

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

Case No. IT-04-74-T

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

Registrar: Mr. John Hocking

Date filed: 29 March 2011

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

REDACTED PUBLIC VERSION

JADRANKO PRLIĆ'S FINAL BRIEF

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PROSECUTOR v. JADRANKO PRLIĆ ET AL

REDACTED PUBLIC VERSION

JADRANKO PRLIĆ'S FINAL BRIEF

I. INTRODUCTION

1. Dr. Jadranko Prlić is not guilty of any of the 26 counts or other alleged acts which the OTP claims in its 80-page, 238-paragraph Second Amended Indictment of 11 June 2008 (the "Indictment"). The evidence adduced during the nearly 5-year trial does not support the OTP's allegations against Dr. Prlić. A review of the evidence in this case demonstrates that the Indictment and the positions taken by the OTP against Dr. Prlić are ill-conceived and baseless in law and fact. The Trial Chamber must acquit Dr. Prlić.
2. There was no joint criminal enterprise ("JCE") as alleged. Dr. Prlić did not participate in any activities, directly or indirectly, to subjugate, permanently remove, or ethnically cleanse Muslims or other non-Croats from areas in Bosnia and Herzegovina ("BiH")¹ in furtherance of the "Greater Croatia" plan alleged. Crimes were committed during the Muslim-Croat conflict in BiH during the period of the Indictment. Those crimes, however, were situational and Dr. Prlić had no connection with or responsibility for them.
3. As President of the Croatian Defence Council ("HVO") of the Croatian Community of Herceg-Bosna ("HZ HB") and President of the Government of the Croatian Republic of Herceg-Bosna ("HR HB"), Dr. Prlić was engaged in lawful and necessary activities: using his experience and knowledge to bring a semblance of normalcy to the areas covered by the HZ HB and HR HB during a period when the State institutions of the newly established BiH had effectively

¹ Note that in this Final Brief, the abbreviation "BiH" refers to the Socialist Republic of Bosnia-Herzegovina and the Republic of Bosnia-Herzegovina. The entity being referred to can be understood from the context of the discussion. Where the context is unclear, the abbreviations "SRBiH" and "RBiH" respectively are used.

ceased to function. The HZ/HR HB was not a criminal enterprise; it was born out of necessity due to the failure of the BiH State, its institutions, and its leadership to provide the necessary protection and socio-economic services to parts of BiH where the majority of BiH Croats resided. With an impotent government and political institutions, a dysfunctional and passive Presidency, and a collapsing State infrastructure (e.g. Central Bank, telecommunications, electrical power plants, and roads), organization was necessary at the municipal and regional levels. This sort of self-management was expected and required under the All People's Defence doctrine, ingrained in every segment of the Socialist Federal Republic of Yugoslavia ("SFRY").

4. With BiH being used as a staging ground by the JNA to attack Croatia, it was only natural that the BiH Croats would become alarmed and take the protection of their homes, villages, towns and areas into their own hands. The Muslims did the same, though their activity was initially clandestine. With BiH becoming independent, the need to ensure the constituent rights of all three nations became pronounced, especially among the Croats who comprised only 17.38% of the BiH population. International negotiations were held to find an acceptable solution for the internal organization of BiH. All proposals that were advanced by the international negotiators were accepted unreservedly by the BiH Croats. By contrast, Alija Izetbegović, the SDA leader who as President of the BiH Presidency acted as the President of BiH, pursued his own vision for BiH: a unitary State of "one person-one vote" and governed in the interests of only Muslims with non-Muslims effectively having no constituent rights.
5. The evidence does not support that Croatia's involvement in the events in and around BiH during the period of the Indictment was part of a JCE to re-constitute the 1939 Croatian Banovina borders. Croatia was entitled to defend its sovereignty against the JNA/JA attacks. Though Franjo Tuđman, the President of the Republic of Croatia, did involve himself in the affairs of the BiH Croats, the evidence does not show that he was attempting to carve up BiH as alleged by the OTP. The international negotiators *sought* Tuđman's involvement. Croatia not only received and protected thousands of Muslim refugees, it provided training

and weapons to the BiH army (“ABiH”). No other country did more to protect BiH Muslims than Croatia.

6. In light of the complexity of the case and the structure of the Indictment, after dealing with some preliminary issues on the standard of proof, Dr. Prlić’s background, and the modes of liability, this Final Brief will first lay out the defence case in a narrative fashion, focusing primarily on the most relevant aspects of the case concerning Dr. Prlić. Based on the evidence adduced, this section will put the facts into context: why it was necessary to set up the HZ HB and later the HR HB, what their purpose was, how they were structured, what the functions of the temporary executive authority (i.e. HVO HZ HB) were, what Dr. Prlić’s functions were, and what was happening during the international negotiations. An analysis of the relevant paragraphs of the Indictment will follow the section on the defence case. An Annex is also provided with the most relevant documents placed in chronological order to assist the Trial Chamber in more fully understanding the overall events as they were occurring. It will emerge that Dr. Prlić is not guilty of any of the crimes charged.

II. STANDARD OF PROOF

A. Presumption of innocence and proof of guilt beyond reasonable doubt

7. Article 21(3) of the Statute presumes the innocence of the Accused until proven guilty. In a joint trial, it is the duty of the Trial Chamber to consider the case against each Accused separately and to consider each count in the Indictment separately.²
8. Pursuant to Rule 87(A), the OTP must prove the case alleged against Dr. Prlić beyond reasonable doubt. The *Čelebići* Trial Chamber cited English authority with approval in defining the burden of “beyond reasonable doubt” as follows:

It need not reach certainty but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence, ‘Of course it is possible, but not in the least

² *Kupreškić* Trial Judgement, para. 339(b).

probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice.³

If, at the conclusion of the proceedings, there is any doubt that the OTP has established the case against Dr. Prlić, and there is another reasonable conclusion which is also reasonably open from that evidence, Dr. Prlić is entitled to the benefit of the doubt and he must be acquitted.⁴ The OTP must prove each and every element of each offense charged, as defined with respect to the relevant mode of liability, beyond reasonable doubt.⁵ Any ambiguity or doubt must be resolved in favor of Dr. Prlić pursuant to the principle of *in dubio pro reo*.⁶

9. In this case, fifteen years after the events alleged in the Indictment, after five years of trial, after more than 500 written motions, after more than 680 written decisions, after requests for the admission of 735 adjudicated facts, after the admission of more than 5,000 exhibits from the bar table, after hearing 208 viva voce witnesses, and after admitting 9,862 exhibits into evidence,⁷ what began as an assumption for the OTP now hangs as an inference.
10. The OTP has provided no direct evidence that Dr. Prlić participated in a JCE to:
 - a.** politically and militarily subjugate, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats who lived in areas on the territory of BiH which were claimed to be part of the HZ HB and later HR HB; **b.** to join these areas as part of a "Greater Croatia," whether in the short-term or over time and whether as part of the Republic of Croatia or in close association with it, in order to establish a Croatian territory with the borders of the Croatian Banovina, a territorial entity that existed from 1939 to 1941; and **c.** to engineer the political and ethnic map of these areas so that they would be Croat-dominated, both politically and demographically, by force, fear or threat of force, persecution,

³ Čelebići Trial Judgement, para. 600 citing *Miller v. Minister of Pensions* [1947] 1 All ER 372, 373-4.

⁴ Čelebići Trial Judgement, paras. 458, 601-603; Brđanin Trial Judgement, para. 23; Galić Appeal Judgement, para. 218; Limaj Trial Judgement, para. 10.

⁵ Stakić Appeal Judgment, para. 219.

⁶ Blagojević & Jokić Trial Judgement, para.18; Halilović Trial Judgement, para. 12.

⁷ See Letter dated 1 November 2010 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council, S/2010/588, 19 November 2010, Annex 1, para. 22, available at http://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_19nov2010_en.pdf (last visited 6 January 2011).

imprisonment and detention, forcible transfer and deportation, appropriation and destruction of property and other means, which constituted or involved the commission of crimes that are punishable under Articles 2, 3, and 5 of the Tribunal Statute. Nor has the OTP provided direct evidence to prove that Dr. Prlić failed to take adequate steps to prevent or punish any crimes committed by his subordinates, or that he aided or abetted any crimes, or otherwise participated in any crimes, or even knew that crimes had occurred or were about to occur.

11. Instead, the OTP's case rests upon whether the Trial Chamber will *infer* guilt from circumstantial evidence. Facing a case based upon assumption and inference, the Defence had to bring a great deal of evidence, in both witness and documentary form, to demonstrate to the Trial Chamber that Dr. Prlić was not involved in the crimes alleged and did not participate in the alleged JCE. The weight of attempting to demonstrate a negative is such that the danger of a reversal of the burden of proof is a real one. The burden of proof *must* remain, at all times, on the OTP.⁸
12. To prove guilt based upon inference, the OTP must prove the primary facts upon which it relies beyond reasonable doubt *and also prove* that all reasonable inferences consistent with innocence have been excluded.⁹ This also applies when inferring the state of mind of an Accused.¹⁰ Where the evidence before the Trial Chamber is reasonably open to more than one inference, Dr. Prlić must be acquitted.¹¹

B. No adverse inference can be drawn from the silence of the Accused

13. Dr. Prlić did not testify in these proceedings. In the *Čelebići* case, the Appeals Chamber held that pursuant to Article 21(4)(g) of the Statute and Rule 85(C) there is an absolute prohibition *against* consideration of the silence of the Accused in the determination of guilt or innocence.¹²

⁸ *Brđanin* Trial Judgement, para. 22.

⁹ *Brđanin* Trial Judgement, para. 353; *Martić* Trial Judgement, para. 24.

¹⁰ *Kvočka* Appeal Judgement, para. 237.

¹¹ *Čelebići* Trial Judgement, paras. 458, 601-603; *Brđanin* Trial Judgement, para. 23; *Galić* Appeal Judgement, para. 218; *Limaj* Trial Judgement, para. 10.

¹² *Čelebići* Appeal Judgement, para. 781.

14. Dr. Prlić opted to make a statement pursuant to Rule 84bis. This statement is evidence. The Trial Chamber will decide its probative value.¹³

III. DR. JADRANKO PRLIĆ'S BACKGROUND

15. Dr. Jadranko Prlić was born on 10 June 1959 in Đakovo, Republic of Croatia. He is a citizen of BiH. It is not an exaggeration to describe him as a polymath.¹⁴ He has led a life and career of atypical diversity and has applied his expertise to an unusually broad range of functions in both public life and the private sector. Dr. Prlić has worked in municipal government as President of the Executive Council and in Republican governments as Minister and Vice-President in different socio-political eras. He has been Chief Executive of one of his country's largest corporations. He has been widely published, both as a journalist and an academic.¹⁵
16. Dr. Prlić's involvement in politics began at secondary school. Around 1975, he joined the League of Communists with all the other students in his school year. Recognized as the brightest pupil in BiH,¹⁶ he was appointed to public organizations at the levels of Mostar, BiH and the SFRY. Dr. Prlić also worked as a journalist during his student days. When he finished university, he worked as an editor at the radio station in Mostar. In 1986, he was appointed Secretary of the Socialist Union of Working People in Mostar, which gave him the opportunity to gain knowledge of the full range of social activities (e.g. youth, employment, import/export, monitoring issues, defence-related issues, agriculture, and environmental issues).¹⁷

¹³ Rule 84 bis (B).

¹⁴ Oxford Dictionaries defines a "polymath" as "a person of wide knowledge or learning." The definition is available at http://oxforddictionaries.com/view/entry/m_en_gb0646090#m_en_gb0646090 (last visited 6 January 2011).

¹⁵ P09078, p. 6. Dr. Prlić is the author of several books: *Policy of Fluctuating Exchange Rates* (1990), *The Imperfect Peace* (1998), *Fuga della Storia* (2000), *Return to Europe* (2001), *Unfinished game* (2002), *A Short Course of Economics* (2003), *A Global and Local* (2004), *European Union and Eastern Adriatic* (2005), and *International Economy* (2008). Dr. Prlić has also lectured on economics and the international economy at the Faculty of Economics and the Faculty of Law of the University in Mostar. He taught postgraduate students at the University in Mostar, Banja Luka and Sarajevo. He has also lectured at a number of overseas universities, such as La Sapienza in Rome, in Lecce, at Columbia and John Hopkins Universities, and at the London School of Economics. P09078, p. 12.

¹⁶ Dr. Prlić was awarded this accolade in 1975. He was also atypical in that he completed two years of Gymnasium in one year. P09078, p. 7.

¹⁷ Tr. 27459 (5 May 2008); P09078, p. 7.

17. In 1987, Dr. Prlić received his doctorate from the Faculty of Economics in Sarajevo, having written his PhD thesis on the policy of fluctuating exchange rates. He passed through all level of professorships before becoming a full professor.¹⁸
18. In 1988, Dr. Prlić was appointed President of the Executive Council of the Municipal Assembly of Mostar (similar to the function of a mayor) after a secret ballot. Later in 1989, the Parliament of BiH appointed him Vice-President of the Executive Council, from a pool of 160 candidates, also after a secret ballot, with overall responsibility for the Republic's economy. He was the youngest person ever to achieve this level of responsibility, devoting his energy to the development of BiH's economy based on the European model.¹⁹
19. During and immediately after the 1990 elections, Dr. Prlić held the position of Acting President of the BiH Government. Before the elections, he left the League of Communists and chose not to participate, despite being requested by some political parties to lead their lists. His view was that persons in government should not exert any influence derived from their position (e.g. over the media) on the democratic process. He returned to Mostar in 1991, having been appointed Chief Executive Officer of APRO.²⁰
20. Dr. Prlić continued in public service by contributing to BiH's economic development. In 1990, he participated in several meetings of the Federal Executive Council. His intention was to bring BiH closer to Western European levels of development. This period in Dr. Prlić's career can be viewed as part of a continuum demonstrating his commitment toward furthering the economic development of all BiH and enhancing the Republic's destiny as an independent State.²¹
21. In early 1991, Dr. Prlić accepted a proposal to act as governor of the Republic's National Bank to introduce the country's first currency. As a distinguished professor of economics, Dr. Prlić had been given the backing of the Government,

¹⁸ P09078, p. 6.

¹⁹ Tr. 27464 (5 May 2008); P09078, p. 8.

²⁰ Tr. 27468 (5 May 2008); Tr. 38760-38764 (2 April 2009). *See also* P09078, p. 11; 1D03136. The APRO Corporation was the one of the largest companies in BiH, with fourteen subsidiary companies and several thousand employees. Companies in the APRO group manufactured consumer goods, including wines, juices and flowers.

²¹ P09078, pp. 18-19.

- including the President of the Government, for this appointment. However, shortly before the Assembly voted, a telegram arrived from the Croatian Democratic Union (“HDZ”) signed by Mate Boban saying that the party had withdrawn its approval to proceed.²²
22. In early March 1992, Dr. Prlić travelled to the United States (“US”) to study the American approach to market economics. When he returned on or around 10 April 1992, Mostar was under siege, subject to relentless shelling by the JNA and Bosnian Serb forces. Dr. Prlić’s family had fled the city. Dr. Prlić, however, returned to defend his home, his town, his municipality, and his country. On his return, he continued working for APRO. He reported for duty with the Mostar Territorial Defence, but, like all other institutions, it was not functioning. When he learned about the establishment of the local military HVO, which by this stage had begun to mobilize units, Dr. Prlić volunteered to serve. As a member of the Military HVO Mostar, Dr. Prlić was appointed to the Special Purposes Council, which organized the supply of resources in the city and helped mount the municipal defence.²³
23. As a result of his work in the Special Purposes Council, Dr. Prlić became acquainted with the HVO’s leaders at that time. In summer 1992, Dr. Prlić met with Boban for the first time, at Boban’s request. At their meeting, Boban explained that the purpose behind the establishment of the HZ HB was to counter Serb aggression. He said that Croats and especially Muslims were not prepared for the war and the only people defending BiH were members of the HVO. Boban also sought Dr. Prlić’s advice on how best to organize the economy. When they met again later that summer, Boban offered Dr. Prlić a role as coordinator of activities relating to the civilian authorities. Boban was clear regarding the nature of Dr. Prlić’s duties: “Do whatever you can do in the civilian area. You have nothing to do with the military and the police.”²⁴
24. Dr. Prlić was appointed as Head of the Finance Department prior to his appointment as President of the HVO HZ HB. This appointment was entirely

²² Tr. 27488 (5 May 2008); Tr. 28901-28904 (2 June 2008); P09078, p. 21.

²³ Tr. 27489 (5 May 2008); Tr. 32136-40 (15 September 2008); Tr. 32335-38 (17 September 2008); P09078, pp. 21-22, 25.

²⁴ Tr. 27492 (5 May 2008); P09078, pp. 25-26; Tr. 30358-61 (8 July 2008).

cosmetic; Dr. Prlić never actually performed this function and only learned about his appointment on the day it was made. His appointment was intended solely as a means to justify his impending appointment as President of the HVO HZ HB.²⁵

25. Dr. Prlić was appointed President of the HVO HZ HB on 14 August 1992. After the establishment of the HR HB, on 20 November 1993, Dr. Prlić was appointed President of the Government of the HR HB.²⁶ His functions and responsibilities in this position are addressed in full herein. Given his expertise and background, and the pressing need for him to provide guidance with economic development, Dr. Prlić assisted with the achievement of positive results in the HZ/HR HB. In 1995, annual data show that growth rates in the real sector of Croat majority areas of BiH were quite high.²⁷ Moreover, “the majority of Herceg Bosna legislation was accepted in the Federation and later at BiH’s level...”²⁸
26. On 18 May 1993, pursuant to the Medugorje Agreement between the Muslims and Croats (also signed by representatives of the international community) on the implementation of the Vance-Owen Peace Plan, Dr. Prlić was appointed Prime Minister of the Interim Government of BiH.²⁹ Upon his appointment, he began to

²⁵ P09078, p. 58; Tr. 27492-93 (5 May 2008).

²⁶ 1D02038.

²⁷ *E.g.*, the industrial production index shows annual growth in Croat majority areas of 25%, official employment grew by 69% and the average net wage in DEM of those officially employed grew by 35%. Output of construction material grew 13-fold. The average net wage of those officially employed in 1995 was 250 DEM per month. In addition, each employee received a food supplement of 50 DEM per month. See 1D03111, Analysis of the Economic Measures and Development in the HZ/HR HB Within the Context of the Economic Environment in Bosnia and Herzegovina from 1991-94 (“Cviki Report”), p. 191. By contrast, in Muslim majority areas, average net wages roughly quadrupled from mid-1995 (40 DEM per month) to May 1996 (158 DEM per month) and each officially employed person received a 40 DEM monthly food supplement, which was raised to 80 DEM in June 1996. See Cviki Report, pp. 190-91. See also Tr. 35296 (13 January 2009) (on the positive contribution made by the HZ HB in the sphere of education); Tr. 35311 (13 January 2009) (on the “good practice” adopted in the sphere of public procurement).

²⁸ 1D03111, pp. 191-92. In this context, Expert Witness Milan Cviki notes particular reforms introduced in “the currency board approach in monetary policy, liberalization of prices of all factors of production, the reduced level of engagement of the government in the economic sphere, and the clear procedures in conducting the budget and keeping revenues and expenditures in equilibrium, which is a huge task even now for a majority of budgets throughout the world.” See also Tr. 35294 (13 January 2009) where Cviki stated: “[I]n 1995 ... in the Croat majority area you have a bigger economic boom ... [W]hat is obvious from that picture and also from other information in this IMF report is that the economic activity on the territory [of] the Croat majority area as envisaged by the revenues levels of that territory and the revenues levels in the budgets was much stronger. Practically the figure is twice the size - that the revenues in the Croat majority areas were twice the size of the revenues in the Bosniak majority area, which had looked as a proof that there were the positive effects for the well-being of all society if, you know, with all these measures [taken by the HVO HZ HB and the Government of the HR HB] which I was describing. That is – that was for me a positive explanation.”

²⁹ 1D01595.

carry out his mandate; generally speaking, when Dr. Prlić assumes a position, he tends to leave his mark.³⁰ The Muslim leadership had no intention of honoring its commitments and no meaningful progress resulted from his efforts to implement the Međugorje Agreement's terms.

27. After the Washington Agreement, in June 1994, Dr. Prlić was appointed Vice-President of the Government and Minister of Defence of both the Federation and the Republic of BiH. In these roles, he was responsible for organizing common activities of both the ABiH and the HVO, liberating significant tracts of territory, and creating the possibility for a final peace agreement.³¹ As a member of a State delegation led by Izetbegović, Dr. Prlić participated in peace negotiations at Dayton, Ohio in 1995, initialling on behalf of the BiH the General Framework Agreement for Peace in BiH.
28. Dr. Prlić did not join the HDZ until 1996. In the summer of 2000, he left the party. As a result, he was accused in some quarters of being a war criminal, a fraudster, and a traitor.³²
29. From February 1996 to February 2001, Dr. Prlić was BiH's Minister of Foreign Affairs. He served in this role with distinction, again demonstrating his commitment to a democratic, multi-ethnic, European destiny for his country. Dr. Prlić was re-elected as Minister of Foreign Affairs on several occasions by representatives of the Croat, Serb and Bosniak communities. He participated in all important international gatherings concerning international politics and the economy. He delivered speeches before the General Assembly of the United Nations ("UN"), including at the Millennium Summit, at annual meetings of the World Bank, the European Bank for Reconstruction and Development and the International Monetary Fund, before the North Atlantic Treaty Organization ("NATO"), the Organization for Security and Co-operation in Europe, the Council of Europe, the Central European Initiative, the World Trade Organization, the Organization of Islamic Countries, the Organization of African Unity, and the Stability Pact for South Eastern Europe. Dr. Prlić's conduct in this

³⁰ Tr. 27543-44 (5 May 2008); Tr. 30476-78 (9 July 2008). *See also* 1D01586; 1D01587; 1D01596; 1D01597; 1D01599; 1D01598.

³¹ P09078, p. 13; Tr. 27475, 27531 (5 May 2008).

³² Tr. 27556-57 (6 May 2008); P09078, p. 14. *See also* 1D03042.

- period demonstrates the essential characteristics of his politics; these initiatives, together with his role taking the lead to re-establish diplomatic relations between Sarajevo and Belgrade, were entirely in keeping with his consistent advocacy of the position that “symmetrical” relations with Serbia and Croatia are a prerequisite for the survival of BiH as an independent State.³³
30. From 2001 to 2003, Dr. Prlić was BiH’s Deputy Minister for Foreign Trade and Economic Relations. He was elected a member of the BiH Parliament twice in 1996 and 1998.
 31. Dr. Prlić was the founder and first President of the non-governmental, multi-ethnic association *Forum 2000 – European Movement*, which promotes the principle of European integration in BiH, and in 2002 was founder and President of the Pro-European People’s Party, a multi-ethnic party in BiH.³⁴
 32. From the foregoing, it is plain that Dr. Prlić entered politics with significant academic and professional experience obtained at an unusually early stage of life. Due to this experience and his character, Dr. Prlić was assigned roles and approached problems from a cerebral and economic perspective that distinguished him from many of his peers. Dr. Prlić’s expertise lies in his technical understanding of the mechanical aspects of economic policy and political structures; this knowledge is infused in the approach he has brought to all of his roles, both inside the government and outside of it, throughout his entire career and to this day.
 33. Dr. Prlić has always been supportive of the ICTY,³⁵ and voluntarily surrendered in order to be tried before it. He has cooperated with the OTP in this case and was willing to be interviewed by the OTP in 2001. His willingness to cooperate with the OTP should not be ignored.
 34. In the course of his 2001 interview, Dr. Prlić, *inter alia*, gave his views, recollections and account of his acts, conduct, and state of mind concerning the events from 1991 to 1994, within the framework of a list of questions submitted

³³ See 1D03043, p. 3; 1D03041; 1D03098; 1D03042; P09078, p. 19; Tr. 27487 (5 May 2008) where Dr. Prlić defined “symmetrical” relations as meaning that the Republic of BiH “must be both as near as possible and as far as possible from Serbia and Croatia.”

³⁴ P09078, p. 14.

³⁵ Tr. 27515 (5 May 2008); P09078, p. 15. See also Tr. 42538-42539 (6 July 2009).

by the OTP. It is of the utmost importance to recollect that at the time of this interview in 2001:

- a. Dr. Prlić was not apprised of all of the evidence material to his case. He had not been able to inspect all of the documents from 1991 which have subsequently become available to him, and on the basis of the documentation he had reviewed at that time, he had come to similar conclusions as Expert Witness Professor Ciril Ribičić; and
- b. Subsisting political circumstances in BiH, following Dr. Prlić's resignation from the HDZ, had led to a degree of bitterness that influenced his statement. Dr. Prlić's resignation from the HDZ attracted stinging criticism in the press, coloring his view of the HDZ and its leadership's objectives during the period covered by the Indictment.³⁶

IV. INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 7(1)

A. Joint Criminal Enterprise ("JCE")

i. Introduction

35. The Defence submits that JCE is not part of customary international law. It must be disregarded in favor of co-perpetration as a mode of liability applicable to a group of persons who have allegedly carried out crimes collectively.³⁷ Although

³⁶ Tr. 27470 (5 May 2008).

³⁷ To establish the *actus reus* of co-perpetration through another person, the following must be present: **a.** there must be an agreement or common plan between the persons who physically carry out the elements of the crime, or between those who physically carry out the elements of the crime through another individual, and; **b.** each co-perpetrator must make coordinated essential contributions that result in the realization of the objective elements of the crime. The agreement need not be explicit; it can be inferred from the subsequent concerted actions of the co-perpetrators. The common plan must include the commission of a crime. When the objective elements of a crime are carried out by a plurality of persons working in accordance with a common plan, only those to whom essential tasks have been assigned and who, consequently, have the power to frustrate the commission of the crime by not performing their tasks, can be said to have effective control over the crime. *Prosecutor v. Katanga & Ngudjolo*, ICC-01/04-01/07, Decision on Confirmation of Charges, 30 September 2008 ("*Katanga* Decision"), paras. 522-25. To establish the *mens rea* of co-perpetration through another person, each of the co-perpetrators is required to: **a.** be aware that implementing their common plan will result in the realization of the objective elements of the crime; **b.** undertake such activities with the specific intent to bring about the objective elements of the crime, or be aware that the realization of the objective elements will be a consequence of their acts in the ordinary course of events; and **c.** be aware of the factual circumstances enabling them to exercise control over the crime through another person. Regarding this last requirement, the suspects must be aware of the character of their organizations, their authority within the organization and the factual circumstances

the basic (JCE I) and systemic (JCE II) forms of JCE bear some similarity with co-perpetration, JCE III has no basis in, and no similarity with, any other mode of liability under customary international law. Prior to the initial articulation of JCE III by the *Tadić* Appeals Chamber, in the period covered by the Indictment, JCE had never been a form of responsibility in the “constant and uniform”³⁸ State practice, or *opinio juris*,³⁹ necessary to constitute customary international law.⁴⁰

ii. JCE III is not customary international law

36. On 20 May 2010, the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) conducted the first systematic judicial analysis of the jurisprudence relied upon by the *Tadić* Appeals Chamber as *forming* the basis of JCE III.⁴¹ The ECCC Pre-Trial Chamber is comprised of five judges: three Cambodian and two international. One of the international judges is Judge Catherine Marchi-Uhel (France), currently on leave from her position as Head of Chambers at the ICTY.⁴² In an unanimous decision, the ECCC Pre-Trial Chamber held that JCE III was not reflective of customary international law.⁴³ The ECCC

enabling near automatic compliance with their orders. *Id.*, paras. 533-34. For an example of how co-perpetration has been applied by the ICTY, see *Stakić* Trial Judgement, paras. 440, 469-98.

³⁸ *Fisheries Jurisdiction Case (United Kingdom v. Iceland)*, Merits Judgement, ICJ Reports 1974, p. 3, para. 240.

³⁹ See *Nicaragua v. United States*, Merits, Judgment. I.C.J. Reports 1986, p. 14, para. 207; *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, para. 77.

⁴⁰ Article 38(1) of the 1946 Statute of the International Court of Justice, which is generally recognized as a definitive statement of the sources of international law, requires the Court to apply, among other things, “international custom, as evidence of a general practice accepted by law.”

⁴¹ The *Tadić* Appeals Chamber held that participation in a common plan is implicitly recognized as a form of “committing” under Article 7(1) of the ICTY Statute. *Tadić* Appeal Judgement, paras. 188-193. It found that the object and purpose of the ICTY Statute allowed the extension of the Tribunal’s jurisdiction to all persons who have in any way participated in crimes within the Tribunal’s jurisdiction. *Id.*, paras. 189-90. It held that the notion of common plan liability has been firmly established in customary international law, relying on ten war crimes cases tried after World War II. *Id.*, paras. 197-220. It considered the relevant provisions of the ICC Statute and the International Convention on the Suppression of Terrorist Bombings and also referred to national legislation and case law. *Id.*, paras. 221-23.

⁴² Judge Marchi-Uhel’s biography is available at http://www.eccc.gov.kh/english/pre-trial_chamber.aspx.

⁴³ *Prosecutor v. NUON Chea et al.*, Case No. 002 /19-09-2007-ECCC/OCIJ (PTC35), Decision on the Appeals Against the Co-Investigative Judges’ Order on Joint Criminal Enterprise, 20 May 2010 (“ECCC Decision”). The ECCC Pre-Trial Chamber held that the IMT Charter and Control Council Law No. 10 do not provide support for the existence of JCE III (ECCC Decision, para. 78). Moreover, the ICC Statute and the International Convention on the Suppression of Terrorist Bombings cannot support the existence of JCE III in customary international law in 1975-79 (the period of the ECCC’s temporal jurisdiction) as these instruments post-date that time period. *Id.* It bears emphasis that the ICC Statute (1998) and the International Convention on the Suppression of Terrorist Bombings (1997) also post-date the period of the Indictment in this case. The Pre-Trial Chamber found that although the facts of the two post World War II cases (i.e. *Essen Lynching* and *Borkum Island*) could be relevant to JCE III, it could not infer that JCE III had been applied in them. *Id.*, paras. 79-81. It did not find that national jurisprudence could be a proper

Pre-Trial Chamber also considered whether general principles of law could be considered in determining customary international law, but ultimately decided that it did not need to make a determination regarding this question.⁴⁴

37. As to whether the elements of JCE III as a form of committing are in fact general principles of law, the answer quite simply is that they are not. Even the *Tadić* Appeals Chamber came to the conclusion that although the notion of common purpose, which according to Judge Cassese is the *sine qua non* condition for JCE III,⁴⁵ has an underpinning in many legal systems, it does not constitute a general principle of law.⁴⁶ Jurists' responses to the ECCC Decision have been positive. This is not surprising – the ECCC Decision is consistent with a long line of dissent questioning the customary status of JCE III.⁴⁷ Former ICTY Judge Schomburg commented that the ECCC Decision was a good start in that it found

precedent for this international form of liability. *Id.*, para. 82. The ECCC Pre-Trial Chamber did not consider whether there are public policy justifications favoring the application of JCE III at the ECCC. The ECCC Pre-Trial Chamber was correct not to engage in this analysis. “[P]olicy considerations are inapposite as a basis for a theory of individual criminal responsibility” such as JCE. *Prosecutor v. Brđanin*, IT-99-36-A, Judgement, 3 April 2007, para. 421. See also Thomas Weigend, *Intent, Mistake of Law and Co-perpetration in the Lubanga Decision on Confirmation of Charges*, 6 J. INT’L CRIM. JUST. 471, 477 (2008); Héctor Olásolo, *Joint Criminal Enterprise and its Extended Form: A Theory of Co-Perpetration Giving Rise to Principal Liability, A Notion of Accessorial Liability, or a Form of Partnership in Crime?*, 20 Crim. L. F. 285 (2009); Jens David Ohlin, *Three Conceptual Problems with the Doctrine of Joint Criminal Enterprise*, 5 J. INT’L CRIM. JUST. 69, 72 (2007).

⁴⁴ ECCC Decision, paras. 84-87. The Pre-Trial Chamber did not consider this question because it was not satisfied that JCE III would have been foreseeable to the Charged Persons in Cambodia in 1975-79.

⁴⁵ See Antonio Cassese, *The Proper Limits of Individual Responsibility Under the Doctrine of Joint Criminal Enterprise*, J. INT. CRIM. JUST., 5, 109, 126 (2007) (“Cassese”).

⁴⁶ *Tadić* Appeal Judgement, para. 224, referring to its survey of the national legal systems of Germany, the Netherlands, France, Italy, England and Wales, Canada, the United States, Australia, and Zambia on the doctrine of acting in pursuance of a common purpose.

⁴⁷ A deep concern has developed regarding the customary status of JCE from the *Stakić* Trial Judgement (*Prosecutor v. Stakić*, IT-97-24-T, Judgement, 31 July 2003 (“*Stakić* Trial Judgement”), para. 441) through to the ICC’s rejection of JCE in *Lubanga* (*Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007 (“*Lubanga* Decision”)) and the *Katanga* Decision. The thread running through these opinions is that for a perpetrator to be convicted of an international crime as a primary offender, he must be in control of the act to the extent that he “can ruin the whole plan if he does not carry out his part” (Wolfgang Schomburg, *Jurisprudence on JCE – Revisiting a Never Ending Story*, CAMBODIA TRIBUNAL MONITOR, 3 June 2010, available at <http://blog.cambodiatribunal.org/2010/06/jurisprudence-on-jcerevisiting-never.html>, (“Schomburg”) p. 9, citing *Stakić* Trial Judgement, para. 440). JCE, on the other hand, “is based primarily on the common state of mind of the perpetrators” (*Id.* at fn. 78). Co-perpetration “is closer to what most legal systems understand as ‘committing’ and avoids the misleading impression that a new crime... has been introduced through the backdoor.” (*Id.*, p. 9 citing *Stakić* Trial Judgement, para. 441.) See also *Prosecutor v. Simić*, IT-95-9-T, Judgement, Separate and Partly Dissenting Opinion of Judge Per-Johan Lindholm, paras. 2, 5; *Prosecutor v. Simić*, IT-95-9-A, Judgement, Dissenting Opinion of Judge Schomburg, 28 November 2006, paras. 3, 11-14, 17, 20; *Prosecutor v. Martić*, IT-95-11-A, Judgement, Separate Opinion of Judge Schomburg on the Individual Criminal Responsibility of Milan Martić, 8 October 2008, paras. 2, 5-9; *Prosecutor v. Seromba*, ICTR-2001-66-A, Judgement, 12 March 2008, paras. 171-72 and Dissenting Opinion of Judge Liu, paras. 8-9.

JCE III not to be supported by customary international law. He added, however, that the ECCC Decision lacks sufficient clarity – in particular, “the court omits to scrutinize the necessity” to re-label co-perpetration as JCE I and JCE II.⁴⁸

38. JCE in all its forms has been rejected as a mode of liability applicable at the ICC. This is of *utmost* relevance to the ICTY because the *Tadić* Appeals Chamber relied *inter alia* on Article 25(3)(d)⁴⁹ of the ICC Statute to establish JCE’s customary status.⁵⁰ The ICC Pre-Trial Chambers in *Lubanga*, presided over by former ICTY President Judge Jorda, and in *Katanga* interpreted Article 25(3)(a) of the ICC Statute⁵¹ as joint commission through co-perpetration,⁵² and Article 25(3)(d) as a form of accessory rather than principal liability.⁵³

iii. It is proper to raise the question of JCE’s applicability at this stage

39. On 20 April 2010, the Prlić Defence moved against the application of JCE in favor of co-perpetration.⁵⁴ In a concurring individual opinion, Judge Antonetti noted that “closing submissions,” i.e. this Final Brief and/or closing arguments, is the “proper time” for the Prlić Defence to raise the issue of whether JCE should be disregarded in favor of co-perpetration.⁵⁵
40. The Prlić Defence notes that on 19 February 2007, it submitted that “co-perpetration, indirect co-perpetration, and indirect perpetration are not recognized

⁴⁸ See Schomburg, p. 1. David Scheffer & Anthony Dinh, *The Pre-Trial Chamber’s Significant Decision on Joint Criminal Enterprise for Individual Responsibility*, CAMBODIA TRIBUNAL MONITOR, 3 June 2010, p. 3, available at <http://www.cambodiatribunal.org/images/CTM/ctm%20scheffer%20dinh%20jce%20commentary%203%20june%202010.pdf> (last visited 6 January 2011).

⁴⁹ Article 25(3)(d) of the ICC Statute states: “In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: ... (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime.”

⁵⁰ *Tadić* Appeal Judgement, paras. 222-23.

⁵¹ Article 25(3)(a) of the ICC Statute states: “In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;...”

⁵² *Lubanga* Decision, para. 334; *Katanga* Decision, para. 483.

⁵³ *Lubanga* Decision, para. 337; *Katanga* Decision, para. 490.

⁵⁴ Jadranko Prlić’s Motion Against the Application of Joint Criminal Enterprise and in Favour of the Application of Co-Perpetration, 20 April 2010 (“Jadranko Prlić’s Motion against JCE”).

⁵⁵ Decision on Jadranko Prlić Motion Against the Application of Joint Criminal Enterprise and in Favour of the Application of Co-Perpetration, Concurring Individual Opinion of the Presiding Judge: Judge Jean-Claude Antonetti, 17 May 2010 (“JCE Decision”).

modes of liability in ICTY jurisprudence” and should not be applied in this case.⁵⁶

The Trial Chamber has considered that it “may allow a party to change its opinion during the proceedings if done on valid grounds; provided, nevertheless, that such party explains its change of mind and does not attempt to maintain silence over contradictions in its requests.”⁵⁷

41. The ECCC Decision and the *Katanga* Decision are substantial developments arising since 19 February 2007 which, together, *cast doubt* on JCE I and II’s status as customary international law, and *discredit* JCE III’s purported status in customary international law. These developments, together with the *Lubanga* Decision, explain why the Prlić Defence has changed its opinion on this issue.⁵⁸ Failure to challenge JCE at this point in the proceedings would constitute a lack of due diligence,⁵⁹ violating Dr. Prlić’s fair trial rights.⁶⁰

iv. The Trial Chamber may depart from the findings of the Tadić Appeals Chamber on this issue

42. Although Trial Chambers are generally obliged to follow decisions issued by the Appeals Chamber, “[i]t is open to a Trial Chamber to express a reasoned disagreement with ... a decision of the Appeals Chamber ... [that] may in the appropriate case lead to a reconsideration by the Appeals Chamber of its earlier decision.”⁶¹ *Stare decisis* is “a principle of policy and not a mechanical formula of adherence to the latest decision.”⁶²

⁵⁶ Joint Defence Joinder to Petković’s Submission to the Trial Chamber to Order the Prosecution to Strike from the Amended Indictment Certain Parts Alleging Co-Perpetration, Indirect Co-Perpetration, Indirect Perpetration and Aiding and Abetting of JCE, 19 February 2007, para. 1.

⁵⁷ JCE Decision, p. 5.

⁵⁸ The change of circumstances brought about by the *Lubanga* and *Katanga* Decisions was also the subject of Jadranko Prlić’s Motion Against JCE.

⁵⁹ Code of Professional Conduct for Counsel Appearing Before the International Tribunal as amended on 29 June 2006 (IT/125, REV.2), Article 11. *See also Prosecutor v. Haradinaj et al.*, IT-04-84-AR65.2, Decision on Lahi Brahimaj’s Request to Present Additional Evidence under Rule 115, 3 March 2006, para. 10; *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, Decision on Naletilić’s Consolidated Motion to Present Additional Evidence, 20 October 2004, para. 30; *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Decision on the Admission of Additional Evidence Following Hearing of 30 March 2001, 11 April 2001, para. 12. *See also Prosecutor v. Delalić et al.*, IT-96-21-A, Judgement, 20 February 2001, para. 631: “Failure of counsel to object will usually indicate that counsel formed the view at the time that the matters to which the judge was inattentive were not of such significance to his case that the proceedings could not continue without attention being called thereto.” (emphasis added).

⁶⁰ ICTY Statute, Articles 20-21.

⁶¹ *Prosecutor v. Blagojević et al.*, IT-02-60AR65 & IT-02-60-AR65.2, Decision on Provisional Release of Vidoje Blagojević and Dragan Obrenović, Separate Opinion of Judge Hunt, 3 October 2002, para. 5.

⁶² *Lawrence v. Texas*, 539 U.S. 558, 577 (2003) citing *Helvering v. Hallock*, 309 U.S. 106, 119 (1940).

v. If JCE is found to be applicable, it must be interpreted restrictively

43. If the Trial Chamber considers itself bound to follow the previous ICTY jurisprudence and apply JCE in this case, it must remain mindful of the following limitations of the doctrine suggested by Judge Cassese, one of the theory's principal architects: **a.** the contribution of a participant in a common plan must be "substantial";⁶³ **b.** JCE III is not applicable when the crime other than that agreed upon requires a special intent (e.g. persecution as a crime against humanity);⁶⁴ and **c.** JCE should not apply when the physical perpetrators of the crimes charged were not part of the criminal plan or agreement, but rather committed the crimes unaware that a plan or agreement had been entered into by another group of persons.⁶⁵

B. Other modes of liability under Article 7(1)

44. In order to establish individual criminal responsibility under Article 7(1), the OTP must prove beyond reasonable doubt that a crime referred to in Articles 2 to 5 of the Statute was committed by the principal offender(s).⁶⁶ The OTP must also prove beyond reasonable doubt that the Accused was at least aware of the substantial likelihood that the crime or the underlying offense would be committed.⁶⁷

⁶³ See Cassese, at 128 citing *Limaj* Trial Judgement, paras. 665-70.

⁶⁴ In such cases, participants in a JCE other than the "primary offender" (i.e. the person who, in addition to committing the agreed upon crimes, also perpetrates a crime not part of the common criminal plan or purpose) could only be charged with aiding and abetting the crimes committed by the "primary offender," if the requisite conditions for aiding and abetting exist. Cassese, at 121-22.

⁶⁵ Cassese, at 126 citing *Brđanin* Trial Judgement, para. 345. Cassese notes that the *Brđanin* Trial Chamber "would seem to be correct. To extend criminal liability to instances where there was no agreement or common plan between the perpetrators and those who participated in the common plan would seem to excessively broaden the notion, which is always premised on the *sharing of a criminal intent by all* those who take part in the common enterprise (and this premise is the *sine qua non* condition for the possible additional liability arising in the third category of JCE, where the 'primary offender' commits a further crime, not envisaged in the common plan.)"

⁶⁶ For "planning," see *Blaškić* Trial Judgement, paras. 278-79; *Kordić* Trial Judgement, para. 386; *Akayesu* Trial Judgement, para. 473. For "instigating," see *Blaškić* Trial Judgement, para. 280; *Krstić* Trial Judgement, para. 601; *Kordić* Trial Judgement, para. 387; *Akayesu* Trial Judgement, para. 482. For "ordering," see *Stakić* Trial Judgement, para. 445. For "aiding and abetting," see *Tadić* Appeal Judgement, para. 229; *Kordić* Trial Judgement, para. 389; *Simić* Trial Judgement, para. 161.

⁶⁷ For planning, see *Milošević* Appeal Judgement, para. 268; *Milutinović* Trial Judgement, para. 81; *Blaškić* Appeal Judgement, para. 41; for "instigating," see *Kordić* Appeal Judgement, para. 32; *Milutinović* Trial Judgement, para. 83; *Kvočka* Trial Judgement, para. 252; *Kordić* Trial Judgement, para. 387; *Nahimana* Appeal Judgement, para. 480; for "ordering," see *Kordić* Appeal Judgement, para. 30; *Martić* Appeal Judgement, paras. 221-222; *Milutinović* Trial Judgement, para. 85; *Nahimana* Appeal Judgement, para. 481; but see *Blaškić* Appeal Judgement, paras. 41-42: "an awareness of a higher likelihood of risk and a volitional element ... incorporated in the legal standard" must be proven;" for "committing." See also *Kordić* Appeal Judgement, para. 112; *Lukić* Trial Judgement, para. 900; *Limaj* Trial Judgement, para. 509;

i. Planning

45. To establish criminal responsibility for planning, the OTP must further prove that at both the preparatory and execution stage there was at least a substantial level of involvement in the planning on the part of the Accused.⁶⁸

ii. Instigating

46. The OTP must prove beyond reasonable doubt that a nexus existed between instigation and commission;⁶⁹ it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.⁷⁰ For liability to arise pursuant to an omission, it must be possible to show that the conduct of the Accused was intended to cause the perpetrator to act and that the omission actually had that result.⁷¹

iii. Ordering

47. The OTP must provide “proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused’s order;”⁷² the Accused’s issuance of the order must have been a factor substantially contributing to the physical commission of a crime or underlying offense.⁷³ Omission is not deemed sufficient to uphold a charge because the “very notion of ‘instructing’ requires a positive action.”⁷⁴ The Appeals Chamber has underlined that when establishing the *actus reus* and the *mens rea* of “ordering” through inferences from circumstantial evidence, great caution is required.⁷⁵

iv. Committing

48. The *actus reus* of “committing” requires that the Accused participated, physically or otherwise directly, alone or jointly with others, in the material elements of a

Galić Trial Judgement, para. 172; *Kvočka* Trial Judgement, para. 251; *but see Simić* Trial Judgement, para. 137: the Accused must have “intended” the offense to occur as a result of his conduct.

⁶⁸ *Brđanin* Trial Judgement, para. 268; *Galić* Trial Judgement, para. 168.

⁶⁹ *Blaškić* Trial Judgement, para. 280.

⁷⁰ *Karera* Appeal Judgement, para. 317; *Kordić* Appeal Judgement, para. 27; *Milutinović* Trial Judgement, para. 84; *Nahimana* Appeal Judgement, para. 480; *Gacumbitsi* Appeal Judgement, para. 129. *See also Kvočka* Trial Judgement, para. 252, where the Trial Chamber held that the instigation must be a “clear contributing factor to” the commission of the crime.

⁷¹ *Blaškić* Trial Judgement, para. 278.

⁷² *Milutinović* Trial Judgement, para. 86. *See also Galić* Trial Judgement, para. 168.

⁷³ *Milutinović* Trial Judgement, para. 88.

⁷⁴ *Milosević* Appeal Judgement, para. 292; *Galić* Appeal Judgement, para. 176.

⁷⁵ *Milošević* Appeal Judgement, para. 265.

crime provided for in the Statute.⁷⁶ In cases of commission by omission, the *actus reus* requires an elevated degree of “concrete influence.”⁷⁷

v. Otherwise Aiding and Abetting

1. Aiding and abetting through a positive act

49. In order to establish criminal responsibility for aiding and abetting, the OTP must prove that: **a.** the Accused provided practical assistance, encouragement or moral support to the commission of a crime or underlying offense; and **b.** this practical assistance, encouragement, or moral support had a substantial effect on the commission of the crime or the underlying offense.⁷⁸ The Appeals Chamber has held that the determination of an individual’s authority or capacity to make a significant contribution to the commission of a crime is to be made on a case-by-case basis.⁷⁹

50. The *mens rea* requirements of aiding and abetting are that either: **a.** the Accused intentionally performed an act with the knowledge that it would lend practical assistance, encouragement or moral support to the commission of a crime or underlying offense;⁸⁰ or **b.** the Accused was aware of the essential elements of the crime or underlying offense with which he is charged, including the mental state of the physical or intermediate perpetrator,⁸¹ and knew that he would thereby assist the commission of the crime.⁸²

2. Aiding and abetting by omission

51. To be convicted of aiding and abetting by omission, “[t]he aider and abettor must know that his omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was

⁷⁶ *Lukić* Trial Judgement, para. 897; *Limaj* Trial Judgement, para. 509; *Akayesu* Appeal Judgement, para. 161.

⁷⁷ *Orić* Appeal Judgement, para. 41.

⁷⁸ *Blagojević* Appeal Judgement, para. 127; *Blaškić* Appeal Judgement, para. 46; *Vasiljević* Appeal Judgement, para. 102; *Simić* Appeal Judgement, para. 85; *Aleksovski* Appeal Judgement, paras. 162-63; *Kvočka* Appeal Judgement, para. 89; *Lukić* Trial Judgement, para. 901; *Milutinović* Trial Judgement, para. 89; *Karemera* Appeal Judgement, para. 321; *Nahimana* Appeal Judgement, para. 482.

⁷⁹ *Blagojević* Appeal Judgement, para. 195.

⁸⁰ *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102; *Milutinović* Trial Judgement, para. 93.

⁸¹ *Aleksovski* Appeal Judgement, para. 162; *Simić* Appeal Judgement, para. 86; *Milutinović* Trial Judgement, para. 93.

⁸² *Tadić* Appeal Judgement, para. 229.

ultimately committed by the principal.”⁸³ The critical issue to be determined in every case is whether the failure to discharge a legal duty assisted, encouraged, or lent moral support to and had a substantial effect upon the perpetration of a crime.⁸⁴

3. Aiding and abetting by omission proper

52. To be convicted of aiding and abetting by “omission proper,” four elements must be met: **a.** the Accused must have a legal duty to act;⁸⁵ **b.** he must fail to act; **c.** his failure to act must assist, encourage, or lend moral support to the commission of a crime, and; **d.** his failure to act must have a substantial effect on the realization of the crime.⁸⁶

4. Aiding and abetting by tacit approval and encouragement

53. Individual responsibility for aiding and abetting by tacit approval and encouragement is based “not on a duty to act, but from the encouragement and support that might be afforded to the principals of the crime from such an omission.”⁸⁷ The physical presence of an Accused at the crime scene is an important *indicium* of tacit approval and encouragement.⁸⁸ While the encouragement or tacit approval provided to a perpetrator need not be explicit, it must constitute a “substantial” contribution to the crime.⁸⁹ The principal perpetrators of the crime must be aware of the Accused’s contribution.⁹⁰

⁸³ *Mrkšić* Appeal Judgement, para. 49; *Orić* Appeal Judgement, para. 43.

⁸⁴ *Mrkšić* Appeal Judgement, para. 146.

⁸⁵ See *Mrkšić* Appeal Judgement, para. 151: “The Appeals Chamber recalls that it has previously recognised that the breach of a duty to act imposed by the laws and customs of war gives rise to individual criminal responsibility.” See also *Bagilishema* Trial Judgement, para. 29: “An individual incurs criminal responsibility for an omission by failing to perform an act in violation of his or her duty to perform such an act.”

⁸⁶ *Mrkšić* Appeal Judgement, para. 49 citing *Orić* Appeal Judgement, para. 43.

⁸⁷ *Brđanin* Appeal Judgement, para. 273; *Kayishema and Ruzindana* Appeal Judgement, paras. 201-202.

⁸⁸ *Brđanin* Appeal Judgement, para. 273. See also *Mrkšić* Appeal Judgement, para. 202: “[T]he Trial Chamber took into account that none of the perpetrators saw Šljivančanin at Ovčara in finding that ‘it cannot be concluded that his presence was deemed by the perpetrators as tacit approval or encouragement.’” See also *Prosecutor v. Kayishema & Ruzindana*, ICTR-95-1-T, Judgement (Reasons), 1 June 2001 (“*Kayishema & Ruzindana* Trial Judgement”), para. 200, referring to the discussion of the *Synagogue* case in the *Furundžija* Trial Judgement, para. 207 (emphasis added).

⁸⁹ *Brđanin* Appeal Judgement, para. 277.

⁹⁰ *Brđanin* Appeal Judgement, para. 277.

V. RESPONSIBILITY OF CIVILIAN SUPERIORS UNDER ARTICLE 7(3)

54. In order to hold a civilian superior responsible under Article 7(3), three elements must be established: **a.** the existence of a superior-subordinate relationship; **b.** the superior knew or had reason to know information which clearly indicated that the criminal act was about to be or had been committed, and; **c.** the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.⁹¹ The subordinates of a superior must have committed an act that constituted a crime punishable under the Statute.⁹²

A. Existence of a superior-subordinate relationship

55. The superior-subordinate relationship must have existed at the time of the commission of the crimes.⁹³ Substantial influence over subordinates that falls short of effective control (i.e. “material ability to prevent or punish criminal conduct”)⁹⁴ is insufficient to hold a superior criminally responsible.⁹⁵ Especially when a superior is alleged to be a member of a collective body with authority shared among various members, “it is appropriate to assess on a case-by-case basis the power of authority actually devolved,”⁹⁶ taking into account the cumulative effect of the various functions of the superior.⁹⁷ In situations of armed conflict, *de facto* authority could be more significant than *de jure* authority for civilian superiors;⁹⁸ *de jure* authority creates a rebuttable presumption that effective control exists.⁹⁹ Generally, civilian superiors have been convicted by the *ad hoc* tribunals via command responsibility only when either: **a.** they were

⁹¹ Orić Appeal Judgement, para. 18; Halilović Appeal Judgement, para. 59; Kordić Appeal Judgement, para. 839; Blaškić Appeal Judgement, para. 484; Aleksovski Appeal Judgement, para. 72.

⁹² Gacumbitsi Appeal Judgment, para. 143.

⁹³ Prosecutor v. Kunarac et al., IT-96-23 & IT-06-23/1, 22 February 2001, para 399; Halilović Appeal Judgment, para. 67; Prosecutor v. Bagosora et al., ICTR-98-41-T, Judgment and Sentence, 18 December 2008, para. 2012. See also Prosecutor v. Bemba, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009 (“Bemba Decision on Confirmation of Charges”), para. 419: “the suspect must have had effective control at least when the crimes were about to be committed.”

⁹⁴ Orić Appeal Judgement, para. 20; Kajelijeli Appeal Judgement, para. 86; Halilović Appeal Judgement, para. 59; Blaškić Appeal Judgement, para. 484; Čelebići Appeal Judgment, para. 256. See also Prosecutor v. Ntagerura et al., ICTR-99-46-A, Judgment, 7 July 2006 (“Ntagerura Appeal Judgement”), para. 341. See also ICC Statute, Article 28(b)(ii): “The crimes concerned activities that were within the effective responsibility and control of the superior.”

⁹⁵ Čelebići Appeal Judgement, para. 266; Halilović Trial Judgement, para. 59; Blagojević & Jokić Trial Judgement, para. 791.

⁹⁶ Bagilishema Appeal Judgement, para. 51.

⁹⁷ Stakić Trial Judgement, para. 494.

⁹⁸ Brđanin Trial Judgement, para. 281.

⁹⁹ Čelebići Appeal Judgement, para. 197.

members of the top political echelons and in charge of military and paramilitary forces; or **b.** they were individuals who were part of the military hierarchy but whose civilian status remained undecided and who operated in a paramilitary setting rather than in a civilian one.¹⁰⁰

B. The superior knew or had reason to know that the criminal act was about to be or had been committed

56. Article 28(b)(i) of the ICC Statute codifies an express standard of *mens rea* for non-military superiors, pursuant to which criminal liability arises only when the superior “either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes.”¹⁰¹ The “consciously disregarded” standard is higher and more subjective than the “should have known” negligence standard applicable to military superiors pursuant to Article 28(a)(i).¹⁰² It is akin to “wilful blindness,” whereby

¹⁰⁰ Yael Ronen, Superior Responsibility of Civilians for International Crimes Committed in Civilian Settings, 43 VAND. J. TRANSNAT'L L. 313, 322, 329 (2010) (“Ronen”). The author notes that “despite repeated statements [by the ICTY and ICTR] to the effect that civilian superior responsibility is an established doctrine in the ad hoc tribunals,” the entire jurisprudence of the ICTY and ICTR prior to *Nahimana* offers only two cases of conviction solely on the basis of superior responsibility, both of which concern military or paramilitary persons. *Nahimana* is the first case in which a civilian was convicted solely on the basis of his superior responsibility in a purely civilian setting. *Id.*, at 330. *Nahimana* is distinguishable from this case. *Nahimana* was a superior at the Radio Television Libre des Mille Collines (RTL) who exercised *de facto* authority over other staff members. *Cf.* Dr. Prlić’s lack of *de facto* authority over the Departments, Ministries, Sub-Departments, municipalities, and military. *Nahimana* Appeal Judgement, para. 822. *Nahimana* was referred to as the “the brain behind the project” and “the boss who gave orders.” *Id.*, para. 808. *Cf.* Dr. Prlić’s limited role when compared with Boban, the President of the HZ HB Presidency. *Nahimana* played a primary role in the creation of the RTL, had control over the organization’s finances, and knew of its future plans. *Id.*, paras. 803, 805, 828. *Cf.* Dr. Prlić’s position as an “outsider” to the HDZ political establishment. *Nahimana* also intervened with RTL journalists to stop attacks against UNAMIR. *Id.*, paras. 832-33. Although Dr. Prlić met with internationals, *Nahimana* demonstrates that this *indicium* of *de facto* control alone is insufficient to establish a superior-subordinate relationship in a civilian setting. In addition, as the Chairman of the Technical and Programme Committee of RTL, *Nahimana* had a specific obligation to prevent or punish the broadcast of criminal discourse. *Id.*, para. 806. *Cf.* Dr. Prlić’s lack of *de jure* authority to prevent and punish criminal activity. As the Director of RTL, *Nahimana* had the material ability to prevent or punish the broadcast of criminal discourse by RTL. *Id.*, para. 817, 822. *Cf.* Dr. Prlić’s lack of *de facto* ability to prevent and punish crimes which were being committed.

¹⁰¹ For the “consciously disregarded” test applicable to civilian superiors, see ICC Statute, Article 28(b)(i): “With respect to superior and subordinate relationships not described in paragraph (a) [i.e. non-military commanders], a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes.” See also *Bemba* Confirmation of Charges, para. 404.

¹⁰² See HECTOR OLÁSULO, CRIMINAL RESPONSIBILITY OF SENIOR POLITICAL AND MILITARY LEADERS AS PRINCIPALS TO INTERNATIONAL CRIMES 101 (Hart Publishing, 2009).

the superior knowingly ignores information before him.¹⁰³ The ICTR *Kayishema and Ruzindana* Trial Chamber construed “had reason to know” as requiring “conscious disregard” when establishing the liability of civilian superiors pursuant to command responsibility.¹⁰⁴

57. The ICC Statute is considered to codify customary international law on international crimes and modes of liability.¹⁰⁵ The Defence submits that the “consciously disregarded” test reflects today’s customary international law regarding the *mens rea* that the OTP must prove to establish the command responsibility of civilian superiors. As demonstrated by the *Kayishema and Ruzindana* Trial Chamber, the test is not incongruent with the “had reason to know” standard prescribed by Article 7(3) of the Statute. Pursuant to the principle of *lex mitior*,¹⁰⁶ the Trial Chamber must construe “had reason to know” to equate with “conscious disregard” when evaluating the liability of civilian superiors pursuant to Article 7(3) in this case. If the Trial Chamber is in any doubt as to the *mens rea* required to establish civilian superiors’ liability pursuant to Article 7(3), then pursuant to the principle of *in dubio pro reo*,¹⁰⁷ the higher threshold test more favorable to the Accused must be applied.
58. If the Trial Chamber considers that it is bound to apply the same “had reason to know” standard to both civilian and military superiors, ICTY and ICTR Appeals Chambers have held that the standard constitutes a higher threshold test than the

¹⁰³ See Greg R. Vetter, *Command Responsibility of Non-Military Superiors in The International Criminal Court (ICC)*, 25 YALE J. INT’L L. 89, 117 (2000).

¹⁰⁴ *Kayishema and Ruzindana* Trial Judgement, paras. 227-28.

¹⁰⁵ The ICC Statute was drafted within the broader negotiations over a 3-year period and with 160 participating countries. See John Washburn, *The Negotiation of the Rome Statute for the International Criminal Court and International Lawmaking in the 21st Century*, 11 PACE INT’L L. REV. 361 (1999). The main aim of the Rome Conference was to achieve the broadest possible acceptance of the ICC by adopting into the Statute provisions recognized under customary international law. See GERHARD WERLE, *PRINCIPLES OF INTERNATIONAL CRIMINAL LAW* 402, fn. 108 (TMC Asser Press, 1st ed., 2005) (“WERLE”). Moreover, “[n]umerous treaties in the area of international criminal law expressly or incidentally codify customary law; this is true, for example, of the definitions of crimes in the ICC Statute” and “The provisions of Article 25(3)(b), second and third alternatives, of the ICC Statute reflect customary law.” WERLE, at 45, marginal no. 127 and 125, marginal no. 358 (TMC Asser Press, 1st ed., 2005).

¹⁰⁶ Adherence to the principle of *lex mitior* requires that where a law that binds the Tribunal is subsequently changed to a more favorable law by which the Tribunal is also obliged to abide, for example today’s customary international law, the more lenient law will apply. See *Prosecutor v. Deronjić*, IT-02-61-A, Judgement, 20 July 2005, para. 97.

¹⁰⁷ The *in dubio pro reo* principle is accepted by as a corollary to the presumption of innocence and the burden of proof beyond reasonable doubt. See *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, 16 November 1998, para. 601; *Limaj* Appeal Judgement, para. 21.

“should have known” standard applicable to military superiors at the ICC.¹⁰⁸

“Should have known” is a negligence standard pursuant to which a military superior can be held liable if he is negligent in failing to gather knowledge regarding his subordinates’ criminal activities.¹⁰⁹

59. By contrast, “had reason to know” means that a lack of due diligence pursuant to a duty to be kept informed of subordinates’ activities is not criminal.¹¹⁰ A superior only meets the “had reason to know” standard if there was *sufficiently alarming* information that put him on notice of the risk that crimes were about to be or had been carried out by his subordinates.¹¹¹ The superior may not be liable for neglecting to acquire knowledge of the acts of his subordinates.¹¹²

C. Failure to take necessary or reasonable measures to prevent or punish

60. “Necessary measures are the measures appropriate for the superior to discharge his obligation, showing that he genuinely tried to prevent or punish.”¹¹³ “Reasonable measures are those reasonably falling within the material powers of the superior.”¹¹⁴ The degree to which a superior has effective control or material ability to act will determine whether he reasonably took the necessary measures required to prevent or punish.¹¹⁵

¹⁰⁸ *Blaškić* Trial Judgement, paras. 314-32. However, the *Blaškić* Appeals Chamber overruled this interpretation of “had to reason to know.” See *Blaškić* Appeal Judgement, para. 62.

¹⁰⁹ *Bemba* Decision on Confirmation of Charges, para 432, citing *Blaškić* Trial Judgement, para. 332.

¹¹⁰ *Čelebići* Appeal Judgement, paras. 235-41; *Bagilishema* Appeal Judgment, para 35: “references to negligence in the context of superior responsibility are likely to lead to confusion of thought.”

¹¹¹ *Strugar* Appeal Judgement, para. 304; *Hadžihasanović & Kubura* Appeal Judgement, para. 27; *Čelebići* Appeal Judgement, para. 241; *Blaškić* Appeal Judgement, para. 62; *Bagilishema* Appeal Judgement, para. 42; *Krnojelac* Appeal Judgement, para. 151.

¹¹² *Blaškić* Appeal Judgement, para. 406; *Bagilishema* Appeal Judgement, paras. 34-35; but see *Čelebići* Appeal Judgement, para. 226: “knowledge may be presumed if a [superior] ... had the means to obtain the relevant information of a crime and deliberately refrained from doing so. ...[A]lthough a commander’s failure to remain apprised of his subordinates’ action, or to set up a monitoring system may constitute a neglect of duty which results in liability within the military disciplinary framework, it will not necessarily result in criminal liability.”

¹¹³ *Čelebići* Trial Judgement, para. 601; *Blaškić* Trial Judgement, para. 333; *Bagilishema* Trial Judgement, para. 47.

¹¹⁴ *Id.*

¹¹⁵ *Naletilić* Trial Judgement, para. 76; *Blaškić* Trial Judgement, para. 335; *Čelebići* Trial Judgement, para. 395.

VI. CONCURRENCE OF THE MODES OF INDIVIDUAL CRIMINAL RESPONSIBILITY

61. The OTP cumulatively charged Dr. Prlić with responsibility for the crimes in Counts 1 through 26 under different modes of liability pursuant to Articles 7(1) and 7(3) of the Statute. The Trial Chamber has the obligation to choose under which mode of responsibility it will assess the evidence.¹¹⁶
62. First, an Accused cannot be convicted for a crime through more than one mode of responsibility under Article 7(1) related to the same conduct.¹¹⁷ If a Chamber decides to convict an Accused for the commission of the crime, it may consider any involvement the Accused had in planning, instigating, or ordering the crime as an aggravating factor in the sentencing.¹¹⁸
63. Second, a Chamber may not concurrently convict an Accused under any of the modes of responsibility in Article 7(1) and simultaneously under Article 7(3).¹¹⁹ The Tribunal has accepted that when the requirements of both modes of responsibility are met with respect to the same count, a conviction should be entered only on the basis of Article 7(1) and the Accused's superior position should be considered as an aggravating factor in the sentencing.¹²⁰ However, a conviction pursuant to Article 7(3), where the only available Article 7(1) modes of responsibility are realized by an omission, is not precluded.¹²¹

VII. THE DEFENCE CASE

A. The importance of context

64. To understand the events that occurred in BiH during the period of the Indictment, it is essential to view them in their historical context. It is also necessary to review the historical events leading up to the break-up of the SFRY. It is important to understand the SFRY's political system, its economic structure at the Federal,

¹¹⁶ *Milutinović* Trial Judgment, para. 76; *Krstić* Trial Judgement, para. 602; *Furundžija* Trial Judgment, para. 189.

¹¹⁷ *Kvočka* Appeal Judgement, para. 104; *Kordić* Appeal Judgement, para. 34; *Čelebići* Appeal Judgement, para. 745.

¹¹⁸ See e.g. *Milutinović* Trial Judgment, para. 77; *Brđanin* Trial Judgment, para. 268; *Stakić* Trial Judgment, para. 443.

¹¹⁹ *Blaškić* Appeal Judgement, para. 92; *Kordić* Appeal Judgement, para. 35; *Prosecutor v. Jokić*, IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005, paras. 23-24; *Milutinović* Trial Judgment, para. 78.

¹²⁰ *Blaškić* Appeal Judgement, paras. 91-92. See also *Kamuhanda* Appeal Judgement, Separate and Partially Dissenting Opinion of Judge Shahabuddeen, 19 September 2005, para. 410.

¹²¹ *Milutinović* Trial Judgment, para. 79; *Strugar* Trial Judgment, para. 355.

Republic and municipal levels, and the involvement of the international community (e.g. the European Community (“EC”), later the European Union (“EU”), the UN, the US) in assisting with and searching for solutions involving either preservation of the SFRY or providing for a peaceful break-up. It is also important to understand events in Croatia, as it came under JNA attack upon seeking independence, and the events and circumstances subsisting in BiH prior to and during this period. Hence, the scene will first be set before discussing the events.

65. Theories abound as to why the SFRY disintegrated. The underlying reasons are not terribly relevant to this case, especially in light of this court’s essential purpose. Establishing the historical truth on this (or any other) issue is neither possible nor practical in a court of law. What matters are the events that follow the break-up and to what extent any of these events can be linked to pre-existing issues.

B. The 1990 elections

66. Yugoslavia leading up to the first democratic elections in 1990 was already under strain, particularly economically. Despite economic liberalization and efforts to switch from a command to a market economy, the SFRY’s economic prosperity had begun to wane. When the results of the 1990 elections showed that the citizens of the SFRY at both the Federal and Republic levels identified more with parties representing national interests, it was inevitable that the SFRY was set for divorce. It was not a matter of *if* but of *when* and *how*.
67. The political system in the SFRY at the time of the elections was based on the 1974 Constitution. At the Federal level, the Constitution provided for a Presidency consisting of eight members representing six Republics and two Autonomous Provinces,¹²² with the President of the Presidency rotating between the six Republics. The President was first among equals, but in a country where appearances are important – especially for ethnic/national reasons – a smooth and predictable rotation of this post was crucial. The Presidency represented the State,

¹²² 1D02976, SFRY 1974 Constitution, Article 321: “The S. F. R. Y. Presidency shall be composed of a member from each Republic and Autonomous Province, elected by secret ballot by the Assemblies of the Republics and the Assemblies of the Autonomous Provinces, respectively, at o. joint session of all Chambers of the Assemblies, and of the President of the League of Communists of Yugoslavia by virtue of his office.”

with Laws being adopted by the Assembly, with the Government (i.e. the executive branch, as supposed to *the* government as commonly referred to in a generic sense for a State's polity encompassing executive, legislative and administrative bodies) composed of the President of the Government and Ministers responsible for the administration of day-to-day affairs. At the Republic level, the political system was similar; each Republic had a Presidency, a National Assembly and a Government. A somewhat similar structure was in place at the municipal levels. The significance of the internal political organization of the SFRY, in particular in BiH, becomes evident as the SFRY began to break apart and the Republics declared their independence.

68. Following the 1990 elections in BiH, as in the past, political and administrative positions were allocated based on formulae ensuring the delicate balance of the political and administrative distribution of power and influence among the Republic's three constituent peoples (i.e. Muslims, Serbs and Croats). This became highly relevant once the BiH Serb political leadership expressed their desire to remain part of the SFRY. With BiH's independence hanging in the balance, the BiH Serbs took steps to block the functioning of Republican institutions. What ensued was a series of efforts by all three constituent peoples to formulate a political re-organization of BiH that would remain territorially intact within its Republican borders.
69. The SFRY was under political strain even before the elections. A major contributing factor was the deteriorating economic situation and the perceived notion of inequity resulting from the distribution of federal revenues: wealthy and productive Republics were disproportionately contributing to the federal services being provided to poorer and less productive Republics. Internally, efforts were being made to find solutions to preserve the SFRY – if not as shaped after World War II and as created by the Allies, then in some sort of a loose federation or confederation. This process led to a series of round-robin meetings among the Presidents of the Republics, with discussions generally being hosted by the Presidents in their respective Republics on a rotating basis. Invariably, little if anything was resolved through these discussions, though perhaps this process did

enable some Republics, such as Macedonia, to seek independence without incurring the JNA's wrath.

70. When the sounds of the war drums began reverberating around the world heralding the inevitable hostile disintegration of the SFRY, the international community pressed all parties concerned to hold meetings.¹²³ The purpose of the

¹²³ - 1D00894, DAVID OWEN, BALKAN ODYSSEY 1, (Indigo, 1996) ("OWEN"), EU, Netherlands proposal about redrawing borders in Yugoslavia, p. 1D19-0114.

- 1D00893, The European Community Conference (1991-1992), 4 November 1991, p. 1D19-0102:
2. The republics recognize that cooperation between them and the creation of the association is part of the process of building a new Europe envisaged in the Paris Charter of November 1990, and will improve the prospects for cooperation and closer relations with the European Community. They will cooperate in the fields for which these agreements provide and other agreed fields, without thereby precluding closer forms of cooperation in such areas between republics that so wish.

- 4D00540, The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples, p. 4D21-0217:

3) – Consequently, the Arbitration Committee is of the opinion:

- that the Socialist Federal Republic of Yugoslavia is in the process of dissolution;
- that it is incumbent upon the Republics to settle such problems of state succession as may arise from this process in keeping with the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities;...

- 1D00398, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro Plan), p. 1D19-0037:

Annexes of 2 April 1992

ANNEX I

The leaders of the three main parliamentary parties meeting in Brussels under the auspices of the European Community for the sixth round of talks on future constitutional arrangements for Bosnia and Herzegovina:

- Solemnly undertake to do all in their power to bring down the level of violence in Bosnia and Herzegovina,

- Urgently appeal to all in Bosnia and Herzegovina, regardless of ethnic origins, religious beliefs and political affiliation, to refrain from violence, provocation of violence and from any other military or political action that might jeopardise the agreements already made by the three parties and cast doubts on a successful outcome of the talks.

They are firmly convinced that a peaceful environment will facilitate understanding, speed up negotiations and allow for the drafting of a new constitution acceptable to all in the shortest possible time.

- P00205, UNSC Resolution 752, 15 May 1992, ERN 0035-9896:

1. Demands that all parties and others concerned in Bosnia-Herzegovina stop the fighting immediately, respect immediately and fully the cease-fire signed on 12 April 1992, and cooperate with the efforts of the European Community to bring about urgently a negotiated political solution respecting the principle that any change of borders by force is not acceptable;...

- P00232, UNSC Resolution 757, 30 May 1992, ERN 0299-1390:

20. Reiterates the call in paragraph 2 of resolution 752 (1992) that all parties continue their efforts in the framework of the Conference on Yugoslavia and that the three communities in Bosnia and Herzegovina resume their discussions on constitutional arrangements for Bosnia and Herzegovina;...

- P00387, UNSC Resolution 770, 13 August 1992, ERN 00275416:

Underlining once again the imperative need for an urgent negotiated political solution to the situation in the Republic of Bosnia and Herzegovina to enable that country to live in peace and security within its borders...

- P00406, Resolution adopted by the General Assembly at its 46th Session regarding the situation in Bosnia and Herzegovina. Ref: A/RES/46/242, 25 August 1992, ERN 04622821:

1. Demands that all parties to the conflict immediately stop fighting and find a peaceful solution in line with the Charter of the United Nations and the principles of international law, in particular the principles of respect for sovereignty and territorial integrity of States, non-recognition of the fruits of aggression and non-recognition of the acquisition of territory by force;...

- 1D00814, Lord Owen speech at Ministerial Level Meeting of the Steering Committee of the International Conference on the Former Yugoslavia, Geneva, 16 December 1992, p. 1D19-0070:

So far we have failed to get the Bosnia and Herzegovina Government, at political level, to come around the same table with the Bosnian Serbs and Bosnian Croats. With so much of the territory in which they would normally be in the majority under the control of the Bosnian Serbs they are afraid of negotiating now, as they see it, from a position of weakness. We will, I expect, need the support of countries particularly in the Islamic world to encourage President Izetbegović to participate constructively in January. But if he is to compromise we will have to be able to demonstrate that we are capable of rolling back the present Bosnian Serb front line and obtaining their agreement to live under a rule of law that allows for ethnic cleansing to be reserved.

- P00932, Resolution of the General Assembly at its 47th Session regarding the situation in Bosnia and Herzegovina. Ref: A/RES/47/121, 18 December 1992, ERN 04622826-04622827:

Determined to restore peace in the Republic of Bosnia and Herzegovina as well as to preserve its unity, sovereignty, political independence and territorial integrity,

.....

11. Requests the Co-Chairmen of the International Conference on the Former Yugoslavia to conclude expeditiously the work of the Working Group on the Republic of Bosnia and Herzegovina, to report on the reasons for the lack of progress and to submit proposals to overcome obstacles in the fulfilment of their mandate by 18 January 1993.

- 1D01313, Report of the Secretary-General on the International Conference on the Former Yugoslavia, 24 December 1992, pp. 1D36-0091-1D36-0092:

2. The third meeting of the Steering Committee of the International Conference was held, in expanded form and at ministerial level, at Geneva on 16 December 1992. There was an in-depth discussion of the situation in the former Yugoslavia and particularly in Bosnia and Herzegovina.

7. It emerged from the meeting that the Ministers wished the Co-Chairmen of the Steering Committee and the Chairpersons of Working Groups to press ahead with strategies for peaceful solutions to problems in the former Yugoslavia. Many participants expressed the view that negotiated solutions were possible, and preferable to expanding the war. In that regard the view was expressed repeatedly that pressure must be increased upon all parties to cooperate.

- P01047, Opening statement of Mr. Cyrus Vance to Peace Talks, 2 January 1993, ERN 0171-0433:

Excellencies,

This is an historic meeting. It is our best chance for peace and we must ensure that it succeeds. From the beginning, we have sought to work together with you in the quest for peace. Now, for the first time, we have the leaders of all delegations assembled here, together with their political and military advisers. You can act decisively to bring an end to the plight of the people of Bosnia-Herzegovina, who have suffered so grievously.

The process we are starting today can make the difference between peace and war; between life and death for thousands of people. Those gathered around this table have it in their power to prevent us from sliding into escalation, or expansion, of the conflict. You, the leaders around this table, can control what comes next. Peace can only come about with your cooperation. We, in the International Conference, are here to assist you; the decision to choose peace or war rests with you.

It is your historic responsibility to see to it that peace prevails. We therefore welcome you and thank you for accepting our invitation to join us in these peace talks.

- Peaceful solutions are within our grasp. The groundwork has been laid within the International Conference in the form of the principles agreed to, and the commitments made by all of the parties - many of which have unfortunately not been fulfilled. The road to peace lies in implementation of these principles and commitments. Time is running short. We expect that the outcome of the process starting today will be the achievement, and consolidation, of tangible measures for peace.
- P01187, UN Report of the Secretary-General Pursuant to Paragraph 12 of General Assembly Resolution 47/121, UN Document A/47/869/1993, 18 January 1993, ERN 0040-1007:
 - 27. On 8 January 1993, the President of the Security Council made the following statement with respect to the first phase of the peace talks: 'The Security Council fully supports the efforts of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia aimed at achieving an overall political settlement of the crisis through a complete cessation of hostilities and the establishment of a constitutional framework for the Republic of Bosnia and Herzegovina. In this connection, the Council reaffirms the need to respect fully the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina. The Council fully endorses the view of the Secretary-General described in his report (S/25050) that it is the duty of all the parties involved in the conflict in the Republic of Bosnia and Herzegovina, despite the recent provocation, to cooperate with the Co-Chairmen in bringing this conflict to an end swiftly. The Council appeals to all the parties involved to cooperate to the fullest with the peace efforts and warns any party which would oppose an overall political settlement against the consequences of such an attitude; lack of cooperation and non-compliance with its relevant resolutions will compel the Security Council to review the situation, in an urgent and most serious manner, and to consider further necessary measures.
 - P01398, UNSC Doc. S/25221 re: framework for the peace talks for the former Yugoslavia, 2 February 1993, ERN 02122310:
 - 7. The Co-Chairmen are resolute in their conviction that there is no realistic alternative to dealing with the conflict in Bosnia and Herzegovina other than through negotiations in good faith by all sides to reach a comprehensive settlement.
 - 1D02852, Note by the President of the UNSC, 3 March 1993, p. 1D54-0413:

The Security Council demands that the leaders of all the parties to the conflict in the Republic of Bosnia and Herzegovina remain fully engaged in New York in a sustained effort with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia to reach quickly a fair and workable settlement.
 - 1D02908, Report of the UN Secretary-General on the activities of the International Conference on the Former Yugoslavia: Peace talks on BiH, 26 March 1993, p. 1D54-0636:
 - 2. The Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, Cyrus Vance and Lord Owen, have deployed their best endeavours for seven months to bring peace, with justice and respect for human rights, to Bosnia and Herzegovina. They and their colleagues have laboured night and day to help the parties to the conflict reach an honourable and durable settlement.
 - P01924, UNSC Resolution 820: Bosnia and Herzegovina, Ref: S/RES/820, 17 April 1993, ERN 0299-1361:

(The Security Council)

 - 1. Commends the peace plan for Bosnia and Herzegovina in the form agreed to by two of the Bosnian parties and set out in the report of the Secretary-General of 26 March 1993 (S/25479), namely the Agreement on Interim Arrangements (annex I), the nine Constitutional Principles (annex II), the provisional provincial map (annex III) and the Agreement for Peace in Bosnia and Herzegovina (annex IV);...
 - P04483, UNSC Resolution 859: To continue to support UNPROFOR and UNHCR, Bosnia and Herzegovina, Ref: S/RES/859, 24 August 1993, ERN 0299-1347:

(The Security Council)

 - 2. Calls for an immediate cease-fire and cessation of hostilities throughout the Republic of Bosnia and Herzegovina as essential for achieving a just and equitable political solution to the conflict in Bosnia and Herzegovina through peaceful negotiations;...
 - P07268, Resolution adopted by the General Assembly at its 48th Session regarding the situation in Bosnia and Herzegovina, Ref: A/RES/48/153, 20 December 1993, ERN 0462-2816:

meetings was to find a commonly acceptable formula for either the survival of the SFRY, albeit under a different political and constitutional model, or for the secession of some or all of the Republics (and Autonomous Regions), and their establishment and recognition as independent States under conditions that would ensure the rights of their citizens: constituent peoples and national minorities.¹²⁴ In trying to find a solution for BiH – either as part of the SFRY or as an independent State – the international community embarked on a series of negotiations with the leaders of the three constituent nations of BiH (Muslims, Serbs and Croats).¹²⁵

C. Efforts of the internationals

71. Involvement of the internationals, particularly of the EC at this stage of the events, was essential. They provided a *modus vivendi* to the Republics that wished to break away, especially relevant in a Republic such as BiH, composed of three constituent nations / peoples and numerous ethnic minorities, all with divergent interests and aspirations. The bases for secession effectively rested on two

(General Assembly)

23. Reaffirms that all parties to the conflict in the territories of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) share the responsibility for finding a peaceful solution through negotiations under the auspices of the International Conference on the Former Yugoslavia, urges that human rights concerns be given proper priority in the peace process, and calls upon the parties to implement immediately all commitments made in the framework of the conference and to reach a just and durable solution as soon as possible;...

- 1D01545, Note by the President of the Security Council S/PRST/1994/1, pp. 1-2:

The Security Council expresses its deep concern at the continuing widespread hostilities in the Republic of Bosnia and Herzegovina. It deplores the failure of the parties to honour the agreements they have already signed, in the context of the International Conference on the Former Yugoslavia, to implement a cease-fire and to permit the delivery of humanitarian assistance. It condemns the flagrant violations of international humanitarian law which have occurred, for which it holds the perpetrators personally responsible...

The Security Council calls on all the parties to cease hostilities throughout the Republic of Bosnia and Herzegovina and to honour the commitments they have entered into. It calls upon them to negotiate in earnest in the framework of the International Conference on the Former Yugoslavia to achieve an early settlement.

- ¹²⁴ 4D00540, The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples, 20 November 1991, p. 4D21-0217:

3) – Consequently, the Arbitration Committee is of the opinion:

- that the Socialist Federal Republic of Yugoslavia is in the process of dissolution;

- that it is incumbent upon the Republics to settle such problems of state succession as may arise from this process in keeping with the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities;...

- ¹²⁵ Conference on Yugoslavia (The Hague Conference) established by EC in September 1991 under the chairmanship of Lord Carrington, International Conference on the former Yugoslavia, established in London on and started to work on 3 September 1992. See also 1D00894, at 1, EU, Netherlands proposal about redrawing borders in Yugoslavia; 1D00398.

conditions. First, a Republic declaring its independence from the SFRY would be required to hold a referendum; secession required 60% approval. Second, unless there was mutual agreement with bordering Republics on re-drawing the Republic's borders, administrative borders that had existed since the establishment of the SFRY would serve as the permanent borders of any newly created independent State. Acceptance and fulfillment of these two conditions were of particular significance in BiH. As the BiH Serbs wished to remain in a rump Yugoslavia, once the National Assembly voted to hold the referendum, it was obvious that Muslims and Croats would need to cooperate to reach the 60% benchmark. The Muslim leadership, in particular Izetbegović, was noncommittal on BiH's future, while the JNA (even from within BiH) pummeled Croatia for seeking independence.¹²⁶ Meanwhile, the BiH Croats were clear and unequivocal in their desire for an independent BiH.¹²⁷ This was reflected in the large turnout during the referendum.

D. Rounds of negotiations

72. As the SFRY's fate as a Federation comprised of all of its Republics and Autonomous Regions became more and more precarious, the Republics' leaders were encouraged by the Presidency of the SFRY to attempt to find a viable solution through a series of discussions. These meetings, mainly bilateral between the Presidents of the Republics, commenced around the beginning of 1991. Nothing significant was resolved, and the Yugoslav crisis deepened.¹²⁸ Izetbegović suggested a so-called asymmetrical federation, and declined Croatia's and Slovenia's suggestion to establish a confederation.¹²⁹

E. Improbability of Karadžić

73. Much has been reported and claimed about what was supposedly agreed between Slobodan Milošević and Franjo Tuđman during their *tête-à-tête* meeting at Karadžić in late March 1991.¹³⁰ There is no eye-witness testimony or account from credible witnesses of the meeting, there are no written notes, no first-hand admissions or revelations by either Milošević or Tuđman, and no tangible or

¹²⁶ 1D00475; 3D03557.

¹²⁷ 1D00480; P00047; P00060.

¹²⁸ Tr. 27656-27659 (7 May 2008); 1D02910; P00037.

¹²⁹ P00037, Presidential transcript of Meeting of Supreme State Council on 8 June 1991, pp. 3, 6.

¹³⁰ Tr. 4471-4472 (9 July 2006).

reliable sources of evidence regarding what was discussed that would meet the scrutiny of confrontation or the burden of proof beyond reasonable doubt. The only evidence available is press clippings from a journalistic culture which, during this period, was often used to disseminate false information. All who claim to know what was said and agreed upon, gathered their information from what was claimed in the media, what was discussed or repeated by those who read what was claimed in the media, or from supposedly reliable sources of information based, of course, on what was claimed in the media.

74. Aside from the fact that there is no evidence or eye-witness account of what was said in Karadžić, certain facts are worthy of consideration which, albeit circumstantial, do provide a plausible explanation as to why nothing regarding BiH's future was ever agreed upon there. First, this type of meeting would not have been uncommon since the Presidents of the Republics often would hold bilateral and multilateral meetings. Second, a few weeks after the meeting, the JNA/JA attacked Croatia.¹³¹ This attack ultimately resulted in the occupation of over one-third of Croatian territory by Milošević-controlled armed forces.¹³² The financial and social costs to Croatia were enormous. It stretches the imagination to believe that an agreement was reached to carve up BiH between Serbia and Croatia while at the very same time Serbia attacked and subsequently occupied one-third of Croatian territory.
75. On 7 September 1991, a peace conference on Yugoslavia began in The Hague. On 4 November 1991, the Convention of the International Conference on the Former Yugoslavia ("ICFY") was adopted. The Convention, drafted by Lord Carrington, then-Chairman of the ICFY, established the main principles for negotiations: *inter alia* having all parties recognize "the independence, within the existing borders unless otherwise agreed, of those Republics wishing it."¹³³ The Convention also defined "[t]he rights of members of national or ethnical groups" and invited the Republics to guarantee constituent rights,¹³⁴ including individuals'

¹³¹ 3D03742; 3D03720, pp. 3D42-5830-5834.

¹³² Tr. 27682-27687 (7 May 2008); Tr. 27846 (13 May 2008).

¹³³ 1D00893, The European Community Conference (1991-1992), 4 November 1991, Article 1.

¹³⁴ 1D00893, The European Community Conference (1991-1992), 4 November 1991, Article 2b.

rights.¹³⁵ If a group represented the majority it would have the right to autonomy, including the right to establish a legislative body, administrative system and judicial system. Such bodies should reflect “the composition of the population of the area.”¹³⁶

F. War breaks out between the SFRY and Croatia

76. At that time, Croatia was home to approximately 670,000 Serbs, predominantly located in the Krajina region. When Croatia expressed its intention to break away from the SFRY, Belgrade dispatched the JNA to Croatia and the Serbs of Krajina declared their intention and desire to remain within the SFRY and/or be part of Serbia. The fighting in Croatia was intense. At the time, Croatia did not have armed forces. Aside from its police force, all it had were soldiers and officers of Croat origin who were or had been members of the JNA, or were serving abroad (e.g. in the French Foreign Legion), and Croats and Muslims from BiH who volunteered to assist in the defence of Croatia.¹³⁷
77. As war progressed in Croatia, JNA attacks came from multiple directions, including BiH and it would not be until 1995 that Croatia would eventually liberate all of its territory, as reflected by internationally recognized borders (the administrative borders of the Federal Republic of Croatia, the SFRY). Suffice it to say, the war in Croatia had a significant impact on its population; a considerable percentage ended up as displaced persons or refugees.¹³⁸ This fact became relevant as war broke out in BiH and hundreds of thousands of BiH Muslims and Croats fled to the free territory in Croatia. The added cost to Croatia in terms of social services and resources was utterly disproportionate to the geographical landscape and financial capabilities of this nascent State. Notwithstanding these challenges, Croatia made nothing short of Herculean efforts to accommodate all refugees *equally* as best as it could.¹³⁹

¹³⁵ Such rights included the right of individuals to choose the group they wished to belong to, the right to non-discrimination, rights in the field of culture, protection from threat to their existence, proportional participation in public service, and self-government to the point which is practical. 1D00893, Article 3, p. 15.

¹³⁶ 1D00893 Article 5, p. 16.

¹³⁷ Tr. 49300, 49354-49357 (11 February 2009); P00279.

¹³⁸ Tr. 27846-27847 (13 May 2008).

¹³⁹ 1D02585; 1D02628.

G. JNA attacks against Croatia & the UN/UNPROFOR Involvement

78. The OTP depicts Tudman's and Croatia's involvement in the BiH conflict as naked aggression disguised as friendship and cooperation. It portrays Croatia as posing when providing humanitarian and military assistance, and putatively engaging with international negotiators and BiH Serb and Muslim political leaders trying to resolve the conflict in BiH through peaceful means. The basis for this thesis is the JCE alleged in the Indictment. Thus, the OTP views all evidence adduced through *its* JCE lens. In doing so, the interpretive results presented are more akin to self-fulfilling prophecies than hardcore objective conclusions from which the truth can be ascertained. Tudman's thoughts and actions can be neither understood nor appreciated without taking into account events on the ground, and especially the role of the international community.
79. Similarly, events in BiH cannot be examined or appreciated without considering events in Croatia. This is especially true when considering attacks against Croatia on the Dalmatian coast, where the physical terrain (reflected by the recognized borders) made Croatian territory virtually indefensible against attacks from BiH territory by JNA/JA/BiH Serb forces. Croatia came under JNA attack well before BiH. The attack was swift, relentless, and lasting. One-third of Croatia's internationally recognized territory was under occupation until just prior to the Dayton Peace Accords. The JNA attack on Croatia first brought the UN and UNPROFOR into the picture. Their rather modest objective was to stop the fighting and to have UN forces act as a peace-keeping buffer between the SFRY and the newly independent Republic of Croatia. Aside from the areas under SFRY occupation, the most hotly contested area was in the Dalmatian coast. With the Serbs (in the SFRY and BiH) and Muslims coveting a deep-sea port, this region, particularly around Prevlaka, would eventually become a prime target.¹⁴⁰ Only when considering the attack on the historic city of Dubrovnik and the nearby areas, can the positions and actions of the Croatian Army ("HV") be understood

¹⁴⁰ Tr. 19085-19095 (24 May 2007); 3D00942; Tr. 48783-48797 (21 January 2010); 4D00599; 2D03661; 3D02591 and 1D01210. It should come as no surprise that when UN forces vacated the sliver of land that separated the belligerents' confrontation lines, pursuant to the Vance Plan Croatia would quickly move its forces to fill the gap as a precautionary measure to ensure the Republic's territorial integrity. This is significant because as the war picked up in BiH, and with the JA/BiH Serbian and Muslim armed forces coveting a deep-water port on the Adriatic coast, Croatia and its forces (the HV) had no choice but to defend that strategically important territory.

and better appreciated. Neither the UN nor the international community (e.g. EU, NATO or neighboring countries) came to Croatia's military assistance. BiH remained helpless and indifferent as the JNA launched attacks on Croatia from BiH territory. The lack of response from BiH, coupled with remarks made by Izetbegović, as the President of the BiH Presidency, that "this is not our war," served as a stark warning to BiH Croats that they should not depend on the BiH Republic authorities for protection.¹⁴¹

80. As the situation stabilized in Croatia with the Vance Agreement, BiH began to unravel. Croatia unavoidably was pulled into the BiH conflict, becoming a sanctuary for hundreds of thousands of refugees. President Tudman was engaged by the international negotiators to assist with finding a peaceful solution in BiH.

H. BiH

81. Throughout the war in BiH, all the important administrative and social services, as well as the military and security forces, were effectively organized, financed and governed at the municipal and regional levels. Initially this was done strictly at the municipal level, before regional authorities began to organize themselves and coordinate decentralized powers. In order to understand the economic measures that were municipally and regionally undertaken, it is essential to appreciate BiH's decentralized institutional set-up before and immediately after declaring its independence.
82. In the early 1950s, the SFRY developed an economic system based on a self-management system after it abandoned the central planning model used by the USSR and other communist/socialist systems.¹⁴² This caused strong protection of economic interests at the level of the Republics. The socialist idea of universal opportunity throughout the SFRY gave way to the belief that each region would look after its own interests.¹⁴³
83. By the 1970s, after radical constitutional reform, decentralization was achieved in the SFRY as important State economic and social services were transferred from

¹⁴¹ P10451; Tr. 2856-2858 (30 May 2006); Tr. 4017-4019 (27 June 2006).

¹⁴² 1D02994 Chapter 1, para. 28: "The key feature of the self-management system was that all key decisions on management of enterprises were to be made by workers' councils, at least formally. The self-management of the enterprise sector was coupled with the establishment of the commercial banking system in the second half of the 1950s and with more and more decentralized decision making on the investments of the enterprise sector and decentralization of public finance implemented from the 1960s onward."

¹⁴³ 1D02994 Chapter 1, para. 16.

the Federal to the Republic level. These included central banking functions and the establishment of special (para-fiscal) funds, the so-called Self Management Interest Communities (“SIZs”). In 1971, national banks as a part of the common central banking system were created as legal entities at the level of Republics and Autonomous Provinces.¹⁴⁴

84. According to the 1974 Constitution, the SFRY was a federal State. There was a clear division of economic responsibilities between the Federation, acting at the level of the SFRY, and the Republics acting at the Republican and regional levels.¹⁴⁵ Given the high level of decentralization, the Federal authorities were responsible for the currency – the Yugoslav Dinar – and for the coordination of the central banking system, implemented at the Republic level through the national banks of the Republics and Autonomous Provinces. There was a unified exchange rate policy, customs, external trade, military courts, and military production. To a certain extent, Federal authorities were responsible for the general level of taxes, e.g. sales taxes, price controls, setting of customs tariffs, and customs rates. However, the major responsibility for fiscal policy and expenditure was left to the Republics and their municipalities.¹⁴⁶
85. The Republics, including BiH, were *responsible* for the economic activities of public enterprises and for all major State, social and public services, including: pension and disability insurance; health services; child care; elementary, high school and university education; culture; sport; the social safety net, including an employment office and unemployment assistance; all infrastructure, such as roads, railways and other transport facilities; construction and maintenance; water supply; sewage and garbage collection; energy production and distribution systems; land utilization and spatial planning; and all civil matters, such as the citizens’ registry, marriages and all citizens’ administrative issues.¹⁴⁷ The Republics also organized their own judicial systems, police and internal affairs

¹⁴⁴ 1D03111, paras. 28-33; Tr. 35164-35165 (12 January 2009).

¹⁴⁵ 1D02976, Part II - Organization of Society, Chapter I - Socio-Economic Arrangements, Articles 51-59 on Self Management Interest Community and Chapter II - Basis of Socio-Political System, articles 110-132 and Part III - Relation in Federation and Right and Duties of Federation, Chapter I - Relations in Federation, Articles 244 – 279.

¹⁴⁶ 1D02976.

¹⁴⁷ 1D02994, Part VIII, Article 304.

institutions, and territorial defences. They were also responsible for municipal and Republican taxes and obligatory contributions and Republic controlled prices.¹⁴⁸

86. At the municipal and regional levels, social services were *delivered* through the administration of municipalities or SIZs for services that included: child care; elementary-obligatory schooling; a social safety net (including assistance to unemployed people); primary health care facilities; local disability insurance; cultural and sport facilities; and services such as libraries, financing of voluntary theaters and sports clubs. Infrastructure services such as sewage, garbage collection, water and energy distribution, central heating, local road maintenance, and construction were organized at the municipal level.¹⁴⁹ Matters reserved to the Republic such as the citizens' registry, birth certificates, marriages, and urban and spatial planning were *delivered* at the municipal level by a local administration operating under Republican authority.¹⁵⁰ Police and internal affairs matters were organized at the Republic level with municipal or county-based decentralized units and police stations. Territorial defence was, from the early 1970s, organized at the Republic level with strong municipality participation ensured through the establishment of municipal reserve brigades. All military matters (i.e. the obligatory draft and list of military recruits) were undertaken by the municipal administration under the auspices of the Republican Secretariat for Public Defence.¹⁵¹

I. Decentralization and public service delivery at the municipal and regional level in BiH before the war

87. In BiH, there were 109 municipalities and, at that level, key State and social services were organized in the form of special funds, i.e. SIZs. The production of major social and administrative services was organized in a decentralized manner through the establishment of SIZs. SIZs were composed of: **a.** representatives of users of social services, i.e. stakeholders working in a particular service who would form a special assembly, and; **b.** representatives of managers of particular social and administrative services, who sat in a separate assembly. Most SIZs were organized at the level of municipalities. Due to economies-of-scale, some

¹⁴⁸ 1D02994, Part VIII.

¹⁴⁹ 1D02994, Article 304. *See also* 1D03111, Chapter 2.1.5.

¹⁵⁰ 1D02994, Article 304. *See also* 1D03111, Chapter 2.1.5.

¹⁵¹ 1D03111, Chapter 1.2; 1D0994 Article 262-263.

services (e.g. high school financing, health sector financing, and water supply) were organized and jointly financed at the inter-communal level¹⁵² in seven areas organized around the main cities of Banja Luka, Bihać, Sarajevo, Doboj, Tuzla, Zenica, and Mostar. The organization of regional chambers of commerce generally followed that principle.¹⁵³

88. The health care system was organized at the county-regional level through district offices of the Health Insurance Fund and through Regional Hospitals or medical centers. Similarly organized were high school or intermediary educational institutions, infrastructure such as road maintenance and construction, territorial defence, and police.¹⁵⁴

89. In the Herzegovina region, covering the area of Mostar, the main regional institutions were the University and the Regional Medical Center financed by the Republican, Regional or District Offices of the Health Fund, i.e. a Self Management Interest Community for Health and High Schools, financed by the Inter-communal Self-Management Interest Community for Education.¹⁵⁵

J. The importance of the Social Accounting Office (SDK)

90. A significant characteristic of the SFRY financial system was that the society was in many ways cashless and controlled. The Social Accounting Office (SDK), also known as the payment bureau, was part of a Republican network headed by a main Republican office. The SDK was both a payment mechanism and a tax collector. With control of the payments system, liquidity was assured. With control of fiscal accounts, i.e. of the budget and para-fiscal funds (SIZ), funding was provided to cover the financial needs of the defence forces and for State and social services at the municipal and regional levels. This is exactly what was undertaken in different parts of BiH by municipal authorities once the SDK system collapsed.¹⁵⁶

K. The impact of the war on BiH

91. While BiH became an internationally recognized sovereign State, it was not an effective State in the sense that it could ensure its economic viability, primarily

¹⁵² 1D02976, Articles 51-59, 110-132.

¹⁵³ 1D03111, Chapter 1, paras. 23-26 ; Tr. 33740-33742 (27 October 2008).

¹⁵⁴ 1D03111, Chapter 1.2.

¹⁵⁵ 1D03111, Chapter 1, para. 27; Tr. 33736 – 33739 (27 November 2008) and 33874 – 33876 (29 November 2008).

¹⁵⁶ 1D03111, Chapter 2, paras. 2-8; Chapter 3, paras. 40-63.

due to the war conditions that prevented effective economic and political control. BiH was not a single economic and political space.¹⁵⁷ The war prevented the creation and functioning of its institutions and the implementation of necessary measures such as a customs authority at the external borders of BiH, a central banking authority, and a tax authority, with the government as regulator.¹⁵⁸ Particularly affected was the banking system.¹⁵⁹ The limited economic activity that was occurring could not be supported with the collapse of the payments system, which also made it impossible to ensure any central tax collection. Effectively, since liquidity was provided by the SDK and the system of national banks, with the coming of war, liquidity became unavailable.¹⁶⁰

92. Limited Republican government resulted in a lack of supply of goods and services. While municipal authorities needed to act, there was a need for the wider authorities to coordinate their activities. The economy throughout BiH was in disarray; the consequences of this crisis were prevalent and pervasive. Sarajevo, Mostar, Jablanica, Livno and many other areas did not have a regular supply of water, electricity, or food. Schools were closing, there were only rudimentary medical services, no municipal services such as garbage collection existed, and no electricity was provided. In these circumstances, the economy of BiH needed to be organized and reformed.
93. Since the government of BiH in Sarajevo was unable to implement the necessary measures effectively, and with chaos ensuing,¹⁶¹ it was only municipalities who could spearhead these efforts. Under these conditions, municipal authorities started to act independently. This occurred in a very similar way in majority Muslim¹⁶² and Croat¹⁶³ areas. This phenomenon was not only reasonable but also necessary. Article 256 of the SRBiH Constitution provided that the municipality would organize territorial defence and civilian protection and implement the preparation of the population, enterprises, institutions, and State bodies for

¹⁵⁷ 1D03111, Chapter 3, paras. 4-19.

¹⁵⁸ 1D03111, Chapter 3, paras. 22-23.

¹⁵⁹ 1D03111, Chapter 3, paras. 45-53, 57-59.

¹⁶⁰ 1D03111, Chapter 2, paras. 12-17; Chapter 3, paras. 60-62.

¹⁶¹ 1D03111, Chapter 5, paras. 35-41; Tr. 33736-33739.(27 October 2008).

¹⁶² 1D03111, Chapter 4, paras. 8-40.

¹⁶³ 1D03111, Chapter 4, paras. 41-69.

defence.¹⁶⁴ Article 63 of the Law on All People's Defence regulated that the municipality would ensure the organisation and preparation of the All People's Defence and municipal protection.¹⁶⁵ Equally important was that pursuant to Article 130 of the SFRY Constitution the municipal assembly had the responsibility to take control of enterprises on its territory if circumstances so required, such as "serious harm [being] caused to social interests, or if an organization or community does not fulfill its statutory obligations." This strengthened the role of the municipal assembly and its *de jure* highest authority, the President of the municipal assembly. Presidents were the *de facto* holders of power, and were perceived to be representatives of the municipal government.¹⁶⁶ As a result, municipalities became the main constitutive part of the regions that established themselves as new entities or later districts, cantons, or Republics.

94. The efforts undertaken by the HVO HZ HB – albeit for temporary purposes and until such time as the war stopped and the internal organization of BiH was resolved - were to establish a single economic and political space, *inter alia*, to: **a.** organize the wartime finances and economic sector; **b.** ensure the protection of State/regional assets; **c.** establish and collect new fiscal revenues; **d.** allocate fiscal revenues into a budget, and; **e.** collect revenues for particular social services that also needed to be organized.¹⁶⁷

L. Elections in Bosnia: what did the results mean?

95. Democratic elections were held on 18 November 1990.¹⁶⁸ The three dominant parties based on national affiliation (SDA – the Muslim party, SDS – the Serb Party and HDZ – the Croat party) won the elections.¹⁶⁹ Accordingly, the SDA, SDS, and HDZ were entitled to form the government and allocate the top political and administrative positions both at the State and municipal level, in a way that would reflect the election results and the rights and privileges guaranteed by the Constitution of BiH to the three constituent peoples.¹⁷⁰

¹⁶⁴ 1D02994.

¹⁶⁵ 1D00897.

¹⁶⁶ 1D02976; 1D03111, Chapter 2, paras. 52-55.

¹⁶⁷ 1D03111, Chapter 7, paras. 4-53.

¹⁶⁸ Tr. 29041 (3 June 2008). *See also* 1D00920, Elections in Bosnia and Herzegovina 1990, Arnautović Senad.

¹⁶⁹ 1D00920, p. 1D30-0131.

¹⁷⁰ 1D02994, 1982 Constitution of SR BiH, Article II, p. 1D60-1599.

96. Based on the existing political system, Izetbegović was selected as President of the BiH Presidency. This position called for a one-year term which could be extended for one additional year upon election by the members of the Presidency.¹⁷¹ The Presidency was also a rotating position based on constituent status. Thus, after a maximum two-year presidential term, the next President would be a representative of one of the other two constituent nations.¹⁷²
97. Izetbegović, upon becoming the President of the BiH Presidency, turned towards the Islamic world in his foreign policy. In July 1991, he requested that BiH be granted observer status in the Organization of Islamic Countries.¹⁷³ There is no evidence that the BiH Presidency at that time approved Izetbegović's foreign policy efforts.¹⁷⁴
98. BiH Croats began to lose confidence in Izetbegović's Presidency, particularly after the "historical agreement"¹⁷⁵ of August 1991 between the Muslims and the Serbs became public.¹⁷⁶ The BiH Croat political leadership had other reasons to lose confidence in Izetbegović. As President of the BiH Presidency, he seemed only to be acting as the President of the SDA party and in the interests of its Muslim constituents.¹⁷⁷ The perception was that Izetbegović was neglecting, if not acting against, the rights of the BiH Croats as guaranteed by the Constitution of BiH. The BiH Croats were afraid of a possible Muslim-Serb agreement;

¹⁷¹ P10509, Article 19. *See also* Tr. 29704-29705 (23 June 2008).

¹⁷² 1D02479.

¹⁷³ P00042; Tr. 4113-4118 (28 June 2006); 1D00896, p. 41.

¹⁷⁴ 1D02994, 1982 Constitution of SR BiH, Article 357 defined the role of President of Presidency: "represent the Socialist Republic of Bosnia and Herzegovina on behalf of Presidency, convene and chair session of the Presidency, sign documents passed by the Presidency and attend to the implementation of the documents and conclusions of the Presidency," which shows that neither Izetbegović nor any other member of the Presidency was authorized to make individual decisions on behalf of BiH, which was common for any collective body in the former Yugoslavia. *See also* P00042; Tr. 4113-4118 (28 June 2006).

¹⁷⁵ 1D00475, Serbian-Muslim Historical agreement: Muhamed Filipovic - Radovan Karadzic, 2 August 1991, p. 1.

¹⁷⁶ Tr. 28888-28889 (2 June 2008); 3D00433.

¹⁷⁷ After he entered politics during the 1990 elections, it was widely believed that he would attempt to achieve his life-long political dreams by establishing a unitary form of government in BiH. The *Islam Declaration* was re-printed and approximately 200,000 copies were distributed in 1990 by the Sarajevo publisher "Bosna." Arnautović, Suad, *Izbori u Bosni i Hercegovini: Analiza izbornog procesa*, (Elections in Bosnia and Herzegovina: An Analysis of the Election Process) Sarajevo: Promocult, 1996, p. 91. It was also featured as part of the SDA's platform. In the *Islamic Declaration* Izetbegović writes: "The Islamic order can only be established in countries where Muslims represent the majority of population." *See also* 1D00431, p. 48.

especially when considering existing constitutional protections and that significant changes could be made by a two-thirds majority.¹⁷⁸

M. Muslims secretly were organizing and planning for war

99. For the Croats, the war effectively began in 1991 with the JNA attack on Ravno.¹⁷⁹ The psychological impact of this attack, in conjunction with both the BiH Presidency's failure to react meaningfully and the apparent failure of the Republic to make any visible war effort, cannot be underestimated when considering the reasons why the BiH Croats felt the need to galvanize their resources. Croatia was being attacked from BiH territory¹⁸⁰ and the BiH Presidency passively observed. The Presidency proclaimed BiH's neutrality in the war in Croatia without consulting the legal organs of BiH as required by the Constitution.¹⁸¹ Izetbegović would go on to publicly announce after attacks on BiH areas in which Croats resided that "this is not our war."¹⁸² Regardless of the context in which this statement was made, it marked the tacit approval for BiH to be used as a base to launch attacks on Croatia.¹⁸³

100. Concurrently, the SDA leadership clandestinely began preparing the Muslims' defence. On 31 March 1991, the SDA established the Patriotic League as its military wing, its founding father being none other than Izetbegović.¹⁸⁴ Under the auspices of the SDA, the Council of National Defence was established on 11 June 1991.¹⁸⁵ Thus, while Izetbegović as President of the BiH Presidency

¹⁷⁸ 1D02994, Article 5.

¹⁷⁹ See P00543, item 3 dealing with the date from which the calculation of war damages would commence. According to the Head of the Finance Department, Tomić, 20 October 1991, the day Ravno was attacked, was chosen.

"Draft decree on the assessment of war damages in the territory of the HZ HB was submitted by the Finance Department. Me. President informed those present of the decree's content. Mr. Tomic pointed out that when they were preparing the draft decree they were in a dilemma about which date to take as a starting point from which the war damage shall be counted, whether it should be 20 October 1991 (aggressor's attack on Ravno) or the day the reservists came to Mostar, 19 /?September/ 1991.

The proposed decree, Article 1 of which specifies 20 October 1991 as the day from which the war damages shall be counted, was unanimously adopted."

¹⁸⁰ Tr. 19632-19635 (6 June 2007); Tr. 27682-27687 (7 May 2008); Tr. 27756-27759 (8 May 2008).

¹⁸¹ See Tr. 4017, 4021 (27 June 2006). Witness Stjepan Kljuić testified that the ostensible neutrality of BiH regarding the war in Croatia was seemingly adopted by Izetbegović without due consultation with the legal organs of BiH. Izetbegović, as a member of a collective body, could only make such decisions within the framework of the Presidency as a collective body. See Tr. 27469-27470 (5 May 2008).

¹⁸² P10451; Tr. 2856-2858 (30 May 2006); Tr. 4017-4019 (27 June 2006).

¹⁸³ Tr. 27469 (5 May 2008).

¹⁸⁴ 1D01062, p. 49, para. 1 and p. 78, paras. 5-6.

¹⁸⁵ 1D00477.

was claiming to represent the interests of BiH and its citizens, in and through his capacity as President of the SDA he was clandestinely working only on behalf of the Muslims of BiH. The Croat leadership, conversely, made efforts to reach out to the BiH Presidency to organize a joint defence.¹⁸⁶ These efforts were rebuffed.

N. The beginning of regionalization

101. On 10 July 1991, due to the deterioration of the situation in Croatia and the expectancy that a conflict would erupt at any time in BiH, the HDZ BiH Presidency formed the Security Council. Kljujić, the President of the HDZ BiH, and a member of the BiH Presidency, was appointed as its President.¹⁸⁷ On 6 August 1991, the Main Board of the HDZ BiH, of which Kljujić was a member, declared that the Croat people were in a state of war and that their territories were under threat, and demanded that the Republic's institutions express a clear position.¹⁸⁸ It was noted that in the areas where HDZ had a majority, it was necessary to protect civilians by organizing a civil defence, to accept refugees from Croatia, and to provide assistance to the Republic of Croatia.¹⁸⁹ At this session: **a.** the recommendation of the Travnik Regional Union of HDZ BiH to form regional communities was supported; **b.** it was decided that regional HDZ communities should establish closer ties; and **c.** in areas where territorial HDZ communities did not function, the HDZ BiH Secretariat decided to make suggestions to municipal HDZ Committees to establish regional communities within eight days.¹⁹⁰ The regionalization called for the establishment of eight

¹⁸⁶ See e.g. P00060, Conclusions of the Joint Meeting of the Presidency of the BH Croatian Democratic Union and the BH Croatian Democratic Union Crisis Staff of the Republic, 8 October 1991: "Where circumstances allow, a system should be developed jointly with the SDA, but even in those environments it is essential to develop contingency plans for an independent system of the Croatian people and its territories."

¹⁸⁷ Tr. 4103-4104 (28 June 2006); P00041.

¹⁸⁸ P00047, Minutes of the BH Croatian Democratic Union Main Committee meeting held in Prozor on 8 August where the Presidency of BiH, the Government of BiH and the Assembly of BiH were called upon "to present a clear position on the status of the so called Bosanska Krajina and Eastern Herzegovina since HDZ will not allow these parts of BiH to secede and be annexed to Serbia, nor will it allow these parts to be a base for sending Chetnick and rebel bands into the Republic of Croatia." See also Tr. 4069-4079 (28 June 2006).

¹⁸⁹ P00047.

¹⁹⁰ P00047.

regional communities.¹⁹¹ Ultimately, areas in approximately seventy municipalities were included.¹⁹²

102. On 26 August 1991, the Presidency of the HDZ BiH accepted the suggestion to establish a regional organization and demanded an urgent meeting of the BiH Assembly regarding Serb / JNA aggression against Croatia and the use of BiH territory as a staging base for it. It concluded that the BiH Croats did not want war, “but should it be thrust upon them, they will be forced to defend themselves and their homesteads, together with the other peoples who might find themselves in the same position.”¹⁹³ On 18 September 1991, the HDZ Security Council held a meeting, over which Kljujić presided, noting: “In case of an armed conflict on a territory with a predominantly Croatian population, the Crisis Staffs shall take over all governmental functions in the municipalities...”¹⁹⁴ It was further recommended “that the chair persons of the municipal crisis staffs should be the presidents of the municipalities if they represent the BH HDZ, and, if not, the presidents of the municipal executive councils or the chairmen of the municipal boards of the BH HDZ.”¹⁹⁵ It was also concluded that “Crisis Staffs must be urgently established in three regional communities of BH HDZ” – the Travnik regional community, the Herzegovina regional community, and the Posavina regional community.¹⁹⁶ At this meeting, the Security Council was transformed into the Crisis Coordination Committee.¹⁹⁷

¹⁹¹ Travnik, Herzegovina, Sarajevo, Doboj-Zenica, Tuzla, Posavina, Bihać-Kladuša and the area of Banja Luka.

¹⁹² It was concluded that “[s]hould new HDZ BiH Municipal Boards be formed in any areas, they shall be attached to the nearest HDZ regional organization.” P00050, Proposal for regionalisation of the BH Croatian Democratic Union Municipal Boards, signed by Ignac KOSTROMAN, 23 August 1991. Herzegovina regional community: Bugojno, Gornji Vakuf, Kupres, Prozor, Jablanica, Livno, Tomislavgrad, Posušje, Grude, Široki brijeg, Mostar, Čitluk, Ljubuški, Čapljina, Stolac, Trebinje (Ravno), Neum, Konjic, TRAVNIK: Kreševo, Kiseljak, Fojnica, Busovača, Vitez, Novi Travnik, Travnik, Jajce, Skender Vakuf (Dobretići), TUZLA: Tuzla Živinice, Lukavac, Srebrenik, Gračanica, BANJA LUKA: Banjaluka, Kotor Varoš, Mrkonjić grad, Glamoč, Sanski Most, Prijedor, Bos. Grahovo, Laktaši, Prnjavor, DOBOJSKO-ZENIČKA: Zenica, Žepče, Zavidovići, Maglaj, Teslić, Tešanj, Doboj, SARAJEVO: Centar, Stari Grad, Novi Grad, Novo Sarajevo, Ilidža, Hadžići, Vogošća, Ilijaš, Visoko, Breza, Kakanj, Vareš, POSAVINA: Bosanski Brod, Derventa, Odžak, Modriča, Bosanski Šamac, Orašje, Gradačac, Brčko, BIHAĆ-KLADUŠA: Bihać, Velika Kladuša.

¹⁹³ P00052, Stamped excerpts from minutes of the 9th regular meeting of the Presidency of the Croatian Democratic Union of Bosnia and Herzegovina held in Sarajevo, signed by Ignac KOSTROMAN and Stjepan KLJUJIC, 26 August 1991, Conclusion 17, p. 4.

¹⁹⁴ P00058, Conclusion 1, p. 2.

¹⁹⁵ P00058, Conclusion 3, p. 2.

¹⁹⁶ P00058, Conclusion 2, p. 2.

¹⁹⁷ P00058, Conclusion 1, p.1.

103. On 8 October 1991, the Presidency of the HDZ BiH held a meeting over which Kljujić presided, concluding that the HDZ continue to advocate for an independent and indivisible BiH; but, in the event of the break-up of BiH after the “secession of the so-called Serbian territories,” that the Muslims and Croats link territories with the Republics of Croatia and Slovenia confederally or by treaty.¹⁹⁸ It was also concluded that “[i]n order to provide the public with truthful and timely information on the public of all issues affecting the interests of the Croatian people in Bosnia and Herzegovina and Croatia, the newspaper Herceg-Bosna shall be started.” The project leaders were Kljujić, Lasić and Markešić.¹⁹⁹ Out of this series of HDZ conclusions and the prevailing circumstances, the HZ HB was established in November 1991.

O. The birth of the HZ HB

104. Given the passivity of the BiH Presidency, the BiH Croats had no choice but to self-organize. On 12 November 1991, the Croatian Community of Bosanska Posavina was established, which later, through individual municipal decisions, became a part of the HZ HB.²⁰⁰ On 18 November 1991, the HZ HB was established as a political, cultural, and economic community.²⁰¹ The character of the Community was primarily political, with the supreme authority vested in “the most senior representatives of the Croatian people in the municipal authority or presidents of the HDZ municipal boards.” This is confirmed by an opinion formed by the Ministry of Administration of Justice and Administration, the Republic Institution for Public Administration and the Secretariat for Legislature of the

¹⁹⁸ P00060.

¹⁹⁹ P00060 Conclusion 14, p. 3.

²⁰⁰ 1D01736; 1D00265.

²⁰¹ 1D00488, *see* in particular the Preamble of the Decision of the Foundation of the HZ HB. *See also* P09537, comments by Boban upon his election as President of the HZ HB published in *Oslobodjenja*, 20 September 1991, where Boban upon his election as President of the HZ HB was reported to have said: “In the situation when the BiH is falling apart, mainly due to the Serb nation and its leadership, Croatian nation has a right to express its interests and commitments based on its own subjectivity. This is not a reply to the plebiscite of the Serbian nation but the continuation of the policy articulated by the Croatian Democratic Union. HZ Herceg-Bosna represents geo-political, cultural and economic entity derived from the former “banovinas”/administrative sub-section in the Kingdom of Yugoslavia/. Croatian people lived within the “Banovina” borders until the WW2. While there is a legal, legitimate and democratic authority in BiH, our community will be completely devoted to it, but if that authority becomes ruined or cease to exist for us won’t be any alternatives. We do not accept any Yugoslavia, neither former nor the future, because Yugoslavia was for Croatian people solitary confinement for seventy years.” When asked how he envisaged the division if it ever became an issue, Boban replied he ““can not say anything precise about it”” adding that the most important thing is to ‘preserve the peace’ in everything that is going to be done.”

Government of the Socialist Republic of BiH. Based on this opinion, the Government of BiH concluded:

Based on mentioned opinions as well as propositions and opinions which were voiced during the discussion, government determined that decision on implementation of Croatian Community Hezeg Bosnia [sic] and Decision by Regional committee of HDZ Bosnian Posavina were not reached according to procedure specified for creation of sociopolitical communities neither they contain regulations which could produce any kind of legal effects such as implementation of the institutions of the authority, because they lack elements of the government institutions. At the same time, Government determined that these material should not have been discussed and they should not have been placed on the conference docket, because this is about organization of the party and its operations.²⁰²

P. Preparations for the referendum

105. With war raging in the Republic of Croatia (with some of the attacks being launched from BiH territory by the JNA),²⁰³ ostensibly due to Croatia's declaration of independence,²⁰⁴ one would have to be afflicted with romantic naiveté not to have felt the southeasterly-bound winds of war.²⁰⁵ One would need to be in a sublime state of unconsciousness or utter ignorance not to have foreseen the dangers linked to either remaining in a rump SFRY (in which case BiH and its territory would become an appendix to and an instrument of Slobodan Milošević's agenda) or breaking off from the SFRY and suffering the consequences.

106. The first precondition to any change of the *status quo* of BiH *vis à vis* the SFRY was voting for or against the holding of a referendum; the question being whether to remain in a rump SFRY or to seek independence.²⁰⁶ A referendum was held in BiH on 29 February and 1 March 1992.²⁰⁷ Though the Serbs

²⁰² 2D00594; *see also* Tr. 31640-31642 (1 September 2008); Tr. 31909-31912 (3 September 2008); Tr. 31673-31677 (1 September 2008).

²⁰³ Tr. 27685–27688 (7 May 2008), discussing document P00089; Tr. 30669–30670 (14 July 2008); Tr. 27758–27760 (8 May 2008), discussing document 1D00397.

²⁰⁴ 3D01085, Excerpt from the book "The truth about Bosnia and Herzegovina, 8 November 1991.

²⁰⁵ Tr. 2695 (26 May 2006); Tr. 3897-3900 (26 June 2006); Tr. 4069-4074 (28 June 2006); Tr. 7966-7977 (9 October 2006); Tr. 28886-28888 (2 June 2008); Tr. 39087-39088 (22 April 2009).

²⁰⁶ 1D00394, Conference on Yugoslavia Arbitration Commission - Opinion 4, 11 January 1992.

²⁰⁷ 1D00410, M. Tuđman - The Truth About Bosnia and Herzegovina; Decision on the referendum of BiH independence, Referendum question of HDZ BiH (9 February 1992), HDZ Report on future governmental status of BiH, Dr. F. Tuđman: Letter to Izetbegović.

boycotted it,²⁰⁸ without the support of the Croat vote in BiH the requisite two-thirds majority of votes needed to declare independence from the SFRY could not have been garnered.²⁰⁹

107. Even before BiH declared Statehood and was recognized as an independent State, the representatives of its three constituent peoples had begun to negotiate a solution to resolve the question of its internal structure/organization. This process was facilitated by the international community, with the first proposal being crafted by Ambassador José Cutileiro, Secretary-General of the Western European Union (“WEU”) and Coordinator of the Peace Conference on Yugoslavia (who also chaired negotiations on BiH in the 1992 EC Peace Conference).²¹⁰ This proposal, as succinctly noted by Lord Owen, was effectively option three of the five options²¹¹ that Martti Ahtisaari, ICFY Chairman of BiH 1992-1994, was to propose later as part of his mandate. This plan, calling for a loose federal State of three ethnic units, did not bear fruit. Though “President Izetbegović had first accepted it on 18 March [1992] he had later changed his mind,”²¹² thus casting away the most promising solution for the avoidance of a bloody conflict.²¹³ Ironically, the ultimate solution for ending the conflict was rooted in the Cutileiro plan²¹⁴ (as well as the Owen-Stoltenberg plan)²¹⁵ with two rather than three entities ultimately established in BiH and with each entity having

²⁰⁸ 1D00410.

²⁰⁹ P00132, Republican referendum to determine the status of Bosnia and Herzegovina, held on 29 February 1992 and 1 March 1992; 1D00920, Elections in Bosnia and Herzegovina 1990, Arnautović Suad.

²¹⁰ 1D00398, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro).

²¹¹ Lord Owen recounts: “On 4 October [1992] we had received from Martti Ahtisaari an important paper on constitutional options, setting out the pros and cons of each. For Vance and me, the five options essentially were:

1. a centralized state;
2. a centralized federal state with significant functions carried out by between four and ten regions;
3. a loose federal state of three ethnic units, not geographically continuous;
4. a loose confederation of three ethnically determined republics with significant independence, possibly even the security field;
5. a Muslim state, with Serbs becoming part of the FRY and Croats becoming part of Croatia.”

1D00896, p. 65 (footnotes omitted).

²¹² 1D00896 at 68.

²¹³ 1D01315, Cutileiro's letter in *The Economist*, June 1992.

²¹⁴ 1D00398, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina (Cutileiro).

²¹⁵ 1D01778, RBiH, HZHB, Agreement regarding Bosnia-Herzegovina – booklet for HZHB Presidency meeting; 1D01557.

more or less the constitutional competencies outlined by Cutileiro.²¹⁶ Even more ironic, if not tragic, is the fact that fifteen years after the resolution of the conflict in BiH, the same issues that precipitated the conflict exist today: how to craft the political and administrative divisions within BiH in a manner that optimally preserves the constituent status and rights of the three peoples at the State, municipal and regional levels. These issues, regrettably, remain because of - not despite - the Washington Agreement and the Dayton Peace Accords. William Montgomery, former US Ambassador to Croatia with fifteen years of diplomatic experience in the region, publicly proclaimed that the Croats of BiH should have their own entity much as the Serbs do, as well as the Muslims, who, for all intents and purposes, due to their majority population and voting rights, effectively have disenfranchised the Croats in the BiH Federation.²¹⁷

108. On 18 March 1992, the Statement of Principles for New Constitutional Arrangements for Bosnia and Herzegovina ("Statement of Principles") was accepted by all three sides.²¹⁸ The Statement of Principles did not consider ethnicity to be the sole criterion for defining areas for the national entities in BiH.²¹⁹ In determining the territories of the constitutive units: "Bosnia and Herzegovina would be a state, composed of three constituent units, based on national principles and taking into account economic, geographic and other criteria."²²⁰ The same criteria would later be advanced through the Vance-Owen Peace Plan.²²¹ The Statement of Principles called for constitutive entities to have the right "to legislate and to administer in matters of concern to the constituent units."²²²

²¹⁶ See 4D01234;1D01536, Dayton Peace Accord, 14 December 1995.

²¹⁷ 1D03138, A Surprising Proposal of the Former American Ambassador about BiH and Kosovo - William Montgomery, 5 June 2009.

²¹⁸ 1D00398.

²¹⁹ The Statement stated: "[s]overeignty resides in the citizens of the Muslim, Serb and Croat nations and other nations and nationalities, who realize it through their civic participation in the constituent units and the central organs of the republic." 1D00398, Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina. See also Tr. 6832 (18 September 2006).

²²⁰ 1D00398, Extract from the International Conference on the former Yugoslavia, Volume 1 - Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina, p. 24.

²²¹ 1D00892.

²²² 1D00398, Statement of Principles of 18 March 1992 for New Constitutional Arrangements for Bosnia and Herzegovina, Section D, Constitutive Units, p. 26. Such rights included the right of "expropriation of property for public use, rights over land registries, fire prevention, chambers of commerce, supervision of

109. In a radio interview, Izetbegović admitted that he had accepted the Statement of Principles only to achieve international recognition for BiH. Izetbegović said that he expected that after gaining recognition, and without the obligation to fulfill promises given to the other two parties and nations in BiH, he would be able to conduct his own policy and not what was mutually agreed.²²³ In light of the so called "Livno question," prompted by doubts regarding the future internal organization of BiH as a State of three constituent nations, Izetbegović may have pursued this approach to win over the Croats and convince them to vote "yes" at the referendum.²²⁴

Q. HVO establishment on 8 April 1992

110. On 8 April 1992, the Decision establishing the HVO called for the establishment of armed forces under the Croatian Defence Council.²²⁵ On 10 April 1992, Boban, President of the HZ HB and HVO, issued a command to all Municipal Staffs of the HVO:

From the moment of the aggression on the Croatian regions of Bosnia and Herzegovina, inconsistencies have been observed in the use of the name of the Croatian Army in Herceg-Bosna. The former TO/Territorial defence/ - as a service of the Serbo-Chetnik armada - does not exist for the Croats in Herceg-Bosna and that is why the Presidency of the Croatian Community of Herceg-Bosna, at its meeting held on 8 April 1992 brought in a DECISION according to which the Supreme body of Croatian defence in Herceg-Bosna shall be called the CROATIAN DEFENCE COUNCIL.

The Decision of the Presidency of Bosnia and Herzegovina on the BH Territorial Defence, also of 8 April 1992, is a rash one in political terms at this moment. Since the beginning of the attack on the Croatian people that same Presidency has been silent in respect of crimes against the Croats. Even now it is not sufficiently raising its voice in respect of the tragedy which has befallen Croatian settlements and people from Ravno, Neum, Kupres, to Mostar. For all those reasons, the Croatian Community of

co-operative trading organizations, saving banks and credit institutions ... social assistance, education, schools, police, trade...".

²²³ 1D02720.

²²⁴ At a meeting of the SDA Main Board on 25 February 1992, Izetbegović discussed the results of the negotiations in Lisbon, stressing that a referendum for BiH independence would fail if the Croat community did not vote. He explained that in Lisbon, the Croats agreed and he stated: "I think that through this, this conditional consent up there, I think that we have won over the Croatian element to be in favour of the referendum. They now want to vote because they hope that in such Bosnia and Herzegovina they will get some sort of sovereignty, some national recognition, some regions, etc, because that is part of this agreement." Izetbegović's speech at the closed meeting of the Main Board of the SDA took place 25 February 1992 in the House of police in Sarajevo. 1D02720, Article in Dani: Alija Izetbegović's Lisbon Secret, 7 March 2008.

²²⁵ 1D00155.

Herceg-Bosna refuses to accept the discredited TO as its military structure.²²⁶

111. On 10 April 1992, Boban sent a proposal to the BiH Presidency seeking to establish a joint command for the defence of BiH. Izetbegović never put this issue on the agenda of a Presidency meeting.²²⁷ Ultimately, HVO units were defending BiH in Sarajevo, Bihać, Usora, Žepče, Vareš, Gradačac, Brčko, and Tuzla; demonstrating that eleven HVO brigades and one HVO battalion were operating in provinces 1, 5, and 9 (designated as Muslim majority provinces);²²⁸ other HVO units were defending in provinces 3, 8 and 10 (designated as Croat majority provinces).

112. The HVO was established as an armed force only after local armed forces had been active for months and the SDA/ABiH forces and the Patriotic League had clandestinely begun to crystallize into a fighting force to protect Muslim interests.

R. Graz

113. On 15 May 1992, at the HVO HZ HB meeting in Grude, it was recorded that Izetbegović suspended internationally sponsored negotiations after the Serbs had accepted the principles of further organization of BiH. The EC then proposed bilateral meetings;²²⁹ hence, the Graz meeting, which was held to resolve outstanding disputes between Serbs and Croats in BiH.²³⁰ A similar meeting was held between BiH Croats and Muslims in Split on 16 and 17 May 1992.²³¹ There was nothing secret about those meetings. It was common throughout the war for the parties to hold bilateral meetings; they were encouraged to do so by the internationals.²³²

²²⁶ P00155.

²²⁷ Tr. 28944-28946 (2 June 2008); 1D2934, p. 3, para. 7.

²²⁸ Tr. 8010 (9 October 2006).

²²⁹ P09526, p. 1.

²³⁰ Tr. 28948-28954 (2 June 2008); *see also* 1D02935, pp. 9049-9051.

²³¹ 1D02739; Tr. 29149-29152 (4 June 2008).

²³² *See* Tr. 28950-28954 (2 June 2008); Tr. 49743-49745 (22 February 2010); Tr. 49977-49979 (24 February 2010); *see also* 1D00475, "Serbian-Muslim Historical agreement: Muhamed Filipovic - Radovan Karadžić," 2 August 1991; 5D00049 (1D00475), Historical Agreement between Croats and Muslims, 25 May 1992; P00339, Signed agreement between Izetbegović Alija and Tuđman Franjo on Friendship and Cooperation, 27 July 1992; 1D01935, Annex to the Agreement on friendship and cooperation between the Republic of Croatia and the Republic of Bosnia and Herzegovina, signed by Tuđman Franjo and Izetbegović Alija, 23 September 1992; 2D00798, Announcement by the Commandant of ARBiH Konjic Headquarters and Commandant of HVO on 1992/10/23; 1D01543, UN Security Council Doc. S/24748;

114. No agreement was reached in Graz. Boban was unequivocal in his public letter to the Diaspora.²³³ No credible evidence was adduced contradicting Boban's public representations concerning the meeting at Graz. Witness 1D-AA testified that: **a.** the Graz meeting was a continuation of a series of meetings held and encouraged by the international community, most notably at the time, WEU Secretary-General Cutileiro (who chaired the negotiations on BiH in the EC Peace

P00717, Document issued by Halilović, Sefer, Armija Bosnia i Hercegovina Supreme Comd HQ Head re: agreement between Izetbegović Alija, Boban Mate, FNU and Stojić Bruno, FNU on forming joined Armija Bosnia - Hercegovina and Croatian Defence Council Comd. for the operation, 7 November 1992; 2D00809, Agreement signed by Bruno Stojić, Ivica Dzinović, Dzevad Hadzihuseinović, Safet Pucević, Dzevdet Tinjić, Mato Nadjelić and Srecko Rebensten on 1993/01/08; P10257, Agreement by Franjo Tuđman and Serb leader Dobrica Ćosić stating that Croatia and Serbia have no claims on each other's territory and pledging mutual recognition, 11 January 1993; P01467, Stamped and signed joint order by Petković Milivoj and Halilović Sefer to issue joint command orders to honour the mutual agreement between the HVO and the BiH Army to prevent the further disagreement between the two. Ref: 01-131, 11 February 1993; 1D02853, Letter dated 3 March 1993 from the Permanent Representative of BiH to the United Nations addressed to UN Secretary-General, with the Agreement signed by Izetbegović, Silajdžić, Boban and Akmađić; P01988, Agreement signed by Petković Milivoj, Halilović Sefer, Morillon Phillippe and Thebault Jean-Pierre, 20 April 1993; P11192, Agreement between the ABiH and the VRS for the demilitarization of Žepa and Srebrenica, brokered by UNPROFOR, signed by Mladić Ratko, Halilović Sefer and Morillon Phillippe, 8 May 1993; 4D01344, Cease fire agreement on the territory of Bosnia and Hercegovina concluded between Ratko Mladić and Sefer Halilović in the presence of Philippe Morillon, 8 May 1993; P02259, Stamped and signed Agreement Croatian Defence Council and Armija Bosnia i Hercegovina, signed by Tokić Zrinko, Zejnilagić Enver, Bandić Miro, Watkins Philip Roger and Graham Binns (Gornji Vakuf), 10 May 1993; P02344, Agreement on Cease Fire Reached by Gen. Petković Milivoj (HVO) and General Halilović Sefer (ABiH) in Mostar in presence of Lieutenant General Morillon Philippe and ECMM/HRC Thebault Jean-Pierre, 12 May 1993; 1D02404, Međugorje Agreement, 18 May 1993; P02726, Agreement between Parties on Cease of Conflict in Bosnia and Hercegovina, Signed by Petković Milivoj for HVO and Delić Rasim for ABiH, Ref: 82-1679/93, 12 June 1993; P02960, UNPROFOR HQ Kiseljak to UNPROFOR Zagreb report on meeting with Serb and Croat commanders in Stolac, 26 June 1993; P10264, Signed copy of the Makarska Agreement on movement of humanitarian aid in Bosnia and Hercegovina, signed by Jadranko Prlić, Hadzo Efendić and Mate Granić, with a cover letter by Ivan Mondović, 10 July 1993; 1D02896, Preliminary Agreement between Croatia and Parties to Constitutional Agreement on the Union of Republics of BiH for implementing 1965 Convention on Transit Trade of Land-Locked States, 5 August 1993; P04690, Agreement, signed at Sarajevo airport, between Rasim Delić, Milivoj Petković, witnessed by Francis Briquemont, Ref: Z-1073, 03 August 1993; 4D01234, Washington Agreement signed by Krešimir Zubak, Haris Silajdžić and Mate Granić, 01 March 1994, with the letter from Mario Nobile and Muhamed Sacirbeć to UN Secretary General, 03 March 1994.

²³³ 1D00428: "The talks in Graz, when it concerns the Croatian side, didn't have any intention of signing any document that would contribute to splitting of BIH, or to denying rights to Muslims, the constitutive nation of BIH. Talks were held on to [sic] request of Conference on BIH of the European Union, and after the Conference, they were held bilaterally. [...] Announcement for public, from what is clear that there was no secret arrangement on splitting the BIH, or 'betrayal' of anyone's interests. Talks in between representatives of BIH nations, bilateral as well, and again on the request of Conference on BIH of the European Union, will continue in the future. Therefore, Croatian-Muslim, Serbian-Croatian, Muslim-Serbian talks, deeply confident without any mischief of the third party, but in the interest of stopping the bloody war. Contributing to this assertion is the meeting between representatives of Croatian and Muslim people, which was agreed on being held, but it was not. Representatives of Muslim people didn't show up because they couldn't leave Sarajevo due to blockades. Talks with SDA representatives, who left as refugees for Croatia are set up for today and those talks need to define mutual campaign of Muslim and Croatian people against common enemy, Serbian aggressors and Units of ex-Federal Army, supported by Chetniks slaughter and defend Chetniks campaign on the territory of Herzeg-Bosna."

Conference); **b.** that meetings such as the one in Graz were also held between Croats and Muslims; **c.** no agreement, secret or otherwise, was concluded with the Bosnian Serbs at Graz, and; **d.** what was later published was done by the Serb side, “the objective being to drive as huge a wedge as possible, in purely political terms, between the Croats and the Muslims, because up until that point in time those two parties had been cooperating.”²³⁴ More importantly, if: **a.** the Neretva was envisaged as the border for the Bosnian Serb State – as represented in the press release issued by the Serbs concerning the so-called Graz Agreement - then effectively part of Mostar on the left bank of the Neretva river (Bijelo Polje, Buna), Mostar South, part of Čapljina on the left bank of Neretva river, Dubrava Plateau, part of Stolac, Neum, Ravno – areas in which Croats have historically resided - would be part of the Bosnian Serb State. Given the desire of the Serb political and military leadership to have a homogenous Serb State, this would have also meant the expulsion/cleansing of BiH Croats from their ancestral lands/homes. Assuming that Boban was naïve enough to make such an agreement, then the question that begs an answer is: how could the HZ HB be pursuing the alleged JCE to re-constitute the Croatian Banovina borders of 1939, while simultaneously negotiating away much of this territory to the Serbs?

S. The Statutory Decision of 15 May 1992

115. On 15 May 1992, the HVO HZ HB (military) held a session in Grude. From this meeting an executive and administrative body was established, also named HVO HZ HB. The Statutory Decision of this executive and administrative body expanded the competencies of the HVO HZ HB as a whole from a strictly military body, as prescribed by the decision of 8 April 1992, to encompass executive and administrative powers in HZ HB areas.²³⁵ Thus, at that time, the term HVO HZ HB referred to both an executive and administrative body and a military body. Though separate, both bodies were led by the same person at this stage. Boban was simultaneously President of the Presidency of the HZ HB, President of the HVO (military) and the President of the HVO HZ HB as an executive and administrative body. The HVO HZ HB executive and administrative body was established because “there [was] no organization of

²³⁴ Tr. 28954 (2 June 2008).

²³⁵ P00206.

power in Bosnia and Herzegovina,”²³⁶ and because the BiH Presidency did not act.²³⁷ It was noted on 15 May 1992 that the referendum did not prejudice the internal organization of BiH and that during the international negotiations it was proposed, in order to prevent chaos and further anarchy, that the Ministerial Council of BiH be composed of nine members (i.e. three members representing each of the three constituent nations) until principles on internal organization could be agreed.²³⁸ The reasons for the establishment of the HVO HZ HB executive and administrative body are also confirmed in Boban’s letter of 26 April 1992 to Ambassador Cutileiro, Izetbegović, and SDS President Radovan Karadžić, wherein *inter alia* he notes:

The Serbian army – made of the so called Yugoslav army and the Chetniks forced upon the people a most bloody and dirtiest war ever known, all the civil authorities are disintegrated and there is a general chaos in the whole country.

Still convinced that the principles of the negotiations under the patronage of the European Community are the only possible way for the establishing of the Government of the State of Bosnia and Herzegovina, that the war still can be stopped, it is necessary to apply at once some of the agreed principles of the future constitutional arrangement of Bosnia and Herzegovina.

Therefore we suggest, that instead of disintegrated and illegal authorities, immediately a Ministry Council of Bosnia and Herzegovina should be mandated consisting of nine members (a parity of the three people) as the European Community has proposed, being [sic] the only authority of temporary governing Bosnia and Herzegovina.²³⁹

T. Statutory Decision of 13 June 1992

116. In 1991-92, Muslims and Croats throughout BiH set up Crisis Staffs based on the Law on All People’s Defence.²⁴⁰ Due to the inability of the Republican organs to organize an effective defence,²⁴¹ self-defence based on All People’s Defence was organized at the municipal level. Municipalities established Crisis Staffs and military units under their control, and began passing independent decisions regarding defence matters. Municipalities, as social and political

²³⁶ P09526, p. 2.

²³⁷ P09526.

²³⁸ P09526, p. 1.

²³⁹ 1D00525.

²⁴⁰ Tr. 30245-30246 (7 July 2008).

²⁴¹ Tr. 7974 (19 October 2006).

[REDACTED]

communities, were required, if necessary, to assume both municipal and Republican government functions.²⁴²

117. The BiH Constitution provided that municipalities were responsible *inter alia* for creating and ensuring conditions for citizens' livelihood and work, social development, satisfying common needs, exercising authority, and managing other social activities.²⁴³ Municipalities were also responsible for "all-people's resistance on the municipal territory."²⁴⁴ As the war progressed, as a matter of pure survival, municipalities needed to coordinate their efforts.²⁴⁵

118. On 13 June 1992, the HVO HZ HB (military) adopted the Statutory Decision on Municipal Executive Authority and Municipal Administration.²⁴⁶ Through this Statutory Decision, an effort was made to coordinate the work of the HVO municipalities. Witness Zoran Buntić explained that prior to this Statutory Decision, the municipalities "had to adopt regulations in the areas of finance, health, education, and so on. Payments were not functioning, traffic communications were not functioning, railroads, and so on. So the municipalities simply had to adopt a large number of regulations to deal with the situation."²⁴⁷ Article 6 of the Decision putatively tasked the HVO HZ HB executive and administrative authority with "supervising the legality of the municipal HVO's work" and "instructing the municipal HVO in the field of its competence." Members of the HZ HB Presidency, were, however, the Presidents of the municipalities.²⁴⁸ In other words, members of the Presidency, which collectively appointed the members of the HVO HZ HB executive and administrative body, were at the same time theoretically accountable to HVO HZ HB members, who were, in fact, subordinated to and accountable to *them*. The purpose of Article 6

²⁴² 1D02994, Article 262 of the Constitution of SRBiH states: "The municipality is self-managing and basic socio-political community..." Article 263 defines the tasks and rights of municipalities.

²⁴³ 1D02994, Article 262(2) of the SRBiH Constitution. Article 262(3) states: "the functions of authority and management of other social business apart from those which, according to the constitution, shall be carried out in larger social-political units, shall be carried out within the municipality."

²⁴⁴ 1D00897, Article 66; 1D02994, Articles 256, 257.

²⁴⁵ *E.g.*, out of three neighboring municipalities, two would conduct defence preparations and the third, which was also in contact with the front line, would not do so. *See also* Tr. 30683-30685 (14 July 2008).

²⁴⁶ P00250.

²⁴⁷ Tr. 30290 (7 July 2008). *See also* 1D00796; 1D00798; 1D00803; 1D00801; 1D00802; 1D01115; 1D01771; 1D00555; 1D00561; 1D00780; 1D01448; 1D00955; 1D00957; 1D00973; 1D00783; 1D00974; 1D00213; 1D00218; 1D01374; 1D01375; 1D02978.

²⁴⁸ P00078, Article 7.

“was to achieve something close to unity, or at least to attempt to harmonize this vast number of regulations adopted in the meantime.”²⁴⁹ This was as illogical as it was impracticable,²⁵⁰ particularly when it came to matters of finance.²⁵¹

U. The development of regionalization

119. Witness “DE” explained the process by which the [REDACTED] was established: “[REDACTED].”²⁵² In Čitluk, once JNA tanks halted near Mostar, an emergency meeting of the municipality’s executive council was called and a Crisis Staff was set up in accordance with the Law on All People’s Defence of BiH.²⁵³

V. Dr. Prlić’s involvement with the Mostar Special Purpose Council

120. When Mostar came under attack by the JA/Serb forces in late April 1992, its residents soon came to learn that no help was on its way. The Republican government in Sarajevo did not send help: no armed forces, no military weapons, no food supplies, nothing. The UN, while in the vicinity, did nothing other than hold a few meetings; it mounted no defence, it offered no protection, it sat and passively watched as the east side of Mostar was pummelled unrelentingly. The neighboring countries sent no assistance. The neighboring municipalities were either in the same dire straits or preparing for the inevitable. If there was ever a reason for a community to come together, this was the time. Despite having a defence plan prepared as part of the All People’s Defence, despite having a political mechanism in place for emergency circumstances (i.e. the forming of a crisis staff which would have the authority to make rapid decisions), despite having drilled on civil protection, Mostar was immediately overcome by chaos. The Crisis Staff became impotent almost from its inception. The head of the Crisis Staff was not up for the task, and even if he were, he had neither a functioning police force nor a Territorial Defence force. The Defence Plan for

²⁴⁹ Tr. 30290-91 (7 July 2008).

²⁵⁰ Tr. 30289-30296 (7 July 2008); Tr. 31660-31672 (1 September 2008); Tr. 33765-33768 (27 October 2008).

²⁵¹ Tr. 33900-33905 (29 October 2008).

²⁵² Tr. 15606-15607 (13 March 2007) (closed session). [REDACTED]. Tr. 15617-15618 (13 March 2007) (closed session).

²⁵³ Tr. 32518-32525 (22 September 2008); Tr. 33711-33718 (27 October 2008); Tr. 34121-34124 (3 November 2008). The Čitluk Crisis Staff included individuals who had become members of the war presidency and it was fully in accordance with the Law on All People’s Defence and the Statute of Čitluk Municipality. See Tr. 30741 l. 23 – 30743 l. 16 (15 July 2008).

Mostar sat in a vault; the city was being shelled, the head of the Crisis Staff was panic-stricken, shell shocked and doing nothing.²⁵⁴

121. Against this backdrop, one member of the Crisis Staff, Borslav Puljić, took the initiative to draft a decision that would entrust the defence of Mostar Municipality to a home-grown force that had recently been formed, the Croat Defence Council – Municipal Headquarters Mostar (“HVO Mostar”).²⁵⁵ The HVO Mostar was composed of both Croats and Muslims from the Mostar Municipality. This was the only available force that was prepared and ready to protect the citizens of Mostar. At the Crisis Staff office/shelter, Puljić would often encounter local Mostarians who would come to offer their assistance. It was under these circumstances that Dr. Prlić and Neven Tomić dropped by to see what they could do to defend their city. Puljić took the opportunity to show Dr. Prlić and Tomić the draft decision he wanted to table for discussion before the Crisis Staff. The draft decision seemed to be an excellent idea, though Dr. Prlić made a suggestion on how to improve it. He suggested that the draft decision contain the following language, which was inserted as paragraph IV of the decision:

The ethnic structure of the command personnel of the Croat Defence Council shall match the ethnic structure of the soldiers on active duty. When forming new defence forces, the command personnel shall be represented on the parity principle. This provision shall apply to forces formed after 1 May 92.

122. The Crisis Staff adopted this decision on 29 April 1992. In the meantime, efforts to defend Mostar had already begun by local managers of enterprises, professionals and technocrats who either had connections outside BiH and could get assistance or had technical and organizational skills. By 13 May, the east side of Mostar was falling, with its residents trying to escape to the west. Witness Ratko Pejanović provided graphic testimony.²⁵⁶ The Crisis Staff was defunct by the time it turned over the defence of Mostar to the HVO Mostar; it existed in name only. When asked about the status of the Crisis Staff, Puljić testified that, by

²⁵⁴ Tr. 32115-32152 (15 September 2008); Tr. 32518-32525 (22 September 2008); Tr. 33711-33718 (27 October 2008); Tr. 34121-34124 (3 November 2008).

²⁵⁵ P00180.

²⁵⁶ Tr. 10387 (5 May 2006).

15 May 1992, when the Crisis Staff was disbanded by the HVO Mostar and replaced by the Special Purpose Council, it did not exist.²⁵⁷

We did not de facto exist at that time, we were unable to do anything. I think some 20 days or even more than that before this date, the Crisis Staff was totally useless. I've already said that de facto at that time, we didn't exist. We didn't have the instruments to administer. The Crisis Staff also had a number of incompetent men who at the time were not up to the tasks that they were facing.

123. It was under these circumstances that the President of the Mostar Municipal Staff of the HVO, Jadran Topić, issued the 15 May 1992 Order disbanding the Crisis Staff and forming the Special Purpose Council of the Mostar Municipality Staff of the Croatian Defence Council to "administer the entire functioning of the city and care for its citizens."²⁵⁸ Puljić recounted:²⁵⁹

We did not talk about this document. I did see it when it was brought to the staff, and it didn't mean anything to me because at the time the Crisis Staff was not functioning. It wasn't even at the first shelter where we were. We were at the cellar or at the rectorate[sic], which was subject to shelling, and most frequently the cellar was empty. Everybody – all the members of the Crisis Staff would be hiding in different places in town because the town was shelled on a daily basis. I saw that document when the messenger brought it and delivered it to the Crisis Staff which at the time was in a different building. We had already left the shelter.

124. Prior to this Decision, Topić had issued an earlier Decision on 7 May 1992, appointing 13 members to the Special Purpose Council, tasking them to undertake certain requirements for the HVO Mostar Municipal Staff.²⁶⁰ In fulfilling part of the responsibilities entrusted to him as a member of the Special Purpose Council, Dr. Prlić prepared a Report on the situation in the holding enterprise – APRO Corporation Mostar, which he submitted to the HVO Mostar Municipality Department for the economy on 2 June 1992.²⁶¹

125. On 21 May 1992, Topić issued another Decision on the establishment of the Croatian Defence Council of Mostar Municipality,²⁶² pursuant to the Statutory

²⁵⁷ Tr. 32148-32150 (15 September 2008).

²⁵⁸ P00209.

²⁵⁹ Tr. 32151 (15 September 2008).

²⁶⁰ P00190.

²⁶¹ 1D2390.

²⁶² P00219.

Decision on the Establishment of Temporary Executive Power and Administration in the territory of HZ HB.²⁶³ Besides defence and internal affairs, members of the Municipal HVO Mostar assumed responsibility for functions including: civil protection, general administration, finance, the economy, social services, provisions, utilities, housing, reconstruction, traffic, telecommunications and information, social and health insurance, and refugees.²⁶⁴ Out of the eleven department heads, five were Muslim, including the Head of the Department of Defence. By the time the HVO liberated Mostar in June 1992, check-points had been set up at the municipality borders and measures were in place to control passengers as well as trade. The Mostar Municipality was not unique in taking these types of actions: every municipality had effectively taken over the functions of the other levels of government that had existed in the SFRY, i.e. the Federation and the Republic. With the Republican government unable to function outside Sarajevo, the municipalities had to try to coordinate their work and to self-manage.

W. HZ HB Presidency meeting dated 3 July 1992

126. The Decision of the Foundation of the HZ HB, adopted on 18 November 1991, was amended by the HZ HB Presidency on 3 July 1992. The amended decision was published in the first issue of the Herceg-Bosna Official Gazette (Narodni list) in September 1992.²⁶⁵ A press release issued by Boban in his capacity as President of the HZ HB explained the reasoning and purpose behind the HZ HB setting up a *provisional* executive authority:

On 3 July 1992 the Presidency of the Croatian Community of Herceg-Bosna adopted decisions to set up a provisional executive authority in the successfully defended and liberated areas that should enable them to resume normal life, as far as possible, i.e. in order to ensure supplies, trade, production, health care, the safety of citizens and their property, accommodation for refugees, etc. These decisions in no way impinge on the sovereignty and unity of Bosnia and Herzegovina. All these decisions are in accordance with EC principles on the constitutional order of Bosnia and Herzegovina as an independent state.

²⁶³ P00206.

²⁶⁴ P00221.

²⁶⁵ P00078: Decision of the Foundation of the HZ H-B, amended version of 3 July 1992 (dated Mostar, 18 November 1991 at the bottom despite this) as printed in *Narodni list* issue number 1, September 1992, pp. 2-3, ERN 0050-8323-0050-8324 in B/C/S original, English translation at ERN 0050-7549-0050-7550.

The Croatian Defence Council was set up as an armed force of their own against the occupier and aggressor in Bosnia and Herzegovina. As soon as it was set up, the Presidency and Government of Bosnia and Herzegovina were informed that this force regarded itself a part of the united defence forces under the Presidency of Bosnia and Herzegovina, but that a joint command of the armed forces for the entire area of the independent state of Bosnia and Herzegovina needed to be established.²⁶⁶

127. The Statutory Decision explicitly sets out in Article 2 the “temporary” nature of this body; it was to cease work upon “the establishment of regular executive authority and administration.”²⁶⁷ In light of: **a.** the war raging throughout BiH; **b.** the collapse of the Republican institutions and the failure of the Republic’s institutions to provide an effective defence to *all* BiH citizens in *all* areas of BiH; and **c.** the ongoing negotiations on the internal organization of BiH that would provide for real constituent rights and protections to the three constituent peoples, a *permanent* executive authority would expectedly emerge from the peace negotiations which had been initiated by the international community, and, in particular, the EC. Boban’s remarks concerning the HVO as a component of the armed forces of BiH, with the Presidency of BiH being its Supreme Commander, echoes what President Tuđman and Izetbegović publicly announced in their 12 June 1992 Joint Statement²⁶⁸ and later agreed to as part of the Friendship and Cooperation Agreement of 21 July 1992.²⁶⁹

128. The amendments were precipitated by and should also be considered in the context of developments taking place between November 1991 and July 1992: **a.** the war in Croatia had temporarily ceased;²⁷⁰ **b.** there was no agreement on the future internal organization of BiH between the Croats and Muslims; **c.** the EC-sponsored negotiations adopted the principles of the Cutileiro Plan on 18 March 1992; **d.** BiH, largely due to Croat and HDZ support for the referendum, had received international recognition; **e.** the war was raging; 70% of BiH was occupied by the Serbs, and the non-Serbs were in large part exiled to remaining

²⁶⁶ 1D02441.

²⁶⁷ P00303.

²⁶⁸ P10481.

²⁶⁹ P00339.

²⁷⁰ The Peace agreement under international auspices (Cyrus Vance) was signed in Sarajevo on 2 January 1992.

free territories and abroad;²⁷¹ **f.** the BiH Assembly had ceased to meet and the BiH Government was effectively not functioning²⁷² and had no influence outside of Sarajevo, which itself was completely surrounded;²⁷³ **g.** municipalities had assumed most of the functions of the SFRY and the Republic, creating the need to coordinate their activities, and; **h.** HVO forces had defended significant parts of BiH (e.g. Herzegovina, Central Bosnia, and Posavina).

129. The amendments were intended to enable the creation of new temporary bodies to coordinate the work of municipalities in certain areas in line with these express needs. The HVO needed to coordinate the united municipalities' Crisis Staffs. Cooperation between municipalities was essential because of the lack of available communication with the Republican government, its limited functionality and its limited capacity to provide basic services to citizens.

130. On 3 July 1992, the HZ HB established a legislative body with the adoption of an amended version of the 18 November 1991 Decision on Establishing the Croatian Community of Herceg-Bosna.²⁷⁴ Article 7 of this Decision vested supreme authority in the President of the HZ HB (Boban) and the Presidency of the HZ HB, consisting of "representatives of the Croatian people in the municipal bodies of authority, the senior official thereof or the presidents of the municipal Croatian Defence Council." This Decision "introduced for the first time the position of the President of the Croatian Community of Herceg-Bosna as a single, independent entity that had not existed up until the 3rd of July 1992."²⁷⁵ According to Article 8, the Presidency was empowered to "appoint the executive and administrative bodies of authority in the Croatian Community of Herceg-Bosna."²⁷⁶ It was on the basis of this Decision that the Statutory Decision of 15 May 1992 on the establishment of the HVO HZ HB executive and administrative

²⁷¹ Map: "Extent of Serbian occupation," "War in Croatia and Bosnia and Herzegovina 1991-1995" ed. Magaš, B, Žanić, I., Frank Cass, London, 2001. See also P00274, Official Gazette of Republic of Bosnia and Herzegovina, Number 7, page 234, Decree declaring a state of war, signed by Alija IZETBEGOVIĆ, 20 June 1992, preamble: "the aggressor, who refuses to halt aggression, has occupied over 70% of the territory of the state of Bosnia and Herzegovina ..."

²⁷² Witness "DE", in his testimony, explained that situation in his answer to a question from the presiding judge at Tr. 15595 (13 March 2007): "[REDACTED]" (closed session).

²⁷³ Tr. 7974 (9 October 2006).

²⁷⁴ P00302.

²⁷⁵ Tr. 30305 (7 July 2008).

²⁷⁶ P00302.

- body was amended by the Presidency of the HZ HB. The 3 July 1992 Statutory Decision outlined with some specificity the role of the President and departments of this interim executive and administrative body.²⁷⁷ Irrespective of his new position as President of the supreme legislative body, i.e. the Presidency of the HZ HB, Boban continued in his capacity as President of the HVO HZ HB executive and administrative body.
131. On 3 July 1992, the Presidency of the HZ HB adopted the Decree on the armed forces of the HZ HB (“Decree on the Armed Forces”).²⁷⁸ This Decree was based on and expressed the spirit of (save for necessary modifications) the SFRY’s and BiH’s Law on All People’s Defence.²⁷⁹ The Decree on the Armed Forces *prescribed* the duties of the HVO HZ HB executive and administrative body in a very similar manner as the BiH Law on All People’s Defence prescribed the duties of the Executive Council of the Assembly of BiH.²⁸⁰ The Decree Law on Defence that the BiH Presidency adopted on 14 May 1992 was also grounded on earlier Laws on All People’s Defence.²⁸¹
132. The Decree on the Armed Forces set out the responsibilities of the Department of Defence as administrative, not operational.²⁸² Beyond this, the Decree established local offices called Defence Administrations - and within them Defence Offices - to handle administrative matters associated with the military.²⁸³ These tasks were devolved to the municipalities in the All People’s Defence system.²⁸⁴ Pursuant to the Decree on the Armed Forces, mobilization was regulated in a similar manner as under the previous Law on All People’s

²⁷⁷ P00303 (same as 1D00156).

²⁷⁸ P00289.

²⁷⁹ *Id.*, Article 62; 1D00897.

²⁸⁰ *Cf.* 1D00897, People’s Defense, SRBiH, 9 February 1984, Article 87 which defined 13 types of activities of the executive council that were mainly civilian in nature with P00289, Decree on the Armed Forces of the HZ H-B, 3 July 1992, Article 9.

²⁸¹ 1D01238.

²⁸² P00289, Article 10.

²⁸³ P00289, Articles 12-14.

²⁸⁴ *See* 1D00897, Law on All People’s Defense, SRBiH, 9 February 1984, Article 63, items 4 and 5 which provided that the municipality “secures the unity of its rights and duties in the all people defense domain ... guides and synchronizes the preparations and the plans of the defense ... training for the working people and citizens, performs the duties related to the military registry, providing manpower and mobilization of the armed forces with military conscripts and material goods from the list...”

Defence.²⁸⁵ The Decree on the Armed Forces regulated the process of military appointments.²⁸⁶ Pursuant to Article 29, the Supreme Commander of the armed forces of the HZ HB was the President of the HZ HB Presidency. Thus, in addition to being the head of the executive and legislative bodies in the HZ HB, pursuant to this Decree, Boban also became the head of the military.

133. The Decree on Armed Forces provided that the HZ HB “members (the municipalities)” contribute to the budget of the Department of Defence; it was to be “adopted by the HZ H-B members” based on “the needs of the Armed Forces of the HZ H-B.”²⁸⁷ Because the HZ HB was established primarily for the defence of the municipalities and areas of the HZ HB, responsibility for the defence’s financing lay with the municipalities. The Department of Defence was exclusively responsible “for the provisioning of the Armed Forces with combat equipment (artillery pieces, arms and ammunition).” Other supplies such as “materiel, equipment, food, financial resources and medical, veterinary and other supplies” were to be carried out “by the HVO Dfence [sic] Department, in cooperation with other departments of the HVO as well as other institutions and bodies.”²⁸⁸

X. Friendship and Cooperation Agreement dated 21 July 1992

134. BiH’s independence was recognized by Croatia immediately and unreservedly. Soon thereafter, Tuđman and Izetbegović, President of the BiH Presidency, began to have contacts and to seek ways to cooperate. The first public indication of this cooperation came from a public interview with Izetbegović in the Croatian news agency HINA. Izetbegović explained that he supported the idea of a confederation between BiH and Croatia. He also noted that “[w]hat took place in Split [the bilateral meetings of 16-17 May 1992 with the HDZ BiH

²⁸⁵ Cf. P00289, Article 36-38 with 1D00897, People’s Defense, SRBiH, 9 February 1984, Article 59, which set up tasks of the social-political communities (municipalities, republic). Item 11 states: “organize and perform the duties and the tasks related to the preparing and executing the mobilization of the armed forces, organs, organizations and the communities, military duties in the All People’s Defence domain, in accordance with the law and other regulations.” The legislation of RBiH also accepted a similar solution. See 4D00409, Decree law on the armed forces of the Republic of Bosnia and Herzegovina, Article 21, which proposed: “The Republican Presidency shall order the mobilization of the armed forces, parts thereof, or others involved in defence as stipulated in the Decree Law on Defence.” Article 24 specified: “The following shall be responsible for the preparation and implementation of Army mobilization: 1. the Minister of Defence - for the preparation and implementation of Army mobilization and other duties in the Ministry of Defence’s sphere of activities; 2. Army units and institution officers- for the preparation and implementation of Army unit and institution mobilization.”

²⁸⁶ P00289, Article 34.

²⁸⁷ P00289, Article 55.

²⁸⁸ P00289, Article 41.

delegation subsequent to the Graz meeting]²⁸⁹ is only the Party's position and, in future, SDA will advocate for this view in the political and state organs of Bosnia and Herzegovina in order to determine a joint platform with the other political parties for official talks with the relevant organs of the Republic of Croatia."²⁹⁰

135. Following Izetbegović's HINA interview, Tuđman and Izetbegović issued a Joint Statement on 12 June 1992. The Joint Statement was, in part, issued because Izetbegović was "not able to travel outside Sarajevo." Tuđman, on behalf of Croatia, offered his continued help to BiH and expressed his support for the BiH Presidency "to consolidate the defence of the Republic by uniting all forms and components of armed forces to the unified armed forces of Bosnia and Herzegovina under the superior command of the Presidency of Bosnia and Herzegovina."²⁹¹

136. Subsequent to the Joint Statement, the BiH Republican authorities prepared a Platform for Regulating the Relationship with the Republic of Croatia.²⁹² The Platform covered, in significant detail, the areas of mutual cooperation envisaged (e.g. military, refugees, humanitarian assistance, establishing a joint bank, and protecting the interests of the citizens of both States abroad). This Platform would lay the groundwork for the Friendship and Cooperation Agreement dated 21 July 1992 between BiH and Croatia; an agreement negotiated between Izetbegović and Tuđman.

137. The Friendship and Cooperation Agreement was reached out of "the need for agreement in resolving issues of vital importance for their mutual cooperation and joint opposition to aggression." It was also designed to provide a general framework for the future organization of BiH in keeping with the constituent status enjoyed by the nations in BiH, i.e. ensuring against the imposition of a unitary political system.²⁹³

138. Based on Item 1 of the Friendship and Cooperation Agreement, the "constitutional-political system of the country will be based on constituent units in the establishment of which due account will be taken of national, historical,

²⁸⁹ 1D02739; Tr. 29149-29152 (4 June 2008).

²⁹⁰ 1D02739, p. 9.

²⁹¹ P10481. *See also* Tr. 27720-27722 (7 May 2008).

²⁹² 1D01773; Tr. 29895-29901 (25 June 2008); Tr. 31256-31259 (25 August 2008).

²⁹³ P00339; Tr. 27720-27734 (7 May 2008).

cultural, economic, traffic and other elements.”²⁹⁴ These principles essentially tracked the criteria set out by the Cutileiro Plan²⁹⁵ as well as the peace plans that were to follow, i.e. the Vance-Owen Peace Plan²⁹⁶ and the Owen-Stoltenberg Plan.²⁹⁷ The Friendship and Cooperation Agreement described the manner by which established civilian structures would be adapted. Institutions would be harmonized with the constitutional and legal system of BiH, in the spirit of protection of the constituent rights of the three constituent nations.²⁹⁸

139. Based on Item 6 of the Friendship and Cooperation Agreement, the HVO (military) was acknowledged “as an integral part of the united armed forces of the [BiH].” However, three weeks later, Izetbegović reneged on this part of the agreement by amending the BiH Decree on the Armed Forces, wherein the HVO was subordinated to the ABiH.²⁹⁹ Izetbegović recognized the HVO on at least one occasion as a component of the armed forces of BiH, as opposed to a subordinate unit of the ABiH.³⁰⁰ This is but a small example of Izetbegović’s lack of sincerity and persistent “two-track” approach.

Y. 14 August 1992

140. On 14 August 1992, the HZ HB Presidency held a session reforming the HVO HZ HB executive and administrative body. During this session, Boban relinquished his position as President of this executive and administrative body and Dr. Prlić was appointed in his stead by the HZ HB Presidency.³⁰¹ Contrary to what is recorded, Dr. Prlić was never the *de jure* or *de facto* Head of the Finance Department from 15 May 1992 to 14 August 1992:³⁰² **a.** the minutes of the Presidency of the HZ HB’s session held on 15 May 1992 do not mention any appointments;³⁰³ **b.** the 3 July 1992 Presidency session does not mention the Head of the Finance Department, or that Dr. Prlić was present in any capacity;³⁰⁴ **c.** the

²⁹⁴ P00339.

²⁹⁵ 1D00398, Statement of Principles, Chapter A.

²⁹⁶ 1D00892, Constitutional Framework, Chapter I.

²⁹⁷ 1D01778, RBiH, HZHB, Agreement regarding Bosnia-Herzegovina – booklet for HZHB Presidency meeting; 1D01557.

²⁹⁸ P00339, Friendship and Cooperation Agreement, 21 July 1992.

²⁹⁹ 4D00410, Article 1; Tr. 28974-28975 (3 June 2008); Tr. 27827-27830 (8 May 2008).

³⁰⁰ 1D02432; Tr. 28978-28980 (3 June 2008).

³⁰¹ P00429.

³⁰² Tr. 30358-30361 (8 July 2008); Tr. 33728-33733 (27 October 2008).

³⁰³ P09526.

³⁰⁴ 1D01670.

minutes of the 14 August 1992 session of the HZ HB Presidency contain no mention of Dr. Prlić's name as a department head in proposals for two Decrees,³⁰⁵ and; **d.** there is no evidence nor any enactment proving that Dr. Prlić ever functioned as Head of the Finance Department.

141. During this session, Božo Rajić, Vice President of the HZ HB Presidency, reported on the political and security situation in the areas controlled by the HZ HB. He commented not only on the grave dangers facing the BiH Croats due to the war, but also on the intransigence and unwillingness of the Muslim political and military leadership to have:

discussions and negotiations on the organization of the state of BH pursuant to the principles of the [EC], with three constituent units. Their insincerity in talks leaves no doubt that they support the model of a civic state – read unitary – and that they are ready to endure who knows how many more human casualties and material destruction.³⁰⁶

142. These changes to the HVO HZ HB were essential for various reasons. Until 14 August 1992, Boban was the head of the executive and legislative bodies, in addition to having other functions such as being the Supreme Commander of the HVO HZ HB (military) and Vice-President of the HDZ. By relinquishing his post as President of the HVO HZ HB executive and administrative body, there would be at least a *de jure* separation of legislative from executive power. Also, as of 14 April 1992, the department heads as part of this collective executive and administrative body had not met, in part perhaps because Boban was preoccupied with more pressing matters related to his other functions.³⁰⁷ By this time, the situation on the ground had dramatically deteriorated because of the breakdown in the Republican institutions and the lack of funding for social services at the municipal level, which were normally financed by the Federal and Republic governments. The SDK was not functioning and no funds were being distributed by the Republican government. The taxes that could be collected at the municipal level were being used to finance defence,

³⁰⁵ P00391.

³⁰⁶ P00391. Lord Owen expressed a similar refrain when discussing his observations from his dealings with Izetbegović and Ganić concerning the fate of the Muslim residents of Sarajevo who were deliberately forbidden to depart Sarajevo and escape the dangers and misery hosted upon them by the shelling and siege of Sarajevo. See 1D01547; 1D01549; 1D01552.

³⁰⁷ Tr. 30359-30361 (8 July 2008).

which left the general population virtually without basic social services. As Witness Tomić explained:

At the time of the collapse of the system, the municipalities that had control of their territory and could work were actually more prosperous than before the war, because there was no transfer of money to the budget of the republic, as the SDK didn't work. But the institutions such as the pension fund, the fund for higher education from which the universities were financed, or water management which were run from the level of the republic and from where money for the pensioners came and for healthcare, they were left without money. And the municipalities continued to raise funds that they were entitled to, but they used them exclusively for defence, so that university teachers were left without salaries, secondary schools were left without salaries because those schools were financed from the regional level, doctors and hospitals were also financed from regional funds or partly from the funds of the republic, were left without salaries [...] So a huge number of the population or a huge part of the population was left without money. So it was our role, first and foremost, to help the citizens and the municipalities which, due to the war activities, were left without money for financing their tasks. [...] On the ground there was already chaos. We were trying to gain control over it.³⁰⁸

143. Most of the initial work of the HVO HZ HB executive and administrative authority dealt with making adjustments to the then-existing Federal and Republic legislation that needed to be harmonized in light of the prevailing circumstances.³⁰⁹ A very specific example was provided as to why amendments needed to be made to laws such as the Law on Court Fees: by August 1992, Yugoslav Dinars “did not exist in any of the monetary payment transactions in the territory of Bosnia-Herzegovina ... payment transaction service[s] that [were] in charge of the payments both in Bosnia and Herzegovina and in the former Yugoslavia no longer functioned ... in this area of the Croatian Community of Herceg-Bosna, most of the payments were effected in Croatian Dinars because Croatian Dinars were most easy to be had and somewhat less was carried out in German marks.”³¹⁰ Similarly, the Decree on the Implementation of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY During a State of War or Immediate Threat of War on the Territory of the

³⁰⁸ Tr. 33738-33739 (27 October 2008). For a more complete understanding of the manner in which social services were financed by the Republic and from the regional level, see Tr. 33740-33744 (27 October 2008); 1D03111, Chapter 1, paras. 23-26; Tr. 35148-35155, 35159-35186 (12 January 2009).

³⁰⁹ Tr. 31697-31700 (1 September 2008).

³¹⁰ Tr. 30349 (8 July 2008).

Republic of Bosnia and Herzegovina, Croatian Community Herceg Bosna HZ HB (“Decree on the Implementation of the Criminal Code”) was adopted in order to make the BiH Criminal Code implementable,³¹¹ and in order to avoid parallelism or conflict between BiH and HVO HZ HB legislation.³¹¹ Article 1 of the Decree on the Implementation of the Criminal Code emphasized the application of BiH legislation, while Article 2 provided for the conversion of fines for criminal offenses from Yugoslav Dinars into Croatian Dinars.³¹² Without these changes, the Criminal Code could not be implemented effectively. Moreover, none of the amendments to the BiH Criminal Code contravened the substantive nature of the crimes and the Code in general or the BiH Constitution.

144. Other relevant legislation adopted by the Presidency of the HZ HB during the 14 August 1992 session serves as an indicator of the intentions of the HZ HB authorities and whether their actions were necessary and reasonable or part of a common criminal plan. The Decree on the Organization and Responsibilities of the Departments and Commissions of the HVO and the HZ HB defined how the organs of the HVO HZ HB would function as a provisional executive and administrative authority.³¹³

145. This provisional executive and administrative authority functioned as a collective, in the sense that anything passed by it would be based on a collective vote. Concerning work within the competencies of the departments and commissions, pursuant to Article 3 of the Decree on the Organization and Responsibilities of the Departments and Commissions of the HVO and the HZ HB, responsibility rested with the departments, and in particular, the department or commission head. Article 6 defines the departments’ *de jure* position:

³¹¹ P00128, Croatian Council HZ HB Report for the work of various departments during the year 1992, September 1992. In this report the HVO HZ HB executive authority noted: “At the legislative level the Council has passed 71 decrees, 21 decisions, numerous rules and rulings. **In making regulations it has tried to ensure that the regulations were concrete and in harmony with the existing regulations of the Republic of Bosnia and Herzegovina, in order to avoid parallelism and conflicts in legislation in practice.** However, priority has been given to such legislation as would ensure the efficient protection of the Community’s interests in all spheres of life and work, particularly defence.”

³¹² P00449.

³¹³ 1D00001; P00440, Article 5 states: “In order to realise the tasks entrusted to them, departments and commissions of the HVO shall execute policies, and apply and ensure the application of regulations and other acts issued by the Presidency of the HZ HB and they are responsible for the situation in the areas for which they are formed.”

“Departments and commissions of the HVO shall monitor the situation and initiate efforts to resolve issues in those fields for which they are formed, resolve issues within their competence, perform supervisory tasks, apply regulations and other acts...” This corresponds with the BiH Law on State Administration.³¹⁴ In performing their prescribed duties, heads of departments had the right to issue regulations independently; a right they exercised with some regularity.³¹⁵ Article 7 mandated that the departments and commissions “cooperate with the republican bodies in the preparation of acts which confirm the policy of the Republic of Bosnia and Herzegovina and in the preparation of laws and other regulations and general acts, referring to issues of the equality of the constituent peoples of the Republic of Bosnia and Herzegovina.” The same principles relating to the responsibility and work of departments and commissions, and in particular the independence with which the department and commission heads carried out their competencies, applied at the Republic level. As Witness Žarko Primorac explained when discussing whether as a cabinet minister he would take directions from the “Prime Minister” [sic]:

I had to operate under the laws that applied in Bosnia and Herzegovina. Understandably, whenever those laws had to be applied, there would be consultations at government level, perhaps consultations with the prime minister [sic] or with whoever happened to be at the time in charge of coordinating all these ministries. But my responsibility was to the law itself. There was no hierarchy in that way in the sense of the prime minister [sic] having the powers to give me an order that transcended my understanding of the law.³¹⁶

146. Finally, Article 34 mandated that relevant provisions of the BiH Law on State Administration would:

apply to interrelations in the realisation of the rights, obligations and responsibilities of the HVO and departments and commissions in execution of their powers, the organisation of municipal HVO offices, basic issues of supervisory inspections, general questions of entrusting public authority, the management of the departments, commissions and offices, resources for the work of HVO bodies, working relations between employees and other issues

³¹⁴ 1D00822, Law on State Administration, 6 March 1990, Article 24: “Administrative organs shall, within their rights and duties, be responsible for the situation in the areas for which they were formed...”

³¹⁵ *E.g.* 1D00016; 1D00015; 1D00019; 1D00023; 1D00020; 1D00041; 1D00147; P00309; P00452; 1D00065; 1D00129; 1D00197; P00309; P00527; P00526; 2D01336; 2D01232.

³¹⁶ Tr. 29990 (26 June 2008).

of importance for the functioning of the departments, commissions and offices.

147. The Decree on Internal Affairs During a State of War or Imminent Threat of War on the Territory of the HZ H-B (“Decree on Internal Affairs”)³¹⁷ serves as another example of the need to adopt such legislation at that time in light of the prevailing circumstances. Article 12 stipulated that the Heads of Departments: **a.** had the power to restrict or prohibit movement in public places in certain areas due to exceptional circumstances – a power not entrusted to the President of the HVO HZ HB or the HVO HZ HB itself; and **b.** had to report to the HZ HB Presidency – not the HVO HZ HB or its President – whenever exercising this power. Article 25 stipulated that this decree “shall be brought into line with current republican regulations when the conditions are met for the normalisation of the legal and other traffic with the relevant bodies of the Republic of Bosnia and Herzegovina.”

Z. Dr. Prlić’s interview – 17 August 1992

148. A few days after being appointed President of the HVO HZ HB executive and administrative authority, Dr. Prlić participated in a televised interview in Split, Croatia. Among the participants was Jure Pelivan, then President of the Government of BiH. This interview is remarkable in that Dr. Prlić succinctly set out the essence of the “temporary executive government of the Croatian Community of Herceg-Bosna,” identified the underlying causes of the war, and beseeched *the powers that be* to seize the moment by grasping onto solutions that were within reach for an enduring peace and the political stability of BiH, a nation of three constituent nations and others. Dr. Prlić, *inter alia*, noted:³¹⁸

The Croatian Defence Council is a civilian authority, namely the **temporary executive government of the Croatian Community of Herceg-Bosna and that much should be clear**. In all fairness, terms coincide. HVO /Croatian Defence Council/ is also the name of the military units operating in this area, and the same designation is that of the temporary executive government in the area of the Croatian Community of Herceg-Bosna. ... **This temporary executive government was elected by the presidents of the war presidencies of municipal assemblies, ensuring in that way the legitimacy of that temporary executive government. In all its documents it emphasizes that all of them are temporary documents, it adopts**

³¹⁷ 1D00002.

³¹⁸ 1D02078.

interim measures, it complies with the legislation of the Republic, and in the preamble of all its decisions it refers to decisions concerning the introduction of a state of war, the imminent threat of war and to the Constitution of Bosnia and Herzegovina. ... All the documents, all the headings, feature the Republic of Bosnia and Herzegovina, and in no case should it be taken to mean - and that is very often stressed - that the Croatian Community of Herceg-Bosna means a certain break-up of Bosnia and Herzegovina. In no case, **I believe that it constitutes one road, one direction towards sustaining the statehood of Bosnia and Herzegovina and the materialization of the interests of equally the Croatian and the other constituent peoples living in it.** (p.5)

[...]

The Croatian Community of Herceg-Bosna fully respects that proposal of the Constitution. And, as for some who do not want to talk about it and believe that by exhaustion, procrastination, a problem can be solved, I think that it cannot. **We have to organise everyday life. Our economic, financial and every other system in Bosnia and Herzegovina have collapsed.** We all have to be clear on that. With exceptional efforts, with numerous victims, more than a hundred people from Mostar are undergoing treatment here in neighbouring Firule alone. **So many have been killed liberating us from the occupation in a part of our region. We had to organise life.** Now we have to make a road to Central Bosnia, for when winter comes, those people will not be able to get food. ... I believe that the points of departure formulated by Europe, stating that there exist three national units in Bosnia and Herzegovina and which clearly said and proposed which competences those three national units should have, which rights should be ensured to peoples in those national units, must be taken as points of departure for talks. The Croatian people are anxious to see the war stop, and peace come, and we are in favour of a political agreement with all groups relevant to the regulation of the political space of Bosnia and Herzegovina, and, by the same token, an end to the war. We have lost over a hundred thousand lives to this war in Bosnia and Herzegovina. Should it take another hundred thousand or another hundred thousand yet for us to come to some political solution? ...I think that these problems of **a political arrangement can be solved in talks of all the relevant factors in Bosnia and Herzegovina, but exclusively under the aegis of Europe,** for, had we been able to come to an agreement, the war would not have ever taken place. (pp. 6 – 7)

[...]

The Croatian people were the ones who were for Bosnia and Herzegovina the most. The Serbian people aggressed on Bosnia and Herzegovina. The Muslim people, who was not prepared, mostly ceded territory to the Serbian side temporarily. Only the Croatian people, not only, but in the most organised way, defended Bosnia and Herzegovina. And, **I want to stress in particular that the Croatian people is the one that is really for Bosnia and Herzegovina, but upon principles that we talked about in Europe. We should take that, we should elaborate that and we should implement that. We are wasting time, and we are not aware of the responsibility**

that we have before the people. Who will explain to mothers why their sons got killed, and /? will go on being killed / in future, when we can solve these questions today. (p. 12)

149. Consistent with his public statement and indicative of his transparent efforts to ensure that all legal instruments passed by the HVO HZ HB were brought to the attention of the Republican authorities, Dr. Prlić sent a letter on 12 September 1992 to the President of the Government of BiH wherein he informed the Republican authorities of and provided them with “the acts passed by the temporary executive and administrative body ...”³¹⁹

150. Pelivan’s observations were also rather telling, particularly in light of the evidence showing Izetbegović’s lack of willingness to negotiate forthrightly for an internal organization of BiH that would guarantee the constituent rights of all three nations, particularly those of the Croats who were the most vulnerable since they comprised less than 18% of the BiH population:

Political agreement is a requirement. All the analyses and all the talks that we have conducted increasingly point to the fact that the question of political agreements cannot be postponed any longer. **The thesis that we should jointly liberate, defend Bosnia and Herzegovina, and then talk about political issues and the political organisation of Bosnia and Herzegovina cannot be accepted. Obviously, this is a job that we need to do in parallel and I think that we have spent enough time already. We have no more time for delays.** And I am increasingly convinced that even those who were in favour of the option of postponing such talks, realise that substantive talks on the subject are indispensable, and, **on returning to Sarajevo, I shall put this issue on the agenda with all seriousness and insistence. I think that there exist broad possibilities for an agreement to be reached without delay.** ... The political reality of Herceg-Bosna is absolutely recognised. In the area of Herceg-Bosna the political organisation of the Croatian Democratic Community has been formed. Thus it can act on a broader or a narrower basis. Therefore it is absolutely recognised as a political reality. ... But, in any case, probably **the representatives of the Muslim people were those who insisted the most that we should really work for a joint defence of the Republic, and that we can proceed with political agreements after the war ends.** The other peoples, primarily representatives of the Croatian people, who is in a relative minority in terms of its share in Bosnia and Herzegovina, insist that we make our choice already today and clearly determine what objectives we are fighting for in a free Bosnia and Herzegovina, and on that basis, with which instruments, with which solutions, are full equality, the full rights of every people, guaranteed. And, I believe that the representatives of the Croatian people are completely

³¹⁹ 1D01558.

right there and we shall insist that an agreement be reached without delay. (p. 9)

151. Tangentially related to Pelivan's remarks regarding his intent to place the need to discuss "political issues" and the political organization of BiH "with all seriousness and insistence" on the BiH government agenda, in parallel with the need to defend and liberate BiH jointly with the Muslims, are the efforts made by Witness Zoran Perković who returned to Sarajevo with Pelivan. Perković's remarks were made in light of the Friendship and Cooperation Agreement and the need to find immediate solutions to matters concerning the judiciary resulting from the siege of Sarajevo and the collapse of Republican institutions.³²⁰ While the details of his efforts are dealt with in the section of the Defence Theory relating to the judiciary, it is noteworthy that despite the Joint Statement and the Friendship and Cooperation Agreement, Izetbegović had no intention of honoring his commitments. Perković found that by this time the Muslim leadership effectively controlled the levers of government and was acting contrary to the principles of legality. They did so by masquerading tokenism as proportional representation; placing a Serb, for instance, as the Minister of Justice as a fig leaf to cover the fact that the decision and policy-making authority lay with a lesser body, with no *de jure* jurisdiction, but headed by a Muslim connected to the SDA.³²¹

AA. London Conference (26-28 August 1992)

152. With the failure of the Cutileiro plan, in part because Izetbegović had withdrawn his acceptance of it,³²² international efforts to find an acceptable peace plan intensified, starting with the talks hosted by Lord Carrington in London on 26-27/8 August 1992, known as the London Conference.³²³ The London

³²⁰ Perković places his trip to Sarajevo in July 1992, while Pelivan's televised interview was on 17 August 1992. From the context of Perković's testimony, especially when considering that Sarajevo was under siege with UNPROFOR providing air transport, the period of Perković's trip to Sarajevo and the events to which he testified would have been in the second half of August 1992.

³²¹ Tr. 31633-31640 (1 September 2008). *See also* Tr. 32031-32034 (4 September 2008), where Perković verifies that Dr. Ismet Daubasić, whose investiture to the BiH Constitutional Court by the SDA lacked legality (and may further explain the *ultra vires* nature of the BiH Supreme Court Decision on the legality of the HZ HB (P00476)), was the brother of Sead Daubasić, who was head of the office responsible for harmonizing legislation, and had *de facto* appropriated authority from the Minister of Justice Ranko Nikolić.

³²² Tr. 16970 (4 April 2007).

³²³ Tr. 16669-16670 (2 April 2007); 1D02454.

Conference was effectively a continuation of the EC process, resulting in the formation of the ICFY.³²⁴ As Witness Herbert Okun put it, “[t]he conference took up its work from where the EC had left off, so the *acquis* was part of our work ... all of the previous official material [being] utilised.”³²⁵ Boban, upon the express invitation of Lord Carrington, attended the London Conference as an observer with the right to express his opinions. Lord Carrington noted that “strenuous efforts [were being made] to ensure that the views of the Bosnian Croats are heard.”³²⁶

153. Pertinent to the Defence case is Tudman’s statement at the London Conference:

While expressing my thankfulness I nevertheless have to observe, noting that is also the view of many other concerned people familiar with the crisis in former Yugoslavia, that the international community has not yet found an efficient mechanism for stopping aggression, and that it has not summoned enough will and ways and means to end the brutal destruction wrought by a war such as Europe has hardly known, associated with the most barbaric form of “ethnic cleansing” in order to create “ethnically pure areas” within the scope of the programme of the conquest of the territories of other states. Therefore, I make a plea for efficient ways to terminate the horrors of war, to stop the loss of human life, civilians in particular, and the vast damage of property, as prerequisites for the gradual re-establishment of peaceful life and good relations among states emerged in the areas of former Yugoslavia, and their integration into civilized Europe. In this connection, I cannot but remind you of some facts related to the occurrence and spreading of the crisis in the area of the former Yugoslav community. ... Such an incomprehensible slowness and the breach of all set deadlines are becoming intolerable. It should be noted that the Republic of Croatia in the area from Slavonski Brod to Zupanja, is continuously being attacked from the territory of Bosnia and Herzegovina. Forces of the former Yugoslav army, that is, Serbo-Montenegrin military formations, still occupy purely Croatian areas south of Dubrovnik, which are not within the UNPA’s [United Nations Protected Areas] because there is no Serbian population in those areas. According to the Vance Plan the aggressor army had to withdraw from this region a long time ago.³²⁷

BB. 17 September 1992

154. Subsequent to the London Conference, Dr. Prlić expressed his understanding of the aims of the HZ HB, and in particular, his personal views on the future of BiH during a meeting with Tudman in Zagreb, Croatia, on 17

³²⁴ 1D01312.

³²⁵ Tr. 16670 (2 April 2007); 1D01312, Chapter I, p. 4.

³²⁶ 1D02454, p. 4.

³²⁷ 1D00397, pp. 1-2.

September 1992.³²⁸ Dr. Prlić was not aware that the meeting was being recorded.³²⁹ Accurate and verifiable transcripts do not exist because the tapes were destroyed. The transcripts, known as the Presidential Transcripts, have been admitted into evidence (presumably to be accorded weight with due deference). In this meeting, Dr. Prlić's remarks mirror in many ways his televised interview a month earlier on 17 August 1992. After stressing his general opinion of the aims of the BiH Serbs and Muslims, Dr. Prlić stresses the political goals of the Croats as reflected by his understanding of the aims of the HZ HB:

It has been clear to me ever since I became involved in this and since I have been in this post. This aim is the forming and ordering of Bosnia and Herzegovina in accordance with the principles of the European Community. That is, the constituting of Bosnia and Herzegovina through three national units. I think that this is convenient for the Croats, but the national composition of the population should not be the only criterion. I would like to say that in this part we have generally succeeded in defending the Croatian areas, except for the Bosnian Posavina.³³⁰

155. Dr. Prlić also remarks explicitly that the HVO has no offensive aims towards the Serbs:

We believe that we shall not hold on to anything that is not under our boot. I think I can say this openly in this company. I am not in favour of some high politics which would deny what our units have defended. We did not enter a single Serbian village, nor do we want a single Serbian village. But we shall defend our territory.³³¹

156. Dr. Prlić's words were neither related to nor contextually connected with any possible conflict with the Muslims. He did express the following, which can be seen as being relevant to BiH Croat-Muslim relations:

We have organised the authorities. This is only starting, we have an official gazette. We are passing the necessary decrees, we are trying to take care, to take care of that civilian aspect in the liberated territories. Why is this important? It is important because in a disorganized situation, people will join those who are organised. **If we set up our institutions, through the SDK /Social Accounting Service/, through the municipal Croatian defence councils, then people from other, who belong to other nations, will join those who are organised and who wish to introduce law and order in a certain area.** There is still no political agreement regarding the

³²⁸ P00498.

³²⁹ Tr. 27472 (5 May 2008).

³³⁰ P00498, pp. 28-29.

³³¹ P00498, p. 29

relations between the Croats and the Muslims, these relations are becoming ever more tense and certain conflicts are looming. Personally, I think that it will be impossible to avoid conflicts entirely. However, we must try to keep them under control.³³²

157. By these remarks, Dr. Prlić is outlining the importance of bringing a sense of order and security, which in turn, will attract others from other places and other nations to join. Simply, Dr. Prlić is promoting the establishment of a functioning civil society under the rule of law. By trying to make the areas in which the HZ HB exists attractive for others to join, Dr. Prlić is hardly advocating ethnic homogenization or the *engineering of the political and ethnic maps* of the HZ HB so that *they would be Croat-dominated, both politically and demographically*. Finally, Dr. Prlić commented on efforts made by the HVO HZ HB to regulate customs, border crossings and other matters with Croatia. These were pressing economic issues that had to be resolved by coordination with a neighboring State.³³³

158. Buntić was also present at the 17 September 1992 meeting in Zagreb. He was recorded as having said:

I would count the following as important and uncontested facts: firstly, according to the current Constitution of Bosnia and Herzegovina, it is defined as a complex state, consisting of three constitutive elements. Secondly, I do not know of any other multi-ethnic community in the world arranged in accordance with the unitary principle. Thirdly, since the beginning of the peace talks on Bosnia and Herzegovina, under the aegis of the international community, the findings of the Badinter Commission, the European Community and the United Nations have been offering a solution to that effect. That is to say, configuring Bosnia and Herzegovina as a complex state. In addition to this, well-known facts which can easily be calculated by using statistics, the decreasing number of Croats in Bosnia and Herzegovina such as it was, because of the large number of Croats who have moved out and also because of the Muslims moving into Bosnia and Herzegovina such as it is, and the fact of the establishment of an independent state of Croatia, the Republic of Croatia, if Bosnia and Herzegovina is arranged as a unitary state, I believe that the percentage of the Croats moving out, because now they have their own state to which they would go, and the Muslims from Sandžak and Kosovo moving in, would at

³³² P00498, p. 29.

³³³ See e.g. 1D02442, Croatian Community Bosanska Posavina letter to Croatian Minister of the Interior Jarnjak re: citizens from Bosanska Posavina in Croatia, 16 September 1992, regarding border issues (i.e. the procedure of crossing border in that part of BiH). Permission to leave the area was to be given by armed forces, Crisis Staffs in municipalities, and the President of the Council of the HVO of the Croatian Community of Bosanska Posavina.

least double. If we take the facts which I have listed to be important and uncontested facts, then our political platform is established. It is clear. That is, configuring Bosnia and Herzegovina as a complex state. What is contested and needs to be discussed is that we would have to establish a model of this complex state. [...] I hold that regardless of the international recognition of the state of Bosnia and Herzegovina, it is not a state, but a state which is only just coming into being. When I say coming into being, I explain it by the fact that it is partly occupied, that its government bodies, and I primarily mean the assembly, do not function, do not exist.³³⁴

159. Commenting on his own and Dr. Prlić's recorded remarks, Buntić testified that their expressed views were in line with what was being advocated by the EC.³³⁵ He noted that the meeting in Zagreb followed the London Conference and that the purpose of the gathering in Zagreb was for those from BiH to express views which they believed should be advocated at the peace conference on BiH, i.e. the ICFY negotiations. Buntić also indicated that:

President Tuđman endorsed the idea and principles, the gist of which was conveyed in Mr. Prlić's speech as well as mine. It was also concluded that at the forthcoming peace conference, we ought to advocate precisely the issues that were touched upon in Mr. Prlić's speech as well as mine. This is something that we did in the subsequent negotiations that took place at the peace conference.³³⁶

CC. 17 October 1992

160. Between the adoption of these two enactments (3 July 1992 – 17 October 1992), the character and authority of the HVO HZ HB executive and administrative authority was transformed. On 17 October 1992, the Presidency of the HZ HB held a session in Travnik.³³⁷ During this session, changes to the Statutory Decision on the Interim Organization of the Executive Authority opened the possibility for the HVO HZ HB to pass urgent decisions in cases "not suffering delay" that fell within the jurisdiction of the Presidency of the HZ HB. Such decisions would take effect pending approval at the next session of the Presidency of the HZ HB, when such enactments would either be confirmed, or not. Commenting on this amendment, Buntić noted that this type of emergency Decision was common.³³⁸ He also noted that at the time the amendment was

³³⁴ P00498, pp. 16-18.

³³⁵ Tr. 30361-30368 (8 July 2008).

³³⁶ Tr. 30366 (8 July 2008).

³³⁷ 2D01262.

³³⁸ Tr. 30369-30370 (8 July 2008).

enacted, it was not foreseen that the Presidency would not convene officially again for some time.³³⁹

161. At the same HZ HB Presidency session of 17 October 1992, the Presidency issued Rules of Procedure of the Presidency of the Croatian Community of Herceg-Bosna.³⁴⁰ These rules impacted upon the functions of the HVO HZ HB, and caused further confusion rather than clarity. As we have seen, the Presidency of the HZ HB was established in order to coordinate the work of the municipalities. Members of the HZ HB Presidency were, concurrently, Presidents of these municipalities.³⁴¹ Meanwhile, the HVO HZ HB was tasked with supervising the work of the HVO municipalities.³⁴² This was an illogical flaw; *de jure*, the HVO HZ HB was supposed to both *monitor* the work of the municipalities and was *subordinate* to the Presidency, impossible tasks to perform simultaneously in practice.³⁴³ Article 39 of the Rules of Procedure of the Presidency compounded the illogicality by prescribing that the “Presidency of HZ H-B promotes relations with HVO HZ H-B through participation of members of municipal HVO /offices/ in the work of the Presidency of HZ H-B, and, if necessary, through joint sessions of the Presidency of HZ H-B, HVO HZ H-B and the municipal HVO.”³⁴⁴ The impracticality was intensified by Article 40, which prescribes that when the “Presidency of HZ H-B decides that a regulation or other piece of legislation of HVO HZ H-B is contrary to regulations or other acts by the Presidency of the HZ H-B, it shall demand that HVO HZ H-B readjusts the regulation or other general acts or to takes [sic] other appropriate measures within a given time limit.”³⁴⁵ The absurdity of it all was that the Presidents of the municipal HVOs, in their capacity as members of the HZ HB Presidency, together were collectively and individually required to promote relations with the Presidency’s subordinate organ, the HVO HZ HB. At the same time, the *subordinate* organ was expected to “*supervise*” the work of its superiors and even

³³⁹ Tr. 30370 (8 July 2008).

³⁴⁰ P00596.

³⁴¹ P00078, Article 7.

³⁴² P00078, Article 15.

³⁴³ Tr. 31949-31956 (3 September 2008).

³⁴⁴ P00596, Article 39.

³⁴⁵ P00596, Article 40.

to dissolve (i.e, dismiss) their supervisors,³⁴⁶ at least on an individual basis. Theoretically, the HVO HZ HB could dissolve the entire Presidency by “dissolving” the municipal HVOs one by one. Commenting in general about the overall relationship between the HZ HB Presidency and the HVO HZ HB, Perković observed: “[t]his concept implies that presidents of the municipal councils of the HV[O] were members of the Presidency, and then according to this same logic you have a complete system in which everyone answers to everyone else, but essentially no one answers to anyone else.”³⁴⁷

162. The Statutory Decision on the Temporary Organization of the Executive Authority and Administration on the Territory of the HZ HB adopted on 3 July 1992, provided that “[i]f a municipal HVO has passed a decision or performed an act violating the basic legal provisions of the HZ HB, the HVO [HZ HB] has the right and duty to dissolve the said municipal HVO.”³⁴⁸ By contrast, the Rules of Procedure of the Croatian Defence Council of the Croatian Community of Herceg-Bosna, adopted on 14 October 1992, prescribed that “[i]f the HVO finds that a regulation or another enactment of the municipal HVOs is in breach of the regulations and other enactments of the HVO HZ H-B, it shall **request** from the municipal HVO to put the regulation or other general enactment right, or take other measures as appropriate within a deadline.”³⁴⁹ This substantially limited the HVO HZ HB’s power, especially when compared with the broad power the HVO HZ HB had in the summer of 1992 to **annul** any enactments violating “basic legal provisions of HZ HB.”³⁵⁰ The HVO HZ HB nullified municipal legislation on four occasions, though there is no evidence that the affected municipalities ever complied with the HVO HZ HB’s decisions.³⁵¹

³⁴⁶ P00303, Articles 14, 15.

³⁴⁷ Tr. 31668 (1 September 2008).

³⁴⁸ P00303, Article 15.

³⁴⁹ P09530, Article 40.

³⁵⁰ P00303, Article 15.

³⁵¹ P00431, nullified a decision issued by HVO Livno Municipality because it contradicted the Decree on the Armed Forces relating to mobilization. The second decision nullified was issued by Mostar Municipality. Minutes from the HVO HZ HB session at which this decision was nullified state: “The Proposal to repeal the Decision on Providing Business Premises for Temporary Use issued by Mostar municipal HVO, number: 01-1924/92 of 13 November 1992 was introduced by the HZ HB HVO Defence department. Mr. B. STOJIC, among other things, stated that the Decision in question conflicted with the Decree on the Sequestration of JNA /Yugoslav People’s Army/ and SSNO /Federal Secretariat for National Defence/ Assets in HZ HB Territory...” P00921, Minutes of the 15th session of the Croatian Council of

163. Another major change that resulted from the HVO Presidency session of 17 October 1992 involved the Decree on the Armed Forces, originally adopted on 3 July 1992.³⁵² Article 34 was amended to prescribe: "Commanders of the armed forces shall be appointed and relieved of duty by the HZ H-B President. Commanders of brigades and high-ranking officers shall be appointed or replaced by the Head of the Defence Department or by commanders appointed by him. Other officers and commanders, junior officers, and military personnel shall also be appointed to, or relieved of, posts of officers and junior officers among the military personnel in the armed forces..."³⁵³ These negated the HVO HZ HB's role in appointments of the armed forces, although there is no evidence that its *de jure* authority was exercised even before the amendments that were made to the Decree. Prior to the Decree's amendment, Article 34 of the Decree prescribed that: "Commanders in the Armed Forces shall be appointed and relieved of their duties as follows: Commanders of brigades, and high-ranking officers - by the President of the HZ H-B Presidency; Commanders of battalions and companies, and all other officers - by the Croatian Council (HVO); Commanders of platoons, detachments, and other non-commissioned officers /as written/ - by brigade commanders."

164. Further significant amendments were made to the Decree on Armed Forces on 17 October 1992.³⁵⁴ Article 30(2-4) of the revised Decree stated: "The

the HRHB held on 17 December 1992 in Mostar, 17 December 1992. The third example, also from Mostar, deals with defence: "The Decision on mobilizing material and technical equipment in Mostar municipality no. 01-225/93 of 24 March 1993 regulates the procedure in mobilizing material and technical equipment in Mostar municipality and determines which officials are authorized to approve it. Since the mobilization of armed forces is citizens' material obligation and duty in defence and since the authority of the HVO, the administrative organs of the Croatian Community of Herceg-Bosna and the legal persons in defence affairs has comprehensively determined by the Decree on the Armed Forces of the Croatian Community of Herceg-Bosna (*Official Gazette of the Croatian Community of Herceg-Bosna* no. 6/92), we maintain that the municipal HVO is not authorized to prescribe a mobilization procedure different from the one prescribed by the competent body. We are also of the opinion that it is not necessary to pass regulations on defence issues that have been regulated by the Decree on the Armed Forces." P01831, Signed proposal issued by Bruno STOJIC for the revocation of the Decision on mobilising material and technical equipment in Mostar municipality, 8 April 1993. The fourth decision relates to the Posavina region. It was passed upon a proposal by the Department of Internal Affairs. Because the municipality had simply passed a decision that all members of the 104th brigade were exempt from paying the customs duty for imported cars, "the decision on the registration of motor vehicles taken by the HVO of the municipality of Bosanski Šamac, No. 27-03/93 from 31 March 1993, is hereby abrogated..." P05262. Minutes from the 51st HZ HB Croatian Council session held in Mostar on 21-Sep-93. See also Tr. 31949-31956 (3 September 2008).

³⁵² P00289.

³⁵³ P00588.

³⁵⁴ P00289.

Supreme Commander of the armed forces may delegate certain tasks of leading and commanding the armed forces to the Head of the Defence Department. Within his jurisdiction, the Head of the Defence Department shall issue rules, commands, instructions, decisions, and other acts. The Head of the Defence Department shall be responsible for his work to the Supreme Commander for all the tasks delegated to him...” By contrast, the parallel provision in the Decree of 3 July 1992 prescribed: “In carrying out the tasks within his competence, the Supreme Commander of the Armed Forces shall issue directives, orders, decisions and other enactments. The Supreme Commander of the Armed Forces may transfer certain duties of command and control of the Armed Forces to the HVO. Within its competence, the HVO shall issue rules, orders, instructions, decisions and other enactments. It shall be responsible to the Supreme Commander for tasks transferred to its competence.”³⁵⁵

165. The power of the President of the HZ HB to delegate military command to the HVO HZ HB was removed by these changes. Once Dr. Prlić was appointed President of the HVO HZ HB on 14 August 1992, the HVO HZ HB’s *de jure* jurisdiction was brought in line with its civilian character as an interim executive and administrative authority. From the changes made to the Decree on the Armed Forces, the role of the HVO HZ HB in military affairs, as enjoyed when Boban was its President (in addition to all his other leadership positions), was over.

DD. HDZ Convention in November 1992

166. The HDZ BiH held its second General Convention in Mostar on 14 November 1992.³⁶¹ Boban was elected as President of the HDZ BiH after a secret vote. The five Vice-Presidents were Mile Akmadžić, Dario Kordić, Pero Marković, Jadran Topić and Ivo Živković. Forty members of the HDZ Central Committee were also elected (mostly municipal representatives). Among the forty six elected officials at the General Convention, none were members of the HVO HZ HB.

167. The HDZ BiH’s Political Charter was adopted at this General Convention.³⁵⁶ The Charter expressed the main political goals of the HDZ BiH.

³⁵⁵ P00289.

³⁶¹ Tr. 30384-30288 (7 July 2008); P00743.

³⁵⁶ 1D02579.

Its substance was a continuation of the principles and goals espoused by the HDZ BiH from its inception. It reflected the tenor of the principles advocated by the EC for the internal organization of BiH. Chapter III specifically proclaimed:

1. BH is a sovereign, independent and internationally recognized state;
2. BH comprises three constitutional and equal nations, the Croats, the Muslims and the Serbs;
3. HDZ BH is in favour of internal structure based on the principles established within the European Community and agreements reached between TUĐMAN and IZETBEGOVIĆ. Croatian Democratic Union is in favour of BH as a state of three constitutive units as the only solution that will guarantee all the civil and national rights of the Croats.

Chapter V encouraged the Muslim leadership to urgent negotiations:

Because of the armed conflict between the Croatian Council of Defence military units and the Muslim military units, HDZ BH hereby invites representatives of the Muslim people to urgent negotiations for cessation of all the conflicts, agreement on temporary borders and respect for all the military and civilian authorities created in the territory of the Croatian Community of Herzeg Bosnia, until the time when final political, constitutional and legal structure of BH will be determined. Such negotiations are an indispensable prerequisite for prevention of further conflicts and for existence of BH as an independent and sovereign state.

168. The HDZ BiH's position remained constant: always recognizing the sovereignty of BiH, its inviolability and the equal rights of all constituent peoples.³⁵⁷ Given that the HDZ captured 20.41% of the vote and considering that based on the 1991 Census the BiH Croats comprised 17.38% of the BiH population, a reasonable inference can be drawn that the BiH Croat nation, along with other nations and national minorities, supported the HDZ BiH Platform.³⁵⁸

EE. General remarks on the responsibility and work of the HVO HZ HB

169. The HVO HZ HB operated as did all other collective executive organs in the SFRY. It passed legal instruments within its defined jurisdiction and in accordance with a defined procedure collectively,³⁵⁹ and conducted its business in sessions.³⁶⁰

³⁵⁷ Tr. 34314-34330 (11 November 2008); 1D02699; 1D02798; 1D02579; 1D02700; 1D02580; 1D02701.

³⁵⁸ 1D02579, p. 1D30-0074.

³⁵⁹ P00303, Article 16 and P09530, Article 2; Tr. 31668-31669 (1 September 2008). A similar method of decision making was characteristic in collective bodies in other communities and executive bodies in

170. Departments were independent. They were required to “execute policies” and “apply” regulations and other acts issued by the Presidency of HZ HB. They were “responsible for the situation in the areas for which they are formed” and were to “monitor the situation and initiate efforts to resolve issues in those fields.”³⁶¹
171. The direct responsibilities of the HVO HZ HB and the departments were defined: departments and commissions were to “execute policies, and apply and ensure the application of regulations and other acts issued by the Presidency of the HZ HB” and were “responsible for the situation in the areas for which they are formed.”³⁶² The Rules of Procedure of the HVO HZ HB prescribed the HVO HZ HB’s responsibility to report to the Presidency of the HZ HB.³⁶³ The Reports of the departments of the HVO HZ HB were intended for the Presidency of the HZ HB.³⁶⁴ The Rules on the internal organization of all bodies, including the Office of Displaced Persons and Refugees (“ODPR”), were approved by the HVO HZ HB to ensure that they were drafted in line with the Department of Justice and General Administration’s criteria, and that there was sufficient funding in the budget to cover the costs of the employees and other expenses. The Rules provided for one notable exception: the President of the HZ HB approved the Rules of Internal Organization of the Defence Department.³⁶⁵
172. Every department was to have its own program of work in its area of responsibility. The HVO HZ HB’s program was merely a compilation of the individual programs of the departments.³⁶⁶ While the President and the Secretary of the HVO HZ HB were to “supervise” the program’s implementation,³⁶⁷ this

municipalities. *See e.g.*, 1D00869, Rules of Procedure of the Presidency of the Tuzla Municipal Assembly, November 30, 1992.

³⁶⁰ P09530, Article 16.

³⁶¹ 1D00001, Articles 5-6. Tr. 31022-31025 (18 July 2008); Tr. 31688 (1 September 2008); Tr. 31723-31727 (2 September 2008).

³⁶² 1D00001, Article 5.

³⁶³ P09530, Article 38.

³⁶⁴ *See* P04220, Minutes of the Working Meeting of the Government of the Croatian Council HZHB, where the HVO HZ HB minutes state that “after all reports on the work of the HVO of the HZ HB in the period between 1 January 1993 to 30 June 1993 are completed, they should be submitted to the Presidency of the HZ HB”.

³⁶⁵ P00586 (adopted in accordance with Article 11 and 29 of the Decree on Armed Forces, P00289), 2D00568, P02477.

³⁶⁶ P09530, Article 8.

³⁶⁷ P09530, Article 8.

was merely in a technical sense. The Secretary, for instance, did not have a right to vote during HVO HZ HB sessions.³⁶⁸ The documentation for HVO HZ HB meetings was prepared by the departments in line with their sphere of competence within deadlines set in the agreed work program.³⁶⁹ Despite the obligation of the departments to prepare their work program, the HVO HZ HB never adopted its own work program in 1992-93.³⁷⁰

173. It was the President's role, in co-operation with the Secretary, to prepare the draft agenda. Members would vote on the agenda as they would do for any other decision based on the principle of majority voting. The President had no discretion to include or exclude a matter for discussion. His role was limited by his vote, which had the same power as the votes of any other member.³⁷¹ Before November 1993, when the departments became ministries of the HR HB, besides coordinating their work in the HVO HZ HB the departments were independent, reporting to the Presidency of the HZ HB, its members, and its President. This is demonstrated by legislation regulating the work of the departments and the HVO HZ HB. For example:

*(A) Statutory Decision on the Temporary Organization of Executive Authority and Administration in the Territory of the Croatian Community of Herceg-Bosna*³⁷²

- **Article 20, para. 1** Tasks related to executive and administrative authority in the territory of the HZ H-B shall be performed by heads of departments...

- **Article 21, para. 1** The Head of the Department shall direct the work of the Department and shall be responsible for its performance. The Head of the Department shall issue legal documents within its sphere of competence and shall represent the Department.

- **Article 22, para. 1** The departments shall take charge of, and be directly involved in, the implementation of legal documents with the force of law in the territory of the HZ H-B;

*(B) Decree on the Organisation and Responsibilities of the Departments and Commissions of Croatian Defence Council of the Croatian Community Herceg Bosna*³⁷³

³⁶⁸ P09530, Article 9 also supports this proposition. The HVO HZ HB's bodies were obliged to implement the work program and monitor its implementation, and in the case of failure to implement the work program, bodies of the HVO HZ HB would be required to submit a timely report on the reasons for such failure to the President of the HVO HZ HB.

³⁶⁹ P09530, Article 11.

³⁷⁰ Tr. 34118-34120 (3 November 2008).

³⁷¹ P09530, Article 25. *See also* P00303, Article 16.

³⁷² P00303.

³⁷³ 1D00001.

- **Article 2** Commissions and department [sic] shall be formed to carry out administrative, professional and other tasks within the framework of the rights and obligations of the HZ HB.
- **Article 3** HVO departments shall carry out legal and other professional tasks within the framework of the rights and obligations of the HZ HB in the fields for which they have been formed, unless other HZ HB bodies are responsible for those tasks.
- **Article 5** In order to realise the tasks entrusted to them, departments and commissions of the HVO shall execute policies, and apply and ensure the application of regulations and other acts issued by the Presidency of the HZ HB and they are responsible for the situation in the areas for which they are formed.
- **Article 6** Departments and commissions of the HVO shall monitor the situation and initiate efforts to resolve issues in those fields for which they are formed, resolve issues within their competence, perform supervisory tasks, apply regulations and other acts, and perform professional and other tasks for the Presidency of the HZHB and HVO.
- **Article 7** Departments and commissions shall cooperate with the republican bodies in the preparation of acts which define [“confirm” is an incorrect translation of the word “define” in the document] the policy of the Republic of Bosnia and Herzegovina and in the preparation of laws and other regulations and general acts, referring to issues of the equality of the constituent peoples of the Republic of Bosnia and Herzegovina.
- **Article 7, para. 2** Departments and commissions of the HVO shall cooperate with administrative bodies of other states in questions of common interest, exchanging experience and knowledge and /engaging in/ other forms of cooperation.
- **Article 33** Departments and commissions of the HVO are obliged to issue rules on internal organization within 30 days of the date of this decision.

174. From 14 August 1992, the President of the HVO HZ HB was on the same level as the department and sub-department heads of the HVO HZ HB. His role related to coordinating the HVO HZ HB’s work. He had the same voting rights as any other member, and signed decisions adopted by the HVO HZ HB as a collective body. Members of the HVO HZ HB were all paid the same salary.³⁷⁴ The President of the HVO HZ HB did not have a right to nominate anyone for appointment.³⁷⁵ The process of appointments was identical to the process by which any other decision of the HVO HZ HB was passed, i.e. following a

³⁷⁴ 1D02117, “For the President of HVO HZ HB, Vice-President of HVO HZ HB, Head of Departments of HVO HZ HB in the amount of 50,000.00 HRD.” See also, Tr. 30284 – 30288 (7 July 2008); Tr. 30326 – 30327 (8 July 2008).

³⁷⁵ The minutes of the session of the HVO HZ HB show who made the proposal for any specific appointment.

proposal from the departments.³⁷⁶ The HVO HZ HB made appointments to the judiciary pursuant to authority conferred on it by the HZ HB Presidency (i.e. only on an interim basis in cases not suffering delay).³⁷⁷ Proposals for appointments usually had the consent of the respective municipalities.³⁷⁸

175. A complete analysis of the work of the interim executive and administrative body and departments must take into account the situation on the ground and the needs that dictated priorities.³⁷⁹ The agendas of HVO HZ HB meetings taken as a whole and in chronological order show the intentions and efforts of its members particularly in light of the prevailing circumstances.

176. Dr. Prlić articulated the aims and goals of the HVO HZ HB at the 7th session of the HVO HZ HB, held on 14 October 1992:

The analysis of the work of the HVO of the HZ HB in these two months, or from the day it was formed, shows that a lot has been done, but the pace of putting the adopted regulations into practice is inadequate. With the break-up of Yugoslavia, and the break of telecommunications, road and all other links with the republican organs, and the self-organization of people with the aim of defending themselves against the aggressor, in the past period the municipalities have gradually taken over the state functions, especially in the area of finance, so today some municipalities act as if they were states. With the creation of the HVO of the HZ HB, which is undoubtedly the aim and wish of the municipalities, or the Croats living in those municipalities, executive authority and government were established in the territory of the HZ HB. The municipalities should understand that the organs and bodies of the HZ HB work in the interests of all Croats, that is, in their interests too. Therefore, a municipality should provide material assistance (secure a vehicle etc.) to the man who is elected from that municipality. In order to work efficiently, departments and sections need to be reinforced and fully staffed. People need to be appointed, be they Croats or Muslims, and when they are appointed it is to be pointed out that the appointment is temporary. Food and accommodation is provided in the Pensioner's Home for the people coming from municipalities.³⁸⁰

177. The Report on the work of departments and the HVO HZ HB for 1992 also points out: "Since the pre-war government of Bosnia and Herzegovina

³⁷⁶ P09530, Article 25. For example, Item 5 of the 6th session of the HVO stated: "Proposal for appointment and termination of judges and prosecutors was submitted by the Department for Judiciary and Administration. The proposal for appointment and termination of judges (enclosed) was agreed in principle but the draft list is to be finalized on 8 October 1992 with the head of the HZ H-B Defence Department and submitted to the HZ H-B Presidency for adoption." *See also* P00559.

³⁷⁷ P00684.

³⁷⁸ *See e.g.* P01748.

³⁷⁹ P00128.

³⁸⁰ P00578, pp. 11-12.

showed itself incompetent and powerless inability and impotence to defend Bosnia and Herzegovina and its peoples from Serb-Chetnik aggression, responsibility for the defence of the Croatian national and its historical territories and interests was assumed by the HZ H-B.”³⁸¹ The same Report emphasized the main guidelines for activity of the interim executive authority: “The guiding principles of the HVO HZ HB have been the political goals of the Croatian people contained in the basic document, the Decision on Establishing the HZ H-B, the views of the international community on the constitutional and political arrangements for Bosnia and Herzegovina, and the obligations accepted by representatives of the Croatian people at international negotiations.”³⁸²

178. The Rules allowed the HVO HZ HB to pass decrees, decisions, determinations, and conclusions.³⁸³ Article 33 of the HVO HZ HB’s Rules of Procedure stipulates, *inter alia*, that the HVO shall “lay down the principal guidelines for its work and the tasks of the bodies of the HVO ...;”³⁸⁴ which reflects the nature of the relationship between the HVO HZ HB as the collective organ and the departments as independent bodies. The HVO HZ HB’s Rules of Procedure regulated the overall work of the HVO in their entirety.

FF. The relationship between the HVO HZ HB and the Presidency

179. The HVO HZ HB had limited powers. Although the HVO HZ HB had the authority to issue urgent decisions with immediate effect which could not wait for approval by the Presidency, it was always assumed that the Presidency of the HZ HB would continue to meet.³⁸⁵ The HVO HZ HB did not have, was not viewed as having, and did not view itself as having any function related to military operations.³⁸⁶

³⁸¹ P00128, p. 1.

³⁸² P00128, p. 3.

³⁸³ P09530, Articles 32-34.

³⁸⁴ P09530.

³⁸⁵ Tr. 30368-30378 (8 July 2008).

³⁸⁶ An example of the limited powers of the HVO HZ HB is seen from a letter that the HVO HZ HB sent to the President of the HZ HB, Boban, on 13 July 1993 (P03413). In this letter, proposals based on a proposal of the Defence Department which were made at the meeting of the HVO HZ HB 42nd session on 15 June 1993 (1D01668) were repeated. No action had been taken by Boban for a month despite the urgency of the matters as reflected: “1. Croats in Central Bosnia and northern Herzegovina are threatened with complete annihilation. The supremacy of Muslim units in that area is manifold and is increasing by the hour. For this reason, unless appropriate measures are urgently taken, an exodus of the Croatian people from these areas and their centuries-old homes is inevitable. In order to protect the threatened people, a general mobilization is urgently needed. In connection to this, it was proposed that the Supreme

180. The members of the Presidency, who were all Presidents of municipal HVOs, had notice of all HVO HZ HB enactments through: **a.** the Official Gazette; **b.** the meetings between members of the HVO HZ HB and the municipalities; and **c.** the information communicated by the Sub-department of Information of the HVO HZ HB. The HVO HZ HB fulfilled its obligation to the Presidency of the HZ HB by sending it the enactments it had adopted for approval (or rejection).³⁸⁷ The HVO HZ HB could *propose* a meeting of the Presidency of the HZ HB, but did not have the authority to *convene* a meeting of the Presidency.³⁸⁸

181. The Presidency of the HZ HB, as the supreme body, had the authority to annul any enactment of the HVO HZ HB.³⁸⁹ The HZ HB could not function

Commander of the HVO, Mr. Mate Boban, urgently meet with the Presidency of the HVO HZ-HB, the Presidency of the HDZ /Croatian Democratic Union/ and the Presidents of Municipal Committees of the HDZ to organize the defence of all Croatian areas which are under attack.” (1D01668). In this same letter, conclusion 4 again proposed that the Supreme Commander of the HVO form a wartime cabinet in accordance with the Decree on Armed Forces of the HZ HB. The proposals were made immediately after the ABiH attacks on Kakanj and Travnik that caused the exodus of more than 30,000 Croats; see 1D01668, Item 1. The implementation of full mobilization was also demanded, which, according to Article 37 of the Decree on the Armed Forces, could be requested by the President of the HZ HB; see P00588.

³⁸⁷ P04220, p. 1, Minutes of the Working Meeting of the Government of the Croatian Council HZ HB held on 16 August 1993: “The Presidency of HZ HB was sent a list of enactments of HVO of HZ HB, which will be applicable until the next meeting of the Presidency of HZ HB ...”

³⁸⁸ P09530, Article 38; See also e.g. P00543, p. 4 - concerning the design of Coat of Arms, it is a political decision which has to be decided by Presidency, p. 8 - Tomić to inform the Presidency which municipalities did not apply regulations, Buntić proposed that “the presidency meet more often and that the Presidency separate the jurisdiction of the HVO from that of the Presidency.” P01627, pp. 1-2 - “Mr. I. Žuljević proposes that the HDZ /Croatian Democratic Union/ and the HZ H-B Presidency make political decisions, or that they carry the burden of political decision-making, and the HVO of the HZ H-B should be the operative and executive organ to implement the policy. In line with that, an emergency session of the HZ H-B Presidency should be called and the question should be approached very seriously.” (8 March 1993). 1D01610, p. 1 - “In the end, Mr B. Stojic proposed to call a meeting of the Presidency of the HZ H-B and to establish a Military Council comprising between 7 and 10 persons.” (10 June 1993); 1D01668, p. 3 “A proposal was made to the Presidency of the HZ H-B and the Supreme Commander of the HVO to adopt a decision to pull out all military units from areas outside the designated Croatian provinces, together with the Croatian inhabitants living there. To this effect, demand cooperation and assistance from UNPROFOR and UNHCR.” 15 June 1993; P04220, p. 1 – proposal that the Presidency meet (16 August 1993).

³⁸⁹ P00596, Article 40; Tr. 25486 (10 December 2007). Ribičić explained the relations inside the HZ HB regarding the aforementioned legislative functions: “So we cannot overlook what the HVO said here, describing its own legislative function, and its own strong position, but on the other hand, we have to take into account the fact that the Presidency continued to be superior to the HVO and the President of the Croatian Community of Herceg-Bosna played a major role in personnel decisions and the operation of the HVO.” See also Tr. 25491 (10 December 2007), where in reply to a question of Judge Antonetti, Ribičić gives another opinion: “Now, please tell me, and please correct me if I'm mistaken can we not finally say that the HVO within its functioning could not have decided of everything without having a certain form of control of the HZ HB who, as a last resort, had the responsibility and that at any time Mate Boban was able to intervene, since on the one hand there was a state of war and, on the other hand, the HVO, such as it was created, did not transfer, as I think, I may be mistaken, the powers of Mate Boban and the Presidency of the

successfully because the division of responsibilities was not well-defined.³⁹⁰ It was only after the Decree on the Government of the HR HB was adopted on 30 September 1993³⁹¹ that a system that could generally provide for an effective government was created. The implementation of this Decree started with the appointment of the HR HB Government on 20 November 1993.³⁹²

GG. The relationship between the HVO HZ HB and the municipalities

182. Problems with the municipal HVOs emerged from the very beginning of the work of the HVO HZ HB and persisted well into late 1993 when the HR HB was established. The peskiest of issues for the municipal HVOs was their financial obligations to the HZ HB. The HZ HB was organized so that the respective municipalities and areas would join their efforts and contribute to the common benefit of all who lived in those municipalities and areas. This required, *inter alia*, that the municipal HVOs make the requisite financial contributions for redistribution. Therein lay the rub. For instance, at the 3 October 1992 HVO HZ HB session, the Head of the Department of Finance noted that “[i]nformation needs to be given at the Presidency session as to what municipalities fail to implement decisions by the HVO of the HZ HB.”³⁹³ A Presidency session was not convened, so the HVO HZ HB attempted to accomplish this goal by meeting with the Presidents of the municipal HVOs. At the 16th session of the HVO HZ HB, held on 23 December 1992, it was concluded: “All members of the HVO HZ HB must be present at the meeting with the Western Herzegovina municipal HVO representatives, and must insist that HZ HB regulations are followed from 1 January 1993.”³⁹⁴ The HVO HZ HB had not managed to achieve implementation of basic HZ HB regulations during 1992, and intended to use this meeting to see if arrangements could be made for their implementation from 1 January 1993. With the Presidents of the municipal HVOs having the power and discretion to decide

HZ HB completely on the HVO? What do you think of this? THE WITNESS: [Interpretation] I share your opinion.”

³⁹⁰ “It was noted that there were some operational problems associated with the executive and the administration. In other words, it was said that an assembly or some other form of legislative organ, which would define the relationships of responsibility between the various organs of the HZ HB on a different basis, was required.” P04220, Minutes of the Working Meeting held on 16 August 1993 on the premises of the HVO of the HZ HB, p. 2.

³⁹¹ P05813.

³⁹² 1D02038.

³⁹³ P00543, p. 8.

³⁹⁴ P00950, p. 9.

if, and when, collectively they should convene a Presidency session, the HVO HZ HB was powerless to effect meaningful implementation of its decisions, which required the municipal HVOs' cooperation or implementation.

183. The lack of cooperation from the HVO municipalities persisted with the establishment of the HR HB, as seen from the minutes of an extraordinary session of the Government of the HR HB on 9 October 1993. The meeting was held to ensure implementation of HR HB regulations, especially in the financial area.³⁹⁵ The discussion focused on the inconsistencies of municipal HVO governments and on the fact that not having a functioning single financial system prevented all members of the HR HB armed forces from enjoying equal financial status. Mr. Stojić, General Praljak and General Petković were critical, especially regarding certain municipal authorities' "arbitrary behavior."³⁹⁶ The solution was obvious and consistent with what the HVO HZ HB Department of Finance had tried to achieve: a single economic space which would ensure payments to the HR HB budget so that salaries to the troops could be uniform. Members of the HR HB's House of Representatives were (like the members of the HZ HB Presidency) the Presidents of the municipal HVOs. Conclusions made by the House of Representatives were in fact the expression of the municipalities' commitments. These Conclusions, however, show a complex and absurd situation: municipalities were not fulfilling their legislative obligations and the Government

³⁹⁵ P05799.

³⁹⁶ P05799, p. 2, where it was recorded that: "The officials of the HR HB armed forces who attended the session, namely Defence Minister B. STOJIĆ, General S. PRALJAK and General M. PETKOVIĆ, presented a report on the military-and-security situation on the territory of HR HB, including a critical assessment of the performance of the civilian authorities. They especially warned about the damaging consequences of the inconsistent implementation of HR HB laws, the deliberate and arbitrary behavior of the civilian authorities' organs in certain municipalities, which reflected on the troops' combat readiness and morale." Related to this issue *see also* P06189, Letter from Dr. Prlić dated 28 October 1993, resulting from a working meeting of the brigade commanders, wherein he stressed: "All municipalities are obliged to implement the regulations of the HR H-B in a consistent and uniformed manner, especially the regulations concerning the financial system. In order to implement this conclusion, propose to the House of Representatives HR H-B to introduce regulations that would regulate the relations between the central and the local authority, that is to say centralise the authority due to the war situation...Ensure payments to the HR H-B budget based on the unitary financing system, which will ensure that the soldiers are paid by unique criteria. No governmental body, public, or any other company can pay off its employees before soldiers receive their pay." *See also* Tr. 15081-15082 (5 March 2007); Tr. 15246-15249 (7 March 2007).

of the HR HB did not have any instruments to enforce those obligations, any more so than did the HVO HZ HB.³⁹⁷

HH. The Department of Finance

184. The Department of Finance of the HVO HZ HB began functioning on 14 August 1992. Prior to this period, not a single regulation had been passed by it.³⁹⁸ With Tomić's appointment as head of the department, the Department of Finance set out to restore a semblance of economic order by prioritizing its main tasks, which were to: **a.** establish a Customs Administration because it was a "source of data for subsequent taxation as most of the merchandise was imported"; **b.** re-establish the SDK service to provide a clearance system to avoid tax fraud; and **c.** to establish a budget for the HZ HB to collect revenues for financing.³⁹⁹ Based on these priorities, a series of complex regulations was set in place,⁴⁰⁰ with tremendous efforts being made to not only restore the financial system as it existed prior to the war, but also to harmonize the approaches taken by the various municipalities in the HZ HB so that there would be a sense of uniformity, transparency and equitable distribution of funds and services.⁴⁰¹

185. The Department of Finance's tasks were practical and BiH-oriented. To fully appreciate these efforts, the reasoning behind each regulation, and the resulting benefits, Tomić's entire testimony needs to be thoroughly analyzed, especially in conjunction with the admitted documents relating to the HZ HB as well as to other municipalities such as Tuzla. Tomić had first-hand knowledge of how the SFRY's financial system worked prior to the war.⁴⁰² After the Washington Agreement, he was appointed Minister of Finance both for the Federation and for BiH. Once the Federation was established, he worked with the

³⁹⁷ See P06689, Signed and stamped letter issued by Jadranko PRLIĆ re: HRHB Government work plan and implementation of a consistent legal, financial and economic system, 16 November 1993. Dr. Prlić's letter to the municipalities speaks volumes regarding the then-existing budgetary problems and the need for concerted efforts by the municipalities.

³⁹⁸ Tr. 33730-33733 (27 October 2008). During its 28 August 1992 session, the HVO HZ HB, four enactments dealing with finance were adopted. They were published in the Official Gazette no. 3 for the month of August 1992, which was the first issue that was published. It was important to publish financial regulations immediately; even prior to the constitutive regulations of the HZ HB, because of the sense of urgency brought about by the prevailing chaos resulting from the war and the collapse of Republican institutions and services (P00412 published in August 1992, P00303 published in September 1992).

³⁹⁹ Tr. 33733-33735 (27 October 2008).

⁴⁰⁰ *E.g.* 1D00024; P00412; 1D00013; 1D00034; 1D00028; 1D00031; 1D00026; 1D00030; 1D00025.

⁴⁰¹ Tr. 33747-33750 (27 October 2008).

⁴⁰² Tr. 33702-33708 (27 October 2008).

World Bank in order to establish a viable BiH currency.⁴⁰³ Tomić's testimony reveals, *inter alia* that the HVO HZ HB, through the Finance Department, made efforts to preserve the sovereignty of BiH⁴⁰⁴ when Republican institutions had failed and no meaningful efforts were being made by those who were responsible for running the country and ensuring the welfare of all citizens in BiH. Though his testimony comprehensively sets out what the Department of Finance did and why, a few examples merit review, particularly when considering the OTP's JCE allegations.

- a. The Customs Authority was established to collect revenue for the benefit of the citizens of the area. Sarajevo was under siege and not a single meaningful effort was made by the Republican authorities to set up a customs border, to regulate customs, or to employ the necessary personnel. This ensured the protection of BiH sovereignty⁴⁰⁵ by dealing with matters the Republican authorities could not manage due to the prevailing circumstances and siege of Sarajevo. If the intent was for the BiH Croats to have the HZ HB be part of Croatia or form a "close association" with it that was "asymmetrical," then setting up a customs border actually defeated that purpose. The establishment of a Customs Authority was a way to separate economically from Croatia after almost a century of being part of the same country. Some municipalities also began to establish their own financial regulations, including customs provisions.⁴⁰⁶ At the time, using the Croatian Dinar to collect customs revenue was optimal since most foreign trade was conducted with Croatia.⁴⁰⁷
- b. The SDK was not functioning. With the main SDK facilities in Sarajevo not operational beyond Sarajevo, there was a need to connect at least those areas with where the SDK could function. The Department of Finance received computer software and assistance from the Sarajevo authorities. More sophisticated software existed in Croatia and Slovenia. The HVO HZ HB opted for the less sophisticated / outdated software because it

⁴⁰³ Tr. 33819 (28 October 2008).

⁴⁰⁴ Tr. 33799-33800 (27 October 2008).

⁴⁰⁵ See *e.g.*, P01560; P00736; Tr. 33830-33839 (28 October 2008).

⁴⁰⁶ See *e.g.*, 1D01747; 1D01123; 1D01111.

⁴⁰⁷ Tr. 33767-33768 (27 October 2008).

wished to maintain links to the other SDK offices with which it would be able to link up once the telecommunications system was restored.⁴⁰⁸ Had the HVO HZ HB wanted to link up with Croatia, it could have easily done so – at least financially – by having the HZ HB revenue transferred to Croatia through the use of the SDK using the more sophisticated Croatian software. It did not choose this option.

- c. Efforts to establish a budget were made in order to provide basic services to all who resided in HZ HB areas.⁴⁰⁹ Although a budget was proposed at the HVO HZ HB meeting on 14 October 1992,⁴¹⁰ no budget was adopted for the HZ HB in 1992 and 1993.⁴¹¹
- d. The HVO HZ HB re-established the banking system with the authorization of the BiH Central Bank authorities.⁴¹² While non-residential accounts were initially opened (by both the HZ HB and the Republican authorities) in Croatia, as soon as it was feasible and practical for BiH banks to operate, regulations were issued to shut down non-residential accounts.⁴¹³ These measures created the basic conditions for the start of the fiscal system.
- e. In the area of insurance, the HVO HZ HB did as was done by Sarajevo: it set up a process whereby insurance could be obtained in the HZ HB

⁴⁰⁸ Tr. 33744-33749 (27 October 2008).

⁴⁰⁹ See e.g. P00412, Decree on Opening of Accounts of the Budget of the HZ HB during the Imminent Threat of War or State of War intended to create a legal basis for opening budget accounts by “the Mostar SDK /Public Auditing Service/ and with a commercial bank.”

⁴¹⁰ P00578, HVO HZ HB meeting, 14 October 1992, p. 2, proposing: “amendment to Article 23 to propose that the executive authority to implement the budget in general shall be vested in the HVO President, who may authorize the head of the Finance Department. Head of the Finance Department, Mr. N. Tomić explained... in connection with Article 23, by virtue of his office, the head of the Finance Department shall be vested with the executive authority to implement the budget and he does not need authorization from the HVO President. After that, the draft decree (enclosed) was unanimously agreed. Send the proposed decree to the HZ HB Presidency for adoption.”

⁴¹¹ Tr. 33874-33876 (28 October 2008).

⁴¹² 1D01765. Decision - permission to establish Hrvatska Banka Ltd Mostar, 10 November 1992. “Permission is granted to establish the mixed ownership bank ‘Hrvatska banka’ Ltd Mostar. Decision is final,” signed by the Governor of the Central Bank. All the banks listed in the Report on the work conducted during the second half of 1993 were registered as new banks after the beginning of the war, in line with the regulations in force in BiH, including the necessary licence issued by the National Bank of Bosnia and Herzegovina.

⁴¹³ P01661, p. 4. The Decree on Conducting Transfer of Payment with Foreign Countries was published in the Official Gazette no. 6. It obliged legal entities to close non-residential accounts in Croatia and transfer the accounts to banks on the territory of BiH. Non-residential accounts were used until banks started to function on BiH territory.

through Croatia.⁴¹⁴ This was particularly crucial for the green card insurance needed for international travel.⁴¹⁵

- f. In the area of privatization, the HVO HZ HB put in place regulations that prevented massive fraud and the flight of capital. Tomić explained how privatization had begun prior to the war and how under the social ownership concept, workers were entitled to purchase shares through withholdings from their salaries.⁴¹⁶ The regulations put in place froze the privatization process in order to preserve the rights of the workers in the property / enterprises being privatized. The regulations made no distinction in their application; they were meant to protect all who had a vested interest in the property.⁴¹⁷
- g. In education, as in other social services, such as health care and pensions, the Republican authorities had ceased providing the requisite funding, which after all, was in part based on funds provided by the municipalities to the Republican authorities.⁴¹⁸ Unlike the Republican authorities who were doing nothing to provide funding or other vital social services, the HVO HZ HB established a revenue system in order to finance them.⁴¹⁹ Other municipalities such as Tuzla did the same thing, along with passing regulations forbidding the flow of liquidity from the municipal areas.⁴²⁰ Understandably, with no SDK, there was no linked financial service. And without such a service, no funds could go to the Republican authorities and none could return to the municipalities.⁴²¹ None of these measures were mutinous acts, rebelling against the Republic or an usurpation of Republican powers as a means to achieve *de facto* autonomy.⁴²²
- h. The HVO HZ HB used the BiH Dinar to the extent it was able to be used. Based on an arrangement with Republican authorities, the HZ HB received approximately one third of the printed new currency. There was an

⁴¹⁴ Tr. 33752-33758 (27 October 2008).

⁴¹⁵ Tr. 33757 (27 October 2008).

⁴¹⁶ Tr. 33768-33772 (27 October 2008).

⁴¹⁷ 1D00052; Tr. 33824-33825 (28 October 2008).

⁴¹⁸ Tr. 33740-33744 (27 October 2008).

⁴¹⁹ Tr. 33736-33739 (27 October 2008).

⁴²⁰ 1D01374; 1D01375; 1D01396; 1D01400; 1D01401; 1D00365.

⁴²¹ Tr. 33775-33776 (27 October 2008).

⁴²² Tr. 33787-33794 (27 October 2008).

understanding that the HZ HB would not be liable for any BiH debt incurred by the Republican authorities during the war, unless it received due benefits. Thus, when the BiH Dinar was introduced, one third of it was accepted by the HZ HB and used in Central Bosnia. It was not acceptable as hard currency for trade purposes and so it was utilized in areas in which it could be used internally. Notwithstanding the lack of confidence and acceptability of the BiH Dinar, the SDK system was set up with the BiH Dinar designated as its primary currency.⁴²³

- i. Croatian Dinars and other currency, such as the German Mark, were used for various reasons. Croatian Dinars were more readily available because most goods were being imported and exported to and from Croatia, the most accessible foreign market. Aside from the fact that the BiH Dinar was not usable for trade, even for domestic purposes it was without value. At some point, even the Croatian Dinar lost most of its value, thus prompting more usage of the German Mark.⁴²⁴

186. The financial system faced many problems, which is why so much attention was paid to it during HVO HZ HB sessions. The HVO HZ HB's financial legislation aimed to establish the basic elements of a financial system and to overcome the chaos caused by the unsynchronized and contradictory decisions passed by most municipalities. The budget did not function in 1992 and 1993.⁴²⁵ There was a lack of revenue and expenditure planning, which is a basic requirement for a budget to function.⁴²⁶ Municipalities functioned as small States and had very different approaches to solving the same problems, which created additional chaos. Certain municipalities avoided making financial contributions to the HVO HZ HB for the defence and social services expected to be delivered by

⁴²³ Tr. 33812-33830 (28 October 2008). *See also* P00447, The Decree on the Regulation of Payment Transactions in Croatian Dinars on the Territory of the HZ HB during the Imminent Threat of War or State of War which provided that the SDK shall open sub-accounts (not accounts) in Croatian Dinars "with the numerical designation 1 written in the first column on the left hand side of the number 1 RIR form." All SDK client accounts began with "0." The basic accounts continued to be held in Yugoslav Dinars up until the summer 1992 when the currency was changed to BiH Dinars. The opening of the sub-account in Croatian Dinars was the first step towards establishing a functioning payment system in BiH. Use of the official currency of BiH for basic accounts was maintained.

⁴²⁴ P09255; Tr. 33814-33817 (28 October 2008); Tr 34180-34185 (4 November 2008).

⁴²⁵ Tr. 33826-33828 (28 October 2008).

⁴²⁶ P00824; P00921; P01511.

the HZ HB.⁴²⁷ The HVO HZ HB Department of Finance kept track of the contributions made by the municipalities to the HZ HB in order to establish the necessary criteria for the distribution of funds to municipal institutions.⁴²⁸ It used this information as the basis for funding from the HZ HB budget. Economic centralization, to the extent that a budget could be drawn up with reliable projections for the itemized distribution of revenue, was never achieved during the life span of the HZ HB.

187. Despite the efforts by the HVO HZ HB to regulate the municipalities, there was no unified system of financing in HZ HB.⁴²⁹ Through regulations, such as the Decree on the Rights and Obligations of Citizens Temporarily Working Abroad,⁴³⁰ the HVO HZ HB tried to unify regulations that the municipalities had putatively accepted.⁴³¹ The Report of the Department of Finance for 1992 stated that “the municipalities were behaving like [statelets]... [T]hey had had their oral ‘systems’ of collecting assets and financing in the first place defence, with an evident diversity of approaches and modes of enforcing those municipal regulations.”⁴³²

II. The Department of General Administration and Justice

188. The Department of General Administration and Justice (“Department of Justice”), like the Department of Finance, did not begin operating in earnest until 14 August 1992. This department was quite active in ensuring that the legal voids created by BiH’s independence and the war were filled.⁴³³ All of its acts were in line with BiH’s Constitution. Buntić, who was the Head of this department, testified extensively about his activities. He testified as to why it was necessary to make certain amendments to BiH laws – particularly in relation to the currency in

⁴²⁷ P04735, pp. 4-6. Report on activities of the Croatian Council HZ HB for the period January to June 1993, showing how municipalities behaved differently; *see also* P04699.

⁴²⁸ P01097, conclusion 16.

⁴²⁹ *See e.g.* P01836, Article 5.

⁴³⁰ P01836.

⁴³¹ 1D01771; 1D01772; 1D01759; 1D00362; 1D00272; 2D01217.

⁴³² P00128, p. 29; Tr. 15488 (12 March 2007), Witness “DE” confirmed in his testimony that [REDACTED] (closed session).

⁴³³ Tr. 30260 (7 July 2008): “[I]n the beginning of May 1992, the Presidency of Bosnia-Herzegovina passed a decree annulling some of the regulations of the former Yugoslavia and certain legal voids were created. These voids had to be filled. When I say this, I am primarily referring to military prosecutor’s offices, because the Yugoslav regulations pertaining to this subject matter had been annulled by a decision of the Presidency and new ones hadn’t been passed yet.” *See also* Tr. 30301, 30324 (7 July 2008); 1D02963.

which fines would be paid - in order to make them applicable.⁴³⁴ He testified about the difficulties in staffing the courts and prosecutors' offices because most judges and prosecutors had left.⁴³⁵ He testified that not a single person working within the judiciary was dismissed.⁴³⁶ He testified about the national origins of judges and prosecutors, lest there be any doubt about the willingness and desire of the HVO HZ HB to have non-Croats in responsible positions.⁴³⁷ He testified about the lack of involvement of the HZ HB in establishing any unlawful prisons, concentration camps or detention centers; a topic discussed in the section dealing with Prisons. He testified about his cooperation with Republican authorities in seeking solutions to fill in the legal gaps. He also testified about his understanding of what the HZ HB represented, its purpose and its method of organization – *de jure* and *de facto*.

189. As with Tomić, to fully appreciate the work performed by this department, the challenges that the HVO HZ HB had been confronted with, and the solutions it implemented – especially *in cases not suffering delay* – Buntić's entire testimony needs to be examined in conjunction with the relevant admitted documents.

190. One of the primary areas of Buntić's responsibilities related to the judiciary: the functioning of the civilian courts and the civilian prosecutor's

⁴³⁴ Tr. 30348-30350 (8 July 2008).

⁴³⁵ Tr. 30266-30268 (7 July 2008).

⁴³⁶ Tr. 30275-30276 (7 July 2008); Tr. 30383 (8 July 2008).

⁴³⁷ Tr. 30275-30276 (7 July 2008); Tr. 30374 (8 July 2008). *See also* 1D02001, Buntić's letter of 9 October 1992 to the President of the Municipal Board of the Mostar SDA:

In keeping with the Decision on the distribution of functions in judicial bodies, we request your opinion regarding the election and appointment of persons for the following posts:

1. President of the Misdemeanour Court in Mostar

2. President of the Lower Court in Mostar

3. President of the District Military Court in Mostar

In order to be able to choose among several proposed candidates, we suggest that at least two candidates be nominated for posts under items 1, 2 and 3. Since the Presidency of the Republic of Bosnia and Herzegovina has already appointed three Muslims as judges to the District Military Court in Mostar, we suggest proposing at least two candidates for President of the District Military Court in Mostar from among the three. The Presidency of the Republic of Bosnia and Herzegovina has already appointed the following Muslim members of the District Military Court in Mostar:

1. **Halil MAKSUMIC** - Judge of the High Court in Mostar

2. **Hakija ZAIMOVIC** - Judge of the High Court in Mostar

3. **Husnija SABLJIC** - Judge of the High Court in Mostar

Please submit the names of the candidates by 15 October 1992 at the latest.

office.⁴³⁸ With Sarajevo cut off, there was a need to establish a third instance court – a relocated division of the BiH Supreme Court.⁴³⁹ Within Buntić’s remit was the proposal of sites for the establishment of prisons by the HVO HZ HB. Though the Department of Justice was not responsible for military courts or the military prosecutors’ offices,⁴⁴⁰ in light of the prevailing circumstances, and due to his level of competence, Buntić also assisted in the establishment of these entities.

191. Though Buntić’s testimony comprehensively sets out what the Department of Justice did and why, a few examples merit review, particularly when considering the OTP’s JCE allegations:

- a. The Presidency of the HZ HB passed the Decree on Establishing an Office of the Supreme Court on the Territory of the HZ HB in Wartime or the Imminent Threat of War (“Decree on Establishing an Office of the Supreme Court ”).⁴⁴¹ In doing so, the HZ HB established a relocated Office of the Supreme Court of BiH for the HZ HB. The establishment of this relocated division of the BiH Supreme Court was done so after consultations with Republican authorities. Buntić met with BiH Deputy Minister of Justice, Jusuf Halilagić, and on the basis of their discussions, to find a suitable solution for final resolution of cases or in matters which were under the jurisdiction of the Supreme Court, it was agreed that a branch office of the BiH Supreme Court which sat in Sarajevo, would be opened in Mostar.⁴⁴² The Decree on Establishing an Office of the Supreme Court incorporated BiH legislation.⁴⁴³ According to Buntić:

⁴³⁸ Tr. 30267 (7 July 2006).

⁴³⁹ Tr. 30261 (7 July 2008): “As regards the civilian part of the judicial system, we had to intervene by establishing a body which could make decisions in terms of legal remedies against second-instance decisions; namely the Supreme Court of the Republic of Bosnia-Herzegovina was in Sarajevo.”

⁴⁴⁰ Tr. 30267 (7 July 2008).

⁴⁴¹ P00589.

⁴⁴² Tr. 30260-20265 (7 July 2008); Tr. 30355-30387 (8 July 2008). *See also* Tr. 31631-31639 (1 September 2008), where Perković testified about a similar gap in the judicial process that arose due to war conditions and the inability to transfer accused persons to Mostar from Livno to be tried by the court having jurisdiction. He also confirms that he and Buntić met with Assistant Minister of Justice Jusuf Halilagić to set up “a department or a division of the Supreme Court of Bosnia and Herzegovina and change the subject matter jurisdiction of the courts in such a way that it be adapted to the wartime situation as it was.” Perković also testified about his failed attempts to meet with certain Republican authorities, who by this point in time had *de facto* sidelined the Minister of Justice Ranko Nikolić (see Tr. 31633-31638 (1 September 2008)).

⁴⁴³ *See e.g.* Articles 7 and 8. Buntić testified about his meeting with the BiH Deputy Minister of Justice Jusuf Halilagić, the purpose of which was to discuss the functioning of the judicial system and to establish

- The Croatian Community of Herceg-Bosna did not establish a single court of its own, a single civilian court; rather what was fully taken over was the Republican law on regular courts.
 - The Croatian Community of Herceg-Bosna did not infringe upon the existing organization that was established by the Law on Regular Courts in the Republic of Bosnia-Herzegovina.
 - There were no changes within the hierarchy. The first-instance courts were still there, the higher courts of second instance, and the Supreme Court of the Republic of Bosnia-Herzegovina that had its division or unit in Mostar.
 - Bosnia-Herzegovina established districts, namely, Zenica Tuzla, and Bihac. Likewise, in these district divisions or units of the Supreme Court of the Republic of Bosnia-Herzegovina were established for the same reason that applied in Mostar ... legal remedies in terms of second-instance decisions could not reach Sarajevo and the Supreme Court could not decide on the matter because Sarajevo was inaccessible.
 - What was accepted in principle by the Republic of Bosnia-Herzegovina was also accepted by the Croatian Community of Herceg-Bosna. It applied all the federal regulations of Yugoslavia unless they were declared null and void ...⁴⁴⁴
- b. The Presidency of the HZ HB adopted the Decree on the Establishment of the Public Prosecutors' Office of BiH on the Territory of HZ HB in Wartime or the Imminent Threat of War⁴⁴⁵ because "the public prosecutor of Bosnia and Herzegovina could not exercise his authority in any territory outside of Sarajevo. It was not physically possible."⁴⁴⁶ The deputy prosecutors in the HZ HB were, at the same time, deputies of the BiH Prosecutor. In doing so, the HZ HB Presidency kept the functioning of the interim judiciary in HZ HB inside the unified judicial system of BiH.⁴⁴⁷
- c. The Presidency adopted the Decree on District Military Courts on the territory of the Croatian Community of Herceg-Bosna in a State Of War or an Imminent

a separate Department of the Supreme Court of the BiH in Mostar. This was a result of his discussions with Mr. Halilagić. See Tr. 30355-30356 (8 July 2008).

⁴⁴⁴ Tr. 30262-30264 (7 July 2008); Tr. 30276 (7 July 2008), Buntić testified that he "was not aware of a single instance" of any decisions taken by the relocated / branch office or divisions office of the BiH Supreme Court in Mostar that was overturned on the basis that the court was not properly constituted or functioning within the framework of the BiH legal system; Tr. 30387 (8 July 2008).

⁴⁴⁵ P00594; Tr. 30378-30382 (8 July 2008).

⁴⁴⁶ Tr. 30379 (8 July 2008).

⁴⁴⁷ Tr. 30381 (8 July 2008), Buntić answered Judge Trechsel's question as to why the Presidency of HZ HB nominated or created an office for the public prosecutor of BiH and not for HZ HB: **"It was always our intention to highlight that this was a prosecutor of Bosnia-Herzegovina, and that it was only his deputies that were relocated to that area who worked within a relocated department, in this instance, it was Mostar. We wanted to emphasize that the structure belonged to Bosnia-Herzegovina and to the republican prosecutor's office. The situation involving courts was similar. When we will be referring to the Supreme Court, the reasons behind that particular solution were similar."**

Threat of War (“Decree on District Military Courts”)⁴⁴⁸ because the operation of military courts and military prosecutors’ offices was suspended.⁴⁴⁹ District Military Courts were then formed in the HZ HB for each operational zone.⁴⁵⁰ Previously, military courts were separated from the ordinary judicial system and were the JNA’s responsibility.⁴⁵¹ The temporary or stop-gap measures chosen to meet the then-existing conditions were practical and in keeping with the principles of legality. Article 5(b) of the Decree provided that “The Supreme Court of Bosnia and Herzegovina, or in cases where communications have been disrupted, the relocated Chamber of the Supreme Court of Bosnia and Herzegovina which has its seat in Mostar, shall hear appeals against the decisions of district military courts, if such cases are mentioned in Article 18, paragraph 2.” Article 18(2) provided that “The relocated Chamber of the Supreme Court of BH, which is based in Mostar, shall review appeals against rulings of district military courts made in chambers when the Supreme Court of BH is unable to do so because of disrupted lines of communication.”⁴⁵² As such, “Article 5(b), in fact, recognizes that the Supreme Court of Bosnia-Herzegovina is competent unless communications with Sarajevo are disrupted, but the natural Supreme Court remains that of Bosnia-Herzegovina.”⁴⁵³

⁴⁴⁸ P00587, Article 2 states: “When performing their functions district military courts shall act independently, and shall administer justice on the basis of the Constitution and on the law.” Article 8 regulated the jurisdiction of these courts in the case of a conflict of jurisdiction in relation to civilians. Article 7 established a wide range of competence for conducting procedures against civilians: if a civilian committed a crime with the aid of a member of the military, “the district military court which has jurisdiction over the member of the military shall also have jurisdiction over the civilian...” Article 12 authorized the district military “to try all crimes involving persons who have participated in armed combat and over which they have jurisdiction by virtue of the provisions of the Geneva Convention on the Protection of War Victims, of 12 August 1949, and the protocol supplementing the said convention.” Article 20 provided that judges and jurors for the District Military Courts would be appointed and dismissed by the Presidency of the HZ HB. Article 23 stated that the provisions of the Law on regular courts of BiH would be applied to the rights, duties and responsibilities of the judges and jurors. Article 25(3) accepted existing Republican legislation and acknowledged that “the high courts and the Supreme Court of Bosnia and Herzegovina shall perform duties and exercise the authority...of regular courts of the second instance.” Article 25(4) provided that “Authorized persons from the organs of security of the armed forces shall perform the duties and exercise the authority of organs of internal affairs...” Article 27 prescribed the procedure for handling perpetrators of crimes.

⁴⁴⁹ 1D02963, Article 1, regulated suspension of “Judiciary Law on military courts” (Official Gazette of SFRY, no. 4/77, 23/77 and 13/82) and “Law on Military Prosecutors Office.”

⁴⁵⁰ P00587, Article 5(a).

⁴⁵¹ Tr. 30267 (7 July 2008).

⁴⁵² P00592; Tr. 30385-30388 (8 July 2008).

⁴⁵³ Tr. 30287-30287 (8 July 2008): Judge Antonetti summarised his understanding of Article 5(b), to which Buntić answered: “what this article expressly states is that the Supreme Court of Bosnia-Herzegovina has

- d. The Decree on the Establishment of the District Military Prosecutors' Offices on the territory of HZ HB in Wartime or the Imminent Threat of War⁴⁵⁴ was adopted in order to establish District Military Prosecutors' Offices in areas such as Mostar, Livno, Travnik and Bosanski Brod. According to Article 3 of the Decree, the District Military Prosecutors' Office was automatically to initiate and conduct proceedings against persons committing criminal acts that were within the jurisdiction of the District Military Courts. The District Military Prosecutor was appointed, as was the deputy, by the Presidency of the HZ HB and was responsible for his work to it. Article 9 stipulates that the District Military Prosecutor was required to report to the Presidency of the HZ HB regarding the implementation of law and the offices' work.
- e. The HVO HZ HB recognized early on the need to establish functioning military courts and military prosecutors' offices. This matter was raised at the HVO HZ HB meeting of 3 October 1992, where Mr. Stojić urged the establishment of military courts and military prosecutors' offices: "For the purpose of efficiency and straitening of military discipline, it is necessary to set up military courts and military prosecutor's offices."⁴⁵⁵ While under normal circumstances the HVO HZ HB had no authority to establish courts (such authority resting with the Presidency of HZ HB), Article 18 of the Statutory Decision on the Interim Organization of the Executive Authority of 17 October 1992 was amended to confer on the HVO HZ HB the authority to pass decisions "*in cases not suffering delay*" that fell within the jurisdiction of the Presidency of the HZ HB, which would take effect "as of the day of their adoption" on the understanding that the HVO HZ HB was "duty-bound" to submit such enactments for the Presidency's approval at its next session.⁴⁵⁶ Based on this authority, the HVO HZ HB moved to cure this pressing matter which could not suffer delay. It was the responsibility of the Department of Defence and the Department of Justice to nominate military

the jurisdiction to hear appeals and where the Supreme court is unable to hear such cases because communications have been disrupted, and there were such cases documented at the time, the relocated Chamber in Mostar will hear these cases."

⁴⁵⁴ P00590.

⁴⁵⁵ P00543, p. 7.

⁴⁵⁶ P00684.

judges and prosecutors.⁴⁵⁷ Significant efforts were made to appoint new judges, though due to the circumstances, it was not easy to find qualified candidates.⁴⁵⁸ As there was a lack of qualified candidates, the criteria for appointment were lowered.⁴⁵⁹ Notwithstanding the efforts made to have fully functioning and efficient courts, due to the war, the courts had mostly ceased to operate.⁴⁶⁰ This can be seen from the HVO HZ HB meeting on 23 December 1992:⁴⁶¹

Mr B. STOJIC cited problems caused by the fact that the Military Courts were still not functioning, and stressed that there were over 1,000 Military Police reports unresolved, as well as the problem of prisoners undergoing investigation who cannot be held in detention without a court ruling.

Mr M. KVESIC stressed that no judges had been appointed to the Livno, Travnik and Bosanski Brod Military Courts, and that the preconditions for the functioning of the Military Courts would be created when they were appointed, and hence for formal (procedural) reasons it was not possible to pronounce a single judgment, and that the first rulings by Military Courts were expected in the first half of January 1993. Mr B. STOJIC stressed that no military policeman could work without a Military Court, and that he would release all the prisoners on his own recognizance if the Military Court did not begin to function within a very brief period of time.

Due to the lack of regular HZ HB Presidency sessions and the necessity of ensuring a functioning judiciary, the HVO HZ HB made appointments pursuant to the authority granted to it on an interim basis by the HZ HB Presidency.⁴⁶²

- f. Combating crime in the midst of the war and chaos was not ignored. Though the groundwork had started in 1993, the realistic possibility of meaningfully tackling criminality would not materialize until 1994. Minutes of HVO HZ HB sessions reflect the HVO HZ HB's efforts to combat criminal activity.⁴⁶³ One of the problems seemed to have been a misunderstanding between the Department of

⁴⁵⁷ Tr. 30932 – 30933 (17 July 2008); Tr. 30626–30629 (14 July 2008).

⁴⁵⁸ Tr. 30439-30442 (9 July 2009); Tr. 30940-30941 (17 July 2008); *See also* 1D0027, where an engineer was appointed as the President of the Livno Municipal Court.

⁴⁵⁹ P00587, Decree on District military courts in the territory of HZHB in a state of war or an imminent threat of war, Article 21, provided that a lawyer with just a bar examination or a law school graduate could be appointed.

⁴⁶⁰ Tr. 30266-30267 (7 July 2008); Tr. 31032-31035 (18 July 2008).

⁴⁶¹ P00950, pp. 3-4.

⁴⁶² P00684; Tr. 30382-30385 (8 July 2008).

⁴⁶³ *See e.g.* P01748, Minutes of the Working Meeting at the Croatian Council HZ HB, 29 March 1993, where, in relation to Mostar, it was emphasized that there was a need to place different groups under control and purge all those with a criminal past from the police and other units, regardless of their merits, and furthermore that: "Defence and Interior Departments should assess whether there is a need to establish combined units of the military and civilian police in the town of Mostar in order to ensure effective protection of citizens from various groups and individuals."

Defence and Department of Interior as to their respective jurisdictional authorities. Having identified the problems, the HVO HZ HB made recommendations to these departments to solve the issue among themselves. Short of making recommendations, the HVO HZ HB as a collective had no authority to impose its will or give orders to the department heads. This was beyond the *de jure* authority of the HVO HZ HB. To this extent, the HVO HZ HB attempted to assist the Department of Defence and the Department of the Interior in defining their respective jurisdictions in order for the department heads to reach a *modus vivendi* on how to be more effective in, *inter alia*, dealing with criminality.⁴⁶⁴

- g. There were numerous measures taken to fight against all forms of crime.⁴⁶⁵ The first precondition for combating crime was securing political support from the Presidency of the HZ HB. The HVO HZ HB, despite its efforts, was simply unable to tackle the range of criminal activity that sprang up due to the war conditions. This is aptly reflected in Dr. Prlić's letter to Boban as the Supreme Commander of the Armed Forces of the HR HB and to the President of the House of Representatives of the HR HB, dated 18 September 1993, and based on conclusions reached at a meeting of HVO HZ HB on the previous day.⁴⁶⁶

In an analysis of the application of the law in the Croatian Republic of Herceg Bosna made several months ago, the Government of the HR H-B stated that all forms of unlawfulness had increased, especially crime. It

⁴⁶⁴ P03796, HVO HZ HB meeting on 29 July 1993: "Due to the increasingly frequent clashes of jurisdiction between the civilian and military police in Mostar, it was recommended that the officials from the Department of Defence and Department of the Interior should meet to discuss the issue." P04008, HVO HZ HB meeting on 7 August 1993: "The meeting on the following subject: situation with regards to law and order in the territory of the HZ H-B with the Presidents of the HVO of the HZ H-B and the Heads of the Defence Department, the Department of Internal Affairs and the Justice and General Administration Department and their associates will be held on 10 August 1993 starting at 1800 hrs. with the aim of preventing all types of illegal activities, especially criminal." See also Tr. 15275-15276 (7 March 2007); P04699

⁴⁶⁵ P04111, Meeting on 11 August 1993. Basic regulations were passed "for the purpose of organising life and work in the Croatian Community of Herceg-Bosna regulating the relationships on its territory and a system of institutions has been set up to ensure the implementation of regulations and the protection of legality [...] War and wartime conditions, especially after the outbreak of hostilities with the Muslims, has brought in its wake a dangerous social phenomenon – an increase in the number and type of illegal activities, among other things, crime in particular and lately even organized crime which, unless it is stopped may have an extremely destructive effect on renewal of life and work and the development of a new government structure." Moreover, "2. ... Interior Departments must assess whether there is a need to establish combined units of the military and civilian police in the town of Mostar in order to ensure effective protection of citizens from various groups and individuals. 3. It is especially essential to link up and establish control over various groups which are currently not fully under the control of the command."

⁴⁶⁶ 2D00854.

therefore adopted the appropriate measures and activities to prevent and combat this. Among other things, a coordinating body was established with the aim of monitoring the situation and acting in an organised, ongoing and comprehensive way. It is made up of the president and vice-president of the Government, the heads of the Defence Department, the Internal Affairs Department, the Justice and General Administration Department and the Finance Department, the chiefs of the Military Police and Revenue Police, and the assistant heads of the Internal Affairs Department.

...

Despite a certain improvement, however, the situation is judged to be unsatisfactory, and the trend of rising crime cannot be stopped without decisive, clear support and harmonised, coordinated activity by all bodies and organs of the HR H-B. This is particularly true given the assessment that there are cases where individuals in the organs of government and individual military commanders are mixed up in unlawful acts, or else they tolerate them, which is very dangerous.

....

Due to the gravity of the situation and the problems faced by the organs and services in their work aimed at preventing crime, the coordinating body, at its meeting on 17 September 1993, concluded that it would propose to the Supreme Commander of the OS of the HR H-B that a meeting concerning these issues be held with the Main Staff, the brigade commanders, and the members of this coordinating body.⁴⁶⁷

192. Based, in part, on these continuing efforts to combat crime, "Operation Spider" was launched in June 1994 by the Government of the HR HB. The aim was to take robust measures in order to arrest and prosecute all perpetrators of crimes.⁴⁶⁸ As outlined by Dr. Prlić:

The purpose of the operation is, within a long interval, with striking points of time, a combination of operative and preventive, repressive and criminal police measures, to deprive of liberty all persons who are reasonably suspected of being perpetrators of criminal acts, to carry out criminal investigation and launch criminal proceedings, to introduce order in road traffic, to prevent public disorder, and to increase the level of safety of citizens and property in general.

JJ. Institutions Concerning Refugees

193. As in other areas of BiH, the HZ HB was faced with humanitarian challenges of unexpected proportions. Though the very purpose for establishing the HZ HB was for the associated municipalities and areas to marshal their resources and resourcefulness for security purposes and to restore a semblance of civil society, the war affected different areas in different ways: some were on the

⁴⁶⁷ 1D01813.

⁴⁶⁸ 1D01249; Tr. 15335-15341, 15353-15355 (8 March 2007); *see also* 1D01252; 1D01257.

front line where the fighting was going on and from where residents were fleeing, some were in the rear and on the receiving side of fleeing masses (displaced persons); and some areas were in the middle as sort of a revolving transit center, with displaced persons arriving from one direction and departing towards another.⁴⁶⁹ Sometimes the wave of displaced persons would come expectedly, sometimes not. Despite the best of planning, despite the best efforts and intentions, and despite the outside assistance, the situation in most HZ HB areas was precarious throughout the war.

194. The HVO HZ HB did its best under the circumstances. As with virtually all other matters, the HZ HB coordinated its efforts with the municipal HVOs,⁴⁷⁰ though it did not have authority to issue orders to them. For the most part, the regulations of the HVO HZ HB or municipal HVOs mirrored those adopted by the Republican authorities or by Muslim controlled/governed municipalities.⁴⁷¹ This phenomenon is understandable; all areas shared more or less the same type of problems, faced similar challenges concerning lack of resources,⁴⁷² and were operating within the same legal and administrative framework from which regulations would be generated. With the country at war, all military aged men were mobilized. Based on the Law on All People's Defence, all military aged men between 18 and 60 had military or civil protection duty. This, for instance, posed just one of the many problems: what to do with men aged 18 to 60 who had left their area, where they were obliged to answer the mobilization call, and now were in another municipality or country. Other issues were, for example, how to prioritize and allocate aid and housing accommodation should displaced persons or persons who just left their areas be forced to return if the conditions were safe,

⁴⁶⁹ Tr. 15621-15624 (13 March 2007) (closed session).

⁴⁷⁰ See The Decree on the Use of Abandoned Apartments passed by the HVO HZ HB, which was a typical example of attempts that were made to harmonize different municipal regulations addressing this issue that had been promulgated over the previous 14 months. See also 1D01669, Minutes of the 44th session of HVO HZHB in Mostar, July 5, 1993, p. 1D32-0450 stating the intention of the Decree as being to: "a) create legal grounds to accommodate expelled persons and refugees; b) standardize the situation in municipalities; c) equally burden all municipalities."

⁴⁷¹ Municipal Official Gazettes show that the majority of the municipalities passed decisions on the status of refugees; see e.g. 1D00551; 1D00596; 1D01117; P00488; 1D00623; 1D01198; 1D00754; 1D00757.

⁴⁷² For instance, municipalities passed decisions regarding the impossibility of receiving any further refugees, which created chaos. For instance, 1D00812, Decision to prohibit entry of refugees, 18 September 1992; 1D00347, Decision on placing a limit on the number of new refugees who can stay in the Jablanica municipality, 10 March 1993; 1D00621, Conclusion on being unable to accommodate new displaced persons and refugees, Mostar Municipality, 16 September 1992.

and what to do about refugees who impermissibly occupied abandoned apartments. The regulations showed a certain uniformity. Municipal authorities regulated the amount of aid to be received; the location and type of accommodation; abandoned apartments, which were controlled with illegal occupants forced to find alternative accommodations; and military aged men being required to register and, in some instances, being forced to return from abroad to perform their combat duties.⁴⁷³

195. In broad brushstrokes, crucial issues concerning displaced persons such as refugee status and the benefits associated with this status, rights of accommodation, and the so called reverse ethnic cleansing alleged by the OTP, will be examined. As with all matters in this case, a contextual analysis of the available facts is necessary. The efforts made by the HVO HZ HB must be weighed against, for example, the circumstances, the resources available, the general practice in BiH (as can be seen from legal instruments promulgated by the Republican authorities in Sarajevo), the size of the areas absorbing continuous waves of displaced persons, the available housing space and infrastructure, and the reasons behind the taking of certain measures. Hence, the following brief overview of the more noteworthy events and issues.

196. On 7 October 1992, the HVO HZ HB adopted the Decision on the Status of Refugees and Displaced Persons from the Territory of the HZ HB during an Imminent Threat of War or State of War.⁴⁷⁴ The HVO HZ HB provided general criteria for what constituted a displaced person. Through this decision, the HVO HZ HB attempted to coordinate the various approaches taken by the municipalities on issues relating to displaced persons. Repatriation of displaced persons was regulated in accordance with the “security situation” (Article 2) or by “determin[ing] the list of municipalities to which return is possible,” which should be proposed by the Defence Department (Article 2). While the HVO HZ HB Sub-Department for Employment and Social Welfare was tasked with coordinating activities in the areas of the HZ HB (Article 7), the municipal HVO had the primary role to “ensure proper registration of refugees and displaced persons from

⁴⁷³ Tr. 31286-31352 (25 August 2008); Tr. 33440-33459; 1D1232; 1D01416; 1D01198; 1D01083.

⁴⁷⁴ P00553.

the territory of municipalities and prepare a schedule for return of refugees or displaced persons” (Article 5), and for compiling “a list of the needs of refugees and displaced persons on their territory in terms of food, clothing, heating and other needs and prepare winterisation programmes” (Article 6). A day prior to the adoption of the decision by the HVO HZ HB, the Republican authorities passed a similar decision for displaced persons and refugees, though with some provisions of dubious legality.⁴⁷⁵

197. On 27 November 1992, the Decision on Establishing the Office for Refugees, Exiled and Displaced Persons was promulgated.⁴⁷⁶ This Decision regulated ODPR’s cooperation with the UNHCR, UNDRO, UNICEF, Caritas, the League of Societies, Red Cross and Red Crescent, and other similar international and national organizations.

198. By April 1993, certain pockets of Croats in Central Bosnia had been surrounded for a few months. Even those who could not participate in war activities were not allowed to move. Serious crimes were being committed against Croats in Zenica and in villages in the Konjic Municipality, including murders, ill-treatment and persecution.⁴⁷⁷

199. On 12 May 1993, Dr. Prlić and Boban issued a statement⁴⁷⁸ relating to a meeting held with the representatives of the ICRC. The context behind this meeting was the ongoing obstruction of access to Croat villages in Konjic and Jablanica Municipalities.⁴⁷⁹ The need for equal treatment during evacuations, as a humanitarian issue, was mentioned.

200. On 31 May 1993, a joint meeting was held between Municipal HVO Mostar and the HVO HZ HB, resulting in the establishment of an office for the

⁴⁷⁵ P00553.

⁴⁷⁶ P00846.

⁴⁷⁷ 1D01652, HR HB Published texts/ J. Prlić’s letter to co-chairmen of the International Conference for Former Yugoslavia re: media, 24 April 1993.

⁴⁷⁸ P02346.

⁴⁷⁹ P02346, Boban, the President of the HZ HB, “said that full attention had to be paid to the abuse of civilians to achieve military and political goals in the field, laying a particular emphasis on the fact that the Croats had never before abused civilians to achieve any goals and that they would never be keen to do so in the future.” Boban added: “Since 10 April 1993 in the Muslim aggression in central Bosnia (Vitez, Busovača and Kiseljak) 27/?6/ [sic] Croatian civilians have been killed, 365 wounded and 149 HVO /Croatian Defence Council/ soldiers killed. Since 17 April 1993, after Muslim forces disarmed HVO brigades in the town of Zenica, 31 Croatian soldiers have been killed, 320 arrested and imprisoned, and seven elderly people killed.”

care of refugees, exiled and displaced persons. It was concluded that the UNHCR be invited to assist with caring for the refugees and displaced persons who were located less than 20 kilometres from the front line. At the same meeting it was concluded that all appropriate measures should be taken for the prevention of crime, especially the looting of private property from apartments in the territory of Mostar Municipality.⁴⁸⁰

201. At the end of May 1993, the ODPR issued its first semi-annual report. The Report coincided with the arrival of a new wave of displaced persons due to the escalation of war. The Report stated that six months were needed to resolve basic technical conditions for the work of the ODPR. It was operating on a marginal budget of 2 million Croatian Dinars and with only 12 employees.⁴⁸¹

202. On 8 June 1993, an urgent letter from the OZ Central Bosnia to Tuđman and Boban after the fall of Travnik stated: the “[e]xodus of Croats from Central Bosnia is complete. More than 15,000 Croats are wandering on the streets ...”⁴⁸² Shortly after the fall of Travnik, another 15,000 Croats were expelled from Kakanj.⁴⁸³ These displaced Croats were mostly sent outside BiH.⁴⁸⁴

203. On 14 June 1993, Žarko Keža, Chief of the Military Intelligence Service, reported to Mate Boban, the President of HZ HB:⁴⁸⁵

A number of sources have informed us that the Muslim army is launching all-out attacks on the territories of S/B/Central Bosnia and northern Herzegovina, committing crimes much more serious than those committed by Serbs. Their military aim is clear - break up the HVO forces along and around Travnik – Vitez – Busovača - Kiseljak road and Zenica – Kakanj - Visoko road and join up with the Muslim forces in Gornji Vakuf, Jablanica and Konjic. When this goal is achieved, the HVO is to be forced to surrender their weapons and these territories are to be subjected to ethnic cleansing.

204. On 15 June 1993, the HVO HZ HB noted that unless immediate steps were taken, an “exodus” of Croats from Central Bosnia would be inevitable. It issued eight conclusions recommending major measures to be undertaken.⁴⁸⁶

⁴⁸⁰ P02575, p. 2.

⁴⁸¹ P02533.

⁴⁸² 1D01263; Tr. 15623 (13 March 2007) (closed session).

⁴⁸³ 1D01264; *see also* Tr. 15624 (13 March 2007) (closed session).

⁴⁸⁴ 1D00928, 1D01830.

⁴⁸⁵ P02760.

⁴⁸⁶ P03413.

After the fall of Travnik and Kakanj, that week alone almost 30,000 Croats (i.e. almost 5% of the total Croat population in BiH) were expelled from their homes.

205. By 18 June 1993, Vareš was an enclave cut off from the outside world. The BiH Croats were pleading with the international humanitarian and health organs, Boutros Boutros-Ghali, Tudman, Stijepan Mesić, Nikica Valentić, and Boban to be evacuated:⁴⁸⁷

[T]he political management, army and people decided to continue their Via Dolorosa on Friday, 18th of June 1993, at 1000 hours, towards the territory of HB. By this occasion, we do not request for answer, we are on our way. If you want to help us, you have got time for this; on the contrary, you shall encounter us dead on our Via Dolorosa.

206. Two days later, another request came to the same addressees:⁴⁸⁸

[I]f you wish to save the bear lives of the Croats in Kakanj, there is time. We intend to depart on June 19th at 10am. Save the lives of the children, the elderly, the women, the ill, the weak. Save the life of a human being, it is the least he deserves. In this moment nothing else matters. Wake up your conscience; don't let this be the end.

207. On 21 June 1993, HVO HZ HB established the Staff for Organizing and Coordinating the Effort on Accommodating and Providing for Expelled Persons and Refugees ("Staff")⁴⁸⁹ because of the severity of the humanitarian crisis, as seen from ODPR's reports. Events preceding its establishment show why it was necessary. The Staff was charged with "organizing and coordinating" the activities of the various bodies dealing with the care of refugees. The ODPR was not able to take care of the tens of thousands of new displaced persons who arrived in HZ HB areas in June 1993; the ABiH offensive in Central Bosnia was unrelenting.

208. On 8 July 1993, in Makarska, Republic of Croatia, the HVO HZ HB and the SDA-dominated Government of the BiH signed an agreement, pursuant to a BiH Croat initiative. The purpose of the agreement was to enable unhindered passage, cooperation, and organization of humanitarian convoys. It envisaged an joint working group.⁴⁹⁰ Mechanisms were put in place that were intended to

⁴⁸⁷ 3D00837; 1D01264.

⁴⁸⁸ 1D01264.

⁴⁸⁹ P02887.

⁴⁹⁰ 1D01590.

ensure that the contents of humanitarian convoys were checked while at the same time allowing for the systematic flow of humanitarian assistance to efficiently reach their destinations.⁴⁹¹

209. On 12 July 1993, a Report noted the number of expelled Croats resulting from the Muslim offensive in Central Bosnia and North-eastern Herzegovina.⁴⁹²

210. On 13 July 1993, a letter was sent reiterating the same proposals that had followed the continuation of Muslim aggression in Mostar and Fojnica. Proposals were again sent to the HDZ BiH, the Presidency of HZ HB and the Supreme Commander of the HVO. The Muslims were advancing their attacks against the BiH Croats, all the while negotiating – supposedly in earnest - for peace.⁴⁹³

211. On 23 July 1993, the President of the Main Staff, Krešimir Zubak, wrote to the Office for Refugees of the Republic of Croatia (“ORRC”), requesting accommodation of displaced persons in Croatia because there was simply no capacity in the free territories of Herzegovina:⁴⁹⁴

In that respect you are kindly requested, within the framework of your competence, to make efforts to allow us to relocate a part of displaced Croats from Kakanj and Konjic to facilities in the territory of the Republic of Croatia.

212. On 29 July 1993, Zubak reported at an HVO meeting about the acceptance of 10,000 expelled Croats. In his report, Zubak “underlined two problems and these are as follows: 1. lack of accommodation capacities in the territory [sic] of HZ HB; 2. insufficient number of vehicles necessary for the evacuation of population from the mentioned area.”⁴⁹⁵ In order to find accommodation for refugees in Croatia, contacts were established with the ORRC. The Department of Interior and the Department of Economy were given the task of establishing the

⁴⁹¹ P03346.

⁴⁹² P03394.

⁴⁹³ P03990, p. 9, para. 37. The co-chairmen of the ICFY noticed that: “The boundary between the Croat and the Muslim-majority republics in this region, where the fighting was intense while negotiations were continuing, was an area of great contention. The atmosphere for negotiations was not improved by the offensive the Bosnian Government army launched in this region. ... The Presidency is considering its attitude to central Bosnia and is hoping to have bilateral talks with the Croat side before the talks resume in Geneva.”

⁴⁹⁴ 1D00929, p. 1D34-0033.

⁴⁹⁵ P03796.

- number of available vehicles (i.e. buses and trucks) in HZ HB areas to facilitate the evacuation from Central Bosnia territory.⁴⁹⁶
213. By July 1993, municipal HVOs accommodated approximately 110,000 displaced persons.⁴⁹⁷ On at least three occasions (5 May 1993, 23 June 1993, and 8 July 1993), Reports discussed the number of Muslims and Croats expelled or displaced due to Serb aggression.
214. On 3 August 1993, Dr. Prlić wrote to the President of the Government of Croatia seeking assistance, transport and means to evacuate the Croats of Kakanj and Vareš:⁴⁹⁸
- As you are aware, an exodus of Croatian people has been going on lately from Central Bosnia, especially from municipalities of Kakanj and Vareš from where a large number of Croats should be evacuated. The main problem in organising the evacuation of these people is the lack of transport means. A large portion of the motor pool has been destroyed in war activities and the rest is in the Republic of Croatia.
215. On 18 August 1993, Dr. Prlić explained why the Croats from Kakanj needed to be evacuated for humanitarian reasons:⁴⁹⁹
- Following the many times expressed request by Kakanj Croats exiled from the Vareš Municipality, for an evacuation of those who are most endangered (children, women, the sick, the old), we have carried out an evaluation. Considering the conditions, especially regarding accommodation and possibility for regular humanitarian aid – we have decided to secure the evacuation in the region of Western Herzegovina.
216. On 25 September 1993, the Head of the ODPR, Darinko Tadić, and Zubak participated as the Croat representatives at the Split meeting of the Working Group for Solving the Humanitarian Issues Related to Refugees and Displaced Persons of BiH in Croatia and their Return to BiH. The Working Group also consisted of Muslim representatives. It was agreed: “[t]he preparations for organized, voluntary return of the relocated/displaced persons and refugees should

⁴⁹⁶ P03796.

⁴⁹⁷ P03394.

⁴⁹⁸ 1D01266.

⁴⁹⁹ P04282.

start immediately.”⁵⁰⁰ The mechanics of implementing this conclusion were detailed in the Protocol agreed by the Working Group.⁵⁰¹

217. On 4 October 1993, the Deputy Prime Minister of the Kakanj HVO Interim Government in Exile, Ilija Sljivić, wrote to Boban and Dr. Prlić pleading for help.⁵⁰²

[W]e, from the Kakanj HVO Interim government in Exile, currently located in Vareš together with approximately 7,000 inhabitants, are forced to address you once again with our appeal to help these wretches who lost everything and who live under very difficult living conditions, inappropriate for a human being.

[...]

[W]e use this opportunity to ask you to do your best to evacuate those people to the free territory of the HR HB or Republic of Croatia, to provide them with adequate food and better living conditions.

[...]

[A]ny delay in organization of the convoy might be disastrous for many children and old people here. There are also other problems that make this place turn into a boiling cauldron.

218. On 2 November 1993, the Croatian Catholic Bishop of Banja Luka, Dr. Franjo Komarica, faxed a letter to Dr. Prlić, passing on a message from Mr. Ostojic, the authorized Minister of the Republika Srpska, wherein he conveyed the following:⁵⁰³

1. They are conducting all possible measures to receive the inhabitants from Vareš. The entire population is on the move, approximately 90% Croats and 10% Serbs. ... The travel from Vareš to Sokac is very tiresome and passes through forests and wasteland. URGENT HELP IS NEEDED!
2. He is appealing through you to the Government of HR BH [sic].
 - It is necessary to agree upon measures for proving [sic] for these people with you – he is not sure of their exact number, he thinks there are between 5-10,000 people! ...
 - He suggests, or rather pleads, that you send fuel as soon as possible, approximately 3 tons or one tank truck, as well as a convoy of buses to transport the refugees through eastern Herzegovina to Herceg-Bosna.

⁵⁰⁰ 1D01590, p. 2.

⁵⁰¹ 1D01590, Protocol of the meeting of the Working Group for humanitarian status of refugees, 25 September 1993, which specified the mechanics of how to stop further relocation of BiH citizens, and to prepare conditions for the voluntary, safe and organized return of refugees from Croatia and third countries to BiH, and the return of displaced persons to the territory under control of the HVO and the ABiH.

⁵⁰² 1D00921.

⁵⁰³ 1D01269.

219. Dr. Prlić responded, requesting Bishop Komarica to convey to the Republika Srpska Government that the HR HB would be providing the requisite assistance and fuel to facilitate the evacuation of the Croats from Vareš.⁵⁰⁴ In light of the fact that during this period the ABiH was on the offensive and was gaining ground, the numbers of displaced persons become more significant in showing the dire conditions facing the HZ HB authorities.

220. Against this backdrop, the HVO HZ HB was attempting to meet pressing humanitarian needs. Concerning issues related to the unlawful occupation of abandoned housing in Mostar Municipality, Witness Martin Raguz testified that Municipal HVO Mostar adopted legislation that allowed for the removal of illegal occupants.⁵⁰⁵ Raguz also testified as to the ODPR's limited capacity with respect to the classification of individuals as displaced persons resulting from its subordination to the municipalities.⁵⁰⁶ He testified that this situation was mirrored in Republican legislation which empowered district offices of the Directorate of Displaced Persons and Refugees of BiH to decide such classifications.⁵⁰⁷

221. Concerning issues related to the humanitarian aspect of the situation in Mostar in 1992-1993, Witness Marinko Simunović, who was working for the Red Cross in Mostar at the time, testified that efforts were made by the Municipal HVO Mostar to regulate the situation regarding the rights of refugees/displaced persons and the distribution of humanitarian aid.⁵⁰⁸ The municipal HVO faced a number of problems, however, including: **a.** the large number of beneficiaries of humanitarian aid;⁵⁰⁹ **b.** the need to re-open schools (which required relocation of

⁵⁰⁴ 1D01270.

⁵⁰⁵ Tr. 31353 (26 August 2008).

⁵⁰⁶ Tr. 31286-88 (25 August 2008).

⁵⁰⁷ Tr. 31289-31290 (25 August 2008) discussing 1D01232. Raguz also testified regarding the equivalence of Republican, HZ HB and municipal enactments in relation to conscription obligations. See Tr. 31272-31294 (25 August 2008).

⁵⁰⁸ See e.g. Tr. 33441 (20 October 2008), discussing 1D00623, Rules on protecting refugees and displaced persons in Mostar municipality. See also 1D1328, Decision to establish Coordination Committee for Collection, Reception and Distribution of Humanitarian Aid; 1D00754, Decision governing the rights granted to refugees, expelled persons and internally displaced persons. The municipal HVO Mostar cooperated with the UNHCR to evaluate the humanitarian situation. See 1D02813. The aid was being referenced by the Red Cross in Mostar in Croatian Dinar, which was the currency representing the organization's transactions through the payment bureau, as well as in German marks and Italian lira, which were donations from the respective countries. See Tr. 33466-33468 (20 October 2008) discussing 1D02651.

⁵⁰⁹ Tr. 33444 (20 October 2008).

the displaced persons being hosted in education facilities);⁵¹⁰ and c. “a significant decrease in terms of humanitarian aid” in April 1993, which in May 1993 became “simply insubstantial.”⁵¹¹

222. [REDACTED], Witness DE testified that the receiving municipalities did not have the capacity to host such a large number of displaced persons.⁵¹² The available supplies were insufficient and the situation would only worsen during winter.⁵¹³ The ODPR and the municipal HVOs were trying to provide accommodation and other resources to all refugees.⁵¹⁴ Dr. Prlić said that: “if there is no new aggression in the territories inhabited by Croatian population in the winter period all of the displaced persons will be taken care of in the adequate and to human needs appropriate way.”⁵¹⁵ The residents of [REDACTED] were exercising a lot of pressure on the municipal authorities to relocate the displaced persons somewhere where there were more resources and better living conditions.⁵¹⁶ Evacuation of the town to the free territory of HR HB or to Croatia was necessary⁵¹⁷ and the only way out was through the Republika Srpska.⁵¹⁸

KK. The Department of Defence

223. The Department of Defence of the HVO HZ HB had unique features when compared to the other departments. Some of its characteristics have been briefly touched upon, particularly how it evolved after the establishment of the HVO (military) and prior to the *actual* establishment of the HVO HZ HB on 14 August 1992. In examining the founding documents and the decrees that set up the Department of Defence and subsequent amendments, what remains constant is that throughout Boban’s tenure, he was the Supreme Commander of the HVO (military). While he ceded one of his functions to Dr. Prlić, he retained his authority over all military matters. At no time did Dr. Prlić have any authority to order / instruct the Head of the Department. Unlike the Head of the Defence Department, Dr. Prlić did not have the right to make any appointments of any

⁵¹⁰ Tr. 33444-33445 (20 October 2008).

⁵¹¹ Tr. 33455 (20 October 2008).

⁵¹² Tr. 15624 (13 March 2007) (closed session).

⁵¹³ Tr. 15643 (14 March 2007) (closed session). *See also* 1D00921; 1D00927.

⁵¹⁴ 1D00928; 1D01268.

⁵¹⁵ 1D00927.

⁵¹⁶ Tr. 15623 (13 March 2007) (closed session).

⁵¹⁷ Tr. 15641-15642 (14 March 2007) (closed session).

⁵¹⁸ Tr. 15638 (14 March 2007) (closed session).

commanders, at any level in the chain of command. At no time did Dr. Prlić have the authority to give orders or instructions to the Main Staff on any matter, be it operational or administrative.⁵¹⁹

224. The Supreme Commander of the Armed Forces issued a Decision on the Basic Principles of Organization of the Defence Department. This Decision defined the department's structure, placing under its authority the Main Staff, the Military Police and the Information and Security Service / Administration ("SIS"). It also defined the responsibilities of its component parts and the role of the Supreme Commander of the Armed Forces.⁵²⁰ The HVO HZ HB is not referred to anywhere in this Decision. The HVO HZ HB, as a collective, and especially its President in his individual capacity, had no *de jure* authority over military formations or operative matters.⁵²¹ Moreover, at no time did any of the military commanders, Main Staff or otherwise, receive any orders or instructions from Dr. Prlić⁵²² or the HVO HZ HB executive and administrative authority.⁵²³

225. The Defence Department functioned within its designated areas and jurisdiction as prescribed by the Decree on the armed forces of the Croatian Community of Herceg-Bosna (edited version) of 17 October 1992 ("Decree on Armed Forces").⁵²⁴ While Article 33 of the 15 May 1992 Decree on the organization and responsibilities of the department and commissions of the Croatian Defence Council and the Croatian Community Herceg-Bosna specified

⁵¹⁹ Tr. 40421-40422 (20 May 2009): "No, Mr. Prlić could not have done that [told General Praljak how to do things]. **Mr. Prlić** could come to see me and inquire. He could have asked me, and I would have told him about the situation, as I did. However, **he could not issue orders, he could not ask me to report to him, and I am talking about the structure that was in place.**"

⁵²⁰ P00586, Decision on the basic principles of organization of the Defence Department, 15 September 1992, Section V, IX.

⁵²¹ Tr. 15344-15348 (8 March 2007).

⁵²² Tr. 31732-31733; 31735 (2 September 2008), Perković: "[O]n sessions which I attended [40-50], and those were mostly the sessions of the HVO of the HZ HB, I am not aware of any situation nor did I witness any situation where such operative orders were issued by the President of the HVO, and this is something that is well illustrated by the minutes from the meetings." For a description on how minutes were kept, conclusions drawn and minutes of previous meetings adopted, see testimony of Witness Slobodan Božić, Tr. 36252-36255 (3 February 2009).

⁵²³ Tr. 31819-31820 (2 September 2009), Perković: "**The civilian HVO, or rather, the HVO of the Croatian Community of Herceg-Bosna did not have the authority, to the best of my knowledge and in my conviction, did not have the authority to pass decisions that would pertain to the operative use of the armed forces of the Croatian Community of Herceg-Bosna. [...] The question of commanding the armed forces of the HZ HB was not under the authority of the HVO of the Croatian community of Herceg-Bosna.**"

⁵²⁴ P00588.

that the “Departments and commissions of the HVO are obliged to issue rules on internal organization within 30 days of the date of this decision,” the internal organization of the Department of Defence was adopted by a decision agreed by Boban.⁵²⁵ The HVO HZ HB is not mentioned in this decision. The previous Decision on the basic principles of organization of the Department of Defence of 15 September 1992⁵²⁶ was issued by Boban. Thus, Boban’s authority, special relationship with the Defence Department, and control over all matters concerning the HVO military, except administrative ones, continued.

226. As with other Departments, the Department of Defence nominated candidates for positions, with the HVO HZ HB executive and administrative authority deciding on the appointments. Appointments were made by the collective and not Dr. Prlić, despite him having responsibility to sign the appointments. This was the practice and procedure and it applied to all appointments. Until the end of 1993 or the beginning of 1994, and after the HR HB had been established, the Department of Defence was responsible for the military courts and military prosecutors’ offices. Buntić, in his capacity as Head of the Department of Justice, assisted in the establishment of these courts. The challenges posed and the efforts made in establishing the military courts and military prosecutors’ offices have been discussed.

227. A stark difference in the relationship between the Head of the Defence Department and the Supreme Commander *vis à vis* the President, the other departments and the collective HVO HZ HB, is set out in Article 30 of the Decree on Armed Forces. Article 30 of the edited version that came into effect on 17 October 1992 conferred powers of a military operational nature on the Head of the Defence, which had previously been bestowed only upon the Supreme Commander, Boban.

Article 30

In performing the tasks that fall within his jurisdiction, the Supreme Commander of the armed forces shall issue directives, commands, decisions, and other acts.

⁵²⁵ P02477.

⁵²⁶ P00586.

The Supreme Commander of the armed forces may delegate certain tasks of leading and commanding the armed forces to the Head of the Defence Department.

Within his jurisdiction, the Head of the Defence Department shall issue rules, commands, instructions, decisions, and other acts.

The Head of the Defence Department shall be responsible for his work to the Supreme Commander for all the tasks delegated to him.

228. The Head of the Department of Defence, and on occasion the Chief of the Main Staff, would inform the HVO HZ HB executive and administrative authority of events in the field. This was necessary in order for departments and offices of the HVO HZ HB to carry out certain tasks relevant to their designated competencies.⁵²⁷ As it turned out, however, some of the information coming from the Main Staff was not necessarily accurate or reliable, especially if the information was not gathered *in situ* first hand. Perković provided a poignant vignette when he described how General Petković had informed the HVO HZ HB about the events in Bugojno at its 22 July 1993 session:

He wanted to see how the generals saw the situation in Livno, Bugojno, and Zepce, and then I think there was a question raised by the president of Bugojno HVO about the situation in Bugojno and about the fact that the army outnumbered the HVO by a ratio of 11:1 or 10:1.... He [General Petković] said that the morale of the HVO was at the required level and there was no need to be pessimistic in relation to the HVO's preparedness in terms of its ability to defend the area in eventuality of clashes with the BH army. I'm certain that what General Petković told us at the time was information that he had and that he had received from the HVO commanders over in Bugojno. ... Nevertheless, several days later clashes erupted in Bugojno virtually a day or two after the HVO lost this area in its entirety. This just goes to show how information that was reaching us from further afield, even military intelligence, could be unreliable and how difficult it was at the time to have realistic assessment of the situation in

⁵²⁷ Tr. 33974-33979 (29 October 2008): "These meetings were meant to inform of the conditions in the field, and it was necessary to know that for the purposes of financing other departments and their institutions. The basic question was always how fund can be secured for financing of defence. At those meetings, there were no conclusions or not even discussions about commanding posts, or managerial posts, or the like." Answering Judge Antonetti's question "Did the government give an impulse as regards the various military operations to be carried out or was it only Boban who could do so, if need be in contact with the Minister of Defence and the generals or where a strategic decision is taken at the government level?" Tomić: "No, not at the government level." See also P03796, Minutes of the 48th session of the Croatian Defence Council of the HZ HB, 29 July 1993, Tomić: "[i]t was recommended [not ordered] that in the future the Department of Defence should issue timely reports about the situation at the front line to the public and to the members of leading bodies of the HVO of the HZHB."

certain areas ... unless you were yourself of course physically present in a given area.”⁵²⁸

229. Another reason for receiving information from the Department of Defence was in order to keep the public informed. A fitting example, for more than one reason, is the so-called “proclamation” of 30 June 1993 issued by Dr. Prlić and the Head of the Department of Defence, Mr. Stojić.⁵²⁹ This public announcement which was sent, *inter alia*, to the media, was based on information presumably provided to the HVO HZ HB executive and administrative authority by the Defence Department or the HVO military in response to the events of 30 June 1993: members of the HVO military who were Muslim turned on their Croat “co-fighters,” in what can only be characterized as a cowardly and treacherous act.⁵³⁰ These acts were followed by public words of incitement from Arif Pasilić, the local commander of the ABiH:⁵³¹

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 citizens who can to bear a rifle, who can bear a rock, to kill ustasha criminals because there is no life with ustasha here accept [sic] life with Muslims, honest Croatians and loyal Serbs.

230. Based on these events, and recognizing the imminent danger, Dr. Prlić and Mr. Stojić issued a warning, noting that “We should unite all our forces from every Croatian village and town, from the whole Herceg-Bosnia in order to stop the Muslim aggression.” Dr. Prlić did not issue an order to any military units nor did he make any declarations or inflammatory comments that demonized the aggressor. This document also bears an order issued by Mr. Stojić “[p]ursuant to the authorization and the new situation.”⁵³² The Order is a call for mobilization for all conscripts to report to the Defence Office in their districts of residence or

⁵²⁸ Tr. 31729-31730 (2 September 2008).

⁵²⁹ P03038.

⁵³⁰ Tr. 46838-46859 (16 November 2009).

⁵³¹ 2D00448, p. 2.

⁵³² Following this order, Colonel Zeljko Siljeg forwards an order (P03039) on the basis of an order “issued by the HZ HB Defence Department and the HZ HB HVO Mostar.” The text of the order shows that the order is from the “Head of the Defence Department of the Croatian Defence Council, Mr. Bruno STOJIC” without mentioning “HVO HZ HB Mostar.” While the substance of the order does show that it came solely from Mr. Stojić, even if Colonel Siljeg presumed that it was also from the HZ HB HVO Mostar, his presumptions alone are insufficient to draw any conclusion that Dr. Prlić either in his individual capacity or through the HVO HZ HB was exercising *de facto* operational military authority.

their units within 24 hours. The authority for mobilization rested with the Supreme Commander, the President of the Presidency, under Article 37 of the Decree on Armed Forces. Article 30, however, grants authority to the Supreme Commander to “delegate certain tasks of leading and commanding the armed forces to the Head of the Defence Department.”⁵³³ This may explain what Mr. Stojić meant by stating that the order was issued “pursuant to the authorization.” Boban must have granted Mr. Stojić the authority to issue the order. This action demonstrates the special or unique relationship between the Supreme Commander and the Department of Defence, to the exclusion of the President, the other departments and the collective HVO HZ HB executive and administrative authority.

231. Another significant difference is the relationship between the Head of the Defence Department and the Supreme Commander *vis à vis* the President of the HVO HZ HB, the other departments and the collective HVO HZ HB. The Head of the Department of Defence appears to have had independent access to and use of funds designated to the Department of Defence. The request for opening a non-residential account bears three signatures: Bruno Stojić, Ante Jelavić, and Pere Majić. The signature lines bearing the names Neven Tomić and Jadranko Prlić have no signature. The testimony of witness “I” was illuminating on how cash was brought to Boban and how Majić upon receiving instructions from Jelavić, who in turn was instructed by Boban, would distribute the funds. According to “I,” all decisions were made by Boban.⁵³⁴

Mr. Boban was the number one percentage down there, and the rest were just actors in lesser roles. What I want to say is that Boban had the main say, and I mentioned this several times to you in what I said.

LL. Prisons & Detentions Facilities

232. Facilities which were unlawfully used for detention purposes were not established, authorized, funded or tolerated by Dr. Prlić or the HVO HZ HB. Only the Supreme Commander had the authority to establish facilities for prisoners of war (POWs). This authority stemmed from Article 30 of the Decree on Armed

⁵³³ P00588.

⁵³⁴ Tr. 23403-23411 (9 October 2007).

Forces.⁵³⁵ It was pursuant to Article 30 that Boban ordered that all illegally established facilities be closed and that lawfully established facilities be in compliance.⁵³⁶

233. Based on the then-existing and applicable legislation in the HZ HB – which was based on or taken over from BiH, particularly as it related to the judiciary and criminal justice systems – prisons for civilian and military purposes could be established by the HVO HZ HB.⁵³⁷ Identifiable criteria were used to determine the legality and welfare of persons being detained for both pre-trial and post-conviction purposes. All persons in such facilities would be visited once a week by the President of the court (and maybe the Prosecutor and/or Investigative Judge). By law, both for military prisons (i.e. those used for pre-trial detention or for sentences being served by military personnel, but not POWs), and civilian prisons, the Presidents of these respective courts had the right and duty to enter such facilities without preconditions and to meet with detained persons confidentially. Neither the President of the military courts nor the President of the civil courts had a right, vested to them by law, to enter and inspect the facilities where POWs were kept.⁵³⁸

234. The Decision to Set Up County Military Prison and County Prison⁵³⁹ was flawed in several ways. It neither proves nor is it evidence that Dr. Prlić or the HVO HZ HB established the Gabela detention facility. The Decision was never published. Since it was not confidential or secret, this Decision could only be implemented if published in the Official Gazette.⁵⁴⁰ Second, the Decision called for the establishment of a lawful facility. Third, the decision specified a general area where a lawfully established prison facility should be established; it did not designate the actual facilities. No evidence was adduced suggesting, let alone proving, that this decision was the basis of or the precursor to establishment of the Gabela detention facility.

⁵³⁵ P00588.

⁵³⁶ P07096.

⁵³⁷ Tr. 30644-30646 (14 July 2008).

⁵³⁸ Tr. 31003-31022 (18 July 2008).

⁵³⁹ P02679

⁵⁴⁰ Tr. 31806-31813 (2 September 2008); Tr. 32014-32018 (4 September 2008).

235. The establishment of the Gabela detention facility appears to have been a reaction to the events of 30 June 1993. The motive behind its establishment may provide a reasoned explanation, which, of course, cannot serve as a justification for the conditions of the facility and the treatment of those detained, irrespective of their status. Witness Božo Pavlović provided a first-hand account of how the Grabovina barracks in Čapljina was turned into a detention facility.

236. Though Pavlović served at the confrontation line in the Čapljina municipality, he indicated that prior to the events of 30 June 1993 and thereafter, there were no facilities designated for POWs. The Grabovina barracks were transformed into a detention facility on the verbal orders of his commander, Colonel Nedjeljko Obradović. It was Obradović who selected the facility. It was Obradović who issued the order to make the arrests. It was Obradović who issued the order that those arrested be kept at the Grabovina barracks.⁵⁴¹ It was Obradović who would later issue the order to the wardens of Gabela Prison, Dretelj Prison, Heliodrom Prison and Ljubuški Prisons that “NO ONE shall be released from your prison without my personal signature.”⁵⁴² Obradović’s original order to make the arrests, which, axiomatically, would necessitate detention facilities, was based on orders he received from his superior officer, General Petković, Chief of the HVO General Staff.⁵⁴³

237. Whether General Petković took it upon himself to issue such an order⁵⁴⁴ or whether he received an order from his immediate superior, the Supreme Commander, Boban, is not known. What is known is that it took an order from Boban, based on his authority under Article 30 of the Decree on Armed Forces, to shut down the Gabela detention facility and other detention facilities. What is also known is that General Petković did not receive orders, instructions, suggestions, encouragement or assistance from Dr. Prlić or the HVO HZ HB. Presumably, had Dr. Prlić or the HVO HZ HB been involved in or connected with General Petković’s order to Obradović, General Petković would have testified to that effect. He did not.

⁵⁴¹ Tr. 46913-46923 (17 November 2009).

⁵⁴² P03201.

⁵⁴³ P03019.

⁵⁴⁴ P03019.

238. No amount of insinuation or innuendo that the HVO HZ HB, or Dr. Prlić as its President, controlled or influenced General Petković because of the notion that the executive controls the military, can vitiate the fact that: **a.** General Petković never testified under oath that he was ordered or cajoled into issuing the order by Dr. Prlić or the HVO HZ HB; **b.** General Petković was a formerly JNA-trained officer who, assuredly, would have been familiar with the law of wars and the Geneva Conventions; and **c.** following an illegal order from a superior is not legally justified.

MM. 15 January 1993

239. On 15 January 1993, the HVO HZ HB issued a Decision to implement an agreement which, in good faith, it understood had been reached between Boban and Izetbegović in Zagreb on 15 January,⁵⁴⁵ following internationally sponsored peace negotiations in Geneva on 10 January 1993. The Decision was issued to end the conflict between Croats and their erstwhile allies, the Muslims; to save lives.

240. The ICFY had started to operate in September 1992. The first draft plan for the internal constitutional organization of BiH was circulated on 21 October 1992. It proposed that BiH should be a “decentralized state ... within its present international borders,”⁵⁴⁶ divided into 7 to 10 autonomous provinces.⁵⁴⁷ The Security Council accepted this proposal on 16 November 1992.⁵⁴⁸

241. On 11 November 1992, the ICFY’s Working Group on BiH reported on the attitudes of the three sides: “One of the parties initially advocated a centralised, unitary State, arranged into a number of regions possessing merely administrative functions. Another party considered that the country should be divided into three independent States, respectively for the Muslim, Serb and Croat peoples, with each of these States having its own international legal personality,

⁵⁴⁵ P001155.

⁵⁴⁶ 1D01312 Annex VII, p. 45.

⁵⁴⁷ The Vance-Owen Peace Plan was prepared by Ahtisaari as head of the working group for BiH. Ahtisaari tabled his first proposal to Owen on 4 October 1992, see 1D00896; 1D02456: Provincial borders “would be defined so that they would be geographically as coherent as possible, taking into account ethnic, geographical (i.e. natural features, such as rivers), historical, communication (i.e. the existing roads and railway networks), economic viability and other relevant facts. ... [M]any provinces (but not necessarily all) will have a considerable majority of one of the three major ethnic groups, and most will have a significant representation of minorities.”

⁵⁴⁸ P00752.

which States might form a loose confederation for the purpose of coordinating certain of their activities. The third party supported a middle solution.”⁵⁴⁹

242. The Vance-Owen Peace Plan did not call for the creation of a State or States within a State. Quite the contrary, as Boban noted to Izetbegović on 15 January 1993:

At any cost, one should listen to reason and make compromises and accept certain concessions in order to stop the war and make Bosnia and Herzegovina the state foreseen by Mr. IZETBEGOVIĆ in his speech when he said that tomorrow it should be a free country with a free flow of people and capital. Incompatible with his thinking is the claim that any territorial organisation means giving something to someone when Bosnia and Herzegovina is a unified whole. Nobody can give anything to anyone, everybody has equal rights, and the rights have been determined by arguments.⁵⁵⁰

243. The Vance-Owen negotiations were chaired by Cyrus Vance and Lord Owen. Aside from holding plenary sessions, there were bilateral sessions as well as sessions divided into civilian/constitutional issues (Group 1), chaired by Ahtisaari, and military issues (Group 2), chaired by General Nambiar.⁵⁵¹ A draft agreement relating to BiH was tabled during the first round of negotiations, which started on 2 January 1992 in Geneva.⁵⁵²

244. Parties were asked to sign the Draft Agreement relating to BiH comprising the Constitutional Principles and Maps⁵⁵³ and the Agreement for Peace in BiH⁵⁵⁴ “...which they explained, were inextricably linked.”⁵⁵⁵ Annex VII of the Agreement for Peace in BiH provided for withdrawal of all formations into provinces where the relevant nation was in the majority during the transitional period, until the complete demilitarization provided for by the Vance-Owen Peace Plan occurred.⁵⁵⁶

⁵⁴⁹ 1D01312, p. 13, para. 34.

⁵⁵⁰ P01158, p. 28.

⁵⁵¹ P09852.

⁵⁵² 1D01314, pp. 16-36.

⁵⁵³ 1D01314, Annex V, p. 16.

⁵⁵⁴ 1D01314, Annex VI, p. 20.

⁵⁵⁵ 1D01314, p. 4, para 18.

⁵⁵⁶ 1D01314, p. 36. Annex VII of the Vance-Owen Peace Plan was titled: “Return of forces to designated Provinces.” “To enable the process of return to normalcy, and as a direct follow-on from the cessation of hostilities and the separation of forces, a return of force to designated provinces will be conducted. This can start as part of the withdrawal of heavy weapons but, given the weather condition, it is hard to fix a definite date for the completion of this process. We should however aim to achieve the return within 45 days. This

245. During the plenary session on 10 January 1993, the Croats and Muslims concluded the Geneva Agreement. The Croat side confirmed its acceptance of the peace plan, *in toto*.⁵⁵⁷ Izetbegović “accepted the Constitutional Principles and the Agreement dealing with observance of a cessation of hostilities. He had not accepted, however, certain of the proposed provincial boundaries.”⁵⁵⁸ The Croats reiterated that they found not only the Constitutional Principles acceptable, but also the Maps.⁵⁵⁹ General Praljak provided extensive testimony on the Geneva negotiations.⁵⁶⁰

246. By accepting the entirety of the Vance-Owen Peace Plan, Boban, on behalf of the BiH Croats, and Tuđman, who was participating because he had been asked to do so by the international community and negotiators, had accepted the *status quo* as far as it related to where populations would ultimately reside in BiH. The Vance-Owen Peace Plan, like the Cutileiro plan, never envisaged, encouraged or sanctioned movements or swaps of population. Indeed, if anything, the Constitutional Principles of the Vance-Owen Peace Plan were designed in such a manner so as to guarantee the equality of all constituent peoples no matter in which of the ten provinces they resided.⁵⁶¹

247. Although Izetbegović had not agreed to the Maps annexed to the Vance-Owen Peace Plan through the Geneva Agreement, he had agreed to the Constitutional Principles and “the Agreement dealing with observance of cessation of hostilities.”⁵⁶² Izetbegović had agreed to the “return of forces to designated provinces,” in accordance with Annex VII of the Agreement for Peace in BiH.⁵⁶³

stage will be coordinated with an agreed demobilization of forces in being.” A special monitoring process for such an operation was also prescribed as part of the plan.

⁵⁵⁷ P01187, p. 2, para. 8.

⁵⁵⁸ P01187, p. 2, para. 8.

⁵⁵⁹ P01187, p. 2, para. 9.

⁵⁶⁰ See generally Tr. 40568-40582 (21 May 2009); Tr. 40585-40622 (25 May 2009); Tr. 41959-41900 (24 June 2009) Tr. 44040-44135 (31 August 2009).

⁵⁶¹ 1D01314, Annex V, pp.16-18.

⁵⁶² P01187, p. 2, para. 8.

⁵⁶³ 1D01314, p. 36. Annex VII of the Vance-Owen Peace Plan was titled: “Return of forces to designated Provinces.” “To enable the process of return to normalcy, and as a direct follow-on from the cessation of hostilities and the separation of forces, a return of force to designated provinces will be conducted. This can start as part of the withdrawal of heavy weapons but, given the weather condition, it is hard to fix a definite date for the completion of this process. We should however aim to achieve the return within 45 days. This

248. General Praljak testified that, following the Geneva Agreement, further discussions were conducted in Zagreb regarding the implementation between, *inter alia*, Izetbegović and his colleagues on the Muslim side, and Šušak, Boban, and General Praljak on the Croat side.⁵⁶⁴ At this meeting, the Zagreb Agreement was made. Its terms were “written [down], dovetailed, and handed over to the minister in the government of [the Republic of] Bosnia-Herzegovina, to the defence minister,” i.e. Božo Rajić.⁵⁶⁵ The parties agreed that the Croat armed forces would subordinate themselves to the Muslim forces in the provinces/administrative units designated by the Vance-Owen Peace Plan as Muslim, and that the Muslim forces would likewise subordinate themselves to the HVO in Croat-designated provinces / administrative units.⁵⁶⁶
249. General Praljak himself travelled to Mostar and presented the Zagreb Agreement to Dr. Prlić, Mr. Stojić and General Petković.⁵⁶⁷ In light of both the Geneva Agreement, and General Praljak’s seniority, the HVO HZ HB would have had no reason to question the authenticity or accuracy of the document he bore from Zagreb containing the Zagreb Agreement’s terms. In good faith, relying on General Praljak’s representations as to the Agreement’s conclusion, the HVO HZ HB published the 15 January Decision.⁵⁶⁸
250. On 16 January 1993, Rajić, Minister of Defence of BiH, issued a Command with similar content to all forces in BiH (i.e. ABiH, HVO, and VRS).⁵⁶⁹ An interview he gave in that period points to the fact that Rajić’s Command was independent from the 15 January Decision.⁵⁷⁰ The 15 January Decision was, however, consistent with Rajić’s Command.

stage will be coordinated with an agreed demobilization of forces in being.” A special monitoring process for such an operation was also prescribed as part of the plan.

⁵⁶⁴ Tr. 44054 (31 August 2009); Tr. 40575-40577 (21 May 2009). Tr. 40568-40579 (21 May 2009); Tr. 40585-40622 (25 May 2009).

⁵⁶⁵ Tr. 44054-44055, 44060 (31 August 2009).

⁵⁶⁶ See P01158, p. 51.

⁵⁶⁷ Tr. 40569-40570 (21 May 2009).

⁵⁶⁸ See generally Tr. 40568-40582 (21 May 2009); Tr. 40585-40622 (25 May 2009); Tr. 41959-41900 (24 June 2009); Tr. 44040-44135 (31 August 2009).

⁵⁶⁹ 2D01409.

⁵⁷⁰ 1D01195, Vecernji list / Interview with Božo Rajić: Muslims do not want the Geneva Agreement, 21 January 1993, p. 8: “I was sure that the HVO would execute the order unconditionally, and I believed there was a high degree of possibility that the BH Army would do the same. I knew that at this juncture it was unrealistic to expect the Serbian army in BH to do this even partially. To be honest, I did not expect that the BH Army would be so emphatic in its rejection of this plan, which is in fact simply the implementation of

251. It was imperative for the HVO HZ HB to act with urgency. Tensions between Croats and Muslims had been increasing in the field since the end of 1992.⁵⁷¹ By 15 January 1993, open conflict between the two sides had been ongoing for four days in Gornji Vakuf. On 10 January 1993, Enver Hadžihasanović, Commander of 3rd Zenica Corps, issued an announcement applying pressure on the Muslim leadership to reject the internal organisation of BiH into three constituent units:

On the occasion of political negotiations in Geneva and on the request of huge number of units and fighters of the 3rd Corps of the B&H Army, we offer you our unconditional support in your efforts to prevent division of B&H on ethnic or any other principle.

Do not allow, neither shall we, that the blood spilled so far and the sacrifice of our fighters, children, women, fathers and mothers, be in vain.⁵⁷²

252. Open conflict between HVO and ABiH started on 11 January 1993.⁵⁷³ On 13 January 1993, the HVO reported on the reasons the conflict began,⁵⁷⁴ and General Petković, Chief of the HVO's Main Staff, requested that the situation be calmed and analyzed the reasons for the conflict.⁵⁷⁵

253. Regrettably, but unsurprisingly with the benefit of hindsight, Izetbegović reneged on the Zagreb Agreement and withdrew his support for it. This was more likely than not at the behest of or resulting from pressure applied by Haris

the agreement from Geneva." Rajić stressed: "There are several reasons why I issued an order of this kind. I wanted there to be a true ray of peace. I believed that the Ministry of Defence must make a statement in this regard, albeit at a juncture when it was unacceptable to attempt to place the entire area and everything that is happening in it in the service of one interest, that being the state of Bosnia and Herzegovina such as it is and such as it can be. Furthermore, I felt as a Croat in BH that I should say that we recognize the state of BH. I wanted to reaffirm the suspended offices of state, the Presidency, the Government and the Ministry of Defence, and to tell people that defence was returning as an active office of the state of Bosnia and Herzegovina. Finally, I wanted to score some points on the eve of the continuation of the Geneva negotiations, to give the politicians and negotiators another argument, to link the armies in BH to a single place for discussion and decision-making. In a way, I wanted to prejudice this definitive agreement. I based all this on good intentions and with the full consent of Prime Minister AKMADŽIĆ. We wanted to eliminate possible sources of conflict, and so it is surprising that this was not understood, at least not in the circles of Alija IZETBEGOVIĆ and Sefer HALILOVIĆ."

⁵⁷¹ P01115.

⁵⁷² Note that when discussing the "division" of BiH, it was always understood that this reference meant reaching a constitutional arrangement concerning the administrative reorganization of BiH in order to ensure the long-term viability and sustainability of its constituent peoples/nations. This can be seen from every peace proposal advanced by the international negotiators. See Division Section.

⁵⁷³ Tr. 49580 (21 May 2009); See also Tr. 34291-34292 (10 November 2008).

⁵⁷⁴ P01114.

⁵⁷⁵ P01115. See also. Tr. 40579-49580 (21 May 2009); Tr. 40585-40604 (25 May 2009).

Silajdžić.⁵⁷⁶ Izetbegović was notorious for reneging on agreements, much to the dismay and exasperation of his interlocutors.⁵⁷⁷ During a meeting with the co-chairmen on 20 January 1993, Boban notified the participants of Izetbegović's latest inconsistencies.⁵⁷⁸

254. The 15 January Decision was not an *ultimatum*. The preamble to the 15 January Decision states:

In accordance with the agreements so far reached and signed at the International Conference on the Former Yugoslavia and the agreement on peace in Bosnia and Herzegovina (the Geneva accords), the HVO HZ H-B /Croatian Defence Counsel of Croatian Community Of Herceg-Bosna/ at its extraordinary session held on 15 January 1993 in Mostar, adopted the following Decision...⁵⁷⁹

The 15 January Decision was temporary in nature.⁵⁸⁰ It called for subordination by reciprocity of the coalition / allied armed forces.⁵⁸¹

255. The orders issued by Mr. Stojić and General Petković pursuant to the 15 January Decision reveal the real intention: proposing complete and equal reciprocity in setting up joint commands. The Stojić Order proposed establishing participation in the command: "Officers of the Army of BH shall enter the

⁵⁷⁶ See Tr. 40572 (21 May 2009). It also fits with what was observed and noted only days earlier by Ambassador Okun during the Geneva negotiations. Ambassador Okun writes in his entry of 12 January 1993:

11:20 – 11:30 AM – Haris SILAJDŽIĆ / HSO

- Haris is hysterical, irrational, suspicious.
- Launches into non-stop diatribe against
- UN, UNSYO, CRV[Cyrus R. Vance] DLO [David Lord Owen] & Conference in toto
- Says we're all appeasers exp Owen & Vance
- [...]
- Says biH will sue anyone who opposed lifting arms embargo ... has lost all faith in UN, ex for UNGA. ICFY map terrible, i.e., Prijedor, Kozarac. V/O appeasers, there' reaware of V/O tricks.
- Whole world hates them [Serbs]; look at tv & press. Etc. etc.

From this it can be gleaned that Silajdžić was nothing but an out-of-control obstructionist, and more importantly, his (and Izetbegović's) objections were not aimed towards the Croats.

⁵⁷⁷ 1D00398; 1D01315; Tr. 31084-31086 (21 July 2008); Tr. 42009-42010 (25 June 2009).

⁵⁷⁸ P01240, Croatian Presidential Transcripts for 20 January 1993, p. 17. Boban said that Izetbegović was expected to come to Mostar, as had been announced publicly. He also explained the reason for the Muslim attack. He stressed that the Muslim side, especially from Herzegovina, conducted a double-policy – supporting the Vance-Owen peace process and at the same time preparing for quite a different solution. As proof, he mentioned the so-called Mostar warning sent to Izetbegović on 5 January 1993. (P01240, p.1D33-0341-42)

⁵⁷⁹ P01146.

⁵⁸⁰ P01146, Signed and stamped decision, ref. 01-I-32/93, 15 January 1993. Item 4 stated: "This Decision is considered temporary and shall be in force until the final signing of the Geneva accords on the structure of and peace in Bosnia and Herzegovina."

⁵⁸¹ P01146.

Command of the Armed Forces of the HVO at the level of Operations Zones and Brigades, in proportion to the number of soldiers that are at the front line.”⁵⁸² The Petković Order elaborated on the way in which joint commands were to be established: “Officers of the BH Army must be included in the commands of the HVO Armed Forces in the Operative Zone and in brigades commensurate with the number of soldiers on the frontline. This is part of the agreement on joint commands.”⁵⁸³

256. In an attempt to find a peaceful resolution of the situation, the HVO HZ HB invited Izetbegović to come to Mostar. Izetbegović accepted the invitation immediately after he sent a letter to Dr. Prlić inviting him to Sarajevo.⁵⁸⁴ The HVO HZ HB held both a regular and an extraordinary session relating to the correspondence with Izetbegović, and it was decided to reiterate that he should come urgently to Mostar. It was also stressed that:

Following the telephone conversation of 16 January 1993, we were in expectation of the announced arrival of your delegation to Mostar. Having in mind the existence of a new situation in some municipalities of the Croatian Community of Herzeg-Bosna (Gornji Vakuf, Jablanica, Mostar and others) and your proposal to change the venue for the meeting - under the existing circumstances, unfortunately we cannot but interpret it as another of your numerous inconsistent and undetermined political moves.

...

In our opinion, it is also important that, in accordance with your promise, you personally convey to the Muslim people your stance expressed before the co-chairmen of the Peace conference in Geneva, that there were no contentious questions regarding the separation lines between the Croatian and Muslim provinces and in that way to prevent attacks on the HVO and the Croatian people carried out by Bosnian army units.⁵⁸⁵

257. On 18 January 1993, the minutes of the extraordinary session of the HVO HZ HB provide further *indicia* that the HVO HZ HB believed that an agreement had been reached relating to mutual subordination in light of the Geneva

⁵⁸² P01140.

⁵⁸³ P01156, Item 5.

⁵⁸⁴ P01197, Minutes of extraordinary meeting and the 19th session of HZ HB Croatian Council held in Mostar, 18 January 1993: “The invitation came after an agreement reached by telephone that Mr. Izetbegović’s delegation should come to Mostar as soon as possible.” The minutes stressed: “Following the telephone conversation of 16 January 1993, we were in expectation of the announced arrival of your delegation to Mostar” (*Id.*)

⁵⁸⁵ P01197, p. 2.

Agreement.⁵⁸⁶ Boban's and Akmadžić's letter to Izetbegović the same day sheds more light on the situation: "We also have evidence showing that on the basis of an order of your highest leadership, the Army of BiH prepared, planned and carried out the attack on HVO units and civilian population in Gornji Vakuf ... We demand that you invite the forces of the Army of BiH and the Muslim people to restrain from any military actions until the final solution of all disputable issues. We have given the same order to our units, but we cannot give up on our self-defence while being attacked so treacherously."⁵⁸⁷ The 15 January Decision was explained: "The Minister of Defence of Bosnia and Herzegovina [i.e. Rajić] commanded, with our approval, that all three national armies, in accordance with Geneva Conference, should withdraw to their respective provinces ... [T]he decision by HVO is merely the implementation of that order."⁵⁸⁸

258. A ceasefire was agreed on 19 January 1993.⁵⁸⁹ Internationals present in the region at that time were aware of it.⁵⁹⁰ However, on the same day that Arif Pašalić sought approval from Halilović to sign the ceasefire agreement, he received an order from Halilović to take Mt. Makljen near Prozor, which was under HVO control.⁵⁹¹ The next day, Pašalić issued an order to take the Makljen Pass.⁵⁹²

259. The formal decision to withdraw the 15 January Decision was made by Boban because a joint will to implement it simply did not exist.⁵⁹³ The 15 January Decision was intended to create conditions for peace. When it transpired that Izetbegović reneged, Boban did not press the issue or force the terms of the

⁵⁸⁶ P01197, pp. 1-2: "In our opinion, it is also important that, in accordance with your promise, you personally convey to the Muslim people your stance expressed before the co-chairmen of the Peace conference in Geneva, that there were no contentious questions regarding the separation lines between the Croatian and Muslim provinces and in that way to prevent attacks on the HVO and the Croatian people carried out by Bosnian army units." The minutes ended with a reminder of the reciprocal character of the 15 January Decision, stressing that it was "[a]s you know, ... in accordance with the Geneva documents..."

⁵⁸⁷ 1D01521.

⁵⁸⁸ 1D01521.

⁵⁸⁹ 1D00819. *See also* P01205; P01211.

⁵⁹⁰ *See* Tr. 23932 (17 October 2007). The ceasefire was also reported in an ECMM document dated 20 January 1993; P01229.

⁵⁹¹ P01214.

⁵⁹² 4D00360.

⁵⁹³ 1D00820. By a letter written in his own hand on the memo pad of the Intercontinental Hotel, Zagreb, Boban, President of the HZ HB wrote: "I am ordering you to convene a special meeting of HVO HZ H-B during the day, and change item 5..."

Zagreb Agreement. When the HVO HZ HB received Boban's Order to amend the 15 January Decision, it did exactly that, without hesitation.⁵⁹⁴

260. On 27 January 1993, Izetbegović and Boban signed a Joint Statement on an immediate ceasefire.⁵⁹⁵ The Joint Statement emphasized the need to establish a joint command, which was a basic premise of the 15 January Decision. The Joint Statement created an atmosphere which calmed the situation.

261. Military implementation of the Joint Statement took place "in order to prevent further disagreements and conflicts between the BH Army and the HVO, and to organise a joint struggle against the aggressor..."⁵⁹⁶ The heads of the Main Staff of ABiH, Halilović, and of the Main Staff of HVO, General Petković, ordered Hadžihasanović and Tihomir Blaškić to form a joint team.⁵⁹⁷ Their Order stated that "[A]ll the coordinating teams mentioned ... are also charged with the

⁵⁹⁴ 1D00821, HVO HZHB Decision / subordinating forces ABiH/HVO, 20 January 1993: "Pursuant to the long-lasting pacifist aspirations of the Croatian people and the Croatian Community Herceg-Bosna, and respecting the agreement of the President of Croatian Community of Herceg-Bosna, Mate Boban M.A., with the Co-chairmen of the Peace Conference for the Former Yugoslavia, Mr. Vance and Lord Owen, the Croatian Defence Council of Herceg-Bosna, at its special session held on 20 January 1993 in Mostar, has made the following DECISION: 1. To change item 5 of the Decision no. 01-I-32/93 dated 15 January 1993, setting up a deadline for implementation of that Decision; 2. Instead of the earlier deadline for subordinating the units of Army BiH to the Command of the HVO General Staff in provinces 3, 8 and 10; and subordinating the HVO units to the Army BiH Command in provinces 1, 5 and 9, which was in five days, a new deadline is defined, and that is the end of the continued Geneva talks; 3. The present Decision shall be executed by the Head of the HZ H-B HVO Defence Office."

⁵⁹⁵ 2D00093. The document signed by Izetbegović and Boban states: "1. We command that confrontations (clashes) between ARBiH and HVO stop immediately. We are asking of croatian and muslim people for complete support because clashes are of use to aggressor only. 2. Commanders of ARBiH Supreme Headquarters and HVO Supreme Headquarters are obligated to determine responsibility for emerged clashes of all levels and to develop joint command without delay." The document's existence was also confirmed in Witness BK's testimony, Tr. 5377 (23 August 2006). See also Tr. 23936 (17 October 2007) : "Q. Did you know that Alija Izetbegovic and Mate Boban informed the commanders of the ABiH and the HVO, and they directed them to solve difficulties and to immediately set up a joint command? A. I was aware that a document had -- a joint document had been issued like this."

⁵⁹⁶ P01467.

⁵⁹⁷ P01467. The joint team was granted the following assignments and powers: "(a) It shall issue joint orders. (b) It shall issue an order that units immediately abandon positions between the BH Army and the HVO, cover all trenches and bunkers built for that purpose /as written/ and withdraw to the positions facing the aggressor. (c) It shall remove all barricades and barriers in the area of responsibility, and ensure the return of the population to their homes, and unobstructed movement on all roads (provide conditions for the return of the legal organs of government). (d) It shall issue an order that all units deployed from other areas withdraw to the position they occupied before the conflict. (e) It shall visit all places where conflicts arose to assess the situation, the causes and the level of responsibility of individuals. (f) It shall investigate on the spot, immediately, all incidents as and when they occur. (g) It shall release all detainees, particularly detained civilians, immediately and unconditionally."

task of preparing a proposal for the composition of the joint commands ... on the basis of the agreement reached by Mssrs. IZETBEGOVIC and BOBAN.”⁵⁹⁸

262. In Herzegovina, the Muslims had started to implement the Vance-Owen Peace Plan. On 31 January 1993, Izetbegović authorized the President of the Regional Board of the SDA for Herzegovina “to start constituting the proposed province of Mostar in cooperation with the representatives of the Croatian people and to finalize this task in terms of the constitutional, legal, political, personnel and functional completion of Mostar province...”⁵⁹⁹

NN. Okruzy (districts) (March 1993)

263. On 29 January 1993, an interim agreement had been reached between the BiH Croats and the Muslim leadership to commence with the implementation of the Vance-Owen Peace Plan. The Agreement included a precise definition of the personnel structure of each province. For instance, for province 8, it was prescribed that the provincial capital, Mostar, would have a governor nominated by Croats and a vice-governor nominated by Muslims. The provincial government was further comprised of seven Croat members, four Muslim members and one Serb member.⁶⁰⁰ On 3 March 1993, an agreement to establish an “interim Presidency,” consisting of nine members, was signed by Izetbegović, Silajdžić, Boban and Akmadžić.⁶⁰¹ While supposedly undertaking these efforts to implement the interim agreement, Izetbegović moved to a different direction by introducing legislation to redistrict BiH.⁶⁰² He had no intention of honoring his commitment.

264. Neither the Constitution of BiH,⁶⁰³ nor the Vance-Owen Peace Plan, or the agreement signed by the Muslim and Croatian delegations at the talks in New York (i.e the Agreement on the Future Relationship between Croats and Muslims in BiH dated 3 March 1993),⁶⁰⁴ provided for the establishment of districts.

⁵⁹⁸ P01467 (emphasis added), point 4. For the content of this Order, see Tr. 23937-38 (17 October 2007).

⁵⁹⁹ 1D02418.

⁶⁰⁰ 1D00892, pp. 1D19-0091-0100; 1D02418.

⁶⁰¹ 1D02853.

⁶⁰² 1D00509. Decree with the power of law on establishment and work of districts, 13 August 1992.

⁶⁰³ In accordance with the valid Constitution of the BiH, the Presidency did not have the right to change the internal territorial organization of the Republic. Such power was regulated only by the Assembly of SRBiH, in a prescribed procedure and with a two-thirds majority. See Tr. 30456 (9 July 2008). See also Tr. 30455-30456 (9 July 2008).

⁶⁰⁴ 1D02903; 1D02853. See also P01398, p. 10, Annex V.

Notwithstanding the proposal's illegitimacy, on 3 March 1993, Demirović, President of the Regional board of the SDA for Herzegovina, passed a letter from Zlatko Lagumdžija, Vice President of the Government of the RBiH, to *inter alia*, Dr. Prlić that pressed the issue.⁶⁰⁵

265. Concerning the redistricting, and in light of the 29 January 1993 Agreement, Buntić testified that the formation of districts constituted:⁶⁰⁶

[S]ignificant – not small, significant – departures in the structure of the district from the agreed and initialled Vance-Owen Plan.⁶⁰⁷

[The BiH] Constitution did not give the authority to the president to change the internal territorial organization of the then-existing Republic of Bosnia-Herzegovina;⁶⁰⁸

The literal territorial organization of Bosnia-Herzegovina could only have been changed pursuant to a decision by the Assembly, because this [was] a constitutional matter and the Parliament of Bosnia-Herzegovina could not transfer that authority on to the Presidency;⁶⁰⁹

[This] exclusive power of the Assembly ... could not be transferred on to the Presidency in war or in the immediate threat of war. Legal authorities could be transferred, but the matters that were regulated by the Constitution could not be transferred. The municipalities, themselves, could, however, issue a decision on association. They could associate themselves into a union of municipalities.⁶¹⁰

[A]t the peace conference that I attended, these districts were not a subject of discussion. I don't know if the Presidency informed them of this, but these provinces, as they were accepted in the Vance-Owen Plan, we have harmonized, we agreed at the meeting in Neum on the 22nd and 23rd of December 1993, because it was 95 agreed – 95 per cent agreed in conformity with the Vance-Owen maps.⁶¹¹

266. Even before the adoption of this unconstitutional legislation, Izetbegović was making moves for redistricting BiH through the use of units of the Muslim armed forces. In a letter dated 20 February 1993, the SDA Regional Committee for Herzegovina informed Izetbegović:

⁶⁰⁵ 1D02565.

⁶⁰⁶ Tr. 30454-30470 (9 July 2008); Tr. 31028 (18 July 2008).

⁶⁰⁷ Tr. 30468 (9 July 2008).

⁶⁰⁸ Tr. 30454-30455 (9 July 2008).

⁶⁰⁹ Tr. 30455 (9 July 2008).

⁶¹⁰ Tr. 30456 (9 July 2008).

⁶¹¹ Tr. 30469-30470 (9 July 2008).

In recent days we have noticed certain tendencies from Sarajevo, from your vicinity, which are rather worrisome. Some ministers and commanders are sending instructions on the establishment of legal organs of authority, the renewed operation of enterprises and other activities which essentially mean the creation of organs of authority parallel to the Croatian ones. In addition, some of our “hotheads,” when they visit Sarajevo, assert that BH must be united and indivisible, that there can be no provinces, as if you and we would be against that. These instructions are being sent /?to/ the army, while we, the regional leadership in the party, are being completely bypassed. On behalf of the Regional Committee, Safet, Arif [Pašalić] and in my own name, I can say that this is irresponsible and unrealistic and, consequently, very dangerous. [...] We shall not do anything without coordinating it with you, but this should be done at both ends, and it appears that some officials from Sarajevo do not know about this.⁶¹²

267. Buntić further testified that it is evident that Minister Rusmir Mahmutćehajić and Halilović sent a letter to Pašalić and the security service instructing them to **“implement forcible military measures to establish the district of Mostar.”**⁶¹³ The Muslim leadership’s proposal to implement districts, through the 4th Corps of ABiH and Ministry of Interior units under the command of the ABiH,⁶¹⁴ once again indicates that it was adopting a “two track policy.”⁶¹⁵

268. On 13 March 1993, the Presidency of the BiH passed a Decision on dismissal and appointment of the Presidents and members of war Presidencies of the municipal assemblies of municipalities. Pursuant to this Decision, the legally elected Presidents of the Municipal Assembly in Konjic and Jablanica were dismissed.⁶¹⁶ This action was also inconsistent with the Vance-Owen Peace Plan.⁶¹⁷ Rusmir Hadžihusejnović, legally appointed President of the Konjic

⁶¹² 1D01210.

⁶¹³ Tr. 31031 (18 July 2008).

⁶¹⁴ Tr. 30466 (9 July 2008).

⁶¹⁵ See 1D02565.

⁶¹⁶ 1D02753, Presidency of RBiH: Decision to relieve of duty presidents and members of war presidencies of municipal assemblies, 13 March 1993: “1D02753, p. 4, Presidency of RBiH: Decision to relieve of duty presidents and members of war presidencies of municipal assemblies, 13 March 1993, “The following person is elected president of the War Presidency of /handwritten: Jablanica/ Municipal Assembly: Dr. Safet ĆIBO” and “The following person is elected president of the War Presidency of Konjic Municipal Assembly: Dr. Safet ĆIBO.”

⁶¹⁷ P01778, Minutes of the 33rd session of the Croatian Council of the HRHB held on 1-Apr-1993 in Mostar, 1 April 1993: “The HVO HZ H-B Information Office is to inform the public about the appointment of Safet ĆIBO President of the Konjic War Presidency, which is inconsistent with the signed Vance-Owen Peace Plan.”

municipality in 1990, contested the legality of the Presidency's decision.⁶¹⁸ This too gave BiH Croat leaders cause to be concerned about the sincerity of the Muslim leadership, and in particular of Izetbegović. Minutes of the 30th session of the Croatian Council of the HZ HB held on 13 March 1993 stated:

The command of the so-called 4th Corps of the BH Army and the Security Services Centre of BH Ministry of the Interior in Mostar have been tasked with implementing the decisions on districts, and the instructions on the implementation of the decision were signed by Mr. Munib BISIĆ, deputy minister of the BH government, and not by Minister Mr. Božo RAJIĆ or the above-mentioned government. These facts point to illegitimacy and justify a suspicion that this could be another attempt at the territorial division of BH in support of interests which are not advocated by the Muslim side in the peace talks, at least not publicly, and which are flatly rejected by the Croatian delegation... In the end it was concluded that there was no constitutional basis for the decision, and that the future activities of the HVO HZ H-B would be based on the concept and practical solutions offered by the Vance-Owen plan, which is not at all recognized in the decisions and initiatives of the central republican authorities.⁶¹⁹

269. On 20 March 1993, Halilović appointed Safet Ćibo to the 4th Corps of ABiH,⁶²⁰ and on the same day, SDA HQ in Zenica appointed him to the Regional board of the SDA for Herzegovina.⁶²¹ Ćibo's illegal appointment coincided with the beginning of the Muslim offensive in the Konjic area. On 7 May 1993, in a letter to the UN Secretary-General, Boban protested that Ćibo was trying to negate the signed peace plan.⁶²²

OO. Medugorje

270. On 10 May 1993, Boban and Izetbegović, the Supreme Commanders, issued orders for a cease-fire.⁶²³ On 18 May 1993, concrete implementation of the Vance-Owen Peace Plan was agreed by the Muslims and Croats at a meeting in

⁶¹⁸ 1D02777, Konjic War Presidency letter to the Presidency of RBiH re: Safet Ćibo appointed President, 25 March 1993.

⁶¹⁹ P01661.

⁶²⁰ 1D02756.

⁶²¹ 1D02757.

⁶²² P09606. Boban wrote "that the Muslim aggression begun in districts 8 and 10 when Alija Izetbegović unilaterally suspended the interim authorities in that areas and appointed Dr. Safet Ćibo as the President of Konjic, Jablanica and Prozor municipalities. In spite of provisions on the organization of Bosnia and Herzegovina in interim period, Safet Ćibo tries to annul the signed plan that he calls 'so-called' by all his activities, and we must stress the anti-Croat campaign of the Muslim media ... directed to the real non-implementation of the Vance-Owen peace plan, which was the introduction into the brutal military aggression of the Muslim units on Croatian population and districts 8 and 10, and the Croatian reaction to the aggression was a futile attempt of peaceful solution of the problems."

⁶²³ 4D00457; 4D00456.

Međugorje. This set the political backdrop necessary for progress.⁶²⁴ For instance, the roads were reopened, making it possible for the HVO HZ HB to appoint a group to travel to Central Bosnia on 31 May 1993.⁶²⁵

271. At Međugorje, the administrative structure in Mostar, Travnik and Zenica provinces was agreed in the presence of the President of the Ministerial Council of the EU and the co-chairmen of the ICFY. A Military Council of Four was formed consisting of Boban, Izetbegović, Akmadžić and Ganić. “It has been agreed that Mr. PRLIC shall be the Prime Minister. Mr. Prlić shall, after meetings and consultations, propose a well-balanced government, including members from the other parties, to the Coordinating body, for their approval.”⁶²⁶

272. The agreement also comprised a military component: “Generals PETKOVIC and HALILOVIC agreed that they have still not been able to implement the agreement they signed on April 25 in Zagreb and on May 12[sic] in Međugorje. They agreed to do it right now, straight away and fully.”⁶²⁷

273. The BiH Croat leadership acted in reliance on the general understanding of what had been agreed at Međugorje on 18 May, where implementation of the Vance-Owen Peace Plan had been agreed to by the Muslim leadership. With the support of the international community, they started preparation of the legal enactments required for implementation of the Plan.⁶²⁸ Dr. Prlić, upon being appointed interim Prime Minister of BiH, immediately began taking the necessary steps to implement the mandate that had been handed to him pursuant to the Međugorje agreement.⁶²⁹ Izetbegović, as in the past, simply went through the motions, never intending to follow up on this agreement. Buntić testified that he was not only aware that Dr. Prlić had been appointed Prime Minister of the transitional government, but also that Dr. Prlić was no longer able to attend HVO

⁶²⁴ 1D01595.

⁶²⁵ P02585, Minutes of Croatian Council HZ HB meeting taken by Miroslav DZIDIC. The meeting was held at Hotel Ero in Mostar on 31 May 1993: “Krešimir ZUBAK, I. ŽULJEVIĆ and I. ŠARAC have been chosen to visit central Bosnia.”

⁶²⁶ 1D02404, p. 2.

⁶²⁷ 1D02404, p. 2.

⁶²⁸ See e.g., 1D02314. See also Tr. 30396-30398 (8 July 2008).

⁶²⁹ The documentation provided by Dr. Prlić in furtherance of his mandate demonstrates the seriousness with which he undertook his mandate as interim Prime Minister.

HZ HB sessions because his duties as interim Prime Minister were more important.⁶³⁰

274. On 27 May 1993, contrary to the terms of the Međugorje agreement on 18 May 1993, the Chief of the ABiH Main Staff, Halilović, submitted a proposal to the Supreme Command “to reject the plan on offer” and to continue to “wage a war of liberation.”⁶³¹

PP. The Croatian Republic of Herceg-Bosna (HR HB)

275. As hopes for peace pursuant to the Vance-Owen Peace Plan dissipated, a new round of internationally mediated negotiations began in late July 1993 led by Lord Owen and Thorvald Stoltenberg. Consistent with every peace plan tabled from the Statement of Principles of 18 March 1992 up to that point, the Owen-Stoltenberg plan provided for an internal organization of BiH that would protect the constituent rights of all three of its peoples. On 30 July 1993, all three sides had agreed “to a constitutional Agreement for a Union of Republics of Bosnia and Herzegovina to form part of an overall peace settlement.”⁶³² The Union would be “composed of three Constituent Republics and encompasses three constitutive peoples: the Muslims, Serbs and Croats, as well as a group of other peoples,”⁶³³ and “[e]ach of the Constituent Republics shall adopt its own constitution, which shall provide for democratic forms of government, including democratically elected legislatures and chief executives and independent judiciaries, as well as for the highest standards of human rights and fundamental freedoms.”⁶³⁴

276. All three sides agreed that the parties would “return home to explain the map, and will come back to Geneva for a final meeting on Monday, 30 August 1993.”⁶³⁵ The Serbian Assembly met in Jahorina on 27 August; the Muslim leadership prepared the Draft Constitutional Law Constituting the Republic of Bosnia (*cf.* BiH), which proposed alternatives for Article 1:

⁶³⁰ Tr. 30478 (9 July 2008). *See also* Tr. 33728-33729 (27 October 2008); Tr. 33917-33920 (29 October 2008).

⁶³¹ 1D01062, p. 1D29-0305.

⁶³² P03990, p. 5, para. 19. In this report, a co-chairman is reported to have said that when discussions on the maps began, it was agreed that any Muslim-majority republic should have at least 30 percent of the territory of Bosnia and Herzegovina. *Id.*, pp. 7-8, para. 30.

⁶³³ *Id.*, p. 13.

⁶³⁴ *Id.*, p. 14.

⁶³⁵ 1D01539, p. 3. Even the UN Security Council Resolution 859 of 25 August 1993 that adopted the last reports from the peace negotiations in Geneva “urg[ed] the parties... to conclude as soon as possible a just and comprehensive political settlement freely agreed by all of them...” *See also* P04483, para. 1.

The Republic of Bosnia is a sovereign and independent state of equal citizens living in it, based on human rights and civic freedoms, rule of law and social justice. Alternatively: The Republic of Bosnia is a sovereign and independent state of equal citizens, the Muslim Bosniak nation and members of the other nations living in it, based on human rights and civic freedoms, rule of law and social justice.⁶³⁶

277. The BiH Croats did not have a parliament. Based on the 1990 election results, the HDZ effectively represented the interests of BiH Croats. The matter was therefore put before the Main Committee of the HDZ at a session held in Livno on 24 August 1993. At this session, the HR HB was proclaimed, modeled on the concept of a future Union of BiH Republics.⁶³⁷ A Working Group was formed that prepared a draft for its newly-formed House of Representatives.⁶³⁸ On 27 August 1993, at the 50th session of the HVO HZ HB, draft proposals for laws to initiate a new system of government were presented.⁶³⁹ At the constitutive session of the House of Representatives the following day, the decision to establish the HR HB was formalized. This session was attended by members of the Presidency of the HZ HB, the Presidency of the HDZ BiH, and Croats who had been elected in the 1990 elections to the Chamber of Municipalities of the Assembly of BiH.

278. The Basic Decision of Founding and Proclaiming the HR HB (the “Basic Decision”) was consistent with, and in the spirit of the Constitutional Agreement on Constituting the Union of the Republics of BiH; it was an integral part of the peace package that was discussed as the first item on the agenda of the first session of the House of Representatives.⁶⁴⁰ Provisions on boundaries were not defined since discussion on internal boundaries was still pending at the international conference.

279. The Basic Decision provided for a clear separation of powers between the legislative, executive and judicial branches. This enactment formed the basis for

⁶³⁶ 1D01436. *See also* Tr. 25625 (11 December 2007). *See also* Tr. 31786-31788 (2 September 2008).

⁶³⁷ P01032; P04589; P04611; P04626; 1D02340.

⁶³⁸ The working group is mentioned in the minutes of the 50th session of the HVO HZ HB.

⁶³⁹ P04560.

⁶⁴⁰ P04611, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, October 1993, Decision on establishing and proclaiming the Croatian Republic of Herceg-Bosna, 28 August 1993, Article 4 stated: “The Republic shall join the federation of republics freely.” *See also* P03990: “The Union of the Republics of Bosnia and Herzegovina is composed of three Constituent Republics...” *See also* 1D01778.

the establishment of a clearly defined legal system in the HR HB, which up to that point had functioned as a community of municipalities, where power was vested. That the institutions and legal enactments of the HZ HB would continue in force meant the acceptance both of its adopted regulations and of all Republican (i.e. Republic of BiH) regulations.

280. There was a rather confusing transitional period after the establishment of the executive organs of the HR HB. This lasted for three months: from the formation of the HR HB on 28 August 1993 until the appointment of the Government of the HR HB on 20 November 1993.

281. The Rules of Procedure of the House of Representatives⁶⁴¹ was a comprehensive enactment clearly defining the subject matter and the method of work of this representative body. Through it, the Elections and Appointments Committee was charged with submitting proposals for appointments, including “key judicial positions.”⁶⁴²

282. The relationship between the House of Representatives and the Government was clearly defined by its Rules of Procedure. The Government was accountable to the House of Representatives for its work, its decisions, and for the work of ministries and administrative organizations. Ministers were accountable to the House of Representatives for their work and the work of their ministry.⁶⁴³ Whereas during the HVO HZ HB period each department was primarily responsible to the Presidency of the HZ HB, in the HR HB period, basic responsibility lay with the Government and its members in the House of Representatives. A provision was also made for a vote of no-confidence against individual ministers, not only the whole Government. Besides the annual report, the Government was obliged to report “on its activities, its overall policy or policy in a particular area, the application of laws and other regulations, and on other issues within its competence.”⁶⁴⁴ Relations with the municipalities differed from

⁶⁴¹ P05821, Narodni List, Official Gazette, Croatian Community of Herceg-Bosna, October 1993, Rules of Procedure for Chamber of Deputies of HR Herceg-Bosna, 11 October 1993.

⁶⁴² *Id.*, Article 50.

⁶⁴³ P05821, Article 61.

⁶⁴⁴ *Id.*, Article 60.

the HZ HB period. The competencies of the HR HB's institutions were more clearly delineated with respect to the municipalities.⁶⁴⁵

QQ. Washington Agreement and the establishment of the Federation

283. On 6 April 1994, the Law on Ratification on the Preliminary Agreement on the Establishing of Confederation between the Federation of Bosnia and Herzegovina (the "Federation") and the Republic of Croatia ("Law on Ratification") was enacted. The Law on Ratification was based on the Framework Agreement for the Federation signed on 1 March 1994 in Washington DC by Siladžić, Granic and Zubak ("Washington Agreement").⁶⁴⁶ Part of the Washington Agreement involved the establishment of a confederation between the Republic of Croatia and the Federation. The Law on Ratification annexed the Preliminary Agreement.⁶⁴⁷ Pursuant to Article 1 of the Preliminary Agreement, a confederation between the Federation and the Republic of Croatia was foreseen, and based on Article 2, such confederation would "not affect the international identity and legal subjectivity of Croatia and Federation."⁶⁴⁸ Also included in this law was another Agreement which provided BiH access to a deep water port in Croatia, in Ploče. Tomić testified that the BiH Croats believed that the realisation of the confederation was an important aspect of the Washington Agreement: "However, the Bosnian side was not in the least interested in seeing this part of the agreement implemented ... First and foremost, the implementation of the Annex that had to do with free access to the port of Ploče" was what they were interested in.⁶⁴⁹

RR. The Mladić Notebooks

i. Exhibit P11376 - Mladić Notebook entry 5 October 1992

284. This entry purports to record a meeting which took place in Pécs, Hungary, on 5 October 1992. The conflict in BiH had been ongoing for several months. The topics raised are easily discernable to the participants: the exchange

⁶⁴⁵ P07000, Minutes of the 3rd HR HB cabinet meeting, 1 December 1993. The provisions of the Law on the Government of the HR HB were revised by the Decree on the Rights and Duties and Organization of Authorities in municipalities of 1 December 1993, which reactivated the Municipal Assembly in the municipalities in the HR HB, if the war conditions allowed for it.

⁶⁴⁶ 4D01234.

⁶⁴⁷ Washington Agreement, Attachment II.

⁶⁴⁸ 1D01530.

⁶⁴⁹ Tr. 34796 (18 November 2008).

of prisoners, the shelling of Slavonski Brod by the VRS, the need to resolve the conflict around Jajce due in part to its hydro-electric plant – a prize which the VRS / RS authorities coveted, and other general matters.

285. There was nothing new about the warring factions concluding bilateral agreements⁶⁵⁰ or about routinely meeting to discuss the exchange of prisoners.⁶⁵¹ In this sense, the substance of this entry in Mladić's diary is cumulative.

286. The first entry related to this meeting is about Dr. Prlić's remarks on agreements not being adhered to and the issue of exchange of prisoners. The second entry concerning Dr. Prlić merely shows that he was seeking a solution which would provide for the transparent participation of the internationals. Dr. Prlić was noted to have said "– The signing is possible only in the presence of some of the international monitors – VANCE or OWEN." Presumably this remark relates to the issues raised by General Praljak, i.e. the ceasefire line, suspension of the bombardment of Slavonski Brod, Jajce and the supply of electricity. All of the topics involve humanitarian issues. The request for the assistance or participation of either "VANCE or OWEN" belies any inferences or conclusions the OTP would have the Trial Chamber draw that something nefarious (and attributable to the alleged JCE) was afoot.

287. There is evidence showing that Mladić's forces were shelling the Croats of Slavonski Brod in the Republic of Croatia, as can be seen by Mladić's Order of 6 October 1992, where he orders "[T]he cease fire is to be realised as parts of the front near Bosanski Brod ... The cease fire also means no fire at Slavonski Brod, the left bank of the Sava river..."⁶⁵² As a result of the shelling by Mladić's forces, not only was there a flood of Croat refugees coming to the Republic of Croatia from Bosanski Brod (on the other side of the border), but there were scores of displaced persons fleeing Slavonski Brod to safer areas of

⁶⁵⁰ Tr. 28950–28954 (2 June 2008); Tr. 49743–49745 (22 February 2010); Tr. 49977–49979 (24 February 2010); see also 1D00475; 5D00049; P00339; 1D01935; 2D00798; 1D01543; P00717; 2D00809; P10257; P01467; 1D02853; P01988; P11192; 4D01344; P02259; P02344; 1D02404; P02960; P10264; 1D02896; P04690; 3D0029; 4D01234.

⁶⁵¹ 1D02435; P02512; P02461; 3D03042; P02520; 6D00006; 2D00438; 6D00762; P05031; 6D00580; 2D00590; P06373.

⁶⁵² P11377.

Croatia.⁶⁵³ The VRS was, by proxy, continuing the military aggression started by the JNA.

288. There is no evidence to support any claims or conclusions that the Republican authorities of BiH, headed by Izetbegović, made any meaningful efforts to suppress or contain the VRS from attacking the Croats in either Bosanski Brod or Slavonski Brod.⁶⁵⁴ Against this backdrop, it would have been more than irresponsible for the Croats on both sides of the borders to have done nothing or to have adopted a posture of appeasement. Notwithstanding the agreements reached at these negotiations concerning Bosanski Brod and Slavonski Brod as reflected by Mladić's Order of 6 October 1992,⁶⁵⁵ the VRS, under Mladić's command, did in fact continue its military onslaught, resulting in the fall of Bosanski Brod the day after this meeting, i.e. the day he issued his Order.⁶⁵⁶

289. Mladić purportedly attributed the following statement to General Praljak: "The goal is the Banovina of 1939; if not, we'll continue the war."⁶⁵⁷ Yet history shows that the agreement creating the Banovina of 1939 had nothing to do with the internal organization of BiH – an issue in which the BiH Croats constructively engaged not just by attending negotiating sessions, but by signing all internally proposed agreements *in toto*. The Banovina of 1939 was based on an agreement made between Dragiša Cvetković, the Serbian President of the Yugoslav government, and Vladko Maček, President of the Croatian Peasant Party and leader of the Croat People.

ii. Exhibit P11377 - Mladić Notebook entry 6 October 1992

290. Mladić's ceasefire order simply confirmed what was agreed: the Croat side would repair the Jajce hydropower plant, thus ensuring the requisite flow of water supply from the Bosnian Serb side, to provide electricity to all. This order provided for the flow of electricity, which, unquestionably, was a vital humanitarian need. At the same time it was a means (or so the Croats believed) to

⁶⁵³ Tr. 27890–27893 (13 May 2008); Tr. 39459–39460 (4 May 2009); 1D02585; 3D00859.

⁶⁵⁴ Tr. 4014–4019 (27 June 2006); Tr. 28866–28888 (2 June 2008).

⁶⁵⁵ P11377.

⁶⁵⁶ Tr. 36728–36730 (11 February 2009); Tr. 36844–36845 (12 February 2009).

⁶⁵⁷ P11376.

prevent further attacks on Jajce by Mladić's forces. Nonetheless, despite the agreement which resulted from this order, 20 days later Jajce was fiercely attacked by Mladić's forces, falling into Bosnian Serb military hands on 29 October 1992.⁶⁵⁸

291. As to Mladić's purported reference to the preparation of "prisoner exchange according to the prearranged lists," this was also a normal humanitarian matter; one that was expected and encouraged by the internationals. This is, for instance, borne out by the 1 October 1992 trilateral agreement concerning exchanges signed under the auspices of the ICRC.⁶⁵⁹

iii. Exhibit P11380 - Mladić Notebook entry 26 October 1992

292. This entry purports to relate to a meeting in Njivice, Montenegro. Dr. Prlić is present, purportedly having said: "If we're not going to respect what we agreed to last time, then there is no need to discuss any further."

293. Four days after this meeting, Jajce fell to the VRS.⁶⁶⁰ The fall of Jajce to the Serbs should dispel any myth that the meeting at the Hotel Palatinus in Pécs on 5 October 1992 was in furtherance of a JCE.⁶⁶¹

294. Unless the events in Jajce of 27-30 October 1992 are fully considered and appreciated, it is improbable to come to any meaningful understanding of the matters discussed at the meeting in Pécs some 22 days earlier. In his entry on this meeting in Njivice, Mladić did not give comments or reveal his sentiments. Nothing is offered to betray his understanding of the circumstances, the tenor of the meeting, or the Serb/VRS position or expectations concerning Jajce. The evidence shows that, by this point in time, Jajce was under attack and effectively under siege.⁶⁶² One need not engage in an overly taxing analysis to conclude, with reasonable certainty, that the representatives of the peoples/nations being attacked, often by indiscriminate shelling, were there in Pécs to find an immediate resolution with the enemy, be it through boastful threats, compromising promises or artful connivance.

⁶⁵⁸ 3D03527.

⁶⁵⁹ See 1D02435; 2D00417; 1D00938.

⁶⁶⁰ 3D03527.

⁶⁶¹ Tr. 36728-36730 (11 February 2009); Tr. 36844-36845 (12 February 2009).

⁶⁶² Tr. 29113-29115 (4 June 2008); Tr. 30770-30775 (15 July 2008).

295. What emerges from Mladić's entries is that one of the issues concerning Jajce was its capacity to generate electricity because of its hydroelectric power plant. It is obvious from the entries attributed to Mr. Stojić that the VRS was in control of the water supply required for the hydroelectric power plant. The gist of the entries is rather obvious: there was no need for the VRS to continue its attack on Jajce to secure an uninterrupted flow of electricity; once the plant was repaired by the Croats and the water supply was made available by the Serbs, electricity would begin to flow. This can be gleaned from Mladić's Order of 6 October 1992:

2. Create conditions for enabling repairs of the "Jajce 2" power plant; consequently, stop the activities of all weapons during the repair, to last no less than[sic] four hours. The Croatian side should then turn on the electricity for Republika Srpska.

3. After the completion of the repair and after the electricity has been turned on, we should release the water needed for the operation of the other power plants, no later than three hours after the electricity has been turned on.⁶⁶³

296. These representations by Mr. Stojić were evidently insufficient to assuage the Serbian/VRS desire to capture and control the town of Jajce and this strategic location. Obtaining electricity, in hindsight, seems only to be a pretext; the real value for Mladić and the VRS was total control of Jajce.

297. Considered in this context, it is inconceivable to suggest that this was a meeting between representatives of two cooperating or allied parties. Equally preposterous are claims that these meetings were part of some sort of elaborate scheme where the Croats and Serbs clandestinely planned the fall of Jajce, the "reverse" ethnic cleansing of the Central Bosnian Croats and the turnover of the hydroelectric plant to the Serbs. There is no credible proof from which this Trial Chamber can draw such conclusions beyond reasonable doubt.

298. The evidence before the Trial Chamber shows that Jajce was defended by units of both the HVO and the TO (Muslim forces). When Jajce came under attack by Mladić's forces subsequent to the agreements reached on 5 October 1992: **a.** the HVO sent reinforcements to repel the attack; and **b.** the Muslim forces in and around Jajce prevented those reinforcements from defending it.⁶⁶⁴

⁶⁶³ P11377.

⁶⁶⁴ 2D01028; 2D01335; 3D01669; 3D00484; P00670; 3D03527.

This again shows the lack of merit in the OTP's claims that the HVO and the VRS planned and executed the fall of Jajce in concert.

299. The OTP asserts that this entry shows "the desire of the Croatian Defence Council leadership including PRALJAK to divide BiH."⁶⁶⁵ However, the BiH Croats never advocated any carving up of BiH. When discussing the "division" of BiH, it was always understood that the term referred to reaching a constitutional arrangement concerning the administrative reorganization, or "internal organization," of BiH in order to ensure the long-term viability and sustainability of its constituent peoples/nations. This can be seen from every peace proposal advanced by the international negotiators.⁶⁶⁶

300. The fact that certain individuals, such as Dr. Prlić, attended two meetings does not *ipso facto* prove that he was a "key player in Herceg Bosna and the Croatian Defense Council leadership," as alleged by the OTP.⁶⁶⁷ The attendees had their respective *de jure* authority and responsibility. While Mladić was constantly meeting with UN representatives (openly and clandestinely) and attending the negotiations in Geneva, Dr. Prlić never attended a single international negotiating session, save for the Dayton peace process where he was the only Croat from BiH to initial the Dayton Peace Accords (unlike Zubak, the former Minister of Justice and Administration of the Croatian Republic of Herceg Bosna (HR HB) and then President of Federation of BiH).

iv. Exhibit P11388 - Mladić Notebook entry 31 January 1994

301. In and around January – February 1994, meetings took place between the Serbs and Croats concerning the boundaries of the three Republics in the Union of BiH as envisaged by and as part of the international negotiation of the Owen-Stoltenberg Peace Plan. In a letter from the UN Secretary General to the Security Council, dated 28 December 1993, it was stressed:

The situation following the discussions held in Geneva on 21 December and at Brussels on 22 and 23 December may be summarized as follows:

(a) There is agreement among all three sides that Bosnia and Herzegovina should be organized as a Union of three republics;

⁶⁶⁵ Prosecution Motion to Admit Evidence in Reopening, Annex 1, 8 July 2010, p. 10.

⁶⁶⁶ 1D00398; 1D00892; 1D01778, RBiH, HZHB, Agreement regarding Bosnia-Herzegovina – booklet for HZHB Presidency meeting; 1D01557; 4D01234; 1D01536.

⁶⁶⁷ Prosecution Motion to Admit Evidence in Reopening, Annex 1, 8 July 2010, p. 10.

(b) There is agreement that the Muslim-majority Republic should have 33.3 per cent of the territory and the Croats should have 17.5 per cent;...⁶⁶⁸

Another meeting was initiated by the co-Chairmen and was held in Geneva on 18-19 January 1994 between the three warring parties with the hope of achieving a settlement where each of the three peoples of BiH would have their own majority Republic.⁶⁶⁹

302. It is against this backdrop that the meeting in Njivice on 3 February 1994 was hosted by the Republic of Montenegro; it was part of the ongoing negotiations. During this period, the Muslims were aggressively attacking the Croats; they endeavored to capture as much territory as possible to be well placed territorially when the time would come to negotiate in earnest for peace with the Croats.⁶⁷⁰

303. The internationals on the ground often organized meetings as well. For instance, in a letter dated 8 July 1994, the Secretary-General wrote to the President of the Security Council:

In accordance with the decision taken by the parties on 19 January, a working group coordinated by Brigadier-General Bo Pellnas held two meetings in Sarajevo on 25 January and on 5 February. All three Bosnian parties took part. The Bosnian Presidency delegation was led by Prime Minister H. Silajdžić, the Bosnian Croat delegation by Mr. M. Akmadžić, and the Bosnian Serb delegation by Professor N. Koljević...

304. This meeting was organized in accordance with the conclusions of the co-chairmen after meetings on 18 and 19 January 1994, as stated in the overall Report of the Co-Chairmen of the Steering Committee on the Activities of the ICFY: "In the circumstances, it was agreed that the parties should consult bilaterally ..."

v. Exhibit P11389 - Mladić Notebook entry 3 February 1994

305. Dr. Prlić is purportedly quoted as stating: "We need to agree on 2-3 things today. Muslims (M) are the common enemy. There are 2-3 ways to keep them down (first – militarily, by breaking their backbone). The military commanders

⁶⁶⁸ 1D01778, RBiH, HZHB, Agreement regarding Bosnia-Herzegovina – booklet for HZHB Presidency meeting; 1D01557.

⁶⁶⁹ See P07866.

⁶⁷⁰ 1D01553.

should say that in both Brčko and Usora. Secondly: A blow against the legitimacy of BH, because the world recognizes AI (Alija Izetbegović) and his Government.”

306. Context, as always, is needed to fully understand and appreciate the purpose of the meeting and the comments of the participants. In January-February 1994, the conflict between the Muslims and the Croats had anything but abated.⁶⁷¹ It would have been utterly disingenuous for Dr. Prlić to have considered or represented the Muslim leadership and the ABiH⁶⁷² to be anything but the enemy. This is reflected in his public remarks made at the time in light of the situation in Central Bosnia:⁶⁷³

The Muslim army in Central Bosnia and Herzegovina is an enemy army for the Croatian Defence Council and all talks, agreements and negotiations are exactly that – only negotiations. This actually suits the position of the Croatian Defence Council and the Government since it is in line with latest decisions. Seven, eight months ago we sent a letter to the Mission of the European Communities, the Monitoring Mission of the EC stating that we are ready to negotiate with the Serbian and Muslim governments. This was eight months ago, on all open questions and the functioning of these infrastructure systems, education, etc. I can reiterate this today - that we are open and ready to talk because we believe that in the throws of hostilities it is always necessary to talk with the enemy.

307. At this point in time, the Muslim leadership, headed by Izetbegović (who was backed by his hard-line collaborators from his Young Muslim days)⁶⁷⁴ and his coterie of like-minded SDA/Muslim unitarians,⁶⁷⁵ was neither acting in good faith at the negotiating table nor decreasing ABiH attacks against the Croats of BiH.⁶⁷⁶ Hence, when considering the situation on the ground, particularly the events in Central Bosnia,⁶⁷⁷ it is no surprise that Dr. Prlić would characterize the

⁶⁷¹ 1D01552, pp. 262-65; 1D01545; P07548.

⁶⁷² The Prlić Defence categorically submits that the evidence adduced overwhelmingly supports the conclusion that the ABiH was nothing other than a Muslim army by, for and of Muslims. It did not represent the interests of anyone other than Alija Izetbegović, the SDA and the Muslim people in BiH. See P02852; Tr. 2565-2566 (25 May 2006); Tr. 44839-44842 (15 September 2009) commenting on 4D00766; Tr. 29622 (19 June 2008); Tr. 42020 – 42022 (25 June 2009) commenting on 1D00431.

⁶⁷³ 1D02230, p. 4.

⁶⁷⁴ 1D02230. See also Tr. 42011 (25 June 2009), wherein General Praljak states that: “the Young Muslims interpreted the Koran as excluding the possibility of any coexistence between Muslims and Christians...”; Tr. 42020-42021 (25 June 2009).

⁶⁷⁵ 1D02230.

⁶⁷⁶ 1D02230.

⁶⁷⁷ P03337; 2D00710; 2D00461; P09503; 1D01523; P03337; 1D02168; P05996; 1D02830.

Muslims as “the common enemy” or that he would advocate for the “breaking of the backbone” of the ABiH.

308. The second point that Dr. Prlić discusses is the legitimacy of the perceived BiH leadership, i.e. “AI (Alia Izetbegović) and his Government ...” There is ample evidence to show that, by this point in time, Izetbegović was behaving as if he were the President of BiH rather than just the President of the Presidency.⁶⁷⁸ The perception – which Izetbegović unabashedly fostered - was that he was the legitimate representative of all BiH, rather than simply the representative of the Muslims.⁶⁷⁹ There is also the issue of whether Izetbegović was lawfully occupying the position of President of the Presidency of BiH. While his mandate was lawfully extended to a second one-year term (with the help of the Croat members of the Presidency), Izetbegović refused to vacate the post and allow the transfer of the position to one of the Croat members of the Presidency, as he was mandated to do by law. Moreover, Izetbegović and his colleagues had already begun, much prior to this point, to treat the Presidency as his own fiefdom, dismissing and replacing its members at will.⁶⁸⁰

309. When viewed in this context, calling into question of the legitimacy of Izetbegović and his government was more than warranted. Dr. Prlić was not calling for the disintegration or de-legitimization of BiH. This is clear when considering that he postulates to “go for” Fikret Abdić⁶⁸¹ or for the reinstatement of the old (and lawfully elected) Presidency. It may have been fanciful for Dr. Prlić to think that Karadžić, Krajišnik, Mladić, and the rest of the Serbian leadership would go along with the reconstitution of the old Presidency as the legitimate representative body of BiH. However, Dr. Prlić’s statements do provide some insight into his intention and foresight concerning his abiding belief in and hope for BiH as a viable and continuing State of the three constitutionally (and historically) recognized constituent peoples.⁶⁸²

⁶⁷⁸ Tr. 29334–29344 (16 June 2008) commenting on 2D00191, pp. 52-53. *See also* P10458.

⁶⁷⁹ *See* 1D00894, p.1.

⁶⁸⁰ Tr. 28877- 28878 (2 June 2008); Tr. 28989 – 28992 (4 June 2008); P10263; 1D02933.

⁶⁸¹ 1D00913.

⁶⁸² 1D02078; 1D02230.

310. Besides viewing all his public / televised remarks as to how he envisaged BiH,⁶⁸³ and keeping in mind that virtually all of his energies were devoted to assisting with the establishment of *ad hoc* / temporary measures that would bridge the void resulting from the virtual collapse of BiH's institutions,⁶⁸⁴ subsequent to the Washington Agreement, Dr. Prlić, as Minister of Defence for BiH, was fully committed to defeating the Bosnian Serb army in 1994-95. If anything, with the international acceptance of the Republika Srpska prior to the Dayton Peace Accords, it was the international community that sanctioned and pressed – as a condition for peace in BiH – for the formation of a “State within a State.”

311. Referring to the Sarajevo government as a “Moslem government” was very common. Indeed, even Expert Witness William Tomljanovich called that government “the Muslim authorities.”⁶⁸⁵ This is also consistent with Lord Owen's observations: “One of our concerns is that the BiH Government is sadly increasingly becoming representative only of the Muslim population.”⁶⁸⁶

312. The fact that Croatia allowed arms to funnel into BiH is nothing new. Taking for instance the testimony of Witness Peter Galbraith, who in a sense facilitated this process, as was later revealed through US Congressional hearings,⁶⁸⁷ it is obvious that Croatia was not only helping the Muslims but also the Croats with funneling arms to the Federation, which was established with two components in their armed forces – the ABiH component and the HVO component. The ratio between Muslim and Croat forces was approximately 2 to 1, reflecting the distribution of weapons that were obtained for the State of BiH.

SS. The notion of “division of BiH” put in context

313. The term “division” has nothing to do with the carving up of BiH. When discussing the “division” of BiH, it was always understood that this reference meant reaching a constitutional arrangement concerning the administrative reorganization of BiH to ensure the long-term viability and sustainability of its constituent peoples/nations. This can be seen from every peace proposal advanced

⁶⁸³ 1D02357; 1D02078; 1D02482; 1D02225; 1D02222; 1D02221; 1D02220; 1D02224.

⁶⁸⁴ 1D03111, Chapters 7-9; Tr. 28574, 28724 (26 May 2008).

⁶⁸⁵ P09545, para. 209.

⁶⁸⁶ 1D00814.

⁶⁸⁷ Tr. 6677-6681 (14 September 2006).

by the international negotiators.⁶⁸⁸ For context and perspective, the best available documented source of the ongoing negotiating process is offered by Lord Owen. In his book *Balkan Odyssey* he details, from different vantage points, the transmutation of the Vance-Owen Peace Plan into the Owen-Stoltenberg Peace Plan. Lord Owen writes:

In Geneva on 23 June [1993] nine constitutional principles emerged. ... Karadžić and Boban seemed genuinely committed and we undertook to put their proposal to the seven members of the Presidency of Bosnia-Herzegovina. ... I asked my deputy, the French Ambassador Jean-Pierre Masset, to visit Sarajevo and give Izetbegović a private letter ... I had in my letter of 1 July included a detailed annex on many issues which were at the time still very private. ... On 7 July Izetbegović sent his reply. ... The Bosnian Croat town of Neum, along Bosnia-Herzegovina's few kilometres of historic coastline, was going to be troublesome. Izetbegović recognized that our experts' assessment that it would make a bad harbour was correct, but it clearly had great symbolic importance in Sarajevo. ... The most important result from our two meetings of 9 July, respectively in Belgrade and Zagreb, was that Milošević and Tudman were now committed to reaching 30 percent of territory for a Muslim majority republic. ... A map of a predominately Muslim Republic from the Sava to the sea was now becoming closer to reality ... Izetbegović was saying from Sarajevo that he could accept a confederal solution for Bosnia, although it was exceptionally difficult, for it effectively meant the ethnic division of Bosnia, but his was a 'delicate decision' which had to be taken collectively, not by him as an individual. ... On 12 July Izetbegović wrote to us as ICFY Co-Chairmen ... saying that he was ready to attend the next round of talks on Bosnia in Geneva ... The Bosnian government also circulated a press release giving some detail of the constitutional proposals discussed by the Presidency in Zagreb on 11 July, namely that an agreement should be based on a federal arrangement with equality for all citizens and equal rights for all constituent nations. ... In effect, behind all the public relations propaganda being put out by all sides, we now had an agreement from the three parties to the principle of a Union of Three Republics with the predominately Muslim Republic having a minimum of 30 percent of territory and Croats arguing they should have more than 20 percent. We were embarking on negotiations based on an agreed framework. The transition from the VOPP had taken about eight weeks ...⁶⁸⁹

314. The term "division" did not connote the "partitioning of Bosnia-Herzegovina into three countries." In particular, the Trial Chamber heard testimony from Akmadzić, a former Prime Minister (President of the

⁶⁸⁸ 1D00398; 1D00892; 1D00526; 4D01234; 1D01536.

⁶⁸⁹ 1D00894, pp. 207-211.

Government) of BiH in 1992-93, who enjoyed a close professional and personal relationship with Izetbegović.⁶⁹⁰ In a letter authored by Akmadzić and delivered by Mohammed Sacirbey to the UN Security Council, he wrote: “When considering the issue of internal political settlement of the Republic of Bosnia and Herzegovina, we must recognize three different constituencies ...”⁶⁹¹ In a letter to then-Senator Joe Biden, the then-Chairman of the European Affairs Subcommittee of the US Senate Foreign Affairs Committee, Akmadzić complained about the cultural and ethnic/national disinformation the BiH Foreign Minister, Haris Silajdžić, was spreading on Capitol Hill.⁶⁹² Silajdžić’s target was indeed none other than Biden and his staff.⁶⁹³ In his letter, Akmadzić concretely notes:

The Government has also determined that Bosnia and Herzegovina can be politically arranged as a decentralized state. The proposals concerning establishment of provinces are an acceptable solution if not based only on ethnic principles, but rather on a combination of ethnic, geographic, historic, economic and other principles developed through negotiations. Our program includes full equality for the three peoples of Bosnia and Herzegovina: Croats, Muslims and Serbs, as recognized by the constitution of the Republic of Bosnia and Herzegovina.⁶⁹⁴

Responding to Judge Trechsel, Akmadzić stated:

[I]t was precisely at this time in New York in the UN building that we were discussing the Vance-Owen Plan. Mr. Izetbegovic and Mr. Karadzic are still in Geneva early January. ... What remained was to determine the borders of the provinces and to set up an interim government which is like a transitional government.⁶⁹⁵

315. The BiH Croat leadership was looking for and agreed to internationally proposed peace plans that retained the inviolability of BiH within its internationally recognized borders, while preserving the constitutionally recognized constituent status of the Croats of BiH.

⁶⁹⁰ Tr. 29338 (16 June 2008).

⁶⁹¹ 1D02888 discussed at Tr. 29374-29376 (16 June 2008).

⁶⁹² 1D 02848.

⁶⁹³ Tr. 29376-29379 (16 June 2008). Purportedly, Akmadzić had received reports claiming that Silajdžić “had deep and sentimental relations with or in the office of Senator Biden.” When pressed, he indicated that these “sentimental relations” were a euphemism for having a *sexual affair* with Senator Biden’s secretary (see Tr. 29385 (16 June 2008)).

⁶⁹⁴ 1D024848; see also Tr. 29377 (16 June 2008).

⁶⁹⁵ Tr. 29379 (16 June 2008). See generally 29380-29383 (16 June 2008).

316. The BiH Croat leadership was the only one from the very beginning and throughout the conflict that signed every proposal for the internal re-organization and administration of BiH drafted by the recognized international negotiators representing the UN and the EC / EU. In a letter dated 12 December 1992 to both the Presidency and the Government of BiH,⁶⁹⁶ Dr. Prlić urged Akmadžić “to have the Government and Presidency discuss this protest.” Dr. Prlić prefaces in unequivocal terms his wish as well as that of the Croats in BiH for a united BiH State, organized on the basis of the concepts proposed by the EC:

The general political position of the Croat people in the BH concerning the status of the BH has been repeatedly and unambiguously expressed and confirmed in practice. We have and will continue to advocate for BH as a sovereign, united, independent and internationally recognised state within the existing constitutional borders. It is for such a state that we have been making large sacrifices, both human and material. We are as unrelentingly in favour of preserving the BH statehood as we are committed to the idea that the state and its internal organization must match the interests of the Croat people residing within it. In this respect, we genuinely accepted the solutions for the internal organisation of the BH offered by the European Community, namely for a BH as a compound state community of three constitutive peoples (Croats, Muslims and Serbs), composed of three constitutive units, formed and organised on the basis of the already accepted principles, from ethnic to sacral ones. We consider this form of the BH to be the only real, possible and sustainable state system, not only because we believe that under such a system the Croat people stand on an equal footing in relation to the other two constitutive and state-building peoples, but also because we firmly believe that this concept of Europe is thoroughly thought-out and imperative if we wish to preserve our common homeland – the state of Bosnia and Herzegovina. Regrettably, we find that all those who did not wish to co-operate with the European Community on such significant matters have been directly or indirectly crushing the sovereignty of the BH.

317. Buntić testified that the Owen-Stoltenberg Peace Plan was not about dividing up, i.e. breaking up BiH into three separate States, but “about the way in which Bosnia and Herzegovina was to be structured on the basis of the principle of three constituent peoples.”⁶⁹⁷

318. The letter sent by the UN Secretary General to the President of the UN Security Council at the beginning of August 1993 reads:⁶⁹⁸ “After intensive discussion on a number of drafts submitted by the parties, with amendments

⁶⁹⁶ 1D01945; Tr. 29429-29432 (17 June 2008).

⁶⁹⁷ Tr. 30777 (15 July 2008). *See generally* 30776 – 30779 (15 July 2008).

⁶⁹⁸ UN Doc S/26233, 3 August 1993. *See also* P03990.

submitted by all three parties, they agreed on 30 July [1993] to a constitutional agreement for a Union of Republics of Bosnia and Herzegovina and to it forming part of an overall peace settlement.”⁶⁹⁹ In this report presented by the Secretary General, a co-President said that, on 21 July 1993, discussions on the maps began and that the idea was “that the Muslim-majority republic should have at least 30 per cent of the territory [of BiH].”⁷⁰⁰ The Constitutional Agreement states in Article 1: “The Union of the Republics of Bosnia and Herzegovina is composed of three Constituent Republics and encompasses three constitutive peoples: the Muslims, Serbs and Croats, as well as a group of other peoples,”⁷⁰¹ while the second chapter of the Constitutional Agreement, in Article 2 states: “Each of the Constituent Republics shall adopt its own Constitution, which shall provide for democratic forms of government, including democratically elected legislatures and chief executives and independent judiciaries, as well as for the highest standards of human rights and fundamental freedoms.”⁷⁰²

VIII. PARAGRAPH BY PARAGRAPH RESPONSE TO THE INDICTMENT

A. Dr.Prlić

Paragraph 2

319. Dr Prlić was never the “President of Herceg-Bosna’s supreme executive, administrative and defence body – the HVO,” as claimed by the OTP. The title as such does not exist. From 14 August 1992 to 20 November 1993, Dr. Prlić was President of the HVO HZ HB, the temporary executive authority of the HZ HB. From 20 November 1993 to 16 June 1996, Dr. Prlić was President of the Government of the HR HB. Dr. Prlić had no *de jure* position in, and no *de facto* influence or control over the HVO, the military component of the HZ HB. He did not, and could not, issue any orders, make any operational decisions, impose his will on the Main Staff, or command any HVO units. There is no evidence that he exercised any authority – *de jure* or *de facto* – over the Department of Defence, the HVO, the Military Police, the Security and Intelligence Services, the military

⁶⁹⁹ P03990, p. 5.

⁷⁰⁰ P03990, p. 8.

⁷⁰¹ P03990, p. 13.

⁷⁰² P03990, p. 14.

courts, or the military detention facilities. The Supreme Commander of the HVO was Mate Boban, the President of the Presidency of the HZ HB. The HVO HZ HB Department of the Defence did not have a *de jure* mandate in the operations of the Main Staff of the HVO, and no operational matters were ever discussed or decided upon by the HVO HZ HB. Other than the HVO HZ HB receiving the occasional briefing on the security situation in the field from the Main Staff, nothing was asked of or ordered to the Main Staff by the HVO HZ HB or its President, Dr. Prlić.⁷⁰³ Dr. Prlić was never Prime Minister of the HR HB. Such a position never existed.⁷⁰⁴

Paragraph 3

320. Other than holding the titles of President of the HVO HZ HB and President of the Government of the HR HB, Dr. Prlić was not the second most powerful person in the HZ HB during any period.⁷⁰⁵ Throughout the period of the Indictment, Dr. Prlić was not a member of the HDZ; his nomination to the BiH Central Bank had been withdrawn by Boban in part because he was seen as a communist or part of the previous political system.⁷⁰⁶ He was an outsider to the HDZ political establishment. Unlike Heads of Department of the HVO HZ HB Dr. Prlić did not have a department with staff, or the authority, influence or control that went with being a department head, he had no personal authority to appoint or dismiss anyone⁷⁰⁷ he had no supervisory authority over any of the departments of the HVO HZ HB or Ministries of the Government of the HR HB,⁷⁰⁸ the HVO Municipalities,⁷⁰⁹ the Main Staff of the HVO or its units,⁷¹⁰ he had no authority to issue orders personally or to make decisions. Dr. Prlić neither participated in nor was he consulted on any of international negotiations leading up to the General Framework Agreement for Peace in Bosnia and Herzegovina. As an unelected official at the HZ/HR HB level who had not participated in the

⁷⁰³ See *supra* paras. 223-231.

⁷⁰⁴ For further details regarding Dr. Prlić's life and career prior to, during and after the period of the Indictment, see *supra* paras. 15-34.

⁷⁰⁵ Tr. 38764-38765 (2 April 2009).

⁷⁰⁶ Tr. 27488 (5 May 2008); Tr. 28901-28904 (2 June 2008); P09078, p. 21; Tr. 32495-32496 (22 September 1992).

⁷⁰⁷ P00303, Article 16 and P09530, Article 2; Tr. 31668-31669 (1 September 2008).

⁷⁰⁸ See *e.g. supra* paras. 169-174, 282.

⁷⁰⁹ See *e.g. supra* paras. 180, 182, 183, 282.

⁷¹⁰ See *supra* paras. 223-231.

1990 elections, who had no direct mandate from, and no power base in the municipalities of the HZ/HR HB whose Presidents (as members of the HZ HB Presidency / HR HB House of Representatives) wielded *de facto* and *de jure* power which certainly eclipsed his own. Dr. Prlić's *de jure* authority was well defined by the Statutory Decision on the Temporary Organization of Executive Authority and Administration in the Territory of the HZ HB,⁷¹¹ Decree on the organization and responsibilities of the commissions and departments and commissions of Croatian Defence Council and the Croatian Community of Herceg-Bosna⁷¹² and Rules of Procedure for the HVO HZ HB.⁷¹³ As for any *de facto* authority he may have exercised, the evidence adduced does not show a single instance where Dr. Prlić overstepped the parameters of his *de jure* authority.

321. It is unfounded that Dr. Prlić “effectively eclipsed” Boban in late 1993. While Boban's leadership and authority may have waned in late 1993 for reasons unconnected to Dr. Prlić, the fact is that when the HZ HB evolved into the HR HB and Boban was sidelined, it was Krešimir Zubak, Vice President of the HVO HZ HB that replaced Boban;⁷¹⁴ not Dr. Prlić. Indeed, both *de jure* and *de facto*, Dr. Prlić's authority remained constant; what changed was the efficiency of political and administrative processes resulting from the changes brought about by the establishment of the House of Representatives of the HR HB. During this period, Dr. Prlić – as in the past – exercised no authority over the military or military matters. As for signing decisions and decrees, that was a formality that went with holding the title of “President;” signing an appointment is not proof of executive authority, control, or even influence in the appointment process. Finally, the assertion that Dr. Prlić had the authority to “close Herceg-Bosna/HVO prisons and concentrations camps” is unfounded and not supported by the evidence. Dr. Prlić was not responsible for opening any prisons or concentration camps; while

⁷¹¹ P00303.

⁷¹² 1D00001.

⁷¹³ P09530.

⁷¹⁴ P07876.

he made concerted efforts to close these facilities, he neither had *de jure* nor *de facto* authority to do so.⁷¹⁵

B. The OTP's JCE

Paragraph 15

322. The OTP's assertion that from 18 November 1991 to April 1994 and after, that there was an overarching JCE, as described in paragraphs 15, 16, 16.1, 17 and 17.1 (and repeated in variations in other segments) of the Indictment, is without merit and not proved beyond reasonable doubt. There was no JCE to politically and militarily subjugate, or permanently remove and ethnically cleanse, Bosnian Muslims and other non-Croats who lived in areas of the HZ/HR HB, so that at some point in time, these areas would become part of a "Greater Croatia," whether as part of the Republic of Croatia or in close association with it, or for the reconstitution of the 1939-41 Croatian Banovina borders.

In general, the evidence adduced shows the following:

- a. The BiH Croat political leadership supported the independence of BiH by voting for the referendum;⁷¹⁶ a prerequisite for international recognition of the declaration of independence which was set by the international community.⁷¹⁷
- b. The BiH Croat political leadership made concerted efforts to prepare for and, if necessary, resist and protect the territorial integrity of BiH;⁷¹⁸ efforts which the Muslim leadership, and the BiH Presidency which it effectively controlled, were not apparently willing to make – at least not for all the citizens of BiH.⁷¹⁹
- c. The BiH Croat political leadership agreed to, and signed every proposed peace agreement without any reservations. The very first such signing occurred in 1992, when all three sides initially agreed

⁷¹⁵ See *supra* paras. 232-238.

⁷¹⁶ P00132, Republican referendum to determine the status of Bosnia and Herzegovina, held on 29 February 1992 and 1 March 1992; 1D00920, Elections in Bosnia and Herzegovina 1990, Arnautović Suad.

⁷¹⁷ 1D00394, Conference on Yugoslavia Arbitration Commission - Opinion 4, 11 January 1992.

⁷¹⁸ P00031; P00047; P00058; P00060.

⁷¹⁹ Tr. 1908 (11 May 2006); Tr. 28895-28896 (2 June 2008); 1D00477.

to the Cutileiro Plan. This plan, as all the others peace plans (i.e. Vance-Owen Peace Plan, Owen-Stoltenberg Peace Plan, Washington Agreement) were drafted by international negotiators. All peace plans called for constitutional, political, and administrative solutions whereby the recognized constituent nations of BiH would have their rights guaranteed and would enjoy limited political autonomy within designated areas allocated to them to administer, but which, unquestionably, remained within the Republic of BiH and subject to its authority and competence over all major State powers and institutions.⁷²⁰

- d. The BiH Croat political leadership established the HZ HB because of the events unfolding in and around BiH, not as part of a JCE as alleged by the OTP:
 - i. The JNA was attacking Croatia for declaring its independence. It was inevitable that BiH would be next when its independence was on the table.
 - ii. The JNA was using BiH territory from which to launch attacks on Croatia with impunity, if not with the acquiescence and appeasement of the BiH Muslim political leadership, which, for all intents and purposes, controlled the Presidency of BiH.
 - iii. The BiH Croat village of Ravno was razed to the ground without any meaningful reaction from the Muslim-dominated BiH Presidency.⁷²¹ This event, coupled with the JNA operations being carried out against Croatia from BiH, was highly significant to the BiH Croats. It effectively demonstrated that they could not and should not rely on the Republic / Sarajevo government to take the necessary measures for their protection.⁷²²

⁷²⁰ 1D00398; 1D00892; 1D01778, RBiH, HZHB, Agreement regarding Bosnia-Herzegovina – booklet for HZHB Presidency meeting; 1D01557.

⁷²¹ Tr. 39078 (22 April 2009); Tr. 50137-50138 (1 March 2010).

⁷²² Tr. 29277-29279 (9 June 2008).

As such, it was necessary to self-organize – a phenomenon that would be repeated in virtually all ‘free’ areas in BiH. This self-management approach was a logical, practical, and legal⁷²³ process given the context of: **a.** the break-up of Yugoslavia; **b.** the JNA (ultimately JA) having turned on the former Republics of SFRY which were effectively left without armed forces save for the Territorial Defences; **c.** the doctrine of the All People’s Defence; and **d.** the decentralization of economic policies and administrative procedures that had begun even prior to the first free elections.

- e. The establishment of the HZ/HR HB had nothing to do with the reconstitution of the 1939 borders of the Croatian Banovina. There was never a border designated for the HZ/HR HB. The HZ HB was a collection of areas where the Croats of BiH resided. These areas were in many instances not contiguous; a matter that is readily visible when viewing a map that highlights the actual areas of the HZ HB, as opposed to the maps prepared by the OTP, which show borders it has drawn in order to fit its JCE thesis.⁷²⁴
- f. Any efforts directed toward “close association” with the Republic of Croatia were necessary and reasonable throughout the period of the Indictment. They were also dynamic. Initially, there was a need for the HZ HB to work with Croatian authorities to ensure that the HZ HB could be defended and supplied. In the HR HB period, a “close association” was supported, but in the context of establishing strong bilateral relations between an independent BiH and the Republic of Croatia, not in the context of the establishment of a “Greater Croatia” as an underlying political objective.
- g. There were neither plans nor efforts to ethnically cleanse any areas in or around areas controlled by the HZ/HR HB. As the conflict ensued in BiH and as territory was lost to the BiH Serb armed

⁷²³ Tr. 41556-41557 (17 June 2009); 1D02976, Articles 237-238.

⁷²⁴ 1D02843; 1D02261; 1D02258; 1D02259; 1D02253; 1D02254; 1D02280; 1D02255; 1D02262; 1D02257; 1D00265; 1D02260; 2D00435; 1D02013; 1D01981; ID00047; 1D02133; Tr. 30278-30281 (7 July 2008).

forces (VRS), large numbers of BiH Muslims and Croats fled for safety.⁷²⁵ To the extent possible, displaced persons - whether Muslim or Croat - were treated fairly and by large and uniformly. Croatia, which at the time had approximately one-third of its territory occupied and was dealing with its own displaced citizens, provided enormous assistance. Refugees from BiH were received without exception, with the Croatian authorities coordinating and cooperating with the BiH (Muslim) authorities and the international community.⁷²⁶ The OTP's allegations of reverse ethnic cleansing (forcibly uprooting the Central Bosnian Croats) to homogenize (Croatize) Herzegovina, is baseless. The Croats from Central Bosnia fled as they came under attack by the VRS. They then fled again when they found themselves isolated in enclaves surrounded by so-called ABiH, which energetically engaged Mujahideen militants. They had no choice but to escape to safety.⁷²⁷

323. When the events are viewed in perspective and context, the evidence adduced shows that not only was there no JCE, but Dr. Prlić was not involved – directly or indirectly – in any activities which were part of or connected to any crimes.

Paragraph 16

324. The OTP names a number of individuals who “participated or contributed” to the alleged JCE. Aside from mentioning specific names, the OTP includes, wholesale, the “members of the Herceg-Bosna/HVO leadership and authorities,” various leaders and members of the HDZ and members of the political and military leadership of Croatia. According to the OTP, all were involved in implementing the objective of the JCE, at the core of which was the realization of the Greater Croatia project. Specific to the realization of this objective was the direct involvement of the Croatian political and military apparatus. In support of

⁷²⁵ Tr. 33707-33710 (27 October 2008); 1D02586.

⁷²⁶ Tr. 28187-28194 (19 May 2008); 1D02921.

⁷²⁷ See *supra* paras. 198-222.

this thesis, the OTP in its Pre-Trial Brief relies on past judgements and, in an attempt to show that its assertions are beyond dispute and thus not required to be proved in this case, it tallies up the lists of ICTY Judges who have made findings of facts and/or conclusions of law.⁷²⁸ Suffice it to say, only adjudicated facts adopted by the Trial Chamber may be considered as presumptively proved though they remain subject to rebuttal by evidence adduced in these trial proceedings.

Paragraph 16.1

325. Dr. Prlić neither participated in the alleged JCE nor did he participate in any fashion in the commission of any crimes alleged to be part of, or connected to, the JCE in an individual capacity, as a superior or as part of a collective such as the HVO HZ HB. There is no evidence that Dr. Prlić intended, foresaw, was objectively able to foresee, or had influence or control over any of the alleged crimes.

Paragraph 17

326. In paragraph 17, the OTP essentially sets out what it believes to be the general nature of the JCE, which it then repeats in other paragraphs in both general and specific fashion. While the Prlić Defence acknowledges – as Dr. Prlić did during his interview with the OTP in 2001⁷²⁹ – that crimes were committed, Dr. Prlić was not engaged in or responsible for any unlawful activity.

- (a) The political structures that emerged with the establishment of the HZ HB were a result of the prevailing circumstances. There was neither an intent to establish a State within a State nor an intent to permanently take over any of the Republic's functions, or exercise "state-like powers." The Croats in BiH were driven to pool their resources and organize themselves into a community because of: **a.** the collapse of the Republic's institutions; **b.** the imminent threat of war and actual acts of war; **c.** the utter failure of the Republic to provide the necessary functions, services and protections; **d.** the existing system of local self-management and regionalization provided for in the BiH Constitution and effectively required by the All People's Defence doctrine; and **e.** the pressing need to provide a

⁷²⁸ See e.g. Pre-Trial Brief, paras. 16.3-16.53.

⁷²⁹ P09078.

semblance of order and public services at the municipal and regional levels.⁷³⁰ To fully understand the reasons for the establishment of the HZ HB, it is important to trace the events from before the first democratic elections, when the SFRY began moving from a command economy to a market economy, and when the decentralization process was well underway.⁷³¹ It is also necessary to understand the political system in BiH and how the internal organization of the Republic, soon to become an independent State, was affected by the results of the elections. The three dominant parties based on national orientation (SDA for the Muslims, SDS for the Serbs and HDZ for the Croats) were expected or had the right to take over positions at the Republic and municipal levels based on the elections' results and past practices relating to the constitutional recognition of the three constituent nations in BiH.⁷³² It is also important to appreciate how the financial institutions functioned in BiH before the war, in particular the SDK, and how with the disruption of telecommunications and electrical power, the SDK's collapse brought BiH's entire financial system to a grinding halt. It is important to understand how the tax and revenue collection system worked and how contributions from the municipal level would – through the SDK – be transferred to the Republic level and from there funds would trickle down to the regional and municipal levels to finance institutions and services.⁷³³ Without such appreciation of these matters, it is easy to draw the wrong conclusion; it is easy to jump to the conclusion that the HZ/HR HB was an effort to wrestle away power and territory from the BiH. The Defence Case lays out the contextual bases from which the evidence adduced must be examined. Suffice it to say, the efforts of Dr. Prlić and of the HVO HZ HB, and latterly the Government of the HR HB, were attempting to control and effectively distribute resources which were in the hands of the

⁷³⁰ See *e.g. supra* paras. 81-151.

⁷³¹ See *supra* paras. 64-69.

⁷³² See *supra* para. 68.

⁷³³ See *supra* paras. 90, 185(b), (g).

municipalities in order to diminish the chaotic consequences brought about by the collapse of the Republic's institutions.

- (b) Dr. Prlić and the HVO HZ HB had no *de jure* authority in and no *de facto* role over military matters even though the head of the Department of Defence was a member of the HVO HZ HB. As of 17 October 1992, the President of the HVO HZ HB had no *de jure* authority over any military matters. The Department of Defence was directly responsible to the President of the Presidency of the HZ HB. No operational orders were issued or authorized to be issued by the HVO HZ HB or the Government of the HR HB. While the Military Police and Intelligence Services, just as the Main Staff, were organs of the Department of Defence, the HVO HZ HB had no authority over these organs and these organs were not responsible to the HVO HZ HB. No evidence was adduced showing that the HVO HZ HB ever tried to influence or exercise control over the individuals responsible for those organs.⁷³⁴ Neither Dr. Prlić nor the HVO HZ HB had any control over the civilian police or the Head of the Department which oversaw the civilian police. The OTP made no effort to adduce evidence from any individual responsible to the Department of Interior. Evidence was adduced by the Defence showing how the civilian police had been effectively subordinated to the military – at least in Mostar – to such an extent that it made crime prevention and detection virtually impossible.⁷³⁵
- (c) Neither Dr. Prlić nor the HVO HZ HB engaged in any activity, and no legal instruments were adopted (decrees, decisions, conclusions etc.), that were intended to deprive or resulted in depriving the Muslims of their fundamental human rights. The HVO HZ HB took decisions and adopted decrees and regulations in order to protect the property rights of all. This can be seen with the legal instruments adopted in relation to abandoned property as well as privatization.⁷³⁶ Evidence was also adduced showing

⁷³⁴ See *supra* paras. 169-178, 223-231.

⁷³⁵ 2D03070, p. 3, point 5; P00377; P00458; 4D01628; 5D05095; 3D02408; 5D03019; P03135; 1D02006; P03124; 5D02189.

⁷³⁶ See *supra* paras. 185(f), 194, 220.

the efforts made to fill posts on a multi-ethnic and non-discriminatory basis; no one was dismissed, all qualified candidates welcomed.⁷³⁷

- (d) The OTP's allegations that Dr. Prlić instilled fear in and prejudiced the BiH Croats against the Muslims are without merit. The HVO HZ HB's communications regarding ABiH and Muslim paramilitary activity reflected the situation in the field, and was not "propaganda" intended to advance a JCE by engendering fear, hatred and mistrust. The evidence adduced shows how the Muslim political and military leadership used Mujahideen,⁷³⁸ who it engaged specifically in order to instil fear.⁷³⁹ Izetbegović is seen on video as Mujahideen were parading in Islamic flags and shouting slogans in Arabic.⁷⁴⁰ Evidence was adduced showing how the BiH Croats were encircled in Central Bosnia in unprotected enclaves, with the humanitarian aid designated for them being siphoned away by the ABiH.⁷⁴¹ Evidence was adduced regarding the consequences to the Croats in places such as Jablanica⁷⁴² and Konjic.⁷⁴³ Evidence was adduced showing how Muslim HVO soldiers turned on their fellow Croat HVO soldiers, killing them in their sleep; an act which no doubt would have instilled fear.⁷⁴⁴ Evidence was shown how Arif Pasalić was publicly inciting Muslims to go out and kill Croats which he characterized as the Ustashas.⁷⁴⁵
- (e) The OTP's allegations of "Croatization" are absurd. No evidence was adduced by the OTP to explain away: **a.** the mass chaos created by the break down of the Republican government; **b.** the lack of willingness and/or ability of the BiH Presidency to provide security throughout BiH; **c.** the Sarajevo government's lack of effort to make the SDK operational

⁷³⁷ Tr. 30382-30385 (8 July 2008); Tr. 30427-30430 (9 July 2008); 1D02388; 1D02714; 1D02667; 1D01805; 1D01806; 1D01807.

⁷³⁸ Tr. 5238-5239, 5247-5248 (21 August 2006); Tr. 5347-5349 (22 August 2006); Tr. 7756-7758 (3 October 2006); Tr. 8463-8467 (16 October 2006); 4D00597; P02875.

⁷³⁹ Tr. 47237-47240 (24 November 2009).

⁷⁴⁰ Tr. 5403-5406 (23 August 2006).

⁷⁴¹ See *supra* paras. 198-222.

⁷⁴² Tr. 33314-33316 (16 October 2008); P10667; 2D01036.

⁷⁴³ Tr. 47214-47215 (24 November 2009); 4D01591.

⁷⁴⁴ See *supra* paras. 235-236.

⁷⁴⁵ 2D00448.

throughout BiH; or **d.** the fact that the BiH Central Bank did not function. While it may have been physically impossible for the Muslim dominated BiH Presidency and government of Sarajevo to govern outside Sarajevo, the OTP adduced no evidence showing what was possible at the municipal and regional levels in Muslim majority areas. Muslim municipalities took over functions normally carried out by State institutions too; much of what was done by those municipalities was similar to what was being done by the municipalities associated with the HZ HB. Use of “Croatian” language was logical. Serbo-Croat, or Croatian-Serbian, was associated with the Serb aggressor, and a Muslim language simply did not exist.⁷⁴⁶ No evidence was adduced showing the use of Muslim language texts. Indeed, even Izetbegović mockingly suggested what name could be given to a Bosnian Muslim language.⁷⁴⁷ This speaks for the fact that a Muslim language used, recognized, and taught in schools did not exist. As for the introduction of Croatian currency, the notion that this was part of a “Croatization” process ignores the fact that: **a.** there was no hard BiH currency; **b.** the most readily available currency was the Croatian Dinar; **c.** most goods were imported from Croatia; and **d.** other currencies such as the German Mark and the US Dollar were also in circulation.⁷⁴⁸ No evidence was adduced by the OTP to counter any of the evidence presented by the Defence on this issue. Not a single expert was produced by the OTP to counter the testimony and documentary evidence adduced by Defence witnesses such as Zarko Primorać, Neven Tomić, and Milan Cvikl, all of whom were both technocrats and experts when it came to financial matters. As for the alleged assumption of power from the municipalities, not only this fact needs to be scrutinized to appreciate the nature and extent of the chaos caused by the power vacuum caused by, *inter alia*, the absence of Republican services, the breakdown of Republican infrastructure, the disruption of communications, and the siege of Sarajevo. There must also be an understanding of the political system of

⁷⁴⁶ 1D00430; 1D00468; 1D00469; 1D00470.

⁷⁴⁷ Tr. 29432-29438 (17 June 2008); 1D02663.

⁷⁴⁸ See *supra* para. 185(i).

the time, including: **a.** the powers entrusted to the municipalities and regional authorities; **b.** the provisions in the Constitution and laws for self-management in case of emergencies; and **c.** the cultural mindset and habits resulting from nearly fifty years of being trained for the All People's Defence. The OTP presented its case in a vacuum.

- (f) The OTP adduced no evidence showing how it would have been possible for the Croats and Muslims of BiH to defend themselves against the JNA/JA and BiH Serb army (VRS) without the use of arms. The evidence shows that as early as 1991 the JNA had effectively removed all stockpiled weapons that were in BiH as part of the Territorial Defence system.⁷⁴⁹ The OTP adduced no evidence showing why it would have been unnecessary for the BiH Croats to defend themselves from Serb aggression, while at the same time it would have been perfectly acceptable for the Muslims to arm. The evidence shows that Croatia was arming and training the Muslims in BiH.⁷⁵⁰ Tudman was given the green light by the US, a permanent member of the Security Council, to have weapons from Iran shipped to BiH for the ABiH.⁷⁵¹ Third World Relief, an organization posing as a humanitarian NGO, funnelled hundreds of millions of dollars into BiH for the exclusive use of the Muslim leadership.⁷⁵² Izetbegović, President of the SDA and President of the Presidency of BiH, clandestinely formed the Patriotic League and Green Berets as part of the military wing of the SDA. Halilović, a Muslim JNA officer from Serbia, who was to rise to the level of Head of the ABiH, was instrumental in developing defence strategy for the Muslim political leadership.⁷⁵³ However, Izetbegović was secretly arming the Muslims solely for their defence and protection. His passivity, well expressed through the inaction of the Presidency, along with his notorious proclamation after the destruction of the Croat village of Ravno, that "this is not our war," gave

⁷⁴⁹ Tr. 28884-28885 (2 June 2008); 1D00524.

⁷⁵⁰ 1D02445; 2D00068; 3D02469; 1D02446; 2D03038; 2D03039; 2D03040; 2D01081; 2D01093; 2D00630; 2D01145; 2D01155; 2D00898; 3D03008; 2D03008; 3D00142; 3D00008; 2D00958; 2D00009.

⁷⁵¹ Tr. 6569-6570 (13 September 2006).

⁷⁵² Tr. 34825-34833 (18 November 2008); 3D02694.

⁷⁵³ 3D02648; 1D02211.

reason to the BiH Croats to mistrust him and the BiH Presidency, creating the necessity to self-arm.⁷⁵⁴ Izetbegović's priorities were once again demonstrated to the BiH Croats when, on national television, as his detention was being played out, he brushed Kljuić aside, demanding his fellow Muslim Ganić to act in his stead; a position that rightfully belonged to Kljuić.⁷⁵⁵ When all of these facts are viewed in their context and proper perspective, the preposterous nature of the OTP's claim that the BiH Croats' production, acquisition, and/or distribution of military equipment, arms, ammunition, funds, and logistical support was intended to advance the alleged JCE is plain.

- (g) Croatia provided assistance to both Muslims and Croats to further their mutual defence from Serb aggression;⁷⁵⁶ not to further the alleged JCE. No other country did as much for BiH's Muslims as Croatia. Meanwhile, the Muslim political and military leadership coveted and sought to capture part of the Croatian coastal area in order to annex a deep-water port.⁷⁵⁷ Evidence was adduced showing that Croatia provided arms and training to the Muslims. Croatia was also engaged by the international community to assist in the peace process.⁷⁵⁸ With the Friendship and Cooperation Agreement signed between Tuđman and Izetbegović, it was natural that Croatian authorities would, on occasion, be called upon to assist during trying moments of the Muslim-Croat relationship, particularly when their common aggressor was the BiH Serb forces.⁷⁵⁹ When the Croats of Central Bosnia found themselves encircled by the ABiH and Mujahideen units, and with the real possibility of Croat civilians being exterminated by the Muslim forces, which, invariably, were under the command and

⁷⁵⁴ Tr. 29277-29279 (9 June 2008).

⁷⁵⁵ Tr. 4918-4207 (28 June 2006); 1D00941.

⁷⁵⁶ 1D01927; 3D00299; 1D01929; 1D01928; 2D00009; 3D02710; 3D01699; 4D01240; 3D00299; 3D02811; 1D01143; 1D01146; 1D01145; 1D02283.

⁷⁵⁷ Tr. 19085-19095 (24 May 2007); 3D00942; Tr. 48783-48797 (21 January 2010); 4D00599; 2D03076; 3D02591 and 1D01210.

⁷⁵⁸ 1D01314, paras. 2-4.

⁷⁵⁹ P00339, 1D02416, 3D02230, 1D01935, 1D01543.

control of Izetbegović, in that dark hour of need and despair, efforts were made to solicit assistance from Croatia.⁷⁶⁰

- (h) Dr. Prlić and the HVO HZ HB/Government of the HR HB were not involved in or part of any plans to establish, organise, direct, fund, facilitate, support, or participate in, maintain, or operate prisons or concentration camps and other detention facilities.⁷⁶¹
- (i) Dr. Prlić and the HVO HZ HB/Government of the HR HB were not engaged in any activity to forcibly transfer or deport anyone from BiH, or to other parts of BiH which were not controlled by the HZ/HR HB.⁷⁶²
- (j) Dr Prlić and the HVO HZ HB/Government of the HR HB were not engaged in any activity related to unlawful forced labor.
- (k) Dr. Prlić and the HVO HZ HB/Government of the HR HB did their utmost to prevent and punish criminal activity. Efforts were made to establish functioning courts, to have judges appointed, and criminal cases tried.⁷⁶³ When the circumstances allowed, “Operation Spider” commenced to tackle organized crime.⁷⁶⁴ Evidence was adduced showing the chaos that emerged once Mostar came under attack; how the judicial system was impacted when most of the judges and prosecutors (who were Serbs) left the area in 1992 when the JNA/JA attacked the city and its surroundings.⁷⁶⁵
- (l) Dr. Prlić and the HVO HZ HB/Government of the HR HB were not engaged in any activity to conceal or minimize any criminal activity. Dr. Prlić was not involved in any activity related to cover-up efforts concerning Ivica Rajić. No evidence was adduced showing that Dr. Prlić participated in the Ivica Rajić affair. Neither Boban as supreme commander nor General Petković as Chief of the Main Staff informed, consulted, sought assistance from, or engaged Dr. Prlić or the HVO HZ HB in any fashion in relation to providing Ivica Rajić with a new name

⁷⁶⁰ See *supra* paras. 198-222.

⁷⁶¹ See *supra* paras. 232-238.

⁷⁶² See *supra* paraa. 193-222.

⁷⁶³ 1D01181, P01511, P01703, P02575, P02606, 2D01272, P04008, 1D01675, P04275, P04276, P04343; 2D00854; P05799; P07200.

⁷⁶⁴ 1D02576; 1D01249; 1D01252. See *supra* para. 192.

⁷⁶⁵ Tr. 30266-30267 (7 July 2008); Tr. 30940-30941 (17 July 2008).

and identity or instructing him not to investigate the very crimes he was responsible for committing.

Paragraph 17.1

327. (a) The HVO HZ HB and the Government of the HR HB were executive authorities that were subordinate to the HZ HB Presidency, which was the legislative body with supreme authority over policy.⁷⁶⁶ The HVO HZ HB executive authorities were not the “supreme ... defence body.” The supreme defence body was the HVO military, commanded by the Chief of the Main Staff and answerable for operational matters to Boban, the President of the Presidency of the HZ HB and latterly President of the HR HB and Supreme Commander. Dr. Prlić had no *de jure* position in and no *de facto* authority or influence over the HVO military. He never issued orders to the Main Staff or its units. Dr. Prlić had no *de jure* or *de facto* authority or influence over either General Praljak or General Petković or their units. Neither of them reported to Dr. Prlić, neither of them were accountable to him, and neither of them were influenced directly or indirectly by him in their activities. Dr. Prlić never participated in any planning of any activity that either Chief of the Main Staff, or their subordinates acting autonomously, may have carried out. No evidence was adduced by the OTP that Dr. Prlić, in his capacity as President of the HVO HZ HB or as President of the Government of the HR HB, had a portfolio which encompassed any military affairs, either *de jure* or *de facto*. Any decisions made by the HVO HZ HB or the Government of the HR HB were issued in accordance with Rules of Procedure.⁷⁶⁷

(b) While Dr. Prlić did attend some meetings in Zagreb hosted by the Croatian leadership, when his words and deeds are viewed in context, no evidence, however marshaled, gives rise to any proof that he was attending meetings as part of the alleged JCE. The evidence does not support the OTP’s claims that Dr. Prlić “led” the alleged “high-level meetings.” When Dr. Prlić attended meetings, he was a mere participant and there is no evidence showing that he was afforded

⁷⁶⁶ See e.g. *supra* paras. 179-181.

⁷⁶⁷ See *supra* paras. 169, 178.

special status or preferential treatment.⁷⁶⁸ Evidence was adduced of one meeting in Split where Dr. Prlić did take a confrontational stance against Boban when discussing the composition of the new government for the HR HB.⁷⁶⁹ This discussion, however, is not proof of any policy planning for the commission of crimes.

- (c) Dr. Prlić's authority within the HVO HZ HB, which operated as collective bodies, was limited.⁷⁷⁰ Department Heads were responsible for carrying out the work of the Departments. Dr. Prlić did not have the authority to order, influence or direct any Department Head or any members of a Department (or Sub-department) to carry out any activity. The Department Heads, though members of the HVO HZ HB, were accountable to the Presidency of the HZ HB. Neither Dr. Prlić nor the HVO HZ HB could appoint or dismiss a Department Head or Minister; only the Presidency of the HZ HB. Consequently, Dr. Prlić did not control or influence the work of the Departments/Ministries or Department Heads/Ministers. No evidence was adduced showing that Dr. Prlić exercised *de jure* or *de facto* authority to control the Departments/Ministries or Department Heads/Ministers.⁷⁷¹
- (d) There is no evidence proving that Dr. Prlić signed any decisions or decrees adopted by the HVO HZ HB which support the alleged JCE. No such decisions or decrees were adopted. Addressing the examples cited, the evidence adduced by the OTP shows that: **a.** the Decree on the Use of Deserted/Abandoned Apartments⁷⁷² was intended to coordinate the work of various municipalities, because they had already passed such decisions;⁷⁷³ **b.** the Decree on Border Crossings and Traffic in the Border Area of HZ H-B at state borders⁷⁷⁴ implemented pre-existing federal regulations that had been adopted by BiH, defining the state border with the Republic of Croatia;⁷⁷⁵ and **c.** The Decision on the Status of Refugees and Displaced Persons represented an attempt to

⁷⁶⁸ P00498; P06454; P06581; P07570; P07856.

⁷⁶⁹ P06454.

⁷⁷⁰ Tr. 30284-30288 (7 July 2008).

⁷⁷¹ See *supra* paras. 170-174.

⁷⁷² P03089.

⁷⁷³ See *supra* paras. 185(f), 194, 220.

⁷⁷⁴ P01560.

⁷⁷⁵ See *e.g. supra* para. 185(a).

coordinate the various municipalities on the issue of refugees and displaced persons.⁷⁷⁶

- (e) Neither Dr. Prlić nor the HVO HZ HB had control over the municipalities nor areas within the municipalities of the HZ/HR HB. Presidents of the municipalities were members of the legislative body, the Presidency of HZ HB, and later the House of Representatives of the HR HB. These municipal Presidents, as members of the HZ HB Presidents and later the HR HB House of Representatives, had the authority to appoint and dismiss members of the HVO HZ HB/Government of the HR HB. Appointments made to municipal HVOs were of a technical nature because municipal HVOs made the relevant proposals. Decisions were generally signed by the President of the HZ HB, though there were **some instances when those decisions, as a matter of formality, were passed by the HVO HZ HB.** All members of the HVO HZ HB answered to the Presidency of the HZ HB/House of Representatives; the reports of the Departments were made for and submitted to the Presidency of the HZ HB/House of Representatives. The municipalities did in fact take decisions that were contrary to some of the decrees and decisions passed by the HVO HZ HB, but effectively (*de facto*) there were no means at the disposal of the HVO HZ HB/Government of the HR HB **to compel municipal presidents to reverse or abolish** such municipal decrees or decisions.⁷⁷⁷
- (f) The entire notion of “Croatization” as alleged by the OTP is unfounded. The establishment of *curricula* for the university and primary/secondary schools, the use of the Croatian Dinar or the display of the BiH Croatian coat of arms does not lead to a conclusion that the HZ HB was trying to “Croatise” the areas of the HZ/HR HB (See para. 326(e), pp.163-164; para. 335, pp. 180-181).
- (g) The economic measures taken by the HVO HZ HB, particularly those related to monetary transactions, were necessary and reasonable. Nothing was done to usurp or ignore the sovereignty of BiH or its institutions, or further an alleged JCE. Evidence was adduced showing why measures were taken in relation to collecting funds from the Diaspora, the collection of taxes and customs duties, and the

⁷⁷⁶ See *supra* para. 196.

⁷⁷⁷ See *supra* paras. 182-183; see also para. 180.

establishment of budgetary mechanisms. With the war, BiH suffered from economic collapse; administrative and social services from the Republic down to the municipal level ceased. This created a vacuum in effective governance. The municipalities needed to react. The HVO HZ HB attempted to coordinate municipal action and resolve basic needs and services at the municipal and regional level. Regionalization followed actions taken by the municipalities and, as the analysis by Cvikić shows, the choices made in municipalities in areas of the HZ/HR HB did not differ much from the choices made in other regions or municipalities of BiH that were facing similar problems.⁷⁷⁸

- (h) The HVO HZ HB had no *de jure* or *de facto* authority over military, police or intelligence matters. Preparations for defence plans were made in relation to the civilian aspect of defence (e.g. relating to mobilization) in schools, banks, and other such institutions.⁷⁷⁹ The Head of the Department of Defence was directly responsible to the Supreme Commander, the President of the Presidency of HZ HB.⁷⁸⁰ The adoption of Croat symbols in military, police and other forces was political decision made by Presidency of HZ HB.⁷⁸¹
- (i) As President of the HVO HZ HB, Dr. Prlić had no authority to appoint, replace, or dismiss anyone. All decrees, decisions and conclusions by the HVO HZ HB/Government of the HR HB – irrespective of their nature – were taken collectively. Dr. Prlić signed appointments on behalf of the HVO HZ HB/Government of the HR HB in his capacity as President. Dr. Prlić's signature is not an *indiciu*m of authorship, ownership, influence or control over what was signed.⁷⁸²
- (j) The Decision on Manufacture and Trade of Arms and Military Equipment on the Territory of HZ HB was a decision that primarily had to do with the economy and was promulgated to assist both the ABiH and HVO.⁷⁸³
- (k) Cooperation with Croatia was not in furtherance of committing any crimes, nor was it performed in furtherance of the establishment of a "Greater Croatia." The

⁷⁷⁸ See *supra* para. 93.

⁷⁷⁹ Tr. 31751-31756 (2 September 2008); 1D 02722; 1D 02723; 1D 02724; 1D 02811.

⁷⁸⁰ See *supra* paras. 223-231.

⁷⁸¹ P00543.

⁷⁸² See *supra* paras. 169-178.

⁷⁸³ P07041, article 7.

Decision on the Import of Goods from the Republic of Croatia was a necessary regulatory measure.⁷⁸⁴ No evidence to the contrary was adduced by the OTP.

- (l) The decision of 15 January 1993 was not an ultimatum. It did not initiate clashes, or crimes, in Gornji Vakuf or anywhere else. It was adopted and withdrawn pursuant to orders and information supplied by the Head of the Croatian negotiating team at international negotiations and the President of the Presidency of the HZ HB, Boban. It was issued in good faith and with a view to setting up a joint command.⁷⁸⁵
- (m) No *ultimatum* was issued in April 1993 either. Both parties had already signed the Vance-Owen Peace Plan by this time. Clashes in parts of the territory had nothing to do with the HVO HZ HB meeting that was held on 3 April 1993. This meeting was devoted in its entirety to documents relating to the Vance-Owen Peace Plan and preparations for its exceptionally complex implementation.⁷⁸⁶
- (n) Neither Dr. Prlić, nor the HVO HZ HB had authority or control over the establishment and operation of detention centers. The HVO HZ HB, in order to restore order, activated, based on Republican regulations and the legislation of the Presidency of the HZ HB, institutions of the judiciary (civilian and military), the prosecution offices, as well as courts and prisons, in which, under the law, prisoners could only be kept pursuant to a decision from an appropriate court. All such decisions were lawful. Neither Dr. Prlić nor the HVO HZ HB/Government of the HR HB participated in any manner, directly or indirectly, in any unlawful detention. Any facilities or parts of facilities used for any unlawful detentions were established without authorization, encouragement, or support from Dr. Prlić or the HVO HZ HB/Government of the HR HB. Upon learning of the existence of these facilities, the HVO HZ HB/Government of the HR HB did in fact attempt to resolve these matters to the extent possible, recognizing that the HVO HZ HB/Government of the HR HB was effectively incapable of controlling the authorities responsible for detentions and detention facilities.⁷⁸⁷

⁷⁸⁴ See *supra* para. 185(a); P00735.

⁷⁸⁵ See *supra* paras. 239-262.

⁷⁸⁶ Tr. 30470-30475 (9 July 2008); 1D02003; 1D02738; P02142.

⁷⁸⁷ See *supra* paras. 232-238.

- (o) There is no evidence at all showing that Dr. Prlić or the HVO HZ-HB/Government of the HR HB was in any way involved in anything to do with forced labor performed by detainees.
- (p) Neither Dr. Prlić, nor the HVO HZ HB/Government of the HR HB took a single decision that discriminated against the Muslim population, or anyone else for that matter.
- (q) Neither Dr. Prlić, nor the HVO HZ HB/Government of the HR HB were engaged in any activity which supported a system of ill-treatment which was used to forcibly transfer or deport Bosnian Muslims. The ODPR was a Sub-Department with a humanitarian remit. It offered assistance to persons whose lives were at risk, especially displaced persons, regardless of their ethnicity. There is no evidence that Dr. Prlić and the HVO HZ HB/Government of the HR HB, with or through this office, or any other office, engaged in any forcible transfers or deportations.⁷⁸⁸ There is nothing to corroborate the alleged activities of the Commission on the Question of the Migration of Population. As for activities concerning the exchange of prisoners, there is no evidence supporting any of the OTP allegations that Dr. Prlić and the HVO HZ HB/Government of the HR HB were engaged in the exchange of prisoners as part of, or in furtherance of, the alleged JCE.
- (r) There was no reverse ethnic cleansing of Croats and there were no attempts permanently to re-populate certain areas controlled by the HZ/HR HB with BiH Croats in order to homogenize these areas. Dr. Prlić and the HVO HZ HB/Government of the HR HB did what it could to simply assist over 100,000 Croats who were displaced because of military action taken by the ABiH in places such as Zenica, Travnik, Kakanj, Konjic, Bugojno, Fojnica or Vareš.⁷⁸⁹
- (s) Dr. Prlić's public statements were neither delivered for the purposes of, nor can be interpreted as, conduct spreading fear, hatred, and distrust. Croats were being expelled from areas historically inhabited by Croats. Concern for the loss of one's ancestral lands cannot be minimized. Dr. Prlić was merely stating a historical fact. Moreover, when considering Dr. Prlić's statements, it is essential to review

⁷⁸⁸ See *supra* paras. 193-222.

⁷⁸⁹ See *supra* paras. 235-238.

all of his statements and conduct throughout the period of the Indictment. At all times, Dr. Prlić publicly proclaimed that BiH should be organized in a manner which would guarantee the rights of all three constituent peoples. He never advocated the dislocation or relocation of anyone in BiH. All the peace proposals called for equal rights for all the constituent peoples irrespective of the province in which they were located. Mostar, was previously considered the center of the Western Herzegovina region, and was slated to be the capital of the province and then also the capital of the HR HB, as well as of the Herzegovinian Neretva County. The 30 June 1993 declaration was a mere declaration; not an order or a decision.⁷⁹⁰

- (t) Every humanitarian convoy that ever traveled through HZ/HR HB territory eventually reached its destination.⁷⁹¹ The protocol that was agreed in cooperation with international organizations provided a reasonable and necessary procedure. No request by international organizations to furnish humanitarian aid was ever refused, regardless of its eventual destination. Dr. Prlić and the HVO HZ HB/Government of the HR HB made all possible efforts to facilitate the transfer and distribution of humanitarian aid.⁷⁹²
- (u) Dr. Prlić, as well as the HVO HZ HB/Government of the HR HB, played no role in any military operations. No evidence was adduced showing that Dr. Prlić or the HVO HZ HB/Government of the HR HB either directly or indirectly were involved in any activity relating to the destruction of any cultural, religious or private property. In fact, the evidence adduced shows the opposite. Significant efforts were made to protect and reconstruct whatever had been destroyed, including the cultural and historic heritage of all of the ethnic groups.⁷⁹³
- (v) Dr. Prlić, as well as the HVO HZ HB/Government of the HR HB passed decisions and took all measures that they were capable of taking to enable internal affairs organs and judicial bodies to prosecute crimes. The HVO HZ HB and the Government of the HR HB involved all competent institutions in those activities.

⁷⁹⁰ See *supra* paras. 235-238.

⁷⁹¹ Tr. 7302-7303 (26 September 2006) (closed session).

⁷⁹² Tr. 31353-31355, 31365-31366 (26 August 2008); P10264, 1D01854, 1D02024, 1D01529; 1D02070; 1D01611; 1D01336; P03673; 1D02299; 1D01873; 1D01874; 1D01912.

⁷⁹³ 1D02705E; 1D02703; 1D02706.

- (w) The OTP did not adduce any evidence that Dr. Prlić directly or indirectly had anything to do with the dissemination of disinformation concerning the detention of Muslims or the conditions in which they were detained. Upon learning of potentially unlawful detentions and conditions, Dr. Prlić did his utmost to assist in rectifying the situation.
- (x) The OTP did not adduce any evidence that Dr. Prlić directly or indirectly had anything to do with the dissemination of disinformation concerning the commission of crimes.

C. The OTP's Statement of the Case

328. This section of the Indictment suffers in two ways. First, it makes sweeping representations which are not supported by the evidence. Second, much of what is described is either taken out of context, or significant facts which are useful to the understanding of the situation as it was at that time are conveniently omitted. For instance, the following relevant contextual information is missing:

- BiH territory was used by the JNA to attack the Republic of Croatia;
- Croat areas in BiH were attacked, prompting Alia Izetbegović, the President of the Presidency of BiH to declare publicly that "this is not our war";
- the BiH Presidency and Republican institutions made no preparations for the defence of BiH territories, prompting the Croats of BiH to commence their own preparations;
- the SDA, representing the Muslim nation under the leadership of Izetbegović, secretly began to establish paramilitary Muslim units, such as the Patriotic League and Green Berets exclusively to defend Muslims and the areas in BiH they claimed to be Muslim;
- that the BiH Presidency delayed in declaring a state of emergency for approximately 8 months after the war in BiH had started;
- the Republic's institutions and infrastructure, such as the Central Bank, electrical power plants, telecommunications, and railway system had ceased to function as a result of the siege of Sarajevo and Serb military activities;
- that the Yugoslav Dinar had become worthless and the BiH Dinar was equally worthless;

- with the Republic's institutions not functioning and not providing services at the municipal and regional level, municipalities in the free area of BiH, without exception, made all efforts necessary to self-manage, including by adopting measures which normally fell within the sphere of the Republic, and previously the SFRY;
- Boban had, virtually from BiH's birth as an independent nation-State, offered the HVO to the BiH Presidency as part of the armed services of BiH in order to defend its territorial and constitutional integrity;
- Kljuić, President of the HDZ and a member of the BiH Presidency, had been part of the decision-making process which encouraged the regionalization of Croat areas in BiH as a result of the looming war;
- Tuđman and Croatia were among the first leaders and countries to recognize BiH as an independent country;
- despite BiH's precarious position and the unlikelihood of its survival in late 1991, once BiH declared its independence, Tuđman and Croatia provided the Muslim leadership and the SDA's armed forces, which was to become the ABiH, substantial military assistance;
- Croatia, despite being one-third occupied and with a large portion of its population displaced, became the largest safe-haven for BiH Muslim refugees;
- BiH Croats were able to see how inconsequential and feeble Kljuić was as a member of the Presidency of BiH when Izetbegović selected his fellow Muslim Ganić to take charge of Presidency matters on national television as Izetbegović's kidnapping was being played out;
- Mostar came under severe attack in 1992 and it was the HVO that liberated the Muslim side with virtually no help from the Republican / SDA-dominated government.

Paragraph 20

329. The HDZ-BiH was not controlled by the HDZ of Croatia. Close consultation on matters of security and cultural issues, in view of the circumstances, was essential. Both parties were formed in advance of the first democratic elections in 1990. When Croatia became independent, for the first time in modern history, there was a free Croatian State not under a neighboring

suzerain or as part of a collective of nation-states. The HDZ started as a movement, and its aim was to protect and promote the political, cultural and economic interests of Croats throughout the world. When war broke out in Croatia, BiH Croats went to Croatia and volunteered to fight. BiH Croats living in the diaspora generally provided financial and humanitarian assistance. Thus, when BiH came under attack and when the interests of the BiH Croats hung in the balance, it was only natural to consult with the Croatian leadership, including Tudman. It was not just the BiH Croat leadership which sought out Tudman's advice and assistance. The HDZ-BiH was faced with a situation that was unique and unprecedented. Based on the election results, the HDZ BiH had the right to nominate and have Croats appointed to fill political and administrative positions throughout BiH. With the coming of war in BiH, it had the responsibility to provide security to Croats scattered throughout BiH, an obligation to safeguard the status of the Croats as a constituent nation of BiH and (not as a national minority), a mandate to negotiate on behalf of the BiH Croats with international negotiators, a responsibility to organize the Croat voters to vote for the referendum, and the obligation – based also on the All People's Defence – to self-organize the areas where BiH Croats lived in order to repel the expected aggression and to meet the day-to-day needs of all those living in and around the areas where BiH Croats lived.

Paragraph 21

330. The establishment of the HZ HB on 18 November 1991 had nothing to do with territorial claims; it was all about security. The situation in BiH was fluid and the safety of the BiH Croats precarious. Neither the HZ HB nor the HR HB had an expressed geographical boundary line; it was a collection of areas where Croats resided throughout BiH. The HR HB evolved from the HZ HB as a result of the peace proposals, which were drafted and promoted by the international negotiators. At no time did either the HZ HB or the HR HB ever attempt to gain international recognition as a State. The OTP makes sweeping assertions while ignoring the evidence adduced.⁷⁹⁴

⁷⁹⁴ See *supra* paras. 104, 275-282.

Paragraph 22

331. This paragraph does not list all areas of the HZ HB.

Paragraph 23

332. There was no “two-track” policy toward BiH and its territory. As the highest political authority of the HZ/HR HB and as supreme commander of the HVO, Boban agreed without hesitation to every peace proposal presented to him by the international negotiators. The primary concern of the BiH Croats was maintaining their constituent status and the internal political and administrative organization of BiH that would recognize and respect their rights within a progressive constitutional framework. Dr. Prlić was clear in both public statements and in his actions, whether private or otherwise. There is no evidence that Dr. Prlić was ever engaged in any activity that in any way promoted the alleged JCE or any crimes. His actions were always consistent with preserving the internationally recognized sovereignty of BiH.⁷⁹⁵

Paragraph 24

333. The 27 December 1991 meeting with Croatian President Tuđman did not call for the carve-up of BiH. The discussions took place when the fate of BiH, which was still a Republic within the rump SFRY, was unclear. The JNA had launched attacks against Croatia and it was rather clear that the Serb leadership in Belgrade had designs on territory in Croatia and the better part of BiH. It was only natural that scenarios would be discussed considering the eventuality that BiH, within its Republican administrative borders, would not survive. In that eventuality, Tuđman expressed his desire to have the borders of Croatia encompass areas which were predominantly inhabited by Croats and that were contiguous to Croatia. This made sense for three reasons: **a.** the modern Croatian borders were physically non-defensible, as was seen from the JNA attacks; **b.** Croatia’s historic enemy was Serbia, and under Milošević’s territorial ambitions, the long-term survival of the nascent state of Croatia would have been unfeasible with such a powerful foe adjacent to it; and **c.** Croatia, especially under its recently adopted Constitution, was responsible to provide aid and protection to all

⁷⁹⁵ 1D02225; P10701; 1D02222; 1D01655; 1D02221; P02881; 1D02220; P04208; 1D02224; P08155; 1D02234; 1D02355; 1D02223; 1D02078; 1D02231; 1D02070; 1D02230.

Croats. The issue of BiH's failure or demise as a break-away state from the rump SFRY became moot once it declared independence (which in no small measure became possible because of the participation of the BiH Croats, encouraged by Tuđman and HDZ Croatia, during the referendum of 28 February – 1 March 1992). Once BiH became independent, Tuđman immediately recognized it as an independent and sovereign nation with its existing borders, and soon thereafter entered into the Friendship and Cooperation Agreement with Izetbegović. Ribičić latched on this particular Presidential Transcript in concluding the nature of the HZ HB was not just a community as its founding documents declared, but was a State within a State. This analysis is as unsound as it is result-oriented. The purpose of the expertise was to conduct a constitutional analysis based on the founding documents and ensuing legislative acts passed by the HVO HZ HB and adopted by the Presidency of the HZ HB. Relying on a discussion which took place in the hypothetical, and extracting a constitutional analysis / conclusion in the absence of other relevant material, is neither methodologically nor normatively correct in reaching an objective expert conclusion. Ribičić, during his evidence, admitted to not reviewing any other material that was available after his initial expertise; a task any objective and competent expert would do. He also relied on what he read in the newspaper, such as the rumours of the so-called Karadžević Agreement.⁷⁹⁶

Paragraph 25

334. The OTP's claim that the 8 April 1992 establishment of the HVO as an armed force to defend areas where Croats and non-Croats lived within the then free territories of BiH was done in furtherance of the alleged JCE, is utterly absurd. The HVO was not established in a vacuum. BiH did not have a functioning military at that time. Various areas in BiH were under attack. The Territorial Defence (TO) system in BiH as it had previously existed no longer functioned, not to mention that the TO's weapons had been taken away by the JNA. The Muslims under the SDA leadership, with Izetbegović as its President, had secretly begun establishing the Patriotic League and the Green Berets. On that very day of 8 April 1992, Croatian areas had come under severe attack. What

⁷⁹⁶ Tr. 25544-25545 (11 December 2007).

followed - the aggressive actions by the BiH Serbian military forces with the assistance of the SFRY armed forces (JA) - was as predictable as it was ruthless. Izetbegović had previously declared BiH's neutrality, even as BiH territory was being used by the JNA/JA to launch attacks against Croatia. More importantly, Boban offered the BiH Presidency to establish joint forces with the HVO in order to defend BiH. This offer was turned down by the Muslim controlled Presidency which opted to establish an armed force that was initially called Territorial Defence (a name which had negative connotations since it was linked to the SFRY), and was later to transform itself into the so-called ABiH. Ultimately, the ABiH and the HVO were recognized as equal forces constituting the Armed Forces of BiH, as agreed in the Friendship and Cooperation Agreement. As for the HVO also playing a political role at that time, the evidence adduced shows that for all intents and purposes nothing was done other than the drafting of a statutory decision which was not activated or acted upon until on or about 18 August 1992. Up until this point, Boban held all leadership positions as: **a.** President of the HDZ; **b.** President of the HZ HB; **c.** President of the Presidency of HZ HB (the legislative body); **d.** President of the HVO (the executive body); and **e.** Supreme Commander of the HVO, by virtue of the legislative acts of the HZ HB. Up until 18 August 1992, Dr. Prlić was not involved to any degree with: **a.** HDZ politics; **b.** the establishment of the HZ HB; or **c.** establishment of the HVO. Dr. Prlić's activities, up until taking the post of President of HVO HZ HB (when the statutory decision was amended to exclude any authority of this office holder to have any involvement with the HVO military and its Main Staff), were limited to the defence of Mostar, his home town, where he participated in the locally formed Special Purposes Council.⁷⁹⁷

Paragraph 26

335. There were no efforts to "Croatise" municipalities or areas that the HZ/HR HB encompassed. Political and administrative positions were awarded proportionally, based on the 1990 elections. With the outbreak of the war, virtually all municipalities in the free territory of BH activated a Crisis Staff or War Presidency, as envisaged by the existing political system and the All

⁷⁹⁷ See *supra* paras. 120-125.

People's Defence. Existing legislation provided mechanisms for a truncated executive body which would subsume the legislative body by including various key positions within the Crisis Staff or War Presidency. This would allow for the expedited adoption of ad hoc measures without the normal, cumbersome political process. While Dr. Prlić as well as the HVO HZ HB/Government of the HR HB had nothing to do with the establishment of, or invocation of emergency measures at the municipal level, it is within this context that acts of the municipalities, which did not act in unison, should be considered. As for the introduction of the Croat language, the evidence shows that while Serbo-Croat or Croatian-Serb was the language of BiH in both Cyrillic and Latin letters, with the outbreak of the war and the Serbian aggression, what was changed, effectively, was the name of the language, so that the prefix or suffix "Serbo" was dropped. There was no formal introduction of a new "Croatian" language, though admittedly school books were brought in from Croatia because of the need to continue with schooling of children and the inability of Republican institutions to provide books and curricula, as was the norm.⁷⁹⁸ As to the use of Croatian currency, the OTP offered no evidence to suggest that a viable BiH currency existed that could be used save for bartering purposes. The amendment of certain laws, primarily dealing with the denomination of fines and penalties, to reflect that payment would be made or calculated in Croatian currency was done out of necessity; the Croatian Dinar was the most prevalent currency in circulation at the time, though German Marks and US Dollars were also used. Evidence was adduced showing that the Central Bank of BiH had ceased to function, the SDK was defunct because the telecommunications system was not adequately functioning, and the only available hard currency in circulation was coming from abroad.⁷⁹⁹ No evidence was introduced that the Republican government ever made any real effort to establish a currency that would be trusted by and circulated amongst all citizens of BiH. Lastly, there is no evidence that Dr. Prlić or the HVO HZ HB/Government of the HR HB ever discriminated against Muslims to prevent

⁷⁹⁸ At that time, there was no Muslim language, as can be seen from the jocular exchange between Izetbegović and others when discussing what to call the language for the Muslims, which was ultimately negotiated into the Dayton Peace Accords as Bosniak or Bosnian. 1D01536.

⁷⁹⁹ See *supra* para. 185.

them from holding public positions. In fact, evidence to the contrary was introduced; positive efforts were made not only to retain all those – irrespective of national origin – in their present positions, but also to recruit and fill vacancies.⁸⁰⁰ Many left their positions early on as it became obvious that hard times and dangerous conditions lurked ahead, while others either refused to work because of party politics⁸⁰¹ or simply because there was no salary to earn because of the lack of available funds.

Paragraph 27

336. The destruction in Mostar – both East and West – in the summer of 1992 was brought about by a Serb military onslaught.⁸⁰² No evidence was adduced showing that Serb houses or Serb Orthodox churches were deliberately destroyed or indiscriminately targeted. The Serbs of Mostar left, in all likelihood, because they would have feared being identified with, or supportive of the Serb military attacks on the Muslims and Croats. Puljić testified extensively about the “urbanicide” committed by the Serb military in Mostar.⁸⁰³ As for the assertions that there was Serb-Croat cooperation as reflected in the so called Graz agreement, the evidence adduced shows that there was no Graz agreement. There was a meeting between Boban and Karadžić. It was part of an ongoing effort to find a peaceful resolution, and it was encouraged by the then international negotiators who suggested that the parties (Serbs, Muslims and Croats) organize and carry out bilateral negotiations. Similar negotiations were held between the Muslims and Croats shortly after the Boban- Karadžić Graz meeting.⁸⁰⁴ Izetbegović had also sent his envoys to Belgrade to cut a deal. As for the cooperation between the Serbs and Croats in 1993, the evidence shows that this was limited and necessary in order to extract trapped Croats from enclaves in Central Bosnia, who were encircled by the ABiH and the Mujahideen.⁸⁰⁵

⁸⁰⁰ 1D00087; 1D00106; P00824; P00921; 1D01137; P00672; 1D00126; 1D01805; 1D00193; 1D01806; 1D02123; 1D02379.

⁸⁰¹ Tr. 30961-30963 (17 July 2008); 1D01978.

⁸⁰² 3D00785.

⁸⁰³ Tr. 32235-32236, 32268-32269 (16 September 2008).

⁸⁰⁴ See *supra* paras. 113-114.

⁸⁰⁵ See *supra* paras. 198-220.

Paragraph 28

337. Neither Dr. Prlić nor the HVO HZ HB had anything to do directly or indirectly with the events in Novi Travnik and Prozor on 19 October 1992. This was a situational skirmish, resulting from local unrest and uncertainty due to the fall of Jajce.

Paragraphs 29-31

338. The Decision issued by the HVO HZ HB on 15 January 1993 was not an ultimatum or an unilateral attempt to commence the implementation of the by-then negotiated framework of the Vance-Owen Peace Plan. The evidence adduced shows that the HVO HZ HB issued the Decision based on its good-faith belief that an agreement had been reached between Izetbegović and Boban, which at the time appeared to be a realistic and practical solution to calm the conflict between the Muslim and Croat armed forces which were, after all, aligned against the BiH Serbian military aggressors. The conflict in Gornji Vakuf had unexpectedly begun around 11 or 12 January. The situation in and around that area was a tinderbox and the likelihood of matters getting out of control on both sides was very real. General Praljak testified extensively about the negotiations that took place in Zagreb, resulting in what was believed to be an agreement calling for the subordination of the HVO forces to the ABiH forces in the Vance-Owen Peace Plan designated Muslim provinces, and the subordination of the ABiH forces to the HVO forces in the Vance-Owen Peace Plan designated Croat provinces. General Praljak testified that he participated in the drafting of the agreement, which he then personally delivered to the HVO HZ HB. Evidence was also adduced showing that upon Izetbegović's representations that he had not made any agreement, Boban communicated via fax to Dr. Prlić, ordering the Decision to be amended. There is also evidence showing that no efforts were made or were about to be made to implement unilaterally and by force the believed agreement. No evidence was adduced showing beyond reasonable doubt that any clashes occurred as a result of the decision. Suffice it to say, there is a plethora of evidence showing that Izetbegović was inclined to make agreements and then retract them or make representations that he had never entered into any agreement. The issuance of the 15 January 1993 Decision by the HVO HZ HB

does not show that Dr. Prlić was either acting de jure or de facto as the superior of Mr. Stojić or General Petković. The 15 January Decision was made in furtherance of instructions from Boban to the HVO HZ HB as a collective body. The HVO HZ HB merely issued a decision which was ordered by the President of the HZ HB and Supreme Commander of the HVO.⁸⁰⁶ When considering the facts and context under which the Decision was made, no inferences can be drawn that Dr. Prlić was beyond a reasonable doubt Superior to the Head of the Department of Defence, and /or the Main Staff of the HVO. Likewise, no inference can be drawn that the Head of the Department of Defence, in this instance, was issuing an operational order to the Main Staff.

Paragraphs 32-33

339. There is no evidence that Dr. Prlić or the HVO HZ HB was engaged in any of the activities alleged concerning the so-called 15 April 1993 deadline / ultimatum. First, Dr. Prlić had no connection with, or responsibility for with the 2 April 1993 “Joint Statement” issued by Boban, which the OTP claims to have been an ultimatum.⁸⁰⁷ Second, the Joint Statement did not call for the implementation of the Vance-Owen Peace Plan by force; it merely expressed the desire and expectation of the President of the HZ HB, that his perceived agreement with Izetbegović, who was the representative of the Muslims and President of the SDA, would be honored. Third, Boban attended the HVO HZ HB session on 3 April 1993, as was his right, apparently to inform members of the HVO HZ HB of the negotiations in Geneva. Fourth, Dr. Prlić did nothing individually or as part of the HVO HZ HB that caused, directly or indirectly, any crimes that may be connected, however remotely, to the Joint Statement. Dr. Prlić had no connection with, or responsibility for the events in Ahmići or Sovići-Doljani on 17 April 1993. No evidence was adduced showing any linkage between Dr. Prlić and these events. He did not participate in or contribute to any activity, and he certainly was not a superior to anyone who may have been involved in or responsible for any crimes related to Ahmići and Sovići-Doljani.

⁸⁰⁶ See *supra* paras. 239-259.

⁸⁰⁷ P01792.

Paragraph 34

340. There is no evidence that Dr. Prlić or the HVO HZ HB/Government of HR HB was engaged in any activities that led to any expulsions, imprisonments, the denial of any humanitarian assistance, or the destructions of homes and mosques.

341. The April 1993 decision in Mostar was neither designed to, nor did in fact, lead to the denial of humanitarian assistance to “10,000 needy persons.” That decision, which was taken by the HVO Mostar Municipality, was made because of the prevailing circumstances at the time: too many refugees, not enough space and food in town and more available space outside the city. It was not designed to target Muslim refugees; it affected all refugees who met certain criteria.⁸⁰⁸

Paragraph 35

342. The events of 9 May 1993 had nothing to do with the Joint Statement made in April. There is no evidence supporting any linkage between Dr. Prlić or the HVO HZ HB, and what transpired on 9 May 1993, and thereafter. Dr. Prlić was not in Mostar on or about 9 May 1993.⁸⁰⁹ He did not participate in any manner and he did not have authority – *de jure* or *de facto* – over anyone involved in any crimes that may have occurred. Dr. Prlić had no authority over the Heliodrom, the persons in charge of it, the staff or any individuals whether civilian or military, that in any way may have been connected to this facility. Dr. Prlić did not authorize the release of anyone because he had no authority to do so. Likewise, he did not order, suggest, or agree to anyone being detained in the Heliodrom or at any other detention facility at any time, to abuse any detainees or to treat them in any manner contrary to the Geneva Conventions.

Paragraph 36

343. The OTP’s description of the events of 30 June 1993 at the Northern Camp in Mostar demonstrates its profound subjectivity and lack of balance in presenting the facts. What occurred was not a mere “attack.” It was an act of treason by Muslim HVO soldiers, who, having switched to the ABiH forces, slaughtered their comrades-in-arms in their sleep. This treacherous act was followed by an attack by the ABiH forces on the HVO. In light of the

⁸⁰⁸ See *supra* para. 221.

⁸⁰⁹ Tr. 34785-34788 (18 November 2008).

circumstances and given that general mobilization of all military aged persons (age 16-60/65) was already in place, issuing a public statement in response to the treasonous act of the Muslim armed forces against the BiH Croats was both necessary and reasonable. The joint Prlić-Stojić statement did not call for the commission of crimes against Muslims or anyone else. The statement was factually correct, measured in tone and appropriate in content. The statement was not a militarily operational order or act. From this statement no inferences can be drawn that Dr. Prlić was Mr. Stojić's superior or that he was on par with him concerning matters which fell within the HVO HZ HB Department of Defence.⁸¹⁰

344. As for what Tuđman may have told Šušak on 2 July 1993, it would appear that under the circumstances the observation to "put pressure on the Muslim units on the Neretva front" was militarily appropriate. If the Muslim units were attacking the HVO in areas where the HVO was also under threat from BiH Serb forces, and if this conflict had the possibility of spilling into areas near the Croatian borders, where both the Serbs and Muslims coveted Croatian coastal areas with a deep-water port, then it was only natural that Tuđman would want the conflict contained. There was no call for attacks on Muslim towns or civilians. Muslim units were on the offensive and needed to be contained. Applying pressure on these units would localize and perhaps then stabilize the conflict in order to facilitate a ceasefire and truce.

Paragraph 37

345. There is no evidence from which to conclude that Dr. Prlić or the HVO HZ HB/Government of the HR HB was involved in any sort of ethnic cleansing. Municipalities did act independently and were engaged in conduct that was not appropriate. It is not for Dr. Prlić to explain or minimize any crimes that may have been committed as a result of acts taken by those responsible at the municipal level. There is no evidence that Dr. Prlić had any connection with, or responsibility for any activities in the municipalities of Mostar, Prozor, Stolac, Čapljina and Ljubuški that could remotely be related to attacks, arrests or ethnic cleansing. Neither in his *de jure* capacity nor in a *de facto* manner did he have the authority or attempt to exercise authority to impose his will, control or influence

⁸¹⁰ See *supra* paras. 229-231.

on the municipal authorities, particularly considering that municipal presidents were his *de jure* superiors by virtue of their membership of the Presidency of the HZ HB, and *de facto* exercised their authority unbridledly. It would appear that after the events of 30 June 1993, all Muslim men of military age may have been perceived in various municipalities as being potential Muslim fighters aligned with, and loyal to the policies of the Muslim leadership who authorized the treacherous acts against the HVO and who were now pressing ahead with further aggression in other areas.⁸¹¹ Neither Dr. Prlić nor the HVO HZ HB/Government of the HR HB ever suggested, encouraged or supported the rounding up and detention of Muslim men, evictions of any kind or the reverse-ethnic cleansing alleged by the OTP. There was no need to try to “homogenize” western Herzegovina; it was nearly 95% Croat-inhabited already. The evidence shows that Croats in Central Bosnia were encircled by Muslim forces which included the notorious Mujahideen. All those who left did so voluntarily and out of necessity. Many of them went to Croatia or beyond. Any claims that evictions of Muslims were conducted in order to secure housing for Croat displaced persons is nonsense. It was a normal process for displaced persons to occupy abandoned property. This required a certain organization and systematization to avoid chaos and conflict. Legislation was never designed to lead to the permanent loss of tenancy or residency rights – even though when the war broke out in BiH real property ownership was virtually non-existent.

Paragraph 38

346. Dr. Prlić was not involved in any patterns of misconduct as alleged by the OTP. He neither participated in nor was connected to any arrests or detentions, and was certainly not responsible for anyone being placed in “prisons and concentration camps.”⁸¹² Moreover, Dr. Prlić did not initiate, instigate, promote, support or participate directly or indirectly in any events that may be related to rounding up military or non-military persons of any sex, age, or of any national origin, in any part of any municipality, town, village, commune or area in BiH. If military aged men were detained or arrested, such orders could not and did not

⁸¹¹ See *supra* paras. 235-236.

⁸¹² See *supra* paras. 232-238.

come from Dr. Prlić; he simply did not have any *de jure* authority to make such orders and there is no evidence that he ever exercised any such *de facto* authority – directly or indirectly. There is not a single piece of evidence that indicates that Dr. Prlić was involved in any such decision-making process or that he in any way provided any overt or tacit assistance or approval to any such activity. Quite to the contrary, despite not having any influence, authority or responsibility concerning any of the conduct alleged in this paragraph of the Indictment, Dr. Prlić did his utmost to work with and provide assistance to those in the international community who attempted to intervene. He did so recognizing that the influence to restrain and refrain those responsible for any activities that led to human rights violations and crimes rested with personages and organizations of international character. The fact that Dr. Prlić placed himself at the disposal of those who had outside influence to bring about necessary changes cannot lead to any inferences that he had the authority, responsibility, or power to act individually or even through the HVO HZ HB to prevent, terminate or punish those responsible in committing any of the alleged crimes. The HVO (military) was not under Dr. Prlić's authority, and Dr. Prlić never attempted to either exercise any authority over it or to influence its conduct. The HVO (military) was under the exclusive command and control of the Supreme Commander, Boban. He exercised his authority through the Main Staff, though there may have been instances when he bypassed the Main Staff by directly issuing orders outside the chain of command. The HVO Main Staff exercised its command and control as prescribed by the Decree on Armed Forces. The HVO Main Staff neither sought nor received any operational orders or instructions from Dr. Prlić, the HVO HZ HB, or the HR HB. Likewise, HVO military commanders at any level or from any location neither sought nor received any operational orders or instructions from Dr. Prlić or the HVO HZ HB. At no time did Dr. Prlić, the HVO HZ HB, or the HR HB ever exercise authority over Head/Minister of the Department in matters that were not strictly prescribed. As such, neither Dr. Prlić nor the HVO HZ HB had any authority over any matters related to the acts and conduct of the Main Staff, Military Police, Security and Intelligence Services, and certainly cannot be held responsible for any crimes or misdeeds committed by any members of any organ

or unit not under the express authority of the HVO HZ HB/Government of the HR HB.⁸¹³

Paragraph 39

347. Dr Prlić was not involved individually or in his capacity as President of the HVO HZ HB or the Government of the HR HB in any of the acts alleged in this paragraph of the Indictment. The adduced evidence, when considered objectively and in context, is proof to the contrary.

- (a) Dr. Prlić did not foment political, ethnic or religious strife, division and hatred; to the contrary, at all times he both publicly and privately advocated peaceful coexistence, national equality and political inclusiveness. Dr. Prlić's position, from the very moment of the first democratic elections in 1990 until the signing of the Dayton Peace Accords and thereafter, remained constant. Any remarks that Dr. Prlić may have said that can be interpreted as being inflammatory, such as "the Muslims are our enemies" and the need to "break the backbone of ABiH" must be put in context. If indeed Dr. Prlić used such language – and there is no reliable and verifiable proof or means to test the evidence where he is recorded to have uttered these words – the time period and events on the ground need to be considered. In late 1993 and early 1994, the Muslim leadership and the ABiH were aggressively pursuing their military objectives against the BiH Croats in Central Bosnia and parts of Herzegovina. Agreements and ceasefires were not being adhered to and it was obvious even to the internationals that the Muslim leadership was not interested in ceasing the conflict with the BiH Croats until it had conquered the landmass it was coveting. The BiH Croats in Central Bosnia had been encircled and were forced to escape from the Muslim armed forces who unabashedly used Mujahideen, tolerating, if not encouraging, their use of terror tactics. The situation in Herzegovina was not much better. The Muslim political and military leadership was engaged in a "two-track" policy of pretending to promote peace while simultaneously

⁸¹³ See *supra* para. 224.

waging war. Under those circumstances, to characterize an opponent as the enemy is fitting.

- (b) Dr Prlić was not involved in any activity connected to the use of force, intimidation or terror. There is no evidence that the HVO HZ HB/Government of the HR HB engaged in such activity, directly or indirectly. There is no evidence from which to conclude any inferences that Dr. Prlić in his individual capacity or as a member of the HVO HZ HB/Government of the HR HB contributed to any acts that might have led to the use of force, intimidation or terror. The fact that Dr. Prlić along with the then Head of the Department of Defence, Mr. Stojić, issued a joint statement cannot be interpreted as an act that was intended to render criminal consequences.⁸¹⁴ The statement came after the treacherous act of 30 June 1993. The Muslim armed forces were on the attack. By this point, all fit military age men had already been mobilized throughout BiH. The necessity for self-defence was imminent. A call to duty of all those who already were under a duty to be serving was a necessary and reasonable measure. The call for mobilization did not advocate or support the commission of any crimes, and if any crimes were in fact committed by any of those mobilized, to which there is no evidence, such crimes can not be attributed to Dr. Prlić.
- (c) Dr. Prlić did not engage in any activity resulting in the appropriation or destruction of property. Neither in his individual capacity, nor as a member of the HVO HZ HB, did he authorize, encourage or participate in the appropriation of any property for illegal purposes, or under circumstances which could be considered unlawful. Any destruction of any property by individuals either as civilians or as members of a military unit did not occur under the direction, control, or authority of Dr. Prlić or the HVO HZ HB. The use of abandoned property was regulated –as it was required to be – by well-defined and appropriate criteria.⁸¹⁵ Private ownership of real property was essentially nonexistent. Apartments were

⁸¹⁴ See *supra* paras. 229-231.

⁸¹⁵ 1D01223; P03089.

socially owned, with the occupant having tenancy rights that were generally forfeited upon the abandonment or non-use of the property (usually after six months). With the influx of displaced persons / refugees, every available space was put to use pursuant to strict regulations. This was common throughout BiH during the war. Evidence was adduced showing the regulations passed by the various municipalities throughout BiH; this evidence was not offered as part of a *tu quoque* defence, but as proof that this was a common, necessary and reasonable solution.⁸¹⁶ The HZ HB adopted a decision (decree) that would allow for the use of abandoned property. Unlike the Republican authorities under Izetbegović, the HZ HB placed a strict prohibition on the sale or purchase of any abandoned property. In doing so, the rightful occupant would be able to reclaim the use of the abandoned property upon return. As for the OTP's claims regarding the appropriation of property belonging to BiH, the evidence adduced shows that what was appropriated belonged to the JNA, which presumably would have belonged to the SFRY, which was by this point defunct. Moreover, it was the JNA which had waged war in BiH, and in particular in Mostar. Buntić gave evidence concerning the appropriation and use of property belonging to or used by the JNA in Mostar.⁸¹⁷

- (d) Dr. Prlić and the HVO HZ HB/Government of the HR HB neither authorized nor caused the establishment of any prison facilities or concentration camps as part of a plan to unlawfully detain and /or mistreat anyone. Neither Dr. Prlić nor the HVO HZ HB/Government of the HR HB participated in any fashion and under any conceivable mode of liability, to the establishment and /or operation of the Heliodrom Camp, Ljubuški Prison, Dretelj Prisons, Gabela Prison and Vojno Camp.
- (e) Dr. Prlić and the HVO HZ HB/Government of the HR HB was not connected with, had no control over, nor was responsible for any activity directly or indirectly resulting in the forcible transfer or deportation of

⁸¹⁶ 1D01512; 1D01157; 1D00548; P00344.

⁸¹⁷ Tr. 30248-30249, 30299-30300, 30306 (7 July 2008); P09553.

anyone. At no time did Dr. Prlić, the HVO HZ HB or the Government of the HR HB do anything that would have caused anyone – irrespective of national origin – to be forcibly transferred or deported. Efforts were made to accommodate displaced persons and to facilitate their relocation into safe areas, including Croatia, as well as for the return of those who were able and willing to return to their areas after they had been declared safe. Neither Dr. Prlić, the HVO HZ HB, nor the Government of the HR HB can or should be held responsible for any unlawful acts of forcible transfer or deportation that might have occurred in and around the HZ/HR HB. Neither Dr. Prlić, the HVO HZ HB, nor the Government of the HR HB participated in or gave assistance to any plan for such activity. Any plans or activities of municipal authorities, or members of military units to forcibly transfer and deport anyone, would have occurred without the authority, encouragement or support of Dr. Prlić or the HVO HZ HB/Government of the HR HB. No evidence was adduced showing beyond a reasonable doubt that Dr. Prlić is guilty of the forcible transfer and deportation alleged in the Indictment.

- (f) Neither Dr. Prlić, the HVO HZ HB, nor the Government of the HR HB were connected with, had control over or was responsible for any forced labor and no evidence was adduced showing that either he or the HVO HZ HB/Government of the HR HB were involved in any way with any activity connected to forced labor. Moreover, those who did engage in, or authorized the use of forced labor, were not subordinate to Dr. Prlić or the HVO HZ HB/Government of the HR HB.

Paragraph 40

- 348. Neither Dr. Prlić, the HVO HZ HB, nor the Government of the HR HB were connected with, had control over or was responsible for any crimes that may have been committed in Stupni Do. No evidence was adduced showing that Dr. Prlić or the HVO HZ HB Government of the HR HB were connected to or were part of any activity, directly or indirectly relating to the alleged events in Stupni Do.

Paragraph 41

349. The crimes alleged in paragraph 41 are similar to what has been alleged in previous paragraphs concerning acts of ethnic cleansing. As previously noted, neither Dr. Prlić, the HVO HZ HB, nor the Government of the HR HB was connected with, had control over or was responsible for any activity to ethnically cleanse any area in BiH. He was not involved in any JCE or common plan to cleanse or homogenize any areas in BiH. The evidence does show that large numbers of Croats, Muslims and Serbs were dislocated as a result of war activities. The evidence also shows that the responsible Departments, Sub-departments and Ministries of the HVO HZ HB/ Government of the HR HB did their best under the circumstances to provide the humanitarian assistance required that was within their capabilities and resources.

Paragraph 42

350. The Washington Agreement, brokered by the US after it had done its best to kill the Vance-Owen Peace Plan and Owen-Stoltenberg Peace Plan, called for the establishment of the Federation of BiH. The evidence shows that, as with previous arrangements between Muslims and Croats for political solutions, such as the Međugorje Agreement, Dr. Prlić was entrusted with responsible positions requiring the trust of both sides. After the Washington Agreement, Dr. Prlić worked tirelessly to set up the Federation. However, the Muslim political authorities, as in the past, showed little interest.⁸¹⁸

IX. CONCLUSION

351. Dr. Prlić is not guilty of any charge, or any crime, alleged in the Indictment. The evidence adduced at trial and as presented herein in a summary fashion demonstrates that the OTP has failed to prove beyond reasonable doubt the charges it laid against Dr. Prlić in the Indictment and for all these reasons Dr. Prlić must be acquitted and set free.

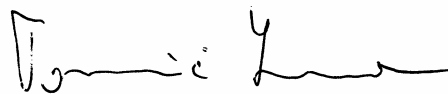
⁸¹⁸ See *supra* para. 283.

Dated: 29 March 2011
The Hague, The Netherlands



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Respectfully submitted,



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