

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

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

**TRIAL CHAMBER III**

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

**Registrar: Mr. John Hocking**

**Filed: 31 March 2011**

**THE PROSECUTOR  
v.  
JADRANKO PRLIĆ  
BRUNO STOJIĆ  
SLOBODAN PRALJAK  
MILIVOJ PETKOVIĆ  
VALENTIN ĆORIĆ  
BERISLAV PUŠIĆ**

**PUBLIC**

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**BRUNO STOJIĆ'S REDACTED FINAL TRIAL BRIEF**

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

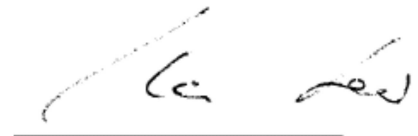
**Case No. IT-04-74-T**  
***Prosecutor v. Jadranko Prlić et al.***

**BRUNO STOJIĆ'S REDACTED FINAL TRIAL BRIEF**

Pursuant to the Trial Chamber's instruction that all parties should submit a redacted, public version of their final trial briefs before 1 April 2011, the Defence for Bruno Stojić respectfully submits the redacted version of its Final Trial Brief.

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All of which is respectfully submitted,



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

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

REDACTED PUBLIC VERSION

**BRUNO STOJIĆ'S FINAL TRIAL BRIEF**

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## Table of Contents

<b>THE INTERNATIONAL CRIMINAL TRIBUNAL</b>	<b>1</b>
<b>1. INTRODUCTION</b>	<b>4</b>
<b>2. ALLEGED JOINT CRIMINAL ENTERPRISE</b>	<b>4</b>
2.1 <i>Prosecution's allegations and Defence theory</i>	4
2.2 <i>Formation of Herceg-Bosna, HVO and Related Structures</i>	7
2.2.1 Situation in Bosnia-Herzegovina prior to 18 November 1991	8
2.2.2 Defence erected against aggression of Serb forces	12
2.2.3 The establishment of the HVO and the Territorial Defence system	13
2.3 <i>Cooperation Between HVO and ABiH Forces Throughout 1991-1994</i>	16
2.3.1 Joint Command	17
2.3.2 Arms and Material transfer	25
2.4 <i>Alleged Campaign to Prosecute Bosnian Muslims and non-Croats</i>	30
2.4.1 Policy of HVO HZ H-B not intended to discriminate against or persecute Bosnian Muslims	30
2.4.2 No HVO plan to attack the ABiH in HZ H-B as part of a criminal plan	45
2.4.3 The alleged Ultimatums were a necessary military measure in the defence against the Serbs and were not directed at the Muslim population	59
2.5 <i>Alleged Plan to Annex Portions of Bosnia Herzegovina into "Greater Croatia"</i>	67
2.5.1 No plan to establish a Greater Croatia	67
2.5.2 No agreement between Croats and Serbs	70
2.5.3 Involvement of the Republic of Croatia	78
2.6 <i>Conclusion: No common plan and JCE</i>	81
<b>3 THE CASE AGAINST BRUNO STOJIĆ</b>	<b>82</b>
3.1 <i>Defence theory</i>	82
3.1.1 No JCE Liability (Art. 7.1.)	82
3.1.2 No liability as a commander	85
3.1.3 No liability for planning, instigating or ordering	89
3.2 <i>The Defence Department as an overarching administrative body</i>	89
3.2.1 <i>De jure</i> role of the Defence Department	90
3.2.2 Logistical and administrative work of the Defence Department	92
3.2.3 Municipal HVO institutions, including regional Defence Administrations and municipal Defence Offices, controlled and influenced local decisions.	109
3.3 <i>Bruno Stojić did not have control over military operations and is not liable for crimes committed in the course of military operations</i>	117
3.3.1 No control over armed forces	117
3.3.2 No control over the Security Sector	126
3.3.3 Stojić did not condone crimes or failed to prevent and punish	142
3.3.4 No liability under Article 7 (1) and (3)	143
3.4 <i>Bruno Stojić did not take part in decisions on alleged policies of the HVO/HZ H-B and is not liable for crimes allegedly committed pursuant to any such policy</i>	145
3.4.1 Bruno Stojić did not take part in any policies aiming at the discrimination, subjugation or "Croatisation" of Muslims or any propaganda aiming at engendering hatred of Bosnian Muslims among Bosnian Croats (paragraphs 17 (d) and (e), 17.2. (i) and (l) of the Indictment)	145
3.4.2 Stojić was not involved in the shipment of arms through BiH in participation in and furtherance of the alleged JCE (paragraph 17.2.(g) of the Indictment)	151

3.4.3	Bruno Stojić did not facilitate the support of Republic of Croatia for HVO armed forces in participation in or furtherance of the alleged JCE (paragraph 17.2.(h) of the Indictment)	153
3.4.4	Bruno Stojić did not block passage of humanitarian aid to Bosnian Muslims in participation in or furtherance of the alleged JCE (paragraph 17.2.(o) of the Indictment)	154
3.4.5	Bruno Stojić did not direct, facilitate and participate in appropriation of property and transfer to HZ HB/HVO forces in participation in or furtherance of the alleged JCE (paragraph 17.2.(n) of the Indictment)	157
3.5	<i>Bruno Stojić did not have control over HVO detentions or detention facilities</i>	165
3.5.1	Scope and limitations of the Decree on the Treatment of Captured Persons During Armed Combat	166
3.5.2	Detention facilities were under control of OZ command	167
3.5.3	Bruno Stojić was not involved in the operation of any HVO detention centre	169
3.5.4	Stojić had no knowledge of or involvement in the practice of forced labor	179
3.5.5	Medical care for prisoners was not the responsibility of Health Sector	181
3.5.6	The Defence Department was not involved in the release or exchange of prisoners	182
3.5.7	Authority to close prisons not with the Defence Department	183
3.5.8	Stojić's Role	183
3.5.9	Unreliability of Exhibit 4D00461	187
3.5.10	No liability under Article 7 (1) and (3)	188
3.6	<i>Conclusion</i>	190
<b>4</b>	<b>SENTENCING</b>	<b>191</b>
<b>5</b>	<b>FINAL CONCLUSION</b>	<b>191</b>

## 1. INTRODUCTION

1. Pursuant to the Trial Chamber's Second Amended Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence) dated 6 December 2010, as well as the Third Amended Scheduling Order dated 4 January 2011,<sup>1</sup> and Rule 86 (B) of the Tribunal's Rules of Procedure and Evidence, the Defence for Bruno Stojić hereby files its Closing Brief.

## 2. ALLEGED JOINT CRIMINAL ENTERPRISE

### 2.1 Prosecution's allegations and Defence theory

3. Paragraph 15 of the Indictment encapsulates the Prosecution's case regarding the scope, nature and objectives of the Joint Criminal Enterprise (JCE) alleged in this trial. The Defence repudiate that theory and submit that the Prosecution have failed to establish the existence of the JCE alleged to the requisite standard.
4. The Prosecution must establish, beyond reasonable doubt, *inter alia*, that a common plan, design or purpose existed, which amounted to or involved the commission of a crime provided for in the Statute.<sup>2</sup> In other words, the common plan, purpose or design has to be inherently criminal, that is, "either have as its objective a crime within the Statute, or contemplate crimes within the Statute as the means of achieving its objective."<sup>3</sup> It must be proven that the plan existed at the time the alleged crimes were committed.<sup>4</sup>
5. What this means, in the context of the present case, is that the Prosecution must prove, beyond a reasonable doubt, that a common plan existed to a) subjugate and remove Muslims and other non-Croats from the area alleged in the indictment, *and* b) establish a "Greater Croatia" by committing crimes punishable under the Statute of the ICTY.
6. The existence of a common plan itself may be inferred from the existence of a state-wide or regional policy,<sup>5</sup> "from the fact that a plurality of persons acts in unison to put into effect a JCE,<sup>6</sup> as

<sup>1</sup> Troisième Ordonnance Portant Modification du Calendrier (Mémoires en Clôture, Réquisitoire, et Plaidoiries Finales), 4 January 2011.

<sup>2</sup> *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 227.

<sup>3</sup> *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (hereafter *RUF*), Trial Judgment, 2 March 2009, para. 260; *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu* (hereafter *AFRC*) Appeal Judgment, para. 80; See also *Prosecutor v. Martić*, IT-95-11-A, Judgment, paras 112-123, endorsing *Prosecutor v Martić*, IT-95-11-T, Judgment, para. 442.

<sup>4</sup> *Prosecutor v. Blagoje Simić et al.*, IT-95-9-T, Judgment, 17 October 2003, para. 987.

<sup>5</sup> *Prosecutor v. Milomir Stakić*, IT-97-24-T, Judgment, 31 July 2003, para. 470-471. The *Stakić* Trial Chamber inferred that the state policy (as expressed by Karadžić in his six points) evidenced, and in fact, equaled a common goal. It appears that a "state policy" constitutes an aim or goal of a state (or state-like entity, per *Stakić*), and is evidenced by the espousal and support of that plan by political and military leaders.

<sup>6</sup> *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 227; *Prosecutor v. Anto Furundžija*, IT-95-17/1-A, Judgment, 21 July 2000, para. 119.

well as from coordinated cooperation of the military and political sphere aimed at implementing of the policy.<sup>7</sup> Joint control over the criminal conduct may also give rise to an inference that a JCE existed.<sup>8</sup> For the reasons detailed in this part of the Final Trial Brief, the Defence submit that the Prosecution have failed to establish that the JCE alleged existed.

7. Firstly, the Prosecution have failed to establish the existence of a state-wide or regional policy aiming subjugating or removing Bosnian Muslims and establishing the "Greater Croatia":
  - a. The HDZ BiH and the HZ H-B leadership pursued legitimate political objectives aimed at democratic representation of the Croats in BiH as a constituent nation. The HVO/HZ H-B bodies were not intended to undermine State institutions and did not constitute a parallel State structure, as the Prosecution allege. The HVO was created in circumstances where the central BiH authorities were under siege and unwilling or unable to act in order to protect the rights of its citizens (2.2.1.).
  - b. The HVO/HZ H-B leadership, including the alleged JCE members, pursued legitimate objectives: The transformation of the JNA into a Serb army, combined with its seizure of TO weapons, had a profound effect on the balance of power amongst the three constituent people of BiH and posed a serious threat to the Bosnian Croats. Indeed, so acute was this danger that Bosnian Croats started to organise themselves even before the HVO was established. The *raison d'être* of the HVO was to prepare and organise an effective and coordinated defence against Serb aggression (2.3.2.).
  - c. Contrary to what the Prosecution alleged in this case, the evidence demonstrates that the HVO did cooperate with the "new" TO (2.2.3), later and throughout the Indictment period with the ABiH (2.3.). This cooperation was formalised by agreements in October 1992, March 1993 and April 1993 to establish joint commands between both armies (2.3.1.). Cooperation between the HVO and ABiH was wide ranging and significant and included such essentials as shipment of MTS to the ABiH from the Republic of Croatia via the HVO. It also included training in Croatia for members of ABiH. This cooperation throughout 1992 and 1993 was critical to the ABiH, in order to obtain weapons and indeed, to allow BiH to survive (2.3.1.).
  - d. The official policy of the HVO HZ H-B was not intended to discriminate against, never mind persecute Bosnian Muslims, as the Prosecution contend. Any discriminatory or criminal actions committed by municipal authorities or individuals, not under the effective control of the HVO leadership cannot be placed at the table of the HVO. Contrary to what the Prosecution

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<sup>7</sup> *Prosecutor v. Milomir Stakić*, IT-97-24-T, Judgement, 31 July 2003, para. 478ff; *Prosecutor v. Blagoje Simić et al.*, IT-95-9-T, Judgment, 17 October 2003, para. 461.

<sup>8</sup> *Prosecutor v. Milomir Stakić*, IT-97-24-T, Judgement, 31 July 2003, paras. 490-491.

contend,<sup>9</sup> the HVO cooperated with humanitarian organisations in order to distribute humanitarian aid equally and to all persons in need. Again, failings, difficulties and the prevailing dynamic, at the local and municipal level, must be acknowledged and understood in order to properly determine whether a JCE existed involving the HVO leadership specified in the Indictment. (2.4.1.).

- e. Both the HVO and the ABiH were considered legitimate defence forces against the Serbs. The HVO defended BiH as a whole and, to this end, subordinated itself to the ABiH (2.3. and 2.4.3.).
- f. Properly understood, the evidence demonstrates that such conflicts, as arose between the HVO and the TO/ABiH in the HZ H-B, were either (i) isolated events, largely the consequence of the dynamic of politics within certain municipalities and the individual commanders there or (ii) the result of attacks carried out by the ABiH, rather than part of any concerted policy on the part of the HVO/HZ H-B to push a discriminatory or criminal agenda as the Prosecution allege (2.4.2.).
- g. Measures, such as the so-called “ultimatums” to subordinate, were actually necessary in order to establish an effective defence against Serb aggression that had already caused great suffering and which challenged the very existence of BiH and her Croat and Muslim communities. The proposal that various units of the ABiH subordinate themselves to the HVO was limited to certain areas within BiH and was based on a bilateral agreement between the representatives of HZ H-B and BiH. It is important to emphasise that this HVO policy was strictly limited to the re-subordination of the Muslim armed forces into the HVO, and did not, in any way, include a plan to ethnically cleanse or otherwise remove Bosnian Muslims from these areas. (2.4.3.)
- h. Tudjman was indeed involved in negotiations regarding the political and military situation in BiH. It was natural that he would be, given his position as Head of State and Croatia’s proximity to BiH. Whilst meetings between Tudjman and representatives of the HVO leadership were indeed fairly frequent, the HVO and Croatia did not embark upon, or otherwise agree, a policy aimed at subjugating or removing Muslims from the HZ-HB as alleged by the Prosecution. (2.5.1.)
- i. Nor did the HVO/HZ H-B collaborate with the Bosnian Serbs who were responsible for widespread crimes in BiH in order to achieve the alleged territorial objectives. The evidence establishes that there were temporary and geographically limited agreements between all parties at different stages in the conflict, including between the Bosnian Serbs and Bosnian Muslims. Any agreements entered into between the HVO and the Bosnian Serbs only served defensive military, tactical or logistical purposes and were not part of any strategy to annex parts of BiH or create a “Greater Croatia” by committing crimes. Furthermore, there is neither

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<sup>9</sup> Indictment, para. 26.



evidence to show that there was an agreement between the Presidents Tudjman and Milošević to divide BiH, in order to satisfy the alleged Croatian territorial ambitions, nor any evidence to show that a policy was ever adopted to that end. (2.5.3.).

- j. The fact that Croatia provided material assistance to both the Bosnian Croat and Bosnian Muslim forces and kept its borders open to both Croat and Muslim refugees, provides important evidence demonstrating the fallacy of the Prosecution's JCE theory. (2.5.3.)
8. Secondly, the factors detailed above also refute the idea that a plurality of persons acted in unison to implement the JCE alleged. Rather, such criminal acts, that were committed and relied upon by the OTP as evidence of a JCE, should properly be considered as the acts of individuals or municipal authorities, which are not imputable to those alleged to be part of the JCE (see 2.4.1. and 2.4.2.3.). This is because those responsible for the commission of such crimes were not under the authority of the HVO/HZ H-B leadership. Such acts were not committed at the behest of the HVO or pursuant to instructions, policy decision or operational orders taken by the leadership. Moreover, there was generally a lack of coordination between the different "central" HVO bodies, as well as disorganisation and confusion on the competencies and authority of the various bodies for much of the time. This militates against a finding of a JCE. In relation to crimes at a local, municipal or individual commander level, the Prosecution have not established that they were the result of coordinated cooperation between the military and political parts of the HVO leadership, exercising joint control over the criminal conduct. Accordingly, this characteristic of JCE is absent.<sup>10</sup>
9. The Prosecution is required to present direct evidence in support of its JCE allegations. In absence of direct evidence, the inference from circumstantial evidence that there existed a JCE with the objective to commit such crimes "must be the only reasonable conclusion on the evidence."<sup>11</sup>

## 2.2 Formation of Herceg-Bosna, HVO and Related Structures

10. The HDZ BiH and the HZ H-B were not created with the objective of creating a "Greater Croatia." Rather, the aim was to pursue legitimate political objectives, such as preserving the political rights of the Croats, including their democratic representation as a constituent nation in BiH. Furthermore, they assumed political functions in circumstances where the central government in Sarajevo was under siege and was otherwise unable to discharge its responsibilities adequately throughout its territory.

<sup>10</sup> See *Prosecutor v. Milomir Stakić*, IT-97-24-T, Judgement, 31 July 2003, para. 490: "[t]he common goal could not be achieved without joint control over the final outcome and it is this element of interdependency that characterises the criminal conduct."

<sup>11</sup> *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Judgement, 3 April 2008, para. 475.

11. The HVO/HZ H-B military bodies had legitimate defence objectives and intervened when the State was unwilling or was unable to react to war caused by the Serbs. The transformation of the JNA into a Serb army, combined with its dismantling of the TO, posed a serious threat to the Bosnian Croats. At its simplest, the HVO was created in order to provide an effective and coordinated defence in circumstances where there was otherwise an absence of state protection.

## **2.2.1 Situation in Bosnia-Herzegovina prior to 18 November 1991**

### **2.2.1.1 Political situation in Bosnia Herzegovina**

#### **2.2.1.1.1 Political parties**

12. The HDZ BiH was formed on 18 August 1990. The party programme, based on principles of human rights<sup>12</sup> and aiming at ending discrimination on ethnic grounds,<sup>13</sup> advocated a pluralist society and a multiethnic state, with equal rights of *all* constituent peoples.<sup>14</sup> In the wake of the 1990 elections, the HDZ aimed for a sovereign BiH and equality for the Croats within it.<sup>15</sup>
13. On 10 July 1991, it became clear that the HDZ BiH Presidency did not want BiH to remain within a Serb-dominated “rump Yugoslavia,”<sup>16</sup> in the event Slovenia and Croatia would cede.<sup>17</sup> Despite the Prosecution’s assertions to the contrary, the Defence submit that the evidence is clear: by the end of the joint meeting of the HDZ BiH Presidency and the Crisis Staff on 8 October 1991, the HDZ BiH advocated an independent and indivisible Bosnia and Herzegovina.<sup>18</sup>

#### **2.2.1.1.2 Negotiations regarding the status of Bosnia-Herzegovina**

14. According to the Prosecution a “secret” meeting was held in March 1991, in Karadjordjevo between Tudjman and Milošević.<sup>19</sup> Allegedly, “the discussions aimed for the division of [BiH]” and Tudjman thought that they could negotiate the reorganisation of Yugoslavia, including the partition of Bosnia “without Milošević being a military threat to Croatia.”<sup>20</sup> The Prosecution rely upon an article,

<sup>12</sup> 1D02699, Statute of HDZ BiH and the Programmatic Declaration of the founding assembly of HDZ BiH, 18 August 1990. See the Programme Declaration of the Founding Assembly of the Croatian Democratic Union of BH, Roman numeral III and number C, page 16.

<sup>13</sup> Zdravko Batinić, 10 November 2008, T.34318:22-34320:14.

<sup>14</sup> Zdravko Batinić, 10 November 2008, T.34314:9-34316:18; See also Zdravko Batinić, 10 November 2008, T.34316:19-34318:21; and 1D02798, Election proclamation of HDZ Gornji Vakuf, 22 September 1990.

<sup>15</sup> See Stjepan Kljuić, 26 June 2006, T.3837:16-3837:25; [REDACTED]. The HDZ repeatedly reiterated its support for the territorial integrity of BiH, including on 23 March 1991, when it also expressed support for the continuation of political dialogue without threats of using force or external pressure, and 16 April 1991, when it condemned any attempts to change the borders of Bosnia-Herzegovina. See P00031, Political platform of the Croatian Democratic Union Bosnia Herzegovina, 23 March 1991, page 3; P00034, Stamped excerpt from the minutes of the Second Session of the Presidency of Croatian Democratic Union of Bosnia and Herzegovina, signed by Ignac Kostroman and Stjepan KLUJIC. Ref: 151/91, 16 April 1991; and Stjepan Kljuić, 26 June 2006, T.3861:16-3862:1.

<sup>16</sup> P00041, Stamped excerpt from the minutes of the 9th regular meeting of the Croatian Democratic Union of Bosnia and Herzegovina, signed by Ignac Kostroman and Kljuić Stjepan, 10 July 1991, p. 2.

<sup>17</sup> Stjepan Kljuić, 26 June 2006, T.3871:15-3873:1.

<sup>18</sup> P00060, Stamped and signed Conclusions of the Joint Meeting of the Presidency of the BH Croatian Democratic Union Crisis Staff of the Republic, 8 October 1991. See also Stjepan Kljuić, 27 June 2006, T.3906:7-3906:21.

<sup>19</sup> See also Section 2.5.2.

<sup>20</sup> Opening statement, 26 April 2006, T.815:1-815:9.

according to which Tudjman allegedly presented the partition to be a Serbian idea.<sup>21</sup> However, the Prosecution have not presented any evidence that the Bosnian Croats, including the allegedly nationalist elements of the HDZ BiH, attended this meeting or sought to cooperate with Milošević or the Bosnian Serbs regarding the division of Bosnia. As a matter of fact, the Bosnian Croats were opposed to cooperation, due to sustained and brutal Serb aggression.<sup>22</sup>

15. The Bosnian Croats were involved in their own negotiations regarding the status of BiH. All three peoples in BiH had a commission for cantonisation.<sup>23</sup> The HDZ BiH's Commission for Cantonisation was established on 18 September 1991.<sup>24</sup> The HDZ did not intend cantonisation to divide BiH. It wanted a unitary BiH but with a new administrative organisation.<sup>25</sup> Whilst no agreement could be reached (largely due to the intransigence and unreasonable demands of the Serbs),<sup>26</sup> the goal and preferred option of the HDZ BiH is relevant in assessing their intent and whether the Prosecution's contended JCE theory is well founded or not.
16. In the course of the year 1991, a number of meetings were held between Muslims and Serbs at different levels.<sup>27</sup> In August 1991, a proposal for an agreement was made for a potential compromise between Serbs and the Muslims which would bypass the Bosnian Croats.<sup>28</sup> [REDACTED],<sup>29</sup> refers to the Republic of BiH as part of Yugoslavia and the need for a common constitution for all Republics.<sup>30</sup> [REDACTED].<sup>31</sup> At the same time Bosnian Croats aimed at a peaceful and undivided BiH. The HDZ BiH considered that the 'historical agreement' would drag BiH into a "large-scale war" and that an agreement between two parties, by-passing the third, is a risk to peace.<sup>32</sup> The talks between the Bosnian Serbs and Muslims did not result in a long-lasting agreement. However, their attempt to come to an understanding, raised suspicion among the Croat population and leadership.

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<sup>21</sup> P10968, Article of Vjesnik, discussing the reports of a planned partition of BiH by Milošević and Tudjman in the wake of Karadjordjevo talks between the 2 Presidents, p. 2.

<sup>22</sup> Stjepan Kljuić, 26 June 2006, T.3845:22-3847:18.

<sup>23</sup> Stjepan Kljuić, 26 June 2006, T.3901:22-3902:5.

<sup>24</sup> P00058, Stamped Conclusions of the BH Croatian Democratic Union Security Council meeting, with addendum diagram of crisis staffs, signed by Ignac Kostroman and Stjepan Kljuić, 18 September 1991, para. 11.

<sup>25</sup> Stjepan Kljuić, 26 June 2006, T.3902:3-11.

<sup>26</sup> Stjepan Kljuić, 26 June 2006, T.3907:5-11; 27 June 2006, T.3955:15-3956:7.

<sup>27</sup> See, e.g., Stjepan Kljuić, 28 June 2006, T.4125:19-4126:6.

<sup>28</sup> Stjepan Kljuić, 9 October 2006, T.8045:8-8046:17.

<sup>29</sup> [REDACTED].

<sup>30</sup> 1D00475, Serbian-Muslim 'Historical Agreement': Muhamed Filipović-Radovan Karadžić, 2 August 1991, especially points 1 and 6.

<sup>31</sup> [REDACTED].

<sup>32</sup> 1D00480, HDZ BiH - Statement, 1 August 1991, para. A.

## 2.2.1.2 Military situation in Bosnia Herzegovina

### 2.2.1.2.1 The JNA's transformation into a Serb army and the dismantling of the TO

17. On 17 August 1990, the JNA openly sided with the Serb aggression against Croatia.<sup>33</sup> Also, in 1990, the JNA seized weapons belonging to the TO in Croatia and in BiH,<sup>34</sup> significantly weakening their ability to defend themselves in the event of attack.

### 2.2.1.2.2 Risk of spill-over of the war from Croatia to BiH

18. [REDACTED].<sup>35</sup> Volunteers from BiH went to war in Croatia, while “reservists from Serbia and Montenegro arrived in [BiH].”<sup>36</sup> The JNA launched attacks against the Republic of Croatia from the territory of BiH.<sup>37</sup> The presence of the JNA in BiH represented a *de facto* occupation or was sometimes described as a “silent occupation” by the Bosnian Croats.<sup>38</sup> Since BiH was still a part of Yugoslavia, its Presidency was unable to stop the JNA. Therefore, the JNA was occupying territories within Croatia and BiH.<sup>39</sup>

19. Two Bosnian Croat delegations were received in Zagreb from 13 to 20 June 1991 to discuss a way to protect BiH and the Croatian population within and to establish cooperation between BiH and Croatia,<sup>40</sup> due to the conflict in Croatia and the danger to BiH.<sup>41</sup> A solution to the problem of the lack of “continuity and communication among the Croats of [BiH]” caused by their geographical dispersion in BiH was sought.<sup>42</sup> During the meeting on 13 June 1991, the following options were discussed: (1) a Yugoslav confederation; (2) an integral BiH; and (3) in case of division of the territory, (a) the Bosnian Croats and Muslim joining Croatia or (b) every entity taking its part.<sup>43</sup> Shortly after, in July 1991, the HDZ considered the situation in BiH to be “extremely dramatic due to aggressive Greater Serbia policy.”<sup>44</sup> At this point, areas were preparing to secede as Serbian

<sup>33</sup> Josip Jurčević, 14 September 2009, T.44735:20-44736:10. See also Stjepan Kljuić, 9 October 2006, T.7966:5-22; and 28 June 2006, T.4091:8-4091:13.

<sup>34</sup> Momir Zuzul, 21 July 2008, T.31112:17-31112:19. See also Hamid Bahto, 11 March 2009, T.37897:5-37897:18; and Stjepan Kljuić, 28 June 2006, T.4156:5-4156:13.

<sup>35</sup> See [REDACTED]. See also P00041, Stamped excerpt from the minutes of the 6<sup>th</sup> regular meeting of the Croatian Democratic Union of Bosnia and Herzegovina, signed by Ignac Kostroman and Kljuić Stjepan, 10 July 1991, p. 1, item 1 (“The situation in the entire homeland was estimated as extremely dramatic and that, due to aggressive greater-Serbian policy, a widespread armed conflict may be expected at any time”).

<sup>36</sup> Stjepan Kljuić, 26 June 2006, T.3848:15-3849:1.

<sup>37</sup> 3D03742, Map showing plan of attack to Croatia after the retreat of JNA from Slovenia (July 1991), (no main date).

<sup>38</sup> P00042, Stamped HDZ BiH Communication to all Municipal Councils, signed by Dario Kordić and Ignac Kostroman re: agenda and minutes of a meeting in Busovača, 21 July 1991, p. 2. See also Stjepan Kljuić, 26 June 2006, T.3868:2-3868:17.

<sup>39</sup> Stjepan Kljuić, 28 June 2006, T.4104:14-4106:15; Hamid Bahto, 11 March 2009, T.37895:17-37896:4.

<sup>40</sup> Stjepan Kljuić, 26 June 2006, T.3864:16-3867:1.

<sup>41</sup> Milivoj Gagro “supported the idea of creating a Croatian Community of Herceg-Bosna”. See Milivoj Gagro, 29 May 2006, T.2684:6-2684:22.

<sup>42</sup> Milivoj Gagro, 29 May 2006, T.2685:2-2685:7.

<sup>43</sup> Stjepan Kljuić, 27 June 2006, T.3950:19-3951:4.

<sup>44</sup> P00041, Stamped excerpt from the minutes of the 6<sup>th</sup> regular meeting of the Croatian Democratic Union of Bosnia and Herzegovina, signed by Ignac Kostroman and Kljuić Stjepan, 10 July 1991, page 1, item 1.

Krajinas.<sup>45</sup> On 26 August 1991 the HDZ was expecting the war to spread to BiH and made the JNA responsible for the situation.<sup>46</sup>

### 2.2.1.2.3 The position of neutrality of the Government and the effect on the Croats

20. On 6 October 1991, President Izetbegović declared that the war in and against Croatia “is not our war.”<sup>47</sup> Different reasons were given to explain this position. Firstly, he believed that the JNA would not attack BiH.<sup>48</sup> [REDACTED].<sup>49</sup> [REDACTED].<sup>50</sup> [REDACTED].<sup>51</sup> The second reason is that the “neutrality” might have been seen as a way to prevent the Croats and Muslims from taking part in these hostilities.<sup>52</sup> Indeed, the government of BiH might not have had the means to prevent the shelling of Croatia from its territory anyway.<sup>53</sup> According to Kljuić, “nobody” in BiH did.<sup>54</sup> On 8 October 1991, Kljuić and Kostroman endorsed the decision of the BiH Presidency regarding the neutrality of BiH.<sup>55</sup> However, Izetbegović called BiH conscripts not to go and fight on the side of the JNA war against Croatia.<sup>56</sup>
21. Notwithstanding the reasons, the result was inaction that was acutely felt by Bosnian Croats who were left without protection.<sup>57</sup> Facing the grim prospect of a war conducted by JNA and Serb forces, the Bosnian Croats felt threatened and contemplated the necessity of arming and defending themselves independently of the decisions taken by the Presidency in Sarajevo. Kljuić confirmed that “as early as April 1991, it was becoming clearer and clearer every day that BiH was going to face ultimately the JNA and the Serbian aggression.”<sup>58</sup>

<sup>45</sup> Stjepan Kljuić 26 June 2006, T.3868:2-3868:17.

<sup>46</sup> See P00041, Stamped excerpt from the minutes of the 6<sup>th</sup> regular meeting of the Croatian Democratic Union of Bosnia and Herzegovina, signed by Ignac Kostroman and Kljuić Stjepan, 10 July 1991, page 1 Item 1. See also Stjepan Kljuić, 28 June 2006, T.4103:24-4104:13.

<sup>47</sup> P10451, Article from *Oslobodenje*: Alija Izetbegovic Message To The Citizens of Bosnia and Herzegovina This Is Not Our War, 7 October 1991. [REDACTED].

<sup>48</sup> Stjepan Kljuić, 9 October 2006, T.7967:3-7968:5.

<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED]. See also P00042, Stamped HDZ-BiH communication to All Municipal Councils, signed by Dario Kordić and Ignac Kostroman re: agenda and minutes in Busovača, 21 July 1991.

<sup>51</sup> [REDACTED].

<sup>52</sup> Stjepan Kljuić, 27 June 2006, T.4015:2-4017:21.

<sup>53</sup> Stjepan Kljuić, 27 June 2006, T.4015:2-4017:21.

<sup>54</sup> Stjepan Kljuić, 9 October 2009, T.8054:7-8055:16.

<sup>55</sup> P00060, Stamped and signed Conclusions of the Joint Meeting of the Presidency of the BH Croatian Democratic Union and the BH Croatian Democratic Union Crisis Staff of the Republic, 8 October 1991.

<sup>56</sup> Momir Zuzul, 21 July 2008, T.31115:25-31116:2.

<sup>57</sup> See Section 2.2.2.

<sup>58</sup> Stjepan Kljuić, 28 June 2006, T.4087:22-5.

## 2.2.2 Defence erected against aggression of Serb forces

22. Serb aggression started in 1991, when the JNA and Serb forces attacked Livno and reached Mostar. In 1992, Mostar, Bosanska Posavina, Tomislavgrad, Livno, Jajce, Bugojno, and Stolac were shelled and attacked. The aggression continued until 1995. From the second half of 1991 Bosnians started to organise themselves as best they could in order to defend themselves from Serb aggression<sup>59</sup> and the “Greater Serbia” policy that was mercilessly being pursued.<sup>60</sup>
23. The first attack by the JNA and the Serb paramilitary forces against the Bosnian Croats took place on 15 September and on 6 October 1991 in Ravno,<sup>61</sup> [REDACTED].<sup>62</sup> This attack is very significant to an understanding of the development of events and the role of the HVO. The fact that the Bosnian Croats were the only victims in the incident, fuelled the debate on the ability and willingness of the authorities in Sarajevo to protect the Croatian population.<sup>63</sup> The JNA corps reached Mostar on 19 September 1991.<sup>64</sup> JNA forces withdrawing from Slovenia and partly from Croatia, redeployed to locations around Mostar, heavily shelling Croatia from these new positions.<sup>65</sup>
24. [REDACTED].<sup>66</sup> In April 1992, Bosanski Brod was shelled by the Serb forces on a daily basis.<sup>67</sup> By 6 October 1992, the Derventa municipality was completely under Serb control.<sup>68</sup> As a consequence, the Posavina was isolated. As of November 1992, the only way to cross the area around Orasje and to reach Mostar was by air.<sup>69</sup>
25. Mostar experienced daily shelling in the course of 1992<sup>70</sup> and especially in April 1992 heavy shelling occurred and fighting in the town,<sup>71</sup> as well as bombardment.<sup>72</sup> On 27 April 1992, after this heavy shelling, the BiH Presidency decided that the JNA should leave the BiH territory. However, the JNA continued shelling Mostar that day,<sup>73</sup> as well as on 30 April. As a consequence, the BiH

<sup>59</sup> This particular aspect will be detailed in Section 2.2.3.

<sup>60</sup> Josip Manolić, 5 July 2006, T.4516:15-21. See also Slobodan Praljak, 22 June 2009, T.41798:18-41798:25.

<sup>61</sup> 3D00432, prezentacija map Ravno Unista, 7 October 2006 (confirmed by testimony of Stjepan Kljuić, 9 October 2006, T.8019:1-8). See also, Herbert Okun, 3 April 2007, T.16836:25.

<sup>62</sup> [REDACTED].

<sup>63</sup> William Tomljanovich, 18 September 2006, T.6810:14-6812:3.

<sup>64</sup> Milivoj Gagro, 29 May 2006, T.2746:12-13.

<sup>65</sup> Milivoj Gagro, 29 May 2006, T.2695:9-2696:7.

<sup>66</sup> [REDACTED].

<sup>67</sup> Stipo Buljan, 11 February 2009, T.36778:3-6; Makar Andjelko, 24 March 2009, T.38501:2-14.

<sup>68</sup> Stipo Buljan, 11 February 2009, T.36754:21-36754:22. See also (for the details on the war in the Posavina) Stipo Buljan, 11 February 2009, T.36730:3-6, T.36739:2-36739:10, T.36729:8-36729:24 and T.36774:19-36774:21.

<sup>69</sup> Stipo Buljan, 11 February 2009, T.36736:19-36737:23.

<sup>70</sup> See, e.g., Bozo Perić, 8 December 2009, T.47954:12.

<sup>71</sup> Stjepan Kljuić, 28 June 2006, T.4179:25-4186:16.

<sup>72</sup> Stjepan Kljuić, 28 June 2006, T.4190:15-4191:3.

<sup>73</sup> Stjepan Kljuić, 28 June 2006, T.4195:14-4197:5.

TO Headquarters ordered its units to resist the JNA.<sup>74</sup> The fighting that followed destroyed important infrastructure, such as the electrical supply network, PPT installations and water supply which lead to water and power shortages.<sup>75</sup> Furthermore, Mostar was cut off on around 10 May 1992. By 13 May, inhabitants of East Mostar fled to West Mostar.<sup>76</sup> On 19 May, the Mostar HDZ and SDA signed an agreement on joining forces against the Serbs and the Muslims in Mostar called all their combatants to join the HVO.<sup>77</sup>

26. In June 1992, Croats and Muslims liberated Mostar,<sup>78</sup> but the Serbs withdrew to positions from which they were able to control the entire city.<sup>79</sup> Fighting continued on the Mostar front.<sup>80</sup>
27. From around 5 April 1992, Sarajevo was under siege and cut off from the rest of the country. Generally, the State institutions were unable carry out all their tasks.<sup>81</sup> On 18 April, Sarajevo was heavily attacked.<sup>82</sup> Finally, on 21 April, Izetbegović called the inhabitants of Sarajevo to defend their town.<sup>83</sup>

### **2.2.3 The establishment of the HVO and the Territorial Defence system**

28. This section will address the Prosecution assertion that the HVO was an essential instrument of the JCE and that its structures and processes were used to pursue and implement the JCE alleged.<sup>84</sup> It was not. Rather, it was established at a time when the Bosnian Croat population was insufficiently protected from Serb aggression and the central authorities in Sarajevo were cut off from the rest of BiH.

#### **2.2.3.1 The organisation of the territorial defences in the former Yugoslavia**

29. The military forces of the SFRY were organised along the concept of All People's Defence which consisted of two components: the JNA and the TO.<sup>85</sup> The JNA was a Federal institution controlled by the state. On the other hand, each of the six Republics and two provinces had their own TO.<sup>86</sup> Unlike the JNA, the TO was exclusively a wartime component. Every municipality had its own TO staff in peacetime and the structure would grow in wartime.<sup>87</sup> The TO structure was strongly influenced by local political and party structures, since the municipalities were in charge of the

<sup>74</sup> Stjepan Kljuić, 28 June 2006, T.4197:11-4198:21.

<sup>75</sup> Veso Vegar, 17 February 2009, T. 37021:25-37022:23.

<sup>76</sup> Stjepan Kljuić, 28 June 2006, T.4210:25-4211:4.

<sup>77</sup> Stjepan Kljuić, 28 June 2006, T.4212:3-10.

<sup>78</sup> Vinko Marić, 11 January 2010, T.48102:23-48102:25.

<sup>79</sup> Milivoj Gagro, 29 May 2006, T.2725:5-2726:3. See also Stjepan Kljuić, 28 June 2006, T.4210:12.

<sup>80</sup> 2D03070, HZ HB BVO, Operative Group 'South East Herzegovina Report, str.con.01-286/964, signed by Brigadier Milenko Brkić, 6 August 1992, paras. 1-2.

<sup>81</sup> Stjepan Kljuić, 28 June 2006, T.4187:2-4188:17.

<sup>82</sup> Stjepan Kljuić, 28 June 2006, T.4190:18-4190:19.

<sup>83</sup> Stjepan Kljuić, 28 June 2006, T.4190:20-4190:22.

<sup>84</sup> Indictment, paras. 25 and 17 (a).

<sup>85</sup> Davor Marijan, 19 January 2009, T.35585:9-17; See also Zoran Buntić, 7 July 2008, T.30248:9-30249:2; Herbert Okun, 4 April 2007, T.16875:16-23.

<sup>86</sup> Davor Marijan, 19 January 2009, T.35586:7-35586:12.

<sup>87</sup> Davor Marijan, 19 January 2009, T.35586:12-35586:25.

appointments and the equipment.<sup>88</sup> [REDACTED].<sup>89</sup> In terms of the command, the TO fell within the ambit of the Republican TO Staff and the municipalities. In case of an attack on the territory BiH, the municipality would issue orders to the TO.<sup>90</sup>

### 2.2.3.2 The presence of the JNA and the confiscation of TO material

30. [REDACTED]<sup>91</sup> and up to April 1992 the JNA had the legal right to be present on Bosnian territory since it was part of the SFRY.<sup>92</sup> In 1989 and 1990, up until 1991, pursuant to a decision by the Federal Secretariat for All People's Defence, the JNA proceeded seizing weapons belonging to the TO by force, both in Croatia and in BiH.<sup>93</sup> In BiH, weapons were seized in the predominantly Croat and Muslim areas, but not in predominantly Serb municipalities. The weapons seized were redistributed to Serb civilians in predominantly Serb municipalities.<sup>94</sup> These events, in June 1991, understandably led to anxiety and rising tension in BiH.<sup>95</sup>
31. [REDACTED].<sup>96</sup> The part of the TO which did not side with the JNA and ultimately the Serbs, remained poorly armed and equipped.<sup>97</sup> The only way for BiH was to procure weapons through Croatia and Slovenia, which provided weapons to established military units.<sup>98</sup>

### 2.2.3.3 Establishment of the HVO and its defensive purpose

32. The establishment of the HVO was based on the rationale of the TO, namely that in the event that the civilian population was cut off from federal government, there would be sufficient weapons and a plan of defence on the municipal level to allow the population to organise itself politically or militarily.<sup>99</sup> Before the establishment of the HVO, the Bosnian Croats, as well as the Muslims, had already started to organise themselves against the Serbs. Zoran Perković described the deplorable situation of the defence in municipalities with Croatian majorities in Kupres and in Ravno.<sup>100</sup> Under these circumstances the defence was ineffective and there was a real danger that these municipalities would be taken by the Serbs. Structures were required to coordinate activities if any defence was to be effective.<sup>101</sup>

<sup>88</sup> Davor Marijan, 19 January 2009, T.35587:1-23.

<sup>89</sup> [REDACTED].

<sup>90</sup> Zoran Buntić, 7 July 2008, T.30248:9-30249:2. See also Stjepan Kljuić, 28 June 2006, T.4100:2-4100:8.

<sup>91</sup> [REDACTED].

<sup>92</sup> Borislav Puljić, 16 September 2008, T.32249:23-24; [REDACTED].

<sup>93</sup> Hamid Bahto, 11 March 2009, T.37897:5-37897:18; Herbert Okun, 4 April 2007, T.16941:19-16942:6. See also 1D00524, Minutes of the meeting, 18<sup>th</sup> Session of the Presidency of the Socialist Republic of Bosnia and Herzegovina, 26 June 1991.

<sup>94</sup> [REDACTED]. See also Witness BM, 21 September 2006, T.7082:21-24; Zoran Buntić, 7 July 2008, T.30247:1-25; and [REDACTED].

<sup>95</sup> Stjepan Kljuić, 9 October 2006, T.7967:2-10.

<sup>96</sup> [REDACTED].

<sup>97</sup> See, e.g., Josip Jurčević, 14 September 2009, T.44764:8-25; Safet Idrizović, 6 November 2006, T.9566:17-20.

<sup>98</sup> Hamid Bahto, 11 March 2009, T.37897:24-37898:19.

<sup>99</sup> Stjepan Kljuić, 28 June 2006, T.4075:16-24; Christopher Beese, 22 August 2006, T.5282:14-25.

<sup>100</sup> Zoran Perković, 1 September 2008, T.31675:8-17; T.31675:25-31676:12.

<sup>101</sup> Zoran Perković, 1 September 2008, T.31674:10-31676:22; T.31677:15-19. See also Slobodan Praljak, 22 June 2009, T.41797:24-41798:10.



33. On 6 April 1992, the EC recognised the Republic of Bosnia and Herzegovina (“R BiH”) as an independent State.<sup>102</sup> Stjepan Kljuić testified that Sarajevo was cut off from the rest of the Bosnian territory by 5 April 1992.<sup>103</sup> The HVO was established on 8 April 1992 as the supreme body for the defence in HZ H-B, for the Bosnian Croats and other people.<sup>104</sup> The newly created HVO was to exercise command over the already established defence forces.<sup>105</sup> On 3 July 1992, Boban referred to the HVO as a “temporary executive body” in the defended and liberated areas in order to assure the organisation of the civil life.<sup>106</sup> The HVO was created to coordinate the military, civilian, and administrative leadership within the HZ H-B.<sup>107</sup> The decision on the creation of the HVO makes it clear that the Serb aggression and the threats faced by the unprotected Croatian population was the reason for the establishment of the HVO. The decision was explicit in acknowledging that the Croatian people are “aware of the impotence of the legal authorities of the [BiH] and the disintegration of its defence system.”<sup>108</sup> The mention of legal authorities is important, as is the stated reason for the creation of the HVO. It had everything to do with survival and protection and nothing to do with a JCE, as alleged by the Prosecution.
34. The HVO formed a component of the joint armed forces of BiH<sup>109</sup> and aimed at being an equal defence component, like the Green Berets, the Patriotic League, and the [TO].<sup>110</sup> Moreover, the HVO became indispensable for the defence against the Serb forces in some municipalities, including Mostar, which the HVO was asked to defend.<sup>111</sup> The HVO sought to distance itself from the “old” TO which had been dominated by the Serbs. Boban declared that the HVO refuses to accept “the compromised TO as its military structure.”<sup>112</sup> Boban’s request that all Crisis Staffs, former TO staffs, be renamed HVO Municipal Staffs,<sup>113</sup> as well as the order to subordinate these

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<sup>102</sup> Indictment, para. 19.

<sup>103</sup> Stjepan Kljuić, 28 June 2006, T.4187:4-4188:17.

<sup>104</sup> P00151, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992, Decision on the Creation of the Croatian Defence Council, 8 April 1992.

<sup>105</sup> P00155, Stamped order to all Municipal Staffs of the Croatian Defence Council making the Croatian Defence Council the only legal military body, signed by Mate Boban, 10 April 1992; See also Borislav Puljić, 16 September 2008, T.32251:25-32252:5.

<sup>106</sup> 1D02441, M. Boban’s public announcement on establishment of temporary executive power (HVO), 3 July 1992.

<sup>107</sup> Robert J. Donia, 10 May 2006, T.1830:23-1830:25.

<sup>108</sup> P00151, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992, Decision on the Creation of the Croatian Defense Council. Ref: 2/92, 8 April 1992. See also Zoran Perković, 1 September 2008, T.31674:10-31676:22; and (regarding the lack of protection by State institutions) P00157, Article from Vjesnik, Headline: Lumped together in the same blanket, 11 April 1992; Milivoj Gagro, 29 May 2006, T.2702:6-18.

<sup>109</sup> Mirko Zelenika, 15 October 2008, T.33253:2-5.

<sup>110</sup> Mirko Zelenika, 15 October 2008, T.33248:11-25.

<sup>111</sup> Borislav Puljić, 15 September 2008, T.32097:18-32100:1.

<sup>112</sup> P00154, Stamped order recognizing the Croatian Defence Council as the exclusive supreme command of the forces and the only legal military formation signed by Mate Boban, 10 April 1992, para. 2. See also Mile Akmadžić, 23 June 2008, T.29726:6-29727:18.

<sup>113</sup> 5D04271, Order issued by Mate Boban, No. 01-92/92, 10 April 1992; P00195, Stamped order signed by Ante Roso about Croatian Defence Council being the only legal military units in the territory of the HZ HB, Ref: 01-331-/92, 8 May 1992. See also Mirko Zelenika, 15 October 2008, T.33254:21-33255:5; Mile Akmadžić, 23 June 2008, T.29729:1-18.

new Municipal Staffs and all units in the area of the HZ HB to the HVO Main Staff<sup>114</sup> should be read in the light of this rejection of the Serb dominated structures.

#### **2.2.3.4 Relation and cooperation HVO and TO**

35. The HVO did cooperate with the “new” TO in the municipalities to which the 8 April 1992 Decision applied. In fact, efforts to establish joint commands commenced even before that date and the process continued throughout the war.<sup>115</sup> In some municipalities, good cooperation between the HVO and the TO was discerned, such as in Mostar, Gornji Vakuf, Jablanica, Konjic and Prozor. The nature of the cooperation between the Muslim and Croat forces in BiH are analysed in detail in Section 2.3.
36. In conclusion, the HDZ BiH and the HVO were neither aiming at subjugating or removing the Bosnian Muslims, nor at establishing a “Greater Croatia”, as the Prosecution allege. The HDZ BiH was established to represent the interests of the Croat population in a context in which political parties were organised along ethnic lines. The HDZ BiH was active in attempting to find a political and democratic solution in times of emergency threatening the existence of the state. The HVO was established to defend the BiH as a whole and the Croats within, at a time when BiH was weak and barely surviving.

#### **2.3 Cooperation Between HVO and ABiH Forces Throughout 1991-1994**

37. The Indictment states that there was “some” cooperation between the HVO and the Bosnian Muslims in spring and summer 1992.<sup>116</sup> During the trial, the Prosecution maintained that evidence regarding the cooperation between ABiH and HVO was irrelevant.<sup>117</sup> The Defence rejects this contention in the most unequivocal terms. The ABiH-HVO relationship is exceptionally relevant to the question of an existence of a plan to subjugate and remove Muslims in HZ H-B areas and to establish a “Greater Croatia.”<sup>118</sup> According to the Prosecution, high-ranking politicians and military officers from both the Republic of Croatia and the HZ H-B were part of this JCE.<sup>119</sup> The alleged JCE members are said to have followed a “two-track policy” toward the BiH,<sup>120</sup> and that words were said publicly that were not meant or were not followed with concrete action. Issues such as joint command and the transfer of MTS are paramount features of the cooperation which was extended beyond words and into practical assistance and cooperation. A fair, dispassionate and objective

<sup>114</sup> 5D04271, Order issued by Mate Boban, No. 01-92/92, 10 April 1992.

<sup>115</sup> Mile Akmadžić, 23 June 2008, T.29735:17-29736:1.

<sup>116</sup> Indictment, para. 28.

<sup>117</sup> Mario Miloš, 30 March 2009, T.38639:13-25. See also, Dragutin Cehulić, 1 April 2009, T.38681:2-38682:13.

<sup>118</sup> Indictment, para. 15.

<sup>119</sup> Indictment, para. 16.

<sup>120</sup> Indictment, para. 23. See also Prosecution Pre-Trial Brief, paras. 23-23.5.

review of the evidence discloses that the close ABiH-HVO cooperation, which existed during the Indictment period, refutes the alleged JCE.

### 2.3.1 Joint Command

#### 2.3.1.1 HVO and ABiH as two legal and equal armies and the need for a joint command

38. The Prosecution maintain that these joint commands “really weren’t worth the piece of paper they were written on.”<sup>121</sup> The Prosecution refer to Boban’s statement, according to which all other military formations on the HZ H-B territory “are either illegal or enemy formations”<sup>122</sup> as proof of the territorial ambitions of the JCE members. However, from mid-April 1992 onward, the HVO and ABiH were both integrated in the defensive BiH system.<sup>123</sup> Both entities cooperated in the defence of BiH. The Agreement on Friendship and cooperation between the Republics of Bosnia and Herzegovina and Croatia concluded by on 21 July 1992 refers explicitly to the HVO as “an integral part” of the united armed forces of BiH.<sup>124</sup> Yet it seems that the Prosecution turn away from acknowledging or accepting these realities.
39. Rather, the Prosecution assert that the 21 July 1992 Agreement “was never implemented, but was spun by the Herceg-Bosna/HVO leadership to suit their agenda.”<sup>125</sup> However, in a letter of 20 November 1992, after the events in Novi Travnik in October 1992, the BiH government gave Plić the power to represent the BiH Government in the territory of the HZ H-B and coordinate measures passed by the BiH Government and HVO.<sup>126</sup> On 20 April 1993, agreement was reached that ABiH and HVO constitute both legal military forces of BiH and “are treated equally.”<sup>127</sup> Furthermore, in May 1993, Mile Akmadžić clarified that HVO forces were not paramilitary forces but rather a “recognised element” of the BiH armed forces.<sup>128</sup> He also declared that the “HVO’s tie to the Government in Zagreb had been exaggerated.”<sup>129</sup> He emphasised the role of the HVO in the

<sup>121</sup> See, e.g., Filip Filipović, 7 December 2009, T.47769:22-47770:1.

<sup>122</sup> P00154, Stamped order recognizing the Croatian Defence Council as the exclusive supreme command of the forces and the only legal military formation signed by Mate BOBAN. Ref: 2-01-11/4, 12 April 1992. See Mile Akmadžić, 23 June 2008, T.29726:6-16 and included in IC00812, Documents tendered by OTP via Witness Akmadžić Mile, p.1.

<sup>123</sup> P01988, Agreement signed by Milivoj PETKOVIĆ, Sefer HALILOVIĆ, Phillipe MORILLON and Jean Pierre Thebault, signed at Zenica, 20 April 1993, point 1.

<sup>124</sup> P00339, Signed agreement between Alija IZETBEGOVIĆ and Franjo TUDJMAN on Friendship and Cooperation, 21 July 1992, point 6.

<sup>125</sup> Prosecution Pre-Trial Brief, para. 25.16.

<sup>126</sup> 1D02147, Authorisation issued for J. Plić to act on behalf of the Government of Republic of Bosnia and Herzegovina, signed by Mile Akmadžić, 20 November 1992. See also Mile Akmadžić, 17 June 2008, T.29424:10-29426:12.

<sup>127</sup> P01988, Agreement signed by Milivoj PETKOVIĆ, Sefer HALILOVIĆ, Phillipe MORILLON and Jean Pierre Thebault, signed at Zenica, 20 April 1993, point 1.

<sup>128</sup> 1D02096, Letter of Mile Akmadžić, President of the Government of RBiH, addressed to Y. Vorontsov, President of the Security Council, UN, New York, 11 May 1993. See also, Mile Akmadžić, 17 June 2008, T. 29492:16-21 (also discussing P02254, Note by the President of the Security Council calling upon the Republic of Croatia to exert all its influence on the Bosnian Croat leadership to stop their attacks in the areas of Mostar. Ref: S/25746, 10 May 1993).

<sup>129</sup> 1D02096, Letter of Mile Akmadžić, President of the Government of RBiH, addressed to Y. Vorontsov, President of the Security Council, UN, New York, 11 May 1993, p.1.

protection of the people of BiH against the Serb aggression.<sup>130</sup> Finally, on 29 June 1993, Izetbegović recognised the HVO as “a constituent part of the armed forces.”<sup>131</sup> On 14 June 1993, Izetbegović issued an order to both the HVO and the ABiH to end the hostilities.<sup>132</sup> All of these factors cast doubt on the central tenet of the Prosecution’s theory of JCE and debunk the notion that the 21 July agreement was never implemented or had no effect.

40. The HVO pushed for the establishment of a joint command with the ABiH, in order to efficiently defend BiH.<sup>133</sup> On 12 December 1992, Prlić refers to the commitment to actively support BiH as being “a sovereign, united, independent and international recognised state within the existing constitutional borders” and the willingness of the HVO to fight for an independent BiH for all peoples.<sup>134</sup> [REDACTED].<sup>135</sup> The HVO and the ABiH fought together during the entire war in Tuzla and almost entire war in Sarajevo.<sup>136</sup> In Tuzla the HVO as subordinated to ABiH entire time. Both municipalities were in HZ H-B.<sup>137</sup> Two former ABiH members testified of the good relations that they had with the HVO.<sup>138</sup> Again, it seems that the Prosecution position is that none of this evidence is relevant. The Defence maintain such evidence and helps demonstrate why the JCE alleged is simplistic and unfounded.

### 2.3.1.2 The cooperation between the HVO and the ABiH in 1992

41. The Prosecution acknowledge that during the spring and summer 1992, there was “some” cooperation between the HVO and ABiH.<sup>139</sup> However, it asserts that relations deteriorated and conflict between the HVO and ABiH commenced in Novi Travnik on 19 October 1992,<sup>140</sup> in Prozor

<sup>130</sup> 1D02096, Letter of Mile Akmadzic, President of the Government of RBiH, addressed to Y. Vorontsov, President of the Security Council, UN, New York, 11 May 1993, p.1.

<sup>131</sup> 1D02664, Tape recording of the 207th session of the Presidency of RBiH, 29 June 1993, p. 1; See also Filip Filipovic, 7 December 2009, T. 47778:5-11.

<sup>132</sup> 4D01611, Order issued by Alija Izetbegovic to all OZ's, re: immediate cessation of all hostilities between the units of A BiH and HVO, ref: 02-2/1-01-1058/93, 14 June 1993.

<sup>133</sup> Marita Vihervouri, 28 August 2007, T.21685:10-21686:23; See also 1D01655, Corrected OTP transcript of Marita Vihervouri's interview with J. Prlic, 30 April 1993, p.2.

<sup>134</sup> 1D01945, Protest to the Presidency of RBiH and the Government of RBiH signed by J. Prlic, 12 December 1992, p. 1.

<sup>135</sup> [REDACTED].

<sup>136</sup> See 2D01185, Document signed by Bruno Stojic on 1992/12/05; constitution of the command and report about the name of the brigade “Kralj Tvrtko”, 5 December 1992; 2D01177, Appointment of staff into the command of the 'Kralj Tvrtko' Sarajevo brigade, signed by Bruno Stojic, 29 December 1992. Dragan Pinjuh, 4 March 2009, T.37700:5-9.

<sup>137</sup> 1D01925, Forming of HVO Tuzla, 12 June 1992; 1D01981, Minutes from a joint meeting of HVO Banovici, Lukavac, Tuzla and Zivinice re: HZ Soli, 15 December 1992; and 1D02259, Decision to form a military unit of the Tuzla HVO, 15 June 1992.

<sup>138</sup> Nedžad Cengić, Commander in the Special Unit of the Ministry of International Affairs of the BH Army, testified about the good relations that he and his unit in Sarajevo had with the HVO. Nedžad Cengić, 11 March 2009, T.37949:23-37955:4. See also, Hamid Bahto, 11 March 2009, T.37910:17-37911:16; P02059, Croatian Presidential Transcripts for 24-04-9, 24 April 1994, p. 20; and 2D00195, Letter to Bruno Stojić - Dragan Vikic, 2/23/1993; 2D01195, Document signed by the Commandant of the HVO Brigade “Kralj Tvrtko” Slavko Zelic on 1993/02/25 sent to HVO HZ HB Main headquarters – Mostar, 25 February 1993 (regarding relation with Bruno Stojić).

<sup>139</sup> Indictment, para. 28.

<sup>140</sup> Indictment, para. 28.

on 23 October 1992<sup>141</sup> and in Gornji Vakuf on 24 to 25 October 1992.<sup>142</sup> The Defence submit that in order to properly understand whether a JCE existed at all, the cooperation between the HVO and ABiH in Central Bosnia and Konjic needs to be understood. Every engagement, skirmish or conflict between the HVO and ABiH cannot be fairly imputed to a JCE whilst every cooperation, assistance and support for the ABiH and BiH is ignored.

42. Generally speaking, throughout 1992, there was cooperation between the Croats and the Muslims against the attacks launched by the Serbs.<sup>143</sup> At the end of 1992, the HVO reiterated that it organised itself in order to defend Croats and Muslims in the HZ H-B area.<sup>144</sup> The ABiH and HVO attempted to reduce tensions and to cooperate against the common enemy.<sup>145</sup> Nevertheless, a protest letter by the HVO underlined tensions that existed and the failure to further formalise the cooperation between the HVO and ABiH, for example by creating a provisional executive authority.<sup>146</sup> [REDACTED].<sup>147</sup> Again, this evidence cannot be properly ignored. Rather than seeking to pull away from BiH or work against the ABiH, the HVO is clearly seen to want to ally itself even closer and to deepen and render more effective the cooperation between itself and the ABiH.
43. The conflict in Central Bosnia was not premeditated by the HVO.<sup>148</sup> Rather, the evidence adduced at trial demonstrates that concrete steps were taken by the HVO to end the conflict and ease tensions, for instance by Petković on 20 October 1992.<sup>149</sup> Difficulties of maintaining the cooperation between the HVO and ABiH were exacerbated when it emerged that the ABiH independently negotiated with the Serbs without the knowledge of the HVO.<sup>150</sup>
44. Nevertheless, measures were taken by both the HVO and ABiH in order to avoid the conflict to each other municipalities.<sup>151</sup> Moreover, in November 1992, efforts were made to establish a joint command and joint commissions in order to determine individual responsibility for the conflict that occurred in October 1992 and so as to avoid future incidents.<sup>152</sup>

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<sup>141</sup> Indictment, paras. 46.

<sup>142</sup> Indictment, paras. 63.

<sup>143</sup> See notably, Mile Akmadžić, 18 June 2008, T.29574:11-20.

<sup>144</sup> 4D00830, signed and stamped report for the period from April 14, 1992 through December 31, 1992 issued by Milivoj Petković to the Government of HZ HB and the Head of Defence Department, ref:01-240/93, 4 February 1993, under "7. Conclusion."

<sup>145</sup> P00633, Order issued by Milivoj PETKOVIĆ to Croatian Defence Council NW Herzegovina operational zone Brigades to cease fire and reduce tensions, 23 October 1992. See also, P00644, Order issued by Milivoj PETKOVIĆ to the units in Prozor; Bugojno; Gornji Vakuf; Vitez; Konjic; Tomislavgrad and Travnik re: cease fire. Ref. 24-10/92, 24 October 1992.

<sup>146</sup> 1D01945, Protest to the Presidency of RBiH and the Government of RBiH signed by J. Prlic, 12 December 1992, pp. 1-2.

<sup>147</sup> [REDACTED].

<sup>148</sup> See Section 2.4.2.

<sup>149</sup> 4D00895, Consolidated report for 19 October 1992 issued by Milivoj Petković, Mostar, 20 October 1992, part 3.

<sup>150</sup> 4D00896, Consolidated report for 20 October 1992 issued by Milivoj Petković, Mostar, 21 October 1992, p. 4.

<sup>151</sup> See Section 2.3.1..

<sup>152</sup> 1D01543, UN Security Council Doc S/24748; Joint Communiqué on talks between Franjo Tudjman and Alija Izetbegović in Geneva on 1 November 1992, 2 November 1992.

45. The Prosecution suggested that the HVO played some sort of double game in Konjic.<sup>153</sup> Such assertions are spurious. When the conflict with the Serbs commenced, the TO and the HVO cooperated in Konjic and even conducted joint operations, for example in June 1992.<sup>154</sup> The ABiH Brigades were established in this area in June 1992 and an HVO Brigade in September 1992.<sup>155</sup> From September 1992, Muslims and the Croats cooperated very closely.<sup>156</sup> Joint meetings were organised regularly in order to discuss the defence of Konjic and ABiH and the HVO agreed a joint front line.<sup>157</sup> The Commander and the Deputy were of different ethnicity.<sup>158</sup> Following the events in Prozor in October 1992, the ABiH and the HVO in Konjic jointly took measures to prevent the spread of the conflict.<sup>159</sup> Various measures were implemented to achieve this aim, including setting up joint checkpoints in Central Bosnia.<sup>160</sup> Throughout November 1992, the cooperation continued. The armies agreed a joint plan of activities to liberate Konjic.<sup>161</sup> The order to implement the plan was issued by Praljak to both armies.<sup>162</sup> The joint command was still conducting operations on the 24 November 1992.<sup>163</sup> This situation continued right up until March 1993, despite tensions caused, for example, by the ABiH establishing some checkpoints in areas where HVO and ABiH were not fighting against the Serbs.<sup>164</sup> Despite these difficulties the joint operations and cooperation continued.

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<sup>153</sup> See Witness 4D AB, 25 November 2009, T.47267:13-18 ("Sir, is it not true that the real reason why the HVO set up a parallel executive authority in Konjic was because Konjic was to become part of the territory of the Croatian Community of Herceg-Bosna, even though the existing authorities were working fine and it was very unlikely that the Muslims would ever hand over control to the Croats in this area?").

<sup>154</sup> See Witness 4D AB, 24 November 2009, T.47189:1-16. See also 2D00229, INFORMATION - From: Commander Mr. Arif pasalic; To: Sefer Halilovic, 26 February 1993. T ABiH unit in Konjic, at that time, belonged to ABiH 4th Corps. In this document Arif Pasalić states that all acquisitions of material by the ABiH 4th Corps were through the HVO.

<sup>155</sup> Dragan Jurić, 27 April 2009, T.39271:16-22 and T.39269:6-10.

<sup>156</sup> Dragan Jurić, 27 April 2009, T.39260:1-13.

<sup>157</sup> Dragan Jurić, 27 April 2009, T.39272:6-22 and T.39272:22-24.

<sup>158</sup> Dragan Jurić, 27 April 2009, T.39273:2-4.

<sup>159</sup> 2D00798, Announcement by the Commandant of ARBiH Konjic Headquarters and Commandant of HVO on 1992/10/23; agreement from October 23rd.1992, 23 October 1992.

<sup>160</sup> P00708, Order signed by Slobodan PRALJAK to all members of the Croatian Defence Council and BH army concerning joint checkpoints and patrols. Ref: 01-2496/92, 6 November 1992. See also P00727, Signed and stamped Letter by Slobodan PRALJAK on the appointment of the temporary members to the joint Command. Ref Number 01-2505-4/92, 10 November 1992.

<sup>161</sup> 3D03519, Q-41-59, Notification issued by Arif Pasalic re:events in Konjic (units of BH Army and HVO are waiting for Mr. Praljak's order, 14 November 1992; Dragan Jurić, 27 April 2009, T. 39335:16-19.

<sup>162</sup> 3D03519, Q-41-59, Notification issued by Arif Pasalic re:events in Konjic (units of BH Army and HVO are waiting for Mr. Praljak's order, 14 November 1992.

<sup>163</sup> P00795, Signed and stamped Order from the Croatian Defence Council HercegStjepan Brigade, Zdravko SAGOLJ re. appointment of Ivica TOMIC and Brislav SOLDI Ref. Number 02-252/92, 24 November 1992.

<sup>164</sup> 2D00764, Certificate signed by the Administrative officer at the Municipal secretary for displaced individuals, labor and welfare Muharem Kozic on 1996/07/17; arrival of refugees of non-Serb nationality at the request of Edina Residovic, 17 July 1996.

### 2.3.1.3 The joint commissions in January 1993

46. Allegedly, the HVO tried to unilaterally implement the VOPP in January 1993 and sent an ultimatum to the ABiH.<sup>165</sup> Whilst tensions did arise between the HVO and ABiH, on 12 January 1993, in Gornji Vakuf, the Serbs were still considered the common enemy.<sup>166</sup> It appears that the Serbs targeted the HVO and ABiH in Gornji Vakuf to create tension between the two.<sup>167</sup> Again, external factors understandably giving rise to tensions, rather than tensions being the manifestation of a JCE, as alleged by the Prosecution. On 19 January 1993, it was agreed that a joint order should be sent by the ABiH and HVO high commands to the local commanders in Gornji Vakuf to ease the tension.<sup>168</sup> On 20 January 1993, the HVO and ABiH agreed on a ceasefire in Gornji Vakuf to fight together against the Serbs<sup>169</sup> and on 21 January 1993, the HVO organised a joint meeting with the ABiH in order to defuse tensions. It was decided that an order to avoid conflict should be issued to the units.<sup>170</sup> Joint commissions were established to solve disputes that arose.<sup>171</sup> The order called the commands to establish contact and reach agreements to solve all disputed issues.<sup>172</sup> On 27 January 1993, Izetbegović and Boban issued a joint ceasefire order acknowledging that conflict between the HVO and ABiH would only assist the Serbs.<sup>173</sup> A temporary joint command was set up<sup>174</sup> and normalised the relations.<sup>175</sup> On 11 February 1993, well

<sup>165</sup> Prosecution Pre-Trial Brief, paras. 29-29.2; P01162, Croatian Defence Council, Northwestern Herzegovina Operational Zone, Regular Report to Croatian Defence Council Main Staff issued by Zeljko SILJEG, 16 January 1993.

<sup>166</sup> P01112, Signed and stamped regular combat report issued by Tonko DZALTO re: Croatian Defence Council returned fire in Gornji Vakuf. Ref. 02/2-99, 12 January 1993, para. 4. See also, Zdravko Batinić, 11 November 2008, T.34413:15-34414:7.

<sup>167</sup> Zdravko Batinić, 11 November 2008, T.34417:7-19.

<sup>168</sup> P01215, ECOMM - RCSplit to ZagrebHQ: special report on talks held in Mostar with Jadranko PRLIC, Arif PASALIC, and Milivoj PETKOVIĆ, 19 January 1993, pp. 1-2.

<sup>169</sup> P01238, Stamped and signed order aborting all Croatian Defence Council combat activities against Armija Bosnia I Herzegovina in the Gornji Vakuf municipality issued by Milivoj PETKOVIĆ and Arif PASALIC. Ref: 01-111/93, 20 January 1993, point 1.

<sup>170</sup> 2D00771, Regular combat report for 1993/01/21 signed by Commandant of Brigade 'Herceg Stjepan' – Konjic Zdravko Sagolj, 21 January 1993, para. 4(b). According to Dragan Jurić, tensions were provoked by the ABiH. For instance, Izetbegović appointed replaced Rusmir Hadzihuseinovic as president of the War Presidency of Konjic and Jablanica, with whom HVO had good relations, at the end of December 1992 or beginning of January 1993. See Dragan Jurić, 27 April 2009, T. 39304:4-10.

<sup>171</sup> P01238, Stamped and signed order aborting all Croatian Defence Council combat activities against Armija Bosnia I Herzegovina in the Gornji Vakuf municipality issued by Milivoj PETKOVIĆ and Arif PASALIC. Ref: 01-111/93, 20 January 1993, point 3.

<sup>172</sup> P01238, Stamped and signed order aborting all Croatian Defence Council combat activities against Armija Bosnia I Herzegovina in the Gornji Vakuf municipality issued by Milivoj PETKOVIĆ and Arif PASALIC. Ref: 01-111/93, 20 January 1993, point 5.

<sup>173</sup> P01329, Joint statement about a cease-fire between Armija Bosnia I Herzegovina and Croatian Defence Council, dated 27 January 1993 and signed by President Alija IZETBEGOVIĆ and Mate BOBAN. For implementation, see P01322, Signed and stamped order, ref. 01-160/93 from Milivoj PETKOVIĆ re: ceasefire between Armija Bosnia I Herzegovina & Croatian Defence Council, 27 January 1993.

<sup>174</sup> P01341, Signed and stamped order, ref. 01-164/93. issued by Milivoj PETKOVIĆ re: the establishment of the joint command of the Armija Bosnia I Herzegovina and Croatian Defence Council pursuant to the joint statement made by Mate BOBAN and Alija IZETBEGOVIĆ, 28 January 1993.

into the Indictment period, a joint order signed by Petković and Halilović was issued establishing a joint coordinating team possessing the power to issue joint commands.<sup>176</sup>

47. These measures calmed the situation down until the end of March 1993.<sup>177</sup> A joint order illustrates the efforts made to organise a joint defence between the HVO and ABiH and common actions taken by them in Central Bosnia in March 1993.<sup>178</sup> On 17 March 1993, Halilović expressed his satisfaction regarding the good cooperation in Konjic.<sup>179</sup> However, a joint meeting held by ABiH Commands demonstrates that ABiH was organising offensive actions against the HVO only three days after Halilović's statement,<sup>180</sup> which led to the ABiH attacking the HVO in Konjic on 23 March 1993.<sup>181</sup> The same day, a joint ceasefire order was issued and a joint commission was announced which was to investigate and report on the engagement between the HVO and ABiH in Konjic.<sup>182</sup> The commission was set up the following day and visited the area to remove the tensions.<sup>183</sup> A report on 28 March 1993 refers to the positive outcome of the joint commissions.<sup>184</sup> The situation calmed down but was still tense until 13 and 14 April 1993.<sup>185</sup> By the beginning of April, ABiH members were actively provoking conflict in the Konjic area.<sup>186</sup> A proper understanding of the role and conduct of the HVO in Konjic reveals the absurdity of the massive JCE alleged by the Prosecution in this case.

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<sup>175</sup> P01311, Report from Zeljko SILJEG to Croatian Defence Council leadership in Mostar, 26 January 1993. See also Andrew Williams, 17 October 2006, T.8533:25-8534:21.

<sup>176</sup> P01467, Stamped and signed joint order by Milivoj PETKOVIĆ and Sefer HALILOVIĆ to issue joint command orders to honour the mutual agreement between the Croatian Defence Council and the Bosnia and Herzegovina Army, 11 February 1993, paras. 1, 2 and 3.

<sup>177</sup> The Prosecutor seems to accept this fact conceding that "major conflict was avoided until the end of March 1993." See Indictment, para. 32.

<sup>178</sup> 4D01700, Order on defence of Central Bosnia OZ issued by Tihomir Blaskic and approved by Milivoj Petković, especially pp. 7-8. See also Filip Filipovic, 30 November 2009, T.47444:8-13 (regarding the date for 4D01700).

<sup>179</sup> P01675, Letter from Sefer HALILOVIĆ to Croatian Defence Council Main Staff in Mostar re. meeting with Arif PASALIC in Sarajevo Ref. number: 02/405-1, 17 March 1993.

<sup>180</sup> 2D00253, MEMO of the joint meeting of representatives of the RBH Army commands, 20 March 1993.

<sup>181</sup> Dragan Jurić, 27 April 2009, T.39308:3-4.

<sup>182</sup> P01709, Signed and stamped Joint Order issued by Arif PASALIC (Armija Bosnia I Herzegovina 4th Corps) & Milivoj PETKOVIĆ (Croatian Defence Council Main Staff) to immediately stop all conflicts Ref. Number: 01-508/93, 23 March 1993, point 8. See also, Witness 4D AB, 24 November 2009, T.47190:1-13; 2D00643, Conclusions from the meeting between HVO and ARBiH signed by Veso VEGAR on 1993/03/25; Cease fire and establishment of Joint HVO and ARBiH Commission, 25 March 1993; and 4D00554, Information about meeting held on March 25 issued by Arif Pasalic to Sefer Halilović, ref: 01/318-1/93, 26 March 1993.

<sup>183</sup> 4D00434, Information, 26 March 1993, Konjic, 26 March 1993.

<sup>184</sup> 2D00645, Report on daily operation by the ARBiH and HVO Joint Commission for the area of Konjic signed by Esad RAMIC and Slavko PULJIC on 1993/03/28, 28 March 1993.

<sup>185</sup> Dragan Jurić, 27 April 2009, T. 39317:14-39317:12. According to witness 4D AB, the cooperation between the HVO and ABiH lasted until this date. See Witness 4D AB, 24 November 2009, T.47242:1-5.

<sup>186</sup> Dragan Jurić, 27 April 2009, T.39345:7-39346:18.



### 2.3.1.4 The establishment of a Joint command on April 1993

48. The Prosecution alleges that the HVO's aim to implement, unilaterally, the VOPP, led to the outbreak of conflict between the HVO and ABiH in April 1993.<sup>187</sup> According to the Prosecution, there was no joint HVO-ABiH command in Central Bosnia in April 1993.<sup>188</sup>
49. On 19 April 1993, during the course of the peace negotiations under the auspices of an international delegation, the idea of a joint operations commission to implement the ceasefire was addressed.<sup>189</sup> These joint commissions were intended to ease tensions and monitor the situation on the field.<sup>190</sup> Halilović and Petković ordered their subordinates to cooperate and to become members of a joint commission.<sup>191</sup> On 20 April, two joint operation commissions, consisting of ECMM, UNMO, HVO and ABiH were set up in Mostar and Zenica.<sup>192</sup> On the same day, the Vitez Joint Operational Centre was set up which was established.<sup>193</sup> The agreement provided for weekly meetings of the commanders and joint commissions at the level of brigade commander. The joint command was to be immediately applied on the ground.<sup>194</sup>
50. On 24 April 1993, Boban, Izetbegović, Tudjman, Owen and Wilson held a meeting in Zagreb and the possibility of a joint command was discussed.<sup>195</sup> Halilović proposed to divide BiH into operations zones which would be to have both operational and territorial commands. Petković was willing to keep both the HVO and ABiH Main Staffs. He did not advocate for any subordination, but for a joint HVO-ABiH command. Halilović agreed.<sup>196</sup> This joint HVO-ABiH command was to have command over all units.<sup>197</sup>
51. At the end of this meeting, on 24 April, Boban and Izetbegović signed a Joint Statement, in order to stop the conflict which they declared contrary to their joint goal which was the independence and

<sup>187</sup> Indictment, paras. 33-34.

<sup>188</sup> Filip Filipović, 7 December 2009, T.47769:22-47770:1.

<sup>189</sup> P01965, ECMM - ZagrebHQ to EC: Report by Ole BRIX-ANDERSEN on peace negotiations in Mostar on 18 April 1993, 19 April 1993.

<sup>190</sup> Bo Pellnas, 5 June 2007, T.19483:8-19.

<sup>191</sup> Bo Pellnas, 5 June 2007, T.19490:19-25.

<sup>192</sup> P02016, Fax Message from ECMM Danish Delegation: talking points for the Ad Hoc group meeting on 22 April 1993, discussing the Joint commissions in Central Bosnia, although the situation in Central Bosnia deteriorated sharply between the Bosnian Croats and the Muslims, 21 April 1993, p. 4; Bo Pellnas, 5 June 2007, T.19491:25-19492:2.

<sup>193</sup> P01988, Agreement signed by Milivoj PETKOVIĆ, Sefer HALILOVIĆ, Phillipe MORILLON and Jean Pierre Thebault, signed at Zenica, 20 April 1993, point 3. See also P02016, Fax Message from ECMM Danish Delegation: talking points for the Ad Hoc group meeting on 22 April 1993, discussing the Joint commissions in Central Bosnia, although the situation in Central Bosnia deteriorated sharply between the Bosnian Croats and the Muslims, 21 April 1993, pp. 5-6; Bo Pellnas, 7 June 2007, T.19753:6-10.

<sup>194</sup> P01988, Agreement signed by Milivoj PETKOVIĆ, Sefer HALILOVIĆ, Phillipe MORILLON and Jean Pierre Thebault, signed at Zenica, 20 April 1993, points 3 and 4.

<sup>195</sup> P02059, Croatian Presidential Transcripts for 24-04-9, 24 April 1994, p. 1.

<sup>196</sup> P02059, Croatian Presidential Transcripts for 24-04-9, 24 April 1994, p. 8.

<sup>197</sup> P02059, Croatian Presidential Transcripts for 24-04-9, 24 April 1994, p. 9. Regarding the functioning of the joint command see also pp. 10 and 36.

integrity of the BiH.<sup>198</sup> The document also detailed the applicable command structure. The ABiH and the HVO were to retain their “separate identities and organisation,”<sup>199</sup> but form a Joint Command that had control over operations in military districts.<sup>200</sup> Following the agreement, on 25 April 1993, appointments were made to the Joint HVO and ABiH Command, as well as to the Joint Command of Mostar, Central Bosnia and Tuzla.<sup>201</sup> On 30 April 1993, an order established a joint command in Central Bosnia which was to plan, coordinate and control combat operations and have its headquarters in Travnik.<sup>202</sup>

52. Bo Pellnas confirmed that throughout April 1993, efforts were made and orders were issued to solve such tensions as arose peacefully.<sup>203</sup> An ECMM report states that the joint commission in Busovaca and Gornji Vakuf were doing “excellent work.”<sup>204</sup> Similarly, a joint police force was created in Mostar.<sup>205</sup> [REDACTED],<sup>206</sup> [REDACTED].<sup>207</sup> The Joint command and the measures taken included visits to Soviči and Doljani, as well as Konjic.<sup>208</sup> According to Filipović, the joint command lasted until 10 June 1993.<sup>209</sup> The turning point was 30 June 1993, when Muslims HVO members attacked Croat members in Mostar, at a time when the HVO and the ABiH were jointly

<sup>198</sup> P02078, Signed joint statement of Alija IZETBEGOVIĆ and Mate BOBAN on a co-ordination body for the implementation of Vance-Owen plan. Witnessed by Franjo TUDJMAN, 25 April 1993. See also P09494, Public statement of HZHB after meeting at Citluk on 29 April 93, 29 April 1993.

<sup>199</sup> P02091, Signed document entitled Appendix 1: Establishment of the Command of the Army of Bosnia and Herzegovina and the Croatian Defence Council, issued by Alija IZETBEGOVIĆ, Mate BOBAN, Sefer HALILOVIĆ and Milivoj PETKOVIĆ, 25 April 1993, point 1.

<sup>200</sup> P02091, Signed document entitled Appendix 1: Establishment of the Command of the Army of Bosnia and Herzegovina and the Croatian Defence Council, issued by Alija IZETBEGOVIĆ, Mate BOBAN, Sefer HALILOVIĆ and Milivoj PETKOVIĆ, 25 April 1993, points 2 and 3. See also Filip Filipović, 30 November 2009, T.47416:6-10.

<sup>201</sup> 4D00455, Appointment of the HVO officers to the Joint HVO and A BH Command by Milivoj Petković, no. 02-2/01-691/93, 26 April 1993, Mostar. See also Andjelko Makar, 23 March 2009, T.38414:2-17; and 2D00439, HEAD OF DEFENCE DEPARTMENT Bruno Stojić - requesting complete information on situation at Tuzla and Brcko, 20 May 1993 (regarding the situation in Tuzla). Point 7 of this document shows that ABiH did not implement the joint command, since Halilović did not appoint two officers on behalf of ABiH. This is reason why this agreement did not become operational.

<sup>202</sup> P02155, Order signed by Milivoj PETKOVIĆ and Sefer HALILOVIĆ re: implementation of joint commands at the level of operative zones' Corps. Ref: 1-2/93, 30 April 1993.

<sup>203</sup> Bo Pellnas, 7 June 2007, T.19755:16-23.

<sup>204</sup> P02016, Fax Message from ECMM Danish Delegation: talking points for the Ad Hoc group meeting on 22 April 1993, discussing the Joint commissions in Central Bosnia, although the situation in Central Bosnia deteriorated sharply between the Bosnian Croats and the Muslims, 21 April 1993, pp. 3-4.

<sup>205</sup> 2D00313, JOINT PUBLIC ANNOUNCEMENT - ARBiH 4th Corps Commander arif Pasalic, Chief of OZ South East Herzegovina Petar Zelenika, 21 April 1993; 5D02052, Report on the work of the joint group of the ABiH and HVO, signed by Zarko JURIC, Esad HUMO and Goran JELAVIC, 21 April 1993, point 8.

<sup>206</sup> [REDACTED]; [REDACTED].

<sup>207</sup> [REDACTED].

<sup>208</sup> Filip Filipović, 1 December 2009, T.47504:12-23 and T.47498:3-10.

<sup>209</sup> Filip Filipović, 7 December 2009, T.47770:12.

fighting the Serbs.<sup>210</sup> Despite this, in some areas of BiH, especially in Posavina,<sup>211</sup> Tuzla and in Sarajevo,<sup>212</sup> the HVO and ABiH still co-operated until November 1993.<sup>213</sup>

### 2.3.2 Arms and Material transfer

53. “Weapons were given to friends.”<sup>214</sup> This simple statement is revealing. The Defence submit it is relevant to the whether a JCE existed at all. The systematic and regular cooperation between Croatia or the HVO on the one hand and the ABiH on the other regarding the supply, transfer and passage of MTS throughout the war casts doubt on whether a regional plan existed from which a JCE can be inferred. The Prosecution has been rather dismissive of the Defence insistence that the assistance and cooperation provided by Croatia and/or the HVO to the ABiH/BiH is relevant evidence to the question of JCE.<sup>215</sup> Instead, the OTP acknowledges limited cooperation between the Croats and the Muslims<sup>216</sup> but asserts that MTS was delivered where there was a common fight against the Serbs.<sup>217</sup> Accordingly, the determining factor is said to be the final destination and the timeframe.<sup>218</sup> Contrary to the Prosecution’s contention, the Defence maintain that the transfer of MTS is absolutely critical to determining this issue. One would not give arms or support or assistance to an enemy. The reason MTS was given and a variety of assistance lent is because the HVO was not hostile to the existence of BiH within its borders. There was no “Greater Croatia” JCE as alleged by the Prosecution. It is pertinent to note that the learned Presiding Judge has determined these issues may indeed be relevant to the Trial Chamber’s assessment of whether the Prosecution have proved the alleged JCE beyond reasonable doubt.<sup>219</sup>

#### 2.3.2.1 The lack of MTS in BiH and the necessity for ABiH to procure it abroad

54. As discussed in Section 2.2.1.2.1 above, the weapons belonging the TO were seized in the initial stages of the breakup of the Former Yugoslavia. ABiH General Bahto confirmed that at the outset of Serb aggression BiH did not have weapons to defend itself.<sup>220</sup> The BiH contacted Slovenia and

<sup>210</sup> Veso Vegar, 17 February 2009, T.37043:6-37044:17. See also 4D00480, Signed and stamped report from Milivoj Petkovic, re: report on MOS (Muslim Armed Forces) attack north of Mostar, Ref:02-2/1-01-1245/93, Mostar 30 June 1993, 30 June 1993; and P03025, ECMM - M2 to RCZenica: daily report for 30 June 1993, points 1 and 5 (regarding June 30 attack).

<sup>211</sup> Stipo Buljan, 12 February 2009, T.36822:6-10.

<sup>212</sup> Dragan Pinjuh, 4 March 2009, T.37701:18-20.

<sup>213</sup> Tihomir Majić, 9 March 2009, T.37851:7-37852:14.

<sup>214</sup> Tihomir Majić, 9 March 2009, T.37841:22.

<sup>215</sup> Prosecution Motion to Exclude the Irrelevant Evidence of Witness Mario Milos, 25 March 2009, para. 4; Prosecution Response to Bruno Stojić Motion for Reconsideration of the “Ordonnance Concernant la Demande d’Admission d’Éléments de Preuve Relatifs au Témoin Mario Milos” dated 7 May 2009, 28 May 2009, para. 7.

<sup>216</sup> The Prosecution states that cooperation took place in 1992 and beginning of 1993 in Mostar, during 1993 in Posavina, and in Sarajevo in 1992 and “for part of 1993.” See Tihomir Majić, 9 March 2009, T.37850:3-37851:20.

<sup>217</sup> Hamid Bahto, 11 March 2009, T.37916:9-37918:8; Nedžad Cengic, 11 March 2009, T.37963:17-37964:1.

<sup>218</sup> Slobodan Praljak, 14 May 2009, T.40117:8-19.

<sup>219</sup> Oral Decision, 1 April 2009, T.38678:20-38679:24.

<sup>220</sup> Hamid Bahto, 11 March 2009, T.37897:5-18.

Croatia to obtain weapons<sup>221</sup> and an agreement on the supply of weapons was reached.<sup>222</sup> According to Praljak, throughout the war at least 90 per cent of the overall weapons received by the ABiH came from Croatia and from the HVO.<sup>223</sup> Additionally, the ABiH was provided with material from the Middle East and North Africa, including oil from Iran.<sup>224</sup> Despite all this assistance, the Prosecution seem content to maintain that Croatia and the HVO were intent on carving up BiH, despite the clear evidence that without such assistance, BiH may not exist as a sovereign country today.

### **2.3.2.2 The transfer of MTS to ABiH by the Republic of Croatia**

55. Regarding the procedure of procurement of MTS until the end of 1992, the Assistant to the Minister of Defence of Croatia, Ivan Čermak,<sup>225</sup> issued orders to the Administration for Technical Issue and Traffic to deliver MTS to a specific entity. On the basis of this order, that Administration<sup>226</sup> issued a request. With this request in hand, the requesting person could receive MTS at the depot. The request specified who took delivery and who was in charge of the equipment. The former obtained a receipt.<sup>227</sup> After the end of 1992, the procedure was computerised and the storage personnel recorded the personal details of the person in charge of the delivery, as well as the nature and amount of the MTS issued.<sup>228</sup> The drivers of the MTS would be issued a letter allowing the transport dangerous goods from the Ministry of the Interior.<sup>229</sup> Additionally, they received a certificate for the route taken, issued by the SIS Administration.<sup>230</sup>
56. Arms and war material,<sup>231</sup> as well as other kinds of MTS, including boots and uniforms as the ones worn by HVO, were delivered.<sup>232</sup> The ABiH were also lent transportation in order to convey MTS from Croatia to BiH.<sup>233</sup> As stated above, oil for the ABiH was imported via the port of Ploca and stored in the warehouse Ergopetrol on Croatian territory.<sup>234</sup> Later on, and in order to reach the ABiH controlled territories, the oil crossed areas controlled by the HVO.<sup>235</sup> Both the ABiH and HVO

<sup>221</sup> Hamid Bahto, 11 March 2009, T.37897:19-37898:8; 2D01253, Set of Invoices and delivery notes regarding issuing arms and ammunition signed by Tihomir Majic.

<sup>222</sup> Hamid Bahto, 11 March 2009, T.37898:6-37899:3.

<sup>223</sup> Slobodan Praljak, 29 June 2009, T.42146:13-14.

<sup>224</sup> 1D02148, J. Pric's letter to the Office of the Government of R BiH in Zagreb re: distribution of oil from Iran, 2 February 1993.

<sup>225</sup> 3D00436, Order stamped and signed by Ivan Čermak, 10 October 1992. See also, 3D00437, Order stamped and signed by Ivan Čermak, 16 October 1992.

<sup>226</sup> See Dragutin Cehulić, 1 April 2009, T.38693:10-14; T.38687:22-38688:25.

<sup>227</sup> Mario Milos, 30 March 2009, T.38644:2-38645:25.

<sup>228</sup> Mario Milos, 30 March 2009, T.38645:21-38646:1. See also Dragutin Cehulić, 1 April 2009, T.38689:7-38689:20.

<sup>229</sup> Mario Milos, 30 March 2009, T.38655:6-14.

<sup>230</sup> Mario, Milos 30 March 2009, T.38655:6-14.

<sup>231</sup> Mario Milos, 30 March 2009, T.38661:2-5.

<sup>232</sup> Dragutin Cehulić, 1 April 2009, T.38700:12-25.

<sup>233</sup> Mario Milos, 30 March 2009, T.38651:1-6.

<sup>234</sup> 1D02458, Letter from the RBiH Ministry of Energy, Mining and Industry to Arif Pasalic, commander of the 4th Corps pf BH Army, 14 February 1993.

<sup>235</sup> Mile Akmadzić, 19 June 2008, T.29611:11-29612:2.

received a significant amount of MTS via Croatia very frequently.<sup>236</sup> In 1992 and 1993 ABiH was issued MTS several times a month.<sup>237</sup>

57. Croatia also organised and conducted training, in Croatia, for ABiH soldiers.<sup>238</sup> This training continued even in 1993 and was provided in order to support the BiH and the ABiH in its fight against Serb aggression.<sup>239</sup> It is hardly likely a country would train and assist its adversaries in this manner. The only reasonable conclusion is that there was, in fact, no plan by Croatia to “carve up” BiH, and no JCE as alleged by the Prosecution.

### 2.3.2.3 The cooperation between the HVO and the ABiH

58. The ABiH depended on the cooperation with the HVO to acquire MTS.<sup>240</sup> This cooperation applied to the transportation of weapons to combat zones. Weapons for the ABiH, other than those manufactured in Central Bosnia and in the Igman Plant in Konjic, passed through HVO-controlled territory.<sup>241</sup> There are numerous examples of the HVO transporting MTS to ABiH combat zones, including on 8 January 1993, where despite tensions in Central Bosnia and what the Prosecution alleged was an HVO ultimatum, MTS was supplied to the ABiH.<sup>242</sup> At least until March 1993, the HVO and ABiH cooperated closely on the transfer of MTS.<sup>243</sup> Frequently, Croatia issued arms to the HVO or ABiH jointly. Those arms were sent to the HVO logistic base in Grude and only then split between the two armies.<sup>244</sup> Other shipments were sent directly to ABiH through the HVO logistics centre in Grude.<sup>245</sup> The ABiH sent requests to the HVO in order to obtain arms and ammunitions. This sustained and constant pattern of assistance continued throughout 1992.<sup>246</sup>
59. According to Mile Akmadžić, then member of the BiH government, an informal agreement by the BiH government provided that weapons be divided equally between the HVO and the ABiH.<sup>247</sup> This

<sup>236</sup> Dragutin Cehulić, 1 April 2009, T.38691:7-38692:4; T.38713:19-24.

<sup>237</sup> Mario Milos, 30 March 2009, T.38659:10-38660:15. See also Dragutin Cehulić, 1 April 2009, T.38709:18-38715:5.

<sup>238</sup> See Slobodan Praljak, 3 June 2009, T.41132:5-41134:7; Marijan Biskić, 6 March 2007, T.15194:3-18; 3D00314, PREZENTACIJA, THE FORMATION OF BH ARMY, 3 July 2006.

<sup>239</sup> 3D00299, Letter to the Ministry of Defense of the Republic of Croatia signed by Colonel Efendić, 4 January 1993. See also Section 2.5.3.1.

<sup>240</sup> See notably, Marita Vihervuori, 28 August 2007, T.21711:7-21.

<sup>241</sup> Mile Akmadžić, 18 June 2008, T.29604:11-14.

<sup>242</sup> See, e.g., 2D00809, Agreement signed by Bruno Stojić, Ivica Dzinovic, Dzevad Hadzhuseinovic, Safet Prucevic, Dzevdet Tinjic, Mato Nadjelic and Srecko Rebensten on 1993/01/08; transport of materials from Igman to Konjic, 1 January 1993.

<sup>243</sup> See, e.g., 2D00229, INFORMATION - From: Commander Mr. Arif pasalic; To: Sefer Halilović, 26 February 1993.

<sup>244</sup> 3D00437, OR-AH-54, Order for issuing materials for the needs of central background base Grude at disposal of the BH army and HVO Gorazde, Foca, Tmovo and Visegrad, issued by Ivan Cermak, 16 October 1992. See also 2D00630, Signed and stamped Order issued by Ivan CERMAK for issuance of arms & ammunition for 106st Brigade of HVO in Orasje Ref. Number 512-07-06/92-01/252, 10 October 1992; and 2D00898, Approval for transport of resources for the needs of 109th Brigade Doboj signed by Ivan Cermak on 1992/11/24, 24 November 1992.

<sup>245</sup> 2D00311, No. 512-08/93-01, ORDERING - For distribution of material resources for BiH Armed forces purposes..., From: REPUBLIC OF CROATIA MINISTRY OF DEFENCE To: Mr. Bruno Stojić And Mr. Safet Orucevic, 30 March 1993. See also, 3D00008, OR-3-2, ORDER ISSUED BY V. ZAGOREC, 6 March 1993.

<sup>246</sup> 2D00522, Request for ammunition sent to HVO Mostar by ARBiH Commander Arif Pasalic, 13 July 1992; 2D00523, Request for ammunition and weapons sent by ARBiH to HVO Mostar - signed by commander Arif Pasalic, 31 October 1992.

<sup>247</sup> Mile Akmadžić, 18 June 2008, T.29601:15-25.

appears to be corroborated by a report from the ABiH 4<sup>th</sup> Corps Command which suggests that on 31 January 1993, the BiH Government issued an order to divide “delivered and manufactured ammunition quantities in 50:50 ratio between [ABiH] and HVO.”<sup>248</sup> In February 1993, the HVO and ABiH agreed to equally share the oil coming from the Iranian contingent, in accordance with a decision of the Ministry of Energy, Mining and Industry.<sup>249</sup> The Defence submits that all these factors are relevant in determining whether the alleged JCE existed at all.

#### **2.3.2.4 Areas where the MTS were delivered and timeframe of the cooperation**

60. Whilst Croatia issued arms for specific purposes and for specific regions of BiH,<sup>250</sup> Croatia did not have any guarantees regarding the final destination of the arms it issued to the ABiH, especially when MTS was sent to BiH logistic centres, like Visoko.<sup>251</sup>
61. The HVO issued MTS to the ABiH in areas where both armies fought against the aggression conducted by the Serbs, as well as in other regions. The help provided by the HVO in several areas was of crucial importance to the ABiH;<sup>252</sup> for example in Tuzla between August 1992 and April 1993<sup>253</sup> and Srebrenica in April 1993,<sup>254</sup> as well as in February 1993 in Sarajevo.<sup>255</sup> MTS were directly supplied to Gornji Vakuf and Bugojno from February to April 1992.<sup>256</sup> In Novi Travnik, the

<sup>248</sup> 2D00147, ARBiH document signed by the Assistant for logistics Mirsad M. on 1993/02/17 - ammunition supply, 17 February 1993, point 2. The existence of the letter by the BiH government referred to in 2D00147 was confirmed by Akmadžić. See Mile Akmadžić, 18 June 2008, T. 29603:11-18.

<sup>249</sup> 1D02148, J. Pric's letter to the Office of the Government of R BiH in Zagreb re: distribution of oil from Iran, 2 February 1993.

<sup>250</sup> See e.g. 3D00436, Order stamped and signed by Ivan Čermak, 10 October 1992. See also, 3D00437, Order stamped and signed by Ivan Čermak, 16 October 1992.

<sup>251</sup> Mario Milos, 30 March 2009, T.38658:16-24; See also Dragutin Cehulić, 1 April 2009, T.38693:19-24. [REDACTED]. For an example of MTS sent to Visoko, see 3D00008, OR-3-2, ORDER ISSUED BY V. ZAGOREC, 6 March 1993.

<sup>252</sup> See 2D00522, Request for ammunition sent to HVO Mostar by ARBiH Commander Arif Pasalic, 13 July 1992.

<sup>253</sup> 2D01097, Report by ARBiH 2nd Corps Command - Tuzla on acquired MTS signed by Assistant to the Commandant Edin Dautbegovic on 1993/03/08; contains amount used for purchase of MTS - 3.300.000DEM, 8 March 1993; 2D01101, Document by Supreme Command Headquarters of ARBiH - Sarajevo signed by Sefer Halilović Head of Supreme Command Headquarters on 1993/03/04 - request for authorization of the transport of confiscated MTS, 4 March 1993; 2D01086, List of materials and equipment - MTS (ammunition) delivered to ARBiH 2nd Corps Command - Tuzla on January 2nd.1993 signed and dated 1993/02/10, 10 February 1993; 2D01091, Order for issuing material resources for ARBiH District headquarters for defense-Tuzla through the Central rear base Grude for the listed MTS (ammunition) signed by Assistant to the Minister of Defense, 13 December 1992; 2D01093, Order for issuing material resources for ARBiH District headquarters for defense - Tuzla for listed military equipment signed by Assistant to the Minister of Defense of R. Croatia, 8 October 1992; 2D01107, Authorization for transport of listed MTS (weapons and combat equipment) for the needs by ARBiH 2nd Corps via route Grude - Prozor - Gradacac - Vitez authorized by HVO Main Headquarters, 1 May 1993; 2D01111, Document by Command of ARBiH 2nd Corps from 1993/02/26; Report from the official visit by the team from 2nd Corps (Andjelko Makar, Osman Puskar and Ivan Mijacevic) to HVO Defense department at Mostar, 26 February 1993; 2D01116, Official letter signed by the Commandant of ARBiH 2nd Corps Hazim Sadic sent to Bruno Stojić on 1993/03/04; request for permission to take possession and transport 3 tones of black powder and 7 tones, 4 March 1993. See also Andjelko Makar, 23 March 2009, T.38453:18-38454:4.

<sup>254</sup> 2D01100, Authorization by HVO Main Headquarters for uninterrupted transport / passage of listed MTS (weapons and ammunition) via route Grude - Srebrenica by three trucks; Document dated 1993/04/07, 7 April 1993. See also Andjelko Makar, 23 March 2009, T. 38454:161-38455:3.

<sup>255</sup> Nedžad Cengiç, 11 March 2009, T.37959:13-16.

<sup>256</sup> 2D01253, Set of Invoices and delivery notes regarding issuing arms and ammunition signed by Tihomir Majic, no main date.

Bratstvo factory produced high calibre artillery and tanks.<sup>257</sup> At the beginning of 1992, both HVO and ABiH had access to the factory and discussed the distribution.<sup>258</sup> Filipović decided to distribute one third of the weapons to the southern joint front and one third to the entire BiH. The last third was equally split between the Croats and the Muslims in Novi Travnik.<sup>259</sup> That cooperation in Novi Travnik did not continue after June 1992, was because the ABiH eliminated the HVO in a fight over the factory.<sup>260</sup> On 8 January 1993, the HVO agreed to provide material for the production of ammunitions at the Igman Factory, in exchange for a supply of ammunition from this factory.<sup>261</sup> Arms were sent to Zenica in March 1993.<sup>262</sup> In October 1992, the Prosecution allege that the HVO “ordered the HVO Military Police to tighten its control over Mostar town”<sup>263</sup> but, in the same time period, Pašalić sent two requests to the HVO for weapons. These weapons were sent and were delivered to the ABiH in Mostar.<sup>264</sup> Hardly conduct consistent with an alleged JCE.

62. Direct cooperation between the HVO and ABiH, was substantial throughout 1992 and at least until March 1993.<sup>265</sup> Testimony suggests that cooperation continued throughout the war during this period, even if in certain areas, the cooperation tended to be more difficult.<sup>266</sup> Even when tensions arose in Central Bosnia, large quantities of MTS were still able to get to other places in BiH as passage to areas without conflict was negotiated, for example during November 1992 and February 1993.<sup>267</sup> Importantly, it appears that on 22 November 1992, less than a month after the conflict between the HVO and ABiH, Petković asked the Prozor HVO to release two ABiH members who were transporting MTS from Tuzla to Mostar.<sup>268</sup> Moreover, on 28 December 1992, just days before the alleged attack of the HVO in several localities in Central Bosnia and the ‘ultimatum’ of 15 January 1993,<sup>269</sup> Petković authorised the ABiH to transport large amount of MTS from Mostar to Jablanica, Prozor, Gornji Vakuf, Bujogno, Travnik, Vitez, and Visoko.<sup>270</sup> Again, on 1 May 1993, the

<sup>257</sup> Filip Filipović, 30 November 2009, T.47466:1-2.

<sup>258</sup> Filip Filipović, 30 November 2009, T.47466:5-16.

<sup>259</sup> Filip Filipović, 30 November 2009, T.47466:17-47467:1.

<sup>260</sup> Filip Filipović, 30 November 2009, T. 47467:6-12.

<sup>261</sup> 2D00809, Agreement signed by Bruno Stojić, Ivica Dzinovic, Dzevad Hadzihuseinovic, Safet Prucevic, Dzevdet Tinjic, Mato Nadjelic and Srecko Rebensten on 1993/01/08; transport of materials from Igman to Konjic, 8 January 1993.

<sup>262</sup> Slobodan Praljak, 14 May 2009, T.40138:3-40140:12.

<sup>263</sup> Indictment, para. 91.

<sup>264</sup> See 2D00522, Request for ammunition sent to HVO Mostar by ARBiH Commander Arif Pasalic, 13 July 1992; 2D00523, Request for ammunition and weapons sent by ARBiH to HVO mostar - signed by commander Arif Pasalic, 31 October 1992.

<sup>265</sup> Milan Gorjanc, 11 February 2009, T.46394:12-22.

<sup>266</sup> Andjelko Makar, 24 March 2009, T.38472:15-20. See also, Slobodan Praljak, 14 May 2009, T. 40144:15-20.

<sup>267</sup> Andjelko Makar, 23 March 2009, T.38455:19-38456:16. See also 2D01111, Document by Command of ARBiH 2<sup>nd</sup> Corps from 1993/02/26; Report from the official visit by the team from 2nd Corps, (Andjelko Makar, Osman Puskar and Ivan Mijacevic) to HVO Defense department at Mostar, 26 February 1993, point 2(b).

<sup>268</sup> P00791, Order issued by Milivoj PETKOVIC to Croatian Defence Council Prozor to release two detained Muslim men and material of Armija Bosnia I Hercegovina, 22 November 1992.

<sup>269</sup> Indictment, para. 31.

<sup>270</sup> 2D01254, Granted transport of material equipment by Milivoj Petković based on Request by Arif Pasalic dated 1992/12/08, 8 December 1992.

HVO authorised a large amount of MTS required by the ABiH 2<sup>nd</sup> Corps to be sent via the Grude-Prozor-Gradacac-Vitez route.<sup>271</sup> This was immediately after alleged HVO attacks.<sup>272</sup> Accordingly, even after May 1993,<sup>273</sup> the ABiH was still able to acquire weapons from Zagreb. This included acquiring weapons from Croatia between June and August 1993.<sup>274</sup> The cooperation highlighted by these examples demonstrates that conflict with the ABiH at a local level was viewed by the HVO as isolated incidents and not part of some grand JCE. If the HVO had been intent on some JCE of the type alleged, then such MTS simply would not have been provided to the ABiH.

63. In conclusion, arms were sent by Croatia and the HVO to the ABiH in Central Bosnia and Mostar, as well as to Konjic. The OTP assert that the alleged JCE commenced in 1991 and lasted until 1994 and encompassed these geographical areas. Therefore, cooperation over this period of time in the areas of the Indictment is relevant. The Defence respectfully submits that the evidence detailed above, pertaining to these areas, refutes the existence of a common plan to subjugate and remove Muslims and establish a "Greater Croatia." Even more so, since alleged JCE members were directly involved in the transfer of MTS and were aware that the MTS could be used against the HVO in the HZ H-B.

## **2.4 Alleged Campaign to Prosecute Bosnian Muslims and non-Croats**

### **2.4.1 Policy of HVO HZ H-B not intended to discriminate against or persecute Bosnian Muslims**

#### **2.4.1.1 Any discriminatory actions or persecution occurring within municipalities were not the result of HVO HZ H-B top-down decisions**

64. The Prosecution assert that members of the alleged JCE discriminated and persecuted Muslims in the HZ H-B in a coordinated manner through harassment, subjugation and discrimination and efforts to 'Croatise' the municipalities in HZ H-B. The efforts by HZ H-B and HVO authorities allegedly include "[taking] control of many municipal governments and services, removing or marginalising local Bosnian Muslim leaders;" "[taking] control of the media and impos[ing] Croatian ideas and propaganda" along with other measures.<sup>275</sup> The paragraphs below will demonstrate that

<sup>271</sup> 2D01107, Authorization for transport of listed MTS (weapons and combat equipment) for the needs by ARBiH 2nd Corps via route Grude - Prozor - Gradacac - Vitez authorized by HVO Main Headquarters and signed by Ante Jelavic, 1 May 1993.

<sup>272</sup> Indictment, paras. 51-53.

<sup>273</sup> Andjelko Makar, 24 March 2009, T.38472:2-20; Mario Milos, 30 March 2009, T.38657:4-24; T.38659:11-38660:6.

<sup>274</sup> Mario Milos, 30 March 2009, T.38656:10-38657:3; [REDACTED].

<sup>275</sup> See, Indictment, para 26. See also Prosecution Pre-Trial Brief, paras. 26.4, 26.15 and 26.7.



actions in the municipalities cannot be fairly attributed to the HVO leadership or establish the JCE alleged.<sup>276</sup>

### **Prozor**

65. In order to establish persecution as a crime against humanity, the Prosecution assert that HVO/HDZ took control of the school system in Prozor in December 1992 and enforced a Croatian curriculum.<sup>277</sup> [REDACTED].<sup>278</sup> [REDACTED].<sup>279</sup> [REDACTED].<sup>280</sup> An SDA report reveals that schools were being given Croatian names.<sup>281</sup>
66. Despite these averments, the Prosecution have presented no evidence to show that any alleged JCE member, or the “central” HVO authorities, had a part in the introduction of a Croatian curriculum. The Prosecution evidence that was presented is insufficient and fails to prove the “Croatisation” of Prozor or the implementation of discriminatory measures. [REDACTED].<sup>282</sup>
67. Moreover, the BiH government could no longer finance or oversee education in the municipalities. Each municipality was responsible for funding and running its own educational system and when the BiH Ministry could no longer meet its obligations, the municipal governments would ensure that the school could function.<sup>283</sup>
68. Importantly, the Prosecution’s evidence that a Croatian curriculum was introduced into Prozor is tenuous at best and often contradictory. While the Prosecution is asserting coercion or persecution, in reality, a disorganised school district with competing goals was more often the cause of perceived discrimination. When the conflict between the Muslims and Croats arose, school was suspended and ultimately stopped rendering the enforcement of any curriculum impossible.<sup>284</sup> [REDACTED].<sup>285</sup> [REDACTED].<sup>286</sup> [REDACTED].<sup>287</sup> [REDACTED].<sup>288</sup> It is not alleged today that this is discriminatory.

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<sup>276</sup> While previous ICTY judgements may have ruled the existence of a widespread and systematic attack against civilians in the HZ H-B, this does not in itself prove the existence of a JCE as alleged in the Indictment. See *Prosecutor v. Naletilić et al.*, IT-98-34-T, Judgment, 31 March 2003; *Prosecutor v. Blaskić*, IT-95-14-T, Judgment, 3 March 2000.

<sup>277</sup> Jacqueline Carter, 20 June 2006, T:3496:17-19

<sup>278</sup> [REDACTED].

<sup>279</sup> [REDACTED].

<sup>280</sup> [REDACTED]. See also P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

<sup>281</sup> P01656, Signed Information from the Party of Democratic Action (Muslim party), Committee for the Return of the legal organs and expelled persons, about situation in Prozor before and after the conflict in October 1992. Ref: 1-01-\_\_\_/03, 12 March 1993, p. 2.

<sup>282</sup> [REDACTED].

<sup>283</sup> Miroslav Palameta, 29 September 2008, T:32800:6-32803:16;1D00199, Decree on Secondary Education in the Croatian Community Herceg Bosna During an Imminent Threat of War or State of War, 9 December 1992; 1D00200, Decree on Primary Education in the Territory of the Croatian Community Herceg Bosna During an Imminent Threat of War or a State of War, 9 December 1992.

<sup>284</sup> Omer Hujdur, 20 June 2006, T:3496:13-16.

<sup>285</sup> [REDACTED].

<sup>286</sup> [REDACTED]. See also 1D01050, Decisions concerning commencement of school year, 18 September 1992.

69. Finally, the Prosecution's contention that the introduction of Croatian into schools shows discrimination against Muslims is misleading and wrong. These measures were meant to assert Croatian identity in the face of Serb expansionism and intended to include room for Muslims. [REDACTED].<sup>289</sup> Nothing could be clearer. In any event, it is reasonable to assume that the supposed introduction of the Croatian language, and curriculum, even if proved, constituted an assertion against Serb oppression rather than an act to belittle, sideline or discriminate against Bosnian Muslims. In considering this whole matter, it is also apt to pause and consider what is the discrimination alleged by the Prosecution anyway. The ICTY has on numerous occasions said that there is no material difference in Bosniak, Croatian or Serbian<sup>290</sup> and the Prosecution have not led evidence as to the nature of the alleged discrimination.
70. The Prosecution presented the dismissal of Muslim persons<sup>291</sup> as evidence of a policy of discrimination. However, the Prosecution failed to present any evidence connecting the dismissals with a systematic or discriminatory policy against Bosnian Muslims. With regard to the dismissals of Sidik Hadžić and Muhamed Zujmović, it failed to provide evidence of the motivation or reasons for such dismissals. In the case of Elvedin Samardžić, the decision was based on Article 6 of the Statutory Decision of the Municipal Executive Authorities and the Municipal Administration.<sup>292</sup> It appears that each municipality adopted its own regulations to deal with the newly emerging situation.<sup>293</sup> Individuals who were dismissed had remedies if their rights had been violated, including appeal against the decision, an administrative procedure, proceedings in labour court or the filing of a criminal report.<sup>294</sup>
71. A report by the SDA in Prozor, dated 14 November 1992, accused the Bosnian Croats of attempting to exert power over all local institutions and eject Muslims from the Ministry of the

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<sup>287</sup> [REDACTED]; P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992, p. 1.

<sup>288</sup> [REDACTED].

<sup>289</sup> 1D01050, Decisions concerning commencement of school year; [REDACTED].

<sup>290</sup> The ICTY has, in the course of determining the existence of mutual comprehension between Serbs and Croats, for example, found that 'the differences between Serb and Croat are so small that that there exists no valid reason to justify the refusal of interpretation into the Serb-Croatian language [...].'' See *Prosecutor v. Krsmanović*, IT-96-19-Misc.1, Decision, 29 March 1996.

<sup>291</sup> See P00726, Stamped decision by Mijo JOZIC Croatian Defence Council Prozor Municipality President dismissing Sidik HADZIC from the position of Director of the Prozor Vodograd Company (public water supply company). Ref: Number: 01/1-66/92, 10 November 1992; P00728, Stamped decision by Mijo JOZIC Croatian Defence Council Prozor Municipality President, Elvedin SAMARDZIC was dismissed from the position of Prozor Elementary School Principal, pursuant to Article 6 of the Statutory Decision of the Municipal Executive Auth, 10 November 1992; P00800, Signed and stamped decision by Mijo JOZIC, President of Croatian Defence Council Prozor Municipality. Muhamed ZAJMOVIC was dismissed from the position of Prozor Forestry Director. Ref: Number: 01/1-64/92, 25 November 1992.

<sup>292</sup> P00250, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Statutory Decision on Municipal Executive Authority and Municipal Administration. Pages 9-10. Ref: 4/92, no main date.

<sup>293</sup> Zoran Buntić, 7 July 2008, T:30290:8-15.

<sup>294</sup> Zoran Buntić, 7 July 2008, T:30292:21-T:30293:17.

Interior.<sup>295</sup> However, it appears that these actions were localised and related to a power struggle, not a coherent and coordinated policy of discrimination emanating from central leadership. The situation in Prozor was far more complex and, properly understood, cannot support to Prosecution's contention of their being part of a pattern of discrimination. HVO officials attempted, within their means, to cooperate with the Bosnian Muslims. An ECMM report in August 1993, during this alleged period of persecution, noted that the Croat mayor of Prozor "feels his greatest responsibility is the safety of all citizens in Prozor."<sup>296</sup> Rudy Gerritsen confirmed in testimony that the mayor "tried to do his best" and while he may have put Croat interests first, was concerned with the Muslims, as well.<sup>297</sup> Evidence shows that on 23 March 1993, the Chief Imam of Prozor thanked the HVO Prozor for providing security during the month of Ramadan which allowed the believers to go to the mosque.<sup>298</sup> Christopher Beese stated that Šiljeg welcomed Muslims in his units.<sup>299</sup>

72. It is worth mentioning that whilst the evidence fails to implicate any member of the alleged JCE in persecution in Prozor, an order by Petković dated 31 October 1992 which requests the HVO Prozor to prevent the torching of Muslim houses indicates that such actions as did befall the civilian population were not part of any policy by the central HVO authorities.<sup>300</sup>

### **Gornji Vakuf**

73. The Prosecution allege that the HVO provoked the predominantly Muslim population by raising a Croatian flag on 6 January 1993<sup>301</sup> and continued through the year, to intimidate and harass Muslims, including attempting to make Muslims burn a Koran.<sup>302</sup> Moreover, the Prosecution allege that the "ultimatum" issued in January 1993 was intended to subjugate Muslims.<sup>303</sup> However, the Prosecution failed to provide any evidence of any alleged JCE member participating in any alleged act of discrimination in Gornji Vakuf. The Prosecution failed to prove how or in what way the contended "ultimatum" itself amounts to a discriminatory act (see Section 2.4.3.). The isolated incidents alleged, including the order to burn the Koran and the raising of the Croatian flag, in no

<sup>295</sup> P00744, Signed Information about situation in the municipality of Prozor and position of the Muslim people in relation to the events of 23 and 24 October 1992 from the Republic of Bosnia and Herzegovina Municipality of Prozor, Forum of Expelled Muslim Organisat, 14 November 1992, p. 1.

<sup>296</sup> P09627, ECMM report on meetings in Prozor, shuttle changed round. IN.266 NL Burum LES 492041060 from V2 GornjiVakuf to CC Travnik, 16 August 1993.

<sup>297</sup> Rudy Gerritsen, 29 May 2007, T:19226:2-19228:5.

<sup>298</sup> 2D00201, Letter to PROZOR HVO and PROZOR MP; Chief Imam of the board of the Prozor IZ Effendi ELKAZ HIDAJET, 23 March 1993.

<sup>299</sup> Christopher Beese, 14 June 2006, T:3109:13-3110:8. His evidence that Muslims contested that there was enough security to return to Prozor needs to be read together with the letter of the Chief Iman of Prozor. See 2D00201, Letter to PROZOR HVO and PROZOR MP; Chief Imam of the board of the Prozor IZ Effendi ELKAZ HIDAJET, 23 March 1993.

<sup>300</sup> P00679, Order issued by Milivoj PETKOVIC Croatian Defence Council COS re: an order to stop individuals from destroying Muslim houses in Prozor. Ref: 31-10-1/92, 31 October 1992.

<sup>301</sup> Indictment, para 64.

<sup>302</sup> Indictment, para 68. See also Prosecution Pre-Trial Brief, paras. 26.5-26.7.

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

way prove a coordinated or directed HVO policy of discrimination or persecution. Furthermore, evidence shows the existence of cooperation between the HVO and the Muslims.

***Sovici and Doljani (Jablanica Municipality)***

74. The Prosecution presented evidence alleging the removal of Muslims from positions of power in Jablanica and the exertion of Croatian authority in the Municipality.<sup>304</sup> The evidence adduced by the Prosecution does not prove any coordinated discriminatory activity in the Municipality of Jablanica. Safet Idrizović's testimony is based on an exhibit which details a chronology of events and that Muslims were dismissed from positions of authority. No further explanation is provided by the witness during his testimony. For example, Idrizović's written chronology states that Sefer Hamdo, President of the Municipal Assembly, was dismissed from office, "apparently due to crime."<sup>305</sup> No more is said, no more is known. It is not clear what the crime is that was alleged or whether he was guilty, whether he is reasonably suspected of it or whether it was a completely fabricated allegation. This is not a technical matter, as the Prosecution has the burden, to establish the causal connection between the removal of an individual and discriminatory intent. This they have failed to do.

***Mostar***

75. The OTP alleged that in 1992 the HVO engaged in a campaign to control and "Croatise" Mostar and give various examples that are said to support that contention.<sup>306</sup>

76. [REDACTED].<sup>307</sup> However, the witness provided no examples or names of dismissed individuals, nor was his testimony corroborated by documentary evidence. Notwithstanding these important deficiencies, his testimony is contradicted by other witnesses such Miroslav Palameta who asserted that nobody was dismissed from Mostar University because of their nationality during late 1992.<sup>308</sup> Additionally, evidence shows that a Bosnian Muslim was appointed Dean of Mechanical Engineering to the University of Mostar.<sup>309</sup> Smajkić's reference to the showing of "obedience to Croatian policy,"<sup>310</sup> in this regard, does not suffice to prove a policy of discrimination. By May 1993

<sup>304</sup> P09400, Attachment to the ICTY witness statement of Safet Idrizovic. Contains chronological events which represent how the HZ H-B took over the power in Jablanica,.

<sup>305</sup> P09400, Attachment to the ICTY witness statement of Safet Idrizovic. Contains chronological events which represent how the HZ H-B took over the power in Jablanica,, p. 5.

<sup>306</sup> Indictment, para 90.

<sup>307</sup> [REDACTED].

<sup>308</sup> Although some professors stopped attending the University and if financially possible they were rehired following the war. See Miroslav Palameta, 29 September 2008, T.32823:3-24.

<sup>309</sup> Seid Samjkić, 31 May 2006, T.2908:4-2909:24; 1D00382, Decision on appointing the dean of Faculty of Mechanical Engineering in Mostar, 23 November 1992.

<sup>310</sup> Seid Samjkić, 31 May 2006, T.2909:14-24.

- no formal classes were taught at Mostar University anyway, but that informal sessions were held and these did involve Muslims who remained on staff and were given rooms at the University.<sup>311</sup>
77. Fahrudin Rizvanbegović testified that the first session of the university council was convened on 26 June 1992 in order to change the name of the university and the curriculum and to introduce Croatian exclusively.<sup>312</sup> The Bosnian Muslims recommended a diverse curriculum which was rejected and 42 Muslim professors left the university.<sup>313</sup> However, his testimony suggested that it was an internal matter that led to the change of the name of Mostar University. The witness acknowledged that these proposals were not made by the president of the university or his deputy but, rather, by Bozo Zepić, a professor of Marxism who acted for personal reasons.<sup>314</sup> The decision on appointment of the vice chancellor, dated 23 November 1992, refers to the university as University of Mostar, not the Croatian University of Mostar.<sup>315</sup>
78. The changes of school names in Mostar were not based on ideological or political motivations and the different names used were of Croatian, Muslim and Serbian origin.<sup>316</sup> The schools in Mostar were given “Communist names” during the 1970s which included Muslims, Serbs and Croats.<sup>317</sup> The names were changed to remove any ideological connotation and the change applied to all schools.<sup>318</sup> Furthermore, a decision from 16 September 1992 by the HVO Mostar also shows that the official names of primary schools were changed into names with numerical references, e.g. “1<sup>st</sup> Primary School”,<sup>319</sup> rather than any name with an ideological, nationalist or ethnic connotation
79. Further, with regard to the issue of language at the University, Fahrudin Rizvanbegović admitted that his testimony that Bosnian was a constitutional language prior to 1993 was incorrect.<sup>320</sup> The official language was “Serbo-Croatian.”<sup>321</sup> It appears that the imposition of “Croatian” was primarily a semantic one and that it was not a new language being forced. The witness acknowledged that there was no real difference between Croatian, Serbian, and Bosnian but that it was rather “just a matter of equality and human rights to have the language called by their name.”<sup>322</sup> Evidence shows that a majority of professors at Mostar University supported the decision to change the official

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<sup>311</sup> Miroslav Palameta, 1 October 2008, T.32915:21-32916:24.

<sup>312</sup> Fahrudin Rizvanbegović, 22 May 2006, T.2186:16-25; 23 May 2006, T:2281:4-9.

<sup>313</sup> Fahrudin Rizvanbegović, 22 May 2006, T.2188:8-10.

<sup>314</sup> Fahrudin Rizvanbegović, 22 May 2006, T:2187:1-5.

<sup>315</sup> 1D00383, Decision on appointing of Vice Chancellor of University in Mostar, 23 November 1992.

<sup>316</sup> Miroslav Palameta, 29 September 2008, T.32804:22-32806:11.

<sup>317</sup> Miroslav Palameta, 29 September 2008, T.32807:21-32809:17.

<sup>318</sup> Miroslav Palameta, 29 September 2008, T.32778:18-32779:19; T.32805:1-32806:15.

<sup>319</sup> 1D00438, Decision on Changing the Name of a Number of Preliminary and Secondary Schools in Mostar Municipality, 16 September 1992.

<sup>320</sup> Fahrudin Rizvanbegović, 22 May 2006, T.2282:1-9.

<sup>321</sup> Fahrudin Rizvanbegović, 22 May 2006, T.2282:1-9.

<sup>322</sup> Fahrudin Rizvanbegović, 23 May 2006, T.2288:12-23. See para. 68 above (ICTY has held that there is no material difference between B/C/S)

- language.<sup>323</sup> The introduction of a Croatian language cannot be considered as discriminatory towards Muslims.
80. Finally, Palameta clearly stated that Muslim students continued to attend Mostar University and lived in Neum during the war directly rebuking the assertion that they were not able to attend that university anymore because they would be arrested.<sup>324</sup>
81. Alija Lizde testified that Radio Mostar was changed to Croatian Radio Mostar, changing the contents of the station, the music and the language.<sup>325</sup> The witness stated that a competing radio station formed, War Mostar, which should be seen as a product of the war and not of discriminatory action.<sup>326</sup> Moreover, he was unable to clearly refute evidence that Radio Mostar retained its name into December 1992 and that Muslims continued to be employed.<sup>327</sup> The witness claimed that on air it referred to itself as “Croatian Radio” but had no answer to evidence showing the name remained Radio Mostar and with no mention of separate radio stations.<sup>328</sup> In fact, considered together, the witness testimony adduced at trial casts doubt on whether or not the alleged name change ever actually occurred.
82. A policy of discrimination cannot be inferred from a greater focus being placed on Croatian culture during the war. The information provided by a radio station during wartime is of a specific nature and the Prosecution’s allegations regarding the change of name and content must, even if believed, be viewed in light of all the prevailing circumstances, including the reality that two groups are engaged in active hostilities and the need to forge a distinct identity to the Serbs and for morale.
83. [REDACTED].<sup>329</sup> [REDACTED].<sup>330</sup> Here evidence is, however, discredited by numerous examples of appointment of Bosnian Muslims into office.<sup>331</sup>

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<sup>323</sup> Miroslav Palameta, 29 September 2008, T.32832:6-T.32833:13; 1D00421, A Century of Higher Education in Herzegovina,, p. 3. See also Miroslav Palameta, 29 September 2008, T.32824:7-22.

<sup>324</sup> Miroslav Palameta, 1 October 2008, T.32917:6-T.32918:10.

<sup>325</sup> Alija Lizde, 1 May 2007, T.17755:1-12.

<sup>326</sup> Alija Lizde, 1 May 2007, T.17755:1-24.

<sup>327</sup> Alija Lizde, 2 May 2007, T.17852:4-T.17855:6.

<sup>328</sup> See 1D01421, Letter of the Committee of the Islamic Community to Radio Mostar, 21 December 1992; See Alija Lizde, 2 May 2007, T.17853:17.

<sup>329</sup> [REDACTED]; [REDACTED].

<sup>330</sup> [REDACTED].

<sup>331</sup> See 1D00499, Decision on Appointment of Temporary Executive Principal of Elementary School Dreznica Mostar – Edin Music, 8 April 1993; 1D00500, Decision on the Appointment of Temporary Executive Principal of the Seventh Elementary School, Mostar – Rasim Jakirovic, 8 April 1993; 1D00501, Decision on the Appointment of Temporary Executive Principal of the Sixth Elementary School Mostar – Samija Sefo, 8 April 1993; 1D00502, Decision on the Appointment of Temporary Executive principal of the Fourth Elementary School, Mostar - Muslija Jugo, 8 April 1993; 1D00504, Decision on the Appointment of Temporary Principal of Elementary School Podvelez Mostar - Ismet Rajjevic, 8 April 1993; 1D02763, Certificates issued by Social Welfare Centre Mostar saying that persons in question are employess of the Centre, 24 May 1993. See also Borislav Pušić, 16 September 2008, T.32185:8-T.32187:14 and T.32189:12-23; 1D00594, Decision to create post of duty head of each office of HVO, 24 July 1992.

84. As to the municipal government, it appears that Muslims were taking part. Half of the representatives in provisional government were supposed to be Muslims. However, three out of five left and were replaced by Muslims who were not from the SDA, since the party members were forbidden to take part in it.<sup>332</sup> However a boycott by the SDA cannot be used to infer discriminatory intent, especially when other Muslims were appointed in their place.

### **Stolac**

85. The Prosecution alleges that in Stolac the HVO persecuted Muslims<sup>333</sup> and that despite its “efforts to ‘Croatise’ the institutions and population” the Bosnian Muslims there rejected HVO control.<sup>334</sup> [REDACTED].<sup>335</sup> However, the witness did not say who dismissed these individuals or provide evidence which would support the existence of a policy of discrimination. On the other hand, a letter dated 23 May 1993, during the height of the conflict between the Muslims and Croats, from Božo Pavlović and Andjelko Marković to Boban, clearly states that Muslims work within HVO units and are given senior positions in Stolac.<sup>336</sup>

### **Čapljina**

86. The Prosecution alleges that in 1992 and 1993 there was increasing HVO persecution against the Muslims.<sup>337</sup> The Prosecution allege that on 20 April 1993, HVO Municipal officials arrested Bosnian Muslims including prominent figures.<sup>338</sup> However, the Prosecution presented little direct evidence of persecution or discrimination in Čapljina. [REDACTED].<sup>339</sup> However, this testimony, even if believed, only shows that a local figure held racist and unacceptable views. It does not connect Marković to the alleged JCE members.

87. The Prosecution has failed to show the existence of a policy of persecution and discrimination by the alleged JCE members, which amounts to a common plan. In fact, evidence shows that municipalities were acting without any leadership,<sup>340</sup> with limited resources and against a primarily Serb threat. In relation to various acts (such as the alleged dismissals), the Prosecution have not adduced sufficient evidence to establish, beyond reasonable doubt, that they were the result of discriminatory intent. Most importantly, the evidence does not establish that any discrimination which occurred was related to orders or a policy by any alleged JCE member. [REDACTED].<sup>341</sup>

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<sup>332</sup> P01158, Croatian Presidential Transcript for 15-01-93, 15 January 1993, p. 38.

<sup>333</sup> Indictment, para 155.

<sup>334</sup> Indictment, para 156.

<sup>335</sup> [REDACTED].

<sup>336</sup> 4D02000, Letter issued by Bozo Pavlovic and Andjelko Markovic to Mate Boban, re: relations between Croats and Muslims in Stolac Municipality, 22 May 1993.

<sup>337</sup> Indictment, para 173.

<sup>338</sup> Indictment, para 174.

<sup>339</sup> [REDACTED].

<sup>340</sup> See also Section 3.2.3. on municipal HVO institutions.

<sup>341</sup> [REDACTED].

Therefore, there was no existence of a regional policy or a plurality of persons acting in unison which would lead to the inference that a common plan to subjugate and remove Muslims and create a Greater Croatia existed.

#### **2.4.1.2 The control of the flow of humanitarian aid by the HVO was a security measure and not aimed at discriminating as part of the alleged JCE**

88. The Prosecution allege that restrictions on humanitarian assistance for the Muslims were used to pursue and implement the alleged JCE.<sup>342</sup> Parties are under the obligation to “allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel.”<sup>343</sup> Thus, there is no absolute obligation to the parties to actually provide humanitarian assistance.<sup>344</sup> Parties may not deliberately impede the delivery but may regulate the passage and take measures of control for example security reasons, including searches.<sup>345</sup> Starvation of civilians may not be used as a method of warfare but this prohibition does not prohibit siege warfare, provided that it aims at achieving a military objective and not at starving a civilian population. Either the inhabitants must be allowed to leave or alternatively, the free passage of humanitarian aid must be allowed.<sup>346</sup>

##### **2.4.1.2.1 Independence of humanitarian organisations on the ground**

89. The Prosecution alleges that the local Red Cross in Mostar was subordinated to the HVO authorities and therefore it amounted to a State humanitarian organisation which was lacking independence.<sup>347</sup> Allegedly, “Herceg-Bosna Red Cross” refused to work with the Bosnian Muslims.<sup>348</sup> In an attempt to establish this, the Prosecution relied on the Decree on the HB H-B Red Cross adopted in December 1994. Article 4 of which states that the HB H-B shall approve the Statute of the Red Cross. Additionally, the Red Cross of the HR H-B shall take over all rights, obligations and property of the BiH Red Cross of on the HR H-B area. <sup>349</sup> The assertion that municipalities influenced or controlled the Red Cross, is allegedly evidenced by the fact that the records regarding recipients of aid were made by municipal services and the Red Cross organised its activities based on these records.<sup>350</sup>

90. Notwithstanding the rather weak evidence tendered by the Prosecution, witness Marinko Šimunović testified that the Red Cross was independent *vis-à-vis* the local authorities and the HVO

<sup>342</sup> Indictment, para. 17(a).

<sup>343</sup> Article 70 (2), Additional Protocol I.

<sup>344</sup> HENCKAERTS J.M., DOSWALD-BECK L., Customary international humanitarian law, Cambridge, Cambridge University Press, 2007, p. 197.

<sup>345</sup> Articles 23 and 59, Geneva Convention IV and Article 70 (3), Additional Protocol I. See also HENCKAERTS J.M., DOSWALD-BECK L., Customary international humanitarian law, Cambridge, Cambridge University Press, 2007, p. 197-198.

<sup>346</sup> HENCKAERTS J.M., DOSWALD-BECK L., Customary international humanitarian law, Cambridge, Cambridge University Press, 2007, p. 188.

<sup>347</sup> Marinko Šimunović, 21 October 2008, T.33562:1-3.

<sup>348</sup> Marinko Šimunović, 21 October 2008, T.33568:22-25.

<sup>349</sup> 1D02661, Law on Red Cross of HR HB from the Official Gazette of HR HB, signed by Ivan Bender, 3 November 1994.

<sup>350</sup> Marinko Šimunović, 20 October 2008, T.334019:3-7.



in general.<sup>351</sup> It never received orders from municipal or “central” HVO authorities, nor was the delivery of humanitarian aid influenced by them.<sup>352</sup> The authorities respected the mandate of the Red Cross.<sup>353</sup> Indeed, staff and workers of the Red Cross were required to cooperate with authorities for protection and to follow procedures, including requesting permits.<sup>354</sup> The local authorities also provided help, including fuel, to the Red Cross which increased its efficiency.<sup>355</sup>

91. As far as the Decree on the HR H-B Red Cross is concerned, it was adopted in December 1994 and therefore after the Indictment period and is of marginal, if any relevance to the determination of matters alleged during the Indictment period.<sup>356</sup>

#### **2.4.1.2.2 Cooperation of the HVO**

92. Generally, the HVO authorities cooperated with international organisations,<sup>357</sup> [REDACTED]. The HVO issued orders for the free passage of aid, including in Stolac in September 1992, for ICRC convoys to all areas on 20 April 1993 and to all the HVO units in August 1993.<sup>358</sup> Prlić called all warring parties not to use humanitarian aid as a weapon of war in July 1993.<sup>359</sup> Evidence shows that between June and December 1993 a huge amount of humanitarian convoys were allowed to pass to Muslim-controlled areas.<sup>360</sup> The HVO, accordingly, respected its obligations under international law and cooperated with international humanitarian organisations.

#### **2.4.1.2.3 The HVO did not discriminate in the attribution of aid**

93. Throughout the Indictment period, Bosnian Muslims and Croats were eligible to receive aid under the same terms without any disadvantage.<sup>361</sup> Muslims were beneficiaries of family cards compulsory to receive humanitarian aid.<sup>362</sup> In Livno, for instance, legislation was adopted in May 1993, which set objective criteria for the distribution of aid according to criteria pursuant to the real

<sup>351</sup> Marinko Šimunović, 20 October 2008, T.33417:17-21.

<sup>352</sup> Marinko Šimunović, 20 October 2008, T.33418:18-T.33419:9.

<sup>353</sup> Marinko Šimunović, 20 October 2008, T.334018:8-13.

<sup>354</sup> Marinko Šimunović, 20 October 2008, T.33418:1-6.

<sup>355</sup> Marinko Šimunović, 20 October 2008, T.334018:8-13.

<sup>356</sup> Indictment, para. 15.

<sup>357</sup> Slobodan Božić, 3 February 2009, T.36311: 10-17. See also 1D01591, UNHCR Medugorje / letter to Martin Raguz, 25 November 1993; Azra Krasjek, 20 June 2007, T.20196:3-T.20199:11.

<sup>358</sup> P00458, Stamped order, ref. 01-2114/92, issued by Milivoj PETKOVIC to all Croatian Defence Council municipal Main Staffs and Bde Comds re: allowance of passage and, if necessary, provision of security for all humanitarian aid convoys, 8 September 1992; P01994, Signed and stamped order issued by Milivoj PETKOVIC to all Operational zone's to protect civilian population affected by war and allow free access to humanitarian convoys. Ref: 01-659/93, 20 April 1993; P03895, Stamped and signed order from Milivoj PETKOVIC to all Croatian Defence Council units re: passage of humanitarian convoys through territory controlled by Croatian Defence Council Ref. Number 02-2/1-02-1664/93, 2 August 1993. See also P03420, UN Civil Affairs Report on a meeting in Grude with Jadranko PRLIC, re Makarska agreement of 10 July on free passage of humanitarian convoys, 13 July 1993.

<sup>359</sup> 1D01529, Published text of the HZ HB Information Office / Jadranko Prlic about humanitarian convoys, 6 July 1993, p. 3.

<sup>360</sup> 3D00921, LIST, APPROVED PASS FOR THE CONVOYS IN THE PERIOD FROM 01.06-10.12.1993, SIGNED BY M. RAGUZ, 8 April 2005.

<sup>361</sup> Marinko Šimunović, 21 October 2008, T.33527:12-16 and T.33681:1-6.

<sup>362</sup> See 1D02761, Humanitarian aid family record, 6 March 1993; 3D03178, Example of family chart-taken from 3D030151, 3D03152-humanitarian aid material, 21 November 1992; 3D03249, Example of the family record (re:3D03151, 3D03152), (no main date).

needs of the population.<sup>363</sup> The eligibility for the aid was assessed by the Welfare Centre in cooperation with the commanders of villages or urban local communities.<sup>364</sup> Humanitarian organisations shall distribute the aid according to the lists received by the Welfare Centre.<sup>365</sup> The criteria applicable in Livno were the one that were applied in Mostar.<sup>366</sup>

94. As to Mostar, the Prosecution asserts that by mid-1992 and 1993, aid was “distributed to the Muslim’s disadvantage.”<sup>367</sup> Allegedly, the Statutory Rights of Refugees and Displaced Persons of 15 April 1993 was adopted by the HVO Mostar Municipal Government, to discriminate against the non-Croats and drive them out of Mostar.<sup>368</sup> The alleged aim of this Decision was to redefine “the criteria for determining an individual’s status as a ‘refugee,’ at a time when being classified as ‘refugee’ was a prerequisite to obtaining humanitarian aid.”<sup>369</sup> The Decision provides that:

In the area of Mostar municipality, refugees’ cards or expelled persons’ cards can only be issued to persons aged between one and 17 years, men over 60, and women over 55, who have not taken up residence in abandoned homes and who come from the occupied territories of the Republic of Bosnia and Herzegovina or the Republic of Croatia. Persons who have come to the area of Mostar municipality from the territories of the Republic of Bosnia and Herzegovina or the Republic of Croatia which have not been occupied shall not be entitled to these cards.<sup>370</sup>

95. [REDACTED].<sup>371</sup>
96. However, the adoption of this decision does not constitute an attempt by the HVO to target the Muslim community.<sup>372</sup> While the decision restricted the attribution of aid, nothing in its wording suggests that the restrictions were targeted against Muslims or non-Croats. In fact, the Decisions were adopted to rationalise the attribution of aid. Marinko Šimunović stated that there were 30.000 beneficiaries of aid in Mostar and prior the adoption of this decision, there were double beneficiaries. Furthermore, this decision was adopted in order to help the persons who needed it the most. For instance, it was not necessary to include men of military age which would be busy and taken care of in their military units.<sup>373</sup> The Decision was justified since there were more people

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<sup>363</sup> 1D00303, Criteria for the distribution of humanitarian aid in the municipality of Livno, signed by Mirko Baković, 11 May 1993. See in particular, Articles II, III, VII, VIII to XIX.

<sup>364</sup> 1D00303, Criteria for the distribution of humanitarian aid in the municipality of Livno, signed by Mirko Baković, 11 May 1993, Article XXII.

<sup>365</sup> 1D00303, Criteria for the distribution of humanitarian aid in the municipality of Livno, signed by Mirko Baković, 11 May 1993, Article XXVII.

<sup>366</sup> Marinko Šimunović, 21 October 2008, T.33492:18-23.

<sup>367</sup> Indictment, para. 90.

<sup>368</sup> Indictment, para. 93. See also 1D00754, Decision / rights granted to refugees, signed by Jadran Topić, 15 April 1993, Article I.

<sup>369</sup> Indictment, para. 93.

<sup>370</sup> 1D00754, Decision / rights granted to refugees, signed by Jadran Topić, 15 April 1993, Article I.

<sup>371</sup> [REDACTED].

<sup>372</sup> Marinko Šimunović, 22 October 2008, T.33588:2-17, T.33444:4-T.33598:1.

<sup>373</sup> Marinko Šimunović, 20 October 2008, T.33404:1-17, T.33444:4-T.33445:11.

arriving in Mostar while the food quantity was decreasing.<sup>374</sup> Indeed, the report of Red Cross Mostar shows the decline in aid arriving to Mostar.<sup>375</sup>

97. Finally, the April 1993 Decision can be compared to the approach taken by the BiH government. Indeed, pursuant to Article 22 of the Decree Law on Displaced Persons and Refugees adopted by the BiH Presidency in October 1992, “the status of a displaced person shall cease when such a person is summoned [...] for military or work obligation.”<sup>376</sup> Indeed, Martin Raguz testified that these individuals have other rights, and therefore their rights under the Decree are curtailed.<sup>377</sup> Moreover, the witness confirmed that pursuant to this decree, people of military age could not be entitled the rights of displaced persons.<sup>378</sup> Thus, the decision taken by the Mostar Municipality to restrict the attribution of aid to people from military age follows the same pattern and the same reasoning than this decree adopted by the Presidency of Bosnia and Herzegovina.<sup>379</sup> It is neither criminal, nor discriminatory, nor unreasonable.

#### **2.4.1.2.4 The attribution of humanitarian aid was decided at a local level**

98. The HVO central authorities had a coordinating role between the municipalities. Humanitarian aid fell in the ambit of the municipalities.<sup>380</sup> The HVO ODP “never took decisions or allocated individuals without having the agreement or proposal from a municipality.”<sup>381</sup> The legislation did not give the Office the power to issue orders.<sup>382</sup> Therefore, if a municipal organ did not issue a decision on the status of a person, the office could not issue an order requesting that such status be granted.<sup>383</sup>
99. Pursuant to the Decision on the Status of Refugees and Displaced Persons on the Territory of the HZ H-B at a Time of Imminent Threat of War, during war the municipalities were solely responsible for granting refugee status and to provide refugees and displaced persons with aid.<sup>384</sup> The Decision provides that “[t]he sub-department for employment and social welfare” coordinate activities within the HZ B-H.”<sup>385</sup>

<sup>374</sup> Marinko Šimunović, 20 October 2008, T.33450:17-19.

<sup>375</sup> 1D02651, Report on the work of municipal Red Cross organisation Mostar in 1993, 23 March 1994. See also Marinko Šimunović, 20 October 2008, T.33455:22-24.

<sup>376</sup> 1D01232, Decree-law on displaced persons and refugees, signed by Ejup Ganić, 6 October 1992.

<sup>377</sup> Martin Raguz, 25 August 2008, T.31269:25-T.31270:2.

<sup>378</sup> Martin Raguz, 25 August 2008, T.31270:3-10.

<sup>379</sup> Martin Raguz, 25 August 2008, T.31284:1-20 and T.31285:1-2.

<sup>380</sup> Martin Raguz, 25 August 2008, T.31286:10-15.

<sup>381</sup> Martin Raguz, 26 August 2008, T.31391:14-19.

<sup>382</sup> Martin Raguz, 25 August 2008, T.31288:10-13.

<sup>383</sup> Martin Raguz, 25 August 2008, T.31288:20-24.

<sup>384</sup> P00553, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue 5, October 1992: Status of refugees and displaced persons on the territory of the Croatian Community of Herceg-Bosna at a time of Imminent Threat of War during a State of War, signed by Jadranko Prlić, 7 October 1992, Articles 3, 4 and 5.

<sup>385</sup> P00553, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue 5, October 1992: Status of refugees and displaced persons on the territory of the Croatian Community of Herceg-Bosna at a time of Imminent Threat of War during a State of War, signed by Jadranko Prlić, 7 October 1992, Article 7. See also, 1D01232, Decree-Law on displaced

100. The distribution of humanitarian aid was controlled by the municipal authorities, e.g. the Mostar Social Welfare Centre, since they decided on the attribution of a card necessary to receive aid.<sup>386</sup> The local communes would collect the aid in the storehouses, prepare the distribution, keep records on beneficiaries and direct distribution of aid.<sup>387</sup>
101. The work carried out by the humanitarian organisations was rationalised and coordinated as early as from October 1992. On 8 October 1992, the HVO President in Mostar issued a decision to establish a Coordinating Committee for Collection, Reception and Distribution of Humanitarian Aid.<sup>388</sup> The Committee consisted of one representative from each organisation registered in Mostar Municipality.<sup>389</sup> Certain institutions were given priority by the Committee, e.g. a soup kitchen or a retirement home.<sup>390</sup> But no distinction was made within the civilian population. The establishment of the Committee assured that the aid was distributed equally between the communities.<sup>391</sup>

#### 2.4.1.2.5 The HVO did not block humanitarian aid

102. From 29 June 1993 to April 1994 a blockade of Mostar allegedly took place and its inhabitants allegedly denied aid.<sup>392</sup> According to Antoon Van der Grinten the HVO had control over the passage of aid since it had to pass HVO checkpoints.<sup>393</sup> However, the witness confirmed that the cooperation with the HVO from June 1993 onwards was good, when the latter provided help to the hospital of East Mostar run by the ABiH. He confirmed that the HVO was generally cooperating with the ECMM.<sup>394</sup>
103. When shown documents relating to Mostar covering the period between June to September 1993, Antoon Van der Grinten testified as to the request made by the ABiH to the hospital in West Mostar for medical equipment, medical assistance, medicines and the provision of an ambulance for the

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persons and refugees, signed by Ejup Ganić, 6 October 1992, Article 17; and see (regarding abandoned flats) 1D01223, Decree Law on abandoned apartments, signed by Alija Izetbegović, 15 June 1992, Article 9. See also 1D01157, Order on the eviction of illegal tenants from socially-owned flats in Tuzla Municipality, signed by Selim Bešliagić, 21 May 1992; 1D00606, Decision on ways and means of allocating for temporary use apartments that have been abandoned without reason by their previous occupants (final version), signed by Jadran Topić, 24 July 1992; 1D00613, Decision to evict all illegal tenants from flats previously owned by the JNA in the territory of Mostar Municipality, signed by Jadran Topić, 16 September 1992.

<sup>386</sup> Marinko Šimunović, 22 October 2008, T.33623:12-16; See also 1D00754, Decision / rights granted to refugees, signed by Jadran Topić, 15 April 1993.

<sup>387</sup> Marinko Šimunović, 20 October 2008, T.33460:12-21; See also T.33460:23-T.33461:12.

<sup>388</sup> 1D01328, Decision to establish Coordination committee for humanitarian aid, Mostar, signed by Jadran Topic, 8 October 1992.

<sup>389</sup> 1D01328, Decision to establish Coordination committee for humanitarian aid, Mostar, signed by Jadran Topic, 8 October 1992, item I. See also 1D00643, Conclusion to increase number of members of Humanitarian aid and social welfare, signed by Jadran Topic, 8 October 1992.

<sup>390</sup> 1D02662, Chart of distribution of humanitarian aid in Mostar municipality prepared by Marinko Šimunović, Red Cross Mostar, prepared by Zeljko Čorić and Goran Šunjić.

<sup>391</sup> Marinko Šimunović, 20 October 2008, T.33469:3-6.

<sup>392</sup> Indictment, paras. 93, 110, 112 and 113; [REDACTED].

<sup>393</sup> Antoon Van der Grinten, 10 July 2007, T.21015:1.

<sup>394</sup> Antoon Van der Grinten, 11 July 2007, T.21173:7-23.

hospital in East Mostar.<sup>395</sup> [REDACTED];<sup>396</sup> the HVO sent an offer for immediate and unconditional help including medicines and medical material for East Mostar.<sup>397</sup> Now, lest the Prosecution seek to dismiss this as “spin”, “insincere” or not reliable evidence, it is important to note that in response, the ABiH sent a list of material and supply actually needed by the hospital.<sup>398</sup> [REDACTED].<sup>399</sup> [REDACTED].<sup>400</sup> In at least two other instances, aid was provided in the same manner.<sup>401</sup> The HVO was not able to provide the ambulances since 19 medical vehicles were destroyed by the ABiH during the conflict. Therefore, the HVO did not have enough vehicles.<sup>402</sup>

104. [REDACTED].<sup>403</sup> [REDACTED].<sup>404</sup> [REDACTED].<sup>405</sup> [REDACTED].<sup>406</sup>

105. Additionally, the HVO developed other measures for providing assistance, including “that [the ABiH] send [their] wounded to the HVO war hospitals where they will have completely identical treatment as [the HVO] soldiers.”<sup>407</sup> [REDACTED].<sup>408</sup> Whilst this proposition was never seriously considered by the ECMM<sup>409</sup> the fact that it was made is relevant when assessing whether the discrimination, underlying much of the Prosecution case is actually proved or not and whether the Joint Criminal Enterprise, alleged by the Prosecution, existed at all.<sup>410</sup>

106. [REDACTED].<sup>411</sup>

107. However, an ECMM report shows that the HVO offer of medical evacuation of female and child patients to the Hospital in West Mostar was rejected by the ABiH, out of fear that it would give a

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<sup>395</sup> Antoon Van der Grinten, 11 July 2007, T.21155:1-3; 2D00119, Brigadier Dr. Ivan Bagaric Deputy Chief of the HZ H-B Defense Department Health Sector, 3 June 1993.

<sup>396</sup> [REDACTED].

<sup>397</sup> 2D00119, Brigadier Dr. Ivan Bagaric Deputy Chief of the HZ H-B Defense Department Health Sector, 3 June 1993.

<sup>398</sup> 2D00120, Commander Mr. Arif Pasalic - to the HVO Medical Staff HVO Hospital - the need for medicines and medical material, 5 June 1993. [REDACTED]. See also, Antoon Van der Grinten, 11 July 2007, T.21157:12-25.

<sup>399</sup> [REDACTED].

<sup>400</sup> [REDACTED].

<sup>401</sup> Antoon Van der Grinten, 11 July 2007, T.21164:18-20. See also 2D00504, Command to issue medications for the needs of ARBiH by Tugomir Gveric for, 7 June 1993; 2D00321, No. 02-5/2-65/93, Shipment of medicine and medical materials for ARBiH, Head of Medical Headquarters of HZ H-B Colonel Dr. Tugomir Gveric, 8 June 1993; [REDACTED].

<sup>402</sup> 2D00123, Colonel Dr. Tugomir Gveric - Letter - in respect to the 4th Corps BH Army request no. 22/93 dated 9 June 1993, 11 June 1993. The Defence notes that the HVO itself was lacking medical resources and personnel. See, e.g., P04698A, Spabat Analyses of the development of the situation in the Mostar and Jablanica area for the period April to September 93 (Full version), pp. 87-88.

<sup>403</sup> [REDACTED].

<sup>404</sup> [REDACTED].

<sup>405</sup> [REDACTED]. See also 2D00123, Colonel Dr. Tugomir Gveric - Letter - in respect to the 4th Corps BH Army request no. 22/93 dated 9 June 1993, 11 June 1993.

<sup>406</sup> [REDACTED].

<sup>407</sup> 2D00123, Colonel Dr. Tugomir Gveric - Letter - in respect to the 4th Corps BH Army request no. 22/93 dated 9 June 1993, 11 June 1993.

<sup>408</sup> [REDACTED]. See also 2D00455, No. 02-5/1-570/93, The letter of request, Chief of medical health care department Ivan Bagaric, 16 September 1993.

<sup>409</sup> Antoon Van der Grinten, 11 July 2007, T.21170:6-19; T.21168:4-21169:24.

<sup>410</sup> For other examples where medical aid is provided by the HVO to the ABiH, see P04698A, Spabat Analyses of the development of the situation in the Mostar and Jablanica area for the period April to September 93 (Full version), pp. 87-88 (no main date); [REDACTED].

<sup>411</sup> [REDACTED].

political advantage to the HVO.<sup>412</sup> Whilst this may cast light on the conduct and motivations of the ABiH, the Defence mention it primarily to demonstrate the HVO's willingness to provide aid to the ABiH.

#### **2.4.1.2.6 The HVO regulated, controlled and searched humanitarian convoys for security reasons**

108. Regarding the alleged restricted access permitted to humanitarian organisations, evidence shows that any limitations were based on security concerns. [REDACTED].<sup>413</sup> Indeed, several reports confirmed the existence of active combat activities which prevented secure access to East Mostar.<sup>414</sup> However, after a ceasefire between the ABiH and the HVO, the HVO reinforced the security conditions in Mostar which allowed humanitarian organisations to enter the city.<sup>415</sup> During these negotiations, the HVO entered every area required by UNMO.<sup>416</sup> Finally, after that the ceasefire was signed, humanitarian organisations were able to access Mostar and humanitarian aid was regularly.<sup>417</sup>

109. The HVO authorities controlled and searched humanitarian convoys because of credible reports of misuse by the ABiH to transport military material. A report on 23 February 1993 reveals that in Doljani, weapons were found included as part of a Merhamed organised humanitarian convoy bound for Goradze. <sup>418</sup> On around 8 April 1993, Serb forces stopped a UN convoy on the way to Hrasnica, close to Gornji Vakuf, and found that it was transporting ammunition.<sup>419</sup> [REDACTED].<sup>420</sup> [REDACTED].<sup>421</sup> [REDACTED].<sup>422</sup> Philip Watkins, however, confirmed that convoys were used to transport weapons. It appears that the Bosnian Muslims stopped convoys to conduct checks for this reason as well.<sup>423</sup>

110. In conclusion, there was no policy by the HVO to block aid for Bosnian Muslims as part of an alleged JCE to subjugate and remove Muslims from the area or create a Greater Croatia. The

<sup>412</sup> P05428, UNMO HQ BH Daily SitRep 25/26 September 1993, 27 September 1993, under "South BH", point 4.

<sup>413</sup> [REDACTED].

<sup>414</sup> See, e.g., P004430 UNMO HQ BH Daily SitRep covering period 21/22 August 1993, 22 August 1993.

<sup>415</sup> P04464, UNMO BH South Report on the negotiations with Croatian Defence Council and Armija Bosnia I Herzegovina regarding the delivery of a Humanitarian Aid convoy to Mostar, 24 August 1993.

<sup>416</sup> P04464, UNMO BH South Report on the negotiations with Croatian Defence Council and Armija Bosnia I Herzegovina regarding the delivery of a Humanitarian Aid convoy to Mostar, 24 August 1993.

<sup>417</sup> P04464, UNMO BH South Report on the negotiations with Croatian Defence Council and Armija Bosnia I Herzegovina regarding the delivery of a Humanitarian Aid convoy to Mostar, 24 August 1993.

<sup>418</sup> 2D00008, Special report dated 1993/02/23 about confiscation of the weapons hidden in humanitarian aid for Merhamet, signed by the officer of traffic military police Ivan Ilic, 23 February 1993.

<sup>419</sup> 1D01921, Transcript of a video recording of humanitarian convoy carrying ammunition – Iidza, 8 April 1993. See also 1D01922, Transcript of a video recording of UNHCR humanitarian convoy carrying ammunition - Rogatica (Zepa), 11 June 1995.

<sup>420</sup> 1D00935, Shipment to ABiH 5th Corps, 29 May 1993. [REDACTED].

<sup>421</sup> [REDACTED].

<sup>422</sup> [REDACTED].

<sup>423</sup> Philip Roger Watkins, 23 May 2007, T. 18975:1-18976:10. See also (regarding ABiH checkpoints) Witness BJ, 30 August 2006, T. 5737:16-25 & T.5793:7-22.

HVO, for security reasons and within the limits of international law,<sup>424</sup> regulated the passage of humanitarian aid. Furthermore, the municipalities were in charge of the distribution of aid. Any deficiencies or shortcomings at the municipal level cannot be imputed to the “central” HVO bodies.<sup>425</sup>

#### **2.4.2 No HVO plan to attack the ABiH in HZ H-B as part of a criminal plan**

111. The evidence in this case casts doubt on the Prosecution’s contention that a concerted HVO plan of attack on ABiH-controlled territory in HZ H-B existed, as part of a JCE. The HVO’s actions were not aimed at subjugating the Muslim population or eliminating the ABiH in the HZ H-B, in order to secure control. Rather, the military engagements between the HVO and the ABiH were caused by disagreements on the municipal level which led to local skirmishes in October 1992 and January 1993 (2.4.2.3.).<sup>426</sup> The operations in April, May and June 1993, on the other hand, were purely defensive actions carried out by the HVO (2.4.2.4.). These defensive actions were rendered necessary because the HVO was targeted by an ABiH military campaign which started in March 1993 in Konjic and Jablanica and aimed at eliminating the HVO in Konjic, Mostar and in the Neretva Valley. Any crimes allegedly committed in the course of these military operations may be seen as crimes, and rightly condemned, but they cannot properly be considered part of a common plan and can, therefore, cannot be imputed to the alleged JCE members.

##### **2.4.2.1 The HVO was constituted as a defence forces against the Serbs and did not intend to wage war against the ABiH**

112. HVO never intended to wage war against Muslims or the ABiH. This is best illustrated by the fact that from the beginning of the establishment of the HVO, the units included a large number of Bosnian Muslims. An overview shows that up until June 1993 there were 16 per cent Muslim soldiers in total in all HVO units.<sup>427</sup> Moreover, as demonstrated in section 2.3., the HVO cooperated with the ABiH in 1992 and for much of 1993.

##### **2.4.2.2 Muslim territorial ambitions**

113. The BiH leadership played an ambiguous role from the beginning of the Serb attacks on BiH. When the first Serb attacks started on the BiH territory, the Bosnian Muslims left the organisation of defence completely in the hands of the HVO (see section 2.2.2). However, the Muslims always had plans to conquer all areas down the Neretva River through Konjic, Jablanica and Mostar all the way

<sup>424</sup> Articles 23 and 59, Geneva Convention IV and Article 70 (3), Additional Protocol I; See also HENCKAERTS J.M., DOSWALD-BECK L., Customary international humanitarian law, Cambridge, Cambridge University Press, 2007, p. 197-198.

<sup>425</sup> See Section 3.2.3. on the role of the municipalities.

<sup>426</sup> Confirmed by the Prosecution, see Indictment, para. 32.

<sup>427</sup> 2D00150, Overview of the national structure of the members of the HVO - Jure Brkic, 9 June 1993.

to the coast.<sup>428</sup> In this plan, the control Central Bosnia played a crucial role. A conversation involving the President of the Muslim Wartime Presidency in Stolac, Mehmed Dizdar, reflects the, mostly economic, importance attributed to access to the sea by the Muslims and especially those from Stolac.<sup>429</sup> Similarly, Konjic was strategically important to the Bosnian Muslims, due to its geographical position.<sup>430</sup> Konjic is on the route connecting Sarajevo to the sea and is first large town from Sarajevo down to Neretva River towards Ploce.

114. All this is brought into clear relief by reviewing the record of a meeting held on 20 March 1993 by the ABiH, civilian and police representatives of Jablanica and Konjic. This reveals that plans for attack against the HVO existed before the ABiH offensive in Konjic in March and April 1993. The aim was to create a buffer toward the HZ H-B.<sup>431</sup> Dragan Jurić confirmed that when the Muslim representatives decided on 20 March 1993 that the ABiH units in Jablanica, Donje Selo and Bradina should be on the alert at all times, there was no conflict taking place between the ABiH and the HVO. He explained that according to the ABiH plan, the Zlatar facility, which was the HVO communications centre, was to be taken and occupied. He made the significance of this plan clear: "by taking up that facility, we would no longer have any communication lines with the operations zone or with our units."<sup>432</sup> Other evidence shows that the ABiH already had plans to gain control over the Zlatar facility in September 1992.<sup>433</sup>

115. Dragan Jurić testified that at the end of 1992, the ABiH established the Neretva Jablanica Brigade in the area of responsibility of the HVO 3rd Battalion in Jablanica. This ABiH Brigade included troops from Eastern Herzegovina, Foca, Prozor, Gacko, Nevesinje and other places. The checkpoints established by that ABiH Brigade were directed against the HVO, rather than the Serb forces.<sup>434</sup> Furthermore, the witness stated that the cooperation between the ABiH and the HVO was good in these areas. But in mid-March 1993, with the arrival of troops from outside Konjic, the situation deteriorated. It was clear that these special-purpose units were from outside of Konjic as some of these troops wore scarves and others spoke Arabic.<sup>435</sup>

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<sup>428</sup> See, e.g., 4D01731, Milan Gorjanc expert report, re: The Doctrine of All-People's Defence and Other Military Topics Relevant to Military Actions During the War in BiH, (no main date), para. 200.

<sup>429</sup> 2D00304, Report on completed task - Report by Mehmed Dizdar, 2 January 1993, p. 10.

<sup>430</sup> See 4D01731, Milan Gorjanc expert report, re: The Doctrine of All-People's Defence and Other Military Topics Relevant to Military Actions During the War in BiH, (no main date), para. 200.

<sup>431</sup> 2D00253, MEMO of the joint meeting of representatives of the RBH Army commands, 20 March 1993, pp. 3-4, points 5, 9, 13. See also 2D00244, NOTE - based on the original document which was taken away from JASMIN GUSKA - Chief of HVO GS VOS Zarko Keza, 14 April 1993, p. 5.

<sup>432</sup> Dragan Jurić, 27 April 2009, T.39311:13-39312:13.

<sup>433</sup> 2D00244, NOTE - based on the original document which was taken away from JASMIN GUSKA - Chief of HVO GS VOS Zarko Keza, 14 April 1993, p. 2 (reference to the 21 September 1992 ABiH Konjic Command meeting).

<sup>434</sup> Dragan Jurić, 27 April 2009, T.39273:23-39274:12.

<sup>435</sup> Dragan Jurić, 27 April 2009, T.39272:22- 39273:22.



### 2.4.2.3 Local skirmishes not spearheaded by the HVO leadership

116. Before the ABiH carried out a military campaign against the HVO in Central Bosnia and Mostar, local skirmishes occurred. That these were local and not planned as part of an alleged JCE will be demonstrated below.

#### **October 1992**

117. According to the Prosecution's allegations, the HVO forces attacked the Bosnian Muslims in Prozor town on 23 October 1992 and took control of Prozor town on 23 and 24 October 1992.<sup>436</sup> However, a signed letter by the TO Commander in Prozor dated 1 September 1992 shows that the Prozor TO, despite still being an ally of the HVO in the fight against the Serbs, already envisaged a so-called Plan B which would be carried out independently or in cooperation with the TO of neighbouring municipalities.<sup>437</sup> This evidence is corroborated by a SIS report which states that "[b]ased on a large number of statements taken from detained ABiH members as well as documentation seized from the ABiH, we learn that a plan for the neutralisation of the HVO in certain areas and establishment of full ABiH command had been made and prepared in advance."<sup>438</sup>

118. Indeed, a letter by an IPD Assistant to the Rama Brigade, demonstrates that the ABiH withdrew their soldiers from the common HVO-ABiH frontline against the Serbs in Prozor, Bugojno, Gornji Vakuf, Jablanica and Konjic, as well as Igman.<sup>439</sup> Furthermore, evidence from a member of the ABiH discloses that the ABiH-HVO conflict arose because the ABiH refused to go to the first combat line against the Serbs.<sup>440</sup> Additionally, the ABiH Command in Prozor forbade the passage of material and troops destined to support the defence of Jajce.<sup>441</sup> The HVO eventually became aware of the ABiH plans to attack them.<sup>442</sup> From the establishment of the TO spring 1992 tensions started increasing as the ABiH was clearly planning a conflict with the HVO and the HVO knew

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<sup>436</sup> Indictment, para. 46.

<sup>437</sup> P00430, Signed cover letter by Muharem SABIC, Bosnia and Herzegovina Territorial Defence Prozor with attached Defence Plan for Prozor. Ref: 1-10-1/92, 1 September 1992.

<sup>438</sup> P00687, Report, ref. 02-53/92, on clashes between Croatian Defence Council and Armija Bosnia i Hercegovina in the Prozor area, 1 November 1992.

<sup>439</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

<sup>440</sup> 3D02206, B-293/1-3, DOCUMENTATION ON SUAD GRCIC, PROZOR, DECISION ON CUSTODY DETERMINATION, OFFICIAL RECORD WITH THE DETAINEE STATEMENT AND SUPPLEMENT TO THE ESCORT NOTE, 18 December 1992, p. 4.

<sup>441</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

<sup>442</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992, pp. 2-3.

it.<sup>443</sup> This led to Željko Šiljeg to request the HVO brigades to inform him on the situation in Bugonjo, Gornji Vakuf, and Prozor and on the possibility to “eliminate” the ABiH in Gornji Vakuf.<sup>444</sup>

119. According to a report by Jozo Meštrović, MP Commander in Prozor, tensions arose between the HVO Military Police and the TO Military Police in the night from 19 to 20 October 1992. No armed conflict broke out, however.<sup>445</sup> There is ample evidence which shows that the ABiH was planning to attack the HVO in Prozor. An intelligence report of the HVO Main Staff, a document tendered by the Prosecution, states that on 20 October “a Prozor TO intervention platoon was sent to the Idovac artillery position” with the purpose of putting pressure on Rama/Prozor at the beginning of the attack against the HVO.<sup>446</sup> Another document details the events that led to the conflict. According to a report by the HVO SIS Prozor, on 22 October, the Prozor TO/ABiH withdraw its unit from the common Rama-Kupres frontline into Prozor town without replacing it with a new unit as planned. Instead, all ABiH units were deployed on elevations around Prozor town, as well as in town, in an attempt to take control over Prozor.<sup>447</sup> During the criminal proceedings against him, an ABiH member stated that assistance from Gornji Vakuf, Jablanica and Konjic was promised in advance to the ABiH in Prozor.<sup>448</sup> Negotiations aimed at avoiding conflict were initiated by the HVO, but were rejected by the TO Prozor.<sup>449</sup> Other documents describe how the tensions in Prozor grew, due to the double game played by the ABiH. A letter by Ilija Petrović, IPD Assistant to the Commander of the Rama Brigade, states that despite receiving logistical support from the HVO, the ABiH in Prozor did not send soldiers to the frontline as agreed. He noted that they were, instead “preparing [the] defence of the town against the Croats.”<sup>450</sup> This escalated and became an

<sup>443</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992, p.2.

<sup>444</sup> P00460, Stamped reports issued by Zeljko SILJEG to the Croatian Defence Council in Bugojno, Gornji Vakuf and Prozor and to Croatian Defence Council Municipal Staffs of Livno, Prozor, Posusje, Gornji Vakuf, Bugojno, Jablanica and Konjic. Ref: 111/92, 9 September 1992.

<sup>445</sup> P00607, Report issued by Jozo MESTROVIC to Zdenko ANDOBAG re: increased tensions between Croatian Defence Council Military Police and Territorial Defence in Prozor threatening to grow into open fighting, 20 October 1992. N.b.: the document refers to “Zdenko Andobag” rather than “Zdenko Andabak” and “10 October” rather than “19 October”.

<sup>446</sup> P00653, Military Intelligence Report no. 89/92 from Zarko KEZA re: situation in Prozor area addressed to Bruno STOJIC, Janko BOBETKO and Milivoj PETKOVIC, 26 October 1992.

<sup>447</sup> P00702, Signed report, ref. 16-16/02-230-456-KU-89/92, issued by Luka MARKESIC, Prozor HVO Security and Information Service to Mostar Military Prosecutors office re: criminal charges against 3 Muslim civilians, 3 November 1992.

<sup>448</sup> 3D02206, B-293/1-3, DOCUMENTATION ON SUAD GRCIC, PROZOR, DECISION ON CUSTODY DETERMINATION, OFFICIAL RECORD WITH THE DETAINEE STATEMENT AND SUPPLEMENT TO THE ESCORT NOTE, 18 December 1992, p. 4.

<sup>449</sup> P00702, Signed report, ref. 16-16/02-230-456-KU-89/92, issued by Luka MARKESIC, Prozor HVO Security and Information Service to Mostar Military Prosecutors office re: criminal charges against 3 Muslim civilians, 3 November 1992.

<sup>450</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

offensive against the Croats, aimed at driving them out of the strategically important town.<sup>451</sup> According to Ilija Petrović, the Muslims intended to establish a Muslim populated areas which would include Konjic, Jablanica, Prozor, Gornji Vakuf, Bugogno and extend further towards Central Bosnia. Securing control over Prozor was a crucial for the implementation of this plan.<sup>452</sup>

120. The Prosecution presented a report, dated 20 October, referring to the HVO hoisting a Croatian flag on the police station in Prozor town.<sup>453</sup> This incident, occurring in what was already a somewhat tense situation, explains why Željko Šiljeg responded to the report by ordering the Rama Brigade to raise its command readiness, while calling the HVO Presidency to work on calming and normalising the situation.<sup>454</sup> This order was issued only one day after the report and shows that while precautionary military measures were taken, the aim was to calm down the situation and prevent any further escalation. The incident in question was not part of any alleged policy of “Croatisation” of municipalities<sup>455</sup> and not part of any persecutory policy against the civilian population. Nor was it part of a military policy to drive the ABiH out of the municipalities which were allegedly claimed as part of Herceg-Bosna.
121. According the an HVO report, on 21 October 1992, 100 members of the 2<sup>nd</sup> Battalion 1<sup>st</sup> and 2<sup>nd</sup> C HVO Military Police on their way to Vitez were stopped by members of the ABiH on the Karamustafić checkpoint in the Prozor municipality and had to return to Makljen.<sup>456</sup> The same document states that on 22 October, two buses of ABiH members arrived in Voljevac village, in Jablanica municipality, which neighbours Prozor.<sup>457</sup> As a consequence of the deployment of ABiH troops, “full combat readiness” was ordered to the HVO units in Prozor. While negotiations were conducted between the commanders of the HVO and ABiH, two HVO soldiers were killed in Dobroša village by the ABiH forces. This incident led to fighting breaking out.<sup>458</sup> Such rising tensions are not unknown on border crossings, in situations such as these and wherever armed

<sup>451</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992, page 2.

<sup>452</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

<sup>453</sup> P00608, Report issued by Prozor HVO Security and Information Service to Zeljko SILJEG re: the situation in Prozor. Ref. 2-44/92, 20 October 1992.

<sup>454</sup> P00612, Signed and stamped order issued by Zeljko SILJEG re: report by Croatian Defence Council Rama Brigade, Prozor no. 18/92 dated 20-Oct-1992. Ref. 83/92, 21 October 1992.

<sup>455</sup> See Indictment, para. 26.

<sup>456</sup> P00712, Reports issued by Zdenko ANDABAK re: events in Prozor from 21/Oct/92 to 27/Oct/92 and in Gornji Vakuf from 19-Oct-1992 to 29-Oct-1992, 6 November 1992 (same document: P00536, Report signed by Zdenko ANDABAK and submitted to Valentin CORIC on the events on the territory of Prozor and Gornji Vakuf municipalities during the period from 21 October to 27 October 1992.

<sup>457</sup> P00712, Reports issued by Zdenko ANDABAK re: events in Prozor from 21/Oct/92 to 27/Oct/92 and in Gornji Vakuf from 19-Oct-1992 to 29-Oct-1992, 6 November 1992.

<sup>458</sup> P00712, Reports issued by Zdenko ANDABAK re: events in Prozor from 21/Oct/92 to 27/Oct/92 and in Gornji Vakuf from 19-Oct-1992 to 29-Oct-1992, 6 November 1992.

men interact in such circumstances. But whilst such incidents took place, they were not part of a JCE, as alleged by the Prosecution.

122. On 22 October 1992, negotiations were held between the Muslim and Croat military and police representatives in Prozor, but failed. The HVO proposed that the ABiH urgently send 110 soldiers to the common frontline to defend Prozor against the Serbs. Various other proposals were made by the HVO including that the Bosnian Muslims accept the military and political organisation of the HZ H-B in which they would participate equally.<sup>459</sup> The negotiations were paused in order for the parties to consult. However, violence broke out before the negotiations did resume, when a HVO soldier was killed by a member of the ABiH and sporadic fire broke out.<sup>460</sup> On the same day, the ABiH Commander of Prozor ordered all Muslims to withdraw from the frontline.<sup>461</sup>
123. Further evidence shows that on 22 October, the HVO had information that new troops and equipment would reinforce the TO in Prozor and Gornji Vakuf.<sup>462</sup> On 23 October Milivoj Petković ordered the HVO armed forces of Prozor, Gornji Vakuf, Bugojno, Vitez, Travnik, and Konjic to stop combat activities, “prevent any uncontrolled activities of individuals and groups” and negotiate.<sup>463</sup> On the same day, the Prozor HVO Presidency and Prozor HVO Command sent a letter to the Muslim civilians and military representatives of Prozor including proposing solutions for the political and security situation in Prozor. The document calls for a cessation of military operations against the HVO and the withdrawal of armed units from the town. The letter urges the Muslims to dispatch their soldiers to the units at the first combat line against the Serb forces. The HVO Presidency and Command of Prozor urged the Muslims to accept and participate in the civilian and military

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<sup>459</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

<sup>460</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992. See 2D00054, Extract from the Register of Deaths - FRANJO ZADRO, 16 June 2006. The death certificate of the said soldier.

<sup>461</sup> P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992. Another exhibit, a report issued by the Forum of Expelled Muslim Organisations, also refers to the negotiations held on 22 October. It equally states that Ilija Petrović, the President of HDZ Prozor proposed to the Muslims to accept the “HD H-Z organisation and the HVO military organisation” which would contribute to calming down the situation. Interestingly, the report states that the Muslim position that provided that “minimum functions” of the BiH are maintained until an agreement on all controversial points is reached was accepted. While this report states that there was no attack against an HVO soldier, HVO documents refer to the death of Franjo Zardo who was killed by a ABiH member in Zgon. See P00744, Signed Information about situation in the municipality of Prozor and position of the Muslim people in relation to the events from 23 and 24 October 1992 from the Republic of Bosnia and Herzegovina Municipality of Prozor, Forum of Expelled Muslim Organisations, 14 November 1992.

<sup>462</sup> P00622, Order for Further activities of Milivoj PETKOVIC, given to to Croatian Defence Council in Bugojno, Gornji Vakuf Prozor, Jablanica, Konjic Vitez to strengthen road blocks leading to Novi Travnik. Tihomir BLASKIC is ordered to resolve situations by use of force where he has the possibility to do so now, 22 October 1992.

<sup>463</sup> P00625, Order issued by Milivoj PETKOVIC to all Croatian Defence Council armed forces in Prozor, Gornji Vakuf, Bugojno, Vitez, Travnik and Konjic re: the immediate suspension of combat activities. Ref. 23/10-92, 23 October 1992.

structures of the HVO in Prozor.<sup>464</sup> This document shows that the HVO in Prozor was aiming at including the Muslims in the political and military institutions, as well as military operations against the Serbs. Furthermore, it shows that the authorities in Prozor were acting independently. There is no evidence to show that this was part of any overall policy to eliminate the Muslims politically and militarily in the HZ H-B, or that any of the accused was involved in this process.

124. The Prosecution maintain that when the Muslims in Prozor did not accept the HVO “demands”,<sup>465</sup> the HVO reacted by issuing an “attack order,” as Šiljeg ordered the Rama Brigade to “[p]ut all armed forces in Prozor municipality and in the town of Prozor itself” under its command.<sup>466</sup> When Milivoj Petković was presented with an order issued by Šiljeg on the same day, containing a similar wording, the real meaning of these order appeared. The second order reads: “All armed forces in the territory of Prozor municipality and in the town proper are to be placed under the command of the HVO “Rama” Brigade.<sup>467</sup> Petković confirmed that Šiljeg placed units of the MP in the Prozor municipality under the command of the brigade, as well as the military police of the municipality of Gornji Vakuf under the control of the HVO Ante Starčević Brigade.<sup>468</sup> It appears that rather than aiming at placing the Muslim forces under the control of the Rama Brigade, these orders were intended place all the Croatian forces including the MP under the control of the brigade.
125. The Rama Brigade Commander report states that Prozor town is under the control of Prozor HVO and is “ethnically pure”.<sup>469</sup> However, there is no evidence demonstrating that this was part of a HVO (regional) policy, in which the alleged members of the JCE and accused were involved.
126. On the other hand, on 24 October, Petković ordered the units in Prozor; Bugojno; Gornji Vakuf; Vitez; Konjic; Tomislavgrad and Travnik to establish contact with the Muslims to agree on a ceasefire and to stop movement of troops in areas where there was no conflict. The order instructs the units to regularly report on the situation.<sup>470</sup> Petković then ordered the establishment of a three-member commission which was tasked to enquire on the causes and reasons for the conflict

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<sup>464</sup> P00628, Letter from Prozor Croatian Defence Council Presidency and Croatian Defence Council to the Muslim civilians and military representatives in Prozor. re: proposals for overcoming the newly arisen political and security situation. Ref. 01-23/92, 23 October 1992.

<sup>465</sup> P00628, Letter from Prozor Croatian Defence Council Presidency and Croatian Defence Council to the Muslim civilians and military representatives in Prozor. re: proposals for overcoming the newly arisen political and security situation. Ref. 01-23/92, 23 October 1992.

<sup>466</sup> P00642, Order, ref. 93/92, from Zeljko SILJEG to the Rama Brigade to take control of the Prozor area, 24 October 1992; See Slobodan Praljak, T. 43838:4-15, 25 August 2009.

<sup>467</sup> P00645, Signed and stamped order issued by Zeljko SILJEG to Rama Brigade Commander, Prozor and STARCEVIC Ante Brigade Commander re: placing all armed forces in Prozor and Gornji Vakuf under their command. Ref. 93/92, 24 October 1992.

<sup>468</sup> Milivoj Petković, 2 March 2010, T.50259:16-50260:4.,

<sup>469</sup> P00647, Report from Jure SMIDT Croatian Defence Council Rama Bde Commander to Croatian Defence Council and Zeljko SILJEG regarding situation in Prozor, 24 October 1992.

<sup>470</sup> P00644, Order issued by Milivoj PETKOVIC to the units in Prozor; Bugojno; Gornji Vakuf; Vitez; Konjic; Tomislavgrad and Travnik re: cease fire. Ref. 24-10/92, 24 October 1992.

between the HVO and the TO in Prozor, as well as to evaluate the situation and relations for the period following.<sup>471</sup>

127. Evidence shows that, at this point, the ABiH was planning to continue the conflict with the HVO. On 25 October, ABiH Commander Delalić issued an order to the ABiH units in the Konjic, Jablanica, Prozor and Gornji Vakuf, as well as the “Zulfikar” Igman unit, giving instructions regarding the military operation aiming at taking control over Prozor town within 48 hours.<sup>472</sup> A HVO intelligence report on the events in Prozor from the 20 to 25 October, states that the aim of the ABiH military operations against the HVO in Prozor was to take control of the roads and hydro-electric plants.<sup>473</sup> Indeed, the road between Prozor and Gornji Vakuf was destroyed by the ABiH.<sup>474</sup>
128. During the escalation of the conflict, the orders were given by local commanders, not by the higher-ranking HVO military leaders. The Defence submits that properly considered, these acts are not evidence of a JCE as alleged by the Prosecution.

### **January 1993**

129. Tensions with the ABiH escalated in Gornji Vakuf around 24 December 1992, when additional ABiH units were brought into the town. The ABiH established checkpoints in and around the town. The ABiH infantry was shooting and three shells were fired. The HVO was required to ask the ABiH for permission before any vehicle movement.<sup>475</sup> While the HVO had 300 troops, the ABiH had a total of 2.500 troops around Gornji Vakuf.<sup>476</sup> According to a report by Šiljeg, “Muslim extremists” created tensions with the Croats in Gornji Vakuf in early January and then carried out military manoeuvres against the Croats. The ABiH units deployed to previously fortified and prepared

<sup>471</sup> 4D00901, Order issued by Milivoj Petkovic to Zeljko Siljeg, re: setting up of a commission in order to shed light on the events in Prozor, ref: 01-2437/92, 28 October 1992.

<sup>472</sup> 3D00127, B-382/1-11, ORDER ISSUED BY ZEJNIL DELALIC TO BH ARMY IN KONIJIC, JABLANICA, PROZOR, AND ZULFIKAR IGMAN UNIT PURSUANT TO INTERVENING ORAL ORDER OF THE BH COMMAND HEAD AND EMERGED NEED WITHIN RESPONSIBILITY ZONE, 25 October 1992.

<sup>473</sup> P00653, Military Intelligence Report no. 89/92 from Zarko KEZA re: situation in Prozor area addressed to Bruno STOJIC, Janko BOBETKO and Milivoj PETKOVIC, 26 October 1992.

<sup>474</sup> P00653, Military Intelligence Report no. 89/92 from Zarko KEZA re: situation in Prozor area addressed to Bruno STOJIC, Janko BOBETKO and Milivoj PETKOVIC, 26 October 1992. An ABiH operational order issued on 27 October 1992 indicates that there were orders to destroy the route connecting Rumboci with an unknown village (illegible) in Prozor, but it appears that these orders were not carried out. See 3D01450, B-382/1-9, ORDER TO COMMANDERS OF OPSO KONJIC, JABLANICA, GORNJI VAKUF AND PROZOR ISSUED BY ZEJNIL DELALIC, 27 October 1992, point 4.2.

<sup>475</sup> P01101, Stamped report by Miro ANDRIC addressed to Bruno STOJIC and Mate BOBAN re: relations between Croatian Defence Council and Armija Bosnia I Herzegovina in OZ North-West Herzegovina, OZ Central Bosnia and OZ South-East Herzegovina. Ref: 01-50 /93, 12 January 1993, pp. 1-2. See also P01114, Stamped and signed report compiled by Zeljko AKRAP addressed to Bruno STOJIC re: information on incidents between Croatian Defence Council and Armija, 12 January 1993.

<sup>476</sup> Safet Idrizović, 7 November 2006, T.9724:16-24.

positions around Gornji Vakuf. The HVO responded to the attack, while at the same time holding the frontline against the Serbs.<sup>477</sup>

130. The ABiH attempted to take over certain HVO facilities that were of strategic importance and which would have led to Gornji Vakuf being encircled.<sup>478</sup> However, on 12 January 1993, Šiljeg ordered the brigade in Gornji Vakuf to hold the “forces under control” and not to start any provocation.<sup>479</sup> On the same day, commanders of the HVO Brigade and the ABiH, as well as the UNPROFOR representatives met to discuss the situation in Gornji Vakuf. They agreed on controlling artillery and light arms, the release of POWs, to handover confiscated MTS, to order the units to return to barracks, to set up joint checkpoints and to meet again on 13 January 1993 at 2000hours. Despite the agreement that had been reached by the brigade level commanders, Colonel Šiljeg reported that the ABiH blocked the entrance and the road through Gornji Vakuf, as they had also blocked the road to Prozor and Bugojno. Colonel Šiljeg also reported that the ABiH started shelling the HVO that same night.<sup>480</sup> Another of Šiljeg’s reports clarifies that the cease-fire ordered by the higher-level commanders on both sides was simply not implemented by the ABiH as lower-level ABiH commanders had ordered their units to keep firing at the HVO.<sup>481</sup>
131. On 13 January 1993, a cease-fire was agreed in Gornji Vakuf.<sup>482</sup> However, according to a report, this agreement was not respected by the ABiH which attacked the HVO positions on 14 January and used tear-gas in the Croatian part of Gornji Vakuf.<sup>483</sup> Moreover, throughout the negotiations held between the parties from 13 to 17 January 1993, the HVO was under ABiH sniper fire. It appears that throughout the talks, the ABiH continued to regroup and prepare for offensive operations, sniper fire continued and the HVO suffered losses. On 18 January, after the ABiH did not stop its attacks, the HVO opened fire against the ABiH<sup>484</sup> On the same day, the ABiH withdrew its forces from the common frontline against the Serbs.<sup>485</sup>

<sup>477</sup> P01185, Signed and stamped report issued by Zeljko SILJEG to Croatian Defence Council leadership in Mostar re: Croatian Defence Council units attacked the Armija Bosnia I Herzegovina that day in the direction of Prozor - Makljen - Gornji Vakuf after artillery activity, 18 January 1993, pp 1-2.

<sup>478</sup> P01107, Signed and stamped order issued by Zeljko SILJEG re: Croatian Defence Council offensive against Armija Bosnia I Herzegovina. Ref. 01/35-1, 12 January 1993, p. 1.

<sup>479</sup> 3D00510, R68-1-88, SILJEG'S ORDER, 12 January 1993.

<sup>480</sup> 4D00356, Report by Colonel Zeljko Siljeg, no: 01-134-1/93, Prozor, 13 January 1993, p. 1.

<sup>481</sup> P01185, Signed and stamped report issued by Zeljko SILJEG to Croatian Defence Council leadership in Mostar re: Croatian Defence Council units attacked the Armija Bosnia I Herzegovina that day in the direction of Prozor - Makljen - Gornji Vakuf after artillery activity, 18 January 1993, p. 2.

<sup>482</sup> P01113, 1 Cheshire MILINFOSUM No. 74, 13 January 1993.

<sup>483</sup> 3D02361, Special Report on the Situation in Gornji Valkuf by Ivan Majić, the ABiH did not respect the cease-fire and opened fire, 14 January 1993.

<sup>484</sup> 3D03065, Q-111-7, REPORT BY MIRO ANDRIC ON THE TASKS, ACTIVITIES AND SITUATION IN THE AREA OF PROZOR AND GORNJI VAKUF, 22 January 1993, pp. 2-3; P01185, Signed and stamped report issued by Zeljko SILJEG to Croatian Defence Council leadership in Mostar re: Croatian Defence Council units attacked the Armija Bosnia I Herzegovina that day in the direction of Prozor - Makljen - Gornji Vakuf after artillery activity, 18 January 1993, pp. 2-3, and 4 (regarding the HVO defence against the attacks on 18 January 1993); 3D02364, B-137/2-20, 17 JANUARY 1993, SPECIAL REPORT

132. On 22 January 1993, Šiljeg ordered all HVO units in Gornji Vakuf to respect the ceasefire reached and not to take individual action, except in response to firing. In his order he mentions “renegade elements” of the ABiH.<sup>486</sup> On 29 January 1993, Petković instructed Šiljeg to arrest and imprison extremists on the HVO side and to call to order commanders who resist.<sup>487</sup>

#### **2.4.2.4 ABiH attacks against the HVO**

##### ***Konjic – March and April 1993***

133. The first ABiH attacks against the HVO were carried out in March and in April 1993 in Konjic. These attacks constitute the first step, in executing the plan of the ABiH to take all the territories in which the ABiH and HVO previously fought together.<sup>488</sup>

134. The first signs of the ABiH offensive appeared at the beginning of March 1993. The transcript of a meeting held on 8 March with Tudjman at the request of the HVO<sup>489</sup> reveals that the representative from Travnik, reported that “Muslim extremists” were terrorising the Croat population and other acts of discrimination. Muslim forces withdrew from their positions against the Serbs and occupied Travnik.<sup>490</sup> It appeared that the Muslim policy was simply to “populate [...] Travnik, Novi Travnik, Vitez, Busovača and Kiseljak with Muslims.”<sup>491</sup>

135. On 22 March 1993, the Konjic War Presidency decided that the authority of the HVO in Konjic should not be tolerated anymore. On the same day, at a meeting with representatives of the ABiH, the War Presidency, Konjic municipality and Konjic MUP the last arrangements before the attack against the HVO were made.<sup>492</sup> On 23 March 1993, the ABiH attacked the HVO in Konjic.<sup>493</sup>

136. Just five days before, on 17 March 1993, General Halilović had sent a letter to the HVO Main Staff, proposing “that Pašalić visit you and inform you of our views of existing problems and how we see

BY IVAN MAJIC ON THE REINFORCEMENT OF THE ENEMY FORCES IN THE AREA OF PROZOR AND GORNJI VAKUF, 17 January 1993..

<sup>485</sup> P01185, Signed and stamped report issued by Zeljko SILJEG to Croatian Defence Council leadership in Mostar re: Croatian Defence Council units attacked the Armija Bosnia I Herzegovina that day in the direction of Prozor - Makljen - Gornji Vakuf after artillery activity, 18 January 1993, p. 2.

<sup>486</sup> 3D02212, Q-17-28, 22 JANUARY 1993, PROZOR, ORDER ON THE CEASE FIRE AND ALL COMBAT ACTIVITIES TOWARDS THE REBELLIOUS FRACTIONS OF THE BH ARMY, ZELJKO SILJEG, 22 January 1993. A similar order was issued a few days later by Šiljeg, see 4D00346, Order signed by Commander Colonel Zeljko Siljeg, Prozor, 25 January 1993. See also Slobodan Praljak, 25 May 2009, T.40605:15-40606:5.

<sup>487</sup> P01344, Stamped order re: instructions for Croatian Defence Council Prozor for further actions, signed by Milivoj PETKOVIC. Ref: 01-185 /93, 29 January 1993, points 1 and 2.

<sup>488</sup> See 2D00403, Report, from Brigade Commandant Zdravko Sagolj to Dinko Zebic, 15 April 1993; 4D00438, Report, 23 March 1993, Konjic, signed by Cerovac Midhad, 23 March 1993; 4D00453, Request by Zdravko Sagolj, 15 April 1993, Konjic, 15 March 1993 and 4D00090, Combat report by Esad Ramic, Konjic, 22 April 1993.

<sup>489</sup> P01622, Croatian Presidential Transcripts for 08-03-93, 3 March 1993.

<sup>490</sup> P01622, Croatian Presidential Transcripts for 08-03-93, 3 March 1993; P01398, Security Council Official Records S/25221 re. framework for the peace talks for the former Yugoslavia, 2 February 1993, p. 3.

<sup>491</sup> P01622, Croatian Presidential Transcripts for 08-03-93, 3 March 1993; P01398, Security Council Official Records S/25221 re. framework for the peace talks for the former Yugoslavia, 2 February 1993, p. 19.

<sup>492</sup> 2D00244, NOTE - based on teh original document which was takne away from JASMIN GUSKA - Chief of HVO GS VOS Zarko Keza, p. 5,

<sup>493</sup> Dragan Jurić, 27 April 2009, T.39308:3-18.



the possibility of overcoming them. I do hope that this aspect of our cooperation will make our friendship and trust stronger and greater.”<sup>494</sup> There was no indication of the upcoming attack. That the HVO had no indication of the attack is, further confirmed by the fact that Petković issued an order for free passage of the ABiH-HVO Joint Commission from Mostar to Konjic on 23 March 1993.<sup>495</sup> Dragan Jurić testified that the attacks were not just caused by the situation on the ground, but were planned ahead by the ABiH leadership.<sup>496</sup>

137. On 25 March 1993, a joint commission visited the Klis area on the joint order of Petković and Pašalić and removed barricades, eased tensions and stopped the fire. The ABiH withdrew partially.<sup>497</sup>

138. New ABiH attacks started on 13 April.<sup>498</sup> A HVO report shows that on 15 April 1993, for instance, the ABiH from Bradina and Igman attacked the HVO in Konjic.<sup>499</sup> Reports show that the ABiH also attacked Konjic, Bokševica, Zlatar and Radešine as well as in Sovići and Doljani in Jablanica.<sup>500</sup> An ABiH 4<sup>th</sup> Corps combat report on 17 April 1993 states that as soon as the military operation in Prozor was successfully completed, the ABiH were to send all its units to attack in two directions: Konjic-Jablanica-Mostar and Konjic-Prozor-Rama.<sup>501</sup> On the same day the ABiH ordered the attack of Zenica.<sup>502</sup>

139. During the ABiH offensive in mid-April 1993 in Konjić, the ABiH announced on the radio, that HVO soldiers should disarm and place themselves under the command of the army. Dragan Juric testified that had the HVO soldiers remained on the right bank of the Neretva River, they would have been arrested and taken to a camp.<sup>503</sup> During the military operations in Konjic, crimes against civilians were committed by the ABiH.<sup>504</sup>

<sup>494</sup> P01675, Letter from Sefer HALILOVIC to Croatian Defence Council Main Staff in Mostar re. meeting with Arif PASALIC in Sarajevo Ref. number: 02/405-1, 17 March 1993.

<sup>495</sup> 4D00806, Signed order issued by Milivoj Petkovic, re: free passage of joint commission of the A BiH and HVO on the direction Mostar-Konjic, ref:01-511/93, Mostar, 23 March 1993.

<sup>496</sup> Dragan Jurić, 27 April 2009, T.39310:18-25.

<sup>497</sup> 4D00434, Information, 26 March 1993, Konjic, 26 March 1993.

<sup>498</sup> Dragan Jurić, 27 April 2009, T.39313:5-7.

<sup>499</sup> 4D00453, Request by Zdravko Sagolj, 15 April 1993, Konjic, 15 April 1993.

<sup>500</sup> 4D00453, Request by Zdravko Sagolj, 15 April 1993, Konjic, 15 April 1993. See also 2D00689, Public information to all media from exceptional session of HVO HZ H-B dated 1993/04/17 in Mostar regarding renewal of attacks by Muslim forces on Konjic area, 17 April 1993, p. 1; P01879, Report by Milivoj PETKOVIC Croatian Defence Council Main Staff regarding the situation in Croatian Defence Council Operational Zones 14-04-93, 14 April 1993, pp. 4-5.

<sup>501</sup> 4D00599, Combat report issued by Esad Ramic to 4th Corps Commander, Bradina, 17 April 1993.

<sup>502</sup> 2D00472, No. 94/93, ORDER FOR THE ATTACK, Commandant of 2nd Battalion, 17 April 1993; 2D00473, Order for the attack, Commandant Asim KORICIC, 17 April 1993; Further ABiH attacks in April 1993, see P02168, ECMM Report - HRC Zenica special report of 1 May 1993. Ref: NL BURUM LES 492340286, 1 May 1993.

<sup>503</sup> Dragan Jurić, 21 June 2006, T.39318:13-39319:22.

<sup>504</sup> 2D00450, No. 03-370/93, information - Supplement about Konjic, Chief of VOS HVO Main Headquarters ZARKO KEZA, 23 April 1993; 2D00689, Public information to all media from exceptional session of HVO HZ H-B dated 1993/04/17 in Mostar regarding renewal of attacks by Muslim forces on Konjic area, 17 April 1993; [REDACTED]. See also 2D00403, Report, from Brigade Commandant Zdravko Sagolj to Dinko Zebic, 15 April 1993; 4D00453, Request by Zdravko Sagolj, 15 April 1993, Konjic, 15 April 1993; and 4D00090, Combat report by Esad Ramic, Konjic, 22 April 1993.

140. Before the escalation in mid-April 1993, MTS was provided to the ABiH by or via HVO. Slobodan Praljak testified that at the end of March 1993, indeed, MTS provided by Croatia for the ABiH Visoko Logistics Centre was transported via HVO.<sup>505</sup>

### **Mostar – May 1993**

141. In the early morning of 9 May 1993, the HVO barracks in Mostar were attacked by an ABiH unit.<sup>506</sup> This directly contradicts the Prosecution's allegation that it was the HVO attacked the ABiH.<sup>507</sup> This represents a clear conflict in the evidence that requires determination by the Trial Chamber. The Defence maintain that the Prosecution's assertions in this regard, are not established beyond reasonable doubt and cannot be accepted. No evidence has been presented that establishes that prior to this moment the HVO took any action against its Muslim members. This is directly relevant to the discriminatory intent that the Prosecution asserts permeated every part of the HVO leadership and structures.

### **Central Bosnia – May and Summer 1993**

142. In June 1993, a major ABiH offensive in Central Bosnia<sup>508</sup> began. [REDACTED].<sup>509</sup>

143. On 6 May 1993, the ABiH attacked the HVO in Crni Vrh and Jurići from Here and Pridvorci, as well as in Komine, Uzdol, B. Lučica and Krančiči from Konjsko.<sup>510</sup> In an order from Petković to the Ljubuški Brigade on 26 May, Petković states that the HVO was under threat from the ABiH in Prozor.<sup>511</sup> On 22 June 1993, Petković requested troops to deploy to Prozor to defend it against the ABiH.<sup>512</sup>

144. A report by Iljia Franjić, dated 8 July 1993, shows that after the arrival of 500 civilians and 500 soldiers from Kostajnica, the situation in Prozor was out of control. The civilians and the soldiers

<sup>505</sup>Slobodan Praljak, 29 June 2009, T.42150:6-42151:13. See also 2D00311, Order for distribution of material resources for BiH Armed forces purposes, 30 March 1993.

<sup>506</sup> 4D00915, Public announcement concerning situation in Mostar issued by Veso Vegar, Mostar, 09 May 1993; P11146, Newspaper article from Slobodna Dalmacija called Napad na Mostar (Attack on Mostar), 10 May 1993. Evidence shows that the plans for this attack already existed on 19 April 1993, when the order for this attack was issued. See P01970, Signed and stamped Order by HUJDURMidhat re reliable information that the Croatian Defence Council and Hrvatska Vojska (army of the Republic of Croatia) units will attack the town of Mostar and its surroundings Ref. Number 470, 19 April 1993; P01962, Orders by HUJDURMidhat re 1. Order for the deployment of troops at positions designated for defence; 2. Order for general attack at all places and along the determined lines 3. Order for the beginning of active deployment of troops, 19 April 1993.

<sup>507</sup> Indictment, para. 94; P02273, Spanish Battalion (UNPROFOR) SITREP 168, 10 May 1993.

<sup>508</sup> See (regarding the strategic importance of Central Bosnia) 4D01731, Milan Gorjanc expert report, re: The Doctrine of All-People's Defence and Other Military Topics Relevant to Military Actions During the War in BiH, paras. 139-200.

<sup>509</sup> [REDACTED].

<sup>510</sup> 3D02515, B-378/2-29, DAILY INTELLIGENCE REPORT BY ZARKO KEZA ON THE ACTIVITIES IN THE AREA OF NORTH-WESTERN HERZEGOVINA, LIVNO, TOMISLAVGRAD, GORNJI VAKUF, PROZOR, CENTRAL BOSNIA, VARES, KAKANJ, BUSOVACA, KISELJAK, 6 May 1993, p. 1.

<sup>511</sup> P02526, Signed and stamped order issued by Milivoj PETKOVIC to Ljubuski Brigade to send company-strength force to Prozor and to report to Slobodan PRALJAK. Ref. 02-2/1-01-1567/93, 26 May 1993.

<sup>512</sup> P02911, Stamped and signed order from Milivoj PETKOVIC re: urgent deployment of troops for defending Prozor, all troops to report to Zeljko in SILJEG Prozor, 22 June 1993.

- wanted to go further to Posušje and the HVO military police struggled to keep them under control.<sup>513</sup>
145. A report dated 29 July 1993 shows that the MOS attacked the HVO in Bugojno and Gornji Vakuf, and aimed at taking Gornji Vakuf and encircle Prozor.<sup>514</sup> According to a report dated 30 and 31 July, the MOS attacked the Prozor area, as well as Gornji Vakuf.<sup>515</sup> An ECMM report confirms the attack on Prozor and Gornji Vakuf by the ABiH.<sup>516</sup>
146. A regular combat report dated 13 August 1993 sent to the Main Staff in Mostar shows that the ABiH continued to attack the HVO in the area of Prozor. The same report states that the HVO did not respond to the attacks.<sup>517</sup>
147. A report dated 29 July 1993 shows that the MOS attacked the HVO in Bugojno and Gornji Vakuf and aimed at taking Gornji Vakuf and encircle Prozor.<sup>518</sup> According a report dated 30 and 31 July, the MOS attacked the Prozor area, as well as Gornji Vakuf.<sup>519</sup> An ECMM report confirms the attack on Prozor and Gornji Vakuf by the ABiH.<sup>520</sup> The military action by the ABiH against the HVO necessitated HVO troop movements in response.<sup>521</sup>
148. A regular combat report dated 13 August 1993, sent to the Main Staff in Mostar, shows that the ABiH continued to attack the HVO in the area of Prozor. The same report states that the HVO did not respond to the attacks.<sup>522</sup> These facts are all inconsistent with the JCE theory maintained by the Prosecution.

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<sup>513</sup> P03314, Report on events in the Rama Municipality to Bruno STOJIĆ and Valentin CORIC signed by Prozor Military Police commander Ilija FRANJIC, 8 July 1993.

<sup>514</sup> 3D02780, B-142/13-185, REGULAR COMBAT REPORT BY NIKO BELJO FROM PROZOR ON THE ACTIVITIES OF MOS AND HVO FORCES ON THE BATTLEFIELD OF BUGOJNO, GORNJI VAKUF, JABLANICA AND PROZOR, 29 July 1993.

<sup>515</sup> 3D02424, B-410/4-49,30-31/071993, DAILY INTELLIGENCE REPORT BY ZARKO KEZA ON THE SITUATION IN THE AREA OF TOMISLAVGRAD,PROZOR,GORNJI VAKUF,BUGOJNO,CENTRAL BOSNIA,ZEPCE, ZAVIDOVICI,VARES,SECTOR NORTH,SECTOR OF, 31 July 1993, p. 1.

<sup>516</sup> P09638, ECMM daily report from V2 GornjiVakuf to CC Travnik on monitoring battle in GornjiVakuf, meeting with HVO in Prozor, and with BiH in Bugojno, 31 July, p. 1; See also 3D02582, Q-33-60, ORDER BY MILIVOJ PETKOVIC ON THE PREPARATION AND DIRECTION OF FORCES (ONE BATTALION) TO PROZOR DUE TO MUSLIM MOVEMENTS FROM THE CENTRAL BOSNIA, 6 August 1993.

<sup>517</sup> 3D02863, B-35/1-10, REGULAR COMBAT REPORT BY NEDJELJKO POKRAJCIC FROM PROZOR ON THE MOS ACTIVITIES IN THE AREA OF STRAZICA, PISVIR, SNIPER FIRE, 13 August 1993.

<sup>518</sup> 3D02780, B-142/13-185, REGULAR COMBAT REPORT BY NIKO BELJO FROM PROZOR ON THE ACTIVITIES OF MOS AND HVO FORCES ON THE BATTLEFIELD OF BUGOJNO, GORNJI VAKUF, JABLANICA AND PROZOR, 29 July 1993.

<sup>519</sup> 3D02424, B-410/4-49,30-31/071993, DAILY INTELLIGENCE REPORT BY ZARKO KEZA ON THE SITUATION IN THE AREA OF TOMISLAVGRAD,PROZOR,GORNJI VAKUF,BUGOJNO,CENTRAL BOSNIA,ZEPCE, ZAVIDOVICI,VARES,SECTOR NORTH,SECTOR OF, 31 July 1993, p. 1.

<sup>520</sup> P09638, ECMM daily report from V2 GornjiVakuf to CC Travnik on monitoring battle in GornjiVakuf, meeting with HVO in Prozor, and with BiH in Bugojno, 31 July, p. 1.

<sup>521</sup> 3D02582, Q-33-60, ORDER BY MILIVOJ PETKOVIC ON THE PREPARATION AND DIRECTION OF FORCES (ONE BATTALION) TO PROZOR DUE TO MUSLIM MOVEMENTS FROM THE CENTRAL BOSNIA, 6 August 1993.

<sup>522</sup> 3D02863, B-35/1-10, REGULAR COMBAT REPORT BY NEDJELJKO POKRAJCIC FROM PROZOR ON THE MOS ACTIVITIES IN THE AREA OF STRAZICA, PISVIR, SNIPER FIRE, 13 August 1993.

**Mostar – June 1993**

149. On 30 June 1993 ABiH supported by the Muslim HVO members attacked the HVO in Mostar.<sup>523</sup>

This was a pivotal moment. Until this date Muslim and Croat had fought together in the HVO. However, after this event, cooperation was no longer possible in Herzegovina.

**Operation Neretva 93**

150. On 1 September 1993, the ABiH launched Operation Neretva<sup>524</sup> which aimed to liberate Mostar from the HVO within ten days.<sup>525</sup> [REDACTED].<sup>526</sup> [REDACTED].<sup>527</sup> [REDACTED].<sup>528</sup>

151. On 11 September 1993, an UNPROFOR report clearly states that the ABiH was conducting an offensive in order to gain territory, UNPROFOR labeled it a "dirty policy" which was being fully coordinated with the authorities in Sarajevo.<sup>529</sup> According to UNPROFOR, the Islamist influence was growing and the ABiH had turned its attention to the Croat territories, after losing against the Serbs elsewhere.<sup>530</sup> The report noted that the offensive was "especially embittering" for the Croats, as they had liberated Mostar from the Serbs.<sup>531</sup> Furthermore, the report shows that the Muslims considered the Serbs as a potential ally.<sup>532</sup> [REDACTED].<sup>533</sup> [REDACTED].<sup>534</sup>

152. In conclusion, the HVO, envisaged and established as a defence force against the Serbs, did not plan to attack the Bosnian Muslims as part of an alleged JCE to remove and subjugate Muslims and create a Greater Croatia. The evidence before the Trial Chamber simply does not allow for such a conclusion. Military operations involving the HVO and the ABiH took place, but they were a consequence of the situation on the ground, not a criminal policy as alleged by the Prosecution in this case. The operations were either caused by disagreements on the municipal level, which led to

<sup>523</sup> 4D00480, Signed and stamped report from Milivoj Petkovic, re: report on MOS (Muslim Armed Forces) attack north of Mostar, Ref:02-2/1-01-1245/93, Mostar 30 June 1993, 30 June 1993. See also P03025, ECMM - M2 to RCZenica: daily report for 30 June 1993, point 1 ("General Situation") and point 5 ("the Moslem soldiers within the HVO-Battalion located in the area of Bjelo Polje (north of Mostar) attacked their Croats troops and positions").

<sup>524</sup> 4D00778, Request for units of the 1st Corps to move into Neretva valley issued by Sefer Halilovic to the Commander of the 1st Corps, ref:2-1, 02 September 1993. See also 4D00779, Report issued by Arif Pasalic to the Supreme Command Staff Sarajevo, ref:728-06, Mostar, 02 September 1993; 4D00782, Signed order issued by Vahid Karavelic to the Ramiz Delalic, re: form a company of 50 soldiers and launch offensive in Jablanica area, ref:05/7-398, Sarajevo, 04 September 1993; 4D00786, Order to attack issued by Alispago Zulfikar, re: carrying out of operation 'Defence of the people's Rights 'Vrđi 93', Jablanica, 11 September 1993; 4D00794, Order issued by Sefer Halilovic to Salko Gusic and Zulfikar Alispago-Zuka, re: taking urgent measures in Vrda, ref:001/255, Sarajevo, 20 September 1993; and 4D00798, Telegram with explanation to Arif Pasalic and Rasim Delic issued by Sefer Halilovic, re: document no. 337, 25 September 1993.

<sup>525</sup> See 4D00801, Excerpts from the publication 'Oslobodjenje': Witness of the Neretva 93 Operation. Articles from 15 January to 06 February 1993, 6 February 1993, p. 7 (regarding the objectives and the time frame of the operation).

<sup>526</sup> [REDACTED]. See also [REDACTED].

<sup>527</sup> [REDACTED].

<sup>528</sup> [REDACTED].

<sup>529</sup> P05033, UNPROFOR: Report on meeting with Mostar military commanders, 14 September 1993, paras. 5-6.

<sup>530</sup> P05033, UNPROFOR: Report on meeting with Mostar military commanders, 14 September 1993, para. 6.

<sup>531</sup> P05033, UNPROFOR: Report on meeting with Mostar military commanders, 14 September 1993, para. 6.

<sup>532</sup> P05033, UNPROFOR: Report on meeting with Mostar military commanders, 13 September 1993, para. 16.

<sup>533</sup> [REDACTED].

<sup>534</sup> [REDACTED].

local skirmishes in October 1992 and January 1993,<sup>535</sup> or were consequences of attacks of the ABiH, as in March, April, May and June 1993. Any crimes allegedly committed in the course of these military operations cannot be seen as part of a common plan and can, therefore, not be imputed to the alleged JCE members.

### **2.4.3 The alleged Ultimatums were a necessary military measure in the defence against the Serbs and were not directed at the Muslim population**

153. According to the Indictment the HVO issued two ultimatums in January and April 1993 to enforce the VOPP unilaterally.<sup>536</sup> However, the measures (which the Prosecution calls ultimatums) were not intended to subjugate, discriminate or persecute Bosnian Muslims as part of any alleged JCE. They were simply measures reasonably considered necessary in order to guarantee an efficient defence against the Serbs.

#### **2.4.3.1 Vance-Owen Peace Plan and Central Bosnia**

154. On 2 January 1993 the peace talks between the three warring parties in BiH began in Geneva.<sup>537</sup> During the talks the parties negotiated the VOPP, which included maps attributing municipalities to the three parties. According to the maps Provinces 1, 5 and 9 would be controlled by the Muslims and Provinces 3, 8 and 10 would be under the control of the Croats. Konjic was in Province 8 and Gornji Vakuf was in Province 10.<sup>538</sup> The Prosecution allege that the VOPP signed by Izetbegović did not provide for the withdrawal of the ABiH forces, because the agreement reads that both the ABiH and the HVO shall be deployed in Provinces 5, 8, 9 and 10.<sup>539</sup> However, Mile Akmadžić testified that during the Geneva talks all the parties accepted the principles according to which BiH would be divided into different provinces and the armed forces would withdraw to the designated provinces.<sup>540</sup> Furthermore, it was agreed that “the plan should take effect as soon as possible,” as a cease-fire had been agreed.<sup>541</sup>

155. The minutes of the meeting between Owen, Vance, Tudjman, Boban and Izetbegović held on 15 January 1993, do not indicate any disagreement regarding the borders and status of the provinces 8 and 10. Izetbegović wanted adjustments in Bihać, Gedina, Sarajevo, the Posavina corridor and other areas.<sup>542</sup> It appears that his refusal to sign the map was mainly due to his disagreement with

<sup>535</sup> See Indictment, para. 32.

<sup>536</sup> Indictment, paras. 30-32.

<sup>537</sup> P01047, Opening statement of Mr Cyrus Vance to Peace Talks, 2 January 1993.

<sup>538</sup> P01043, Map of Vance-Owen Peace Plan, 2 January 1993.

<sup>539</sup> Prosecution Pre-Trial Brief, para. 32.1 (citing P01398, Security Council Official Records S/25221 re. framework for the peace talks for the former Yugoslavia, 2 February 1993).

<sup>540</sup> Mile Akmadžić, 17 June 2008, T.29469:7-9.

<sup>541</sup> Mile Akmadžić, 17 June 2008, T.29469:9-11.

<sup>542</sup> P01158, Croatian Presidential Transcript for 15-01-93, 15 January 1993, pp. 4, 6, and 7.

the Serb position and his request that they accept his proposal; he felt the aggressor was rewarded with territorial gains.<sup>543</sup>

156. Finally, on 3 March 1993, the Bosnian Muslims and Croats reached an agreement on the existence and control over provinces as provided for in VOPP.<sup>544</sup> Akmadžić confirmed that in early March 1993, the Bosnian Muslim and Croats had already signed the VOPP and therefore, “agreed about the provinces based on this plan, the number of those provinces and their delineation, conditionally speaking, their borders.”<sup>545</sup>

### **2.4.3.2 HVO proposals on re-subordination and the ABiH’s ambiguous position**

#### **January 1993**

157. Despite being designated a Croat area in the VOPP, the HVO was in a weaker position in Gornji Vakuf and its positions were increasingly threatened by the ABiH at the beginning of January.<sup>546</sup> The decision taken by the HVO in January 1993<sup>547</sup> to re-subordinate ABiH units was based on the understanding that the ABiH and HVO were in agreement on the VOPP. Re-subordination was essential to securing an effective defence against the Serb enemy.<sup>548</sup>

158. Mile Akmadžić testified that based on agreements reached during the peace talks and following a proposal by Boban, orders were issued that addressed two issues, namely, re-subordination and the establishment of a joint command. Re-subordination was seen as an intermediary measure that was necessary in order to be able to set up a joint command.<sup>549</sup> Slobodan Praljak testified that he was involved in the process regarding the command on re-subordination. It is this command to re-subordinate that the OTP has persistently labelled an “ultimatum”. On 15 January 1993, Praljak was invited to President Tudjman's office in Zagreb where President Izetbegović was also present. He was asked to take the command to re-subordinate, which had been personally reviewed and adjusted by Tudjman and Izetbegović, to Mostar.<sup>550</sup> The document was published upon Boban's order, and following decisions were issued by Prlić,<sup>551</sup> Stojić<sup>552</sup> and Petković<sup>553</sup> that the ABiH units

<sup>543</sup> P01158, Croatian Presidential Transcript for 15-01-93, 15 January 1993, pp. 21-22.

<sup>544</sup> 1D02903, Agreement signed by Izetbegovic, Boban, Silajdzic and Akmadzic, 3 March 1993.

<sup>545</sup> Mile Akmadžić, 17 June 2008, T.29451:4-9.

<sup>546</sup> See 2.4.2.3..

<sup>547</sup> P01155, Stamped decision on subordination of Armija Bosnia I Hercegovina units to Croatian Defence Council command in provinces 3, 8, 10 and Croatian Defence Council units to Armija Bosnia I Hercegovina command in provinces 1, 5, 9, signed by Jadranko PRLIC, 15 January 1993. See also P01140, Signed and stamped order, ref. 02-1/1-9 from Bruno STOJIC issued pursuant to the decision of Jadranko PRLIC, 15 January 1993; and P01139, Order signed by Milivoj PETKOVIC to Croatian Defence Council and Bosnia and Hercegovina army regarding command structure. Ref: 01-70/93, 15 January 1993.

<sup>548</sup> P01158, Croatian Presidential Transcript for 15-01-93, 15 January 1993, p. 51.

<sup>549</sup> Mile Akmadžić, 17 June 2008, T.29469:13-19.

<sup>550</sup> Slobodan Praljak, 21 May 2009, T.40568:23-40570:19.

<sup>551</sup> P01146, Decision signed by Mr. Jadranko Prlić, 15 January 1993. See also P01155, Stamped decision on subordination of Armija Bosnia I Hercegovina units to Croatian Defence Council command in provinces 3, 8, 10 and Croatian Defence Council units to Armija Bosnia I Hercegovina command in provinces 1, 5, 9, signed by Jadranko PRLIC, 15 January 1993 (same document).

in Provinces 3, 8 and 10 should either submit to the HVO command or leave the territory within 5 days, namely by 20 January 1993. Bozo Rajić, BiH Minister of Defence, published the text a day later.<sup>554</sup> Furthermore, these orders provide that the HVO units in Provinces 1, 5 and 9 were to re-subordinate to the ABiH. The measures are referred to as “temporary”---pending the final peace agreement.<sup>555</sup> Indeed, an ABiH report shows that the HVO decision was considered to be a temporary one and that the Bosnian Croats were willing to change the organisation according to the final agreement made in Geneva.<sup>556</sup> It also appears that the fact that the orders do not provide for re-subordination in Province 7<sup>557</sup> reflects the disagreement voiced by Izetbegović regarding the status of Sarajevo, which was in Province 7. During a meeting on 19 January 1993 between an ECMM representative and Prlić and Petković, the HVO is said to have “regarded the transfer of responsibility for all forces to the HVO as a natural progression of organisation in the area.”<sup>558</sup>

159. The Prosecution presented evidence in an attempt to prove that the orders issued on 15 January amount to an ultimatum. They have failed to discharge their burden of proof. The Prosecution’s characterisation of the command on re-subordination as an ultimatum is emotive but inaccurate. It would be a strange ultimatum that sought to re-subordinate one’s own troops to the allegedly threatened side. Yet this is precisely what the command on re-subordination provided for.

160. [REDACTED].<sup>559</sup> Christopher Beese confirmed that the ECMM, on the other hand, was informed of the existence of an “ultimatum” by the ABiH brigade commander in Gornji Vakuf on 15 January 1993 who stated that the HVO had announced the subordination through the radio. Allegedly, the date of implementation was set on 20 January.<sup>560</sup> The fact that the brigade commander was drunk<sup>561</sup> calls into question the value of his statements and assessment of the situation. Furthermore, the choice by the ABiH to send a rather low-ranking ABiH representative to a meeting with ECMM representative Ray Lane<sup>562</sup> shows that the ABiH did not attribute great importance to

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<sup>552</sup> P01140, Decision signed by Mr. Bruno Stojić, 15 January 1993.

<sup>553</sup> P01139, Order signed by Milivoj PETKOVIC to Croatian Defence Council and Bosnia and Herzegovina army regarding command structure. Ref: 01-70/93, 15 January 1993.

<sup>554</sup> Slobodan Praljak, 21 May 2009, T.40568:23-40570:19; 2D01409, Republic Bosnia-Herzegovina, Ministry of Defence, No.01/93 -Order signed by the minister Bozo Rajic on 1993/01/16, 16 January 1993

<sup>555</sup> P01146, Decision signed by Mr. Jadranko Prlić, 15 January 1993; P01140, Decision signed by Mr. Bruno Stojić, 15 January 1993; and P01139, Order signed by Milivoj PETKOVIC to Croatian Defence Council and Bosnia and Herzegovina army regarding command structure. Ref: 01-70/93, 15 January 1993.

<sup>556</sup> P01174, Signed report for the attention of the Chiefs of the Supreme Command Staff of the R BH Armed Forces, Issued by Dzemal Merdan and Enver Hadzihanović, 17 January 1993.

<sup>557</sup> P01146, Decision signed by Mr. Jadranko Prlić, 15 January 1993; P01140, Decision signed by Mr. Bruno Stojić, 15 January 1993; and P01139, Order signed by Milivoj PETKOVIC to Croatian Defence Council and Bosnia and Herzegovina army regarding command structure. Ref: 01-70/93, 15 January 1993.

<sup>558</sup> Christopher Beese, 14 June 2006, T. 3079:12-25.

<sup>559</sup> [REDACTED].

<sup>560</sup> Christopher Beese, 14 June 2006, T.3075:1-5; T.3076:11-16; T.3076:21-3077:1; and T.5300:1-13.

<sup>561</sup> Christopher Beese, 22 August 2006, T.5301:8-17.

<sup>562</sup> Christopher Beese, 22 August 2006, T.5300:4. See also 14 June 2006, T.3076:11-17.

the situation in Gornji Vakuf, which it undoubtedly would have, if it were facing an ultimatum. At this stage no efforts were made by the ECMM to talk to the HVO.<sup>563</sup> Indeed, Christopher Beese testified that the situation wasn't considered to be an emergency by the ECMM.<sup>564</sup>

161. On 16 January the command of the 3<sup>rd</sup> ABiH corps reported that the HVO issued an ultimatum.<sup>565</sup>

The document states that the HVO requested the withdrawal of troops from outside and the subordination of the ABiH forces, and that ABiH commander Merdan could designate an ABiH commander for the units which were to be subordinated to the HVO.<sup>566</sup> These details do not appear in the UNPROFOR report, or the testimony of Christopher Beese. Instead, this Prosecution evidence suggests that all ABiH troops were requested to leave or subordinate. Andrew Williams confirmed that if both the HVO and ABiH forces from outside would have withdrawn, as requested by the HVO, the conflict in Gornji Vakuf could have been avoided.<sup>567</sup>

162. Safet Idrizović's response to a question about what happened following the January 1993 "ultimatum" is telling: "Well, nothing. What would happen?"<sup>568</sup> and, later, "we didn't take it seriously."<sup>569</sup> Indeed, the reaction of the ABiH was ambivalent and does not suggest a sense of urgency. This is clearly relevant for the following reasons. Firstly, it explains the continued escalation on the ground and the incapacity of the HVO to calm the situation. Secondly, it sheds light on the conditions the HVO faced during the period of the Geneva talks and explains that, faced with contradictory statements; the HVO could have concluded the existence of an agreement on the re-subordination.

163. Initially, the ABiH rejected the HVO orders by issuing a proclamation on 16 January.<sup>570</sup> However, during the days that followed, the positions of Izetbegović and other BiH representatives were ambiguous. According to the Cheshire Regiment's information for 17 January, the local ABiH officer had been instructed by Izetbegović to reject the "ultimatum."<sup>571</sup> On the other hand, on 16 January, Bozo Rajić, the BiH Defence Minister, issued a command for re-subordination in the Croat and Muslim provinces.<sup>572</sup>

<sup>563</sup> Christopher Beese, 22 August 2006, T.5302:13-25.

<sup>564</sup> Christopher Beese, 22 August 2006, T.5304:6-10.

<sup>565</sup> P01174, Signed report for the attention of the Chiefs of the Supreme Command Staff of the R BH Armed Forces, Issued by Dzemal MERDAN and Enver HADZIHASANOVIC. Ref: 02/32-109, 17 January 1993.

<sup>566</sup> P01174, Signed report for the attention of the Chiefs of the Supreme Command Staff of the R BH Armed Forces, Issued by Dzemal MERDAN and Enver HADZIHASANOVIC. Ref: 02/32-109, 17 January 1993, p. 1.

<sup>567</sup> Andrew Williams, 18 October 2006, T.8655:20-8656:25.

<sup>568</sup> Safet Idrizović, 7 November 2006, T:9656:17.

<sup>569</sup> Safet Idrizović, 7 November 2006, T:9657:2-8.

<sup>570</sup> P01160, Stamped and signed Proclamation of Muslims of Herzegovina, 16 January 1993.

<sup>571</sup> P01182, 1 Cheshire MILINFOSUM No. 78, 17 January 1993. See also P01168, Order by Sefer Halilović not to comply Croatian Defence Council Order that Armija Bosnia I Herzegovina in Provinces 3, 8, & 10 subordinate, 16 January 1993.

<sup>572</sup> 2D01409, Republic Bosnia-Herzegovina, Ministry of Defence, No.01/93 -Order signed by the minister Bozo Rajic on 1993/01/16, 16 January 1993.



164. On 16 January 1993, Izetbegović and Prlić agreed that Izetbegović's delegation would come to Mostar.<sup>573</sup> However, on 17 January Izetbegović sent an invitation to Prlić to hold talks in Sarajevo.<sup>574</sup> The minutes of the HVO extraordinary session show that Izetbegović's position was perceived as being ambiguous. The HVO called upon Mr. Izetbegović to send a delegation to Mostar and to explain to the Muslim population the position he expressed at the Geneva peace conference, namely, that there were no contentious questions with regards to the provinces designed as being Croat and Muslim.<sup>575</sup> Moreover, on 18 January, Bozo Rajić again issued an order requesting the subordination of all HVO units in Provinces 1, 5 and 9 to the ABiH, and the subordination of the ABiH units in Provinces 3, 8 and 10 to the HVO.<sup>576</sup>
165. The reaction of the HVO on hearing the position of the BiH further challenges the Prosecution's assertion that the HVO issued an ultimatum, since the HVO made efforts to find a political solution. On 19 January, Prlić, Pasalić and Petković issued a joint order to the ABiH and HVO high and local commands to implement an immediate cease-fire, to withdraw all troops that came from outside Gornji Vakuf and to establish a group of six persons to supervise the cease-fire.<sup>577</sup> The same day, Boban issued an order forbidding any offensive operations against the ABiH.<sup>578</sup> On the same day, the ECMM reported that "after some misunderstandings" between the HZ H-B government and the BiH Presidency, Prlić requested a meeting between Boban and Izetbegović.<sup>579</sup>
166. On 20 January 1993, in a meeting with Tudjman and Cyrus Vance, Lord Owen confirmed that Izetbegović gave an official statement that he would accept the constitutional principles and ceasefire documents.<sup>580</sup> The same day, Prlić issued a decision amending his decision of 15 January, setting the new deadline for the re-subordination to be the end of the Geneva talks.<sup>581</sup>

<sup>573</sup> 1D00818, Minutes of HVO HZ HB meeting , 18 January 1993, pp 1-3.

<sup>574</sup> 1D00818, Minutes of HVO HZ HB meeting , 18 January 1993, pp 1-3.

<sup>575</sup> 1D00818, Minutes of HVO HZ HB meeting , 18 January 1993, pp. 1-3.

<sup>576</sup> P01201, Order signed by Bozo Rajić regarding relocation of formations of armed forces of Croatian Defence Council, Armija Bosnia I Hercegovina and the Serbian Army issued in pursuance with the partially signed Geneva agreement, 18 January 1993.

<sup>577</sup> P01215, ECMM special report on talks held in Mostar with Jadranko Prlić, Arif Pasalić, and Milivoj Petković, 19 January 1993.

<sup>578</sup> P01211, Order issued by Mate Boban regarding prohibition of Croatian Defence Council offensive combat activity in Gornji Vakuf municipality, 19 January 1993. See also P01205, Letter regarding CFA in Gornji Vakuf reached between Milivoj Petković & Bruno Stojić (Croatian Defence Council) and Arif Pasalić (Armija Bosnia I Hercegovina), addressed to Sefer Halilović, signed by Arif Pasalić, 19 January 1993 (related order issued by ABiH).

<sup>579</sup> P01215, ECMM - RCSplit to ZagrebHQ: special report on talks held in Mostar with Jadranko PRLIC, Arif PASALIC, and Milivoj PETKOVIC, 19 January 1993, point 2(b). See also P01205, Letter re: CFA in Gornji Vakuf reached between Milivoj PETKOVIC & Bruno STOJIC (Croatian Defence Council) and Arif PASALIC (Armija Bosnia I Hercegovina), addressed to Sefer HALILOVIC signed by Arif PASALIC. Ref:01-415/93, 19 January 1993; and [REDACTED].

<sup>580</sup> P01240, Croatian Presidential Transcripts, 20 January 1993, p. 19. See also P01229, Record of Agreements Processes leading to Peace between Croatian Defence Council and Bosnia and Hercegovina in Gornji Vakuf, 20 January 1993 (agreements signed by both parties).

<sup>581</sup> 1D00821, HVO HZHB Decision / subordinating forces ABiH/HVO, 20 January 1993.

167. Contrary to the Prosecution's assertion, the ceasefire was not put in place following international protest, but was a result of efforts made by the parties to resolve the issue. As Christopher Beese testified, Ambassador Beaussou and Ray Lane, representatives of the ECMM, only met Mr. Prlić on the 19 January 1993.<sup>582</sup> Christopher Beese testified that he did not have any information on documents having been exchanged or negotiations or discussions held at a higher level.<sup>583</sup>
168. The deadline for the re-subordination of the ABiH units expired without any action taken by the HVO. There was no change in status or the relationship between the ABiH and HVO.<sup>584</sup> This is not surprising considering the fact that the HVO did not threaten to take any kind of action after the deadline of the orders expired.<sup>585</sup> This all goes to show that the orders were never intended to represent an ultimatum aiming at implementing a regional policy or subjugating Muslims and committing crimes, but rather, were an effort to be militarily more effective. The parties agreed that the deadline for the re-subordination would be the end of the Geneva talks.<sup>586</sup>
169. It is worth mentioning that there are indications that during this period that the HVO and the ABiH continued to cooperate. On 8 December 1992, 28 days before the alleged attack by the HVO in several localities in Central Bosnia, General Petković granted an ABiH request to facilitate the transportation of a large amount of MTS from Mostar to Jablanica, Prozor, Gornji Vakuf, Vakuf, Bujogno, Travnik, Vitez and Visoko.<sup>587</sup> The HVO also provided weapons to the ABiH in Novi Travnik on 7 January 1993<sup>588</sup> and agreed on 8 January to deliver MTS to the ABiH in Konjić.<sup>589</sup> MTS was also delivered to the ABiH Logistics Centre in Visoko during January 1993.<sup>590</sup>

#### **April 1993**

170. On 2 April 1993, Boban signed a joint statement declaring that all disputes regarding "the borders of the provinces and the temporary authority in them" had been overcome.<sup>591</sup> Furthermore, it provided that the HVO and ABiH units from outside must leave those provinces within 3 days.<sup>592</sup>

<sup>582</sup> Christopher Beese, 14 June 2006, T.3079:12-17.

<sup>583</sup> Christopher Beese, 22 August 2006, T.5306:1-8.

<sup>584</sup> See Christopher Beese, 14 June 2006, T.3091:17-21 and 21 August 2006, T.5206:20-25.

<sup>585</sup> See Christopher Beese, 21 August 2006, T.5206:5-6 ("There was, to my understanding, no official word on what would have happened.")

<sup>586</sup> 1D00821, HVO HZHB Decision / subordinating forces ABiH/HVO, 20 January 1993.

<sup>587</sup> 2D01254, Granted transport of material equipment by Milivoj Petković based on Request by Arif Pasalic, 8 December 1992..

<sup>588</sup> P10253, Agreement on the delivery of weapons from the Factory of Machines and Hydraulics in Novi Travnik (in BiH), signed on behalf of Jadranko PRLIC for Herceg- Bosna, 7 January 1993.

<sup>589</sup> 2D00809, Agreement signed by Bruno Stojić, Ivica Dzinovic, Dzevad Hadzihuseinovic, Safet Prucevic, Dzevdet Tinjic, Mato Nadjelic and Srečko Rebensten on 1993/01/08; transport of materials from Igman to Konjic, 8 January 1993.

<sup>590</sup> 2D01037, Information by Sector for security, interview with Mr. Ivan Roso conducted on January 29th.1993 regarding the convoy of 54 trucks which departed from Zagreb at beginning of November, 30 January 1993.

<sup>591</sup> P01792, Joint Statement signed by Mate BOBAN but not Alija IZETBEOVIC regarding implementation of Vance-Owen Peace Plan and formation of joint military command. Handwritten note: Boban's Suggestion, 2 April 1993.

<sup>592</sup> P01792, Joint Statement signed by Mate BOBAN but not Alija IZETBEOVIC regarding implementation of Vance-Owen Peace Plan and formation of joint military command. Handwritten note: Boban's Suggestion, 2 April 1993, item 2.

Additionally, the document states that the ABiH and the HVO should establish a joint command at the latest by 15 April 1993.<sup>593</sup> The Prosecution claims that pursuant to this statement the HVO issued an ultimatum---setting the deadline for the signature of the joint statement for 15 April.<sup>594</sup> The Prosecution bases its allegation regarding the ultimatum on two newspaper articles.<sup>595</sup> These articles are unreliable and inaccurate and must be viewed with caution. Firstly, contrary to the claims made in the articles, the joint statement proposed by the HVO did *not* provide for the withdrawal of all ABiH units, but only units originating from outside the province. This requirement applied to HVO units as well.<sup>596</sup> Secondly, both articles have the same source---Reuters.<sup>597</sup> One article can therefore not be used to corroborate the content of the other article. Thirdly, in this particular case, the newspaper articles amount to hearsay since the author was in Zagreb and therefore remote from the scene. The second article dated 4 April refers to a communiqué by the HVO Main Staff regarding the ultimatum. However, such a document was never presented by the Prosecution. Veso Vegar confirmed that he did not issue any press release including any reference to an ultimatum. Additionally, he stated that the articles tendered by the Prosecution<sup>598</sup> that refer to a press release by the Main Staff regarding an ultimatum are erroneous, as the Main Staff never issued a press release and the articles misstate his press release, as well as the minutes of taken in the HVO session of 3 April.<sup>599</sup>

171. Indeed, the minutes of the HVO session on 3 April tendered by the Prosecution to prove the ultimatum, show that the HVO's position was that if the joint statement was not implemented regarding the withdrawal of outside forces in regions 3, 8 and 10, the HVO would implement the provision on withdrawal of these forces as provided for in the VOPP. On the other hand, the HVO would respect the authority of the Muslims or Serbs in the other provinces.<sup>600</sup> Finally, the ECMM

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<sup>593</sup> P01792, Joint Statement signed by Mate BOBAN but not Alija IZETBEOVIC regarding implementation of Vance-Owen Peace Plan and formation of joint military command. Handwritten note: Boban's Suggestion, 2 April 1993, item 4.

<sup>594</sup> Prosecution Pre-Trial Brief, paras. 31.2-31.3.

<sup>595</sup> P01804, Reuters article entitled Bosnian Croats demand Moslem Troop Pullouts, 4 April 1993; P01808, Article published in Borba, Headline : Croatian Defence Council ultimatum Demands Pull-out of Muslim Troops from Three Provinces, 5 April 1993.

<sup>596</sup> P01792, Joint Statement signed by Mate BOBAN but not Alija IZETBEOVIC regarding implementation of Vance-Owen Peace Plan and formation of joint military command. Handwritten note: Boban's Suggestion, 2 April 1993.

<sup>597</sup> *Ibid.*

<sup>598</sup> See P10675, Article on the implementation of the ultimatum given to the Muslims to leave the Croat controlled areas, dated 4 April 1993; see also P01804, Reuters article entitled Bosnian Croats demand Moslem Troop Pullouts, 4 April 1993; P01808, Article published in Borba, Headline : Croatian Defence Council ultimatum Demands Pull-out of Muslim Troops from Three Provinces, 5 April 1993.

<sup>599</sup> Veso Vegar, 17 February 2009, T.37074:19-37075:2. See also Veso Vegar, 16 February 2009, T.37214:1 -20. The Reuters report refers a news paper article of "Vijesnik" in which Veso Vegar's statement was included. However, all Vijesnik papers issued during that period of time were shown to the in court. The witness stated that he did not give such a statement to Vijesnik."

<sup>600</sup> P01798, Minutes of the 34th meeting of the Croatian Defence Council HZHB held on 03-Apr-1993, 3 April 1993, p. 4.

report presented by the Prosecution as further evidence of the ultimatum fails to mention the deadline, despite being issued just three days after, on 19 April 1993.<sup>601</sup>

172. Nevertheless, on 18 April Izetbegović and Boban issued a joint declaration stating that the situation should be solved through political means and hostilities should cease.<sup>602</sup> There is evidence that even after the publication of the joint declaration on 18 April the ABiH kept carrying out attacks against the HVO and Croat civilians in Konjić.<sup>603</sup> On 20 April, Halilović and Petković signed an agreement that declared the ABiH and the HVO to be the legal forces in BiH and decided on a ceasefire. Weekly meetings were to be held.<sup>604</sup> On 24 April, Boban and Izetbegović signed a Joint Statement in order to stop the conflict which was declared contrary to the political goal of independence and integrity of the BiH.<sup>605</sup> The Joint Statement refers to an agreement reached in New York on 3 March 1993.<sup>606</sup> In the Joint Statement from 24 April, the ABiH and the HVO formed a coordination body.<sup>607</sup>

#### **2.4.3.3 HVO measure are not an ultimatum and did not aim at subjugation of Muslims or other crimes**

173. The Prosecution failed to provide clear evidence to show that the HVO did issue an ultimatum in April 1993 to the ABiH. It is clear from the interview with Prlić on 23 April that the HVO did not pose an ultimatum, but that it was a proposal.<sup>608</sup> Andrew Williams confirmed that had the proposal applied to both sides it would have stopped the conflict.<sup>609</sup>

174. As stated above, the HVO clearly considered re-subordination to be based on reciprocity. On numerous occasions, the HVO stated that its units in Provinces 1, 5 and 9 were supposed to be reintegrated into the ABiH. This position is also reflected in the minutes of the HVO HZ H-B meeting on 18 January.<sup>610</sup> Furthermore, Slobodan Praljak confirmed that in Tuzla, Sarajevo and

<sup>601</sup> P01965, ECMM - ZagrebHQ to EC: Report by Ole BRIX-ANDERSEN on peace negotiations in Mostar on 18 April 1993, 19 April 1993.

<sup>602</sup> P01983, Letter dated 19 April 1993 from the Chargé d'Affaires A.I. of the Permanent Mission of Croatia attaching Joint Declaration by Alija IZETBEGOVIĆ and Mate BOBAN. To the UN addressed to the Secretary-General. Ref: S/25640, 20 April 1993.

<sup>603</sup> See 4D00090, Combat report by Esad Ramic, Konjic, 22 April 1993.

<sup>604</sup> 2D00470, No. 02/1594-321, AGREEMENT - Zenica, Sefer HALILOVIĆ, Milivoj PETKOVIĆ, Philippe MORRILON, Jean-Perre THEBAULT, 20 April 1993. See also, P02002, Cease fire agreement between the Croatian Defence Council and Armija Bosnia I Herzegovina, signed by Milivoj Petković and Sefer Halilović, 20 April 1993; and P02097, Stamped order, ref. 02-5/12-2, from Milivoj PETKOVIĆ re: cease fire agreement signed by Alija IZETBEGOVIĆ; Mate BOBAN; Milivoj PETKOVIĆ; Sefer HALILOVIĆ; Franjo TUDJMAN and David Lord OWEN, 25 April 1993.

<sup>605</sup> P09494, Public statement of HZHB after meeting at Citluk on 29 April 93, 29 April 1993. See Section 2.3. on cooperation.

<sup>606</sup> P02078, Signed joint statement of Alija IZETBEGOVIĆ and Mate BOBAN on a co-ordination body for the implementation of Vance-Owen plan. Witnessed by Franjo TUDJMAN, 25 April 1993, item 1.

<sup>607</sup> P02078, Signed joint statement of Alija IZETBEGOVIĆ and Mate BOBAN on a co-ordination body for the implementation of Vance-Owen plan. Witnessed by Franjo TUDJMAN, 25 April 1993, item 1.

<sup>608</sup> P02046, Audio taped interview of Jadranko Prlić in Mostar, by Erich Rathfelder of Die Tageszeitung, 23 April 1993.

<sup>609</sup> Andrew Williams, 18 October 2006, T.8656:9-8657:10.

<sup>610</sup> 1D00818, HVO HZ HB meeting / minutes, 18 January 1993, pp. 3 and 5.

Bihać the HVO units re-subordinated to the ABiH.<sup>611</sup> In October 1993 the HVO Sarajevo was disbanded and the members of the *Kralj Tvrtko* HVO Brigade was renamed into *Kralj Tvrtko* Croatian Brigade and put under the command of the ABiH 1<sup>st</sup> Corps.<sup>612</sup> These municipalities are in Provinces 1, 5 and 7.<sup>613</sup>

175. Furthermore, the evidence shows that the measures taken by the HVO in April 1993 were not part of a regional policy, but clearly based on a presumed agreement aiming at military effectiveness. When the ABiH resisted to the proposal, the HVO sought a political solution. The measures did not aim at or involve subjugating or committing crimes against Muslims, but were military measures. Therefore, the crimes alleged<sup>614</sup> cannot be seen as part of a common plan or a foreseeable consequence of any such plan.

## **2.5 Alleged Plan to Annex Portions of Bosnia Herzegovina into “Greater Croatia”**

### **2.5.1 No plan to establish a Greater Croatia**

#### **2.5.1.1 Tudjman did not have a plan to establish a Greater Croatia by criminal means**

176. The Indictment alleges that the territorial ambition of the alleged JCE was to re-establish a Croatian territory within the borders of the Croatian Banovina.<sup>615</sup> The Indictment and the Prosecution’s Pre-Trial Brief show an extraordinary focus on Franjo Tudjman and his alleged regional policy and a rather limited interest in the role played by the accused. Tudjman is referred to as the JCE leader.<sup>616</sup> The Indictment refers to two meetings involving Tudjman. During the meeting on 27 December 1991, Tudjman allegedly declared that “it is time that we take the opportunity to gather the Croatian people inside the widest possible borders.”<sup>617</sup> During the meeting on 17 September 1992 with the HVO leadership, Tudjman insisted that they secure their position “in the national and territorial sense” in BiH.<sup>618</sup>

177. However, the Prosecution has not established that Tudjman constructed and pursued a plan to establish a “Greater Croatia” by criminal means. Tudjman was in favour of an independent BiH. Josip Manolić testified that during the referendum of 29 February 1992, Tudjman was in favour of

<sup>611</sup> Slobodan Praljak, 25 May 2009, T.40610:11-40611:14.

<sup>612</sup> In his testimony defence witness Dragan Pinjuh confirmed that steps to integrate the HVO Brigade in Sarajevo into the ABiH were already taken in August 1993. See Dragan Pinjuh, 4 March 2009, T.37718:12-37719:1.

<sup>613</sup> P01043, Map of Vance-Owen Peace Plan, 2 January 1993.

<sup>614</sup> Indictment, paras. 33-35.

<sup>615</sup> Indictment, paras. 15, 221 and 222.

<sup>616</sup> Indictment, para. 36.

<sup>617</sup> Indictment, para. 24.

<sup>618</sup> Indictment, para. 24.

an integral BiH<sup>619</sup> and unenthusiastic about restoring the Croatian Banovina borders, which would involve relinquishing Istria or Baranja.<sup>620</sup>

178. Witness 4D-AB, when asked by the bench whether there was a 'Greater Croatian' policy replied: "at that time I was there, there was no Croatian policy in the area. And what we're dealing with here is people who wanted to co-operate with the Croats, and they wanted to avoid a conflict between the Croats and the Muslims, so they represented the interests of their people."<sup>621</sup>

179. It does not appear that Tudjman had a regional plan that involved committing crimes. Rather, caught by surprise by the dissolution of Yugoslavia and the events that followed,<sup>622</sup> Tudjman explored options regarding the territorial organisation of the former Yugoslav Republics. Indeed, expert Jurčević argues that "the state and social institutions and hierarchies in Croatia were almost completely unprepared for 1990, i.e. for the fall of Communism and the break up of Yugoslavia. [...] [There were no] preparations for internal armed conflict or radical policies aimed at breaking up Yugoslavia on the part of the Croatian institutions in the 1980s and early 1990s, or the existence of any plans and organisations intended for that purpose."<sup>623</sup> In Croatia, contrary to Serbia, no plans existed on the political and territorial organisation.<sup>624</sup> In the light of the breakdown of the existing state system and organisation, the reference to the Banovina as a possible scenario for a political and territorial reorganisation seems to be natural.

180. The fact that Tudjman contemplated this option does not prove the existence of a common plan involving the commission of crimes. While, pursuant to the principle of *uti possidetis* former republican borders become international borders protected by international law,<sup>625</sup> considering or aiming at changing those borders is not a crime under the Statute and does not constitute a JCE if it does not involve the commission of crimes punished under the Statute. The Prosecution has failed to provide evidence that would suggest Tudjman envisaged or planned the commission of crimes.

181. Additionally and importantly, evidence shows that in 1992 and 1993 Croatia regularly and systematically provided the ABiH with MTS. The procedure of procurement and transfer of the MTS involved the approval of Gojko Šušak, Croatia's Minister of Defence.<sup>626</sup> The transfer of

<sup>619</sup> Josip Manolić, 3 July 2006, T.4277:4-6.

<sup>620</sup> Josip Manolić, 3 July 2006, T.4282:6-14.

<sup>621</sup> Witness 4D-AB, 23 November 2009, T.47098:10-14.

<sup>622</sup> See Indictment, para. 18.

<sup>623</sup> 3D03720, Expert Report by Josip Jurcevic, Bosnia and Herzegovina 1990-1995, p. 43.

<sup>624</sup> 3D03720, Expert Report by Josip Jurcevic, Bosnia and Herzegovina 1990-1995, p. 41.

<sup>625</sup> P00109, Opinion no. 3 of the Arbitration Commission of the Peace Conference on Yugoslavia in Paris. Signed by R. BADINTER Ref: No 153, 11 January 1992..

<sup>626</sup> See Section 2.3.2.

weapons and other supplies to the Bosnian Muslims challenges the existence of a regional policy which involved controlling parts of BiH by criminal means.

### 2.5.1.2 The HVO leadership did not have a plan to establish a Greater Croatia

182. The Prosecution alleges that the Herceg-Bosna/HVO leadership, its members and governmental and political structures, were utilised to “implement the objectives of the criminal enterprise.”<sup>627</sup>
183. Whilst conceding that the Bosnian Croat population supported the referendum, the Prosecution argues that this “support” symbolised a lesser of two evils. They aver that the “alternative of not voting for independence was to remain in Milošević’s Yugoslavia and at least the independence of Bosnia-Herzegovina was a step toward Greater Croatia.”<sup>628</sup> However, the evidence presented shows that during that period of time the Bosnian Croat leadership discussed different options,<sup>629</sup> none of which involved the commission of crimes and the resurrection of the Banovina. The Prosecution identifies this moment as a crucial juncture, as shortly after this, the HVO was established with a clear mandate to “defend the sovereignty of the territories.”<sup>630</sup>
184. However, according the report by Jurčević, “the roots of the emergence of the HVO lie primarily in the fact that many Croats from BH (the estimate is 10,000 to 20,000) participated in the defence of the Republic of Croatia from Serbian armed aggression in 1990 and 1991.”<sup>631</sup> Serb aggression, and its bid to create a “Greater Serbia,”<sup>632</sup> had created fear and insecurity and destroyed BiH’s military and financial infrastructure. Coupled with this, BiH experienced political changes which led to the feeling of under-representation by the Croats.<sup>633</sup> In essence, the HVO was established as a defensive response to “nationalist Serb forces attempting to incorporate parts of Croatia [and BiH] into ‘Greater Serbia’.”<sup>634</sup>
185. It is also worth mentioning that the representatives of the international community also presented plans involving the organisation of BiH along ethnic borders in order to achieve and preserve peace. [REDACTED].<sup>635</sup> As evidenced above, other peace plans involved an organisation along ethnic borders as well.<sup>636</sup>

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<sup>627</sup> Indictment, para. 16.1.

<sup>628</sup> Prosecution’s Opening Statement, 26 April 2006, 833:15-16.

<sup>629</sup> See Section 2.2.1.2.2., for the three options for BiH.

<sup>630</sup> P00151, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992, Decision on the Creation of the Croatian Defense Council. Ref: 2/92, 8 April 1992, article 2. On 6 October 1991 the President Izetbegović declared that the war in Croatia “is not our war.” See P10451, Article from *Oslobodenje*: Alija Izetbegovic Message To The Citizens of Bosnia and Herzegovina This Is Not Our War, 7 October 1991. See also 1D-AA, 4 June 2008, T.29126:3-29127:4.

<sup>631</sup> 3D03720, EXPERT REPORT, JOSIP JURCEVIC, BOSNIA AND HERZEGOVINA 1990-1995,

<sup>632</sup> Indictment, para. 18.

<sup>633</sup> See Section 2.2.1.

<sup>634</sup> Indictment, para 18. See also Prosecution Pre-Trial Brief, para 18.

<sup>635</sup> [REDACTED].

<sup>636</sup> P01043, Map of Vance-Owen Peace Plan, 2 January 1993.

## 2.5.2 No agreement between Croats and Serbs

### 2.5.2.1 Meetings between Tudjman and the Serb leadership

186. The Prosecution alleges that the accused, as HVO leaders, are guilty of participating in a JCE with the leadership of Republic of Croatia, including Franjo Tudjman.<sup>637</sup> More specifically, Tudjman, in order to implement the alleged JCE, met with Serb leaders to discuss a division of the BiH between the Croats and Serbs.<sup>638</sup> However, the Prosecution has not shown beyond a reasonable doubt that Tudjman's meetings were part of a regional policy or aimed at implementing or furthering the alleged JCE.

#### *Tudjman and Milošević meeting in March 1991*

187. In order to demonstrate the existence of an agreement with the Serbs within the alleged JCE, the Prosecution tendered evidence on a meeting that supposedly took place between Tudjman and Milošević in early 1991 at Karadjordjevo.<sup>639</sup> Stjepan Kljuić testified that the first time he had ever heard of such a meeting occurring was when he read about it in a book published years later.<sup>640</sup> Josip Manolić testified that Tudjman told him that he and Milošević had come to an "agreement in principle" regarding the situation in BiH.<sup>641</sup> However, Manolić testified that he was not at the meeting.<sup>642</sup> Moreover, Manolić's testimony discounts the Prosecution's assertion that this meeting had a significant effect upon Tudjman's policy toward BiH.<sup>643</sup> He testified that Tudjman's continued support of the referendum was "[...] in contradiction with all the stories and rumours up until that time that agreements that he had with Milošević about the division of [BiH]."<sup>644</sup> Further testimonial evidence suggests that President Tudjman's "[...] motive for going to meet Milošević was to try to stop the war and to try to find a peaceful solution."<sup>645</sup>

188. Josip Manolić indicated that upon returning to Zagreb, Tudjman established a team of experts "to prepare the implementation of this agreement in principle"<sup>646</sup> However, no evidence has been

<sup>637</sup> Indictment, paras. 19-20, 22-27

<sup>638</sup> Indictment, para. 27. See also, Prosecution's Pre-Trial Brief, paras. 27.1 and 27.2..

<sup>639</sup> See [REDACTED]; Josip Manolić, 3 July 2006, T.4277:20-4280:7.

<sup>640</sup> Stjepan Kljuić, 26 June 2006, T.3845:13-20.

<sup>641</sup> Josip Manolić, 3 July 2006, T.4277:25-4278:4.

<sup>642</sup> Josip Manolić, 3 July 2006, T.4277:25-4278:1.

<sup>643</sup> Josip Manolić, 3 July 2006, T.4277:4-19.

<sup>644</sup> Josip Manolić, 3 July 2006, T.4277:14-19 (emphasis added). Manolić's portrayal of the agreements as "stories and rumours" gives them even less credence. Moreover, while Kljuić testified he had no knowledge of the meeting, he did state that "[t]here were rumours [...] to the effect that there was some kind of secret agreement, but nobody said anything specific about it." Stjepan Kljuić, 26 June 2006, T.3845:22-25.

<sup>645</sup> Momir Zuzul, 21 July 2008, T.31121:14-16.

<sup>646</sup> Josip Manolić, 6 July 2006, T.4745:8-9.



shown that the commission allegedly established by Tudjman was actually operative or produced anything.<sup>647</sup>

189. In September 1991, the Serb armed forces occupied and used territory in BiH, particularly the villages of Ravno and Brčko, as a launching ground to attack Croatia.<sup>648</sup> The fact that Milošević sent the JNA to BiH to attack Croatia weakens the credibility of any assertion that Tudjman and Milošević had actually entered into an agreement on the division or partition of BiH in March 1991.

***Tudjman's Presidential Meeting on 27 December 1991: talks to be initiated with Serbs and Muslims***

190. The Prosecution introduced transcripts of the presidential meeting held in Zagreb on 27 December 1991.<sup>649</sup> A careful reading of this transcript shows that there existed many differing opinions on how to deal with the situation in BiH, and there existed no prevailing view as to the ultimate approach to be adopted.<sup>650</sup> Various leaders of the HDZ offered their opinions and views on the subject.<sup>651</sup> Kljuić reported on the relations between the HDZ BiH, SDA, and SDP with regard to the possibility of a sovereign BiH.<sup>652</sup> He stated that the Serb position was strongly in favour of partition, but that he thought a sovereign BiH “divided into cantons, which would guarantee human rights to all,”<sup>653</sup> would be acceptable. Boban reported on the establishment of the HZ H-B. The purpose of the “alternative entity” was to be a “framework for the expression of the political will of the Croatian people”<sup>654</sup> and he indicated that it would exist should BiH remain an independent state or disintegrate.<sup>655</sup> Tudjman emphasised the need to find a political solution that would not involve changing borders by force.<sup>656</sup> Regarding his past diplomatic efforts: “I can tell you right here, at this table, that in private talks I had with Izetbegović, in private talks with Milošević, and in talks with both of them, there was discussion of how to find such a solution which would satisfy both the

<sup>647</sup> Josip Manolić, 6 July 2006, T.4744:7-4745:12.

<sup>648</sup> Hamid Bahto, 11 March 2009, T.37895:24-37896:4.

<sup>649</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991.

<sup>650</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 2.

<sup>651</sup> See P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, pp. 2, 17.

<sup>652</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 3.

<sup>653</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 12.

<sup>654</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 17.

<sup>655</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 17.

<sup>656</sup> See P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, pp. 100-01.

Croatian and Serbian people, as well as the Muslims.”<sup>657</sup> While demarcation and border changes were discussed, Tudjman emphasised the need to seek “a solution, not just in passing, for our demarcation, a solution which would satisfy all three sides.”<sup>658</sup> At the conclusion of the meeting, a commission was created that “[...] would conduct talks both with the Serbs and with the Muslims.”<sup>659</sup>

191. [REDACTED]<sup>660</sup> [REDACTED].”<sup>661</sup>

### **Tudjman, Boras, and Koljević meeting on January 1992**

192. The Prosecution further alleges that the meeting between Tudjman, Franjo Boras and Nikola Koljević began a period of collusion with the Bosnian Serbs and an advancement of their plan to divide BiH.<sup>662</sup> [REDACTED].<sup>663</sup> [REDACTED].<sup>664</sup> This idea of a relatively decentralised tripartite state can also be found in the January 1993 agreement signed in Geneva by Izetbegović, Karadžić and Boban.<sup>665</sup> [REDACTED].<sup>666</sup> Both Tudjman and the Bosnian Croats expressed concern as to the reaction of the Muslims and their stance on the issue.<sup>667</sup> This directly contradicts the Prosecution’s assertion that Bosnian Croats and Serbs conspired to divide BiH and force the Muslim population to go along with their proposals.<sup>668</sup> Franjo Boras is quoted as saying that the Muslims would need to be brought in to the discussion “before a *fait accompli*.”<sup>669</sup> [REDACTED].<sup>670</sup>

### **2.5.2.2 Meetings between the HVO, the Serb leadership and representatives of Croatia**

193. Evidence tendered by the Prosecution indicates the willingness of parties to enter into bilateral talks about the future of BiH. This is evidenced by a decision of the HDZ BiH presidency made on

<sup>657</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 101.

<sup>658</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 102.

<sup>659</sup> P00089, Minutes of a meeting between the President of the Republic of Croatia, Dr Franjo Tudjman and a delegation of the Croatian Democratic Union of Bosnia and Herzegovina. Meeting of 27 December 1991, 27 December 1991, p. 105.

<sup>660</sup> [REDACTED].

<sup>661</sup> [REDACTED].

<sup>662</sup> Prosecution’s Pre-Trial Brief, para. 27.2.

<sup>663</sup> [REDACTED]. See also P00108, Presidential transcript: Meeting of 8 January 1992. Included in those present: Franjo TUDJMAN, various Croatian leaders, Bosnian Serb and Bosnian Croat delegations etc., 8 January 1992, pp. 7 and 9.

<sup>664</sup> [REDACTED]. See also Zoran Buntić, 15 July 2008, T.30774 :9-10; Josip Jurcević, 17 September 2009, T.45073:3-11; Josip Manolić, 5 July 2006, T.4603:4-23; 4613:9-4620:3.

<sup>665</sup> See P01363, Agreement related to Bosnia and Herzegovina signed in Geneva on 30/01/93 by A. Izetbegović; R. Karadžić; M. Boban witnessed by C.R. Vance and D. Owen, 30 January 1993.

<sup>666</sup> [REDACTED].

<sup>667</sup> P00108, Presidential transcript: Meeting of 8 January 1992. Included in those present: Franjo TUDJMAN, various Croatian leaders, Bosnian Serb and Bosnian Croat delegations etc., 8 January 1992, pp. 43 and 46.

<sup>668</sup> See Prosecution’s Pre-Trial Brief, para. 27.4.

<sup>669</sup> P00108, Presidential transcript: Meeting of 8 January 1992. Included in those present: Franjo TUDJMAN, various Croatian leaders, Bosnian Serb and Bosnian Croat delegations etc, 8 January 1992, p. 46.

<sup>670</sup> [REDACTED].

16 January 1992.<sup>671</sup> This decision also indicates that the Bosnian Croats did not believe that a partition was the immediate solution to the problem. Additionally, a letter from Mate Boban, sent to both Karadžić and Izetbegović, in April 1992 discusses a solution in which BiH will have one central government with nine core actors, three from each ethnic group.<sup>672</sup>

194. It is clear from both documentary and testimonial evidence that the HVO had meetings and negotiated with the Bosnian Muslims to find a non-violent political solution that guaranteed all national interests. Such meetings were also conducted on the initiative of the Croats and Muslims solely, for example, the meeting conducted on 27 March 1993 between Izetbegović, Tudjman and Boban.<sup>673</sup> The minutes of this meeting highlight Bosnian Croat and Muslim cooperation, as well as Croatia's "anti-Serb" stance. When Izetbegović enquired as to the proposed course of action should the Serbs "[...] try to make a compromise again, something in the interest of the Serbs [...]"<sup>674</sup> Tudjman replied, "We should be as determined *and unified* as possible in not allowing them to implement their policies."<sup>675</sup>

### **2.5.2.3 No evidence of an on-going and systematic cooperative relationship between HVO and Serb forces**

#### ***Boban and Karadžić Meeting in Graz on 6 May 1992***

195. The Prosecution alleges that "there was substantial ongoing co-operation between the Bosnian Croats and Serbs" following a meeting between Karadžić and Boban on 6 May 1992, which continued in the parts of BiH with minor exceptions until end of 1993."<sup>676</sup>

196. The Prosecution suggests that this meeting constituted a substantial turning point for Bosnian Croat and Serb relations.<sup>677</sup> Testimonial evidence, however, indicates that this was not the case and that there was no "substantial ongoing co-operation." [REDACTED]<sup>678</sup> [REDACTED].<sup>679</sup> [REDACTED],<sup>680</sup> [REDACTED].<sup>681</sup> [REDACTED],<sup>682</sup> [REDACTED].<sup>683</sup> [REDACTED].<sup>684</sup>

<sup>671</sup> P00110, Stamped conclusions of the Presidency of the HDZ- Bosnia and Herzegovina, meetings on 16 January 1992, signed by Stjepan Kljuić, 16 January 1992. Note: While Stjepan Kljuić, who left the HDZ in February 1992, made this decision he was still an active member of the party and carried out the HDZ policy at the time.

<sup>672</sup> 1D00525, Letter of Mate Boban to Cutileiro, Izetbegovic, Karadzic, 26 April 1992.

<sup>673</sup> 3D00561, R66-3-39, MINUTES FROM 27TH OF MARCH 1993 MEETING, TUDJMAN AND ALIJA IZETBEGOVIC, 27 March 1993.

<sup>674</sup> 3D00561, R66-3-39, MINUTES FROM 27TH OF MARCH 1993 MEETING, TUDJMAN AND ALIJA IZETBEGOVIC, 27 March 1993, p. 3.

<sup>675</sup> 3D00561, R66-3-39, MINUTES FROM 27TH OF MARCH 1993 MEETING, TUDJMAN AND ALIJA IZETBEGOVIC, 27 March 1993, p. 3 (emphasis added).

<sup>676</sup> Indictment, para. 27.

<sup>677</sup> Prosecution's Pre-Trial Brief, paras. 27.3-27.4.

<sup>678</sup> [REDACTED].

<sup>679</sup> [REDACTED].

<sup>680</sup> [REDACTED].

<sup>681</sup> [REDACTED].

<sup>682</sup> [REDACTED]; 1D00398, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina, 18 March 1992, p. 4.

[REDACTED].<sup>685</sup> [REDACTED].<sup>686</sup> In the light of this information, the meeting between Boban and Karadžić in Graz appears in fact to be an effort by the Bosnian Croats to find a peaceful way to end the growing conflict.

197. The Prosecution has introduced several press releases as evidence of the content of these discussions between Boban and Karadžić.<sup>687</sup> [REDACTED].<sup>688</sup> [REDACTED].<sup>689</sup>

198. Regarding the “agreement,”<sup>690</sup> Josip Manolić testified that it shows “that they have agreed that they disagreed” and would need to continue negotiating.<sup>691</sup> For instance, there was disagreement on the status and borders of Mostar.<sup>692</sup> Considering the importance of Mostar, there was, therefore, no agreement on boundaries. This refutes the allegation that this meeting and agreement demonstrate “a broad consensus between the Croats and Serbs” on the division of BiH<sup>693</sup>

### ***Ethnic Relations after May 1992 Graz Meeting***

199. The meeting had no effect upon the relationship between the Croats and Muslims. For instance, Bosnian Muslims and Croats reached an agreement in mid-May 1992 that the two sides would institute a ceasefire in the area of Mostar, where tensions between Croats and Muslims had resulted in sporadic fighting.<sup>694</sup> When asked by the Chamber whether or not he considered Generals Petković and Praljak enemies during 1992 and 1993, Hamid Bahto, then an ABiH soldier, testified that he “couldn’t possibly imagine that we were enemies,” since he received all MTS through the HVO.<sup>695</sup> “We cooperated, we made agreements, and we used each other’s help about getting weapons, about preparing for combat, about reconnaissance.”<sup>696</sup> It is not contested that there were limited instances of armed conflict between the Bosnian Muslims and Croats during 1992 and 1993. However, conflict was, in the words of Hamid Bahto, “partial and only local.

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<sup>683</sup> [REDACTED]; 1D02437, Letter from the Croatian Defence Minister's Cabinet to Zdravka Busic re: Cutilleiro's conditions posed to Serbs and Muslims, 30 April 1992.

<sup>684</sup> [REDACTED].

<sup>685</sup> [REDACTED].

<sup>686</sup> [REDACTED].

<sup>687</sup> See P00192, ECMM report regarding peace deal signed between the Serb and Croat leaders. (Exhibit 126.1 in Naletilic et al case), 7 May 1992, p. 4..

<sup>688</sup> [REDACTED].

<sup>689</sup> [REDACTED].

<sup>690</sup> P00192, ECMM report regarding peace deal signed between the Serb and Croat leaders. (Exhibit 126.1 in Naletilic et al case), 7 May 1992.

<sup>691</sup> Josip Manolić, 6 July 2006, T.4665:19-20. See also Josip Manolić, 6 July 2006, T.4667:7-13..

<sup>692</sup> P00192, ECMM report regarding peace deal signed between the Serb and Croat leaders. (Exhibit 126.1 in Naletilic et al case), 7 May 1992, p. 2.

<sup>693</sup> Prosecution’s Pre-Trial Brief, para. 27.1.

<sup>694</sup> See Bozo Perić, 8 December 2009, T.47934:22-47935:1; T.47935:3-18; and Stjepan Kljuić, 28 June 2006, T.4212:3-10.

<sup>695</sup> Hamid Bahto, 11 March 2009, T.37910:22-25.

<sup>696</sup> Hamid Bahto, 11 March 2009, T.37911:10-12..

It wasn't through [BiH]."<sup>697</sup> This statement supports the defence position that there was not a common plan between the HVO and Serbs to divide BiH.<sup>698</sup>

200. Croat-Serb relations did not change because of this meeting either. In fact, for some time after the meeting the Serbs continued to launch numerous attacks at HVO units and municipalities, for instance Livno, Rama, Jajce and in Posavina.<sup>699</sup> During the months of May and June 1992, Serb forces were attacking Stolac.<sup>700</sup> The Serbs also took Capljina and East Mostar.<sup>701</sup> The HVO, "with some assistance from the ABiH," liberated those territories in mid-June 1992.<sup>702</sup>

### ***Negotiations between Bosnian Croats and Serbs in 5 and 26 October 1992***

201. In the reopening of its case-in-chief, the Prosecution has put forth evidence of two meetings between Bosnian Croats and Serbs during October 1992.<sup>703</sup> It asserts that these meetings help prove that the Bosnian Croats cooperated with the Serbs to implement the alleged JCE.<sup>704</sup> Evidence regarding the situation on the ground and the continued HVO-Serb hostilities indicate that there was no actual agreement reached at the meeting.

202. At the meeting of 26 October 1992, after discussing the fact that Tudjman had agreed to a meeting with Karadžić, Čosić, and Boban, there is a notation of Prlić's response: "If we're not going to respect what we agreed to last time, then there's no need to discuss any further."<sup>705</sup> While this statement may suggest that *some* agreement was reached at the meeting on 5 October 1992, it *contradicts* the Prosecution's allegations that such meetings or "agreements" had any practical effect and were in furtherance of the alleged JCE. Rather, it supports and corroborates the evidence that there was no actual, meaningful cooperation on the ground between the two parties. The statements made regarding Slavonski Brod during both meetings further corroborate this failure of cooperation or consensus. On 5 October 1992, Praljak is recorded to have asked twice

<sup>697</sup> Hamid Bahto, 11 March 2009, T.37911:14-16.

<sup>698</sup> See Section 2.3. on HVO-ABiH cooperation.

<sup>699</sup> See Stjepan Kljuić, 9 October 2006, T.8008:12-8011:1; Slobodan Praljak, 5 May 2009, T.39618:6-39619:20; T.39621:22-39622:3.

<sup>700</sup> Stjepan Kljuić, 9 October 2006, T.8009:7-15.

<sup>701</sup> Stjepan Kljuić, 9 October 2006, T.8009:7-11.

<sup>702</sup> Stjepan Kljuić, 9 October 2006, T.8009:12-15. See also (regarding Mostar) Vinko Marić, 11 January 2010, T.48102:23-25; 2D01364, Order by mate Boban on the general mobilization in the area of Citluk, Capljina, Grdue, etc, 10 July 1992; See also, Bruno Pinjuh, 23 February 2009, 37274:1-6; Spomenka Drjević, 2 May 2006, T.1005:4-7. See regarding Operaiton Bura, 2D03057, Order for offensive combat operations signed by Milivoj Petkovic, 6 November 1992, 2D01295, Order for defence signed by Milivoj Petkovic on 1992/11/15 on Forward Command Post Capljina regarding combat activities in past days, 15 November, pp.1-3. Regarding Operation Bura, see also 3D03528, OZ JIH Medical Service, MEDICAL REPORT ('BURA') FOR THE DAY NOVEMBER 7th-8th 1992, Chief of Medical Service Nikica Sutalo, 9 November 1992, pp. 6 and 7.

<sup>703</sup> See P11376, Mladic Notebook, entry 5-October-1992. Pecui - Hotel Palatinus. Negotiations with the delegation of Croatia and Herceg-Bosna, 1200-1600, 5 October 1992; and P11380, (untitled), 26 October 1992

<sup>704</sup> See Prosecution Motion to Admit Evidence in Reopening, 9 July 2010, Annex 1, pp. 5, 8-11.

<sup>705</sup> P11380, (untitled), p. 73.

for the “[s]uspension of the bombardment of Slavonski Brod.”<sup>706</sup> Jozo Marić, the HVO Minister of Culture, is recorded to have stated “[y]ou are shelling Slavonski Brod.”<sup>707</sup>

203. Evidence also refutes the Prosecution’s allegation that the Croats cooperated with the Serbs in Jajce,<sup>708</sup> since the Serb forces attacked ABiH and HVO in Jajce immediately after the meetings. For instance, a report from the Health Sector describes the evacuation of wounded HVO soldiers from Jajce on 27 and 29 October.<sup>709</sup> Testimonial evidence confirms that the fighting conducted in Jajce was against the Serbs and in cooperation with the Muslims.<sup>710</sup> Additionally, fighting continued during the autumn of 1992 in Tomislavgrad.<sup>711</sup>

204. Furthermore, there was also continued cooperation between Bosnian Croats and Muslims. For example, on 23 October 1992, there was a joint meeting between the ABiH and HVO commanders in Konjic.<sup>712</sup> The press release announced that the parties had “agreed on several key issues that will help avoid all undesirable consequences and create the conditions for more successful and effective cooperation and actions against the common enemy in the future.”<sup>713</sup> Indeed, the HVO and the ABiH launched the joint operation “Bura” at the beginning of November 1992. This goes to refute the alleged HVO-Serb cooperation after the October meetings. An order by Petković commanding an offensive of 3 HVO Brigades in Podveležje was sent to the ABiH 1<sup>st</sup> Mostar Brigade on 6 November 1992.<sup>714</sup> Another order by Petković, dated 15 November 1992, explicitly mentions “Bura” and attributes tasks to the ABiH 1<sup>st</sup> Mostar Brigade.<sup>715</sup> Combat reports of the VRS during the same period confirm the existence of the offensive.<sup>716</sup> The operation aimed at moving

<sup>706</sup> P11376, Mladic Notebook, entry 5-October-1992. Pecui - Hotel Palatinus. Negotiations with the delegation of Croatia and Herceg-Bosna, 1200-1600, 5 October 1992, pp. 6 and 8.

<sup>707</sup> P11376, Mladic Notebook, entry 5-October-1992. Pecui - Hotel Palatinus. Negotiations with the delegation of Croatia and Herceg-Bosna, 1200-1600, 5 October 1992, p. 8.

<sup>708</sup> P11376, Mladic Notebook, entry 5-October-1992. Pecui - Hotel Palatinus. Negotiations with the delegation of Croatia and Herceg-Bosna, 1200-1600, 5 October 1992, p. 8.

<sup>709</sup> 3D03527, REPORT ON THE ORGANISATION AND CONDUCT OF EVACUATION OF THE WOUNDED FROM JAJCE, ISSUED BY IVAN BAGARIC, REPORT ON JAJCE ISSUED BY BAREŠIĆ, 31 October 1992.

<sup>710</sup> Ivan Bagarić, 21 April 2009, T.39054: 1-4.

<sup>711</sup> Stjepan Kljuić, 9 October 2006, T.8060:24-8061:2.

<sup>712</sup> See 2D00798 Announcement by the Commandant of ARBiH Konjic Headquarters and Commandant of HVO on 1992/10/23; agreement from October 23rd.1992, 23 October 1992. See also Dragan Jurić, 28 April 2009, T.39438:3-12.

<sup>713</sup> 2D00798, Announcement by the Commandant of ARBiH Konjic Headquarters and Commandant of HVO on 1992/10/23; agreement from October 23rd.1992, 23 October 1992 (emphasis added).

<sup>714</sup> 2D03057, Order for offensive combat operations signed by Milivoj Petkovic, 6 November 1992.

<sup>715</sup> 2D01295, Order for defence signed by Milivoj Petkovic on 1992/11/15 on Forward Command Post Capljina regarding combat activities in past days, 15 November, pp.1-3. Regarding Operation Bura, see also 3D03528, OZ JIH Medical Service, MEDICAL REPORT ('BURA') FOR THE DAY NOVEMBER 7th-8th 1992, Chief of Medical Service Nikica Sutalo, 9 November 1992, pp. 6 and 7.

<sup>716</sup> 2D01278, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-372- Regular combat report signed by Col Radovan Grubac on 1992/11/09, 9 November 1992; 2D01279 Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-742-Combat report signed by Col Radovan Grubac on 1992/11/14, 14 November 1992; 2D01281 Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-738-Regular Combat report signed by Col Radovan Grubac on 1992/10/11, 11 October 1992; 2D01282, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-702-Regular Combat report signed by Col Radovan Grubac on 1992/10/29, 29

the Serbs "as far as possible from the Neretva Valley."<sup>717</sup> This is particularly significant because, according to the Serbs, the Neretva River formed the boundary line between Serbian and Croatian territory.<sup>718</sup> This fact also casts doubt upon the Prosecution's allegation that Karadžić and Boban came to an agreement on the division of BiH in Graz in May 1992.

205. A number of remarks can be made regarding Stojić's alleged statement according to which no weapons will be given to the Muslims. One thing is clear---the evidence shows that the HVO delivered and facilitated the delivery of MTS to the ABiH after the October meetings and the alleged remarks.<sup>719</sup> A document issued by Arif Pašalić confirms that until February 1993 the HVO provided or facilitated the transfer of MTS.<sup>720</sup> Moreover, on 30 March 1993, the ABiH ordered MTS through the Logistics Centre in Grude for a delivery which was planned to pass the border from Croatia the next day. This order was delivered by fax to Bruno Stojić.<sup>721</sup> [REDACTED].<sup>722</sup>

206. Indeed, the dialogue between the Serbs and Croats was, in the end, limited to discussing the release of Serbian prisoners,<sup>723</sup> and did not aim at implementing an alleged JCE.

#### **2.5.2.4 Temporary and geographically limited agreements between all parties, including the Bosnian Serbs and Muslims**

207. Evidence shows that occasional agreements between the Bosnian Croats and Serbs did occur; however, such agreements were not the norm and did not amount to substantial cooperation.

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October 1992; 2D01283, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-712- Regular Combat report signed by Col Radovan Grubac on 1992/11/02, 2 November 1992; 2D01284, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-721-Regular Combat report signed by Col Radovan Grubac on 1992/11/05, 5 November 1992; 2D01285, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-727-Regular Combat report signed by Col Radovan Grubac on 1992/11/07, 7 November 1992; 2D01286, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-729- Combat report signed by Col Radovan Grubac on 1992/11/08, 8 November 1992; 2D01287, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-730-Regular Combat report signed by Col Radovan Grubac on 1992/11/08, 8 November 1992; 2D01288, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-731- Combat report signed by Col Radovan Grubac on 1992/11/09, 9 November 1992; 2D01289, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-734- Combat report signed by Col Radovan Grubac on 1992/11/10, 10 November 1992; 2D01290, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-735-Regular Combat report signed by Col Radovan Grubac on 1992/11/10, 10 November 1992; 2D01291, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-740- Combat report signed by Col Radovan Grubac on 1992/11/12, 12 November 1992; 2D01293, Command of Herzegovina Corps To the Main Staff of Republica Srpska Army Str.Con. 147-735- Combat report signed by Col Radovan Grubac on 1992/11/11, 11 November 1992.

<sup>717</sup> Vinko Marić, 11 January 2010, T.48103:15-17.

<sup>718</sup> See 3D00430, TU-49, Agreement Boban-Karadžić, 6 May 1992 (items 1 and 2). See also, P00187, Croatian Ministry of Defense Fax, dated 7 May 1992, of the Public Declaration by Radovan Karadžić and Mate Boban from 6 May 1992 after the Graz meeting giving reference to the city of Mostar as borderline, 7 May 1992, items 1 and 2.

<sup>719</sup> See Section 2.3.2.

<sup>720</sup> 2D00229, INFORMATION - From: Commander Mr. Arif pasalic; To: Sefer Halilovic, 26 February 1993, under point 2.

<sup>721</sup> 2D00311, No. 512-08/93-01, ORDERING - For distribution of material resources for BiH Armed forces purposes..., From: REPUBLIC OF CROATIA MINISTRY OF DEFENCE To: Mr. Bruno Stojić And Mr. Safet Orucevic, 30 March 1993.

<sup>722</sup> [REDACTED].

<sup>723</sup> See P11380, untitled, 26 October 1992, p. 75..

There were never any joint military operations between the Bosnian Serbs and Croats.<sup>724</sup> Often the cooperation that took place occurred by necessity. Services performed often involved transporting wounded soldiers or refugees through each other's territory to a hospital or place of safety.<sup>725</sup> This limited cooperation enabled the HVO to comply with its duties under IHL.

208. Testimony indicates that during summer 1993, the HVO was also forced to cooperate with the Serbs in the area of Konjic, since the only way to remove the wounded from the battlefield was to carry them through the Republika Srpska.<sup>726</sup> Equally, since Kiseljak was a Croatian enclave that bordered Serbian territory, cooperation was a necessity,<sup>727</sup> rather than evidence of a policy in furtherance of the JCE. According to Jasak, "any kind of co-operation [...] meant pure survival [...] co-operation was realised only when a humanitarian catastrophe was looming."<sup>728</sup>
209. In conclusion, the Prosecution has failed to show that the alleged JCE members entered into agreement with the Serbs as part of the alleged JCE to subjugate or remove the Bosnian Muslims in order to create a Greater Croatia. While cooperation with the ABiH was continuous (see Section 2.3.), agreements with the Serbs were limited to technical issues related to the ongoing conflict, such as the exchange of prisoners.

### **2.5.3 Involvement of the Republic of Croatia**

#### **2.5.3.1 Croatian Contribution is Limited to Material Assistance Provided to Both Bosnian Croat and Bosnian Muslim Forces**

210. The Prosecution alleged that Croatia supplied military, logistical and financial support for the HVO armed forces, particularly through contacts with Susak, the Minister of Defence of Croatia.<sup>729</sup> In the following paragraphs, the Defence will identify the type of assistance which was provided to both Bosnian Croats and Bosnian Muslims, as well as the geographical reach and temporal context of such assistance. This will indicate that this was given in equivalence.

##### **2.5.3.1.1 Limited Financial Support**

211. According to the Indictment, the accused, in furtherance of and participation in the alleged JCE, requested, received and arranged Croatia's financial assistance to Herceg-Bosna/HVO.<sup>730</sup> The Prosecution called Witness I to testify on banking and financial transactions in BiH. First, the Defence submits that the Prosecution failed to present witnesses that are competent to testify in

<sup>724</sup> 4D-AB, 24 November 2009, T.47173:17. Though individual units or soldiers may have attempted to carry out such joint military operations, they were never ordered or facilitated on a command level. See Dragan Jurić, 28 April 2009, T.39413:5-10.

<sup>725</sup> See, e.g., Dragan Jurić, 28 April 2009, T.39413:17-21, T.39428:23-24, T.39435:19-22; 4D-AB 24 November 2009, T.47172:16-47175:3.

<sup>726</sup> Radmilo Jasak, 18 January 2010, T.48506:3-7.

<sup>727</sup> Radmilo Jasak, 27 January 2010, T.49033:16-21; 49061:11-49063:10.

<sup>728</sup> Radmilo Jasak, 27 January 2010, T.49062:1-5.

<sup>729</sup> Indictment, para 17.2(h).

<sup>730</sup> Indictment, para 17(g).



any meaningful way to this issue and provide relevant and credible evidence. The Chamber stated that in relation to the financial infrastructure of the HVO, several other more suitable witnesses could have been called.<sup>731</sup> Indeed, the Prosecution acknowledged it simply did not have access to better placed and knowledgeable witnesses.<sup>732</sup>

212. Witness I confirmed that no bank existed in the HZ H-B in 1992 and early 1993. The practice was to open a non-resident bank account in Croatia and carry out necessary transactions through that account. Witness I stressed that during this period, namely during 1992 into early 1993, Herceg-Bosna was in the early stages of its organisation. As such, it was devoid of financial institutions. Croatia then gave that money to the HVO for defence against Serbian aggression.<sup>733</sup> Therefore, such payments were not carried out in furtherance of the JCE.
213. Generally, the money provided by Croatia to the HVO constituted a loan. Witness I explained that during the war in Croatia, Croats from all over the world sent money to Croatia to assist. They continued to do this during the conflict in Bosnia. He also indicated that this was done by way of money transfer from accounts in the United States, Austria and Liechtenstein.<sup>734</sup>
214. Further, evidence confirms that Croatia was not the sole country extending such loans. During his testimony, Witness I stated that the ABiH received financial assistance from Arab countries. Such funds were initially deposited with Croatia as money transfers did not work in BiH. Indeed, Croats from all regions of the world contributed capital to assist in the defence against the Serbian aggressor.
215. Witness I was of the view that the bank accounts used in the Opuzen and Imotski branches were the only bank accounts being used by the HVO during 1992 and 1993.<sup>735</sup> Witness I noted that some of the cash he collected from the Opuzen and Imotski bank offices was used for the payment of HVO salaries.<sup>736</sup> In reference to a request to draw cash, Witness I confirmed that he was collecting 70 million Croatian dinar (approximately 15.000 Deutsche Mark), which was intended for the military.<sup>737</sup> Witness I confirmed that on 15 December 1992 there was a deposit of 70 million Croatian dinar and the withdrawal of 70 million Croatian dinar at the same day. Witness I confirmed that the payment of salary and payroll of professional units varied from one municipality

<sup>731</sup> Witness I, 9 October 2007, T.23408:2-11.

<sup>732</sup> Witness I, 9 October 2007, T.23408:12-16.

<sup>733</sup> Witness I, 8 October 2007, T.23338:17-25, T.23339:5-16, T.23328:24-23329:12; 9 October 2007, T.23497:9-23498:11.

<sup>734</sup> Witness I, 8 October 2007, T.23383:11 - T. 23384L:4. See also 1D01755, Mate Boban's letter to donors from abroad, 11 April 1992; 1D01753, Croatian National Association donation, 27 August 1993 and 1D01754, Croatian National Fund Chicago – donations, 30 September 1993.

<sup>735</sup> Witness I, 8 October 2007, T.23343:7-12..

<sup>736</sup> Witness I, 8 October 2007, T.23343:11-13.

<sup>737</sup> Witness I, 8 October 2007, T.23347:18-T.23352:21. See also P01094, 1 Cheshire MILINFOSUM No. 72, 11 January 1993. Witness I confirmed that as of 5 April 1993, 1,500, 000 Dinar equated to approximately 2,000 to 3,000 Deutsche Mark. See Witness I, 10 October 2007, T23526:18-T.23527:9.

to another. He explained that there was no money in Herceg-Bosna and either the Croatian Dinar or the Deutsche Mark was used.<sup>738</sup>

#### **2.5.3.1.2 MTS supplied**

216. As previously stated, Croatia provided the ABiH with MTS in 1992 and 1993.<sup>739</sup> The procedure described in 2.3.2.2 clearly demonstrates that the Minister of Defence of Croatia was in charge of making the decision to issue weapons to the ABiH. Moreover, since the name of the person in charge of the equipment was mentioned, the Ministry of Defence knew that these arms were provided to the ABiH. This demonstrates that alleged JCE members, who the Prosecution asserts aimed at subjugating and removing Muslims from certain parts of BiH, furnished war material to the side the Prosecution maintain were their enemy.

#### **2.5.3.1.3 Training of Members of the ABiH**

217. As stated above, the Republic of Croatia also organised training in Croatia for ABiH members.<sup>740</sup> This training was provided to ABiH soldiers in order to support higher efficiency in the conflict against the aggression carried out by the Serbs.<sup>741</sup> An order sent by the Ministry of Defence of Croatia on November 1992 shows that soldiers who left the JNA after 10 November 1991 would be arrested by Croatian authorities whereas trainings of ABiH soldiers were still organised.<sup>742</sup> This demonstrates that at this time, the ABiH was not considered an enemy, but an ally of the Republic of Croatia in its fight against the aggression launched by the Serbs.

#### **2.5.3.2 Borders of Republic Croatia Open to Both Croat and Muslim Refugees**

218. During the Indictment period, Croatia welcomed a high number of Muslim refugees, in absolute and proportional terms. In his report, Adalbert Rebić states that when war broke out in BiH in April 1991, the Croatian ODPB dealt with taking care of Bosnian refugees in Croatia. In addition to the 320,000 registered displaced persons (Croats from Croatia), there was an abrupt increase of Bosnian refugees. By summer 1992, there were more than half a million refugees who were accommodated all over Croatia.<sup>743</sup> In December 1992, Croatia had 371,319 refugees from BiH. The number of refugees in Croatia stabilized by mid-1993. It then rose again at the end of the year, when new, mostly Croat, refugees arrived due to the conflict in Central Bosnia.<sup>744</sup> At the end

<sup>738</sup> Witness I, 8 October 2007, T.23364:9-T.23365:14

<sup>739</sup> See Section 2.3.2.

<sup>740</sup> See Section 2.3.3.

<sup>741</sup> 3D00299, BIH-3-2-9, THE MILITARY DELEGATION, 4 January 1993.

<sup>742</sup> 3D02633, SLOBODAN PRALJAK'S BOOK, AID OF THE REPUBLIC OF CROATIA TO MUSLIM-BOSNIAK PEOPLE AND ARMY OF R BIH IN THE PERIOD 1991-1995 (FACTS), p. 3D83-0170 ("Warning Re:sending passager to Zagreb" dated 25 November 1992).

<sup>743</sup> 1D02921, Dr A. Rebić's report on his work at the office for Displaced Persons and Refugees, 2 February 1996, p. 6 (ET).

<sup>744</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 3.

of 1992, between 65% and 70% of refugees were Muslims. In 1993, 58% were Muslims, with estimates of 40% in 1994 and around 25% in 1995.<sup>745</sup>

219. Rebić explained that the main reason for the reduction of the number of refugees in May 1993 was their departures towards third countries.<sup>746</sup> Indeed, in July 1993, Croatia requested Western European countries to receive Bosnian refugees due to the challenges it was facing regarding the accommodation of all the refugees it had received.<sup>747</sup> The number was reduced following refugees leaving for third countries, but rose again when the armed conflict between Muslim and Croats began.<sup>748</sup> Through programs of transfer to third countries 42,076, mostly Muslim, refugees left Croatia from 1 October 1992 to the end of May 1998. Due to the criteria set for the program of transfer Croats made up a small part of that number. Since they were dual citizens of BiH and Croatia, they were generally not considered eligible.<sup>749</sup> Overall, according to an ODPH report, Bosnian refugees stayed in Croatia for an average of 3 months before moving onto third countries. It is estimated that from 1992 to mid 1996 approximately half a million refugees from BiH passed through Croatia.<sup>750</sup>

220. In Croatia there was a unified welfare system for displaced Croat citizens and Bosnian refugees. Moreover, the system did not differentiate between ethnic groups---all refugees from BiH were treated the same way and in accordance with international conventions,<sup>751</sup>

## 2.6 Conclusion: No common plan and JCE

221. The following statement from the Prosecution's opening statement properly encapsulates the core of the JCE allegations "What's the result of all this? What happened as a result of these systematic and well-orchestrated campaigns by the Zagreb and Herceg-Bosna leadership against the Muslims? The result was this: The Bosnian Muslim population in many parts of Herceg-Bosna was substantially reduced if not eliminated altogether. And those who did remain, those Muslims who for whatever reason did remain were plainly dominated by the Herzeg-Bosna HVO authorities and forces as planned and intended by the joint criminal enterprise."<sup>752</sup>

222. However, the Prosecution recently acknowledged in its recent motion responding to the reopening of the Defence cases that "throughout the Indictment period the three ethnic groupings were involved in a series of complex and shifting allegiances and animosities."<sup>753</sup>

<sup>745</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 4.

<sup>746</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 4.

<sup>747</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 9.

<sup>748</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 9.

<sup>749</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 4.

<sup>750</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 5.

<sup>751</sup> 2D00486, Information about the Refugees from BiH to Croatia in the period 1992-1998, p. 10.

<sup>752</sup> Prosecution's Opening Statement, 26 April 2006, T.872:24-873:6.

<sup>753</sup> *Prosecutor v Prlic et al, IT-04-74-T*, Prosecution consolidated response to Defence motions to reopen their cases and tender evidence per the Trial Chamber Decision of 6 October 2010, para 12.

### 3 THE CASE AGAINST BRUNO STOJIĆ

#### 3.1 Defence theory

##### 3.1.1 No JCE Liability (Art. 7.1.)

223. The Prosecution charges Bruno Stojić with JCE liability over the alleged crimes pursuant to Article 7(1) of the Statute.<sup>754</sup> The Tribunal's jurisprudence has identified three categories of JCE. The scope and content of JCE I,<sup>755</sup> JCE II<sup>756</sup> and JCE III<sup>757</sup> has been judicially determined in various cases in relation to each category.

224. The Prosecution assert that Stojić contributed to and furthered the JCE in various ways.<sup>758</sup> The Defence denies this, as well as the Prosecution's characterisation of the evidence and the conclusions and inferences drawn therefrom. In fact, the evidence adduced in the course of trial shows that Stojić did not contribute significantly to the commission of any alleged crimes. Rather, his was an administrative and logistical role (see Section 3.2.). He was not involved in any way in the military operations (see Section 3.3.) or decisions regarding the alleged HVO policy (see Section 3.4.). Nor was he involved in the establishment and functioning of the detention facilities in which the crimes were allegedly taking place (see Section 3.5.). Moreover, Stojić did not have the requisite *mens rea*, since he did not intend to further a JCE aimed at subjugating and removing Muslims from HZ-HB and creating a "Greater Croatia", or in the commission of any crimes as part of thereof. Stojić was not in the chain of reporting of the armed forces (including the SIS and MP units within) or the system of the detention. Therefore, most of the time he had no knowledge of the alleged crimes.<sup>759</sup> Regarding the few instances in which he was made aware of crimes, he attempted to act, for instance by establishing the Commission for Detention Centres and Prisons (see Section 3.5.8.2.). However, these measures were not implemented by others due to his lack of authority.

225. Furthermore, the Prosecution failed to prove that Stojić had the specific intent to persecute and discriminate against Muslims.<sup>760</sup> Evidence shows that Stojić employed Muslims and never

<sup>754</sup> Indictment, paras. 221-227..

<sup>755</sup> *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 196.

<sup>756</sup> *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgement, 15 July 1999, paras. 203, 228; *Prosecutor v. Radoslav Brđanin*, IT-99-36-A, Judgement, 3 April 2007, para. 365; *Prosecutor v. Miroslav Kvočka*, IT-98-30/1-A, Judgement, 28 February 2005, para. 284.

<sup>757</sup> *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 204; *Prosecutor v. Milan Martić*, IT-95-11-A, Judgement, para. 83.

<sup>758</sup> Indictment, paras. 17 and 17.2.

<sup>759</sup> See Sections 3.3.1.1., 3.3.2.1.4., 3.3.2.2.2. and 3.5.3.

<sup>760</sup> *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgement, 2 November 2001, para. 288, upheld in *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement, 28 February 2005, para. 110. See also *Prosecutor v. Stakić* IT-97-24-A, Judgement, 22 March 2006, para. 327, where the Appeals Chamber concluded that a charge of persecutions must include those elements required for all crimes against humanity under the Statute, but additionally it must be an act or omission that (i) discriminates in fact

discriminated on ethnic grounds,<sup>761</sup> and played a positive role in the shipment of MTS to the ABiH.<sup>762</sup> Furthermore, both the Health Sector and the Welfare Administration of the Defence Department provided services to Muslims and Croats equally.<sup>763</sup>

226. Additionally, regarding to his alleged responsibility for crimes under the second JCE category, Stojić did not participate in “the enforcement of a system of repression.” He did not have a position of authority regarding the victims of the crimes charged in the Indictment. HVO legislation only gave him power over the detention of Serb POWs. Moreover, Stojić did not play a significant role in, or contribute in a significant way to, the detention system, from which such intent could be inferred. Moreover, the Tribunal’s jurisprudence demonstrates that this type of liability has been applied to persons who working *within* the detention centre.<sup>764</sup> JCE II is not an appropriate form of liability for a person holding administrative functions and being physically and structurally cut from the detention facility, such as Stojić.<sup>765</sup>

227. During the course of trial the Prosecution asserted that Bruno Stojić advocated a “Banovina” and called evidence in support of this proposition.<sup>766</sup> Properly considered the Prosecution’s reliance upon a transcript of a telephone conversation between Stojić and Mandić, Kvesić, and Mico Stanisić, in a bid to establish the contended proposition, in fact illustrates the weakness of its case in this regard.

228. Throughout the trial, the Prosecution declined to have regard to the context of the conversation intercepted and that, in any view, it was not a serious conversation from which any reliance could safely be placed. Rather, it is banter and what may be described as “ribbing” between former colleagues. That this is manifestly so is apparent from the tone of the conversation, the language used, enquiries as to family members, other ex-colleagues and the like. The Defence deprecates

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and which denies or infringes upon a fundamental right laid down in international customary or treaty law (*actus reus*); and (ii) was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (*mens rea*). Furthermore, “[i]t is not sufficient for the accused to be aware that he is in fact acting in a way that is discriminatory; he must consciously intend to discriminate.” Additionally, the result of the act must, in fact, be discriminatory; intent alone is not enough. See *Prosecutor v. Krnojelac* IT-97-25-T, Judgement, 15 March 2002, paras. 435 and 432; *Prosecutor v. Vasiljević* IT-98-32-T, Judgement, 29 November 2002, paras. 248 and 245.

<sup>761</sup> Tomislav Kresić, 2 April 2009, T:38733:23-T:38736:17.

<sup>762</sup> See Sections 3.4.2.1..

<sup>763</sup> See Sections 3.2.2.3. and 3.2.2.5. respectively.

<sup>764</sup> Kvočka, as duty officer in the Omarska camp, was considered to have a key role in the administration and functioning. See *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgement, 2 November 2001, para. 404-407. Krnojelac was prison warden and highest position of authority in the KP Dom. See *Prosecutor v. Krnojelac* IT-97-25-T, Judgement, 15 March 2002, para. 97.

<sup>765</sup> The Appeals Chamber in *Kvočka* held that one element of the requisite *mens rea* is “personal knowledge of the criminal nature of the system.” See *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement, 28 February 2005, para. 198. Knowledge “can be inferred from such indicia as [...] the amount of time spent in the camp, [...] his movement throughout the camp, and any contact he has with detainees [and] staff personnel.” See *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgement, 2 November 2001, para. 324; endorsed in *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgement, 28 February 2005, para. 201. None of these indicia apply to Stojić who therefore lacks the *mens rea* for JCE II.

<sup>766</sup> P00185, Transcript of intercepted telephone conversation between Miljenko Mandić Branko KVESIĆ, STANISIC, Mico and Bruno STOJIC, 5 May 1992.

any attempt to rely upon this informal, far from serious conversation, in a bid to scrape together an argument seeking to implicate Stojić in the alleged JCE.

229. Various points can briefly be made in this regard: Firstly, Stojić is only passed the telephone at page 3 of the transcript. All that is said before the telephone is passed to Stojić should be disregarded, as the views of others cannot be imputed to Stojić.
230. Secondly, if the Prosecution's reliance upon P00185 had stemmed from the application of principle, rather than expedience, it would have been compelled to view various statements of Stojić as exculpatory, casting doubt on its own case. Instead, the Prosecution has attempted to "cherry-pick" the evidence in a manner that leads to a fundamental misunderstanding of what transpired. For example, after various unsavoury statements of Mandić regarding mosques and synagogues, Stojić did *not* express approval or adopt such views in any way. Rather, he moved the conversation on, asking whether there was any way to resolve matters in Sarajevo "peacefully".<sup>767</sup> Similarly, one must ask, why did the Prosecution not assert that Stojić's repeated statements that the Serbs would never be allowed to get close to the Neretva,<sup>768</sup> not contradict the alleged agreement between the Serbs and Croats to divide up BiH, with one group controlling each side of the Neretva, or the alleged agreement between Boban and Karadžić in Graz.<sup>769</sup> Indeed, when Mandić asserts that an agreement had been concluded, Stojić *explicitly* states "I have no idea"<sup>770</sup>
231. Stojić's statement to Stanišić to "go and talk to that fool of yours...he is really out of his mind" and that Karadžić should get "pipe dreams" out of his head have all been conveniently ignored by the Prosecution at trial. Indeed, if any weight was to be given to this intercepted transcript, then it behoved a fair and objective prosecutor to comment on Stojić's response to further absurd remarks of Stanišić's in the terms "Stop it already? What's wrong with you"<sup>771</sup> and his marked refusal to respond to, or express agreement with, further vituperative comments made against the Muslims. Indeed, at one point Stojić clearly distances himself from the extreme views of Stanišić that the Serbs would go after the Muslims in the end, in the terms "Well, I leave that to you. [...] Those recessions are between you."<sup>772</sup> In conclusion, the Defence submit that the transcript should be given little probative weight as it would be perilous for the Trial Chamber to rely upon it, given the nature of the conversations. However, if it is given weight, it actually exculpates Stojić and contradicts the Prosecution case in material particulars.

<sup>767</sup> *Ibid*, p. 3.

<sup>768</sup> *Ibid*, p. 3.

<sup>769</sup> See regarding the alleged Graz agreement Section 2.5.3.2.

<sup>770</sup> P00185, Transcript of intercepted telephone conversation between Miljenko Mandić Branko KVESIĆ, STANISIĆ, Mico and Bruno STOJIC, 5 May 1992., p 3.

<sup>771</sup> P00185, p 4.

<sup>772</sup> *Ibid*, P00185, p 4

### 3.1.2 No liability as a commander

232. The Prosecution additionally charges Stojić with liability over the alleged crimes under an Article 7(3) theory of liability.<sup>773</sup> Whilst command is a prerequisite for criminal responsibility under Article 7(3), control will determine the extent of that responsibility and the resulting liability.<sup>774</sup> There is a threshold within command responsibility, that the control must be effective. This has been interpreted as the material ability to prevent and punish the commission of these offences.<sup>775</sup> *Čelebići* held that command responsibility could apply to civilian superiors, but “only to the extent that they exercise a degree of control over their subordinates which is similar to that of military commanders.”<sup>776</sup> A number of factors have been identified as indicating this military-type control:

1. The formality of the procedure used for appointment of a superior;<sup>777</sup>
2. The capacity to issue and sign orders – provided the signature on a document is not purely formal or merely aimed at implementing a decision made by others but that the indicated power is supported by the substance of the document;<sup>778</sup> and whether there is evidence of the documents being acted upon.<sup>779</sup>
3. The capacity to transmit reports to competent authorities for the taking of proper measures;<sup>780</sup>
4. The fact that subordinates show in the superior’s presence greater discipline than when he is absent;<sup>781</sup>
5. An accused’s high profile, manifested through public appearances and statements or by participation in high-profile international negotiations.<sup>782</sup> The mere presence of an accused in important meetings is not sufficient but the contributions made during them will be analysed.<sup>783</sup>

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<sup>773</sup> Indictment, para. 228.

<sup>774</sup> E. Sliedregt, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, (T.M.C. Asser Press 2003), p. 153.

<sup>775</sup> *Prosecutor v. Mucić et al.*, (“*Čelebići Camp*”), IT-96-21-A, Judgement, 20 February 2001, para. 256.

<sup>776</sup> *Prosecutor v. Mucić et al.*, (“*Čelebići Camp*”), IT-96-21-T, Judgement, 16 November 1998, para. 378.

<sup>777</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 312.

<sup>778</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 312. See also *Prosecutor v. Brđjanin*, IT-99-36-T, Judgement, 1 September 2004, para. 281.

<sup>779</sup> *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-T, Judgement, 26 February 2001, para. 421.

<sup>780</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 312.

<sup>781</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 312. (*Ibid.*)

<sup>782</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 312. (*Ibid.*)

<sup>783</sup> *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement, 26 February 2009, paras. 301 and 309.

6. Whether the civilian superior, through their position in any given hierarchy, should have a duty to report crimes that are committed, and that, in light of their position, the likelihood that those reports will trigger an investigation or initiate disciplinary or criminal measures.<sup>784</sup>

233. The *Boškoski* Trial Chamber held that “both the *de facto* and the *de jure* authority and the effective control exercised by the civilian superior in the particular circumstances of the case” must be carefully scrutinized.<sup>785</sup> Most recently, the *Milutinović* Trial Chamber further clarified that it is the nature, rather than the source of authority that is important,<sup>786</sup> thus placing greater weight on *de facto* authority. It also highlighted that the mere presence of an accused at important meetings would not of itself indicate effective control or *de facto* authority, what was important was the contribution of the accused during the meetings and the role taken by him.<sup>787</sup>

234. In order to find responsibility under Article 7(3), the Prosecutor must prove beyond reasonable doubt that: (1) there existed a superior-subordinate relationship between the superior and the perpetrator of the crime; (2) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (3) the superior failed to take the necessary and reasonable measures to prevent the criminal act or to punish the perpetrator thereof.<sup>788</sup>

235. The crimes were allegedly committed by members of the HVO armed forces, including regular soldiers, military police in active combat, members of professional units, and other individuals acting in concert with the HVO armed forces.<sup>789</sup> Stojić was not, however, in the military chain of command. He had no effective control over these forces or those who were in charge of the detention facilities (see 3.5.2.), and was not in a position to prevent or punish their acts.

### **3.1.2.1 Bruno Stojić did not have a superior-subordinate relationship with the any of the individuals alleged to have violated international law**

236. Indicators of the existence of a position of authority and effective control are: (1) the official position held by the accused; (2) his capacity to issue orders whether *de jure* or *de facto*; (3) the procedure for appointment; (4) the position of the accused within the military or political structure; and (5) the actual tasks that the accused performed.<sup>790</sup>

<sup>784</sup> *Prosecutor v. Brđanin*, IT-99-36-T, Judgement, 1 September 2004, para. 281.

<sup>785</sup> *Prosecutor v. Boškoski & Tarčulovski*, IT-04-82-T, Judgement, 10 July 2008, para. 410. See also *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-T, Judgement, 26 February 2001, para. 414 (holding that it is the reality of the authority of the accused that will be assessed).

<sup>786</sup> *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement, 26 February 2009, para. 401.

<sup>787</sup> *Prosecutor v. Milutinović et al.*, IT-05-87-T, Judgement, 26 February 2009, para. 309.

<sup>788</sup> *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Judgement, 17 January 2005, para. 790; *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-A, Judgement, 17 December 2004, para. 827; *Prosecutor v. Halilović*, IT-01-48-T, Judgement, 16 November 2005, para. 56; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, para. 520; *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 294.

<sup>789</sup> See, e.g., Indictment, para. 39.

<sup>790</sup> *Prosecutor v. Halilović*, IT-01-48-T, Judgement, 16 November 2005, para. 58.



237. As it will be demonstrated,<sup>791</sup> none of these elements are satisfied for Stojić. First, despite his official title as Head of the Defence Department, the *de jure* provisions make clear that this was not an “official position of authority.” The position as a as Head of the Defence Department was created after the HVO military structures were already in place, merely to deal with the administrative and logistical needs of the HVO. Thus, the allegation of superior authority put forth by the Prosecution is without merit and has not been proven beyond a reasonable doubt.
238. Second, it is clear that Stojić did not have the *de jure* authority to issue operative commands, and there is no evidence that, *de facto*, he did so. The few documents referenced by the Prosecution in this regard are clearly of logistical and administrative nature, and do not rise to the level of operative command and control required for a finding under 7(3) of the Statute.
239. Furthermore, Stojić had no actual decision making power, either *de jure* or *de facto*, regarding appointments or dismissals.<sup>792</sup> Thus, Stojić’s involvement in signing appointments or dismissals does not demonstrate any actual authority that would support the Prosecution’s assertions of command responsibility.
240. Finally, it is clear that Stojić did not figure in the military chain of command.<sup>793</sup> The work performed by Stojić was of a purely administrative nature, and did not give him command authority over any of the operative members of the HVO.

### **3.1.2.2 Bruno Stojić did not have the requisite knowledge of past or potential crimes within HVO forces**

241. The second element of Article 7(3), the requirement of actual or constructive knowledge, has been heavily litigated in the *ad hoc* Tribunals. Actual knowledge may be established through direct or circumstantial evidence, but may not be presumed.<sup>794</sup> Constructive knowledge and the consequent criminal liability will be established only if the accused had reason to know that a subordinate was about to commit acts or had done so,<sup>795</sup> or had in his possession such information which would put him on notice of the risk of such offences, in that it indicated or alerted him to the need for additional investigation in order to determine whether such crimes had been or were about to be committed by his subordinates.<sup>796</sup>
242. However, as Stojić was not in a position of *de facto* superior authority over members of the HVO, it is irrelevant that he may have received knowledge of possible crimes committed by HVO officers.

<sup>791</sup> See Sections 3.2. and 3.3., as well as 3.5. regarding the detention facilities.

<sup>792</sup> See Sections 3.3.1.2., 3.3.2.1.1., 3.3.2.2.2., 3.5.3.1.1., 3.5.3.2.1., 3.5.3.3.1. and 3.5.3.4.1.

<sup>793</sup> See Section 3.3.1.1.

<sup>794</sup> *Prosecutor v. Blaškić*, IT-95-14-T, Judgement, 3 March 2000, para. 307.

<sup>795</sup> G Sluiter, A Zahar, *International Criminal Law, A Critical Introduction*, (Oxford University Press 2008), p. 295.

<sup>796</sup> *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Judgement, 17 January 2005, para. 792; *Prosecutor v. Halilović*, IT-01-48-T, Judgement, 16 November 2005, para. 65.

Despite any instances where Stojić was made aware of criminal activity by HVO officers, he had no authority to take measures against these officers.<sup>797</sup>

### 3.1.3. No liability as an aider and abettor

243. Bruno Stojić is charged with aiding and abetting the alleged crimes pursuant to Article 7(1) of the Statute.<sup>798</sup> The *actus reus* for aiding and abetting a crime is to carry out “acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime [...] and this support has a substantial effect upon the perpetration of the crime.”<sup>799</sup> Contributions having a “substantial effect” include providing weapons to a principal,<sup>800</sup> allowing resources for which a person is responsible to be used for crimes<sup>801</sup> and others. In additions, omissions may have substantial effect, as long as the accused had the obligation to prevent the crime.<sup>802</sup>

244. According to the Tribunal’s jurisprudence, the required *mens rea* for aiding and abetting a crime includes intentional action and knowledge of the crime. Aiding and abetting must be intentional, in as much as the aider and abettor intends both to further the crime through his contribution and the intentional completion of the crime by the principal perpetrator.<sup>803</sup> Furthermore, “knowledge that the act performed assists the commission of a specific crime by the principal perpetrator” is required.<sup>804</sup> Additionally, to establish knowledge, the aider and abettor “must, at the least, be aware of the type and the essential elements of the crime(s) to be committed.”<sup>805</sup>

245. The Prosecution have failed to establish that any acts of Stojić had a substantial effect on the commission of crimes. Regarding the military operations, his purely administrative and logistical role (see Section 3.2.1.2.) cannot be considered as having a substantial effect on the commission of crimes. Furthermore, *even if* means provided by Stojić to the armed forces, MP or SIS in the formations, as part of his logistical role, were used to commit crimes, Stojić lacked the required *mens rea* for aiding and abetting. As he was not part of the chain of command and reporting,<sup>806</sup> his knowledge of military operations and the detention system was very limited. Therefore, he was not “aware of the type and the essential elements of the crime(s) to be committed.” When he became aware of certain problems he attempted to remedy the situation, for example by establishing the Commission for Detention Centres and Prisons (see Section 3.5.8.2.). Accordingly, he did not

<sup>797</sup> See Sections 3.3.1.1. and 3.3.1.3.

<sup>798</sup> Indictment, para. 220.

<sup>799</sup> *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 229.

<sup>800</sup> *Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2006, para. 530.

<sup>801</sup> *Prosecutor v. Krstić*, IT-98-33-A, Judgement, 19 April 2004, para. 137; See also, *Prosecutor v. Bisengimana*, ICTR-00-60-T, Judgement, 13 April 2006, para. 79.

<sup>802</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 283.

<sup>803</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 288.

<sup>804</sup> *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 229. Note that the ICC Statute does not require knowledge, but rather requires the act to be for the purpose of facilitating the crime. See ICC Statute, Article 25(3)(c).

<sup>805</sup> *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 288.

<sup>806</sup> See Sections 3.3.1.1., 3.3.2.1.4., 3.3.2.2.2. and 3.5.3

intend to further any crimes by his own contribution. Indeed, that those measures he attempted were not implemented is indicative of this lack of authority.

### 3.1.3 No liability for planning, instigating or ordering

246. Bruno Stojić is accused of being liable for planning, instigating or ordering the crimes alleged pursuant to Article 7(1) of the Statute.<sup>807</sup> However, Stojić did not plan the commission of alleged crimes, since he did not act in any way that substantially contributed to the crimes.<sup>808</sup> Furthermore, Stojić did not instigate any crime. The Prosecution did not present evidence that he incited, solicited, induced, or otherwise prompted another to commit a crime.<sup>809</sup> Lastly, Stojić was not in a position of authority and to issue binding orders (see 3.3.1., 3.3.2. and 3.3.3. and 3.5.2.). As such he could not instruct direct perpetrators to commit crimes.<sup>810</sup>

## 3.2 The Defence Department as an overarching administrative body

247. The Defence Department was created in July 1992 as a temporary<sup>811</sup> office to deal with the administrative and professional tasks<sup>812</sup> required for the continued functioning of the armed forces of HVO which was established by Boban on 8 April 1992.<sup>813</sup> By June 1992, issues such as the lack of war participant records and care for the wounded and families of dead soldiers were specifically in need of being addressed by some sort of administrative body.<sup>814</sup> Even though a number of administrative departments, such as the Personnel Administration, already existed at that point, they had not been fully developed and thus were not functioning effectively.<sup>815</sup>

248. Stojić was appointed head of the Defence Department by Boban on 3 July 1992.<sup>816</sup> Stojić was an economist, whose experience in military matters was limited to the area of logistics,<sup>817</sup> casting

<sup>807</sup> Indictment, paras. 218-219.

<sup>808</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 26; *Prosecutor v. Limaj et al*, IT-03-66-T, Judgement, 30 November 2005, para. 513; *Prosecutor v. Milosevic*, IT-98-29/1-T, Judgment, 12 December 2007, para. 956.

<sup>809</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 27; *Prosecutor v. Limaj et al*, IT-03-66-T, Judgement, 30 November 2005, para. 514; *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, paras. 271, 274.

<sup>810</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 28; *Prosecutor v. Limaj et al*, IT-03-66-T, Judgement, 30 November 2005, para. 515; *Prosecutor v. Strugar*, IT-01-42-T, Judgement, 31 January 2005, para. 331.

<sup>811</sup> "The term 'Department' was adopted in order to emphasize the fact that these solutions were only temporary, as was the HZ H-B itself, which acknowledged the framework of Bosnia and Herzegovina, as is evident from the bulk of its memoranda." 2D02000, Davor Marijan – Expert Report, para. 5.

<sup>812</sup> 2D02000, Davor Marijan - Expert Report, para. 5 (citing P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992, Article 10).

<sup>813</sup> P00151, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992, Decision on the Creation of the Croatian Defense Council, 8 April 1992.

<sup>814</sup> 2D02000, Davor Marijan – Expert Report, para. 8.

<sup>815</sup> 2D02000, Davor Marijan – Expert Report, para. 8 (citing 2D01458, Decision to institute Personnel Administration with Croatian Defence Council, signed by Mate Boban, 8 May 1992).

<sup>816</sup> P00297, Decision on appointing the head of the Defence Department of the HVO of the HV-HB, 3 July 1992.

doubt on the Prosecution's theory that Stojić had a controlling authority over the military.<sup>818</sup> Also telling is the fact that *after* his time at the Defence Department, Stojić was transferred to another purely administrative department, the Personnel Department.<sup>819</sup> That his appointments *before* and *after* his tenure as Head of the Defence department were focused on logistical and administrative matters is relevant. It helps demonstrate that in his role as Head of the Defence Department his responsibilities were focused on logistical and administrative aspects of HVO organisation, rather than on command of the armed forces.

249. The Defence Department was specifically responsible for certain enumerated duties and was accountable to the HVO HZ H-B for its work.<sup>820</sup> As discussed below, the evidence shows that generally the work carried out by the Defence Department was of a purely administrative and logistical nature, as was the work of the numerous sub-departments within its remit. However, the department's effectiveness in all these activities was limited by the realities of the war. This resulted in a gross discrepancy between the *de jure* authority of Stojić and his *de facto* role within the HVO.

### 3.2.1 *De jure* role of the Defence Department

250. For a full understanding of the role of the Defence Department within the HVO, it is first necessary to look at the department's core founding documents. However, it should be kept in mind that many organisational decisions were never fully implemented, and in some cases ignored completely.<sup>821</sup> For instance, although the Decree on the Armed Forces of 17 October 1992 states that a Military Council will be formed within the Defence Department,<sup>822</sup> it was not until December 1993 that Boban established such a body.<sup>823</sup> Thus, many of the provisions dealing with the Defence

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<sup>817</sup> Documentary evidence shows that Stojić worked as Assistant Commander of the HVO Main Staff for Logistics. See, e.g., 2D01355, Confirmation for free pass of material resources and food, issued by Bruno Stojic referring to a vehicle, transporting the aforementioned goods, 26 June 1992.

<sup>818</sup> Expert witness Davor Marijan pointed out that even the official decision appointing Stojić to the Defence Department mentions the fact that he is an economist and not a military officer, emphasizing his role as a civilian, not military, authority. The witness further points out that this was "a significant move away from the previous system, in which, unlike in western democracies, such positions were always given to professional soldiers." 2D02000, Davor Marijan - Expert Report, para. 11 (citing P00297, Decision on appointing the head of the Defence Department of the HVO of the HV-HB, 3 July 1992).

<sup>819</sup> Radmilo Jasak stated that in fall of 1994, he came back from Zagreb and reported to the Personnel Department, looking for housing for him and his wife and new baby, where he spoke with Stojić. Radmilo Jasak, 25 January 2010, T.48803. See also P10785, Meeting Note no: 02-08-1-3466/95 re meeting of Personnel Commission of MO held on 23/05/1995 in Posusje. StojicBruno, Chairman of the Personnel Commission, Attached is a letter from StojicBruno, Chairman of the Personnel Commission, 24 May 1995. Furthermore, according to the Indictment Stojić was appointed as head of the HB HZ Office for the Production and sales of Weapons and Military Equipment on 16 December 1993. See Indictment, para. 4. The Defence notes that Stojić was sent to another non-operational department which is in line with his previous experience in logistics.

<sup>820</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 10; See also, 2D02000, Davor Marijan – Expert Report, para. 13.

<sup>821</sup> Stipo Buljan, 12 February 2009, T.36854:21-36855:1.

<sup>822</sup> P00588, Decree on the Armed Forces of the HZ-HB, 17 October 1992, Article 18.

<sup>823</sup> P07090, Signed and stamped decision issued by Mate Boban to establish the Military Council of the Ministry of Defence, 9 December 1993.

Department were *de facto* ineffective and only upon close analysis of the *de facto* situation can the reality of how the Defence Department functioned within the HVO be understood.

251. In any event, it is necessary to consider the *de jure* duties that the Department was created to address. Although the evidence shows that certain provisions were ineffectual, the general structure of these organisational laws, i.e. creating the Department as an overarching administrative body, while preserving a separate and independently functioning Main Staff, was followed. Indeed, both *de jure* and *de facto*, the Department was never granted any command function, and did not figure in the HVO military chain of command.
252. Examination of the relevant legal provisions makes this separation between military administration and command apparent. Article 10 of the Decree on the Armed Forces of the HZ H-B clearly refers to the Defence Department as one of the “administrative bodies of the HZ H-B”<sup>824</sup> This is the only “administrative” body mentioned, and thus the only reasonable conclusion is that the Defence Department was created as *the* administrative body of the HZ H-B. This interpretation is fortified by the catch-all provision of Article 10, which states that the duties of the Department include “other tasks in the sphere of defence that have not been placed under the jurisdiction of another administrative body.”<sup>825</sup> The only reasonable interpretation of this provision is that the Department is the central administrative body with general jurisdiction *only* over those tasks that have not been specifically assigned to other departments. Again, the language of the act itself indicates that the Head of the Department had a purely administrative and managerial role.
253. Article 10 also enumerates the duties of the Defence Department, stating it is responsible for “administrative and technical work in the field of defence and protection.”<sup>826</sup> It then lists 24 duties of the Department, all of which are of an administrative and logistical nature; not one of these tasks is related to actual operative control over any other HZ H-B body.<sup>827</sup>
254. Article 30 states that the HZ H-B President could delegate certain tasks related to commanding the armed forces to the Head of the Defence Department. However, not only did this never happen, but the possibility that it would happen was “highly unlikely.”<sup>828</sup> Stojić was an economist, not a military officer. As long as he was Head of the Department, it was unconceivable that he would

<sup>824</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 17 October 1992.

<sup>825</sup> P00289, Decree on the Armed forces of the Croatian Community of Herceg-Bosna, 3 July 1992, Article 10, subsection 25. The following paragraph also supports this interpretation. It specifies that “[t]he Defence Department shall provide the HZ H-B Presidency with staff and other specialised services related to its competences in the sphere of defence, excluding specialized services within the jurisdiction of other administrative bodies.”

<sup>826</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 17 October 1992. (Note that this language was changed from the July 1992 Decree, wherein it stated “administrative and specialised tasks”. See P00289, Decree on the Armed forces of the Croatian Community of Herceg-Bosna, 3 July 1992. Indeed, the use of “technical” rather than “specialised” in the revised decree suggests even more strongly a logistical role).

<sup>827</sup> For example, the enumerated tasks include preparatory (see, e.g., items 2-5), organisational (see, e.g., items 12, 18), and logistical (see, e.g., items 8, 13) duties.

<sup>828</sup> Bruno Pinjuh, 24 February 2009, T.37328:18.

have any direct involvement in military matters. Article 41 of the Decree on the Armed Forces of 3 July 1992 states that one of the main tasks of the Defence Department will be to “supply the armed forces combat equipment,” in addition to overseeing the work of a number of sub-departments in charge of coordinating other necessities, such as food, finances and medical supplies, to the HVO.<sup>829</sup> Considering the limited staff available to the Defence Department from its inception,<sup>830</sup> it is easy to understand how just trying to coordinate with the numerous administrative sub-departments within its remit was a difficult task for the Department.

### 3.2.2 Logistical and administrative work of the Defence Department

255. *De facto*, there was a limited sphere that the Defence Department was authorised to oversee. Using the limited resources available, the Head of the Department pursued his two main duties: 1) formalising organisational documents such as brigade formations, regulations, and appointments; and 2) ensuring that the military had the people and equipment necessary to operate. To this end, Stojić issued orders concerning such logistical issues, compiled reports on the work of the sectors under his authority, and represented the Department at meetings with various military and political leaders.

256. A great portion of the Department work was ensuring that civilian services were functioning during wartime. Stojić had a small role in coordinating the needs of the various administrative departments providing civilian services,<sup>831</sup> but it was his deputy, Slobodan Bozić, who dealt with civilian affairs.<sup>832</sup>

257. Minutes from various meetings show that the Defence Department was mostly engaged in administrative activities such as preparation of documents and personnel issues.<sup>833</sup>

<sup>829</sup> 2D02000, Expert Report of Davor Marijan, para. 6 (citing P00289, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna of 3 July 1992, Official Gazette of the HZ HB, September 1992, Article 41).

<sup>830</sup> See 2D02000, Expert Report of Davor Marijan, para. 16 (citing 2D01347, Personnel sector of Ministry of Defence-payment list for month of November 1992, issued by Bruno Stojić; and 2D01352, List of Payment for November 1992, signed by Bruno Stojić).

<sup>831</sup> According to Article III of the Decision on the Internal Organisation of the Defence Department, the Deputy Head is responsible for the civilian sector, comprised of the Administration for Defence Preparation of Compulsive Military Service and Mobilisation, the Civilian Protection Staff, the Budget Administration, Administration for Legal Affairs, and Personnel Administration. See P00586, Stamped and signed letter from Bruno STOJIĆ attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992. See also 2D00567, Decision on the internal organization of the Defence Department, 17 October 1992, Article II; and P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIĆ on the internal organization of the HVO\_Defence\_Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 20 May 1993.

<sup>832</sup> Slobodan Bozić, 5 February 2009, T.36431:1-6. In addition to his duties as deputy head, Bozić was also the head of the commission that was in charge of making contact with and cooperating with international organizations. Bozić was appointed to this position by the HZ H-B as a whole, and thus could only answer to them for issues related to his contacts with international representatives. This reveals the extreme level of disorganization wherein some persons held multiple titles and performed numerous tasks with no clear structure or delineation of duties. See, e.g., Slobodan Bozić, 5 February 2009, T.36446:3-11.

<sup>833</sup> Slobodan Bozić, 10 February 2009, T.36685:4-7.

### 3.2.2.1 Internal organisation of the Defence Department

258. In accordance with the Decision on the Basic Principles of Organisation of the Defence Department, issued by Mate Boban on 15 September 1992,<sup>834</sup> the Defence Department contained a Civilian Sector. The Deputy Head of the Defence Department was directly responsible for the Civilian Sector. This Civilian Sector was made of following organisational units: the Administration for Defence Preparation of Compulsive Military Service and Mobilisation, the Civilian Protection Staff, Budget Administration, and the Administration for Legal Affairs and Personnel Administration. Based on the Decision on Internal Organisation of the Defence Department of 20 May 1993,<sup>835</sup> the Welfare Administration was integrated into Civilian Sector. During Stojić's entire mandate as the Head of the Defence Department, the organisational units of the Civilian Protection Staff, the Budget Administration and the Administration for Legal Affairs were not operational.<sup>836</sup> The Personnel Administration was constituted on 8 May 1992, before the Defence Department was established.<sup>837</sup>

259. According to the Decision on the Basic Principles of Organisation of the Defence Department,<sup>838</sup> following services had to assist the Head of the Defence Department in his work: a Cabinet and an Office of General Administration and Information. However, these units never became operational while Stojić was the Head of the Defence Department.<sup>839</sup>

260. According to the same Decision on the Basic Principles, the Main Staff was also included in Defence Department.<sup>840</sup> Additionally, within the Defence Department there were four other administrative sub-departments: the Health Sector, the Sector for Morale and Ethics, the Sector for Supply, Procurement and Production, and the Security Sector. The deputies that headed each sector were responsible to the Head of the Defence Department for their administrative duties.<sup>841</sup> Thus, these sectors had a professional link with the Defence Department and all did work related to

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<sup>834</sup> P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992.

<sup>835</sup> P02477, Signed and stamped Decision by mate Boban and Bruno Stojić on the internal organization of the HVO Defence Department, replacing the decision of 17/10/92, 20 May 1993.

<sup>836</sup> Slobodan Bozić, 2 February 2009, T.36213:2-17.

<sup>837</sup> 2D01458, Decision to institute Personnel Administration with Croatian Defence Council, signed by Mate Boban, 8 May 1992. See also Slobodan Bozić, 2 February 2009, T.36213:18-21.

<sup>838</sup> P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992.

<sup>839</sup> Slobodan Bozić, 2 February 2009, T.36212:11-17.

<sup>840</sup> See P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, Article IX. See also Section 3.3.1.1.

<sup>841</sup> This internal organisation was decided by Mate Boban on 15 September 1992. See P00586, Decision on the basic principles of organization of the Defence Department, 15 September 1992, pp. 3-5. For a detailed analysis of the Security Sector, which was controlled by the military, see Section 3.3.2.

the administrative and logistical needs of the HVO. Ivan Bagarić confirmed that all Chiefs of the sub-departments had independence in their work.<sup>842</sup>

261. In accordance with the Decision on Internal Organisation of Defence Department, within the Defence Department there was also a Defence Administration, which was headed by Chiefs. The latter were accountable to the Head and Deputy Head of the Defence Department for their work, as well as to the Defence Offices and to the Chief of Defence Administration.<sup>843</sup>

262. Within the Defence Department, decisions were taken by the “collegium” that Stojić would occasionally call upon in order to get a complete picture of the state of affairs and get the input from various sectors such as the Main Staff.<sup>844</sup> Stojić had little influence on the decisions taken at these meetings, and while he would on occasion make proposals, it was the collective body that would ultimately decide upon whether or not to adopt the proposals.<sup>845</sup>

### 3.2.2.2 Mobilisation

263. Article 9 of the Decree of Armed Forces states that HVO shall decide and pass regulations on mobilisation. More specifically, Article 37 states that “[a]ny mobilisation of the Armed Forces” shall be ordered by Boban.<sup>846</sup> Furthermore, evidence shows that orders on mobilisation were also issued by military commanders. On 2 April 1993, Obradović issued a request for mobilisation to the head of the Neum Defence Office.<sup>847</sup> On 18 April 1993, Petković requested an assessment of the potential for additional mobilisation from different OZ.<sup>848</sup>

264. The role of the Defence Department was merely to assist in the preparations for mobilisation.<sup>849</sup> As aforementioned, the Deputy Head of the Department was responsible for the Civilian Sector, which included the Administration for Defence Preparation of Compulsive Military Service and Mobilisation.<sup>850</sup> This administration had a chief, whose role was to “manage the work of those administrations and answer for their work to the Deputy Head.”<sup>851</sup> The Administration for Defence

<sup>842</sup> See Ivan Bagarić, 20 April 2009, T.38886:2-8.

<sup>843</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992.

<sup>844</sup> Slobodan Bozić, 4 February 2009, T.36398:17-36399:6.

<sup>845</sup> Slobodan Bozić, February 2009, T.36240:13-16; See also P00700, Signed decision issued by Bruno STOJIC on defence administrations and defence offices in HZHB, their number, headquarters and area of responsibility, 3 November 1992; and P00767, Minutes from the 11th session of the Croatian Defence Council, 18 November 1992, (as confirmed by Bruno Pinjuh, 23 February 2009, T.37245:11-24, these documents demonstrate how decisions were made by the HVO HZ-HB).

<sup>846</sup> P00289, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 3 July 1992, Articles 9, items (5) and (6), and 37. Already on 10 July 1992, Mate Boban proclaimed general mobilisation. See 2D01364, Order by mate Boban on the general mobilization in the area of Citluk, Capljina, Grdue, etc, 10 July 1992.

<sup>847</sup> 2D01223, Document signed by the Commandant of HVO “Knez Domagoj” Brigade Colonel Nedeljko Obradovic on 1993/04/02; filling of Battalion “Neum”, 2 April 1993.

<sup>848</sup> P01945, Stamped order issued by Milivoj PETKOVIC to assess the potential for additional mobilisation due to open aggression by Muslim forces. Ref: 02-2/1-01-649/93, 18 April 1993.

<sup>849</sup> P00289, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 3 July 1992, Article 38.

<sup>850</sup> P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, Article III.

<sup>851</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992, Article II.



Preparation of Compulsive Military Service and Mobilisation did not have the power to make decisions regarding who would be required to conscript or when mobilisation would be carried out. This was in the exclusive remit of Boban.<sup>852</sup> Instead, this administration was responsible for arranging the logistical and administrative tasks required to implement Boban's decisions.<sup>853</sup>

265. Article 13 of the Decree on Armed Forces set out the tasks of the Defence Administrations.<sup>854</sup> It describes Defence Administrations as "administrative and military-territorial bodies" charged with, *inter alia*, "maintenance and manpower levels in, and mobilisation of the Armed Forces"<sup>855</sup> and "organis[ing] and prepar[ing] mobilisation."<sup>856</sup> Defence Offices were constituent parts of the Defence Administration and had for instance to "keep records of military conscripts, persons subject to compulsory work service and members of the monitoring and reporting service."<sup>857</sup>

266. Several witnesses testified that the Administration for Defence Preparation of Compulsive Military Service and Mobilisation was not operational until the nomination at its head of Dobroslav Barbarić in June 1993.<sup>858</sup> Thus, during this period of time, the Defence Administrations and Offices played a key role in the mobilisation process.<sup>859</sup> The role of the Defence Department in that respect was to coordinate the actions of the several Defence Administrations and Offices.<sup>860</sup>

267. The evidence adduced demonstrates that the mobilisation process was far from smooth. For instance, mobilised persons did not report to the Municipalities and the Municipalities did not

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<sup>852</sup> P00588, Decree on the Armed Forces of the HZ H-B, 17 October 1992, Article 29(3).

<sup>853</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 17 October 1992, Article 15(1).

<sup>854</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992.

<sup>855</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992, Article 13.

<sup>856</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992, Article 13.

<sup>857</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992, Article 14.

<sup>858</sup> Slobodan Božić, 2 February 2009, T.36213:5-7 (discussing P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992).

<sup>859</sup> See, e.g., P07433, Booklet Annual Analysis of the work performed by Mostar Defence Administration for the year 1993, (no main date); P01831, Signed proposal issued by Bruno STOJIC for the revocation of the Decision on mobilising material and technical equipment in Mostar municipality. Ref. 02-1-361/93, 8 April 1993; 1D00805, Decision on mobilisation and demobilisation of assets, 18 August 1992, (Livno on 18 August 1992); 1D02991, Decision on general mobilisation in Prozor, 22 June 1992. See also Zoran Perković, 2 September 2008, T.31765:1-11. Furthermore, Article 2 of the Decision on Carrying Out Mobilisation in the Territory of the Croatian Community of Herceg-Bosna in Times of the Immediate Threat of War or in Wartime signed by Jadranko Prlić on 10 June 1993 reaffirms the Municipal Office's role in the mobilisation process. Moreover, the fact that Jadranko Prlić adopted this order on mobilisation demonstrates that the Municipalities had the primary role on this question, since those Municipalities were answerable to the President of the HVO HZ H-B. For instance, the Mostar Defence Administration, during the first half of 1993, reported that during this period, it focused its efforts on recruitment and other logistical tasks such as setting up a monitoring and reporting system. See P03355, Report on the number of Defence Departments for the period January – June 1993, 10 July 1993.

<sup>860</sup> 1D01672, Minutes of the working meeting of HVO HZHB and presidents of municipal HVOs in Siroki Brijeg at FEAL, 22 July 1993; 1D01611, Minutes of the 45th session of HVO HZHB, 12 July 1993, item 7.

cooperate amongst each other.<sup>861</sup> Because of this and due to the serious situation in June 1993,<sup>862</sup> Stojić issued several orders in which he required additional actions on mobilisation.<sup>863</sup> Nevertheless, the evidence demonstrates that the situation was still critical after his intervention.<sup>864</sup> More importantly, as is discussed in further detail below, the highly independent municipal defence offices were the only bodies capable of working closely with the armed forces and, as such, the Defence Department was limited in its ability to effectively administer even these logistical tasks.<sup>865</sup>

### 3.2.2.3 Health Sector

268. The Chief of the Health Sector was the Assistant Head of the Defence Department for Health.<sup>866</sup> The HVO HZ H-B appointed Ivan Bagarić to this position on 8 September 1992.<sup>867</sup> The following positions within the Health Sector were appointed by the Head of the Defence Department: the Chief of the Service for the Care of the Wounded; the Chief of the Medical Staff; the chiefs of the medical brigades; the Chief of the Control and Inspection Services; and the commanders of the war hospitals. However these appointments were to be made on the recommendation of the Assistant Head for Health.<sup>868</sup>

269. The Health Sector had three different sections, the Healthcare Sector, the Inspection Unit, and the Medical Corps Headquarters.<sup>869</sup> The Medical Corps Headquarters was the medical logistical sector.<sup>870</sup> The other two sections were operational sections that went into the field on tours.<sup>871</sup> The

<sup>861</sup> For instance, Bruno Pinjuh testified on the fact that some Municipalities had over half of their conscripts abroad and that there was no sanctions to impose under the law for those who weren't complying with the mobilisation orders. See Bruno Pinjuh, 23 February 2009, T.37288:11-24.

<sup>862</sup> P03024, Signed and stamped order, ref. 02-1-763/93, issued by Bruno STOJIC re: general mobilization in Croatian Defence Council Posusje, 30 June 1993; 1D01668, Minutes of the 42nd session of HVO HZHB in Mostar at Rondo, 15 June 1993.

<sup>863</sup> P01409, Signed order, ref. 02-1-03/93, issued by Bruno STOJIĆ to Ivan ANDABAK and Mihovil ZDUNIC, chief and deputy chief of the Administration for Defence and Mobilisation of the Defence Department re: mobilisation in all Croatian Community of Herceg-Bosna municipalities, 3 February 1993; 2D01485, Command on the conscription of HVO armed forces signed by Bruno STOJIĆ, dated 18 June 1993, 18 June 1993; P03024, Signed and stamped order, ref. 02-1-763/93, issued by Bruno STOJIC re: general mobilisation in Croatian Defence Council Posusje, 30 June 1993; P03038, Signed and stamped Proclamation by Jadranko PRLIĆ, Croatian Defence Council President, and Bruno STOJIĆ, HVO Defence Department Head, re: Muslim offensive against Croat in Bosnia and Herzegovina. Number: 02-1-765/93, 30 June 1993.

<sup>864</sup> 1D01672, Minutes of the working meeting of HVO HZHB and presidents of municipal HVOs in Siroki Brijeg at FEAL, 22 July 1993.

<sup>865</sup> See Section 3.2.3.2.

<sup>866</sup> 2D02000, Davor Marijan – Expert Report, para. 64 (citing P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organization of the Defence Department, Signed by Bruno Stojić, 17 October 1992; and 2D00752, Organizational scheme regarding Sector for Health). Before the establishment of the Health Sector various bodies existed within municipalities and HVO which dealt with civilians and soldiers on health issues. See 2D02000, Davor Marijan – Expert Report, para. 66; Ivan Bagarić, 20 April 2009, T.38877:11-38877:19.

<sup>867</sup> 2D02000, Davor Marijan – Expert Report, para. 65 (citing P00615, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, on the Appointment of a Security Assistant to the President of the Croatian Defence Council HZ HB, 21 October 1992).

<sup>868</sup> 2D02000, Davor Marijan – Expert Report, para. 65. See also 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, signed by Bruno Stojić and Mate Boban, 17 October 1992.

<sup>869</sup> Ivan Bagarić, 20 April 2009, T.38890:24-38890:25; 2D00752, Organizational scheme regarding Sector for Health.

<sup>870</sup> Ivan Bagarić, 20 April 2009, T.38890:25-38891:1.

<sup>871</sup> Ivan Bagarić, 20 April 2009, T.38891:1-38891:3.

Chiefs of those sections were directly subordinated to Ivan Bagarić.<sup>872</sup> These sectors were in charge of surgical staff, medics, and the trained medical personnel in lower units.<sup>873</sup>

270. At the military level there was a Chief of Health. He had the status of commander of the military sector.<sup>874</sup> Additionally, each brigade had an assistant to the brigade commander attached, who was subordinated to the brigade commander.<sup>875</sup> Therefore, with the establishment of the brigades, the Medical Corps were transformed into a medical service which attached to every brigade.<sup>876</sup> Additionally, within the armed forces were chiefs of the Medical Corps who were also regularly a part of the Department of Logistics.<sup>877</sup>

271. The positioning of doctors as assistant chiefs was an important way to preserve their autonomy. Additionally, it ensured that the service could work most efficiently.<sup>878</sup> They had a direct link with the commanders. Doctors reported to the commander of the unit for everything that needed to be done in accordance with the actions of the unit.<sup>879</sup> These doctors had a professional link with the Health Sector and were responsible to the person in charge of the Service for Healthcare for the Wounded in the Healthcare Sector.<sup>880</sup>

272. Witness AB confirmed that the Medical Corps were not part of the military chain of command because of the way they were organised. Similarly to medical corps throughout the world, the Medical Corps were a professional body involved in activities such as making proposals, reports and conducting training.<sup>881</sup>

### 3.2.2.3.1 Operations

273. The Health Sector was responsible for the care and treatment of the wounded.<sup>882</sup> There were several surgical teams that were sent to war hospitals when needed.<sup>883</sup> One of the most significant activities of the sector was the extrication of wounded from encircled towns such as Jajce.<sup>884</sup> Assistance was not only given to the HVO,<sup>885</sup> but to others as well. After hostilities with the

<sup>872</sup> Ivan Bagarić, 20 April 2009, T.38891:3-38891:5,.

<sup>873</sup> Ivan Bagarić, 20 April 2009, T.38891:5-38891:6,.

<sup>874</sup> Ivan Bagarić, 20 April 2009, T.38887:14-38887:16.

<sup>875</sup> Ivan Bagarić, 20 April 2009, T.38887:16-38887:17.

<sup>876</sup> 2D02000, Davor Marijan – Expert Report, para. 67 (citing P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, September 1992).

<sup>877</sup> 2D02000, Davor Marijan – Expert Report, para. 65,.

<sup>878</sup> Ivan Bagarić, 20 April 2009, T.38895:2-38895:5.

<sup>879</sup> Ivan Bagarić, 20 April 2009, T.38895:5-38895:7.

<sup>880</sup> Ivan Bagarić, 20 April 2009, T.38895:15-38895:18.

<sup>881</sup> Witness 2D-AB, 2 March 2009, T.37503:16 – 37503:19.

<sup>882</sup> 2D02000, Davor Marijan – Expert Report, para. 68.

<sup>883</sup> 2D02000, Davor Marijan – Expert Report, para. 68 (citing, 2D01455, Defence Department of the HVO, Sector for Healthcare, Letter from dr. Ivan Bagarić addressed to attention of Dr. Martinović, signed by Ivan Bagarić, 27 September 1992).

<sup>884</sup> 2D02000, Davor Marijan – Expert Report, para. 68 (citing, P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, September 1992).

<sup>885</sup> 2D02000, Davor Marijan – Expert Report, para. 68.

Muslims broke out, assistance was still provided to the ABiH and the Muslim population.<sup>886</sup> Assistance was also given in relation to the wounded and exchange of prisoners, which was obstructed by ABiH.<sup>887</sup>

### 3.2.2.3.2 No discrimination

274. The aim and main task of the Health Sector was to assist everybody who needed help.<sup>888</sup> This assistance was provided to all irrespective of their ethnicity or their status as soldier or civilian.<sup>889</sup> The guiding principal of the Health Service was volunteerism. Doctors were volunteers.<sup>890</sup>

275. Stojić gave his full support to this policy of the Health Sector and made an order to allow the treatment of all who needed assistance, regardless of their ethnicity, civilian or soldier.<sup>891</sup> There was also no discrimination in terms of persons employed in the Health Sector, "we also worked together, all of us, without regard to our ethnic background."<sup>892</sup>

### 3.2.2.3.3 Mostar Hospital

276. In May 1992 the municipal council of Mostar proclaimed Mostar Hospital to be a war hospital<sup>893</sup> and Dr. Milenko Lugonja was appointed the commander of the hospital.<sup>894</sup> In September 1992, on the proposal of Bagarić, Ante Kvesić was appointed the new commander of the hospital by Boban. This Mostar Regional War Hospital, as it was renamed,<sup>895</sup> was part of the Health Sector.<sup>896</sup>

277. Kvesić testified that the hospital operated independently and did not receive orders from anyone.<sup>897</sup> In logistical matters, the hospital asked for and received help and support.<sup>898</sup> Thus, the evidence

<sup>886</sup> 2D02000, Davor Marijan – Expert Report, para. 68 (citing 2D00119, Brigadier Dr. Ivan Bagarić Deputy Chief of the HZ H-B Defense Department Health Sector, signed by Ivan Bagarić, 3 June 1993; 2D00120, Commander mr. Arif Pasalic - to the HVO Medical Staff HVO Hospital - the need for medicines and medical material, signed by Arif Pasalić, 5 June 1993; 2D00320, COMMAND, Chief of HZ H-B Medical Headquarters Colonel Tugomir Gverić, signed by Tugomir Gverić, 7 June 1993; 2D00322, SUBJECT: REQUEST, 4th Corps Commandant Mr. Arif Pasalić, signed by Arif Pasalić, 9 June 1993; P02661, Document signed and stamped from Arif Pasalić, Armija Bosnia I Hercegovina 4th Corps Commander to UNPROFOR, PМЕZ, MKCK, United Nations High Commissioner for Refugees and the Croatian Defence Council, regarding the attack on Mostar, signed by Arif Pasalić, 7 June 1993; 2D00323, Chief of HZ H-B Main Medical Headquarters Colonel Tugomir Gverić, signed by Tugomir Gverić, 11 June 1993).

<sup>887</sup> 2D02000, Davor Marijan – Expert Report, para. 68 (citing P04857, Report on the developments in the negotiations with the Muslim side in connection with the evacuation of the wounded issued by Ivo Šandrć, signed by Ivo Šandrć, 7 September 1993; 2D00502, Medical situation and HVO ARBiH relations signed by Dr. Ivan Bagarić, 20 December 1993).

<sup>888</sup> Ivan Bagarić, 20 April 2009, T.38879:16-38880:15.

<sup>889</sup> Ivan Bagarić, 20 April 2009, T.38879:18-38879:20.

<sup>890</sup> Ivan Bagarić, 20 April 2009, T.38879:21-38879:22.

<sup>891</sup> 2D02000, Davor Marijan – Expert Report, para. 68; P02050, Order to all operations zones commanders, all commanders and soldiers providing medical help for all wounded, regardless of nationality and military status, issued by Bruno Stojić, signed by Bruno Stojić, 23 April 1993.

<sup>892</sup> Ivan Bagarić, 20 April 2009, T.38880:12 – 38880:15.

<sup>893</sup> Ante Kvesić, 25 February 2009, T.37395:3-37395:5; 1D00544, Decision to proclaim the hospital in Mostar a war hospital, signed by Jadran Topić, signed 21 May 1992. See also 2D02000, Davor Marijan – Expert Report, para. 66 (citing P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, September 1992).

<sup>894</sup> Ante Kvesić, 25 February 2009, T.37395:5-37395:7.

<sup>895</sup> Ante Kvesić, 25 February 2009, T.37395:8-37395:12.

<sup>896</sup> Ante Kvesić, 25 February 2009, T.37395:17-37395:18; P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIC on the internal organization of the HVO\_Defence\_Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 30 May 1993.

<sup>897</sup> Ante Kvesić, 25 February 2009, T.37477:14-37477:15.

shows that Stojić, as Head of Defence Department, had no *de jure* authority over the Mostar regional hospital other than the hospital belonging to the Health Sector, and providing help and support when requested.

278. Furthermore, Kvesić stated that there was a shortage of doctors and the hospital was desperate to recruit more.<sup>899</sup> Thus, anybody who turned up at the hospital with the appropriate educational background was immediately employed.<sup>900</sup> There was absolutely no discrimination in the hiring of hospital staff, as can be seen from range of ethnicities represented on its personnel list.<sup>901</sup> Kvesić also testified that he never dismissed anyone from work because of their ethnicity or nationality<sup>902</sup> and that there was no policy in place to retain Croats and dismiss Muslims.<sup>903</sup>
279. Moreover, the hospital staff assisted everyone to the best abilities in the meagre circumstances.<sup>904</sup> No distinctions were made between people.<sup>905</sup> For instance, records were not kept in the hospitals of patients' ethnicities or whether they were members of any particular army.<sup>906</sup> Often ABiH and HVO patients would lie in beds next to each other.<sup>907</sup> The evidence demonstrates that wounded ABiH members were sent from the HVO Mostar war hospital to the hospital in Split, Croatia.<sup>908</sup> This was confirmed by Kvesić, who also testified that Dr. Ivo Sandrk organised the transport of these people<sup>909</sup> and that many people, including Muslims, were transferred to this hospital.<sup>910</sup> Indeed, thousands of wounded soldiers and civilians, from war struck areas of BiH, including Muslims and Serbs, were treated in Croatian hospitals.<sup>911</sup>

#### 3.2.2.3.4 Bruno Stojić's Involvement

280. Stojić issued two orders, co-signed by Bagarić, to OZ commanders and chiefs of Medical Corps. The first of these relates to missing and captured people<sup>912</sup> and the second to the inter-

<sup>898</sup> Ante Kvesić, 25 February 2009, T.37477:16-37477:19.

<sup>899</sup> Ante Kvesić, 25 February 2009, T.37404:8-37404:9.

<sup>900</sup> Ante Kvesić, 25 February 2009, T.37404:9-37404:11.

<sup>901</sup> Ante Kvesić, 25 February 2009, T.37404:11-37404:21 (discussing 2D00968, List of Medical Doctors who had been employed during the war, signed by Slavko Rasguz, 7 March 2008).

<sup>902</sup> Ante Kvesić, 25 February 2009, T.37402:2-37402:4.

<sup>903</sup> Ante Kvesić, 25 February 2009, T.37432:10-37432:11.

<sup>904</sup> Ante Kvesić, 25 February 2009, T.37404:2-37404:5.

<sup>905</sup> Ante Kvesić, 25 February 2009, T.37403:20.

<sup>906</sup> Ante Kvesić, 25 February 2009, T.37403:22-37404:2.

<sup>907</sup> Ante Kvesić, 25 February 2009, T.37419:17-37419:19.

<sup>908</sup> Ante Kvesić, 25 February 2009, T.37411:17-37407:19; 2D00566, List of wounded ARBiH members who were transferred from HVO hospital at Mostar to hospital at Split, Croatia signed by Dr. Ivo Sandrk, 10 September 1993.

<sup>909</sup> Ante Kvesić, 25 February 2009, T.37412:13-37411:14.

<sup>910</sup> Ante Kvesić, 25 February 2009, T.37411:14-37411:16; T.37412:10-37412:11. This is supported by documentary evidence. See 2D00566, List of wounded ARBiH members who were transferred from HVO hospital at Mostar to hospital at Split, Croatia signed by Dr. Ivo Sandrk, 10 September 1993.

<sup>911</sup> Ivan Bagarić, 20 April 2009, T.38947:25-38948:3.

<sup>912</sup> Davor Marijan, 21 January 2009, T.35773:15-35773:23; P01417, Order by Bruno Stojić to report names of captured and missing civilians and Croatian Defence Council members to the HZHB Defense Section, Medical Sector, Information and Investigation Office, signed by Bruno Stojić and Ivan Bagarić, 4 February 1993.

- departmental reporting of autopsies.<sup>913</sup> These orders were not operational. There is no evidence available to determine whether these orders were followed.
281. Another document signed by Stojić and Petković was sent to the OZ commanders of and all other commanders, instructing that doctors and other medical personnel have access to all injured people in need regardless of whether they were a civilian or a member of an enemy unit and to treat civilians and prisoners in accordance with international law.<sup>914</sup> However, the order was co-signed by Stojić merely in his logistical capacity.<sup>915</sup>
282. Stojić received half-annual or annual reports from the Health Sector.<sup>916</sup> On one occasion, Kvesić and Bagarić wrote a letter to Stojić informing him of the murder of a Muslim doctor in the HVO Mostar regional hospital and asking to “take concrete measures.”<sup>917</sup> In response to this letter, Stojić organised an urgent meeting with all ministers wherein it was decided that an investigation be undertaken to find the murderer.<sup>918</sup> The investigation was initiated,<sup>919</sup> but it is uncertain whether it was established who was responsible.<sup>920</sup> Important, however, is that in the rare instance that Stojić was informed of a possible crime, he did what he could to organise the appropriate bodies with the authority to initiate an investigation. Notably, Stojić had no authority to initiate an investigation himself, but merely to organise a meeting of those persons with actual authority.
283. Another way in which Stojić was involved in the work of the Health Sector was in sending medical supplies to the ABiH in Zenica.<sup>921</sup> This is in line with his logistical role, and also highlights the fact that he was indiscriminate in carrying out his logistical duties.
284. In sum, the evidence demonstrates that the Health Sector had a high degree of autonomy from the Defence Department, particularly due to the special status of doctors as medical professionals in charge of their domain of expertise. The evidence demonstrates that Stojić was informed of the

<sup>913</sup> Davor Marijan, 21 January 2009, T.35773:24-35774:2; P01428, Order by Bruno STOJIĆ and Ivan Bagarić to all Brigades in the NW Herzegovina operation zone re: obligatory autopsy. It is ordered that autopsy is to be performed when there is suspicion that war crime has been committed, signed by Bruno Stojić and Ivan Bagarić, 6 February 1993.

<sup>914</sup> P02050, Order to all operations zones commanders, all commanders and soldiers providing medical help for all wounded, regardless of nationality and military status, issued by Bruno Stojić, 23 April 1993.

<sup>915</sup> See 2D02000, Davor Marijan – Expert Report, paras. 86 and 130, for discussion of co-signed documents.

<sup>916</sup> Ivan Bagarić, 20 April 2009, T.38899:6-38899:9. See also 2D00714, Report signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagarić on 1993/09/13, 13; report on activities by Sector for healthcare from September 7th.1993 to 13 September 1993, 13 September 1993; 2D00739, Report on activity of Healthcare Department for the period from July 13th.1993 to August 2nd.1993, signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagarić, 2 August 1993.

<sup>917</sup> P05939, Signed and stamped letter issued by Ivan Bagarić and Ante KVESIĆ to Bruno Stojić re: killing of a Muslim Dr. Slavenka TRAVLJANIN by unknown persons in her apartment, 18 October 1993.

<sup>918</sup> Ante Kvesić, 25 February 2009, T.37474:6-8.

<sup>919</sup> Ante Kvesić, 25 February 2009, T.37474:20-21. See also P07035, Stamped HVO Security and Information Service report re: findings on crimes in the Croatian Republic of Herceg-Bosna, addressed to Miroslav Tudgman, signed by Ivica Lucic, 4 December 1993.

<sup>920</sup> Ante Kvesić, 25 February 2009, T.37474:9.

<sup>921</sup> Ivan Bagarić, 20 April 2009, T.38956:3-21 (discussing 2D00737, Letter signed by members of the board of War Medical Center 'Dzemal Bijedic' from Zenica - Department for trauma and orthopedics on 1992/12/31 sent to Bruno Stojić; request for help in medical materials, approved by Bruno Stojić, 31 December 1992).

activities of the health service regularly; however, he was not in a position to issue orders or commands.

285. In relation to the detention centres, the evidence demonstrates that Health Sector was not in control and had no power to change the conditions. While the Health Sector did report the problems they encountered to Stojić, he did not have authority to effect any changes, since the prisons were under the exclusive control of the military.<sup>922</sup>

### 3.2.2.4 Sector for Morale and Ethics

286. The Prosecution alleges that Stojić was in charge of “moral education, which included Information and propaganda.”<sup>923</sup> However, the evidence shows that while the Defence Department had an administrative link with the Sector for Morale, Stojić had no *de facto* control over the IPD staff or its operations. Moreover, there were Assistants for IPD in the formations which were in the chain of command of the Main Staff, as demonstrated below.

#### 3.2.2.4.1 Appointments

287. Witness Veso Vegar stated that he was appointed as assistant head of IPD by a decision by the HVO HZ H-B, following a proposal made by Stojić.<sup>924</sup> As can be seen in the Decision on the Internal Organisation of the Defence Department, this was the proscribed procedure.<sup>925</sup> Other witnesses and documents also confirm that this was the case.<sup>926</sup>

288. Pursuant to the Decision on the Internal Organisation of the Defence Department, Stojić appointed people to the following positions upon the proposal of the Assistant Head for Morale: the Chiefs of the three sub-departments; the assistant commanders for morale at the OZ commands, in the brigades, in the *Bruno Busić* regiment and in special purpose units. The Assistant Head for Morale was to make all other appointments of staff upon the prior consent Stojić or someone authorised by him.<sup>927</sup>

289. The Chief of the IPD Sector was the Assistant to the Head of Defence Department.<sup>928</sup> Appointments to the aforementioned position were, *de jure*, made by Boban on the proposal of Stojić.<sup>929</sup> The first person appointed to this role was Božo Rajić, by Prlić on 22 September 1992.<sup>930</sup>

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<sup>922</sup> See 3.5.3.

<sup>923</sup> Indictment, para. 5.

<sup>924</sup> Veso Vegar, 16 February 2009, T.36889:19-36890:2..

<sup>925</sup> 2D00567, Decision on the internal organisation of the Defence Department, 17 October 1992, item 8.

<sup>926</sup> See, e.g., Bruno Pinjuh, 23 February 2009, T. 37239:1-23.

<sup>927</sup> 2D02000, Davor Marijan – Expert Report, para. 56 (citing 2D00567, HVO Defence Department, no 03-142/92 of 17 October 1992, Decision on the Internal Organisation of the Defence Department, 17 October 1992).

<sup>928</sup> See P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, signed by Mate Boban, 15 September 1992, 15 September 1992.

<sup>929</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, signed by Mate Boban, 15 September 1992, Article XIII.

<sup>930</sup> 2D02000, Davor Marijan – Expert Report, para. 55.

Rajić was replaced on 27 August by Vegar, who was appointed by Priić on the proposal of Head of the Defence Department.<sup>931</sup>

290. Stojić did not have full *de facto* control over the appointment procedure. On 10 June 1993, he did indeed receive eighty proposals from Brigade Commander Marinko Zelenika<sup>932</sup> and approved all appointments, including four IPD employees.<sup>933</sup> However, often, IPD staff would be appointed by brigade commanders on the spot. Stipo Buljan,<sup>934</sup> for example, was simply told by his brigade commander: "As of today, you shall be my assistant for IPD."<sup>935</sup> Thus, the evidence demonstrates that the *de jure* system of appointments was not adhered to and did not reflect the *de facto* appointment procedure and Stojić in no way controlled appointments.

### 3.2.2.4.2 Operations

291. The IPD sector lacked a coordinated effort in the appointment of personnel, and local commanders frequently selected and appointed their own assistant IPD commanders.<sup>936</sup> As a result, information exchange between the Sector for Morale and IPD officers on the ground was rare and any information provided to units was of purely local significance.<sup>937</sup>

292. In an effort to establish a uniform system, the IPD organised bi-weekly press conferences using information from the Main Staff.<sup>938</sup> The IPD collected information from the IPD assistant commanders, the Defence Department, and the Main Staff.<sup>939</sup> They then analysed, systematised and disseminated the information to the military and the public through newspapers, brochures, daily bulletins, written statements and press conferences.<sup>940</sup> The press conferences were quite regular at first,<sup>941</sup> but they grew infrequent beginning in May 1993 as the security situation in

<sup>931</sup> P04565, Excerpt from Narodni List Dismissal of Bozo RAJIC as Assistant Head of the Department of Defense for Information - Propaganda Activities and Veso VEGAR is appointed Assistant Head of the Department of Defense for Information - Propaganda Activities, 27 August 1992.

<sup>932</sup> 2D01450, Rama Brigade, no.01-588/93 of 10 June 1993, Recommendation for Appointment in a War Formation, signed by Marinko Zelenika, 10 June 1993.

<sup>933</sup> P02945, Signed and stamped order issued by Bruno Stojić re: appointments in Croatian Defence Council Rama Brigade Command. Ref. 02-1-651/ 93, signed by Bruno Stojić, 25 June 1993 (four IPD appointments are items 18, 19, 56 and 70).

<sup>934</sup> Stipo Buljan, 11 February 2009, T.36727:17-23.

<sup>935</sup> Stipo Buljan, 11 February 2009, T.36790:1-2.

<sup>936</sup> P00128, Croatian Defence Council HZHB report for the work of various departments during the year 1992, September 1992, p. 15.

<sup>937</sup> P00128, Croatian Defence Council HZHB report for the work of various departments during the year 1992, September 1992, p. 15.

<sup>938</sup> P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, March 1992, p. 16.

<sup>939</sup> Veso Vegar, 16 February 2009, T.36894:19-21.

<sup>940</sup> Veso Vegar, 16 February 2009, T.36901:25-36902:4; See also P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, March 1992, p. 16.

<sup>941</sup> P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, March 1992, p. 16.



- Mostar deteriorated.<sup>942</sup> For example, information was provided to soldiers about practical matters such as the rules of conduct in armed combat and first aid methods.<sup>943</sup>
293. On 24 November 1992, Petković ordered that the IPD exercise exclusive control over the media because individuals had been issuing statements which revealed military secrets.<sup>944</sup> However, Vegar was not able to obtain complete control over media reports coming from assistant IPD commanders, which occasionally contained propaganda.<sup>945</sup> The only form of control or unification between Vegar and local IPD assistant commanders came from seminars and training sessions that Vegar organised for IPD operatives.<sup>946</sup>
294. The task of hosting international journalists and organisations on their visits to various locations within HZ H-B was a task carried out by the brigade IPD assistants.<sup>947</sup> In the Petković order of 24 November 1992, it is provided that journalists must be sent to the OZ commander who will choose the individual to accompany them and also that press conferences may only be held with the commander's permission.<sup>948</sup>
295. Additionally, the IPD was not the sole system of information within the HZ H-B. There was the HVO Information Department, the information office of the HZ H-B President, and some OZ "had their own information officers."<sup>949</sup> The multiple systems of information even existed within the military units.<sup>950</sup>
296. The success of the IPD in formations differed drastically across the various OZ. In the period of January to June 1993, many areas still had not been properly staffed. The OZ Northwest Herzegovina, for example, still did not have staff for information and propaganda activities.<sup>951</sup> The

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<sup>942</sup> Veso Vegar, 16 February 2009, T.36907:7-10. See also P04699, Report on activities of the Croatian Defence Council HZHB for the period January to June 1993, unsigned, September 1993, p. 18

<sup>943</sup> See, e.g., 2D00418, Brochure, RULES OF CONDUCT DURING ARMED CONFLICT - INTERNATIONAL RED CROSS COMMITTEE. Witness Veso Vegar confirmed that these were the types of informational brochures they disseminated to the troops. See Veso Vegar, 17 February 2009, T.36992:22-23. See also 2D00751, Pocket book-Rules of conduct for combatants and First aid.

<sup>944</sup> 2D00687, Command issued by PETKOVIĆ Milivoj dated 1992/11/24; Ban of giving public statements without his approval, signed by Milivoj Petković, 24 November 1992. See also Veso Vegar, 16 February 2009, T.36927:3-6.

<sup>945</sup> See P04626, Bulletin prepared by the agency of Information and Propaganda for the Croatian Defence Council, unsigned, 29 August 1993. See also Veso Vegar, 18 February 2009, T.31743:4-8.

<sup>946</sup> Veso Vegar, 16 February 2009, T.36911:14-18. See also P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992, September 1992; P03355, Report on the work of Defence Department for the period January - June 1993, unsigned, 10 July 1993.

<sup>947</sup> Veso Vegar, 16 February 2009, T.36939:10-36940:1.

<sup>948</sup> See 2D00687, Command issued by PETKOVIC Milivoj dated 1992/11/24; Ban of giving public statements without his approval, 24 November 1992 (discussed by Veso Vegar, 16 February 2009, T.36926:19-36927:1). See also P00856, Order, ref. 01-2691/92, from Milivoj PETKOVIC re: maintenance of discipline and imposition of military justice, 4 December 1992; and P02331, Signed and stamped order ref. 02-2/1-01-768/93 by Milivoj PETKOVIC re: The Information and Proaganda Dept of the HZHB defence Dept. is to prepare daily reports and to inform all Croatian Defence Council units about events in the territory of the community, 12 May 1993..

<sup>949</sup> Veso Vegar, 16 February 2009, T.36908:2-4.

<sup>950</sup> See Alija Lizde, 2 May 2007, T.17944:6-22.

<sup>951</sup> The IPD service began to function, however, after the arrival of Petar Kalinić from Jajce Brigade. P03355, Report on the work of Defence Department for the period January - June 1993, unsigned, 10 July 1993, p. 16.

Posavina Military District, however, functioned very well despite ethnic tensions in the units, and in the OZ Central Bosnia, which had a complete lack of communication with the central office, the IPD continued to function and provided public communiqués to the media twice per day.<sup>952</sup> By the end of 1993, the administration for information and propaganda had developed a system of reporting, which included tracking various human rights abuses.<sup>953</sup> Furthermore, the administration had held press conferences, spoke with over 2,000 journalists, and developed cooperation with Croatian media services.<sup>954</sup>

297. The majority of the work performed by the Sector for Morale and Ethics was the collection and dissemination of information.<sup>955</sup> Contrary to the Prosecution's theory that Stojić in some way directed and controlled this procedure,<sup>956</sup> the Sector would receive reports from the Main Staff and directly disseminate that information. Stojić was not involved in this process.<sup>957</sup>

298. Stojić was not involved in making daily decisions regarding the content of information to be disseminated by the IPD. Vegar testified that he decided which information to disseminate because "[i]t was almost impossible to hold consultations of that nature."<sup>958</sup>

299. More importantly, political decisions to be made in relation to information to be disseminated were taken directly to Boban, as political decisions were not within the purview of the Head of the Defence Department.<sup>959</sup> There is evidence that Stojić aided the IPD on occasion with logistical issues, such as the methods for collecting information, but this does not imply, as the Prosecution would like to suggest, that Stojić took any part in deciding the substance of the information that would then be disseminated.<sup>960</sup> In fact, a functioning political administration was not set up until after Stojić left office and the HVO was restructured.<sup>961</sup>

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<sup>952</sup> P03355, Report on the work of Defence Department for the period January - June 1993, unsigned, 10 July 1993, p. 16 ("They issue public communiqués twice per day, they deliver to this sector regular weekly and monthly reports and they also draft monthly activity plans").

<sup>953</sup> P04399, Signed report, ref. 03/3669, by Petar Kalinić, Ass Cmndr IPD to Croatian Defence Council Main staff and Veso Vegar re: situation in OZ NW after the fall of Bugojno, signed by Petar Kalinić, 21 August, 1993, p. 3, ("There are various abuses by individuals and groups, and especially in the Prozor villages. The police are not only not preventing this, but there are indications that they are themselves committing various ugly acts.").

<sup>954</sup> P07419, Report on HZHB Croatian Defence Council and MUP activities for period: July to Dec.1993, unsigned, 31 December 1993, p. 4.

<sup>955</sup> Veso Vegar, 16 February 2009, T.36900:7-36901:1.

<sup>956</sup> Indictment, para. 5.

<sup>957</sup> Veso Vegar, 16 February 2009, 36926:9-16 (discussing 2D01353, Report by Milivoj Petkovic to defence department referring to temporary structure of HVO, zone of operations, formation of brigades, discipline within units, 21 September 1992).

<sup>958</sup> Veso Vegar, 16 February 2009, T.36902.

<sup>959</sup> Veso Vegar, 17 February 2009, T.37103.

<sup>960</sup> See, e.g., P01593, Signed and stamped order from Bruno Stojić to Bde Comds and Assistants for Information and Propaganda, to deliver documentation that witnesses the war. Ref. 02-6/1-49/93, 3 March 1993, discussed by witness Veso Vegar, 17 February 2009, T.37108.

<sup>961</sup> See Veso Vegar, 16 February 2009, T. 36933 (discussing 2D00687, Command issued by PETKOVIC Milivoj dated 1992/11/24; Ban of giving public statements without his approval, 24 November 1992). Confirmed by P07236, Stamped and

### 3.2.2.4.3 Defence Department relationship to Sector for Morale and Ethics

300. Although the Sector for Morale and Ethics was one of the sub-departments within the Defence Department the evidence does not demonstrate that Stojić had any *de facto* control over the IPD. The only evidence of him issuing an order in his administrative capacity was in order to arrange the collection of historical information, but control over this information remained with the Main Staff. Thus, the evidence demonstrates that the military commanders had complete *de facto* control over IPD services in the field. As Stojić was not in the military chain of command,<sup>962</sup> he had no control over the conduct of IPD operatives.

### 3.2.2.5 Welfare Administration

301. On 20 May 1993, a Welfare Administration became part of the Civilian Sector.<sup>963</sup> The Administration looked after the needs of “wounded HVO members and families of killed HVO soldiers.”<sup>964</sup> The type of tasks performed related e.g. to medical treatment and temporary accommodation.<sup>965</sup> The HVO units were multiethnic,<sup>966</sup> and all HVO members receive the same type of care regardless of ethnicity.<sup>967</sup>

302. No distinctions were made between ethnicities in the provisions which would guarantee welfare and assistance to the wounded, and the families of the wounded, missing and dead. All received benefits.<sup>968</sup> The only necessary requirement was that the relevant documentation could be produced, i.e. certification showing the circumstances under which the person had been wounded or killed.<sup>969</sup>

303. The Defence Department was not involved in the work of the Welfare Sector in any significant way. Stojić appointed Ramo Omanović, a Muslim medical commissioner, in Mostar;<sup>970</sup> and he organised a department to make first instance decisions on the permanent rights of disabled war veterans

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signed document issued by Mate BOBAN about the decision on basic elements of the Organization of the Croatian Defence Council Ministry of Defence, 18 December 1993.

<sup>962</sup> See Section 3.3.1.1..

<sup>963</sup> Davor Marijan, 20 January 2009, T.35620:25-35621:4.

<sup>964</sup> 2D02000, Davor Marijan – Expert Report, para. 22.

<sup>965</sup> 2D02000, Davor Marijan – Expert Report, para. 22.

<sup>966</sup> Stipo Buljan, 11 February 2009, T. 36757:18 – 36758:24; see also, 2D00150, Overview of the National Structure of the Members of the HVO, signed by Jure Brkic, 9 June 1993.

<sup>967</sup> Stipo Buljan, 11 February 2009, T.36766:5-36766:6; T.36768:5-36768:6. See also, Stipo Buljan, 12 February 2009, T.36866:12-36867:5; T.36771:10-36771:13; T.36749:16-36749:18; P04756, Minutes issued by Goran ZADRO from meeting of Croatian Defence Council Defence Dept Heads, dealing with new organization of Croatian Defence Council Main Staff and problems, unsigned, 2 September 1993.

<sup>968</sup> Stipo Buljan, 11 February 2009, T.36749:14-36749:16 and T.36831:2-36831:6; Slobodan Praljak, 29 June 2009, T.42190:7-42190:17.

<sup>969</sup> Stipo Buljan, 12 February 2009, T.36831:4-36831:6.

<sup>970</sup> Stipo Buljan, 11 February 2009, T.36752:17-36753:2; T.36752:24-36752:25; and T.36753:2. See also 2D00749, Decision on appointment of Higher (2nd level) doctors military-invalids commission at Mostar signed by Bruno Stojić, 17 March 1993.

and the families of dead soldiers in areas which were temporarily occupied.<sup>971</sup> Stojić in no way controlled the operations of the Welfare Administration. His only involvement with the Welfare Administration was when he would forward reports submitted by the sector to the HVO HZ H-B authorities.

### 3.2.2.6 Procurement and Production Sector

304. The Sector for Supply and Procurement was officially established on 17 October 1992 by Boban pursuant to the Decision on the Basic Principles of Organisation of the Defence Department.<sup>972</sup> The purpose of the sector was to supply the armed forces with weapons, equipment, food, financial assets, and necessary services.<sup>973</sup>

305. This sector was the largest in the Defence Department.<sup>974</sup> It originally consisted of the following eight sub-departments: the Procurement Administration; the Quartermaster Administration; the Technical Administration; the Traffic Administration; the Production Administration; the Administration of Construction Maintenance and Geodesics; the Administration of Planning and Information; and the Administration of Financial Affairs.<sup>975</sup>

306. On 20 May 1993, as part of a reorganisation, the Central Logistics Base was placed within the Sector for Supply and Procurement.<sup>976</sup>

#### 3.2.2.6.1 Operations

307. At the start of the conflict, neither the HVO nor the BiH had any weapons or material supplies.<sup>977</sup> The logistical provision of these goods began in local municipalities based upon threats of Serbian aggression. Crisis Staffs formed to organise and aid the TOs of the Municipalities. Their primary role was "to procure and store material and technical equipment."<sup>978</sup> Municipal warehouses were used to store and distribute the MTS.

308. After the establishment of the HVO Main Staff in April 1992, the Crisis Staffs and warehouses were placed under Main Staff control.<sup>979</sup> The warehouse in Grude became the Central Logistics Base.<sup>980</sup>

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<sup>971</sup> Stipo Buljan, 11 February 2009, T.36754:7-36754:18; 2D01247, Decision on Assigning Municipal Defence offices, signed by Bruno Stojić, undated. This order was made for the protection of municipalities and to aid people whose territory had been occupied and were not in their own territory.

<sup>972</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, 17 October 1992, p. 4.

<sup>973</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, signed by Mate Boban, 17 October 1992.

<sup>974</sup> See 2D02000, Davor Marijan – Expert Report, 2008, para. 75.

<sup>975</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, 17 October 1992.

<sup>976</sup> P02477, Signed and stamped Decision by mate Boban and Bruno Stojić on the internal organization of the HVO Defence Department, replacing the decision of 17/10/92, 20 May 1993, p. 5.

<sup>977</sup> Hamid Bahto, 11 March 2009, T.37897:5-18.

<sup>978</sup> Tihomir Majić, 9 March 2009, T.37809:3-4.

<sup>979</sup> Tihomir Majić, 9 March 2009, T.37813:5-7.

Finally, in October 1992, the HVO HZ H-B created the Sector for Supply and Procurement to serve as the chief agency for procuring and distributing supplies.<sup>981</sup> However, unlike the rest of the logistical services, the warehouses and Municipal Crisis Staffs remained formally under the control of the Main Staff.<sup>982</sup> Logistical bases remained formally under the Main Staff until the reorganisation of the defence department on 20 May 1993.<sup>983</sup>

309. The slow transition from the logistical services of the Main Staff to the Sector for Supply and Procurement resulted in an intermediate period with a vague and unclear structure of authority. The vague wording of the founding documents for the Defence Department failed to describe the processes of procurement and their relationship with the armed forces. As a result, the hierarchy and final authority over the logistical services remained elusive and unclear. Final authority over the distribution of MTS stemmed from control of the municipal logistical bases. It is unclear, who actually controlled the logistical bases between October 1992 and May 1993, the period in which they were officially within the command structure of the Main Staff.<sup>984</sup>

310. The Technical Support Administration issued distribution orders to the municipal warehouses, and they, in turn, would distribute the goods to the military units. The municipal warehouses, however, were under the control of the Main Staff until the aforementioned reorganisation of the Defence Department. There is no evidence that the municipal warehouses ignored distribution orders from the Technical Support Administration, but they also received requests directly.<sup>985</sup> They would forward these requests to their commanders who would then issue distribution orders.<sup>986</sup>

311. A 1993 report on the performance of the Sector for Supply and Procurement states they were limited by “the lack of a unified central command structure.”<sup>987</sup> As a result, local municipalities

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<sup>980</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, 17 October 1992; 2D00567, Decision on the Internal organization of the Defence Department, signed by Bruno Stojić and Mate Boban, 17 October 1992.

<sup>981</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, 17 October 1992.

<sup>982</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, 17 October 1992; 2D00567, Decision on the Internal organization of the Defence Department, signed by Bruno Stojić and Mate Boban, 17 October 1992; and Tihomir Majić, 9 March 2009, T.37823:23-37824:1 (“My logistical base did not belong here, did not come under this sector”).

<sup>983</sup> P02477, Signed and stamped Decision by mate Boban and Bruno Stojić on the internal organization of the HVO Defence Department, replacing the decision of 17/10/92, 20 May 1993.

<sup>984</sup> P00586, Stamped and signed letter from Bruno Stojić attaching a decision on the basic principles of Organisation of the Defence Department, 17 October 1992; and P02477, Signed and stamped Decision by Mate Boban and Bruno Stojić on the internal organization of the HVO Defence Department, replacing the decision of 17/10/92, 20 May 1993.

<sup>985</sup> 2D00522, Request for ammunition sent to HVO Mostar by ARBiH Commander Arif Pašalić, signed by Arif Pašalić, 13 July 1992. Tihomir Majić confirmed that “[t]his is how they contacted the Municipal Staff.” See Tihomir Majić, 9 March 2009, T.37828:8-11). See also 2D00524, Request for materials and equipment sent by Mithad Hujdur – ARBiH commander to HVO, 12 December 1992.

<sup>986</sup> 2D01252, Request for ammo regarding offensive in Nevesinje area issued by Arif Pašalić, Drago Poljak and Bajro Pisović, 29 September 1992. See also Tihomir Majić, 9 March 2009, T.37833:2-7.

<sup>987</sup> P08118, Stamped Annual Report (Final Statement) for 1993 of the Supplies, Procurement and Production Section of the Ministry of Defence, Croatian Republic of Herceg-Bosna, signed by Ante Jelavić, 25 March 1994, p. 4.

continued to act outside the orders of the HVO HZ H-B. Many municipalities, for example, were still financing themselves throughout 1993 in order to procure MTS.

312. In certain instances, the local commanders directly disobeyed central commands. Local commanders, for example would hold up convoys or even confiscate MTS from the convoys which passed through.”<sup>988</sup>

313. In fact, decisions involving the distribution of MTS rested with the Main Staff. In February 1993, Nedžad Čengić attempted to use his personal friendship with Stojić to procure weapons for the ABiH. “Bruno asked [him] to wait until the next day [...], because he personally did not have the power to make any decisions as to what could be given to Sarajevo and how much MTS there was that was available.”<sup>989</sup> The witness testified that he was sure they were waiting on permission from Praljak and Petković.<sup>990</sup> This event demonstrates that Stojić required Praljak’s approval. Furthermore, the permit to transport the MTS was signed by both Praljak and Petković, but not Stojić.<sup>991</sup>

### 3.2.2.6.2 Bruno Stojić’s involvement

314. Stojić’s involvement with the Sector for Supply and Procurement was purely administrative. He never obtained *de facto* control over the distribution of MTS within the HVO. Although the Defence Department obtained *de jure* authority over logistical services in October 1992, the Sector for Supply and Procurement did not begin to fully function until May 1993. Even then, however, many municipalities did not fully submit to the HVO HZ H-B and would act outside of their official authority.<sup>992</sup> Furthermore, the Main Staff retained *de facto* authority over all military matters, including the distribution of goods. Lastly, the administrative function of all six administrations in the Sector for Supply and Procurement demonstrates that Stojić’s control over the logistical element of the war was purely administrative. This also clearly refutes the Prosecution’s allegation according to which Stojić participated in taking over JNA and TO equipment and facilities, as well as enterprises that were producing military equipment in furtherance of the alleged JCE.<sup>993</sup>

<sup>988</sup> 2D01114, Report on tasks completed during the official assignment performed based on the order number 13/104 from March 4<sup>th</sup>, 1993 from Command of ARBiH 2<sup>nd</sup> Corps – Tuzla at the Republic of Croatia, signed by Mesic Avdo, DATE; Andjelko Makar, 23 March 2009, T.38455.

<sup>989</sup> Nedžad Čengić, 11 March 2009, T.37944:6-9.

<sup>990</sup> Nedžad Čengić, 11 March 2009, T.37946:15-19.

<sup>991</sup> 2D01195, Document signed by the Commandant of the HVO Brigade “Kralj Tvrtko” Slavko Zelic on 1993/02/25 sent to HVO HZ HB Main headquarters – Mostar; request for help in MTS which was unable to arrive because, 25 February 1993; Nedžad Čengić, 11 March 2009, T.37951:8-11.

<sup>992</sup> P08118, Stamped Annual Report (Final Statement) for 1993 of the Supplies, Procurement and Production Section of the Ministry of Defence, Croatian Republic of Herceg-Bosna, signed by Ante Jelavić, 25 March 1994, p. 4.

<sup>993</sup> Indictment, para. 17.2(f).

### 3.2.2.7 Reporting

315. Stojić received reports from the numerous assistants within the various sub-departments overseen by the Defence Department, and on occasion he would receive reports from the Main Staff.<sup>994</sup> The Prosecution has attempted to show the Department was in the military chain of reporting.<sup>995</sup> However, the Prosecution evidence merely confirms that Stojić played a purely administrative role in that he collected information from the various sub-departments<sup>996</sup> and from the Main Staff and compiled it into reports for the HVO and the HZ H-B President.<sup>997</sup> Furthermore, reports from military units were sent directly to the brigade commanders and were not necessarily ever disclosed outside the Main Staff.<sup>998</sup> When the Chief of the Main Staff would submit reports to the Department, these were very broad reports relating to a six month period and covering just a few pages.<sup>999</sup> Stojić was not informed in detail about the military situation, and his knowledge of the HVO operations was cursory, since reports presented the situation in a summary and simplified way.<sup>1000</sup>

### 3.2.3 Municipal HVO institutions, including regional Defence Administrations and municipal Defence Offices, controlled and influenced local decisions.

316. Despite the Prosecution's allegations that Stojić was Defence Department's "top political and management official" and exerted total control over Department's activities,<sup>1001</sup> the evidence shows that there was no such central authority. "[T]he local communities, in this case the municipalities, had great power in certain situations of course."<sup>1002</sup> The municipalities were by law considered to

<sup>994</sup> Slobodan Božić, 5 February 2009, T.36461.

<sup>995</sup> See Veso Vegar, 17 February 2009, T.37106-36107 (discussing P00518, Stamped report on the Croatian Defence Council Defence Departments activities, with a cover report signed by Bruno STOJIC, 22 September 1992).

<sup>996</sup> One of the few departments that actually reported to the head of the Defence Department on a fairly regular basis was the Health Sector. See, e.g., 2D00721, Report signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagarić on 1993/01/01; report on dead and wounded and report on visit to the field, 1 January 1993; 2D00739, Report on activity of Healthcare Department for the period from July 13th.1993 to August 2nd.1993, signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagarić, 2 August 1993; 2D00738, Report on activity of Healthcare Department for the period from August 3rd.1993 to August 10th.1993, signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagari, 10 August 1993; 2D00714, Report signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagarić on 1993/09/13; report on activities by Sector for healthcare from September 7th.1993 to Sept, 13 September 1993.

<sup>997</sup> See, e.g., 2D01018, Signed and stamped Bruno STOJIC request that all Croatian Defence Council components submit reports on their activities for the period from Jan-93 to Jun-93, and an assessment of the current situation, 7 July 1993. See also Bruno Pinjuh, 23 February 2009, T.37246.

<sup>998</sup> P04055, Signed and stamped order issued by Milivoj PETKOVIĆ re: complying with Croatian Defence Council Main Staff orders, maintaining order, discipline and responsibility. Ref. 02-2/1-01/1782/93, 9 August 1993, item 13.

<sup>999</sup> See, e.g., P03642, Signed and stamped six-month summary report issued by Milivoj PETKOVIĆ to the head of the Defence Department. Ref. 02-2/1-01-1494/93, 22 July 1993

<sup>1000</sup> P03642, Signed and stamped six-month summary report issued by Milivoj PETKOVIĆ to the head of the Defence Department. Ref. 02-2/1-01-1494/93, 22 July 1993, p. 3 (citing the "irresponsible work of the Defence Office and the command of units", "insufficient engagement of organs of authority at all levels" specifically pointing to Ljubuski Municipality, lack of skill, lack of record keeping of wounded and dead, and "Serious shortcomings of the command system, and especially unprofessionalism on the level of squad-company-battalion, and let us be honest, on the level of the zone – HVO Staff").

<sup>1001</sup> Indictment, para. 5.

<sup>1002</sup> Ivan Bandić, 16 March 2009, T.38017.

be independent entities and were known to be conducting their own logistical and administrative work.<sup>1003</sup> As Davor Marijan pointed out that, “The influence of municipal HVOs and the political leaders was based in their financial and political power.”<sup>1004</sup> Indeed, evidence shows that municipalities financed the HVO formations in their areas.<sup>1005</sup>

### 3.2.3.1 Independent Municipal Governments

317. The HZ H-B Presidency was made up of heads from each municipality.<sup>1006</sup> Municipal Governments had a large degree of autonomy. While this independence was present in every municipality, the situation in Mostar Municipality is a good illustration. While the rules and procedure of the Mostar Municipal HVO stipulated that the HVO “shall direct, coordinate, and supervise the work of administrative departments [...] by defining their obligations in implementing decisions and other enactments and by issuing working guidelines,”<sup>1007</sup> the overwhelming weight of the evidence, confirmed by the testimony of Prosecution’s expert Tomljanovich,<sup>1008</sup> shows the independence of the Municipalities.

318. The Municipalities enjoyed financial independence. Indeed, in Mostar, the Municipality opened a giro account which only members of the Municipal Board could control,<sup>1009</sup> and Topić introduced the Croatian dinar as a valid mean of payment inside the Municipality.<sup>1010</sup>

<sup>1003</sup> 2D02000, Davor Marijan – Expert Report, para. 7 (citing P00289, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 3 July 1992, Article 41).

<sup>1004</sup> 2D02000, Davor Marijan – Expert Report, para. 7.

<sup>1005</sup> 2D00535, Information on financing ‘Kralj Tomislav’ Brigade from the beginning of the war until present and request to take over financing of expenses of the brigade and compensation of previously made expenses, 20 February 1993; 2D00536, Decision on monetary compensation of mobilized military conscripts signed by Velimir Jukic, 4 June 1992; 2D00537, R BiH Municipal Assembly Posusje Decision on mandatory financing of defense signed by Velimir Jukic, 2 May 1992; 2D00538, Municipal HVO Livno Decision on financing HVO of Livno Municipality by their workers temporary employed abroad, 9 December 1992; 2D00540, Commission for Regulations of the Municipal Assembly of Tomislavgrad Decision on financing the needs of all people’s defense signed by Zvonimir Kutlesa, 20 August 1992; 2D00541, Decision on changes and amendments to the Decision on financing all peoples defense signed by Mijo Tokic, 2 August 1992; 2D01217, Decision on the contribution of citizens of Tomislavgrad municipality in financing the defence signed by Mijo TOKIC, 24 March 1993; 1D00295, Decision determining salaries for village commanders, 23 November 1993; 1D00296, Decision to approve payment of funds, 26 October 1993; 1D00297, Decision on the amount of compensation - daily allowance for privates sent on assignments pursuant to an order issued by HRHB HVO main staff, 9 October 1993; 1D00298, Decision to professionalize members of the Petar Kresimir IV HVO brigade and determine the appropriate TIP salary, 24 September 1993; 1D00302, decision on the financing of the defence of Livno - the municipal HVO by individual farmers - cattle breeders, 13 May 1993; 1D00307, decision on assignment of financial aid to the Bruno Basic HVO regiment, 16 April 1993; 1D00310, Decision on financial contributions for the Livno OHVO - penalties against persons liable for military service, 26 March 1993; 1D01771, Posusje - Decision on obligatory financing of defence, 2 May 1992; 1D01772, Tomislavgrad - Decision on financing the needs of national defence, 20 August 1992; 1D02998, Decision on one-off payments to military conscripts, Prozor, 7 August 1992.

<sup>1006</sup> Ciril Ribčić, 10 December 2007, T.25500.

<sup>1007</sup> 1D00550, Rules of Procedure of HVO of Mostar Municipality, 5 June 1992.

<sup>1008</sup> P09545, W.B. Tomljanovich, The Governing Bodies and Organs of Herceg-Bosna and Their Functioning (1991-1994), para. 34.

<sup>1009</sup> 1D00498, Decision on signing of gyro account of Croatian Defence Council of Municipality of Mostar, 5 June 1992.

<sup>1010</sup> P00281, Decision published in the Mostar Municipal Croatian Defence Council Official Gazettes. Regarding the introduction of the Croatian Dinar as a means of payment in Mostar Municipality Issued by Jadran TOPIĆ, Croatian Defence Council President Mostar Municipality, 30 June 1992. See also the decision taken by the Tomislavgrad Municipality, 2D01217, Decision on the contribution of citizens of Tomislavgrad municipality in financing the defence signed by Mijo TOKIC, 24 March 1993.



319. Stojić had no *de jure* power over the Municipal HVOs. For example, the Mostar HVO reported directly to the HZ H-B Presidency.<sup>1011</sup> Indeed, there was little correspondence between Topić and Stojić, and the correspondence that did occur did not indicate a relationship based on control. On 27 May 1993, Topić announced publicly that the population should address directly the Defence Department concerning their residence status.<sup>1012</sup> Concerning this issue, Stojić wrote a letter to ask Topić to withdraw his announcement,<sup>1013</sup> since he could not force him to do so.
320. Municipalities had extensive powers in both civilian and defence matters. The evidence in this case shows that municipal councils made many important military decisions. For example on 25 February 1993, Topić took the decision to create the Home Guard Unit in Mostar,<sup>1014</sup> and on 25 May 1993, he appointed the negotiating team regarding the Muslim Community in Mostar.<sup>1015</sup>

### 3.2.3.2 Independent Defence Administrations and Offices

321. Evidence adduced in the course of this trial demonstrates that even though there was an attempt to have a unified defence of HZ H-B with a hierarchical structure, the *de facto* situation was chaotic. The Defence Administrations and Offices suffered from a patent lack of organisation and, as such, were not in any clear chain of command.
322. The diffuse structure of these defence organs was, in part, a legacy of the SFRY's TO system. Under that system, local defence offices carried out preparations for defence of their respective municipalities.<sup>1016</sup>
323. Defence Administrations existed at the level of municipalities, where municipal HVOs had been formed.<sup>1017</sup> The TO Administrations had the dual responsibility of coordinating with the military command operating in their respective territories and also with the Defence Offices in regard to organisational and logistical issues.<sup>1018</sup> This again demonstrates how the HVO functioned, with one military chain of command controlling operative decisions and with separate administrative support offices.

<sup>1011</sup> 1D00550, Rules of Procedure of HVO of Mostar Municipality, 5 June 1992.

<sup>1012</sup> Slobodan Božić, 3 February 2009, T.36299:23:36300:19.

<sup>1013</sup> 2D00444, No. 02-1/1:56/93, Letter from DEFENCE DEPARTMENT - Head of department office Bruno Stojić To Mostar County Croatian Defence Council - Head Jadranko Topić, 27 May 1993.

<sup>1014</sup> P01550, Decree on the Formation of Home Defence Units in Mostar Municipality. No. 2, February 1993 issue of Mostar Municipal Croatian Defence Council Official Gazettes. Signed by President of Mostar Municipal Croatian Defence Council Jadran TOPIĆ, 25 February 1993. The municipality had the primary role in the setting up of these units, with a coordinating role played by the Main Staff; See P01550, Decree on the Formation of Home Defence Units in Mostar Municipality. No. 2, February 1993 issue of Mostar Municipal Croatian Defence Council Official Gazettes. Signed by President of Mostar Municipal Croatian Defence Council Jadran TOPIĆ, 25 February 1993, Articles VI and VII. See also, Bruno Pinjuh, 23 February 2009, T. 37249:14-T.37250:3.

<sup>1015</sup> P02507, Decision published in the Mostar Municipal Croatian Defence council official Gazettes. Regarding appointments of the negotiating team with Muslims in Mostar. Issued by Jadran TOPIĆ, Croatian Defence Council President Mostar Municipality. Ref: 01-286/93 No, 25 May 1993.

<sup>1016</sup> 2D02000, Davor Marijan – Expert Report, para. 35.

<sup>1017</sup> Slobodan Božić, 10 February 2009, T.36682.

<sup>1018</sup> Bruno Pinjuh, 24 February 2009, T.37325.

324. Defence Administrations had broad powers and even *de jure*, the Defence Administration had certain autonomy in decision making. Article 13 of the 3 July 1993 Decree states that Defence Administrations, in addition to maintaining defence preparedness, may undertake other measures in defence.<sup>1019</sup> The main tasks of these offices were recruitment, mobilisation preparation, replenishment of units and record keeping.<sup>1020</sup> The municipal Defence Offices had *de jure* power to mobilise manpower and material, to keep record of conscripts and material and technical equipment for the needs of the defence, to keep record of the movement of conscripts, and to organise and execute the defence of the town.<sup>1021</sup>

### 3.2.3.3 No Centralised Authority

325. The Prosecution describes events in the HZ H-B from 1991 to 1994 as planned, directed and ordered by a strong, centralised HVO in Mostar. At least in respect to the Defence Department, this was certainly not true. The simple reality was that there was diffuse authority and disregard for the central administrative office. The HZ H-B Presidency,<sup>1022</sup> made up of heads from each municipality, was hierarchially above the HVO HZ H-B and its departments, including the Defence Department. Powerful municipal leaders directed policy and took decisions at the local level throughout the HZ H-B. This was made possible in large part because of the problems with communication and the fact that many municipal leaders had already been in power long before the creation of the HZ H-B. In one report on the work program of the Morale Guidance Sector, the problem at the municipal level is stated clearly: "Every locality has acted autonomously and independently of a single goal."<sup>1023</sup>

326. In an attempt to rein in these disparate entities, meetings were often held with representatives from Defence Offices and Administrations.<sup>1024</sup> Also in attendance at these meetings would be a

<sup>1019</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992, Article 13; See also P07433, Booklet Annual Analysis of the work performed by Mostar Defence Administration for the year 1993, p. 3.

<sup>1020</sup> Bruno Pinjuh, 23 February 2009, T.37232. See also, P00289, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna, 3 July 1992 (Articles 13 and 14, *inter alia*, relating to the work of defence offices); and P01553, Stamped regulations on Internal Organisation of Defence Offices and Administrations on the Territory of the Croatian Community of Herceg Bosna, signed by Bruno STOJIC, 25 February 1993 (discussed by Bruno Pinjuh at T.37244). Also, for more on the work of the defence administrations and offices, see P04699, Report on the work of the Croatian Defence Council for the period of January-June 1993 (discussed by Witness Pinjuh at T.37246). Finally, according to witness, main tasks of defence offices were "to see that the records for recruits were kept in order, mobilisation, replenishment of units, recording, recruitment, links with units of the local administration in order to facilitate our work, mobilisation preparation [...] and other tasks for the recruitment of defence." See Bruno Pinjuh, 23 February 2009, T.37232.

<sup>1021</sup> 1D00543, Decision to establish administrative departments in municipality of Mostar, 15 May 1992.

<sup>1022</sup> Ciril Ribicic, 10 December 2007, T.25500.

<sup>1023</sup> 2D00677, Sector for moral education; document dated 1993/01/15; Overview of the Sector's activities program, 15 January 1993.

<sup>1024</sup> See, e.g., 2D01209, Document signed by Chief of Defense Administration of north-west Herzegovina Ante Rados, 14 April 1993; 2D00995, Document signed by Head of Mostar Defense Administration Rade Bosnjak, 28 July 1993; P06234, Stamped and signed Minutes of meeting Bruno STOJIC attended with heads of Municipal Defence Administrations, 29 October 1993, (discussed by Witness Pinjuh at T.37270-37271).

representative from the Main Staff and from the Defence Department. However, it is clear that these meetings had no lasting effect - as late as September 1993, we see Stojić sending an order to local administrators in an attempt to get them to follow protocol and respect certain deadlines.<sup>1025</sup>

327. Another major factor adding to the lack of control over municipal authorities was the fact that the local offices had to respond to the day-to-day conditions of operating in a war-zone.<sup>1026</sup> A variety of evidence illustrates the profound problem of disorganisation and how it permeated the entire HVO system. In February 1993, Colonel Miro Prce reported on the work of the Main Staff and remarked on the “unorganised manner” in which mobilisation was being carried out, “without honouring the order of steps starting from the issue of orders to their implementation by the defence administrations and offices.”<sup>1027</sup>

328. As late as October 1993, evidence shows that the municipalities and local brigade formations were out of the control of the Defence Department. One letter from Stojić to the Military Police Administration highlights the type of uncoordinated and unauthorised decision making that was occurring at the municipal level. According to this letter, a military conscript had been reassigned “without the consent of his parent unit and without informing the authorised Defence office.”<sup>1028</sup>

#### **3.2.3.4 Appointments of municipal authorities and staff**

329. Early on in establishment of the HVO, Boban had an extensive hand in appointing the top government positions in Municipal HVO offices. For instance, an order from July 1992 shows Boban appointing all of the top government positions in Vares Municipality.<sup>1029</sup> Boban appointed the President of the Mostar HVO,<sup>1030</sup> and appointed the Vice-Presidents as well.<sup>1031</sup> In August 1992, Boban appointed all the top positions in the Prozor Municipal HVO, including the top military command position within the municipality.<sup>1032</sup>

<sup>1025</sup> Stipo Buljan, 11 February 2009, T.36753, (discussing 2D01246, Signed order by Bruno Stojic dated 1993/09/15 regarding finding the space and equipment for work of Department for families of wounded and deceased members of HVO, 15 September 1993).

<sup>1026</sup> See, e.g., Stipo Buljan, 11 February 2009, T.36761.

<sup>1027</sup> 2D01222, report on activities by HVO Mostar Main Headquarters during his temporary assignment there, 5 February 1993.

<sup>1028</sup> 2D01237, Order signed by Bruno Stojić on 1993/10/29 to the Department of Military police regarding bringing back Pero BRKAN to his unit from wherw he was transferred to MP, 29 October 1993.

<sup>1029</sup> P00296, Stamped decision on the appointment of the Vares Municipal Croatian Defence Council, with a list of nominated people issued and signed by Mate BOBAN. Number: 416, 3 July 1992.

<sup>1030</sup> P00199, Order appointing Jadranko TOPIC as president of the Croatian Defence Council Mostar and Jasmin JAGANJAC, Petar ZELENIKA, Rade BOSNJAK, VrljicStojan and AleksicAnte as leading figures of the Croatian Defence Council Mostar Municipal Staff signed by Janko BO, 11 May 1992.

<sup>1031</sup> See, e.g., 1D00083, Decision to Appoint a Vice-President of the Croatian Community of Herceg Bosna Croatian Defence Council, 17 October 1992; 1D00084, Decision to Appoint a Vice-President of the Croatian Community of Herceg Bosna Croatian Defence Council, 17 October 1992.

<sup>1032</sup> P00382, Signed and stamped decision issued by Mate BOBAN re: appointment of Prozor Municipal Croatian Defence Council members, 12 August 1992 (including appointment of Ilija Franjić as Commander of the Municipal HVO Staff).

330. However, in July 1992, Boban decided that appointments of personnel within the HVO municipal government were to be proposed by the Presidents of the Municipal HVOs.<sup>1033</sup> Indeed, the President of the Mostar HVO appointed many positions within his municipality, from top government staff,<sup>1034</sup> to fire brigade commanders.<sup>1035</sup> Thus, personnel for Municipal HVO governments were chosen by the Municipal Presidents, pursuant to Boban's instruction. Stojić had no involvement in this process.

331. Pursuant to Article 9 of Boban's Decision on the Internal Organisation of the Defence Department,<sup>1036</sup> Stojić was charged with implementing the appointments of heads of Municipal Defence Administrations,<sup>1037</sup> heads of municipal defence offices,<sup>1038</sup> municipal and their support staff.<sup>1039</sup> However, the substantive decision on who to appoint to these positions were taken by the municipal defence chiefs or other municipal authority<sup>1040</sup> or at other times by the HVO HZ H-B.<sup>1041</sup> While some of these positions were proposed by Stojić, his proposals were subject to the vote of the HVO HZ H-B, and thus he did not have actual authority over the decision.

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<sup>1033</sup> 1D02538, M. Boban's letter to all presidents of municipal HVOs / Forming and appointments in HZ HB HVO, 28 July 1992.

<sup>1034</sup> P00221, Signed and stamped Decision by Jadran TOPIĆ re. temporary formation of the executive power and administration in Croatian Community of Herceg-Bosna Ref. Number 01-227/92, 21 May 1992.

<sup>1035</sup> 1D00392, Decision on Appointment of the Commander of Professional Fire Brigade of Mostar, 22 January 1993.

<sup>1036</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992.

<sup>1037</sup> 2D01482, Proposal for appointment of the Head of Defence administration for Mostar signed by Bruno Stojić, 12 December 1992.

<sup>1038</sup> See, e.g., 2D01225, Decision signed by Bruno Stojić on 1993/01/12, appointment of Head of Odzak Defense Office, 12 January 1993; 2D01226, Decision signed by Bruno Stojić on 1993/02/19; appointment of Head of Modrica Defense Office, 19 February; 2D03055, Decision no.02-1-480/93 signed by Bruno Stojić - Appointment of Bruno Matijanic to the Office of defence Gornji Vakuf, 15 May 1993; 2D01387, Delivery of proposition for appointment by Ante Puljic, addressed to Bruno Stojić, enclosures, 23 March 1993.

<sup>1039</sup> 2D01227, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of Zvonimir Kin to the position of operative employee of Bosanski Brod Defense Administration, 19 February 1993; 2D01228, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of Nada Zlatarevic to the position of secretary of Bosanski Brod Defense Administration, 19 February 1993; 2D01229, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of employees and secretary at the Stolac Defense Office, 19 February 1993; 2D01387, Delivery of proposition for appointment by Ante Puljic, addressed to Bruno Stojić, enclosures, 23 March 1993.

<sup>1040</sup> 2D01206, Document signed by Bruno Stojić on 1993/10/02; concordance with appointment of Kasim Primeca to the position of "Higher specialized administrative officer for recruiting and peace time fill" at the Or, 2 October 1993; 2D01211, Document signed by Head of Municipal HVO Gornji Vakuf Ivan Saric on 1993/04/03; proposal for appointment of Head of Defense Office for G. Vakuf, 3 April 1993; 2D01225, Decision signed by Bruno Stojić on 1993/01/12; appointment of Head of Odzak Defense Office, 12 January 1993; 2D01226, Decision signed by Bruno Stojić on 1993/02/19; appointment of Head of Modrica Defense Office, 19 February 1993; 2D01227, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of Zvonimir Kin to the position of operative employee of Bosanski Brod Defense Administration, 19 February 1993; 2D01228, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of Nada Zlatarevic to the position of secretary of Bosanski Brod Defense Administration, 19 February 1993; 2D01229, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of employees and secretary at the Stolac Defense Office, 19 February 1993; 2D03003, BiH, Croatian Community of Herzeg-Bosnia, Croatian Defence Council-Appointment proposal on the position of the Commandant, and his Deputy, of the Brigade 'Rama' signed by Mijo Jozic, 12 August 1993; and P04055, Signed and stamped order issued by Milivoj PETKOVIC re: complying with Croatian Defence Council Main Staff orders, maintaining order, discipline and responsibility. Ref. 02-2/1-01/1782/93, 9 August 1993.

<sup>1041</sup> P01063, Minutes of the 17th session of the Croatian Defence Council of the HRHB held on 06-Jan-1993 in Mostar, 6 January 1993, p. 6. There is evidence that shows that some of these administrative defence positions at the municipal level were appointed by Boban, himself. See, e.g., P00382, Signed and stamped decision issued by Mate BOBAN re: appointment of Prozor Municipal Croatian Defence Council members, 12 August 1992.

332. There is additional evidence that shows that these decisions on appointments to municipal Defence Administrations and Offices required consent from the OZ commander (in this case Tihomir Blaškić) and “political agreement” from the Vice President of the HDZ BiH (Dario Kordić).<sup>1042</sup> Additionally, some appointment papers include the provision that objections to the appointment can be filed within 15 days.<sup>1043</sup> This further supports the fact that Stojić may have had the task of signing off on these appointments, but did not have actual authority over the substantive decision of who to appoint.
333. Heads of municipal defence bodies exerted significant influence and control in the appointment of officers and employees for municipal offices. For example, in respect to the procedure for appointing chiefs of Defence Offices in HZ H-B, numerous documents admitted into evidence establish that these appointments were executed by the chief of the defence administration.<sup>1044</sup> These documents also show that if these appointments were not made by the chief of the Defence Administration, but were made by Stojić, then such action could only be taken with the approval of the municipality in which the Defence Office was located.<sup>1045</sup> In turn, the heads of the Defence Offices had the authority to choose the staff within their office.
334. A very clear example of this appointment procedure was presented by Bruno Pinjuh. He stated that a proposal was made for his appointment to the post of Chief of the Mostar Defence Administration by the outgoing Chief,<sup>1046</sup> and this proposal would need approval from the Municipal authorities (in Čitluk) before it would be signed off on by Stojić. Without the approval of the municipal authorities, Stojić would not have made the appointment.<sup>1047</sup> This *de facto* procedure does not mirror the procedure laid out in the Decree on the Internal Organisation of the Defence Department,<sup>1048</sup> but

<sup>1042</sup> 2D01387, Delivery of proposition for appointment by Ante Puljic, addressed to Bruno Stojic, enclosures, 23 March 1993; see also 2D01226, Decision signed by Bruno Stojic on 1993/02/19; appointment of Head of Modrica Defense Office, 19 February 1993.

<sup>1043</sup> 2D01225, Decision signed by Bruno Stojić on 1993/01/12; appointment of Head of Odzak Defense Office, 12 January 1993.

<sup>1044</sup> See 2D00567, Decision on the Internal Organisation of the Defence Department, dated 17 October 1992. See also 2D01226, Decision signed by Bruno Stojić on 1993/02/19; appointment of Head of Modrica Defense Office, 19 February 1993, (“with the previous consent of Croatian Defence Council of Modrica municipality”); 2D01227, Document signed by Bruno Stojic on 1993/02/09; concordance with appointment of Zvonimir Kin to the position of operative employee of Bosanski Brod Defense Administration, 19 February 1993; 2D01228, Document signed by Bruno Stojić on 1993/02/19; concordance with appointment of Nada Zlatarevic to the position of secretary of Bosanski Brod Defense Administration, 19 February 1993.

<sup>1045</sup> See 2D00567, Decision on the Internal Organisation of the Defence Department, dated 17 October 1992. Item 9 of the Decision provides that “the chief of the defence office shall be appointed by the chief of the defence administration, *or rather, he shall be appointed by the head of the Defence Department, with the approval of the municipality* [emphasis added].”

<sup>1046</sup> The witness also says that the reason for his appointment to this position was because he was already performing many of the duties associated with that position, once again demonstrating that the official appointment procedure was a mere formality. Bruno Pinjuh, 23 February 2009, T.37229.

<sup>1047</sup> Bruno Pinjuh, 23 February 2009, T.37227-37229. See also, 2D01199, Document signed by Bruno Stojić on 1992/12/12; proposition for appointment of Head of Mostar Defense Administration, 12 December 1992; and 2D01225, Decision signed by Bruno Stojić on 1993/01/12; appointment of Head of Odzak Defense Office, 12 January 1993.

<sup>1048</sup> See 2D00567, Decree on the internal organization of the Defence Department, 17 October 1992, item 8.

this is how it was.<sup>1049</sup> This same procedure was followed concerning the appointment of Slavko Bago to the position of head of the Defence Office in Odzak,<sup>1050</sup> confirming that Stojić really only had a role in coordinating these appointments, but no autonomous appointment power. Also, while assistant chiefs in defence administrations were, by law, supposed to be appointed by the Head of the Defence Department, all other operatives and employees in the Defence Administration were assigned by the chief of the Defence Administration with the approval of the head of the Defence Department, or a person authorised by him.<sup>1051</sup> This is exhibited in the appointment of Abdulah Kasim Primeca as a clerk in the Defence Department.<sup>1052</sup> While this appointment seems to require the “approval” of Stojić, it is clear that this was mere formalisation of an appointment already made, as the appointment is effective retroactively. Thus, Stojić’s “approval” is basically worthless.

### 3.2.3.5 Municipal policy decisions

335. Many decisions presented by the Prosecution to demonstrate the HVO leadership intention to implement the alleged JCE were taken independently by the Municipalities with no interference from the leadership of the HVO. The authority of the municipalities were mainly responsible for the administration of humanitarian aid,<sup>1053</sup> the attribution of the status<sup>1054</sup> and accommodation<sup>1055</sup>

### 3.2.3.6 No control over legislative policy

336. An important aspect of the overall functioning of the Defence Department is the role that the HZ H-B Presidency played as the decision-making body. The HZ H-B Presidency, made up of representatives from the various municipalities,<sup>1056</sup> as legislative<sup>1057</sup> and collective body, had the authority to make important organisational decisions. For example, Article 12 of the July Decree<sup>1058</sup> states that the decision on the establishment of regional defence offices will be taken by the HVO.<sup>1059</sup> Ciril Ribičić remarked, that decisions “that were even more momentous that were taken by the Presidency as some kind of a regular legislative body.”<sup>1060</sup>

<sup>1049</sup> Bruno Pinjuh, 23 February 2009, T.37239.

<sup>1050</sup> 2D01225, Decision signed by Bruno Stojić on 1993/01/12; appointment of Head of Odzak Defense Office, 12 January 1993, (requiring the “previous consent of the Croatian Defence Council of Odzak municipality”).

<sup>1051</sup> See 2D00567, Decision on the Internal Organisation of the Defence Department, dated 17 October 1992, item 8.

<sup>1052</sup> 2D01206, Document signed by Bruno Stojić on 1993/10/02; concordance with appointment of Kasim Primeca to the position of “Higher specialized administrative officer for recruiting and peace time fill” at the Or, 2 October 1993.

<sup>1053</sup> Sections 2.4.1.2.4. and 3.4.4.2..

<sup>1054</sup> Section 3.4.4.2..

<sup>1055</sup> Section 3.4.4.2..

<sup>1056</sup> Ciril Ribičić, 10 December 2007, T.25500:21-24.

<sup>1057</sup> 2D02000, Davor Marijan – Expert Report, para. 1; Slobodan Bozić, 5 February 2009, T.36434:1.

<sup>1058</sup> P00289, Decree on the Armed forces of the Croatian Community of Herceg-Bosna, Pages 2-23, 3 July 1992, Article 12.

<sup>1059</sup> See P00988, Decrees on internal organization of the Defence Administration and HVO Security and Information Service, no date/1993, (stating in the preamble that the document is being issued pursuant to a decision by the HVO HZ H-B. Bruno Pinjuh confirms that it was indeed the HVO collective body that would make these sorts of decisions. Bruno Pinjuh, 23 February 2009, T.37243:20-37244:5).

<sup>1060</sup> Ciril Ribičić, 10 December 2007, T.25502:9-11.

### 3.3 Bruno Stojić did not have control over military operations and is not liable for crimes committed in the course of military operations

#### 3.3.1 No control over armed forces

337. The HVO armed forces are alleged to have committed crimes, including in furtherance of the alleged JCE. The Prosecution allege that Bruno Stojić was “in charge of the HVO armed forces,”<sup>1061</sup> over which he “exercised *de jure* and/or *de facto* power, effective control and substantial influence”<sup>1062</sup> and assert various ways in which he is alleged to incur criminal responsibility<sup>1063</sup> under Article 7(1)<sup>1064</sup> and 7(3)<sup>1065</sup> of the Statute.

338. The evidence actually adduced at trial indicates that Stojić did not have command or control over the armed forces. The Prosecution has failed to establish that Stojić had significant involvement in military operations or in the finances of the armed forces. Additionally, Stojić lacked the power to appoint and dismiss or discipline members of armed forces. As such, Stojić did not have the authority to enforce respect of international law or to prevent and punish crimes. Moreover, the fact that he was not in the chain of reporting, left him unaware of the situation on the ground. Any inaction on his part, cannot, by any standard, particularly in light of Stojić's lack of authority, be considered as condoning the alleged crimes committed by the armed forces.

##### 3.3.1.1 Defence Department not in military chain of command

339. The HVO Armed Forces were under the authority of the Chief of the Main Staff.<sup>1066</sup> According to the organisational documents governing the structure of the HVO, the Main Staff was administratively a part of the Defence Department.<sup>1067</sup> However, in reality, the Main Staff was fully operational before the Defence Department was created in July 1992<sup>1068</sup> and operationally independent from it even after that date,<sup>1069</sup> The Defence Department was not part of the chain of command of the HVO armed forces.<sup>1070</sup>

<sup>1061</sup> Indictment, para. 17.2(a).

<sup>1062</sup> Indictment, para. 17.2(b).

<sup>1063</sup> Indictment, paras. 17.2(d), (e), (m), (q), (r).

<sup>1064</sup> Indictment, para. 218.

<sup>1065</sup> Indictment, para. 228.

<sup>1066</sup> P00586, Stamped and signed letter from Bruno STOJIĆ attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, Article IX.

<sup>1067</sup> P00586, Stamped and signed letter from Bruno STOJIĆ attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, Article IX.

<sup>1068</sup> P00154, Stamped order recognizing the Croatian Defence Council as the exclusive supreme command of the forces and the only legal military formation signed by Mate BOBAN. Ref: 2-01-11/4, 10 April 1992. This document does not use the term “Main Staff”, but rather “Main Headquarters”. See also 1D02716, Certificate issued to Ilija Kozulj by HZ HB Main Staff for free movement, 9 May 1992 (the earliest available document with “Main Staff” letterhead).

<sup>1069</sup> The mischaracterization of the relationship between the Defence Department and the Main Staff most likely resulted to some degree from the fact that these two separate departments were often confused in contemporaneous news put out by international journalists. Ignorance of the HVO structures meant that many journalists referred to these two departments interchangeably, when in reality they were separate entities operating independently. See Veso Vegar, 18 February 2009, T.37117:13-17.

<sup>1070</sup> 2D02000, Davor Marijan – Expert report, para. 17.

340. In the words of the Prosecution expert Andrew Pringle: “the chain of command [goes] from the President as Supreme Commander of the armed forces down through the Chief of the Main Staff, down to the brigade commanders.”<sup>1071</sup> Pringle’s statement refers to the provision of the 3 July 1992 Decree which states that:

The Chief of the Main Staff shall be responsible to the Head of the [Defence] Department – proposing and implementing measures – for all administrative tasks, and issues relating to the budget and material supplies, and to consumption and general organisation of civilian life, as well as wartime organisation of the Armed Forces.

The Chief of the Main Staff shall be responsible to the President of the Croatian Community of Herceg-Bosna for all issues relating to the supreme command, unit organisation, strategic and operative plans and the use of the Armed Forces in time of peace or war.<sup>1072</sup>

341. This early decision on the organisation of the Defence Department<sup>1073</sup> makes it clear that the Main Staff was responsible to the Defence Department only for certain, enumerated tasks pertaining to administration, supplies, general organisation of civilian life and such matters. It is equally clear that all matters relating to military operations and planning, were outwith the competency and responsibility of the Head of the Defence Department, being specifically placed instead under the exclusive authority of Boban.

342. According to the Decree on the Armed Forces of 3 July 1992, the three main duties of the HZ H-B President, Mate Boban, were: 1) Command and control of the Armed Forces (Article 29); 2) Appointing high-level commanders and officers (Article 34); and 3) issuing mobilisation orders for the Armed Forces (Article 37).<sup>1074</sup> An amendment to this decree gave also to Boban the power to authorise military conscription in the event of war or imminent threat of war.<sup>1075</sup> These provisions ensured that Boban would maintain complete control over all military activities carried out by the HVO Armed Forces in the HZ H-B.

343. An order emanating from the Main Staff, dated August 1993,<sup>1076</sup> reiterated the chain of command, stating first and foremost that “the GS /Main Staff/ shall be directly subordinate to the [...] HZ H-B

<sup>1071</sup> Andrew Pringle, 7 November 2007, T.24269:24-24270:1.

<sup>1072</sup> P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, Art. IX.

<sup>1073</sup> According to Articles 10 of the Decrees on the Armed Forces of the HZ H-B and its amended version, the Defence Department will perform administrative and technical work. The functions of the Department were purely logistical. See P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. 3 July 1992, Art. 10; P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 10..

<sup>1074</sup> 2D02000, Davor Marijan – Expert Report, para. 2 (citing P000289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB, 3 July 1992, Article 10).

<sup>1075</sup> 2D02000, Davor Marijan – Expert report, para. 2 (citing P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 61).

<sup>1076</sup> P04134, Order by Slobodan PRALJAK to Croatian Defence Council Operational Zones re: future chain of Croatian Defence Council command. Ref: 02-2/01-1858/93, 12 August 1993.



Supreme Commander.”<sup>1077</sup> Furthermore, a document of 17 October 1992 provides that the Chief of the Main Staff shall determine command and control of organizational units.<sup>1078</sup> More specifically, the OZ units and special forces were under the “direct command” of the Main Staff.<sup>1079</sup> Finally, a command from the Main Staff to the Stepan Radić brigade, states in unequivocal terms, “the army and military units execute tasks assigned by superior command units, and not by civilian authorities.”

344. Boban’s control extended to the military units. He even received reports from the military leaders.<sup>1080</sup> Boban was seen as the true authority on all matters of military strategy.<sup>1081</sup> Additionally, Boban took decisions on issues within area of competence of the Defence Department. For instance, while recruitment was within the purview of the Department (though the regional sub-departments), Boban established Home Guard units in response to the problem of low manning levels.<sup>1082</sup>

345. The Decree on Armed Forces of 17 October 1992 provides for the creation of a Military Council, which would operate as an advisory body within the Defence Department, connecting the Head of the department to the Chief of the Main Staff.<sup>1083</sup> However, the Military Council, which was supposed to provide a link, was not established until December 1993, after Stojić had left the Defence Department.<sup>1084</sup>

346. The legal provisions place the Main Staff administratively within the Defence Department. The actual relationship between the Chief of the Main Staff and the Defence Department was strictly limited to logistical support and there was little interaction between these two HVO bodies. It is essential to note that the Chief of the Main Staff was answerable to the Head of the Defence

<sup>1077</sup> P04134, Order by Slobodan PRALJAK to Croatian Defence Council Operational Zones re: future chain of Croatian Defence Council command. Ref: 02-2/01-1858/93, 12 August 1993, p. 1.

<sup>1078</sup> P00586, Stamped and signed letter from Bruno STOJIĆ attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, p. 7.

<sup>1079</sup> P04134, Order by Slobodan PRALJAK to Croatian Defence Council Operational Zones re: future chain of Croatian Defence Council command. Ref: 02-2/01-1858/93, 12 August 1993, p. 2.

<sup>1080</sup> See, e.g., 2D00595, Report about the situation at the Operational Zone Central Bosnia signed by Colonel Tihomir Blaškić, 8 June 1993.

<sup>1081</sup> Veso Vegar, 17 February 2009, T.36988:6-10.

<sup>1082</sup> P00680, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, December 1993, Decision on Organization of Home Guards Units Ref: 625/92, 1 November 1992; Bruno Pinjuh at T.37253:14-16. After Boban’s decision, Stojić merely passed along the order for the establishment home guard units, which were directly subordinate to the OZ commanders and Main Staff. See P01424, Stamped and signed Order issued by Bruno STOJIĆ on formation of Home guard units based on the Decision on the Organisation of the Home guard. Ref: 02-1-15/93, 5 February 1993; and P01746, Stamped order for the organisation of Croatian Home Guard DOMOBRANI units containing 6 items giving the detailed instructions for its realisation signed by Milivoj PETKOVIĆ. Ref: 01-542/93, 28 March 1993, respectively. See also discussion on these orders, Bruno Pinjuh, 23 February 2009, T.37305:5-37306:21. See for chain of command applying to home guard units, P00680, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, December 1993, Decision on Organization of Home Guards Units Ref: 625/92, 1 November 1992, Article 7.

<sup>1083</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 18.

<sup>1084</sup> P07090, Signed and stamped decision issued by Mate BOBAN to establish the Military Council of the Ministry of Defence. Ref. UP 00281/93, 9 December 1993.

Department *only* in regard to limited areas such as technical and professional issues.<sup>1085</sup> He did not report to the Head of the Defence Department.<sup>1086</sup>

### 3.3.1.2 No appointment or dismissal power within military

347. Pursuant to Article 34 of the Decree on the Armed Forces of the HZ H-B, Boban had the authority to appoint the highest military official, namely the Chief of the Main Staff.<sup>1087</sup> Indeed, Boban appointed various individuals to this post.<sup>1088</sup> He also appointed the position of Deputy Chief of the Main Staff,<sup>1089</sup> and appointed the position of OZ commander.<sup>1090</sup> *De facto*, appointments of brigade commanders and other high-ranking military commanders also emanated from Boban,<sup>1091</sup> or the Chief of the Main Staff.<sup>1092</sup> Appointments of lower-level positions mostly were made directly by the brigade commander.<sup>1093</sup>

<sup>1085</sup> Slobodan Božić, 4 February 2009, T.36400:17-21.

<sup>1086</sup> Slobodan Božić, 4 February 2009, T.36400:23-365401:5.

<sup>1087</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB Pages 2-23, 3 July 1992, Art. 34; P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 34.

<sup>1088</sup> See, e.g. 4D01126, Order issued by Mate Boban, re: appointment of Ante Roso as a Chief of the Main Staff of the Armed Forces of the HZ HB, ref: 00267/93, Mostar, 09 December 1993.

<sup>1089</sup> 4D01124, Order issued by Mate Boban, re: appointment of Milivoj Petković as a Deputy of the Chief of the Main Staff of the Armed Forces of HZ HB, ref: 00269/93, Mostar, 09 December 1993; P01067, Signed Decision by Mate BOBAN on the appointment of Colonel Miro Andric to the post of Croatian Defence Council Main Staff Deputy Chief, 6 January 1993.

<sup>1090</sup> P00280, Stamped and signed Order by Mate BOBAN and Ante ROSO re appointment of Tihomir BLAŠKIĆ to Commander Croatian Defence Council Central Bosnia Operational Zone. Ref: 396, 27 June 1992

<sup>1091</sup> P03363, Stamped and signed Order by Mate BOBAN, HZHB Pres, re: appointment of Andjelko DJEREK as Croatian Defence Council Rafael Vitez Boban Bde Cmdr. Ref: UP.00068/93, 10 July 1993; See e.g. P00661, Signed and stamped document, ref. 622/92, issued by Mate BOBAN re: appointments of operational zone commanders, 28 October 1992; 2D02018, Appointment of the Commandant of War Hospital in Mostar signed by Mate Boban and Milivoj Petković, 6 June 1992; P00280, Stamped and signed Order by Mate BOBAN and Ante ROSO re appointment of Tihomir BLAŠKIĆ to Commander Croatian Defence Council Central Bosnia Operational Zone. Ref: 396, 27 June 1992; P03582, Stamped and signed Order by Mate BOBAN, HZHB Pres, re: appointment of Bozo PAVLOVIC as Croatian Defence Council 3 Bde Cmdr. Ref: 00090/93, 20 July 1993; P03683, Information, ref. 02-2/1-01-1538/93, issued by Milivoj PETKOVIĆ to all Croatian Defence Council units re: appointment of Slobodan PRALJAK, pursuant to the decree of the President of the Croatian Community of Herceg-Bosna, Mate BOBAN as Commander of the Cr, 24 July 1993; P04234, Stamped and signed order issued by Mate BOBAN re: appointment of Marinko ZELENKA. Ref. UP. 00130/93, 16 August 1993; P04550, Stamped and signed Order by Mate BOBAN, HZHB Pres, re: appointment of Ante PAVLOVIC as Croatian Defence Council Rama Brigade Commander, 27 August 1993; P05566, Signed and stamped order by Mate BOBAN, HZHB President, re: appointment of STANKO-BAJA SOPTA. It is ordered that SOPTA be appointed Croatian Defence Council 3 Brigade Commander as of 02-Oct-93. It is also ordered that an order re: appointment of SOPTA as C, 2 October 1993.

<sup>1092</sup> See e.g. P04037, Proposal issued by Slobodan PRALJAK re: appointment of officers within Lasvanska Battalion forwarded to HZ HB Defence Department. Ref. 01-2190, 8 August 1993; P00796, Stamped appointment of 36 Officers, as members of Main Staff Southeast O.Z signed by Bruno STOJIĆ. Ref: 03-215/92, 24 November 1992 ("temporary" appointments within South-Eastern Herzegovina OZ, signed by Stojić); P00833, Stamped list of officers appointed by Bruno STOJIĆ to Croatian Defence Council STARCEVIC Ante Bde, Gornji Vakuf, signed by Bruno STOJIĆ. Ref: 03-234/92, 30 November 1992 ("temporary" appointments to Ante Starcevic brigade in Gornji Vakuf, signed by Stojić); P00835, Stamped report from Bruno STOJIĆ appointing people to Croatian Defence Council Rama Bde, Prozor, signed by Bruno STOJIĆ. Ref: 03-231/92, 30 November 1992; P00849, Stamped order issued by Bruno STOJIĆ regarding appointment of 12 officers to Croatian Defence Council OZ NW signed by Bruno STOJIĆ. Ref: 03-228/92, 2 December 1992; P01072, Signed decision Bruno STOJIĆ on the appointment of Blaz ANDRIC to the Croatian Defence Council HQ to the post of adjutant. Ref: 03-326/93, 7 January 1993; P01077, Signed and stamped order issued by Bruno STOJIĆ re: appointment of Ivica TOMIĆ as Croatian Defence Council 4 Brigade Deputy Commander. Ref. 03-328/93, 7 January 1993; P01612, Signed order, ref. 02-1-148/93, issued by Bruno STOJIĆ re: appointment of Ivica RAJIĆ as Intelligence Advisor to NW Herzegovina OZ, 5 March 1993; P01637, Signed and stamped order by Bruno STOJIĆ re: appointment of Dragan JURIĆ as Croatian Defence Council HercegStjepan Brigade Deputy Commander. Ref. 02-1-165/93, 9 March 1993; P02945, Signed and stamped order issued by

348. Stojić played a purely administrative role regarding the appointment procedure. The procedure, which was confirmed by Petković's testimony, the commander of a formation proposed his assistants and other members of the command to the Main Staff. The latter gave its approval and then Stojić would issue a decision on the appointment.<sup>1094</sup> Praljak explained that the HVO "did not have an organised staffing policy"<sup>1095</sup> and that in practice the procedure "relied largely on the opinion of those who issued proposals."<sup>1096</sup> Indeed, Article 34 of the Decree on the Armed Forces<sup>1097</sup> charged the Head of the Defence Department with administering the paperwork to formalise appointments.<sup>1098</sup> That this was clearly just a formality, is illustrated by the fact that numerous appointment documents explicitly state that the appointee had already been acting in the position for some time,<sup>1099</sup> in some cases for over a year.<sup>1100</sup>
349. In some instances proposals for appointments were addressed directly to Stojić. In those instances, he was then required to transmit the proposal and request consent from either the Main

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Bruno STOJIC re: appointments in Croatian Defence Council Rama Brigade Command. Ref. 02-1-651/ 93, 25 June 1993; P01805, Signed order, ref. 02-1-322/93, issued by Bruno STOJIC to appoint Adis DELALIC as Automatic Data Processing Programmer in the Stjepan Radic Brigade, 4 April 1993; P01846, Order signed by Bruno STOJIC to appoint Fuad TUTNJIC as Zvonko Krajina Bde 1 Coy Cmdr, starting from 01-Apr-93. Ref: Number: 02-1-357/93, 12 April 1993; P01631, Signed and stamped order by Bruno STOJIC re: dismissal of Marko ZELENKA from his position of Croatian Defence Council HercegStjepan Brigade 3 Battalion Commander, 9 March 1993; P01637, Signed and stamped order by Bruno STOJIC re: appointment of Dragan JURIC as Croatian Defence Council HercegStjepan Brigade Deputy Commander. Ref. 02-1-165/93, 9 March 1993.

<sup>1093</sup> See e.g. P03117, Signed and stamped order, ref. 01-3822/93, issued by Miljenko LASIĆ re: defence of Mostar. Order states areas of responsibility and divides Mostar into 3 sectors, 2 July 1993; P00616, Stamped and signed Order by Zeljko ŠILJEG appointing KAPOVICDemisio as commander of KupresBattalion, 22 October 1992; P00620, Stamped and signed Order by Zeljko ŠILJEG discharging Filip ZRNO from the post of KupresBattalion commander, 22 October 1992; 2D00989, Proposition for appointments to the Command of HVO Brigade 'Knez Domagoj' signed by the Commandant of the HVO Brigade 'Knez Domagoj' Colonel Nedeljko Obradović, 18 March 1993. Dragan Juric also gave a very clear explication of this procedure, confirming that the substantive decisions were made by the military staff. For instance, he was appointed by Zdravko Sagolj, the brigade commander, who was appointed by Boban. See, Dragan Juric, 27 April 2009, T.39269:3-39271:13.

<sup>1094</sup> Milivoj Petković, 25 February 2010, T.50095:12 - T.50096:24.. See also 2D02000, Davor Marijan – Expert Report, para. 102. Slobodan Praljak, 29 June 2009, T.42109:1-42113:10.

<sup>1095</sup> Slobodan Praljak, 29 June 2009, T.42110:15.

<sup>1096</sup> Slobodan Praljak, 29 June 2009, T.42110:15-16.

<sup>1097</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992; P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992.

<sup>1098</sup> The following appointments were made pursuant to this provision: 2D01177, Appointment of staff into the command of the 'Kralj Tvrtko' Sarajevo brigade, signed by Bruno Stojić, 29 December 1992; 2D01531, HZ H-B HVO, Defence Department - Appointments on duty in the 115th Zrinski Tuzla Brigade signed by Bruno Stojić, 16 February 1993; 2D01446, Defence Department of the HVO, no.03-179/92 of 3 September 1992, Appointment, 3 September 1992; 2D01186, Command signed by Bruno Stojić on 1993/05/07; command on appointment of Stjepan Glavas for the Commandant of 1st Battalion of HVO "Kralj Tvrtko" Brigade, 7 May 1993.

<sup>1099</sup> See e.g. 2D01211, Document signed by Head of Municipal HVO Gornji Vakuf Ivan Saric on 1993/04/03; proposal for appointment of Head of Defense Office for G. Vakuf, 3 April 1993 (stating that candidate "already performs these duties"); 2D01206, Document signed by Bruno Stojić on 1993/10/02; concordance with appointment of Kasim Primeca to the position of "Higher specialized administrative officer for recruiting and peace time fill" at the Or, 2 October 1993 (stating that the appointment shall be valid retroactively, as of 28 Spetember 1993); 2D03055, HZ HB HVO - Decision no.02-1-480/93 signed by Bruno Stojić - Appointment of Bruno Matijanic to the Office of defence Gornji Vakuf, 15 May 1993.

<sup>1100</sup> 2D00985, Command on appointment signed by Bruno Stojić on 1993/07/01; appointments at the Brigade 'Eugen Kvaternik' – Bugojno, 1 July 1993.

Staff<sup>1101</sup> or the municipal HVO authorities for appointments.<sup>1102</sup> This procedure limited Stojić's *de jure* authority laid down in Article 104 of the Decree on Armed Forces.<sup>1103</sup>

350. Dismissals from military units were also controlled by the brigade commanders or other military officers.<sup>1104</sup> The Commander of the Main Staff ordered the dismissal and reinstatement of certain soldiers that had left in various brigades.<sup>1105</sup> This order was not sent to the Defence Department, and Praljak also testified on various occasions that he could and would arrange the soldiers depending on the situation in the field.<sup>1106</sup>

351. Even after Stojić left his position, the appointment power remained with the OZ commanders and the Chief of the Main Staff.<sup>1107</sup>

352. In sum, the evidence unequivocally shows that the Head of the Defence Department did not have the *de jure* authority to appoint or dismiss members of the armed forces at any level, and that his role in this regard was constrained to implementing and formalising the appointment decisions made by the appropriate military authority. There is no evidence to show that Stojić ever actually authorised a military appointment, nor that he had any power to object to a proposal made by a military commander.

### 3.3.1.3. No control over military operations and no authority to issue operative orders

352. In an attempt to show a link between Stojić and the conduct of the armed forces, the Prosecution relies on a number of "orders" signed by Stojić in his capacity as Head of the Defence Department. The Defence accepts that Stojić did sign documents concerning appointments,<sup>1108</sup> mobilisation

<sup>1101</sup> 2D03005, BiH, Croatian Community of Herzeg-Bosnia, Croatian Defence Council- Proposal for appointments in the regiment 'Bruno Basic' signed by Bruno Stojić, 27 August 1993; 2D03007, BiH, Croatian Community of Herzeg-Bosnia, Croatian Defence Council- Information for the HVO Main Staff signed by Bruno Stojić re Proposal for appointments in OZ Bosanska Posavina, 7 October 1993.

<sup>1102</sup> 2D01198, Document signed by Bruno Stojić on 1992/12/08; request for opinion regarding the proposition on appointment of Head of Mostar Defense Administration, 8 December 1992; 2D01200, Document signed by Bruno Stojić on 1992/12/12; request for approval of appointment of Head of Bosanski Brod Defense Administration, 12 December 1992.

<sup>1103</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 34.

<sup>1104</sup> See, e.g., 4D01038, Demand issued by Milivoj Petković to OZ S/E Herzegovina, re: proposal for dismissal in OZ S/E Herzegovina-Command, ref: 02-2/1-01-912/93, Mostar, 01 June 1993, 1 June 1993.

<sup>1105</sup> P03917, Order issued by Slobodan PRALJAK re: dismissal of soldiers from H.V. Hrvatinic Brigade who joined the PetarKresimir IV Brigade and Kralj Tomislav Brigades without the consent of their superiors, and return them to their parent unit, H.V. Hrvatinic Brigade, 3 August 1993.

<sup>1106</sup> Slobodan Praljak, 2 June 2009, T.41004:3-13 (discussing 3D01178, EFK, B-143/1-4, IMMEDIATE REQUEST FOR A REPLY, ISSUED BY SLOBODAN PRALJAK, 1 August 1993).

<sup>1107</sup> See, e.g., 2D01490, HVO Main HQ - Suggestion for deployment of Borivoj Malbasic signed by Nedeljko Obradović and Milivoj Petković, 13 July 1994. Interestingly enough, this appointment proposal was not even sent to the then Ministry of Defence.

<sup>1108</sup> See, e.g., P00698, Signed and stamped order, ref. 03-173/92, from Bruno STOJIĆ on the appointment of officers in 2nd Croatian Defence Council Brigade, 3 November 1992; P00849, Stamped order issued by Bruno STOJIĆ regarding appointment of 12 officers to Croatian Defence Council OZ NW signed by Bruno STOJIĆ. Ref: 03-228/92, 2 December 1992; P00938, Stamped order signed by Bruno STOJIĆ regarding appointment of 18 Croatian Defence Council officers to the Command of Croatian Defence Council OZ Central Bosnia. Ref: 03-272/92, 18 December 1992; P01077, Signed and stamped order issued by Bruno STOJIĆ re: appointment of Ivica TOMIĆ as Croatian Defence Council 4 Brigade Deputy Commander. Ref. 03-328/93, 7 January 1993; P01604, Signed and stamped order, ref. 02-1-128/93 by Bruno STOJIĆ re:

preparations including recruitment,<sup>1109</sup> supplies distribution<sup>1110</sup> and organisational issues.<sup>1111</sup> However, he did not issue any order regarding military combat activities since he did not have the *de jure* authority to do so.

353. Illustrating this point is the report issued by Stojić on 22 September 1992, at the request of HVO HZ H-B.<sup>1112</sup> This document, introduced by the Prosecution, is not an active combat order. Rather, it is clearly a report on reorganisation which was one of the logistical tasks assigned to the Defence Department, pursuant to Article 8 of the Decree on the Armed Forces.<sup>1113</sup> Any attempt to draw any other inference would be to mischaracterise the document and the role of Bruno Stojić.
354. Similarly, certain orders co-signed by Praljak and Stojić are alleged to show military command authority on behalf of Stojić. Such an interpretation would also be misplaced. These orders all

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appointment of Home guard, 4 March 1993; P01612, Signed order, ref. 02-1-148/93, issued by Bruno STOJIĆ re: appointment of Ivica RAJIC as Intelligence Advisor to NW Herzegovina OZ, 5 March 1993; P01631, Signed and stamped order by Bruno STOJIĆ re: dismissal of Marko ZELENKA from his position of Croatian Defence Council HercegStjepan Brigade 3 Battalion Commander, 9 March 1993; P01637, Signed and stamped order by Bruno STOJIĆ re: appointment of Dragan JURIC as Croatian Defence Council HercegStjepan Brigade Deputy Commander. Ref. 02-1-165/93, 9 March 1993; 2D00629, Order on assignment of Stipo BULJAN in Operational Zone Bosanska posavina No.02-1-297/93 on 3rd of March 1993 signed by Bruno STOJIĆ, 3 April 1993; P01805, Signed order, ref. 02-1-322/93, issued by Bruno STOJIĆ to appoint Adis DELALIC as Automatic Data Processing Programmer in the Stjepan Radic Brigade, 4 April 1993; P01846, Order signed by Bruno STOJIĆ to appoint Fuad TUTNJIC as Zvonko Krajina Bde 1 Coy Cmdr, starting from 01-Apr-93. Ref: Number: 02-1-357/93, 12 April 1993; P02602, Signed order, ref. 02-1-536/93, issued by Bruno STOJIĆ re: relieving Ivica RAJIC of his duties as Intelligence Advisor in Croatian Defence Council OZ NW, 1 June 1993; P02945, Signed and stamped order issued by Bruno STOJIĆ re: appointments in Croatian Defence Council Rama Brigade Command. Ref. 02-1-651/93, 25 June 1993; P06208, Signed and stamped order, ref. 02-1-1679/93, issued by Bruno STOJIĆ and Branko KVESIC, re: the formation of a joint Battalion, 28 October 1993, para. 4; 2D01337, Appointment of officers in "Herceg Stjepan" Brigade signed by Bruno Stojić on 1992/10/27, 27 October 1992; 2D01507, Decision on appointment of Franjo Krizanac signed by Bruno Stojić, 25 August 1993; 2D01508, Decision on appointment of Ivan Vrankic to the position of Head of SIS Center in Capljina signed by Bruno Stojić, 27 August 1993; 2D01509, Decision on appointment of Miroslav Music to the position of Head of SIS Center in Mostar signed by Bruno Stojić, 31 August 1993.

<sup>1109</sup> See, e.g., 2D01201, Command signed by Bruno Stojić on 1993/08/18; commanding a meeting to be held on August 21st. 1993, with Heads of Defense Administrations from Mostar and Tomislavgrad, 18 August 1993 (items 4.1 and 4.2 dealing with recruitment); 2D01449, Defence Department of the HVO, no.02-1-138/93 of 3 March 1993, Amendments to the Basic Mobilisation Plan, 3 March 1993; 2D01453, Defence Department of the HVO, no.02-1-1290/93 of 17 September 1993, Order, 17 September 1993 (recruitment); 2D01469, HZ H-B HVO Defence Department - Instruction on acceptance, transfer, deployment and termination of active military personnel signed by Bruno Stojić, 17 February 1993; 2D01481, HZ H-B HVO Defence Department - Command issued by Bruno Stojić, 18 October 1993 (further instructions for recruitment procedure).

<sup>1110</sup> See, e.g., 2D01348, Request by Bruno Stojić to Zitopromet for 20 tons of flour for the needs of HVO "Usora" dated 1992/12/11, 11 December 1992 (food).

<sup>1111</sup> See, e.g., 2D01027, Request for approval of issuing seal instead of missing ones for Bosanski Brod signed by Bruno STOJIĆ on 1992/11/30, 30 November 1992; 2D01369, Rules of the military identification card, signed by Bruno Stojić, 3 July 1992; 2D01372, Rules on the paychecks of the military conscripts during their service in the army, signed by Bruno Stojić, 9 September 1993; 2D01447, Defence Department of the HVO, no.03-97/92 of 15 December 1992, Approximate formation of HVO Battalion Command, 15 December 1992; 2D01479, Request for issuing of telephone number signed by Bruno Stojić, 4 December 1992; 2D01540, HZ H-B HVO, Defence Department - Order no.02-1-1485/93 signed by Bruno Stojić, 8 October 1993.

<sup>1112</sup> P00518, Stamped report on the Croatian Defence Council Defence Departments activities, with a cover report signed by Bruno STOJIĆ. Includes a list of decrees that had been adopted by Defence Department. Ref: 03-101/92, 22 September 1992.

<sup>1113</sup> P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992. See also Bruno Pinjuh, 24 February 2009, T.37333:4-12.

contain both operative and logistical provisions, which explain the need for both signatures.<sup>1114</sup> That was the only reason for the signature of Stojić. For instance, in the order co-signed by Petković and Stojić on 2 July 1993, most of order is an operative command coming from the Main Staff to the OZ South Easter Herzegovina.<sup>1115</sup> However, items 2(2) and 2(3) clearly relate to logistical tasks within the remit of the Defence Department, thus explaining the need for Stojić's signature. Moreover and very importantly, OZ Commander Lasić issued an order subsequently in which he referred to the order of 2 July 1993 as a "Main Staff Order."<sup>1116</sup> This shows that Stojić did not have the authority to issue orders to the armed forces, including an OZ Commander.

355. [REDACTED].<sup>1117</sup> Whatever the relevance of that observation, nothing in that report, on a rare meeting between a representative of the international community and Stojić, indicates that the latter had actual command authority over members of the HVO. This simple reality has been consistently overlooked or glossed over by the Prosecution in the course of this trial.

356. In fact, the Main Staff operated independently from Stojić. Boban issued operative orders throughout the relevant period, which he addressed directly to all levels of subordinate units.<sup>1118</sup> Furthermore, it was Boban who decided to use army units in order to respond to emergency situations,<sup>1119</sup> and who was the only person authorised to make declarations of mobilisation.<sup>1120</sup>

357. As to the reports on combat activities, the Main Staff compiled them completely separately from the reports on the work of the Defence Department and forwarded them directly to the President of HZ H-B and the President of HVO HZ H-B.<sup>1121</sup> There is no evidence to show that the Main Staff issued regular reports to the Head of the Defence Department. Thus, Stojić was not in the military chain of reporting and as such, did not have any detailed knowledge of the military situation on the

<sup>1114</sup> 2D02000, Davor Marijan – Expert report, paras. 86,130. See, e.g. 2D01342, Defence department of HZ H-B- Letter of commendation for defenders of Municipality of Zepce signed by Slobodan Praljak and Bruno Stojić on 1993/09/21, 21 September 1993; 2D1335, Approval for safe passage to Jajce signed by Slobodan Praljak on 1992/10/28, 28 October 1992.

<sup>1115</sup> P03128, Stamped order re: instructions for cleaning of the Croatian Defence Council OZ SE, listing locations and officers in charge of the execution of the order, signed by Milivoj PETKOVIĆ and Bruno STOJIĆ. Ref: 02-2/1-1259/93, 2 July 1993.

<sup>1116</sup> P03117, Signed and stamped order, ref. 01-3822/93, issued by Miljenko LASIĆ re: defence of Mostar. Order states areas of responsibility and divides Mostar into 3 sectors, 2 July 1993. The first sentence of this order mentions the reference number of the order 2 July 1993 (P03128) and describes it as a "Main Staff order."

<sup>1117</sup> [REDACTED].

<sup>1118</sup> See, e.g., 3D02469, Q-91-108, 17 AUGUST 1992, FREE PASSAGE FOR THE CONVOY WITH MS (MATERIAL RESOURCES), ORDER, MATE BOBAN. Here, Boban is ordering Dario Koridć and Tihomir Blaškić to convoy with MTS for the ABiH pass. See also 1D01704, Boban's order / humanitarian aid, access to detention centres 10 September 1993 (Boban's direct order to specific brigades and battalions to grant access to the detained persons to the ICRC and allow passage of humanitarian aid).

<sup>1119</sup> Slobodan Bozic, 5 February 2009, T.36436:8-10.

<sup>1120</sup> Bruno Pinjuh, 23 February 2009, T.37272:5-7. See also 2D01364, Order by mate Boban on the general mobilisation in the area of Citluk, Capljina, Grdue, etc, 10 July 1992; P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Pages 12-23, 3 July 1992, Article 37.

<sup>1121</sup> These Main Staff reports were treated as confidential and thus were kept at the Presidents' offices and not disseminated prior to meetings. 2D02000, Davor Marijan - Expert report, para. 13.

ground. Without any Military Council to act as the military liaison with the Defence Department,<sup>1122</sup> Stojić's knowledge of the active military situation was extremely limited.

358. The fact that the Defence Department did not have control over the Main Staff while Stojić was its Head is highlighted by the order issued by his successor, Perica Jukić, on 14 December 1993.<sup>1123</sup> This order is a desperate attempt by the Minister of Defence to gain control over the military. This would not have been necessary had the Main Staff been previously subordinated to the Defence Department.

### 3.3.1.4 No control over the financial operations of the HVO armed forces

359. The HVO HZ H-B was in control of the financial resources and made decisions together collectively about how funds should be applied, including to the armed forces. The Finance Department was responsible for receiving and processing requests for funds on behalf of the HVO HZ H-B.<sup>1124</sup>

360. Clearly, the HVO HZ H-B, and not the Defence Department, was responsible for the financial resources of the armed forces. For instance, on 5 July 1993 the HVO HZ H-B authorised the Finance Department to make an assessment of the funds needed for defence purposes.<sup>1125</sup> Further, during a HVO HZ H-B meeting of 15 June 1993 it was concluded that they would engage "all material resources to procure necessary material and technical equipment needed for a successful defensive war."<sup>1126</sup>

361. Additionally, the municipalities financed a big part of the expenditures of the armed forces. They had budgets with funds gathered from the local communities that they used to pay the armed forces. On 4 June 1992, the War Defence Council Posušje issued rules in regard to the collection of funds from companies and private business to pay the salaries of the members of armed forces in Posušje.<sup>1127</sup> For instance, a letter from the HVO Tomislavgrad Office of Finance, dated 20

<sup>1122</sup>As mentioned above, while the Military Council was prescribed by the Decision on the principles of organization of the Defence Department of 17 October 1992, the council was nonexistent until Boban issued a decision in December 1993 creating it. See, P00297, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, September 1992, Decision on Appointing the Head of the Defense Department of the Croatian Community of Herceg-Bosna, 3 July 1992 and P07090, Signed and stamped decision issued by Mate BOBAN to establish the Military Council of the Ministry of Defence. Ref. UP 00281/93, 9 December 1993 respectively..

<sup>1123</sup> 4D00821, Inquiry issued by Dragan Ramljak to the Bobovac Brigade Command, ref: 08-10-507/93, Vitez, 25 October 1993, 25 October 1993.

<sup>1124</sup> P00672, Minutes of the 8th session of the Croatian Defence Council of the HRHB held on 30-Oct-1992 in Mostar, 30 October 1992, conclusions, p. 6.

<sup>1125</sup> 1D01669, Minutes of the 44th session of HVO HZHB in Mostar, 5 July 1993, item 8, p. 3.

<sup>1126</sup> 2D00851, Minutes from the 42nd Conference of HVO HZ HB which was held on 1993/06/15; Agenda: examination of military - security situation at the territory of HZ HB; Minutes signed by recording secretary Miroslav, 15 June 1993, conclusion no. 7, p. 3. Additionally, upon the proposal of the Justice and Administration Department, on 9 December 1992 the HVO HZ H-B granted funds to the military courts and military prosecutor's office. This demonstrates that the salaries were not paid by the Defence Department. See 1D01180, Minutes from 14th session of HZ HB HVO, 9 December 1992, Ad. 13, p. 4.

<sup>1127</sup> 2D00536, Decision on monetary compensation of mobilized military conscripts signed by Velimir Jukic, 4 June 1992. See also 2D00537, R BiH Municipal Assembly Posusje Decision on mandatory financing of defense signed by Velimir Jukic, 2 May 1992.

February 1993, states the municipality had not received any financial help from the HZ H-B or any other municipality and bore all war expenses by itself.<sup>1128</sup> Similar evidence of collections of funds from the community (including members of the community who lived abroad) and of the municipalities setting salaries for the armed forces are available for Tomislavgrad, Livno and Mostar.<sup>1129</sup>

### 3.3.1.5 Conclusion

362. The fact that Stojić was clearly not part of the military chain of command refutes the Prosecution's allegation that he participated in and furthered the alleged JCE by exercising "*de jure* and/or *de facto* power, effective control and substantial influence [...] over all parts of the armed forces." Stojić did not receive regular reports on the military operations and did not issue operative orders. He lacked control or influence over the military operations, refuting the allegation that he had any part in military operations in furtherance of the alleged JCE. Moreover, Stojić did not have any *de jure* or *de facto* power to appoint and dismiss members of the HVO Armed Forces. This factor, coupled to the lack of control and absence of substantial influence helps demonstrate why any alleged inaction on Stojić's part was not because he was part of an alleged JCE, or because he "condoned crimes" by the armed forces. Rather, Stojić simply did not have effective control over the armed forces and cannot be held to be responsible for any alleged crimes committed by them under the doctrine of command responsibility.

### 3.3.2 No control over the Security Sector

363. The Prosecution alleges that Bruno Stojić was responsible for "security, including the work of the HVO Military Police and an HVO intelligence service known as the Security and Information Service ('SIS')." <sup>1130</sup> These HVO bodies are alleged to have committed crimes, including in furtherance of the alleged JCE. However, in reality, the operations arms of both the Military Police and the SIS were under the control of the HVO Armed Forces, and both were only administratively linked to the Defence Department. Thus, officers of the MP and the SIS answered directly to the commanders in their respective operative zones. Stojić did not have control over these security forces.

<sup>1128</sup> 2D00535, Information on financing 'Kralj Tomislav' Brigade from the beginning of the war until present and request to take over financing of expenses of the brigade and compensation of previously made expenses, 20 February 1993.

<sup>1129</sup> 2D01217, Decision on the contribution of citizens of Tomislavgrad municipality in financing the defence signed by Mijo TOKIC, 24 March 1993; 2D00538, Municipal HVO Livno Decision on financing HVO of Livno Municipality by their workers temporary employed abroad, 9 December 1992; 2D00540, Commission for Regulations of the Municipal Assembly of Tomislavgrad Decision on financing the needs of all people's defense signed by Zvonimir Kutlesa, 20 August 1992; 2D00541, Decision on changes and amendments to the Decision on financing all peoples defense signed by Mijo Tokic, 2 August 1992; 1D00298, Decision to professionalize members of the Petar Kresimir IV HVO brigade and determine the appropriate TIP salary, 24 September 1993; 1D01759, Decision on war tax for workers from Mostar Municipality working abroad, 16 September 1992; 1D01761, Decision on financing the Livno OVHO - sanctioning military conscripts, 26 March 1993.

<sup>1130</sup> Indictment, para. 5.



364. The Security Sector was created within the Defence Department by Boban's decision of 15 September 1992.<sup>1131</sup> It was comprised of the SIS Administration and the MP Administration. However, the sector existed in no more than an administrative and instructive sense. The SIS and the MP services were already operating within the HVO Armed Forces long before Boban's formal decision to create overarching administrative bodies to coordinate their work. This was also before Stojić was appointed to the Defence Department.<sup>1132</sup> Further demonstrating how security services were already functioning within the HVO military is Boban's appointment of the Assistant Commander of the HVO Main Staff of the Security and Information Service in April 1992.<sup>1133</sup> This shows how the creation of the Security Sector was merely an administrative afterthought, and how the operative side of this service functioned independently from the administration. Furthermore, the fact that Stojić was not involved in appointing this important position confirms that he had no controlling role over the service.
365. In fact, there were problems of *de jure* authority over the Security Sector in general, because its internal structure was not clearly delineated in the October Decree<sup>1134</sup> and caused disagreements over each sub-department's proper jurisdiction.<sup>1135</sup> Both sub-departments had merely a professional link<sup>1136</sup> with the Defence Department and the chiefs of both administrations participated in meetings<sup>1137</sup> with and submitted semi-annual reports to the head of the Defence Department.<sup>1138</sup> The Head of the Defence Department clearly had no significant involvement in this Sector's activities, or else he would have received more than just a semi-annual report on their work.<sup>1139</sup>

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<sup>1131</sup> P00586, Signed and stamped order issued by Zeljko SILJEG to Rama Brigade Commander, Prozor and STARCEVIC Ante Brigade Commander re: placing all armed forces in Prozor and Gornji Vakuf under their command. Ref: 93/92, 17 October 1992.

<sup>1132</sup> 2D02000, Expert Report – Davor Marijan, para. 30 (referring to the fact that Boban appointed Ćorić "Assistant Commander of the HVO Main Staff for Security and Information Service" in April 1992, which made him responsible for all HVO Military Police units. See 2D01333, Appointment of Valentin Ćorić for Assistant of the Commandant of Sector of security and intelligence signed by Mate Boban on 1992/04/13, 13 April 1992).

<sup>1133</sup> 2D01333, Appointment of Valentin Ćorić for Assistant of the Commandant of Sector of security and intelligence signed by Mate Boban on 1992/04/13, 13 April 1992.

<sup>1134</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992.

<sup>1135</sup> Expert Marijan points to one incident where an attempt to subordinate an MP battalion to the Assistant Commander for SIS was objected to by the SIS Administration. See P01678, Signed communication issued by Valentin ĆORIĆ to the North Western Herzegovina Operations Zone commander re: conclusions of the meeting held at the S/Z /North-Western/ Herzegovina Operations Zone in Tomislavgrad, 9-Mar-1993, 17 March 1993.

<sup>1136</sup> Expert Marijan elaborates on how this relationship differed from that of the security and defence administrations of the SFRY. See 2D02000, Expert Report – Davor Marijan, paras. 35-37.

<sup>1137</sup> P04756, Minutes issued by Goran ZADRO from meeting of Croatian Defence Council Defence Dept Heads, dealing with new organization of Croatian Defence Council Main Staff and problems, 2 September 1993.

<sup>1138</sup> 2D01379, Report on the work of the security intelligence service in the period from January till June 1993 by Ivica Lucic, enclosures, 15 July 1993; P04699, Report on activities of the Croatian Defence Council HZHB for the period January to June 1993. Pages 1 to 52.

<sup>1139</sup> Ivan Bagarić confirmed that all assistants in the Defence Department in charge of individual sectors had independence in their work. See Ivan Bagarić, 20 April 2009, T. 38885: 21-38886:8.

### 3.3.2.1 SIS Administration

366. SIS Administration was regulated separately in the Boban's Decision on Internal Constitution of Defence Department.<sup>1140</sup> As such, SIS Administration had instructive and educational role in relation to SIS Assistants, who were integrated in to military chain of command and subordinate to the commandants of their formations.<sup>1141</sup> There were SIS Centres which were located in each OZ,<sup>1142</sup> which were envisioned as link between SIS Administrations and SIS Assistants, but this link never functioned properly. Therefore, Stojić did not have *de jure* and *de facto* control over the SIS in the formations and SIS Administration also did not have such control.

367. Furthermore, Stojić did not have *de jure* control over the operations of SIS Administration. Article 137 of the Decree of Armed Forces provides that SIS performs "[p]rofessional work related to security of the armed forces and the Defence Department."<sup>1143</sup> This refers to the work of SIS Assistants who were in HVO formations. Line 5 of Article 137 provides for the administrative role of Defence Department which is charged with issuing regulations for the area of the SIS Administration operations, which Stojić did. This provision clearly emphasised that control over the operations of SIS is conducted by the Commission which is appointed based on a proposal from Head of the Defence Department, but whose actual appointment is issued by the HZ H-B President.<sup>1144</sup> Even though Stojić proposed the Commission, the HZ H-B President never formed it.<sup>1145</sup> Thus, SIS Assistants<sup>1146</sup> were never actually supervised by the Defence Department and it is clear that Boban, the Main Staff and the commanders of the formations had *de facto* authority.

<sup>1140</sup> P00586, Stamped and signed letter from Bruno STOJIĆ attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992. See also 2D00924, Organizational scheme of the Sector for security.

<sup>1141</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992. See also P05621, Signed and stamped order, ref. 01-2004/93, issued by Ante PAVLOVIC re: detention of all Muslims fit for military service surveillance of these individuals, 4 October 1993; P05614, Letter dated 04 Oct 1993 issued by Milivoj PETKOVIC addressed to Ivica LUCIC giving instructions regarding steps to be taken by HVO Security and Information, 4 October 1993; and 2D00944, List of HVO formations and SIS officers in them signed by Head of Security - Information - Service (SIS) Ivica Lucic on 1993/11/19, 19 November 1993.

<sup>1142</sup> P00128 Croatian Defence Council HZHB Report for the work of various departments during the year 1992. September 1992, pp. 8-9.

<sup>1143</sup> P00588, Report on activities of the Croatian Defence Council HZHB for the period January to June 1993. Pages 1 to 52, Article 137. This service was not regulated in the July Decree. See P00289, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Decree on the Armed Forces of the HZHB. Article 7 of the Rules of the Work of the SIS is a similar provision. See also P04211, Rules of Procedure on the work of the HVO Security and Information Service signed and stamped by Bruno Stojic, 15 October 1993.

<sup>1144</sup> P00858, Stamped proposal to appoint a commission for controlling the work of the security and information service signed by Bruno STOJIC. Ref: 03-238/92, 14 December 1992.

<sup>1145</sup> Ivan Bandić, 16 March 2009, T. 38006-8.

<sup>1146</sup> It is worth mentioning that toward the end of 1993, at least 157 SIS Assistants were operating throughout various factions of the armed forces, whereas 13 staff members were working at the Administration. See 2D00944, List of HVO formations and SIS officers in them signed by Head of Security - Information - Service (SIS) Ivica Lucic on 1993/11/19, 19 November 1993.

### 3.3.2.1.1 Appointments

368. The SIS appointment procedure also shows this schism between the SIS Administration and SIS in the formations. *De jure*, certain SIS Assistants were supposed to be proposed by the Assistant Head for Security, and then formally appointed by the Head of the Defence Department.<sup>1147</sup> Additionally, all other SIS Assistants were to be appointed by the Assistant Head for Security, upon the approval of the Head of the Defence Department.<sup>1148</sup> However, *de facto*, these officials were often not appointed in this manner, according to Ivan Bandić.<sup>1149</sup> Additionally, Bandić testified that Brigade Commanders appointed SIS Assistants without asking the Chief of the SIS Administration for approval.<sup>1150</sup>
369. Well into 1993, Lučić, Chief of the SIS Administration,<sup>1151</sup> raised the issue of these unofficial appointments, stating that he was not being consulted about appointments at the brigade level.<sup>1152</sup> However, the unofficial appointment of SIS Assistants within brigades continued to be a problem.<sup>1153</sup>
370. This was also a problem in the Administration. In an additional report dated 22 November 1993, Lučić compiled a list of SIS employees within each department noting who was working without an actual letter of appointment. In the SIS Administration, six employees had never been officially appointed.<sup>1154</sup> SIS Administration Chief and the Head of the Defence Department, had no control over these unofficial SIS employees, and they clearly had no influence over the military commanders who carried on doing as they please, despite any regulation to the contrary.<sup>1155</sup>

<sup>1147</sup> 2D00567, Decision on the Internal Organisation of the Defence Department, 17 October 1992 Article IV. See also P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIC on the internal organization of the HVO\_Defence\_Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 20 May 1993.

<sup>1148</sup> 2D00567, Decision on the Internal Organisation of the Defence Department, 17 October 1992, Article IV, last paragraph.

<sup>1149</sup> Ivan Bandić Testimony, 16 March 2009, T.38012.

<sup>1150</sup> Ivan Bandić Testimony, 16 March 2009, 38020:7-21

<sup>1151</sup> P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992.

<sup>1152</sup> P04756 Minutes issued by Goran ZADRO from meeting of Croatian Defence Council Defence Dept Heads, dealing with new organization of Croatian Defence Council Main Staff and problems, 2 September 1993, p. 3-4. There is no prior indication of this issue being brought to the attention of Stojic.

<sup>1153</sup> 2D00944, List of HVO formations and SIS officers in them signed by Head of Security - Information - Service (SIS) Ivica Lucic on 1993/11/19, 19 November 1993; 2D00949, Lists of SIS officers with and without decision on appointment and list of SIS officers who displayed satisfactory performance and ones that did not, divided upon location of SIS Centers of employment, 22 November 1993; 2D00930, Order issued by Perica JUKIC on 1993/11/23 regarding clarification of number of individuals who work for Sector of Security without permission by Ministry of Defence, 23 November 1993. This problem prevailed at least until November 1993. See 2D00944, List of HVO formations and SIS officers in them signed by Head of Security - Information - Service (SIS) Ivica Lucic on 1993/11/19, 19 November 1993, p. 10. This document is also evidence that the SIS was in the Main Staff. In fact it lists at least thirteen SIS members within the SIS.

<sup>1154</sup> 2D00949, Lists of SIS officers with and without decision on appointment and list of SIS officers who displayed satisfactory performance and ones that did not, divided upon location of SIS Centers of employment, 22 November 1993.

<sup>1155</sup> 2D00949, Lists of SIS officers with and without decision on appointment and list of SIS officers who displayed satisfactory performance and ones that did not, divided upon location of SIS Centers of employment, 22 November 1993.

371. Stojić likewise was not involved in dismissals of SIS Assistants. In fact, the SIS Administration had little authority over this, as well. The Chief of the Main Staff had ultimate authority over dismissals of SIS Assistants operating in military formations, as can be seen in his order authorising the dismissal of Zvonko Duznjević, Assistant for SIS in Bobovac Brigade.<sup>1156</sup> This demonstrates how the SIS Assistants were indeed fully integrated in the military chain of command and not connected to the SIS Administration.

### 3.3.2.1.2 Operations

372. The *de facto* structure of SIS operations clearly delineates the separation of the administrative bodies to the operative ones. For one, security officers existed in HVO municipal staffs before the establishment of operations formations. Further, even though the Main Staff formation from September 1992 does not mention this post,<sup>1157</sup> there was an assistant for SIS in the Main Staff as late as September 1993.<sup>1158</sup> Thus, these operational positions were located in the military command structure. Indeed, assistants for SIS at the OZ level and below also predated the establishment of the SIS Administration; they were already established within military and political structures.<sup>1159</sup> These assistants for SIS placed within the military units operated completely independently of the SIS Administration and were under the exclusive control of the military commander of their respective units. This can be seen from the fact that commanders included tasks for their unit's SIS Assistants in their orders.<sup>1160</sup> Zvonimir Skender confirmed in his testimony that these assistants were under his command in the Tomislavgrad OZ.<sup>1161</sup> As it has been demonstrated that this chain of command did not include Stojić,<sup>1162</sup> who had no command over their activities.

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<sup>1156</sup> P06022, Order to Croatian Defence Council Vares, issued by Milivoj PETKOVIC, to remove Anto PEJCINOVIC, Zvonko DUZNOVIC and Ivica GAVRAN from their positions. Ref: G5-3117-1/93, 23 October 1992 (Zvonko Dužnović, listed under item 2, was an Assistant for SIS for Bobovac Brigade. See P06841, Report from Ivica RAJIC to Mate BOBAN, Tihomir BLASKIC and HVO Security and Information Service Vitez about criminal charges brought against Zvonko DUZNOVIC and Ivica GAVRAN. Ref: 10-3645-1/93, 23 November 1993.

Although Petković tried to deny that he created this and that commanders could relieve SIS officers, see Milivoj Petkovic, 8 March 2010, T.50590:5-22, the fact that the commander issued an order for investigation of Djuzinovic on the following day shows that his testimony in this regard was not credible. See 4D00517, Order issued by Tihomir Blaskic to Ivica Rajic, ref: 01-10-485/93, 24 October 1993.

<sup>1157</sup> P00502, Signed and stamped document from Bruno STOJIC, Croatian Defence Council Defence Department Chief, re: the decision on Croatian Defence Council Main Staff temporary formation, 18 September 1993.

<sup>1158</sup> 2D02000, Expert Report – Davor Marijan, para. 39.

<sup>1159</sup> 2D00944, List of HVO formations and SIS officers in them signed by Head of Security - Information - Service (SIS) Ivica Lucic on 1993/11/19, 19 November 1993.

<sup>1160</sup> See, e.g., 2D03083, HZ HB, HVO, Main Staff - Order con.no.01-2298/92 re Security of the HE Salakovac, signed by Milivoj Petkovic, 9 October 1992, item 5.

<sup>1161</sup> Zvonimir Skender, 24 September 2009, T.45223:3-4.

<sup>1162</sup> See Section 3.3.1.1.

373. Many other orders unequivocally confirm that Assistants for SIS attached to military units were being commanded by the military.<sup>1163</sup> Examples can be seen in orders emanating from units of all levels operating throughout the HZ H-B.<sup>1164</sup>
374. Also, because the framework of the SIS was never fully thought out, the SIS Administration could not fully function as it was envisioned in the Rules. As Ivan Bandić states, "It was my understanding that basically the sector never started functioning in the true essential [sic] of the word as it had been envisaged and as it was supposed to function."<sup>1165</sup> While the SIS Administration tried to establish links between the administration and the units on the ground, it constantly faced problems of lacking resources, non-existent means of communication, and general disorder that prevented it from fully functioning.<sup>1166</sup> "A year and a half after the administration was established, an attempt was made to bring things in order, to deal with the situation as it was."<sup>1167</sup> This is reflected in the adoption of new rules for the Security Sector<sup>1168</sup> at the meeting of the HVO on 22 September 1993.<sup>1169</sup> However, many provisions were merely copied over from previous rulebooks and it had little practical effect on the functioning of the department.<sup>1170</sup> Clearly, the operative arm of the SIS was under the complete control of the military command.

### 3.3.2.1.3 Role of SIS Administration in taking statements from prisoners

375. The SIS Administration did have its own officers, located in the regional SIS Centres, that took statements from prisoners, but the authority to initiate an actual investigation into any reports of crime was with the MPA.<sup>1171</sup> In this function, these SIS officers did not have any actual authority to

<sup>1163</sup> 4D01700, Order on defence of Central Bosnia OZ issued by Tihomir Blaskic and approved by Milivoj Petkovic.

<sup>1164</sup> 2D03083, HZ HB, HVO, Main Staff - Order con.no.01-2298/92 re Security of the HE Salakovac, signed by Milivoj Petkovic, 9 October 1992. It is sometimes necessary to look at the recipients to see that SIS Assistants were being commanded as well as regular military units. See e.g. 5D01064, Obradovic / order, 3 July 1993, recipient #3. See also 2D03025, BiH, Croatian Republic of Herzeg-Bosnia, Brigade 'Ban Josip Jelacic' - Order no.02-2464-1/93 signed by Mario Bradara, 15 September 1993.

<sup>1165</sup> Ivan Bandić, 16 March 2009, T.37998:25-37999:2. When Judge Antonetti asked Bandić about whether 137 of the Decree was implemented, and whether there was ever a special committee formed to over the SIS, Bandić stated, "When these documents were passed, they were necessary because there was an attempt, probably for the best intentions, to establish these organs, and so many of these regulations were copied from the former services of the former state as you said, as they would be in peacetime, and I think to this day the same thing happens in similar fashion. But the situation at that time in that area was completely different of course."

<sup>1166</sup> Ivan Bandić, 16 March 2009, T.38040-38044.

<sup>1167</sup> Ivan Bandić, 16 March 2009, T.38022.

<sup>1168</sup> P04211, Rules of Procedure on the work of the HVO Security and Information Service signed and stamped by Bruno Stojic, 15 October 1993.

<sup>1169</sup> P04756, Minutes issued by Goran ZADRO from meeting of Croatian Defence Council Defence Dept Heads, dealing with new organization of Croatian Defence Council Main Staff and problems, 2 September 1993.

<sup>1170</sup> Ivan Bandić, 16 March 2009, T.38028-38032; T.38046.

<sup>1171</sup> 2D00934, Request issued by Ivica LUCIC on 1993/08/16 regarding taking measures in event of killing 9 Muslims in Village of Mokronog, 16 August 1993.

enter the prisons, but had to request access from the prison wardens.<sup>1172</sup> This demonstrates of the SIS Administration had no ability to command members of the military and did not figure in the military chain of command, as the prisons were all operated and controlled by military formations.<sup>1173</sup>

### 3.3.2.1.4 Assistants for SIS in formations

376. The fact that *not a single command* was ever issued by Stojić or Lučić to the SIS Assistants in the formations further confirms that Stojić and the SIS Administration had no authority over operative SIS Assistants and no position in the military chain of command. SIS Assistants in the formations were under the exclusive command of their superior commanders,<sup>1174</sup> with SIS Assistants included at every level of military formation.<sup>1175</sup> Zrinko Tokić confirmed that the SIS Assistants in his unit were under his chain of command.<sup>1176</sup> This is confirmed by the fact that SIS officers in brigades reported up the military chain of command.<sup>1177</sup> As such, Stojić had no *de facto* control over and cannot be responsible for activities carried out by SIS Assistants.

### 3.3.2.2 No control over Military Police

#### 3.3.2.2.1 *De jure* functions and organisation of the Military Police

377. The MP was instituted on 10 April 1992 on a municipal level, prior to the establishment of the Defence Department.<sup>1178</sup> Pursuant to the Decisions on the Internal Organisation of the Defence

<sup>1172</sup> 2D00929, Letter sent by Miroslav MUSIC to the warden of Heliodrom BOZIC asking permission for conversation with Suad REPKA and Milorad TRIVUN dated 1993/08/30, 30 August 1993; P05133, Stamped request to the military Prisons in Dretelj and Gabela and Tomo SAKOTA personally, for unrestricted access to the prisons for 2 Croatian Defence Council HVO Security and Information Service operatives, signed by Ivica LUCIC. Ref: 02-4-1-1311 /93, 16 September 1993.

<sup>1173</sup> See Section 3.5.2.

<sup>1174</sup> There are numerous examples of orders from military formations directed at Assistants for SIS. See, e.g. 2D03083, HZ HB, HVO, Main Staff - Order con.no.01-2298/92 re Security of the HE Salakovac, signed by Milivoj Petkovic, 9 October 1992; 4D00475 Order for active defence, issued by Miljenko Lasic. Ref:03-0188/93, Mostar, 23 February 1993; 4D01700, Order on defence of Central Bosnia OZ issued by Tihomir Blaskic and approved by Milivoj Petkovic; P03135, Signed order by Nedjelko OBRADOVIC. Ref:1100-01-01-93-482, 3 July 1993; P04071, Signed and stamped order issued by Nedjelko OBRADOVIC to the Neum Battalion re: increase of combat readiness and the bringing of order and discipline to the Units. Ref. 1100-01-01-93-575, 10 August 1993; P06791, Stamped order signed by Milivoj PETKOVIC, Croatian Defence Council GS Deputy COS, to Military Districts Mostar, Vitez and Tomislavgrad re: new measures for the reduction of criminal offences in Croatian Defence Council units (which is on the rise), 22 November 1993.

<sup>1175</sup> 2D00927, Temporary formation of OZ HVO with table of various positions within HVO formations signed by Bruno Stojic on 1992/12/10, 10 December 1992; 2D01370, Scheme of the brigade organization, approved by Bruno Stojic; P00566, Croatian Defence Council Chart of the Battalion Wartime Establishment issued by Bruno STOJIC, 9 October 1992.

<sup>1176</sup> Zrinko Tokić, 30 September 2009, T.45458:13-14. See also Zvonimir Skender, 24 September 2009, T.45223:3-4.

<sup>1177</sup> P02597, Signed report, ref. 03-02-40/93, from Franjo KRIZANAC, Croatian Defence Council Rama HVO Security and Information Service to HVO Security and Information Service OZ NW Herzegovina, re: events in the villages of Klek and Donji Krancici, 1 June 1993; 4D00977, Report issued by Zeljko Bosnjak to HVO Main Staff Mostar, re: it would not be good idea to discuss problem of crime at this time, ref: 06-1397-1/93, Kiseljak, 07 June 1993; P03260, Signed and stamped analytical report issued by Mate KNEZOVIC re: situation at the Mostar Frontline. Ref. 05-0044/93, 7 July 1993; P03831, Weekly Situation Report, ref. 03-02-83/93, from Luka MARKESIC, Security and Information Chief, Rama Brigade, 31 July 1993.

<sup>1178</sup> P00420, Part of Official Bulletin No. 2 and No. 3 of the Republic of Bosnia and Herzegovina, Croatian Defence Council Military Police. (pg 29-60) re: activities of Croatian Defence Council Military Police in the Croatian Defence Council OZ's during July and August, 31 August 1992, p. 52 (ERN 03012912).

Department of 17 October 1992<sup>1179</sup> and 20 May 1993,<sup>1180</sup> the MP was created as part of the Security Sector, together with the SIS. The MP was responsible for “security in military traffic, of military order and discipline, and elimination of criminal elements in the Armed Forces.”<sup>1181</sup>

378. The *de jure* organisation of the MP was reviewed several times. At first, the MPA was organised into two departments, the MP General and Transport/Traffic Department and the Crime Prevention Department, and five MP battalions.<sup>1182</sup> The Transport Department was in charge of “checking the transport/traffic and general MP services,”<sup>1183</sup> while the Crime Prevention Department covered the “organisation and checking of the Crime Prevention Service and forensic equipment, records and analysis.”<sup>1184</sup>
379. *De jure*, the MPA was inside the Defence Department.<sup>1185</sup> *De jure*, the Head of the Defence Department had an administrative role on the appointment of members of the MPA.<sup>1186</sup> The Chief of the Section of General and Traffic and the Chief of the Crime Prevention Section were formally appointed by the Head of the Defence Department, but only at the proposal of the Chief of the MPA and with the approval of the Assistant Head for Security.<sup>1187</sup> The same procedure applied for the appointment of commanders of the active battalions.<sup>1188</sup>
380. The 1<sup>st</sup> MP Battalion, which operated throughout the HZ H-B, was supposed to be “directly linked” to MPA and its Chief, while the four others were organised by Operations Zones.<sup>1189</sup> Concerning the latter, within each of them, there were “(independent) brigade MP platoons which form part of

<sup>1179</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992, p. 3.

<sup>1180</sup> P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIC on the internal organization of the HVO\_Defence\_Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 20 May 1993, p. 3.

<sup>1181</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 137.

<sup>1182</sup> P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 1.

<sup>1183</sup> P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 1.

<sup>1184</sup> P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 1.

<sup>1185</sup> P00586, Stamped and signed letter from Bruno STOJIC attaching a decision on the basic principles of Organisation of the Defence Department. Ref: 03-142/92, 17 October 1992, p. 2. See also [REDACTED].

<sup>1186</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992, p. 2. However, Boban appointed the Chief of the MPA, Valentin Corić, on 13 April 1992. See 2D01333, Appointment of Valentin Čorić for Assistant of the Commandant of Sector of security and intelligence signed by Mate Boban on 1992/04/13, 13 April 1992.

<sup>1187</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992, p. 2,.

<sup>1188</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992, p. 2. See also P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIC on the internal organization of the HVO\_Defence\_Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 20 May 1993, p. 3.

<sup>1189</sup> P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 2.

the brigades.”<sup>1190</sup> These MP battalions in Operations Zones were directly subordinated to the OZ Commander and carried out orders “in accordance with the powers and responsibilities of the MP.”<sup>1191</sup> Thus, from the very beginning, the MPA and the HVO Main Staff had concurrent *de jure* control over the MP, resulting in inconsistencies in its command structure.

381. There was no *de jure* system of reporting between the MP and the Defence Department, and the practice showed that reports of the activities of the MP were scarce; in fact, there is no evidence that reports were even sent from the MP to the Assistant Head for Security.

382. In sum, the MPA was *de jure* positioned within the Security Sector and administratively linked with the Defence Department. Nevertheless, from the very beginning, the functions, structure and organisation of the MPA, as set out in the constitutional documents of the MPA, were very complex. Contributing to this confusion was the way in which heads within the Security Sector, namely the Chief of the MPA and the Assistant Head for Security, were appointed by different levels of HVO HZ H-B authority. Additionally, different actors were responsible depending on the function being performed by the MP unit in question. This *de jure* organisation led to a dysfunctional MP on the ground, where different actors like the municipal government, the Main Staff and the local commanders had control over MP operations.

### **3.3.2.2 De facto functions and organisation of the Military Police**

383. The Prosecution tried to depict a rigorous chain of command concerning the work of the MP. However, evidence shows that the *de jure* functions and organisation of the MP did not correspond to the *de facto* situation. The situation was chaotic, the functions were unclear and the reporting structure was unregulated.<sup>1192</sup>

#### **Main Staff command over Military Police activities**

384. The MP in the formation was directly subordinate to the commander of the brigade, OZs and Battalions and considered to be an integral part of the formation.<sup>1193</sup> Specifically, each HVO

<sup>1190</sup> See, e.g., P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 5..

<sup>1191</sup> P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 5..

<sup>1192</sup> 5D00538, Records of a co-ordination meeting with commanders, 9 March 1993, p. 2, “item 1” (showing that there were problems with “formation, command and control of the military police”).

<sup>1193</sup> P01099, Croatian Defence Council Bde organizational chart with attached tables, 11 January 1993. See also, Zdenko Andabak, 15 March 2010, T.50927:17-T.50928:9; P01148, Memo from Valentin ČORIĆ on the reorganization of Military Police in Central Bosnia, Pasko LJUBIĆ was announced a new Commander of Croatian Defence Council Military Police 4th Battalion Ref. Number: 02-4/3-01 104/93, 15 January 1993; P01888, Signed and stamped order, ref. 01-2388/9?, issued by Miljenko LASIĆ re: Croatian Defence Council 1 and 2 Brigades action in Dreznica, 15 April 1993; P01913, Stamped request re: the area of responsibility of the First Croatian Defence Council KNEZ DOMAGOJ Brigade, signed by Nedjelko OBRADOVIĆ. Ref: 1100-01-01-93-236, 16 April 1993; P01972, Signed and stamped daily report, ref. 02-4/3-06/4-12-116/93, issued by Ivan ANCIĆ re: activities of Croatian Defence Council 3 BAT 3 Coy Military Police, Capljina between 18-Apr-1993 and 19-Apr-1993, 19 April 1993.



brigade included a Brigade MP.<sup>1194</sup> The Brigade MP was charged with providing security at barracks, for transport, and for entry and exit from the battlefield, as well as taking persons into custody.<sup>1195</sup> The Brigade commanders had power over their Brigade MP's, who reported directly to them.<sup>1196</sup> They appointed members of the Brigade MP and adopted disciplinary measures as well.<sup>1197</sup>

385. [REDACTED].<sup>1198</sup>

386. Both Prosecution and Defence witnesses testified that the MPs were subordinate to Operative Zone and Brigade commanders even in the functioning of typical police duties. In fact, the MP was duty bound to obey the orders of the OZ and Brigade Commanders, even when conducting police tasks such as arresting and detaining armed groups.<sup>1199</sup> Colonel Andabak further affirmed having received orders from Petković to locate and bring back deserters, to provide freedom of movement to the UN, to lift road blockades, to establish checkpoint, and to prevent acts in violation of International law.<sup>1200</sup> Andabak also affirmed that he was under the command of the OZ

<sup>1194</sup> See P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin ĆORIĆ and Bruno STOJIĆ. Ref: 02-4/3-01-1940/92, 26 December 1992. See also, 2D01370, Scheme of the brigade organization, approved by Bruno Stojić, (no main date)..

<sup>1195</sup> P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin ĆORIĆ and Bruno STOJIĆ. Ref: 02-4/3-01-1940/92, 26 December 1992, p. 5. See also P04922, Stamped extract from instructions on the work of the Brigade Military Police (Obligation with the force of an order). Ref: 3-01-2238, 10 September 1993

<sup>1196</sup> See, e.g., P04110, Stamped and signed report by Ivan MAMIC, Croatian Defence Council Kralj Tomislav Brigade Kralj Tomislav Bde re: several Croatian Defence Council members cautioned not to mistreat Muslim civilians. Ref: 124/93, 11 August 2003. See also P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin ĆORIĆ and Bruno STOJIĆ. Ref: 02-4/3-01-1940/92, 26 December 1992, pp. 5-6..

<sup>1197</sup> P00990, Order, ref. 04-140-11/93, from Stanko PRIMORAC to dismiss Ante PRLIĆ from the post of 4th Brigade Military police commander (no main date); P02595, Document signed by Mario CERKEZ, to the Croatian Defence Council Military Police Vitez Brigade, notifying to Dragan CALIC a disciplinary measure against. The document states that discipline was deteriorating among Croatian Defence Council Brigade Military, 1 June 1993; 5D05106, Appointment of Ljupko PERIC to the post of Platoon Commander of Brigade Military Police, issued by Commander of 'Frankopan' brigade Ilija NAKIC, No. 05-04-19-III/93, 3 April 1993; 5D05107, Order issued by Mario CERKEZ re: disciplinary measures against Ivica RAJIC and Ivica JUKIĆ, No. 01-39/93, 22 March 1993..

<sup>1198</sup> [REDACTED]. See also P00413, Signed and stamped order issued by Ante GOVORUSIC re: Croatian Defence Council Brigade Military Police members warned to respect hierarchical order in Croatian Defence Council units. Ref: 01/3694-1, 22 August 1993; P00781, Signed and stamped report by Zeljko ŠILJEG on forming of S/Z Herzegovina OZ Commands Ref. Number 175-1, 20 November 1992; P02026, Stamped and signed report by Ante PRLIĆ on daily activities of the 4th Brigade of the Croatian Defence Council Military Police 21 April 1993. Ref:04-81/93, 22 April 1993.

<sup>1199</sup> [REDACTED]; and [REDACTED]. See also, P05731, Monthly report for the month of September 1993 on the activities of HVO\_MP 05th Battalion submitted to Valentin ĆORIĆ. The deployment of Croatian Defence Council MP members at Dretelj, Heliodrom and Ljubuski, as well as in municipalities is reported, 8 October 1993; [REDACTED]; P05411, Signed and stamped order issued by Ivan ANCIC to Military Police 5 Battalion 3 Company re: sending Hrvatska Vojska (army of the Republic of Croatia) unit Jelen back to Croatia. Ref: 02-4/3-13-258/93, 27 September 1993; 3D00798, B-2/2-16, S. PRALJAK'S ORDER(CROATIAN STATE ARCHIVE, BINDER GS HVO-170), (no main date)

<sup>1200</sup> Zdenko Andabak, 15 March 2010, T.50917:21-T.50918:10; T.50934-T.50941:11. See also P00781, Signed and stamped report by Zeljko ŠILJEG on forming of S/Z Herzegovina OZ Commands Ref. Number 175-1, 20 November 1992; 5D02102, Order by Zeljko ŠILJEG regarding placing under command, No. 01-1269, 29 June 1993; P04063, Signed and stamped order, ref. 02-2/1-01-1770/93, from Milivoj PETKOVIĆ re: the updated rosters of all Croatian Defence Council Bde members and reports on those who deserted or are missing, 9 August 1993; P04251, Stamped order issued by Milivoj PETKOVIĆ to all Croatian Defence Council Oz's: Mate BOBAN's order reiterated re: unhindered movement of UN forces in the Territory of Bosnia and Herzegovina. Ref: 02-2/1-01-2007/93, 17 August 1993; P01238, Stamped and signed order aborting all Croatian

Commander, Colonel Šiljeg, when it came to both combat and performance of daily operations, without requiring the previous consent of the MPA.<sup>1201</sup>

387. Moreover, on 17 August 1993, Petković adopted an order in which he affirmed Main Staff exclusive authority and command over the actions of the MP, stating that the Brigade MP is directly subordinate to the brigade Commanders.<sup>1202</sup> Similarly, Stojić clarified that he did *not* have control over the operations conducted by the MP in an order taken on 28 July 1993.<sup>1203</sup> In this order, Stojić recalled that “[a]ll units of the Military Police that are being adjacent to the forces of the HVO are subordinated to the commander of the HVO until the performance of the tasks.”<sup>1204</sup> Multiple witness testimonies, as well as number of admitted orders, confirm the control of OZ Commanders over the MP units in every OZ.<sup>1205</sup>
388. The HVO military issued orders to the MP and controlled the daily activities of the MP units, both in and out of combat.<sup>1206</sup> Specifically, a series of orders show that the members of the Main Staff issued orders for activities that were intended to be under the control of the MPA, such as arrests and checkpoints.<sup>1207</sup>

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Defence Council combat activities against Armija Bosnia I Hercegovina in the Gornji Vakuf municipality issued by Milivoj PETKOVIĆ and Arif PASALIC. Ref: 01-111/93, 20 January 1993

<sup>1201</sup> Zdenko Andabak, 18 March 2010, T.51146:2-25.

<sup>1202</sup> P04262, Signed and stamped warning, ref. 02-2/1-01-2011/93, issued by Milivoj PETKOVIĆ to Brigade Military Police re: inefficiency of the Brigade Military Policemen, 17 August 1993. See also, P04131, Order, ref. 02-2/1-01-1858/93, re: future chain of command in the Armed Forces of HZ HB, 12 August 1993

<sup>1203</sup> 5D02002, Order by Stojić- subordination of the units of the MP to the HVO commander, 28 July 1993, Article 1. See also P03778, Stamped Order re subordination of Croatian Defence Council 1, 2, 3 & 4 Light Assault Military Police BATs to Maj Gen Slobodan PRALJAK effective 29-07-93, signed by Valentin CORIĆ. Ref: 02-4/3-01-1775/93, 28 July 1993.

<sup>1204</sup> 5D02002, Order by Stojić- subordination of the units of the MP to the HVO commander, 28 July 1993, Article 1. See also P03778, Stamped Order re subordination of Croatian Defence Council 1, 2, 3 & 4 Light Assault Military Police BATs to Maj Gen Slobodan PRALJAK effective 29-07-93, signed by Valentin CORIĆ. Ref: 02-4/3-01-1775/93, 28 July 1993.

<sup>1205</sup> See, e.g., Zvonko Vidović, 29 March 2010, T.51442:6-T.51445:22. See also P00990, Order, ref. 04-140-11/93, from Stanko PRIMORAC to dismiss Ante PRLIC from the post of 4th Brigade Military police commander, (no main date) (demonstrating that the commander of the Brigades also dismissed and appointed Military Police personnel in their OZs); 5D00546, Order by Slobodan Praljak and Zeljko Šiljeg for engagement of forces in Prozor, 25 July 1993; 5D01054, Pavlovic order, 27 May 1993; 5D02009, Order by Obradović Nedjeljko re checkpoints, 3 July 1993; 5D04392, Order re: prevention of stealing, issued by Bozo PAVLOVIC, No. 1100-15-21-93-100, 3 July 1993.

<sup>1206</sup> See P00957, Joint report signed by Valentin CORIĆ and Bruno STOJIĆ, dated 26 December 1992 (setting forth organisation of MP units and specifically stating that “in performing their daily duties, the commanders of MP battalions in operations zones are directly subordinate to the Operations Zone Commander and carry out all orders relating to military police work in accordance with the powers and responsibilities of the MP”). See also, P01148, Memo from Valentin ČORIĆ on the reorganization of Military Police in Central Bosnia, Pasko LJUBIĆ was announced a new Commander of Croatian Defence Council Military Police 4th Battalion Ref. Number: 02-4/3-01 104/93, 15 January 1993; and 5D04039, Message from Pasko LJUBIĆ to Emil HARAHA, No. 02-4/3-07-977/93, 8 July 1993.

<sup>1207</sup> 5D00538, Records of a co-ordination meeting with commanders, 9 March 1993; P02548, Stamped Order, ref. 1100-01-01-93-379, to the Engineer Unit on Mine-Laying around Police Checkpoints. Signed on behalf of Nedjelko OBRADOVIĆ, Commander of Knez Domagoj Brigade, 28 May 1993; 5D04030, Warning issued by Tihomir BLAŠKIĆ, No. 01-5-330/93, 14 May 1993; P05412, Signed and stamped order issued by Slobodan PRALJAK to all OZ and Armed Forces of the HR HB re: members of HR HB Armed Forces who violate discipline be detained in the Military Prison in Dretelj, 27 September 1993; 5D00546, Order by Slobodan Praljak and Zeljko Šiljeg for engagement of forces in Prozor, 25 July 1993; 5D01054, Pavlovic order, 27 May 1993; 5D02009, Order by Obradović Nedjeljko re checkpoints, 3 July 1993; P01472, [REDACTED]; 5D03048, Approval by Bozo PAVLOVIC, No. 1100-15-21-93-71, 16 April 1993; 5D03052, Order by Bozo PAVLOVIC, No. 1100-15-21/93-53, 17 April 1993; 5D02195, Order to take into custody, issued by Ivan ANCIC, No. 02-4/3-06-11-42/93, 19 April 1993; 5D03019, Order by Nedjeljko OBRADOVIĆ, No. 1100-01-01-93-355, 22 May 1993; 5D04380, Order issued by Bozo

### **Control of the 1st Light Assault Battalion**

389. [REDACTED].<sup>1208</sup> [REDACTED].<sup>1209</sup> Upon the request of the Main Staff, the commander would deploy his battalion to any OZ where it was needed.<sup>1210</sup> [REDACTED].<sup>1211</sup> [REDACTED]<sup>1212</sup>
390. The 1<sup>st</sup> Light Assault Battalion made attempts to investigate reports of crime by members of the armed forces, as evidenced by a report submitted by unit commander Mijo Jelić on 14 June 1993.<sup>1213</sup> In regard to the particular incident mentioned in this report, the information indicates that renegade commander "Stela" was using his military unit to round up Muslims, upon orders from commander "Tuta."<sup>1214</sup>
391. Another report from Commander Jelić, dated 3 July 1993, further elucidates the *de facto* activities carried out by the MP 1<sup>st</sup> Light Assault Battalion.<sup>1215</sup> From this report, it can be concluded that MP units had *de facto* control over prison facilities, at least to the extent that they would apprehend individuals and bring them to the detention facility in their zone of responsibility, and also were involved in the transfer of detainees.<sup>1216</sup>
392. On 6 August 1993, Mijo Jelić was appointed Commander of the Defence of Mostar town by Chief of the Main Staff, Zarko Tole.<sup>1217</sup> [REDACTED].<sup>1218</sup>

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PAVLOVIC, No. 1100-15-21-93-57, 23 April 1993; P02640, Signed and stamped order, ref. 1100-15-21-93-90, issued by Bozo PAVLOVIC re: search of the houses and other properties belonging to Croatian Defence Council members of Muslim ethnicity in Stolac, 5 July 1993; P03135, Signed order by Nedjelko OBRADOVIĆ. Ref:1100-01-01-93-482, 3 July 1993; P01913, Stamped request re: the area of responsibility of the First Croatian Defence Council KNEZ DOMAGOJ Brigade, signed by Nedjelko OBRADOVIĆ. Ref: 1100-01-01-93-236, 16 April 1993; 3D00798, B-2/2-16, S. PRALJAK'S ORDER(CROATIAN STATE ARCHIVE, BINDER GS HVO-170); P04063, Signed and stamped order, ref. 02-2/1-01-1770/93, from Milivoj PETKOVIĆ re: the updated rosters of all Croatian Defence Council Bde members and reports on those who deserted or are missing, 9 August 1993; and P04251, Stamped order issued by Milivoj PETKOVIĆ to all Croatian Defence Council Oz's: Mate BOBAN's order reiterated re: unhindered movement of UN forces in the Territory of Bosnia and Herzegovina. Ref: 02-2/1-01-2007/93, 17 August 1993 (in which Praljak and Petković give a direct order to the MP).

<sup>1208</sup> [REDACTED].

<sup>1209</sup> [REDACTED].

<sup>1210</sup> [REDACTED]. See also, P04260, Order issued by Slobodan PRALJAK re: withdrawal of all detainees from works within their areas of responsibility as of 17-Aug-1993. Ref. 01-2142/93, 17 August 1993 (in which Slobodan Praljak orders the withdrawal of prisoners. The Rama Brigade SIS and MP were responsible for the return of the prisoners).

<sup>1211</sup> [REDACTED].

<sup>1212</sup> [REDACTED].

<sup>1213</sup> P02769, Stamped report on the activities of the 1st Military Police Battalion for the period 13/14 June 1993, signed by Mijo-Zlatan JELIC. Ref: 02-4/3-04/2-116/93, 14 June 1993.

<sup>1214</sup> P02769, Stamped report on the activities of the 1st Military Police Battalion for the period 13/14 June 1993, signed by Mijo-Zlatan JELIC. Ref: 02-4/3-04/2-116/93, 14 June 1993, p. 2, section titled "Zone III".

<sup>1215</sup> P03179, Daily report issued by Mijo-Zlatan JELIC Military Police 1 BAT Commander regarding activities conducted in the Croatian Defence Council Military Police AOR. Ref: 02-4/3-06, 3 July 1993.

<sup>1216</sup> P03179, Daily report issued by Mijo-Zlatan JELIC Military Police 1 BAT Commander regarding activities conducted in the Croatian Defence Council Military Police AOR. Ref: 02-4/3-06, 3 July 1993, p. 2, section titled "Zone 2" ..

<sup>1217</sup> P03983, Signed and stamped order, ref. 02-2/1-01-1733/93, issued by Zarko TOLE appointing Mijo JELIC as Commander of the defence of the town of Mostar and all Croatian Defence Council units in Mostar are placed under his command, 6 August 1993.

<sup>1218</sup> See [REDACTED].

### **Control of commander of Northwest Herzegovina OZ over Military Police units**

393. Petković ordered military police activities like police patrols, arresting and detaining looters, as well as confiscating their loot.<sup>1219</sup> Further evidence shows that this order was then passed down the chain of command from Petković to the OZ Commander, and from the OZ to the individual brigades and units.<sup>1220</sup> Other orders show effective control of the Chief of the Main Staff over activities of the MP.<sup>1221</sup> In a document from Šiljeg addressed to local forces in Gornji Vakuf and Bugojno, Šiljeg stated that “recently” before this document dated 25 February 1993, the MP was subordinated to the brigade commands and OZ commands.<sup>1222</sup> Although some testimonies conflicted with this version of events, it is clear from the face of this properly authenticated document that at least to the best of Šiljeg’s knowledge, the MP was subordinated to the HVO military chain of command prior to the date of 25 February 1993.<sup>1223</sup> Moreover, an order dated 3 September 1993 clearly shows an MP platoon involved in combat activities commanded by Šiljeg.<sup>1224</sup>

### **Control of commander of Central Bosnian OZ over Military Police units**

394. Tihomir Blaškić very clearly ordered the subordination of all units of the MP within a brigade’s zone of responsibility to the brigade commander “in [the] sense of functional use, leading and command.”<sup>1225</sup> The order, dated 6 May 1993, was for immediate subordination. Several witnesses have testified that the powers of the commander of the Central Bosnian OZ were not representative in that it extended far beyond the normal mandate.<sup>1226</sup> However, the order from Blaškić closely resembles orders issued by other OZ commanders such as Šiljeg, which clearly subordinated MP to the brigade commanders, as well as ordering brigade platoons to take over “military police tasks.” Hence, this was a uniform practice, not confined to the Central Bosnian OZ, and not based solely on this OZ being cut off from the Main Staff command.<sup>1227</sup>

<sup>1219</sup> P01344, Stamped order re: instructions for Croatian Defence Council Prozor for further actions, signed by Milivoj PETKOVIĆ. Ref: 01-185 /93., 29 January 1993; Slobodan Praljak, 8 July 2009, T.42705:1-5.

<sup>1220</sup> See P01359, Signed and stamped order issued by Zeljko ŠILJEG to the Croatian Defence Council Brigades and all units in Prozor, Gornji Vakuf and Bugojno re: proper conduct of soldiers. Ref. 1-5/1-78/93, 30 January 1993. See also Slobodan Praljak, 8 July 2009, T.42709.

<sup>1221</sup> See, e.g., P01344., Stamped order re: instructions for Croatian Defence Council Prozor for further actions, signed by Milivoj PETKOVIĆ. Ref: 01-185 /93, 29 January 1993.

<sup>1222</sup> P01548, Document from Zeljko ŠILJEG and signed and stamped certifying its accuracy by Brigade Commander Ivica LUČIĆ addressed to local forces in Gornji Vakuf and Bugojno on the engagement of the forces for the execution of the Military Police tasks in Gornji Vaku, 25 February 1993.

<sup>1223</sup> See, e.g., Slobodan Praljak, 7 July 2009, T.42712:19-24, (witness claiming that by stating that the MP were not involved in any combat operations prior to his arrival in July 1993, he had meant that the MP could only take part in combat operations upon asking the permission from the chief of the MPA).

<sup>1224</sup> P04778, Stamped and signed Order for an attack from Zeljko ŠILJEG. Ref. 01-3375/93, 3 September 1993.

<sup>1225</sup> 5D04040, Order by Tihomir BLAŠKIĆ, No. 01-5-124/93, 6 May 1993, item 1.

<sup>1226</sup> See, e.g., Slobodan Praljak, 8 July 2009, T.42728:8-20.

<sup>1227</sup> Slobodan Praljak, 7 July 2009, T.42616:24-42618:24.

### **Control of commander of South-Eastern Herzegovina OZ over Military Police units**

395. Evidence adduced shows that the commander of the South-Eastern Herzegovina OZ, Miljenko Lasić had control over the military police. For example, an order from Lasić, dated 23 January 1993, directed to the 3<sup>rd</sup> MP Battalion shows the direct superior-subordinate relationship between the OZ commanders in the military chain of command over the MP units.<sup>1228</sup>
396. This remained the same throughout the Indictment period and evidence demonstrates that during the summer 1993, the actions taken by the MP in relation to the South-Eastern Herzegovina OZ and Mostar in particular were under the responsibility of the OZ Commander.<sup>1229</sup>
397. In sum, the evidence adduced demonstrates that the MPA was not in control of the MP units during combat operations, or any other policing activity on the ground. The involvement of the MPA and of Stojić was at an administrative level. The formations had the power to appoint MPs and had control over the MP units.

#### **3.3.2.2.3 De facto role of the Military Police Administration**

398. Evidence demonstrates that the sole involvement of the MPA consisted of setting up a homogeneous and logistical repartition of the units on the ground.<sup>1230</sup> Indeed, even though at the very beginning the MPA sought to play a “joint command” role, this was never implemented as it was impossible to establish links with MP units.<sup>1231</sup> Thus, the MPA involvement was purely administrative and not connected to the military operations. The MPA only coordinated questions in relation to the placement of battalions, but had no power once the battalions were in place.<sup>1232</sup>
399. Both, Prosecution and defence witnesses consistently stated that the only responsibility of the MPA towards the MP on the ground was in fact “professional assistance”, which meant providing

<sup>1228</sup> P01272, Stamped order that entry to Mostar and other municipalities within the Croatian Community of Herceg-Bosna be prohibited for people who are not resident in the area, transport of weapons or other war material must have special approval from Croatian Defence Council, 23 January 1993.

<sup>1229</sup> P03019, Signed and stamped order, ref. 02-2/1-01-1244/93, issued by Milivoj PETKOVIĆ, forwarded by Miljenko LASIĆ, re: fortification of defence lines, 30 June 1993; P03201, Signed and stamped order, ref. 1100-01-01-93-495, issued by Nedjelko OBRADOVIĆ re: no one will be released from Gabela, Dretelj, Heliodrom or Ljubuski municipality Camps without his personal approval, 5 July 1993; P03161, Order from Nedjelko OBRADOVIĆ to the wardens of Gabela prison, Dretelj prison, Mostar Heliodrom and Ljubuski prison prohibiting all contacts between prisoners and visitors or unauthorized persons due to current situation. Ref: CLASS: 8/93-01/164-1, 3 July 1993; 5D03046, Order by Bozo PAVLOVIC, No. 1100-15-21-93-51, 15 April 1993; and 5D04392, Order re: prevention of stealing, issued by Bozo PAVLOVIC, No. 1100-15-21-93-100, 3 July 1993.

<sup>1230</sup> P04922, Stamped extract from instructions on the work of the Brigade Military Police (Obligation with the force of an order). Ref: 3-01-2238, 10 September 1993. See also P00646, Stamped proposal of operations signed by Bruno STOJIC regarding Croatian Defence Council Defense Department's draft program for work to be completed by the end of 1992. Ref: 01-03/92-69, 24 October 1992 (clearly showing that the MP are under control of the HVO Main Staff when conducting combat operations and that the MP Administration has only a coordination and administrative role).

<sup>1231</sup> P00128, Croatian Defence Council HZHB Report for the work of various departments during the year 1992. September 1992, pp. 9 and 10.

<sup>1232</sup> See, e.g., 3D02408, B-42/6-89, 9 MAY 1993, ORDER BY BRANKO KVESIC REFERRING TO SUDDEN DETERIORATION OF THE SAFETY SITUATION IN THE AREA OF MOSTAR; UNIT FOR SPECIAL PURPOSES OF LIVNO SHOULD BE TRANSFERRED TO MOSTAR IMMEDI, 9 May 1993

logistical instruction and military police equipment, such as belts and badges for their use.<sup>1233</sup> After Petković issued his order to subordinate the MP to the OZ and Brigade commanders, the Chief of the MPA sent a document to all brigades in which it affirmed that the MPA only provided “professional assistance” to the MP units.<sup>1234</sup>

400. Andabak confirmed that the MPA was only duty bound to ensure military police equipment and professional training.<sup>1235</sup> [REDACTED].<sup>1236</sup>

401. Further demonstrating that the MPA had only a logistical and administrative role in relation to the MP is the fact that Ćorić did not receive combat reports. On the contrary, Andabak testified that Šiljeg insisted upon receiving regular combat reports from the MP 2<sup>nd</sup> Battalion.<sup>1237</sup> [REDACTED].<sup>1238</sup>

#### 3.3.2.2.4 *De facto* role of Bruno Stojić

402. Even if *de jure* the MPA was part of the Security Sector, *de facto* Stojić had little authority over the work of the MPA and MP. *De jure*, he was involved in the appointment and dismissal of MPA officers, but this involvement was based on the prescribed procedure,<sup>1239</sup> which consisted in fact of signing appointments which had already been decided by others.<sup>1240</sup> Furthermore, Stojić was not involved in the daily work of the MP. The Prosecution tendered orders signed by Stojić.<sup>1241</sup> However, first, these very limited number of orders do not demonstrate Stojić’s continuous

<sup>1233</sup> [REDACTED]; Zdenko Andabak, 15 March 2010, T.50921:6-50922:5.

<sup>1234</sup> P04922, Stamped extract from instructions on the work of the Brigade Military Police (Obligation with the force of an order). Ref: 3-01-2238, 10 September 2003.

<sup>1235</sup> Zdenko Andabak, 15 March 2010, T.50906:24-50907:23.

<sup>1236</sup> [REDACTED].

<sup>1237</sup> Zdenko Andabak, 15 March 2010, T.50932:24-50933:18.

<sup>1238</sup> [REDACTED].

<sup>1239</sup> 2D00567, Decision on the internal organization of the Defence Department from October 17th.1992, 17 October 1992; P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIC on the internal organization of the HVO\_Defence\_Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 20 May 1993.

<sup>1240</sup> 2D01349, Proposition of dismissal of Dragan Mustapic and appointment of Zarko Juric sent by Valentin Ćorić to Bruno Stojić, 13 April 1993; P01420, Stamped proposal to appoint officers to the Military Police Administration addressed to Bruno STOJIC and signed for Valentin ĆORIĆ. Ref: 02-4/3-01-239/93, 4 February 1993; P01422, Signed and stamped proposal issued by Valentin ĆORIĆ to Bruno STOJIC re: appointment of MP Administration officers. Ref. 02-4/3-01-239/93, 4 February 1993; P02230, Signed and stamped proposal issued by Valentin ĆORIĆ to Bruno STOJIC suggesting that Zdenko ANDABAK, Main and Traffic Military Police Department Chief, be relieved of his duty and appointed Military Police Administration Assistant Chief for North-West, 8 May 1993; P02970, Signed and stamped proposal, ref. 02/4/B-01-1482/93, issued by Valentin ĆORIĆ to Bruno STOJIC re: appointments of men to positions within the Croatian Defence Council Military Police, 26 June 1993; P04108, Signed and stamped letter from Valentin ĆORIĆ to Bruno STOJIC proposing that Blazenko BODULUSIC be appointed as Deputy Commander of Croatian Defence Council Luka Jozic 2nd Light Assault Battalion. Ref. 02-4/3-01-1988/93, 11 August 1993.

<sup>1241</sup> See, e.g., P00799, Stamped order summoning Ilija FRANJIC (Croatian Defence Council Rama Bde Comd), Marinko BELJO (Croatian Defence Council Military Police Unit - Prozor) and Jozo MESTROVIC (Croatian Defence Council Military Police Prozor Comd) to the office of Croatian Defence, 25 November 1992; P01098, Stamped order by Bruno STOJIC, banning wearing uniforms and weapons to all Croatian Defence Council members and other individuals in HZHB except to officials. Ref: 02-1/2-22/93, 11 January 1993

involvement in the work of the MP, as alleged by the Prosecution.<sup>1242</sup> Secondly, his involvement was restricted to administrative tasks such as signing appointments,<sup>1243</sup> organising training of the MP,<sup>1244</sup> organising the work and housing of the MP,<sup>1245</sup> or improving the repartition in the field.<sup>1246</sup> Likewise, the few reports by the MP that were sent to Stojić were due to this administrative function in organising logistics.<sup>1247</sup> These orders do not demonstrate that Stojić had the authority to issue operative orders to MP units. Such authority was attributed exclusively to the command of the formation. Finally, the orders presented by the Prosecution to demonstrate Stojić's involvement in the MP's daily activities were all merely co-signed by Stojić, and in fact required the signature of a military officer in order to have the proper authority, actually demonstrating his lack of command authority over the MP.<sup>1248</sup>

<sup>1242</sup> Indictment, para. 17.2(c). There are only a few instances in which Valentin Ćorić applies an order given by Stojić. See, e.g., (in relation to mobilization) P03077, Stamped order based on proclamation 02-1-765/93 of 30 June 1993 of Bruno STOJIC and Jadranko PRLIC, signed by Valentin CORIC. Ref: 02-4/3-01-1540/93, 1 July 1993.

<sup>1243</sup> P01422, Signed and stamped proposal issued by Valentin ĆORIĆ to Bruno STOJIC re: appointment of MP Administration officers. Ref. 02-4/3-01-239/93, 4 February 1993; P01420, Stamped proposal to appoint officers to the Military Police Administration addressed to Bruno STOJIC and signed for Valentin ĆORIĆ. Ref: 02-4/3-01-239/93, 4 February 1993; P01457, Signed decision, ref. 02-1-24/93, issued by Bruno STOJIC re: appointment of KRESOLVICA as Active Military Police 2 BAT Comd, taking effect on 10-Feb-1993, 10 February 1993; P01460, Signed decision, ref. 02-1-22/93, issued by Bruno STOJIC re: appointment of Zdenko ANDABAK as Main and Traffic Military Police Dept Chief, taking effect on 10-Feb-1993, 10 February 1993; P01466, Signed decision, ref. 02-1-23/93, issued by Bruno STOJIC re: appointment of Mijo-Zlatan JELIĆ as Active Military Police 1 BAT Comd, taking effect on 10-Feb-1993, 10 February 1993; P02985, Signed decision, ref. 02-1-735/93, issued by Bruno STOJIC appointing Radoslav LAVRIC to the position of Deputy Head of Military Police in the Military Police Administration, 28 June 1993; P02993, Signed decision, ref. 02-1-734/93, issued by Bruno STOJIC appointing Branimir TUCAK to the position of Assistant to the Head of the Military Police Administration for security in the Military Police Administration, 28 June 1993; P03002, Signed decision, ref. 02-1-731/93, issued by Bruno STOJIC appointing Pasko LJUBICIC to the position of Assistant to the Head of the Military Police Administration for the Central Bosnia OZ in the Military Police Administration, 28 June 1993; P03487, Signed and stamped decision issued by Bruno STOJIC re: appointment of Mijo-Zlatan JELIĆ as Croatian Defence Council Military Police Administration Assistant Chief for operational zone SE. Ref. 02-1-874/93, 16 July 1993.

<sup>1244</sup> P00509, Stamped decision on establishing the Military Policemen Training Centre, signed by Bruno STOJIC. Ref: 03-59/92, 20 September 1992.

<sup>1245</sup> P00960, Signed and stamped instructions, ref. 02-4/3-01-1943/92, issued by Bruno STOJIC re: the reorganization of the Military Police unit, 28 December 1992. See also P00893, Stamped decision on allotting of the barracks in Dretelj (Capljina) to the Military Police, to serve their needs, 10 December 1992.

<sup>1246</sup> P03146, Signed and stamped order, ref. 02-1-785/93, issued by Bruno STOJIC to Croatian Defence Council P Kresimir Brigade re: Croatian Defence Council P. Kresimir Bde Military Police Coy Livno, under command of Andabak being redeployed to Mostar, 3 July 1993.

<sup>1247</sup> P02202, Special report signed and stamped by Zdenko ANDABAK Croatian Defence Council Regular and Traffic Military Police Dept Chief, addressed to Mate BOBAN, Bruno STOJIC and Valentin CORIC, regarding activities pursued by Military Police units from Livno, 5 May 1993; P05471, Signed and stamped request issued by Valentin CORIC to Bruno STOJIC, Slobodan PRALJAK and Zarko TOLE re: reconsideration of the engagement of Military Police units on frontlines. Ref. 02-4/13-01-2379/93, 29 September 1993.

<sup>1248</sup> P00876, Signed order jointly issued by Valentin ĆORIĆ, Slobodan PRALJAK & Bruno STOJIC re: regulations on Military Police Check-points ref: 02-4/3-01-1775/92, 7 December 1992; P00875, Stamped and signed joint order issued by Valentin ĆORIĆ, Slobodan PRALJAK and Bruno STOJIC re: regulating Croatian Defence Council Military Police checkpoints and the Military Police code of conduct at these checkpoints. Ref: 02-4/3-01-1775/92, 7 December 1992; P03128, Stamped order re: instructions for cleaning of the Croatian Defence Council OZ SE, listing locations and officers in charge of the execution of the order, signed by Milivoj PETKOVIĆ and Bruno STOJIC. Ref: 02-2/1-1259/93, 2 July 1993; 2D01335, Approval for safe passage to Jajce signed by Slobodan Praljak on 1992/10/28, 28 October 1992; P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin ĆORIĆ and Bruno STOJIC. Ref: 02-4/3-01-1940/92, 26 December 1992. See part on joint orders in Section 3.3.1.3.

### 3.3.2.3 Conclusion

403. The SIS and the MP on the ground were subordinated to the military formation which they formed part of and were within the military chain of command. As previously established, Stojić was not part of the military chain of command. Stojić did not receive reports on the MP and SIS activities within the formation and did not issue operative orders to the MP and SIS units. He did not appoint or dismiss members of the MP and SIS units. This refutes the Prosecution's allegation that he directed, controlled, facilitated or supported the activities and operations of those units in furtherance of the alleged JCE. Similarly, all these factors are relevant to show that Stojić did not have effective control over the MP and SIS units which would give rise to his responsibility as a commander for the alleged crimes.

### 3.3.3 Stojić did not condone crimes or failed to prevent and punish

404. As previously demonstrated, Stojić did not have effective control, *de facto* or *de jure* power or substantial influence over the HVO armed forces, including the Military Police or SIS within. Generally, Stojić did not participate in any way in the military operations of the HVO forces. He was not in a position to issue operative orders to or receive operative reports from the HVO armed forces or the MP and SIS units therein. As such, Stojić was not in a position and did not have obligation to prevent and punish crimes allegedly committed by those forces. His inaction does not amount to condoning, acquiescing or encouraging crimes. It is merely a result of his lack of authority over these forces, as well as unawareness of the alleged crimes since he was not in the chain of reporting.

405. Moreover, according to Article 137 of the Decree on Armed Forces, the MP within the armed forces are responsible to ensure "military order and discipline" and for the "elimination of criminal elements in the armed forces."<sup>1249</sup>

406. Regarding the prosecution of crimes, the minutes of HVO HZ H-B meetings demonstrate that the Department of Justice and Administration was responsible for most of the work involved in setting up the military judiciary.<sup>1250</sup> Pursuant to Article 7 of the Decree on District Military Prosecutor's

<sup>1249</sup> P00588, Decree on the Armed Forces of the Croatian Community of Herceg-Bosna signed by Mate BOBAN. Ref: 659/92, 17 October 1992, Article 137. See also P00592, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, November 1992, Decree on District military courts in the territory of HZHB in a state of war or an imminent threat of war. Ref: 629/92, 17 October 1992, Article 27. There were instances in which Boban intervened directly. He, for example, sent instructions directly to Colonel Blaškić to investigate the situation in Ahmići, of which the Deputy Head of the Defence Department had no knowledge. Slobodan Bozic, 10 February 2009, T.36695:3-22 (discussing 4D00575, Report issued by Tihomir Blaskic to Mate Boban, re: assignments received in the Office of the Supreme Commander, ref: 01-12-96/93, Vitez, 06 December 1993)..

<sup>1250</sup> See, e.g., 1D01179, Minutes from 4th session of HZ HB HVO, 22 September 1992, item 13, p. 4; P00559, Minutes of the 6th Croatian Defence Council Cabinet Meeting, 8 October 1992, items 3-5..



Offices<sup>1251</sup> and Article 20 of the Decree on District Military Courts,<sup>1252</sup> the Head of the Defence Department held *de jure* powers to propose persons to be appointed district military prosecutor, his deputies and judges and lay judges to district military courts.<sup>1253</sup> However, *de facto* the proposals were usually made by the Department of Justice and Administration.<sup>1254</sup> Moreover, reports on the activities of the judicial bodies were sent to the Department of Justice Administration, which were included in the semi-annual reports of the latter.<sup>1255</sup> This clearly shows that the control over the work of these judicial bodies was with the Department of Justice Administration.

407. Evidence shows that Stojić did not have the authority and the competence to prevent and punish crimes by the HVO forces, but that he still contributed to the mechanisms in place that ensured the prosecution of crimes. This was the duty of the commanders of the military formations.<sup>1256</sup>

### 3.3.4 No liability under Article 7 (1) and (3)

408. Regarding Stojić's JCE I liability, the Prosecution has failed to demonstrate any significant<sup>1257</sup> involvement or participation<sup>1258</sup> of Stojić intending the resultant alleged crimes<sup>1259</sup> committed by the armed forces. He did not have authority over the armed forces, including the MP and SIS units within, and was not part of the military chain of command. His knowledge was very limited, since he was not in the chain of reporting.<sup>1260</sup> Overall, he had no involvement that went beyond his logistical role.

409. All allegations under JCE II will be discussed in Section 3.5.9.<sup>1261</sup>

<sup>1251</sup> P00590, Decree on the District Military Prosecutor's offices in the territory of the Croatian Community of Herceg-Bosna in a state of war or an imminent threat of war, 17 October 1992, Article 7.

<sup>1252</sup> P00592, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, November 1992, Decree on District military courts in the territory of HZHB in a state of war or an imminent threat of war. Ref: 629/92, 17 October 1992, Article 20.

<sup>1253</sup> P00590, Decree on the District Military Prosecutor's offices in the territory of the Croatian Community of Herceg-Bosna in a state of war or an imminent threat of war, 17 October 1992, Article 7; P00592, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, November 1992, Decree on District military courts in the territory of HZHB in a state of war or an imminent threat of war. Ref: 629/92, 17 October 1992, Article 20.

<sup>1254</sup> See, e.g., P01536, Minutes of the working meeting held on 22-Feb-1993 in the HZHB Croatian Defence Council held building in Mostar, 22 February 1993, p. 3, item 15; P01652, Minutes of the 29th session of the Croatian Defence Council of the HRHB held on 11-Mar-1993 in Mostar, 11 March 1993, p.p. 3-4, point 12; 1D01179, Minutes from 4th session of HZ HB HVO, 22 September 1992, p. 4, item 13.

<sup>1255</sup> See, e.g., P03350, Department of Justice and General Administration Work Report for the period from 1 January 1993 to 31 June 1993, 10 July 1993. See also 1D01974, Report on the work of military courts and misdemeanour courts, signed for Zoran Buntic, Head of Department of Justice and General Administration, 5 August 1993.

<sup>1256</sup> P00587, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, November 1992, Decree on District military courts in the territory of HZHB in a state of war or an imminent threat of war. signed by BobanMate Ref: 629/92, Article 27.

<sup>1257</sup> See *Prosecutor v Miroslav Kvočka*, IT-98-30/1-A, Judgement, 28 February 2005, para. 97; *Prosecutor v. Momčilo Krajišnik*, IT-00-39-A, Judgement, 17 March 2009, para. 215.

<sup>1258</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 196.

<sup>1259</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 196.

<sup>1260</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 203.

<sup>1261</sup> See *Prosecutor v. Miroslav Kvočka*, IT-98-30/1-A, Judgement, 28 February 2005, para. 284.

410. Lastly, regarding his liability under JCE III, the Prosecution did not present evidence that Stojić entered with the alleged direct perpetrators to commit any particular crime. Stojić had no authority over the alleged perpetrators, the HVO armed forces. Furthermore, he had limited knowledge.<sup>1262</sup>
411. Furthermore, the Prosecution failed to provide evidence showing that Stojić designed or participated in the design of the criminal conduct constituting the alleged crimes committed by the armed force,<sup>1263</sup> that he incited, solicited, induced, or otherwise prompted the alleged crimes<sup>1264</sup> or was in a position of authority to issue binding orders and instructed the armed forces to commit the alleged crimes.<sup>1265</sup> Stojić did, therefore, not plan, instigate or order the alleged crimes committed by the armed forces.
412. As to Stojić's liability for aiding and abetting the commission of crimes, he did not act in any way that would have a "substantial effect upon the perpetration of the crime."<sup>1266</sup> In the event means provided by Stojić to the armed forces, MP or SIS within, as part of his logistical role, were used to commit crimes, Stojić lacked the required *mens rea* for aiding and abetting. He was not "aware of the type and the essential elements of the crime(s) to be committed"<sup>1267</sup> since he did not receive regular and detailed operative reports.
413. Finally, with regard to his liability pursuant to Article 7 (3) of the Statute, Stojić did not have effective control over the alleged principal perpetrators in the armed forces, including the MP and SIS within. His position did not provide for such control and he was not within the military chain of command. He was not able *de jure* or *de facto* to issue orders to the alleged direct perpetrators. The procedure for appointment of the persons in charge in the armed forces and the actual tasks that the Stojić performed clearly show that he did not have effective control.<sup>1268</sup>

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<sup>1262</sup> See *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Decision on form of Further Amended Indictment, 26 June 2001, para. 44.

<sup>1263</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 26; *Prosecutor v. Limaj et al*, IT-03-66-T, Judgement, 30 November 2005, para. 513; *Prosecutor v. Milosevic*, IT-98-29/1-T, Judgment, 12 December 2007, para. 956.

<sup>1264</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 27; *Prosecutor v. Limaj et al*, IT-03-66-T, Judgement, 30 November 2005, para. 514; *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, paras. 271, 274.

<sup>1265</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 28; *Prosecutor v. Limaj et al*, IT-03-66-T, Judgement, 30 November 2005, para. 515; *Prosecutor v. Strugar*, IT-01-42-T, Judgement, 31 January 2005, para. 331.

<sup>1266</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgement, 15 July 1999, para. 229.

<sup>1267</sup> See *Prosecutor v. Naser Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 288.

<sup>1268</sup> See *Prosecutor v. Sefer Halilović*, No. IT-01-48-T, Judgement, para. 58..

**3.4 Bruno Stojić did not take part in decisions on alleged policies of the HVO/HZ H-B and is not liable for crimes allegedly committed pursuant to any such policy**

414. Paragraphs 17 and 17.2. of the Indictment<sup>1269</sup> accuse Bruno Stojić of having participated in and contributed to the alleged JCE in various ways related to alleged HZ H-B policies. However, Stojić did not take part in decisions on such alleged policies and any involvement by Stojić was not aimed at the subjugating and removing Muslims and establishing a “Greater Croatia.” The present section will address each allegation regarding the alleged policies.

**3.4.1 Bruno Stojić did not take part in any policies aiming at the discrimination, subjugation or “Croatisation” of Muslims or any propaganda aiming at engendering hatred of Bosnian Muslims among Bosnian Croats (paragraphs 17 (d) and (e), 17.2. (i) and (l) of the Indictment)**

**3.4.1.1 Stojić did not engage in or disseminate information for purpose of engendering hatred against the Bosnian Muslims among Bosnian Croats**

415. Bruno Stojić is alleged to have engendered fear, hatred and mistrust of Bosnian Muslims among the Croats.<sup>1270</sup> In support of this allegation, the Prosecution introduced evidence allegedly showing Stojić anti-Muslims tendencies. The evidence tendered in this regard is weak and does not, in any event, support the inferences the Prosecution seek to draw. [REDACTED].<sup>1271</sup> [REDACTED].<sup>1272</sup> [REDACTED].<sup>1273</sup> [REDACTED].<sup>1274</sup> [REDACTED].<sup>1275</sup> Moreover, one such statement was allegedly made on 17 July 1993, four days after the ABiH offensive in South Mostar on 13 July 1993. It appears that rather than referring to the removal of the civilian population, the alleged statement, if made at all, referred to the conflict with the ABiH.

416. As far as documentary evidence is concerned, the Prosecution rely upon a joint statement by Prlić’s and Stojić’s, dated 30 June 1993,<sup>1276</sup> as evidence of “hate speech.” The impugned statement<sup>1277</sup> was issued immediately after the surprise Muslim attack on Mostar.<sup>1278</sup> Whilst the

<sup>1269</sup> Indictment, paras. 17(d), 17(e), 17.2(g), 17.2(h), 17.2(i), 17.2(l), 17.2(n), and 17.2(o).

<sup>1270</sup> Indictment, para. 17.2(l) and 17(d).

<sup>1271</sup> [REDACTED].

<sup>1272</sup> [REDACTED].

<sup>1273</sup> [REDACTED].

<sup>1274</sup> [REDACTED].

<sup>1275</sup> [REDACTED].

<sup>1276</sup> P03038, Signed and stamped Proclamation by Jadranko PRLIĆ, Croatian Defence Council President, and Bruno STOJIĆ, HVO Defence Department Head, re: Muslim offensive against Croat in Bosnia and Herzegovina. Number: 02-1-765/93, 30 June 1993.

<sup>1277</sup> “We should unite all our forces from every Croatian village and town [...] in order to stop the Muslim aggression. Croats from Široki Brijeg, Posušje, Čitluk, Grude, Livno, Tomislavgrad, Čapljina, Stolac and other HZ H-B municipalities, Mostar was and remained the Croatian town.” See P03038, Signed and stamped Proclamation by Jadranko PRLIĆ, Croatian Defence Council President, and Bruno STOJIĆ, HVO Defence Department Head, re: Muslim offensive against Croat in Bosnia and Herzegovina. Number: 02-1-765/93, p. 1.

Prosecution seek to impute inappropriate motives or wrong connotations to this statement, it is actually perfectly understandable and unobjectionable in the circumstances. It constitutes a message of support and encouragement to the Croat population which had just been a victim of ABiH military operations. The mention of the international community's position on Mostar, in the statement, demonstrates that rather than engendering hatred against the Muslims, Stojić was referring to the status of Mostar as defined in international peace negotiations.<sup>1279</sup>

417. The Prosecution labours under a similar fallacy in seeking to rely upon a letter of support, sent, by Stojić to HVO soldiers and Croats in Central Bosnia, on 9 June 1993.<sup>1280</sup> The attempt to characterise such a statement as an attempt to foster hatred of Muslims amongst Bosnian Croats discloses both a profound lack of realism and a most unfortunate disregard to the contents of the statement and the context in which it was made. In fact, it brings in to stark relief the paucity of the Prosecution evidence against Bruno Stojic on this issue. Any fair, objective and dispassionate reading of these two statements allow but one conclusion: They were made in response to hostile ABiH's attacks in Central Bosnia in June 1993<sup>1281</sup> and Mostar on 30 June 1993<sup>1282</sup> and were intended to instill courage and confidence in the HVO soldiers and civilians and in reaction to an ABiH attack. It would be to contort reality to seek to use such statements to ascribe to Stojić any virulence of attitude or discriminatory intent against the Muslim people in Bosnia.<sup>1283</sup> It is almost cynical to call messages of support to a suffering civilian population which is enduring attacks by armed forces, a "hate speech" against other parts of the civilian population. These statements are put into proper perspective by Antoon Van der Grinten's testimony that Stojić did not express derogatory or prejudiced views of Muslims.<sup>1284</sup>
418. As far as the wider allegation of disseminating information in order to engender hatred is concerned, Veso Vegar testified that either the Assistant Head of the IPD or Boban himself determined the information that should be disseminated.<sup>1285</sup> The information was collected and

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<sup>1278</sup> See Section 2.4.2.4.

<sup>1279</sup> "The international factors also predestined Mostar to be the capital of all Croatian territories in Bosnia and Herzegovina." See P03038, Signed and stamped Proclamation by Jadranko PRLIC, Croatian Defence Council President, and Bruno STOJIC, HVO Defence Department Head, re: Muslim offensive against Croat in Bosnia and Herzegovina. Number: 02-1-765/93, 30 June 1993, p. 1..

<sup>1280</sup> P02690, Announcement for 9 June 1993, to Deputy Commanders for Information and Propaganda, all Brigades and Independent Units, issued by Bruno STOJIC. Ref: 08-6-278/93, 9 June 1993.

<sup>1281</sup> 2D00595, Report about the situation at the Operational Zone Central Bosnia signed by Colonel Tihomir Blaskic, 8 June 1993; Veso Vegar, 17 February 2009, T.36983:8-13. See also Section 2.4.2.4.

<sup>1282</sup> 4D00480, Signed and stamped report from Milivoj Petkovic, re: report on MOS (Muslim Armed Forces) attack north of Mostar, Ref:02-2/1-01-1245/93, Mostar, 30 June 1993. See also P03025, ECMM - M2 to RCZenica: daily report for 30 June 1993; and Section 2.4.2.4..

<sup>1283</sup> In fact, all these statements by Stojić followed military operations by the ABiH. See Section 2.4.2.4.

<sup>1284</sup> Antoon Van der Grinten, 10 July 2007, T.21023:8-21024:7..

<sup>1285</sup> Veso Vegar, 18 February 2009, T.37103:14-21.

gathered on the ground and submitted through the Main Staff.<sup>1286</sup> Stojić was not involved in the process of dissemination in any way. In short, any contention that Stojić made statements or disseminated information in order to engender hatred in furtherance of a JCE or from any intent to persecute or discriminate against Muslims is as misplaced as it is unfounded.

### **3.4.1.2 Bruno Stojić did not commit any act in furtherance of the introduction of administrative policies**

#### **3.4.1.2.1 Localised incidents**

419. The Prosecution allege that the flying of the Croatian flag over buildings of public authorities was a sign of the alleged gradual “Croatisation.”<sup>1287</sup> The raising of a Croatian flag on the Prozor police station in mid-October 1992 in particular is said to be evidence of acts taken in furtherance of the alleged JCE.<sup>1288</sup> To this end, the Prosecutor tendered a report from the Prozor HVO SIS to Željko Šiljeg which states that: “The situation in town in deteriorating. After the hoisting of the Croatian flag on the police station, there is a possibility that large-scale clashes will occur in the town.”<sup>1289</sup>

420. The evidence adduced at trial, however, depicts the clash as the result of rising tensions between local police in October 1992.<sup>1290</sup> There is no evidence which proves Stojić’s participation, or involvement, in the “flag incident” in furtherance of the alleged JCE.

421. Furthermore, the Prosecution alleged that the HZ H-B/HVO provoked the predominantly Muslim population by raising a Croatian flag in the Gornji Vakuf on 6 January 1993.<sup>1291</sup> The Defence firstly note that the evidence relating to this incident in Gornji Vakuf is conflicting. Jacqueline Carter testified that she remembers a BiH flag being raised.<sup>1292</sup> Andrew Williams and a report written by the British Army refer to an incident involving an Ustasha flag being raised.<sup>1293</sup> However, both witnesses, Carter and Williams, testified that they were not actually present while the incident with the flag was taking place.<sup>1294</sup> Zrinko Tokić testified that the flag was raised by the HOS.<sup>1295</sup> In any event, none of the evidence presented suggests that Stojić participated significantly or was involved in this strictly local incident and acted in furtherance of the alleged JCE. Praljak confirmed

<sup>1286</sup> See Veso Vegar, 16 February 2009, T.36926:9-16. See also 2D01353, Report by Milivoj Petkovic to defence department referring to temporary structure of HVO, zone of operations, formation of brigades, discipline within units, 21 September 1992, p. 2; and Section 3.2.2.4.

<sup>1287</sup> Prosecution’s Pre-Trial Brief, para. 26.15.

<sup>1288</sup> Indictment, para. 45.

<sup>1289</sup> P00608, Report issued by Prozor HVO Security and Information Service to Zeljko SILJEG re: the situation in Prozor. Ref. 2-44/92, 20 October 1992.

<sup>1290</sup> See Omer Hujdur, 20 June 2006, T.3500:21-3501:8.

<sup>1291</sup> Indictment, para. 64.

<sup>1292</sup> Jacqueline Carter, 20 June 2006, T.3410:2-3.

<sup>1293</sup> See P01068, 1 Cheshire Milinfosum No. 67 (Kordic, Exhibit 298-3), 6 January 1993; Andrew Williams, 18 October 2006, T.8650:15-19.

<sup>1294</sup> See Jacqueline Carter, 20 June 2006, T.3439:10-13; Andrew Williams, 18 October 2006, T.8650:22-8651:2.

<sup>1295</sup> Zrinko Tokić, 29 September 2009, T.45352:4-5.

that “there was no order to raise this flag [...]. This was an isolated incident and tensions were allayed immediately because the commanders jumped in to calm the situation down.”<sup>1296</sup>

### 3.4.1.2.2 Measures under the control of the municipal authorities

422. The Prosecution argues that in efforts to “Croatise” municipalities in the HZ H-B, the accused were involved in the introduction of the Croatian curriculum and the Croat language in schools.<sup>1297</sup> To prove the “Croatisation”, the Prosecution, for instance, tendered evidence that a Croatian curriculum was introduced into the school system of the municipality.<sup>1298</sup> [REDACTED].<sup>1299</sup> [REDACTED]<sup>1300</sup> [REDACTED]. [REDACTED].<sup>1301</sup>

423. As to Mostar, the Prosecution allege that in 1992 the HVO “engaged in a campaign to control and ‘Croatise’ Mostar Municipality [...] with increasing persecution and discrimination aimed at the municipality’s Bosnian Muslim population.”<sup>1302</sup> The Prosecution asserted that the HVO renamed Mostar University the “Croat University in Mostar” and “stacked with Croat members.”<sup>1303</sup> There is no evidence to suggest that Stojić acted in any way to further the alleged JCE by renaming the university. These matters were dealt with at municipal level.<sup>1304</sup>

424. The Prosecution also allege that Muslims were dismissed in a discriminatory manner in Mostar.<sup>1305</sup> However, it has failed to prove that Stojić committed any act in furtherance of such dismissals. [REDACTED].<sup>1306</sup> Moreover, Tomislav Kresić testified that Stojić employed Muslims and Serbs in the public utilities company he ran and that he never discriminated against individuals because of their ethnicity.<sup>1307</sup> Not only have the Prosecution failed to establish the necessary *actus reus*, but the requisite *mens rea*, to commit the alleged crimes with discriminatory intent as part of a JCE is also missing.

425. Regarding Prozor, the Prosecution attempted to prove discrimination on the part of the HVO through the dismissal of Bosnian Muslims from government positions.<sup>1308</sup> The dismissal of each of these officials was act of the municipal HVO. All were pursuant to municipal HVO meetings and were signed by the President of the Prozor HVO.<sup>1309</sup> No evidence suggests that the Stojić played

<sup>1296</sup> Slobodan Praljak, 31 August 2009, T.44048:9-15.

<sup>1297</sup> Indictment, para. 26.

<sup>1298</sup> See Section 2.4.1.1.

<sup>1299</sup> [REDACTED].

<sup>1300</sup> [REDACTED].

<sup>1301</sup> [REDACTED].

<sup>1302</sup> Indictment, para. 90.

<sup>1303</sup> Prosecution’s Pre-Trial Brief para. 26.5.

<sup>1304</sup> See 2.4.1.1.

<sup>1305</sup> Prosecution’s Pre-Trial Brief, para. 26.7.

<sup>1306</sup> [REDACTED]; [REDACTED]. See also Section 2.4.1.1.

<sup>1307</sup> Tomislav Kresić, 2 April 2009, T.38733:23-38736:17..

<sup>1308</sup> See 2.4.1.1.

<sup>1309</sup> See P00726, Stamped decision by Mijo JOZIC Croatian Defence Council Prozor Municipality President dismissing Sidik HADZIC from the position of Director of the Prozor Vodograd Company (public water supply company). Ref:Number: 01/1-

any role in the decisions or actual removals of the officials mentioned above. The report by the SDA Prozor, for example, does not mention Stojić, but blames the discrimination and policies on the local HDZ President.<sup>1310</sup> Moreover, several documents show that the actions are localised and related to a power struggle, not a coherent and coordinated policy of discrimination emanating from central leadership aiming at subjugating Muslims and establishing the Greater Croatia.<sup>1311</sup>

426. As to the situation in Jablanica, the evidence provided by the Prosecution regarding the alleged removal of Muslims from power and the assertion of Croatian authority in the Municipality does not establish a coordinated policy of discrimination by the alleged JCE members which is aimed at subjugating Muslims and establishing the Greater Croatia.<sup>1312</sup> In particular, no evidence suggesting any involvement of Stojić has been presented by the Prosecution.

427. With regards to Čapljina, the Prosecution allege that, in 1992 and 1993, there was “increasing HVO persecution against the Muslims.”<sup>1313</sup> The evidence put forth by the Prosecution regarding such allegations shows only that the local political officials, such as the Mayor of Čapljina, engaged in discriminatory policies and held prejudiced views of Muslims.<sup>1314</sup> [REDACTED].<sup>1315</sup> No evidence of this nature was presented that involves Stojić.

428. In sum, these were all decisions by municipal bodies over which Stojić had no control, nor exerted influence.<sup>1316</sup>

### 3.4.1.2.3 Centralised bodies

429. The decrees of 9 December 1992 that were supposed to provide HVO oversight of the primary and secondary schools in BiH was issued by the HVO Presidency.<sup>1317</sup> The decrees assign responsibility of the curriculum to the HVO administrative body for education, which was independent from the Defence Department and Stojić. Palameta testified that such assignment

66/92, 10 November 1992; P00728, Stamped decision by Mijo JOZIC Croatian Defence Council Prozor Municipality President, Elvedin SAMARDZIC was dismissed from the position of Prozor Elementary School Principal, pursuant to Article 6 of the Statutory Decision of the Municipal Executive Auth, 10 November 1992; P00800, Signed and stamped decision by Mijo JOZIC, President of Croatian Defence Council Prozor Municipality. Muhamed ZAJMOVIC was dismissed from the position of Prozor Forestry Director. Ref: Number: 01/1-64/92, 25 November 1992.

<sup>1310</sup> P00744, Signed Information about situation in the municipality of Prozor and position of the Muslim people in relation to the events of 23 and 24 October 1992 from the Republic of Bosnia and Herzegovina Municipality of Prozor, Forum of Expelled Muslim Organisat, 14 November 1992, p. 3.

<sup>1311</sup> [REDACTED]; P01656, Signed Information from the Party of Democratic Action (Muslim party), Committee for the Return of the legal organs and expelled persons, about situation in Prozor before and after the conflict in October 1992. Ref: 1-01-\_\_\_/03, 12 March 1993; P00716, Signed and stamped letter by Ilija PETROVIC re. Sequence of events relating to aggravation of the situation and breakout of armed conflict between Croatian Defence Council and OS Bosnia and Herzegovina in the area of Prozor Ref. number 101-530/92, 7 November 1992.

<sup>1312</sup> See Section 2.4.1.1.

<sup>1313</sup> Indictment, para. 173.

<sup>1314</sup> See Section 2.4.1.1.

<sup>1315</sup> [REDACTED].

<sup>1316</sup> See Section 3.2.3.

<sup>1317</sup> See 1D00199, Decree on Secondary Education in the Croatian Community Herceg Bosna During an Imminent Threat of War or State of War, 9 December 1992; 1D00200, Decree on Primary Education in the Territory of the Croatian Community Herceg Bosna During an Imminent Threat of War or a State of War, 9 December 1992. .

occurred, solely due to the need to secure funding for education, within the context of a broken and ineffective state and to ensure the mere functioning of the school.<sup>1318</sup>

#### **3.4.1.3 Bruno Stojić did not have power to issue any military orders**

430. The Prosecution allege that, in furtherance of the JCE, Bruno Stojić was involved in the HVO's orders of subordination to the ABiH.<sup>1319</sup> The Prosecution contend that these orders were issued in October 1992 in Prozor,<sup>1320</sup> January 1993 in Gornji Vakuf and Mostar,<sup>1321</sup> and April 1993 in Jablanica.<sup>1322</sup> However, as established in Section 3.2.2 Stojić's role was purely administrative and he did not have *de jure* or *de facto* control over military operations of the armed forces, nor did he have the power to issue any military orders (Section 3.3.1.3). These orders referred to in this paragraph were all military orders and Stojić did not have any involvement in their issuance. Other orders were issued by municipal authorities and as established in Section 3.2.3. above, Stojić did not have authority over these municipalities.

431. Regarding Prozor, the Prosecution presented, in support of its allegations,<sup>1323</sup> a statement of the HVO President of Prozor, on 23 October 1992, that allegedly concludes that Bosnian Muslims' tensions would be solved by immediate acceptance of HVO political and military control.<sup>1324</sup> As established in Section 2.4.2.3., the situation in Prozor in October 1992 was tense. The Prosecution has, however, failed to present any evidence indicating that Stojić was involved in any way in this declaration or indeed even have knowledge of it.

#### **3.4.1.4 Any involvement of Bruno Stojić was for legitimate purposes, not for furtherance of the alleged joint criminal enterprise**

432. Regarding the situation in Gornji Vakuf, the Prosecution asserted that on 15 January 1993, "HVO authorities demanded [...] that ABiH forces in large parts of Bosnia and Herzegovina including Gornji Vakuf [and Mostar] either subordinate themselves to the HVO or withdraw from these areas. On 16 January 1993, the Prosecution allege that the HVO issued a specific ultimatum to the Bosnian Muslims in Gornji Vakuf."<sup>1325</sup> As demonstrated above, in Section 2.4.3., the measures

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<sup>1318</sup> Miroslav Palameta, T.32798:4-32802:16. See also 1D00236, Decision to take over the rights of the Founder with regard to the Secondary Electrical Engineering School Centre in Tuzla and its transformation, 19 December 1992; and 1D00200, Decree on Primary Education in the Territory of the Croatian Community Herceg Bosna During an Imminent Threat of War or a State of War, 9 December 1992.

<sup>1319</sup> Indictment, paras. 65, 75, 92.

<sup>1320</sup> Indictment, para. 45. See also Prosecution's Pre-Trial Brief, Confidential Annex 1, Proposed Fact no. 35.

<sup>1321</sup> Indictment, paras. 65 and 92.

<sup>1322</sup> Indictment, para. 75.

<sup>1323</sup> Indictment, para. 45.

<sup>1324</sup> P00628, Letter from Prozor Croatian Defence Council Presidency and Croatian Defence Council to the Muslim civilians and military representatives in Prozor. re: proposals for overcoming the newly arisen political and security situation. Ref. 01-23/92, 23 October 1992. See also P01656, Signed Information from the Party of Democratic Action (Muslim party), Committee for the Return of the legal organs and expelled persons, about situation in Prozor before and after the conflict in October 1992. Ref: 1-01-\_/03, 12 March 1993; [REDACTED].

<sup>1325</sup> Indictment, para. 65.



taken by the HVO regarding the subordination of the ABiH had legitimate purposes and was not in furtherance of a common plan involving the commission of crimes. Therefore, Stojić's alleged involvement does not show the necessary intent to commit a crime, but has to be seen in the light of the efforts made by the HVO to increase military effectiveness.

433. Regarding Jablanica, the Prosecution has alleged that the HVO issued an ultimatum in "Jablanica Municipality and Sovići and Doljani, to either subordinate themselves to the HVO or leave these areas by no later than 15 April 1993."<sup>1326</sup> The very issuance of this "ultimatum" has been questioned during trial.<sup>1327</sup> In any event, no evidence has been put forth that Stojić was involved in or took any action to further the alleged ultimatum.

### **3.4.2 Stojić was not involved in the shipment of arms through BiH in participation in and furtherance of the alleged JCE (paragraph 17.2.(g) of the Indictment)**

434. The Prosecution alleges that Bruno Stojić "controlled and regulated the shipment of military equipment, arms and ammunition into or through the territory claimed by Herceg-Bosna" in furtherance of the JCE to subjugate Muslims and establish a Greater Croatia.<sup>1328</sup> However, evidence shows that Stojić's role regarding the shipment of military equipment was very limited and any involvement was for legitimate purposes.

#### **3.4.2.1 Bruno Stojić's limited role in the shipments**

435. Contrary to the allegation set forth by the Prosecution, Stojić's involvement in shipment of weapons and military equipment was limited. The pre-existing HVO main logistics base in Grude was placed under the Defence Department in May 1993.<sup>1329</sup> Even after the incorporation of the logistics base, Stojić's involvement in the shipments was limited. Arms were shipped directly either to the units or to Grude, without the involvement of the Defence Department. In addition, the Defence Department did not have control over the municipal warehouses.<sup>1330</sup>

436. The HVO central logistics base in Grude was established as a storage facility by the Crisis Staff in Grude after attacks by the Serbs on Ravno at the end of 1991.<sup>1331</sup> At the beginning of 1992 it became the regional warehouse and in April 1992 it became the logistics base of the Main Staff.<sup>1332</sup>

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<sup>1326</sup> Indictment, para. 75.

<sup>1327</sup> See P10675, Implementation of the Ultimatum given to the Muslims to leave the Croat controlled areas in April 93. (Particularly, Mark Heinrich, *Bosnian Croats demand Moslem troop pullouts*, Reuter News, 4 April 1993). There is some dispute as to whether statements made by the HVO were correctly deemed ultimatums. See Veso Vegar, 18 February 2009, T.37153:10-37154:10; Witness 4D AB, 25 November 2009, T.47337:13-19. See also section 2.4.3.2.

<sup>1328</sup> Indictment, para. 17.2(g).

<sup>1329</sup> See also Section 3.2.2.6.1.

<sup>1330</sup> See also Section 3.2.2.6.1.

<sup>1331</sup> Tihomir Majić confirmed that he started procuring arms in Grude under the Crisis Staff. The warehouse formed part of the Main Staff. In May 1993 it was placed under the Procurement Sector of the Defense Department. See Tihomir Majić, 9 March 2009, T.37807:23-37808:5..

<sup>1332</sup> Tihomir Majić, 3 March 2009, T.37812:23-37813:6.

It was placed under the Defence Department only on 20 May 1993.<sup>1333</sup> In the same month Ante Jelavić became Assistant Head for Supplies, Procurement and Production.<sup>1334</sup> During the period leading up to May of 1993, the logistics base in Grude was not under the Defence Department and did not fall within Bruno Stojić's responsibility.<sup>1335</sup>

437. The usual procedure was that the requests for supplies were sent by the military units to the HVO central logistics base in Grude.<sup>1336</sup> Requests were authorised by the Head of the Central Logistics base, Ante Jelavić. This authorisation would then be sent to the warehouse for execution.<sup>1337</sup> Requests were sometimes sent to the Defence Department for information only.<sup>1338</sup>

### **3.4.2.2 The purpose of the shipments was legitimate and not criminal**

438. Shipments of MTS were for legitimate purpose against Serb aggression. MTS were not only sent to the HVO units, but also to the ABiH. Stojić's limited involvement in these shipments was only for these legitimate defence attempts.

439. There is ample evidence indicating shipment of weapons from Croatia to the HVO central logistics base in Grude. In many cases, shipments were meant to be divided between the HVO and the ABiH.<sup>1339</sup> In some instances, Stojić was involved in the cooperation with the ABiH on the transport of MTS. For example, on 8 January 1993, an agreement was signed between Stojić and other HVO representatives and the ABiH regarding shipment of MTS to the municipality of Konjic.<sup>1340</sup>

440. Stojić's involvement was not limited to shipments to areas where the ABiH and HVO fought jointly. These shipments were also sent to Srebrenica, when the ABiH was struggling to defend the area and was depending on this MTS.<sup>1341</sup>

<sup>1333</sup> P02477, Signed and stamped Decision by Mate BOBAN and Bruno STOJIC on the internal organization of the HVO Defence Department, replacing the decision of 17/10/92 Ref. Number 02-1-496/93, 20 May 1993, section E(VII).

<sup>1334</sup> P02190, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, issue No. 12 July 1993. Decision on the appointment of Ante JELAVIC as Assistant Chief of Croatian Defence Council, Ministry of Defence for Supplies, Procurement and Production., 5 May 1993. See also 2D02000, Davor Marijan – Expert Report, para. 74.

<sup>1335</sup> Tihomir Majić, 9 March 2009, T.37812:23-25; 37814:8-12. See also P02477, Signed and stamped Decision by mate Boban and Bruno Stojić on the internal organization of the HVO Defence Department, replacing the decision of 17/10/92, 20 May 1993..

<sup>1336</sup> See Section 4.xx.

<sup>1337</sup> Tihomir Majić, 2 March 2009, T.37835:19-22.

<sup>1338</sup> 3D00008, OR-3-2, ORDER ISSUED BY V. ZAGOREC, 6 March 1993.

<sup>1339</sup> 2D00630, Signed and stamped Order issued by Ivan CERMAK for issuance of arms & ammunition for 106st Brigade of HVO in Orasje Ref. Number 512-07-06/92-01/252, 10 October 1992; 3D00009, OR-A-2-5, ORDER ISSUED BY V. ZAGOREC, 26 March 1993; 3D00010, MULJ-1-11-75, ORDER ISSUED BY V. ZAGOREC, 30 March 1993. See also Section 3.3.2.

<sup>1340</sup> 2D00809, Agreement signed by Bruno Stojić, Ivica Dzinovic, Dzevad Hadzihuseinovic, Safet Prucevic, Dzevdet Tinjic, Mato Nadjelic and Srečko Rebensten on 1993/01/08; transport of materials from Igman to Konjic, 8 January 1993.

<sup>1341</sup> 2D01101, Document by Supreme Command Headquarters of ARBiH - Sarajevo signed by Sefer Halilović Head of Supreme Command Headquarters on 1993/03/04 - request for authorization of the transport of confiscated MTS, 4 March 1993; Andjelko Makar, 23 March 2009, T. 38454:161-38455:3. Shipments were also sent to the ABiH for the defence of Sarajevo. See 2D00195 (A), Letter to Bruno Stojić - Dragan Vikic, 23 February 1993.

441. Furthermore, these shipments did not stop when the HVO and ABiH were in conflict in Central Bosnia.<sup>1342</sup> On 30 March 1993, an order was sent from the Croatian Ministry of Defence to Stojić, listing arms and medical supplies to be sent to the ABiH through Grude.<sup>1343</sup>

442. In sum, there was a procedure in place for the procurement of MTS of military units which bypassed Stojić. However, his limited personal involvement in arms shipments, including during periods of conflict with the ABiH in Central Bosnia, refutes the Prosecution's allegation that Stojić's involvement in arms shipments contributed to or furthered the alleged JCE to subjugate Muslims and establish a "Greater Croatia." There is no evidence that shows that Stojić provided a substantial contribution to the alleged JCE through his involvement in the transfer of weapons and that by doing so he shared the intent to pursue the common purpose. The shipment of arms was carried out for the legitimate and legal defence by the HVO and the ABiH against the Serbs.

**3.4.3 Bruno Stojić did not facilitate the support of Republic of Croatia for HVO armed forces in participation in or furtherance of the alleged JCE (paragraph 17.2.(h) of the Indictment)**

443. The Prosecution's allege that Stojić, acting in furtherance of and participating in the JCE, facilitated Croatia's military, logistical and financial involvement.<sup>1344</sup> However, Stojić did not take part in Croatia's alleged military involvement, since he was not part of the military chain of command of the HVO.<sup>1345</sup>

444. Nor was Stojić involved in the financing of the HVO armed forces.<sup>1346</sup> In fact, Stojić did not take part in any alleged financial assistance for the HVO armed forces or contribution to the plans of the armed forces by Croatia. Regarding the HVO financial affairs, Witness I confirmed that the documents pertaining to HVO Mostar related to the govern HVO HZ H-B ment account, whereas, documents referring to the HVO Grude were military accounts. He then confirmed that Stojić was not in Grude at the time.<sup>1347</sup> Witness I also discussed a loan in the amount of 306.909.700 Croatian dinar, confirming that this was not signed by Stojić, but by Petković.<sup>1348</sup>

445. As to Croatia's logistical involvement, any steps taken by Stojić were not for illicit purposes but in relation to the defence against the Serbs. As established in Section 2.3.2. and 2.5.3.1., Croatia provided MTS and facilitated the transfer for the use by the ABiH and HVO. Those shipments to the ABiH continued even when the ABiH attacked the HVO in Central Bosnia. Therefore,

<sup>1342</sup> See Section 2.4.2.4.

<sup>1343</sup> 2D00311, No. 512-08/93-01, ORDERING - For distribution of material resources for BiH Armed forces purposes. From: REPUBLIC OF CROATIA MINISTRY OF DEFENCE To: Mr. Bruno Stojić And Mr. Safet Orucevic, 30 March 1993.

<sup>1344</sup> Indictment, para. 17.2(h)

<sup>1345</sup> See Section 3.3.1.

<sup>1346</sup> See Section 3.3.1.4.

<sup>1347</sup> Witness I, 8 October 2007, T.23374:4-9..

<sup>1348</sup> Witness I, 8 October 2007 (discussing P10291, Combination of exhibits 00910, 00913, 00923, 00920, 00935 and 00909 for use with Witness I)..

shipments of MTS from Croatia were not carried out as a part or in furtherance of the alleged JCE. In any event, Stojić's involvement in those arm shipments, as argued in Section 4.4.2. was very limited and for legitimate defence purposes, rather than aiming at subjugating and removing Muslims and establishing a "Greater Croatia."

446. Therefore, the Prosecution failed to prove that Stojić facilitated Croatia's alleged support for the HVO armed forces in furtherance of the JCE aiming at removing and subjugating Muslims and establishing a "Greater Croatia."

#### **3.4.4 Bruno Stojić did not block passage of humanitarian aid to Bosnian Muslims in participation in or furtherance of the alleged JCE (paragraph 17.2.(o) of the Indictment)**

447. The Prosecution alleges that Bruno Stojić "controlled and regulated the flow of humanitarian aid to Bosnian Muslims, including in East Mostar, and prevented international organisations and relief groups from entering East Mostar."<sup>1349</sup> However, evidence shows that Stojić was not involved in the regulation of and did not block humanitarian aid.

##### **3.4.4.1 Bruno Stojić was not involved in the regulation of humanitarian aid**

448. [REDACTED].<sup>1350</sup> [REDACTED].<sup>1351</sup> There is no evidence suggesting that when Stojić was the incumbent of the Defence Department, it was involved in decisions regarding the passage of humanitarian aid.<sup>1352</sup>

449. [REDACTED].<sup>1353</sup> [REDACTED],<sup>1354</sup> [REDACTED].

450. In this context, it is worth mentioning that when a formal procedure was finally adopted on the passage of humanitarian convoys, no role was attributed to the newly formed Ministry of Defence.<sup>1355</sup> Furthermore, the Protocol adopted on 17 March 1994 demonstrates that the Military Police did not have a crucial role in the question of humanitarian convoy. According to this Protocol they are not in charge of controlling the loading.<sup>1356</sup>

##### **3.4.4.2 HVO institutions and persons involved in the regulation of humanitarian aid**

451. [REDACTED].<sup>1357</sup> Generally, Prlić was the person addressed by the representatives of the international organisations on passage of aid. [REDACTED],<sup>1358</sup> [REDACTED].<sup>1359</sup> Prlić also

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<sup>1349</sup> Indictment, para. 17.2(o).

<sup>1350</sup> [REDACTED].

<sup>1351</sup> [REDACTED].

<sup>1352</sup> See, e.g., 1D02207, Order signed by Col. N. Obradovic re: humanitarian and other convoys, 6 December 1993

<sup>1353</sup> [REDACTED].

<sup>1354</sup> [REDACTED].

<sup>1355</sup> 1D02025, Protocol (Instruction) on the passage of humanitarian convoys, signed by Valentin Ćorić, Jozo Martinović, Ilija Žuljević, Slobodan Božić, Martin Raguž, Drago Bagarić, Željko Siljeg, 9 April 1994.

<sup>1356</sup> 1D02024, Protocol / Instructions on the passage of humanitarian convoys, 17 March 1994.

<sup>1357</sup> [REDACTED].

<sup>1358</sup> [REDACTED].

<sup>1359</sup> [REDACTED].

negotiated the access of a convoy to East Mostar on 20 August 1993.<sup>1360</sup> [REDACTED].<sup>1361</sup> Prlić, on the other hand, reported to Mr. Mate Boban on the question of the passage of humanitarian aid.<sup>1362</sup>

452. After the Makarska Agreement, international organisations addressed their requests for free passage for their convoys to the ODP. <sup>1363</sup> The ODP would then forward the request to the Main Staff. Pursuant to the request by the ODP and based on the agreements reached by Prlić, the Main Staff issued orders and permits for free passage.<sup>1364</sup> Upon issuance of the orders, the ODP would then issue the approval of the passage of the convoy to the organisation.<sup>1365</sup> Evidence shows the ODP reported directly to Prlić,<sup>1366</sup> including in case of difficulties to obtain orders of free passage from the Main Staff. For instance, on 3 August 1993, Darinko Tadić complained to Prlić that the Office did not receive any guarantee for free passage for humanitarian aid since 30 July.<sup>1367</sup>
453. Furthermore, on the ground, it was the Main Staff that was deciding on the modalities of passage. For instance, on 31 July 1993, Praljak signed an order in relation to the inspection of UNPROFOR convoys.<sup>1368</sup> Also, if a convoy encountered difficulties to pass, the Main Staff would decide on the passage.<sup>1369</sup>
454. On 17 October 1993, representatives of the [REDACTED], ICRC, EC and UNPROFOR agreed with Prlić on the establishment of a joint commission on humanitarian issues and on the procedure to be followed regarding the passage of humanitarian convoys.<sup>1370</sup>

<sup>1360</sup> P04358, Press report re. Talks held between Cedric THORNBERRY and Jadranko PRLIĆ about blocking of humanitarian aid into East Mostar and elsewhere by Croatian Defence Council, 20 August 1993.

<sup>1361</sup> [REDACTED].

<sup>1362</sup> 1D02142, Letter of Mate Granic to Mate Boban re: humanitarian convoys, 7 December 1993.

<sup>1363</sup> Martin Raguz, 26 August 2008, T.31353:24-31354:18.

<sup>1364</sup> P03895, Stamped and signed order from Milivoj PETKOVIC to all Croatian Defence Council units re: passage of humanitarian convoys through territory controlled by Croatian Defence Council Ref. Number 02-2/1-02-1664/93, 2 August 1993. See also P01994, Signed and stamped order issued by Milivoj PETKOVIC to all Operational zone's to protect civilian population affected by war and allow free access to humanitarian convoys. Ref: 01-659/93, 20 April 1993; P00458, Stamped order, ref. 01-2114/92, issued by Milivoj PETKOVIC to all Croatian Defence Council municipal Main Staffs and Bde Comds re: allowance of passage and, if necessary, provision of security for all humanitarian aid convoys, 8 September 1992; P05138, Order issued by Milivoj PETKOVIC, ref. GS-2507-1/93 addressed to all Croatian Defence Council units to cease military actions not later than 18-Sep-1993; and all POWs to be released by 21-09-93, 17 September 1993, point 4; and P06825, Order, ref. 02-2/1-01-3428/93, issued by Milivoj PETKOVIC re: unrestricted passage of humanitarian aid convoy via Prozor, 23 November 1993.

<sup>1365</sup> 1D01360, Approval for unhindered passage for UNHCR, signed by D. Tadic, 12 October 1993. See also P03327, Daily report re: activities of Military Police Admin Ops Duty Dept. No. 02-4/3-02-/?P/ 013/93, 9 July 1993, point 5.

<sup>1366</sup> 1D02183, Letter of Martin Raguz to J. Prlić re: Joint Commission for Humanitarian Issues, 17 October 1993.

<sup>1367</sup> P03923, Signed and stamped Letter from Darinko TADIC to Jadranko PRLIC - requesting an unobstructed passage for a humanitarian aid convoy. Ref. Number 10-370-II/93, 3 August 1993.

<sup>1368</sup> P03835, Stamped order ensure unhindered passage of UNPROFOR vehicles & units; control humanitarian goods before letting them through. Ref: 02-2/1-01-1642/93, 31 July 1993.

<sup>1369</sup> P04466, Daily report signed by Zdravko TOKIC, Mostar Croatian Defence Council Military Police 5th BAT Duty Officer to HVO Military Police Administration Ljubuski and the 5th HVO\_MP Battalion re: activities of various Military Police services on 24-Aug-93. Ref:No, 24 August 1993.

<sup>1370</sup> P05926, Stamped Protocol (Instructions) on the Movement of Humanitarian Aid convoys, 17 October 1993.

455. In sum, Prlić was responsible for negotiating agreements and attending meetings on the flow of humanitarian aid. ODPH was forwarding requests for passage to the Main Staff and upon reception of an order for passage by the Main Staff, ODPH would issue a permit. Petković was the official in charge of taking the operative orders in relation to the passage of humanitarian aid. He had, furthermore, the required authority over the local commanders who at times blocked the passage of humanitarian aid and was able to remedy such situations. He reported directly to Prlić on the issue of passage of humanitarian aid.<sup>1371</sup>

#### 3.4.4.3 Bruno Stojić was not involved in the alleged Mostar blockade

456. [REDACTED].<sup>1372</sup> Only one report from UNPROFOR alleges that the “source of the current restrictions was from the Ministry of Defence.”<sup>1373</sup> Accordingly, the limited reports of this nature cast doubt on whether such difficulties, if they occurred, were the result of actions or policies by Stojić or whether the reports were based on a confused or inaccurate report of who was actually responsible for access.

457. [REDACTED].<sup>1374</sup> This is corroborated by documents and other witness testimonies of which establish that it was Boban who made the decisions regarding access to Mostar.<sup>1375</sup> [REDACTED].<sup>1376</sup> This information is confirmed by a report from the UNMO which stated on 22 August 1993 that “HVO still denies access to Mostar. It is alleged that Mr. Boban has to be back from Geneva reverse the situation and let UNMOS in.”<sup>1377</sup>

458. [REDACTED].<sup>1378</sup> Indeed, Stojić accompanied Petković to the meeting, who gave the military authorisation regarding the access to Mostar.<sup>1379</sup> [REDACTED].<sup>1380</sup> Moreover, five days after this meeting, on 25 August 1993, Petković negotiated with the UNMO regarding the passage of a convoy to East Mostar.<sup>1381</sup>

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<sup>1371</sup> P01994, Signed and stamped order issued by Milivoj PETKOVIĆ to all Operational zone's to protect civilian population affected by war and allow free access to humanitarian convoys. Ref: 01-659/93, 20 April 1993.

<sup>1372</sup> [REDACTED].

<sup>1373</sup> P03376, UNMO HQ BH Daily Sitrep for 09/10 July 1993, 10 July 1993.

<sup>1374</sup> [REDACTED].

<sup>1375</sup> See, e.g., Antoon Van der Grinten, 11 July 2007, T.21178:10-24; P05091, Security Council Distribution S/26442 Letter from the Permanent Representative of Bosnia and Herzegovina To the United Nations Addressed to the President of the Security Council, 15 September 1993.

<sup>1376</sup> [REDACTED].

<sup>1377</sup> P04430, UNMO HQ BH Daily SitRep covering period 21/22 August 1993, p. 6, item 4.

<sup>1378</sup> [REDACTED].

<sup>1379</sup> See *infra*.

<sup>1380</sup> [REDACTED].

<sup>1381</sup> P04464, UNMO BH South Report on the negotiations with Croatian Defence Council and Armija Bosnia I Herzegovina regarding the delivery of a Humanitarian Aid convoy to Mostar, 25 August 1993. See also P03895, Stamped and signed order from Milivoj PETKOVIĆ to all Croatian Defence Council units re: passage of humanitarian convoys through territory controlled by Croatian Defence Council Ref. Number 02-2/1-02-1664/93, 2 August 1993.

#### **3.4.4.4 Bruno Stojić played a positive role regarding the situation in Mostar**

459. Pursuant to his competencies as the Head of the Defence Department, Stojić was involved in the delivery of medical supply. Whilst negotiations on the medical situation in East Mostar were mostly conducted by Ivan Bagarić, Deputy Chief of the Defence Department Health Sector<sup>1382</sup> and Arif Pasalić, Stojić took steps to facilitate the treatment of sick and wounded present in East Mostar. Stojić also gave permission to carry blood and plasma to the hospital in Mostar.<sup>1383</sup> Reviewing all the evidence adduced, the defence respectfully submit that the Prosecution has failed to establish beyond reasonable doubt that Stojić played an obstructive role regarding the passage of humanitarian aid with the aim to subjugate or remove Muslims and create a Greater Croatia.

#### **3.4.5 Bruno Stojić did not direct, facilitate and participate in appropriation of property and transfer to HZ HB/HVO forces in participation in or furtherance of the alleged JCE (paragraph 17.2.(n) of the Indictment)**

460. The Prosecution allege that Stojić “directed, facilitated and participated in the seizure of movable and immovable property and its transfer to the Herceg-Bosna/HVO forces.”<sup>1384</sup> In furtherance of the alleged JCE, “Herceg-Bosna/HVO authorities and soldiers forced Bosnian Muslims to abandon their homes or sign them over to the HVO [...]” According to the Prosecution, “[s]eized or abandoned Muslim apartments and homes were often given or assigned to HVO members or Croat refugees.” Lastly, to further the JCE, the HZ H-B/HVO allegedly appropriated property belonging to the RBiH.<sup>1385</sup> Therefore, the Prosecution allege that the HVO seized property as part of the JCE to subjugate and remove Muslims and establish a “Greater Croatia.” However, as submitted below, evidence shows that the transfers of property were in accordance with legislation, which legitimately sought to regulate the situation with the aim to administer state-owned property used by the former Yugoslav institutions, as well as having private tenants in a way that protect the tenancy rights and ensure that persons in need obtained housing (Section 3.4.5.1.). These regulations were neither inherently discriminatory, nor generally applied in a discriminatory way (Section 3.4.5.2.). Additionally, during trial it was established that the municipal authorities were mainly in charge of administering housing and accommodating of refugees. Often municipal regulations pre-existed HZ H-B regulations. In any event, the municipalities were in charge of the

<sup>1382</sup> Ivan Bagarić, 20 April 2009, T.38874:12-17.

<sup>1383</sup> P02291, Signed letter from Bruno STOJIĆ for the Attention of the Commander of the Spanish Battalion of UN granting Permission whereby Spanish Bat is granted passage to take blood plasma, to the hospital in Mostar. Ref: 02-1/2-396/93, 11 May 1993; Witness DV, 1 October 2010, T.22903:15-22904:2.

<sup>1384</sup> Indictment, para. 17.2(n).

<sup>1385</sup> Indictment, para. 39(c).

implementation of the latter. Therefore, any alleged discriminatory measures cannot be imputed to Stojić.

461. Additionally, there is no evidence showing that Stojić contributed to the transfer of property as part of the JCE to subjugate and remove Muslims and create a “Greater Croatia” (Section 3.4.5.3.).

**3.4.5.1 The legislation passed by the HZ H-B regulating transfers of socially owned property was legitimate and within its purview and any property transferred with private tenants was abandoned**

462. In the former Yugoslavia, most apartments were socially owned property.<sup>1386</sup> These “premises would be allocated by municipal or state structures, institutions, or socially owned companies. [...], it would be done autonomously on the basis of regulations that allowed one to allocate tenancy rights to certain individuals.”<sup>1387</sup> In the HZ H-B, the property used by former Yugoslav institutions was transferred to the HVO authorities through legislation. Apartments with private tenants were only newly allocated if they were abandoned. The regulations were therefore within the limits of existing law and legitimate since they prevented evictions and protected the tenancy rights.

463. As established in Section 2.2.1.2., when the conflict broke out in BiH, the previous state and government structures of the former Yugoslavia collapsed. The HVO did assume state functions in an attempt to uphold a certain degree of organisation of the BiH in the absence of independent and functioning central government in Sarajevo representing all the constituent nations.<sup>1388</sup> The absence of a government exercising its functions meant in reality that the previously state-owned civil and military property was not administered anymore. For these practical reasons, Boban issued an order on 3 July 1992 that announced that the HVO would be taking over JNA and SSNO assets, and would declare such property as belonging to the HZ H-B. His decree, made the same day, supports this analysis of socially owned property. Article 1 states “The socially-owned resources on the territory of the HZ H-B,” which is managed and used by the JNA and SSNO, “shall become the property of the HZ H-B.”<sup>1389</sup> Zoran Buntić testified that this meant that the HZ H-B “[i]t could not take over the property on behalf of a third party [...], so it took ownership of the property on its own account. And ultimately, this property was subject to the succession of the former Yugoslavia.”<sup>1390</sup>

<sup>1386</sup> Martin Raguz, 25 August 2008, T.31306:3-4. See also Zoran Buntić, 7 July 2008, T.30299:14-18.

<sup>1387</sup> Martin Raguz, 25 August 2008, T.31306:11-15.

<sup>1388</sup> See Section 2.2.1.2..

<sup>1389</sup> P00424, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992 Decree on the Transfer of the Assets of the JNA/Yugoslav People's Army/ and SSNO/ Federal Secretariat for National Defence/ on the Territory of the HZ H-B, Article 1.

<sup>1390</sup> Zoran Buntić, 7 July 2008, T.30300:3-8.



464. The transfer of property formerly used by the Yugoslav institutions did not lead to any evictions of Muslims. Contrary to the allegations,<sup>1391</sup> it was not aiming at subjugating Muslims or establishing a "Greater Croatia." Its objective was to administer public and civil life in the absence of independent and functioning central government in Sarajevo.
465. Regarding property which was inhabited by persons with tenancy rights, the HVO Presidency, in July 1993, signed a piece legislation governing the temporary allocation of abandoned apartments that was nearly identical to that passed by Izetbegović a year earlier.<sup>1392</sup> The July 1993 decree defined abandoned apartments as:
- a) an apartment whom the holder of the tenancy rights and the family members in his household who live there together on a permanent basis have abandoned and temporarily ceased to use
  - b) an apartment in which weapons or ammunition have been found for which an appropriate permit cannot be obtained in accordance with the laws in effect have been discovered, or an apartment from which enemy activity was conducted, and
  - c) an empty apartment to which no one holds tenancy rights, and for which no lease agreement exists.<sup>1393</sup>
466. As in the decree issued by Izetbegović in June 1992, the municipality where the apartment was located was responsible for making the determination of whether or not an apartment could be considered abandoned.<sup>1394</sup>
467. Martin Raguz clarified that in the case of socially owned property, "the municipality did have the right [...] to give it to someone else and to determine which apartments are considered abandoned."<sup>1395</sup> When questioned about Article 2(b) of the July 1993 decree (regarding the existence of ammunition in an apartment), Raguz clarified: "Article 2 refers to an aspect which does not relate merely to ownership but also that an apartment may be declared abandoned if it was used for an illegal purpose."<sup>1396</sup>

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<sup>1391</sup> Indictment, para. 39(c)

<sup>1392</sup> See P03089, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, July 1993, Decree on the use of abandoned apartments. Ref: 01-I-419/93, 1 July 1993.

<sup>1393</sup> P03089, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, July 1993, Decree on the use of abandoned apartments. Ref: 01-I-419/93, 1 July 1993, Article 2.

<sup>1394</sup> P03089, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, July 1993, Decree on the use of abandoned apartments. Ref: 01-I-419/93, 1 July 1993, Article 5. See also 1D01223, Decree law on abandoned apartments, 15 June 1992, Article 5..

<sup>1395</sup> Martin Raguz, 28 August 2008, T.31562: 23-25.

<sup>1396</sup> Martin Raguz, 25 August 2008, T.31296:2-4.

468. The Prosecution alleges that Bosnian Muslims were forcibly expelled from their apartments in order to provide accommodation for Bosnian Croat refugees or HVO soldiers.<sup>1397</sup> However, such action was illegal under the decree passed by the HVO Presidency in July 1993. The decree clearly stated that “[a]n apartment which has been abandoned by the holder of tenancy rights with the family members of his household due to the use of physical force and the objective of ethnically cleansing the populace” or “[a]n apartment which was destroyed, torched or whose tenants were in indirect danger from war-time activities” were not to be considered “abandoned.”<sup>1398</sup> It is not contested that there might have been isolated incidents in which tenants of apartments were removed in contravention to this law: “I never denied that there were individual cases.”<sup>1399</sup> However, no laws were passed by the HVO that allowed for illegal expulsion tenants and dispossession of property. Zoran Buntić testified that he was not aware of any case where the HZ H-B or the HVO “adopted any decision whereby private property would be taken over into the ownership of the Croatian Community or of the HVO.”<sup>1400</sup> However, witness Raguz acknowledged that “[w]e saw some decisions about the eviction of [...] flats that were illegally moved into [...] Some municipalities rescinded the status of refugees and displaced persons so that temporarily occupied apartments could be restored to earlier owners, previous owners.”<sup>1401</sup> He also stated that “if there was such physical force, it cannot be considered an abandoned apartment, according to the provisions of this article [...].”<sup>1402</sup> In fact, also on the municipal level, the Mostar HVO passed a law in December 1992 that prohibited the transfer of property during a state of war for this very reason – so that minorities could not be forced to sell their property and move.<sup>1403</sup>

469. At this point, it is important to note that while the decree provided guidelines, the actual implementation was left to the individual municipalities.<sup>1404</sup> Evidence suggests that municipalities were already beginning to adopt regulations on the allocation of abandoned flats prior to the July 1993 decree.<sup>1405</sup> The Mostar HVO President, Jadran Topić, issued a decision on 24 July 1992,

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<sup>1397</sup> Indictment, para 39(c).

<sup>1398</sup> P03089, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, July 1993, Decree on the use of abandoned apartments. Ref: 01-I-419/93, 1 July 1993, Article 3. See also Martin Raguz, 28 August 2008, T.31561:25-31562:6.

<sup>1399</sup> Martin Raguz, 28 August 2008, T31562:6. See also Zoran Buntić 7 July 2008, T.30313:22-23.

<sup>1400</sup> Zoran Buntić, 7 July 2008, T.30313:23-30314:1.

<sup>1401</sup> Martin Raguz, 28 August 2008, T.31563:5-9.

<sup>1402</sup> Martin Raguz, 28 August 2008, T.31562:2-6.

<sup>1403</sup> See 1D00669, Decision on utilising immovable property, 2 December 1992. See also [REDACTED]; and 1D01892, Decree prohibiting property (real estate) transactions in wartime or under immediate threat of war, 22 December 1993 (also demonstrating the power of the municipalities in the fact that the Mostar HVO issued this decision on 2 December 1992, and the HVO Presidency did not issue such a decision until 22 December 1993)..

<sup>1404</sup> See P03089, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, July 1993, Decree on the use of abandoned apartments. Ref: 01-I-419/93, 1 July 1993, Article 5; Martin Raguz, 25 August 2008, T.31288:18-20. See also Zoran Perković, 2 September 2008, T.31767:1-4 (regarding Livno municipality).

<sup>1405</sup> See, e.g., 1D00618, Decision to amend Decision on temporary use of abandoned homes, 16 September 1992 (Mostar); 1D00613, Decision to evict illegal tenants from flats formerly owned by JNA, 16 September 1992, (Mostar.); 1D01198,

which provided regulations on the definition of an abandoned apartment and how such apartments were to be allocated amongst the people.<sup>1406</sup> This evidences of the authority the municipalities had even prior to HB H-Z decrees which explicitly gave them such.

470. Additionally, the municipalities were the decision-makers regarding the number of refugees that each would accept.<sup>1407</sup> This fact was made clear in the course of trial. When asked “could you actually order [the municipalities] [...] to say these refugees coming from Central Bosnia will – should be here, let’s try and find some accommodations [?]”<sup>1408</sup> Witness Raguz replied, “I didn’t issue any orders nor was I able to do so [...]. [T]here were no orders issued, this is not how we worked and this was not a possible way of working for me.”<sup>1409</sup>

471. In conclusion, the HVO/HZ H-B issued decisions which allowed the administration of property formerly owned by Yugoslav institutions, as well as abandoned property with tenancy rights or which has been used by enemy forces. These laws in fact imposed limits on the transfer of property.<sup>1410</sup> Any decisions to evict those living illegally in abandoned flats were made solely by the municipalities, which were in charge of the implementation of the regulations and often already issued regulations before the HZ H-B authorities.

### **3.4.5.2 Assignment of property was not conducted in a discriminatory manner**

472. The Prosecution has alleged that Bosnian Muslims were evicted from their flats in order to make room for Bosnian Croat refugees, and that abandoned flats were allocated in a discriminate manner, favouring the Bosnian Croats.<sup>1411</sup> [REDACTED].

473. The Prosecution puts forth the Decision of 29 April 1993 by Jadran Topić on the status of refugees in Mostar.<sup>1412</sup> The Prosecution asserts that the requirement that a refugee not be staying in an abandoned apartment, in order to receive a refugee or expellee card, differed from similar

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Decision on the rights and obligations of refugees / HVO Stolac, 1December 1992 (Stolac); 1D00754, Decision / rights granted to refugees, 15 April 1993 (Mostar); and 1D00749, Decision to move out all persons, 19 April 1993 (Mostar).

<sup>1406</sup> 1D00606, Decision / temporary use of apartments, 25 July 1992. See also 1D00625, Conclusion to amend Conclusion on the implementation of Decision no. 01-52/92 on temporary use of flats, 16 September 1992.

<sup>1407</sup> See Martin Raguz, 25 August 2008, T.31286:10-15.

<sup>1408</sup> Martin Raguz, 25 August 2008, T.31288:7-9.

<sup>1409</sup> Martin Raguz, 25 August 2008, T.31288:10-13.

<sup>1410</sup> See P00553, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue 5, October 1992: Decision on the status of Refugees and displaced persons on the territory of the HZHB at a time of imminent threat of war or during a State of War. Ref: 01/53/92-R, 7 October 1992; 1D01892, Decree prohibiting property (real estate) transactions in wartime or under immediate threat of war, 22 December 1993

<sup>1411</sup> Indictment, paras. 39(c), 99-100, 107, 159, 175, 182.

<sup>1412</sup> See P02144, Stamped and signed Decision of Jadran TOPIC Croatian Defence Council Mostar on criteria to qualify for Humanitarian assistance. Ref: 01-273/93, 29 April 1993, section I, para. 1. See also Martin Raguz, 27 August 2008, T.31493:16-19.

decisions elsewhere and resulted in the expulsion of Muslims from their residences.<sup>1413</sup>  
[REDACTED].<sup>1414</sup>

474. As established above, individual municipalities were responsible for implementing the specifics of allocating abandoned housing.<sup>1415</sup> Moreover, pursuant to Articles 3 and 5 of the Decision on the Status of Refugees and Displaced Persons in HZ H-B the Municipalities were solely and uniquely responsible in order to grant the refugee status and to provide the refugees and displaced person with the necessary aid.<sup>1416</sup> This delegation to municipalities was not unique to the HVO – regulations passed by the BiH government regarding refugee status also delegated substantial discretion to the municipalities.<sup>1417</sup> While the Mostar municipality passed a Decision concerning the eviction of all tenants residing illegally in abandoned housing in September 1992,<sup>1418</sup> the municipality of Tuzla, which was not under complete HVO control,<sup>1419</sup> was doing the same thing in May and June 1992.<sup>1420</sup> Additionally, the government of BiH passed its own law in October 1992 that stated a refugee's status could be revoked "if he/she refuses the offered organised accommodation and other forms of organised assistance."<sup>1421</sup> Raguz explained during his testimony that it was a product of the conditions of the time. The municipalities "would have enormous requests and problems with respect to accommodation and they had to investigate [*sic*] enormous efforts to find appropriate accommodations. So it is quite understandable for this [...] to figure here, which says that – which refers to organised necessary accommodation or temporary accommodation, because that was the only accommodation that it was possible to offer people at the time."<sup>1422</sup>

475. [REDACTED].<sup>1423</sup> The report contains the organisation's reaction to Decision relating to refugee status cards issued by Jadran Topić on refugee status.<sup>1424</sup> [REDACTED].<sup>1425</sup> [REDACTED].<sup>1426</sup> The

<sup>1413</sup> See P02144, Stamped and signed Decision of Jadran TOPIC Croatian Defence Council Mostar on criteria to qualify for Humanitarian assistance. Ref: 01-273/93, 29 April 1993, I, para. 1. See also Martin Raguz, 27 August 2008, T.31493:16-19.

<sup>1414</sup> [REDACTED].

<sup>1415</sup> Martin Raguz, 25 August 2008, T.31284:1-4; 27 August 2008, T.31482:4-8.

<sup>1416</sup> P00553, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue 5, October 1992: Decision on the status of Refugees and displaced persons on the territory of the HZHB at a time of imminent threat of war or during a State of War. Ref: 01/53/92-R, 7 October 1992, Articles 3, 4 and 5.

<sup>1417</sup> See P00553, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue 5, October 1992: Decision on the status of Refugees and displaced persons on the territory of the HZHB at a time of imminent threat of war or during a State of War. Ref: 01/53/92-R, 7 October 1992, Article 3 (p. 1); 1D01232, Decree law on displaced persons and refugees, 7 October 1992, Article 17; and Martin Raguz, 25 August 2008, T.31289:10-31290:4.

<sup>1418</sup> See 1D00613, Decision to evict illegal tenants from flats formerly owned by JNA, 16 September 1992.

<sup>1419</sup> See Zoran Buntić, 8 July 2008, T.30333:9-18.

<sup>1420</sup> See 1D01157, Order on the eviction of illegal tenants from socially-owned flats in Tuzla municipality, 21 May 1992; 1D01385, Order evicting persons and property from unlawfully occupied socially-owned flats, 8 June 1992.

<sup>1421</sup> 1D01232, Decree law on displaced persons and refugees, 7 October 1992, Article 21(3).

<sup>1422</sup> Martin Raguz, 25 August 2008, T.31272:4-10.

<sup>1423</sup> [REDACTED].

<sup>1424</sup> P02144, Stamped and signed Decision of Jadran TOPIC Croatian Defence Council Mostar on criteria to qualify for Humanitarian assistance. Ref: 01-273/93, 29 April 1993.

ODPR was an independent office of the HVO that was not under any Department.<sup>1427</sup> The entity that it worked closest with was the Department of Labour and Social Welfare,<sup>1428</sup> but it was not subordinated to it, and the Department could not give orders to the Office.<sup>1429</sup>

476. Indeed, evidence suggests that the number of refugees far outnumbered the available accommodations.<sup>1430</sup> Additionally, refugees and expelled persons, both Croat and Muslim, were coming to Mostar from a multitude of other municipalities and towns, with no real procedure set up on how to process them.<sup>1431</sup> [REDACTED].<sup>1432</sup> Nevertheless, evidence shows that the Mostar HVO took concrete steps to ensure that allocation of housing was done in as fair a way as possible. In March 1993, Topić issued a Decision to set up housing commission that would be in charge of the allocation of abandoned housing.<sup>1433</sup> On 1 April 1993, the proposed housing commission was actually established, with five named commissioners – two of whom were Bosnian Muslims.<sup>1434</sup>

477. The situation in Mostar during this time has been described as chaotic by Prosecution and Defence witnesses alike.<sup>1435</sup> In order to accommodate the greatest amount of refugees possible, it was necessary that the allocation of abandoned apartments be regulated. Had such regulation not been enforced, it would have resulted in chaos.

478. [REDACTED].<sup>1436</sup> [REDACTED].<sup>1437</sup> [REDACTED].<sup>1438</sup> [REDACTED].<sup>1439</sup>

479. This attitude did not go unnoticed by those in the HVO at the time. Evidence shows that the HVO had specifically requested three experts in humanitarian issues to come to Mostar to aid with the increasing humanitarian crisis.<sup>1440</sup> Raguz, when asked to describe the effectiveness of the UNHCR during this time, replied that “they didn’t have the opportunity to exactly assess what would happen with the refugees and expelled persons [...] And we were repeatedly instructed by the UNHCR

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<sup>1425</sup> [REDACTED].

<sup>1426</sup> [REDACTED].

<sup>1427</sup> Martin Raguz, 25 August 2008, T.31251:8-9.

<sup>1428</sup> Martin Raguz, 25 August 2008, T.31251:12-13.

<sup>1429</sup> Martin Raguz, 25 August 2008, T.31251:20-24.

<sup>1430</sup> See P09593, Letter dated 07-May-93 from TADIC, Darinko, Office for Displaced Persons and Refugees to UNHCR Mostar. TADIC explains why the mayor of Mostar altered the status of certain categories of Refugees and DPs, 31 May 1993, p.2; Martin Raguz, 28 August 2008, T.31552:20-31553:7; T.31557:20-21.

<sup>1431</sup> Martin Raguz, 28 August 2008, T.31552:21-23.

<sup>1432</sup> [REDACTED].

<sup>1433</sup> See 1D00717, Decision / commission for allocating apartments owned by HVO, 5 March 1993.

<sup>1434</sup> See 1D00730, Decision / HVO Mostar housing commission, 1 April 1993. [REDACTED].

<sup>1435</sup> See, e.g., Martin Raguz, 28 August 2008, T.31552:20-23; Milivoj Gagro, 29 May 2006, T.2749:21-22.

<sup>1436</sup> [REDACTED].

<sup>1437</sup> [REDACTED].

<sup>1438</sup> [REDACTED].

<sup>1439</sup> [REDACTED].

<sup>1440</sup> 1D02141, Branko Culo, Lovre Pejkoć, Andro Vlakušić from the Office for Refugees and Displaced Persons of Croatia visiting HZ HB, 16 August 1993.

regarding various issues and we sought to react adequately, and in our communication with them [...] we didn't have the timely support nor timely information from the UNHCR."<sup>1441</sup>

480. In conclusion, the evidence shows that the HVO did not seize and transfer private apartments or houses from the legitimate tenants. Nor does evidence prove the existence of discriminatory policies that led to the seizure and transfer of property with private tenancy rights. HVO legislation regarding the issue of control over property with private tenants prohibited such illegal seizure and transfers and provided a legal framework for a lawful transfer of property in exceptional cases. Acts concerning the temporary allocation of abandoned housing were done in accordance with properly passed laws and give no indication of an illegal or discriminatory motive — such acts were applicable to both Muslims and Bosnian Croats alike. Moreover, the actual implementation of the housing allocation was conducted by municipal HVOs, who did not receive orders from “central” HVO institutions. Furthermore, tying up the regime applying to abandoned housing and the issue of refugee status was not aiming at removing Muslims, but rationalising assistance for all persons in need. This was done in municipalities outside of the HZ H-B. The evidence the Prosecution puts forth is deficient in material respects and lacks credibility due to the fact that its main witness on this issue is called to report and give evidence regarding the actual situation on the ground, yet she was not even aware of the laws and decisions that were being passed that directly affected the topic upon which she was reporting.

### **3.4.5.3 No evidence Bruno Stojić played any role in the alleged transfer or appropriation of property in furtherance of the JCE**

481. The Prosecution has failed to present evidence showing that Stojić was significantly involved in legislation resulting in acts of eviction and transfer of property aimed at removing Muslims and creating a Greater Croatia. In fact, Stojić contributed to the drafting of the Decree on the temporary use of military apartments in HZ H-B. The Decree lists the procedure for the temporary allocation of empty, vacated or abandoned flats to families of soldiers. It required that the previous tenant of the house being allocated be informed about its new occupants in detail. It further protects the rights of the original tenant by stipulating that the new occupant acquires no rights over the property.<sup>1442</sup> The wording of the Decree clearly indicates that it does not target specifically Muslim tenants, but applies to all tenants equally. Moreover, the fact that tenants do not lose their rights indicates that the aim was not to remove Muslims permanently. The Prosecution failed to address the consequences of this to their grand JCE theory. What is more, the Prosecution has failed to

<sup>1441</sup> Martin Raguz, 25 August 2008, T.31325:4-13.

<sup>1442</sup> 2D00993, Signed and stamped cover letter issued by Bruno STOJIĆ re: draft decree on temporary use of military apartments in the area of HZHB, 20 January 1993, paras. 1, 11, 12.

demonstrate that this order resulted in Muslim refugees being illegitimately evicted in furtherance of the alleged JCE.

482. The Prosecution produced a single document which even mentions Stojić in connection with the issue of private property. This is the notification from Stojan Vrlića, addressed to Stojić, informing of the existence of Muslim families in certain apartments in Mostar.<sup>1443</sup> This document is not enough, however, to implicate Stojić. First, Stojić did not have authority over the municipal HVO.<sup>1444</sup> Second, the stamp on the cover page of the document shows that this document was received by the Military Police Administration.<sup>1445</sup> No evidence has been adduced to show that Stojić ever actually received the document. Doubt on this issue is demonstrated by the fact that the document does not bear his signature. Nor does it include Stojić's instructions as to whom the document should be forwarded;<sup>1446</sup> which was his usual habit regarding all documents he received.<sup>1447</sup>
483. Generally, Stojić did not have authority over the municipal institutions<sup>1448</sup> and the alleged acts regarding the transfer of property or the temporary allocation of flats by the latter can, therefore, not be imputed to him.
484. Additionally, Stojić did not have power over the armed forces.<sup>1449</sup> Therefore, any alleged acts regarding the alleged seizure of flats during military operations.

### **3.5 Bruno Stojić did not have control over HVO detentions or detention facilities**

485. The Prosecution allege that in furtherance of the alleged JCE, Bruno Stojić "controlled, directed, facilitated, assisted and/or participated in a system of ill-treatment involving a network of Herceg-Bosna/HVO prisons, concentration camps and other detention facilities which were used to arrest, detain and imprison thousands of Bosnian Muslims in unlawful and harsh conditions, where they were killed, mistreated, beaten and abused."<sup>1450</sup> It is alleged that he is responsible for forced labour,<sup>1451</sup> and deportation of detainees after their release.<sup>1452</sup>
486. However, the evidence actually adduced at trial demonstrates that it was Boban, commanders of formations, municipal authorities, and the ODPR that headed the daily operations at local detention

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<sup>1443</sup> P03181, Signed and stamped letter, ref. 01/I-7/?9/0/93 issued by Stojan VRLIĆ addressed to Bruno STOJIC re: Families of members of Balija units, 5 July 1993.

<sup>1444</sup> See Section 3.2.3.

<sup>1445</sup> P03181, Signed and stamped letter, ref. 01/I-7/?9/0/93 issued by Stojan VRLIĆ addressed to Bruno STOJIC re: Families of members of Balija units, 5 July 1993, p. 1.

<sup>1446</sup> P03181, Signed and stamped letter, ref. 01/I-7/?9/0/93 issued by Stojan VRLIĆ addressed to Bruno STOJIC re: Families of members of Balija units, p. 1.

<sup>1447</sup> Slobodan Božić, 3 February 2009, T.36247:3–23.

<sup>1448</sup> See Section 3.2.3..

<sup>1449</sup> See Section 3.3.1..

<sup>1450</sup> Indictment, para. 17.2(j). See also para. 17(h).

<sup>1451</sup> Indictment, para. 17.2(k).

<sup>1452</sup> Indictment, para. 17.2(p).

centres who were responsible for the conditions therein. Stojić did not have *de jure* authority or *de facto* control over any of these parties, and as such had little involvement in the operation of detention centres.

### 3.5.1 Scope and limitations of the Decree on the Treatment of Captured Persons During Armed Combat

487. One crucial fact in the analysis of responsibility for HVO detention facilities is who had control over the establishment of these facilities. With regard to this issue, the Prosecution relies upon the Decree on the Treatment of Captured Persons During Armed Combat in the HZ H-B, issued by Boban, to show that the Head of the Defence Department was charged with setting up military detention facilities.<sup>1453</sup> However, this order did not apply to any of the allegations of unlawful detention in the Indictment.<sup>1454</sup> Furthermore, the Prosecution failed to show how this directive gave Stojić any actual control over prison operations.

488. In fact, Boban's decision provided for the establishment of "locations where prisoners will be kept" and assigned this task to the Head of the Justice and Administration Department, "in cooperation with the Head of the Defence Department and the Head of the Department of the Interior."<sup>1455</sup> While Stojić indeed signed the establishment of the Central Military Remand Prison,<sup>1456</sup> the location was decided by the Head of the Justice and Administration Department, and then his proposal was merely enacted by the Head of the Defence Department, in line with his administrative function.<sup>1457</sup> In fact, the military judge had *de jure* authority over all military prisons, not the Defence Department.<sup>1458</sup>

489. Stojić had absolutely no *de facto* control, or even involvement, in these activities. All of these activities concerning the set up and operation of Heliodrom, and who was involved in this, are noted in Josip Praljak's diary; there is no mention of Stojić.<sup>1459</sup> There is no evidence Stojić was involved in the establishment and opening of the other detention facilities mentioned in the Indictment. These prisons were not established pursuant to Boban's decree,<sup>1460</sup> thus Stojić had no

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<sup>1453</sup> P00292, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992, page 31. Decree on the treatment of persons captured in armed fighting in the HZHB, 3 July 1992.

<sup>1454</sup> See Indictment, 39(d).

<sup>1455</sup> P00292, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, Issue No. 1 September 1992, Page 31. Decree on the Treatment of Persons Captured in Armed Fighting in the HZHB, 3 July 1992, Article 2.

<sup>1456</sup> P00452, Stamped Decision Establishing the Central Military Prison in Mostar in the Heliodrom Barracks, and Appointing Mile PUSIC as the Prison Warden, Signed by Bruno STOJIC. Ref: 03-44/92, 3 September 1992.

<sup>1457</sup> 2D02000, Davor Marijan – Expert Report, para. 119.

<sup>1458</sup> Signed Report by Velimir Marić Re: Inspection of Ljubuski Municipality; Notes Unauthorized Release of Dalibor KOZUL. Number: SU. 173/93, 8 November 1993. See also 4D01105, Law on Criminal Proceedings, Official Gazette SFRJ, no. 26, 16 May 1986.

<sup>1459</sup> P00352, Diary of Josip PRALJAK.

<sup>1460</sup> P02679, Signed and Stamped Decision by Jadranko Prlic to Set Up Military Prison in Capljina, Ljubuski and Gabela, Ref. Number 01-I-350-93, 8 June 1993; P00420, Part of Official Bulletin No. 2 and No. 3 of the Republic of Bosnia and Herzegovina, Croatian Defence Council Military Police. (pg 29-60) Re: Activities of Croatian Defence Council Military Police



connection whatsoever to the establishment of these facilities. There is similarly no evidence showing any *de facto* involvement of Stojić in these facilities, therefore he cannot be responsible for detentions at any of the other locations mentioned in the Indictment.

### 3.5.2 Detention facilities were under control of OZ command

490. On 9 March 1993, Boban was informed that "prisons have been established in all operational zones."<sup>1461</sup> These facilities were established by military formations in their respective areas of responsibility, and were under the exclusive control of local military commanders and municipal leaders.<sup>1462</sup> The Main Staff had the ultimate authority and *de facto* control over all detention centres throughout HZ H-B OZs.<sup>1463</sup> Furthermore, there is no evidence to show that Stojić was ever made privy to any of these activities.

#### 3.5.2.1 South-East Herzegovina OZ

491. The Prosecution alleges that Stojić is responsible for crimes that took place at the Heliodrom,<sup>1464</sup> Vojno,<sup>1465</sup> Ljubuški/Otok,<sup>1466</sup> Gabela,<sup>1467</sup> Dretelj,<sup>1468</sup> and Kostana Hospital<sup>1469</sup> facilities located in the South-East Herzegovina OZ. However, there is no evidence of Stojić being involved in any of these detentions, and the evidence conclusively shows that Colonel Obradović had absolute control over all facilities in his OZ. He issued orders for arrests<sup>1470</sup> and required his personal signature for any releases.<sup>1471</sup> Hence, Obradović controlled all aspects of detentions throughout the South-East Herzegovina OZ.

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in the Croatian Defence Council OZ's During July and August, 31 August 1992, p. L0051089; Zoran Buntić, 10 July 2008, T.30578:80.

<sup>1461</sup> P01635, Report on the Activity of Military Police Units of the HZ HB Addressed to Mate Boban and Issued by Valentin Coric. Ref: 02-4/3/-01-598/93, 9 March 1993, p. 1.

<sup>1462</sup> P00420, Part of Official Bulletin No. 2 and No. 3 of the Republic of Bosnia and Herzegovina, Croatian Defence Council Military Police. (pg 29-60) Re: Activities of Croatian Defence Council Military Police in the Croatian Defence Council OZ's During July and August, 31 August 1992.

<sup>1463</sup> See, e.g., P10268, Order by Milivoj PETKOVIC directing proper treatment of civilians and the capture all out of control units and individuals. REF: 01 - 1583 / 93 and 02-2/1-0/673 /93, 22 April 1993.

<sup>1464</sup> Indictment, paras. 119-135.

<sup>1465</sup> Indictment, paras. 136-143.

<sup>1466</sup> Indictment, paras. 144-153.

<sup>1467</sup> Indictment, paras. 187-194.

<sup>1468</sup> Indictment, paras. 195-203.

<sup>1469</sup> Indictment, paras. 158 and 184.

<sup>1470</sup> See, e.g., P03169, Signed and Stamped Order, Ref: 1100-01-96-493, Issued by Nedjelko Obradovic Re: Release of Serb detainees, 4 July 1993.

<sup>1471</sup> P03201, Signed and stamped order, ref. 1100-01-01-93-495, issued by Nedjelko OBRADOVIC re: no one will be released from Gabela, Dretelj, Heliodrom or Ljubuski municipality Camps without his personal approval, 5 July 1993; P03442, Signed and Stamped Order, ref. 1100-01-01-96-495, Issued by Nedjelko Obradovic Re Signed and stamped order, ref. 1100-01-01-93-495, Issued by Nedjelko Obradović Re: No One Will Be Released From Gabela, Dretelj, Heliodrom or Ljubuski municipality Camps Without His Personal Approval, 14 July 1993.

### 3.5.2.2 North-West Herzegovina OZ

492. The Prosecution further alleges that Stojić is responsible for detentions at various locations in Prozor Municipality,<sup>1472</sup> but does not put forth any piece of evidence proving that Stojić was involved in or even aware of these activities. The imprisonment was carried out by members of the armed forces and detention facilities were under the exclusive control of OZ Commander Zjelko Šiljeg.<sup>1473</sup> Colonel Šiljeg also had *de facto* command over arrests.<sup>1474</sup>

493. Release of prisoners from Prozor detention centres were likewise under the authority of the military command.<sup>1475</sup> For instance, following a Rama HVO meeting held on 11 August 1993, Brigade Commander Ante Pavlović issued an order to the MP to release all the affected detainees.<sup>1476</sup> Furthermore, numerous documents establish that, under the command of the OZ, the Rama Brigade had overall responsibility for the transfer of prisoners from Prozor to other compounds.<sup>1477</sup> As Stojić was not in the military chain of command and had no authority over these actions by the military formations, he cannot be said to be responsible for these detentions. Furthermore, there is no evidence of any involvement of Stojić.

### 3.5.2.3 Central Bosnia OZ

494. All detention facilities located in the Central Bosnia OZ were under the exclusive control of OZ commander Blaškić,<sup>1478</sup> as evidenced by his 12 February 1993 order. In this order he clearly stated that “[t]he command of the prison shall be the responsibility of Central Bosnia OZ Command.”<sup>1479</sup>

<sup>1472</sup> Indictment, paras. 47, 54-58.

<sup>1473</sup> P02047, Signed order, ref. 01/5-162, from Zeljko SILJEG to all Croatian Defence Council Units in S/Z H OZ re: conduct towards civilians prisoners, 23 April 1993.

<sup>1474</sup> P03242, Stamped letter requesting for information, required for up to date briefing of Croatian President, Parliament and Government, addressed to Head of Defence Department, Croatian Defence Council and signed by Zvonko SESAR. Ref: 512-09-02-93-1, 6 July 1993; P03380, Report issued by Prozor HVO Security and Information Service stating 237 Muslim conscripts who were sent to Ljubuski Municipality military prison this date. Ref. 03-02-78/93, 11 July 1993.

<sup>1475</sup> P01636, Ivan STIPIC Croatian Defence Council Ante Starcevic Brigade report to Zrinko TOKIC: list of Muslim detainees from Gornji Vakuf who had been released from Prozor, also those still being detained. Ref: 01/100-335/93, 9 March 1993.

<sup>1476</sup> P04193, Signed and stamped order issued by Ante PAVLOVIC re: release of sick detained persons. Those younger than 15 and older than 60 shall be released. Ref. 01-1533/93, 14 August 1993. P04193 refers to the Rama HVO meeting on 11 August 1993.

<sup>1477</sup> P04156, Signed and stamped order issued by Ante PAVLOVIC re: movement of persons temporarily settled in the building of Secondary School to the premises of UNIS (atomic shelter) and Prisoners of War's to the premises of MUP. Ref. 01-1620/93, 13 August 1993; P06569, Signed and stamped report, ref. 02-4/2-7-61/93, from Luka MARKESIC re: the position of Muslims in the HVO Security and Information Service Rama area of responsibility, 10 November 1993; P06662, Report issued by Pero KOVACEVIC, Head of HVO Security and Information Service re: transfer of 105 Muslim detainees from the prison in Prozor to Gabela prison, 14 November 1993; P06658, List issued by Pero KOVACEVIC of 106 Muslim prisoners from Prozor who are to be admitted to the the military prison in Gabela on 14-Nov-1993. Ref. 03-03-523/93, 14 November 1993; and P03380, Report issued by Prozor HVO Security and Information Service stating 237 Muslim conscripts who were sent to Ljubuski Municipality military prison this date. Ref. 03-02-78/93, 11 July 1993.

<sup>1478</sup> P01478, Stamped and signed document by Zlatko ALEKSOVSKI, Croatian Defence Council Kaonik prison Busovaca re: detention procedure, 12 February 1993.

<sup>1479</sup> P01478, Stamped and signed document by Zlatko ALEKSOVSKI, Croatian Defence Council Kaonik prison Busovaca re: detention procedure, 12 February 1993.

Other orders also show his *de facto* authority over the prison in the Central Bosnia OZ.<sup>1480</sup> Brigade commanders enjoyed this same absolute authority in their respective zones.<sup>1481</sup> Not a single piece of evidence has been put forth that would connect Stojić to these activities.

### 3.5.3 Bruno Stojić was not involved in the operation of any HVO detention centre

#### 3.5.3.1 Heliodrom

##### 3.5.3.1.1 Establishment

495. As mentioned above, Stojić signed the establishment of the Central Military Remand Prison at the Heliodrom.<sup>1482</sup> However, it is clear that Stojić's order was merely formalisation, as *de facto* preparations for the establishment of a detention centre at Heliodrom were already underway.<sup>1483</sup> The order itself states that the decision was made by the Head of the Justice and Administration Department, not Stojić.<sup>1484</sup> Thus, this order sheds little light on Stojić's *de jure* authority, as it was merely administrative.

496. Furthermore, the Prosecution has failed to show how Stojić's action in formalising the establishment of the Central Military Remand Prison was connected to any unlawful act or aiming at the commission of the alleged crimes. Stojić issued the document with the express intention of separating military and civilian prisoners,<sup>1485</sup> to address the problem of both civilian and military prisoners being held at the Mostar District Prison.<sup>1486</sup> In fact, on 20 September 1992 Serb POWs were moved to the Heliodrom barracks.<sup>1487</sup>

497. All of these Serb POWs were released by the end of October 1992, pursuant to the agreement on release and transfer of prisoners which was signed in Geneva under the auspices of the ICRC.<sup>1488</sup> Thus, the reference to Boban's decree concerning POWs applied merely to these POWs that were already at Heliodrom and eventually released. As such, the reference in Stojić's order cannot be

<sup>1480</sup> P02877, Stamped and signed Order by Tihomir BLASKIC, Croatian Defence Council Central Bosnia re:POWs to be treated according to the precepts of the Geneva Convention. Ref: 01-6-486/93, 21 June 1993.

<sup>1481</sup> P06114, Stamped order based on the order of the Croatian Defence Council General Staff Commander number 02-2/1-02-314/93 dated 23-10-1993, signed by Ivica RAJIC. Ref: 01-704-21/93, 25 October 1993, Item 6.

<sup>1482</sup> P00452, Stamped decision establishing the Central Military Prison in Mostar in the Heliodrom barracks, and appointing Mile PUSIC as the Prison warden, signed by Bruno STOJIC. Ref: 03-44/92, 3 September 1992.

<sup>1483</sup> P00352, Diary of Josip PRALJAK, p. 2.

<sup>1484</sup> P00452, Stamped decision establishing the Central Military Prison in Mostar in the Heliodrom barracks, and appointing Mile PUSIC as the Prison warden, signed by Bruno STOJIC. Ref: 03-44/92, 3 September 1992.

<sup>1485</sup> P00292, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, issue No. 1 September 1992, page 31. Decree on the treatment of persons captured in armed fighting in the HZHB, 3 July 1992; P00452, Stamped decision establishing the Central Military Prison in Mostar in the Heliodrom barracks, and appointing Mile PUSIC as the Prison warden, signed by Bruno STOJIC. Ref: 03-44/92, 3 September 1992.

<sup>1486</sup> P09551, Activity Report of the Croatian Defence Council of the Croatian Community of Herceg-Bosna (Croatian Community of Herceg-Bosna) for July - December 1993, p. 33.

<sup>1487</sup> P00352, Diary of Josip Praljak, pp. 1-5.

<sup>1488</sup> 1D02435, Agreement on release and transfer of prisoners, 1 October 1992; P00665, Stamped order signed by Bruno STOJIC, for the unconditional release of all war prisoners that are being held in Croatian Defence Council Investigative prisons in Mostar; Livno and Tomislavgrad. Ref: 03-171/92, 28 October 1992; P00677, Signed report issued by Valentin CORIC re: release of 363 detainees on 30-Oct-1992 from Livno, Mostar and Tomislavgrad Military remnants as per the agreement with International Committee of the Red Cross, EC and UNPROFOR. Ref: 01-1514/92, 31 October 1992.

used to impute responsibility for any other category of detainees that may have subsequently been detained by the armed forces.<sup>1489</sup> As the Prosecution makes no allegation regarding the mistreatment of the Serb POWs, Stojić's participation in establishing Heliodrom is irrelevant. None of the victims of the crimes alleged in the Indictment falls into the category of prisoners covered by the order on establishment issued by Stojić.

498. Furthermore, the Prosecution alleges that detentions on 9 May and after June 1993 were carried out against Bosnian Muslim *civilians*,<sup>1490</sup> not against individuals that could be categorised as POWs under Article 4 of the 3rd Geneva Convention.<sup>1491</sup> As detailed below, these persons were under the responsibility of the ODP.<sup>1492</sup> The Prosecution has not produced any evidence to connect Bruno Stojić to these detentions. In any case, the Prosecution has also failed to prove beyond a reasonable doubt that any of these individuals were POWs and as such. Boban's decision<sup>1493</sup> cannot be used to impute any *de jure* responsibility for these detentions.

499. Finally, the establishment order gave Stojić no *de facto* control over the Heliodrom. The diary of Josip Praljak not only indicates that preparations were underway long before Stojić's order, it also shows who was making appointments of Heliodrom personnel.<sup>1494</sup> The only appointment that involved Stojić in any way was that of Mile Pušić as prison warden,<sup>1495</sup> which Stojić included in his establishment order.<sup>1496</sup> As with the location, this was merely a formalisation of decisions already taken by other authorities.<sup>1497</sup> Additionally, there is not a single piece of correspondence between Mile Pušić and Stojić after this document was issued, further demonstrating how Stojić's appointments were mere formalities and were not indicative of any sort of actual authority over the appointee. Moreover, Mile Pušić was commander of the HVO 6<sup>th</sup> Battalion; a position he retained when he became prison warden.<sup>1498</sup> Therefore, he was in the military chain of command, whereas,

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<sup>1489</sup> Further evidence that Stojić's order was intended to cover merely those POWs already in detention, not to detain large numbers of civilians, can be seen from the fact that it had a capacity of merely 500 persons. See [REDACTED]. See also Zoran Buntić, 10 July 2008, T.30601:9-18..

<sup>1490</sup> Indictment, paras. 120-122.

<sup>1491</sup> Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949, Article 4.

<sup>1492</sup> See (regarding the responsibility of the ODP for civilian detainees) P02170 , Signed report from Military Police Ivan SANTIC. Issues raised: International Committee of the Red Cross visited detainees, about 25 detainees taken to RED CROSS to help unload 15 trucks. The chief of the Office for Expelled Persons, Darinko TADIC arrived, 21 May 1993, last sentence; [REDACTED].

<sup>1493</sup> P00292, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, issue No. 1 September 1992, page 31. Decree on the treatment of persons captured in armed fighting in the HZHB, 3 July 1992.

<sup>1494</sup> See, e.g., P00352, Diary of Josip PRALJAK.

<sup>1495</sup> All subsequent appointments were made by other persons. See, e.g., P01711, Signed and stamped report issued by Josip PRALJAK re: handing over the duty of warden of the Central Military Remand, Mostar to Stanko BOZIC. Ref. 203/93, 23 March 1993.

<sup>1496</sup> P00452, Stamped decision establishing the Central Military Prison in Mostar in the Heliodrom barracks, and Appointing Mile PUSIC as the Prison Warden, Signed by Bruno Stojic. Ref: 03-44/92, 3 September 1992.

<sup>1497</sup> P00352, Diary of Josip PRALJAK, pp. 12-13..

<sup>1498</sup> P00352, Diary of Josip PRALJAK, p. 13..

as already established, Stojić was not.<sup>1499</sup> Thus, the Prosecution has failed to show how this document signed by Stojić gave him any *de facto* authority over the prison staff or its operation.

### 3.5.3.1.2 No involvement in detentions

500. The Prosecution allege, but have failed to prove, that on 9 May 1993, the HVO “rounded up and detained” Bosnian Muslims in West Mostar.<sup>1500</sup> In actuality, due to the outbreak of intense fighting in Mostar on 9 May, a large number of persons were evacuated from the city and brought to the Heliodrom.<sup>1501</sup> These individuals were kept at the Heliodrom for a few days,<sup>1502</sup> during which they were under the exclusive responsibility of the ODPR.<sup>1503</sup> Stojić was not in Mostar most of the day (he was present approximately four hours in the afternoon)<sup>1504</sup> and thus was unaware of the decision to dislocate civilians, nor he was involved in this. Stojić had no authority over and can bear no responsibility for their treatment while under the ODPR’s care.

501. During the month of June 1993, civilians were transferred from the civilian prison in Mostar to the Heliodrom upon the orders of Petković.<sup>1505</sup> There is no evidence that Stojić was involved in this in any way. In fact, Petković sends this order to the Department of Justice and Administration,<sup>1506</sup> to the Department of Interior (which included members of prison administration and staff), the commander of the South-East Herzegovina OZ, and the brigade commanders whose area of responsibility included the prisons. Critically, this command was not delivered to Stojić, nor was it addressed to the Defence Department, because it had no authority over the Heliodrom. If Petković believed that Stojić was responsible in any way for Heliodrom, or for detentions, at all, he certainly would have informed him about this. This alone is clear and unequivocal proof of who was responsible for detentions.

<sup>1499</sup> See 3.3.1.1.

<sup>1500</sup> Indictment, para. 120.

<sup>1501</sup> 2D01321, Croatian Family Circle- Letter by Darinko Tadic Dated 2006/12/5 to Croatians Academics and Bishops, 5 December 2006.

<sup>1502</sup> P02853, Signed and Stamped Monthly Report Issued by Stanko Bozić to Valentin Coric Re: Operation of Heliodrom in May 1993. Ref. 433/93, 19 June 1993.

<sup>1503</sup> P01711, Signed and stamped report issued by Josip PRALJAK re: handing over the duty of warden of the Central Military Remand, Mostar to Stanko Bozić. Ref. 203/93, 23 March 1993; 1D01666, Minutes of the 38th session of HVO HZHB in Siroki Brijeg, 17 May 1993, p.1; 2D01321, Croatian Family Circle- Letter by Darinko Tadic dated 2006/12/5 to Croatians academics and bishops, 5 December 2006, p. 2, Item 1.

<sup>1504</sup> Petković testified that he was with Stojić on the morning of 9 May 1993 heading to Prozor to meet Šiljeg, and that they returned to Mostar around 1pm in the afternoon, and that Stojić informed him he was leaving Mostar at about 5pm that afternoon. See Milivoj Petković, 16 February 2010, T.49535:1-17.

<sup>1505</sup> P02925, Signed and stamped order, ref. 02-2/1-01-1197/93, issued by Milivoj PETKOVIC re: vacating the premises of the county prison and transfer of prisoners to Heliodrom, 24 June 1993. See also P09551, Activity Report of the Croatian Defence Council of the Croatian Community of Herceg-Bosna (Croatian Community of Herceg-Bosna) for July - December 1993, pp. 33-34.

<sup>1506</sup> The Department of Justice and Administration was informed of the relocation of prisoners from the civil prison in Mostar, since civilian detainees suspected of having committed crime and being held at the Heliodrom was the responsibility of the President of the Civil Court in the area of local jurisdiction of the court according to Article 205 of the Criminal Procedure. See 4D01105, Law on Criminal Proceedings, Official Gazette SFRJ, no. 26, 16 May 1986. See also P06520, Stamped and signed Report by Velimir Maric re: inspection of Ljubuski Municipality; notes unauthorized release of Dalibor Kozul. Number: SU. 173/93, 8 November 1993.

502. Then on 30 June 1993, due to security concerns within the HVO units,<sup>1507</sup> the Chief of the Main Staff issued an order to disarm and isolate Muslim soldiers within the HVO.<sup>1508</sup> This order was carried out by the OZ commanders.<sup>1509</sup> This order was passed down the military chain of command by the commander of the South Sector, Colonel Obradović,<sup>1510</sup> and the commander of the North-West Herzegovina OZ, Colonel Šiljeg.<sup>1511</sup> As established earlier, Stojić was not in the military chain of command,<sup>1512</sup> and had no authority over or responsibility for the actions taken by members of the armed forces. The Prosecution did not show any involvement of Stojić in ordering these arrests and no evidence that he was made aware of them. Furthermore, discipline of members of the HVO armed forces was under the exclusive authority of the commanding officer.<sup>1513</sup> Thus, the Prosecution failed to show how Stojić was in any way responsible for the detention of Muslim members of the HVO on or after 30 June 1993.

503. Finally, in October 1993, the Deputy Commander of the Main Staff issued an order addressed to all OZs in which he requested all military units to disarm and isolate Muslim HVO members.<sup>1514</sup> Again, this order was passed down the military chain of command with no involvement or knowledge of Stojić.<sup>1515</sup> Stojić did not receive reports regarding these arrests; they were sent to the Main Staff.<sup>1516</sup> In sum, all detentions from 30 June 1993 were under the *de jure* and *de facto* control of

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<sup>1507</sup> This operation started as a response to the attack by the members of the army of Bosnia and Herzegovina and the Muslim members of the HVO on the North Camp barracks, Bijelo Polje, Rastani all the way to the hydroelectric power plant on the 29 June 1993, in the course of which the Croatian population was expelled from those areas. See [REDACTED]. See also Section 2.4.2.4. (for details on the events in Mostar on 30 June 1993).

<sup>1508</sup> P03019, Signed and stamped order, ref. 02-2/1-01-1244/93, issued by Milivoj Petkovic, forwarded by Miljenko LASIC, re: fortification of defence lines, 30 June 1993. See also P04745, Signed and stamped order issued by Milivoj Petkovic addressed to Operations Zones that all Croatian Defence Council members of the Muslim ethnicity are to be dismissed, disarmed, isolated and detained. Ref. 02-2/1-01-2797/93, 2 September 1993; and [REDACTED].

<sup>1509</sup> P03019, Signed and Stamped Order, Ref. 02-2/1-01-1244/93, Issued by Milivoj Petkovic, Forwarded by Miljenko LASIC, Re: Fortification of Defence Lines, 30 June 1993.

<sup>1510</sup> P03151, Signed Order, Ref. 1100-01-01-93-486, Issued by Nedjelko OBRADOVIC Re: Reorganization of Croatian Defence Council Units, 3 July 1993; P03222, Signed and Stamped Order, Ref. 1100-01-01-93-497, Issued by Nedjelko OBRADOVIC Re: Dismissal, Disarming and Detaining of Croatian Defence Council Soldiers of Muslim Origin, 6 July 1993; P03300, Signed and Stamped for Nedjelko Obradovic Order Regarding: Current Tasks and Carrying Out of Forthcoming Tasks. Issued to Battalion Neum Ref: 1100-01-01-93-480, 8 July 1993. See also, [REDACTED].

<sup>1511</sup> P03234, Signed and stamped order issued by Zeljko SILJEG Re: Arrest and Detain all Muslim Men Aged Between 16 and 60. Ref. 01-1489/93, 6 July 1993.

<sup>1512</sup> See Section 3.3.1.

<sup>1513</sup> P00307, Book of Rules on the Operation of the Armed Forces of HZHB, passed by Mate BOBAN, HZHB Armed Forces Commander, published in 1992 in Mostar, 3 July 1992, Ch. 1, Article 10; P00425, Narodni List Official Gazette, Croatian Community of Herceg-Bosna, Official Gazette, Issue 1, September 1992, Code of Military Discipline. Pages 37-53, no main date, Articles 19, 21, 25.

<sup>1514</sup> P04745, Signed and stamped order issued by Milivoj Petkovic addressed to Operations Zones that all Croatian Defence Council members of the Muslim ethnicity are to be dismissed, disarmed, isolated and detained. Ref. 02-2/1-01-2797/93, 2 September 1993.

<sup>1515</sup> P05581, Order by Zeljko Siljeg to all directly subordinate units to urgently cleanse units from Muslims Ref. Number 01-4705/93, 2 October 1993, P01333, Report from Ante Starcevic Brigade commander Zrinko Tokic addressed to Croatian Defence Council Main Staff. Pursuant to the Order Issued by Zeljko Siljeg, 27 January 1993, P05621, Signed and Stamped Order, Ref. 01-2004/93, Issued by Ante Pavlovic Re: Detention of All Muslims Fit For Military Service surveillance of These Individuals, 4 October 1993.

<sup>1516</sup> P05590, Signed report, ref. 4254/93/, from Ivan Stipic on actions to remove Muslim unit members, 3 October 1993.

the military chain of command, and the Prosecution not proven beyond a reasonable that Stojić was in this chain of command<sup>1517</sup> or involved in detentions in any way.

### 3.5.3.1.3 No involvement in prison maintenance

504. The Prosecution's allegation that Stojić was in some way responsible for the conditions of detention at Heliodrom is equally without merit. As mentioned above, the individuals taken to Heliodrom after the evacuation of Mostar on 9 May 1993 were under the exclusive responsibility of the ODP. <sup>1518</sup> Post-30 June 1993, all arrests and detentions were carried out by and under the exclusive responsibility of the military formations, and this meant that the military had custody of and was responsible for the treatment of the detainees. <sup>1519</sup> The only evidence cited by the Prosecution, the instructions that Stojić issued in February 1993, <sup>1520</sup> were not even sent to Heliodrom because the location already had a set of rules that it had received from the MPA. <sup>1521</sup>

505. These rules that were in place at Heliodrom regulated the treatment of prisoners and demonstrate that all aspects of prisoner care – including food, medical services, and security – were the responsibility of the squad commanders and other military staff. <sup>1522</sup> These were members of the military chain of command, over which Stojić had no authority. <sup>1523</sup> This was the case until September 1993, when the HVO HZ H-B assigned the ODP with the specific task of improving conditions at all detention centres, thus making them additionally responsible for ensuring hygienic accommodations and food for the prisoners. <sup>1524</sup> This demonstrates that it was the HVO HZ H-B, not Stojić, had the authority to delegate tasks related to prison operations. Stojić had no authority over the ODP or the military formations in charge of maintenance of Heliodrom and cannot be held responsible for the conditions of confinement.

<sup>1517</sup> See Section 3.3.1.

<sup>1518</sup> See para. 500.

<sup>1519</sup> *Prosecutor v. Mile Mrkšić and Veselin Šijvančanin*, IT-95-13/1-A, Appeal Judgement, para. 73.

<sup>1520</sup> P01474, Signed and stamped instructions issued by Bruno STOJIC re: house rules in Prisoners of War camps. Ref. 02-1/2-137/93, 11 February 1993.

<sup>1521</sup> See P00514, Signed and stamped instructions issued by Valentin CORIC for operation of Central Military Prison of Croatian Defence Council in Mostar. Ref. 01-1205/92, 22 September 1992. See also P00352, Diary of Josip PRALJAK, p. 14 (entry for 23 September 1992, noting that instructions were received by the MP and military staff working at Heliodrom). Furthermore, this was merely another administrative task typical of Stojić's *de facto* role. Comparing the two sets of instructions, it is clear that Stojić's instructions regulate logistical issues, such as the record-keeping of inmates, whereas the order coming from the MPA actually delegates command responsibility amongst the various prison staff, including the "prison commander" and the "security commander." See P01474, pp. 1-2. This is further evidence that the operational chain of command that had effective control over Heliodrom did not include the head of the Defence Department.

<sup>1522</sup> P01474, Signed and Stamped Instructions Issued by Bruno Stojic re: house rules in Prisoners of War camps. Ref. 02-1/2-137/93, 11 February 1993, p. 4. Another report confirms that the "3rd brigade logistics service" and "3rd brigade medical service" were responsible for ensuring adequate conditions for the prisoners. See P03942, Signed and Stamped Report Issued by Stanko Bozic to Valentin Coric and Mijo-Zlatan Jelic Re: the Situation at the Heliodrom. Ref. 523/93, 4 August 1993.

<sup>1523</sup> See Section 3.3.1

<sup>1524</sup> P04841, Minutes of a Working Meeting of the HRHB Government Held on 06-Sep-1993 in Mostar [...], 6 September 1993, Item 3.

#### 3.5.3.1.4 Not responsible for security

506. Security at Heliodrom was specifically provided by platoon of the 5th MP Battalion.<sup>1525</sup> After the It has already been demonstrated that Brigade MP were under the exclusive control of the military chain of command,<sup>1526</sup> and that Stojić was not part of this chain of command.<sup>1527</sup> Thus, the Prosecution has shown no evidence that Stojić was involved with or in control of securing the Heliodrom facility.

#### 3.5.3.2 Ljubuški and Vitina/Otok

##### 3.5.3.2.1 Establishment

507. As mentioned above in relation to Heliodrom, in October 1992 the ICRC facilitated a release of POWs from the military prisons throughout HZ H-B, including Ljubuški.<sup>1528</sup> After this release, any remaining military detention centres in HZ H-B were under the control of the military for their sole use in detaining members of their units pending criminal charges.

508. The detention facilities located in Ljubuški Municipality were not established pursuant to Boban's decision,<sup>1529</sup> thus there is no evidence of the *de jure* responsibility of Stojić for these facilities. The Prosecution has equally failed to show any *de facto* involvement of Stojić in the establishment of Ljubuški and Vitina/Otok detention centres. Stojić was not involved in the appointment of the warden of Ljubuški,<sup>1530</sup> or that of Otok.<sup>1531</sup> No other evidence has been tendered that would indicate Stojić has anything to do with these facilities.

##### 3.5.3.2.2 No involvement in detentions

509. The Prosecution presented no evidence that Stojić participated in or knew about arrests alleged to have been carried out on 7 May 1993 by the Stjepan Radić Briagde in Ljubuški.<sup>1532</sup> Similarly, the evidence does not show any involvement of Stojić in the arrests alleged to have been carried out in Ljubuški on 14 and 15 August 1993.<sup>1533</sup> These arrests were carried out by military formations under

<sup>1525</sup> P01001, Signed and stamped order issued by Ivan ANCIC re: structure and organization of Military Police deployed in Heliodrom Central Military Remand. Ref. 02-4/3-06-2201/93.

<sup>1526</sup> See Section 3.3.2.2.

<sup>1527</sup> See Section 3.3.1.

<sup>1528</sup> 1D02435, Agreement on release and transfer of prisoners, 1 October 1992; P00677, Signed report issued by Valentin Coric Re: Release of 363 Detainees on 30-Oct-1992 from Livno, Mostar and Tomislavgrad Military Remands as Per the Agreement with International Committee of the Red Cross, EC and UNPROFOR. Ref. 01-1514/92, 31 October 1992; Zvonko Vidović, 30 March 2010, T.51545:5-51548:25.

<sup>1529</sup> See paras. 487-489.

<sup>1530</sup> [REDACTED].

<sup>1531</sup> P03613, Appointment Issued by Kreso Tolj of Kreso Medic as Vitina-Otok Tin Hangar Detention Camp Military Prison Commander, 21 July 1993.

<sup>1532</sup> P02223, Signed and stamped document from the Chief of HVO Security and Information Service Stjepan Radić Brigade Safety Report for 07-05-93. Ref.No.09-1029/93, 7 May 1993.

<sup>1533</sup> P04225, Signed report by Ante PRLIC, Croatian Defence Council 4 Bde Military Police Cmdr for 14-Aug-93 and 15-Aug-93. It is reported that 300 Muslim men in Ljubuski and Town of Vitina, Ljubuski Municipality were arrested and brought to Ljubuski. Also contains list, 16 August 1993; P05091, Security Council Distribution S/26442 Letter from the Permanent



the command of the South-East Herzegovina OZ, and as Stojić was not in this chain of command,<sup>1534</sup> he had no control over these individuals ordering and conducting arrests in Ljubuški. There is no evidence Stojić was even aware of this activity.

### 3.5.3.2.3 No involvement in maintenance

510. The Prosecution makes no direct allegations of Stojić's involvement in the operation of the Ljubuški and Vitina/Otok facilities. The accommodation of prisoners at Ljubuški and Vitina/Otok was carried out by members of the HVO under the command of the 4th Stjepan Radić Brigade, and ultimately the Main Staff.<sup>1535</sup> Services such as the provision of food and transport were controlled by the Brigade.<sup>1536</sup> At Otok, basic necessities such as power were also maintained by the Brigade.<sup>1537</sup> There is no indication that Stojić was responsible for any of these services, nor that he was in a position of authority over any of those who were.

### 3.5.3.2.4 Not responsible for security

511. Security at the Ljubuški and Otok facilities were likewise under the responsibility and complete control of the Commander for the 4th Stjepan Radić Brigade,<sup>1538</sup> particularly the SIS of the brigade.<sup>1539</sup> As discussed above, Stojić did not have any authority over the SIS of the formations because they were directly subordinate to their Brigade Commanders and Stojić did not figure in the military chain of command.<sup>1540</sup>

## 3.5.3.3 Dretelj

### 3.5.3.3.1 Establishment

512. As shown above, Dretelj was not formed pursuant to Boban's decision.<sup>1541</sup> [REDACTED].<sup>1542</sup> However, there is no evidence that Stojić was involved in or even aware of any detentions at the Dretelj barracks.<sup>1543</sup> Zoran Buntić, testified that "Dretelj was established as a municipal prison by

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Representative of Bosnia and Herzegovina To the United Nations Addressed to the President of the Security Council, 15 September 1993.

<sup>1534</sup> See Section 3.3.1.1.

<sup>1535</sup> P01987, Signed Order Regarding the Military Police to Supply Detainees for work Upon Request of the Battalion Commander. Issued by Ivica Tomic to Brigade Military Police. Ref: 10-876/93, 20 April 1993.

<sup>1536</sup> P01987, Signed Order Regarding the Military Police to Supply Detainees for Work Upon Request of the Battalion Commander. Issued by Ivica Tomic to Brigade Military Police. Ref: 10-876/93, 20 April 1993, Item 4.

<sup>1537</sup> P03367, Order Issued by Stanko Primorac, to Elektro Ljubuski /An Electricity Department/ Ljubuski to Provide Power Supply to the HEPOK Warehouses in Town of Vitina, Ljubuski Municipality Otok. Ref: No: 01-1632/93, 10 July 1993.

<sup>1538</sup> P03784, Signed and stamped Order by Stanko PRIMORAC, Croatian Defence Council Stjepan Radic Brigade Re: Increase number of soldiers to guard prisoners in Otok, 29 July 1993.

<sup>1539</sup> P03793, Signed order, ref. 01-1819/93, issued by Stanko PRIMORAC re: regulations when using the prisoners, 29 July 1993, Item 3.

<sup>1540</sup> See Section 3.3.1.1. and 3.3.2.1.2.

<sup>1541</sup> See paras. 487-489.

<sup>1542</sup> [REDACTED].

<sup>1543</sup> The only evidence cited by the Prosecution regarding Stojić is the fact that he visited Dretelj Barracks with Boban and Prlić on 4 April 1993, but even the Prosecution admits that this was before any military prisoners were being held at the barracks and thus has no relevance to the question of Stojić's involvement in the operation of the prisons. See Prosecution's

virtue of a decision of the municipal council of Čapljina municipality,<sup>1544</sup> and was within the remit of the Čapljina municipality.<sup>1545</sup> Stojić had no such command authority over the brigade controlling the detention facility.<sup>1546</sup>

513. Furthermore, there is no indication that Stojić was involved in the appointment of either Mile Lopin<sup>1547</sup> or Tomo Šakota as wardens.<sup>1548</sup> Boban appointed Tomo Šakota as warden.<sup>1549</sup> Thus, the Prosecution has failed to show how Stojić was involved in the establishment of Dretelj, much less that he even knew about these actions by the Čapljina Municipal HVO and the 1<sup>st</sup> Brigade.

### 3.5.3.3.2 No involvement in detentions

514. Again, the Prosecution shows no evidence of any involvement of Stojić in arrests in the South-East Herzegovina OZ, in which Dretelj was located. The Main Staff order from 30 June 1993 to arrest Muslim HVO members based on security concerns<sup>1550</sup> was relied upon by the commander of the 1<sup>st</sup> Knez Domagoj Brigade to order arrests those members on numerous occasions.<sup>1551</sup> There is no evidence Stojić was aware of these activities of the brigade, and even if he had been made aware, there was nothing he could do as he was not a commander in the military chain of command.<sup>1552</sup>

### 3.5.3.3.3 No involvement in prison maintenance

515. While there is no evidence indicating any involvement of Stojić in the maintenance of Dretelj, there is ample evidence that Colonel Obradović exercised absolute authority over all aspects of detention in the South-East Herzegovina OZ, which included Dretelj. [REDACTED],<sup>1553</sup> and all visits to facilities within the South-East Herzegovina OZ required his authorisation.<sup>1554</sup> The medical staff of the brigade, under the command of Obradović, had responsibility and control over the

Pre-trial Brief, para. 187.1 (citing P01802, Signed and stamped daily report issued by Ivan ANCIC re: activities of Croatian Defence Council 3 BAT 3 Coy HVO\_MP, Capljina between 03-Apr-1993 and 04-Apr-1993, 4 April 1993).

<sup>1544</sup> Zoran Buntić, 10 July 2008, T.30578:5-6.

<sup>1545</sup> Zoran Buntić, 10 July 2008, T.30580:23-25.

<sup>1546</sup> See Section 3.3.1.

<sup>1547</sup> P03794, Report on Situation in Dretelj Prison, 29 July 1993. See also [REDACTED].

<sup>1548</sup> [REDACTED]; [REDACTED].

<sup>1549</sup> P07341, Report by Tomo SAKOTA sent to the President of HRHB; the Prime Minister of HRHB; the Head of Office of the President of HRHB; the Minister of Defence of HRHB; the Minister of the Interior of HRHB; the Minister of Justice of HRHB; and the HVO Security, 26 December 1993; 2D00973, Request by Tomislav CAKOTA to the Ministry of Foreign Affairs of the Republic of Croatia for the job of security worker in General Consulat of the Republic of Croatia in Mostar. Boban appointed Šakota as coordinator of all prisons in July 1993.

<sup>1550</sup> P03019, Signed and Stamped Order, Ref. 02-2/1-01-1244/93, Issued by Milivoj Petkovic, Forwarded by Miljenko Lasic, Re: Fortification of Defence Lines, 30 June 1993, Item 8.

<sup>1551</sup> P03546, Stamped and Signed Report by Zarko Pavlovic, Croatian Defence Council Knez Domagoj Brigade Re: Conflicts with Muslims Inside Croatian Defence Council Units, Subsequent Disarming and Detention of 3600. Ref: 1100-11-17-93-92, 18 July 1993; P03151, Signed order, ref. 1100-01-01-93-486, Issued by Nedjelko Obradovic Re: Reorganization of Croatian Defence Council Units, 3 July 1993; P03222, Signed and Stamped order, ref. 1100-01-01-93-497, Issued by Nedjelko Obradovic Re: Dismissal, Disarming and Detaining of Croatian Defence Council Soldiers of Muslim Origin, 6 July 1993.

<sup>1552</sup> See Section 3.3.1.

<sup>1553</sup> [REDACTED].

<sup>1554</sup> P03161, Order from Nedjelko OBRADOVIC to the Wardens of Gabela Prison, Dretelj Prison, Mostar Heliodrom and Ljubuski Prison Prohibiting all Contacts Between Prisoners and Visitors or Unauthorized Persons Due to Current Situation. Ref: CLASS: 8/93-01/164-1 – Number, 3 July 1993.

administration of medical services.<sup>1555</sup> Obradović also gave an order to military formations at a meeting in July 1993 to compile lists of detainees. This was subsequently carried out by the units under his command.<sup>1556</sup> Thus, the military chain of command clearly had effective control over all aspects of accommodation in the Dretelj detention centre, and the Prosecution has not put forth any evidence that Stojić was involved in Dretelj detentions.

#### **3.5.3.3.4 Not responsible for security**

516. Dretelj barracks were secured at different times by members of the MP, the home guard, and of the Čapljina MUP.<sup>1557</sup> None of these factions were under the control of the Defence Department; as explained above, both the Brigade MP and the Home Guard units were part of the military chain of command, which did not include Stojić.<sup>1558</sup>

#### **3.5.3.4 Gabela**

##### **3.5.3.4.1 Establishment**

517. There is no evidence that Stojić was involved in the establishment of Gabela detention centre<sup>1559</sup> and he had no authority appointment of prison staff.<sup>1560</sup> Additionally, as this prison was not established pursuant to Boban's decree,<sup>1561</sup> the Prosecution has shown no evidence that Stojić was linked the establishment of Gabela.

##### **3.5.3.4.2 No involvement in detentions**

518. Gabela prison was located in the same OZ as Dretelj, and as such, all the same conclusions made above regarding the ordering of arrests by the Main Staff and implementation by the brigades apply

<sup>1555</sup> 2D00715, Command Signed by Assistant to Head of HZ HB Defense Department for Health Sector Brigadier Dr. Ivan Bagaric on 1993/08/18; Establishment of Medical station at Dretelj Prison, 18 August 1993; P03129, Signed and Stamped Request for Medical Help for Detainees in Dretelj. Issued by Kresimir Bogdanovic to Bozan Simovic Barracks Infirmary. Ref: 02-4/3-06/4-02-279/93, 2 July 1993; P03197, Signed order by Nedjelko Obradovic. Ref: 1100-01-01-93-492, 5 July 1993; 5D01066, Obradovic / Medical Care for Prisoners, 5 July 1993.

<sup>1556</sup> P03328, Report Signed for Kresimir Bogdanovic by Bakalo (fnu) Croatian Defence Council Military Police, Stating That a Total of 2040 Prisoners Were Brought in to Dretelj Barracks by 09-Jul-93. The Number of Prisoners Belonging to Several Specific Groups (*inter alia*), 9 July 1993.

<sup>1557</sup> P03478, Signed and stamped daily report issued by Kresimir BOGDANOVIC. Ref. 02-4/3-06/4-12-223/93, 15 July 1993; P05222, Information report ref. 02-4-1-1347/93 on security and conditions in military detention camp Dretelj, 20 September 1993.

<sup>1558</sup> See Section 3.3.1.

<sup>1559</sup> P02679, Signed and stamped Decision by Jadranko PRLIC to Set up Military Prison in Capljina Ljubuski and Gabela Ref. Number 01-I-350/93, 8 June 1993.

<sup>1560</sup> See, e.g., P02674, Signed and Stamped Decision by Jadranko Pric to Appoint Bosko Previsic as Head of Gabela Prison, 8 June 1993. See also P03642, Signed and Stamped Six-Month Summary Report Issued by Milivoj Petkovic to the Head of the Defence Department. Ref. 02-2/1-01-1494/93, 22 July 1993.

<sup>1561</sup> Prlić's Decision makes no reference to P00292 (Boban's Decree), indicating that Gabela was not established pursuant to Boban's order. See P02679, Signed and stamped Decision by Jadranko PRLIC to Set up Military Prison in Capljina Ljubuski and Gabela Ref. Number 01-I-350/93, 8 June 1993; Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, issue No. 1 September 1992, page 31. Decree on the treatment of persons captured in armed fighting in the HZHB, 3 July 1992.

equally for the arrests that led to detentions at Gabela.<sup>1562</sup> Most importantly, the Prosecution has not shown any evidence of Stojić's involvement in arrests in Čapljina or detentions at Gabela.

#### **3.5.3.4.3 No involvement in prison maintenance**

519. Stojić also had no authority over or involvement in the operation of the Gabela prison. The prison was located in the South-East Herzegovina OZ and as such was under the exclusive authority of the OZ command.<sup>1563</sup> Medical services were administered and controlled by the brigade medical staff and reported to both the Main Staff and the ODP, but notably not to the Defence Department.<sup>1564</sup> Orders from Obradović's show him commanding the operation of all prisons in the South-East Herzegovina OZ, including Gabela.<sup>1565</sup>

520. In November 1993, prisoners were still arriving to the Gabela compound. Their accommodation was provided and managed in the same way as during the summer 1993, by the 1<sup>st</sup> Knez Domagoj Brigade according to the orders of the Main Staff.<sup>1566</sup> Thus, from July to November 1993, the Gabela prison was under the effective authority of Obradović.

#### **3.5.3.4.4 Not responsible for security**

521. The OZ command was also responsible for securing the transfer of prisoners to Gabela, as can be seen in an order from Žarko Tole and the Main Staff.<sup>1567</sup> Military formations, including Home Guards, at Gabela were under the command of Obradović.<sup>1568</sup> Again, Stojić was not in this chain of command, and have no authority to control the actions of these units.

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<sup>1562</sup> See Section 3.5.3.3.2.

<sup>1563</sup> Zvonko Vidović, 1 April 2010, T.51737:17-51738:1.

<sup>1564</sup> 2D00278, No. 02-5/5-150/93, Command - HVO Department of Defence Healthcare Sector, Commander of the Infectious-Epidemiological-Toxicological Service, Head Doctor Dr Ivo Curic Mr. Sci, 28 August 1993; 2D00412, Stamped Order by Croatian Defence Council Health Sector Re: Health Situation in Detention Camps. Ref: 02-5/1-603/93, 28 September 1993; P05485, Stamped and Signed Report by Ivo Curic on the Sanitary Monitoring of Gabela Detention Camp, 29 September 1993.

<sup>1565</sup> See, e.g., P03161, Order from Nedjelko Obradovic to the Wardens of Gabela Prison, Dretelj Prison, Mostar Heliodrom and Ljubuski Prison Prohibiting all Contacts Between Prisoners and Visitors or Unauthorized Persons Due to Current Situation. Ref: Class: 8/93-01/164-1 – Number, 3 July 1993; P03232, Signed and Stamped Order, Ref. 02-4/3-06/4-02-256/93, Issued by Ivan Ancic Re: New Rules in Dretelj, 6 July 1993.

<sup>1566</sup> P06658, List Issued by Pero Kovacevic of 106 Muslim Prisoners from Prozor Who Are to be admitted to the Military Prison in Gabela on 14-Nov-1993. Ref. 03-03-523/93, 14 November 1993.

<sup>1567</sup> P06659, Signed and Stamped Report, Ref. 02-4/2-7-61/93, from Luka Markesic Re: the Position of Muslims in the HVO Security and Information Service Rama Area of Responsibility, 10 November 1993; P06662, Report Issued by Pero Kovacevic, Head of HVO Security and Information Service Re: Transfer of 105 Muslim Detainees From the Prison in Prozor to Gabela Prison, 14 November 1993.

<sup>1568</sup> P03462, Signed and Stamped Order, Ref. 1100-01-01-93-491, Issued by Nedjelko Obradovic to the Heads of Gabela and Dretelj Prisons and to the Čapljina Civilian Police and Home Guards Re: Combat Readiness of Croatian Defence Council Gabela and Dretelj Prison Guards, 15 July 1993.

#### 3.5.3.4.5 No authority to release prisoners

522. Stojić similarly had no authority to order the release of prisoners from Gabela. Obradović's order prohibiting all visits to Dretelj without his authorisation also applied to Gabela, and gave him exclusive authority over prisoner release.<sup>1569</sup>

#### 3.5.3.5 Kostana Hospital

523. The Prosecution alleges that patients were removed from Kostana Hospital in May 1993 and the hospital was converted into a military detention facility, wherein "Bosnian Muslim men," i.e. civilians, were mistreated.<sup>1570</sup> There was no showing of any involvement in Stojić in these events, or that he had knowledge of them. [REDACTED].<sup>1571</sup> It was established that Stojić was not in the military chain of command.<sup>1572</sup> Therefore, he had no authority over these individuals and can bear no responsibility for their alleged actions at Kostana Hospital.

#### 3.5.3.6 Vojno Camp

524. The Prosecution did not put forth one piece of evidence against Stojić relating to the allegations regarding Vojno detentions. Reports mentioning Vojno are few, and most are dated after Stojić left the Defence Department.<sup>1573</sup> The one report sent in September 1993 was not sent to Stojić, the Defence Department, or any of its subsectors.<sup>1574</sup> Testimonies regarding Vojno, of which there was very little, also relate to the period after Stojić left the Defence Department.<sup>1575</sup> The Prosecution has failed to prove any allegation against Stojić contained in the Indictment concerning Vojno. Consequently, Stojić cannot be held responsible for under any theory of liability.

#### 3.5.4 Stojić had no knowledge of or involvement in the practice of forced labor

525. The Prosecution has also failed to show that Stojić had any knowledge of or involvement in the practice of the HVO armed forces of using prisoners for labour. Requests for taking prisoners for work tasks were authorised in large part by Mijo Jelić,<sup>1576</sup> Božo Pavlović,<sup>1577</sup> Stanko Sopta,<sup>1578</sup> and

<sup>1569</sup> P03161, Order from Nedjelko Obradovic to the wardens of Gabela prison, Dretelj prison, Mostar Heliodrom and Ljubuski prison prohibiting all contacts between prisoners and visitors or unauthorized persons due to current situation. Ref: Class: 8/93-01/164-1 – Number, 3 July 1993.

<sup>1570</sup> Indictment, paras. 158, 169 and 184.

<sup>1571</sup> [REDACTED]; [REDACTED].

<sup>1572</sup> See Section 3.3.1.

<sup>1573</sup> P07722, Report signed and stamped by Berislav PUSIC and sent to Marijan BISKIC admitting prisoners held at Vojno were abused & killed Mario MIHALJ, further admits prisoners were used for labor assignments. Also mentions the use of Croat detainees by MOS at front, 29 January 1994; P08077, Following an inspection by International Committee of the Red Cross there is this stamped order by Ante ROSO Croatian Defence Council Chief of Main Staff to immediately close all private prisons in HRHB where persons of Muslim ethnicity were kept. Croatia, 16 March 1994; [REDACTED].

<sup>1574</sup> P05288, Report regarding the death of Salim ALILOVIC while he was in Vojno doing forced labour. Issued by Stanko BOZIC, warden to Branimir TUCAK, Zlatan Mijo JELIC, Zvonko VIDOVIC Ref: 698/93, 22 September 1993.

<sup>1575</sup> See, e.g., [REDACTED].

<sup>1576</sup> P02638, Signed and stamped order issued by Mijo-Zlatan JELIC approving the allocation of 5 POWs from Heliodrom to the 1st Light Attack Military Police Battalion. Ref. 02-4/3-04/2-167/93, 5 June 1993; P02667, Signed and stamped order issued by Mijo-Zlatan JELIC approving the allocation of 3 POWs from Heliodrom to the 1st Light Attack Military Police

Mile Pušić (as member of the 3<sup>rd</sup> Brigade).<sup>1579</sup> The Main Staff also issued consent for the taking of detainees for labour,<sup>1580</sup> and on at least one occasion it is shown that a request from the Brigade MP for taking detainees was approved by the Main Staff.<sup>1581</sup> None of these individuals was under the command of Stojić.<sup>1582</sup> Further, there is no evidence that these orders were ever forwarded to

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Battalion. Ref. 02-4/3-04/2-173/93, 7 June 1993; P02693, Signed and stamped order issued by Mijo-Zlatan JELIC approving the allocation of 4 POWs from Heliodrom to the 1st Light Attack Military Police Battalion. Ref. 02-4/3-04/2-185/93, 9 June 1993, P02702, Signed and stamped order issued by Mijo-Zlatan JELIC approving the allocation of 10 POWs from Heliodrom to the 1st Light Attack Military Police Battalion. Ref. 02-4/3-04/2-190/93, 10 June 1993; P02848, Signed and stamped order issued by Mijo-Zlatan JELIC approving the allocation of 3 POWs from Heliodrom to the 1st Light Attack Military Police Battalion. Ref. 02-4/3-04/2-239/93, 19 June 1993; P02915, Signed and stamped order issued by Mijo-Zlatan JELIC approving the allocation of 6 POWs from Heliodrom to the 1st Light Attack Military Police Battalion. Ref. 02-4/3-04/2-285/93, 23 June 1993; P03929, Stamped and signed Activity Report by Mijo-Zlatan JELIC, Croatian Defence Council Military Police Mostar. Ref. 02-4/3-04/2-743/93, 3 August 1993; P05518, Handwritten report issued by HVO Security and Information Service about an ethnic cleansing operation carried out in Mostar by Vinko MARTINOVIC, aka Stela and the 1st Light Infantry Battalion. Mijo-Zlatan JELIC was informed of the operation. Ref. No. 03-9, 30 September 1993; 3D01745, Q-10-90, REPORT RE:COMBAT ACTIVITIES IN MOSTAR AREA, ISSUED BY ZLATAN MIJO JELIC, 2 September 1993; 3D02427, IL-2-784-6, 18 AUGUST 1993, REPORT FOR 17 AND 18 AUGUST 1993 BY ZLATAN MIJO JELIC ON THE SITUATION IN THE AREA OF MOSTAR; BH ARMY ACTIVITIES FOLLOWING THE SNIPER FIRE AND INFANTRY WEAPON USAGE, 18 August 1993; 3D02430, Q-10-70, 1 SEPTEMBER 1993, REPORT FOR 31 AUGUST AND 1 SEPTEMBER 1993 BY ZLATAN MIJO JELIC ON THE SITUATION IN THE TOWN OF MOSTAR AND OFFENSIVE ACTIVITIES OF THE ENEMY, 1 September 1993; 3D02432, Q-10-108, 4 SEPTEMBER 1993, REPORT FOR 3 AND 4 SEPTEMBER BY ZLATAN MIJO JELIC ON THE SITUATION IN THE TOWN OF MOSTAR AND SEVERE MUSLIM FIRE FROM ALL WEAPONS, 4 September 1993; 3D02435, Q-25-15, 27 AUGUST 1993, REPORT FOR 26 AND 27 AUGUST 1993 BY ZLATAN MIJO JELIC ON THE SITUATION IN MOSTAR, 27 August 1993; 3D02436, Q-25-16, 26 AUGUST 1993, REPORT FOR 25 AND 26 AUGUST 1993 BY ZLATAN MIJO JELIC ON THE SITUATION IN MOSTAR, 26 August 1993; 4D00754, Order issued by Zlatan Mijo Jelic, re: artillery activity, ref:02-960/93, Mostar, 07 December 1993, 7 December 1993; P01765, Stamped log-book of approvals for engagement of detainees in work between 02-Apr-1993 and 08-Mar-1994; P08043, Stamped Ministry of Defence Military Police Administration logbook of requests and approvals for engagement of POWs in forced labour in the period between 02-Apr-1993 and 08-Mar-1994, 8 March 1994; P02642, Stamped log-book of orders for engagement of detainees in forced labour between 05-Jun-1993 and 09-Dec-1993, 5 June 1993; P08428, Report with heading of the HRHB Ministry of Defence, Military Police Administration re: mistreatment, death, wounding and escape of prisoners at forced labour sites.(Exhibit PP774 Naletilic et al.case), 12 August 1994 (logbooks of requests and approvals for use of detainees for work)). See also [REDACTED].

<sup>1577</sup> See Božo Pavlović, 18 November 2009, T.47019:3-44020:17 (discussing P01765, Stamped log-book of approvals for engagement of detainees in work between 02-Apr-1993 and 08-Mar-1994 in particular).

<sup>1578</sup> See, e.g., P06275, Stamped approval for Bozidar DERONJIC to take 2 prisoners for forced labour at the Heliodrom. Stamped approval for Drazen MARJANOVIC to take 2 female prisoners for forced labour in the laundry, 30 October 1993 (approval from Sopta for use of prisoners).

<sup>1579</sup> See P01765, Stamped log-book of approvals for engagement of detainees in work between 02-Apr-1993 and 08-Mar-1994; P08043, Stamped Ministry of Defence Military Police Administration logbook of requests and approvals for engagement of POWs in forced labour in the period between 02-Apr-1993 and 08-Mar-1994, 8 March 1994; P02642, Stamped log-book of orders for engagement of detainees in forced labour between 05-Jun-1993 and 09-Dec-1993, 5 June 1993; P08428, Report with heading of the HRHB Ministry of Defence, Military Police Administration re: mistreatment, death, wounding and escape of prisoners at forced labour sites.(Exhibit PP774 Naletilic et al.case), 12 August 1994.

<sup>1580</sup> See, e.g., P01765, Stamped log-book of approvals for engagement of detainees in work between 02-Apr-1993 and 08-Mar-1994, Items 25 and 29.

<sup>1581</sup> P01765, Stamped log-book of approvals for engagement of detainees in work between 02-Apr-1993 and 08-Mar-1994, Item 27. Indeed, one order from Petković unequivocally states that the use of prisoners for forced labour must cease immediately, and any future permits for the use of prisoners must be obtained from the Main Staff. See P05873, Stamped order signed by Milivoj Petkovic, to all Croatian Defence Council brigades in the OZ South East Herzegovina prohibiting the removal of prisoners to perform any kind of labour in the brigades' respective zones of responsibility, 14 October 1993. This order was immediately carried out by Stanko Božić, (see P05874, Signed and stamped order issued by Stanko BOZIC re: prohibition on use of detainees for forced labour pursuant to order no. 02/2-1-01-2955/93. Ref. 761/93, 14 October 1993) and he reported to Petković regarding its implementation, (see P06202, Signed and stamped report issued by Stanko Bozic Re: previous order ref. 02-2/1-01-2955/93 restricting use of POWs is not being respected. Ref. 780/93, 28 October 1993) demonstrating that the military chain of command did have *de facto* control over the prison staff.

<sup>1582</sup> See Section 3.3.1.

the Defence Department, thus the Prosecution has failed to show that Stojić had knowledge or control of this practice.

526. The Prosecution has likewise failed to demonstrate any knowledge of Stojić regarding the taking of prisoners to the frontlines. Reports mentioning the use of prisoners at the frontlines were sent up the military chain of command.<sup>1583</sup> There is no evidence that this information was ever forwarded to Stojić. Reports from Stanko Božić that mentioned deaths of detainees while performing work tasks likewise were never forwarded to the Defence Department.<sup>1584</sup>
527. Thus, the overwhelming weight of the evidence shows that the HVO armed forces, including the Brigade MP and special purpose units, controlled the use of detainees for labour and had the *de facto* authority to order the release of prisoners for this purpose. There is no evidence that Stojić had any knowledge of this practice, or that he could intervene in these activities even if he had been informed of them, due to his complete lack of command authority over the HVO Armed Forces. The armed forces operated within a completely independent chain of command that only had a professional relationship with the Defence Department.<sup>1585</sup>

### 3.5.5 Medical care for prisoners was not the responsibility of Health Sector

528. The Health Sector was responsible for providing epidemiological protection for the population living within the HZ H-B and this included places such as the detention centres where captives were kept.<sup>1586</sup> But it did not have a specific mandate for medical treatment for prisoners. This was the responsibility of the Assistant to the Brigade Commandant for Medical issues on the territory where the prison is located.<sup>1587</sup> The Health Sector conducted inspections of the detention centres. While it made reports based on their inspections requesting changes to be made in order to improve the

<sup>1583</sup> P04119, Signed and stamped document by Ivan PRIMORAC, Croatian Defence Council Operations and Training Dept Chief, regarding a report from the Croatian Defence Council Knez Branimir Brigade. Ref: 02-2/1-02-1854/93, 12 August 1993, Item 6 (Wherein Ivan Primorac states, "They are already working on fortification, utilising Muslim prisoners-of-war...").

<sup>1584</sup> See, e.g., P05307, Signed and stamped report issued by Stanko BOZIC re: Azim KARADUZ who was killed by MOS on the working site with the 3rd Brigade. Ref. 701/93, 23 September 1993; P05324, Report signed and stamped from Stanko BOZIC sent to Branimir TUCAK Mijo-Zlatan JELIC Zvonko VIDOVIC re Azim KARALUZ being killed performing forced labor. Ref: No. 671/93, 23 September 1993; P05459, Signed and stamped report issued by Stanko BOZIC re: wounding of 1 Muslim detainee by MOS. Ref. 718/93, 28 September 1993; P05607, Signed and stamped Report from Stanko BOZIC stating that detainees from Heliodrom were delivered to the KNEZ DOMAGOJ Brigade detainee GUSKA, Adem had been wounded by Armija Bosnia I Hercegovina Ref. 738/93, 4 October 1993. One report was allegedly sent to Stojić, however, it is not demonstrated that Stojić received it. See P01514, Signed and stamped report issued by Josip PRALJAK to Bruno STOJIC and Valentin CORIC re: Amir PRGUDA who went 0465-9594-0465-9594 on 17-Feb-1993 while engaged in labour. Ref. 165/93, 18 February 1993.

<sup>1585</sup> See Section 3.3.1.

<sup>1586</sup> 2D02000, Davor Marijan – Expert Report, para. 70.

<sup>1587</sup> See P03197, Signed order by Nedjelko OBRADOVIC. Ref:1100-01-01-93-492, 5 July 1993 (order for medical commission to treat prisoners at Dretelj, Gabela, and Heliodrom); P03942, Signed and stamped report issued by Stanko BOZIC to Valentin CORIC and Mijo-Zlatan JELIC re: the situation at the Heliodrom. Ref. 523/93, 4 August 1993 (for Heliodrom); and P03129, Signed and stamped request for medical help for detainees in Dretelj. Issued by Kresimir BOGDANOVIC to Bozan SIMOVIC Barracks infirmary. Ref:02-4/3-06/4-02-279/93, 2 July 1993 (for Dretelj).

conditions for the detainees,<sup>1588</sup> these requests were unequivocally denied by the military commander in charge.<sup>1589</sup>

### 3.5.6 The Defence Department was not involved in the release or exchange of prisoners

529. The Prosecution has not shown any evidence to connect Stojić to the release or exchange of prisoners. The Service for the Exchange of Prisoners and Other Persons was the main organ of the HVO in charge of releasing and exchanging prisoners,<sup>1590</sup> and was responsible to the HVO HZ H-B for its work. Stojić was not involved with this process at any step.<sup>1591</sup>

530. Stojić's lack of control over the exchange and release of prisoners is also demonstrated by the fact that he was not involved in a single negotiation where the exchange or release of prisoners was discussed. This was done by the Chief of the Main Staff or other high-ranking military commanders<sup>1592</sup> or by the Service for the Exchange of Prisoners and Other Persons, which represented the HVO during meetings with international organisations in relation to prisoner exchange and release.<sup>1593</sup> Agreements concluded between Boban and Izetbegović<sup>1594</sup> were forwarded by the Main Staff to OZ commanders.<sup>1595</sup> The same procedure was followed after the agreement on the cessation of hostilities signed on 30 July 1993.<sup>1596</sup> Stojić did not take part in these negotiations, indicating he had no authority to decide on the exchange or release of prisoners.

531. In sum, Stojić was not involved in the exchange and release procedure. The evidence admitted during trial demonstrates that the Main Staff had a significant control in this process. This authority

<sup>1588</sup> P04145, Stamped and signed request by Ivan BAGARIC to Ante MUSA, to immediately establish medical service in Heliodrom Central Military Remand. Number: 02-5/1;470/93, 12 August 1993; 2D00412, Stamped Order by Croatian Defence Council Health Sector re: health situation in detention camps. Ref: 02-5/1-603/93, 28 September 1993; P05503, Stamped report, ref. 02-5/1-614/93, issued by Ivo CURIC; Toni Kolak; Ivo SANDRK re: medical supervision of the Heliodrom Preventive Isolation Centre, 30 September 1993.

<sup>1589</sup> 2D02000, Davor Marijan – Expert Report, para. 70 (citing 2D00717, Termination of the Command issued by Head of Sector for healthcare from October 28th.1993; Termination signed by Commandant Colonel Zeljko Siljeg on 1993/10/28, 28 October 1993).

<sup>1590</sup> See Section 3.5.1.3. See also P06170, Signed and stamped report issued by Josip PRALJAK to Mladen NALETILIC, aka Tuta and Bruno STOJIC re: work of the commission for release of detainees. Ref. 779/93, 27 October 1993. Whilst this document was erroneously sent to Stojić, who had no role in the release of prisoners (Prlić created the commission), this document certainly proves Pušić's involvement in the release of prisoners.

<sup>1591</sup> P03169, Signed and stamped order, ref. 1100-01-01-93-490, issued by Nedjelko OBRADOVIC re: release of Serb detainees, 4 July 1993; [REDACTED].

<sup>1592</sup> See, e.g., [REDACTED]. See also P02344, Agreement on Cease Fire Reached by Gen Petković (Croatian Defence Council) and Gen Halilovic (Bosnia and Herzegovina) in Mostar in presence of Lt Gen Phillipe Morillon and ECMM/HRC Jean-Pierre Jean-Pierre THEBAULT, 12 May 1993.

<sup>1593</sup> P04380, Report re: re negotiations held in Jablanica with Croatian Defence Council, represented by Berislav PUSIC, Ivan BANDIC and Zeljko BARBARIC under Spanish Battalion (UNPROFOR), 21 August 1993; P07417, Report issued by Berislav PUSIC to Petar KOLAKUSIC re: meeting between Berislav PUSIC and Amor MASOVIC at Spanish Battalion (UNPROFOR) in Medugorje. Ref. 01-IP-321/93, 31 December 1993.

<sup>1594</sup> 2D00089, Alija Izetbegovic and Mate Boban, After a Discussion on Croatian-Muslim Relations, 18 April 1993.

<sup>1595</sup> P01959, Stamped order, ref. 02-2/1-01-648/93, issued by Milivoj PETKOVIC to all operational zones re: cessation of hostilities between the BH army and the Croatian Defence Council, 18 April 1993.

<sup>1596</sup> P05138, Order issued by Milivoj PETKOVIC, ref. GS-2507-1/93 addressed to all Croatian Defence Council units to cease military actions not later than 18-Sep-1993; and all POWs to be released by 21-09-93, 17 September 1993.



was also shared with Pušić, who played a major role in this process as from his appointment at the Service for the Exchange of Prisoners and Other Persons. None of these organs were under the responsibility of Stojić.

### 3.5.7 Authority to close prisons not with the Defence Department

532. Stojić did not have the authority to close prisons. This was under the exclusive control of Boban, as demonstrated by his December 1993 order that stated “all detention centres in the HZ H-B “shall be closed unconditionally and one-sidedly [...] not later than 17 December 1993.”<sup>1597</sup> The fact that Stojić did not have the authority to close the prisons contradicts the Prosecution’s allegations that Stojić “controlled, directed HVO detention facilities,” and further highlights Stojić’s lack of effective control over the HVO armed forces.

### 3.5.8 Stojić’s Role

#### 3.5.8.1 Knowledge

533. The Prosecution has failed to show that Stojić was informed of the detentions carried out by HVO armed forces in HZ H-B. None of the reports that were allegedly sent to the Head of the Defence Department were marked by receipt stamps from the Defence Department.<sup>1598</sup> Moreover, a letter sent by the Assistant of the Minister of Defence on 17 December 2007 evidenced that the Record Book from Defence Department for 1993 which consisted of reception and distribution book had disappeared.<sup>1599</sup> The disappearance of that book, combined with the lack of stamps, casts serious doubt on the authenticity of these documents, and as such they cannot be relied upon as evidence.

534. Furthermore, despite the Prosecution’s allegation that Stojić was put on notice by a letter from Stanko Božić on 11 October 1993,<sup>1600</sup> this letter was originally addressed to Boban and sent on 10

<sup>1597</sup> P07096, Decision issued by Mate Boban, Declaring That All Detention Centres in HZ/HB Shall be Unconditionally Closed No Later Than 17 December 1993, 10 December 1993, paras. 1-2 (followed by an order by Plić to close Gabela. See P07668, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, January 1994, Decision revoking 08-June-93 Decision 01-I-350/93 and Decision 01-I-349/93 Ref: 01-I-728/93, 25 January 1994).

<sup>1598</sup> P01514, Signed and stamped report issued by Josip PRALJAK to Bruno STOJIC and Valentin CORIC re: Amir PRGUDA who went 0465-9594-0465-9594 on 17-Feb-1993 while engaged in labour. Ref. 165/93, 18 February 1993; P03209, Signed and stamped report by Stanko BOZIC to Bruno STOJIC, Valentin CORIC, Zvonko VIDOVIC and Berislav PUSIC re: incident that occurred in Heliodrom. Ref. 476/93, 5 July 1993; P04186, Signed and stamped report issued by Stanko BOZIC addressed to Bruno Stojic and Valentin CORIC stating that there are no resources to feed 2100 detainees in Heliodrom and requesting help from Bruno Stojic in order to prevent undesired consequences. Ref. 54, 14 August 1993; P04352, Signed and stamped letter from Stanko BOZIC to Bruno STOJIC re: International Committee of the Red Cross visit to Heliodrom re the violations of the Geneva Conventions, and warning by Mr Franco Faro. Number: 574/93, 20 August 1993; P05812, Report issued by Stanko BOZIC addressed to Bruno STOJIC re: situation in Heliodrom Central Military Remand. Ref. 751/93, 11 October 1993; P06170, Signed and stamped report issued by Josip PRALJAK to Mladen NALETILIC, aka Tuta and Bruno STOJIC re: work of the commission for release of detainees. Ref. 779/93, 27 October 1993; P06859, Signed and stamped report issued by Josip PRALJAK to Ante ROSO, Radoslav LAVRIC and Perica JUKIC re: various issued relating to the Heliodrom. Ref. 837/93, 24 November 1993.

<sup>1599</sup> 2D01399, Reply of MORH to Stojic’s defence on the requested documentation (the book of protocol of defence department of HZ HB hasn’t been found in the archive), 17 December 2007. See also 2D02000 Davor Marijan - Expert report, introductory remarks..

<sup>1600</sup> P05812, Report issued by Stanko BOZIC addressed to Bruno STOJIC re: situation in Heliodrom Central Military Remand. Ref. 751/93, 11 October 1993.

October 1993.<sup>1601</sup> Several indicia indicate that the document sent to Stojić was created at a later date: both documents have the same reference number;<sup>1602</sup> the reports are nearly the same (only one sentence differs);<sup>1603</sup> nothing indicates in the document sent to Boban that this report was going to be forwarded to someone else; and, finally, a receipt stamp proves that Boban acknowledged this report and forwarded it,<sup>1604</sup> while nothing indicates that Stojić ever saw this document.<sup>1605</sup>

535. Doubt has also been cast on the authenticity of the shipment book from Heliodrom.<sup>1606</sup> Indeed, some entries are allegedly from 1992, but the heading reads “Ministry of Defence – Military Police.”<sup>1607</sup> In 1992, the Ministry of Defence of Herceg Bosna did not even exist. Furthermore, even though this book was supposed to enclose daily information, inconsistencies demonstrate that this document is in fact a forgery. For instance, entry number 682 is from 4 January 1994 while the next entry is from 5 July 1993. Thus, this document cannot be given any weight and the defence submit the only safe course is for the Trial Chamber to dismiss it in its entirety.

536. Furthermore, regardless of any information Stojić is alleged to have received about conditions of detention, it is clear he had no responsibility for such facilities as demonstrated above.<sup>1608</sup> Despite this lack of *de jure* or *de facto* responsibility, he unsuccessfully tried to establish a commission (explained in further detail below). Indeed, the fact that it failed to become operative provides clear evidence as to the lack of authority and complete absence of effective control possessed by Stojić in relation to such facilities.

### 3.5.8.2 The Commission

537. The Prosecution attempted to use the establishment of the Commission for Detention Centres and Prisons to prove Stojić’s control over the prisons.<sup>1609</sup> [REDACTED].<sup>1610</sup> Stojić’s formation of the Commission was completely ignored, which highlights his lack of *de facto* authority regarding the functioning of the prisons.

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<sup>1601</sup> P05792, Signed and stamped letter issued by Stanko BOZIC to Mate BOBAN re: problems at the Heliodrom relating to persons brought in between 30-Jun-1993 and 10-Oct-1993. Ref. 751/93, 10 October 1993.

<sup>1602</sup> The reference number for both documents is 751/93.

<sup>1603</sup> There is one more sentence in the last paragraph of the document sent to Mate Boban. See P05792, Signed and stamped letter issued by Stanko BOZIC to Mate BOBAN re: problems at the Heliodrom relating to persons brought in between 30-Jun-1993 and 10-Oct-1993. Ref. 751/93, 10 October 1993.

<sup>1604</sup> P05792, Signed and stamped letter issued by Stanko Bozic to Mate Boban re: problems at the Heliodrom relating to persons brought in between 30-Jun-1993 and 10-Oct-1993. Ref. 751/93, 10 October 1993.

<sup>1605</sup> P05812, Report issued by Stanko Bozic addressed to Bruno Stojic re: situation in Heliodrom Central Military Remand. Ref. 751/93, 11 October 1993.

<sup>1606</sup> P00285, Logbook of Post 1711 of the Croatian Defence Council Military Police containing lists of orders, requests and reports.

<sup>1607</sup> See, e.g., P00285, Logbook of Post 1711 of the Croatian Defence Council Military Police containing lists of orders, requests and reports, item 88.

<sup>1608</sup> See Section 3.5.2.

<sup>1609</sup> Prosecution’s response to 98bis, 5 February 2008, T.27127:24-T.27128:7.

<sup>1610</sup> [REDACTED].

538. Based on the limited knowledge that Stojić had about problems with command and control of the prisons,<sup>1611</sup> Stojić attempted to organise a prison commission in order to clarify the situation. On 6 August 1993, Stojić created the Commission “to take charge of all detention units and prisons in which prisoners of war and military detainees are held.”<sup>1612</sup> Pusić was appointed President of this Commission.<sup>1613</sup>

539. However, Stojić’s order to constitute a commission was entirely ignored. For one, Pušić continued to act exclusively as Director of Service for the Exchange of Prisoners and Other Persons, paying no mind to Stojić’s appointment.<sup>1614</sup> He also continued to be addressed exclusively as the Director of Service for the Exchange of Prisoners and Other Persons.<sup>1615</sup> Clearly, Stojić was not considered an authority by those in control of detentions and had no material ability to affect the situation.

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<sup>1611</sup> On July 1993, discussions were held on the conditions in the prisons during the 46<sup>th</sup> session of the HVO. See P03560, Minutes of the 46th Croatian Defence Council government session, 19 July 1993. See also P03565, Signed and stamped Decision of the Croatian Defence Council HZHB by Jadranko Prlic re. creation of a commission to assess situation in Capljina Ref. Number: 01-1-442/93, 19 July 1993.

<sup>1612</sup> P03995, Order by Bruno Stojic on the establishment of the commission to control the functioning of prisons, 6 August 1993. This order also confirms the fact, discussed in Section 3.5.1, above, that the Defence Department never had *de jure* authority over the detention of civilians.

<sup>1613</sup> P03995, Order by Bruno Stojic on the establishment of the commission to control the functioning of prisons, 6 August 1993.

<sup>1614</sup> See, e.g., P04178, Signed release order issued by Berislav Pusic and Zvonko Vidociv and sent to Heliodrom for the release of Safet Smajkic. Ref. 02-4/3-03-S2079/93, 14 August 1993; P04379, Stamped and signed Approval by Berislav Pusic for the release of Zvonko Vuckovic from Dretelj, 20 August 1993; P04450; Signed and Stamped authorization by Berislav Pusic and Zvonko Vidovic for the release of Safet Rados from Heliodrom 01-P-15/93, 23 August 1993; P04551, Signed and stamped approval issued by Berislav Pusic to Stanko Bozic for the release of Eso Tojaga from Heliodrom. Ref. 01-P-25/93, 27 August 1993; P04686, Authorisation by Berislav PUŠIĆ for the release of detainee Droce, Zijo from Heliodrom, 31 August 1993; P04799, Signed and stamped approval from Berislav Pusic to Stanko Bozic for the release of Miralem Zujo and Mamo BASIC from Heliodrom. Ref. 01-P-136/93, 4 September 1993; P04849, A list of 44 people from Prozor detained in Ljubuški Municipality prison, Signed by Berislav Pusic, 7 September 1993; P04993, Signed and stamped by Stanko Bozic list of Heliodrom prisoners sent to Berislav Pusic. Ref. 671/93, 13 September 1993; P05044, Stamped permit of the Bureau for Prisoners' Exchange, c/o Governor of the Military Investigating Prison issued by Berislav Pusic, 14 September 1993; P05071, Stamped list of 44 members of Armija Bosnia I Hercegovina detained at Heliodrom on 1st Floor, left block, signed by Berislav Pusic, 15 September 1993; P05743, Stamped approval signed by Berislav Pusic for the release of Sefik Muminagic from Heliodrom. Ref. 01-P-117/93, 8 October 1993; P05870, Report from V Vegar on a letter sent by Berislav Pusic to Mate Granic about a meeting of Berislav Pusic with International Committee of the Red Cross. Insufficient data, 14 October 1993; P05949, Stamped and signed report by Berislav Pusic to Stanko Bozic re: Stanko Bozic approval to release 5 prisoners from Heliodrom, 19 October 1993; P05952, Signed and stamped approval issued by Berislav Pusic to Stanko Bozic for the release of 5 named detainees from Heliodrom. Ref. 01-P-159/93 to 01-P-163/93, 19 October 1993; P06436, Signed list of 100 detainees in Heliodrom issued by Stanko Bozic to Berislav Pusic that have letters of guarantee for third countries. Ref. 795/93, 4 November 1993; P06467, Two stamped approvals issued by Berislav PUŠIĆ to Stanko Bozic for the release of Abdurahman Dedic and Alija Kebo from Central Military Prison, Mostar. Ref. 01-P-184/93, 6 November 1993.

<sup>1615</sup> P04312, Telex from Berislav Pusic to Ivo Lozancic re Croatian Defence Council 111 Rama brigade report dated 18-08-1993 re: handing over Muslim prisoners to 111 Bde, 19 August 1993; P04380, Report re: re negotiations held in Jablanica with Croatian Defence Council, represented by Berislav PUŠIĆ, Ivan Bandic and Zeljko Barbaric under Spanish Battalion (UNPROFOR), 21 August 1993; P04500, Stamped and signed list by Josip Praljak addressed to Berislav Pusic, containing a list of 17 Heliodrom detainees from Doljani and Sovici doing forced labor or being treated in hospital. Number: 586/ 93, 25 August 1993; P04916, Slobodan Dalmacija article re. press conference in Medjugorje by Kresimir ZUBAK, Berislav PUŠIĆ and Bozo RAJIC, 10 September 1993; P05870, Report from V VEGAR on a letter sent by Berislav PUŠIĆ to Mate GRANIC about a meeting of Berislav PUŠIĆ with International Committee of the Red Cross. Insufficient data, 14 October 1993.

540. Thus, the Commission was never effective.<sup>1616</sup> Even after the establishment of the Commission, orders from various individuals continued to be issued regarding activities at Ljubuški detention centres.<sup>1617</sup> This demonstrates that Stojić did not have *de jure* nor *de facto* control over the prisons. Indeed, and even though after having received limited knowledge about the situation in prisons, he tried to have a positive impact, the Commission that he set up could not perform its duties. Shortly thereafter, Stojić left the Defence Department.
541. The minutes of the meeting of the Heads of the Defence Department held on 2 September 1993, which were presented by the Prosecution, as evidence for Stojić control over detention facilities, should be read in the light of these failed efforts by Stojić. Indeed, during the meeting held approximately one month after the establishment of the Commission, Stojić stated that there are “two military prisons, Heliodrom and [...] Ljubuški. As for the other places [...], I do not consider them as military facilities and refuse to personally endorse the work of these institutions.”<sup>1618</sup> Indeed, in line with his initial mandate to separate civilian and military detainees,<sup>1619</sup> Stojić, after becoming aware, tried to remedy the situation regarding the command and control of the military prisons. As demonstrated, this he failed due to his lack of authority.
542. This shows that this statement does not constitute evidence of his control over the detention facilities of Heliodrom and Ljubuški. Moreover, his statement does not give rise to liability for the alleged crimes committed against civilians, since it does not refer to civilian detention facilities. Additionally, it cannot be used to impute responsibility regarding any acts committed against the Muslim members of the HVO, since these do not qualify as protected persons under the Geneva Conventions and, therefore, the Statute.<sup>1620</sup>

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<sup>1616</sup> See, e.g., P05792, Signed and stamped letter issued by Stanko BOZIC to Mate BOBAN re: problems at the Heliodrom relating to persons brought in between 30-Jun-1993 and 10-Oct-1993. Ref. 751/93, 10 October 1993 (report of Stanko Božić emphasising the “unresolved status of the SVZ”).

<sup>1617</sup> See, e.g., P04772, Order by Petar Majic to the Home guards Battalion to secure guarding prisoners while working at the vineyards in Vitina-Otok, 3 September 1993; [REDACTED]; P10175, Certificate by Ante PRLIĆ that pursuant to order by Valentin Coric two prisoners have been released from Ljubuški prison, 14 August 1993; P04572, Certificate from 4<sup>th</sup> Military Police Brigade stating Valentin CORIC issued an order that all Muslim detainees in possession of guarantee letters and transit visas are to be released from detention, 27 August 1993; See, e.g., P04079, Stamped and Signed Request From, Zarko Pavlovic to Nedjelko Obradovic, for release of 28 prisoners from Dretelj. Ref: 1100-11-17-93-138, 10 August 1993.

<sup>1618</sup> P04756, Minutes issued by Goran ZADRO from meeting of Croatian Defence Council Defence Dept Heads, dealing with new organization of Croatian Defence Council Main Staff and problems, 2 September 1993, p. 4.

<sup>1619</sup> See Section 3.5.3.1.1.

<sup>1620</sup> Under the Geneva Conventions Protected Persons are persons satisfying the criteria of Articles 4 of the 3<sup>rd</sup> or the 4<sup>th</sup> Geneva Conventions, respectively. Muslim HVO members do not qualify as Protected Persons under Article 4 of the 4<sup>th</sup> Geneva Convention, since they are not civilians. However, due to their allegiance to the HVO, they do not qualify as POWs pursuant to Article 4 of the 3<sup>rd</sup> Geneva Convention.

### 3.5.9 Unreliability of Exhibit 4D00461

543. On 28 November 2006, exhibit 4D00461, an order allegedly signed by Bruno Stojić,<sup>1621</sup> was first tendered in court by the Petković Defence during the testimony of Witness CG.<sup>1622</sup> The document was admitted per oral decision on 13 December 2006.<sup>1623</sup> At that time, the Defence did not object to the admission of the document as it did not have any information regarding its authenticity. Only later did Bruno Stojić inform the Defence that he has never seen the order before it was shown in court and that he did not sign it. [REDACTED].<sup>1624</sup> [REDACTED].<sup>1625</sup>
544. In fact, the Petković Defence did not provide the source of this document during the proceedings in court, nor in any written submission. The document bears no stamp from the Croatian State Archive or any other archive. Moreover, Witness CG did not testify to the reliability of the document, nor was the witness able to give evidence regarding the content of the document or the circumstances surrounding the issuance of the alleged order. Concretely, the witness stated that he is not aware whether the order was followed upon, who was responsible, and which measures exactly were taken.<sup>1626</sup>
545. The Defence took steps to enquire the authenticity of the document after its admission. On 7 September 2009, in order to proceed to an analysis of the signature, the Defence sent a letter to the Petković Defence requesting the original document.<sup>1627</sup> However, the latter was unable to provide the original document or a high-quality copy of the document. The Petković Defence stated that the document, together with other documents, was obtained from the “Croatian military archive.”<sup>1628</sup> No information was provided regarding the chain of custody of the document.
546. Contrary to all other documents issued within the same time period under preceding or subsequent registration numbers,<sup>1629</sup> exhibit 4D00461, with the registration number 02-1-781, cannot be found in the archives of the Republic of Croatia. Moreover, evidence shows that after this order was

<sup>1621</sup> 4D00461, Order on custody, accommodation etc. regarding the arrested members of the MOS, no: 02-1-781, 3 July 1993, Mostar, signed by Bruno Stojic, 3 July 1993.

<sup>1622</sup> Witness CG, 28 November 2006, T.10843:8-10844:2.

<sup>1623</sup> See Transcript of 13 December 2006, T.11616. The Defence notes that this oral decision occurred before the introduction of the so-called IC-procedure which allows the parties to object to documents through written submission.

<sup>1624</sup> [REDACTED].

<sup>1625</sup> [REDACTED].

<sup>1626</sup> See Testimony Witness CG, 28 November 2006, T.10843:25-10844:2.

<sup>1627</sup> This issue was raised by the Defence in its Motion for the Admission of Exhibit 2D03088, dated 12 May 2010, para. 9.

<sup>1628</sup> See Bruno Stojić's Motion for the Admission of Exhibit 2D03088, dated 12 May 2010, para 9.

<sup>1629</sup> 2D00985, Command on appointment signed by Bruno Stojic on 1993/07/01; appointments at the Brigade 'Eugen Kvaternik' – Bugojno, 1 July 1993; P03146, Signed and stamped order, ref. 02-1-785/93, issued by Bruno STOJIC to Croatian Defence Council P Kresimir Brigade re: Croatian Defence Council P. Kresimir Bde Military Police Coy Livno, under command of Andabak being redeployed to Mostar, 3 July 1993; and P03163, Stamped order by Bruno STOJIC to all Croatian Defence Council sectors, including OZ commanders, Military Police re: prohibiting HZHB citizens and persons fit for military service to leave HZHB without permission (which can be given by Stojic, Milivoj PETK, 4 July 1993).

allegedly issued, the Knez Domagoj Brigade and Obradović continued to be in charge of the detainees in Čapljina and Stolac, contrary to what the order stipulates.<sup>1630</sup>

547. Upon the admission of a document, it is within the Trial Chamber's discretion to decide how much weight should be given to this piece of evidence in the light of other evidence adduced in the case. The *Delalić* Trial Chamber held that "[f]actors such as authenticity and proof of authorship will naturally assume the greatest importance in the Trial Chamber's assessment of the weight to be attached to individual pieces of evidence."<sup>1631</sup> Furthermore, the *Halilović* Trial Chamber stated that it is settled Tribunal practice that when a challenge has been made to the authenticity or reliability of a document, the Trial Chamber will admit the document and decide what weight should be given to during its deliberations in light "of the trial record as a whole."<sup>1632</sup> Exhibit 4D00641 is not authentic and therefore not reliable. The Trial Chamber should not attribute any weight to the document.

### 3.5.10 No liability under Article 7 (1) and (3)

548. Bruno Stojić had no authority over the operation of HVO detention system. His only demonstrated involvement is the formalisation of Heliodrom location by written order and the formation of Commission. As established above, the object of the order on Heliodrom were Serb POWs and not any category of victims of the crimes alleged in the Indictment, namely civilians and Muslim HVO members. As to the formation of the Commission, evidence shows that it was completely ineffective due to Stojić's lack of authority. Stojić was not involved in any other way in the HVO detention system.

549. Regarding Stojić's JCE I liability, the Prosecution has failed to demonstrate any significant<sup>1633</sup> involvement or participation<sup>1634</sup> of Stojić intending the resultant alleged crimes<sup>1635</sup> within the

<sup>1630</sup> P03197, Signed order by Nedjelko OBRADOVIC. Ref:1100-01-01-93-492, 5 July 1993; P03201, Signed and stamped order, ref. 1100-01-01-93-495, issued by Nedjelko OBRADOVIC re: no one will be released from Gabela, Dretelj, Heliodrom or Ljubuski municipality Camps without his personal approval , 5 July 1993; P03216, Stamped information re: cancellation of order 05/07/93, new order directs that Nedjelko OBRADOVIC can only release those prisoners detained by Croatian Defence Council 1st KNEZ DOMAGOJ Brigade, signed by Valentin CORIC. Ref: 02-4/3-oL-1616/93, 6 July 1993; P03442, Signed and stamped request, ref. 1100-01-01-93-455, issued by Nedjelko OBRADOVIC to the Prison warden Dretelj re: release of the detainees from the Dretelj prison , 14 July 1992; P03462, Signed and stamped order, ref. 1100-01-01-93-491, issued by Nedjelko OBRADOVIC to the heads of Gabela and Dretelj prisons and to the Capljina civilian police and home guards re: combat readiness of Croatian Defence Council Gabela and Dretelj prison guards, 15 July 1993; P03731, Signed report issued by Nedjelko OBRADOVIC re: visit of Brigadier Luka DZANKO to prison in Gabela. Enclosed is the statement by the warden Boko PREVISIC, 27 July 1993; P04079, Stamped and signed request from, Zarko PAVLOVIC to Nedjelko OBRADOVIC, for release of 28 prisoners from Dretelj. Ref: 1100-11-17-93-138, 10 August 1993; and P04941, Stamped request to Nedjelko OBRADOVIC for the release from prison of persons who are in possession of letters of guarantee and transit visa for the passage through Croatia signed by Zarko PAVLOVIC. Ref: 1100-11-17-93-403, 11 September 1993.

<sup>1631</sup> *Prosecutor v. Delalić et al*, IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence, 19 January 1998, para.20.

<sup>1632</sup> *Prosecutor v. Halilović*, IT-01-48-T, Decision on Defence Motion for Exclusion of Exhibits, 29 June 2005.

<sup>1633</sup> See *Prosecutor v. Miroslav Kvočka*, IT-98-30/1-A, Judgement, 28 February 2005, para. 97; *Prosecutor v. Momčilo Krajišnik*, IT-00-39-A, Judgement , 17 March 2009, para. 215.

<sup>1634</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 196.

- detention system. His knowledge was very limited and when he was aware of the situation, he tried to act. Therefore, he did not possess the intent to further the alleged JCE by contributing to the commission of the alleged crimes, since he did refuse to contribute.<sup>1636</sup>
550. As to the allegations under JCE II, Stojić did not actively participate in “the enforcement of a system of repression”<sup>1637</sup> since he did not have a position of authority.<sup>1638</sup> Moreover, as mentioned above, Stojić did lack the knowledge of the system and refused to participate once he was aware of the situation in the detention facilities.<sup>1639</sup>
551. Lastly, regarding his liability under JCE III, the Prosecution did not present evidence that Stojić entered with the alleged direct perpetrators to commit any particular crime. Stojić had no authority over the detention system or over the alleged perpetrators, the HVO armed forces. Furthermore, he had limited knowledge.<sup>1640</sup>
552. Additionally, due to his non-involvement in the release of prisoners, the Prosecution’s allegations regarding his participation in the deportation of Bosnian Muslims by establishing procedures for their release<sup>1641</sup> must fail.
553. Furthermore, the Prosecution failed to provide evidence showing that Stojić designed or participated in the design of the criminal conduct constituting the alleged crimes committed by the armed force,<sup>1642</sup> that he incited, solicited, induced, or otherwise prompted the alleged crimes<sup>1643</sup> or was in a position of authority to issue binding orders and instructed the armed forces to commit the alleged crimes.<sup>1644</sup> Stojić did. Therefore, Stojić did not plan, instigate or order the alleged crimes committed by the armed forces.
554. As for Stojić’s liability for aiding and abetting the commission of crimes, he did not act in any way that would have had a “substantial effect upon the perpetration of the crime.”<sup>1645</sup> Moreover, despite not having the authority to do so,<sup>1646</sup> he tried to remedy the situation regarding the detention centres by forming a Commission. He also lacks the “double intent,” since he did not intend to act

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<sup>1635</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para 196.

<sup>1636</sup> See *Prosecutor v. Momčilo Krajišnik*, IT-00-39-T, Judgement, 27 September 2006, para. 890.

<sup>1637</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para 203.

<sup>1638</sup> See *Prosecutor v. Duško Tadić*, IT-94-1-A, Judgment, 15 July 1999, para. 228.

<sup>1639</sup> See *Prosecutor v. Miroslav Kvočka*, IT-98-30/1-A, Judgement, 28 February 2005, para. 284.

<sup>1640</sup> *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Decision on form of Further Amended Indictment, 26 June 2001, para. 44.

<sup>1641</sup> Indictment, para. 17.2(p).

<sup>1642</sup> *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 26; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, para. 513; *Prosecutor v. Milosevic*, IT-98-29/1-T, Judgment, 12 December 2007, para. 956.

<sup>1643</sup> *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 27; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, para. 514; *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, paras. 271, 274.

<sup>1644</sup> See *Prosecutor v. Kordić & Cerkez*, IT-65-14/2-A, Judgement, 17 December 2004, para. 28; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, para. 515; *Prosecutor v. Strugar*, IT-01-42-T, Judgement, 31 January 2005, para. 331.

<sup>1645</sup> See *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999, para 229.

<sup>1646</sup> See *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 283.

in any way that would further the commission of the alleged crimes and did not intend the perpetration of the alleged crime by the principal perpetrators.<sup>1647</sup>

555. Finally, with regard to his liability pursuant to Article 7 (3) of the Statute, Stojić did not have effective control over the alleged principal perpetrators.<sup>1648</sup> His position did not provide for such control and he was not within the military chain of command.<sup>1649</sup> He was not able *de jure* or *de facto* to issue orders to the alleged direct perpetrators.<sup>1650</sup> Stojić was not involved in the procedure for appointment of the persons in charge of the detention centres.<sup>1651</sup> None of the tasks he performed were related to the detention of the victims of the alleged crimes.<sup>1652</sup> In short, Stojić only had limited knowledge of the detention system.<sup>1653</sup> When he became aware of failings and allegations of concern, Stojić tried to remedy the situation by forming a Commission. That it failed is further evidence of Stojić's lack of authority.<sup>1654</sup>

### 3.6 Conclusion

556. In the previous Part of this Brief, the Defence argued that the core thesis of the Prosecution, namely that there was a JCE of the type alleged is unsupported by the evidence.<sup>1655</sup> In this Part, the Defence has endeavoured to take the Trial Chamber through the main allegations of the Prosecution's case and to demonstrate that the assertion that Stojić was a member of such a JCE or otherwise responsible under 7(1) or 7(3) of the Statute is simply wrong. In particular, the Defence submit that together with the other JCE allegations against Stojić, it refuted that Stojić was responsible for actions and activities carried out in furtherance of the alleged JCE.<sup>1656</sup> Relevant in this regard is the fact that the Defence Department was created to fulfil largely administrative and logistical functions and that Stojić never possessed operational competencies,<sup>1657</sup> nor was he a military commander or civilian superior possessed with effective control over subordinates who may have committed any of the crimes alleged.<sup>1658</sup> Accordingly, he cannot incur responsibility for failing to prevent or punish as required by the Statute.<sup>1659</sup> The weight of evidence before the Trial Chamber also debunks the theory that Stojić possessed any discriminatory intent or had a hostile

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<sup>1647</sup> See *Prosecutor v. Orić*, IT-03-68-T, Judgement, 30 June 2006, para. 288.

<sup>1648</sup> See test applied in *Prosecutor v. Halilović*, IT-01-48-T, Judgement, 16 November 2005, para. 58.

<sup>1649</sup> See Section 3.3.1.1.

<sup>1650</sup> See Section 3.5.2. and 3.5.3.

<sup>1651</sup> See Section 3.5.3.

<sup>1652</sup> See Section 3.5.1.

<sup>1653</sup> See Section 3.5.8.1.

<sup>1654</sup> See Section 3.5.8.2.

<sup>1655</sup> See Section 2 above.

<sup>1656</sup> See Indictment, para. 17.2(a).

<sup>1657</sup> See Section 3.2

<sup>1658</sup> See Section 3.3

<sup>1659</sup> Indictment, paras. 17.2(r) and 228.



animus towards the Muslim people of BiH.<sup>1660</sup> Indeed, he did a great deal to help them.<sup>1661</sup> The Defence submit that it has demonstrated numerous misunderstandings, misconceptions and deficiencies in the Prosecution's case which, simply put, has not been proved beyond reasonable doubt.

#### **4 SENTENCING**

557. The Defence will address the issue of sentencing, if necessary, in the course of closing argument and make no submissions at this juncture.

#### **5 FINAL CONCLUSION**

558. For the reasons adumbrated in this brief, it is the respectful submission of the Defence that the Prosecution have failed to discharge their burden of proving Bruno Stojić guilty beyond reasonable doubt in relation to any of the counts alleged in the indictment. The Defence respectfully pray that, in these circumstances, the only safe and proper course is that he be acquitted on all counts.

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<sup>1660</sup> See Section 3.4.

<sup>1661</sup> See Section 3.4.4.4.

ANNEX 1

EXHIBITS INCLUDED IN EACH BRIEF SECTION AND  
RELATION TO INDICTMENT

SECTION OF BRIEF		PARAS. OF INDICTMENT	RELATED EXHIBITS
2.	ALLEGED JOINT CRIMINAL ENTERPRISE	15, 16, 16.1, 17 (a)-(l), 17.2(a)-(q), 39, 221-227	
2.2.	Formation of Herceg-Bosna, HVO and Related Structures	1, 18-26, 43-45, 61-62, 64, 73-74, 88-89, 144-145, 154-156, 172-173, 204-206	
2.2.1.	Tensions in Bosnia-Herzegovina up until 18 November 1991		P00031, P00034, P00041, P00042, P00058, P00060, P10451, P10968, 1D00475, 1D00480, 1D02699, 1D02798, 3D03742.
2.2.2.	Defence erected against aggression of Serb forces		P00060, 2D03070, 3D00432.
2.2.3.	Establishment of HVO HZ-HB and influence of territorial defences (TO)		P00151, P00154, P00155, P00157, 1D00524, 1D02441, 5D04271.
2.3.	Cooperation Between HVO and ABiH Forces Throughout 1991-1994		
2.3.1.	Joint Command	17.2(d), 27, 28	P00154, P00633, P00644, P00727, P00339, P00708, P00795, P01112, P01215, P01238, P01311, P01322, P01329, P01341, P01467, P01675, P01709, P01965, P01988, P02016, P02054, P02059, P02078, P02091, P02192, P02155, P02254, P03025, P09494, P10919, 1D02259, 1D01543, 1D01655, 1D01925, 1D01945, 1D01981, 1D02096, 1D02147, 1D02664,

			2D00195, 2D00229, 2D00253, 2D00313, 2D00439, 2D00645, 2D00764, 2D00771, 2D00798, 2D01177, 2D01185, 3D03519, 4D00434, 4D00455, 4D00830, 4D00895, 4D01700, 5D02052.
2.3.2.	Arms and materiel transfers	17.2(g)	P00791, 1D02148, 1D02458, 2D00147, 2D00229, 2D00311, 2D00522, 2D00523, 2D00630, 2D00809, 2D00898, 2D01086, 2D01091, 2D01093, 2D01097, 2D01100, 2D01101, 2D01107, 2D01111, 2D01116, 2D01253, 2D01254, 3D00008, 3D00436, 3D00437, 3D00299.
<b>2.4.</b>	<b>Alleged Campaign to Persecute Bosnian Muslims and other non-Croats</b>		
2.4.1.	Official policy of HVO HZ H-B not intended to discriminate against or persecute Bosnian Muslims	26, 35, 41, 50, 59, 90, 93, 112, 152	P00250, P00275, P00458, P00553, P00679, P00716, P00726, P00728, P00744, P00800, P01158, P01194, P01656, P01994, P02622, P02703, P02721, P02731, P02782, P02923, P02929, P03007, P03346, P03420, P03895, P03900, P004430, P04464, P04698A, P05428, P09400, P09627, P09694, P09712, 1D00303, 1D00383, 1D00421, 1D00438, 1D00499, 1D00500, 1D00501, 1D00504,

			<p>1D00594, 1D00606, 1D00613, 1D00643, 1D00754, 1D01050, 1D01157, 1D01223, 1D01232, 1D01328, 1D01421, 1D01529, 1D01591, 1D01921, 1D01922, 1D00935, 1D02651, 1D02661, 1D02662, 1D02761, 1D02763, 2D00008, 2D00119, 2D00120, 2D00123, 2D00201, 2D00504, 3D00921, 3D03178, 3D03249, 4D02000.</p>
2.4.2.	No concerted HVO plan of attack on ABiH	17.2(d), 31-36, 40, 110-117	<p>P00430, P00460, P00607, P00608, P00612, P00622, P00625, P00628, P00642, P00644, P00645, P00647, P00653, P00687, P00702, P00712, P00716, P00744, P01101, P01107, P01113, P01114, P01185, P01344, P01398, P01622, P01675, P01879, P01962, P01970, P02168, P02192, P02273, P02526, P02750, P02911, P03025, P03314, P04817, P04905, P04931, P04951, P05033, P09638, P11146, 2D00054, 2D00150, 2D00244, 2D00253, 2D00304, 2D00311, 2D00403, 2D00450, 2D00472, 2D00473, 2D00689, 3D00127, 3D00510, 3D01450, 3D02206,</p>

			3D02212, 3D02361, 3D02364, 3D02424, 3D02515, 3D02582, 3D02780, 3D02863, 3D03065, 4D00090, 4D00346, 4D00356, 4D00434, 4D00438, 4D00480, 4D00453, 4D00599, 4D00778, 4D00779, 4D00782, 4D00786, 4D00794, 4D00798, 4D00801, 4D00806, 4D00901, 4D00915, 4D01731.
2.4.3.	Ultimatums were necessary military measure in battle against Serbs	17.2(i), 30-33, 65, 75, 92-93	P01043, P01047, P01140, P01146, P01155, P01158, P01139, P01174, P01194, P01160, P01182, P01168, P01201, P01205, P01211, P01215, P01229, P01240, P01303, P01792, P01798, P01804, P01808, P01965, P01983, P02002, P02046, P02078, P02097, P09494, P10253, P10675, 1D00818, 1D00821, 1D02903, 2D00470, 2D00809, 2D01037, 2D01254, 2D01409, 4D00090.
<b>2.5.</b>	<b>Alleged Plan to Annex Portions of Bosnia-Herzegovina into "Greater Croatia"</b>		
2.5.1.	No plan to establish "Greater Croatia"	20, 23, 24, 30, 42, 216	P00109, P00151, P01043, P10027, P10451, 3D03720.

2.5.2.	No agreement between Tudjman and Karadzic	27	P00089, P00108, P00110, P00187, P00192, P01363, P11376, P11380, 1D00525, 1D00398, 1D02437, 2D00229, 2D00311, 2D00798, 2D01278, 2D01279, 2D01282, 2D01283, 2D01284, 2D01285, 2D01286, 2D01287, 2D01288, 2D01289, 2D01290, 2D01291, 2D01293, 2D01295, 2D01364, 2D03057, 3D00430, 3D00561, 3D03527, 3D03528.
2.5.3.	Involvement of Republic of Croatia	20,	P01094, 1D01753, 1D01755, 1D02921, 2D00486, 3D00299, 3D02633.
3.	<b>THE CASE AGAINST BRUNO STOJIC</b>	4, 5, 17(a)-(l), 17.2(a)-(r), 39, 221-228.	
3.1.	Defence Theory	N/A	N/A
3.2.	Department of Defence as an overarching administrative body	5, 17.2(a), (e), (f), (g), (r), 25, 228	P00128, P00281, P00151, P00289, P00297, P00518, P00586, P00588, P00615, P00700, P00767, P00856, P01409, P01417, P01428, P01550, P01553, P01593, P01831, P01945, P02050, P02331, P02477, P02507, P02661, P02945, P03024, P03038, P03355, P03642, P04055, P04399, P04565,

		P04626, P04699, P04756, P04857, P05939, P07035, P07090, P07236, P07419, P07433, P08118, P09545, P06234, P00221, P00296, P00199, P00382, P00988, P04055, P01063, P00382, 1D00083, 1D00084, 1D00295, 1D00296, 1D00298, 1D00297, 1D00302, 1D00307, 1D00310, 1D00498, 1D00543, 1D00544, 1D00550, 1D01611, 1D01668, 1D01672, 1D01771, 1D01772, 1D02991, 1D02538, 1D00392, 1D02998, 2D00119, 2D00120, 2D00150, 2D00320, 2D00322, 2D00323, 2D00418, 2D00444, 2D00502, 2D00522, 2D00524, 2D00535, 2D00536, 2D00538, 2D00540, 2D00541, 2D00566, 2D00567, 2D00687, 2D00714, 2D00721, 2D00737, 2D00738, 2D00739, 2D00749, 2D00751, 2D00752, 2D00968, 2D01018, 2D01114, 2D01195, 2D01217, 2D01223, 2D01247, 2D01252, 2D01347, 2D01352, 2D01353, 2D01355, 2D01370, 2D01450, 2D01455, 2D01458, 2D01485, 2D02000, 2D00567, 2D00677, 2D01209, 2D00995,
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			2D01206, 2D01222, 2D01246, 2D01237, 2D01482, 2D01225, 2D01226, 2D03055, 2D01387, 2D01211, 2D01225, 2D01226, 2D01227, 2D01228, 2D01229, 2D03003, 2D01387, 2D01199.
<b>3.3.</b>	<b>No control over military operations</b>	46, 48-49, 51, 53, 63, 65-67, 76, 82-85, 94, 103, 107-117, 160-167, 176-185, 206, 208-209, 211	
<b>3.3.1.</b>	No control over armed forces	17.2(b), (d), (e), (f), (g), (m), (n), (q), (r), 25, 27, 30, 40, 97-98, 100-102, 105, 107-117, 160-167, 176-185, 206, 208-209, 213-216, 228	P00586, P00154, 1D02716, P04134, 2D00595, P00680, P01424, P01746, P07090, P00289, 4D01126, 4D01124, P01067, P00280, P03363, P00661, 2D02018, P03582, P03683, P04234, P04550, P05566, P04037, P00796, P00833, P00835, P00849, P01072, P01077, P01612, P01637, P02945, P01805, P01846, P01631, P01637, P03117, P00616, P00620, 2D00989, 2D01177, 2D01531, 2D01446, 2D01186, 2D01211, 2D01206, 2D03055, 2D00985, 2D03005, 2D03007, 2D01198, 2D01200, 4D01038, P03917, 3D01178, 2D01490, P00698, P00849, P00938, P01077, P01604, P01612, P01631, P01637, 2D00629, P01805,

			<p>P01846, P02602, P02945, P06208, 2D01337, 2D01507, 2D01509, 2D01201, 2D01449, 2D01453, 2D01469, 2D01348, 2D01027, 2D01369, 2D01372, 2D01447, 2D01479, 2D01540, 2D01342, 2D1335, P03128, P03117, P03532, 3D02469, 1D01704, 2D01364, 4D00821, P00672, 1D01669, 2D00851, 1D01180, 2D00536, 2D00537, 2D00535, 2D01217, 2D00538, 2D00540, 2D00541, 1D00298, 1D01759, 1D01761,</p>
<p><b>3.3.2.</b></p>	<p>No Control over the Security Sector (SIS and Military Police Administration)</p>	<p>5, 17.2(c), (p), (q), (r), 25, 91, 95, 106, 184, 215-216, 228</p>	<p>P00586, 2D02000, 2D01333, 2D01333, P00588, P01678, P04756, 2D01379, P04699, 2D00924, 2D00567, P05621, P05614, 2D00944, P00128, P00289, P04211, P00858, 2D00944, 2D00567, 2D00944, 2D00949, 2D00930, 2D00944, 2D00949, P06022, P06841, 4D00517, 2D00944, 2D03083, 4D01700, 2D03083, 5D01064, 2D03025, P04211, P04756, 2D00934, 2D00929, P05133, 2D03083, 4D00475, 4D01700, P03135, P04071, P06791, 2D00927, 2D01370, P00566, P02597, 4D00977, P03260,</p>

			<p>P03831, P00420, 2D00567, P02477, P00957, P00586, 2D00567, 5D00538, P01099, P01148, P01888, P01913, P01972, P04110, P00990, P02595, 5D05106, 5D05107, 5D05110, P00413, P00781, P02026, P03593, P05731, P05411, 3D00798, P00781, 5D02102, P04063, P04251, P01238, P04262, P04131, 5D02002, P03778, 5D00546, 5D01054, 5D02009, 5D04392, P01148, 5D04039, 5D00538, P02548, 5D04030, P05412, 5D00546, 5D02009, P01472, 5D03048, 5D03052, 5D02195, 5D04380, P02640, P03135, P01913, 3D00798, P04063, P04251, P04260, P02769, P03179, P03983, P01344, P01359, P01344, P01548, P04778, 5D04040, P01272, P03019, P03201, P03161, 5D03046, 5D04392, P04922, P00646, 3D02408, 2D01349, P01420, P01422, P02230, P02970, P04108, P00799, P01098, P03077, P01422, P01420, P01457, P01460, P01466, P02985, P02993,</p>
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				P03002, P03487, P00509, P00960, P00893, P03146, P02202, P05471, P00876, P00875, P03128, 2D01335, P00588, P00592, 4D00575, 1D01179, P00590, P00592, P00590, P01536, P01652, 1D01179, P03350, 1D01974.
<b>3.4.</b>	<b>No part in decision on alleged HZ H-B policies in furtherance of the JCE</b>			
<b>3.4.1.</b>	Policies aiming at the discrimination, subjugation or "Croatisation" of Muslims or any propaganda aiming at engendering hatred of Bosnian Muslims among Bosnian Croats	17 (d), (e), 17.2. (i), (l)		P00275, P00608, P00628, P00716, P00726, P00728, P00744, P00800, P01068, P01656, P02690, P03038, P09694, P09702, P09840, P10367, P10675, 1D00199, 1D00200, 1D00236, 4D00480, 2D00595, 2D01353
<b>3.4.2.</b>	Shipment of arms	17.2.(g)		P02190, P02477, 2D00195, 2D00311, 2D00630, 2D00809, 2D01101, 2D02000, 3D00008, 3D00009, 3D00010
<b>3.4.3.</b>	Facilitation of the support of Republic of Croatia	17.2.(h)		P10291
<b>3.4.4.</b>	Blockage of passage of humanitarian aid	17.2.(o)		P00458, P01994, P02291, P02746, P03327, P03346, P03362, P03376, P03835, P03895, P03923, P04027,

			P04358, P04430, P04464, P04466, P05091, P05138, P05926, P06825, P09495, P09712, P09846, P10367, 1D01360, 1D02024, 1D02025, 1D02142, 1D02183, 1D02207
<b>3.4.5.</b>	Appropriation of property and transfer to HZ HB/HVO forces in participation	17.2.(n)	P00424, P00553, P02144, P03089, P03181, P09593, P09840, 1D00606, 1D00613, 1D00618, 1D00669, 1D00717, 1D00730, 1D00749, 1D00754, 1D01232, 1D01157, 1D01198, 1D01385, 1D01892, 1D02141, 2D00993
<b>3.5.</b>	<b>No control over HVO detentions</b>	17.2(j), (q), 37, 38, 39(d)	P03181
<b>3.5.1.</b>	Scope and limitations of P00292	17.2(j), 119-120	P00292, P00452, 2D02000, 4D01105, P00352, P02679, P00420
<b>3.5.2.</b>	Detentions within OZs under control of military	17.2(j), 37, 38, 47, 48, 54, 56-59, 67-71, 77-80, 86, 94-96, 99, 103-106, 157-159, 168, 174-175, 183-184, 187-194, 195-203, 207, 209-210	P01635, P00420, P10268, P03169, P03201, P03442, P02047, P03242, P03380, P01636, P04193, P04156, P06569, P06662, P06658, P01478, P06114
<b>3.5.3.</b>	<b>No part in operations</b>	17.2(j)	
<b>3.5.3.1.</b>	Heliodrom	17.2(j), 105, 119-135	P00452, P00352, P00292, P09551, P00665, 1D02435, P00677, P09843, P02170,

				P001711, 2D01321, P02853, P02925, 1D01666, 4D01105, P06520, P04745, P03019, P03151, P03222, P03300, P03234, P00307, P04745, P05581, P01333, P05621, P05590, , P00514, P00352, P03942, P04841, P01001
<b>3.5.3.2.</b>	Ljubuški and Vitina/Otok		17.2(j), 146-151, 153	1D02435, P00677, P03613, P02223, P04225, P05091, P01987, P01987, P03367, P03784, P03793
<b>3.5.3.3.</b>	Dretelj		17.2(j), 187-194	P01802, P03794, P07341, 2D00973, P03019, P03546, P03151, P03222, P03161, 2D00715, P03129, P03197, 5D01066, P03328, P03478, P05222
<b>3.5.3.4.</b>	Gabela		17.2(j), 195-203	P02679, P02674, P03642, P00292, P02679, 2D00278, 2D00412, P05485, P03161, P03232, P06658, P06569, P06662, P03462, P03161,
<b>3.5.3.5.</b>	Kostana Hospital		17.2(j), 158, 169	
<b>3.5.3.6.</b>	Vojno Camp		17.2(j), 136-143	P07722, P08077, P08079, P05288
<b>3.5.4.</b>	No knowledge or involvement in forced labor		17(j), 17.2(k), 39(f), 55, 81, 127-130, 133-134, 139, 148-149	P02638, P02667, P02693, P02702, P02848, P02915, P03929, P05518, 3D01745, 3D02427, 3D02430, 3D02432,

				3D02435, 3D02436, 4D00754, P01765, P08043, P02642, P08428, 5D05110, P06275, P01765, P08043, P02642, P08428, P01765, P01765, P05873, P05874, P06202, P04119, P05307, P05324, P05459, P05607, P01514
<b>3.5.5.</b>	Healthcare – not responsibility of Health Sector but Medical Staff of armed forces		124, 126, 137, 147, 168, 183, 190, 198	2D02000, P03197, P03942, P03129, P04145, 2D000412, P05503
<b>3.5.6.</b>	No involvement in release/exchange of prisoners		17.2(p), 70, 151	P06170, P03169, P02468, P02344, P04380, P07417, 2D00089, P01959, P05138, P07096
<b>3.5.7.</b>	No involvement in closing of prisons		17.2(j)	P07096, P07668
<b>3.5.8.</b>	<b>Stojic's Role</b>		17.2(j)	
<b>3.5.8.1.</b>	Knowledge		17.2(j), 219-220, 228	P01514, P03209, P04186, P04352, P05812, P06170, P06859, 2D01399, 2D02000, P05812, P05792, P05792, P05792, P00285, P00285
<b>3.5.8.2.</b>	Commission		17.2(j)	P03560, P03565, P03209, P03995, P03995, P04379, P04450, P04551, P04686, ; P04799, P04849, P04993, P05044, P05071, P05743, P05870, P05949, P05952, P06436, P06467, P04312,

			P04380, P04500, P04916, P05870, P05792, P04772, P05100, P10175, P04572, P05479, P04079
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ANNEX II

EXAMPLES OF DECISIONS / EVENTS PREDATING MERE  
FORMALISATION BY BRUNO STOJIC

	DECISION/EVENT	DE FACTO DATE OF DECISION/EVENT	DATE OF FORMALISATION
4.	HVO Main Staff formation	The HVO "Main Staff", i.e. the centralised military command headquarters, was <i>de facto</i> operating as early as <b>10 April 1992</b> (See P00154, Stamped order recognizing the Croatian Defence Council as the exclusive supreme command of the forces and the only legal military formation signed by Mate BOBAN. Ref: 2-01-11/4. See also 1D02716, Certificate issued to Ilija Kozulji by HZ HB Main Staff for free movement, <b>9 May 1992</b> (earliest available document with "Main Staff" letterhead)).	<b>18 September 1992</b> (See P00502, Signed and stamped document from Bruno STOJIC, Croatian Defence Council Defence Department Chief, re: the decision on Croatian Defence Council Main Staff temporary formation).
5.	OZ formation	<b>31 August 1992</b> (See, P00416, Stamped order to form Operations Zones (OZ) on the territory of Herceg-Bosna. Lists the area of responsibility of these zones. Signed by the Armed Forces Commander. Ref: 01-2054/92).	<b>10 December 1992</b> (See 2D00927, Temporary formation of OZ HVO with table of various positions within HVO formations signed by Bruno Stojic on 1992/12/10).
6.	Establishment of Mostar Sector	Prior to <b>21 September 1992</b> (See 2D01353, Report by Milivoj Petkovic to Defence Department referring to temporary structure of HVO, zone of operations, formation of brigades, discipline within units, item 2 (stating that the establishment of the Mostar Sector was underway)).	<b>22 September 1992</b> (See P00517, Signed and stamped order issued by Bruno STOJIC re: the establishment of Brigades and the Mostar Sector. Ref: 03-100/92).
7.	Establishment of military prison at Heliodrom	<b>1 July 1992</b> (See P00352, Diary of Josip PRALJAK, page 2 (indicating construction was to commence "to build, or adapt a building that will be used as a military prison after the war").	<b>3 September 1992</b> (See P00452, Stamped decision establishing the Central Military Prison in Mostar in the Heliodrom barracks, and appointing Mile PUSIC as the Prison warden, signed by Bruno STOJIC. Ref: 03-44/92).
8.	Establishment of Military Police Training Center	"Request" from Military Police Administration made on <b>14 September 1992</b> states that "[a] plan for the training of Military Police" has already been drawn up	<b>20 September 1992</b> (See P00509, Stamped decision on establishing the Military Policemen Training Centre, signed by Bruno STOJIC. Ref:

		and "accommodation facilities and training grounds [...] have been provided in Neum." (See P00475, Stamped letter signed by Valentin CORIC requesting the foundation of a military police training centre in Neum. Ref: 01-1083/92).	03-59/92).
9.	Organisation of Military Police	As early as <b>April 1992</b> , there were provisional instructions for the organisation of the Military Police from Boban (See P00143, Provisional instructions for the work of the military police units of the Croatian Defence Council in the HZHB issued by Mate BOBAN). Official instructions were issued by Coric on <b>30 November 1992</b> (See P00837, Instructions for the work of the Military Police Units of the Croatian Defence Council HZHB. Ref. 02/413-01-1688/92).	<b>26 December 1992</b> (See P00957, Stamped report on the organisation of the Croatian Defence Council Military Police in HZHB, signed by Valentin CORIC and Bruno STOJIC. Ref: 02-4/3-01-1940/92).
10.	Designation of Dretelj Barracks to Military Police	The request from the Military Police to use the Dretelj Barracks was approved in a collegium meeting on <b>9 December 1992</b> (See P00880, Stamped Minutes from the Collegium of the head of the Defence Department held on 7 and 9 December 1992 in the office of the head, signed by Gordan ZADRO. Witness Slobodan Bozic affirmed that the collegiums did in fact approve this and that the transcript of the meeting is not correct where it says that the collegium rejected the MP request. See transcript of 2 February 2009, T.36289:19-21.).	<b>10 December 1992</b> (See P00893, Stamped decision on allotting of the barracks in Dretelj (Capljina) to the Military Police, to serve their needs).
11.	Appointment of Assistant for Security, Rama Brigade	<b>24 August 1993</b> (See 2D01507, Decision on appointment of Franjo Krizanac signed by Bruno Stojic (appointment issued <i>retroactively</i> )).	<b>25 August 1993</b> (See 2D01507, Decision on appointment of Franjo Krizanac signed by Bruno Stojic).
12.	Appointment of Head of SIS Centre, Rama	<b>24 August 1993</b> (See 2D01505, Decision on appointment of Luka Markesic signed by Bruno	<b>25 August 1993</b> (See 2D01505, Decision on appointment of Luka Markesic signed by Bruno

		Stojic (appointment issued <b>retroactively</b> ); See also 2D01506, Decision on suspension of Luka Markesic signed by Bruno Stojic (retroactive dismissal on same day).	Stojic; See also 2D01506, Decision on suspension of Luka Markesic signed by Bruno Stojic).
13.	Appointment of Head of SIS Center, Capljina	<b>26 August 1993</b> (See 2D01508, Decision on appointment of Ivan Vrankic to the position of Head of SIS Center in Capljina signed by Bruno Stojic (appointment issued <b>retroactively</b> )).	<b>27 August 1993</b> (See 2D01508, Decision on appointment of Ivan Vrankic to the position of Head of SIS Center in Capljina signed by Bruno Stojic).
14.	Assigning officers to the "Eugen Kvaternik" Brigade, Bugonjo	Officers in brigade "on duty" since as early as <b>5 January 1991</b> (See 2D00985, Command on appointment signed by Bruno Stojic on 1993/07/01; appointments at the Brigade 'Eugen Kvaternik' – Bugojno).	<b>1 July 1993</b> (See 2D00985, Command on appointment signed by Bruno Stojic on 1993/07/01; appointments at the Brigade 'Eugen Kvaternik' – Bugojno).
15.	Appointment of "expert officer for recruitment and peacetime supplement" in Defence Office, Orasje	<b>28 September 1993</b> (See 2D01206, Document signed by Bruno Stojic on 1993/10/02; concordance with appointment of Kasim Primeca to the position of "Higher specialized administrative officer for recruiting and peace time fill" (appointment issued <b>retroactively</b> )).	<b>2 October 1993</b> (See 2D01206, Document signed by Bruno Stojic on 1993/10/02; concordance with appointment of Kasim Primeca to the position of "Higher specialized administrative officer for recruiting and peace time fill").
16.	Appointment of head of Defence Administration, Tomislavgrad <sup>1</sup>	<b>10 May 1993</b> (See 2D03055, HZ HB HVO - Decision no.02-1-480/93 signed by Bruno Stojic - Appointment of Bruno Matijanic to the Office of defence Gornji Vakuf (appointment issued <b>retroactively</b> )).	<b>15 May 1993</b> (See 2D03055. HZ HB HVO - Decision no.02-1-480/93 signed by Bruno Stojic - Appointment of Bruno Matijanic to the Office of defence Gornji Vakuf).

<sup>1</sup> Similarly, see 2D01211, Document signed by Head of Municipal HVO Gornji Vakuf Ivan Saric on 1993/04/03; proposal for appointment of Head of Defense Office for G. Vakuf , 3 April 1993, stating that the candidate "already performs these duties".