

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

CASE NO. IT-04-74-T

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

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THE PROSECUTOR

v.

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

REDACTED PUBLIC VERSION

PETKOVIC DEFENCE FINAL BRIEF

**The Office of the Prosecutor
Mr. Kenneth Scott
Mr. Douglas Stringer**

**Counsel for Jadranko Prlić
Mr. Michael G. Karnavas
Ms. Suzana Tomanović**

**Counsel for Milivoj Petković
Ms. Vesna Alaburić
Mr. Zoran Ivanišević**

**Counsel for Bruno Stojić
Ms. Senka Nožica
Mr. Karim Khan**

**Counsel for Valentin Čorić
Ms. Dijana Tomašegović Tomić
Mr. Dražen Plavec**

**Counsel for Slobodan Praljak
Mr. Božidar Kovačić
Ms. Nika Pinter**

**Counsel for Berislav Pušić
Mr. Fahrudin Ibrišimović
Mr. Roger Sahota**

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ABBREVIATIONS

I. MILIVOJ PETKOVIĆ

1. Petković's personal and professional/military background

1. Petković was born in Croatia (Šibenik, 11 October 1949), where he completed his primary and secondary education. He enrolled with the Military Academy in Belgrade in 1968 and graduated in 1972. After that he served as a professional soldier in various localities (in Slovenia and Croatia) and on various positions and ranks within the JNA until July 1991.

2. He was a professional military person all of his life. He has been educated, trained and legally required to strictly respect the scope/limits of his authority/power while performing various specific duties within armed forces, pursuant to relevant laws and regulations.

3. During his military service (in the JNA, Croatian Army and/or HVO) Petković fully respected and acted in accordance with the doctrine of civilian *control of the military*.¹ In accordance with this doctrine, the ultimate responsibility over strategic decision-making (including the decision to set the aims of war and/or the decision to end the conflict) lies in the hands of the political-civilian leadership.² Civilian authorities enact relevant laws and regulations concerning the management and control of the military, including those defining specific duties and the scope of powers and responsibilities of the military commanders/persons, on the one hand, and duties, powers and responsibility of other organs an/or persons in charge of various other specific tasks in relation to the military, on the other. Through these laws and regulations civilian authorities also establish specific mechanisms/instruments of the civilian control over the military and identify bodies/organs and/or persons empowered to carry out these specific tasks.

4. The strategical goals and purposes of the military are set by civilian authorities. The military is subordinated to these goals and policies, and military commanders are required to implement the decisions of competent civilian authorities. The quality of the work of a professional soldier does not, and should not, depend on the political party that is in power at the time.³ For a professional soldier, as in case of Petković, there is only one justified reason that would require him to refuse to carry out an order – if carrying out an order would involve a commission of a crime.⁴ Petković considered this doctrine undisputable and performed his military duties accordingly.⁵ In this case, Petković has not been shown to have ever received an unlawful order which he would have been required to disobey. Petković was never politically engaged nor did he participate in political decision-making. His goal was to perform his duties

¹ Witness Petković, T.49297-8. Witness Marijan confirmed the civilian control over military in Herceg-Bosna, T.35794-5.

² Witness Petković, T.49293.

³ Witness Petković, T.49292.

⁴ Witness Petković, T.49310; Beneta, T.46544-5; Skender, T.45252-3.

⁵ Witness Petković, T.49192-3, 49297, 49310.

as a military man as best as he could in the circumstances in line with the decisions of the civilian government under whose authority he performed his duty.

5. Following Tito's death (1980) and especially in the second half of the nineties (when Slobodan Milošević took power in Serbia in December 1987) the dissolution of the former Yugoslavia became inevitable. During these politically turbulent times the JNA gradually transformed into the Serbian army (i.e. into the military force in the service of the political and aggressive/conquering aims of the then Serbian political leadership).

6. It must be noted though that even before the Republic of Croatia firstly declared its independency (in June 1991) the Serb population inhabiting various parts of Croatia (in the so called Krajina and Western and Eastern Slavonia), comprising almost 1/3rd of the territory, rejected to acknowledge the Croatia as an independent sovereign state. They started the armed rebellion against the Croatian government, with the open support of the Serbian political leadership at the time. The JNA openly took side with the Croatian Serbs, taking part in the conflict, providing arms and ammunition to the rebellious Serb forces, organizing their military structure and providing financial and logistic aid.

7. In such circumstances Petković, who at the time served in Zadar (Croatia), left the JNA in July 1991 and joined the Croatian Army. However, it is important to note in this connection that he neither deserted nor defected from the JNA. After Croatia declared its independency in June 1991, he requested from the competent JNA authorities that his service in the JNA be terminated, strictly respecting the legal procedure prescribed by relevant laws and regulations still in force at the time.⁶ All his connections with the JNA were terminated on 1 August 1991.

2. Petković's arrival in BiH

8. On 1 August 1991, Petković became the Commander of the defence of Šibenik successfully organizing and coordinating the defence of Šibenik and its wider area. On 15 November 1991 he was deployed to the Command of the Split Operative zone on operational tasks. On 14 April 1992, Petković was deployed to Grude, BiH, where the IZM of the Southern Front/Battlefield of the HV was established, as a deputy commander to Janko Bobetko.⁷

2.1. South Front/Battlefield was integral/sole theatre of war in the military sense

9. The Southern part of Croatia (wider Dubrovnik area), as well as neighboring areas in BiH and western parts of Montenegro, constituted a single theatre of war from a military point of view.⁸ This area was of strategic importance to Croatia. In 1991 and in the first half of 1992

⁶ Witness Petković, T.49290.

⁷ Exh.P00162.

⁸ Exh.IC01173; witness Petković, T.40313; Beneta, T.46569; Jurčević, T.44817-9. The witness Nissen confirmed that the territory of Croatia in Dubrovnik area was too narrow and therefore could not be defended at the Croatian border, T.20593.

the JNA and BH Serb forces carried out large offensive operations in this area from the direction of Montenegro and BiH (Kupres, Nevesinje, Trebinje), engaging considerable forces for the purpose. The strategic goal of those coordinated operations was to completely cut off the southern parts of the territory of Croatia from the bordering territory of Bosnia and Herzegovina and occupy that territory.⁹ If they had succeeded in this it would have had devastating strategic consequences for the defence of Croatia, as Serbian forces would have got behind the HV and squeezed them in the narrow strip towards the Adriatic sea. The HV would then have been easily defeated and the Serb forces would have had an open road to Split, so that the whole area of Croatia south of Split towards Dubrovnik would have been easily conquered and occupied by the JNA and Serbian forces. Then, Croatia would not border with the Republic of BiH in that area any more.¹⁰ This would have endangered the overall security of the Republic of Croatia. In sum, the situation in Croatia was closely tied up militarily with the situation in BiH, and Croatia did not have its own interest, but the joint interest was to stand up to a joint adversary in this trans-border region, the border belt between BiH and Croatia.¹¹

10. In order to prevent such an imminent strategic disaster, authorities in Croatia decided to engage units of the Croatian Army /HV/ in these southern parts of Croatia and neighboring parts of the Republic of BiH.¹² The principal aim was to prevent the offensive of Serb forces in those areas, secure the borders of the Republic of Croatia towards BH and Montenegro and create military conditions for liberation of the southern parts of Croatia (north and south of Dubrovnik), which had been occupied by the JNA at the time, as well as to liberate the town of Dubrovnik which had been under JNA siege.¹³ The authorities in BiH did not protest Croatia's decision; instead, it was in BiH's interest to benefit from Croatia's military support against a joint enemy.¹⁴ In those circumstances, Petković arrived as a friend and ally of the BH government.

⁹ Exh.4D01483.

¹⁰ Exh.IC01174; witness Petković, T.49327.

¹¹ Witness Petković, T.49328-9.

¹² Petković testified: «The Croatian Army, that was sometime at the end of November 1991, after the fall of Slano, a place called Slano, and then Smokovljani and Visocani – it could not be defended in that narrow part because there were attacks from the flank – put part of its force, let's say some 10 kilometres away from its border, to cover the area towards Stolac because the JNA was attacking from that axis.» /T.49303/

Petković further testified that the HV stayed in the border belt area close to Dubrovnik, after the Dayton Accords, when was replaced by the HVO. /T. 49306/ The presence of the HV in the area was not a problem for the Muslim side, said Petković. /T.49308/ Exh.4D01240, *Directive of the Supreme Command Staff of the Armed Forces of the R BiH*, signed by Halilović, proves that the HV and the BH Army launched joint actions against the VRS.

¹³ Witness Petković, T.49338-9. See also, Annex 16: *Maps showing actions of the HV on BH territory*.

¹⁴ Sefer Halilović explained in his *Directive of the Supreme Command Staff of the Armed Forces of the Republic of Bosnia and Herzegovina* of 10 September 1992: «The aggressor's /armed forces of Serbia and Montenegro, former JNA and extremist forces of the SDS/ goal is to extend the territory of the so-called Serbian state of BH and link it up with the Knin Krajina in a single state, and to overrun Eastern Herzegovina and link it up with Montenegro. /.../ Armed forces of the Republic of Croatia, conducting offensive operations to liberate Croatian

11. An additional principal aim of the HV engagement in these areas has been to provide necessary assistance in organizing, training and supplying the military units of BH Croats and BH Muslims in the struggle against common adversaries (JNA and Bosnian Serbs forces) and their aggressive plans to occupy parts of Croatia and neighboring parts of BiH. Such cooperation, assistance and supply were a military necessity of vital strategic importance to both states. The territorial integrity of both, Croatia and BiH, was seriously threatened by the same enemy forces (JNA and VRS).¹⁵ As a professional soldier, Petković understood this military necessity well and acted, lawfully, according to the orders he had received.¹⁶

2.2. IZM of the HV established in Grude (BH) in April 1992

12. The IZM of HV, which also included individuals from the HVO, was set up in April 1992 in Grude,¹⁷ a town in the vicinity of the Croatia-BH border, for a specific military purpose. At the time, there was practically no organized resistance to the aggressor in those areas of the BH bordering with southern Croatia. Various groups of armed men had started to organize themselves at the end of 1991 and at the beginning of 1992 in various municipalities for the defence of their particular territories (villages or parts of municipalities).¹⁸ But those were only isolated pockets of resistance against a well-planned military aggression. Those groups of self-organized and self-armed men, mostly of Croat and Muslim ethnicity, were insufficiently organized, poorly armed/led/equipped/supplied and uncoordinated.

13. Considering the common vital interests and common military objectives in the struggle against Serbian aggression, it was necessary and reasonable from a military point of view to set up HV IZM in this bordering area of BH. It served a twofold purpose. On the one hand it served as a kind of driving/motivating force in assisting the BH Croat and Muslim population in this area to prepare and organize for the defence of their BH homeland by facilitating this

territory, are directly cooperating with our forces to liberate Eastern Herzegovina, especially the towns of Trebinje and Stolac, with the part of their forces engaged in the Dubrovnik sector. /.../ TASKS OF OPERATIONAL FORCES /.../ 4th Corps . In coordination with forces of the Republic of Croatia, move to offensive operations with the main forces on the Mostar-Nevesinje, Trebinje-Bileća, Tomislavgrad-Kupres-Šipovo axes. /.../' – Exh.4D01240, p.2,4,7.

¹⁵ On 21 July 1992 Tuđman and Izetbegović signed the *Agreement of Friendship and Cooperation between the Republic of BiH and the Republic of Croatia* and agreed the cooperation and coordination of the defensive activities in the contiguous zones of the two states. They agreed that the Croatia had been attacked from the contiguous areas of BiH. – Exh.P00339.

¹⁶ At the time of Petković's arrival to BH the Serb forces already captured not only southern parts of the Republic of Croatia (Dubrovnik area) but also the parts of the BiH neighbouring these parts of Croatia, specifically, Kupres municipality and parts of the municipalities of Tomislavgrad and Livno, in the course of their wider strategic plans and preparations to capture whole area of those municipalities and to connect their forces with the Serb forces from the Neretva Valley.

¹⁷ Exh.P00162.

¹⁸ Witness Petković, T.49331.

According to the actual legislation in Bosnia and Herzegovina, homeland/defence and liberation war started on 18 September 1991 - exh.2D01183, Article 1. That day, the JNA attacked the village of Ravno, inhabited by Croatian population.

process end ensuring necessary logistical support.¹⁹ On the other hand it functioned as a joint command for planning and coordinating the defence of this trans-border territory against the common enemy. In this period, the IZM practically served as a substitute for the Main Staff of the HVO (which was in the process of being established).²⁰ This was the consequence of a specific military reality and the necessity of the specific theater of war. This was how Petković understood the IZM's role and his personal role within it.

14. Further military developments showed that the IZM was military effective. In May and June 1992 the HV, in cooperation with the HVO and the Independent Mostar Battalion,²¹ liberated the left bank of the Neretva river from Čapljina to Mostar Municipality, including Bijelo Polje, Dubrava plateau and Stolac.²² In June 1992, Mostar was liberated. In July 1992 Bobetko withdrew elements of the HV from the BH territory and deployed them in the direction of Dubrovnik.²³ The Dubrovnik area was liberated in August 1992. Shortly after the liberation of Dubrovnik Bobetko ceased to be involved in the combat activities on the South battlefield and in the autumn 1992 he left that area.²⁴ The common effort of Croatian and Bosnian forces had paid off.

3. Petković as Chief of HVO Main Staff

15. As explained above, one of the principal tasks of the IZM South Front/Battlefield of the HV in Grude was to provide all necessary military assistance to the local Croat and Muslim population to enable them to defend the territorial integrity of their homeland (BiH) against the attacking Serb forces. It was necessary in this context to assist in the formation and establishment of an adequate military structure (including the Main Staff) which would enable the civilian population from these areas to efficiently defend themselves and be protected from Serbian aggression. Petković was entrusted with this specific task within the IZM. He was chosen for a simple reason - it was considered that his professional background, as an ex-JNA officer and the commander of the defence of Šibenik, he had the necessary experience and skills to assist in this complex organizational matter. Petković consented to that. He was led by simple military logic and not by any political consideration. The civilian population in these areas of BiH was in imminent and present danger, faced with the offensive of well-organized, well-armed and professionally-led Serb forces. Such a situation imperatively required an

¹⁹ Witness Petković, T.49331.

²⁰ Witness Petković, T.49332-3

²¹ Petković explained that in June 1992 the Presidency of the BiH did not organise a single force in Hercegovina, except the independent battalion which was called Mostar battalion, T.49355-6. Witness Pavlović testified that in spring 1992 it was only HV and HVO that could put up resistance against the JNA and the army of the BH Serbs, T.46793.

²² Witness Petković, T.49339; Pavlović, T.46794; Beneta, T.46575; Praljak, T.40402-3.

²³ Witness Petković, T.49341, 49359. Petković also testified that along that border belt with the BiH certain HV units stayed until 1996, T.49306. Witness Beneta, T.46581; exh.IC01175

²⁴ Witness Petković, T.49369. See also, Annex 16: *Maps showing actions of the HV on BH territory.*

immediate and appropriate military response. An adequate military structure for the defence of this area of BH had to be established as soon as possible.

16. The HVO military was *formally* established on 8 April 1992 (prior to Petković's arrival to the BiH). Upon his arrival to the IZM in Grude (on 14 April 1992) Petković assisted in the formation of the HVO Main Staff. Soon thereafter, Petković was offered by Boban, the HVO President at the time, to assume the duty of the Chief of the HVO Main Staff emerging */in statu nascendi/*. Petković accepted. The HV military authorities gave their consent to Petković's request to terminate his engagement in the HV.

17. At the time of his arrival in Grude Petković did not plan nor expected to stay on the BH territory longer than a couple of months.²⁵ The decision to stay in BiH and to accept the position of the Chief of the HVO Main Staff, offered by Boban, was exclusively his personal decision and it was the result of worsening military conditions in the country at the time. In the chaotic and dangerous circumstances on the ground, described above, he acted as a soldier led by a simple military logic - he considered that his professional military skills and experience were urgently needed then and there, especially in the absence of professional military persons trained for more complex and demanding military tasks. He could not leave the local population in the circumstances and turn his back on them and therefore decided to stay without anyone's prompting.

4. Distinctive features of the HVO military

18. HVO armed forces were (i) ad hoc wartime, (ii) multiethnic, (iii) territorial, (iv) defensive army, which was (v) a part of the armed forces of BiH, with the purpose to (vi) defend the territorial integrity of the country – BiH. That was Petković's understanding of the reasons for the establishment, purpose and goal of the HVO army.

4.1. Ad hoc wartime military force

19. The HVO military emerged in extremely difficult and chaotic circumstances as an *ad hoc wartime military force* of the people (Croat and Muslim) inhabiting certain areas of BiH, intending to uphold their natural and inalienable right to defend their families, their homes and their country against an aggression. The established peacetime military structure which could relatively quickly transform into the wartime army did not exist (indeed, it had ceased to exist).

²⁵ In the interview published in the Croatian daily "Večernji list" on 1 August 1994 Petković explained that he thought he would stay in BiH "for a month, until the problem of Kupres and Livno is resolved".-Exh.4D01355.

Petković confirmed in his testimony that he "thought that it would last for a brief period, because in the neighbouring municipality in the Republic of Croatia, UNPROFOR forces had already deployed, and it was to be expected that with the proclamation of the independence of Bosnia-Herzegovina, that the UNPROFOR forces would be deployed there, too, in similar fashion". /T.49410/

A completely new defence military structure had to be established practically from nothing.²⁶ Petković's understanding was that he was helping a multi-ethnic force, rather than contributing to any sort of ethnic fragmentation of BH territory. He stayed in BiH with that understanding in mind.

20. The BH Government in Sarajevo was at the time practically blocked by JNA and Serb forces, with insufficient connections or no connections with other parts of the country. The situation required immediate action. Serb forces were occupying more and more BH territory daily. There was no time for subtle discussion on the modalities of organization of the new BH military formations. What mattered was to take measures to stop the Serbian onslaught.

21. Until April 1992, only a few small armed groups existed in villages and towns, and were not integrated under a single command.²⁷ On 8 April 1992, the HZHB Presidency enacted that the HVO would be the supreme defence body in the HZHB²⁸ and on 10 April 1992 President of the HVO Mate Boban ordered that Crisis Staffs, or former TO staffs, would be renamed as Municipal Staffs of the HVO and subordinated to the HVO Main Staff.²⁹ HVO Staffs were then established in various municipalities and in September 1992 these HVO Staffs were transformed into brigades.³⁰ Municipal Staffs, acting as HVO commands, were abolished as of 31 December 1992.³¹ The evidence demonstrates that the HVO was in the process of being established throughout 1992. Its growth was "organic" in the sense that it was evolving with the situations and had clearly not been planned ahead of time. The HVO was still far from a well established, organized and trained army.³² It took months and much of Petković's time to organize that structure in such a way that it could start functioning efficiently.

4.2. Common military force of both BH Croats and Muslims

22. The HVO military component was established as a *common* military force of both Croat and Muslim people, as well as all others willing to join.³³ Its structure and organisation was

²⁶ Witness Gorjanc explained in his report that a wartime army, as a rule, consists of a peacetime core, so the command system is fully established, and the communication, control and coordination system organized and active in the initial stage of the war. The situation is completely different if a wartime army has to be formed when there is no peacetime core of the armed forces. Exh.4D01731, paras.9-21.

²⁷ Witness Pavlović testified that in early 1992 some units had been preparing in secret and that the HVO was established from these units, T.46793-4. Also Marić, T.48093-8; Gagro, T.2701, 2703; Slobodan Praljak.42359.

²⁸ Exh.P00151.

²⁹ Exh.5D04271.

³⁰ Exh.P00491.

³¹ Exh.P00955.

³² In mid-October 1993, the ECMM reported that the HVO was «still weak» and «everything was still being organised», «the municipalities and the state are financing the army» - exh.P09672, p.3 (item 8).

In the interview published in «Večernji list» on 2 August 1994 Petković said that the «HVO is in transition. Much is needed to establish an army.»-exh.4D01355.

³³ Petković testified that in the mid of 1992, 30% of HVO soldiers were Muslims, T. 49342; CQ testified that the HVO of [REDACTED] was composed of Muslims and Croats, and there were 60-70% Muslim soldiers, T.11424; CJ testified that he did not know a single example of discrimination of Muslim soldiers in the HVO prior to June 1993, T.10952.; witness U stated that a large number of the citizens in Mostar of Bosniak

such as to be able to function together with ABiH forces against their joint enemy; Petković's many meetings and discussions with Halilović and Pašalić testify to that fact.

23. Although the formation of the HVO military was primarily initiated and organized by Croats, it was never intended to be a military force of the BH Croats exclusively, neither by its composition nor by its goals. The presence of Muslim fighters in that force is evidence of that fact. Petković, who actively participated in its formation, always made this clear to everyone concerned that this was his understanding of what was being set up.³⁴ This remained to be Petković's position and understanding of the HVO character during the whole period he spent in BiH. He never received requests or instructions from anybody which would indicate otherwise.

24. The HVO was thus established as the common (multi-ethnic) military force of BH Croats and Muslims and those willing to fight against Serbian aggression and as the only available military force in the area at the time. The fact is that large numbers of BH Muslims joined the HVO units and were welcomed by the HVO hierarchy. The composition of some HVO units comprised of more than 50% Muslim membership.³⁵ These facts render entirely unreasonable any conclusion that would assume that Petković was part or even knew of the alleged JCE pleaded in the Indictment. Instead, all of his actions are evidence of an agenda totally opposed to such ambitions if indeed they existed at all.

25. In many areas of BiH Croat and Muslim authorities established an HVO and a BH Army unit. The two forces were constantly in contact and coordinating their military efforts. As a rule, an HVO unit was subordinated to the Commander of the BH Army unit in the municipality in which the BH Army had more units or higher number of soldiers (Sarajevo, Zenica, Tuzla) and, *vice versa*, a BH Army unit was subordinated to the Commander of an HVO unit in the municipality in which the HVO was stronger (Stolac, Mostar).³⁶ This was the

nationality joined the HVO because the HVO basically proclaimed the goals of the struggle that were agreeable with most of the citizens – exh.P10220,p.2920; the witness Buntić testified that in 1992 the HVO was the only multi-ethnic military force in BiH, with 30% Muslim members, T.30724-5. This evidence is un-disputed.

Witness Pavlović testified that after the liberation of Stolac in June 1992 about 90% of Muslims in the municipality answered the public mobilization call, so two battalions were established, with the ethnic composition being 50:50; Pavlović had full support of his superior Beneta to establish the multi-ethnic army. /T.46796-7/ Also Marić, T.48095.

Exh.P00180, 2D00150, 4D00914

³⁴ See, for example, Petković's letter to Halilović, exh.4D00075 ("I looked forward to each new soldier, Croatian or Muslim, because I knew that they had a common goal. The HVO has not changed its attitude or behaviour towards the BH Army to this day. We are aware that with the present balance of powers, neither the HVO nor the BH Army alone can defeat the Chetniks.")

Also exh.4D00397

³⁵ For example, 1st Battalion of the 2nd HVO Brigade – witness Perić, T.47943-4.

³⁶ The Commander of the Bregava Brigade Bajro Pizović asked the Commander of the 1st HVO Brigade to be included in the combats of the Brigade, to get the zone of responsibility and the location for the unit – exh.4D00908. See also exh.4D01521, 4D01026, 4D01048, 4D00478, 4D00476.

regular modality of cooperation and joint military actions of the two armies against the joint enemy.³⁷ Again, this is clear evidence of the absence – at least as far as Petković and those around him were concerned – of a JCE-like agenda: instead, his work and actions demonstrate a clear commitment to the defence/well-being of the local population, irrespective of ethnicity or religion.

4.3. Territorial character of the HVO military

26. HVO military formations had a distinctive *territorial character*. Groups of self-armed men of mostly Croat but also Muslim ethnicity started to organize from the end of 1991 to defend the territory of their municipality. Those groups were composed of local people, they were organized, led, supplied by local people and even funded by local communities. In other words, they were deeply rooted to their territories and depended heavily on their local communities.³⁸

27. Those armed groups gradually transformed into HVO units, but their territorial character remained unchanged. Municipal HVO brigades/units were reluctant or refused to accept military tasks and/or perform combat actions on the territory of other municipalities and were substantially influenced by their local civilian authorities (to a larger or lesser extent depending on the specific circumstances prevailing in various municipalities at the relevant time).³⁹ This rendered joint/coordinated military actions considerably difficult and complicated the functioning of the chain of command.

Independent Mostar Battalion (later on 1st Mostar Brigade) – exh.2D00522, 3D00004, 4D01404, 3D00208, 3D00211. See also exh. 2D03057 – Petković's order of 6 November 1992 to the 1st Mostar Brigade for offensive actions, in coordination with the 3rd HVO Brigade. Also Marić, T.48096.

³⁷ Witness Pavlović, T.46813; Filipović, T.47444.

³⁸ Witness Filipović, T.47843-4; Marjan, T.35598-35600, 35629, 35849; Perković, T.31846; Gorjanc, T.46048-9; witness C, T.22439-22442, 22314-5; witness EA, T.24523; Jasak, T.48510-1; Marić, T.48105. Exh.1D00296, 1D00298, 1D00795, 1D00796, 1D00802, 1D00808, 1D00810, 1D00812, 1D00867, 1D01115, 1D01212, 1D01157, 1D01172, 1D01170, 1D01385, 1D01392, 2D00535, 2D00537, 2D00538, 2D00540, 2D00541, 2D01214, 2D01230, 2D001416.

Witness Petković testified about the influence of the municipality leadership on the brigade commanders and explained that the presidents of the civilian HVO municipal governments were members of the HZHB Presidency, which made their real power and influence stronger, especially in the municipalities which were financially stronger. /T.49404-5/

³⁹ For example, on 13 February 1993 the Commander of the HVO Brigade in Livno informed the Defence Department, the Main Staff and the Operative Zone about the impossibility of sending units of the Brigade to the Gornji Vakuf Municipality «because this would lead to further destabilization of the Livno frontline». The Brigade Commander further reported: «People are wondering why Livno has to bear the greatest burden in this war and are finding it difficult to understand that this is the result of failed mobilisation throughout the HZHB. Livno has been the most successful in this aspect (14%), but also the most 'PUNISHED' for it. During the recent events, we at the *Petar Krešimir IV* Brigade Command have been very dissatisfied with the orders issued by the North Western Herzegovina Operations Zone, asking us to do things which were beyond our abilities.» Exh.4D01674.

28. Special purpose units, intended for carrying out military operations in the entire area of Herceg-Bosna, were also established.⁴⁰ Their purpose was to provide rapid military aid to territorial units when some special circumstances on the particular ground so required. The number of soldiers engaged in these professional (manoeuvring) HVO units (855 members altogether at the end of 1992, or 2%) in comparison with the number of soldiers engaged in regular territorial HVO units (around 45,000 men, or 98%) clearly confirms the primarily *territorial* character of the HVO as a whole.⁴¹

29. In these circumstances it was extremely difficult to set up appropriate mechanisms of coordination, reporting, subordination and control among and between territorial military formations and to ensure a proper subordination.⁴² Such an undertaking would be a highly demanding and time-consuming organizational task even during peacetime let alone in a war.⁴³ This process required time, and much expertise (that was often missing); notably it was not finished by the time of Petković's departure in August 1994.⁴⁴ It also explains that many responsibilities – in tactical, strategic, administrative, security and organisational matters – were left to the responsibility of local commanders. It also explains difficulties and shortcomings in the functioning of the chain of command.

4.4. Defensive character of the HVO military

30. The HVO was established and functioned as a *defensive* military force. Its territorial character confirms this.⁴⁵ HVO military units were established by the local population with the

⁴⁰ In September 1992 Petković reported on the request of the HVO/Government that the regiment "Bruno Bušić" was establishing at the moment, and that two special purpose units have been established – "Baja Kraljević" and "Ludvig Pavlović" - exh.2D01353.

More about the manoeuvre component of an army in the report of Milan Gorjanc – exh.4D01731, paras.22,23.
⁴¹ Exh. P00128.

⁴² There is ample evidence that the individuals and/or units refused to accept or execute orders of their superiors, requested explanations from the superiors etc. See, for example, 4D01463, 4D01328, P03642, P03314, 4D00805. Witness Slobodan Praljak, T.42366-7, 42392-3.

⁴³ Gorjanc explained in his report the transformation of a peacetime army into a wartime army and difficulties in establishing an ad hoc wartime army – exh.4D01731, paras. 9-21.

⁴⁴ In the interview to the Croatian daily "Vecernji list" of 2 August 1994, when asked to explain whether the HVO was an army or an armed people, Petković said: "HVO is in transition. Much is needed to establish an army. We are working on the HVO to become the army at least in its best part. Those are guard brigades. It will be the army by the time we have a particular peacetime contingent and by the time we know that to do and how. The rest will be a territorial component." – Exh.4D01355.

Petković testified: "Fifteen months are not enough to establish the kind of army you have described: organised, trained, ready to carry out its duties. But work was being invested for the army to be better every day, but of course it wasn't possible to achieve that in 15 months. I'm not saying, however, that from the beginning to that time, no progress was made, but that progress was not sufficient for us to be able to call that army well trained, organised, and well equipped, especially the later part. In spite of all efforts to take that military out of the hands of some local forces, we were unable to do much. I'm not saying that all municipalities were a problem, but in the more important municipalities, which were financially stronger, we were unable to achieve anything." /T.49404/.

Pringle testified that it would take several years to create a fully functioning army with fully functioning headquarters, T.24245-6. See also Filipović, T.47459-60, 47852; Slobodan Praljak, T.42359-60,

⁴⁵ Gorjanc explained that the mere dominance of the territorial component in an army proves its defence character – exh.4D01731, paras.25,26. Also Filipović, T.47461-3.

purpose of defending their respective communities. By defending their particular territories, HVO units (composed of Croats and Muslims) defended the territorial integrity of BiH against the Serb forces.

31. Considering their territorial character and defensive purpose, HVO military formations had to be and actually were organized and commanded in a *decentralized* manner in order to be able to effectively perform their defensive tasks according to the specific military situation prevailing in the particular area, which significantly varied from municipality to municipality.⁴⁶ Local people knew best their specific situations and military needs so as to best respond to those without necessary external input.

32. Military logic required that a *corresponding* HVO command structure should be established, i.e. a command structure which would correspond/match to these specific territorial and defensive characteristics. Responsibility for the defence of their particular territories rested primarily on local HVO forces and their respective commanders. They had considerable freedom of action and decision-making authority based on their own assessment of the military situation. It was therefore essential and necessary to establish relatively strong and self-sufficient local commands on the ground, in the brigades and/or Operative Zones (to the extent possible in the circumstances at the time) in order to ensure the most efficient defence. Commands of the brigades and/or of the Operative Zones were adequately structured and staffed. The internal structure (i.e. various sectors/departments) established within those commands and the number of persons engaged in them for various tasks (as well as their ranks and their previous military training and experience) surpassed to a large degree those of the HVO Main Staff.⁴⁷

33. The HVO Main Staff operated as an ancillary organ/body to the local commands of the brigades and/or Operative Zones depending on their specific needs. Its structure, composition

⁴⁶ Witness Watkins testified that local civil and military structures in the Central Bosnia were more independent than those in Herzegovina: "Sir, I believe I do have an understanding of the civil and military structures, and what is important is, is how those contrasted between what was happening in Herzegovina and what was happening in Central Bosnia. I was going to say that in Central Bosnia, because of the isolated nature of pockets of minority groups, it was quite possible for an individual to actually -- and often a mayor, and I could give you an example of Zepce or Vares, where a mayor would have authority and would be able to carry out independent actions. My comment would simply be that in Herzegovina that independence of initiative at a political level was not achievable because there was a control structure there. In other words, they may be given some latitude to do some local arrangements, but if that was to extend beyond what was politically acceptable there was a means of -- of checking that individual authority.» /T.18877/

See Annex 14: *Decentralized organization of Herceg-Bosna*.

⁴⁷ The Commanders of the Operative Zones and brigades had assistants for security and moral/IPD, as well as personnel for health (exh.2D00567, 2D00927, 2D01370), while the Chief of the Main Staff did not have personnel for these matters (exh. 2D00567). The Commanders of the Operative Zones and brigades had the authority to order to the commanders of certain Military Police units in relation to the regular daily military police tasks, and MP commanders were obliged to obey the orders, while such authority was not given to the Chief of the Main Staff (exh.P00957, P02997, P07018. At the end of 1992, only 30% of the Main Staff personnel was filled, whilst the strength of the OZ SEH Command stood at 95%, OZ NWH 60% and CB 60% - exh.P00907.

and the number of persons employed clearly confirms this essentially ancillary role of the Main Staff. Its principal role was to coordinate defensive activities of the local commanders (to the extent it could) and provide necessary support and assistance to them when requested and/or needed.⁴⁸

34. HVO was thus a force where military powers and responsibilities had been placed for the most part at the local level with only residual, coordinating, responsibilities placed higher up in the military structure. When assessing the nature and scope of Petković's power, this structure and its effect on its alleged authority to control must be duly accounted for.

4.5. Component of the BH armed forces

35. From the very beginning the HVO military considered itself, and was recognized as, a *component of the BH Armed Forces*, which were in the process of being established at the time (BH Territorial Defence was established on 15 April 1992 and in June 1992 was renamed the BH Army). Both components of the BH Armed Forces (BH Army and HVO) were considered and recognized *de jure* and *de facto* as two constituents of the BH armed forces, distinct in their military formations but equal in status.⁴⁹ That was Petković's understanding in 1992 as well as in 1994, when he was, after the signing of the Washington Agreement, appointed again to the position of Chief of the Main Staff. And that was the basic reason that Petković's main efforts in the first half of 1993 were focused on the establishment of joint commands of the two forces (HVO and BH Army),⁵⁰ avoiding conflicts, ensuring immediate cease-fire, negotiations and direct communication between high-ranking commanders in both forces.⁵¹

36. The legality of the HVO forces has never been disputed. The Constitutional Court of the BiH never reviewed the constitutionality, nor annulled the decision to create the HVO forces.⁵² Finally, the *Law on Armed Forces of the BiH Federation* enacted in August 1996 prescribed that the Army of Federation was composed of the formations of the BH Army and the HVO,⁵³ which clearly and undoubtedly proves that the HVO was both a legal and

⁴⁸ See Annex 4: *Documents issued (or allegedly issued) by Petković*.

⁴⁹ Witness Idrizović, T.9805; Akmadžić, T.29439-40; Zelenika, T.33228; Praljak, T.42321; Pinjuh, T.37739; Gorjanc, T.46400; Filipović, T.47773; 4D AB, T.47136; Jasak, T.48565-6; Petković, T.49310, 49691. See also Annex 1: *HVO and ABiH components of the BH Armed Forces*.

⁵⁰ Petković testified: «We considered the joint command a great step forward, and we also saw it as something that provided us security, because we were in a weaker position than the ABiH. So that was a guarantee of our survival. But some things happened on the political level. The Vance-Owen Plan failed for good, and then things went bad.» /T.49692/ See also Filipović, T.47402, 47443, 47535-39, 47769-70; Slobodan Praljak, T.42336.

⁵¹ Exh.4D00397, 4D00399, 4D00433, P02599.

⁵² Exh. P00476. The Constitutional Court annulled, *inter alia*, the *Decree on the Armed Forces of the HZHB* because, as explained in the decision, regulation of defence matters fell under the competence of the Republic and municipalities and the annulled Decree had not been enacted either by the Republic or by a municipality. Petković testified that the Constitutional Court did not annul the military part of the HVO, T.49523. Also Jasak, T.48565; Marić, 48159-60; Slobodan Praljak, T.42329.

⁵³ Exh.4D00826, Article 37. Witness Bo Pellnas testified that the HVO was considered to be a legal army on the territory of BiH, T.19730.

legitimate army (of the Croat population in BiH and all others who wanted to join them in the defence of the country). Finally, under current BH legislation, the status of the defender (of the BiH) is recognized to all former members of the HVO as well as to all former members of the BH Army, and they enjoy the same rights in this respect.⁵⁴

37. Petković's understanding was that the Presidency of the BiH did not establish detachments and brigades in Herzegovina, but only in Central Bosnia because it fully accepted the role of the HVO formations which had been established in Herzegovina.⁵⁵ The Independent Mostar Battalion was established, with Pašalić as its commander, but was subordinated to the HVO.⁵⁶ Petković opined that the BH Croats took part in the defence of BiH as well as BH Muslims. The medal *Golden Lilly*, awarded to him by the BH Presidency in October 1992 in Sarajevo, was considered by Petković as recognition of his contribution to the defence of BiH.⁵⁷

4.6. Goal – Defense of BiH

38. HVO forces were not established with the purpose to bring a political party or a group of people to power, or to occupy territory in order to expand the area of Herceg-Bosna. HVO authorities (civilian legislative, executive and judicial bodies) achieved power without military assistance, save in Stolac Municipality.⁵⁸ The only goal that the HVO forces were mandated to achieve, as Petković understood it, was the defence of BiH, with the leading role in some areas of the country, while being subordinated to the BH Army in other free areas of the country.⁵⁹ This was a joint effort which it undertook together with the ABiH forces. As an illustrative example of this, on 20 June 1992, when informed about the tensions between the Croats and

⁵⁴ Exh.2D00628, Article 2; Article 1; 2D01181, Article 1; 2D01183, Article 1; 3D03226, Article 2.

Witness Pavlović was an HVO commander in 1992 and 1993, later on continued to work in the Ministry of Defence of the BH Federation and retired in 2006 with the rank of colonel of the Armed Forces of BH – T.46788, 46790. Witness 4D AB [REDACTED] - T.47066. Witness Filipović was an HVO commander 1992-1994, in 1995 he went to the Joint Staff of the Army of the BH Federation and was retired in 2007 holding the rank of major general of the BH Federation Army – T.47403, 47405-7, 47412, 47414, 47416. Witness Perić was a member of the HVO, in 1999 continued to work with the Defence Ministry of the BH Federation and was retired in 2001 holding the rank of brigadier of the BH Federation Army – T.47869. Witness Marić was a member of the HVO until the end of 1996 and then was retired with the rank of brigadier of the BH Federation Army – T.48087, 48092, 48159. Witness 4D AA [REDACTED] – T.49092-3. Witness Čurčić was a member of the HVO, continued to work in the Army of the BH Federation and was retired as a lieutenant general of the BH Federation Army – T.45785.

⁵⁵ Witness Petković, T.49354-7.

⁵⁶ Witness Petković, T.49355-6.; exh.2D00522, 2D03057, 3D00004, 4D01404, 3D00208, 3D00211.

⁵⁷ Witness Petković, T.49357.

⁵⁸ Stolac was liberated in June 1992 and the Crisis Staff, composed of 50% Croats and 50% Muslims, took control of the area as of 1 July 1992, and the HVO civilian local government took control at the end of 1992. Witness CR, T.11834-11836, 11850; Beneta, T.46598, 46604; Pavlović, T.46799, 46810-11; Petković, T.49365-6.

⁵⁹ Witness Petković, T.49370.

Muslims in the area of Konjic and Gornji Vakuf, Petković made a strong plea to the Municipal Staff:

Gentlemen, I have been informed by TO (Territorial Defence) and HVO that the situation among you is extremely tense and dangerous. Sit down immediately at the common table and clear up the situation you are faced with. I expect that you did not forget that TO and HVO are integral parts of OS BH (the Armed Forces of Bosnia and Herzegovina). Instead of strengthening your mutual bonds in the fight against our common enemy who is on the treshold of your Municipality, you are preparing to use arms against each other.

In the name of Croats and Muslims I beg you to overcome this situation, as the members of the OS BH (Armed Forces of BH) you are bound to do that.

Don't allow that serbo-chetnick's enemy occupy your Municipality, therefore come to your senses and move together to the first line.⁶⁰

This statement more generally reflects Petković's views of his role, function and that of HVO forces.

5. Petković's personal circumstances during the conflict

39. Prior to his arrival in BiH Petković had no particular connection with the BiH or Herzegovina. He had no relatives, friends or acquaintances there. He knew nobody there.⁶¹

40. Petković had not met Tuđman or Šušak until January 1993, when he met them for the first time in Geneva during the peace conference.⁶² Petković met Bobetko for the first time on 10 April 1992 in Ploče (Croatia) and they discussed the situation after the JNA and VRS had attacked the municipalities of Kupres, Livno and Tomislavgrad.⁶³ Petković met Boban for the first time in late March 1992 and the second time on 12 April 1992 in Ploče, when Boban came to ask Bobetko for military help.⁶⁴

41. Petković never talked with Tuđman, Šušak, Bobetko or anybody else, about the alleged «Greater Croatia», «Banovina», the alleged intention to “redesign the ethnic map of this region” or such political matters.⁶⁵ The evidence shows that Petković was never politically engaged, did not participate in the political decision-making process, political meetings and/or discussions and about political designs or ambitions. Considering his professional and personal background it is unrealistic to assume that Petković would have been entrusted by them to enforce an illegitimate political purpose.

⁶⁰ Exh.4D00397.

⁶¹ Witness Petković, T.49337.

⁶² Witness Petković, T.49748-9.

⁶³ Witness Petković, T.49749.

⁶⁴ Witness Petković, T.49750, 49753.

⁶⁵ Witness Petković, T.49749-50.

42. Prior to his arrival in BiH Petković did not personally know Prlić, Stojić, Praljak, Ćorić and Pušić either. Again, this militates against the inference that he would have been trusted by any of them into an alleged criminal plan that they are said to have shared.

43. Petković did not participate in the establishment of the HZHB. He did not participate in the establishing, organizing and/or operating governmental and political structures and processes in the HZHB. He did not attend any meeting, including meetings of the HZHB leadership and/or leadership of the Republic of Croatia, where the goals, programs, policies, operations and strategies of the HZHB might have been discussed. Petković did not discuss with anybody about the HZHB policies or goals. He attended various international peace conferences whenever requested by the HVO Supreme Commander Boban, but he was not involved in the discussions or decisions concerning political matters (i.e. modalities of internal organization of the BiH state). He personally would have welcomed any political solution that would have ended the war and the sufferings of the BH citizens and expressed this on numerous occasions. His selection for this position was based purely on his known military competence. The Prosecution has not alleged – nor proved – otherwise.

44. Petković had no reason to believe that various plans offered and/or advocated by the representatives of the international community in the context of international peace conferences, relating to the composite (in contrast to unitary) internal organization of the BiH state, of which he was aware, contained or implied anything criminal. It was his understanding that all three constituent peoples in BiH should agree through their political representatives on the modalities of internal BH constitution within the internationally recognized BH borders, as was endorsed and suggested by the international community.⁶⁶ As far as Petković was concerned, if three constituent peoples in BiH had decided to set up a monarchy in the BiH, Petković would have – as he testified – “saluted the king”.⁶⁷ For him, as a professional soldier, any political solution the political leaders of the three peoples in BiH would agree upon had to be accepted without any reservation or objection from his part.⁶⁸ He was a military person, dealt with military problems and acted within the scope of his duties and responsibilities as a military officer. It was not for a military officer to intervene in political matters whatsoever, and he never did so.

⁶⁶ The part of the Cutilleiro's plan was the *Statement of Principles of 18 March 1992 for New Constitutional Arrangements for BiH*, according to which BiH would be «a state, composed by three constituent units,. Based on national principles and taking into account economic, geographic and other criteria», exh.1D00398.

All other plans of the internal organisation of BiH, proposed by the representatives of the international community, were based on the same principle – that BiH would be composed of at least three constituent units (VOPP proposed in January 1993, Owen-Stoltenberg Plan proposed in July 1993)

⁶⁷ Witness Petković, T.49337.

⁶⁸ Witness Petković, T.49338.

45. Petković was never told by anybody, nor did he have reason to believe, that the political leadership of HZHB planned that the constituent unit of BiH with the Croatian majority should be ethnically cleansed of BH Muslims and other non-Croats. Quite the opposite: his understanding was that the HVO military was established (as explained above) as the common military force of the BH Croats and Muslims (as well as citizens of other ethnicity who wanted to join them): military activities were planned and carried out as the joint military actions of the HVO and the BH Army against the common enemy – RS Army,⁶⁹ the HVO was considered and recognized as the part of the BH Armed Forces, distinct but equal to the BH Army,⁷⁰ considerable efforts were invested to establish joint HVO-BH Army command on the level of the BiH as well as on the level of the Operative Zones/Corps⁷¹ and they were serious and honest from Petković's part. Petković had no reason to believe that anything other than that lay behind these goals. If there was, he had no information from the political leadership that those existed or had been planned.

46. Petković rejected any comment concerning the BH borders and alleged intentions of the Republic of Croatia to annex part(s) of the BH simply as unreasonable, i.e. as something that was not even worth of discussion. He testified (and was un-challenged on that point):

Let me first say what I replied to Halilovic. I said to him, You must be out of your mind if you really think that's the case. Croatia as an integral part of its territory the Serbian Krajina which wishes to leave Croatia, and it is a crazy idea to think that Croatia, given this unsolved problem, aspires to anything more; something along those lines. So I'm not sure whether it was -- how faithfully it was recorded in that document. But, anyway, as far as I'm concerned, I was never in favour of the idea that part of Bosnia-Herzegovina should join Croatia. Instead, Bosnia-Herzegovina was a unified country and stayed this way, only I'm sorry that nowadays they can't seem to be able to run their own affairs.⁷²

Petković was referring to meeting of HVO and BH Army representatives held on 21 April 1993 in Zenica, in the presence of Thebault. On this occasion he replied to Halilović's objection that Croat leading politicians advocated a Croatian state in BiH:

Well, you ought to be reasonable enough to know that Croatia cannot go for the annexation of BiH territory because in that case it would lose its own territory. But, you are simply looking for a reason for disagreement.⁷³

⁶⁹ See Annex 3: *HVO plans:ABiH ally.*

⁷⁰ See Annex 1: *HVO and ABiH components of the BH Armed Forces.*

⁷¹ See Annex 2: *HVO and ABiH – Joint commands.*

⁷² Witness Petković, T.49677-8.

⁷³ Exh.P02019, p.3.

If Petković's understanding was wrong in the circumstances, at least it was held honestly and in good faith.

47. Petković's understanding was that representatives of three constituent peoples in BiH should stop fighting immediately and agree peacefully about the internal organization of the country. On 29 November 1992, at the meeting with Morillon and Mladić at the Sarajevo Airport, Petković said:

*.../ As for myself I will do everything to see to it that the ceasefire agreement is respected. .../ I am prepared to accept a full ceasefire which will be controlled by the UN if they can do so. There's been enough of war. It will be difficult for us and them. .../ I do not want to leave out the Muslim side. They have the right to have a say. A meeting between two is senseless. .../ Regarding a solution for the problem in BH we don't have to keep referring to TUDMAN and Croatia. I propose that the three /?sides/ meet here as soon as possible.*⁷⁴ (Emphasis added)

48. There is no evidence that Petković ever harbored any sort of ethnic or religious enmity towards Muslims. Instead, all of his actions demonstrate his strong commitment –until this became militarily unfeasible – to build bridges with the BH Army; and when full-out war broke out with the BH Army, he was the one who continued to try to extinguish fires and find negotiated solutions to the situation rather than military confrontation. When the time came for peace, it was he again that the HVO turned to with a view to find common grounds with his BH Army counterparts. At no stage, had he lost the trust of those whom he fought on the other side of the military divide.

6. Conclusions

49. A conflict between the BH Army and the HVO started in earnest in April 1993 in the Konjic-Jablanica area. The HVO was unprepared for this conflict. Petković did all he could to calm down tensions, stop the fights and find peaceful solutions (as he did on previous occasions in relation to specific incidents that occurred). Until June 1993, he believed that fighting could be prevented.⁷⁵ There is ample evidence of his numerous efforts to reach a peace agreement with the representatives of the BH Army. If Petković had not sincerely believed in finding peaceful solutions for the conflict between the BH Army and HVO he would not have

⁷⁴ Exh.4D02510. See also Filipović, T.47499-47500; Skender, T.45191-2; Jasak, T.48601-3. Also P10217, 92bis statement of the witness DV (that he “even remember seeing Halilović and Petković talking as friends”- para.26; that Petković was considered a “dove”-para.28; the same in the exh.P03369 – Petković in the “soft line, doves: they want to negotiate”).

⁷⁵ Petković testified that he always asked for a meeting with Halilović when the conflict started in some area. He did so after the fall of Travnik on 9 June 1993. Only after the fall of Kakanj on 13 June 1993, the situation for Petković «no longer gave any certain hope of stopping these events through negotiations». /T.49457-8/ Obviously, Petković still had some hope that the combats could be stopped through negotiations, but was not sure any more that the negotiations could be successful.

attended all those meetings personally nor invest so much of his time and efforts in them (he could have sent some other to attend).⁷⁶ Regrettably, his efforts failed.

50. In June 1993 Petković became aware of the wider offensive plans of the ABH to conquer territories held by the HVO authorities. But despite all prior security warnings he received (which he disregarded as unrealistic/not probable), it was not until 30 June 1993 (when the BH Army units, with the cooperation of the HVO soldiers of Muslim ethnicity, conquered the territories defended by the HVO north of Mostar,) that Petković became fully conscious that there was all-out war between the HVO and the BH Army, and that the BH Army was determined to militarily defeat the HVO and conquer the territories held by the HVO authorities. The betrayal of HVO soldiers of Muslim ethnicity on 30 June 1993 came as a shock to HB/HVO authorities. It represented an extremely serious security threat and security measures had to be adopted in response. The disarmament and isolation of the HVO soldiers of Muslim ethnicity were considered and accepted by Petković as a necessary measure in the circumstances in order to avoid imminent military defeat or further dangers to military positions.⁷⁷

51. The alleged HVO military “cooperation” with the BH Serbs must be viewed and assessed in this particular context (i.e. in the context of the wide-scale conflict which occurred between the ABH and HVO in June 1993). This cooperation was a military necessity in certain localities in Central Bosnia, in which HVO units and Croat population were encircled and being attacked by the BH Army. In the second half of 1993, after the BH Army offensive operations against the HVO forces had started in April and intensified in June, only four small enclaves inhabited by Croats remained in Central Bosnia area - Vitez-Busovača, Kiseljak, Žepče and Vareš.⁷⁸ Following the offensive of the BH Army in Konjic municipality, which had started in April 1993, only one small enclave inhabited by a Croat population remained in the Konjic area (villages Turija, Zabrđe and Zaslavlje). All these Croat enclaves managed to survive primarily thanks to cooperation with the Serbs in the neighboring areas. This cooperation with the Serbs was a precondition for their remaining and surviving in these particular areas and not the means to achieve any criminal goal. It was not something Petković (or anybody else from the HVO authorities) planned or had wished for. It was forced upon them by the BH Army activities and the threats posed to local Croat communities. Nor was it something Petković could decide by himself. It was the decision of the HVO Supreme

⁷⁶ See Petković's testimony /T.49524/ where he commented on the importance of personal contacts between the military commanders in the context of peace negotiations.

⁷⁷ See paras.241-244, 295-297.

⁷⁸ Travnik, Kakanj and Bugojno were conquered by the ABiH in June and July 1993; Vareš was conquered on 3 November 1993.

Commander (and the President of the HZHB), in response to the specific needs of HVO units in particular localities which were then faced with a strong BH Army offensive and most probable military defeat with all humanitarian consequences for the Croat civilian population (including their flight from those areas). Petković saw the need and military necessity for such cooperation in those areas. The HVO Main Staff could not provide any direct military assistance to those encircled HVO enclaves at the time and they urgently needed all the military help they could get to survive. There is no evidence of such military cooperation (or Petković's participation in it) with the BH Serbs prior to the second half of June 1993, when the strong BH Army offensive against the HVO was under way. This clearly shows that this military cooperation was forced upon the HVO by the specific military circumstances in certain areas.⁷⁹ The fact that two sides in the multi-sided armed conflict, forced by the specific military situation, meet and exceptionally *cooperate* in certain military matters in particular localities, to a very limited extent and for very limited purposes, does not necessarily, factually and/or logically, make them "*collaborators*" (i.e. allies) in the political and/or military sense of the word.⁸⁰ It should be noted, furthermore, that localized military cooperation with Serb forces is not alleged to form part of the alleged JCE. This is entirely logical considering the purely military justification for such cooperation.

52. On 24 July 1993, at his request, Petković was relieved of the duty as Chief of the HVO Main Staff. Petković made that request to Boban on 15 July, because of the operation "South", which was launched despite to the Petković's professed and contrary opinion that HVO forces were not prepared for any offensive action in the Mostar region (see paragraphs 146-148), considering the military situation at the Dubrava plateau in mid-July and the overall military situation.⁸¹ Petković was well aware of the military situation at the time. The BH Army had embarked on the wide-scale offensive against the HVO, which was losing territories every day (Mostar area was seriously endangered). There was no indication that this BH Army offensive could be stopped by military negotiations. Considering his previous unsuccessful attempts to find peaceful solutions to the conflict and the fact that the operation "South" had been launched despite his opposition and without his participation, Petković assessed/considered that he was not the right person to lead the HVO Main Staff in a situation of total war between the BH Army and the HVO, and requested his withdrawal from the

⁷⁹ Witness DE, T.15588-9, 15716; EA, T.24640-3, 24918-9; Praljak, T.42374-5; Jasak, T.48615-6, 49061-3; Filipović, T.47689; Petković, T.50537, 50539; Slobodan Praljak, T.42374-5.

⁸⁰ There is ample evidence in this case showing that the BiH Muslim side (ABiH) also met and military cooperated in certain areas with the Serb forces in the conflict against the BiH Croats (HVO) during the relevant period. See, for example, witness Marić, T.48172, 48185-6; Pavlović, T.46863-4, 46878. Also exh.P04403, P07302,p.5.

⁸¹ Witness Petković, T.49598-49600.

position. He was then asked to remain in the HVO Main Staff as the person whose principal task was to participate in cease-fire and peace negotiations with the BH Army (as well as with the BH Serbian side).⁸² This was his main task until his reappointment to the position of the Chief of the HVO Main Staff following the Washington Agreement.⁸³

53. Petković was not a man of war,⁸⁴ least of all against the BH Muslims (i.e. BH Army) with whom he had cooperated in such difficult circumstances. The HVO Main Staff and Petković himself never planned or prepared for the war against the BH Army. When this conflict occurred he invested a considerable amount of his time and efforts in order to find and reach peaceful solutions for the conflict. All his acts and conduct in the context of this conflict can be explained by military logic and/or (perceived) military necessity. As the Chief of HVO Main Staff Petković mainly acted in response to the actual military situations and needs as they evolved daily and on the request for assistance received from various HVO units on the ground. There is no evidence that Petković planned or led any military operation or offensive action against the BH Army.⁸⁵ Reasons for his actions were military in nature, never political; his goals, likewise, were military in nature, not political or ethnic/religious.

54. Petković arrived in BiH to participate in the defence of the southern part of Croatia and the neighboring buffers in BiH, which were part of a single theatre of war. He stayed in BiH to

⁸² Exh.P04493 (Praljak's Information to UNPROFOR, of 25 August 1993, where Praljak informed UNPROFOR that Petković was authorized for negotiations on the level of the Commanders and Deputy Commanders and that all invitations for the negotiations on the highest level should be sent to Petković). See also Slobodan Praljak, T.42341,

⁸³ Nobody from the BH Muslim side or from the side of international community had any objection to this reappointment.

⁸⁴ In an interview given to Croatian daily "Vecernji list" of 16 February 1993 Petković stated: "If we don't want the war to start again, for someone will always be discontented, and if all this military power is left on the territory of BH, it will be difficult to put it under control of any kind, and the war will always be actual (possibility). I think that the arms should be completely relocated from the whole territory of Bosnia and Herzegovina or, and that is my proposal – to smelt all heavy arms in the Zenica steel plants. Consequently, the solution is in the complete demilitarization of this state". – exh.4D00100

Whether one agrees with the Petković's proposed solution or not, it could be hardly denied that this is not a kind of discourse one would expect from a General, especially during a wartime.

In an interview given to BH Serb TV at Sarajevo airport on 16 May 1993, Petković stated: «Well, I think that it is time to stop the war in these areas. It is better to spend a year or two politically negotiating than to wage a war for five months, or even for one day.» When asked if the day of peace agreement is near Petković said: «Listen, I would like it to be as soon as possible. You see what is happening in all this: the suffering, the destruction and the burning, people leaving certain territories. Therefore, every day of war brings with it more victims, more destruction, and more people get hurt, and what is a country without people. And there is enough room here in Bosnia for even a larger number of people to live in than have lived here thus far», and further on in relation to Mostar: » Mostar belongs to the people of Mostar. I think that that is the most sensible definition and that this is the one we should stick with. If we stick to this then there will be no conflict. But they accuse us of wanting to take Mostar for ourselves, you see. But how could we take it exclusively for ourselves when they are here as well, you can't just take it for yourself. If I share something with you, then I cannot take it for myself. Which means that I am actually sharing it with someone.» Petković testified that he strove the most to solve the conflict with the Muslim side through negotiations and that his position was exactly as expressed in this interview - that it is better to negotiate for two years instead of spend one day waging war, «because when I saw what could be done in wartime, naturally it's better to discuss matters and to allow everything to be solved on a political level». - T.50865.

⁸⁵ See Annex 6: *Petković's combat orders*.

help the local population defend their land. He was relieved of duty as Chief of the Main Staff soon after the total war broke out between the HVO and the BH Army. He was again appointed to the position of the Chief of the Main Staff when the Washington Agreement was signed. BH Croats and BH Muslims were again allies against the joint enemy in BiH.

II. COMPETENCE OF HZHB/HRHB BODIES IN MATTERS OF DEFENCE

55. The defence system of the HZHB was the unified form of organisation of the Armed Forces, administrative bodies and legal entities with a view to ensuring the timely and organised prevention of attack or any other form of military danger to the HZHB.⁸⁶ The competence of the HZHB/HRHB President as the HVO Supreme Commander, the HVO/Government, the Defence Department/Ministry, including the Main Staff, military commanders and other administrative bodies and legal entities were prescribed by the Decree of the Armed Forces as of 3 July 1993⁸⁷ and by other relevant legal documents.

56. The accurate and complete establishment of the *de jure* competence and authority of various HZHB/HRHB bodies in matters directly or indirectly relating to defence is important for Petković because it demonstrates: (i) civilian control over military; (ii) narrow and limited competence of the Chief of the Main Staff; (iii) competence of the civilian authorities to decide about peace and/or war; (iv) competence of the civilian authorities to decide about the issues of strategic and political relevance for defence; (v) competence of the civilian authorities in matters closely connected and/or relevant for combats, such as humanitarian aid, public services, housing and accommodation, refugees and displaced persons, requirements to leave the country, freedom of movement etc.

57. Competence and authority of an institution is further relevant to establish the scope of the legal duties of its head/chief, which might in turn be relevant to some of the charged forms of liability (especially omission liability).

1. HZHB/HRHB PRESIDENT

58. The HZHB/HRHB President was the Supreme Commander of the Armed Forces and had the wide spectrum of authorities in leading and commanding the armed forces.⁸⁸ His authorities and relevant activities are discussed throughout this brief.

2. HVO/GOVERNMENT

59. The HVO/Government had extensive competence in matters which were directly or indirectly relevant to military and defence-related activities.⁸⁹ Pursuant to the *Decree on the*

⁸⁶ Exh.P00289, P00588 /Article 2/,

⁸⁷ Exh.P00289

⁸⁸ Exh.P00588, Article 29, 30, 34; P00293, P00586, P02477, P07236, 2D00567.

Organisation and Responsibilities of the Departments and Commission of the HVO HZHB of 14 August 1992⁹⁰, the Defence Department, Department of the Interior, Department of Justice and General Administration, as well as other departments were considered as organs of the HVO/Government. The competence of the Defence Department was prescribed by this *Decree* and the *Decree of the Armed Forces of the HZHB* (Article 9).

60. The Department of the Interior had the authority to, *inter alia*, perform tasks relating to the prevention and investigation of criminal offences, the discovery and arrest of suspected perpetrators of criminal offences and their handing over to the relevant prosecuting organs, and the preservation of public law and order, the control and regulation of road traffic (Article 10). It has been especially prescribed that the Department of the Interior would cooperate with the Military Police in the performance of their overlapping tasks.⁹¹

61. The Department of Justice had the authority to perform tasks relating to the organization and work of judicial bodies, legal practices and the prosecution and enforcement of criminal and misdemeanour penalties (Article 11).

62. Also relevant here are the following considerations:

(i) As of 17 October 1992 the HVO/Government had the authority to adopt regulations falling within the competence of the HZHB Presidency in cases not suffering delay.⁹² Since for the passing of regulations it was necessary to define one's political orientation and views, responsibility for determining politics in all spheres was, in effect, transferred to a certain extent to the HVO/Government,⁹³ which included the policy in the defence matters. This authority was especially relevant in the situation of the conflict of jurisdiction (either lack or overlapping) of the HZHB executive organs upon certain important issues. The HVO/Government could solve the problem by adopting an adequate enactment.

(ii) The basic defence tasks of the HVO/Government were prescribed by Article 9 of the *Decree on the Armed Forces: inter alia*, to adopt a defence plan, set up measures for the improvement of the defence, determine the manner in which funds would be raised, decide on

⁸⁹ Witness Perković testified that the «questions that have to do with the readiness of a community to defend itself and that have to do with these questions, that is to say replenishing the armed forces through mobilisation and logical activities and so on and so forth, financing and so on and so forth; of course, *inter alia*, this was within the authority of the HVO through one of its departments, that is to say the department for defence», T.31820-1. Perković mentioned other measures necessary for successful defence which were under the competence of the HVO/Government: temporary confiscation of property, banning military conscripts from leaving the territory, food rationing for the population or for the military if the circumstances dictated it and all other tasks that were deemed necessary, T.31822.

⁹⁰ Exh.P00440.

⁹¹ Exh.P00440 (also 1D00001).

⁹² Exh.P00684. The HVO/Government was duty-bound to submit these enactments for consent to the HZHB Presidency. If the Presidency denies its consent, the implementation of the enactments would be terminated.

⁹³ Exh.P00128, p.2.

carrying out mobilization and undertake other measures necessary for successful defence.⁹⁴ The HVO/Government did not have competence to submit orders to the military commanders for concrete military actions and operations,⁹⁵ but had the wide competence to take all measures necessary for successful defence (Article 9 of the *Decree*). Perković testified that all fundamental documents establishing the HZHB and the HVO HZHB stipulated that the defence of Herceg-Bosna was a priority. “It is my deep conviction that had there not been a war and needs of defence there wouldn’t have been an HVO either. That task is in the very foundation of all the institutions of Herceg-Bosna, including HVO which was one of the most important institutions of Herceg-Bosna”.⁹⁶ He was not challenged on that point.

(iii) On 30 September 1993, the House of Representatives concluded that the Government, as well as the Supreme Commander of HRHB armed forces, the Defence Ministry and the Main Staff, had to undertake all necessary actions for the defence of Croatian people and their rights.⁹⁷

63. The HVO/Government fully exercised its competence in matters of defence. It may be garnered from there that the HVO/Government had a great deal of responsibility and authority in such matters that did not belong and were not exercised by the Main Staff, but were directly under the control and authority of the HVO/Government (over which Petković had no authority). None of its powers and authority could be attributed, for the purpose of assessing responsibility, to any other organ or person. The following is indicative of that state of affair:

(i) In its first work report, for 1992, the HVO/Government stated that the defence of the HZHB area was the primary goal of its work.⁹⁸ The HVO/Government reported *inter alia* that it “has organized military resistance against the aggressor”.⁹⁹

(ii) “The military and security situation in the area of the HZHB, i.e. the issue of defence was a priority in the work of the HVO HZHB and was given special treatment. Efforts were made to achieve the unity of the Croatian population and to put both material and human

⁹⁴ Exh.P00289, P00588.

⁹⁵ Pursuant to the Article 30 of the *Decree on the Armed Forces* of 3 July 1992 (P00289), the Supreme Commander of the Armed Forces might transfer certain duties of command and control of the Armed Forces to the HVO. The provision had been changed in October 1992, thus the duties of command and control of the Supreme Commander could be transferred to the Head of the Defence Department (P00588).

⁹⁶ Witness Perković, T.31832.

⁹⁷ Exh.4D00471, item 4.

⁹⁸ Exh.P00128 («For defence purposes, but also for the purpose of organising life and work on the defended or liberated area, numerous regulations were passed, governing social and economic relations on the territory of the HZHB, and a system of institutions was created whose task was to see to it that the HZHB became a territory that could defend itself, was well organized, and functioned as a community governed by law”, p.1) The witness Perković testified that defence was central priority of the HVO/Government: “It is my deep conviction that had there not been a war and needs of defence there wouldn’t have been and HVO either. That task is in the very foundation of all the institutions of Herceg-Bosna, including HVO which was one of the most important institutions in Herceg-Bosna.” T.31831-2.

⁹⁹ Exh.P00128, p.2.

resources to maximum use in the defence of Croatian areas”, reported the HVO/Government in its work report for the period January-June 1993.¹⁰⁰

(iii) The competence of the HVO/Government can be fully established by the analysis of its work reports. The work reports of all Departments/Ministries and their organizational units, including units of the Defence Department (Main Staff, Security Sector: SIS and Military Police) were part of the HVO/Government work report.¹⁰¹

(iv) The Military-security situation in Herceg-Bosna, or parts of it, were on the agenda on 19 meetings of the HVO/Government. Such meetings were held regularly during and/or after the combats between the HVO and the BH Army, for example in Gornji Vakuf in January 1993¹⁰², Central Bosnia in April, May and June 1993,¹⁰³ Mostar in May, June and July 1993.¹⁰⁴ The Head of the Defence Department regularly reported about the military-security situation. However, Petković was only invited to report about the military situation four times, three times as the Chief of the Main Staff and once as the Deputy Commander of the Main Staff, when he participated at the meeting together with Commander Praljak.¹⁰⁵ The evidence proves that the HVO/Government gave support to the activities of the Main Staff¹⁰⁶ and measures taken by the Defence Department,¹⁰⁷ delegated tasks to the Defence Department and the Main Staff¹⁰⁸ or made political decisions relevant for the defence.¹⁰⁹

64. The competence, power and authority of the HVO/Government (as well as other HZHB bodies and institutions) in the matters of defence are directly relevant for the Petković Defence for several reasons:

(i) The pre-existence of a legal duty to act is a precondition to any sort of liability for omission, including command responsibility. In that sense, Petković could only be held responsible for failing to act where he breached a legal duty that was legally his own.¹¹⁰ In that sense, he could not be held responsible for failing to adopt measures or take steps which were within the realm of competence of the HVO/Government or any other HZHB/HRHB body in matters of defence. The competence of the Main Staff and the position of authority of its Chief can be properly and correctly evaluated only in the context of duties and authorities of other HZHB/HRHB bodies.

¹⁰⁰ Exh.P04699, p.2.

¹⁰¹ Exh.P00128, P04699, P04735.

¹⁰² Exh.P01197, P01227, P01324.

¹⁰³ Exh.1D01664, 1D01609, 1D01667, 1D01668,

¹⁰⁴ Exh.1D01666, 1D01275, P03796.

¹⁰⁵ Exh.1D01609, 1D01672, P02575, P05799 (together with the Commander Praljak).

¹⁰⁶ Exh.1D01608, 1D01667

¹⁰⁷ Exh.P01324.

¹⁰⁸ Exh.1D01664.

¹⁰⁹ See Annex 9: *HVO/Government – table of minutes and excerpts concerning matters of defence*

¹¹⁰ See for further legal submissions on that point, below at paras.643-652.

(ii) Legal duties of the HVO/Government and its activities in matters directly or indirectly relevant to defence clearly demonstrate overall civilian control of the military in the HZHB/HRHB. This control included, *inter alia*, the competence to prescribe the authority of the Chief of the Main Staff and means available to him to prevent and/or punish the perpetrators of crimes. The scope of what Petković could permissibly do and achieve was ultimately dependent upon the delegation of authority by those civilian authorities. This administrative reality prevents any inference that might be drawn on the nature and scope of his alleged control over the (unidentified) perpetrators of the crimes charged.

(iii) Consideration of the scope and nature of other HZHB/HRHB organs' responsibility is also directly relevant to identifying those responsible and legally obliged to adopt measures which might be relevant to an allegation of a failure to prevent or punish crimes. In this instance, the competences and responsibilities of the HVO/Government and other civilian organs are most directly relevant to establishing who was responsible for and who had the ability, material or otherwise, to adopt this sort of measures for the purpose of preventing/punishing the crimes charged in the Indictment. Consideration of the full and accurate establishment of the competence of the HVO/Government and/or its departments in relation to the prevention and investigation of criminal offences, the discovery and arrest of perpetrators of criminal offences and their handing over to the relevant organs, the preservation of public law and order, establishing and managing of prisons and other detention facilities, the control and regulation of road traffic, humanitarian aid, displaced persons and refugees, public services, housing and property, clearly demonstrate that the Chief of the Main Staff had no competence in these matters, so that a failure to act in this context could not be culpably imputed to Petković.

3. DEFENCE DEPARTMENT/MINISTRY

65. The Defence Department was the body of the HVO/Government and its duty was to perform all administrative and other professional tasks that related to, *inter alia*, the organization of all people's defence against the aggressor, development of the defence system, recruitment, replenishment and mobilization of units of the HZHB armed forces and other tasks prescribed by the *Decree on the Armed Forces*.¹¹¹ Activities of the Defence Department prescribed by the *Decree on the Armed Forces* were enumerated in 24 counts. These were administrative and specialized tasks related to, *inter alia*, planning the use of the armed forces, system of command and control of the armed forces, mobilization, security and protection of the armed forces, personnel policy in the armed forces, material and financial dealings of the armed forces, medical care for the armed forces, publication of army newspapers and other

¹¹¹ Exh.P00440, chapter II, Article 9.

journalistic activities in the armed forces.¹¹² The distribution of those responsibilities between the various organs and individuals that made up that structure is most directly relevant to assessing Petković's alleged liability for the crimes charged. It was especially prescribed that the Defence Department would provide the HZHB Presidency with staff and other specialized services related to its competences in the sphere of defence, excluding specialized services within the jurisdiction of other administrative bodies.¹¹³ In order to perform these tasks a Main Staff was supposed to be established within the Defence Department.¹¹⁴ The Chief of the Main Staff did not have the authority to appoint his deputy, his assistants, chiefs and assistant chiefs in the Main Staff, but only to propose the appointment to the Supreme Commander or the Head of the Defence Department.¹¹⁵ In that, and many other ways, he was dealt with a hand that he had no way of influencing.

3.1. HVO MAIN STAFF

3.1.1. Competence

66. Pursuant to the *Decree on the Armed Forces*, as explained above, the Main Staff was established within the Defence Department in order to provide the Supreme Commander with staff and other specialized services related to its competences in the sphere of defence. The *Decree* does not contain any other provision about the tasks, competences and/or responsibilities of the HVO Main Staff.¹¹⁶ In other words, its competences and power were determined and circumscribed by the *Decree*. The Main Staff had no *de jure* authority, power or competence beyond this.

67. The *Decree* differentiated the term "command" or "command headquarters" and the term "staff" (Article 17). The *Decree* also differentiated the position of the Chief of the Main Staff (Article 18) and the commanders of the armed forces which duty, prescribed by the *Decree*, was the command and control of the armed forces (Article 31).¹¹⁷ Accordingly, there is

¹¹² Exh.P00289, P00588, Article 10.1.

¹¹³ Exh.P00289, P00588, Article 10.2.

¹¹⁴ Exh.P00289, P00588, Article 11.1.

¹¹⁵ Deputy Chief of the Main Staff, Chiefs of the Operative Section, Operative Centre and VOS, as well as Assistants Chief of the Main were appointed by the President of the HZHB at the proposal of the Chief of the Main Staff and with the approval of the Head of the Defence Department. All other chiefs and assistant chiefs in the Main Staff were appointed by the Head of the Defence Department at the proposal of the Chief of the Main Staff. Other employees of the Main Staff were assigned by the Chief of the Main Staff – exh.2D00567, Section III. B.

¹¹⁶ Confirmed by the witness Božić, Deputy Head of the Defence Department at the relevant time, T.36394-5.

¹¹⁷ The order exh.P00237, submitted by Petković on 3 June 1992, confirms that Petković's understanding was that the Main Staff was staff of the Supreme Commander. He ordered to the HVO staff in three municipalities: «In order to allow this staff to monitor the situation in the area it is responsible for, and to allow it to submit reports on time to its superior command ...»

The witness 4D AA testified that the inspection of the HVO military unit which was not subordinated to the Main Staff but directly to the Supreme Commander was part of the staff duties which the Main Staff performed for the Supreme Commander. He further explained that the Supreme Commander did not have other staff but the Main Staff. T.49241.

no doubt that pursuant to the *Decree*: a/ the Chief of the Main Staff did not act as a commander, but as chief of the staff of the Supreme Commander; b/ the Chief of the Main Staff did not have authority to command and control of the armed forces. The nature of the Chief of Staff's responsibility is most directly relevant to (a) establishing the nature of Petković's duties and (b) the nature and scope of his alleged control and means thereof over the alleged perpetrators and (c) the extent to which he could be said to have culpably failed to fulfill his legal duties.

68. As a matter of law, chiefs-of-staff at subordinated levels of the HVO were at the same time deputy-commanders of their respective commanding officers.¹¹⁸ However, this was *not* the case for the Chief of the Supreme Commander staff (Main Staff). Pursuant to the *Decree* of 3 July 1993, the Supreme Commander could transfer duties of command and control of the armed forces to the HVO (Article 30.2). After the *Decree* was amended in October 1992, the Supreme Commander could transfer his duties of command and control to the Head of the Defence Department.¹¹⁹ Accordingly, the *Decree* did not permit the Supreme Commander to transfer his command and control duties over the armed forces to the Chief of the Main Staff. Nor did Petković ever exercise such authority. The legal competence of the Chief of the Main Staff was only *staff* in nature (i.e., expert, specialized or advisory in nature) and in regard to other specialized services specifically provided for the Supreme Commander. These powers did not involve any sort of command and control authority over the armed forces. There is no doubt that the political will in the HZHB at the relevant time was to establish a weak Main Staff.¹²⁰ Since the HVO authorities copied laws of the Republic of Croatia, including the decree on armed forces, the explanation of the then Croatian President Franjo Tuđman was relevant for Herceg-Bosna as well:

/.../ We did need professionals so that we could learn how to handle weapons, but we could not just abandon the armed might to cold professionalism. /.../ Some elements here were unclear with regards to the forming of the Ministry of Defence, the Main Staff and even attempts to separate the Main Staff from the Ministry of Defence. However, when I spoke to the responsible officers, I told them that the Main Staff was only part of the Ministry of Defence for operations and training just like, for example, the IPD /information and propaganda/ service, the Military

¹¹⁸ Exh.2D00927, item 2; 2D01370, p.3 item 2.

¹¹⁹ Witness Božić confirmed the possibility of such transfer of the duties of the Supreme Commander, T.36386.

¹²⁰ Witness Božić, who was Deputy Head of the Defence Department at the relevant time, testified that such legal position of the Main Staff, as well as other organs, was an expression of the political will, T.36397.

*Police, the counter-intelligence service, etc. They all form part of the Ministry as a whole. The army cannot only be placed under professional soldiers. /.../*¹²¹

69. The *Decision on the Basic Principles of Organization of the Defence Department*¹²² further demonstrates that the Chief of the Main Staff, as a rule, was not to be regarded as a superior to the military commanders. It prescribed:

*The Chief of the Main Staff shall exercise superior authority over the Command of the Croatian Defence Council, within the scope of general and specific powers vested in him by the President of the Croatian Community of Herceg-Bosna.*¹²³

This provision is highly relevant here. It establishes the limits of the subordination of HVO military commanders to the Chief of the Main Staff. This, in turn, is directly relevant to (a) establishing an alleged chain of command between Petković and the alleged perpetrators and the nature thereof, (b) the scope of his alleged authority and control over them, (c) the nature of his duty and powers over their actions insofar as might be relevant to an alleged failure to fulfill his duties. The Chief of the Main Staff was not superior to HVO commanders in relation to those matters as would be relevant to the charges. In particular, he was not their superior in relation to all combat and to non-combat matters. The Chief of the Main Staff was in the chain of command only and exclusively within the scope of those powers that the Supreme Commander had delegated onto him in combat matters. Those were narrow and specific, not general in kind.

70. The *Decision on the Basic Principles of Organization of the Defence Department* prescribed that the Chief of the Main Staff was responsible: a/ to the Head of the Defence Department for all administrative tasks and issues relating to the budget and material supplies, consumption and general establishment and life of the peacetime and wartime organization of the Armed Forces; b/ to the Supreme Commander for all issues relating to the supreme command, unit organization, strategic and operative plans and the use of the Armed Forces in time of war and peace.¹²⁴ This division of non-combat issues, linked to the Head of the Defence Department, and combat issues, linked to the Supreme Commander, was directly relevant for the provision about the responsibility of the commanders of HVO brigades:

Brigade Commanders shall be subordinate and responsible to the President of the Croatian Community of Herceg-Bosna as the Commander-in-Chief of the Armed Forces, and the Head /of the Defence Department/ and Chief of the Main Staff

¹²¹ Exh.4D01330, p.8-9.

¹²² Exh.P00586

¹²³ Exh.P00586, B.IX 5.

¹²⁴ Exh.P00586, B.IX 3,4; witness S Božić, T.36400.

*within the scope of their responsibilities, in accordance with the powers described above.*¹²⁵

This clearly and undoubtedly establishes the following facts: a/ brigade commanders were always subordinated and responsible to the Supreme Commander *directly*; b/ brigade commanders were subordinated and responsible to the Head of the Defence Department for all non-combat issues, which were under his competence; c/ brigade commanders were subordinated and responsible to the Chief of the Main Staff for all combat issues, *but solely within the scope of general and specific powers vested in him by the Supreme Commander*. As already explained in the previous paragraph, Petković was not in a position of superior-subordinate to all HVO military commanders in all issues under their competence, but only and exclusively for combat issues within the scope of general and specific powers vested in him by the Supreme Commander. Such inference would be a gross misrepresentation of the nature and scope of his duties. The authority of Petković as the Chief of the Main Staff was limited to combat matters.

71. Work reports of the Main Staff¹²⁶ and the reports of the Commanders of the Operative Zones/Military Districts submitted to the Main Staff and summarized in a daily reports¹²⁷ clearly confirm that the situation on the front-line, activities of the enemy army, combat readiness and combat actions of the HVO units were issues over which the Chief of the Main Staff had some authority.

72. By contrast, he had none of the powers that, in other cases, the Prosecution had alleged could be relevant to a superior's responsibility. For instance, Petković is not alleged to have failed to take any disciplinary measure and the Prosecution case, as pleaded, is not that such measures would have been relevant to its case.¹²⁸ Nor did he have any criminal investigative, prosecutorial or punitive competence or authority.

¹²⁵ Exh.P00586, B.IX 6. Witness Marijan confirmed that the brigade commanders were subordinate and responsible to the Head of the Defence Department according to the mentioned provision, T.35766.

In December 1993, President Boban issued the new *Decision on the Foundation of the Organisation of the Ministry of Defence*. The responsibility of the Chief of the Main Staff remained dual, to the Defence Minister and the President of the HRHB, and the Chief of the Main Staff remained superior to the commands of the Armed Forces only within the competence of the general and specific authorization from the President of the HRHB – exh.P07236, Article 12, 13.

¹²⁶ Exh. P00907, P03642, P07419, p.4.

¹²⁷ Exh.4D00895, 4D00896, 4D00897, P00638, 3D02131, 4D01179, P00658, 4D00042, P01152, 3D01094, P01193, P01220, 2D03067, P01370, P01437, 3D01096, P01810, P01874, P01879, 3D01843, P01954, P01961.

¹²⁸ It is worth noting, however, that the lack of the disciplinary power of the Chief of the Main Staff regarding the disciplinary offences is further example of the political will in Herceg-Bosna to reduce his competence as much as possible. The *Rules of the Military Discipline* (P00425) were written out Rules of the Croatian Army (4D01346), but some differences between the authority of the Chief of the Main Staff in the Croatian Army and the HVO is significant here: in Croatia the Chief of the Main Staff was authorized to bring the offender before the military disciplinary court (if the offender was the high ranking officer) (Article 69.1.1.), and in Herceg-Bosna this competence has not been given to the Chief of the Main Staff, but to the Commander of the Armed Forces (Article 67.1.). The Chief of the HVO Main Staff did not have any competence in the disciplinary

73. Also relevant here is the inability of the Chief of the Main Staff to appoint or remove commanders of HVO units, another matter which, in other cases the Prosecution has argued, demonstrates control and material ability to act, to prevent/punish crimes of subordinates. The Chief of the Main Staff did not have any authority to appoint and/or relieve of duty military commanders. As a result, any ability to exercise control over military commanders in such manner was significantly undermined, reduced and, in fact, made impossible. Commanders of the HVO Operative Zones/Military Districts, brigades and high-ranking officers were appointed and relieved of duty by the President of the HZHB through the whole relevant time. Commanders of battalions and companies, and all other officers were appointed and relieved of duty by the HVO/Government, and lower ranking commanders by the brigade commanders.¹²⁹ In October 1992, these authorities were given to the Head of the Defence Department.¹³⁰ The procedure of the appointment of the military commanders was different in the Operative Zone/Military District Central Bosnia. On 27 June 1992 Tihomir Blaškić, the commander of the OZ/MD CB, had been given the authority to appoint and relieve of duty all military commanders in his OZ/MD.¹³¹ Evidence shows that Blaškić exercised his competence to appoint and relieve of duty military commanders in his Operative Zone/Military District during the whole relevant time.¹³² Petković was given no such competencies or authority.

74. The Chief of the Main Staff had no competence to award ranks and/or promote officers to higher ranks. This authority was vested in the HZHB President, the Head of the Defence Department and commanders of units who were authorized by the Head of the Defence Department.¹³³

75. The Chief of the Main Staff was not involved in the establishing, managing and/or supervising of a military prison and/or any other detention facility in Herceg-Bosna. He had no competence and role in this matter. Nor has it been alleged in the Indictment.

76. Public law and order responsibilities were under the exclusive competence of the Department of Interior,¹³⁴ whilst for military personnel the Defence Department would be supposed to be in charge of them.¹³⁵ Petković had no competence in this matter; nor has it been alleged in the Indictment.

proceedings for the disciplinary offences; the exclusive ability and authority to take disciplinary measures was with military commanders.

¹²⁹ Exh.P00289, Article 34.

¹³⁰ Exh.P00588, Article 34 (incorrect translation of the Article has been extensively discussed during the trial).

¹³¹ Exh.P00280.

¹³² Exh.P00370, P00762, P00765, P00766, P00769, P00774, P00775, P00777, P02328, P06000, P06813, P07394, P07401. Also Filipović, T.47432.

¹³³ Witness Tomljanović, T.6319-20.

¹³⁴ Exh.P00440 (also 1D00001), P00128 p.18-19, P04469 p.21-24.

¹³⁵ Witness Božić, T.36403-4.

77. HZHB legislation, work reports of the HVO/Government and the evidence before the Trial Chamber prove that the Chief of the Main Staff had no competence or authority over the military judiciary and/or the politics of the criminal proceedings (by giving priority to a certain crimes), nor was this alleged in the Indictment. This was the competence of the Presidency of the HZHB and later of the Assembly of the HRHB.¹³⁶

78. Petković had no competence and no authority with regard to the conducting of criminal investigations. Nor has it been alleged in the Indictment. Prevention and investigation of criminal offences, the discovery and arrest of perpetrators of crimes and their handing over to the relevant organs were under the competence of the Department for Interior,¹³⁷ Military Police¹³⁸ and SIS.¹³⁹ The authority of the organs of internal affairs before the military courts was assigned to authorized persons from the security organs of the armed forces¹⁴⁰, i.e. the SIS and Military Police. Therefore, not only authorized officials of the Department of Interior, but also those within the security organs (SIS) and the Military Police were competent to arrest a suspect member of the Armed Forces.¹⁴¹ If a perpetrator of a crime was known, the commander of the military unit or institution was obliged to take measures to prevent him from hiding or escaping (and was authorized to arrest him/her), and to attempt to preserve all the traces of the criminal act and all objects that may serve as evidence. He also had to obtain all information relevant to the criminal proceedings and to inform immediately the district military prosecutor or his superior.¹⁴² There is no allegation that Petković ever failed to fulfill that duty, which belonged to any member of the armed forces and HB/HVO official, or that he ever had the requisite information in his possession.

79. The Chief of the Main Staff had no competence in the governmental and political structures and processes, including but not limited to housing and property, the status of refugees and displaced persons, the provision of public services and humanitarian assistance. Although the Prosecution did not plead such competence, this should be noticed as relevant for the establishment of the scope of Petković's alleged legal duty to act.

¹³⁶ Exh.4D01655.

¹³⁷ Exh.1D00001, Article 10; P00128 p.24-26; P04469 p.24-26.

¹³⁸ Exh.P00588, Article 137.6; P00837, Section II. The Sphere of Action and Tasks of the Military Police; P04469 p.13-14; witness Božić, T.36408;

¹³⁹ Exh.P04469 p.12; witness EA explained that the Military Police was authorized for criminal investigation, but in more delicate matters SIS intervention would be requested, T.24805.

¹⁴⁰ Exh.P00592 Article 25.4.

¹⁴¹ Exh.P00592, Article 27.4.

¹⁴² Exh.P00592, Article 27.

It should be noted that similarly all working people in government agencies, organizations and communities had a duty to report criminal acts whereby damage was inflicted on public property or which constituted an abuse of work duties or official duties in that agency or organization, and government agencies, organizations and communities were obliged to present evidence known to them, take steps to preserve traces to the criminal acts, objects upon which or with which the criminal act had been committed and other evidence as well. - Exh.4D01105 Article 148; 4D01317.

80. The authority of the Deputy Commander/Chief of the Main Staff was not expressly prescribed by any legal document. Some evidence even causes doubts whether the Deputy was automatically in charge of heading the Main Staff if the Commander/Chief was absent. For example, Ante Roso as the Chief of the Main Staff submitted the document to the Main Staff and two Military Districts that in the case of his absence persons in charge of the Command of the HVO Main Staff would be: Deputy Chief Petković, Assistant Head for Land Army Stanko Matic and Assistant Head for Combat Sector Vinko Vrbanac.¹⁴³ However, as any deputy, the Deputy Commander/Chief of the Main Staff was not in the direct line of command and was not in the vertical position of authority with the alleged direct perpetrators of crimes, which is relevant for Petković's alleged command responsibility as of 24 July 1993, when he was relieved of the duty of Chief of the Main Staff. It is also clear from the evidence that, in that capacity, he could only exercise competences expressly delegated to him by Praljak, or Roso later on, and to the extent only that Praljak or Roso would agree to it. It is significant here that the Indictment does not mention a single duty related to Petković's role as deputy as being relevant to his alleged duty to prevent or punish crimes. Finally, it should be noted that it is not alleged that at any relevant time in the proceedings did Petković come to take charge of matters as a result of his superior's absence (i.e., Praljak's).

3.1.2. Structure

81. According to the *Decision on the Basic Principles of Organization of the Defence Department*,¹⁴⁴ the Chief of the Main Staff was supposed to have a Deputy and four assistants: for special units, personnel and legal affairs, Home Guard and training and education.

82. The structure of the Main Staff was changed in December 1993 pursuant to the *Decision on the Foundation of the Organisation of the Ministry of Defence*.¹⁴⁵ The Chief of the Main Staff still had a Deputy and four assistants, but now for different matters: combat sector, land forces, training and education and Home Guard.

83. Non-combat matters, as already explained (paragraph 70) were not under the competence of the Chief of the Main Staff, but of the Head of the Defence Department. Accordingly, organization units which were competent for non-combat matters (such as Military Police, intelligence service, wartime health service, moral and ethics, or information and propaganda, logistics, finance, budget) were organizational units of the Defence Department, not those of the Main Staff. The Head of the Defence Department had assistants for these non-combat activities of the armed forces. The structure of the Main Staff and the authorities of the Assistants Chief of the Main Staff additionally prove that the Chief of the

¹⁴³ Exh.4D01614.

¹⁴⁴ Exh.P00586.

¹⁴⁵ Exh.P07236

Main Staff had no competence and no authority for the mentioned non-combat matters relevant for the armed forces and the defence.

84. Although the formation of the Main Staff, prescribed by the Head of the Defence Department, predicted that the Main Staff would consist of 117 members,¹⁴⁶ in December 1992 there were 21 persons in the Main Staff,¹⁴⁷ in March 1993 there were 33 members,¹⁴⁸ and in the second half of 1993, when Slobodan Praljak was the head of the Main Staff, the Main Staff consisted of 51 members, but 17 of them were engaged in the Command Centre (housekeeping matters).¹⁴⁹ The evidence demonstrates that the Chief of the Main Staff did not have any subordinate competent for the investigation of crimes, security matters, military police tasks, medical care, information and ethics, budget, detention facilities and other non-combat matters relevant for defence. In addition to an absence of legal competence in regard to these matters, Petković's position is also characterized by a complete material *inability* to act in relation to those. These figures clearly show that Petković did not have personnel within the Main Staff capable of taking care of even those matters placed within the realm of its specialized competence, let alone would this sort of personnel be adequate or sufficient to establish effective control over the alleged (unidentified) perpetrators of crimes or perform the tasks which the Prosecution alleges he should have carried out in these difficult circumstances. The Prosecution has simply not established (and not even sought to prove) how, in the circumstances, Petković and its minimal staff could have achieved this.

3.2. SECURITY SECTOR

85. The Security Sector was an organizational unit in the Defence Department/Ministry and consisted of: (i) the Security and Intelligence Service (SIS) Administration and (ii) the Military Police Administration.¹⁵⁰ The Security Sector was headed by the Assistant Head of the Defence Department for security, who was appointed and relieved of duty by the HVO/Government on the proposal of the Head of the Defence Department.¹⁵¹ Petković had no competence nor any authority over that body or its officers/personnel. Nor has this been alleged in the Indictment.

3.2.1. SIS

86. The *Decree of the Armed Forces* prescribed that professional work related to the security of the armed forces and the Defence Department would be organized and performed

¹⁴⁶ Exh.P00502.

¹⁴⁷ Exh.2D01352. Witness Perić testified that in October 1992 there were 15-20 people in the Main Staff, T.47872.

¹⁴⁸ Exh.P01683; Witness Slobodan Praljak, T.42470.

¹⁴⁹ Exh.4D01600; Witness Perić, T.47884.

¹⁵⁰ Exh.P00586, item IV.1., V.

¹⁵¹ Exh.P00400, Article 31.

by SIS. Members of SIS had the same rights, responsibilities and powers, and could apply the same methods as members of the civilian intelligence service, which was under the competence of the Department of Interior. The work of SIS was supposed to be supervised by a committee appointed by the President of the HZHB following the proposal of the Head of the Defence Department.¹⁵² The Head of the Defence Department was authorized to draw up rules of procedure on the work of SIS.¹⁵³ According to the *Decree*, the Chief of the Main Staff had no competence over security matters and had no authority over the SIS Administration and/or any SIS employee, which is relevant for the accurate establishment of the sort of authority that his *de jure* position entailed, as well as his possible omission liability which relates only to the *legal* duty to act. To the extent that SIS and its resources would at all be relevant to the charges, any failure or action attributed to it would be of no relevance to the charges brought against Petković.

87. *Rules of Procedure on the Work of the Information and Security Service* prescribed that SIS carried out the counter-intelligence and security protection of the Defence Department and armed forces.¹⁵⁴ The work of the Administration was managed by its Chief,¹⁵⁵ who was responsible to the Head of the Defence Department for his work and the work of the whole SIS.¹⁵⁶ Pursuant to the *Decree on District military courts in the territory of HZHB in a state of war or an imminent threat of war*, authorized persons from SIS performed the duties and exercised the authority of organs of internal affairs in relation to the criminal proceedings under the jurisdiction of the military courts.¹⁵⁷ Concretely, this meant that the SIS officers were authorized to perform tasks relating to the prevention and investigation of criminal offences, the discovery and arrest of perpetrators of criminal offences and their handing over to the relevant organs.¹⁵⁸ The evidence shows that SIS was engaged, *inter alia*, in the prevention and investigation of crimes¹⁵⁹ and the interrogation of the detained persons.¹⁶⁰ SIS prepared reports and other documents and submitted them to the President of the HZHB/HRHB and the Head of

¹⁵² Exh.P00588, Article 137.

¹⁵³ Exh.P00588. Service for the protection of the constitutional order was the name for the civilian intelligence service.

¹⁵⁴ Exh.P04211, Article 9.

In the Rules of Procedure on the Work of SIS, Article 9, it was stated that the Defence Department in a broader sense encompassed all segments of the Department and military districts, units, assembly points, training centres etc. /exh.P04211/.

¹⁵⁵ Witness Slobodan Praljak testified that everything that was supposed to be done by the SIS was under the competence of its Chief, at the relevant time Ivica Lučić, T. 42420.

¹⁵⁶ Exh.P04211, Article 10.

¹⁵⁷ Exh.P00587, Article 25.4; P04836, 2D00940, 2D01433, 3D00113. See also, Marjan's report exh.2D02000, para.38.

¹⁵⁸ Exh.1D00001, Article 10 (competence of the Department of Interior)

¹⁵⁹ Work reports P00128, P04699. Witness Buntić, T.30722; Vidović, T.51572.

¹⁶⁰ Exh.P02488, P03716, P04002, P04699, p.16; P07327, 2D00929, 2D00950, 3D00134, 3D02206. Witness Vidović, T.51677.

the Defence Department.¹⁶¹ SIS did not submit his reports and/or other documents to the Chief of the Main Staff. The chain/line of subordination, including the reporting chain/line, clearly and undoubtedly shows that the Chief of the Main Staff was not in the chain/line of reporting and subordination of the SIS and/or in relation to the security matters.

88. Commanders of the HVO Operative Zones/Military Districts and HVO brigades had assistants for security, who were appointed and relieved of duty by the Head of the Defence Department on the proposal of his Assistant for Security.¹⁶² Assistant Commander for Security and other security officers in the command were SIS employees.¹⁶³ These SIS employees, including the Assistant Commander, were obliged to inform the SIS Administration about all developments impacting on state security and counterintelligence.¹⁶⁴ The Commander of the OZ/MD or brigade was allowed to issue an order to an employee of SIS, which was within the scope of SIS activity, but the SIS employee was obliged to submit a report not only to the commander, but also to his superiors in the SIS structure.¹⁶⁵ If the order of the military commander was beyond the scope of the work of SIS, the SIS employee was obliged to inform immediately his superior in the SIS, who would “take appropriate measures”.¹⁶⁶ Assistant Commander of the OZ/MD or brigade was subordinate both to his commander and the Chief of SIS, and further to the Assistant Head of the Defence Department for Security and the Head of the Defence Department.¹⁶⁷ The Chief of the Main Staff was in none of these two chains of command. In other words, he had no authority over and no competence vis-à-vis SIS and/or its operatives. Nor has this been alleged.

89. Pursuant to the *Decision on the Basic Principles of Organization of the Defence Department*, brigade commanders were subordinated and responsible to the Supreme Commanders on all issues, and then alternatively to the Head of the Defence Department and the Chief of the Main Staff within their respective competence (see paragraph 70). Since the security matters, as explained, were non-combat issues, not under the competence of the Chief of the Main Staff, military commanders were subordinated and responsible to the Head of the Defence Department in relation to all security matters.¹⁶⁸ The chain therefore bypassed Petković. This is directly relevant for the proper and accurate establishment of his *de jure*

¹⁶¹ Exh.P00128, p.8. Witness Marijan testified that he had not found in the archives any report of the commanders' assistants for SIS or SIS headquarters submitted to the Main Staff, T.35740.

¹⁶² Exh.2D00567

¹⁶³ Exh.P04211, Article 64.

¹⁶⁴ Exh.P04211, Article 68.

¹⁶⁵ Exh.P04211, Article 65.

¹⁶⁶ Exh.P04211, Article 66.

¹⁶⁷ Exh.4D00507; witness Biškić, T.15228-9

¹⁶⁸ Witness Marijan testified that there was no doubt that the “SIS was under Mr.Stojić, reported to Mr.Stojić and Mr.Stojić was responsible for all their work” /T. 35731/ and that, pursuant to the item 9 of the *Decision on the Basic Principles of Organization of the Defence Department*, it could be concluded that the brigade commanders were subordinated and responsible to the Head of the Defence Department for security matters /T.35791/.

competence, his alleged liability for alleged failure to perform his legal duty to act and/or the non-existence of a superior-subordinate relationship between the Chief of the Main Staff and the military commanders and/or their subordinates in relation to the security matters.

3.2.2. MILITARY POLICE

90. The *Decree on the Armed Forces of the HZHB* prescribed that military police formed part of the overall structure of the armed forces. Military police had authority in: (a) military traffic; (b) military order and discipline; (c) elimination of criminal elements in the armed forces.¹⁶⁹

91. According to the *Instructions for the Work of the Military Police Units of the HVO*, issued in late November 1992, the Military Police Administration led and commanded all Military Police units within the framework of the HVO operative zones, units or within the MPA.¹⁷⁰

92. Military Police units had services for crime suppression, military road traffic, patrol, search, escort, duty and security.¹⁷¹ Specific tasks of the MP included, *inter alia*: a/ protection of people and property; b/ safety of military traffic; c/ military order and discipline; d/ detection of crimes, finding the perpetrators of a crime in cases when crimes were committed either by HVO members or in connection with the property and facilities belonging to the HVO;¹⁷² e/ preventing the unauthorized desertion of a battlefield by HVO members or the entry by unauthorized persons in the zone where combat operations were being conducted; f/ internal security of military prisons and premises where detained persons were held; g/ participation in finding and bringing in military conscripts who did not respond to the summons; h/ participation in providing security for prisoners of war.¹⁷³

93. The Military Police was authorized and obliged to submit a criminal report if a person violated military discipline and substantially disrupted public order or carried out a crime, and arrest and took a person into custody.¹⁷⁴

94. Pursuant to the *Instructions* and other legal documents, the Chief of the Main Staff had no *de jure* authority over the Military Police Administration and/or MP units. Nor has it been alleged that he had the material ability to order them to do anything that would have been relevant to the charges.

¹⁶⁹ Exh.P00588, Article 137.6.

¹⁷⁰ Exh.P00837, Section I. c.1. See also Annex 10: *Activities of the HVO Military Police* and Annex 11: *Reports of the MP battalions, companies and brigade platoons*.

¹⁷¹ Exh.P00837, Section I. c.2. See also exh.P01654.

¹⁷² Witness Vidović, T.51440, 51447-8, 51466, 51537, 51575, 51620-1.

¹⁷³ Exh.P00837, Section II. The Sphere of Action and Tasks of the Military Police.

¹⁷⁴ Exh.P00837, Section III. c.1.c/

95. Work reports of the Military Police Administration prove its *de facto* competence and activities in relation to: a/ establishment of military prisons; b/ criminal investigation; c/ control of traffic; d/ detainees and prisoners of war.¹⁷⁵ These were regular, non-combat military police tasks. However, Military Police had units designed for combat actions (Light Assault battalions), which were indeed engaged in the combats against the Army of the RS and the BH Army. These combat activities of the Military Police were included in the work reports of the MP Administration.¹⁷⁶

96. If the situation on the front-line requested that regular HVO forces be reinforced, other Military Police units, or parts of these units, could be engaged in the combats upon the decision of the Head of the Defence Department and the Chief of the MP Administration.¹⁷⁷ The MP unit, or part of it, was thus re-subordinated to a military commander and was in the military operational chain-of-command during the military action or during a certain period of time, as decided by the order of the Chief of the Military Police Administration.

97. Accordingly, although the Prosecution has not in any way alleged that Petković had any sort of authority or control over the Military Police, it should be noted that the Chief of the Main Staff has never been superior to any member of the Military Police in relation to the regular military police tasks,¹⁷⁸ but could be superior to the members of MP unit which was re-subordinated to him or to his subordinated commander, but for the limited purposes and for a limited period of time – during the military action or during a certain period of time. To be relevant to superior responsibility, it would therefore have to be established that military police took a culpable part in a crime at the time when they were subordinated to Petković. This has not been alleged, nor has it been proved. It is also significant to note that the Indictment does not allege that members of the military police committed any of the crimes at a time when they had been re-subordinated to a “combat” chain of command. Nor has this been established in evidence.

98. If a MP unit was engaged in combats without a decision of re-subordination, or if the MP unit was re-subordinated to the military commander who was not subordinated to the Chief

¹⁷⁵ Exh.P00956, P04699 p.12-18.

¹⁷⁶ Exh.P01635, 2D01366.

¹⁷⁷ Exh.P03770, 5D02002.

Witness Marijan confirmed that a subordinated unit of the MP would be responsible to the commander to whom it was subordinated, as long as the re-subordination lasted, T.35806.

Witness Praljak testified that the head of the Military Police was Ćorić, and that he, Praljak, as the Commander of the Main Staff was responsible for the operative use of those Military Police units which have been subordinated to him, T.42420-1.

Petković confirmed that it was standard procedure for the deployment of the military police in combat operations, T.49601.

¹⁷⁸ Witness Marijan testified that he reviewed all documents in the archives and had never found a Military Police report submitted to the Main Staff, T.35740.

of the Main Staff¹⁷⁹, the Chief of the Main Staff could not be said to be superior to the military policemen engaged in combats and was not responsible for their conduct.¹⁸⁰ The duty, responsibility and material ability to use their services only belonged to others. Any failure to do so could therefore not be attributed to Petković. Nor has this been alleged.

99. The Commander of the Operative Zone/Military District did not have an assistant for the military police tasks. However, the HVO Military Police was organized in five, later on (as of July 1993) eight battalions,¹⁸¹ at least one battalion always covered the area of one Operative Zone/Military District. Commanders of the MP battalions in Operative Zones/Military Districts were subordinated to the Commanders of the OZ/MD in performing their daily military police duties and were obliged to carry out orders relating to the regular military police work.¹⁸² However, Military Police Administration led and commanded all Military Police units, including the mentioned battalions.¹⁸³ Accordingly, the commanders of the MP battalions which covered the area of an OZ/MD were subordinated both to the Commander of the OZ/MD in relation to the regular military police tasks and to the Head of the MP Administration in relation to their *professional* activities. None of these two chains of subordination went to and/or through the Chief of the Main Staff. This is relevant for the Petković Defence case in relation to his alleged *de jure* competence and scope thereof, his alleged omission to take certain steps and the superior-subordinate relationship that is alleged to have existed between him and those said to have committed the underlying crimes charged.

100. Commanders of HVO brigades did not have assistants for the military police tasks, but the Military Police was organized in a way that each MP Battalion, which covered the area of the Operative Zone, included independent MP platoons, which were in the HVO brigades and carried out orders of the Brigade Commander within the following scope of competence: (i) security of barracks and commands; (ii) providing an escort for the brigade's military convoys; (iii) guarding points of entry into the area of the brigade defence responsibility and (iv) arresting

¹⁷⁹ For example, the Commander of the Convict Battalion was not subordinated to the Chief of the Main Staff. Accordingly, if a MP unit had been re-subordinated to the Commander of the Convict Battalion, this re-subordinated MP unit has not been in the operational chain of command of the Chief of the Main Staff. Exh.P02982, P03075, P04151.

¹⁸⁰ Witness Gorjanc explained in his report that re-subordination is generally limited with regard to combat task (the execution of an entire combat task or one part or phase), time (for the execution of a concrete combat task or during other non-combat activities or until revocation) and place (as a direct part or at a separate location). The re-subordination command defines precisely mutual relations and the duration and manner of re-subordination. Re-subordination is a complex military action. – Exh.4D01731, paras.235-247.

¹⁸¹ Exh.P00957, P02997.

¹⁸² Exh.P00957,

¹⁸³ Exh.P00957, p.5. The Head of the HVO MPA Ćorić explained in his report to Boban: «The command structure is headed by the Military Police Administration, and the units are organised in the form of one brigade, consisting of five battalions. One Military Police battalion is active in each of the operational zones, and the 1st Light Assault Battalion is active on the entire territory of HZHB.» - exh.P01635.

See also Annex 10: *Activities of the HVO Military Police* and Annex 11: *Reports of the MP battalions, companies and brigade platoons.*

and taking persons into custody of the brigade.¹⁸⁴ Brigade platoons of the Military Police were thus subordinated to the Brigade Commanders in exercising four mentioned regular military police tasks. At the same time Brigade MP platoons were subordinated to the Chief of the Military Police Administration.¹⁸⁵ None of these two chains of subordination went to and/or through the Chief of the Main Staff because the regular military police tasks were not under his competence. This is again relevant for the Petković Defence case in relation to his *de jure* competence, his omission liability and the superior-subordinate relationship between him and the direct perpetrators of crimes as one of the basic elements of the command responsibility.

101. In December 1993 the Defence Minister concluded that “the organization of the HVO Military Police so far has not been efficient, functional, operative and effective” and ordered the reorganization of the Military Police.¹⁸⁶ This is further evidence relevant to the conclusion that Petković did not and could not have effective control over the military police at any time relevant to the charges; nor, as already noted, has this been alleged in the Indictment.

102. In December 1993 MP platoons attached to the HVO brigades had been disbanded, as well as light assault battalions.¹⁸⁷ Light assault MP battalions, which had been dedicated to combat operations, became a part of the regular HVO units and came into the operational chain of command of the Main Staff.¹⁸⁸ This is relevant for the Petković Defence case because it goes to prove that MP platoons attached to the brigades did not function properly, which could directly influence the activities of the brigades relevant for combat readiness and actions. The disbandment of the light assault MP battalions proves that the existence of the combat units in two separate operational chains of command (regular HVO units in one, and the MP units in another) could and did cause uncoordinated military actions and chaos, as well as the impossibility to have the effective control over the units in combats, which called in turn for reform and re-structuring.¹⁸⁹

103. Pursuant to the *Decision on the Basic Principles of Organization of the Defence Department*, brigade commanders were subordinated and responsible to the Supreme Commanders in all issues, and then alternatively to the Head of the Defence Department and the Chief of the Main Staff within their competence (see paragraph 70). Since the regular military police tasks, as explained, were not under the competence of the Chief of the Main Staff, military commanders were subordinated and responsible to the Head of the Defence

¹⁸⁴ Exh.P00957.

¹⁸⁵ Exh.P00956, p.18; P02020, P02310, P02535; P04101, P04922, P06322.

¹⁸⁶ Exh.P07018. It should be noted that this was the first decision about the organisation of the Military Police co-signed by the Chief of the Main Staff.

¹⁸⁷ Exh.P07419, p.1.

¹⁸⁸ Exh.P07169, p.13.

¹⁸⁹ It should be noted that «professional units» which were not subordinated to the Main Staff were abolished at the same time – exh.P07419, p.1.

Department in relation to the military police tasks. This is directly relevant to the proper and accurate establishment of the *de jure* authority of the Chief of the Main Staff, his alleged failure to perform his legal duties to act and/or the non-existence of a superior-subordinate relationship between the Chief of the Main Staff and the military commanders and/or their subordinates in relation to the activities of the military police. It is again important to reiterate here that it has not been alleged that Petković could be held responsible for any act attributed to members of the military police.

3.3. Conclusion

104. The HVO forces consisted of combat and non-combat components. The non-combat component of the HVO forces were services for the needs of the combat component of the HVO, such as medical care, logistic support, SIS, Military Police. The subordination line, or chain-of-command, for non-combat components of the HVO did not go to and/or through the Chief of the Main Staff, but to the Head of the Defence Department and his Assistant for the particular non-combat issues.¹⁹⁰ In other words, there was no direct chain of command between the Chief of the Main Staff and non-combat components of the HVO, nor *de jure* authority and no basis to infer any sort of control.

105. Pursuant to the *Decision on the Basic Principles of Organization of the Defence Department*, which prescribed that HVO brigade commanders would be responsible alternatively to the Head of the Defence Department or the Chief of the Main Staff within their competence,¹⁹¹ brigade commanders were responsible:

- (i) for combat activities of their units to the Chief of the Main Staff and
- (ii) for non-combat activities of their units to the Head of the Defence Department.

106. Assistants Commanders for security and the commanders of the Military Police units in the Operative Zone/Military District and brigades, as explained, were subordinated in the dual chain of command – to the military commander and the Chief of SIS or the Chief of MP Administration. Since the Assistants Commanders for security were appointed and relieved of duty by the Head of the Defence Department on the proposal of the Chief of SIS, had the status of the SIS employees, received the salaries from SIS and had broader obligations towards their superiors in the SIS, military commanders considered that their loyalty was devoted to the SIS and not to them, the military commanders. Similarly, commanders and members of the Military Police units were military policemen, with the broader obligations towards the

¹⁹⁰ Exh.4D01286; witness Praljak confirmed parallel chains of command as presented on the diagram exh.4D01286, T.42423-4; witness Petković, T.50187-8; witness EA explained the two chains of command in relation to the SIS officers and confirmed that the chain of command for SIS did not lead to the Main Staff, T.24802-4.

¹⁹¹ Exh.P00586, B.IX 6.

superiors in the MP Administration, and military commanders believed they were not supportive enough to the HVO units. For that reason, in October 1993 military commanders requested from the President of the HRHB, Prime Minister, Minister of Defence and Commander of the Main Staff to, *inter alia*: (i) create changes and establish the right of the brigades in usage of MP troops, as well as the right and responsibility of command; (ii) specify the authorization and way of proposals, appointments and establishment of SIS services.¹⁹² At the beginning of November 1993 military commanders requested from the same HRHB bodies, *inter alia*, to “establish one and only one command line”.¹⁹³ Even after that time, and whilst Petković was deputy-commander, the chain of authority over the military police never went through him.

4. DEPARTMENT/MINISTRY OF INTERIOR

107. Petković had no authority over the Department of Interior. To the extent that the Department (or its organs) could or should have played any part in relation to the charges its acts or culpable failures could not be in any way attributed to Petković.

108. The Department/Ministry of Interior had the authority to, *inter alia*: (i) perform tasks relating to the prevention and investigation of criminal offences; (ii) the discovery and arrest of perpetrators of criminal offences and their handing over to the relevant organs; (iii) the preservation of public law and order; (iv) the control and regulation of road traffic.¹⁹⁴ Work reports show that the Department/Ministry exercised these tasks and authorities.¹⁹⁵ The Chief of the Main Staff had no authority over the civilian police and no competence in relation to the tasks of the Department/Ministry of Interior, which is relevant for the establishment of the scope of Petković’s alleged legal duties to act and his alleged liability by omission, as well as his command responsibility for crimes allegedly committed by civilian policemen.

109. Civilian police could be engaged in combats upon the order of the Head Department/Minister of Interior to re-subordinate a unit to a military commander.¹⁹⁶ At no point has it been shown that a civilian policeman had been re-subordinated to the authority (direct or indirect) of Petković when that person committed a crime. In other words, the preliminary requirement of temporal coincidence in the chain of command has not been met. Petković could only be held responsible for crimes committed by members of the civilian police if and where, at the time of the commission of crimes, this person was subordinated to

¹⁹² Exh.3D00796; Slobodan Praljak, T.42448-9.

¹⁹³ Exh.3D00793.

¹⁹⁴ Exh.P00440, Article 10.

¹⁹⁵ Exh.P00128, P04699, P04735.

¹⁹⁶ Exh.3D02408, P03027, 1D02006, P05963, P06027, P06208, P06397, P05573; witness Petković, T.49605-6.

him and when he had effective control over that person. That has not been alleged and has not been proved.

III. CRIME BASIS (until 24 July 1993)¹⁹⁷

1. General factual background

110. The Prosecution case is that a major conflict between the Croat and the Muslim side was avoided until mid-April 1993. Until then, it says, the tensions grew and local skirmishes occurred, but in mid-April, as pleaded, HB/HVO forces are said to have set out a broad campaign of persecutions, military actions, arrests and expulsions to enforce their demands for re-subordination of the BH Army to the HVO in the provinces 3, 8 and 10 accepted by the VOPP. The next turn-point is said to have been 30 June 1993 when, as the Prosecution submits, HB/HVO forces, supported by and involving the government and the armed forces of the Republic of Croatia, launched a massive campaign of attack, arrest and cleansed Bosnian Muslims from areas claimed to be part of Herceg-Bosna.¹⁹⁸

111. The Prosecution clearly divided the relevant time in three periods:

- (i) until mid-April 1993,
- (ii) from mid-April until 30 June 1993,
- (iii) from 30 June.

112. The Petković Defence will address the Prosecution case in light of this division.

1.1. Period until mid-April 1993

113. Until mid-April 1993 the BH Army and the HVO were allies against the joint enemy – RS Army and its masters. All defence plans and military actions of the HVO forces included the BH Army.¹⁹⁹ Petković's position and understanding was that the HVO and the BH Army were equal partners in the BH Armed Forces and that the liberation of BiH, or at least the defence of its territory was the joint responsibility of the HVO and the BH Army.

114. However, despite this understanding, there were unforeseeable tensions, incidents, conflicts between the HVO and the BH Army; all of these were contrary to the interests of the parties and contrary to the views of Petković. An end was put to those as soon as possible in every case. Petković always recommended talks and negotiations of local military commanders, believing in good faith that they had common interest and goal and therefore should overcome their disagreements and problems.²⁰⁰ Everytime, he and Halilović worked hard to prevent the tension to grow into a fully-fledged conflict.

¹⁹⁷ On 24 July 1993 Petković was relieved of duty of the Chief of the Main Staff.

¹⁹⁸ Indictment, paras.32,33,37.

¹⁹⁹ See Annex 3: *HVO plans: ABiH ally*

²⁰⁰ See Annex 5: *Petković's orders concerning tensions and conflicts between HVO and ABiH*

115. Tensions and local skirmishes between the local HVO and BH Army units, while the high-ranking commanders of both forces cooperated, planned and conducted joint actions against the common enemy, cannot constitute the state of international armed conflict. Nor has it been shown that, during that period, Croatia exercised overall control over (or occupied) those parts of the country where skirmishes took place. Instead, these incidents were mere incidents between two allied forces.

116. The two days fight in Prozor in October 1992 and the six days of fighting in Gornji Vakuf (which for five days lasted despite the cease-fire order of the HVO Supreme Commander and the joint order of Petković and Pašalić to end all combat operations²⁰¹), were isolated, local skirmishes, not an international armed conflict nor a part thereof.²⁰²

117. In the absence of an international armed conflict, crimes allegedly committed in Prozor in October 1992 and the six day long conflict in Gornji Vakuf in January 1993 could not constitute grave breaches under Article 2 Statute.

118. Nor could crimes committed in the context of these incidents (even if proved) be said to amount to a widespread/systematic attack against a civilian population. Any crime committed in a context other than such an attack could not constitute a crime against humanity under Article 5.²⁰³ The evidence demonstrates that none of the high-level political and/or military authorities planned, instigated or in any capacity participated in the two days local skirmish in Prozor in October 1992. The evidence also demonstrates that the conflict in Gornji Vakuf in January 1993 lasted six days after the Supreme Commander submitted a cease-fire order, and five days after the Chief of the Main Staff issued the implementation of a cease-fire order.²⁰⁴

²⁰¹ The Prosecution pleaded that the HB/HVO forces attacked Gornji Vakuf town and enumerated villages on 18 January 1993. The HVO Supreme Commander Boban issued the cease-fire order on 19 January 1993 – exh. P01211. The same day, 19 January, the representatives of the HVO and the BH Army met in Mostar and agreed the cease fire - exh.P01205, P01215.

On 20 January 1993 the Chief of the HVO Main Staff, Milivoj Petković, and the Commander of the BH Army 4th Corps Pašalić issued a joint order to end all combat operations, “in order to end the pointless conflict between the Muslim and Croatian peoples in Gornji Vakuf and to fight back together against the Serbian Chetnik aggressor”. It was ordered, *inter alia*, to set up a commission consisting of three members from the HVO and the BH Army, which would be responsible for examining the reasons, motives and consequences of the conflict and to identify the culprits. – Exh.P01238.

On 24 January 1993 Petković from Geneva issued the order that the HVO units in Gornji Vakuf should immediately stop offensive activities against BH Army units (exh.P01286, P01293).

On 25 January 1993 Šiljeg, the Commander of the OZ NWH, ordered the absolute cease-fire (exh.P01300), and fighting finally stopped.

²⁰² Petković testified that the event in Prozor in October 1992 was not conflict, but incident which was over after a day and a half. A few days before the incident, he started organizational preparations for the operation “Bura” in the Neretva Valley against RS Army and pulled out some material from the OZ and deployed them to the Neretva Valley. – T.49653.

The *Naletić* Trial Chamber concluded that an armed conflict existed on the relevant territory at least between 17 April 1993 and the end of February 1994» (para.179; adjudicated fact no.202 pursuant to the TC decision of 7 September 2006).

²⁰³ *Tadić* AJ, para. 271

²⁰⁴ The *Blaškić* Trial Chamber clarified the meaning of the “systematic” requirement and established that this requirement refers to, *inter alia*, the implication of high-level political and/or military authorities in the definition

Crimes (even if proved) were localized and isolated; they were insignificant in scale and number compared to the alleged targeted civilian population. The Prosecution thus failed to prove that these skirmishes could be regarded as a widespread or systematic attack directed against Muslim civilian population in the context of which crimes against humanity could be committed. Furthermore, it is an adjudicated fact that in April 1993 and further on “there was a widespread and systematic attack against the Muslim part of the civilian population in the area relevant to the Indictment”;²⁰⁵ there is no such adjudicated for the period prior to mid-April 1993 for the simple reason that there is no evidence to support such a finding.

1.1.1. Milivoj Petković as peace negotiator

119. In January 1993, Petković participated in three rounds of peace-talks in Geneva: from 2nd until 6th, then from 10th until 12th and finally from 22nd until 26th.²⁰⁶ During the whole month of January, Petković was primarily focused on peace negotiations and the implementation of the military aspect of the Vance-Owen Peace Plan. However, the second day after the commencement of the conflict in Gornji Vakuf, after the HVO Supreme Commander issued the cease-fire order, Petković participated in a meeting with representatives of the ECMM and the BH Army in Mostar. Petković and Pašalić, who represented the BH Army, agreed that an order should be sent to local commanders in Gornji Vakuf in order to ease the tensions and to cease-fire,²⁰⁷ and on 20 January 1993 they jointly issued a cease-fire order. In the preamble of the order, its purpose was explained as follows:

*In order to end the pointless conflicts between the Muslim and Croatian peoples in Gornji Vakuf and to fight back together against the Serbian Chetnik aggressor.*²⁰⁸

120. During the peace conference in Geneva, on 24 January 1993, Boban and Petković were informed that fighting in Gornji Vakuf did not cease, which prompted Petković to issue a further order for an immediate cease-fire.²⁰⁹ On 25 January 1993, the Commander of the HVO OZ NWH Šiljeg ordered the cease-fire²¹⁰ and the situation in Gornji Vakuf started to calm down. The evidence proves that Petković did his best to stop the fighting in Gornji Vakuf, pacify the situation and encourage the two forces (BH Army and the HVO) to fight together, as allies, against the common enemy.

and establishment of the methodical plan /para 203/; crime may be widespread, or committed on a large scale, by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude” /para 206/.

²⁰⁵ *Naletilić* TJ, para. 240 (adjudicated fact no. 14 pursuant to the TC decision of 7 Septembre 2006).

²⁰⁶ Witness Petković, T.49427, 49654; exh.P01038, P01275. See also Annex 8: *Petković's whereabouts in 1993*

²⁰⁷ Exh.P01205, P01215.

²⁰⁸ Exh.P01238.

²⁰⁹ Exh.P01286.

²¹⁰ Exh.P01300.

121. The Deputy-Chief of the Main Staff, Miro Andrić, was in Gornji Vakuf during the conflict. However, he was not sent to, or instructed to go to Gornji Vakuf by Petković.²¹¹ Miro Andrić did not inform Petković about the meeting with the representatives of the BH Army held on 16 January, nor about the 17 January deadline for the acceptance of the HVO requests and the plan to attack BH Army in the Gornji Vakuf municipality. Petković did not issue a single order or instruction to Miro Andrić or any unit of the HB/HVO forces to attack the BH Army. Accordingly, Andrić's presence in Gornji Vakuf and possible involvement in combats had no relation with Petković. Nor has it been alleged

1.2. Period from mid-April until 30 June 1993

122. The Prosecution case is, in short, that: (i) the HB/HVO leadership set a deadline by 15 April 1993 that all BH Army units in the provinces 3, 8 and 10 accepted by the Vance-Owen Peace Plan should either subordinate themselves to the HVO or leave the areas covered by the proposed provinces; (ii) the BH Government did not accept the "ultimatum" and on 15 April 1993 HB/HVO forces set out a broad campaign of persecutions, military actions, arrests and expulsions, with more than thirty attacks on Muslim towns and villages (crime basis relates to several villages in the period 16-19 April); (iii) on 9-10 May 1993 HB/HVO forces attacked Bosnian Muslims in Mostar.²¹²

123. Instead, the evidence shows the following: (i) HVO authorities and/or forces did not plan the war against the Muslim side; (ii) Petković did not set any deadline for April 1993, nor participate in setting any such deadline; (iii) in mid-April 1993 HVO forces did not launch any campaign against BH Muslims, but defended the parts of the Konjic and Jablanica municipalities (as of 23 March 1993, and especially as of 14 April 1993); (iv) HVO authorities did not have plans to expand the areas under their control and accordingly HVO forces did not plan and/or launch any military action in order to broaden the area under the control of the HVO authorities; (v) the result of combats between the HVO and the BH Army from April 1993 until 30 June 1993 was that the BH Army significantly broadened the area under its control.²¹³

124. Petković explained in an interview to the Croatian daily "Večernji list" on 2 August 1994 that the Croats in BiH had not been preparing themselves for the war against BH Army.²¹⁴ Petković also testified:

The HVO did not prepare at all for a war against the Muslims. The HVO wanted the Muslims and Croats to unite as far as possible and to stop the Serb attack or to

²¹¹ Exh.4D00348; witness Petković, T. 49653-4.

²¹² Indictment, paras.32, 33, 35.

²¹³ See Annex 15: *Maps showing expansion of the territory under the control of the BH Army during 1993*

²¹⁴ Exh.4D01355.

*extend the free territory, depending on the political will of the leaders of Bosnia-Herzegovina of the day.*²¹⁵ /.../

*Your Honours, that was the general position. At no point did we prepare for war against the Muslims. Quite the contrary, we tried in all manner possible to draw as close to them as possible and unite at all levels, to unite our forces.*²¹⁶

If others made such preparation, these were unknown to Petković.

125. Krešimir Zubak, Vice-President of the HVO/Government at the relevant time and the HRHB President after Boban, said in a television talk show: “It is fact that after the signing of the Vance-Owen plan, our intentions towards the Muslims were entirely honest, and that we believed that by signing the agreement the Muslims would accept a peaceful solution to a BiH crisis. At the moment we signed the Vance-Owen agreement, the Croats, that is the HVO, controlled 88% of the territory that was supposed to be added to the Croatian provinces, according to the Vance-Owen plan. After the signing, however, after the aggression by the MOS /Muslim Defence Forces/, that territory was reduced to 50%, which shows that Croats did not expect the MOS to act in this way. We were unprepared in this sense.”²¹⁷

126. The Prosecution did not plead that Petković had made a demand in early April 1993 that the BH Army units in the provinces 3, 8 and 10 of the VOPP be subordinated to the HVO or leave the areas. The Prosecution alleged that the HB/HVO authorities (not HVO forces), i.e. civilian authorities, had made such demand (paragraph 93 Indictment). The evidence clearly demonstrates that Petković had no part in any such matter.

127. In early April (3rd) the HVO/Government held its 34th session; President Boban participated at the meeting. The Vance-Owen Peace Plan was on the agenda.²¹⁸ Petković was not present at the meeting; he was not consulted about the topic of the meeting and did not participate in any other way in the preparing of the meeting and its conclusions.²¹⁹ Vegar testified that the VOPP has been discussed on the meeting of the HVO/Government, and that the Main Staff did not issue or publish any announcement.²²⁰ Petković testified that the Main Staff had nothing to do with the so-called “ultimatum”.²²¹ The Prosecution did not put to

²¹⁵ Witness Petković, T.49411.

²¹⁶ Witness Petković, T.49414.

²¹⁷ Exh.1D02340. Also Filipović, T.47456, 47458.

²¹⁸ Exh.P01798. The adjudicated fact is that on 3 April 1993 the HVO leadership met in Mostar to discuss the implementation of the Vance-Owen Peace Plan (*Kordić* TJ, para.603(c); adjudicated fact no.155 pursuant to the TC decision of 14 March 2006)

²¹⁹ Vegar, Assistant Head of the Defence Department, who also worked as the public relation officer of the HVO/Government, published the article about the meeting in the Croatian daily “Slobodna Dalmacija” - Exh.P09519.

²²⁰ Witness Vegar, T.36970-5.

²²¹ Witness Petković, T.49653.

REUTERS (exh.P10675) and the Belgrade daily «Borba» (exh.P01808) incorrectly interpreted that the HVO announcement was the announcement of the HVO armed forces.

Petković that such evidence was false or incorrect; as such, it must be regarded as unchallenged or, at the very least, as not forming part of the Prosecution case against Petković.

128. The Prosecution claims that in mid-April 1993 HVO forces started a broad campaign of persecutions, military actions, arrests and expulsions, with more than thirty attacks on Muslim towns and villages, and specifically that the HVO forces attacked three villages in Prozor Municipality, launched the offensive in the Jablanica Municipality in order to conquer Jablanica and therefore attacked Sovići and Doljani on 17 April. Whilst there was fighting in these five villages, the allegation about the time of commencement and the reasons of combats is *not* based in evidence.

129. The evidence demonstrates that the HVO had one brigade in the Konjic-Jablanica area, while the BH Army had three brigades – two in Konjic and one in Jablanica. ²²² In the middle of March 1993, other BH Army units arrived to Jablanica – Zuka's special purpose unit which was directly subordinated to the Supreme Command Staff, the Silver Fox unit and Čedo's Wolves.²²³ There were 2,500 members of the BH Army, Municipal Staff and MUP in Jablanica, while the HVO had a unit of 300 members.²²⁴ Idrizović confirmed that it was not logical from a military aspect that the HVO should enter into conflict against the BH Army units in the Jablanica area.²²⁵ Petković testified that the HVO never planned to take control of Jablanica, nor did the HVO have the forces or strength to do so.²²⁶

130. Evidence clearly demonstrates that the BH Army attacked HVO forces in Konjic at the end of March 1993 and after a short period of relative peace started the offensive operations in the Konjic-Jablanica area and further towards Mostar, as well as in the Central Bosnia:

(i) On 23 March 1993, the BH Army attacked the HVO forces in Konjic, captured 150 HVO soldiers and blocked the town.²²⁷ The same day Petković and Pašalić submitted the joint cease-fire order²²⁸ and both sides tried to calm the situation.²²⁹ The HVO/Government concluded at an emergency session held on 24 March that the situation in Konjic and Jablanica should be calmed with all political means, but that adequate measures should be prepared if political measures fail to produce a favourable solution.²³⁰

²²² Witness Idrizović, T.9767.

²²³ Ibid., T.9739.

²²⁴ Ibid., T.9767-8.

²²⁵ Witness Idrizović, T.9771.

²²⁶ Witness Petković, T.49432; Marić testified that the HVO did not have an intention to take Jablanica town, and was not able to do so, T.48193; Jasak, T.48654; 4D AA, T.49141-2.

The evidence refutes the conclusions of the *Naletilić* Trial Chamber (TJ, paras.25,30) that the HVO offensive aimed at taking Jablanica (adjudicated facts no. 26, 27 and 30 pursuant to the Trial Chamber's decision of 7 September 2006).

²²⁷ Exh.4D00438

²²⁸ Exh.4D00125

²²⁹ Exh.4D00806, 4D01556, 4D01558, 4D01168.

²³⁰ Exh.2D01402.

- (ii) Tensions and incident continued in the area until the mid-April 1993.²³¹
- (iii) On 14 April 1993 the Commander of the BH Army Jablanica Brigade ordered the full mobilization of all units and gave the specific tasks to the battalions, including the 4th Battalion which was deployed at the Risovac plateau, Sovići and Doljani.²³² The same day the commander of the HVO unit in the area reported that the situation in Konjic worsened on 13 April, that the Croatian village Buščak and some other areas were attacked, Kostajnica has been shelled, and that actually started the general attack on the Konjic and Jablanica area. The HVO commander asked for help from the HVO units in the Prozor Municipality.²³³
- (iv) On 15-16 April the BH Army continued its offensive actions and the HVO units in the Konjic-Jablanica area literally cried for help.²³⁴
- (v) On 17 April the officer of the 4th BH Army Corps reported the results of the military actions in the Konjic area, concluding: “We will try to have the work in Konjic completed as soon as possible, and then start with all brigades counterattack in two directions:
1. Konjic-Jablanica-Mostar
 2. Konjic-Prozor-Rama.”²³⁵
- The document clearly demonstrates the military plans of the BH Army: to “complete the work” in Konjic, and then through Jablanica towards Mostar.
- (vi) In order to assist HVO units in the Konjic-Jablanica area, HVO units belonging to the Operative Zones NWH and SEH took certain military actions, including an attack on Sovići and three villages in the neighboring Prozor Municipality.²³⁶
- (vii) On 18 April 1993 Boban and Izetbegović issued the cease-fire order²³⁷, and Petković accordingly submitted the same order to the commanders of the HVO Operative Zones.²³⁸
- (viii) Military actions of the BH Army in the Konjic-Jablanica area did not stop.²³⁹ In May 1993 two small Croatian enclaves remained in the area.²⁴⁰ One of them, Kostajnica, was

²³¹ Exh.P01803, P01810, 2D00774, 2D00775, 2D00776.

²³² Exh.2D00246.

²³³ Exh.P01874.

²³⁴ Exh.P01879, P01887, 4D00083, 4D00874, 4D00453, P01882, 3D00557, 4D00085.

²³⁵ Exh.4D00599. It should be noted that the name of the town «Konjic» mentioned for the first time in the quoted sentence has been incorrectly written in the English text as «Prozor».

²³⁶ Exh.P01874, P01879, 4D00453, P01882.

²³⁷ Exh.2D00089

²³⁸ Exh.P01959.

²³⁹ Exh.4D00445, 4D01156, 4D00090, 4D00139, 4D00091, 1D02758, P02128, 4D01565. [REDACTED] – exh.P02185, p.8 /e/.

²⁴⁰ Exh.4D01216

conquered by the BH Army in July 1993.²⁴¹ Another Croatian enclave (comprising the villages of Turija, Zaslavlje, Zabrđe) remained in the area until the end of conflict.²⁴²

(ix) Mostar 9 May 1993

(a) The Prosecution incorrectly pleaded that the confrontation line running north and south along the Bulevar and Šantićeva Street, on the west bank of Neretva River, was established on 9 May 1993 as the result of the armed conflict between the HVO and the BH Army (para. 98 Indictment). The evidence demonstrates that the division line was established on 20 April 1993, at the meeting of the representatives of the BH Army and the HVO in the presence of the representatives of the international community.²⁴³

(b) The Prosecution pleaded that on 9 May 1993 HVO forces «attacked Bosnian Muslims in Mostar town» and that the attack on the Vranica building was a part of this operation (Indictment para.94). It should be noted that the Prosecution underlined that the Vranica building was an apartment complex with a large number of civilians, but was silent in relation to the fact the 4th Corps of the BH Army and the Command of the BH Army Mostar Brigade had their headquarters in the same Vranica building, and that other facilities in the Vranica building complex belonged to the BH Army.²⁴⁴ The evidence demonstrates it was the BH Army that started hostilities there; in any case, and furthermore, that building would have been and was a valid military objective because of the presence and activities of the 4th Corps in that building.²⁴⁵ However, for the responsibility of the Accused in this case the more relevant issue is the target of the combat activities of the HVO forces in Mostar. The evidence establishes that targets of the HVO forces were only the headquarters of the BH Army Commands in the Vranica building and the military objects of the BH Army.²⁴⁶ These were legitimate military objectives that could be attacked.

²⁴¹ Exh.P03311, P03371, P03381, P03465

²⁴² Exh.4D01219.

²⁴³ Exh.4D00557, 3D00676, 3D00016, 3D00017; Pellnas, T.19759; Praljak, T.42501; Perić, T.47913; Jasak, T.48671; Marić, T.48197; Petković, T.49544. It is also the adjudicated fact that «on 15 April 1993 there was an armed incident between the HVO and an ABiH unit stationed in Hotel Mostar, which was on the separation line between the BH Croat and the BH Muslim part of town» (*Naletilić* TJ, para.38; adjudicated fact pursuant to the TC decision of 14 March 2006).

²⁴⁴ *Naletilić* TJ, para. 39 (adjudicated fact no.93 pursuant to the TC decision of 7 September 2006).

²⁴⁵ [REDACTED]; witness CV testified that Vranica building “was where the 4th Corps was and /.../ the 41st Motorised Brigade, and they were linked with a cellar, a basement”, T.12540-1. Witness Marić testified that the HVO decided to take the Vranica building and the command of the 4th Corps of the BH Army, T.48197.

²⁴⁶ [REDACTED] Witness CV, T.12644-5; Lizde, T.17947; exh.P10034 – 92bis statement of the witness DY, paras.6 and 7; Marić, T.48197; exh.4D00628.

The *Naletilić* Trial Chamber stated that «one of the targets was the ABiH headquarters in the Vranica building» (para. 40; adjudicated fact no.94 pursuant to the TC decision of 7 September 2006).

(c) Petković was not in Mostar on the morning of 9 May when fighting started, but arrived in early afternoon.²⁴⁷ He immediately tried to contact Pašalić in order to stop combats, but did not succeed.²⁴⁸ Petković then informed Boban that the contact should be established with the Muslim side and a cease-fire agreed. Boban accepted his suggestion, contacted Izetbegović and they agreed to issue a cease-fire order the following day.²⁴⁹ On 10 May Boban and Izetbegović submitted the orders,²⁵⁰ and Petković helped Boban in transcribing the document.²⁵¹ Boban and Izetbegović instructed Petković and Halilović to meet and agree the details, so Petković went to Kiseljak and met with Halilović. They were accompanied by General Morillon.²⁵² On 11 May all of them went to Međugorje²⁵³ and on 12 May Halilović and Petković signed the agreement, Morillon and Thebault also co-signed.²⁵⁴ The situation started to calm and until 30 June 1993 the commanders of the two forces generally communicated well in the Mostar area, and although there were some incidents, the situation was under generally quiet.²⁵⁵

(x) On 9 June 1993 the BH Army took control over Travnik.²⁵⁶

(xi) On 13 June 1993 BH Army took control over Kakanj.²⁵⁷

131. To conclude, in relation to the crimes allegedly committed by the HVO authorities and/or forces in mid-April 1993 it is irrelevant which army started the conflict. However, in relation to the Prosecution pleading about an alleged broad campaign of military actions and persecution by HVO forces, it is highly relevant to establish the true content and context of the combats in Konjic-Jablanica and surrounding areas. HVO forces, as far as Petković knew and understood, launched military actions only and exclusively to assist the HVO units in the Konjic-Jablanica area, which were attacked by the BH Army units. Petković did not plan and/or order any of these military actions, and did not participate in the conducting of these actions. As of 18 April 1993, he was engaged in negotiations with Halilović, establishing joint commands, meetings with the HVO and BH Army military commanders in Central Bosnia and other peace-keeping processes.²⁵⁸ At no time did Petković plan unlawful actions, nor has this been put to him in cross-examination.

²⁴⁷ Witness Petković, T.49535; Jasak, T.48674; Perić, T.47928

²⁴⁸ Witness Petković, T.49536-7; Perić, T.47933.

²⁴⁹ Witness Petković, T.49541

²⁵⁰ Exh.4D00456, 4D00457

²⁵¹ Witness Petković, T.49548

²⁵² Exh.P02461; witness Petković, T.49549.

²⁵³ Witness Petković, T.49550.

²⁵⁴ Exh.P02344; witness Petković, T.49553. Petković explained that the agreement was operationalization of the Boban-Izetbegović's agreement of 10 May.

²⁵⁵ Witness Petković, T.49555; Marić, T.48206-7; Jasak, T.48684; Perić, T.47935; Rajkov, T.13033.

²⁵⁶ Exh.P02740, P02750, 2D01407. Petković testified that he immediately asked for a meeting with Halilović, still believing that the combats could be stopped by negotiations – T.49456.

²⁵⁷ Exh.P02740. Only then Petković realized that the situation “no longer gave any certain hope of stopping these events through negotiations” (emphasis added) – T.49458.

²⁵⁸ See Annex 8: *Petković's whereabouts in 1993*.

1.3. Period from 30 June 1993

132. The Prosecution case is that on 30 June 1993 the BH Army attacked the HVO in the barracks in the northern part of Mostar town, and then: (i) HVO forces commenced a siege against East Mostar, which involved shelling, sniper fire, blocking of humanitarian aid and deprivations directed against Muslims in East Mostar; (ii) HVO forces, supported by the government and armed forces of Croatia, launched a massive campaign to attack, arrest and cleanse BH Muslims from areas claimed to be part of Herceg-Bosna (Indictment, paragraph 37).

133. 30 June 1993 was the turning-point in the relationship between Croat and Muslim forces in BiH. All-out war started on that day.²⁵⁹ However, the Prosecution incorrectly described the events on 30 June 1993 as the “attack of the BH Army on the HVO barracks in the northern part of Mostar town” and avoids explaining the circumstances that led to, thereby explaining, the outbreak of war in the Mostar area on 30 June 1993. In order to understand the need for and validity of security and military measures taken by the HB/HVO authorities, including Petković’s order for disarmament and isolation of the Muslim HVO soldiers and the able-bodied Muslim men in the Mostar region,²⁶⁰ it is essential to look at the circumstances in which these measures became necessary and had become militarily justified. The most relevant factual circumstances, *not challenged by the Prosecution*, will be recounted briefly below.

134. As already explained, until 30 June 1993 the BH Army established control of the whole Konjic municipality, save two enclaves (1/ villages Turija, Zaslavlje, Zabrđe; 2/ Kostajnica),²⁶¹ then Travnik²⁶² and Kakanj²⁶³ in Central Bosnia.

135. According to intelligence, the BH Army planned to launch offensive actions in the Neretva valley.²⁶⁴ Therefore, on 7 June 1993 Petković issued an order to the Commander of the OZ SEH to prepare for the defence: to assess and organize the necessary number of units to prevent a possible Muslim breakthrough along the axes of Jablanica-Bijelo Polje-Mostar, to fortify all lines towards the BH Army, set obstacles and build positions deep in the territory.²⁶⁵ That order had a sound, valid, military basis – caused by the fear based on reliable information

²⁵⁹ Witness Petković, T.49465; Praljak, T.42279; Pavlović, T.46839-40; Marić, T.48212; Jasak, T.48684; Filipović, T.47456.

²⁶⁰ Exh.P03019.

²⁶¹ Exh.4D01216.

²⁶² Exh.4D00562, IC01185, P02740, P02750

²⁶³ Exh.IC01185, P02740; witness Jasak, T.48685

²⁶⁴ Witness Jasak testified that VOS indicated that the BH Army would try to link up Konjic, Jablanica and Mostar area in order to obtain the right conditions for pressing on towards Stolac, Čapljina and Neum, and the they envisaged that the attack could happen around 1 July. /T.48685/

²⁶⁵ Exh.4D00948. Witness Jasak testified that this documents submitted by Petković was based on VOS information, T.48688.

of further offensive actions by the BH Army in areas where the positions of the HVO would have been exposed.

136. On 26 June 1993, at a meeting in Međugorje, HVO representatives warned General Morillon of the possibility that the Muslim side had been organizing a frontal assault against the town of Mostar and the HVO positions in its vicinity.²⁶⁶ Petković testified:

Our knowledge was that we followed the developments in the BH Army and its offensive in Central Bosnia and in the Konjic-Jablanica areas, and we expected a further attack or movements on the part of the BH Army towards Mostar. /.../ But I never thought that it would happen in this shape or form, to be quite honest²⁶⁷

Morrillon did not deny that this had been the case. Petkovic held these beliefs in good faith. This is direct, and un-disputed, evidence of Petkovic's mindset at the relevant time. He knew and had reason to fear renewed offensive operations from the BH Army and could therefore reasonably assume that security measures were justified to limit the potentially prejudicial consequences of such attacks upon their positions. There was no evil intent nor any criminal plan behind his views: he was concerned by the deteriorating military relationship between HVO and BH Army and what was perceived as the increasingly aggressive stance of ABiH forces.

137. Up until 30 June 1993 no HVO commander had taken any measure against the HVO soldiers of Muslim ethnicity, except for measures that applied to everybody, irrespective of ethnicity.²⁶⁸ Those measures do not form part of the charges. Commanders of HVO units wanted Muslim soldiers to stay in the units,²⁶⁹ but if somebody wanted to be discharged from the HVO, he was allowed to go and could turn back.²⁷⁰ New military developments impacted on those circumstances dramatically.

138. On 30 June 1993, the BH Army occupied not only the Northern Barracks, as pleaded by the Prosecution, but the area of Bijelo Polje, Vrapčići and all other places in an area stretching for 26 kilometres north of Mostar.²⁷¹ This action established communication between Mostar and Jablanica fully under the control of the BH Army, which created preconditions for the BH Army units in the Mostar area to link up with units from other parts of the country, and to

²⁶⁶ Exh.4D00702. Witness Jasak testified that it was appeal made by Petković to the international community to get involved in order to keep large-scale civilian casualties from occurring and in order to help stop the fighting, T.48689.

²⁶⁷ Witness Petković, T.49585.

²⁶⁸ Witness Petković, T.49589; Pavlović, T.46835.

²⁶⁹ Jasak testified that HVO commanders trusted those Muslims who had stayed on in HVO units after 9 May 1993 /T.48701, 48704-5/. Exh.P02562, 5D01115.

²⁷⁰ Exh.4D01180, 4D01225, 4D01633, 4D01634, 4D01639, 4D01645, 4D01646, 4D01647, 4D01648. Witness Petković, T.49590; Marić, T.48209, 48211.

²⁷¹ Exh.4D01216, 4D00622, ; witness Nissen, T.20631; Jasak, T.48684; Perić, T.47943, Marić, T.48212.

receive regular supplies of weapons, ammunition and other necessities.²⁷² Previously known BH Army goals and plans to gain full control of the territory on the Jablanica-Mostar-Neum axis, proposed by Halilović, at a joint session of the Presidency, Government and parliamentary parties on 10 March 1993, were one step away.

*“6. Make sure that the port of Ploče and the Ploče – Mostar – Sarajevo – Zenica road are in continuous operation for the needs of the state of BH. If necessary, engage international forces for this, and also use our own forces as necessary to secure that area.”*²⁷³

139. The evidence clearly demonstrates that the BH Army occupied the area north of East Mostar in cooperation with the HVO soldiers of Muslim ethnicity in the 2nd HVO Brigade, whose defence position were in the Northern Barracks and the area north of Mostar towards Jablanica.²⁷⁴ In the report of the Staff of the Supreme Command of the BH Army of 1 July 1993 the combats in the zone of responsibility of the 4th Corps on 30 June 1993 was described as follows:

“Our forces successfully repelled yesterday’s attack by Ustasha units and captured some very important strongholds in a counterattack: Sjeverni Logor, Raštane, Vrapče, Bijelo Polje, Salakovac and Rošci. Among other things, we hold all HE /hydroelectric power plants/ on the Neretva river except the Čapljina HE. About 100 /HVO/ soldiers surrendered to our forces and several hundred captured civilians have been freed. The BH Army seized a large booty consisting of weapons and ammunitions in the North Camp.

*According to a report by the 4th Corps Command, the units of this Corps linked up with the forces of the 6th Corps, which will have a positive effect on the coming combat operations.”*²⁷⁵

Klaus Nissen confirmed that the BH Army had linked their forces in Mostar with those deployed in the Jablanica area²⁷⁶, [REDACTED].²⁷⁷ International observers understood that it was a cohesive line from the north²⁷⁸ and that action was a planned and was a part of larger operation.²⁷⁹

²⁷² Communication between Mostar and Jablanica is substantiated, for instance, by the following documents: 4D00768, 4D00545, 2D01389. Also Jasak, T. 48684-5, Marić, 48212-3, 48216-8, Božo Perić, T.47968, 47972, 47974-9.

²⁷³ 3D02648, page 151.

²⁷⁴ 4D01056, 4D01058, 4D01060, 4D01062, 4D01066; Witness CR, T.11947; Perić, T.47943; Marić, T. 48212; Jasak, T.48684-6; Petković, T.49576.

²⁷⁵ Exh.2D01389.

²⁷⁶ Witness Nissen, T.20636.

²⁷⁷ Exh.P03361, para.6.C.3.

²⁷⁸ Witness Nissen, T.20637.

²⁷⁹ Witness Nissen, T.20638-9.

140. [REDACTED] reported about the «mutiny of Muslim soldiers of the HVO»²⁸⁰ and that BH Army took the Northern HVO Barracks, the dam and the village of Raštani on the west-bank.²⁸¹ Klaus Nissen testified that the ECMM “learnt from various sources that single soldiers, probably also some troops, parts of troops, but, rather, single soldiers of the armija who served under the HVO had risen against the HVO, against their leaders”.²⁸² [REDACTED] reported that “on June 30th, at dawn, the expected happens” and that “it seems that the operation was triggered off during the night of June 29/30th when the Muslims enlisted in the HVO 3rd²⁸³ Brigade with the basis in the TIHOMIR MIŠIĆ barracks deserted with their weapons to join the ranks of the BiH. Seizing this opportunity, the Muslims advanced north and reached BIJELO POLJE.”²⁸⁴

141. [REDACTED] also reported that Croats were very concerned that Muslims were deserting from the 1st and the 2nd HVO Brigades and joining the BH Army units.²⁸⁵ [REDACTED] reported as well about the “29 July BiH Army offensive which resulted in a significant increase in military activity in and around Mostar and a further worsening of the security situation in same areas”.²⁸⁶ These concerns were legitimate, reasonable and justified. The Prosecution has not shown otherwise.

142. On 30 June 1993 Halilović congratulated Pašalić for his successful operations, and Pašalić informed him that he was “gathering some forces for further activities”.²⁸⁷ Their conversation was known to the HVO commanders at the time.²⁸⁸

143. Clearly, the situation was deteriorating rapidly and dramatically, putting great pressure on HVO forces to react.

144. The War Radio BiH Mostar broadcasted the speech of the Commander of the BH Army 4th Corps Pašalić on 30 June 1993 at 11,00 hours:

/.../ Citizens of Mostar, Muslims and other honest citizens, beat ustasha on every step. /.../ People, citizens of Mostar, you have to understand that this is a judgement day when you have to start with fight. I am inviting each citizen who can to bear a rifle, who can bear a rock, to kill ustasha criminals because there is no life with ustasha here accept life with Muslims, honest Croatians and loyal Serbs. We, citizens of Mostar announce loss of legendary commander Hujko. But gentlemen,

²⁸⁰ Exh.P03952, para.2.b/; witness Nissen, T.20641.

²⁸¹ Exh.P03031.

²⁸² Witness Nissen, T.20449.

²⁸³ It should be stated – 2nd Brigade.

²⁸⁴ Exh.P04698A, p.38.

²⁸⁵ Exh.P02979, para.5.a(3).

²⁸⁶ Exh.P06332.

²⁸⁷ Exh.P03030.

²⁸⁸ Exh.P03026. Witness Jasak, T.48969-7.

*you have to know hundreds and thousands of likes of Hujko are going to be born tonight directly in the fight against you who imposed a war on us.*²⁸⁹

It was obvious: the war between the Croat and the Muslim side had started in Mostar area. Defensive, reactive and anticipatory military steps needed to be taken promptly and effectively to avoid further military defeats guarantee the stability and security of HVO positions, protect its own forces and protect the local population and prevent enemy forces from growing stronger and more numerous. As discussed further below, these measures were urgent, justified, proportionate and legitimate from a military viewpoint. They have not been shown to be anything other than the exercise of sound and reasonable military judgement in the circumstances. Whilst Petković was involved in reacting to these military threats, he had no part in any crimes that is said to have accompanied or followed those.

145. On 30 June 1993 the President of the HVO/Government a Prlić and the Head of the Defence Department a Stojić issued a proclamation stating, *inter alia*:

*As a nation, we have to defend every one of our homes, hearths and churches-
We have to defend them if we wish to survive in this region /.../.*

*Let us unite our forces, in every village, every Croat settlement, in every part of
our Herceg-Bosna, in order to stop the Muslim aggression. ,.../*

*New Muslim aggression against Mostar has also brought about changes in the
lifestyle, behaviour and operation of the military and civil system in this area.*²⁹⁰

Stojić issued the order that all military conscripts should report to the defence offices or their unit within 24 hours²⁹¹ and ordered the HVO in Posušje to urgently mobilize all available human resources and MTS.²⁹² [REDACTED] reported about the general mobilization and a curfew.²⁹³ No doubt, the security situation had become extremely difficult and required urgent, security and military measures; a failure to do so would have allowed the BH Army to continue with its offensive operations in the Mostar region. Petković's 30 June 1993 order for the isolation of Muslim HVO soldiers and able-bodied Muslim men was one of those orders that had been rendered necessary by a dramatic change in circumstances.²⁹⁴

Operation "South"

146. In order to prevent the BH Army from broadening the territory under its control south of Mostar, Boban decided that an operation²⁹⁵, entitled "South", should be launched in the mid-

²⁸⁹ Exh.2D00448.

²⁹⁰ Exh.P03023.

²⁹¹ Exh.P03023.

²⁹² Exh.P03024.

²⁹³ Exh.P02979, para.5.a (3).

²⁹⁴ Petković's order extensively discussed in paras.241-284.

²⁹⁵ Gorjanc explained in his report: «According to US interpretations the term operation indicates any military

July 1993. He informed Petković about it on 5 July. Petković's position was that the HVO at that moment was not capable of undertaking of any such an operation, or even action, and he informed Boban of his position. Boban responded that he would find a team capable of carrying out that task.²⁹⁶ The task was then entrusted to the Brigadier Luka Džanko,²⁹⁷ who established the Command of the Operation. Petković was not member of that command,²⁹⁸ and was not present on the ground during the operation.²⁹⁹ Simply put, Petković was not in a chain of command relevant to that operation (nor has it been alleged) and he had no means of control over the troops involved therein, nor any commanding role in relation to them. Operation «South» involved the 1st and the 3rd HVO Brigade, independent detachment Ludvig Pavlović, and a group of the 5th Guards Brigade—a group of volunteers,³⁰⁰ which were subordinated to the Commander of the Operation. The Operation was scheduled to be carried out on 13 July.³⁰¹ However, it was postponed because of sabotage actions by the BH Army in the area, and was launched on 15 July, without success.³⁰²

147. The evidence shows that the BH Army launched sabotage actions in Dubrava Plateau (Stolac and Čapljina Municipalities) on 13 July 1993.³⁰³ On the night of 12 July, a substantial amount of ABiH forces attacked HVO units from different directions,³⁰⁴ throughout the Dubrava Plateau,³⁰⁵ especially Domanovići,³⁰⁶ Masline,³⁰⁷ Borojevići,³⁰⁸ Aladinići,³⁰⁹ Rotimlja,

activity regardless of the goal, type of forces carrying it out and level of command. According to the Yugoslav interpretation the term operation indicates military action by joint forces in a large area over a long time period and at them strategic or operational level of command. At the tactical level of command, military activities are called engagements or battles.» Exh.4D01731, para.262.

Witness Beneta testified that in accordance with the doctrine that was known there at the time, Operation South would not be considered an operation but, rather, a battle that took a very short time and small forces were involved. /T.46609/

²⁹⁶ Witness Petković, T.49598. Witness Beneta testified that the Commander of the 3rd HVO Brigade (which defended the southern part of Mostar) Ivan Primorac was of the opinion that his unit was not able to launch attack, T.46629.

²⁹⁷ Witness Petković, T.49598. Beneta testified that Džanko sent him to participate in the Operation and defined his tasks, T. 46610-1. The order for the attack was submitted by Džanko – exh.P03048.

²⁹⁸ Exh.4D01695. Beneta testified that he did not meet Petković at the time and did not see any document showing that he would participate in the planning and/or conducting the Operation, T.46630. Also Petković, T.49598; Pavlović, T.46828.

²⁹⁹ Beneta testified that Boban arrived at the artillery positions not far from the Command, but Petković was not there, T.46630.

³⁰⁰ Witness Beneta, T.46728.

³⁰¹ Witness Beneta, T.46611.

³⁰² Witness Beneta, T.46630.

³⁰³ Exh.4D01715, p.3.; P09935, 4D01042, 4D01096, 4D01101; witness Beneta, T.46626.

³⁰⁴ Exh.4D01715; Witness Beneta, T.46612

³⁰⁵ Exhibits: 4D01096, 4D01042, P03427, P03449, P03453, P03640, P03428, P08648; P09935, para.26; P09770 p.7.

³⁰⁶ Exh.P09935, 4D01042, P03449, P03546; P10145, para. 43. (Relevant for para.176 Indictment)

³⁰⁷ Exh.4D01101, 4D00462, 4D00910.

³⁰⁸ Exh.4D00462 (Relevant for para.164 Indictment)

³⁰⁹ Exh.4D00462 (Relevant for para.161, 162 Indictment)

Pješevac Greda, Prenj,³¹⁰ Opličići,³¹¹ Lokve,³¹² Kevčići,³¹³ Bivolje Brdo³¹⁴ and Počitelj.³¹⁵ The sabotage actions caused many casualties, civilian and military, on both sides.³¹⁶

148. A group of able-bodied men in Dubrava Plateau, who were hiding in the area, were also involved in sabotage actions. The group had established radio contact with the BH Army from Blagaj and was sourcing rifles from them. Many people from Blagaj and Gubavica joined the group. On 12 July they received an order from the command in Mostar to launch an action in the surroundings of Domanovići, not far from Potkos, together with the people from Prenj and Bregava. They knew that similar actions were being undertaken near Buna, Gubavica, and at the checkpoint was near the village of Piješci. They took their positions at dawn on 13 July 1993 and arrested all members of the HVO units from Bivolje Brdo.³¹⁷

1.4. Conclusion

149. From 30 June 1993 to April 1994 there was continued fighting between the BH Army and the HVO forces in and around Mostar town.³¹⁸ Thanks to military measures adopted by the HVO, the front-line remained completely unchanged in town and almost unchanged in the greater Mostar area. However, in other areas the BH Army continued to broaden the territory under its control:³¹⁹

- (i) in July the BH Army conquered Kostajnica, a Croat enclave in the Konjic Municipality;³²⁰
- (ii) in July the BH Army conquered Fojnica;³²¹
- (iii) in July the BH Army conquered Bugojno;³²²
- (iv) in July the BH Army conquered Doljani;³²³

³¹⁰ Exh.4D00462 (Relevant for para.160-162 Indictment)

³¹¹ Exh.4D01042, P03449 (Relevant for para.179 Indictment)

³¹² Exh.P03546; P09753, p. 3; P09770, p.7. (Relevant for para.180 Indictment)

³¹³ Exh.P03546 (Relevant for para.177 Indictment)

³¹⁴ Exh.4D01042; P09935; P10145, para. 45. (Relevant for para.177 Indictment)

³¹⁵ Exh.4D01715 (Relevant for para.178 Indictment)

³¹⁶ Exh.4D01715; witness Beneta, T.46612; Pavlović, T.46827

³¹⁷ Exh.P10145, 92bis statement of witness Vilogorac, paras.40, 42-45. Witness Beneta, T. 46617-20.

³¹⁸ Exh.P04743, 3D00736, 3D00737, 3D00740, 3D00932, 3D00939, 3D00941,3D02591 (On 21 September 1993 Zuka informed Izetbetović that «people are asking for Mostar to be liberated» and that the BH Army «had strength» not only for Stolac and Dubrava plateau, but for Neum, «and if they behave improperly, we will take Grude and Lištica from them, we will take everything from them».); 4D00488, 4D00709, 4D00711, 4D00724, 4D00727, 4D00741, 4D00778, 4D00779, 4D00780, 4D00782, 4D00786 (BH Army order for attack, operation «Vrdi 93»); 4D00793, 4D00794, 4D00795, 4D00800, 4D01076, 4D01115, 4D01116, 4D01117, 4D01547, 4D01702, 4D01719, 4D01722. Also Marić, T.48177, 48183-187; Pavlović, T.46875; Slobodan Praljak, T.42288; Petković, T.49483.

³¹⁹ See Annex 15: *Maps showing expansion of the territory under the control of BH Army during 1993.*

³²⁰ Exh.P03311, P03371, P03381, P03465

³²¹ Exh.P03511

³²² Exh.P03822, P03771, P09503 ([REDACTED] reported on 6 August 1993 that “approximately 5,000 Croats have fled Muslim ethnic cleansing in the Bugojno area while as many as one thousand may still be held against their will in the town itself”).

³²³ Exh.1D02288.

- (v) in October the BH Army conquered some villages in the Vareš Municipality;³²⁴
- (vi) in November the BH Army conquered Vareš.³²⁵

150. All-out (“total”) war between HVO forces and the BH Army, which started on 30 June 1993, security and other military measures taken by the HVO authorities and/or forces, including the disarmament and isolation of the Muslim HVO soldiers and the isolation of the military conscripts of the BH Army, had not been planned or predicted by the HB/HVO leadership until this dramatic turn of events. These measures were a reaction to, and the consequence of, the offensive operations of the BH Army, which started in mid-April 1993 and culminated on 30 June 1993 with the betrayal of the HVO soldiers of the Muslim ethnicity and their joining the BH Army in the Mostar region. The threat that this might occur in other HVO units in the Mostar region, and the joint military actions of the BH Army and these Muslim HVO soldiers could cause the HVO to lose control over the whole Mostar region, demanded immediate measures on the part of the HVO authorities. Petković was completely surprised with the events on 30 June 1993 and the threat that suddenly became real and dangerous.³²⁶ The events of 30 June 1993 and what unfolded from it had not been planned by Petković and/or HVO authorities. His reaction was, as discussed above, rendered necessary from a military point of view by the change in circumstances; it was also lawful in the circumstances.³²⁷

151. Petković’s efforts, acts and intentions until that moment were all directed towards the establishment and development of a good and cooperative relationship with the BH Army, including the establishment of a joint command. Preventing conflicts, calming tensions, negotiations, direct and friendly communication with the BH Army commanders were basic characteristics of the Petković’s conduct up to that point.³²⁸ The commencement of an all-out war meant that his approach was not successful, *but by no fault of his*. Dramatically deteriorating military circumstances called for new – lawful – measures. Petković did not envisage nor adopt any unlawful ones.

2. PERSECUTION

2.1. The charges

³²⁴ See paras. 410-412.

³²⁵ Exh.4D00519

³²⁶ Witness Jasak testified that VOS in its reports «indicated that the BH Army would try to link up these areas, Konjic, Jablanica and Mostar, in order to obtain the right conditions for pressing on towards Stolac, Čapljina and Neum» /T. 48685/. However, VOS report was not construed as particularly alarming because the HVO commanders did not have doubts about the loyalty of their Muslim soldiers who remained in the units after 9 May 1993. Jasak said that “there was widespread disappointment and disbelief in the Main Staff /T.48686/.

³²⁷ See paras.241-284.

³²⁸ See Annex 5: *Petković’s orders concerning tensions and conflicts between HVO and ABiH*

152. The offence of “persecutions” is charged in relation to all counts of the Indictment. In the absence of specific (or contrary) pleadings on that point, the Indictment can only be read as suggesting that the underlying acts said to be capable of amounting to persecution pursuant to Article 5(h) are the same acts that are also charged as separate crimes in the Indictment. In other words, the same acts and underlying acts as are said to qualify as “willful killing”, “deportation”, etc, are said to be capable of amounting to persecutions where the necessary requirements are met.

153. As regard the conduct imputed to Petković under that particular count, no material fact relevant to establishing the elements of the crime of persecutions (*actus reus* and *mens rea*) has been pleaded in relation to any of the underlying incidents. In particular, the Indictment fails to plead any material fact as would be relevant to establishing Petković’s alleged persecutory/discriminatory *mens rea*. As such, this part of the charges should be dismissed for that reason already.

2.2. Preliminary temporal considerations

154. The submissions made below apply, in general, to all acts charged as persecutions. However, preliminary submissions must be made as regard the different stages of the tensions and then conflict that opposed the HVO and the BH Army during the relevant period:

(i) until mid-April 93: During that period, and as noted above, isolated incidents occurred which are not sufficient to qualify as either widespread or systematic attack on a civilian population.³²⁹ Accordingly, no crime committed in that context could qualify as crimes against humanity, let alone as acts of persecution. Even if this were the case, the Prosecution has failed to establish that each and all of the crimes charged (a) were part of such an attack and (b) that any of those was committed with the requisite discriminatory mindset necessary under Article 5(h).

(ii) mid-April - 30 June 93: During that period, crimes to the extent they have been proven were limited to the Mostar and Sovići area, or area close to Sovići. The Prosecution failed to establish that crimes charged (i) were part of the widespread or systematic attack directed against civilian population and (ii) committed with the requisite discriminatory mindset.

(iii) after 30 June 93: During that period, the scope of alleged criminal activities greatly increased. Most of the alleged crimes were not directed against civilians, or at least against persons who were alleged to be civilians, nor were part of the widespread or systematic attack

³²⁹ According to the *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*, prepared on 14 November 1992 by the *Forum of «expelled» Muslim organisations*, there were no major damages on objects, save those which were a specific target of the attack, there were no civilian casualties, after the attack the BH Army started to evacuate civilians from the town and the Army withdrew on the southern exit towards Jablanica. – Exh.P00744

against civilian population. In addition, it remains the case that none of the underlying crimes charged during that period were shown beyond reasonable doubt to have been committed with the requisite persecutory mindset.

2.3 The evidence

155. For the crimes that have been proved to have been committed, there is no or insufficient evidence to warrant a finding, beyond reasonable doubt that the perpetrators of these crimes (whomever they might be since they were not identified) possessed and acted pursuant to the requisite persecutory *mens rea* relevant to Article 5(h).³³⁰ This element is “an indispensable legal ingredient” of this crime,³³¹ which may not be assumed but must instead be proved beyond any reasonable doubt: this has not been done and there remains a reasonable possibility that the perpetrators might have committed these crimes in the absence of this particular state of mind.

156. Nor has it been shown that Petković himself possessed or acted with the awareness of a persecutory *mens rea* towards the alleged victims of these crimes. Instead, the evidence amply demonstrates an absence of discriminatory mindset on his part:

- (i) Petković came to BiH to protect locals from the Serbian aggressor, regardless of ethnicity or religion;³³²
- (ii) The record makes it clear that Petković insisted that everyone, not just Croats, should be protected and treated lawfully and humanely;³³³
- (iii) When he arrived, Petković helped set up a military force that was multi-ethnic and included many Muslim fighters;³³⁴
- (iv) Petković expressed his distress and disappointment when military developments forced him to order the arrest and separation of Muslim military-able bodied men;³³⁵

³³⁰ See, e.g., *Kupreškić* TJ, para. 633; *Blaškić* TJ, para. 235; *Kordić and Čerkez* TJ, paras 211-220; *Kvočka* TJ, paras 194–98; *Naletilić* TJ, para. 638; *Tadić* AJ, para. 305.

³³¹ *Tadić* AJ, para. 305. See also *Kordić and Čerkez* TJ, paras. 211–220.

³³² See paras.22-34, 38, 47.

³³³ Exh.P01994, P02038, P02084, P02089, P02599, P02036, 4D00320.

³³⁴ Exh.4D00480; witness Jasak, T.48699; 4D02022, 4D02020, 4D02021; witness Marić, T.48098-48112.

³³⁵ Petković testified: “I felt cheated and double-crossed, because we were accepting a large number of Muslim men into the HVO. On the other hand, whenever anything happened outside of Mostar, where there were the most Muslims in the ranks of the HVO, I tried to make it clear to my counterparts in the ABiH that we can function this way and do everything with this composition of our forces. And I tried to convince my colleague, Mr.Halilović, that this was the right way and that we should both go about our work in this manner. In such situation, it wasn’t easy to accept the fact that you were backing up the policy of accepting people in the HVO and then they turned against you. /.../ Well, I felt shattered, completely shattered. Everything I had hoped for was simply falling apart, and I simply couldn’t .. I couldn’t come by. And it wasn’t easy to pass such a decision, and I feared that there could have been losses due to fighting in the process of disarming. However, that didn’t happen, fortunately.” /T.49579/

(v) As discussed above, all through the relevant time, Petković did all he could to find a negotiated solution to the conflict, thereby demonstrating an absence of persecutory intent towards members of the opposite warring side;³³⁶

(vi) Petković took many steps, in cooperation with his BH Army counterparts, to protect vulnerable Muslim civilians from harm – again undermining any suggestion of persecutory animus on his part towards Muslim citizens;³³⁷

(vii) Tellingly, during the cross-examination of Petković, the Prosecution did not put to him that he had ever acted with or shared a discriminatory mindset as is relevant to that part of the charges. Accordingly, that allegation must be regarded either as forming no part of the charges or as having been abandoned by the Prosecution.

157. In light of the above, it would not be reasonable to conclude that Petković possessed the requisite persecutory mindset relevant to the crime of persecution in relation to crimes allegedly committed in the course of these incidents.

3. DEPORTATION AND FORCIBLE TRANSFER

3.1. PROZOR

158. There are no charges for crimes of deportation and/or transfer in the Prozor Municipality for the period until 24 July 1993. In paragraph 229 (counts 8 and 9) the Prosecution refers to paragraph 57 of the Indictment, which relates to July 1993. However, the paragraph does not contain a description of any act or conduct which could possibly constitute an *actus reus* of the crime of forcible/unlawful transfer of civilians: no adequate notice of such a charge is provided. In sum, the Prosecution has not pleaded any underlying act of deportation/transfer in relation to this area or has failed to do so adequately for the period preceding 24 July 1993. No prejudicial finding could validly be made in relation to that period for the purpose of the charges.

3.2. GORNJI VAKUF

159. There are no charges for the crimes of deportation in the Gornji Vakuf Municipality.

160. In relation to the crimes of forcible/unlawful transfer of civilians, the Prosecution case is that hundreds of Muslim civilians left the Gornji Vakuf area because of HVO actions,³³⁸ that

³³⁶ See paras.53, 54.; see Annex 5: *Petković's orders concerning tensions and conflicts between HVO and ABiH.*

³³⁷ See Annex 7: *Petković's orders concerning humanitarian law and customs and customs of war.*

³³⁸ Second Amended Incidntment, para. 67; representative witnesses: [REDACTED]

Muslims from Hrasnica were told to go to ABiH-held territory and to live there,³³⁹ and that in Uzričje HVO soldiers also told the Muslims to go to ABiH-held territory and live there.³⁴⁰

3.2.1. Analysis

161. [REDACTED].³⁴¹ The civilians who left the village did so on a voluntary basis.³⁴² There is no evidence of HVO members having a culpable *mens rea* in relation to these matters, let alone one whose actions would be relevant to the charges. [REDACTED] stated that he was part of an exchange between the BH and the HVO armies.³⁴³ He further explained that the released soldiers of the BH Army asked UNPROFOR to help get the civilians released and that UNPROFOR made a direct agreement with the HVO.³⁴⁴ Again, there is no indication that any of the men involved in this matter possessed the requisite *mens rea*, nor has the Prosecution sought (or manage) to prove such a case in relation to any one person – let alone someone in relation to whose actions Petković could be held responsible under one of the pleaded heads of responsibility.

162. [REDACTED]³⁴⁵ Senad Zahirović, who was a BH Army soldier, interned until April 1993, stated that UNPROFOR peacekeepers brought women to Bugojno.³⁴⁶ Senad Zahirović stayed in the BH Army until May 1994.³⁴⁷

163. Zijada Kurbegović testified that they left the village of Uzričje in March or April 1993.³⁴⁸ She went with her children, on foot, to the upper part of Gornji Vakuf called Mahala, which was a “purely Muslim area”. En route, she passed through the “Croatian part of the town” and nobody hurt or bothered them.³⁴⁹ The witness also testified that some people left the village during the conflict.³⁵⁰ [REDACTED].³⁵¹ The commander of the 3rd Corps of the BH Army, Enver Hadžihanović, reported that some of residents of Uzričje

³³⁹ Second Amended Indictment, para. 69; representative witness– [REDACTED]

³⁴⁰ Second Amended Indictment, para. 71; representative witness– [REDACTED]

³⁴¹ Witness BY, T. 9106

³⁴² Ibid., T.9107.

³⁴³ Exh.P09202 [REDACTED]

³⁴⁴ Ibid. The witness also stated: «That's what I think what happened. I don't kow the details.»

³⁴⁵ Exh.P09710 [REDACTED]

³⁴⁶ Exh.P09198 92bis statement of the witness Zahirović

³⁴⁷ Ibid.

³⁴⁸ Witness Kurbegović, T.8970.

³⁴⁹ Ibid., T.8976-7.

³⁵⁰ Witness Kurbegović, T. 9009.

³⁵¹ Exh.P09804 [REDACTED]

were voluntarily evacuated to Gornji Vakuf, as well as the village of Hrasnica whose residents were evacuated to Grnica.³⁵²

164. Muamer Trkić from Ždrimci testified that he along with other men³⁵³ who were interned in the garage, were told to go to the neighboring village of Vrse to tell people there to surrender.³⁵⁴ He went to see his mother, who was in a neighboring house in the village, and she did not allow him to go to Vrse, so he returned to the garage.³⁵⁵ After the truce, when things calmed down, he and his mother went to the village of Vrse, where his sister was married and stayed with her there.³⁵⁶ The witness explained that they did not stay in the village of Ždrimci because they were afraid that a conflict might break out again.³⁵⁷

165. Đulka Brica stated that a group of four soldiers (two UNPROFOR, one BH Army and one HVO) arrived in the village of Ždrimci and told them that a cease-fire had been signed and that they were free to go where they wanted. She stayed in Ždrimci.³⁵⁸

166. According to HVO reports, local people in Uzričje wanted to stay in the village while the families of the refugees wanted to be evacuated. In the village of Duša, women wanted to stay in their villages, but wanted to consult their husbands who were imprisoned.³⁵⁹ UNPROFOR reported that in Ždrimci all civilians wished to leave the village.³⁶⁰

167. Witness Zrinko Tokić testified about the decision of some civilians to leave their villages:

I was personally present there on the ground with Mr. Agić, the commander. In order to be able to speak more freely, he spoke to all of the Bosniaks who were there at the time. Following these conversations, he said that, quite simply, most of the population was ready to leave the village. The HVO, he said, should allow them to simply leave. Therefore, I, as a unit commander, did not make that decision. I was not the one to decide whether they would stay or leave the village. All those who wanted to stay received every guarantee from us that they would be allowed to stay on and be safe. But I must repeat the decision was theirs and theirs alone. /.../

³⁵² Exh.P01226. The document is not translated correctly into the English (the word «samovoljno» is translated as «arbitrarily» instead of «voluntarily»), which was clarified during the testimony of the witness Raymond Lane, T.23946-8.

³⁵³ The witness Trkić testified that the most of men were soldiers of the BH Army, T. 9170.

³⁵⁴ Witness Trkić T.9198.

³⁵⁵ Witness Trkić T.9172

³⁵⁶ Witness Trkić T.9181-2.

³⁵⁷ Witness Trkić T.9186, 9212.

³⁵⁸ Exh.P09797 92bis statement of the witness Đulka Brica.

³⁵⁹ Exh.P01351.

³⁶⁰ Exh P01373.

*We did not force anyone to leave. Quite the contrary, we encouraged them to stay on and guaranteed their safety. Their decision was simply to leave the area.*³⁶¹

3.2.2. Conclusion

168. Evidence before the Trial Chamber does not support the conclusion that civilians were unlawfully transferred outside the municipality of Gornji Vakuf. The evidence of the witnesses discussed above was *undisputed*. The Prosecution has failed to prove both the *actus reus* and *mens rea* of those whom, it claimed, were involved in such actions. There is no evidence that anyone for whose actions Petković could be held responsible knew (let alone intended) that Muslim civilians were being displaced unwillingly from these areas. Accordingly, the Prosecution did not prove that the crime of inhumane acts – forcible transfer under Article 5(i) and the crime of unlawful transfer of a civilian under Article 2(g) were committed by conduct described in the paragraphs 67, 69 and 71 of the Indictment. If there is any doubt in that regard, it must benefit the accused.

169. Also, as discussed further below, the Prosecution has failed to establish that Petković knew of any of these particular incidents and that individuals of whom he was responsible had partaken in unlawful actions of the sort alleged in the Indictment.

3.3. SOVIĆI, DOLJANI

170. The Prosecution case is that on 4-5 May 1993 HVO forces transported 400-500 Muslim civilians towards Gornji Vakuf and that upon arrival, HVO forces unloaded the Muslim women, children and elderly and told them to walk toward ABiH-controlled territory.³⁶²

3.3.1. Civilians were gathered in Sovići after houses had been destroyed

171. Civilians were gathered in Sovići school and the Junuzovići houses after many Muslim houses had been destroyed or burnt down on 21 and/or 22 April 1993.³⁶³ There is no evidence that the civilians were gathered in Sovići School and the Junuzovići houses in order to be transferred/deported outside the Doljani-Sovići area.

172. The Trial Chamber in the *Naletilić* case concluded:

*There was a plan early on in the operation to have the BH Muslim civilian population transferred from Sovići, intending to use them in exchange for BH Croat prisoners taken by the ABiH elsewhere. Evidence has been led to the fact that the plan was implemented.*³⁶⁴

³⁶¹ Witness Tokić, T.45375-6.

³⁶² Second Amended Indictment, para 86. The representative witnesses are [REDACTED]

³⁶³ Witness CA, T.10032-3; exh.P09870, 92bis statement of the witness D, p.914;

³⁶⁴ *Naletilić*, Trial Judgement para. 529 (adjudicated fact no.48 according to the Trial Chamber's Decision of 7 September 2006).

First, it is not alleged and has not been proved (nor put to Petković) that he knew or was aware of such a plan. Secondly, the conclusion of the *Naletilić* Trial Chamber is unreliable and has been disproved in these proceedings: it is based entirely on two documents, which are also exhibits in this case: (i) P02052 - a report from the Jablanica HVO Defence Office to Slobodan Božić for 23 April 1993, and (ii) P02218 – a report of the SIS officer Blaž Azinović of the HVO Battalion «Mijat Tomić» of 7 May 1993:

(i) The *Naletilić* Trial Chamber concluded that the HVO report from Jablanica of 23 April 1993 (P02052) showed the HVO intent to use Muslim civilian in exchange for Croat prisoners taken by the ABiH elsewhere. However, the conclusion of the *Naletilić* Trial Chamber was based on an incorrect translation of the report: the sentence stating “our /Croatian/ civilians detained in Jablanica” by the BH Army was translated as “civilians we /Croats/ have interned in Jablanica”.³⁶⁵ The correct translation of the report of 23 April 1993 does not support the thesis of the *Naletilić* Chamber about the planned exchange of civilians.

(ii) SIS officer Azinović stated in his report (P02218) that the transfer of the Muslim civilians from Sovićka vrata started on 5 May 1993 on the order of Vlado Jurić. However, the report does not contain any information that the transport/transfer had been planned prior to 5 May 1993. Therefore, the report cannot be a basis for concluding that there was a «plan early on in the operation to have the Muslim civilians population transferred from Sovići». Conversely, the report supports the reasonable conclusion that the decision concerning the transfer of the Muslim civilians from Sovići did not exist prior to 4 May 1993, when the Muslim men in Sovići school agreed with the BH Army commanders to go to Jablanica. Accordingly, no order about the transport of the Muslim civilians from the area could have been issued prior to 4 May 1993.

3.3.2. Joint Commission in Sovići on 4 May 1993

173. On 4 May 1993, Halilović and the delegation of the BH Army met with Petković and the HVO delegation in Jablanica. The meeting was organized by SPABAT.³⁶⁶ It was agreed that a joint commission would visit Sovići and Doljani. The same day, Halilović, Pašalić, Zajko Sihirlić and other representatives of the BH Army, and Petković, Dr. Bagarić and other

³⁶⁵ On 25 October 2010 the Petković Defence informed the Prosecution about the incorrect translation of the document and asked for the correction and uploading the correct translation into the e-court. The Prosecution corrected the translation and uploaded the correct translation into e-court on 7 December 2010.

³⁶⁶ Exh.P02187 (video tape of the meeting was reproduced during the hearing on 1 December 2009).

The Trial Chamber in the *Naletilić* case stated that «on 3 May 1993, a Joint Commission with General Petković representing the HVO and General Halilović representing the ABiH together with international representatives and medical personnel visited Sovići and Doljani». (Adjudicated fact no.57 upon the Trial Chamber's decision of 7 September 2006). However, the evidence proves that the Joint Commission visited Sovići and Doljani on 4 May 1993.

HVO representatives, went to Doljani and Sovići. They, *inter alia*, met with the Muslim men in Sovići school.³⁶⁷

3.3.3. Civilians and BH Army commanders agreed the evacuation/movement

174. On 4 May 1993, during the visit of the Joint Commission and representatives of SPABAT to Sovići, Muslim men in Sovići school expressed their desire to relocate to Jablanica and wait to see how the situation would develop. Petković testified:

Well, Arif Pasalic remained with them afterwards, and another man. I can't remember his -- or two other men. I can't remember their names. They stayed with them, once we had left the school. And Pasalic came up to me and Halilovic and said that he wanted to have all the people evacuated towards Jablanica. They separated a bit, stood apart. Halilovic supported this. And so with that, with this position and decision, we set out towards Kostajnica. /.../

Well, they'd already reached the decision when they were in front of the school and said that they would evacuate the civilians from Sovici and Doljani. So they were just looking into the ways and means of how to ensure the means for this transportation; buses and so on. So when we left Sovici and Doljani -- actually, while we were waiting to leave, they made this definite decision, said, that's our decision, and will you help us by providing transport for these people because we don't have the necessary number of buses?³⁶⁸

175. Zajko Siharlić, who was one of the BH Army representatives in the Joint Commission,³⁶⁹ reported on 4 May 1993 that “an unconditional *evacuation* of the civilian population from Doljani and Sovići was agreed for tomorrow.”³⁷⁰

³⁶⁷ Exh.P02187; witness Bagarić, T.38919; witness Petković, T.49487.

³⁶⁸ Witness Petković, T.49488.

³⁶⁹ Witness Petković, T.49486-7.

³⁷⁰ Exh.4D00447 (emphasis added).

176. There is no evidence that the civilians were forcibly transferred from the area.³⁷¹ Nor is there any evidence that Petković knew this to be the case. No one suggested during these meetings that the transfer/evacuation was unlawful or unwanted or non-voluntary. At no point did Petković take that view, nor was informed that this was the case. Instead, all the circumstances (the help of the international community, requests of the BH Army, the stated wishes of the local Muslims, agreement of the BH Army commanders with the Muslim civilians) led him to reasonably conclude that this operation was lawful and desirable for the well-being of civilians.

3.3.4 HVO was requested to obtain buses

177. On 4 May 1993, Halilović and Pašalić requested the HVO to provide the means to transport the civilians in Sovići.³⁷² The same day, Petković asked the Commander of the HVO Battalion, Stipe Polo, whether there were any free buses in the area. Immediately, Petković and Polo called the HVO Main Staff in Mostar and requested five buses and were told that they would be provided.³⁷³ In those circumstances, they were seeking to provide assistance seen as necessary by their counterparts in the BH Army. A refusal in those circumstances would have prolonged the risks posed to civilians, poisoned the HVO relationship with the BH Army and exposed civilians to even greater risks. It was entirely reasonable and in fact the only reasonable thing to do to respond positively to the BH Army request for assistance. The Prosecution did not suggest otherwise in his cross-examination of Petković.

178. The day after the Joint Commission visited Sovići and Doljani, on 5 May 1993, the BH Army delegation and the HVO delegation met again in Jablanica. Halilović asked Petković whether the buses have been sent to Sovići. Since members of the HVO delegation did not

³⁷¹ Article 49 of the Geneva Convention IV prohibits forcible transfers and deportations of protected persons, apart from evacuation necessitated to ensure the security of the population or imperative military reasons. The Commentary of the GC IV, p.279, explains that the Diplomatic Conference preferred not to place an absolute prohibition on transfers of all kinds, as some might up to a certain point have the consent of those being transferred. The Conference had particularly in mind the case of protected persons belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account and might therefore wish to leave the country. In order to make due allowances for that legitimate desire, the Conference decided to authorize voluntary transfers by implication, and only to prohibit «forcible» transfers.

The *Naletilić* Trial Chamber concluded that “thousands of Muslim civilians were forced to leave their homes in Sovići, Doljani and West Mostar” (adjudicated fact no. 15 according to the Trial Chamber’s decision of 7 September 2006). The Prosecution in the *Prlić et al.* case stated that the HVO transported “400 to 500” Muslim civilians from the Sovići-Doljani area. The evidence proves beyond reasonable doubt that Muslim civilians were not forcibly transferred from the Sovići and Doljani. Accordingly, even if the *Naletilić* Trial Chamber interpreted the statement that “Muslim civilians were forced to leave their homes” as amounting to the *actus reus* of the crime of forcible/unlawful transfer, this adjudicated fact would be rebutted by the evidence in this case.

Witness BJ confirmed that an agreement was reached that the civilian population would be transported from Sovići (T.5805), which proves that they were not forcibly transferred.

³⁷² Witness Petković, T.49487.

³⁷³ Witness Petković, T.49489.

have any information about the buses which were supposed to be sent to Sovići, Petković asked Filip Filipović to enquire about the buses.³⁷⁴

179. Filipović established contact with the HVO Main Staff in Mostar and explained to the duty officer that there was an agreement that the HVO would provide the buses to transport the Muslims from Sovići and Doljani. Filipović was the author of inquiry no. 02-2/1-01-728/93 of 5 May 1993, sent from the HVO Main Staff in Mostar to the HVO in Doljani, about five buses which were supposed to evacuate Muslims to Jablanica.³⁷⁵ This document, written upon the request of Filipović and sent from Mostar, bore the title: 'Chief of the HVO Main Staff' and the name of Milivoj Petković, but the evidence proves beyond reasonable doubt that Petković was in Jablanica and not in Mostar, that Petković was not the author of the said document and that Petković was not even informed about the document.³⁷⁶

180. Soon thereafter Pašalić informed the participants of the 5 May 1993 meeting in Jablanica, including Petković, that buses had been sent and that the evacuation had already been performed.³⁷⁷

3.3.5. HVO did not impose any conditions on the evacuation/movement of Muslim civilians

181. BH Army commanders agreed with the Muslim population in Sovići and Doljani that civilians would be evacuated and the HVO did not impose any condition on such an evacuation. HVO was not involved in this negotiation/discussion. The evacuation was, therefore, an operation planned and organized by ABiH; only then did it seek the assistance of the HVO to execute it. Thus, the Chief of Security of the Jablanica 44th Mountain Brigade Zajko Sihirlić, who was the member of the Joint Commission which visited Sovići and Doljani,³⁷⁸ reported on 4 May 1993 to his superiors:

*An unconditional evacuation of the civilian population from Doljani and Sovići was agreed for tomorrow.*³⁷⁹

182. Filipović confirmed that the HVO did not impose any condition on the evacuation of the civilian Muslim population from Sovići and Doljani.³⁸⁰

3.3.6. Civilians were supposed to go to Jablanica, but were transported to Gornji Vakuf

183. BH Army commanders agreed with the civilian population in Sovići and Doljani that they would be transported to Jablanica, where the buses were supposed to go.³⁸¹

³⁷⁴ Witness Filipović, T.47506, 47508; Petković, T.49494-5; exh.P02187 (video: Petković is giving a piece of paper to Filipović with the phone number which he should call; described also in Petković's testimony, T.49494-5).

³⁷⁵ Exh.P02200; witness Filipović, T.47506; witness Petković, T.49494.

³⁷⁶ Witness Filipović, T.47506; witness Petković confirmed that Filipović's testimony about the document was correct, T.49494.

³⁷⁷ Witness Filipović, T. 47507; Petković, T. 49497.

³⁷⁸ Witness Petković, T. 49486-7.

³⁷⁹ Exh.4D00447.

³⁸⁰ Witness Filipović, T.47517.

184. However, the civilians were transported to Gornji Vakuf because the Doljani-Jablanica road was blocked by the BH Army.³⁸² Petković personally saw obstacles on the road when the UNPROFOR vehicles were travelling with the Joint Commission from Jablanica to Doljani and he showed these obstacles to the Honorable Judges on the video.³⁸³ The obstacles were positioned on the BH Army check-point and they were removed when the UNPROFOR vehicles arrived and subsequently returned to their prior position when the vehicles had passed. “It was the demand of the ABiH, both those at the check-point and those in our escort”, Petković explained.³⁸⁴

185. Buses which transported people from Sovići towards Jablanica had to take the same road because that was the only road to Jablanica.³⁸⁵ Since the road to Jablanica was blocked, the buses went to Gornji Vakuf.

3.3.7. Transport of the civilians from Gornji Vakuf to Jablanica

186. Filipović testified that the HVO was requested afterwards by the BH Army Commander to obtain buses and fuel for the transport of the Sovići civilians from Gornji Vakuf to Jablanica.³⁸⁶

3.3.8. Civilians transported to Jablanica in June 1993

187. According to a report of 18 June 1993, eight buses transported Sovići-Doljani refugees from Gornji Vakuf to Jablanica between 10-15 June 1993.³⁸⁷ Witnesses confirmed that they were transported from Gornji Vakuf to Jablanica.³⁸⁸

3.3.9. HVO assisted in all possible manners requested by ABiH

188. In a report of 5 May 1993, HVO members of the Joint Commission stated: “One of the commissions visited areas of Sovići, Doljani and Slatina in the presence of General Petković and Halilović. Everything asked for was realized.”³⁸⁹ Petković and Filipović made it clear that

³⁸¹ Witness Filipović, T.47522. BH Army Commander Zejnilagić reported on 5 May 1993 about the arrival of the civilian population from Sovići to Gornji Vakuf, instead of to Jablanica as agreed – exh.P02195.

³⁸² Witness Filipović, T.47522, 47527.

³⁸³ Exh.P02187; witness Petković, T.49498.

³⁸⁴ Witness Petković, T.49498.

³⁸⁵ Witness Petković, T.49498. On the map 4D02025 Petković marked the position on the road with the obstacles and the marked map is exhibit IC01179.

³⁸⁶ Witness Filipović testified: «Already the next day, I think it was the 6th, Arif Pasalic was very angry and asked why the civilians had gone to Gornji Vakuf, and he said that I should secure the fuel needed - I didn't have any fuels – and get the buses to return these civilians to Jablanica. So that was his ultimatum. He wanted the population to be returned to Jablanica. And that's when I learnt that this transport had been carried out, as I asked about the buses, and it wasn't to Jablanica but to Gornji Vakuf, and now what had to be organised was the return of these people to Jablanica. And I -- well, with all the other problems that I had to solve, Pasalic and I and all those meetings that we had and so on, I don't know exactly when they were returned.» /T.47526 /

³⁸⁷ Exh.P02825.

³⁸⁸ Witness CA, T.10042; witness Kovač, T.10311

³⁸⁹ Exh.4D01079. p.2.

the HVO provided all services requested of it according to the agreement between civilians in Sovići and the commanders of the BH Army, including Halilović and Pašalić.³⁹⁰

3.3.10. Exhibit P02182

189. In the Pre-Trial Brief, the Prosecution stated that on 4 May 1993 Petković ordered that the HVO Herceg Stjepan Brigade in Doljani: “Release all detained civilians in Doljani and Sovići, keep men fit for military service.”³⁹¹ The document is not signed and bears the handwritten note in the up right corner “from Mostar 4 May 1993 at 2200 hours”.

190. Petković testified that he had never seen this document before the trial and explained that he was with the commander of the HVO “Mijat Tomić” Battalion Stipe Polo on 4 May 1993 at the meeting in Jablanica and they together visited Sovići and Doljani afterwards. Polo was immediately informed about the request of the BH Army commanders for five buses for the transport of civilians and he, together with Petković, called the Main Staff in Mostar, asked for the buses and received confirmation that the buses would be provided. Therefore, there is no logic at all in writing a document of that kind, as explained by Petković.³⁹²

191. Petković also explained that everybody was evacuated from the area and that men in the Sovići school agreed with the BH Army commanders that they would be evacuated.³⁹³ Not a word was said about the “men fit for military service”.

192. In those circumstances, it could not reasonably be concluded that Petković authored this document. He did not and was not even aware of such an order (if it was genuinely made).

3.3.11. Exhibit P02200

193. As already explained above (paragraphs 177-179), the inquiry of 5 May 1993 was written upon the request of Filipović and sent from the HVO Main Staff in Mostar to the HVO in Doljani. Petković was in Jablanica at that time and was not even informed about the document.³⁹⁴

3.3.12. Conclusion

194. The civilians were not removed from their houses and gathered in Sovići school and the Junuzović houses in order to be transferred or deported from the Doljani-Sovići area. Neither HVO commanders nor HVO authorities decided that the civilian population should leave Sovići and Doljani. The decision was taken between the Muslim civilians in Sovići and the BH Army commanders, including the highest commanders - Halilović and Pašalić.

³⁹⁰ Witness Petković, T.49821-2; witness Filipović, T.49521.

³⁹¹ The Prosecution Pre-Trial Brief, para. 86.11; exh.P02182.

³⁹² Witness Petković, T.49492.

³⁹³ Witness Petković, T.49493.

³⁹⁴ Witness Filipović, T.47506; witness Petković confirmed that Filipović's testimony about the document was correct, T.49494.

195. The evidence proves that the HVO was requested to obtain buses and fuel for the transport and the HVO provided everything that was requested of it. The civilians were not transported to Jablanica directly because of obstacles on the Doljani-Jablanica road, but first to Gornji Vakuf and later on to Jablanica.

196. Accordingly, the HVO did not transfer Muslim civilians by coercion, but gave transport services to the Muslim population and the BH Army, as requested. Therefore, no reasonable trier of fact could have concluded that the crime of inhumane acts-forcible transfer, under Article 5(i), and the crime of unlawful transfer of a civilian, under Article 2(g), were established.

197. Furthermore, as discussed further below, there is no basis that would allow for the reasonable conclusion that Petković possessed a culpable mindset in that matter or that he knew of such a mindset among individuals for whose acts he could be held responsible. Such a conclusion is not reasonable in the circumstances.

3.4. MOSTAR

198. Paragraph 96 of the Indictment says that on 10 May 1993 the HVO forces expelled “some of the Bosnian Muslims” into East Mostar. There is no evidence about the forcible/unlawful transfer of civilians on (9 or) 10 May 1993 (nor any trace of requisite *mens rea* even if this had occurred).

199. Paragraph 101 of the Indictment says that the HVO authorities and forces evicted Muslims from their homes and flats in the second half of May, but did not plead the underlying or culpable conducts of forcible/unlawful transfer of civilians in relation to these events. Therefore, it does not form part of the Prosecution case in relation to such crimes. In any case, such an allegation has not been proved (not the *actus reus*, not the *mens rea*, nor the identity of the alleged perpetrators, nor any element that could render Petković liable for these crimes).

200. Evidence shows that the Croat and Muslim sides in Mostar signed an agreement on 25 May 1993 that both sides would prepare a list of individuals who wanted to move from one local community to another and organized their transport, followed by the Spanish Battalion.³⁹⁵ Such an agreement was considered beneficial for both sides and for both sides’ civilians. As far as Petković understood this agreement, this was done, not with a view to cleanse ethnic minorities, but to guarantee the greatest possible security for the civilians of both sides to prevent or limit the risk of physical harm to them. To the extent that the Trial Chamber were to find that some of those moved from one side of town to the other did not do so voluntarily,

³⁹⁵ Exh.P02512.

Petković had no knowledge of such cases. Instead, it was entirely reasonable for him to assume that this is what all wanted – Croat and Muslim civilians.

201. Such *voluntarily* relocation of Croats from East Mostar and Muslims from West Mostar was indeed organized in May 1993.³⁹⁶ There is no evidence about *forcible* transfer in the second half of May 1993. Nor any trace of culpable mindset on Petković's part.

202. Paragraph 102 of the Indictment alleges that in mid-June 1993 HVO forces evicted and expelled a large number of Muslims from their homes in West Mostar. It should be noted that some cases of evictions of Muslim residents in Mostar in mid-June 1993 were known to the HB/HVO authorities. These evictions were regarded and treated as criminal actions.³⁹⁷ BC testified about [REDACTED].³⁹⁸ As noted above, law and order issues are within the sole remit of the Ministry of Interior.

203. BB testified [REDACTED].³⁹⁹ That assumption was correct as a matter of law and fact.

204. As already discussed, the HVO Main Staff and its Chief did not have any competence in relation to public order in Mostar. On 31 May 1993, at the joint meeting of the HVO HZHB and the Mostar Municipality HVO, after discussions about the military-security and political situation in Mostar, it was decided that the Defence Department and the Defence of Interior would ensure the coordination in order to preserve and improve the military-security situation in the town. Civilian authorities also decided that all appropriate measures had to be taken for the prevention of crime, especially looting of private property from apartments in the town.⁴⁰⁰ The Head of the MPA Valentin Ćorić reported on 4 June 1993 that “on 31 May 1993 Military Police received an order that starting from the 1 June 1993 has to put under absolute control

³⁹⁶ Witness A, T.4111-2; exh.P02524.

In the *Naletilić case* the TC decided: «A transfer of about 300 Muslim civilians to the eastern side of Mostar occurred on 25 May 1993.» (para. 547, adjudicated fact no. 111 pursuant to the TC decision of 7 September 2006). However, the evidence proves that this «transfer» of 300 Muslim civilians on 25 May 1993 was not unlawful or forcible, but voluntary movement, organized by the Muslim authorities in Mostar, in cooperation with the Croat authorities in Mostar and the Spanish Battalion.

Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, stated in his report of 17 November 1993 (exh.P06697) that the «eviction of Muslim residents in Mostar began in June 1993» (para.53).

³⁹⁷ The Trial Chamber in the *Naletilić case* concluded that Vinko Martinović committed the unlawful transfer of civilians in Mostar, para 550 and 553 (adjudicated fact no.113 pursuant to the TC Decision of 7 September 2006); exh.P02749, P02770.

The witness U testified in the *Naletilić case* that the Martinović's unit «Vinko Škrobo» was included in the Convict Batalion, exh.P10220, p.2973.

³⁹⁸ Witness BC, T.18361.

³⁹⁹ Witness BB, T.17196.

⁴⁰⁰ Exh.P02575, P02585.

part of the city controlled by the units of the HVO. The order was issued because of the occurrence of large amount of criminal activities and flat looting. In regards to that activity, police curfew measures were increased as well as controls on the exit checkpoints from the city, which had already given noticeable results.”⁴⁰¹ On 15 June 1993, the Head of the Department for Interior Branko Kvesić informed the HVO HZHB about the activities undertaken to improve the security situation in Mostar and the readiness of the police to assume full control over Mostar, as agreed.⁴⁰² Accordingly, the evidence proves that public order was under the competence of the Military Police and the civilian police, and not in any way under the authority or responsibility of the Chief of the Main Staff.

205. Paragraph 103 of the Indictment alleges that on 30 June 1993 about 400 Bosnian Muslim families were expelled from West Mostar. However, there is no evidence to support this allegation. The *representative* victim [REDACTED] was not transferred to East Mostar on 30 June 1993, but was arrested and detained in the Heliodrom until 17 December 1993.⁴⁰³ The second *representative* victim Damir Katica stated that his father had been arrested “somewhere in July 1993” and that he and his family were expelled to East Mostar after about a month,⁴⁰⁴ which means in August 1993. Accordingly, the Prosecution did not prove that the crimes of forcible/unlawful transfer of civilians were committed in Mostar on 30 June 1993. Nor has it been shown that contrary information was ever acquired by Petković.

206. Paragraph 105 of the Indictment says that in mid-July 1993 another round of forcible evictions and expulsion of Muslims from their homes in West Mostar into East Mostar in mid-July. The pleadings were inadequate and unspecific. In any case, there is no evidence to prove this allegation, nor the requisite material elements relevant to the charges.

3.5. STOLAC

207. Evidence proves that in mid-July 1993 combats were going on in the Dubrava plateau and as a result civilians in some villages between Stolac and Čapljina were gathered and temporarily moved out of the villages with a view to guaranteeing their safety and protecting them from harm; they were turned back to their villages in a few days.⁴⁰⁵ There is no evidence that civilians from Stolac Municipality would be transferred outside the municipality prior to the end of July 1993.⁴⁰⁶

⁴⁰¹ Exh.5D02113. Already in March 1993 the Chief of the HVO MPA reported to Boban that MP “successfully performed its duty and is in control of the security situation in Mostar” – exh.P01654.

⁴⁰² Exh.1D01668, p.2.

⁴⁰³ Exh.P10220, [REDACTED], p 2941, 2968.

⁴⁰⁴ Exh.P09862, 92bis statement of the witness Damir Katica, p.2.

⁴⁰⁵ Witness CD, T.10554; witness Fata Kaplan, T.2142; the witness CH’s 92bis statement (P09749), page 5E; the witness CM’s 92bis statement (P09753), p.4

⁴⁰⁶ [REDACTED] (P09749, p.5); [REDACTED] T.10566; witness Šejla Humačkić left the Stolac area approximately at the beginning of August 1993 (P09986, para. 31); witness Fata Kaplan left the Stolac area on 2

3.6. ČAPLJINA

208. Evidence proves that in mid-July 1993 combats were occurring in the Dubrava plateau and therefore civilians in some villages between Stolac and Čapljina were gathered in one house in the village or transported to Počitelj.⁴⁰⁷ There is no evidence that civilians from the Čapljina area were transferred outside the area prior to the end of July 1993.⁴⁰⁸

3.7. DEPORTATION/TRANSFER OF THE DETAINED PERSONS

209. Petković was not involved in any way whatsoever in the release of persons detained in the Heliodrom, Dretelj, Gabela, Ljubuški or any other prison/detention facility as of 1 July 1993 and their transport to Croatia and/or territory under the control of the Muslim authorities. Nor has this been alleged. It is not, therefore, relevant to the charges against Petković.

4. DETENTION CRIMES

4.1. Introduction

210. As a matter of law, fact and authority of relevant actors, two issues must be kept separate and distinct:

- (i) the authority to order the arrest/internment of given individuals and
- (ii) the authority to detain and the responsibility to review the lawfulness of detention.

211. Petković as the Chief of the Main Staff had the authority to order the arrest/internment, derived from an order of the Supreme Commander Boban. By contrast, Petković had no authority and no competence as regard the actual detention of people captured or detained as a result of such orders, nor any competence or authority as regard the review of the lawfulness of their detention/internment.⁴⁰⁹ It is significant in that regard that it is not part of the Prosecution

August 1993, T.2142; [REDACTED] (P09750, p.9E); [REDACTED] T.11071; [REDACTED] (P09751, p.4E); witness Rizvanović Hikmeta left the Stolac area on 4 August 1993 (P09947, p. 6E; [REDACTED] (P09946, para.46; witness Kaplan Aiša left the Stolac area in August 1993 (P09945, para.15); witness Hajdarović Sabina left the Stolac area in October 1993 (P09944, para.19).

[REDACTED] T.10961

⁴⁰⁷ The witness Hasic Sabira's 92bis statement (P09931) paras. 52-57; the witness CG's 92bis statement (P09770) page 11; the witness Trbonja Aldijana's 92bis statement (P09937) paras. 32-33; the witness Ćiber Sadeta's 92bis statement (P09929) para. 16.

⁴⁰⁸ Witness CI left the Čapljina area on 1 August 1993, T.10916; witness Šoše Fatima did not know the date of leaving the Čapljina area, but it was not before the end of July (P09935); witness Ćiber Sadeta left the Čapljina area at the beginning of August (P09929, para. 19); witness Sabira Hasić left the Čapljina area (Počitelj) around 7 August 1993 (P09931 paras. 57, 58); witness CO left the Čapljina area on 23 August, T.11308, 11309; [REDACTED] (P09933, p. 4[REDACTED] T.11007, 11008; [REDACTED] (P09754, p. 6).

In their 92bis statements two witnesses explained that on 22/23 July 1993 a group of people was transported to Doljani, and after a few days they walked across to the territory under the control of Muslim authorities (exh.P09770, p.12; P09937, para.35).

⁴⁰⁹ Petković testified that his remit and authority was only to hand over the detainees and isolated to the centres and that he had no authority under any provision to do anything more, T.50672-3.

case, as pleaded in the Indictment, that Petković had any competence in establishing, running and/or supervising prisons and/or any other detention facilities, as well as the treatment of the detained persons. Nor, during his cross-examination, was such a case put to him. In other words, Petković's role stopped at the door of the detention facilities or earlier at the time of handing-over detainees.

212. As a matter of law, a prisoner of war is the prisoner of the government, not of the individuals and army unit who captured them. In that sense, a prisoner of war is not at the disposal of an individual or military body that has detained him but of the government on whose behalf this was done. It is for that government, in turn, to designate the organ or person responsible for taking care of individuals detained in the context of an armed conflict to which it is a party.⁴¹⁰

213. Customary international law does not provide for a responsibility of the arresting officer to continue to care for the well-being of the arrested person after he/she is handed over of that person. This is simply not the law, nor it is, in any case, practical or feasible. As a matter of international law, from the moment when prisoners are transferred from a commanding officer to others whose responsibility it is to care for the fate of prisoners “thereafter their control of such prisoners is terminated”.⁴¹¹ There is no basis in customary law and no precedent which would place upon those ordering the arrest of one or more person the legal responsibility to continue to care for the fate of detainees. As mentioned above, as a matter of both law and practice, that responsibility may validly be passed on to others.

214. As already noted, customary international law requires that, within a reasonable time following arrest, a review is conducted of the status of any detainee and lawfulness of his/her continued detention. To the extent that a failure or omission has taken place in regard to that requirement, it has to be attributed to those whose competence and responsibility it was to see to the lawfulness of continued detention once they had been handed over to the competent authorities. Petković had no such competence or authority, nor has it been alleged in the Indictment.

4.2. Various municipalities until 30 June 1993

4.2.1. Prozor

4.2.1.1. October 1992

215. The Prosecution case is that the HVO detained “Bosnian Muslim men” in the Ripci primary school and kept them there for several days, while others were kept for several weeks (paras.47, 48).

⁴¹⁰ Annex to the Hague Convention: Regulations Respecting the Laws and Customs of War on Land, Article 4, 7, 14. The same GC III, Article 12.

⁴¹¹ High Command, Vol XII, 102.

216. The Prosecution did not prove that the detained “Muslim men” were civilians. The evidence proves that older men in the village Paljike were not detained⁴¹² and that the internees were soldiers of the BH Army and military-age Muslim men.⁴¹³ The evidence proves that the «Muslim men» went back home in a couple of days.⁴¹⁴ Civilians were evacuated from the town.⁴¹⁵ On 26 October 1992 Muslim civilians who did not participate in the fighting and who didn’t join the BH Army, were returning to the town. The following day civilians from both sides were gradually returning.⁴¹⁶

217. The two-days fighting between the BH Army and the HVO in Prozor municipality was an isolated incident, not an international armed conflict. It was circumscribed and as such did not meet the classification requirements of an international conflict; in particular, there was no indication of any involvement of Croatia in those events. Nor could these events qualify as a widespread and/or systematic attack against a civilian population.

218. It is significant that the Prosecution has not identified a single individual allegedly involved in those events who could be shown beyond reasonable doubt to have possessed the requisite *mens rea*. This necessary element remains unproven. Nor has Petković been shown to have been aware of such incidents and, if he had been, that he acted with a culpable mindset.

219. Accordingly, the Prosecution did not prove that the crime of imprisonment and/or unlawful confinement of civilians were committed.

4.2.1.2. April - 30 June 1993

220. In the Prozor Municipality only members of the BH Army, captured during combats, were interned in the period April–30 June 1993.⁴¹⁷ Accordingly, neither the crime of imprisonment nor the crime of unlawful confinement of civilians could be or was committed.

4.2.2. Gornji Vakuf

4.2.2.1. Non-civilians

221. The Prosecution case is that the HB/HVO forces detained approximately sixty military-aged «Bosnian Muslim men» from Duša and Hrasnica in the Trnovača furniture factory for about 2 weeks (para.70).

⁴¹² Exh.P09207 92bis statement of the witness Osman Osmić.

⁴¹³ Exh.P00536, P00629.

⁴¹⁴ The witness BQ stated in his 92bis statement (P09716, p.5) that all detainees were released after 2-3 days, and the witness BR testified that most of the detainees were released by October (T.8097). Witness Osmić stated in his 92bis statement (P09207, p.19) that all detained men went home in the first week in November 1992. Witness Praljak stated that on 29th or the 30th 29th "my request was met and they were all sent home." (T.43873).

⁴¹⁵ Exh.P00744, P01542, P01656; The witness Hujdur, stated that the civilian population “were moved to safer areas of the town”, T.3520

⁴¹⁶ Exh.P00536, p.3

⁴¹⁷ Exh.P09197 92bis statement of Ibro Pilav, p.11; P09200 [REDACTED].; P01937; 3D01843; P01952; P01954; P01961.

222. The Prosecution did not prove beyond reasonable doubt that these “Muslim men” were civilians. On the contrary, the evidence proves that they were actually members of the BH armed forces, active soldiers and reservists. Captured members of the active or reserve BH armed forces were POWs and as such were lawfully separated from the civilians and later exchanged for the HVO soldiers captured by the BH Army.⁴¹⁸ The crimes charged *could not* therefore (and were not) committed against them. Again there is no evidence of a culpable *mens rea*, neither at the level of the alleged perpetrators, nor in relation to Petković.

4.2.2.2. Civilians

223. The Prosecution case is that the HVO detained women, children and elderly in one or two houses in the villages for approximately one month (Ždrimci), two weeks (Hrasnica) or several weeks (Uzričje) (paras.67-70).

224. The evidence proves that the villages were defended by the BH Army, that there was fighting in the villages and that the conflict between the two sides finally ended in mid-February 1993.⁴¹⁹ Until then, civilians were placed in a couple of houses in the village, guarded and not allowed to leave the villages because of ongoing combat in the area. They were not locked up or detained, but protected from harm and safeguarded for their own good. As soon as the fighting stopped, the civilians were allowed again to move freely.⁴²⁰

225. On 18 January 1993, the HVO commander of the Operative Zone NWH Željko Šiljeg wrote in his report addressed to the HB/HVO authorities and the Main Staff that civilians in Uzričje were not detained.⁴²¹ Petković had no reason to believe this report to be false or incorrect; nor has this been alleged.

226. It is also significant that the Prosecution has not identified a single individual allegedly involved in those events who could be shown beyond reasonable doubt to have possessed the requisite *mens rea* nor any awareness on Petković’s part of the existence of such a mindset in relation to persons over whom he had control.

227. In light of the above, the crimes of imprisonment and/or unlawful confinement of civilians were not committed.

4.2.3. Stolac

228. The Prosecution case is that around 20 April 1993 the Herceg-Bosna/HVO authorities arrested prominent Bosnian Muslims in Stolac Municipality (including the Bosnian Muslim members of the Stolac Crisis Staff) and detained them for varying periods of time in HVO

⁴¹⁸ Witness Tokić, T.45374.

⁴¹⁹ Exh.P10109, p.1; P10107, p.2; P01185; P01193; P01210; P01226; P01326; 3D00473; 3D00476; 3D02369
Witness Tokić, T.45347, 45369.

⁴²⁰ Exh.P09797 92bis statement of the witness Đulka Brica; P09710 92bis statement of the witness BX.

⁴²¹ Exh.P01351.

detention facilities at Dretelj, Gabela, Ljubuski and Heliodrom (para.157; representative victim was Fahrudin Rizvanbegović).

229. Fahrudin Rizvanbegović was not detained in April 1993, but on 1 July 1993.⁴²² Apart from the representative victim, persons named by witnesses as prominent Bosnian Muslims captured around 20 April were: dr. Kapić⁴²³, Ibro (Ibrahim) Mahmutović⁴²⁴, Meho (Mehmed) Dizdar⁴²⁵, Ragib Dizdar⁴²⁶, Salko Marić⁴²⁷, Bajro Pizović⁴²⁸, Džemil Sijačić⁴²⁹, Saćir Turković⁴³⁰ and Mr. Isaković⁴³¹.

230. The evidence proves that Dr.Kapić was not arrested on 20 April⁴³², and that Ibro (Ibrahim) Mahmutović⁴³³, Meho (Mehmed) Dizdar⁴³⁴, Ragib Dizdar⁴³⁵, Salko Marić⁴³⁶, Bajro Pizović⁴³⁷, Džemil Sijačić⁴³⁸ and Saćir Turković⁴³⁹ were members of the BH Army.

231. Witness Božo Pavlović testified that the only persons captured and detained around 20 April 1993 were members of the BH Army Bregava Brigade.⁴⁴⁰

232. Since the persons detained in April 1993 were not civilians, the crimes of imprisonment and/or unlawful confinement of civilians could not have been committed. Nor, as with the other cases above, has it been shown beyond reasonable doubt that (i) any of the persons involved in this matter possessed the requisite *mens rea* nor (ii) if that were the case, that Petković ever learned about it nor possessed the requisite *mens rea* himself (or even knew about it).

4.2.4. Čapljina

233. The Prosecution case is that around 20 April 1993 the HB/HVO authorities arrested a substantial number of Muslim men in Čapljina Municipality, including prominent Muslim men

⁴²² Witness Rizvanbegovic, T.2200; Hikmeta Rizvanovic's 92bis statement (P09947, para 41, 42); Pavlovic, T.46832

⁴²³ Exh.P09947, 92bis statement of the witness Rizvanovic, para. 40.

⁴²⁴ Ibid; witness Rizvanbegović, T.2201-2202

⁴²⁵ Exh.P09947, 92bis statement of the witness Rizvanovic, para. 40; witness Rizvanbegović, T.2201-2202

⁴²⁶ Exh.P09947, 92bis statement of the witness Rizvanovic, para. 40.

⁴²⁷ Ibid, para. 40.

⁴²⁸ Witness Rizvanbegović, T.2201-2202

⁴²⁹ Witness Rizvanbegović, T.2201-2202

⁴³⁰ Witness Rizvanbegović, T.2201-2202

⁴³¹ Witness CR, T.11879

⁴³² Exh.P07529. Dr.Kapić was accused of committing a crime – exh.P06916.

⁴³³ Witness Rizvanbegović, T.2201-2202; exh.P06916, no.373; Pavlović testified that he was the chief of the civilian defence in Stolac, T.46957.

⁴³⁴ Witness Rizvanbegović, T.2201-2202; witness CR, T.11892 [REDACTED]; exh.P06916, nr.373

⁴³⁵ Exh.4D01715; exh.P06963, no.5.; exh.P06916, no.388 ; exh.P03185, no.5.

⁴³⁶ Exh.P06863[REDACTED]

⁴³⁷ Witness Rizvanbegović, T.2201-2202; exh.P01809; exh.4D00035.

⁴³⁸ Witness Rizvanbegović, T.2201-2202.

⁴³⁹ Witness Rizvanbegović, T.2201-2202.

⁴⁴⁰ Witness Pavlovic T.46838; exh.4D01715, p.3; P01913.

in that area, and detained them at various detention facilities for varying period of time (para.174) (representative victim [REDACTED]).

234. There is no evidence that [REDACTED] would be detained at any time.

235. One piece of evidence indicates the internment of four Muslim men in, or around April 1993⁴⁴¹ and another indicates the internment of two Muslim men.⁴⁴² However, [REDACTED] testified that before 1 July 1993 some people were arrested but were released after a few days.⁴⁴³

236. The Prosecution did not prove the arrest of the “substantial number” of Muslim men in Čapljina in April 1993 and did not prove that the arrested men were civilians.⁴⁴⁴ Accordingly the Prosecution did not prove that the crimes of imprisonment and/or unlawful confinement of civilians were committed in Čapljina in April 1993. Nor, as with the other cases above, has it been shown beyond reasonable doubt that (i) any of the persons involved in this matter possessed the requisite *mens rea* nor (ii) if that were the case, that Petković ever learned about it.

4.3. Mostar 9 May 1993

237. The Prosecution pleaded that on 9 May 1993 approximately 1,800 Muslim civilians were detained by the HVO forces at the Heliodrom for varying period, up to about ten days (paragraph 96).⁴⁴⁵

238. The HVO Main Staff was not involved in the planning and/or conducting the operation of gathering residents in the combat area of Mostar on 9 May 1993 and transporting them to the Heliodrom. It had not been informed in advance of that operation. The evidence proves that all care for people located at the Heliodrom for up to ten days⁴⁴⁶ was provided by the ODPR and that the HVO/Government supported the activities of the ODPR:

(i) Darinko Tadić, the Head of the ODPR at the relevant time, personally went to the Heliodrom and on behalf of the Government of the HZHB and the ODPR assumed all responsibility for the civilians.⁴⁴⁷ ODPR was taking responsibility for the living conditions for about 2,000 people at the Heliodrom.⁴⁴⁸

⁴⁴¹ P09755, p.3.

⁴⁴² Witness CN, T. 11223-4.

⁴⁴³ [REDACTED] T.11177

⁴⁴⁴ Witness CN testified [REDACTED] They were both able-bodied men. T. 11223-4.

⁴⁴⁵ Evidence proves that all civilians were indeed released by indeed 19 May 1993 – exh.4D00614.

⁴⁴⁶ Witness Josip Praljak testified that all people who had arrived to the Heliodrom on 9 May 1993 were released within five or six days, T. 14691.

⁴⁴⁷ Exh.2D01321

⁴⁴⁸ Exh.P02533; 5D01004; P08880 p.5; P08880 92bis statement of the witness CT, p.5; witness Josip Praljak, T.14686-7, 14704-5, 14921; 14689; witness BB, T.17166.

(ii) The ODPH had the authority to decide about the persons who would leave the Heliodrom premises.⁴⁴⁹

(iii) On 17 May 1993 the HVO HZHB gave support to the activities of the ODPH “which has been active since the first day civilians were relocated from Mostar”. The HVO/Government was informed “all elderly persons, women and children have already been sent back to their homes”, and that some of them have been sent, at their own request, to East Mostar.⁴⁵⁰

239. HB/HVO authorities explained to the representatives of the international community that the people had been detained for their own security.⁴⁵¹ Petković was informed that the civilians had been evacuated to Heliodrom, but he later learned the ethnic composition of the evacuated people only on 12 May, after he signed the agreement with Halilović in Međugorje.⁴⁵²

240. On 10 May 1993 Boban and Izetbegović ordered the ceasing of combat activities and ordered Petković and Halilović to meet and work out the details between them.⁴⁵³ Two days later Petković and Halilović, in the presence of Morillon and Thebault, signed an agreement that, *inter alia*, civilians would be released.⁴⁵⁴ Petković had been given the authority to sign the agreement even for matters which were under the competence of the police, as well as the exchange of prisoners, release of civilians, return of displaced persons - because UNPROFOR Commander Morillon wanted to have only one representative of each side to sign the document.⁴⁵⁵ [REDACTED].⁴⁵⁶ The subsequent implementation of the relevant parts of the Agreement was delegated to those competent in this matter.⁴⁵⁷

4.4. 30 June 1993

4.4.1. Internment

4.4.1.1. Military situation prior to 30 June 1993

⁴⁴⁹ Exh.5D02016; P02260; witness Josip Praljak, T.14690.

⁴⁵⁰ Exh.1D01666.

⁴⁵¹ Witness BB, T.17169; Marić, T.48198.

⁴⁵² Witness Petković; T.49540.

⁴⁵³ Exh.4D00456, 4D00457, witness Petković, T.49548.

⁴⁵⁴ Ex.P02344

⁴⁵⁵ Witness Petković, T.49554. The witness DV explained in his 92*bis* statement (exh.P10217): [REDACTED] – para.27.

⁴⁵⁶ [REDACTED] T.36270.

⁴⁵⁷ Witness Petković, T.49554.

241. On 30 June 1993 the BH Army, together with Muslim HVO soldiers, attacked the HVO in the area north of East Mostar and took control of 26km of territory towards Jablanica. As already explained (see paras.138-144), on that day the war between the BH Army and the HVO started in the Mostar region. Threats of similar betrayal of the Muslim soldiers in other HVO units in the region and the possibility that the HVO authorities could loose control over other parts of the territory in the region demanded that adequate security and military measures be taken immediately.⁴⁵⁸ As discussed further below, these measures were urgent, justified, proportionate and legitimate from a military viewpoint. They have not been shown to be anything other than the exercise of sound and reasonable military judgement in the circumstances.

4.4.1.2. Previous warnings of security threats gained new importance and urgency

242. Loss of control over an exceptionally important area on the left bank of the Neretva north of Mostar was in itself alarming for the HB/HVO authorities, because there was a real threat of a total loss of control over Mostar and territories toward the coast.⁴⁵⁹ It exposed HVO forces and positions to great(er) military threats. The fact that the BH Army captured a strategically important area owing also to *betrayal* (and risk of *betrayal*) by HVO soldiers of Muslim ethnicity, justifiably highlighted the danger that the HVO could lose control for the same reason over other areas defended by the HVO units which had soldiers of Muslim ethnicity. Earlier warnings of a security threat posed by the large number of Muslim soldiers in some HVO units, which were obviously not considered important by anyone until then, turned out to be justified and pressing:

(i) In a report about the inspection of the 1st HVO Brigade of 8 February 1993, sent to the Commander of the SEH Operative Zone Miljenko Lasić, it was stated that the “defence security is diminished due to a significant amount of Muslim in the composition of the unit (over 50%)”.⁴⁶⁰

(ii) As a particular problem in some units the SIS highlighted a large number of non-Croatian soldiers, mainly Muslims.⁴⁶¹

243. BH Army documents on cooperation with Muslim soldiers in the HVO, instructions to stay in the HVO in order to carry out certain operations, as well as other information on cooperation between HVO soldiers of Muslim ethnicity with BH Army commanders and soldiers, known to services of Herceg-Bosna even earlier, gained significance in the new

⁴⁵⁸ Exh.2D00150 – in June 1993 there were 35% soldiers of Muslim ethnicity in the 1st HVO Brigade; in the 2nd Brigade 21%; in the Brigade “P.Krešimir IV” 25%; in the Rama Brigade 23%.

⁴⁵⁹ Exh.P03038.

⁴⁶⁰ Exh.P01438.

⁴⁶¹ Exh.2D01379; P03355, P04699.

military circumstances. It is apparent from BH Army documents that the most senior BH Army commanders worked intensively to recruit HVO members of Muslim ethnicity into the BH Army and at the same time counted on them as an internal ally in the upcoming armed conflict.⁴⁶² Military expert Gorjanc gave the following (unchallenged) opinion:

*It is my opinion that under the described assumptions it is reasonable and from a military point of view completely justified to believe that there was a danger of new betrayals by HVO soldiers of Muslim ethnicity and that the HVO could lose control of other areas as well because of that. In these conditions, every military commander must issue an order on measures to monitor the conduct in battle of his own soldiers of the same ethnicity as the opposing side, restrict access to confidential information, and not send them on important combat missions, including the drastic measure of disarming and isolation in the event of individual inadequate conduct, and in the event of inadequate conduct (desertion, collective disobedience) by a large number of personnel of the same ethnicity as the opposing side, those measures can be undertaken against the majority, or, rather, all personnel in own ranks who are of the same ethnicity as the opposing side. This is the only way to prevent losses in own ranks, defeat and loss of own territory.*⁴⁶³

This evidence was not challenged by the Prosecution.

244. [REDACTED] also confirmed that on the basis of the same documents of the BH Army a HVO commander could reasonably believe that Muslim soldiers in the HVO posed a certain security threat, a danger.⁴⁶⁴

4.4.1.3. Isolation of the HVO Muslim soldiers and the military conscripts of ABiH

(i) Order of the HVO Supreme Commander

245. On the morning of 30 June 1993 Petković met with HVO Supreme Commander Mate Boban about the military situation north of East Mostar and the concerns associated with HVO-Muslim soldiers:

He asked me, General, you were convincing us that you can rely on your soldiers of Muslim ethnicity. Any warnings to the effect that this was risky was rejected by you .. were rejected. And he asked me that I was planning to do with my Muslims, as he put it, and I said, Well, we'll wait a bit longer, and then we'll assess the situation and see how it develops. At that moment, he said to me, You know, General, from this moment on, you must start disarming all these people you have in your units, if

⁴⁶² See Annex 13: BH Army policy towards Muslims in HVO

⁴⁶³ Exh.4D01731, para.138.

⁴⁶⁴ [REDACTED] T.24625.

*it isn't too late already. Do you have any idea what's happening south of Mostar? As far as I can tell and judging what happened, we will not only lose the entire area south of Mostar, and also put Croatia in jeopardy, because you know that it is their wish to reach the coast, because they want to take not only Neum, they also want the port of Ploče.*⁴⁶⁵

246. Boban and Petković continued the conversation, trying to find the best ways and means of disarming and isolation of HVO soldiers of Muslim ethnicity “and everybody else who could be a threat for the HVO” to ensure the necessary degree of military security. Ultimately, the decision laid in the hands of Boban, as commander-in-chief. Their discussion was entirely based on military considerations; the Prosecution has not alleged differently, nor is there evidence to the contrary. Petković’s role in this context was purely advisory and purely military in nature. Boban’s order that Muslim soldiers of the HVO were to be disarmed and isolated, and the BH Army conscripts isolated as well, was considered by Petković as lawful and justified in the circumstances.⁴⁶⁶ That order was not unlawful *per se* and was therefore binding on Petković who was duty-bound to obey it.

247. Boban asked Petković about the number of Muslim soldiers in the HVO units and “how many collaborators, or, that is, able-bodied men that were left who did not join the ranks of the ABiH”. The estimate was that it would be 2,500 to 3,000 men.⁴⁶⁷ Petković asked about facilities for accommodation of isolated Muslim HVO soldiers and able-bodied Muslim men, thereby demonstrating his concern and care for would-be internees; Boban said that the HVO had facilities that can put up this number of men and that “it was up to the army to disarm these men in the safest manner, and everything else was for someone else to take care of”.⁴⁶⁸

(ii) Order of Milivoj Petković

248. On 30 June 1993, in line with Boban’s order, Petković issued the order to the Commander of the OZ SEH to disarm and isolate Muslim HVO soldiers and the military capable Muslim men.⁴⁶⁹ The order was not submitted to all HVO Operative zones and special purpose units. Considering that the security threats are the most serious in the Mostar area and the area south of Mostar, Petković submitted the order only to the Commander of the OZ SEH:

8. In units where you still have Muslim soldiers, disarm and isolate them.

⁴⁶⁵ Witness Petković, T.49576-7. Witness Božić has been asked by the Presiding Judge Antonetti why the HVO did not disarm its soldiers of Muslim ethnicity already on 9 May 1993, and the witness explained that the betrayal of the Muslim soldiers of the HVO did not happen before 30 June 1993 and that it was the general position in the HZHB after the conflict in Mostar on 9 May 1993 that all the remaining Muslims were loyal members of the HVO, T.36379-80.

⁴⁶⁶ Witness Petković, T. 49577.

⁴⁶⁷ Witness Petković, T.49578. According to the report of 9 June 1993 there were about 2,500 Muslim soldiers in the HVO units in the Operative Zone SEH, exh.2D00150.

⁴⁶⁸ Witness Petković, T.49578.

⁴⁶⁹ Exh.P03019.

Isolate all able-bodied men in Muslim-inhabited villages in your area of responsibility, and leave women and children in their houses or apartments.”

249. Petković testified that it was *not* easy for him to issue such order and explained why:

*Well, I felt shattered, completely shattered. Everything I had hoped for was simply falling apart, and I simply couldn't come by. And it wasn't easy to pass such a decision, and I feared that there could have been losses due to fighting in the process of disarming. However, that didn't happen, fortunately.*⁴⁷⁰

Despite his strong personal disappointment at the turn of events, he regarded the order as lawful and binding and this view was, as discussed above, entirely reasonable in the circumstances.

250. The Commander of the Operative Zone SEH forwarded Petković's order to the 2nd and the 3rd HVO Brigade.⁴⁷¹ The order was not submitted to the 1st HVO Brigade, which defended Čapljina and Stolac municipalities.⁴⁷² The disarmament and the isolation of Muslim HVO soldiers and the isolation of the military-able Muslim men in the municipalities of Čapljina and Stolac were not conducted pursuant to Petković's order. Božo Pavlović, the HVO commander in Stolac, testified that he got the order from his superior, the Commander of the 1st Brigade Nedjeljko Obradović, but he did not know who submitted the order to Obradović.⁴⁷³

251. There was no fighting between the BH Army and the HVO in Tomislavgrad municipality (Operative Zone NWH). Therefore, Muslim soldiers did not pose the same threat to HVO security as in the Mostar area. Accordingly, Muslim HVO soldiers were disarmed and sent back to their houses, not detained.⁴⁷⁴ From this, it may be inferred that measures enacted were proportionate to the exigencies of the circumstances, and not a way to commit or promote a JCE, as alleged.

252. Boban's order to take isolation measures was submitted to the Commander of the Operative Zone SEH through Petković. Civilian and Military Police were also ordered to carry out the isolation measures through their chains of command.⁴⁷⁵ The Prosecution did not establish who issued the orders to the military and the civilian policemen, but evidence shows

⁴⁷⁰ Witness Petković, T.49579.

⁴⁷¹ Exh.P03019.

⁴⁷² Detention facilities Dretelj and Gabela were located in these municipalities.

⁴⁷³ Witness Pavlović, T.46851, 46910-1. Pavlović explained that the day of disarmament of the Muslim HVO soldiers was the most difficult day in his life, that it was very hard for him to disarm the people with whom he had spent a year on the front-line, but there were no doubts that the measure had to be taken because of security reasons /T.46856/

⁴⁷⁴ Exh.P03470.

⁴⁷⁵ Witness Pavlović testified that an order which obliged regular HVO units, Military Police and civilian police can be issued only by the Supreme Commander, T.46845.

that both civilian and military police were indeed involved in carrying out the measures of the internment of the able-bodied Muslim men.⁴⁷⁶

(iii) Petković's reports about the implementation of the security measures

253. On 30 June 1993 Petković reported to the Head of the Defence Department the attack of the BH Army north of Mostar and stated, inter alia: "Measures have been taken in all units to remove the Muslims from the HVO."⁴⁷⁷ Petković also informed Supreme Commander Boban that he had taken the ordered measures.⁴⁷⁸

254. On 22 July 1993, two days prior his being relieved as Chief of the Main Staff, Petković submitted a report to the Head of the Defence Department and stated that the disarming of Muslim members in HVO units and the additional general mobilization caused by that disarming were carried out with respect to the operation and strategic situation.⁴⁷⁹ There was no indication of any criminal intentions or purpose. This is further evidence of the legitimate military purpose pursued, the lawfulness of the measures and Petković's understanding or belief in the lawfulness of those measures.

(iv) Muslim HVO soldiers

255. Petković considered that the isolated Muslim soldier of the HVO retained their status as HVO soldiers:

*Yes, fully. There's no difference between him and somebody else whom we detained because he refused to take up his position. So, yes, he does retain his status as an HVO soldier.*⁴⁸⁰

256. This was part of the reason for Petković's understanding or belief that the order was lawful. The evidence demonstrates that isolated Muslim HVO soldiers retained their status as HVO soldiers. The BiH Federal Ministry for Veterans and Disabled Soldiers Affairs, Military Service Records Department in Tomislavgrad confirmed in its 25 February 2009 letter that, according to the Regulation of the Federation Government on Criteria, Mode and Procedure of recognizing time spent in the defence of BiH as special length of service for retirement, the Department recognized the time period spent in HVO units as special double-length of service to all persons subject to military conscription (Croats, Bosniaks and others). "Furthermore, time spent in detention, prison, detention centre or assembly camp regardless of the cause or

⁴⁷⁶ Exh.P03057, P03075, P03116, P03121, P03175 para.6, P03210, P03132, P03134, P03142, P03170, P03230, P03282, P03307, P03326, P03347, P03353, P03960.

⁴⁷⁷ Exh.4D00480.

⁴⁷⁸ Witness Petković, T.49581.

⁴⁷⁹ Exh.P03642.

⁴⁸⁰ Witness Petković, T.49579. Petković further clarified that the disarmed HVO soldiers were not POW, but the HVO soldiers, T.49594. Also NO, T.51243; Pavlović, T.46860; Gorjanc, T. 46166.

duration is recognized as time spent in a military unit and as such is recorded as special length of service for retirement.”⁴⁸¹

257. Evidence clearly shows that the HVO authorities made a clear distinction between the detained HVO soldiers and the prisoners of war.⁴⁸²

258. Servicemen within the army of the detaining Power do *not* fall within the jurisdiction of international humanitarian law at all. As observed by Cassese:⁴⁸³

War crimes may be perpetrated by military personnel against enemy servicemen or civilians, or by civilians against either members of the enemy armed forces or enemy civilians (for instance, in occupied territory). Conversely, crimes committed by servicemen against their own military (whatever their nationality) do not constitute war crimes. Such offences may nonetheless fall within the ambit of the military law of the relevant belligerent.

This principle was reiterated by the Trial Chamber in the RUF case of the Special Court for Sierra Leone, which specified that ‘the law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces’,⁴⁸⁴ and that, further, ‘[t]he law of international armed conflict regulates the conduct of combatants vis-à-vis their adversaries and persons hors de combat who do not belong to any of the armed groups participating in the hostilities.’⁴⁸⁵ It continued:⁴⁸⁶

The law of international armed conflict was never intended to criminalise acts of violence committed by one member of an armed group against another, such conduct remaining first and foremost the province of the criminal law of the State of the armed group concerned and human rights law. In our view, a different approach would constitute an inappropriate re-conceptualisation of a fundamental principle of humanitarian law. We are not prepared to embark on such an exercise.

⁴⁸¹ Exh.4D01466. The Trial Chamber rejected to admit into evidence the document 4D01467 [REDACTED] /TC order of 19 November 2009 and the TC decision of 21 January 2010./

⁴⁸² The document *Instructions for the Operation of the Central Military Prison of the Croatian Defence Council in Mostar* of 22 September 1992 contained the definition that POW /ratni zarobljenici/ were persons captured in the war against the Croatian people and HVO units, and military detainees /vojni zatvorenici/ were military personnel who committed an offence or crime - exh.P00514. p.8.

Military Police Administration in its work report for 1992 reported about the “prisoners of war and detainees, HVO soldiers who have committed a misdemeanor or an offence and civilians who have committed a misdemeanor or an offence against HVO members or facilities”, and all of them were placed in the military investigation prisons – exh.P00956, p. 14.

Witness Josip Praljak, the deputy warden of Heliodrom prison, confirmed the difference between the military prisoners, detainees, and prisoners of war, T.14650.

⁴⁸³ Cassese, *International Criminal Law* (2008), p.82.

⁴⁸⁴ RUF TJ, para.1451.

⁴⁸⁵ Ibid, para.1452.

⁴⁸⁶ Ibid, para.1453.

This principle has been framed in general terms in both the jurisprudence and the commentaries that have addressed it, and therefore would appear to have unconditional application, regardless of the religious, ethnic or national make-up of the serviceman in question. Indeed, the post-World War II cases to deal with this issue such as *Pilz* and *Motosuke* support this position, holding that the nationality of the victim was overruled by their military allegiance.⁴⁸⁷ Further, the Dutch Special Court of Cassation in *Pilz* held that the crimes perpetrated against them by their military fell within national, rather than international jurisdiction. That Court considered that while crimes were committed against a Dutch member of the German army, ‘they did not, however, constitute war crimes, but were crimes in the domestic sphere of German military law and jurisdiction.’⁴⁸⁸ The Court held that ‘the object of the [1907 Hague] Regulations, and in particular of Article 46, was to protect the inhabitants of an enemy-occupied country and not members of the occupying forces’, and that ‘[t]he legal position of the latter was regulated not by international convention, but by the military law of the occupying Power.’⁴⁸⁹ When it was established that the victim of the alleged crime belonged to the occupying army, it was held that ‘his nationality, or former nationality, was irrelevant, since by his enlistment in the Occupant’s army he had forfeited the protection of the law of nations and had voluntarily submitted himself to the laws of the occupying Power.’⁴⁹⁰ Likewise, the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field was deemed inapplicable, ‘since this Convention only protected members of an army against acts by members of the opposing army’.⁴⁹¹ Further, the Court considered that the crimes could not be crimes against humanity, ‘since the victim no longer belonged to the civilian population of occupied territory, and the acts committed against him could not be considered as forming part of a system of “persecutions on political, racial or religious grounds”’.⁴⁹² The Court’s findings thus reflect the same principles as those upheld in the *RUF* case, the Commentary of the Geneva Conventions and the observations of Antonio Cassese, in addition to the position taken by the ICTY towards the concept of civilian population vis-à-vis crimes against humanity.

259. The Conventions and their Protocols therefore cannot be said to envisage members of one’s own forces within their protections, regardless of their background – a restriction designed to uphold the distinction between the law of armed conflict and the realms of

⁴⁸⁷ *Motosuke*, 13 *Law Reports of Trials of War Criminals* (1949), p.129; *In re Pilz*, *International Law Reports* vol.17, 391 (1957), p.391.

⁴⁸⁸ *In re Pilz*, p.392.

⁴⁸⁹ *Ibid.*, p.391.

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

⁴⁹² *Ibid.*, p.392.

domestic criminal and military law. As the jurisprudence addressing this issue indicates, this jurisdictional distinction does not appear to encourage a ‘gap’ in protections for either category of combatant; rather, it identifies which body of law is best suited to address the crimes committed, depending on the relationship between the perpetrator and the victim.

260. The consistency between the jurisprudence of the earlier post-World War II *Pilz* case, the more recent *RUF* judgment, and the provisions of the Geneva Conventions and First Additional Protocol, all suggest that the rules of international humanitarian law deriving from the Conventions are also reflective of customary international law. Indeed, the existence of domestic military and criminal laws regulating the internal behaviour of the armed forces further suggests the customary nature of this jurisdictional distinction – this well-established domestic jurisdiction itself demonstrating State practice in this regard. It is this practice that further forms the basis of the position taken in the *Pilz* and *RUF* cases, in addition to the Commentary of Cassese – and is supported by the wording of the Geneva Conventions and their First Additional Protocol. This jurisdictional distinction, then, appears to be reflected across domestic and international practice, thus indicating a prevailing consistency between customary international and humanitarian law.

(v) Able-bodied Muslim men

Members of the armed forces according to the IHL

261. The armed forces may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as POW (Article 3 of the Hague Regulations).⁴⁹³

262. Non-combatant members of armed forces include medical personnel and chaplains (Article 43.2. of the AP I) and they are not allowed to be engaged in firing weapons. Besides medical personnel and chaplains, there are numerous categories of members of an army whose task has nothing to do with firing weapons, for example administrative services, military legal services, auxiliary services, civil defence personnel. Further, a civilian who is incorporated in an army becomes a member of the military throughout the duration of the hostilities, or until *permanently* demobilized by the responsible authority, whether or not he is in combat or armed. If captured, he/she is entitled to the protection under GC III.⁴⁹⁴

263. In some countries the entire segments of the population between certain ages may be drafted into the armed forces in the event of armed conflict. In determining when reservists

⁴⁹³ GC III also states that members of the armed forces who have fallen into the power of the enemy are prisoners of war (Article 4 (A)(i)).

⁴⁹⁴ *Commentary on the Additional Protocols*, p. 1677; Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Rule 3, p.13

actually become members of the armed forces it is necessary to consider the legislation of the relevant state.⁴⁹⁵

Legislation of the BiH

264. Pursuant to the *Constitution of BiH*, any citizen who *with arms* or *otherwise* participates in resistance to an aggressor shall be considered a member of the armed forces of the Republic.⁴⁹⁶

265. A *Decree Law on Defence*, adopted by the RBH Presidency on 14 May 1992, prescribed that citizens had “rights and obligations” to defend the country, namely to: (i) perform compulsory military service; (ii) perform compulsory work; (iii) comply with the requisition of resources; (iv) participate in civilian protection and (v) train for defence.⁴⁹⁷ By performing compulsory military service, citizens were prepared, trained and organised for: (i) armed combat, (ii) other duties in the armed forces, (iii) participation in other forms of all-people’s resistance.⁴⁹⁸

266. All citizens of the Republic of BH who were fit for work were subject to compulsory military service.⁴⁹⁹ Compulsory military service consisted of: (i) the recruitment obligation; (ii) the obligation to complete military service and (iii) the obligation to serve in the reserve forces.⁵⁰⁰

267. *Reserve forces, together with the standing forces, were a component of the BH Army.*⁵⁰¹ While the standing forces consisted of active military personnel, soldiers, workers and civilians employed with the Army,⁵⁰² the reserve forces included persons who were, according to the provisions regulating conscription, subject to service in the reserve forces of the Army.⁵⁰³ All citizens were subject to the recruitment obligation, and *citizens who were fit for military service* were subject to the obligation of completing their military service and then serving in the reserve forces.⁵⁰⁴

268. The recruitment obligation started at the beginning of the calendar year in which a citizen of the Republic of BH reached the age of 17,⁵⁰⁵ that is when the citizen was *16 years*

⁴⁹⁵ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Rule 3, p.14. (including footnote 86).

⁴⁹⁶ Exh.4D01731, para. 64.

⁴⁹⁷ Exh.4D00408, Article 46.

⁴⁹⁸ Exh.4D01030, Article 1.

⁴⁹⁹ Exh.4D01030, Article 2.

⁵⁰⁰ Ibid, Article 4/1.

⁵⁰¹ Exh.4D00412, Article 7.

⁵⁰² Ibid, Article 8.

⁵⁰³ Ibid, Article 9.

⁵⁰⁴ Exh.4D01030, Article 4/3.

⁵⁰⁵ Ibid., Article 11/2.

old.⁵⁰⁶ Recruitment was carried out in the calendar year in which the recruit reached the age of 18, but exceptionally in the case of an imminent threat of war or state of war, the Presidency might order the recruitment of persons aged 16.⁵⁰⁷ *Military conscripts who had completed their military service were liable for service in the reserve forces.*⁵⁰⁸ Compulsory military service ceased for men at the end of the calendar year in which the *age of 60* was reached.⁵⁰⁹

269. Military conscripts who volunteered for the armed forces' units, institutions or staffs, or were mobilized into the armed forces, had the *status of soldiers* serving their military service. The same status of 'soldier' was granted also to conscripts and reservists who were engaged on a work obligation in units, institutions and staffs of the armed forces.⁵¹⁰

270. A state of imminent threat of war was declared in BiH by a decision of the RBH Presidency of 9 April 1992⁵¹¹. At a session held on 20 June 1992, the RBH Presidency adopted a decision to declare a state of war.⁵¹² That same day, 20 June 1992, the RBH Presidency issued an order to declare a general public mobilisation in the territory of the Republic of Bosnia and Herzegovina⁵¹³. A general public mobilisation *of all conscripts* between the ages 18 to 55 was ordered and they were obliged immediately to report with military equipment and small arms to the nearest Territorial Defence unit (item I.). Furthermore, a general public mobilisation of all other able-bodied citizens (men of 18 to 65 years of age and women of 18 to 55 years of age) was ordered and they were obliged to report to civilian protection units, which would start to carry out tasks in defence of the country in accordance with the decree law on defence (item II.)

271. From the moment of general mobilization, all male able-bodied citizens became active members of the armed forces of BH. It is understandable that due to a shortage of weapons and equipment, as well as initial problems in establishing and organising a BH wartime army, not all men fit for military service and conscripts could be actively engaged in the armed forces. Those who were not immediately actively engaged in combat operations stayed in the reserve or performed other tasks important for the defence of the country.⁵¹⁴ Military recruits were not allowed to leave the municipality during the period of war or imminent threat of war.⁵¹⁵

272. The Prosecution military expert witness Andrew Pringle stated in his report:

⁵⁰⁶ Pursuant to the Article 77.2. it is prohibited to recruit children under the age of 15. This prohibition was also the rule of the customary international humanitarian law (as of 2000 the age limit was increased on 18).

⁵⁰⁷ Exh.4D01030, Article 13. Witness 4D AB testified the the BH authorities mobilized young boys of 16 years into the BH Army, T. 47095.

⁵⁰⁸ Ibid., Article 41.

⁵⁰⁹ Ibid., Article 7/1.

⁵¹⁰ Ibid., Article 72/1 and 72/5.

⁵¹¹ Exh.P00150.

⁵¹² Exh.P00274.

⁵¹³ Exh.4D01164 .

⁵¹⁴ 4D01731, para. 119.

⁵¹⁵ Witness BR, T.8131T

*In general terms, women, children and elderly could be set aside as probably non-combatant. Where there is suspicion the individuals could be questioned to ascertain their true identity and role. It would be reasonable to question carefully men of fighting age who claimed non-combatant status. Questioning would have to be carefully regulated and in accordance with the Laws of War.*⁵¹⁶

Accordingly, women, children and elderly should be assumed civilians, while men of fighting age should be assumed members of the armed forces.

273. Pursuant to the BH legislation, members of the reserve forces were members of the BH armed forces, not civilians. They were non-combatants until mobilization and engagement in the standing armed forces. As non-combatant members of the armed forces, reservists were not liable to attack, but were liable to internment as any other member of the enemy armed forces.⁵¹⁷ If interned, reservists were entitled to protection as prisoners of war.⁵¹⁸

ICTY jurisprudence

274. Men of military age are not considered civilians, unless proved otherwise. On the other hand, men younger and older than those of military age, as well as women, are considered civilians, unless proved otherwise.⁵¹⁹ The burden of proof to establish the status of an alleged victim is at all times on the Prosecution and there is no presumption of civilian status in that context when civilian status is an element of the offence.

Evidence

275. The evidence proves beyond any doubt that the BH Army and Muslim authorities treated able-bodied men as the members of the BH army. For example, 44th Mountain Brigade Command of the BH Army reported on 17 April 1993 that “civilians from the village of Doljani are being evacuated at the moment, *conscripts will remain*”.⁵²⁰ The witness Senad Zahirović testified that “*people fit for military service* from my village established the defence

⁵¹⁶ Exh.P09549, para.78. See also Gorjanc’s report - exh.4D01731, para.114.

⁵¹⁷ The capture of the prisoners of war during active hostilities is always lawful. This long-standing custom (as stated in Henckaerts and Doswald-Beck *Customary International Humanitarian Law*, Volume I: Rules, Rule 99, p.344) is the basis for the same GC III provisions (Article 21/1 regulates that the Detaining Power may subject prisoners of war to internment; Article 118/1 states that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities).

⁵¹⁸ A danger that a man of military age joins the enemy armed forces justifies the capture of that man. In the ICRC Commentary on the GC IV, in relation to the internment, it is stated: «The fact that the man is of military age should not necessarily be considered as justifying the application of these measures, unless there is a danger of him being able to join the enemy armed forces.» (p.258).

Article 4.B(1) of the GC III states that as prisoners of war shall be treated as «persons belonging, or having belong, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment”.

⁵¹⁹ *Kordić and Čerkez*, AJ, paras. 608, 609, 615, 623.

⁵²⁰ Exh.4D00430.

line”.⁵²¹ [REDACTED].⁵²² The witness Husnija Mahmutović said that “all *healthy men of military age* in the village /Stupni Do/ were under an obligation to join the Territorial Defence.”⁵²³ In May 1993, the War Presidency of Jablanica Municipality issued an order to mobilize “all people currently in the area who are fit for military service or work, between the ages of 15 and 65”.⁵²⁴ BH Army commanders treated Croat military recruits as members of the HVO.⁵²⁵

276. Evidence further proves that military conscripts of the BH Army considered themselves obliged to join the Army. [REDACTED]⁵²⁶

277. *Decision on matters concerning the status of citizens of the Republic of BiH in the Republic of Croatia*, adopted by the BiH Government on 24 September 1992,⁵²⁷ is also significant in this context. Displaced persons and refugees that had work obligations⁵²⁸ or who were military conscripts could not get the departure approval to other countries and had to return to BiH. Collection centres for their organized return were in Zenica, Visoko, Jablanica, Konjic and other areas named by the BH Ministry of Defence. No doubt, military conscripts had military obligations and were under the competence of the BH Ministry of Defence.⁵²⁹

278. The evidence proves that able-bodied Muslim men, military conscripts of the BH Army, were considered by the HVO authorities as the reservists of the BH Army and thus, if interned, they would come under the category of POWs. For example, at the working meeting held on 6 September 1993 the HRHB Government discussed the situation regarding imposing penalties and measures of isolation on POWs pursuant to the provisions of the International

⁵²¹ Witness Zahirović, T. 0107.

⁵²² [REDACTED] T.6471.

⁵²³ Witness Mahmutović, T.25694.

⁵²⁴ Exh.1D00349.

⁵²⁵ Witness Idrizović testified that after the attack on 15 April 1993 in Jablanica «MUP carried out a search of the apartments and houses of military recruits, members of the HVO who remained in Jablanica...» - T.9903-4.

⁵²⁶ Exh.P10220, [REDACTED], p.2969.

⁵²⁷ Exh.1D01410.

⁵²⁸ Work obligation was one of the duties of BH citizens, prescribed by the Decree Law on Defence – exh.4D00408. See also Gorjanc report – exh.4D01731, paras. 67, 72, 73.

⁵²⁹ Pursuant to the item IV of the *Decision on matters concerning the status of citizens of the Republic of BiH in the Republic of Croatia*, collection centres had to undertake all actions necessary to organize reception, provide accommodation and send citizens to their military and work obligations, and the Ministry of Defence had to provide collection centres with the necessary instructions on how to carry out military and work obligations in BiH. (Exh.1D01410)

Law of War, and clarified that these persons (POW's) were captured as active-duty and *reserve enemy forces*.⁵³⁰

279. Petković testified that his understanding was also that the Muslim men of military age, if not active-duty, were reserve members of the BH Army.⁵³¹ Tokić testified that military conscripts were categorized as soldiers.⁵³² Filipović confirmed that apart from women, children and elderly there were no civilians.⁵³³ Pavlović testified that conscripts of Muslim ethnicity were treated as the reserve force of the BH Army.⁵³⁴ Witness K stated that «it was a common knowledge that military-aged men from the village of [REDACTED] were securing village».⁵³⁵

280. Witness BB testified that the “draft-age Muslim men were regarded by the Bosnian Croats as a threat to national security because they were perceived as being potential combatants for the ABiH, even if they had absolutely no relationship with the ABiH whatsoever and they were civilians, that was the perception.»⁵³⁶ [REDACTED]⁵³⁷

Conclusion

281. Internment of Muslim able-bodied men was based on lawful grounds, i.e. a legitimate concern and fear, based on objective grounds, that these men might present a security risk for HVO forces and the Croatian population on the territory controlled by HB/HVO authorities.

282. Boban's order was entirely lawful and Petković had no reason to believe that, by implementing this order he was obeying an illegal order or that he was acting unlawfully.

283. The view that the arrest of broad categories of individuals who might pose a security threat (as opposed to blanket, all-encompassing, orders) is lawful in principle also finds support in *Kordic* where the Appeals Chamber found that “[i]n the circumstances the evidence does not

⁵³⁰ Exh.P04841.

⁵³¹ Witness Petković, T.49579.

⁵³² Witness Tokić, T.45374

⁵³³ Witness Filipović, T.47550-2.

Filipović also testified: “Your notion of civilians and whether they could have been in that area, whether there were men who were not soldiers in that area of the Lasva River Valley, there were no men who were not soldiers. They had uniforms and rifles from the age of 18 until a ripe old age. /.../ I do not exclude the possibility of an exception, but it would be a strict exception. A man of 22 was either away or he was a soldier assigned to a unit. There were such people in Vienna or in The Hague, abroad, but for them to be in that village and not to perform a defence function, that was impossible.”

⁵³⁴ Witness Pavlović, T.46859.

⁵³⁵ Exh.P10080, [REDACTED]. Also witness Vidović, who observed a difference between “civilians” and “conscripts”, T.51744-5.

⁵³⁶ Witness BB, T.17215.

⁵³⁷ Exh.P09712, [REDACTED]

support that the HVO carried out blanket detentions of all Muslim civilians, but rather suggests that men of military age between 18 and 60 were targeted”.⁵³⁸

284. In the present case, the impugned order of Petković's was narrowly directed towards those individuals perceived as posing a security threat so that it could not be said to have been a blanket, persecutory order. Women and children were expressly excluded from these orders (thereby further underlining the fact that the order was not “persecutory” in nature, but grounded in genuine security concerns). The underlying reason for these orders (at least as far as Petković was concerned) was not their status as ‘nationals’ of the enemy side (as is clear from the fact that women and children were not detained) but their physical ability and legal obligation (as able-bodied men) to join the enemy side and thus pose a security threat to the interning power. That view – and the validity of orders of detention issued on that basis – has been accepted by the *Kordic* Appeals Chamber as being consistent with humanitarian law.

(vi) Measure of isolation was not directed against civilians and was not indiscriminate

285. Petković, as explained in paragraphs 248 and 284 above, ordered that women and children should be left alone. Petković testified that this category of population was not a threat to security and was therefore not to be detained:

*My position was that this category was not a threat to security in any way, and, therefore, that it was quite understandable and reasonable that they should be left to remain in their houses, where they lived, regardless of what people called total national defence. But as far as I was concerned, this category, women, children and the elderly, did not present a threat; that is to say, all those who weren't able-bodied men.*⁵³⁹

This attitude and approach clearly demonstrates an absence of persecutory mindset and the genuineness of his concerns regarding the military risk posed or reasonably believed to be posed by able-bodied Muslim men in certain areas.

(vii) Measure of isolation widely publicized

286. The orders of internment were widely publicized and were discussed with international representatives on the ground; the suggestion that they formed part of a JCE would, in those circumstances, not be reasonable. This is further evidence of the belief and understanding at the time that the measures were entirely lawful.

287. On 4 July 1993 an [REDACTED] reported that the Commander of the HVO 1st Brigade Nedjeljko Obradović informed him that “in response to the perceived internal threat, all Muslim members of the HVO under his command have been removed (25% of his force)” and

⁵³⁸ *Kordic* AJ, para. 609.

⁵³⁹ Witness Petković, T.49580.

“the shortages have been made up by the general mobilization”. “In addition all Muslim males between the ages of 18 and 60 within the Čapljina municipality and the villages south of Mostar have been arrested”, explained Obradović.⁵⁴⁰ The document shows beyond any doubt that the security measures launched in early July 1993 were not kept secret, as Petković confirmed.⁵⁴¹

288. On 7 July 1993, the Commander of OZ NWH Željko Šiljeg confirmed to the ECMM that Muslim males had been disarmed and taken into custody because of the incident in Mostar and explained that they had been temporarily placed in different locations “for their own safety”.⁵⁴² The ECMM did not issue any protest in relation to this security measure. It should be noted that Petković did not order the isolation of the Muslim HVO soldiers and the BH Army military conscripts in Šiljeg’s Operative Zone, but only in the SEH, Lasić’s Operative Zone. Accordingly, there is no evidence who ordered that such measure should be taken in Šiljeg’s Operative Zone.

289. On 10 July 1993 the representatives of the [REDACTED] visited Heliodrom, accompanied by the officers of the HVO-ODPR, and reported that the detainees were males between 18 and 60, and those with serious medical conditions, and those under 18 or over 60 have been or would be released soon. They were told that these detained persons were under the competence of the ODPR. The author of the report mentioned the earlier meeting with the HVO HZHB President Jadranko Prlić, who explained that the HVO had arrested and was detaining up to 6,000 draft age male Muslims, but was unable to provide for them and therefore requested help from the UNHCR.⁵⁴³

(viii) Isolation was not imprisonment

290. Petković’s understanding was that the “isolation” was militarily justified and not a form of imprisonment, but a temporary security measure rendered necessary by the circumstances:

*It should have been temporarily removing these people to see what had done – who had done what and who was responsible for what, and then who should be prosecuted further. And if not, if they weren’t culpable, then they should be released.*⁵⁴⁴/.../

Those HVO members who were isolated were supposed to be in one place, under supervision, and certain measures should be taken to find the organizers from amongst them, to find who the organizers were, who the leaders were in these

⁵⁴⁰ Exh.P03175, para.6.

⁵⁴¹ Witness Petković, T.49582.

⁵⁴² Exh.P03234.

⁵⁴³ Exh.P09843. See also exh.P09712, [REDACTED]

⁵⁴⁴ Witness Petković, T.49595.

*individual groups, and to see what each person's behaviour and conduct was, what they had done. And then, on the basis of that, to take certain measures if the individuals were deemed culpable.*⁵⁴⁵

291. Pavlović, HVO commander in the Stolac Municipality on 1 July 1993, explained that the word "isolate" meant that a certain group would be disarmed and escorted to an area in which that group would be secure and not able to operate.⁵⁴⁶

4.4.1.4. Other measures taken by HVO authorities

292. Due to the sudden deterioration of the military and security situation in the Mostar area, additional measures were soon required. On 30 June 1993, the Head of the Interior Department ordered to the Chief of the Mostar Police Administration to form a joint police unit numbering 100 policemen. Until re-subordination of the unit to the military commander, the Chief of the Mostar civilian police was supposed to command the unit.⁵⁴⁷

293. On 1 July 1993 the Head of the HVO MP Administration Valentin Ćorić issued the order for the implementation of the Stojić's order to all MPA departments, MPA sections and the commands of eight MP battalions.⁵⁴⁸

4.4.1.5. Internment was not planned prior to 30 June 1993

294. Internment had not been planned or foreseen before 30 June and there is no evidence to that effect. Instead, it is clear that this measure was seen as being necessary because of the rapidly-developing security situation. There is no evidence that the HZHB authorities established or planned to establish any detention facility in order to obtain accommodation for the interned Muslim HVO soldiers and/or able-bodied men of Muslim ethnicity.⁵⁴⁹ The security measure of internment of these categories of population was caused by legitimate security concerns associated with Muslims in HVO units in the Mostar area and the occupation of the area north of East Mostar by the BH Army.⁵⁵⁰

4.4.1.6. Conclusion

295. Petković's 30 June 1993 order whereby in the Operative Zone SEH Muslim HVO soldiers should be disarmed and isolated, and able-bodied Muslim men isolated, was lawful, both as a matter of domestic and international law.

⁵⁴⁵ Witness Petković, T.49596.

⁵⁴⁶ Witness Pavlović, T.46845-6.

⁵⁴⁷ Exh.P03027.

⁵⁴⁸ Exh.P03077.

⁵⁴⁹ The witness BA stated that the HVO authorities «did not have the facilities to care for thousands of newly arrested Muslim males» - exh.P09712, para.46.

⁵⁵⁰ Representatives of all international organizations on the ground were of the opinion that the internment of the able-bodied Muslim men was a consequence of the attack of the BH Army north of Mostar. Even the UNCHR opined that the arrest was the "response to this attack" [REDACTED]

296. It was effectively the implementation of an order that had been issued by the HVO Supreme Commander. The *Kordic* jurisprudence supports a proposition relevant to the present case, namely, that, at the time of capture/arrest, it would not be unreasonable for a party to the conflict to regard men aged between 17 and 65 as not being civilians for the purpose of their initial internment.⁵⁵¹

297. For the purpose of (ordering) detention/capture, and under the explained security circumstances and military situation, the fact that persons were military conscripts of the enemy army provided a sufficient and valid basis for their internment (pending review of their status). It was not a blanket, persecution-based, decision, but one based on valid security concerns.⁵⁵² Petković had no reason to understand or interpret that order in any other way and there is no evidence that would allow for another conclusion.

4.4.2. Continuation of the detention

298. As already noted, the responsibility to review the lawfulness of arrest and the decision of continued detention did not belong to Petković. Nor did he have any responsibility as regard the treatment of detainees or their condition of internment.

299. The legal distinction between the authority to arrest and the authority to detain/keep in detention (paras.210-214) is fully recognized in the HVO Military Police Administration document of 22 September 1992 about the operation of the Central Military Prison in Mostar. In the chapter «Instruction regarding accommodation and house rules» the Head of the HVO MPA prescribed the procedure of the receiving new POW:

Accept prisoners of war only with orderly documentation or an ESCORTING FORM from persons bringing them.

After receiving the escorting form, issue a CERTIFICATE ON THE RECEIPT OF THE ESCORTED PERSON and give it to the person who brought them, leaving a copy in the files.

*From this moment, the persons who brought the escorted person have finished their job and the escorted person (prisoner of war) shall be under the authority of military policemen from the security.*⁵⁵³ (Emphasis added)

300. Other evidence fully supports the above-mentioned instruction of the Head of the HVO Military Police Administration. Petković testified that HVO soldiers would hand over captured

⁵⁵¹ See in particular *Kordic* AJ, 607-609, 615, 623 and corresponding *Kordic* Trial Chamber's findings.

⁵⁵² Ibid, in particular *Kordic* AJ para. 609: "In the circumstances the evidence does not support that the HVO carried out blanket detentions of all Muslim civilians, but rather suggests that men of military age between 18 and 60 were targeted. The detaining power has a reasonable time to determine whether a particular person is a civilian and further to determine whether there are reasonable grounds to believe that the security of the detaining power is threatened."

⁵⁵³ Exh.P00514, p.10, c.1.

prisoners of war at places prescribed and further proceedings did not come under the responsibility of the HVO army and, accordingly, he as the Chief of the HVO Main Staff had no authority under any provision to do anything in relation to the treatment of the detainees in the detention facilities.⁵⁵⁴ The witness NO, [REDACTED] confirmed that all units, if they captured or took in some prisoners, would turn all the prisoners of war to the military police and the military police would take them away.⁵⁵⁵

301. Petković derived his authority to order the internment solely and directly from the order of Mate Boban. By contrast, he had no authority and no competence as regard the actual detention of those detained as a result of his orders or the orders of others, nor any competence or authority as regard the review of the lawfulness of their detention/internment, their treatment or release. It is significant in that regard that it is *not* part of the Prosecution case, as pleaded in the Indictment, that Petković had any authority over detention facilities. Nor, during his cross-examination, was such a case put to him.

302. On 13 July 1993 the [REDACTED] that Vice President of the HVO/Government Krešimir Zubak explained that “it was necessary to arrest Muslim soldiers in the HVO because they were mutinying” and the “HVO will try to exchange them or bring them into other areas”.⁵⁵⁶ Petković confirmed that the HB/HVO authorities did their best to solve the problem of the isolated HVO soldiers and able-bodied Muslims in co-operation with representatives of the international organizations and with their assistance.⁵⁵⁷

303. [REDACTED]⁵⁵⁸

On 20 July 1993, at the meeting with the representatives of the UNHCR, President Boban also raised the issue of transit visas for Muslims who wished to leave for other countries.⁵⁵⁹ The evidence proves that

⁵⁵⁴ Witness Petković, T.50672-3.

⁵⁵⁵ Witness NO, T.51207.

⁵⁵⁶ Exh.P03427, c.2.

⁵⁵⁷ Witness Petković, T.48584.

⁵⁵⁸ Exh.P09682.

⁵⁵⁹ P09712, [REDACTED]

the HB/HVO civilian authorities, not the Chief of the Main Staff or military commanders, were engaged in establishing a transit centre in Ljubuški.

304. [REDACTED]⁵⁶⁰

[REDACTED].⁵⁶¹

[REDACTED]⁵⁶²

The evidence proves the competence of the civilian authorities to decide about the continuation of detention.

305. On 23 July 1993 Prlić explained in the letter sent to Minister Granić:

The assault by Muslim forces on the region around Mostar compelled the armed forces of the HVO and its military police to assume preventive measures against all members of the so-called Army of BiH and its active duty and reserve force in the area of combat activities. There were no special detention camps formed for these persons. Instead, the following facilities were used: premises of the former Military College, the nearby military base of the former JNA in Rodoč, near Mostar (so-called 'Heliodrom'), as well as facilities once used for mass accommodation of JNA soldiers in Dretelj. It is necessary to keep in mind that these persons are all men in the age suitable for military service. Many of them are regarded as standard military prisoners and some of them were members of the Muslim army reserve force. In the apartments of some of these persons, weaponry and other proof of co-operation with the so-called Army of BiH were found. Therefore, in accordance

⁵⁶⁰ Exh.P03554, c.4, 6D00577.

⁵⁶¹ Exh.P09712, [REDACTED]

⁵⁶² Exh.P09712[REDACTED]

with the Article 6 paragraph 4 of the Geneva Convention, they are also treated as was prisoners.

Immediately after the capture, medical examinations of all persons were conducted. All those persons that had medical problems, regardless of their age, were discharged. In the course of the last few days after the end of the investigating process, large groups of them are being released successively. /.../

At one of its sessions, HZ H-B HVO took a stand that interested humanitarian organisation should be allowed access to facilities where isolated persons are placed. 'Heliodrom' facilities were already visited by delegations of certain Embassies in the Republic of Croatia, as well as a number of television crews. Also, the arrival of the International Red Cross Delegation is announced.

*HZ H-B HVO requests consistent implementation of international conventions from all its bodies, both in the case of civilians and war prisoners. Reports at our disposal confirm that they are respected. /.../*⁵⁶³

306. There is no evidence that Petković made any decision, nor could have taken any decision, about the continuation of the internment of these men. He had no such authority, power or competence. Nor has it been alleged.

4.4.3. Release of the detained persons

307. The release of persons detained at the beginning of July 1993 started in the second half of July 1993⁵⁶⁴ and continued up to December 1993, when President Boban decided to close all detention centres.⁵⁶⁵ Detained persons who were not released stayed in the Heliodrom and Ljubuški Prison, and criminal report were filed against them.⁵⁶⁶ Release was ordered by others, not by Petković, since he had no such competence or authority to do so.

308. Petković did not participate in these proceedings, nor has the Prosecution pleaded that he had any role in the decision making process and the realization of the decisions to release those detainees.

4.5. Competence of HB/HVO authorities in relation to detention facilities

309. The Chief of the HVO Main Staff and/or the HVO Main Staff had no *de jure* and/or Petković had no *de facto* authority over any detention facility in Herceg-Bosna or those running these facilities. Petković did not have authority and did not establish any detention facility

⁵⁶³ Exh.P03673.

⁵⁶⁴ Exh.P03617, P09680

⁵⁶⁵ Exh.P07096

⁵⁶⁶ Exh.P07488; witness Josip Praljak, T.14807.

and/or participate in establishing of any detention facility.⁵⁶⁷ Petković did not have the authority and did not manage any detention facility nor participated, nor assisted in the managing of any detention facility in Herceg-Bosna. Petković did not have the authority nor did he control/inspect the functioning of any detention facility, nor did he participate, nor did he aid and abet the controlling/inspecting of any detention facility. Petković did not have the authority nor did he make decisions regarding the accommodation of the detainees/prisoners and the conditions of confinement, nor did he participate and/or aid and abet the decision making process about these issues. Petković did not have the authority nor did he make decisions about the closing of the detention facilities, nor did he participate in the decision making process regarding their closure. Furthermore, Petković did not possess the authority nor did he participate in the process of closing the detention facilities and the release of all prisoners by virtue of the decision of the HRHB President decision of 10 December 1993.⁵⁶⁸ Significantly, the Prosecution has made no such allegation in the Indictment.

4.5.1. HZHB/HRHB President

310. It was President Boban who had the authority to set up detention facilities, to decide on the exchange and/or release of POWs and to disband the detention facilities in Herceg-Bosna.⁵⁶⁹ A significant measure undertaken by him was the 10 December 1993 decision to disband all detention centres in Herceg-Bosna unconditionally.⁵⁷⁰ He authorized various civilian and/or military authorities to implement his decisions and orders.⁵⁷¹

311. President Boban signed the Presidency's *Decree on the Treatment of Persons Captured in Armed Fighting in the HZHB*, which ruled that the Head of the Department of Justice, in cooperation with the Head of the Defence Department and the Head of the Department of Interior, would designate the locations where POWs would be kept, and that the Defence Department would be in charge of the facilities.⁵⁷²

⁵⁶⁷ Witness Božić, Deputy Head of the Defence Department at the relevant time, testified: «...And then Mr.Šakota said Heliodrom and Ljubuški were specifically military prisons, whereas all the other prisons that wanted to convert to military prisons, the HVO had no jurisdiction over them. And it was known that there were other persons dealing with that field.» /T.36289/ Later on Božić clarified that this sentence did not relate to the HVO Main Staff, neither directly nor indirectly /T.36375/.

⁵⁶⁸ Exh.P07096. Mate Boban ordered that the Government of the HRHB and all competent bodies would implement the decision to close all detention centres unconditionally. Neither Petković nor any other member of the Main Staff had been member of the working group established for the implementation of the Boban's order to disband all detention centres.

⁵⁶⁹ Exh.P05104, P07096.

⁵⁷⁰ Exh.P07096.

⁵⁷¹ For example, on 18 April 1993 the Chief of the HVO Main Staff submitted the cease-fire order on the basis of the conclusions of Mate Boban and Alija Izetbegović, which included the exchange of POW (exh.P01959). Further, Boban authorizes the HRHB Government to implement the 10 December 1993 decision to close all detention camps (P07096). He appointed a coordinator for inmates and POWs and gave him instructions for such work (exh.P07341).

⁵⁷² Exh.P00292.

312. President Boban had the authority to supervise and ensure the conditions in the detention facilities according to the standards prescribed by the Geneva Conventions. Accordingly, on 15 September 1993 Boban submitted the order to the Defence Department and the HVO Main Staff. Part of the order was related to the combat activities of the HVO units. In relation to the detention centres Boban ordered:

3. Immediately ensure all conditions in case they have not been provided in the detention centres for prisoners of war, and ensure they are stipulated by the International Military Law and the Geneva Convention. Observe provisions of the Geneva Convention as well as other humanitarian standards during treatment of prisoners of war.

4. Allow undisturbed and unconditional flow of humanitarian aid by the UNHCR, UNICEF and ICRC in the entire area of the HRHB.⁵⁷³

313. Mate Boban also had appointing/removing authority in these matters. For instance, he appointed Tomo Šakota to the post of the coordinator for inmates and POWs in the HRHB.⁵⁷⁴ According to the instructions and the given powers, Šakota immediately proceeded to implement the agreement between the Croatian Minister of Foreign Affairs (Mate Granić) and Boban concerning the disbandment of detention camps. Šakota visited Dretelj and reported that “the major and most essential problems were how to reconcile the commands, tasks and orders /he/ was issued by the President of the Republic, with the positions held by the local authorities, that is to say, municipal bodies and administration”. Šakota further reported to Boban that the “reasoning and policies of the municipal authorities do not coincide and are not coordinated with the orders and commands you have issued with /.../”.⁵⁷⁵

314. In September 1993, in order to obtain access to the detention facilities in Dretelj and Gabela, the Assistant Head of the Defence Department for security, Ivica Lučić sought out and contacted Tomislav Šakota,⁵⁷⁶ which proves Šakota’s authority over these facilities. Božić testified that SIS reported directly to Mate Boban about the detention centres because of the severity of the situation and to enable him to take necessary measures.⁵⁷⁷

315. Boban was also involved in various specific problems relating to detention issues. For example, at a meeting with the representatives of the UNHCR, held on 20 July 1993, Boban

⁵⁷³ Exh.4D01067.

⁵⁷⁴ The witness Božić testified that he knew Tomislav Šakota personally and that he knew that Šakota had been appointed by Mate Boban to be coordinator of the isolation centres, and Boban was Šakota's superior /T.36286/.

⁵⁷⁵ Exh.P07341. In the report P06729 Tomislav Šakota was mentioned as a person from the Office of the HRHB President, who came to Gabela Prison from time to time.

⁵⁷⁶ Exh.P05133.

⁵⁷⁷ Witness Božić, T.36282-3; exh.2D00926.

raised the issue of transit visas for Muslims who wished to leave for other countries.⁵⁷⁸ In October 1993, the warden of the Heliodrom Prison Stanko Božić contacted Boban and informed him about the situation in the Prison and requested assistance. Boban sent Božić's letter to Valentin Ćorić, stating that "this was a very serious problem" and requesting to "sort the matter out within the limits of what is possible and the requirements of humanitarian law".⁵⁷⁹

316. Petković played no part and had no role in any of the above matters.

4.5.2. HVO/Government

317. According to its obligations prescribed by the international humanitarian law (paragraph 212), the HVO/Government established the Prisoner Exchange Commission in 1992.⁵⁸⁰ The minutes of the session of 8 February 1993 shows that the Commission for the exchange of prisoners was in operation.⁵⁸¹ Later that month, on the 22nd, the secretary of the Commission was appointed.⁵⁸² During the session of 11 March 1993, the HVO/Government decided that the Commission should plan a visit to Banja Luka.⁵⁸³ On 25 May 1993, at a meeting of the Commission, it was concluded that other people could be engaged because of the huge amount of work involved.⁵⁸⁴ On 5 July 1993 a new Commission for Exchange of Prisoners and Other Persons was established, as well as the Service as its executive organ.⁵⁸⁵ On 29 July 1993 the HVO/Government decided to expand the Service for the Exchange of Prisoners and Other Persons to include representatives of the municipalities of Mostar, Čapljina, Livno and Stolac.⁵⁸⁶ Neither Petković nor anybody else from the Main Staff was a member of the Commission. Nor did he have any role in the government.

318. The HVO/Government had authority to establish military prisons:

(i) On 22 February 1993 the HVO HZHB decided that a military prison had to be established in Posavina.⁵⁸⁷ In the work report for the period between January – June 1993 the Department of Justice and General Administration stated that in the reporting period district military and civilian prisons were established in Orašje and their wardens appointed.⁵⁸⁸

⁵⁷⁸ Exh.P09712, [REDACTED]

⁵⁷⁹ Exh.P05792.

⁵⁸⁰ Exh.P00921. At the meeting held on 17 December 1992, the HVO/Government decided that, apart from the two members already engaged in the Commission the remaining members should be appointed for the next session.

⁵⁸¹ Exh.P01439.

⁵⁸² Exh.P1536, c.4 (secretary Jerko Radić; the president Jozo Marić).

⁵⁸³ Exh.P01652, c.15.

⁵⁸⁴ Exh.P02520. There were no representatives of the HVO Main Staff in the Commission.

⁵⁸⁵ Exh.1D01669.

⁵⁸⁶ Exh.P03796.

⁵⁸⁷ Exh.P01536.

⁵⁸⁸ Exh.P03350, c.11; witness Buntić, T. 30646.

(ii) At a meeting held on 8 June 1993 the HVO HZHB decided to set up the County Military prison and the County Prison in Gabela⁵⁸⁹ and appointed Boko Previšić to the position of Head of the Prison.⁵⁹⁰ The Department of Justice and General Administration reported that Čapljina prison was relocated to Gabela and its warden appointed.⁵⁹¹ The Prison was closed and Previšić was relieved of duty by a Government decision of 22 December 1993.⁵⁹²

319. Petković was not included in these discussions or in the process leading up to the creation of these detention facilities, and he had no part in these activities.

320. The work reports of the HVO/Government contained the report about the POWs and the detention facilities (section Military Police). In the report for the period January – June 1993 it was stated that over six thousand POWs had stayed in appropriate centres, they were interrogated by SIS officers and the MP crime investigation services, that prison wardens had been appointed and that they undertook all co-ordination work.⁵⁹³ The Department of Justice and General Administration reported that Mostar District Prison was not functioning so the prisoners have been relocated to the Heliodrom.⁵⁹⁴

321. The witness Perković testified that detention centres for the POWs, according to Herceg-Bosna's regulations, were under the authority of the justice minister and the defence department.⁵⁹⁵ However, some evidence proves that the Department/Ministry of Justice was supposed to have broader competence in relation to the military detention facilities. Thus, at a meeting of the HVO Military Police Administration, held on 23 July 1993, it was concluded that the Department of Justice and Administration should appoint a warden to the Central Military Investigative Prison, as well as adopting all decisions regarding detainees.⁵⁹⁶ There is no evidence that the issue of the conflict or lack of competence in relation to detention facilities was ever raised at the meeting of the HVO/Government.

322. In mid-July 1993, the HVO (civil) authorities in Čapljina Municipality called upon the HVO/Government to relocate prisoners from Dretelj and Gabela. The HVO/Government discussed the request on 19 July 1993 and adopted these conclusions: (i) accommodation conditions, material and medical support for POWs should be secure and in accordance with the GC; if the existing accommodation conditions were not satisfactory, the head of the Department of Justice and General Administration, in coordination with the Defence Department and the Department of the Interior, should designate new sites and transfer POWs;

⁵⁸⁹ Exh.P02679.

⁵⁹⁰ Exh.P02674.

⁵⁹¹ Exh.P03350, c.11.

⁵⁹² Exh.P07668.

⁵⁹³ Exh.P04699, p. 16.

⁵⁹⁴ Exh.P03350, c.12.

⁵⁹⁵ Witness Perković, T.31982.

⁵⁹⁶ Exh.P03651.

(ii) the working group was to visit Čapljina, inspect accommodation conditions and propose measures to remedy the situation.⁵⁹⁷

323. The working group subsequently visited Čapljina Municipality and assessed the existing conditions concerning the care of the expelled people and refugees, as well as the accommodation of prisoners of war and isolated individuals. Buntić, who was a member of the working group which visited Čapljina, testified that their proposal was motivated by the fact that there were too many people in these localities, and that one half should be released immediately with the other half to be moved to other areas.⁵⁹⁸

324. On 20 July 1993, the HVO/Government was informed that the working group proposed the relocation of some of the detained individuals from Čapljina so that the conditions in these facilities would meet the standards of the international conventions. The HVO/Government decided that: (i) the access was to be allowed to the ICRC and other international organizations in order to inspect the conditions in the facilities where detained individuals were accommodated; (ii) a support was given for an initiative to open a transit centre in Ljubuški for individuals who wanted to leave the war effected areas and depart to third countries (UNHCR were informed about this initiative); (iii) Jadranko Prlić, Krešimir Zubak, Zoran Buntić and Martin Raguž were assigned to explore possibilities to accommodate a certain number of detained individuals from Čapljina.⁵⁹⁹ Petković played no part and had no knowledge of this matter.

325. Buntić testified that he along with other persons in charge made a concerted effort to find appropriate accommodation facilities, but none of the heads of the municipalities expressed a willingness to help the municipality of Čapljina and take in a certain number of people in.⁶⁰⁰

326. On 18 August 1993, the HVO/Government decided, *inter alia*, that the Defence Department and the Department of Justice and General Administration were charged with undertaking measures and activities relating to organizing military prisons and providing adequate capacity to accommodate POWs in accordance with international conventions.⁶⁰¹

⁵⁹⁷ Exh.P03560, P03565.

⁵⁹⁸ Witness Buntić, T.30584.

⁵⁹⁹ Exh.P03573. Witness Buntić, T.30577-9 (The witness testified that the working group did not go to Gabela or Dretelj, but only met with the municipal authorities of Čapljina because he «did not believe himself competent to go there because, as we saw from the evidence presented yesterday, Dretelj was established as a municipal prison by virtue of a decision of the municipal council of Čapljina municipality. And in keeping with the law on the enforcement of sentences, I as a representative of the department for justice and general administration, I had no powers or qualifications to enter such a facility. And at the end of the day, even if we said that I did have some authority, I did not have any powers in that sense. All that we learned, therefore, was from Mr.Kordić and his assistants.”)

⁶⁰⁰ Witness Buntić, T.30584-5.

⁶⁰¹ Exh.P04275, c.II.3.

327. On 6 September 1993, the HVO/Government concluded that the conditions of detention of persons captured as active-duty and reserve enemy forces and persons preparing an armed rebellion were unsatisfactory and accordingly adopted several measures to improve the situation in those detention facilities. None of these tasks were entrusted to the HVO Main Staff.⁶⁰² In relation to this exhibit, witness Perković testified:

*We can see two important things from the minutes here, first, that the HVO discusses those problems on the basis of oral reports; in other words, there is no paper trail, there are no documents that were used as a basis for the discussion at this meeting. And I would like to remind you that in accordance with the Rules of Procedure of the HVO, the HVO departments were duty-bound to provide written materials for the discussion at the meetings of the HVO. And it is quite clear to me from this that the jurisdiction was not that of the HVO HZ HB, but it is obviously within the jurisdiction of the local authorities, municipal authorities, the municipal HVOs. And in this context it is logical to conclude, I say, that the HVO HZ HB was not responsible for the situation as it was up until that time, but taking as our starting point that the document that we had seen just a little while ago, where the HVO indicates that there are violations of the Geneva Conventions pertaining to war, the conclusion that is logical is that since the local authorities are doing nothing to rectify the situation the HVO, as a guarantor of the compliance with those conventions, takes it upon itself to perform all those tasks that have to be done in order to rectify the situations -- the situation and bring it in line with those conventions to improve the conditions of life of those people. And to me it seems completely consistent and completely responsible conduct on the part of the Croatian Defence Council of the Croatian Community of Herceg-Bosna in a situation where the local authorities are in violation of the international regulations and the regulations of the Croatian Community of Herceg-Bosna.*⁶⁰³

328. Buntić testified that detention facilities in Gabela and Dretelj were under the remit of the Čapljina municipality.⁶⁰⁴

329. As noted already, Petković played no part and had no role in the administration of detention facilities. He cannot therefore be held liable for any crime committed in that context.

4.5.3. Defence Department/Ministry

⁶⁰² Exh.P04841.

⁶⁰³ Witness Perković, T.31979. Perković further explained that «local authorities» meant «municipal authorities», T.31980.

⁶⁰⁴ Witness Buntić, T.30580.

330. As explained above, the Defence Department was in charge of the detention facilities established by the Department of Justice, in cooperation with the Head of the Defence Department and the Head of the Department of Interior (paragraph 311). On 11 February 1993, the Head of the Defence Department issued *Instructions on house rules in military prisoner-of-war centres*, prescribing *inter alia* that the implementation of the *Instructions* would be monitored by a commission of the Defence Department appointed by the Head of the Defence Department, and that the commission would submit monthly written reports to the Head of the Defence Department.⁶⁰⁵ This document did not foresee any role for the Main Staff nor its Chief.

331. The evidence shows that the commission was established on 6 August 1993. The Commission was authorized to take charge of all detention units and prisons in which POW and military detainees were held. The Commission had the authority and duty to compile a list of all detainees, sort them into categories, establish control over all detention units and prisons, solve any problems relating to functioning and security, regulate release from detention, prisoner exchange and all other issues relating to the work and functioning of detention units and prisons. The order was sent to nine detention unit and prison commanders.⁶⁰⁶

332. During the meeting of the Head's of the Defence Department board, held on 2 September 1993, the Head of the HVO Military Police Administration Ćorić reported that military prisons were examples of very bad practice. The Head of the Defence Department Stojić explained that, in his opinion, there were two military prisons, Heliodrom and Ljubuški, and other places where detainees were held, like Gabela and Dretelj, he did not consider as military facilities and refused to personally endorse the work of these institutions. The Head of the Security Sector and the Chief of SIS Lučić was of the view that they had to say precisely who was behind those prisons (Gabela and Dretelj), who was operating there and what measures could be taken. It was decided that the SIS, the MP Administration and the Health Sector would draft separate reports on the work of the Dretelj and Gabela prisons and submit them to the Head of the Defence Department.⁶⁰⁷ According to the minutes of the meeting, the Deputy Chief of the HVO Main Staff, Stanko Matić, was the representative of the HVO Main Staff on the board; he did not participate in the discussion about military prisons, nor was his assistance sought, and the HVO Main Staff was not involved in conducting the investigation into Dretelj and Gabela detention units.

333. The assistant Defence Minister for security, Marjan Biškić, chaired the working group for the implementation of the order issued by the President Boban of 10 December 1993 to

⁶⁰⁵ Exh.P01474, Articles 28, 29.

⁶⁰⁶ Exh.P03995, P04002; P04141.

⁶⁰⁷ Exh.P04756, item 3, p.5.

disband all detention centres in Herceg-Bosna. There were no representatives of the HVO Main Staff in this working group,⁶⁰⁸ nor was the HVO Main Staff assigned any task in relation to the implementation of Boban's 10 December 1993 order.

334. The witness Marjan explained in his report some aspects of responsibility and authority of the Defence Department with respect to military prison and detention centres.⁶⁰⁹ This explanation was mistakenly placed in the section "Compulsory military service" and should have been placed, according to Marjan's testimony, in the section entitled "employee relationships" because of the authority held by the Head of the Defence Department over prisoners of war, military prisons and military detention centres.⁶¹⁰

335. The Main Staff was not authorized and did not have competence to participate in the activities of the Defence Department/Ministry related to the POWs and detention facilities.

4.5.4. Military Police

Establishment of military prisons

336. Military Police had competence in the establishment and running of military prisons. In its work report for 1992, MP Administration reported that by the end of June it had established three military investigation prisons - in Ljubuški, Mostar and Livno. In July a military investigation prison was established in Čapljina and later on in 1992 the request of the MPA was approved and the Central Military Prison in Mostar was established. Mile Pušić was appointed prison commander. "All prisoners of war and detainees are sent to the CVZ /Central Military Prison/, while prisoners who have committed misdemeanors or less serious criminal offences as well as detainees who have been given detention by the commander in authority, are kept in military police company bases in military detention facilities during investigation." The MPA further reported that the Central Military Prison in Mostar was placed under the authority of the MPA Department for Criminal Investigation.⁶¹¹

337. In an order dated the 22 September 1992, regarding the establishment of the Central Military Prison in the barracks situated at Mostar Heliostrom, the Chief of the MP Administration Ćorić decided that both prisoners of war and detainees, both military and civilian, would be accommodated and guarded in the Prison. The prison governor would be responsible for the operation and security of the Prison.⁶¹²

338. The same day, 22 September 1992, the Chief of the MP Administration Ćorić issued the *Instructions for the Operation of the Central Military Prison in Mostar*.⁶¹³ According to this

⁶⁰⁸ Exh.P07124, P07143. Mate Boban order of 10 December 1993 is exh. P07096.

⁶⁰⁹ Exh.2D02000, paras. 119 and 120.

⁶¹⁰ Witness Marjan, T.35749.

⁶¹¹ Exh.P00956, p.14.

⁶¹² Exh.P00513.

⁶¹³ Exh.P00514.

document, the prison commander was responsible for all work and everyday life in the prison, especially for the treatment of POWs in accordance with the Geneva Conventions. According to the payroll list of the Central Military Prison for November 1992, the employees in the Prison were part of the HVO Military Police.⁶¹⁴ The warden of the CMP Heliodrom in the report of 14 August 1993 stated that the personnel of the Prison “the whole time have been part of the military police unit”.⁶¹⁵

339. Petković did not participate in the activities of the Military Police to establish military prisons and appoint wardens. There is no evidence that reports about these activities were sent to the Main Staff.

Running the military prisons

340. Neither Petković nor the Main Staff played any part in the running of military prisons, nor has this been alleged in the Indictment. Crimes committed therein cannot, therefore, be attributed to him.

341. The MP Administration reported for 1992 that the treatment of prisoners and prison conditions were in accordance with international standards. The situation in the Central Military Prison in Mostar was properly recorded and reports were sent to the Military Police Administration on a daily basis.⁶¹⁶ The evidence shows that the reports of the Central Military Prison governor were indeed regularly sent to the Chief of the HVO MP Administration. The evidence also shows that other reports about the Central Military Prison in Mostar-Heliodrom, as well as reports about other military prisons and detention facilities were sent to the Chief of the HVO MP Administration.⁶¹⁷

342. In a report submitted to the HZHB President Mate Boban on 9 March 1993, the Chief of the HVO MP Administration Ćorić stated that the “Military Police has concerned itself with several thousand detainees thus far, of whom the majority was released at numerous exchanges of prisoners of war”.⁶¹⁸

343. The record clearly reveals that Petković played no part and had no responsibility with regard to the running, supervising and conditions of detention of prisoners.

Exchange of prisoners

344. The Military Police was involved in exchanging POWs. As reported by the MP Administration, it had representatives on negotiating committees for exchanges and in conducting actual exchanges. “In the Military Police Administration the necessary records are

⁶¹⁴ Exh.P00968

⁶¹⁵ Exh.P04186. Also P04999, P05006; P05160.

⁶¹⁶ Exh. P00956, p.14.

⁶¹⁷ Annex 12: *Reports of wardens of detention facilities as of 1 July 1993.*

⁶¹⁸ Exh.P01635.

kept on our imprisoned defenders and the prisoners of war from the enemy side”, reported the MPA in its 1992 report.⁶¹⁹

Other matters

345. The evidence shows that the MP Administration controlled visits to the Heliodrom Central Military Prison and other detention facilities,⁶²⁰ had the authority to decide about the transfer of prisoners,⁶²¹ controlled or had a substantive role in the release of prisoners,⁶²² supervised and/or was informed about the situation in the various detention centres.⁶²³

346. It was the Military Police who implemented the order of the HRHB President Boban of 10 December 1993 to disband all detention centres in Herceg-Bosna.⁶²⁴

347. Petković was not involved in Military Police activities related to POWs or detention facilities. Nor has it been alleged, nor put to him in cross-examination.

4.5.5. Conclusion

348. Petković did not have any competence or authority to establish, run and/or supervise any detention facility in Herceg-Bosna, and had no role in determining the conditions of confinement. He did not plan, instigate, order, commit or otherwise aided and abetted in the planning, preparation or execution of any crime related to the conditions of confinement, and therefore cannot be responsible for the conditions of confinement crimes pursuant to Article 7/1. Furthermore, he was not in a superior-subordinate relationship with the wardens of military prisons and other detention facilities (or those competent to order release), nor had effective control over them. Accordingly, Petković cannot be held responsible for the crimes related to the conditions of confinement.

4.6. Prison in Prozor

349. As is to be expected from the nature of his role, the record reveals that Petković had no role and no authority in regard to the prison in Prozor.

⁶¹⁹ Exh.P00956, p.15.

⁶²⁰ Exh.P03292, P03254.

⁶²¹ Exh.P03345, P04101; P05193; P05194; P05214; P05302; P05312

⁶²² Exh.P03133, P03167, P03309, P03411, P03864, P03618, P10782, P03753, P03942, P04201, P10175, P10178, P04297, P10187, P10190, P10191, P04572, P04404.

⁶²³ Assistant Chief for Security of the MPA Branimir Tucak inspected the military prisons in Ljubuški and Dretelj-Čapljina on 11 July 1993 and submitted the report to the Chief of the HVO Military Police Valentin Ćorić – exh. P03377; on 15 July 1993 the commander of the 3rd Company of the 5th Battalion of the HVO MP reported to the Chief of the HVO MPA Valentin Ćorić about the circumstances of shooting incident in Dretelj – exh. P03476; on 29 July 1993 Branimir Tucak reported to the Chief of the HVO MPA Ćorić about his inspection of Dretelj on 27 July – exh. P03794; on 8 August 1993 Branimir Tucak reported about the inspection of Heliodrom – exh. P04031; on 10 September 1993 Branimir Tucak ordered that an assessment of the situation in the Heliodrom, Dretelj and Gabela prisons be made – exh. P04921; a monthly report about the situation in Ljubuški Prison submitted to the Chief of the HVO MPA on 5 October 1993 – P05642; monthly report about the situation in Ljubuški Prison submitted to the Chief of the HVO MPA on 11 November 1993 – P06349; monthly report of the Heliodrom Prison warden submitted on 9 November to the Chief of the HVO MPA – exh. P06552; exh.1D02291, P06695, P06729, P06805

⁶²⁴ Exh.P07148, P07143, P07419, P07178.

350. Until 6 July 1993, only members of the BH Army captured during fighting in the area were imprisoned in Prozor.⁶²⁵ The Prozor Municipality did not have a detention facility to accommodate a large number of prisoners and therefore prisoners were usually transferred to the Ljubuški Prison.⁶²⁶

351. On 6 July 1993, the Commander of the OZ NWH, Šiljeg issued an order that all Muslim men aged between 16 and 60 should be detained.⁶²⁷ Šiljeg further ordered that the final destination for all arrested military conscripts of Muslim nationality from the Rama area should be urgently determined through the SIS of NWH OZ and the SIS of the Defence Department, and the arrested persons should then be immediately sent to the designated location.⁶²⁸ On 7 July 1993 the Brigade Commander ordered that the Civilian Protection should organize accommodation and meals for the detained military-age Muslims in the Secondary School,⁶²⁹ and the Home Guard should ensure the security of the School.⁶³⁰ The Brigade Commander requested from the Police Station that two policemen be included in maintaining the security of the School,⁶³¹ and ordered the Chief of Medical Corps to provide regular visits to the School.⁶³² On 11 July 1993, 237 persons were transferred from Prozor to Ljubuški Prison, and then to Dretelj.⁶³³

352. On 13 July 1993, Šiljeg sent a report to the Head of the Defence Department Stojić and the Chief of the Main Staff Petković and requested, *inter alia*, the instructions regarding the accommodation of the detained military conscripts of Muslim nationality: «13. We requested a reply regarding relocating Muslims v/o (liable for military service) from Rama to Herzegovina. Because of the danger to our men from desertion and reprisals, but there was no reply until we had, on our own initiative, driven them into Ljubuški. It is unclear to me how we then found a reply and accommodation.»⁶³⁴ On 14 July 1993 Petković replied to Šiljeg that he had given him permission to transfer interned Muslim men from the Prozor area.⁶³⁵

353. It should be noted that the Prosecution asserts in paragraph 17.4.(k) of the Indictment that Petković participated in the forcible transfer and deportation “such as ... the removal of

⁶²⁵[REDACTED] – exh.P09715, p.5 and T.7927[REDACTED] the Prosecution did not prove he was a civilian. There is no other evidence about the alleged internment of Muslim men on 4 July 1993 in the Prozor Municipality.

⁶²⁶ Exh.P02521, P02541.

⁶²⁷ Exh.P03234

⁶²⁸ Exh.P03227

⁶²⁹ Exh.P03266

⁶³⁰ Exh.P03270.

⁶³¹ Exh.P03267.

⁶³² Exh.P03286.

⁶³³ Exh.P03401, P03380.

⁶³⁴ Exh.P03418, item 13.

⁶³⁵ Exh.P03455, item 12.

Muslims from Prozor Municipality in July 1993”. The Prosecution did not make any reference in its Pre-Trial Brief to any material fact or element in support of this allegation. As such, it is inadequate and should be disregarded. In any case, the above-mentioned reply of Petković to Šiljeg about the transport of the detained able-bodied Muslim men to Hercegovina could not be read as implicating Petković in the commission of the alleged crimes. As the document relates to the transfer of detained able-bodied Muslim men from one prison to another, it is obvious that it does not support the Prosecution thesis about Petković’s alleged participation in the forcible/unlawful transfer of Muslim *civilians* from Prozor: (i) Petković’s *mens rea* was that Muslim able-bodied men were reserve members of the BH Army, not civilians (see para.279); (ii) transfer of detainees from one prison to another because of reasons of accommodation does not constitute the *actus reus* of the crime of forcible/unlawful transfer of civilians.

354. On 16 July 1993, the SIS of the RAMA Brigade prepared the transfer of the interned able-bodied Muslim men to a prison in Herzegovina.⁶³⁶ However, the Chief of the HVO MPA Ćorić replied on 19 July 1993 that “due to the large number of detained persons (of Muslim ethnicity) we are unable to receive the people” and that therefore prisoners should continue to be detained “within the operations zone”.⁶³⁷ Thus detained BH Army military conscripts remained in Prozor/Rama. The permission granted by Petković dated 14 July 1993 for the transfer of the prisoners had no relevance, because he was not a person who could effectively decide about the transfer of the prisoners. They were and remained under the authority of others during that time.

355. On 14 August 1993, all detainees under 15 or over 60 years of age, as well as ill persons, were released pursuant to the decision of the Rama (civilian) HVO,⁶³⁸ which shows again that local civilian authorities were competent over the prison. In November 1993, 105 prisoners were transferred to Gabela Prison due to lack of accommodation space.⁶³⁹ In mid-December 1993, pursuant to the 10 December 1993 order of President Boban disbanding of all detention centres, the then Chief of the MP Administration Lavrić ordered that all POWs should be transferred from the Rama Military Prison to the Heliodrom Prison on 15 December 1993,⁶⁴⁰ which occurred the following day.⁶⁴¹

356. On 14 August 1993, Petković, then Deputy Commander of the Main Staff, replied to the Commander of the OZ NWH Šiljeg to accept the meeting with the new representative of the European Community and further: “If there is anything in Prozor, show it to them

⁶³⁶ Exh.P03498 (P09732 is a document of the same content). The signature no. of the documents is: 03-02-82/93.

⁶³⁷ Exh.P03551 (response to the information no: 03-02-82/93, which is exh. P03498).

⁶³⁸ Exh.P04193.

⁶³⁹ Exh.P06662.

⁶⁴⁰ Exh.P07174.

⁶⁴¹ Exh.P07212

(prisoners), but make them presentable.”⁶⁴² On the basis of this document the Prosecution alleges that Petković “directed, participated in and facilitated the concealment of crimes committed by Herceg-Bosna/HVO forces”.⁶⁴³ In relation to the recommendation to make the prisoners, if any, presentable, Milivoj Petković testified:

At a point in time, it is quite normal, if somebody announces a visit, that you take a look at the people that are going to be visited; that you talk to them, that you tell them that there would be a visit, so button up your shirts, tighten your belts, that kind of thing, let's see whether you have put the place you slept in in order. So that's something that any soldier would do and is expected of a soldier.

And let me tell you that in this particular Detention Unit where I am at present, when there's a visit, we would be told, Please put your facilities in order. So I think that is quite justified and very human, and nothing was upset by that.

*Now, the serious consequences two or three hours later cannot be covered up or hidden in any way before the ICRC turned up.*⁶⁴⁴

357. The evidence proves, as explained, that the commander of the HVO Brigade in Prozor/Rama was involved indeed, and together with the Military Police⁶⁴⁵ and SIS,⁶⁴⁶ was in charge and control of the detention facility in Prozor/Rama. Pursuant to the *Decision on the Basic Principles of organization of the Defence Department* (see para.70), brigade commanders were responsible to the Head of the Defence Department for all non-combat activities, including detention facilities.⁶⁴⁷ Petković, as the Chief of the Main Staff at the relevant time, was not superior to the HVO commanders in non-combat matters relevant for defence, but only within the scope of powers vested in him by the President of the HZHB, which related to combat matters (see para.70). Whatever issue went beyond his delegated powers did not concern him. This was a case regarding matters of detention.

4.7. Dretelj and Gabela⁶⁴⁸

358. The record makes it clear that Petković had no authority and no role in relation to the setting up or administration of Dretelj or Gabela detention facilities, and accordingly reports

⁶⁴² Exh.P04188

⁶⁴³ Second Amended Indictment, para.17.4(o).

⁶⁴⁴ Witness Petković, T.49832.

⁶⁴⁵ Exh.P05117 - in September 1993 the Command of the 2nd Light Assault MP Battalion informed Branimir Tucak in the HVO MPA that 256 men between 16 and 60 were in isolation; exh.P05892.

⁶⁴⁶ Exh.P03906, P03948, P03971, P04026, P09734; [REDACTED] T.10371, 10374, 10387, 10434, 10436.

⁶⁴⁷ Exh.P00586, Section B.IX. See also paras.104-106.

⁶⁴⁸ Witness Božić, speaking about Dretelj and Gabela, said that «it was known that there were other persons dealing with that field» (meaning detention centres like Dretelj and Gabela), and further clarified that this sentence did not relate to the HVO Main Staff, neither directly not indirectly, T.36375.

about the conditions of confinement, incidents and/or mistreatment of the detained persons were not sent to him. Nor did he partake in discussions concerning these facilities.

359. Disarmed Muslim soldiers of the 1st HVO Brigade and able-bodied Muslims in the Municipalities Stolac, Čapljina, Neum were interned in Dretelj and Gabela. The 4th Company of the 3rd Battalion of the Military Police was accommodated in the barracks in Dretelj,⁶⁴⁹ and Gabela was the county military prison, as well as the county prison, set up by the Decision of the HVO/Government of 8 June 1993.⁶⁵⁰

360. The disarmament and the isolation of Muslim HVO soldiers and the isolation of the BH Army military conscripts was carried out in the municipalities of Stolac, Čapljina and Neum⁶⁵¹ upon the order of the Commander of the 1st Brigade Nedjeljko Obradović.⁶⁵² The evidence proves that the order issued by Petković was not forwarded to the 1st Brigade⁶⁵³, and there is no evidence that the HVO Supreme Commander Boban sent the order directly to the Commander of the 1st Brigade.⁶⁵⁴ However, some evidence indicates that the local HVO government gave such an order to commander Obradović.⁶⁵⁵

361. The evidence proves that the Military Police and the 1st HVO Brigade were both involved in accommodating of detained persons. The Commander of the MP 3rd Company of the 3rd Battalion, Krešimir Bogdanović, stated that all detained persons were accommodated in the buildings of the Dretelj barracks and that “a proper record of them is kept”, and that 18 military policemen were constantly used for taking, searching and guarding the detainees.⁶⁵⁶ On 3 July 1993, Bogdanović reported that the MP requested the help of the 1st Brigade to secure the buildings and “the initiative for doing everything needed to house the prisoners that came from our /MP/ side”, like water, medical assistance in cooperation with the Brigade.⁶⁵⁷

362. The evidence also shows that the local HVO government in Čapljina was engaged in matters of treatment of detainees and prisoners. In mid-July 1993, the HVO Čapljina (local government) requested the HVO/Government to relocate the prisoners, and the HVO/Government established a working group tasked with visiting Čapljina, inspect the accommodation conditions and propose measures to remedy the situation.⁶⁵⁸

⁶⁴⁹ Exh.P00861, P00893

⁶⁵⁰ Exh.P02679, P02674.

⁶⁵¹ Exh.P03121 (MP report that the brought persons were mainly from the area of Čapljina and Stolac, while a small number were brought by the MP platoon from Neum, p.3.)

⁶⁵² Witness Pavlović, T.46851

⁶⁵³ Exh.P03019; see also para.250.

⁶⁵⁴ Witness Pavlović testified that he did not know who gave the order to the Commander of the 1st Brigade, T.46911

⁶⁵⁵ Exh.P10133[REDACTED] paras.26,27. The president of the local government in Čapljina, Pero Marković, was a member of the HZHB Presidency.

⁶⁵⁶ Exh.P03121, p.3.

⁶⁵⁷ Exh.P03134, p 1-2.

⁶⁵⁸ Exh.P03560, item 7.

363. Detention facilities were closed in Dretelj in September 1993,⁶⁵⁹ and in Gabela in December 1993 by the decision of the HVO/Government.⁶⁶⁰

364. The Commander of the 1st HVO Brigade was involved indeed in running the detention facilities in Dretelj and Gabela. However, neither he nor any other commander, soldier and/or person submitted any report to the Main Staff about detention facilities in Gabela and/or Dretelj. Petković did not submit any order and/or instruction, recommendation or any other document in relation to Dretelj and Gabela detention facilities. Petković, as the Chief of the Main Staff until 24 July 1993, was not in a superior-subordinate relationship with (nor did he have effective control over) the Commander of the 1st HVO Brigade in relation to the detention facilities and other non-combat matters. As already explained, pursuant to the *Decision on the Basic Principles of organization of the Defence Department* brigade commanders were responsible to the Head of the Defence Department for all non-combat activities, including detention facilities and to the Chief of the Main Staff in combat matters, within the scope of powers vested in him by the President of the HZHB (see paras.70, 104, 105).

5. UNLAWFUL LABOUR

5.1. Applicable law

365. International law provides for limited circumstances in which civilians and prisoners of war may be made to work against their will.⁶⁶¹ What those circumstances are exactly, as a matter of international law, is not entirely clear and there may be situations where the (un)lawfulness of compulsory labour might be questionable.

366. Emergency situations of the kind faced by the HVO during the relevant period have been said to provide for the sort of circumstances where normally protected groups might be required to perform “quasi-military work”:

*“Emergencies, however, may arise, when the population may properly be impressed to perform labour, or render quasi military service, for the purposes of the occupying belligerent; but such service cannot properly be extended to bearing arms as soldiers.”*⁶⁶²

367. Case law also reveals that the very sort of work relevant to the present case (work on defensive structures) falls within the category of work that is arguably permissible under

⁶⁵⁹ Exh.P05662 (the letter of the President of the HRHB Government Jadranko Prlić to Cedric Thornberry, p.6.). The decision for closing down Dretelj was issued after the Tuđman-Izetbegović Joint Declaration of 14 September 1993 (exh.P05051), according to which all detention camps should be disbanded and all detainees released immediately (item 2).

⁶⁶⁰ Exh.P07668.

⁶⁶¹ See generally, *Krnjelac* TJ, pars 359-360 and references given therein; *Naletilic* TJ, par 252. Articles 49-50 GE49 III; Articles 40 and 51 GE49 IV.

⁶⁶² Winthrop, *Military Law and Precedents*, at 811.

existing law and that requiring this sort of work from normally protected categories of individuals is not *per se* unlawful. At Nuremberg, the following was stated (*High Command case*):

*“One serious question that confronts us arises as to the use of prisoners of war for the construction of fortifications. It is pointed out that the Hague Convention specifically prohibited the use of prisoners of war for any work in connection with the operations of war, whereas the later Geneva Conventions provided that there shall be no direct connection with the operations of war. This situation is further complicated by the fact that when the proposal was made to definitely specify the exclusion of the building of fortifications, objection was made before the conference to that limitation, and such definite exclusion of the use of prisoners, was not adopted. It is no defence in the view of this Tribunal to assert that international crimes were committed by an adversary, but as evidence given to the interpretation of what constituted accepted use of prisoners of war under International Law, such evidence is pertinent. At any rate, it appears that the illegality of such use was by no means clear. The use of prisoners of war in the construction of fortifications is a charge directed against the field commanders on trial here. This Tribunal is of the opinion that in view of the uncertainty of International Law as to this matter, orders providing for such use from superior authorities, not involving the use of prisoners of war in dangerous areas, were not criminal upon their face, but a matter which a field commander had the right to assume was properly determined by the legal authorities upon higher levels.”*⁶⁶³

368. The ICRC GC49 Commentary reflects the same uncertainties as to the exact scope or nature of prohibited work.⁶⁶⁴ Those uncertainties must unquestionably benefit the accused both because the law is ambiguous on that point and because resolving that ambiguity to the prejudice of the accused would constitute a violation of the principle of legality.

5.2. Petković's orders

369. On 15 July 1993, after the sabotage actions of the BH Army at the Dubrava plateau in the Stolac and Čapljina Municipalities⁶⁶⁵ and the failure of the HVO military operation «South»,⁶⁶⁶ Petković issued an order to all units in the Operative Zone SEH to switch to the defence lines reached and «organise immediately the fortification and barricading of defence lines reached and in the zone depth by engaging engineering equipment, prisoners and detainees».⁶⁶⁷ The order was not executed.

370. Therefore, on 20 July 1993, Petković issued a speeding up order that «in the course of tomorrow, 21 July 1993, by 2400 hours» the defence line should be consolidated. He gave the

⁶⁶³ High Command, 97-98.

⁶⁶⁴ See Article 50 GC49 III and ICRC Commentary.

⁶⁶⁵ Exh.P10145, P09935, 4D01042, 4D01096, 4D01101; witness Beneta, T.46618-26; Petković, T.49599.

⁶⁶⁶ HVO operation launched under the command of the Brigadier Luka Džanko, who was engaged by Mate Boban, and Petković did not participate in the operation – exh.4D01695 (members of the command of the operation), P03048; witness Beneta, T.46629-30; Petković, T.49598-49600.

⁶⁶⁷ Exh.P03474.

instruction to «engage the prisoners and available machinery in the completion of this task». ⁶⁶⁸
This second order was not carried out either.

371. The Prosecution did not allege in the Indictment, nor did it put to Petković in cross-examination that either of these orders were unlawful nor could the order be a basis for his liability. Such an allegation does not therefore form part of the Prosecution case.

372. Furthermore, it should be noted that Petković reasonably assumed that these orders were lawful and in compliance with humanitarian law. On a different reading of the law and with hindsight, his assumption might have been incorrect, but he did not have the benefit of hindsight and did not act with a culpable mindset as is necessary to enter a conviction in this matter.

373. Petković had no reason to believe that persons not eligible as a matter of humanitarian law would be sent to do work that was prohibited for them. His understanding was that all detained persons had to be categorized as either POWs (active or reserve members of the BH Army) or military detainees (HVO soldiers detained for any reason), and that only detainees (i.e. HVO soldiers) would be sent to work at the front-line, in the zone of combat. ⁶⁶⁹ POWs were not supposed to be forced to work in dangerous areas. The responsibility to see to the lawful implementation of the order belonged to those who had received it; as a matter of international law, an officer is entitled to assume that his orders will be implemented lawfully.

374. It was reasonable for Petković to assume that his order, if carried out as he had intended them, would be complied with in a lawful manner and that labourers would be safe since the authorities requested to provide labourers were competent to make a determination as to whom should be eligible for such work. Only they had all the relevant information pertaining to the status of detainees and were the only one competent to release detainees and prisoners for that purpose (and with the actual means to protect them and remove them from danger if it arose). Petković simply had no way to make that determination for himself nor was he able (nor was he required) to verify that his orders had been complied with in a lawful manner. That responsibility lay fairly with those who had been asked to provide the labourers. For instance, local detaining authorities could have lawfully selected individuals who were members of the HVO and put them to work without committing a war crime as they would not have come within one of the protected categories. Petković had no information that those authorities had selected individuals whom, under existing law, could not be selected for that purpose. To the extent that an unlawful act occurred in the selection process, it would have to be placed on the shoulders of those who made those choices, not Petković's.

⁶⁶⁸ Exh.P03592.

⁶⁶⁹ Witness Petković, T.50677-9, 50681.

375. Petković's order was also lawful from the point of view of "domestic" law. Pursuant to the *Instruction on House Rules in Military Prisoner-of-War Centres*, a prisoner may be taken out of the centre temporarily only on the basis of a written order of the centre administrator (warden).⁶⁷⁰ A warden was supposed to control the work of the prisoners of war.⁶⁷¹ Thus, the warden of the Heliodrom Prison, Stanko Božić, on 10 August 1993 ordered that no prisoner who had not been registered by the ICRC was to go to work that day.⁶⁷² Božić also refused to fulfill the request of the 2nd MP Battalion to place 30 detainees at their disposal, explaining that numbers of the 2nd Battalion had mistreated prisoners during the labour period.⁶⁷³ Petković could reasonably assume that a warden would ensure that humanitarian law be complied with so that POWs would not be sent to perform unlawful work or be exposed to danger whilst performing it. He did not have the responsibility, nor the means, to verify in each instance that this was the case.

376. In light of the above, it may be said that (i) the Petković's orders were not carried out, (ii) these orders were, in any case, not *per se* unlawful, (iii) if they were said to have been unlawful, there was enough uncertainty about that fact to have the principle of legality (and the defence of mistake of law/fact) protect the accused against the effect of those uncertainties (*in dubio pro reo*),⁶⁷⁴ (iv) this uncertainty and the view taken by Petković about the lawfulness of his orders prevented him from forming a culpable mindset. For all these reasons, the issuance of those orders cannot form the basis of a criminal conviction for ordering, nor could they be regarded as evidence of his alleged involvement in a JCE or aiding and abetting the perpetrators of the crime of unlawful labour.⁶⁷⁵

⁶⁷⁰ Exh.P01474, Article 26.

⁶⁷¹ Petković testified that requests for the labour of the detained persons were sent to the prison warden and that he/she had the authority to reject the request, T.50686.

⁶⁷² Exh.P04093.

⁶⁷³ Exh.P04104.

⁶⁷⁴ See, e.g., Llandovery Castle, German Supreme Court/Reichsgericht (Leipzig), 16 July 1921, at 2585/721 (and 26 AJIL, 708 et seq). See, also, for illustrations of the application of that principle, *In re Wintgen*, Netherlands, Special Court of Cassation (Bijzondere Raad van Cassatie), 6 July 1949, in *NederJ* 1949 no 540, at 484-486; *In re B*, Netherlands, Field Court Martial, (Krijnsraad te Velde), 2 January 1951, in *NederJ* 1952, no 247. All cited in Cassese, *International Criminal Law*, 295-299.

⁶⁷⁵ Petković testified: «Your Honours, Milivoj Petkovic issued such orders, but in those orders he ordered that a labour be conducted with the engineers' equipment and that the manpower should be used as auxiliary manpower several kilometres away from the line. So it always says in the orders "use engineering equipment," and we know that when engineering units work -- you need one soldier, not 100. All the others were in a safe place and were completely protected. Milivoj Petkovic issued specific orders. I don't want to get away from that, but through my orders the lives of not a single soldier was under threat, and none of my soldiers were killed, because they were not where the trench-digging was going on. They were either in warehouses -- where resources were later transported by truck to certain positions. /.../ And I claim that pursuant to the orders of the 15th, the 20th, and the 8th, there were no fatalities amongst the soldiers who were taken out. And, on the other hand, if we look at orders, where it says that -- well, my orders, at least, of the 15th, it says that my orders were not carried out. So I am not the person responsible for each order issued from the start to the finish of the war. Every period had its own people who were in command positions. And I stand by each of the orders I issued, and I will always be happy to expound and explain them before this Tribunal. And when I was at the head of the Main Staff, I'm willing to speak about every specific case while I was head of the Main Staff, every case that occurred, because -

6. MOSTAR (counts 24, 25, 26)

377. The Indictment charges Petković with counts of unlawful attack on civilians, unlawful infliction of terror on civilians and cruel treatment /Mostar siege/ with respect to events in Mostar as of 30 June 1993.

378. It is submitted that, upon analysis of the evidence, a reasonable trier of fact could not infer that the aforementioned crimes were proven against Petković, taking into account the continued fighting between HVO forces and the BH Army in and around Mostar, as well as the *actual* powers and responsibilities of Petković during the limited time when he held the position of Chief of the Main Staff (i.e., until 24 July 1993).

6.1. Alleged attacks on civilians

379. The *actus reus* of the offence of unlawful attack on civilians comprises of an attack which causes deaths and/or serious bodily injury within the civilian population or damage to civilian property; the required *mens rea* is that the attack was conducted *intentionally* in the knowledge, or when it was impossible not to know, that civilians or civilian property were being *targeted* not through military necessity.⁶⁷⁶ Indiscriminate attacks, which strike civilians or civilian objects and military objectives without distinction, *may* qualify as direct attacks against civilians.⁶⁷⁷ Whether an attack is deemed to be either direct or indiscriminate, the Prosecution still has the burden of proving beyond a reasonable doubt that civilians were the intentional target of the attack or that an attack was indiscriminate.⁶⁷⁸

6.1.1. Shelling

380. It is not in dispute that a visible and protracted military conflict between HVO forces and the BH Army was taking place in an urban and densely populated area. The evidence shows that intense fighting was ongoing from June 30 and that shelling was a method used by both parties.⁶⁷⁹ For example, following an BH Army attack on the 30 June on the HVO's 'Tihomir Mišić' Barracks, the [REDACTED] reported that fighting continued the following day, with 'shelling increasing during the afternoon.'⁶⁸⁰ Numerous reports for the rest of July show a consistent pattern of combat between the HVO and the BH Army. From a military

- and where I signed. Outside that, I do not accept responsibility, because I did not order it myself, nor did I ask that anything like that be done.» T.49817-49820

⁶⁷⁶ *Blaškić* TJ, para. 180.

⁶⁷⁷ *Galic* TJ, para. 57.

⁶⁷⁸ That the burden of proof rests on the Prosecution to prove the criminal liability of the accused has been clearly stated by this very Chamber: '[T]he Prosecution, upon which the burden of proof rests, and as a result, must prove all of the necessary facts to establish the guilt of the accused...' See *Prlić et al.*, *Decision adopting Guidelines for the Presentation of Defence Evidence*, 24 April 2008, para. 15.

⁶⁷⁹ Second Amended Indictment, para. 103. See for examples of reporting of the conflict by international organizations exh.P03025, P03085, P03298, P03361, P03371, P03428, P03465, P03587, P03597.

⁶⁸⁰ [REDACTED]exh.P03085.

viewpoint, heavy artillery from the enemy, BH Army, forces could hardly be suppressed in any other way than through the use of the same method. Shelling invited return shelling. The nature of the military objectives that were targeted also rendered other methods of warfare for the most part irrelevant. To shoot at militarized targets hundreds of meters and sometimes kilometers away would have no military effect; shelling was the only military-viable method available at the time.

381. During this short timeframe, 30 June-24 July, there is no statement by any international observer from which it could be inferred that there was shelling on the part of the HVO that was intended *to target* the civilian population of Mostar, or that shelling was indiscriminate. No such protest was ever recorded, at least none that Petković was ever made aware of at the time.⁶⁸¹ Analysis of the SPABAT, ECMM and UNMO reports for this period shows that there were active combat operations *between both sides*, with military positions stated as being the intended targets. For example, on the 13th July, the UNMO reported a 'major BiH offensive towards south Mostar involving mortar.'⁶⁸² Again on the 15th, SPABAT reported shelling of BiH targets but notably stated that there was 'a constant *exchange* of fire.'⁶⁸³ (Emphasis added) Witness CB stated that 'the conflict and the *exchange* of fire and shelling continued throughout this period.'⁶⁸⁴ (Emphasis added) Thus, there is a consistent pattern of reporting by international observer's that there was an active military conflict between two parties, and that these operations were targeting legitimate military objectives. The fact that civilians might have suffered indirectly from such legitimate military exchange is the unfortunate reality of war and not one that is criminalized *per se*.

382. Moreover, the pattern of reporting by the international organisations cited in the preceding paragraph, which undoubtedly confirms the existence of an active military conflict between the HVO and the BH Army in Mostar, factually corresponds with the pattern of military reports by the HVO forces during the same period.⁶⁸⁵ Again, this further emphasizes the fact that Petković received no suggestion from HVO reports that shelling was used in an unlawful manner.

383. Importantly, artillery in Mostar and the Operative Zone SEH was not subordinated to Petković whilst he was Chief of the Main Staff, but to the Commander of the Operative Zone SEH. Infantry mortars were weaponry of the brigades and it was the brigade commanders who

⁶⁸¹ Witness Marić testified that he had never heard that anybody from the territory of East Mostar submitted information to the HVO about the number of victims and the status of dead and killed /T.48168/.

⁶⁸² UNMO Report, 13th July 1993, exh.P03428.

⁶⁸³ SPABAT Report, 15th July 1993, exh.P03465.

⁶⁸⁴ The Witness CB, T.10157.

⁶⁸⁵ Exh.P03363, 4D01363, 4D01364. Witness Marić testified that ABiH launched the most intense attacks in the area of Mostar in September and October 1993, including the intensive use of artillery, T.48174.

decided about the employment of this weaponry.⁶⁸⁶ In that sense, Petković was not the one in charge of selecting targets or determining the duration of shelling activities or assessing their effect. These responsibilities were those of the commanders of the Operative Zone SEH and HVO Mostar brigades only. It was their professional judgment, and discretion, that decided such matters within the scope of the applicable legal standards. Petković received no indication that these commanders were abusing their authority or breaching the law during that period.

384. Further, a reasonable trier of fact could *not* conclude beyond reasonable doubt that during the period 30 June - 24 July, HB/HVO forces *deliberately* destroyed or *significantly* damaged the mosques or religious properties in Eastern Mostar. Nor, furthermore, could such intentions ever be imputed to Petković. The letter sent by the Islamic Community of Mostar from January 1993⁶⁸⁷ clearly shows that the vast majority of the mosques listed in para. 116 of the Indictment were significantly damaged by the Serbs - during the conflict with Serbs in 1992 - which was confirmed by numerous witnesses.⁶⁸⁸ This fact plainly eviscerates the Prosecution allegation that the HVO and/or Petković was responsible for intentionally destroying Mosques and or/religious properties enlisted in paragraph 116 of the Indictment. Furthermore, there is no indication that Petković was made aware of any such destruction during the period relevant to this part of the charges (30 June – 24 July). He received no complaint or report to that effect during that time.

385. As noted above, Petković did not receive any complaints from international observers and/or representatives of the BH Army that HVO shelling was intentionally targeting the civilian population and/or civilian property, or that it was disproportionate and/or indiscriminate. Reports of the HVO commanders sent to the Main Staff also did not contain such information, nor indicated that artillery was being used in violation of the laws and customs of war. When military targets were being identified, consideration was taken as to whether civilians would be the target of an attack, and if striking the military objective was expected to cause incidental loss of life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.⁶⁸⁹ He had no indication at that time that there was a criminal lack of precaution in targetting.

386. The evidence demonstrates that the Prosecution did not prove that the HVO was engaged in intentionally and/or indiscriminately shelling in the period 30 June – 24 July 1993,

⁶⁸⁶ Witness Marić, T.48130-2.

⁶⁸⁷ Exh.2D01421

⁶⁸⁸ Witness Pejanovic T.1425; Vihervouri T.21754; Vegar T.37023; Puljic T.32274-8.

⁶⁸⁹ As stipulated in Article 51(5)(b) of Additional Protocol I. Witness Vinko Marić testified that he never ordered or allowed anybody to open fire on civilian population, that the rule was to shell only the observed targets /T.48159-60/.

and/or Petković's alleged criminal mindset as relate to that part of the charges. Nor did it show that any person over whom Petković had effective control at that time acted with the requisite culpable *mens rea*. Nor even if this occurred, has it been shown that Petković knew or had reason to know about such an incident.

6.1.2. Sniping

387. It is not in dispute that civilians died because of fighting in Mostar town and the region, and that the death of some of them was caused by shooting. However, the Prosecution did not prove that, during the relevant period (30 June - 24 July), Muslim civilians were deliberately targeted by the snipers of regular HVO forces (in the knowledge that they were civilians).⁶⁹⁰ Nor, if this ever occurred, has it been established that Petković was aware of any such occurrences.

388. In the majority of reports by international observers citing incidents of sniping, invariably the source of the fire that would impute liability to one of the parties to the conflict cannot be identified with a degree of certainty i.e. *beyond a reasonable doubt*. For example, a [REDACTED] on the 19th May reported that one of their [REDACTED] was fired upon, while also stating that the source of the fire could not be identified.⁶⁹¹ Another example, on 20th July, 'sporadic sniper fire' was reported by the [REDACTED], attributing it to neither party.⁶⁹² Petković had no independent account that this fire was coming from HVO forces. Nor was this in fact alleged in these reports.

389. In assessing the weight of the sniping allegation, it must be remembered that a military conflict was going on and accidental shooting of civilians could ever occur in such a situation particularly in an urban environment.⁶⁹³ Gunfire was a common occurrence, with the [REDACTED] reporting on 11th June 1993 that there was 'an *exchange* of sniper fire on the frontline', with both parties involved.⁶⁹⁴ Crucially for an independent tribunal of fact, it must be noted that the BH Army was also present on the 'West Bank' of the river Neretva.⁶⁹⁵ Therefore,

⁶⁹⁰ It should be noted that the HVO Military Police also had snipers in its units (exh. P 03351, p.10) and that commanders of the Military Police units were not subordinated to the Chief of the Main Staff, unless re-subordinated by order of the Defence Minister and the Head of the MP Administration (see paras.94,96-98). It is relevant for Petković's command responsibility to establish the military status of the direct perpetrator and the possible superior-subordinate relationship between Petković and the direct perpetrator.

⁶⁹¹ [REDACTED] exh.P02461.

⁶⁹² [REDACTED] exh.P02564.

⁶⁹³ The *Galić* Appeals Chamber endorsed the approach taken by the Trial Chamber in relation to the need to consider questions such as: the distance between the victim and the most probable source of fire; distance between the location where the victim was hit and the confrontation line; combat activity going on at the time and the location of the incident, as well as relevant nearby presence of military activities or facilities; appearance of the victim as to age, gender, clothing; the activity the victim could appear to be engaged in; visibility of the victim due to weather, unobstructed line of sight or daylight. *Galić* Appeals Judgment, para. 133, endorsing the approach taken by the *Galić* TJ at para.188.

⁶⁹⁴ [REDACTED] exh.P02721

⁶⁹⁵ Second Amended Indictment, para 98.

when a report states that a sniper shot came from the 'west side' of the river,⁶⁹⁶ it cannot be excluded as unreasonable that such fire could have come from ABiH, given that its forces were also present on that side of the river. In any case, and furthermore, none of these reports record intentional firing at civilians.

390. Petković did not receive any complaints from international observers and/or representatives of the BH Army that HVO gunfire was intentionally targeting civilians. Reports of the HVO commanders sent to the Main Staff also did not contain information, or even indication, that snipers of the regular HVO forces would attack civilians. In other words, Petković had no reason to believe that the incidents listed by the Prosecution in the Indictment actually occurred. Not knowing of such occurrences, he could not be held liable for them if they occurred.

6.1.3. Members of international organizations

391. The death of a SPABAT soldier delivering medicine which was deemed to have come from the west side of the river could not be attributed beyond reasonable doubt to the HVO.⁶⁹⁷ Other reports amount to little more than 'guessing' that sniper fire might have come from a one side of the river and hence a particular party was responsible.⁶⁹⁸ It is respectfully submitted that an accused cannot be convicted for such actions on the basis of 'guessing' the source of fire. Such methodology is flawed and cannot be the basis for a conviction. Furthermore, at the time of the events, Petković would have had no means of ascertaining that fact, nor has the Prosecution made such a claim in the Indictment. Even though an investigation was undertaken with regard to the death of the SPABAT soldier, the position from which shots were fired could not be confirmed.⁶⁹⁹ Indeed, in some areas where sniper fire was reported, 'the areas were mixed' and sniper fire could not be reasonably attributed to either party to the conflict.⁷⁰⁰ In sum, this shooting could not be attributed, beyond reasonable doubt, to any HVO soldier. Even if it could, no such fire was shown to have been carried out with the requisite culpable *mens rea*. The possibility of an accident, cross-fire or collateral damage has not been excluded as unreasonable. Instead, and considering the circumstances surrounding this incident, it is not unreasonable to conclude that this death could have resulted from accidental fire.

⁶⁹⁶ For example, see exh.P02635 and P02731and P03415, all concluding that sniper fire came from the 'west side' of the river.

⁶⁹⁷ See the Sorensen report into the incident, exh.P03415. An investigation by the HVO into the circumstances and the weaponry used in the incident concluded that the shot was fired from the 'Muslim military positions at the Bristol hotel, 6th elementary school or 'Revija' and that Lieutenant Fernandez was shot from the machinegun of a 7.62 x 54 caliber or automatic rifle of a 7.62 x 54 caliber.' See the Letter from Bruno Stojic to Julian Garcia Varga, Spanish Minister of Defence, 14th June 1993-exh.2D00116.

⁶⁹⁸ Exh.P02635.

⁶⁹⁹ Exh.P03415.

⁷⁰⁰ Exh.P02635. [REDACTED]

392. Finally, there is no evidence that Petković possessed the requisite *mens rea* in relation to that incident; it is significant in that regard that such a proposition was not put to him during cross-examination, nor, in fact, did the Prosecution put it to him that he was in any way responsible for that incident. In those circumstances, Petković could not reasonably be regarded as responsible for this unfortunate death.

6.2. Alleged infliction of terror on civilians

393. With regard to the crime of terror, the accused must be shown to have acted for the ‘primary purpose’ of spreading terror among the civilian population.⁷⁰¹ The prosecution is required to prove not only that the accused accepted the likelihood that terror would result from the illegal acts – that he was aware of the possibility that terror would result – but that that was the result which he *specifically intended*.

394. This evidentiary threshold has not been met by the Prosecution with respect to Petković (nor the alleged, un-identified, perpetrators). No evidence has been adduced that he bore such intent to inflict terror. Furthermore, he received no complaints from international organisations that HVO actions were intentionally targeting the civilian population so that he did not even know that this was a possibility, let alone intended it to result from military actions.

395. As noted above, it is a necessary (albeit an unfortunate) consequence of war that civilians will suffer from military confrontation. This, however, is no «terror» in the penal sense. Fighting in urban environment is particularly likely to cause fear in the population, but none of that fear was *intended* by Petković or anyone related to him. Croats just as Muslims were likely scared by the ongoing conflict. Petković had no reason to believe that anyone intended the use of military power to terrorise the local population, and it certainly was not his intention. His actions as a peacemaker among the warriors make it clear that he was of the view that any unnecessary suffering should be avoided and worked hard to achieve that goal (in particular, in his constant negotiations with the BH Army leadership). In those circumstances, an inference that he intended to inflict terror would be entirely unreasonable

6.3. Public supplies

396. The Prosecution alleged that the HB/HVO authorities: (i) blocked and deprived Muslims in East Mostar of humanitarian aid (from 30 June 1993 until 24 August 1993); (ii) cut off or failed to repair water and power supplies to that part of the city (as of 30 June 1993), and that these acts/omissions constituted the *actus reus* of the crime of cruel treatment.

397. The Prosecution did not plead that the provision of public services and humanitarian assistance were under the competence of the Chief of the Main Staff or Petković himself. On the contrary, the Prosecution’s case is that these matters were the competence of the *civilian*

⁷⁰¹ *Galic* TJ, para. 133.

HVO authorities. In that sense, this allegation does not form part of the charges against Petković, nor is it attributed to him in any culpable sense in the Indictment as pleaded.

398. Petković did not have authority to influence or take decisions regarding humanitarian aid policy, to establish procedures for obtaining permission for humanitarian convoys, to decide about cutting off or neglecting to repair water and/or power supplies. The Prosecution did not allege that this was the case, did not put such a case to Petković during cross-examination and, of course, did not prove that this was so. Nor was it established that, at the time, Petković was made aware that humanitarian convoy was intentionally blocked with criminal intent.

6.4. Ability to leave East Mostar

399. The Prosecution did not allege that the population of East Mostar could *not* leave the town, and that Mostar could therefore be said to be under siege. However, the Prosecution alleged that East Mostar was under siege as of 30 June 1993, and therefore the ability to leave Mostar is relevant for the case.

400. A “siege” is not a legal element of any crime, nor it is automatically, *per se* an illegal means of warfare.⁷⁰² East Mostar was not surrounded by HVO forces because: (i) the HVO authorities and forces only controlled the area west of the BH Army positions in Mostar; (ii) the area north and south of East Mostar, all the entire area on the left bank of Neretva (50 km from Jablanica to Buna) was under the control of the BH Army; (iii) the area east of the positions of the BH Army was under the control of the RS Army.⁷⁰³

401. The Prosecution pleaded that from 30 June 1993 there was continued fighting between HVO forces and the BH Army, which proves that the BH Army in East Mostar was regularly supplied by combat material (weapons, ammunition, etc). The BH Army not only held positions at the line of disengagement established in April 1993,⁷⁰⁴ but also carried out large-scale combat operations elsewhere.⁷⁰⁵ Re-supply for its forces was therefore forthcoming and capable of entering the city and reaching its positions.

⁷⁰² Witness Gorjanc in his report gave the following definition of a siege: «A siege is a term which indicates a military operation to capture a city or any other place by surrounding it and blocking communication and supplies, which may, or may not be accompanied by artillery attacks and bombardment. The aim is to force the enemy to surrender or his authorities to make political concessions. The purpose of a siege may also be to tie up enemy forces and thus prevent their engagement on other axes, and to protect own forces on other axes.» - exh.4D01731, para.204.

DW testified that a sieged city had all its way out or all its exits closed and no food and no other resources can get into the city, T.23261.

⁷⁰³ Exh. 4D01731, para.206; 4D00711, 4D00625, 2D01389

⁷⁰⁴ See para.130(ix)(a).

⁷⁰⁵ See, *inter alia*, 3D00932 (the maneuvering unit of the 3rd Corps was on its way there in order to strengthen, reinforce the 4th Corps in its operations and the unit from Central Bosnia was now about to arrive in the Mostar area); For further examples of ABiH combat operations see also Exh.1D02717, 1D02079, 3D00917 (for example note for 22 September 1993), 3D00931, 3D00939, 4D00485, 3D00944, 4D00523, 4D00525, 4D00709,

402. The civilian population in East Mostar could use, and indeed did use, the route between East Mostar and Jablanica, and onwards to Central Bosnia, to leave the town and/or the area. The accessibility of this route is evinced in an . [REDACTED] report dated 23 August 1993, wherein it states that Muslim refugees from Čapljina arrived in Mostar on the east bank and were headed towards Jablanica.⁷⁰⁶ The [REDACTED] also reported civilians leaving East Mostar at this time: “Since mid-August there has been some limited civilian movement between the greater East Bank and Jablanica/Central Bosnia (both north and south) via a mountain donkey route, of those seeking to reunite with family members. The movement remains limited due to the danger of the journey and the fact that BiH Army permission must be obtained to leave (such permission reportedly being difficult to obtain).”⁷⁰⁷ Witness BB testified:

We were very well aware of the fact that the Bosnian authorities didn't allow people to leave East Mostar. [REDACTED]

They were not -- they did not want people to leave, and we believe that that was partly because they wanted also to consolidate their territory by using civilians as pawns to consolidate their territorial...⁷⁰⁸

403. Witness BA also explicitly stated that Mostar was *not* besieged,:

*We also need to remember that the city of Mostar had commercial trucks coming in. It was very different in the sense that the flow of commercial trucks compared to, for example, in the city of Sarajevo, which entirely depended on the supply of humanitarian goods that the international community would bring in. **Mostar was not a besieged city, so the situation was very different.**⁷⁰⁹ (Emphasis added)*

404. Witness BC confirmed that civilians could not leave East Mostar without the permission of the authorities in East Mostar:

Yes. I know -- I'm -- I know of specific cases of individuals who wanted to leave. In some cases they were allowed, but in general the policy of the -- the authorities there was, as you say, not to -- to allow people out. Having said that, in cases

4D00711, 4D00720, 4D00723, 4D00724, 4D00725, 4D00727, 4D00771, 4D00772, 4D00782, 4D00779, 4D00794, 4D00795, 4D00798, 4D00800, 4D01115, 4D01116, 4D01211, 4D01702, 4D01117.

⁷⁰⁶ Exh.P04447. It should be noted that in the same report the [REDACTED] stated that « [REDACTED] informed that material to repair the Bijela-bridge had started arriving in Metković and that the Serbs had promised not to disturb the rebuilding of the bridge.» The partly destroyed bridge was the main reason that travel between Mostar-Jablanica was not possible via the highway and that alternative roads had to be used.

⁷⁰⁷ Exh.P09851, p.3.

⁷⁰⁸ The Witness BB, T.25334-5.

⁷⁰⁹ The Witness BA, T.7192.

*involving exceptionally vulnerable individuals, people who were unable to receive medical assistance, victims of rape, et cetera, those type -- those category of cases were generally allowed out. But in general, you're correct in saying that the policy of the authorities there was not to allow people to leave.*⁷¹⁰

405. Clearly, it was not in the interest of the BH Army to allow civilians to leave and they ensured that they would stay so as to serve their own political and military agenda. That choice, and its consequences, should not be imputed to others. The 4th Corps of the BH Army reported in October 1993 that “a big problem for the OG /Operations Group/ Command is the transport of civilians and others marching north and south”, and that “there are big problems with the transport of the wounded and other things for the town”.⁷¹¹ Esad Šejtanić, the BH Army commander at the relevant time, subsequently wrote in his book that the Muslim authorities, “by repressive measures prevented the outflow of population and reduced movement of population to a minimum.”⁷¹²

406. Accordingly, the evidence shows that the civilian population was in actual fact able to leave East Mostar, but that the BH Army controlled the movement of civilians and intentionally reduced it to a minimum.⁷¹³ Obviously, civilians were able to leave the town on a large scale, which prompted the BH Army to prevent the outflow of the population.⁷¹⁴

407. There is no evidence that any civilian was ever *intentionally* killed or wounded on his/her way from East Mostar, or that the civilians leaving East Mostar were ever targeted by the HVO forces, nor has the Prosecution alleged such, either in the Indictment or during cross-examination.⁷¹⁵ The logical conclusion is that East Mostar was never besieged in a classical military sense.⁷¹⁶

⁷¹⁰ The Witness BC. T.18485-6.

⁷¹¹ Exh.4D00719.

⁷¹² Exh.4D00545.

⁷¹³ Exh.P10137 para.26; witness DW, T. 23261.

⁷¹⁴ Witness Gorjanc explained the reasons for preventing the departure of the civilian population from East Mostar: «Any town defending itself, and where there is population at the same time, the morale of the defenders is much better when they know that they are defending their own people. And in that context, two or three documents back, when soldiers of the ABiH dislike the population leaving northward, this measure was probably taken to raise the morale of the soldiers of the ABiH.» - T.46154-5.

⁷¹⁵ During cross-examination of Gorjanc, the Prosecution tried to establish that the main Mostar-Jablanica road, following the Neretva River Valley, could be targeted from the positions of the HVO artillery and that the road was impassable for that reason /T. 46447/. It should be noted that in the whole of the relevant territory, all roads could be targeted from the positions of all three armies, but such a possibility did not make the roads impassable. For example, all roads to West Mostar could be targeted from the positions of the BH Army (as well as the RS Army), but that possibility did not make them impassable and did not prevent Croats from using these roads.

Witness Perić testified: «As for artillery, no one was entirely safe from artillery weapons in Bosnia and Herzegovina.» - T.47976

However, the evidence proves, as explained, that other roads were used; Gorjanc, 46450-1; IC01153; witness Perić, T.47972; Marić, T.48216-7; 3D03793; 3D03794

⁷¹⁶ Witness Gorjanc, T.46162; exh.4D00768, P03858, 3D00932.

408. As far as Petković is concerned, and whilst not charged with being responsible to organize a siege, it should be noted that he had no reason to regard any of the method used by HVO forces as impermissible and unlawful. He received no complaint and no information to that effect.

IV. CRIME BASIS (after 24 July 1993)

1. VAREŠ

409. Croats, Muslims and others lived in Vareš in peaceful co-existence until mid-1993,⁷¹⁷ when the BH Army conquered certain areas in Central Bosnia. Thousands of Croats were expelled from their homes and went to Vareš. After the fall of Travnik in mid-June 1993, 1,000 able-bodied Croatian men managed to reach Vareš.⁷¹⁸ On 13 June, there was an all-out Muslim attack on Kakanj and Croats were expelled⁷¹⁹ from that municipality. Around 13,000 Croats, including HVO soldiers, fled from Kakanj to Vareš, and those left behind were arrested by Muslim troops and their houses looted.⁷²⁰ Immediately after the fall of Travnik and Kakanj, in June 1993 Vareš was considered by UNPROFOR to be an area of potential conflict.⁷²¹

1.1. Offensive plans and actions of the BH Army

410. The evidence proves that the BH Army's attack on Vareš was not a reaction to the attack of the HVO forces on Stupni Do, as the Prosecution tried to present. The BH Army had already planned to conquer Vareš in August 1993 and in mid-October 1993 commenced offensive actions in the Vareš area, according to the plan created in August:

(i) In August 1993, the chief of VOS in the Operative Zone of Central Bosnia, Ivica Zeko, reported that BH Army continued to entrench themselves in the villages of Mijakovići and Dragovići in Vareš municipality. By gaining control over the village of Kopjari, the Muslim villages of Mijakovići and Dragovići would then have a road connection to Kakanj, thus enabling Muslim forces to easily advance above Vareš. Zeko further reported that in the village of Stupni Do, Muslims had forces to the strength of a reinforced platoon, and that should conflict occur, they could efficiently aim sniper fire at the town and the road.⁷²²

(ii) On 21 August 1993, the Supreme Command Staff of the BH Army gave consent to the 3rd Corps for a proposed offensive in the Vareš Area. The villages of Liješnica, Borovica, Mahorići, Dragovići, Mijakovići and the hill of Pliješ were mentioned specifically as relevant

⁷¹⁷ The same was stated by the Prosecution in the para.205 of the Second Amended Indictment.

⁷¹⁸ Witness DE, T.15498

⁷¹⁹ The Prosecution incorrectly asserts in para.206 of the Indictment that 13,000 Croats from Kakanj «moved» to Vareš.

⁷²⁰ Exh.P02875

⁷²¹ Exh.P02875

⁷²² Exh.4D00526

areas to the planned military actions.⁷²³ Witness EA [REDACTED] .⁷²⁴ Praljak also testified that the plan to attack Vareš was drafted a long time before the events in Stupni Do and they had commenced a long time beforehand.⁷²⁵ Petković testified that the operation to take Vareš was planned in August 1993, a month and a half after the fall of Kakanj.⁷²⁶

(iii) Philip Roger Watkins testified that there had been much speculation that the 2nd and the 3rd Corps of the BH Army would try to retake the Vareš pocket, but would need justification for such action, or otherwise there would be international condemnation due to the significant humanitarian issues resulting from the movement of the Croat population out of Vareš.⁷²⁷

(iv) On 20 October 1993, the Commander of the HVO BOBOVAC Brigade in Vareš, Emil Harah, informed the Commander of the 2nd Corps of the BH Army Hazim Šadić that the offensive actions of the 3rd Corps of the BH Army started on 17 October 1993 in Liješnica, then Kopjari and Pliješ mountain. Harah assured Šadić that the reports of the 3rd Corps that the HVO began shelling first, were not correct.⁷²⁸ Witness EA [REDACTED] .⁷²⁹

(v) On 20 October 1993, the chief of VOS in the Bobovac Brigade, Zdravko Mijočević, reported that another raid was to be expected on Kopjari village from the direction of Kakanj towards Pliješ and from the direction of Dragovići village. He also reported that an order was given to the BH Army to try to capture Liješnica once the attack began.⁷³⁰

(vi) The following day, on 21 October, the 3rd Corps of the BH Army attacked the village of Kopjari, looting and burning it after the attack.⁷³¹ Major Birger, who commanded NORDBAT company, stated that the commander of the Muslim unit in Kopjari told him: “See you in Vareš in around a week.”⁷³² This comment of the Muslim officer was important as it confirmed the information that NORDBAT had been receiving throughout the month – that Vareš would be the next major ABiH objective.⁷³³ It was well known that Vareš was strategically important to

⁷²³ Exh.4D00523 (also 3D00832).

⁷²⁴ Witness EA, T.24628.

⁷²⁵ Witness Slobodan Praljak, T.41955.

⁷²⁶ Witness Petković, T.49610.

⁷²⁷ Witness Watkins, T.18794.

⁷²⁸ Exh.3D00809.

⁷²⁹ Witness EA, T.24622. The witness K [REDACTED] /exh. P10080, [REDACTED]. Tadeusz Mazowiecki, UN Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia reported the killings in Kopjari on 21 October 1993 /exh.P06697, para.29.

⁷³⁰ Exh.4D00643

⁷³¹ Witness Hakan Birger, T. 16323-24, 16393; exh 4D00527.

⁷³² Witness Hakan Birger, T. 16393

⁷³³ Exh. 4D00519

the BH Army⁷³⁴ as it would allow for the unification of the 2nd and 3rd Corps as well as serving to open and clear logistical routes between Zenica and Tuzla.

(vii) In November 1993, the Command of the Operative Group East of the 6th Corps of the ABiH reported about “Operation Vareš”: the operation was aimed at lifting the blockade off the villages of Dragovići and Mijakovići, capturing the village of Kopjari and also features in Pliješ and Liješnica.⁷³⁵

411. The evidence shows that the BH Army planned to conquer Vareš long before the HVO attack on Stupni Do. Accordingly, the evidence disproves the Prosecution thesis that the HVO attack on Stupni Do caused the offensive of the BH Army towards Vareš.

1.2. Decision to help the HVO in Vareš

412. HVO forces in Vareš, faced with the offensive actions of the BH Army in the area, contacted their superiors and asked for help:

(i) On 20 October 1993, at 17.00 hours, the Chief of the VOS of the Vareš HVO Brigade informed the VOS Chief of the Vitez Military District and the VOS Chief of the OG-2 in Kiseljak that, *inter alia*, in the course of today or tomorrow another raid was to be expected on Kopijari village from the direction of Kakanj towards Pliješ, and from Dragovići village.⁷³⁶

(ii) On 21 October 1993, at 14.00 hours, the Commander of the Vareš HVO Brigade BOBOVAC, Emil Harah, informed Rajić that the BH Army attacked the defence line Kopijari-Založnik-Jezero. “The condition is critical”, reported Harah, requesting assistance in the form of manpower and ammunition.⁷³⁷

(iii) Witness J [REDACTED] .⁷³⁸

(iv) On 21 October 1993, at 14.50 hours, Tihomir Blaškić ordered Rajić to provide artillery support to the BOBOVAC Brigade by targeting the villages of Mijakovići and Dragovići and other areas with strong concentrations of Muslim forces. Also, contact was to be made with the BOBOVAC Brigade and provide artillery support according to their requests.⁷³⁹

⁷³⁴ Exh. P10087, 92bis statement of the witness Henricsson, para 39

⁷³⁵ Exh.4D00519.

⁷³⁶ Exh.4D00643, p.2 /4th para./; P06069.

⁷³⁷ Exh.4D00527. Harah also reported that the Brigade Command had received the telegram to come to Kiseljak, but that they could not come immediately. This proves that on 21 October 1993 at 14.00 hours the Commander of the Vareš HVO Brigade and his associates were expected to come to Kiseljak and that the HVO commanders in Kiseljak did not plan to go to Vareš.

⁷³⁸ Exh.P10082 [REDACTED] , para.62.

⁷³⁹ Exh.4D00645.

[REDACTED] Rajić received this order and [REDACTED] .⁷⁴⁰

(v) On 21 October 1993, at 17.00 hours, the VOS officer of the Vareš BOBOVAC Brigade informed the VOS officers of the Vitez Military District and the OG-2:

*/.../ It is my conclusion that the defence of Vareš has reached a critical stage, bearing in mind the events which have undermined morale over the past few days and the chaotic situation we have found ourselves in, we urgently need assistance from a group of experienced persons because this is beginning to remind me of Kakanj.*⁷⁴¹

(vi) On 21 October 1993, at 19.45 hours, the Chief for ONO of the BOBOVAC Brigade Krešimir Božić informed the Command of the Vitez Military District and the OG-2 about the villages being taken over by the BH Army and the military situation in the area. He announced that the Chief of Staff of the Brigade was coming to Kiseljak during the night to inform Ivica Rajić about the overall situation.⁷⁴² This document also proves that on 21 October at 19.45, Ivica Rajić did not yet plan to go to Vareš.

(vii) On 21 October 1993 at 21.45 hours, the Chief of ONO, Krešimir Božić, informed Ivica Rajić that he believed that without Rajić's presence in Vareš further developments would not ensure the effective defence of the town.⁷⁴³

(viii) Petković testified that the BH Army took over Kopijari village, then Pliješ and Liješnica, and panic broke out in the Command of the BOBOVAC Brigade which requested help from the Operations Group at Kiseljak.⁷⁴⁴ [REDACTED] the Vareš HVO Brigade Commander requested assistance from Ivica Rajić in defending Vareš.⁷⁴⁵

413. [REDACTED] Petković and Rajić agreed that Rajić would go to Vareš and see how to assist the BOBOVAC Brigade.⁷⁴⁶ Petković confirmed that he agreed to the fact that Rajić, with a number of the HVO soldiers, should move to Vareš.⁷⁴⁷ At that time, there was an urgent military need to establish the situation in the Vareš area, and no indication that any HVO offensive action will be conducted and/or crimes were about to be committed there. The matter was a purely military one.

414. The evidence proves that in Kiseljak Rajić was not given any specific task.

⁷⁴⁰ Witness EA, T.24700.

⁷⁴¹ Exh.4D00530.

⁷⁴² Exh.4D00646.

⁷⁴³ Exh.4D00531.

⁷⁴⁴ Witness Petković, T.49611.

⁷⁴⁵ Witness DE, T.15528.

⁷⁴⁶ [REDACTED] , T.24380. In the report to the HVO Supreme Commander of 25 October 1993 Milivoj Petković stated that "due to the total disorganization of the defence of Vareš, I sent Ivica Rajić with 200 men from Kiseljak to help." (exh.P06069).

⁷⁴⁷ Witness Petković, T.49611.

[REDACTED]⁷⁴⁸

[REDACTED]⁷⁴⁹

415. Petković also confirmed that the HVO Main Staff did not expect Rajić to conduct any kind of operations in Vareš, but to stabilize the front-line which had been broken through by the BH Army from the village of Kopijari towards certain features which were closer and closer to Vareš town.⁷⁵⁰ Petković did not give him any orders or instructions in regard to this matter, or with respect to any other matter related to these events.

416. Rajić left Kiseljak during the night between 21 and 22 of October 1993.⁷⁵¹ He then arrived in Vareš on 22 October at around 6.00 hours.⁷⁵² The same day, Rajić informed Petković in Kiseljak and the Kiseljak Brigade Commander, Mario Bradara, that he had arrived in Vareš.⁷⁵³ Rajić's message was sent to Petković by Paket link.⁷⁵⁴ Petković did not send him any orders or instructions. There was no contact between them thereafter or in the course of the action.

1.3. Ivica Rajić in Vareš

1.3.1. Decision to attack Stupni Do was brought in Vareš on 22 October 1993

417. The decision to attack Stupni Do did not involve Petković and he was not informed of that decision prior to its implementation.

418. [REDACTED] the HVO Brigade Commander in Vareš, Emil Harah, prepared a reconnaissance plan, which was carried out on 22 October 1993. Harah gave Rajić his assessment on what the likely directions of a future ABiH attack on the town of Vareš would be. Together they visited various areas at the confrontation line.⁷⁵⁵ From one position there was

⁷⁴⁸ [REDACTED] T.24386-7.

⁷⁴⁹ [REDACTED] T. 24389

⁷⁵⁰ Witness Petković, T.49843.

⁷⁵¹ Witness Petković, T.49609.

⁷⁵² [REDACTED] T.24381.

⁷⁵³ Exh.P09954 (also 4D00510); [REDACTED] T.24712; Petković, T.49613.

⁷⁵⁴ [REDACTED] , T.24396.

⁷⁵⁵ Exh.P10082 [REDACTED] para.64.

a good view of Stupni Do and Bogoš hill. Rajić took interest in that area.⁷⁵⁶ [REDACTED] on 22 October Rajić spent the whole day on the ground and sent his men in other directions to take stock of the situation and to see what they would eventually have to do. Rajić personally undertook a few scouting expeditions himself.⁷⁵⁷

419. After Harah and Rajić returned to Vareš, Rajić invited Vareš HVO civilian and military HVO leaders for a meeting. The purpose was to decide the next course of action.⁷⁵⁸ [REDACTED] Ivica Rajić spoke with the commander of the local HVO battalion, [REDACTED] and other local officers about the then-situation at the front lines and what they could do to stabilize the situation there. [REDACTED] was asked for his opinion and he suggested choosing the operation on the village of Dragovići and Mijakovići, rather than Stupni Do.⁷⁵⁹ [REDACTED] the HVO commanders discussed what needed to be done, that Rajić spoke with everyone and wanted to hear the opinion of others.⁷⁶⁰ Finally, Ivica Rajić approved the execution of the operation of the attack on Stupni Do.⁷⁶¹ On 22 October, in the late evening hours, three decisions were made: (i) to direct an attack towards Bogoš hill; (ii) to attack Stupni Do; (iii) military-able Muslim men in Vareš should be temporarily isolated, monitored for a short period of time and then either released or necessary measures be taken against them.⁷⁶²

420. The evidence proves beyond any doubt that Rajić did not inform his superiors about the decision to attack Stupni Do (nor about its means, method or timing). Significantly, there is no evidence that such a report was sent and [REDACTED] Rajić did not inform his superiors about the decisions made in the evening hours of 22 October 1993 (explained in the previous paragraph).⁷⁶³ It was *not* part of the Prosecution case that Petković had been informed in any way about the upcoming action prior to its commencement.

1.3.2. While in Kiseljak Petković did not receive reports from Vareš

421. Petković arrived in Kiseljak on 18 October 1993 because of the operation to evacuate the wounded from Nova Bila hospital.⁷⁶⁴ Petković planned to leave Kiseljak on 22 October 1993 and on 21 October sent plea request to UNPROFOR to provide three seats (for Petković, Ivan Bandić and Vinko Lučić) on their helicopter for transport from Kiseljak to Split.⁷⁶⁵ On 21 October 1993, when Petković asked for the seats in the UNPROFOR helicopter, Rajić was still

⁷⁵⁶ Ibid., para.65.

⁷⁵⁷ [REDACTED]

⁷⁵⁸ Exh.P10082 [REDACTED] , para.66.

⁷⁵⁹ Exh.P10080, [REDACTED] , p.45-6.

⁷⁶⁰ [REDACTED] , T.24715.

⁷⁶¹ [REDACTED] , T.24393.

⁷⁶² [REDACTED] , T.24716.

⁷⁶³ [REDACTED] , T.24716; Petković, T.49612, 49843.

⁷⁶⁴ Exh.4D00705; 4D00846; [REDACTED] , T.24698.

⁷⁶⁵ Exh.4D00844.

in Kiseljak and knew that Petković planned to leave Kiseljak on 22 October. However, Petković did not leave Kiseljak on 22 October as planned, because the bad weather prevented the helicopter from taking off at Kiseljak to fly to Split.⁷⁶⁶ Petković stayed in Kiseljak until 26 October 1993.⁷⁶⁷

422. Petković's plan to leave Kiseljak on 22 October and Rajić's knowledge about the plan is relevant to understand the reasons that Rajić's reports addressed to Petković as of 23 October were sent to the Main Staff in Mostar/Čitluk, and not to Kiseljak, and that Petković, still in Kiseljak, did not receive these reports.

23 October 1993:

423. At 9.10 hours, the Head of VOS in the BOBOVAC brigade reported to the VOS in the Vitez Military District and Kiseljak that the attack on Stupni Do had begun. The report was not sent to Petković.⁷⁶⁸

424. At 13.30 hours, a duty officer in the BOBOVAC Brigade sent a combat report to Blaškić.⁷⁶⁹ The report was not sent to Petković.

425. After the attack had ended, Rajić sent a report to Kordić, Petković, Blaškić and the Kiseljak Brigade Commander that he had carried out an attack on Stupni Do, that many members of the BH Army and "some civilians" were killed, that Vareš "has been mopped up and all Muslims of military age placed under surveillance" and that Anto Pejčinović, Zvonko Dužnović and Ivica Gavran have been isolated because they "attempted to obstruct the planned activities."⁷⁷⁰ The report, sent by Paket link, was addressed to Petković in Mostar. Since Petković was still in Kiseljak, he did not receive it at that time.⁷⁷¹ There is no evidence that the report was forwarded to Petković in Kiseljak.⁷⁷²

426. At 19.00 hours, Rajić sent a request to Blaškić and Petković to take certain measures to reduce the efficiency of the coordinated action of the 2nd and the 3rd Corps of the BH Army or to prevent such coordinated action.⁷⁷³ The request was, again, addressed to Petković in the Main Staff in Mostar, sent by Paket communication and Petković, who was still in Kiseljak, did not and could not receive it.⁷⁷⁴

⁷⁶⁶ Exh.P06144; witness Petković, T.49608.

⁷⁶⁷ Witness Petković, T.49608.

⁷⁶⁸ Exh.4D00648; [REDACTED] T.24721.

⁷⁶⁹ Exh.3D00825.

⁷⁷⁰ Exh.P06026.

⁷⁷¹ Witness Petković, T.49613-4; [REDACTED] the report sent by Paket communication addressed to Petković in the Main Staff in Mostar could be received only in Mostar and accordingly if Petković was in Kiseljak he could not receive the report, T.24725-6.

⁷⁷² [REDACTED] T.24731.

⁷⁷³ Exh.P06036.

⁷⁷⁴ [REDACTED] T.24728.

427. It is relevant to note here that the Indictment contains no suggestion that Petković would have been able to take any measures to control troops in Stupni Do during the action nor how he would have been able to do so, had he received information requiring him to act at that time. The evidence clearly demonstrates that none was available to him at the time.

24 October 1993

428. There is no evidence that any report and/or other document was addressed and/or sent to Petković from Vareš.

429. Rajić sent a report to the Chief of the HVO Main Staff,⁷⁷⁵ the Commander of the Vitez Military District and the Commander of the HVO Brigade in Kiseljak that the situation in Vareš was being gradually consolidated.⁷⁷⁶

430. [REDACTED] also sent a report about the deployment of the UNPROFOR armored carriers in the Vareš area to Praljak and Blaškić.⁷⁷⁷

431. The Chief of the HVO Main Staff, Žarko Tole, responded to [REDACTED] report to Praljak by ordering that anti-armour weaponry should be positioned around UN forces.⁷⁷⁸

25 October 1993

432. There is no evidence that Rajić sent and/or addressed any document to Petković on that day.⁷⁷⁹ According to the UNPROFOR report about the meeting of Petković with UNPROFOR's General Ramsey, held on 25 October 1993 at 22.00 hours, Petković's "information came from Sarajevo Radio and 'other sources' – largely un-authoritative".⁷⁸⁰ Petković testified that on 25 October he had information about Stupni Do from Radio Sarajevo and that was his main motive to meet with General Ramsey.⁷⁸¹

433. On 25 October 1993, UNPROFOR had information that crimes had been committed in Stupni Do and such information was even published. Accordingly, requests were sent to Rajić to provide accurate information about the situation in Stupni Do and Vareš:

(i) Petković asked Rajić and the BOBOVAC Brigade Commander to submit the correct information on Stupni Do, including the correct number of civilian casualties, and to allow the UN to enter Stupni Do.⁷⁸² Petković thereby demonstrated his intention to clear this matter and did not demonstrate any intention to dissimulate it.

⁷⁷⁵ Žarko Tole at the relevant time.

⁷⁷⁶ Exh.P06057 (also P06047).

⁷⁷⁷ Exh.P06067.

⁷⁷⁸ Exh.P06066.

⁷⁷⁹ [REDACTED] T.24748.

⁷⁸⁰ Exh.P06144.

⁷⁸¹ Witness Petković, T.50597.

⁷⁸² Exh.P06078.

(ii) The Assistant Commander of the Vitez Military District for IPD requested a report from the BOBOVAC Brigade Commander about the public information surrounding the massacre in Stupni Do and the behaviour towards UNPROFOR.⁷⁸³

(iii) The HVO Chief of the Main Staff (Žarko Tole) stated that Croatian TV confirmed that it had the footage of the massacre in Stupni Do and requested the truth about this event.⁷⁸⁴

434. Rajić responded to the Chief of the Main Staff Žarko Tole and the Commander of the Vitez Military District Blaškić, expressing doubts regarding the authenticity of the footage and reportage surrounding the events in Stupni Do.⁷⁸⁵ The response was not sent to Petković.

435. Tole, Chief of the Main Staff at the time, requested accurate information about the events in Stupni Do from the Commander of the Vitez Military District.⁷⁸⁶ The request was not sent to Petković.

26 October 1993

436. In relation to Petković's request of 25 October 1993,⁷⁸⁷ Rajić sent a report to Petković stating that he had already sent the report to the Chief of the Main Staff, Žarko Tole, and that it was not possible to precisely determine the number of casualties.⁷⁸⁸

437. Petković asked Rajić and Emil Harah⁷⁸⁹ to conduct a complete investigation about the events in Stupni Do and, *inter alia*, identify the perpetrators of illegal acts. Petković set 15 November 1993 as the deadline for the report and submission of complete documentation on the investigation.⁷⁹⁰ In doing so, Petković was acting under the authority and within the boundaries of the authority delegated to him by his superiors. The Prosecution has not alleged in the Indictment that Petković could, nor that he was legally required to, do more in relation to this matter.

438. [REDACTED] on 26 October 1993 and Milivoj Petković had already left Kiseljak.⁷⁹¹

1.3.3. Isolation of Anto Pejčinović, Zvonko Dužnović and Ivica Gavran

439. In the report of 23 October 1993, addressed to Kordić, Petković, Blaškić and Bradara, Rajić stated that he had placed into isolation Pejčinović, Dužnović and Gavran "because they

⁷⁸³ Exh.4D00821.

⁷⁸⁴ Exh.P06104.

⁷⁸⁵ Exh.P06102.

⁷⁸⁶ Exh.P06091.

⁷⁸⁷ Exh.P06078.

⁷⁸⁸ Exh.P06146.

⁷⁸⁹ Petković did not know that Harah was replaced by Krešimir Božić in the position of BOBOVAC Brigade commander and therefore addressed the order to him. The order was sent to Rajić in Vareš because Petković did not know that Rajić would come to Kiseljak on 26 October 1993. [REDACTED] Ivica Rajić did not inform his superiors about the departure from Vareš, T.24751.

⁷⁹⁰ Exh.P06137.

⁷⁹¹ [REDACTED] T.24463-4.

attempted to obstruct the planned activities”.⁷⁹² Petković, as already explained in paragraph 425, did not receive this report.

440. On 23 October 1993, at 19.00 hours, Tihomir Blaškić reported to the HVO Main Staff Commander that Rajić temporarily placed Pejčinović in isolation for obstructing offensive actions against the BH Army and he (Blaškić) asked for the Commander’s support.⁷⁹³

441. [REDACTED] Rajić decided to place Pejčinović, Dužnović and Gavran in isolation and that he had not been ordered by his superiors to do that.⁷⁹⁴ [REDACTED] Rajić was afraid of his military plans being obstructed.⁷⁹⁵ [REDACTED] .⁷⁹⁶

442. [REDACTED].⁷⁹⁷

At the same time Rajić initiated a procedure for Dužnović’s and Gavran’s dismissal.⁷⁹⁸

443. Petković did not plan, order and/or participate in any capacity in the internment of Pejčinović, Dužnović and Gavran.

1.3.4. Internment of military-abled Muslim men in Vareš

444. [REDACTED] on 22 October 1993 Rajić decided that military-able Muslim men⁷⁹⁹ in the town of Vareš should be temporarily isolated, monitored for a short period of time and then either released or necessary measures be taken against them. Rajić did not inform his superiors about this decision.⁸⁰⁰

445. In relation to the internment of military-abled Muslim men in Vareš, the Prosecution refers to Praljak’s document addressed to Petković in Kiseljak,⁸⁰¹ suggesting that this document was the basis for the internment of the Muslim men in Vareš. [REDACTED]⁸⁰² but the Muslim men had at that stage already been interned.

⁷⁹² Exh.P06026, p.3.

⁷⁹³ Exh.P06039, p.6 (no.6.).

⁷⁹⁴ [REDACTED] T.24422, 24427, 24432, 24592, 24608. The testimony related to the exh. P06028 (in connection with exh.P06026) and P06022.

⁷⁹⁵ [REDACTED]T.15577.

⁷⁹⁶ [REDACTED]T.15578.

⁷⁹⁷ [REDACTED]T.24842.

⁷⁹⁸ [REDACTED]T.24842; exh.4D00517, P09813.

⁷⁹⁹ Military-able men were considered as members of the armed forces: active soldiers, reservists or persons who in some other way, proscribed by law, gave their contribution to the defence of the country, and who are according to the law members of the armed forces /see paras.261-284/.

⁸⁰⁰ [REDACTED], T.24716.

⁸⁰¹ Second Amended Indictment, para.209. Praljak wrote the message to Petković at the end of the document which is exh.P06026, and the message was typewritten and sent to the addressees as a separate document, which is exh.P06028. Witness Petković testified that the exh.P06028 was received in Kiseljak, T.49583.

⁸⁰² [REDACTED]T.24427.

446. The evidence proves that Praljak's message did not relate to Muslims and BH Army, but to Croats in Vareš who were not capable of controlling the situation in the area.⁸⁰³ Petković testified that the document "referred to people in the command and those around the command and headquarters who clashed with the command".⁸⁰⁴ The Prosecution did not put it to him that it was otherwise or that he had given false evidence on that point so that the necessary procedural and evidential inference must be drawn from that failure. [REDACTED] there was no confusion that the message was in relation to dealing with the situation within the HVO Brigade and the Croatian leadership in Vareš.⁸⁰⁵

447. Accordingly, Petković had no role nor any part in the decision of internment.

1.3.5. Kiseljak HVO units engaged in Vareš

448. There is no evidence that the special purpose units "Maturice" and "Apostoli", engaged in Vareš by Rajić, committed any war crime in the earlier combat activities.⁸⁰⁶ [REDACTED] Rajić reorganized the unit "Maturice" in May 1993, disciplined the units and had control over them as of August 1993.⁸⁰⁷ [REDACTED] these units were established for special purposes and that Rajić "did not have any other units at that point in time to be able to intervene anywhere, including Kiseljak and Vareš". [REDACTED] Rajić trusted them as well as they trusted Rajić,⁸⁰⁸ [REDACTED].⁸⁰⁹

449. Petković testified that there were records about an internal clash or incident, but that there were no reports or records about crimes committed in combat actions.⁸¹⁰ Petković [REDACTED] prior to the events in Stupni Do he had no reason to doubt that Rajić was a reliable commander, that "we may have disliked some things about the way he went about his command, but not more than that".⁸¹¹ The Prosecution did not prove otherwise.

1.3.6. UNPROFOR

450. On 24 October 1993, [REDACTED] sent a request to Praljak and Blaškić to warn UNPROFOR to withdraw to the area where they were located before, or otherwise the HVO would be forced to intervene.⁸¹² [REDACTED] did not inform Petković. The same day the Chief of the HVO Main Staff,

⁸⁰³ Witness Praljak, T.41871, 41903, 41906.

⁸⁰⁴ Witness Petković, T.49614.

⁸⁰⁵ [REDACTED]T.38182-3.; exh.4D01652.

⁸⁰⁶ Witness Nelson could not give a single piece of information about any crime committed by «Maturice» or «Apostoli» in combat actions, T.16600.

⁸⁰⁷ [REDACTED]T.24350, 24416.

⁸⁰⁸ [REDACTED]T.24706.

⁸⁰⁹ [REDACTED], T.24706.

⁸¹⁰ Witness M Petković, T.50604, 50613-5.

⁸¹¹ [REDACTED][REDACTED]

⁸¹² Exh.P06067.

Žarko Tole, ordered that anti-armor weaponry be positioned around UNPROFOR and that UNPROFOR was to be warned that “our forces would destroy them in case they rendered our combat activities inoperative against the MOS in any way”.⁸¹³ After having received Tole’s order, an APC was halted in Vareš and an HVO soldier fired a shell next to the UNPROFOR vehicle which caused it to withdraw.⁸¹⁴

451. [REDACTED]Tihomir Blaškić ordered that UNPROFOR should not be permitted to enter the combat–zone area.⁸¹⁵ Again, Petković was not informed.

452. On 25 October 1993, Petković sent an order to Rajić in Vareš to allow the UN to enter Stupni Do, “whatever the consequences (understand that the more difficult it is made for them the worse it is for us)”, and to avoid any kind of conflict with the UN.⁸¹⁶ Petković [REDACTED] was not informed by Rajić that the HVO had blocked UNPROFOR’s entry to Stupni Do, but by General Ramsey, whom he met with late in the evening of 25 October 1993.⁸¹⁷ General Ramsey reported that Petković had given UNPROFOR written permission to go to Stupni Do and had said “there is no point in trying to hide what has happened”.⁸¹⁸

General Ramsey commented:

*Petkovic’s orders are not being obeyed by HVO commanders at Vareš. He is out of touch with both his HQ and his military commanders. HQBHC is urgently trying to fly Petkovic back to Split so that he may exert his authority /.../. Petkovic has a clear interest in the release of Muslim wounded as he wishes for a further evacuation of HVO people from Nova Bila. But while in Kiseljak he is unable to tell Gen.Tole what to do.*⁸¹⁹

This clearly demonstrates the absence of any sort of control, let alone, effective control, on the part of Petković at the relevant time in regard to these events.

453. On the morning of 26 October 1993, UNPROFOR entered the village of Stupni Do.⁸²⁰

1.3.7. Ability that civilians leave Stupni Do

454. The evidence shows that Stupni Do was a defended village and that there was fighting between the HVO and the BH Army in the village.⁸²¹

455. Stupni Do was not completely surrounded by HVO forces. There was a free area on one side of the village and all citizens who wanted to leave Stupni Do were able to do so.⁸²²

⁸¹³ Exh.P06066.

⁸¹⁴ [REDACTED]T.24437.

⁸¹⁵ [REDACTED]T.24524.

⁸¹⁶ Exh.P06078.

⁸¹⁷ [REDACTED]

⁸¹⁸ Exh.P06144.

⁸¹⁹ Exh.P06144.

⁸²⁰ Exh.P07838, para.7; witness Petković, T.50593.

⁸²¹ Witness Mufid Likić, T.16047-8; Mahmutović, T.25674-8

Mahmutović testified that 150-180 people managed to leave Stupni Do during the night of 23/24 October.⁸²³ Likić testified that she was in a group of about 100 civilians (women, children and elderly men) hiding in the forest until the morning of 25 October when they decided to surrender to the HVO unit which was nearby.⁸²⁴ HVO soldiers received Muslim refugees from Stupni Do at their check-point and later on, upon their request, enabled them to go to the territory held by the BH Army.⁸²⁵ The UN Secretary General also stated in his report of 10 February 1994 that on 23 October 1993, after 16.30 hours, the HVO started withdrawing from the village, “allowing residents to go through the village looking for survivors” and that 193 citizens survived.⁸²⁶

456. Petković did not have any role in the conducts of HVO units and soldiers towards Muslim civilians from Stupni Do nor did he exercise any sort of control over them at the time. Furthermore, it should be noted that the nearby HVO unit took care about the civilians from Stupni Do, which demonstrates that HVO units in the Vareš area were not ordered to attack or mistreat Muslim civilians in Stupni Do. Whilst some incidents and/or crimes might have occurred, they could not reasonably be said on the evidence to be the consequence of a pre-planned criminal scheme.

1.4. Investigation of crimes committed in Stupni Do

1.4.1. Pleading considerations

457. At paragraph 215 of the Indictment, the Prosecution alleges that, on 26 October 1993, Petković ordered an investigation regarding allegations of crimes in Vareš and Stupni Do. The Indictment goes on to allege that Prlić gave a public indication that an investigation had been requested and that all commanders involved had been suspended or disciplined. That paragraph does not make it clear whether that alleged involvement of Petković is said to have been culpable and, if so, for what reason, on which legal basis and under what theory of liability. If intended to be relevant to Petković’s responsibility, such pleadings are inadequate.

458. At paragraph 216 of the Indictment, the Prosecution alleges that neither Rajić nor any other person was ever disciplined or punished for what happened in Stupni Do. The Indictment does not allege that Petković had any authority to do anything about this. As noted above (paragraph 80) Petković, the Deputy Commander/Chief of the Main Staff at the relevant time, did not have the authority, power or competence to suspend HVO commanders, discipline them and/or punish them.

⁸²² Witness Kemal Likić, T.26390-1; Mahmutović, T.25663.

⁸²³ Witness Mahmutović, T.25695

⁸²⁴ Witness Ferida Likić, T.16239.

⁸²⁵ Witness Nelson, T.16533-4.

⁸²⁶ Exh.P07838, para.6.

1.4.2. Engagement of the Military Prosecutor

459. On 28 October 1993, the Deputy District Military Prosecutor required the BOBOVAC Brigade Commander to give information about the events in Stupni Do.⁸²⁷ [REDACTED]Rajić knew that some contacts had been established between the military prosecutor and SIS and that the military prosecutor could use the services of SIS if he wanted to conduct certain procedures.⁸²⁸ [REDACTED]testified that the military prosecutor had initiated proceedings⁸²⁹ and that the names of Ivica Rajić, Dominik Ilijašević Como, Ante Ljoljo and Marinko Jurišić were sent as names of the potential perpetrators of the crimes to the public prosecutor.⁸³⁰ Petković knew that the military prosecutor had been properly seized, that he was competent and that he had started to look into the matter⁸³¹ and confirmed that names of three or four men as the main actors in Stupni Do, together with their statements, had been handed to the prosecution for further proceedings.⁸³² Petković had no reason to regard that information was unreliable or false. Nor did he have any reason nor any authority to involve himself into the Prosecutor's investigation.

460. Jan Koet stated that on 16 November 1993 he had met with Marjanović, who was the prosecutor in charge of Stupni Do. Marjanović wanted to talk to him about Stupni Do, but they did not talk about it. Marjanović later on called him about bodies discovered in Stupni Do which he wanted to be investigated by UNPROFOR.⁸³³

461. On 29 December 1993, the Assistant of the Kiseljak HVO Brigade for SIS, Ivica Marjanović, submitted reports from Marinko Ljoljo, the commander of the HVO unit "Maturice", and Marinko Jurić, the commander of the HVO unit Apostoli, to the District Military Prosecutor's Office in Travnik, and stated: "If you consider that there is a responsibility linked to this case of Stupni Do village, please inform us that we may continue to proceed with this case."⁸³⁴

1.4.3. Personal involvement of the HRHB President Boban

462. On 31 October 1993, Rajić sent the report directly to the President Boban and informed him, *inter alia*, that the operation was carried out by the special purpose units "Maturice" and "Apostoli", and their commanders Dominko Ilijašević and Marinko Jurišić, and the operation

⁸²⁷ Exh.4D00500.

⁸²⁸ [REDACTED], T.24510.

⁸²⁹ [REDACTED] [REDACTED]

⁸³⁰ [REDACTED][REDACTED]

⁸³¹ Witness Petković, T.49645.

⁸³² Witness Petković, T.50741.

⁸³³ Exh.P10092, 92*bis* statement of the witness Jan Koet, para.22.

⁸³⁴ Exh.4D00499.

was headed by Marinko Ljoljo.⁸³⁵ [REDACTED]Boban called Rajić on the phone and asked him to send the report directly to him.⁸³⁶

463. [REDACTED]the President's office was informed about the investigation about Stupni Do.⁸³⁷

464. Boban, *inter alia*, spoke about the situation in Stupni Do, the investigation and the necessity to punish the perpetrators with the Croatian President, Franjo Tuđman. They met in Split (Croatia) on 5 November 1993⁸³⁸ and in Zagreb, on 10 November 1993.⁸³⁹ Petković participated at the meeting in Split, together with his superior, the Commander of the Main Staff Praljak, and the President of the Government Jadranko Prlić, but did not participate at the meeting in Zagreb. Petković was not informed about the details of Boban's engagement in the investigation about Stupni Do, but he knew that Boban, his superior, was involved in the investigation and had the competence to suspend and relieve Rajić of duty, as well as other suspected military commanders, and/or discipline and punish them. In that sense, Petković would have had no reason again to involve himself in a matter that his superiors were dealing with and where they had established a procedure/mechanism for that purpose.⁸⁴⁰

1.4.4. Involvement of the Defence Minister

465. On 27 November 1993, the Defence Minister Perica Jukić sent a request to UNPROFOR for assistance in revealing war crimes in Stupni Do, especially concerning: [REDACTED].

[REDACTED].⁸⁴¹ [REDACTED]Rajić did have communication with the Defence Minister Jurić.⁸⁴²

1.4.5. Involvement of military commanders

466. On 26 October, pursuant to the competence of his superiors which was vested on him, Petković issued an order to Rajić and Emil Harah to conduct an investigation into the attack on Stupni Do; 15 November was set as the deadline for submission of the report.⁸⁴³ Petković

⁸³⁵ Exh.P06291.

⁸³⁶ [REDACTED]T.24769.

⁸³⁷ [REDACTED] T.15583. [REDACTED]the President Boban promised an investigation and later on the witness read that the investigation has been initiated /T.15556/.

⁸³⁸ Exh.P06454 (Prlić, Praljak and Petković were present at the meeting).

⁸³⁹ Exh.P06575.

⁸⁴⁰ U.S., Federal Court of Florida, *Ford v Garcia*, Judgement, 3 Nov 2000, 289 F.3d 1283, 52 Fed R Serv 3d, referring to Jury Instructions at 6-7, 9-10 («[A] commander may be relieved of the duty to investigate or to punish wrongdoers if a higher military or civilian authority establishes a mechanism to identify and punish the wrongdoers. In such a situation, the commander must simply do nothing to impede nor frustrate the investigation.»); the case is also referred to in the ICRC's *Customary Study*, Vol II: Practice, Part 2, para.661, p.3758 and in the *American Journal of International Law*, April 2001, Vol 95(2), 394, 395.

⁸⁴¹ Witness Petković, T.49625.

⁸⁴² [REDACTED] T.24801-2, 24975-6.

⁸⁴³ Exh.P06137.

informed Praljak about everything he knew about the events in Stupni Do.⁸⁴⁴ In doing so, Petković effectively fulfilled any disciplinary responsibility to notify. Praljak subsequently informed his successor Ante Roso about everything he knew about Stupni Do. Roso was therefore acquainted with everything that Praljak considered important at the time.⁸⁴⁵ On 8 November 1993 Praljak sent Rajić a request for an urgent report.⁸⁴⁶

467. On 8 November 1993, Rajić sent his report to the HVO Main Staff, addressed to Petković.⁸⁴⁷ [REDACTED].⁸⁴⁸ On 15 November 1993, Rajić sent an additional report to the HVO Main Staff, addressed to Petković again, and to SIS, and informed *inter alia* that they contacted the Deputy District Military Prosecutor in Vareš and that new items of information were obtained on the basis of his report.⁸⁴⁹

468. On 15 November 1993, when Rajić submitted his second report,⁸⁵⁰ Petković was deputy to the Chief of the HVO Main Staff, Ante Roso. Petković testified that he, as the Deputy Chief of the HVO Main Staff, did not have any power to take any measure against Rajić or any other HVO member: “I was duty bound, if General Ante Roso was not informed about that, to bring this report to his attention and to inform him about all actions that were taken. And in that case, he took it upon himself to act further.”⁸⁵¹ The Prosecution did not challenge Petković’s evidence on that point. It is also consistent with what was said above regarding the responsibility of a superior as a matter of international law.

469. Petković testified about the accusations that he was involved in misrepresenting and covering up crimes committed in Stupni Do:

Now, as far as Stupni Do is concerned, I say with full responsibility here that through issuing my order, I secured the entry of UNPROFOR forces into Stupni Do, and thereby I automatically ensured that the news of Stupni Do should be disseminated to all four corners of the world so that all the important factors in the international community be informed about it. I also ensured that the scene was protected and secured. And, similarly, I took measures to see that the United Nations and their forces should have the necessary conditions to carry out an

⁸⁴⁴ Witness Petković, T.49637.

⁸⁴⁵ Witness Praljak, T.39665.

⁸⁴⁶ Exh.4D00834 - the request was prepared and signed by Slobodan Praljak, but the name of Milivoj Petković was typewritten. Milivoj Petković testified that he was in Split when the order was submitted, T.49643. Slobodan Praljak confirmed that he signed the document and that Petković was in Split on that day, T.41154, 41270.

⁸⁴⁷ Exh.P06519.

⁸⁴⁸ [REDACTED]T.24508

⁸⁴⁹ Exh.P06671.

⁸⁵⁰ [REDACTED]T.24515.

⁸⁵¹ Witness Petković, T.49678.

*investigation and that the United Nations should be informed thereof. And all structures in Herceg-Bosna as well, they were all informed with the fact, including the political leadership of the Republic of Croatia. And I do not see in what way it is alleged that this was covered up or hidden from anyone. It was accessible to one and all, everybody who wanted to get to know the situation there.*⁸⁵²

The Prosecution did not challenge his evidence on these matters. Nor did the Prosecution include in the Indictment as a material fact any other step that, it says, he was required and was materially able to adopt. Nor was any such step or measure put to him in cross-examination. The necessary inference would have to be drawn from these facts.

1.4.6. Engagement of SIS

470. In November 1993, the SIS conducted operation “Kiseljak”, obtaining information about Rajić and his activities, including Stupni Do. The information of 23 November 1993 was sent to the Defence Minister Jukić, the Chief of the HVO Main Staff Roso and the Chief of the Political Administration in the Defence Ministry Viro.⁸⁵³

471. On 30 November 1993, the Chief of SIS Administration Lučić sent a report to the Head of HIS /Croatian Information Service/ Miroslav Tuđman about the events in Stupni Do⁸⁵⁴ and mentioned the names of the following commanders: Ivica Rajić, Dominik Ilijašević Como, Ante Ljoljo and Marinko Jurišić.

472. The witness Bandić, first associate of Ivo Lučić, testified that he personally endeavored to collect information about Stupni Do and spoke with the people who were there.⁸⁵⁵ Jan Koet explained that he had met with Ivan Bandić and Vinko Lučić in November 1993 and that the HVO wanted to cooperate with UNPROFOR in the investigation of Stupni Do.⁸⁵⁶

473. As explained above (paragraphs 87, 92, 108) the SIS, investigative organs of the Military and the civilian police were in charge of investigating crimes.⁸⁵⁷ If a perpetrator of the crime was unknown, or if it was not established that a crime had been committed, SIS and the Military Police were responsible for gathering information and then filing a criminal report with the military prosecutor.⁸⁵⁸ Slobodan Praljak testified that SIS had to do its job *ex officio*,

⁸⁵² Witness Petković, T.49832-3.

⁸⁵³ Exh.P06828.

⁸⁵⁴ Exh.P06964.

⁸⁵⁵ Witness Bandić, T.38324.

⁸⁵⁶ Exh.P10092, 92bis statement of the witness Jan Koet, paras. 24-29; exh.P06959.

⁸⁵⁷ Confirmed by Petković, T.49633.

⁸⁵⁸ Witness Petković, T.49635. Praljak also testified that if the perpetrator of a criminal act was unknown, investigation had to be done by the SIS and the military police, T.42245, 42460, 42462.

The *Blaškić* Appeals Chamber concluded that in relation to the crimes committed in Ahmići, Blaškić took measures that were reasonable and within his material ability to denounce the crimes committed, by requesting that the SIS carry out an investigation. This was done and Blaškić was not informed of the results of the investigation (para. 420).

irrespective of Petković's order of 26 October 1993.⁸⁵⁹ Petković had no right, no authority and no ability to interfere in the work of these organs. Nor did he have any reason to.

474. The evidence proves that SIS did conduct an investigation and that the names of military commanders suspected for crimes committed in Stupni Do were established. The proceedings regarding the suspects at the time did not depend on the SIS, or any other investigative body, but on the HRHB President, Boban. Any failure to bring the matter forward for the purpose of prosecution would therefore be attributable to him and no one else. Petković had no authority and no means to advance that process any further. He had done all he could to contribute to it.

1.5. Ivica Rajić became Viktor Andrić

475. On 10 November 1993, the Office of the President of the HRHB Boban issued a statement that Rajić was relieved of duty due to, *inter alia*, the course of investigation into his responsibility.⁸⁶⁰ [REDACTED]Boban informed Rajić that such information would be announced on TV, but that Rajić would keep his position and complete the job he had started. [REDACTED].⁸⁶¹

476. [REDACTED].⁸⁶² Witness Bandić testified that the HRHB President and the HVO Supreme Commander Boban made the decision that Rajić would change his name to Viktor Andrić.⁸⁶³ Petković testified that, as far as he knew, Rajić made the decision to change his name and that obviously Boban knew that Rajić changed his name.⁸⁶⁴

477. On 30 December 1993, Blaškić dismissed Rajić from the position of the Commander of the OG-2⁸⁶⁵ and appointed Viktor Andrić to the same position.⁸⁶⁶

478. Political and military leaders of the HRHB (the President and the Supreme Commander Mate Boban,⁸⁶⁷ later on Krešimir Zubak,⁸⁶⁸ the Defence Minister Jukić,⁸⁶⁹ the Chief of the HVO Main Staff Roso,⁸⁷⁰ the Deputy Chief of the HVO Main Staff Petković,⁸⁷¹ the

⁸⁵⁹ Witness Praljak, T.42260.

⁸⁶⁰ Exh.P10255. In the report of the Political Administration of the RH Defence Ministry of 6 April 1994 the "project Colonel Viktor Andrić" was explained as a consequence of the international pressure to dismiss Rajić because of the crimes committed in Stupni Do – exh.P10327. [REDACTED]Ivica Rajić gave the interview described in the report, T.24555.

⁸⁶¹ [REDACTED]T.24531.

⁸⁶² [REDACTED]T.24532-3.

⁸⁶³ Witness Bandić, T.38306

⁸⁶⁴ Witness Petković, T.49650-1.

⁸⁶⁵ Exh.P07394.

⁸⁶⁶ Exh.P07401.

⁸⁶⁷ Exh.P07386, P07387.

⁸⁶⁸ [REDACTED]T.24823-4.

⁸⁶⁹ Exh.4D00537.

⁸⁷⁰ Exh.4D00536.

⁸⁷¹ Exh.P07348, P07352, P07504.

Commander of the Vitez Military District Blaškić,⁸⁷² etc.) communicated with Viktor Andrić, knowing that he was Ivica Rajić, and sometimes even addressed such communications to Rajić using his real name. [REDACTED]⁸⁷³ as did Petković.⁸⁷⁴

479. Jakov Kovač was Rajić's third name.

[REDACTED].⁸⁷⁵

[REDACTED].⁸⁷⁶

480. Rajić was arrested in 1995.⁸⁷⁷ The indictment issued against him before the court in Mostar was not in relation to the crimes committed in Stupni Do.⁸⁷⁸ The Mostar Court acquitted Rajić.⁸⁷⁹

481. To the extent that Petković's superior, President Boban, declined or refused to take the last step in the punishment of Rajić and, instead, decided to shield him from prosecution, there was nothing that Petković could do, and no subsequent failure that could render him liable under the doctrine of superior responsibility as the actions of his own superior(s) had effectively rendered any further steps (even if he had the material ability to take any) meaningless. The law is clear that in such a case he could not be held criminally responsible.⁸⁸⁰

1.6. Forged documents and/or documents of suspicious authenticity and/or probative value

482. On 23 October 1993, at 6.40 hours, Rajić allegedly wrote to Krešimir Božić in the BOBOVAC Brigade that he "approved his (Božić's) proposal to carry out the operation in the area of Bogoš hill and Stupni Do and announced that he would talk to "XY" for permission to come to Vareš "in the course of the day".⁸⁸¹ This document clearly suggests that Rajić did not make the decision to attack Stupni Do and that he was not in Vareš at all in the early morning of 23 October 1993.

⁸⁷² Exh.4D00538.

⁸⁷³ [REDACTED], T. 24822-4.

⁸⁷⁴ Witness Petković, T.49652, 50617-8

⁸⁷⁵ Ivica Rajić was arrested in 1995, tried (not for crimes committed in Stupni Do) and acquitted. [REDACTED] /T.49202-3/.

⁸⁷⁶ [REDACTED]T.24865.

⁸⁷⁷ [REDACTED]T.24833.

⁸⁷⁸ [REDACTED], T.24834.

⁸⁷⁹ [REDACTED]T.24834-5.

⁸⁸⁰ See, in particular, *Ntagerura* Appeal Judgment, par 345.

⁸⁸¹ Exh.P06038.

[REDACTED].⁸⁸²

[REDACTED].⁸⁸³

483. On 23 October 1993, at 11.45 hours, Harah allegedly sent a report to Praljak.⁸⁸⁴

[REDACTED]⁸⁸⁵

484. On 23 October 1993, Petković allegedly sent a document to the Commander of the HVO-Vareš, stating that the Commander was authorized to dismiss Pejčinović, Dužnović and Gavran of their duties and that responsibility for ethnic cleansing in the Croat and Muslim villages should be investigated.⁸⁸⁶ The BCS version of the document is the translation of the English document. There is no evidence that the document was written in Croatian and signed by Petković. The registration number of the document cannot be connected with Petković, there is no reference that the document was written in Kiseljak (which Petković always wrote if the document was issued at the IZM in Kiseljak) and the function of the “HVO-VAREŠ Commander” did not exist. Petković [REDACTED] had never seen the document before this trial.⁸⁸⁷ [REDACTED]⁸⁸⁸ and could not exclude the possibility that somebody used Petković’s name to cover up something that Rajić had already done.⁸⁸⁹ In those circumstances, the document is unreliable and subject to contradictory evidence; its authenticity is doubtful at best and its authorship has not been established.

485. The document of 26 October 1993, allegedly signed by the BOBOVAC Brigade Commander Krešimir Božić, with the title “Addition to the Appraisal Regarding the Events from 18 October 1993 to Today”, shows that the attack on Stupni Do was militarily justified.⁸⁹⁰

⁸⁸² [REDACTED]T.24498-9, 24717-8. [REDACTED] /T.24501/.

⁸⁸³ [REDACTED], T.38176.

⁸⁸⁴ Exh.P06020.

⁸⁸⁵ Exh.P10082, [REDACTED], p.79.

⁸⁸⁶ Exh.P06022.

⁸⁸⁷ [REDACTED]

⁸⁸⁸ [REDACTED]T.24839.

⁸⁸⁹ [REDACTED]T.24840.

⁸⁹⁰ Exh.4D00513.

[REDACTED].⁸⁹¹

/.../

[REDACTED].⁸⁹²

486. The explained evidence clearly proves that Rajić was aware of crimes committed in Stupni Do and already in Vareš started to produce documents which “would be useful” for him if a criminal investigation were initiated. Rajić did not inform Petković about his preparations for the possible criminal investigation and the production of “useful” documents, nor did Petković have any information about these Rajić’s activities.

Exhibit P09895

487. On 26 October 1993, Petković left Kiseljak⁸⁹³ and allegedly left the handwritten message by an unknown author that “the order for an investigation⁸⁹⁴ is merely as a formality” and that Rajić “must be cautious”.⁸⁹⁵ The Prosecution does not assert that Petković was the author of the document. The Defence positively asserts that he was not.

⁸⁹¹ [REDACTED]T.24751.

⁸⁹² [REDACTED]T.24843. The evidence proves that Ivica Rajić knew already in Vareš that some crimes were committed in Stupni Do. [REDACTED]T.24844.

⁸⁹³ Milivoj Petković left Kiseljak on 26 October 1993.

⁸⁹⁴ Petkovic's order for an investigation was sent the same day (26 October 1993) to Ivica Rajić in Vareš, exh.P06137.

⁸⁹⁵ Exh.P09895.

488. [REDACTED].⁸⁹⁶

[REDACTED].⁸⁹⁷

489. Asked by the Honorable Judge Trechsel how he knew that the message had been dictated by Petković,⁸⁹⁸

[REDACTED].⁸⁹⁹

490. The Honorable Judge Antonetti asked a question about the probability that a confidential message would be written by another person and that such a message would not be given over the phone.⁹⁰⁰ [REDACTED].⁹⁰¹

491. As noted above, [REDACTED] evidence is *per se* of doubtful reliability. In this particular instance, the doubts that attach to [REDACTED] is unsupported, uncorroborated and is no more than guess-work on his part that has no basis in facts. In this particular instance, the guess-work has shown to be false by Petković's own testimony. In those circumstances, this part [REDACTED] evidence cannot be relied upon.

⁸⁹⁶ [REDACTED]T.24477.

⁸⁹⁷ [REDACTED]T.24479.

⁸⁹⁸ «TRECHSEL: The question, Witness, had been how do you know that this message was dictated by Mr. Petkovic? This question, you have not really answered. Either Mr. Petkovic or Mr. Lucic could have told you. It is not very likely that it was a third person, but the third possibility is that you concluded, after having spoken to Mr. Petkovic, that probably he had dictated it. Which of these three applies? If any?» /T.24479.

⁸⁹⁹ [REDACTED]T.24479-80

⁹⁰⁰ « JUDGE ANTONETTI: [Interpretation] Mr. EA, let's assume that General Petkovic left you a message contradicting the official order that we saw earlier. Do you believe that he's going to go through a third party, i.e., Vinko Lucic, to tell you not to take into account the official order? Do you think that's creditworthy or another situation: If General Petkovic leaves you a confidential message, why doesn't he write it himself, in his own handwriting in a couple of lines. And if it's that confidential, why doesn't he just tell you on the phone about it?» /T.24480/

⁹⁰¹ [REDACTED]T.24480-1.

492. [REDACTED].⁹⁰²

During cross-examination by the Petković Defence,⁹⁰³

[REDACTED].⁹⁰⁴

/.../

[REDACTED].⁹⁰⁵

493. [REDACTED]»⁹⁰⁶

Significantly, the Prosecution did not call Vinko Lučić as a witness – despite his apparent availability – as would have been expected had it sought to prove that fact as a fact material to its case.

⁹⁰² [REDACTED]T.24464, 24468, 24758-9

⁹⁰³ [REDACTED] T.24848-9.

⁹⁰⁴ [REDACTED]T.24850-1.

⁹⁰⁵ [REDACTED]T.24857-8.

⁹⁰⁶ [REDACTED]T.24864

494. Petković testified that he had never seen this document before the trial, that he had no need to dictate anything for he could write himself, that Rajić had never mentioned the document and acted as he had been ordered to do and speed up the process of reporting. Petković further explained that he did not speak with Rajić upon Rajić's arrival to Kiseljak, because he was in Split and could not communicate with Rajić.⁹⁰⁷ This evidence was logical, reliable and consistent. The Prosecution did not expose it as false or unreliable in cross-examination.

495. [REDACTED].⁹⁰⁸

The document does not have a stamp of an archive or any authority, [REDACTED].⁹⁰⁹ The document is clearly self-serving and false.

1.7. BH Army conquered Vareš and Croats left the town

496. [REDACTED]the population was evacuated because of the large-scale attack on Vareš which was prepared and launched by the BH Army.⁹¹⁰ Asked to comment on the allegations about the self-ethnic cleansing, [REDACTED].⁹¹¹ Hakan Birger testified that HVO did not force Croats out of Vareš, but that Croats were afraid and therefore escaped from Vareš.⁹¹² This evidence was not challenged by the Prosecution.

1.8. Conclusion

497. The evidence demonstrates that Petković did not plan, instigate, order, commit or otherwise aid and abet in the planning, preparation or execution of crimes committed in Stupni Do and Vareš.

498. Further, the record demonstrates that Petković was not informed about Rajić's decision that the HVO would attack Stupni Do and, while in Kiseljak, did not get Rajić's report about military activities in Stupni Do and Vareš. Petković was not personally present in Vareš and/or Stupni Do and therefore was physically unable to observe the situation on the ground. Accordingly, Petković did not know, nor had any reason to know that the HVO would attack Stupni Do or that any HVO soldier and/or commander was about to commit any crime in Stupni Do and/or in Vareš. Furthermore, he had no demonstrated means of controlling them at the time.

⁹⁰⁷ Witness Petković, T.49636-7, 49639.

⁹⁰⁸ [REDACTED]T.24848

⁹⁰⁹ Exh.P09895. [REDACTED].

⁹¹⁰ [REDACTED] T.15552, 15663.

⁹¹¹ [REDACTED]T.15528.

⁹¹² Witness Birger, T. 16442.

499. At the relevant time, Petković was Deputy-Commander of the Main Staff. Petković acted in good faith at all times and submitted all information available to him about the events in Vareš and Stupni Do to his superior commanders - the Supreme Commander Boban and the Commander of the HVO Main Staff Praljak. There is no evidence and no suggestion that he failed to provide to the competent authorities any information that he had in his possession concerning this incident.

500. Petković was in Kiseljak accompanied by the SIS officer Ivan Bandić, and information available to Petković was known to Bandić as well. Petković knew that the military prosecutor and SIS were included in the investigation. Furthermore, Petković knew that all competent bodies in the HRHB were informed about the events in Stupni Do and Vareš and that they had seized themselves of the matter and that a criminal investigation had been initiated. Names of the HVO commanders suspected of being responsible for crimes committed in Stupni Do were known to all competent investigative bodies of the HRHB.

501. Petković, as the Deputy Commander/Chief of the HVO Main Staff, had no authority to punish the perpetrators of the crimes, either in terms of disciplinary measures or to initiate any criminal proceedings. Nor did he have any investigative authority. What he was required and able to do, he did. As noted above, there was nothing more which, legally, he was required to do in this matter.

502. Concerning Rajić, Petković had no authority to suspend him and/or remove from his position. Nor has this been alleged in the Indictment. He had no disciplinary authority over him and it was made clear by his superior (President Boban) that no such measures were required in the circumstances and that none would be taken against him. In those circumstances, Petković could do nothing but to acknowledge the fact that Rajić would continue to work in the HVO as Andrić. The Prosecution has not pleaded any material fact that would suggest that Petković had any other means at his disposal to deal with this matter.

2. UNLAWFUL LABOUR

2.1. Petković's Order

503. On 8 August 1993 Petković, acting as deputy-Commander of the Main Staff at the time, signed the order to the Posušje Brigade Commander to fortify the lines: «Prisoners and detained Muslims may be used for fortifying lines. Ask for authorisation through Military Police Administration (in charge of utilising prisoners).»⁹¹³ Petković confirmed that he had signed the order, which was drafted by the Chief of the Main Staff Žarko Tole.⁹¹⁴ The order

⁹¹³ Exh.P04020 (the same document P04039).

⁹¹⁴ Witness Petković, T.50685.

was, and was understood to be, lawful. Even if the Chamber was to take another view, this would have prevented Petković to form the relevant *mens rea*.

504. The Commander of the Posušje Brigade submitted the request to the Chief of the HVO MPA Ćorić for 100 “Muslim detainees”.⁹¹⁵ There is no evidence that the Chief of the HVO MPA, or anybody else, decided to admit the request and that the labour of the detainees upon this request was carried out.

505. The order could not constitute a basis for a conviction for “ordering” a crime as the order remained un-executed and, therefore, had no culpable consequence in relation to any of the crimes charged in the Indictment. Accordingly, all submissions made in paragraphs 365-376 are applicable *mutatis mutandis* in regard to the order of 8 August 1993.

2.2. Control of the requests

506. On 14 October 1993, Petković submitted an order to the brigades in the OZ SEH that the removal of prisoners to perform any kind of labour was prohibited, and that the HVO Main Staff would exceptionally permit such activity.⁹¹⁶ Petković testified that he prepared the order in agreement with the representatives of the ICRC.⁹¹⁷

507. The HVO Main Staff did not have authority to intervene in the acts of wardens of detention facilities and/or their superiors.⁹¹⁸ Members of the Main Staff thought that the MPA evaluated the requests for the labour of detained persons⁹¹⁹ and made decisions in relation to them, and that it was prison wardens who determined that POWs would not be sent to perform unlawful work or be exposed to danger during such work. The reports about the labour of the detained persons were never sent to the Main Staff and nobody ever requested the assistance or any contribution of the Main Staff in relation to this matter.⁹²⁰ This was because, as noted, this matter did not come within the scope of responsibility of the Main Staff.

508. When ICRC representatives asked for assistance from the Main Staff – which it must have trusted as reliable and willing to help – and because detention facilities, POWs and detainees were *not* under the Main Staff’s competence, the Main Staff could only try to control

⁹¹⁵ Exh.P04030.

⁹¹⁶ Exh.P05873.

⁹¹⁷ Petković testified: “Well, on that day I received a delegation from the International Red Cross Committee because we were supposed to decide about the holding of two meetings, one in Tomislavgrad and the other in Mostar, which would involve about 100 officers and NCOs, and the ICRC would talk about International Humanitarian Law. And that was arranged, and the people from the ICRC spent two days in Mostar on both sides, both banks. And they went with me -- they came to me to talk to me, and they said that they had been to the east bank, and asked them there to regulate questions of human labour. And then they told me that it would be a good idea if I were to issue an order, and that's what I did. That's how I drafted the order forbidding any more such people to be taken for that purpose, and, if necessary, then the Main Staff would make the decision and it would be far off from the front-line so as not to bring anybody into jeopardy.” T.50835-6.

⁹¹⁸ See, above, section *Competence of the HB/HVO authorities in relation to detention facilities*, paras.309-348.

⁹¹⁹ Exh.P04020.

⁹²⁰ See Annex 12: *Reports of wardens of detention facilities as of 1 July 1993*

requests which would be sent to the competent authority for execution.⁹²¹ However, the HVO Main Staff did not, and could not, control the realization or implementation of the approved request. It did not have the personnel, the expertise, the time or resources (let alone the mandate or responsibility) to do so and was entitled to assume that implementation was done in accordance with relevant legal standards.

509. It should be noted that units of the HVO Armed Forces which were not subordinated to the Chief/Commander of the Main Staff (such as Military Police units, units of the Convict Battalion) were not obliged to address to the Main Staff and did not indeed ask the HVO Main Staff to approve their requests for the work of the detained persons. This is relevant for the Petković defence case because many detainees were working upon the requests of the Military Police commanders and the units within the Convict Battalion.

510. The rules about labour of detained persons were established by the HVO Military Police Administration. On 22 November 1993 Radoslav Lavrić, Chief of the MPA, reported that “it was decreed that prisoners could be used for work (arranging the terrain) with the signature of the commander of the MP battalion or brigade with the mandatory submission of an application and a report after their return”.⁹²²

511. On 8 December 1993 the Assistant Defence Minister for Security Marjan Biškić issued the order to the Chief of the HVO MP Administration and forbade the taking of prisoners for labour without the permission of the Security Sector of the Ministry.⁹²³ Thus the Defence Minister, or more precisely his Assistant for Security specified the rules and the Security Sector of the Defence Ministry took complete control over the labour of the detained persons. It was their responsibility to see to the lawful enforcement of their directions.

2.3. Conclusion

512. During the period post-24 July 1993, Petković did not issue any order that could be regarded as unlawful (nor is this alleged in the Indictment). Instead, the order referred above was lawful or could reasonably be regarded as such in the circumstances. Any residual doubt in that regard would have to benefit the accused. If and where its implementation fell short of relevant standard, the responsibility for it would have to be born by those whose responsibility it was to see that this was not the case. Petković had no knowledge that this was the case. Nor was he aware that any of his actions in this context were unlawful so that he could not be said to have formed the relevant culpable mindset. There is no evidence that, at the time when he issued the said order, he possessed the requisite culpable mindset. For these reasons, the

⁹²¹ Exh.P05882, P05895, P05934, P06537, P06819.

⁹²² Exh.P06805.

⁹²³ Exh.P07075.

issuance of those orders (not specifically identified in the Indictment as material facts) could not form the basis of a criminal conviction under any heads of liability.

V. FORMS OF LIABILITY AND ALLEGED RESPONSIBILITY OF PETKOVIĆ

1. JCE

1.1. Prosecution's JCE theory – General considerations

513. It is essential to reject the mental association sought by the Prosecution between (i) the fighting of a war, whose legitimacy and legality is *not* at issue in this case and (ii) the creation of, and participation in a joint criminal enterprise as is said to have occurred in the context of that conflict. Petković fought and participated in the former; he had no information about and no involvement in the latter. Two great jurists (and French representatives at the *Commission on the Responsibility of War*) discussing the extradition of the Prussian Emperor, Wilhelm II, noted the risks involved in trying to merge war and sweeping ideas of criminal enterprises:⁹²⁴

“Il est anti-juridique de vouloir assimiler la guerre à un complot, à une conspiration accompagnée de crimes et délits.”

514. Whilst the acts of a man involved in the fighting of a war with a military enemy might in some cases coincide with (and even further) the criminal agenda of others, his actions will not be criminal simply for that reason. This would only be the case if and where what he did was done in the knowledge of the existence of such a criminal enterprise and with the intention of furthering its criminal purpose through his actions.

515. Therefore, assuming that the Prosecution establishes beyond reasonable doubt the existence of the JCE pleaded in the Indictment, it would have to exclude each and all reasonable possibilities that the fifteen (15) alleged culpable associations of Petković could be regarded as anything other than a willful and intentional contribution to a joint criminal enterprise.

516. To achieve its purpose, the Prosecution is asking this Chamber to look at all of Petković's actions in a criminal light or, rather, to look at a selection of facts whilst ignoring others, to forget for a moment the existence and relevance of the armed conflict to Petković's actions and to super-impose onto his actions a huge criminal framework that should explain all of his deeds.

517. Instead, the Defence will invite the Chamber to look at Petković's actions for what they are – not necessarily perfect, not necessarily flawless – but those of a military man, trying to do a military job under testing circumstances as best he could to protect his land and his people. Whilst the Chamber might find fault with some of his actions, none was such as to allow for the sort of criminal association that the Prosecution has invented for this case.

⁹²⁴ Mr Larnaude and Mr Lapradelle (*Journal de Droit International Privé*, 1919, p.157).

518. The Prosecution failed to establish that what Petković did was not merely and simply the performance of his military functions which he sought to perform as best he could in the circumstances to try to win the war, rather than the knowing and intentional pursuit on his part of a pre-existing criminal plan to commit atrocities against Muslim fellow citizens.

519. The Prosecution attempts to merge into the blurriest of JCE-theories all aspects of the conflict would effectively result in the automatic criminalisation of any sort of involvement in the conflict that would happen to coincide with the criminal agenda that the Prosecution has attributed to some. This sort of collective guilt by association must imperatively be resisted. It is historically false, evidentially unsupported, legally dangerous and humanely unfair.

1.2. Alleged criminal agreement

520. The Indictment says that the alleged JCE had goals to: (i) politically subjugate, (ii) military subjugate, (iii) permanently remove and ethnically cleanse BH Muslims and other non-Croats who lived in the area of Herceg-Bosna, and then (iv) join these areas as part of “Greater Croatia” (whether as part of the Republic of Croatia or in close association with it). Allegedly planned means for achieving these goals were: force, fear or threat of force, persecution, detention, forcible transfer and deportation, appropriation and destruction of property and other criminal means punishable under Article 2, 3 and 5 of the Statute.

521. This JCE was allegedly agreed upon on or before 18 November 1991 – in unspecified circumstances, in an unspecified location, between unspecified individuals. There is no evidence – let alone evidence to a beyond reasonable doubt standard – that such a thing occurred on or around that date.⁹²⁵

522. If it was not agreed upon then, the Prosecution has provided no alternative theory of the alleged birth-moment of that alleged JCE. There is, therefore, and for the purpose of the charges no other case that the Defence has to meet or has notice of. In fact, there was no such moment and there is no evidence that would allow for a finding beyond reasonable doubt that this occurred as pleaded in the Indictment.

523. What is certain, however, are the following facts:

- (i) There is *no* allegation in the Indictment (and no evidence) that Petković was part of that alleged *original* moment;
- (ii) There is *no* allegation (and no evidence) that Petković knew of such an event;
- (iii) There is *no* allegation (and no evidence) that Petković was formally informed of the creation of such an enterprise.

⁹²⁵ Decision on establishing the HZHB as a political, cultural, economic and regional entity was adopted on 18 November 1991 (exh.P00079), but the document is not evidence of the alleged agreement to achieve a criminal goal by the criminal means.

524. The Prosecution JCE-case is entirely circumstantial. There is no direct evidence that the alleged criminal agreement had been reached between its alleged members. What the prosecution is attempting to merge is the political agenda of a number of actors with criminal acts that occurred during a violent ethnic conflict. According to the Prosecution the latter were the agreed means to achieve the former. *As a theoretical proposition*, it is easy to build a theory onto any sort of criminal eruption to try to bring it into a coherent self. The question here is whether the Prosecution has proved that theory beyond reasonable doubt as the only reasonable inference on the evidence or whether it is reasonable to view these crimes as the parasitical result of the unleashing of enmities and war between two warring sides. The Defence submits that it did not take a plan or agreement for this to happen and that none has been shown to have existed.

525. Regardless of the answer to the above question, it is essential for the Chamber to draw a clear evidential line between those involved in fighting a military war (legitimate) and those who might have partaken in criminal activities that accompanied that conflict (unlawful and punishable). Petković was part of the first group, not the latter.

526. If the Trial Chamber takes the view that a JCE existed, it would be required to determine when exactly it could be said, beyond reasonable doubt, to have existed. Such timing could impact directly on the scope of relevant criminality and inferences relevant to the defendants' alleged knowledge of and involvement in that alleged JCE. The Defence submits, in addition to its position of principle (that no JCE ever existed), that no evidence would allow even for the remotest of conclusion on that point prior to 30 June 1993. As already explained, the evidence establishes that the period relevant for the Indictment consists of three periods (1/ until mid-April 1993; 2/ from the mid-April until 30 June 1993; 3/ as of 30 June 1993) which were significantly different, and no evidence supports the thesis that events in July 1993 were planned, or even predicted in, for example, July 1992.

1.3. Alleged awareness of JCE-agreement and sharing of purpose

527. The Prosecution generally alleges that Petković knew of this alleged JCE. The Indictment says nothing, however, of the manner and time in which Petković is alleged to have learnt about it. That is because it is unable to point to *any* evidence that would support *any* allegation on that point. These material facts based on which the Prosecution would seek to demonstrate Petković's alleged awareness of the goals of the enterprise and criminal means chosen to pursue it (thus reflecting "un accord de volonté sur le but et les moyens") are nowhere to be found in the Indictment.

528. The Prosecution's pleading deficiency is not due to a lack of inventiveness when it comes to making allegations: it is due to the fact that it never *happened* so that there is simply

no indication to point to even for the purpose of pleading relevant material facts in the Indictment. Instead, the Prosecution is hoping that the Chamber will make a case for the Prosecution that Petković in fact knew of such a thing. For the Chamber to do so would be a grave displacement of its duty of neutrality and impartiality. As discussed above, it is not for the Chamber to invent a case for the Prosecution: it is for the Prosecution to properly give notice of each material elements of its case (including this one), to put forward evidence capable of proving that fact beyond reasonable doubt and for the Chamber to decide whether the Prosecution has succeeded in doing so. With no precise allegation being made on that point, the Prosecution could hardly succeed.

529. Whilst the failure of the Indictment to provide notice of any of these critical fact warrants dismissal of the charges, it also provides for a powerful indication of the Prosecution's evidential inability to make a case for, let alone prove, Petković's alleged awareness of this alleged criminal enterprise.

530. It is evidentially challenging for the Defence to prove a negative – such as, in this case, the absence of knowledge – and it is in any case for the Prosecution to positively establish that Petković knew of the existence of the alleged JCE. But in this case, there is not just a complete absence of positive evidence of knowledge on his part of that alleged JCE, but also clear evidence of the absence thereof, including:

- (i) The JCE is alleged to have been agreed upon in unspecified circumstances in November 1991. Petković had no involvement with that meeting or occasion. This fact is *not* even alleged in the Indictment and has no basis in evidence.
- (ii) It is telling that in his cross-examination of Petković, counsel for the Prosecution never put to Petković a time, a place or circumstances in which, the Prosecution alleges, he would have been made aware of the existence of this alleged enterprise. Under the Rules, a party is obliged to put its case to the witness of the other party. This was not done and therefore permits the Chamber to draw the necessary inference from the Prosecution's failure to abide by the Rules in that regard.
- (iii) Petković was not present at any meeting during which an alleged JCE was discussed. It is telling in that regard that he was not present at those meetings when, the Prosecution seems to be suggesting, the JCE might have been discussed.⁹²⁶

⁹²⁶ The central importance of personal participation in such meetings has been noted by Nuremberg Judge, Henri Donnedieu de Vabres, when discussing the alleged involvement of individual accused with group-crimes of the sort now under consideration. See: Donnedieu de Vabres, "Le procès de Nuremberg devant les principes modernes du Droit Pénal International/The Nuremberg Trial and the Modern Principles of International Law", reprinted in Mettraux, *Perspectives on the Nuremberg Trial*, at 251: "As may be seen from this list [of Nuremberg defendants convicted for conspiracy], the main criterion to establish participation remained in the eyes of the Tribunal, the presence at meetings during which Hitler revealed his criminal plans."

(iv) There is no evidence that Petković was ever formally introduced to that enterprise by any of its alleged members – nor is there any precise allegation to that effect in the Indictment that could have been tested at trial.

(v) For a time, Petković fought together with the BH Army, which was directly contrary to the ethnic agenda that the JCE allegedly pursued. Had he known (and shared the goals) of such an enterprise, he would not have demonstrated such zeal in coordinating military matters with his BH Army counterparts, meeting and negotiating with them all the time (often finding common grounds with his BH Army counterparts and thus effectively achieving results that would be directly contrary to the purported goals of the JCE⁹²⁷).

531. In its *R98bis* decision, the Trial Chamber made reference to the testimony of Herbert Okun⁹²⁸ about the international conference of the former Yugoslavia. Okun testified that between September and December 1992 meetings of the chairman and the co-chairman were held with the individual parties, and there were bilateral meetings, but not conference because the BH Muslims refused to sit down at the same table with the BH Serbs until January 1993.⁹²⁹ Petković participated only at the conference in Geneva in January 1993 (1-6, 10-12, 22-26) and November 1993 (29), at the meetings of the military working group, as a member of the delegation of the BH Croats, and got instructions only from Boban.⁹³⁰ Okun allegedly heard Tuđman made statements about extending the borders of Croatia, either directly or by including Herceg-Bosna within Croatia. Relevantly, however, Okun did not suggest that Petković was present at the time when those statements were made, that he heard them being made or that he otherwise expressed an opinion in relation to those. Okun explained that he had various conversations and meetings with Tuđman⁹³¹ and his diary undoubtedly proves that Tuđman did not speak about borders during the conferences in Geneva in January 1993.⁹³² Accordingly, the evidence proves that Petković did not participate at any meeting in which the BH borders were allegedly discussed by Tuđman.⁹³³

⁹²⁷ See Annex 2: *HVO and ABiH – Joint Commands*; Annex 3: *HVO plans: ABiH ally*; Annex 5: *Petković's orders concerning tensions and conflicts between HVO and ABiH*; Annex 8: *Petković's whereabouts in 1993*.

⁹²⁸ R 98bis decision: «Herbert Okun also testified that during the international conference on the former Yugoslavia, held between September 1992 and May 1993, Franjo Tuđman was the de facto president of the Bosnian Croat delegation, including, among others, Mate Boban and Milivoj Petkovic. During that conference, Herbert Okun heard Franjo Tuđman make statements about extending the borders of Croatia, either directly or by including Herceg-Bosna within Croatia. He also heard him make statements about his support for the government of Mate Boban.» T. 27215-6

⁹²⁹ Witness Okun, T.16670.

⁹³⁰ Exh.P01038; witness Petković, T.49523, 49654, 49745. See also, Annex 8: *Petković's whereabouts in 1993*.

⁹³¹ Witness Okun, T.16692.

⁹³² Exh.P01038, P01275.

⁹³³ It should be noted that Okun wrote in his diary (P01038) that at the meeting of the military working group in Geneva on 2 January 1993 Halilović and Petković agreed to establish joint command of the BH Army and the HVO, and that Mladić said that «need to break mil.alliance 'of Croatia+Al.Izet.' against Serb people», p. R0164258

532. In its R98*bis* decision, the Trial Chamber further noted that at the meeting held on 5 November 1993 Prlić informed participants of the meeting, including Petković, that Mostar had all the assets to be the capital city of Herceg-Bosna.⁹³⁴ This document in no way suggests that Petković, who was deputy-commander at the time, was being informed of the existence of a JCE. This was the expression of Prlić's views as regard the status of Mostar of which he was informing Tuđman, copying Praljak and Petković (as his deputy) onto that message. There is no indication that Petković either shared Prlić's views on that point or that he could have guessed from it some intended criminal purposes.

533. During that 5 November 1993 meeting, Prlić expressed the view that military victory would be necessary to implement the objectives of Herceg-Bosna. He did not state what those were – *in his view* – during this meeting, nor is there any indication (nor any allegation) that he had done so nor that he identified criminal goals as his stated objective. This exhibit does not allow for such an inference. Petković's objectives were clear from his actions (as discussed here): he tried to build bridges with BH Army wherever he could but, as a military man, was required to perform militarily what his political leaders decided as in any other state. There is no indication in this exhibit that Petković should have understood Prlić's objectives for Herceg-Bosna as anything criminally prohibited. Such a fact is not pleaded as material in the Indictment, nor was such a suggestion put to Petković during cross-examination as it should have been had it formed part of the Prosecution case.

534. At the same meeting, as also noted in the R98*bis* decision, Prlić referred to the need to transfer Croats to areas that would remain Croat areas and stated that the Government defined proposals and conclusions last spring about that.⁹³⁵ There is no indication that Petković understood this –if indeed it was – as an indication of a criminal plan. It was clear to all, including to the international community, that control over certain areas would be allocated to the warring parties and that some of those would be, as Prlić put it, politically under Croat control. (Nor has it been alleged that the transfer of *Croats* to areas where they would be and would feel safer was criminal or part of a JCE). This in no way suggests that Prlić intended to achieve this goal in criminal fashion or that those present at that meeting should have understood him to have such intentions. The Indictment does not suggest that Petković learnt of a JCE at that meeting or that he should have interpreted Prlić's views in such a way. Nor

⁹³⁴ Exh.P06454. It should be noted that evidence clearly establishes that Petković did not participate in any other meeting with the Croatian President Franjo Tuđman.

⁹³⁵ Exh.P06454, p.36. The meeting of the HVO/Government was held on 15 June 1993 and Milivoj Petković was not present at the meeting – exh.ID01668. There is no evidence that the conclusions of the meeting have ever been submitted to Petković. The witness Petković testified that the HVO/Government “was taken by surprise by the situation”, which “proved that there was no plan to move these people, these units”; “the HVO/Government attempted to take appropriate measures *ad hoc*, with the intention to provide some sort of the assistance to the people residing in the territories outside of the reach of the HZHB authorities” – T.31722.

was such a case put to him in cross-examination as it should have been had it formed part the Prosecution case. It would be unreasonable to infer any culpable mindset from this document.

535. As regard the Prosecution's suggestion that Petković shared the criminal purpose of other alleged members of the JCE, it should first be noted that the Prosecution has failed to plead in the Indictment the material facts on which, it says, such a conclusion could reasonably be reached. The absence of such critical material facts would normally call for the dismissal of the charges as it denied the Defence a fair opportunity to prepare.

536. In its R98*bis* decision the Trial Chamber referred to an order of 15 January 1993 issued by Petković (P01156). This order was issued in compliance with the orders of the President of the HVO/Government and the Head of the Defence Department (P01146 and P01140). There is no indication, and it is not part of the Prosecution case as pleaded, that Petković thereby contributed materially to an alleged JCE or that he was in any way aware of doing so by passing this order. The order is purely military in character and is consistent with the instructions given to him by his government. It was not for him (nor was it alleged that it was for him) to second guess the nature and reasons for his superior's orders. It is no evidence of a criminal mindset.⁹³⁶

537. Secondly, the Prosecution has failed to put forth evidence as would allow for a finding beyond reasonable doubt that Petković shared any of the criminal purposes that are said to have underlied this alleged JCE. Instead, there is compelling (and in much respects undisputed) evidence that would render such a finding entirely unreasonable:

(i) First, as an outsider from Croatia, Petković was never fully trusted by President Boban who seemingly distrusted Petković's willingness to fight against the BH Army. This is explained by the circumstances of his removal from his position on 24 July 1993 (see paragraphs 52, 53) and his absence from important meetings where the political direction of Herceg-Bosna was discussed.

(ii) Petković was at none of the Presidential meetings in Croatia where the political direction of the conflict in the area was discussed. He participated in only one meeting of the HRHB delegation with Tuđman, in relation to Stupni Do.⁹³⁷

(iii) The Prosecution asserts that Petković "participated in high-level meetings" concerning goals, programs, policies of the HZHB/HVO leadership (para.17.4.(b)) and in its PTB supports

⁹³⁶ Petković testified that the order was not an ultimatum of any kind and that it was not stated in the order that the domicile ABiH or HVO units had to leave the territory. Petković said: «No one is removing units that were formed out of people belonging to that province, and that is the heart of item Then, also, the commands are invited to have talks./.../ The BH Army and the HVO must sit down and find a common language for the situations in provinces where they are mixed, where the population is mixed. So that is the essence of the problems reflecting the military part and relations between the HVO and BH Army, in particular.» /T.49889-49890/

⁹³⁷ On 5 November 1993, exh.P06454.

the allegation with one document – a report of 26 June 1992.⁹³⁸ Petković testified that the report, written by him and two members of the Main Staff, was supposed to be read at the meeting with representatives of the civilian and military authorities of municipalities in Hercegovina which have been recently liberated of the JNA and the BH Serb Army. Words “Croatian interest” and “Croatian-held territory”, used in the documents, had the meaning that the territory was free, liberated of Serb forces. These words did not have any anti-Muslim meaning. In this context it should be noted that participants of the meeting were also Pašalić and the delegation of his Mostar BH Army Battalion, which together with HVO and HV liberated that part of BiH⁹³⁹, and it is not probable that anybody would make an anti-Muslim speech in front of the representatives of the allied BH Army. Furthermore, documents submitted by Petković at that time, and later on as well, demonstrate that Petković wanted to establish HVO as a the multi-ethnic army, that he considered the HVO and the BH Army as allies and parts of the BH armed forces,⁹⁴⁰ which directly shows that for Petković the word “Croatian” did not have any anti-Muslim meaning or connotations. The report was not presented at the meeting (because Bobetko rescheduled the agenda) and therefore the document did not get a registration number nor the status of an official document.⁹⁴¹

(iv) Petković did not make any public statement calling for the sort of agenda supposedly pursued by the JCE. Instead, in his rare public utterances, he called for peace and negotiations, rather than conflict.⁹⁴²

(v) Petković’s calls for peace and negotiations were not just words. They were consistent with his actions: all through his time as chief of the HVO staff, he sought to cooperate and build bridges with the BH Army. Were Petković’s counterparts in the BH Army so naïve, so misinformed, as not to see a major ethnic cleanser in him and continue to negotiate with and call upon his help? That is the suggestion that the Prosecution is putting forth. It is unreasonable.

(vi) In his orders, Petković made it clear that his goal was not to protect only Croats, but also Muslims living on the territory under control of the HVO authorities.⁹⁴³ This would have

⁹³⁸ Exh.P00279

⁹³⁹ Witness Petković, T.49351-3

⁹⁴⁰ In the work report for 1992 Petković stated, *inter alia*, that “by creating its own forces in the territory of the HZHB, the Croatian people has defended itself and a majority of the Muslims” – exh.P00907, p.7. See also Annex 1: *HVO and ABiH components of the BH Armed Forces*; Annex 2: *HVO and ABiH – joint commands*; Annex 3: *HVO plans: ABiH ally*; Annex 4: *Petković’s orders concerning tensions and conflicts between HVO and ABiH*.

⁹⁴¹ Witness Petković, T.49351-3. Witness Beneta, who participated at the meeting, testified that Petković did not read the report, but spoke while looking at his audience-T.46606-7.

⁹⁴² Exh.4D00100, 4D01355.

⁹⁴³ Exh.P00907, item 4.7.

sent a clear and unmistakable message that he did not partake in any criminal enterprise of the sort advanced by the Prosecution.

(vii) Petković made it clear in his evidence that he did not have any political (or other) agenda for BiH and thought that all three constitutive people in Bosnia should have equal rights – and was not challenged on that point in cross-examination.⁹⁴⁴ His agenda was entirely military in nature.⁹⁴⁵

(viii) Rather than to promote a criminal agenda, he used his authority to remind troops repeatedly of their obligations to abide by the laws of war and to protect vulnerable civilians who could be endangered by military activities.⁹⁴⁶

(ix) There is no evidence that Petković shared the divisionist agenda supposedly underlying the JCE. His constant negotiating efforts with BH Army representatives are evidence of this. And so is the fact that when the chance for peace arose again, he was brought back to head the HVO's Main Staff and rebuild those bridges with BH Army that had been destroyed by months of war. Petković spent much of his time putting out fires with his BH Army counterparts and even tried to help with the de-blockading of Sarajevo, all acts directly contrary to the alleged purpose and means of the JCE.⁹⁴⁷ By aiding the BH Army in such a way, he would have made it harder for himself to achieve those goals which the Prosecution said he shared with the others. Petković was even honored with an award by the BH government for his actions at the beginning of the war right when, the Prosecution implausibly claims, Petković would have been involved in enforcing a JCE against these very same people who rewarded him with a medal.⁹⁴⁸

538. The fact that Petković was aware of certain criminal occurrences cannot be equated with knowledge or awareness of an over-reaching plan or agreement to commit those, nor did he ever partake in or share such a plan or its alleged purposes. Again, the Prosecution is asking the Chamber to infer a fact that did not exist and for which no reliable factual basis exists.

1.4. Alleged culpable participation

539. The Chamber should not judge Petković's actions by the standards of a flawless man, but against those of a responsible army officer in terribly challenging times where choices were sometimes reduced by circumstances to little more than to pick the lesser of two evils. Nor, as a matter of law, should the Tribunal seek to replace Petković's discretion as a military

⁹⁴⁴ Witness Petković, T.49336.

⁹⁴⁵ Ibid., T.49336-41

⁹⁴⁶ See Annex 7: *Petković's orders concerning humanitarian law and customs of war.*

⁹⁴⁷ Witness Petković, T.49417-8.

⁹⁴⁸ Witness Petković, T.49368-9.

commander with its own.⁹⁴⁹ Instead, the Chamber's responsibility is to verify the legality of the military commander's exercise of discretion and that it falls within the range of reasonableness, determined by the relevant legal norms applicable to his conduct.⁹⁵⁰

540. Peeled of its rhetorical flourish, the Prosecution case regarding Petković's alleged participation in a JCE consists of 15 sorts of actions (a-o, paragraph 17(4)), which might in turn be divided in 10 groups for the purpose of analysis. As discussed below, all but one (n) are charges that pertain to alleged acts or actions taken by Petković, rather than any sort of alleged omission.

(i) Exercise of his functions as chief of staff: Paragraphs 17(4)(a), (b), (c), (d), (e) and (f)

541. Setting aside for a moment all the other alleged forms of participation in a JCE (g-o), all those alleged acts (a-f) are no more than the regular and lawful fulfillment of military duties as would be expected and required of a high-ranking military officer involved in fighting a war.

542. They reveal no indication of criminal involvement or criminal purpose. If proved at all (a fact not conceded), all of those would fall within a legitimate and lawful military mandate; all of them are consistent with the actions of a responsible commander or, at least, none has been shown to have been exercised in such a way that is inconsistent with responsible command; none of these alleged acts have been shown to have been carried out with the requisite criminal mindset; none has been shown to make a significant contribution to the alleged JCE.

543. When considering the charges against Petković, it is essential not to mistake rank or position for culpable participation. This point was duly highlighted by the Appeals Chamber of the BiH State Court:

*“If viewed in that context, there is a risk that if too much emphasis is placed on the rank of the Accused, which is exactly what the Trial Verdict is doing, then the key factor in deciding whether to convict the Accused or not becomes his position, and not the basis and level of his responsibility for the referenced crime. It is understandable that the position in which the individual was within the hierarchy of a state apparatus or within other relevant structure is a factor that might be relevant when deciding about prosecution and establishment of his responsibility at a later stage, but definitely that factor, disregarding other evidence, cannot be given disproportionately great weight.”*⁹⁵¹

The Prosecution is presenting a case that seeks to blur the fundamental differences between the two.

⁹⁴⁹ See, e.g., H.C. 7015/02, *Ajuri v. IDF commander in the W. Bank*, 56(6) P.D. 352, English translation available at www.court.gov.il, in particular at 375, J Barak.

⁹⁵⁰ *Ibid.*

⁹⁵¹ *Savic/Mucibabic Appeals Judgment*, 12 April 2010, page 9 (footnote omitted).

544. In sum, even if proved, none of these goes to prove a culpable and intentional involvement in that alleged JCE. In evidence, Petković firmly rejected the claim that he participated in a criminal enterprise.⁹⁵² He testified that he participated in one meeting of the HRHB delegation with Tuđman,⁹⁵³ he was requested to report about the military situation at four meetings of the HVO/Government (and was not present at the meetings during the discussion on other agenda),⁹⁵⁴ he was present on one meeting of the HB Presidency, and he did not attend a single meeting where politics was discussed.⁹⁵⁵ Petković planned only one operation – “Bura”, which was launched in November 1992 against the Army of BH Serbs; he did not plan, approve, prepare, support or direct any operation against the BH Army; his combat orders were a kind of assistance to local HVO units which had been attacked and requested some help.⁹⁵⁶

(ii) Seizure of properties: Paragraph 17(4)(g)

545. This allegation is insufficiently specific to permit the Defence to confront it effectively. The Defence was unable to determine what event it is supposed to refer to. The Defence is able to say, however, that Petković did not order, plan or otherwise take a culpable part in the seizure of property in violation of the laws of war regarding the taking and seizure of properties and never did he partake in any sort of property seizure with the intention of furthering a criminal enterprise (or with the knowledge of its existence). No demonstrated effect on the alleged JCE has been demonstrated for these un-identified occurrences. The inadequacy of pleadings on that point makes it impossible for the Defence to make further submissions on that point. The Prosecution’s allegations on that point have no merit.⁹⁵⁷

(iii) Destruction of religious properties: Paragraph 17(4)(h)

546. Petković is alleged to have planned, approved, prepared, supported, ordered and/or directed military operations and actions in the course of which religious and cultural properties

⁹⁵² Witness Petković, T.49809

⁹⁵³ Exh.P06454

⁹⁵⁴ On 26 May 1993 (exh.1D01609), 31 May 1993 (exh.P02575), 22 July 1993 (exh.1D01672) and 11 October 1993 (exh.P05799)

⁹⁵⁵ Witness Petković, T.49810.

⁹⁵⁶ See Annex 6: *Petković’s combat orders*

Petković testified: «Your Honours, it would be a good idea if the Prosecutor had mentioned specific military operations, when they started, when they were completed, and how they evolved. There were no military operations that the HVO carried out against members of the BH Army in the sense of military operations. The HVO did clash with members of the ABiH in a number of locations from Central Bosnia down to the Neretva River Valley, and these were not operations that were initiated by the HVO. And in the course of such defensive assignments, I did issue orders and I advised my commanders, which it is my duty to do.» T.49813-4.

⁹⁵⁷ Petković testified about this allegation: «I can say that Milivoj Petkovic did not participate in the seizure of any kind of property, nor did he transfer that property to the HVO. Milivoj Petkovic had the right -- the captured equipment from the VRS and the ABiH, to treat it in the way it is treated in any armies of the world, that is, to proclaim it its own equipment, nor under no circumstances to seize any other kind of equipment if it is not of a military nature.» T.49815-6.

were destroyed without justification or military necessity and failed to prevent, stop, punish or redress such destruction and looting.

547. First, in terms of pleadings, it should be noted that there is no allegation that Petković himself ordered, planned, approved, prepared, supported or ordered *the commission of such crimes*, but only operations and actions in which it is said such crimes were committed. This is not sufficient to warrant a conviction for crimes committed in the context of such an operation unless he knew or could reasonably foresee that such crimes would be committed, a matter neither alleged nor proved.

548. Secondly, the Indictment fails to identify a single incident where this is said to have occurred (either by date, location or circumstances). In terms of notice and ability to prepare, this sort of allegation amounts to trial by ambush and the Defence can hardly address this sort of accusation other than by saying the following:

- (a) Petković never ordered, planned, instigated, committed or aided and abetted such crimes;
- (b) Whilst Petković had information that destruction of properties had occurred, he had no information that this had occurred (i) as a result of a crime (ii) committed by subordinates (iii) whom he was required and materially able to identify and (allegedly) punish;
- (c) Nor did he ever receive information of that sort at a time when he would have been both required and materially able to stop or prevent such destruction when not justified by military necessity.

549. That sort of destruction is, unfortunately, *the stuff of war* and Petković had not received information that this sort of destruction had been carried in violation of the laws of war and with the intent to further a criminal enterprise. Nor has it been shown that Petković took part in any of those (unidentified) operations with the knowledge of the existence of the alleged JCE, with the intention to further its goals and that his acts had any demonstrable effect on that supposed JCE.

550. In the absence of more detailed pleadings, the Defence is unable to say more than this. It should add, however, that this sort of unspecified allegations – that have not been established beyond reasonable doubt – could not possibly be regarded as evidence of criminal involvement on Petković's part in the alleged JCE, nor have the underlying act(s) otherwise been shown to have been part of an alleged JCE.⁹⁵⁸

(iv) Arrest and detention crimes: Paragraph 17(4)(i)

⁹⁵⁸ Petković testified: «Your Honours, I do not deny that there was destruction of certain facilities and even certain properties as a result of combat activities, and even intentional destruction. But Milivoj Petkovic did not in any way encourage such methods, but in his orders Milivoj Petkovic cautioned and warned his subordinates to treat property, civilians, and facilities in accordance with the regulations recognised by international law.» T.49816.

551. This issue has been fully dealt with above.⁹⁵⁹ Suffice to add that none of the acts attributable to Petković in this context were carried out for the alleged purpose of furthering or participating in a supposed JCE. Nor have any of his acts been shown to have had a demonstrable effect on the alleged JCE.⁹⁶⁰ Even if these matters were regarded as unlawful, the Prosecution would have had to establish that they were carried out in knowing furtherance of a criminal enterprise. This was not shown in any way, let alone beyond reasonable doubt. Instead, this was done for good and valid military/security reasons.

(v) Unlawful labour: Paragraph 17(4)(j)

552. This matter has been fully briefed above.⁹⁶¹ It may be reiterated here that POWs were never supposed to work on the front-line or in a dangerous zone. Labour of POWs was not knowingly unlawful, nor was it intended to further a criminal purpose. In other words, these instances may not reasonably be said as evidence of willful and intentional and culpable participation in a JCE. Nor have they been shown to have been performed with the requisite *mens rea*, nor to have had any demonstrated effect on the alleged JCE. Even if these matters were regarded as unlawful, the Prosecution would have had to establish that they were carried out in knowing furtherance of a criminal enterprise. This was not shown in any way, let alone beyond reasonable doubt. Instead, this was done for good and valid military/security reasons.

(vi) Forcible transfer: Paragraph 17(4)(k)

553. At paragraph 17.4(k) of the Indictment, the Prosecution alleges that Petković played an unspecified culpable role in the unlawful transfer or deportation of Muslim civilians, and it mentions specifically the area of Sovići-Doljani in May 1993 and Prozor municipality in July 1993, alleging that his actions in these locations are evidence of his participation in the alleged JCE.

554. This manner of pleading did not allow the Defence to properly prepare as it did not make it clear what (culpable) part, it was alleged, Petković played in relation to the transfer of civilians, nor what incidents of transfer (other than Sovići-Doljani and Prozor) he is alleged to have been involved in. Nor did the Indictment provide any pleading regarding the alleged culpable *mens rea* (or material facts pertaining thereto). The Pre-Trial Brief provided no further notice of these allegations so they remained defective.

⁹⁵⁹ See above paras.210-364.

⁹⁶⁰ Petković testified: «Your Honour, Milivoj Petkovic and the Main Staff did not direct any locations where persons were detained or imprisoned or put up in any other way; that is, the Muslims. Milivoj Petkovic, availing himself of the rights of a commander, in the event of a security threat to his units and the territory under his control, acted in accordance with the general rules of military organisation of any state and was entitled to disarm members of his own army, to disarm members of the enemy army that was in the area, but Milivoj Petkovic, through his orders, insisted that civilians, elderly, women and children, should be protected.» T.49817

⁹⁶¹ See above paras.365-376, 503-512.

555. In the absence of notice of another case, the Defence understands this part of the Prosecution case to be limited to the two incidents mentioned in the preceding paragraph (Sovići-Doljani/May 1993 and Prozor/July 1993) and, if not so limited, as only validly pleaded in relation to these two incidents. It has received no valid notice of any other incident relevant to that part of the charges.

556. Furthermore, in the absence of any indication of the alleged nature of Petković's culpable involvement in these incidents, the Chamber should be careful not to take into account any material allegation of which the Defence did not have adequate notice prior to the commencement of trial. In particular, and considering that these allegations are mentioned in relation only to Petković's alleged involvement in a JCE, it is not part of the Prosecution case that these incidents and Petković's alleged involvement therein are relevant to any other forms of liability charged against him.

557. The matter related to Sovići-Doljani (May 1993) and Prozor (July 1993) has already been dealt with above.⁹⁶² Suffice to add that by agreeing to involve himself in transport of civilians from Sovići (at the request of his BH Army counterparts and with the full knowledge of UNPROFOR), Petković did the very opposite of what could be regarded as intentional and culpable involvement in the alleged JCE. By doing what he did he (i) demonstrated his willingness to assist vulnerable non-Croat civilians, (ii) demonstrated his cooperative attitude towards the BH Army when it came to the common interest of protecting civilians, (iii) helped put vulnerable civilians beyond the very possibility of the sort of crimes which is said to have formed part of the alleged JCE. These acts have not been shown to have been carried out with the *mens rea* relevant for the crime of forcible transfer, nor to have had any demonstrable effect on the alleged JCE.

(vii) "Balija": Paragraph 17(4)(l)

558. It is not quite clear what the allegation referred to in paragraph 17(4)(l) is supposed to refer to. It seems to refer to one order of 8 August 1993 signed by Petković, in which he used the term "balija forces" to refer to the BH Army.⁹⁶³ The Prosecution allegation that Petković used derogatory terms referring to "Bosnian Muslims" is incorrect, for the term "balija forces" was directed at *enemy military forces* (not the Muslim population). Enemies in armed conflict do not generally refer to each other in terms reflective of brotherly love, thus the BH Army commanders at the time used the term "ustasha forces" for the HVO forces, which was very derogatory for Petković. It should be noted as well that the document was submitted in August 1993, during the all-out war between the BH Army and the HVO forces when tension was at

⁹⁶² See above paras.170-197, 352, 353.

⁹⁶³ Exh.P04020.

its highest, and there is no a single document written and/or signed by Petković prior to 30 June 1993 using the term “balija”. The use of such expressions, though not necessarily proper as a matter of politeness or diplomacy, are not criminalized nor are they in any way an indication of an intentional and culpable participation in a massive JCE that was directed, not at those armed forces, but allegedly at the local Muslim population. Reference to “balijas” in relation to enemy armed forces was not shown to have been made in any way with the intention to further or participate in a JCE against the local Muslim population so that it could not be said to partake in the alleged JCE. Nor, in any case, was this shown to have had any effect (significant, substantive or otherwise) on the alleged JCE. Having had no demonstrated effect on the alleged JCE, it could not be said to have formed part of it.

559. Petković testified about the order of 8 November 1993:

*Your Honours, in this courtroom you have had an opportunity of seeing hundreds of documents signed by me, and you were able to see only one document where this is mentioned. What I can say is this: I'm not the author of that document, but I am the signatory of the document. And I'm not going to defend myself from that fact. Had it been my intention, then you would have found that in any number of documents. However, at a point in time, it so happened that I put my signature to a document like that. It was not my intention, nor was it my position. I did not insult a nation, an ethnic group. And in that document -- I signed it without looking at the document, and I think that you'll find that is the only document of that kind in hundreds of other documents. And as such, I don't think it reflects what the Prosecutor wants to ascribe to me and hold me responsible for.*⁹⁶⁴

(viii) Duty to ensure compliance with IHL: Paragraph 17(4)(m)

560. Contrary to the Prosecution’s allegations, Petković made repeated requests for members of the HVO forces to respect IHL standards, although the Chief of the HVO Main Staff was not obliged to do so.⁹⁶⁵ It may be added that:

(a) no such failure, even if it were found to have occurred, has been shown to have occurred with the requisite mindset of seeking to further or participate in the alleged JCE;

⁹⁶⁴ Witness Petković, T.49829-49830

⁹⁶⁵ Petković testified: «Your Honours, similarly through these proceedings in this trial, you could see many orders signed by me on behalf of the Main Staff, because my subordinates were asked to implement the Geneva Conventions, and I claim that by no document of Herceg-Bosna, or act, was I responsible, as chief of the Main Staff or any of my commands, for detention centres. Nobody ever called me to attend any discussion, whether at government level or anywhere else, where detention centres are mentioned. Nobody gave me any responsibilities or tasks or assignments in that regard. I did not take part, either me or the Main Staff, or anybody from the Main Staff, when such detention centres were being disbanded, dismantled. Therefore, I consider that one -- no document from Herceg-Bosna ever bound me or the Main Staff as having that duty, and I claim that it was in no way a task of the Main Staff of the Croatian Defence Council.» T.49830

See Annex 7: *Petković’s orders concerning humanitarian law and customs of war.*

(b) no such failure has been shown to have had any impact (as would be culpable) on the alleged JCE. Instead, it is clear that the alleged JCE would have occurred (if the Prosecution's theory is accepted) despite the repeated requests by Petković that IHL be complied with and civilians protected (since such requests were actually made, to little apparent effect).

561. This part of the Prosecution case, as with the above, has no merit.

(ix) Failure to prevent/punish: Paragraph 17(4)(n)

562. This allegation is fully dealt with below.⁹⁶⁶ Suffice to add here that even if a culpable failure to prevent or punish crimes was attributed to Petković, and the Defence submits it would *not* be reasonable to do so, the Prosecution still has failed to establish beyond reasonable doubt that the alleged failure was in any way intended to further the alleged JCE or that it had any material impact on that enterprise. In those circumstances, such failure could not be said (even if proved) to provide evidence of culpable participation in the alleged JCE.

563. The sort of reasoning advanced by the Prosecution in this matter would automatically render any superior responsible for a failure to prevent/punish crimes guilty of hundreds and maybe thousands of crimes over which he had no control and no knowledge. The attempted merging of various forms of liability (in this case JCE and command responsibility) for the purpose of diluting their respective requirements and thereby expand the scope of liability is a dangerous prosecutorial practice that must be resisted to protect the integrity of these proceedings and the need to limit liability to what is genuinely culpable from the point of view of criminal law. This allegation has no merit and must be rejected.

(x) Concealment of crimes: Paragraph 17(4)(o)

564. Paragraph 17(4)(o) alleges that Petković partook in the alleged JCE by concealing crimes in Prozor by ordering that prisoners be made presentable for a forthcoming international observers' visit.⁹⁶⁷ That allegation appears to pertain to Exhibit P04188, order submitted on 14 August 1993.

565. In this document, Petković asked that *if there was any need for it*, detainees should be made presentable. He did not know whether this was in fact needed, thereby excluding as unreasonable the suggestions that (i) he knew that some detainees were not presentable, (ii) that he knew that they had been victims of crimes and were not presentable as a result of these crimes, and (iii) that this was done with a view to hide evidence of crimes from international observers.⁹⁶⁸ The Prosecution's allegation on that point assumes facts that have not been

⁹⁶⁶ See paras.633-642.

⁹⁶⁷ No other incident of alleged concealment of crimes is pleaded in the Indictment.

⁹⁶⁸ Petković testified: «At a point in time, it is quite normal, if somebody announces a visit, that you take a look at the people that are going to be visited; that you talk to them, that you tell them that there would be a visit, so button up your shirts, tighten your belts, that kind of thing, let's see whether you have put the place you slept in in order. So that's something that any soldier would do and is expected of a soldier. And let me tell you that in

proved and in fact did not exist. Petković's order was intended, not to hide traces of crimes (there is no evidence that the detainees to which these measures pertained had been subjected to crimes – whose traces, furthermore, were still apparent on them), but to ensure that observers would not think that the situation of those whom they could meet was worse than it truly was in the circumstances and to give them a sense of orderliness in the HVO (as would happen in any case where outside observers come to visit an official location).

566. It has not been shown that this was done with the intention of furthering or participating in the alleged JCE nor has this order had any demonstrated effect on the alleged JCE. It was directed to one man who was not shown to have played any part in the alleged JCE; nor has it been shown what measures that man actually took (if any) to implement that order; or that observers actually met the detainees to which the order related and whether, as the Prosecution seems to suggest, they were “fooled” by the *clean-up* of those detainees so as to be denied evidence of alleged crimes. None of these facts has been established.

567. There is another reason where this order could not be regarded as culpable concealment of crime, as the Prosecution would have it. Those observers were not police or judicial investigators whose responsibility it was to uncover and report criminal activities. Even assuming the unproved suggestions that (i) detainees had been victims of crimes and that (ii) they bore the signs of those crimes, no legal system makes it a criminal offence to hide a crime from a person who has no responsibility in regard to a criminal investigation. Nor is it one as a matter of international law.

568. In any case and furthermore, this order has not been shown to have been issued with an intention to further a JCE, nor has it been shown to have been issued with that intention. Nor, again, has been shown to have had any (let alone significant) effect on the purported JCE: as far as the evidence is concerned, that order has had no demonstrated effect, on the alleged JCE or otherwise.

1.5. Foreseeability of crimes

569. Based on the information shown to have been available to Petković, the Prosecution has failed to establish beyond reasonable doubt that any of the crimes charged in the Indictment were foreseeable to Petković and that this would be the only reasonable conclusion on the evidence.⁹⁶⁹ To obtain a conviction, foreseeability would have to be established in relation to *each and every* crime charge. The possibility that “a” crime, regardless of which, could be

this particular Detention Unit where I am at present, when there's a visit, we would be told, Please put your facilities in order. So I think that is quite justified and very human, and nothing was upset by that. Now, the serious consequences two or three hours later cannot be covered up or hidden in any way before the ICRC turned up.» T. 49832-3

⁹⁶⁹ On the interpretation of this requirement, see Cassese “The Proper Limits of Individual Responsibility under the Doctrine of Joint Criminal Enterprise”, 5 (2007) *Journal of International Criminal Justice*, 109.

committed would not be sufficient proof of that fact. That foreseeability must relate to the very crimes with which the accused is charged.

570. Petković did not foresee the commission of *any* of these crimes. Petković always thought that the conflict with the ABiH could be brought to an end so that he did not even envisage the possibility of a lengthy war let alone one in which the crimes charged could have been committed. To succeed, the Prosecution would have had to show that each and all of these crimes were foreseeable and put forth the evidence which, it says, renders this conclusion the only reasonable one of the evidence. That, it has entirely failed to do.

1.6. Conclusion

571. The Prosecution has failed to show that any of the alleged participatory acts had (i) for many of them, been proved beyond reasonable doubt and/or (ii) been carried out with the requisite *mens rea* and/or (iii) had the requisite effect on the alleged JCE. In particular, the Prosecution has failed to exclude the reasonable possibility for each of the 15 alleged grounds of participation (where established) that these are consistent with the legitimate actions of a military leader carrying out his military duties rather than those of a man trying to promote and pursue a criminal enterprise. In fact, Petković never carried out any act intended or known to further a joint criminal enterprise. And none of his actions have been shown to have had any effect (let alone, a significant effect) on the alleged JCE. The Prosecution simply suggests that this should be assumed, rather than proved.

572. In light of the above, the Prosecution's JCE-case against Petković must fail in its entirety.

2. COMMAND RESPONSIBILITY

2.1. Role, function and responsibilities

Pleadings considerations

573. Instead of distinguishing between Petković's successive positions (as chief-of-staff and then deputy-commander) as are relevant to this case, the Prosecution attempts to merge them into one whole as if they were comparable for the purpose of Article 7(3). There are, however, significant differences between the two positions so that this manner of generic pleading is entirely unsatisfactory and factually misleading.

574. This part of the Prosecution case is based on the following allegations (para.10):

- (i) Petković was responsible for the management, organization, planning, preparation, training, discipline, supply and deployment and operations of the HB/HVO forces.
- (ii) Petković issued organization, strategic and combat orders.

(iii) It was part of his responsibility to ensure that all HB/HVO forces conduct themselves in accordance with the Geneva Conventions and international humanitarian law and that all prisoners, detainees and other persons held by HB/HVO armed forces be treated in compliance with such conventions and law.

(iv) Petković was closely involved in all aspects of HB/HVO military planning and operations.

(v) And, insofar as concerns the civilian police, it is said that Petković had command authority over the HB/HVO civilian police, when they acted under or in co-ordination with the HB/HVO armed forces.

575. The Prosecution did not allege that Petković had command authority over the HVO Military Police.

576. These allegations are *not* genuinely about Petković: they are a “copy and paste” case that is said to apply (with minor nuances) to all six defendants in equal measure. Again, this manner of *pleading by association* (as if the situation of any one accused is comparable to another for the purpose of the charges), without any indication of the material facts said to be relevant to each individual accused is prejudicial and has significantly impaired Petković’s ability to prepare.

577. Aside from these vague and unspecific allegations that pertain to the six defendants as a group, it is not alleged in the Indictment that any other alleged role, function or responsibility is relevant to establishing an alleged relationship of subordination (and/or “effective control”) between Petković and the perpetrators. Findings should, therefore, be limited to *those* charges as are pleaded in the Indictment and not further.

578. Whilst the Prosecution has alleged that Petković’s (and, in fact, all six defendants’) relationship of authority with the alleged perpetrators was both of a *de jure* and *de facto* sort,⁹⁷⁰ it has only pleaded in relation to Petković’s case material facts relevant to the former (*de jure*), and none to the latter (*de facto*). In other words, and as a matter of notice of charges (under Article 21(4)(a) Statute), the Prosecution has not clearly identified *any* material fact as would extend/expand the alleged chain of command between Petković and the alleged perpetrators beyond or besides that which, the Prosecution says, existed as a matter of law (*de jure*) as a result of Petković’s positions as chief of staff and subsequently as deputy-commander. As far as concerns the Prosecution’s allegation of a relationship of superior-subordinates between Petković and the perpetrators, the Defence has received notice only of facts relevant to an allegation of *de jure* superiority, but none (or none that is apparent to the Defence) that would

⁹⁷⁰ Indictment, para.10 (and para.228 in relation to all six accused).

be relevant to a *de facto* sort of relationship. It has, therefore, treated the Prosecution case as being limited to a *de jure* case of subordination.

Relevance of domestic laws/regulations

579. Prior to reviewing the evidence relevant to each element of this doctrine, the Defence will review the laws and regulations relevant to establishing the nature and scope of Petković's duties within the HVO structure. There is no dispute between the parties that these laws and regulations set the limits of his responsibilities for the purpose of the charges.

580. This approach is consistent with the view of the Appeals Chamber (and Trial Chambers⁹⁷¹) that where the starting point of an alleged relationship of superior-subordinate is said to have laid in a *de jure* position of authority (as in the present case), local/domestic regulations (subject to those falling below minimum international requirements) will determine both the nature of an alleged relationship of authority (between the accused and alleged perpetrators) and the nature and scope of the accused's duty to act where he has received information that his subordinates have or are about to commit a crime.⁹⁷²

581. In this case, those laws and regulations set the framework of Petković's relationship, authority and powers vis-à-vis the alleged perpetrators and what he might have been required (circumstances permitting) to do to prevent/punish crimes as an alleged superior of these men.

Chief of HVO Main Staff

582. From mid-April 1992 until 24 July 1993, Petković effectively acted as Chief of the HVO Main Staff.⁹⁷³ In that capacity, he acted as chief of staff of HVO's Supreme Commander, President Boban.

583. The Prosecution is seeking to suggest that this limited *de jure* authority gave Petković unspecified and general authority over the alleged perpetrators. (Strangely, the Prosecution appears to be making a similar claim in relation to other co-defendants *in relation to the same alleged perpetrators*). As will be seen, this was far from true.

584. A position of *de jure* authority such as Petković's role as chief-of-staff is not itself evidence that he either commanded or was able to exercise any sort of control over the perpetrators. The evidential relevance of such a position for the purpose of the doctrine of command responsibility depends on the nature and extent of actual authority that this position

⁹⁷¹ E.g. *Delic* TC, para. 548; *Boskoski* TC, paras. 498 *et seq.*

⁹⁷² See, in particular, *Halilovic* AC, paras. 182-184, 210-213; *Ntagerura* AC, paras 342-33. Mettraux, *The Law of Command Responsibility*, 56 *et seq* and references. The *Mrksic* Appeals Chamber has identified one possible qualification to that principle where a superior might be required to go beyond his strict *de jure* authority to try to prevent/counteract an illegal order (*Mrksic* AC, para.94). This jurisprudence finds no application in the present case as this scenario does not form part of the Prosecution case as pleaded in the indictment.

⁹⁷³ Indictment, para. 9.

gave him over the perpetrators and the extent to which it is shown to have actually enabled him to exercise effective control over these persons.

585. The nature and scope of Petković's role as chief-of-staff was tailored to both (i) President Boban's preferences as regard his own role as commander-in-chief and that of the Main Staff and by (ii) the nature of the conflict.

586. As a new creation, the HVO Main Staff could have been structured in all sorts of ways and it could have been given all sorts of powers, from a fully-fledged commanding center to a purely advisory body. Whilst it had a limited operational role (as discussed below), the HVO Main Staff (with Petković as its Chief) fell towards the latter sort of structure, rather than the former.⁹⁷⁴

587. The structure of the HVO armed forces reflects Boban's hands-on approach and his wish to have a decentralized command structure with him at the helm and a weak Main Staff that is not institutionally capable of interfering with his strategic and political goals. The following is illustrative of the narrow mandate and powers given by Boban to the Main Staff (with Petković as Chief):

- (i) Instead of endowing the Main Staff with a *general* competence over all military matters, military competencies and responsibilities were effectively divided between the Commander-in-Chief, the Main Staff and the Ministry of Defence – and much of it was delegated down directly to the Operative Zone and the Brigade level;
- (ii) The division of labour was not only institutional, it was also substantive: major military responsibilities were given directly to Operative Zones and Brigades (thereby bypassing the Main Staff) and to the Ministry of Defence (again providing an alternative command and reporting route), whilst the Main Staff was given a specific and narrowly-defined mandate.⁹⁷⁵
- (iii) In particular, the Main Staff was given no competence over public order matters;
- (iv) Unlike traditional Main Staff structures, it had no military security, thereby greatly reducing its ability to intervene promptly in emergency or security situations and effectively making it dependent on other structures;⁹⁷⁶
- (v) It had no control over military police, again an oddity compared to other Main Staff structures, and again a major impediment to any sort of controlling function (as relevant to the doctrine of superior responsibility for the purpose of prevention/punishment of crimes);⁹⁷⁷
- (vi) It had no disciplinary powers or organs of its own, again curtailing its material ability significantly.⁹⁷⁸

⁹⁷⁴ See paras.66-80.

⁹⁷⁵ See paras.69,70.

⁹⁷⁶ See paras.87-89.

⁹⁷⁷ See paras.97-103.

(vii) Petković was subject not to one hierarchical chain of command, but two: one to the President and one to the Defence Ministry.⁹⁷⁹ This unusual arrangement effectively made him dependent on two masters for the purpose of the exercise of his function.

588. The practical effect of this quirky military arrangement was to reduce significantly the actual *de jure* authority of the Main Staff (and Petković as its Chief) to a very narrow range of issues and competencies.

589. It was not the function of the Main Staff (nor would it have been able) to operate as a command and control organ operating over the entire military structure. Nor did it act in such manner. Instead, the Main Staff's operational role was limited to a coordinating or "plug-in" function: whilst the main responsibility for operational matters was left to local commanders (from Brigade command downwards), the Main Staff was asked on a number of occasions to provide limited assistance to those structures when they were encountering defensive or operational difficulties that the Main Staff could help them solve (e.g., by securing additional forces for a particular area where fighting was particularly heavy or by helping to reinforce defense structures in a particular location).⁹⁸⁰ This is the limited context in which Petković had the authority to issue orders. And none of those orders has been shown to have been issued to any of the alleged perpetrators (nor at a time relevant to establishing effective control). Nor is any of these orders evidence of any sort of control that would be relevant to establishing a relationship of "effective control" over the alleged (but unidentified) perpetrators at the time when they committed their culpable deeds.

590. Significantly, Petković's position as chief of the Main Staff was *not* a *commanding* role. This greatly undermines the Prosecution's case as regard the relevance of this function to his alleged superior responsibility vis-à-vis the perpetrators.⁹⁸¹ He did *not* direct combat. He did *not* plan combat operations. He did *not* give orders of attack. He did *not* give military directions or decide on military axis. He was *not* consulted during military operations about the course of those. In that sense, he had no actual control over troops in the course of their operations. Instead, the Main Staff and Petković was to perform (and did perform) staff responsibilities and other specialized tasks expressly delegated by the Supreme Commander.⁹⁸² These do not demonstrate any sort of control over the alleged perpetrators.

591. Control over some operational matters was and remained in the hands of local commanders, for all combat-related issues. Operational tasking was given at the local level.

⁹⁷⁸ See para.72.

⁹⁷⁹ See para.70.

⁹⁸⁰ See Annex 4: *Documents issued (or allegedly issued) by Petković*; Annex 6: *Petković's combat orders*; Annex 14: *Decentralized organization of Herceg-Bosna*

⁹⁸¹ E.g. *Strugar* TC, para.142; *Kujundzic* TC, para.426; *Bagosora* TC, para.2047.

⁹⁸² Exh.P00588

Military axis and military objective were decided at that level. Weapons and personnel decisions were made at the local level. Forces were commanded from the local level. Plans were drawn up there.⁹⁸³

592. Boban's preferences for a weak Main staff is also reflected in the skeletal personnel that was put at the disposal of Petković as chief-of-staff (approximately 30 people for an army of approximately 40,000 people⁹⁸⁴). The Prosecution has failed to explain how, with such a staff, Petković was supposed or would have been materially able to prevent/punish all (or even some of) the crimes charged in the Indictment (whilst also carrying out his regular duties).

593. As noted above, the very nature of the conflict also impacted on the way in which the HVO was organized. Because the conflict was decentralized in nature, with several distinct regional focal points or fronts, operational authority had been given and left primarily to local – Brigade – commanders (and their subordinates) who had both direct operative access to that region and all relevant information pertaining to that part of the conflict. It would have been impossible and military impracticable in the circumstances to give overall command authority to a structure far removed from these areas and with limited access (and, sometimes, no communication) to local areas. In other words, this distribution of power and authority made military sense. Brigade commanders were thus able to act independently from an operational point of view for day to day activities from any other superior authority. (Local command also suited Petković insofar as he lacked any knowledge of the terrain.⁹⁸⁵)

594. The territorial division was also such as to bypass the Main Staff since Brigade commanders were directly subordinated to the President in regard to much of their activities.⁹⁸⁶ And Boban made use of that hierarchical possibility by bypassing the Main Staff when it suited him, including as regard issues pertaining to the alleged commission of crimes.⁹⁸⁷ As noted by the Presiding Judge, in those circumstances, it would be a reasonable inference to take the view that the Main Staff (and its chief) was denied evidence potentially relevant to him (and now to the charges).⁹⁸⁸

595. In conclusion, it may be said that Petković's *de jure* role as chief of the Main Staff has very limited evidential weight insofar as pertains to his alleged ability to exercise any sort of command or control over the alleged perpetrators:

(i) it did not give him a commanding role or function over these people;

⁹⁸³ See Annex 4: *Documents issued (or allegedly issued) by Petković*; Annex 6: *Petković's combat orders*.

⁹⁸⁴ Exh.P01683, P01572

⁹⁸⁵ Witness Petković, T.49336.

⁹⁸⁶ Exh.P00586, B(IX), in fine).

⁹⁸⁷ Witness Petković, T.49526-8. Exh.P00613, P03054, P03363, P05566, P06339, P06841, P07387, P10309, 3D02469, 4D00575, 4D00576.

⁹⁸⁸ Witness Petković, T.49388-92.

- (ii) it was limited in nature/substance and occasional;
- (iii) it did not give him any means to control their activities;
- (iv) it has not been shown that even this limited authority could have been used at the time when the crimes were committed (i.e., the time relevant to establishing effective control);
- (v) it has not been shown to give him any authority “over the perpetrators”, let alone at the time relevant to the charges;
- (vi) it has not been shown that it could have been used for the purpose of preventing or punishing crimes.

596. As will be discussed below, this *de jure* role and position is in no way sufficient to allow for a reasonable conclusion that he had effective control over those persons at the time of the crimes.

Deputy-commander position

597. On 24 July 1993, Petković became deputy commander of the HVO Main Staff. As deputy, Petković was not in a direct line of command with HVO officers or rank-and-file. He had no authority to give combat orders to any of them. In other words, and for the purpose of this doctrine, he was not in a vertical position of authority in a chain of command with the alleged perpetrators.⁹⁸⁹

598. Nor, in that capacity, did he have any commanding role or authority over HVO soldiers. Nor did he come to replace his commander in his commanding function at any point or time relevant to the charges. And in that capacity he had no responsibility regarding troops’ compliance with humanitarian law or regarding their disciplinary oversight.⁹⁹⁰ His position as deputy did not give him any authority nor any means to control the alleged HVO perpetrators as could be relevant to the doctrine of superior responsibility.

599. It is significant, in that regard, that the Prosecution did not plead in the Indictment any material fact said to be relevant to establishing Petković’s alleged superior responsibility over the perpetrators during his time as deputy. The only fact mentioned in the indictment that pertains to that period is to be found at paragraph 215. It has been dealt with above, and has no bearing (and no alleged bearing) on Petković’s alleged superior authority (or effective control) over the alleged perpetrators. Considering the importance of Petković’s change of position on 24 July, the Prosecution would have been expected to specify what material facts could be said to be relevant to assessing his alleged superior responsibility during that period and in relation to crimes committed whilst he was deputy. Its failure to do so warrants the dismissal of charges

⁹⁸⁹ See para.80.

⁹⁹⁰ Witness Petković, T.49405-7.

as the Defence was denied any notice of critical material facts as would have enabled it to prepare and meet the Prosecution case.

600. The Prosecution has also failed to establish that, at the time when he was deputy-commander, Petković was in a relationship of superior-subordinate with the alleged perpetrators (as is relevant to the doctrine of command responsibility), that a vertical chain of command linked them together or that he had any commanding role vis-à-vis these persons. From an evidential point of view, his position as deputy does not allow for any inference that he had any sort of control over the perpetrators at the time relevant to the charges (nor any inference that this position would have given him effective control over those persons).

De jure authority over units in combats

601. Convict Battalion and its ATG (anti-terrorist groups) had the status of HVO special purpose units, directly subordinated to the Supreme Commander Boban. The Chief of the Main Staff was therefore not in a relationship of superior-subordinate to Mladen Naletilić Tuta, Vinko Martinović Štela nor commanders and soldiers of the Convict Battalion and its ATGs, nor was there a chain of command linking them.⁹⁹¹ Nor has this been alleged in the Indictment.

⁹⁹¹ Witness Milivoj Petković, T. 49390, 49394, 49455; Slobodan Praljak, T.42382, 43442,43462; [REDACTED]T.49096-7.

Petković testified about Mladen Naletilić: “He and I had a difference of opinion, as I said, on the 14th of November, 1992, when he -- well, since he lost two of his soldiers in Operation Bura, he stormed into the headquarters with a pistol in his hand and started threatening me, along with swear words which he readily used, saying that he would liquidate me and that he would finish the job with Tito's soldiers once and for all. Thanks to Mr. Dzanko intervening, who happened to be there at the time, the situation calmed down, and he left this locality. Mr. Boban was informed of all this, and he arrived that very same evening. He came to Capljina, to the command post there. And it was his position that Tuta and Tuta's men are his problem, and that Tuta, from that time on, would have nothing to do with anybody else -- no contacts with anybody else, and that he would be exclusively responsible to Mr. Mate Boban. And that's what the situation was like after that. I don't remember, after that 14th of November, 1992, ever having, in an order of mine, except the one in July 1993, any mention of the Convicts Battalion, and this was different to other units to which I issued orders. I gave up on Tuta and Tuta's men. I had nothing to do with them.» T.49804.

[REDACTED]Convict Battalion was a unit of the HB/HVO forces, financed and supplied with weapons and ammunition as other HVO units, but operationally it was subordinated directly to the HVO Supreme Commander and was not in the operational chain of command of the HVO Main Staff. /T.49100, 49117-8./ [REDACTED]the office of the HVO Supreme Commander Mate Boban did not have its logistics, or health-care, or anything else and therefore could not supply a unit directly subordinated to him. Therefore the Supreme Commander had to use the Defence Department/Ministry, including the HVO Main Staff as the organizational unit of the Defence Department/Ministry, to obtain certain information, perform an inspection etc. Such assistance to the HVO Supreme Commander in relation to the Convict Battalion does not deny the fact that the Convict Battalion was directly subordinated to the HVO Supreme Commander. /T.49213, 49241.

Commander of the Convict Battalion Ivan Andabak stated in an interview published in the Croatian political weekly “Globus” in 2009 that the Convict Battalion was responsible exclusively to Šušak, when fighting in Croatia, and to Boban, when fighting in BiH. “And not to the Minister of Defence of Herceg-Bosna Bruno Stojić, or to the Commanders of the Staff Milivoj Petković and Slobodan Praljak”, asked the journalist, and Andabak repeated: “We have been responsible only to Šušak and Boban.” – Exh. 4D01356.

In the work report of the HVO/Government for the period July-December 1993 it was stated that the “HRHB Armed Forces have been improved by the decision to form professional guard brigades, and by abolishing all ‘professional units’ which were not attached to the HVO HQ”, which additionally proves the existence of the military units not subordinated to the Chief/Commander of the Main Staff. – Exh.P07419, p.1.

602. The evidence demonstrates that Military Police units, civilian police units and/or units of the Convict Battallion, which were *not* subordinated to the Chief of the Main Staff⁹⁹², were engaged in fighting during which crimes were allegedly committed:⁹⁹³

(i) Military Police was engaged in the conflict in Prozor in October 1992,⁹⁹⁴ and according to reports the town was under the control of the MP.⁹⁹⁵ There is no evidence that it had been re-subordinated to the Chief of the Main Staff or a local HVO commander.

(ii) Military Police units, the intervention unit under the command of Mladen Naletilić and the special purpose platoon under the command of Major Jure Šmit were engaged in combats in Gornji Vakuf in January 1993,⁹⁹⁶ but there is no evidence that they were re-subordinated to the Chief of the Main Staff or a local HVO commander.

(iii) Members of the Convict Battalion, according to the adjudicated facts, committed certain crimes in Sovići and Doljani area in April 1993, and there is no evidence that the Convict Battalion was re-subordinated to the Chief of the Main Staff.

(iv) Military Police units were engaged in combats in mid-April 1993 in Konjic and Jablanica, and there is no evidence about their re-subordination to the Chief of the Main Staff.⁹⁹⁷

(v) The Convict Battalion, including Mladen Naletilić and Vinko Martinović, according to the adjudicated facts, participated in combats in Mostar on 9-10 May 1993, and there is no evidence that they were re-subordinated to the Chief of the Main Staff.

(vi) Military Police was engaged in combats in Mostar on 9-10 May 1993, and there is no evidence that the MP units were re-subordinated to the Chief of the Main Staff.⁹⁹⁸

(vii) Military Police and the civilian police were engaged at the front-line in Mostar in July 1993, and there is no evidence that these police units were re-subordinated to the Chief of the Main Staff.⁹⁹⁹

(viii) HVO operation “South” was launched in mid-July 1993 in the area south of Mostar and the command of the operation was not subordinated to the Chief of the Main Staff.

Witness Buntić testified that “there existed some units that neither Boban nor the Main Staff were able to put under their control, and I know there were conflicts because of that, a number of incidents that threatened to escalate into large-scale conflicts that would have major consequences” –T.30727.

⁹⁹² Military police, civilian police and units of the Convict Battalion were not subordinated to the Chief of the Main Staff, but could be temporarily re-subordinated to him or the commander of the Operative Zone or Brigade by an order of their superiors.

⁹⁹³ See Annex 10: *Activities of the HVO Military Police*, p.31.

⁹⁹⁴ Exh.P00536 (P00712)

⁹⁹⁵ Exh. P00956,p.12; 3D00126.

⁹⁹⁶ Exh.4D00348, 2D01366 p. 5, P01330, P01350, P01357, P03090. Šiljeg reported that the HVO Brigade Commander Tokić could not influence the commander of the MP unit Andabak, and that Andabak and Šmit attacked Duratbegov Dolac and Tokić could not stop them – exh.P01287.

⁹⁹⁷ Exh.2D01366.

⁹⁹⁸ Exh.2D01366.

⁹⁹⁹ Exh.P03124.

Furthermore, 1st HVO Brigade was included in the operation “South” and its commander was re-subordinated to the commander in charge, Luka Džanko, during the operation.¹⁰⁰⁰

603. The Prosecution did not prove that Petković had *de jure* authority over any of these units at the time when crimes were allegedly committed, nor that Petković could have exercised any sort of control (effective or otherwise) over members of such units accused of having committed crimes.

Preliminary conclusions regarding Petković’s positions

604. To be relevant to the doctrine of superior responsibility, a *de jure* position must be a commanding or leadership function/position placing the accused in such a position as to enable the accused to control those placed under his authority if necessary.¹⁰⁰¹ And that authority must be established, not in general fashion, but *in the context said to be relevant to the charges* – i.e., in particular, at the time of the crimes and in relation to those said to have committed those. Thus, where the Prosecution alleges that crimes were committed as part or in the aftermath of a military operation, it must establish that the accused had a commanding role in that operation *and* that, in that capacity, he was able to control those among its troops that committed those crimes and culpably failed to do so.¹⁰⁰²

605. Petković’s roles as chief-of-staff and then deputy have not been shown to be of that sort. His role as chief of Staff was narrow and specific, not general in nature – with no commanding function over the alleged perpetrators. It depended on express delegation of authority from the Supreme Commander. It gave him no commanding authority and no control over the alleged perpetrators at the time relevant to the charges.

606. Its role was also geographically circumscribed since military actions were led and organized at the local level with only limited and sporadic involvement of anyone above Operative Zone level. This was due, as explained above, to the fact that military activities were localized and the Main Staff was not in a position to direct combat activities at the local level. That responsibility was left to local commanders. This is significant insofar as it is part of the Prosecution case that crimes were committed during or in the aftermath of military operations.¹⁰⁰³

607. During the period when he was deputy-commander, Petković was *not* in a vertical chain of command with any of the alleged perpetrators. He had no command authority over them, did not give them any orders, did not receive any reports from them, did not have direct contacts with them and had no material ability to control their actions. In other words, any authority or

¹⁰⁰⁰ Exh.4D01695, P03048; Beneta, T.46610-1.

¹⁰⁰¹ See, generally, *Halilovic* case. See also *Bagosora* TC, para. 2047, *in fine*.

¹⁰⁰² *Ibid*.

¹⁰⁰³ See e.g. *Bagosora* TC, para. 2047, *in fine*.

power that he could theoretically have exercised was entirely dependent upon that of his superior, Praljak and later on Roso.

608. The limitations on his authority were further compounded by the absence of a staff large enough to allow him to have much of an impact on the running of the war, let alone prevent or punish the crimes charged in the Indictment.

609. In light of the above, Petković's position as chief-of-staff would provide minimal, sporadic and insufficient evidence of control over members of the force. The position of deputy-commander would provide none.

610. Finally, a number of observations regarding Petković's positions – both as chief-of-staff and deputy-commander– are also directly relevant to the third element of command responsibility. These positions gave him none of the following powers (and none of which is alleged in the Indictment to have been part of his authority): no power to appoint; no power to remove; no power to arrest; no disciplinary authority; no power, authority or responsibility to conduct or order a criminal investigation. The absence of any such authority significantly curtails any possibility that Petković could be said to have had control (let alone “effective” control) over the perpetrators for the purpose of prevention or punishment of crimes.

2.2. Effective control

Pleadings considerations

611. Whilst the Indictment claims that Petković (like all other defendants) was in effective control of unidentified perpetrators, the Prosecution has not provided any material fact in the Indictment as would particularise that claim in relation to him (either by identifying the perpetrators or the means by which he is said to have been able to exercise that alleged control). In the absence of such indications, the Defence could hardly prepare effectively. It has, therefore, regarded the above 5+1 factors as *sole* factors said by the Prosecution to be relevant to its “effective control case” against Petković.

Legal and factual considerations

612. There was no dispute between the parties at trial that effective control must be established “at the time when the offence was committed”.¹⁰⁰⁴ The Prosecution has failed to establish beyond reasonable doubt that, at the time when the crimes were committed, Petković exercised effective control over the perpetrators. There is no evidence that the perpetrators (whoever they might be) were under the effective control of their *direct* superior (whomever they might have been). Nor has it been established that this direct superior was under the effective control of his own superior. Nor was that superior shown to have been under the

¹⁰⁰⁴ *Hadzihasanovic* 7(3) AC Decision, paras.45-55; *Kvočka* AC, paras.241-242; *Celebici* AC, para.198; *Bagosora* Trial Judgment, para.2012.

effective control of the next level of relevant command. In fact, not one of the links in the alleged chain of effective control that is said to have existed between Petković and the alleged perpetrators has been established beyond reasonable doubt. Each and all links in the alleged chain of “effective control” said to have linked Petković to the perpetrators is assumed to have existed by the Prosecution; none has been proved.

613. Not only has the Prosecution entirely failed to positively establish the existence of a relationship of effective control between Petković and the alleged perpetrators, but there are also plenty of good reasons on the record that further support the view that the conclusion sought by the Prosecution (“Petković had effective control over the perpetrators at the time of crimes”) could not be regarded as the only reasonable conclusion on the evidence, but is in fact a plainly unreasonable one to draw:

(i) Multiple and partly conflicting chains of command and reporting

614. As explained above, commanders of the regular HVO units were subordinated directly to the Supreme Commander and, in addition, alternatively to the Chief of the Main Staff or the Head of the Defence Department.¹⁰⁰⁵ Convict Battalion was subordinated exclusively to the Supreme Commander;¹⁰⁰⁶ Military Police units were subordinated to the Chief of the MP Administration (save the situation of re-subordination to a military commander) and the civilian police units were subordinated to the Head of the Department of Interior (save the situation of re-subordination to a military commander).¹⁰⁰⁷ Further, assistants commanders of the Operative Zones and brigades for security, IPD, logistics etc., were subordinated both to the commander and the superior in the professional chain of command, up to the Assistant of the Head of the Defence Department. Accordingly, there were always at least two lines of command and reporting that could have been relevant to establishing a chain of command vis-à-vis alleged perpetrators. Some of them did not go to and/or through the Chief of the Main Staff. In this case, the existence of more than one, sometimes competing, chains of command/reporting makes it impossible to determine who, at the time, might have been in a position to exercise any sort of control over the perpetrators.¹⁰⁰⁸

615. Whilst it is theoretically possible to have two (or more) persons in effective control of the same subordinate if these two persons belong to the same chain of command and one is subordinated to the other, that possibility is *not* open where they are not subordinated to each other: if one were to say right and the other left to the alleged perpetrator, the latter would have

¹⁰⁰⁵ See para.70.

¹⁰⁰⁶ See footnote 991.

¹⁰⁰⁷ Exh: 1D02006, 3D02408, P03027, P05963, P06027, P06208, P06397, P05573.

¹⁰⁰⁸ See, for illustration, *Hodžić* TC, paras.75, 79, 87 and 90.

to choose and the one he follows would be in effective control, not the other.¹⁰⁰⁹ The evidence suggests that there were dual or competing lines of authority over the alleged perpetrators (whomever they are said to be) that would have prevented Petković from being able to exercise any sort of control over the alleged perpetrators:

(a) those believed to have been the perpetrators received orders directly from the Supreme Commander, commander of the Operative Zones and Brigades, commander of the Military Police and/or civilians police units, and/or the Chief of the Military Police Administration and the Head of the Department of Interior, without such orders being shown or sent to Petković.

(b) those believed to have been the perpetrators never sent report of their activities (in the context of which crimes were allegedly committed) to Petković.

(ii) Disrupted command and control system

616. The evidence also suggests that all through the relevant period there were problems of disrupted system of command and control coupled with command shortcomings at the local level that effectively undermined attempts to enforce a unitary chain of command over local forces.¹⁰¹⁰ Petković also complained about the creation of local(ised), independent, military structures.¹⁰¹¹ UNPROFOR's General Ramsey noted that Petković's orders were not being obeyed, further strong evidence of the actual absence of effective control.¹⁰¹²

(iii) Absence of controlling means

617. Whilst it has alleged that Petković had effective control over the perpetrators, the Prosecution has failed to plead as a material fact any of the means or procedure which, it is said, would have allowed him to exercise this sort of control. In fact, no such means or procedure existed as would have allowed Petković, at the time of the crimes, to intervene to control and stop those troops. None has been shown to exist and the material limitations placed on its staff (not mentioning travel and communication limitations) makes it plain that he could not have exercised such control at the time relevant to the charges and has not been shown to have been able to do so.

(iv) Absence of operational control and no commanding function

618. It is most significant that crimes were allegedly committed in two types of context over which Petković had no control: (i) during or in the direct aftermath of military operations – for which he played no commanding part and over which he exercised no sort of control (let alone, “effective”) and (ii) in camp/detention centers – in relation to which he had no authority or competence. This absence of commanding role as might have given him some degree of

¹⁰⁰⁹ See, e.g., *Mandić* AC, para.107 (with Corrigendum 10/03/2010).

¹⁰¹⁰ Exh.P03642, 4.4-4.6.; P03314, 3D00793, 3D00796, 4D00805, 4D01328; witness Petković, T.49402-4.

¹⁰¹¹ Exh.P03642, 4.6

¹⁰¹² Exh.P06144.

control might thus be established: there is no order signed by Petković for any of the operations in the course of which, it is alleged, crimes were committed.

(v) Absence of *triggering* information in relation to the alleged perpetrators

619. There is no evidence that, at the time when the crimes were committed, (i) Petković received information suggesting that crimes were being committed or were about to be committed so that (ii) he had no reason to even consider the possibility or need to do anything to control particular individuals at the time when crimes were being committed and (iii) even if he had that he would have had any means at his disposal to control the individuals in question.¹⁰¹³ None was pleaded in the Indictment. None has been established beyond reasonable doubt.

(vi) Perpetrators had not been (and still have not been) identified

620. Whilst the failure of the Prosecution to identify the perpetrators might not necessarily mean that its case should fail, it weakens it a great deal. How, is it suggested, could Petković have exercised control over individuals whom he could not identify at the time and had no means of identifying then (and still today)? Who, is it said, was he materially able to punish? A superior could hardly be said to be capable of exercising control over un-identified persons from un-identified military units at a time when they commit crimes if he did not know it was happening, and did not know who they were, or where they were at the time when they allegedly committed a crime.

(vii) No evidence of ability to communicate with troops at time of crimes

621. The Prosecution has failed to establish that, at the time of the crimes, Petković was able to communicate with the alleged perpetrators. Again, without such ability, Petković could hardly have been able to control the alleged perpetrators at the time when they were carrying out their deeds.

(viii) Chaotic circumstances surrounding the events

622. The situation at the time was chaotic and one should not judge the functioning of the HVO according to an ideal situation, but in light of all circumstances that made communication and discipline such a great challenge.¹⁰¹⁴ At the time, Petković was also involved in a series of military matters and negotiations with the BH Army that further limited the range of things that he could reasonably have done in the circumstances (and thus the scope of his alleged material ability).

¹⁰¹³ See para.78.

¹⁰¹⁴ *Oric* TJ, para.503; *Oric* AJ, paras.145-149.

623. To test the solidity and reasonableness (or otherwise) of the Prosecution's "effective control" case, a simple test may be carried out: select *any* of the underlying crimes charged in the Indictment (a murder here or an act of torture there) and:

- (i) try to identify in the Indictment the material facts said to be relevant to establishing a relationship of effective control between Petković and the alleged perpetrators, and
- (ii) on the record of this trial, try to reconstruct the alleged chain of effective control said to have linked Petković to the alleged (and un-identified perpetrators) and which allegedly enabled him to control those perpetrators at the time of their crimes.

624. In all cases the result would be identical: there is no material facts pleaded in the Indictment that would be relevant to establishing such a linkage and there is no evidence on the record that would allow for a finding beyond reasonable doubt that, at the time of *that* crime (or any other), Petković had control over its perpetrator as would have enabled him to prevent or punish that crime.

625. Command responsibility is predicated upon the power of a superior to control the acts of alleged subordinates.¹⁰¹⁵ As pointed out, "effective control" implies the "actual ability to prevent or punish the perpetration of criminal offences".¹⁰¹⁶ Where there is no such power, there can *not* be any command responsibility. In this case, effective control has not been established beyond reasonable doubt and Petkovic should be acquitted for that reason also.

2.3. Mens rea

626. The Indictment pleads in the most generic fashion (in relation to all six defendants) that they possessed the requisite *mens rea* under Article 7(3). As with other parts of the case, however, the Prosecution has failed to plead any material fact as would be relevant to notice of its case against Petković. The Defence was greatly prejudiced by this manner of pleading *by association* and by the inadequacy and defectiveness of those pleadings.

627. Petković knew of general allegations of crimes. None, however, aside from two (Stupni Do and Sovići/Doljani – see above) pertained to any particular incident or to any identifiable group of alleged perpetrator. Information was general in character, not such as to provide him with either of the requisite *mens rea*. The Prosecution has failed to establish that Petković knew or had reason to know about *any of the alleged crimes charged* in the Indictment as

¹⁰¹⁵ See, e.g., *Fofana* TJ, para. 236, referring to *Kordic* AJ, pars. 840, *Celebici* TJ, para. 377; *Strugar* TJ, para. 359; *Mrskic* TJ, para.559; *Alic* TJ, at 29; *Mandic* TC, at 152 (footnote omitted but referring to *Strugar* TC, par 359) ("The doctrine of command responsibility is based on the power of the superior to control the acts of his subordinates. The duty is imposed on the superior to use that power of his to prevent and punish the crimes committed by his subordinates, and if he fails to do so, he is sanctioned by imposing the criminal responsibility on him."); *Lazarevic* TC, at page 46 (footnotes omitted but referring to *Celebici* TJ, para.377, *Halilovic* TJ, para.57 and, respectively, *Celebici* TJ, para.378, confirmed on appeal, *Celebici* AJ, paras.256, 265-266): "The doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates. Having control means having *effective* authority over subordinates."

¹⁰¹⁶ *Kujundzic* TJ, para. 424.

underlying offences and Petković had no such knowledge at the time. The detail of these incidents has been already discussed.¹⁰¹⁷

628. There are only two exceptions to this absence of knowledge: the first one pertains to Vares/Stupni Do (Indictment, par 215), where more detailed information was made available to him. His reaction to this information has already been discussed above (paragraphs 466-469). To be relevant to his *mens rea*, information must be shown to have existed for each of the criminal incidents alleged against him. In that sense, information that he might have had about Stupni Do is not transferrable to any other location or alleged crime committed in other parts of Herceg-Bosna. Furthermore it was obtained only *after* the events so that it would and could only be relevant to an allegation of failure to punish (not to prevent).

629. The second exception pertains to the events of Doljani/Sovići: In relation to Doljani/Sovići, Petković made it clear that he was able to involve himself in this matter *at the request and on behalf of President Boban*.¹⁰¹⁸ Having obtained relevant information about this matter, Petković duly forwarded all of that the information to his superior (including the names of those believed to be responsible for these acts – which directly contradicts any suggestion that he would have sought to hide the responsibility of those involved); based on this, Boban undertook to set up a commission for the purpose of establishing the individual responsibility of those involved.¹⁰¹⁹ Petković had no part in the work of that Commission nor was he present at the meeting when its functioning was discussed.¹⁰²⁰ But he had no reason to doubt the willingness of Boban to carry out its promise in that regard. The Commission did not fully operate in 1993 due to the overall circumstances (or due to circumstances beyond Petkovic's control), but there is no indication (and no allegation) that it was a sham or that Petković knew this to be the case. It is unchallenged evidence that Petković had no command authority over the operation in Doljani/Sovići.¹⁰²¹ Petković made it clear during his evidence that there was no subordination between the alleged perpetrators (members of the Convicts Battalion and/or civilians) and the Main Staff.¹⁰²²

630. The Prosecution has otherwise failed to establish that Petković knew or had reason to know of any of the particular incidents for which he stands accused.

631. Furthermore, even if it were accepted that he had known of rumours of crimes in certain locations, the Prosecution has failed to establish that he possessed information that would have

¹⁰¹⁷ See paras.170-197, 409-502.

¹⁰¹⁸ Witness Petković, T.49438-45.

¹⁰¹⁹ Ibid.

¹⁰²⁰ Witness Petković, T.49444-5, 49449-50.

¹⁰²¹ Witness Petković, T.49442.

¹⁰²² Witness Petković, T.49454.

made it clear to him that subordinates were responsible for such crimes.¹⁰²³ Finally, the Prosecution has also failed to establish that Petković acquiesced in the commission of the crimes with which he is charged.¹⁰²⁴

632. In sum, the Prosecution may be said to have failed to plead that part of its case properly and failed to prove beyond reasonable doubt the relevant *mens rea* elements of that form of liability in relation to any and all of the crimes charged.

2.4. Culpable failure to prevent/punish

Pleading deficiencies

633. The Defence has been greatly prejudiced by the Prosecution's failure to specify in the Indictment what measure(s) Petković is alleged to have had the legal duty and material ability to adopt and which he is said to have culpably failed to adopt. Such material facts were critical to the Defence's ability to prepare: "[t]his is an essential element for charging an accused with a failure to prevent or punish. An accused must at least know the scope of his obligations to be in a position to dispute his alleged default".¹⁰²⁵ The Prosecution was legally required to provide clear and detailed notice of this aspect of its case in the Indictment. As a matter of practice also, the Prosecution has duly provided explicit notice of such material facts.¹⁰²⁶ The Prosecution's complete pleading failure on that point should lead to the dismissal of that part of the charges. It was highly prejudicial to the Defence ability to prepare – not knowing what allegations it faced, not knowing what evidence should be elicited to disprove those allegations.

634. Even if this part of the charges was considered by the Chamber on its merit, it would be prohibited from considering any material fact not pleaded in the Indictment as forming part of the Prosecution case. In particular, in relation to the present matter, it should not build into the Prosecution case allegations that are not present in the Indictment. In particular,

- (i) there is no allegation that Petković had the power to appoint, remove or replace anyone;
- (ii) there is no allegation that Petković had the power to arrest anyone;
- (iii) there is no allegation that Petković had any authority to conduct or order a criminal investigation;
- (iv) there is no allegation that Petković was in a position (or was required) to report a crime to the competent authorities – nor, if such an allegation had been raised, what incident(s) it would pertain to, in relation to whom and to what authority this should have been done and when;

¹⁰²³ E.g. *Galic* AJ, para. 184; *Celebici* AJ, para. 241.

¹⁰²⁴ Mettraux, *The Law of Command Responsibility*, 218-226.

¹⁰²⁵ *Mpambara* TJ, para.32.

¹⁰²⁶ See e.g. *Perisic* Indictment, para. 37; *Boskoski* Indictment, paras.15-17; *Karadzic* Indictment, para.35 – all listing the alleged measures that the accused was required and allegedly failed to adopt.

(v) there is no allegation that Petković had any disciplinary authority over any of the alleged perpetrators, nor any evidence that, in the circumstances (in particular in light of the gravity of the alleged crimes), disciplinary measures would have been a reasonable response. Nor has it be shown that Petković had any authority to initiate such proceedings.¹⁰²⁷

HZHB/HRHB organization

635. Every State is free in principle to organize its armed forces as it sees fit and States have exercised their authority in that regard in very different manners. To the extent that international humanitarian law imposes upon a State certain obligations, that State is free to *distribute* that responsibility between its various organs as it sees fit. Every state official who, from the point of view, might qualify as a “superior” therefore only bears that part of the State’s obligations (insofar as pertain to the prevention/punishment of crimes) that the State has placed upon them in its internal organisation – subject to the *de minima* set by customary law. Although the HZHB/HRHB was not a state, the mentioned rule is *mutatis mutandis* relevant for Herceg-Bosna or any party to a conflict that is bound by IHL.

636. As far as HZHB/HRHB regulations are concerned, none of the responsibilities pertaining to the general prevention or investigation/punishment of crimes were placed upon the chief-of-staff (nor, for that matter, upon the deputy-commander).¹⁰²⁸ Petković had no legal duty that he could be said to have breached in relation to the prevention or punishment of crimes committed by members of HVO armed forces.

637. Nor did he have any demonstrated material ability to do so. The following factors are relevant in this regard:

- (i) Petković did not have personnel within the staff (or as deputy-commander) to carry out or adopt measures of prevention/punishment capable of preventing/punishing the alleged crimes.¹⁰²⁹
- (ii) There was no procedure in place as would have allowed him to do so, let alone required him to;
- (iii) Petković had no practical means to intervene to control troops at the time when they were said to commit crimes – and thus no demonstrated means to prevent those crimes.
- (iv) Petković did not have any expertise in relation to punishment or investigation of crimes;
- (v) Petković did not have the authority nor material ability to order or initiate a criminal investigation or disciplinary proceedings (nor is it alleged).¹⁰³⁰ The competence and

¹⁰²⁷ Witness Petković, T.49405-7

¹⁰²⁸ See para.78.

¹⁰²⁹ Exh.P01683; 4D01600.

¹⁰³⁰ Witness Petković, T.49407-8.

responsibility for investigating allegations of crimes was with the prosecutor, civilian police, SIS and Military Police under the ultimate authority of the competent judicial organs.

(vi) Petković did not have any information that he could have shared with others concerning the alleged commission of crimes by any person or group of persons that he could have identified. Nor, as mentioned above, is this alleged in the Indictment. Where he had such information (as in the case of Doljani/Sovići and Stupni Do), he duly reported it and shared it with his superiors, which he had reason to believe would lead to the adoption of adequate measures.¹⁰³¹

(vii) Petković did not have material ability to carry out arrest of suspects (even if they had been identified – and they had not) (nor is it alleged);

(viii) Petković did not have authority over the military police (nor is it alleged in the Indictment).¹⁰³² Instead, the Military police was subordinated to its own chain of command, which went directly through the MP Administration and the Security Sector of the Defence Department/Ministry, thereby bypassing the Main Staff.¹⁰³³ In that sense, any use of or reliance upon the military police (and any failure associated with it in this context) would only have been a possibility for others, not Petković.

(ix) Petković did not have the authority nor material ability to appoint or dismiss any HVO commander (nor is it alleged);

(x) Civilian police and the judiciary that would have been competent in many cases to investigate and prosecute these matters were both malfunctioning and there were tensions between the civilian and military institutions as regards the sharing of their competencies.¹⁰³⁴ Petković may not be held responsible for the deficiencies of institutions over which he had no control. He could only be held liable for derelictions that are directly attributable to *him*.

638. Petković had no competence to change the institutional framework in which he functioned and his calls to bring such changes went un-headed.¹⁰³⁵ The competence to bring any institutional changes (as might have been required in this case – though this does not form part of the Prosecution case) was solely with the Presidency, President and the HVO/Government.¹⁰³⁶ The fact that the competent judicial authorities were malfunctioning or inadequate was not a matter within the realm of his competencies as a military man. In other words, institutional or organizational deficiencies or shortcomings could not be laid at Petković's door.

¹⁰³¹ Ibid.,T.49438-45.

¹⁰³² Ibid.,T.49407.

¹⁰³³ See Annex 10: *Activities of the HVO Military Police*.

¹⁰³⁴ Exh.P00108, p.8-9.

¹⁰³⁵ Exh.P03642, item 4.6;

¹⁰³⁶ See para.62(i).

639. The Indictment refers to only one measure that could be said to be relevant to Petković's alleged failure to prevent crimes. The Indictment claims that it was part of Petković's responsibility to ensure that all HB/HVO armed forces conduct themselves in accordance with the Geneva Conventions and international humanitarian law and that all prisoners, detainees and other persons held by HB/HVO armed forces be treated in compliance with such conventions and law. The allegation is repeated in relation to all defendants, without discrimination nor any effort to determine who, in fact, was obliged to do so under the relevant regulations.

640. Every soldier in the HVO knew that he was required to act in accordance with the law, including humanitarian law.¹⁰³⁷ No one would need to be reminded that murdering or torturing is a crime and that it should not be done. Suggesting that a failure to remind troops to not do so would render that superior guilty of the murder or torture is simply unreasonable as a matter of both law and fact. No army in the world requires its commanders, *let alone its highest ranking officers*, to remind soldiers to abide by those laws every time they go in the field under threat of criminal prosecution. There is no binding state practice the prosecution could point to, nor any customary rule, that would require such an onerous burden and place penal consequences upon such a failure. That is because any member of the armed forces is under such an obligation *as a matter of law* already. However, as already noted, whenever he considered that this was necessary and reasonable to do so, Petković explicitly gave such reminders in his orders. Therefore, to the extent that he would be said to have had any responsibility in this matter, he may be said to have fulfilled it.¹⁰³⁸

641. The Prosecution also failed to establish that, if and where a failure of some sort was found to have occurred, it was of such seriousness as to meet the minimum threshold of gravity relevant to customary international law on that point.¹⁰³⁹

642. In light of the above, it might be concluded that the Prosecution –

- (i) failed to properly plead its case in relation to that element of Article 7(3);
- (ii) failed to establish beyond reasonable doubt the scope or nature of Petković's legal duties in that regard;
- (iii) failed to establish beyond reasonable doubt his alleged material ability;
- (iv) failed to establish beyond reasonable doubt that he culpably failed in his duty to prevent or punish any of the alleged crimes;

¹⁰³⁷ Exh.P00588, art 23.

¹⁰³⁸ See Annex 7: *Petković's orders concerning humanitarian law and customs of war*.

¹⁰³⁹ The standard is that of a "gross dereliction of duty" (*Bagilishema* AC, par 36), i.e., "personal neglect amounting to a wanton, immoral disregard of the action of his subordinates amounting to acquiescence" (*High Command* 543-4).

(v) failed to establish that any attributed failure would be so grave as to engage his liability as a matter of customary law.¹⁰⁴⁰

The Prosecution case must fail for these reasons also.

3. Commission by omission

3.1 General pleading considerations

643. In a number of places in the Indictment, the Prosecution has alleged *in relation to the defendants as a group* that liability could result from certain alleged omissions which the Indictment says are culpable. Whilst making such broad and unspecific allegations as regard all six defendants, the Indictment does not specify a single incident where, it is alleged, Petković had such a duty to act in relation to given individuals and culpably failed to do so. An allegation of a culpable failure attributable to *Petković himself* is to be found in two places only in the Indictment:

- (i) At paragraph 228 regarding his alleged superior responsibility;
- (ii) In paragraph 17.4(n), which refers back to the same alleged failure, namely, to prevent/punish crimes of subordinates as a superior to the alleged perpetrators.

644. No other culpable failure is attributed to Petković in the Indictment and no other legal duty is identified in relation to him so that the Prosecution's omission-case is, as far as Petković is concerned, limited to an allegation that, in unspecified circumstances, he failed to fulfill his duty to prevent or punish vis-à-vis subordinates who had committed crimes. It is not specified in relation to what crime or what individual that alleged failure is supposed to relate.

645. The Indictment says not a word about the circumstances, occasions or situations where Petković is alleged to have culpably failed in this duty to prevent/punish crimes of subordinates. Nor does it say a word of the regulatory whereabouts of the legal duties which he is said to have culpably violated. In other words, the Indictment fails to:

- (i) Identify in the relevant laws and regulations those alleged duties, which Petković is said to have breached: what was it that the Prosecution says he was materially able to do and legally required to do and which he culpably failed to do? What law/regulation, the Prosecution claims, provided for those duties and enabled him to act in the circumstances? As discussed above, the Prosecution was required to give notice of such materially-central facts and it failed to do so as to prejudice the Defence ability to prepare.¹⁰⁴¹
- (ii) Provide clear and detailed notice of those occasions/circumstances where, it is alleged, Petković was required and was materially able to act against criminal subordinates in line with his alleged legal duties and where he knowingly and culpably failed to do so. *Not a single*

¹⁰⁴⁰ Mettraux, *Law of Command Responsibility*, p.260 *et seq* (and references).

¹⁰⁴¹ *Blaskic AC*, paras.218(c) and 220.

instance of this occurring is identified in the Indictment (not by incident, not by alleged culpable subordinates, not by date, not by location).

646. Such pleading practice amounts to trial by ambush. The Trial Chamber would violate minimal pleadings requirements and Petković's fundamental rights to adequate notice of the charges if it were to enter a conviction on the basis of these pleadings. In those circumstances, a case for a culpable omission (apart from those considered separately regarding command responsibility charges) could not be said to form a valid part of the Prosecution case against Petković.

3.2 Legal considerations

647. An omission is capable, in some circumstances, to trigger the individual criminal responsibility of an individual under customary international law. This sort of liability is, however, narrowly construed as a matter of customary law. When it was suggested, during the negotiation of the ICC Statute, to include a general provision on liability for omission, States overwhelmingly rejected that proposition.

648. Omission can give rise to individual criminal responsibility only if a person failing to take an action has a duty to act.¹⁰⁴² That duty has to be legal, prescribed by law.¹⁰⁴³ Therefore, establishing the *de jure* authorities, duties and obligations of an accused in relation to the specific issues in question is a precondition for determining that he/she failed to perform his/her legal duty to act in the particular circumstances of the case.

649. Liability for omission is only sanctioned as a matter of customary international law in relation to three sets of well-identified legal obligations to act: (i) superior responsibility; (ii) principal liability under Article 7/1, and (iii) accessorial liability (instigation, aiding and abetting) under Article 7/1.

650. First, liability for an omission to act may occur where crimes have been committed by subordinates of the accused if and where he is shown, all other conditions being met, to have culpably failed to prevent or punish these crimes ("superior responsibility").¹⁰⁴⁴ To be relevant to a superior's responsibility under that doctrine, the legal duty that has been breached by the superior must be shown to have been his own (not that of anyone else)¹⁰⁴⁵ and the dereliction

¹⁰⁴² *Galic* AJ, para.175; *Oric* AJ, para.43, *Kayishema and Ruzindana* TJ, para.202.

¹⁰⁴³ *Milutinovic* TJ, para.90; *Galic* AJ, para.175; *Oric* AJ, para.43.

¹⁰⁴⁴ See, generally, *Halilovic* TJ, para.54 and references cited therein. See also *Fofana* TJ, para.234; *Brima* TJ, para.783.

¹⁰⁴⁵ See, generally, *Tadic* AJ, para.186. See also *Celebici* AJ, para.239; *Krnojelac* AJ, para.171; *High Command case*, TWC XI, pp 543-4 ("[i]f [von Leeb's] subordinate commanders disseminated [an unlawful order] and permitted its enforcement, that is their responsibility and not his"); *Celebici* TJ, para.400; *Kordic* TJ, para.447; *Bagilishema* AJ, para. 35; *Krnojelac* AJ, para.171; *Aleksovski* TJ, para.72; *Hadzihasanovic* TC Decision on Jurisdiction, para.131; *Halilovic* TJ, para.54.

must be shown to be attributable to *him* (and no one else).¹⁰⁴⁶ In this context, the applicable – domestic – regime (in this case, the legal regime applicable to Petković in his successive capacities as chief of staff and then deputy-commander) is most directly relevant to establishing the nature and scope of those duties whose violation could result in rendering him liable under that doctrine.¹⁰⁴⁷

651. The second recognized form of liability for omission under customary law is a culpable omission of the legally-recognised duty to protect prisoners-of-war.¹⁰⁴⁸ Again, to trigger a defendant’s responsibility under that theory liability, (a) such a case must be properly pleaded in the Indictment (and it has not been done in this case in relation to Petković) and, all other conditions being met,¹⁰⁴⁹ (b) it must be shown that the defendant was responsible for and had the legal duty to care for prisoners of wars in his custody and (c) that he culpably failed to do so (which in turn pre-supposes that he had the *capacity*, and not just the legal duty, to act¹⁰⁵⁰).¹⁰⁵¹ The legal duty in question must be expressly provided for under the laws of war or be provided for in an applicable rule of criminal law as only *criminalised* forms of omission could ever be relevant to liability under such a theory of liability.¹⁰⁵² This second sort of liability for omission (i.e., one stemming from a duty to protect POWs) is not relevant to Petković as it has not been charged against him, and because, as explained above, he had no duty or responsibility vis-à-vis POWs and other detainees once they had been handed over to the authorities competent for their detention.¹⁰⁵³

652. Customary international law recognizes a third sort of culpable liability for an omission to act – not relevant to these proceedings, as it is not part of the charges – “by tacit approval and encouragement”¹⁰⁵⁴, or “approving spectator” doctrine¹⁰⁵⁵, where a person with superior

¹⁰⁴⁶ Ibid. See, also, *Hadzihasanovic* AJ, para.154; *Hadzihasanovic* Article 7(3) AC Decision, Separate and Partially Dissenting Opinion of Judge Hunt (not dissenting on this issue), para.9.

¹⁰⁴⁷ See, generally, Mettraux, *Law of Command Responsibility*, p.56-63 and authorities cited therein, in particular, *Halilovic* AJ, paras.183, 210-213; *Ntagerura* AJ, paras.342-343; *Boskoski* TJ, paras.498 *et seq* (upheld on appeal).

¹⁰⁴⁸ *Mrksic* AJ, paras.150-151, 201; *Mrksic* TJ, paras.668-669.

¹⁰⁴⁹ If, for instance, omission is charged as a form of aiding/abetting, it must be shown that the culpable failure to act had a substantial effect on the commission of the underlying act (see, e.g., *Mrksic* AJ, paras.146, 200, 202). For commission by omission, proof is required of “concrete influence” (*Oric* AJ, para. 41; *Mrksic* AJ, para.156), a material fact again not alleged in this case. Respective *mens rea* requirements would also have to be met. No omission-based *mens rea* is pleaded in the Indictment against Petkovic.

¹⁰⁵⁰ *Mrksic* AJ, para.154; *Ntagerura* AJ, para.335.

¹⁰⁵¹ See, generally, *Mrksic* AJ, paras.134-135; *Oric* AJ, para.43; *Brdjanin* AJ, para.274; *Galic* AJ, para.175; *Simic* AJ, footnote 259; *Blaskic* AJ, paras.47-48, 663, footnote 1385; *Tadic* AJ, para.188. See, also, *Ntagerura* AJ, paras.334, 370; *Ntagerura* TJ, para.333.

¹⁰⁵² See, e.g., *Ntagerura* TJ, para.660. The *Mrksic* Appeals Chamber declined to expressly rule on that point (*Mrksic* AJ, para.151; see also *Ntagerura* AJ, paras.334-335).

¹⁰⁵³ See paras.299-300.

¹⁰⁵⁴ *Oric* AJ, para.42. See also *Ntagerura* AJ, para.338.

¹⁰⁵⁵ *Akayesu* TJ, paras.693-4; *Furundžija* TJ, para.273; *Aleksovski* TJ para.125; *Orić* TJ para.284, *Brđanin* AJ, para.277

authority is present at the scene of a crime and culpably fails to act in violation of a duty to act recognized by international law.¹⁰⁵⁶ This has not been alleged (nor proved).

4. Other forms of liability

4.1. General pleadings issues

653. As already noted, the pleadings are entirely inadequate as regard material facts alleged to be relevant to the various forms of liability charged against Petković. Simply stated, they are nowhere to be found in the Indictment. Even the most basic elements of these forms of liability (including *actus reus* and *mens rea* attributed to Petković) are missing in relation to what could be said to constitute the alleged culpable conduct of Petković. This should warrant a complete dismissal of charges.

4.2. Planning

654. ‘Planning’ liability ‘envisions one or more persons formulating a method of design or action, procedure, or arrangement for the accomplishment of a particular crime’.¹⁰⁵⁷ None of the material facts relevant to such form of liability is pleaded in the Indictment, thereby making it impossible for the Defence to prepare.

655. The Prosecution has not identified any act of culpable criminal planning in the Indictment attributable to Petković.¹⁰⁵⁸ Nor has it established beyond reasonable doubt any such act that could be said to relate to any of the crimes charged in the Indictment. To the extent that any planning went into the commission of any of the crimes charged, none has been shown to have benefited from Petković’s involvement (let alone any “substantial” sort as would be relevant to establishing his responsibility under that theory of liability).

656. Finally, there is no indication that Petković ‘directly or indirectly intended that (any of the crimes charged in the Indictment) be committed’.¹⁰⁵⁹ This has not been shown in relation to *any* of the crimes charged. The Prosecution has thus failed to establish beyond reasonable doubt the requisite *mens rea* that attaches to that form of liability.

4.3. Instigating

657. The Prosecution generally alleges that Petković could be found responsible for “instigating” crimes charged in the Indictment – in the sense of ‘urging, encouraging or prompting’ another to commit a crime and causing that person to do so¹⁰⁶⁰ - but it did not connect that general allegation with any of the underlying crimes; nor did it identify *any*

¹⁰⁵⁶ See, generally, *Blaskic* AJ, paras.47-48

¹⁰⁵⁷ *Semanza* AJ, para.380.

¹⁰⁵⁸ The Prosecution also failed to put its case of “planning” clearly and un-ambiguously to Petkovic in cross-examination.

¹⁰⁵⁹ E.g. *Blaskic* TJ, para.278; *Kordic and Cerkez* TJ, para.386.

¹⁰⁶⁰ E.g. *Bagilishema* TJ, para.30; *Semanza* TJ, pars.381; *Rutaganda* TJ, para.38; *Akayesu* TJ, para. 482; *Musema* TJ, para.120; *Kajelijeli* TJ, para.762; *Kamuhanda* TJ, para.593; *Blaskic* TJ, para.280; *Krstic* TJ, para.601.

material fact that would support this broad allegation; nor did it identify which crime(s) he is alleged to have instigated or how; nor did it plead any material fact pertaining to the underlying *mens rea*. Such pleadings are not such as to enable the Defence to prepare for trial. Prejudice is significant and charges of instigation should be disregarded on that basis already.¹⁰⁶¹

658. In any case and furthermore, there is no evidence that Petković instigated any of the crimes charged in the sense defined above. None of his acts has been shown to have caused – in the sense of a directly and substantially contributing to encourage¹⁰⁶² – another to commit a crime. Nor has he been shown to have been ‘urging, encouraging or prompting’ another to commit one of the crimes charged in the Indictment. Instead, his acts and statements clearly show that he did not want and did not support crimes and made it clear to others that this was the case: that view would have been clear to anyone who heard his public statements and knew of his involvement in finding peaceful solutions to the conflict with ABiH officers.

659. The Prosecution also failed to establish beyond reasonable doubt that Petković possessed the requisite *mens rea*, namely, that ‘he [or she] directly or indirectly intended that the crime in question be committed’¹⁰⁶³ and ‘intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts’.¹⁰⁶⁴ There simply is no evidence that would support such a conclusion, let alone beyond reasonable doubt. There is also clear evidence supporting a contrary conclusion. In those circumstances, it would be unreasonable to conclude that he possessed the requisite *mens rea*.

4.4. Ordering

660. The Indictment does not identify a single order issued by Petković as an alleged basis to find him responsible for “ordering” any of the crimes charged against him. *Mens rea* and *actus reus* relevant to this form of liability are not even stated in the Indictment. In those circumstances, the Defence could hardly be expected to identify a case that is invisible from the pleadings.¹⁰⁶⁵

661. In any case and furthermore, the Prosecution has failed to establish beyond reasonable doubt any instances where Petković issued an order to commit a crime to individuals under his authority. None of the crimes charged in the Indictment has been shown to be the result of an

¹⁰⁶¹ The Prosecution also failed to put its case of “instigating” clearly and un-ambiguously to Petković in cross-examination.

¹⁰⁶² *Ndindabahizi* TJ, para.456.

¹⁰⁶³ *Blaskic* TJ, para.278; *Kordic and Cerkez* TJ, para.386; *Naletilic and Martinovic* TJ, para.60; *Kordic and Cerkez* TJ, para.387; *Kvocka* TJ, para.252.

¹⁰⁶⁴ *Naletilic and Martinovic* TJ, para.60; *Kordic and Cerkez* TJ, para.387; *Kvocka* TJ, para.252.

¹⁰⁶⁵ The Prosecution also failed to put its case of “ordering” clearly and un-ambiguously to Petković in cross-examination.

order issued by Petković. The Prosecution has therefore failed to prove the *actus reus* of this form of liability beyond reasonable doubt.

662. Those Petković orders expressly mentioned in the Indictment have been dealt with above and have all been shown to have been lawful in character or could reasonably be regarded as such by Petković at the time and in the prevailing circumstances. Even if some orders were regarded as unlawful in nature (those related to the labour of the detainees of 15 and 20 July 1993 and 8 August 1993), none of them was carried out and, further, all of them were issued with the genuine, good faith, belief that they were indeed lawful so that a mistake of law/fact would have prevented Petković to form the requisite *mens rea* even if the orders were executed and crimes upon these orders committed.¹⁰⁶⁶

663. Nor has the Prosecution shown beyond reasonable doubt that Petković issued any order, let alone any mentioned in the Indictment, with the requisite *mens rea* and that any crime has been committed in the execution of his order. Petković has not been shown to have issued any order with the intention that any of the crime charges against him be committed¹⁰⁶⁷ nor ‘with the awareness of the substantial likelihood that a crime will be committed in the execution of that order’.¹⁰⁶⁸ Tellingly, the Prosecution failed to put such a case to Petković in cross-examination as he would have been required to do had it pursued such a case against him in relation to any of his orders.

4.5. Committing

664. In paragraph 218 of the Indictment, the Prosecution alleges that all six accused (i.e., Petković included) “committed” some of the crimes charged (although it made it clear that it did not allege that any of the accused personally performed the *actus reus* of any of the crimes charged). The Prosecution did not plead in that paragraph or anywhere else in the Indictment any material fact as would have specified/particularized (and given notice of) what act or conduct, it said, could render Petković liable under that form of liability and, if so, in relation what crime(s) charged. The absence of these critical material facts deprived the Defence of the ability to effectively confront those allegations. In the absence of clarification on that point, the Defence understands this allegation to be limited to an allegation that “committing” liability is limited to an allegation of culpable participation in the alleged JCE (as addressed above). The Defence cannot decipher any other case relevant to that form of liability from the pleadings.

665. JCE-allegations have already been dealt with above. Suffice to add here that Petković has not committed any of the crimes charged in the Indictment. None of his act or conduct could be regarded as amounting to the physical perpetration of the relevant criminal act or to a

¹⁰⁶⁶ See paras.365-376, 503-512.

¹⁰⁶⁷ *Blaskic* TJ, para.278; *Kordic* TJ, para.386.

¹⁰⁶⁸ *Blaskic* AJ, para.42.

culpable omission in violation of a rule of criminal law.¹⁰⁶⁹ Nor has Petković been shown to have possessed the requisite *mens rea* for any of the offences charged. As already noted, at all times relevant to the charges, Petković acted and conducted himself on the understanding that he was acting lawfully at all times. If the Chamber were to consider that any of his actions were in fact unlawful, it would have to conclude, on the evidence discussed above, that Petković must have committed a mistake of law or fact as regard the lawfulness of his conduct which prevented him from forming the requisite culpable mindset. The Prosecution has failed to exclude this conclusion as being reasonable in the circumstances (in particular, in light of Petković's words and deeds to improve the lot of civilians in Herceg-Bosna).

4.6. Aiding and abetting

666. Pleadings are entirely inadequate in relation to this mode of liability: no material fact is identified as would provide notice of what, the Prosecution claims, could render Petković liable under that doctrine.¹⁰⁷⁰

667. To be convicted under that mode of liability, the accused must be shown to have carried out an act of practical assistance, encouragement, or moral support to the principal offender.¹⁰⁷¹ The act of assistance must be shown to have had a 'substantial effect' on the commission of the crime by the principal offender.¹⁰⁷²

668. The Prosecution has failed to connect any of Petković's actions in such a way with any one crime charged in the Indictment (whether as a matter of material facts pleaded in the Indictment or as a matter of evidence proving an allegation beyond reasonable doubt). Tellingly, the Prosecution failed to put such an allegation (in relation to *any* of the charged crimes) to Petković during cross-examination as it was required to do (in relation to each and every crime that he alleged Petković had aided and abetted). The fact that his actions might have accidentally coincided with a crime or that it might have unwittingly have had that effect is not such as to allow for the conclusion that the accused willingly aided and abetted a crime.

669. The Prosecution also failed to establish that Petković ever acted – in relation to any of the crimes charged – with the requisite *mens rea*. At its most basic, Petković had no awareness that he was aiding or abetting any of the crimes charged in the Indictment. The Prosecution has not presented any evidence that would allow for a beyond reasonable doubt finding to the contrary. Nor was Petković aware in relation to any of the crimes charged in the Indictment of the essential elements of these crimes committed by the principal offender and of the principal

¹⁰⁶⁹ Regarding «omission» liability, see paras.643-652.

¹⁰⁷⁰ See, in particular, above, at para.652, concerning any suggestion that Petković aided and abetted by omission.

¹⁰⁷¹ E.g. *Celebici* AJ, para.352; *Tadic* AJ, para.229; *Blaskic* AJ, para.46

¹⁰⁷² *Furundzija* TJ, paras.223, 224, 249; *Blaskic* AJ, para.48

offender's state of mind; nor was he shown to have taken the conscious decision to act in the knowledge that he thereby supported the commission of the crime.¹⁰⁷³ All of these propositions are based on false assumptions and distorted reading of the evidence. As far as real and concrete evidence is concerned, there is no case to sustain such allegations.

670. Again, Petković's acts and statements render it unreasonable to draw the inference (as the only reasonable conclusion on the evidence) that he acted with the requisite mindset in regard to any of the alleged crimes.¹⁰⁷⁴

5. Conclusion

671. In light of the above, considering all of the evidence presented, the inadequacy of the charges, all of the parties' submissions and in compliance with the principle of the presumption of innocence, the Defence respectfully submits that the Trial Chamber should acquit Milivoj Petković of each and all charges that have been laid against him.

VI. CONSIDERATIONS PERTAINING TO SENTENCE

672. The Defence has submitted above that Petković should be acquitted of all charges. The present submissions should not in any way be interpreted as qualifying that position. However, should the Trial Chamber take a different view and convict Petković, the Defence submits that the following considerations would be relevant to mitigation:

- (i) Petković is married and has two (married) daughters, and three grandsons.
- (ii) His age (61) should also be taken into account insofar as a lengthy sentence would effectively deny him any chance to be free again.
- (iii) [REDACTED].
- (iii) He has no criminal record and has lived an exemplary, law-abiding, life. Prior to the ICTY Indictment (2004) Petković was not suspected, investigated or charged for any crime.
- (iv) In his relations with the Tribunal, Petković has always shown great respect towards the court and been fully co-operative with its organs (he previously testified in two ICTY proceedings, in both cases as a witness for the respective Trial Chamber).¹⁰⁷⁵
- (v) As soon as he became aware of the ICTY Indictment against him, Petković notified Croatian authorities of his intention to place himself at the disposal of the ICTY in the

¹⁰⁷³ See, generally, *Aleksovski* AJ, paras.162-165; *Tadic* AJ, para.229.

¹⁰⁷⁴ See Annex 1: *HVO and ABiH components of the BH Armed Forces*; Annex 2: *HVO and ABiH – Joint commands*; Annex 3: *HVO plans: ABiH ally*; Annex 5: *Petković's orders concerning tensions and conflicts between HVO and ABiH*; Annex 7: *Petković's orders concerning humanitarian law and customs of war*.

¹⁰⁷⁵ It must be noted that the ICTY Prosecutor did not ask for an interview with Petković.

shortest time possible. He voluntarily surrendered to the Tribunal on 5 April 2004, five days after receiving the Indictment.

- (vi) His conduct during the trial has been impeccable. Petković regularly attended all court hearings [REDACTED] Throughout the proceedings he has always been respectful to the Trial Chamber, victims, witnesses, the Prosecution and the co-accused and their counsels.
- (vii) He testified in this case in order to assist the Trial Chamber to establish the truth about the events charged in the Indictment and the role of various individuals in those events. He answered sincerely, to the best of his knowledge/recollection, to all questions put to him by the Honourable Judges, the Prosecution, co-accused and their defence counsel. During his testimony he was consistently respectful and expressed his regret for the victims of the BH conflict.
- (viii) Whilst at the UNDU, Petković has been an exemplary detainee, never causing any problem – whether during his actual detention or during his repeated provisional releases[REDACTED]
- (ix) During the conflict, Petković took many steps to try to improve situation/circumstances affecting the vulnerable. He showed a great deal of cooperation with members of the BH Army with a view to find a peaceful solution to the conflict and end the sufferings of the civilian population.
- (x) His motives for coming to Bosnia and Herzegovina were upstanding and wholly honorable.
- (xi) The circumstances in which he had to fulfill his mandates could not have been more testing. His actions and the gravity of any fault that should be attributed to him should be judged in that light.
- (xii) Petković helped to put an end to the conflict by renewing his negotiating efforts with the BH Army commanders.

673. In conclusion, the Defence respectfully submits that each and all of these considerations is mitigating in character and should be treated as such should the Chamber decide to convict Petković.

Respectfully submitted by,



Vesna Alaburić
Counsel for Milivoj Petković

FINAL BRIEF ANNEXES

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ANNEX 1

HVO and ABiH components of the BH Armed Forces

20 June 1992 / **Request by Milivoj Petkovic to HVO in Konjic and Gornji Vakuf** /4D00397/

clear up the situation you are faced with. I expect that you did not forget that TO and HVO are integral parts of OS BH (the Armed Forces of Bosnia and Herzegovina). Instead of

21 July 1992 / **Izetbegović and Tuđman: Agreement on Friendship and Cooperation** /P00339/

6. The armed component of the Croatian Defence Council (Hrvatsko Vijeće Obrane) is an integral part of the united armed forces of the Republic of Bosnia and Herzegovina. The Croatian Defence Council will have its representatives in the joint command of the armed forces of Bosnia and Herzegovina.

06 August 1992 / **Decree with the force of law on the BiH armed forces** /4D00410/ Article 1

In the Decree with the Force of Law on Armed Forces of the Republic of Bosnia and Herzegovina ("Official Gazette of RBH", number 4/92, 7/92 and 9/92), Article 2 has been changed and reads as follows:

"The Republic's armed forces shall comprise the Army of the Republic of Bosnia and Herzegovina (hereinafter: the Army).

Constituent part of the Army shall comprise the Croatian Defense Council, as well as other armed compositions which place themselves under the single command of the Army.

09 October 1992 / **Publication Oslobođenje: Izetbegovic in Mostar** /1D02077/

IZETBEGOVIĆ stated that soon a single command of the Armed Forces of BH would be established consisting of the leaders of the BH Army and the HVO. The

16 October 1992 / **Izetbegovic's order: raising the blockade around Sarajevo** /1D02432/

1. The armed forces of Bosnia and Herzegovina (the BH Army and the HVO /Croatian Defence Council/) shall immediately begin preparations for the operation to lift the blockade of Sarajevo city by military means (in all further documents: the Sarajevo operation, shortly: operation "S"). The operation shall be prepared and carried out as soon as possible.

20 April 1993 / **Halilović and Petković: Agreement** /P02002/

- 1) The BiH Army and the HVO /Croatian Defence Council/ are equally treated legitimate military forces of the Republic of Bosnia and Herzegovina.

25 April 1993 / **Izetbegović, Boban, Tuđman: Joint statement** /P02078/

3. The signatories of this Joint Statement urge all commanders and units of the Army of Bosnia and Herzegovina and of the Croatian Defence Council (HVO) to unconditionally respect all the thus far concluded agreements between the representatives of the Croatian and Muslim peoples in the Republic of Bosnia and Herzegovina. In particular, they urge military units of the Army of Bosnia and Herzegovina and of the Croatian Defence Council to immediately start implementing the Agreement on the legality of both the Army of Bosnia and Herzegovina and the HVO, and on the establishment of a joint command of both forces made up of representatives of both headquarters (Annex 1).

25 April 1993 / **Halilović and Petković: Supplement to the Joint Statement** /P02091/

1. BiH Army and HVO shall keep their separate identities and organisation of the Command. Their activities shall include all classes of staff, logistics, guidance, training, morale and identity.
2. They shall form the Joint Command which is going to be responsible for control of operations in military districts.

13 May 1993 / **Hina / Akmadzic's letter to Ghali and others: Aggression on Croats** /1D02728/

STOLTENBERG. They point out in the letter that calling the Croatian Defence Council a "paramilitary unit of the Bosnian Croats" is unacceptable, false and insulting because the HVO units are legitimate and defined as the first, and for a long time now as the only regular defence army of the Republic of BH.

14 June 1993 / **Izetbegovic order: immediate cessation of all hostilities between the units of A BiH and HVO** /4D01611/

2. Persons responsible for fulfillment of this Order are : Commander of Army of BiH – Rasim Delic and Commander of HVO General Staff – Milivoj Petkovic.

29 June 1993 / **BiH Presidency** /1D02664/

We recognise the HVO /Croatian Defence Council/ as a constituent part of the armed forces.

20 July 1993 / **Izetbegovic's decision** /4D01586/

The units of the Army of BH and the units of the Croatian Defence Council are called upon to immediately and unconditionally, cease their attacks on one another, and immediately begin to release captured soldiers and civilians.

01 March 1994 / **Washington Agreement** /4D01234/

VI
MILITARY ARRANGEMENTS

Both sides agree to the establishment of a unified military command of the military of the Federation.

The sides will develop comprehensive transitional arrangements to that end in the context of a military agreement. In the transitional period:

- current command structures will remain in place;

26 March 1994 / **Organisation and tasks of the Joint Staff** /4D01300/

A ten-man Joint Staff based in Sarajevo is hereby established, consisting of five (5) officers from each side, appointed by the commanders.

26 August 1996 / **Law on the Armed Forces of the B&H Federation** /4D00826/

Army of Federation is composed of: formations of the Army of B&H and the Croatian Defence Council up to and including the level of corps and military district, and is constituted of peacetime and wartime forces.

19 April 2004 / **Alija Izetbegović and Franjo Tuđman: Agreement on Friendship and Cooperation** /2D00628/

As defined by this Law, the following shall be considered defenders: members of the Army of the Republic of Bosnia and Herzegovina, of the Croatian Defence Council and of the police force of the relevant internal affairs body (hereinafter: the Armed Forces) who participated in the defence of Bosnia and Herzegovina (the beginning of the aggression against the municipality of Ravno) between 18 September 1991 and 23 December 1996, i.e. until the cessation of the imminent threat of war,

19 May 2005 / **Decree on criteria, way and procedure of the recognition of time spent in defence of Bosnia and Herzegovina into the pension seniority as special seniority, Article 2 /3D03226/**

Right to a special seniority in double duration, which comprises in the pension seniority, has the member of the Croatian Defence Council, member of the Army of the Republic of Bosnia and Herzegovina, active and reserve police composition of the competent organ of the Interior, an official and an employee of the competent Ministry of defence (further in text, member of the Armed forces) who participated in defence of Bosnia and Herzegovina in the period from 18th of September 1991 till 23rd of December 1993.

01 January 2006 / **Decree on the special rights of the bearers of the war commendations and members of their families, Article 1 /2D01183/**

This Law shall define the rights, conditions and procedures related to the rights of the recipients of war decorations and awards and the family members of the recipients of war decorations and awards who were killed or are deceased or missing, members of the Army of the Republic of Bosnia and Herzegovina, the Croatian Defence Council and the Ministry of the Interior, for their military services in the homeland/defence and liberation war from 18 September 1991 to 23 December 1995.

29 August 2007 / **Decree on acquisition of rights to retirement paycheck under the lucrative conditions, Article 1 /2D01181/**

*This Decree shall temporarily regulate the conditions and procedure for exercising the right to an old age pension under favourable conditions of discharged members of the former Army of the Federation of Bosnia and Herzegovina (the Croatian Defence Council and the Army of the Republic of Bosnia and Herzegovina).

ANNEX 2

HVO and ABiH – Joint commands

21 July 1992 / **Izetbegović and Tuđman: Agreement on Friendship and Cooperation** /P00339/

6. The armed component of the Croatian Defence Council (Hrvatsko Vijeće Obrane) is an integral part of the united armed forces of the Republic of Bosnia and Herzegovina. The Croatian Defence Council will have its representatives in the joint command of the armed forces of Bosnia and Herzegovina.

09 October 1992 / **Publication Oslobođenje: Izetbegovic in Mostar** /1D02077/

IZETBEGOVIĆ stated that soon a single command of the Armed Forces of BH would be established consisting of the leaders of the BH Army and the HVO. The

02 November 1992 / **UN Security Council Doc S/24748; Joint Communiqué on talks between Tuđman and Izetbegovic in Geneva on 1 November 1992** /1D01543/

The two Presidents agreed that the latest conflicts between some B-H Army units and the Croatian Defence Council (HVO) formations were detrimental to their continued struggle against the joint aggressor. These conflicts should be stopped immediately and the culprits dismissed and punished. Joint unbiased commissions will be set up to determine individual responsibility. Similar occurrences will be avoided in the future through proper actions including urgent formation of a joint command of armed forces of B-H Army and HVO.

27 January 1993 / **Joint statement signed by Izetbegovic and Boban** /P01329/

2. Commanders of the BH Army Main Staff and the HVO Main Staff must immediately determine the responsibility for the outbreak of the fighting at all levels and form a joint command without delay.

27 January 1993 / **Petkovic's order** /P01322/

Get in touch with the respective BiH Army commanders at the level of zone of operations in order to form joint commands.

28 January 1993 / **Pasalic's order** /4D00366/

On the basis of the joint statement Izetbegovic-Boban of 27 January 1993, in accordance with count 2 of the said statement in connection with the establishment of joint command of the Army RBH and the HVO, till the full realization of the order on joint command as a temporary solution and in accordance with an agreement with HVO

28 January 1993 / **Petkovic' order** /P01341/

Pursuant to the joint statement made by Mr Mate BOBAN and Mr Alija IZETBEGOVI] in Geneva on 27.01.1993 and in accordance with Item 2 of the above-mentioned statement on forming of a Joint Command of the Army of Bosnia and Herzegovina /A BiH/ and the HVO, and before a complete implementation of the order on a joint command, and in accordance with the agreement with the A BiH 4th Corps, as a temporary solution I

11 February 1993 / **Order by Petkovic** /P01467/

1. The Commander of the BH Army 3rd Corps and the Commander of the HVO Central Bosnia Operative Zone (Hadžihasanović and Blaškić) shall form a joint coordinating team of three members each, presided over by the said gentlemen. The team shall have the following assignments and powers:

13 February 1993 / **Order by Blaskic and Hadzihasanovic** /4D01205/

Pursuant to the joint order issued by the Chief of the Main Staff of A R BH /Army of the Republic of Bosnia and Herzegovina/ and the Chief of the Main Staff of the HVO of the HZ – HB /Croatian Community of Herceg Bosna/ of the Republic of Bosnia and Herzegovina, confidential number 01-131 of 11 February 1993, item 1 c) and item 5, and with the aim of preventing any disagreements between the forces of the A R BH and the HVO of the HZ – HB R BH, I hereby issue the following

20 April 1993 / **Agreement by Petkovic, Halilovic, Morillon and Thebault** /P01988/

3/ VITEZ JOINT OPERATIONAL CENTRE IS ESTABLISHED AT THE LEVEL OF THIRD CORPS BiH ARMY AND HVO OZ MIDDLE BOSNIA AS THE BEGINNING OF A JOINT HEAD QUARTER WHICH IS TO BE CREATED COMPLETELY IN THE FOLLOWING DAYS. THIS JOINT OC WILL BE HEADED AT ITS BEGINNING BY BOTH DEPUTY COMMANDERS AND WILL INCLUDE REPRESENTATIVES OF ALL BRIGADES OF BOTH SIDE.

24 April 1993 / **Joint statement of Izetbegovic and Boban witnessed by Tudjman** /P02078/

they urge military units of the Army of Bosnia and Herzegovina and of the Croatian Defence Council to immediately start implementing the Agreement on the legality of both the Army of Bosnia and Herzegovina and the HVO, and on the establishment of a joint command of both forces made up of representatives of both headquarters (Annex 1).

25 April 1993 / **Appendix 1 to Joint statement by Izetbegovic, Boban, Halilovic and Tudjman** /P02091/

1. The Army of BiH and the HVO will keep their individual identities and establishment of the Command. Their activities will include all the aspects of personnel, logistics, leadership, training, morale and identity.
2. They will form the joint Command responsible for control of the operations of the military districts.
3. The joint Command will consist of two Commanders-in-Chief, General HALILOVI] and General PETKOVI], who will meet on a regular basis, at least once a week. They will establish the permanent main staff, which will be located

26 April 1993 / **Appointment of the HVO officers to the Joint HVO and A BH Command by Petkovic /4D0455/**

Based on the Joint Statement of Mr. Mate BOBAN and Mr Alija IZETBEGOVIĆ resulting from the meeting held on 24 April 1993 in Zagreb and pursuant to point 3 of the Statement and Annexe no. 1 and with regard to the organization of the command of the A BH /Army of Bosnia and Herzegovina/, I hereby

APPOINT

1. The following HVO officers to the Joint HVO and A BH Command:

30 April 1993 / **Order signed by Petkovic and Halilovic re: implementation of joint commands at the level of operative zones' Corps /P02155/**

1. A Joint Command at the level of 3 Corps Command and Operations Zone Middle Bosnia is to be formed. It will consist of the Corps' and Operations Zone's Commanders Enver HAD@IHASANOVI] and Tihomir BLA[KI], their deputies, and an operative organs made of at least three representatives of the Army of BiH and HVO, appointed by the Corps' and Operations Zone's Commanders.

01 May 1993 / **Signed and stamped order issued by Blaskic /4D00594/**

On the basis of the joint order no. /illegible/ of /30?/ April 1993 issued by the HVO Main Headquarters Chief of Staff and the BH Army Main Headquarters Chief of Staff, and with the purpose of its full implementation, I hereby

ORDER

On behalf of the HVO Operative Zone, I hereby name and appoint the following members' of the Joint Command at the Corps level:

12 June 1993 / **Agreement signed by Petkovic and Delic /P02726/**

1. From 1400 hours on 10 June 1993, absolute cease of fire will be introduced, as well as freezing of military activities, including military movements, deployment of troops and further fortification.

2. UNPROFOR and ECMM "/European Community Monitoring Mission/" will supervise implementation of cease of hostility, along with Joint Command consisting of Colonel Filip FILIPOVI], Franjo NAKI] and @ivko TOTI] on behalf of HVO "/Croatian Defence Council/" and Colonel Stjepan SIBER, Vehbija KARI] and D'emal MERDAN on behalf of ABiH "/Army of BiH/". Meetings, during which they will discuss the results of the implementation of this Agreement, will be held in the Command of British Battalion in Vitez (ECMM Head Office).

26 March 1994 / **Organisation and tasks of the Joint Staff issued by Ante Roso and Rasim Delic, Sarajevo /4D01300/**

A ten-man Joint Staff based in Sarajevo is hereby established, consisting of five (5) officers from each side, appointed by the commanders.

The officers shall be appointed five days after the signing of this document.

The appointments shall be made by the commanders of the ARMY OF THE REPUBLIC OF BH /R BH ARMY/ and the CROATIAN DEFENCE COUNCIL. Dispatch and arrival in Sarajevo to take place within five (5) or ten (10) days after the signing.

Preparations for work and the constitution of the Joint Staff shall be completed within three (3) days.

The actual work of the Joint Staff shall start fourteen days after the signing of this document.

ANNEX 3
HVO plans: ABiH ally

20 June 1992 / **Milivoj Petković to HVO Municipal Staff in Konjic and Gornji Vakuf /4D00397/**

Gentlemen, I have been informed by TO (Territorial Defence) and HVO that the situation among you is extremely tense and dangerous. Sit down immediately at the common table and clear up the situation you are faced with. I expect that you did not forget that TO and HVO are integral parts of OS BH (the Armed Forces of Bosnia and Herzegovina). Instead of strengthening of your mutual bonds in the fight against our common enemy who is on the threshold of your Municipality, you are preparing to use arms against each other.

In the name of Croats and Muslims I beg you to overcome this situation, as the members of the OS BH (Armed Forces of BH) you are bound to do that.

Don't allow that serbo-chetnick's enemy occupy your Municipality, therefore come to your senses and move together to the first line.

06 November 1992 / **Operation "Bura" order signed by Petković /2D03057/**

Command for offensive combat operations

- 1st Brigade Mostar

With objective to eliminate direct attack on the city of Mostar and wider area, based on the previous agreement

15 November 1992 / **Milivoj Petković: Order (operation BURA) /2D01295/**

- ⑤ The 1st Mostar Brigade shall use some of its troops to hold earlier defence positions, and it will place some (about 200) at the disposal of the 3rd Brigade of the HVO.

16 November 1992 / **Order by Petkovic to OZ NWH Command /4D00399/**

Get in touch urgently with the Command of the BH Army in Gornji Vakuf to overcome mistrust and to send units to the defence lines in Bugojno.

16 December 1992 / **Order by Petkovic to OZ NWH /4D00389/**

5. In executing this order, achieve full coordination with Bosnian Army units.

05 February 1993 / **Order issued by Milivoj Petkovic to OZ SEH /4D01048/**

2. There are indications that chetniks will get reinforcement in form of 200 soldiers and that they will try to make a break through our lines with those forces.
3. Inform the units of the Army of BiH so that they could reinforce their defense lines too.

23 February 1993 / **Miljenko Lasić: Order for the active defence of the OZ SEH /4D00475/**

5.2.1. HVO Brigade "Knez Domagoj" with tank company from tank battalion shall defend right side region excluding Drenovac village, left side region excluding tt-690, and municipality of Capljina in the depth.

TASK:

Same as 5.1. (paragraph 1, 2 and 3)

- joint to the right is to be supplemented with arm-fire in collaboration with HVO Brigade "Stjepan Radic", while to the left region of Drenov put above Rotimlja (500m west from tt-690) is to be secured by.

5.3. "Bregava" Brigade of Army of B&H from 4th Corps of Army of B&H shall defend region extending 300m to the left and 300m to the right from tt – 690, and Kajtavovina hamlet in the depth.

/.../

5.5. First Mostar brigade from 4th Corps of Army of B&H, shall defend right side region excluding Velika kosa, Suhi do including its south part in left region, Neretva River in the depth.

Tihomir Blaškić: Order for the defence of the OZ Central Bosnia /4D01700/

Organise decisive defence in coordination with forces of the BH Army and the North-Western Herzegovina OZ, relying on terrain features and making use of various types of obstacles; conduct active defence to inflict as heavy losses as possible on the enemy in terms of personnel and materiel; slow down the attack and prevent /the enemy from/ taking control of the first lines of defence, creating the conditions for putting up decisive resistance, crushing the attack and undertaking offensive operations with forces from the depth.

/.../

5.1. The *Stjepan Tomašević* Brigade along with one company of the Vitez Brigade is to organise defence in its zone of responsibility.

/circled: **Task:**/ Through persistent and active defence, the laying of obstacles and in coordinated action with the BH Army, inflict as many losses on the enemy as possible, prevent them from breaking through the defence zone in the direction of Novi Travnik.

The focus of POB is to be on the Komar – Mešćema axis.

The forward defence line is to be at Slatka Voda, Vučja Glava (tt 1370).

It is to be supported by a 120-mm mortar battery and the MTD /mixed artillery battalion/ from the Prahulja sector.

ZM /command post/ is to be in Novi Travnik, IZM /forward command post/ in Đakovići.

/.../

Task: Organise the defence of the zone and be on standby to receive forces that will be defending the Travnik – Vitez – Busovača axis; then through persistent and active defence and in coordinated action with the *Jure Francetić* Brigade, the 2nd Zenica Brigade and BH Army forces, inflict as many losses on the enemy as possible, prevent them from advancing through the defence zone and create the conditions for putting up decisive resistance and crushing attacks on the given line. Simultaneously be on standby for introduction into combat outside the Brigade's zone of responsibility.

ANNEX 4
Documents issued (or allegedly issued) by Milivoj Petkovic

TOPIC	Chief of the Main Staff /until 24 July 1993/		Deputy Commander/Deputy Chief of the Main Staff /24 July 1993- April 1994/	
	Exhibit number	No.		No.
Combats- planed HVO actions	2D01295, 2D03057	2	P06425, P06498 , P06815	3
Combats- reactions on ABIH activities	P00602 , P00622 , P01153 , P01292 , P01347 , P01949 , P02040, P02055, P02526, P02599, P02911, P02931 , P03019, <i>P03128</i> , P03215, P03246, P03455 , P09951 , 4D00874	19	P06534 , 3D02582	2
Increase combat readiness	P01064, P01087 , P01135, P01896, P02209 , P03082, 4D00389 , 4D00948, 4D01553	9	P06408, P09818	2
Fortifying defence lines	P00512 , *P03474, * P03592, 4D00399 , 4D01048	5	*P04020	1
Humanitarian law and customs of war	P00458, P00679 , P01994, P02038 , P02527 , P02739, 3D01163 , <i>4D00320</i> , 4D00332	9	P03895, P04251, <i>P04690</i> , P06063 , P06580, P06825 , 3D01089, 4D00705, 4D00838	9
Calming situation	P00625 , P00633 , P01190, P01467, 4D00019, 4D00045 , <i>4D00125</i> , 4D00397 , 4D00433 , 4D00806	10		
Cease fire agreements/orders	P00644 , P01959, P02037 , <i>P02084</i> , <i>P02089</i> , <i>P02726</i> , P03584 , <i>1D00819</i> , <i>2D00470</i> , 4D00016 , 4D00041 , 4D00048 , <i>4D00863</i> , <i>4D00864</i> , <i>6D00009</i>	15	P05138	1
Organisation and functioning of the HVO	P00173, P00237, P00288 , P00333, P00377 , P00416, P00441, P00797, P00798, P00856 , P00886, P01307 , P01340, P01341, P01344, P01441 , P01487, P01571 , P01665 , P01673, P01683, P01736, P01746, P01754, P01807, P01855, P01945 , P02006 , P02036, P02331, P02517, P02534, P02587, <i>P03149</i> , P03212, P03384, P03614, P03622, P08341, P10897 , P11212 , P11213 , 2D00687, 2D00972, 2D01354, 2D01357, 2D01358, <i>2D02018</i> , 3D02604, 4D00455 , 4D00543, 4D00623, 4D01038, 4D01406	54	P04054, P04063, P04262, P04745, P05110 , P05614, P05796 , P06779, P06791, P07044 , P07160 , P09827, 3D01146, 3D02584/// P07873, <i>P07884</i> , P08188	14 3
Labour of det. pers.	*P03474, *P03592	2*	*P04020, P05873	1 1*
Work reports	P00907, P03642, 2D01353, 4D00830	4		
Summary reports ¹	P00638 , P00658 , P01152 , P01193 , P01220 , P01370 , P01437 , P01810 , P01874 , P01879 , P01954 , P01961 , 2D03067 , 3D01094 , 3D01096 , 3D01843 , 3D02131 , 4D00042 , 4D00895 , 4D00896 , 4D00897 , 4D01179	22		
Other reports	P01355 , P03029, <i>P03466</i> , P03802, 4D00307, 4D00480, 4D00701, 4D00702, 4D01078	9	P03886, P04188, P05389 , P06069 /// P08183	4 1
Various topics	P00144, P00279 ² , P00343 , P00791 , <i>P00812</i> , <i>P00891</i> , <i>P00933</i> , P01139 (Vans-Owen Plan)*, <i>P01296</i> , P01445, P01541, P01598, P01791, <i>P02091</i> , <i>P02155</i> , P02182 , P02199 , P02200 , P02569 , P02925, P02962 , P02968 , P03356 , P03683 , P08731 , P10153 , P10308 , <i>P11162</i> , 2D03083, 3D00279 , 3D01602 , 4D00037 , 4D00075, 4D00354 , <i>4D00381</i> , 4D01082	36	P06022 , P06073 , P06078, P06131, P07551 , P09895 , P09968 , 3D02022, 4D00516, 4D00834, 4D00844, 4D00928 , 4D02026/// P07893, P07897, P08052 , P08112, P08163, <i>P08236</i>	13 6
Total number		194		60

- Bold - unsigned documents
 Underlined - documents signed by others (Akrap, Praljak, Matić)
 Italics - co-signed by Petković
 * - documents in two or more topics
 xx - documents allegedly submitted by Petković, authenticity/reliability challenged³

¹ Summary reports were retyped reports of the Operative Zones, put together in one document (see witness Radmilo Jasak, T.48651)

² The written speech has never been presented (see witness Milivoj Petković, T. 49351)

³ For exh. P02182 see paras.189-192; for exh. P02200 see para.193; for exh. P09895 see paras.487-495

ANNEX 5

Petkovic's orders concerning tensions and conflicts between HVO and ABiH

20 June 1992 / **Petkovic to HVO Municipal Staff in Konjic and Gornji Vakuf** /4D00397/

Gentlemen, I have been informed by TO (Territorial Defence) and HVO that the situation among you is extremely tense and dangerous. Sit down immediately at the common table and clear up the situation you are faced with. I expect that you did not forget that TO and HVO are integral parts of OS BH (the Armed Forces of Bosnia and Herzegovina). Instead of strengthening of your mutual bonds in the fight against our common enemy who is on the threshold of your Municipality, you are preparing to use arms against each other.

In the name of Croats and Muslims I beg you to overcome this situation, as the members of the OS BH (Armed Forces of BH) you are bound to do that.

Don't allow that serbo-chetnick's enemy occupy your Municipality, therefore come to your senses and move together to the first line.

16 November 1992 / **Order by Petkovic to OZ NWH Command** /4D00399/

Get in touch urgently with the Command of the BH Army in Gornji Vakuf to overcome mistrust and to send units to the defence lines in Bugojno.

16 December 1992 / **Order by Milivoj Petkovic to OZ NWH** /4D00389/

5. In executing this order, achieve full coordination with Bosnian Army units.

13 January 1993 / **Petkovic's order on avoiding conflicts** /P01115/

4. Where possible, set up joint teams with the Muslim side to solve the past or current conflicts.

18 January 1993 / **Petkovic's letter to Bugojno, Travnik, Vitez and N. Travnik** /P01190/

Please avoid conflicts of any kind, because we and the Muslims do not want our dispute to escalate again.

20 January 1993 / **Order by Petkovic to Konjic HVO** /4D00433/

Establish contact with the BH Army in Konjic and work on calming down the situation.

27 January 1993 / **Order by Milivoj Petkovic regarding ceasefire between HVO and ABiH** /4D00019/

Resolve all disputes with the BiH Army units through negotiations with the competent BiH Army commanders.

05 February 1993 / **Order by Petkovic and Miljenko Lasic to units of OZ SEH** /4D01048/

Inform the units of the Army of BiH so that they could reinforce their defense lines too.

09 February 1993 / **Petkovic's letter to Halilovic** /4D00075/

I looked forward to each new soldier, Croatian or Muslim, because I knew that they had a common goal.
The HVO has not changed its attitude or behaviour towards the BH Army to this day.
We are aware that with the present balance of powers, neither the HVO nor the BH Army alone can defeat the Chetniks.

23 March 1993 / **Order by Petkovic and Pasalic** /P01709/

1. Immediately cease all actions and activities that harm the joint struggle of the HVO and BH Army.

5. Resolve all disagreements which led to the tense situation by joint agreements with mutual understanding and readiness by both sides to make concessions.

18 April 1993 / **Order by Petkovic to all operational zones** /P01959/

5. Establish communications with the BH Army Command and request them to implement the same order.

01 June 1993 / **Order from Petkovic to all Operational Zones** /P02599/

You should negotiate with the Muslim side to calm the situation whenever it is possible.

ANNEX 6
Petkovic's combat orders

1. Combats - planed HVO actions

06 November 1992 / **Order for offensive combat operations signed by Milivoj Petkovic /2D03057/**

Command for offensive combat operations
- 1st Brigade Mostar

With objective to eliminate direct attack on the city of Mostar and wider area, based on the previous agreement

I COMMAND

1. Prepare and execute offensive combat operations in the area of Podveležje with objective to take the points: Merdžan Glava, Sveta Gora, Dobrić.
2. 3 HVO Brigades will engage in offensive operations in the area of v. Podveležje – Busak.
3. Ready to engage on 6th November at 24,00 hours, deployment on 7th November 1992 at 05.00 hours. (There will be a signal for the attack).
4. Establish joint operations with the forces from 3 HVO Brigades.

15 November 1992 / **Operation „Bura“- order for defence against RS Army (in cooperation with BH Army- ostar Brigade) /2D01295/**

- ⑤ The 1st Mostar Brigade shall use some of its troops to hold earlier defence positions, and it will place some (about 200) at the disposal of the 3rd Brigade of the HVO.

2. Combats – Reactions on ABIH activities

20 October 1992 / **Re. stop all Territorial Defence units that are moving towards Travnik Ref. Number 01-7/92 /P00602/**

Block all roads IMMEDIATELY. Use all available forces to stop all Territorial Defence /TO/ units that are moving towards Travnik.

22 October 1992 / **Order for Further activities of 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 /P00622/**

1. Strengthen the blockade of all roads leading to Novi Travnik

15 January 1993 / **Order to the Croatian Defence Council in Prozor, Gornji Vakuf, Bugojno and Konjic re: informing Zeljko Siljeg that while they Muslims are negotiating they are also deploying their troops /P01153/**

Issue an order to our forces to fire at every move they make and to respond fiercely whenever they open fire.

24 January 1993 / **Order, ref. 01-129/93, issued by Petkovic to SE Herzegovina ZO re: rotating the Croatian Defence Council troops at Gornji Vakuf due to fatigue /P01292/**

1. Due to the newly arisen situation in Gornji Vakuf, that is due to the fatigue of the men at the positions, it is necessary to carry out rotate them, and therefore I

29 January 1993 / **Order to Croatian Defence Council, Prozor to take control of the Prozor - Fojnica rout /P01347/**

Due to the blockade of the roads leading to central Bosnia and lack of any communication with these areas, I hereby

15 April 1993 / **Order issued by Petkovic to Tihomir Blaskic, ref:01-632/93, Mostar, 15 April 1993 /4D00874/**

In connection with the latest situation in the Konjic municipality sector and the difficult position of the Herceg Stjepan Brigade

I HEREBY ORDER

1. Tie down BH Army forces with parts of forces from the Central Bosnia Operations zone as follows:

18 April 1993 / **Petkovic's order to Siljeg re: further combat activities /P01949/**

1. Urgently reinforce the troops that are carrying out offensive operations towards Klis.

23 April 1993 / **Signed and stamped order, ref. 02-2/1-01-675/93, issued by Petkovic and forwarded by Miljenko Lasic re: 80 Croatian Defence Council Neum BAT soldiers be prepared to replace troops in Prozor /P02040/**

23 April 1993 / **Signed and stamped order, ref. 02-2/1-01-677/93, issued by Petkovic and forwarded by Miljenko Lasic re: 3 T-55 tanks from Knez Domagoj Brigade are to be prepared to be sent to Prozor /P02055/**

26 May 1993 / **Signed and stamped order, ref. 02-2/1-01-677/93, issued by Petkovic and forwarded by Lasic re: 3 T-55 tanks from Knez Domagoj Brigade are to be prepared to be sent to Prozor /P02526/**

Due to the exceptionally complex situation round Bugojno and the threat to Vakuf and Prozor, and in connection with URGENT assistance in manpower, I herewith

ORDER

1. Company-strength forces are IMMEDIATELY to be prepared and sent to Prozor.

01 June 1993 / **Order to all OZ's** /P02599/

Since the attacks of Muslim forces are getting more increased everywhere, herewith I issue an

Order that

1. All forces of HVO have to be ready for defensive combat activities in order to protect Croatian people and Croatian territories.

20 June 1993 / **Communication from Petkovic to Rajic regarding transfer of troops to Kiseljak in accordance with plans agreed** /P09951/

3. URGENTLY prepare a plan for a break-through through Busovača (the time when the Muslims mount an offensive against Vitez and Busovača).

22 June 1993 / **Order from Petkovic re: urgent deployment of troops for defending Prozor, all troops to report to Zeljko in Siljeg Prozor** /P02911/

In order to ensure the defence of Prozor from the Muslim forces, bring in

URGENTLY in the course of the day:

24 June 1993 / **Order to observe the situation in region of Medine, Grbici and Kik-Kamenjas villages. Ref. 02-2/1-02-1200/93** /P02931/

2. Use the right moment.
3. I forbid any support to former allies.
4. Provide support to the new allies.

02 July 1993 / **Order re: instructions for cleaning of the OZ SE, listing locations and officers in charge of the execution of the order, signed by Petkovic and Stojic** /P03128/

/Due to/ the attack of the MOS /Muslim armed forces/ (forces of the so-called 4th Corps of the BH Army) on HVO units in the J/I Herzegovina OZ and the consequences arising from it, with the aim of eliminating them and carrying out a final showdown (mopping up the MOS) in the J/I Herzegovina zone, and /in order to/ solve the problems which have arisen more efficiently, I hereby issue the following

5 July 1993 / **Petkovic's order** /P003215/

2. Engagement of the reserve company is to be planned on the routes: village of Ilići -Mostar, village of Žovnica - village of Miljkovići and village of Đubrani.

6 July 1993 / **Order issued by Petkovic re: combat activities in the area of Boksevica. Ref. 01-4791/93.** /P03246/

With the aim to organize combat activities in the area of Bokševica, I hereby

14 July 1993 / **Response to questions from Siljeg ref. 01-1662/93** /P03455/

3 PRIOR TO THEIR DEPARTURE FOR PROZOR, THE BRUNO BUŠIĆ REGIMENT WAS DIRECTED TO THE AREA OF OBRADOVIĆI BECAUSE OF THE ATTACK BY MOS /Muslim Armed Forces/ AND THE VERY CRITICAL SITUATION. TOGETHER WITH LUDVIG PAVLOVIĆ, THE REGIMENT IS CONDUCTING COMBAT OPERATIONS AND CLEARING MOS WHOSE INFILTRATED GROUPS DISRUPTED ALL LINES OF COMMUNICATION.

ANNEX 7***Petkovic's orders concerning humanitarian law and customs of war***

08 September 1992 / **Order to HVO municipal staff** /P00458/

Humanitarian aid vehicles of the UN High Commission for Refugees /UNHCR/ were unnecessarily kept at the checkpoints controlled by the Croatian Defence Council /HVO/ for several times, and to avoid such cases, I

ORDER

1. All humanitarian aid convoys are allowed to go through and should be escorted by the police as necessary.

23 October 1992 / **Order to HVO in Prozor, Gornji Vakuf, Bugojno, Vitez, Travnik and Konjic** /P00625/

U R G E N T Work on the suspension of combat activities. For talks seek the most responsible and most influential individuals.

Prevent uncontrolled activities of individuals and groups.

23 October 1992 / **Order to OZ NWH** /P00633/
TAKE URGENT ACTION TO STOP THE FIGHTING.

FIND AND TALK TO THOSE WITH THE GREATEST RESPONSIBILITY AND INFLUENCE.

PREVENT INDIVIDUALS AND GROUP FROM ACTING IN AN UNCONTROLLED WAY.

31 October 1992 / **Order to HVO re: an order to stop individuals from destroying Muslim houses in Prozor** /P00679/

Preventing the wild behaviour
of individuals

29 January 1993 / **Order to HVO in Prozor** /P01344/

1. Arrest and imprison all our extremists.

20 April 1993 / **Order to all OZ** /P01994/

1. **Free access for ICRC to civilians in all territories.**
2. **Respect and protection of the civilian population affected by combat activities.**
3. **Arrested civilians and soldiers to be treated in a humane manner and ensure adequate protection ensured for them.**
4. **The ICRC shall be informed of the identity of all arrested and detained persons and ICRC representatives allowed to visit them.**
5. **All the wounded shall be collected, taken care of and protected at all times and in every of their affiliation.**
6. **Free access and safe passage shall be given to convoys of humanitarian and medical aid.**

22 April 1993 / **Order directing proper treatment of civilians and the capture all out of control units and individuals** /P10268/

5. All those who obstruct the missions of the UNPROFOR, UNHCR and other international institutions are to be prevented from doing so in most energetic manner.
All these organisations must have full freedom of movement and activity and must be assisted in carrying out their tasks.

22 April 1993 / **Order to all OZ's: abide International Humanitarian laws** /P02038/

1. The respect and protection of the civilian population affected by war.
Civilians, by definition, do not have an active role in the conflicts and can therefore not be the object of attack.

22 April 1993 / **Order to all OZ** /P02036/

3. Immediately set about arresting individuals or groups who have gone totally out of control.

22 April 1993 / **Order directing proper treatment of civilians and the capture all out of control units and individuals** /P10268/

3. The individuals and groups that have gone out of control are to be arrested immediately.

23 April 1993 / **Order by Stojic and Petkovic** /4D00320/

Behave towards civilians and prisoners solely in accordance with international conventions and rules.

25 April 1993 / **Order by Stojic and Petkovic to all OZ** /P02084/

3. Do not react to provocative actions, and in the event of an attack take all necessary measures to protect civilian population and soldiers, with the use of all available means repel the attack assertively.

25 April 1993 / **Order to Zeljko Siljeg from Stojic and Petkovic to suspend all offensive actions against Armija Bosnia I Herzegovina in accordance with the cease fire agreement signed in Zagreb** /P02089/

3. Do not respond to provocations; in case of attack, take all necessary measures for protection of civilian population and soldiers and energetically repel the attack using all available means.

28 April 1993 / **Request to HVO Ban Jelacic Josip Brigade** /P11213/

2. Prohibit setting fire to facilities owned by Muslims and severely punish persons who do that. Submit to me immediately any information on perpetrators.

26 May 1993 / **Order to all operative zones regarding freedom of movement and guaranteed safety for UNPROFOR and humanitarian organisations** /P02527/

1. UNPROFOR and international humanitarian organisations must be allowed free and unrestricted access and movement.
2. I demand that HVO members provide guaranteed security for UNPROFOR and international humanitarian organisations.
3. I demand free passage and unrestricted movement for civilian and commercial goods.

01 June 1993 / **Order to all OZ to get ready for defensive actions against ABiH** /P02599/

4. You should request all members of HVO to treat the civilians and property in the spirit of international conventions.

14 June 1993 / **Order by Petkovic** /4D00332/

Humanitarian convoy of the UNCHR which has been stopped on the section Jablanica-Konjic at the check-point Drecelj should be allowed to pass.

20 July 1993 / **Order re: treatment of prisoners and civilians** /3D01163/

1. HVO members must treat imprisoned soldiers and, civilians in particular, in accordance with international standards.

20 July 1993 / **Order re: treatment of prisoners and civilians** /3D01163/

2. Prevent wilful behaviour by individuals and groups.

02 August 1993 / **Order to all HVO units** /P03895/

1. All HVO units will enable the unobstructed passage of convoys of humanitarian aid.

10 November 1993 / **Order to Rajic** /P06580/

1. On the territories of HVO-controlled opcina Kiseljak, Kresevo and part of Fojnica a smooth running of operations carried out by UN, UNHCR, IRC and other organizations must be secured.
2. All contacts and talks with the representatives of these organizations must be characterized by calmness and dignity.

22 November 1993 / **Order to MD** /P06791/

1. To analyse without delay the criminal offences committed in your units.
2. To take the most rigorous measures to disable the perpetrators of any such criminal offence.

ANNEX 9

HVO/Government – table of minutes and excerpts concerning matters of defence

TOPICS	No.	EXHIBIT NUMBER
Organisation of the BiH (VOPP)	1	P01798 (03/04/1993)
Organisation of the HRHB	2	P04560 (27/08/1993), P06667 (15/11/1993)
Illegality prevention and crime fighting, war crimes <i>/law and order?/</i>	6	1D01181 (11/02/1993), P01563 (26/02/1993), P04111 (11/08/1993), P04275 (18/08/1993), 2D00854 (17/09/1993), 1D01612 (28/12/1993)
The security and military situation	19	P01197 (18/01/1993), P01227 (19/01/1993), P01324 (27/01/1993), 1D01182 (27/02/1993), 1D01664 (19/04/1993), 1D01666 (17/05/1993), 1D01608 (24/05/1993), 1D01609 (26/05/1993), 1D01667 (28/05/1993), P02575 (31/05/1993), 1D01610 (10/06/1993), 1D01668 (15/06/1993), 1D01275 (18/06/1993), 1D01669 (05/07/1993), 1D01672 (22/07/1993), P03796 (29/07/1993), P05799 (11/10/1993), P05955 (19/10/1993), P07310 (23/12/1993)
Prisoners of war	6 (9)*	P01669* (15/03/1993), P00921 (17/12/1992), P01439 (08/02/1993), P01661 (13/03/1993), P03560 (19/07/1993), P03573 (20/07/1993), P03796* (29/07/1993), P04275* (18/08/1993), P04841 (06/09/1993)
Others / Various	37	P00578, P00672, P00715, P00767, P00824, P00950, P01063, P01137, P01264, P01403, P01511, P01602, P01652, P01778, P02606, P04008, P05262, P05610, P06803, P07000, P07082, P07200, P07354, P07514, P08092, P08114, P08172, P08239, P08253, P08266, P08276, 1D01179, 1D01180, 1D01183, 1D01184, 1D01607, 1D01611
Total Number of Documents	71	

RELATED DOCUMENTS	No.	EXHIBIT NUMBER
HVO members at the meeting of the HZHB bodies	1	P02142 (29/4/1993)
Report on crime rate	1	P01977 (27/12/1883)
Public announcements	2	1D02212, 2D00689
<i>Total Number of Documents</i>	4	

BOLD - Attended by Milivoj Petković

- 1D01609 (26 May 1993)
- P02575 (31 May 1993)
- 1D01672 (22 July 1993)
- P05799 (11 October 1993 /with the Commander S.Praljak/)

**documents mentioned in two "topics"*

- P01669 (15 March 1993)
- P03796 (29 July 1993)
- P04275 (18 August 1993)

Illegality prevention and crime fighting, war crimes

11 February 1993 / **Minutes of the meeting of the HVO** /1D01181/

2. A coordinating body is hereby established for monitoring and implementing the plan of activities, made up of the following members:

- K. ZUBAK, Vice-President of the HVO HZ H-B – coordinator
- Chief of the Criminal Investigation Department
- Chief of the Revenue Police
- Chief of the Military Police
- Deputy Head of the HVO HZ H-B Judiciary and General Administration Department
- Head of the Information Office

11 August 1993 / **Minutes of the meeting of the HVO** /P04111/

6. The HZ H-B HVO Defence Department and the HZ H-B HVO Department of Justice and Administration shall organise special military and civilian prisons in keeping with HZ H-B regulations and international conventions.

18 August 1993 / **Minutes of the meeting of the HVO** /P04275/

3. The Defence Department, the Department of Justice and General Administration are charged with undertaking measures and activities relating to organising military prisons and /providing/ adequate capacity to accommodate prisoners of war in accordance with international conventions.

28 December 1993 / **Minutes of the meeting of the HVO** /1D01612/

DECISION

to appoint a Commission for Establishing War Crimes Committed in the territory of the Croatian Republic of Herceg-Bosna

The security and military situation

18 January 1993 / **Minutes of the meeting of the HVO** / P01197/

The HVO HZ H-B is fully supporting resistance to such intentions and is determined to provide you with any kind of help and assistance, including the force and combat readiness of HVO Armed Forces.

19 January 1993 / **Minutes of the meeting of the HVO** /P01227/

After the report of the Chief of the HZ H-B HVO Defence Department, it was concluded that the Croatian Defence Council Armed Forces, Military Police and personnel of various police stations are keeping the situation under control and that no serious incidents have been recorded, excluding the events in G. Vakuf.

27 January 1993 / **Minutes of the meeting of the HVO /P01324/**

After Mr. B. STOJIĆ, the head of the Defence Department of the HVO of the HZ H-B, presented his report, support was given for all measures and activities taken by the Defence Department of the HVO of the HZ H-B to protect the people under threat and to defuse the conflicts with BH Army units.

27 February 1993 **Minutes of the meeting of the HVO /P01182/**

3. It is believed important for the improvement of the effectiveness of the joint struggle against the aggressor and for further development of Croatian-Muslim relations that changes occur in the Republic of BH OS /Armed Forces/ Main Staff. To this end, it has been recommended to the Republic of BH Minister of Defence that he suspend Sefer HALILOVIĆ, Chief of the Main Staff.

4. It was stated that illegitimate decisions have been adopted for a long time in the Republic of BH Government, because the Prime Minister and Croatian ministers have not participated in their adoption. For this reason, the HVO /Croatian Defence Council/ and the Croatian people do not recognise the decisions of the incomplete

19 April 1993 / **Minutes of the meeting of the HVO /1D01664/**

1. The HVO HZ H-B Defence Department and the HVO Main Staff will undertake all military and mobilisation measures in order to provide full protection for Croats in Bosnia and Herzegovina.
9. The HVO HZ H-B Office for Refugees, Expelled and Displaced Persons will do the following:
 - a) Create conditions for the accommodation of Croat refugees and expelled persons from Central Bosnia and the municipalities of Konjic and Jablanica.
 - b) Compile a report containing comparative data on the number of Muslims before the war and their current numbers on the territory of the Croatian Community of Herzeg-Bosna, as well as the number of Croats in Muslim districts. /handwritten in English: IMPORTANT/

17 May 1993 / **Minutes of the meeting of the HVO /1D01666/**

Support was expressed for the activities of the Office for Expelled Persons and Refugees which has been active since the first day civilians were relocated from Mostar to the former Military Gymnasium and Heliobrom, after the commencement of combat activities in Mostar. The Red Cross will be requested to become more

24 May 1993 / **Minutes of the meeting of the HVO /1D01608/**

At the end of the session, support was given to the overall activities of the HVO Main Staff, pointing out the high combat morale, training and combat readiness of soldiers of all HVO units.

26 May 1993 / **Minutes of the meeting of the HVO** /1D01609/

measures and activities were undertaken urgently. In its work so far, the HVO HZ H-B was insufficiently engaged in all spheres so that certain tasks, particularly accommodation of civilians, delivery of humanitarian aid and others, were transferred to the Defence Department.

8. A working group was appointed to visit Central Bosnia comprising I. ŽULJEVIĆ, Z. PERKOVIĆ and, if necessary, K. ZUBAK.
Deadline: next week /handwritten in English: visit to Central Bosnia/

28 May 1993 / **Minutes of the meeting of the HVO** /1D01667/

At the end of the session, support was expressed for the overall defence activities of the HVO Main Staff and high levels of combat morale, training and combat readiness in all HVO units.

31 May 1993 / **Minutes of the meeting of the HVO** /P02575/

1. That the Defence Department of the HVO of the HZ H-B and the Department of the Internal Affairs of the HVO of the HZ H-B organise the work of the co-ordinating /word illegible/ within two days with the task of preserving the military-security situation and to take steps /?/ for its improvement in the territory of the Mostar Municipality.
7. That all appropriate measures are taken for the prevention of crime, especially the looting of private property from apartments in the territory of the Mostar Municipality. /hand-written/: -8-

15 June 1993 / **Minutes of the meeting of the HVO** /1D01668/

to isolate, terrorise and destroy everything that is Croatian. In the general area of Travnik, in the municipalities of Kiseljak, Vitez, Vareš and in the municipalities of Konjic and Jablanica, as well as in locations where Croats are the minority population (for example, in Sarajevo, Zenica and Tuzla), the survival of every single Croat and the Croatian people as a whole is seriously threatened. The Defence Department of

In his remarks, Mr B. KVESIĆ upheld the proposals set out by Mr B. STOJIC and proposed that the BH Army be declared an enemy army and its supreme commander Mr A. IZETBEGOVIĆ a war criminal because of the crimes committed by the Army.

He told the meeting about the activities undertaken to improve the security situation in the town of Mostar, certain transformations of the civilian police and military units and the readiness of the police to assume full control over Mostar, as agreed.

18 June 1993 / **Minutes of the meeting of the HVO** /1D01275/

2. Taking as a starting point the conclusions of the joint session of the HVO HZ H-B and the HVO of Mostar municipality and the present situation, a working group comprising Krešimir ZUBAK, Milivoj PETKOVIĆ, Slobodan BOŽIĆ, Mladen ALPEZA and Jure BEGIĆ is charged with proposing the organisation and functioning of military, police and civilian authorities in the territory of Mostar municipality.

19 October 1993 / **Minutes of the meeting of the HVO** / P05955/

1. The proposal of the HR H-B Ministry of the Interior is adopted. The proposal advises the HR H-B Defence Ministry to replace, in cooperation with the HVO Main Staff, the active police force with the reserve police force at the front line, so the active police force would directly perform work and tasks designated by the regulations of the Croatian Republic of Herceg-Bosna.

Prisoners of war

29 July 1993 / **Minutes of the meeting of the HVO** /P03796/

* Given the overall military situation in the territory of the HZHB, and in particular in the territory of Mostar, it was agreed that President Dr. J. PRLIĆ should hold special working meetings the collegiums of the Departments of Defence and the Interior.

06 September 1993 / **Minutes of the meeting of the HVO** /P04841/

1. Determine locations for the detention of prisoners-of-war.
Adopt regulations on the conditions and procedure for the detention of prisoners-of-war at the centres for prisoners-of-war, which are founded on the provisions of International Law of War.
3. In order to improve the conditions of accommodation and diet of detainees, the Office for Expelled Persons, Refugees and Displaced Persons is tasked to ensure the necessary quantities of food, personal hygiene items and, if possible, equipment and materiel needed for accommodation (blankets, mats, etc).

Meeting of the HZHB bodies

29 April 1993 / **Minutes** /P02142/

Mr. Bruno STOJIĆ, head of the Defence Department:

All reports from the field indicate that Muslims have not accepted the statement. They are attacking Vitez, Busovača, Kiseljak, Konjic, etc. They are carrying out ethnic cleansing. The Croats have been driven out from Travnik even though the town is being held under siege. I ask for a political decision ordering units to advance into that part of the HZ HB.

ANNEX 10

Activities of the HVO Military Police

13 April 1992 / **Appointment of Coric** /2D01333/

Mr Valentin ČORIĆ has been appointed Croatian Community of Herceg-Bosna Croatian Defence Council Assistant Commander of the Security and Information Service. All Croatian Defence Council Military Police units shall also come under his command. All commanders of the Military Police are subordinated to him and are obliged to carry out his orders.

Book of Rules of duty specifications in the Croatian Defence Council Military Police Administration /P00978/

CHIEF OF MILITARY POLICE ADMINISTRATION	/V/VSS /university degree/	Brigadier -Major General	VSS 5 years of service Appropriate rank	1	He controls and organises the work of VP Administration , co-operates with organs and services of the HZ H-B /Croatian Community of Herceg-Bosna/, commands Military Police units (battalions in the OZ /operations zone/ and the light assault brigade), administers personnel affairs in the Military Police and decides on all crucial matters relevant to the overall work of the Military Police.
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31 August 1992 / **Coric's report for July and August** /P00420/

As a result we believe that the military police ought to be organised in units, platoons, companies and battalions, in line with the organisation of HVO units, so that each Operative Group would have a military police battalion, and existing military police stations would be transformed into the platoons or companies of those battalions. We believe that a military police organised in this way would function better and be more effective.

/.../

The Military Police Administration formed four Military Remand Prisons in Mostar, Livno, Ljubuški and Čapljina for the needs of the Croatian Community of Herceg-Bosna. All prisoners of war and prisoners from the Croatian Defence Council are kept in them. Prisoners of war are treated in accordance with international conventions.

31 August 1992 / **MP Official Bulletin No. 2 and No. 3** /P00423/

was organised throughout the first two months of the war. It is with satisfaction that we can now point out that units of the Military Police have been organised in the entire territory of the Croatian Community of Herceg-Bosna, that they are well-organised and functionally interconnected, linked and operatively subordinated to Military Police Administration.

27 September 1992 / **Order by Coric on reporting** /2D01395/

As of 1 October 1992, Military Police platoons and companies are to send daily, weekly and interim reports to battalion commands as follows:

/.../

Battalions are to send weekly and interim reports to the relevant departments of the Military Police Administration as follows:

- Military Police (general and traffic police) weekly and interim reports are to be sent to the Military General and Traffic Police Department headquartered in Ljubuški;

- Weekly and interim reports on crime are to be sent to the Crime Prevention Department headquartered in Mostar.

20 November 1992 / **Coric's decision on identifying numbering of the documents within the MP administration** /P00786/

1. Chief of the Military Police Administration.....02-4/3-01
2. General and Traffic Military Police Department02-4/3-02
3. Crime Prevention Department02-4/3-03
4. 1st Active duty Military Police Battalion02-4/3-04
5. 2nd Military Police Battalion02-4/3-05
6. 3rd Military Police Battalion02-4/3-06
7. 4th Military Police Battalion02-4/3-07
8. 5th Military Police Battalion02-4/3-08

30 November 1992 / **Instructions for the work of the Military Police Units** /P00837/

I. General Provisions

1. The Military Police Administration is organised within the framework of the Croatian Defence Council and it leads and commands all Military Police units within the framework of operative groups, organisational units or within the Military Police Administration.

/.../

5. The commanders of lower units are responsible for their work and execution of tasks to the commander of the battalion military police, and he answers to the Military Police administration.

26 December 1992 / **Coric's report for the period Apr-Dec 1992** /P00956/

Operative group commands were established and placed under the unified command of the military police administration. However, despite all efforts, territ

/.../

From the time of their establishment, military police battalion commands, have been delivering monthly reports on their work in addition to the regular reports. However,

/.../

police in this period in tabular form. It is obvious from the reports that each military police battalion has been carrying out activities from the range of military police tasks as established by the Instructions for the Work of the Military Police of the HZ HB HVO. The activities can be summarised as: security, on-duty patrol service, search service, road blocks, criminal investigation and the traffic service. Incidents and events of security interest from the relevant areas are listed in the reports.

/.../

By the end of June, due to the needs of the /illegible/ HZ HB, the military police administration established three military investigation prisons in Ljubuški, Mostar and Livno. All prisoners of war and detainees, HVO soldiers who have committed a misdemeanour or an offence and civilians who have committed a misdemeanour or an offence against HVO members of facilities, were placed in them. On 30 June 1992, 491 prisoners of war were in these prisons.

/.../

- The military police administration is organised into the Department of General Purpose and Traffic Military Police, the Criminal Investigation Department and five military police battalions;

26 December 1992 / **Organisation of the HVO MP, information issued by Coric and Stojic** /P00957/

The 1st VP Battalion is an active-service unit directly linked to the VP Administration (and its Chief). On the Chief's orders, it operates on the entire territory of the HZ H-B. It consists of a command, a communications squad and three companies. The 1st

/.../

The 2nd Battalion is based in Tomislavgrad and covers the North-Western Herzegovina Operations Zone. It consists of a command, which includes a crime prevention service and a (duty) communications squad, three companies and six VP brigade platoons. The 1st Company is an active-duty unit and consists of a command,

/.../

The 3rd Battalion is based in Mostar and covers the South-Eastern Herzegovina Operations Zone. It consists of a command, which includes a crime prevention service and a communications squad, three companies and four brigade platoons. The 1st

/.../

The 4th Battalion is based in Travnik (Vitez) and covers the Central Bosnia Operations Zone. It consists of a command, a crime prevention service, a communications squad, three companies and eight (independent) brigade platoons. The 1st Company is an

/.../

As for the division of authority in the VP, brigade VP forces are responsible for the security of barracks and commands, guarding military convoys for the brigade, guarding points of entry into the front in the brigade area of responsibility, arresting and taking people into custody of the brigade. The other units of the 2nd, 3rd, 4th and 5th VP battalions are responsible for all military police work in the operations zone of the 1st VP Battalion, which is directly /subordinate/ to the VP Administration (its Chief) and which, when ordered, carries out its duties on the entire territory of the HZ H-B.

The VP Administration leads and commands all VP units.

In performing their daily duties, the commanders of VP 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 VP.

VP platoons in brigades carry out orders given by the Brigade Commander within the scope of their competence.

29 January 1993 / **Minutes of a meeting from from Ljubuski MP Center** /P01350/

After a short break Z. ANDABAK, a VP commander in action in Gornji Vakuf from the beginning, spoke a few words: the situation in Gornji Vakuf is now calm, our lads are well, an agreement has been reached for all non-local units to leave the municipality by 28 January. Otherwise, the BH Army has about 1,400 soldiers from

/.../

K. TOLJ stressed the success of the team led by M. JELIĆ, but also the problem of the poor state of VP equipment levels and the tasks they were given (mopping up the terrain and guarding positions) compared to other units. He therefore proposed the

/.../

units. The VP has an assault force which is respected, and can be ranked with a professional army, although they lack the same MTS /technical equipment and materiel/ as the others. We suffered many casualties in Gornji Vakuf (five killed and

/.../

M. BANDIĆ, Gornji Vakuf VP Commander, in reply to a question from the Chief about the participation of the local Military Police in Gornji Vakuf, first of all thanked the VP Administration and all the military policemen who contributed to this operation. There were a few shirkers (four or five) among Gornji Vakuf military

/.../

The Chief informed those present about the situation in Central Bosnia: the VP is an assault unit, and the assessment is that there is no need to send new units to assist in that area. Turning to Gornji Vakuf, upon the return of the last VP group, Z. ANDABAK will take that area with a VP operations group (calm the situation and reinforce the VP, paying attention to equipment).

09 March 1993 / **Coric's report to Boban** /P01635/

The command structure is headed by the Military Police Administration, and the units are organised in the form of one brigade, consisting of five battalions. One Military Police battalion is active in each of the operational zones, and the 1st Light Assault Battalion is active on the entire territory of HZ HB.

/.../

Prisons have been established in all operational zones. The Central Military Prison for the whole of HZ HB, located in Mostar, can take in around 500 detainees. The Military Police has concerned itself with several thousand detainees thus far, of whom the majority was released at numerous exchanges of prisoners of war.

07 April 1993 / **Coric's instructions to MP battalions** /P01821/

I wish to note that the commands of the Military Police battalions should send their daily reports to the operative duty office in Ljubuški – Ljubuški Military Police Administration (by fax, packet communication line) or report important events of the day by telephone.

11 May 1993 / Report issued by Ancic re: two meetings between Capljina municipality civilian authorities and HVO MP representatives /P02310/

The brigade military police receives its first command staff from the brigade commander and comes under the authority of the Military Police Administration, to which it submits reports of its operations.

/.../

The anti-terrorist company is activated only on orders from the chief of military police, Mr. Valentin CORIĆ, and exclusively performs the tasks ordered, which are specific in nature.

04 June 1993 / Report issued by Coric /5D02113/

On 31 May 1993, Military Police received an order that starting from the 1 June 1993 has to put under absolute control part of the city controlled by the units of the HVO. Order

28 June 1993 / Coric's notification on the changes in the organisation of the MP /P02991/

The integration of the military-police activities of the light assault battalions and the VP battalions in the corresponding operative zones will be carried out by the assistant chief of the VP Administration responsible for the zone, who is also authorised to command the battalions.

All Military Police battalions are required to send weekly reports to the Mostar

Military Police Administration and, most important, the monthly report should reach

the address given above by the 5th of the month.

02 July 1993 / Report by Ante PRLIC /P03116/

The Brigade Military Police continues to be on alert because of the situation in Mostar and Mostar environs, it is at the station and is regularly carrying out all orders received from the brigade and the Military Police Administration. There were no

06 July 1993 / Coric's information to Obradovic /P03216/

1. Military Investigative Prisons are within the competence of the Military Police Administration alone, and therefore you are not authorised to issue orders for the release of prisoners.

28 July 1993 / Order issued by Stojic to Coric, re: subordination of units /5D02002/

1. All 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.
2. Military Police in that case performs tasks given to it by the commander of the HVO.

MPA work report for the period January-June 1993 /2D01366/

1.1 SOUTH-EASTERN HERZEGOVINA OZ

/.../

Because of the deterioration of relations between the BH Army and the HVO, and because of the daily provocations of the BH Army and their snipers, who killed several citizens and HVO members, an order for the anti-terrorist unit of the 1st Light Assault Battalion to move to Mostar was issued on 9 April 1993. This unit came to the *Tihomir Mišić* barracks, where they assisted the 1st Company of the 3rd Military Police Battalion. On 19 April 1993 the remainder of the 1st Light Assault Battalion came to Mostar and took over a part of the zone of responsibility: the Surgery, the Old Peoples' Home, the Post Office, the Prison and the Court. On 20 April 1993 members of the 1st Light Assault Battalion attacked Hotel Mostar, in which BH Army members were quartered. After fighting which continued until morning, the BH Army withdrew from Hotel Mostar with UNPROFOR security.

/.../

Since the attack started unexpectedly, the 3rd Military Police Battalion 4th Company moved outside the town of Konjic. Immediately after this, on 15 April 1993, there was an attack on HVO units and the Croatian people in Jablanica municipality and afterwards fighting broke out in Central Bosnia. The fighting spread from Konjic to part of Rama municipality, where members of the 1st and 2nd VP Battalions stood in the front rank of the defence of the Croatian people.

/.../

Major new clashes of the HVO and the BH Army occurred on 9 May 1993. The ATJ /anti-terrorist unit/ and the Light Assault Battalion, with other members of the 1st Military Police Battalion and members of the 3rd Military Police Battalion, took over the zone of responsibility from Splitska Street, Šantićeva Street to Bakina Luka. That part of town was cleared of members of the BH Army and our units went on to *Carinski Most /Bridge/* and captured a large part of Šantićeva Street, and members of the BH Army retained only the 6th Elementary School and the *Partizan* cinema. After

/.../

1.2 NORTHWEST HERZEGOVINA OZ

/.../

Exceptionally good cooperation was established during the operation in Gornji Vakuf. In this OZ, the role and services of the 2nd Light Assault Battalion, which distinguished itself on the Prozor, Gornji Vakuf and Mostar fronts, should be mentioned.

The HZ HB HVO Military Police took part in all of the more important war operations, from the beginning until now. The most significant operations of the war were played out in Gornji Vakuf, Prozor, Jablanica, Konjic, and Mostar municipalities, as well as in almost every municipality in Central Bosnia.

/.../

The Military Police units were commanded by the commander of the 1st Light Assault Battalion and the commander of the 2nd Military Police Battalion.

/.../

At about 0800 hours on the same day, members of the 2nd VP Battalion from Livno and Posušje, who numbered 30 military police officers, captured Uzričje village and thereby made an opening in the circle which the BH Army held around the town. At 1435 hours members of the 1st Light Assault Battalion captured Ždrince village, the larger part of which had been in the hands of the BH Army. At this time members of

/.../

Throughout this conflict members of the 2nd VO Battalion from Livno, Posušje and Tomislavgrad and members of the 1st Company of the 1st Light Assault Battalion, with the Military Police from Gornji Vakuf, held all the defence lines in the town and in addition inflicted large losses on an enemy many times greater in numbers.

/.../

2. REPORT ON THE WORK OF THE MILITARY POLICE ADMINISTRATION

- 2.1 REPORT ON THE WORK OF THE CRIME PREVENTION DEPARTMENT
- 2.2 REPORT ON THE WORK OF THE MILITARY POLICE TRAFFIC DEPARTMENT
3. REPORT ON THE WORK OF THE VP GENERAL DEPARTMENT
- 2.4 REPORT ON THE WORK OF THE CENTRAL MILITARY PRISON AND PRISONER SECURITY

/.../

At our request, snipers were trained, because this problem made its appearance in Mostar; the opposing side has exceptional snipers, which has resulted in the activity of our units being blocked. Six pairs of snipers were trained, who by the end of the training were getting results up to five times as good as when they came for the training. One of the problems with that training was that we did not have weapons of a

05 August 1993 / Report issued by Ancic to Coric /P03960/

All this has been accompanied by the frequent departure of our company members to the field in Mostar. They went to the field pursuant to an order from the Military Police Administration, so you should be familiar with the number of days spent in the field and the number of policemen engaged. While they were performing their police

05 August 1993 / Crime prevention department work report for July 1993 /P04058/

By order of the n. UVP /Chief of the Military Police Administration/, on 26 June 1993, it was decided in Military Police units within the operative zones to form the Mostar Section, for Mostar, Široki Brijeg, Jablanica and Konjic municipalities, and Zvonko VIDOVIĆ, previously an officer of the Department, was appointed head.

12 August 1993 / Order issued by Coric /P04146/

Due to the fact of the isolation of Central Bosnia and Posavina from the Military Police Administration, the Chief of the Military Police Administration has transferred most of his authority to his assistants for individual operational zones. Zlatan Mijo JELIĆ has been appointed assistant chief in the Military Police for the South-East Herzegovina operational zone, Zdenko ANDABAK assistant chief of the Military Police Administration for the North-West Herzegovina operational zone, Paško LJUBIČIĆ assistant chief of the Military Police Administration for the Central Bosnia operational zone, while Pero VINCETIĆ was appointed assistant chief of the Military Police Administration for the Posavina operational zone. The assistants of the chief of the Military Police Administration received an order and authorisation from the chief of the Military Police Administration to establish and organise in each of the four operational zones Military Police Light Assault Battalions and to reorganise the existing battalions of the general and traffic Military Police.

27 August 1993 / Decision issued by Coric re: Military Police Administration instructions, giving reference no's. of documents, specifying the reference numbers for each Military Police Administration organizational unit /P04544/

The organisational units within the Military Police Administration have the following Call Numbers:

- | | |
|---|---------------------|
| 1. Chief of VP /Military Police/ Administration | 02-4/3-01 |
| 2. 1 st Light Assault Brigade | 02-4/3-02 (command) |
| 3. 1 st Light Assault VP Battalion | 02-4/3-02/1 |
| 1 st Company | 02-4/3-02/1-1- |
| 2 nd Company | 02-4/3-02/1-2- |
| 3 rd Company | 02-4/3-02/1-3- |
| 4 th Company | 02-4/3-02/1-4- |
| 4. 2 nd Light Assault VP Battalion | 02-4/3-02/2- |
| 1 st Company | 02-4/3-02/2-1- |
| 2 nd Company | 02-4/3-02/2-2- |
| 5. 3 rd Light Assault VP Battalion | 02-4/3-02/3- |
| 1 st Company | 02-4/3-02/3-1 |
| 2 nd Company | 02-4/3-02/3-2 |
| 6. 4 th Light Assault VP Battalion | 02-4/3-02/4- |
| 1 st Company | 02-4/3-02/4-1- |
| 2 nd Company | 02-4/3-02/4-2- |
| 7. Security Section | 02-4/3-03- |
| 8. Regular Military Police Department | 02-4/3-04- |
| 9. Traffic Military Police Department | 02-4/3-05- |
| 10. Crime Military Police Department | 02-4/3-06- |

/.../

11. Logistics Section	02-4/3-07-
12. Operations Duty Section	02-4/3-08-
13. Informatics and communications section	02-4/3-09-
14. _____	02-4/3-10-
15. PD /expansion unknown/ and welfare section	02-4/3-11-
16. Section for education	02-4/3-12-
17. 5 th VP Battalion	02-4/3-13-
1 st Company	02-4/3-13/1-
2 nd Company	02-4/3-13/2-
3 rd Company	02-4/3-13/3-
4 th Company	02-4/3-13/4-
5 th Company	02-4/3-13/5-
18. 6 th VP Battalion	02-4/3-14-
1 st Company	02-4/3-14/1-
2 nd Company	02-4/3-14/2-
3 rd Company	02-4/3-14/3-
4 th Company	02-4/3-14/4-
5 th Company	02-4/3-14/5-
19. 7 th VP Battalion	02-4/3-15-
1 st Company	02-4/3-15/1-
2 nd Company	02-4/3-15/2-
3 rd Company	02-4/3-15/3-
4 th Company	02-4/3-15/4-
5 th Company	02-4/3-15/5-
20. 8 th VP Battalion	02-4/3-16-
1 st Company	02-4/3-16/1-
2 nd Company	02-4/3-16/2-
3 rd Company	02-4/3-16/3-

30 August 1993 / Order issued by Coric /5D04110/

1. Organise the Military Crime Police of the HVO /Croatian Defence Council/ on the principle of line of work and specialist sections and centres of the Military Crime Police, in accordance with the organisation of the Military Crime Police Department.

10 September 1993 / Coric's instructions on the work of the Brigade Military Police /P04922/

With the delimitation of the field of competence within the Military Police, the brigade Military Police is authorised to secure barracks and commands, military transports for the brigade, entry into the front line in the brigade's zone of responsibility and the taking into custody and detention of individuals for the brigade.

-The brigade Military Police has no other jurisdiction except for what has been described above and cannot perform territorial military and police tasks outside the brigade's zone of responsibility. The general-purpose Military Police shall perform

/.../

-The structure of the Military Police can only be part of the structure of the brigade in the field of activity under the brigade's command. Every Military Police

/.../

-Military Police platoons attached to brigades carry out the orders of the brigade commander within the framework of their field of competence.

-The Military Police in the brigade can consist of one company at most, but as a rule should consist of a platoon.

-The HVO Military Police is unique and is linked to battalions and companies under the command of the Chief of the Military Police Administration.

11 September 1993 / **Minutes of the MP meeting held on 10 September 93 in Ljubuski** /P04947/

4. On several occasions there have been overlaps and conflicting orders have been issued to Military Police by the Main Staff, the Defence Department and the OZ. If this happens again, stop carrying out the order and report immediately to the chief of the UVP personally and wait for further instructions.

23 September 1993 / **MP instructions issued by Coric re: Crime Investigation Centre** /P05313/

In their daily work, criminal investigation centres of the military police are subordinate to the battalion command, to which they report on their work and with which they jointly carry out the orders issued by the Military police Administration.

The actual coordination of the work of the military police criminal investigations centre and the issuing of orders is done by the Criminal Investigations Department of the Military Police, to which the centre submits regular reports and answers to with regard to all matters related to work and operations of the Military police criminal investigations centre.

03 December 1993 / **Order by Jukic and co-signed by Biskic, re: re-organization of MP** /P07018/

2.1. /circled/ Disband VP platoons which have so far been part of the Brigade and transfer the military policemen to the companies of the 1st and 2nd VP Battalions mentioned in item 1.

14 December 1993 / **Minutes of the meeting of officers of Military police** /P07169/

the Military Police as functional as possible. The HVO Military Police Administration would be structured in a simpler way. The Light Assault Brigade would no longer be part of its structure and would come under the control of the HVO Main Staff. The main tasks of the HVO Military Police would be organised and carried out through the work of the 1st, 2nd and 3rd Military Police Battalions, the education company for

31 December 1993 / **Report for period: July to Dec.1993** /P07419/

HVO unit commanders. VP platoons attached to the HVO brigades and light assault battalions of the VP have been disbanded.

ANNEX 11

Reports of the MP battalions, companies and brigade platoons

1. MP BATTALIONS DOCUMENTS

Battalion	Document	Recipient: MP Administration/MP battalion	Recipient: others	Recipient: unknown
1 st battalion	Report	P02754		
2 nd battalion	Report	P00536, P00712, P00970	P00970 (OZ N/W Herzegovina Command)	
3 rd /5 th battalion	Report	5D01079, P02186, P03580, P03624, P03960, P03970, P04466, P05322, P05497, P05647, P05731, P05893	5D01079 (President of HR HB), P05893 (Chief of General MP)	5D00486, P03666, P06322
	Order		P00916 (3rd Battalion Company Commaders), P04527 (1st Company 5 Battalion MP), P05411 (4th Company 5 Battalion MP)	P01001
	Official note		P01584 (Chief of General and Traffic MP, Bruno Stojic)	
	Request	P03536		
	List			P06670
	Minutes			P00696
4 th battalion	Message		5D04039 (Emil Harah)	
	Criminal report		P01405 (District Military Prosecutor Travnik)	
	Proposal	P01614		
	Order		5D04371 (all units of MP of OZ CB)	

2. MP COMPANIES DOCUMENTS

Company/Battalion	Document	Recipient: MP Administration/MP battalion	Recipient: others	Recipient: unknown
MP 1 st company 1 st battalion	Report			P04648, P04671, P04824
MP 3 rd company 1 st battalion	Report			P02228, P02232
MP 4 th company 1 st battalion	Report			P04886
	Request		P03252, P03320 (Heliodrom)	
MP 1 st company 2 nd battalion	Official note	3D00422		
MP 2 nd company 2 nd battalion	Official note	P07746		
MP 1 st company 3 rd battalion	Report	P02749, P02802, P07742		
	Request		P02773, P02956 (Heliodrom)	
	Approval	P02267		
	Official note		P02871 (MP Crime department)	
MP 3 rd company 3 rd battalion	Report	P01802, P01972, P03057, P03121, P03134, P03170, P03230, P02132, P07753	P01802, P01972, P03057, P03121, P03134, P03170, P03230(brigade)	P03075, 5D00528, 5D00529
	Request	P01858	P03129 (barracks Bozan Simovic, military dispensary, Knez Domagoj brigade)	
	Order		5D02195	
	Information	P02310	P02310 (Mayor of Capljina, Civilian police Capljina, Knez Domagoj brigade)	
MP 4 th company 3 rd battalion	Report		P00931 (3 brigade-command, 3 brigade-SIS)	
MP 1 st company 5 th battalion	Report	P03249, P03513		P05841
	Request		P03218, P06956 (Heliodrom)	
	List	P03986		
MP 2 nd company 5 th battalion	Report	P03142		
MP 3 rd company 5 th battalion	Report	P03307, P03326, P03347, P03449, P03478, P03555, P03593, P03605, P03892, P04000, P04855	P03307, P03326, P03347, P03449, P03478, P03555, P03593, P03605, P03892, P04000 (brigade) P04855 (Mayor of Capljina)	P03328
	Official note	P03446, P03476		
	Note			P03780
MP 4 th company 5 th battalion	Information	4D02041	4D02041 (Knez Branimir brigade, Zarko Tole)	
MP 4 th company 6 th battalion	Order		P09737 (Administrator of the detention facility Prozor)	
MP 3 rd company 7 th battalion MP	Report	P06008		

3. MP BRIGADE PLATOONS' DOCUMENTS

Brigade MP	Document	Recipient: MP Administration	Recipient: others	Recipient: unknown
3 rd HVO brigade MP	Report	P02503		
Ante Starcevic brigade MP	Minutes			P02832
Brigade MP Kiseljak	Report			P05988
Kralj Tomislav brigade MP	Report		3D03814 (Kralj Tomislav brigade) 3D03815, 3D03816, P04110 (Kralj Tomislav brigade, SIS)	
Posusje brigade MP	Report		P04068 (Posusje brigade)	
Stjepan Radic Brigade MP	Report	P04225		<i>P01986, P02017, P02026, P02042, P02068, P02110, P02170, P02197, P02206, P02247, P02294, P02369, P02400, P02456, P02465, P02479, P02489, P02497, P02505, P02546, P02917, P03034, P03116, P03132, P03210, P03229, P03282, P03308, P03353, P03393, P03401, P03429, P03457, P03491, P03507, P03535, P03664, P03691, P03753, P03806, P04101, P04129, P04167, P04201, P04267, P04274, P04299, P04443, P04528, P04621, P05149, P05479, P05871, P06654</i>
	List	P04263		5D02036, P10178
	Decision			5D02056
	Order			P02535, P02541
	Request			P10166
	Escort form	P03255, P03256, P03259, P03277		
Certificate	P04404		P04572 (Homeguard company)	P04297, P04562, P10165, P10175, P10183, P10187, P10188, P10190, P10191

* [REDACTED]

ANNEX 12

Documents of wardens of detention facilities as of 1 July 1993

Warden	Document	Recipient: Military Police	Recipients: others	Rec.unknown
Stanko Bozic <i>Heliodrom</i>	Report	P03171, P03209, P03293, P03334, P03349, P03414, P03435, P03468, P03518, P03525, P03596, P03633, P03646, P03788, P03936, P03939, P03942, P03946, P04004, P04016, P04088, P04112, P04157, P04181, P04186, P04221, P04259, P04280, P04286, P04309, P04315, P04393, P05008, P05563, P06552 (Valentin Coric, Zvonko Vidovic and other MP officers) P04482, P04512, P04571, P04576, P04600, P04602, P04610, P04632, P04636, P04668, P04675, P04689, P04725, P04726, P04727, P04729, P04730, P04754, P04779, P04830, P04832, P04873, P04883, P05040, P05054, P05132, P05163, P05167, P05175, P05185, P05242, P05269, P05280, P05290, P05307, P05315, P05321, P05324, P05343, P05383, P05430, P05459, P05532, P05545, P05607, P05720, P05756, P05837, P05902, P05907, P05989, P06132, P06133, P06190, P06541, P06553, P06679, P06479 (Branimir Tucak, Z.M. Jelic, Zvonko Vidovic), P05160, P06626 (Branimir Tucak), P07021, P07069, P07118, P07166 (Branimir Tucak, Rade Lavric, Zvonko Vidovic), P04918, P04927, P05288, P05296 (Branimir Tucak Z.M.Jelic), P07340, P07357, P07364, P07378, P07399, P07530, P07565, P07572, P07580, P07589, P07594, P07841, P07993 (MP Administration), P07554, P07767, P08041, P08122, P08147 (Zeljko Siljeg-Chief of MP), P07153, P07212, P07223 (Radoslav Lavric)	P07021, P07069, P07118, P07166 (Branimir Tucak, Rade Lavric, Zvonko Vidovic, Marijan Biskic), P06202 (Milivoj Petkovic), P06526, P07209 (Berislav Pusic)	
	Order		P05874 (Prison building)	P03055, P03064, P03254, P04093, P04902, P06819
	Official note	P03681 (Valentin Coric, Josip Djogic)	P03681 (Bozo Pavlovic)	
	Information		5D04176 (District Military Court Mostar), P05194 (Military Remand Prison Ljubuski), P05465 (Ivan Bagaric), P05792 (Mate Boban)	P05146
	Request		P04165(3 rd HVO brigade logistic)	
	Minutes	P04530 (receiving stamp: MP Administration)		
	List	P05480 (Branimir Tucak) P07773 (Zeljko Siljeg-Chief of MP)	P04993, P05480, P06436, P06816, P07498 (Berislav Pusic), P05328 (receiving stamp: Service for the exchange captive and other individuals)	P03814, P04899, P04999, P05006
	Decision		P08240 (Josip Praljak, Snjezana Cvitanovic, Zeljko Bevanda, Branka Drmac)	
Ivica Kraljevic <i>Ljubuski</i>	Report	P05642, P06349 (Valentin Coric)		
	Request	P05214 (receiving stamp: MP Administration)	P05214 (Heliodrom)	
	List			P06393
Boko Previsic <i>Gabela</i>	Statement		P03731 (Nedjeljko Obradovic)	
Tomo Sakota <i>Dretelj</i>	Report		P03958 (Knez Domagoj brigade)	
	Request		P03883 (Nedjeljko Obradovic)	
Mario Mihalj <i>Vojno</i>	Memo	P04908 (receiving stamp: MP Administration)		
Mate Zadro <i>Prozor</i>	Report		P03906, P03948, P03988, P04026 (receiving stamp: security information service), 2D0271 (SIS)	P09734, P09736
	List			P03091

ANNEX 13

BH Army policy towards Muslims in HVO

19 September 1992 / **Security information regarding activities by members of the BH Army in the area of Stolac and Capljina municipalities** /4D01461/

Stolac SDA. According to the source's information, on the evening of 16 September Muharem DIZDAR, one of the HVO commanders, and Ragib DIZDAR visited Muslim members of the HVO, telling them "not to leave the HVO units, or not to join the BH Army until the hour strikes, and they will inform them at the time."

26 January 1993 / **Command of Brigade "Bregava" analysis** /2D00281/

Arming by the way of dispossession from the ex-JNA members and later on from the HVO units.

30 March 1993 / **Official record regarding relations between Croats and Muslims** /4D00469/

the pressure is put on Muslims who are members of HVO and MUP units to leave those units or they might be killed or their houses set on fire (example of MUP member Edin DRAČKOVIĆ whose house was set on fire by Muslim extremists);

16 April 1993 / **Tasks issued to the Chief of the Military Security Service** /4D00568/

and even general military confrontation between the RBiH Army and the HVO. It is very important to prepare ourselves for such situation and to inactivate the Muslims who are in the HVO and to exercise influence on them to move over from the HVO to the Army of the RBiH.

16 April 1993 / **4th Corps ABiH: Evaluation of the security situation** /4D00033/

call upon all Muslim members of the HVO to place themselves on the side of their people;

18 April 1993 / **4th Corps ABiH: Proposal of the security measures** /4D00034/

- establish cooperation with our soldiers in the HVO and point out the seriousness of the situation to them;

18 April 1993 / **Commander of the 42nd mountain br., 4th Corps ABiH: Order** /4D00035/

- The organ for moral affairs, IPD and VP /information, propaganda and religious affairs will draft a Plan for informing the personnel, the members of the brigade, the inhabitants of Mostar, Čapljina and Stolac municipalities, and the Muslim soldiers in HVO /Croatian Defence Council/ units in these municipalities. When drafting the

18 April 1993 / **Letter of the commander of the 42nd mountain br. ABiH to HVO** /4D00473/

I mention, and this is well known to you, that a large number of Muslim soldiers are in your formations, and they are Muslims and belong to this people, so it would not be good if defined organization and formation of your units would be disrupted.

02 May 1993 / **Commander of the 4th Corps ABiH Arif Pašalić: Report** /4D00036/

- linking up with our men in the HVO was carried out;
/.../
- Men from the Čapljina HVO have the task of taking Tasevčići village and the bridge in Čapljina in order to prevent troops being brought from the direction of Metković
- villages have maximum security and are linked by courier
- seize the town of Stolac with our people in the HVO

[REDACTED]

ANNEX 14

Decentralized organization of Herceg-Bosna

	<i>HZHB/HRHB</i>	<i>District/region</i>	<i>Municipality</i>
<i>Executive power body in the field of defence¹</i>	<i>Defence Department/ Ministry</i>	<i>Defence Administration</i> - Mostar - Tomislavgrad - Travnik - Bosanski Brod	<i>Defence offices</i> - 44
<i>Executive power body in the field of interior²</i>	<i>Department/Ministry of Interior</i>	<i>Police Administration</i> - Mostar - Livno - Travnik	<i>Police stations</i>
<i>Military courts³</i>	<i>Supreme Court of BiH (or relocated Chamber of the Supreme Court of BiH)</i>	<i>District Military Courts:</i> - Mostar - Livno - Travnik - Bosanski Brod	

	<i>HZHB/HRHB</i>	<i>District/region</i>	<i>Municipality</i>	<i>Lower level</i>
<i>Regular HVO units</i>	<i>- Supreme Comm. - Head of the Def.Dep./ Def.Min. or Chief of the Main Staff⁴</i>	<i>Operative Zone/Military District⁵</i> - SEH / Mostar - NWH / Tomislavgrad - CB / Vitez - Posavina/Bosanski Brod	<i>Brigades</i>	<i>Battalions Companies Platoons</i>
<i>SIS⁶</i>	<i>- Assistant of the Head of Def.Dep./Def.Min. for security - Chief of the SIS</i>	<i>- OZ/MD SEH - Center - Ass.Comm. - OZ/MD NWH - Center - Ass. Comm. - OZ/MD CB - Center - Ass.Comm. - OZ/MD Pos. - Center - Ass Comm.</i>	<i>Assistant Comm.for Security</i>	
<i>HVO Military Police⁷</i>	<i>- Chief of the MPA</i>	<i>Battalions</i> - OZ/MD SEH - OZ/MD NWH - OZ/MD CB - OZ/MD Pos.	<i>- Companies - Brigade platoons</i>	

¹ Exh.P00700

² Exh.P04699 p.21-24.

³ Exh.P00587 Article 5, 5b.

⁴ Exh.P00586, B.IX.

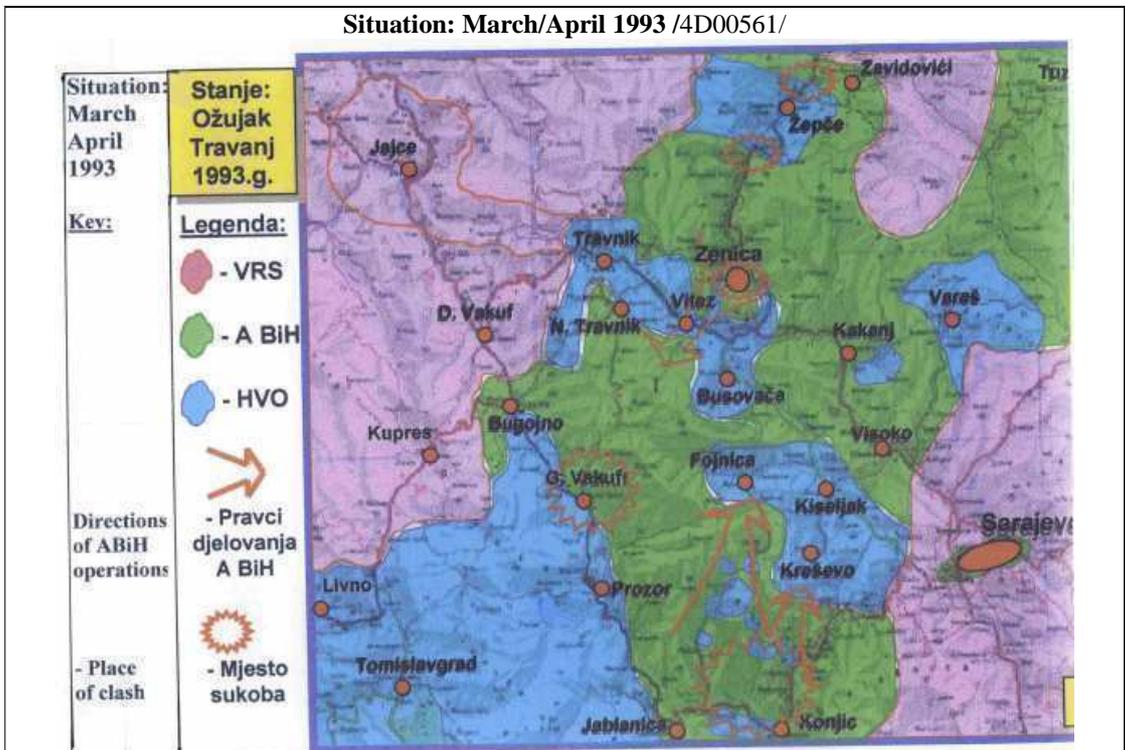
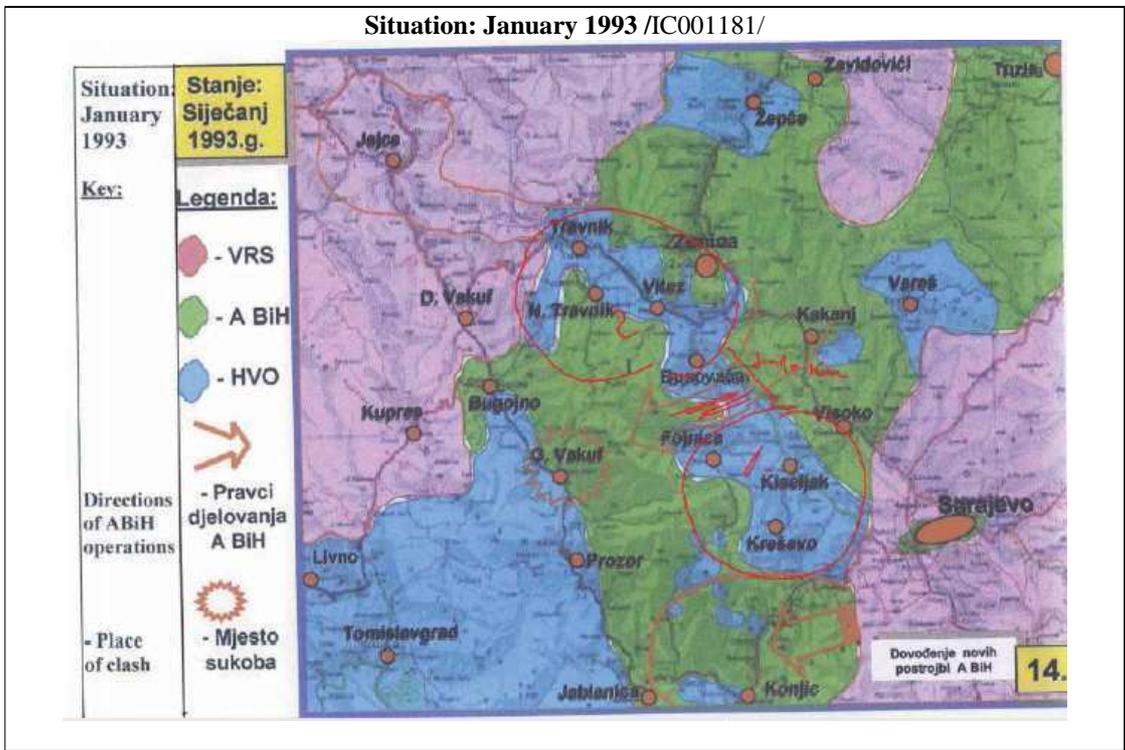
⁵ On 14 October 1993 Operative Zones changed the name into Military Districts - Exh.P05876.

⁶ Exh.2D00567

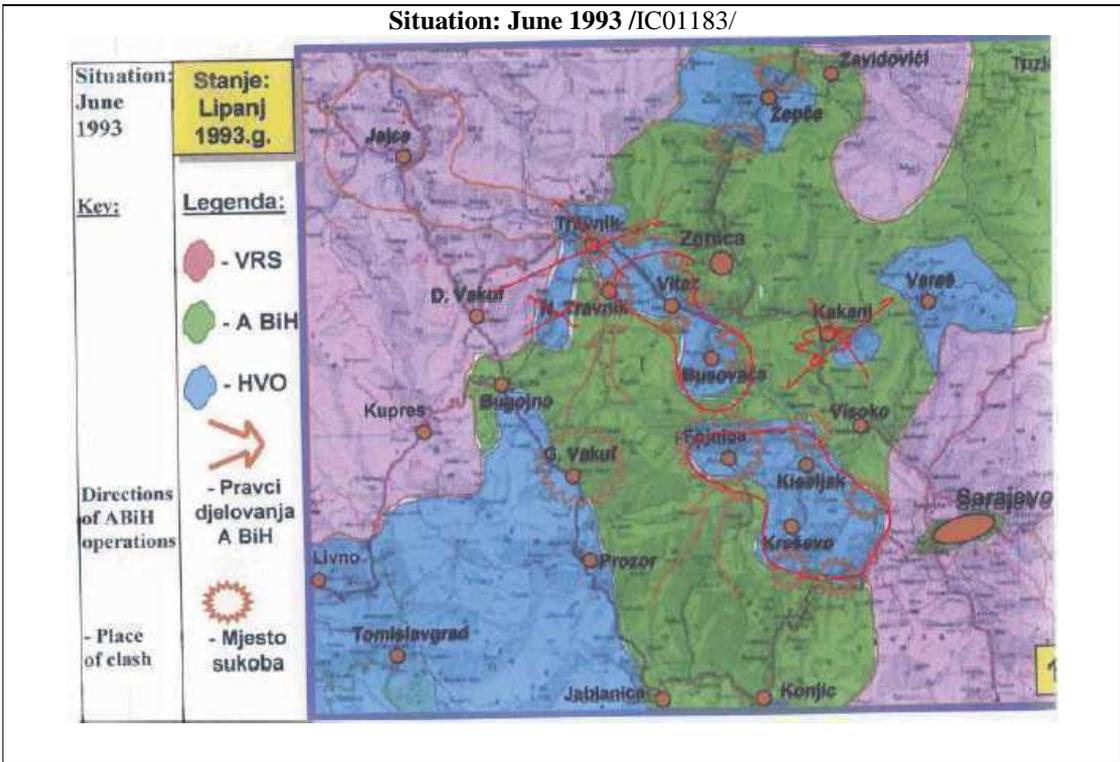
⁷ Exh.P00957

ANNEX 15

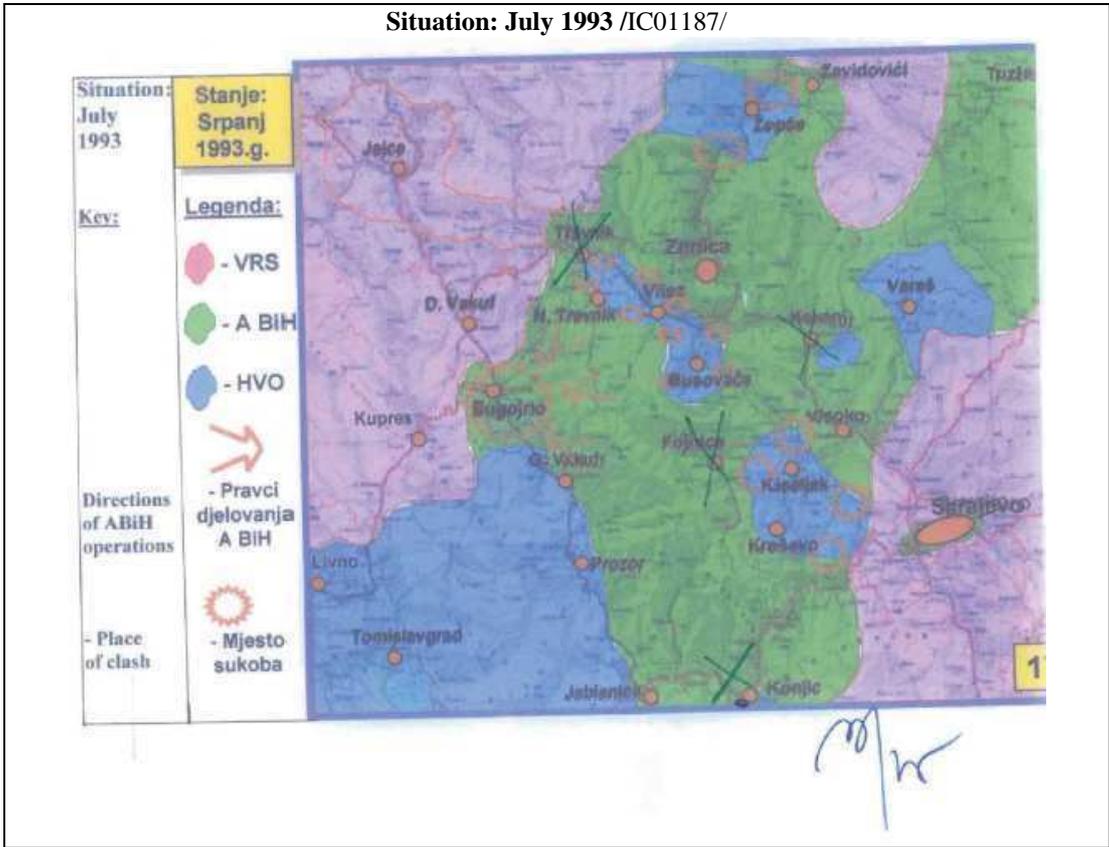
Maps showing expansion of the territory under the control of BH Army



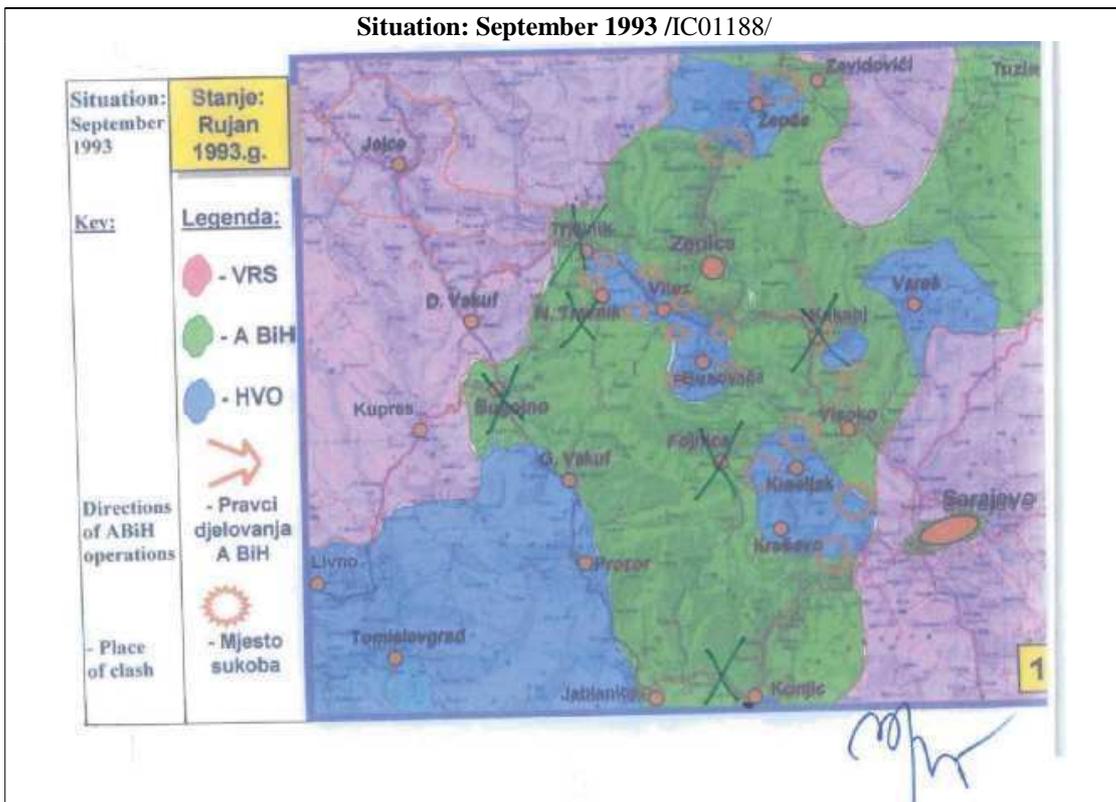
Situation: June 1993 /IC01183/



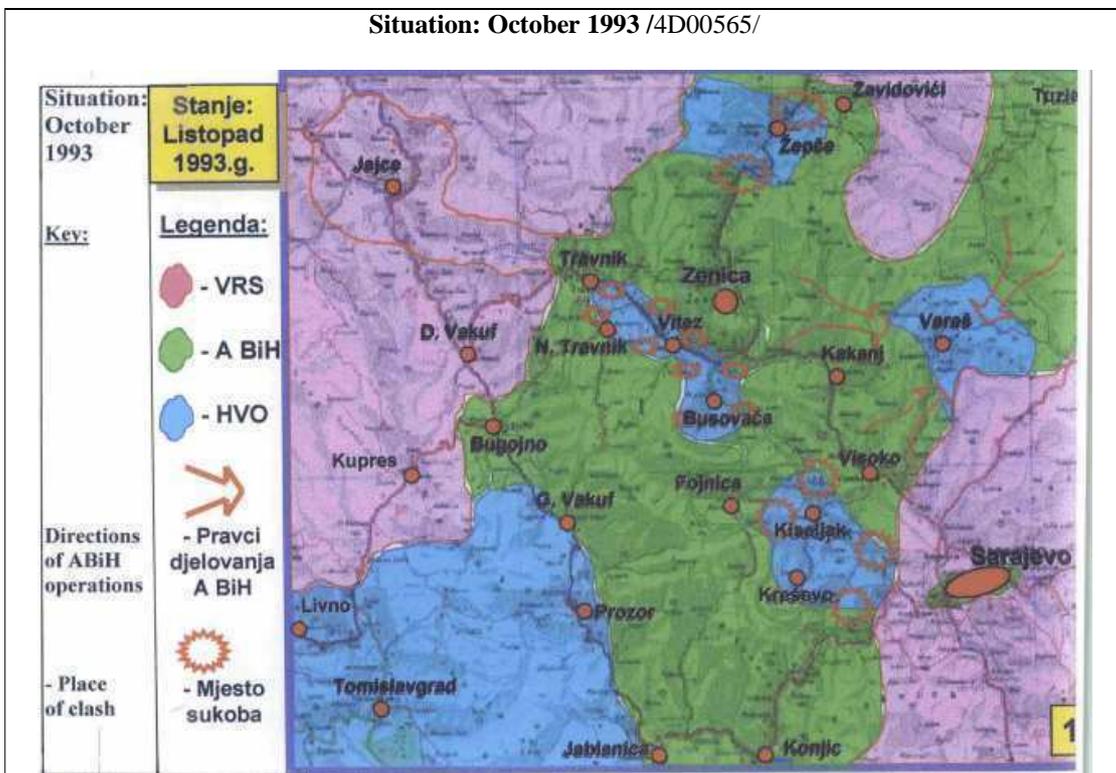
Situation: July 1993 /IC01187/



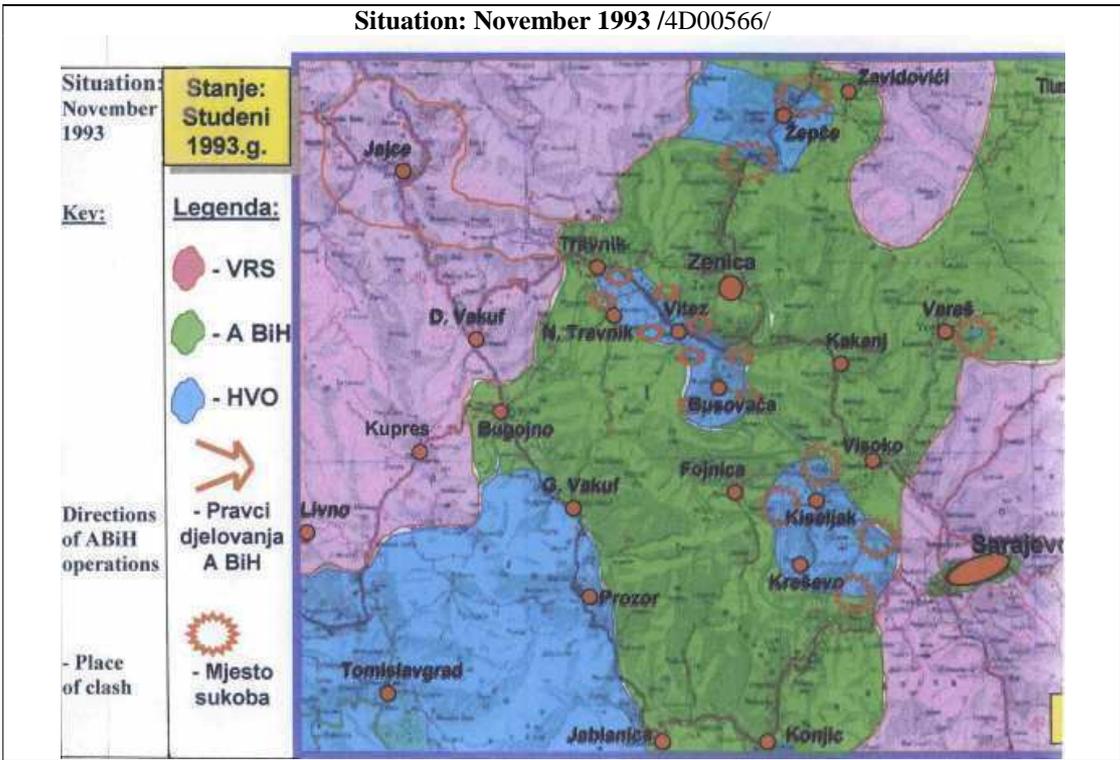
Situation: September 1993 /IC01188/



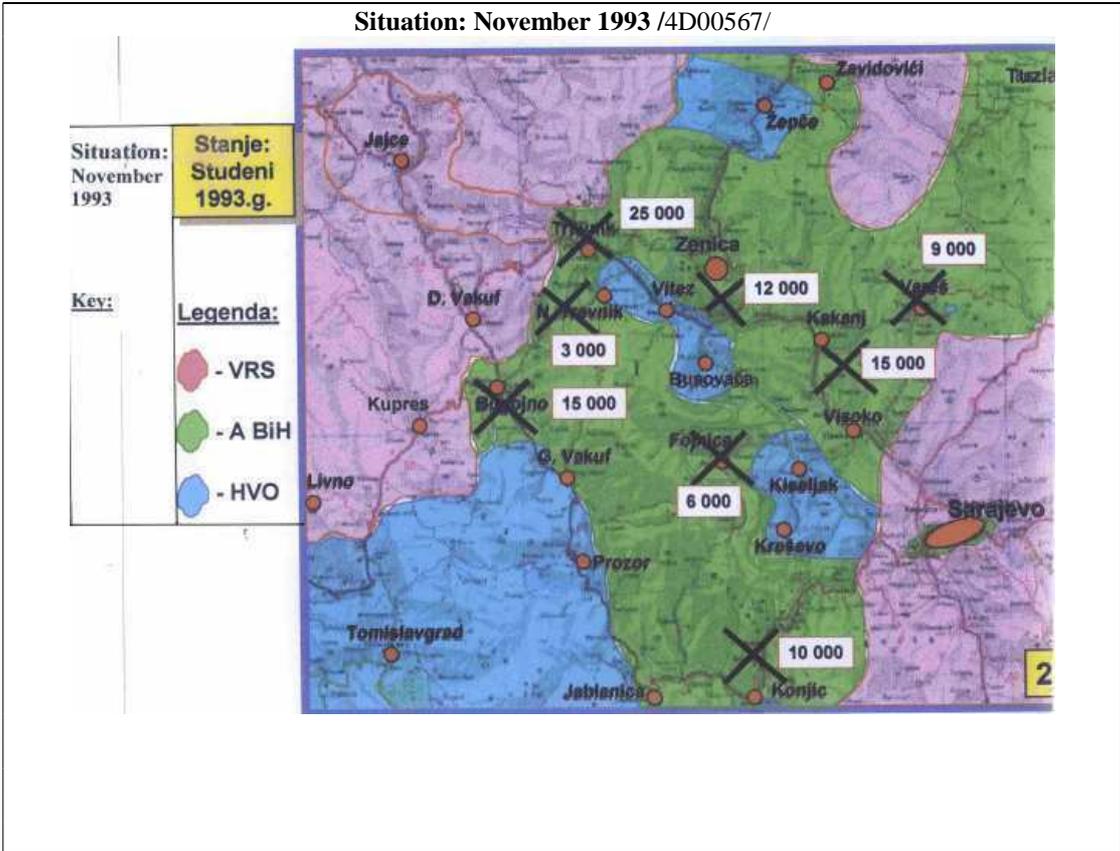
Situation: October 1993 /4D00565/



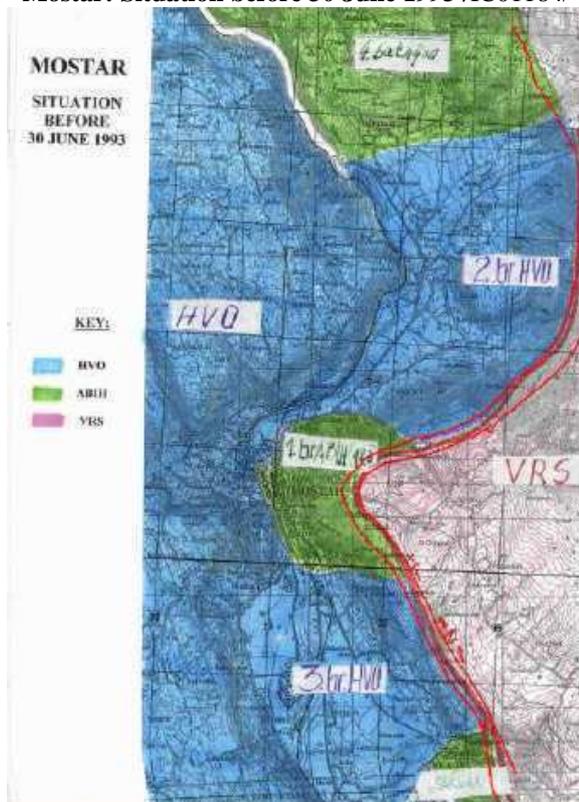
Situation: November 1993 /4D00566/



Situation: November 1993 /4D00567/



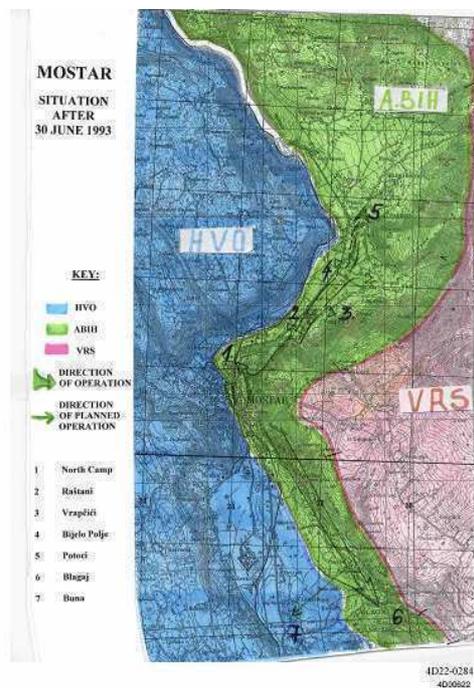
Mostar: Situation before 30 June 1993 /IC01184/



Mostar/Jablanica/Konjic: Situation till 30 June 1993 /IC01185/



Mostar: Situation after 30 June 1993 /4D00622/



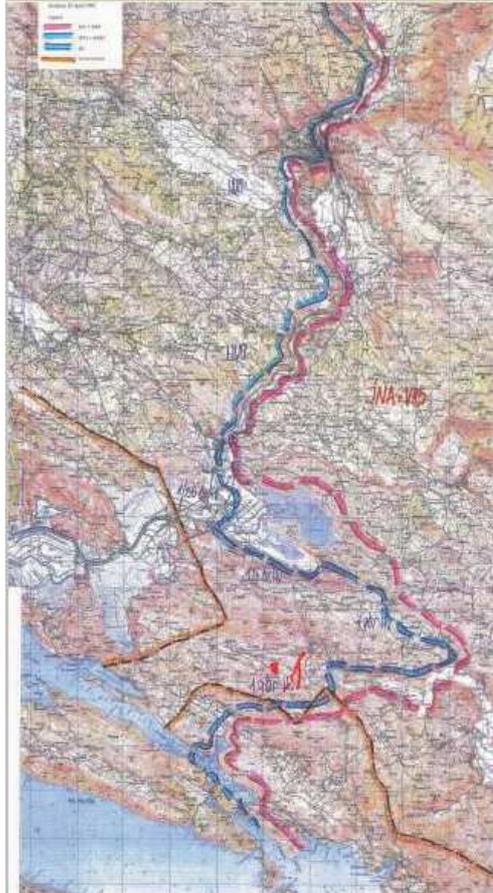
Mostar/Jablanica/Konjic: Situation 30 June 1993 /IC1186/



ANNEX 16

Maps showing actions of HV on BH territory

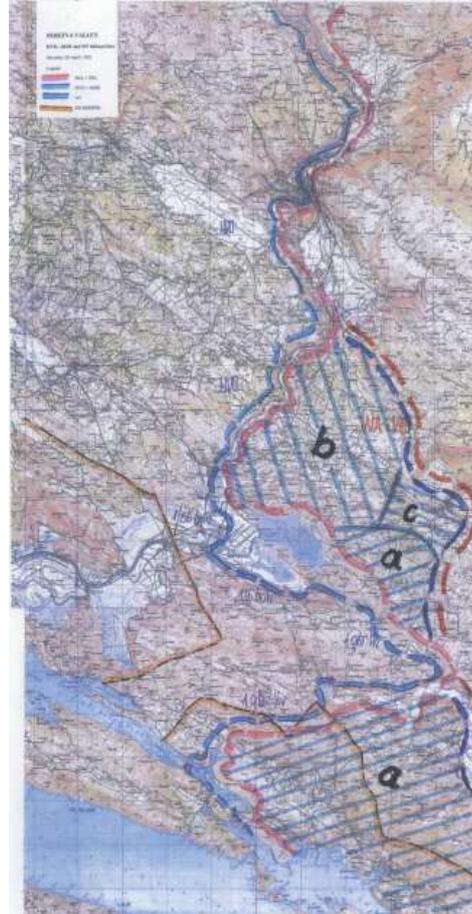
Marked map of Neretva valley, HVO, ABiH and HV defence line as opposed to the VRS and the JNA, situation on 30 April 1992
/IC01096/



Witness Beneta, T. 46573-4 marked map with:

"1" – Hutovo, the 4th Guard Brigade command post

Marked map of Neretva valley, HVO, ABiH and HV defence line as opposed to the VRS and the JNA, situation in June 1992
/IC01097/



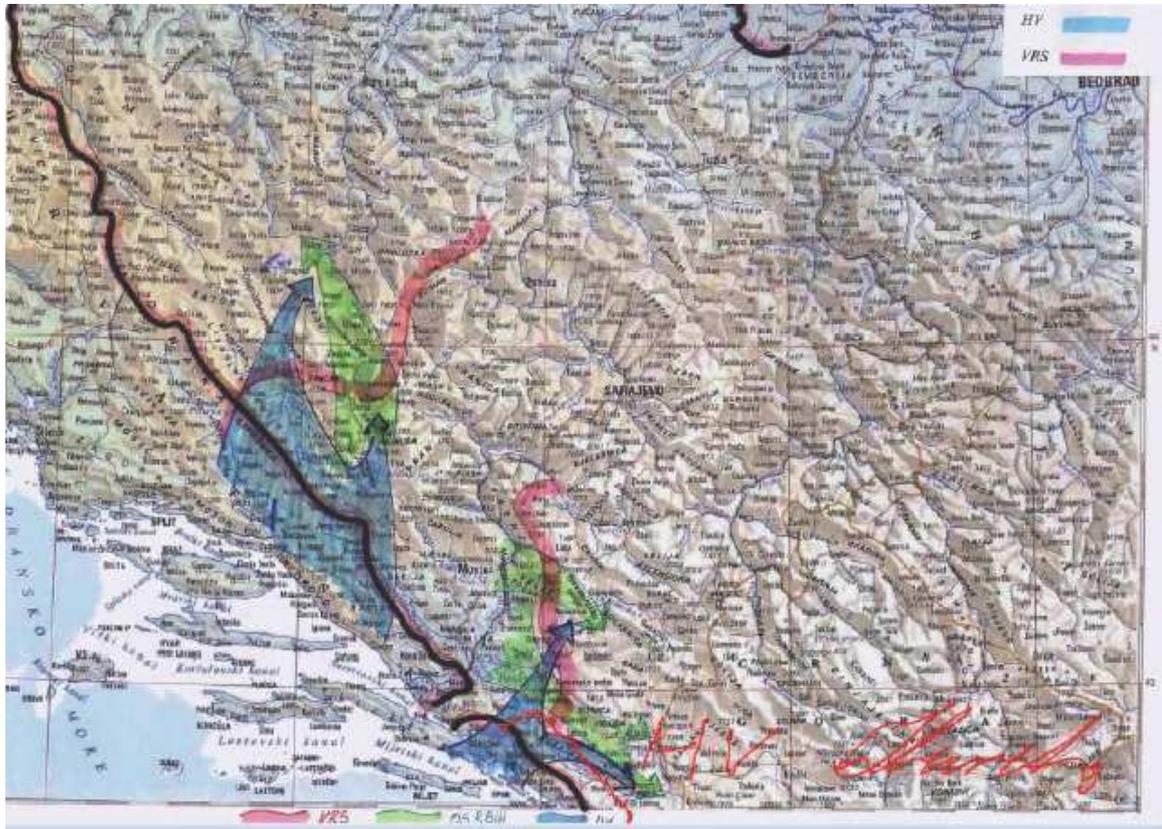
Witness Beneta, T. 46574-7 marked map with:

"a" – The territory which was liberated by the 4th and 1st Brigades of Croatian Army in the end of May and in early June 1992;

"b" – The territory around Domanovici which was liberated round about the 6th of June 1992 immediately after completion of the operations in which "a" marked territories were liberated by the forces of the HV and those of HVO who acted jointly;

"c" – The territory of Stolac town which was liberated in June 1992.

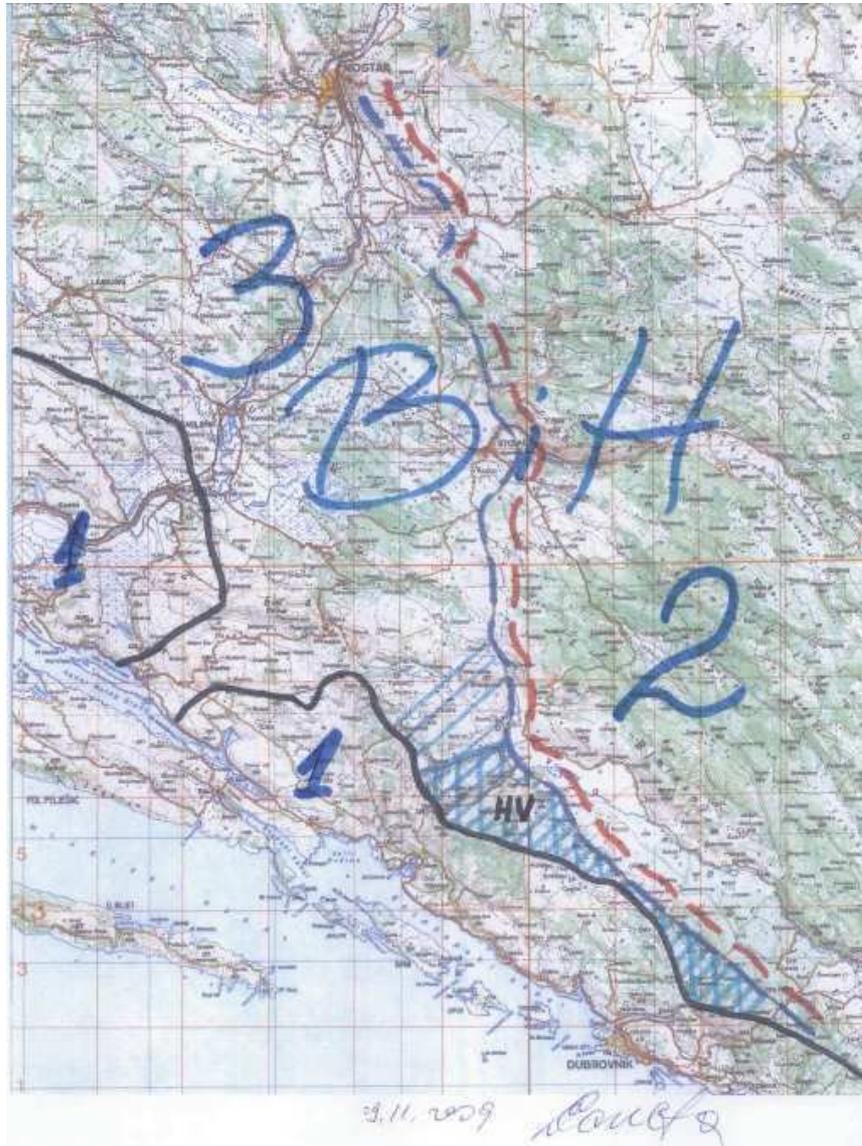
The Croatian Army positions in September 1992 /IC01098/



Witness Beneta, T. 46580-1, marked the above map with:

a handwritten red line and the letters "HV" – where in September 1992, Beneta's unit - which was part of the Croatian Army - was located in the border belt area between BiH and Croatia

The situation from September 1992 onwards /IC01099/



Witness Beneta T. 46584-91, marked the above map with a:

- Black line** – Indicating the border between Croatia and Bosnia and Herzegovina;
- Broken red line** – The territory east of which was controlled by the VRS;
- Shaded area** – Border belt area in BH in which a HV unit was deployed until the Dayton Agreement was signed (Petkovic, T. 49306);
- “1”** – The territory of the Republic of Croatia;
- “2”** – The territory controlled by the VRS;
- “3”** – The territory of Bosnia and Herzegovina controlled by the Muslim and Croatian authorities;
- “BIH”** – The territory of Bosnia and Herzegovina

ABBREVIATIONS

ABiH	- Army of Bosnia and Herzegovina
ATG	- Anti-Terrorist Group
BCS	- Bosnian-Croatian-Serbian language
BH Army	- Army of Bosnia and Herzegovina
BH	- Bosnia-Herzegovina
BiH	- Bosnia and Herzegovina
ECMM	- European Community Monitoring Mission
FB	- Final Brief
GC	- Geneva Convention
HB	- Herceg-Bosna
HIS	- Croatian Information Service
HQ	- Headquarters
HV	- Croatian Army
HVO	- Croatian Defence Council
HVO/Government	- HVO HZHB / HRHB Government
HR HB	- Croatian Republic of Herceg-Bosna
HZ HB	- Croatian Community of Herceg-Bosna
ICL	- International Criminal Law
ICRC	- International Committee of the Red Cross
ICTR	- International Criminal Tribunal for Rwanda
ICTY	- International Criminal Tribunal for the Former Yugoslavia
IHL	- International Humanitarian Law
IMT	- International Military Tribunal
Indictment	- <i>Prosecutor v. Prlić et al.</i> , Second Amended Indictment
IPD	- Informative and political activities
IZM	- Forward Command Post
JCE	- Joint Criminal Enterprise
JNA	- Yugoslav People's Army
MD	- Military District
MOS	- Muslim Armed Forces
MP	- Military Police
MPA	- Military Police Administration
MTS	- Material and Technical Equipment (<i>or Supplies</i>)
NORDBAT	- UNPROFOR Norway Battalion
ODPR	- Office of the HVO/Government for Displaced Persons and Refugees
OG	- Operative Group
ONO	- Operations and Training Department
OZ	- Operative Zone
OZCB	- Operative Zone Central Bosnia
OZNWH	- Operative Zone North West Herzegovina
OZSEH	- Operative Zone South East Herzegovina
POW	- Prisoner(s) of War
RS Army	- Army of Republic of Srpska
RUF	- Revolutionary United Front (<i>Prosecutor v. Sesay, Kallon and Gbao</i>) (RUF Case)
SIS	- Informative and Security Service
SPABAT	- UNPROFOR Spanish Battalion
TO	- Territorial Defence
UNDU	- United Nations Detention Unit
UNHCR	- United Nations High Commissioner for Refugees
UNCIVPOL	- United Nation Civilian Police
VOPP	- Vance-Owen Peace Plan

VOS
VRS

- Military Informative Service
- Army of the Republic of Srpska