup>4407</sup> Witness Ivo Kolenda noticed that soldiers were taking out all of his animals, his horse, and his livestock.<sup>4408</sup> The witness believed that those who committed that plunder were members of the 7<sup>th</sup> Brigade.<sup>4409</sup> On the afternoon of 8 June 1993, Witness Z2 saw a soldier and Muslim civilians plundering a store in Donje Čukle and transporting the plundered property with a tractor.<sup>4410</sup> This plunder continued on 9 June 1993 and the witness assumed that the plunderers were Muslim soldiers.<sup>4411</sup> Witness Z3 was detained between 8 and 12 June 1993 in the village of Bare, which is on a hill one kilometre from Čukle.<sup>4412</sup> From where he was, the witness could see ABiH soldiers in green camouflage uniforms loading furniture, household appliances, and livestock into civilian trucks and then take the plundered property towards Zenica.<sup>4413</sup> About two weeks after the attack on 8 June 1993,<sup>4414</sup> for the purposes of the Civil Defence,<sup>4415</sup> Witness ZA went to Ovnak zone<sup>4416</sup> and saw soldiers plunder houses in Čukle.<sup>4417</sup> According to Witness ZA, immediately after

<sup>4397</sup> Witness ZM, T(F) p. 4699.

<sup>4398</sup> Jozo Erenda, T(F) pp. 4266 and 4272.

<sup>4399</sup> Ivo Kolenda, T(F) p. 4469; P 384 (under seal), para. 5.

<sup>4400</sup> See Indictment, para. 44; Prosecution Final Brief, paras. 311-312.

<sup>4401</sup> P 579.

<sup>4402</sup> Salim Tarakčija, T(F) p. 11804.

<sup>4403</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4404</sup> Witness ZD, T(F) pp. 3384-3385.

<sup>4405</sup> Witness ZD, T(F) p. 3387.

<sup>4406</sup> Witness ZD, T(F) p. 3386.

<sup>4407</sup> Ivo Kolenda, T(F) p. 4470.

<sup>4408</sup> Ivo Kolenda, T(F) p. 4471.

<sup>4409</sup> Ivo Kolenda, T(F) p. 4472. The witness believed that it was the 7<sup>th</sup> Brigade, since that brigade had attempted on several occasions to attack HVO forces in Ušiće and Grahovčići.

<sup>4410</sup> P 384 (under seal), para. 12.

<sup>4411</sup> P 384 (under seal), para. 15.

<sup>4412</sup> P 385 (under seal), para. 8.

<sup>4413</sup> P 385 (under seal), para. 8.

<sup>4414</sup> Witness ZA, T(F) p. 2330.

<sup>4415</sup> Witness ZA, T(F) p. 2330.

<sup>4416</sup> Witness ZA, T(F) pp. 2327-2328.

the villages in the Ovnak region fell, the 7<sup>th</sup> Brigade Military Police brought in trucks requisitioned from civilians<sup>4418</sup> and seized technical equipment, household appliances, building materials and food.<sup>4419</sup> The 7<sup>th</sup> Brigade was followed by a police unit of the 314<sup>th</sup> Brigade which also committed acts of plunder.<sup>4420</sup>

1913. In view of the above evidence, the Chamber finds that plunder was committed repeatedly and extensively in Čukle in June 1993. The Chamber notes that many houses and outbuildings in Čukle were plundered. Livestock, furniture, and household appliances were stolen from these places.<sup>4421</sup> Contrary to the allegations of the Defence for the Accused Hadžihasanović,<sup>4422</sup> the Chamber considers that the value of the plundered property and the repeated acts of plunder make it possible to conclude that the offence was serious.

1914. The Chamber finds that livestock, furniture, and household appliances were stolen.<sup>4423</sup> Although the ABiH rules on war booty authorised the army to seize private property that could be used directly for military purposes,<sup>4424</sup> the Chamber considers that household appliances, furniture, and livestock do not fall into the category of property having direct military use. Additionally, contrary to the rules on war booty established by the ABiH Supreme Command, the evidence does not demonstrate that receipts were given in exchange for the confiscation of this property.<sup>4425</sup> The Chamber therefore concludes that the property in question was unlawfully and deliberately appropriated and that such appropriation went beyond the scope of war booty.

1915. As regards the perpetrators, the Chamber considers that the plunder was in large part committed by the 7<sup>th</sup> Brigade Military Police. The Chamber finds that, following the fall of Čukle, the members of the 7<sup>th</sup> Brigade Military Police had at their disposal trucks requisitioned from civilians, and took with them property that was inside the houses in Čukle.<sup>4426</sup>

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<sup>4417</sup> Witness ZA, T(F) pp. 2330-2331.

<sup>4418</sup> Witness ZA, T(F) p. 2332.

<sup>4419</sup> Witness ZA, T(F) pp. 2330-2332.

<sup>4420</sup> Witness ZA, T(F) p. 2332.

<sup>4421</sup> Ivo Kolenda, T(F) p. 4471; P 385 (under seal), para. 8; Witness ZA, T(F) pp. 2330-2332.

<sup>4422</sup> Hadžihasanović Defence Final Brief, para. 585: "It cannot be established that the initial looting was of sufficient value to involve grave consequences."

<sup>4423</sup> Ivo Kolenda, T(F) p. 4471; P 385 (under seal), para. 8; Witness ZA, T(F) pp. 2330-2332.

<sup>4424</sup> See DH 1469.

<sup>4425</sup> DH 1469. The ABiH rules governing war booty provide that a certificate be given in exchange for the confiscation of certain private property.

<sup>4426</sup> Witness ZA, T(F) pp. 2330-2332.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

a. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1916. The Chamber finds that the plunder alleged in paragraph 44 of the Indictment was committed by the members of the military police subordinated to the 7<sup>th</sup> Brigade.<sup>4427</sup> Since the 7<sup>th</sup> Brigade was *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time, it is presumed that the Accused Hadžihasanović exercised effective control over the 7<sup>th</sup> Brigade and over the perpetrators of the plunder.

1917. Moreover, the evidence shows that the tactical group composed in particular of 7<sup>th</sup> Brigade units followed the orders of the 3<sup>rd</sup> Corps Command and reported to it on the progress of the combat operations in Ovnak sector. The combat report from the Zenica *OpŠO* of 11 June 1993 addressed to the 3<sup>rd</sup> Corps Command indicates that the tactical group made an assessment of the situation in Ovnak sector and that combat reports were prepared which were approved by the 3<sup>rd</sup> Corps Command.<sup>4428</sup> Moreover, following the order of 16 June 1993 from the 3<sup>rd</sup> Corps Command demanding information on the allegations of plunder committed by soldiers after combat operations,<sup>4429</sup> the 7<sup>th</sup> Brigade Command sent a report to the 3<sup>rd</sup> Corps Command specifying that measures had been taken to prevent the acts of plunder and denying that such acts had been committed by 7<sup>th</sup> Brigade units in Ovnak sector.<sup>4430</sup>

1918. Likewise, the Defence for the Accused Hadžihasanović does not dispute that the 7<sup>th</sup> Brigade was subordinated to the Accused Hadžihasanović and presented no evidence to refute such a presumption.

1919. Consequently, the Chamber concludes that the Accused Hadžihasanović exercised effective control over the perpetrators of the plunder and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

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<sup>4427</sup> See *supra*, para. 346.

<sup>4428</sup> P 423.

<sup>4429</sup> P 189.

<sup>4430</sup> P 426.

b. Knowledge of Enver Hadžihasanović

1920. The Prosecution alleges that both Accused were informed of the plundering in the sectors of Guča Gora, Šušanj and Ovnak.<sup>4431</sup> The Prosecution points to the meeting between the Accused Hadžihasanović and Witness ZP during which the witness mentioned that the soldiers were returning with bags filled with plundered property.<sup>4432</sup> Furthermore, the Prosecution considers that the order given by the Accused Kubura on 20 June 1993 prohibiting the plunder of the abandoned houses suggests that he was informed by the Accused Hadžihasanović of the acts of plunder that had been committed.<sup>4433</sup> The Defence for the Accused Hadžihasanović does not raise the issue of knowledge.

1921. The Chamber finds that, as of 10 June 1993, the Accused Hadžihasanović issued several orders to all the units under his command, in which he explicitly mentioned the plunder that was committed following the combat operations, and in which he reiterated that the perpetrators of those acts must be punished.<sup>4434</sup> The Chamber notes that the Accused Hadžihasanović repeatedly raised the issue of the plunder throughout the month of June 1993. The Chamber also notes that while those orders do not expressly make reference to the village of Čukle, they do mention acts of plunder committed in sectors where fighting or combat activities between the HVO and ABiH took place. Accordingly, the Chamber considers that the Accused Hadžihasanović had knowledge of the problems associated with the plunder in all the zones in which his troops were engaged, including in the village of Čukle. The Chamber further notes that during a meeting with Witness ZP on 20 June 1993, the Accused Hadžihasanović acknowledged that he knew that soldiers under his command were involved in acts of plunder.<sup>4435</sup> Furthermore, the Chamber recalls that it need not consider the question of whether the Accused Kubura had knowledge of the plunder committed in Čukle in June 1993.

c. Measures Taken

1922. The Prosecution alleges that neither the Accused Hadžihasanović nor the Accused Kubura took the necessary and reasonable measures to stop those crimes or to punish the perpetrators.<sup>4436</sup> The Prosecution adds that the order given on 20 June 1993 by the Accused Kubura prohibiting plunder does not constitute a sufficient measure to consider that a commander has fulfilled his

<sup>4431</sup> Prosecution Final Brief, para. 319.

<sup>4432</sup> *Ibid.*, para. 317.

<sup>4433</sup> *Ibid.*, para. 318.

<sup>4434</sup> P 186; P 189; DH 65; P 188.

<sup>4435</sup> Witness ZP, T(F) p. 8863; P 589.

<sup>4436</sup> Prosecution Final Brief, para. 319.

obligations. According to the Prosecution, the Accused Kubura had the duty to open an investigation so that the perpetrators of crimes would be prosecuted.<sup>4437</sup>

1923. The Defence for the Accused Hadžihasanović alleges that the Accused Hadžihasanović took preventive measures both to prevent and stop the plunder, and measures to ensure that his subordinates who allegedly committed acts of plunder would be dealt with in accordance with the laws in force.<sup>4438</sup>

1924. The Chamber considers that since the Accused Kubura was not mentioned in the Indictment in relation to the plunder committed in Čukle in June 1993, the question of measures taken by him need not be raised.

1925. The Chamber considers that the Accused Hadžihasanović took measures of a general nature prohibiting plunder and also issued orders intended to prevent plunder and punish the perpetrators. As the issue of the measures taken by the Accused Hadžihasanović is developed in the part “Findings of the Chamber on Measures Taken by the Accused Hadžihasanović regarding Destruction and Plunder”, the Chamber refers to the relevant paragraphs of the Judgement.<sup>4439</sup>

(iv) Conclusions of the Chamber

1926. The Chamber considers that the Accused Hadžihasanović knew that plunder had been committed in Čukle in June 1993 by members of the 7<sup>th</sup> Brigade Military Police. Nevertheless, the Chamber finds that the Accused Hadžihasanović took preventive measures to prevent acts of plunder and measures intended to punish the perpetrators. Consequently, the Accused Hadžihasanović cannot be held responsible for the plunder committed in Čukle in June 1993. Furthermore, despite the allegations by the Prosecution in its Final Brief,<sup>4440</sup> the Chamber considers that it may not be seized of the question of the responsibility of the Accused Kubura, since the Indictment does not charge him with the plunder committed in Čukle in June 1993.

(e) Šušanj/Ovnač/Brajkovići/Grahovčići

1927. The Indictment alleges that the 7<sup>th</sup> Brigade,<sup>4441</sup> the 306<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade plundered dwellings, buildings and personal property belonging to Bosnian Croats and Bosnian

<sup>4437</sup> Prosecution Final Brief, para. 318.

<sup>4438</sup> Hadžihasanović Defence Final Brief, para. 585.

<sup>4439</sup> See *supra*, paras. 2018-2063.

<sup>4440</sup> Prosecution Final Brief, para. 319.

<sup>4441</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and played a major role in the combat operations conducted by the 7<sup>th</sup> Brigade.

Serbs in Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993.<sup>4442</sup> The Indictment sets out that the Accused knew or had reason to know that the members of these units who were under their command and effective control were about to commit acts of plunder or had done so, and failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators.<sup>4443</sup> The Accused are charged with the plunder of public and private property, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

(i) Arguments of the Parties

1928. The Prosecution alleges that soldiers belonging to the 7<sup>th</sup> Brigade, 314<sup>th</sup> Brigade and 306<sup>th</sup> Brigade attacked the villages of Šušanj/Ovnak/Brajkovići/Grahovčići. During and immediately after the attacks, buildings were plundered, some by the 7<sup>th</sup> Brigade.<sup>4444</sup> The Prosecution holds that both of the Accused had been informed about the plunder committed in these villages<sup>4445</sup> and that with the exception of written orders prohibiting the commission of crimes, the Accused failed to take any measures to prevent these crimes or punish the perpetrators.<sup>4446</sup>

1929. The Defence for the Accused Hadžihasanović alleges that based on the evidence it is not possible to know what had been plundered, the extent of the plunder or the value of the plundered property. Furthermore, the evidence does not make it possible to know if the plunder was unlawful and not justified by military necessity or whether it amounted to war booty. The Defence for the Accused Hadžihasanović posits that the identity of the plunderers has not been established and that the 3<sup>rd</sup> Corps took all the necessary and reasonable measures to prevent the plunder, to avoid the repetition of plunder and to punish the perpetrators once their identity had been established.<sup>4447</sup>

1930. The Defence for the Accused Hadžihasanović does not dispute the presence of 7<sup>th</sup> Brigade units in Ovnak on 8 June 1993<sup>4448</sup> but claims that the perpetrators of the plunder were not identified as belonging to the 7<sup>th</sup> Brigade.<sup>4449</sup> The Defence for the Accused Kubura claims that it was not possible for 7<sup>th</sup> Brigade soldiers to commit acts of plunder<sup>4450</sup> since they had left the zone of the Ovnak pass on 8 June 1993 and headed towards Kakanj.<sup>4451</sup> The Defence for the Accused Kubura

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<sup>4442</sup> Indictment, para. 44.

<sup>4443</sup> *Ibid.*, para. 45.

<sup>4444</sup> Prosecution Final Brief, para. 320.

<sup>4445</sup> *Ibid.*, paras. 321 and 322.

<sup>4446</sup> *Ibid.*, para. 322.

<sup>4447</sup> Hadžihasanović Defence Final Brief, para. 734.

<sup>4448</sup> Kubura Defence Final Brief, para. 168.

<sup>4449</sup> *Ibid.*, paras. 164 and 182.

<sup>4450</sup> *Ibid.*, para. 175.

<sup>4451</sup> *Ibid.*, paras. 173-174.

added that different brigades and units were also in the Ovnak sector at the time material to the alleged facts.<sup>4452</sup>

(ii) Findings of the Chamber regarding the Plunder of Public or Private Property in Šušanj/Ovnak/Brajkovići/Grahovčići

1931. In early June 1993, combat operations were conducted in the direction of the Bila Valley.<sup>4453</sup> The ABiH decided to attack the pass at Ovnak that was occupied by HVO forces because of the tactical and operational interest of the sector.<sup>4454</sup> As the 306<sup>th</sup> Brigade was in a difficult position facing the HVO forces, it was decided to use other 3<sup>rd</sup> Corps units in the Ovnak sector in order to assist the 306<sup>th</sup> Brigade.<sup>4455</sup> Consequently, a tactical group under the command of the Accused Kubura consisting of 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade units was formed in order to take control of the Ovnak sector.<sup>4456</sup> On 8 June 1993, in the early hours of the morning, combat began between HVO and ABiH forces.<sup>4457</sup> The 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions<sup>4458</sup> intervened in Ovnak on 8 June 1993<sup>4459</sup> and the fighting continued until the middle of the afternoon.<sup>4460</sup> The village of Brajkovići was attacked in late morning<sup>4461</sup> and Šušanj, which had already been deserted by its inhabitants, was not included in the combat operations.<sup>4462</sup> The 7<sup>th</sup> Brigade units did not enter the villages of Brajkovići, Grahovčići and Šušanj.<sup>4463</sup> After receiving the order to head in the direction of Kakanj,<sup>4464</sup> the 7<sup>th</sup> Brigade units left the Ovnak sector on 9 June 1993.<sup>4465</sup>

1932. After the fall of the villages of Šušanj, Ovnak, Brajkovići and Grahovčići, the military police arrived<sup>4466</sup> and members of the 3<sup>rd</sup> Corps Military Police Battalion were stationed at the check-point set up in Ovnak.<sup>4467</sup> The 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade military police also went to

<sup>4452</sup> *Ibid.*, para. 182.

<sup>4453</sup> Džemal Merdan, T(F) p. 13125.

<sup>4454</sup> Džemal Merdan, T(F) p. 13126.

<sup>4455</sup> Džemal Merdan, T(F) pp. 13125-13126; P 420.

<sup>4456</sup> P 420; P 419; Mirsad Ibraković, T(F) pp. 14373-14374.

<sup>4457</sup> Franjo Križanac, T(F) pp. 1100-1101; P 400 (under seal), para. 6.

<sup>4458</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

<sup>4459</sup> Kasim Alajbegović, T(F) p. 18699; Elvedin Omić, T(F) pp. 18598-18599; Safet Junuzović, T(F) p. 18514.

<sup>4460</sup> Kasim Alajbegović, T(F) p. 18700; Safet Junuzović, T(F) p. 18517.

<sup>4461</sup> Franjo Križanac, T(F) p. 1101; P 400 (under seal), para. 7.

<sup>4462</sup> Safet Junuzović, T(F) p. 18516.

<sup>4463</sup> Safet Junuzović, T(F) p. 18516.

<sup>4464</sup> Safet Junuzović, T(F) p. 18517. *See* DK 23 and DK 24.

<sup>4465</sup> Safet Junuzović, T(F) p. 18578; Kasim Alajbegović, T(F) pp. 18701-18702; P 426.

<sup>4466</sup> Elvedin Omić, T(F) p. 18618; P 898; P 424; Safet Junuzović, T(F) pp. 18576 and 1578.

<sup>4467</sup> P 898.

these villages to prevent plunder and arson and to recover the war booty.<sup>4468</sup> Furthermore, Nesib Talić, head of the 7<sup>th</sup> Brigade Security Service, was in the Ovnak sector on 8 June 1993.<sup>4469</sup>

1933. Contrary to the allegations of the Prosecution,<sup>4470</sup> the evidence shows that the 306<sup>th</sup> Brigade did not take part in the attacks on the villages of Šušanj, Ovnak, Brajkovići and Grahovčići. On 8 June 1993, it was positioned on the Maline-Guča Gora-Mosor-Bukovica axis.<sup>4471</sup> The 306<sup>th</sup> Brigade 1<sup>st</sup> and 4<sup>th</sup> Battalions conducted combat operations in Maline,<sup>4472</sup> while the 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were in Guča Gora at the time material to the alleged facts.<sup>4473</sup>

1934. On 8 June 1993, during the operation in Ovnak, 7<sup>th</sup> Brigade soldiers entered houses to make sure there were no soldiers inside.<sup>4474</sup> Witness Elvedin Omić stated that he did not see any member of the 7<sup>th</sup> Brigade removing property from these houses.<sup>4475</sup> Witness Kasim Podžić took an active part in combat in the Ovnak sector and did not see any member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion entering houses intending to plunder them.<sup>4476</sup> According to Witness Safet Junuzović, 7<sup>th</sup> Brigade members were wrongfully accused of plunder in Ovnak since these acts were the work of thieves who had stolen 7<sup>th</sup> Brigade uniforms and insignia.<sup>4477</sup> From his position on Strmac on 8 June 1993,<sup>4478</sup> Witness Žarko Jandrić could see the villages of Ovnak and Brajkovići, and stated that he saw ABiH soldiers taking materiel and technical equipment in the direction of Zenica,<sup>4479</sup> and Muslim civilians loading cattle into trucks.<sup>4480</sup> Nevertheless, the Chamber notes that from the positions Witness Žarko Jandrić held on Strmac, even using binoculars it would have been impossible for him to distinguish a soldier from a civilian in Brajkovići or identify specific objects plundered in Ovnak and Brajkovići.<sup>4481</sup>

1935. Witness BA, who was part of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion in 1992 and 1993,<sup>4482</sup> was in Ovnak on 9 June 1993.<sup>4483</sup> He claimed that 7<sup>th</sup> Brigade members were collecting property belonging

<sup>4468</sup> Witness ZA, T(F) pp. 2330-2332.

<sup>4469</sup> Franjo Križanac, T(F) pp. 1100-1106. On 8 June 1993, Witness Franjo Križanac left Brajkovići for Zenica. On the way, he met Nesib Talić in Pojske. See DK 62/DH 776, an order of 12 March 1993 of the Supreme Command designating Nesib Talić the 7<sup>th</sup> Brigade head of security.

<sup>4470</sup> Prosecution Final Brief, para. 320.

<sup>4471</sup> p 579.

<sup>4472</sup> Salim Tarakčija, T(F) p. 11804.

<sup>4473</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4474</sup> Elvedin Omić, T(F) p. 18602.

<sup>4475</sup> Elvedin Omić, T(F) p. 18603.

<sup>4476</sup> Kasim Podžić, T(F) p. 18645.

<sup>4477</sup> Safet Junuzović, T(F) p. 18548.

<sup>4478</sup> Žarko Jandrić, T(F) p. 950.

<sup>4479</sup> Žarko Jandrić, T(F) p. 952.

<sup>4480</sup> Žarko Jandrić, T(F) p. 973.

<sup>4481</sup> DH 1978; DH 2055.

<sup>4482</sup> Witness BA, T(F) pp. 660, 665, 807 and 808.



to civilians and taking it to the collection point in the church in Brajkovići.<sup>4484</sup> When he went to the church in Brajkovići, Witness BA saw many household appliances inside the church and cars parked in front of it.<sup>4485</sup> This property was then transported to 7<sup>th</sup> Brigade headquarters in Bilimište, where the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were accommodated,<sup>4486</sup> and then taken to a depot.<sup>4487</sup> The witness used a sketch to identify where the property was stored.<sup>4488</sup> On 9 June 1993,<sup>4489</sup> Witness Z18 saw soldiers plunder the presbytery of Brajkovići and load the property into a truck.<sup>4490</sup> When Witness Ivo Vuleta returned to Šušanj on the morning of 9 June 1993,<sup>4491</sup> he found his house ransacked and saw that his radio and VCR were missing.<sup>4492</sup> He also noted a tractor loaded with household appliances in front of Mario Vuleta's house.<sup>4493</sup> On the evening of 9 June 1993, Witness Z2 left Čukle and headed for Šušanj. He hid in the forest around Šušanj for five or six days and saw Muslim civilians plunder property, such as televisions and household appliances, from houses belonging to Croats.<sup>4494</sup>

1936. The Zenica *OpšO* (Municipal Defence Staff) Security and Information Service inspected the Ovnak sector on 10 June 1993 and noted cases of illegal appropriation of property and plunder by inhabitants of the nearby villages.<sup>4495</sup> On 10 or 11 June 1993,<sup>4496</sup> Witness Franjo Križanac went all around the village of Ovnak and saw that all the houses had been plundered.<sup>4497</sup> Witness Mijo Marković went to Šušanj on 10 June 1993<sup>4498</sup> and noted that houses had been plundered, property had been thrown outside and 3<sup>rd</sup> Corps soldiers were transporting furniture.<sup>4499</sup> Around 1330 hours on 10 June 1993, a 3<sup>rd</sup> Corps military police patrol arrived in Šušanj to compile a report on persons of Croatian origin who had died during combat. Members of this patrol noted that many houses had

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<sup>4483</sup> Witness BA, T(F) pp. 791-794. Witness BA was present in Ovnak with other members of the 7<sup>th</sup> Brigade the day after the attack.

<sup>4484</sup> Witness BA, T(F) pp. 794-795.

<sup>4485</sup> Witness BA, T(F) pp. 795-796.

<sup>4486</sup> Witness BA, T(F) p. 801; P 14.

<sup>4487</sup> Witness BA, T(F) pp. 796-797.

<sup>4488</sup> P 14.

<sup>4489</sup> P 400 (under seal), para. 10.

<sup>4490</sup> P 400 (under seal), para. 17.

<sup>4491</sup> Ivo Vuleta, T(F) pp. 4442-4449. Witness Ivo Vuleta spent the night of 8 June 1993 in the school in Pojske and went to Šušanj the next day.

<sup>4492</sup> Ivo Vuleta, T(F) p. 4450.

<sup>4493</sup> Ivo Vuleta, T(F) p. 4450.

<sup>4494</sup> P 384 (under seal), para. 17.

<sup>4495</sup> P 424.

<sup>4496</sup> Franjo Križanac, T(F) pp. 1100, 1103 and 1108. Witness Franjo Križanac arrived in Zenica on 8 June 1993 and left for Ovnak the third day after he arrived in Zenica.

<sup>4497</sup> Franjo Križanac, T(F) p. 1108.

<sup>4498</sup> Mijo Marković, T(F) p. 2365.

<sup>4499</sup> Mijo Marković, T(F) p. 2366.

been plundered and that property of any value had been stolen.<sup>4500</sup> On 10 June 1993, ECMM observers visited the village of Brajkovići and inspected a house to see if acts of plunder had been committed. The observers noted that the contents of drawers in this house had been emptied out onto the floor but the fixtures and fittings were intact. They also noted that the church in Brajkovići had not been plundered.<sup>4501</sup>

1937. When Witness Jozo Marković went back to Šušanj around mid-June 1993,<sup>4502</sup> the village had already been plundered and he saw neighbours taking household appliances out of houses, aided by the police.<sup>4503</sup> On 14 June 1993, the wife of Witness Z18 found that their house had been vandalised and various objects, such as the television, photographs and washing machine, had been stolen.<sup>4504</sup> Two weeks after the offensive, Witness ZA went to the Ovnak region and saw soldiers plunder houses<sup>4505</sup> in Ovnak, Šušanj and Grahovčići.<sup>4506</sup> He stated that right after these villages fell, the 7<sup>th</sup> Brigade military police brought in trucks requisitioned from civilians<sup>4507</sup> and took possession of technical equipment, household appliances, building material and food.<sup>4508</sup> The 7<sup>th</sup> Brigade was followed by a military police unit from the 314<sup>th</sup> Brigade that also committed acts of plunder.<sup>4509</sup>

1938. On 3 August 1993, ECMM observers noted that the village of Grahovčići had been plundered.<sup>4510</sup> In the autumn of 1993, Witness ZQ saw soldiers from the 314<sup>th</sup> Brigade taking furniture from houses near the church in Brajkovići and from the parish office<sup>4511</sup> and then they took it away in trucks.<sup>4512</sup> Witness ZQ asked the soldiers why they were doing it and they replied that it was war booty.<sup>4513</sup>

1939. The Chamber notes that an official procedure to collect and register war booty had been put in place pursuant to the rules established by the Supreme Command in this regard.<sup>4514</sup> An order

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<sup>4500</sup> DH 258.

<sup>4501</sup> DH 196.

<sup>4502</sup> Jozo Marković, T(F) pp. 4422-4423. Witness Jozo Marković went to Zenica on 9 June 1993 and stayed there for five or six days before going to Šušanj.

<sup>4503</sup> Jozo Marković, T(F) pp. 4423-4424. Witness Jozo Marković did not state whether it was the civilian or military police.

<sup>4504</sup> P 400 (under seal), para. 27. The witness and his wife were imprisoned on 9 June 1993 and his wife was given a pass to leave five days after her imprisonment.

<sup>4505</sup> Witness ZA, T(F) p. 2330.

<sup>4506</sup> Witness ZA, T(F) p. 2331.

<sup>4507</sup> Witness ZA, T(F) p. 2332.

<sup>4508</sup> Witness ZA, T(F) pp. 2330-2332.

<sup>4509</sup> Witness ZA, T(F) p. 2332.

<sup>4510</sup> P 164.

<sup>4511</sup> Parish office.

<sup>4512</sup> Witness ZQ, T(F) pp. 1018-1019.

<sup>4513</sup> Witness ZQ, T(F) p. 1018.

<sup>4514</sup> See DH 1469.

dated 5 June 1993 issued by the Accused Kubura set up collection points and called for the creation of two commissions, one in the combat zone and another based in Bilimište, both in charge of organising the collection of war booty:

“Collection points are to be set up and all war booty collected in the area of combat operations is to be directed there, and a collection point shall also be set up on the premises of the Bilimište barracks. These collection points are to be adequately secured. The PK for logistics of the 7th Mbbr is to order the establishment of two commissions as follows: a Commission for the collection and inventory of war booty, which will operate in the zone of combat operations, and a Commission for the collection of war booty, which will organise the collection of war booty in the Bilimište barracks.”<sup>4515</sup>

Furthermore, in a report dated 20 June 1993 on the plunder and destruction of private property following combat operations, the 7<sup>th</sup> Brigade Commander informed the 3<sup>rd</sup> Corps Command that measures had been taken to implement the rules on war booty.<sup>4516</sup>

1940. The Chamber notes, however, that the official procedure for war booty requiring that seized property be registered<sup>4517</sup> was not followed. Members of the Zenica *OpŠO* Security and Information Service inspected Ovnak on 10 June 1993. While they supposed that the seized property would be registered in facilities controlled by the 7<sup>th</sup> Brigade, they noted that no records were kept of the vehicles transporting war booty in the Ovnak region.<sup>4518</sup> Similarly, in a report dated 20 June 1993, the Zenica *OpŠO* informed the 3<sup>rd</sup> Corps Command that the Ovnak sector was being controlled by 3<sup>rd</sup> Corps Military Police from the 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade, but that property seized in that sector was not being registered and controls at check-points were insufficient.<sup>4519</sup>

1941. Furthermore, the Chamber notes that the ABiH rules on property likely to be considered war booty<sup>4520</sup> were not obeyed and that property found in houses, such as technical equipment, household appliances and food,<sup>4521</sup> was seized, collected in Brajkovići and then stored in Bilimište.<sup>4522</sup> The Chamber considers that although the army had the right to seize private property that could be used directly for military purposes,<sup>4523</sup> pursuant to the rules on war booty established by the ABiH Supreme Command, the property seized in the Ovnak sector did not fit into the category of property having direct military use. The Chamber thus finds that the property in

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<sup>4515</sup> P 420.

<sup>4516</sup> P 426.

<sup>4517</sup> See DH 1469.

<sup>4518</sup> P 424.

<sup>4519</sup> P 898.

<sup>4520</sup> See DH 1469.

<sup>4521</sup> See Witness ZA, T(F) pp. 2330-2332; Witness BA, T(F) pp. 795-796; P 898.

<sup>4522</sup> Witness BA, T(F) pp. 795-796.

<sup>4523</sup> See DH 1469.

question was appropriated in an unlawful and deliberate manner and went beyond the scope of legitimate war booty.

1942. The Chamber notes that plunder in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići was committed extensively and repeatedly as of 9 June.<sup>4524</sup> Many houses were plundered and property of value, such as household appliances, was stolen.<sup>4525</sup> Contrary to the allegations of the Defence for the Accused Hadžihasanović,<sup>4526</sup> the Chamber considers that the value of the plundered property and the repeated acts of plunder make it possible to conclude that the offence was serious.

1943. With regard to the perpetrators of the plunder, the Chamber first finds that they were civilians. Witnesses stated that they saw Muslim civilians,<sup>4527</sup> and neighbours<sup>4528</sup> plunder in the village of Šušanj. Furthermore, the report of the Zenica *OpŠO* dated 11 June 1993 notes the appropriation of property in the Ovnak sector by civilians from the neighbouring villages.<sup>4529</sup> Second, the Chamber considers that plunder was also committed by members of the military police belonging to the 3<sup>rd</sup> Corps Military Police Battalion and military police units of the 7<sup>th</sup> and 314<sup>th</sup> Brigades. Indeed, the Zenica *OpŠO* report recounts plunder by members of the 3<sup>rd</sup> Corps Military Police Battalion and the 7<sup>th</sup> and 314<sup>th</sup> Brigades.<sup>4530</sup> Witnesses ZA and BA both testified that after the villages fell, members of the 7<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade, and in particular the military police of these brigades, requisitioned property belonging to civilians.<sup>4531</sup> The Chamber finds that the evidence allows the identification of the perpetrators of the plunder committed in June 1993 in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići as civilians and members of the 3<sup>rd</sup> Corps Military Police Battalion and military police units of the 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade.

<sup>4524</sup> See *supra*. Witness Žarko Jandrić is the only witness who stated that he saw the plunder in Ovnak and Brajkovoći as of 8 June. The Chamber recalls that Witness Žarko Jandrić was unable to make out the different objects that were plundered or to differentiate between soldiers and civilians from his position on Strmac.

<sup>4525</sup> See Witness BA, T(F) pp. 794-795; P 400 (under seal), paras. 17 and 27; Ivo Vuleta, T(F) p. 4450; P 384 (under seal), para. 17; P 424; Franjo Križanac, T(F) p. 1108; Mijo Marković, T(F) p. 2366; DH 258; Jozo Marković, T(F) pp. 4423-4424; Witness ZA, T(F) pp. 2330-2332; P 164.

<sup>4526</sup> Hadžihasanović Defence Final Brief, para. 734. The Defence for the Accused Hadžihasanović alleges that the evidence does not indicate the extent of the alleged plunder and does not make it possible to know the value of the property allegedly plundered.

<sup>4527</sup> P 384 (under seal), para. 17.

<sup>4528</sup> Jozo Marković, T(F) pp. 4423-4424. Witness Jozo Marković did not state whether it was the civilian or military police.

<sup>4529</sup> P 424.

<sup>4530</sup> P 898.

<sup>4531</sup> Witness ZA, T(F) p. 2332; Witness BA, T(F) pp. 795-796.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanovića. Effective Control of Enver Hadžihasanović over the Perpetrators of the Crime

1944. The Chamber finds that the plunder in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993 was committed in particular by members of the military police subordinated to the 7<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade. Given that the 7<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade were *de jure* subordinated to the 3<sup>rd</sup> Corps at the material time, the Accused Hadžihasanović is presumed to have exercised effective control over the members of these brigades and the perpetrators of the plunder belonging to them.

1945. Furthermore, the evidence shows that a tactical group composed of units from the 314<sup>th</sup> Brigade and the 7<sup>th</sup> Brigade followed the orders of the 3<sup>rd</sup> Corps Command and reported to it on the course of combat operations in the Ovnak sector. Thus, the Zenica *OpŠO* combat report dated 11 June 1993 sent to the 3<sup>rd</sup> Corps Command states that the tactical group had proceeded to assess the situation in the Ovnak sector and drafted combat reports in accordance with the 3<sup>rd</sup> Corps Command decision.<sup>4532</sup> Furthermore, following the 3<sup>rd</sup> Corps Command order dated 16 June 1993 demanding information on the allegations of plunder by soldiers after combat operations,<sup>4533</sup> the 7<sup>th</sup> Brigade Command sent a report to the 3<sup>rd</sup> Corps Command explaining that measures had been taken to prevent plunder and denying that such acts had been committed by 7<sup>th</sup> Brigade units in the Ovnak sector.<sup>4534</sup>

1946. The Defence for the Accused Hadžihasanović also did not contest the fact that the 7<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade were subordinated to the Accused Hadžihasanović and presented no evidence to refute this assumption.

1947. Consequently, the Chamber finds that the Accused Hadžihasanović exercised effective control over the perpetrators of the mistreatment and that there was a superior-subordinate relationship within the meaning of Article 7(3) of the Statute.

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<sup>4532</sup> P 423.

<sup>4533</sup> P 189.

<sup>4534</sup> P 426.

b. Knowledge of Enver Hadžihasanović

1948. The Prosecution alleges that the Accused Hadžihasanović had been informed of the crimes of plunder committed in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići and on 18 September 1993 issued an order in which he acknowledged that plunder had indeed been committed during combat operations.<sup>4535</sup> The Defence for the Accused Hadžihasanović admits that it was possible that the Accused Hadžihasanović knew that soldiers had taken part in the plunder.<sup>4536</sup>

1949. The Chamber notes first that as of 10 June 1993, the Accused Hadžihasanović issued several orders addressed to all the units subordinated to him in which he explicitly mentioned plunder committed after combat operations and reiterated that the perpetrators of these acts must be punished.<sup>4537</sup> The Chamber notes that the Accused Hadžihasanović repeatedly raised the question of plunder all through the month of June 1993 and that although his orders do not make express reference to the villages of Šušanj, Ovnak, Brajkovići and Grahovčići, they note acts of plunder committed in sectors where conflicts or combat activities had taken place between the HVO and the ABiH. Consequently, the Chamber considers that the Accused Hadžihasanović had knowledge of the problem of plunder in all the zones where his troops were engaged, including the villages of Šušanj, Ovnak, Brajkovići and Grahovčići. Second, the Chamber notes that on 20 June 1993, the Zenica *Opština* sent a report to the 3<sup>rd</sup> Corps mentioning acts of plunder committed by members of the 3<sup>rd</sup> Corps Military Police in the Ovnak sector.<sup>4538</sup> Also on 20 June 1993, the Accused Hadžihasanović had a conversation with Witness ZP during which he acknowledged that he knew that soldiers were returning to Zenica with sacks full of plundered property, from Šušanj and Ovnak among other places.<sup>4539</sup> Finally, the Chamber considers that the presence of Džemal Merdan in Grahovčići on 3 August 1993 along with the ECOMM observers who noted that the village of Grahovčići had been plundered<sup>4540</sup> also makes it possible to establish the Accused Hadžihasanović's knowledge of the plunder committed in June 1993.

c. Measures Taken

1950. The Prosecution alleges that with the exception of written orders prohibiting the commission of crimes, the Accused Hadžihasanović failed to take measures to prevent these crimes and punish

<sup>4535</sup> Prosecution Final Brief, para. 321.

<sup>4536</sup> Hadžihasanović Defence Final Brief, para. 729.

<sup>4537</sup> P 186; P 189; DH 65.

<sup>4538</sup> P 898.

<sup>4539</sup> Witness ZF, T(F) p. 8863; P 589.

<sup>4540</sup> P 164.

the perpetrators.<sup>4541</sup> The Defence for the Accused Hadžihasanović maintains that the 3<sup>rd</sup> Corps took all necessary and reasonable measures to prevent the plunder, circumvent its repetition and punish the perpetrators once their identity had been established.<sup>4542</sup>

1951. The Chamber considers that the Accused Hadžihasanović undertook measures of a general nature prohibiting plunder and also issued orders intended to prevent plunder and punish the perpetrators. As the issue of the measures taken by the Accused Hadžihasanović is developed in the part “Findings of the Chamber on Measures Taken by the Accused Hadžihasanović regarding Destruction and Plunder”, the Chamber refers to the relevant paragraphs of the Judgement.<sup>4543</sup>

(iv) Findings of the Chamber regarding the Responsibility of Amir Kubura

a. Effective Control of Amir Kubura over the Perpetrators of the Crimes

1952. The Chamber finds that the plunder in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993 was committed in particular by members of the military police subordinated to the 7<sup>th</sup> Brigade. Given that the 7<sup>th</sup> Brigade was subordinated to the Accused Kubura at the material time, it is assumed that he exercised effective control over the members of the 7<sup>th</sup> Brigade and over the perpetrators of the plunder belonging to it.

1953. Furthermore, the evidence shows that 7<sup>th</sup> Brigade units carried out the orders of the Accused Kubura.<sup>4544</sup> Thus, following an order to attack dated 5 June 1993,<sup>4545</sup> 7<sup>th</sup> Brigade units conducted operations to take control of the Ovnak sector.<sup>4546</sup> In addition, following the Accused Kubura’s order to his troops to move in the direction of Kakanj at the end of combat operations in the Ovnak sector,<sup>4547</sup> the 7<sup>th</sup> Brigade units left the Ovnak sector on 9 June 1993.<sup>4548</sup>

1954. Consequently, the Chamber finds that the Accused Kubura exercised effective control over the perpetrators of the plunder and that a superior-subordinate relationship existed within the meaning of Article 7(3) of the Statute.

<sup>4541</sup> Prosecution Final Brief, para. 322.

<sup>4542</sup> Hadžihasanović Defence Final Brief, para. 734.

<sup>4543</sup> See *infra* paras. 2018-2063.

<sup>4544</sup> Safet Junuzović, T(F) p. 18516.

<sup>4545</sup> P 420.

<sup>4546</sup> Franjo Križanac, T(F) pp. 1100-101; P 400 (under seal), para. 6.

<sup>4547</sup> Safet Junuzović, T(F) p. 18517. See DK 23 and DK 24.

<sup>4548</sup> Safet Junuzović, T(F) p. 18518; Kasim Alajbegović, T(F) pp. 18701-18702; P 426.

b. Knowledge of Amir Kubura

1955. The Prosecution alleges that the Accused Kubura had been informed about the plunder committed in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići,<sup>4549</sup> and cites an order he gave on 20 June 1993 acknowledging that civilian property had been plundered after combat between the ABiH and the HVO.<sup>4550</sup> The Defence for the Accused Kubura does not raise the question of his knowledge regarding plunder in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići.

1956. The Chamber notes that part of the plundered property was taken to 7<sup>th</sup> Brigade headquarters in Bilimište,<sup>4551</sup> where the Accused Kubura exercised his regular command. The Chamber therefore considers it should not be ruled out that the Accused Kubura was present in the 7<sup>th</sup> Brigade headquarters at the time of the alleged facts and that he was able to see the plundered property being transported to Bilimište and stored in a warehouse.<sup>4552</sup> Nevertheless, the Chamber considers that his presence cannot be established beyond a reasonable doubt.

1957. The Chamber notes that the plundered property was distributed among the members of the 7<sup>th</sup> Brigade.<sup>4553</sup> Such a distribution, however, required a decision from the command, a decision that assumed the Accused Kubura had knowledge of the existence of the plundered property or had given his previous consent to such distribution in the event the property was plundered. The Chamber thus finds that the Accused Kubura had knowledge of the plunder committed by members of the 7<sup>th</sup> Brigade in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići.

c. Measures Taken

1958. The Prosecution alleges that apart from written orders prohibiting the commission of crimes, the Accused Kubura failed to take any measures to prevent these crimes or punish the perpetrators.<sup>4554</sup> The Defence for the Accused Kubura did not directly address the matter of measures taken by the Accused but noted nonetheless that the military police were stationed in Pojske to check whether soldiers were transporting property.<sup>4555</sup>

<sup>4549</sup> Prosecution Final Brief, paras. 321-322.

<sup>4550</sup> *Ibid.*, para. 321.

<sup>4551</sup> Witness BA, T(F) pp. 796-797.

<sup>4552</sup> *See* Witness BA, T(F) pp. 796-797; P 14.

<sup>4553</sup> Witness BA, T(F) p. 809.

<sup>4554</sup> Prosecution Final Brief, para. 322.

<sup>4555</sup> Kubura Defence Final Brief, para. 177.



1959. With regard to the preventive measures, the Chamber notes that following an order from the 3<sup>rd</sup> Corps Command dated 19 June 1993, the 7<sup>th</sup> Brigade Commander issued an order dated 20 June 1993 noting the plunder after combat and prohibiting the plunder of houses and abandoned buildings.<sup>4556</sup> Nevertheless, the same day, the Accused Kubura sent a report to the 3<sup>rd</sup> Corps Command denying that members of the 7<sup>th</sup> Brigade had taken part in acts of plunder.<sup>4557</sup> The order of 20 June was followed on 22 June 1993 by a similar order issued by the Commander of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion.<sup>4558</sup>

1960. With regard to punitive measures, the Chamber notes that on 20 June 1993 the Accused Kubura ordered his subordinates to take measures against anyone committing acts of plunder, ranging from detention to initiating judicial proceedings.<sup>4559</sup> The Chamber also notes, however, that the plundered property was distributed among members of the 7<sup>th</sup> Brigade.<sup>4560</sup> Within the framework of an organised army having a standardised procedure for war booty, the Chamber finds that such a distribution of plundered property required a decision or at least the consent of the Brigade Commander, the Accused Kubura. This either tacit or explicit decision authorising the distribution of unlawfully appropriated property among members of the 7<sup>th</sup> Brigade, which could be taken as some form of compensation, is incompatible with taking punitive measures against the same persons. The Chamber thus concludes that by dividing the property among the members of the 7<sup>th</sup> Brigade and not ordering an investigation into the matter, the Accused Kubura failed in his duty to punish the perpetrators of the plunder.

(v) Conclusions of the Chamber

1961. The Chamber considers that the Accused Hadžihasanović knew that plunder had been committed in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993 by members of the 7<sup>th</sup> Brigade and 314<sup>th</sup> Brigade. Nevertheless, the Chamber notes that the Accused Hadžihasanović took preventive measures to thwart acts of plunder and measures intended to punish the perpetrators. Consequently, the Accused Hadžihasanović cannot be held responsible for the plunder committed in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993.

1962. The Chamber considers that the Accused Kubura had knowledge of the plunder committed by members of the 7<sup>th</sup> Brigade in the villages of Šušanj, Ovnak, Brajkovići and Grahovčići in June 1993. The Chamber notes that even if the Accused Kubura took preventive measures to prohibit

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<sup>4556</sup> P 427.

<sup>4557</sup> P 426.

<sup>4558</sup> P 467. The order was signed by Šerif Patković who was Commander of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion from 11 December 1992 until 21 July 1993, P 498.

<sup>4559</sup> P 427.

acts of plunder, he nevertheless failed his duty to punish the perpetrators of these crimes. Consequently, the Chamber declares the responsibility of the Accused Kubura is incurred pursuant to Article 7(3) of the Statute, for acts of plunder committed in Šušanj, Ovnak, Brajkovići and Grahovčići during June 1993.

(f) Vareš

1963. The Indictment alleges that the 7<sup>th</sup> Brigade<sup>4561</sup> plundered dwellings, buildings and personal property belonging to Bosnian Croats and Bosnian Serbs in Vareš in November 1993.<sup>4562</sup> The Indictment sets out that the Accused Kubura knew or had reason to know that the members of this unit under his command and effective control were about to commit acts of plunder, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.<sup>4563</sup> The Accused Kubura is accused of the plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 and 7(3) of the Statute.

(i) Arguments of the Parties

1964. The Prosecution alleges that when the ABiH took control of Vareš in November 1993,<sup>4564</sup> 7<sup>th</sup> Brigade soldiers committed acts of plunder<sup>4565</sup> and asserts that the Accused Kubura failed in his obligation to prevent the crimes and punish the perpetrators.<sup>4566</sup> The Prosecution submits that the Accused Kubura did not take all the measures ordered by his superiors to prevent the soldiers from further plunder<sup>4567</sup> and, instead of initiating investigations, he granted leave to all the soldiers who took part in the Vareš operations and issued an order authorising the distribution of war booty.<sup>4568</sup>

1965. The Defence for the Accused Kubura does not dispute the presence of 7<sup>th</sup> Brigade units in Vareš on 4 November 1993<sup>4569</sup> but submits that the evidence does not allow the assertion that the plunder was committed by members of the 7<sup>th</sup> Brigade.<sup>4570</sup> The Defence for the Accused

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<sup>4560</sup> Witness BA, T(F) p. 809.

<sup>4561</sup> See Indictment, paras. 18-20. According to the Indictment, the 7th Brigade also included the mujahedin, since they were allegedly subordinated to and integrated into the 7th Brigade and played a major role in the combat operations conducted by the 7th Brigade.

<sup>4562</sup> Indictment, para. 44.

<sup>4563</sup> Indictment, para. 45.

<sup>4564</sup> Prosecution Final Brief, para. 329.

<sup>4565</sup> *Ibid.*, para. 330.

<sup>4566</sup> *Ibid.*, para. 337.

<sup>4567</sup> *Ibid.*, paras. 330, 331 and 334.

<sup>4568</sup> *Ibid.*, paras. 336 and 337.

<sup>4569</sup> Kubura Defence Final Brief, para. 187.

<sup>4570</sup> *Ibid.*, paras. 195, 200 and 201.

Hadžihasanović asserts that the fact that soldiers took bread and chocolate<sup>4571</sup> constitutes minor acts that could not be considered a serious violation of international humanitarian law.<sup>4572</sup> The Defence for the Accused Kubura adds that brigades other than the 7<sup>th</sup> Brigade were present in Vareš in November 1993<sup>4573</sup> and that there was plunder after the departure of the 7<sup>th</sup> Brigade on 4 November 1993.<sup>4574</sup> Furthermore, the Defence for the Accused Kubura notes that the military police had been assigned to a check-point at Vareš Majdan to monitor whether any soldiers were leaving with stolen property.<sup>4575</sup>

(ii) Findings of the Chamber regarding the Plunder of Public or Private Property in Vareš

1966. The operations in Vareš were conducted jointly by the ABiH 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Corps.<sup>4576</sup> On 3 November 1993, the 7<sup>th</sup> Brigade received the order to attack and liberate Vareš under the command of the OG *Istok*.<sup>4577</sup> At 0800 hours on the morning of 4 November 1993, the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions entered the deserted town of Vareš<sup>4578</sup> and then joined the units of the 2<sup>nd</sup> Corps.<sup>4579</sup> The 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion went no further than Vareš Majdan<sup>4580</sup> outside of Vareš.<sup>4581</sup> The HVO forces had already withdrawn and there was no intense combat activity.<sup>4582</sup> The 7<sup>th</sup> Brigade's units withdrew from the town the same day<sup>4583</sup> towards 1500 hours, leaving the military and civilian police behind them.<sup>4584</sup>

1967. Witness Safet Junuzović stayed in Vareš Majdan with the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion reconnaissance platoon until late in the afternoon of 4 November 1993.<sup>4585</sup> The members of the reconnaissance platoon did not notice any plunder by soldiers of the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion,<sup>4586</sup> although Witness Safet Junuzović, the battalion commander, saw civilians transporting sacks of

<sup>4571</sup> *Ibid.*, para. 197.

<sup>4572</sup> Kubura Defence Final Brief, para. 198.

<sup>4573</sup> *Ibid.*, paras. 201-202.

<sup>4574</sup> *Ibid.*, paras. 207-208.

<sup>4575</sup> *Ibid.*, para. 209.

<sup>4576</sup> DH 1513; P 217.

<sup>4577</sup> P 674.

<sup>4578</sup> P 468; Safet Junuzović, T(F) p. 18529.

<sup>4579</sup> P 676; P 468; Kasim Podžić, T(F) p. 18676.

<sup>4580</sup> Safet Junuzović, T(F) pp. 18531-18534; Džemail Ibranović, T(F) pp. 18371-18373. According to Witness Džemail Ibranović, the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion stayed in Vareš Majdan and only several members of the 1<sup>st</sup> Battalion, including the witness, entered the town of Vareš.

<sup>4581</sup> *See* DK 38.

<sup>4582</sup> Džemail Ibranović, T(F) p. 18371; Safet Junuzović, T(F) p. 18530; DK 62, para. 17.

<sup>4583</sup> DK 50; P 468; DK 62, para. 19; DK 44; Kasim Podžić, T(F) p. 18656; Safet Junuzović, T(F) pp. 18533-18534; Elvir Mušija, T(F) p. 18778.

<sup>4584</sup> P 448.

<sup>4585</sup> Safet Junuzović, T(F) p. 18531.

<sup>4586</sup> Safet Junuzović, T(F) p. 18502.

flour,<sup>4587</sup> and one of his soldiers who had dropped his rifle, had taken a sack of flour and headed in the direction of Breza.<sup>4588</sup> The witness did not know whether other soldiers had taken food in their pockets or with their gear, but admits that this might have happened.<sup>4589</sup> Witness Džemail Ibranović, Assistant Commander for Morale and Religious Affairs in the 1<sup>st</sup> Battalion, did not deny the possibility that 7<sup>th</sup> Brigade soldiers helped themselves to food, explaining that the town of Vareš was full of food and the soldiers were hungry.<sup>4590</sup> With regard to the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion, Witness Kasim Podžić stated that its members took part in the liberation of Vareš but did nothing that could be characterised as plunder.<sup>4591</sup> Halil Brzina, 7<sup>th</sup> Brigade Deputy Commander,<sup>4592</sup> was at the check-point set up at on the way out of Ovnak on 4 November 1993 and did not see the soldiers carrying anything but their military equipment.<sup>4593</sup>

1968. Nevertheless, reports from the OG *Istok* Commander for November 1993 on operations in Vareš stress the extent of the plunder by the units in Vareš on 4 November 1993.<sup>4594</sup> According to these reports, the 7<sup>th</sup> Brigade soldiers stole and plundered everything they found,<sup>4595</sup> broke shopfronts and wrecked cars.<sup>4596</sup> In addition, these reports note the chaotic situation in the town on 4 November 1993.<sup>4597</sup> There was unrestrained plunder,<sup>4598</sup> the units could not be controlled after the town was liberated,<sup>4599</sup> and plunder by the soldiers and civilians made it impossible to register all the war booty.<sup>4600</sup>

1969. As part of the NordBat (Nordic Battalion) mission, Witnesses Hakan Birger and Ulf Henriesson went to Vareš on 4 November 1993<sup>4601</sup> and noted the chaos.<sup>4602</sup> Soldiers were firing their guns at will<sup>4603</sup> and breaking shopfronts.<sup>4604</sup> According to Witness Hakan Birger, every shop had at least a broken display window.<sup>4605</sup> The soldiers plundered everything they

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<sup>4587</sup> Safet Junuzović, T(F) p. 18532.

<sup>4588</sup> Safet Junuzović, T(F) p. 18562.

<sup>4589</sup> Safet Junuzović, T(F) p. 18562.

<sup>4590</sup> Džemail Ibranović, T(F) pp. 18373-18374.

<sup>4591</sup> Kasim Podžić, T(F) p. 18658.

<sup>4592</sup> DK 62 (under seal), para. 4.

<sup>4593</sup> DK 62 (under seal), para. 20.

<sup>4594</sup> P 445; P 448; P 676.

<sup>4595</sup> P 445; P 448.

<sup>4596</sup> P 448.

<sup>4597</sup> P 445.

<sup>4598</sup> P 448.

<sup>4599</sup> P 445; P 448.

<sup>4600</sup> P 448.

<sup>4601</sup> Hakan Birger, T(F) p. 5384; Ulf Henriesson, T(F) p. 7669.

<sup>4602</sup> Ulf Henriesson, T(F) p. 7670.

<sup>4603</sup> Hakan Birger, T(F) pp. 5385, 5388 and 5420; Ulf Henriesson, T(F) p. 7670.

<sup>4604</sup> Ulf Henriesson, T(F) p. 7670; Hakan Birger, T(F) pp. 5385, 5388, 5389.

<sup>4605</sup> Hakan Birger, T(F) p. 5389.

found:<sup>4606</sup> automobiles,<sup>4607</sup> bread, chocolate,<sup>4608</sup> pens and paper,<sup>4609</sup> furniture and household appliances.<sup>4610</sup> The theft of foodstuffs was part of the strategy of the troops plundering in Vareš.<sup>4611</sup> Whenever they entered a zone, they took what food they found with them.<sup>4612</sup> The shops on the main street were the primary target of the plunder, but so were private houses.<sup>4613</sup>

1970. NordBat patrols tried in vain to end the plunder. Witness Hakan Birger placed several patrols on different streets in Vareš to put a stop to it,<sup>4614</sup> but when he realised this was impossible, he decided to concentrate the troops around the church and in the UNHCR food stores.<sup>4615</sup> A French battalion from Sarajevo under the command of Ulf Henricsson arrived in Vareš on 4 November 1993 to help put a stop to the plunder.<sup>4616</sup> Witness Ulf Henricsson tried in vain to persuade the commander of the 7<sup>th</sup> Brigade unit in Vareš to respect international humanitarian law<sup>4617</sup> and also contacted the operations group in Dabrovine so that it would take control of the situation and send in military police units.<sup>4618</sup> The plunder did not stop until the ABiH military police arrived.<sup>4619</sup>

1971. Witness Hakan Birger met Kasim Podžić, 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion Commander<sup>4620</sup> in Vareš on 4 November 1993. He spoke to the commander of the unit there to inform him that the armed forces had left Vareš and that, consequently, the soldiers should stop firing.<sup>4621</sup> During this conversation, one of the soldiers broke the display window of a shop right next to Witness Hakan Birger in order to steal a pair of shoes.<sup>4622</sup> Later, just before lunch, the commander of this 7<sup>th</sup> Brigade unit told Witness Hakan Birger to let the 7<sup>th</sup> Brigade soldiers take food, since for them it was a matter of logistics.<sup>4623</sup> The Chamber considers that the commander with whom Witness Hakan Birger had these discussions<sup>4624</sup> was Kasim Podžić, 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion Commander. It notes that Witness Kasim Podžić also stated that he had a conversation with an UNPROFOR officer

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<sup>4606</sup> Ulf Henricsson, T(F) p. 7670; Hakan Birger, T(F) p. 5424.

<sup>4607</sup> Ulf Henricsson, T(F) p. 7670.

<sup>4608</sup> Hakan Birger, T(F) p. 5385.

<sup>4609</sup> Hakan Birger, T(F) p. 5424.

<sup>4610</sup> Hakan Birger, T(F) pp. 5392 and 5424.

<sup>4611</sup> Hakan Birger, T(F) p. 5424.

<sup>4612</sup> Hakan Birger, T(F) p. 5389.

<sup>4613</sup> Hakan Birger, T(F) p. 5425.

<sup>4614</sup> Hakan Birger, T(F) p. 5388.

<sup>4615</sup> Hakan Birger, T(F) pp. 5388, 5389 and 5423.

<sup>4616</sup> Hakan Birger, T(F) p. 5391.

<sup>4617</sup> Ulf Henricsson, T(F) pp. 7669-7670. Witness Ulf Henricsson did not say which unit it was.

<sup>4618</sup> Ulf Henricsson, T(F) pp. 7670-7671. *See* P 676.

<sup>4619</sup> Hakan Birger, T(F) pp. 5390-5391; Ulf Henricsson, T(F) pp. 7670-7671.

<sup>4620</sup> Kasim Podžić, T(F) p. 18632.

<sup>4621</sup> Hakan Birger, T(F) pp. 5385-5387.

<sup>4622</sup> Hakan Birger, T(F) pp. 5385-5386.

<sup>4623</sup> Hakan Birger, T(F) p. 5389.

<sup>4624</sup> Hakan Birger, T(F) pp. 5385-5387.

during which he learned that the HVO forces had left Vareš and there was thus no need to continue firing.<sup>4625</sup> Witnesses Hakan Birger and Kasim Podžić both described the arrival of the 7<sup>th</sup> Brigade troops in Vareš and the unusual way they were firing. The soldiers were marching in two columns and firing into the air from left to right and back again in order to foil any ambushes.<sup>4626</sup> Owing to the similarity of the descriptions by Witnesses Hakan Birger and Kasim Podžić, the Chamber has no doubts that the commander of the unit in question was the head of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion.

1972. Witness Hakan Birger did not remember seeing insignia on the soldiers who were plundering but thought that they were members of the 7<sup>th</sup> Brigade because they were carrying green flags and shouting “*Allah-u-akbar*.”<sup>4627</sup> Furthermore, on 4 November 1993, just before going to Vareš, Witness Hakan Birger was informed by foreign journalists from the BBC and CNN that members of the 7<sup>th</sup> Brigade had stolen their food and clothing in Vareš.<sup>4628</sup> Witness Ulf Henriesson stated that he had not seen any units in Vareš on 4 November 1993 other than those belonging to the 7<sup>th</sup> Brigade.<sup>4629</sup>

1973. Witnesses Martin Garrod and Rolf Weckesser arrived in Vareš around 1000 hours on 4 November 1993 as part of the ECMM<sup>4630</sup> and found the 7<sup>th</sup> Brigade soldiers<sup>4631</sup> drunk<sup>4632</sup> and firing in all directions.<sup>4633</sup> The ECMM international observers noted that the shopfronts had been broken and that there had been plunder, without, however, being able to determine if this had been done by the ABiH, more specifically the 7<sup>th</sup> Brigade, or by the HVO.<sup>4634</sup>

1974. Witness Rolf Weckesser returned to Vareš on 8 November 1993<sup>4635</sup> and noted that the streets were full of plunderers. He saw soldiers and people taking the plundered property towards the south, in the direction of Breza.<sup>4636</sup> He did not recognise the military units to which the soldiers belonged and thought that the 7<sup>th</sup> Brigade was no longer in Vareš on 8 November

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<sup>4625</sup> Kasim Podžić, T(F) p. 18653.

<sup>4626</sup> Hakan Birger, T(F) p. 5385; Kasim Podžić, T(F) pp. 18652-18653.

<sup>4627</sup> Hakan Birger, T(F) pp. 5386 and 5422.

<sup>4628</sup> Hakan Birger, T(F) pp. 5384-5385.

<sup>4629</sup> Ulf Henriesson, T(F) p. 7670.

<sup>4630</sup> Sir Martin Garrod, T(F) p. 5694; Rolf Weckesser, T(F) pp. 7214-7215.

<sup>4631</sup> Sir Martin Garrod, T(F) pp. 5692-5693; Rolf Weckesser, T(F) pp. 7214-7216.

<sup>4632</sup> Sir Martin Garrod, T(F) p. 5692.

<sup>4633</sup> Sir Martin Garrod, T(F) p. 5692; Rolf Weckesser, T(F) p. 7214.

<sup>4634</sup> P 198; P 221; Sir Martin Garrod, T(F) pp. 5692-5693.

<sup>4635</sup> Rolf Weckesser, T(F) pp. 7216-7217.

<sup>4636</sup> Rolf Weckesser, T(F) p. 7218.

1993.<sup>4637</sup> According to a report by the ABiH Supreme Command, individual acts of theft and plunder started after a 300-strong unit from the 2<sup>nd</sup> Corps reached Vareš on 16 November 1993.<sup>4638</sup>

1975. In view of the evidence presented above, the Chamber considers that plunder took place repeatedly and extensively in Vareš during the month of November 1993. The Chamber notes that reports from the OG *Istok* referred to uncontrolled plunder and specified that the day the 7<sup>th</sup> Brigade soldiers arrived in Vareš, they plundered and stole everything they found, disobeying the orders they had been given.<sup>4639</sup> Furthermore, the international observers in Vareš on 4 November 1993 and then again on 8 November 1993 also noted large-scale plunder with soldiers breaking shopfronts and removing what was inside.<sup>4640</sup> The Chamber considers that the extensive and repeated nature of the plunder allows the finding that the offence was serious.

1976. The Chamber considers that the stolen property was appropriated illegally and went beyond the scope of war booty. Although the ABiH rules regulating war booty authorised the Army to take private property that could be used directly for military purposes,<sup>4641</sup> the Chamber considers that the property in question did not fall within the category of property having direct military use. The Chamber also notes that, contrary to the war booty procedure set up by the ABiH Supreme Command, the evidence does not report that receipts or certificates were given in exchange for the confiscation of this property. Furthermore, contrary to the rules put in place by the ABiH Supreme Command whereby seized property could not be appropriated by individuals,<sup>4642</sup> on 7 November 1993 the Accused Kubura gave the order to distribute the war booty.<sup>4643</sup>

1977. The Chamber notes that an official and organised procedure existed to collect certain property, particularly food, which the 7<sup>th</sup> Brigade considered to be part of the war booty. In a report dated 11 November 1993 to the commands of the 3<sup>rd</sup> Corps and the 7<sup>th</sup> Brigade on operations conducted in Vareš, the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion mentions that the collection of war booty, consisting primarily of food, was being carried out in an organised fashion by the battalion.<sup>4644</sup> The Chamber notes in addition that during the conversation between Witness Hakan Birger and Witness Kasim Podžic, the latter stated that it was a question of logistics for the soldiers to seize food when

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<sup>4637</sup> Rolf Weckesser, T(F) p. 7231.

<sup>4638</sup> P 450.

<sup>4639</sup> P 676; P 445; P 793.

<sup>4640</sup> Ulf Henriesson, T(F) p. 7670; Hakan Birger, T(F) pp. 5385 and 5424; P 198; Rolf Weckesser, T(F) p. 7218.

<sup>4641</sup> *See* DH 1469.

<sup>4642</sup> DH 1469.

<sup>4643</sup> P 447.

<sup>4644</sup> P 468.

they entered a combat zone.<sup>4645</sup> The Chamber considers that these elements show the systematic nature of this type of plunder.

1978. With regard to the perpetrators of the plunder, the Chamber notes that witnesses who were members of the 7<sup>th</sup> Brigade and stated that their units did not take part in the plunder are contradicted by both ABiH reports and the testimony of the international observers present in Vareš on 4 November 1993. Reports from both the OG *Istok*<sup>4646</sup> and the 3<sup>rd</sup> Corps Command,<sup>4647</sup> as well as from the international observers,<sup>4648</sup> mention that the soldiers who were part of the units in Vareš, in the particular members of the 7<sup>th</sup> Brigade, were responsible for these actions. In addition, a report from the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion dated 11 November 1993 mentions this battalion's collection of war booty consisting primarily of food.<sup>4649</sup> The Chamber notes in particular that contrary to Witness Kasim Podžić's assertions, he was not only aware of the plunder committed by the members of his unit,<sup>4650</sup> but also justified the appropriation of food by the fact that it was a question of logistics.<sup>4651</sup> Furthermore, the Chamber notes that the 7<sup>th</sup> Brigade units withdrew on 4 November 1993<sup>4652</sup> and that plunder was committed subsequently by other units that did not belong to the 7<sup>th</sup> Brigade.<sup>4653</sup> The Chamber thus finds that plunder was committed by several units of the ABiH and particularly by soldiers of the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions.

(iii) Findings of the Chamber regarding the Responsibility of Amir Kubura

a. Effective Control of Amir Kubura over the Perpetrators of the Crime

1979. The Chamber finds that the plunder in Vareš in November 1993 was committed in particular by members of the 7<sup>th</sup> Brigade. Given that the 7<sup>th</sup> Brigade was subordinated to the Accused Kubura at the material time, it is presumed that he exercised effective control over its members and over the perpetrators of the plunder.<sup>4654</sup>

<sup>4645</sup> Hakan Birger, T(F) p. 5389.

<sup>4646</sup> P 445; P 676.

<sup>4647</sup> P 449.

<sup>4648</sup> Hakan Birger, T(F) pp. 5386 and 5422; Ulf Henriesson, T(F) p. 7670.

<sup>4649</sup> P 468.

<sup>4650</sup> Hakan Birger, T(F) pp. 5385-5386. During a conversation between Witness Hakan Birger and Witness Kasim Podžić, a member of the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion broke a shop display window in order to steal a pair of shoes.

<sup>4651</sup> Hakan Birger, T(F) p. 5389. On 4 November 1993, Witness Kasim Podžić told Witness Hakan Birger that taking food was a logistical matter for members of the 7<sup>th</sup> Brigade.

<sup>4652</sup> DK 50; P 468; DK 62, para. 19; DK 44; Kasim Podžić, T(F) p. 18656; Safet Junuzović, T(F) pp. 18533-18534; Elvir Mušija, T(F) p. 18778.

<sup>4653</sup> P 450.

<sup>4654</sup> *See supra*, para. 348.



1980. Furthermore, the evidence shows that the 7<sup>th</sup> Brigade's units carried out the orders of the Accused Kubura. Following an order from the OG *Istok*,<sup>4655</sup> on 4 November 1993 the Accused Kubura in turn ordered the 7<sup>th</sup> Brigade units operating in Vareš to withdraw from the town,<sup>4656</sup> which the troops did the same day.<sup>4657</sup>

1981. The Chamber consequently finds that the Accused Kubura exercised effective control over the perpetrators of the plunder and that there was a superior-subordinate relationship within the meaning of Article 7(3) of the Statute.

b. Knowledge of Amir Kubura

1982. The Chamber would first recall that the Accused Kubura knew that his subordinates had already committed acts of plunder before November 1993. It considers that the evidence has proved that members of the 7<sup>th</sup> Brigade plundered in the Ovnak sector in June 1993 and that the Accused Kubura had knowledge of these crimes as of that time.<sup>4658</sup> In addition, the Chamber finds that the Accused Kubura failed to take punitive measures against the perpetrators of these acts<sup>4659</sup> and the absence of such measures against the plunder committed in June 1993 encouraged the subsequent commission of such acts. The Chamber therefore considers that the Accused Kubura, owing to his knowledge of the plunder committed by his subordinates in June 1993 and his failure to take punitive measures, could not know that the members of the 7<sup>th</sup> Brigade were likely to repeat such acts.<sup>4660</sup>

1983. Second, the Chamber notes that the Accused Kubura was in the Vareš sector from 3 to 5 November 1993. Witness Elvir Mušija accompanied the Accused Kubura to Striježevo on 3 November 1993.<sup>4661</sup> On 4 November 1993, they went in the direction of Vareš Majdan and stayed at the check-point manned by the military police and then went back to Striježevo.<sup>4662</sup> On 5 November 1993, the Accused Kubura went to the town of Vareš for two or three hours to attend a celebration.<sup>4663</sup> The Chamber considers that it has not been established that the route the Accused Kubura took on 5 November 1993 allowed him to see the plunder. Consequently, the Chamber

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<sup>4655</sup> P 675.

<sup>4656</sup> DK 50; *See* P 478.

<sup>4657</sup> P 468; DK 62, para. 19; Kasim Podžić, T(F) p. 18656; Safet Junuzović, T(F) pp. 18533-18534; Elvir Mušija, T(F) p. 18778.

<sup>4658</sup> *See supra*, para. 1957.

<sup>4659</sup> *See supra*, para. 1960.

<sup>4660</sup> *See supra* para. 133.

<sup>4661</sup> Elvir Mušija, T(F) p. 18773.

<sup>4662</sup> Elvir Mušija, T(F) pp. 18774-18775.

<sup>4663</sup> Elvir Mušija, T(F) pp. 18776-18777.

believes that the presence of the Accused Kubura in Vareš is not sufficient in itself to establish his knowledge beyond a reasonable doubt.

1984. The Chamber considers, however, that the presence of the Accused Kubura in Vareš is not in itself sufficient to establish his knowledge beyond a reasonable doubt.

1985. The Chamber notes that the combat report from the 6<sup>th</sup> Corps OG *Istok* Command dated 4 November 1993 mentions plunder committed by 7<sup>th</sup> Brigade units right after their arrival in Vareš.<sup>4664</sup> Furthermore, it notes that although the report is addressed *inter alia* to the 3<sup>rd</sup> Corps Command, the 7<sup>th</sup> Corps is not on the list of addressees.<sup>4665</sup> Consequently, the Chamber concludes that the combat report does not make it possible to establish directly the Accused Kubura's knowledge about the plunder in Vareš.

1986. The Chamber finds, however, that on 4 November 1993, the 6<sup>th</sup> Corps OG *Istok* Command issued an order recalling that all unlawful activity in Vareš was to stop and that measures to halt the removal of property from the town were to be undertaken. The order noted specifically that the 7<sup>th</sup> Brigade Commander was responsible for the execution of the order.<sup>4666</sup> That same day, 4 November 1993, the 3<sup>rd</sup> Corps Command informed the OG *Istok* that orders had been sent to the brigades for them to use the military police to prevent property from being plundered.<sup>4667</sup> Since the 7<sup>th</sup> Brigade was the only brigade subordinated to the 3<sup>rd</sup> Corps that was present in Vareš on 4 November 1993, the Chamber considers that the 3<sup>rd</sup> Corps orders mentioned above must have been sent to the 7<sup>th</sup> Brigade. Furthermore, the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion informed the 7<sup>th</sup> Brigade Command on 11 November 1993 that the collection of war booty, consisting primarily of food, had been carried out in an organised manner.<sup>4668</sup> The Chamber thus finds that the orders issued by the OG *Istok* and by the 3<sup>rd</sup> Corps Command, as well as the 7<sup>th</sup> Brigade 2<sup>nd</sup> Battalion report, establish the Accused Kubura's knowledge about the plunder committed by his subordinates in Vareš.

### c. Measures Taken

1987. The Prosecution alleges that the Accused Kubura failed in his duty to prevent the plunder.<sup>4669</sup> It claims that the Accused Kubura did not fully respect the order from his superior and should have sent his police forces into Vareš in order to prevent 7<sup>th</sup> Brigade soldiers from causing

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<sup>4664</sup> P 676.

<sup>4665</sup> P 676.

<sup>4666</sup> P 675.

<sup>4667</sup> P 446.

<sup>4668</sup> P 468.

<sup>4669</sup> Prosecution Final Brief, para. 337.

more destruction.<sup>4670</sup> The Prosecution further alleges that the Accused Kubura failed to take punitive measures to punish the perpetrators of the plunder in Vareš.<sup>4671</sup> According to the Prosecution, the real reason for the check-point two kilometres from Vareš<sup>4672</sup> was to secure the town from possible HVO attacks and not to stop the plunderers, because no case of plunder in Vareš ever reached the Zenica District Military Court, which had jurisdiction over the town.<sup>4673</sup> The Prosecution maintains that instead of launching an investigation into the plunder in Vareš, the Accused Kubura rewarded the soldiers who had taken part in the Vareš campaign by granting them leave and gave the order to distribute the war booty.<sup>4674</sup>

1988. The Defence for the Accused Kubura alleges that a check-point manned by the military police had been set up on 4 November 1993 in Vareš Majdan in order to verify that soldiers were not leaving with stolen goods.<sup>4675</sup>

1989. With regard to preventive measures, the Chamber notes that the Accused Kubura took certain measures to end the plunder in Vareš on 4 November 1993. Indeed, following the order of 4 November 1993 from the OG *Istok* Command,<sup>4676</sup> the Accused Kubura withdrew his troops from Vareš the very same day.<sup>4677</sup> On 5 November 1993, the Accused Kubura forbade the members of the 7<sup>th</sup> Brigade from entering or staying in Vareš and stated that any soldier contravening this order would be arrested and put in detention.<sup>4678</sup> The Chamber considers, however, that even though the Accused Kubura put a stop to the plunder once it had started so it would not be repeated, he nonetheless did not take sufficient measures to prevent the initial plunder from taking place.

1990. The Chamber notes, however, that 7<sup>th</sup> Brigade soldiers had previously plundered in the sectors of Šušanj, Ovnak, Grahovčići and Brajkovići in June 1993 and that the Accused Kubura had failed in his duty to punish the perpetrators of these crimes. The Chamber considers that when a commander punishes his subordinates for having committed crimes, this is also a measure to prevent the crimes from being repeated.

1991. Consequently, the Chamber considers that the Accused Kubura failed to take the necessary and reasonable measures to prevent the crimes committed in Vareš in November 1993. Even if the

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<sup>4670</sup> *Ibid.*, para. 334.

<sup>4671</sup> *Ibid.*, para. 337.

<sup>4672</sup> *Ibid.*, para. 334.

<sup>4673</sup> *Ibid.*, para. 335.

<sup>4674</sup> *Ibid.*, para. 336.

<sup>4675</sup> Kubura Defence Final Brief, para. 209.

<sup>4676</sup> P 675.

<sup>4677</sup> DK 50.

<sup>4678</sup> P 478.

Accused Kubura took measures *a posteriori* to put an end to the plunder in Vareš by withdrawing his troops from the town, the Chamber considers that by not taking punitive measures against those plundering in June 1993, the Accused Kubura failed in his duty to prevent such acts in Vareš in November 1993.

1992. With regard to the punitive measures, the Chamber notes that witnesses who were part of the 7<sup>th</sup> Brigade at the material time stated that a check-point had been set up on 4 November 1993 in Vareš Majdan<sup>4679</sup> at the entry to and exit from the town<sup>4680</sup> in order to ensure that soldiers were not taking any stolen or plundered property out of Vareš.<sup>4681</sup> Witnesses Halil Brzina and Kasim Podžić stated that the soldiers passing by the check-point had nothing with them other than military equipment.<sup>4682</sup> The Chamber notes, however, that Witness Rolf Weckesser did not remember having been stopped at a check-point<sup>4683</sup> when he went to Vareš with Witness Martin Garrod at around 1000 hours on 4 November 1993.<sup>4684</sup> The Chamber considers that even if a check-point had been set up on 4 November 1993, it did not prevent the 7<sup>th</sup> Brigade soldiers from plundering property without being punished. Witnesses Kasim Podžić and Osman Hasanagić do not remember any proceedings against members of the 7<sup>th</sup> Brigade or any arrests for plunder in Vareš in November 1993.<sup>4685</sup>

1993. Furthermore, the Chamber notes that the Accused Kubura issued an order dated 7 November 1993 in which he granted leave to the soldiers who took part in the operations in Vareš and ordered that the seized property be distributed.<sup>4686</sup> This decision explicitly authorised the distribution of illegally appropriated property among the members of the 7<sup>th</sup> Brigade and can be compared to a form of reward, which is incompatible with taking punitive measures against these same persons. The Chamber considers that the leave granted to the 7<sup>th</sup> Brigade soldiers and the distribution of seized property allows the finding that the Accused Kubura did not take punitive measures against the perpetrators of the plunder in Vareš in November 1993.

(iv) Conclusions of the Chamber

2. The Chamber finds beyond a reasonable doubt that the Accused Kubura had knowledge of the plunder by the members of the 7<sup>th</sup> Brigade in Vareš in November 1993. The Chamber finds that

<sup>4679</sup> Elvir Mušija, T(F) p. 18775.

<sup>4680</sup> DK 62, para. 20; Kasim Podžić, T(F) pp. 18653, 18656 and 18657; Džemail Ibranović, T(F) pp. 18373-18374.

<sup>4681</sup> DK 62, para. 20; Džemail Ibranović, T(F) p. 18374.

<sup>4682</sup> Kasim Podžić, T(F) p. 18657; Halil Brzina, DK 62, para. 20.

<sup>4683</sup> Rolf Weckesser, T(F) p. 7236.

<sup>4684</sup> Rolf Weckesser, T(F) pp. 7214-7215; Sir Martin Garrod, T(F) p. 2694.

<sup>4685</sup> Kasim Podžić, T(F) p. 18663; Osman Hasanagić, T(F) p. 18900.

<sup>4686</sup> P 447.

the Accused Kubura failed in his duty to take both preventive measures to avert the plunder and punitive measures to punish the perpetrators of these crimes. Consequently, the Chamber finds the Accused Kubura responsible, pursuant to Article 7(3) of the Statute, for the acts of plunder committed in Vareš in November 1993.

3. Count 7: Destruction or Wilful Damage of Institutions Dedicated to Religion in the Municipality of Travnik

(a) Guča Gora: the Monastery

1994. The Indictment alleges that the 7<sup>th</sup> Brigade,<sup>4687</sup> the 306<sup>th</sup> Brigade and the 17<sup>th</sup> Brigade destroyed or wilfully damaged Bosnian Croat religious institutions in Guča Gora in June 1993.<sup>4688</sup> The Indictment states that the Accused Hadžihasanović knew or had reason to know that the units under his command and effective control were about to plan, prepare or execute such acts, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators. The Accused Hadžihasanović is therefore accused of the destruction or wilful damage of institutions dedicated to religion, a violation of the laws or customs of war punishable under Articles 3(d) and 7(3) of the Statute.<sup>4689</sup>

1995. The Chamber notes that although the Indictment mentions the 7<sup>th</sup> Brigade in relation to the destruction or damage committed in Guča Gora in June 1993, the Prosecution does not claim that the Accused Kubura is guilty for the destruction or damage caused by his subordinates.

(i) Arguments of the Parties

1996. The Prosecution asserts that the mujahedin occupied the monastery in June 1993 and damaged it with the approval of the ABiH.<sup>4690</sup> It maintains that the Accused Hadžihasanović knew that serious crimes had been committed in the monastery<sup>4691</sup> and failed to take the necessary measures to investigate those crimes<sup>4692</sup> or punish the perpetrators of these crimes.<sup>4693</sup>

1997. The Defence for the Accused Hadžihasanović does not deny that the Guča Gora monastery was damaged in June 1993, but claims that it was damaged by mujahedin who were not under the

<sup>4687</sup> See Indictment, paras. 18-20. According to the Indictment, the 7<sup>th</sup> Brigade included the mujahedin, since they were allegedly subordinated to and integrated into the 7<sup>th</sup> Brigade and were allegedly heavily involved in the combat operations conducted by the 7<sup>th</sup> Brigade.

<sup>4688</sup> Indictment, para. 46.

<sup>4689</sup> *Ibid.*, para. 46.

<sup>4690</sup> Prosecution Final Brief, paras. 345, 346 and 349.

<sup>4691</sup> *Ibid.*, para. 348.

<sup>4692</sup> *Ibid.*, para. 350.

<sup>4693</sup> *Ibid.*, paras. 348-350.

effective control of the 3<sup>rd</sup> Corps. The Defence for the Accused Hadžihasanović notes that general measures had been taken to prevent the destruction or damage of religious institutions and that with regard to the monastery in Guča Gora, measures were taken to restore the monastery and repair all the damage immediately, and to investigate the acts and punish the perpetrators.<sup>4694</sup>

(ii) Findings of the Chamber regarding the Destruction or Damage of Institutions Dedicated to Religion in Guča Gora

1998. On 8 June 1993, the forces of the 306<sup>th</sup> Brigade reached the front line connecting the villages of Maline, Guča Gora, Mosor and Bukovica.<sup>4695</sup> Late in the afternoon of 8 June 1993, the soldiers from the 306<sup>th</sup> Brigade 2<sup>nd</sup> Battalion joined the forces of the 306<sup>th</sup> Brigade 3<sup>rd</sup> Battalion and took up positions overlooking Guča Gora.<sup>4696</sup> The combat operations between HVO and ABiH units continued until 10 June 1993, at which time the 306<sup>th</sup> 2<sup>nd</sup> Battalion entered the village of Guča Gora<sup>4697</sup> and received the order to head towards the villages of Mosor and Radojčići the same day.<sup>4698</sup>

1999. On 16 June 1993, the 306<sup>th</sup> Brigade Military Police received the order to secure the Guča Gora sector.<sup>4699</sup> Following this order, the 306<sup>th</sup> Brigade Military Police and part of the 3<sup>rd</sup> Corps Military Police Battalion went to the monastery the same day and noted it had been damaged.<sup>4700</sup> During the summer, the 306<sup>th</sup> Brigade Command moved into the monastery in order to provide it better protection<sup>4701</sup> and stayed until it was given back in 1994.<sup>4702</sup>

2000. Contrary to what is asserted by the Prosecution,<sup>4703</sup> neither the 7<sup>th</sup> Brigade nor the 17<sup>th</sup> Brigade were present in Guča Gora during combat operations. The evidence shows that the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion was engaged in combat in Hajdareve Njive on 8 June 1993<sup>4704</sup> together with the 17<sup>th</sup> Brigade,<sup>4705</sup> while the 7<sup>th</sup> Brigade 2<sup>nd</sup> and 3<sup>rd</sup> Battalions were operating in the Ovnak sector.<sup>4706</sup> On 9 June 1993, the 7<sup>th</sup> Brigade 1<sup>st</sup> Battalion and 17<sup>th</sup> Brigade units were engaged in

<sup>4694</sup> Hadžihasanović Defence Final Brief, para. 658.

<sup>4695</sup> DK 22.

<sup>4696</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4697</sup> Fahir Čamdžić, T(F) p. 11713; Esed Sipić, T(E) p. 14778.

<sup>4698</sup> Salim Tarakčija, T(F) p. 11805.

<sup>4699</sup> DH 161.13.

<sup>4700</sup> Izet Mahir, T(F) pp. 16832, 16833, 16805 and 16806; Asim Delalić, T(F) pp. 13368 and 13371; Zaim Mujezinović, T(F) pp. 17422-17423.

<sup>4701</sup> Munir Karić, T(F) p. 11457; Asim Delalić, T(F) p. 16404.

<sup>4702</sup> Franjo Križanac, T(F) pp. 1114-1115.

<sup>4703</sup> Prosecution Final Brief, para. 339.

<sup>4704</sup> Remzija Šiljak, T(F) pp. 10572-10573; Semir Terzić, T(F) p. 18256; Safet Junuzović, T(F) pp. 18505-18508; Suad Jusović, T(F) pp. 18435-18437; DK 18; DK 19; DK 34; P 465.

<sup>4705</sup> Safet Junuzović, T(F) p. 18505.

<sup>4706</sup> Kasim Alajbegović, T(F) p. 18698; Elvedin Omić, T(F) pp. 18597-18599.

Sibicara and Obuka<sup>4707</sup> several kilometres from Travnik.<sup>4708</sup> The 306<sup>th</sup> Brigade was the only one involved in the combat operations in Guča Gora from 8 to 10 June 1993.<sup>4709</sup>

2001. Following the allegations that Guča Gora was in flames and that civilians had been massacred,<sup>4710</sup> UNPROFOR members and ECMM representatives went to Guča Gora on 8 June 1993.<sup>4711</sup> Witness Vaughan Kent-Payne spent about half an hour inside the monastery and noted that it had not been damaged.<sup>4712</sup>

2002. A few days after 9 June 1993,<sup>4713</sup> around 11 or 12 June 1993,<sup>4714</sup> Witness Džemal Merdan went to Guča Gora to verify the allegations that there were foreign nationals at the monastery who intended to demolish it. There he saw 10 to 15 foreign mujahedin<sup>4715</sup> in the courtyard of the monastery.<sup>4716</sup> After six hours of talks, Witness Džemal Merdan managed to persuade them not to demolish the church.<sup>4717</sup> When he returned from Guča Gora, Witness Džemal Merdan immediately informed the 3<sup>rd</sup> Corps Commander that there were foreign mujahedin in the monastery of Guča Gora. Witness Džemal Merdan and General Hadžihasanović decided that they needed to increase the protection of the monastery and to involve the military police.<sup>4718</sup> On 12 June 1993, Witness Remzija Šiljak learned that the foreign mujahedin had entered the monastery and damaged it.<sup>4719</sup> At around 0900 hours on 13 June 1993, Witness Vaughan Kent-Payne left Vitez and went in the direction of Maline. He arrived in Guča Gora at around 1000 hours<sup>4720</sup> and saw that there were 20 to 30 foreign mujahedin outside the monastery.<sup>4721</sup>

2003. On 16 June 1993, Witness Izet Mahir and 14 other members of the 3<sup>rd</sup> Corps Military Police went to the monastery of Guča Gora<sup>4722</sup> to join the 306<sup>th</sup> Brigade Military Police unit.<sup>4723</sup> When

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<sup>4707</sup> DK 42.

<sup>4708</sup> Safet Junuzović, T(F) p. 18506.

<sup>4709</sup> Fikret Čuskić, T(F) p. 12112; P 465.

<sup>4710</sup> Hendrik Morsink, T(F) p. 8057.

<sup>4711</sup> Vaughan Kent-Payne, T(F) p. 4949; Hendrik Morsink, T(F) pp. 8056-8059.

<sup>4712</sup> Vaughan Kent-Payne, T(F) p. 4793.

<sup>4713</sup> Džemal Merdan, T(F) pp. 13139-13140. Witness Džemal Merdan does not remember the exact day he arrived in Guča Gora.

<sup>4714</sup> Džemal Merdan, T(F) p. 13363.

<sup>4715</sup> Džemal Merdan, T(F) pp. 13140, 13341 and 13356.

<sup>4716</sup> Džemal Merdan, T(F) pp. 13140 and 13362.

<sup>4717</sup> Džemal Merdan, T(F) pp. 13140-13141.

<sup>4718</sup> Džemal Merdan, T(F) p. 13142.

<sup>4719</sup> Remzija Šiljak, T(F) p. 10556.

<sup>4720</sup> Vaughan Kent-Payne, T(F) p. 4794.

<sup>4721</sup> Vaughan Kent-Payne, T(F) p. 4795; DH 71.

<sup>4722</sup> Izet Mahir, T(E) p. 16833.

<sup>4723</sup> Izet Mahir, T(F) p. 16832.

Witness Izet Mahir got there he found 20 to 25 Arabic-speaking foreigners<sup>4724</sup> inside the church and in the monastery courtyard.<sup>4725</sup> When he managed to get inside the monastery, he noted that it had been damaged. Books had been thrown on the floor, there were inscriptions written in Arabic and part of the organ was broken.<sup>4726</sup> That same day, 16 June 1993, when Witness Vaughan Kent-Payne arrived at the monastery, he was able to assess the level of the damage and desecration.<sup>4727</sup> The wooden confessional and a number of steles had been destroyed and everything else was covered in excrement. There were inscriptions on the walls and an attempt had been made to obliterate and hack away the frescoes.<sup>4728</sup> Towards mid-June 1993, Witnesses Jasenko Eminović and Samir Sefer went to Guča Gora to verify the allegations that the monastery had been damaged.<sup>4729</sup> Inside the monastery they saw objects scattered everywhere,<sup>4730</sup> there were bullet holes on the walls<sup>4731</sup> and inscriptions in Arabic,<sup>4732</sup> and they learned that this damage had been the work of the mujahedin.<sup>4733</sup>

2004. Witness Franjo Križanac visited the monastery of Guča Gora several times between June 1993 and July 1994.<sup>4734</sup> He stated that during his first visit he noted that it had been completely devastated.<sup>4735</sup> Numerous objects had disappeared, several paintings had been damaged, benches had been smashed, and inscriptions and indecent photographs covered the walls and doors.<sup>4736</sup> During a subsequent visit to the monastery, Witness Franjo Križanac noted that the organ was missing.<sup>4737</sup> On 13 August 1993, Witness ZQ went to the monastery of Guča Gora<sup>4738</sup> and saw graffiti in several languages and noted that the frescoes, the organ and the statue of St Francis of Assisi in the monastery courtyard had all been damaged.<sup>4739</sup>

2005. In view of the above evidence, the Chamber finds that the monastery of Guča Gora was damaged in June 1993.<sup>4740</sup> Several witnesses stated that as of 16 June 1993 inscriptions in Arabic

<sup>4724</sup> Izet Mahir, T(F) pp. 16833-16834.

<sup>4725</sup> Izet Mahir, T(F) p. 16833.

<sup>4726</sup> Izet Mahir, T(F) p. 16805.

<sup>4727</sup> Vaughan Kent-Payne, T(F) p. 4813.

<sup>4728</sup> Vaughan Kent-Payne, T(F) p. 4814.

<sup>4729</sup> Jasenko Eminović, T(F) pp. 5736-5737; Samir Sefer, T(F) p. 11975.

<sup>4730</sup> Samir Sefer, T(F) p. 11975.

<sup>4731</sup> Samir Sefer, T(F) p. 11975.

<sup>4732</sup> Jasenko Eminović, T(F) p. 5737; Samir Sefer, T(F) p. 11975.

<sup>4733</sup> Jasenko Eminović, T(F) p. 5753; Samir Sefer, T(F) p. 11976.

<sup>4734</sup> Franjo Križanac, T(F) p. 1111.

<sup>4735</sup> Franjo Križanac, T(F) p. 1111. Witness Franjo Križanac did not state the date of this visit.

<sup>4736</sup> Franjo Križanac, T(F) pp. 1112-1113.

<sup>4737</sup> Franjo Križanac, T(F) p. 1113. Witness Franjo Križanac did not state the date of this visit.

<sup>4738</sup> Witness ZQ, T(F) p. 1016.

<sup>4739</sup> Witness ZQ, T(F) p. 1017.

<sup>4740</sup> See P 482.



appeared on the walls,<sup>4741</sup> steles had been destroyed,<sup>4742</sup> and paintings, frescoes<sup>4743</sup> and the organ<sup>4744</sup> had been damaged. The Chamber considers that the damage to the objects and the inscriptions on the walls constitute acts of desecration.

2006. Regarding the perpetrators of the damage to the monastery of Guča Gora, the Chamber notes that the evidence refers to the presence of foreign mujahedin in the monastery in June 1993. Between 11 or 12 and 16 June 1993, witnesses stated that they saw foreign mujahedin inside and outside the monastery.<sup>4745</sup> The Chamber also notes that no damage to the monastery was observed until after it was occupied by foreign mujahedin and their departure on 16 June 1993.<sup>4746</sup> Consequently, the Chamber considers that the evidence allows the finding that foreign mujahedin were the perpetrators of the damage to the monastery of Guča Gora in June 1993.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

2007. The Chamber finds that the damage to the monastery of Guča Gora in June 1993 was the work of foreign mujahedin. Furthermore, the Chamber finds that the foreign mujahedin were not under the effective control of the Accused Hadžihasanović at the time of the alleged facts.<sup>4747</sup>

(iv) Conclusions of the Chamber

2008. The Chamber considers that the damage to the monastery of Guča Gora in June 1993 was the work of foreign mujahedin who were not subordinated to the 3<sup>rd</sup> Corps. Since the Accused Hadžihasanović did not exercise effective control over the foreign mujahedin, the Chamber concludes that he cannot be held responsible for the damage to the monastery of Guča Gora in June 1993.

(b) Travnik: the Church and the Town of Travnik

2009. The Indictment alleges that the mujahedin subordinated to the ABiH 3<sup>rd</sup> Corps and/or the 17<sup>th</sup> Brigade destroyed or damaged Bosnian Croat religious institutions in Travnik in June 1993.<sup>4748</sup> It states that the Accused Hadžihasanović knew or had reason to know that units under his

<sup>4741</sup> Izet Mahir, T(F) p. 16805; Vaughan Kent-Payne, T(F) p. 4814; Jasenko Eminović, T(F) p. 5737; Samir Sefer, T(F) p. 11975; Franjo Križanac, T(F) p. 1112; Witness ZQ, T(F) p. 1017.

<sup>4742</sup> Vaughan Kent-Payne, T(F) p. 4814.

<sup>4743</sup> Vaughan Kent-Payne, T(F) p. 4814; Franjo Križanac, T(F) pp. 1112-1113; Witness ZQ, T(F) p. 1017.

<sup>4744</sup> Izet Mahir, T(F) p. 16805; Witness ZQ, T(F) p. 1017.

<sup>4745</sup> Džemal Merdan, T(F) pp. 13140, 13341, 13356, 13362 and 13363; Vaughan Kent-Payne, T(F) pp. 4794-4795; DH 71; Mahir Izet, T(F) pp. 16833-16834.

<sup>4746</sup> Mahir Izet, T(F) p. 16805; Vaughan Kent-Payne, T(F) pp. 4813-4814; Jasenko Eminović, T(F) pp. 5736-5737; Samir Sefer, T(F) pp. 11975-11976.

<sup>4747</sup> See *supra* para. 805.

command and effective control were about to plan, prepare or execute such acts or had done so, and failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators. The Accused Hadžihasanović is therefore charged with the destruction or wilful damage to institutions dedicated to religion, a violation of the laws or customs of war punishable under Articles 3(d) and 7(3) of the Statute.<sup>4749</sup>

(i) Arguments of the Parties

2010. The Indictment alleges that mujahedin entered the church of St John the Baptist in Travnik on 8 June 1993 and damaged it,<sup>4750</sup> adding that the Accused Hadžihasanović had been informed of these events but that the ABiH did not seriously investigate them.<sup>4751</sup>

2011. The Defence for the Accused Hadžihasanović does not deny that the Catholic church in Travnik was damaged on 8 June 1993, but states that the church in Travnik was damaged by mujahedin not under the effective control of the 3<sup>rd</sup> Corps. The Defence for the Accused Hadžihasanović also maintains that the soldiers who were there were unable to stop the mujahedin. With regard to the measures taken, the Defence for the Accused Hadžihasanović alleges that measures were taken to prevent the destruction and damage to religious institutions, to put an immediate stop to the damage to the church in Travnik, and to find and punish the perpetrators of these acts.<sup>4752</sup>

(ii) Findings of the Chamber regarding the Destruction and Wilful Damage of Religious Institutions in Travnik

2012. Around 0700 or 0800 hours on 8 June 1993,<sup>4753</sup> eight to ten mujahedin entered the church in Travnik and started to smash objects inside it.<sup>4754</sup> Witness Mirko Ivkić<sup>4755</sup> was awakened by the sound of banging objects<sup>4756</sup> and saw a mujahedin in front of the church.<sup>4757</sup> He reacted immediately and called the civilian and military authorities, including the ABiH barracks in Travnik,<sup>4758</sup> and also notified<sup>4759</sup> the two ABiH soldiers in charge of watching over and securing

<sup>4748</sup> Indictment, para. 46.

<sup>4749</sup> Indictment, para. 46.

<sup>4750</sup> Prosecution Final Brief, para. 352.

<sup>4751</sup> *Ibid.*, para. 355.

<sup>4752</sup> Hadžihasanović Defence Final Brief, para. 770.

<sup>4753</sup> Mirko Ivkić, T(F) p. 4593; DH 67.

<sup>4754</sup> DH 67.

<sup>4755</sup> Mirko Ivkić, T(F) pp. 4558-4559. Witness Mirko Ivkić was a Catholic priest in the Travnik parish.

<sup>4756</sup> Mirko Ivkić, T(F) pp. 4591 and 4594.

<sup>4757</sup> Mirko Ivkić, T(F) p. 4634.

<sup>4758</sup> Mirko Ivkić, T(F) pp. 4591-4592.

Witness Mirko Ivkić and the parish office on a permanent basis.<sup>4760</sup> Fearing the mujahedin, the soldiers did not intervene and locked themselves inside the house.<sup>4761</sup> When the mujahedin left, Witness Mirko Ivkić noted the extent of the damage.<sup>4762</sup> Representatives of the Public Security Station and the MUP arrived and prepared a report of what had happened in the church.<sup>4763</sup> Fikret Cuskić, Commander of the 17<sup>th</sup> Brigade, also went to the church on 8 June 1993.<sup>4764</sup>

2013. When Witness Mirko Ivkić was able to enter the church, he noted that the interior had been demolished.<sup>4765</sup> The organ and windows were damaged, and the sculptures and paintings smashed and destroyed.<sup>4766</sup> The investigation report compiled on 8 June 1993 by the Security Service Centre notes the mujahedin's destruction of the loudspeakers, the organ, paintings and windows.<sup>4767</sup> When Witness Torbjorn Junhov went to Travnik in June 1993 as part of the ECMM, he saw that many of the objects inside the church in Travnik had been destroyed and statues decapitated. The person serving as Witness Tobjorn Junhov's guide told him that mujahedin were the perpetrators of this damage.<sup>4768</sup> On 12 March 1994, Witness Z6 took photographs of several objects inside the church in Travnik showing the damage to several statues and the organ.<sup>4769</sup>

2014. In view of the above evidence, the Chamber finds that the Catholic church in Travnik was damaged on 8 June 1993. Both Witness Mirko Ivkić<sup>4770</sup> and the investigation report of 8 June 1993<sup>4771</sup> refer to the destruction of objects inside the church. The Chamber considers the damage to the Catholic church in Travnik on 8 June 1993 to be an act of desecration.

2015. With regard to the perpetrators of the damage to the church in Travnik, the Chamber notes that those who were present at the scene on 8 June 1993 stated that they saw mujahedin enter the church. After being wakened by banging objects,<sup>4772</sup> Witness Mirko Ivkić saw a mujahedin in front of the church<sup>4773</sup> and immediately called both civilian and military authorities.<sup>4774</sup> Furthermore, one

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<sup>4759</sup> Mirko Ivkić, T(F) p. 4593.

<sup>4760</sup> Mirko Ivkić, T(F) pp. 4632-4633.

<sup>4761</sup> Mirko Ivkić, T(F) pp. 4593-4594.

<sup>4762</sup> Mirko Ivkić, T(F) pp. 4595-4598.

<sup>4763</sup> Mirko Ivkić, T(F) p. 4635; DH 66; DH 67.

<sup>4764</sup> Fikret Cuskić, T(F) p. 12082; Mirko Ivkić, T(F) p. 4599.

<sup>4765</sup> Mirko Ivkić, T(F) p. 4595.

<sup>4766</sup> Mirko Ivkić, T(F) pp. 4597-4598.

<sup>4767</sup> DH 67.

<sup>4768</sup> Torbjorn Junhov, T(F) pp. 8383-8384.

<sup>4769</sup> P 388 (under seal), para. 7.

<sup>4770</sup> Mirko Ivkić, T(F) p. 4596.

<sup>4771</sup> DH 67.

<sup>4772</sup> Mirko Ivkić, T(F) pp. 4591 and 4594.

<sup>4773</sup> Mirko Ivkić, T(F) p. 4634.

of the soldiers charged with securing the church told him that after a mujahedin had hit him, he had locked himself in for protection.<sup>4775</sup> Witness Fikret Cuskić also concluded that the damage was the work of mujahedin.<sup>4776</sup> The investigation report of 8 June 1993 notes the statements by persons providing security for the church according to whom the damage was caused by eight or ten mujahedin.<sup>4777</sup> Consequently, the Chamber considers that the evidence allows the finding beyond a reasonable doubt that the perpetrators of the damage to the church in Travnik on 8 June 1993 were mujahedin. The Chamber also finds that none of the evidence suffices to identify members of the 17<sup>th</sup> Brigade as the perpetrators of this damage.

(iii) Findings of the Chamber regarding the Responsibility of Enver Hadžihasanović

2016. The Chamber concludes that the damage caused to the church in Travnik on 8 June 1993 was the work of mujahedin. Furthermore, the Chamber notes that the mujahedin were not part of the 17<sup>th</sup> Brigade and were not under the effective control of the Accused Hadžihasanović at the time of the alleged facts.<sup>4778</sup>

(iv) Conclusions of the Chamber

2017. The Chamber considers that the damage caused to the church in Travnik in June 1993 was the work of mujahedin who were not part of the 17<sup>th</sup> Brigade and were not subordinated to the 3<sup>rd</sup> Corps. Because the Accused Hadžihasanović did not exercise effective control over the mujahedin, the Chamber concludes that the Accused Hadžihasanović cannot be held responsible for the damage to the church in Travnik on June 1993.

**C. Findings of the Chamber on Measures Taken by the Accused Hadžihasanović regarding Destruction and Plunder**

1. Introduction

2018. In analysing all the measures taken by the ABiH during the material time, the context in which the measures were taken should first be explained. The Chamber notes that the Accused have

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<sup>4774</sup> Mirko Ivkić, T(F) pp. 4591, 4592 and 4634.

<sup>4775</sup> Mirko Ivkić, T(F) pp. 4593, 4594 and 4634.

<sup>4776</sup> Fikret Cuskić, T(F) p. 12082; Mirko Ivkić, T(F) p. 4599.

<sup>4777</sup> DH 67.

<sup>4778</sup> *See supra* para. 805.

been acquitted of the two counts in the Indictment dealing with the destruction and plunder in the village of Dusina and the destruction in the village of Miletići.<sup>4779</sup>

2019. In view of the evidence, the Chamber finds that destruction and plunder systematically followed the combat operations mentioned in the Indictment. This phenomenon began well before June 1993, appearing in “waves” as of late January 1993.

2020. The first wave appeared in late January 1993.<sup>4780</sup> The Chamber would recall, however, that the Prosecution did not tender any evidence regarding the destruction and plunder alleged to have taken place in Dusina.

2021. As of 17 April 1993, following the combat in Zenica and its surroundings, there was a second wave of destruction and plunder.<sup>4781</sup> With regard to this period, the Chamber recalls that it was not seized of the issue except for the plunder that allegedly took place in Miletići.<sup>4782</sup>

2022. The third wave of destruction and plunder began in early June 1993. According to the evidence, these incidents of destruction and plunder clearly began before 8 June 1993 and continued after 30 June 1993. Likewise, it extended over a territory that went beyond the municipalities covered in the Indictment, in particular the municipality of Kakanj and places in the municipality of Travnik not mentioned in the Indictment. For the sake of clarity and also motivated by the interests of fairness to better understand the Accused Hadžihasanović’s efforts to curb such actions, the Chamber will analyse all these incidents without limiting itself to the temporal and geographical framework set out in the Indictment.

## 2. Documentary Proof from the 3<sup>rd</sup> Corps

2023. The measures taken will first be analysed using the documents tendered into evidence. For the period of June 1993, the Chamber admitted 65 documents from either the ABiH or civilian authorities in the region.<sup>4783</sup> They will be analysed according to the following categories.

<sup>4779</sup> See Decision on Motions for Acquittal, Disposition.

<sup>4780</sup> P 137; P138/DH 704; DH 263; DH 710; DH 711; DH 732.

<sup>4781</sup> See for example the following documents: DH 874; DH 265; P 877/DH 111/DH 161.2; P 146/DH 109/DH 264; DH 110/DH 161.3/DH 884; P 878; P 895; P 820.

<sup>4782</sup> Decision on Motions for Acquittal, Disposition.

<sup>4783</sup> In chronological order: DH 1101; P 464 , P 465; P 287/DH 1132; DH 1135; DH 1137; DH 162.2; DH 161.9/DH 1139; DH 1141; P 185; P 186/DH 161.10; DH 1155; P 187; P 422; P 423; P 424; DH 1164; DH 1162; P 188; P 466; P 895; DH 1186; P 890; P 585; P 189/DH 161.12; P 158/ DH 161.13; P 864; DH 1197; DH 1196; P 159; P 470; DH 161.14; DH 1207; P 900/DH 162.3/DH 234; P 204; DH 1213; DH 1906; P 160; P 798; DH 65/DH 161.16/DH 1215; P 426; P 427; P 808; P 893; P 590; P 898; DH 1225; P 428; DH 1235; P 467; P 475; P 429; P 591; DH 1246; P 201; P 592; P 431; P 544/DH 161.19; DH 1916; P 894/DH 2071; DH 160.5; DH 1920; P 864; DH 1265; DH 1272; DH 1278.

(a) General Prohibition against Destruction and Plunder

2024. The Chamber first notes that the Accused Hadžihasanović issued orders to remind his subordinates that destruction and plunder were prohibited. The first was dated 9 June 1993<sup>4784</sup> and made reference to his two previous orders dated 18 April 1993.<sup>4785</sup> On 10 June 1993, the Accused Hadžihasanović again prohibited his troops from committing destruction and plunder in a new order.<sup>4786</sup> Then, on 17 June<sup>4787</sup> and 19 June<sup>4788</sup> 1993, the Accused Hadžihasanović issued two new orders repeating the prohibition. Other orders regarding the same prohibition can be cited.<sup>4789</sup>

(b) General Preventive and Punitive Measures

2025. The Chamber notes from the documents tendered into evidence that the Accused Hadžihasanović issued another type of order intended to prevent destruction and plunder and punish the perpetrators. In the first order of this type, dated 10 June 1993,<sup>4790</sup> the Accused warned that all those guilty of such acts would be punished by being immediately relieved of their duties or would be criminally prosecuted before “courts-martial” or “special courts”. The order says he must be informed promptly in writing of any failure to obey the order and of any measure taken in this regard. In response to a report dated 11 June 1993 from Mehmed Alagić,<sup>4791</sup> Commander of the OG *Bosanska Krajina*, on 12 June 1993 the Accused Hadžihasanović ordered all those caught plundering or burning property<sup>4792</sup> to be detained at once.<sup>4793</sup>

2026. Then, on 16 June 1993 the Accused Hadžihasanović issued an order covering seven points intended to verify the allegations that soldiers had plundered and burned civilian property following combat.<sup>4794</sup> Of these seven points, the Chamber will focus on a few in particular: the order to verify the allegations of plunder and burning of property by members of the ABiH; to appoint persons or commissions to establish whether such events occurred and to indicate the names of the perpetrators by 20 June 1993; to submit criminal reports if such events had occurred and to take measures if possible to find and return the plundered goods; to detain the perpetrators of such acts and to initiate criminal proceedings against them. The order announces the creation of a special commission of the

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<sup>4784</sup> DH 1139.

<sup>4785</sup> P 146; P 877.

<sup>4786</sup> P 186/DH 161.10.

<sup>4787</sup> P 159.

<sup>4788</sup> DH 65/DH 161.16/DH 1215.

<sup>4789</sup> P 159 (seeming to respond to an order of the same day [P 470] coming from both the Minister of the Interior and the Commander of the Supreme Command Main Staff).

<sup>4790</sup> P 186/DH 161.10.

<sup>4791</sup> P 187.

<sup>4792</sup> Movable and immovable property.

<sup>4793</sup> P 188.

3<sup>rd</sup> Corps Command to verify the information obtained regarding the plunder, any arson and the credibility of the reports submitted.

2027. Other documents attest to the fact that the Accused Hadžihasanović took measures of a general nature to protect civilian property, for example the order dated 18 June 1993<sup>4795</sup> further to an order from the Supreme Command dated 16 June 1993,<sup>4796</sup> and his order dated 19 June 1993.<sup>4797</sup> Two other orders dated 25 June 1993<sup>4798</sup> and 27 June 1993<sup>4799</sup> should also be mentioned.

(c) Organisation and Mobilisation of the Military Police

2028. Several orders issued by the Accused Hadžihasanović dealt with the organisation and use of the military police, and cooperation between the military and civilian police. On 12 June 1993, the Accused Hadžihasanović ordered Mehmed Alagić to use “his own police” and the MUP forces to arrest the arsonists and looters.<sup>4800</sup> Then, on 16 June 1993, he ordered the Commander of the 306<sup>th</sup> Brigade to use his military police unit to secure the Guča Gora sector in order to prevent plunder and arson and to do this in conjunction with the 3<sup>rd</sup> Corps Military Police Battalion and part of the 312<sup>th</sup> Brigade Military Police unit.<sup>4801</sup> A similar order was also issued three days later for the municipality of Kakanj.<sup>4802</sup> Finally, an order was issued on 28 June 1993 to form a military police unit within the OG *Bosanska Krajina*.<sup>4803</sup>

(d) Reports Submitted to the Supreme Command

2029. In two reports to the Supreme Command in June 1993, the Accused Hadžihasanović informed his superiors of the nature and extent of the problem and the measures taken to stop it.<sup>4804</sup>

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<sup>4794</sup> P 199/DH 161.12.

<sup>4795</sup> P 900/DH 162.3/DH 234.

<sup>4796</sup> P 864.

<sup>4797</sup> DH 65/DH 161.16/DH 1215.

<sup>4798</sup> This order was not tendered into evidence, but its existence is established by the reference made to it in the order [DH 1265] that includes “Directives” dated 27 June 1993 and signed by Mesud Smajić, Assistant Commander for Security in the 312<sup>th</sup> Brigade.

<sup>4799</sup> P 864.

<sup>4800</sup> P 188.

<sup>4801</sup> P 158/DH 161.13. For the execution of the order, see P 204.

<sup>4802</sup> P 160.

<sup>4803</sup> DH 1920.

<sup>4804</sup> P 422; P 160.

(c) Personal Initiatives Taken by the Accused Hadžihasanović in Respect of Specific Cases

2030. On 17 June 1993, the Accused Hadžihasanović asked the Commander of the 7<sup>th</sup> Brigade for information regarding the rumours that members of the 7<sup>th</sup> Brigade had stolen property while guarding the Franciscan convent of *Kraljeva Sutjeska*.<sup>4805</sup> Then, on 25 June 1993, he followed up on a request from the Deputy Commander of the Supreme Command dated 20 June 1993.<sup>4806</sup> In his response, the Accused Hadžihasanović reported that an investigation was being conducted into 7<sup>th</sup> Brigade members Nesib Talić and Aser Bektaš in order to verify the allegations that they had taken part in the plunder.<sup>4807</sup>

2031. Another personal initiative by the Accused Hadžihasanović intending to prevent and punish destruction and particularly plunder in Kakanj in June 1993 should also be noted. On 20 June 1993, the Accused Hadžihasanović went to Kakanj in person to try to put an end to the problem of plunder.<sup>4808</sup> In addition, on 25 June 1993 he informed the Deputy Commander of the Supreme Command that officers in the 7<sup>th</sup> Brigade had been relieved of their duties for failing to execute an order intended to prevent plunder.<sup>4809</sup>

(f) Interaction Between the 3<sup>rd</sup> Corps Command and Subordinate Units

2032. Thirteen reports submitted between 8 and 25 June 1993 by units subordinated to the 3<sup>rd</sup> Corps informed the Accused Hadžihasanović of destruction and plunder in their zone of responsibility and either asked for assistance in solving the problem or proposed solutions.<sup>4810</sup>

2033. Eight documents can be cited that attest to measures taken in June 1993 by units subordinated to the 3<sup>rd</sup> Corps carrying out orders by the Accused Hadžihasanović.<sup>4811</sup>

(g) Autonomous Initiatives by the Commanders of 3<sup>rd</sup> Corps Units

2034. Eight documents from June 1993 attest to autonomous initiatives taken by subordinates.<sup>4812</sup> All these initiatives were taken by Mehmed Alagić, Commander of the OG *Bosanska Krajina*. The Chamber notes in particular the order of 8 June 1993 that set up a special military court.<sup>4813</sup>

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<sup>4805</sup> DH 161.14.

<sup>4806</sup> P 431. See also the testimony of ZP, T(F) pp. 8865-8867.

<sup>4807</sup> P 544/DH 161.19. Nesib Talić was the 7<sup>th</sup> Brigade Assistant Commander for Security at the time; P 498.

<sup>4808</sup> P 590; P 808.

<sup>4809</sup> P 544/DH 161.19. See also P 475.

<sup>4810</sup> In chronological order: P 465; DH 1137; P 187; P 895; P 423; DH 1906; P 798; P 898; P 426; P 428; P 429; P 592; DH 1916.

<sup>4811</sup> In chronological order: DH 1187; P 158; P 204; P 898; P 426; P 427; P 467; DH 1265.

<sup>4812</sup> In chronological order: DH 1101; P 464; P 287/DH 1132; DH 1155; P 890; P 893; P 894/DH 2071; DH 1278.



### 3. Investigations and Criminal Proceedings

2035. During the trial, the Defence for Hadžihasanović tendered into evidence numerous documents concerning investigations and criminal proceedings against members of the 3<sup>rd</sup> Corps. Some dealt with the prosecution of ABiH members accused of plundering houses abandoned by Croats which, depending on the circumstances, might or might not be considered a war crime.

2036. According to the documents tendered into evidence, the Chamber knows of 32 proceedings initiated against individual soldiers or groups of soldiers, members of the ABiH, for acts of plunder sometimes accompanied by destruction. Twenty of these cases were submitted to military judicial authorities in Travnik<sup>4814</sup> and twelve were sent to the military judicial authorities in Zenica.<sup>4815</sup> In the cases that the Chamber knows were tried, suspended sentences of two to six months in prison were handed down.<sup>4816</sup> Nevertheless, in a case involving several accused for five different offences committed over a period of several months, the non-suspended sentences were from one to three years in prison.<sup>4817</sup> It should be noted that none of these cases was prosecuted pursuant to Article 142, Chapter 16 of the SFRY Criminal Code.<sup>4818</sup>

2037. Among the twenty cases submitted to the District Military Court in Travnik, 11 were for offences committed in June 1993 and nine for crimes committed in July and August 1993. As regards the locations when the unlawful acts were committed, three of the twenty cases submitted took place in locations indicated in the Indictment, while 17 involved primarily cases of crimes committed in areas around Travnik. If these cases are examined with regard to the material time and places indicated in the Indictment, the Chamber notes that not a single one concerns the relevant time or places.

2038. Of the 12 cases submitted to the District Military Court in Zenica, three deal with crimes committed during the period material to the Indictment, four concern previous months and five after

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<sup>4813</sup> P 287/DH 1132.

<sup>4814</sup> By date the crimes were committed, the following documents: case no. 1: DH 1144; case no. 2: DH 122.1, DH 1145; case no. 3: DH 121, DH 1328; case no. 4: DH 1562; case no. 5: DH 1200; case no. 6: DH 1201; case no. 7: DH 1202; case no. 8: DH 1204; case no. 9: DH 1190, DH 1935; case no. 10: DH 1202; case no. 11: DH 121.5, DH 1295; case no. 12: DH 1379, DH 2000, DH 2001; case no. 13: DH 1997, DH 1998, DH 1999; case no. 14: DH 1586; case no. 15: DH 1581; case no. 16: DH 121.4; case no. 17: DH 121.3, DH 1342; case no. 18: DH 2002-DH 2006; case no. 19: DH 1451; case no. 20: DH 1483.

<sup>4815</sup> By date the crimes were committed, they are the following documents: case no. 1: DH 2030; case no. 2: DH 982; case no. 3: DH 283, DH 1069; case no. 4: DH 303, DH 1366, DH 1975; case no. 5: DH 1578; case no. 6: DH 972; case no. 7: DH 319; case no. 8: DH 316; case no. 9: DH 320; case no. 10: DH 285, DH 297, DH 323; case no. 11: DH 325; case no. 12: DH 1471.

<sup>4816</sup> For Travnik cases no. 12, 14 and 20 and for Zenica cases no. 8, 9, 10, 11.

<sup>4817</sup> Case no. 5 (Zenica).

<sup>4818</sup> *See supra* paras. 958-969.

that time. With regard to the location of the crimes, the Chamber notes that six of the 12 cases concern crimes committed in the municipality of Kakanj and six in other municipalities. None of the 12 cases took place in locations referred to in the Indictment.

2039. An initial observation is that the plunder of abandoned Croatian houses did not go unpunished, as the Chamber knows of 32 criminal proceedings covering such actions initiated in 1993: from June to August 1993 for Travnik, and from April to October 1993 for Zenica. This leads to the inference that the military police and military courts were operating. In spite of this assertion, however, an analysis as to why the number of cases was so small is essential.

2040. Accordingly, the Chamber will examine the reasons why so few cases of plunder were submitted to it. It will also attempt to provide an explanation for the fact that no case dealing with the time and places material to the Indictment was reported by the Parties. To this end, it will start from a first unverified postulate that these cases were the only ones to be conducted by the district military courts during or close to the material time. The Chamber will proceed to analyse the circumstances in which the plunder took place and the difficulties the Accused Hadžihasanović faced in preventing and investigating such incidents.

(a) Extent of the Plunder: Difficulties in Stopping and Identifying the Perpetrators

2041. In view of the documents tendered into evidence and the testimony of witnesses heard by the Chamber, it appears that plunder was a widespread occurrence in all the sectors of Central Bosnia where combat took place.

2042. In early June 1993, plunder occurred in the Travnik area.<sup>4819</sup> Then, towards 8 June 1993, it spread to all the combat zones in the Bila Valley and to other locations referred to in the Indictment.<sup>4820</sup> Towards 17 June 1993, it reached the Kakanj sector.<sup>4821</sup>

2043. In order to understand the extent of the plunder, it should be noted that entire villages had been deserted by the Croatian population. Witness HE, for example, mentioned the departure of 17,000 inhabitants of the Travnik area and the Bila Valley, which left thousands of dwellings empty.<sup>4822</sup>

2044. A second element which is very important within the context of the plunder was the high number of Muslim refugees who had fled the combat in other parts of Bosnia and Herzegovina and

<sup>4819</sup> P 464; P 465; P 287/DH 1132/DH 1135/DH 1137.

<sup>4820</sup> See for example: P 422; P 423; P 188; P 585; P 189/DH 161.12; P 158/DH 161.13; P 204.

<sup>4821</sup> See for example: DH 161.14; P 160; P 590; P 808; P 428; P 429.

<sup>4822</sup> HE, T(F) p. 16977. See also Fikret Čuskić, T(F) p. 12098.

had arrived in Central Bosnia seeking refuge.<sup>4823</sup> Witness Fikret Čuskić stated that there were approximately 20,000 refugees in the Travnik area alone.<sup>4824</sup> The town of Zenica accommodated as many as 50,000 persons during this period.<sup>4825</sup>

2045. A third element often reported by witnesses and also visible in the documentary evidence was the prevailing shortage of goods in the area during this period that was seriously aggravated by the massive influx of refugees.<sup>4826</sup>

2046. A final element that deserves special mention is the lifting of the blockade of the roads after the combat on 8 June 1993 that allowed the re-establishment of communication networks between Travnik and Zenica and ended the Bila Valley's isolation. Opening the roads gave thousands of refugees and other persons, both military and civilian, access to the Bila Valley where they could enter dwellings abandoned by their Croatian owners and steal basic commodities for their immediate needs and all property of value.<sup>4827</sup>

2047. Thus, in order to determine whether and how the Accused Hadžihanović took measures against the widespread occurrence of plunder, all the consequences such a problem could cause, the context in which the plunder appeared, and the means available to the 3<sup>rd</sup> Corps to end it must also be recalled.

2048. As explained above, the plunder was widespread and covered a very large territory abandoned by its inhabitants who were not present to stop it or identify the perpetrators.

(b) Means Put into Effect by the 3<sup>rd</sup> Corps and Their Limitations

2049. The 3<sup>rd</sup> Corps first focused on the need to end the plunder. Working together with the civilian authorities, it imposed a curfew in certain areas to limit the movement of people.<sup>4828</sup> It also dispatched military and civilian police patrols<sup>4829</sup> and established check-points to prevent acts of plunder committed by both civilians and 3<sup>rd</sup> Corps members and to punish them.<sup>4830</sup> Finally, in late June 1993 a new police unit was created within the OG *Bosanska Krajina* as a response to the

<sup>4823</sup> See *supra* paras. 400 and 401.

<sup>4824</sup> Fikret Čuskić, T(F) p. 12083

<sup>4825</sup> DH 1593; Semir Sarić, T(F) p. 17315; Martin Garrod, T(F) p. 8285; Ramiz Džaferović, T(F) p. 14210. See *supra* para. 400.

<sup>4826</sup> See for example Osman Menković, T(F) p. 14880 and DH 1009.

<sup>4827</sup> Asim Delalić, T(F) p. 16372 and Remzija Šiljak, T(F) p. 10557.

<sup>4828</sup> See for example P 158; Fikret Čuskić, T(F) p. 12094.

<sup>4829</sup> See for example DH 1186; P 204; Osman Menković, T(F) p. 14686.

<sup>4830</sup> See for example P 422; P 204; Asim Delalić, T(F) p. 16373; HF, T(F) pp. 16979, 17022-17023; Osman Menković, T(F) pp. 14674, 14685-14686.

problems encountered by the brigade military police units, in particular their reduced number and limited territorial jurisdiction.<sup>4831</sup>

2050. Nevertheless, given the size of the territory and the extent of the incidents, the limited number of military police in the brigades meant that check-points could be set up only in a few places for a specific period of time. The military police did not have the authority to check members of the ABiH only, and units tended to follow their brigades towards the shifting front line.

2051. Some witnesses also mentioned that after combat was over and the military police units had left for other front lines, it was primarily the civilian police who were in charge of checking individuals to prevent the plunder and they did not always have the means to arrest the armed looters from the ABiH. Thus, whenever possible, the military police went on patrols with the civilian police.<sup>4832</sup>

2052. According to some witness testimony, another element deserving special attention is the fact that plunder very often took place at night and the looters had no trouble bypassing the check-points.<sup>4833</sup>

2053. It seems that the means put in place to stop the plunder were often undermined by the fact that the military police of some brigades, such as the 7<sup>th</sup> Brigade and the 314<sup>th</sup> Brigade, took part in these activities.<sup>4834</sup>

2054. Finally, owing to the fact that the villagers had left, they were not present to identify the looters and lodge complaints with the relevant authorities.

2055. The Chamber finds that the efforts of both the relevant military and civilian authorities were in line with the principal desire to put an end to the plunder in order to prevent any repetition. The means put in place, as we have just seen, were limited.

(c) Disciplinary Measures

2056. Some witnesses asserted that the perpetrators of the plunder were to be liable for criminal prosecution.<sup>4835</sup> After the two main orders issued by the Accused Hadžihasanović in respect of punishment for plundering, it seems that criminal sanctions were intended as a response to such

<sup>4831</sup> DH 1920; HE, T(F) p. 16978; Osman Menković, T(F) pp. 14674, 14695.

<sup>4832</sup> Osman Menković, T(F) p. 14725. It should be noted that the civilian police were also involved in combat and could thus abandon territory and leave it open to the looters.

<sup>4833</sup> Asim Delalić, T(F) p. 16398; Samir Konjalić, T(F) p. 12808; Osman Menković, T(F) p. 14685.

<sup>4834</sup> See *supra* paras. 1943 and 1978.

<sup>4835</sup> Fikret Čuskić, T(F) p. 12099; HE, p. T(F) 17075; Osman Menković, T(F) p. 14705.

actions. They do not suggest that disciplinary measures were the appropriate response to punish such acts.<sup>4836</sup>

2057. Nevertheless, Witness Asim Delalić stated that disciplinary measures were taken within the 306<sup>th</sup> Brigade to punish plunder due to the lack of criminal proceedings and explained that such measures were taken because, at the time, it was difficult to go to Travnik and because the District Military Court there was not very effective. Finally, he suggested that the 306<sup>th</sup> Brigade made systematic use of disciplinary measures to punish looters. The punishment imposed by the 306<sup>th</sup> Brigade Commander was 30 to 60 days in prison.<sup>4837</sup>

2058. The length of the sentences imposed as disciplinary measures do not differ from that handed down by the district military courts. They condemned looters to suspended sentences of two to six months in prison. Thus, they can be considered “reasonable” punishment within the meaning of Article 7(3) of the Statute.

#### 4. General Conclusions

2059. In June 1993, the Accused Hadžihasanović was faced with a serious problem of destruction and plunder, whose size and extent he assessed. In order to deal with it, he took a set of general measures intended to prohibit and prevent such actions and punish the perpetrators. He also took specific measures to respond to individual situations.

2060. His subordinates regularly informed him of the unlawful acts of destruction and plunder. A great number of documents attest to the execution of Hadžihasanović’s orders by his units.

2061. All these documents suggest that the Accused Hadžihasanović was concerned about the problem he faced in June 1993 and showed a proven desire to effectively solve this matter using the means at his disposal. In this regard, the Chamber considers that the Accused Hadžihasanović established a proper framework to stop such incidents, prevent their repetition and punish the perpetrators.

2062. Starting from the assumption that the 32 cases showing that investigations were undertaken promptly represent all of the proceedings initiated to punish acts of destruction and plunder, the Chamber notes that this limited number can be based only on certain factors, such as the extent of the incidents, the inadequate means to deal with them and the objective circumstances in which they took place.

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<sup>4836</sup> P 186/DH 161.10 (10 June 1993); P 189/DH 161.12 (16 June 1993).

<sup>4837</sup> Asim Delalić, T(F) pp. 16374-16375, 16399-16400 (the sentence was served in the monastery of Guča Gora).

2063. Furthermore, the Chamber recalls that, as explained elsewhere in the Judgement, the Prosecution did not meet its obligation to prove that no measures were taken in respect of these counts.<sup>4838</sup>

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<sup>4838</sup> *See supra* paras. 995-1000.

## VIII. SENTENCING

### A. Submissions of the Parties

2064. The Prosecution argued that justice would be done by sentencing the Accused Hadžihasanović to a term of 20 years in prison and the Accused Kubura to 10 years.<sup>4839</sup> It argued that sentences must reflect as best as possible the seriousness of the Accused's conduct in the specific context of the case, and the form and degree of their participation in the alleged offences.<sup>4840</sup> The Prosecution submitted that: (a) by failing to prevent or punish the crimes in question, the Accused Hadžihasanović and the Accused Kubura allowed the commission of more than 30 unsolved murders, allowing the perpetrators of those crimes and crimes committed in the detention centres to escape responsibility, and allowed a number of people to burn and plunder houses belonging to Bosnians and Croats with impunity;<sup>4841</sup> (b) the Chamber must consider the background, education, and intelligence of each of the Accused as aggravating circumstances;<sup>4842</sup> (c) the fact the Accused Hadžihasanović and Kubura are career military officers constitutes an aggravating circumstance,<sup>4843</sup> especially in the case of Hadžihasanović;<sup>4844</sup> (d) given the gravity of the crimes with which they are charged, the Chamber must not attach undue weight to the Accused's "good character prior to the commission of these offences",<sup>4845</sup> and (e) there are no mitigating circumstances.<sup>4846</sup>

2065. The Defence for the Accused Hadžihasanović also argued for an acquittal on all counts. Without explicitly mentioning mitigating circumstances, several paragraphs of Hadžihasanović's Pre-Trial Brief describe the particular context of this case,<sup>4847</sup> arguing that Hadžihasanović's actions were purely defensive in nature,<sup>4848</sup> that when he assumed command of the 3<sup>rd</sup> Corps in Central Bosnia he faced an "unprecedented situation from a military perspective",<sup>4849</sup> that when he took up his duties he was faced with "a massive influx of refugees in his area of responsibility as well as with the lack of basic necessities for the population to survive and to fight the war on two fronts,"<sup>4850</sup> and that he was even confronted with "the problem of foreign holy warriors or

<sup>4839</sup> Prosecution Closing Arguments, T(F) p. 19112.

<sup>4840</sup> Prosecution Closing Arguments, T(F) p. 19110.

<sup>4841</sup> Prosecution Closing Arguments, T(F) pp. 19110-19111.

<sup>4842</sup> Prosecution Final Brief, para. 360.

<sup>4843</sup> Prosecution Final Brief, para. 360.

<sup>4844</sup> Prosecution Closing Arguments, T(F) p. 19111.

<sup>4845</sup> Prosecution Final Brief, para. 362.

<sup>4846</sup> Prosecution Final Brief, para. 361; Prosecution Closing Arguments, T(F) p. 19111.

<sup>4847</sup> Hadžihasanović Defence Pre-Trial Brief, paras. 17-24.

<sup>4848</sup> Hadžihasanović Defence Pre-Trial Brief, para. 17.

<sup>4849</sup> Hadžihasanović Defence Pre-Trial Brief, para. 21.

<sup>4850</sup> Hadžihasanović Defence Pre-Trial Brief, para. 22.

Mujaheddins”.<sup>4851</sup> In its Final Brief, the Defence for Hadžihasanović again pointed to “the particular circumstances in which General Hadžihasanović was required to exercise his command”.<sup>4852</sup> His Defence further noted that Hadžihasanović’s service record rated as “exceptional”,<sup>4853</sup> and that when he assumed command of the 3<sup>rd</sup> Corps he had not yet attended the necessary course for promotion to General, taken part in the required strategic command exercises for promotion to that rank, or had command experience at a level higher than brigade.<sup>4854</sup> The Defence for Hadžihasanović also called a number of witnesses who all attested to Hadžihasanović’s ability to command the 3<sup>rd</sup> Corps in the most difficult of circumstances.<sup>4855</sup>

2066. The Defence for the Accused Kubura also argued for an acquittal on all counts. It argued that Kubura strove at all times to act as a responsible commander and ensure that the laws of war were respected,<sup>4856</sup> and that, as a virtuous and law-abiding man, he set an example for his troops.<sup>4857</sup> In its Closing Arguments, the Defence for Kubura requested the Chamber to consider as mitigating circumstances the fact that (a) Kubura did not participate in a massive attack in which 200 civilians lost their lives in a very short time<sup>4858</sup> and (b) there was no discriminatory basis for the depredations for which Kubura is accused.<sup>4859</sup>

## **B. Legal Framework for Sentencing**

### **1. Legal Provisions and Principles for Determining Sentences**

2067. The relevant parts of Article 24 of the Statute and Rules 87(C) and 101 of the Rules read as follows:

Article 24 of the Statute:

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

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<sup>4851</sup> Hadžihasanović Defence Pre-Trial Brief, para. 22.

<sup>4852</sup> Hadžihasanović Defence Final Brief, paras. 75-87.

<sup>4853</sup> Hadžihasanović Defence Final Brief, para. 26.

<sup>4854</sup> Hadžihasanović Defence Final Brief, para. 30.

<sup>4855</sup> Hadžihasanović Defence Final Brief, paras. 31-32 and 73-74.

<sup>4856</sup> Kubura Defence Pre-trial Brief, para. 13.

<sup>4857</sup> Kubura Defence Pre-trial Brief, para. 16.

<sup>4858</sup> Kubura Defence Closing Arguments, T(F) p. 19265. Reference is made here to the attacks described and alleged in paragraph 27 of the Indictment. The attacks were allegedly launched by ABiH 3<sup>rd</sup> Corps units in April 1993 and early summer 1993 against the HVO, particularly, but not exclusively, in the municipalities of Bugojno, Busovača, Kakanj, Maglaj, Novi Travnik, Travnik, Vareš, Vitez, Zavidovići, Zenica and Žepče. During the attacks, predominately Bosnian Croat but also Bosnian Serb civilians, including women, children, the elderly, and the infirm, were allegedly subjected to wilful killings and serious injury. Two hundred Bosnian Croat and Bosnian Serb civilians were allegedly killed.

<sup>4859</sup> Kubura Defence Closing Arguments, T(F) pp. 19265-19266.



2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

[...]

Rule 87 of the Rules:

(C) If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

Rule 101 of the Rules:

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

[...]

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

2068. While the Statute and Rules provide the Trial Chambers general guidelines for determining sentences by requiring that they take into account aggravating and mitigating factors, the material and personal circumstances of the Accused, the gravity of the offence, and the general practice regarding prison sentences in the former Yugoslavia, they do not exhaustively define the points of fact and law which the Trial Chambers may consider when determining sentences. Chambers therefore have broad discretionary power in determining such matters.<sup>4860</sup>

2069. When reviewing the personal situation of an Accused in order to determine a sentence appropriate to that individual, Trial Chambers must take into account aggravating and mitigating circumstances. A Chamber may take into account only aggravating circumstances directly related to the crime or crimes in question and to the perpetrators thereof,<sup>4861</sup> which the Prosecution will have included in its Indictment<sup>4862</sup> and established beyond a reasonable doubt.<sup>4863</sup> Even when all such conditions are met, the Trial Chamber preserves its discretionary power to attach only limited

<sup>4860</sup> *Čelebići* Appeal Judgement, paras. 716-717, 780.

<sup>4861</sup> *Kunarac* Trial Judgement, para. 850.

<sup>4862</sup> *Kunarac* Trial Judgement, para. 850.

<sup>4863</sup> *Strugar* Trial Judgement, para. 466.

weight to such circumstances.<sup>4864</sup> As to mitigating circumstances, the Trial Chamber shall consider only those established by the Accused on the balance of probabilities,<sup>4865</sup> whether or not they have a direct nexus with the crimes in question,<sup>4866</sup> because even when he presents evidence of mitigating circumstances, the Accused is never automatically entitled to a reduction in his sentence.<sup>4867</sup>

2070. In its determination of the most appropriate sentence, the Trial Chamber must take into account the purpose of punishment.

2071. Retribution is a particularly important factor. As the Trial Chamber in *Aleksovski* held: “This is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes. This factor has been widely recognised by Trial Chambers of this International Tribunal ...”<sup>4868</sup> The Chamber subscribes to that position.

2072. It is established case law that deterrence should be the most important factor taken into account in determining sentences.<sup>4869</sup> Nevertheless, Trial Chambers have always taken care not to accord undue prominence to deterrence in their final determinations.<sup>4870</sup> Such moderation should be applied as a general deterrent,<sup>4871</sup> in order to deter similarly situated individuals from committing similar crimes, but also as a special deterrent to ensure the Accused never contemplates taking part in such crimes again.<sup>4872</sup> The Chamber agrees with the position of the *Kunarac* Trial Chamber<sup>4873</sup> that only very limited weight should be attached to special deterrence.

2073. In its determination of the sentence, the Chamber also bears in mind that its purpose is to protect society by incapacitating persons considered dangerous, while also reflecting public disapproval and making it possible for the convicted person to return to society at a later date. The

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<sup>4864</sup> *Čelebići* Appeal Judgement, para. 777; *Blagojević* Judgement, para. 840.

<sup>4865</sup> *Blaškić* Appeal Judgement, para. 697; *Čelebići* Appeal Judgement, para. 590; *Kunarac* Trial Judgement, para. 847.

<sup>4866</sup> *Babić* Appeal Judgement, para. 43; *Stakić* Trial Judgement, para. 920.

<sup>4867</sup> *Babić* Appeal Judgement, para. 44.

<sup>4868</sup> *Aleksovski* Appeal Judgement, para. 185. See also *Erdemović* Trial Judgement, para. 64; *Čelebići* Trial Judgement, para. 1234; *Furundžija* Trial Judgement, para. 288.

<sup>4869</sup> *Čelebići* Trial Judgement, para. 1234.

<sup>4870</sup> *Tadić* Sentencing Appeals Judgement, para. 48; *Čelebići* Appeal Judgement, paras. 800-801.

<sup>4871</sup> *Aleksovski* Appeal Judgement, para. 185.

<sup>4872</sup> *Čelebići* Trial Judgement, para. 1234.

<sup>4873</sup> *Kunarac* Trial Judgement, para. 840: “The main reason is that the likelihood of persons convicted here ever again being faced with an opportunity to commit war crimes, crimes against humanity, genocide or grave breaches is so remote as to render its consideration in this way unreasonable and unfair.”

Chamber considers, however, that in accordance with Tribunal case law, the importance of those three functions in determining sentence is relative.<sup>4874</sup>

2074. The Chamber must also take into account the general practice regarding prison sentences in the courts of the former Yugoslavia. Any references to those practices are purely indicative and are in no way binding.<sup>4875</sup> The relevant provisions for determining sentences are set out in Chapter 16, Articles 33, 38, 41 and 48 of the SFRY Criminal Code.<sup>4876</sup>

## 2. Single Basis of Responsibility of the Accused: Their Position as Superiors at the Time of the Events

2075. The Chamber would note that this Judgement is the first in the history of the Tribunal to convict Accused persons solely on the basis of Article 7(3) of the Statute<sup>4877</sup> and recalls that command responsibility must be conceived as a type of personal responsibility for failure to act. The Accused will not be convicted for crimes committed by his subordinates but for failing in his obligation to prevent the crimes or punish the perpetrators.<sup>4878</sup>

2076. When a person is found responsible solely on the basis of Article 7(1) of the Statute, or cumulatively in conjunction with Article 7(3), the gravity of the offence is evaluated in view of two elements: the inherent gravity of the acts committed and the form and degree of the Accused's participation in the crimes in question.<sup>4879</sup> The concept of command responsibility in this regard is exceptional in law in that it allows for a superior to be found guilty of a crime even if he had no part whatsoever in its commission (absence of an *actus reus*), and even if he never intended to commit the crime (absence of *mens rea*). Accordingly, the Chamber finds that the *sui generis* nature of command responsibility under Article 7(3) of the Statute may justify the fact that the sentencing scale applied to those Accused convicted solely on the basis of Article 7(1) of the Statute, or cumulatively under Articles 7(1) and 7(3), is not applied to those convicted solely under Article 7(3), in cases where nothing would allow that responsibility to be assimilated or linked to individual responsibility under Article 7(1).

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<sup>4874</sup> Regarding the protective function of sentencing, see *Kunarac* Trial Judgement, para 843; regarding the retributory function, see *Erdemović* Trial Judgement, para. 65, and for the rehabilitative function, see *Čelebići* Appeal Judgement, para. 806 and *Kunarac* Trial Judgement, para. 844.

<sup>4875</sup> See *Kupreškić* Trial Judgement para. 840; *Blaškić* Trial Judgement, para. 759; *Čelebići* Appeal Judgement, paras. 813 and 820; *Jokić* Appeal Judgement, para. 37; *Strugar* Judgement, para. 473.

<sup>4876</sup> Entered into force on 1 July 1977.

<sup>4877</sup> In its assessment of the overall composition of this case, taking into account its points of fact and law and determining which material and personal circumstances might have a bearing on the sentence, the Chamber has been careful not to consider any element of an offence defined in Article 7(3) of the Statute as an aggravating or mitigating circumstance.

<sup>4878</sup> See *supra* paras. 74 and 75.

<sup>4879</sup> *Kupreškić* Trial Judgement, para. 852.

## **C. Determination of Sentence**

### 1. Enver Hadžihasanović

2077. The Judges of the Chamber have unanimously determined the sentence.

#### (a) Mitigating Circumstances Accepted by the Chamber

##### (i) Personal Mitigating Circumstances

2078. To best tailor the sentence to the personal situation of the Accused Hadžihasanović, even though his Defence did not explicitly raise the issue, the Chamber has considered a few mitigating circumstances with regard to that Accused. Considering that the purpose of sentencing could be achieved through a reduced sentence, the Chamber, pursuant to Tribunal case law in this area,<sup>4880</sup> credits the Accused Hadžihasanović for his voluntary surrender to the Tribunal,<sup>4881</sup> for always complying with the conditions of his provisional release, and for his good conduct at the United Nations Detention Unit<sup>4882</sup> and during the hearings.

2079. The Chamber finds the family situation of the Accused Hadžihasanović, in particular the fact that he is married and is the father of two children, to be a mitigating circumstance.<sup>4883</sup>

2080. The Chamber also finds that the Accused Hadžihasanović has a character which can be rehabilitated and that he thus merits a reduced sentence. To arrive at that conclusion, the Chamber has taken into account not only his lack of a prior criminal record<sup>4884</sup> but also his prior good reputation.<sup>4885</sup> The Chamber is also sensitive to the testimony attesting to his professionalism, conscientiousness, efficiency, ability, intelligence, and good manners.<sup>4886</sup> The Chamber has borne in mind the fact that the Accused Hadžihasanović was not guided by any feeling of belonging to a

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<sup>4880</sup> For voluntary surrender to the Tribunal as a mitigating circumstance, see *Blaškić* Trial Judgement, para. 776; *Kunarac* Trial Judgement, para. 868. For good conduct at the detention centre and during the hearings as a mitigating circumstance, see *Simić* Trial Judgement, para. 1114; *Banović* Trial Judgement, para. 63; *Plavšić* Trial Judgement, para. 109. For compliance with the conditions of provisional release as a mitigating circumstance, see *Plavšić* Trial Judgement, para. 109.

<sup>4881</sup> The Accused Hadžihasanović voluntarily surrendered to the International Tribunal on 4 August 2001.

<sup>4882</sup> See in this regard the report from the Commander of the United Nations Detention Unit to the Registrar of the Tribunal dated 11 July 2005: “Whilst in detention his behaviour has at all times been exemplary. He has shown respect for the staff and management alike. He has at all times observed the rules of detention. He interacts very well with other inmates irrespective of their ethnic origin and is at all times pleasant and positive in his interaction with others. His pleasant attitude has on occasions helped to diffuse minor tensions.”

<sup>4883</sup> For family responsibility as a mitigating circumstance, see *Blaškić* Trial Judgement, para. 779; *Vasiljević* Trial Judgement, para. 300.

<sup>4884</sup> For the absence of prior criminal convictions as a mitigating circumstance, see *Blaškić* Trial Judgement, para. 780.

<sup>4885</sup> For good prior character as a mitigating circumstance, see *Blaškić* Judgement, para. 780; *Obrenović* Sentencing Judgement, para. 134; *Krstić* Appeal Judgement, para. 273. *A contrario*, see *Čelebići* Trial Judgement, para. 1256.

<sup>4886</sup> See for example: *Džemal Merdan*, T(F) p. 12959; Witness HE, T(F) p. 17098; Sir Martin Garrod, T(F) p. 5670; Guy Chambers, T(F) p. 6033; Alistair Duncan, T(F) pp. 7279-7280; Bryan Watters, T(F) p. 7508.

religious or ethnic group<sup>4887</sup> and that he worked to enforce the rules of international humanitarian law to protect Croatian people and property, be it through his calls to respect the law,<sup>4888</sup> or through the training sessions on the principles of international humanitarian law that he organised for 3<sup>rd</sup> Corps soldiers and officers.<sup>4889</sup> The value of these considerations has been assessed in view of the fact that when he assumed command of the 3<sup>rd</sup> Corps, he had not yet completed the theoretical and practical training required to hold such a post.<sup>4890</sup>

(ii) Factual Mitigating Circumstances

2081. The case law of this Tribunal has, on several occasions, considered that the overall context in which the incriminating acts took place may be taken into account in determining which sentence to impose.<sup>4891</sup> In this case, the Chamber notes that when he became commander of the 3<sup>rd</sup> Corps, the Accused Hadžihasanović was faced with a generally difficult situation. Hadžihasanović assumed command of the ABiH 3<sup>rd</sup> Corps on 18 November 1992,<sup>4892</sup> only nine days after the Corps had been set up on 9 November 1993.<sup>4893</sup> Furthermore, he assumed command of the 3<sup>rd</sup> Corps at the very time the ABiH was forced to engage in an unforeseen battle with the armed forces of the HVO.<sup>4894</sup> Lastly, the difficulties Hadžihasanović had in exercising command were compounded by the mass arrival of refugees into Central Bosnia<sup>4895</sup> and by the problem of the foreign combatants. Although it does not justify the causes or consequences, that particular context casts the Accused Hadžihasanović's failures in a light which leads the Chamber to show leniency.

(b) Aggravating Circumstances Accepted by the Chamber

2082. The time span over which the criminal acts took place may be considered as an aggravating circumstance in that it is indicative of the scope of the crimes committed.<sup>4896</sup> In this case, the Chamber notes that the cruel treatment at the Zenica Music School took place over approximately a seven-month period, and that the cruel treatment in the other detention centres created in Bugojno was inflicted over a period of about three and a half months. In the view of the Chamber, the prolonged period over which these crimes were committed warrants a more severe sentence.

<sup>4887</sup> See for example: Witness HE, T(F) p. 17098.

<sup>4888</sup> See for example: P 293; P 288; P 323; P 316; P 284; P 161; P 197; Edib Zlotrg, T(F) p. 14982; Witness HF, T(F) pp. 17200-17201. See *supra* paras. 1161-1167 and 2024.

<sup>4889</sup> See for example: P 255; P 324; P 335. See *supra* paras. 856-859.

<sup>4890</sup> See for example: DH 2088, paras. 320-321.

<sup>4891</sup> See in this regard *Čelebići* Trial Judgement, para. 1248.

<sup>4892</sup> P 245.

<sup>4893</sup> P 123.

<sup>4894</sup> Mark Bower, T(F) pp. 5207-5208.

<sup>4895</sup> Witness ZJ, T(F) p. 4184; Rudy Gerritsen, T(F) p. 7182.

<sup>4896</sup> See in this regard *Blaškić* Trial Judgement, para. 784; *Kunarac* Trial Judgement para. 865.

2083. Moreover, the fact that there are large numbers of victims has, on several occasions, been considered an aggravating circumstance.<sup>4897</sup> In this case, the Chamber notes that there were some one hundred detainees at the Zenica Music School, while at the five detention centres in Bugojno, the detainees numbered several hundred.

2084. Lastly, and consonant with the case law in this area,<sup>4898</sup> the Chamber considers that the particularly heinous nature of Dragan Popović's murder by beheading on 21 October 1993 must also be considered as an aggravating factor for the sentence of the Accused Hadžihasanović.

(c) Single Sentence

2085. After ensuring that the Accused Hadžihasanović would not be punished more than once for the same conduct, the Chamber has decided, on the basis of the allegations of cruel treatment and murders set out in paragraphs 42(a), 42(e), 42(g), 43(c) and 43(e) of the Indictment for which the Chamber has found him guilty, to impose a single sentence of 5 years' imprisonment on the Accused Hadžihasanović.

(d) Credit for Time Served

2086. Under Rule 101(C) of the Rules, all persons found guilty have the right to credit for the "period during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal". Accordingly, in calculating the duration of the sentence the Accused Hadžihasanović must serve, one must consider that from 4 August 2001, the day he was first taken into custody, until the day of this Judgement, and after subtracting the periods of provisional release granted to him, he has already been in detention 828 days.

2. Amir Kubura

2087. The Judges of the Chamber have unanimously determined the sentence.

(a) Mitigating Circumstances Accepted by the Chamber

(i) Personal Mitigating Circumstances

2088. As it did for the Accused Hadžihasanović, in determining the sentence for the Accused Kubura, the Chamber first took into account his personal situation. Accordingly, the Chamber

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<sup>4897</sup> See in this regard *Blaškić* Trial Judgement, para. 784; *Kunarac* Trial Judgement, para. 866.

<sup>4898</sup> See in this regard *Blaškić* Trial Judgement, para. 783; *Simić* Sentencing Judgement, para. 63; *Nikolić* Sentencing Judgement, para. 213.

considered his voluntary surrender to the Tribunal,<sup>4899</sup> his good conduct during the hearings, and his compliance with the conditions of his provisional release. The Chamber also considered that the sentence must be pronounced in view of the fact that the Accused Kubura is married, that he is the father of three children, and that his spouse's health is not good.<sup>4900</sup>

2089. The Accused Kubura's lack of a prior criminal record and his reputation as a conscientious soldier dedicated to respect for the law and discipline<sup>4901</sup> have been considered by the Chamber. The Chamber has also noted that the Accused Kubura does not seem to have harboured any animosity against his opponents, other than the animosity a commander has for an enemy army.<sup>4902</sup>

(ii) Factual Mitigating Circumstances

2090. While the Chamber has found that the Accused Kubura failed in his duty to take measures to punish those of his subordinates who plundered and destroyed public and private property in Vareš, it does note that he acted swiftly to comply with the order given to him on 4 November 1993 by the OG *Istok* commander to put a stop to the depredations in the town of Vareš and to withdraw his troops from there.<sup>4903</sup> As of 5 November 1993, the Accused Kubura in fact prohibited the members of the 7<sup>th</sup> Brigade from entering or remaining in the town of Vareš in order to protect the property of the people living there. In the view of the Chamber, this is a mitigating circumstance.<sup>4904</sup>

(b) Aggravating Circumstances Accepted by the Chamber

2091. The Chamber is of the view that the systematic manner in which an offence is committed must be considered an aggravating circumstance. In this case, the Chamber considers that the systematic nature of the plunder in Vareš and Susanj was a product of the procedure organised and set up to collect what the 7<sup>th</sup> Brigade referred to as "war booty". Regarding the plunder committed in the region of Susanj/Ovnak/Brajkovići/Grahovčići, the Chamber bases its opinion on two 20 June 1993 reports,<sup>4905</sup> as well as an order issued by the Accused Kubura on 5 June 1993, which provided not only for the establishment of collection points but also for the creation of two commissions, one operating in the combat zone and the other based in Bilmište, both tasked with organising collections of war booty.<sup>4906</sup> Regarding the plunder in Vareš on 4 November 1993, the Chamber

<sup>4899</sup> The Accused Kubura voluntarily surrendered to the Tribunal on 2 August 2001.

<sup>4900</sup> See in this regard Decision on Motions by Enver Hadžihasanović and Amir Kubura for Provisional Release, Case No. IT-01-47-T, 19 July 2005, p. 5.

<sup>4901</sup> Elvir Mušija, T(F) pp. 18780-18781.

<sup>4902</sup> Elvir Mušija, T(F) pp. 18781-18782.

<sup>4903</sup> P 675. See *supra* para. 1989.

<sup>4904</sup> P 478. See *supra* para. 1989.

<sup>4905</sup> P 898; P 426.

<sup>4906</sup> P 420.

relies on the reports of the OG *Istok*<sup>4907</sup> and on corroborating testimony<sup>4908</sup> which highlight the repetitive and extensive nature of the plunder.<sup>4909</sup> The Chamber finds that the organised scheme for the systematic appropriation and distribution among 7<sup>th</sup> Brigade members of property plundered in the Susanj/Ovnač/Brajkovići/Grahovčići region and in Vareš could not have been implemented without the prior approval of the Accused Kubura. Accordingly, the Chamber finds that the systematic nature of the plunder in those areas constitutes an aggravating circumstance for the sentence against the Accused Kubura.

2092. Furthermore, the Chamber considers that by accepting and organising the plunder and appropriation of public and private property, the Accused Kubura shared a wilfulness with the direct perpetrators of the acts scarcely different from that required to trigger responsibility under Article 7(1) of the Statute. The Chamber finds that the Accused Kubura was deeply involved in the commission of the offence and that even though that circumstance cannot in and of itself entail his responsibility under Article 7(1) of the Statute, it nevertheless justifies an aggravation of the sentence imposed on him on the basis of Article 7(3) of the Statute.

(c) Single Sentence

2093. After ensuring that the Accused Kubura would not be punished more than once for the same conduct, the Chamber has decided, on the basis of the allegations of plunder set out in paragraph 44 of the Indictment, for which the Chamber has found him guilty, to impose a single sentence of 30 months' imprisonment on the Accused Kubura.

(d) Credit for Time Served

2094. Under Rule 101(C) of the Rules, all persons found guilty have the right to credit for the "period during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal". Accordingly, in calculating the duration of the sentence the Accused Kubura must serve, one must consider that from 4 August 2001, the day he was first taken into custody, until the day of this Judgement, and after subtracting the periods of provisional release granted to him, he has already been in detention 828 days.

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<sup>4907</sup> P445; P 448.

<sup>4908</sup> Hakan Birger, T(F) pp. 5384-5390, 5420 and 5422-5425; Ulf Henriesson, T(F) pp. 7669-7670; Sir Martin Garrod, T(F) pp. 5692-5694; Rolf Weckesser, T(F) pp. 7214-7218.

<sup>4909</sup> *See supra* para. 1975.



## IX. DISPOSITION

**FOR THE FOREGOING REASONS, THE CHAMBER**, ruling unanimously,

**PURSUANT TO** Articles 23 and 24 of the Statute and Rules 98 *ter*, 101, 102, and 103 of the Rules of Procedure and Evidence,

**SITTING** in open session,

**FINDS the Accused Hadžihasanović, as a superior pursuant to Articles 3 and 7(3) of the Statute:**

### COUNT 1

- **COUNT 1: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić, Augustin Radoš, Vojislav Stanišić, and Zvonko Rajić in Dusina on 26 January 1993;
- **Count 1: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović, and Anto Petrović in Miletici on 24 April 1993;
- **Count 1: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matić, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić, and Ivo Volić in Maline on 8 June 1993;

### COUNT 2:

**RECALLS** that the Chamber, in its Decision on Motions for Acquittal rendered on 27 September 2004, found the Accused Hadžihasanović:

- **Count 2: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the cruel treatment of Niko Kegelj, Stipo Kegelj, Vinko Kegelj, Pero Ljubičić, Augustin Radoš, Vojislav Stanišić, and Zvonko Rajić in Dusina on 26 January 1993;

- **Count 2: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the cruel treatment of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović, and Anto Petrović in Miletici on 24 April 1993;
- **Count 2: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the cruel treatment of Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matic, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić, Ivo Volić, Berislav Marjanović, Zdravko Pranješ, Darko Pušelja and Želko Pušelja in Maline on 8 June 1993;

### **COUNT 3**

**RECALLS** that the Chamber, in its Decision on Motions for Acquittal rendered on 27 September 2004, found the Accused Hadžihasanović:

- **Count 3: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of a Croatian detainee in the former JNA Barracks in Travnik in May 1993;
- **Count 3: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Jozo Maračić at the Zenica Music School on 18 June 1993.

**Now finds the Accused Hadžihasanović:**

- **Count 3: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent the murder of Mladen Havranek at the *Slavonija* Furniture Salon in Bugojno on 5 August 1993;
- **Count 3: GUILTY** of failing to take the necessary and reasonable measures to punish the murder of Mladen Havranek at the *Slavonija* Furniture Salon in Bugojno on 5 August 1993;
- **Count 3: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Mario Zrno at the Bugojno Convent in early August 1993;
- **Count 3: GUILTY** of failing to take the necessary and reasonable measures to prevent the murder of Dragan Popović by ritual beheading at the Orašac Camp on 21 October 1993;

- **Count 3: NOT GUILTY** of failing to take the necessary and reasonable measures to punish the murder of Dragan Popović by ritual beheading at the Orašac Camp on 21 October 1993.

#### COUNT 4

- **Count 4: GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Zenica Music School from around 26 January 1993 to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the former JNA Barracks in Travnik from around May 1993 to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Mehurići Elementary School from around 6 June 1993 until at least 24 June 1993;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Mehurići Blacksmith Shop from around 6 June 1993 until at least 13 July 1993;
- **Count 4: GUILTY** of failing to take the necessary and reasonable measures to prevent cruel treatment at the Orašac Camp from 15 October to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to punish cruel treatment at the Orašac Camp from around 15 October 1993 to 31 October 1993;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Motel *Sretno* from around 15 May 1993 until at least 21 June 1993;
- **Count 4: GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the *Gimnazija* School Building in Bugojno, from around 18 July 1993 until at least 13 October 1993;

- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Bugojno Convent from around 24 July 1993 until at least early August 1993;
- **Count 4: GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the *Slavonija* Furniture Salon in Bugojno from around 24 July 1993 until at least 18 August 1993;
- **Count 4: GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the *Iskra* FC Stadium in Bugojno from around 30 July 1993 to 31 October 1993;
- **Count 4: GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the *Vojin Paleksić* Elementary School from around 31 July 1993 until at least September 1993;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at *BH Banka* in Bugojno from around September 1993 until 31 October 1993.

#### **COUNT 5**

**RECALLS** that the Chamber, in its Decision on Motions for Acquittal rendered on 27 September 2004, took note of the Prosecution's withdrawal of:

- **Count 5:** in respect of the responsibility of the Accused Hadžihasanović for failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Dusina in January 1993.

**AND FOUND on that occasion the Accused Hadžihasanović:**

- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Miletići in April 1993.

**NOW FINDS the Accused Hadžihasanović:**

- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Guča Gora in June 1993;
- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Maline in June 1993;
- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Čukle in June 1993;
- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in the villages of Šušanj/Ovnač/Brajkovići/Grahovčići in June 1993.

**COUNT 6**

**RECALLS** that the Chamber, in its Decision on Motions for Acquittal rendered on 27 September 2004, took note of the Prosecution's withdrawal of:

- **Count 6:** in respect of the responsibility of the Accused Hadžihasanović for failing to take the necessary and reasonable measures to prevent or punish plundering in Dusina in January 1993.

**NOW FINDS the Accused Hadžihasanović:**

- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in Miletići in April 1993;
- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in Guča Gora in June 1993;
- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in Maline in June 1993;
- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in Čukle in June 1993;

- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993.

#### COUNT 7

- **Count 7: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the destruction of or wilful damage to institutions dedicated to religion in Guča Gora and Travnik in June 1993.

**SENTENCES the Accused Hadžihasanović to a term of imprisonment of 5 years to run as of this day, subject to credit that shall be given, pursuant to Rule 101(C) of the Rules, for the 828 days in total that the Accused Hadžihasanović has already spent in detention.**

**FINDS the Accused Kubura, as a superior pursuant to Articles 3 and 7(3) of the Statute:**

#### COUNT 1

- **Count 1: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović, and Anto Petrović in Miletici on 24 April 1993;
- **Count 1: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matic, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić, and Ivo Volić in Maline on 8 June 1993;

#### COUNT 2

**RECALLS** that the Chamber, in its Decision on Motions for Acquittal rendered on 27 September 2004, found the Accused Kubura:

- **Count 2: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the cruel treatment of Franjo Pavlović, Tihomir Pavlović, Vlado Pavlović, and Anto Petrović in Miletici on 24 April 1993;

- **Count 2: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the cruel treatment of Anto Balta, Ivo Balta, Jozo Balta, Luka Balta, Nikica Balta, Bojan Barać, Davor Barać, Goran Bobaš, Niko Bobaš, Slavko Bobaš, Srećo Bobaš, Pero Bobaš-Pupić, Dalibor Janković, Stipo Janković, Slavko Kramar, Anto Matić, Tihomir Peša, Ana Pranješ, Ljubomir Pušelja, Predrag Pušelja, Jakov Tavić, Mijo Tavić, Stipo Tavić, and Ivo Volić, Berislav Marjanović, Zdravko Pranješ, Darko Pušelja and Želko Pušelja in Maline on 8 June 1993;

### **COUNT 3**

**RECALLS** that the Chamber, in its 27 September 2004 Decision on Motions for Acquittal, found the Accused Kubura:

- **Count 3: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the murder of Jozo Maračić at the Zenica Music School on 18 June 1993.

### **COUNT 4**

**NOW FINDS the Accused Kubura,**

- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Zenica Music School from 1 April 1993 until at least January 1994;
- **Count 4: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish cruel treatment at the Motel *Sretno* from around 15 May 1993 until at least 21 June 1993.

### **COUNT 5**

**RECALLS** that the Chamber, in its Decision on Motions for Acquittal rendered on 27 September 2004, found the Accused Kubura:

- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Miletići in April 1993.

**NOW FINDS the Accused Kubura,**

- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Maline in June 1993;
- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993;
- **Count 5: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish the wanton destruction of towns and villages not justified by military necessity in Vareš in November 1993.

**COUNT 6****NOW FINDS the Accused Kubura,**

- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in Miletići in April 1993;
- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in Maline in June 1993;
- **Count 6: NOT GUILTY** of failing to take the necessary and reasonable measures to prevent plundering in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993;
- **Count 6: GUILTY** of failing to take the necessary and reasonable measures to punish plundering in the villages of Šušanj/Ovnak/Brajkovići/Grahovčići in June 1993;
- **Count 6: GUILTY** of failing to take the necessary and reasonable measures to prevent or punish plundering in the village of Vareš in November 1993.

**AND SENTENCES the Accused Kubura to a term of imprisonment of 2 and a half years to run as of this day, subject to credit that shall be given, pursuant to Rule 101(C) of the Rules, for the 828 days in total that the Accused Kubura has already spent in detention.**



Pursuant to Rule 103 of the Rules, pending an agreement for the transfer of the convicted persons to a State where they will serve their sentence, the convicted persons shall remain in the custody of the Tribunal.

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

The President of the Trial Chamber

/signed/

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Jean-Claude Antonetti

/signed/

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Vonimbolana Rasoazanany

/signed/

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Bert Swart

Done this fifteenth day of March 2006

At The Hague

The Netherlands

**[Seal of the Tribunal]**

## **X. ANNEX I: HISTORICAL BACKGROUND**

### **Dissolution of the Former Yugoslavia and Escalation of the Conflicts**

On 25 June 1991, the Republic of Croatia proclaimed its independence. The European Community recognised Croatia on 15 January 1992, and the country was admitted as a Member State of the United Nations on 22 May 1992.

The Republic of Bosnia and Herzegovina (“RBiH”) was recognised by the European Community on 6 April 1992, and by Croatia on 7 April 1992. It was admitted as a Member State of the United Nations on 22 May 1992.

On 18 November 1991, the Croatian Community of Herceg-Bosna (“HZ H-B”) proclaimed its independence. The community would never gain international recognition.

On 9 January 1992, the Bosnian Serb Assembly proclaimed the Serbian Republic of Bosnia and Herzegovina.

In March 1992, the Bosnian Serb Army (“VRS”) launched an attack on Mostar and Sarajevo.

On 8 April 1992, with the establishment of the Republic of Bosnia and Herzegovina, the General Staff of the Territorial Defence (“TO”) of the RBiH was created and the former General Staff of the SFRY TO was dissolved. The Presidency of the RBiH announced the state of impending threat of war.

The same day, the Presidency of the HZ H-B decided to establish the Croatian Defence Council (“HVO”) officially as the “supreme defence body of the Croatian people” in HZ H-B.

On 27 April 1992, the Federal Republic of Yugoslavia, which included the Republics of Serbia and Montenegro, was proclaimed.

On 12 August 1992, the Serbian Republic of Bosnia and Herzegovina became the “Republika Srpska”.

On 23 June 1992, by decision of the Presidency of the RBiH, the RBiH Army (“ABiH”) was created to protect the Republic of Bosnia and Herzegovina in the ongoing conflict in its territory.

On 25 October 1992, the HVO attacked the ABiH forces in Prozor, expelling all Bosnian Muslims from the town.

On 29 October 1992, the Bosnian Serb Army (VRS) occupied Jajce, displacing 25,000 Bosnian Muslims and Bosnian Croats to Travnik.

On 2 January 1993, the Vance-Owen Plan was presented at the International Conference for the Former Yugoslavia in Geneva. That peace plan proposed, *inter alia*, a decentralised Bosnia-Herzegovina, organised into ten provinces, each one substantially autonomous. Accepted by the Bosnian Croats, the plan was rejected by the Bosnian Serbs and Muslims.

In January 1993, fighting between the HVO and ABiH escalated and the two armed forces engaged in combat in Zenica municipality and in the Lašva Valley.

On 15 April 1993, Živko Totić, Commander of the HVO *Jure Francetić* Brigade, was abducted by foreign mujahedin in Zenica.

In April 1993, fighting again broke out between the HVO and ABiH in Ahmići and Zenica.

In June 1993, fighting between the HVO and ABiH spread to the Bila Valley.

In July 1993, fighting between the HVO and ABiH broke out in Bugojno.

### ABiH 3<sup>rd</sup> Corps

By presidential decision of 18 August 1992, the territory of the Republic of Bosnia and Herzegovina was to be divided into five different military areas of responsibility known as Corps, answerable to the ABiH Supreme Command Main Staff.

On 18 August 1992, headquarters for the 3<sup>rd</sup> Corps were set up in Zenica.

On 29 September 1992, the ABiH Supreme Command Main Staff ordered that the District TO Staff (*OkŠO*) be resubordinated to the Corps and the Municipal TO Staff ("*OpŠO*") be subordinated to ABiH units in their respective zone of responsibility.

On 9 November 1992, the Chief of the Supreme Command Main Staff, Sefer Halilović, ordered the creation of specific units within the 3<sup>rd</sup> Corps.

In mid-November 1992, Enver Hadžihasanović was appointed 3<sup>rd</sup> Corps Commander by Sefer Halilović.

On 11 December 1992, Amir Kubura was appointed 7<sup>th</sup> Brigade Assistant Chief of Staff for Operations and Training.

On 1 January 1993, Amir Kubura was appointed 7<sup>th</sup> Brigade Chief of Staff.

In February 1993, Enver Hadžihasanović proposed the creation of operations groups (“OG”) to ensure a more efficient chain of command between base units and the 3<sup>rd</sup> Corps Command.

On 8 March 1993, operational groups were set up to include OG *Bosanska Krajina*, headquartered in Travnik, OG *Lašva*, headquartered in Kakanj, OG *Bosna*, headquartered in Žepče and Zavidovići, and OG *Zapad*, headquartered in Bugojno.

On 12 March 1993, Amir Kubura was appointed Deputy Commander of the 7<sup>th</sup> Brigade.

On 6 August 1993, Amir Kubura was officially appointed Commander of the 7<sup>th</sup> Brigade.

On 12 August 1993, the 3<sup>rd</sup> Corps proposed to the ABiH Supreme Command Main Staff the creation of a detachment of foreign volunteers, to be called the *El Mujahedin*, in the 3<sup>rd</sup> Corps’ zone of responsibility.

On 13 August 1993, the Supreme Command Staff of the ABiH created the *El Mujahedin* detachment, ordering the 3<sup>rd</sup> Corps to set it up.

#### **Joint Command**

On 25 April 1993, Presidents Alija Izetbegović and Mate Boban signed a joint statement ordering a cease-fire between the ABiH and the HVO units and setting up a Joint Command. Following the statement, Enver Hadžihasanović was appointed as a member of the Joint Command for Central Bosnia.

On 2 May 1993, Enver Hadžihasanović ordered the establishment of the Joint Command for Central Bosnia, to be headquartered in Travnik.

#### **Washington Accords**

On 18 March 1994, the Presidents of Bosnia and Herzegovina and Croatia signed the Washington Accords, which put an end to the armed conflict between the army of Bosnia and Herzegovina and the Croatian troops.

## XI. ANNEX II: GLOSSARY

### A. Frequently Used Terms and Abbreviations

ABiH	Army of the Republic of Bosnia and Herzegovina
Accused	Enver Hadžihasanović and Amir Kubura
Accused Hadžihasanović	Enver Hadžihasanović
Accused Hadžihasanović's Opening Statement	Opening Statement by the Accused Hadžihasanović, 18 October 2004, T(F) p. 10178 <i>ff.</i>
Accused Kubura	Amir Kubura
Amir Kubura's Motion for Acquittal	Defence Motion on Behalf of Amir Kubura for judgement of acquittal pursuant to Rule 98 <i>bis</i> of the Rules of Procedure and Evidence, 11 August 2004
Accused Kubura's Opening Statement	Opening statement by the Accused Kubura, 11 April 2005, T(F) p. 18181 <i>ff.</i>
Bank	<i>BH Banka</i> in Bugojno
Barracks	Barracks of the former JNA in Travnik
BRITBAT	British Battalion of the United Nations Protection Force
Convent	Bugojno Convent Building
CSB	Security Services Centre
Defence	Defence for the Accused Hadžihasanović and Defence for the Accused Kubura
Defence for the Accused Hadžihasanović	Defence Counsel for the Accused Hadžihasanović
Defence for the Accused Kubura	Defence Counsel for the Accused Kubura
District Military Prosecutors	Zenica District Military Prosecutor and Travnik District Military Prosecutor
ECMM	European Community Monitoring Mission
Enver Hadžihasanović's Motion for Acquittal	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Enver Hadžihasanović's Motion for Acquittal, 11

	August 2004
Foreign Mujahedin	Foreign Muslim fighters who arrived in Central Bosnia in 1992 and 1993
Former JNA Barracks	Barracks of the former JNA in Travnik
Furniture Salon	<i>Slavonija</i> Furniture Salon in Bugojno
<i>Gimnazija</i> School Building	Building of the Secondary School in Bugojno
G/ŠVK	Main Staff of the Supreme Command
Hadžihasanović Defence Closing Arguments	Closing Arguments of the Hadžihasanović Defence, 13-15 July 2005
Hadžihasanović Defence Final Brief	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Final Trial Brief on behalf of Enver Hadžihasanović, 6 July 2005
Hadžihasanović Defence Pre-Trial Brief	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Pre-Trial Brief of Enver Hadžihasanović pursuant to Rule 65 <i>ter</i> (F), 3 November 2003
HV	Army of the Republic of Croatia
HVO	Croatian Defence Council (Bosnian Croat Army)
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994
IKM	Forward Command Post
ILC	International Law Commission
Indictment	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-PT, Third Amended Indictment, 26 September 2003
<i>Iskra</i> Stadium	<i>Iskra</i> Football Club (FC) Stadium in Bugojno

JNA	Yugoslav People's Army (Army of the Socialist Federal Republic of Yugoslavia)
Joint Statement on the Agreement of Facts	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Joint Prosecution-Defence Statement, Agreement of Facts, 3 December 2003
Judge	Judge before the Tribunal
Judgement	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Judgement delivered on 15 March 2006
KP Dom in Zenica	Zenica Penal and Correctional Facility (prison)
Kubura Defence Closing Arguments	Closing Arguments of the Kubura Defence, 15 July 2005
Kubura Defence Final Brief	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Final Trial Brief on behalf of Amir Kubura, 6 July 2005
Kubura Defence Pre-Trial Brief	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Defence Pre-Trial Brief of Amir Kubura Pursuant to Rule 65 <i>ter</i> (F), 3 November 2003
Mehurići School	Mehurići Elementary School
milinfosum	Military Information Summary
Military District courts	Zenica Military District Court and Travnik Military District Court
Ministry of Defence	Ministry of Defence of the RBiH
Mujahed	Member of the group of foreign and local Muslim fighters located in Mehurići/Poljanice among other places
Mujahedin	Members of the group of foreign and local Muslim fighters located in Mehurići/Poljanice among other places
MUP	Ministry of the Interior
Music School	Music School in Zenica
Muslims	RBiH Muslims
OKŠO	District TO

OpŠO	Municipal TO
p./pp.	page/pages
para./paras.	paragraph/paragraphs
Parties	The Prosecution and Defence in the trial of <i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T
Prosecution	Office of the Prosecutor of the Tribunal
Prosecution Closing Arguments	Prosecution Closing Arguments, 12 and 13 July 2005
Prosecution Final Brief	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Prosecution Final Brief, 6 July 2005
Prosecution Opening Statement	Prosecution Opening Statement, 2 December 2003, T(F) p. 348 <i>ff.</i>
Prosecution Pre-Trial Brief	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T. Submission of the Prosecution's Pre-Trial Brief pursuant to Rule 65 <i>ter</i> (E), 10 October 2003
Prosecution Response to Motions for Acquittal	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Prosecution Response to Defence Motions for Acquittal Pursuant to Rule 98 <i>bis</i> , 1 September 2004
RBiH	Republic of Bosnia and Herzegovina
Reply of Amir Kubura to the Prosecution's Response to Motions for Acquittal	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Confidential Reply of the Defence for Amir Kubura to the Prosecution's Response to the Motions for Acquittal pursuant to Rule 98 <i>bis</i> of the Rules, 6 September 2004
Reply of Enver Hadžihasanović to the Prosecution's Response to Motions for Acquittal	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Reply of Enver Hadžihasanović to Prosecution's Response to Defence Motions for Acquittal pursuant to Rule 98 <i>bis</i> of the Rules, 6 September 2004



School	Zenica Music School (in the chapter on the Music School in Zenica)
	<i>Vojin Paleksić</i> Elementary School in Bugojno (in the chapter on the <i>Vojin Paleksić</i> Elementary School in Bugojno)
	Mehurići Elementary School (in the chapter on the Elementary School in Mehurići)
SDB	State Security Service
SFRY	Socialist Federal Republic of Yugoslavia
SJB	Public Security Station
Supreme Commander	Supreme Commander of the ABiH
SVB	Military Security Service
T(E)	English transcript of proceedings
T(F)	French transcript of proceedings
TO	Territorial Defence
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
UB	Security Administration
UNHCR	United Nations High Commissioner for Refugees
UNPROFOR	United Nations Protection Force
VRS	Army of Republika Srpska

## **B. ABiH Brigades**

Military Police Battalion	3 <sup>rd</sup> Corps Military Police Battalion
7 <sup>th</sup> Brigade	ABiH 7 <sup>th</sup> Muslim Mountain Brigade
17 <sup>th</sup> Krajina Brigade	ABiH 17 <sup>th</sup> Krajina Mountain Brigade

301 <sup>st</sup> Brigade	ABiH 301 <sup>st</sup> Mechanised Brigade
303 <sup>rd</sup> Brigade	ABiH 303 <sup>rd</sup> Mountain Brigade
306 <sup>th</sup> Brigade	ABiH 306 <sup>th</sup> Mountain Brigade
307 <sup>th</sup> Brigade	ABiH 307 <sup>th</sup> Motorised Brigade
308 <sup>th</sup> Brigade	ABiH 308 <sup>th</sup> Motorised Brigade
309 <sup>th</sup> Brigade	ABiH 309 <sup>th</sup> Mountain Brigade
312 <sup>th</sup> Brigade	ABiH 312 <sup>th</sup> Motorised Brigade
314 <sup>th</sup> Brigade	ABiH 314 <sup>th</sup> Motorised Brigade
317 <sup>th</sup> Brigade	ABiH 317 <sup>th</sup> Mountain Brigade
3 <sup>rd</sup> Corps	ABiH 3 <sup>rd</sup> Corps
OG	Operations Group
<i>El Mujahedin</i> detachment	ABiH <i>El Mujahedin</i> detachment

### C. International Instruments and Authorities

Official Records	Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-1977
common Article 3	Article 3 common to the Geneva Conventions of 1949
Tokyo Charter	Tokyo Charter of the International Military Tribunal for the Far East, Tokyo, 19 January 1946
ILC Commentary	Commentary of the International Law Commission on the Draft Code of Crimes Against the Peace and Security of Mankind, 1996, Report of the International Law Commission on the work of its forty-eighth session, Official Records of the General Assembly, Fifty-first session, A/51/10
Commentary on Additional Protocol I	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), ICRC, Martinus Nijhoff Publishers, Geneva, 1986

Commentary on Additional Protocol II	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), ICRC, Martinus Nijhoff Publishers, Geneva, 1986
Commentary on Additional Protocols	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), ICRC, Martinus Nijhoff Publishers, Geneva, 1986
Commentary on the Third Geneva Convention	Commentary on Geneva Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, Jean S. Pictet (ed.), ICRC, Geneva, 1958
Commentary on the Fourth Geneva Convention	Commentary on Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Jean S. Pictet (ed.), ICRC, Geneva, 1956
American Convention on Human Rights	American Convention on Human Rights, OAS Treaty Series no. 36, 1144 UNTS 123 entered into force July 18, 1978
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
Third Geneva Convention	Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949
Fourth Geneva Convention	Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.
The Hague Convention of 1954	Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954
Vienna Convention of 1969	Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969
Customary International Humanitarian Law	Henckaerts J-M., Doswald-Beck L. (eds.), <i>Customary International Humanitarian Law</i> . ICRC (Cambridge University Press), Cambridge 2005
Principles of International Law	Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, adopted by the International Law Commission of the United Nations, Official Document Fifth Session, Supp. (no. 12), U.N. Doc. A/1316 (1950)

ILC Draft Code	Draft Code of Crimes Against the Peace and Security of Mankind, 1996, Report of the International Law Commission on the Work of its Forty-eighth session, A/48/10. Also published by ILC Y.B., 1996, vol. II (2)
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
Report of the United Nations Commission of Experts	Final Report of the United Nations Commission of Experts Established pursuant to Security Council resolution 780 (1992), S/1994/674
Secretary-General's Report	Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), UNSC, UN Doc. S/25704, 3 May 1993
Law Reports	<i>Law Reports of Trials of War Criminals</i> , Selected and Prepared by the United Nations War Crimes Commission, London, 1949 (reprinted in Buffalo, New York, 1997)
Rules	Rules of Procedure and Evidence of the Tribunal
The Hague Regulations	Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907
Rules of Detention	Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia, adopted by Security Council resolution 827 (1993), later amended by resolution 1481
Bassiouni C. M., Manikas P., <i>The Law of the International Criminal Tribunal for the Former Yugoslavia</i> , Transnational Publishers, 1996.	
Hendin, Stuart E., <i>Command Responsibility and Superior Orders in the Twentieth Century – A Century of Evolution</i> , Murdoch University Electronic Journal of Law, 10, 2003.	
Kalshoven F., Zegveld L., <i>Constraints on the Waging of War</i> , International Committee of the Red Cross, 2001.	

## **D. Case Law**

### 1. ICTY - Prosecutor v. Enver Hadžihasanović and Amir Kubura.

#### Case No. IT-01-47-T

Decision on Joint Challenge to Jurisdiction	<i>The Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, 12 November 2002
Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility	<i>The Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003
Final Decision on Judicial Notice of Adjudicated Facts	<i>The Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-PT, Final Decision on Judicial Notice of Adjudicated Facts, 20 April 2004
Decision of 16 July 2004 on Admissibility of Documents	<i>The Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-PT, Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, 16 July 2004, (confidential). This decision was made public on 2 August 2004. See Decision to Unseal Confidential Decision on the Admissibility of Certain Challenged Documents and Documents for Identification, 2 August 2004.
Decision on Motions for Acquittal	<i>The Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Decision on Motions for Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence, 27 September 2004
Decision on Defence Motion regarding Cross-examination of Witnesses by the Prosecution	<i>The Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura</i> , Case No. IT-01-47-PT, Decision on Defence Motion regarding Cross-examination of Witnesses by the Prosecution, 9 December 2004

### 2. ICTY- Other Cases

<i>Aleksovski</i> Trial Judgement	<i>The Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999
<i>Aleksovski</i> Appeal Judgement	<i>The Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000

<i>Babić</i> Appeal Judgement	<i>The Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
<i>Banović</i> Sentencing Judgement	<i>The Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003
<i>Blaškić</i> Trial Judgement	<i>The Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Blaškić</i> Appeal Judgement	<i>The Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blaškić</i> Decision	<i>The Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-PT, Decision on the Defence Motion to Strike Portions of the Amended Indictment Alleging "Failure to Punish" Liability, 4 April 1997
<i>Blagojević</i> Trial Judgement	<i>The Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005
<i>Brđanin</i> Trial Judgement	<i>The Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići</i> Trial Judgement	<i>The Prosecutor v. Zejnil Delalić, Zdravko Mucić, (aka "Pavo"), Hazim Delić, and Esad Landžo, (aka "Zenga")</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
<i>Čelebići</i> Appeal Judgement	<i>The Prosecutor v. Zejnil Delalić, Zdravko Mucić, (aka "Pavo"), Hazim Delić, and Esad Landžo, (aka "Zenga")</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Erdemović</i> Trial Judgement	<i>The Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-T, Judgement, 29 November 1996
<i>Furundžija</i> Trial Judgement	<i>The Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Galić</i> Trial Judgement	<i>The Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003
<i>Jokić</i> Appeal Judgement	<i>The Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005
<i>Kordić and Čerkez</i> Trial Judgement	<i>The Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001

<i>Kordić and Čerkez</i> Appeal Judgement	<i>The Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Kordić and Čerkez</i> Decision	<i>The Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Decision on the Joint Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999
<i>Kordić and Čerkez</i> Decision on Failure to Punish	<i>The Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Decision on the Joint Defence Motion to Dismiss for Lack of Jurisdiction of the Amended Indictment Alleging “Failure to Punish” Liability, 2 March 1999.
<i>Krnojelac</i> Trial Judgement	<i>The Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krnojelac</i> Appeal Judgement	<i>The Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 17 September 2003
<i>Krstić</i> Trial Judgement	<i>The Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001
<i>Krstić</i> Appeal Judgement	<i>The Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004
<i>Kunarac</i> Trial Judgement	<i>The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23 and IT-96-23/1-T, Judgement, 22 February 2001
<i>Kunarac</i> Appeal Judgement	<i>The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23 and IT-96-23/1-A, Judgement, 12 June 2002
<i>Kupreškić</i> Judgement	<i>The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić, also known as “Vlado”</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
<i>Kupreškić</i> Appeal Judgement	<i>The Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić</i> , Case No. IT-95-16-A, Judgement, 23 October 2001
<i>Kvočka</i> Trial Judgement	<i>The Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-T, Judgement, 2 November 2001

<i>Kvočka</i> Appeal Judgement	<i>The Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005.
<i>Naletilić</i> Judgement	<i>The Prosecutor v. Mladen Naletilić (aka "Tuta") and Vinko Martinović, aka "Stela"</i> , Case No. IT-98-34-T, Judgement, 31 March 2003
<i>Nikolić</i> Sentencing Judgement	<i>The Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003
<i>Obrenović</i> Sentencing Judgement	<i>The Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003
<i>Plavšić</i> Sentencing Judgement	<i>The Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
<i>Simić</i> Sentencing Judgement	<i>The Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002
<i>Simić</i> Trial Judgement	<i>The Prosecutor v. Milan Simić, Miroslav Tadić, Simo Zarić</i> , Case No. IT-95-9-T, Judgement, 17 October 2003
<i>Stakić</i> Trial Judgement	<i>The Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
<i>Strugar</i> Trial Judgement	<i>The Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
<i>Tadić</i> Jurisdiction Decision	<i>The Prosecutor v. Duško Tadić (aka "Dule")</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Trial Judgement	<i>The Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Judgement, 7 May 1997
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Dusko Tadić (aka "Dule")</i> , Case No. IT-94-1-A and IT-94-1-A bis, Judgement in Sentencing Appeals, 26 January 2000
<i>Vasiljević</i> Trial Judgement	<i>The Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002
<i>Vasiljević</i> Appeal Judgement	<i>The Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004



3. ICTR

<i>Bagilishema</i> Trial Judgement	<i>The Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, Judgement, 7 June 2001
<i>Bagilishema</i> Appeal Judgement	<i>The Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-A, Judgement, 3 July 2002
<i>Kajelijeli</i> Trial Judgement	<i>The Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44-A-T, Judgement, 1 December 2003
<i>Kayishema</i> and <i>Ruzindana</i> Trial Judgement	<i>The Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999
<i>Musema</i> Trial Judgement	<i>The Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement, 27 January 2000
<i>Ntakirutimana</i> Appeal Judgement	<i>The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004
<i>Rutaganda</i> Appeal Judgement	<i>The Prosecutor v. Georges Anderson Nderubunwe Rutaganda</i> , Case No. ICTR-96-3-A, Judgement, 26 May 2003
<i>Semanza</i> Trial Judgement	<i>The Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-T, Judgement, 15 May 2003
<i>Semanza</i> Appeal Judgement	<i>The Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, Judgement, 20 May 2005

4. Decisions of Other Courts

High Command Case	<i>United States v. Wilhem von Leeb et al.</i> , Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law no. 10, Vol. XI
Hostage Case	<i>United States v. Wilhem List et al.</i> , Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law no. 10, Vol. XI
<i>Nicaragua</i> Case	<i>Nicaragua v. United States</i> – Case Concerning Military and Paramilitary Activities in and against Nicaragua ( <i>Nicaragua v. United States of America</i> ), Merits, Judgement, I.C.J. Reports 1986
<i>Soering</i> Case	<i>Soering v. United Kingdom</i> , Judgement of 7 July 1989, Eur. Ct. H.R., Series A, no 161
<i>Toyoda</i> Case	<i>United States v. Soemu Toyoda</i> , Official Transcript of the Record of Trial

- Tokyo Judgement International Military Tribunal for the Far East, *Prosecution v. Akaki Sadao et al.*, 4 November 1948, in *The Tokyo Judgement*, The Complete Transcripts of the Proceedings in the International Military Tribunal for the Far East, reprinted in R. John Pritchard and S. Magbauna Zaide (eds.), *The Tokyo War Crimes Trial*, New York - London 1981
- Yamashita Case* United States Military Commission, Manila (7 December 1945), Law Reports of Trials of War Criminals, selected and prepared by the United Nations War Crimes Commission, London, 1949 (reprinted in Buffalo, New York, 1997), Vol. IV
- In Re Yamashita* *In Re Yamashita*, 327 US 1 (1946)

## **XII. ANNEX III: PROCEDURAL BACKGROUND**

### **A. Pre-trial Proceedings**

#### **1. Indictment, Transfer and Initial Appearance**

2095. The initial Joint Indictment of 5 July 2001 against Enver Hadžihasanović, Amir Kubura and Mehmed Alagić was confirmed by Judge Fouad Riad on 13 July 2001. The Indictment alleges that the three Accused incurred command responsibility under Article 7(3) of the Statute for failing to prevent or punish certain acts by their subordinates, committed in the territory of Central Bosnia between 1 January 1993 and 31 January 1994, which constituted violations of the laws or customs of war and grave breaches of the Geneva Conventions pursuant to Articles 2 and 3 of the Statute. The initial Indictment was amended on 11 July 2002, 15 August 2003, and 26 September 2003, further to motions for defects in its form. Following the death of the Accused Mehmed Alagić on 7 March 2003, the Trial Chamber ordered the proceedings against him closed on 21 March 2003.

2096. The trial proceeded on the basis of the charges contained in the definitive version of the Indictment (“Indictment”) of 26 September 2003 against the Accused Hadžihasanović and the Accused Kubura. The Indictment alleges that the Accused incurred command responsibility under Article 7(3) of the Statute for failing to prevent or punish certain acts committed by their subordinates which constitute violations of the laws or customs of war under Article 3 of the Statute.

2097. The Accused surrendered to the Tribunal voluntarily, Amir Kubura on 2 August 2001 and Enver Hadžihasanović on 4 August 2001. At their initial appearance of 9 August 2001, both pleaded not guilty to all counts in the initial Indictment. The Accused Kubura again pleaded not guilty on 28 November 2003, after new counts had been added to the Indictment.

#### **2. Counsel for the Defence, Pre-Trial Judge and Composition of the Trial Chamber**

2098. Pursuant to a Decision of 26 November 2001 by the Deputy Registrar, Ms Edina Rešidović was appointed Lead Counsel and Mr Stéphane Bourgon Co-Counsel for the Accused Hadžihasanović, and Mr Fahrudin Ibrišimović was appointed Lead Counsel and Mr Rodney Dixon Co-Counsel for the Accused Kubura.

2099. In an order dated 7 August 2001,<sup>4910</sup> the President of the Tribunal assigned case No. IT-01-47-I to Trial Chamber II, composed of Judges David Hunt (presiding), Florence Mumba, and

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<sup>4910</sup> Order of the President Assigning a Case to a Trial Chamber, 7 August 2001.

Patricia Wald. Pursuant to an order by Judge Liu Daqun, Duty Judge, Judge David Hunt was appointed Pre-Trial Judge on 16 August 2001.<sup>4911</sup> On 3 September 2001, Judge David Hunt, Presiding Judge of Trial Chamber II, appointed Judge Florence Mumba Pre-Trial Judge.<sup>4912</sup> In an order dated 23 November 2001,<sup>4913</sup> the President of the International Tribunal assigned the case to Trial Chamber II, composed of Judges Wolfgang Schomburg (presiding), Florence Mumba, and Carmel A. Agius. On 8 October 2003, Judge Jean-Claude Antonetti was assigned to the Trial Chamber to replace Judge Wolfgang Schomburg.<sup>4914</sup> Pursuant to a Trial Chamber II order dated 17 October 2003, Judge Jean-Claude Antonetti was appointed Pre-Trial Judge.

2100. In an order dated 18 November 2003, the President of the Tribunal appointed Judges Jean-Claude Antonetti, Bert Swart, and Vonimbolana Rasoazanany to hear the case.

### 3. Preliminary Motions on Defects in the Form of the Indictment Brought Under Rule 72(A)(ii) of the Rules

#### (a) Indictment of 13 July 2001

2101. In the initial Indictment of 13 July 2001,<sup>4915</sup> the Accused had to answer to charges of violations of the laws or customs of war and grave breaches of the Geneva Conventions pursuant to Articles 2 and 3 of the Statute of the International Tribunal for the Former Yugoslavia.

2102. On 8 October 2001, the Defence<sup>4916</sup> filed a joint preliminary motion<sup>4917</sup> arguing that the initial Indictment was defective because: (1) it alleged that the Accused were responsible as superiors under Article 7(3) of the Statute<sup>4918</sup> but failed to clearly and adequately plead the existence of a subordinate link between the Accused and the perpetrators of the crimes, i.e. the “foreign fighters or Mujahedin”, and failed to adequately characterise the conduct of the Accused; (2) it pleaded command responsibility for crimes committed in an internal armed conflict;<sup>4919</sup> (3) it alleged a “partial occupation;”<sup>4920</sup> (4) it inappropriately brought cumulative charges under Articles 2 and 3 of the Statute on the basis of the same conduct,<sup>4921</sup> and (5) it was generally vague.<sup>4922</sup> On 22 October 2001, the Prosecution filed its response to the Defence’s preliminary motions.<sup>4923</sup>

<sup>4911</sup> Order Designating a Pre-trial Judge, 16 August 2001.

<sup>4912</sup> Order Designating a Pre-trial Judge, 3 September 2001.

<sup>4913</sup> Order of the President on the Composition of a Trial Chamber for a Case, 23 November 2001.

<sup>4914</sup> Order Assigning a Judge to a Case before a Trial Chamber, 8 October 2003.

<sup>4915</sup> Order on Review of the Indictment pursuant to Article 19 of the Statute and Order for Non-disclosure, 13 July 2001.

<sup>4916</sup> The Defence for Mehmed Alagić also filed this motion.

<sup>4917</sup> Joint Preliminary Motion Alleging Defects in the Form of the Indictment, 8 October 2001.

<sup>4918</sup> *Ibid.*, paras. 3-30.

<sup>4919</sup> *Ibid.*, paras. 31-42 and more specifically, para. 32.

<sup>4920</sup> *Ibid.*, para. 43.

<sup>4921</sup> *Ibid.*, paras. 51-53.

2103. In its Decision on the Form of the Indictment dated 7 December 2001,<sup>4924</sup> the Chamber partially granted the preliminary motion of 8 October 2001. The Trial Chamber dealt with the objections over the alleged command responsibility<sup>4925</sup> by finding that the alleged subordinate link between the Accused and the “mujahedin” was not adequately explained in the initial Indictment.<sup>4926</sup> Accordingly, the Trial Chamber ordered the Prosecution to amend the initial Indictment in order to better establish the existence of a link between subordination and effective control.

2104. Regarding objections on the nature of the armed conflict and partial occupation, the Chamber ruled, *inter alia*, and in line with the Defence argument,<sup>4927</sup> that by alleging in the Initial Indictment of 13 July 2001 that at all relevant times “a state of international armed conflict and partial occupation existed in Bosnia and Herzegovina”, the Prosecution made it impossible to determine which States were involved in the international armed conflict<sup>4928</sup> and that the Defence was not clearly informed of the nature and cause of the charges against the Accused<sup>4929</sup> in that pleading.<sup>4930</sup> Consequently, the Judges ordered the Office of the Prosecutor to clearly state which States were involved<sup>4931</sup> and either specify or strike out entirely any references to the partial occupation, the identity of occupying forces, the area or areas occupied, and the date or dates when that occupation is alleged to have existed.<sup>4932</sup>

(b) Indictment of 11 January 2002

2105. In addition to the amendments ordered by the Chamber in its Decision of 7 December 2001, all the counts based on Article 2 of the Statute, which required proof of the existence of an international armed conflict, were struck from the Amended Indictment of 11 January 2002. Three counts based on Article 3 of the Statute were also withdrawn, which left a total of seven counts for violations of the laws or customs of war. On 21 February 2002, the Defence filed a joint response

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<sup>4922</sup> *Ibid.*, paras. 54-74.

<sup>4923</sup> Prosecutor’s Response to the Joint Preliminary Motion Alleging Defects in the Form of the Indictment, 22 October 2001.

<sup>4924</sup> Decision on Form of Indictment, 7 December 2001.

<sup>4925</sup> *Ibid.*, paras. 13-25.

<sup>4926</sup> *Ibid.*, paras. 14-15.

<sup>4927</sup> *Ibid.*, paras. 26-27.

<sup>4928</sup> *Ibid.*, para. 29.

<sup>4929</sup> Mehmed Alagić, like the other Accused, was concerned by the provisions of that Decision.

<sup>4930</sup> Decision on Form of Indictment, 7 December 2001, para. 31.

<sup>4931</sup> *Ibid.*, para. 29.

<sup>4932</sup> *Ibid.*, paras. 33-34. Conversely, the Trial Chamber did not grant the Defence’s request to strike paragraph 58 of the initial Indictment which, according to the Defence, confused the difference between occupation and “areas listed under the ABiH 3<sup>rd</sup> Corps area of responsibility” (para. 40); the Trial Chamber dismissed the Defence objections on cumulative charging, (para. 40). Finally, with regard to the objections over the alleged vagueness of the initial

on the form of the Amended Indictment.<sup>4933</sup> On 8 March 2002, the Prosecution made its observations,<sup>4934</sup> which were followed by the Defence's reply of 20 March 2002.<sup>4935</sup>

2106. On 12 December 2002,<sup>4936</sup> the Chamber ordered the Prosecution to respond to the three Defence objections raised in its joint challenge to jurisdiction of 21 February 2002. The Prosecution responded on 27 December 2002 and on 25 March 2003, filed its Motion to Amend the Amended Indictment of 11 January 2002<sup>4937</sup> seeking leave to: (1) withdraw from the Indictment charges against Mehmed Alagić, who had since died; (2) allege, in the alternative, the existence of an international armed conflict; (3) allege that the Accused Kubura was responsible under Article 7(3) of the Statute for the crimes committed in Miletići, which charges had already been brought against Enver Hadžihasanović, and (4) replace a charge of "violence to life and person" with a charge of "cruel treatment" in count 2. On 25 April 2003, in its Response to the Motion for Leave to Amend the Amended Indictment,<sup>4938</sup> the Defence requested a stay of proceedings, alleging that the Prosecution's conduct violated the rights of the Defence and was an abuse of process.<sup>4939</sup>

2107. After the Parties had filed their submissions,<sup>4940</sup> the Chamber issued its Decision on amending the Indictment on 18 June 2003,<sup>4941</sup> in which it recalled that in the Decision on Joint Challenge to Jurisdiction of 12 November 2002, the Chamber held that "the doctrine of command responsibility already in – and since – 1991 was applicable in the context of an internal armed conflict under customary international law." The Chamber also recalls that the Defence appealed that Decision, and that since "the interlocutory appeal on the present issue is still pending before the Appeals Chamber, it would be highly inappropriate for this Trial Chamber to take a decision on this matter now, unless the Appeals Chamber would order the Trial Chamber to do so."<sup>4942</sup> The Trial Chamber decided *inter alia* to postpone ruling on matters related to the form of the Indictment, which dealt with a request to rely on an international armed conflict in the alternative, pending the

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Indictment, the Trial Chamber granted some parts of the Defence motions (paras. 45, 47, 54, 58, 60, 62, 65, and 68, pp. 22-29) and denied others (paras. 43, 47, 49, 51, 56, 67, and 69, pp. 21-29).

<sup>4933</sup> Joint Response on the Form of the Amended Indictment, 21 February 2002.

<sup>4934</sup> Prosecution's Response to the Joint Response on the Form of the Amended Indictment, 8 March 2002.

<sup>4935</sup> Joint Reply to the Prosecution Response to the Joint Response on the Form of the Amended Indictment, 20 March 2002.

<sup>4936</sup> Order to File Response, 12 December 2002.

<sup>4937</sup> Motion for Leave to Amend the Amended Indictment, 25 March 2003.

<sup>4938</sup> Defence Response to Prosecution Motion for Leave to Amend the Amended Indictment and Request for Stay of Proceedings, 25 April 2003.

<sup>4939</sup> *Ibid.*, paras. 2-6.

<sup>4940</sup> See Prosecution Response and Reply to Defence Response to Amend the Amended Indictment and Requested Stay of Proceedings and Reply to Response of Amir Kubura to Prosecution Motion for Leave to Amend the Amended Indictment, 12 May 2003. Defence Motion Seeking Leave to Reply and Reply to Prosecution Response and Reply to Defence Response to Amend the Amended Indictment and Requested Stay of Proceedings, 14 May 2003.

<sup>4941</sup> Decision on Motion for Leave to Amend the Amended Indictment, 18 June 2003.

<sup>4942</sup> *Ibid.*, p. 5.

Appeals Chamber's decision on jurisdiction.<sup>4943</sup> The Trial Chamber further decided that there was no reason to postpone the hearings and dismissed the Defence motion in that regard.

2108. On 5 August 2003, following the Appeals Chamber's Decision on Jurisdiction of 16 July 2003, Judge Schomburg, the Pre-Trial Judge, ordered the Prosecution to file a new Amended Indictment.<sup>4944</sup>

(c) Indictment of 15 August 2003

2109. On 15 August 2003, the Prosecution filed a new motion seeking leave to amend the Amended Indictment.<sup>4945</sup> It suggested adding to the Second Amended Indictment all the proposed amendments of 25 March 2003<sup>4946</sup> in addition to those ordered by the Appeals Chamber on 16 July 2003. The Defence filed a response to the proposal for a new version of the Second Amended Indictment on 1 September 2003, and the Prosecution's reply was filed on 8 September 2003. In its Decision of 17 September 2003,<sup>4947</sup> the Trial Chamber ordered the Prosecution to make certain amendments to the Second Amended Indictment of 15 August 2003. The Prosecution was ordered to provide, if possible, further details relating to the specific units allegedly involved in the crimes set out in paragraphs 44 and 46,<sup>4948</sup> and to clarify the role and position of the mujahedin within the 3<sup>rd</sup> Corps.<sup>4949</sup> Considering that the Accused Kubura would not be prejudiced if given the opportunity to adequately prepare his defence against the amended case, the Chamber authorised the Prosecution to include in the amended version of the Second Amended Indictment new charges against him under Article 7(3) of the Statute concerning alleged events in Miletići,<sup>4950</sup> "as long as it provides sufficient new supporting material".<sup>4951</sup> The Judges also accepted the Prosecution's proposal to amend the alleged offence charged in count 2 by replacing the terms "violence to life and person" with "cruel treatment", which according to the Chamber, "does nothing but to limit the scope of the crime with which the Accused is charged".<sup>4952</sup>

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<sup>4943</sup> *Ibid.*, para. 3.

<sup>4944</sup> Oral order.

<sup>4945</sup> Motion for Leave to Amend the Amended Indictment, 15 August 2003.

<sup>4946</sup> Except for the proposed amendments to paragraph 8.

<sup>4947</sup> Decision on Form of Indictment, 17 September 2003.

<sup>4948</sup> *Ibid.*, para. 14. Counts 5, 6 and 7 of the Second Amended Indictment describe these crimes, namely the destruction and plunder of nine towns and villages by ABiH 3<sup>rd</sup> Corps units not justified by military necessity.

<sup>4949</sup> *Ibid.*, paras. 16 and 17, p. 9. In particular, the clarifications clear up the confusion created by the use of contradictory terms such as "subordinated" and "integrated and subordinated" found in paragraphs 18 and 20 of the Second Amended Indictment of 15 August 2003 to describe the position of the "mujahedin" unit within the 3<sup>rd</sup> Corps.

<sup>4950</sup> *Ibid.*, para. 31: specifically, four murders and the wanton destruction and plunder of a village in April 1993. Decision on Form of Indictment, 17 September 2003, para. 31.

<sup>4951</sup> *Ibid.*, para. 35.

<sup>4952</sup> *Ibid.*, para. 40.

2110. The Trial Chamber denied the Defence application for certification to appeal the Decision of 17 September 2003,<sup>4953</sup> considering that the Accused Kubura would not suffer unfair prejudice by having to answer charges that he was responsible under Article 7(3) of the Statute for crimes allegedly committed in Miletići.<sup>4954</sup>

(d) Indictment of 26 September 2003

2111. On 26 September 2003, the Third Amended Indictment was filed taking into account the disposition of the Decision of 17 September 2003. On 7 November 2003, the Defence for the Accused Kubura filed a motion requesting amendments to the Third Amended Indictment, principally arguing that the new charges against the Accused lacked precision in respect of the identity of the perpetrators of the four murders and the destruction caused in Miletići.<sup>4955</sup> The Trial Chamber denied the motion on 18 November 2003.<sup>4956</sup>

The charges brought definitively against the Accused, and on the basis of which the trial proceeded, are those contained in the Third Amended Indictment as amended on 26 September 2003 (“Indictment”).

4. Motion on Jurisdiction (Command Responsibility in an Armed Internal Conflict) under Rule 72(A)(i)

2112. In its Joint Preliminary Motion Alleging Defects in the Form of the Initial Indictment filed on 8 October 2001, the Defence challenged the Tribunal’s jurisdiction to impose command responsibility for crimes based on Article 3 of the Statute committed in a non-international armed conflict.

2113. In support of their motion, the Defence argued that in 1993, the period when the Prosecution alleges that the offences were committed, international humanitarian law did not recognise command responsibility in internal armed conflicts.<sup>4957</sup> According to the Defence therefore, any application of such responsibility would betray the principle of legality. The Defence requested a ruling whereby the Chamber would make it absolutely impossible for charges brought under Article 3 of the Statute, based on common Article 3 of the Geneva Conventions, to stand in conjunction

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<sup>4953</sup> Decision on the Application of Amir Kubura for Certification of the Trial Chamber’s Decision on Form of Indictment, rendered by the Trial Chamber on 30 September 2003.

<sup>4954</sup> Decision on the Application of Amir Kubura for Certification of the Trial Chamber’s Decision on Form of Indictment, rendered by the Trial Chamber on 30 September 2003.

<sup>4955</sup> Defence Motion of Amir Kubura on Form of Indictment in Respect of New Charges Concerning Miletići, 7 November 2003, p. 3.

<sup>4956</sup> Decision on Form of Indictment, 18 November 2003.

<sup>4957</sup> Joint Preliminary Motion Alleging Defects in the Form of the Indictment, 8 October 2001, paras. 32-34.



with charges brought under Article 7(3) of the Statute, which applies only to international armed conflict.<sup>4958</sup>

2114. In the Prosecution's Response of 22 October 2001<sup>4959</sup> regarding Defence assertions that the principle of *nullum crimen sine lege* had been violated, it argued that the Tribunal's case law<sup>4960</sup> makes Article 3 of the Statute applicable to crimes committed in both international and non-international armed conflicts.

2115. On 7 December 2001, the Chamber rendered its Decision on Challenge to Jurisdiction regarding command responsibility in internal conflicts.<sup>4961</sup> In that Decision, the Chamber partially denied the Defence preliminary motion, deferred its Decision until the trial on the merits, and ordered the Parties to address the following question in their pre-trial briefs: "Did international law at the time relevant to the [initial] indictment provide for the criminal responsibility of superiors who knew or had reason to know that their subordinates were about to commit violations of international humanitarian law, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof in the context of non-international conflicts?"<sup>4962</sup>

2116. After the Prosecution withdrew all charges based on Article 2 of the Statute and some counts based on Article 3 from the Amended Indictment of 11 January 2002, the Defence filed a new joint motion on 21 February 2002 challenging jurisdiction<sup>4963</sup> which contained three objections: (1) during the period covered by the Indictment, international law did not provide for criminal responsibility of superiors in the context of a non-international armed conflict; (2) Article 7(3) of the Statute does not provide for responsibility of a superior for crimes committed by his subordinates before the existence of a superior-subordinate relationship between them and, (3) Article 7(3) does not provide for responsibility of superiors for failure to prevent or punish the planning and preparation of crimes.

2117. On 27 February 2002, the Prosecution filed its Response<sup>4964</sup> and acknowledged that those issues needed to be settled before the trial.

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<sup>4958</sup> *Ibid.*, para. 40.

<sup>4959</sup> Prosecution's Response to Joint Preliminary Motion Alleging Defects in the Form of the Indictment, 22 October 2001.

<sup>4960</sup> See in particular *Tadić* Jurisdiction Decision, para. 137; *The Prosecutor v. Momčilo Krajišnik*, Decision on Motion Challenging Jurisdiction – With Reasons, Case No. IT-00-39-PT, 22 December 2000, (*Krajišnik* Jurisdiction Decision), para. 24.

<sup>4961</sup> Decision on Challenge to Jurisdiction, 7 December 2001.

<sup>4962</sup> *Ibid.*, para. 10.

<sup>4963</sup> Joint Challenge to Jurisdiction Arising from the Amended Indictment, 21 February 2002.

<sup>4964</sup> Prosecution's Response to Joint Challenge to Jurisdiction Arising from the Amended Indictment, 27 February 2002.

2118. The Chamber addressed the Defence objections in a detailed Decision dated 12 November 2002.<sup>4965</sup> As to whether command responsibility could be entailed in a non-international armed conflict,<sup>4966</sup> the Chamber found that “the crimes listed in Article 3, violations of the laws or customs of war, and Article 5, crimes against humanity, are applicable in either internal or international armed conflicts”<sup>4967</sup> and that “the doctrine of command responsibility already in – and since – 1991 was applicable in the context of an internal armed conflict under customary international law. Article 7(3) constitutes a declaration of existing law under customary international law and does not constitute new law.”<sup>4968</sup>

2119. As to the second Defence objection,<sup>4969</sup> the Chamber took a broad approach to its reading of Article 7(3) of the Statute, finding that “a commander can be liable under the doctrine of command responsibility for crimes committed prior to the moment that the commander assumed command”<sup>4970</sup> provided, however, that the elements of command responsibility are met after the said commander took up his duties. Considering that the last condition was a factual issue to be addressed at trial, the Chamber denied that specific part of the Defence motion.<sup>4971</sup>

2120. On those grounds, and others not warranting particular attention at that stage, the Chamber denied the preliminary motion of 21 February 2002 in its entirety.<sup>4972</sup>

2121. On 27 November 2002 the Accused<sup>4973</sup> filed a joint interlocutory appeal before the Appeals Chamber against the Decision of 12 November 2002,<sup>4974</sup> first on the ground that command responsibility could not be applied in a non-international armed conflict, and second, that the said responsibility could not apply to acts committed prior to the existence of a superior-subordinate relationship between the commander and the direct perpetrator. The Prosecution filed its Response on 9 December 2002.<sup>4975</sup>

2122. On 16 July 2003, the Appeals Chamber rendered its Decision on the Challenge to Jurisdiction in which it dismissed the Defence appeal.<sup>4976</sup> Regarding the first ground of appeal, the Appeals Chamber agreed with the Trial Chamber and dismissed it, considering that command

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<sup>4965</sup> Decision on Joint Challenge to Jurisdiction, 12 November 2002.

<sup>4966</sup> *Ibid.*, paras. 9-179.

<sup>4967</sup> *Ibid.*, para. 120.

<sup>4968</sup> *Ibid.*, para. 179.

<sup>4969</sup> *Ibid.*, paras. 180-202.

<sup>4970</sup> *Ibid.*, para. 202.

<sup>4971</sup> *Ibid.*, para. 202.

<sup>4972</sup> *Ibid.*, p. 92.

<sup>4973</sup> The late Mehmed Alagić also filed an interlocutory appeal.

<sup>4974</sup> Interlocutory Appeal on Decision on Joint Challenge to Jurisdiction, 27 November 2002.

<sup>4975</sup> Prosecution’s Response to Defence Interlocutory Appeal on Jurisdiction, 9 December 2002. On 20 December 2002, the Prosecution filed an addendum to its Response. The Appellants filed a joint reply on 13 December 2002.

<sup>4976</sup> Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003.

responsibility for crimes committed by subordinates in a non-international armed conflict was an integral part of customary international law at the time material to the Indictment.<sup>4977</sup> Regarding the second ground of appeal lodged by the Appellants, the Appeals Chamber held that “an accused cannot be charged under 7(3) of the Statute for crimes committed by a subordinate before the said accused assumed command over that subordinate.”<sup>4978</sup>

#### 5. Detention and Provisional Release Pending Trial

2123. The Chamber granted the initial requests from the Accused for provisional release, first in an oral decision on 13 December 2001, then in writing on 19 December 2001.<sup>4979</sup> Pursuant to the Decision of 19 December 2001, provisional release was granted until 27 November 2003.<sup>4980</sup>

#### 6. Status Conferences

2124. Between 29 November 2001 and 28 November 2003, the Pre-Trial Judge held eight status conferences; eight meetings were held with the Senior Legal Officer pursuant to Rule 65 *ter* (D) of the Rules. The Parties filed their Pre-Trial Briefs on 3 November 2003.

### B. Trial

#### 1. General Comments

2125. The trial commenced on 2 December 2003 and closed on 15 July 2005. In all, 2,949 exhibits were tendered into evidence, 172 witnesses testified before the Chamber, and 33 written statements under Rule 92 *bis* as well as 3 stipulations were admitted.

#### 2. Tendering of Exhibits into Evidence

2126. This question is addressed in the part of this Judgement dealing with evidentiary matters.<sup>4981</sup>

#### 3. Provisional Release During the Trial and Deliberations

2127. On 17 January 2004, the Defence for the Accused Hadžihasanović filed a motion for his provisional release in order to attend the funeral of his brother, who had died the day before.<sup>4982</sup> In

<sup>4977</sup> *Ibid.*, paras. 30-31.

<sup>4978</sup> *Ibid.*, para. 51. *See also*, para. 45.

<sup>4979</sup> Decision Granting Provisional Release to Enver Hadžihasanović, 19 December 2001; Decision Granting Provisional Release to Amir Kubura, 19 December 2001; Decision Granting Provisional Release to Mehmed Alagić, 19 December 2001.

<sup>4980</sup> Decision on Joint Defence Motion for Extension of Provisional Release and Scheduling Order, 31 October 2003.

<sup>4981</sup> *See infra* paras. 280-295.

<sup>4982</sup> Defence Motion for Provisional Release to Attend Funeral, 17 January 2004.

its Decision of 18 January 2004, the Chamber granted the Defence motion and allowed Enver Hadžihasanović to travel to Zvornik from 18 to 20 January 2004 for his brother's funeral.<sup>4983</sup>

2128. On 13 July 2005, the Defence for Hadžihasanović and the Defence for Kubura each filed a new motion for provisional release, to which the Prosecution objected in its Response.<sup>4984</sup> On 19 July 2005, the Chamber partially allowed the Defence motion, granting the Accused provisional release for a period of 12 days,<sup>4985</sup> warranted by the "family-related humanitarian considerations which are fully justified and convincing"<sup>4986</sup> which they refer to in support of their motion. On 28 July 2005, the Appeals Chamber denied the Prosecution's application of 25 July 2005 to appeal the Decision of 19 July 2005.<sup>4987</sup>

2129. On 10 October 2005, the Defence for the Accused Enver Hadžihasanović filed another motion requesting provisional release for the 15-day period preceding pronouncement of the Judgement. On 12 October 2005, the Defence for the Accused Kubura filed a similar request, seeking his provisional release while awaiting the Judgement. In its Decision of 1 November 2005, the Chamber granted those motions pending the issuance of an order amending the Decision. By Order of 23 February 2006, and for the purposes of delivering the Judgement, the Chamber ordered the Accused to return to the Detention Unit on 8 March 2006.<sup>4988</sup> To date, each Accused has spent 828 days in detention.

#### 4. Decision on Motions for Acquittal Pursuant to Rule 98 bis of the Rules

2130. In its Decision on Motions for Acquittal Pursuant to Rule 98 bis of the Rules, the Chamber found that, during its case-in-chief, the Prosecution had adduced *prima facie* evidence for a conviction on all charges in the Indictment, excepting a few which, at that stage, warranted pronouncement of an acquittal.<sup>4989</sup> The Defence filed a joint appeal on the ground *inter alia* that the

<sup>4983</sup> Decision Granting Provisional Release to Enver Hadžihasanović from 18-20 January 2004, 18 January 2004.

<sup>4984</sup> Prosecution's Response to Defence Motions for Provisional Release, 20 July 2004.

<sup>4985</sup> Initially, therefore, from 11 August to 22 August 2005 for the Accused Hadžihasanović, and from 25 August to 5 September 2005 for the Accused Kubura. Hadžihasanović's period of provisional release was later amended and pushed back to the period running from 1 September to 12 September 2005. *See* Order Amending the Dates of Enver Hadžihasanović's Provisional Release, 22 August 2005.

<sup>4986</sup> Decision on Motions by Enver Hadžihasanović and Amir Kubura for Provisional Release, 19 July 2005, p. 8.

<sup>4987</sup> Decision on Application for Leave to Appeal, 28 July 2005.

<sup>4988</sup> Order Amending the Decision on the Provisional Release of Enver Hadžihasanović and Amir Kubura in View of the Pronouncement of the Judgement, 23 February 2006.

<sup>4989</sup> The Chamber acquitted the Accused Hadžihasanović of the charges in count 2 regarding cruel treatment in Dusina on 26 January 1993 and of those in count 3 with respect to the murder of a Croatian detainee in the former JNA Barracks in Travnik in May 1993; it acquitted both Accused of the charges in count 2 regarding cruel treatment in Miletići and Maline; it acquitted both Accused of the charges in count 3 regarding the murder of Jozo Maračić at the Zenica Music School, and it acquitted both Accused of the charges in count 5 regarding the wanton destruction of towns and villages not justified by military necessity in Miletići in April 1993. In that Decision, the Chamber noted the Prosecution's withdrawal of the charge in count 5 regarding the wanton destruction of towns and villages not justified

Chamber did not have jurisdiction over three of the counts. The Chamber partially granted the request for certification to appeal the Decision on Motions for Acquittal. The Appeals Chamber dismissed the appeal on 11 March 2005.

#### 5. Decision on the Prosecution's Application to Reopen its Case

2131. This question is addressed in the section of this Judgement dealing with evidentiary matters.<sup>4990</sup>

#### 6. Site Visit

2132. On 24 March 2005, the Chamber was seized of a motion from the Prosecution requesting an on-site visit pursuant to Rule 4 of the Rules, for the purpose of affording the Chamber an opportunity to observe firsthand the geography, topography, and roads in the areas in Central Bosnia referred to in the evidence and described in the Indictment. The Defence for Hadžihasanović opposed the motion, arguing *inter alia* that if such a visit were to take place, the Accused Hadžihasanović had a right to be present under Article 21(4)(a) and (b) of the Statute. The Defence for Kubura submitted that it was for the Chamber to determine whether such a visit would be useful in its deliberations and serve the interests of justice.

2133. The Trial Chamber granted the Prosecution motion, considering that it was in the interests of justice for it to have a firsthand look at the geography and topography of the areas in Central Bosnia material to the case and noting that, *inter alia*, the Accused had informed the Chamber that they had waived their request to be present during the visit. The visit took place from 13 to 17 June 2005, and the transcripts of comments made by the Parties and recorded by the Registry were tendered into evidence.<sup>4991</sup>

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by military necessity in Dusina and of the charge in count 6 regarding plunder in Dusina in January 1993. *See* the disposition in the Decision on Motions for Acquittal.

<sup>4990</sup> *Supra* para. 292.

<sup>4991</sup> C 21; C 21b; C 22; C 22 b; C 22.1; C 23; C 23b; C 23.1.

### **XIII. ANNEX IV: INDICTMENT**

#### **THIRD AMENDED INDICTMENT**

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

**CASE NO: IT-01-47-PT**

**THE PROSECUTOR OF THE  
TRIBUNAL**

**AGAINST**

**ENVER HADŽI HASANOVIĆ**

**AMIR KUBURA**

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (hereafter: Statute of the Tribunal), charges:

**ENVER HADŽI HASANOVIĆ and AMIR  
KUBURA**

with **VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR**, as set forth below:

#### **THE ACCUSED:**

- 1) **Enver HADŽI HASANOVIĆ**, son of Besim and Refija (née SARAJLIĆ), was born on 7 July 1950 in Zvornik, municipality of Zvornik, Republic of Bosnia and Herzegovina (hereafter: Bosnia and Herzegovina).
- 2) **Enver HADŽI HASANOVIĆ** is a former professional military officer of the Yugoslav People's Army (hereafter: JNA). He graduated from the Belgrade Land Forces Military Academy in 1973 and was thereafter assigned to JNA posts in Tuzla and Sarajevo. With the rank of Captain First Class he attended the Staff Officer's College in Belgrade. After completion, he was promoted to the rank of Major and was assigned as the Commander of a Military Police battalion within the Military Police of the 7<sup>th</sup> Army. In 1988, **Enver HADŽI HASANOVIĆ** was transferred to the post of Chief of Staff of the 49<sup>th</sup> Motorised Brigade. Subsequently, this brigade was transformed into a mechanised brigade and in late 1989, he was appointed as its commander. Whilst in this position, **Enver**

**HADŽIHASANOVIĆ** achieved the rank of Lieutenant Colonel.

- 3) In early April 1992, the JNA placed **Enver HADŽIHASANOVIĆ** under house arrest in Sarajevo. On 8 April 1992, he managed to escape and subsequently deserted from the JNA. Immediately after leaving the JNA, **Enver HADŽIHASANOVIĆ** joined the Territorial Defence (hereafter: TO) of Bosnia and Herzegovina. On 14 November 1992, **Enver HADŽIHASANOVIĆ** was made the Commander of the 3<sup>rd</sup> Corps of the Army of Bosnia and Herzegovina (hereafter: ABiH). He retained this position until 1 November 1993, when he was promoted to Chief of the Supreme Command Staff of the ABiH. In December 1993, **Enver HADŽIHASANOVIĆ** was further promoted to the rank of Brigadier General. As such, he became a member of the Joint Command of the Army of the Federation of Bosnia and Herzegovina. In May 1997, **Enver HADŽIHASANOVIĆ** achieved the rank of Division General. He was subsequently promoted to the rank of Major General. **Enver HADŽIHASANOVIĆ** retired in April 2000.
- 4) **Amir KUBURA**, son of Nazif, was born on 4 March 1964 in Kakanj, municipality of Kakanj, Bosnia and Herzegovina.
- 5) **Amir KUBURA** is a former professional military officer of the JNA. After completion of training at the Academy for Ground Forces, he served for five years as an active military officer of the JNA in Đakovica. In 1992, **Amir KUBURA** left the JNA with the rank of Captain.
- 6) In 1992, **Amir KUBURA** joined the ABiH whilst it was being formed as the Deputy Commander of a detachment in Kakanj. Later on, he was assigned as the commander of an ABiH Mountain Battalion in the same area. On 11 December 1992, **Amir KUBURA** was posted as Assistant Chief of Staff for Operations and Instruction Matters of the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade. He became the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade Chief of Staff on 1 January 1993. From 1 April 1993 to 20 July 1993, **Amir KUBURA** acted as the substitute for Asim KORIČIĆ, the then assigned ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade Commander who was absent during this period. On 21 July 1993, he was appointed Commander of the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade. On 16 March 1994, holding the rank of Colonel, **Amir KUBURA** was made ABiH 1<sup>st</sup> Corps 1<sup>st</sup> Muslim Mountain Brigade Commander. He was named as the ABiH 4<sup>th</sup> Corps 443<sup>rd</sup> Brigade Commander on 16 December 1995. In June 1999, **Amir KUBURA** served in the Command of the ABiH 1<sup>st</sup> Corps.

#### GENERAL ALLEGATIONS:

- 7) All acts and omissions alleged in this indictment occurred between January 1993 and 16 March 1994 in the territory of Bosnia and Herzegovina.
- 8) At all times relevant to this indictment, an armed conflict existed in the territory of Bosnia and Herzegovina.

- 9) At all times relevant to this indictment, **Enver HADŽIHASANOVIĆ** and **Amir KUBURA** were required to abide by the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 1949 and the Additional Protocols thereto. Furthermore, **Enver HADŽIHASANOVIĆ** and **Amir KUBURA** were responsible for ensuring that military units under their command and effective control respected and applied these rules of international law. Moreover, **Enver HADŽIHASANOVIĆ** and **Amir KUBURA** were obliged by superior order to initiate proceedings for legal sanctions against individuals under their command and effective control who had violated the international law of war.
- 10) **Enver HADŽIHASANOVIĆ** and **Amir KUBURA**, while holding the positions set out in the preceding paragraphs, are criminally responsible for the acts of their subordinates, pursuant to Article 7(3) of the Statute of the Tribunal. A superior is responsible for the acts of his subordinate(s) if he knew or had reason to know that his subordinate(s) were about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

#### **BACKGROUND:**

- 11) On 23 August 1992, the Presidency of Bosnia and Herzegovina issued an order on the adoption of the "Rules of the International Laws of War by the Armed Forces of Bosnia and Herzegovina". This order came into force on 5 September 1992. The order stipulated the following:
- (a) All unit commanders and individual members of the Armed Forces were responsible for putting the rules into practice;
  - (b) Senior officers were to take steps prescribed in the rules against anyone who breached the laws;
  - (c) All members of the Armed Forces were to undergo training in order to familiarise themselves with the rules;
  - (d) The planning and preparation of military actions by the Armed Forces were to comply with the rules and laws.
- 12) On 1 August 1992, a law on service in the ABiH was introduced via Presidential Decree. Under the law, non-Bosnian citizens were allowed to join the ABiH and be promoted during times of war. On 14 April 1993, again by Presidential Decree, amendments were made to the law on Service in the ABiH allowing non-Bosnian citizens to be promoted to Superior Officer ranks during times of war.
- 13) On 18 August 1992, the President of the Presidency of Bosnia and Herzegovina made a "Decision on the Establishment of the ABiH Corps". The document outlines the division of Bosnia and Herzegovina into five military areas of responsibility known as Corps and



defines the municipalities, which fall within each Corps. Based on this decision, the ABiH 3<sup>rd</sup> Corps with its Headquarters was established in Banja Luka - however Zenica was listed and used as temporary ABiH 3<sup>rd</sup> Corps Headquarters.

- 14) The following municipalities were listed under the ABiH 3<sup>rd</sup> Corps area of responsibility: Banja Luka, Bosanska Dubica, Bosanska Gradiška, Bugojno, Busovača, Čelinac, Donji Vakuf, Gornji Vakuf, Jajce, Kakanj, Kotor Varoš, Kupres, Laktaši, Mrkonjić Grad, NoviTravnik, Prnjavor, Skender Vakuf, Srbac, Šipovo, Travnik, Vitez, Zavidovići, Zenica, and Žepče.
- 15) On 9 November 1992, the ABiH Chief of the General Staff issued an order for the creation of specific types of units within ABiH 3<sup>rd</sup> Corps allowing for the various TO units and headquarters to merge.
- 16) On 19 November 1992, the 7<sup>th</sup> Muslim Mountain Brigade was formed with its Brigade Headquarters located in Zenica. The 7<sup>th</sup> Muslim Mountain Brigade was created and used as an infantry manoeuvre unit, consisting of three battalions which were located in Travnik (1<sup>st</sup> Battalion). Zenica (2<sup>nd</sup> Battalion) and Kakanj (3<sup>rd</sup> Battalion).
- 17) The ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade was an all-Muslim unit. Soldiers within this unit were required to strictly adhere to Islamic beliefs. Recruits had to swear an oath, which included that they would follow the example of a proper Muslim soldier as set out in the booklet titled "Instructions to the Muslim Fighter". The "Instructions to the Muslim Fighter" was initially published in 1993 and subsequently 20,000 copies were distributed within the ABiH 3<sup>rd</sup> Corps' area of responsibility. Further publications of the booklet were made in 1994. The booklet contains the following headings and commentary:
  - (a) Subordination: "A Muslim fighter primarily takes orders from the supreme commander and only then from his superior officer".
  - (b) War Booty: "[...] it is clear that a fifth of war booty shall fall to the State treasury and the other four-fifths belong to the soldiers. However, in situations where the soldiers receive pay and in which the State has assumed the obligation to care for the soldiers and their families [...] all war booty shall be placed at the disposal of the State [...] Because of this the most proper way for the State to dispose of war booty is through its army officers".
  - (c) Prisoners of war: "[...] the killing of women, children and priests who do not participate at all in the war and who do not directly or indirectly assist the enemy, is forbidden [...] Islam likewise forbids the torture and brutalisation of prisoners of war and the mutilation of enemy wounded and dead [...] These are general rules which are binding for our soldiers. However, if the commanding officer assesses that the situation and the general interest demand a different course of action, then the soldiers are duty-bound to obey their commanding officer. For instance, if their officer or a higher commander assesses that in the interests of defence, the protection of his own

people or higher goals it is best to set fire to certain buildings, crops or woods, then this is permitted [...] It is also left to the military command's discretion to decide whether it is more useful or in the general interest to free, exchange or liquidate enemy prisoners of war".

- 18) Foreign Muslim fighters, who referred to themselves as "Mujahedin" or "Holy Warriors", began arriving in Bosnia and Herzegovina sometime during the middle of 1992. The "Mujahedin", who were principally from Islamic countries, were prepared to conduct a "Jihad" or "Holy War" in Bosnia and Herzegovina against the enemies of the Bosnian Muslims.
- 19) After its formation on 19 November 1992, the 7<sup>th</sup> Muslim Mountain Brigade incorporated and subordinated "Mujahedin" within its structure.
- 20) The "Mujahedin" were heavily involved in the 7<sup>th</sup> Muslim Mountain Brigade's combat activities and frequently spearheaded its operations.
- 21) On 13 August 1993, the Commander of the ABiH Supreme Command Staff ordered the establishment within the ABiH 3<sup>rd</sup> Corps area of responsibility of the "El Mujahed" unit comprised of foreign volunteers, with immediate effect, but not later than 31 August 1993. This unit was subordinated to **Enver HADŽIHASANOVIĆ**, who ordered its subordination to units under his command for specific combat operations.
- 22) By order of **Enver HADŽIHASANOVIĆ** on 8 March 1993, the following four OGs were created within ABiH 3<sup>rd</sup> Corps: OG "Lasva" with its Headquarters in Kakanj; OG "Zapad" with its Headquarters in Bugojno; OG "Bosna" with its Headquarters in Zavidovići and OG "Bosanska Krajina" with its Headquarters in Travnik.
- 23) With its formation, Mehmed ALAGIĆ was appointed as the commander of the OG "Bosanska Krajina".
- 24) On 8 March 1993, the 7<sup>th</sup> Muslim Mountain Brigade, the 17<sup>th</sup> Krajina Mountain Brigade, the 305<sup>th</sup> Mountain Brigade Jajce, the 27<sup>th</sup> Motorised Brigade and the Municipal Defence Headquarter Jajce with its units were placed under the command of the OG "Bosanska Krajina". On or around 16 April 1993, the 306<sup>th</sup> Mountain Brigade, the 308<sup>th</sup> Mountain Brigade, and the 312<sup>th</sup> Mountain Brigade were also attached to the OG "Bosanska Krajina". On or about 12 July 1993, the 7<sup>th</sup> Muslim Mountain Brigade was re-subordinated under immediate command of the ABiH 3<sup>rd</sup> Corps as it was prior to 8 March 1993.
- 25) At all times relevant to this indictment, the 301<sup>st</sup> Mountain Brigade Zenica, the 303<sup>rd</sup> Brigade Zenica, the 314<sup>th</sup> Mountain Brigade Zenica, the Municipal Defence Headquarters Zenica with its units and all staff units of the Corps were under the direct subordination of the ABiH 3<sup>rd</sup> Corps.

**CHARGES:**

- 26) In 1993 (and until 18 March 1994), the ABiH participated in an armed conflict with the Croatian Defence Council (hereafter: HVO) and the Army of the Republic of Croatia (hereafter: HV). In particular, 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 municipalities of Bugojno, Busovača, Kakanj, Maglaj, Novi Travnik, Travnik, Vareš, Vitez, Zavidovići, Zenica and Žepče. The ABiH operations culminated in a massive attack between 7 and 13 June 1993 within, *inter alia*, the municipalities of Kakanj, Travnik and Zenica.
- 27) Within the municipalities listed in paragraph 26) ABiH 3<sup>rd</sup> Corps units attacked towns and villages mainly inhabited by Bosnian Croats. Predominately Bosnian Croat but also Bosnian Serb civilians, including women, children, the elderly, and the infirm, were subjected to wilful killings and serious injury. In the course of, or after the attacks, at least 200 Bosnian Croat and Bosnian Serb civilians were killed and many more were wounded or harmed while attempting to hide or escape. In several instances, ABiH forces killed HVO troops after their surrender.
- 28) Mainly Bosnian Croats, but also Bosnian Serbs, were unlawfully imprisoned and otherwise detained in ABiH detention facilities. Imprisoned and otherwise detained Bosnian Croats and Bosnian Serbs were killed and beaten, subjected to physical and/or psychological abuse, intimidation and inhuman treatment, including being confined in overcrowded and unsanitary conditions, and suffered inhumane deprivations of basic necessities, such as adequate food, water and clothing. They were provided little or no medical attention.
- 29) ABiH forces plundered and destroyed Bosnian Croat and Bosnian Serb property with no military justification. Mainly Bosnian Croat, but also Bosnian Serb dwellings and buildings, as well as civilian personal property and livestock, were destroyed or severely damaged. In addition, Bosnian Croat buildings, sites and institutions dedicated to religion were targeted for destruction or otherwise damaged or violated.
- 30) The allegations contained in paragraphs 1) through 10) as well as the allegations in paragraphs 26) through 29) are re-alleged and incorporated in each charge.

**INDIVIDUAL CRIMINAL RESPONSIBILITY:****Enver HADŽIHASANOVIĆ:**

- 31) At the time **Enver HADŽIHASANOVIĆ** took over the command of the ABiH 3<sup>rd</sup> Corps, he was experienced in exercising command and effective control over military units. Furthermore, **Enver HADŽIHASANOVIĆ** was specifically trained in military disciplinary procedures.
- 32) In following the common practice of the ABiH to use a variety of regulations and

instructions of the former JNA, **Enver HADŽIHASANOVIĆ** by virtue of his authority and duties as a commander, was, *inter alia*, responsible for the preparation of the corps for armed combat in the field, including the planning of the operations and other forms of combat actions, transmitting the decision to subordinated commands and controlling its implementation.

- 33) At all times relevant to the charges in this indictment, **Enver HADŽIHASANOVIĆ**, by virtue of his position and authority as Corps commander, directly or through his Chief of Staff, his assistants, heads of branches, and other officers, commanded all units of the ABiH 3<sup>rd</sup> Corps and units that were operating within his command and effective control. These units include the units described in paragraphs 15) to 25). **Enver HADŽIHASANOVIĆ** demonstrated or exercised both formal de jure and de facto power by his command and effective control in military matters in a manner consistent with the exercise of superior authority in a variety of ways, such as: issuing orders, instructions and directives to the units subordinated to ABiH 3<sup>rd</sup> Corps, ensuring the implementation of these orders, instructions and directives and bearing full responsibility for their completion, deploying troops, artillery and other units under his command and effective control and planning the preparation and implementation of military operations performed by these units. Furthermore, **Enver HADŽIHASANOVIĆ** ensured that he had permanent and current information on all matters that happened on the ground, including minor incidents, communicating with the ABiH Supreme Command Staff on an almost daily basis. He was responsible for implementing the orders of the ABiH Supreme Command with respect to the organisational structures of the ABiH 3<sup>rd</sup> Corps. This included the formation of OGs, the subordination of units under OGs and the appointment and relief of military commanders. He exercised command and effective control over all military units subordinated to the ABiH 3<sup>rd</sup> Corps, including those operating detention facilities.
- 34) **Enver HADŽIHASANOVIĆ** also exercised his power as a Corps commander by negotiating the exchange of prisoners of war and cease-fire agreements with the HVO, appointing ABiH 3<sup>rd</sup> Corps officers for the ABiH / HVO Joint Command and negotiating with UNPROFOR and ECMM officials.
- 35) At all times relevant to this indictment, **Enver HADŽIHASANOVIĆ** exercised effective control over all his subordinates alleged to have committed crimes.

**Amir KUBURA:**

- 36) In following the common practice of the ABiH to use a variety of regulations and instructions of the former JNA, **Amir KUBURA**, by virtue of his authority and duties as a commander was, *inter alia*, responsible for the preparation of the units subordinated to his command for armed combat in the field, including the planning of the operations and other forms of combat actions, transmitting decisions to subordinated commands and controlling their implementation.

- 37) At all times relevant to the charges in this indictment, **Amir KUBURA**, by virtue of his position and authority described above, commanded all units of the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade. **Amir KUBURA** demonstrated and exercised both formal de jure and de facto power, by his control in military matters in a manner consistent with the exercise of superior authority in a variety of ways, including: issuing orders, instructions and directives to units subordinated to the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade; deploying troops under his command; planning the preparation and implementation of military operations performed by units under his command and effective control. He exercised command and effective control over all military units subordinated to the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade, including those operating detention facilities.
- 38) At all times relevant to this indictment, **Amir KUBURA** exercised effective control over all his subordinates alleged to have committed crimes.

### COUNTS 1-2

#### (MURDER, CRUEL TREATMENT)

- 39) Several times during the course of their combat activities with the HVO and the HV in central Bosnia in 1993, ABiH 3<sup>rd</sup> Corps forces killed and seriously wounded surrendered HVO soldiers and/or Bosnian Croat and Bosnian Serb civilians. These killings by ABiH 3<sup>rd</sup> Corps forces after attacks on towns and villages include but are not limited to executions and massacres in the following villages:

(a) Dusina:

(aa) The execution on 26 January 1993 of the Bosnian Serb civilian Vojislav STANIŠIĆ and the following five surrendered HVO soldiers after troops of the 7<sup>th</sup> Muslim Mountain Brigade, the 303<sup>rd</sup> Mountain Brigade, and the 17<sup>th</sup> Krajina Mountain Brigade had launched the attack on Dusina – Zenica Municipality: Niko KEGELJ, Stipo KEGELJ, Vinko KEGELJ, Pero LJUBIČIĆ, and Augustin RADOŠ;

(ab) The killing of the surrendered HVO soldier Zvonko RAJIĆ by Šerif PATKOVIĆ, the then commander of the 2<sup>nd</sup> Battalion of the 7<sup>th</sup> Muslim Mountain Brigade, after the attack on Dusina – Zenica Municipality;

(b) Miletići:

The killing on 24 April 1993 of the following four surrendered HVO soldiers after troops of both the 7<sup>th</sup> Muslim Mountain Brigade and the 306<sup>th</sup> Mountain Brigade had launched the attack on Miletići - Travnik Municipality: Franjo PAVLOVIĆ, Tihomir PAVLOVIĆ, Vlado PAVLOVIĆ, and Anto PETROVIĆ;

(c) Maline / Bikoši:

The massacre on 8 June 1993 in Bikoši - Travnik Municipality of around 30 Bosnian Croat civilians and surrendered HVO soldiers after troops of both the 7<sup>th</sup> Muslim Mountain Brigade and the 306<sup>th</sup> Mountain Brigade had launched the attack on Maline - Travnik Municipality. Among the killed were the following persons: Anto BALTA, Ivo BALTA, Jozo BALTA, Luka BALTA, Nikica BALTA, Bojan BARAĆ, Davor BARAĆ, Goran BOBAŠ, Niko BOBAŠ, Slavko BOBAŠ, Srećo BOBAŠ, Pero BOBAŠ-PUPIĆ, Dalibor JANKOVIĆ, Stipo JANKOVIĆ, Slavko KRAMAR, Anto MATIĆ, Tihomir PEŠA, Ana PRANJEŠ, Ljubomir PUŠELJA, Predrag PUŠELJA, Jakov TAVIĆ, Mijo TAVIĆ, Stipo TAVIĆ, and Ivo VOLIĆ. Seriously wounded were Berislav MARJANOVIĆ, Zdravko PRANJEŠ, Darko PUŠELJA, and Željko PUŠELJA.

- 40) **Enver HADŽIHASANNOVIĆ** from about January 1993 to 31 October 1993 and **Amir KUBURA** from 1 April 1993 to March 1994 knew or had reason to know that ABiH forces under their command and effective control were about to commit such acts or had done so in the following villages on or about the dates indicated and they failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof:

**Enver HADŽIHASANNOVIĆ:**

Dusina (Zenica Municipality)	26 January 1993
Miletići (Travnik Municipality)	24 April 1993
Maline / Bikoši (Travnik Municipality)	8 June 1993

**Amir KUBURA:**

Miletići (Travnik Municipality)	24 April 1993
Maline / Bikoši (Travnik Municipality)	8 June 1993

By these omissions **Enver HADŽIHASANNOVIĆ** and **Amir KUBURA** committed:

**Count 1:** MURDER, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by Article 3(1)(a) of the Geneva Conventions.

**Count 2:** CRUEL TREATMENT, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by Article 3(1)(a) of the Geneva Conventions.

**COUNTS 3-4**

**(MURDER, CRUEL TREATMENT)**

- 41) **Enver HADŽIHASANNOVIĆ** from about January 1993 to 31 October 1993 and **Amir KUBURA** from 1 April 1993 to March 1994 knew or had reason to know that the following ABiH forces under their command and effective control were about to plan, prepare or

execute the imprisonment, killing and cruel treatment of Bosnian Croats and Bosnian Serbs at the following locations, in the territory of Bosnia and Herzegovina, or had done so, and they failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof:

**Enver HADŽIHASANOVIĆ:**

(a) Zenica Municipality:

Zenica Music School, in the town of Zenica, staffed and operated by the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade, from about 26 January 1993 to 31 October 1993;

(b) Travnik Municipality:

(ba) Town of Travnik:

Former JNA barracks, staffed and operated by the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" 17<sup>th</sup> Krajina Mountain Brigade, from about May 1993 to 31 October 1993;

(bb) Village of Mehurići:

- Mehurići Elementary School, staffed and operated by the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" 306<sup>th</sup> Mountain Brigade, from about 6 June 1993 to at least 24 June 1993;
- Blacksmith Shop, staffed and operated by the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" 306<sup>th</sup> Mountain Brigade, from about 6 June 1993 to at least 13 July 1993;

(bc) Village of Orašac:

Orašac Camp, staffed and operated by "Mujahedin" within the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina", from about 15 October 1993 to 31 October 1993;

(c) Kakanj Municipality:

Motel Sretno, staffed and operated by the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade 3<sup>rd</sup> Battalion, from about 15 May 1993 to at least 21 June 1993;

(d) Bugojno Municipality:

(da) Gimnazija School Building from about 18 July 1993 to at least 13 October 1993;

(db) Convent Building from about 24 July 1993 to at least the beginning of August 1993;

(dc) Slavonija Furniture Salon from about 24 July 1993 to at least 18 August 1993;

(dd) FC Iskra Stadium from about 30 July 1993 to 31 October 1993;

(de) Vojin Paleksić Elementary School from about 31 July 1993 to at least September 1993;

(df) Bank of Bosnia and Herzegovina Building from about September 1993 to 31 October 1993.

The ABiH 3<sup>rd</sup> Corps camps and detention facilities in Bugojno were all staffed and operated by the ABiH 3<sup>rd</sup> Corps OG "Zapad" Military Police and soldiers of the ABiH 3<sup>rd</sup> Corps OG "Zapad" 307<sup>th</sup> Brigade.

**Amir KUBURA:**

(a) Zenica Municipality:

Zenica Music School, in the town of Zenica, staffed and operated by the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade, from 1 April 1993 to at least January 1994;

(b) Kakanj Municipality:

Motel Sretno, staffed and operated by the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade 3<sup>rd</sup> Battalion, from about 15 May 1993 to at least 21 June 1993.

42) Imprisoned and otherwise detained Bosnian Croats and Bosnian Serbs were subjected to regular physical and/or psychological abuse. The physical abuse included beatings inflicted by a wide variety of weaponry such as rifle butts, metal hooks, wooden sticks and handles, batons, truncheons, knuckle-dusters, wooden staves, boots and telephone cables, resulting in a wide variety of bodily injuries. Several detainees got their ribs, noses and limbs broken. In some instances, prisoners were beaten to death. Detainees were subjected to inhuman treatment, including being confined in overcrowded and unsanitary conditions and suffered from inhumane deprivations of basic necessities such as adequate food, water and clothing. They were provided little or no medical attention. The psychological abuse included threats of bodily injury and death, such as prisoners being forced to dig their "own graves" and the threat of amputation of limbs while detained:

(a) In the Zenica Music School, soldiers of the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade, who were predominately both members of the Military Police and "Mujahedin" subordinated to the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade, abused prisoners by beating them with a wide variety of weaponry, such as rifle butts, wooden sticks and handles, truncheons, knuckle-dusters, staves, boots and telephone cables, resulting in a wide variety of bodily injury. Members of the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade Military Police and "Mujahedin" subordinated to the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade forced prisoners to dig their "own graves". In general, food, hygiene and living conditions were poor.



- (b) In the former JNA Barracks in Travnik soldiers of the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" 17<sup>th</sup> Krajina Brigade beat detainees on a regular basis.
  - (c) In the Mehurići Elementary School, members of the ABiH 3<sup>rd</sup> Corps 306<sup>th</sup> Mountain Brigade kicked prisoners while detained. During interrogation prisoners were beaten and threatened by members of the ABiH 3<sup>rd</sup> Corps 306<sup>th</sup> Mountain Brigade. The general food, hygiene and living conditions were poor.
  - (d) In the Blacksmith Shop Mehurići soldiers of the ABiH 3<sup>rd</sup> Corps 306<sup>th</sup> Mountain Brigade crammed prisoners in a small room, around 3x3 metres in size. They took prisoners out for interrogation, threatened, kicked and beat them. The food, hygiene and living conditions were poor.
  - (e) In the Orašac Camp, "Mujahedin" subordinated to the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" severely beat detainees with rifle butts. The "Mujahedin" broke the nose of one of the detainees, and several ribs of another. They regularly subjected detainees to threats of bodily injury and death.
  - (f) In the Motel Sretno, ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade 3<sup>rd</sup> Battalion soldiers physically abused detainees by beating them with batons, sticks, rifle butts, metal hooks, wooden staves and boots. They also forced them to beat each other. In addition, detainees were ordered to bang their heads against walls. Furthermore, ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade 3<sup>rd</sup> Battalion soldiers threatened detainees with the amputation of their legs whilst detained at the facility.
  - (g) In the detention facilities in Bugojno, members of the ABiH 3<sup>rd</sup> Corps OG "Zapad" Military Police and soldiers of the ABiH 3<sup>rd</sup> Corps OG "Zapad" 307<sup>th</sup> Brigade abused prisoners by beating them with a variety of weapons, namely truncheons, police batons, rifle butts, billiard sticks, wooden staves, plastic cables, and boots. They forced detainees to hit their heads against metal bars. The physical assaults resulted in prisoners losing consciousness and receiving broken legs. In a few instances, detainees got their teeth knocked out. On several occasions, detainees were forced to give blood. On a regular basis, ABiH 3<sup>rd</sup> Corps OG "Zapad" Military Police threatened to kill detainees. In addition, they subjected prisoners to overcrowded cells and highly unsanitary living conditions. The food conditions were very poor.
- 43) The killings of imprisoned and otherwise detained Bosnian Croats and Bosnian Serbs include, but are not limited to:
- (a) The killing by beating to death of a Bosnian Croat detainee by Military Police Officers from the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" 17<sup>th</sup> Krajina Brigade in May 1993 in the former JNA Barracks in Travnik - Travnik Municipality;
  - (b) The killing by beating to death of the imprisoned HVO soldier Jozo MARAČIĆ by soldiers of the ABiH 3<sup>rd</sup> Corps 7<sup>th</sup> Muslim Mountain Brigade on 18 June 1993 in the Zenica Music School- Zenica Municipality;

- (c) The killing by beating to death of the imprisoned HVO soldier Mladen HAVRANEK by members of the ABiH 3<sup>rd</sup> Corps OG "Zapad" Military Police on 5 August 1993 in the Slavonija Furniture Salon - Bugojno Municipality;
- (d) The killing by beating to death of the imprisoned HVO soldier Mario ZRNO by members of the ABiH 3<sup>rd</sup> Corps OG "Zapad" Military Police in the beginning of August 1993 whilst taken out for forced labour from the Convent Building in Bugojno -Bugojno Municipality;
- (e) The killing by ritual beheading of the Bosnian Serb detainee Dragan POPOVIĆ, a civilian, by "Mujahedin" subordinated to the ABiH 3<sup>rd</sup> Corps OG "Bosanska Krajina" on 20 October 1993 in the Orašac Camp - Travnik Municipality.

By these omissions **Enver HADŽIHASANOVIĆ** and **Amir KUBURA** committed:

**Count 3:** MURDER, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by Article 3(1) (a) of the Geneva Conventions.

**Count 4:** CRUEL TREATMENT, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3 and 7(3) of the Statute of the Tribunal and recognised by Article 3(1)(a) of the Geneva Conventions.

#### COUNTS 5-6

#### (WANTON DESTRUCTION OF CITIES, TOWNS OR VILLAGES, NOT JUSTIFIED BY MILITARY NECESSITY, PLUNDER OF PUBLIC OR PRIVATE PROPERTY)

- 44) In the course of their combat activities with the HVO and the HV in central Bosnia in 1993, ABiH 3<sup>rd</sup> Corps forces either plundered or plundered and unlawfully destroyed Bosnian Croat and Bosnian Serb dwellings, buildings and civilian personal property. These incidents of plunder and unlawful and wanton destruction not justified by military necessity were committed by the units as detailed below and include, but are not limited to the following towns and villages, on or about the dates indicated:

Dusina (Zenica Municipality)	January 1993
- 7 <sup>th</sup> Muslim Mountain Brigade	
- 303 <sup>rd</sup> Mountain Brigade	
- 17 <sup>th</sup> Krajina Mountain Brigade	
Miletići (Travnik Municipality)	April 1993
- 7 <sup>th</sup> Muslim Mountain Brigade	
- 306 <sup>th</sup> Mountain Brigade	

Guča Gora (Travnik Municipality) June 1993  
 - 7<sup>th</sup> Muslim Mountain Brigade  
 - 306<sup>th</sup> Mountain Brigade  
 - 17<sup>th</sup> Krajina Mountain Brigade

Maline (Travnik Municipality) June 1993  
 - 7<sup>th</sup> Muslim Mountain Brigade  
 - 306<sup>th</sup> Mountain Brigade

Čukle (Travnik Municipality) June 1993  
 - 7<sup>th</sup> Muslim Mountain Brigade  
 - 306<sup>th</sup> Mountain Brigade

Sušanj / Ovnak / Brajkovići /Grahovčići  
 (Zenica Municipality) June 1993  
 - 7<sup>th</sup> Muslim Mountain Brigade  
 - 306<sup>th</sup> Mountain Brigade  
 - 314<sup>th</sup> Mountain Brigade

Vareš (Vareš Municipality) November 1993  
 - 7<sup>th</sup> Muslim Mountain Brigade

- 45) **Enver HADŽIHASANOVIĆ** from about January 1993 to 31 October 1993 and **Amir KUBURA** from 1 April 1993 to March 1994 knew or had reason to know that ABiH forces under their command and effective control were about to commit such acts or had done so in the following villages, on or about the dates indicated, and they failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof:

**Enver HADŽIHASANOVIĆ:**

Dusina (Zenica Municipality) January 1993  
 Miletići (Travnik Municipality) April 1993  
 Guča Gora (Travnik Municipality) June 1993  
 Maline (Travnik Municipality) June 1993  
 Čukle (Travnik Municipality) June 1993  
 Sušanj / Ovnak / Brajkovići / Grahovčići  
 (Zenica Municipality) June 1993

**Amir KUBURA:**

Miletići (Travnik Municipality) April 1993  
 Maline (Travnik Municipality) June 1993  
 Sušanj / Ovnak / Brajkovići /Grahovčići  
 (Zenica Municipality) June 1993  
 Vareš (Vareš Municipality) November 1993

By these omissions **Enver HADŽIHASANOVIĆ** and **Amir KUBURA** committed:

**Count 5:** WANTON DESTRUCTION OF CITIES, TOWNS OR VILLAGES, NOT JUSTIFIED BY MILITARY NECESSITY, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3(b) and 7(3) of the Statute of the Tribunal.

**Count 6:** PLUNDER OF PUBLIC OR PRIVATE PROPERTY, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3(e) and 7(3) of the Statute of the Tribunal.

**COUNT 7**  
**(DESTRUCTION OR WILFUL DAMAGE OF**  
**INSTITUTIONS DEDICATED TO RELIGION)**

- 46) **Enver HADŽIHASANOVIĆ** from about June 1993 to 31 October 1993 knew or had reason to know that ABiH forces under his command and effective control, as detailed below, were about to plan, prepare or execute the destruction or wilful damage of Bosnian Croat institutions dedicated to religion in the following towns and villages, on or about the dates indicated, or had done so and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof:

Guča Gora (Travnik Municipality)	June 1993
- 7 <sup>th</sup> Muslim Mountain Brigade	
- 306 <sup>th</sup> Mountain Brigade	
- 17 <sup>th</sup> Krajina Mountain Brigade	

Travnik (Travnik Municipality)	June 1993
- "Mujahedin" subordinated to ABiH 3 <sup>rd</sup> Corps and/or 17 <sup>th</sup> Krajina Mountain Brigade	

By these omissions, **Enver HADŽIHASANOVIĆ** committed:

**Count 7:** DESTRUCTION OR WILFUL DAMAGE DONE TO INSTITUTIONS DEDICATED TO RELIGION, a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Articles 3(d) and 7(3) of the Statute of the Tribunal.

/signed and stamped/

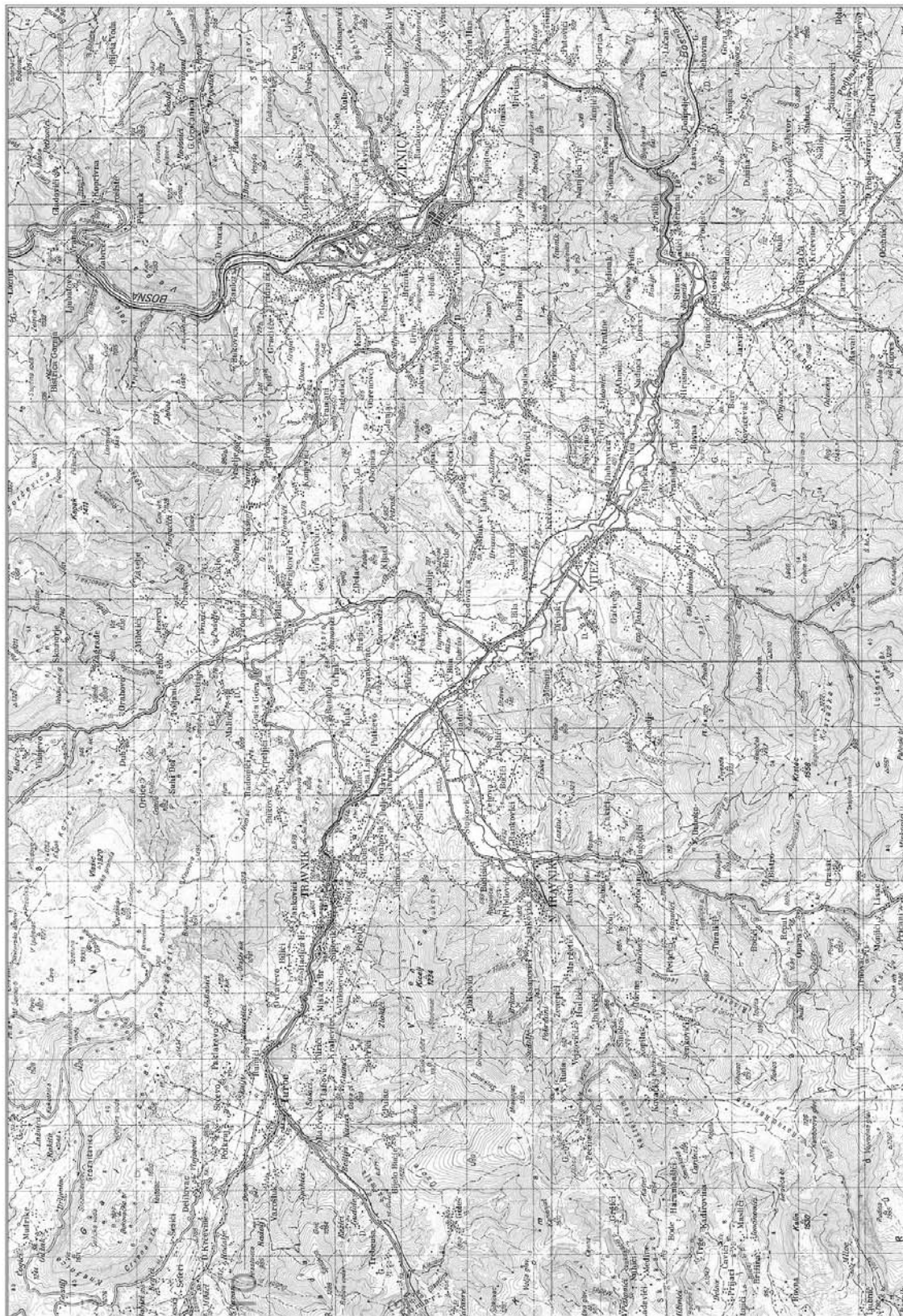
Carla Del Ponte  
Prosecutor

Dated this 26<sup>th</sup> day of September 2003  
At The Hague  
The Netherlands



**XIV. ANNEX V: MAPS**

A. DH 82 (extract)



M&P 15 March 2005

TRAVNIK ZENICA HADZHISANOVIC & KUBURA IT-01-47 Base map Zenica 474 TK100 (original scale 1:100,000)

**B. DH 84 (extract)**



MSP 15 March 2006

KAKANI VARES HADZIHASANOVIC & KUBURA IT-01-47 Base map Vares 475 TK100 (original scale 1:100,000)



C. DH 97 (extract)



BUGOJNO HADZIHASANOVIC & KUBURA IT-01-47 Base map Jajce 473-4-4 TK25 (original scale 1:25,000) M&P 15 March 2006