

**INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER
YUGOSLAVIA**

Case number: IT-04-83-T

BEFORE TRIAL CHAMBER I

**Before: Judge Bakone Justice Moloto, Presiding
Judge Frederick Harhoff
Judge Flavia Lattanzi**

Registrar: Mr Hans Holthuis

Date: 30 May 2008

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC REDACTED VERSION

DEFENCE CLOSING BRIEF

Office of the Prosecutor:
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Mr Nicholas Robson

<u>TABLE OF CONTENTS</u>	<u>Page</u>
<u>I.INTRODUCTION</u>	10
<u>A.Introduction</u>	10
<u>B.Principles of Evidence</u>	10
<u>C.Abbreviations</u>	11
<u>II.BACKGROUND</u>	12
<u>A.ARBiH</u>	14
<u>B.TO</u>	14
<u>C.Formation of ARBiH</u>	15
<u>1.Lack of Professional Experience</u>	15
<u>2.Lack of Resources</u>	16
<u>3.Communications</u>	16
<u>4.Internal conflicts</u>	17
<u>D.The prevailing circumstances when General Delić became Main Staff Commander</u>	17
<u>1.Situation in Sarajevo</u>	17
<u>2.The Overall Situation in 1994 and 1995</u>	18
<u>3.Ozren-Vozuća</u>	19
<u>III.CENTRAL BOSNIA GENERALLY</u>	21
<u>A.Central Bosnia and Bila Valley</u>	21
<u>1.Serb forces</u>	21
<u>2.HVO</u>	22
<u>B.ARBiH in Bila valley region</u>	23
<u>1.3rd Corps</u>	23
<u>2.Poor communications</u>	23
<u>3.Operational Groups</u>	25
<u>4.306th Mountain Brigade</u>	26
<u>5.7th Muslim Mountain Brigade</u>	26
<u>C.Mujahedin in Central Bosnia</u>	27
<u>1.Arrival of Mujahedin</u>	27
<u>2.Organisation of arrival</u>	28
<u>3.Croatian Involvement</u>	28
<u>4. Muslim Armed Forces (MOS)</u>	30
<u>(a)MOS was independent of ARBIH</u>	31
<u>(b)No foreigners in MOS</u>	32
<u>(c)Changes to MOS structure</u>	33
<u>(d)Relationship between MOS and mujahedin</u>	33
<u>5.Mujahedin conducted combat operations in Karaula</u>	33
<u>6.Arrival of humanitarian organizations</u>	34
<u>7.Different mujahedin groups in Central Bosnia</u>	35
<u>(a)Zenica municipality</u>	35
<u>(b)Travnik municipality</u>	35
<u>(c)Zepce municipality</u>	36
<u>(d)Abu Zubeir's group</u>	36

<u>8.Mujahedin in Mehurici Elementary School</u>	36
<u>D.Effective Control over Mujahedin Pre-Formation of EMD</u>	38
<u>1.Prosecution’s pleadings are confused</u>	38
<u>2.The Law</u>	39
<u>3.None of the mujahedin groups were under control</u>	41
<u>4.Support for Mujahedin within BiH</u>	42
<u>5.Effective Control over Poljanice mujahedin</u>	43
<u>(a)Under control of external bodies</u>	45
<u>(b)Reporting abroad</u>	46
<u>(c)Participation in combat</u>	46
<u>(d)ARBiH had no means to punish</u>	48
<u>(e)Poljanice group received logistic support</u>	
<u>and money from outside</u>	49
<u>(f)Fact it became EMD</u>	50
<u>6.El Dzihad</u>	50
<u>7.Relationship with 306MB</u>	50
<u>(a)Criminal reports could not be issued</u>	52
<u>8.Allegations of mujahedin in 7MB</u>	53
<u>(a)Mujahedin were not in 7MB generally</u>	54
<u>(b)Travnik 1st Battalion of 7MB</u>	56
<u>(c)Bilmiste barracks</u>	56
<u>(d)Gerila</u>	57
<u>(e)Bijelo Bucje</u>	58
<u>(f) Visegrad Elevation</u>	58
<u>(g)Rift between mujahedin and 7MB</u>	59
<u>(h)Zivko Totic Exchange</u>	59
<u>(i)Ramo Durmis and others joined the mujahedin</u>	60
<u>(j)7MB never in Bila valley</u>	62
<u>(k)Conclusion</u>	62
<u>E.Build-up to combat activities in Bila Valley on 8 June 1993</u>	63
<u>1.HVO Blockades and Control over Bila Valley</u>	63
<u>2.Ahmici and other incidents</u>	64
<u>3.HVO and VRS Cooperation</u>	64
<u>4.306MB Command Divided</u>	65
<u>5.HVO attack on Velika Bukovica</u>	65
<u>6.Planning and command for 8 June 1993 attack</u>	67
<u>7.Guca Gora</u>	69
<u>IV.MALINE/BIKOSI</u>	70
<u>A.Events prior to 8 June 1993</u>	70
<u>B.Events on 8 June 1993</u>	70
<u>C.Only 306MB participated in Maline attack</u>	71
<u>(a)Mujahedin not in Maline</u>	71
<u>(b)7MB not in Maline</u>	73
<u>D.The killings in Bikosi</u>	75
<u>(a)No proof of the identities of perpetrators</u>	77
<u>(b)No proof perpetrators were members of</u>	78

<u>an identifiable group</u>	
<u>(c)Not proven that local mujahedin were members of ARBiH</u>	79
<u>E.7(3) Elements:</u>	80
<u>1.Existence of superior-subordinate relationship</u>	80
<u>(a)General Delic had not assumed command when crimes committed</u>	81
<u>(i)Appointment of General Delic as Commander</u>	81
<u>(ii)Timing of killings</u>	85
<u>(iii)Conclusion</u>	86
<u>(b)No effective control over mujahedin at Poljanice and other groups</u>	87
<u>2.Maline Knowledge</u>	88
<u>(a)Role of PW3 and the SVK IKM in Zenica</u>	88
<u>(b)Conditions impacting on possibility of Delic receiving information</u>	91
<u>(i)Role of Sefer Halilovic and Zicro Suljevic</u>	91
<u>(ii)Problems with RiK, particularly 9 and 10 Brigades</u>	94
<u>(iii)VRS aggression in and around Sarajevo</u>	96
<u>(iv)Fikret Abdic</u>	97
<u>(v)Role of propaganda</u>	97
<u>(c)Information about Events in Bikosi</u>	99
<u>(i)Investigation in Bikosi immediately after killings</u>	107
<u>(ii)Conflict in evidence about report</u>	108
<u>(iii)Merdan report</u>	109
<u>(iv)General Delic responded properly</u>	109
<u>(v)When Delic received request to assist he reacted</u>	110
<u>3.Necessary and Reasonable Measures</u>	111
<u>V.ARBH OPERATIONS TO LIBERATE MOUNT OZREN-VOZUCA POCKET: 1995</u>	112
<u>A.Background Information</u>	112
<u>B.ARBH in the area towards the Ozren-Vozuca pocket</u>	112
<u>1.OGBosna</u>	112
<u>2.35Division</u>	112
<u>3.328Brigade</u>	114
<u>C.Mujahedin in the area towards Vozuca-Ozren pocket</u>	115
<u>1.‘El Mujahedin’ Detachment</u>	115
<u>(a)Reason for arrival</u>	115
<u>(b)EMD-ARBiH Relations in 1995</u>	119
<u>2.Other Mujahedin Groups in Ozren-Vozuca pocket in July-September 1995</u>	121
<u>(a)Asim Camdzic Unit</u>	121
<u>(b)Abu Zubeir Al Haili’s Group</u>	123
<u>(c)Kurds</u>	124

<u>(d)Zelene Beretke and others</u>	125
<u>VI.JULY ACTION 1995–PROLJECE-II</u>	126
<u>A.July Crime Base</u>	126
<u>B.Kamenica Camp and Livade: July 1995</u>	127
<u>1.Livade location</u>	127
<u>2.Kamenica Camp location</u>	130
<u>C.The Prosecutor failed to prove material facts showing Accused exercised command and control during July action</u>	136
<u>1.The liberation of Mount Ozren pocket from VRS forces was not prime objective of ARBIH in 1994-1995</u>	137
<u>2.On 16 and 17 July 1995 Delic did not order 2 and 3Corps to conduct combat operations in Ozren-Vozuca pocket</u>	139
<u>(a)The role of ARBIH General Staff</u>	142
<u>3.Neither Delic nor Main Staff directed combat operations in Mount Ozren-Vozuca Pocket</u>	143
<u>4.Delic was not informed that EMD was the “main unit in charge of the coming assignment”</u>	145
<u>D.July Knowledge</u>	148
<u>1.In general terms the EMD did not have reputation for criminal and uncontrolled behaviour or criminal propensity</u>	149
<u>2.Specifically Delic did not know EMD had reputation nor was he put on notice that EMD had propensity to commit crimes</u>	155
<u>(a)No knowledge from Maline</u>	155
<u>(b)Delic did not receive documents relied on by Prosecution</u>	155
<u>(c)Delic did not know that EMD was operating Kamenica Camp</u>	159
<u>(d)What the SVB knew about EMD propensity</u>	160
<u>(e)Operative Action Vranduk</u>	162
<u>3.Delic did not know that EMD members were about to commit or had committed crimes</u>	164
<u>(a)Information about POWs from July 1995 which was available to 35Division and 3Corps</u>	165
<u>(b)Information regarding POWs available to the SVB Administration</u>	166
<u>(c)Delic did not have information that the EMD was holding POWs from the July action</u>	168
<u>(i)Delic’s pre-occupations in July 1995</u>	169
<u>4.Delic did not know or have reason to know that members of the EMD had committed crimes</u>	171
<u>5.Delic did not fail to take the necessary and reasonable measures to prevent and punish these crimes</u>	172
<u>VII.SEPTEMBER FARZ SECTION</u>	172
<u>A.September Crime Base</u>	172
<u>1.Kamenica Camp and Kesten:September 1995</u>	172

<u>(a)Location:Road near Kesten</u>	172
<u>(i)Murder of Milenko Stanic and ZivinkoTodorovic</u>	173
<u>(ii)Four Taken Away</u>	174
<u>2.Location:Kamenica Camp</u>	174
<u>(a)No proof that the EMD took-over the 52 POWs</u>	175
<u>(i)Presence of other Arab Groups</u>	
<u>in Vozuca-Ozren region</u>	175
<u>(ii)Arabs seizing the 52 POWs not identified</u>	176
<u>(iii)Movement of the EMD during Vozuca Operation</u>	178
<u>(b)No proof that the EMD captured the three Serb women</u>	178
<u>(i)DRW3 unreliable</u>	179
<u>(ii)Women taken over by different persons</u>	
<u>to group seizing 52 POWs</u>	180
<u>(iii)Women and POWs were not taken to Kamenica Camp</u>	180
<u>(iv)No complaints about killings or mistreatment</u>	182
<u>(c)On or about 17 September 1995 ten VRS soldiers surrendered to the ARBiH</u>	183
<u>(i)Evidence unreliable</u>	184
<u>(ii)No proof that 52 POWs taken to Kamenica camp</u>	186
<u>(iii)Seven VRS POWs were not shot</u>	186
<u>(iv)When they were released there were no complaints about killings or mistreatment</u>	187
<u>(d)The Forensic Evidence</u>	188
<u>(i)DNA report provisional findings</u>	189
<u>(ii)24 bodies had already been exhumed by 3 April 2006</u>	190
<u>(iii)The Kamenica grave was secondary burial location</u>	191
<u>(iv)Conclusion</u>	192
<u>(e)Krcmar Photograph</u>	192
<u>(f)No Evidence from Prosecution Witnesses that EMD held around 52 POWs</u>	192
<u>(g)Submissions on allegations</u>	194
<u>(i)Between 11-17 September 1995 EMD soldiers murdered most of 52 captured VRS soldiers</u>	194
<u>(ii)On or about 17 September 1995 ten VRS soldiers were beaten and mistreated</u>	195
<u>(iii)Nenad Jovic</u>	195
<u>(iv)In Kamenica camp three Serb women were beaten and mistreated</u>	196
<u>B.Prosecution Failed to Prove Material Facts to show Delic exercised Command and Control in the September Operation</u>	197
<u>1.Delic did not order the 2 and 3 Corps to liberate the Mount Ozren-Vozuca pocket on 26 August 1995</u>	197

(a) <u>Order of 26 August 1995</u>	198
(b) <u>Coordination Plans for August and September 1995</u>	
<u>Uragan plans</u>	200
(c) <u>The real meaning of the approval of the Farz and Uragan plans</u>	201
2. <u>Delic did not command Operation Farz nor did he “continue to command” the Operation</u>	204
(a) <u>Where was Delic located during Operation “Farz”?</u>	206
(b) <u>The Role of Main Staff in Operation Farz</u>	209
3. <u>Delic did not order the cessation of combat activities in the Mount Ozren-Vozuca pocket region</u>	212
4. <u>EMD and Operation Farz</u>	212
<u>C.Farz Knowledge</u>	217
1. <u>Delic was not put on notice that EMD soldiers had propensity to commit crimes, particularly against captured enemy soldiers and civilians</u>	217
(a) <u>SVB Bulletins</u>	221
2. <u>Delic did not know or have reason to know that EMD Soldiers were about to or had committed crimes during Operation Farz</u>	224
(a) <u>Information on POWs in Operation Farz</u>	225
(b) <u>Fuad Zilkic’s Credibility</u>	226
3. <u>Delic did not receive information that anyone had captured approximately 52 Serbs</u>	229
<u>VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY</u>	231
<u>A.Position of the Accused</u>	231
1. <u>Rasim Delic did not have overall authority or responsibility for the functioning of the ARBiH</u>	233
(a) <u>Presidency of RbiH</u>	233
(b) <u>RBiH Ministry of Defence</u>	236
(c) <u>Main Staff/General Staff Supreme/Command Staff</u>	236
(d) <u>Who was subordinated to the Commander of the General Staff?</u>	238
(e) <u>Command over a resubordinated unit</u>	239
(f) <u>Principle of unity of command</u>	240
(g) <u>Levels of command in the ARBiH</u>	240
(h) <u>SVK KM Kakanj</u>	242
(i) <u>Reasons for establishment and tasks</u>	242
(ii) <u>Representing the Commander</u>	245
(iii) <u>The importance of KM Kakanj for reporting</u>	245
(i) <u>Main Staff Administrations</u>	247
(i) <u>SVB and SVB Administration</u>	248
(ii) <u>SVB Operative Actions</u>	251
(iii) <u>Management of the SVB</u>	252
B.7(3) <u>Requirements</u>	253
1. <u>Effective Control: Superior-Subordinate Relationship</u>	253

<u>(a)Perpetrators must be identified at least as part of an identifiable group</u>	253
<u>(b)Effective control had to be established at the time when the crimes were committed</u>	254
<u>(c)Meaning and scope of effective control</u>	255
<u>(d)Effective control must be established beyond reasonable doubt</u>	256
<u>(e)Prosecution’s theory:“de jure commanding power by reason of position in a military structure”</u>	257
<u>(f)Whether de jure power creates a presumption of effective control</u>	258
<u>(g)De facto factors undermining RiK and the exercise of effective control in AOR of 35Division</u>	259
<u>2.Effective Control: EMD Formation</u>	262
<u>(a)RBiH authorities – reasons for EMD formation</u>	262
<u>(b)EMD and the Order of 13 August 1993</u>	264
<u>(c)EMD did not accept the insignia, rules and regulations of RBiH and its army</u>	267
<u>(d)Identification data and lists</u>	269
<u>(e)Certificates</u>	270
<u>3.EMD was not under the de facto authority of the ARBiH</u>	272
<u>(a)EMD did not obey orders from its alleged superior commands of ARBiH</u>	272
<u>(b)Alleged re-subordination of the EMD toARBiHunits</u>	276
<u>(c)EMD command did not forward orders concerning Geneva Conventions to its members nor follow ARBiH procedure</u>	279
<u>(d)EMD did not report to the ARBiH commands</u>	280
<u>(e)Reports EMD allegedly sent to 3Corps Commander</u>	283
<u>(i) Importance of record-keeping documents</u>	284
<u>(f)Delic and the EMD</u>	288
<u>(i)Effective control and the issuing of orders</u>	289
<u>(ii)Delic’s acts and orders concerning EMD fall short of effective control</u>	291
<u>(g)EMD was not de facto part of the ARBiH</u>	297
<u>(h)EMD has its own objectives, political and military organisation</u>	300
<u>(i)Al-Qaeda</u>	301
<u>(j)EMD and foreign intelligence services</u>	303
<u>(k)EMD Logistics</u>	303
<u>(l)Al Jamma Al Islamiyaa, Islamic Cultural Institute, Milan</u>	306
<u>(m)Sheikh Shaban–de facto authority over the EMD</u>	307
<u>(n)Dzemat and Shura</u>	310
<u>(o)Civilian and religious authorities and the EMD</u>	314
<u>4.The Knowledge Requirement</u>	317

<u>(a)The law generally</u>	319
<u>(b)No responsibility on the part of the commander for failure to inform himself</u>	322
<u>(c)The extent of knowledge required pursuant to Article 7(3)</u>	323
<u>(d)The Accused must be shown to have intended not to act</u>	
<u>(e)Means of acquiring knowledge and inference of knowledge</u>	325
<u>(f)Conclusion</u>	326
<u>5.Necessary and reasonable measures to prevent and punish</u>	327
<u>(a)Relevant Law</u>	327
<u>(b)Distinguishing the duties of the Commander from that of his subordinates and power to delegate</u>	330
<u>(c)General Delic was reasonable commander</u>	331
<u>(i)General measures towards to improvement of command and control system in the ARBiH</u>	331
<u>(ii)Rasim Delic and the fight against crime as one of the factors undermining RiK</u>	334
<u>(iii)Measures towards the application of IHL</u>	335
<u>(d)Delic has no material ability to prevent or punish the crimes in question</u>	338
<u>(i)General Delic tried to take measures to bring EMD within RIK</u>	339
<u>(ii)Factors due to which the attempts to bring the EMD into RiK failed</u>	342
<u>(iii)OAs: Tim and Vranduk did not demonstrate the ability of ARBIH to take measures against EMD</u>	343
<u>(iv)'use of force against EMD</u>	345
<u>(v)Rasim Delic had no power to authorise the use of force against EMD</u>	345
<u>(vi)Use of force against EMD was not possible</u>	348
<u>(vii)Conclusion</u>	351
<u>IX.SENTENCING AND MITIGATION</u>	351
<u>X.REQUEST FOR ACQUITTAL</u>	356

LINTRODUCTION

A. Introduction

1. The Defence hereby submits its final Defence brief.

B. Principles of Evidence

2. The Accused is entitled to the presumption of innocence (Article 21(3) of the Statute). It places on the Prosecution the burden of establishing beyond reasonable doubt all the facts and circumstances which are material and necessary to constitute the crimes charged and the criminal responsibility of the Accused. The burden remains with the Prosecution for each individual fact and at no time does it shift to the Accused. The Prosecution bears the burden of proving to the criminal standard each distinct element of the charges in the indictment, regardless of whether the evidence has been challenged.

3. In bringing its case the Prosecution is obliged to state the material facts underpinning the charges in the indictment.¹ An accused is entitled to be informed of the material facts of the specific allegation that the Prosecution is making against him so as to prepare his defence adequately.² In this case the Prosecution has pleaded various material facts in the indictment which it relies upon to prove the Accused's command responsibility. These pleaded material facts constitute the Prosecution's theory as to how the Accused exercised command responsibility over his alleged subordinates. It will be necessary for the Trial Chamber to consider each and every pleaded material fact to determine whether the Prosecution's case has been met.³ In determining the case, the Trial Chamber is necessarily bound by the theories of the case pleaded by the Prosecution in the indictment.⁴ If the Prosecution fails to prove the material facts on which it relies to establish command responsibility, then the Trial Chamber should acquit the Accused.

¹ *Kupreskic* AJ,para.88

² *Kupreskic* AJ,para.105

³ *Halilovic* AJ,para.69

⁴ *Halilovic* AJ,para.198

C. Abbreviations

AOR	zone of responsibility
BiH	Bosnia and Herzegovina
Delic	Main Staff Commander Rasim Delic
E	Exhibit
EMD	El Mujahedin detachment
GS	Main Staff/General Staff
ICI	Islamic Cultural Institute, Milan
IHL	International Humanitarian Law
IMT	International Military Tribunal
OA	Operative Action
RBiH	Republic of Bosnia and Herzegovina
RiK	The ARBiH system of command and control
SVK	Supreme Command Staff
SVB	Military Security Service of the ARBiH
TJ	Trial Judgment
AJ	Appeal Judgment
AF	Agreed fact
3Corps	3 rd Corps of the ARBiH
35Division	35 th Division of the ARBiH

II.BACKGROUND

4. A full understanding of the political and military context of this case is crucial for the assessment of the events and the alleged responsibility of General Delic. In the Indictment, the Prosecution took a selective view of the events and the context in which violations were allegedly committed by forces under the effective control of the Accused. This context, well known to the Prosecution, has been described in detail in various judgments rendered by the ICTY.⁵

5. It is against the circumstances of this complex and extremely challenging situation that the responsibility of the Accused must be assessed. These circumstances, including the fact that the Accused's command was based in besieged Sarajevo at a time when thousands of civilians were killed by sniping and shelling, with the ARBiH scattered in various enclaves, and facing internal conflict, placed the Accused in one of the most difficult military scenarios of all time.⁶

6. The fall of the Socialist Federal Republic of Yugoslavia (SFRY), caused by Serbia's nationalistic policy, represents the backdrop to the war in Bosnia and Herzegovina.⁷ Similarly, the Government of Croatia had its own plans for territorial expansion, in particular towards BiH.⁸

7. By the beginning of 1990s the SFRY had begun its disintegration, and indications of the armed conflict could be seen.⁹ In Resolution 713 of 25 September 1991, the UN Security Council imposed a complete embargo on all deliveries of arms and military equipment to the territory of former Yugoslavia.¹⁰

⁵ See TJ in: *Blaskic*(IT-95-14), *Kordic*(IT-95-14/2), *Galic*(IT-98-29), *Brđanin*(IT-99-36), *Krstic*(IT-98-33), *Krajisnik*(IT-00-39&40), *Plavsic*(IT-00-39&40/1), *Deronjic*(IT-02-61), *Rajic*(IT-95-12), *Nikolic*(IT-02-60/1).

⁶ **Karavelic**, 25/03/2008-T.7812; **Dedovic**, 10/04/2008-T.8317

⁷ **PW3**, 21/08/2007-T.1434-1438

⁸ **PW3**, 24/07/2007-T.1199

⁹ **PW3**, 21/08/2007-T.1434

¹⁰ **E187A**

8. The Republic of Bosnia and Herzegovina (RBiH) declared its independence on 3 March 1992. It was recognized as a sovereign State by the European Community by 7 April 1992,¹¹ and it became a member of the UN on 20 May 1992.¹² The ARBiH became the only lawful army on the territory of RBiH.

9. Together with the Yugoslav People's Army (JNA), Bosnian Serbs began their aggression against the Bosnians in early 1992.¹³ Already by April 1992 the ethnic cleansing of Bosnian Muslims had begun in eastern Bosnia (municipalities of Zvornik, Bijeljina, Srebrenica, Bratunac, Foča, Višegrad etc).¹⁴

10. On 28 April 1992 the Federal Republic of Yugoslavia (FRY) was formed. Subsequently, during the summer of 1992, the ethnic cleansing continued in northwest Bosnia, Bosanska Krajina.¹⁵

11. On 4 May 1992, RBiH proclaimed FRY an aggressor. This was followed by Resolution 752 of the UN Security Council on 15 May 1992¹⁶, which demanded that the units of the JNA and the Croatian Army present in RBiH either withdraw or be disarmed and placed under international monitoring.

12. RBiH's main goal was to achieve a cessation of hostilities and ensure a peaceful future for all of its citizens. In June 1992 the Presidency of RBiH adopted its "Platform", whose basic principle was the preservation of a multi-ethnic, multi-religious, parliamentary democracy, under which the military was subordinated to the civilian authorities.¹⁷ On 20 June 1992, President Izetbegović proclaimed a state of war in BiH.¹⁸

¹¹ **PW3**,21/08/2007-T.1437;**AF28**

¹² **AF31**

¹³ **PW3**,21/08/2007-T.1434;**Karavelic**,25/03/2008-T.7795-7796.

¹⁴ **Delic**,20/09/2007-T.2710;**PW3**,21/08/2007-T.1502-1503;**E800**-BBC video on refugees

¹⁵ **Begovic**,12/07/2007-T483;**Ribo**,04/03/2008-T.6988-6989.

¹⁶ **E187B**

¹⁷ **E189**-Platform for the activities of the RBiH Presidency during the war,30/06/1992

PW3,21/08/2007-T.1465-1468

¹⁸ **AF29**

13. In 1992 the Serb army was in control of 70% of the territory of RBiH, and the Muslim population was forced into five enclaves: Sarajevo, Tuzla, Žepa and Srebrenica, Goražde, and Bihać.¹⁹ These areas were declared safe zones by the UN Security Council in Resolution 819 (Srebrenica) and Resolution 824 (other zones).²⁰ By May 1993 large numbers of Muslims had been killed and raped.²¹

14. In the period relevant to this case (June 1993 to September 1995), RBiH remained completely surrounded by Serb forces and the increasingly hostile Republic of Croatia, which caused a humanitarian crisis and further undermined the defence of the RBiH territory.²²

A. ARBiH

15. It was against this background that the ARBiH was created. Prior to the formation of the ARBiH and its predecessor, the TO, the armed force with responsibility for the whole territory of the SFRY was the JNA. Each republic of SFRY had its own TO. In the 1990s the predominance of Serb officers in the JNA increased, and JNA units in BiH became progressively all-Serb units. The JNA finally formally withdrew from BiH on 19-20 May 1992.²³

B. TO

16. In April 1992, the Presidency of RBiH formed the Territorial Defence (TO) of RBiH.²⁴ The TO was not a unified military force. Many small, disorganized and poorly armed groups existed in BiH.²⁵ They acted as village or local militia.²⁶ On 9 April 1992 President Izetbegovic ordered the unification of armed groups under the command of the TO RBiH.²⁷ In some areas, especially in Central Bosnia, armed groups such as the

¹⁹ PW3,21/08/2007-T.1499-1500

²⁰ E203-UN Resolution, No.819; E204-UN Resolution, No.824

²¹ PW3,21/08/2007-T.1502-1503

²² Begovic,12/07/2007-T.490

²³ PW3,21/08/2007-T.1443-1444

²⁴ AF46

²⁵ Karavelic,25/03/2008-T.7799-7800

²⁶ Sabanalic,16/07/2007-T.670

²⁷ E1183-RBiH Presidency Decision on unification of all armed units on RBiH territory,09/04/1992

Patriotic League, Green Berets and MOS didn't obey the order nor accept the TO as their command.²⁸

C. Formation of ARBiH

17. It was announced by the Presidency Order of 23 June 1992 that the armed forces would be called the ARBiH.²⁹ Although the ARBiH was formed early in the war, it was not until much later that it became anything close to functional, and in some parts of RBiH this was never achieved at all. On 3 September 1992 the Presidency ordered the formation of the corps³⁰, but it took a long time for the order to be implemented.³¹

18. The process of establishing the ARBiH was so slow that insignia were not issued to units until the end of 1993.³² During the entire conflict, the ARBiH failed to function properly and experienced a whole range of organisational problems, which included, but were not limited to, the following:

1. Lack of Professional Experience

19. Only 2.5% of the officers in the ARBiH had previous military training³³; they came from the JNA. Due to the lack of experienced officers, the political and military leadership of RBiH decided not to introduce a formal system of ranks until late 1993 or early 1994. Most of the persons commanding units who did not have any formal military training and the intention was therefore to appoint as commanders those who had military training or a background in the JNA. The evidence shows that there was distrust and even animosity between the commanders with a military background and those who lacked such a background.³⁴

²⁸ **Ribo**,04/03/2008-T.6933

²⁹ **AF48**

³⁰ **E29**-RBIH Presidency Decision on formation of Corps,03/09/1992

³¹ **Karavelic**,25/03/2008-T.7800-7801

³² **Adilovic**,07/03/2008-T.7244-7245

³³ **PW3**,21/08/2007-T.1441-1442

³⁴ **Loncaric**,10/04/2008-T.8318

2.Lack of Resources

20. Another immense problem was the lack of resources, in particular the lack of weapons and basic equipment, available to the ARBiH. Whereas the VRS and the HVO were aided by the JNA and the Croatian Army (and Serbian and Croatian authorities), the ARBiH had to be organized from scratch with the little that was left after the withdrawal of the JNA. The Presidency and the Supreme Command were not able to provide any material assistance to the corps, and there were no war reserves left from which the corps could draw material and technical supplies. All this had been taken or destroyed by the JNA; the corps were therefore left to obtain resources in whatever manner they could. They depended on civilian authorities; consequently civilian authorities had great influence on the appointment of commanders.³⁵

21. By the time Delić was appointed Commander of the Main Staff in June 1993, the ARBiH was still far from organized and was severely under-equipped. Even by 1995, only every other soldier was armed.³⁶

3.Communications

22. The fact that the VRS controlled most of the territory of RBiH made communications between the corps and the Main Staff extremely difficult and, in case of some corps, impossible. When the JNA withdrew from RBiH, radio relays which enabled radio communication were destroyed. Consequently, means of communication were extremely poor, and were often limited to physical delivery of communications by couriers. Some radio communication was possible over short distances within the ARBiH, but it was often blocked or intercepted.³⁷

23. The VRS and HVO actively sought to block communication between the different parts of the ARBiH, which made it extremely difficult to pass information during most of the conflict. It was part of the VRS and the HVO strategy to block communications between different parts of the ARBiH in order to weaken and finally defeat it.

³⁵ Karavelic, 2503/2008-T.7839-7840

³⁶ E1333-GSARBIH Analyses of year's work, 09/06/1994

³⁷ Karavelic, 25/03/08-T.7816

4. Internal conflicts

24. Internal conflict existed within the highest levels of the ARBiH, which led to significant problems which could have undermined the entire ARBiH. An internal conflict of a different nature concerned Fikret Abdić, a Muslim who had been a member of the Presidency at the start of the conflict, and who rejected the legitimacy of the RBiH Government, and led his supporters into violent confrontations with the ARBiH. These problems lasted until autumn 1995.³⁸

D. The prevailing circumstances when General Delić became Main Staff Commander

25. The situation was so desperate that the UN Security Council issued several resolutions in a short period of time. In Resolution 819 (16 April 1993), the UN Security Council expressed concern regarding the “pattern of hostilities by Bosnian Serb paramilitary units against towns and villages in eastern Bosnia” and reaffirmed that “any taking or acquisition of territory by the threat or use of force, including through the practice of ‘ethnic cleansing,’ is unlawful and unacceptable.”

26. In Resolution 824 (6 May 1993), the Security Council reiterated the concerns expressed in previous resolutions and declared that “The capital city of the Republic of Bosnia and Herzegovina, Sarajevo, and other such threatened areas, in particular the towns of Tuzla, Žepa, Goražde, Bihać, as well as Srebrenica, and their surroundings should be treated as safe areas by all the parties concerned and should be free from armed attacks and from any other hostile act”.

1. Situation in Sarajevo

27. In June 1993, when General Delić became Commander of the Main Staff of ARBiH, Sarajevo was under the worst attacks from VRS positions since the beginning of the armed conflict in RBiH. Aside from constant shelling, the citizens of Sarajevo were also deprived of water, electricity, and basic humanitarian aid.³⁹

³⁸ Dedovic, 08/04/2008-T.8208

³⁹ Dedovic, 08/04/2008-T.8179; Karavelic, 25/03/2008-T.7812

28. The situation was so bad the UNSC issued two resolutions in one month.⁴⁰ In Resolution 836 (4 June 1993), the UNSC expressed alarm at “the plight of the civilian population in the territory of the RBiH in particular in Sarajevo...”. In Resolution 859 (24 August 1993), the Security Council reiterated its concern “about the continuing siege of Sarajevo...”.

29. This desperate situation persisted long after General Delić became Main Staff Commander. As a result of Bosnian Serbs’ sniping and shelling campaigns, thousand were killed and injured in the ARBiH controlled areas in and around Sarajevo. Civilians were specifically targeted, and many lost their lives on buses and trams, while attending funerals, and in their own homes.⁴¹

30. In July and August 1993 the VRS launched an offensive with the goal of taking over Mount Igman and thus placing Sarajevo, the political and military centre of the RBiH, under complete blockade. Because of its great strategic importance, this operation was commanded by Ratko Mladić, the Commander of the VRS.⁴²

31. With Sarajevo completely sealed off, the ARBiH was forced to dig a tunnel under the airport in order to connect Sarajevo with the free territories and bring in the desperately needed food and other necessities.⁴³

2. The Overall Situation in 1994 and 1995

32. These problems, as well as the problems to which the Security Council reacted in its numerous resolutions, completely preoccupied General Delić during this period.

33. Throughout 1994 and 1995, the ARBiH and the civilian population in all parts of RBiH were faced with devastating attacks by Serb forces. The most difficult situations were noted in a number of Security Council resolutions issued during this period.

⁴⁰ E205-UN Resolution, No. 836; E204-UN Resolution, No. 824

⁴¹ E1323-Video clip showing shelling of Sarajevo

⁴² Karavelic, 25/03/2008-T.7828-7829

⁴³ Karavelic, 25/03/2008-T.7815-7816

34. Due to the humanitarian catastrophe in which Sarajevo found itself in mid-1995, and the unwillingness of the international community to sanction the Bosnian Serbs for constant violations of UN resolutions, ultimatums and agreements regarding Sarajevo, on 18 May 1995 the President of the Presidency, Alija Izetbegović, requested the General Staff to lift the siege of Sarajevo immediately.⁴⁴ This action was the only one which the Main Staff commanded, and it did so pursuant to the authority given to it by the President of the RBiH Presidency.

35. During the execution of the Sarajevo operation, the situation in Eastern Bosnia progressively worsened, especially in the areas of Srebrenica and Žepa. UNPROFOR, whose duty it was to protect the population within the safe zones in Eastern Bosnia, failed to react which led to the tragic killing of over 7,000 men and the expulsion of the population from Srebrenica, Bratunac, Cerska, Kamenica and Zepa.⁴⁵

3.Ozren-Vozuća

36.In the campaign of ethnic cleansing, at the end of May and the beginning of June 1992, Serb forces attacked and took over the Muslim villages in the Zavidovići municipality, and forced around 2000 Bosniaks out of their homes. The Serb forces also took over all the main elevation points in the area of the Zavidovići municipality, including Blizna, Podsjelovo, Paljenik, Stolić, Velež, and Verigovac.⁴⁶

37.Around 40,000 Muslims, found themselves under siege in the municipality of Zavidovići. The main route from Ribnica to Zavidovici to Tuzla and Zenica was cut-off.⁴⁷ Throughout the armed conflict in the RBiH, the town of Zavidovići and the surrounding villages were under constant fire from artillery, tanks, and rocket systems from Ozren and Vozuća. As a result, a large part of the town of Zavidovići was completely destroyed and many civilians in Zavidovići and Maglaj were killed.⁴⁸ On 25 May 1995, one shell fired from the area of Ozren killed 78 people, mostly children, at the

⁴⁴ E1348-Izetbegovic's letter regarding fall of the enclaves,16/07/1995

⁴⁵ Alija,16/10/2007-T.4161

⁴⁶ Sljuka,22/10/2007-T.4330-4331

⁴⁷ Infra,para.???Hasnagic dio ispod Ribnica

⁴⁸ Sljuka,22/10/2007-T.4330-4333

town gate in Tuzla.⁴⁹ During 1995, the situation in the Ozren-Vozuća area rapidly worsened.

38. The foregoing paragraphs set out the overall circumstances in which General Delić acted. Any consideration of the matters alleged in the Indictment must be viewed within this context.

⁴⁹ **Delic**, 21/09/2007-T.2813-2816

III. CENTRAL BOSNIA GENERALLY

A. Central Bosnia and Bila Valley

39. In summer and autumn 1992, hundreds of thousands of refugees came to the Travnik region, causing a terrible situation.⁵⁰ Ribo described the situation as: “*total chaos.*”⁵¹ Saban Alic explained how “*People went hungry. There was uncertainty. We were surrounded on all sides, and there was panic among the people, the sense of insecurity*”.⁵²

40. The Bila valley is in Travnik municipality, and its villages include Mehurici, Suhi Dol and Maline.⁵³

1. Serb forces

41. In late March 1992, from the vantage point of Mount Vlastic (overlooking Travnik municipality)⁵⁴, Serb forces began military preparations to attack Bosnian Muslim and Croat villages.⁵⁵ In 1992 villages formed village guards and set up defence lines facing towards the Serb positions.⁵⁶

42. In the zone of responsibility of the 3rd Corps, the ARBIH faced two VRS corps, the 1st Krajina Corps and the East Bosnia Corps, over an immense frontline of nearly 300 kms.⁵⁷ The 3rd Corps faced a huge militarily superior enemy;⁵⁸ the 1st Krajina Corps had 50,000 soldiers, equipped with 270 tanks, 210 armoured vehicles and 360 pieces of artillery.⁵⁹

⁵⁰ **PW2**, 18/07/07-T.792.

⁵¹ **Ribo**, 04/03/08-T.6950; **PW2**, 18/07/07-T.800.

E1180-Excerpt from “Seasons in hell” by Ed Vulliamy, 2000

Ribo, 04/03/08-T.6953-6956.

⁵² **SabanAlic**, 16/07/07-T.676.

⁵³ **HalimHusic**, 13/03/08-T.7463-7467

See also **E1213**-Map marked by **HalimHusic**, showing villages that are part of Bila valley

⁵⁴ **Marijanovic**, 19/07/07-T.939; **Begovic**, 12/07/07-T.491; **SabanAlic**, 16/07/07-T.680.

⁵⁵ **Marijanovic**, 19/07/07-T.912; **Pranjes**, 20/07/07-T.998.

⁵⁶ **Begovic**, 11/07/07-T.382-383.

⁵⁷ **AF,119.**

⁵⁸ **Duncan**, 30/08/07-T.1972-1974.

⁵⁹ **AF,120.**

The East Bosnia Corps had around 25,000 soldiers, 153 tanks, 210 armoured vehicles, and 360 pieces of artillery.⁶⁰

2.HVO

43. At the outset of the war, relations in Central Bosnia between the inhabitants of Bosnian Muslim and Bosnian Croat villages was initially good⁶¹, and they organized a common defence against the Serb forces. Relations however deteriorated between Bosnian Muslims and Croats in Central Bosnia towards the end of 1992.⁶²

44. The Bosnian Croats formed the para-state of the Croatian Community of Herceg-Bosna (HZHB) in 1992⁶³, which claimed to exercise authority over territory that included parts of Travnik municipality.⁶⁴ It also intended to place the ARBiH, the lawful army of the RBiH, under the command of the HVO.⁶⁵

45. In October 1992, despite ARBiH attempts to negotiate, the HVO leadership refused to resolve the problem.⁶⁶ On 22 October 1992, Tihomir Blaskic was granted authority by the HVO HQ in Mostar to resolve the situation forcefully, where possible.⁶⁷ In January 1993, the HVO ordered combat readiness and open HVO hostilities towards Gornji Vakuf and Prozor. Routes out of Zenica were also to be blocked, and ARBiH vehicles and weapons to be confiscated.⁶⁸ The conflict was confirmed in January 1993.⁶⁹

⁶⁰ **AF,121.**

⁶¹ **Marijanovic**,19/07/07-T.912.

⁶² **Begovic**,12/07/07-T.487.

⁶³ **PW3**,21/08/07-T.1440.

⁶⁴ **Begovic**,12/07/07-T.487-488.

⁶⁵ **E83**-Response of the 306MB to 3C regarding relationship with the HVO HZHB,17/01/93

⁶⁶ **E1181**-Report of the Central Bosnia Operations zone Command, HZHB,19/10/92

See also **Ribo**,04/03/08-T.6964-6965.

⁶⁷ **E1182**-HVO Main Staff Order,22/10/92

See also **Ribo**,04/03/08-T.6966.

⁶⁸ **E191**-HVO Order for full combat readiness of all HVO units,15/01/93

See also **PW3**,21/08/07-T.1472-1473.

⁶⁹ **AF,122.**

46. In late 1992, the Frankopan brigade was formed, with headquarters at Guca Gora.⁷⁰ The 4th battalion covered the villages of Guca Gora, Velika Bukovica and, Maline.⁷¹ The brigade controlled the dominant elevations of the Bila Valley at the time relevant to the Indictment.⁷²

B. ARBiH in Bila valley region

1.3rd Corps

47. Central Bosnia was in the zone of responsibility of the 3Corps. Its soldiers were very poorly equipped, lacking decent weapons and uniforms.⁷³ Unlike the VRS, the ARBiH lacked heavy weapons.⁷⁴ The 3Corps had a huge front line to defend of around 300 kms.⁷⁵

2. Poor communications

48. The ARBiH suffered from enormous communication problems throughout the war. The telecommunication system was one of the first targets of the Serb aggressor.⁷⁶ During its withdrawal from parts of Bosnia and Herzegovina where non-Serbs lived, the JNA took and destroyed most of the equipment that it had.⁷⁷ It also destroyed many relays, including the Vlasic relay in Central Bosnia.⁷⁸ Karavelic, 1Corps Commander, explained: *“Communications with units outside of Sarajevo, any kind of communication, was scarce. There was no continuity, there were frequent and long breakdowns and the means of communications were very poor. So communications were sporadic and unsafe”*.⁷⁹

⁷⁰ **Pranjes**,20/07/07-T.975.

⁷¹ **E264-306MB** Report,11/04/93

See also **Delalic**,27/08/07-T.1733-1734.

⁷² **E1202-Order** issued by Commander of HVO “Frankopan” brigade,24/05/93

See also **HalimHusic**,12/03/08-T.7368-7371.

⁷³ **Duncan**,30/08/07-T.1972.

⁷⁴ **Duncan**,30/08/07-T.1973.

⁷⁵ **Duncan**,30/08/07-T.1973.

⁷⁶ **Divjak**,12/09/07-T.2227.

⁷⁷ **Berbic**,14/09/07-T.2376.

⁷⁸ **Berbic**,14/09/07-T.2376-2377.

⁷⁹ **Karavelic**,25/03/08-T.7816.

49. Communication to the Main Staff in Sarajevo could be disrupted due to poor weather conditions and technical interference by the VRS⁸⁰, which affected the Main Staff's ability to exercise command and control in the field.⁸¹ Packet communication links to Sarajevo, which used radio, were often interrupted and was a vulnerable form of communication.⁸²

50. BRITBAT Milinfosum for 28 June 1993 describes how the passage of information from the 3Corps AOR to Sarajevo was not particularly good.⁸³ It was difficult to communicate in that region. The same communication problems also occurred with BRITBAT, even though they had more sophisticated radios.⁸⁴

51. In the 3Corps AOR, the communication between the 3Corps and subordinated units was very poor until the end of the war, which effected the quality of reporting and command and control⁸⁵ Ribo testified about the communications situation in Travnik, and described how the ARBiH had to use 'ham radio', which was unreliable and led to problems with RiK; he stated that during 1992 and 1993 there was no communication with Sarajevo.⁸⁶

52. During the relevant time period, the 306MB had poor and unreliable communications with its superior OG-Zapad (OG-West).⁸⁷ The 306MB didn't have the possibility of packet communication,⁸⁸ and the HVO had equipment to block ARBiH radio transmissions.⁸⁹ The HVO blockade prevented different parts of 306MB from having contact with each other. As a result, communication with the Corps was cut off.⁹⁰

⁸⁰ **Divjak**, 12/09/07, T.2226.

⁸¹ **Divjak**, 12/09/07, T.2228.

⁸² **Berbic**, 14/09/07-T.2378.

⁸³ **E297-PWO** Milinfosum No.60,28/06/93

See also **Duncan**, 30/08/07, T.1985.

⁸⁴ **Duncan**, 30/08/07, T.1979-1980.

⁸⁵ **Jusic**, 17/09/07-T.2541.

⁸⁶ **Ribo**, 04/03/08-T.6962-6964.

⁸⁷ **E265-306MB** Report for 12th and 13th April 1993

See also **Delalic**, 27/08/07-T.1735.

⁸⁸ **Delalic**, 27/08/07-T.1751-1752.

⁸⁹ **Duncan**, 30/08/07-T.1978, T.1980.

⁹⁰ **HalimHusic**, 12/03/08-T.7378-7380.

3.Operational Groups

53.In February 1993 units called Operational Groups (OG) which were subordinated to the Corps level were introduced into the ARBIH.⁹¹ These were temporary groupings of brigades, with the aim of facilitating RiK. Enver Hadzihasanovic, 3Corps Commander, ordered the establishment of OGs in the 3Corps AOR with the intention to improve the effectiveness of RiK, but in fact they made the situation worse.⁹²

54.In the Bila valley region two OGs existed, OG-Zapad and OG-Bosanska Krajina which were formed on 8 March 1993.⁹³ OG-Bosanska Krajina was based in Travnik⁹⁴ and commanded by Mehmed Alagic.⁹⁵ Confusion over authority to command units in the Travnik municipality was present in April and May 1993, as shown by E199.⁹⁶ There was confusion whether OG-Bosanska Krajina or the TO Staff commanded units in the Travnik Municipality.⁹⁷

55.It can be seen from reports of 306MB that communication to OG-Bosanska Krajina was fraught with difficulties.⁹⁸

56.OG-Zapad was based in Bugojno, commanded by Selmo Cikotic.⁹⁹ The 306MB was resubordinated to it during the spring of 1993.

4.306th Mountain Brigade

⁹¹ **AF,55.**

⁹² **PW3,25/07/07-T.1302-1303[REDACTED]**

PW3,21/08/07-T.1494.

⁹³ **AF,56.**

See also **E159-3Corps Order ,08/03/93**

⁹⁴ **Fusko,24/07/07-T.1177.**

⁹⁵ **Ribo,05/03/08-T.7008.**

⁹⁶ **E199-OG-Zapad Order,09/04/93**

See also **PW3,21/08/07-T.1495-1496.**

⁹⁷ **E200-OpSo Travnik document "Resolving unclear issues",16/05/93**

See also **PW3,21/08/07-T.1496-1497.**

⁹⁸ **E258-OG-Bosanska Krajina Report and proposals,05/06/93, p.2:"At the moment the connection with Sipic is interrupted so we do not have information if he is already on his way and how far he has come. We are trying to reach him indirectly, through 3rd Corps."**

See also **HalimHusic,12/03/08-T.7381.**

⁹⁹ **PW3,21/08/07-T.1494-1495;Negovetic,15/01/08-T.6818-6819.**

57. The 306MB was located in the Bila valley and formed in 1993 from several detachments, including the Ljuta Greda Detachment¹⁰⁰, and the Mehuric Detachment.¹⁰¹ It was headquartered at the Rudnik coal mine, and its commander was Esed Sipic.¹⁰² It had around 1,600 members in 1993.¹⁰³ Problems in forming the 306MB included lack of equipment and weapons, lack of information and cooperation with other ARBiH units.¹⁰⁴ These problems lasted throughout its existence.¹⁰⁵

58. During June 1993 the Assistant Commander for Security of the 306th Mountain brigade was Asim Delalic. Osman Fusko and Haris Jusic worked as security officers.¹⁰⁶ There were around 20 Military Police officers in the brigade.¹⁰⁷

5. 7th Muslim Mountain Brigade

59. The 7MB was established on 22 November 1992 and its battalions were based in Zenica, Travnik and Kakanj.¹⁰⁸ The brigade took a long time to form and didn't function properly for a long time.¹⁰⁹

C. Mujahedin in Central Bosnia

1. Arrival of Mujahedin

¹⁰⁰ **Begovic**, 11/07/07-T.384-385.

¹⁰¹ **Delalic**, 27/08/07-T.1697.

¹⁰² **AF, 72.**

¹⁰³ **Fusko**, 23/07/07-T.1158.

¹⁰⁴ **E142-306MB** Weekly report, 08/01/93

See also **Fusko**, 23/07/07-T.1124-1125; **Delalic**, 27/08/07-T.1746-1747.

¹⁰⁵ **E84**-Video showing that soldiers of 306MB didn't have uniforms at the time the brigade was formed
See also **Begovic**, 12/07/07-T.494-495, T.496-498; **HasibAlic**, 16/07/07-T.622-624; **SabanAlic**, 16/07/07-T.669-670.

E86: "Logistics support of the unit is bad which made it practically impossible for us to carry out regular jobs. The cause is the lack of /illegible/ fuel, lubricants and spare parts for vehicles. A constant problem has also been the lack of weapons, ammunition and clothing..."

¹⁰⁶ **Fusko**, 23/07/07-T.1073.

¹⁰⁷ **Fusko**, 23/07/07-T.1073.

¹⁰⁸ **E107-SVK** Order for the formation of 7MB, 19/11/92

See also **Adilovic**, 07/03/08-T.7195-7196.

¹⁰⁹ **Adilovic**, 07/03/08-T.7250.

60. The Prosecution claims that the mujahedin begin arriving in Bosnia and Herzegovina sometime during the middle of 1992, ready to conduct “Jihad” or “Holy War” in Bosnia and Herzegovina against the enemies of Bosnian Muslims.¹¹⁰

61. The mujahedin had their own agenda in BiH, determined by foreign centres of power, to whose command and control they were subordinated. Foreign mujahedin began arriving in Zenica and Travnik during 1992, particularly in the second half of the year.¹¹¹ Witnesses explained the reasons why some foreigners felt compelled to come to BiH. For some, the images of the suffering of the Muslim people was their motivation.¹¹² Another objective for their arrival was to carry out Dawa, a fundamental version of Islam.¹¹³

62. Documents found in the Islamic Cultural Institute in Milan (ICI), revealed that these compassionate sentiments hid a different agenda for the foreign entities supporting and promoting the mujahedin. E58, the Charter of Islamic Struggle, shows some of their principles:

*“We, as Muslims, have been given the task to realize the supremacy of the law of God on earth and of not allowing that any group on earth govern without the law of God. We fight whoever refuses that and refuses obedience to God...The fight is imposed on us to remove the apostate ruler from the land of Islam, to fight those who support them and their laws, to impose the caliphate...Jihad has been introduced to spread God’s religion and to destroy any ruler that is not subject to the adoration of God. Fighting the infidels has the purpose of exalting the revelation God”.*¹¹⁴

63. Andrew Hogg, who had experienced mujahedin in several countries, confirmed that this document reflects the principles of the Arab mujahedin that he met previously, which he described as “a law unto themselves”.¹¹⁵

¹¹⁰ **Indictment**, para.12.

¹¹¹ **AF**,125.

¹¹² **Awad**,08/02/08-T.5;**PW9**,16/11/07-T.5745.

¹¹³ **PW9**,15/11/07-T.5622-5623;**PW4**,31/10/07-T.4880-4882.

See also **E677**-Categorisation of people of Arab origin by activity issued by 3Corps,17/04/95

¹¹⁴ **E58**-Excerpt from Evan Kohlmann’s book,2004.

¹¹⁵ **Hogg**,10/07/07-T.344,T.347.

64. Another explanation as to why mujahedin came to BiH was given by witness Ali Hamad. He stated that Al-Qaeda had its own interests in war in Bosnia and Herzegovina. Al-Qaida was not interested in Muslims but in creating a base from which they could operate within Europe.¹¹⁶ It had secret goals, unknown to Bosniaks.¹¹⁷

2. Organisation of arrival

65. The military and state authorities of RBiH were not involved in the arrival of the mujahedin into Bosnia and Herzegovina.¹¹⁸

66. E1389 shows that the prominent Islamic scholars decided to initiate Jihad in Bosnia by inviting many young men to conduct Jihad in Bosnia under the leadership of Sheikh Anwar Shaban.¹¹⁹ Shabaan was responsible for recruiting and sending young man to go to BiH.¹²⁰ Ali Hamad testified that Al-Qaeda organized the arrival of the Mujahedin in BiH.¹²¹

3. Croatian Involvement

67. Throughout the conflict in Bosnia and Herzegovina, its borders were closed and the forces of RBiH did not control them.¹²² To the east the external border was controlled by the forces from Serbia, and the internal border was controlled by the VRS; to the west the external border was controlled by the forces of the Republic of Croatia, and the internal border by the HVO.¹²³

¹¹⁶ **Hamad**,08/09/07-T.89-90.

See also **E326**-Interview of Hamad with Der Spiegel,04/12/06.

¹¹⁷ **Hamad**,08/09/07-T.141.

¹¹⁸ **PW9**,16/11/07-T.5743-5744;**Awad**,09/02/08-T.139

¹¹⁹ **E1389**-Video showing Islamic scholars

See also **PW9**,17/04/08-T.8667-8670.

¹²⁰ **E1390**-Excerpt from Judgement from Civil and Penal Court in Milan, Intercepted conversation between Anwar Shabaan and Abdul Aziz,1996:"*Interlocutor Abu-Abd-El-Aziz: Tell me, are there lads departing for Bosnia for you? Subscriber Anwar Shabaan: I am organizing their departure , it's working well. Also I am dealing with another matter; if it works out we shall be able to send many people.*"

See also **PW9**,17/04/08-T.8672-8674.

¹²¹ **Hamad**,08/09/07-T.140.

¹²² **PW9**,16/11/07-T.5770;**PW3**,21/08/07-T.1440.

¹²³ **PW9**,16/11/07-T.5770-5771.

68. In January 1993, the HVO Military Police Administration ordered a total blockade of the border towards the Republic of Croatia for the ARBiH and its members.¹²⁴ Yet, despite the blockades and control of the border, the mujahedin were able to enter BiH through Croatia.¹²⁵ Witnesses confirmed that it was impossible for somebody to enter into BiH without being granted permission by either Croatian/HVO or Serb authorities.¹²⁶ The Republic of Croatia had its own interests in supporting the arrival of the mujahedin in BiH. [REDACTED]¹²⁷ By bringing in foreigners, Tudjman's goal was to fan the conflict between Bosnian Muslims and other ethnic groups in RBiH.¹²⁸ He had territorial aspirations for the part of BiH known as Herzeg-Bosna, and he wanted to split Herzegovina from Bosnia.¹²⁹ [REDACTED]¹³⁰

69. In practice the arrival of mujahedin fighters was facilitated by Croatian officials by allowing them to travel safely along roads, and guaranteeing their security so that nobody would attack them.¹³¹ Documentary evidence proved beyond question that this was the case. One example is E220¹³², in which the HZHB authorities granted permission to 14 Iranians to travel to BiH.

70. Ali Hamad came to BiH from Zagreb, Croatia and then to Travnik in September 1992.¹³³ Similarly, Aiman Awad travelled from Zagreb to Split, then to Visoko and Zenica.¹³⁴ His organization Mowafaq was in the process of being registered with the Croatian authorities, so he hadn't received any official insignia or documents; even so, he was able to travel.¹³⁵

¹²⁴ **E192**-HVO Order, 14/01/93

¹²⁵ **AF,126.**

¹²⁶ **PW9**,16/11/07-T.5771; **HalimHusic**,11/03/08-T.7295.

¹²⁷ [REDACTED]

¹²⁸ **PW3**,22/08/07-T.1568-1569;**PW3**,22/08/07-T.1570-1571

¹²⁹ **PW3**,24/07/07-T.1240.

¹³⁰ [REDACTED]

¹³¹ **PW3**,22/08/07-T.1576.

¹³² **E220**-Permit issued by the Chief of Defence Department of HZHB,07/11/92

See also **PW3**,22/08/07-T.1580-1581

¹³³ **Hamad**,07/09/07-T.10-12.

¹³⁴ **Awad**,08/02/08-T.6.

¹³⁵ **Awad**,10/02/08-T.257.

71. Evidence showed that mujahedin had good relations with and were financed by the Croatian authorities.¹³⁶ There was evidence that the Croatian authorities supplied identity documents to some mujahedin.¹³⁷ Arabs joined units of the Croatian Army, together with Bosniaks.¹³⁸ One of such units had a Bosniak commander called Midhat Puric, and it was able to travel freely into Bosnia and Herzegovina.¹³⁹

4. Muslim Armed Forces (MOS)

72. The Prosecution claims that most of the mujahedin that arrived in Bosnia were initially incorporated into the Muslimanske Snage (Muslim Forces or 'MOS') based in Travnik.¹⁴⁰

73. MOS was founded by Ahmed Adilovic, a religious leader from the Travnik municipality, with the support of the Travnik mufti, Nusret Avdibegovic.¹⁴¹ They were its ideological leaders.¹⁴² MOS was formed in May 1992.¹⁴³ It was organized differently from a typical military unit, and emphasized religious practice among its members.¹⁴⁴ Ahmed Adilovic, who was also the Travnik imam and director of the Travnik Medresa exercised strong influence over MOS.¹⁴⁵ The Travnik Islamic community provided MOS with a local religious facility to billet its men.¹⁴⁶ It was comprised only of

¹³⁶ E676-SDB MUP RBIH Official record,23/10/95

See also PW4,31/10/07-T.4875-4877

E223(Under seal);PW3,22/08/07-T.1590-1591.

¹³⁷ E221-Official note issued by Security Sector of Defence Department of HZHB,20/07/93

See also PW3,22/08/07-T.1582-1583

E222-Article by Oslobodjenje "One or two Handalas",06/12/06 with the identity card of Ahmed Zuhair Handala,p.2

PW3,22/08/07-T:1585-1586;Hamad,08/09/07-T.152;HalimHusic,11/03/08-T.7294,T.7282-7284

¹³⁸ HalimHusic,11/03/08-T.7284-7285,T.7287-7288.

¹³⁹ HalimHusic,11/03/08-T.7284-7285.

¹⁴⁰ PPTB,para.12.2.

¹⁴¹ Ribo,04/03/08-T.6997.

¹⁴² Ribo,04/03/08-T.6989.

¹⁴³ Ribo,04/03/08-T.6985.

¹⁴⁴ PW2,17/07/07-T.714,T.734

See also E118-Zenica District Defence Staff Official record,21/07/92.

See also Ribo,04/03/08-T.6987-6989.

Ribo,04/03/08-T.6990-6991:"They were not under my command, and that is why I think that this sentence is not formulated correctly. I did not give such a statement. I wouldn't give a statement against the Muslim Forces had they been in my Staff. I'm not that crazy."

¹⁴⁵ PW2,18/07/07-T.828.

¹⁴⁶ Ribo,04/03/08-T.6986.

Muslims.¹⁴⁷ In addition to its religious emphasis, another reason for the formation of MOS was disagreement with the multi-ethnic composition of the Municipal TO Staff.¹⁴⁸

(a) MOS was independent of the ARBiH

74. MOS was an independent organization, and it did not fall within the command and control structure of either the TO or ARBiH.¹⁴⁹ Ribo, former head of the Travnik TO Municipal Staff, testified:

“The Muslim Armed Forces were independent units outside of the system of control of the Travnik Staff, so they were not part of my forces.

Q. When you say “part of my forces”, what exactly do you mean?

*A. Units of the Travnik Territorial Defence ”.*¹⁵⁰

75. Many MOS members were suspicious and distrustful of the ARBiH, and considered the Army to be communist and infidels.¹⁵¹ E1184¹⁵² clearly shows that MOS was not one of the units of the TO under the command of the Travnik TO Municipal Staff. Ribo testified that none of the members of the Travnik MOS swore their oath before him or any of the representatives of his brigade when MOS were formed.¹⁵³

76. Its independence was also shown by its encouragement of soldiers from regular Territorial Defence/ARBiH units to desert and join MOS, which had a major disruptive

¹⁴⁷ PW2,18/07/07-T.806.

¹⁴⁸ Ribo,04/03/08-T.6972.

¹⁴⁹ Ribo,04/03/08-T.6975-6977; Delalic,27/08/07-T.1705.

¹⁵⁰ Ribo,04/03/08-T.6974.

¹⁵¹ PW2,18/07/07-T.833-834.

See also Ribo,04/03/08-T.6974; HalimHusic,11/03/08-T.7297.

¹⁵² E1184-Review of staff and units of TO under the command of Municipal Staff of TOTravnik,23/05/92
See also Ribo,04/03/08-T.6978-6980, testifying about E1184:” Since this is my document, which was sent to the Staff in Sarajevo, I can tell you that it clearly shows that there are no Muslim Armed Forces, nor were any ever part of my force. Had there been any, I would have indicated them here.”

Ribo,04/03/08-T.6983.

¹⁵³ Ribo,04/03/08-T.6992-6994 referring to E55-Video of formation of Muslim Forces

effect on the normal functioning of the Army.¹⁵⁴ Soldiers would leave their units and went to MOS because they were offered better conditions there.¹⁵⁵

77.The Prosecution relies upon E103¹⁵⁶ to show that MOS was linked to the ARBiH. Ribo said that he never received this document and he noted features which cast doubt upon the authenticity of the document.¹⁵⁷

(b) No foreigners in MOS

78.Contrary to the Prosecution's claim, foreign Mujahedin were not incorporated into the Muslim Forces at Travnik. The Prosecution here relies on E103 and E104¹⁵⁸. Regarding E103, witnesses testified that person mentioned in this document as a member of Muslim Forces, Makteuf Abdula, lived and worked in BiH 10-15 years before the war; just because his name is listed here it cannot be concluded that foreign fighters were members of MOS.¹⁵⁹ When asked to comment on this document Ribo said: "**I know there were no foreigners there in the MOS.**"¹⁶⁰

79.Concerning E104, the evidence shows this document lacks authenticity and reliability.¹⁶¹ No Bosniaks ever used or went by the title "Ibn".¹⁶² Witnesses confirmed that the information in this list was not correct.¹⁶³

(c) Changes to MOS structure

¹⁵⁴ **Ribo**,04/03/08-T.6990:" *We had problems to keep our fighters in the TO because of these favourable conditions being offered, to stop them from going over.*"

PW2,18/07/07-T.799

¹⁵⁵ **E118**,p.2.

See also **Ribo**,04/03/08-T.6990;**PW2**,17/07/07-T.711; **HalimHusic**,11/03/08-T.7297.

¹⁵⁶ **E103**-List of Travnik Muslim Forces soldiers from Travnik area,15/09/92

¹⁵⁷ **Ribo**,04/03/08-T.6995-6996; **Ribo**,06/03/08-T.7106 .

¹⁵⁸ **E104(Under seal)**- [REDACTED]

¹⁵⁹ **PW2**,18/07/07-T.811-813;**Ribo**,04/03/08-T.6997.

¹⁶⁰ **Ribo**,04/03/08-T.6998.

¹⁶¹ **PW2**,18/07/07-T.820.

¹⁶² **PW2**,17/07/07-T.725;**Ribo**,05/03/08-T.7001;**Adilovic**,07/03/08-T.7193.

¹⁶³ **PW2**,18/07/07-T.820-821;**Ribo**,05/03/08-T.7002-7003.

Adilovic,07/03/08-T.7192-7194:" *Q. Mr. Adilovic, do you see there an entry on this page at number 273? And there we can see a name "Enver ibn Sefik Adilovic."*

A. I can see that, but I had never been a member of the Muslim forces, and in my view this document is inaccurate."

80. Towards the end of 1992, around the time that the ARBiH formed brigades, the Travnik MOS ceased to exist.¹⁶⁴ Former members of MOS did not exclusively make up the members of 1/7MB - there were other men from Travnik and other places who joined.¹⁶⁵

(d) Relationship between MOS and mujahedin

81. While participating in combat actions "Arabs" had their own commanders and they were not under the command of the Muslim Forces.¹⁶⁶ They had their own weapons and logistics, and were independent operators.¹⁶⁷

5. Mujahedin conducted combat operations in Karaula

82. The Prosecution claims that in mid-late 1992 the mujahedin conducted combat operations with the TO against the VRS in Karaula, west of Travnik, after which they deployed to Bijelo Bucje.¹⁶⁸ As a former leader of one of those groups, Ali Hamad confirmed that while he was fighting in Bijelo Bucje he never received any order from the ARBiH.¹⁶⁹ He also confirmed that he received funds for his unit from different Islamic humanitarian organizations.¹⁷⁰ According to Adilovic they were not fighting with the ARBiH.¹⁷¹

6. Arrival of humanitarian organizations

83. During the war, there were many humanitarian organizations working in Central Bosnia.¹⁷² The mujahedin groups had close ties to many of them, and foreign mujahedin frequently arrived as members of humanitarian organizations.¹⁷³

¹⁶⁴ **Ribo**,04/03/08-T.6977.

¹⁶⁵ **Ribo**,06/03/08-T.7111.

See also **E107**: "Form a mountain brigade under the name of the 7th Muslim Mountain Brigade from the RBiH Army armed units currently engaged on the Vlasica plateau."

PW2,18/07/07-T.822-824.

¹⁶⁶ **PW2**,18/07/07-T.816,T.819.

¹⁶⁷ **PW2**,18/07/07-T.817.

¹⁶⁸ **PPTB**,para.12.2.

¹⁶⁹ **Hamad**,08/09/07-T.109-110.

¹⁷⁰ **Hamad**,08/09/07-T.132-133.

See also **E337**-Excerpt from the book of Ali Hamad,31/12/94

¹⁷¹ **Adilovic**,07/03/08-T.7199-7200.

¹⁷² **E677**-3Corps Information,17/04/95

84. Witnesses from the Bila valley region confirmed that Arabs around there were members of humanitarian organizations.¹⁷⁴ An example of this was Awad Aiman, who arrived as a member of the Muwafaq Foundation in December 1992.¹⁷⁵ He had previously been coordinating the efforts of other Islamic charitable organizations, such as Igasa, Appeal International, Islamic Relief, Merhamet.¹⁷⁶ When witness Ali Hamad came to BiH, he was assisted by people in Zagreb who worked for a humanitarian organization called The Third World.¹⁷⁷ The mujahedin could wield a lot of support because of their ties to aid organizations.

85. PW2 stated that it was very hard for people to distinguish between humanitarian workers and mujahedin fighters.¹⁷⁸

7. Different mujahedin groups in Central Bosnia

86. There were many different mujahedin groups in Central Bosnia during 1993.¹⁷⁹ Contrary to the apparent claim of the Prosecution, they were not one unified group, but comprised of many groups and individuals.¹⁸⁰ Each had different leaders. There were ideological differences between the groups which sometimes led to tension and conflict.¹⁸¹ The evidence showed groups in Central Bosnia, as follows.

See also **PW4**,31/10/07-T.4884-4885.

E678-SVB-CSB Tuzla Information about Afroasian humanitarian organizations in BiH during the war,10/11/95

PW4,31/10/07-T.4885-4888.

E1141-SVB Zenica Information on foreign humanitarian organizations operating in Zenica,24/11/95

Awad,10/02/08-T.239-240;**PW9**,15/11/07-T.5640;**Mujezinovic**,23/11/07-T.6106.

¹⁷³ **AF**,127.

¹⁷⁴ **PW2**,13/07/07-T.537-538.

¹⁷⁵ **Awad**,08/02/08-T.6.

¹⁷⁶ **Awad**,08/02/08-T.5.

¹⁷⁷ **Hamad**,07/09/07-T.9-10.

¹⁷⁸ **PW2**,18/07/07-T.801-802.

¹⁷⁹ **PW2**,17/07/07-T.744: "[...]there had been a lot of groups of Arabs[...]"

Alic,16/07/07-T.677; **PW2**,18/07/07-T.818;**Duncan**,31/08/07-T.2058

¹⁸⁰ **PW9**,16/11/07-T.5743-5744.

¹⁸¹ **PW9**,15/11/07-T.5622-5625.

(a) Zenica municipality

87. In Zenica municipality there was the “Turkish guerilla” in Zenica.¹⁸² The 3Corps was aware of them in June 1993.¹⁸³ There was a group in Bisticak,¹⁸⁴ which never became part of the EMD.¹⁸⁵

(b) Travnik municipality

88. There were several mujahedin groups present in and around the Bila valley area. Marijanovic, a Bosnian Croat, who lived in Maline village confirmed that there was more than one group of mujahedin in Travnik municipality around that time.¹⁸⁶ The evidence shows there were groups in Karaula, Bijelo Bucje, Mehurici/Poljanice, Guca Gora, and Gluha Bukovica.

89. There were several groups of Arabs and Turks in Karaula.¹⁸⁷ After the fall of Jajce and Karaula, one group of Arabs arrived in Bijelo Bucje, where they were billeted.¹⁸⁸ There were 107 mujahedin located there, in two or three private houses.¹⁸⁹ In Guca Gora there was a group of Mujahedin led by a man called Abu Hamza,¹⁹⁰ which was a mixture of foreigners and Bosnians.¹⁹¹ This group never became part of the EMD.¹⁹² The group’s presence was confirmed by witnesses Negovetic¹⁹³ and Alihodzic,¹⁹⁴ who were involved in an incident on 23 June 1993 at Guca Gora. BRITBAT encountered mujahedin there who refused to be bound by an ARBiH-HVO ceasefire.¹⁹⁵ Husic

¹⁸² **Begovic**,13/07/07-T.538;**PW9**,15/11/07-T.5629; **HalimHusic**,11/03/08-T.7308;**Hamad**,07/09/07-T.34.

¹⁸³ **E179**-3Corps Report regarding existence of “Gerila” group,13/06/93

¹⁸⁴ **Hamad**,07/09/07-T.39;**Begovic**,13/07/07-T.538;**Alic**,16/07/07-T.679; **PW2**,19/07/07-T.875.

¹⁸⁵ **PW9**,15/11/07-T.5628.

¹⁸⁶ **Marijanovic**,19/07/07-T.940.

¹⁸⁷ **PW2**,17/07/07-T.716.

¹⁸⁸ **PW2**,17/07/07-T.744

¹⁸⁹ **Hamad**,07/09/07-T.28

¹⁹⁰ **Fusko**,23/07/07-T.1144;**Delalic**,27/08/07-T.1762-1763; **HalimHusic**,11/03/08-T.7306-7307.

¹⁹¹ **Awad**,08/02/08-T.29.

¹⁹² **PW9**,15/11/07-T.5628,T.5635-5636;**Awad**,09/02/08-T.165-166.

¹⁹³ **Negovetic**,15/01/08-T.6815-6818;

See also **E990**-Excerpt from diary of Ivan Negovetic,23/06/93

¹⁹⁴ **E1370**-Alihodzic 92bis statement,29/02/08,para.14.

¹⁹⁵ **E287**-PWO Milinfosum No.45,13/06/93

See also **Duncan**,30/08/07-T.1940-1941.

referred to E145,¹⁹⁶ a report concerning residential buildings being set alight and stated that the perpetrators were members of Abu Hamza's group from Guca Gora.¹⁹⁷

90. The group from Gluha Bukovica was part of Abu Zubair's group.¹⁹⁸

(c) Zepce municipality

91. See Section V, C(2)

(d) Abu Zubeir's group

92. See Section V, C(2)(b)

8. Mujahedin in Mehurici Elementary School

93. The Prosecution claims that during the second half of 1992, a number of the mujahedin were based in the upper floor of the Mehurici Elementary School while TO units, and later the 1st Battalion of 306MB, were located on the ground floor of the school.¹⁹⁹

94. Evidence was heard that "Arabs" came to the school at the end of May or June 1992.²⁰⁰ TO Commander Ribo explained that the Zihnija Aganovic, the Patriotic League Regional Commander and member of Travnik District Presidency, arranged for the mujahedin to be billeted at the school.²⁰¹ TO did not have any influence on the decision to billet them.²⁰² The principal of the school was ordered to provide accommodation for the mujahedin in the school.²⁰³

¹⁹⁶ E145-306MB Official note, 26/08/93.

¹⁹⁷ HalimHusic, 11/03/08-T.7313: "Q. I would like to ask you the following: Did you find out, you and the brigade, did you find out who were the perpetrators of this incident that is described in this document? A. Yes. It's this group called "Abu Hamza's group." The only thing we knew was that they were living in Guca Gora."

¹⁹⁸ SabanAlic, 16/07/07-T.677.

¹⁹⁹ PPTB, para. 12.4.

²⁰⁰ Husic, 12/03/08, T.7437; Begovic, 11/07/07, T.386.

²⁰¹ Ribo, 05/03/08, T.7012.

²⁰² Ribo, 05/03/08-T.7013.

²⁰³ HalimHusic, 11/03/08-T.7298.

95.Hajrudin Hubo explained that each municipality had its own Municipal Defence Secretariat,²⁰⁴ which was not part of the ARBiH, but part of the civilian government administration.²⁰⁵ This was confirmed by Ribo.²⁰⁶

96.The mujahedin moved out of the school in late 1992 and they moved to Poljanice, Savica kuce.²⁰⁷ In this brief the Defence will hereinafter refer to this mujahedin group as the “Poljanice group”. During the summer of 1993, the leader of this group was Abu Haris.²⁰⁸ The other leaders were Wahiudin and Muatez.²⁰⁹ The Poljanice group left the school around end 1992/start 1993, because they started to clash with 1st battalion of 306MB.²¹⁰

97.Ivan Negovetic claimed that when he went to the school with the joint commission in June 1993 there were mujahedin stationed there. He explained how on arrival in Mehurici the UNPROFOR vehicle he was in was surrounded by hostile mujahedin who threatened to attack.²¹¹ His claim was in stark contrast to his diary (E990) made at that time where he stated that as soon as they left the vehicles, they were surrounded by mujahedin, ie he didn't see them for the first time in the school.²¹² He also quoted what he was told by the local 306MB commander, who said the mujahedin were located in the surrounding of Mehuric, not the school.²¹³ It seems the witness assumed that the mujahedin were stationed there on the basis seeing come out of the school with weapons.²¹⁴

²⁰⁴ **Hubo**,14/03/08-T.7590-7591.

²⁰⁵ **Hubo**,15/03/08-T.7688.

²⁰⁶ **Ribo**,05/03/08-T.7011.

See also **E1310**-Decree on the criteria and standards for the assignment of citizens and material resources to the armed forces and for other defence needs,26/10/92

²⁰⁷ **Fusko**,23/07/07-T.1144.

²⁰⁸ **PW2**,17/07/07-T.751.

²⁰⁹ **PW2**,17/07/07-T.751-752.

²¹⁰ **HalimHusic**,12/03/08-T.7437.

²¹¹ **Negovetic**,15/01/08-T.6815-6816.

²¹² **E990**:“*We arrived in Mehurici after almost an hour, an hour of uncomfortable drive. As soon as we left the vehicles and entered the school accommodating Croat refugees, a commotion began. A group of Mujahedin who suddenly appeared out of nowhere surrounded the UNPROFOR armed personnel carriers and pointed the anti-armour weapons.*”

²¹³ **E990**.

See also **E1370**,paras.17and18.

²¹⁴ **Negovetic**,15/01/08-T.6831.

98. Thus, the decision to billet the mujahedin in the same building as the local TO Staff initially was not taken by the TO and ARBiH, and they had no ability to influence that decision. This is not a relevant indicator of control.

D. Effective Control over the Mujahedin Pre-Formation of EMD

1. Prosecution's pleadings are confused

99. The Prosecution's pleadings in the Indictment concerning effective control over the mujahedin during 1992 and 1993 are confused. Also, the Prosecution's characterization of foreign fighters who came to Bosnia is incorrect.

100. Initially, the Prosecution portrays all foreign fighters of Islamic beliefs as one cohesive, homogenous group. Paragraph 12 of the Indictment provides that "Mujahedin or Holy Warriors began arriving in Bosnia and Herzegovina sometime during the middle of 1992". It then refers to the "Mujahedin" as a collective entity and asserts that they were prepared to conduct a "Jihad or Holy War". Next, at paragraph 13 the indictment alleges that at some stage after 19 November 1992 the "Mujahedin" was incorporated and subordinated into the 7MB, and other units of the 3Corps. Thus the Prosecution seems to suggest that this collective entity became de jure integrated into the 7MB and other 3rd Corps units. Finally, in paragraph 24, which deals with the events at Maline on 8 June 1993, it talks of an attack by units of 3Corps "including the 306th Mountain Brigade, 7th Muslim Brigade, and the Mujahedin".

101. Thus, it appears that the Prosecutor suggests that from November 1992 these foreign fighters became de jure incorporated and subordinated into different units of the 3rd Corps, but then seems to suggest that on 8 June 1993 there was only some sort of de facto control.

2.The Law

102. Whether the allegation is de facto or de jure control, the Prosecution must prove that the Accused exercised effective control over the alleged perpetrators of crimes. The *Celebici* Appeals Chamber held that the “doctrine of superior responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates”, in the “sense of having the material ability to prevent and punish the commission of” offences.²¹⁵

103. It must be shown that the Accused (the superior) exercised effective control over the persons committing the underlying crimes (the subordinate).²¹⁶ The existence of a superior-subordinate relationship demands the existence of a hierarchical relationship, direct or indirect, between the Accused and the subordinate who is alleged to have committed or about to commit a crime within the Tribunal’s jurisdiction.²¹⁷

104. The *Blaskic* Appeal Judgment discussed in detail “indicators of effective control”, holding that they are a matter of evidence rather than substantive law.²¹⁸ It follows that, rather than there being an exhaustive list of indicators showing whether a relationship of subordination existed, the Trial Chamber should look at all the evidence presented.²¹⁹ Also, the Appeals Chamber held that a Trial Chamber has “to consider whether the evidence on the record contained indicators establishing beyond reasonable doubt that [the accused] was the superior of the alleged perpetrators and had effective control over them”.²²⁰ Thus, it is *mandatory* to assess whether indicators exist.

105. Some of the indicators which the *Blaskic* Appeal Chamber considered to be of importance are of relevance to the present case. The indicators of effective control included:

²¹⁵ See *Celebici* AJ, paras.197-198, referring to *Celebici* TJ, paras.337-378; *Blaskic* AJ, para.256.

²¹⁶ See *Blaskic* AJ, para.67; *Celebici* AJ, para.378.

²¹⁷ See *Halilovic* AJ, para.59.

²¹⁸ See *Blaskic* AJ, para.69; *Aleksovski* AJ, paras.73-74; *Celebici* AJ, para.206.

²¹⁹ See *Halilovic* AJ, para.66

²²⁰ See *Halilovic* AJ, para.174

- Evidence showing that the accused was not only able to issue orders but that those orders were actually followed.²²¹
- Evidence showing that the perpetrators were not under the control of the army and acted towards their own criminal agenda.²²²
- Evidence showing the perpetrators enjoyed the protection of and acted on the orders of others.²²³
- Evidence showing the perpetrators were not de facto commanded by the accused.²²⁴
- Evidence that the perpetrators were attached to a different command chain than that of the accused.²²⁵
- Evidence that the perpetrators only accepted the authority of another person.²²⁶
- Evidence that the perpetrators did not have any obligations towards the accused.²²⁷
- Evidence showing who or what the perpetrators reported to.²²⁸

106. All of these indicators are all relevant to this case. Further, the Military Expert, Paul Cornish, gave evidence about the six elements which in his opinion were crucial for control to be exercised,²²⁹ which included communications, information and reporting, and logistics. These elements are important indicators for this case. He testified that the absence of any one of six elements would lead to failure of control.²³⁰

²²¹ See *Blaskic* AJ, para.69, confirmed in *Halilovic* AJ, para.207.

²²² See *Blaskic* AJ, para.387.

²²³ See *Blaskic* AJ, para.390.

²²⁴ See *Blaskic* AJ, para.393.

²²⁵ See *Blaskic* AJ, para.394.

²²⁶ See *Blaskic* AJ, para.395.

²²⁷ See *Blaskic* AJ, para.396.

²²⁸ See *Blaskic* AJ, para.398.

²²⁹ **E1383**-Expert Report by Defence military expert Cornish, 06/02/08, p.14: “For modern armed forces, military control involves the following: Command Infrastructure; Planning; Communications and Liaison; Information, Intelligence and Reporting; Logistics and Supply; and Discipline.”

²³⁰ **E1383**, para.52: “The absence or inadequacy of any one of these six key functions would lead to failure of military control. Equally, the inability of a military commander to integrate all six functions would also be likely to result in failure.”

See also **Cornish**, 15/04/08-T.8577.

3. None of the mujahedin groups were under control

107. In Central Bosnia during 1992 and 1993 there were many different mujahedin groups. The evidence shows that none of them, including the Poljanice group, was under de jure or de facto effective control of any part of the ARBiH, let alone the Accused. The Prosecution called several former local mujahedin members, who clearly were in a position to know the real situation. They confirmed that none of the groups were under the control of the ARBiH.

108. PW2 testified that the mujahedin groups were independent.²³¹ Saban Alic stated they could not be controlled by the Army.²³²

109. [REDACTED]²³³ In his testimony he confirmed that they were not part of the ARBiH.²³⁴

110. Jovan Divjak, also Deputy Main Staff Commander, explained that it wasn't until a meeting at the SVK on 18 June 1993 that he first heard about the existence of the mujahedin. At the meeting it was specifically discussed that they "*should have been made part of the regular army, with all its regulations and rules*".²³⁵

111. Documentary evidence showed that from the beginning the mujahedin intended not to work with the ARBiH. In a Pakistani magazine interview with Abdel Aziz in January 1993, Aziz was recorded as saying that "*to fight alongside with the official military forces against the Kuffar was not fighting in the way of Allah*".²³⁶

²³¹ PW2, 19/07/07-T.875-876; PW2, 17/07/07-T.745-747.

²³² Saban Alic, 16/07/07-T.678-679: "*Q. Those other groups, do you know whether anyone controlled them? A. No. They could not be controlled. As I explained just a while ago, those who were more persistent, who were willing to cause worse incidents, they ruled. Nobody could fight them. Nobody could even attempt to put them under any control. Nobody dared. Q. When you say "nobody," I take it that you refer to the units of the BH Army? A. Yes, yes. Definitely. They wouldn't even dare to look at them, let alone anything else.*"

²³³ E56-The Sunday Times article "Terror trail of the Mujahedin" by Hogg, 27/06/93

[REDACTED] E169(Under seal) [REDACTED]

²³⁴ PW3, 22/08/07-T.1562.

²³⁵ Divjak, 11/09/07-T.2182.

²³⁶ E61-Article from Ad-Dawah Magazine, "The Jihad in Bosnia", p2
See also Hogg, 10/07/07-T.364.

112. Thus, in general terms, the evidence shows that no mujahedin groups were under ARBiH control.

4. Support of the Mujahedin within BiH

113. The mujahedin in BiH enjoyed support of local politicians and religious leaders.²³⁷ One such leader was Zihnija Aganovic, the commander of the Regional Staff of the Patriotic League in the Travnik region and President of the Travnik district. He was very influential in the SDA party and one of the persons who supported the mujahedin.²³⁸ Another person close to the mujahedin was Midhat Puric. Witness Halim Husic explained that, in 1992, when he returned to his home in Mehurici he came across the unit of Midhat Puric, known as the Zengas, which went on to join the Patriotic League.²³⁹

5. Effective Control over Poljanice mujahedin

114. Turning specifically to the Poljanice group, which the Prosecution alleges the perpetrators of the Bikosi killings were members of,²⁴⁰ the evidence shows beyond a shadow of doubt that they were not under the effective control of any part of the Army, whether de facto or de jure. The Prosecution claims that during June 1993 the Poljanice mujahedin were deployed in combat actions with other ARBiH units from the OG-Bosanska Krajina and took orders from Mehmed Alagic, the OG-Bosanska Krajina Commander.²⁴¹ To suggest control the Prosecution relies on the evidence of Hogg, Ali Hamad and Duncan.

²³⁷ PW11,29/11/07-T.6343-6347.

Jusic,19/09/07-T.2684:” I know, however, that they enjoyed favours of the religious people there, including clerics, Islamic clerics in Travnik, in Maglaj, as well as in Zenica.”

PW4,31/10/07-T.4890;**PW11**,30/11/07-T.6508.

²³⁸ **Ribo**,04/03/08-T.6989.

See also **E118**-Official record made by Zenica District Defence Staff, 21/07/92, p.2

E136-306MB Report on the formation of the 8th Muslim Brigade,13/05/93, p.1 and 2:”People who have already shown themselves to be materialist who watch out for their own interests alone are also involved in these activities. One of them is Mr. Zihnija Aganovic, the President of Travnik district, who is dishing all this up behind the scenes.”

Ribo,04/03/08-T.6987-6991.

²³⁹ **HalimHusic**,11/03/08-T.7285,T.7287;**Ribo**,05/03/08-T.7003

²⁴⁰ **PPTB**,para.24.11.

²⁴¹ **PPTB**,para.13.9.

115. Andrew Hogg confirmed he knew little or nothing about the structure of ARBiH.²⁴² Moreover, Hogg was of the view that the mujahedin that he met in Mehurici were not under Army control. He wrote in his Sunday Times article of 27 June 1993: "***More than 200 Mujahedin, who have been fighting in Bosnia for the past year, now operate as lawless gangs which the Bosnian Command is powerless to control.***"²⁴³ His opinion was gained from speaking to PW3.²⁴⁴ He agreed that they had no respect for the Bosnian authorities.²⁴⁵

116. Ali Hamad was a Bahraini mujahedin who fought in Bosnia. Out of the entire case, he was the only mujahedin witness who suggested that the Poljanice group was under the control of the ARBiH. However, rather than demonstrating the group was under ARBiH control, his testimony made it crystal clear that there was no effective control whatsoever.

117. Ali Hamad testified that he became a mujahedin in Afghanistan, under the command of Al-Qaeda.²⁴⁶ At one stage Ali Hamad was a member of the mujahedin group which included Abdel Aziz and Wahiudeen.²⁴⁷ The evidence led by the Prosecution to suggest Army control related to purported meetings with Mehmed Alagic. Ali Hamad said that in the first half of 1993 he met Alagic, who introduced himself as a general and commander of 7Corps.²⁴⁸ However, Ali Hamad was obviously wrong when testified about this; the order appointing Alagic to the post of Commander of 7Corps was not issued until February 1994.²⁴⁹ Also, military ranks were not introduced into the ARBiH until December 1993, so it would have been impossible for him to have been a general in the first half of 1993.²⁵⁰ There was no corroboratory evidence to confirm Ali Hamad's account of meeting with Alagic, and there is no objective way of confirming his hearsay evidence.

²⁴² Hogg, 10/07/07-T.358-360.

²⁴³ E56.

²⁴⁴ Hogg, 10/07/07-T.367-368.

²⁴⁵ Hogg, 10/07/07, T.368.

²⁴⁶ Hamad, 07/09/07-T.4.

²⁴⁷ Hamad, 07/09/07-T.15, T.24.

²⁴⁸ Hamad, 07/09/07-T.30.

²⁴⁹ E331-RBiH Presidency Order appointing, inter alia, Alagic as 7Corps Commander, 26/02/94

²⁵⁰ E1403-Tape recording of the 230th Session of the RBiH Presidency, 14/12/93, p.3

118. Moreover, Ali Hamad's account of what happened at Guca Gora during June 1993 shows without doubt that the mujahedin were not under Alagic's control. Ali Hamad explained that at the church was an Algerian called Ebu El Sadik, who was one of the persons "leading the attack", who was quarrelling with Mehmed Alagic. According to Ali Hamad, Alagic saw that the mujahedin intended to damage the church, and tried to prohibit this.²⁵¹ Rather than heeding Alagic's order, Sadik retorted angrily and "*it became so serious that El Sadik almost killed the general*".²⁵² Sadik told Alagic he was in command.²⁵³ Ali Hamad confirmed that Sadik stepped up to Alagic and pushed him with his hands, saying, "*Now get the hell out of here as far as you can -- as far as you can before I ... rip your head off*".²⁵⁴

119. Alisdair Duncan was the BRITBAT commander in Central Bosnia for six months, from April 1993. His testimony was extremely confusing, speculative and he failed to provide any facts to support his comments. In many instances, upon challenge, he retracted his initial opinion. As such, his testimony lacked credibility and reliability and no weight should be attached to it. Initially, he claimed the mujahedin consisted of local mujahedin and outside mujahedin who joined almost as mercenaries. He claimed they later formed into units and were used with great effect by the ABiH. He claimed that the mujahedin would have been under the command of 3Corps or even higher command; however later retracted this saying "*I'm not sure if they had been used by the 3rd Corps*".²⁵⁵

²⁵¹ Hamad,07/09/07-T.64.

²⁵² Hamad,07/09/07-T.65.

²⁵³ Hamad,08/09/07-T.119-120, referring to E332-Excerpt from book of Ali Hamad,31/12/04

²⁵⁴ Hamad,08/09/07-T.120.

See also Hamad,08/09/07-T.121

E332: "The general [Alagic] said: The planting of explosives must stop immediately. /?A unit/ will be sent to protect the church." Abu es-Sidik laughed and then told him with an indescribable lack of courtesy, "We'll stop it, boss, but first you have to suck my d...(1)" Then he became serious and continued, "Who do you think you are to give us orders? We'll do what Allah Dz.S. /praised be His supreme being/ ordered us to do (2). We won't take any orders from anyone but Him. We won't be afraid of anyone, not even of you. Leave us at once."

Hamad,08/09/07-T.119-121

²⁵⁵ Duncan,30/08/07-T.1949.

120. Duncan initially claimed to have certainly seen at least two or three foreign mujahedin.²⁵⁶ However his credibility crumbled when his prior testimony in the *Hadzihasanovic* case was put to him in which he had said about the mujahedin, “*I’m not sure they existed or were used*”. Incredibly Duncan’s response was that it didn’t matter whether they existed.²⁵⁷ He accepted “*I didn’t know they were there because I didn’t see them*”.²⁵⁸

121. Duncan’s wholly speculative remarks about the mujahedin were shown to be worthless, as he eventually accepted that, apart from not knowing whether or not the mujahedin existed, he was associating the mujahedin and 7MB as being one and the same.²⁵⁹ This was despite that fact that he had previously during the Kordic case, which he accepted was still the case, that he did not know *whether the 7MB existed*.²⁶⁰

(a) Under control of external bodies

122. Ali Hamad made it clear that he and the leadership of the group was subject to the outside control of the terrorist organization, Al-Qaeda. He said Al-Qaeda organized the arrival of mujahedin in BiH.²⁶¹ It exercised control over him, determining that he should go to fight in Bosnia,²⁶² and deciding which unit he would join and what he would do.²⁶³ Rather than the ARBiH appointing the leaders of the group, Wahideen El Misri actually appointed him as unit commander.²⁶⁴

(b) Reporting Abroad

123. To whom or what a group reports to is clearly indicative of control. A unit that reports outside of the chain of command is indicative that it is not part of the command

²⁵⁶ **Duncan**,30/08/07-T.1992.

²⁵⁷ **Duncan**,30/08/07-T.1996

²⁵⁸ **Duncan**,30/08/07-T.1997.

²⁵⁹ **Duncan**,31/08/07-T.2059.

²⁶⁰ **Duncan**,30/08/07-T.2007-2008.

²⁶¹ **Hamad**,08/09/07-T.140.

²⁶² **Hamad**,07/09/07-T.4-5.

²⁶³ **Hamad**,08/09/07-T.94.

²⁶⁴ **Hamad**,08/09/07-T.95.

E328-Excerpt from book of Ali Hamad,31/12/94

chain.²⁶⁵ Ali Hamad testified that the leaders of the Poljanice mujahedin group, such as Wahideen, reported to his bosses in Al-Qaeda.²⁶⁶ Also, the “Shura” of the group (the “administration” or body of senior members) reported about its members to their Al-Qaeda superiors abroad.²⁶⁷

124. In contrast Ali Hamad did not suggest that the mujahedin ever reported information to the ARBiH. When asked whether, subsequent to attacks, he would report back to Wahideen or the ARBiH, he made it clear he only reported to Wahideen.²⁶⁸ In the absence of a subordinate reporting information about combat activities and a host of other matters to a superior there can be no control.²⁶⁹

(c) Participation in combat

125. A crucial indicator of effective control is whether the Accused could issue orders and that those orders were actually followed. The evidence shows that no part of the ARBiH could order the group to participate in combat actions, let alone the Accused.

126. Rather than a relationship of subordination whereby a superior command in the ARBiH ordered the group to participate in combat action, Ali Hamad described how a process of discussion and agreement would take place with the ARBiH before the mujahedin group would approve participation.²⁷⁰ Crucially, he confirmed that he never once took orders from the ARBiH and described the relationship as one of “cooperation”.²⁷¹ Ali Hamad confirmed that decisions as to whether the mujahedin would participate in combat was taken by the Wahideen alone:

²⁶⁵ Cornish, 15/04/08-T.8546.

²⁶⁶ Hamad, 08/09/07-T.102-103, T.141.

²⁶⁷ Hamad, 08/09/07-T.102-103:” Q. So it would be fair to say that the Mujahedin administration wrote reports about Mujahedin activities in Bosnia and their members to bosses outside Bosnia?
A. Correct.”

See also E329-Excerpt from book of Ali Hamad, 31/12/94, p.2.

²⁶⁸ Hamad, 08/09/07-T.163.

²⁶⁹ Cornish, 15/04/08-T.8544-8558; T.8566.

²⁷⁰ Hamad, 07/09/07-T.23.

²⁷¹ Hamad, 08/09/07-T.109-110:”Q. Witness, in actual fact during all the time that you spent on the position of the commander of the unit in Bijelo Bucje, you never received a single order from army of Bosnia and Herzegovina; is that correct? I'm talking about orders now. You personally never received an order from BH army?

A. Not from them. There was only cooperation. There were no orders.

Q. Thank you. Specifically, you never received any written order?

“Q.In other words, the boss of the Mujahedin would evaluate the circumstances related to actions and then himself made the decision about the participation of Mujahedins in these actions.

A.That is correct.

Q. He would accept or not accept that they would participate in battles; is that correct?

A. That is correct.²⁷²

127.During combat actions in the first half of 1993 (at Visegrad Elevation, Visoko), the commanders of the ARBiH could not have given orders to the mujahedin present.²⁷³

128.Ali Hamad completely demolished the Prosecution’s allegation of subordination to the ARBiH, stating that whatever battle the mujahedin agreed to take part in, they set a precondition to the Bosnian commanders that during the attack they would be in command.²⁷⁴ The idea that a subordinate unit could command and dictate to its superior what to do is anathema to the concept of a chain of command. The mujahedin’s independence was further illustrated by his explanation that the group would decide what it would do in an action and, if it wished to carry on further than agreed, it would do so.²⁷⁵

129.Several local mujahedin members of the Poljanice group also confirmed the group was not under Army control.²⁷⁶

(d) ARBiH had no means to punish

130.The evidence shows that the ARBiH had no means to prevent crime nor punish members of the mujahedin group, which is critical to a finding that there was the “material ability to prevent or punish”. There was no way for the ARBiH to remove mujahedin commanders of the group from their positions. Ali Hamad was unequivocal when he explained that only the mujahedin leadership had the power to punish him and

A.No.”

²⁷² Hamad,08/09/07-T.109.

²⁷³ Hamad,08/09/07-T.111-112,T.128.

²⁷⁴ Hamad,08/09/07-T.138.

²⁷⁵ Hamad,08/09/07-T.162-163.

²⁷⁶ SabanAlic,16/07/07-T.685-686;PW2,19/07/07-T.876-878;PW2,19/07/07-T.877-878.

other mujahedin. During 1993 Abu Haris and Wahideen ordered Ali Hamad to be removed from his role as commander of the Bijelo Bucje.²⁷⁷ He explained how the Mujahedin had their own military court in Bosnia,²⁷⁸ and that Al-Qaeda ordered the group to arrest him.²⁷⁹ He was tried by the group for “rejecting orders and withdrawing from al-Qaeda”,²⁸⁰ and was sentenced to 20 days detention.²⁸¹

131. Ali Hamad confirmed that in 1993 the ARBiH military police had no possibility to take measures against the mujahedin which had committed crimes.²⁸² When asked whether action was taken by the ARBiH to discipline or prosecute members of the mujahedin, Ali Hamad replied, “*To the best of my knowledge this did not happen once during the war or after the war*”.²⁸³

(e) Poljanice group received logistic support and money from outside

132. Dr. Cornish gave evidence that “*Logistics and supply[...] can be a key indicator of the sophistication, probable effectiveness and integration of any military organisation. Where operations and logistics do not run closely in parallel, from the top to the bottom of the chain of command, it would be impossible for a commander to be confident that his operational plan could be both prepared and executed meaningfully*”.²⁸⁴

133. There was no evidence that the mujahedin group received any form of logistic support from the ARBiH nor that it reported to the Army about such issues. Its independence from the ARBiH was further shown by its access to funding, weapons and logistical support from abroad. Ali Hamad said that “*[t]he commander of the mujahedin when he arrived in Travnik was Abdel Aziz, who had arrived with some \$10m to*

²⁷⁷ Hamad, 08/09/07-T.168-169.

²⁷⁸ Hamad, 08/09/07-T.99.

²⁷⁹ Hamad, 08/09/07-T.98.

²⁸⁰ Hamad, 08/09/07-T.170.

²⁸¹ Hamad, 08/09/07-T.170.

²⁸² Hamad, 08/09/07-T.175.

²⁸³ Hamad, 08/09/07-T.171.

²⁸⁴ E1383, para.39.

*finance the mujahedin.*²⁸⁵ He explained how the mujahedin received funds from several humanitarian organizations, eg from Kuwait, Third World, High Saudi Committee.²⁸⁶ [REDACTED]²⁸⁷ [REDACTED]²⁸⁸ Ali Hamad stated that the mujahedin purchased weapons for themselves with their own money.²⁸⁹ They had new equipment and vehicles.²⁹⁰

134. As to the Prosecution claim that, while based at Poljanice, local and foreign mujahedin received monthly salaries from the ARBiH,²⁹¹ the Prosecution failed to lead any evidence. Ali Hamad explained that the mujahedin did not receive any money or salaries from the ARBiH; to the contrary in fact the mujahedin gave money to the army.²⁹² Thus, on a key indicator of control there was no evidence to show that the group depended on the Army for logistical support.

(f) Fact it became EMD

135. One obvious fact which shows the Poljanice mujahedin were not under ARBiH control in June 1993 is that the EMD was formed on 13 August 1993.²⁹³ It must follow that the mujahedin were not under control in June 1993 or else there would be no need to form it.

136. Thus, the evidence overwhelmingly shows that none of the indicators of effective control show that the Poljanice group was in a subordinate relationship with the ARBiH, let alone with the Accused.

6. El Dzihad

²⁸⁵ Hamad, 07/09/07-T.15.

²⁸⁶ Hamad, 08/09/07-T.132-134.

See also E337-Excerpt from book of Ali Hamad, 31/12/04

²⁸⁷ PW3, 24/07/07-T.1238.

²⁸⁸ [REDACTED]

²⁸⁹ Hamad, 08/09/07-T.137.

See also E339-SDB Zenica Official record on intercepted conversations mentioning purchasing of weapons, 23/10/05

²⁹⁰ Hogg, 10/07/07-T.320.

²⁹¹ PPTB, para. 13.11.

²⁹² Hamad, 08/09/07-T.131.

²⁹³ E273-Order for the formation of EMD, 13/08/93

137. The Prosecution claims that prior to the establishment of the EMD, the Poljanice mujahedin called themselves El Dzihad or Brigada Dzihad unit.²⁹⁴ In relation to E88,²⁹⁵ Halim Husic stated that the group referred to themselves by different names “Jihad, Mujahid, Mujahedin”; however he never received any confirmation from 3Corps that any unit called “El Jihad” had been established.²⁹⁶ He also said that El Jihad wasn’t under anyone’s command.²⁹⁷

7. Relationship with the 306MB

138. Although the Prosecution’s pleadings are wholly unclear as to whether it is alleging that mujahedin were either de facto or de jure subordinate to the 306MB, the Defence will address this issue. The evidence shows that there was no link whatsoever, let alone a relationship that could amount to effective control.

139. The Prosecution called members of the 306MB who confirmed that the Poljanice group was not under control of the 306MB. Fusko said “*At that moment, there was no way to prevent any crimes. The Mujahedin who were in the area were beyond anybody’s control*”.²⁹⁸ Delalic stated that in the period when the crimes were committed in Bikosi, “*the Mujahedin unit, [...] was not under the control of the Army of the Republic of Bosnia and Herzegovina*”.²⁹⁹

140. Negovetic, a member of the Main Staff, was in an UNPROFOR vehicle in Mehurici on 23 June 1993, not long after the killings, when they were surrounded by mujahedin with weapons, “ready to use”.³⁰⁰ In his statement he described that “*It looked to me that*

²⁹⁴ PPTB, para. 13.10

²⁹⁵ E88-306MB Information, 30/07/93

²⁹⁶ HalimHusic, 11/03/08-T.7312.

²⁹⁷ HalimHusic, 13/03/08-T.7534.

²⁹⁸ Fusko, 23/07/07-T.1074.

Fusko, 23/07/07-T.1075: “*Nobody could control them in whatever they were doing, in whatever tasks they had, if we may call those tasks. They did of their own initiative without any previous agreements with anybody. I don’t know, to this very day, who was it who had sent them to that area of responsibility*”.

Awad, 10/02/08-T.190, T.269.

²⁹⁹ Delalic, 27/08/07-T.1715.

³⁰⁰ Negovetic, 15/01/08-T.6815.

See also E977-Negovetic 92bis statement, 27/11/07, para. 33

the foreign fighters acted on their own".³⁰¹ In his group were members of 306MB, OG-Zapad, and the Main Staff and yet the witness confirmed that none of them could command the mujahedin.³⁰² With Negovetic was Fadil Alihodzic, a member of the Main Staff. He said: *"The behaviour of the mujahedin fighters was aggressive and not according to military rules. The impression I gained was that they were out of control"*.³⁰³

141. The Poljanice mujahedin's independence from the Army was also confirmed by local mujahedin and former 306MB members Sinan Begovic and Saban Alic. They stated that after they joined the Poljanice group they had no contact with the 306MB.³⁰⁴

142. Apart from being out of control, former 306MB officer Halim Husic confirmed that the mujahedin did not fight alongside the brigade during combat.³⁰⁵ He stated that none of the mujahedin groups, including the Poljanice group, fought with the 306MB and he described the relations as "hostile".³⁰⁶

143. Many documents from the 306MB over the time period of May to August 1993, made contemporaneously, show beyond doubt that the Poljanice mujahedin were not under control. E254³⁰⁷ states how: *"Soldiers of other units that have 'gotten out of line' of their superior commands [...] mujahedin have committed arbitrary acts."* E997³⁰⁸ describes that *"[t]he presence of a large number of foreigners, mostly Arabs, in Mehuric is extremely problematical"*. E135³⁰⁹ states: *"We are having a lot of problems*

³⁰¹ E977, para. 28

³⁰² Negovetic, 15/01/08-T.6818.

³⁰³ E1370, para. 16.

³⁰⁴ Begovic, 13/07/07-T.519-520; SabanAlic, 16/07/07-T.681.

³⁰⁵ HalimHusic, 11/03/08-T.7324: *Q. Mr. Husic, I would like to ask you this: Did the Mujahedin fight in 1992 and in the spring of 1993 with the 306th Brigade, with an objective or without an objective?*

A. No, never. We were never together in any single action."

See also Delalic, 27/08/07-T.1727-1728, T.1758

³⁰⁶ HalimHusic, 11/03/08-T.7313-7314.

HalimHusic, 11/03/08-T.7324-7326, referring to E291-PWO Milinfosum No.100,07/08/93

³⁰⁷ E254-306MB Collective operations report for the period from 15 April to 5 May 1993 with proposals, 05/05/93, p.2

³⁰⁸ E997-Information about factors influencing combat morale in the zone of responsibility and units of the 306MB, 06/05/93, p.3

³⁰⁹ E135-3Corps SVB Submission of the daily report, 10/05/93, p.2 and 3.

regarding the undefined status of Muslim forces from Mehuric.” E90³¹⁰ refers to “*a group of mujahedin who are not under the control of our brigade and are billeted in Mehuric*”. It also noted that the mujahedin had been led by Ramo Durmis. Fusko confirmed that Sakib Brkic, the local Bosnian member of the group, who had been killed, was a minor and had not been a member of 306MB.³¹¹ Begovic, who was a member of the 306MB in the first half of 1993, said that the Mujahedin didn’t request his permission to reconnoiter the terrain.³¹² E89³¹³ refers to the need to “*resolve the problem of the El Dzihad formation in Mehurici village*”.

(a)Criminal reports could not be issued

144.Proof that the ARBiH lacked the material ability to prevent or punish crimes was demonstrated showed beyond doubt by the testimonies of Prosecution witnesses who confirmed that there was no possibility of the ARBiH issuing criminal reports against the mujahedin. Delalic stated in relation to the Bikosi killings that the 306MB could not issue criminal reports against the perpetrators, ie the mujahedin.³¹⁴

145.As to PW3, unlike the criminal investigation he ordered into the allegations of crimes carried out by ARBiH soldiers at Ovnak and Susanj, he did not order steps against the mujahedin when he heard about the allegations of killing. This demonstrates that he did not believe he had authority to take steps against them.

146.Thus, in contrast to the mujahedins’ superiors abroad and the leadership of the Poljanice mujahedin, there was not one shred of evidence that the ARBiH possessed the material ability to take steps to prevent or punish crimes committed by mujahedin. The

See also **Fusko**,23/07/07-T.1138-1139.

³¹⁰ **E90**-306MB Official note,28/05/93

³¹¹ **Fusko**,23/07/07-T.1157;**Delalic**,27/08/07-T.1756-1757; **HalimHusic**,11/03/08-T.7345-7346.

³¹² **Begovic**,13/07/07-T.519-520.

³¹³ **E89**-3Corps Report on the inspection of the 306MB,02/08/93,p.2

³¹⁴ **Delalic**,27/08/07-T.1716:” *Q.Until then, was your Service ever investigating again or reopening an investigation into the Bikosi events from June 1993?*

A.No, because we believed that we had no authority over the perpetrators of this act.

See also **Fusko**,24/07/07-T.1083-1084.

evidence shows that the Poljanice mujahedin were neither de jure nor de facto subordinate to the 306MB.

8. Allegations of mujahedin in 7MB

147. The Indictment alleges that after its formation on 19 November 1992, the 7MB incorporated and subordinated “Mujahedin” within its structure and were “involved in combat activities” of 3Corps units.³¹⁵ The Prosecution further claims that some of the mujahedin who had been in MOS joined the 7MB in Travnik or Zenica or were subordinated to other 3Corps units.³¹⁶ The Prosecution seems to suggest that foreign mujahedin were de jure subordinated to the 7MB.

148. As to these claims, the Defence first notes that the mujahedin were never part of MOS (See Section III, C(4)(a)). Furthermore, the Prosecution has failed to prove that mujahedin joined the 7MB in Travnik or Zenica, or were subordinated on a de jure or de facto basis.

(a) Mujahedin were not in 7MB generally

149. The Defence will first deal with the general allegation that mujahedin were incorporated and subordinated within the 7MB. In making its claim, the Prosecution relied on a number of documents. E290³¹⁷ suggested that there were foreigners in 7MB. The Trial Chamber should attach no weight to this document as its source was Franjo Nacic, an HVO commander. It says he “*claimed*” that 7MB was comprised of three battalions; it is clear that this Nacic’s opinion, and no explanation is given for its basis. Evidence has shown how the HVO used propaganda to serve its own purposes (See Section IV, E(2)(v)). PW2 explained how the HVO would always mix the concepts of 7MB, mujahedin and Muslim Forces.³¹⁸ Moreover, witnesses confirmed that the

³¹⁵ **Indictment**, para. 13.

³¹⁶ **PPTB**, para. 13.1.

³¹⁷ **E290-PWO Milinfosum**, 27/06/93

³¹⁸ **PW2**, 19/07/07-T.864-865.

information in the report was wrong.³¹⁹ Alistair Duncan also accepted that information and opinions in Milinfosums had to be treated with caution.³²⁰

150. Concerning E1126,³²¹ Awad confirmed that the document does not in any way show that the named men were members of the 7MB.³²²

151. The Prosecution also relies on E995,³²³ E996,³²⁴ E320.³²⁵ As to E995, it can be seen that the document bears no name and the signature is illegible. About this document, Adilovic said that it was “invalid”.³²⁶ About E996, Adilovic confirmed that again the information was incorrect.³²⁷ Moreover, it appears from the document that the source of the information is the HVO, which was not a reliable source.

152. E108 is a 7MB report referring to “around 60 Arabs and Turks”.³²⁸ It is clear from the document that the Commander is not suggesting that they are members of 7MB. About this document Adilovic said that there were not 60 Arabs and Turks in 1/7MB and they didn’t fight alongside 1/7MB.³²⁹ Adilovic justified his statement that there were no Arabs in 7MB from the occasions when all the 7MB battalions conducted combat together and when he met with the other 7MD unit commanders.³³⁰

³¹⁹ **Adilovic**,07/03/08-T.7235-7236:” *Was the commander of the 1st Battalion of the 7th Muslim Brigade Asim Koricic in June 1993? A. Asim Koricic was never the commander of that battalion or any of the battalions of the 7th Muslim.*”

³²⁰ **Duncan**,30/08/07-T.1928-1929.

Duncan,30/08/07-T.2011: “*A[...]/the bit about uncontrollable elements was a comment, and I thought that we discussed earlier that comments should be looked at with caution.*”

³²¹ **E1126**-Appeal of the 7MB,02/03/93

³²² **Awad**,09/02/08-T.144-145.

³²³ **E995**-Letter from 7MB Commander to Dario Kordic,02/04/93

³²⁴ **E996**-SVB Administration Bulletin No.22,04/04/93

³²⁵ **E320**-7MB Report “on members by our brigade taken prisoner by HVO members,12/04/93

³²⁶ **Adilovic**,07/03/08-T.7211: “*...I'm also asserting that among our ranks there were no foreign members. I can't really comment upon this document, because it's invalid. In my company, in my unit and in my battalion -- or the entire 7th Muslim Brigade didn't have a single foreign member.*”

³²⁷ **Adilovic**,07/03/08,T.7212.

³²⁸ **E108**- Report regarding combat disposition and engagement of the 7MB,15/03/93

³²⁹ **Adilovic**,07/03/08-T.7210.

See also **PW2**,18/07/07-T.850-851

³³⁰ **Adilovic**,07/03/08-T.7213.

153. The Prosecution also relies on a video concerning a 7MB ceremony;³³¹ however witness Divjak confirmed that on the film, at no stage could any Arabic-looking persons be seen.³³² He also said that he was not aware of the fact that foreigners were ever in 7MB.³³³

154. Delalic was shown E254³³⁴ and he confirmed that it distinguishes the 7MB from the status of mujahedin.³³⁵

155. E1196³³⁶ shows the true situation in the 1/7MB, confirming that there were no foreigners.³³⁷ Also, E1198³³⁸ shows that on 19 July 1993 the 1/7MB Commander informed OG Bosanska Krajina that “as we officially informed you on several occasions, those units do not belong to the 1/7 MMB, and therefore we do not have the right to command the unit at Mehuric camp”, ie the Poljanice mujahedin. Adilovic confirmed that the information in this document is accurate.³³⁹

156. In contrast to the Prosecution claim, many Prosecution witnesses made it clear that there were no foreigners in it. PW2, [REDACTED] testified that the 7MB was made up exclusively of Bosnians.³⁴⁰ Ali Hamad confirmed the mujahedin were not under the command of the 7MB.³⁴¹ He described the relationship as one of “cooperation”.³⁴² He emphasised that the 7MB had no right to make decisions about the mujahedin.³⁴³ He made it clear that the 7MB was distinct from the mujahedin, and foreign fighters were not part of the brigade.

³³¹ E349-Videoclip of 7MB ceremony.

³³² Divjak, 13/09/07-T.2280,T.2282.

³³³ Divjak, 13/09/07-T.2311.

³³⁴ E254.

³³⁵ Delalic, 27/08/07-T.1748.

³³⁶ E1196-7MB Assesment of units for their use in combat, 04/03/93

³³⁷ Adilovic, 07/03/08-T.7216-7219, T.7220

³³⁸ E1198-Response to request of the 1/7MB, 19/07/93 July

³³⁹ Adilovic, 07/03/08-T.7237-7238.

³⁴⁰ PW2, 17/07/07-T.743; T.18/07/07-T.851.

³⁴¹ Hamad, 08/09/07- T.126-127.

³⁴² Hamad, 07/09/07-T.48.

³⁴³ Hamad, 08/09/07-T.130.

(b) Travnik Battalion (1/7MB)

157. Concerning the claim that there were mujahedin in the 7MB in Travnik, PW2, a former member of 1/7MB and EMD, confirmed that the 1st battalion consisted exclusively of Bosniaks.³⁴⁴ 1/7MB company commander Enver Adilovic emphasised throughout his testimony that there were no foreigners in the 1/7MB in Travnik nor in the entire brigade: **“There wasn't a single foreigner as a member of the 7th Muslim Brigade, nor did foreigners take a part in actions”**.³⁴⁵

(c) Bilmiste barracks

158. Concerning Zenica, the Prosecution claims a core group of mujahedin occupied two offices at Bilmiste Barracks.³⁴⁶ Awad was based in the rooms at Bilmiste for a while, but testified that the mujahedin there were not part of 7MB.³⁴⁷ They did not carry out orders from 7MB.³⁴⁸ He confirmed what he had told the investigator during his interview, namely ***“Arabs were not receiving orders from anyone. They were just going to the front line to fight. Nobody could order the Arabs to go, because they wanted to go to fight anyway, but all of them asked the emir whether to go or not”***.³⁴⁹

(d) Gerila

159. Ali Hamad claimed there was a group of Turkish mujahedin, the “Turkish guerrilla,” which were with the 7MB in Zenica; however he accepted that this was based solely on him seeing them at the premises of 7MB at Bilmiste Barracks.³⁵⁰ Thus, he merely *assumed* that the Turkish guerrilla were under 7MB control without foundation. Aiman Awad could not confirm that the Turks were under the 7MB.³⁵¹ From what he saw, they did not follow orders from 7MB.³⁵²

³⁴⁴ PW2, 18/07/07-T.851.

³⁴⁵ Adilovic, 07/03/08, T.7215.

³⁴⁶ PPTB, para.13.2.

³⁴⁷ Awad, 09/02/08-T.139.

³⁴⁸ Awad, 09/02/08-T.140-141: **“That group of Arabs did not carry out the orders of the commander of the 7th Muslim Brigade; is that correct? A. What I saw was that they were not carrying out the orders of the commander of the 7th Muslim Brigade.”**

³⁴⁹ Awad, 09/02/08-T.141-143.

³⁵⁰ Hamad, 08/09/07-T.127-128.

³⁵¹ Awad, 09/02/08-T.139-140.

³⁵² Awad, 09/02/08-T.140.

160. In the evidence there was confusion surrounding the suggestion that there was a 'guerrilla' group with the 7MB in Zenica. However, documents showed that the 2nd battalion of 7MB had its own unit known as the 'guerrilla' led by Senci. E1196³⁵³ refers to the "mountain" and "city" guerrilla groups.³⁵⁴ Adilovic explained that they were a unit of the 2nd Battalion led by Senad Senci.³⁵⁵ He said that the members were all Bosniaks and none were Turkish.³⁵⁶ Adilovic confirmed that there was only one "guerrilla" group.³⁵⁷

161. The Prosecution relies on a BRITBAT milinfosum suggesting there was a mujahedin group in Zenica under the 3Corps,³⁵⁸ following a visit by the Zenica Liaison Officer. However, E303,³⁵⁹ a Milinfosum from 31 May, four days later, showed that the LO went back and met with the mujahedin in Zenica again; this time he assessed that "they are not under control of 3Corps". Duncan accepted that the LO had gone back to verify the initial information.³⁶⁰

162. Thus it cannot be concluded that the Turkish Gerila were ever part of the 7MB. In any event, the Prosecution has not pleaded in the Indictment that the Turkish Gerila committed any of the crimes charged.

(e) Bijelo Bucje

163. The Prosecution claims that while based in Bilmiste Barracks, combat operations by mujahedin with locals from the 7MB continued at the frontline in Bijelo Bucje.³⁶¹ PW2 confirmed that the foreign fighters at Bijelo Bucje were separate from 7MB, and they did

³⁵³ **E1196**

³⁵⁴ **E1196**, p.2.

³⁵⁵ **Adilovic**, 07/03/08, T.7219.

³⁵⁶ **Adilovic**, 07/03/08-T.7219-7220:" *Q. And just so we're clear, were there any foreigners within that group at all, particularly any foreigners of Turkish origin? A. No, no.*"

³⁵⁷ **Adilovic**, 07/03/08-T.7225.

³⁵⁸ **E288**-PWO Milinfosum No.28, 27/05/93

³⁵⁹ **E303**-PWO Milinfosum No.32, 31/05/93

³⁶⁰ **Duncan**, 30/08/07, T.2015.

³⁶¹ **PPTB**, para.13.4

not engage in the combat operations together.³⁶² PW2 testified that the foreign fighters were under entirely separate command than the 7MB.³⁶³

(f) Visegrad Elevation

164. The Trial Chamber heard evidence about combat activities at Visoko at Visegrad Elevation. This took place on 28 December 1992.³⁶⁴ Adilovic was clear that Arabs did not fight alongside the 7MB during this combat.³⁶⁵

165. He was shown E319,³⁶⁶ a report by Selim Sisman, but explained that Sisman was not present, only hearing the events over the radio, and therefore hadn't seen the events himself.³⁶⁷ The document refers to a "guerrilla group", which Adilovic explained was Senci's guerrilla.³⁶⁸ He was also shown E121³⁶⁹ but didn't accept accuracy of the document. Neither of these documents are signed.³⁷⁰ PW2 explained how the Arabs acted independently during the combat.³⁷¹ He explained how the Arabs and Turks refused to follow orders that day.³⁷²

167. Ali Hamad confirmed that Ramo Durmis, who at that time was a commander of one of the companies of 7MB, could not have given orders to the mujahedin.³⁷³ He confirmed that the Arabs obeyed their own command.³⁷⁴ E121, the purported report by Ramo Durmis confirms that the mujahedin which were present that day were not under ARBiH control. It states "*some Mujahids, including Arabs moved towards the elevation 744 and ... without my order*".

³⁶² PW2,17/07/07-T.743-745.

³⁶³ PW2,17/17/07/07, T.745-747.

³⁶⁴ Adilovic,07/03/08-T.7203.

³⁶⁵ Adilovic,07/03/08-T.7257.

³⁶⁶ E319-Report made by Company Commander Selim Sisman regarding operation at Visegrad,11/02/93

³⁶⁷ Adilovic,07/03/08-T.7256.

³⁶⁸ Adilovic,07/03/08-T.7220-7223

³⁶⁹ E121-Durmis Report on the operation of the 1Company in the Visoko-Buci-Rakovci-Visegrad elevation sector,28/12/92

³⁷⁰ Adilovic,07/03/08-T.7275-7276,T.7274-7275.

³⁷¹ PW2,18/07/07-T.840.

³⁷² PW2,18/07/07-T.844: "[...]the Arabs and the Turks, I know all of them left without the order."

³⁷³ Hamad,08/09/07-T.112: "[...]he couldn't command Arabs."

³⁷⁴ Hamad,08/09/07-T.128.

168. Thus the Prosecution has failed to prove that mujahedin participated in combat at this Visegrad Elevation were under ARBiH control.

(g) Rift between mujahedin and 7MB

169. The Prosecution claims that the abduction of Zivko Totic, together with differences concerning military deployments and operations with the 7MB, led to a growing rift resulting in “the Mujahedin” leaving the 1/7MB.³⁷⁵ Thus from its pleadings the Prosecution’s theory is that, prior to the events on 08 June 1993, there was no link between the mujahedin and 7MB.

(h) Zivko Totic exchange

170. As to Zivko Totic’s abduction, the Prosecution led little evidence on this. However, it was clear from the testimony of Awad that the ARBiH had nothing to do with the negotiation of Totic’s release. He explained the exchange took place in May or June 1993.³⁷⁶ He confirmed that the exchange was carried out through the mediation of the ECMM.³⁷⁷ E1135³⁷⁸ makes it clear that the 7MB was not involved in the exchange. It shows that the ARBiH denied any relationship with the mujahedin,³⁷⁹ as did the 7MB commander;³⁸⁰ it shows that the ECMM negotiated between the HVO and mujahedin without assistance from the ARBiH.³⁸¹

171. Had the Mujahedin been under Army control, the ARBiH would have negotiated with HVO and acted as a mediator rather than ECMM.

(i) Ramo Durmis and others joined the mujahedin

³⁷⁵ PPTB, para.13.4

³⁷⁶ Awad,08/02/08-T.16

³⁷⁷ Awad,09/02/08-T.147-148.

³⁷⁸ E1135-Annexes B and C to final ECMM report on hostage exchange,19/05/93

³⁷⁹ E1135,p2:”This message was passed to 3rd Corps who continued to deny any relationship with the “extremists” and any kind of involvement in the kidnapping.”

³⁸⁰ E1135,p2.

³⁸¹ E1135,paras10,12,17 etc.

See also Awad,09/02/08-T.146-148:” Is it true that the exchange was carried out through the mediation of the ECMM?

A. That is right. The exchange was carried out through them.”

172. It is not disputed that soldiers who left the 1/7MB joined the mujahedin at Poljanice camp.³⁸² The evidence shows that the Visegrad Elevation action in December 1992 was a disaster which led to members of the 7MB leaving the unit, including Ramo Durmis. The ARBiH officers responsible for the action were blamed for not sending assistance.³⁸³

173. Durmis had been the commander of the 1st company of 1/7MB.³⁸⁴ After the action, he went with some Bosniaks and Arabs to the ARBiH command in Visoko.³⁸⁵ An armed incident took place in which weapons were used.³⁸⁶ Prosecution witnesses confirmed that after that incident he left the 7MB.³⁸⁷ The 7MB report of 19 February 1993 shows that Ramo Durmis is no longer listed as 1st Company Commander, confirming that he had left by then.³⁸⁸ Delalic confirmed that by May 1993 Durmis had joined the mujahedin group at Mehurici.³⁸⁹

174. PW2 confirmed that, following Ramo Durmis's departure, ties between the mujahedin and 7MB were severed.³⁹⁰ The rift between the 7MB and the mujahedin increased further with the attempted assassination of Effendi Karalic by two mujahedin at Bilmiste Barracks. Ali Hamad explained that persons outside of Bosnia had decided that he had to be killed and ordered four mujahedin to do it; however Karalic's bodyguards killed two of them.³⁹¹

175. According to Halim Husic, after the killings "the conflict was *simmering* on both sides".³⁹² E1201, a faxed report from Abu Maali to Sheikh Enver Shaaban at the ICI Milan notifies him that "*a commander of the Muslim forces here was able*

³⁸² PPTB, para. 13.6

³⁸³ PW2, 18/07/07-T.841, T.845

³⁸⁴ Adilovic, 07/03/08-T.7202.

³⁸⁵ PW2, 18/07/07-T.845.

³⁸⁶ PW2, 18/07/07-T.845.

³⁸⁷ PW2, 18/07/07-T.845-846.

³⁸⁸ E122-Order issued by 7MB, 19/02/93

See also PW2, 18/07/07-T.849.

³⁸⁹ Delalic, 27/08/07-T.1763-1764: "*Q. Am I right if I say that they were then members of the local Mujahedin, not the 7th Muslim Brigade in any way on this day, the 13th of May, 1993?* A. Yes", referring to E136

³⁹⁰ PW2, 18/07/07-T.851.

³⁹¹ Hamad, 07/09/07-T.48.

³⁹² HalimHusic, 11/03.08-T.7349.

treacherously to kill (4 Mujahedin) Arabs here, after which he escaped ... this Commander is called Ahmad Carolic".³⁹³ Witness PW2 also confirmed that foreigners tried to assassinate Karalic.³⁹⁴ Ali Hamad confirmed that the mujahedin were no longer billeted in the two rooms in Bilmiste Barracks following the killing.³⁹⁵

176. Thus, even on the *Prosecution's* theory, at some point prior to 8 June 1993, a simmering rift arose between the 7MB and the mujahedin, and ties were severed. Thus, the Prosecution has failed to prove *any* link between the two at the relevant time, let alone a relationship of subordination.

(j) 7MB never in the Bila valley

177. Witness confirmed that there was no unit of the 7MB in Mehurici or the Bila valley.³⁹⁶ Members of 7MB were never stationed there, although members of the unit did come from the Bila valley region, and would sometimes return on furlough.³⁹⁷ E1198³⁹⁸ clearly shows that 7MB didn't have a unit at Mehurici, which was confirmed by Adilovic.³⁹⁹

178. In this regard, the Prosecution relies on E167,⁴⁰⁰ which refers to the problem of foreigners in the brigade's AOR and them being present in the 7MB. However the evidence shows that, following the departure of Ramo Durmis and his men from the 7MB and them joining the Poljanice mujahedin, a degree of confusion arose in the area as to their status. Halim Husic stated that the Bila valley didn't have 7MB units located there,

³⁹³ **E1201**-Extracts from DIGOS dossier of faxes sent to ICI in Milan and telephone intercepts to Islamic Cultural Center, 28/07/93, p.1

³⁹⁴ **PW2**, 19/07/07-T.857.

³⁹⁵ **Hamad**, 07/09/07-T.48.

³⁹⁶ **Adilovic**, 07/03/08-T.7236.

Halim Husic, 11/03/08-T.7341: "*First of all, the Bila Valley never had units of the 7th Muslim Brigade. No unit of the 7th Muslim Brigade was located there.*"

Halim Husic, 07/03/08-T.7236-7237 referring to **E290**

³⁹⁷ **Delalic**, 27/08/07-T.1749.

Halim Husic, 11/03/08-T.7326: "*[...] the 7th Muslim was never in Mehurici except for individuals from the area of responsibility or the Bila Valley, who were in 7th Brigade*".

³⁹⁸ **E1198**

³⁹⁹ **Adilovic**, 07/03/08-T.7237-7238.

⁴⁰⁰ **E167**-Minutes from the operations team meeting issued by 306MB, 20/05/93

and the men that this document referred to were the men led by Ramo Durmis.⁴⁰¹ For a while after leaving 7MB, Durmis had continued to hold himself as being a member of 7MB.⁴⁰² PW3 also confirmed, referring to this document, that it had never been suggested that there were foreigners in 7MB.⁴⁰³

(k)Conclusion

179. Thus it has not been shown that mujahedin were incorporated or subordinated to the 7MB on either a de facto or de jure basis.

E. Build-up to combat activities in Bila Valley on 8 June 1993

1. HVO Blockades and Control over Bila Valley

180. On 14 January 1993, the HVO ordered a total blockade of border crossings toward the Republic of Croatia for vehicles, goods, and members of the ARBiH.⁴⁰⁴ On 15 January 1993, General Milivoj Petkovic raised the combat readiness of HVO units to the highest level.⁴⁰⁵ By April 1993 the HVO controlled the dominant features of the Bila Valley region, and set up check-points so the ARBiH couldn't move about.⁴⁰⁶ The 306MB reported that new HVO blockades were being set up, and old ones strengthened, cutting off communication to Travnik.⁴⁰⁷ Many of the HVO members manning the checkpoints had been sent from outside the territory.⁴⁰⁸ At the end of April, the HVO didn't allow Muslims to move freely in the area of Ricice.⁴⁰⁹ At the checkpoints the

⁴⁰¹ Halim Husic, 11/03/08-T.7341.

⁴⁰² Adilovic, 12/03/08-T.7366: "*Much earlier, before this period, he was a member of the 7th Muslim Brigade; and with a group of fighters, disagreeing with the policies of the Army of the Republic of Bosnia-Herzegovina, he left the 7th Muslim Brigade and established his own group, which represented itself variously using different names and falsely.*"

⁴⁰³ PW3, 26/07/07-T.1346-1349.

⁴⁰⁴ E192-HVO Order, 14/01/93

⁴⁰⁵ E191-HVO Order for full combat readiness, 15/01/93

⁴⁰⁶ Begovic, 12/07/07-T.499; Hasib Alic, 16/07/07-T.624

⁴⁰⁷ E86-306MB Daily operations report for 11 April 1993: "*New checkpoints have been set up and the old ones in the usual places have been strengthened.*"

⁴⁰⁸ E265-306MB Daily operations report, 13/04/93

See also Delalic, 27/08/07-T.1734-1735.

⁴⁰⁹ E100-OG Bosanska Krajina Regular combat report, 27/04/93

See also Alic Saban, 16/07/07-T.672-673.

HVO would seize vehicles belonging to Bosniaks, and would open small arms fire to try and provoke the ARBiH.⁴¹⁰

181. In May 1993 the Frankopan brigade was ordered to keep all important elevations in Bila valley under control.⁴¹¹ The result was the whole Bila valley was under blockade. Because of the way that Bosnian Croat and Muslim villages alternated through the valley, the HVO checkpoints had the effect of making normal movement impossible within the municipality.⁴¹² The result was that the Bila valley was broken up into four or five different regions.⁴¹³

2. Ahmici and other incidents

182. Tensions between the HVO and ARBiH increased dramatically as a result of several incidents in April 1993. At that time the HVO carried out killings and other criminal acts in area of Ahmici, killing almost all the inhabitants.⁴¹⁴ In the Bila valley region, in terms of weapons and in manpower, the HVO had a great advantage over the ARBiH, especially as the "most notorious members of the HVO" were brought in from Herzegovina.⁴¹⁵ An ECMM report of 22 April 1993 described the attacks on Muslim villages.⁴¹⁶

183. The outbreak of conflict against the HVO had a major impact on the already desperate situation that the ARBiH faced, with the ARBiH having to form an additional frontline of 100-150 kms to defend itself from HVO forces.⁴¹⁷ In April 1993, armed

⁴¹⁰ **E87-3Corps** Protest, 13/04/93

See also **HalimHusic**, 12/03/08-T.7367-7368; **Begovic**, 12/07/07-T.500-501.

E143-306MB Daily intelligence report for 09 May 1993: "On the 9th of May 1993, the HVO members continue to hold check-points and do not allow cars or civilians to pass. They confiscate motor vehicles."

Fusko, 23/07/07-T.1126-1127.

⁴¹¹ **E1202-Order** issued by HVO Frankopan brigade, 24/05/93: "All elevations relevant for defense are to be kept under constant control of our units."

See also **HalimHusic**, 12/03/08-T.7368-7369

⁴¹² **Begovic**, 12/07/07-T.500-501.

⁴¹³ **Delalic**, 27/08/07-T.1707.

⁴¹⁴ **PW3**, 25/07/07-T.1282; **Duncan**, 30/08/07-T.1919-1920; **Adilovic**, 07/03/08-T.7227.

⁴¹⁵ **PW3**, 25/07/07-T.1283.

⁴¹⁶ **E193-Special report** on Bilalovac incident issued by International monitors, 22/04/93.

⁴¹⁷ **AF, 122.**

incidents broke out in the Bila valley and in Donje Maline the first Bosniak was killed there, Sakib Dautovic, as a result of sniper fire from Gonje Maline .⁴¹⁸

3.HVO and VRS Cooperation

184.Matters became worse for the ARBiH when, from spring 1993, HVO and Serb forces began to openly cooperate in Central Bosnia.⁴¹⁹ In early June, 306MB reports show they were beginning to conduct negotiations in the Vlasic area.⁴²⁰ By 6 June 1993 the VRS was providing fire support for HVO forces in the Vlasic area.⁴²¹ Following an agreement, the HVO gave up defence lines against the Serbs, which permitted the VRS to claim important HVO positions. Also, groups of Bosnian Croat civilians crossed over into the Serb lines.⁴²² The HVO also withdrew from their positions facing the Serb forces, from which they had defended their villages, and set up new lines facing the ARBiH.⁴²³

185.E294 showed that the VRS and HVO were cooperating and that 3000 Croats had crossed over Serb lines into Ovcarevo; also the HVO had surrendered their positions in the defence of Travnik and Turbe.⁴²⁴ HVO demolished their command in Travnik before leaving.⁴²⁵ [REDACTED]⁴²⁶

4. 306 MB Command Divided

186.After the HVO launched its attacks in late May, the 306MB command was divided into three or more parts, and could not function properly.⁴²⁷ The brigade command post

⁴¹⁸ **E254.**

⁴¹⁹ **PW3**,21/08/07-T.1490.

⁴²⁰ **E144**-306MB Telegram,02/06/93:"*HVO and Chetniks conducted negotiations in Vlasica area...*"

⁴²¹ **E198**-Letters sent to the Vlasic Operative Group Command, issued by 1st Krajina Corps of the VRS,06/06/93, relating to the Vlasic area. It states: (p1)"*You may provide fire support for HVO forces in the requested areas, provided they give you the exact grid references, but within the limits of the available ammunition [...]*"

See also **PW3**,21/08/07-T.1490-1491

⁴²² **E198**(p2): Lieutenant Momir Talic on 6 June 1993: "*Positions ceded to us by the HVO units, if vital for us, should be taken over.*"

⁴²³ **Marijanovic**,19/07/07-T.941;**Pranjes**,20/07/07-T.976

⁴²⁴ **E294**-PWO Milinfosum No.039,07/06/93,paras.4 and 5

See also **Duncan**,30/08/07-T.1969-1970.

⁴²⁵ **E294**,para.4.

⁴²⁶ [REDACTED]

⁴²⁷ **Fusko**,23/07/07-T.1127;**Delalic**,27/08/07-T.1707.

at Rudnik was encircled for about 20 days, and was shelled all the time.⁴²⁸ Witnesses described the blockade.⁴²⁹ At this time, 306MB Commander, Esed Sipic, with part of his assistant commanders, was stuck in Krpeljici and they were encircled and could not go anywhere.⁴³⁰

5. HVO attack on Velika Bukovica

187. The Prosecution claim that the ARBiH launched an offensive attack⁴³¹ is entirely wrong – the ARBiH's actions were purely defensive. At the end of May 1993, the HVO commenced hostilities, firing on Alihodze and Radojice in the Bila valley, damaging two houses.⁴³²

188. The HVO continued with attacks on Slimena and Kalibunar villages on 3 June 1993, near Travnik, and the conflict spread from there to the Bila valley when the HVO attacked Velika Bukovica on 4 June 1993. On 4 June the HVO also attacked from Jankovici village towards Kalibunar, close to Travnik, firing down onto Travnik from Hajderove Njive.⁴³³ Attacks on Travnik continued the next day, with the HVO bringing new forces (5 buses) from Novi Travnik.⁴³⁴

189. In the Bila valley, the HVO commenced attacks on a number of villages. This was confirmed by witness and HVO Frankopan Brigade member, Pranjes.⁴³⁵ Delalic explained that on 4 June 1993, an ultimatum was presented to the village of Velika Bukovica to hand over their weapons and move out. They did not agree, and the HVO immediately starting attacking the village, which went on for two days until the HVO managed to place the village under control.⁴³⁶ Pranjes confirmed that the HVO attacked Bukovica prior to 8 June.⁴³⁷ The inhabitants of Velika Bukovica were taken to Nova Bila

⁴²⁸ Delalic,27/08/07-T.1707.

⁴²⁹ SabanAlic,16/07/07-T.671; HasibAlic,16/07/07-T.624; HalimHusic,04/03/08-T.6964.

⁴³⁰ Delalic,27/08/07-T.1707;Fusko,23/07/07-T.1127;Begovic,12/07/07-T.502.

⁴³¹ PPTB-para.10.1

⁴³² E1221-306MB Daily operations report,31 May/01 June 1993

⁴³³ E258-OG Bosanska Krajina Report and proposals,05/06/93

⁴³⁴ E1197-OG Bosanska Krajina Extraordinary combat report,05/06/93

⁴³⁵ Pranjes,20/07/07-T.999.

⁴³⁶ Delalic,27/08/07-T.1707-1708.

⁴³⁷ Pranjes,20/07/07-T.1004.

by the HVO, where they were subjected to mistreatment. The men were then taken to prison in Kaonik, while the women were taken to Skradno village.⁴³⁸ Subsequently, they were exchanged by the Joint Commission on 24 June 1993.⁴³⁹

190. The 306MB was able to send a telegram to the 3Corps command informing them about the attack on Velika Bukovica (“18 dead and six seriously wounded”), stating that *“the situation is similar in the village of Ricice”*.⁴⁴⁰ This telegram was sent on to Sipic, 306MB commander, in Krpeljici informing him that action was required to deblock Velika Bukovica.⁴⁴¹ The evidence shows that the 3 Corps received E1203, the telegram, and on 5 June 1993 the 3Corps sent an order to *inter alia* the 306MB stating that it would *“try to send the UNPROFOR to Velika Bukovica to pull out the wounded”*.⁴⁴² E283,⁴⁴³ the PWO report of 5 June confirms that the attack was underway and reports that Merdan stated 18 Muslims had been massacred in Bukovica and *“that something similar had happened in Radojcici”*; he also asks BRITBAT for assistance. The PWO Milinfosum of 6 June 1993 confirmed the HVO now held Bukovica.⁴⁴⁴

191. Around 6 June the 306MB Commander in Krpeljici sent a telegram to the parts of the 306MB blocked in at Mehurici, asking for the deblocking of Velika Bukovica to be carried out with instructions for the action to start on 7 June. The ARBiH forces were not ready for that date, so the action started on 8 June to deblock Velika Bukovica.⁴⁴⁵ By 8 June, other villages in the Bila valley were under HVO attack. E285 shows that the HVO

⁴³⁸ E267-Statements taken by 306MB from inhabitants of Velika Bukovica,26/06/93

See also Delalic,27/08/07-T.1738-1739.

⁴³⁹ E170 (under seal)- [REDACTED]

See also Delalic,27/08/07-T.1740,T.1743-1745;Negovetic,15/01/08-T.6807-6811

⁴⁴⁰ E1203-Telegram sent from 306MB to 3Corps,05/05/93

See also HalimHusic,12/03/08-T.7376-7378:” *The document reflects the actual state of affairs in Velika Bukovica, where about 100 Bosniak citizens received an ultimatum three days before that to hand over their weapons; and after they failed to do that, they were attacked and they asked for help from the superiorcommand in this manner.*

JUDGE MOLOTO: *Who attacked them? THE WITNESS: [Interpretation] Forces of the HVO.”*

⁴⁴¹ Delalic,27/08/07-T.1708.

⁴⁴² E999-3Corps Order,05/06/93

⁴⁴³ E283-PWO Milinfosum No.37,05/06/93

⁴⁴⁴ E284-PWO Milinfosum No.038,06/06/93,para.9

⁴⁴⁵ Delalic,27/08/07-T.1708.

was also attacking the Bosniak villages of Bandol and Kula in the Bila valley, and that Ricice, a Muslim village, was deserted.⁴⁴⁶

6.Planning and command for 8 June 1993 attack

192.Contrary to the Prosecution's claim,⁴⁴⁷ there is no evidence that the 3Corps Commander ordered combat readiness to be raised in May 1993. Also, the Prosecution relies on E998,⁴⁴⁸ an interim report of Sipic dated 19 May 1993 to show that an offensive plan was made; however it is mistaken as to the relevance of that document. The planning in the report was made on basis of a 3Corps order (which was not admitted), but it can be seen that the 306MB was planning defensive activities. In the end, none of the variants in the report were implemented.⁴⁴⁹ It is clear from the evidence that, due to pressing circumstances to assist the inhabitants of Velika Bukovica, the attack was unplanned.

193.Thus it can be concluded that the combat action arose *ad hoc*, based on an immediate need for assistance and without any proper prior planning. E1001⁴⁵⁰ confirms that the attack was directed to Bukovica, not Krpeljici. Thus the evidence shows that the objective of the action was to assist the inhabitants of Velika Bukovica and not to solely attack Maline village.

194.The military action in the Bila valley was a low intensity combat action, not a major operation.⁴⁵¹ This was not an attack on the whole Bila valley, but focused towards Velika Bukovica. The ARBiH set off from Suhi Dol and Mehurici in the direction of Maline and Velika Bukovica.⁴⁵² In terms of command and control over the parts of the 306MB

⁴⁴⁶ E285-PWO Milinfosum No.40,08/06/93,para.5

⁴⁴⁷ PPTB,para.24.2

⁴⁴⁸ E998-306MB Interim report,19/05/93

See also HalimHusic,12/03/08-T.7383.

⁴⁴⁹ HalimHusic,12/03/08-T.7382-7385.

⁴⁵⁰ E1001-306MB report,08/06/93

⁴⁵¹ PW3,25/07/07-T.1334.

⁴⁵² Delalic,27/08/07-T.1709.

that set off from Mehurici, it is clear that Commander Sipic was unable to exercise any control as he was blocked in Krpeljici.⁴⁵³

195. Halim Husic described how the blockade of Krpeljici was eventually lifted in the early hours of 9 June by civilian inhabitants, rather than the 306MB.⁴⁵⁴ Begovic confirmed that these were the only combat activities in the region during the period of June, and members of the 306 MB ended the action in the area of Bukovica.⁴⁵⁵

7. Guca Gora

196. Although the Indictment and PPTB does not make any allegations about crimes in Guca Gora, the Prosecution did lead evidence about events there. It must be borne in mind that the initial claims about what had occurred there were highly misleading and the result of HVO propaganda. The evidence shows that ARBiH units there took measures on 8 June 1993 to prevent looting and the mistreatment of Bosnian Croats there.⁴⁵⁶

197. [REDACTED]⁴⁵⁷ [REDACTED]⁴⁵⁸ They explained how reports had claimed that Bosnian Croats had left the area because they feared mujahedin forces, when in fact departure of Croats had been prepared and sponsored by HVO and Croatian political leaders. They concluded that the initial allegations of atrocities at Guca Gora were false.⁴⁵⁹ Alisdair Duncan accepted that the evidence contradicted his initial view that Croats could have been massacred there.⁴⁶⁰

⁴⁵³ Halim Husic, 13/03/08, T.7490-7492.

⁴⁵⁴ Halim Husic, 13/03/08-T.7473-7475.

⁴⁵⁵ Begovic, 11/07/07-T.403.

⁴⁵⁶ E304-OG Bosanska Krajina report, 08/06/93

E293-Milinfosum AnnexA, 09/06/93

⁴⁵⁷ [REDACTED]

⁴⁵⁸ [REDACTED]

⁴⁵⁹ E305, p3.

⁴⁶⁰ Duncan, 31/08/07-T.2030.

IV. MALINE/BIKOSI

A.Events prior to 8 June 1993

198.The Prosecution alleges that the mujahedin undertook reconnaissance in the hamlets, villages and hills surrounding Maline;⁴⁶¹ however, no witnesses confirmed this.

199.E90, an official note dated 26 May 1993, speaks of this. Osman Fusko said that ARBiH didn't have any position between Probijeno Brdo and Mehurici.⁴⁶² Saban Alic, a local Bosnian member of the Poljanice group, was clear that the mujahedin group did not carry out reconnaissance as there were members who knew the terrain.⁴⁶³

B.Events on 8 June 1993

200.The attack on the village started around 4 to 5 am.⁴⁶⁴ Berislav Marijanovic testified that in Maline there were large numbers of HVO soldiers from the Frankopan Brigade located around the village prior to the attack.⁴⁶⁵

201.Contrary to the Prosecution allegation,⁴⁶⁶ the evidence did not show that there were several lines of attack.

202.At some stage during the attack, the HVO forces began to retreat. Some HVO soldiers sought shelter in houses in the village, whereas others fled from Maline towards Guca Gora.⁴⁶⁷ Civilians and HVO soldiers gathered in Maline and surrendered to ARBiH soldiers.⁴⁶⁸ The surrender took place around 10 am or sometime between 10 and 11

⁴⁶¹ PPTB, para.24.3.

⁴⁶² Fusko, 23/07/07-T.1091-1092, commenting on E90.

⁴⁶³ SabanAlic, 16/07/07-T.620-621.

⁴⁶⁴ Marijanovic, 19/07/07-T.914; Puselja, 20/07/07-T.1024.

⁴⁶⁵ Marijanovic, 19/07/07-T.942.

⁴⁶⁶ PPTB, para.24.6.

⁴⁶⁷ Marijanovic, 19/07/07-T.914.

⁴⁶⁸ Marijanovic, 19/07/07-T.916.

am.⁴⁶⁹ Among them were approximately 50 or so HVO soldiers.⁴⁷⁰ Civilians and soldiers were gathered together by the ARBiH, and were taken in the direction of Mehurici.⁴⁷¹ There were around 350 civilians and 50 or so HVO soldiers gathered together.⁴⁷² The Croat witnesses confirmed that the ARBiH soldiers accompanying the Bosnian Croats were members of the 306MB military police.⁴⁷³ The ARBiH military police treated the Bosnian Croats professionally whilst they gathered them and escorted the column along.⁴⁷⁴

C.Only 306MB participated in the attack on Maline

203.Contrary to the Prosecution allegation,⁴⁷⁵ forces of the 3Corps including the 306 MB, 7MB and “the Mujahedin” did not launch an attack on Maline village.

(a)Mujahedin not in Maline

204.There is no proof beyond reasonable doubt that mujahedin were involved in the Maline attack, or that they were observed in the village.⁴⁷⁶ The Bosnian Croat Prosecution witnesses said that the ARBiH soldiers who participated in the attack wore green uniform and looked like regular troops.⁴⁷⁷ Zeljko Puselja said they wore camouflage uniform with insignia on their sleeves.⁴⁷⁸ Zdravko Pranjes, an HVO soldier who fought in Maline, said that the first time he saw “Mujahedin”, ie foreigners, was when the convoy of surrendered Bosnian Croats was en route to Mehurici.⁴⁷⁹ Zeljko Puselja stated that, when he surrendered, there were no foreigners among the forces attacking the village.⁴⁸⁰ However, the prosecutor then asked a series of leading questions,

⁴⁶⁹ Puselja,20/07/07-T.1027:“What time was this, sir? A.Around 10.00 or between 10.00 and 11.00 maybe.”

⁴⁷⁰ Puselja,20/07/07-T.1029.

⁴⁷¹ Marijanovic,19/07/07-T.917.

⁴⁷² Puselja,20/07/07-T.1029.

⁴⁷³ Delalic,27/08/07-T.1712.

⁴⁷⁴ Pranjes,20/07/07-T.1001;Marijanovic,19/07/07-T.943.

⁴⁷⁵ Indictment,para.24.

⁴⁷⁶ PPTB,para.24.8.

⁴⁷⁷ Pranjes,20/07/07-T.983.

⁴⁷⁸ Puselja,20/0/07-T.1034.

⁴⁷⁹ Pranjes,20/07/07-T.986.

⁴⁸⁰ Puselja,20/07/07-T.1028.

which resulted in the witness describing two men with beards, who were dark-skinned, and a third with black curly hair.⁴⁸¹ No other witness corroborated this. He said they wore military uniforms, which were “a rather brighter green”.⁴⁸²

205. One witness’s simple account, made in difficult circumstances, of seeing men sporting beards and dark hair does not mean that these men were foreigners. The fact that the men wore military uniforms differs from the description given of the appearance of the foreign mujahedin seen later that day.⁴⁸³ Solely on this witness’s uncorroborated evidence, it could not reasonably be concluded that the men were foreign mujahedin and not from BiH.

206. Apart from this testimony, resulting from leading questions, there is no other evidence to confirm the participation of foreign mujahedin in the Maline attack. To the contrary the Chamber heard a lot of evidence from the local mujahedin from Poljanice that took part in combat activities that day who made it clear that mujahedin fighters were *not in Maline*.

207. Saban Alic, a Bosniak member of the Poljanice mujahedin group, testified that the mujahedin fighters set off from their base at Zapode and went in the direction of Simulje, and from there on to the location of Borovi, an area of pine trees above Radonjici.⁴⁸⁴ They then proceeded to Radonjici and then to Bandol.⁴⁸⁵ He testified that there were no arrangements made with the ARBiH to participate in combat.⁴⁸⁶ He said it was a “*spontaneous thing, and I simply joined in*”.⁴⁸⁷ Hasib Alic, another Bosniak member of the Poljanice group, could not recall combat taking place in June 1993 and believed that the first combat activities occurred in July or August 1993.⁴⁸⁸ He also testified that the

⁴⁸¹ Puselja, 20/07/07-T.1029-1031.

⁴⁸² Puselja, 20/07/07-T.1031.

⁴⁸³ Pranjes, 20/07/07-T.987.

⁴⁸⁴ SabanAlic, 16/07/07-T.645-650.

⁴⁸⁵ SabanAlic, 16/07/07, T.645-650.

See also E99-Map of AlicSaban.

⁴⁸⁶ SabanAlic, 16/07/07-T.682.

⁴⁸⁷ SabanAlic, 16/07/07-T.683.

⁴⁸⁸ SabanAlic, 13/07/07-T.571-572.

Mujahedin had gone first to Simulje and then Radonjici.⁴⁸⁹ They engaged in combat at Simulje.⁴⁹⁰

208. Sinan Begovic, a member of 306 MB at the time who later joined the Poljanice group, was involved in the combat activities that day. He did not see mujahedin at all that day.⁴⁹¹ He said that members of the 306 MB who were fighting in June did not have any clear information about the involvement, if any, of the Mujahedin from Poljanice in combat activities.⁴⁹² Osman Fusko, a 306MB member, confirmed that no mujahedin fighters fought alongside the ARBiH.⁴⁹³

209. Thus the Prosecution failed to prove beyond reasonable doubt that foreign mujahedin participated in the Maline attack alongside the ARBiH.

(b) 7MB not in Maline

210. There was no evidence to support the Prosecution's claim that the 7MB was involved in the Maline action. In its PPTB the Prosecution did not specify any evidence that it intended to lead to prove this fact. No witness testified that the 7MB was involved. (See Section III, D(8)). Further, Prosecution witnesses stated that 7MB did not have any units in the Bila valley region.⁴⁹⁴ This was confirmed by Enver Adilovic,⁴⁹⁵ Naim Horo,⁴⁹⁶ and Halim Husic.⁴⁹⁷

⁴⁸⁹ **SabanAlic**, 13/07/07-T.573.

⁴⁹⁰ **SabanAlic** -13/07/07-T.574.

⁴⁹¹ **Begovic**, 13/07/07-T.521.

⁴⁹² **Begovic**, 11/07/07-T.400-401.

⁴⁹³ **Fusko**, 24/07/07-T.1173.

⁴⁹⁴ **Fusko**, 23/07/07-T.1156-1157.

Delalic, 27/08/07-T.1752: "*The 7th Muslim Brigade, in the Biljani region area, did not have a single unit there in early 1993; is that correct? A. Yes.*"

⁴⁹⁵ **Adilovic**, 07/03/08-T.7237.

See also **E1196**-Assesment of units for their use in combat issued by 7MB, 04/03/93.

Adilovic, 07/03/08-T.7216-7219.

⁴⁹⁶ **E1371**-Horo 92bis statement, 09/05/05, para. 13.

⁴⁹⁷ **HalimHusic**, 11/03/08-T.7341: "*First of all, the Bila Valley never had units of the 7th Muslim Brigade. No unit of the 7th Muslim Brigade was located there.*"

211. In early to mid-June, the closest 7MB battalion to the Bila valley was 1/7MB, based in Travnik.⁴⁹⁸ It was primarily engaged in combat in Bijelo Bucje, west of Travnik, but at the start of June members of 1/7MB were engaged to undertake combat from Travnik towards the HVO firing positions on Hajderove Njive,⁴⁹⁹ an elevated plateau east of Travnik. Exhibits show the 1/7MB was engaged there on 5 June 1993, but was not successful.⁵⁰⁰ It follows that the unit was not engaged in combat in the Bila valley.

212. Delalic commented on E268 and confirmed that although there were members of the 7MB in Kljaci, they were not functioning as a unit, and had been blocked in the village. As to E134,⁵⁰¹ Delalic confirmed that the 7MB platoon mentioned in the document were the same members who happened to be at home at that time.⁵⁰²

213. Although the Indictment simply states that 3Corps units, including 7MB, launched an attack without specifying any more, the PPTB raises confusion about what exactly the Prosecution is alleging in relation to the 7MB. In 24.7 PPTB (footnote 216) the Prosecution claims that “sometimes the Mujahedin were referred to in contemporaneous documents as “7MMB”, and it relies upon several documents: E254, E997, E628, E291. The Defence has shown in Section III that there were no foreigners in the 7MB. (See Section III, D(8)(a)).

214. In relation to the documents that the Prosecution refers to, none of them shows that the 7MB was involved in combat in Maline on 8 June and E254,⁵⁰³ E997⁵⁰⁴ and E628⁵⁰⁵ make no reference to foreigners being in the 7MB. As discussed (Section III, D(8)), the

⁴⁹⁸ **Adilovic**, 07/03/08-T.7197.

⁴⁹⁹ **Adilovic**, 07/03/08-T.7229-7231.

See also **E1197-OG-Bosanska Krajina Extraordinary combat report**, 05/06/93.

Adilovic, 07/03/08-T.7232-7233.

E1371, paras. 7-11.

⁵⁰⁰ **E258-OG-Bosanska Krajina Report and proposals**, 05/06/93.

E1197.

⁵⁰¹ **E134-306MB Report**, 14/05/93.

⁵⁰² **Delalic**, 27/08/07-T.1755.

⁵⁰³ **E254-306MB Collective operations report**, 05/05/93.

⁵⁰⁴ **E997-306MB Information**, 06/05/93.

See also **HalimHusic**, 11/03/08-T.7335-7340.

⁵⁰⁵ **E628**- Excerpt from 3Corps notebook, 21/07/93.

See also **EdinHusic**, 23/10/07-T.4386-4388.

references to 7MB in these documents are the group of men who were formerly with the 7MB and joined with the mujahedin in Mehurici. E291⁵⁰⁶ is a BRITBAT document, and the reference to 7MB appears to be uninformed speculation on the part of the reporting officer. Husic testified that the assessment wasn't credible.⁵⁰⁷ As discussed above, BRITBAT was wholly confused as to the status of 7MB and the mujahedin; moreover, the BRITBAT commander, Duncan, stated that opinion expressed in these reports should be treated with caution.⁵⁰⁸ Moreover, Prosecution witnesses Delalic and Husic explained that there were former members of 7MB who had become members of mujahedin groups, and their status was confusing to some people (See Section III, D (8)(a)(b)).

D.The killings in Bikosi

215.The elements of murder that the Proseccion must prove are set out in Section VI, A., paragraph 400.

216.The Prosecution alleges that on 8 June 1993 approximate ten mujahedin and *local Bosnian Muslim soldiers* approached from the direction of Mehurici and ordered the column to stop.⁵⁰⁹ In contraction to this, in the PPTB it alleges that “about *nine Mujahedin* – five locals and four foreigners” stopped the column.⁵¹⁰

217.The numbers of mujahedin appearing varied from four to a possible ten.⁵¹¹ On the Prosecution's own theory, the mujahedin stopped the ARBiH commander escorting the Croats and “held him at gunpoint”.⁵¹² The evidence is clear that the mujahedin threatened extreme violence to the ARBiH military policemen.

⁵⁰⁶ E291-PWO Milinfosum No.100,07/08/93.

⁵⁰⁷ HalimHusic,T.11/03/08-T.7325-7327.

⁵⁰⁸ Duncan,30/08/07-T.1929,T2011:“[...]comments should be looked at with caution.”

⁵⁰⁹ Indictment,para.24.

⁵¹⁰ PPTB,para.24.11.

⁵¹¹ Pranjes,20/07/07-T.985;Puselja,20/07/07-T.1036;Marijanovic,19/07/07-T.945.

⁵¹² PPTB,para.24.11.

218. The mujahedin pointed their guns towards the group and the ARBiH escorts, and cocked their weapons ready to fire.⁵¹³ Pranjes said the ARBiH commander shouted out “Command, command”, trying to explain that they were taking the group to the ARBiH command centre.⁵¹⁴ It was only when the Mujahedin pointed their guns and threatened to shoot the Bosnian army members that the Mujahedin were able to separate the Bosnian Croat men from the column.⁵¹⁵

219. Zeljko Puselja described what happened when the “Arabs” arrived:

*“They wanted to pick whom they wanted from the column. Semro [the ARBiH commander escorting the detainees] told them they were captives of the BH army, and the other man said, “Oh, screw the BH army.” And then they started an argument, wherein this Arab man put a gun barrel into Semro's mouth. And when that happened, Semro had to give in to the man who wanted to take his pick from the column, that they started doing that, picking men from our group as they pleased”.*⁵¹⁶

220. Berislav Marijanovic said that the mujahedin used force to separate the detained HVO members from their mixed group.⁵¹⁷ Thus it is clear that the mujahedin had no reservations about using extreme force against the ARBiH, and it was only the threat of lethal force that enabled the mujahedin to seize certain Croats

Proof of murder

221. The Defence accepts that 24 persons were murdered at Bikosi.⁵¹⁸

Actus reus

222. The actus reus of murder is accepted; however the Prosecution must prove that the perpetrators were the alleged subordinates of the Accused.

⁵¹³ Pranjes, 20/07/07-T.1002.

⁵¹⁴ Pranjes, 20/07/07-T.1002.

⁵¹⁵ Pranjes, 20/07/07-T.1002-1003.

⁵¹⁶ Puselja, 20/07/07-T.1035.

⁵¹⁷ Marijanovic, 20/07/07-T.948.

⁵¹⁸ AF, 39.

(a) No proof of the identities of the perpetrators

223. The foreign Mujahedin were not described in any detail, indeed the Prosecution did not even ask Berislav Marijanovic what they looked like. Pranjes simply described them as being dark-skinned and sported long beards.⁵¹⁹ Puselja simply described them as ‘Arabs’.⁵²⁰ All three Prosecution witnesses said the locals wore masks or stockings over their heads.⁵²¹ Zdravko Pranjes was unable to recall how they were dressed.⁵²²

224. Puselja claimed to recognize two locals, but he could not remember their names, and did not testify that they belonged to any group. In the Mehurici primary school, Mr Puselja was told by unknown persons that the local who was referred to as Isak “*could be this man, Isak Aganovic, the son of Rasid from Fazlici*”. Mr Puselja said “I personally did not know that person”.⁵²³

225. He also mentioned the name of one other local who he claimed was involved (Zihnad Sejdic), but confirmed that he did not know the person and was merely repeating what he was told by others at a later stage.⁵²⁴ Thus Mr Puselja’s uncorroborated testimony about the names of the men, which was based upon hearsay speculation by persons who were not present at the killings, cannot form a basis to conclude that the named persons actually participated.

226. The difficulties faced by Mr. Puselja when observing the local mujahedin were reflected in Judge Harhoff’s comment to Zeljko Puselja: “*And I understand that you thought they were Bosnians, but you could not tell for sure*”.⁵²⁵

227. The Prosecution has failed to prove beyond a reasonable doubt the identity of the perpetrators carrying out the killings.

⁵¹⁹ Pranjes, 20/07/07-T.985.

⁵²⁰ Puselja, 20/07/07-T.1036.

⁵²¹ Pranjes, 20/07/07-T.985; Puselja, 20/07/07-T.1036; Marijanovic, 19/07/07, T.921.

⁵²² Pranjes, 20/07/07-T.987.

⁵²³ Puselja, 20/07/07-T.1043-1044.

⁵²⁴ Puselja, 20/07/07-T.1041, T.1056.

⁵²⁵ Hearing, 20/07/07-T.1012.

(b) No proof the perpetrators were members of an identifiable group

228. In the absence of proof of the identity of a perpetrator, the Prosecution must at least prove that the perpetrator was a member of an identifiable group which the Accused exercised effective control over.⁵²⁶ The Prosecution alleges that the mujahedin came out of the Poljanice camp.⁵²⁷ The evidence does not show this at all.

229. Pranjes testified that before they entered Mehurici, the group was “jumped by the Mujahedin”.⁵²⁸ He said they “jumped out of the meadow, which was partly fenced off, partly separated from us by that hedge, and that's where they jumped from and landed right in front of us”.⁵²⁹ Zeljko Puselja said that the “Arabs” appeared as they got down to “Poljanice and Bikosi”, and that “from the left hand side of the road, Arabs came running at us”.⁵³⁰ Berislav Marijanovic simply said that they met the mujahedin close to Mehurici.⁵³¹ Thus the evidence varied as to where they appeared. There was no evidence to show the mujahedin were from the Poljanice camp, for example anything showing they had been in the camp or were seen leaving the camp. There was nothing about their physical appearance which could mark them out as being members of the Poljanice group.

230. There were numerous mujahedin groups in that area at that time, namely the Guca Gora group (Abu Hamza's group), the Zenica Gerila and Abu Zubeir's group (See Section III, C(7)(a)(b)(d). Halim Husic described the different groups in the Bila during that time period and the difficulties in identifying them.⁵³² In addition to the Abu Hamza group at Guca Gora, he also saw the Gerila from Zenica active in the Bila valley.⁵³³ Moreover, Ivan Negovetic and Fadil Alihidzic gave evidence of armed mujahedin in

⁵²⁶ See *Hadzihasanovic* TJ, paras. 114, 117-118, 163-164; *Krnjelac* AJ, paras. 178-180; *Brima* TJ, para. 1659.

⁵²⁷ *PPTB*, para. 24.11.

⁵²⁸ *Pranjes*, 20/07/07-T.984.

⁵²⁹ *Pranjes*, 20/07/07-T.985.

⁵³⁰ *Puselja*, 20/07/07-T.1035.

⁵³¹ *Marijanovic*, 19/07/07-T.919.

⁵³² *HalimHusic*, 11/03/08-T.7306.

⁵³³ *HalimHusic*, 11/03/08-T.7308.

Guca Gora.⁵³⁴ Husic testified that the distance between Guca Gora and Bikosi village was very short, only two kilometres.⁵³⁵

231. Also, a reasonable inference could be that the perpetrators were individuals from one of the humanitarian aid organizations that worked in the Bila Valley, which had grouped together with some Bosnian men for the purpose of an *ad hoc* criminal venture.

232. Thus the Prosecution has failed to prove beyond reasonable doubt that the mujahedin were members of the Poljanice group and not one of the other mujahedin groups active in the area.

(c) Not Proven that the local mujahedin were members of the Bosnian Army

233. As to the local mujahedin, the Prosecution's pleading are confused. In the indictment it alleges that approximately ten mujahedin and "local Bosnian Muslim soldiers" approached⁵³⁶; whereas in the PPTB it alleges that "about nine Mujahedin – five locals and four foreigners" stopped the column.⁵³⁷ Thus, the theory asserted in the PPTB is that the locals were mujahedin and not soldiers (ie members of the ARBiH). In view of the confusion, the Trial Chamber must select the theory most favourable to the Accused and hold that the Prosecution is asserting that the locals were *mujahedin* and not ARBiH soldiers acting with them.

234. In the event that the Trial Chamber considers that this issue needs addressing, there is no proof that the local Bosnians who acted with the foreign mujahedin were part of the ARBiH. Berislav Marijanovic described the locals as wearing "green masks on their faces and dressed like ninjas".⁵³⁸ Unlike the other two, he described how there were only four Mujahedin in total – two were foreign and two were locals. In cross-examination he

⁵³⁴ **Negovetic**, 15/01/08-T.6815-6818

See also **E990**-Excerpt from diary of Negovetic, 23/06/93.

E1370-Alihodzic 92bis statement, 29/02/08, para. 14.

⁵³⁵ **Husic**, 11/03/08-T.7309.

⁵³⁶ **Indictment**, para. 24.

⁵³⁷ **PPTB**, para. 24.11.

⁵³⁸ **Marijanovic**, 19/07/07-T.945.

accepted that some were not dressed like ordinary Bosnian Army soldiers.⁵³⁹ He also said that, when he used the term “Mujahedin”, he also considered that local Bosnians were included in that definition.⁵⁴⁰

235. During his testimony Mr Marijanovic stated that the local Mujahedin wore army insignia.⁵⁴¹ He later clarified that, of the two locals, one had a uniform and insignia; the other was in civilian clothes.⁵⁴² Neither of the other two witnesses recalled or described seeing insignia on the local Mujahedin.⁵⁴³ Thus Mr. Marijanovic was the only witness who asserted that the locals were ARBiH members. In cross-examination he accepted that he didn’t know anything about the organisation of the ARBiH and had assumed they were members.⁵⁴⁴ It was shown that during his initial interviews he had not said that ARBiH members were involved in the killings.⁵⁴⁵

236. Even if Mr Marijanovic did see ARBiH insignia on the clothing of one of the local Mujahedin, this does not mean that the man was in fact still a member of the ARBiH. Evidence was heard that ARBiH soldiers left their units and joined the mujahedin, but some of them kept uniforms with ARBiH insignia (See Section VIII, B(2)(c)). Thus, if indeed the local mujahedin was wearing military uniform it cannot be proven beyond reasonable doubt that he was a member of the ARBiH at that time.

E.7(3) Elements:

1. Existence of superior-subordinate relationship

237. The existence of a superior-subordinate relationship demands the existence of a hierarchical relationship, direct or indirect, between the Accused and the subordinate who is alleged to have committed or about to commit a crime within the Tribunal’s

⁵³⁹ **Marijanovic**, 19/07/07-T.945.

⁵⁴⁰ **Marijanovic**, 20/07/07-T.957.

⁵⁴¹ **Marijanovic**, 20/07/07-T.949.

⁵⁴² **Marijanovic**, 20/07/07-T.959.

⁵⁴³ **Pranjes**, 20/07/07-T.1011.

⁵⁴⁴ **Marijanovic**, 20/07/07-T.960.

⁵⁴⁵ At no point did he mention local mujahedin ARBiH members: **Marijanovic**, 20/07/07, T.955-6; T.960-2.

jurisdiction.⁵⁴⁶ The Prosecution must prove that the Accused exercised effective control through a chain of command, with Delic at the top and mujahedin fighter at the bottom.⁵⁴⁷ “Effective control” has been defined as the “material ability to prevent offences or punish the principal offenders”.⁵⁴⁸

238. There must be a perfect temporal coincidence between the time when the crimes which form the basis of the charges were committed by alleged perpetrators and the time when the superior-subordinate relationship existed. Crimes committed prior to a commander’s assumption of command be charged to him.⁵⁴⁹ Therefore the Prosecution must show that the Accused exercised effective control at the time the crimes were committed.

(a) General Delic had not assumed command when crimes committed

239. The Prosecution has not proven that Delic had assumed command as Commander of the Main Staff at the time the crimes were committed.

(i) Appointment of General Delic as Commander

240. [REDACTED]⁵⁵⁰

241. [REDACTED]⁵⁵¹ [REDACTED]⁵⁵²

242. E315⁵⁵³ are the 203rd Presidency Session Minutes for 8 June 1993. The attendees included Halilovic; Delic was not in attendance. The session started at 11.00 a.m. that day. Item one on the agenda was “Organisational and Personnel Changes in the RBiH Armed Forces”. The minutes show that proposed changes to appoint Delic as

⁵⁴⁶ See Halilovic AJ, para.59

⁵⁴⁷ See Halilovic AJ, para.210-211.

⁵⁴⁸ See Celebici AJ, paras.196-198.

⁵⁴⁹ See Hadzihasanovic Jurisdiction Decision, para.51: “an accused cannot be charged under Article 7(3) of the Statute for crimes committed by a subordinate before the said accused assumed command over the subordinate”.

⁵⁵⁰ [REDACTED]

⁵⁵¹ **E210(Under seal)**- [REDACTED]

⁵⁵² [REDACTED]

⁵⁵³ **E315**-Minutes, 203th Presidency session, 08/06/1993.

Commander and the appointment of certain officers to the rank of general were discussed. It was agreed that the deputy commanders, Stjepan Siber and Jovan Divjak, would be consulted on the proposal to appoint Delic, and the session was adjourned until 2 pm in order to do so.⁵⁵⁴

243. The Presidency session resumed at 2 pm and the opinions of Generals Siber and Divjak were conveyed to the attendees.⁵⁵⁵ A decision was not taken straight away, as Halilovic then read a report about the 10 Brigade and its commander, Caco, and then informed the Presidency about a football game in Dobrinja. This was followed by a vote on the proposal to appoint Delic. The Minutes record “Voting results. They are all for the decision”, with Sefer Halilovic abstaining from the voting.⁵⁵⁶ Thus a decision was taken at some stage after 2 pm that day.

244. The minutes reflect that Halilovic orally submitted his resignation but the President refused, wanting to have it in writing; the minutes then note that the “*Hand-over between Sefer and Rasim Delic will be done during the day*”.⁵⁵⁷ Members of a “Handover Commission” were appointed, which included General Jovan Divjak, Mr. Muslimovic and Dr. Konjicija to consider and discuss relevant issues relating to the hand-over.⁵⁵⁸ After the commission had carried out those discussions, it was then supposed to report back to the Commander's Collegium.⁵⁵⁹

245. Divjak's diary shows that the Handover Commission met at 16.15-16.45 pm, and the Commission then met with Sefer Halilovic at 16.50-17.15 pm.⁵⁶⁰ According to Divjak's note, the Commander's collegium meeting took place from 17.45-20.30 pm that day,

⁵⁵⁴ E315, pp.5-6.

See also Djuricic, 31/08/07-T.2109-2110.

⁵⁵⁵ E315, p.6.

⁵⁵⁶ E315, p.7.

⁵⁵⁷ E315, p.7.

⁵⁵⁸ Divjak, 12/09/07-T.2248.

⁵⁵⁹ Divjak, 12/09/07-T.2248-2249.

⁵⁶⁰ E354-Excerpt from diary of Mr. Divjak, 08/06/93, p1.

during which it was announced that, following the Presidency's decision, Delic had been appointed as army commander.⁵⁶¹

246. As to the specific timing that the announcement was made, General Karavelic said that it was made at a meeting which began about 8 pm.⁵⁶² He was clear that it was during that meeting that Delic, who was present at the meeting, assumed command.⁵⁶³ Karavelic stated:

“...it's very important that he took up his duties only at the moment when the decision was publicly announced and broadcast by the media, not before. And when it was announced to his subordinates, generals and officers, and that was that evening, the 8th of June, 1993.

Judge Harhoff: Were you present at that meeting?

*A: Yes”.*⁵⁶⁴

247. [REDACTED]⁵⁶⁵

248. Thus, the evidence shows that the Presidency decision to appoint Delic as commander was not taken until some point well after 2 pm on the afternoon of 8 June 1993. Even after the decision was taken, it is clear that further steps needed to be taken before Delic could be informed, with the Handover Commission being formed to consider and highlight pertinent issues for the handover to be carried out.

249. It is unclear when exactly Delic was informed of his appointment; however, Karavelic made it very clear that Delic only assumed command from 8 pm that evening.

250. Divjak described how on 9 June 1993, the day after Delic's appointment, he held his first meeting as Commander of the Main Staff with his chiefs of administration.⁵⁶⁶ At the meeting the chiefs made Delic aware of what was happening at the Main Staff, and

⁵⁶¹ Divjak, 12/09/07-T.2254.

⁵⁶² Karavelic, 25/03/08-T.7805: “A.I think the meeting was in the evening about 8.00 p.m.”

⁵⁶³ Karavelic, 25/03/08-T.7810: “[...]the official inauguration of General Delic as number one in the BH army was on that day, the 8th of June, 1993, at that meeting”.

⁵⁶⁴ Karavelic, 25/03/08-T.7810-7811.

⁵⁶⁵ [REDACTED]

⁵⁶⁶ E355-Excerpt from diary of Mr.Divjak, 09/06/93.

“spoke about the goals, objectives, materiel support and personnel questions which fell within the purview of their respective administrations”.⁵⁶⁷ In relation to Delic, Divjak confirmed that, *“according to the way he showed his interest, he did not seem to know everything” about the Main Staff and “[h]e seemed interested, not superficial. He was very carefully listening, but my conclusion was he did not know the complete situation”*.⁵⁶⁸

251. Dr Cornish testified that in time of war, there should be a period of handover where the new commander would meet with incumbent, and then visit his subordinate commander and receive briefings from them, allowing him to assert his authority over the new structure.⁵⁶⁹ As to how long the process of assumption of command could take, he said:

“I would say it could take anything, really, from minutes, in time of immediate urgent conflict, to several days really, because particularly if the handover, takeover is at very high level, then there is, quite clearly, so much more to see and to understand. So the new commander would have an awful lot more to -- to visit and to see and to be briefed upon. ...perhaps even as long as a week”.⁵⁷⁰

252. As the highest professional officer in the ARBiH it would be reasonable to expect that if the handover had gone smoothly it would have taken him at least several days to establish control, by ascertaining what his predecessor had been doing, what the current activities in the Main Staff and ARBiH were, and to meet his immediate subordinates and begin to assert his authority. However, upon becoming commander, things did not go smoothly for Delic. His new deputy, Chief-of-Staff Halilovic, did not accept his authority and a conflict commenced, which would significantly hinder Delic’s ability to assert control.⁵⁷¹ Moreover, the terrible situation in and around Sarajevo hampered Delic’s ability to leave the city to meet with his subordinate corps commanders in the

⁵⁶⁷ Divjak, 12/09/07-T.2256-2257.

⁵⁶⁸ Divjak, 12/09/07-T.2257.

⁵⁶⁹ Cornish, 15/04/08-T.8522-8523.

⁵⁷⁰ Cornish, 15/04/08-T.8523-8524.

⁵⁷¹ Karavelic, 25/03/08-T.7807: “[...]The reaction was very negative, a bit aggressive”.

field.⁵⁷² Loncaric testified that Delic introduced himself as Commander to the 3Corps Command in September 1993.⁵⁷³

(ii) Timing of killings

253. The evidence is that the surrender took place around 10 am, or between 10 and 11 am,⁵⁷⁴ with the inhabitants of the village and soldiers being gathered together and escorted towards Mehurici thereafter. There was no evidence of there being long delays between the surrender and the gathering of the group.

254. Berislav Marijanovic drew the route taken by the column on a map.⁵⁷⁵ From the map it can be seen that the route from Maline to Mehurici was fairly direct, a distance of about one and a half kilometres. Even allowing for a large group travelling at a slow pace, the interception of the group by the Mujahedin must have occurred around noon or by very *early* afternoon at the latest, with the shootings occurring not long afterwards.

255. Osman Fusko testified that on the day of the attack he travelled from the forward command post at Vlastic to Mehurici.⁵⁷⁶ After a while, Croat civilians started to arrive in Mehurici. He learned that they were mostly from Maline.⁵⁷⁷ As to the timing of the killings he was asked:⁵⁷⁸

“Q. And at what time of the day did you learn that information?”

It was in the afternoon. I heard this from the Croat civilians who were talking among themselves.”

256. Thus by the afternoon the killings had already occurred and Bosnian Croats were discussing this.

⁵⁷² The first time he was in Zenica was 21 and 22/08/1993: **E1248**-Conclusions and tasks adopted at the meeting in Zenica, 29/08/93.

⁵⁷³ **Loncaric**, 10/04/08-T.8379.

⁵⁷⁴ **Puselja**, 20/07/07-T.1027; see

See also **E292**-Annex AMilinfo sum, 08/06/1993: BRITBAT informed by HVO of “cleansing” of Maline at 10.15 am, which suggests that the Bosnian Croats were already moving at that time.

⁵⁷⁵ **E129**-Map marked by Marijanovic; point 1 indicates starting point in Maline.

See also **Marijanovic**, 19/07/07-T.916-917.

⁵⁷⁶ **Fusko**, 23/07/07-T.1093-1094.

⁵⁷⁷ **Fusko**, 23/07/07-T.1095.

⁵⁷⁸ **Fusko**, 23/07/07-T.1096.

(iii) Conclusion

257. The burden is on the Prosecution to prove that Delic had assumed command prior to the crimes taking place, ie he was in fact exercising effective control over the alleged perpetrators at that time, and not just that a decision had been taken to appoint him at the time the killings occurred.

258. Even if the test was whether a decision had been taken to appoint Delic at the time the crimes were committed (which is denied) the Prosecution did not prove that the killings took place *after* the Presidency decision to appoint Delic. The test is whether Delic had assumed command at the time the killings took place.⁵⁷⁹ The evidence shows that he did not assume command until at least 8 pm that day, so he could not have assumed effective control over *anybody* prior to then, let alone any alleged subordinates far away from him in the field.

259. There is no evidence to show that Delic was aware of or had been involved in any way in the Bila valley action of 8 June 1993. Previously he had been based at Visoko, far from the Main Staff HQ in Sarajevo. As mentioned previously (Section III, E(6)), the Maline action was a spontaneous event taken by members of the 306MB and armed villagers, even without any command or control from Commander Sipic. There was no evidence that the Main Staff was aware of it.

260. Therefore the Prosecution has not proven beyond reasonable doubt that Delic had assumed command as Main Staff Commander at the time the killings took place nor that he exercised effective control over any of the participants in the combat action, let alone “the Mujahedin”. It was said by the Appeals Chamber in the *Hadzihasanovic*, “[i]n the case of doubt, criminal responsibility cannot be found to exist, thereby preserving full respect for the principle of legality”.⁵⁸⁰ In this case, the doubt is overwhelming.

(b) No effective control over Mujahedin at Poljanice and other groups

⁵⁷⁹ See *Krstic* TJ, paras. 328-331. There the Trial Chamber considered de facto assumption of command as more important than formal appointment; there the handover ceremony was a very important factor.

⁵⁸⁰ See *Hadzihasanovic* Jurisdiction Decision, para 51.

261. Even if the Prosecution was able to prove that Delic had assumed command at the time of the killings (which it cannot), and if it was able to prove that the perpetrators belonged to the Poljanice mujahedin group (which it cannot), that group was neither de jure part of the ARBiH nor de facto under ARBiH effective control (Section III, D(5)).

262. Moreover, the fact that the mujahedin which seized the Bosnian Croats used the threat of death and serious violence against the 306MB Military Police speaks for itself. It would defy logic to conclude that the perpetrators and the soldiers escorting the Bosnian Croat detainees could have been part of or under the control of the same military organization.

263. The Prosecution did not prove at the time of the killings that there was a superior-subordinate relationship between Delic and the perpetrators through a chain of command. There is absolutely no link whatsoever between these unknown persons and the Accused. The Prosecution failed to prove each step in the alleged chain of command and show how effective control was exercised. The Prosecution has not proven that he was even aware of the combat activities in Maline, let alone proven that he could exercise some sort of influence over events. It follows it failed to prove that Delic exercised effective control over the unknown perpetrators.

2. Maline Knowledge

264. Contrary to the Prosecution's claim, the evidence did not show that Delic was put on notice of the murders and woundings in Maline/Bikosi.⁵⁸¹

(a) [REDACTED]

265. [REDACTED] Moreover, during this part of his testimony his recollection was poor and his answers were unclear, often giving contradictory responses.

266. [REDACTED] The Chamber heard that on 28 April 1993 a Forward Command Post of the SVK was formed⁵⁸² at the mining hotel in Zenica.

⁵⁸¹ **Indictment**, para. 27.

267. [REDACTED]⁵⁸³ [REDACTED]⁵⁸⁴ [REDACTED]⁵⁸⁵ [REDACTED]

268. [REDACTED]⁵⁸⁶ [REDACTED]⁵⁸⁷

269. [REDACTED] On 15 June Hadzihasanovic appointed persons to a fact-finding commission to establish facts about events in Susanj and Ovnak.⁵⁸⁸ Soon after, the Chief of the 3Corps SVB sent a report to the SVK IKM concerning the killed persons in Ovnak and Susanj.⁵⁸⁹ [REDACTED]⁵⁹⁰ The Zenica District Military Court Investigative Judge prepared an official note on 12 June.⁵⁹¹

270. [REDACTED]⁵⁹² [REDACTED]⁵⁹³ [REDACTED]⁵⁹⁴ [REDACTED]⁵⁹⁵
[REDACTED]⁵⁹⁶

271. The reality is that PW3 knew that the mujahedin were alleged to have carried out the crimes, and that *he had no authority over them*. Around this critical period in June he met with Andrew Hogg in Zenica and gave an interview in which he said “*They are not under the control of the Bosnian Army and they must go. We hope that in the next few days President Izetbegovic will order them out*”.⁵⁹⁷

⁵⁸² E245-SVK Order,28/04/1993.

See also PW3,24/08/07-T.1659-1661.

⁵⁸³ Negovetic,15/01/08-T.6842:“Q[...]*he had been delegated with authority to command and control on behalf of the Supreme Command Staff in the field. Do you agree with that? A.Yes.*”

⁵⁸⁴ [REDACTED]

⁵⁸⁵ [REDACTED]

See also E20-Rules of service in ARBiH,Article16.

⁵⁸⁶ E180(Under seal)– [REDACTED]

⁵⁸⁷ [REDACTED]

⁵⁸⁸ E250(Under seal)– [REDACTED]

⁵⁸⁹ E249-3Corps SVB Report,12/06/93.

⁵⁹⁰ E251-3Corps Report,15/06/1993.

⁵⁹¹ E252-Official Note of District Investigative Judge,12/06/1993.

⁵⁹² Negovetic,15/01/08-T.6842.

⁵⁹³ Negovetic,15/01/08-T.6798.

⁵⁹⁴ [REDACTED]

⁵⁹⁵ [REDACTED]

⁵⁹⁶ [REDACTED]

⁵⁹⁷ E56-Sunday Times article by Hogg,27/06/1993.

272. In addition, PW3's testimony regarding Maline/Bikosi was very unclear and contradictory. During his testimony of 26 July 1993 PW3 was asked a series of leading questions intended to get him to discuss the Bikosi killings; initially he said he couldn't remember any details.⁵⁹⁸ [REDACTED]⁵⁹⁹ [REDACTED]⁶⁰⁰ [REDACTED]⁶⁰¹

273. [REDACTED]⁶⁰² [REDACTED]⁶⁰³ [REDACTED]⁶⁰⁴ [REDACTED]⁶⁰⁵ [REDACTED].

274. Later, again attempting to get PW3 to discuss the killings in Bikosi by mujahedin, the Prosecution asked PW3 about E179,⁶⁰⁶ which concerned the Zenica Gerila. [REDACTED]⁶⁰⁷ [REDACTED]⁶⁰⁸

275. Any confusion in the evidence must be resolved in a manner most favourable to the Accused [REDACTED].

(b) Conditions impacting on the possibility of Delic receiving information

(i) Role of Sefer Halilovic and Zicro Suljevic

276. After his appointment, Delic could not establish a functioning chain of command. Sefer Halilovic (who remained as Chief-of-Staff) began actively working against Delic. Even at the Collegium Meeting at which Delic's appointment was announced, Halilovic

⁵⁹⁸ [REDACTED]

⁵⁹⁹ **E166**-[REDACTED]

⁶⁰⁰ [REDACTED]

⁶⁰¹ [REDACTED]

⁶⁰² **E170(Under seal)**- [REDACTED]

⁶⁰³ [REDACTED]

⁶⁰⁴ [REDACTED]

⁶⁰⁵ [REDACTED]

⁶⁰⁶ **E179**-Report of Hadzihasanovic, 13/06/1993.

⁶⁰⁷ [REDACTED]

⁶⁰⁸ [REDACTED]

voiced his objection.⁶⁰⁹ The ensuing conflict created further problems with the chain of command and RiK.

277. [REDACTED]⁶¹⁰ [REDACTED]⁶¹¹

278. PW3 confirmed that Halilovic made Delic's life "much more difficult", and he "belittled him not only as a commander but as a man".⁶¹² [REDACTED]⁶¹³
[REDACTED]⁶¹⁴

279. [REDACTED]⁶¹⁵ [REDACTED]⁶¹⁶ [REDACTED].⁶¹⁷

280. [REDACTED].⁶¹⁸ [REDACTED]⁶¹⁹

281. Halilovic continued to command the authority of many former Patriotic League officers, including Zicro Suljevic who held the position of Head of the Operations Centre. During this period of conflict, the Main Staff Operations Centre was located near Vjecna Vatra⁶²⁰ did not function as it should have done. Delic's office was situated at the Vranica building company,⁶²¹ which was some distance from the Operations Centre.⁶²²

282. [REDACTED]⁶²³ [REDACTED]⁶²⁴ [REDACTED]⁶²⁵ [REDACTED].⁶²⁶
[REDACTED]⁶²⁷

⁶⁰⁹ **Karavelic**,25/03/08-T.7807: "JUDGE HARHOFF: So Halilovic was also against the appointment of General Delic? A: Well, he was the one who most strenuously and vociferously objected and he was the ring leader of the others."

⁶¹⁰ [REDACTED]

⁶¹¹ [REDACTED]

⁶¹² **PW3**,22/08/07-T.1533.

⁶¹³ [REDACTED]

⁶¹⁴ [REDACTED]

⁶¹⁵ [REDACTED]

⁶¹⁶ [REDACTED]

⁶¹⁷ [REDACTED]

⁶¹⁸ [REDACTED]

⁶¹⁹ [REDACTED]

⁶²⁰ **Dedovic**,08/04/08-T.8168.

⁶²¹ **Karavelic**,25/03/08-T.7803.

⁶²² **Dedovic**,08/04/08-T.8168.

⁶²³ [REDACTED]

283. [REDACTED]

(ii) Problems with RiK, particularly 9 and 10 Brigades

284. Serious problems with units failing to comply with the command and control system existed in Sarajevo, particularly in the 9 and 10 Brigades. The commanders of these units, Caco and Celo, were criminals before the war,⁶²⁸ who had committed very grave crimes.⁶²⁹ [REDACTED]⁶³⁰ Delic had to deal with these serious problems immediately to ensure the whole system of RiK did not fall apart.

285. [REDACTED]⁶³¹ [REDACTED].⁶³² [REDACTED].⁶³³ [REDACTED]⁶³⁴ [REDACTED]⁶³⁵

286. A number of exhibits show that in July 1993 these rogue brigades carried out serious criminal activities including an attack on the Sarajevo University clinical centre, and taking members of ARBiH, police and judges to dig trenches.⁶³⁶ Witnesses confirmed that events culminated on the night of 2 and 3 July 1993, which included an attack on the SVK Command Post and various police stations.⁶³⁷ When a subordinate of Musan Topalovic, Caco, was detained he threatened that unless he was released he would launch a mortar attack on the Presidency building.⁶³⁸ The 10 Brigade also kidnapped Delic's son

⁶²⁴ [REDACTED]

⁶²⁵ [REDACTED]

⁶²⁶ [REDACTED]

⁶²⁷ [REDACTED]

⁶²⁸ PW3,22/08/07-T.1539.

⁶²⁹ PW3,22/08/07-T.1539.

⁶³⁰ [REDACTED]

⁶³¹ [REDACTED]

⁶³² [REDACTED]

⁶³³ [REDACTED]

⁶³⁴ [REDACTED]

⁶³⁵ [REDACTED]

⁶³⁶ E1246–MUP Information regarding 9MB,05/07/93.

E1332–Letter of Delic regarding 10MB,06/07/1993.

⁶³⁷ PW3,22/08/93-T.1545; Softic,28/08/07,T.1880; Dedovic,08/04/08-T.8183-8187.

See also E217-SVB Administration Criminal report,29/10/93,p.3.

⁶³⁸ Dedovic, 08/04/08-T.8192-8194.

and took him to dig trenches at the front line, which was only resolved by the personal intervention of President Izetbegovic.⁶³⁹

287. Delic immediately began to deal with the problems posed by the units.⁶⁴⁰ However, he could not react unilaterally by ordering the use of force to arrest the members.⁶⁴¹ The evidence shows that only President Izetbegovic had the authority to decide to use force against the 9 and 10 Brigades.⁶⁴² PW3 and Karavelic confirmed that the SVK prepared a plan to arrest the members of 9 and 10 Brigade, but the plan had to be approved by President Izetbegovic.⁶⁴³ It was not until the end of October 1993 that Izetbegovic finally gave approval.⁶⁴⁴ During the action to arrest the Brigade members, 5000 ARBiH soldiers were involved and 500 policemen.⁶⁴⁵ At least 20 Army and MUP members were killed.⁶⁴⁶ Afterwards life in Sarajevo became normal for non-Muslims.⁶⁴⁷ Subsequently members of the brigades were charged with crimes,⁶⁴⁸ and criminal proceedings later took place.⁶⁴⁹

288. The 9 and 10 Brigades' worst actions occurred at start of June/early July, which was the time that PW3 was demanding that Delic come to Zenica. Also the timing of the operation to arrest the 9 and 10 Brigade members coincided with the time that Delic sent his letter of 23 October 1993,⁶⁵⁰ in response to Mazowieski's letter to President Izetbegovic.⁶⁵¹

⁶³⁹ PW3,22/08/07-T.1546;Dedovic,08/04/08-T.8184-8187.

⁶⁴⁰ PW3,22/08/07-T.1541;Karavelic,25/03/07-T.7853.

⁶⁴¹ Karavelic,26/03/08-T.7878.

⁶⁴² Karavelic,26/03/08-T.7979-7980.

⁶⁴³ PW3,22/08/93-T.1558.

See also E218(Under seal)- [REDACTED]

Karavelic,26/03/08-T.7866-7868.

⁶⁴⁴ PW3,22/08/93-T.1558.

⁶⁴⁵ Karavelic,26/03/08-T.7883.

⁶⁴⁶ PW3,22/08/93-T.1559.

⁶⁴⁷ Djuricic,31/08/07-T.2117.

⁶⁴⁸ E217.

See also E960-SVK Security Administration Criminal report,21/11/93.

PW13,06/12/07-T.6631-6633.

E961-RBIH Presidency letter regarding investigation in case against Hasic et al.,02/02/94.

PW13,06/12/07-T.6633-6634.

⁶⁴⁹ Divjak,13/09/07-2320.

⁶⁵⁰ E178-Information of Delic,23/10/1993.

⁶⁵¹ PW3,24/08/07-T.1616.

(iii) VRS aggression in and around Sarajevo

289. During the siege, Sarajevo was under constant shelling, with Serbs targeting civilian targets; there were thousands of sniper rounds and other projectiles fired each day.⁶⁵²

The ARBiH lacked almost everything required to defend Sarajevo.⁶⁵³

290. UNSC resolutions were adopted in May, June and August 1993 calling for Sarajevo and other towns to be free from attack.⁶⁵⁴

291. In June 1993 the VRS tightened its encirclement, and managed to take a suburb of Sarajevo.⁶⁵⁵ Also, on 13 June the VRS took the town of Gorazde, with the aim of encircling Sarajevo in a second ring, killing and wounding hundreds of people.⁶⁵⁶ During July VRS forces increased the strength of their attacks on Sarajevo. On 3 July the Serbs broke through the defence lines into Mujkica Brdo, a part of Sarajevo, meaning the city would fall.⁶⁵⁷ Karavelic confirmed that at this time Delic's strategic priority had to be the defence of the city.⁶⁵⁸ On 17 July there was another offensive on Rogoj and Trnovo, which put Sarajevo under more fierce pressure.⁶⁵⁹ In addition to the Serb threat, the HVO had started attacks in the Sarejevo area.⁶⁶⁰ They fought around Kiseljak, in the AOR of the 1Corps.⁶⁶¹ At end of July, the fate of Sarajevo was in the balance again when

⁶⁵² **Karavelic**,25/03/07-T.7812.

⁶⁵³ **PW3**,21/08/07-T.1453.

⁶⁵⁴ **E204**-UNSC Resolution 824,06/05/1993.

E205-UNSC Resolution 836,04/06/1993,p.2:"*Alarmed by the resulting plight of the civilian population ...in particular in Sarajevo, Bihac, Srebrenica, Gorzade, Tuzla and Zepa.*"

E206-UNSC Resolution 859,24/08/1993.

⁶⁵⁵ **PW3**,21/08/07-T.1508.

See also **E207**-SVK Overview of operations,28/06/1993.

⁶⁵⁶ **Karavelic**,25/03/07-T.7818.

See also **E1324**-1Corps Supplement to combat report,13/06/1993.

Dedovic,08/04/04-T.8178-8179.

⁶⁵⁷ **Karavelic**,25/03/07-T.7823.

See also **E1325**-1Corps Daily combat report,03/07/1993.

⁶⁵⁸ **Karavelic**,25/03/07-T.7824.

⁶⁵⁹ **PW3**,24/08/93,T.1612.

See also **E229**-SVK Intelligence Administration Weekly report,17/07/1993.

⁶⁶⁰ **Karavelic**,25/03/07-T.7825.

⁶⁶¹ **E1326**-1Corps Information,01/07/1993.

See also **Karavelic**,25/03/07-T.7825-7826.

the Serbs captured territory just outside the city. There were mass desertions by the ARBiH and Karavelic had no way to deal with things.⁶⁶²

292. Thus besides serious internal conflict, Delic faced the fall of Sarajevo and could not leave, either physically or because of demands on him to save the civilian population of Sarajevo.

(iv) Fikret Abdic

293. From June 1993 Fikret Abdic, a Muslim, increased his attempts to form the Autonomous Province of Western Bosnia.⁶⁶³ He was a former member of the RBiH Presidency, who had won the most votes during the pre-war elections, and desired his own region; this problem occupied Delic's attention immediately following his appointment.⁶⁶⁴ PW3 testified that at that time there was a danger that forces of the 5Corps under Drekovic would split away from the 5Corps.⁶⁶⁵

(v) Role of propaganda

294. Throughout the war, the Croats in Croatia and Bosnia used the media and other information providers for propaganda purposes. There was wide-scale propaganda,⁶⁶⁶ and Croatian and Serbian media created high levels of hatred and mistrust against the people loyal to the ARBiH.⁶⁶⁷

295. In Central Bosnia in particular, there was a need to treat reports of crimes with great caution. For example, E232,⁶⁶⁸ an order dated 17 April 1993 by Tihomir Blaskic, refers

⁶⁶² **Karavelic**, 25/03/07-T.7828: "I thought at that time that the whole world this come down...Everything was burned down during the day, every single village, every single house was torched."

See also **E1247**-Addition to combat report by Karavelic, 30/07/1993.

⁶⁶³ **PW3**, 22/08/07-T.1524.

⁶⁶⁴ **PW3**, 22/08/07-T.1523-1525.

⁶⁶⁵ **PW3**, 22/08/07-T.1527.

See also **E212**(Under seal)- [REDACTED]

⁶⁶⁶ **PW3**, 24/08/07-T.1620.

⁶⁶⁷ **Mrkaljevic**, 10/10/07-T.3929.

⁶⁶⁸ **E232**-Order of Blaskic, 17/04/1993.

to Muslim Forces using tanks to fire at people, mostly women and children. PW3 confirmed that this was simply untrue.⁶⁶⁹

296.A further example of false or exaggerated claims was shown by E233.⁶⁷⁰ This document shows that members of the Bosnian Croat community, in particular Fra Stjepan, and the International Community did receive misinformation about incidents in Central Bosnia which, upon further investigation, turned out to be wrong or exaggerated.

297.During June 1993 HVO propoganda intensified against the ARBiH to increase conflict and tension. [REDACTED].⁶⁷¹ Halim Husic described how on 10 June Croatian media informed the public that the monastery at Guca Gora had been destroyed and he made a film to show this wasn't the case.⁶⁷²

298.The worsening propoganda at that time was also shown by the information report from the 3 Corps Press Centre dated 11 June 1993.⁶⁷³ The deceit of the HVO's propoganda was exposed by [REDACTED], relating to Travnik.⁶⁷⁴ [REDACTED]

299.HVO motives behind its propoganda were revealed in E299, showing that it was used to displace its own Croat people.⁶⁷⁵ PW3 confirmed that the report reflected the sort of information that was circulating in Central Bosnia, and this made it very difficult for the 3Corps Command to distinguish between what was true and what was propoganda if it was coming from Croatian sources.⁶⁷⁶

⁶⁶⁹ PW3,24/08/07-T.1621.

⁶⁷⁰ E233(Under seal)- [REDACTED]

⁶⁷¹ [REDACTED]

⁶⁷² Husic, 11/03/08-T.7307.

See also E1204-video showing monastery at Guca Gora.

⁶⁷³ E235-3Corps Press Centre Information,11/06/1993.

⁶⁷⁴ E234(Under seal)- [REDACTED]

See also PW3,24/08/07-T.1626.

⁶⁷⁵ E299-UNHQBHCommand Daily Infosum,21/06/1993, p.2:"the HVO in the Haljinci valley reported that 2000 'Mujahideen' were heading towards them, so they moved to Vares".

⁶⁷⁶ PW3,24/08/07,T.1626.

300.PW2 testified that, as part of its propaganda, Croatian TV and radio media would refer to the entire Bosnian Army as “Mujahedin”, “Muslimanske Snage” and “Turks” making it difficult to determine what exactly was being spoken of, and making their reports highly unreliable.⁶⁷⁷

301.Consequently, any information arriving at the Main Staff from Central Bosnia concerning allegations of crimes had to be considered in the light of the fact that information was often unverified and inaccurate. Because of Croat propaganda spread throughout Croatia and BiH, ARBiH commands, including the Main Staff, and the international community had no trust in information coming from Croat sources in Central Bosnia.⁶⁷⁸

(c) Information about Events in Bikosi

302.The Prosecution alleges that Rasim Delic was put on notice of the murders and woundings in Maline/Bikosi.⁶⁷⁹ Against the backdrop of events after Delic’s appointment, it cannot be shown that he knew or had reason to know of the existence of crimes in Maline/Bikosi prior to October 1993.

303.In making the allegation, the Prosecution first relies on the letter of 3Corps Commander Hadzihasanovic dated 13 June 1993 to Delic.⁶⁸⁰ However, this document talks about volunteers from foreign countries in the general area of *Zenica*, the Gerila group. There is no mention of any mujahedin groups in the territory of Travnik Municipality, such as Poljanice or Guca Gora. It does not state that crimes have been committed.

304.On 16 June 1993, Delic sent his response, ordering the Gerila “staying on the territory of *Zenica*” to be sent to Igman to merge with another unit, or otherwise “*show*”

⁶⁷⁷ **PW2**,19/07/07T.864-865: “[...]They called us “the Mujahedin,” “the Turks,” or some other names also.”

⁶⁷⁸ **E767-SVBSVK** Special Information No.189,24/09/93. Administration didn’t trust PW3 because of Croat propaganda and thought he was biased.

⁶⁷⁹ **Indictment**, para.27.

⁶⁸⁰ **E179-3Corps** report,13/06/93.

them no hospitality and eventually disarm them".⁶⁸¹ Thus, Delic's goal is, in the first instance, to try to bring the group within the RiK system.

305. Delic's authority as Main Staff Commander, however, was shown to be completely ineffective by the telephone discussion that took place later that day following Hadzihasanovic's receipt of Delic's order. [REDACTED].⁶⁸² [REDACTED] This shows that the chain of command did not function, and that Delic's order was willfully disobeyed. More importantly, it shows that Delic lacked the material ability to take measures to, if necessary, disarm the mujahedin group.

306. Around that time period, General Divjak testified that at the SVK in Sarajevo, the mujahedin was raised for the first time at a morning briefing.⁶⁸³ No particular unit was discussed, and it was agreed that Delic should propose to the President, Mr Izetbegovic, that either the group of foreign citizens should be sent back to wherever they had come from or that they should be organised as a unit within the ARBiH.⁶⁸⁴ This demonstrates that the authority to decide whether to try and integrate the mujahedin groups into the ARBiH was with President Izetbegovic, and not Delic.

307. [REDACTED]⁶⁸⁵ [REDACTED]

308. [REDACTED]⁶⁸⁶

309. [REDACTED] on 17 June Delic reacted in a joint letter with Minister of Interior, Bakir Alispahic.⁶⁸⁷ In it, all corps commanders and MUP SJB Chiefs were ordered to undertake measures to protect citizens and their property, and create conditions for the

⁶⁸¹ **E163**-Order of Delic, 16/06/1993: "*Send these groups to Igman to join the SVK independent detachment, to Zuka's unit. Otherwise, they should have hospitality withdrawn and possibly be disarmed.*"
See also **PW3**, 24/08/07-T.1641.

⁶⁸² [REDACTED]

⁶⁸³ **Divjak**, 11/09/07-T.2176.

⁶⁸⁴ **Divjak**, 11/09/07-T.2177-2178.

⁶⁸⁵ [REDACTED]

⁶⁸⁶ [REDACTED]

⁶⁸⁷ **E226**-Order by Delic and Minister Alispahic, 17/06/1993.

return of people who had fled. Thus, when Delic received a letter requesting assistance, he reacted quickly and forcefully. [REDACTED]⁶⁸⁸

310. [REDACTED].⁶⁸⁹ [REDACTED].⁶⁹⁰ [REDACTED].⁶⁹¹

311. [REDACTED].⁶⁹² [REDACTED].⁶⁹³ [REDACTED].⁶⁹⁴ [REDACTED].⁶⁹⁵

312. [REDACTED].⁶⁹⁶ [REDACTED].⁶⁹⁷

313. More importantly, unlike other documents sent to the SVK Operations Centre that we can be certain reached Delic because he responded to them, there are no markings to show that Mr. Suljevic forwarded this document to Delic.

314. Chef-de-Cabinet Murat Softic explained how a document should be marked if it was to be forwarded to the Commander in relation to E272.⁶⁹⁸ On the document, the signature of the operator receiving the document at the Operations Centre can be seen at the top of the page. To the left of it is marked “K-dant”. Softic explained that the Commander would not receive the document directly, but somebody at the Operations Centre wrote it because the Commander “was supposed to be made aware of this document and then it was supposed to be forwarded to the Commander”.⁶⁹⁹ We know that Delic received the proposal because he responded to it.⁷⁰⁰

⁶⁸⁸ [REDACTED]

⁶⁸⁹ [REDACTED]

⁶⁹⁰ [REDACTED]

⁶⁹¹ [REDACTED]

⁶⁹² [REDACTED]

⁶⁹³ [REDACTED]

⁶⁹⁴ [REDACTED]

⁶⁹⁵ [REDACTED]

⁶⁹⁶ [REDACTED]

⁶⁹⁷ [REDACTED]

⁶⁹⁸ E272-3Corps Proposal for formation of detachment of foreign citizens, 12/08/1993.

⁶⁹⁹ Softic, 28/08/07-T.1818.

⁷⁰⁰ E273, SVK Order for formation of EMD, 13/08/1993.

315. Other documents showed that if a document was supposed to go to Delic it would be marked in a similar way. E173 is a letter from PW3 dated 30 June 1993, it is addressed “To the Commander of the Supreme Command Staff of the BH Army, Mr Rasim Delic personally”. On that letter, the officer receiving the document at the Operations Centre marked the document in the bottom left corner “Sent to the Commander 30 June 1993”.

316. It follows that, in the environment existing at the time in SVK, where the Operations Centre was headed by an officer loyal to Halilovic, as this document sent by packet communication bore no markings indicating that it was to be forwarded the Commander, the Prosecution has failed to prove beyond reasonable doubt that it was ever forwarded on to Delic. The only reasonable conclusion is that he never received it.

317. [REDACTED].⁷⁰¹ [REDACTED].

318. Prosecution witness Negovetic stated this document was received by the Operations Centre,⁷⁰² but once again a review of the BCS version shows that although it bears the signature of the operator receiving the document, there is no markings to show that it was forwarded on to the Commander. Also, in contrast to the other documents which were marked to be passed ‘to the Commander’ in the address line of the heading it was not marked to be delivered “personally”. Again, it cannot be concluded beyond reasonable doubt that this document was ever forwarded to Delic by the Operations Centre.

319. [REDACTED].⁷⁰³ [REDACTED].⁷⁰⁴

320. However, it is clear that this letter was received because Delic reacted to it. E225⁷⁰⁵ is a document from Delic dated 27 July 1993, warning the Corps commands to take measures to prevent MOS from breaking up ARBiH formation. [REDACTED]⁷⁰⁶

⁷⁰¹ [REDACTED]

⁷⁰² **Negovetic**, 15/01/08-T.6855-6857.

⁷⁰³ [REDACTED]

⁷⁰⁴ [REDACTED]

321. This shows that when Delic did receive communications requesting assistance, he would react and take steps to resolve problems.

322. [REDACTED].⁷⁰⁷ [REDACTED].⁷⁰⁸

323. [REDACTED].⁷⁰⁹ [REDACTED].⁷¹⁰ [REDACTED].⁷¹¹ [REDACTED].

324. The Prosecution next relies on President Izetbegovic's letter to Delic dated 17 October,⁷¹² which was sent as a result of President Izetbegovic receiving a letter dated 15 October from the Special Rapporteur, Tadeus Mazowieski.⁷¹³ In his 17 October letter, President Izetbegovic did not send a copy of Mr Mazowieski's letter to Delic.⁷¹⁴ While the Mazowieski letter referred to alleged killings on 8 June 1993 in Maljine village and claimed that "*Mojehedin troops were involved, reportedly connected to the 7th brigade*" of ARBiH, President Izetbegovic's letter omitted to make any mention of mujahedin, only mentioning that alleged crimes were committed by "*some soldiers from our Army*".

325. Delic immediately reacted and sent a request the same day for information to 3Corps.⁷¹⁵ This is the first point at which it can be properly concluded that Delic received information about the killings in Bikosi. In his letter, he requested information about an alleged massacre of 25 Bosnian Croats (civilians) in the village of Maljine on 8 July [sic] 1993. Thus, he demanded all the necessary information that a reasonable commander would require to find out whether there was any substance to the allegations.

⁷⁰⁵ E225-Warning issued by Delic, 27/07/1993.

⁷⁰⁶ [REDACTED]

⁷⁰⁷ [REDACTED]

⁷⁰⁸ [REDACTED]

⁷⁰⁹ [REDACTED]

⁷¹⁰ [REDACTED]

⁷¹¹ [REDACTED]

⁷¹² E182-Letter from President Izetbegovic regarding Maline events, 17/10/1993.

⁷¹³ E182, p.3 and 4.

⁷¹⁴ NOTE-The Prosecution tendered both letters together as one exhibit, creating the impression that they were sent together to Delic; however the evidence did not show that Delic received the Mazowieski letter.

⁷¹⁵ E176-Request for information by Delic to 3Corps, 17/10/1993.

Also, he dealt with it properly by sending the request down through the chain of command; Delic was not required to undertake investigation himself.

326. The same day (17 October), Hadzihasanovic sent a request to his subordinate in OGBosanska-Krajina for submission of data.⁷¹⁶

327. On 19 October 306MB SVB sent a report to OGBosanska-Krajina and 3Corps providing information.⁷¹⁷ It is signed “for” Asim Delalic, the Assistant Commander for Security. To the 3Corps, Mr Delalic would have appeared to have been the correct person to conduct the investigation and send the report. It said that during a battle in the villages of Maline, Bikosi and Podstinje, the HVO suffered losses in manpower, dead bodies of 25 Croats were collected in the period 8-10 June, and they were all dressed in uniforms. It concluded, “*We repeat that all these individuals died in combat*”.

(i) Investigation in Bikosi immediately after killings

328. There was evidence that the 306MB carried out an investigation into the killings at Bikosi immediately after they occurred. The head of 306MB SVB was Asim Delalic, the Assistant Commander for Security, assisted by Osman Fusko and Haris Jusic, the unit’s lawyer. As with all other departments throughout the ARBiH, these officers lacked relevant training and experience for the positions they held in security matters.⁷¹⁸

329. There was a degree of information about the killings soon after it had occurred, but it was very limited and unclear what had happened. Delalic testified that he was at the command post at Rudnik until 11 June 1993⁷¹⁹, and when he came to Mehurici he saw a large number of refugees. He heard from Mr. Zukanovic, Assistant Commander for Security of 1/306MB, that 20-25 people had been abducted from the Military Police of 1 Battalion and that they were missing.⁷²⁰

⁷¹⁶ E177-3Corps Request for submission of data, 17/10/1993.

⁷¹⁷ E140-306MB Report regarding Maline events, 19/10/1993.

⁷¹⁸ Fusko, 23/07/07-T.1121-1123; 24/07/07-T.1183.

⁷¹⁹ Delalic, 27/08/07-T.1710.

⁷²⁰ Delalic, 27/08/07-T.1710.

330. Zukanovic was ordered to carry out a full investigation, which revealed that the perpetrators were mujahedin, and members of 306MB were not involved. He informed the 3Corps SVB about the investigation.⁷²¹ Delalic said “*by virtue of that fact I could not continue investigating because in that period no one could enter the Mujahedin camp*”.⁷²² Zukanovic took statements from the military policemen, and made an official note, stating that the outcome was that no perpetrators belonged to 306MB and the perpetrators were unknown.⁷²³

331. Delalic testified that the outcome of the investigation clearly showed that the crimes was committed by the mujahedin, which “*was not under the control of the Army of the Republic of Bosnia and Herzegovina*”.⁷²⁴ Husic confirmed that Delalic’s report was sent to 3Corps on 15 June 1993.⁷²⁵

332. Other evidence showed that the 3Corps Commander was already aware of the allegations of killings in Maline by 20 June 1993. On 20 June 1993, he sent a reply to the 17th Krajina Brigade Commander: “*An investigation into the events in the village of Maline has been launched, and I hope that the competent organs will be rigorous, which will be my request*”.⁷²⁶ Delalic confirmed that Hadzihasanovic had received information from him that an investigation was being conducted, and this document reflected this.⁷²⁷

(ii) Conflict in evidence about report

333. Thus, the investigation in June clearly concluded that the killings had been carried out by mujahedin who were not within the jurisdiction of the ARBiH. As to why E140⁷²⁸ did not reflect this and gave the impression that the victims had been killed during a battle is unclear, as there was a conflict between two Prosecution witnesses. Fusko

⁷²¹ Delalic, 27/08/07-T.1710-1711; Husic Halim, 12/03/08-T.7395.

⁷²² Delalic, 27/08/07-T.1711.

⁷²³ Delalic, 27/08/07-T.1714.

⁷²⁴ Delalic, 27/08/07-T.1715; Husic Halim, 12/03/08-T.7403.

⁷²⁵ Husic Halim, 12/03/08-T.7400-7401.

⁷²⁶ E228-3Corps Reply to the Commander of 17th Krajina MB, 20/06/1993.

⁷²⁷ Delalic, 27/08/07-T.1770-1771.

⁷²⁸ E140-306MB Report regarding Maline events, 19/10/93.

testified that Delalic told him to draft the report; ie send information to say that the ARBiH had not committed any criminal offences.⁷²⁹

334. When he was shown E140, Mr. Delalic said he saw the document for the first time when he testified in 2005 (during the *Hadzihasanovic* case).⁷³⁰ He said he was most probably at the IKM at Mount Vlasic when it was produced on 19 October 1993.⁷³¹ He denied that he had asked Mr. Fusko to write the report in the way it had been written.⁷³²

335. It is therefore unclear why the report was drafted the way it was, but it was forwarded to the 3Corps who relied upon the information.

(iii) Merdan report

336. On 21 October the Deputy 3Corps Commander Dzermal Merdan sent a report to the SVK.⁷³³

337. The Prosecution notes that the 3Corps response was received only five days later⁷³⁴ and alleges that there was no real investigation.⁷³⁵ However, this fails to take account that an investigation into Maline had already been carried out by a unit of the 3Corps and there was independent knowledge within the 3Corps about the allegations. It can be seen that Merdan's report is much more substantial than the 306MB one, reflecting his knowledge. Delalic confirmed that Merdan visited the area with representatives of the international community and Fra Stipan Radic.⁷³⁶ PW3 also thought that Fra Stipan Radic was interviewed by the ARBiH in connection with the incident.⁷³⁷

⁷²⁹ **Fusko**, 23/07/07-T.1114.

⁷³⁰ **Delalic**, 27/08/07-T.1716-1717.

⁷³¹ **Delalic**, 27/08/07-T.1717.

⁷³² **Delalic**, 27/07/07, T.1771.

⁷³³ **E231**-Delivery of requested information by 3Corps, 21/10/1993.

See also **PW3**, 24/08/07-T.1617-1618.

⁷³⁴ **PPTB**, para. 27.7.

⁷³⁵ **PPTB**, para. 27.8.

⁷³⁶ **Delalic**, 27/08/07, T.1772-1773: "*Q. He went there with representatives of the International Community and Father Stipan Radic? A. Yes.*"

⁷³⁷ **PW3**, 24/08/07-T.1679.

338. In his report, Merdan wrote that there was no massacre of civilians by ARBiH nor were HVO soldiers executed and that the burial location was visited by members of UNPROFOR, EMM, ICRC and Fra Stjepan Radic from the Zenica parish office.⁷³⁸ He wrote that *“this is not a massacre of the rival population or mass graves as some are representing it”*. The receiver of this information would conclude that the Bosnian Croats had been killed in combat. There was nothing in Merdan’s report to suggest that it could not be relied upon by Delic.

(iv) General Delic responded properly

339. On 23 October Delic wrote to Ministry of Foreign Affairs, passing on the information which had been provided to him, stating that a massacre *“which is being attributed to the RBH Army did not take place”*.⁷³⁹ Emphasis was placed on the information reported to Delic by Merdan that members of the international community and Fra Radic visited the sites.

340. Thus, Delic acted promptly and responsibly in seeking information through the chain of command, and was entitled to rely on the conclusion of the 3Corps at face value, where it informed him that “there was no massacre”. The information came from the Deputy 3Corps Commander, a senior officer, and there was no requirement for Delic to seek further report from other sources; to do so would have been a failure of the chain of command.⁷⁴⁰ Also, at the time Delic sent his letter of 23 October, the operation to arrest the 9 and 10 Brigade members was at its peak.⁷⁴¹

341. The Prosecution suggests that Delic ignored the totality of his knowledge,⁷⁴² but as outlined previously, it cannot be reasonably concluded that Delic ever received any information about the allegations prior to October.

⁷³⁸ E231,p2:“The location was visited by representatives of UNPROFOR, the European monitoring mission, representatives of the International Red Cross and Fra Stipan Radic from the Zenica parish office.”

⁷³⁹ E178-Information by Delic to Ministry of Foreign Affairs,23/10/1993.

⁷⁴⁰ See *High Command* case at pp.543-545.

⁷⁴¹ PW3,24/08/07-T.1616.

⁷⁴² PPTB, para.27.10

342. In any event, even if he did (which is vigorously denied), PW3's letters referred to allegations of mujahedin carrying out crimes. In President Izetbegovic's letter to Delic, and Merdan's response from the 3Corps, there was only reference to ARBiH soldiers. Thus, on this information, Delic could not be expected to have known that the allegations referred to were linked to earlier suggested allegations about mujahedin.

(v) When Delic received request to assist he reacted

343. The evidence demonstrates that when it can be shown for certain that Delic received a request for assistance, he reacted. There are numerous examples:

344. [REDACTED].⁷⁴³ [REDACTED].⁷⁴⁴ [REDACTED].⁷⁴⁵ [REDACTED].⁷⁴⁶
[REDACTED].⁷⁴⁷

345. [REDACTED]. The Prosecution is inviting the Trial Chamber to draw an inference that he must have received them. Based on the fact that neither of the letters were marked for his attention personally and didn't bear markings to show that they had been forwarded on to the Commander, coupled with the Operations Centre's failure to function properly, it cannot be concluded that Delic received them. This was a critical moment in Sarajevo, where Delic's attention would have been focused on many pressing matters, such as the 9 and 10 Brigade and increase aggression of the Serbs.

3. Necessary and Reasonable Measures

346. See Section VIII, B(5).

347. However, the Prosecution pleaded in paragraph 27 of the Indictment, that no measures were taken in relation to the killings in Maline/Bikosi, and relies inter alia on E881 and E882 and testimony of Hadziselimovic, Zenica district military prosecutor. However, on the contrary, that evidence shows that war crimes charges were brought

⁷⁴³ [REDACTED]

⁷⁴⁴ [REDACTED]

⁷⁴⁵ [REDACTED]

⁷⁴⁶ [REDACTED]

⁷⁴⁷ [REDACTED]

against Besim Spahic and Hadzihasanovic.⁷⁴⁸ Hadziselimovic did not exclude the possibility that criminal charges for Maline/Bikosi existed because the Bosnian authorities sent the casefile to the OTP in respect of these two persons; the Prosecution didn't try to show this wasn't the case.⁷⁴⁹

V. ARBiH Operations to Liberate the Mount Ozren-Vozuca Pocket: 1995

A. Background Information

348. The geographical area relevant to the 1995 allegations is the wider area of the Zavidovici Municipality, and the adjacent Municipality of Zepce (12 kms away from Zavidovici). The community of Zeljezno Polje composed of 12 hamlets is part of the Zepce Municipality.⁷⁵⁰

B. ARBiH in the area towards the Ozren-Vozuca pocket

349. The geographical area was in the zone of responsibility of the 3Corps.⁷⁵¹ During 1995, that included the following units.

1. OG Bosna

350. OGBosna was active in Zavidovici during 1994. From February 1994 Prosecution witness Fadil Hasanagic was its commander.⁷⁵² OGBosna was a temporary unit in nature and isolated from the 3Corps command. Because of this, it was subject to the strong influence of local civilian authorities, politicians, and businessmen.⁷⁵³ It only had 20-40% of the necessary manpower levels. Out of its 200 officers, only three or so had completed military academy.⁷⁵⁴

⁷⁴⁸ E881-Letter of Zenica-Doboj Cantonal Prosecutor's Office, 24/10/06 ,p.3. Note neither were mujahedin.

⁷⁴⁹ Hadziselimovic, 27/11/07-T:6185-8186.

⁷⁵⁰ DW4, 18/03/2008-T.7742

⁷⁵¹ Hasanagic, 24/09/2007-T.2926

⁷⁵² Hasanagic, 24/09/2007-T.2925

⁷⁵³ Hajderhodzic, 08/10/2007-T.3761-3762

⁷⁵⁴ Hasanagic, 25/09/2007-T.3080-3081

2.35 Division

351. In January 1995 OGBosna was transformed into a permanent unit, the 35Division.⁷⁵⁵ Hasanagic was its commander from March 1995,⁷⁵⁶ and its headquarters were in Zavidovici. It had between 11-12,000 soldiers.⁷⁵⁷ It had a SVB organ and military police.⁷⁵⁸ The following became part of 35Division: 327Brigade from Maglaj, 328Brigade from Zavidovici, 329Brigade from Kakanj, and 3rd Manoeuvrere Battalion.⁷⁵⁹

352. According to the 'temporary war establishment',⁷⁶⁰ the Division was supposed to have 500 educated officers,⁷⁶¹ but in reality it only had five officers who had completed military academy.⁷⁶² Neither the 35Division nor its brigades had officers experienced in the field of military security. Neither Fadil Imamovic nor Hamdija Sljuka, who performed these duties in 35Division during 1995, had the necessary knowledge or training for this type of work.⁷⁶³

353. The 35Division faced the same problems as its predecessor OG-Bosna. Local politicians and religious leaders influenced the appointment of commanders.⁷⁶⁴ They insisted on deciding where the Division headquarters should be.⁷⁶⁵

354. The interference of local politicians and religious leaders into military issues in the 35Division created a climate of bad relations within the Division Command, as well as between the Division and its brigades. Hajderhodzic testified that the situation within the command was poor, and there was tension in relations between the members of the command staff of the 35Division. The Chief-of-Staff of 35Division would not come to meetings for a month at a time. The relationship between the Assistant Commanders for

⁷⁵⁵ **E165**-GSARBIH Order for Organisational changes in war units in 3rd Corps AOR

⁷⁵⁶ **Hasanagic**,24/09/2007-T.2925

⁷⁵⁷ **Hasanagic**,26/09/2007-T.3081

⁷⁵⁸ **Imamovic**,11/10/2007-T.3963

⁷⁵⁹ **Hasanagic**,24/09/2007-T.2926

⁷⁶⁰ A standard form issued by the Main Staff specifying how each unit a certain level should be replenished.

⁷⁶¹ **E482**,GS ARBIH Temporary war establishment for the Division Command,December 1994

⁷⁶² **Hasanagic**,26/09/2007-T.3083

⁷⁶³ **Hasanagic**,26/09/2007-T.3085-3086;**Imamovic**,11/10/1007-T:4023

See also **E583**-3Corps Report to the Chief of the of the OSVB ARBIH,30/08/1995

⁷⁶⁴ **Hajderhodzic**,08/10/2007-T.3775

⁷⁶⁵ **Hajderhodzic**,08/10/2007-T:3762-3763

Logistics and Security on one side, and the Division Commander was very poor.⁷⁶⁶ Imamovic confirmed this.⁷⁶⁷ Hajderhodzic said that there were strained relations between the 35Division Commander and 328Brigade Commander Fuad Zilkic.⁷⁶⁸

355. The problems and poor relations within the 35Division had a significant impact on RiK, particularly concerning the gathering and sending of information from lower commands to 35Division, and from the 35Division to 3Corps. The reliability of such information was questionable.⁷⁶⁹

3.328 Brigade

356. The 328Brigade was established when Zavidovici brigades 318Brigades and 320Brigades were merged.⁷⁷⁰ Its headquarters were in Zavidovici, and it was composed of 5 battalions. The commander was Fuad Zilkic.⁷⁷¹

357. The 5th battalion of 328Brigade is relevant to the indictment (5/328MB). Its headquarters were in Marici. During the September 1995 operation the battalion's rear command post was in Sehici hamlet, near Borovnica village, in Gostovici.⁷⁷² The commander was Ahmet Sehic.⁷⁷³

358. Like the other units from this area, the 328Brigade lacked educated and experienced officers.⁷⁷⁴ The 5Batt commander had next to no military experience when he became commander.⁷⁷⁵ The 328Brigade took part in the combat activities in July and September 1995,⁷⁷⁶ and a local unit, the Asim Camdzic unit, fought as part of them.⁷⁷⁷

⁷⁶⁶ **Hajderhodzic**,08/10/07-T.3768-3770

See also **E596**-35Division Official note regard to combat readiness of the combat and units of the 35Division,Analyses,17/08/1995

⁷⁶⁷ **Imamovic**,15/10/1007-T.4078-4097

⁷⁶⁸ **Hajderhodzic**,08/10/2007-T.3773

⁷⁶⁹ **E596**: "...there were very marked problems of false reporting..."

⁷⁷⁰ **Zilkic**,09/11/2007-T.5299-5300

⁷⁷¹ See Section VII, C(2)(b)

⁷⁷² **Sehic**,05/11/2007-T.5014

⁷⁷³ **Sehic**,05/11/2007-T.5085

⁷⁷⁴ **Zilkic**,09/11/2007-T.5356

⁷⁷⁵ **Sehic**,05/11/2007-T.5085

⁷⁷⁶ **Sehic**,01/11/2007-T.5017-5018

C. Mujahedin in the area towards Vozuca-Ozren pocket during 1995

359. It is first important to note the difference in meaning between “Mujahids” (in BCS “Muzdahidi”) as a general term for a fighter, and “El Mujahid” or “El Mujahedin”, which relates specifically to the El Mujahedin Detachment.⁷⁷⁸

1. ‘El Mujahedin’ Detachment

(a) Reason for arrival

360. The Prosecution claims that the transfer of part of the EMD by the 3Corps was part of preparatory steps to liberate the Mount Ozren-Vozuca pocket.⁷⁷⁹

361. It relies on documents concerning EMD participation in battles on the Serici-Teslic battlefield and elsewhere during 1994,⁷⁸⁰ and claims that during these battles the EMD acted under 3Corps command. It relies on documents concerning combat activities in the AOR of OG-3-Sjever (OG-3North), in which the EMD participated. OG-3North was commanded by Jusuf Musinbegovic.⁷⁸¹ Most of these documents show that the EMD acted in the AOR of OG-3North.⁷⁸² They do not show that the EMD was commanded by ARBiH commands.

362. Former EMD members, who knew about the real relationship between the detachment and ARBiH units, testified about these documents and said that they did not reflect the real situation in the field. PW9, a member of the EMD command, said:

⁷⁷⁷ See Section V, C(2)(a)

⁷⁷⁸ PW9, 16/11/2007-T.5716-5717

⁷⁷⁹ PPTB, para.29.1

⁷⁸⁰ E846-3Cors Order for forming of the OG, 05/04/1994, showing that OG North was formed and that Jusuf Musinbegovic was its commander. The EMD was supposed to be permanently incorporated in the OG North and not temporarily re-subordinated to it, as claimed by the Prosecution in PPTB, para.29.1

E1022, E839, E361, E1016, E1144, E1020

⁷⁸¹ PW9, 15/11/2007-T.5601

⁷⁸² **E1016, E1022, E361**

“Definitely, the EMD was not a part of OG-3 North. We did carry out some operations in the operations zone of the OG-3 North, but we were never a part of OG-3 North.

Q: Mr. Jusuf Musinbegovic never commanded the EMD, is that correct?

*A: “Yes, he never commanded the EMD”.*⁷⁸³

Awad Aiman:

“Q. Did you ever accept Mr. Jusuf [Musinbegovic] as your commander?

*A.Never”.*⁷⁸⁴

363.The documents seized from the ICI (Islamic Cultural Centre), Milan⁷⁸⁵ show that the EMD Emir submitted reports about battles at the Serici-Teslic directly to the ICI Director, Sheikh Shaban.⁷⁸⁶ In contrast Kadir Jusic, Chief-of-Staff of 3Corps, stated that *“...they did not send any reports to the 3rd Corps”.*⁷⁸⁷

364.Analysis of E429,⁷⁸⁸ E624,⁷⁸⁹ E1021,⁷⁹⁰ E431⁷⁹¹ and E378⁷⁹² shows that these documents represent only an *attempt* by the ARBiH, including the Main Staff,⁷⁹³ to place the EMD under the control of the 3Corps and its subordinate units. In particular, E624 shows that the EMD was to be moved to another region, *“according to the decision of the [EMD] unit commander”.*⁷⁹⁴ The following documents talk about the results of the attempts to place the EMD under control and the real relationship between this unit and the different ARBiH commands:

365.E1019:

⁷⁸³ **PW9**,16/11/2007-T.5699

⁷⁸⁴ **Awad**,10/02/2008-T.219-220

⁷⁸⁵ Documents seized from ICI(Milan),disclosed by Prosecution pursuant to R68.

⁷⁸⁶ **E1201**-Set of faxes sent abroad from EMD commander;Combat report sent from Abu Maali to Sheikh Saaban in Milan,Italy,describing details of the combat activities in Teslic-Serici area,05/10/1994,p.p.3-4
About the role of Sheik Shaaban see Section VIII, B(3)(m)

⁷⁸⁷ **Jusic**, 18/09/2007-T:2591

⁷⁸⁸ 3Corps Order for reception of the teams of the 3Corps Command and EMD,23/10/1994

⁷⁸⁹ 3Corps Order,06/11/1994

⁷⁹⁰ 3Corps Information about EMD deployment,25/10/1994

⁷⁹¹ 3Corps Order for re-subordination of EMD,31/03/1995

⁷⁹² GSARBIH Order for organisational changes of war units in 3Corps AOR,12/01/1995

⁷⁹³ *ibid*

⁷⁹⁴ **E624**,p.2

“They go among our soldiers giving them lessons in which they tarnish ARBIH stating that it is “a pissy Army that does not do anything” and that they “will settle with them as soon as they strengthen”.⁷⁹⁵

366.E847 described how the EMD insisted that the 330th Light Brigade act contrary to orders and how the EMD members were ready to shoot all the soldiers that were not members of their unit. It said:

“I am pointing out that during the take-over of the lines of defence from EMD, the situation was very tense and at the edge of conflict...”⁷⁹⁶

367. With regard to relationship between the EMD and ARBiH, see Section VIII, B(3).

368. The Trial Chamber heard no evidence to show that the 3Corps order in late 1994 concerning the transfer of part of the EMD to the Ozren-Vozuca area represented a preparatory step for the liberation of Ozren-Vozuca. In fact the evidence presented by the Prosecution leads to the opposite conclusion.

369.E932 shows that on 20 November 1994 the EMD was located in Livade village and it had not carried out any combat activities since 8 November 1994. It was clear that the alleged superior commands didn't know who commanded them:

“It is unknown as to who the commander of this unit is, allegedly, their commander is somewhere in Zenica...In their contacts with the population they preach Islam and the importance of faith”.⁷⁹⁷

370. It can be seen from this document, which was amongst the first information that OGBosna received about the unit, that the detachment's goals involved spreading Islam by:

“...persuading children to pray, offering chocolates, candies and other sweets to them”.

⁷⁹⁵ SVB 7MBrigade Information on the EMD,01/10/95

⁷⁹⁶ 330LightBrigade Official note,08/10/1994

⁷⁹⁷ E932-3Corps SVB Report about some indicative actions of the EMD,20/11/1994

371. In no way can one conclude what the Prosecution wants to show, which is that they came to the Zavidovici area in order to liberate the Ozren-Vozuca pocket.

372. E583 talks about the activities of the EMD towards the end of 1994:

*“Since October 1994, the El Mujahedin unit has been in the zone of responsibility of the 35th Division, or in the zone of responsibility of the 328th Brigade to be precise; it had operated independently and has not respected the RiK system”.*⁷⁹⁸

373. Haso Ribo, 3Corps Assistant Commander for Operations and Training, explained two orders of the 3Corps Command dated 24 March 1995 (E1029) and 28 March 1995 (E395). The witness was very clear when he said the first order of the 3Corps Commander, which he authored,⁷⁹⁹ concerned an order to the EMD to carry out preparations for combat as part of 3Corps or 7Corps and to march towards the Vlasic plateau. The witness explained that the EMD refused to obey this order:

*“The EMD did not follow the order. It was not engaged in the 7th Corps, because the detachment was always calculating, asking for additional preparation, and in short did not carry out this assignment”.*⁸⁰⁰

374. Therefore Ribo was ordered by the 3Corps Chief-of-Staff to annul the 24 March order.⁸⁰¹ Ribo stated that the EMD did not participate in the Vlasic operation in any way.⁸⁰² He explained why the Corps Command ordered the re-subordination of the EMD to the 35Division:

*“...I suppose that the commander of the 3rd corps was dissatisfied with their refusing to take part in the operation at Vlasic, and he asked that they be engaged elsewhere, rather than idle away at the barracks or what-not. We tried to place them under somebody’s command to do something other than sleep at the barracks and sit on their hands”.*⁸⁰³

⁷⁹⁸ E583-35Division Report to the 3Corps Chief of OSVB,30/08/1995,p.20

⁷⁹⁹ E1029-3Corps Preparatory Order for offensive combat operations,24/03/1995

⁸⁰⁰ Ribo,05/03/2008-T.7038-7040

⁸⁰¹ E395-3Corps Order to prepare for execution of the task,28/03/1995

⁸⁰² Ribo,05/03/2008-T.7047

⁸⁰³ Ribo,05/03/2008-T.7049

375. He explained that a new order for the re-subordination of the EMD to 35 Division was issued on 31 March 1995.⁸⁰⁴

376. When asked what happened to the EMD during the subsequent period, he said:

“We tried to place the detachment in various ways under [control and the] system of the control and command of the 3rd Corps. However, it was not proceeding very well and we were not succeeding”.⁸⁰⁵

(b) EMD-ARBiH Relations in 1995

377. During 1995 the EMD was present in the area towards the Ozren-Vozuca pocket and it carried out combat activities there. However, the nature of the relationship between the EMD and 35 Division, as its supposed superior, was no different to the way it had interacted previously with other ARBiH commands during 1994.

378. In its PPTB the Prosecution places importance on the claim that EMD soldiers carried out reconnaissance in the area east of Zavidovici, together with ARBiH units.⁸⁰⁶ However, witnesses confirmed that EMD members carried out reconnaissance independently and for their own needs, and they did not report the results to the ARBiH superior command.⁸⁰⁷

379. On 17 July 1995 Hasanagic issued an order to the EMD to submit daily combat reports.⁸⁰⁸ Commenting on this document,⁸⁰⁹ Hasanagic said that the EMD did not obey his earlier order from 5 April 1995,⁸¹⁰ demanding that daily combat reports be provided. When asked about this by Judge Harhoff he explained:”

⁸⁰⁴ E431-3Corps Order for re-subordination of EMD to the 35th Division, 31/03/1995.

⁸⁰⁵ Ribo, 05/03/2008-T:7048

⁸⁰⁶ PPTB, para. 30.1

⁸⁰⁷ Hasanagic, 27/09/2007-T.3153-3154

⁸⁰⁸ E491-35 Division Order for delivery of operative reports sent to EMD, 17/07/1995

⁸⁰⁹ Hasanagic, 27/09/1995-T.3158: “Q. But you simply did not receive such reports from the El Mujahedin Detachment neither on the 17th of July, 1995 nor in the remaining period while they were re-subordinated to you. Am I correct in saying so?

A. Yes, you are correct”.

⁸¹⁰ E484, 35 Division Warning to meet all deadlines for submission of the regular operative reports, 05/04/1995

“Q: Even after you issued this order on 17th of July, which is on the screen now, even after that time, you still did not receive any reports from the EMD, be it operational or otherwise. Is that correctly understood?”

A: That's correct, your Honour».⁸¹¹

380. The Prosecution relies on E439,⁸¹² a plan of attack sent by Abu Maali, to try to show the EMD carried out the orders of the 35 Division in the first half of 1995. With regard to this plan, Prosecution witness Awad explained that this was the only plan which the EMD forwarded to the ARBiH:

“ A.[...]It was not habitual for the detachment to forward its plans of attacks, from which side the attack would be coming and in what manner it would be carried out. These types of plans were never forwarded”.⁸¹³

381. Furthermore, the witness explained that they didn't implement the plan in the way described in the document, but in a way which suited their own needs⁸¹⁴. According to the witness, the purpose for submitting the plan was to gain the trust of the ARBiH which they had lost when they refused to participate in the November 1994 attack.⁸¹⁵

382. In the context of the preparations to liberate the Vozuca-Ozren pocket, the Prosecution placed emphasis on joint training between the EMD and 35 Division. However, the evidence showed that this training turned into an attempt by the EMD to impose its own religious views and ideology on ARBiH members; this involved “insulting the state leadership and negating state and success of the BH Army”.⁸¹⁶

383. Hasanagic testified about E489⁸¹⁷ when explaining other problems the 35 Division had with the EMD. He said:

“Q: Would you agree with the statement that the detachment did not fit into the command and control system precisely in the way as described in this document?”

⁸¹¹ Hasanagic, 27/09/2007-T.3156

⁸¹² E439-EMD Plan of attack, 15/05/1995.

⁸¹³ Awad, 10/02/2008-T.221

⁸¹⁴ Awad, 10/02/2008-T.221

⁸¹⁵ Awad, 10/02/2008-T.220-221

⁸¹⁶ Zilkic, 09/11/2007-T.5360-5362, referring to E798

⁸¹⁷ 2nd Maneuvre Battalion Command, Daily Operative report, 28/05/1995

A: Yes.

Q: They were given assignments, just as other units were; however, they did not execute these assignments in the way that they had been asked to.

A: They preferred carrying out assignments on their own.

[...]

Q: Therefore, if they decide not to engage in an action, this is their decision and one could not give them any further orders on that matter. Am I right?

*A: Yes”.*⁸¹⁸

384. On 02 June 1995, 3Corps Command issued an order once again re-subordinating the EMD to 35Division.⁸¹⁹ The fact that the 3Corps had to re-issue the order of resubordination shows that the previous order from 31 March 1995⁸²⁰ had not been carried out.

385. On 23 September 1995 the 3Corps issued an order⁸²¹ annulling the 2 June order concerning re-subordination of the EMD to the 35Division. However, the EMD did not follow this order either. It remained in the AOR of the 35Division.⁸²²

2. Other Mujahedin Groups in the Ozren-Vozuca pocket in July-September 1995

(a) Asim Camdzic Unit

386. The Asim Camdzic had between 50-80 members, and it was formally under 328Brigade, whose commander was Fuad Zilkic. Zilkic was “highly respected by the unit” and carried “out his command functions and consultations via Commander/*komandir*/Remzo SINANOVIC”.⁸²³

387. Zilkic described this unit as being comprised of religious people, who prayed every day, wore beards, did not wear insignia, and who looked like Arabs even though they

⁸¹⁸ Hasanagic, 27/09/2007-T.3145-3146

⁸¹⁹ E396-3Corps Order for re-subordination of EMD to the 35Division, 02/06/1995

⁸²⁰ E431

⁸²¹ E506-3Corps Order for withdrawal of the EMD from the structure of the 35th Division, 23/09/1995

⁸²² E903-35Division Official note about the behavior of the EMD, sent to 3rd Corps, 27/10/1995, p.2

⁸²³ E810-35Division SVB Report situation in the Asim Camdzic unit, 24/10/1995

were members of the 328 Brigade.⁸²⁴ E810 shows that they obtained logistics and finances on their own and that they were closely linked to the EMD. According to witness Hajderhodzic, this unit was only formally part of the ARBiH, but in reality it was not part of the regular chain of command. It displayed religious symbols and respected orders which came outside of the ARBiH.⁸²⁵

388. Numerous documents showed that this unit, like the EMD, enjoyed significant support from civilian authorities and religious circles.⁸²⁶ This was confirmed by Imamovic,⁸²⁷ Hajderhodzic⁸²⁸ and Vuckovic.⁸²⁹

389. Hajderhodzic was asked about the civilian authorities:

*“Q. Yet on the basis of what you say, I conclude that the influence of the local politicians in Zavidovici was especially strong over this type of units, the Mujahedin and the Asim Camdzic unit. Am I right?
A: Yes”.*⁸³⁰

390. Referring to E509,⁸³¹ Hajderhodzic confirmed that civilian bodies praised and “aggrandized the roles of ... the El Mujahedin Detachment and the Asim Camdzic unit and this type of unit, generally speaking”, and he added that the civilian authorities

⁸²⁴ Zilkic, 09/11/2007-T.5372-5373

⁸²⁵ Hajderhodzic, 08/10/2007-T.3764-3765

⁸²⁶ E509-3Corps SVB Information about relations in the 35th Division AOR, 12/08/1995,

E593-35Division Report about Asim Camdzic unit, 19/07/1995,

E742-GSSVB Special report, No.87, 16/08/1995,

E810-35Division SVB Report about situation in the Asim Camdzic unit, 24/10/1995,

E1235-3Corps SVB Report about behaviour of the members of the Asim Camdzic unit, 06/03/1995

⁸²⁷ Imamovic, 15/10/1995-T.4061-4062: “Q. In SDA speeches of individuals at religious gatherings, they belittled the results of the army and glorified the results of the Asim Camdzic unit and the El Mujahedin unit, which caused mistrust among the civilians, among the citizens, in the Command of the Army. You are aware of these events, are you not? Does this document actually reflect the actual situation in the field, in August 1995, that is?

A. Yes, it does.

See also Imamovic, 15/10/2007-T.4063-4064

⁸²⁸ Hajderhodzic, 08/10/2007-T.3764-3765, T.3777-3779

⁸²⁹ Vuckovic, 08/11/2007-T.5195-5197

⁸³⁰ Hajderhodzic, 08/10/2007-T.3779

⁸³¹ E509

created an atmosphere of mistrust towards the ARBiH commanders and “exaggerated the importance of the Mujahedin and the Asim Camdzic unit”.⁸³²

391. For more details about the role and influence of civilian authorities in the Zavidovici Municipality see section VIII, B(3)(o).

392. E794⁸³³ shows that there were 55 mujahedin fighters with the Asim Camdzic unit. This unit was involved in the September 1995 combat activities known as Operation Farz.⁸³⁴

(b) Abu Zubeir Al Haili’s Group

393. Abu Zubeir Al Haili (known as ‘the Bear’) came to Central Bosnia in 1992.⁸³⁵ He had groups in Tesanj, Gluha Bukovica and Zeljezno Polje.⁸³⁶ E342 shows that he had a long career as a member of Al-Qaeda. Zubeir established a number of groups in various parts of RBiH.⁸³⁷ In combat activities, his groups acted independently outside of the ARBiH and EMD.⁸³⁸ An Agency for Information and Documentation document sheds light about mujahedin that arrived during the war:

*“Later they were groomed by the unit known as Zubejr's group. Its actions during the war were characterised by non-adherence to strict military principles”.*⁸³⁹

394. The ‘non-military’ manner was confirmed by Prosecution witness PW9.⁸⁴⁰

⁸³² Hajderhodzic, 08/10/2007-T.3777-3779

⁸³³ E794-35 Division Order on pulling forces out of the AOR of the 328 Mountain Brigade, 03/09/1995

⁸³⁴ Zilkic, 13/11/2007-T.5423-5424

⁸³⁵ E1385 (under seal) - [REDACTED]

PW9, 17/04/2008-T.8644-8645

E342-Excerpt from E. Kohlmann book: “..Abu Zubeir Al Haili (also known as the «Bear», 300 pound monster of man) had also first gained a reputation as a fearless and calculating military commander in Afghanistan before serving as an military expert with the Arab Mujahedin in Bosnia.”, p.2

⁸³⁶ Sabanalic, 16/07/2007-T.67; PW9, 15/11/2007-T.5631-5632

⁸³⁷ PW9, 17/04/2008-T.8646

⁸³⁸ PW9, 16/11/2007-T.5714; Hasanagic, 27/09/2007-T.3177; Hajderhodzic, 09/10/2007-T.3787-3788

E684-3 Corps MP Battalion, Information about fugitive Abu Malloh, 18/11/1995: «The responsible people from EMD do not recognised the said group of people under the command of Abu Zubeir as one of theirs, because the groups works independently, «as it wishes and to the extent it wishes».

E1384-Agency for Investigation and Documentation, Report about former members of the Abu Zubeirs group and their criminal behaviour, 24/06/2002,

E1385 (under seal),

E1201, p.p. 7, 10

⁸³⁹ E1384, p.1.

395. Ali Hamad confirmed that Al Zuhair, known as Handala, was also part of Zubeir's group and under the command of the witness.⁸⁴¹ He also explained that Al Zuhair (Handala) was not a member of the EMD. Rather he had his own group which had close ties to Osama bin Laden:

*“Q. Witness, you stated that: "Handala left the Mujahedins due to a misunderstanding. He wanted to form his own unit, and he had good connections with Osama bin Laden, and Osama bin Laden respected what Handala wanted to do with his group. Handala, aka Zuhayr, convinced member of the Mujahedin's Light Brigade and other young members to join his unit. It was Handala's plan to develop the young members of his unit to become the future members of the unit. So I understand that Handala, in 1995, was not a member of El Mujahedin.
A. That is correct”.*⁸⁴²

(c) Kurds

396. Witnesses have commented on the participation of other Afro-Asian groups in Farz. Sehic said one such group was located in Imamovici, 20 kms northeast of Borovnica.⁸⁴³ He also said there was a group in Borovnica and explained that they were distinguishable from the EMD and that people referred to them as ‘Kurds’. He saw them personally in the Vozuca area.⁸⁴⁴ Witness Omerasevic similarly testified that his soldiers informed him that they had seen Arabs with different traits than ones they had seen before. They smoked, bought alcohol and people referred to them as ‘Kurds’.⁸⁴⁵

(d) Zelene Beretke and others

⁸⁴⁰ **PW 9**, 17/04/2007-T:8643: *“Q... you described Abu Zubeir's group as an informal group, an almost illegal group. Do you remember that?”*

“A. Yes, I do. So Abu Zubeir's group was exactly as described in this document”.

⁸⁴¹ **Hamad**, 08/09/2007-T.149

⁸⁴² **Hamad**, 08/09/2007-T.150; **PW9**, 17/04/2008-T.8635-8636

Al Zuhair Handala had close ties with Croatian authorities. See **Hamad**, 08/09/2007-T.152, **E222**-Newspaper article, published in «Oslobodjenje»-«One or two Handalas», 06/12/1997

E344-Interview of Ali Hamad to FBI, 16/06/2003

E345-Article from daily newspaper «Oslobodjenje», «Zuhair, the real Handala», 07/12/1997

⁸⁴³ **Sehic**, 05/11/2007-T.5092-5093

⁸⁴⁴ **Sehic**, 05/11/2007-T.5093-5094

⁸⁴⁵ **Omerasevic**, 10/12/2007-T.6740-6742

397. Witness DW4 testified about a group of Arabs in the unit of Zelene Beretke (ZeBe) which was incorporated in the 319Brigade.⁸⁴⁶ This group was stationed in the area of Zeljezno Polje.⁸⁴⁷ He also spoke about a group of Arabs located in the school at Biljevina, a hamlet of Zeljezno Polje. They were known as members of the El Faruk centre, which had no connection with the EMD.⁸⁴⁸ He explained that various Arab groups came to Zeljezno Polje that were not members of the unit ZeBe.⁸⁴⁹ He testified that the Arabs from 319Brigade, as well as Abu Zubeir's unit, including a large number of other Arabs, participated in Operation Farz.⁸⁵⁰ He described the problems in identifying Arabs, and in determining which group they belonged to.⁸⁵¹ He emphasized that the security services did not have sufficient information about the Arabs, and they were trying to find out who the perpetrators of incidents were that took place.⁸⁵² He added:

*“.....when an incident occurred they would attribute it to the unit where these foreign nationals were, for that reason alone, because they were Arab nationals in the unit».*⁸⁵³

398. Other witnesses testified about Arab groups being active in the area of Vozuca during Farz, and said that it was impossible to determine whether the Arabs were members of the EMD or another group.⁸⁵⁴

399. The issue of determining whether the perpetrators of the crimes alleged in the Indictment were members of the EMD is crucial in this case, particularly with respect to paragraphs 40 and 41 of the Indictment.

⁸⁴⁶ E1319-3Corps SVB Information on foreign citizens engaged in 319Brigade,27/10/1995

⁸⁴⁷ DW4,18/03/2008-T.7741

⁸⁴⁸ DW4,18/03/2008-T.7743

⁸⁴⁹ DW4,18/03/2008-T.7750

See also E937-3Corps SVB Information about desecration of the Catholic cemetery by Arabs from Zeljezno Polje,22/07/1995

⁸⁵⁰ DW4,18/03/1995-T.7758

⁸⁵¹ DW4,18/03/2008-T:7747

⁸⁵² DW4,18/03/2008-T.7746

⁸⁵³ DW4,18/03/2008-T.7747

⁸⁵⁴ PW9,15/11/2007-T.5636; Hasanagic,27/09/2007-T.3182; Awad,09/02/2007-T.155; Alihodzic,30/11/2007-T.6449-6451

VI JULY ACTION 1995 - PROLJECE II

A. July Crime Base

400. The elements of murder and cruel treatment which the Prosecution must prove are:

Murder

- Nexus between the armed conflict and alleged criminal acts
- The victim is dead
- The victim was a person taking no active part in hostilities, including members of the armed forces who had laid down their arms and those placed *hors de combat*
- Acts by the Accused's subordinates were a substantial cause of the death of the victim
- The acts were done with an intention to kill or to inflict grievous bodily harm or serious bodily injury, in the reasonable knowledge that such act or omission was likely to cause death

Cruel Treatment

- Nexus between the armed conflict and alleged criminal acts
- The victim was a person taking no active part in hostilities, including members of the armed forces who had laid down their arms and those placed *hors de combat*
- Acts by the Accused's subordinates caused serious mental or physical suffering or constituted a serious attack on human dignity.
- Acts by the Accused's subordinates were intentional, being deliberate and not accidental
- Each of these elements must be proved beyond reasonable doubt.

B.Kamenica Camp and Livade: July 1995

1.Livade location

401.The Prosecution alleges that in the early hours of 21 July 1995 the EMD launched an attack and captured VRS soldiers were taken to Livade village where two captured soldiers, Momir Mitrovic and Predrag Knezevic, were killed and decapitated by ARBiH soldiers. It also claims that the prisoners were subjected to daily beatings in Livade before being taken to Kamenica Camp.⁸⁵⁵

Murder (Count 1)

402.The Prosecution has not proved the requisite elements of murder with respect to the alleged murder victims, Momir Mitrovic and Predrag Knezevic.

Proof of death and identity of victims

403.In the indictment the Prosecution alleges that the two decapitated persons were killed in Livade village; however there is no conclusive evidence of where the men were killed. Witness Velibor Trivicevic stated that while in the house in Livade a mujahedin came in carrying a head.⁸⁵⁶ Trivicevic claimed to recognize the head as belonging to Momir Mitrovic.

404.At a later point the same mujahedin returned with another head.⁸⁵⁷ Trivicevic said that he didn't know this man, but later he saw a photograph and recognised the second man; he was told it was Predrag Knezevic.⁸⁵⁸ The Prosecution claimed that the corpse and head of Predrag Knezevic was exhumed in Bozici,⁸⁵⁹ but there was no evidence to establish this. Based on the difficult initial viewing circumstances, the Chamber cannot be satisfied that the second head was that of Predrag Knezevic.

⁸⁵⁵ **Indictment**,para.33.

⁸⁵⁶ **Trivicevic**,04/10/07-T.3613.

⁸⁵⁷ **Trivicevic**,04/10/07-T.3614.

⁸⁵⁸ **Trivicevic**,04/10/07-T.3614.

⁸⁵⁹ **PPTB**,para.33.7.

405. Trivicevic confirmed that these two killed men had not been brought to Livade with him, and he hadn't seen them at any stage prior to their deaths.⁸⁶⁰ He could not say where they were killed or who killed them.⁸⁶¹ Although the witness describes hearing shouting and noise in front of the house, it cannot be concluded beyond reasonable doubt that the two men were being killed there. Earlier that day Trivicevic had seen a decapitated body on the battlefield.⁸⁶² He accepted it was not far from the village to where the fighting had occurred.⁸⁶³ Thus, the Prosecution cannot prove that the two heads had not been similarly removed in the field, collected and brought to Livade a short time after.

406. Moreover, the Prosecution did not prove that the killed men had laid down their arms at the time of their deaths or were otherwise *hors de combat*, and thus held protected status. It did not prove that their deaths did not occur legitimately on the battlefield, with somebody removing their heads post-death. Thus the Trial Chamber cannot be certain beyond reasonable doubt that the two men had protected status at the time of deaths.

Actus reus of murder

407. The Prosecution must prove that the Accused's subordinates were the substantial cause of the death of the victims. There is no evidence as to who killed the two men or the circumstances surrounding the deaths. Even if it could be concluded that the person bringing the heads in was a member of the EMD, which is not accepted, there is no proof that he carried out the killings. This was reflected by Judge Harhoff's remark: "But I think the witness has testified already to the fact that he didn't see the killings, so he is, in any case, unable to tell you who killed them".⁸⁶⁴ Thus the Prosecution cannot show that the perpetrators were members of the EMD, ie alleged subordinates of the Accused.

⁸⁶⁰ Trivicevic,04/10/07-T.3670-3671.

⁸⁶¹ Trivicevic,04/10/07-T.3670.

⁸⁶² Trivicevic,04/10/07-T.3607.

⁸⁶³ Trivicevic,04/10/07-T.3670.

⁸⁶⁴ Hearing,04/10/07-T.3673.

Mens rea of murder

408. The Prosecution led no evidence as to the mens rea of the unknown perpetrators. Also, without proof that the men had protected status, the Prosecution has failed to prove that the perpetrators had the requisite mens rea and did not kill them legitimately during battle.

Cruel Treatment (Count 2)

409. The elements of cruel treatment are set out above at paragraph 400. The Prosecution has failed to prove that the alleged subordinates of the Accused carried out acts causing cruel treatment at Livade. The claim of cruel treatment is predicated on twelve VRS soldiers being “threatened, beaten with fists, sticks or other objects” by EMD soldiers, and that “the beatings continued throughout the detention at Livade”.⁸⁶⁵ It is not alleged in the indictment that the manner in which the POWs were tied or restrained constituted any part of the cruel treatment.

410. Two witnesses testified about this issue, Velibor Trivicevic and Krstan Marinkovic. The evidence shows that in fact it was not the mujahedin at Livade who administered beatings and physical violence but the inhabitants of the village. Trivicevic described how, on arriving at the village, he and Sikanic were attacked by local villagers, *not the mujahedin*, and their mujahedin escorts were angered by this and took them away.⁸⁶⁶ Similarly, Marinkovic explained that when he and the two others arrived in Livade village it was, again, the civilian villagers that started to attack the three men. he confirmed that mujahedin escorting them, particularly the Bosnian, protected them.⁸⁶⁷ The local Bosnian escorting Mr. Marinkovic “was telling us, ‘Go, go, faster, faster,’ as if he was trying to get us out. There was a crowd of people there. They were about to beat us more, so the Bosnian did a good job and I am grateful to him for that”.⁸⁶⁸

⁸⁶⁵ PPTB, para. 33.6.

⁸⁶⁶ Trivicevic, 04/10/07-T.3667.

⁸⁶⁷ Marinkovic, 03/10/07-T.3521-3523.

⁸⁶⁸ Marinkovic, 03/10/07-T.3556-3557.

411.As to the treatment in the house, a review of the evidence shows that there is no evidence to show that the mujahedin beat the POWs. Marinkovic's testimony shows that he was beaten only by female civilians who came into the room, who complained about the deaths of their sons, and not his mujahedin captors.⁸⁶⁹ Similarly Trivicevic stated that it was civilian villagers that beat them.⁸⁷⁰

412.The Prosecution has pleaded that the beatings were carried out "by soldiers of the EMD"⁸⁷¹; it has not plead that the EMD omitted to prevent civilians from beating the POWs. It follows that the Prosecution has failed to prove that the alleged beatings were carried out by EMD soldiers.

413.As to any possible mistreatment arising from the manner of restraint in the house, as this has not been plead as material fact in the Indictment it should not be taken into account by the Trial Chamber. In the event that the Chamber decides to take the manner of restraint into account, the Prosecution did not prove that the alleged perpetrators had the requisite mens rea for cruel treatment in restraining the POWs. It did not show that the means of restraint were not a reasonable and legitimate means to prevent them from escaping and not for the purposes of intending to cause serious mental or physical suffering or attack on human dignity.

2.Kamenica Camp location

Murder (Count 1)

414.The Prosecution alleges that on 24 July 1995 VRS prisoner Gojko Vujicic was decapitated in Kamenica Camp.⁸⁷²

⁸⁶⁹ **Marinkovic**,03/10/07-T.3524-5.

⁸⁷⁰ **Trivicevic**,04/10/07-T.3615.

⁸⁷¹ **PPTB**,para.33.6.

⁸⁷² **Indictment**,para.35.

Proof of death

415. Gojko Vujicic was allegedly killed in the camp by a mujahedin firing a rifle shot to his temple.⁸⁷³ Trivicevic was the only eye-witness to the alleged murder.

Actus reus of murder

416. According to Trivicevic, during the attack on Krcevine, and prior to being taken into detention, Gojko Vujicic had sustained a wound to the groin.⁸⁷⁴ He explained that on arrival at the camp, Vujicic was clearly in pain. He called out at somebody, and “[h]e started to swear, and amongst other things, he mentioned God in those curses. One of the Mujahedin who were in the tent at prayer came out of the tent, took an automatic rifle that was right next to the entrance, and he cocked it on his way. ... And then going along, he stood next to Gojko's head and coolly fired a shot to Gojko's right temple and then went back to the tent.”⁸⁷⁵ Marinkovic confirmed that Vujicic had been swearing.⁸⁷⁶ This was something the detainees had been warned strictly not to do.⁸⁷⁷

417. There is no evidence to prove the identity of the person who killed Gojko Vujicic. In his testimony, Trivicevic does not describe the person's appearance; it is not even clear whether he was a foreigner. From the evidence it is clear that the camp was not a sealed facility. The Prosecution must prove that the perpetrator was a member of an identifiable group, ie the EMD. If the evidence showed that the perpetrator was wearing a recognisable uniform or insignia to mark him as a member of a group, or if the crime took place in a secure building which only certain persons had access to, then it might be possible to find that he was a member of a certain group. However, none of those factors applied. With such vague evidence it is not possible to exclude that the perpetrator was somebody attending the camp at that time who was not a member of the EMD. Therefore the Prosecution cannot prove that the act was carried out by one the Accused's alleged subordinates.

⁸⁷³ Trivicevic, 04/10/07-T.3639.

⁸⁷⁴ Trivicevic, 04/10/07-T.3639.

⁸⁷⁵ Trivicevic, 04/10/07-T.3639.

⁸⁷⁶ Marinkovic, 03/10/07-T.3562.

⁸⁷⁷ Trivicevic, 04/10/07-T.3639.

Mens rea of murder

418. The facts of Gojko Vujicic's killing, if true, could establish manslaughter or involuntary manslaughter on the basis of provocation:

“Provocation is some act, or series of acts, done or words spoken by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind”.⁸⁷⁸

419. The permanent characteristics of the accused, including his ethnicity, are to be taken into account when considering whether a reasonable person would have been provoked in those circumstances.⁸⁷⁹

420. The defence of provocation is found in most legal systems around the world,⁸⁸⁰ including under Bosnian law at the relevant time.⁸⁸¹ The count of murder charged in the Indictment requires clear intent. Manslaughter, in any of its forms – voluntary or involuntary – is not an offence within the jurisdiction of the Tribunal.

421. Both witnesses confirmed that the victim had been cursing God, something that the POWs had been told strictly not to do. The perpetrator had been in the prayer tent at prayer when he heard the cursing.⁸⁸² It therefore cannot be excluded that he suddenly and temporarily lost self-control, so that at that moment he was not “master of his own mind”. The evidence permits the conclusion that the perpetrator was enraged by what he heard and provoked into killing Vujicic with a single shot to the head.

⁸⁷⁸ See Archbold 2004, paras.19-56; *R v Whitfield*, 63 Cr.App.R.39 at 42.

⁸⁷⁹ See *R v Newell* (1980) 71 Cr.App.R. 331 adopting a judgment in New Zealand case of McGregor [1962] NZLR 1069 at p.1081.

⁸⁸⁰ Under German law (section 213 of the Criminal Code Strafgesetzbuch, STGB) the lesser offence of manslaughter is charged “if the person committing manslaughter was provoked to rage by maltreatment inflicted on him or a relative or a serious insult by the person killed and was thereby immediately torn to commit the act..”

⁸⁸¹ Article 37 (“Manslaughter”) of the Criminal Code of the Socialist Republic of Bosnia and Herzegovina states that it is manslaughter if a person kills in a fit of rage caused by a serious insult by the deceased.

⁸⁸² **Trivicevic**, 04/10/07-T.3639.

422. The facts of the killing may fall within the definition of provocation, which would meet the elements of manslaughter. If there is any doubt it must be resolved in favour of the Accused.

423. Thus the Prosecution has failed to prove the perpetrator was an alleged subordinate of the Accused, ie EMD member, and cannot prove beyond reasonable doubt that the perpetrator had the requisite mens rea for murder.

Cruel Treatment (Count 2)

424. The elements of cruel treatment are set out above at paragraph 400. The Prosecution alleges that following the death of Gojko Vujicic, all the other prisoners were forced to kiss the head,⁸⁸³ and they were mistreated and beaten; some received electrical shocks and others suffered terrible pain through the use of high pressure air hoses.⁸⁸⁴

425. Trivicevic stated that the killing took place on the first night, and described how they were tied up outside.⁸⁸⁵ Marinkovic described how that evening he was thrown to the ground and somebody tied his feet with some sort of hose. After the killing took place they were returned to the room where they were detained.

426. The first issue for the Trial Chamber to determine is whether the treatment caused serious mental or physical suffering or constituted a serious attack on human dignity. The evidence shows that following that first night in detention, the conditions of the POWs improved markedly. Following the killing, a mujahedin who Trivicevic referred to as the "Emir", was clearly angry about the killing.⁸⁸⁶ Through an interpreter, he told the detainees that they would all have warm water and clothes to change into, and at some point the Red Cross would come and register them.⁸⁸⁷ From that time on, during the remainder of the detention, conditions improved for the detainees.⁸⁸⁸ Both witnesses

⁸⁸³ **Indictment**, para.35.

⁸⁸⁴ **Indictment**, para.36.

⁸⁸⁵ **Trivicevic**, 04/10/07-T.3638.

⁸⁸⁶ **Trivicevic**, 04/10/07-T.3641.

⁸⁸⁷ **Trivicevic**, 04/10/07-T.3681.

⁸⁸⁸ **Trivicevic**, 04/10/07-T.3682.

confirmed that, after the incident, they were allowed to wash, and received regular food and water.⁸⁸⁹ One of the detainees, Dr.Sikanic, was also given some medical supplies so that he could provide treatment to the other detainees.⁸⁹⁰

427. Thus, it seems that the most difficult conditions occurred on the evening after arrival. Trivicevic described how a mujahedin called Habib, the young mujahedin, that placed some cardboard under his face as he lay down, brought him coffee, and untied his arms.⁸⁹¹ He also spoke of an elderly man who, “when he was on guard, we wanted for nothing. Whenever he was on duty, he would bring us water and food regularly”.⁸⁹² This gives rise to doubt that the treatment at the camp meets the necessary standard for cruel treatment.

428. The Prosecution alleges that on the afternoon of 23 or 24 August 1995 the prisoners were severely beaten and electric shocks were inflicted.⁸⁹³ However, doubt that the mistreatment was serious enough to amount to cruel treatment arises from the evidence surrounding the departure of the POWs from the camp. That day the detainees were driven by bus to the Reception Centre for Prisoners at Zenica KP Dom by members of the 3Corps Military Police.⁸⁹⁴ Even the Prosecution witnesses accepted that there was no evidence to suggest that, at the time of departure, the men had injuries consistent with serious physical mistreatment.

429. Velibor Trivicevic stated that there may have been markings on their hands from the chains or ropes they were bound with, but “I don't remember anymore how I looked at that time. I don't think that there were any other visible wounds or injuries”.⁸⁹⁵ Mr. Marinkovic, one of the detainees, had a broken tooth, but no traces on his face. He was unable to say whether any of the other detainees had any visible signs of injury.⁸⁹⁶

⁸⁸⁹ Trivicevic,04/10/07-T.3681;Marinkovic,03/10/07-T.3567

⁸⁹⁰ Marinkovic,03/10/07-T.3567-3568.

⁸⁹¹ Trivicevic,04/10/07-T.3638.

⁸⁹² Trivicevic,04/10/07-T.3679.

⁸⁹³ PPTB,para.36.2.

⁸⁹⁴ Trivicevic,04/10/07-T.3642.

⁸⁹⁵ Trivicevic,04/10/07-T.3682.

⁸⁹⁶ Marinkovic,03/10/07-T.3570.

430. Trivicevic confirmed that they spoke to the MP officers;⁸⁹⁷ thus any signs of mistreatment should have been apparent, if they existed. On the contrary, the report of the Military Policeman who collected the POWs, did not report any signs of mistreatment.⁸⁹⁸ In fact, E499⁸⁹⁹ provides: "*No problems or obstacles emerged when the listed aggressor soldiers were taken over and escorted under guard and they were all safely escorted and brought to the centre for the intake of prisoners of war.*" Similarly E542,⁹⁰⁰ the escort sheet for the POWs, does not indicate any mistreatment. Similarly, at the Reception Centre the POWs were interviewed by Edin Saric, a member of the 3Corps counter-intelligence department.⁹⁰¹ He explained that in August 1995 he interviewed three of the POWs, Trivicevic, Sikanic and Guljevatelj. He stated that it was compulsory to ask what sort of treatment they received at the hands of the unit that captured them.⁹⁰²

431. As to their appearance, Saric said there were no visible injuries to indicate that they had been subject to inhuman treatment, torture or anything like that.⁹⁰³ He asked each of them whether they had been mistreated, and they all told him that there had been no mistreatment.⁹⁰⁴ If one of them had told him that he had been mistreated by the mujahedin, Saric would have noted it down and sent the information to his superior.⁹⁰⁵

432. Saric interviewed Branko Sikanic on 24 August 1995.⁹⁰⁶ During the interview, Sikanic was asked if he had been mistreated at the camp; Sikanic did not indicate that he had been.⁹⁰⁷ Saric interviewed Velibor Trivicevic on 25 August 1995 and made a report, E552.⁹⁰⁸ In this statement there is no mention of any mistreatment suffered by Mr. Trivicevic.⁹⁰⁹ Similarly, Guljevatelj was interviewed by a colleague of Saric's⁹¹⁰ and

⁸⁹⁷ **Trivicevic**, 04/10/07-T.3643.

⁸⁹⁸ **Hasanagic**, 27/09/2007-T.3216-3217; **PW11**, 29/11/2007-T.6371

⁸⁹⁹ **E499**-3MP Battalion of 3Corps Report regarding taking over members of the so-called VRS, 29/08/95

⁹⁰⁰ **E542**-3MP Battalion of 3Corps Escort Sheet, 24/08/95

⁹⁰¹ **Saric**, 21/11/07-T.5875.

⁹⁰² **Saric**, 21/11/07-T.5941.

⁹⁰³ **Saric**, 21/11/07-T.5936.

⁹⁰⁴ **Saric**, 21/11/07-T.5935-5936.

⁹⁰⁵ **Saric**, 21/11/07-T.5937.

⁹⁰⁶ **E861**-3Corps SVB Official note regarding interview with Sikanic, 25/08/95

⁹⁰⁷ **Saric**, 21/11/07-T.5942.

⁹⁰⁸ **E552**-3Corps SVB Official note regarding interview with Trivicevic, 26/08/95

⁹⁰⁹ **Saric**, 21/11/07-T.5943.

no mention was made of mistreatment.⁹¹¹ Saric also interviewed Krstan Marinkovic on 28 August 1995. Saric's report contained a lot of detailed information,⁹¹² but again does not mention any mistreatment. Saric said that, if Marinkovic had mentioned this, it would have been noted in the report, and would have been sent to his boss.⁹¹³ In fact the report states that although the witness had heard stories about the mujahedin, he told Saric that "the stories are not completely true", suggesting that the treatment was not so bad as he would have expected.⁹¹⁴

433.Saric confirmed that none of the other reports or documents shown to him relating to the VRS soldiers captured during the July action contained any information showing that the POWs had been mistreated in any way.

434.Thus, in the light of all the evidence, it is highly questionable whether the treatment experienced by the POWs in the camp was such as to amount to serious mental or physical suffering or constituted a serious attack on human dignity.

435.Moreover, on the evidence of the Serb witnesses it is impossible to conclude with certainty that the persons that carried out the various alleged actions were members of the EMD, and hence the Prosecution has failed to prove that they were the alleged subordinates of the Accused.

C.The Prosecutor failed to prove material facts showing the Accused exercised command and control during July action

436.The Prosecution pleaded the following material facts to attempt to establish command and control during the July action:

⁹¹⁰ E863-3Corps SVB Report regarding interview with Stokanovic and Guljevatelj,30/08/95

⁹¹¹ Saric,21/11/07-T.5950.

⁹¹² E545-3rd Corps SVB Official note regarding interview with Marinkovic,28/08/95

⁹¹³ Saric,21/11/07-T.5945.

⁹¹⁴ Saric,21/11/1995-T.5945.

- The liberation of the Mount Ozren pocket from VRS forces was a prime objective of ARBIH in 1994-1995;⁹¹⁵
- On 16 and 17 July 1995 Delic ordered the ARBIH 2Corps and 3Corps to conduct combat operations in the Mount Ozren-Vozuca pocket;⁹¹⁶
- ARBIH Main Staff directed combat operations in that pocket;⁹¹⁷
- The General Staff of ARBIH was informed that the EMD was “the main unit in charge of the coming assignment” within the Mount Ozren-Vozuca pocket.⁹¹⁸

437. The Prosecution failed to prove any of these alleged material facts.

1. The liberation of the Mount Ozren pocket from VRS forces was not a prime objective of ARBIH in 1994-1995

438. The Prosecution alleges that the liberation of the Mount Ozren pocket from VRS forces was a prime objective of ARBIH in 1994-1995.⁹¹⁹ In support it relies on E386;⁹²⁰ however in no way does this document support the claim. The evidence shows that the liberation of the Ozren-Vozuca area from the VRS was not a prime objective of the ARBiH. The ARBiH’s primary objectives were determined by the 1995 Directive.⁹²¹ Those objectives were described in item 3 on page 8 of the Directive as:

“I have decided the following: In the combat defensive combat operations, firmly hold the taken line of defence, continue carrying out offensive combat operations of operative and tactical importance, /particularly for the Army/, with the following objective: free the PZT /temporary occupied territory/, lift the blockades surrounding the free territories in the Drina river valley, lift the blockade of Sarajevo, join the forces of the 4th and 7th Corps with those of the 5th Corps, cut

⁹¹⁵ Indictment, para. 28.

⁹¹⁶ Indictment, para. 30.

⁹¹⁷ Indictment, para. 28.

⁹¹⁸ Indictment, para. 30.

⁹¹⁹ Indictment, para. 28.

⁹²⁰ E386-GSARBIH Order for taking measures pursuant to the Directive for 1995, 26/08/1995: «Commanders of the 2nd and 3rd Army will carry out all preparations and draft documents-a plan for carrying out part of the RBiH GSA Directive pertaining to the liberation of Vozucki dzep».

⁹²¹ E384-GSARBIH Directive for the continuation of offensive combat operations by the ARBIH, 05/01/1995

off important roads and industrial facilities for our own needs and to create conditions for the final liberation of our homeland...”.

439.The primary objectives of the ARBiH were thus determined by decision of the Commander. There was no mention of Vozuca or Ozren. The liberation of Vozuca was only mentioned as a task for the 2Corps⁹²² and 3Corps.⁹²³

440.The liberation of Ozren was not even foreseen. Rather, the task of 2Corps and 3Corps was to “cut off the Chetnik forces in Mount Ozren along the Klokotnica-Savarlije axis [near Doboј]”.⁹²⁴

441.Prosecution witness Sead Delic, Commander of 2Corps, testified about the Directive. He said that the Directive only covered “general tasks, guidelines for some activities”.⁹²⁵ He stated that, based on the Directive, the corps command was in charge of preparing plans and issuing tasks to subordinate units.⁹²⁶

442.Commenting on the 1995 Directive, 3Corps Chief-of-Staff, Jusic said:

*“This is the most general kind of document in terms of its nature. This is a general plan, the most general plan possible on how to wage a war of liberation”.*⁹²⁷

443.About the military significance of Vozuca, Hasanagic said that it was important because “[t]he Zavidovici-Ribnica road ran along it, connecting the Tuzla and Zenica cantons”.⁹²⁸ Hasanagic explained the goal of the combat activities in the Ozren-Vozuca

⁹²² E384,p.p.8-9

⁹²³ E384,p.9

⁹²⁴ *Ibid*

⁹²⁵ Delic,21/09/2007-T.2842

⁹²⁶ Delic,21/09/2007-T.2842“Q. So based on the directive, it was the responsibility of the corps command to work out plans and issue tasks to the units subordinate to the corps; is that correct? A.Precisely so”.

⁹²⁷ Jusic,18/09/2007-T.2559

⁹²⁸ Hasanagic,24/09/2007-T.2929

area in July 1995 when commenting on E444, the ‘Plan for Continuation of Attacking Engagement Proljece-95’:⁹²⁹

“In the Proljece II Operation, the objective was to capture the elevations of Malovan, Krcevine, and Gaj from which the enemy shelled Zavidovici as well”.⁹³⁰

444. Therefore, the liberation of the Ozren-Vozuca area from the VRS forces was not a prime objective of the ARBiH in 1994-1995, rather it was a goal of local importance. The liberation of Vozuca (but not Ozren) was just one of the multiple goals of the 2Corps and 3Corps in this period.

445. In claiming that it was a primary objective of the ARBiH, the Prosecution tries to link the combat activities carried out by the 35Division in July 1995 in the area of Vozuca with the Main Staff and to invent the conclusion that Delic ordered combat activities in this area and that the Main Staff directed these activities. This is far from reality.

2. On 16 and 17 July 1995 Delic did not order 2 and 3 Corps to conduct combat operations in the Mount Ozren-Vozuca pocket

446. The Prosecution alleges that on 16 and 17 July 1995 Delic ordered the ARBiH 2Corps and 3Corps to conduct combat operations in the Mount Ozren-Vozuca pocket.⁹³¹

In support, it relies on two orders of the Main Staff:

- The Main Staff order of 16 July 1995 concerning the undertaking of combat operations, signed by Delic, and sent to all corps commands. This order provides:

“In connection with newly created situation in Zepa and Srebrenica, and on the basis of the suggestion of the President of the RBiH Presidency, and for the purpose of activating the whole front and all soldiers on the battlefield of the Republic of Bosnia and Herzegovina...”.⁹³²

⁹²⁹ E444-35Division Order for Continuation of the Attacking Engagement “Proljece-95”, 18/07/1995. The July action ordered in this Order was known as “Proljece-II”.

⁹³⁰ Hasanagic, 24/09/1995-T.2936

⁹³¹ Indictment, para. 30

⁹³² E496-GSARBiH Order Re Undertaking of Combat Activities, 16/07/1995

- The ARBiH Main Staff order of 17 July 1995 concerning the undertaking of combat operations, signed by Rasid Zorlak, and sent to 1, 3, 4 and 7Corps. This order provides:

“With the goal of providing assistance and relieving the front around Zepa, and pursuant to my order, str.pov. /strictly confidential/ number 1/825-1279, dated 16/07/1995, I hereby issue the following

ORDER

Immediately undertake active combat operations on the entire front, along selected axes and on selected objects in the basic areas.

*Undertake immediate measures to minimise the time required to launch attacks within the Operation ‘T’”.*⁹³³

447. In no way do these documents mention or suggest a connection with the combat activities in the Vozuca area in 1995. The Prosecution tries to use these orders to show that Delic ordered combat activities which are the subject of this Indictment; however, the orders were issued in a completely different context. Their background relates to the tragic events in Podrinje, in eastern BiH, during which the Serb forces killed more than 7,000 people from the Srebrenica-Cerska area over several days in the early July 1995, as part of an ethnic-cleansing operation against Muslims. They had also besieged the eastern Bosnian enclave of Zepa, which was facing the same fate.⁹³⁴

448. It is clear from E1348 that President Izetbegovic requested the activation of the entire front in BiH in order to alleviate the situation in these threatened areas.⁹³⁵ As a result of his request, the Main Staff issued orders E496 and E494. The purpose of these orders was unequivocal.

449. The order of the Accused, which simply went down the chain of command, and implemented the order of his superior, cannot be relied upon to establish his effective

⁹³³ E494. Operation ‘T’ was the operation to break the siege of Sarajevo. See Sivro, 01/10/2007-T.3362

⁹³⁴ Hasanagic, 27/09/1995-T.3185; Delic, 20/09/2007-T.2723

⁹³⁵ E1348: “Today, when the Chetniks are attacking Zepa, the Army must activate all the fronts in a way that will be felt. We need a victory somewhere. This is extraordinary important for the Army, for the people and especially for Zepa”, p.2

control; it simply reflects the fulfilment of his duty to pass on the directions of his superior.⁹³⁶

450. These documents do not order combat activities in the Ozren-Vozuca area in July 1995. Prosecution witness Ismet Alija, who drafted the order dated 16 July 1995, explained that the focus of these orders pertained specifically to the area of Podrinje, and the “Kamenica” mentioned in this order has nothing to do with “Kamenica” in the Vozuca area.⁹³⁷ This was confirmed by Hasanagic. He was clear when he said it would be completely wrong to say that these orders represented a direction to attack Ozren and Vozuca.⁹³⁸

451. The Prosecution tried to connect E494 and E496 with the time at which the ‘Order for the Continuation of the Offensive *Proljece-95*’ from 18 July 1995,⁹³⁹ was issued by Hasanagic. However, Hasanagic explained:

“I think that this is coincidence, because this is a continuation of the *Proljece* operation from May 1995 and this coincided with the General Staff's and 3rd Corps commander's orders. Because *Proljece II* is supposed to be commenced on the 21st—20th and 21st of July 1995”.⁹⁴⁰

452. Hasanagic’s testimony on this issue is confirmed by the report of the 35 Division on ‘Carrying out of combat operations’ of 18 July 1995, which was sent to 3 Corps Command.⁹⁴¹ Although the preamble of the document refers to the Main Staff order of 17 July 1995,⁹⁴² the document itself provides:

“In the following period, units of the 35th Division will carry out offensive combat activities in their zone of responsibility

⁹³⁶ See adopting this view I. Bantekas, The contemporary law of superior responsibility, 93 AJIL 572, 583 (1999) (Orders which move down the chain of command can not provide evidence of de facto control).

⁹³⁷ Alija, 17/10/2007-T.4237: «Q. In other words, this is Kamenica in Podrinje, which has nothing whatsoever to do with Kamenica in the Vozuca area?

A. No, it has nothing to do with it. This is an order that refers to Zepa and Srebrenica, and this Kamenica is near Srebrenica and Zepa and no other Kamenica.».

⁹³⁸ Hasanagic, 27/09/2007-T.3191

⁹³⁹ E444

⁹⁴⁰ Hasanagic, 28/09/2007-T.3273

⁹⁴¹ E443

⁹⁴² E494

[...][in keeping with the decision of the Commander of the [35th Division], which was approved by the 3rd Corps Command.]

453. Therefore, contrary to the Prosecution's claim, Proljece-II was not carried out on the basis of orders E496 and E494.

454. In assessing this fact, it is very important to consider the 3Corps order from 17 July 1995⁹⁴³ sent to the 35Division. This order was based on the Main Staff order related to Srebrenica and Zepa (E494). In no way does this 3Corps order mention the Ozren-Vozuca battlefield. Rather, the 3Corps Command orders:

“Undertake active [combat activities] immediately on the entire front in your zones, and on selected axes and features”.⁹⁴⁴

455. The author of this document, Prosecution witness Pesto, commented on it.⁹⁴⁵ Pesto said:

“A. The sense of the first paragraph is to immediately undertake active combat in their zones on selected axes and facilities. That would indicate that they already should have known where they were supposed to go. The word "isabrani," [phoen] "selected," indicates that this was in the past, that it had already been done”.⁹⁴⁶

456. Therefore the Prosecution incorrectly pleaded that on 16 and 17 July 1995 Delic ordered combat activities in the Ozren-Vozuca area. The order of the 35Division concerning these activities (in which EMD participated), did not result from an order of Delic or the Main Staff. This amounts to nothing more than an arbitrary assertion by the Prosecution.

(a) The role of the ARBIH General staff

457. Witness Ismet Alija, Head of the Main Staff Operative Planning Department, who was in charge of preparing and planning combat activities within the Main Staff said that

⁹⁴³ **E539**

⁹⁴⁴ **E539**

⁹⁴⁵ **Pesto**, 02/10/2007-T.3498-3502

⁹⁴⁶ **Pesto**, 02/10/2007-T.3502

he had hardly heard of action Proljece-II and that the Main Staff did not participate in the planning, control and command of this action.⁹⁴⁷

458. In order to exaggerate the importance of these combat activities and bring them closer to the Main Staff, the Prosecution claimed that the offensive was planned and coordinated between the 2Corps and 3Corps.

459. E532,⁹⁴⁸ on which the Prosecution relies, described cooperation between the 37Division and 22Division in terms of artillery support. Therefore cooperation took place at the division level, rather than planning and coordination at the corps level.⁹⁴⁹ In response to a leading question by the Prosecution, 2Corps Commander Sead Delic said:

*“Now, as far as the Ozren front is concerned, we can say that there were only negligible activities [in the area of Lukavac]”*⁹⁵⁰.

460. He explained that all the forces and resources of 2Corps were focused on saving the people of Zepa and Srebrenica.⁹⁵¹ Therefore this assertion by the Prosecution is also incorrect.

461. The Main Staff's 'Plan of coordination for July 1995'⁹⁵² does not shed light in any way on the role of the Main Staff in relation to the July 1995 events.

3. Neither Delic nor ARBiH Main Staff directed combat operations in Mount Ozren-Vozuca Pocket

462. The Prosecution claims the Main Staff directed combat operations in that pocket.⁹⁵³

⁹⁴⁷ **Alija**, 16/10/2007-T.4207

⁹⁴⁸ 3K Command, Monthly Analyses of combat readiness in July 1995, 26/07/1995

⁹⁴⁹ **PPTB**, para. 30.3

⁹⁵⁰ **Delic**, 20/09/2007-T.2722

⁹⁵¹ **Delic**, 20/09/2007-T.2722

⁹⁵² **E599**. The Prosecutor relies on this exhibit in PPTB, para. 30.2: «On 16 and 17 July 1995, RD ordered «active operations» towards Zepa and Kamenica».

About the role of coordination plans, see more Section VII, B(1)(b)

⁹⁵³ Indictment, para. 28

463. Several documents show that the 3Corps informed the Main Staff at KMKakanj about the activities during action Proljece-II.⁹⁵⁴ These are reports which relate to the situation and changes on the BiH battlefield. This was the method of reporting between the corps and the Main Staff needed for the activity of SVK KM Kakanj to draw up global documents and plans of significance for the improvement of the situation in the BH theatre of war and the global situation.⁹⁵⁵ This in no way means that the Main Staff directed those activities. The evidence shows that the Main Staff and Delic did not command, approve, order or direct the combat activities of Proljece-II.

464. Witness Jusic explained that the plan for action Proljece-II was not approved by the Main Staff but by the 3Corps.⁹⁵⁶

465. In para.30.3 of PPTB the Prosecution claimed that action Proljece-II was prepared by the 3Corps and 35Division. However, it is clear that Proljece-II was a combat action directed by the 35Division. The action was approved by the 3Corps Commander and ordered by the 35Division Commander.⁹⁵⁷ The 3Corps did not prepare this action; the focus of its activity at that time was the Sarajevo operation.⁹⁵⁸

466. The 35Division Command prepared the combat activities and they were ordered by its commander.⁹⁵⁹

467. Both E443⁹⁶⁰ and E525 shed light on the real relations between 35Division and EMD during this action. The 35Division did not treat the EMD as a subordinate unit, even

⁹⁵⁴ **E373,E525,E526,E527,E528,E529,E530,E604,E606,E608,E1050,E1051,E1053,E1054,E1163**

⁹⁵⁵ **Alija**,16/10/2007-T.4195

⁹⁵⁶ **Jusic**,18/09/2007-T.2585

⁹⁵⁷ **E444**-35th Division Order for continuation of the attacking engagement, Proljece-95

⁹⁵⁸ **Ribo**,05/03/2008-T.7051:«*A. The focus of the activities of the 3rd Corps and its units in the months of June and July of 1995 was the Sarajevo operation*».

Pesto,02/10/2007-T.3497-3502,**Jusic**,18/09/2007-T.2585

E538-3Corps Analyses for the realisation of the monthly work plan for July1995,p.2

⁹⁵⁹ **E525**-3Corps Report on carrying out combat operations,sent to Kakanj,18/07/1995

⁹⁶⁰ 3Corps Report on carrying out the combat operations,18/07/1995

though the detachment was re-subordinated to it on 2 June 1995.⁹⁶¹ It treated it as unit with which it carried out “coordinated action”.

468.EMD members testified that during this action, the EMD received its instructions from its Military Emir.⁹⁶² The EMD Emir, Abu Maali, reported on two occasions in detail about the July action, which the EMD had given its own name, Al Kerame. However, he did not report to the 35Division Command nor 3Corps Command, let alone Delic. Instead, on 4 August 1995, Maali sent two combat reports concerning action Al Karame to his “superiors” in the Emirates about the results of the battle.⁹⁶³

469.The reports shows that the EMD Emir did not consider the detachment to belong the units of the ARBiH.⁹⁶⁴

4.Delic was not informed that the EMD was the “main unit in charge of the coming assignment” within the Mount Ozren-Vozuca pocket

470.The Prosecution claims that SVK IKM Kakanj (in fact it was KM Kakanj) was informed that the EMD was the “main unit in charge of the coming assignment”.⁹⁶⁵

471.It supports this claim with E525/E606.⁹⁶⁶ However, this report was not sent to Delic whose headquarters was in Sarajevo. He was sent highly reduced information pertaining to only the most important events. This information was presented in a summarised and general manner.⁹⁶⁷

472.E537 is a series of reports containing information on the situation in the BiH theatre of war for the period 18-29 July 1995. The first of these reports, on the situation in the

⁹⁶¹ **E396**

⁹⁶² **Begovic**,13/07/2007-T.549-550

⁹⁶³ **E668**(under seal)- [REDACTED]

⁹⁶⁴ *See Section VIII, 3(d)*

⁹⁶⁵ **PPTB**,para.30.3

⁹⁶⁶ 3Corps report on carrying out active combat operations,sent to KM Kakanj,18/07/95.Both the documents are the same,except that **E525** is signed

⁹⁶⁷ *See Section VIII, A(1)(h)(iii)*

BH theatre of war on 18 July 1995, sent *inter alia* to Delic in Sarajevo confirms that no information about the EMD was sent to him. This was also confirmed by witness Alija:

“Q. And will you agree with me that there's no information that we saw in the document that originated from the 3rd Corps and was sent to the command post in Kakanj?”

A.Yes.

Q. The El Mudjahedin Detachment is not mentioned here; is that correct?

A.Yes, it is.”⁹⁶⁸

473.None of the evidence in this case confirms that Delic even knew about the participation of the detachment during combat activities in July 1995, let alone knew the EMD was “the main unit in charge of the coming assignment”.

474.The Prosecution also relies on E398.⁹⁶⁹ However, it was clear that this document was neither written (the document bears the initials TF/KR) nor signed by Delic. Witness Sead Delic confirmed that someone signed the document for Rasim Delic.⁹⁷⁰ This is a document requesting extraordinary reports on the results achieved on the Ozren front. Rasim Delic did not receive any such report mentioning the EMD.

475.E373, E525, E527, E528, E529, E530, E604, E608, E1050, E1051, E1053, E1054 show that the information about the activities of the EMD was sent to KMKakanj during this period. However, reports on the situation in the BH theatre of war E374⁹⁷¹, E537,⁹⁷² E1407⁹⁷³ and E1419⁹⁷⁴ again show that no such information was forwarded to Delic.⁹⁷⁵

476.In order to link Delic to the 1995 July action in Vozuca the Prosecution has once again imagined that evidence exists. In paragraph 30.3 PPTB the Prosecution claims that the “35th Division order for the continuation of attacks (Proljece-2) instructed subordinate

⁹⁶⁸ Alija,17/10/2007-T.4235

⁹⁶⁹ GSARBIH Order to 2nd and 3rdCorps for delivery of reports,21/07/1995

⁹⁷⁰ Delic,20/09/2007-T.2719

⁹⁷¹ Report for 20/07/1995,sent from KMKakanj to Sarajevo,21/07/1995

⁹⁷² Set of reports for the period between 19/07/1995-30/07/1995, sent from KMKakanj to Sarajevo

⁹⁷³ Report for 28/07/1995,sent from KMKakanj to Sarajevo,29/07/1995

⁹⁷⁴ Report for 31 July 1995,sent from KMKakanj to Sarajevo,01/08/1995

⁹⁷⁵ E374,p.2-no information about EMD;E537,p.p.2,13,17,24,10,13-no information about EMD;E1407,p.2-no information about EMD;E1419,p.2-no information about EMD

units to use ‘the instructions of General Rasim DELIC’”.⁹⁷⁶ However, page 26 of this order (E444) provides:

“For this activity, use GS ARBIH materials about [...] our units’ achievements, and the speech of Army General Rasim Delic.”

477.It is clear from E444, pages 25-26, that the order mentions General Delic's address in the context of the July 1995 Srebrenica events:

“The fate of Srebrenica demands an even greater unity of all defence factors from us....”

478.The Prosecution has also invented its claim in PPTB, paragraph 38.4, where it suggests that Delic congratulated the 3Corps for the successes on the Ozren front on 22 July 1995. In support, it relies on E1045,⁹⁷⁷ a document signed by the 3Corps Commander and sent from IKM Orahovo, enclosing 2 attachments. On reading the information concerning the successes of the 3Corps units contained in attachment number one, it is clear that Delic is not congratulating anyone and that he did not sign this document. Attachment number two, which is also part of E1045, makes it crystal clear that that it was the joint forces of the 4Corps who were being congratulated on the results in the wider area of Sarajevo.

479.E1047⁹⁷⁸ also relates to the information on the successes of the 3Corps units but this time it was forwarded by the 3Corps Department for Morale to the lower units. The author of the document, Halim Husic, the Chief of the Department of Moral of the 3Corps, said that the initials 'MM', appearing on this document (as well as on E1045) belong to Mustafa Music from the Main Staff Administration for Morale. The document does not bear the signature of Delic.⁹⁷⁹ Halim Husic explained that in principle Delic did not sign documents of the Administration for Morale, but rather his Assistant for Morale did this.⁹⁸⁰

⁹⁷⁶ The Prosecution supports this allegation with **E444**

⁹⁷⁷ 3Corps Report on the successes of units of the 3Corps,22/07/1995

⁹⁷⁸ 3Corps Forwarding of Information on success of joint forces of ARBIH,25/07/1995

⁹⁷⁹ **HalimHusic**,12/03/2008-T.7410-7411

⁹⁸⁰ **HalimHusic**,12/03/2008-T.7411

480. In any event, the evidence shows that Delic could neither receive nor sign documents because in the period prior to and during the combat activities in July 1995, as well as after them, he was outside of Sarajevo and KMKakanj.⁹⁸¹

481. Finally E460,⁹⁸² a 35Division report, shows that Delic, together with President Izetbegovic and General Mahmuljin, visited the 35Division on 2 August 1995. Witness Hasanagic explained that the visit lasted 30-40 minutes, that he informed President Izetbegovic on the situation in the Division.⁹⁸³ The only mention of EMD members was a suggestion that mujahedin appeared in a corridor during the visit. However, during cross-examination Hasanagic clarified that there was no connection between the passing of the mujahedin with the meeting held with Izetbegovic and Delic.⁹⁸⁴

482. The Prosecution has not presented any evidence to show that Delic was informed that the EMD was “the main unit in charge of the coming assignment” in the Ozren-Vozuca pocket. Moreover, the Prosecution did not prove that he even knew that the EMD took part in these combat activities.

D. July Knowledge

483. The Prosecution alleges:

- Delic knew that the EMD had a reputation for criminal and uncontrolled behaviour (para.30)
- Delic was put on notice that ARBiH soldiers from the EMD had propensity to commit crimes, particularly against captured enemy combatants and civilians (para.38)

⁹⁸¹ See Section VI, D(3)(c)(i)

⁹⁸² 35Division Daily Report to 3Corps,02/08/1995

⁹⁸³ Hasanagic,25/09/1995-T.3006-3007

⁹⁸⁴ Hasanagic,27/09/1995-T.3210

- Delic knew or had reason to know that soldiers of the EMD under his command and effective control were about to commit or had committed the acts described in paras.33-36 (para.38)

1.In general terms the EMD did not have a reputation for criminal and uncontrolled behaviour or propensity to commit crimes

484.The Prosecution bases its unfounded allegations on information contained in SVB Bulletins which, inter alia, mention the behaviour of EMD members.⁹⁸⁵ Upon analysis of these documents one can conclude:

- most of the evidence relates to minor misdemeanours arising out of cultural differences between the EMD members and the local population: breaking alcoholic drink bottles in bars/restaurants;⁹⁸⁶ disturbance of couples;⁹⁸⁷ disturbance of women wearing short skirts or attending bars;⁹⁸⁸ destroying pornographic videos;⁹⁸⁹ and disturbance of bathers by rivers,⁹⁹⁰ etc.
- all of the incidents took place in 1994 and they have nothing to do with the behaviour of EMD members during combat activities nor with captured enemy combatants and civilians.
- the most serious incidents are the desecration of a cemetery,⁹⁹¹ and the beating of two Muslim citizens from Zenica and Travnik due to a misunderstanding with the members of the EMD.⁹⁹² None of these incidents are related to the behaviour of EMD members during combat either.

⁹⁸⁵ E659,E714,E715,E721,E722,E723,E725,E727,E731,E733,E737,E738

⁹⁸⁶ E721,p.2;E722,p.3

⁹⁸⁷ E725,p.4;E738,p.2

⁹⁸⁸ E721,p.2;E723,p.4

⁹⁸⁹ E737,p.2

⁹⁹⁰ E722,p.3

⁹⁹¹ E731,p.4

⁹⁹² E727,p.3;E733,p.p.3-4

485. The Prosecution also relies extensively on evidence relating to the murder in January 1994 of Paul Goodall, a humanitarian organization member, to show the propensity of EMD members to commit serious criminal acts such as cruel treatment and murder.⁹⁹³

486. In consequence of the murder, the civilian police of Zenica (CSB Zenica) filed a criminal report against three persons of Afro-Asian origin, two of whom were EMD members, on 1 February 1994.⁹⁹⁴ Further, witness Awad stated that EMD members were not the perpetrators of this crime.⁹⁹⁵ Moreover, it can be seen from the statement of Abu Haris, Emir of the EMD at the time, that detachment members had not committed the murder.⁹⁹⁶ As witnesses PW4 and Hadziselimovic confirmed, the criminal proceedings in the case were never completed.⁹⁹⁷

487. Even if it was proven that two EMD members *were* involved in the murder of Paul Goodall, by itself, this would not prove that *all* EMD members had a propensity to commit criminal acts such as murder and cruel treatment.

488. The Prosecution relies on E736, a SVB Administration bulletin, which contained information originating from the 3Corps SVB.⁹⁹⁸ It suggested that EMD members, during their visits to the Vozuca/Ozren front, frequently visited soldiers of the adjacent unit, the 328 Brigade, and threatened them, especially soldiers of Serb and Croat ethnicity. It clearly suggested that unnamed EMD members were threatening soldiers from the 328 Brigade of the ARBiH in general, particularly the non-Muslim members. It had nothing to do with the behaviour of EMD members towards the enemy in combat. According to witness Vuckovic, the bulletin contained “raw information” received from

⁹⁹³ E57-Article published by Andrew Hogg regarding killing of Paul Goodall,30/01/1994

E658-Operative plan of measures and activities related to discovering organisers and perpetrators of the killing members of the UNHCR organisation ODA,29/01/1994

E659-GSARBIHSVB Special report,No.26,02/02/1994

E714, E715;E1013-Statement of Abu Haris,30/01/1994

⁹⁹⁴ E659-GSARBIHSVB Special report,No.26,02/02/1994,p.2

⁹⁹⁵ Awad,10/02/2008-T:271

⁹⁹⁶ E1013

⁹⁹⁷ PW4,30/10/2007-T.4771-4772;Hadziselimovic,27/11/2007-T.6198

⁹⁹⁸ E736-GSARBIHSVB Bulletin,No.125,10/07/1995,p.7

subordinate units.⁹⁹⁹ The initial information, on which the information in the bulletin was based, originated in a 328MB SVB report, E764.¹⁰⁰⁰ Commenting on the initial “raw” information, Vuckovic explained that this report in fact was based on a *rumour* concerning a threat by *one* EMD member towards *one* Bosnian Croat member of the ARBiH.¹⁰⁰¹

489. The testimony of witness Alihodzic, who certified E764 with his signature, sheds light on these documents and confirmed that the incident, which concerned a threat to one Bosnian Croat, developed into a rumour that *all* Serbs and Croats were being threatened.¹⁰⁰² It is clear from both documents that the identity of “the EMD member” who made the threat was not determined.

490. The perpetrator’s identity in relation to incidents is of fundamental importance in determining whether “the El Mujahed Detachment had a propensity to commit crimes, and particularly crimes against captured enemy combatants and civilians”. The Prosecution has completely failed to address this issue.

491. In considering these alleged incidents that the Prosecution relies on, account must be taken of the substantial evidence from both Prosecution¹⁰⁰³ and Defence¹⁰⁰⁴ witnesses that there were large numbers of different Arab groups and humanitarian organisation members of Afro-Asian origin present in the geographical locations relevant to the Indictment. Numerous Prosecution witnesses in this case, including former EMD

⁹⁹⁹ Vuckovic, 08/11/2007-T.5202

¹⁰⁰⁰ E764, 328th Brigade SVB Report, 07/07/1995

¹⁰⁰¹ Vuckovic, 08/11/2007-T.5209-5210

¹⁰⁰² Alihodzic, 30/11/2007-T.6486

¹⁰⁰³ PW9, 15/11/2007-T.5626-5629; Begovic, 13/07/2007-T.538-539; Alic, 16/07/2007-T.677-680; PW2, 19/07/2007-T.875-T.890-891; Delalic, 27/08/2007-T.1762; Hasanagic, 27/09/2007-T.3176-3177; Hamad, 07/09/2007-T.39-40; Hajderodzic, 09/10/2007-T.3787-3788, Husic, 25/10/2007-T.4476-4478, Mrkaljevic, 10/10/2007-T.3937-3938, PW4, 31/10/2007-T.4916-4917; Sehic, 05/11/2007-T.5092-5093; Spahic, 08/11/2007-T.5278-5279; Mujezinovic, 23/11/2007-T.6106-6107; Awad, 09/02/2007-T.150-157, 161-162

¹⁰⁰⁴ HalimHusic, 11/03/2007-T.7306-7309, 7334-7339; DW4, 18/03/2008-T.7756

members, confirmed that serious problems arose in trying to identify which group an Arab belonged to.¹⁰⁰⁵ Consequently, it was very difficult to tell them apart.¹⁰⁰⁶

492. Witnesses confirmed that incidents committed by Arabs who were not EMD members, who belonged to other groups, were erroneously attributed to the EMD.¹⁰⁰⁷ Documents E641¹⁰⁰⁸ and E1285¹⁰⁰⁹ also confirmed that incidents involving Afro-Asians were arbitrarily attributed to the EMD. E1285, p.6, item 5 provides:

“A discussion took place on incidents occurring in our area, involving persons from African and Asian countries, with arbitrary assumptions that they are members of the El Mujahid unit. It was concluded that the responsible organs, when taking measures and actions in incidents involving persons from AA countries, are to take all legal measures, identify these persons and, in cases when they really are members of El Mujahid unit, turn them over to the Military Police Battalion of the BH Army 3rd Corps, which shall provide feedback on measures taken against these persons. This is necessary in order to remove the ‘stigma’ spread by malicious people that all persons coming from AA countries are members of the El Mujahid unit.”

493. Examples of the confusion which existed are given by several documents that talk about incidents caused by “El Mujahedin unit” member Abu Hamza from Guca Gora.¹⁰¹⁰ In fact, Abu Hamza was not an EMD member, but the leader of an independent group.¹⁰¹¹ Information of the 3Corps SVB sent to the 7Corps dated 5 November 1995 also confirms that Abu Hamza was not an EMD member.¹⁰¹²

¹⁰⁰⁵ PW9,15/11/2007-T.5636; Hasanagic,27/09/2007-T.3182; Awad,09/02/2007-T.155; Alihodzic,30/11/2007-T.6449-6451

¹⁰⁰⁶ EdinHusic,25/10/2007-T.4478

¹⁰⁰⁷ PW9,15/11/2007-T.5639:“Q. Was it known in the detachment that incidents were being ascribed to the members of the detachment? And if you were, what happened in that case?”

A. Yes, I am aware that many incidents were ascribed to the detachment for which the detachment members were not responsible”.

PW 9,17/04/2008-T.8650-8652; Awad,09/02/2007-T.163-165

¹⁰⁰⁸ E641-Minutes of the meeting of the 3CorpsSVB and the CSBZenica,02/09/1995

¹⁰⁰⁹ E1285-CSBZenica, Minutes of the meeting held on 28 August 1995,04/09/1995

¹⁰¹⁰ E723-GSARBIHSVB Bulletin,No.211,15/10/1994

E841-SVB3Corps Information,05/10/1995

¹⁰¹¹ See Section III, C(7)(b)

¹⁰¹² E841:“...we have been informed by the EMD command that Mr. Abu Hamza is not a member of their unit”.

494. Thus the Prosecution has not proven beyond reasonable doubt that it was actually EMD members that committed the incidents which were reported, as opposed to unidentified groups or individuals.

495. As to any suggestion that the EMD was undisciplined, former EMD members testified, that there was discipline within the detachment.¹⁰¹³ It was organized around the detachment's principles and focused on preserving the reputation of the EMD with the local population. Prosecution witness PW9 explained that the basic EMD mission, spreading Dawa (or missionary work), depended on the general population placing trust in the EMD.¹⁰¹⁴ This suggests that criminal behaviour was neither encouraged, or tolerated in the EMD.

496. Bulletin of EMD, sent abroad on 06/03/1995, found in the Islamic Cultural Centre (ICI) in Milan, shows that the EMD distanced itself from acts carried out by others to maintain a good reputation with the local population:

*“Also, relations and movements of Mujahids are conditioned by the thing that keeps legitimacy of Jihad and its special character, and the Detachment announced several times that it did not take responsibility for actions and offences of individuals or groups that did not belong to it”.*¹⁰¹⁵

497. ARBiH members testified about the behaviour of EMD members and described that they did not accept ARBiH command and control, and how they refused to display ARBiH insignia, symbols and flag.¹⁰¹⁶ None of the witness confirmed that the EMD members had a propensity to commit serious crimes.¹⁰¹⁷

¹⁰¹³ **Awad**,09/02/2007-T.154-155:“Q. Could you please explain for the Trial Chamber what the rules of discipline were in the detachment.

A.I can say this: There was discipline within the detachment. Not everyone was free to go wherever they wanted to go, so there were orders that had to be obeyed. The emir had to be obeyed, so people had to do what the emir wanted them to do...”

PW9,16/11/2007-T.5667-5668,17/04/2007-T.8647-8651;**Begovic**,13/07/2007-T.541;**Saban Alic**,16/07/2007-T.678;**Awad**,09/02/2007-T.154-155

¹⁰¹⁴ **PW9**,17/04/2008-T.8649-8650

¹⁰¹⁵ **E1200**,p.2

¹⁰¹⁶ **Hasanagic**,26/09/2007-T.3102-3103,3125,3129;**Imamovic**,15/10/2007-T.4058-4059;**Sljuka**,22/10/2007-T.4370-4371;**Sehic**,05/11/2007-T.5086-5087

¹⁰¹⁷ See section VII, C(1)

498. In any event, in order to gain a clear picture of the importance of the information related to these incidents, described in the documents on which the Prosecution relies, the Trial Chamber must keep in mind the context of events and conditions in which the ARBiH operated.¹⁰¹⁸ In particular, 1995 was a year of tragic events, in which the survival of RBiH hung in the balance. Due to the poor level of organization and the limited material resources available, the ARBiH faced numerous and serious problems within its own ranks.

499. E1270,¹⁰¹⁹ E1286¹⁰²⁰ and E1293¹⁰²¹ are SVB Administration reports which show the terrible circumstances that ARBiH units faced during 1995, and they demonstrate the frequency of serious incidents occurring in these units. Such reports were submitted to the SVK. They show that among ARBiH members, there were mass desertions, murders, large-scale wilful abandonment of positions, self-wounding, suicide, disturbance of public peace and order, arbitrary shooting, refusal to obey orders, etc. The documents indicate a high level of anarchy and chaos within the units, which the higher commands, including the SVK, encountered.¹⁰²² The information concerning the EMD must be considered within this context. It can be seen that they are not even mentioned in these reports as a problematic unit or group.

500. In this regard, E944 is particularly important, which is a CSB Zenica report concerning incidents in the AOR of the 3Corps for period January-August 1995.¹⁰²³

¹⁰¹⁸ See Section II

¹⁰¹⁹ GSARBIHSVB Special report, No.35, Characteristic negative tendencies registered in the units of the Army during April 1995, 04/05/1995

¹⁰²⁰ GSARBIHSVB Special report, No.97, Characteristic negative occurrences in the units of the Army registered in August 1995, 08/09/1995

¹⁰²¹ GSARBIHSVB Special report, No.104, Characteristic negative occurrences in the units of the Army registered in September 1995, 11/10/1995

¹⁰²² Alihodzic, 30/11/2007-T.6513-6517: «Q.[...] The problems described here, were these problems similar to the ones that existed in your corps?»

A. Yes, these were major problems. There were about 35.000 men, and of these, about 800 to 1.000 were being sought because they had abandoned their positions.

Q. And there were a lot of problems like this all over Bosnia?

A. Yes, that's correct. Because human resources were being used to search for these men, the defence lines were not manned properly. This was reflected in morale and the combat readiness of the units».

¹⁰²³ List of incidents caused ARBiH 3Corps members in the period January-August 1995, issued by CSB Zenica, 18/08/1995

Alihodzic confirmed that EMD members caused a very small number of incidents in Zavidovici compared to ARBiH members.¹⁰²⁴

501.E906, E907, E908, E909, E910, E942 and E1239, 3Corps SVB information about criminal reports filed during the course of 1995, show the situation in the 3Corps units. It can be seen that during 1995 criminal reports were filed against ARBiH members for, inter alia, wilful desertion, assaulting military personnel in the course of their duties, unlawful possession of firearms and explosives, infliction of serious bodily harm, serious theft and banditry, murder, possession and distribution of intoxicating drugs etc.

2.Specifically Delic did not know the EMD had a reputation nor was he put on notice that the EMD had a propensity to particularly commit crimes

502.More specifically, it has not been proven that at the time the Serb POWs were captured on 21 July 1995 *Rasim Delic* knew about any alleged EMD reputation for criminal and uncontrolled behaviour nor was he put on notice that it had a propensity to commit crimes particularly against captured combatants and civilians.

(a)No knowledge from Maline

503.The Prosecution failed to prove that Delic received any information putting him on notice that mujahedin had been alleged to have committed crimes in Maline/Bikosi in 1993.¹⁰²⁵

(b) Delic did not receive documents relied on by Prosecution

504.To show that Delic knew about the propensity for criminal and uncontrolled behaviour of EMD members the Prosecution relies on three SVB Administration documents¹⁰²⁶ related to the murder of Paul Goodall, a member of a humanitarian organization.

¹⁰²⁴ **Alihodzic**,30/11/2007-T.6518-6520

¹⁰²⁵ refer back to para.XXX, section 4 Maline

¹⁰²⁶ **E714,E715,E659**

505. These documents are contradictory with regard to the identity of the perpetrator of the crime. These three documents were issued over a period of four days. E714¹⁰²⁷ contains the following information concerning Paul Goodall: ***“According to unverified information, the armed attack was carried out by 5 uniformed individuals, of dark complexion, wearing beards, who were probably members of the “Mujahedin” unit of the 6th Corps”***. E715¹⁰²⁸ provides information that three uniformed persons, with Arabic names, were arrested and the document details the countries that they came from. E659¹⁰²⁹ mentions that CSB Zenica, i.e. the civilian police, filed a criminal report against three persons, two of whom stated that they were members of the EMD.

506. The Prosecution also relies on E57,¹⁰³⁰ an article by Andrew Hogg, which concludes, ***“this week, Rasim Delic, the commander in chief of the Bosnian Army, will visit Zenica to oversee the investigation into the murder of Paul Goodall.”*** It is clear from the article that this is merely the opinion of the journalist, which was not based on any concrete information such as a statement made by Delic or anyone else. There is no evidence to suggest that Delic ever came to Zenica in connection with this matter. The article however talks about the suspicion that Paul Goodall was murdered by members of the 7MB, who were “nominally in control of scattered groups of Mujahedin”. The article ends with the statement of General Divjak, Deputy Commander concerning this brigade.¹⁰³¹

507. Thus, from the article one could conclude that members of the 7MB were suspected of committing the murder. The document provides no proof that Delic knew of the alleged reputation of the EMD to commit crimes.

508. It is important to emphasise that the murder of Paul Goodall took place at the beginning of 1994, which was around one and a half years before the relevant events in 1995.

¹⁰²⁷ GSARBIHSVB Bulletin, No. 22, 29/01/1994

¹⁰²⁸ GSARBIHSVB Bulletin, No. 23, 30/01/1994

¹⁰²⁹ GSARBIHSVB Bulletin, No. 26, 02/02/1994

¹⁰³⁰ The *Sunday Times*, Newspaper article, published by Andrew Hogg, 30/01/1994

¹⁰³¹ E57

509. [REDACTED]¹⁰³² [REDACTED].¹⁰³³ [REDACTED].¹⁰³⁴ [REDACTED].

510. The Prosecution also relies on various information concerning minor incidents mentioned in paragraph 484, which were published in the daily bulletins of the SVB. The Prosecution simply assumes that Delic was always familiar with the contents of these bulletins. It has not proven this. This issue was not clarified by Prosecution witnesses Vuckovic, who was involved in the preparation of these documents, nor Buljubasic, the Chef-de-Cabinet of Delic. From the testimony of Vuckovic, it can be concluded that his responsibility ended once the document left his department. He did not know what happened afterwards, nor was he interested in this.¹⁰³⁵

511. Buljubasic explained that while he was in this position, he never saw a bulletin, because they arrived in sealed envelopes, which he did not open, and he only handed them to the secretary. Therefore, he was not familiar with their contents, nor the types of documents or information contained therein.¹⁰³⁶

512. The evidence of the Prosecution witness Berbic shed more light on the delivery of bulletins addressed to Delic at KM Kakanj. He clearly stated that during the absence of Delic from KM Kakanj, bulletins were received by the Chief-of-Staff. He explained that the documents were not left waiting for Delic.¹⁰³⁷

513. In any case, the mere fact that a document was addressed to Delic does not mean that he saw the document. This was confirmed by Buljubasic¹⁰³⁸ as he commented on the

¹⁰³² [REDACTED]

¹⁰³³ [REDACTED]

¹⁰³⁴ [REDACTED]

¹⁰³⁵ **Vuckovic**, 7/11/2007-T.5173

¹⁰³⁶ **Buljubasic**, 13/11/2007-T.5458-5461, 14/11/2007-T.5502

¹⁰³⁷ **Berbic**, 14/09/2007-T:2425: «*Q...Do you remember having said that you would deliver the bulletin personally to the Chief of Staff, of course, in those situations when General Delic was absent?*

A. As far as I remember, I said that if he was absent, I would hand it over to the Chief of Staff or to the next highest-ranking officer of the administration».

¹⁰³⁸ **Buljubasic**, 14/11/2007-T:5500-5501

document submitted to Delic at KM Kakanj for signing, but which was finally signed by General Hadzihasanovic representing Delic.¹⁰³⁹

514.It can be seen from the testimony of witness Dedovic, that Delic frequently left the Sarajevo Command Post to visit ARBiH units in the field.¹⁰⁴⁰ Specifically, Dedovic stated that no documents were delivered to Delic while he was at the battlefield where combat activities were taking place.¹⁰⁴¹

515.The Prosecution places particular importance on document E736,¹⁰⁴²which according to the Prosecution was received by Delic on 10 July 1995. It can be concluded without doubt, based on several witnesses testimonies, that at the time this was sent Delic was commanding the operation to lift the siege of Sarajevo, and he was outside the city.¹⁰⁴³

516.Dedovic described the period between the 10-17 July as the culmination of combat activities in the Sarajevo operation.¹⁰⁴⁴ He stated that, at that time, Delic was constantly outside of Sarajevo, moving between Command Post Proskok in the area of Visoko, Nisic Plateau, and locations in between.¹⁰⁴⁵ The operation for the lifting of the siege of Sarajevo took place outside the city.¹⁰⁴⁶ Dedovic was clear when he stated that Delic did not receive any documents, nor would it have been possible to reach him due to the combat activities and his constant changing of locations.¹⁰⁴⁷ Therefore, even if the (mis)information contained in E736 had the importance which the Prosecution attributes to it (which is denied) it is certain that it never reached Delic.

¹⁰³⁹ **E820**-Letter for Delic,sent from Sarajevo to KMKakanj,14/02/1994

¹⁰⁴⁰ **Dedovic**,08/04/2008-T.8170

¹⁰⁴¹ **Dedovic**,08/04/2008-T.8203-8204: «*Q... do you remember whether General Delic received or did not receive any documents during the action?*

A.No, General Delic did not receive any documents in that period because that is something that would have been handed to me first, so, for sure, he didn't receive any documents».

¹⁰⁴² GSARBIHSVB Bulletin,No.125,10/07/1995

¹⁰⁴³ **Buljbasic**,14/11/2007-T.5495;**Karavelic**,26/03/2008-T.7923;**Dedovic**,08/04/2008-T.8201-8206

¹⁰⁴⁴ **Dedovic**,08/04/2008-T:8204:“*Q...To your knowledge, when did the combat activities relating to the lifting of the blockade of Sarajevo gain momentum? When did they come to a head?*

A.It was between the 10th and the 17th of July, 1995. That was the time when the fighting was at its highest”.

¹⁰⁴⁵ **Dedovic**,08/04/2008-T.8202-8203

¹⁰⁴⁶ **Dedovic**,08/04/2008-T.8205

¹⁰⁴⁷ **Dedovic**,08/04/2008-T.8203-8204

517.A further document the Prosecution relies is E532. This is a monthly analysis of combat readiness of the 3Corps for the month of July 1995 and is addressed to the Main Staff at KM Kakanj.¹⁰⁴⁸

518.Witness Alija could not remember whether such monthly analyses were delivered to KM Kakanj every month. In particular, he did not remember whether this monthly analysis was delivered, which cannot be seen from the document. Nothing on the face of this document suggests it was sent to or received by KM Kakanj.¹⁰⁴⁹

519.More specifically, the Prosecution has not proven in any way that monthly analyses of combat readiness were delivered to Delic in Sarajevo, particularly this one. On the contrary, the Trial Chamber heard a lot of evidence showing that the information sent from KM Kakanj to Delic in Sarajevo was condensed into summary form and limited.¹⁰⁵⁰

(c) Delic did not know that the EMD was operating in Kamenica camp

520.The Prosecution alleges that Delic knew the EMD was operating the Kamenica camp.¹⁰⁵¹ However, it has failed to call any evidence to support this theory.

(d) What the SVB knew about propensity of EMD to commit crimes

521.Several documents show that the SVB Administration¹⁰⁵² was in possession of some information relating to the alleged inappropriate behaviour of certain members of the EMD.¹⁰⁵³ However, none of this information relates to the behaviour of members of the EMD during combat or their propensity to commit criminal acts in connection with combat.

¹⁰⁴⁸ Monthly analyses of the 3rd Corps combat readiness in July1995

¹⁰⁴⁹ **Alija**,16/10/2007-T.4138-4139

¹⁰⁵⁰ See Section VIII, A(1)(h)(iii)

¹⁰⁵¹ Indictment,para.38

¹⁰⁵² See Section VIII, A(1)(i)

¹⁰⁵³ **E934,E759,E760,E774,E775,E798,E800,E801,E956**

522. In trying to show the propensity of the EMD to commit crimes against captured enemy combatants and civilians with two documents, the Prosecution relies on E665¹⁰⁵⁴ and E666.¹⁰⁵⁵ In PPTB para.38.3 it states “this evidence demonstrates that EMD during combat operations ‘liquidated a number of chetnicks, slaughtered two and carried their heads through the villages down the Krivaja river, showing them to the local and school children’”.

523. In reality, the contents of these documents clearly show that the mentioned enemy combatants were killed in combat and not as POWs. This was confirmed by Prosecution witness PW9.¹⁰⁵⁶

524. The Prosecution has failed to prove that any of the information mentioned in E665 and E666 or in any of the other documents mentioned above reached Delic in any way or form.

525. The Security Administration of the GS ARBIH kept a protocol record showing which documents were received by the SVB Administration and where they were distributed to. The protocol record was structured in such a way that it had a column indicating the identity of the recipient, and the document’s distribution.¹⁰⁵⁷ With regard to the documents that the Prosecution relies on, it was recorded where they were distributed to:

- E934 was distributed to ‘PO /auxiliary file/ Vranduk’,¹⁰⁵⁸
- E774 was distributed to department “01” in the GS Security Administration,¹⁰⁵⁹

¹⁰⁵⁴ SVB3Corps Information about EMD,15/06/1995

¹⁰⁵⁵ SVB3Corps Information about activities and developments to in the EMD,21/07/1995

¹⁰⁵⁶ **PW 9**,16/11/2007-T.5671-5672:«*Q. Would you agree that from this document, we can see that this event, relating to the beheading, took place in action, in the course of an action?*

A. Yes, that is correct[...]It was shortly after the first action on the Zavidovici front.

Q. So these people were killed in battle, and then the beheading took place; am I correct?

A. Yes, that is correct».

¹⁰⁵⁷ **PW13**,06/12/2007-T.6680-6681

¹⁰⁵⁸ See **E1303, p.2**-Excerpt from GSSVB Protocol for 27/05/1995

¹⁰⁵⁹ See **E708, p.4**-Excerpt from GSSVB Protocol for the period for July 1995

- E775 was distributed to GS Directorate for Morale, General Muslimovic, Ministry of Interior and State Security Service,¹⁰⁶⁰
- E798 was distributed to GS Directorate for Morale, General Muslimovic, Ministry of Interior and State Security Service,¹⁰⁶¹
- E801 was distributed to ‘PO /auxiliary file/ Vranduk’,¹⁰⁶²
- E956 was distributed to GS Directorate for Morale, General Muslimovic,¹⁰⁶³
- E665 was distributed to to ‘PO /auxiliary file/ Vranduk’,¹⁰⁶⁴
- E666 was distributed to PO (auxiliary files) Vazal and Vranduk.¹⁰⁶⁵

It is completely clear that none of these document was ever sent to Delic.

526. Moreover, there is important evidence to suggest that the information concerning the EMD was kept within the SVB. E666, which is related to the behaviour of the EMD members, bears the handwritten instruction “*Take care that the information about this unit is not used outside the service*”.¹⁰⁶⁶ Also, E784, information of the 3Corps SVB regarding preparations for the start of the Islamic school in the EMD, which was sent to the SVB Administration on 22 June 1995, contains the handwritten remark “*Use exclusively in operative work. Do not use the intelligence out of the service!!*”

527. Witness Spahic commented on the significance of this handwritten note, saying that this means:

*“that the information about this unit should not be disseminated to persons who are not part of the service, that the information should be kept within the service”.*¹⁰⁶⁷

528. [REDACTED].¹⁰⁶⁸ [REDACTED].¹⁰⁶⁹

¹⁰⁶⁰ See E708, p.6-Excerpt from GSSVB Protocol for the period for July 1995

¹⁰⁶¹ See E708, p.6-Excerpt from GSSVB Protocol for the period for July 1995

¹⁰⁶² See E708, p.13-Excerpt from GSSVB Protocol for the period for July 1995

¹⁰⁶³ See E708, p.10-Excerpt from GSSVB Protocol for the period for July 1995

¹⁰⁶⁴ See E1304, p.2-Excerpt from GSSVB Protocol for the period of May and June 1995

¹⁰⁶⁵ See E1304, p.2-Excerpt from GSSVB Protocol for the period of May and June 1995

¹⁰⁶⁶ E666-SVB3Corps Report on activities and developments in the EMD,24/06/1995

¹⁰⁶⁷ Spahic,08/11/2007-T.5270-5271

¹⁰⁶⁸ [REDACTED]

¹⁰⁶⁹ [REDACTED]

529. This undoubtedly points to the fact that such information was kept within the SVB, and was not forwarded outside of the service to anyone, including Delic. The Prosecution has not presented any evidence to the contrary. It is important to note that the Security Administration was controlled and commanded by its Chief,¹⁰⁷⁰ Jusuf Jasarevic, and it was he who decided what information would be forwarded to the Commander. This was confirmed by witness Vuckovic.¹⁰⁷¹

(e) Operative Action Vranduk

530. The Prosecution relies on several documents concerning Operative Action (OA) Vranduk,¹⁰⁷² to try and prove that “Delic was aware of the propensity of EMD members to “commit serious acts such as cruel treatment and murder”.

531. Section VIII, A(1)(i)(ii) explains in detail in what SVB operative actions were and what the General Staff Commander’s authority was with regard to them.

532. The Defence will now deal with the relevance of OA Vranduk to the issue of the “general and specific criminality of the EMD”, claimed in PPTB paragraph 38.2.

What do the documents concerning OA Vranduk show?

533. First, these documents show without doubt that the Main Staff and its SVB Administration did not have sufficient nor verified information on the basis of which they could assess the real situation within the EMD and its ties.

¹⁰⁷⁰ **E585**-Rules for operation for the Military Security Service in the ARBIH, para.46

¹⁰⁷¹ **Vuckovic**, 07/11/2007-T:5149: “*Q. The commanding officer of the Security Administration, that's to say, the chief of the Security Administration, had within his discretion to decide about -- on what matters he would inform other departments of the staff of the supreme command and on what matters to inform the commander of the staff of the supreme command. Am I right?*

A. Yes”.

¹⁰⁷² **E965/1160**-GSARBIHSVB Preparation for the realization of OA Vranduk, 13/05/1995

E964-GSARBIHSVB Proposal for the introduction of the OA Vranduk, 13/05/1995

E1035-3Corps Plan of operative measures and activities of the SVB and SDB for the execution of OA Vranduk, 22/05/1995

E693(under seal)- [REDACTED].

534. All of these documents refer only to initial information and show that OA Vrankuk was established “with the aim of monitoring, **documenting** and cutting off the intelligence activities, and **shedding light** on all activities of the members of the detachment”.¹⁰⁷³

535. [REDACTED]¹⁰⁷⁴ [REDACTED].¹⁰⁷⁵

536. The ‘Plan of operative measures of the SVB and the SDB for the execution of OA Vranduk’ refers to the verification of information “based on the so-far registered crimes for which there are indications that the perpetrators or people connected to them are members of the unit ‘El Mujahedin’...”.¹⁰⁷⁶

537. [REDACTED].¹⁰⁷⁷

538. None of the documents talk about the behaviour of EMD members during combat. Rather, they suggest that “a certain number of Afro-Asian nationals, after having found safe haven in the detachment, set good conditions for *engaging in intelligence activities* for the purposes of foreign intelligence services”.¹⁰⁷⁸ This document also provides that “there is also a significant issue of evading *the participation in combat activities*” by members of the unit.

539. E964 explains the actual “indications” that the SVB had which required further investigation:

“- the way of arrival of some African-Asian nationals to the territory of BiH (the majority of them has come from Western Europe, including the Republic of Croatia, and there were some cases of arrival from Serbia);

¹⁰⁷³ E964-GSARBIHSVB Proposal of introduction of the OA Vranduk, approved by Delic, 13/05/1995

¹⁰⁷⁴ [REDACTED]

¹⁰⁷⁵ [REDACTED]

¹⁰⁷⁶ E1035-3Corps Plan of operative measures and activities of the SVB and SDB for the execution of OA Vranduk, 22/05/1995, p.4, point 4(c) (emphasis added).

¹⁰⁷⁷ [REDACTED]

¹⁰⁷⁸ E964, p.1

- the way of practising religion and manifestation of religious ceremonies as well as;
- the way of financing and the entire logistical support.”

3.Delic did not know that the members of EMD were about to commit or had committed crimes

540.The Prosecution takes a completely wrong approach in trying to prove that Delic knew that the EMD was about to commit or had committed crimes. It assumes that Delic automatically received every piece of information available to the ARBiH – from its different services, including the SVB Administration.

(a)Information concerning the POWs from July 1995 which was available to 35Division and 3Corps

541.The first information concerning the existence of POWs, captured by the EMD, in July 1995 is the regular combat report by 35Division Commander Fadil Hasanagic sent to the Operations Centre of 3Corps on 21 July 1995.¹⁰⁷⁹ The report cites that a typical problem is that “[w]ar prisoners and captured documents from the aggressor formations are not forwarded according to the instruction of the 3rd Corps Command” by the EMD.

542.The next information was the report of 35Division SVB sent to 3Corps SVB on 22 July 1995.¹⁰⁸⁰ This report provided that the 35Division SVB conducted an interview with the prisoners captured by the EMD, “with the approval of Abu Mali”. It also provides that the members of the EMD, “only gave permission for a short interview”.

543.It is clear from the document that the 35Division SVB requested a written order from the superior command concerning the takeover of prisoners, since they (35Division) were

¹⁰⁷⁹ E455, 21/07/95.

¹⁰⁸⁰ E553, 22/07/95.

not being allowed to takeover the prisoners.¹⁰⁸¹ It is also clear from the document that the 35Division proposes that the 3Corps security organ try to agree on the takeover with the EMD.

544.Hajderhodzic, the 35Division Assistant Commander for Intelligence, testified that he saw one prisoner, who was restrained and in an inhumane position.¹⁰⁸² However, he did not inform his superior command about what he saw. The witness was shown his daily reports from the relevant time period,¹⁰⁸³ none of which contains any information about the treatment of prisoners. He accepted that he did not inform anyone in writing about this event.¹⁰⁸⁴

545.The report of the 3Corps Intelligence Department dated 24 July 1995,¹⁰⁸⁵ signed by witness Mrkaljevic, a member of that department, and sent to Edin Husic, 3Corps Assistant Commander for Intelligence, shows that Mrkaljevic had information about POWs held by the EMD. According to the document, General Mahmuljin, 3Corps Commander, also had such information.

546.However, according to the document Mahmuljin immediately ordered him to “meet with superior officers of the El Mujahedin Detachment to remove the seized documents and **request approval to contact the prisoners** of the 1st Prnjavor light infantry brigade at their camp located 14kms towards Kamenica village”.¹⁰⁸⁶

¹⁰⁸¹ **E553:**«*The EMD does not allow us the takeover*»

¹⁰⁸² **Hajderhodzic**,08/10/2007-T.3717

¹⁰⁸³ **E558**-35Division daily intelligence report,21/07/1995,

E559-35Division daily intelligence report,22/07/1995,

E560-35Division daily intelligence report,23/07/1995,

E561-35Division daily intelligence report,23/07/1995,

E562-35Division daily intelligence report,24/07/1995,

E563-35Division daily intelligence report,25/07/1995.

¹⁰⁸⁴ **Hajderhodzic**,09/10/2007-T.3803

¹⁰⁸⁵ **E554**

¹⁰⁸⁶ **Mrkaljevic**,10/10/2007-T.3895

547. Witness Saric said that the Chief of the 3Corps SVB, Ekrem Alihodzic, had tasked him with interviewing prisoners,¹⁰⁸⁷ which he did once they had been brought to the POW Reception Centre.¹⁰⁸⁸

(b) Information regarding POWs available to the SVB Administration

548. E580 shows that the 3Corps SVB forwarded a report dated 22 July 1995¹⁰⁸⁹ to the Main Staff Security Administration, stating that “about 50 aggressor troops” were captured and “all captives are under control of the ‘El Mujahedin’ Detachment”.¹⁰⁹⁰ On 23 July 1995 the 3Corps SVB *once again* informed the Main Staff Security Administration that “the ‘El Mujahedin’ Detachment does not allow the aggressor soldiers to be taken over”.¹⁰⁹¹ [REDACTED].¹⁰⁹² [REDACTED].¹⁰⁹³

549. The instruction was followed by an order issued by the Chief of SVB Administration Jasarevic.¹⁰⁹⁴ He demanded that the 3Corps SVB “conduct detailed interviews” and to inform the Security Administration of this. Information was sent to the SVB Administration concerning an interview with three prisoners,¹⁰⁹⁵ who had been mentioned in earlier documents.¹⁰⁹⁶ This information was based on an interview conducted by the 35Division SVB, and it should be noted that, while very detailed, it did not contain any suggestion that prisoners had been mistreated. Moreover, it didn’t contain any information that the prisoners were being held by the EMD.

¹⁰⁸⁷ Saric, 21/11/2007-T.5886

¹⁰⁸⁸ Saric, 21/11/2007-T.5888

¹⁰⁸⁹ E580, SVB3Corps Information about results of attacking activities in the AOR of the 35th Division, 22/07/1995

¹⁰⁹⁰ Imamovic disputed the number of prisoners captured, 11/10/2007-T.3999, as did Alihodzic: «...*But this figure here was never confirmed, and that much is certain*», 30/11/2007-T.6470

¹⁰⁹¹ E858/581/957-it must be noted that **three** versions of the same document were admitted into evidence

¹⁰⁹² E957-SVB3Corps Information about captured aggressor's soldiers, 23/07/1995

¹⁰⁹³ [REDACTED]

¹⁰⁹⁴ E594-GSARBIHSVB Instruction for informative interview with prisoners, 26/07/1995

¹⁰⁹⁵ E859-SVB3Corps Information about results of interviews conducted with the captured aggressor's soldiers, sent to GSARBIHSVB, 25/07/1995

¹⁰⁹⁶ E580, E858/581/957

550.E862,¹⁰⁹⁷ E863¹⁰⁹⁸ and E1168¹⁰⁹⁹ are all similar in nature, and were sent to the SVB Administration on 30 August 1995. They all contain information concerning informative interviews with different POWs captured on 21 July 1995. None of these documents mention which unit captured the POWs nor specify where they were being detained. In fact, many units from the 35Division and 37Division were involved in combat in the Vozuca area on 21 July 1995.¹¹⁰⁰ Therefore, on the basis of these documents, the Security Administration could not conclude that these were the prisoners being held by the EMD. **Delic did not receive any of these documents.**¹¹⁰¹

551.The Prosecution relies on E668, [REDACTED] which mentions “about 30” Serb prisoners. See section VIII, B(3)(d) on the importance of reporting to “superiors” abroad. In any event, Delic did not receive this report.¹¹⁰²

552.E935 is another information report by the 3Corps SVB to SVB Administration dated 28 July 1995. It concerned an intercepted conversation between EMD member Abu Isaa with E.Muad from Saudi Arabi, in which Isaa informs E.Muad of the latest combat activity results carried out by the EMD on the Vozuca battlefield. Delic did not receive this information either.

(c) Delic did not have information that the EMD was holding POWs from the July action

553.First, Delic did not receive the information contained in documents: E580 and E858/581/957.¹¹⁰³ The same information was contained in E375;¹¹⁰⁴ however there is no evidence that Delic received these documents.

¹⁰⁹⁷ SVB3Corps Official note about results of the interview conducted with POW,Dusko Pejicic,30/08/1995

¹⁰⁹⁸ SVB3Corps Report about results of the interview conducted with POWs,Goran Stokanovic and Igor Guljevatej,30/08/1995

¹⁰⁹⁹ SVB3Corps Report about results of the interview conducted with POW,Miodrag Samac,30/08/1995

¹¹⁰⁰ See **E444**-35th Division Order for the continuation of the attacking engagement,Proljece-95,18/07/1995

¹¹⁰¹ See **E1306**,p.2-GSARBIHSVB Excerpt from Protocol for July,August and September 1995; **E862**-distributed to 3Corps Command SVB Organ,

See **E1306**,p.2-GS SVB Excerpt from Protocol for July, August and September 1995; **E863**-distributed to «01» and «03» departments of the GSARBIHSVB

¹¹⁰² See **E1305**,p.3-GS SVB Excerpt from Protocol for July, August and September 1995; **E668**(Under seal)- [REDACTED]

¹¹⁰³ See **E1305**,p.2-GS SVB Excerpt from Protocol for July, August and September 1995; **E858/581/957**-distributed to 3Corps Command SVB Organ

554.To try to show that Delic knew the EMD was holding POWs from the July action, the Prosecution relies on a document from 22 July 1995 sent to KM Kakanj.¹¹⁰⁵ However, this information did not go to Delic.¹¹⁰⁶

555.The Prosecution claims that “the head of the GS Department for Intelligence Staff and Information Technology visited the 3K IKM Klek, which was just located a few kilometres away from the Kamenica camp where the Serb POWs were held”.¹¹⁰⁷ It supports this assertion with E458,¹¹⁰⁸ suggesting that General Karasik was subordinated to Delic and that he could have forwarded him the information.

556.Karasik was not a member of the Main Staff in July 1995 nor was he subordinate to Delic. This was confirmed by E498,¹¹⁰⁹ from which it can be seen that Karasik was not a member of the Main Staff after 26 February 1994; rather he was member of the Ministry of Defence, which was a RBiH Government body, superior to the ARBiH Main Staff.¹¹¹⁰

557.The Prosecution claims that on 22 July 1995 Delic was informed that 40 aggressor soldiers were captured after the liberation of Kesten and other locations on Ozren and that they were all being held by the EMD, which so far was not allowing access to them

¹¹⁰⁴ This is a set of documents from 22 July 1995 showing the flow of information concerning the successes of the ARBiH on 21 July 1995. P.4 in BCS version and p.5 in English shows that part of the information was included in a document which was *not* signed by General Delic: See **Sead Delic**,21/09/2007-T.2881:«Q.So would you agree with me that somebody has prepared a physical document, a piece of paper in this instance, and somebody has put a stamp on this document and a signature, signing it for Rasim Delic?

A.This is what it says here, "for," and then there are the initials of the person».

Berbic,14/09/2007-T.2422

¹¹⁰⁵ **E530**-3Corps Addition to the regular combat report,sent to KMKakanj,22/07/1995,p.1

¹¹⁰⁶ See **E537**-Set of daily reports sent from KM Kakanj to Sarajevo,(*inter alia* RD),p.9-Report on the situation on the war front in BiH for 22/07/1995,no mention of EMD.

¹¹⁰⁷ **PPTB**,para.38.6

¹¹⁰⁸ 35Division combat report sent to OC3Corps on 23/07/1995:“*During the day, the 3K commander and General Karisik visited the “Klek” command post and the command post of the of the ground forces 35th Division*».

¹¹⁰⁹ **E498**-RBIH Presidency Order for transfer of Mr.Karisik from GSARBIH to RBiH Ministry of Defence,26/02/1994

¹¹¹⁰ See *Section VIII, A(1)(b)*

(PPTB,para.38.4).¹¹¹¹ This is a bulletin which was forwarded to KM Kakanj on that day, which was supposed to be given to Delic.¹¹¹²

558.As was explained in Section VI, D(3)(c), the fact that a document was sent to be delivered to Delic does not necessarily mean that this was carried out, and it certainly wasn't in this case. During that time period Delic was neither in Sarajevo nor in KM Kakanj.

(i)Delic's pre-occupations in July 1995

559.In July 1995 Delic personally commanded the operation to lift the siege of Sarajevo, which reached its climax between 10-17 July 1995.¹¹¹³ This was also the time of appalling events in Srebrenica. During the period immediately preceding 20 July 1995 Delic was trying to alleviate the consequences of this tragic situation.¹¹¹⁴

560.Witness Dedovic described the movement of Delic after 20 July 1995 in detail. He explained that he went to Split with Delic on 20 July 1995 to attend a conference between the delegations of ARBiH and Croatia concerning the preparation and adoption of the Split Declaration. The witness was very clear that Delic was in Split on 22 and 23 July.¹¹¹⁵ This was confirmed by witness Alija,¹¹¹⁶ and shown by E612, an article from the Oslobodjenje newspaper which described Delic's stay in Split, Croatia between 22-23 July 1995, and E1360, a Main Staff Press Centre an information bulletin dated 23 July 1995.

561.Dedovic explained that these negotiations lasted two-three days and immediately after he and Delic went to the Krajina region (Bihac area), where the ARBiH was in an

¹¹¹¹ **E582**-GSARBIHSVBBulletin,No.137,22/07/1995

Imamovic testified about this document and confirmed that the information in question had not been verified:15/10/2007,T.4068-4069

¹¹¹² **E377**-A range of documents sent by Jusuf Jasarevic to the SVB at KM Kakanj, ERN 06084890,

See also Section VI, D(3)(c)

¹¹¹³ **Dedovic**,08/04/2008-T.8204

¹¹¹⁴ **Dedovic**,08/04/2008-T.8205-8206

¹¹¹⁵ **Dedovic**,08/04/2008-T.8206-8207

¹¹¹⁶ **Alija**,16/10/2007-T.4187-4191

extremely difficult position.¹¹¹⁷ He also stated that in the period after 23 July they often went to Zagreb from Krajina for talks about cooperation between Croatian and Bosnian forces.¹¹¹⁸ Dedovic explained that it was only at the end of July 1995 that Delic went to KM Kakanj and he only spent several hours there attending a seminar.¹¹¹⁹

562.E1365 are the conclusions and tasks from the meeting between the core members of the Main Staff and ARBiH corps commanders in Kakanj on 29 July 1995. It describes the topics which were discussed, as well as the conclusion from this meeting. There was no mention of POWs, foreign fighters nor the EMD in any way.

563. Therefore the Prosecution's claim that Delic received the bulletin from 22 July 1995 with information "that 40 aggressor's soldiers have been captured ... by the EMD and so far they do not allow anyone access to these prisoners" is unfounded.¹¹²⁰ The Prosecution has not proven beyond reasonable doubt that Delic ever received this information.

564. Throughout this case, the Prosecution has lost sight of the fact that Delic, as Main Staff Commander, working at the strategic command level which dealt with broad and general issues, did not receive operational information or, if he did, it was in a highly summarized and undetailed form.¹¹²¹

4. Delic did not know or have reason to know that members of the EMD had committed crimes

565. The Prosecution has not shown any evidence to suggest that Delic knew or had reason to know that EMD members had committed crimes, including murder and cruel treatment, in July and August 1995. Even members of the military police and 3Corps

¹¹¹⁷ Dedovic, 08/04/2008-T.8208

¹¹¹⁸ Dedovic, 08/04/2008-T.8208-8209: «*Q. Mr. Dedovic, do you remember where you went next after Split? [...]* *A. In that period of time we went often to Zagreb to visit General Zvonimir Cervenko, I recall this quite well. And this had to do the cooperation between the two armies in that geographic area».*

¹¹¹⁹ Dedovic, 09/04/2008-T.8270-8271

¹¹²⁰ PPTB, para.38.4

¹¹²¹ See Section VIII, A(h)(iii)

SVB did not have any such information.¹¹²² Similarly, the former Serb POWs who testified said that they did not inform ARBiH members with whom they had contact about mistreatment, nor did those ARBiH members notice any signs of mistreatment on them.¹¹²³

566. On the contrary, when talking to them, the former POWs informed the ARBiH members that there had been *no* mistreatment. Also there was no way that the 3Corps or Main Staff could have known that a POW had been killed. The initial information talked of 11 Serb POWs,¹¹²⁴ and 11 of them were released to the 3Corps military police.¹¹²⁵ Thus no POWs were reported as missing or killed.

567. The Main Staff did not have any information about the alleged murdered persons: Gojko Vujicic, Momir Mitrovic and Predrag Knezevic. Such information did not reach the lower commands, including the 3Corps. Information on this issue did not reach the SVB Administration, let alone Delic.

568. On the absence of command and the importance of the absence of adequate notice, see paras in Chapter on Individual Criminal Responsibility.

5. Delic did not fail to take the necessary and reasonable measures to prevent and punish these crimes

569. On the absence of command and the importance of the absence of adequate notice, see Section VIII, B(5).

¹¹²² See Section VI, B

¹¹²³ *Ibid*

¹¹²⁴ E553, 35 Division SVB report to SVB 3Corps, 22/07/1995 refers to “eleven Chetnik prisoners”; E858, SVB 3Corps to GSARBIH, 23/07/1995 refers to “captured 11 enemy soldiers”.

¹¹²⁵ E499, 3Corps MP Battalion report, 29/08/1995; E542

VII. SEPTEMBER FARZ SECTION

570. The September 1995 Operation was carried out by 2 Corps of ARBiH (Codename 'Uragan') and 3 Corps of ARBiH (Codename 'Farz').¹¹²⁶ Operation Farz, relevant to this Indictment, was carried out in the zone of responsibility of the 35 Division, 3 Corps. The EMD took part in the combat activities.

A. September Crime Base

571. Each of the elements described in paragraph 400 must be proved beyond reasonable doubt.

1. Kamenica Camp and Kesten: September 1995

(a) Location: Road near Kesten

572. The Prosecution alleges that on 11 September 1995 EMD soldiers killed two of the captured soldiers on the road to Kesten, Zivinko Todorovic and Milenko Stanic, and took away four others.¹¹²⁷

(i) Murder of Milenko Stanic and Zivinko Todorovic

Milenko Stanic

Proof of death

573. [REDACTED].¹¹²⁸

Actus Reus

574. For the charge of murder the Prosecution must prove that the victim was a person taking no active part in hostilities, including members of the armed forces who had laid

¹¹²⁶ Delic, 20/09/2007-T.2738

¹¹²⁷ Indictment, para 40.

¹¹²⁸ [REDACTED]

down their arms and those placed *hors de combat*. [REDACTED]¹¹²⁹ Milenko Stanic was not part of [REDACTED] group. The Prosecution failed to ask DRW3 any follow-on questions to clarify whether the man had surrendered at the time he was killed.¹¹³⁰ The Trial Chamber cannot simply assume this. Karahasanovic cast further doubt on the alleged victim's status, who testified that two Serb soldiers had been killed earlier by ARBiH soldiers resisting capture.¹¹³¹ He recorded this information on his list.¹¹³² Thus VRS soldiers killed around that time were still taking an active role and thus were not protected persons.

575. The identity of the perpetrator is unclear and the Prosecution failed to establish that it was an alleged subordinate of the Accused. Even if the Prosecution proved the perpetrator was a mujahedin, for reasons explained later, it cannot be established that any mujahedin seen around Kesten at that time were EMD members.

Mens rea

576. The perpetrator of the killing is unknown and no evidence has been adduced about the mens rea of this unknown person; it cannot be excluded that he/they used force legitimately against an enemy combatant or in self-defence, and didn't hold the requisite mens rea.

Zivinko Todorovic

Proof of death

577. [REDACTED].¹¹³³ No other witness testified as to the death of Zivinko Todorovic, so the Prosecution has failed to prove that somebody of that identity was killed.

(ii) Four Taken Away

¹¹²⁹ [REDACTED]

¹¹³⁰ DRW3,20/11/07-T:5783.

¹¹³¹ Karahasanovic,03/04/08-T:8039-8040;see also:Sehic,05/11/07-T:5061.

¹¹³² E646-List of captured persons in Kesten,11/09/1995: "2 were killed on the road in Kesten".

¹¹³³ [REDACTED]

578. The Prosecution led no evidence as to the identities of the four soldiers, where they were taken, or by whom. Karahasanovic explained that he had been told by 2Company Commander Sogolj that four had been captured in the morning in the Kesten area and taken away by Arabs.¹¹³⁴ However, 5/328Brigade Commander Sehic explained that they had been handed to the 2Corps and subsequently exchanged.¹¹³⁵ The Prosecution failed to prove that the four men were ever harmed at all. Further, it has failed to establish that anything happened to them at the hands of the EMD.

2. Location: Kamenica Camp

579. The Prosecution alleges that:

- Three women and approximately 52 captured VRS soldiers (hereinafter “52 POWs”) were delivered to Kamenica Camp.¹¹³⁶
- Between 11-17 September 1995 EMD soldiers murdered most of the 52 POWs.¹¹³⁷
- On or about 17 September 1995 a group of ten VRS soldiers were taken to Brezik and then to Kamenica camp by EMD soldiers where they were beaten and mistreated by EMD soldiers.¹¹³⁸
- A few days after the men were delivered an elderly Serb man called Nenad Jovic was beaten, stripped and given water mixed with petrol; he died in the camp after a few days.¹¹³⁹
- In Kamenica camp the three Serb women were beaten and mistreated.¹¹⁴⁰

(a) No proof that the EMD took-over the 52 POWs

580. The Prosecution has failed to prove that the EMD seized the 52 POWs at Kesten.

¹¹³⁴ Karahasanovic, 03/04/08-T.8035-8037

¹¹³⁵ Sehic, 5/11/07, T.5060.

¹¹³⁶ Indictment, para.40.

¹¹³⁷ Indictment, para.41.

¹¹³⁸ Indictment, paras.42 and 43.

¹¹³⁹ Indictment, para.44.

¹¹⁴⁰ Indictment, para.48.

(i) Presence of other Arab Groups in Vozuca-Ozren region

581. During the September Farz operation, apart from the EMD, many other Arab groups were fighting.¹¹⁴¹ Abu Zubeir's group was present (See section V, C(2)(b)). DW4 described that some wore uniforms without any insignia or emblems, while others wore a mixture of uniform and Arab wear, and others were dressed in Arab wear only.¹¹⁴²

582. As part of the OTP investigation, Ali Hamad drew a map in which he charted the movements of Abu Zubeir's group during the operation.¹¹⁴³ It has a legend which describes the route taken by the main Zubeir unit (of around 70-80 men), marked with a small black arrow. It has the route taken by the other units in cooperation with the ARBiH marked in large black arrows. It states that Abu Zubeir's unit fought with 150 foreign combatants, together with around 120 foreign volunteers, most of them working with Afro-Asian humanitarian organizations. Zubeir's main group came from Zeljezno Polje through Borovnica.

583. The map clearly shows that Zubeir's units came from Mount Gradac along two routes, one to the north and one the south of Paljenik, both looping back in a northwest direction which took them right through the vicinity of Kesten. According to the map, Zubeir's group continued on to Doboje over Mount Ozren. PW9 confirmed that he came across the group in Stog, moving between an axis from Vozuca towards Ozren.¹¹⁴⁴

584. Thus, Abu Zubeir had large numbers of foreign mujahedin under his command in the Vozuca area, with sufficient numbers to take-over the captured VRS soldiers. They moved through the vicinity of Kesten in a northerly direction, ie the direction that witnesses testified that the POWs soldiers were last seen heading. DW4 also testified that he saw 40-50 Arabs from Abu Zubeir's group head north on the first day of combat.¹¹⁴⁵ On his return to his camp he didn't see the Arabs again in Borovnica.¹¹⁴⁶

¹¹⁴¹ PW9,16/11/07-T.5719;Sehic,05/11/07-T.5092-5093;DW4,18/03/08-T.7755-7756.

¹¹⁴² DW4,18/03/08-T.7756.

¹¹⁴³ E343-Map of AliHamad,17/08/2006

See also Hamad,08/09/07-T.148-149.

¹¹⁴⁴ PW9,16/11/07-T.5713-5714.

¹¹⁴⁵ DW4,18/03/08-T.7759-4461.

Witnesses confirmed that by looking at mujahedin you couldn't tell which group they belonged to.¹¹⁴⁷

(ii)Arabs seizing the 52 POWs not identified

585.The 52 POWs were taken to the hall in Kesten, and there the three women were separated and sent towards the 328Brigade IKM in Marici accompanied by an ARBiH escort.¹¹⁴⁸ Karahasanovic was notified of the capture and went to Kesten, where he took details from all the captured Serbs.¹¹⁴⁹ The list prepared by him, E646, shows 51 VRS soldiers were held in the hall.¹¹⁵⁰ Commander Sehic and his deputy, Omerasevic, also attended.¹¹⁵¹

586.As to the identities of the Arabs that seized the Serbs, Sehic stated that they were not wearing any insignia and could have been members of *any* of the mujahedin groups in the Vozuca region.¹¹⁵² He was unable to say they were EMD members.¹¹⁵³ Omerasevic testified that there was nothing about their clothing from which you could conclude that they were EMD members.¹¹⁵⁴

587.Karahasanovic explained how maybe 20 Arabs came into the hall; none had any insignia or markings and he didn't know which unit they belonged to.¹¹⁵⁵ The Prosecution attempted to attack Mr Karahasanovic's credibility, referring to two previous witness statements. However he explained the pressure the OTP investigator had used in taking the statements. The key evidence concerning the take-over was his contemporaneous description of the perpetrators contained in E646. When describing who had taken the four POWs earlier that day, he described them as "*Arabs*", not El Mudzahedin. The Trial

¹¹⁴⁶ DW4,18/03/08-T.7761.

¹¹⁴⁷ Sehic,05/11/07-T.5093-5094;PW9,15/11/2007-T.5636;Hasanagic,27/09/2007-T.3182;Awad,09/02/2007-T.155.

¹¹⁴⁸ Karahasanovic,03/04/07-T.8017;Omerasevic,10/12/07-T.6744.

¹¹⁴⁹ Karahasanovic,03/04/07-T.8020-8021.

¹¹⁵⁰ E646-11/09/1995.

¹¹⁵¹ Sehic,01/11/07-T.5023.

¹¹⁵² Sehic,05/11/07-T.5095.

¹¹⁵³ Sehic,01/11/07-T.5025.

¹¹⁵⁴ Omerasevic,10/12/07-T.6744-6745.

¹¹⁵⁵ Karahasanovic,03/04/08-T.8022-8023.

Chamber should not attach any weight to the term used in Karahasanovic's witness statements in considering the issue of the identity of the 'Arabs'.¹¹⁵⁶

588. There was no evidence to show that by clothing or insignia they belonged to a particular group. Thus the Prosecution has failed to prove on this evidence that the persons seizing the 52 POWs were members of the EMD.

(iii) Movement of the EMD during Vozuca Operation

589. PW9 testified that on 11 September 1995 "*the detachment was supposed to crush enemy lines in the Kvrge area and continue to advance down the territory and in a northerly direction towards Ozren*".¹¹⁵⁷ At noon the EMD carried out an attack against the Serb-held positions around Kvrge, and "[t]hey continued to push forward until that evening".¹¹⁵⁸ He confirmed that during the entire day and later "[n]ot a single group belonging to the El Mujahedin Detachment was in the Kesten village area".¹¹⁵⁹

590. 328 Brigade Commander Zilkic was asked about 11 September, the day that 3 Corps units made contact with 2 Corps units in Kvrge.¹¹⁶⁰ Zilkic drew the axes that the EMD attacked along on a map (axes Podsjelovo-Kvrge and Durica Vis-Kvrge).¹¹⁶¹ He was in the field that day and saw the EMD units fighting around Durica Vis, which continued in the direction of Kvrge.¹¹⁶² He saw the EMD advance towards Kvrge at around 1500 hours that day.¹¹⁶³ Thus, around the time that the VRS soldiers were taken-over by mujahedin, Zilkic saw the EMD advancing to Kvrge. The distance between Kesten and

¹¹⁵⁶ His OTP statements referred to "El Mudzahid" (E1354-18/09/2006; E1355-19/10/2007). He explained in general whenever he saw an "Arab" he would presume that he was a member of the EMD.

(Karahasanovic, 03/04/08-T.8023). However, he did not know for certain that the Arabs were members of the EMD. He said "[w]hen I gave the statement and whenever I mentioned 'Arabs,' the investigator present would insist that that referred to the El Mujahedin Unit, and not to Arabs in general"

(Karahasanovic, 03/04/08-T:8075-8076). He talked about 'Arabs', but the investigator insisted on calling it the 'El Mujahed Unit' (Karahasanovic, 03/04/08, T.8082-83). The Prosecution was not acting fairly in insisting that this term be used. Karahasanovic was at the battalion level and had limited knowledge of what was going on in the area and about the EMD; he would have no reason to know of the other mujahedin groups operating in the area (Karahasanovic, 04/04/08-T:8133-8134). Also, see E1354, para. 25.

¹¹⁵⁷ PW9, 16/11/07, T.5708.

¹¹⁵⁸ PW9, 16/11/07, T.5709. See E849, map marked by PW9 showing Kvrge.

¹¹⁵⁹ PW9, 16/11/07, T.5710.

¹¹⁶⁰ Zilkic, 13/11/07-T.5381.

¹¹⁶¹ See E803

¹¹⁶² Zilkic, 13/11/07-T.5385-5386.

¹¹⁶³ Zilkic, 13/11/07-T.5387.

Kvrge was about five kms.¹¹⁶⁴ The Prosecution relies upon E512, the 3Corps war diary. However, rather than suggesting the EMD were in Kesten on 11 September, it confirms that the EMD was involved in attacking and taking Kvrge.¹¹⁶⁵

591. The evidence raises serious doubt that EMD members were the mujahedin group that took over the 52 POWs as they were engaged in critical combat at that same moment, around five kms away.

(b) No proof that the EMD captured the three Serb women

592. The Prosecution failed to prove the three Serb women were initially taken over by members of the EMD.

(i) [REDACTED]

593. [REDACTED]

- [REDACTED].¹¹⁶⁶
- [REDACTED].¹¹⁶⁷ [REDACTED].¹¹⁶⁸
- [REDACTED].¹¹⁶⁹ [REDACTED].¹¹⁷⁰
- [REDACTED].¹¹⁷¹

594. Any one of these factors should make a criminal court cautious, no matter how credible the witness seems. Taken *together* the cumulative effect is to create an unacceptable level of unreliability, particularly in remembering the details of what [REDACTED] heard.

(ii) *Women taken over by different persons to group seizing 52 POWs*

¹¹⁶⁴ **Zilic**, 13/11/07-T.5387.

¹¹⁶⁵ **E512**, p.13.

¹¹⁶⁶ [REDACTED]

¹¹⁶⁷ [REDACTED]

¹¹⁶⁸ [REDACTED]

¹¹⁶⁹ [REDACTED]

¹¹⁷⁰ [REDACTED]

¹¹⁷¹ **DRW3**, 20/11/07-T.5839.

595. The three women were captured by different mujahedin to the ones that took the 52 POWs. Made his way to Kesten, passing the women, between 2 and 3 pm.¹¹⁷² The remainder of the women's journey to Marici should have taken around 30-35 minutes,¹¹⁷³ and Karahasanovic's journey to Kesten would have taken ten minutes, with the mujahedin arriving around twenty minutes later.¹¹⁷⁴ Thus the time of arrival of the mujahedin at Kesten hall would have coincided approximately with the time the three women were taken.

596. Karahasanovic said the mujahedin taking the women could not have belonged to the same group that took the POWs.¹¹⁷⁵ Omerasevic confirmed that the women were taken by 'another' group in relation to the group that happened to be in Kesten at that point in time.¹¹⁷⁶

(iii) Women and POWs were not taken to Kamenica Camp

597. The Prosecution relies on the evidence of the three Serb women to support its claim that the approximately 52 POWs were taken to Kamenica Camp.

598. [REDACTED]¹¹⁷⁷[REDACTED].¹¹⁷⁸ [REDACTED]. The POWs from Kesten were last seen heading north on foot.¹¹⁷⁹ If they had been placed into trucks and taken on the long journey to Kamenica, they would have been an obvious sight. None of the ARBiH witnesses mentioned seeing any trucks come past Marici.¹¹⁸⁰ [REDACTED].¹¹⁸¹ The Trial Chamber should be very wary about accepting the witness' account about trucks; Farz was a huge battle; there would have been many vehicles around.

¹¹⁷² Karahasanovic, 03/04/08-T.8032

¹¹⁷³ Karahasanovic, 03/04/08-T.8032

¹¹⁷⁴ Karahasanovic, 04/04/08-T.8102

¹¹⁷⁵ Karahasanovic, 03/04/08-T.8039.

¹¹⁷⁶ E970-Omerasevic 92bis statement, 24/10/2006, p.10, para.89.

See also Omerasevic, 10/12/07-T.6746.

¹¹⁷⁷ [REDACTED]

¹¹⁷⁸ [REDACTED]

¹¹⁷⁹ Karahasanovic, 03/04/07-T:8027-8028.

¹¹⁸⁰ Omerasevic, 10/12/07-T.6746-6747.

¹¹⁸¹ Karahasanovic, 03/04/08-T.8031-8032; Omerasevic, 10/12/07-T.6746.

599. [REDACTED] No other witnesses spoke of a small wooden building at Kamenica camp which could have served as the detention place for the women there.¹¹⁸² There is reasonable doubt that the women were held at Kamenica camp.

600. [REDACTED]; also this evidence shows that it was *Bosnian* voices [REDACTED] heard during most of [REDACTED] detention. Bearing in mind the passage of time between the events and witness making [REDACTED] first statement, the witness's poor recollection (which with regard to names being read out has strangely improved over time), the Trial Chamber should attach no weight to [REDACTED] hearsay account of what [REDACTED] claims to have heard.

601. As to identity of the captors holding the women at the first detention location, there is no clear evidence. [REDACTED].¹¹⁸³

602. [REDACTED].¹¹⁸⁴ [REDACTED],¹¹⁸⁵ [REDACTED],¹¹⁸⁶ [REDACTED].¹¹⁸⁷

603. It is reasonable to infer that the group or individuals holding the women at the first location, where B/C/S was predominantly spoken, were different to those at the second location. On this evidence it cannot be concluded to the criminal standard that the persons holding the women at the first location were EMD members.

(iv) No complaints about killings or mistreatment

604. After release none of the women complained that they had been mistreated or that they had witnessed alleged killings of POWs. The women had numerous opportunities to raise complaints over the following weeks, but didn't do so. This goes to the credibility of their claims that they heard men being mistreated and killed. It also goes to the issue of cruel treatment, which will be considered later.

¹¹⁸² **Trivicevic** mentioned a wooden shack but it was clear this was a bathroom and toilet area: **Trivicevic**, 04/10/07-T.3628-3629.

¹¹⁸³ [REDACTED]

¹¹⁸⁴ [REDACTED]

¹¹⁸⁵ [REDACTED]

¹¹⁸⁶ [REDACTED]

¹¹⁸⁷ [REDACTED]

605. The three women taken from Vatrostalna to the POW Reception Centre by Zakir Alispahic on 28 September 1995.¹¹⁸⁸ The military police was duty-bound to ask POWs whether they had been ill-treated or hurt.¹¹⁸⁹ Alispahic issued an official note, E853, confirming that there was no signs of physical abuse on them, which was confirmed by them during a short interview.¹¹⁹⁰ If the women had told him that they had been mistreated or if he had seen signs of injury, he would have recorded that.¹¹⁹¹ Each woman signed the note confirming this.

606. [REDACTED].¹¹⁹² [REDACTED].¹¹⁹³ [REDACTED].¹¹⁹⁴ [REDACTED].¹¹⁹⁵ [REDACTED].¹¹⁹⁶

607. [REDACTED].¹¹⁹⁷ [REDACTED].¹¹⁹⁸ [REDACTED].¹¹⁹⁹

608. On this evidence, the Prosecution has failed to prove beyond reasonable doubt that it was members of the EMD that mistreated the women during the initial detention, and that POWs from Kesten were beaten and killed by the EMD.

(c) On or about 17 September 1995 ten VRS soldiers surrendered to the ARBiH

609. The Prosecution alleges relies on the ten VRS soldiers captured on or about 17 September to support its claim that 52 POWs were taken to Kamenica Camp. The

¹¹⁸⁸ Alispahic, 04/12/07, T.6531 and
See also E946(Under seal)- [REDACTED]

¹¹⁸⁹ Alispahic, 04/12/07, T.6533.

¹¹⁹⁰ Alispahic, 04/12/07, T.6542.

¹¹⁹¹ Alispahic, 04/12/07, T.6542-6543.

¹¹⁹² [REDACTED]

¹¹⁹³ [REDACTED]

¹¹⁹⁴ [REDACTED]

¹¹⁹⁵ [REDACTED]

¹¹⁹⁶ [REDACTED]

¹¹⁹⁷ [REDACTED]

¹¹⁹⁸ [REDACTED]

¹¹⁹⁹ [REDACTED]

Defence notes that there is no evidence that the ten men were first taken to a school building in Brezik, as alleged in the PPTB.¹²⁰⁰

(i) Evidence unreliable

610. [REDACTED]¹²⁰¹

- Both men were detained in difficult and stressful circumstances, which would affect their accurate recollection.
- [REDACTED].¹²⁰² [REDACTED].¹²⁰³
- [REDACTED].¹²⁰⁴ [REDACTED].¹²⁰⁵ [REDACTED].¹²⁰⁶ [REDACTED].¹²⁰⁷
- [REDACTED].¹²⁰⁸ [REDACTED]¹²⁰⁹ [REDACTED]¹²¹⁰ [REDACTED].
- The witnesses never found out the identities of the men that they claimed to speak to.¹²¹¹ The court has no opportunity to assess the reliability of the source, save that PW12 stated that the men were completely “out of their minds”,¹²¹² suggesting it was highly unreliable.
- The fact that the elderly man, who the Prosecution alleges was called Nenad Jovic, does not appear in Annex C of the indictment (List of VRS soldiers captured on or about 11 September 1995) shows that the Prosecution’s case is that there were people in the camp who were not seized from Kesten. It follows that the men that PW12 and PW7 claimed to speak to did not necessarily come from Kesten as well.

611. Due to the unreliability of this hearsay evidence, the Trial Chamber should afford no weight to what the two witnesses claimed to have been told. It follows that their

¹²⁰⁰ PPTB, para. 42.1.

¹²⁰¹ [REDACTED]

¹²⁰² [REDACTED]

¹²⁰³ PW12, 05/12/07-T.6579-6580; T.6582.

¹²⁰⁴ [REDACTED]

¹²⁰⁵ [REDACTED]

¹²⁰⁶ [REDACTED]

¹²⁰⁷ [REDACTED]

¹²⁰⁸ [REDACTED]

¹²⁰⁹ [REDACTED]

¹²¹⁰ [REDACTED]

¹²¹¹ PW12, 05/12/07-T.6585; PW7, 07/12/07-T.6702-6703.

¹²¹² PW12, 05/12/07-T.6589.

evidence does not show that the men they alleged to have seen were the same POWs taken from Kesten hall earlier in the Farz Operation.

(ii) No proof that 52 POWs taken to Kamenica camp

612. Moreover, the evidence does not show that 52 POWs were taken to the camp at some point prior to the arrival of the ten Serb POWs. On PW7's evidence he saw 3 or 4 others on arrival, which may have been the same men that were brought into their room at a later stage. PW12 claims to have seen more men, but nowhere near the high numbers alleged by the Prosecution. Thus, on the evidence it would be pure speculation to conclude that approximately 52 POWs were taken to the Kamenica camp.

(iii) Seven VRS POWs were not shot

613. The Chamber cannot be certain beyond reasonable doubt that about seven men were taken out and killed. The Prosecution relies solely on the evidence of PW12, who *assumed* men were killed. This cannot meet the criminal standard of proof for a number of reasons. First, PW7 gives no similar account, thus PW12's claim is uncorroborated. Second, both men accepted that during their stay at the camp they were taken outside the building. PW12 was taken out to retrieve a weapon, to pick up rubbish, and wash.¹²¹³ [REDACTED].¹²¹⁴ It follows that just because PW12 heard men being taken outside it cannot be concluded that it was not for any number of similar reasons.

614. At the time the two witnesses were being detained, combat action was ongoing in the Vozuca region.¹²¹⁵ PW12 confirmed that there was an area for mujahedin to conduct shooting practice at the camp.¹²¹⁶ PW12 said he heard shooting, but he couldn't say *where* the shooting took place. He didn't hear any cries or shouts. He stated that it was his *assumption* that the men were killed.¹²¹⁷ He didn't see any signs of anyone having

¹²¹³ PW12,05/12/07-T.6586-6587

¹²¹⁴ [REDACTED]

¹²¹⁵ Hasanagic,25/09/07-T:3066-3067.

See also E467-Order for deployment of troop,11/09/1995

E478-Order,15/09/1995.

¹²¹⁶ PW12,05/12/07-T.6592.

¹²¹⁷ PW12,05/12/07-T.6593: "So this would be my assumption".

been killed.¹²¹⁸ [REDACTED],¹²¹⁹ [REDACTED]. The Prosecution has failed to prove beyond reasonable doubt that the seven men were killed.

(iv) When they were released there were no complaints about killings or mistreatment

615. When the ten POWs were released, none of them complained that they had been mistreated nor that they had witnessed alleged killings of other prisoners in the camp. Again, this goes to both the credibility of the claim that other POWs were killed at the camp and the allegation of cruel treatment.

616. Zakir Alispahic collected them from Kamenica camp. When he took them to the Service Platoon office he had the chance to see them and speak with them.¹²²⁰ He could not see any injuries on them and they told him that they had not been mistreated or hurt.¹²²¹ Edin Saric was tasked to interview one of the ten, Mile Gojic,¹²²² and at no time did Gojic mention mistreatment by the mujahedin nor that he converted to Islam due to fear.¹²²³ Had Gojic said anything suggesting mistreatment it would have been noted in the report.¹²²⁴

617. Thus no mention was made to the ARBiH following release that there had been other Serb POWs at the camp or that it was believed that they had been killed.

(d) The Forensic Evidence

618. The Prosecution called two witnesses, Goran Krmar¹²²⁵ and Sabiha Brkic, to support its claim that 52 POWs were taken to Kamenica Camp. In fact, their evidence provided no such support.

¹²¹⁸ PW12,05/12/07-T.6596.

¹²¹⁹ [REDACTED]

¹²²⁰ Alispahic,04/12/07,T.6546-6547.

¹²²¹ Alispahic,04/12/07,T.6547.

¹²²² E671.

¹²²³ Saric,22/11/07,T.5976-5977.

¹²²⁴ Saric,22/11/07,T.5999.

¹²²⁵ Krmar,25/10/07,T.4509.

619. In its PPTB, the Prosecution alleges that at an exhumation in “2005” corpses were found including Radomir Blagojevic, Bozidar Todorovic, Cedo Dabic, Drago Stepanovic and Radovan Radojic, all of whom were taken from Kesten hall.¹²²⁶ However on the evidence the Trial Chamber cannot be certain beyond reasonable doubt that the bodies exhumed at the Kamenica grave were these persons.

620. Krcmar testified that bodies were exhumed at the Kamenica grave, just by the Gostovici river, on 21-23 June 2006 and not 2005, as alleged.¹²²⁷ The grave was about 15 kms south of Zavidovici.¹²²⁸ Samples of bodies were placed in bags and delivered to Ms Brkic for analysis. In total, 17 samples were sent off to the International Commission on Missing Persons (ICMP) for DNA analysis.¹²²⁹

621. According to Krcmar, seven bodies were identified, six of whom were VRS soldiers from Kesten.¹²³⁰ He was shown the DNA Reports of six persons;¹²³¹ he claimed five came from Kesten (Radomir Blagojevic, Bozidar Todorovic, Drago Stepanovic, Cedo Dabic, and Radovan Radojic). The sixth DNA report related to a “Miladin Pejic”, whose name does not appear on the Karahasanovic list.¹²³² He claimed a seventh body was found in the wider region, belonging to a POW from Kesten called Obrad Petrusic; however he accepted that there was no DNA evidence in respect of that body and the Trial Chamber should disregard this evidence.¹²³³

(i) DNA report provisional findings

622. Krcmar made it clear that an ICMP DNA Report was just a *working document*,¹²³⁴ and lacked a signature from the forensic pathologist or some other official involved in the identification process; and Krcmar confirmed that the signature would be put on the ‘identification record’.¹²³⁵ He confirmed the DNA Report does not provide official

¹²²⁶ PPTB, para. 41.5.

¹²²⁷ Krcmar, 26/10/07, T. 4584-4585.

¹²²⁸ Krcmar, 26/10/07, T. 4584.

¹²²⁹ Brkic, 29/10/07, T. 4684.

¹²³⁰ E644, Krcmar 92bis statement, 06/06/07, para. 19.

¹²³¹ E649, ICMP DNA Reports.

¹²³² E646.

¹²³³ Krcmar, 25/10/07, T. 4545; 26/10/07, T. 4618.

¹²³⁴ Krcmar, 26/10/07, T. 4589.

¹²³⁵ Krcmar, 25/10/07, T. 4529.

confirmation that a body has been identified. He said you needed to look at the ‘identification record’, a completely different document, signed by an official involved in the DNA identification process.¹²³⁶ Dr Brkic explained that an ‘identification record’ is a document providing formal confirmation of a body’s identification, which is signed by family members, the doctor, the prosecutor, Federal Commission for Missing Persons and police.¹²³⁷ The Prosecution failed to introduce such formal proof of identification.

623.Brkic confirmed that the body identification process had not been completed for the bodies exhumed from Kamenica grave.¹²³⁸ She explained that the normal practice would be to hold onto the bodies from which samples were taken until the ‘initial findings’ had come back from ICMP.¹²³⁹ However, in this case she had to send the bodies on before she could carry out a full investigation, and that the DNA findings were just one part of the whole identification process.¹²⁴⁰ When asked why the process had not been completed, she said the Prosecutor involved interfered with the process, saying “I have to say that this is the ugly part that I never really investigated”.¹²⁴¹

624.Forensic identification of human remains is complicated and technical, and procedures need to be completed properly. In a murder case, it is not acceptable for the Prosecution to lead forensic evidence arising from uncompleted procedures. Reasonable doubt as to the correctness of the identifications must arise.

(ii)24 bodies had already been exhumed by 3 April 2006

625.E651, a document dated 3 April 2006 from the BiH Ministry of Defence Joint Staff of the Armed Forces lists the details of 51 individuals missing or killed (“MoD Document”). It provides details of 24 persons whose bodies were “found and exhumed”

¹²³⁶ **Krcmar**,26/10/07,T.4589.

¹²³⁷ **Brkic**,29/10/07,T.4729.

¹²³⁸ **Brkic**,29/10/07,T.4703: “*JUDGE MOLOTO: Can you just answer my question with a "yes" or a "no"? You never finally completed the job? A: No.*”

¹²³⁹ **Brkic**,29/10/07,T.4701-4702.

¹²⁴⁰ **Brkic**,29/10/07,T.4702: “*Q...you had to send the bodies away before you could complete a proper and thorough investigation; is that a fair summary? A:Correct. Neither medical procedure nor the identification were complete.*”

¹²⁴¹ **Brkic**,29/10/07,T.4704.

at some unspecified earlier date. It states that the information came “from the Chief of Staff of the Republika Srpska Army”, and contradicts the Prosecution evidence that only six bodies from the Kamenica grave had been identified.

626. The MoD Document came from an important source, and contains information provided by the Republika Srpska authorities themselves. This evidence supports the Defence theory that one of the other mujahedin groups could have seized the POWs. The Prosecution chose not to call any witness from the BiH MoD or from the Republika Srpska authorities who provided the information to the BiH MoD to clarify this issue.

627. Although the Trial Chamber has recently admitted a collection of documents from the RS Secretariat for Cooperation to rebut E651, those documents do not undermine E651’s impact. The key rebuttal document is the letter from Mr Jovan Spaic dated 19 April 2007 (“Spaic Letter”), sent to the Prosecution through Trivun Jovicic, the Republika Srpska Liaison Officer at the same office. The Chamber should accord no weight to the Spaic Letter as it is confusing¹²⁴² and speculative.¹²⁴³ He doesn’t provide any factual basis for his speculative conclusion. Rather than seeking clarification about the letter from Mr Spaic, the Prosecution simply let the matter rest.¹²⁴⁴

628. Therefore the evidence suggests that 24 bodies had been exhumed prior to 3 April 2006 from unknown locations. This raises confusion about the Prosecution’s theory that the 52 POWs were seized and killed by the EMD. If the bodies of 24 persons named in the MoD Document have been found, then depending on where they were located it and

¹²⁴² Spaic states that, out of the 52 persons listed in Annex C of the indictment, “this Secretariat provided information regarding 27 persons” and that “only 7, and not 27 bodies have been found by now”. However, the MoD Document in fact only specifies that the bodies of 24 persons were found and exhumed, so it is unclear what the reference to “27 persons” means.

¹²⁴³ Mr Spaic provided no factual explanation as to why the MoD Document specified that “27 persons [sic]” had been found. Instead he speculates that “the employees of the former Ministry of Defence of the Republika Srpska *probably* incorrectly interpreted and thus incorrectly understood that the information referred to the exhumed persons”. He goes on to state, at page 3, “In our opinion the misunderstanding occurred in relation between and a mistaken comprehension of the terms: “Missing Persons-Exhumed Persons”. Again, rather than saying that he spoke to the person who compiled or sent the information and sent it to the BiH MoD, Mr Spaic engages in speculation.

¹²⁴⁴ The two memoranda relating to Mr Jovicic, E1399 and E1400, indicate that he bribed potential and actual witnesses, so the Spaic Letter which he provided is highly questionable. The fact the Prosecution chose not to call him shows they didn’t trust him.

the physical evidence from the bodies, it could show that other groups, not even necessarily mujahedin, were responsible and that the killings did not take place in Kamenica Camp.

(iii) The Kamenica grave was a secondary burial location

629. The fact that the bodies were found at the Kamenica grave does not support the claim that the EMD killed the men and buried them. The fact that the grave was located relatively close to Kamenica camp is irrelevant because the evidence shows that the Kamenica grave was a secondary burial site. Krcmar accepted that the bodies had been initially buried at another location and then subsequently dug up and moved to the Kamenica grave.¹²⁴⁵ Dr Brkic confirmed that the Kamenica grave was a secondary burial site.¹²⁴⁶

630. Thus if indeed the bodies belonged to POWs from Kesten then they could have been killed and buried at any possible location either in or outside of the Vozuca-Ozren area. It is impossible to say who could have killed them. However, if the EMD killed the men it is illogical that they would have gone to the trouble of burying them, subsequently exhuming them and then moving them to a location close to their camp. This does not support a theory that the EMD was responsible.

(iv) Conclusion

631. The Prosecution has failed to prove that the bodies found at the Kamenica grave were those of Radomir Blagojevic, Bozidar Todorovic, Cedo Dabic, Drago Stepanovic and Radovan Radojic. Even if the Trial Chamber finds that the identities are proven, this does not prove that the victims were murdered or show that members of the EMD was responsible.

(e) Krcmar Photograph

¹²⁴⁵ **Krcmar**, 26/10/07, T.4616.

¹²⁴⁶ **Brkic**, 29/10/07, T.4709-4710.

632.Krcmar revealed a photograph, E648, purportedly taken in the Kamenica camp, showing POWs from Kesten.¹²⁴⁷ The Trial Chamber should attach no probative value to E648. Its quality is poor, and the witness accepted the room depicted looks like thousands of rooms in buildings in that part of BiH.¹²⁴⁸ The room lacks distinguishing features, such as windows or wallpaper, which might identify it (save for damage to the wall, the cause of which can't be identified). Krcmar claimed to visit the building where the photo was taken in late November 1997, where he carried out a "reconstruction". He didn't explain what this "reconstruction" consisted of. Revealingly, Krcmar did not mention this photograph previously in any of his three OTP statements.¹²⁴⁹ Finally, Krcmar claimed that the two men depicted were Dragan Lukic and Marko Maric.¹²⁵⁰ However, if regard is had to the Karahasanovic List,¹²⁵¹ it can be seen that the two men that Krcmar claims to have been recognised on the photograph, are not named as persons who were taken from Kesten.¹²⁵² Thus this "purported photo" has no probative value.

(f) No Evidence from Prosecution Witnesses that EMD held around 52 POWs

633.Finally, the evidence of numerous Prosecution witnesses indicate that the EMD did not take the 52 POWs. Hamdija Sljuka went to Kamenica camp at some stage in September 1995 to check whether the EMD was holding POWs.¹²⁵³ At the front gate he was told that there were no POWs there.¹²⁵⁴ He reported to his superiors that he did not learn of any prisoners.¹²⁵⁵ From what he could observe it seemed to him that no POWs were being held.¹²⁵⁶ Edin Saric who worked closely with POWs, confirmed that he received no such information.¹²⁵⁷

¹²⁴⁷ **Krcmar,25/10/07,T.4570.**

¹²⁴⁸ **Krcmar,26/10/07,T.4624.**

¹²⁴⁹ **See E642,E643,E644.**

¹²⁵⁰ **Krcmar,25/10/07,T.4568.**

¹²⁵¹ **E646.**

¹²⁵² **Krcmar,26/10/07,T.4625-4630.**

¹²⁵³ **Sljuka,22/10/07,T.4310-4311.**

¹²⁵⁴ **Sljuka,22/10/07,T.4327-4329.**

¹²⁵⁵ **Sljuka,22/10/07,T.4373-4374.**

¹²⁵⁶ **Sljuka,22/10/07,T.4374.**

¹²⁵⁷ **Saric,21/11/07,T.5951.**

634. Members of the EMD confirmed that such large numbers of POWs were never held there.¹²⁵⁸ [REDACTED].¹²⁵⁹ He was aware that no more than 15 POWs were detained during the September operation, who were released, but not the 52 POWs.¹²⁶⁰ During the entire period in the Vozuca region during 1995 the EMD only captured about 25 POWs.¹²⁶¹ All these POWs were handed to the 3Corps Military Police.¹²⁶² PW9 visited the Kamenica camp many times, and saw the prisoners following the July action; who “looked alright”.¹²⁶³ EMD soldiers were instructed not to touch or kill POWs.¹²⁶⁴

635. PW2 said his EMD group didn’t capture any prisoners, although he heard that some had been captured during the second action (in July).¹²⁶⁵ Similarly, Hasib Alic confirmed that he saw only prisoners after the July action.¹²⁶⁶ He was shown E96 and testified that this picture was taken at Kamenica camp after the July action.¹²⁶⁷

636. Thus the evidence of the Prosecution’s own witnesses shows that the 52 POWs were not taken to Kamenica camp. It would defy logic for the EMD to hold and release ten POWs in September and, during the same month, detain and kill around 52 others. Whether the evidence is considered individually or taken as a whole, the Prosecution has failed to prove that the EMD seized the 52 POWs, took them to Kamenica camp and killed them.

(g) Submissions on allegations

COUNTS 1 and 2: (Murder and Cruel treatment)

(i) Between 11-17 September 1995 EMD soldiers murdered most of the 52 captured VRS soldiers

¹²⁵⁸ PW9, 16/11/2007-T.5710.

¹²⁵⁹ [REDACTED]

¹²⁶⁰ PW9, 16/11/2007-T.5719.

¹²⁶¹ PW9, 16/11/2007-T.5736.

¹²⁶² PW9, 16/11/2007-T.5750.

¹²⁶³ PW9, 16/11/2007-T.5752-5753.

¹²⁶⁴ PW9, 16/11/2007-T.5755.

¹²⁶⁵ PW2, 13/07/07, T.549.

¹²⁶⁶ Hasib Alic, 13/07/07, T.607. He refers to E96.

¹²⁶⁷ Hasib Alic, 13/07/07-T:607-609.

Proof of Death

637. There is no proof beyond reasonable doubt that any of the men were killed. They were seized in the middle of a major combat operation, and last seen heading from Kesten in a northerly direction. The forensic evidence relating to the bodies found at the Kamenica grave does not meet the necessary standard of proof for a criminal murder trial. The evidence of the Serb women was too unreliable to draw any firm conclusions about the 52 POWs.

638. It cannot be concluded from the POWs taken to the camp on 17 September that the men that they saw were from Kesten nor that they were killed. Even if it could be concluded that the other prisoners had come from Kesten (which is strenuously denied), PW12 and PW7 only saw a much smaller number of men. The evidence suggests that they were not soldiers and not from Kesten.

639. A conviction for murder may be entered even though a victim's body has not been found if the conclusion that the victim is dead is the *only* reasonable inference to be drawn from the evidence.¹²⁶⁸ Simply because PW12 and PW7 didn't see the other prisoners later in the Reception Centre does not mean they weren't released and taken elsewhere. There was evidence that VRS soldiers turned up in other locations. [REDACTED].¹²⁶⁹ [REDACTED].

Actus reus

640. There was no eye-witness evidence of any of the 52 POWs being killed. There is no proof beyond reasonable doubt that they were taken from Kesten to Kamenica camp. The evidence of what witnesses heard and assumed cannot meet the criminal standard of proof. The Prosecution has failed to prove that the mujahedin taking the 52 POWs were members of the EMD.

¹²⁶⁸ See *Krnjelac* TJ, para.326; *Tadic* TJ, paras.240-241.

¹²⁶⁹ [REDACTED]

Mens rea

641. The Prosecution has not adduced any evidence as to the mens rea of the unidentified perpetrators.

(ii) On or about 17 September 1995 ten VRS soldiers were beaten and mistreated by EMD soldiers

642. As to whether the conditions sustained by the ten POWs amounted to cruel treatment, the Trial Chamber must consider the evidence concerning the handover of the men to the ARBiH which showed that there were no signs of injuries and they did not mention mistreatment. This casts doubt on the claim that they were mistreated. Again, as the exact perpetrators are unknown there is no proof that they were EMD members.

(iii) Nenad Jovic

Proof of Death

643. The Prosecution does not allege in the Indictment that the man described as Nenad Jovic was one of the POWs taken from Kesten, thus his death does not support the allegation that the POWs from Kesten were taken to Kamenica.

644. [REDACTED].¹²⁷⁰ [REDACTED].¹²⁷¹ [REDACTED]¹²⁷² [REDACTED].¹²⁷³

Actus reus

645. There is insufficient proof that acts of EMD soldiers caused the death. Although PW12 saw him being beaten, he said they were not such blows as to cause death.¹²⁷⁴ PW12 accepted that his cause of death was unclear.¹²⁷⁵ On the evidence, a reasonable

¹²⁷⁰ Trivicevic, 04/10/07, T.3678.

¹²⁷¹ PW12, 05/12/07-T:6594

¹²⁷² E929(Under seal)- [REDACTED]

¹²⁷³ [REDACTED]

¹²⁷⁴ PW12, 05/12/07, T.6594-6595.

¹²⁷⁵ PW12, 05/12/07, T.6595.

inference would be that the old man had a pre-existing injury which was the cause of death.

Mens rea

646. The perpetrators are unknown and no evidence has been led to show that they had the requisite intent for murder.

(iv) In Kamenica camp the three Serb women were beaten and mistreated (COUNT 4)

647. The Indictment alleges cruel treatment solely in relation to the treatment at the first location, allegedly Kamenica Camp. Treatment at Vatrostalna does not form part of the charge. There is no proof beyond reasonable doubt that the women were held at Kamenica.

B. Prosecution Failed to Prove Material Facts to show Delic exercised Command and Control in the September Operation

648. The Defence stresses once again that the Trial Chamber must base its decision on material facts pleaded by the Prosecution in the Indictment, otherwise the result could be an unfair trial.

649. The Prosecution pleaded the following material facts relating to command responsibility:

- On 26 August 1995 Delic ordered the 2 and 3 Corps to liberate the Mount Ozren Vozuca pocket (Indictment, para. 31)
- Delic officially approved the operation as the Commander of the Main Staff (Indictment, para. 31)
- Delic knew that 3 Corps Operation Farz included the EMD (Indictment, para. 31)
- Delic left BiH on 8 September 1995 for a four-day conference in Kuala Lumpur, but continued to exercise command and control **even from abroad** (PPTB, para. 47.2)

- Delic visited the 3Corps Command Post OK-1 Siljak 451 on 22 September 1995 and **continued to command** operation Farz until 10 October 1995 (PPTB, 47.7.)
- On 11 October 1995, Delic ordered the cessation of combat activities in the Mount Ozren-Vozuca region and resubordinated certain troops out of the region (para.32 Indictment)

1.Delic did not order the 2 and 3 Corps to liberate the Mount Ozren-Vozuca pocket on 26 August 1995

650.In order to prove that Delic ordered the 2 and 3Corps to liberate the Ozren-Vozuca pocket on 26 August 1995, the Prosecution relies on the Main Staff order at KM Kakanj of 26 August 1995 sent to 2 and 3Corps.¹²⁷⁶ To be of evidentiary relevance, it must be established that the order was followed **down the chain of command, starting from the Accused all the way to the executor of the order.**

651.The Prosecution must show that the person(s) to whom the order was directed acted in a certain manner because of the order of the Accused or as a result of that order. In other words, a link must be established between the order of the Accused and the perpetrators of the crime. If the order was carried out for any reason other than the authority of the giver of the order, then that is not proof of effective control.¹²⁷⁷

652.The Trial Chamber must delve into the reality of orders and acts of the Accused to determine whether the orders indicated some degree of authority on the part of the Accused and, if so, whether that authority amounts to effective control over the executors of the order.

¹²⁷⁶ **E386**

¹²⁷⁷ *See Section VIII, B(e)*

(a)Order of 26 August 1995

653.The Prosecution claimed that on 26 August 1995 Delic ordered the 2 and 3 Corps to liberate the Mount Ozren Vozuca pocket.¹²⁷⁸ It has not presented any evidence to that effect. The Prosecution claims that Delic ordered the 2 and 3 Corps commanders to draft documents “for carrying out part of the SVK Directive pertaining to the liberation of the Vozuca pocket”.¹²⁷⁹ Only one glance at E386 suffices to conclude that Delic neither signed nor approved the issuing of the document. Moreover, there is no evidence to suggest that he ever saw this document or heard about it.

654.Witnesses have explained the background to which the document was created. The drafter, witness Ismet Alija, explained that the document was prepared at KM Kakanj. At that time, Delic was not at KM Kakanj and the issuing of the document was approved by the witness’s superior Asim Dzambasovic, Chief of the Administration for Operative Planning.¹²⁸⁰ The same was confirmed by witness Jusic.¹²⁸¹ As pointed out, Jusic described the Directive as a very general plan on how to wage war:

***“Q ...General Delic is not handing out any assignments to any particular unit in this directive apart from these general assignments in reference to the corps; right?
Yes, no particular tasks. These are very, very general sweeping assignments, very broad”.***¹²⁸²

655.Jusic, 3Corps Chief-of-Staff, as well as Sead Delic, 2Corps Commander, were directly involved in the preparations, planning and commanding of combat operations Farz and Urgan. Therefore, they were in a position to know the essence of these operations. The preparations for the operations by the two corps, mentioned in E386, had already been completed by the time the SVK KM Kakanj order of 26 August 1995 reached the corps.¹²⁸³

¹²⁷⁸ PPTB,para.31

¹²⁷⁹ PPTB,para.31.3

¹²⁸⁰ Alija,16/10/2007-T.4209

¹²⁸¹ Jusic,18/09/2007-T.2564-2565

¹²⁸² Jusic,18/09/2007-T.2559

¹²⁸³ Delic,21/09/2007-T.2849:«Q. Now, just going back to that very first entry in the second column, to the right of the entry we can see a time frame there, can't we? 16 to 25th of August, 1995.

A.Yes, precisely».

Alija,16/10/2007-T.4209

656. The testimony of witness Hasanagic, 35 Division Commander, shed light on how the idea for the liberation of Vozuca concretely came about:

*“We had attempted to resolve that matter on four or five occasions previously, and at one of the meetings at corps command we discussed how should we go about resolving the issue of the Vozuca and how we should go about resolving the issue of the Ribnica-Zavidovici road. The commander came up with this idea and said that all corps units are going to take part in this operation. That operation was in the area of responsibility of the 35th Division, and that this operation would be undertaken in corporation with the 2nd Corps. And that was the start of the planning and preparation process for this operation; meaning the preparation of documents, the preparation of facilities, roads for supply and evacuation, training, and everything that is understood by the term ‘preparation’ ... All commanders received the basic idea of the corps commander underpinning this operation”.*¹²⁸⁴

657. Therefore, it is obvious that the plan for Farz resulted from 3 Corps activities which had been started before the 26 August order.

(b) Coordination Plans for August and September 1995

658. The Prosecution pleaded that the August 1995 SVK coordination plan made offensive combat in the 2 and 3 Corps zones towards Vozuca a main task.¹²⁸⁵

659. Commenting on the Coordination Plan of the Main Staff ARBiH for August 1995,¹²⁸⁶ witness Alija explained:

*“The coordination plan concerns the life and work of units and installations, their life and work. This should not be confused with the coordination and concentrated action plan, because these are two different concepts”.*¹²⁸⁷

¹²⁸⁴ Hasanagic, 25/09/2007-T.3013

¹²⁸⁵ PPTB, para. 31.1

¹²⁸⁶ E600

¹²⁸⁷ Alija, 16/10/2007-T.4137

660. Coordination plans were submitted by the Corps to KM Kakanj monthly.¹²⁸⁸ Coordination plans are not combat documents nor are they related in any way to the coordination of combat activities.¹²⁸⁹ They describe the general activities which the different corps plan to undertake (by whom and when).¹²⁹⁰ Thus, the coordination plans for August and September¹²⁹¹ are not combat documents in which the Main Staff set the goals of combat activities. Rather, they described planned monthly activities relating to the life and work of units in the corps. In these plans the Main Staff did not make offensive combat activities in Vozuca “a main task”; rather those offensive combat activities were a plan of the 2 and 3 Corps.

(c) The real meaning of the approval of the Farz and Uragan plans

661. Delic approved the Farz and Uragan plans.¹²⁹² However, to “approve a plan for an action” is not the same as to “order” an action. Witness Jusic explained the difference between “the assignment of a task” and “the approval of a task”:

*“A. The task or an assignment received is a task that a superior command hands out to a subordinate unit. A task that is approved or authorised is a task designed and prepared by a subordinate unit. For this task they seek authorisation or approval from their superior command”.*¹²⁹³

662. Sead Delic was crystal clear when he explained the reasons for the approval of the Farz and Uragan plans by the Main Staff. First, “combat activities were carried out by the two corps”. Second, “they needed additional logistics”. He was clear that the Corps Commander was the one who was familiar with the conditions in the field, and who decided which units subordinated to him would be used in the operation.¹²⁹⁴

¹²⁸⁸ **Alija**, 16/10/2007-T.4137-4138

¹²⁸⁹ **Delic**, 21/09/2007-T.2865

¹²⁹⁰ **Delic**, 20/09/2007-T.2735: «A. As far as I know, my plans were never approved by the General Staff. Concerning my activities, I sent such plans to the General Staff with the general descriptions of tasks of my units and my command for the forthcoming month. Such documents were usually drafted at the beginning of every month, describing in general what the activities are to be undertaken, by whom, and at what time»., by commenting **E400-GSARIH** Plan for coordination for September 1995

¹²⁹¹ **E400, E600**

¹²⁹² **Delic**, 21/09/2007-T.2852-2853, **Jusic**, 18/09/2007-T.2580

¹²⁹³ **Jusic**, 18/09/2007-T.2554

¹²⁹⁴ **Delic**, 21/09/2007-T.2854: «Q. ... You were the commander in the field. You knew the conditions, and therefore you were the appropriate person to decide which units to be used -- which subordinate units to be used within the operation.

663. The 3Corps map for Farz depicts the 3Corps plan for Operation Farz in a graphic form.¹²⁹⁵ Here the Defence will address the issue of what precisely was approved by General Delic when he signed the upper left corner of the Farz map, below the words “I approve”. The Trial Chamber heard clear evidence in this regard.

664. The standard ARBiH procedure relating to combat plans and maps (as a graphical representation of the plan) prepared by the corps was such that they would only specify information about the tasks of the corps’ units and the units directly subordinated to the corps.¹²⁹⁶

665. Delic signed both the maps for the Farz and Uragan plans in the presence of Sead Delic, at the same time. Sead Delic testified that the approved plans and maps only contained information relating to units at the corps level and units directly subordinated to the corps.¹²⁹⁷ The map of the Farz plan, approved by Delic,¹²⁹⁸ shows the tasks issued in accordance with the Farz plan by the 3Corps to the 35Division and other units directly subordinated at the time to the 3Corps.¹²⁹⁹

666. There is no reference to the EMD or any tasks issued to the detachment on the map of the Farz plan. When asked why the EMD’s tasks were not shown on the map, Jusic replied:

“ A. We cannot see any particular unit of the 35th Division at the level of battalion. Therefore, standard procedure does not require to depict units of subordinate commands. Therefore, we do not see them here.

A. Precisely so».

¹²⁹⁵ **E380**

¹²⁹⁶ **Delic**, 21/09/2007-T.2853

¹²⁹⁷ **Delic**, 21/09/2007-T.2852-2853

¹²⁹⁸ **E380**

¹²⁹⁹ **Jusic**, 18/09/2007-T.2568: «*Q. When a commander approves a plan on a map of the 3rd Corps or any other corps, he -- he does not hand down the tasks or he does not see the task of units which are below the level of corps. Am I right?*

A. He would see only the tasks of the units which are directly subordinate to the corps command. Division command, autonomous units which are part of the corps command and brigades».

Q. That is because that unit is at least three levels down below the General Staff, which was supposed to approve this attack. Am I correct?

*A. Yes. The General Staff would be the fourth level up”.*¹³⁰⁰

He further explained:

*“A. The El Mujahidin detachment was not part of the 3rd Corps. Several months before that it had been resubordinated to the command of the 35th Division”.*¹³⁰¹

667. Haso Ribo, Chief of the 3Corps Operative and Training Centre, worked on the Farz plan. He said that the Main Staff did not participate in the preparation, drafting and distribution of the plan, and the only role of the Main Staff was to approve the plan (map of the corps). No task was issued to the EMD pursuant to the plan. Moreover, none of the documents connected to the 3Corps plan mentioned the EMD.¹³⁰²

668. It was not the practice for a plan prepared by the division to be submitted to the Commander of the Main Staff for approval, except in situations concerning independent divisions directly subordinated to the Main Staff, which was not the case here. Specifically, the plan of the 35Division for Farz¹³⁰³ was not submitted to Delic for approval.¹³⁰⁴ According to Hasanagic, it was approved by the 3Corps Commander.¹³⁰⁵

669. The division commander issued tasks to his subordinate units; he **decided which units would be used** in the operation and with which resources the task would be carried out.¹³⁰⁶ Therefore, by officially approving the plan for Operation Farz, Delic approved the carrying out of the operation by the 3Corps, specifically by those units whose tasks

¹³⁰⁰ Jusic, 18/09/2007-T.2580

¹³⁰¹ Jusic, 18/09/2007-T.2580

¹³⁰² Ribo, 05/03/2008-T.7055-7056: «*Q. You said that you were involved in the planning of Operation Farz. Did any of those documents mention a role to be played by the El Mudjahedin Detachment?*

A. No».

¹³⁰³ E461-Map for operation Farz, prepared by the 35th Division-commented upon by Ribo who said that this is a draft of the plan because it has not certified by a seal and signed by the 3Corps Commander, BCS-p.17, 05/03/2008-T.7056

¹³⁰⁴ Ribo, 05/03/2008-T.7057

¹³⁰⁵ E505

¹³⁰⁶ Delic, 20/09/2007-T.2742: «*The division commander will issue assignments to brigades, to clarify which brigade, with what resources shall perform the assignment».*

Ribo, 05/03/2008-T.7056-7057

were graphically depicted on the map of the Farz plan.¹³⁰⁷ The 3Corps' order for the 'Improvement of Combat Readiness' of 22 August 1995, which attaches the 'Realisation Plan of the Main Staff General Assignments and the 3 Corps Activities and Measures Plan for the Improvement of Combat Readiness', which provides "[d]evelop plan Farz",¹³⁰⁸ must be viewed in this context as well. In no way did Delic approve the participation of the EMD in Operation Farz, nor was it in his authority to do so.

670. The Farz map which Delic approved in no way indicated the use of the EMD, let alone showed that it would be the unit with the "most difficult task of the whole operation".¹³⁰⁹ He did not approve the joint training of the ARBiH units and the EMD, nor the subordination of units to the EMD, relied on by the Prosecution.¹³¹⁰ The Prosecution has not presented any evidence that the Delic knew that the EMD was taking part in Operation Farz.¹³¹¹

2. Delic did not command Operation Farz nor did he "continue to command" the Operation

671. The Prosecution pleaded that Delic commanded combat operation Farz until 10 October 1995 in the following way: "*Delic left BiH on 8 September 1995 for a four day conference in Kuala Lumpur, but continued to exercise command and control even from abroad*".¹³¹² The Prosecution also pleaded that "*...Delic visited the 3K Command Post OK-1 Siljak 451 on 22 September 1995 and continued to command Operation Farz until 10 October 1995 using EMD soldiers in combat.*"¹³¹³

672. The evidence clearly shows that Operation Farz was commanded by the 3Corps Commander.¹³¹⁴ Jusic, 3Corps Chief-of-Staff, was in an ideal position to know who commanded Operation Farz. With regard to Delic's role in this operation, he said:

¹³⁰⁷ E380

¹³⁰⁸ E385, point 1., p.3

¹³⁰⁹ PPTB, para.39.5

¹³¹⁰ PPTB, para.39.1.

¹³¹¹ See Section VII, B(4)

¹³¹² PPTB, para.47.2

¹³¹³ PPTB, para.47.7

¹³¹⁴ Jusic, 18/09/2007-T.2582-2583: «The operation was managed by the commander of the 3rd Corps.

*“A. I know that he did not command that operation because I took part in it, and I know who commanded because on the part of the 3rd Corps it was commanded by the 2nd -- 3rd Corps commander in the zone of responsibility of the command -- the commander of the 2nd Corps. General Staff did not have their representatives in 3rd Corps commands alongside with its commander. There was nobody from the General Staff and who would manage and direct this operation. I know that he did not command or direct the operations in the zone of responsibility of 3rd Corps...”*¹³¹⁵

673. The Prosecution relies on the video clip of the interview with Delic conducted by journalist Arijana Saracevic¹³¹⁶ to show that Delic commanded Operation Farz and that he commanded to exercise command and control, even from abroad. In the interview it says:

- “operations had been planned for a long time, and I personally watched over every of those maps”
- “[the operations] kept being performed under my immediate supervision because the system of command and control functions although one is not physically present at the site because I was in continuous contact and secured that all keeps functioning...”

674. The Trial Chamber should not assign any weight to this evidence nor accept that it has any evidentiary value.¹³¹⁷ Both Prosecution and Defence witnesses have confirmed that Delic was exposed to fierce attacks in the media because of his absence from BiH in September 1995, when the final fight for the survival of BiH was being fought.¹³¹⁸

Your Honours... And in practical terms, the Operation Farz was commanded by the 3rd Corps command and was effected in the area where the 35th Division had organized and maintained defence for years before that in 1992, 1993, 1994, and then in 1995».

¹³¹⁵ **Jusic**, 17/09/2007-T.2536-2537; **Ribo**, 05/03/2008-T.7055

¹³¹⁶ **E622**-witness Alija recognised the voice of General Delic but he questioned the veracity of the contents of the videoclip-**Alija**, 17/10/2007-T.4269

¹³¹⁷ See *Blaskic* AJ, para.612, footnote-1255: “Regard must also be had to the appellant statement to a member of the press, admitted into evidence that he exercised command over all operative groups[...][this evidence must be qualified by the context in which that statement was made...][in brief there is considerable doubt about the extent to which the statement was made[...][It is also unreasonable to expect a contrary response to the press from a commander in the field and in the midst of combat operations, who would not ordinarily disclose problems in his command structure under such circumstances”.

¹³¹⁸ **Vuckovic**, commenting on **E768**-Information of the GSARBiH Administration for Morale on the negative press, 08/11/2007-T.5220

During that time, Delic was being ridiculed in the media.¹³¹⁹ Delic gave interviews to the media in order to try and justify to the public his actions.¹³²⁰ In an attempt to defend himself from the attacks, he referred to something that did not actually happen. He neither “watched over maps” nor was he in “continuous contacts with his subordinates”.

675. Witnesses have described what happened with regard to the planning and particularly the approval of operations Farz and Urgan, and the commanding of these operations. With regard to the procedure for the planning and approval of the Farz map witness Jusic said that in this specific case, the entire plan was submitted to General Hadzihasanovic and that Hadzihasanovic “analysed and studied that plan and proposed to the commander to approve it”.¹³²¹ He further stated:

*“I presume that he believed and trusted his chief of staff and his subordinates. I think even that I delivered it personally. And it seems to me that he signed it just taken a look -- having taken a look at the map”.*¹³²²

676. The same event was described by Sead Delic:

*“I do remember that I brought along two copies and that it was in a hurry that the commander signed both copies. He signed the map at the same time. I don't recall whether Sakib Mahmuljin had the order at all. I know that his map was signed by the commander too. We briefly looked at the map, and that was when this particular activity was implemented”.*¹³²³

677. The only thing in the interview which is true is that the system of command and control functioned in the absence of Delic.¹³²⁴

¹³¹⁹ **E768:** «The authority of the GS commander, Army General Rasim Delic was treated with open irony in an article entitled «Sala Masala» /What a joke/...in «Oslobodjenje» of 18 September 1995 and, similarly, in an article entitled «51 percent of Bosnia and Herzegovina Liberated»...in «Slobodna Bosna»...The following inappropriate comparison: «Dudakovic/commander of the 5th Corps ARBIH-objasnjenje added/ almost in Banja Luka /town in BIH-objasnjenje added/, Delic almost in Kuala Lumpur...».

¹³²⁰ **Dedovic**, 08/04/2008-T.8222

¹³²¹ **Jusic**, 18/09/2007-T.2568

¹³²² **Jusic**, 18/09/2007-T.2568

¹³²³ **Delic**, 21/09/1995-T.2852-2853

¹³²⁴ **Alija**, 17/10/2007-T.4269: «I can only speak about what happened at the Kakanj command post, where General Hadzihasanovic was the deputy commander and our superior».

(a)Where was general Delic located during Operation “Farz”?

678.Delic was absent from BiH at the time of Operation Farz, and this included the period in which preparations for Operation Farz were carried out. This is shown by a lot of evidence. The Main Staff Commander was represented by Brigadier-General Mustafa Hajrulahovic from at least 28 August 1995.¹³²⁵

679.From at least 5 to 17 September Hadzihasanovic represented the Commander of the ARBiH Main Staff, issuing orders and submitting reports. The evidence shows that during this period Hadzihasanovic represented the Commander of the ARBiH Main Staff and submitted reports directly to President Izetbegovic. Those reports were not submitted or sent to Delic at all.¹³²⁶ The evidence also shows that after 17 September 1995, Hadzihasanovic continued to sign orders for Delic.¹³²⁷

680.Witness Alija explained what it means to “represent the Commander”:

“Q. The fact that someone should designate someone to stand in for him means that the former person took care that control and command will function during his absence? Yes, that is correct”.¹³²⁸

681.From at least 28 August 1995 Delic was outside of BiH. In the period 28-31 August 1995 he was visiting the Islamic Republic of Iran.¹³²⁹ On his return from Iran, he visited Turkey.¹³³⁰ On 2 and 3 September 1995 Delic attended a meeting with the Croatian

¹³²⁵ **E819**-GSARBIH Order of 28/08/95 sent to 'Combat Army' and where the signature is it says 'representing the commander' Brigadier-General Hajrulahovic.

See also **Buljubasic**, commenting on **E819**, 14/11/2007-T.5490-5491

¹³²⁶ **E1289**-Extraordinary report sent to the RBiH President from KM Kakanj, 15/09/1995

E1290-Extraordinary report sent to the RBiH President from KM Kakanj, 16/09/1995

See also **Alija**, 17/10/2007-T.4253-4257; **Buljubasic**, 14/11/2007-T:5491-5194

¹³²⁷ **E1292**-GSARBIH Order, signed by Hadzihasanovic, «for the commander», 20/09/1995

¹³²⁸ **Alija**, 17/10/2007-T.4272

See also **Buljubasic**, 14/11/2007-T.5491:«A...In my statement, I said that there was an organisational order by the army from October 1994, and pursuant to this order the Chief of Staff, the army's Chief of Staff would also stand in for the commander in terms of his role and function. However, whenever the commander left Sarajevo, there were still commitments remaining in Sarajevo, and one of the administration heads would normally stand in for the commander. Most frequently, this was General Hajrulahovic».

¹³²⁹ **E818**-BBC Report mentioning general Delic's visit to Iran, 31/08/1995

See also **Buljubasic**, 14/11/2007-T.5489; [REDACTED]

¹³³⁰ [REDACTED]

delegation headed by General Cervenko.¹³³¹ After 3 September he spent several days visiting the Sarajevo front, after which he left for Malaysia on 8 September.¹³³² The Conference of Islamic Countries for Aid to BiH was held in Malaysia. It began on 9 September and lasted until 16 September 1995.¹³³³

682. Delic's health declined during this time (he suffered from diabetes), which is why Doctor Horozic accompanied the delegation to Malaysia.¹³³⁴ Although his health was poor, Delic was pre-occupied with many discussions which lasted well into the night.¹³³⁵ He did not contact his cabinet or his subordinates.¹³³⁶ Dedovic explained that the only means of communication were the regular phone lines, which were unprotected and insecure, and therefore not suitable for military communication.¹³³⁷ Moreover, there was a time difference between Malaysia and BiH. Therefore, the Prosecution's claim that Delic exercised command and control even from abroad is far from true.

683. Upon his return from Malaysia Delic stopped in Zagreb for negotiations with the Croatian military delegation, which were held on 19 September 1995 and attended by representatives of the international community. An agreement on joint operations by the Croatian forces and ARBiH for the liberation of western BiH was agreed.¹³³⁸ From that time on, Delic would focus on the implementation of this important agreement upon which the establishment of peace in BiH depended.¹³³⁹ Witnesses have described his stay in the area of Bosanska Krajina at the end of September 1995.¹³⁴⁰ Therefore Delic did not "continue to command Operation Farz until 10 October 1995".

¹³³¹ **E1362**-Newspaper article mentioning general Delic's visit to Croatia and his meeting with the representatives of the Croatian Army, 03/09/1995

¹³³² **Dedovic**, 08/04/2008-T.8212

¹³³³ **Dedovic**, 08/04/2008-T.8212-8213

¹³³⁴ **Dedovic**, 08/04/2008-T.8217

¹³³⁵ **Dedovic**, 08/04/2008-T.8213

¹³³⁶ **Dedovic**, 08/04/2008-T.8214

¹³³⁷ **Dedovic**, 08/04/2008-T.8215

¹³³⁸ **E1292**-GSARBIH Order for establishment of a joint military command between the ARBiH and Croatian Army, 20/09/1995

See also **Karavelic**, 27/03/2008-T:7942

¹³³⁹ **Dedovic**, 08/04/2008-T.8209

¹³⁴⁰ **Buljubasic**, 14/11/2007-T.5539-5540; **Dedovic**, 08/04/2008-T.8224

See also **E1363**-photograph showing General Delic, witness Buljubasic and witness Dedovic in the company of 5Corps Commander, Dudakovic, in the area of Krajina

684. The Prosecution supports its claim with the 3Corps Command War Diary kept during Operation Farz¹³⁴¹ and the Regular Daily Combat Report of the 3Corps Command sent to KM Kakanj.¹³⁴² The war diary mentions that Delic visited the units and the commands of the 3Corps on 22 September 1995; however Dedovic explained that at the end of September 1995, Delic was visiting the zone of responsibility of the 2Corps.¹³⁴³ Even if Delic had visited the units and commands of the 3Corps on 22 September 1995, one cannot conclude from this that he commanded or “continued to command” Operation Farz until 10 October 1995. This is mere invention by the Prosecution which is not supported by the evidence.

685. In reality, the evidence shows that his activities were related to an entirely different area of BiH. Towards the end of September 1995, he spent more than four days in the area of Bihac. Witness Buljbasic said:

“Q[...]Isn't it true that you, together with General Delic, in late September 1995 visited the Bihac area and spent time there because the situation there was exceptionally difficult? This is what I'm talking about.

*A... After the liberation of Bosanski Petrovac, Laniste and Kljuc, units of the 5th Corps were in an exceptionally difficult situation, and staying in the area of the 5th Corps, together with General Delic”.*¹³⁴⁴

686. In October 1995 he was in the Krajina area, at the part of the front commanded by Karavelic, who said:

*“...but there were many visits by the officers of the Main Staff, including the commander general Delic...but it was in October”.*¹³⁴⁵

(b)The Role of Main Staff ARBiH in Operation Farz

¹³⁴¹ E512

¹³⁴² E514,22/09/95

¹³⁴³ Dedovic,08/04/2008-T.8225-8226:«A....we visited Zenica and Zavidovici which was on or around the 22nd or 23rd of September.

Q.Do you remember how long you stayed in Zenica and Zavidovici for?

A.It was a very short stay because we visited the 2nd Corps ».

¹³⁴⁴ Buljbasic,14/11/2007-T.5539

¹³⁴⁵ Karavelic,27/03/2008-T.7945-7946

687. To show that Delic commanded Operation Farz, the Prosecution claims that several hours before the start of the operation the Main Staff asked for information on VRS targets and issued final tasks.¹³⁴⁶ It relies on the Operative Diary of the observation post of the 3Corps, which mentions a Main Staff order for submission of information relating to aggressor's military targets.¹³⁴⁷ However the document has been taken out of context. The end of August and September 1995 was a time of intensive cooperation with the forces of NATO, aimed at the bombing of aggressor targets by NATO.¹³⁴⁸ [REDACTED]¹³⁴⁹ [REDACTED].¹³⁵⁰

688. Therefore the Main Staff request to the 3Corps for the submission of information on VRS military targets had absolutely nothing to do with Operation Farz.¹³⁵¹

689. The Prosecution tried to prove Delic's command responsibility by showing that the Main Staff played a certain role in the September combat activities. It tried to prove that the Main Staff coordinated combat activities. In doing so, it placed a lot of importance on the visit by Generals Zorlak and Cengic to the Vozuca battlefield.¹³⁵² However witness Ribo explained that Cengic was not present in the area as a member of the Main Staff, but he had come to congratulate Mahmuljin on the success in the Vozuca front.¹³⁵³ The Prosecution has not presented any evidence to the contrary.¹³⁵⁴ It did not call Zorlak or Cengic to testify, even though they had been on the Prosecution's list of witnesses.

¹³⁴⁶ PPTB, para.39.3

¹³⁴⁷ E394-«An order on sending data of important aggressor military targets has been issued from Main Staff. I called the major on duty, Nermin Pesto, and requested that the intelligence officer carry out the order.» p.2

¹³⁴⁸ Pesto, commenting on E536-Order of Main Staff on Submitting of Information on aggressor forces sent to 1,2,3,4 and 7Corps, 02/10/2007-T.3468

¹³⁴⁹ [REDACTED]

¹³⁵⁰ [REDACTED]

¹³⁵¹ Pesto, commenting on E394, on which the Prosecution relies, 02/10/2007-T.3451

¹³⁵² PPTB, para.39.6 referring the visit of Generals Zorlak and Cengic, members of GLOC-Visoko, to General Mahmuljin. See also E512

¹³⁵³ Ribo, 05/03/2008-T.7061-7062

¹³⁵⁴ Commenting on E512 witness PW4 said that Generals Zorlak and Cengic visited General Mahmuljin, and that he did not know what positions they held, 30/10/2007-T.4818-4819
See also Sivro, 01/10/2007-T.3333

690. With regard to the coordinating role of the Main Staff, the Prosecution used the report of the Administration for Morale dated 24 September 1995,¹³⁵⁵ which provided that the Main Staff coordinated and successfully orchestrated the operation. Commenting on this document, witness Halim Husic, 3Corps Assistant for Morale, said:

***“Q.[...]Is this document correct in this segment?
No. No one from the General Staff, during the operation but also during the planning phase of the action, while we were working at the command post in Zenica, operated or participated in these activities».***¹³⁵⁶

691. His testimony that the document does not reflect reality accords with the testimonies of witnesses: Delic, Jusic, Hasanagic and Ribo.

692. There is ample evidence to show that it was actually the 2 and 3Corps who coordinated combat activities between themselves.¹³⁵⁷ The essence of the Main Staff's role in combat activities during the September operation was explained by 2Corps Commander Sead Delic:

***“Q. So the reality is, General, that the coordination of Farz and Uragan took place in the field, didn't it?
Precisely so.
Q. It follows from that that the General Staff did not coordinate the activities of the 2nd and 3rd Corps during Farz and Uragan. Do you agree?
A. There was no single officer there”.***¹³⁵⁸

693. In paragraph 47.1 PPTB, the Prosecution relies on several documents to show that the Main Staff at “KM Kakanj was given constant reports before and during the combat leading to the seizure of Vozuca and about the progress the battle”.¹³⁵⁹ It relies on three

¹³⁵⁵ **E411**

¹³⁵⁶ **HalimHusic**, 12/03/2007-T.7421

¹³⁵⁷ **E403**-Order of 2K Command of 01.09.1995:«*With regard to the preparations for the offensive according to the plan «Uragan95» and with the intention of synchronizing the combat activities with the ARBIH, 3rd Corps units...»*

Delic, commenting on **E403**, 20/09/2007-T.2748

Ribo, 05/03/2008-T.7059:«*A. Nobody coordinated those actions on the part of the General Staff. This responsibility and this obligation was taken up by the 2nd and the 3rd Corps, and we, ourselves, organised coordinated action by the two corps in this action».*

¹³⁵⁸ **Delic**, 21/09/2007-T.2865

¹³⁵⁹ **E634, E631, E636, E404, E514**

intelligence reports, the purpose of which was to gather information on enemy forces, their strength and position.¹³⁶⁰ The remainder of the evidence on which the Prosecution relies is the Operative Diary of the 3Corps observation post¹³⁶¹ and 3Corps IKM Logbook,¹³⁶² documents which have questionable authenticity.¹³⁶³

694. The Logbook provides that the reports for 8, 11, 12, 13 and 14 September were sent to Main Staff at KM Kakanj.¹³⁶⁴ The Trial Chamber has not seen any of these reports nor has any witness heard by the Trial Chamber confirmed that these reports were received at KM Kakanj. Even if they had been sent to KM Kakanj, Delic never saw those reports.

695. However even if those reports had been received, they would be part of the regular activities of the Main Staff in monitoring frontlines and the positions of ARBiH and enemy forces, and not as part of the function of command and control over combat units taking part in combat. This was the method of reporting between the corps and the Main Staff needed for the activity of SVK KM Kakanj to draw up global documents and plans of significance for the improvement of the situation in the BH theatre of war and the global situation.¹³⁶⁵ As the above-mentioned witnesses have stated, this was performed by 2 and 3Corps Commands.

3. Delic did not order the cessation of combat activities in the Mount Ozren-Vozuca pocket region and did not re-subordinate certain troops out of region

696. The Prosecution pleads this material fact but the evidence on which the Prosecution relies in paragraph 32.1 PPTB does not show this.¹³⁶⁶ This evidence actually shows that the Main Staff Commander order for the cessation of hostilities on the BiH battlefield of 11 October 1995 resulted from the authority of the President of the Presidency of RBiH, who signed the agreement on the cessation of hostilities together with Slobodan Milosevic, President of SR Yugoslavia, in the presence of the international community.

¹³⁶⁰ **E634,E631,E636**

¹³⁶¹ **E394**

¹³⁶² **E519**

¹³⁶³ *See Section VIII, B(3)(e)*

¹³⁶⁴ **E519**

¹³⁶⁵ **Alija**, 16/10/2007-T.4195

¹³⁶⁶ **E1083,E1082**

According to these documents, Delic's order resulted from the authority of his superior and the international agreement.

4.EMD and Operation Farz

697.The Prosecution has not proven that Delic knew the EMD was taking part in Operation Farz.¹³⁶⁷ The Prosecution's allegations in the PPTB relating to the relationship between the conduct of the Accused and the alleged perpetrators of the crimes (the EMD) and their activities during Operation Farz are far from proven. The Prosecution has not presented clear evidence to show in which way the EMD was under the command and effective control of the Accused during this operation. Also, it has not presented evidence to show that Delic "continued to command Operation Farz ... **using EMD soldiers in combat**".

698.The Prosecution relies on a series of documents to show that the EMD participated in Operation Farz under the command of ARBiH units (3Corps and in particular 35Division).¹³⁶⁸ According to the Prosecution, one should conclude from this that the EMD was in the chain of command, at the top of which was the Accused, who therefore exercised effective control over the EMD. What the Prosecution had to prove, but failed to, was that the EMD's participation in Operation Farz (which resulted in a crime) was the result of an order of the Accused. In order to be relevant to the issue of effective control over the EMD during Operation Farz, that order would have to be an order by the Accused issued to the perpetrators or binding for those over whom the Accused is alleged to have had effective control (the EMD).¹³⁶⁹

699.The Trial Chamber has not seen such an order issued by the Accused. As pointed out, the General's approval of the Farz plan was in no way connected to the EMD. This "approval" to the 3Corps did not mean an "approval" for the use of this unit. Nonetheless, the Defence will address the essence of the evidence relied on by the

¹³⁶⁷ Indictment,para.31

¹³⁶⁸ **E461**-Hasanagic commented on this document,25/09/2007-T.3012

E1059,E401,E463,E1060,E1063

¹³⁶⁹ See Section VIII, B(3)(f)(i)

Prosecution to try and establish a relationship between EMD and ARBiH commands, which were allegedly superior to the detachment during Farz.

700.To this effect, the Prosecution placed significant emphasis on the joint training of part of the 35Division and the EMD several weeks before the beginning of Operation Farz. The documents prove nothing apart from showing this was a **joint training** between part of 35Division and EMD.¹³⁷⁰ An analysis of these documents shows that the training was not carried out pursuant to a plan of the division but a **plan of the EMD**.¹³⁷¹

701.Documents and testimony show that this joint training actually illustrated the EMD's lack of respect for the State of RBiH, its symbols and the ARBiH leadership.¹³⁷²

702.In paragraph 39.1 of PPTB the Prosecution refers to several documents with which it wishes to show that ARBiH soldiers were resubordinated to the EMD.¹³⁷³ Testifying on the 'Order for Attack' of the 328Brigade from 19 May 1995,¹³⁷⁴ Ahmet Sehic described this "resubordination":

"A. The EMD used the soldiers from the 5th Battalion, i.e. from the 3 to 8th Brigade to carry the fallen and wounded soldiers which is exactly what is stated in the document. Usually one of the commanders would go together with our soldiers, which means that those soldiers were not under the command of the EMD. They were just assigned to them to assist them with some tasks, such as the carrying of the wounded" (emphasis added).¹³⁷⁵

¹³⁷⁰ E1064,E1067,E575,E438,E1069,E512,E1071,E1073

¹³⁷¹ E512,E1071,E1073

¹³⁷² E592-Daily Report of 3KSVB of 10/09/1995:"*Individuals from El Mudzahedin say before our soldiers that this is not their flag and that it should be burnt. They emphasise that they have no confidence in our army leadership and soldiers, and they have to be trustworthy*".

E774-Information of 3KSVB Problems in conducting joint training with the EMD,01/07/1995:«*There was a verbal duel as members of the 328th Mountain Brigade began presenting their objections, in which the members of the 328th Mountain Brigade were degraded along with the fight of the ARBiH, and non-acceptance of President Izetbegovic, the flag and Commander of ARBiH was demonstrated*».

¹³⁷³ E577-Although the document actually talks about arbitrary desertion by ARBiH soldiers and joining the EMD; E461,E465,E481

¹³⁷⁴ E699

¹³⁷⁵ Sehic,05/11/2007-T.5075

703. In para. 39.3 of PPTB the Prosecution talks about the arrival of Abu Maali at 3Corps IKM Klek “for final coordination of the forthcoming combat operations” with Mahmuljin. The Prosecution relies on two record keeping documents of questionable authenticity and evidential value.¹³⁷⁶ However none of these documents mentions the issuing of orders to the EMD commander, Abu Maali, and compliance with those orders. Rather, they mention a “meeting” between the 3Corps Commander and EMD commander.¹³⁷⁷ The second document refers to the “**final agreement**” for the upcoming combat activities.¹³⁷⁸

704. When asked by the court about the manner of coordination with the EMD witness Jusic expressed his opinion on how this **coordination** functioned based on his personal experience. He explained what actually happened:

*“I’m not sure how this was done, but I think that no other way could have -- could it have been done if -- other than for the commander of the division and the commander of that detachment and the commander of the corps getting together and trying to agree, or another -- put another way, try to convince the detachment’s commander to accept the task because of the importance, et cetera. And when it comes to the Vozuca pocket, had the commander of the 35th Division given them another task, they would have rejected it, because they wanted to be the first everywhere...”*¹³⁷⁹

705. This reality was described by a series of other witnesses. The testimony of witness Sljuka illustrated this when he was shown the 3Corps order of 2 June 1995 on the resubordination of the EMD to 35Division:¹³⁸⁰

*“A. This document came from the 3rd Corps commander, Mr. Mahmuljin. It is a combat document, such as the ones I did not encounter at the time. Independently of that, it is still my opinion that irrespective of any orders, one couldn't do anything with that unit”*¹³⁸¹

¹³⁷⁶ E394, E512. For record keeping documents see Section VIII, B(3)(e)(i)

¹³⁷⁷ E394

¹³⁷⁸ E512

¹³⁷⁹ Jusic, 18/09/2007-T.2632-2633

¹³⁸⁰ E396

¹³⁸¹ Sljuka, 22/10/1995-T.4375

706. Commenting on the Order of the 35 Division Intelligence Department of 24 August 1995 sent to the EMD,¹³⁸² witness Hajderhodzic said:

“Not correct. I don't know how this misunderstanding occurred. It was the end of the war, and I still didn't know that the El Mudjahedin Detachment had ever been part of the 35th Division”. (emphasis added)¹³⁸³

707. Discussing the EMD's participation in Operation Farz and commenting on the 35 Division 'Order on the Deployment of Troops' dated 11 September 1995,¹³⁸⁴ sent, inter alia, to the EMD, the 35 Division Commander Hasanagic said:

“I did not receive reports during Farz operation...”¹³⁸⁵

708. Commenting on the 'Report to the Chief of OSVB of the 3 Corps of the BH Army', dated 30 August 1995,¹³⁸⁶ Imamovic, Assistant Commander for Security of 35 Division, said:

«The essence is the following: They carried out each and every task in their own way, and they paid no heed to the orders of the commander of the 35th Division».¹³⁸⁷

709. Testifying about the 3 Corps' proposal for commendations and incentives dated 10 November 1995,¹³⁸⁸ Jusic, 3 Corps Chief-of-Staff, described how the document did not reflect reality, and hence was unreliable with regard to what was happening with the EMD during the operation:

“Q. Could you tell the Trial Chamber whether this account of what happened in Operation Farz is for the most part accurate?”

A...I know and I think that what they caused was only damage and that they should not have come to Bosnia. So if this is to refute what I said, this will not budge me. I did write -- read what is written here, and I disagree with 80 per cent of this text, which sang praise to the El Mujahedin Detachment”.¹³⁸⁹

¹³⁸² E556

¹³⁸³ Hajderhodzic, 08/10/2007-T.3746

¹³⁸⁴ E467

¹³⁸⁵ Hasanagic, 25/09/2007-T.3042

¹³⁸⁶ E583

¹³⁸⁷ Imamovic, 11/10/2007-T.4042

¹³⁸⁸ E111

¹³⁸⁹ Jusic, 19/09/2007-T.2667

710. Witness Hasanagic was once again correct when he said that the EMD did not submit reports to him. The EMD did not submit reports to 35 Division, to which it was allegedly resubordinated. Once again, the EMD sent its combat report about this action to its “superiors” abroad. It is clear from the report that EMD sent abroad on 16 September 1995, they did not even accept the name of Operation Farz, but they had their own name, ‘Bedr Bosna’. The report shows that in no way did they consider themselves to be under the ARBiH control. On the contrary, it shows they considered that *they were in command* of the Army: “*The Bosnian Army also took part in this operation, under the command of the El Mujahid Detachment*”.¹³⁹⁰

711. Sporadic contacts with the 3 Corps Commander, mentioned in the War Diaries, are not proof of combat reports to the superior command.¹³⁹¹ On the contrary, all they could show is that the unit was stepping outside the chain of command, if it was ever within the chain of command to begin with (which is denied).

C.Farz Knowledge

712. In paragraph 47 of the Indictment the Prosecution pleads that:

- Delic was as put on notice that the EMD soldiers had a propensity to commit crimes and particularly crimes against captured enemy soldiers and civilians and he knew or had reason to know that the EMD was operating the Kamenica camp
- Delic knew or had reason to know that EMD soldiers were about to commit or had committed the acts in paras.33-36 (Indictment, para.47)

1. Delic was not put on notice that the EMD soldiers had a propensity to commit crimes and particularly crimes against captured enemy soldiers and civilians

¹³⁹⁰ E669-Information SVB 3K of 16/09/1995, seized from the intercepted fax of EMD regarding the results of Farz, sent abroad, p.5

¹³⁹¹ See Section VIII, B(3)(e)(i)

713.It supports this with the claim that the results of the intercepts generated during Operation Vranduk and the experience from the July action in which the EMD took POWs indicated that the use of the EMD in combat **posed a risk to any potential enemy POWs**. The Prosecution concludes that Delic failed to address that risk by issuing adequate orders to his subordinates in the 3Corps.¹³⁹²

714.In order to show the Accused failed to prevent crimes by subordinates (para.47.2 PPTB) the Prosecution had to prove that the Accused was aware of the risk that such crimes (which are the basis of the indictment) could happen or that they would happen. In the context of armed conflict such a risk always exists.¹³⁹³ However, knowledge of **any kind of risk** is not sufficient to infer criminal responsibility for serious violations of international humanitarian law.

715.Evidence has shown that even the 3Corps Command was not in possession of information which would indicate that the EMD had mistreated the POWs from July who were exchanged.¹³⁹⁴ On the contrary, the evidence heard by the Trial Chamber with regard to the knowledge of the 3Corps members only points to one conclusion: POWs were treated correctly by the EMD.¹³⁹⁵

716.The claim that any information about mistreatment of POWs reached Delic is far from reality. According the Prosecution, the alleged experience from July 1995 relating to POWs, as well as the results of the intercepts during Vranduk, “indicated” that “the use of EMD in combat posed a risk to any potential enemy POWs”. Again, the Prosecution makes the completely unfounded assumption that Delic was in possession of all information available to different parts of ARBiH.

717.The Defence addressed the issue of information about the EMD gathered through intercepts in section VI, D(2). The Prosecution has introduced into evidence several

¹³⁹² See Section VIII, B(5)

¹³⁹³ See *Blaskic* AJ, para.41

¹³⁹⁴ See Section VI, D(3)(a)

¹³⁹⁵ See Section VI, B(2)

documents relating to information on the EMD available to the 3Corps.¹³⁹⁶ This information relates to behaviour which had nothing to do with the EMD's conduct during combat.¹³⁹⁷ These incidents are related to a different understanding of Islam from that of the local population, and they have nothing to do with combat activities, nor did they constitute serious crimes.

718. The Trial Chamber has heard several Prosecution witnesses who were ideally placed to know about the activities of the EMD. They said that they did not have information relating to the propensity of the EMD to commit serious crimes, such as murder and cruel treatment of POWs. 3Corps members, senior officers from the security organ that received the information on events of security interest, have said that the reports which they received were mostly related to misdemeanours rather than serious criminal acts:

719. [REDACTED]¹³⁹⁸

720. Salih Spahic said:

“Q...In paragraph 32 of your statement, you said that you personally did not know about any problems concerning the El Mujahid unit during 1995; is that correct?”

A. That's correct, I didn't know.

Q. Which means that you did not receive a report from the subordinate units of the 3rd Corps indicating that they had committed grave crimes, such as murder or mistreatment of prisoners of war?

*A. I did not receive any information about the problems with the El Mujahedin Detachment. If I had received them, I would have passed them on”.*¹³⁹⁹

721. [REDACTED].¹⁴⁰⁰

¹³⁹⁶ E1065, E1066, E872, E894

¹³⁹⁷ E872-Information of 3Battalion MP, sent to 3KSVB. It deals with disturbance of public order by the EMD: destroying newspapers and magazines from a kiosk, threatening the owner of the kiosk, beating up a couple and cutting the girl's hair, confiscation of alcohol from bar/restaurants, threatening a member of 7K with a gun, the desecration of gravestones in a Catholic cemetery, and vandalization of bar.

¹³⁹⁸ [REDACTED]

¹³⁹⁹ Spahic, 08/11/2007-T.5264

¹⁴⁰⁰ [REDACTED]

722. Witness Halim Husic, 3Corps Assistant Commander for Morale:

“Q...In the Morale Department of the 3rd Corps during the war, did you ever receive an order--did you ever find out, rather, that the El Mudjahedin Detachment had committed any criminal act, yes or no? Did you receive such information?”

A.No.

Q.Did you have information of any kind about the negative attitude of this unit towards prisoners of war or towards civilians?”

*A.No. We did not have information like that at all. No information indicated or even intimated such events”.*¹⁴⁰¹

723. Several 35Division officers, in whose zone of responsibility the EMD acted, were also ideally placed to receive information because they were responsible for the departments which received intelligence and security information. They have said as follows:

724. Witness Imamovic, 35Division Assistant Commander for Security, commenting on the 'Report to the Chief of OSVB 3Corps' of 30/08/1995:¹⁴⁰²

“Q. It is a fact that you didn't have any such information?”

A. We didn't have any such information.

Q. And you did not report that to the superior command; is that so?”

*A. Yes”.*¹⁴⁰³

725. Witness Hajderhodzic, 35Division Assistant Commander for Intelligence:

“Q. It is true, isn't it, that the incidents that they were causing and that you heard about, and I mean the Mujahedin, had to do with their different views on religion and life, different from those held by the local Muslims; would I be right in stating that?”

A. Yes, you're right.

Q. You never heard that those people were indeed killing anyone at all, POWs included, before you were in touch with them in July?”

A. No.

Q. You didn't know anything like that?”

¹⁴⁰¹ Halim Husic, 12/03/2008-T.7429-7430

¹⁴⁰² E583

¹⁴⁰³ Imamovic, 11/10/2007-T.4044

A.No.

Q.You didn't know that they were mistreating POWs?

*A.No, I knew nothing about that either».*¹⁴⁰⁴

726.The Main Staff SVB Administration received from the field some of the above information, which was related to the conduct of EMD members after 21 July 1995.¹⁴⁰⁵ It received information on incidents relating to the removal of construction materials from houses and the desecration of the Catholic cemetery in the village of Ovnak, allegedly committed by EMD members.

(a)SVB Bulletins

727.Some of that information was published in SVB Bulletins.¹⁴⁰⁶ Again, this information had nothing to do with the EMD's conduct during combat. Nor did it mention the treatment of captured enemy combatants or civilians.¹⁴⁰⁷ This information was operative in nature; it was initial and unverified.¹⁴⁰⁸ The bulletins which the Prosecution tendered into evidence relating to this issue speak for themselves:

728.SVB Administration Bulletin of 1 August 1995:

“The 3rd Corps SVB reported that Josip Pojavnik, president of Zenica HDZ municipal board, had recently sent a protest note to the 3rd Corps Commander requesting that the El Mujahedin

¹⁴⁰⁴ Hajderhodzic,09/10/2007-T.3854-3855

¹⁴⁰⁵ E780

¹⁴⁰⁶ E739,E745,E740,E741,E710,E744

¹⁴⁰⁷ E745-GSARBIH SVB Bulletin,03/08/1995 talking about the incident where allegedly EMD surrounded a restaurant which served alcohol, demolished it, and maltreated those present.

E741-GSARBIH Bulletin,11/08/1995: «...a group of the EMD members came to...Zavidovici Technical school farm and started abusing them. One of the members of the group was Edin Husic who took accordion from a student and poked it with a wooden stick. When the class teacher opposed that Husic hit him with the stick in the back».

E744-GSARBIH SVB Bulletin,26/08/1995:«...Ramo Durmic and Ferid Jusufovic, members of the EMD, physically abused Nijaz Mujagic, and took 170 DM from him. On the same day, and also in Kakanj, Durmic and Jusufovic forced their way into the house of Dzermal Zahirovic and took a colour TV, after which they arrested three disabled veterans, took them to the barracks of this detachment...»

¹⁴⁰⁸ Spahic,08/11/2007-T.5262-5263:« Q. ..The gist of my question is this:Please tell me, you did not verify such information and in no way could you claim whether the facts cited in such reports were correct, accurate, or not; am I right in saying so?

A.In our Analysis Department, as far as I can say, we did not conduct any verification in any way.

Q. When you would receive such information from your subordinate units, you would inform your immediate superior, Assistant Commander for Security, about the most salient facts; is that so?

A.That's correct».

unit be relocated from Podbriježje, as its members allegedly provoked people of Croatian ethnicity...”.¹⁴⁰⁹

729.SVB Administration Bulletin of 20 November 1995:

“...El Mujahedin unit whose members...were forcibly squatting in abandoned Croatian houses in Tetovo and Podbriježje near Zenica. Upon acknowledging the complaints, especially those made by Zenica HDZ leader Josip Pojavnik, members of the 3rd Corps VP regulary went to scene and on the whole found the information to be false”.¹⁴¹⁰

730.SVB Administration Bulletin of 01 August 1995 speaks of the same events.¹⁴¹¹

731.SVB Administration Bulletin of 04 August 1995:

“...rumours started among soldiers and citizens in Zavidovici on the alleged betrayal of officers from the 328th bbr, and members of the El Mujahedin detachment physically assaulted them as a result. There is also misinformation about a quarrel between members of the El Mujahedin and the 7th MVO br over the division of booty, which was allegedly the reason why the Mujahedin left the zone of responsibility of the 35th Division”.¹⁴¹²

732.SVB Administration Bulletin of 19 August 1995:

“The 3rd Corps SVB has reported that, because the Command of the 'El Mujahed' detachment has refused to cooperate, it is unable to shed any light on a number of serious crimes and misdemeanours for which there are indications that they may have been perpetrated by members of the Detachment”.¹⁴¹³

733.The information in the bulletins published by the SVB Administration could not be verified or confirmed.¹⁴¹⁴ This is clear from E710. The SVB of the 3Corps and its Military Police, which was a source of information in most cases, couldn't even establish the identity of the perpetrators of crimes. It could not determine whether or not the

¹⁴⁰⁹ E749

¹⁴¹⁰ E753

¹⁴¹¹ E739

¹⁴¹² E740

¹⁴¹³ E710

¹⁴¹⁴ See Section VI, D(1)(2)

perpetrators were members of the EMD. On 28 August 1995, describing incidents caused by foreign nationals, the 3Corps Military Police said the following:

“The perpetrators of these acts are most frequently members of the RBH Army without proper documentation, without proof of membership of the RBH Army or without proof of identity”.¹⁴¹⁵

734. The bulletins contained information which was not true.¹⁴¹⁶ They contained a high degree of “hearsay”.¹⁴¹⁷ They contained rumours and misinformation.¹⁴¹⁸ Therefore the Prosecution’s basis for Delic’s alleged knowledge of the criminal propensity of the EMD (information in bulletins) is weak, tenuous and inherently unsustainable for inferring constructive knowledge, even if he had received the bulletins.

735. When assessing the issue of whether Delic received these bulletins, the Trial Chamber must take account of all circumstances in which Delic acted at the time. It also must take into account the specific way the Main Staff functioned.¹⁴¹⁹ When assessing the mental element “was put on notice”, when determining whether the Article 7(3) standard has been satisfied, the Trial Chamber must take into account the specific circumstances of the case, taking into the specific situation of the alleged superior at the time.¹⁴²⁰

736. These bulletins¹⁴²¹ were sent to KM Kakanj to be handed to Delic.¹⁴²² However, during this time period Delic was engaged in the operation to lift the siege of Sarajevo, which he commanded personally. This operation lasted from the beginning of June 1995 until the end of August 1995.¹⁴²³ On 2 August 1995, an order was issued extending the “further work” of IKM Proskok, which was 25 kilometres from Sarajevo, and from which

¹⁴¹⁵ **E1066**-Information of 3Corps 3rd MP Battalion sent to 3Corps SVB,28/08/95

¹⁴¹⁶ See Section VI, D(1)(2)

¹⁴¹⁷ **Spahic**,08/11/2007-T.5264

¹⁴¹⁸ **E740**

¹⁴¹⁹ See Section VIII, A(1)(h)

¹⁴²⁰ See *Celebici* AJ para.239, *Krnjelac* AJ para.156

¹⁴²¹ **E739,E745,E740,E741,E710,E744**

¹⁴²² **E377**-Range of documents sent from Jusuf Jasarevic from Sarajevo to KM Kakanj

¹⁴²³ **Dedovic**,08/04/2008-T.8201-8202

Delic commanded the operation.¹⁴²⁴ Due to his constant movement within the field, at the time of these combat activities, Delic did not receive documents.¹⁴²⁵

737.The Defence once again reminds the Trial Chamber that the Main Staff at KM Kakanj functioned in such a way that Hadzihasanovic, Chief-of-Staff and, at the same time, Deputy Commander, received and processed documents in the absence of the Commander. Delic did not receive a single bulletin during the Sarajevo operation. The conclusion that Delic was put on notice must be based on facts and not conjecture and assumption. The conclusion must be based only on information which the Prosecution has proven that Delic had in his possession at the relevant time. Information which was in the possession of others is not relevant for these charges.

2.Delic did not know or had reason to know that soldiers of EMD were about to commit or had committed crimes during operation Farz

738.Information which was in the possession of an accused and which may suggest that subordinates were “about to commit or had committed a crime” does not have to be such that it is absolutely certain that the subordinates had committed or were about to commit a crime (with which the accused has been charged).¹⁴²⁶ However, the Prosecution must prove that the accused had an awareness on his part of a “higher likelihood of risk”, that is an awareness of the substantial likelihood that a crime will be committed. Even a risk which isn’t slight or remote will not be sufficient if it does not amount to “substantial likelihood”. The risk must be clear, strong, real and serious in order to trigger the necessary level of awareness.¹⁴²⁷

¹⁴²⁴ **Karavelic**,26/03/2008-T.7923-7924

See also **E1347**-Order for further work of IKM GSARBIH Proskok,02/08/1995

¹⁴²⁵ **Dedovic**,08/04/2008-T.8203

¹⁴²⁶ See *Strugar*, TJ para.369 and 416.

¹⁴²⁷ See *Blaskic*, AJ para.41 and 42. Although this finding was made in relation to charges, pursuant to Article 7(1), this principle should clearly apply to all forms of liability in the same manner, when the accused is charged with having failed to fully consider the consequence of his actions. And the Appeals Chamber made it clear that its holding applied in principle to every allegations of serious violation of humanitarian law. See also *Kvocka* Appeal Judgement, paras 155 and 179, which talks of «sufficiently alarming information». See also *Strugar* Trial Judgment, par. 370, which talks of the «likelihood of illegal acts», par 417 («a real and obvious prospect, a clear possibility»), par 418 («clear and strong risk» and a «risk that (...) was so real, and the implications were so serious»), par 420 («substantial likelihood»), par 421 («very clear prospect») and para 422 («clear likelihood»).

739.Failure to prevent requires proof of an indication that “crimes are *about to be committed*”. This means that subordinates have already taken steps towards committing the crime or they are in the process of committing crimes and the accused knew this.¹⁴²⁸

A remote and vague possibility that a crime might occur in a later phase would not therefore meet the requirements of Article 7(3). Thus, the Prosecution’s pleading from PPTB paragraph 47.2 represents a clear error in law.¹⁴²⁹

(a)Information on POWs in Operation Farz

740.In order to prove that Delic knew that the EMD were about to commit a crime, the Prosecution relies on a document concerning information on POWs held by the EMD in September 1995.¹⁴³⁰ Again, the Prosecution tries to suggest that the information in the possession of the 328Brigade was also in the possession of Delic. In PPTB paragraph 47.4 the Prosecution claims that the “35th Division was on notice” that the EMD held 61 POWs and 3 Serb women who were captured in Kesten by the 5th Battalion of 328Brigade. This allegation is not relevant to Delic responsibility.

741.The Prosecution has not proven beyond reasonable doubt that the 35th Division command was on notice that the EMD was holding these POWs. Hasanagic, 35Division Commander, and Sljuka, 35Division Assistant Commander for Security, were the most senior officers of the 35Division, and positioned in such a way that at least one of them should have received a written report or oral information through the official channels. Both witnesses denied that ever received this information.¹⁴³¹

742.With regard to E480, 328Brigade Commander Fuad Zilkic stands alone in suggesting that it was sent.

(b) Fuad Zilkic’s Credibility

¹⁴²⁸ See *Kordic*, TJ para.445

¹⁴²⁹ See Section VIII, B(4)

¹⁴³⁰ E480-Regular daily combat report of 328Brigade,13/09/95

¹⁴³¹ **Hasanagic**,25/09/2007-T.3068:«Q. *We talked about the September operation now with a couple of documents. Were any prisoners of war taken during that operation?*
A.I had no information about that».

Sljuka,22/10/2007-T.4363

743. It is clear from Zilkic's testimony that he knew that 35Division Commander Hasanagic was in the area of combat activities, because he was in contact with him.¹⁴³² Regardless of this, he delayed sending the report from 13 September 1995 (E480) to the KM in Zavidovici for two whole days. When this was put to him during cross-examination, he suggested that he sent daily combat reports referring to the 61 POWs on 10th, 11th or 12th September 1995.¹⁴³³ Fuad Zilkic was not telling the truth. The Defence obtained and entered into evidence daily combat reports of 328Brigade sent to 35Division,¹⁴³⁴ including the extraordinary report of 11 September 1995.¹⁴³⁵ None of these reports mentions the event relating to the 61 POWs.

744. Zilkic tried to explain that he informed the 35Division Commander Hasanagic of this event. However, there is a series of contradictions in his statements, namely in his interview with the OTP investigators on 20 February 2007 he stated that he informed Hasanagic of this event at the meeting at the Panorama Hotel on 10 September 1995.¹⁴³⁶ In court, when he realised that the POWs were captured on 11 September 1995, he stated that he informed Hasanagic through radio communications immediately after he learned of the event. He tried to explain this discrepancy by saying that he had been coerced by the OTP investigator into giving such a statement:

*«A. My statement was forced, my hand was forced to say certain things. I was coerced».*¹⁴³⁷

745. In fact, neither Zilkic nor his military security organ informed anyone of this event.¹⁴³⁸ Zilkic had very good reason for this. His ties with Arab groups and the EMD, as well as the political and religious circles which supported them, are more than

¹⁴³² Zilkic, 13/11/2007-T.5397-5398

¹⁴³³ Zilkic, 13/11/2007-T.5399-5401

¹⁴³⁴ E971-Regular daily combat report from 328Brigade from 11/09/95 sent to 35Division.

E973-Regular daily combat report from 328Brigade from 12/09/95 sent to 35Division.

¹⁴³⁵ E972-Extraordinary operative combat report from 328Brigade from 11/09/95 sent to 35Division.

¹⁴³⁶ Zilkic, 13/11/2007-T.5406-5409

¹⁴³⁷ Zilkic, 13/11/2007-T.5408

¹⁴³⁸ 328Brigade Assistant Commander for Security, Enes Malicbegovic, stated that he "couldn't remember that the Brigade IKM received information that more than 50 Serb POWs had been taken" and he couldn't recall the SVB receiving a report from Kasahasanovic about the take-over: See

E931, Malicbegovic, 92bisStatement, 18/01/2006, paras. 122 and 123, p. 15

Sljuka, 22/10/2007-T.4363

clear.¹⁴³⁹ Moreover, in his brigade he had the Asim Camdzic unit, which considered itself to be mujahedin.¹⁴⁴⁰

746. Furthermore, this event was not recorded in the record keeping documents of the brigade,¹⁴⁴¹ even though Zilkic stated in court that that the arrest and seizure of 61 POWs would certainly have been a significant event for the brigade.¹⁴⁴² Furthermore, Zilkic not only failed to inform his superior command of this event and 61 POWs, but he hid the event from it. The analysis of the preparations for and carrying out of combat activities during Operation Farz of 16 October 1995, signed by Zilkic, and sent to 35 Division Command provides that the 328 Brigade captured 65 POWs.¹⁴⁴³ There is no mention in the document of the seizure of POWs by the EMD, despite the fact that there was a column for “negative experiences”.

747. Zilkic had clear instructions regarding the treatment of POWs,¹⁴⁴⁴ and he knew what the reporting procedure was. Although he knew that POWs had been seized from the members of his 5th Battalion, part of his report from 13 September 1995 simply provided that the POWs were “taken-over by the EMD”,¹⁴⁴⁵ and made no reference to use of force. His subordinates did not inform him that the EMD had taken-over the POWs, but that they had been kidnapped by Arabs.¹⁴⁴⁶

¹⁴³⁹ See Section VIII, B(1)(g)

¹⁴⁴⁰ E794-Order 35 Division of 03/09/1995: “Pull out 55 mujahedin members of the Asim Camdzic company...”.

¹⁴⁴¹ E807-Duty shifts of the 328th brigade for the period between 10th and 15th of September 1995, No mention of information related to the capture of POWs.

E808-Excerpt from the operations log of the 328th Brigade for the period from 10th to 15th of September 1995, the Hajderovici command post, No mention of information related to the capture of POWs.

E809-Excerpt from war diary of the 328th Brigade for 13/09/1995. No mention of 61 POWs, although it does mention the capture of 2 Serb soldiers, p.8 This shows that the capture of POWs was known it was recorded.

¹⁴⁴² Zilkic, 13/11/2007-T.5406-5409

¹⁴⁴³ E481, p.8: «During the b/d according to the «F-95» Operation plan, around 65 a/v (aggressor soldiers) and the following quantities of MTS have been captured...».

¹⁴⁴⁴ E505-35th Division Plan for the operation «Farz», p.14

¹⁴⁴⁵ E480

¹⁴⁴⁶ Sehic, 05/11/2007-T.5055

748. Thus the 35 Division was not on notice that the EMD was holding POWs as alleged.¹⁴⁴⁷ Neither its commander, Hasanagic, nor the SVB reported to the 3 Corps about this.

749. [REDACTED].¹⁴⁴⁸ [REDACTED].¹⁴⁴⁹ [REDACTED].¹⁴⁵⁰ [REDACTED]¹⁴⁵¹ [REDACTED].¹⁴⁵²

750. With regard to the rumours which the Prosecution presented evidence about during trial, they don't provide knowledge of the facts which are the subject of the rumours. It shows solely the existence of a remote and vague claim. A rumour is not proof of anything but its own existence.¹⁴⁵³

751. Prosecution witnesses Edin Husic and Jusic, senior officers in 3 Corps, stated that they never received information that the EMD had captured members of the VRS nor that any such POWs were subjected to any mistreatment.¹⁴⁵⁴ The Prosecution uses an entry in the 3 Corps War Diary from 11 September 1995¹⁴⁵⁵ to try to prove that on that day the EMD allegedly captured approximately 52 VRS members. However, it is not clear from the entry who captured the "57 Chetniks" as stated in the document. Witness Ribo, Chief of the 3 Corps Operations and Planning Organ, said he never heard this information.¹⁴⁵⁶ The witness was present at the oral briefing of the 3 Corps Commander on 11 September 1995, where such no information was ever mentioned.¹⁴⁵⁷

¹⁴⁴⁷ PPTB, para. 47.4

¹⁴⁴⁸ [REDACTED]

¹⁴⁴⁹ [REDACTED]

¹⁴⁵⁰ [REDACTED]

¹⁴⁵¹ [REDACTED]

¹⁴⁵² [REDACTED]

¹⁴⁵³ *US Supreme Court Judge Rutledge-Yamashita opinion* «Conviction shall not rest in any essential part on unchecked rumor (...), but shall stand on proven fact».

¹⁴⁵⁴ **Edin Husic**, 23/10/2007-T.4457

Jusic, 18/09/2007-T.2597-2598,

Jusic, 18/09/2007-T.2600: "*Q. In other words, the 3rd Corps had no information that prisoners of war are being mistreated or killed on -- by anybody in their zone of responsibility until that date. Am I right? A. There were no such information reaching the command. Had there been, they would have been forwarded to the superior command.*"

¹⁴⁵⁵ **E512**

¹⁴⁵⁶ **Ribo**, 05/03/2008-T.7071-7072

¹⁴⁵⁷ **E1189**-excerpt from the briefing of 3K commander on 11/09/1995

3.Delic did not receive information that anyone had captured approximately 52 Serbs

752.The only information mentioning large numbers of POWs was that obtained through the intercepted fax of the EMD sent abroad, referring to 60 POWs, which the 3Corps SVB forwarded to the SVB Administration on 16 September 1995.¹⁴⁵⁸ This information was not sent to Delic nor did he receive it. An excerpt from the protocol of the SVB Administration shows that the document was distributed in the ‘PO/auxiliary file/Vranduk’ and that it was not sent to Commander Delic.¹⁴⁵⁹ This information was unverified and not included in the bulletin.¹⁴⁶⁰

753.The Prosecution relies on a large number of documents sent to the SVB Administration by the 3Corps SVB which mention information about various POWs captured on the Vozuca front.¹⁴⁶¹ In fact only two of these documents mention that the EMD had captured three POWs, members of the VRS. None of these documents mention that POWs were mistreated.

754.The only document which was received at KM Kakanj after Operation Farz which mentions POWs is the Regular Daily Combat Report of 3Corps Command of 15 September 1995. This report provides:

*“Prisoners of war are being treated in the spirit of Geneva Convention and taken in organised fashion to the POW reception center in Zenica, where they are being received and processed”.*¹⁴⁶²

755.None of the documents mentioned in paragraph 753 received at the SVB Administration mention that 60 VRS members were captured by the EMD or refer to such a high number of POWs.

See also **Ribo**,05/03/2008-T.7068

¹⁴⁵⁸ **E669**

¹⁴⁵⁹ **E1306**,p.3

E709,Information document from Main Staff Security Administration to State Security Service of RBiH on 22/10/1995 which shows that this information was sent to the SDB and not to General Delic.

¹⁴⁶⁰ **Vuckovic**,07/11/2007-T.5124

¹⁴⁶¹ **E670**(under seal),**E671**,**E672**,**E694**(under seal),**E866**(under seal),**E893**(under seal),**E896**(under seal),**E897**(under seal),**E898**(under seal),**E949**,**E958**(under seal),**E1093**,**E1168**

¹⁴⁶² **E393**,p.4

756.The SVB Administration had at its disposal the 'Information' dated 16 September 1995 which resulted from the intercepted fax sent abroad by the EMD.¹⁴⁶³ The information mentions that “*Mudzahidi*” had captured 60 prisoners. Prosecution witness PW9 explained that “*Mudzahidi*” and the “*El Mujahedin*” Detachment do not have the same meaning.¹⁴⁶⁴ Therefore it cannot be concluded from this document that *the EMD* captured the 60 POWs.

757.However, on 18 September 1995 the SVB Administration requested from the 3Corps SVB precise information and daily reports on POWs, and that the POWs be treated in accordance with international humanitarian law.¹⁴⁶⁵ On 19 October 1995 the Security Administration received a report from 3Corps SVB which mentioned a total of 39 persons captured during Operation Farz with precise personal information about them.¹⁴⁶⁶

758.All of the information suggesting that the EMD was holding POWs captured on 17 September 1995 (including 3 Serb women), never went further than the 3Corps.¹⁴⁶⁷ None of this information mentioned that any of the POWs had been subjected to cruel treatment. All members of the 3Corps Military Police and SVB who had contact with the POWs stated that they didn't have any information that they were mistreated.¹⁴⁶⁸ Moreover, while they were in the Reception Centre in Zenica, the POWs were visited by the ICRC.¹⁴⁶⁹ It appears that the ICRC representatives did not obtain any such information either since they did not inform the 3Corps of any mistreatment of POWs.¹⁴⁷⁰

¹⁴⁶³ **E669**

¹⁴⁶⁴ **PW9**,16/11/2007-T.5716-5718

¹⁴⁶⁵ **E911**, p.p.1.4., SVBGSARBIH, Tasks for furnishing of information on captured aggressor soldiers, sent to Corps SVBs,18/09/1995

¹⁴⁶⁶ **E694**-3Corps SVB Information on the Analysis of Informative Interviews conducted with POWs captured on the Ozren-Vozuca front,19/10/95

¹⁴⁶⁷ **E499,E852**(under seal),**E853**(under seal),**E874**(under seal),**E875,E876,E945**(under seal),**E946**(under seal),**E947**(under seal),**E948**

¹⁴⁶⁸ **Saric**,22/11/2007-T.5974-5975,5994-5996;**Mujezinovic**,23/11/2007-T.6113-6114;**Alispahic**,04/12/2007-T.6531-6534;T.6543

¹⁴⁶⁹ **E913**(under seal), [REDACTED]

¹⁴⁷⁰ **PW11**,29/11/2007-T.6375

759. Therefore Delic did not receive information that the EMD was holding POWs, nor did he fail to follow up on this. Moreover, Delic did not know nor did he have any reason to know that the EMD had committed crimes.

760. On the absence of command and the importance of the absence of adequate notice, see Section VIII, B(4).

VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY

A. Position of the Accused

761. With regard to the position of the Accused the Prosecution pleaded that by virtue of his authority (Main Staff Commander) as set out in military regulations and instructions, Delic controlled the work of the Main Staff...and “was responsible for the overall state and conduct of the ARBIH”.¹⁴⁷¹

762. Specifically, concerning the allegations in the indictment related to events and the Accused's connection with them, the Prosecution pleaded:

- that the Main Staff directed operations in the Ozren-Vozuca pocket;¹⁴⁷²
- in July 1995 Delic ordered the 2 and 3 Corps to undertake combat activities;¹⁴⁷³
- Delic ordered 2 and 3 Corps to liberate the Ozren-Vozuca pocket (operations Uragan and Farz).¹⁴⁷⁴

763. The Prosecution also claimed that Delic commanded combat activities in July 1995¹⁴⁷⁵ and September 1995¹⁴⁷⁶ and, finally, that he ordered the cessation of combat

¹⁴⁷¹ Indictment, para. 18

¹⁴⁷² Indictment, para. 28

¹⁴⁷³ Indictment, para. 30

¹⁴⁷⁴ Indictment, para. 31.

¹⁴⁷⁵ Para. 38.8

¹⁴⁷⁶ Para. 47.7

activities in the Ozren-Vozuca area.¹⁴⁷⁷ Concerning the allegations relating to the 8 June 1993 events, the Prosecution pleaded that Delic “assumed” the post of Main Staff Commander on 8 June 1993.¹⁴⁷⁸ It did not plead that Delic played any role in these events.

764.It follows that the Prosecution suggests that Delic’s criminal liability is based upon:

- solely his position in accordance with which he is alleged to have been responsible for the overall state and conduct of the ARBiH;
- his role as Commander in Proljece-II (July 1995) and Farz (September 1995).

765.The Trial Chamber will have to deal with those facts, although they are not express requirements of Article 7(3). The Prosecution did not explicitly allege control of combat operations (Maline 1993, July and September 1995), but it did plead that Delic ordered the operations and commanded them, as a way of showing that a superior-subordinate relationship existed. Therefore the Trial Chamber is expected to make a finding in this respect, since these facts were pleaded as requirements of command responsibility.

1.Rasim Delic did not have overall authority or responsibility for the functioning of the ARBiH

(a)Presidency of RBiH

766.The Presidency of RBiH, as the Supreme Command of the Armed Forces, had the overall authority and responsibility for the functioning of the ARBiH. The RBiH Presidency was multi-ethnic, composed of representatives of the constitutional peoples of BiH, specifically two Croats, two Serbs and two Muslims-Bosniaks. It also had a representative of so-called “others” who was elected to represent “other” people of BiH. After the beginning of the war, in 1992, the Presidency was expanded to include three

¹⁴⁷⁷ Para.32

¹⁴⁷⁸ **PPTB**,para.24

additional members: Prime Minister, President of the Assembly, and the Chief of Staff of the ARBiH.¹⁴⁷⁹

767. The RBiH Presidency was not a “political” body as alleged in PPTB paragraph 15.2, rather, under the RBiH constitution it was the Supreme Command of the Armed Forces of RBiH.¹⁴⁸⁰ The Decree Law on the Armed Forces of RBiH which regulates command and control in the ARBiH is clear in this regard. Article 8 provides: “*The Republic Presidency shall be the most senior organ in the command and control of the Army*”.¹⁴⁸¹

768. The rights and obligations of the RBiH Presidency were regulated by the Decree with the Force of Law on Defence. The Presidency decides upon all important issues relating to the defence of RBiH, including the enacting of the wartime establishment of the Armed Forces, and the appointment and removal of senior commanding officers in the ARBiH.¹⁴⁸²

769. The Prosecution claims that the Army Service Law gave Delic, as the Main Staff Commander, the authority to assign, promote, relieve and decide on the termination of duties of personnel under his command.¹⁴⁸³ The Prosecution relies on the Decision on the Amendment of the Decision on Commission, Promotion and Adjudication in the Military Personnel Service Affairs in the State of War of 18 July 1993.¹⁴⁸⁴

770. In fact the Prosecution entirely misinterpreted this regulation, because in reality it was the Presidency which decided on the appointment and promotion of brigade

¹⁴⁷⁹ **Djuricic**, 31/08/2007-T.2066-2067

¹⁴⁸⁰ **E42**, Art. 222: «During the period of martial law the Presidency is the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina», p.108

See also **Delic**, 21/09/2007-T.2830

¹⁴⁸¹ **E22**, p.2.

¹⁴⁸² **E7**, Art. 9, p.3

¹⁴⁸³ **PPTB**, para. 18.3

¹⁴⁸⁴ **E1097**

commanders, corps commanders, chiefs of Main Staff Administrations etc. In other words, the Presidency appointed officers who held the rank of colonel and higher.¹⁴⁸⁵

771. Delic's authority was limited to the appointment of non-commissioned officers and officers with the rank lower than colonel. Therefore, he did not have the authority to appoint, promote and remove persons under his command. His competence in disciplinary proceedings was limited to only those directly subordinate to him.¹⁴⁸⁶

772. Contrary to the Prosecution's claim in the above-mentioned paragraphs of the PPTB, this law did not permit Delic to "decide on the engagement of foreign citizens in the regular army units"; rather this authority was given explicitly to the Presidency of the RBiH.¹⁴⁸⁷

773. The decisions concerning the reorganisation of the ARBiH, which were issued during the war confirm the position of the Presidency as the Supreme Command of ARBiH. The RBiH Presidency acted as the Supreme Command of ARBiH throughout the war.¹⁴⁸⁸ Although he was a member of the Presidency and had the right to vote in this body, Delic was subordinate to the Presidency as a collective body and its President, as the head of that body.

774. The RBiH Presidency decided on the use of the Armed Forces during the war.¹⁴⁸⁹ The Decree Law on Amendments to the Decree Law on the Armed Forces of RBiH set out clearly the authority of the RBiH Presidency in this regard.¹⁴⁹⁰

¹⁴⁸⁵ E1097, Art. 7., p.p. 4-5

¹⁴⁸⁶ E1097, Art. 5. E419 defines persons who were subordinated to Delic during 1995

¹⁴⁸⁷ E1097, Art. 7, section 10, p. 5

¹⁴⁸⁸ E154-Decision on the organisational structure of the Ministry of Defence and the ARBiH, 18/07/1993, p. 1; E419-Decision on organisation chart of the ARBiH, 24/10/1994, p. 1

¹⁴⁸⁹ E22, Art. 9(5): «*In achieving command and control of the ARBiH, the Republic Presidency shall in particular: ... Establish a plan for use of the Army in time of war and the order use of the Army in peace and- wartime*». p.p. 2-3

See also Karavelic, 26/03/2008-T.7865: «*The item 5 explicitly says that for any kind of employment of the army in peacetime and in war, in other words, for the use of armed force it is precisely that body, the Presidency of Bosnia and Herzegovina, as the Supreme Command that is responsible*».

[REDACTED], Delic, 21/09/2007-T.2831

¹⁴⁹⁰ E1335-Decree Law on amendments to the Decree Law on the Armed Forces of the RBiH, 31/12/1993 Art. 2: «*During a state of war the Presidency of the Republic may order the use of Units of the Army for implementing certain tasks of the police of the Ministry of the Interior*». p. 1

775. Although the Presidency functioned as a collective body, the President of the Presidency, Alija Izetbegovic, was authorised to represent in BiH and abroad the Armed Forces and to sign documents of the Presidency.¹⁴⁹¹ De facto the President of the Presidency had very strong authority with regard to the making of key decisions and their implementation.¹⁴⁹²

776. General Vahid Karavelic, 1 Corps Commander, explained:

*«A. I discussed this in the corps command with my men and with President Izetbegovic.
Q. Why with President Izetbegovic, if you recall?
A. Because he was the only person who had both de jure and de facto authority and who could approve the use of force in order to resolve this kind of situation».*¹⁴⁹³

777. The role of the Main Staff and its position, even with regard to some important military issues, was limited by the authority of the President of the Presidency, Alija Izetbegovic. He proposed the promotion of Sefer Halilovic to the role of Brigadier-General even though the Main Staff opposed this promotion at the Presidency session held on 26 April 1994.¹⁴⁹⁴ The view of the President was decisive. He was the one who proposed the promotion and the Presidency accepted this proposal irrespective of the opposition of the Main Staff.¹⁴⁹⁵

778. The President sometimes decided on military issues directly, outside of the chain of command.¹⁴⁹⁶

(b) RBiH Ministry of Defence

779. The RBiH Ministry of Defence is a body of the RBiH Government.¹⁴⁹⁷ Its position was set out in the Decree with the Force of Law on Defence, Article 18:

¹⁴⁹¹ E22, Art. 10, p. 3

¹⁴⁹² PW3, 22/08/2007-T. 1559

¹⁴⁹³ Karavelic, 25/03/2008-T. 7854-7855

¹⁴⁹⁴ See Section IV, E(2)(b)(i)

¹⁴⁹⁵ E308-Minutes of the Presidency session held on 26/04/1994, p. 545

¹⁴⁹⁶ [REDACTED]

See also Karavelic, 25/03/2008-T. 7840

“Ministry of Defence performs the administrative, professional and staff work in defense domain, which is determined by law and other regulations and general enactment..”¹⁴⁹⁸

780.Under this Decree the Main Staff was part of the Ministry of Defence.¹⁴⁹⁹ Through the reorganisation of the ARBiH on 18 July 1993¹⁵⁰⁰ and later on 24 October 1994¹⁵⁰¹ the Ministry of Defence retained its superior status with respect to the SVK until the end of the war. This is clear from attachment one of Decision on Organisation Chart of the Army of RBiH of 24 October 1994.¹⁵⁰²

781.Through Municipal Defence Secretariats the Ministry of Defence requisitioned and gave objects, buildings and other material resources to the ARBiH units.¹⁵⁰³

(c)ARBiH Main Staff/General Staff Supreme/Command Staff

782.From the beginning of the war until 1993, the ARBiH Main Staff was headquartered in several locations in Sarajevo.¹⁵⁰⁴ Towards the end of 1993/start 1994 the Command Post of the SVK was established on the free territory in Kakanj.

783.The Main Staff, as well as the entire ARBiH, developed over time. In the course of this development, its competence changed. The Decree with the Force of Law on Defence, passed on 14 May 1992, provided that the Main Staff was in charge of operations and Staff work on organisation; outfitting; education and training; and the use of troops, institutions, headquarters and command quarters of the Armed Forces.¹⁵⁰⁵ The

¹⁴⁹⁷ **PW9**,15/11/2007-T.5619

¹⁴⁹⁸ **E45**,p.p.8-10

¹⁴⁹⁹ **E45**,Art.25

¹⁵⁰⁰ **E154**

¹⁵⁰¹ **E419**

¹⁵⁰² **E419**,p.7

¹⁵⁰³ **E1310**-Decree on he criteria and standards for the assignments of citizens and material resources to the armed forces and for other defence needs, 26/10/1992.Art.52, 58,59,p.p.13,16

See also **Ribo**,27/03/2008-T.6960;**Hubo**,17/03/2008-T.7673

¹⁵⁰⁴ **Karavelic**,25/03/2008-T.7804

¹⁵⁰⁵ **E7**,Art.25,p.10

Prosecution relies on this regulation, in particular Article 26, to prove that Delic had the overall authority and responsibility for the functioning of the ARBiH.¹⁵⁰⁶

784.However, the Prosecution forgets that on several occasions the Presidency issued Decisions on Amendments to the Organisational Scheme of the SVK, which reorganised the SVK. Thus on 8 June 1993 the position of the Main Staff Commander was established, which had not been foreseen by the Decree with the Force of Law on Defence.¹⁵⁰⁷

785.The Decision on the Organisational Scheme of ARBiH issued by the Presidency on 18 July 1993 defined the organisation of the ARBiH and its Main Staff. This decision also determined the relationship between corps commanders and Main Staff Commander.¹⁵⁰⁸

786.Finally, on 24 October 1994 the Presidency issued the Decision on the Organisational Scheme on ARBiH which was in force until the end of the war, and therefore was the only relevant law with regard to the position and authority of the Accused during the 1995 events described in the indictment.¹⁵⁰⁹ With this decision the Presidency renamed the Main Staff as the ‘General Staff of ARBiH’ and it determined its composition:

“The Army General Staff shall consist of General Staff Commander, Office of the Commander, Deputy Commander of the Main Staff and his office, Chief of the Army Staff, who is at the same time Deputy Commander (with his office), three Assistants to the Commander of the General Staff (for Services, for organisation and development of the Army, for civil affairs), Army Staff and the following Administrations with headquarters support units: Intelligence Administration, Morale Administration, Administration for Military Security Service, Personal and Legal Affairs Administration, Logistics Administration, Finance and Army Development Planning

¹⁵⁰⁶ E7,Art.26,p.10

¹⁵⁰⁷ E161-Decision on amendments to the organisational scheme of the staff of the supreme command of the armed forces of the RBIH and on appointment of officers to duties,08/06/1993,p.1

¹⁵⁰⁸ E154,sectionIII(5),p.4

¹⁵⁰⁹ E419

*Administration, Inspection Department, and Military Legal Office of the Army”.*¹⁵¹⁰

(d)Who was subordinated to the Commander of the General Staff of the ARBiH

787.In the same decision, the Presidency determined who would be subordinated to and linked to the General Staff Commander:

*“The following shall be directly subordinated and linked to the Army General Staff Commander: Air-force and Anti-aircraft Defence commander, and commanders of the units as referred to under item IV/1 of this Decision, Deputy Commander, Chief of the Army Staff (also acting as a Deputy Commander), Assistants to the General Staff Commander, the Army Staff and all Administrations and departments as referred to under item IV/2 of this Decision”.*¹⁵¹¹

Item IV/1:

*“The ARBIH shall consist of: General Staff, Air-force and Anti-Aircraft Defence Command, six corps, Eastern Bosnia Operations Group-Division[...]and three independent Brigades(Guards Brigade, 10th Mountain Brigade and 1st Reconnaissance-Sabotage Brigade Crni labudovi)...”*¹⁵¹²

788.The rights and obligations of the Deputy Commanders and the Chief of Staff of ARBiH are set out in the ‘Regulation on the Internal Structure and Competence of General Staff of ARBiH’ of November 1994.¹⁵¹³

789.Witnesses have explained that E419 established the chain of command in which corps commanders and units specifically mentioned in this decision were subordinated to the General Staff Commander.¹⁵¹⁴

¹⁵¹⁰ E419,p.p.2-3

¹⁵¹¹ Ibid, p.3

¹⁵¹² Ibid,p.2

¹⁵¹³ E619-Regulation on the Internal Structure and competence of the General Staff of the ARBIH,November 1994,p.2

¹⁵¹⁴ Delic,21/09/2007-T.2837-2838

Alija,16/10/2007-T.4177-4178:«Q. ...Mr. Alija, it would be erroneous to believe, would it not, that all the units of the Army of Bosnia and Herzegovina were under the direct command and control of the Army General Staff, i.e., its commander?

A.Yes, you are quite correct. It was impossible for the commander to control all units. There were hundreds of other units».

790. The Decision, E419, contains a ‘Statement of Reason’ on the last page of the document which specifically provides: “*Besides division, one [manoeuvre] brigade is formed in each corps under direct command of the Corps Commander...*”. Therefore it was clearly determined that divisions were part of the corps and under the corps commander, rather than under the General Staff Commander. Many witnesses, both Prosecution and Defence, have confirmed that after the Decision was issued in October 1994 command and control functioned in this way. Jusic explained:

*“Q. You said that's the procedure. The commander of the General Staff is not empowered to hand down directions to the second line of subordinate units; am I right in saying so?
A. The commander, as a matter of principle, never issues orders to the 2nd or 3rd line of subordinate units, because in -- by doing so, he would be ignoring the existence and the functioning of the commands of the immediate subordinates. This would never happen, I think. I don't recall it ever happening during the war”.*¹⁵¹⁵

(e) Command over a resubordinated unit

791. Jusic also explained the principle of command over a resubordinated unit:

*“By all means, the resubordinated unit must effect the orders of the commander to whom they're resubordinated, and that command is duty-bound to supply them with everything as if they were their own unit”.*¹⁵¹⁶

(f) Principle of unity of command

792. The principle of command and control in the ARBiH was defined in the Decree with the Force of Law on Armed Forces.¹⁵¹⁷ Article 12 provides “*Army command and control shall be achieved by Army unit and institution officers in keeping with the law, other regulations and general acts*”. Article 13 adopted the universal principle known to

¹⁵¹⁵ Alija, 16/10/2007-T.4179-4180: «Do you agree that this document says -- this part of the document, namely, specifically explains that under the direct command of the corps commander are divisions and mobile or manoeuvring brigade with which the corps commander exerts his influence on the main axis of combat activities?»

A. Yes, I agree with that.

Delic, 21/09/2007-T.2839; Jusic, 18/09/2007-T.2567

¹⁵¹⁶ Jusic, 18/09/2007-T.2586-2587

¹⁵¹⁷ E22

all modern armies in the world¹⁵¹⁸ as the principle of unity of command “*Army command and control shall be founded on the principles of united command with regard to the use of forces and equipment, unity of command and the obligation to carry out the decision, commands and orders of a superior officer, except in cases where to do so would result in the commission of the crime*”. The principle of unity of command was implemented in practice by ARBiH officers.¹⁵¹⁹

(g) Levels of command in the ARBiH

793. ARBiH adopted and implemented the principle of modern armed forces with regard to the way in which political objectives and military activities were linked.¹⁵²⁰ Karavelic said:

*“The General Staff is the highest command level within the army of the RBiH it is the strategic command. The corps are one step down in terms of command. Those are operational commands and operational tactical units”.*¹⁵²¹

794. The General Staff as the strategic command of the ARBiH issued Directives which set general goals for the ARBiH over an extended period of time. They defined only the objectives of the corps and not the lower units. The corps would then work out the global tasks in order to implement the Directive.¹⁵²² General Karavelic explained:

*“Q. In principle, who decides on the chose of place, time, means, and units for combat activities, in terms of such planning?
A. The corps commander and his subordinate commanders”.*¹⁵²³

795. Therefore Delic did not have military command and control over the ARBiH units throughout BiH. Rather the ARBiH had different levels of command. Delic had his subordinates, defined in E419, including corps commanders. Corps commanders

¹⁵¹⁸ E1383, Military Expert report Dr. Cornish, para. 17, p. 9.

¹⁵¹⁹ Alija, 16/10/2007-T:4180; PW3, 21/08/2007-T:1431

¹⁵²⁰ E1383, para. 23: «The strategic level of war is the level at which national security police and defence strategy are decided [...] The operation level of war is the level at which military forces are deployed and used in order to meet strategic goals, the tactical level of war is the point at which military forces come into contact with an adversary in order to meet operational objectives». p. 11

¹⁵²¹ Karavelic, 26/03/2008-T.7920

¹⁵²² Alija, 16/10/1007-T.4200

¹⁵²³ Karavelic, 26/03/2008-T.7920

commanded their subordinate units, including divisions, independent brigades and other independent units directly linked to the corps. This principle applied also to lower units in the sense that the commander at each organisational level had his own commanders which were subordinate to him.

796. Therefore the Prosecution erroneously claims that the units, including the EMD, were “subordinate formations under the command and effective control of Rasim Delic”.¹⁵²⁴ Even if it could be said that the EMD was in the ARBiH chain of command at the time of the events in July and September 1995, *and it wasn't*, it was on paper resubordinated to the 35 Division.¹⁵²⁵

797. This is a fundamental mistake which means that the entire case is based on a completely erroneous foundation. In fact, the units specified in para.17 of the Indictment were under the command and control of the commanders of the divisions, depending on the level to which they were subordinated or re-subordinated at the relevant time.

798. In order to prove that Delic was the overall commander of ARBiH forces throughout R BiH, the Prosecution relies on the regulations and manuals of the former JNA, which is completely pointless. R BiH was established as a new state, based on a different social system.¹⁵²⁶ At the beginning of the war, R BiH passed its own laws and regulations. The manuals¹⁵²⁷ were used for the purpose of training of officers about general military knowledge, but they were not applied as R BiH regulations nor were they in any way binding.¹⁵²⁸ The Prosecution even entered into evidence drafts of JNA regulations which they wanted to use against the Accused. They were not even binding for the former JNA.¹⁵²⁹

¹⁵²⁴ Indictment, para.17

¹⁵²⁵ See Section VIII, A(1)(e)

¹⁵²⁶ PW3, 21/08/2007-T.1422

¹⁵²⁷ E147, E149, E150, E151, E155

¹⁵²⁸ PW3, 21/08/2007-T.1423-1429; Alija, 16/10/2007-T.4170-4171

¹⁵²⁹ PW3, 21/08/2007-T.1416-1417, by commenting upon E147

(h) SVK KM Kakanj*(i) Reasons for establishment and tasks*

799. General Jusic, 3 Corps Chief-of-Staff said: "Until 1995, the headquarters of the Supreme Command was an imaginary command of the army." This was so because the SVK had no influence over combat activities. Military issues and problems arising outside of Sarajevo were resolved by the corps and lower commands.¹⁵³⁰

800. The General Staff, whose headquarters were in besieged Sarajevo, could not function effectively. Sarajevo and the General Staff were cut off from other parts of BiH, with the exception of some parts of the 1 Corps.¹⁵³¹ In order to improve the operational-tactical position of the ARBiH and its effectiveness, the Presidency decided to transfer the part of the General Staff command linked to combat activities.

801. On 26 November 1993 this decision was executed by Delic, who ordered that an orderly transfer of a large part of the GS to the free territory.¹⁵³² On 2 January 1994 Deputy Commander and at the same time Chief-of-Staff Enver Hadzihanovic ordered the transfer of a large part of the General Staff to KM Kakanj.¹⁵³³

802. On 16 February 1994 Delic ordered the organisation and deployment at SVK KM Kakanj. The following were transferred there: the Army Staff; and the Administration for Operational Planning, Preparation, Organisation, Monitoring and Commanding of Combat Operations, including the Operative Centre. Also transferred to KM Kakanj were parts of other Administrations linked to combat activities.¹⁵³⁴ KM Kakanj functioned under the command and control of Deputy Commander and, at the same time,

¹⁵³⁰ **Jusic**, 18/09/2007-T.2545

¹⁵³¹ **Softic**, 28/08/2007-T.1873-1874

¹⁵³² **E279-SVK ARBIH** Order to move the Staff of the Supreme Command, 26/11/1993

¹⁵³³ **E280-SVK ARBIH** Order for the SVK to go out to the Command Post, 02/01/1994

The Prosecution confuses terms IKM (Forward Command Post) and KM (Command Post). Kakanj was a Command Post. The substantive difference between the two was explained by General **Divjak**, 12/09/2007-T.2238: "Q. In contrast to an IKM, is it right that KM Kakanj was established on a long-term basis, so from December 1993 up until the end of the war in 1995?"

A. Yes, that is correct".

¹⁵³⁴ **E281-SVK ARBIH** Order for organizing the deployment of the VK OS RBH Staff, 16/02/1994

Chief-of-Staff Hadzihasanovic.¹⁵³⁵ In its decision of 24 October 1994 (E419) the Presidency decided that operational command and control over commands and units linked to the General Staff would be under the competence of the Army Staff: “*The Army Staff has been established within the General Staff, its primary task being to operatively command corps commands and independent units linked to the General Staff.*” As pointed out, General Hadzihasanovic was the Head of the Army Staff.

803. In this case, the Prosecution completely neglected one essential fact, namely Delic remained in Sarajevo together with a part of the SVK. He dealt with the issues of strategic importance for the ARBiH, including:

- participation in the work of the Presidency, the Government and the Ministry of Defence;¹⁵³⁶
- military diplomacy;¹⁵³⁷
- cooperation with international forces in RBiH;¹⁵³⁸
- participation in peace negotiations and implementation of agreements which resulted from them;¹⁵³⁹
- participation in international conferences concerning donation of aid and the establishment of peace in RBiH;¹⁵⁴⁰ and
- the attempt to lift the siege of Sarajevo, where the conditions for civilian population had become unbearable.¹⁵⁴¹

804. SVK KM Kakanj dealt with issues related to combat activities and the Operations Centre¹⁵⁴² of KM Kakanj received reports from the field.¹⁵⁴³ The Operations Centre of the General Staff, which previously existed in Sarajevo ceased to work.¹⁵⁴⁴

¹⁵³⁵ **Berbic**, 14/09/2007-T.2382

¹⁵³⁶ **Alija**, 16/10/2007-T.4186

¹⁵³⁷ **Dedovic**, 08/04/2008-T.8198-8199

¹⁵³⁸ **Alija**, 16/10/2007-T.4186

¹⁵³⁹ **Dedovic**, 08/04/2008-T.8226

¹⁵⁴⁰ **Dedovic**, 08/04/2008-T.8213

¹⁵⁴¹ **Dedovic**, 08/04/2008-T.8178-8179; **Karavelic**, 25/03/2008-T.7812

¹⁵⁴² **Alija**, 16/10/2007-T.4194-4195: “Q. *Do you agree that the Operations Centre for the planning, preparation, organisation, and monitoring and implementation of the combat activities was wholly transferred to Kakanj. A. Yes*”.

See also **Alija**, 15/10/2007-T.4129-4130

805. Delic rarely went to Kakanj as he was pre-occupied with the activities set out above and visiting units in the field. Meetings at KM Kakanj were held rarely, two to three times a year.¹⁵⁴⁵ The videoclip showing Delic discussing contacts and visits to KM Kakanj:

*“...a part of the Staff works in Kakanj, a part in Sarajevo and they communicate only through papers and occasional encounters, and they mostly have no possibility to meet in shorter time periods”.*¹⁵⁴⁶

806. On 29 March 1994 Delic issued the ‘Order for Organisation of Life and Work at KM Kakanj’. He ordered that in the absence of the Commander from KM Kakanj, it would be commanded and controlled by the Chief-of-Staff and in his absence the most senior officer present would be responsible for RiK.¹⁵⁴⁷ This decision was confirmed by the Presidency in the above-mentioned ‘Regulation on Internal Structure and Competence of the General Staff of the ARBiH’.¹⁵⁴⁸ The order was implemented in practice. Hadzihasanovic received and signed documents for Delic in KM Kakanj.¹⁵⁴⁹

(ii) Representing the Commander

¹⁵⁴³ **Softic**, 28/08/2007-T.1877

¹⁵⁴⁴ **E353-SVK** ARBIH Report, sent to KM Kakanj, 15/02/1994

See also **Divjak**, 12/09/2007-T.2239-2240

¹⁵⁴⁵ **Alija**, 16/10/2007-T.4143: “*Q. Do you know how often these types of meetings occurred in Kakanj?*

A. Not very often, because this was at so high a level, they were not held very frequently.

Q. Can you be more specific, what "not very frequently" means?

A. Perhaps twice a year, but I can't be sure of that. I'm not positive. I just suppose that it was two or three times a year”.

Softic, 28/08/2007-T.1877-1878; **Berbic**, 14/09/2007-T.2392

¹⁵⁴⁶ **E1357**

See also **Dedovic**, 08/04/2008-T.8195: “*A. This shows that the commander spent very little of his time in Kakanj to meet up with his subordinates. They didn't have occasion to meet often.*

Q. How long would the General stay in Kakanj, if he stayed there at all?

A. Sometimes 15 minutes, sometimes two hours or one hour, sometimes -- actually, not ever a whole day but more or less a couple of hours”.

¹⁵⁴⁷ **E370-GS** ARBIH Order for organization of life and work at the Command Post of the GS ARBIH, 29/03/1995

¹⁵⁴⁸ **E619**

¹⁵⁴⁹ **E370** see **Berbic**, 14/09/2007-T.2390-2392; **Alija**, 17/10/2007-T:4242-4243

807. In the ‘Regulation on Internal Structure and Competence of the General Staff of the ARBiH’¹⁵⁵⁰ the Presidency clearly provided that in his absence the Main Staff Commander would be represented by the SVK Chief-of-Staff in respect of the corps and independent units. It was regulated that the Main Staff Commander could issue a special authorisation transferring his authorities in respect of units and institutions to his Deputy Commanders and ‘Chiefs of organisational units’ of the General Staff (the Administrations).¹⁵⁵¹

808. As explained, Hadzihasanovic represented Delic during his absence from RBiH.¹⁵⁵² The Trial Chamber will have to take into account the manifold significance of this fact when assessing the criminal liability of the Accused.

(iii) The importance of KM Kakanj for reporting

809. The way that the General Staff was organised and functioned is of great importance and the Trial Chamber must take it into account when assessing a significant indicator of effective control, reporting, as well as when assessing the knowledge requirement. In particular, the General Staff was organized such that from 27 September 1994 the corps would send reports exclusively to KM Kakanj.¹⁵⁵³ The same document provided that the Commander in Sarajevo would only be sent summary reports about crucial changes on the front (positive or negative) and problems under the jurisdiction of the Commander.¹⁵⁵⁴

¹⁵⁵⁰ **E619**

¹⁵⁵¹ **E619**, p.3

See also **Alija**, 17/10/2007-T.4249: “The deputy commanders and the chiefs of the Organisational Staff, with respect to military units and installations, could have been given special authorities by the commander of the General Staff of the Army, who could have transferred to him his competences and responsibilities. Do you agree that this is the way it functioned in practice?

A. Yes”.

¹⁵⁵² **Alija**, 17/10/2007-T.4253-4254

¹⁵⁵³ **E371**-Set of two GS ARBiH KM Kakanj Orders, 27/12/1994, p.1

See also **Pesto**, 02/10/2007-T.3426-3428

¹⁵⁵⁴ **E371**, p.2

810. Witnesses confirmed that from 27 September 1994 onwards Delic was only sent summary reports on combat activities.¹⁵⁵⁵ There was no mention of lower units in these reports, including the EMD.¹⁵⁵⁶ In Delic's absence from KM Kakanj, all documents including SVB Bulletins were given to Hadzihasanovic or the person that was representing him at the time. Berbic said:

«Q. Therefore, I am correct in believing that when the commander was absent, bulletins would be received by the Chief of Staff; is that correct?

*A. Yes. When the commander was absent, the Chief of Staff would receive those».*¹⁵⁵⁷

811. Considering that the process of reporting to the Main Staff Commander was regulated and functioned in the way described above, the Prosecution still must prove beyond reasonable doubt that Delic actually received the documents which it claims he did, even if they were addressed to him personally.

812. The Trial Chamber will have to consider these facts, which are important in determining criminal liability. The Prosecution must prove that this conclusion is the only reasonable one open on the evidence. In the above-described situation, the Prosecution has failed to meet that standard.

¹⁵⁵⁵ Commenting on **E371, Berbic**, 14/09/2007-T.2398-2399. See also **Alija**, 16/10/2007-T.4218

¹⁵⁵⁶ **E537**-set of Situation reports at the BH theatre of war, sent from KM Kakanj to Sarajevo (*inter alia*, general Delic) for the period from 19/07/1995-30/07/1995

E374-Situation report for 20/07/1995,21/07/1995

E615-Situation report for 29/06/1995,30/06/1995

E616-Situation report for 06/07/1995,07/07/1995

E617-Situation report for 08/07/1995,09/07/1995

E618-Situation report for 03/08/1995,04/08/1995

E1407-Situation report for 29/07/1995,30/07/1995

E1408-Situation report for 23/06/1995,24/06/1995

E1411-Situation report for 04/10/1994,05/10/1994

E1412-Situation report for 08/10/1994,09/10/1994

E1413-Situation report for 04/11/1994,05/11/1994

E1414-Situation report for 03/04/1995,04/04/1995

E1417-Situation report for 27/07/1995,28/07/1995

E1419-Situation report for 31/07/1995,01/08/1995

See also **Berbic**, 14/09/2007-T.2414; **Alija**, 16/10/2007-T.4218: "It is true, is it not, that only short, summary reports were sent from Kakanj to Sarajevo; brief overviews, that is?"

A. Yes, only the most important things were derived from the corps reports. A summary was drafted and sent to these addresses".

¹⁵⁵⁷ **Berbic**, 14/09/2007-T.2426, T.2372

(i) Main Staff Administrations

813. The Decision on the Organisational Scheme of ARBiH of 24 October 1994 specified which Administrations would form part of the Main Staff: the Intelligence Administration, Morale Administration, Military Security Service Administration, Administration for Personnel and Legal Affairs, Logistics Administration, Finance and Army Development Planning Administration, Military Education Administration, Inspection Department, and Military Legal Office of the ARBiH.¹⁵⁵⁸

814. On 16 February 1994 the ARBiH Army Staff and the Administrations linked to combat activities were transferred to KM Kakanj.¹⁵⁵⁹

815. On the basis of the views and instructions of the Presidency, on 18 October 1994 Delic issued an order on the reorganisation of ARBiH.¹⁵⁶⁰ He ordered a series of measures aimed at more effective command and control. This included the organisation of the Administrations which were part of the Main Staff. Item 11 of this order transferred the authority to command and control the Main Staff Administrations to the Chiefs of those Administrations:

*“All Administrations shall be organised according to the following principles:
-an administration shall be under the command and control of a CHIEF”.*¹⁵⁶¹

816. In the ‘Regulation on the Internal Structure and Competence of General Staff of ARBiH’ of 24 November 1994 (E619) the Presidency confirmed that the Main Staff Commander could transfer parts of his authorities to his subordinates. Berbic confirmed that Administrative Organs and parts of the SVK located in Kakanj were under the direct control of the Chief-of-Staff and Deputy Commander Hadzihasanovic.¹⁵⁶²

¹⁵⁵⁸ E419,IV/2,p.p.2-3.

¹⁵⁵⁹ E281

¹⁵⁶⁰ E610

¹⁵⁶¹ E610,p.3

¹⁵⁶² E619,p.p.2-3

See also Berbic,14/09/2007-T.2382

(i) Military Security Service (SVB) and SVB Administration

817. The competence and tasks of the SVB are regulated by the ‘Rules of operation for the Military Security Service in the Armed Forces of the RBiH’ issued by the Presidency on 11 September 1992.¹⁵⁶³ These Rules were in force throughout the war.¹⁵⁶⁴ It covered inter alia proceedings against ARBiH members who had committed a crime. The SVB was responsible for the work of the State Security Service in the ARBiH, in charge of preventing all forms of disorder towards the ARBiH.¹⁵⁶⁵

818. The senior officers of the SVB were professionals **through whom unit commanders realised command and control over the military police units**. SVB chiefs in commands and staffs were responsible for combat readiness and the regular use of military police.¹⁵⁶⁶

819. Under the Rules the SVB had three functions: counter-intelligence;¹⁵⁶⁷ security of staff;¹⁵⁶⁸ and military police.¹⁵⁶⁹ One of the tasks was to create conditions for documentation of war crimes and other criminal offences.¹⁵⁷⁰

820. Within the framework of military police tasks the SVB was to professionally direct the work of authorised members of military police in pre-trial proceedings and to propose the use of military police units in the execution of their intended tasks in combat actions.¹⁵⁷¹

821. The Decree Law on District Military Courts from 13 August 1992 provides: “Commanders (senior officer) of a military unit or a military establishment shall take

¹⁵⁶³ E585

¹⁵⁶⁴ Vuckovic, 07/11/2007-T.5139

¹⁵⁶⁵ E585, Art. 1/1, p.3

¹⁵⁶⁶ E585, Art. 1/2, p.3

¹⁵⁶⁷ E585, Art. 2/5, p.4

¹⁵⁶⁸ E585, Art. 2/6, p.4

¹⁵⁶⁹ E585, Art. 2/7, p.5

¹⁵⁷⁰ E585, Art. 2/5-b., p.4

¹⁵⁷¹ E585, Art. 2/7-e-f., p.5

measures to prevent the perpetrator of a criminal offence prosecutable ex officio from going into hiding or escaping...”.¹⁵⁷² The Prosecution relies on this Decree and the incorrect translation of the Bosnian words “starjesina”,¹⁵⁷³ to prove that a unit commander was responsible for filing a criminal report for a criminal act, including a war crime.

822.The SVB Rules are completely clear in this regard. In matters concerning criminal offences within the jurisdiction of military courts and which are prosecuted ex officio, under the conditions prescribed by the law on criminal procedure, authorised officers of the SVB may arrest a suspect and bring him immediately before an investigating judge of the military court or nearest military command or unit.¹⁵⁷⁴

823.The role of the SVB in criminal proceedings was regulated in detail by the Rules. When there was reasonable suspicion that a criminal offence triable by military courts had been committed SVB officers, in the command of the brigade or a corresponding or higher ranking officer, **had to gather the necessary information and submit a criminal report to the competent military prosecutor’s office.**¹⁵⁷⁵

824.Under the Rules, the work and powers of the Internal Affairs organs (MUP) as laid down by the Criminal Procedure Code (CPC) also related to the conduct of and action taken by authorised officers of the SVB in pre-trial and criminal proceedings within the framework of their competence.¹⁵⁷⁶

825.Article 151 of the CPC obliged the MUP to initiate an investigation if there were reasonable doubts to suspect that a crime, such as murder, may have been committed:

¹⁵⁷² E25,Art.27, p.8

¹⁵⁷³ ‘Starjesina’ is a broader term than ‘commander’. It includes a commander but also other senior officers in responsible positions in ARBiH units. The Defence brought to the Trial Chamber’s attention this word: Hearing,01/11/2007-T:5009. PW4 explained that the most adequate expression for the term would be the ‘Assistant Commander for Security Affairs’.

¹⁵⁷⁴ E585,Art.32,p.8

¹⁵⁷⁵ E585,Art.40-41,p.p.9-10

See also Vuckovic,07/11/2007-T.5169;Mujezinovic,23/11/2007-T.6075-6079

¹⁵⁷⁶ E585,Art.39,p.9

*“if there are reasonable grounds to suspect that a crime prosecuted ex officio has been committed, Internal Affairs organs must take necessary measures to find the perpetrator of the crime, ensure that the perpetrator or accomplice do not go into hiding or flee, find and secure the traces of the crime and objects that might be used as evidence as well as gather all information that might be of use to the successful conducting of criminal proceedings”.*¹⁵⁷⁷

826. Such was the work and responsibilities of the Internal Affairs organs (MUP), as regulated by the CPC, which were transferred from MUP to SVB organs in a situation where the perpetrators of crimes were members of the Army.

827. According to the Rules and witness testimony, the SVB had a duty to investigate criminal acts and take appropriate measures, rather than simply reporting the matter to superior commands. The SVB organs did not need any permission to conduct an investigation and file a criminal report when they had information about an alleged crime and perpetrator.

“Q. Therefore, it is not incumbent upon them to write information about criminal offences. It is incumbent upon them to collect evidence and to submit a criminal report to the competent prosecution service.

A. This is correct.

Q. This is the original competence deriving from this rule on the operation of Military Security Service and for that they do not need any special approvals. Is that so?

*A. This is so”.*¹⁵⁷⁸

828. When they obtained information through an intercepted fax¹⁵⁷⁹ or in any other way, which indicated that a crime may have been committed, they had a duty to investigate. It had nothing to do with the Main Staff Commander. He did not have a duty to know about this or to approve such an investigation. On the contrary, the SVB organs at all levels were obliged to propose adequate measures to their superior commanders which

¹⁵⁷⁷ E49-Excerpt from SFRY Criminal procedure code, Art. 151, p. 4

¹⁵⁷⁸ Vuckovic, 07/11/2007-T.5170

¹⁵⁷⁹ E669-3K SVB Intelligence report, 16/09/1995

would be carried out within the system of command and control,¹⁵⁸⁰ including the use of military police.¹⁵⁸¹

(ii)SVB Operative Actions

829.The SVB Administration, whose chief in 1995 was General Jasarevic, issued instructions and orders to the SVB at the corps levels. The Chief of the Administration **did not need an approval to issue instructions and orders** to his subordinate organs and units.¹⁵⁸² The only time when the SVB Administration Chief needed the **approval** of the Main Staff Commander was when the SVB was supposed to apply special methods and sources which encroached upon the constitutionally guaranteed rights of citizens. This applied only in the situation when the SVB Administration would **propose** the use of special methods, such as wire-tapping, surveillance etc.¹⁵⁸³

830.The approval of the Main Staff Commander was necessary only with regard to the use of special methods and means used by the SVB (secret searches, telephone/fax intercepts, room-bugging), as well as operative actions which included a wide range of measures, including above-mentioned special methods and means.¹⁵⁸⁴ When carrying out operative actions, the SVB cooperated with the SDB (State Security Service).¹⁵⁸⁵

831.The evidence shows that whenever the SVB proposed the use of special methods and means and the introduction of operative actions, Delic gave his approval.¹⁵⁸⁶

¹⁵⁸⁰ **E585**,Art.2/6-b:“*Following conclusions from the assessment of the security situation, it shall undertake measures within the range of its competence, instigate other organs of commands and headquarters to undertake adequate measures, and propose t its superior officer suitable measures for the system of command and control*”,p.4

¹⁵⁸¹ **E586**-Rules for the work of the military police of the ARBIH,Art.8,p.5

See also **Zilkic**, 13/11/2007-T.5435-5436;**Mujezinovic**,23/11/2007-T.6059-6062

¹⁵⁸² **Vuckovic**,07/11/2007-T.5162

See also **E706**, Vuckovic Rule92ter statement,para.31,p.6

¹⁵⁸³ **Vuckovic**,07/11/2007-T.5162

See also **E585**,Art.10,p.5

¹⁵⁸⁴ **Vuckovic**,07/11/2007-T.5164-5166

¹⁵⁸⁵ **Vuckovic**,07/11/2007-T.5129

¹⁵⁸⁶ **E241**-GS Security Administration Request,06/12/1993

E242-GS Security Administration Results of IR,06/04/1994

E243-3K SVB Information,16/07/1994

E244-GS ARBIH Order for Operative action Trebevic4,22/03/1994

E282-GS ARBIH order for Operative actions Trebevic and Trebevic2,25/10/1993

E656(under seal)- [REDACTED]

E902(under seal)- [REDACTED]

(iii) Management of the SVB

832. The SVB had a double chain of command. SVB members were immediately subordinate to the Assistant Commander for Security in the command, as well as answering to the unit commander.¹⁵⁸⁷ However, in professional terms, the senior SVB officer in the superior command controlled the SVB officer at the subordinated level of command.¹⁵⁸⁸

833. In professional terms the SVB Administration controlled, directed and coordinated the work of the SVB.¹⁵⁸⁹ Article 46 provided:

“The Security Administration shall be headed by the chief who shall be responsible to the Chief of the Main Staff of the Armed Forces for the organization of the work and for the legal and proper carrying out of work within the competence of the Security Administration, and to the Minister of Defence for questions pertaining to the role and responsibility of the Ministry of Defence for the Security of the armed forces of the Republic”.

834. In the order to reorganise the ARBiH of 18 October 1994, in paragraph 11 General Delic orders that an administration shall be **under the command and control** of a Chief.¹⁵⁹⁰

B.7(3) Requirements**1. Effective Control: Superior-Subordinate Relationship**

(a) Perpetrators must be identified at least as part of an identifiable group (Paragraphs 24, 25, 40 and 48 of Indictment)

E661(under seal)- [REDACTED]

See also **PW4**,31/10/2007-T.4863-4864

¹⁵⁸⁷ **E585**, Art. 8-9, p.5

¹⁵⁸⁸ **E585**, Art. 11, p.5

See also **Vuckovic**, 07/11/2007-T.5137-5138

¹⁵⁸⁹ **E585**, Art. 45, p.10-11

¹⁵⁹⁰ **E610**

835. The Trial Chamber must face the reality that the Prosecution has not proven that members of an identifiable group committed the crimes in question. Concerning paragraphs 24 and 25 of the Indictment, the Prosecution simply presumes that the crime was committed by members of the Poljanice mujahedin group. It also presumes that all members of this group were incorporated into the EMD at its formation. As explained,¹⁵⁹¹ the evidence does not support either of these presumptions.

836. Concerning paragraphs 40 and 48, the Chamber will also have to face the fact that Prosecution witnesses, former EMD members, rejected the claim that the 52 VRS members were captured by the EMD, and there is no clear evidence to this effect. The testimony of Zilkic, a non-credible witness, and his alleged report to the 35 Division stand alone against the weight of all other evidence.

837. With respect to the allegations from paragraph 40 of the Indictment, the Prosecution has not proven the identity of one single person involved in the alleged kidnapping and murder of 52 VRS members, on the basis of which it would be possible to determine membership in an “identifiable group.”¹⁵⁹² In fact, the Trial Chamber has heard evidence to the contrary.¹⁵⁹³

838. The Prosecution’s failure to establish who the killers were makes it almost impossible for the Trial Chamber to find effective control between Delic and the perpetrators. In *Celebici, Kunarac, Kvočka and Kordic*, the Chambers made it clear that the Prosecution had to establish a link of effective control between the alleged perpetrators and the Accused and that it should do so at the time when the crimes were being committed. Effective control must be exercised over persons who are alleged to have committed the offences.¹⁵⁹⁴

¹⁵⁹¹ See section III, C, D.

¹⁵⁹² See *Oric*, TJ, para. 311; *Blaskic*, AJ, para. 217.

¹⁵⁹³ See section VII, 2 (a)(i).

¹⁵⁹⁴ See also *Stakic* TJ, para. 459.

839. The identification of the alleged perpetrators at least as members of an identifiable group is, therefore, of crucial importance in establishing the Accused's effective control over them.¹⁵⁹⁵ The Prosecution's failure in that regard would, thus, be highly relevant to the inference which the Chamber is asked to draw in relation to the (non-)existence of effective control on the part of Delic over the perpetrators of the offences described in paragraphs 24, 25, 40 and 48 of the Indictment.

840. The identification of the alleged perpetrators is of critical importance because of the requirement that the Accused must be shown to have shared their *mens rea*.

841. In a case involving circumstantial evidence, the Prosecution must establish that the inference sought to be drawn is the only reasonable inference to be drawn from the evidence. The Prosecution has failed to meet that standard in relation to the above-mentioned charges. Moreover, such an inference is not the same as an assumption. In the present case, based on the evidence in relation to these charges, there is a reasonable inference to be drawn that the killers were members of other Arab groups present in the area at the time.¹⁵⁹⁶ That inference, being reasonable and favorable to the accused, must be drawn in light of the principle *in dubio pro reo*.

(b) Effective control must exist at time when crimes were committed (paras. 24 and 25 of the Indictment)

842. The Appeals Chamber held that there must exist a perfect temporal coincidence between the time when crimes forming the basis of the charges were committed by the alleged perpetrators and the time when the superior-subordinate relationship existed. Therefore, crimes committed prior to a commander's assumption of command cannot be charged against him.¹⁵⁹⁷

¹⁵⁹⁵ *Kvočka TJ*, para.412.

¹⁵⁹⁶ *See section V, C (2)*.

¹⁵⁹⁷ *Hadzihasanovic* Article 7(3) Appeals Decision, paras.37, 51.
Kvočka AJ, paras.251,252.

843. The Prosecution must establish that, at the time when the crimes were committed, the accused was in effective control of the perpetrators. If that fact is sought to be established circumstantially, such inference must be the only reasonable one to be drawn from the evidence. The effective control on the part of the Accused at **that time** must be established beyond reasonable doubt.

844. The evidence has shown that at the time of the 8 June 1993 events, Delic had not yet assumed command over the ARBiH, let alone Mujahedin.¹⁵⁹⁸

(c) Meaning and scope of effective control

845. Article 7(3) requires that, regardless of whether the Prosecution's case is *de jure* or *de facto*, the Accused must be shown to have exercised effective control over those alleged to have committed the crimes;¹⁵⁹⁹ that **he** had "the material ability to prevent offences or punish the perpetrators."¹⁶⁰⁰ It is, therefore, the power to effect, not any result in relation to any matter, but the power and ability to take effective steps to prevent and punish crimes of the superior's subordinates.¹⁶⁰¹ Where there is no effective control, there is no superior responsibility.¹⁶⁰²

846. Effective control means the "capacity and power to force a certain act" upon the persons alleged to have committed the offence.¹⁶⁰³ The power concerns the ability to demand, expect, and actually impose obedience with one's orders. The Appeals Chamber found that the degree of *de facto* authority or powers of control required to entail responsibility pursuant to Article 7(3) is equivalent to that required based on *de jure* authority.¹⁶⁰⁴

¹⁵⁹⁸ See section IV, E (1)(a).

¹⁵⁹⁹ *Bagillishema* AJ, para. 50 and jurisprudence cited.

¹⁶⁰⁰ *Krnjelac* TJ, para. 93; *Bagillishema* AJ, paras. 49-55; *Celebici* AJ, paras. 196-198.

¹⁶⁰¹ *Celebici* TJ, para. 354.

¹⁶⁰² *Celebici* AJ, para. 79, footnote-374

¹⁶⁰³ See *Sadaiche* case, reported in XV LRWTC 175 (1949).

See also IV LRWTC 411, 480 (1950).

¹⁶⁰⁴ *Celebici*, AJ para. 197.

Kordic, TJ para. 416.

847. The power of the commander must be such that there is an expectation of compliance on his part and one of obedience on the part of the recipient of the order. Anything short of that standard, as when one person has to convince, cajole or supplicate the other to act in a certain way, would fall short of effective control. Effective control must, first and foremost, be “effective,” that is “real”,¹⁶⁰⁵ as opposed to merely being theoretical and potential.¹⁶⁰⁶ It must be exercised over the persons who are alleged to have committed the offences.¹⁶⁰⁷

848. Therefore, the Trial Chamber must delve into “the reality of the authority of the accused” and show that his powers are “real” for criminal responsibility to be attached to them.¹⁶⁰⁸ The mere appearance of such powers does not satisfy that standard.¹⁶⁰⁹

(d) Effective control must be established beyond reasonable doubt

849. The Chamber must be satisfied that all acts of an accused upon which the Prosecution relies to establish effective control are an “unequivocal exercise of superior authority”.¹⁶¹⁰ If they are reasonably consistent with the exercise of authority falling short of command authority, or if any other interpretation inconsistent with the Prosecution’s theory is reasonably open to the Chamber, that interpretation must be preferred.¹⁶¹¹

(e) Prosecution’s theory: “de jure commanding power by reason of position in a military structure”: (the Commander of the Main Staff/General Staff)

¹⁶⁰⁵ *Kordic*, TJ para.422.

¹⁶⁰⁶ *Celebici*, AJ para.197 (“it is necessary to look to effective exercise of power or control”).

¹⁶⁰⁷ *Stakic*, TJ par 459; *Celebici*, AJ para.992.

¹⁶⁰⁸ *Kordic*, TJ paras.418,422.

¹⁶⁰⁹ *Kordic*, TJ para.423, referring to the *Karadzic* and *Mladic* “Rule 61 Decision,” para.71, and the requirement of “the effective exercise of those powers” which the accused had per official position.

¹⁶¹⁰ *Celebici*, TJ para.669.

¹⁶¹¹ *Pohl Case*: “every defendant in a criminal case is presumed to be innocent until the prosecution by competent and credible proof has shown his guilt to the exclusion of every reasonable doubt. This presumption of innocence follows him throughout the trial until such degree of proof has been adduced. Beyond a reasonable doubt, does not mean beyond a vain, imaginary, or fanciful doubt, but means that the defendant’s guilt must be fully proved to a moral certainty, before he is condemned. Stated differently, it is such a doubt as, after full consideration of all the evidence, would leave an unbiased, reflective person charged with the responsibility of decision, in such a state of mind that he could not say that he felt an abiding conviction amounting to moral certainty of the truth of the charge.”

850. The Prosecution pleaded the following material facts to show effective control over the alleged perpetrators:

- On 8 June 1993, the day the alleged Maline/Bikosi crimes occurred, Delic assumed the post of Main Staff Commander and, *ipso facto*, the effective control over the Mujahedin.
- As Main Staff Commander, Delic exercised military command and control over all regular ARBiH forces throughout BiH (para.15 of the Indictment).¹⁶¹² According to the Prosecution, all ARBiH units were under the command and control of the Accused. In particular, the units described in paragraph 17 of the Indictment were under his effective control, including the EMD.
- Delic commanded the combat activities during action Proljece II (July 1995) and Operation Farz (September 1995), using the EMD, which was under his effective control, in combat.

851. To prove that Delic exercised effective control over the EMD, the Prosecution relies on limited evidence, mostly indirect orders concerning the Detachment. The Prosecution has not produced a single order by the Accused to the EMD directly. Not only is the Prosecution's theory not supported by the facts, but it represents a clear error in law.

852. Superior authority requires the existence of a *de facto* chain of command (up and down the chain), between the accused and the alleged perpetrators,¹⁶¹³ at the time the crime is committed. Effective control does not presuppose formal authority to issue binding orders or disciplinary sanctions, as the relevant threshold depends on the factual situation, *i.e.*, the ability to maintain or enforce compliance of others with certain rules and orders.¹⁶¹⁴ Whether this sort of control is directly exerted upon a **subordinate** or mediated by other **sub-superiors** or **subordinates** is immaterial, as long as the

¹⁶¹² The Prosecution erroneously claims that Delic had overall authority and responsibility for the functioning of ARBiH.

¹⁶¹³ *Celebici*, TJ para.647.

¹⁶¹⁴ *Oric*, TJ para.311.

responsible **superior** would have means to prevent the relevant crimes from being **committed** or to take **efficient** measures for having them sanctioned.¹⁶¹⁵

(f) Whether de jure power over subordinates creates a presumption of effective control

853. In the PPTB, the Prosecution asserts:

*“In general, the position of de jure power in itself may not suffice for a finding of command responsibility if it does not manifest itself in effective control, although a court may presume that possession of de jure power prima facie results in effective control unless proof to the contrary is produced.”*¹⁶¹⁶

854. However, in *Celebici* the Appeals Chamber underscored that effective control is the ultimate standard and that a showing of effective control is required in cases involving both *de jure* and *de facto* superiors.¹⁶¹⁷ Even when a superior is found to have *de jure* authority over his subordinates, the Prosecution still has to prove beyond reasonable doubt that this superior exercised effective control over his subordinates.¹⁶¹⁸ By holding that “a court may presume that position of [*de jure*] power *prima facie* results in effective control”, the Appeals Chamber in *Celebici* did not reverse the burden of proof. It simply acknowledged that the possession of *de jure* authority may constitute a *prima facie* reasonable basis for inferring that an accused has effective control over his subordinates. Thus, the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates always rests with the Prosecution.¹⁶¹⁹

¹⁶¹⁵ *Oric*, TJ para.311.

¹⁶¹⁶ PPTB, para.19.2, based on: *Galic* TJ, para.173; *Celebici*, AJ para.197; *H&K*, TJ paras.79,1406.

¹⁶¹⁷ *Celebici*, AJ paras.196,256 (“the concept of effective control over a subordinate – in the sense of material ability to prevent or punish criminal conduct, however that control is exercised – is the threshold to be reached in establishing a superior-subordinate relationship for the purpose of Article 7(3) of the Statute.”).

Celebici, AJ para.266(“[C]ustomary law has specified a standard of effective control.”); *Halilovic*, AJ para.59

¹⁶¹⁸ Depending on the circumstances of the case, a finding that an accused had *de jure* authority will not necessarily lead to the conclusion that he had effective control over his subordinates. In *Blagojevic*, for example, the Trial Chamber found that Vidoje Blagojevic was in command and control of all units of the Bratunac Brigade. This conclusion reflected its assessment of his *de jure* authority over all members of the brigade, including Momir Nikolic (*Blagojevic and Jokic*, TJ para. 419). The Trial Chamber, however, concluded that in light of the actual facts on the ground, Vidoje Blagojevic lacked effective control over Momir Nikolic (*Blagojevic and Jokic*, TJ para.795).

Halilovic, AJ para.85, finding that “*de jure* power is not synonymous with effective control” and that “the former may not in itself amount to the latter.”

¹⁶¹⁹ *Hadzihasanovic*, AJ para.21.

(g) De facto factors undermining the chain of command and exercise of effective control in AOR of 35Division.

855. From its inception until the end of the war, the ARBiH suffered from many problems caused by the lack of resources necessary for the chain of command and control to function normally.¹⁶²⁰ These problems were particularly pronounced in the AOR of the 35Division and one of its units, the 328Brigade.¹⁶²¹ During 1994 and 1995, the influence of religious and civilian structures in this area was so significant that the executive board of the SDA¹⁶²² requested that the command of OG-Bosna remove its commander, Refik Lendo.¹⁶²³

856. On 16 August 1995, the SVB Administration reported that the relations between the 35Division command and civilian authorities had deteriorated to the point where the political structures in Zavidovici had asked for the removal of the 35Division Commander, Hasanagic.¹⁶²⁴ The civilian authorities openly praised the successes of the EMD and the Asim Camdzic company, while they undermined the achievements of ARBiH units.¹⁶²⁵

857. Civilian authorities in Zavidovici considered the 35Division to be a burden for that area. *“You could feel this in a thousand different ways,”* said Hajderhodzic.¹⁶²⁶

858. Hasanagic was obviously aware of the civilian authorities’s influence on the EMD and Asim Camdzic unit, since he appealed to municipal officials to solve the problems

¹⁶²⁰ See section II, C(2)

¹⁶²¹ See section VII, B (1)(g).

¹⁶²² “Democratic Action Party”, the party in power during the war in BiH.

¹⁶²³ E742-Special Information No.87,16/08/1995

¹⁶²⁴ *Id.*

¹⁶²⁵ E509-3Corps SVB Information,12/08/1995,p.2, Imamovic, 15/10/2007-T.4062, commenting on E509, confirmed that the document reflects the actual situation in the field at the time.

E742,p.2;E810- 35Division SVB Information,24/10/1995;E1235 –3Corps SVB Information,06/03/1995,p.1: *“They are treated better than the other members of the Army of BH, because the SDA, the party president and the president of the municipality help them and meet their requirements. They are often their guests.”*

¹⁶²⁶ Hajderhodzic,08/10/2007-T.3777,commenting on E509.

with these units.¹⁶²⁷ As a consequence of the influence of civilian authorities on the appointment of senior officers in the 35Division and the 328Brigade, responsible positions in these units were occupied by officers who did “*not meet even the bare minimum of moral and technical requirements*” necessary for these positions.¹⁶²⁸

859.The 35Division became divided,¹⁶²⁹ which directly undermined the system of RiK in its AOR. The events of July and September 1995, which are the subject of the Indictment, relate specifically to the AOR of the 328Brigade, subordinated to the 35Division. There is ample evidence to show that the system of RiK did not function properly in this area due to serious mistakes in the work of senior officers in the brigade and its battalions. Following the loss of defence lines, serious problems occurred in the 328Brigade due to the mistakes of company commanders in the 1, 2, 4, and 5Battalions.¹⁶³⁰

860.On 29 July 1995, the 3Corps SVB reported that the system of RiK had completely failed and that the commands of the 328Brigade and its battalions were not in control of the situation. Soldiers were left to their own devices, not knowing what was going on around them.¹⁶³¹ On 10 August 1995, the 3Corps SVB again reported that the system of RIK was not functioning within the 328Brigade, and that soldiers were being pro-forma recorded in this unit.¹⁶³² Commander Zilkic, either did not impose disciplinary measures, or those measures were not in accordance with the rules.¹⁶³³

861.A correct assessment of the character and role of the 328Brigade Commander is of crucial importance in this case.¹⁶³⁴ Evidence clearly shows his connection with the EMD

¹⁶²⁷ See section VII, B (3)(o)

E593-35Division Information,19/07/1995.

¹⁶²⁸ **Imamovic**,15/10/2007-T.4078,commenting on **E596**-35Division Official Note,17/08/1995.

¹⁶²⁹ **Imamovic**,15/10/2007-T.4079.

¹⁶³⁰ **E578**-35Division SVB Review of the situation in 35Division,23/08/1995.

¹⁶³¹ **E778**-3Corps SVB Information,29/07.1995, p.3: “*From everything above-stated, it can be concluded that the RIK system completely failed, the Brigade and Battalion Command was not in control of the situation on the ground, so the fighters were left to take decisions by themselves, not knowing what was going on around them.*”

¹⁶³² **E811**-3Corps SVB Information,p2.

¹⁶³³ *Ibid.*,p.8

¹⁶³⁴ Section VII, C (2)(b)

and his preference for religious units.¹⁶³⁵ At the time, Zilkic's cousin was Chief of Zavidovici Municipality.¹⁶³⁶ Therefore, he was close to the civilian authorities which supported the EMD and Zilkic's religious unit Asim Camdzic.

861. Zilkic's conduct was unprofessional and contrary to military rules. On 17 August 1995, having analyzed the situation in the 328 Brigade, the 35 Division SVB concluded that:

*“The chain of RIK had totally failed, that there was no inspection of the implementation of ordered measures and activities, that there were very marked problems of false reporting, especially with regard to the number of troops engaged in brigades, and that there was no chain of RIK between the battalion command and company and platoon commanders.”*¹⁶³⁷

862. On 10 August 1995, the 3 Corps Commander ordered the 35 Division Commander to remove the noted weaknesses.¹⁶³⁸ On 17 August 1995, the 35 Division SVB pointed to the problem of false reporting in the 328th Brigade¹⁶³⁹ which persisted during Operation Farz.
1640

863. On 15 August 1995, the 328 Brigade submitted to the 35 Division a report stating that the observed weaknesses within the brigade had been removed.¹⁶⁴¹ This was far from the truth. Contrary to the explicit order of the 3 Corps command of 12 August 1995 about the intended use of military police,¹⁶⁴² the 328 Brigade command continued to use its military police in combat. Zilkic accepted that the military police “were to serve as a protection

¹⁶³⁵ **E810**, p.2: “Fuad Zilkic, the commander of the 328th bbr, is highly respected by the unit [Asim Camdzic]. [...] Members of this unit were involved in several incidents related to enforcing Muslim customs in the municipality. These incidents happened when the unit linked up with the El Mujahedin unit.”

¹⁶³⁶ **Zilkic**, 09/11/2007-T.5358.

¹⁶³⁷ **E596**

¹⁶³⁸ **E812**-35 Division Report on the removing of observed weaknesses, 16/08/1995, containing the 328th Brigade Report on the elimination of weaknesses observed during the inspection of the 328th bbr area of responsibility, 15/08/1995

¹⁶³⁹ **E596**

¹⁶⁴⁰ **E1230**-3 Corps Wartime Diary, kept during Operation Farz, relevant entry from 24/09/1995, p.2.

¹⁶⁴¹ **E812**, pp.12-16.

¹⁶⁴² **E587**-3 Corps Order, 12/08/1995

unit,” as had been ordered by his superior. Instead, he used it in combat during the operation.¹⁶⁴³

864. Consequently the system of RiK did not function in the 328 Brigade AOR. This was the area in which the events from July and September 1995 took place.

865. The close ties between the 328 Brigade commander and the Mujahedin and their supporters,¹⁶⁴⁴ resulted in the fact that the information on events concerning the mujahedin, was either not forwarded or was inaccurate. Zilkic’s Assistant Commander for Security did not remember the documents related to Serb victims from Farz.¹⁶⁴⁵ If he had indeed received these documents, as claimed by Karahasanovic,¹⁶⁴⁶ it is very unlikely that he would not recall seeing them, given the specific nature of the events and the large number of documents.

866. The fact that, in just seven days, the 35 Division command changed five forward command posts also had a negative effect on the flow of information from subordinate units towards the division.¹⁶⁴⁷ Therefore, there is reasonable doubt that the 35 Division could regularly receive reports in those conditions, even if such reports were sent to it.

2. Effective Control: EMD Formation

(a) RBiH authorities – reasons for EMD formation

867. Long before the arrival of Delic as Main Staff Commander, mujahedin were active in Central Bosnia, and they presented a problem for RBiH authorities. Delic ordered that

¹⁶⁴³ **Zilkic**, 13/11/2007-T.5432-5433

¹⁶⁴⁴ **E1384**-Agency for Investigation and Documentation Analysis, 24/06/2002, stating that Asim Camdzic unit is under Zilkic’s command

¹⁶⁴⁵ **E931-92bis** Statement of Malicbegovic, 21/10/2007, p.15, para.122.

¹⁶⁴⁶ **Karahasanovic**, 04/04/2008-T.8137-8138

¹⁶⁴⁷ **E501**-35 Division Order, 11/09/1995,

E806-35 Division Order, 12/09/1995,

E502-35 Division Order, 13/09/1995,

E503-35 Division Order, 16/09/1995,

E504-35 Division Order, 17/09/1995.

these Mujahedin groups (guerilla) be sent to Igman and placed under the ARBiH control or be disarmed.¹⁶⁴⁸ This order was not followed.

868. The Prosecution claims that, on 23 July 1993, Delic authorized Sakib Mahmuljin to negotiate with the Mujahedin with regard to the incorporation of a group of Mujahedin into the 3Corps.¹⁶⁴⁹ Although the 3Corps 'Proposal for the formation of a detachment of foreign citizens',¹⁶⁵⁰ refers to this authorization, the authorization itself is of questionable authenticity.¹⁶⁵¹ Moreover, it pertained specifically to negotiations with the mujahedin from Zenica. Prosecution witness Awad shed light on the role of Mahmuljin in the negotiations with the mujahedin:

*"...And let me tell you sincerely, we only trusted the man whose name was Sakib Mahmuljin as the general of the army, as the commander. We only trusted him because he was a Muslim and somebody who was sent by the president, the late Alija Izetbegovic as his man to Zenica."*¹⁶⁵²
[...]

*There was never any mention of Rasim Delic giving any authorisation to him. At that meeting, it was stated that this person, Sakib Mahmuljin, had been sent by President Alija Izetbegovic.*¹⁶⁵³

869. Witness Loncaric testified that it was President Izetbegovic who decided on Mahmuljin's departure to Zenica.¹⁶⁵⁴

(b) EMD and the Order of 13 August 1993

¹⁶⁴⁸ **E163**-GSARBiH Order to 3Corps, 16/06/1993.

¹⁶⁴⁹ **E271**-GSARBiH Authorisation to Sakib Mahmuljin, 23/07/1993.

¹⁶⁵⁰ **E272**-3Corps Proposal for the formation of a detachment of foreign citizens, 12/08/1993.

¹⁶⁵¹ Delic's Chef de Cabinet, witness Softic, stated that he has never seen **E271**, and that the signature on the document is strange (28/08/2007, T.1814-1816). Softic further pointed out that the document does not bear his initials, and it should since such a document would have been prepared in Delic's Cabinet; that nothing on the face of the document suggests that it was either sent or received by anyone; that the contents of the Authorisation does not correspond to the writing style of a professional officer such as Delic (T.1857-1859), and that Mahmuljin was not a member of the 3Corps Command at the time (T.1867-1869).

¹⁶⁵² **Awad**, 10/02/2008-T.206.

¹⁶⁵³ **Awad**, 10/02/2008-T.218.

¹⁶⁵⁴ **Loncaric**, 10/04/2008-T.8315-8316.

870. It is crystal clear from the evidence why Delic issued the order on the formation of the EMD on 13 August 1993.¹⁶⁵⁵ Sometime in mid-May 1993, the international community, through General Morillon¹⁶⁵⁶ and President of Croatia, Tudjman, insisted that all foreigners in BiH be placed under the control of ARBiH.¹⁶⁵⁷ The decision regarding this was made by President Izetbegovic. [REDACTED].¹⁶⁵⁸

871. [REDACTED] Izetbegovic gave Delic the task of putting the Mujahedin in a “sura,” that is to say in ‘the system,’ under the ARBiH control.¹⁶⁵⁹

872. The Order on the Formation of EMD (E273), issued by Delic, flowed from the decision and authority of his superior, the President and the ARBiH Supreme Commander, Izetbegovic. [REDACTED]¹⁶⁶⁰

873. The Order on the Formation of the EMD provided that the detachment should be replenished with “foreign volunteers.” It did not allow for the recruitment of local soldiers.¹⁶⁶¹

¹⁶⁵⁵ E273-GSARBiH Order for the formation of the EMD, 13/08/1995.

¹⁶⁵⁶ UNPROFOR commander at the time.

¹⁶⁵⁷ PW3, 22/08/2007-T.1587: “Q. So it is true, then, that the International Community insisted on this; is that right?”

A. Yes.

Q. And it did so through President Tudjman as well; you knew about that, did you not?

A. Yes.

Q. Rasim Delic was not in a position as commander of the Supreme Command Staff to decide otherwise than he had been ordered to do by Izetbegovic as his superior; isn't that right?

A. Yes, that's right.”

¹⁶⁵⁸ [REDACTED]

¹⁶⁵⁹ [REDACTED]

Divjak, Delic's other deputy, explained that the problem of foreigners was discussed at a Main Staff meeting, 11/09/2007-T.2177: “After a discussion that lasted for about an hour, all the present proposed to Commander Delic that the problem was these people, so we are not talking about any unit. According to the information that we had received, this was no unit. So that we were to discuss this problem with the president of the Presidency, Mr. Izetbegovic, in order for this question of this group of foreign people to be resolved.”

¹⁶⁶⁰ [REDACTED]

¹⁶⁶¹ E273, p.1: “Replenish the ‘El Mujahedin’ detachment with foreign volunteers currently on the territory of the 3 Corps zone of responsibility.”

E577-35 Division SVB document “Transfer of members of the 328th Mountain Brigade and 4th Manoeuvre Battalion into the El Mujahedin Detachment, 06/08/1995.

E590-3 Corps Order to EMD to return servicemen, 09/08/1995.

874. However, the real founders of the detachment, those who in fact exercised effective control over it,¹⁶⁶² had their own reasons to form it, including the spreading of Dawa,¹⁶⁶³ and gaining the support of the local fighters and population.¹⁶⁶⁴ They wished to resolve the status of local fighters who had already joined them, as well as of those they wanted to recruit, so that their families would have medical and other support.¹⁶⁶⁵

875. Many witnesses testified that the 3Corps considered those ARBiH soldiers who joined the EMD as deserters, and that the EMD admitted these soldiers in contravention of the prescribed procedure. Husic said:

“We considered those individuals deserters. The military police brought them in detention. Some of them were sanctioned, and they were kept in military detention. But I can't tell you the exact numbers, but there were criminal reports also raised against some of them. And you can check this in the documents of the brigade [...]

JUDGE LATTANZI:[...]They were arrested -- like they went to the detachment to take those men out, to put them in detention, to punish them?

*A.No, that would have been very dangerous.*¹⁶⁶⁶

876. However, in spite of the orders on the return of Bosnians who had joined the EMD, and the order explicitly prohibiting further replenishment of this unit with either foreigners or Bosnians,¹⁶⁶⁷ the detachment continued to admit local and foreign fighters until the end of the war. PW9 said:

Q. [...] Did anyone in the detachment actually know that any further recruitment of any sort of members, domestic or foreign, to the El Mujahedin Detachment was, in fact, suspended?

¹⁶⁶² See section VIII, B (3)(m)(n).

¹⁶⁶³ E677-3Corps SVB Information, 17/04/1995,

PW9, 15/11/2007-T.5622-5623.

¹⁶⁶⁴ Halim Husic, 11/03/2008-T.7305-7306; Begovic, 12/07/2007-T.506.

¹⁶⁶⁵ Awad, 08/02/2008-T.37.

¹⁶⁶⁶ Halim Husic, 13/03/2008-T.7510-7512; PW11, 30/11/2007-T.6410.

Imamovic, 11/10/2007-T.3979, commenting on E577: “As the document states, this is willful abandonment of units, no prior approval from appropriate officers, no signed documents signed "Order" telling them to actually do that.”

Hubo, 17/03/2008-T.7667-7668, commenting on E590.

¹⁶⁶⁷ E591-3Corps SVB Request for a list of EMD members, 22/04/1995: “Upon order of the 3Corps Commander, staffing of the ‘El Mujahidin’ unit was limited and further admittance of fighters was suspended, both from abroad and our citizens.”

A. Yes, that was a well-known fact. I, myself, saw the order at the time it was issued.

Q. So was this order complied with?

A. New members were being recruited to the very last day of the detachment existence, so the order was not complied with.¹⁶⁶⁸

877. Awad explained exactly what the EMD and its real leadership had in mind when they agreed to be incorporated in the 3Corps. They never considered they should accept the regular ARBiH chain of command. Rather, they wished to decide themselves which ARBiH commander they would trust. Awad stated:

“[...] So it was not a decision for us to have to obey everything, but the decision was that those who are in charge of the army, the army commanders, the unit chain of commanders, were people that we did not have absolute confidence in, absolute trust, because they could betray us...”¹⁶⁶⁹

878. It is clear from the testimony of Awad and other witnesses that the document concerning the EMD's command structure at the formation of the detachment, which the EMD sent to the 3Corps,¹⁶⁷⁰ and the information regarding its members, did not reflect the real situation in this unit.¹⁶⁷¹

(c) EMD did not accept the insignia, rules and regulations of RBiH and its army

879. Dr. Paul Cornish:

“... Well, I think to mark its, to show its presence within the system, at the broadest level, the unit might be expected to wear the standard uniform. It might wear a badge of -- a cap badge. It might wear shoulder flashes, as they're known, to show that it is part of, not just that unit, but part of the bigger formation or structure to which it belongs. So there would be a shoulder flash to show that are you part of battalion A and part division 1, and so on. Then there will be, as well as an uniform and insignia, there would be flags and so on.”¹⁶⁷²

¹⁶⁶⁸ PW9, 16/11/2007-T.5681-5682, commenting on E591.

¹⁶⁶⁹ Awad, 10/02/2008-T.205.

¹⁶⁷⁰ Awad, 08/02/2008-T.39-40.

¹⁶⁷¹ Awad, 09/02/2008-T.173, commenting on E67: “Q. Do you agree then that this document does not reflect the real state of affairs and relationships within the detachment on the basis of what was said about you?”

A. Yes. I even see some names, some companies. That certainly wasn't like that”.

¹⁶⁷² Cornish, 15/04/2008-T.8543.

880.EMD members and its commanders did not wear the ARBiH insignia.¹⁶⁷³The EMD did not wear uniforms,¹⁶⁷⁴ and they did not accept or use ARBiH military identification documents. Sljuka said:

*“... Well, you could not stop and ask an ID of a person who did not have regular military documents, so if an MP were to stop somebody to determine whether a person is on a sick leave or is deserting or is on his rest-and-recreation time, this was possible with those -- with regular soldiers, but this could not be done with the El Mujahedin Detachment members...”*¹⁶⁷⁵

881.The EMD had its own stamp and symbols,¹⁶⁷⁶ and it only used the ARBiH stamp for the purposes of its Bosnian members.¹⁶⁷⁷ The EMD never accepted the ARBiH symbol and flag.¹⁶⁷⁸ It used its own flag.¹⁶⁷⁹ Moreover, EMD members showed disrespect for the ARBiH flag, making it clear that this was not their flag, that it should be burnt, and that the ARBiH was not their army.¹⁶⁸⁰

882.The Defence Ministry and the Municipal Secretariats of National Defence (OSNO) were the RBiH state organs responsible for the mobilization and replenishment of

¹⁶⁷³ **PW2**,19/07/2007-T.885-886:“*Q.It is true, is it not, that the detachment, throughout its existence, refused to wear the BH Army insignia? What I mean, I refer to the fleur-de-lys symbol.*

A. Well, the Command Staff and the Arabs, they didn't want to wear them, but some Bosniaks who had perhaps brought them over from their original units, they may have worn them. But they were not generally worn.

Q.The record says that "they were not generally worn," but what you actually said is they were not worn officially?

A. Yes, that's right.

Hasanagic,26/09/2007-T.3129;**Sehic**,05/11/2007-T.5087;**PW9**,16/11/2007-T.5746.

¹⁶⁷⁴ **Hasanagic**,27/09/2007-T.3182.

¹⁶⁷⁵ **Sljuka**,22/10/2007-T.4371.

¹⁶⁷⁶ **Awad**,08/02/2008-T.38-39,

E1386-EMD Bulletin sent to ICI Milan,05/05/1992,

E1388-Fax from EMD to ICI,12/04/1995,

E1395-EMD Bulletin sent to ICI Milan,12/09/1995.

¹⁶⁷⁷ **PW9**,16/11/2007-T.5746-5747.

¹⁶⁷⁸ **E116**-Photoboard of military insignia.

¹⁶⁷⁹ **PW2**,19/07/2007-T.886, commenting on **E128**-Video of EMD flag.

¹⁶⁸⁰ **E592**-3Corps SVB Daily Report,10/09/1995,p.3.

E774-3Corps SVB Information,01/07/1995,p.2:“*There was a verbal duel as members of the 328th Mountain Brigade began presenting their objections, in which the members of the 328th Mountain Brigade were degraded along with the fight of the ARBiH, and non-acceptance of President IZETBEGOVIC, the flag and Commander of ARBiH was demonstrated.*”

Imamovic,15/10/2007-T.4059, commenting on **E575**-35Division SVB Daily Report,18/08/1995.

ARBiH. The procedure for the admission of foreigners into the ARBiH was regulated by the a Decree.¹⁶⁸¹ This included the category of volunteers, to which foreign fighters belonged.¹⁶⁸² OSNOs kept records of conscripts, including volunteers. Each unit had a duty to keep records of each member and to submit these records to the OSNO.

883. On 14 July 1993, Delic issued the following order:

*“To all commands, staffs, units and institutions of RBiH Army, I hereby PROHIBIT immediate–direct mobilization or deployment of conscripts and MTS organized by themselves. Staffing of war units of ARBiH on all levels of management and command is to be done exclusively by requests through relevant defense secretariats, with strict abidance by legal provisions stipulated by the Decree on criteria and regulations for assignment of citizens and material equipment to the armed force and other defense needs (“RBiH Official gazette” No. 19/92).[...]I hereby prohibit direct admittance of recruits–volunteers to war units, and the existing recruits–volunteers in war units are to be treated in accordance with point 4 of this staff’s order, strictly confidential No. 14/55-13.”*¹⁶⁸³

884. The EMD ignored this order and the procedure regulated by the decree referred to therein.¹⁶⁸⁴ Until the end of the war, they refused to sign statements that they joined the

¹⁶⁸¹ **E1310**-Decree on the Criteria and Standards for the Assignment of Citizens and Material Resources to the Armed Forces and For Other Defence Needs, 26/10/1992, Art.20.

Hubo,14/03/2008-T.7597.

¹⁶⁸² **E1310**, Art.46.

Hubo,14/03/2008-T.7601-7603;**PW4**,01/11/2007-T.4937.

¹⁶⁸³ **E1337**-GSARBiH Order on elimination of weaknesses displayed in mobilization,14/07/1993,items 1 and 7.

¹⁶⁸⁴ **E109**-RBiH MUP Information Request,sent to the OSNO Zenica,11/10/1994.

army voluntarily.¹⁶⁸⁵ Most foreign fighters, Arabs, were not registered with the OSNO, and because of this they did not have the status of ARBiH members.¹⁶⁸⁶

(d) Identification data and lists

885. Information on foreign members of the EMD, including their names, was kept secret even from the Bosnians who joined this unit. Their records were kept by Abu Isa, an Arab and a close relative of Sheik Shaban.¹⁶⁸⁷ EMD members¹⁶⁸⁶ had secret files. Commenting on E1201,¹⁶⁸⁸ PW9 said:

“Q. I referred you to point 2 of the letter, which states: "Some brothers, not those in charge, have become aware of some secrets that are regarded as personal secrets, such as, for example, the personal file on each brother -- secret file." Let me ask you this: It is true, is it not, that the personal data of the Arabic members of the detachment were treated as a secret among the members of the unit to themselves.

*A. Yes, that's true. A special service was competent for the personal data of the Arabs. It was the so-called special command for the Arab, which, at this time - and I see the date of this document is late March 1995 - meaning in early 1995, the service was taken over by Dzulajbib from Saudi Arabia...”*¹⁶⁸⁹

¹⁶⁸⁵ E1138-3Corps Instruction on the engagement and records to be kept of foreign citizens in the BH Army, 27/10/1995.

E1433-GSARBiHSVB Information on foreign citizens refusing to sign statements on membership in the ARBiH, 07/11/1995.

Awad, 10/02/2008-T.233-234, commenting on E1138: “Not only did they not give such statements, they didn't wish to make such statements. They refused.”

Hubo, 14/03/2008-T.7603,

Hubo, 17/03/2008-T.7660, commenting on E1138: “A. This document is dated 27th October, 1995. This is a new attempt to draw attention and insist on the uncompliance with the provisions of the laws and other documents, which prescribe the manner and method of treating foreigners who were engaged in the army units”.

¹⁶⁸⁶ Hubo, 14/03/2008-T.7615: “Q. Mr. Hubo, in your last answer, you said that if persons were not registered in the Defence Secretariat or at the unit, they did not enjoy the status of... and then the transcript didn't capture the next part of your answer. What status did they not enjoy?”

A. Specifically, it means that they did not enjoy the status of a member of the army, or a member of the police, or any other status that they would enjoy under the law.

¹⁶⁸⁷ PW2, 19/07/2007-T.888.

¹⁶⁸⁸ E1201-Faxes sent by the EMD to ICI in Milan and telephone intercepts to ICI.

¹⁶⁸⁹ PW9, 17/04/2008-T.8637.

886.EMD command never submitted information on the real identity of its members or copies of their passports to the 3Corps Command.¹⁶⁹⁰ The 3Corps Command insisted that the EMD should provide information about its foreign members.¹⁶⁹¹ Hubo said:

*“A. All the time there were attempts, not only on the part of my organ but on the part of the other commands as well, to obtain information from them. I said that countless times now. And this was the case throughout the time, through to the end of the war, and we weren't able to get anything more than what we had in fact received from them.”*¹⁶⁹²

887.The evidence shows that, even when the EMD submitted lists with certain information on its members, such information was insufficient and useless.¹⁶⁹³ The lists on which the Prosecution relies in order to prove that the 3Corps had information about EMD members and their identity, were prepared by the EMD, and the 3Corps was not able to verify the information therein. Those lists contained incorrect information.¹⁶⁹⁴

Awad explained:

*“...But somebody ask why Abu. Everyone was Abu, so they called me Abu Ajman. They always called me Abu Ajman. So you see, what was provided to the corps were the names Abu, Abu, Abu, except for those who explicitly wanted their real names to be provided. They provided data without providing passport copies...”*¹⁶⁹⁵

(e) Certificates

888.The Prosecution placed a lot of importance on the fact that EMD members received certificates. However, members of all armed formations in the BiH Federation, including

¹⁶⁹⁰ **Awad**,09/02/2008-T.174;**Awad**,09/02/2008-T.177-178;**Alihodzic**,30/11/2007-T.6477.

¹⁶⁹¹ **E110**-3Corps Order,08/05/1995;**E1311**-3Corps Order,18/07/1994.

¹⁶⁹² **Hubo**,17/03/2008-T.7656.

¹⁶⁹³ **Hubo**,17/03/2008-T.7644:“...We received some information, and this information was, as it were, not in proper form, and more often than not it was useless. It was impossible to use them...”

¹⁶⁹⁴ **Begovic**,12/07/2007-T.475, commenting on **E78**-containing the Personal military file of Sinan Begovic, p.6.

Begovic,13/07/2007-T.525, commenting on **E67**-List of EMD members.

HasibAlic,16/07/2007-T.628-629, commenting on **E67**.

Awad,10/02/2008-T.226-227, commenting on **E663**-List of foreign EMD members,07/05/1995:“*Q...Do you agree with me, then, that the information contained in this list is not trustworthy, that the date when you joined the army is incorrect, at least in your case?*”

A. That's correct.

¹⁶⁹⁵ **Awad**,09/02/2008-T.175.

the HVO, received these certificates.¹⁶⁹⁶ They were issued by the Ministry of Defence, a civilian body.¹⁶⁹⁷ The certificates were issued on the basis of the record of army membership, signed by witness Hubo.¹⁶⁹⁸ The 3Corps tried to determine membership of EMD soldiers in the ARBiH retroactively, and for this purpose it formed a commission which prepared the lists.¹⁶⁹⁹ However commenting on E114,¹⁷⁰⁰ Hubo said that it was not possible to verify the information on foreigners, and he signed the list without checking the information contained therein.¹⁷⁰¹

889.The persistent efforts of the 3Corps command to obtain information on EMD members yielded no results. Because of this lack of information, among other things, all attempts by the 3Corps to place EMD members under its control were doomed to failure. The inability to determine the identity of EMD members is of crucial importance in this criminal case, and it is directly relevant to many aspects of the exercise of effective control.

890.The Trial Chamber must not disregard the fact the evidence has shown that Arab fighters entered and left RBiH using forged passports. Neither the RBiH authorities nor its army was able to control their movement as they did not control RBiH borders for the duration of the war.¹⁷⁰²

¹⁶⁹⁶ PW2,19/07/2007-T.892-893.

¹⁶⁹⁷ PW2,19/07/2007-T.892-893.

¹⁶⁹⁸ E114(Under seal)- [REDACTED], witness Hubo said that he signed it although he did not think the information therein was reliable, 17/03/2008-T.7701.

¹⁶⁹⁹ E1313-3Corps Order,02/06/1995;E1314-3Corps Order,13/11/1995.

Hubo,17/03/2008-T.7658: *“The role of the commission was to establish the length of service in 1992 of the members of the BiH army, in respect of the individuals who-for whom such records do not exist. So this addresses the units who did not keep records properly but in doing so they had to comply with the law with the provisions of the Law on Administrative Procedure, whilst using all the individuals and organs that were placed at their disposal.”*

¹⁷⁰⁰ [REDACTED]

E976- Vukovic92bis Statement,28/11/2007

Awad,10/02/2008-T.273, commenting on E1139-Video mentioning documents forged by foreign citizens.

Awad,10/02/2008-T.228-229, commenting on E97-List of EMD members.

¹⁷⁰¹ Hubo,14/03/2008-T.7624.

¹⁷⁰² PW4,31/10/2007-T.4914.

E676-RBiH MUP, State Security Service, Official note relating to Operation Vranduk, 23/10/1995, p.2, item 7.

E686-RBiH MUP, State Security Service, document ‘Security-related information about Ahmed A.Y.Al Washli, 15/11/1995.

3. EMD was not under the *de facto* authority of the ARBiH

(a) EMD did not obey orders from its alleged superior commands of ARBiH

891. Overwhelming evidence shows that, regardless of being incorporated in the 3Corps, the EMD continued to operate wholly independently from its alleged superior command.

¹⁷⁰³ Witnesses described the EMD as a “very tight community, difficult to penetrate.”¹⁷⁰⁴

Although the 3Corps issued many written orders to the EMD to try to place it under control, in reality the EMD never accepted carrying out those orders. Sljuka, commenting on E396¹⁷⁰⁵:

*“This document came from the 3Corps commander, Mr. Mahmuljin. It is a combat document, such as the ones I did not encounter at the time. Independently of that, it is still my opinion that irrespective of any orders, one couldn’t do anything with that unit.”*¹⁷⁰⁶

892. Witnesses described the relationship between the 3Corps command and the EMD as one of agreement and cooperation. The EMD took part in combat activities only when it chose to do so.¹⁷⁰⁷ In order for the EMD to participate, the ARBiH had to reach an agreement with it first. This was confirmed both by EMD members and members of the 3Corps. [REDACTED].¹⁷⁰⁸

Awad:

*“...And when we agreed to do something, then such an order would be issued to us in formal format. But if we didn't agree, then such an action or an attack would not be carried out.”*¹⁷⁰⁹

E939-3Corps SVB Proposal for introduction of POpO and TK telefax towards members of the “El Mujahid” detachment, 06/03/1995.

¹⁷⁰³ See section VII, B (3).

¹⁷⁰⁴ **Hajderhodzic, 09/10/2007-T.3846.**

¹⁷⁰⁵ **E396-3Corps Order, 02/06/1995.**

¹⁷⁰⁶ **Sljuka, 22/10/2007-T.4375.**

¹⁷⁰⁷ **Awad, 09/02/2008-T.107:** “We ourselves wished to participate because we had some -- we felt that with guards assistance we could achieve it if the reconnaissance was done properly.”

¹⁷⁰⁸ [REDACTED]

¹⁷⁰⁹ **Awad, 10/02/2008-T.191.**

893.Ribo, member of the 3Corps Command charged with the planning of combat activities during 1995:

“JUDGE HARHOFF: *You leave me with the impression that they were somehow seen as being a bit lazy, also, but were they not, at least in other relations, considered to be very brave and courageous soldiers?*

THE WITNESS: *That's true, but only at the moment when they said that they were ready to carry out an assignment. If they thought that they were not ready to do that, not a single authority could tell them otherwise, that they should be engaged in an action, be it the commander of the 35Division, or of the 3Corps, or anybody else.”*¹⁷¹⁰

894.The 3Corps and 35Division Commands issued orders to the EMD, but whether those orders would be accepted was decided within the detachment.¹⁷¹¹ Even when the EMD accepted the request of an ARBiH command to participate in an action, the detachment alone decided to what extent and in what way that request would be fulfilled, if at all. Frequently, 3Corps and the 35Division orders were only partially carried out.¹⁷¹²

895.Witnesses described the attitude of the EMD with respect to orders concerning combat actions.¹⁷¹³ EMD refused to participate in combat actions or to do so at the time requested by the 3Corps Command.¹⁷¹⁴ This was true with regard to many actions,

¹⁷¹⁰ **Ribo**,05/03/2008-T.7049-7050.

¹⁷¹¹ **Awad**,10/02/2008-T.196:“*Q....The command did give orders, but unlike other units, you did not observe those orders. You simply decided on your own whether you would accept an order or not. Would that be a fair summary of what you have said? A.Yes.”*

¹⁷¹² **Awad**,10/02/2008-T.197:“*Q...Judging by what you said to the investigator while talking to him: "The command would pressure us in order to prepare the action as soon as possible, but we would often meet their request somewhere in the middle based on the situation in the field."And what I wish to ask you now is the following: First of all, did you say this to the Prosecutor, and is that right? Is that true? [...]*

Q. So what you said is true.

A. Yes.”

Awad,10/02/2008-T.194:“*Q. Mr. Awad, you did not implement the order of the 3Corps with respect to the method nor with respect to the timing of that action, that is, in November 1994; is that right? I'm talking about the operation at the end of November 1994.*

A. We didn't follow the instructions regarding the method of carrying out the attack...”

¹⁷¹³ **Jusic**,18/09/2007-T.2627:“*...But I can tell you that the 3Corps commander never issued a task or a -- to the El Mujahid detachment in the same manner as he did to brigade commanders, because that -- their representative never attended the briefings where tasks were handed down and that unit never reported back...”*

¹⁷¹⁴ **PW9**,18/04/2008-T.8736.

including the battle against the HVO in the area of Vitez.¹⁷¹⁵ EMD's military emir, Muatez, refused to permit the EMD to participate in the action at Pisana Jelika and Visoka Glava (in summer 1994)¹⁷¹⁶ because he considered that the EMD was not ready at the time its alleged superior command, OG-3-North, requested its participation.¹⁷¹⁷ The EMD carried out the action independently when it thought it should do so,¹⁷¹⁸ despite the 3Corps order for joint action with other units.¹⁷¹⁹ They did not follow the 3Corps order regarding the action on Kajen Sopot in October 1994.¹⁷²⁰

896. In 1994, when the EMD transferred from the Serici-Teslic front, it refused the 3Corps' order to attack features 726, 702, and 706. Instead, it carried out a fake attack as a way of deceiving the 3Corps Command.¹⁷²¹ The EMD did not follow the instructions concerning the method and timing of the attack which had been planned for November 1994.¹⁷²²

897. On 24 March 1995, the 3Corps ordered the EMD to prepare for combat activities on the Vlasic plateau with the 3 and 7Corps.¹⁷²³ However, the EMD refused to participate in this action. Consequently, the 3Corps order was revoked.¹⁷²⁴ Ribo said:

“Q. Did the El Mujahedin Detachment follow this order or not?”

A. The El Mujahid Detachment did not follow the order. It was not engaged in the 7th Corps, because the detachment was

¹⁷¹⁵ PW9,18/04/2008-T.8737.

¹⁷¹⁶ E837-3Corps Decision for attack,20/08/1994.

PW9,17/04/2008-T.8652-8654, commenting on E1386.

¹⁷¹⁷ PW9,16/11/2007-T.5729; Awad,10/02/2008-T.195.

¹⁷¹⁸ PW9,15/11/2007-T.5598-5600, commenting on E837.

PW9,15/11/2007-T.5612-5613, commenting on E839-3Corps Order,03/10/1994,

¹⁷¹⁹ *Id.*

¹⁷²⁰ E839.

PW9,17/04/2008-T.8657-8659, commenting on E1201.

¹⁷²¹ Awad,10/02/2008-T.191-192: “*I explained that the attack could not be carried out. However, they insisted, because other units were ready for it, and they were waiting for us, and we didn't launch the attack. But in order to fulfil some kind of a form so there wouldn't be any conflict between the corps command and the detachment command and others, I call this a fake attack, but it wasn't a real attack...*”

¹⁷²² Awad,10/02/2008-T.191-192.

¹⁷²³ E1029-3Corps Order,24/03/1995.

¹⁷²⁴ E395-3Corps Order, revoking E1029.

Ribo,05/03/2008-T.7047: “*The previous one, the preparatory order that we looked at before. The chief of staff of the 3Corps issued a task to me to draft an order of this kind in order to cancel the effectiveness of the previous order, which was the preparatory order.*”

always calculating, asking for additional preparation, and in short did not carry out this assignment.”¹⁷²⁵

898. Although it was re-subordinated to the 35 Division in March 1995,¹⁷²⁶ the EMD was merely active in its AOR, and it refused to carry out its orders. On 30 August 1995, Imamovic, 35 Division Assistant Commander for Security, reported to the 3 Corps Command on the EMD’s activities in the AOR of the 35 Division,¹⁷²⁷ and noted that “[t]he command and control system was not complied with.”¹⁷²⁸

899. The EMD did not even follow the 35 Division order to establish a camp at the 12th kilometre.¹⁷²⁹ The 35 Division Commander Hasanagic explained that this location was of particular military significance. Nonetheless, the EMD established its camp at the 13th kilometre.¹⁷³⁰

900. Concerning the EMD’s attitude toward orders during combat operations in 1995, which are the subject of the Indictment, see section VIII, B (3)(a). Witness PW9 was crystal clear when he commented on E1394.¹⁷³¹

*“Q.[...] This letter, which is said to be signed and certified by the detachment command, would you agree that it reflects these very facts that you testified about, that the detachment, in fact, would not accept nor carry out orders of the army units in Bosnia and Herzegovina, or rather, of the corps?
A. Yes, that is correct.”*¹⁷³²

901. Dr. Cornish explained the importance of respecting the authority of the superior command:

“...In the end, though, the battalion commander, having made that observation, having said perhaps, It looks to me as if I won’t be able to breakthrough for the following reason,

¹⁷²⁵ **Ribo**, 05/03/2008-T.7039.

¹⁷²⁶ **E431**-3 Corps Order, 31/03/1995.

¹⁷²⁷ **E583**-35 Division SVB Report, 30/08/1995, p.20.

¹⁷²⁸ **Imamovic**, 11/10/2007-T.4040-4042

¹⁷²⁹ **E434**-35 Division Preparatory order, sent to the EMD, 07/04/1995.

¹⁷³⁰ **Hasanagic**, 26/09/2007-T.3102-3103, commenting on **E434**-35 Division Preparatory order, sent to the EMD, 07/04/1995.

¹⁷³¹ **E1394**-Fax sent from the EMD to the ICI Milan, 07/03/1995.

¹⁷³² **PW9**, 17/04/2008-T.8690, commenting on **E1394**.

*nevertheless, he could conceivably be given an order to go and do precisely that. That's where this authority allies, and that's where this reliance so importantly on military discipline is so essential.*¹⁷³³

(b) Alleged re-subordination of the EMD to ARBiH units

902. In order to prove effective control over the EMD, the Prosecution relies on numerous 3Corps documents ordering re-subordination of the EMD to various ARBiH units. On 28 August 1993, the 3Corps ordered that the EMD be re-subordinated to the 306MB for joint actions.¹⁷³⁴ It has been marked on the face of the document that this order was “not carried out”. Witnesses confirmed this.¹⁷³⁵ Only eight days later, on 6 September 1993, the 3Corps Commander ordered the re-subordination of the EMD to the OG-Bosanska Krajina.¹⁷³⁶

903. On 3 April 1994, the 3Corps ordered the re-subordination of the EMD to the 330th Light Brigade.¹⁷³⁷ Only two days later, on 5 April 1994, the EMD was issued a new order re-subordinating it to OG-3-North.¹⁷³⁸ On 9 April 1994, the EMD was re-subordinated to the 7MB.¹⁷³⁹ Therefore, in only six days the EMD was issued three orders on subordination or re-subordination. It did not follow any of these orders. PW9 said:

*“Q...The documents which came from the 3Corps and the orders by which the 3Corps attempted to include the El Mujahedin Detachment within the corps structure were basically just pieces of paper. The detachment never accepted such orders or any resubordination?
A. That is correct.”*¹⁷⁴⁰

904. PW9 was clear the EMD never became part of OG-3-North nor was it ever re-subordinated to 7MB.¹⁷⁴¹ Awad explained that the EMD never accepted the 330th

¹⁷³³ Cornish, 15/04/2008-T.8601-8602.

¹⁷³⁴ E1137/E269-3Corps Order, 28/08/1993.

¹⁷³⁵ Delalic, 27/08/2007-T.1758-1759; Halimusic, 11/03/2008-T.7332.

¹⁷³⁶ E1010-3Corps Order, 06/09/1993. The Prosecution did not show this document to any witnesses.

¹⁷³⁷ E845-3Corps Order, 03/04/1994.

¹⁷³⁸ E846-3Corps Order, 05/04/1994.

¹⁷³⁹ E848-3Corps Order, 09/04/1994.

¹⁷⁴⁰ PW9, 16/11/2007-T.5703.

Brigade command and its commander, or the OG-3-North command and its commander. Moreover, the EMD was never part of 7MB, nor was it ever commanded by its commander.¹⁷⁴²

905. Not only did the EMD refuse to accept the command of the above-mentioned units, but its relations with those units in the field bordered on conflict.¹⁷⁴³

906. In the first half of 1995, the 3Corps ordered the re-subordination of the EMD to the 35Division.¹⁷⁴⁴ However, witnesses explained that the relationship between them was not a superior-subordinate relationship.¹⁷⁴⁵ Commenting on the 3Corps order re-subordinating the EMD to the 35Division,¹⁷⁴⁶ [REDACTED].¹⁷⁴⁷

907. Hajderhodzic explained:

¹⁷⁴¹ PW9, 16/11/2007-T.5702-5703.

¹⁷⁴² Awad, 10/02/2008-T.219-220, commenting on E1137: "Q...Do you agree with me if I say that at the bottom it says, in handwriting, "Not carried out"? Witness, do you agree that it says here that the entire personnel and technical equipment and materiel shall be resubordinated to the 306th Brigade? My question is: It is true, is it not, that you never in – were in actual fact resubordinated to that brigade, nor did you accept their command throughout your stay in Bosnia-Herzegovina?"

A. Yes, that's right.

Q. Did you ever accept the command of the 330th Brigade and their commander as your commander?

A. Never in our life.

Q. Did you ever accept Mr. Jusuf Hasimbegovic [as interpreted] as your commander?

A. Never.

Q. Did you ever throughout the fighting in Bosnia and Herzegovina accept the commander of the 7th Brigade as your own commander?

A. Never."

¹⁷⁴³ E847-330 Light Brigade Official, 08/10/1994, p.2: "I am pointing out that during the take-over of the lines of defence from the "El Mudzahid" Detachment, the situation was very tense and at the edge of conflict, which was avoided as a result of the collected behaviour of the 330th Light Brigade operative and engagement of the operative of the OG'3-SJEVER."

E1019-7 Muslim Brigade SVB Information on the EMD, 01/10/1994, p.2: "The commanders of the units as well as soldiers publicly protest about that and we are afraid that serious incidents involving weapons could occur."

¹⁷⁴⁴ E431-3Corps Order, 31/03/1995; E1030-3Corps Order, 31/03/1995; E396-3Corps Order, 02/06/1995.

¹⁷⁴⁵ Imamovic, 11/10/2007-T.4039.

¹⁷⁴⁶ E396.

¹⁷⁴⁷ [REDACTED]

Hajderhodzic, 08/10/2007-T.3782, commenting on E428-3Corps Decision re-subordinating, *inter alia*, the EMD to OG Bosna, 24/10/1994: "Q. And the reason for that is the fact that this unit did not act as a unit, subordinate -- resubordinated to the 35Division; is that correct?"

A. Yes, that's correct.

Q. They did not attend the briefings in the 35Division, or at least not regularly? When I say that, I don't mean visits to the Division. I am talking about the briefings, where you discussed things. I don't know if you know about that.

A. They did not attend any of the briefings where I was, and I'm sure that I attended all the regular briefings. No Arabs were there."

*“It is your area of responsibility that sort of puts you in charge of security and other related issues. They were in our area of responsibility, and everything that is in the area of responsibility of the 35Division should be its responsibility. Should be, as I say. Whether it is or, in fact, not, well, that's a different kettle of fish.”*¹⁷⁴⁸

908. The relationship between the EMD and members of the 35Division was no better than its relationship with OG-3-North. They attacked, threatened,¹⁷⁴⁹ and provoked ARBiH members.¹⁷⁵⁰ Moreover, they belittled ARBiH members, negated the struggle of the ARBiH and refused to accept the legal representatives of the RBiH and ARBiH.¹⁷⁵¹ On 27 October 1995, they did not allow the 35Division Commander and members of UNPROFOR to pass through the area of Donja Blizna. They insisted on the return of the convoy due to the fact that “their commander had not been informed.”¹⁷⁵²

909. In May 1995, the EMD did not allow parts of the 35Division “timely seizing of certain regions, which exposed the units to the Serbian-Montenegrin artillery and caused losses...”. Moreover, they “did not determine guides that would take the units to certain regions in timely fashion.”¹⁷⁵³ During combat activities with ARBiH members in September 1995, the EMD disregarded safety warnings, which had tragic consequences.¹⁷⁵⁴ During combat activities in October 1995 they seized the war booty from ARBiH units, under the threat of arms, and took it to their camp.¹⁷⁵⁵

¹⁷⁴⁸ Hajderhodzic, 08/10/2007-T.3733.

¹⁷⁴⁹ E800-GSARBiH SVB document on the behavior of EMD members, 20/07/1995; E801-3Corps SVB Information on the behaviour of the “El Mudzahedin” Detachment members, 15/07/1995.

¹⁷⁵⁰ E938-35Division SVB Information, 05/07/1995; E760-GSARBiH SVB document “Threats from EMD members to 328th Brigade soldiers,” 10/07/1995.

¹⁷⁵¹ E774-3Corps SVB Information, 01/07/1995.

¹⁷⁵² E903-35Division SVB Official Note, 27/10/1995, p.2.

¹⁷⁵³ E489-2nd Manoeuvre Battalion Daily operative report, 28/05/1995.

¹⁷⁵⁴ E1073-3Corps SVB Information, 03/09/1995,

E490-35Division Analysis of the “Spring-95” offensive engineering support, 03/06/1995, p.2: “Setting up of barrier systems at newly reached lines was slow because of a misunderstanding with a unit of the El Mudzahidin detachment which did not permit the setting up of barrier systems with PPM, so only roads k685-k706 and Cevaljusa village-k-702 were blocked with PTM.”

¹⁷⁵⁵ E1084-35Division SVB Information ‘Summary of the knowledge on the El-Mudzahidin unit, 24/10/1995, p.2.

(c) EMD command did not forward orders concerning Geneva Conventions to its members nor follow the ARBiH procedure relating to POWs

910. The EMD command received orders concerning the Geneva Conventions, forwarded by the 3Corps command. However, those orders were neither forwarded nor explained to EMD members. The EMD command simply decided it would apply its own rules instead of these orders.¹⁷⁵⁶ Moreover, it did not follow the 35Division order for the transfer of POWs from the combat zone.¹⁷⁵⁷

911. The EMD command did not allow access to POWs, and even the 3Corps commander could not order them this. Rather, he had to request permission from the EMD commander to contact the POWs captured on 21 July 1995 and to take-over seized documentation.¹⁷⁵⁸ Contact with POWs was possible only after EMD members “gave permission for a short interview,” and only “with the approval of Abu Mali.”¹⁷⁵⁹ The EMD command would not allow the POWs to be taken over.¹⁷⁶⁰

(d) EMD did not report to the ARBiH commands

912. The EMD did not submit military reports to its alleged superior commands, the 35Division and 3Corps. Rather, those commands obtained information on this unit indirectly, from units which had contact with the EMD in the field.¹⁷⁶¹

913. The EMD did not submit basic reports on numerical strength and available material and technical resources which were needed for the assessment of this unit’s combat readiness.¹⁷⁶² On 9 January 1995, the 3Corps command requested a complete and accurate report on ammunition quantity per unit, broken down by types and unit

¹⁷⁵⁶ **PW9**,16/11/2007-T.5773

¹⁷⁵⁷ **E505**-35Division Order for Farz,25/08/1995,item14,
E455-35Division Daily combat report,21/07/1995.

¹⁷⁵⁸ **E554**-3Corps Intelligence Department Report,24/07/1995, p.3.

¹⁷⁵⁹ **E553**- 35Division SVB Information on the interview with prisoners of war,22/07/1995,p.2.

Imamovic,11/10/2007-T.3989-3990, described this situation,
E580-3Corps SVB Information,22/07/1995,p.2: “*All captives are under control of the “El Mudzahedin” Detachment, who do not allow any access to them.*”

Alihodzic,30/11/2007-T.6433-6434,
E582-GSARBiH SVB Bulletin no. 137, 22/07/1995.

¹⁷⁶⁰ **E858/E581/E957**-3Corps SVB Information,23/07/1995.

¹⁷⁶¹ **Imamovic**,11/10/2007-T.4046.

¹⁷⁶² **Ribo**,05/03/2008-T.7027-7028, commenting on **E1187**-3Corps Order,09/01/1995.

levels.¹⁷⁶³ The EMD never responded to this request, and never submitted any reports on this issue.¹⁷⁶⁴

914. The EMD did not submit any reports pertaining to intelligence and security, nor did it submit reports on combat activities. Members of the 3Corps command who, by virtue of their position, had insight into the reporting situation in the 3Corps said:

Sivro, 3Corps Operations Centre member:

“Q ...You were located in the Operations Centre. This is my question: Did you ever take in your hands a report sent directly to the 3Corps from the El Mujahedin Detachment in the period while you worked in this Operations Centre?”

*A.No, I never received a report from them, either when I was in the Operations Centre or at the IKM...”*¹⁷⁶⁵

Mrkaljevic, Chief of the 3Corps Analysis Sector:

“...Yes, that’s what I said to the investigators, and I stand by that. As chief of the analysis sector, I never received a single letter in writing from them (...)

Q... You never received any intelligence from them, did you?

i. That's right.

Q. You never received any information on their victims?

A. That's right.

Q. Their plans?

A. Their plans, you're right.

Q. [...]You didn't know what the composition of those units was, who there was in that detachment; am I right?

*A. Yes, you're right.”*¹⁷⁶⁶

Spahic, 3Corps SVB member:

“Q...Did you ever receive from the security organ of the El Mujahedin Unit any report on any event?”

¹⁷⁶³ E1187.

¹⁷⁶⁴ Ribo,05/03/2008-T.7028.

¹⁷⁶⁵ Sivro,01/10/2007-T.3367.

¹⁷⁶⁶ Mrkaljevic,10/10/2007-T.3935-3937.

EdinHusic,23/10/2007-T.4446-4447, commenting on E564-3Corps Warning for submission of reports, 11/09/1995.

*A. In the analysis department, we have -- we had never received a single document on security matters from the security organ of the El Mujahid Unit.*¹⁷⁶⁷

Halim Husic, 3Corps Assistant for Morale:

*“From the beginning to the end of my stay in the 3Corps, we never received a single report from the El Mudjahedin Detachment. We didn’t even know who was the person in the unit in charge of morale. They didn’t inform us about that, either.”*¹⁷⁶⁸

915. As mentioned, the EMD was re-subordinated to the 35Division on two occasions in 1995, the first was on 31 March 1995.¹⁷⁶⁹ Shortly after, on 5 April 1995, the 35Division Chief-of-Staff, Sabic, issued a written order warning, *inter alia*, the EMD command of “very frequent disobedience as for the orders pursuant to which operational and daily reports are to be submitted.”¹⁷⁷⁰

916. By 8 May 1995, Hasanagic had not received any reports concerning operative records, on the basis of which he could assume command over the EMD. Therefore, that day he requested information on equipment, including motor vehicles, and communications equipment.¹⁷⁷¹ Hasanagic explained:

“I was supposed to be given a list of all equipment and weaponry available to them, from what they were wearing to the heaviest artillery, what kind of munitions they had, complete logistics supplies, communications, equipment. And only after I received such information could I control such a unit and command and issue them with missions. When it says "company of the El Mujahedin Detachment," the commander of the division, I or anybody else, never - I repeat "never" -

¹⁷⁶⁷ Spahic, 09/11/2007-T.5290, commenting on E777-3Corps SVB Report, 08/07/1995.

¹⁷⁶⁸ Husic Halim, 12/03/2008-T.7422.

¹⁷⁶⁹ E431-3Corps Order, 31/03/1995; E1030-3Corps Order, 31/03/1995.

¹⁷⁷⁰ E484-35Division Warning, 05/04/1995.

Hasanagic, 26/09/2007-T.3104:Q.... *Did you receive regular and operational reports from the command of the El Mujahedin Detachment at all?*

A. *I did not receive any...*

¹⁷⁷¹ 485-35Division Order to EMD, 08/05/1995,

Hasanagic, 26/09/2007-T.3122, commenting on E485,

Hasanagic, 26/09/2007-T.3128, commenting on E485: *“I received no response to my document dated 8th of May.”*

*knew the establishment of the El Mujahedin Detachment. The manpower, the number of -- of troops, or anything else.*¹⁷⁷²

917. On 27 May 1995, Hasanagic requested reports concerning the newly reached lines.¹⁷⁷³ He never received such a report from the EMD.¹⁷⁷⁴ On 10 June 1995, he demanded that the EMD submit a report on all results of reconnaissance and information collected.¹⁷⁷⁵ However, the EMD never submitted a report.¹⁷⁷⁶ On 17 July 1995, the 35Division commander again requested that the EMD submit daily combat reports.¹⁷⁷⁷ The EMD never complied with this request.¹⁷⁷⁸

918. When asked by Judge Moloto whether the EMD representative, Awad, gave him an explanation as to why they did not comply with his instructions, Hasanagic replied:

*“They said ...: ‘En-Shala, God willing, everything is going to be okay.’ This was their response. I could not really do much or maintain frequent contacts with them or try to prevail over them the same way that I succeeded in prevailing upon the commander of the 4th Manoeuvre Battalion when I threatened him that he would be replaced. My purview and my authority powers were not such that I could threaten the same threat to the EMD.”*¹⁷⁷⁹

919. The 35Division never managed to establish any contacts with the EMD with regard to the issue of security. It never received a single report concerning security from the EMD.¹⁷⁸⁰

920. Finally, Awad, an EMD member who served as an interpreter and intermediary between the EMD and the 35Division and 3Corps commands, said:

¹⁷⁷² Hasanagic, 25/09/2007-T.3041, commenting on E467-35Division Order on deployment of troops, 11/09/1995.

¹⁷⁷³ E488-35Division Order, 27/05/1995.

¹⁷⁷⁴ Hasanagic, 27/09/2007-T.3141, commenting on E488.

¹⁷⁷⁵ E442-35Division Order to EMD, 10/06/1995.

¹⁷⁷⁶ Hasanagic, 27/09/2007-T.3154, commenting on E442.

¹⁷⁷⁷ E491-35Division Order to EMD, 17/07/1995.

¹⁷⁷⁸ Hasanagic, 27/09/2007-T.3104, commenting on E484 and E491: “I did not receive any. While they were in my area of responsibility, I received not a single written regular operational -- operational report.”

¹⁷⁷⁹ Hasanagic, 28/09/2007-T.3297

¹⁷⁸⁰ Imamovic, 11/10/2007-T.4045-4046.

*“Q...The detachment commander did not forward written reports to the corps or division commands. Am I correct?
A.You’re right”*.¹⁷⁸¹

(e)Reports EMD allegedly sent to 3Corps Commander

921.The Prosecution must prove beyond reasonable doubt that the chain of command functioned, starting with the Accused, running all the way down to the alleged perpetrators. Therefore, it must prove that Delic’s subordinate, the 3Corps Commander, exercised effective control over the 35Division commander; and that he, in turn, had effective control over the EMD commander, who must be shown to have exercised effective control over the alleged perpetrators. The Trial Chamber must find beyond reasonable doubt that all acts upon which the Prosecution seeks to rely to establish effective control are an “unequivocal exercise of superior authority.”¹⁷⁸²

922.In paragraph 39.5 of the PPTB, the Prosecution claimed that the EMD repeatedly reported to the 3Corps about their progress to suggest that the EMD was under effective control. It supports this claim with a number of record-keeping documents. However, evidence shows that this assertion is far from reality.

(i)Importance of record-keeping documents

923.ARBiH record-keeping documents were operations diaries, war diaries, observation post diaries, etc. Prosecution witness Pesto explained:

*“[...]It was often the case, however, that entries were made at a later stage additionally. As for the operations log, another document that was kept at the time, this was a compulsory document kept at forward command posts and back at the Command, and it is the duty operations officer who is in charge of this document, whoever happens to be on duty. They get information by telephone, and then this gets recorded. In 95 per cent of the cases, the officer gets information by telephone, and then this information gets recorded, without verifying whether information is, in fact, true or not.”*¹⁷⁸³

¹⁷⁸¹ Awad,10/02/2008-T.221-222.

¹⁷⁸² Celebici,TJ para.669.

¹⁷⁸³ Pesto,02/10/2007-T.3461.

924. The record-keeping documents in this case are of questionable authenticity. Witness Ribo, whose work during 1995 entailed the preparation of these documents, described the standard procedure.¹⁷⁸⁴ He examined in court the originals of E394 and E511, operations diaries of the 3Corps.¹⁷⁸⁵ With regard to E394, Ribo explained that, at the time this document was created, he personally paginated it and certified the last page of the logbook with his signature. The pages had to be numbered sequentially.¹⁷⁸⁶

925. Ribo determined that the pages pertaining to the relevant events from September 1995 are missing. Moreover, the pages are not numbered chronologically, but re-start at “1” in the middle of the document.¹⁷⁸⁷ He also determined that while some pages are missing, other pages were inserted which could not have belonged in this type of document.¹⁷⁸⁸ Similarly, Ribo concluded that E511 was tampered with since pages were missing from this document as well.¹⁷⁸⁹

926. War diaries are not combat documents. Rather, they have historical value. Events are recorded therein “at a later date, after the event transpired. It did not have to be necessarily contemporaneous...”.¹⁷⁹⁰ Operations diaries of the 3Corps contained unreliable information.¹⁷⁹¹ For example, the operations diary and the wartime diary of the 3Corps contain very different accounts of the same event.¹⁷⁹²

927. In general, these documents are unreliable because they were written on the basis of information which had been passed on from one person to another, which could not be verified, as demonstrated by E394. Sivro, the author of this document admitted that he recorded the information on page ERN0185-5157, concerning the telephone call from the

¹⁷⁸⁴ **Ribo**,05/03/2008-T.7076-7077.

¹⁷⁸⁵ **E394**-3Corps Observation post operations diary, September 1995.

Ribo,05/03/2008-T.7081.

E511-3Corps Operations diary, 26/08/1995-08/10/1995,

Ribo,05/03/2008-T.7077.

¹⁷⁸⁶ **Ribo**,05/03/2008-T.7081-7086,06/03/2008-T.7173, commenting on **E394**

¹⁷⁸⁷ **Ribo**,05/03/2008-T.7083, 7091, commenting on **E394**.

¹⁷⁸⁸ **Ribo**,05/03/2008-T.7085-7086, commenting on **E394**.

¹⁷⁸⁹ **Ribo**,05/03/2008-T.7078-7080, commenting on **E511**.

¹⁷⁹⁰ **Ribo**,05/03/2008-T.7072, commenting on **E512**-3Corps Wartime Diary, August-October 1995.

¹⁷⁹¹ **E524**-3Corps Operations Diary. Entry no.70 mentions Awad Aiman as the EMD commander.

Sivro,01/10/2007-T.3415-3416, commenting on **E524**.

¹⁷⁹² **Sivro**,01/10/2007-T.3392-3396, commenting on **E523**-Excerpts from the 3Corps Operations Diary and Wartime Diary (containing different accounts of the same event).

EMD to the 3Corps commander, even though he was in close proximity of the 3Corps Commander at the time and did not hear anyone calling him. “Matters unfolded so quickly that I did not really pay that much attention to what I was writing down,” he explained.¹⁷⁹³

928. Documents E394, E512, and E524 mention several calls from the EMD to the 3Corps or its commander during Operation Farz in September 1995. However, even the writer of most of the entries in those documents did not consider the telephone calls as reports. “*They placed a telephone call – they placed a call two or three times. I don’t know what it was about, but I made note of it. In other words, I never received a report from them,*”¹⁷⁹⁴ he said.

929. Commenting on the entry in E394 which provides that the EMD had telephoned the 3Corps Commander to inform him of the progress of combat activities, Jusic said:

*“The fact that he called him -- well, he simply made use of the possibility he had, that is, to use the communication links to boast to the commander. He went -- he bypassed the regular command and control chain, and he bypassed the division commander. Technically speaking, he could have done this, and he did. This is a conversation that took place. It was not a document in which he reports on anything. He simply called him by telephone, I believe, and it was merely a conversation. I don't think it falls under the topic of reporting and the system of reporting that was in place. They were completely out of it.”*¹⁷⁹⁵

930. Jusic was certainly right. Pursuant to the 3Corps order of 2 June 1995,¹⁷⁹⁶ the EMD was re-subordinated to the 35Division; therefore, it had a duty to submit reports to the 35Division rather than the 3Corps Command. When asked what happens if a commander at a certain level does not report to his immediate superior but jumps that level and

¹⁷⁹³ **Sivro**, 01/10/2007-T.3413-3414, commenting on **E394**: “*I was at the observation post, together with the commander, and I did not hear anybody calling from the El Mujahedin Detachment. It must have been someone from the Communications Service who reported this, and this is how I wrote down.*”

¹⁷⁹⁴ **Sivro**, 01/10/2007-T.3367-3368.

¹⁷⁹⁵ **Jusic**, 19/09/2007-T.2663.

¹⁷⁹⁶ **E396**-3Corps Order, 02/06/1995.

reports to the higher commander two levels above him, Military Expert Cornish explained:

*“...If, though, a brigade under normal circumstances were to decide for itself to report outside or around the chain of command to a senior level, a more senior level, then that would be, as I said earlier, to contradict the principle of unity of command and would be to go outside the chain of command, which is an anathema, and that whole structure begins to become inoperable....”*¹⁷⁹⁷

931. The Decree with the Force of Law on the Armed Forces of RBiH adopted unity of command as one of the fundamental principles governing the relations within the ARBiH.¹⁷⁹⁸

932. Furthermore, neither the 3Corps Command nor its Commander received military reports from the EMD. Moreover, there is ample evidence to show that the EMD was not under the effective control of the 3Corps command or its commander.¹⁷⁹⁹ Jusic said:

*“[...] And those who were not fully devout and who did not perform all the rites, they would call such people "faithless," and they did not want to fight alongside them. And for that reason for a long time, for maybe two years, attempts were made to find a way to command over them and the issue of them coming to that area -- well, in this respect, I may state that with what they achieved in Bosnia, they shouldn't have bothered coming to Bosnia...”*¹⁸⁰⁰

¹⁷⁹⁷ Cornish, 15/04/2008-T.8562.

¹⁷⁹⁸ E9-Decree With the Force of Law on the Armed Forces of RBiH, 15/11/1992, Article 13: *“Command and control in the Army shall be based on the principles of a unified command in respect to the use of forces and resources, a single command and the obligation to implement decisions, commands and orders of a superior officer, except in cases when a criminal offence would be committed were the orders to be carried out.”*

PW3, 21/08/2007-T.1429, commenting on E9; Alija, 16/10/2007-T.4180-4181.

¹⁷⁹⁹ See section VIII, B (3)(d).

E591-3Corps SVB Request for a list of EMD members, 22/04/1995,

E683-3Corps document ‘Participation of Foreigners in the Army of RBiH’, 26/02/1994,

E1311-3Corps Order on the establishment of unit card files, 18/07/1994,

E1187-3Corps Order for submission of data on ammunition quantity, 09/01/1995,

E843-3Corps SVB Information on Vranduk, 19/12/1995,

E761- Security Administration, Special Information No. 234, 02/12/1993,

E1058-3Corps SVB Information ‘The El Mujahedin Detachment-unsolved cases,’ 17/08/1995,

E583- 35Division SVB Report, 30/08/1995, p.20.

¹⁸⁰⁰ Jusic, 18/09/2007-T.2631-2632.

Ribo:

*“We tried to place the detachment in various ways under the control and system of the control and command of the 3Corps. However, it was not proceeding very well and we were not succeeding.”*¹⁸⁰¹

933. Awad said that the only ARBiH commander the EMD trusted was the 3Corps Commander, because *“he was a Muslim and somebody who was sent by the president, the late Alija Izetbegovic, as his man to Zenica.”*¹⁸⁰² However, Awad never said that Mahmuljin commanded the EMD. The gist of his testimony is completely different. As Awad explained, the EMD commander, Abu Maali, never accepted the authority of Sakib Mahmuljin. Rather, his real superior was Sheikh Shaban.¹⁸⁰³

934. Sakib Mahmuljin’s influence on the EMD was best described by his Assistant for Morale Husic, a Muslim cleric, who was acquainted with the Mujahedin community:

*“...I know that they did take into account the opinions of the 3Corps commander to a certain degree, but, on the other hand, it would happen that they would completely ignore or refuse to follow his orders. So it’s hard to say this precisely. They would decide who, when, and to what extent they would cooperate or listen to any particular person.”*¹⁸⁰⁴

935. Therefore, witnesses have said that the 3Corps Commander had *some* influence over the EMD. However, this influence does not even satisfy the standard of “substantial influence” as a means of control, described in paragraph 266 of the *Celebici* Appeals Judgment. Even this threshold of substantial influence is insufficient to establish command responsibility if it **falls short of effective control over subordinates, which requires the possession of material ability to prevent subordinate offences or to punish subordinate offenders.**¹⁸⁰⁵

¹⁸⁰¹ Ribo, 05/03/2008-T.7048.

¹⁸⁰² Awad, 10/02/2008-T.206.

¹⁸⁰³ Awad, 10/02/2008-T.216-217.

¹⁸⁰⁴ Halim Husic, 13/03/2008-T.7526.

¹⁸⁰⁵ *Celebici*, AJ para.266.

936. Effective control must be distinguished from the lower forms of influence that charismatic, respected or persuasive individuals may be able to exercise over other individuals without their relationship being one of superior-subordinates pursuant to Article 7(3).¹⁸⁰⁶

(f) Delic and the EMD

937. The Prosecution pleads that Delic, as Main Staff Commander, exercised both *de jure* and *de facto* command and control over the ARBiH forces that participated in the crimes alleged in the Indictment.¹⁸⁰⁷ Moreover, it pleads that the EMD was under his command and effective control.¹⁸⁰⁸ As pointed out, the Prosecution has not proved its pleaded material facts that Delic commanded the combat activities which are the subject of this indictment. Moreover, the Prosecution has not proved that Delic exercised effective control down the chain of command, through his subordinate, the 3Corps commander, all the way to the alleged perpetrators.¹⁸⁰⁹

938. There is no evidence to suggest that Delic exercised *de facto* control over the EMD outside the chain of command. The Prosecution has not produced a single written document from Delic to the EMD, nor any piece of evidence suggesting that Delic personally received any report or information from the detachment. Moreover, no witnesses said that Delic was given such information orally.

939. The Prosecution relies on very limited evidence regarding the EMD, including several orders which will be addressed later. At this point, the Defence addresses the standards which must be satisfied for orders to be relevant from an evidentiary point of view to effective control.

¹⁸⁰⁶ *Celebici*, AJ paras.263, 266.

¹⁸⁰⁷ Indictment, para.20.

¹⁸⁰⁸ Indictment, para.38.

¹⁸⁰⁹ *See section VIII, B (3)(e).*

Halilovic, AJ paras.210-211: It is necessary for the Prosecution to prove that there was a chain of command. It can't be just assumed. It must be shown how Delic exercised effective control down through the chain of command. On the basis of the indicators, one way might be by showing how directives flowed down the chain from commander to commander, and ultimately down to the EMD fighter on the ground.

(i) *Effective control and the issuing of orders*

940. The capacity to sign orders will be indicative of some authority.¹⁸¹⁰ In order to make a proper determination of the actual powers of control of a superior it is necessary to look to the substance of the documents signed and **whether there is evidence of them being complied with**. An accused's signature on a document may not necessarily be indicative of actual authority, as it may be purely formal or merely aimed at implementing a decision made by others. An order by the accused which is merely passed down the chain of command, or which implements the order of an accused's own superior, would not be relevant to establishing effective control insofar as the power being exercised is not that of the accused, but that of his own superior.¹⁸¹¹

941. In *Celebici* the Trial Chamber determined that orders signed by the accused did not demonstrate a hierarchy of control between him and his alleged subordinates, but instead established a state of intermediate implementation of his superior's orders. The signature by an accused on an order which is said to be relevant to establishing his effective control must give the order its force and validity.¹⁸¹²

942. If the matter being ordered in the document draws its force and authority from a source other than the decision and signature of the commander, that order may not be regarded as indicative of effective control on the part of the accused.¹⁸¹³

943. Furthermore, the issuance of a single or a limited number of orders from the accused to the alleged subordinates would not yet be conclusive of a superior-subordinate relationship (even if those orders were all complied with). The Prosecution has to establish a *consistent pattern* of compliance with the orders of the accused on the part of the alleged perpetrators, on the basis of which the Trial Chamber could conclude effective control existed.

¹⁸¹⁰ *Celebici*, TJ para.672.

¹⁸¹¹ See, adopting this view, I.Bantekas, "The Contemporary Law of Superior Responsibility," 93 AJIL 572, 583 (1999) ("orders which move down the chain of command cannot provide evidence of de facto control").

¹⁸¹² *Celebici*, TJ paras.671-673.

¹⁸¹³ *Celebici*, TJ paras.672-673.

944. Proof is required that the accused was not only able to issue orders but that the orders were actually followed.¹⁸¹⁴ Pursuant to Article 7(3) the Prosecution must establish that the receiver acted because of the order and in compliance with it. It is the cumulative effect of evidence showing both subjugation to orders and respect for the authority of the accused that is necessary to convince the Trial Chamber of the existence of a superior-subordinate relationship.¹⁸¹⁵

(ii) Delic's acts and orders concerning EMD fall short of effective control

945. With regard to the authorization allegedly issued to Mahmuljin by Delic, and the order of 13 August 1993, see section VIII, B (2)(b) and (3)(e). The evidence shows that, although both of these documents bear Delic's signature, the substance thereof is not a result of his decision. Rather, their source is the cumulative authority of the President and Supreme Commander of ARBiH, Alija Izetbegovic.

946. Commenting on his first meeting with Mahmuljin, to whom the authorization was allegedly issued, Awad said:

"...He was introduced by Ahmed Halilovic, saying that this person, Sakib Mahmuljin, had come from Sarajevo and that he was coming on behalf of President Alija Izetbegovic.

Q. In the talks that you interpreted, for instance between General Mahmuljin and other individuals, was any authorisation given by General Rasim Delic to Mahmuljin ever mentioned, or was he introduced in the way you have just described?

*A. There was never any mention of Rasim Delic giving any authorisation to him. At that meeting, it was stated that this person, Sakib Mahmuljin, had been sent by President Alija Izetbegovic.*¹⁸¹⁶

947. Furthermore, as explained, the EMD did not follow the order of 13 August 1993. Local soldiers were admitted, even though the order provided for replenishment with

¹⁸¹⁴ *Blaskic*, AJ para.69.

Halilovic, AJ para.207.

¹⁸¹⁵ *Prosecutor v. Nikolic*, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 20 Oct 1995, para.24.

¹⁸¹⁶ *Awad*, 10/02/2008-T.217-218.

foreigners alone. Moreover, the order required that a report on implementation be submitted no later than 5 September 1993. However, such a report was never received in the Main Staff.¹⁸¹⁷

948.Video E351 shows the meeting between the Croat and Bosnian delegations composed of political and military representatives (1994), headed by Dr. Ejup Ganic, President of the BiH Federation, and Kresimir Zubak, its Vice-President. In the video, Delic responds to the question of a Croat representative regarding the transfer of the EMD from the area of Zenica. In doing so, Delic is not acting as a negotiator with respect to the issues concerning the EMD. Rather, it is clear that he is part of the Bosnian delegation which is discussing disputed issues with Croat representatives.

949.A political leader, the President of the BiH Federation and member of the RBiH Presidency, Dr. Ejup Ganic, was present at the meeting as well. Any resulting decision was not a decision of Delic, but the decision of the BiH Federation, led by its President, Dr. Ejup Ganic.¹⁸¹⁸

950.To prove effective control, the Prosecution tries to rely on the ‘Proposal for promotion of ranks’ of 25 July 1994,¹⁸¹⁹ containing the names of several Arab members of the EMD. This document was produced by the Main Staff Personnel Administration. Delic did not even see it, let alone sign this document. Loncaric explained:

*“General Delic did not see this document. It was signed in his name, and this document was then forwarded to President Izetbegovic where it was signed and where a decree was produced.”*¹⁸²⁰

¹⁸¹⁷ Softic,28/08/2007-T.1856.

¹⁸¹⁸ Divjak,12/09/2007-T.2199-2200.

¹⁸¹⁹ E570,

E571- RBiH Presidency, Decision on Commissions and Promotions to Rank in the ARBiH,05/08/1994.

¹⁸²⁰ Loncaric, 10/04/2008-T:8343-8344.

951. The evidence shows that the EMD did not follow orders concerning appointments and promotion to ranks.¹⁸²¹

952. The Prosecution also relies on several documents concerning stimulative measures awarded to the EMD and individual members of the detachment.¹⁸²² All of these documents were produced in the period 1-23 December 1995. This was the time of intensive preparations for the signing and implementation of the Dayton Accords. The international community made it clear to the RBiH authorities that all foreigners would have to leave BiH territory.¹⁸²³ This meant the EMD would have to be disbanded. EMD members openly opposed disbandment and made statements to the effect that they would continue to fight the war.¹⁸²⁴ The SVB, which intercepted their telephone conversations, had information that they refused to hand over their weapons and would go on fighting.¹⁸²⁵ This was a dangerous situation, given the support the Mujahedin enjoyed among the local population. Halim Husic explained:

*“...The 3Corps commander was a very tactful man. He knew that they enjoyed support among the people. War was about to end imminently, and we were faced with the danger of a completely new conflict breaking out between the units of the Army of Bosnia and Herzegovina and this unit, which would probably be backed by a considerable number of the citizens from that area. The unit would be backed.”*¹⁸²⁶

953. An intercepted fax, sent abroad by the EMD, shows that they expected, and that there was a possibility they might have to fight again. The fax provided that in the case of “an

¹⁸²¹ **E571**, **PW9**, 15/11/2007-T.5645-5646, commenting on **E830**.

¹⁸²² **E79**- GSARBiH document on Silver Shield Awards, 01/12/1995,

E817-GSARBiH Order, 01/12/1995,

E827(Under seal)- [REDACTED]

E828- GSARBiH document on Golden Lily Awards, 23/12/1995,

E829-GSARBiH document on Silver Shield Awards, 23/12/1995,

E1134-GSARBiH document on Commendations, 23/12/1995,

E1374-GSARBiH Order, 20/02/1995.

¹⁸²³ **Loncaric**, 10/04/2008-T.8364; **HalimHusic**, 12/03/2008-T.7428-7429.

¹⁸²⁴ *Id.*

¹⁸²⁵ **Loncaric**, 10/04/2008-T.8364.

¹⁸²⁶ **HalimHusic**, 12/03/2008-T.7429.

escalation of a conflict with the Army, they are not to leave until a safe transfer to the next place is secured.”¹⁸²⁷

954. The 3Corps Commander proposed a peaceful solution, which included awarding citations to EMD members, after which they would leave the country. Loncaric described how the events unfolded:

*“...After the Dayton Accords, this unit was supposed to leave Bosnia and Herzegovina and we received information from Mr. Izetbegovic, the president, and Sulejman Vranj was in the area of responsibility of the 3Corps, so we had information that they were not prepared to be disarmed easily and cease fighting [...] And it was decided Mr. Izetbegovic called Mr. Sulejman Vranj to come and see him. He went and saw him, and he explained that these men were supposed to be awarded these citations, so that then they could leave the country.”*¹⁸²⁸

955. What followed was a political decision and intervention. Politicians negotiated with this unit. Sulejman Vranj, Chief of the Personnel Administration, who had met with President Izetbegovic to discuss this matter, brought proposals for citations to be awarded to the EMD and its members.¹⁸²⁹ Therefore, the orders for citations, although they were signed by Delic, were not based on his decision. Rather, they were the result of the *political* decision of President Izetbegovic.

956. Document E673¹⁸³⁰ mentions two meetings concerning the disbandment of the EMD, held with EMD members on 11 December 1995. Awad said he remembered a meeting in December 1995 regarding disbandment, at which President Izetbegovic and Delic were present. EMD members tried to convince President Izetbegovic to change his position on the disbandment of the unit.¹⁸³¹

957. Awad said that *“if [Izetbegovic] would yield a little bit in his position, then Delic would say, ‘President, do you remember what we agreed in December?’ That was the*

¹⁸²⁷ E843-3Corps SVB Information on Vranduk, 19/12/1995.

¹⁸²⁸ Loncaric, 10/04/2008-T.8364.

¹⁸²⁹ *Id.*

¹⁸³⁰ E673(Under seal)- [REDACTED]

¹⁸³¹ Awad, 09/02/2008-T.122.

only sentence of his during the meeting.”¹⁸³² Delic’s position with regard to the EMD was completely clear. It is evident that EMD representatives discussed their status with Izetbegovic and they expected a decision from him. Delic adhered to the position of the international community, and he wanted to see the implementation of the Dayton Accords.

958. Therefore, the Order for the disbandment of the EMD¹⁸³³ was not Delic’s decision, but a political decision resulting from the Dayton Accords, accepted and signed by President Izetbegovic. Again, Delic’s order flowed from the authority of his superior.

959. It is in this context that the Trial Chamber should view Delic’s presence at the farewell gathering. The Defence accepts Delic was present, but disputes that the voice on the videoclip which the Prosecution attributes to Delic is authentic.¹⁸³⁴ The Prosecution has not proven this in any way. To the contrary, PW9 explained that neither the visual nor audio component of the videoclip reflected what happened. He described how Delic gave a short delivery, conveying the greetings of President Izetbegovic and thanking the Arab members of the EMD for their help to the Bosnian people.¹⁸³⁵

960. The Prosecution relies on several other documents to try to show that Delic exercised effective control over the EMD. Delic’s order of 12 January 1995, placing the EMD once again under the direct control of 3Corps represents yet another attempt to bring this unit within the chain of command.¹⁸³⁶ Although within the same order he ordered the establishment of the 35Division in Zavidovici, Delic did not order the subordination of the EMD to this unit. Rather, he subordinated it to the 3Corps which should have had a greater chance of bringing the unit under control. However, this order was not effective since the EMD was never integrated into the 3Corps.

¹⁸³² *Id.*

¹⁸³³ **E824**-GSARBiH Order for the disbandment of the El-Mudzahidin unit, 12/12/1995.

¹⁸³⁴ **E833**-Transcript of the Youtube video.

¹⁸³⁵ **PW9**, 15/11/2007-T.5580.

¹⁸³⁶ **E165/E378**-GS ARBiH Order on reorganization of ARBiH, 12/01/1995.

961. On 18 May 1995 Delic approved the 'Realization for the Plan for OA Vranduk'. This action was clearly aimed at trying to bring the unit within the system of RiK.¹⁸³⁷

962. The Trial Chamber has seen numerous documents concerning intercepted EMD telephone conversations and faxes which were shown to SVB members Vuckovic and PW11. They were officers who held important positions within the SVB and came across numerous intercept documents. Both of them said that they never saw any report or document which would indicate any connection between Delic and the EMD.¹⁸³⁸ On the contrary, during the intercepted calls, EMD members mentioned high-ranking civilian officials as being their contacts through which problems were resolved.¹⁸³⁹

963. Neither the EMD command nor Shiekh Shaban, its true leader, ever contacted Delic or the Main Staff. When the 3Corps Command did not allow the transfer of ARBiH members to the EMD, its leaders met with President Izetbegovic to discuss this problem.¹⁸⁴⁰ This shows that EMD members considered themselves on an equal level with the ARBiH, and this is why they addressed Izetbegovic.¹⁸⁴¹

964. The EMD did not even show respect towards the Main Staff or its Commander, let alone recognize it as its command.¹⁸⁴² They distrusted Main Staff officers.¹⁸⁴³ The evidence shows that neither the EMD nor its sponsors trusted communists¹⁸⁴⁴ and JNA officers. Delic had been both. PW9 said:

"...At the time, the funds stopped arriving to the El Mujahedin Detachment because some speculations and suspicions emerged that [Jamma Al Islamiyaa] from Egypt was controlling the detachment, and that the detachment was under the control of the Bosnian army which contained many

¹⁸³⁷ **E661**

¹⁸³⁸ **Vuckovic**, 08/11/2007-T.5194, commenting on **E762-SVB Administration Bulletin no.5,06/01/1994**.

¹⁸³⁹ **E902**(Under seal)- [REDACTED]

¹⁸⁴⁰ **Awad**, 10/02/2008-T.214-216,

[REDACTED]

¹⁸⁴¹ See section VIII, B (3)(o).

¹⁸⁴² **E592-3CorpsSVB Daily Report**, 10/09/1995,

E774-3CorpsSVB Information, 01/07/1995,

E798-3CorpsSVB Report, 03/07/1995.

¹⁸⁴³ **PW11**, 28/11/2007-T.6320.

¹⁸⁴⁴ **E127-3Corps Information**, 28/11/1993.

*elements of the former JNA troops who were of pro-Communist orientation and so on...”*¹⁸⁴⁵

965. The Prosecution argues in PPTB para. 19.3 that indicators of effective control are: the official position occupied, the power to issue orders and to have them executed, the conduct of combat operations implicating the forces in question, the power to impose sanction, the power to promote soldiers of the force in question or to dismiss them, as well as the participation of the superior in negotiations affecting the troops in question.

966. The evidence has shown that none of these indicators of effective control have been met. The Prosecution relied upon the position of the Trial Chamber in the *Blaskic* case. However the Appeals Chamber in the same case took into account other factors as indicators of a material ability to exercise control.¹⁸⁴⁶

967. When assessing whether the Accused exercised effective control over the EMD the Trial Chamber must take into account inter alia these *Blaskic* Appeals Chamber indicators, as they are highly relevant to the present case.

(g) EMD was not de facto part of the ARBiH

968. There is clear and irrefutable evidence that the EMD was not *de facto* part of the ARBiH. EMD members and members of ARBiH commands shared this opinion:

Ismet Alija, Main Staff member:

“[...]in my knowledge and according to my information, was not within the system of control and command. They were a closed unit, and they stood for themselves. They were independent. They were very difficult to reach or receive information about their activities. They made their own decisions.

Most probably, Your Honours, I believe that you know that they had their own way of decision-making. That term is

¹⁸⁴⁵ PW9,17/04/2008-T.8685;PW2,19/07/2007-T.884, commenting on E127: “Q. ... [I]t is true, is it not, that both the Arabs and the Muslims close to the religious circles considered former JNA officers to be Communists?”

A. Yes.”

¹⁸⁴⁶ *Blaskic*, AJ paras: 69 (confirmed in *Halilovic*, AJ para.207),385,387,390,393-396,398,399.

"shura," is something like a council of sorts. And if they decided to do something, they did it. And if they decided not to do, they didn't do it, and they would not take anybody's orders."¹⁸⁴⁷

PW9, EMD member:

*"Formally, in our language, you could interpret as meaning de jure, but in essence it operated quite differently from the way that a unit should operate in relation to its superior command."*¹⁸⁴⁸

Hasanagic, 35Division Commander:

*"I did not and I could not have control over them because I did not have enough information and everything else that we discussed so that I could have control over that detachment. Starting with the establishment, head count, reporting, and the other elements that are of very great importance for me having any control over them."*¹⁸⁴⁹

Sljuka, 35Division intelligence officer:

"Q...And now before you, you have a decision ordering the formation or the establishment of the El Mujahedin Detachment. This is what we see on paper; is that correct?

A.Yes.

Q.These are just papers?

A.Yes.

Q. What was the de facto state of affairs in the ground? Was it not that the units of the Army of Bosnia-Herzegovina did not control the El Mujahedin Detachment; is that correct?

*A.That's correct. They were led by their own will. Nobody could control them."*¹⁸⁵⁰

[REDACTED].¹⁸⁵¹

Halim Husic, 3Corps Morale Section:

¹⁸⁴⁷ Alija, 16/10/2007-T.4156, commenting on E606-3Corps Report on combat activities, 18/07/1995.

¹⁸⁴⁸ PW9, 16/11/2007-T.5747.

¹⁸⁴⁹ Hasanagic, 28/09/2007-T.3286-3287.

¹⁸⁵⁰ Sljuka, 23/10/2007-T.4381.

¹⁸⁵¹ [REDACTED]

*“We were hoping that with the forming of a unit, all the armed foreigners would in that way be under control. This didn't happen, however. Certain individual armed groups remained outside the El Mujahid Detachment and continued to create numerous problems. On the other hand, no matter how much we tried to place the El Mujahid Detachment in the system of control and -- command and control, this did not happen until the end of the war, until the detachment was actually disbanded. Our hopes were really illusory.”*¹⁸⁵²

969. Documents originating from different sources in¹⁸⁵³ and outside¹⁸⁵⁴ of BiH show that the EMD was not *de facto* part of the ARBiH. E127:

*‘I inform you that a difficult phase has started for us because there are many enemies-communists. However, this phase represents a new phase of improvement in the road we follow. We are now one unit, we have our own body which is formally under the control of the Army, but the Army cannot order us to engage in actions against our will. To the contrary, we set plans for them because they have little experience.’*¹⁸⁵⁵

970. A report seized by the Italian police during the search of the ICI, Milan, signed by five members of the EMD command, certified by the Emir of the detachment, Abu Maali, provides:¹⁸⁵⁶

“When the Detachment was formed and recognised by the Bosnian Army, this recognition did not signify acceptance. Proof of this is that the Detachment refused many operations that the army command tried to impose on it because they were dangerous, and this was also the answer from the Detachment’s military command and the Military Council. Therefore, had the Detachment carried out the army’s orders without having the right to reply, then it would have carried out these operations, and Allah knows best.”

¹⁸⁵² HalimHusic, 13/03/2008-T.7523.

¹⁸⁵³ E127, E668(Under seal), E676, E679, E682, E688(Under seal), E689(Under seal), E669, E681-GSARBiH Hierarchical Chart of EMD, 28/11/1995.

¹⁸⁵⁴ E1200, E1201, E1386, E1387, E1388, E1390, E1393, E1394, E1395, E1436, E1437, E1438, E1423.

¹⁸⁵⁵ E127-3Corps Information, 28/11/1993, p.1,

PW9, 16/11/2007-T.5707-5708, commenting on E127.

¹⁸⁵⁶ E1394-A fax from the EMD to ICI Milan, 07/03/1995, p.4,

PW9, 17/04/2008-T.8686, commenting on E1394.

971. When the true founders and sponsors of the EMD suspected, *inter alia*, that the ARBiH, which had former JNA officers of pro-communist orientation among its members, was commanding the EMD, they stopped the financing.¹⁸⁵⁷ PW9 recalled the situation and confirmed that the EMD command did not accept the orders of the 3Corps and the ARBiH.¹⁸⁵⁸

(h) EMD had its own objectives, political and military organisation

972. As the Defence's claimed in Defence PTB, paragraph 132, the evidence shows the arrival of the mujahedin in Bosnia was closely related to and resulted from the activities of Islamic organisations who had their own agendas in BiH.¹⁸⁵⁹ This agenda was the same as that of Islamic organisations in Afghanistan, which was described by Andrew Hogg: "It was quite clear they were there fighting Jihad".¹⁸⁶⁰ The mujahedin in BiH had the same approach to combat as the mujahedin in Afghanistan.¹⁸⁶¹

973. A document found at the ICI, referred to by Evan Kohlmann in 'Al-Qaida's Jihad in Europe'¹⁸⁶² stated: "Jihad has been introduced to spread God's religion and to destroy any ruler that is not subject to the adoration of God." Wherever the mujahedin fought they did so with the goal of creating an Islamic State.¹⁸⁶³ In contrast, the ARBiH was not fighting for an Islamic State; its goal was clearly defined.¹⁸⁶⁴ It fought for a multi-ethnic BiH.¹⁸⁶⁵

¹⁸⁵⁷ PW9,17/04/2008-T.8685,commenting on E1394.

¹⁸⁵⁸ PW9,17/04/2008-T.8690,commenting of E1394: "Q... *This letter, which is said to be signed and certified by the detachment command, would you agree that it reflects these very facts that you testified about, that the detachment, in fact, would not accept nor carry out orders of the army units in Bosnia and Herzegovina, or rather, of the corps?*

A. *Yes, that is correct.*"

¹⁸⁵⁹ See section III, C(1), (6).

¹⁸⁶⁰ Hogg,10/07/2007-T.344.

¹⁸⁶¹ Hogg,10/07/2007-T.347, commenting on E58-Kohlman Evan, Al-Qaida's Jihad in Europe the Afghan-Bosnian Network, 2004,p.15.

¹⁸⁶² E58

¹⁸⁶³ Hogg,10/07/2007-T.354,commenting on E54-Andrew Hogg's article 'Arabs join in Bosnia war,' 30/08/1992.

¹⁸⁶⁴ E189-Platform for the Activities of the RBiH Presidency in Conditions of War, 26/06/1992.

¹⁸⁶⁵ E60-Excerpt from Hogg's journal, quoting several Bosnian men, p.27: "*We are fighting for our lives and the lives of our children.What Islamic republic.*"

Hogg,10/07/2007-T.355,commenting on E60:"Q.*Would you agree it's clear from their words that the main concern of these men was simple survival and protection. They were not interested in fighting to create an Islamic state, were they?*

974. Responding to a question by a journalist at a press-conference, Delic said: “

*“The ARBIH, as you said it yourself, is multi-ethnic, just like BIH. And it is against ethnic division...As a Bosnian after all, and Muslim because I must declare myself as a member of some ethnic group, I would only like to live in a multi-ethnic BIH and I think we shall build it...”*¹⁸⁶⁶

975. The other goal of the mujahedin was missionary work (Dawa).¹⁸⁶⁷ The evidence shows the EMD devoted a significant part of its efforts to missionary work:

*“In addition to defending the Muslim honour in Bosnia and liberating the occupied territory, the Detachment has taken upon itself to return the people, instruct them and bring them back to authentic Islam. Therefore, since its inception, the Detachment has opened a Sharia school, where a volunteer can learn proper devotion...”*¹⁸⁶⁸

976. E1386 shows that the EMD worked intensively on the “enlightenment” of Imams from the Islamic community of Zenica and the surrounding area. They created a programme which included 100 Imams from Zenica whom they regularly trained.¹⁸⁶⁹

977. Commenting on E1200, Halim Husic said:

*“This precisely reflects the goal that they had, which completely put aside our tradition in Islamic education in Bosnia, and the Bosnian way of many generations, and they tried to impose a completely new, different concept which had not existed...”*¹⁸⁷⁰

(i) Al-Qaeda

978. Witnesses have described the relationship between the EMD and international terrorist organisations.¹⁸⁷¹ Ali Hamad, a former member of Al-Qaeda said he was sent to BiH by this organisation, where he was one of its officers.¹⁸⁷² In an interview he

A.I would agree with that, yeah.”

¹⁸⁶⁶ E993-Delic’s statement at a press conference.

¹⁸⁶⁷ Hogg, 10/07/2007-T.348-349

E677-3Corps SVB Information ‘Categorisation of people of Arab origin by activity, 17/04/1995.

¹⁸⁶⁸ E1386-EMD Bulletin sent to ICI Milan, 05/05/1992, p.4.

¹⁸⁶⁹ E1386, p.5; E1200-EMD Newsletter ‘Call of Jihad,’ 06/03/1995, p.2.

¹⁸⁷⁰ Halim Husic, 11/03/2008-T.7302, commenting on E1200.

¹⁸⁷¹ See section III, C (1).

¹⁸⁷² Hamad, 08/09/2007-T.140; Hamad, 07/09/2007-T.5-6.

explained that Al-Qaeda was not interested in Muslims in BiH, but only in creating a base in Europe from which it could act.¹⁸⁷³

979. Wahidin El Misri, the first military commander of the mujahedin in BiH, was a well known Al-Qaeda figure.¹⁸⁷⁴ He sent his reports to Al-Qaeda.¹⁸⁷⁵ Al-Qaeda had its own cell in BiH, and it founded a “mujahedin administration” which placed Ali Hamad in Abu Zubeir’s group.¹⁸⁷⁶ The mujahedin administration reported to Al-Qaeda on the activities of its mujahedin in BiH.¹⁸⁷⁷ The military commander of the EMD, Muatez, was a member of Al-Qaeda.¹⁸⁷⁸ Al-Qaeda formed Abu Zubeir’s group and decided to separate it from the EMD.¹⁸⁷⁹ The people of BiH and its leadership did not know about the existence of Al-Qaeda and its objectives at the time:

*“Well, briefly I can only state that we, the foreign Mujahedins, from the very arrival to Bosnia during the war, that we haven't actually arrived here to help the Bosnian people. It is true that we have stated that, but we had our secret goals unknown to local people. Not those from the BiH army, and also not the leadership, Izetbegovic and others who led the country during the war...”*¹⁸⁸⁰

980. The mujahedin had its own disciplinary system and rules.¹⁸⁸¹ Ali Hamad was tried by the mujahedin military court.¹⁸⁸² E682, of 31 October 1995, is a list of addressees to which the EMD sent correspondence; under number six is the name of Usama Ibn Laden.¹⁸⁸³

¹⁸⁷³ **E326**-Hamad’s interview to Spiegel Online, 03/12/2006,p.3, **Hamad**,08/09/2007-T.89-90,commenting on **E326**.

¹⁸⁷⁴ **Hamad**,08/09/2007-T.93-94.

¹⁸⁷⁵ **Hamad**,08/09/2007-T.102-103.

¹⁸⁷⁶ **Hamad**,08/09/2007-T.98.

¹⁸⁷⁷ **E329**-Excerpt from the book of Ali Hamad.

Hamad,08/09/2007-T.102-103,commenting on **E329**.

¹⁸⁷⁸ **E330**- Excerpt from the Interview of Ali Hamad with OTP Investigators, 15 August 2006,

Hamad,08/09/2007-T.108-109,commenting on **E330**.

¹⁸⁷⁹ **E328**-Excerpt from the book of Ali Hamad,

Hamad,08/09/2007-T.99-100,commenting on **E328**.

¹⁸⁸⁰ **Hamad**,08/09/2007-T.141.

¹⁸⁸¹ **Hamad**,08/09/2007-T.180.

¹⁸⁸² **Hamad**,08/09/2007-T.169-170.

¹⁸⁸³ **E682**-3Corps SVB Report on telephone and fax numbers to which members of the EMD send shipments,31/10/1995.

(j) EMD and foreign intelligence services

981. In the period between the formation of the EMD and disbandment, the SVB reported that certain members of the detachment were under the direct patronage of foreign intelligence services.¹⁸⁸⁴ [REDACTED].¹⁸⁸⁵

982. The EMD had significant ties with certain circles in the Republic of Croatia. The mujahedin were selected in Croatia and then would travel onto Bosnia from there.¹⁸⁸⁶

(k) EMD Logistics

983. The evidence shows that the EMD received symbolic logistical support from the ARBiH in comparison to the other sources of logistics available to it. PW9 said:

*“A. As for its logistics, the detachment was left to its own devices, in a way. Any support that came from the army was very sporadic and insufficient, if I may put it that way. Everything the detachment required, in terms of food, clothing, weapons and the like, was bought by using donations that we had secured from abroad in most cases....
Q...you say that it was Muatez who decided which sort of military equipment would be purchased and which not?
A. Yes, that's right.”*¹⁸⁸⁷

984. The EMD was financed and supported by Islamic organisations outside the EMD, the true founders of the EMD, who will be discussed later. It was also financed by various Arab humanitarian organisations that were active in BiH.¹⁸⁸⁸ A letter from Abdel Aziz to

¹⁸⁸⁴ **E127**-3Corps Information on activities of foreigners from Arab countries within the 3Corps zone of responsibility, 28/11/1993,

E939-3Corps SVB Proposal for introduction of POpO and TK telefax towards members of the “El Mujahid” detachment, 06/03/1995,

E689(Under seal)- [REDACTED]

¹⁸⁸⁵ [REDACTED]

¹⁸⁸⁶ *Id.*,

E939

E1427-Excerpt from Milan Court Judgment, 03/01/2006, pp.1,24,25.

E1390- Excerpt from Milan Court Judgment, 01/01/2006, p.4.

E1201-Faxes sent by the EMD to ICI in Milan and telephone intercepts to ICI, 27/02/1995.

¹⁸⁸⁷ **PW9**, 16/11/2007-T.5682.

¹⁸⁸⁸ **E678**-CSB Information about Afro-Asian humanitarian organizations in BiH, 10/11/1995,

E1141-CSB Information on foreign humanitarian organization in BiH, 24/11/1995,

E1268-3Corps SVB Information on connection between Arab humanitarian organizations and EMD, 17/04/1995, **E337**-Excerpt book of Ali Hamad,

E338-Official note, 04/11/1997,

the EMD commander, Abu Maali, seized at the ICI mentioned large sums of money collected directly or indirectly from officials in Qatar for the EMD.¹⁸⁸⁹

985. Not only did the EMD obtain weapons and military equipment independently, it also secured funds for salaries and other forms of monetary awards for its men.¹⁸⁹⁰ The EMD opened a battalion office in Kuwait in the house of Abu Othman Al Kuwaiti. A faxed letter dated 27 February 1995 seized at the ICI from Abu Othman Al Kuwaiti addressed to Sheikh Shaban provided:

*“...we have collected around 18 000 DM in just one day, we will send you monthly aid for the battalion; we will also publish the news from Bosnia and from the battalion that you will send us by fax to no. 4576596.”*¹⁸⁹¹

986. PW9 described Abu Othman al Kuwaiti as a person who collected the funds for the EMD in Kuwait. The witness identified a reference to this person in E1388.¹⁸⁹²

987. Dr Cornish gave evidence that logistic support provided a very important indicator of whether a unit was integrated into an army.¹⁸⁹³ He also commented on a situation where a unit had its own logistics:

“...If this unit is supported specifically by its own logistics, re-supply route, what does that mean entirely? What is actually going on? Can we really depend on them once again [...] I would, again, say that it invites questions as to the level of integration of that unit within the overall system and, indeed, of the dependability of that unit, for all the reasons I've given. Really ...there could not be a clear idea of precisely what that

E339-State Security Service Official note,23/10/1995,

E676-RBiH MUP, State Security Service, Official Note,23/10/1995,

E677-3Corps SVB Information,17/04/1995,

E782-3Corps SVB Information,20/06/1995,

E940-3Corps SVB Information on Abu Maali,17/05/1995,

E1256-3Corps SVB Information,24/03/1994.

¹⁸⁸⁹ **E1436**-Letter from Abdel Aziz to Abu Maali.

¹⁸⁹⁰ **E782**,

PW9,16/11/2007-T.5683-5684,commenting on **E782**.

¹⁸⁹¹ **E1201**-Faxes sent by the EMD to ICI in Milan and telephone intercepts to ICI,27/02/1995,p.9.

¹⁸⁹² **E1388**-Fax from EMD to ICI,12/04/1995.

PW9,17/04/2008-T.8692-8693, commenting on **E1201**.

¹⁸⁹³ **E1383**-Expert Report of Dr. Cornish,pp.17-18.

*unit was capable of, if it were not reporting and requiring through the standard logistics chain of its needs... ”.*¹⁸⁹⁴

988. The EMD was financed by sources outside of BiH; it sent reports to those sponsors and was accountable to them. Dr. Abu Haris was responsible for this.¹⁸⁹⁵ PW9 said:

*“...Abu Haris was charged with submitting reports and sending reports abroad, raising funds and making sure that certain funds were secured for special purposes, and so on and so forth. Whatever had to do with matters abroad was within his competence.”*¹⁸⁹⁶

989. [REDACTED].¹⁸⁹⁷

990. Bulletins containing reports about events were regularly sent to EMD sponsors outside of BiH.¹⁸⁹⁸ They were not sent to ARBiH commanders.¹⁸⁹⁹ The founders of mujahedin camps in BiH, including EMD camps, received these reports and collected funds for the EMD.¹⁹⁰⁰ Video E1389 shows that Shiekh Shaban was responsible for the issue of mujahedin in BiH.¹⁹⁰¹

(l) Al Jamma Al Islamiyaa, Islamic Cultural Institute in Milan

991. Sheikh Shaban was a prominent figure in Al Jamma Al Islamiyaa. In paragraph 5 of the indictment against Osama Bin Laden filed with the U.S. District Court, Southern District of NY, Al Jamma Al Islamiyaa is described as one of the terrorist organisations through which Al-Qaeda operated in different parts of the world including BiH.¹⁹⁰²

¹⁸⁹⁴ **Cornish**, 15/04/2008-T.8573-8574.

¹⁸⁹⁵ **E826**(Under seal)- [REDACTED]

¹⁸⁹⁶ **PW9**, 17/04/2008-T.8633.

¹⁸⁹⁷ **E656**(Under seal)- [REDACTED]

¹⁸⁹⁸ **E1200**-EMD Newsletter ‘Call of Jihad,’ 06/03/1995;**E1386**-EMD Bulletin sent to ICI Milan, 05/05/1992;**E1395**-EMD Bulletin sent to ICI Milan, 12/09/1995,

E1389-Video showing Islamic scholars.

¹⁸⁹⁹ **PW9**, 17/04/2008-T.8648-8649.

¹⁹⁰⁰ **PW9**, 17/04/2008-T.8666-8669, commenting on **E1389**, recognized: Sheik Abdel Aziz, Sheik Selman Sauda, Sheik Abdul Mesid Udani, Sheik Omar Abdel-Rahman, Sheik Ahmed Saif, Sheik Abu Talah, Sheik Enver Saban.

¹⁹⁰¹ **E1389**

PW9, 16/11/2007-T.5738, said EMD had associates abroad who arranged for reception and treatment of the wounded.

¹⁹⁰² **E323**- Indictment against Osama Bin Laden filed with the U.S. District Court, 31/12/2001.

992. [REDACTED].¹⁹⁰³

993.E1424 shows a connection between the ICI and Al Jamma al Islamiyya. ICI Director Shaban was “*also wanted in Egypt as a political extremist on account of his involvement...in the attack on Sadat.*”¹⁹⁰⁴ PW11 confirmed that the SVB had obtained this information.¹⁹⁰⁵

994.Sheikh Shaban was a member of the European Shura, which met for the first time on 24 April 1993. They discussed the overview of future work in Europe, support and assistance to secure a mujahedin victory in Algeria, Tunisia and Sri Lanka. In particular it was decided that “the lines of the DAA’WA¹⁹⁰⁶ and the information committee will be adopted as a starting point for the work in Europe.”¹⁹⁰⁷ They also considered the issue of Bosnia and decided that:

*“...the competent party in Bosnia is the Social Committee (the head of the Social Committee is brother ABU KHALED). As regards having the money reach its destination, the heads of the units within Europe are responsible for ensuring that the money intended for the Mujaheddin in Bosnia reaches them in accordance with the safest possible plan”.*¹⁹⁰⁸

(m) Sheikh Shaban – de facto authority over the EMD

995.The evidence shows that Sheikh Shaban was the de facto authority over the EMD. Bulletins and combat reports were sent by the EMD to sent to Shaban at the ICI, who sent some of them on to EMD sponsors. Daily combat reports concerning ongoing military

¹⁹⁰³ **E905**(Under seal)- [REDACTED]

E325- Excerpt from Kohlmann Evan, Al-Qaida’s Jihad in Europe the Afghan-Bosnian Network, 2004,

E324-Excerpt from the book of Ali Hamad,

Hamad,07/09/2007-T.81, commenting on **E324**.

¹⁹⁰⁴ **E1424**-Excerpt from Milan Court Judgment,p.5

¹⁹⁰⁵ **PW11**,29/11/2007-T.6340, commenting on **E905**(Under seal).

¹⁹⁰⁶ **E1437**-Meeting of the European Shura,Agenda,24/04/1993,

E844-Interview with Sheik Shaban in ‘Ljiljan,’ 15/11/1995, in which he introduced himself as a missionary.

¹⁹⁰⁷ **E1437**.

¹⁹⁰⁸ **E1437**,pp.2-3,

E325,p.5.

actions were sent to Shaban.¹⁹⁰⁹ Such reports were not sent to the 3Corps Command or any other ARBiH command.¹⁹¹⁰ PW9 said: *“These reports were not sent to the command of the 3Corps, nor to any other command of the army. The reports were solely intended for foreign countries.”*¹⁹¹¹

996. Shaban organised the arrival of the mujahdein in BiH and secured identification documents for them.¹⁹¹² He also sent military commanders to BiH.¹⁹¹³ PW9 confirmed that Arab commanders in the EMD were not appointed by the ARBiH, but they were sent to BiH by Shaban.¹⁹¹⁴ Shaban conducted security checks for new EMD members.¹⁹¹⁵ PW9 said:

*“Security checks were, for the most part, carried out while Sheik Enver had a great many acquaintances throughout the world, and there many Arabs who were claiming to be [...] So it was Sheik Enver Saban who carried out most of these security checks.”*¹⁹¹⁶

997. Shaban was frequently informed of problems within the EMD. On 12 November 1993 the EMD informed Shaban of “the acts of treason committed by the Bosnian army,” in which the commander of Muslim Forces (Ahmed Karalic) managed to kill four Arab mujahedin, after which he escaped.¹⁹¹⁷ They also reported that unauthorised persons had

¹⁹⁰⁹ PW9, 17/04/2008-T.8661,

E387-EMD combat report sent abroad, 31/05/1995.

E1201-EMD combat report sent abroad, 05/10/1994, p.3.

E668(Under seal)- [REDACTED]

E669-3Corps SVB Information, 16/09/1995,

E935-3Corps SVB Information, 28/07/1995.

¹⁹¹⁰ PW9, 17/04/2008-T.8663,

E904(Under seal)- [REDACTED]

¹⁹¹¹ PW9, 17/04/2008-T.8663.

¹⁹¹² E1201-EMD fax to ICI, 12/11/1993, p.1.

¹⁹¹³ E1390-Excerpt from Judgment of Civil and Penal Court in Milan, Intercepted conversation between Anwar Shaban and Abd El Aziz, 01/01/2006, p.3: *“Interlocutor Abu-Abd-El-Aziz: Let’s hope so. Abu-El-Hareth has called me from Bosnia and tells me that he needs commanders on the various front.s Subscriber Anwar Shaaban: I have sent two lads from here, they will be with Abu El-Hareth in the next few days, they will be a great help to him, they are excellent people.”*

¹⁹¹⁴ PW9, 17/04/2008-T.8673.

¹⁹¹⁵ E1393-EMD fax sent to ICI Milan, 25/12/1994, p.1.: *“If your /background/ check shows that he is clean, he may be very, very useful, Allah willing. He can be summoned here at any moment, as agreed.”*

¹⁹¹⁶ PW9, 17/04/2008-T.8680-8681.

¹⁹¹⁷ E1201-EMD fax to ICI, 12/11/1993, p.1.

HalimHusic, 11/03/2008-T.7349-7350, commenting on E1201, confirmed that the event occurred.

obtained the personal information contained in the secret EMD personnel files, and about the conflict with the Abu Zubeir group.¹⁹¹⁸ In the same document they report on problems with weapons.¹⁹¹⁹

998. On 25 December 1994, Shaban was further informed of the situation in the EMD, in order “to be fully brought up to date on the matter.”¹⁹²⁰ It is clear from the explanation he received that EMD members did not accept the authority of the EMD commander, Abu Maali, but only trusted Shaban. PW9 recalled this situation and said that this in principle was the general attitude in the detachment.¹⁹²¹

999. On 7 March 1995, Sheikh Shaban, who was at the ICI at the time, was sent a comprehensive report on the doubts and dilemmas which were discussed in BiH about the EMD.¹⁹²² This document was signed by the most prominent EMD members, including the emir, Abu Maali. It can be seen from the document that the EMD command tried to explain itself and remove the doubts mentioned in the document, including that the EMD was under ARBiH command.

1000. It is clear from the document that the “honourable Sheik Ibn Usejmini, may Allah bless him” confirmed that “the struggle in Bosnia was righteous according to Sharia,” before EMD’s formation. The document also mentioned that a video had been recorded in which Sheikh Ibn Usejmin is seen issuing a fatwa.¹⁹²³ A fatwa is a binding order, based on an Islamic rule or prescription.¹⁹²⁴

1001. The evidence shows that Sheikh Shaban arrived in BiH at the end of 1994.¹⁹²⁵ Although Abu Maali was the EMD emir, and known as such to the ARBiH, Sheikh

¹⁹¹⁸ E1201-EMD faxt to ICI,30/03/1995,p.10.

¹⁹¹⁹ *Ibid.*,p.7.

¹⁹²⁰ E1393-EMD faxt sent to ICI Milan,25/12/1994,p.1.

¹⁹²¹ PW9,17/04/2008-T.8679.

¹⁹²² E1394.

¹⁹²³ E1394, p.4

¹⁹²⁴ PW9,15/11/2007-T.5661.

¹⁹²⁵ PW2,19/07/2007-T.890, PW9,15/11/2007-T.5663, Awad,10/02/2008-210, E339-State Security Service Official Record,23/10/1995.

Shaban was the true leader. Moreover, Arab members of the EMD elected him as the emir, failing to inform the ARBiH and its commands about his appointment as the main leader of the EMD.

Awad:

“Q...You described that after the Sheik arrived, who knew the Shariat very well, the Arab members of the detachment chose him as the emir, as the man in charge, the leader. Is this correct?”

A.Yes, it is.

Q. Now, please, would you agree with me that the Bosnia and Herzegovina army and their commands did not -- or were not asked or consulted in any way about the election of Sheik Enver as the main leader of the El Mujahedin Detachment?”

A.Yes, that is correct. There was no need to ask anyone either.

Q. So the command of the Bosnia and Herzegovina army did not issue any orders in terms of the Sheik becoming the emir of the detachment?”

A.Yes, that is true. Absolutely.”¹⁹²⁶

1002.Thus Abu Maali was the emir only on paper, while the true emir of the EMD was Sheikh Shaban.¹⁹²⁷ Shaban was also the political authority in the detachment. Abu Maali, Muatez and others “respected and obeyed him very much.”¹⁹²⁸ Shaban managed the EMD until his death on 14 December 1995.¹⁹²⁹ Although he was in BiH, Shaban kept in contact with the ICI in Milan, and remained the decision-maker of the centre in Milan.¹⁹³⁰

(n) Dzemat and Shura

1003.The EMD was part of a political and religious community known as the “Dzemat”, which was completely independent of the BiH authorities. PW9 said:

“...[T]he El Mujahid Detachment was a part of the Dzemat, it was part of a community that had its political objectives and other kinds of objectives, too. The principal objective of this

¹⁹²⁶ Awad,10/02/2008-T.211.

¹⁹²⁷ Awad,10/02/2008-T.212-213.

PW9,17/04/2008-T.8670.

¹⁹²⁸ PW9,15/11/2007-T:5657.

¹⁹²⁹ E923-92bis statement of Luka Babic,pp.5-9

¹⁹³⁰ E688(Under seal)- [REDACTED]

E689(Under seal)- [REDACTED]

PW4,31/10/2007-T.4911,
[REDACTED]

*Dzemat was Dawa, which is what we spoke about a while ago, missionary work, work on promoting Islamic values, principles and the like. It was within the framework of that Dzemat, of that community, that the El Mujahid Detachment came into existence, as well as a number of other institutions and humanitarian organisations, such as the Institution for Missionary Work and the like...?*¹⁹³¹

1004.The Dzemat had its own hierarchy and structure. It had a shura, an emir, and institutions “which it use[d] to further its own objectives.” The mujahedin Dzemat in BiH had “a lot of members, all the members of El Mujahid Detachment plus a number of others who were not members of the Detachment.” Members of the Dzemat who were not in the EMD were in charge of finances, collected donations, funding, and general support for the work of the detachment.¹⁹³²

1005.PW9:

*“It was the Shura that was at the head of this all. It was the highest-ranking body, the supreme body. In formal terms, it was above Sheik Enver Saban. But I don't think any decision could have been taken by the Shura that would have strayed from any preferences expressed by the sheik. In a way, what that means is that he was the number-one man, and that is why I said originally that he was not a member of the detachment's command. This was a broader institution than the Command itself, and the institution that I have in mind is the Dzemat, the community.”*¹⁹³³

1006.Sheikh Shaban pronounced fatwas which were binding for the EMD.¹⁹³⁴ PW9:

“Q...[I]f such a fatwa is pronounced, even if it is contrary to the position that the state itself takes, or a state authority, facing a situation like that, what would the members of the El Mujahedin Detachment do? Would they follow the instructions of the state authorities of Bosnia-Herzegovina or would they obey the fatwa?

*A.As I said already, Sheik Enver's fatwas were binding for the members of the El Mujahedin Detachment, and his authority was never questioned.”*¹⁹³⁵

¹⁹³¹ PW9,15/11/2007-T.5657.

¹⁹³² PW9,15/11/2007-T.5658-5659.

¹⁹³³ PW9,15/11/2007-T.5657-5658.

¹⁹³⁴ PW9,15/11/2007-T.5662.

1007. The Shura was a council composed of around twenty persons:

*“...who took various decisions on the policies of the detachment, the activities of the detachment, the appointments to be made, who will the commander be, who will be the commander's deputy, that sort of thing. All the most important decisions to do with the El Mujahedin Detachment and its activities were taken by the Shura.”*¹⁹³⁶

1008. The Shura took decisions on the military organization of the detachment, including its activities along and away from the front line, and dealt with disciplinary issues in the detachment.¹⁹³⁷ The Shura did not answer to anyone in the ARBiH, on any level of command. Moreover, ARBiH commands did not even know the Shura existed.¹⁹³⁸

1009. The Shura considered and discussed plans of attack, and whether the attack would be carried out or not.¹⁹³⁹ The Shura and the emir decided whether the EMD would take part in combat.¹⁹⁴⁰ When asked whether the EMD would accept a decision of the RBiH Presidency on the replacement of EMD leadership, Awad said: *“...it would not accept it. It would accept the Shura's decision. What the Shura decided that's how it would be.”*¹⁹⁴¹

1010. Awad was right. Proposals of the Main Staff and Presidency decisions regarding appointments were not followed by the EMD.¹⁹⁴² [REDACTED].¹⁹⁴³ [REDACTED]. However, the EMD did not accept the ranks and structure or the organization of ARBiH

¹⁹³⁵ PW9, 15/11/2007-T.5663.

¹⁹³⁶ PW9, 15/11/2007-T.5648-5649.

¹⁹³⁷ PW9, 15/11/2007-T.5649.

¹⁹³⁸ PW9, 15/11/2007-T.5649-5650.

PW2, 19/07/2007-T.876.

¹⁹³⁹ Awad, 10/02/2008-T.198.

¹⁹⁴⁰ PW2, 19/07/2007-T.876-878.

¹⁹⁴¹ Awad, 10/02/2008-T.251.

¹⁹⁴² E570- GSARBiH Proposal for promotion of ranks, 25/07/1994,

E571- RBiH Presidency, Decision on Commissions and Promotions to Rank in the ARBiH, 05/08/1994,

E830(Under seal)- [REDACTED]

¹⁹⁴³ [REDACTED]

units. Instead, the detachment had combat groups led by emirs.¹⁹⁴⁴ [REDACTED].¹⁹⁴⁵ Therefore, any proposals of the Main Staff regarding appointments were not followed by the EMD.¹⁹⁴⁶

1011. The emir was the EMD commander, and he “was the most responsible person, had the highest responsibility and had the executive role for the detachment.[...] [T]his applied to both the military aspect of its work and the civilian aspect of its work.”¹⁹⁴⁷ The EMD also had a military emir who had authority to make decisions on whether or not to take part in operations. This position was held by Muatez Billah.¹⁹⁴⁸ Certainly, Muatez was not given this authority by the 3Corps or any other ARBiH command. That authority derived from the emir and the Shura.¹⁹⁴⁹

1012. The EMD applied its own rules which covered “*the conduct of the people who were members of the detachment. And also the conduct towards the 3Corps or the 35Division or any other unit...*”¹⁹⁵⁰ This included disciplinary rules.¹⁹⁵¹ Discipline was of crucial importance for the EMD, since one of its main tasks was missionary work. PW9:

*“...It is highly important for missionary work that the general population place trust in those – or trust those who are calling upon them to join the Islamic community That’s why preserving the dignity of the Jihad and of the Arabic soldiers was one of the priorities of the detachment. It could not be tainted by any sort of criminal activity or even misconduct or indecent behaviour and so on and so forth.”*¹⁹⁵²

¹⁹⁴⁴ [REDACTED]

¹⁹⁴⁵ [REDACTED]

¹⁹⁴⁶ **E570.**

¹⁹⁴⁷ **PW9**, 15/11/2007-T.5648.

¹⁹⁴⁸ **PW9**, 16/11/2007-T.5701-5702.

¹⁹⁴⁹ **PW9**, 16/11/2007-T.5702.

¹⁹⁵⁰ **Awad**, 10/02/2008-T.201.

¹⁹⁵¹ **Awad**, 09/02/2008-T.154-155.

E842-EMD Decision, 23/10/1993.

¹⁹⁵² **PW9**, 17/04/2008-T.8649-8650.

E1200-EMD Newsletter ‘Call of Jihad,’ 06/03/1995, mentioning that the EMD distanced itself from other groups which were committing various offences.

1013. The Shura passed down disciplinary measures within the EMD. PW9 confirmed that the Shura did not allow interference in affairs that they considered to be their own to anyone outside the EMD.¹⁹⁵³

1014. The Shura decided that the EMD would join the army ranks. Had it not been for this decision, the Detachment would not have been formed.¹⁹⁵⁴ The Shura determined what the relationship between the EMD and the ARBiH would be. Awad:

“...it was not a decision for us to have to obey everything, but the decision was that those who are in charge of the army, the army commanders, the unit chain of commanders, were people that we did not have absolute confidence in, absolute trust, because they could betray us.”¹⁹⁵⁵

1015. It may appear that the EMD was disbanded pursuant to the Dayton Accords. However, EMD members testified that it was the Shura which decided to disband the EMD. If the Shura had not made this decision, the EMD would have continued to fight. Awad said:

“...And by Allah had the Shura decided then...to continue fighting. [...] So had the Shura not agreed that the detachment be dismantled, nobody would have forced us or could have forced us to dismantle it.”¹⁹⁵⁶

1016. This is confirmed by a 3Corps SVB report which states that the Shura is meeting every fifteen minutes regarding the dismantling of the EMD.¹⁹⁵⁷

(o) Civilian and religious authorities and the EMD

1017. There is abundant evidence to show that the EMD was much closer to civilian and religious authorities than it was to the ARBiH. Certain members of civilian and religious authorities supported the EMD and had close ties with it. As explained, EMD

¹⁹⁵³ PW9, 16/11/2007-T.5668.

¹⁹⁵⁴ Awad, 10/02/2008-T.204-205.

¹⁹⁵⁵ Awad, 10/02/2008-T.205-206.

¹⁹⁵⁶ Awad, 10/02/2008-T.206-207.

PW9, 15/11/2007-T.5656: “It was the Shura that took the decision for the El Mujahedin Detachment to cease to exist.”

¹⁹⁵⁷ E843-3Corps SVB Information, 19/12/1995,

PW9, 15/11/2007-T.5655-5656.

representatives did not turn to the Main Staff or its commander for help with problems and issues they were facing. Rather, they addressed President Izetbegovic directly. [REDACTED].¹⁹⁵⁸

1018. [REDACTED].¹⁹⁵⁹ [REDACTED].¹⁹⁶⁰

1019. Dr. Cornish described a unit's contacts with the highest state authorities, rather than with its immediate superior in the chain of command, in the following way:

*“Well, that would be to step outside of the command chain with rather massive self-confidence, I would have to say. It would be such a flagrant abuse of the whole system, and it would also send, I think, a very peculiar message, that this unit considers itself to be in some kind of special relationship with the political leadership.”*¹⁹⁶¹

1020. The EMD had the support of individuals in the Government, the Ministry of Foreign Affairs,¹⁹⁶² and the Ministry of the Interior.¹⁹⁶³ It was also supported by certain local politicians, particularly in Zenica, Travnik, Zavidovici, and Tesanj.¹⁹⁶⁴ In Zavidovici, the EMD had much closer relations with the civilian authorities than with the military.¹⁹⁶⁵ This is confirmed by witnesses¹⁹⁶⁶ and documents.¹⁹⁶⁷ In January 1995, the

¹⁹⁵⁸ [REDACTED]

E668(Under seal)- [REDACTED]

PW9,14/11/2007-T.5567.

¹⁹⁵⁹**E1302**-EMD Bulleting sent to President Izetbegovic,01/01/1995.

¹⁹⁶⁰ [REDACTED]

¹⁹⁶¹ **Cornish**,15/04/2008-T.8563.

¹⁹⁶² **E243**-3Corps SVB document on failure to deport foreign nationals,16/07/1994,p.1:“According to our information, the RBiH Ministry of Foreign Affairs has not carried out the deportation of foreign-Turkish citizens. Instead, they all remained in Sarajevo upon their arrival from Zenica. They resumed their stay in Sarajevo undisturbed. Some of them are even engaged with some humanitarian organizations.”

¹⁹⁶³ **E689**(Under seal)- [REDACTED]

E680-Official Record of the State Security Service,23/10/1995,

PW4,01/11/2007-T.4948,commenting on E680.

¹⁹⁶⁴ [REDACTED]

Ribo,04/03/2008-T:6989-6990,describing Zihnija Aganovic as an influential member of the SDA party, the President of the Travnik District,and a supporter of the Mujahedin.

E509-3Corps SVB Information,12/08/1995,

E933-3Corps SVB Information,10/05/1995,p.3:“Besides this, in contact between Abu Maali and Husan, Husan said to Abu Maali that he was visited by the interpreter of Besim Spahic, Head of SO /Municipal Assembly/ Zenica, Zijad Imamovic. On that occasion, they talked about the unit...”

¹⁹⁶⁵ **Imamovic**,15/10/2007-T.4061.

¹⁹⁶⁶ **PW4**,31/10/2007-T.4889-4890, commenting on **E679**-SDB Zenica Official Note,06/09/1995.

municipal authorities in Tesanj issued to Abu Zubeir Al-Haili a certificate necessary to obtain BiH citizenship and passport.¹⁹⁶⁸

1021.Of crucial importance in this case is the fact that the Chief of the Zavidovici Municipality held a meeting with EMD representatives on 6 September 1995 to discuss the “forthcoming activities.” E679 provides:

*“E.Hamza recounted to E. Ejmen how the meeting about forthcoming activities went with the representatives of the civilian authorities (the Chief) of Zavidovici. He said that they were told if Vozuca is taken they would give them....., they were then told that something for other purposes could be produced in Krivaja. E. Hamza said that he would convey how the meeting transpired to E. Meali.”*¹⁹⁶⁹

1022.Moreover, the evidence shows that the 35Division Commander, Hasanagic, expected a solution to the problems with the EMD from the political structures and from the Zavidovici municipality leadership.¹⁹⁷⁰ Witness Imamovic characterized this as “a unique case in military practice.”¹⁹⁷¹

1023.E1386 shows that the EMD had a special programme for the enlightenment of Bosnian imams, which included around one hundred imams.¹⁹⁷² Undoubtedly, the EMD was close to certain imams and it had their support. Witness PW11, [REDACTED], was familiar with the relationship between the detachment and the local population and authorities, said the documents which he saw showed that the EMD had contacts with and support from senior clerics in that area.¹⁹⁷³

¹⁹⁶⁷ **E742** -Special Information No.87,16/08/1995,
E1235-3Corps SVB Information,06/03/1995,
E509-3Corps SVB Information,12/08/1995,
E810- 35Division SVB Information,24/10/1995.

¹⁹⁶⁸ **E1385**(Under seal)-[REDACTED]

¹⁹⁶⁹ **E679**,p.1.

¹⁹⁷⁰ **E593**-35Division Information,19/07/1995,
Imamovic,15/10/2007-T.4063.

¹⁹⁷¹ **Imamovic**,15/10/2007-T.4064, commenting on **E593**.

¹⁹⁷² **E1386**-EMD fax sent abroad,13/11/1994,p.5,item4.

¹⁹⁷³ **PW11**,29/11/2007-T.6345-6346.

1024.EMD members had frequent contacts with the Travnik Mufti, Nusret Avdibegovic. Moreover, the EMD Commander organized the issuing of travel documents to EMD members through the Travnik Mufti.¹⁹⁷⁴ On 23 August 1995, the Mufti of Zenica issued a death certificate for an Arab fighter, stating that he died on the Vozuca front near Zavidovici as an ARBiH soldier, even though he was not a member of the ARBiH. The Zenica Mufti had no authority to issue such a certificate on behalf of the ARBiH.¹⁹⁷⁵

4.The Knowledge Requirement

1025.In paragraphs 19 of the Indictment and 19.4 of the PPTB, the Prosecution pleads that an accused possesses the requisite mental state under Article 7(3) if he “knew” or “had reason to know” that a subordinate committed an offence or was about to do so. The superior must be in possession of general information that would provide notice of offences committed by his subordinates. According to the Prosecution, notice may be “actual notice” or “inquiry notice.”

1026.In paragraph 19.7 of the PPTB, the Prosecution specifically argues that “character traits of subordinates and lack of instruction of subordinates may indicate that the superior had the requisite notice”.¹⁹⁷⁶ With regard to the “relevant information, the Prosecution argues that it only needs to have been provided or available or in the possession of the superior” (19.8 PPTB).¹⁹⁷⁷

1027.The Prosecution pleads the following material facts in respect of knowledge:

Maline:

- Delic was informed that innocent civilians, most of them elderly, were murdered, and he was specifically informed about the massacre on 25 June

¹⁹⁷⁴ **E676**-State Security Service, Official Note,23/10/1995, PW4,31/10/2007-T.4877,commenting on **E676**.

¹⁹⁷⁵ **E1282**-Death certificate issued by the Zenica Mufti’s office,23/08/1995, HalimHusic,12/03/2008-T.7414-7415,commenting on **E1282**.

¹⁹⁷⁶ It relies on *Celebici* AJ,para.238.

¹⁹⁷⁷ Prosecution relied on: *Celebici*, AJ para.239;*Krnjelac*, TJ para.94;*Kvočka*, TJ para.318.

1993. On 17 October 1993, Izetbegovic requested from Delic to investigate the incident in Maline.¹⁹⁷⁸

Proljece II – July 1995:

- Following the crimes in Maline/Bikosi, Delic knew that the EMD had a reputation for mistreating and murdering POWs, was put on notice that ARBiH soldiers from the EMD had a propensity to commit crimes, particularly crimes against captured enemy combatants and civilians, and because of that Delic had prior notice about the criminal conduct of soldiers in this unit. (paras.30.4, 38.1 and 38.2)

Farz – September 1995:

- Experience with the EMD taking POWs in Krcevine and Livade in July 1995 indicated that the use of EMD in combat posed a risk to any potential enemy POWs.

(a)The law generally

1028. Additional Protocol I, Article 86(2), of the Geneva Conventions, provides: “The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.”

1029. The Trial Chamber in *Celebici* interpreted the knowledge requirement of Article 7(3) in light of the language used in the above-cited article of the Additional Protocol I. It held that, under the “had reason to know” standard, it is necessary to establish that the superior had “information of nature, which at the least, would put him on notice of the risk of [...] offences by indicating the need for additional investigation in order to

¹⁹⁷⁸ E182,17/10/1993.

ascertain whether such crimes were committed or were about to be committed by his subordinates.”¹⁹⁷⁹ The Appeals Chamber in *Celebici* also held that the rationale behind the standard set forth in Article 86(2) is plain: “failure to conclude, or conduct additional inquiry, in spite of alarming information constitutes knowledge of subordinate offences.”¹⁹⁸⁰ It noted that this information may be general in nature,¹⁹⁸¹ and does not need to contain specific details about the unlawful acts which have been or are about to be committed.¹⁹⁸² It follows that, in order to demonstrate that a superior had the *mens rea* required under Article 7(3) of the Statute, it must be established whether, in the circumstances of the case,¹⁹⁸³ he possessed information sufficiently alarming to justify further inquiry.

1030. While a superior’s knowledge of and failure to punish his subordinates’ past offences is insufficient, in itself, to conclude that the superior knew that similar future offences would be committed by the same group of subordinates, this may, depending on the circumstances of the case, nevertheless constitute sufficiently alarming information to justify further inquiry.¹⁹⁸⁴

1031. However, in *Hadzihasanovic*, the Appeals Chamber concluded that the Trial Chamber erred when it found that “by failing to punish, the superior (Krnojelac) did not prevent subsequent criminal acts.” The Appeals Chamber stated that “[t]hose findings

¹⁹⁷⁹ *Celebici* TJ, para. 393.

¹⁹⁸⁰ *Celebici* AJ, para. 232.

¹⁹⁸¹ *Celebici* AJ, para. 238. As an example of general information that may be available to the superior, the Appeals Chamber referred to the tactical situation, the level of training and instruction of the subordinates and their character traits.

¹⁹⁸² *Celebici* AJ, para. 238; *Krnojelac* AJ, para. 155.

¹⁹⁸³ *Celebici*, AJ para. 239, “...an assessment of the mental element required by Article 7(3) of the Statute should be conducted in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.”

See also ILC Comment on Article 6 of the ILC Draft Code of Crimes Against the Peace and Security of Mankind: Article 6 provides two criteria for determining whether a superior is to be held criminally responsible for wrongful conduct of a subordinate. First, a superior must have known or had reason to know in the circumstances at the time that a subordinate was committing or was going to commit a crime. [...] Superior may have the *mens rea* required to incur criminal responsibility in two different situation [...] a superior has actual knowledge that his subordinate is committing or is about to commit a crime [...] or he has **sufficient relevant information to enable him to conclude under the circumstances at the time** that his subordinates are committing or are about to commit a crime.”

¹⁹⁸⁴ *Krnojelac* AJ, para. 169

could be read as implying that a superior's failure to punish a crime of which he has knowledge *automatically* constitutes sufficiently alarming information under the "had reason to know" standard, irrespective of the circumstances of the case. Such reading would amount to an error of law."¹⁹⁸⁵

1032.To be liable under 7(3) of the Statute, the superior must be shown to have had actual knowledge (he knew) established through either direct or circumstantial evidence (that his subordinates were committing or were about to commit such a crime), or that he had in his possession information which would at least put him on notice of the risk of such offences. The nature of information must be such to alert him to the need for additional investigation to determine whether such crimes were about to be committed by his subordinates (he had reason to know).¹⁹⁸⁶

1033.Therefore, the ICTY jurisprudence does not recognize "actual notice" or "inquiry notice" (as a form of general information) as sufficient to establish that the accused possessed the requisite mental state under Article 7(3) of the Statute. In fact, the jurisprudence recognizes "actual knowledge" and "imputed knowledge." Actual knowledge, which may be defined as awareness that the crimes charged against the accused were committed or were about to be committed,¹⁹⁸⁷ may be established either by way of direct evidence or circumstantially through evidence from which it may be inferred beyond reasonable doubt that the commander had indeed acquired such knowledge by the time he is said to have failed to act.¹⁹⁸⁸ Such an inference must be the only reasonable one to be drawn from the evidence. If any other reasonable inference may be drawn, which is not consistent with him having had sufficient notice of the crimes, that inference **must** be drawn.

1034.The imputed form of knowledge requires that the commander possesses some general information putting him on notice of the commission of the crimes charged by his

¹⁹⁸⁵ *Hadzihasanovic* AJ,para.31.

¹⁹⁸⁶ *Delalic*,AJ paras.223-226;*Krnjelac*,TJ para.94;*Bagilshema*,AJ paras.26-38.

¹⁹⁸⁷ *Kordic*,TJ para.427.

¹⁹⁸⁸ *Blaskic*,TJ para.308;*Aleskovski*,TJ para.80;*Krnjelac*,TJ para.94.

subordinates or strong likelihood that they are about to be committed.¹⁹⁸⁹ That information must be sufficiently clear or alarming to indicate the strong likelihood of the offences charged having been or being about to be committed and to trigger the commander's duty to investigate the matter further.¹⁹⁹⁰ It is not, therefore, sufficient that a commander knows, in general terms, that crimes have or may be about to be committed by his subordinates.¹⁹⁹¹

1035. The knowledge can never be presumed. The mental element of "had reason to know" is determined only by reference to information which was in fact available to the commander at the relevant time. Consequently, a superior could not be held criminally responsible for not making sure that he was informed of the acts of his subordinates.¹⁹⁹² ICTY jurisprudence has established factors which are potentially evidentially relevant to the determination whether a commander may be said to have known or have had reasons to know that crimes had been committed or were about to be committed by his subordinates.¹⁹⁹³ The Prosecution relies on two of the many factors to try to prove that the Accused knew or had reason to know that the crimes had been committed or were about to be committed: the character traits of the subordinates and lack of instruction of the commander to his subordinates. However, those factors, even if proved, are not evidence of *actual* knowledge on the part of the commander, but the factors which are potentially evidentially relevant to the Trial Chamber's finding on that point.

1036. Moreover, the acquisition of knowledge of certain fact on the part of the Accused cannot be assumed from the fact that others, including the accused's subordinates and

¹⁹⁸⁹ *Celebici*, AJ para.238; *Kordic*, TJ para.437.

¹⁹⁹⁰ *Kordic*, TJ para.437; *Strugar*, TJ para.369-370,415-419.

¹⁹⁹¹ *Strugar*, TJ para.369.

¹⁹⁹² *Celebici* AJ, paras.226, 230; *Blaskic* AJ, paras.62,63.

¹⁹⁹³ These factors are: the number of illegal acts; the type of illegal acts committed; the scope of illegal acts; the length of time during which the illegal acts occurred; the number and the type of troops involved; the logistics involved; the geographical scope in which the illegal acts were committed; the widespread and systematic occurrence of the acts; the tactical tempo of the operation if any; the modus operandi of similar illegal acts; the officers and staff involved; the location of the commander at the time when the acts were said to have been committed ("the more physically distant the superior was from the commission of the crimes, the more additional indicia are necessary to prove that he knew of the crimes – *Marinovic* and *Naletilic*, TJ para.72); the nature and the scope of the accused's responsibility and his position in the hierarchy; geographical proximity between the crime committed and the place where the commander was located at the time...

associates, might have possessed that information. The Prosecution must establish, at least circumstantially, that such knowledge was transmitted to the Accused. The information may not simply be shown to have been out in the open and available to others; it must be established that the commander actually acquired it. This is not the law of this Tribunal and this is not the standard recognized under international law.

(b)No responsibility on the part of the commander for failure to inform himself

1037. In paragraph 47.7 of the PPTB, the Prosecution argues that Delic failed to follow up on the information he had received that the EMD held POWs. According to the Prosecution,¹⁹⁹⁴ it was in this way that Delic was put on notice that criminal activity was afoot. However, the fact that a unit is holding POWs means nothing in itself. Many units held POWs during the war and, due to the very nature of war, there is always a certain risk for the POWs. Therefore, the Prosecution's argument represents an error of fact and law.

1038. Notice means that the Accused does, indeed, possess **sufficient** information about the crimes charged, not that he must look for it in the first place. The Prosecution's interpretation is in fact a disguised attempt at re-arguing the "should have known" standard which was expressly rejected by the Appeals Chamber in *Celebici*.¹⁹⁹⁵ The Accused either possessed the required *mens rea* based on the information which he is shown to have received, or he did not. In the latter case, he had no obligation under international law to look for more information and, where he failed to do so, that alone would not render him responsible under Article 7(3).

1039. A superior may be criminally responsible if he **deliberately** ignores available information that would put him on notice. What is required, however, is the superior's factual awareness of information which, due to his position, should have provided a reason to avail himself or herself of further knowledge. Without any such subjective requirement, the alternative basis of superior criminal responsibility by having had

¹⁹⁹⁴ Indictment, paras.47.1-47.9

¹⁹⁹⁵ *Celebici*, AJ para.226.

‘reason to know’ would be diminished into a purely objective one and, thus, run the risk of transgressing the borderline to ‘strict liability.’¹⁹⁹⁶

(c)The extent of knowledge required pursuant to Article 7(3)

1040.A military commander, or a civilian superior, may therefore be held responsible if he fails to discharge his duties as a superior either by deliberately failing to perform them or by culpably or willfully disregarding them. The information available to the superior at the time when he is said to have failed in his duties need not contain specific details of unlawful acts which have been or are about to be committed.¹⁹⁹⁷ What the superior must have known or have had reason to know, however, is that “acts such as those charged” had been committed or were about to be committed by his subordinates.¹⁹⁹⁸

1041.The commander must be shown to have known or have had reason to know of all the material elements of the offence which his subordinates have committed or are about to commit and with which he is charged. In particular, the commander could not be said to have known or have had reason to know that a given crime (say, torture) had been committed or was about to because he may have known or have had reason to know that a less serious offence or one which does not contain all of the elements of the first one had been or was about to be committed.¹⁹⁹⁹ Knowledge about a general matrix of events and conduct does not therefore suffice to constitute knowledge or notice pursuant to Article 7(3).²⁰⁰⁰

1042.It would not, therefore, be sufficient to convict the Accused of command responsibility to show that he knew of the commission or likely commission of **any crime**. Furthermore, it is not sufficient to show that the Accused was aware of the commission or likely commission of a crime which was generally **similar** to the one with which he is charged. To be convicted of the crime charged pursuant to Article 7(3) of the

¹⁹⁹⁶ *Oric*,TJ para.324.

¹⁹⁹⁷ *Krnjelac*,AJ para.155.

¹⁹⁹⁸ *Strugar*,TJ paras.416-417;*Krnjelac*,AJ paras.155,178-179.

¹⁹⁹⁹ *Krnjelac*,AJ paras.155,178-179.

²⁰⁰⁰ *Bagilshema*,AJ para.42.

Statute, the commander must have known that the acts of his subordinates fell within the definition of that crime, rather than to qualify as anything less serious.

1043. It is fundamental to establish that the Accused knew that his own conduct was illegal and criminal and, with that knowledge, he must have persisted. The commander must have knowledge of these offences and acquiesce or participate or criminally neglect to interfere in their commission and the offences must be potentially criminal.²⁰⁰¹

(d) The Accused must be shown to have intended not to act

1044. In addition to the knowledge that the Accused must have had of criminal conduct of his subordinates, the Accused must be shown to have intended not to act as he was required to do, with or despite that knowledge, or to have been reckless as to the likely consequences of his failure.²⁰⁰² In the language of a number of World War II cases, there must be “proof of a causative, overt act or omission from which a guilty intent can be inferred.”²⁰⁰³

1045. First, the failure of the commander to act must be shown to have been intentional in the sense of being both voluntary and deliberate. In the *High Command* case, in relation to the accused von Leeb, the IMT made it clear that, to be individually liable, the accused “must be shown both to have had knowledge and to have been connected with such criminal acts, either by way of participation or criminal acquiescence.”²⁰⁰⁴ In *Toyoda*, the tribunal made it clear that a commander could be held responsible for the crimes of his subordinates where, all other conditions being met, he orders, permits or condones” their criminal actions.²⁰⁰⁵

(e) Means of acquiring knowledge and inference of knowledge

²⁰⁰¹ *High Command* case, Vol XI p. 545.

²⁰⁰² See generally Cassese, *International Criminal Law*, pp.210-211

²⁰⁰³ See the authoritative statement in the *Hostage* case to the effect that “[i]n determining the guilt or innocence of these defendants, we shall require proof of a causative, overt act or omission from which guilty intent can be inferred before a verdict of guilty will be pronounced.”

²⁰⁰⁴ *High Command* case.

²⁰⁰⁵ *United States v. Soemil Toyoda*, War Crimes Tribunal Courthouse, Tokyo, Honshu, Japan, September 1949.

1046. The means and resources at the disposal of the commander at the time, by which he could have acquired knowledge, is a factor of relevance to any inference to be drawn that he had actual or imputed knowledge. Such determination must duly take into account the actual circumstances in which the Accused found himself at the time and may not be made in the abstract. In assessing the evidence, the Trial Chamber must duly consider the information in the context and form in which the information was received and its apparent reliability so as to determine what conclusion the Accused, placed in the circumstances in which he was, could reasonably draw from it. As noted by the ICRC “something that is true may, depending on the circumstances, seem unlikely.”²⁰⁰⁶

1047. The required state of mind must be established beyond reasonable doubt. If it is built on circumstantial evidence, the inference that the Accused possessed the required state of mind must be the only one that could reasonably be drawn on the evidence. In the case of doubt as to whether the prosecution has met its burden of proof concerning that matter, the benefit of the doubt must accrue to the accused and he must be acquitted.

(f) Conclusion

1048. As regards the allegations relating to Maline on 8 June 1993, the Prosecution pleads actual knowledge, that is, that Delic was put on notice that his subordinates had committed the crime described in paragraph 26 of the Indictment. As explained, contrary to the Prosecution’s claim, the evidence has not shown that Delic was put on notice of the murders and woundings in Maline.

1049. However, the Prosecution argued that following the crime in Maline/Bikosi Delic knew that the EMD had a reputation to mistreat and murder POWs. Even if the Prosecution proved that Delic knew the mujahedin committed the crimes in question, and he did not, this would not be sufficient to constitute the required knowledge. It is not enough to know that *some* mujahedin, whose identity has not been established, committed the crime. Rather, Delic must have known that *his* subordinates had

²⁰⁰⁶ ICRC *Commentary of Additional Protocol I*, para.3546.

committed the crime. On 8 June 1993, the mujahedin were neither *de jure* nor *de facto* subordinated to Delic, since the EMD did not even exist at the time.

1050. The Prosecution did not prove who the perpetrators were, or that they were any of the individuals who later became members of the EMD. The Prosecution cannot consider all Arabs who were present in Central Bosnia as EMD members. Moreover, it is not possible to claim that all Arabs present in Central Bosnia had a bad character and presented a potential danger for POWs.²⁰⁰⁷

1051. Nevertheless, even if Delic had known that his subordinates had committed the crime on 8 June 1993 and failed to punish them, that fact alone would not be sufficient.

1052. When assessing this fact, the Trial Chamber must keep in mind that the crime in Maline occurred in a distinct geographical area (Travnik Municipality), 57 km from Vozuca. It also must keep in mind the fact that the events in Maline took place more than two years before the events in Vozuca.²⁰⁰⁸ Therefore, it was a remote and isolated event with respect to the events from Vozuca.

1053. However, the evidence did not show that the EMD had a propensity to commit murder and cruel treatment, particularly toward POWs as the Prosecution claimed, nor that Delic had actual or imputed knowledge that his subordinates had committed or were about to commit a crime. Therefore, the Prosecution has not met the knowledge requirement.

5. Necessary and reasonable measures to prevent and punish

²⁰⁰⁷ See section V, C (2).

DW4, 18/03/2008-T.7741-7742.

E1200-EMD Newsletter 'Call of Jihad,' 06/03/1995, mentioning that the EMD distanced itself from other groups which were committing various offences.

²⁰⁰⁸ *Hadzihasanovic*, AJ para.267: "The Appeals Chamber notes however, that the acts of plunder, committed by Kubura's subordinates in the Ovnak area on 9 June 1993 and in Vares on 4 November 1993 were separated by some five months and some 40 kilometres. While the plunder was widespread on the two occasions it occurred, Kubura's subordinates were not found to have engaged in plunder on a frequent basis while under his command."

(a) Relevant Law

1054. In paragraph 19.12 of PPTB the Prosecution argues that a commander in a position “similar to that held by Delic” had the material ability to, inter alia investigate, establish the facts, stop the criminal activity, impose measures or file a criminal report. The Prosecution provides a list of measures that they consider he had the material ability to impose. It relies on the judgments in the following cases: *Kordic*, *Blaskic* and *Stakic*.

1055. However, Delic’s position as the SVK/General Staff Commander was not similar to that held by the accused in those cases. The accused Kordic was a member of the civilian authorities,²⁰⁰⁹ while Blaskic was the Commander of the Operative Zone Srednja Bosna,²⁰¹⁰ i.e. commander at the operational level with completely different responsibilities and competences. Therefore the positions set out in these judgments are not applicable to Delic, who commanded at the strategic level.

1056. The Prosecution has failed to identify the domestic body of law applicable in the case of a commander at this level. It did not address this issue with any witnesses, nor has it called any expert to clarify the matter.

1057. Rules regulating the functioning of the military judicial system and disciplinary regulations²⁰¹¹ are not relevant in determining the criminal liability of Delic. As explained, the system of the SVB had been established, and its competence covered the investigation of crimes and going after perpetrators.²⁰¹² The procedure began with the SVB of the unit where the incident occurred and ended with the Chief of the SVB Administration who controlled and commanded that system and had the authority to issue orders. As mentioned, he needed the approval of the General Staff Commander only with regard to special methods.²⁰¹³

²⁰⁰⁹ See *Kordic* TJ, paras. 1, 5

²⁰¹⁰ See *Blaskic* TJ, para. 9

²⁰¹¹ PPTB, paras. 20.1-20.9

²⁰¹² See section VIII, A (1)(i).

²⁰¹³ *Ibid.*

1058.The same is true with regard to the alleged list of reasonable and necessary measures which Delic, as the General Staff Commander, supposedly in accordance with various rules and regulations, was obliged to apply to prevent the alleged crimes.²⁰¹⁴

1059.The evidence shows that as a reasonable commander, Delic issued instructions and orders to corps commanders concerning the application of international humanitarian law. He took a series of general measures aimed at improving the system of command and control, discipline and the implementation of orders relating to IHL. It was up to the lower commands to implement these measures and orders.

1060.Delic, as General Staff Commander, was not the one who was supposed to apply the disciplinary regulations on which the Prosecution relies. Under these regulations, disciplinary infractions were the responsibility of the officers that were superior to the alleged perpetrators.²⁰¹⁵ Other regulations on which the Prosecution relies accord with this principle.

1061.The Defence has shown who was subordinate to Delic.²⁰¹⁶ There is no law which supports the list alleged in paragraphs 19.12 and 20.11 of the PPTB as being the purported responsibilities of the SVK Commander.

1062.The Prosecution has failed to prove that Delic had the obligations, whether under international or national law, which it lists in its brief. Holding a commander criminally responsible for failing to do something he had no legal duty to do would constitute a grave breach of the principle of legality recognized by all civilised nations. International criminal law, just like any other criminal law, requires that responsibility for a failure to act:

- be matched by an existing legal duty to act in particular manner;

²⁰¹⁴ PPTB,para.20.11,the Prosecutor relies on:**E427,E1096,E25,E21,E1095,E14,E585,E586**

²⁰¹⁵ **E1095**,Art.22-23,p.3

See also **Karavelic**,26/03/2008-T.7896

²⁰¹⁶ See section VIII, A (1)(d).

- that duty be sufficiently accessible and foreseeable to entail individual criminal responsibility when allegedly breached;
- the accused was aware of both his duty and his breach of it at the time when he failed to carry it out.

1063. Customary international law requires a causal link between the failure and the crimes or consequences thereof. The Prosecution must establish that the failure of the commander to act was significant – though not necessary the sole – contributing factor in the commission of the crime (failure to prevent) or in the failure of the competent authorities to investigate the crimes, identify and punish the perpetrators (failure to punish). In other words, as far as failure to prevent is concerned, causality must therefore be established between the commanders failure and the crime or crimes committed by his subordinates, while in the case of a failure to punish the causal relation is one between the commander’s failure to act and the resulting impunity of the perpetrators generated by his inaction.²⁰¹⁷

(b) Distinguishing the duties of Commander from that of his subordinates and power to delegate

1064. Command responsibility is not responsibility for the acts of others. Nor it is a form of objective responsibility whereby a commander is held responsible merely because he is in a position of command and subordinates are committing crimes. There must be a “personal dereliction” on his part.²⁰¹⁸ A commander should not be held responsible for the failure of *his subordinates* to properly investigate or prevent crimes, but only for his own.

1065. In this context, due regard must be given to the way in which an army was structured and how a military hierarchy was organised and functioned in practice. Of particular relevance is the way in which tasks and responsibilities were legitimately

²⁰¹⁷ *Celebici*, TJ, para. 399

²⁰¹⁸ See *High command* case: “That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part. In the later case it must be personal neglect amounting to a wanton, immoral disregard of the action of his subordinates amounting to acquiescence”.

delegated down the chain of command. A commander in a modern army cannot be expected to do everything himself, nor are they expected to keep informed of all matters pertaining to the structure which they are commanding.²⁰¹⁹ A commander is entitled, under international law, to give a great deal of leeway to his subordinates in that regard, and in return, to assume that details entrusted to them are duly and legally executed.²⁰²⁰

1066.Nothing under international law, nor for that matter under RBiH law, obliged the commander, once he has learned of crimes having been committed by the subordinates, to take care of the investigation himself. The Prosecution argument that Delic should have been in charge to initiate the investigation, arrest perpetrators and discipline them, demonstrates the total absence of understanding of the role of the commanders, their obligation under international law and the way in which an army functions.

1067.Every modern army is structured in such a way that the commanders delegate to subordinates most of their tasks. The situation is no different where violations of laws or customs of war have or are about to be committed by subordinates. Depending on the circumstances, the commander is generally entitled to delegate the execution or implementation of the measures which he has decided to adopt in response to the actions of his subordinates.²⁰²¹

1068.He may fulfil his duties to investigate and punish wrongdoers by delegating the duty to a responsible subordinate.²⁰²² Where he does so, the commander is entitled to assume that the assignment entrusted to that subordinate will be properly executed, unless he know that his subordinate will not or can not carry the assignment.²⁰²³ The higher a commander is hierarchically, the greater number of subordinate staff officers and commanders there are to whom the commander may transfer the responsibility to take measures in his name and in the name of the chain of command.

²⁰¹⁹ See Commentary to Art.87,Additional protocol I,para.3563

²⁰²⁰ *High command case*

²⁰²¹ See *Aleksovski* TJ,para.78,*Blaskic* TJ,para.302

²⁰²² US Federal Court of Florida,*Ford v. Garcia*,Judgment 03/11/2003, 289 F 3d 1283, 52 Fed R Serv 3d

²⁰²³ See *High command case*,Vol.11,558:“*While [the accused Von Leeb] had a right to issue orders to his subordinates concerning such matter, he also had the right to assume that the officers in command of those units would properly perform the function which had been entrusted to them by higher authorities*”.

(c)General Delic was reasonable commander

(i)General measures to improve system of RiK in the ARBiH

1069.Delic became ARBiH head at the most difficult period for the ARBiH and RBiH. This was a time of extreme pressure by the Serb forces against Sarajevo and its citizens. Moreover, this was a time of intense internal conflicts within the Main Staff and the rogue ARBiH brigades in Sarajevo.²⁰²⁴

1070.Besides these problems, the Government organs which were supposed to provide support to the ARBiH didn't function or were inadequate. Delic found a disrupted system of RiK, that the SVK had not been properly formed, because all of the SVK functions had been taken over by the Chief-of-Staff. The ARBiH had a large number of different contingents and units which were not connected into the system of RiK. The SVK was not familiar with the situation in the field. In June 1993, the struggle against two strong enemies, the VRS and HVO, intensified. The resources available to the ARBiH to defend itself were rapidly diminishing due to the blockade of RBiH borders (controlled by HVO and VRS) and the ARBiH's troops being physically cut off from each other by HVO and VRS.²⁰²⁵

1071.Immediately upon appointment in June 1993, Delic had to wrestle with these problems. He established cooperation with the MUP and its Minister, Bakir Alispahic.²⁰²⁶ After learning about problems in Central Bosnia, he ordered together with Minister Alispahic a series of measures aimed at improving the situation in Central Bosnia, including the resubordination of MUP units to ARBiH units with the goal of stopping criminal activity.

²⁰²⁴ **Karavelic**,25/03/2008-T.7812;**Dedovic**,08/04/2008-T.8178-8179

See also **E1323**-Video clip showing the situation in Sarajevo city, **E216**(under seal)- [REDACTED]

²⁰²⁵ **E1333**-GS ARBIH Analysis of a year's work of the ARBIH,09/06/1994

See also **Karavelic**,25/03/2008-T.7858-7860

²⁰²⁶ **Dedovic**,08/04/2008-T.8176

1072.Delic and Alispahic warned the corps commanders and CSB (Security Service Centre) Chiefs that they were respectively responsible for the organisation and carrying out of tasks within their competence. They demanded that the civilian police not be used in combat activities, but rather be used to stop criminal activities by paramilitary formations and armed groups and individuals.²⁰²⁷ They demanded that the police forces protect civilians and their property, particularly the clergy and places of worship of all religions.²⁰²⁸

1073.Delic fought for unity with respect to the appearance of the military and the signs used. He formed a commission for the visual identity of the ARBiH.²⁰²⁹ On 27 July 1993 Delic issued a ban on the activity of the Muslim Armed Forces.²⁰³⁰ On 29 August 1993 Delic held a meeting inter alia with corps commanders at which it was concluded that various “independent” units would be placed under the control of ARBiH corps.²⁰³¹

1074.He ordered a series of measures towards the establishment of the system of RiK and improvement of order and discipline. Thus on 14 July 1993 he ordered the elimination of weaknesses in the mobilising soldiers and MTS in war units, which included “I hereby prohibit direct admittance of recruits-**volunteers to war units**, and the existing recruits-**volunteers** in war units”.²⁰³² He continued to insist on the elimination of these weakness in 1995.²⁰³³

1075.The SVK document of 5 June 1994 shows that Delic issued numerous orders to SVK KM Kakanj and the corps commands concerning the control of movement of

²⁰²⁷ **E175**(under seal)- [REDACTED]

²⁰²⁸ **E226**- Joint order of GS ARBIH and MUP,17/06/1993

²⁰²⁹ **E227**(under seal)- [REDACTED]

See also **PW3**,22/08/2007-T.1603-1604

²⁰³⁰ **E225**-GS ARBIH Warning,27/07/1993

See also *Section III, C(4)*

²⁰³¹ **E1248**-Conclusions and tasks adopted at the meeting of senior officers of the Main Staff and Corps Commanders in Zenica on 21 and 22 August 1993

See also **Karavelic**,26/03/2008-T.7889

²⁰³² **E1337**-GSARBIH Order on elimination of weaknesses displayed in the mobilization and release of soldiers and MTS in the war units of ARBIH,14/07/1993,para.7,p.2

²⁰³³ **E1269**-SVK ARBIH Order for taking measures in settlement of Army records for mobilized conscripts and MTS,27/04/1995

persons and goods within the zones of responsibilities of the corps, and he warned of mistakes *“indicating either that there are units out of control acting on their own or that Corps Commands are not complying with the orders of SVK”*.²⁰³⁴

1076. On 27 December 1994, he issued tasks to the corps commanders related to command and control. On 10 February 1995 Delic ordered an inspection of the corps commands for the assessment of the situation and whether previously issued tasks had been carried out. It was concluded that *“due to the fact that the commands of divisions and mobile brigades have not been established, the system of command and control at the corps-division-brigade level does not function and there are no developed mechanisms that make it possible for the RIK /system of command and control/ to function”*.²⁰³⁵

1077. The SVK at KM Kakanj requested the corps to submit timely reports: *“fight for complete truthfulness of reports and information. Take the severest measures in case of their false representation”*.²⁰³⁶ SVK KM Kakanj provided a template setting out the elements which were supposed to be contained in these reports.²⁰³⁷

1078. Delic took a series of measures aimed at the training of members of the ARBiH commands to improve the situation and strengthen command and control system.²⁰³⁸ Delic made special effort towards measures to facilitate the development of the SVB and

²⁰³⁴ E1258-GSARBIH Warning for convoy passage control, 05/06/1994

²⁰³⁵ E1267-GSARBIH Report on the found situation regarding reorganization of the ARBiH, 03/03/1995

²⁰³⁶ E614-GSARBIH Warning for timely submission of reports, 31/01/1994

See also Alija, 16/10/2007-T.4215-4216

²⁰³⁷ E1190-Study on the organization of routine duty at IKM 3-Luke, Zenica August 1995

²⁰³⁸ E1248, E1342-GSARBIH Order for training in 1995, 06/02/1995

E1266-GSARBIH Order for development of syllabuses, 01/03/1995

See also Karavelic, 26/03/2008-T.7914-7915

efficient management of the SVB,²⁰³⁹ as well as education of senior officers in intelligence organs.²⁰⁴⁰

(ii) *Rasim Delic and the fight against crime as one of the factors undermining RiK*

1079. Delic responsibly implemented the decisions of the Presidency aimed at prevention and cutting-off of criminal activities. The USA CIA stated:

*“Of more lasting importance, the «Trebevic-1 Operation» was the first and most dramatic step in Commander Delic's campaign to regularize and profesionalize the Bosnian Army”.*²⁰⁴¹

1080. His position towards discipline in units and crime was clear. Karavelic, 1Corps Commander, said

*“A. Once he became the first man in the army and after I became the corps commander, the 1st Corps commander, his position was the same as mine. He supported me fully and tried as soon as feasible or as soon as possible to resolve this issue with these men who were outside of the chain of command.”*²⁰⁴²

1081. He continually tried to make the disrupted system of RiK, and he implemented the decisions of the Presidency through a series of operative activities aimed at resolving criminal activities and obstructions within command and control system: Trebevic, Trebevic-2, 25/10/1993,²⁰⁴³ Trebevic-3, 03/11/1993,²⁰⁴⁴ Trebevic-4, 22/03/1994.²⁰⁴⁵

1082. At a meeting between Delic and corps commanders held on 29 July 1995, it was concluded that they should take effective measures to cut-off lack of discipline and

²⁰³⁹ **E1263**-GSARBIH Order to ensure prescribed development and control over Military Security Service, 13/02/1995

E1344-GSARBIH Order for training courses for SVB and VP commanding officers, 01/02/1995

E1415-GSARBIH Order for engagement of SVB senior officers at the training course, 04/05/1995

See also **Karavelic**, 26/03/2008-T.7917-7918

²⁰⁴⁰ **E1294**-GSARBIH order for courses for senior officers in intelligence bodies, 14/10/1995

E1418-GSARBIH Order for training for intelligence officers, 29/07/1995

E1420-GSARBIH Order for training for intelligence officers, 16/08/1995

²⁰⁴¹ **E316**-Excerpt from book “Balkan battlegrounds”, p.2

²⁰⁴² **Karavelic**, 25/03/2008-T.7853-7855; 26/03/2008-T.7886-7887; **PW3**, 22/08/2007-T.1540-1541

See also **E1332**-Letter from general Delic to the Republican Public Prosecutor, 06/07/1993

²⁰⁴³ **E282**

²⁰⁴⁴ **E239**

²⁰⁴⁵ **E244**

reconsider the role of military prosecutor's offices and courts, military disciplinary courts and the rights of commanders ("komandiri" and "komandanti") when taking repressive measures, including the establishment of special courts for the imposition of the death penalty in extreme situations.²⁰⁴⁶ Corps commanders were in charge of implementing the ordered measures (ie Trebevic).²⁰⁴⁷ The tasks of the SVB in the implementation of these measures were determined by the SVB chief.²⁰⁴⁸

(iii) *Measures towards the application of IHL*

1083. On 14 June 1993, Delic began to take measures to apply IHL.²⁰⁴⁹ On 27 July 1993 he met with Catholic clergyman, Fra Petar Andjelovic, to discuss the problems of the Croat population at the time. Delic then immediately ordered that the Croatian population from Bugojno be taken care of, and that POWs be treated in accordance with the Geneva Conventions.²⁰⁵⁰

1084. As soon as Delic became Commander, he insisted that "*senior officer and fighters are to be constantly directed to correct treatment of population and prisoners, public and private property, priests and sacral facilities, confirming the high morale qualities of members of our Army*".²⁰⁵¹ On 14 October 1993 he ordered that measures be taken to apply IHL rules and, in particular, that the ICRC be given access to POWs.²⁰⁵² On 26 November 1993 he again ordered the corps commanders to cooperate with the ICRC and comply with the Geneva Conventions.²⁰⁵³ On 27 December 1994 he ordered:

"Do not keep any documentation on war crimes in units; send it all to the military security administration, to the specialised section for this type of work, in cooperation with the MUP engage military police units and ensure full control of free

²⁰⁴⁶ E601-GS ARBIH Order regarding conclusions and tasks resulting from a meeting of core section of RBiH General Staff with Corps Commanders, 02/08/1995

²⁰⁴⁷ PW3, 24/08/2007-T.1646-1648; PW4, 01/11/2007-T.4975-4977, T.4979-4980

²⁰⁴⁸ PW13, 06/12/2007-T.6635-6636

See also E241-GS ARBIH SVB Request for report on engagement of the SVB in Trebevic, 03/06/1993

²⁰⁴⁹ E236 (under seal) - [REDACTED] E1338-GS ARBIH Order for termination of all combat activities against HVO and for protection of civil population, 03/08/1993

²⁰⁵⁰ E391-GS ARBIH Request for taking care about the population, 27/07/1993

²⁰⁵¹ E1245-GS ARBIH Order sent to 3 Corps, 21/06/1993

²⁰⁵² E1249-GS ARBIH Order for implementation of the joint declaration, 14/10/1993

²⁰⁵³ E1340-GS ARBIH Order for implementation of the Geneva Convention, 26/11/1993

See also Karavelic, 26/03/2008-T.7910-7911

territory. Ensure the highest quality and most comprehensive possible work of SVB members with the goal of detecting all forms of criminal activities and their perpetrators in the army of BH through the implementation of the Trebevic operation and other regular activities of SVB and military police members”.²⁰⁵⁴

1085. On 8 May 1995 Delic issued a detailed instruction to apply Geneva Conventions and ordered corps commanders to organise the study of Geneva Conventions III and IV. He also ordered that senior officers at the brigade, division and corps level inspect their own practices relating to the Geneva Conventions and define concrete task in this regard.²⁰⁵⁵ Witnesses have confirmed that all ARBiH members were informed of this with this order and numerous others.²⁰⁵⁶

1086. In the Directive for 1995 Delic directed that the procedure with prisoners was to be started and completed with the military police organs, engaging commanding officers from the SVB and other trained organs as necessary.²⁰⁵⁷ On 30 May 1995 Delic issued a detailed order to the Armed Forces providing guidelines and instructions “in terms of orders underpinning the importance of proper conduct when treating prisoners, POWs and that no violence against life and limb should be occurring and especially all forms of mutilation killing, cruel behaviour, torture, hostage-taking...”.²⁰⁵⁸

1087. Through its chain of command on 31 August 1995 the SVB Administration issued an ‘Instruction for processing of POWs’ which provided that, when processing POWs of the aggressor units, adhere to the Instructions for Application of Rules of International

²⁰⁵⁴ **E1341**

See also **Karavelic**, 26/03/2008-T.7913

²⁰⁵⁵ **E392**-GS ARBiH Order for the implementation of the Provisions of the International Law of War, 08/05/1995

See also **Jusic**, 18/09/2007-T.2596-2597

²⁰⁵⁶ **Mrkaljevic**, 10/10/2007-T.3942-3943,

Karavelic, 26/03/2008-T.7918-7919, by commenting on **E1345**-GS ARBiH Forwarding Order to lower units in connection with the treatment of enemy soldiers in accordance with the Geneva conventions, 19/09/1995

²⁰⁵⁷ **E384**, p.11

²⁰⁵⁸ **E1346**-GS ARBiH Addendum to Order for attack, 30/05/1995

Law of War in the RBiH Armed Forces which was submitted by the Morale Administration (no.6/667 of 4 May 1995) and Order of the General Staff.²⁰⁵⁹

1088. Delic paid attention to the prosecution of war criminals. He requested that the SVB devote particular attention to the gathering of evidence concerning war crimes. On 6 September 1994 the Main Staff established cooperation with the ICTY OTP including with regard to crimes committed by ARBiH members. Even during the war the ARBiH granted access to the OTP to its archives, including the Main Staff and Presidency archives. At the start of 1995, upon the OTP's request, the RBiH Government handed over ARBiH members to the ICTY.²⁰⁶⁰ After the war, in 1997 Delic ordered all Administrations and Corps Commands to investigate and document war crimes committed on the territory of the RBiH.²⁰⁶¹

(d) Delic had no material ability to prevent or punish the crimes in question

1089. The Prosecution had to prove that a superior failed to take "necessary and reasonable measures to prevent or punish the crimes of his subordinates". What is "necessary" and "reasonable" will depend a great deal on the circumstances of each case, in particular the extent of the commander's *actual* and *proven* material ability to do anything (be it prevention or punishment) about those crimes.²⁰⁶²

1090. The measures required of the superior are limited to those which are "feasible in all the circumstances" and are "within his power".²⁰⁶³ The phrase "necessary" must be interpreted in light of the information at the disposal of the commander at the time and in view of all relevant factual circumstances. In practice measures are:

- directly derived from the commander's legal duty to ensure compliance with IHL on the part his subordinates,²⁰⁶⁴

²⁰⁵⁹ E626-GS ARBiH SVB Instruction for processing prisoners of war, 31/08/1995

²⁰⁶⁰ Vuckovic, 08/11/2007-T.5224-5225

²⁰⁶¹ E1301-GS ARBiH Suggestion for investigating and documenting of the war crime at the territory of BIH, 03/06/1997

²⁰⁶² See *Delalic* AJ, para.226, *Krnjelac* TJ, para.95

²⁰⁶³ See *Krnjelac* TJ, para.95, *Delalic* AJ, para.226, See also ICRC Commentary, AP, p.1010, para.3548

²⁰⁶⁴ Article 12 of the 1991 ILC Draft Code of Crimes against the Peace of Security of Mankind

- within his sphere of competence,²⁰⁶⁵
- seen as capable of preventing the commission of the crime of which the commander knows of or has reason to know and that is likely to be committed,
- proportionate to the threat that IHL will be breached,
- such as to ensure continued compliance with the laws of war on the part of subordinates, and
- such as to be capable of sanctioning any breach of the laws of war that might have been committed.

1091. The phrase “reasonable” means those measures, which in light of the information at the disposal of the commander at the time and in view of all relevant factual circumstances, are:

- Legal,
- Feasible,
- Proportionate²⁰⁶⁶,
- Timely.²⁰⁶⁷

(i) General Delic tried to take measures to bring EMD within RIK

1092. Specifically concerning the EMD the Prosecution claims that, as a superior having effective control over his subordinates, Delic had the material ability to:

- to investigate, report and arrest subordinates (EMD members);
- request the removal of the EMD commander;
- disband the unit;
- as a last resort, authorise the use of force against this unit.²⁰⁶⁸

²⁰⁶⁵ Commission on the responsibility of the authors of the War and Inforcement of Penalties, memorandum of Reservations presented by United States, 04 April 1919, re-printed in 1920 AJIL,95

²⁰⁶⁶ The measures should first and foremost be an appropriate response to the information in possession of the commander at the time when he is duty bound to act and a risk or situation he is to confront

²⁰⁶⁷ See *Kordic* TJ, para.445-446, *Kvočka* TJ, para.317

²⁰⁶⁸ **PPTB**, para.19.12

1093. First of all, as explained, Delic as Main Staff Commander did not have the duty to investigate, report, or arrest EMD members.²⁰⁶⁹ As explained, neither Delic nor ARBiH lower commands had effective control over the EMD.

1094. Nonetheless Delic did everything in his power to implement the order of his superior, President and ARBiH Supreme Commander Izetbegovic, to place mujahedin under control. He issued the order for the formation of the EMD and its subordination to the 3Corps, the largest formation in the area in which the mujahedin acted, which also had the best prospect of bringing them under control.²⁰⁷⁰

1095. Delic took a series of other measures, ordering the 3Corps Commander (his subordinate), to take measures against other 'Arab' groups. He insisted that 'Arab' groups, Gerila and EMD, be placed under control.²⁰⁷¹

1096. On 9 December 1993 Delic issued an order to implement the Presidency Decision on the crack-down of illegal activities in the ARBiH. This included the taking of appropriate measures for RiK in the units of the Gerila and EMD, for which he had assessed that the conduct of their senior officers was in complete collision with the system of RiK.²⁰⁷²

1097. As part of Operative Action Trebevic 3 he ordered the expulsion of the Turkish Gerila²⁰⁷³ which, as the 3Corps had informed him, were causing problems in the Zenica area.²⁰⁷⁴ However, because of the support 'Arabs' enjoyed with the civilian authorities,²⁰⁷⁵ and in particular the Ministry of Foreign Affairs, the decision was not implement. The 'Arabs' were simply moved to Sarajevo where they continued to live

²⁰⁶⁹ **Karavelic**, 27/03/2008-T.7983

²⁰⁷⁰ *See Section VIII, B(2)*

²⁰⁷¹ *See Section VIII, B(2)*

²⁰⁷² **E690**-GS ARBIH Order for further crackdown on illegal activities in the ARBIH units, 09/12/1993

See also PW4, 01/11/2007-T.4964-4966

²⁰⁷³ **PW3**, 24/08/2007-T.1651, **PW4**, 01/11/2007-T.4962-4964, **Vuckovic**, 07/11/2007-T.5178-5180

²⁰⁷⁴ **E179**-3K Report sent to GS ARBIH, 13/06/1993

²⁰⁷⁵ *See Section VIII, B(3)(o)*

and work, despite the order for their deportation. The Ministry of Foreign Affairs, as a Government body, did not carry out the deportation.²⁰⁷⁶

1098. On 28 August 1994 Delic ordered the 3 and 7 Corps Commanders to ensure that EMD members acted in accordance with the law: *“The Corps commanders will be held responsible for rectifying these shortcomings and for laying down the rules of behaviour of foreign citizens who are in the z/o /AOR/ of the 3rd and 7th Corps ”*.²⁰⁷⁷

1099. A hand-written remark, written on the 3 Corps SVB document of 20 November 1994 to the SVB Administration, stated that the Main Staff Commander ordered on 23 November 1994 that the EMD be placed in the system of RiK or disbanded.²⁰⁷⁸ It can be seen from the document that the SVB Administration issued instructions to SVB organs to this effect.²⁰⁷⁹

1100. On 12 April 1995, when the SVB Administration informed him of the unacceptable behaviour of the EMD members (imposition of their own religious ideology in Central Bosnia), Delic wrote on the document *“Proposal to finally resolve this”*.²⁰⁸⁰

1101. The SVB Administration was competent and obliged to propose security measures to the Commander. [REDACTED]²⁰⁸¹[REDACTED]²⁰⁸² Delic insisted that the SVB make OA Vranduk its priority in order to gather information on EMD activities and to resolve the problem with this unit.²⁰⁸³

²⁰⁷⁶ E243-3K SVB Information sent to SVB GS ARBIH, 16/07/1994

²⁰⁷⁷ E692-GS ARBIH order regarding behavior of the foreign citizens in the AOR of 3 and 7 Corps

See also PW4, 01/11/2007-T.4973-4975

²⁰⁷⁸ E932

²⁰⁷⁹ PW13, 06/12/2007-T.6650-6651

²⁰⁸⁰ E963-GS ARBIH SVB Information about some unacceptable activities of the volunteers from Arab countries

See also PW13, 06/12/2007-T.6652-6653

²⁰⁸¹ [REDACTED]

²⁰⁸² [REDACTED]

²⁰⁸³ Vuckovic, 07/11/2007-T.5177: *“[...] General Delic insisted that this action, or, rather, that the implementation of the measures arising from this action, be the priority task of the Military Security Service”*.

1102. The evidence has shown that the EMD was issued various orders by the 3Corps Command, including those pertaining to the application of the Geneva Conventions. EMD members testified that before each action the 3Corps sent to the EMD instructions to comply with the Geneva Conventions. However, the EMD command applied its own rules.²⁰⁸⁴

(ii) Factors due to which the attempts to bring the EMD into RiK failed

1103. Various complex factors caused the efforts of Delic and ARBiH commands to bring the EMD under control failed.

1104. One very important factor is the presence of different Arab groups and humanitarian organisations in Central Bosnia. The evidence in this regard is very clear.²⁰⁸⁵ As explained, BiH State organs and its Army did not control RBiH borders. The Foreigners joined and left the EMD as they wanted.²⁰⁸⁶ Information concerning their identities was not available because the 3Corps was given lists with nicknames.²⁰⁸⁷ They did not allow access to their camps.²⁰⁸⁸ The 3Corps made many efforts to try and place the EMD under control,²⁰⁸⁹ but the EMD refused to appoint any person who liaise with the 3Corps and 35Division for example with security issues.²⁰⁹⁰ The direct consequence of this was that the 3Corps could not penetrate the EMD, gather information about them, or take measures.

²⁰⁸⁴ **PW9**,16/11/2007-T.5773-5774,T.5767

²⁰⁸⁵ **E841-3K SVB** Information about activities of Abu Hamza, who is not a member of EMD,05/11/1995
See also PW9,15/11/2007-T.5636: “A. Well, this is something that happened all the time. People were not familiar with the fact that there were different groups and the relationships between them, so it was very simple to say, for any of them, that this was an Arab from the El Mujahedin Detachment, when actually it was not the case”.

²⁰⁸⁶ **PW4**,31/10/2007-T.4913-4915

²⁰⁸⁷ *See Section VIII, B(2)(d)*

See also PW4,31/10/2007-T.4913-4915

²⁰⁸⁸ **Begovic**,13/07/2007-T.536-537: “A[...]There were guards wherever we had a camp. There were guards. No one could enter without Enver's permission. Even if Rasim Delic had appeared, it would have been necessary for his entry to be authorized”.

Delalic,27/08/2007-T.1765

²⁰⁸⁹ **Imamovic**,15/10/2007-T.4055

²⁰⁹⁰ **Sljuka**,22/10/2007-T.4370: “A[...]First of all, first you have to appoint a security organ, and the 35th Division security organ must know the identity of that person so that they can contact that person, because apart from regular combat reports, we had security reports up and down the line. So if you do not have a person appointed to be your contact, a person to receive confidential information, then you have nobody to communicate with within that unit, either orally or in writing”.

1105.As pointed out, the EMD had its own military and political organisation and structure and rules.²⁰⁹¹ It did not comply with the laws of the RBiH. The Shura dealt with disciplinary issues:

“Q. Would it be correct to say that the Shura and these responsible people in the detachment did not allow interference in affairs that they considered to be their own in the detachment, they did not allow anyone else outside of the detachment to interfere in what they considered to be their own affairs; is that correct?”

A.Yes”.²⁰⁹²

1106.It was simply not possible to conduct investigations in respect of EMD members. There is abundant evidence to show this.²⁰⁹³ On 17 August 1995 the 3Corps SVB informed the SVB Administration of the following:

“In the realisation of the assigned task in the Military Police Battallion Services Department with regard to resolving crime bases and disciplinary infringements that were pruportedly committed by members of EMD, there are still many cases that had not been solved entirely, due to the lack of co-ordination and almots non-existent co-operation with the officials of that unit...Adressing the authorities in the EMD with the aim of resolving the aforementioned and other cases has fallen on deaf ears and they have always pointed that they would resolve the cases on a higher level”.²⁰⁹⁴

1107.The EMD had their own rules concerning POWs.²⁰⁹⁵ Even the 3Corps Commander had to ask the EMD commander and EMD members for permission to have access the POWs.²⁰⁹⁶

²⁰⁹¹ See Section VIII, B(3)(h)

²⁰⁹² PW9,16/11/2007-T.5668

See also Begovic,13/07/2007-T.537

²⁰⁹³ E737-GS ARBIH SVB Bulletin, No.130,15/07/1995

See also Mujezinovic,23/11/2007-T.6083-6084:“A.I cannot say that he did anything wrong, but he did not report back. He may have issued a disciplinary measure, but he never reported back on it, which leads me to conclude that there were no disciplinary measures imposed”.

²⁰⁹⁴ E1058. The term “higher instance” was explained by witness Vuckovic,07/11/2007-T.5131-5132:«Therefore, this higher instance in my view and I suppose that it could have been in reference to someone from abroad who had been financing them and to whom they reported on their activities or politics, because this detachment, as far as I know, for the entire duration of the war, was not part of the command and control system...».

²⁰⁹⁵ PW9,16/11/2007-T.5669

²⁰⁹⁶ See Section VI, D(3)(a)

(iii) OAs Tim and Vranduk did not demonstrate the ability of ARBiH to take measures against EMD

1108. With regard to OAs “Tim” and “Vranduk”, see Section VI, D(2).

1109. First of all, OA Tim shows that the ARBiH did not have the ability to take measures against the EMD. In fact the evidence shows that CSB Zenica, the civilian police, filed the criminal report with the Zenica public prosecutor's office against the alleged killers of Paul Goodall.²⁰⁹⁷ PW4 testified about the extent of the role of the SVB in these activities.²⁰⁹⁸ The draft for the OA Tim plan, on which the Prosecution relies, even if it were authentic, would clearly show that the ARBiH did not conduct these activities on its own, but that this was a cooperation between military and civilian organs.²⁰⁹⁹ However, the evidence undoubtedly shows that after their arrest, the alleged perpetrators were seized and escaped during the course of the proceedings.²¹⁰⁰

1110. The evidence also shows that the EMD command did not permit its members to be subject to the jurisdiction of RBiH authorities. On 30 January 1994 Dr Abu Haris, the EMD Emir at the time, gave a statement in which he requested that the mujahedin arrested for the murder of Paul Goodall. He said: “*The authorised individuals in the Military Police and CSB will be held responsible in case of ill-treatment of brothers Mujahedins*”.²¹⁰¹ Witness Awad was clear that, had the Shura considered that its members were responsible, it would have taken measures.²¹⁰²

1111. [REDACTED] the 3 Corps SVB informed that EMD members had threatened the police: “In the end, the report contains a strong protest against the behavior of civilian policemen and calls for severe punishment of the perpetrators, nothing that if the lives

²⁰⁹⁷ E659-GS ARBiH SVB Special Information, No. 26, 02/02/1994, p. 2

²⁰⁹⁸ PW4, 30/10/2007-T.4771-4772

²⁰⁹⁹ E658 (under seal)

²¹⁰⁰ PW4, 30/10/2007-T.4771-4772; Hadziselimovic, 27/11/2007-T.6197-6198

²¹⁰¹ E1013

²¹⁰² Awad, 10/02/2008-T.274

and property of the mujahedin are threatened, 'they feel obliged to return in kind to protect the property and the mujahid'.²¹⁰³

1112.The [REDACTED] joint ARBiH and MUP activities were planned for the taking of measures and activities to document and cut-off the subversive and other counter-constitutional and illegal activities of a number of EMD members. The plan envisaged the formation of joint teams of police and SVB organs to establish the facts relating to the alleged counter-constitutional and illegal activities of the EMD. It's clear from item 5 of this plan that the EMD was yet to be placed under control. The document shows that General Delic delegated this task to the commands of the 3 and 7Corps.²¹⁰⁴ The entire document shows that the EMD was not under control.

1113.Therefore, not a single segment of OA Vranduk demonstrated the ability of the ARBiH to take measures against the EMD. In fact this action was aimed at investigating the activities of the EMD and represents yet another attempt by the ARBiH to place the EMD under control so that an attempt could be made to take measures against certain members.

1114.Moreover, there was *no evidence whatsoever to show that any EMD member was ever prosecuted before a Military Court during the whole war.*

(iv)Prosecution argument –'use of force against EMD'

1115.The Prosecution argues that as a last resort Delic should have authorised the use of force against this unit.²¹⁰⁵ This argument, as asserted in the PPTB, is unclear. It is unclear whether the Prosecution considers that, as a last resort, Delic should have authorised the use of force against this unit in order to liberate POWs that the EMD was allegedly holding in July or September or whether it considers that it should have used force to disarm the unit. If both cases, this fact alone shows that there was no effective control.

²¹⁰³ **E892**(under seal)- [REDACTED]

²¹⁰⁴ **E661**(under seal)

²¹⁰⁵ **PPTB**,para.19.12

(v) *Delic had no power to authorise the use of force against EMD*

1116. Before addressing the use of force both a factual and legal issue, the Defence reiterates that Delic did not possess any information that the EMD was holding *any* prisoners in September 1995, let alone that they were being mistreated. The 3Corps Command did not have any information on the mistreatment of POWs, just as it did not know about the 52 VRS prisoners. This would be a pre-requisite before the use of force against this unit could be contemplated as a last resort.

1117. It is a fact that this kind of use of force is legal under international humanitarian law in so far as it complies with the principles of proportionality and precaution and may even demonstrate that a superior has a material ability to prevent and punish the commission of crimes.²¹⁰⁶

1118. The competence to use force is determined by domestic law. General Delic was not authorised to approve the use of force, whether for the liberation of POWs or to disarm this unit. Therefore this is not a measure that he could have taken against the EMD. The evidence is unequivocal in this regard.

1119. The ARBiH and Delic had encountered a situation previously where they considered the use of force against an ARBiH unit. Actions Trebevic and Trebevic-2 were carried out and resulted in the use of force against a certain number of 9 and 10 Brigade members and their commanders.²¹⁰⁷

1120. The evidence shows that only the RBiH Presidency had the authority to approve use of force against a unit which was an enemy belligerent. Karevelic, 1 Corps Commander, who carried out the operative actions that he discussed the use of force with President

²¹⁰⁶ See *Hadzihasanovic and Kubura* AJ, para.228, The Appeal Chamber also found: “[...]in the present case, however, Appeals chamber found[...]’: ‘whether those modalities in force should have been used in the Trial Chambers view, to rescue the hostages, confirm the absence of Hadzihasanovic effective control over the EMD’”.

²¹⁰⁷ **E282**-GS ARBiH Order for carrying out plan Trebevic and Trebevic2,25/10/1993
See also **Djuricic**,31/08/2007-T.2076-2077,T.2117

Izetbegovic, “*who had both de jure and de facto authority and who could approve the use of force in order to resolve this kind of situation*”.²¹⁰⁸

1121. Karavelic was clear that he as 1 Corps Commander was competent to request the use of force.²¹⁰⁹ He explained that Izetbegovic made a decision only after he was presented with the evidence of crimes committed by 9 and 10 Brigade. To consider the use of force, evidence of serious crimes was required.²¹¹⁰

Q. In what situations is force used? When?
A.[...]In cases of serious or large-scale war crimes, or when there is a large number of incidents in which violations of law and regulations occur.
Q. What about the evidence concerning those? Were you supposed to present that to the Presidency?
***A. Yes, of course*”.²¹¹¹**

1122. In this case, it has not been proved that the EMD committed serious or large-scale violations of the law. In particular, it has not been proven that Delic nor his subordinate, the 3Corps Commander, had any knowledge of this. OA Vranduk was introduced, inter alia, in order to assess the activities of EMD.

1123. When assessing the use of force in Action Trebevic/Trebevic-2 it was necessary to prove proportionality. The use of force had to be the appropriate measure in the specific situation with regard to the events which led to consideration of the use of force.²¹¹²

²¹⁰⁸ Karavelic, 25/03/2008-T.7854-7855; 26/03/2008-T.7866-7867

²¹⁰⁹ Karavelic, 26/03/2008-T.7865: “*Q[...]Who had the authority, who was the one who should have requested the use of force in that situation?*

A. In that situation, the commander of the corps”.

²¹¹⁰ Karavelic, 27/03/2008-T.7978-7981

²¹¹¹ Karavelic, 27/03/2008-T.7984-7985

²¹¹² Karavelic, 27/03/2008-T.7984: “*As the corps commander at the time, did you or did you not have to prove that you used proportionate force to the events? When I say proportionate, did you have to convince the Presidency that you used proportionate force?*

A. I could say yes to that, certainly.

Q. When it comes to the use of force, does one always have to prove the proportionality of the force used to the events in the field?

A. It has to be proven”.

1124. Karavelic explained that he had the absolute support of Delic for his proposal. He said “...and if commander general Delic demanded from the President countless times that that (use of force) should be approved and done, still it took five to six months...”²¹¹³

1125. When asked by the court about the use of force against the EMD Karavelic said:

*“I assure you as a human being, and as an officer, that he did. It's quite another matter whether he was in a position to, whether he received or could have received an approval from the president of the Presidency, Mr. Alija Izetbegovic to use force or something similar. Of his own accord, he did not have the right to do any such thing.”*²¹¹⁴

(vi) *The use of force against EMD was not possible*

1126. As early as June 1993 Delic ordered the 3Corps to disarm, disband and even expel the mujahedin. Karavelic said he was sure that Delic followed up on this order. However, he explained that it was not possible to carry out this order because the mujahedin were scattered in the different villages in Central Bosnia, that they had bases in different locations, and that they had the support of the local population:

*“Any attempt that General Delic took on his own to disarm them would inevitably have led to loss of life among civilians. He did not have the right to do that without approval from the Supreme Command”.*²¹¹⁵

1127. Delic's initiative to disarm the mujahedin,²¹¹⁶ as well as his efforts from June 1993 and OA Vranduk, were deemed unrealistic in Central Bosnia in the 3Corps AOR.

1128. [REDACTED].²¹¹⁷

1129. [REDACTED].²¹¹⁸

²¹¹³ Karavelic, 27/03/2008-T.7979

²¹¹⁴ Karavelic, 27/03/2008-T.7989

²¹¹⁵ Karavelic, 27/03/2008-T.7990

²¹¹⁶ E163-GS ARBIH Order regarding Gerila unit, 16/06/1993

E661 (under seal), E963

²¹¹⁷ [REDACTED]

²¹¹⁸ [REDACTED]

1130. Witnesses who were 3Corps members explained that they did not have information about the number of EMD members or their real strength. The EMD had the support, not only of the civilian population but of some civilian authorities and religious officials:²¹¹⁹

*“...by virtue of the fact that there were Bosniaks among them and that they had started marrying under-age persons, and these marriages resulted in children, this entailed the possibility that the problem might deepen in this way”.*²¹²⁰

1131. A direct conflict with the EMD would have created a very difficult situation in Central Bosnia. Witnesses described that attacking the EMD would have opened a third front in Central Bosnia.²¹²¹ EMD members were well armed, unlike the ARBiH:

*“Otherwise, we had our own independent logistics, and we were own stronger than the corps as far as that is concerned.”*²¹²²

1132. An attempt to arrest anyone from the EMD would have been very dangerous.²¹²³ Witnesses have said that it would not have been possible to use force against the EMD because, in such a situation, it would have created conflict amongst Muslims, much like the conflict which arose in Bosanska Krajina between the ARBiH and the supporters of Fikret Abdic.²¹²⁴

1133. The evidence shows that the consequences of a conflict with the EMD would be far more complex than on initial appearance. Evidence shows that the consequences of conflict would be felt not only on Central Bosnia but also other parts of RBiH. Unfortunately the evidence shows the EMD had support within the political and religious structures of RBiH, including at the highest level of authority.

1134. [REDACTED].²¹²⁵ [REDACTED]²¹²⁶ [REDACTED].

²¹¹⁹ **Alihodzic**, 30/11/2007-T.6508; **PW11**, 30/11/2007-T.6408-6409

²¹²⁰ **Alihodzic**, 30/11/2007-T.6503-6504

²¹²¹ **Fusko**, 23/07/2007-T.1139; **Delalic**, 27/08/2007-T.1762

²¹²² **Awad**, 10/02/2008-T.260; **Fusko**, 23/07/2007-T:1165-1166

²¹²³ **HalimHusic**, 13/03/2008-T.7510-7512

²¹²⁴ **HalimHusic**, 11/03/2008-T.7357-7359. This witness explained: “My father, after I refused to join them and went of...refused to speak to me for months after that...”

[REDACTED], **Jusic**, 19/09/2007-T.2686-2687

²¹²⁵ [REDACTED]

1135. [REDACTED]²¹²⁷ [REDACTED].²¹²⁸

1136. In light of this consideration, the use of force against EMD would not only be comparable to a clash with enemy forces, rather than a force under its effective control,²¹²⁹ but it would also have widespread consequences for the ARBiH, which in 1995 was already fighting several enemies (VRS, HVO and Fikret Abdic's forces).

(vii) Conclusion

1137. To demonstrate that Delic had effective control over the EMD the Prosecution had to prove beyond reasonable doubt that he had a material ability to prevent or punish criminal behaviour of its members. Such a material ability is the minimum requirement of for the recognition of a superior-subordinated relationship for the purpose of the Article 7(3) of the Statute. The Prosecution has not proved such a material ability. Therefore Delic did not have effective control over the EMD.

1138. The Prosecution has not proven that Delic was in a superior-subordinate relationship vis-a-vis those troops, who allegedly committed crimes during the combat action in Maline (June 1993) and Ozren-Vozuca pocket (July 1995 and combat operation in September 1995). In the absence of command, he had no obligation under international law to punish or prevent their crimes.

1139. Furthermore, the Prosecution has not proven that Delic knew or had reason to know that murders and cruel treatment had been or were about to be committed.

²¹²⁶ [REDACTED]

²¹²⁷ [REDACTED]

²¹²⁸ [REDACTED]

²¹²⁹ See *Hadzihasanovic Appeals Judgment*, para.229: «the military operation that the Trial Chamber expected the 3rd Corps to launch in order to rescue the hostages was not simply a type of police operation over a few reluctant subordinates. Rather, it would have amounted to a full-fledged armed attack against the camp where the EMD was based...In light of this consideration, the military operation that the Trial Chamber expected the 3rd Corps would in the appeals chamber view be comparable to what necessary to obtain the release of the hostages from an enemy force rather than a force under its effective control»,

1140. Moreover, the Prosecution has failed to establish that any failure that might be attributable to Delic would have been intentional and deliberate so as to amount to acquiescence on his part of the crimes charged as it required under Article 7(3). The Defence submits that the evidence of Delic acts and conduct would lead to the opposite conclusion.²¹³⁰

IX. SENTENCING AND MITIGATION

1141. Rule 24(2) of the Statute requires the personal circumstances of the accused to be taken into account in determining sentence: “*In imposing the sentences, Trial Chambers should take into account such factors as the gravity of offence and the individual circumstances of the convicted person*” (underlined portion added). The individual circumstances of the convicted person, as set out in this Rule have been considered in the jurisprudence of this Tribunal.²¹³¹ The factors to be taken into account as evidence in mitigation include the following: (1) voluntary surrender,²¹³² (2) good character with no prior criminal convictions,²¹³³ (3) circumstances prevailing in BIH and those particular to the accused²¹³⁴ and (4) personal and family circumstances.²¹³⁵

1142. The following factors are relevant to sentence and are evidentially relevant to a number of inferences which the Trial Chamber might have to draw in relation to charges:

(1) Voluntary surrender. Voluntary surrender is deemed a significant mitigating circumstance in determining the sentence.²¹³⁶ As soon as the Indictment against Mr. Delic was filed and confirmed on 16 February 2005, he immediately notified the BH authorities and the Prosecution of his intention to surrender voluntarily to the custody of the Tribunal. On 6 May 2005 and 20 November 2007, provisional release was granted to Mr. Delic by this Tribunal. During the provisional release, Mr. Delic

²¹³⁰ See Section VIII, B(5)(c)

²¹³¹ See *Blaskic* judgment, para. 771

²¹³² See *Jokic* sentencing judgment, para. 73

²¹³³ See *Erdemovic* second Sentencing judgment, para. 16(i); *Kupreskic* Appeal Judgment, para. 459

²¹³⁴ See *Oric* TJ, para. 767

²¹³⁵ See *Kunarac* at al. AJ, paras. 362, 408

²¹³⁶ See *Blaskic* Judgment, para. 776

reported to the FBIH police and returned back to the UNDU pursuant to Trial Chamber's order.

(2) Good character–conduct during trial. The Trial Chamber should take into consideration the conduct of Mr.Delic during the trial. Mr.Delic cooperated during the whole trial with the Tribunal. He showed full respect towards the Trial Chamber as well as towards the Prosecution. Mr.Delic's attitude towards the Tribunal was shown by the fact that even before the end of the war, he had taken steps to ensure cooperation between the ARBiH and the OTP, as was explained by witness Vuckovic. He said that the ARBiH had already started its co-operation with the ICTY in 1995:

*“Q. That cooperation, Mr. Vuckovic, was accepted, among other things, because that was the position of General Delic with regard to war crimes that cooperation must be started with the International Criminal Tribunal's Prosecutor?
A.That's correct”.*²¹³⁷

No prior criminal convictions–Prior to the filing of the Indictment, Mr.Delic had never been indicted nor convicted before any court. Mr.Delic has no criminal record.

The issue of Mr.Delic's good character was addressed by several Prosecution witnesses²¹³⁸, as well as by some Defence witnesses²¹³⁹. Mr.Delic was respected as an officer and as a personality among military officers of all nationalities. [REDACTED].²¹⁴⁰

Immediately after his appointment as the Commander of the Main Staff, Mr. Delic had to face difficult problems existing in the ARBiH and Main Staff at the time²¹⁴¹. Through the “Trebevic” actions, he persisted in his efforts to implement the RBiH Presidency decision to fight against crime within the ARBiH. He was determined to

²¹³⁷ Vuckovic,08/11/2007-T.5224

²¹³⁸ PW3;Djuricic;PW13;Vuckovic

²¹³⁹ Juric;Karavelic

²¹⁴⁰ [REDACTED]

²¹⁴¹ E1333-Analyses of a year's work of the ARBiH,09/06/1994

see the operative action “Trebevic” implemented, even after he was physically attacked and his son was arrested and beaten by members of the 10th Mountain Brigade (who were the targets of this operative action).²¹⁴²

After this action was successfully completed, Mr.Delic continued with his activities against criminals in the ARBIH with the several operative actions, called “Trebevic”, which had the goal to prevent and stop criminal activities in the ARBIH.

The character of Mr.Delic can also be assessed in relation to his attitude towards the non-Muslim population. On 17 June 1993, shortly after he assumed the post of Main Staff Commander, Mr.Delic sent to the Presidency a recommendation for organization and establishment amendments in the ARBIH, emphasizing that “by appointing active service men and civilians employed by the Army to establishment positions in administrations and Main Staff departments, attention shall be given to a balanced representation of the peoples of the Republic and other ethnicities who live in it”.²¹⁴³

Prosecution witness Djuricic (ethnic Serb) gave his personal impression of Mr.Delic:

*“My impression about him was that this was a courteous, decent man who was not a fanatic in any sense, and who was a professional soldier, as I knew JNA officers to be like before. He contacted everyone, and I think that he did different things for members of the Presidency who were non-Muslims, if I can put it that way”.*²¹⁴⁴

Witness Juric (ethnic Croat) explained in detail Mr.Delic’s efforts to stop the conflict between the ARBIH and HVO, which Mr.Delic inherited after he became the Commander.²¹⁴⁵ He wanted the ARBIH units to have members of all ethnicities.²¹⁴⁶

Juric, described Mr.Delic as:

²¹⁴² E216 (under seal), [REDACTED]
 See also Karavelic, 25/03/2008-T.7856
²¹⁴³ E357, p.12
²¹⁴⁴ Djuricic, 31/08/2007-T.2112
²¹⁴⁵ Juric, 14/04/2008-T.8471
²¹⁴⁶ Juric, 14/04/2008-T.8473-8474

*“[...]I was able to hear from him what could be done to avert crimes, that whatever crimes were committed should be recorded, that cooperation should be established with the-- among the Croat, Serb, and Bosniak sides in order to make sure that there were as few victims as possible, and that the politicians should be enabled find solutions”.*²¹⁴⁷

Mr.Delic expressed his determination for a multiethnic BIH during the international press-conference held together with his deputies, Mr.Siber (ethnic Croat) and Mr.Divjak (ethnic Serb):

*“The ARBIH, as you said it yourself, is multi-ethnic, just like BIH. And it is against ethnic division...As a Bosnian after all, and Muslim because I must declare myself as a member of some ethnic group, I would only like to live in a multi-ethnic BIH and I think we shall build it...”.*²¹⁴⁸

(3)Circumstances prevailing in BIH and those particular to the accused—in assessing the guilt or innocence of Mr.Delic and his sentence, if any, the Trial Chamber must take into account the difficulties and the pressure under which Mr.Delic was working. Immediately after his appointment as Main Staff Commander Mr.Delic was faced with the refusal of the part of Main Staff to accept him as Commander, as well as by certain political groups and influential organizations, such as the Patriotic League.²¹⁴⁹ He had a lot to put up with and worked hard over the next months and years in order to win over the commanders and officers.²¹⁵⁰

(4) Personal and family circumstances of the accused—Mr.Delic is married, has two sons and three grandchildren. Mr.Delic has been diabetic for many years, and needs constant supervision of a medical doctor.

1143.Of key importance to any sentencing exercise are the concessions made by Prosecutor del Ponte in Annex A of the Prosecution’s *Motion by the Prosecutor for Appointment of a Referral Bench Pursuant to Rule 11bis* of 5 July 2007 (“Referral

²¹⁴⁷ Juric, 14/04/200-T.8495-8496

²¹⁴⁸ E993

²¹⁴⁹ Loncaric, 10/04/2008-T.8320

²¹⁵⁰ [REDACTED]

Motion”). In it the Prosecution tried to have Delic’s case referred to BiH and set forth various reasons, including:

- General Delic’s case only involved a limited number of victims in comparison to other cases tried before the Tribunal;²¹⁵¹
- The crimes charged are limited geographically, temporally and in terms of number of victims that the case was not sufficiently grave to be heard before the Tribunal;²¹⁵²
- Though Delic held a high rank his actual role in the commission of the crimes was minimal;²¹⁵³
- His role was “different” compared with other alleged perpetrators appearing before the Tribunal;²¹⁵⁴
- Trial Chambers routinely hand down low sentences in cases involving Article 7(3) liability which is an indicator that they are less grave than Article 7(1) cases.²¹⁵⁵

1144. The Prosecution relied on these arguments to try and have General Delic referred to BiH; it cannot renounce them now. The Trial Chamber should take account of the Prosecution’s view that the charged crimes are not grave and low sentences are handed down. This was recently confirmed in the recent *Hadzihasanovic* Appeal Judgment, which resulted in a reduction in sentence length.

²¹⁵¹ Referral Motion, Annex A, para. 11

²¹⁵² Referral Motion, Annex A, para. 14.

²¹⁵³ Referral Motion, Annex A, para. 15.

²¹⁵⁴ Referral Motion, Annex A, para. 15.

²¹⁵⁵ Referral Motion, Annex A, para. 17.

X.REQUEST FOR ACQUITTAL

1145.The Defence respectfully invites the Trial Chamber to acquit the Accused General Delic.

Submitted on this 30th Day of May 2008:

A handwritten signature in black ink, appearing to read 'V. Vidović' with a small apostrophe above the 'i'.

Vasvija Vidović

Lead Counsel for Rasim Delić

Word count: 100 774 words