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NATIONS**

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

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IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr. John Hocking

THE PROSECUTOR

-V-

**JOVICA STANIŠIĆ
and FRANKO SIMATOVIĆ**

PUBLIC REDACTED VERSION

STANIŠIĆ DEFENCE FINAL TRIAL BRIEF

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PART I - INTRODUCTION

1. Having based their case on the flamboyant Kula award ceremony, the Prosecution commenced this trial without a basic understanding of the structure or function of the Serbian State Security (DB). This is apparent from the conflation of the state security and the public security organs of the Serbian MUP and the absence of meaningful commentary with regard to the DB in the Indictment and Pre-Trial Brief.¹ The extravagant assertion that the DB was “*the most powerful institution in the Former Yugoslavia*”² that “*brought the Security Services of both the military and the Federal MUP under its control*”³ is illustrative of this comprehensive misconception of the DB, undermining an accurate or reasonable perspective of Stanišić’s role during the indictment period.

2. Instead of viewing the DB as a civilian government administration, the Prosecution erroneously concluded that Stanišić and the DB were responsible for *controlling* the military and the chain of supplies that sustained the Croatian and Bosnian Serbs war machines. The Prosecution believed that the takeover of the Federal MUP by the Serbian MUP was an assumption of power, which provided Stanišić with overweening control over the civilian security services in Serbia, Croatia and Bosnia. Having realised its error with regard to this second foundational premise, the Prosecution retreated, settling on the more prosaic: the takeover of the Federal MUP was a takeover of a building, designed to conceal inconvenient paperwork.⁴

3. Instead of a moderate perspective based on vital investigations, the Prosecution opted to allege that Stanišić controlled everything: the politics, the security services, the police, the military and the paramilitaries.

4. As the evidence shows, the DB was not equipped for the role alleged. Stanišić was an apolitical professional leading an organ within the MUP of Serbia that was, and had to be, non-discriminatory. Its role was to hold Serbia together and prevent civil war at any cost.

5. As Confidential Annex I, shows, during the indictment period, Stanišić increased the number of operatives working on fighting internal extremism through Operative Action

¹ Prosecution Pre-Trial Brief, para.44.

² *Ibid*, para.48.

³ *Ibid*.

⁴ [REDACTED].

Tomson (“OA Tomson”) by almost threefold from before the time he was Chief of the Service. By 1995, the percentage of DB operatives from the service engaged with this work increased from around 30% to 50%.⁵ Despite one-half of DB staff engaged in this work, the Prosecution (and its “expert” Theunens) were seemingly unaware of this critical mandate or the thousands of actions taken by the DB to suppress Serbian extremism to ensure the protection of civilians from all ethnic groups.⁶ This goes a long way to establishing reasonable doubt, as well as the faulty premise upon which the Prosecution pled its case.

6. More than any other factor, the Prosecution’s failure to discover these facts, and assess this evidence prior to the trial, reflects the depth of the Prosecution’s misconception concerning the role of Stanišić and the DB during the indictment period. There is a reason why the CIA is not commanding or supplying the war in Afghanistan, or why the MI6 did not replace the Army in subduing the Irish Republican Army, or why Mossad does not lead military operations in Gaza. No country in the world removes or reduces its ability to fight the threats to its own security (through its intelligence and counter-intelligence capabilities) by placing its security services at the forefront of a classical war outside of its borders, not to mention the loss in expertise in fighting a war led by someone who has no training in these types of operations. For any government, the Milošević government being no exception, protecting against internal threats was essential.

7. Confronted with reality, the Prosecution has attempted to paint the DB as a criminal organisation and Stanišić as a crude caricature from a cheap Hollywood movie. This portrayal must be approached with utmost caution. It is a thinly disguised attack on Serbia’s right to protect its own citizens through its state security service through a persistent denial of the validity of the DB’s mandate to protect Serbia and its citizens. It will not enable an accurate assessment Stanišić’s alleged *individual* responsibility.

8. Against extraordinary pressures, Stanišić did his best to play a civilised role in the war. Further, he was in favour of Serbia being a full member of the international community. In 1991, while the Prosecution allege Stanišić was plotting crimes with other alleged members of the plurality of the JCE, he reached out to the international community. From this time, he

⁵ See Confidential Annex I.

⁶ Theunens, T.8402-8403.

provided valuable information [REDACTED], in pursuance of a reasonable resolution to the conflict.⁷

9. [REDACTED].⁸ [REDACTED].⁹ [REDACTED].¹⁰ [REDACTED].¹¹

10. Despite the Prosecution's attempts to heighten crude instincts concerning sinister "police or spy" chiefs, it is plain the international community did not view Stanišić in this way. [REDACTED]. He used this freedom to assist with the creation of conditions to ensure peace.¹² Instead of disappearing into the shadows, as the Prosecution avers, he became famous by assisting in the release of the UNPROFOR hostages and French pilots¹³ and in helping to negotiate the Dayton Peace Accords.¹⁴ [REDACTED].¹⁵

11. [REDACTED].¹⁶

12. [REDACTED].¹⁷

13. Not a single leader in the Balkans can lay claim to this consistent pattern of conduct. It cannot be dismissed as mere mitigation. It goes to Stanišić's state of mind throughout the indictment period when others were committing terrible crimes. The Defence submits that these factors should be considered each time the Trial Chamber considers whether or not it can infer anything in relation to Stanišić's *mens rea*.

I. COLLAPSE OF THE PREMISE OF THE PROSECUTION CASE

14. Regarding the activities of the Serbian DB and Stanišić, the Prosecution's investigations failed to discover, or ignored, the facts above. Instead of making appropriate adjustments to their view of Stanišić and the DB, the Prosecution built its case upon the Kula award speech and concluded that Stanišić was the commander of the Serbian war. This case has been shown to be false.

⁷ [REDACTED].

⁸ [REDACTED]

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

15. The Prosecution has not demonstrated that Stanišić was Milošević's right hand man.¹⁸ They have not shown that Milošević would bypass his own SPS party stalwarts, Sokolović or Janačković, in favour of Stanišić.¹⁹ It has not even shown that Stanišić was *de jure* or *de facto* more powerful than the Deputy Minister of Interior Radovan Stojičić, aka Badža.²⁰

16. It should have looked more carefully at Badža, as it was him who had an intimate relationship with Milošević and the corresponding status which goes along with such a relationship.²¹ [REDACTED].²² [REDACTED].²³ In 1993, he commanded police officers trained for anti-terrorism,²⁴ [REDACTED].²⁵

17. [REDACTED].²⁶ [REDACTED].²⁷ [REDACTED].²⁸ Having failed to subvert the DB during the indictment period, Milošević's 1995 attempt to subordinate Stanišić and the DB to the Supreme Defence Council (SDC) was the act of a frustrated man.²⁹

18. It is plain from the evidence that the DB did not have a group of 28 elite trainers ("28 Elite Trainers") or 26 training camps.³⁰ As the Prosecution was forced to concede, on the rare occasion that it particularised its case, there was no control by a Unit Command of "*around 5,000 soldiers*".³¹ The DB did not have an "air squadron" or a specialised system of radio and telephone communications "*with various commands in the Republika Srpska and the Republic of Serbian Krajina*"³² to facilitate the supply of hundreds of thousands of tonnes of military logistics.³³

¹⁸ Prosecution Pre-Trial Brief, para.46.

¹⁹ *Ibid*, para.45.

²⁰ P1056; [REDACTED].

²¹ [REDACTED] P2977, p.21.

²² [REDACTED].

²³ [REDACTED].

²⁴ D416, p.1.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ D1691, p.16.

³⁰ Prosecution Pre-Trial Brief, paras 70-71.

³¹ [REDACTED].

³² [REDACTED].

³³ P61, p.10, 11.

II. APPLICABLE LAW

A. JOINT CRIMINAL ENTERPRISE: ALLEGED TOOLS OF THE JCE

19. The *Krajišnik* Appeal Judgement, citing both *Brđanin* and *Martić*, expounded upon the threshold links that must be established to prove this case. These include “evidence that the JCE member explicitly or implicitly *requested* the non-JCE member to commit such a crime *or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member* to commit the crime”.³⁴ This may be shown where there is clear evidence that “orders were passed from the political leadership to military officers” and the “leadership actively supervised the operations” which were undertaken on the basis of “a plan of action broadly formulated by the political leadership”.³⁵

B. CIRCUMSTANTIAL EVIDENCE

20. Instead of basing its case on direct evidence, the case for the Prosecution rests upon multiple hearsays, speculation and an invitation to stretch adverse inferences to a breaking point.

21. As stated by the ICTY Appeals Chamber, a circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him. Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from the evidence. For a finding of guilt to be based upon circumstantial evidence, it must be the *only* reasonable conclusion available. If there is another conclusion, consistent with innocence, which is reasonably available, he must be acquitted.³⁶ The Prosecution’s attempt to replace this approach to the evidence, with a presumption that no evidence (or evidence that is demonstrably weak) can be explained as the Accused “working in the shadows”, must obviously be resisted.

³⁴ *Krajišnik* Appeal Judgement, para.226, referring to *Brđanin* Appeal Judgement, para.410 (emphasis added).

³⁵ *Krajišnik* Appeal Judgement, para.239.

³⁶ *Delalić et al.* Appeal Judgement, para.458.

C. MATERIAL INCONSISTENCIES IN TESTIMONY

22. Many of the most relevant Prosecution witnesses were unable to provide consistent testimony. Confidential Annex III outlines some of the most egregious. The remainder will be addressed in the body of the Brief.

23. The jurisprudence shows that minor inconsistencies in witness testimony may raise doubts in relation to a particular piece of evidence. However, when such inconsistencies are found to be material, this raises doubt as to the evidence as a whole.³⁷ For example, a witnesses' prior statements of the events in which he failed to mention the involvement of the accused,³⁸ or the failure of a witness to mention a significant issue in his previous statement, even when not the subject of cross-examination, should give the Trial Chamber reasonable doubts about the credibility of the testimony.³⁹

24. The contradictions need to be examined to assess whether they are of a material nature and whether they vitiate the consistency of the substance of the testimony as to their account of *the facts at issue*.⁴⁰ In the event that a witness is unable to provide a convincing explanation for the inconsistencies, the doubt that is raised must remain.⁴¹ The Chamber must demand an explanation of substance rather than mere procedure,⁴² something concrete to dispel the doubt.⁴³ For example, the failure of the witness to mention the accused in his prior statement cannot be convincingly explained by the explanation that he was not directly asked about the accused. The absence of questions about the accused would not prevent a witness from volunteering information if he wanted to give a credible account of an event.⁴⁴

D. ACCOMPLICE EVIDENCE

25. Accomplice evidence "must be carefully considered in light of the circumstances under which it was given".⁴⁵ Even though the Chamber "retains the discretion to rely on uncorroborated, but otherwise credible, witness testimony",⁴⁶ with an accomplice to a crime,

³⁷ *Akayesu* Appeal Judgment, para.142; see also *Kayishema et al.* Trial Judgment, para.77.

³⁸ *Simba* Trial Judgment, paras 82,109,272-73.

³⁹ *Mpambara* Trial Judgement, para.107.

⁴⁰ *Rutaganda* Trial Judgment, paras 252,334.

⁴¹ *Rutaganda* Appeal Judgment, para.190.

⁴² *Kayishema* Trial Judgment, para.78.

⁴³ *Kayishema* Trial Judgment, para.443.

⁴⁴ *Rwamakuba* Trial Judgement, para.114

⁴⁵ *Niyitegeka* Appeal Judgment, para.98.

⁴⁶ *Nchamihigo* Appeal Judgment, para.42.

it should require corroboration.⁴⁷ At the very least, the Trial Chamber should briefly explain why the evidence of witnesses who may have had motives or incentives to implicate the accused was accepted.⁴⁸ In any event, the evidence should be viewed with caution.⁴⁹

SECTION I. THE ALLEGED CORE 28

I. THE PROSECUTION HAS FAILED TO PROVE THE CORE OF ITS CASE REGARDING THE “28 ELITE TRAINERS” FOR 26 CAMPS

26. The Prosecution has failed to prove the root of its case against Stanišić: that the Serbian DB was responsible for creating a network of 26 training camps using “28 Elite Trainers”.⁵⁰ As the following analysis will show, there was no Unit of “28 Elite Trainers” mainly used to train Red Berets in 26 training camps. They did not train 5,000 men who regarded “themselves as staying under the command of the MUP Serbia.”⁵¹ They did not provide important military support to the RSK or RS.⁵² The “28 Elite Trainers” did not act together as a Unit. As will become apparent in this Brief, the DB’s 1991 attempt to create a legitimate anti-terrorist Unit (“the ATU”) to function in Serbia was shelved in early March 1992.

A. PRELIMINARY MATTERS: INCONSISTENT ALLEGATIONS AND EVIDENCE

27. As a significant preliminary matter, the Defence notes a material mismatch in the premise of the “28 Elite Trainers” thesis and the evidence called in support.

28. The Prosecution’s Pre-Trial Brief states that “the unit was constituted on 4 May 1991” with a makeup of 28 men.⁵³ However, during its case, the Prosecution [REDACTED] to advance the theory of “28 Elite Trainers”, alleged to be the core of the Unit and the commencement of the Red Berets. [REDACTED]. His evidence is unequivocal on this point.⁵⁴

⁴⁷ *Nchamihigo* Appeal Judgement, para.48.

⁴⁸ *Krajišnik* Appeal Judgement, para.146.

⁴⁹ *Nchamihigo* Appeal Judgement, para.48.

⁵⁰ Prosecution Pre-Trial Brief, paras 70-73.

⁵¹ Prosecution Pre-Trial Brief, para.71.

⁵² Prosecution Pre-Trial Brief, paras 71-72.

⁵³ Prosecution Pre-Trial Brief, para.70.

⁵⁴ [REDACTED].

29. There is no evidence that these men were a distinct unit or group of “28 Elite Trainers” in Golubić. The evidence suggesting a level of control or influence by Simatović over the Golubić operations is analysed in paragraphs 298-320 of this brief. However, the Defence recalls that this was alleged to be control over the camp, or over the Knindžas as whole, not over “28 Elite Trainers”, “**mainly used** to train volunteers at training camps”.⁵⁵

30. Putting the aforementioned significant discrepancy aside, upon reasoned analysis, the Prosecution has failed to prove that Stanišić commanded “28 Elite Trainers”, or that they existed as a group or unit after early March 1992.

31. The Prosecution must prove that the “28 Elite Trainers” - **and not others** – were used as “tools” by Stanišić and Simatović, to set up 26 training camps in Croatia, Bosnia and Serbia;⁵⁶ (ii) “**mainly used** to train volunteers at training camps”⁵⁷; and (iii) provided important combat and other military support within Croatia and BiH.⁵⁸

B. THE EVIDENCE OF THE ALLEGED “28 ELITE TRAINERS”

32. It should be noted from the outset that the Prosecution case was based on “28 Elite Trainers”, yet only 22 names were inexplicably provided [REDACTED],⁵⁹ [REDACTED].

33. The evidence against 20 of those named is hopelessly sparse. Of these, 16 were dead or demonstrably not affiliated with Stanišić by Spring 1992.⁶⁰ With regard to the remaining 4, the evidence does not allow a reasonable inference that Stanišić had any link with them until they joined the JATD in late summer of 1993.⁶¹ Even then, the evidence does not disclose that they were engaged in assisting either the Croatian or Bosnian Serb forces in training or combat activities.

34. What remains to be considered in depth are Božović and Ivanović (Crnogorac). The proposition that these men were under the command of Stanišić from September 1991, let alone from May 1991, until the end of the indictment period is addressed in other parts of this Brief. Suffice to say, even if these two men had been shown to be under the command of

⁵⁵ Prosecution Pre-Trial Brief, Para.71.

⁵⁶ Prosecution Pre-Trial Brief, paras 28, 31, 39, 61, 69 (referring to P61, p.11, listing 26 training camps).

⁵⁷ *Ibid*, para.71.

⁵⁸ *Ibid*, para.72.

⁵⁹ [REDACTED].

⁶⁰ *Infra*, paras 36-59.

⁶¹ *Infra*, paras 36-59.

Stanišić during 1991–1995, the core of the Prosecution’s “28 Elite Trainers” has been shown to be untrue. What follows is an analysis of the 28 so-called elite trainers.

35. There was no “28 Elite Trainers” acting at the behest of Stanišić in furtherance of crime at any time. Stanišić shelved his plans for an ATU in early March 1992. Consequently 26 training bases were not created. No unit command supervising 5,000 men in the Krajina or air squadron existed. There was no essential military support to Croatia or Bosnia.⁶² The following is a summation of the alleged “28 Elite Trainers”, their non-involvement in training and military support and the absence of links to the first Accused.

1. 16 of the “Group of 28” were Dead or had No Affiliation with the Accused or the Serbian DB after early March 1992

a. Milan Andić

36. The Prosecution evidence is limited to an assertion that Andić was at Golubić before becoming part of the 28.⁶³ Nothing more is known of his activities thereafter. Based on the Prosecution’s own allegation of Stanišić’s Unit, it cannot be related to Stanišić as the Unit did not come into being until September 1991. Allegations related to the Golubić camp relate to April 1991.

b. Božo Božić and Rade Božić

37. Broadly consistent with the Stanišić case, the evidence *at its highest* shows that the Božić brothers left the Red Berets in Spring 1992.⁶⁴ The evidence shows that these brothers rekindled their alliance with Dragan in the Brčko area after Fruška Gora, where they formed a new group, which became known as the “Red Berets”.⁶⁵

38. The Prosecution has failed to prove that the Accused controlled, influenced, or were even in contact with this new group of Red Berets. Instead, this group was subordinated to Dragan, the Brčko Garrison and then the SVK.⁶⁶ At some stage this group formed a training centre – the Alfa Training Centre.⁶⁷ [REDACTED] confirmed that when Dragan formed this

⁶² P61, pp.11-12.

⁶³ [REDACTED].

⁶⁴ *Ibid.*

⁶⁵ P3017, pp.7-8.

⁶⁶ P1184; P1178; D83, pp.3-4; P2610, p.4

⁶⁷ [REDACTED].

training camp, he “came back without ‘Frenki’ this time”.⁶⁸ An intelligence assessment suggests the Božić brothers were still in key positions within the Alfa Centre in 1995.⁶⁹

c. [REDACTED]

39. [REDACTED]⁷⁰ [REDACTED].⁷¹ [REDACTED] [REDACTED].⁷² [REDACTED].⁷³

d. Boro Kovačević

40. The only evidence relevant to the case against Stanišić - until the Prosecution adduced its rebuttal evidence to bolster its case - was that Kovačević was “one of the original trainers at Golubić” and was one of the original 28.⁷⁴ The Prosecution’s rebuttal evidence [REDACTED] is wholly uncorroborated.⁷⁵ [REDACTED].⁷⁶ [REDACTED].⁷⁷ Firstly, [REDACTED].⁷⁸ [REDACTED].⁷⁹

e. [REDACTED]

41. [REDACTED]⁸⁰ [REDACTED].⁸¹ [REDACTED].⁸² [REDACTED],⁸³ [REDACTED].⁸⁴ [REDACTED].

f. Fnu Lnu aka “Komarać”

42. The only evidence relevant to the case against Stanišić was the allegation that Komarać “was at Golubić and he left Fruška Gora [REDACTED][i.e., in February 1992]”.⁸⁵

⁶⁸ [REDACTED]; D136, p.1; D71; P1183; P1184; D1156; P1178; D617; P1568; P242; D171-D173 which confirm the lack of involvement of the DB.

⁶⁹ P1178, pp.4-5.

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED]; *see also* Part II, Section IV, paras 486-537.

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

g. Fnu Goran

43. The Prosecution's evidence is limited to [REDACTED] that Goran was physically present at Golubić and at Fruška Gora.⁸⁶ Nothing more is known about his activities.

h. Saša Medaković

44. [REDACTED]. [REDACTED].⁸⁷ The Prosecution has asserted that Korenica was a training camp or "Frenki's base", but nothing more is known of the activities alleged to have taken place therein.⁸⁸ In any event, the Korenica evidence relates to a time prior to his arrival in Fruška Gora in November/December 1991.

45. The Prosecution's rebuttal material did not advance their case. The vague claim that Medaković [REDACTED]⁸⁹ cannot be evidence that supports the "28 Elite Trainer" thesis. At best, it shows that from Fruška Gora until his death, Medaković was a reserve and inactive member of the DB. For example, it is claimed that on 23 June 1992 he was killed "as a member of the reserve composition of the Special Purpose Unit of the MUP Republic of Serbia."⁹⁰ [REDACTED].⁹¹

i. [REDACTED]

46. [REDACTED]⁹² the Prosecution has failed to adduce any evidence concerning his activities [REDACTED],⁹³ [REDACTED],⁹⁴ [REDACTED].⁹⁵

j. Dusan Orlović

47. Despite being described as a veteran of the Special Operations Units at Kula,⁹⁶ there is not a single piece of evidence to support the proposition that Orlović was one of the trainers or that he provided support for any military action.

⁸⁶ [REDACTED].

⁸⁷ [REDACTED]. He was also mentioned in the context of an attack against the Glina police station on 26 July 1991, *see* P2875, p.1.

⁸⁸ Makšić, T.6846-6847; [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ P3146, p.1.

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

⁹⁶ P61, pp.4-5.

k. Nikola Filipović (aka Pilipović)

48. The Defence accepts that [REDACTED]⁹⁷ and [REDACTED].⁹⁸

49. Filipović [REDACTED].⁹⁹ Similar to all other members of the original 28, his file contains no documents to show that the request was processed at the time further than requests for checks being made. [REDACTED].¹⁰⁰ [REDACTED].¹⁰¹

50. [REDACTED]¹⁰² or [REDACTED],¹⁰³ the Prosecution evidence is inconclusive. At its highest, it shows that Filipović may have been acting as a paramilitary within a new group (possibly borrowing the designation “Red Berets”), but not as a member of the original 28. There is no evidence to support his claim [REDACTED]¹⁰⁴ or [REDACTED]. None of the evidence from this crime base incriminates him or links him with Božović, who was present in Doboj at the behest of the CSB Doboj.¹⁰⁵

51. Although Filipović [REDACTED],¹⁰⁶ [REDACTED]. Apart from being present in Ilok, Titova Villa in August 1995 with Subotić and 50 other so-called Red Berets,¹⁰⁷ and being present with Stanišić when the latter secured the release of the French pilots in Pale,¹⁰⁸ there is no evidence relating to him.

l. Radomir Rašković

52. [REDACTED] an individual named “Rašković” was one of the original 28. [REDACTED] limited to the assertion that Rašković “stayed in the Red Berets, and then went to Bosnia from Fruška Gora. He went to a place on the border with Serbia. He went to the Tara camp”.¹⁰⁹

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ See Part II, Section I, paras 307-308.

¹⁰⁵ See Part III, Section II, paras 693-701.

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ *Ibid.*

¹⁰⁹ [REDACTED].

53. The Prosecution failed to prove that Rašković was an elite trainer. At its highest the evidence suggests that he was a member of the reserve force until 21 April 1992. [REDACTED].¹¹⁰ [REDACTED].¹¹¹

54. [REDACTED].¹¹² [REDACTED].¹¹³ Other than these skeletal claims, largely contained in a rebuttal personnel file, nothing more has been shown.

m. Goran Starčević

55. The Prosecution has not shown Starčević to have been an active member of a Unit of “28 Elite Trainers”.

56. Instead, he appears to have known Simatović personally.¹¹⁴ [REDACTED],¹¹⁵ [REDACTED]¹¹⁶ [REDACTED].¹¹⁷ [REDACTED],¹¹⁸ [REDACTED].¹¹⁹ Starčević was alleged by Babić to be one of Simatović’s assistants who stayed around Kistanje in 1991.¹²⁰ He may have driven Simatović and dealt with logistics at Fruška Gora in late 1991.¹²¹ [REDACTED].¹²² [REDACTED]. However, no evidence corroborates this skeletal assertion.¹²³

n. Borjan Vučković

57. [REDACTED].¹²⁴ The evidence shows that he was part of Captain Dragan’s unit at the time.¹²⁵

58. [REDACTED] does not indicate the locations or objectives of the operations in which he allegedly took part.¹²⁶ [REDACTED].¹²⁷ The only evidence ([REDACTED]) of his

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

¹²⁰ Babić, P1878, p.173.

¹²¹ [REDACTED].

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ [REDACTED].

¹²⁵ P991; [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ [REDACTED].

involvement in military activity arises from P2878, a report he wrote, reflecting his involvement on 26 July 1991 in the “expelling of members of the MUP Croatia from Glina”.¹²⁸ This was prior to the 28 arriving at Fruška Gora in September 1991, [REDACTED]¹²⁹.¹³⁰ [REDACTED].¹³¹

o. Ilija Vučković

59. The evidence does not suggest that Ilija Vučković was engaged in training or other military activities on behalf of Stanišić. [REDACTED].¹³²

60. The case against Stanišić rests upon [REDACTED].¹³³ [REDACTED].¹³⁴ [REDACTED].¹³⁵ [REDACTED].¹³⁶

61. In mid 1992, some months after Stanišić had disbanded the “Unit of 28”, Ilija Vučković became a member of a new Krajina MUP unit.¹³⁷ He may have conducted some training at Pajzoš around June 1992¹³⁸ but it is unclear who was trained and why.¹³⁹ He appears to have been distributing RSK MUP identification cards to members of the unit.¹⁴⁰

62. Whether or not the RSK MUP unit was in fact the same as the Serbian MUP unit (as the Prosecution belatedly now allege), the evidence does not show that Vučković was an elite trainer or military combatant working for Stanišić. [REDACTED]¹⁴¹ and minor military activity or petty criminality.¹⁴² [REDACTED].¹⁴³

63. The evidence suggests that, as part of this new unit, Ilija Vučković was acting at this time in collaboration with the local TO. [REDACTED]¹⁴⁴ and of Vojin Susan, Minister of

¹²⁸ P2878.

¹²⁹ [REDACTED].

¹³⁰ P991.

¹³¹ [REDACTED].

¹³² [REDACTED].

¹³³ [REDACTED].

¹³⁴ [REDACTED].

¹³⁵ [REDACTED].

¹³⁶ [REDACTED].

¹³⁷ P2653, p.4; P3170, p.9; P2874, p.1; [REDACTED].

¹³⁸ P3006, p.1.

¹³⁹ P3006, p.1.

¹⁴⁰ P3007.

¹⁴¹ [REDACTED].

¹⁴² See e.g. [REDACTED]; P2658; P2874; P2879; P3006; P3007; [REDACTED].

¹⁴³ [REDACTED].

¹⁴⁴ [REDACTED].

Justice in the RSK.¹⁴⁵ [REDACTED].¹⁴⁶ Vučković's employment with the SVK continued, however on 15 February 1994, Lieutenant Ilija Vučković was ordered to report to the Main Staff of the SVK for further assignment.¹⁴⁷

2. There is an Absence of Any Evidence to Link Stanišić and Four of the "28 Elite Trainers" Until they Joined the JATD in the Summer 1993 or Later

a. Dragan Filipović

64. There is no probative evidence that "Filipović, also known as Major Fića, played a leading role in the training of the special police units in the Krajina"¹⁴⁸ or that he otherwise acted as part of a group of "28 Elite Trainers" at DB camps or otherwise engaged in military activities for the Serbian DB.

65. [REDACTED] stated that Filipović was a member of the original "28", that "he was not at Golubić ... he visited ... but was not with [REDACTED] group at the time".¹⁴⁹ He joined the group in Fruška Gora in November/December 1991.¹⁵⁰ [REDACTED] believes that Filipović was a "commander at Korenica" in August 1991.¹⁵¹ However, the Prosecution has not proven any meaningful activities (including training,) took place at this location.¹⁵²

66. The Prosecution has not proved Filipović's training or military activities between late 1991 and late 1994 (when he was present during the Pauk operations). Slišković's claim that Filipović was in a unit with Borović, Mijović and others since 1991 was based on a "strong brotherly rapport" - a manifestly inadequate basis for asserting that he worked as a member of "28 Elite Trainers" between 1991 and the Pauk operations in late 1994.¹⁵³

67. In fact, the available evidence suggests that Filipović was engaged in classical intelligence gathering tasks, at least in 1991 and mid-1994.¹⁵⁴ In Pauk, he appears to have

¹⁴⁵ [REDACTED] D382; D763, p.2.

¹⁴⁶ P3042, p.2 (US).

¹⁴⁷ P1264, p.2, N.48.

¹⁴⁸ Prosecution 98*bis* Submissions, T.11379.

¹⁴⁹ [REDACTED].

¹⁵⁰ [REDACTED].

¹⁵¹ [REDACTED].

¹⁵² Babić, P1877, pp.44; JF-39, T.7246; [REDACTED]; *see also* Part II, Section I, paras 307-308.

¹⁵³ Slišković, P440, para.3.

¹⁵⁴ P2420; *see also* [REDACTED].

been engaged in some form of reconnaissance.¹⁵⁵ The evidence suggests Filipović was present in Pauk, as same kind of authority over the JATD.¹⁵⁶

68. Furthermore, there is no evidence to support [REDACTED] claim that Božović was subordinated to Filipović at Pauk.¹⁵⁷ When challenged twice to confirm his evidence (that Filipović had command over the alleged reserve forces, such as Božović), Slišković avoided the questions, lapsing into meaningless generalities; “[a]s far as I understood, when Jovica Stanišić or Franko Simatović were absent they [Filipović included] had certain tasks they had to perform based on an authorisation”.¹⁵⁸

69. In 1995, Filipović was in Banja Luka coordinating the Serbian police who were employed to protect the civilian population.¹⁵⁹ Then he was based in Pajžos. The evidence shows that he was not engaged in training recruits for war operations or other military activity as alleged.¹⁶⁰

b. Nikola Pupovac

70. The evidence does not support an inference that Stanišić had any direct or indirect control over Pupovac from early March 1992 until his entry into the JATD. The evidence is unclear concerning his role and activities within the JATD post-August 1993.

71. Pupovac was one of the original 28 men, operating in Serbia and “securing important persons”.¹⁶¹

72. The evidence suggests that Pupovac trained men in Ilok in 1992. On 2 November 1992, Milan Lukić stated that sometime after 10 April 1992 he went to Ilok for training, which was “provided by men called Pupe and Zoran, Red Berets-*Knindžas*”.¹⁶² If Lukić is to be relied upon, the training took place sometime after the 10 April 1992.¹⁶³

¹⁵⁵ P3024, p.5; *see also* D47.

¹⁵⁶ P235, pp.51, 63.

¹⁵⁷ [REDACTED].

¹⁵⁸ Slišković, T.5111-5112.

¹⁵⁹ *See* Part III, Section IX, paras 1213-1215.

¹⁶⁰ [REDACTED].

¹⁶¹ [REDACTED].

¹⁶² P2448, p.2.

¹⁶³ P2448, p.2.

73. [REDACTED].¹⁶⁴ In other words, he had not been on active duty when he trained the aforementioned men. The evidence does not reveal the result of his request. Lukić did not link the group in Ilok to the Serbian DB. He describes them as Knindžas.¹⁶⁵

74. Subsequently, in 1992, Pupovac appeared to set himself up as a trainer in the Skelani region.¹⁶⁶ He created a paramilitary unit of “so-called Red Berets”.¹⁶⁷ [REDACTED],¹⁶⁸ it is plain that he was supported locally and organised a small, ineffectual camp that failed to contribute meaningfully to military objectives. As discussed in Part III, Section IV of this brief, his subsequent role as the camp commander at Tara in 1993 under the supervision of the Serbian MUP (not DB),¹⁶⁹ placed him under the command of Badža, not Stanišić.¹⁷⁰

75. After the Tara Operations, [REDACTED]. [REDACTED].¹⁷¹ [REDACTED].¹⁷²

76. [REDACTED],¹⁷³ but the evidence does not disclose his activities. Even though Slišković repeated the Prosecution’s case – that Pupovac was one of the commanders of the reserve units of the DB prior to 1994, that was commanded by Stanišić - he was unable to support this claim with any information concerning Pupovac’s previous activities. [REDACTED].¹⁷⁴

c. Zoran Rajić

77. There is insufficient evidence that Stanišić commanded Rajić, as a trainer or combatant, from 1991 to 1995. At best, the evidence [REDACTED] suggests that he was one of the original 28 in Fruška Gora, dealing with supplies.¹⁷⁵ However, [REDACTED], except initially, no supplies, other than food, came to Fruška Gora until at least January 1992.¹⁷⁶ [REDACTED].¹⁷⁷ [REDACTED].¹⁷⁸

¹⁶⁴ [REDACTED].

¹⁶⁵ P2448, p.2 [REDACTED].

¹⁶⁶ See Part III, Section IV, paras 884-888.

¹⁶⁷ P383, p.5.

¹⁶⁸ [REDACTED].

¹⁶⁹ P1053, p.18.

¹⁷⁰ See Part III, Section IV, paras 777-778, 781-782, 827-835, 884-888.

¹⁷¹ [REDACTED].

¹⁷² [REDACTED].

¹⁷³ [REDACTED].

¹⁷⁴ [REDACTED].

¹⁷⁵ [REDACTED].

¹⁷⁶ [REDACTED].

¹⁷⁷ [REDACTED].

¹⁷⁸ [REDACTED].

78. Rajić may have formed some kind of friendship with Simatović in 1991. [REDACTED] Martić ordered Rajić, Simatović, Starčević and Orlović to be arrested in early March 1992 because these “men all worked directly for ‘Frenki’ and were members of the Serbian DB”,¹⁷⁹ is uncorroborated.

79. [REDACTED] suggested that Rajić worked for the Serbian DB and the Serbian DB controlled the Krajina DB through Rajić.¹⁸⁰ However, [REDACTED].¹⁸¹ Whatever the truth of these various claims, the Prosecution has failed to establish that the Krajina DB (or Rajić) played any role in the training of combatants or engaging in any military activity. In the end, JF-39 also moderated his view, claiming that, whilst Simatović paid these men, Martić’s principal grievance with this arrangement was that “he never actually received correct information”.¹⁸² In other words, Rajić may have been collecting intelligence for the Serbian DB.¹⁸³

80. The remainder of the evidence about Rajić’s activities at this time are contradictory. [REDACTED].¹⁸⁴ [REDACTED].¹⁸⁵

81. Whatever the probative value of this evidence, none of it places Rajić as a trainer or combatant with the Serbian DB. Conversely, from the time Stanišić shelved the plans for an anti-terrorist Unit in early March 1992. [REDACTED]. [REDACTED].¹⁸⁶ [REDACTED]. Contradicting the Prosecution’s case, [REDACTED].¹⁸⁷

82. [REDACTED]¹⁸⁸ [REDACTED].¹⁸⁹ [REDACTED]¹⁹⁰ consistent with being trained for the JATD. [REDACTED].¹⁹¹

83. Slišković claimed that Rajić was the commander of a reserve/paramilitary force or a trainer. However, there is nothing to support his claims. There is no evidence to even suggest

¹⁷⁹ [REDACTED].

¹⁸⁰ [REDACTED].

¹⁸¹ [REDACTED].

¹⁸² JF-39, T.7282.

¹⁸³ *Ibid.*

¹⁸⁴ [REDACTED].

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED].

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

that he ever engaged in combat, let alone being known as an “excellent fighter”, as he was characterised by Slišković.¹⁹²

84. Moreover, Slišković’s claim that Rajić was the commander of the Scorpions was plainly a lie.¹⁹³ This is dealt with in depth in Part III, Section VI (Pauk)¹⁹⁴ and Section VIII (Sanski Most).¹⁹⁵ First, he proffered nothing that would support this uncorroborated hearsay assertion. Further, his knowledge of the Scorpions was embarrassingly sparse.¹⁹⁶ Finally, he contradicted himself, later claiming that it was not Rajić who was the Scorpions commander, but Medić.¹⁹⁷

d. Davor Subotić

85. The evidence adduced does not support an inference that Subotić was controlled or influenced, directly or indirectly, by either Simatović or Stanišić from early 1992 throughout the indictment period.

86. In the biography contained in his personnel file, Subotić makes various claims concerning his military activities in 1991-1993 in an RSK MUP unit. Of the men who have personal files, he alone suggests that the RSK MUP is the same as the Serbian MUP. These uncorroborated claims must be approached with utmost caution for the following reasons below.

87. Subotić claims to have gone to Camp Golubić “where a Special Purpose Unit of MUP Republika Srpska was being formed”.¹⁹⁸ He claims to have fought in a variety of locations in the RSK on behalf of a special unit of the RSK MUP, before being taken to Fruška Gora.¹⁹⁹ Thereafter, he claims that he fought on behalf of the unit in SBWS, including Bilje, Bapska, Tikveš, etc.²⁰⁰ As is discussed elsewhere in the Brief, these claims are wholly unsupported by evidence.²⁰¹

¹⁹² [REDACTED].

¹⁹³ Slišković, P440, para.19; [REDACTED].

¹⁹⁴ Paras 1076-1091.

¹⁹⁵ Paras 1197-1198.

¹⁹⁶ Slišković, T.5198-5200.

¹⁹⁷ Slišković, T.5120; *see also* T.5199.

¹⁹⁸ D423; [REDACTED].

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *See* Part II, Section IV (discussion of JF-31’s evidence).

88. [REDACTED].²⁰² [REDACTED].²⁰³ [REDACTED].

89. [REDACTED].²⁰⁴ [REDACTED]; [REDACTED]²⁰⁵ [REDACTED]. [REDACTED]; [REDACTED].²⁰⁶

90. Regarding Subotić's activities in Doboj in April 1992,²⁰⁷ a biographical note in his file suggests that he was in a RSK MUP Unit and was "dispatched with a group of men on Mount Ozren".²⁰⁸ At this time he was in possession of an RSK MUP ID.²⁰⁹ The CSB Doboj in BiH paid him in April 1992²¹⁰ and May 1992²¹¹ for his services.

91. [REDACTED].²¹² [REDACTED] at the time of the Pauk operations with the Red Berets in Mount Tara, but did not detail his activity.²¹³ Apart from evidence that shows that he was present in August 1995 in Titova Villa, Ilok, with Subotić and 50 other so-called Red Berets, there is no other evidence of his activities.²¹⁴

C. THERE WERE NOT 26 TRAINING CAMPS CREATED BY THE 28 ELITE TRAINERS

92. Regarding the existence of training camps where the 28 elite trainers trained various Serbian Forces, the Prosecution relied heavily on the Kula speech. In this speech, Simatović states that the DB established 26 training camps.²¹⁵ However, he only identified 21: Golubić, Dinara, Obrovac, Gračač, Plitvice, Šumarice, Petrova Gora, Lički Osik, Benkovac, Ležimir, Ilok, Vukovar, Banja Luka, Doboj, Šamac, Brčko, Bijeljina, Trebinje, Višegrad, Ozren and Mrkonjić Grad.

93. The Prosecution has not raised even a *prima facie* case of DB involvement in 14 of the 21 alleged bases from this infamous speech: Lički Osik, Šumarice,²¹⁶ Plitvice,²¹⁷ Bijeljina,

²⁰² [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ [REDACTED].

²⁰⁵ [REDACTED].

²⁰⁶ [REDACTED].

²⁰⁷ See Part III, Section II, paras 702-704.

²⁰⁸ D423.

²⁰⁹ P489.

²¹⁰ P142, p.1.

²¹¹ P143.

²¹² [REDACTED].

²¹³ [REDACTED].

²¹⁴ [REDACTED].

²¹⁵ P61, p.11.

²¹⁶ DFS-14, T.15984.

²¹⁷ DFS-14, T.15984.

Višegrad,²¹⁸ Obrovac,²¹⁹ Vukovar,²²⁰ Mrkonjić Grad,²²¹ Benkovac,²²² Bosanski Šamac,²²³ Trebinje,²²⁴ Dinara,²²⁵ and Gracac.²²⁶ Regarding Banja Luka, the Prosecution accepted that the camp was not organised by the DB.²²⁷ The Prosecution also lists 7 other training camps in its Pre-Trial Brief: Baranja, Bratunac, Bruška, Fruška Gora, Lipovaca, Skelani, Tara and Zvornik. Lipovaca was a DB training camp. For the others, they were not DB camps for the reasons discussed in this brief.

94. Regarding Simatović's Kula speech and his 28 elite trainers, this thesis has been exposed as award ceremony rhetoric. However, even if all of these camps disclose a case against Stanišić, in the context of a war spanning the better part of five years, involving hundreds of thousands of combatants, these facts alone raise a reasonable doubt as to the magnitude of Stanišić's contribution to the alleged JCE.

95. The nominal contribution of Stanišić, even taking the alleged camps and the men trained there at its highest, is evidence when one compares this to the "real" trainers at the time. For example, in 1992 alone, the JNA had more than 23 training centres. Tens of thousands of men were trained at Centres organised by the VJ, SVK and VRS, sometimes hundreds in a day.²²⁸ In one month alone - March 1993 - the VJ's Bujanj Potok centre trained and dispatched 3,453 volunteers to the war front.²²⁹

II. CONCLUSION

96. As can be deduced by the foregoing discussion, the foundational premise of the Prosecution case - "28 Elite Trainers" and 26 training camps²³⁰ - has been shown to false.

²¹⁸ JF-54, T.15572.

²¹⁹ DFS-14, T.15984.

²²⁰ DFS-74, T.13281-13282.

²²¹ JF-54, T.15572; DST-71, T.17390-17391.

²²² DFS-14, T.15886-15888; DFS-14, T.15984.

²²³ JF-005 had only heard about it. T.2810-2812. JF-54 testified he never heard about it. T.15572; D1611, p.2 (US).

²²⁴ P1053, p.9; P1053.

²²⁵ DFS-14, T.15984; JF-41, T.8025-8026; JF-41, T.8025-8026

²²⁶ JF-41, T.8030-8031; DFS-14, T.15984.

²²⁷ T.17382.

²²⁸ D859, p.2; D913, p.2; P1328, p.2; P1064, p.2; P2528, p.2; D1136, p.1; D1135, p.2; P1063, p.3; D859, p.3; P1063, p.3-4; P1097, pp.21, 30; D1132, p.2; D758, p.2; D916 pp.2-4; D1222, p.2; D914, p.3; D912, p.2; P2522, p.42.

²²⁹ D1222, p.2; *see also* D1185, p.4; P1278, p.8; P1276, p.6.

²³⁰ Prosecution Pre-Trial Brief, paras 70-73.

97. They were not used as “tools” by Stanišić to train 5,000 men who regarded “themselves as staying under the command of the MUP Serbia.”²³¹ They did not provide important military support to the RSK or RS.²³² They did not even train their own prospective members in 1993, when the JATD was being created.²³³ Instead, the DB relied on the experts – the Serbian military and the anti-terrorist police (“SAJ”).²³⁴

98. As this Brief will demonstrate, the evidence shows, in 1991 the DB intended to create an ATU but shelved this plan in early March 1992. The “28 Elite Trainer” thesis is a figment that sprung from the imagination of the Kula Award Ceremony.

A. NOTICE VIOLATION – ATTEMPTS TO BUILD A NEW CASE

88. As noted above, the Prosecution’s Pre-Trial Brief states that “the unit was constituted on 4 May 1991” with a makeup of 28 men.²³⁵ The notice provides that these men - **and not others** - set up 26 training camps in Croatia, Bosnia and Serbia;²³⁶ (ii) were “**mainly used** to train volunteers at training camps”;²³⁷ and (iii) provided important combat and other support in Croatia and BiH.²³⁸

89. Having appreciated the collapse of this core case, the Prosecution has attempted to build a new one. Rather than heeding Judge Meron’s call to ensure a clear identification of the link required between the JCE and the crimes on the ground, to impute crimes committed by principal perpetrators to the JCE, and to provide a “more precise historical record”²³⁹ the Prosecution focused on creating a new alleged Unit, flooding the case with 91 new personnel files containing dubious employment claims.

90. The Prosecution have not explained the probative value of these personnel files to proof of the “28 Elite Trainers” thesis. Annex IV and Annex V demonstrate how little these prove in the context of a criminal trial that demands evidence beyond a reasonable doubt that alleged perpetrators are *used* by a JCE member in furtherance of a criminal purpose.

²³¹ *Ibid*, para.71.

²³² *Ibid*, paras 71-72.

²³³ P973, p.7; P972, p.24; JF-94, T.7152.

²³⁴ D763, p.2; [REDACTED].

²³⁵ Prosecution Pre-Trial Brief, para.70.

²³⁶ *Ibid*, paras 28, 31, 39, 61, 69 (referring to P61, p.11, listing 26 training camps).

²³⁷ *Ibid*, para.71.

²³⁸ *Ibid*, para.72.

²³⁹ Separate Opinion of Judge Meron, *Brđanin* Appeal Judgment, para.7.

91. Consequently, the Defence has been deprived of information vital to the preparation of an effective defence. Putting aside the piecemeal introduction of these files into the trial, it has not been provided with necessary information concerning how Stanišić is alleged to have used these non-JCE members to commit crime.²⁴⁰ Complex charts drawing threads of continuity between various men claiming to be engaged in combat, is a poor substitute for a reasoned analysis of this fundamental element of JCE liability.²⁴¹

92. Any attempt to rely upon these files will violate Stanišić's right to be informed of the case against him. The Defence cannot be expected to speculate concerning the use of the personal files in this trial.²⁴² As the aforementioned analysis of the "28 Elite Trainers" and their alleged 26 training camps has amply shown, these new "Unit members" have not been linked to the original 28, such that they might be considered as part of the original "28 Elite Trainer" Unit.

93. The fundamental question in determining whether an indictment is pleaded with sufficient particularity is whether accused persons have enough detail to prepare their defence.²⁴³ These new men, alleged perpetrators or material facts, giving rise to new charges (a basis for conviction "that is factually and/or legally distinct from any already alleged in the indictment") should have been pled.²⁴⁴ This is particularly the case with principal perpetrators of crimes, which must be listed in the indictment, so long as the Prosecution is in a position to do so.²⁴⁵

94. It cannot be reasonably argued that the Prosecution have provided any meaningful notice of the role these men are alleged to have played, let alone how they were used. As Annex V shows, in most cases, it is not even known from the evidence what they claim to

²⁴⁰ *Krajišnik* Appeal Judgement, para. 226, referring to *Brđanin* Appeal Judgement, para. 410 (emphasis added).

²⁴¹ See e.g. *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Prosecution Response to Stanišić Defence Motion for the Exclusion of Specified Exhibits or other Remedies, 12 June 2012; Prosecution Motion for Admission of Rebuttal Evidence, DB Personnel Files, 24 September 2012, paras 12-14.

²⁴² *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Decision on Defence Motion for Exclusion of Specified Exhibits and Admission of Various Other Documents, 15 August 2012, para 15.

²⁴³ *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, ICTR Trial Judgement, 15 May 2003, para. 44; citing *Prosecutor v. Kupreskic*, Case No. IT-95-16-A, ICTY Appeal Judgement, 23 October 2001, para. 88.

²⁴⁴ *Prosecutor v. Halilovic*, Case No. IT-01-48-PT, Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment, ICTY Trial Chamber, 17 December 2004, para. 30; see also *Prosecutor v. Prlic*, Case No. IT-04-74-PT, Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment, ICTY Trial Chamber I, 18 October 2005, para. 13; *Prosecutor v. Krnojelac*, Case No. IT-27-95-PT, Decision on Prosecutor's Response to Decision of 24 February 1999, ICTY Trial Chamber II, 20 May 1999, para. 20.

²⁴⁵ *Prosecutor v. Popović et al*, Case No. IT-05-88-T, Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006, para.40.

have done, let alone any independent verification of the claim. The belated attempt to buttress this central aspect of its case should be dismissed for want of proper notice.

SECTION II. DEBUNKING THE MYTHOLOGY THAT THE DB WAS A WAR MACHINE

I. STANIŠIĆ'S ROLE IN THE DB

A. STANIŠIĆ WAS AN APOLITICAL PROFESSIONAL

95. Stanišić was a professional civil servant [REDACTED]²⁴⁶ [REDACTED].²⁴⁷

96. [REDACTED].²⁴⁸ [REDACTED].²⁴⁹

97. [REDACTED].²⁵⁰ [REDACTED].²⁵¹ [REDACTED].²⁵² [REDACTED].²⁵³

98. Apart from restricting Stanišić's ability to act, [REDACTED] also shows that Stanišić was not Milošević's right-hand man, or the *de facto* Head of the DB in 1991. Its existence makes it significantly less likely that he was chosen to implement secret plans to support the Croatian Serbs' movement to war.²⁵⁴ Stanišić's "hands [were] tied" by Janačković and the Commission investigation.²⁵⁵ There is no evidence that Milošević disagreed [REDACTED] intervened to protect Stanišić from these political or professional attacks.²⁵⁶

99. The question arises as to how a non-political man, attacked by senior politicians from Milošević's party, nonetheless became the Chief of the DB. [REDACTED] noted their surprise with the decision.²⁵⁷ But, with civil war approaching Belgrade, Milošević needed a knowledgeable professional in charge of state security, someone who could subdue the paramilitaries and keep the population of Serbia safe. Without safety, there was discontent, with discontent there could be an uprising and consequentially, a loss of power. Milošević was intelligent enough to know that party functionaries do not run the state security, nor does the state security run the war.

²⁴⁶ [REDACTED].

²⁴⁷ [REDACTED].

²⁴⁸ [REDACTED].

²⁴⁹ [REDACTED].

²⁵⁰ [REDACTED].

²⁵¹ [REDACTED].

²⁵² [REDACTED]; *see also* Annex I.

²⁵³ [REDACTED].

²⁵⁴ [REDACTED]; D608, pp.2,4.

²⁵⁵ P630, p.1.

²⁵⁶ *See also* [REDACTED].

²⁵⁷ [REDACTED].

B. STANIŠIĆ'S RESPECT FOR THE RULES

100. Stanišić was a stickler for rules. He “strictly required everyone to abide by the rules and regulations, irrespective of who issued them or when they were issued”.²⁵⁸

101. Stanišić would not violate democratic principles and processes.²⁵⁹ For example, there is clear and unequivocal evidence that Stanišić, unlike his predecessor, insisted on obtaining consent from the President of the Supreme Court, as required by law, before implementing the measures that deviated from the Constitutional principle of inviolability of communications, that is before the DB derogated from citizen's rights.²⁶⁰ There is no evidence that this solid principle was not strictly adhered to throughout his tenure.

C. STANIŠIĆ'S FOCUS ON THE DB PROTECTING ETHNIC MINORITIES

102. As Annex I shows, the DB's mission statement included the protection of ethnic minorities within Serbia. Stanišić embodied this mission, with no evidence in this case of differential treatment towards non-Serbs. Stanišić, in times of ethnic war, and with threatening secession movements in Sandžak and Kosovo, distinguished himself by ensuring that his service was multi-ethnic. This was considered “an asset”²⁶¹ and “most centres had a multi-ethnic composition”.²⁶² Moreover, he had a multi-ethnic staff, even in leadership positions.²⁶³

II. THE CONSTITUTIONAL AND REGULATORY FRAMEWORK OF THE DB

A. THE MANDATE OF THE DB

103. The mandate of the DB was to “collect data and information” with the purpose to “detect and prevent activities aimed at undermining and overthrowing the constitutional order and endangering the security of the country”.²⁶⁴ It was not designed to wage war but to provide for the “defence” or “protection” of Serbia [REDACTED].²⁶⁵

²⁵⁸ [REDACTED].

²⁵⁹ [REDACTED].

²⁶⁰ [REDACTED]; Čorbić, D451, para.38; Milošević, T.19051-19052; Milošević, D795, paras 161-163.

²⁶¹ Novaković, T.13931.

²⁶² Novaković, T.13931.

²⁶³ [REDACTED]; Dragičević, T.14741; [REDACTED].

²⁶⁴ [REDACTED] D239, p.1.

²⁶⁵ [REDACTED].

104. The Law on Defence provided the tasks for the JNA and the TO. In times of peace, the JNA was supposed to be organised and make preparations for both defensive and offensive operations,²⁶⁶ and prepare for “all types of armed struggle”.²⁶⁷ The TO, together with the JNA and other forces of all-people’s defence, was supposed to offer resistance, and wage a campaign against the enemy.²⁶⁸

105. Unlike the military, the DB did not have a mandate to ensure “territorial integrity”.²⁶⁹ Unlike the police, in times of war or emergency, the DB was not to be subordinated to the military and “used for carrying out combat activities for the armed forces”.²⁷⁰

106. [REDACTED],²⁷¹ [REDACTED]. [REDACTED].²⁷² [REDACTED].²⁷³

107. As in most legal jurisdictions, violations of the laws of war naturally fell to the armed forces,²⁷⁴ not a civilian authority. Even if information could be submitted to the military prosecutor,²⁷⁵ it was not envisaged that the DB would take actions in relation to the enforcement of justice against members of the armed forces.²⁷⁶

B. BUILT TO FIGHT EXTREMISM, NOT WAR

108. When the case started, the Prosecution was unaware of Operation Tomson²⁷⁷ or of the DB’s use of domestic legislation to fight against Serbian extremism.²⁷⁸

109. Dozens of paramilitary groups emerged in FRY between 1991 and 1995, often linked to opposition groups in Parliament.²⁷⁹ [REDACTED],²⁸⁰ many of whom were determined to

²⁶⁶ P1010, pp.64-65, Article 100.

²⁶⁷ P1010, p.65, Article 100.

²⁶⁸ P1010, p.66, Article 102.

²⁶⁹ P1010, p.1.

²⁷⁰ P1010, p.67, Article 104; P1042, pp.3, 5; Milošević, D795, paras 88, 92; Theunens, P1575, p.5 (Executive Summary, p.3); D199, p.4.

²⁷¹ [REDACTED].

²⁷² [REDACTED].

²⁷³ [REDACTED].

²⁷⁴ P1041, Article 1; Theunens, T.8210-8211.

²⁷⁵ P1038, p.21.

²⁷⁶ Theunens, T.8340.

²⁷⁷ D232, pp.1-2; [REDACTED].

²⁷⁸ Theunens, T.8308, 8316, 8402-8403.

²⁷⁹ D1338, p.1; D1340, p.2; D1341, p.7; P2466, p.3.

²⁸⁰ [REDACTED].

seize power if the opportunity arose or were plotting the assassination of the President and Serb officials.²⁸¹ [REDACTED],²⁸² [REDACTED].²⁸³

110. For Milošević, fighting Serbian extremism was more essential than supporting the war. As Annex I shows, under Stanišić, fighting Serbian extremism was a priority of the service throughout 1992 – 1995.²⁸⁴ The DB used its means (from informative interviews,²⁸⁵ secret surveillance,²⁸⁶ use of security service documentation and record,²⁸⁷ and the planting information and disinformation²⁸⁸) to fight against this extremism in order to protect *all* civilians. It relied fully upon the domestic legislation to seize weapons and prosecute to ensure that paramilitaries were dismantled.²⁸⁹ This focus had been previously dealt with through Operative Action *Danube*²⁹⁰ and was further expressed by the launching of Operative Action SREM, which was introduced on 1 July 1992 [REDACTED],²⁹¹ including refugees in the area near the Croatian border.²⁹²

1. The DB's Focus on Fighting Extremism is Probative of Stanišić's Lack of Criminal Intent

111. The Prosecution refuses to accept that Stanišić was motivated only by a desire to prevent a civil war to ensure the constitutionally established state and social order of Serbia, as the evidence demonstrates.²⁹³ Having only learnt of the DB's role in subduing the paramilitaries during the trial, the Prosecution seeks to diminish its relevance through the claim that the DB's motive²⁹⁴ [REDACTED]. This is a belated attempt to deprive Stanišić of his right to rely upon this work, both in terms of lives protected, but also in the assessment of his *mens rea* for the crimes alleged.

²⁸¹ [REDACTED]; D1333, p.4; D1335, p.6; P2449, p.15; [REDACTED].

²⁸² [REDACTED].

²⁸³ [REDACTED].

²⁸⁴ [REDACTED]; D239, para.6; [REDACTED].

²⁸⁵ D239, paras. 18-19

²⁸⁶ D239, para.20-23; D1341, p.7.

²⁸⁷ D239, para.24; P2449, p.5.

²⁸⁸ D239, p.2.

²⁸⁹ [REDACTED]; D1341, p.2; D1342, pp.1, 3; D1331, p.2; [REDACTED].

²⁹⁰ [REDACTED]; DST-40, T.13825-13826; DST-63, T.13710.

²⁹¹ [REDACTED].

²⁹² DST-40, 13826; [REDACTED]; D380; Confidential Annex I.

²⁹³ [REDACTED]; D1335, p.8; [REDACTED]; D1333, p.4; D1335, p.6; [REDACTED].

²⁹⁴ Prosecution Rebuttal Motion: Miscellaneous, Confidential Annex A, pp.6-8 (regarding 65ter 1D1593).

112. Annex II shows that the Prosecution's skewed interpretation is contradicted by Stanišić's overall conduct. As Annex I shows, the DB's task was to protect all citizens including Croats and Muslims, and to gather information about the way arming was conducted irrespective of ethnicity.²⁹⁵ This evidence cannot be dismissed as merely assisting to shore up the Milošević regime. That cannot fully explain how a relatively small organ, said to be criminal and deeply involved in ethnically based violence, spent a considerable amount of its resources fighting discrimination and protecting minorities from the paramilitaries.

113. This may have provided comfort for Milošević, but for Stanišić this was as heartfelt as his interactions with [REDACTED], his efforts to secure the release of the UNPROFOR hostages and of the French Pilots, as well as his efforts to fight extremism and investigate war crimes.²⁹⁶ Even if his honourable motives are not accepted, what matters is that he acted, and intended to act, to secure ethnic minorities and to protect them from crime.

III. THE PROSECUTION'S TREATMENT OF THE DB AS A MILITARY ORGANISATION IS MISCONCEIVED

114. The Prosecution presents the DB as if it were a monolithic, militarised organisation where every action by any person engaged by, or associated with, the DB was the result of a top-down order or instruction. It is a thesis designed to suggest that the DB had a culture of military-type activity and was well suited to it. As the following analysis shows, the Prosecution's case is wholly misconceived.

115. The DB was a *civilian* intelligence service. Stanišić was not the commander of an army: he was the director, or coordinator, of a civilian institution.²⁹⁷ The DB's leadership and operatives [REDACTED].²⁹⁸ It did not have military posts or ranks, military command and control systems, a rigid chain of command, or subordination of a nature that would give rise to the presumption of effective control. It lacked a military reporting system, as well as any legal obligation to gather evidence on crimes in the war zones, or even report the commission of war crimes by its employees.

²⁹⁵ [REDACTED]; D1340, pp.4-5, 9; [REDACTED]; D1333, pp.1-2; D1335, p.8; [REDACTED]; *see also* Confidential Annex I.

²⁹⁶ *See* Confidential Annex II.

²⁹⁷ [REDACTED].

²⁹⁸ [REDACTED].

A. THE DB DID NOT POSSESS A MILITARY STRUCTURE WITH A RIGID CHAIN OF COMMAND

1. Subordination Within the DB does not have the Same Meaning as in the Military

116. [REDACTED].²⁹⁹ However, this does not equate to military command and control. For example, unlike the military and the police, ranks were not introduced until after Stanišić resigned from his post in 1998.³⁰⁰

117. The Prosecution has not shown that this subordination involved the “superior’s authority to prevent or punish transgressions by the subordinate” or “the obligation to inform the appropriate level in the...chain of command of violations of military rules and regulations in general, and violations of the laws of war in particular”.³⁰¹

a. No Available Military Sanctions

118. Unlike the JNA, DB ‘workers’ were not “in service”,³⁰² but were employed.³⁰³ Unlike the DB staff, soldiers took a solemn and permanent oath to die defending the constitution.³⁰⁴ Even within the JATD, it was possible to leave for relatively minor reasons, [REDACTED],³⁰⁵ [REDACTED] other personal reasons,³⁰⁶ such as discontent with the disciplinary regime.³⁰⁷

119. Stanišić had no power to punish as if he was a general in an army.³⁰⁸ He had no ability to impose criminal penalties, such as imprisonment for a failure to execute orders.³⁰⁹ Within the JNA, a whole range of failures, not giving rise to criminal type penalties in the DB, were punishable by prison, [REDACTED].³¹⁰

²⁹⁹ [REDACTED].

³⁰⁰ Dragičević, T.14913, T.14930; [REDACTED]; Gagić, T.17106. [REDACTED]; *see also* Annex I.

³⁰¹ P1575, pp.75-76 (Part I, pp.52-53).

³⁰² P1012, p.2.

³⁰³ P1044, p.8.

³⁰⁴ P1012, p.5.

³⁰⁵ [REDACTED].

³⁰⁶ [REDACTED]; P3175, p.6; P3186, p.1.

³⁰⁷ Slišković, T.5131; Slišković, P440, para.20; *see also* [REDACTED].

³⁰⁸ [REDACTED].

³⁰⁹ P1044, pp.10-11.

³¹⁰ [REDACTED].

B. THERE WAS NO EFFECTIVE PUNISHMENT FOR NOT REPORTING THROUGH THE HIERARCHY

120. Within the JNA, withholding information from a superior anticipating military action was punishable by prison.³¹¹ No such consequences flowed within the DB. Given the nature of the DB's work,³¹² such a provision would have likely inhibited the work.

121. In summary, there was no effective way of policing whether operatives or the leadership of the DB withheld information from Stanišić. Rather than information that had to be transmitted for immediate action, the DB's mandate revolved around the piece-by-piece collection of information – each piece important, no one piece critical. Primary documents contained “raw information” collected at ground level without any expectation that it would be sent to the higher levels,³¹³ let alone to the Chief. This included information concerning crimes committed in Croatia and Bosnia.³¹⁴

C. A CRITICAL DIFFERENCE: MILITARY RESPONSIBILITY TO REPORT WAR CRIMES TO THEIR COMMANDERS

122. DB employees had no specific obligation to report war crimes to their superiors, unlike members of the armed forces.³¹⁵ DB operatives “hardly ever obtained that kind of information; and when it came it normally came in late,” as the combat operations were constantly ongoing and the presence of the operatives in the war zones obviously problematic. There was a reasonable presumption that the army would take appropriate measures.³¹⁶ The DB collected evidence that had an impact on *the overall security of the country*;³¹⁷ Individual war crimes, however terrible, would ordinarily not reach this threshold.

³¹¹ P1032, p.28; [REDACTED].

³¹² [REDACTED]; Novaković, T.13929.

³¹³ Milošević, T.19073-19074.

³¹⁴ Milošević, T.19077.

³¹⁵ P1038, pp.5-6, 18, 20-21.

³¹⁶ DST-63, T.13583-84.

³¹⁷ DST-46, T.13929; *see also* DST-63, T.15589-15591.

D. THERE WAS NO EFFECTIVE SYSTEM OF REPORTING FROM THE SECOND ADMINISTRATION

123. Except for reports from the Second Administration, all primary documents were drawn up in four copies – for the superior official, the responsible line organisational Administration of the DB, the Fifth Administration and the operative who produced the document.³¹⁸

124. [REDACTED],³¹⁹ [REDACTED]. [REDACTED]³²⁰ [REDACTED],³²¹ [REDACTED].

125. [REDACTED]. [REDACTED].³²² [REDACTED].³²³

126. Even if the reporting from the Second Administration had been appropriate, it was highly unlikely that the Chief of the Department would receive primary documents as “the information wasn’t immediately provided to the chief of the Service, it had to be verified”.³²⁴ It was presumed that the Chief would receive only the most important primary documents.³²⁵ [REDACTED].³²⁶

127. Given the volume of primary documents - [REDACTED]³²⁷ - this was an essential allocation of responsibility, one that rested on the veracity and integrity of those within the Second Administration, as well as Tepavčević.

1. Actions against Paramilitaries

128. Theunens claim that the DB did not take measures against paramilitary groups as a whole and instead “there [were] selective actions against certain groups”³²⁸ is unproven. The basis for his conclusion was flimsy.³²⁹ Theunens’ research was embarrassingly scant: based on

³¹⁸ [REDACTED]; D795, para.171.

³¹⁹ [REDACTED].

³²⁰ [REDACTED].

³²¹ [REDACTED]).

³²² [REDACTED].

³²³ [REDACTED].

³²⁴ Milošević, T.19078.

³²⁵ D795, para.228; [REDACTED].

³²⁶ [REDACTED].

³²⁷ [REDACTED].

³²⁸ Theunens, T.8127.

³²⁹ Theunens, T.8126.

his research, Dragoslav Bokan, the alleged leader of the White Eagles, was the only paramilitary arrested by the DB.³³⁰

129. It is fanciful to suggest, as Theunens did, that the DB should have arrested all the war criminals from Bosnia or Croatia, that it had the requisite information to initiate criminal proceedings, or that it should have done the work of the military or the police in this regard. The DB undoubtedly took a leading role in challenging the government (and the prevailing view that criminals from the war zones were heroes). However, there were a multitude of political, official and logistical problems to overcome.

130. The proposition that the DB should also have arrested Arkan for his crimes in Bosnia or Croatia is a utopian assertion designed to prejudice Stanišić and devoid of any real attempt to understand the responsibilities of the DB within the politics of that time.³³¹ Arkan's links with high officials, [REDACTED], and *etcetera* are well documented.³³² The proposition that there was a possibility to arrest, or a reasonable prospect that such arrest would lead to an effective prosecution, is a claim, but not a serious one.

131. [REDACTED].³³³ [REDACTED]³³⁴ or, as in Miljković's case, the DB provided information on a crime, but he was acquitted nonetheless.³³⁵

132. Instead of providing reliable support and logistical assistance, as the Prosecution suggests, Paramilitaries regarded the DB as the enemy. Extremists did not remain passive to the DB's repressive actions. MUP and DB members were targeted /monitored by the extremists³³⁶ [REDACTED].³³⁷ [REDACTED].³³⁸ They created links and connections with high-ranking military and political officials, including the MUP.³³⁹ Extremists would rely on

³³⁰ Theunens, T.8312.

³³¹ [REDACTED].

³³² [REDACTED] The reports are spanning from 1991 to 1995: [REDACTED]; P1646; [REDACTED]; D400; P1649; *see also* [REDACTED]; D1196, pp.2-3; D1213, p.1; P1127, p.2; [REDACTED]; JF-38, T.1112; [REDACTED]; P3062, p.1; P55 [REDACTED]; P1219; [REDACTED]; [REDACTED]; D1191, p.1.

³³³ [REDACTED].

³³⁴ [REDACTED].

³³⁵ D129, p.5; D1341, p.3.

³³⁶ D1337, p.3.

³³⁷ [REDACTED].

³³⁸ [REDACTED].

³³⁹ D1340, p.2; P2449, pp.9, 11-12; D1330, p.1; D1332, p.1; D1333, p.5; D1334, pp.2-3; D1337, p.1; [REDACTED]; D1335, pp.2-5; [REDACTED]; P2449, p.11; D1338, p.3.

false documents (obtained through VRS officers concerning the participation of individuals in war torn areas at the time when the crimes were perpetrated) in order to manufacture alibis.³⁴⁰

2. Actions Against Suspected War Criminals and Government Officials

133. The DB was the only Serbian organisation that urged or otherwise facilitated the arrest of suspected war criminals, [REDACTED],³⁴¹ [REDACTED].³⁴² The DB facilitated the Public Security Department's ("RJB") prosecution of many more such extremists and suspected war criminals.³⁴³ [REDACTED]. [REDACTED].³⁴⁴

b. The DB's Limited Resources Impaired its Investigations

134. As ICTY prosecutors will attest, prosecuting mass violations of international crimes, gives rise to significant difficulties, even with ongoing international and financial support. Logically, for a national DB service with limited person power in the midst of an ethnically based war, the collation of evidence *fit for court* presented even more insuperable problems.³⁴⁵

135. The DB was not militarised or replete with armed enforcement troops. It had to rely upon the RJB,³⁴⁶ whilst protecting its secret sources.³⁴⁷ [REDACTED].³⁴⁸

136. [REDACTED].³⁴⁹ [REDACTED].³⁵⁰ Centres complained [REDACTED]³⁵¹ or about the lack of staff to conduct the comprehensive monitoring of the extremists.³⁵²

137. Important DB centres such as Novi Sad, which was bordering Croatia and had to deal with the threats of terrorist attacks such as the Apatin terrorist attacks in 1991 and 1992,³⁵³ [REDACTED].³⁵⁴ The Sremska Mitrovica Centre, also bordering Croatia, [REDACTED].³⁵⁵

³⁴⁰ D1333, p.4; [REDACTED].

³⁴¹ [REDACTED].

³⁴² [REDACTED].

³⁴³ [REDACTED]; D1337, p.3; D1338, pp.1-3; D1339, p.1; [REDACTED]; D1340, p.4.

³⁴⁴ [REDACTED].

³⁴⁵ See Confidential Annex I, pp.1-2.

³⁴⁶ [REDACTED]; D1337, pp.1-3; D1338, pp.1-2; D1340, pp.8-9; D1341, p.4; D1342, pp.1-3; [REDACTED].

³⁴⁷ D1340, p.9.

³⁴⁸ [REDACTED].

³⁴⁹ Confidential Annex I, pp.1-2; [REDACTED].

³⁵⁰ [REDACTED].

³⁵¹ [REDACTED].

³⁵² [REDACTED]; D1340, p.8; [REDACTED].

³⁵³ Gagić, T.17186-17187.

³⁵⁴ [REDACTED].

³⁵⁵ [REDACTED].

Even the largest, the Belgrade Centre, which covered the Capital with population of 2 million, [REDACTED].³⁵⁶

E. THE DB LACKED MILITARY RESOURCES

1. Basic Facts Concerning the DB's Material Resources

138. The Prosecution has not shown that the new hardware at Kula in May 1997, including a mobile operating room, an anti-tank weapon, anti-aircraft vehicle, *etcetera*³⁵⁷ were in the possession of the DB during the indictment period. [REDACTED].³⁵⁸ [REDACTED].³⁵⁹ [REDACTED].³⁶⁰

139. As argued above, this lack of weaponry stood in stark contrast to that possessed by the RJB. Of course, this (plus the personnel) also stood in direct contrast to the hundreds of tonnes of weaponry possessed by the JNA or VJ.³⁶¹

140. [REDACTED].³⁶² [REDACTED].³⁶³

141. The Prosecution has not shown that the JNA or VRS provided the DB with information concerning day-to-day military activity or crimes committed within the war zones. The reporting systems within the Bosnian Serb army were poor.³⁶⁴ The reports that Stanišić was sent focused on strategic/intelligence issues, not crimes. Of course, the reports included military issues, but plainly this was not the DB's focus and no one anticipated it to be so.³⁶⁵

³⁵⁶ [REDACTED].

³⁵⁷ P61, pp.15-18.

³⁵⁸ [REDACTED].

³⁵⁹ [REDACTED].

³⁶⁰ [REDACTED].

³⁶¹ P1094, pp.1-4.

³⁶² [REDACTED].

³⁶³ [REDACTED].

³⁶⁴ Milovanović, T.4480.

³⁶⁵ [REDACTED]; D44, P389; P1286; P1287; P1288; P1289; P1290; P1291; P1292; [REDACTED]; P1350; P1351; P1352; P1353; P1354; P1355; P1356; P1357; P2420; [REDACTED]; Milovanović, T.4485.

IV. SALIENT SPECIALISED ASPECTS OF THE DB

A. THE CREATION OF THE SECOND ADMINISTRATION: A CREATURE OF ITS TIME

1. The Late Introduction of Intelligence Component

142. The Prosecution advance a case that Stanišić knew all that was done by the Second Administration. As discussed above,³⁶⁶ having regard to the reporting system, this is a fallacy, advanced for no other reason but to make it easier to convict Stanišić for any conduct found proven against Simatović. The following issues are relevant to this generic assertion.

143. [REDACTED].³⁶⁷ [REDACTED].³⁶⁸ [REDACTED].³⁶⁹

2. De Jure Aspects of the Second Administration

144. [REDACTED].³⁷⁰ [REDACTED].³⁷¹ Stanišić could not know each of their activity, [REDACTED].

145. In hindsight, the DB structure may have placed too much trust in the Second Administration to work, hire and report properly. [REDACTED]. [REDACTED].³⁷² [REDACTED].³⁷³ [REDACTED].³⁷⁴ [REDACTED].³⁷⁵ [REDACTED].³⁷⁶

146. As discussed above, [REDACTED].³⁷⁷ [REDACTED].³⁷⁸ [REDACTED].³⁷⁹ [REDACTED].³⁸⁰ [REDACTED].³⁸¹ this placed an inordinate amount of reliance in the Head of the Second Administration and the staff that were employed therein.

³⁶⁶ *Supra*, paras 123-126.

³⁶⁷ [REDACTED].

³⁶⁸ [REDACTED].

³⁶⁹ [REDACTED].

³⁷⁰ [REDACTED].

³⁷¹ [REDACTED].

³⁷² [REDACTED].

³⁷³ [REDACTED].

³⁷⁴ [REDACTED].

³⁷⁵ [REDACTED].

³⁷⁶ [REDACTED].

³⁷⁷ [REDACTED].

³⁷⁸ [REDACTED].

³⁷⁹ [REDACTED].

³⁸⁰ [REDACTED].

³⁸¹ [REDACTED].

a. The Role of Tepavčević and the Second Administration

147. The role of the Deputy was pivotal to the way in which the DB operated. It is plain that the role carried too much responsibility, and left too much room for personalised conduct. [REDACTED].³⁸² [REDACTED].³⁸³

148. [REDACTED].³⁸⁴ [REDACTED]. [REDACTED].³⁸⁵ He “was powerful in the MUP”.³⁸⁶ He was Assistant Chief of the State Security Service during Bogdanović’s time.³⁸⁷ Tepavčević would address the Minister of Interior separately without regard to Stanišić.³⁸⁸

149. [REDACTED].³⁸⁹ He was “in charge of officers in the field, and he concerned himself with the implementation of the plan itself”.³⁹⁰ He was responsible for ensuring the finances and logistical supply of any special action.³⁹¹ If Simatović, Kršmanović, Božović, Mijović, or any other employee or reserve member were engaged by the JATD or JSO, they would be expected to report to him, “before, during, and after [any] special action”.³⁹² As discussed above,³⁹³ the Deputy informed the Chief but only “to the extent that he needed to be familiar with staffing and other matters”.³⁹⁴

150. [REDACTED].³⁹⁵ It is accepted that on the 4 and 7 April 1991, he worked with Bogdanović to supply weapons and ammunition to Martić in Knin.³⁹⁶ As this action suggests, Tepavčević was in direct contact with the Minister and could facilitate supplies without approval from Stanišić.

151. [REDACTED].³⁹⁷ [REDACTED].³⁹⁸

152. [REDACTED]; [REDACTED].³⁹⁹

³⁸² [REDACTED].

³⁸³ [REDACTED].

³⁸⁴ [REDACTED].

³⁸⁵ [REDACTED].

³⁸⁶ [REDACTED].

³⁸⁷ P988, pp.1-3.

³⁸⁸ [REDACTED].

³⁸⁹ [REDACTED].

³⁹⁰ Milošević, T.19095.

³⁹¹ Milošević, T.19096.

³⁹² Milošević, T.19095.

³⁹³ *Supra*, paras 123-127.

³⁹⁴ [REDACTED].

³⁹⁵ [REDACTED].

³⁹⁶ P2990; [REDACTED].

³⁹⁷ [REDACTED].

³⁹⁸ [REDACTED].

153. It is not known why his name can be found on the list for “Persons to Receive a Memorial Badge”⁴⁰⁰ (1994) and [REDACTED].⁴⁰¹ However, it is plain that it reflects his significant power and substantial discretion to act without reference to Stanišić.

3. Control of the Financing and Supply of the DB

154. The Prosecution presents Stanišić as being in control of every supply of weapons or ammunition, every employment decision and every engagement (or payment of *per diems*) made by the DB during the indictment period. No evidence, or iota of logical deduction, supports this thesis. It is instructive that the Prosecution have presented no evidence to support this blanket assertion. As with all functioning civilian organisations, Stanišić had to “balance the finances”, not micro-manage every payment.

B. THE EIGHTH ADMINISTRATION

155. [REDACTED].⁴⁰²

1. The Common/Joint Affairs Department

156. [REDACTED].⁴⁰³ The Joint Affairs Department of the Serbian MUP was responsible for both the RJB and RDB.⁴⁰⁴ [REDACTED].⁴⁰⁵

157. [REDACTED].⁴⁰⁶ and [REDACTED].⁴⁰⁷ [REDACTED].⁴⁰⁸

2. The Powers of the Head of the Eighth Administration

a. The Eighth Administration was Processing Requests for Supplies

158. Any organisation consisting of more than 1000 personnel, let alone one tasked with protecting the citizenry or the state, would cripple itself if it placed the minutiae of the

³⁹⁹ [REDACTED].

⁴⁰⁰ P1696, p.1.

⁴⁰¹ [REDACTED].

⁴⁰² [REDACTED].

⁴⁰³ [REDACTED].

⁴⁰⁴ D795, paras 76, 82, 306; *see also* D826, p.3; [REDACTED].

⁴⁰⁵ [REDACTED].

⁴⁰⁶ [REDACTED].

⁴⁰⁷ [REDACTED].

⁴⁰⁸ [REDACTED].

distribution of supplies in the hands of the head of the organisation. [REDACTED]⁴⁰⁹ as described below.

159. [REDACTED].⁴¹⁰ [REDACTED].⁴¹¹ [REDACTED].⁴¹² [REDACTED].⁴¹³

160. [REDACTED].⁴¹⁴ [REDACTED].⁴¹⁵

161. [REDACTED].⁴¹⁶ [REDACTED].⁴¹⁷ [REDACTED].⁴¹⁸

162. [REDACTED].⁴¹⁹ Evidence that they might have been involved with supply does not, *without more*, implicate Stanišić, no more than fraudulent supply by Defence Counsel would implicate the Registrar of the ICTY.⁴²⁰ [REDACTED].⁴²¹

i. Special Purpose Resources

163. The financing of the DB was done through the budget of the Republic of Serbia and the law envisaged “special purpose resources” determined by the annual estimate of the MUP’s special purpose resources.⁴²²

164. The funds for special purposes were used for intelligence work of the DB namely for:

- i. work with operative positions of the Service, allowances and awards for associates and other persons who provide information and intelligence to the Service, operative actions and other activities of the State Security Service;
- ii. equipping [and maintaining] service facilities...the purchase of special operative equipment beyond the regular equipment;

⁴⁰⁹ [REDACTED].

⁴¹⁰ [REDACTED].

⁴¹¹ [REDACTED].

⁴¹² [REDACTED].

⁴¹³ [REDACTED].

⁴¹⁴ [REDACTED].

⁴¹⁵ [REDACTED].

⁴¹⁶ [REDACTED].

⁴¹⁷ [REDACTED].

⁴¹⁸ [REDACTED].

⁴¹⁹ [REDACTED].

⁴²⁰ P2537, pp.1-2.

⁴²¹ [REDACTED].

⁴²² D795, paras 201, 383.

- iii. work on the training of associates for work in the event of an immediate threat of war and other emergency situations.⁴²³

ii. *The Minister, the Chief, the Deputy and Special Purpose Expenditure*

165. Based on the Law on Administrations, it was the Minister who was “responsible for the lawful use of special purpose resources” and in practice he would give an authorisation to “the specialist representative of the ministry in charge of finance”⁴²⁴ *i.e.* the Head of the Joint Affairs and the Eighth Administration within the DB.

166. The resources for the special expenditure for operative work and the basic organisational units (*i.e.* the Centres and the Administrations) were determined by an annual estimate of special purpose resources of the RDB MUP of the Republic of Serbia and they were authorised by the SDB Chief on the basis of reasoned proposals of the heads of organisational units.⁴²⁵ There was a control mechanism over the use of the special expenditure resources carried out once a year by a committee appointed by the Chief of the DB.⁴²⁶

167. These special expenditure resources were used with the authorisation of the Chief of the Department, *and* up to a specific prescribed amount by the authorisation of the head of the basic organisational unit (*e.g.* the Head of the Second Administration).⁴²⁷ The Chief of the DB would not authorise payment by payment, but could authorise the chief of the organisational units to approve payments of means for special expenditures of 50,000 Dinars.⁴²⁸

168. As discussed above, the Deputy of the Service was “directly in charge of officers in the field” as he organised the conduct of special actions in conditions of a state of emergency, a threat of war, or war.⁴²⁹ The police expert stated that it is “logical” to conclude that the Deputy dealt with the special purpose resources as he “was in charge of these operative actions”.⁴³⁰

⁴²³ D841, p.3; *see also* Milošević, T.19105, T.19114-19115.

⁴²⁴ D795, paras 199, 305.

⁴²⁵ D795, paras 204, 309, 383; D841, pp.2-3.

⁴²⁶ D841, p.4; D795, para.205.

⁴²⁷ D795, para.203.

⁴²⁸ D841, pp.2, 4.

⁴²⁹ Milošević, T.19095.

⁴³⁰ Milošević, T.19108.

b. The Eighth Administration was Responsible for Hiring

i. Hiring of Permanent Staff

169. Again, as with any organisation employing in excess of a thousand people, the hiring procedure for staff was not in Stanišić's hands. His role was to formalise the decisions of others, in the case of permanent staff – the Employment Commission.

170. [REDACTED].⁴³¹ [REDACTED]⁴³² [REDACTED].⁴³³

171. There is ample evidence that the Serbian DB attempted to conduct proper checks on criminal convictions.⁴³⁴ Criminal convictions were a real bar on admission. The checks were all encompassing; even traffic violations were recorded.⁴³⁵ [REDACTED].⁴³⁶ JF-48 confirmed, "the background checks to join the [JATD] unit were very stringent".⁴³⁷ This should not be judged in a vacuum or with the benefit of UN type modern processes. It was war and conditions were less than ideal. [REDACTED].⁴³⁸

172. [REDACTED].⁴³⁹ [REDACTED].⁴⁴⁰ [REDACTED].⁴⁴¹

173. [REDACTED].⁴⁴² [REDACTED]. [REDACTED].⁴⁴³

ii. Hiring of Reserve Staff

174. Even more implausible is the proposition that Stanišić could and did vet the engagement and payment of the reserve staff.

175. Article 27 of the Law on Internal Affairs allowed for the engagement of reserve forces by the MUP.⁴⁴⁴ Contrary to the reserve forces of the JNA, the MUP reserve forces were intended for conducting "certain peace-time duties of the Ministry, in particular to prevent

⁴³¹ [REDACTED].

⁴³² [REDACTED].

⁴³³ [REDACTED].

⁴³⁴ [REDACTED].

⁴³⁵ [REDACTED].

⁴³⁶ [REDACTED].

⁴³⁷ JF-48, T.5715.

⁴³⁸ [REDACTED].

⁴³⁹ [REDACTED].

⁴⁴⁰ [REDACTED].

⁴⁴¹ [REDACTED].

⁴⁴² [REDACTED];

⁴⁴³ [REDACTED].

⁴⁴⁴ P1044, p.7; *see also* [REDACTED]; P1042, p.6; [REDACTED]; JF-95, T.7092.

activities threatening the security of the Republic”.⁴⁴⁵ This changed only in 1994, when it became permissible for their engagement “for the discharge of combat missions”.⁴⁴⁶

176. [REDACTED].⁴⁴⁷ Logically, “reserve engagements didn’t go as high up” as Stanišić.⁴⁴⁸ As with the JATD, the “deputy commander and the operational part of the service made assessments as to whether additional forces were required in a specific point in time”.⁴⁴⁹ It was the “deputy commander of the unit ... who had the lists of their names”.⁴⁵⁰

177. [REDACTED].⁴⁵¹ [REDACTED].⁴⁵²

178. Even though the reservists, including those engaged by the JATD, were not considered employed as such, there was still supposed to be rigorous checks on criminal records, as well as other operative vetting.⁴⁵³

179. Similar to permanent staff, criminal checks as well as vetting were supposed to be done for reserve members of the JATD. As confirmed by Kovačević, he “had been vetted before [he] joined department”.⁴⁵⁴ The emphasis on criminal convictions,⁴⁵⁵ general reputation⁴⁵⁶ and background checks in the place of birth⁴⁵⁷ was maintained.

iii. Engagement of Associates and Operative Connections

a) Necessary “Collaboration” with those on the “Ground”

180. It ought to go without saying in a trial about spies and intelligence gathering, that nothing may be presumed by contact with criminals, or even their appearance on payment lists, [REDACTED].⁴⁵⁸ As demonstrated in Confidential Annex VI, actions were taken against the Miljković extremist group, such collaboration and rewards for information, sometimes, proved the best way to deal with crime.

⁴⁴⁵ P1044, p.7.

⁴⁴⁶ D795, paras 92-93.

⁴⁴⁷ [REDACTED].

⁴⁴⁸ DST-40, T.14504.

⁴⁴⁹ DST-40, T.14504.

⁴⁵⁰ DST-40, T.14501.

⁴⁵¹ [REDACTED].

⁴⁵² [REDACTED].

⁴⁵³ P1044, p.8; [REDACTED]; Milošević, T.18862; [REDACTED].

⁴⁵⁴ Kovačević, T.6722.

⁴⁵⁵ See e.g. [REDACTED].

⁴⁵⁶ See e.g. [REDACTED].

⁴⁵⁷ See e.g. [REDACTED].

⁴⁵⁸ [REDACTED].

181. The DB, like any counter or intelligence gathering service anywhere in the world, used associates and operative connections “who were not professionally linked [to the DB], but who, guided by various motives and causes, consciously, secretly and in an organised and continuous manner collected for it operative data and discharged other tasks”.⁴⁵⁹

b) The DB Chief did not Approve the Engagement of Operative Connections

182. [REDACTED].⁴⁶⁰ For a service engaged in collecting information about the inner workings of hundreds of extremist’s gangs, practical reality meant that persons, [REDACTED]⁴⁶¹ would be engaged and paid as operative connections without Stanišić’s approval or knowledge.

C. THE PAYMENT LISTS AND *PER DIEMS* SYSTEM

183. From the aforementioned, [REDACTED]. Rather than checking each of the thousands of payments, Stanišić’s responsibility was to ensure compliance with *the rules* on the use of special purpose funds by ensuring an annual audit by a Commission.

1. The Payment Lists Do Not Only Reflect Services Provided to the JATD

184. [REDACTED].⁴⁶² Inclusion on the list could mean, for example, that the person simply had the “status of a candidate” and no more.⁴⁶³ [REDACTED].⁴⁶⁴

185. Anyone on mission outside of his/her DB centre was entitled to *per diem*.⁴⁶⁵ [REDACTED].⁴⁶⁶ [REDACTED].⁴⁶⁷ [REDACTED].⁴⁶⁸ [REDACTED].⁴⁶⁹

186. There is evidence that former-JATD unit members appeared on the list even though they were no longer part of the unit. [REDACTED].⁴⁷⁰

⁴⁵⁹ D795, para.254.

⁴⁶⁰ [REDACTED].

⁴⁶¹ [REDACTED].

⁴⁶² [REDACTED].

⁴⁶³ [REDACTED]; *see also* DST-40, T.14484.

⁴⁶⁴ [REDACTED]

⁴⁶⁵ DST-83, T.14427-14428; P3030.

⁴⁶⁶ [REDACTED].

⁴⁶⁷ [REDACTED].

⁴⁶⁸ [REDACTED].

⁴⁶⁹ [REDACTED].

⁴⁷⁰ [REDACTED].

187. Nenad Bursać – “chief in the special forces corps”⁴⁷¹ of the Yugoslav Army – is on the payment list.⁴⁷² Karan testified that he [Bursać] was “appointed by the army and he certainly is receiving his salary from the army. I don't see why he would be on the payroll of the state security sector”.⁴⁷³ [REDACTED].⁴⁷⁴ [REDACTED].⁴⁷⁵

188. Opačić received *per diem* while he was not a member of the unit.⁴⁷⁶ [REDACTED].⁴⁷⁷

2. Process

189. The process for paying *per diems* to the JATD can be found in Confidential Annex VII. [REDACTED].⁴⁷⁸ The annual budget of special purpose resources was based on the proposal put forward by the Head of the Second Administration.⁴⁷⁹ It is important to reiterate that, up to a specific prescribed amount, the Head of the Second Administration did not need the approval (from Stanišić) to administer the *per diem* payments.⁴⁸⁰

a. Lack of Control of the *Per Diem* System Leading to Abuse of the System

190. [REDACTED].⁴⁸¹ [REDACTED]⁴⁸² [REDACTED].⁴⁸³ [REDACTED].⁴⁸⁴

191. [REDACTED].⁴⁸⁵ [REDACTED] knew whether the Serbian DB engaged certain people appearing on lists.⁴⁸⁶ JF-95 acknowledged that a realistic possibility existed that money was embezzled through the falsification of the *per diem* payment lists.⁴⁸⁷

3. Stanišić's Role in Relation to the Payment Lists

192. As per Stanišić's general responsibilities for special purpose payment, he had one main responsibility regarding *per diem* payments to the JATD. As outlined above, as special

⁴⁷¹ Karan, T.17859.

⁴⁷² [REDACTED].

⁴⁷³ Karan, T.17859.

⁴⁷⁴ [REDACTED].

⁴⁷⁵ [REDACTED].

⁴⁷⁶ Opačić, T.18232-18233; [REDACTED].

⁴⁷⁷ [REDACTED]; P3108.

⁴⁷⁸ [REDACTED].

⁴⁷⁹ D795, para.383.

⁴⁸⁰ D795, para.309; D841, p.4.

⁴⁸¹ [REDACTED].

⁴⁸² [REDACTED].

⁴⁸³ [REDACTED].

⁴⁸⁴ [REDACTED].

⁴⁸⁵ [REDACTED].

⁴⁸⁶ DST-40, T.14650.

⁴⁸⁷ JF-95, T.7141.

purpose expenditure resources, he could authorise the chief (or, *de facto* Chief) of the JATD to approve payments of means for special expenditures up to 50,000 Dinars,⁴⁸⁸ and to ensure that there was a commission once a year to check that the money was being properly spent.⁴⁸⁹ Logically, providing that the anticipated budget was not exceeded, or any obvious fraud exposed, there would be no reason for Stanišić or the Commission to scrutinise or question individual payments.

V. CONCLUSION

193. The aforementioned is a comprehensive account from the trial record of the DB's salient function and role. The way that the DB functioned is critical to a proper assessment of Stanišić's alleged *individual* responsibility for the crimes. The Prosecution's failure to call a case to explain the DB (or to challenge this case) should serve as an eloquent illustration of the avoidance of facts in pursuit of a conviction.

⁴⁸⁸ D841, p.4.

⁴⁸⁹ D841, p.4; D795, para.206.

PART II – CROATIA

SECTION I. ALLEGED JCE IN CROATIA – COMMON PURPOSE/JOINT ACTION

I. THE ALLEGED COMMON PURPOSE IN KRAJINA AND SBWS

A. PROSECUTION CASE

194. The Prosecution's case as to the existence of a JCE no later than April 1991⁴⁹⁰ relies upon (i) political action;⁴⁹¹ (ii) attacks involving the cooperation of JNA and other Serb Forces;⁴⁹² and (iii) logistical assistance by political, military, and police structures in Belgrade to Croatian Serbs, including arming and training.⁴⁹³ This constitutes the alleged concerted action by members of an alleged JCE in pursuit of a common criminal purpose.

B. DEFENCE CASE

195. The Prosecution failed to establish the existence of a JCE prior to September 1991. The evidence does not prove the existence of a common criminal purpose. There was no joint action of JCE members in Belgrade with Martić, Babić or Hadžić in furtherance of crimes in the indictment.

C. THE PROSECUTION'S POLITICAL ARGUMENTS

1. The Croatian Serbs Motivations in Context

196. The Prosecution paints all political action before September 1991 as actions in furtherance of the criminal purpose. However, political activity cannot prove concerted action in pursuit of a criminal purpose unless the political agenda encompasses a shared intention to commit crime.⁴⁹⁴ In *Martić*, it was not criminal to share a political agenda (to create a unified Serbian territory), unless crimes were intended to achieve that end.⁴⁹⁵ In other words, the political action must be *irresistibly* linked to the commission of crimes, rather than actions towards self-determination, self-defence or law and order.

⁴⁹⁰ Indictment, para.11.

⁴⁹¹ Prosecution Pre-trial Brief, paras 11,19,20,22,23,25,31.

⁴⁹² Prosecution Pre-trial Brief, para.27.

⁴⁹³ Prosecution Pre-trial Brief, paras 25,31.

⁴⁹⁴ *Martić* Appeal Judgement, para.112.

⁴⁹⁵ *Martić* Appeal Judgement, para.123.

197. The Prosecution ignores swathes of evidence, much of it its own, concerning the reality of the situation for Croatian Serbs in 1990-1991. In short, they had objective reasons to fear for their safety and political survival. A plethora of evidence exists making this clear, even if one ignores the subjectivity of their recollection of the Second World War.⁴⁹⁶ As early as February 1990, reasons for their fear existed as a consequence of Tuđman and his political cohorts public vitriol: that an independent Croatia is “a fascist creation” and that Serbs “should be expelled, baptized, killed”.⁴⁹⁷

198. Illegal arming and ill-treatment of Serbs exacerbated the situation.⁴⁹⁸ As did, the infamous tapes of Špegelj and Minister Boljvac from January 1991, referring to, *inter alia*, the slaughtering of Serbs.⁴⁹⁹

199. [REDACTED].⁵⁰⁰ On 7 January 1991, as Serb-Croat relations worsened, a national council was set up, of which Hadžić was elected president.⁵⁰¹

200. Unsurprisingly, on 9 January 1991 the SFRY Presidency concluded that the prevailing circumstances “constitute a serious and immediate danger to the outbreak of armed inter-ethnic conflict”⁵⁰² and adopted a series of measures, including disbanding irregular armed structures and requiring the surrender of illegally acquired weapons to the JNA.⁵⁰³

201. In January 1991, the Croatian government prepared to secede from Yugoslavia, calling on Croats to desert the JNA,⁵⁰⁴ by refusing to surrender weapons,⁵⁰⁵ and otherwise making threats towards the JNA.⁵⁰⁶ Jović, who was vice President in the SFRY Presidency in 1991,⁵⁰⁷ understood this to indicate an intention to go to war.⁵⁰⁸

202. The Serbian response was instructive. There was no fixed political objective, nor one that was to be achieved through war, or crimes. They sought an opportunity for negotiation to

⁴⁹⁶ [REDACTED].

⁴⁹⁷ [REDACTED].

⁴⁹⁸ Marinović, T.5354; DST-31, D313, para.4; D1685, p.3.

⁴⁹⁹ [REDACTED]; D133.

⁵⁰⁰ [REDACTED].

⁵⁰¹ Bogunović, P553, p.3.

⁵⁰² D1685, p.6.

⁵⁰³ D1685, p.6.

⁵⁰⁴ D1685, p.8.

⁵⁰⁵ D1685, pp.9-10.

⁵⁰⁶ D1685, p.10.

⁵⁰⁷ [REDACTED].

⁵⁰⁸ D1685, p.11.

democratically address the thorny issue - whether the Krajina was part of Serbia.⁵⁰⁹ Milošević response was somewhat moderate: “As soon as they declare their secession, we should accept that decision, provided that we hold on to the Krajina municipalities militarily until the people declare by plebiscite where they want to live”.⁵¹⁰

203. Nonetheless, the Croats pressed ahead. A January 1991 SSNO report reached the SFRY Presidency, reporting that in Croatia arrests had been made for organising and arming illegal paramilitary formations and preparing “an armed revolt”.⁵¹¹ Croatian police were training for combat. Members of the illegal HDZ military organisation were transferred to reserve police structures at an accelerated pace. Anti-Serbian propaganda was “being radicalized to an extreme”. The Serbian populace was subjected to provocations. The resultant fear and uncertainty meant that “the Serbian population [felt] directly threatened, and people are already beginning to flee”.⁵¹²

204. In May 1991, Tuđman remarked that had Croatia not gone to war, there would have been no independent Croatia, something he desperately sought.⁵¹³ Unsurprisingly, the violence against Serbs in Croatia continued,⁵¹⁴ as did the build up of Croatian forces preparing for combat throughout Spring 1991.⁵¹⁵ Arms were purchased from a wide variety of sources, including Uganda, Panama and Hungary.⁵¹⁶ Notwithstanding, the Serbs from Belgrade did not provoke widespread conflict in Croatia as well as Slovenia when they seceded.⁵¹⁷

205. The historical context cannot be ignored, even if it should not be overdone. Many of the Ustaša atrocities in 1941 were perpetrated on local soil: “Plasko....[t]his entire area, Kordun, Banja, Lika was affected very badly”.⁵¹⁸ It does a disservice to the evidence, or the reality of ordinary civilian life, to dismiss such fears as the product of machinations from outside forces from Belgrade, the DB or the Accused. The mass of evidence concerning the Serbian perspective during a period of more than a year and a half before the JCE puts beyond doubt the fact that Serbs in Croatia came to live in fear, and for cogent reasons.

⁵⁰⁹ D1685, p.9.

⁵¹⁰ D1685, p.10.

⁵¹¹ D1685, p.13.

⁵¹² D1685, p.13.

⁵¹³ JF-40, P951 p.114.

⁵¹⁴ [REDACTED]; D1077, p.3.

⁵¹⁵ Maksić, P951, p.89.

⁵¹⁶ P951, p.126; [REDACTED].

⁵¹⁷ D1685, pp.9,30.

⁵¹⁸ [REDACTED].

206. Even Tuđman, Martić and Babić – whose pathetic leadership and crowd rabbling actions are to be condemned – were responding to the fear and perceived drive to destruction of the political position of Croats and Serbs and the threat of physical harm. As the following submissions will discuss, the political developments prior to September 1991 went hand in hand with these fears. As a consequence, the developments were fragmented, haphazard, *ad hoc* – and above all, devoid of Belgrade leadership, organisation or coordination.

2. The Creation of Separate Structures are not Evidence of “Joint Action” with Belgrade

207. The criminal acts that were perpetrated by the Croatian Serbs were not the result of contributions by the Serb leadership in Belgrade, particularly the DB or the Accused. As will be seen in Part II, Section II of this Brief,⁵¹⁹ Babić’s parallel structure thesis – presupposing that Babić was powerless and nothing occurred in the Krajina without hand of Milošević, the Accused and the remainder of the Belgrade leadership – is as trite as it is intentionally self-serving.

208. The Prosecution’s case as to the lead-up to the JCE begins two-thirds of the way through 1990. It is shaped to suggest that the political ambition of the Croatian Serbs arose only as a result of escalating violence that was provoked by an imaginary parallel structure in furtherance of a common criminal purpose.⁵²⁰ However, it is obvious that such political developments had begun and would have continued irrespective of the violence of that time.

209. The formation of Serbian political structures in the Krajina – taking independent decisions by majority vote, with executive bodies implementing these decisions - began without Serbia’s involvement. Milošević did not create the constitution of the SAO Krajina, decide on the composition of its government, promulgate the applicable laws or provide the financing for these political institutions. Instead, locally-led efforts led to the creation of the SAO Krajina.

210. In June and July 1990, for example, steps were taken in local municipalities to organise, including establishing local governmental institutions.⁵²¹ On 6 July, Babić called for

⁵¹⁹ Paras 338-410.

⁵²⁰ Prosecution Pre-Trial Brief, para.31.

⁵²¹ DST-31, D313, para.2; P1912; P1952.

a meeting of representatives from all Serb-majority municipalities in Croatia.⁵²² On 25 July 1990, a Serbian Assembly was established in Srb,⁵²³ where deputies were elected⁵²⁴ and laws were adopted.⁵²⁵ All of this activity, including the Assembly's declaration of the sovereignty and autonomy of the Serbian people in Croatia,⁵²⁶ show the Assembly to be a normal political institution, concerned and motivated by the need to protect the Serbian people in Croatia.

211. The 19 August-2 September 1990 referendum on the autonomy of Serbs in Croatia, instigated by the Serbian National Council, the legislative body of SAO Krajina, led to a 97.7% vote in favour.⁵²⁷ The vote was patently a local decision-making process. It cannot reasonably be alleged that this was the result of concerted action with Belgrade, let alone a Milošević dictate.

212. Despite Babić's "parallel structure" thesis, the political process that oversaw the creation of the SAO Krajina in May 1991,⁵²⁸ with all its attendant political responsibilities, was democratic.⁵²⁹ The same is true of the formation of the SAO SBWS on 26 February 1991.⁵³⁰ The Prosecution have not shown that these political responses, including the creation of separate Serbian political structures, and the concomitant activity of the Serbian police, were not intended to protect the Serbs or otherwise maintain law and order.

213. The SAO Krajina Assembly elected and dismissed Ministers. It approved the policy and the work of the government of the SAO Krajina.⁵³¹ The politics of the day was marked by localised disagreement, fragmented decision making and the exercise of choice.⁵³²

3. Conclusion on Political Aspects of the Prosecution's JCE Case

214. The political events in Croatia in 1990 and 1991 must not be considered with the benefit of hindsight, but with a view to the legitimate fears held by the uneducated, unworldly, population of the Krajina, including Martić and Babić (many of whom harboured

⁵²² P2057, para.10.

⁵²³ P1904; Second Decision on Adjudicated Facts (Prosecution), Fact 3; Prosecution Pre-trial Brief, para.20.

⁵²⁴ P1904; P2016; Second Decision on Adjudicated Facts (Prosecution), Fact 3.

⁵²⁵ P2021, pp.16-20; P1963; P1901; P1964; P1965; P2036; P2038; P2089; P2033; P2050.

⁵²⁶ P1904; Second Decision on Adjudicated Facts (Prosecution), Fact 3; Prosecution Pre-trial Brief, para.20; P1911; P2023.

⁵²⁷ P1905; Second Decision on Adjudicated Facts (Prosecution), Fact 3; P1961; P2058; P1899.

⁵²⁸ Babić, P1877, para.25.

⁵²⁹ See P1973; P1964; P1964, pp.1-4, 6-7.

⁵³⁰ Savić, T.1769; P558; Bogunović, P553, para.5.

⁵³¹ P2027; P2034; P2035; P2087; P1117.

⁵³² Bosnić, D313, paras 23-24.

tragic memories of the Uštaša only 50 years prior). Not only does the evidence demonstrate that the actions of the Serbs were motivated by the need to protect themselves and maintain law and order, it also demonstrates the lack of contribution and concerted action of Belgrade Serbs as part of any plan, criminal or otherwise. Local people in the Krajina acted in an independent, but fragmented, *ad hoc* fashion.

D. EVENTS ON THE GROUND IN CROATIA BEFORE AUTUMN 1991: THE ‘PATTERN’ OF VIOLENCE

215. The Prosecution seeks to rely upon the violence that occurred prior to September 1991 as evidence of concerted action in pursuit of forcible transfer. It wrongly asserts that the violence involved the JNA acting in coordination with the police, the TO, and paramilitaries.⁵³³

216. Each of the events in the Krajina must be understood in the context of the developments described above. The evidence shows that the Croatian Serb violence was a localised *defensive* response to escalating violence on both sides. The Prosecution’s claim that the JNA only acted as a buffer as a means of demarcating territory to further forcible transfer⁵³⁴ is an unreasonable thesis designed to show *centralised* planning and coordination from Belgrade where the evidence indicates there was none.

1. The Krajina

a. The Log Revolution and Early Use of Barricades in 1990

217. The Prosecution characterises the Log Revolution and use of barricades as evidence of cooperation between Belgrade and the local leadership in furtherance of crime.⁵³⁵ There is a plethora of Prosecution and Defence evidence, as well as adjudicated facts, which demonstrates that the barricades were a defensive response by the local Serbs, designed to prevent attacks on the villages or otherwise give some reassurance of safety.

218. [REDACTED]. [REDACTED].⁵³⁶ [REDACTED]. [REDACTED].⁵³⁷

⁵³³ Prosecution Pre-trial Brief, paras 11, 27.

⁵³⁴ Prosecution Pre-trial Brief, para.27.

⁵³⁵ Prosecution Pre-trial Brief, para.25.

⁵³⁶ [REDACTED].

⁵³⁷ [REDACTED].

219. Babić's claim that the barricades in Knin were the result of fears generated through disinformation from the parallel structure⁵³⁸ was immediately contradicted by his own admission that the JNA had to intervene to force the Croatian Special Forces back to Zagreb,⁵³⁹ thereby showing the legitimate reason for the barricades.

220. Lažarević's claim that the barricades were "organised by the DB; or to put it in simpler terms, it was organised in Belgrade"⁵⁴⁰ was as absurd as his claim to have attended meetings on behalf of part of the JNA intelligence service ("KOS") in the guise of a translator for leaders who spoke BCS.⁵⁴¹

221. Almost every other witness disputes the Prosecution theory. [REDACTED],⁵⁴² that there was provocation on both sides,⁵⁴³ and that they were arranged, manned and supplied with weapons on a local level.⁵⁴⁴

b. Barricades in 1991

222. [REDACTED].⁵⁴⁵ [REDACTED].⁵⁴⁶ [REDACTED].⁵⁴⁷ [REDACTED].⁵⁴⁸

II. THE VIOLENCE IN THE SAO KRAJINA FROM PLITVICE THROUGH TO KIJEVO IN AUGUST 1991: NO PATTERN OF FORCIBLE TRANSFERT AND NO JNA INVOLVEMENT

A. PRELIMINARY OBSERVATIONS: BABIĆ'S PARALLEL STRUCTURE THESIS IN THE CONTEXT OF THE VIOLENCE PRE-AUGUST 1991

223. As noted in the relevant Adjudicated Fact, several armed clashes occurred during the spring and early summer of 1991 between SAO Krajina and Croatian armed forces. Initially, these clashes were the result of tensions between the Croatian and SAO Krajina and the climate of fear between the locals.⁵⁴⁹ The evidence supports this presumption.

⁵³⁸ Babić, P1877, pp.13-14; Babić, P1878, pp.51-52.

⁵³⁹ Babić, P1877, p.17.

⁵⁴⁰ Lažarević, P224, p.241 (PPCE).

⁵⁴¹ Lažarević, T.3396-3397.

⁵⁴² [REDACTED].

⁵⁴³ [REDACTED]; *see also* Bosnić, D313, para.10; [REDACTED].

⁵⁴⁴ [REDACTED]; P420, p.59; D302, p.4; Bosnić, D313, para.27; [REDACTED]; D296, p.7; [REDACTED].

⁵⁴⁵ [REDACTED].

⁵⁴⁶ [REDACTED].

⁵⁴⁷ [REDACTED].

⁵⁴⁸ [REDACTED].

⁵⁴⁹ First Decision on Adjudicated Facts (Defence), SAO Krajina Fact 9.

[REDACTED].⁵⁵⁰ Even if Simatović did participate in any material way, which is doubtful, this does not change the nature of the *ad hoc* clashes or allow an inference that these clumsy defensive clashes were in furtherance of a criminal purpose.

B. MARCH 1991: THE PLITVICE LAKES AND PAKRAC

1. Plitvice Lakes

224. The Prosecution attempts to reshape the facts that occurred at the Plitvice lakes and Pakrac to fit a pattern upon which their purpose might comfortably rest.⁵⁵¹ Babić's claim that this was Serbian aggression and a JNA 'buffer' plot designed to seize land and demarcate boundaries⁵⁵² is incapable of rebutting the presumption that "the JNA intervened to separate the two (armed) sides"⁵⁵³ or proving involvement from Belgrade.

225. [REDACTED].⁵⁵⁴ Babić claimed that only one member (who he could not identify) of the DB was present.⁵⁵⁵ This is not serious testimony.

226. First, the Knindžas and Red Berets did not exist in March 1991.⁵⁵⁶ Second, Babić was fabricating evidence in response to leading questions designed to implicate the illusory parallel structure. Babić was urged to claim that the armed persons deployed by Martić were MUP Serbia personnel.⁵⁵⁷ Babić then claimed that, "[t]hey knew about the preparations. Now, how far *they* themselves took part in it and organised it, I can't really say. I don't know."⁵⁵⁸ Babić then lapsed into vagaries: when asked who "they" might be, he answered: "I don't know who was actually there, but a man [of the Serbian DB] from the group was there permanently or, rather, at that time".⁵⁵⁹

227. Leaving aside these clunky exchanges, the remainder of the testimony provides an account that shows these were local (often, defensive) military actions, *not* in furtherance of crime.

⁵⁵⁰ See e.g. [REDACTED].

⁵⁵¹ Prosecution Pre-Trial Brief, para.27.

⁵⁵² Prosecution Pre-Trial Brief, para.27.

⁵⁵³ Second Adjudicated Facts Decision (Prosecution), Fact 8.

⁵⁵⁴ [REDACTED].

⁵⁵⁵ Babić, P1878, pp.161-162.

⁵⁵⁶ See *infra* paras 281-282.

⁵⁵⁷ Babić, P1878, pp.160-161.

⁵⁵⁸ Babić, P1878, p.161.

⁵⁵⁹ Babić, P1878, pp.161-162.

228. [REDACTED] Martić also ordered a police station established in Plitvice.⁵⁶⁰ The next day, the Croatian police attacked the Serb forces.⁵⁶¹ Even though he claimed that this was more in the way of an exhortation to the population, Babić admitted that *he* (not the parallel structure) issued the order to mobilise the TO of SAO Krajina on 1 April 1991 in response to an attempt at Plitvice by the Croatian armed forces to occupy the Krajina.⁵⁶² Non-uniformed, untrained, village guard civilians were also armed with nothing more than hunting rifles.⁵⁶³ The following day, the Croatian Police attacked the Serbs.⁵⁶⁴

229. Babić confirmed that the JNA acted as a buffer until the end of August or early September.⁵⁶⁵

2. Pakrac

230. Contrary to the Prosecution's assertion (that this was an instance of Serb aggression),⁵⁶⁶ the events were instigated in Pakrac by Croat Special Forces. More than 2,000 [Croatian] MUP and armed HDZ members attacked Pakrac, resulting in 2,500 Serb civilians fleeing.⁵⁶⁷ Notably, the JNA intervened to prevent the bloodshed.⁵⁶⁸

C. EARLY MAY: KIJEOVO

231. On 2 May 1991, Captain Karna attacked the Kijevo police station. He stressed that this was defensive.⁵⁶⁹ Whether that is an accurate claim is perhaps debatable. However, it cannot be reasonably argued that the attack was aimed at civilians.⁵⁷⁰ It was a militarised zone. [REDACTED].⁵⁷¹ [REDACTED]⁵⁷² Martić and Babić lost control of the citizenry.⁵⁷³

⁵⁶⁰ [REDACTED]; Babić, P1878, p.160.

⁵⁶¹ [REDACTED]; *see also* Bosnić, T.12768-12769.

⁵⁶² Babić, P1877, p.109.

⁵⁶³ Bosnić, T.12769-12771.

⁵⁶⁴ [REDACTED]; *see also* Bosnić, T.12768-12769.

⁵⁶⁵ P1877, p.85.

⁵⁶⁶ Prosecution Pre-Trial Brief, para.27.

⁵⁶⁷ D308, p.6.

⁵⁶⁸ D308, p.6.

⁵⁶⁹ D117, p.2.

⁵⁷⁰ D117, p.1.

⁵⁷¹ [REDACTED].

⁵⁷² [REDACTED].

⁵⁷³ D304, p.4.

232. The JNA sought to persuade the SFRY Presidency to take measures to end violence and ensure peace in the region.⁵⁷⁴ Acting as a buffer lasted through the Summer of 1991.⁵⁷⁵

D. JUNE 1991: LOVINAC

233. [REDACTED].⁵⁷⁶ [REDACTED].⁵⁷⁷

234. The objective of this operation in Lovinac in June of 1991 was military. In sum, “there was a Croatian SJB in Lovinac [...] and as a consequence, the village was attacked by the police of the SAO Krajina. Milan Martić participated in the attack”.⁵⁷⁸

235. There is no consistent allegation from [REDACTED] Babić concerning alleged crimes against civilians to show that this attack was a contribution to a criminal purpose.⁵⁷⁹ In different ways, they allege collaboration between Martić and Simatović in forcing the population of Lovinac to leave the village. At its highest, their descriptions are of the involvement of a Simatović “circle” involved in the events. At best they implicate him, not a parallel structure from Belgrade acting in concert to further crimes. Aware of this evidential lacuna, the Prosecution can be seen in its direct examination of Babić attempting to have him describe Simatović as a “structure”.⁵⁸⁰ A claim of this kind must rest on more than the folly of a small group of men.

236. As noted, Babić’s “knowledge” of Simatović’s involvement contradicts that of JF-39. Based on unsourced rumour, he suggested that “[p]eople were saying” and “[t]here was a report about these events” and “I heard people from Gračac talking about the events”.⁵⁸¹ Babić claimed, “[p]eople were saying that Martić, Simatović, and Rastović were carrying out target practice with mortars, *allegedly* they were firing at the police”.⁵⁸² He claimed to have overheard Simatović bragging in a restaurant in Knin in September 1991 that together with Martić and Rastović “they had razed it all”.⁵⁸³ He claimed to have heard from Vjestica that he had to protect people from Lovinac “so that they wouldn’t be killed by people within Frenki’s

⁵⁷⁴ D1685, pp.27-28.

⁵⁷⁵ Second Adjudicated Facts Decision (Prosecution) Fact 35.

⁵⁷⁶ [REDACTED].

⁵⁷⁷ [REDACTED].

⁵⁷⁸ Second Adjudicated Facts Decision (Prosecution) Fact 42.

⁵⁷⁹ [REDACTED]; Babić, P1878, p.386; Babić, P1877, p.44.

⁵⁸⁰ Babić, P1878, p.386.

⁵⁸¹ Babić, P1877, p.44.

⁵⁸² Babić, P1877, p.44 (emphasis added).

⁵⁸³ Babić, P1877, p.44.

circle” and that “he had to escort them towards Gospić”.⁵⁸⁴ These hearsay accounts from an accomplice, 92^{quater} witness cannot be considered to have probative value.

237. The evidence of JF-39 is equally flawed. Not only is it internally inconsistent, it is also at odds with Babić’s account. [REDACTED]⁵⁸⁵ [REDACTED].⁵⁸⁶

238. [REDACTED]. [REDACTED].⁵⁸⁷ [REDACTED]. [REDACTED] he testified that Simatović and Martić jointly planned the operation.⁵⁸⁸

239. JF-39 claimed that Simatović was responsible for the use of an armoured vehicle in Lovinac⁵⁸⁹ Instead of the JNA, tanks, armoured vehicles or any assistance from Belgrade, the locals created a ridiculous train.⁵⁹⁰

E. MAY 1991: LJUBOVO

240. D117 suggests that Captain Dragan led a unit on the attack. There is no evidence that the attack on Ljubovo was aimed at forcible transfer. On the contrary, [REDACTED],⁵⁹¹[REDACTED].⁵⁹² [REDACTED].⁵⁹³

F. BABIĆ’S PARALLEL STRUCTURE ALLEGEDLY BEGAN WITH MILITARY ACTIVITIES IN JUNE 1991

241. According to Babić, the Serbian DB began with combat activities from the end of June 1991 onwards. According to Babić, they then “had an overall control of all of the events at that time in Krajina”.⁵⁹⁴ The following brief analysis of the principal military events at that time shows he was not telling the truth. The Defence also refers the Trial Chamber to paragraphs 338 to 352 of this Brief. In sum, the action remained local, defensive, *ad hoc* and not in furtherance of forcible transfer.

⁵⁸⁴ Babić, P1878, p.134.

⁵⁸⁵ [REDACTED].

⁵⁸⁶ [REDACTED].

⁵⁸⁷ [REDACTED].

⁵⁸⁸ JF-39, T.7259-7260, [REDACTED].

⁵⁸⁹ See P2673; see also Bosnić, T.12867; P1877, pp.115-116.

⁵⁹⁰ [REDACTED]; Bosnić, T.12773, 12869; D1161; D615.

⁵⁹¹ [REDACTED].

⁵⁹² [REDACTED].

⁵⁹³ [REDACTED].

⁵⁹⁴ P1877, p.35.

G. JUNE/JULY 1991: BENKOVAC, GLINA, & DVOR NA UNA

1. Benkovac

242. The Croatian police had been established and were engaged in acts of provocation and aggression. Two buses of Croatian forces had been seen arriving in the region, leading to the local civilians fleeing in fear.⁵⁹⁵ The order for armoured vehicles to be used in Benovac was a defensive response by the Serbs: the purpose was to “protect the area and repel any attack on the Benkovac-Knin route [... and] protect the Knin-Drnis route.”⁵⁹⁶ A contemporaneous newspaper article, reported, “after this morning’s attack by the Croatian police and guard [...] the local Serbian population had retaliated with a fierce *counter-attack*”.⁵⁹⁷

2. End of June 1991: Dvor na Una

243. The evidence suggests the Croatian police instigated the violence.⁵⁹⁸ The Serbian side involved men under the command of Captain Dragan and the Glina War Staff.⁵⁹⁹ Martić reported that “20 Croatian policemen had been arrested in the Banija and Kordun area”⁶⁰⁰ suggesting that the attack involved military objectives.

244. Captain Dragan confirmed that in Dvor na Una, “there were solely men from the volunteers units led by Vagić [*sic*]”.⁶⁰¹ Babić claimed that the commander of the Dvor na Una War Staff, [REDACTED]⁶⁰² was in command of the 7th Banija division.⁶⁰³ According to Babić, the command of this volunteer unit was Vajagić who was commanded by the parallel structures until the end of September 1991,⁶⁰⁴ *as well as* being subordinated to the JNA.⁶⁰⁵ He offered nothing to support this view and there is no corroboration for this claim.

245. [REDACTED].⁶⁰⁶

⁵⁹⁵ P1121, p.2.

⁵⁹⁶ P2673.

⁵⁹⁷ P994.

⁵⁹⁸ P994, p.1.

⁵⁹⁹ Second Decision on Adjudicated Facts (Prosecution), Fact 45; P1120.

⁶⁰⁰ P994, p.1.

⁶⁰¹ P2659, p.2; Bosnić, D315, p.4.

⁶⁰² [REDACTED].

⁶⁰³ Babić, P1877, pp.124-125.

⁶⁰⁴ P1878, p.13383.

⁶⁰⁵ P1878, p.13383.

⁶⁰⁶ [REDACTED].

3. 26 July 1991: Glina

246. The evidence relating to this attack does not support an inference, that even this late in the summer, the conflict was about crime or that it involved any concerted action from Belgrade. Neither does the evidence support a reasonable conclusion that Simatović was involved.

247. It has been adjudicated in the *Martić* case that “[i]n mid-July 1991, the town of Glina...was attacked by a unit under the command of Captain Dragan Vašljaković”.⁶⁰⁷ Evidence of aggression by the Croat Serbs⁶⁰⁸ is outweighed by that which shows it to have been a response to an attack by Croat forces.⁶⁰⁹ In any event, it had a military objective - the takeover of a Croat fortification at the Glina police station or “expelling the members of the MUP Croatia from Glina”.⁶¹⁰ [REDACTED].⁶¹¹

248. A few Krajina policemen were wounded and in response they arrested some Croatian policemen.⁶¹² Captain Dragan’s focus at this time appears to have been to restore order. This included restraining the Chetniks and preventing attacks on non-Serbs in the region.⁶¹³

249. Ivanović’s (“Crnogorac”) report confirms that some of the men fell under the command of Captain Dragan and/or the TO of the SAO Krajina.⁶¹⁴ Some of the reports refer to the Special Purpose(s) Unit or the Special Police Unit of the *SAO Krajina*.⁶¹⁵ Martić referred to persons injured in the battle as “Krajina militiamen”.⁶¹⁶

250. JF-39 provides the only evidence of Simatović’s involvement in these events. He claimed that the men were “obviously under the command of Frenki and Captain Dragan” but when pressed he conceded that he was not “saying directly that Frenki gave any orders... those were his men...and the command of Captain Dragan...[i]t was an open secret”.⁶¹⁷

⁶⁰⁷ Second Adjudicated Fact Decision (Prosecution) Fact 45.

⁶⁰⁸ P2873.

⁶⁰⁹ P2670.

⁶¹⁰ P2878; *see also* P2658; P2659; P2872; P2873; P2874; P2875; P2876; P2877; P2878; P2879; P2880.

⁶¹¹ D297, p.2 (US).

⁶¹² P994, p.1.

⁶¹³ *See e.g.* P1186.

⁶¹⁴ P2658, p.1; *see also* P2670.

⁶¹⁵ P2872; P2873; P2874; P2875; P2879; P2880.

⁶¹⁶ P994, p.1.

⁶¹⁷ JF-39, T.7252.

251. The JNA once more acted as a buffer, much to the chagrin of Dragan's men.⁶¹⁸

H. AUGUST 1991: SKRADIN, SABORSKO, PLITVICE AND KIJEOVO

1. 4 August 1991: Skradin

252. Croatian MUP and ZNG attacked Serbian villages in the Skradin basin.⁶¹⁹ [REDACTED].⁶²⁰ He is equivocal as to Simatović's role. [REDACTED].⁶²¹ It is not possible to infer what Simatović's vaguely defined, *de minimis* contribution might have been.

253. It should be noted that as late as 14 August 1991 the leadership of the JNA was making practical attempts at the political leadership level to avoid being dragged into the local conflicts. There is nothing to suggest that it was not seeking to avoid being implicated in an all out war.⁶²²

2. June-August 1991: Saborsko⁶²³

254. The Prosecution alleges that the Serb forces targeted the civilian Croat inhabitants of Saborsko.⁶²⁴ This allegation is unsupported by the evidence. As the evidence shows, this was a military skirmish without any involvement of the JNA or any other alleged Belgrade JCE member.

255. On 1 April 1991, the Croatian MUP established a SJB outpost in Saborsko.⁶²⁵ The Croatian police changed its name from *Milicija* (as it was called in the SFRY) to *Policija*, whose uniforms had chequerboard insignia,⁶²⁶ thereby invoking images of the *Ustaša*.

256. It is submitted that the attack had a military objective.⁶²⁷ It was designed to enable communication between Serb villages.⁶²⁸ Non-military (or *de facto* military personnel) had already been evacuated in July of 1991, to safe places in Croatia.⁶²⁹

⁶¹⁸ P994, p.1; P2872; P2658, p.1; Second Adjudicated Fact Decision (Prosecution), Fact 45; P2875, p.1; P2880; P2670, p.1; P2659, pp.4-6.

⁶¹⁹ D1455, pp.6-9.

⁶²⁰ [REDACTED].

⁶²¹ [REDACTED].

⁶²² D1685, pp.50-51.

⁶²³ Second Decision on Adjudicated Facts (Prosecution), Fact 45.

⁶²⁴ Prosecution Pre-Trial Brief, paras 105,109.

⁶²⁵ Vuković, P1775, pp.5-6; [REDACTED]).

⁶²⁶ Vuković, P1775, pp.39-40.

⁶²⁷ Vuković, P1775, pp.12-14, p.49; p.51-52; [REDACTED].

257. That this was a military operation cannot lessen the disgust at the crimes that occurred. Equally, in the circumstances, the fact that crimes occurred cannot show that its overall aim was forcible transfer. The fact that villagers returned *en masse* after the operation was complete militates against a conclusion that the aim was permanent forcible transfer.⁶³⁰ [REDACTED].⁶³¹

258. The evidence shows that the crimes were the result of the acts of a criminal few. The looters from Martić's police were a small number of incorrigible criminals.⁶³² Some civilians also joined in; there was "no command there anymore".⁶³³ [REDACTED].⁶³⁴

259. That the Croatian Serb roadblocks allowed the JNA vehicles to pass through supports the presumption that the JNA was acting as a buffer.⁶³⁵

3. 25 August 1991: Plitvice

260. The Prosecution refers to an operation at Plitvice on 25 August 1991, which it alleges to have been under Simatović's command.⁶³⁶ The evidence of Simatović's involvement is flimsy. It cannot implicate him, let alone a Belgrade parallel structure. [REDACTED].⁶³⁷

261. [REDACTED].⁶³⁸ [REDACTED].⁶³⁹

4. Early 1991: SBWS

262. The Prosecution argues that the JNA, paramilitary and volunteer units engaged in forcibly taking over Croatian villages, towns and settlements throughout 1991 up to the takeover of Vukovar in November 1991, murdering and expelling non-Serbs from the targeted areas.⁶⁴⁰

⁶²⁸ Second Decision on Adjudicated Facts (Prosecution), Fact 120; Vuković, P1775, p.10.

⁶²⁹ [REDACTED]; Vuković, P1775, p.13.

⁶³⁰ Second Decision on Adjudicated Facts (Prosecution), Fact 123; Vuković, P1775, p.13.

⁶³¹ J[REDACTED].

⁶³² [REDACTED]

⁶³³ [REDACTED] C-1247, P1738, p.23; [REDACTED].

⁶³⁴ [REDACTED].

⁶³⁵ Second Decision on Adjudicated Facts (Prosecution), Fact 120; Vuković, P1774, p.51.

⁶³⁶ Prosecution Pre-Trial Brief, para.70; *see also* [REDACTED].

⁶³⁷ [REDACTED].

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED].

⁶⁴⁰ Prosecution Pre-Trial Brief, para.31.

263. As the following analysis shows, the evidence does not support this thesis. Whilst there was illegal arming through various channels in early 1991, *ad hoc* militarised operations and regrettable crimes, the evidence does not show that these were in pursuit of a criminal purpose or that they involved any alleged JCE members from Belgrade. Similar to the situation in the SAO Krajina, as described above, the local Serb leadership considered their people to be under threat and were engaged in what they considered to be defensive action.

264. The proportionality of their response may be open to question. However, what is plain from the evidence of the *ad hoc* incidents of violence is that it was locally driven, without any concerted intervention from the Belgrade based alleged JCE members (including Arkan and the JNA) until August 1991.

265. On the contrary, [REDACTED]⁶⁴¹ and the JNA was acting directly contrary to the wishes of the SBWS Serbs. As confirmed by JF-35, until the fall of Dalj (in August or possibly September 1991), “the Yugoslav Army was there as a buffer zone sort of, a sort of UNPROFOR”. Before it joined the Serbian side, the Serbians “didn't really trust the army”.⁶⁴²

I. MARCH-MAY 1991: SKIRMISHES AND BARRICADES IN SBWS

266. By March 1991, the SBWS leaders had begun to engage in attempts to secure self-determination and political links to other Serb majority areas at this time.⁶⁴³ However, it was apparent at a meeting of the Executive Board and Main Boards of the SDS on 30 March 1991 that, Hadžić, Rastović and other leaders (apart from the extremists such as Babić and his men) were looking for reasonable solutions to “political and other problems in the area”.⁶⁴⁴

267. However, the arming of Croats and mistreatment of Serbs continued unabated. Both Prosecution and Defence witnesses confirmed that the Serbs felt vulnerable and this fear was objectively well-founded.

268. [REDACTED].⁶⁴⁵ The Croats were engaged in belligerent arming, unwarranted arrests and other forms of abusive and arbitrary conduct.⁶⁴⁶

⁶⁴¹ [REDACTED].

⁶⁴² JF-35, T.5442-5443.

⁶⁴³ [REDACTED].

⁶⁴⁴ B-202, T.1770-1772.

⁶⁴⁵ [REDACTED]).

⁶⁴⁶ [REDACTED]; JF-35, T.1853-1855.

269. [REDACTED].⁶⁴⁷ [REDACTED].⁶⁴⁸ [REDACTED].⁶⁴⁹
 [REDACTED]. [REDACTED].⁶⁵⁰ [REDACTED].⁶⁵¹

270. That is not to argue that the Croatian state was furthering a criminal purpose. However, it is relevant to discuss context, since the account proffered by the Prosecution studiously avoids the facts. No one at the time regarded the problem as a manifestation of a political plan on either side. On the contrary, the conflict in Borovo Selo was another example of the nature of the *ad hoc*, violent relationship between Croats and Serbs in SBWS at that time; characterised by skirmishes, attacks and moves (however ill-judged) for defence. Even Croats on the ground perceived the problem as political disintegration and mutual antagonism, rather than as a Serbian plan to expand Serb territory and forcibly transfer their population.⁶⁵²

271. [REDACTED]. [REDACTED].⁶⁵³ [REDACTED].⁶⁵⁴ [REDACTED].⁶⁵⁵

272. The evidence shows that the JNA acted as a buffer to stop or inhibit fighting in Borovo Selo,⁶⁵⁶ issuing warnings “over megaphones operated from armoured vehicles to bring about an end to the armed clashes”.⁶⁵⁷ Nevertheless, the conflict escalated.⁶⁵⁸

273. Although in June and July it is claimed there was shelling from across the Danube,⁶⁵⁹ likely to have been the JNA (or more likely a recalcitrant member therein), the sporadic nature of it evinces a lack of clear intent. [REDACTED].⁶⁶⁰ [REDACTED].⁶⁶¹ [REDACTED].⁶⁶² At that time, the Serbian population regarded the JNA as a necessary buffer to prevent abuse by the Croatian MUP.⁶⁶³ [REDACTED].⁶⁶⁴

⁶⁴⁷ [REDACTED]

⁶⁴⁸ [REDACTED].

⁶⁴⁹ [REDACTED].

⁶⁵⁰ [REDACTED]).

⁶⁵¹ [REDACTED].

⁶⁵² [REDACTED]; D303, p.1; D1130, p.1.

⁶⁵³ [REDACTED].

⁶⁵⁴ [REDACTED].

⁶⁵⁵ [REDACTED].

⁶⁵⁶ D303, p.2.

⁶⁵⁷ D303, p.2.

⁶⁵⁸ D303, p.2.

⁶⁵⁹ Albert, P74, p.2.

⁶⁶⁰ [REDACTED].

⁶⁶¹ [REDACTED].

⁶⁶² [REDACTED].

⁶⁶³ D303, p.4.

⁶⁶⁴ [REDACTED].

274. [REDACTED].⁶⁶⁵ [REDACTED].⁶⁶⁶ [REDACTED].⁶⁶⁷

275. [REDACTED].⁶⁶⁸ Some Crisis Staffs made their own arrangements, but there were some coordinated efforts for villages under threat.⁶⁶⁹ [REDACTED].⁶⁷⁰

276. [REDACTED].⁶⁷¹ [REDACTED].⁶⁷² [REDACTED].⁶⁷³ Even though the weapons were in poor condition, they provided the reassurance of safety; most were probably not even used.⁶⁷⁴ [REDACTED].⁶⁷⁵

III. GOLUBIĆ: A DEFENSIVE PROJECT

A. THE PROSECUTION CASE: THE KNINDŽAS - THE STUFF OF MYTHS AND LEGENDS

1. The Creation of the Golubić Camp: Local Initiative Prompted the Creation of the Camp

277. The Defence submits that Milošević did not issue an order creating the Golubić camp near Knin. Bosnić testified that the local political leadership, after holding a vote on the matter, decided to open Golubić in April 1991 to train the SAO Krajina police so that they could resist the Croatian special units.⁶⁷⁶ Bosnić participated in the discussions.⁶⁷⁷ The local leadership included the Serbian National Council in the Krajina, with Babić as President.⁶⁷⁸ This group forwarded their decision to the Government of Serbia and the MUP Serbia, probably Bogdanović.⁶⁷⁹

⁶⁶⁵ [REDACTED].

⁶⁶⁶ [REDACTED].

⁶⁶⁷ [REDACTED].

⁶⁶⁸ [REDACTED].

⁶⁶⁹ Bogunović, T.6019-6020.

⁶⁷⁰ [REDACTED].

⁶⁷¹ [REDACTED].

⁶⁷² [REDACTED].

⁶⁷³ [REDACTED].

⁶⁷⁴ Bogunović, T.6022; [REDACTED].

⁶⁷⁵ [REDACTED].

⁶⁷⁶ Bosnić, T.12718-12719; First Decision on Adjudicated Facts (Defence), SAO Krajina Fact 1.

⁶⁷⁷ Bosnić, T.12716-12718.

⁶⁷⁸ Bosnić, D313, para.40; Bosnić, T.12717, 12719.

⁶⁷⁹ Bosnić, T.12719.

278. As discussed below, while the Croatian Serbian leadership contacted the Serbian Government and MUP, the locals in Knin requested that Dragan organise training in the SAO Krajina. [REDACTED]. [REDACTED].⁶⁸⁰

a. Serbian MUP Officers were not Sent to Krajina at the Request of the Croatian Serb Leadership

279. The Prosecution will rely upon Milošević's 15 March 1991 speech wherein he stated that he had ordered "a mobilisation of the reserve police forces...engagement and formation of new police forces is to follow...to guarantee our security".⁶⁸¹ It is alleged that this order led to the creation of Golubić. This is a simplistic interpretation of a complex series of decisions (almost all, at this time, based on objectively based fears about the dangers facing the Croatian Serbs due to rising extremism and violence in Croatia). Even if this purported order referred to Golubić (which is far from clear), it is plain from a fair reading of the discussion that Milošević's preferred option for Croatia was peace; this was to be achieved through a "referendum of nations" with the army's role limited to "disarm[ing] paramilitary formations".⁶⁸² If it can be inferred that this order led to Golubić, and this may be an inference too far, it serves only to underscore its defensive, non-belligerent underpinnings.

b. Stanišić Did not Send Captain Dragan to Knin

280. Stanišić did not sent Dragan to Knin. The Defence accepts that high-ranking political figures from Serbia may have had some involvement, including Milošević, but this was by way of the issuance of SPS political approval, not actually *sending* Dragan.

281. Rather than an order from Milošević, Bosnić testified that the local political leadership decided to open Golubić so that the *SAO Krajina police* would be able to resist Croatian special units.⁶⁸³ Bosnić explained that the decision to set up Golubić in April 1991 was made by the Serbian National Council in the Krajina, and Babić, as President,⁶⁸⁴ forwarded it to the Government of Serbia and the MUP Serbia.⁶⁸⁵ Babić and Martić suggested the location, which was owned by municipality of Knin.⁶⁸⁶ Bosnić testified that Golubić – like

⁶⁸⁰ [REDACTED].

⁶⁸¹ P975, p.1.

⁶⁸² P975, p.2

⁶⁸³ Bosnić, T. 12718-12719; First Decision on Adjudicated Facts (Defence), SAO Krajina Fact 1.

⁶⁸⁴ Bosnić, D313, para.40; Bosnić, T. 12717, T.12719.

⁶⁸⁵ Bosnić, T.12719.

⁶⁸⁶ Bosnić, D313, para.40.

other issues relating to the Ministry of Interior or the police force in general – were subject to debate and voting within the Assembly.⁶⁸⁷

282. Whether the aforementioned decisions and preparatory steps occurred prior to Dragan making contact with the locals in Knin is unclear. [REDACTED].⁶⁸⁸

283. Evidence points thereafter to Dragan making contact with several Serbian government ministers and SPS party stalwarts, including Simović, Šainović, Bogdanović and maybe even Milošević.⁶⁸⁹ He did not speak to Stanišić. But, this is manifestly different to Dragan being *sent* by them, let alone Stanišić, pursuant to a Milošević master plan.

284. Šainović and Bogdanović may have taken a leading role in providing some kind of approval for his mission. Dragan may have even ended up in direct contact with Milošević.⁶⁹⁰ Šainović arranged a meeting with Captain Dragan and Minister Bogdanović, after which Captain Dragan was very satisfied.⁶⁹¹ [REDACTED].⁶⁹²

285. [REDACTED]. [REDACTED].⁶⁹³ [REDACTED].⁶⁹⁴ Dragan had been in direct contact with Brana Crnčević of the Association of Serbs,⁶⁹⁵ [REDACTED]⁶⁹⁶ [REDACTED].⁶⁹⁷

286. No contemporaneous record puts Stanišić in contact with Dragan. Stanišić was not the Chief of the Serbian DB at the time, a Milošević party stalwart,⁶⁹⁸ or even a senior member of government.

287. In fact, at the time he was under investigation for treason.⁶⁹⁹ It is difficult to conceive of the role that Stanišić is alleged to have played given the plethora of bureaucracy to be surmounted and the prevailing suspicion that he was the *betrayal of state secrets*. Particularly with this, perhaps one of the biggest state secrets of all.

⁶⁸⁷ Bosnic, T.12716-12718.

⁶⁸⁸ See *e.g.* [REDACTED].

⁶⁸⁹ P01924; P01925; [REDACTED].

⁶⁹⁰ P01924; P01925.

⁶⁹¹ [REDACTED]; P1400, p.14.

⁶⁹² [REDACTED]

⁶⁹³ [REDACTED].

⁶⁹⁴ [REDACTED].

⁶⁹⁵ [REDACTED]; P1074, p.4.

⁶⁹⁶ [REDACTED].

⁶⁹⁷ [REDACTED].

⁶⁹⁸ See Part I, Section II, paras 95-99.

⁶⁹⁹ See Confidential Annex I.

i. Captain Dragan Incorrectly Claimed to have been Sent by the DB

288. Attempting to disregard the contemporaneous evidence, or the evidence of persistent surveillance by the DB for the months before Dragan departed for Knin, the Prosecution relies upon Dragan's retrospective claim to have worked for the DB while at Golubić.

289. Only Dragan puts Stanišić and the DB in control of his arrival in Knin (or subsequent activities following his departure).⁷⁰⁰ It is unclear how Stanišić, an assistant in the DB suspected of treason in April 1991,⁷⁰¹ could override Janačković, the chief of the Serbian DB, let alone Bogdanović, the Minister of the Interior or Sainović, the Prime Minister.

290. General Simović, Serbian Minister of Defence in 1991, did not draw this conclusion at the time. When he discussed the Serbian MOD's use of Captain Dragan's services in the fall of 1991, he noted that the standard procedure involved, *inter alia*, informing the security services of the details.⁷⁰² If Dragan were a Serbian DB employee, they would know. If he were under their control, the Serbian MOD would not inform the Serbian DB, they would request its permission.

291. Further, and perhaps obvious to most, Dragan is unreliable. He changed his account to suit his audience and his immediate objectives, much like he did when he famously testified in the *Milošević* case. At one point, he claimed that the "SDB invited him to [Serbia]. He collaborated with Stanišić and Bogdanović".⁷⁰³ [REDACTED].⁷⁰⁴ In January 1992, Dragan stated in an interview that he "never worked for that man", referring to Slobodan Milošević.⁷⁰⁵

292. Many of Dragan's later interviews are highly suspect, as he was embittered by his removal from Knin in August 1991 and the loss of his narcissistic ambitions. His later interviews were littered with untruths designed to maximise his fame and influence. He failed to persuade the MOD to train outside the existing TO system,⁷⁰⁶ so he lied, publically,

⁷⁰⁰ [REDACTED]; P1069, p.2.

⁷⁰¹ [REDACTED]; D608.

⁷⁰² P1050, p.23.

⁷⁰³ P1069, p.2.

⁷⁰⁴ [REDACTED].

⁷⁰⁵ D1164, p.8.

⁷⁰⁶ See e.g., P1066, with Minister of Defence of Serbia, General Simović, in his response to a question by MP Vojislav Šešelj, confirmed that Captain Dragan had proposed to train volunteer units, and Simović had offered Captain Dragan "to conduct training for Serb Krajina volunteers in Bujanj Potok, within the existing system. However this initiative met with little response", according to Simović.

claiming that he had been engaged by the government to train special units in Bujanj Potok.⁷⁰⁷

293. [REDACTED]⁷⁰⁸ [REDACTED].⁷⁰⁹ As Simović observed, Dragan was “hitting below the belt...to preserve his image at any cost”.⁷¹⁰

294. Dragan’s claim of control over MUP forces of Serbia was utterly discredited long before this case: “[w]hen the time arrived for Captain Dragan to show his [60] instructors...it became clear there were none” as these “were members of the special police forces of the Republic Serbia, who were busy with their other commitments”.⁷¹¹

2. Locally-Based Command hierarchy

a. Reporting to the “State Security”

295. The Prosecution interprets the “State Security Department”⁷¹² (as an addressee) in Golubić reporting as a reference to the Serbian DB and evidence that Golubić was commanded by Stanišić at the behest of Milošević. The only reason proffered for this is that it would (marginally) support the proposition that Stanišić was in Golubić’s operational loop. It is much more reasonable to infer this was a reference to the Krajina DB.

296. For example, Stanišić would not need to know much of the detail, even if the Serbian DB was the principal coordinator of a Belgrade-led plan. For instance, Belgrade would not need to know that “confidential sources reported that someone was smuggling (selling) automatic weapons. So far this person has sold 40 weapons; the State Security Department was told who this person is”.⁷¹³ It overstretches the point to assert that the Serbian DB would be interested in this minutia. Conversely, Martić’s DB, led by Orlović at that time, might have needed to know.⁷¹⁴

⁷⁰⁷ P1072, p.1.

⁷⁰⁸ [REDACTED].

⁷⁰⁹ [REDACTED].

⁷¹⁰ D1515, p.4; P1050, pp.37-38; D1164, p.12; D1164, p.12.

⁷¹¹ P1050, pp.36-38.

⁷¹² See e.g. P2670-P2672; P2674; P2676-P2680; P2682.

⁷¹³ P2674, p.2.

⁷¹⁴ P1877, pp.34-35.

297. Theunens' claim to this effect in relation to P1179⁷¹⁵ is like his evidence: devoid of critical reasoning or evidential support. The likewise prosecutorial claim that the reference to "Security Service" in P426,⁷¹⁶ refers to the Serbian DB, and more precisely Stanišić and Simatović,⁷¹⁷ is wishful thinking. The list of addressees on the second page as well as the header on page one ("To: Secretary of the SUP") clearly references the local entities within the SAO Krajina.⁷¹⁸ Had the reference to "Security Service" been to the Serbian service, it would have distinguished this fact from the rest of the list.

i. Simatović's Alleged Command Over Golubić

298. The Prosecution suggests that Simatović was sent to Knin by Stanišić to implement Milošević's order to mobilise the reserve forces and to engage the new police. The evidence in this regard is seductive, but ultimately unconvincing.

299. Whilst the evidence suggests that Simatović was around Dragan, the Golubić camp and its operations, it does not show that he possessed a degree of control consistent with the role alleged. At best, Simatović was sent to Knin on intelligence work, but may have overstepped his intended task. However, the evidence does not show him in command, having a supervisory role over the camp, or a particular function there.

300. If he were sent on this mission, in command, one would expect Simatović's colleagues, Filipović⁷¹⁹ and Radonjić⁷²⁰ who are also alleged to have been on the same mission, to be equally prominent in the evidence or to have a clearly defined task in the camp. Had Radonjić been on the same mission, there would be evidence of it. There is none. Babić merely speculates about Filipović: he was "one of the instructors" from the Serbian DB "[i]n Golubić, as far as I know".⁷²¹ His knowledge is based upon uncorroborated hearsay. With regard to Filipović, [REDACTED] he only "visited Golubić or the fortress [where the Golubić camp was moved in June or July 1991] a couple of times, but was not with them as a group at the time".⁷²²

⁷¹⁵ P1179; *see also* Prosecution Opening Statement, T.1471; P1575, p.210.

⁷¹⁶ P426; *see also* Prosecution, Opening Statement, T.1469-1470.

⁷¹⁷ Prosecution Opening Statement, T.1470.

⁷¹⁸ P426, p.2.

⁷¹⁹ *See* Part I, Section I, paras 64-69.

⁷²⁰ P1878, p.360.

⁷²¹ P1878, p.173.

⁷²² [REDACTED].

301. No reasonable inference can be drawn that Simatović was in command at the camp and that his colleagues were involved in supervising Golubić. Simatović's role, if he had any "additional" involvement beyond intelligence gathering in Knin, was not part of any master plan formulated by the Serbian DB.

a) Witnesses do not Support that Simatović was in Command of the Camp

302. The evidence shows that Simatović was *considered* to be a man of influence. What is unclear is his actual function, if any. Consistent with Simatović, perhaps, overstepping his intelligence remit, or playing on the status of the Serbian DB, Babić confirmed that Simatović was a "host, maybe supervisor, a senior person" at Golubić.⁷²³

303. [REDACTED]. [REDACTED]⁷²⁴ [REDACTED].⁷²⁵ [REDACTED]⁷²⁶
[REDACTED].⁷²⁷

304. JF-39's account typically fluctuated depending upon the question. [REDACTED]⁷²⁸
[REDACTED].⁷²⁹ [REDACTED].⁷³⁰

305. [REDACTED].⁷³¹

306. JF-39 failed to explain the orders issued to Dragan, how orders were distinguished from being in command, or how Simatović could have ordered Dragan but not be in command there. [REDACTED].⁷³² [REDACTED].⁷³³ The vacillations in his account are an eloquent demonstration of this fact.

307. JF-39 embellished his assertions as to Simatović's authority by suggesting that Martić had a dispute with Simatović in June/July 1991: "there was a major altercation between

⁷²³ P1877, p.114.

⁷²⁴ [REDACTED].

⁷²⁵ [REDACTED].

⁷²⁶ [REDACTED].

⁷²⁷ [REDACTED].

⁷²⁸ [REDACTED].

⁷²⁹ [REDACTED].

⁷³⁰ [REDACTED].

⁷³¹ [REDACTED].

⁷³² [REDACTED].

⁷³³ [REDACTED].

Frenki who wanted to command all those men and the TO, which is why the staff was moved to the fortress.”⁷³⁴ [REDACTED].⁷³⁵

308. This was apparently to re-establish Martić’s control over the TO and police.⁷³⁶ [REDACTED]⁷³⁷ [REDACTED].⁷³⁸

309. [REDACTED] stating that there was “no direct departure from Golubić camp for Korenica”.⁷³⁹ Rather than Simatović being chased out, “the command centre with Frenki and Captain Dragan moved to the main command in the fortress, and some men were sent to Udbina, while some other men were sent to Korenica.”⁷⁴⁰

310. In this version, the first group transferred was under Simatović’s command: “Captain Dragan and Frenki were transferred and then later on they were – they joined under the command of the TO Commander Milan Dragišić”.⁷⁴¹ In other words, to prevent Simatović from co-opting the command, Martić moved Simatović *with the command* to the fortress.

311. Realising the absurdity of this, his account changed again: “In fact, he [Simatović] spent most of his time in Belgrade rather than at the fortress, and then when he did come to Knin for a couple of days, a day or two, then they would have these meetings together at the fortress, they would quarrel, so that it was asked for him to be – to go back”.⁷⁴²

312. [REDACTED]. [REDACTED]⁷⁴³ No witness or document corroborates these circumvolutions.

313. In fact, the move to the fortress (higher ground) was proposed as early as May 1991 to prevent an “enemy squad occupying” Golubić.⁷⁴⁴ Every salient piece of evidence shows Dragan leaving the SAO Krajina and the Knindžas early August 1991 due to conflict with

⁷³⁴ JF-39, T.7242.

⁷³⁵ [REDACTED].

⁷³⁶ [REDACTED] ; *see also* T.7242.

⁷³⁷ [REDACTED].

⁷³⁸ [REDACTED]

⁷³⁹ JF-39, T.7200.

⁷⁴⁰ JF-39, T.7201.

⁷⁴¹ JF-39, T.7243.

⁷⁴² JF-39, T.7254-7255.

⁷⁴³ [REDACTED]

⁷⁴⁴ P426, p.2.

Babić. Rather than revolving around Simatović, this was premised on simmering personal rivalry between Babić and Martić, and falling out between Dragan and Babić.⁷⁴⁵

b) Documentary Evidence does not support that Simatović was in command in Golubić

314. A number of documents show Simatović at planning meetings. They cannot prove Simatović's command over Golubić or Dragan,⁷⁴⁶ but do reflect an intelligence gathering function. At most, they show Simatović acting on a frolic of his own, outside of his intelligence function: one of the "influential specials".⁷⁴⁷

315. Only two documents provide *prima facie* evidence of real command over Golubić or its activities: P1062 and P979. Neither can demonstrate a controlling or supervisory role.

316. [REDACTED].⁷⁴⁸ The Prosecution claims this demonstrates that Dragan was working for the Serbian MUP under Stanišić.⁷⁴⁹

317. Basic inaccuracies fatally undermine its reliability without more ([REDACTED]).⁷⁵⁰ [REDACTED].

318. An "Order", dated 16 June 1991, is an obvious forgery designed to implicate Simatović. Purporting to be an order by him, for all weapons and armament, except for formational weapons, to "retreat from the fortress to Golubić",⁷⁵¹ it is plainly illogical considering the evidence at hand. A move from the fortress in June 1991 does not make sense, since all evidence indicates that the training was at Golubić, until the move *to* the Fortress from Golubić.⁷⁵²

319. The strongest documentary evidence of Simatović's "command" over Martić, Dragan or the Golubić camp is consistent with Babić's characterisation of him as a "host...maybe supervisor, a senior person".⁷⁵³

⁷⁴⁵ Bosnić, T.12704, 12727-12728, 12767-12768; D313, para.58; D314, p.4 (correction for para.58); [REDACTED]; P1070, p.3; P1073, pp.1-2; D607, pp.2-3; D1164, p.4; P1163, pp.4-5.

⁷⁴⁶ See eg. P1009; P1186.

⁷⁴⁷ P1179, p.2.

⁷⁴⁸ [REDACTED].

⁷⁴⁹ Prosecution Opening Statement, T.1467.

⁷⁵⁰ [REDACTED].

⁷⁵¹ P979; see also JF-39, T.7209-7210.

⁷⁵² JF-39, T.7269-7270; [REDACTED].

⁷⁵³ P1877, p.114.

320. As Dragan wrote on in May/June 1991, the arrival of Simatović and some “influential specials” will raise the morale and they would dispense advice to the recruits. Consistent with Stanišić case, Simatović was considered to have no command over the camp or Dragan. Instead, his presence was anticipated to raise morale and he might have provided some advice.⁷⁵⁴

3. The Training at Golubić was not in furtherance of the Common Purpose

321. A crime must be committed in furtherance of (or a reasonably foreseeable consequence of) the JCE’s common criminal purpose if it is to give rise to liability. In the case of the Golubić training, without proof that alleged JCE members intended (or should have reasonably foreseen) the training to be a means of procuring recruits to commit crimes in furtherance of the common criminal purpose, the fact that crimes did occur subsequent to the training, cannot prove that it was intended to further a criminal purpose.

322. This is a troubling feature of the Prosecution’s case against the Accused. It relies on criminalising the training at Golubić because trainees (principally Martić’s men) *eventually* committed crimes in the region. The Prosecution should be required to show that a clear pattern of crime arose *as a result of and due to* the training received. Or that the trainees regularly committed crimes, the camp trainers/organisers were aware of these crimes, but persisted with this training nonetheless without taking additional preventative measures.

323. This is not the evidence in this case. The nature of the training at Golubić does not permit this type of inference to be drawn, as the training was short and it involved nothing more than providing police officers or locals with some basic, defensive military skills to deal with the escalation of violence. Despite the prominence this camp plays in the Prosecution case, Golubić only operated for three months⁷⁵⁵ and trained only 200-300 men.⁷⁵⁶ Importantly, such training included clear rules concerning the protection of civilians. Training is discussed below.

⁷⁵⁴ P1179, p.2.

⁷⁵⁵ [REDACTED]; *see also* Bosnić, T.12704; D313, para.35; D314, p.3.

⁷⁵⁶ JF-39, T.7246-7247 (200-250 men).

a. Basic Infantry Training for Self-Defence

324. As confirmed by Dragan himself, the training was “a short 21 day course, roughly speaking”.⁷⁵⁷ Finding this admission overly modest, he reverted immediately thereafter to boasting, noting that he endeavoured to use 10% of these trainees to later train “the entire armed forces”.⁷⁵⁸ This did not happen: Dragan principally trained men who did not train anyone else.

325. Despite some basic military-style infantry training, the focus was on producing police officers, not combatants.⁷⁵⁹ [REDACTED].⁷⁶⁰ Further, an adjudicated fact establishes that Golubić was created “because Milan Martić wanted properly trained police officers.”⁷⁶¹ This shows that he was not training these men to commit crimes in furtherance of the common purpose.

326. [REDACTED].⁷⁶² This would appear to encompass the creation of Golubić. [REDACTED]⁷⁶³ [REDACTED].⁷⁶⁴ [REDACTED].⁷⁶⁵ [REDACTED].⁷⁶⁶ The people mostly came “to defend their houses, wives and children”.⁷⁶⁷ [REDACTED].⁷⁶⁸ [REDACTED].⁷⁶⁹

327. A misnomer about the training is that it produced “special forces”. [REDACTED] absorbed the media image of Knindžas as “highly trained guys”.⁷⁷⁰ [REDACTED].⁷⁷¹ A video of the trainees in Golubić illustrates the basic training for the men.⁷⁷² [REDACTED].⁷⁷³ [REDACTED].⁷⁷⁴ [REDACTED].⁷⁷⁵ Bosnić also confirmed the basic nature of the training.⁷⁷⁶

⁷⁵⁷ P2976, p.5; Second Decision on Adjudicated Facts (Prosecution), Fact 55; *see also* P1181, p.4; Bosnić, T.12706; [REDACTED].

⁷⁵⁸ P2976, p.8.

⁷⁵⁹ [REDACTED]; DST-43, T.13015; [REDACTED]; Bosnić, D313, para.36; P1103, p.2; Babić, P1877, pp.38-39.

⁷⁶⁰ [REDACTED].

⁷⁶¹ First Decision on Adjudicated Facts (Defence), SAO Krajina, Fact 1; [REDACTED].

⁷⁶² [REDACTED].

⁷⁶³ [REDACTED].

⁷⁶⁴ [REDACTED]; Bosnić, T.12707.

⁷⁶⁵ [REDACTED]; *see also* [REDACTED]; Bosnić, D313, para.43; [REDACTED].

⁷⁶⁶ [REDACTED].

⁷⁶⁷ P991, para.4.

⁷⁶⁸ [REDACTED].

⁷⁶⁹ [REDACTED].

⁷⁷⁰ D298, p.2.

⁷⁷¹ [REDACTED].

⁷⁷² P991.

⁷⁷³ [REDACTED].

⁷⁷⁴ [REDACTED].

⁷⁷⁵ [REDACTED].

328. JF-40, arriving at Golubić in late September 1991, confirmed there was only one special unit of the MUP SAO Krajina,⁷⁷⁷ and added “they called it a special unit, but it was no special unit. There were not specialists trained in special tasks.”⁷⁷⁸

329. [REDACTED].⁷⁷⁹ [REDACTED]⁷⁸⁰ [REDACTED].⁷⁸¹ [REDACTED],⁷⁸² [REDACTED],⁷⁸³ this was based on little more than fable and mythology making.

b. Training in Treating Civilians Humanely

330. [REDACTED]⁷⁸⁴ [REDACTED].⁷⁸⁵

331. Captain Dragan trained recruits on how to treat prisoners of war, tried to improve the conditions of prisoners by proposing to create a prison with humane conditions in the SAO Krajina.⁷⁸⁶ He deemed the condition of detention of six prisoners at the fortress “extremely inadequate” and requested for a decent prison to be created.⁷⁸⁷

332. His involvement in operations in the SAO Krajina in the summer of 1991 led to improved law and order.⁷⁸⁸ His attempts at strict adherence to law contrasted sharply with the JNA regime once it took over the prisons in the Krajina.

IV. CONCLUSION: LACK OF CONCERTED ACTION IN THE KRAJINA AND THE SBWS

333. In SAO Krajina, *taking the Prosecution’s case at its highest*, there are no alleged JCE members involved in the attack on Pakrac and Kijevo. Accordingly, it cannot be argued that a member of the alleged JCE procured anyone to commit crimes on behalf of the JCE in these locations.

334. More importantly, in Plitvice, Pakrac, Kijevo, Lovinac, Benkovac, Dvor na Una, Skradin, Saborsko, the alleged crimes were not done in furtherance of the alleged common

⁷⁷⁶ Bosnić, T.12706-12707.

⁷⁷⁷ Maksić, T.6969.

⁷⁷⁸ Maksić, T.6970-6971.

⁷⁷⁹ [REDACTED].

⁷⁸⁰ [REDACTED].

⁷⁸¹ [REDACTED].

⁷⁸² [REDACTED].

⁷⁸³ [REDACTED].

⁷⁸⁴ [REDACTED].

⁷⁸⁵ [REDACTED].

⁷⁸⁶ *See e.g.* P425.

⁷⁸⁷ P425, p.1.

⁷⁸⁸ *See e.g.* P1186, p.1; P1070, p.2; P2659, p.1.

purpose of the JCE, as these actions were done as a defensive reponse, for military purposes and/or, were not intended to displace civilians.

335. Regarding the fighting in Plitvice, Pakrac, Kijevo (at least before August 1991), Glina, Skradin, and Saborsko, the JNA intervened to stop the fighting. The indictment clearly states that from April 1991, special units of the Serbian DB operated “in coordination with the JNA”, as well as other forces.⁷⁸⁹ However, as is evident, it cannot be said that the criminal plan to forcibly displace non-Serb civilians commenced at a time when the JNA, whose leadership are alleged JCE members in the Indictment, were acting in concert with the other alleged JCE members.

336. Further, while the theory is altogether flawed, Babić’s Parallel Structure theory, where Belgrade-led aggression throughout the Krajina would provoke a the creation of a JNA, thereby allowing Croatian Serbs to seize land and demarcate boundaries is facially flawed in Plitvice, Pakrac, Kijevo, Lovinac, Benkovac, Saborsko, Dvor na Una, Glina, as there are no individuals associated with the Belgrade Serbs involved in the attack, including Simatović. Simatović is only listed as being involved in Lovinac, Glina, Skradin, and Plitvice.

337. In SAO SBWS, the evidence does not show that these were in pursuit of a criminal purpose or that they involved any alleged JCE members from Belgrade. They were engaged in defensive actions due to the perceived threat they felt from the Croats. Further, it was not in coordination with the JNA, as alleged in the indictment. Instead, the JNA was acting as a “kind of UNPROFOR”, as asserted by Prosecution witness JF-35. This is a far cry from the allegations made in the Indictment that the JNA, Belgrade and local Serbs were acting in concert to accomplish their joint criminal objectives.

⁷⁸⁹ Indictment, para.8.
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SECTION II. ALLEGED JCE IN CROATIA - PARTICIPATION

I. ALLEGED CONTRIBUTION BY STANIŠIĆ IN CROATIA/RSK

A. PRELIMINARY ISSUES

1. Contribution by Stanišić in Command or Supply in SAO Krajina Post Mid-July 1991

338. As stated in Part II, Section I of this Brief, there was no criminal purpose agreed upon by any of the alleged JCE members prior to August 1991. Regarding Stanišić, no evidence implicates him in the support or command of the Krajina police or military after mid-July 1991. Only two *92quater* witnesses, Babić and Pavlović, implicate Stanišić with regard to command or logistical assistance to the SAO Krajina police or military after July 1991. Analysing the thesis of both witnesses, alongside a consideration of the evidence of who in fact was supplying the SAO Krajina police, exposes their perjured testimony.

2. Babić Contradicts Himself and JF-39

339. Babić made contradictory allegations concerning the existence and control exercised by the so-called parallel structure. Firstly, he claimed that it came into existence sometime in “August 1990”.⁷⁹⁰ At another point, he stated that, “their activities began in April 1991.”⁷⁹¹ Whether August 1990 or April 1991, how a parallel structure can be said to have existed without action was not explained.

340. Further, he claimed that combat activities began in June/August 1991⁷⁹² and that the Serbian DB had control “of all of the events” in the Krajina.⁷⁹³ Babić testified that “this parallel structure...caused provocations towards Croatian threats to create clashes and to pull in the JNA, as [Milošević] had planned”.⁷⁹⁴ He stated that police and volunteer units under Serbian DB control would attack first, causing provocations and opening fire; then the JNA would join in.⁷⁹⁵ Not even the Prosecution appear to believe Babić’s dishonest, uncorroborated account that Stanišić was in control of the Army, TO and Krajina police in

⁷⁹⁰ Babić, P1879, p.3.

⁷⁹¹ Babić, P1877, p.35.

⁷⁹² Babić, P1878, pp.175-176.

⁷⁹³ Babić, P1877, pp.35; *see also* P1878, p.130.

⁷⁹⁴ Babić, P1878, p.350.

⁷⁹⁵ Babić, P1878, p.350.

July/August 1991, as it “put” its case to DST-34 that men in the Krajina were supplied weapons by the Serbian DB, *not* that it coordinated the actions of these forces.⁷⁹⁶

341. Babić’s testimony was replete with contradictions and other evidence leaves his lies further exposed. He claimed that during a visit to see Milošević, in relation to obtaining a TO commander (Radoslav Maksić) for the Krajina, he met Stanišić in a room with a “military map in front of him with the lines drawn in of the deployment of the army”.⁷⁹⁷ Putting aside the absurdity of a professional intelligence officer being in command of an army, Babić quickly contradicted this account. The next time he recounted this tale, Babić stated this room “had a *stand* for a map, and the room was empty.”⁷⁹⁸ This clumsy attempt to place Stanišić in control of at least the TO is made even more implausible when one considers other Prosecution’s evidence that both Babić and Martić controlled the TO.⁷⁹⁹

342. Further, although JF-39 was as unreliable as Babić, his account completely contradicts the latter. [REDACTED].⁸⁰⁰ [REDACTED].⁸⁰¹ [REDACTED].⁸⁰² [REDACTED].⁸⁰³

3. Alleged Logistical and Financing of the Krajina Police by Stanišić

343. The Prosecution case has remained opaque regarding the extent that Stanišić allegedly provided logistical assistance to the Krajina Serbs, principally because the two primary witnesses – JF-39 and Babić – materially contradict each other. [REDACTED].⁸⁰⁴ The implication of Babić’s “parallel structure theory” (and its all-encompassing logistical support for all Serb Forces in the Krajina) is that Stanišić continued to provide supplies past this date.

344. The Defence will examine the remaining evidence that exposes the fabrications by both witnesses. In order to be able to properly contextualise the evidence that implicates Stanišić, the Defence will first analyse the Babić thesis (in as much as it supposes overall support of the military and police action by Stanišić after mid-1991).

⁷⁹⁶ DST-34, T.12570-12571; *see also* P61, pp.10-11.

⁷⁹⁷ Babić, P1878, p.202.

⁷⁹⁸ Babić, P1878, p.353 (emphasis added).

⁷⁹⁹ Maksić, T.6964; Maksić, P951, pp.13, 16-18, 124; *see also* P2047, para.26.

⁸⁰⁰ [REDACTED].

⁸⁰¹ [REDACTED].

⁸⁰² [REDACTED].

⁸⁰³ [REDACTED].

⁸⁰⁴ [REDACTED].

345. The Defence will then consider the evidence of JF-39 [REDACTED]. By understanding the absolute lack of evidence implicating Stanišić after mid-1991, it is possible to see clearly how the supplies alleged by JF-39 (cash and arms) to the SAO Krajina prior to that time, even if reliable, could only have been minimal and not in furtherance of crime. For the avoidance of doubt, it is not accepted that either witness was capable of truth.

a. The Babić Thesis of Alleged Logistical Support and Financing of the Krajina Police by Stanišić from Mid-1991 is Faulty

346. The mass arming of Serbs with tens of thousands of weapons in the Krajina and SBWS from TO storages started from July 1991.⁸⁰⁵ The Serbian DB observed and recorded some of these occurrences.⁸⁰⁶ [REDACTED].⁸⁰⁷

347. [REDACTED]. [REDACTED].⁸⁰⁸

348. [REDACTED]⁸⁰⁹ [REDACTED].⁸¹⁰ In July 1991, Martić confirmed that weapons from the JNA were shared with the police.⁸¹¹ Not from the JNA as an institution, but from “JNA Serb patriot officers” from JNA storage;⁸¹² “not from Serbia as many would like to put it”.⁸¹³ Also, weapons were provided from individuals abroad”.⁸¹⁴

349. From at least August/September 1991, Simović, the Minister of Defence of Serbia, was supplying the weaponry needs of the Main Staff of the SAO Krajina TO.⁸¹⁵ Despite Babić’s claims of impotence, he was involved in these arrangements.⁸¹⁶

350. With regard to the first joint operation between the JNA and the local SAO Krajina armed forces (Kijevo on 26 August 1991),⁸¹⁷ Martić stated that “[w]e gave the infantry (police

⁸⁰⁵ Bosnić, T.12675; Bosnić, D313, para.64; D314, correction to para.64; Babić, P1878, pp.241-243.

⁸⁰⁶ *See e.g.* [REDACTED].

⁸⁰⁷ [REDACTED].

⁸⁰⁸ [REDACTED].

⁸⁰⁹ [REDACTED].

⁸¹⁰ [REDACTED].

⁸¹¹ P2593.

⁸¹² D296, p.8.

⁸¹³ D296, p.9.

⁸¹⁴ D296, p.9.

⁸¹⁵ P965, pp.1-9; P968; P1877, p.64.

⁸¹⁶ P1877, pp.64-65.

⁸¹⁷ DST-43, T.12903.

and civilian), and the logistics was provided by the JNA”.⁸¹⁸ From the fall of 1991, through the implementation of the 1992 Vance Plan and beyond, these arrangements were the norm.⁸¹⁹

351. Mladić confirmed the enormous supply operation that was being prepared by the JNA.⁸²⁰ He also noted the task to “[a]rm 50,000 men legally and illegally”.⁸²¹ The SSNO coordinated the provision of logistical supplies from the army stores to the MUP units. Selak confirmed that “it was quite normal for police to request from the army this kind of supplies”.⁸²² [REDACTED].⁸²³

352. By April 1992, there was a Board of special police units of the RSK subordinated to the RSK Ministry of Defence.⁸²⁴ The SSNO ordered the creation of special police units.⁸²⁵ TO units (with all their equipment) were transformed into police units.⁸²⁶ Martić’s reliance on the military for supplies continued until October 1993.⁸²⁷

4. Stanišić Did Not Finance of the Krajina Police From Mid-1991

353. Within the Prosecution case there is a mismatch of allegation and evidence. The Prosecution allege that Stanišić supplied the police throughout the indictment period. [REDACTED].⁸²⁸ The evidence shows that from May 1991, Martić’s police were financed through the SAO Krajina budget, which was largely funded through the SDK.

a. The Existence of SDK Accounts for the SAO Krajina from May 1991

354. On 16 May 1991, the SAO Krajina Assembly established the SDK of the SAO Krajina.⁸²⁹ The SDK service was to cooperate with Krajina organs and the Republic of Serbia.⁸³⁰ With the SDK, the SAO Krajina obtained its own financial system with budgets and

⁸¹⁸ D296, p.11.

⁸¹⁹ [REDACTED]; D1163; P1142, p.2; P1140, pp.6-7; P1141, p.3; D717; P1226, p.2; D681, pp.1-2; D1167, pp.3-5; D736, pp.1,3; D730, p.3; D737, pp.1-2; P1235, pp.1-2; P1233, p.2; D1172; D739; D682; D684; D685; D686.

⁸²⁰ D1458, p.3.

⁸²¹ D1458, p.5.

⁸²² D730, p.4; D1432, pp.3-12.

⁸²³ [REDACTED].

⁸²⁴ P1232.

⁸²⁵ P1232.

⁸²⁶ P1236; P1233; P1103, p.6; P1237, pp.3-4; P1238, p.3; D1685, pp.73-74.

⁸²⁷ D1134, p.2; P2579; P2580; D1139; D1182; D1183.

⁸²⁸ [REDACTED].

⁸²⁹ P2050.

⁸³⁰ P2050, Articles 5,9-10.

bank accounts.⁸³¹ The money was distributed through these accounts based on an agreement with the Federal Government.⁸³² Bosnić confirmed that the TO, the police, and the municipalities all had their own SDK accounts.⁸³³

355. The Krajina police were also likely financed through the funds provided to the TO by the SSNO, at least from September 1991. According to Babić, the TO was financed through the JNA: through the giro account into which funds were paid from the Serbian MOD and Serbian Government.⁸³⁴ Maksić, a member of the SAO Krajina TO main staff, confirmed this arrangement.⁸³⁵ Maksić also noted that the Krajina MUP and TO received their money through the SDK.⁸³⁶

356. This is corroborated by the record of a meeting in November 1992 between the RSK and Serbian Government (involving Milošević, Radoman Božović and the Governor of the National Bank) to decide on “[t]he way of financial help to the Krajina till the end of this year”.⁸³⁷ It was noted, *inter alia*, to “immediately start the planning of the means for the needs of the Army and the police, the way it was in 1992....[t]his will be accomplished through the Ministry of Defense of the Republic of Serbian Krajina and the Ministry of Defense of the Republic of Serbia”.⁸³⁸ Babić admitted that from at least the fall of 1991, the police was financed through the MOD of Serbia.⁸³⁹

357. In the end, Babić lies were instructive. By trying to implicate the Serbian MUP, he demonstrated that the DB did not finance the police, nor did he believe this to be the case. He related how in a government session in July 1991 Martić had requested more money for the police from the government budget.⁸⁴⁰ Having been refused, Martić responded by indicating that he would go “work for the one who was paying him”. Babić testified that he understood Martić to mean the MUP Serbia.⁸⁴¹

⁸³¹ Bosnić, D313, paras 47,49; D315, p.2; P2025; P333; P1877, p.59-61.

⁸³² Bosnić, D313, paras 47, 49.

⁸³³ Bosnić, D313, para.49; *see e.g.* P970; P1878, p.67.

⁸³⁴ Maksić, T.6853-6854, 6861; P1877, pp.62,66; P968, pp.1-2.

⁸³⁵ Maksić, T.6856.

⁸³⁶ Maksić, T.6856.

⁸³⁷ P1886, pp.1-2.

⁸³⁸ P1886, p.2.

⁸³⁹ Babić, P1878, p.84.

⁸⁴⁰ Babić, P1877, p.62.

⁸⁴¹ Babić, P1877, p.62.

358. Babić confirmed later that the police were financed from Serbia through MUP Serbia with cash and technical equipment and “[l]ater on, they operated accounts”.⁸⁴²

359. Bosnić never heard of any special funding for the SAO Krajina police, only that they were receiving payments from the federal budget,⁸⁴³ and that Martić was paid through the local budget.⁸⁴⁴ [REDACTED].⁸⁴⁵

b. The Vance Plan and Supplies to the Police

360. Through the implementation of the Vance plan, the financing of the RSK police continued to be effectuated through the SFRY Presidency from the federal budget.⁸⁴⁶ There was no role envisaged for the DB or Stanišić. Martić wanted 20,000 military personnel transferred to the police. He wanted officers to “lead these units as police units”.⁸⁴⁷

361. The Federal MUP and MOD were designated as the principal coordinators.⁸⁴⁸ These arrangements, which included the creation of “the basic organisational structure of the (MUP) service” in the RSK,⁸⁴⁹ and the *wholesale provision of training*, did not involve the Serbian MUP, DB or Stanišić.⁸⁵⁰ Gračanin, Federal MUP minister at the time, noted that “[a]s for the financial part with regard to the police – some loans have been taken out.”⁸⁵¹ On 25 February 1992, the SFRY Presidency confirmed that it was the MOD and Federal MUP’s responsibility.⁸⁵² The JNA also financed some of its officers to man MUP units or MUP reserve troops.⁸⁵³

362. On 18 May 1992, and despite the Vance Plan, the RSK Assembly stated that the RSK “shall have a Serbian Army”.⁸⁵⁴ On 16 July 1992, Martić was promoted Colonel General.⁸⁵⁵

⁸⁴² Babić, P1878, p.65.

⁸⁴³ Bosnić, D313, paras 31,45-46; D314, p.2 (correction for para.31), p.3 (correction for para.45); D315, p.3 (comment on P2025).

⁸⁴⁴ D313, para.71.

⁸⁴⁵ [REDACTED].

⁸⁴⁶ D1429, p.53, 55-56; P1430, p.9.

⁸⁴⁷ D1429, p.52.

⁸⁴⁸ D1430, p.10.

⁸⁴⁹ D55, p.1.

⁸⁵⁰ Bosnić, T.12740-12743; Bosnić, D313, para.82; *see also* D55, pp.6-9; D1520, pp.3-11; D318, p.11-12; D1432, p.6.

⁸⁵¹ D1432, p.7.

⁸⁵² D318, pp.11-12; *see also* P1878, pp.231-233; P2005, pp.14, 16-17.

⁸⁵³ D1432, p.4; *see also* P1233, p.2.

⁸⁵⁴ P1239, p.3.

⁸⁵⁵ P1240.

On 16 October 1992, the administration and “all PJM brigades which constitute the A defence echelon of the RSK” were put under the command of the newly created main staff”.⁸⁵⁶

363. On 27 November 1992, an order by the RSK main staff regulated the reorganisation of the TO and special police units into the VRSK, stating that “PJM Brigades shall become part of the corps (...) and shall in every respect be subordinate to the corps commanders”.⁸⁵⁷ Further specific orders were issued about the integration of these TO and PJM units within the newly created Army of the RSK, the SVK. In particular, an order by the RSK Zone TO HQ of SBWS, dated 8 December 1992, concerned “the creation of the unified logistics organ and the base in the Corps”,⁸⁵⁸ with the PJM Brigade envisaged “to pay all persons, and complete any other financial obligations by 31-Dec-92. As of 1 January 1993, payment to all persons as well as engaging in financial obligations is to be carried out by the Corps Command, through its organs”.⁸⁵⁹

364. The Serbian MUP was not involved in any of this supply or financing. Adžić, [acting Federal Secretary of National Defence]⁸⁶⁰ [REDACTED].⁸⁶¹ However, as will be discussed below in paragraphs 366-370 of this Brief, all the evidence shows that it did not play more than a marginal role.⁸⁶²

365. By November 1994, the RSK budget covered both the funds for financing the police and the army.⁸⁶³ Babić explained that budget deficits were funded by the National Bank of the RSK, receiving its money from the National Bank of Yugoslavia. He confirmed that the army and police took almost two-thirds of the budget.⁸⁶⁴

c. Serbian MUP and DB Supplies to SAO Krajina Police: Post Mid-July 1991

366. As discussed above, contributions by the MUP Serbia were minimal. Importantly, they were designed to enhance the security of the SAO Krajina, not advance a criminal purpose. The Prosecution must not be permitted to obscure this critical distinction. Ordinary citizens of

⁸⁵⁶ P1242, p.1.

⁸⁵⁷ P1244, p.14.

⁸⁵⁸ P1246, p.3.

⁸⁵⁹ P1246, p.3.

⁸⁶⁰ DFS-17, T.16842.

⁸⁶¹ [REDACTED].

⁸⁶² D1432, pp.45-47; [REDACTED].

⁸⁶³ P2012, p.4; P2050.

⁸⁶⁴ P1878, pp.74-78; P2012; P224, p.16; P2076; P2055, pp.1-2; [REDACTED]

all ethnicities in the SAO Krajina had the right to security, provided through a functioning criminal justice system, including a functioning police force.

367. As the aforementioned evidence of supply to the RSK MUP shows, it was the SSNO and the army that was involved in supply of the “police” that was created as a result of the Vance plan.

368. The Serbian MUP’s involvement appears to have been focused on the police that were genuinely conducting crime prevention tasks.⁸⁶⁵ Martić made various requests of Badža, for the training of the RSK MUP trainees.⁸⁶⁶ Golubić was used from March 1992 as a training facility for the RSK MUP.⁸⁶⁷ [REDACTED].⁸⁶⁸ The Prosecution has not demonstrated that this facility was henceforth used to train combatants. It became a police school that “trained ordinary police officers.”⁸⁶⁹ The Serbian MUP provided some limited training for the police recruits during 1992 – 1995.⁸⁷⁰ The RSK MUP was expected to finance the courses.⁸⁷¹

369. Martić received his communication supplies for the SVK from the VJ, wherein cooperation was “exemplary”.⁸⁷² The Institute for Security in Belgrade, involving the Serbian MUP, provided assistance to the RSK MUP that was engaged in civilian police tasks, including cryptographic data protection courses in September 1993 to 28 employees of the RSK MUP.⁸⁷³ This went hand-in-hand with other limited (and, often reluctant or delayed) assistance being provided with regard to the provision of communications equipment and the loan of experts to ensure effective communication between the Federal organs and the RSK, as well as the effective functioning of the RSK police service.⁸⁷⁴

370. [REDACTED].⁸⁷⁵ Even for crime prevention police work, Martić was forced to turn to the Federal SUP as his main sponsor. In sum, they dealt with issues relating to training,

⁸⁶⁵ See e.g. P2633.

⁸⁶⁶ P2664; P1553.

⁸⁶⁷ P3216, p.379; P2350.

⁸⁶⁸ [REDACTED].

⁸⁶⁹ Bosnić, T.12710; D313, para.60; P984; D765, p.6.

⁸⁷⁰ D1173; D1176. D1174; D317, p.3; D1188; D1187; D1189, D1190; P2460.

⁸⁷¹ D317, pp.1-3; D1178; D1179.

⁸⁷² D1140, pp.1,6.

⁸⁷³ D1180; see also D1181.

⁸⁷⁴ P2445, p.2; P1233, p.3; D1184; D1150; P2578; D313, para.80; [REDACTED]; D1151.

⁸⁷⁵ [REDACTED].

organisation, staffing and the provision of “advisors in the areas of public and state security to be assigned to the MUP of the Republic of Krajina and police stations”.⁸⁷⁶

B. THE PROSECUTION HAS NOT SHOWN ANY CONTRIBUTION BY STANIŠIĆ OR PROVEN ANY CRIMINAL INTENT

1. Stanišić’s Alleged Contribution to the SAO Krajina: 1990 – July 1991

371. Having discussed the command and supply of the SAO Krajina police from mid-July 1991 through to 1995, it is crystal clear that there is no evidence that Stanišić commanded, supplied or financed the military or the SAO Krajina police from mid-July 1991. Had this been true, someone other than B-179 or Babić would have noticed. The brief will now discuss Stanišić’s alleged assistance prior to July 1991.

2. The Remaining Acts are Incapable of Allowing an Inference of Criminal Intent

372. The Prosecution alleges that Stanišić, using Simatović, organised supplies for Martić’s nascent police force beginning in November and December 1990 when Simatović started transporting weapons and ammunition to Knin, using trucks of the MUP Serbia.⁸⁷⁷ Thereafter, it is alleged that Stanišić supplied the arms, equipment, uniforms and payment for the “SAO Krajina” police (who were going to start training at Golubić camp);⁸⁷⁸ for expanding the barricades in January 1991 and thus “extending Serb territory”;⁸⁷⁹ sending cash to set up the police stations⁸⁸⁰ and organising all the supplies (including salaries) for the new Golubić camp.⁸⁸¹

373. This case rests almost exclusively on the testimony of JF-39 and Babić. As noted above, Babić does not corroborate JF-39, except marginally. This will be discussed below. Whilst corroboration may not be strictly necessary, logic dictates that had JF-39 been a witness of truth, there would have been some meaningful support for his account.

⁸⁷⁶ P2445, p.3.

⁸⁷⁷ Prosecution Pre-trial Brief, paras 51-55, 85.

⁸⁷⁸ Prosecution Pre-trial Brief, para.85.

⁸⁷⁹ Prosecution Pre-trial Brief, para.51.

⁸⁸⁰ Prosecution Pre-trial Brief, para.85.

⁸⁸¹ Indictment, para.3.

a. Transport of Weapons and Ammunition beginning in November/December 1990

i. Trucks in Bosansko Grahovo

374. [REDACTED].⁸⁸² [REDACTED];⁸⁸³ [REDACTED].⁸⁸⁴ [REDACTED]. It is implausible to say the least.

375. Not a single witness or any exhibit provides a scintilla of support for this alleged chain of supply. [REDACTED]. Moreover, why the SDS and Babić would not know, when they were engaged in distributing arms from at least the summer of 1990, is not immediately apparent.⁸⁸⁵

376. Thereafter, [REDACTED]. [REDACTED]. [REDACTED].⁸⁸⁶ [REDACTED].⁸⁸⁷ Bearing in mind, as confirmed by the arrest of Serbian MUP employee, Pokrajak on 8 May 1991⁸⁸⁸ transporting communications equipment probably destined for Knin, it was almost impossible for vehicles not to be noticed in Bosnia and in Croatia by the many mixed mobile patrols at that time,⁸⁸⁹ this account cannot be relied upon.

ii. Two PUCH (PUH) Vehicles of Military Supplies

377. [REDACTED],⁸⁹⁰ [REDACTED].⁸⁹¹ [REDACTED].⁸⁹² [REDACTED].⁸⁹³ As argued above,⁸⁹⁴ it is submitted that delivering weapons for use at the barricades was in furtherance of the defence of the Serbian villages, not in furtherance of a criminal purpose.

378. [REDACTED].⁸⁹⁵ Not a single witness connected to Knin at this time, including Babić, corroborated this account.

⁸⁸² [REDACTED].

⁸⁸³ [REDACTED].

⁸⁸⁴ [REDACTED].

⁸⁸⁵ [REDACTED]; [REDACTED]; Bosnić, D313, paras. 28,64; Bosnić, T.12645.

⁸⁸⁶ [REDACTED].

⁸⁸⁷ [REDACTED].

⁸⁸⁸ P3004.

⁸⁸⁹ [REDACTED].

⁸⁹⁰ [REDACTED]

⁸⁹¹ [REDACTED].

⁸⁹² [REDACTED].

⁸⁹³ [REDACTED].

⁸⁹⁴ See Part II, Section I, paras 217-222.

⁸⁹⁵ [REDACTED].

379. [REDACTED]d.⁸⁹⁶ It is likely that JF-39 adopted this story as his own. In any event, even if one or both of these stories are true, they serve as a useful demonstration of the depth of the fear that prevailed at that time, only reinforcing the defensive nature of Martić's activities.

380. [REDACTED];⁸⁹⁷ [REDACTED] the evidence shows that they were using hunting rifles or reserve weapons taken by Martić from the Knin police station.⁸⁹⁸ [REDACTED].⁸⁹⁹ Had it been true that untrained, inexperienced villagers in rural Croatia were armed with semi-automatic rifles, someone would have known.⁹⁰⁰ At the very least, gossip at the local cafes in the region would have related to the introduction of more advanced weaponry being used in the area. [REDACTED].

381. In the end, the witness was unconvincing. [REDACTED], the witness conceded: "You see, I'm completely confused. It's not that I'm withdrawing any portions of my statement; it's just that I find it very hard to pick out the right words and to give you the right context. Every time I'm recounting the story yet again, the context simply takes me to a different direction".⁹⁰¹ An accurate summation of a dishonest account.

iii. Stanišić did not Provide Cash for expanding the barricades in January 1991 and thus "extending Serb territory"

382. [REDACTED].⁹⁰² The inference that the Prosecution invites the Chamber to draw is that the money was for the barricades, which in turn were in furtherance of forcible transfer.

383. Putting aside the fact that it is not immediately apparent, [REDACTED], how such money would be spent with regard to makeshift barricades, as noted above, there is a huge body of evidence to suggest that the barricades were a clumsy, localised, defensive response.⁹⁰³ There is evidence that in January 1991 Martić had not fully complied with a SFRY Presidency order, and an agreement with Vasiljević, to return all the weapons. Martić

⁸⁹⁶ [REDACTED].

⁸⁹⁷ [REDACTED].

⁸⁹⁸ See for example [REDACTED]; Bosnić:, D313, para.27; DST-43, T.12932; D296, pp.6-7.

⁸⁹⁹ JF-41, T.7952-7956.

⁹⁰⁰ See Part II, Section I, paras 217-222.

⁹⁰¹ JF-39, T.7351.

⁹⁰² [REDACTED].

⁹⁰³ See Part II, Section I, paras 217-222.

noted “the people bought by themselves, nor all the weapons we took from the police station.”⁹⁰⁴ It is likely those on the barricades used these weapons.⁹⁰⁵

384. JF-39 is the only witness to claim something so contrary. [REDACTED].⁹⁰⁶ If JF-39’s account is to be accepted, then Stanišić acted to ensure law and order.

b. Stanišić did not Provide Logistical Assistance to the “SAO Krajina” Police and Financing to set up the Police Stations

385. [REDACTED].

386. Firstly, the account is undermined by the lack of corroborative support. [REDACTED]. [REDACTED]⁹⁰⁷ and [REDACTED].⁹⁰⁸ [REDACTED].⁹⁰⁹

387. As confirmed by other evidence, the principal source of money for the SAO Krajina at this time was charitable donations or sponsorship from sympathetic businesses.⁹¹⁰ This money was kept in the treasury of the SUP Knin, and Martić and his associates were in charge of the allocation of these resources.⁹¹¹ The treasury was part of the common affairs of the SUP Knin. This service was in charge of the finances, including the payment of salaries of the police station.⁹¹² [REDACTED]⁹¹³ [REDACTED].⁹¹⁴

388. [REDACTED].⁹¹⁵ This fabrication alone ought to raise a reasonable doubt.

389. [REDACTED]⁹¹⁶ [REDACTED].⁹¹⁷ [REDACTED].⁹¹⁸ It is curious, to say the least, that not a single receipt recording Stanišić’s cash deliveries and Simatović’s records from duration of Golubić’s three months lifespan, survived.

⁹⁰⁴ D296, p.7.

⁹⁰⁵ D296, pp.6-7.

⁹⁰⁶ [REDACTED].

⁹⁰⁷ [REDACTED].

⁹⁰⁸ [REDACTED].

⁹⁰⁹ [REDACTED].

⁹¹⁰ DST-43, T.12965-12966, [REDACTED]; [REDACTED]; Bosnić, D313, paras 44, 47, 51-52, 54-55; Maksić, T.6856-6857; D314, p.4. (*correction for paras 51, 52*).

⁹¹¹ [REDACTED]; Bosnić, D313, para.53.

⁹¹² [REDACTED].

⁹¹³ [REDACTED].

⁹¹⁴ [REDACTED].

⁹¹⁵ [REDACTED].

⁹¹⁶ [REDACTED].

⁹¹⁷ [REDACTED].

⁹¹⁸ [REDACTED].

390. [REDACTED].⁹¹⁹ It is noteworthy that this source of money was at the forefront of both Martić's and Babić's minds, not the alleged regular and ample supplies allegedly provided by Stanišić.

391. Equally noteworthy, despite Stanišić's alleged critical role in supplying and creating the SAO Krajina police, in 1993, when Martić seeks the assistance of Serbia to help pay his police officers, he fails to address his trusted financier Stanišić. Instead, he addresses Milošević, Šainović and Sokolović.⁹²⁰ Instead, he addresses Stanišić only to *investigate* an alleged theft of money by Orlović.⁹²¹

c. Stanišić did not Provide the Supplies, Including Salaries, for The Golubić Camp⁹²²

392. The Prosecution's dominant thesis as to Stanišić's role revolves around his alleged involvement with the Golubić training camp from April 1991. The Prosecution alleges that Stanišić had a key role in setting up and supplying the camp.⁹²³ The evidence does not prove this case.

393. Babić's assertion that Golubić was set up by the SAO Krajina MUP, Martić, the Serbian DB, Captain Dragan and Simatović was based simply on the fact that "they told me as much".⁹²⁴ He also claimed, again in the form of pure, unsupported assertion, that Stanišić had told him.⁹²⁵ For someone so well placed, Babić's vagueness on the issue casts considerable doubt upon the Prosecution case.

394. The credibility of JF-39 has already been addressed. [REDACTED].⁹²⁶ [REDACTED].⁹²⁷

d. Golubić: A local Endeavour

395. The remaining evidence tells a different story, showing that Golubić was locally constructed and financed. This small enterprise, training only 200-300 men, did not require funding from Belgrade.

⁹¹⁹ [REDACTED].

⁹²⁰ P1552.

⁹²¹ P1556.

⁹²² Indictment, para.3.

⁹²³ Prosecution Pre-trial Brief, para.67.

⁹²⁴ Babić, P1877, p.110.

⁹²⁵ Babić, P1877, p.62.

⁹²⁶ [REDACTED].

⁹²⁷ [REDACTED].

396. [REDACTED].⁹²⁸ [REDACTED].⁹²⁹ [REDACTED].⁹³⁰ [REDACTED].⁹³¹
[REDACTED].⁹³²

397. There was no consistent uniform for the recruits of Golubić. Every group appears to have made its own arrangements.⁹³³ [REDACTED].

398. As for weapons, the same is true. The weapons came from a variety of sources. As confirmed in an exhibit vividly labelled the confessions of a “Chetnik Duke”, the men at Golubić were “mainly armed with hunting rifles”.⁹³⁴

399. As discussed above, the police had access to weapons from the storages of the reserve police (which had been distributed in Knin during the so-called Log Revolution).⁹³⁵
[REDACTED].⁹³⁶ [REDACTED].⁹³⁷

400. [REDACTED].⁹³⁸ [REDACTED].⁹³⁹ [REDACTED].⁹⁴⁰

C. CONCLUSION: NO RELIABLE EVIDENCE OF ANY ASSISTANCE BY STANIŠIĆ TO THE SAO KRAJINA

401. There is no reliable evidence to show that Stanišić was Milošević’s conduit for supplies to the Knin Krajina between 1990-1995. For the reasons advanced, the evidence does not disclose that he was in command of a parallel structure or that he was involved coordinating the financing or supply of the SAO Krajina police.

402. The Defence does not argue that *individuals* from the Serbian Government, including the Serbian MUP and DB, were not involved in providing support to the nascent SAO Krajina police. However, Stanišić did not coordinate this nor was he involved.

⁹²⁸ [REDACTED].

⁹²⁹ [REDACTED].

⁹³⁰ [REDACTED].

⁹³¹ [REDACTED].

⁹³² [REDACTED].

⁹³³ Bosnić, D313, paras 30, 32, 64; [REDACTED].

⁹³⁴ P1181, p.2.

⁹³⁵ See Part II, Section I, paras 217-221.

⁹³⁶ [REDACTED].

⁹³⁷ [REDACTED].

⁹³⁸ [REDACTED].

⁹³⁹ [REDACTED].

⁹⁴⁰ [REDACTED].

403. The evidence shows that prior to August 1991, the supplies came through many different sources - more in the way of personal favours. This was not a concerted plan in furtherance of crime, but an *ad hoc* response to a frightening new reality.

404. In the early days, the SDS supervised the *ad hoc* and defensive supply. [REDACTED].⁹⁴¹ Smuggling was rife.⁹⁴² Even the most powerful politician of that time, Babić, was personally involved in smuggling weapons.⁹⁴³ [REDACTED].⁹⁴⁴ Only later was this assistance institutionalised through the JNA and the federal structures.

405. The Defence accepts that Bogdanović was involved in providing such *ad hoc* assistance to the Croatian Serbs.⁹⁴⁵ Bogdanović is proud of his involvement in assisting the Serbs in the SAO Krajina. Bogdanović admitted that he and the SPS were among the first ones to provide material and other assistance.⁹⁴⁶ Bogdanović was a critical figure in Milošević's party.⁹⁴⁷ He was the natural choice, upon resigning from the Ministry of Interior ([REDACTED]⁹⁴⁸) to chair the Board for the Relationship with Serbs outside Serbia in the Serbian Parliament with a mandate to support the Serbs in Croatia who are in need of protection "from the material and military point of view".⁹⁴⁹ As discussed,⁹⁵⁰ Stanišić was not and never became a member of the SPS.

406. Bogdanović summed up the Serbian MUP's assistance as "help in expertise and, occasionally, with material help...Our help was material, but not very significant in terms of people."⁹⁵¹ His forthright admissions stand in contrast to the Prosecution case, and the caricatured evidence provided by JF-39 and Babić concerning Stanišić.

407. The Serbian MUP obviously provided some communication equipment.⁹⁵² [REDACTED].⁹⁵³ In May 1991, they may have tried to transport telecommunication

⁹⁴¹ [REDACTED].

⁹⁴² Bosnić, D313, paras. 28,64; Bosnić, T.12645.

⁹⁴³ D1512.

⁹⁴⁴ [REDACTED].

⁹⁴⁵ See e.g. [REDACTED]; P2990; D957, p.2.

⁹⁴⁶ D1197.

⁹⁴⁷ D1213, p.3.

⁹⁴⁸ [REDACTED].

⁹⁴⁹ D1165, p.1; see also D1515; D1197.

⁹⁵⁰ See supra, para.98.

⁹⁵¹ P404, p.3.

⁹⁵² P1102, pp.1,3; [REDACTED].

⁹⁵³ [REDACTED]; P2615, pp.1,2.

equipment and battery chargers of the MUP Serbia to Knin.⁹⁵⁴ Tepavčević may have provided assistance for “issues like repairs, car repairs and fuel, vehicle fuel and so on.”⁹⁵⁵ Pokrajac, an employee of the MUP Serbia, may have been transporting telecommunication equipment and battery chargers of the MUP Serbia to Knin.⁹⁵⁶

408. In contradistinction to these individuals, it appears that, in some ill-defined way, Martić regarded the Serbian DB as an impediment to his narcissistic ambitions and clumsy attempts at leadership.

409. [REDACTED] (an “amateurish” affair⁹⁵⁷) [REDACTED].⁹⁵⁸ Drača confirmed this account, noting that Martić forbade any contacts with the Serbian DB until late June 1993.⁹⁵⁹ It would appear unlikely that he was working hand-in-hand with Stanišić at any time.

410. Finally, as discussed in Part III, Section V⁹⁶⁰ [REDACTED].⁹⁶¹ It is submitted that belated evidence is a last minute attempt to shore up an unreliable case. As the aforementioned arguments demonstrate, having failed to prove that Stanišić was in control of armies, he now stands accused of helping the Serb leaders have private conversations. Neither this nor the remainder evidence can be relied upon as evidence of a meaningful contribution to the SAO Krajina or the RSK, let alone supporting a reasonable inference of criminal intent.

⁹⁵⁴ P3004, p.1.

⁹⁵⁵ JF-39, T.7216.

⁹⁵⁶ P3004, p.1.

⁹⁵⁷ P2925, pp.9-10.

⁹⁵⁸ [REDACTED].

⁹⁵⁹ Drača, T.16778-16779.

⁹⁶⁰ See *infra* paras 958-959.

⁹⁶¹ [REDACTED].

**SECTION III. STANIŠIĆ'S ALLEGED CONTRIBUTION IN SBWS/CONTRIBUTION BY STANIŠIĆ
IN COMMAND OR SUPPLY IN SBWS**

I. PROSECUTION CASE

411. The Prosecution alleges that Stanišić acted as a coordinator between Belgrade and the SAO SBWS Government, with Badža handling the operational side on instruction from the DB.⁹⁶² It is alleged that Stanišić provided Badža with directions “on operational matters”.⁹⁶³ It is alleged that Stanišić coordinated supplies of weapons by Kostić (a DB operative) and Kertes into the SBWS through the JNA stores at Bubanj Potok.⁹⁶⁴ Stanišić is also alleged to have controlled and supplied Arkan and his men.⁹⁶⁵

II. DEFENCE CASE

A. DEFICIENT NOTICE

412. Having failed to prove that the DB supplied, or participated, directed or controlled the powerful individuals and entities that administered the SAO SBWS – the JNA, Arkan, and Badža – during the indictment period, the Prosecution’s case shifted in two principal ways: (i) to attempt to attribute *all* the actions of DB operatives in the region (Kojić, Sarac and any others that appear in the Prosecution’s Closing Brief) to Stanišić and (ii) to allege that *all* of Kostić’s actions (not only supply) within the SBWS were at the behest of the DB.

413. Only Kostić is named in the Pre-Trial Brief as participating in arming on behalf of the Serbian DB in SAO SBWS.⁹⁶⁶ Regarding his other activities in SBWS at this time, there was no notice provided.⁹⁶⁷ On the basis of this deficient notice, any attempt to rely upon other aspects of Kostić’s conduct within the framework of the SBWS government, or upon the actions of DB operatives *at all*, as an alleged contribution to the JCE, should be dismissed.

⁹⁶² Prosecution Pre-Trial Brief, para.55.

⁹⁶³ Prosecution Pre-Trial Brief, para.56.

⁹⁶⁴ Prosecution Pre-Trial Brief, paras 85,87.

⁹⁶⁵ Prosecution Pre-Trial Brief, para.75.

⁹⁶⁶ Prosecution Pre-Trial Brief, para.86.

⁹⁶⁷ OTP 98*bis* submissions, T.11392-11393.

B. DEFENCE RESPONSE

414. The Defence submits that Stanišić did not play a coordinating role in the SBWS. He did not procure Arkan to commit crimes. He did not procure Kostić to supply arms.

415. In the event that the Trial Chamber allows the other actions of Kostić, and the conduct of DB operatives, Kojić and Sarac, to be considered, it is submitted that they were not acting at the behest of Stanišić, except with regard to intelligence gathering. It is submitted that their *de jure* status as an operative within the DB cannot replace a principled analysis directed at assessing whether their activities in assisting the SBWS administration was at Stanišić's behest.

3. Stanišić was not the Go-Between for Belgrade and the SAO SBWS Government⁹⁶⁸

416. Arkan, the JNA and Badža were the most significant controlling factors within the SBWS from August 1991. This triumvirate did not rely upon Stanišić for coordination or direction. This was wholly unnecessary, as they were organised and otherwise coordinated with the Serbian Government directly. This will be discussed below.

a. **Badža was Milošević's Protégé and Coordinated Activities in SAO SBWS**

417. The alleged coordinating role by Stanišić rests upon him providing directions to Badža after his arrival to the region in September 1991.⁹⁶⁹ There is not a single piece of reliable evidence to support the assertion that Badža took orders, or even advice, from Stanišić.

418. [REDACTED] suggested that there were rumours that Badža was subordinated to the DB.⁹⁷⁰ His willingness to falsely implicate the DB is dealt with in Part III, Section V⁹⁷¹ and Confidential Annex III-C.

419. [REDACTED]⁹⁷² [REDACTED].⁹⁷³ [REDACTED].⁹⁷⁴ [REDACTED].⁹⁷⁵

420. [REDACTED],⁹⁷⁶ [REDACTED].⁹⁷⁷ [REDACTED].⁹⁷⁸

⁹⁶⁸ Prosecution Pre-Trial Brief, para.55.

⁹⁶⁹ Prosecution Pre-Trial Brief, para.55.

⁹⁷⁰ Kovačević, T.6796, T.6810-6811.

⁹⁷¹ Paras 984-998.

⁹⁷² [REDACTED].

⁹⁷³ [REDACTED].

⁹⁷⁴ [REDACTED].

⁹⁷⁵ [REDACTED].

421. [REDACTED] testified that Badža coordinated the creation and organisation of the SBWS police and TO directly through Hadžić. He took a “hands on approach”, attending meetings in Novi Sad SUP where he obtained the necessary supplies.⁹⁷⁹ Logically, he had no issue with transporting these supplies. [REDACTED].⁹⁸⁰ Having arrived as a MUP “volunteer”, and working in coordination with the JNA, it is reasonable to infer that prior to this time, he had no trouble at the borders.

422. [REDACTED].⁹⁸¹ [REDACTED],⁹⁸² the Chief of the main staff of the VJ.⁹⁸³ It is instructive that no special telephone line went to the DB. [REDACTED].⁹⁸⁴

423. As discussed, Badža’s relationship with Milošević’s developed throughout the indictment period. The evidence suggests his MUP forces became Milošević’s Praetorian Guard and Badža his *de facto* enforcer. [REDACTED].⁹⁸⁵ [REDACTED].⁹⁸⁶

424. [REDACTED]. [REDACTED]. [REDACTED].⁹⁸⁷

425. This brief analysis of evidence provides a considerably more plausible account of Badža’s *de facto* authority within the SBWS than the fanciful suggestion that Stanišić directed Badža or otherwise coordinated his contact with Belgrade.

b. Stanišić Was Not the Contact Person for the SBWS Leadership

426. Stanišić did not act as a coordinator between the Serbian and SAO SBWS Governments. Rather than proffering concrete evidence showing that Stanišić actually did *something*, the Prosecution case against Stanišić is predicated on rumours of his alleged presence at meetings in Belgrade. It is submitted that mere presence at meetings, especially with regard to the work of an intelligence chief, cannot be the basis for an inference of participation in activities in pursuance of crimes.

⁹⁷⁶ [REDACTED].

⁹⁷⁷ [REDACTED].

⁹⁷⁸ [REDACTED].

⁹⁷⁹ Bogunović, T.5995-5996.

⁹⁸⁰ [REDACTED].

⁹⁸¹ [REDACTED].

⁹⁸² [REDACTED].

⁹⁸³ DFS-4, T.17573.

⁹⁸⁴ [REDACTED].

⁹⁸⁵ D270, para.64.

⁹⁸⁶ [REDACTED].

⁹⁸⁷ [REDACTED].

427. Babić characteristically made extravagant claims. He alleged that Hadžić was under Milošević's control through Stanišić. Stanišić would accompany Hadžić to the Presidency of Serbia and he would even stay over at Stanišić's apartment.⁹⁸⁸ Had their been an iota of truth to these claims, the Prosecution would have adduced some of the necessary corroboration for this 92*quater* witness.

428. Conversely, the other SBWS Prosecution witnesses (albeit, reluctantly at times) provided accounts that provided a more accurate insight into Stanišić's role. He acted within the remit of his intelligence tasks - gathering intelligence. The little direct evidence with regard to Stanišić playing any role towards the SBWS provides persuasive proof that he did not play the role alleged. No doubt the Prosecution will assert that Stanišić "acted in the shadows", but inferences may still be drawn. This is misconceived as the available evidence shows.

429. [REDACTED].⁹⁸⁹ [REDACTED].⁹⁹⁰ [REDACTED].⁹⁹¹ [REDACTED].⁹⁹²
[REDACTED].⁹⁹³

430. [REDACTED] claimed that Hadžić told him that Stanišić was the link between Milošević and Badža.⁹⁹⁴ According to him, Hadžić went to see Milošević with Stanišić, on the eve of the setting up of SAO Krajina Government. Hadžić gave the witness the *impression* that Stanišić was present at all of his meetings with Milošević between January and August 1991. He *believed* that there were four such meetings between May and August 1991.⁹⁹⁵ Despite being the former Minister of Interior for SBWS in 1991, he had to concede that he not seen anything to corroborate these impressions throughout the whole of 1991 and 1992.⁹⁹⁶ Hadžić said he had met Stanišić and spoken but "did not specify any instructions" purportedly given.⁹⁹⁷

⁹⁸⁸ Babić, P1878, pp.230-231.

⁹⁸⁹ [REDACTED].

⁹⁹⁰ [REDACTED].

⁹⁹¹ [REDACTED].

⁹⁹² [REDACTED].

⁹⁹³ [REDACTED].

⁹⁹⁴ Bogunović, T.6062-6063.

⁹⁹⁵ Bogunović, T.5972-5973.

⁹⁹⁶ Bogunović, T.6062-6063.

⁹⁹⁷ Bogunović, T.6043.

431. [REDACTED] confirmed that he attended a meeting between the SAO Krajina and the Serbian Government (just before the SAO SBWS was unified with Knin, Dalmatia, and Western Slavonia). Stanišić took notes and rarely spoke.⁹⁹⁸

432. [REDACTED].⁹⁹⁹ [REDACTED].¹⁰⁰⁰

433. [REDACTED].

4. The SBWS Triumvirate: Badža, Arkan, and the JNA

a. Arkan's Tigers were Not Supplied or Otherwise Controlled by Stanišić

i. Stanišić did not Supply Arkan's Tigers

434. Despite this being one of the linchpins of the Prosecution case in the indictment, it is crystal clear that the DB had no relationship with Arkan or his men between 1991-1994. The DB's relationship with ex-members of the Arkan's men will be discussed in Part III, Section VI¹⁰⁰¹ and in Part III, Section IX.¹⁰⁰²

435. There can be no doubt that Arkan was very well connected to ministers and senior politicians, as well as senior men in the JNA.¹⁰⁰³ [REDACTED].¹⁰⁰⁴ Subsequently, he built and maintained a variety of relationships that served his criminal ends. [REDACTED].¹⁰⁰⁵ [REDACTED].¹⁰⁰⁶ [REDACTED]. [REDACTED].¹⁰⁰⁷

436. [REDACTED],¹⁰⁰⁸ [REDACTED].¹⁰⁰⁹

437. In the SBWS, Arkan's Centre may also have been established at the expense of the Serbian MOD.¹⁰¹⁰ There is also evidence that he was financed directly through the SBWS government.¹⁰¹¹ [REDACTED].¹⁰¹²

⁹⁹⁸ Bogunović, P554, paras 11-12.

⁹⁹⁹ [REDACTED].

¹⁰⁰⁰ [REDACTED].

¹⁰⁰¹ Paras 1029-1030, 1046-1050, 1057-1070.

¹⁰⁰² Paras 1218-1247.

¹⁰⁰³ [REDACTED]; D391, p.2.

¹⁰⁰⁴ [REDACTED].

¹⁰⁰⁵ [REDACTED]; JF-35, T.1879; P1164, p.9; JF-35, T.1809.

¹⁰⁰⁶ [REDACTED].

¹⁰⁰⁷ [REDACTED].

¹⁰⁰⁸ D338, p.5 (US); P2408, p.4.

¹⁰⁰⁹ [REDACTED].

¹⁰¹⁰ [REDACTED]; D103, p.2.

438. He was supplied by the JNA with weaponry (even tanks), sometimes against the instructions of the leadership of the JNA/VJ.¹⁰¹³ [REDACTED].¹⁰¹⁴

ii. Evidence Relating to Arkan Receiving Weapons from the Serbian DB Lacks Probative Value

439. The little evidence implicating the DB in supplying Arkan has no probative value.

440. First, as shown in Confidential Annex III-C, B-215's claim that the DB approved Arkan's Tigers existence,¹⁰¹⁵ and that Arkan carried a DB ID card with him were plainly lies that he could not sustain.¹⁰¹⁶

441. The remainder of the evidence was equally speculative and unreliable, based on the ease with which Arkan operated or the sophistication of his military supplies. The thesis advanced was that because Arkan's men were able to travel freely and obtain high quality uniforms and weaponry; they must have been under the DB control.¹⁰¹⁷

442. It is submitted that these conclusions are obviously ill-founded. As is overwhelmingly clear, the Serbian MUP (including Badža), the Customs and the JNA/VJ controlled the borders thereby giving them control over freedom of movement.¹⁰¹⁸ Arkan and Badža's TO controlled the movement into and around the SBWS.¹⁰¹⁹ The sophisticated weaponry that Arkan possessed had nothing to do with the DB but was in the hands of the Serbian MUP and the JNA.¹⁰²⁰

¹⁰¹¹ P331, P332, P333, pp.4. P333 is to be read in conjunction with P331-P332.

¹⁰¹² [REDACTED].

¹⁰¹³ D753, pp.15,18; D696, p.1; [REDACTED].

¹⁰¹⁴ [REDACTED].

¹⁰¹⁵ B-215, P53, para.7.

¹⁰¹⁶ B-215, T.2144; B-215, P53, pp.1-2.

¹⁰¹⁷ B-215, T.6811; [REDACTED].

¹⁰¹⁸ See Part III, Section V.

¹⁰¹⁹ B-215, T.2151 [REDACTED].

¹⁰²⁰ D273, pp.1,3 (US); D742, p.1; P1078, p.4.

b. Badža and the Serbian Ministry of Defence Cooperated Closely with the JNA and Arkan, not Stanišić

443. Arkan, the JNA and Badža constituted a power triumvirate in the SBWS that was all-controlling and encompassing. Close cooperation between the three is more than established on the evidence.¹⁰²¹

444. [REDACTED].¹⁰²² [REDACTED].¹⁰²³

445. C-15, [REDACTED],¹⁰²⁴ described the pivotal role played by the Erdut Centre in the military preparations from August 1991 through to the end of the year. He agreed that the JNA had, “for a while” taken care of the equipment, supplies, and weapons for the TO at the Erdut training camp. The centre in Erdut had been “used by the JNA, by Arkan, by the special forces and also the Krajina army.... [s]o everyone actually passed through that TO centre”.¹⁰²⁵

c. Stanišić is Not Responsible for Supplies from Novi Sad SUP to SBWS Police

446. [REDACTED].¹⁰²⁶ [REDACTED].¹⁰²⁷ [REDACTED].¹⁰²⁸

447. [REDACTED].¹⁰²⁹ He did not implicate Stanišić in his account. [REDACTED].¹⁰³⁰ [REDACTED].¹⁰³¹ Witness JF-15 confirmed JF-32’s lies. [REDACTED].¹⁰³²

448. Be that as it may, rather than these supplies being organised by Stanišić, they were coordinated between the Federal SUP, Badža, Kertes, Markov, the Secretary at SUP Novi Sad, and one of the deputies, Sikimić.¹⁰³³ [REDACTED].¹⁰³⁴

d. The Principal Role for Kojić and Kostić Involved Law and Order Functions

449. [REDACTED].¹⁰³⁵ [REDACTED].¹⁰³⁶ [REDACTED].¹⁰³⁷ [REDACTED]. [REDACTED].¹⁰³⁸

¹⁰²¹ See e.g. D196, p.1; see also [REDACTED]; Bogunovic, T.5988; P553, para.45.

¹⁰²² [REDACTED].

¹⁰²³ [REDACTED].

¹⁰²⁴ [REDACTED].

¹⁰²⁵ C-015, T.1658-1659.

¹⁰²⁶ [REDACTED].

¹⁰²⁷ [REDACTED].

¹⁰²⁸ [REDACTED].

¹⁰²⁹ [REDACTED].

¹⁰³⁰ [REDACTED].

¹⁰³¹ [REDACTED].

¹⁰³² [REDACTED].

¹⁰³³ Bogunović, P553, paras 13-14; Bogunović, T.5974-5975, T.5995-5997, T.6009-6011; [REDACTED].

¹⁰³⁴ [REDACTED].

450. Badža, despite his alliance with Arkan, was responsible for coordinating this restoration of law and order to the region. [REDACTED].¹⁰³⁹

5. Stanišić's Alleged Contribution to SBWS Through DB Operatives

451. As noted above, having failed to show that Stanišić was acting in concert directly with Badža, Arkan or the JNA in the SBWS, the Prosecution will seek to rely upon his professional-operative relationship with Kojić, Kostić and Sarac. Having failed to provide notice, it is not known how the Prosecution will put its case in relation to these individuals.

452. The Defence submits that the Prosecution has failed to show that these DB operatives acted at the behest of Stanišić in furtherance of the common purpose. Clear evidence, beyond *de jure* status, must be adduced to show that Stanišić explicitly or implicitly *requested* the non-JCE member to commit such a crime *or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member* to commit the crime in furtherance of the common purpose.

453. It is submitted that the burden of proof is an onerous one, particularly in light of the clear evidence of their intelligence function. The DB had a number of operatives in the SBWS region, as either full or part-time operatives, gathering intelligence. This includes Kojić, Kostić, Sarac, Glušica,¹⁰⁴⁰ and Lemić.¹⁰⁴¹ Kojić, Kostić, and Sarac will be addressed below.

a. Kojić

454. Kojić's *de jure* status as either a member of the Serbian MUP or DB is a wholly inadequate basis for concluding that he was acting at the behest of Stanišić in furtherance of his functions in SBWS, or, more crucially, in furtherance of crime.¹⁰⁴²

i. Relationship with the Serbian MUP/DB

455. Kojić's comments during his 15 February 2008 police interview, where he claims to have been subordinated to Stanišić *after* the Vukovar operations,¹⁰⁴³ cannot replace the

¹⁰³⁵ [REDACTED].

¹⁰³⁶ [REDACTED].

¹⁰³⁷ [REDACTED].

¹⁰³⁸ [REDACTED].

¹⁰³⁹ [REDACTED].

¹⁰⁴⁰ [REDACTED]; DST-74, D334, paras 41-42; DST-7, T.13191-13192.

¹⁰⁴¹ DST-74, D334, paras 41-42; DST-74, T.13191-13192; Djukić, T.18029-18030; [REDACTED]; *see e.g.* D400, D401, [REDACTED], D406, [REDACTED], D205; [REDACTED].

¹⁰⁴² [REDACTED].

rigorous analysis necessary before his actions might be considered to have been at the behest of Stanišić.

456. While the Prosecution will claim that this is evidence that incriminates Stanišić, it must be seen in context. First, Kojić gave this account in the context of being arrested for allegedly committing a crime unrelated to this case.¹⁰⁴⁴ He needed status to exculpate him from this potential trouble. Being an ex-member of the SAO SBWS or RSK government did not provide this comfort, so he stated that he was a DB member (after all, neither existed by that point).

457. Second, it should be noted, that Kojić states he was subordinated “as an SDB operative”, not generally, or with regard to his SBWS functions.¹⁰⁴⁵ An operative’s role in the DB was to collect intelligence.¹⁰⁴⁶ Thirdly, the contents of document, if reliable, suggest that Kojić was subordinated to Stanišić only after early 1992. [REDACTED].¹⁰⁴⁷ [REDACTED]¹⁰⁴⁸ and thereafter the Vance plan was signed.¹⁰⁴⁹

458. Finally, Kojić’s retrospective claim must be seen in light of his conduct at the relevant time. During 1992-1995, Kojić did not claim that he was Stanišić’s “man” or otherwise suggest he was acting on behalf of the DB in his various SBWS positions. [REDACTED].¹⁰⁵⁰ [REDACTED].¹⁰⁵¹ [REDACTED];¹⁰⁵² a meeting which almost certainly did not take place.¹⁰⁵³

459. Even if he had sought to exercise the DB’s aims and objectives – whatever they might have been - he had no opportunity to impose dictates. The SBWS government plainly worked on a one-man/one-vote principle. No witness suggested that Kojić’s vote counted more than others.¹⁰⁵⁴ With the triumvirate controlling the region, it is clear that it did not.

¹⁰⁴³ P1698, p.3.

¹⁰⁴⁴ P1698, p.4.

¹⁰⁴⁵ P1698, p.3.

¹⁰⁴⁶ See Part I, Section I, paras 179-181.

¹⁰⁴⁷ [REDACTED].

¹⁰⁴⁸ [REDACTED]

¹⁰⁴⁹ First Decision on Adjudicated Facts (Prosecution), Fact 19.

¹⁰⁵⁰ [REDACTED].

¹⁰⁵¹ [REDACTED].

¹⁰⁵² [REDACTED].

¹⁰⁵³ *Supra*, paras 446-448.

¹⁰⁵⁴ See Bogunović, T.6049-6056.

ii. The Prosecution has not shown Kojić to be Acting at the Behest of Stanišić in Furtherance of Crime

460. [REDACTED] alleged that Kojić was responsible for the first distribution of weapons to Serbs in the region of Vukovar in August 1990.¹⁰⁵⁵ [REDACTED].¹⁰⁵⁶ If Kojić's 2008 interview (as referenced above) is accepted as reliable, he was not an operative with the DB at that time. He was a member of the Public Security.¹⁰⁵⁷ Significantly, [REDACTED] admitted he did not know the difference between the Public and State Security.¹⁰⁵⁸

461. [REDACTED] also claimed that Kojić confessed to receiving weapons from Stanišić in 1990.¹⁰⁵⁹ This evidence cannot implicate Stanišić in arming the SBWS, as the Prosecution has unconvincingly claimed.¹⁰⁶⁰ The Prosecution rests its case on nothing more than [REDACTED]'s claim that that he visited Kojić's flat, who showed him some old weapons and confessed that Stanišić gave them to him.¹⁰⁶¹ Despite discussing Kojić's arming activities in his 2002/2003 statements, he had failed to mention the Stanišić tale until he was proofed in 2007, in preparation for the Stanišić trial.¹⁰⁶²

462. [REDACTED] attempted to bolster his account by claiming that it must have been the DB since it was not possible to buy weapons easily at that time.¹⁰⁶³ He later conceded the obvious truth, however, acknowledging that it was possible to buy these old weapons on the black market.¹⁰⁶⁴

463. At best, if this clumsy attempt to implicate Stanišić is accepted, it shows that Stanišić gave Kojić some old weapons for self-defence or defensive/law and order purposes. It cannot form the basis of a conclusion that Stanišić was involved in systemic arming of the region. As argued above Part II, Section I, it is not reasonable to suggest that this type of ad hoc arming in 1990 (or any time prior to August 1991) was in furtherance of an alleged criminal purpose. Arming during this period was in furtherance of an uncoordinated defence of the region.

¹⁰⁵⁵ [REDACTED] T.1758-1759.

¹⁰⁵⁶ [REDACTED].

¹⁰⁵⁷ P1698, p.3.

¹⁰⁵⁸ [REDACTED], T.1848-1849.

¹⁰⁵⁹ [REDACTED], T.1759.

¹⁰⁶⁰ Prosecution Rule 98bis Submissions, T.11393.

¹⁰⁶¹ [REDACTED], T.1758-1759, T.1843-1844, T.1850.

¹⁰⁶² [REDACTED], T.1841-1845.

¹⁰⁶³ [REDACTED], T.1844.

¹⁰⁶⁴ [REDACTED], T.1840, T.1854.

iii. Kojić's Other Roles During the Indictment Period Were Not in Furtherance of Crime

464. Various witnesses attributed a number of *de jure* roles to Kojić during the indictment period. Witnesses seemed genuinely uncertain how to define his title or function during 1991-1995. [REDACTED],¹⁰⁶⁵ [REDACTED],¹⁰⁶⁶ [REDACTED]¹⁰⁶⁷ [REDACTED].¹⁰⁶⁸

465. Rather than these alleged posts being an indication of Kojić's authority, the confusion is a direct result of his lack of *de facto* authority and his failure to pursue the objectives of the triumvirate. [REDACTED].¹⁰⁶⁹ At some point in 1991, Kojić may have been *de jure* in charge of the TO, purportedly coordinating with the JNA. However, "[n]othing could be done without the JNA's approval".¹⁰⁷⁰ Moreover, "he also had no influence over day-to-day operations and had no authority to give instructions to the TO on the ground".¹⁰⁷¹

466. [REDACTED].¹⁰⁷² The JNA, in charge of military activities in SBWS, did not even consult with the SAO SBWS government regarding military matters.¹⁰⁷³ Kojić had nothing to do with the arming; the JNA used their people.¹⁰⁷⁴ [REDACTED].¹⁰⁷⁵

467. Trying to sift through this confused picture, Kojić's *de facto* role in 1990 – 1995 is more accurately described as that of a police officer.¹⁰⁷⁶ [REDACTED].¹⁰⁷⁷ [REDACTED]¹⁰⁷⁸ [REDACTED].¹⁰⁷⁹ [REDACTED]¹⁰⁸⁰ [REDACTED].¹⁰⁸¹

468. [REDACTED].¹⁰⁸² [REDACTED].¹⁰⁸³ As confirmed by the evidence, whilst this may have been unwise, it cannot reasonably be considered to be in furtherance of crime.¹⁰⁸⁴

¹⁰⁶⁵ [REDACTED].

¹⁰⁶⁶ [REDACTED].

¹⁰⁶⁷ [REDACTED].

¹⁰⁶⁸ [REDACTED].

¹⁰⁶⁹ [REDACTED].

¹⁰⁷⁰ Bogunović, P553, para.56.

¹⁰⁷¹ Bogunović, P553, para.56.

¹⁰⁷² See [REDACTED].

¹⁰⁷³ Bogunović, P553, paras 10-11, 22.

¹⁰⁷⁴ Bogunović, T.6025.

¹⁰⁷⁵ [REDACTED].

¹⁰⁷⁶ [REDACTED]; JF-32, T.4776.

¹⁰⁷⁷ [REDACTED].

¹⁰⁷⁸ [REDACTED].

¹⁰⁷⁹ [REDACTED].

¹⁰⁸⁰ [REDACTED].

¹⁰⁸¹ [REDACTED].

¹⁰⁸² [REDACTED].

469. Regarding arming, the mass arming of the population only took place after the JNA's intercession in August 1991.¹⁰⁸⁵ [REDACTED].¹⁰⁸⁶ [REDACTED]. [REDACTED].¹⁰⁸⁷

470. Unsurprisingly, Kojić's efforts to ensure law and order put him in conflict with Arkan. Arkan "interfered a lot, primarily with Ilija Kojić."¹⁰⁸⁸ [REDACTED].¹⁰⁸⁹ Arkan and his cohorts regarded Kojić as an impediment to their criminal ambitions.¹⁰⁹⁰ [REDACTED].¹⁰⁹¹

b. Kostić

471. The Prosecution claims that Kostić worked with Stanišić to establish the SBWS police and to co-ordinate military supplies - the transfer of "huge quantities" of weapons from Serbia¹⁰⁹² - to the SBWS. The Prosecution also alleges that Kostić was involved in forming the SAO SBWS *Milicija* - former police members - and oversaw their equipment with weapons through the Novi Sad DB.¹⁰⁹³

i. De jure Status within the DB

472. It is accepted that Kostić was a DB operative from December 1990.¹⁰⁹⁴ Similar to Kojić, the Prosecution relies almost exclusively upon Kostić's *de jure* status as a DB operative as evidence that all actions taken by Kostić were done at the behest of Stanišić. In light of Kostić's obvious intelligence gathering function,¹⁰⁹⁵ the Prosecution have a heavy burden of proof to discharge to show that other activities were *also* at the behest of Stanišić.

473. Moreover, despite Kostić's *de jure* status as a DB operative, not a single witness stated that Kostić invoked his DB status to gain authority within the SBWS region. [REDACTED].¹⁰⁹⁶ [REDACTED].¹⁰⁹⁷

¹⁰⁸³ [REDACTED].

¹⁰⁸⁴ See Part II, Section I.

¹⁰⁸⁵ Bogunović, T.6023, 6025.

¹⁰⁸⁶ [REDACTED].

¹⁰⁸⁷ [REDACTED].

¹⁰⁸⁸ Bogunović, P553, para.45.

¹⁰⁸⁹ [REDACTED].

¹⁰⁹⁰ See Djukić, T.18017-18018; Bogunović, T.6036-6037; [REDACTED].

¹⁰⁹¹ [REDACTED].

¹⁰⁹² Prosecution Opening Statement, T.1491.

¹⁰⁹³ Prosecution Opening Statement, T.1490-1491, T.1493.

¹⁰⁹⁴ [REDACTED].

¹⁰⁹⁵ [REDACTED]; JF-36, T.4273-4274; [REDACTED].

¹⁰⁹⁶ [REDACTED].

¹⁰⁹⁷ [REDACTED].

474. JF-32, [REDACTED] attempted to implicate Stanišić, claiming that Kostić was “constantly employed by the MUP of Serbia, the State Security” and that “[h]e was their man who came to our area daily”.¹⁰⁹⁸ However, when challenged, JF-32 was unable to identify who gave him orders in 1991 and 1992.¹⁰⁹⁹

475. [REDACTED].¹¹⁰⁰

476. [REDACTED].¹¹⁰¹ [REDACTED].¹¹⁰²

ii. *De Facto Authority in SBWS*

a) Kostić was not Superior to All in SBWS

477. [REDACTED].¹¹⁰³ [REDACTED].¹¹⁰⁴ His role thereafter appears to have been limited to that region.

478. Kostić was not visible in the region. [REDACTED].¹¹⁰⁵ [REDACTED]. [REDACTED].¹¹⁰⁶

479. Further, Bogunović, the former Ministry of Interior of SBWS,¹¹⁰⁷ had no dealings with Kostić. Indeed, he did not know him at all until they met in the MUP building of the Sirmium-Baranja region in 1993.¹¹⁰⁸ He testified that Kostić did not attend any government meeting and that he never gave him any order.¹¹⁰⁹ [REDACTED].¹¹¹⁰ [REDACTED]¹¹¹¹ [REDACTED].¹¹¹²

480. [REDACTED]. [REDACTED].¹¹¹³ [REDACTED].¹¹¹⁴

¹⁰⁹⁸ JF-32, T.4701.

¹⁰⁹⁹ JF-32, T.4701.

¹¹⁰⁰ [REDACTED].

¹¹⁰¹ [REDACTED].

¹¹⁰² [REDACTED].

¹¹⁰³ [REDACTED].

¹¹⁰⁴ [REDACTED].

¹¹⁰⁵ [REDACTED].

¹¹⁰⁶ [REDACTED].

¹¹⁰⁷ Bogunović, P553, para.8.

¹¹⁰⁸ Bogunović, T.6030-6031.

¹¹⁰⁹ Bogunović, T.6030.

¹¹¹⁰ [REDACTED].

¹¹¹¹ [REDACTED].

¹¹¹² [REDACTED].

¹¹¹³ [REDACTED].

¹¹¹⁴ [REDACTED].

481. [REDACTED].¹¹¹⁵ However, this *de jure* title should be examined with care. It cannot be relied upon to suggest that he was the second in command to Martić in the RSK. In sum, Kostić's post as Assistant Minister appears to have been limited to a liaison role in Baranja. [REDACTED].¹¹¹⁶ JF-32 had testified that Baranja and Eastern Slavonia were administered almost as "two separate areas... there was little coordination" between the two areas.¹¹¹⁷ As confirmed by JF-32, "[w]e knew very little about Baranja and what went on there, so I can't speak about that at all."¹¹¹⁸

b) Stanišić did not Coordinate with Kostić and Šarac to Supply SBWS

482. The Defence relies upon its submissions in Part II, Section II, concerning Stanišić's alleged role in arming through through the JNA stores at Bujanj Potok.¹¹¹⁹

483. [REDACTED]. As discussed above, only Kostić appears in the Pre-Trial Brief as participating in arming on behalf of the Serbian DB in SAO SBWS.¹¹²⁰

484. [REDACTED].¹¹²¹ However, JF-32's evidence was replete with contradictions. [REDACTED].¹¹²²

485. [REDACTED].¹¹²³ [REDACTED].¹¹²⁴

III. CONCLUSION: STANIŠIĆ MADE NO CONTRIBUTION TO THE SAO KRAJINA, SAO SBWS OR RSK

486. In sum, the Prosecution placed Stanišić at the helm of the events. This characterisation has been shown to be false. Stanišić was not acting in the shadows in furtherance of a criminal purpose. As the evidence shows, he was not involved, except when in furtherance of his intelligence gathering function. The Prosecution case that suggests otherwise is inconsistent, contradictory and a poor basis for inferring otherwise.

¹¹¹⁵ [REDACTED].

¹¹¹⁶ [REDACTED].

¹¹¹⁷ JF-32, T.4702.

¹¹¹⁸ JF-32, T.4702.

¹¹¹⁹ See also Prosecution Pre-Trial Brief, paras 85,87.

¹¹²⁰ Prosecution Pre-Trial Brief, para.86.

¹¹²¹ [REDACTED].

¹¹²² [REDACTED].

¹¹²³ [REDACTED].

¹¹²⁴ [REDACTED].

SECTION IV. FRUŠKA GORA AND THE ANTI-TERRORIST UNIT (SEPTEMBER 1991 – EARLY MARCH 1992)

I. PROSECUTION CASE

487. The Prosecution alleges that from the first group of trainees in Golubić, 28 men were identified as being the most qualified. Among them was Zivojin Ivanović *aka* Zika Crnogorac, Dragan Filipović *aka* Fico and Radojica (Rajo) Božović, who represented the core group of the DB's Special Unit.¹¹²⁵ After Golubić, Stanišić and Simatović, using the “28” men trained at Golubić, established 26 other further training camps in Serb held areas in Croatia and BiH as well as in Serbia.¹¹²⁶ In June 1992, Simatović informed Serb municipal leaders from Bratunac, Višegrad and Zvornik that training camps were to be established and that volunteers from the municipalities had to be sent there for training.¹¹²⁷ Local Serbs, in particular Martić's police, volunteers from Croatia, BiH and Serbia and other special units were trained in 26 training camps by the 28 “Elite Trainers”. Those trained, approximately 5,000,¹¹²⁸ were deployed throughout the targeted territories in Croatia and BiH.¹¹²⁹ The “new men” regarded themselves as under the command of the MUP Serbia, even when they joined with other forces.¹¹³⁰

488. According to the Prosecution, the “28 Elite Trainers” (also known as the “Red Berets”) were also involved in combat operations in BiH and “provide(d) important support in the liberation of all areas of the Republic of Serbian Krajina”.¹¹³¹ The “28 Elite Trainers” commanded the Special Forces of the DB to participate in the persecution campaigns and the crimes in the Indictment. They were involved in committing crimes in Ilok, Vukovar Bapska, Mohovo, Opatovac, and Grabovac (“SAO SBWS”) from 1991.¹¹³²

489. Following the setting up of training camps at Ilok, and Tito's castle in Tikveš, Baranja, the DB special units based in these places would carry out operations in the Baranja region.¹¹³³

¹¹²⁵ Prosecution Pre-Trial Brief, para.70.

¹¹²⁶ *Ibid*, para.69.

¹¹²⁷ *Ibid*.

¹¹²⁸ *Ibid*, para.71.

¹¹²⁹ *Ibid*, para.28.

¹¹³⁰ *Ibid*, para.71.

¹¹³¹ *Ibid*, para.72.

¹¹³² *Ibid*.

¹¹³³ *Ibid*.

490. In sum, the prosecution allege that Stanišić and Simatović are responsible for persecutions, murder and forcible transfer committed by the “28 Elite Trainers” and men under their command.¹¹³⁴

II. DEFENCE CASE

491. The Prosecution’s central thesis makes good television but has little basis in fact or reality. Like all good fiction, it contains a sprinkling of truth that can be manipulated and embellished to create a colourful tale.

492. As will be further demonstrated in this section, having seen that its case concerning the “28 Elite Trainers” was not supported by evidence, the Prosecution will attempt to rest Stanišić’s liability on a more nebulous, non-exhaustive, “Unit”. In sum, the Prosecution will attempt to use *any* link, however tenuous, between Stanišić’s *de jure* position as Chief of the DB and any man on the ground during the five-year indictment period designated, mostly by self-assertion, to be a member of the Serbian DB. Instead of a “tools test”, whereby the Prosecution, to impute action by non-JCE members to a JCE member, must show that a perpetrator was used by Stanišić in furtherance of the common purpose;¹¹³⁵ the Prosecution’s strategy has turned to attributing the actions of anyone who regarded themselves as a member of a group referred to as the Red Berets, or were regarded by others to be Red Berets, to the first Accused - with little other than a vague association with the DB and a red hat.

493. It is obvious there was no “28 elite trainers”, or even another DB sponsored group, that makes the title “Unit” meaningful in a military setting. The Prosecution has failed to identify any organisation or basic structures that would warrant such a designation. A military unit, in any common sense interpretation of the word, can and must be defined in a criminal trial: by its men; their roles, the chain of command and the manner in which these men are dispatched as a training or combat team. Apart from identifying the “28 elite trainers”, (the men who went to Fruška Gora),¹¹³⁶ there has been no serious attempt to identify such features. Even with the “28 Elite Trainers”, the Prosecution chose, for the most part, not to explain how the “28 Elite Trainers” went about their business of training or contributing to the war or the criminal purpose.¹¹³⁷ Meaningful notice, based on meaningful evidence, demanded at least

¹¹³⁴ Indictment, paras 22, 25, 46-50, 51-54.

¹¹³⁵ *Supra*, para.19.

¹¹³⁶ P1001.

¹¹³⁷ See Part I, Section I.

that the Defence were told which of the 28 went to which region to organise which of the 26 training bases.

494. Further, having failed to identify these details in the evidence, the Prosecution attempts to “fill” the chasm with retrospective claims from Slišković and JF-48. Claiming, from observations in 1994, that the DB had a paramilitary unit since 1991, because as “[a]s far as I can tell, this group existed as a fighting unit since the time of Captain Dragan’s training camp near Knin, in 1991”¹¹³⁸ or “[t]here were definitely more training camps and facilities elsewhere that were unknown to us at the time”¹¹³⁹. [REDACTED].¹¹⁴⁰

495. Plainly, this type of speculation is an inadequate substitution for meaningful notice or evidence. The Prosecution theory of “28 Elite Trainers” is a fiction. In the hundreds of thousands of pages of military documentation arising out of this conflict and from Croatia, BiH and Serbia, little of it even mentions a Red Beret Unit, let alone one constituted from one or more of the 28. The Prosecution, it must be assumed, presented all the relevant documents during its case. This dearth of evidence presented to support such a supposedly massive enterprise, demonstrates the flawed underpinnings of the Prosecution case.

496. As Part I, Section I shows, the Prosecution theory rests on two demonstrably inaccurate claims: (i) that the Red Beret Unit, said to be the core group of the DB’s Special Operations Unit, were “*mainly* used to train volunteers” at DB camps in Croatia, BiH and Serbia, allegedly training 5,000 recruits, all “under the authority and direction” of Stanišić,¹¹⁴¹ and (ii) that this Unit or their predecessors in the Special Operations Unit, went on to play an important controlling, coordinating or supporting role in the military operations in Croatia and BiH.¹¹⁴²

497. The evidence exposes the truth. It shows that Stanišić only had control over one unit, referred to as the Red Berets at the time, from August / September 1991 until end February 1992, as part of his aim to create an anti-terrorist unit (“the ATU”). During this period, the ATU did not commit any crimes. In early March 1992, the plan for a DB-sponsored ATU was

¹¹³⁸ Slišković, P440, para.3.

¹¹³⁹ Slišković, P441, para.25 (PPCE).

¹¹⁴⁰ [REDACTED].

¹¹⁴¹ Prosecution Pre-Trial Brief, paras 69-71.

¹¹⁴² Prosecution Pre-Trial Brief, para.72.

shelved. Stanišić did not command the men from that time. Specifically, the evidence shows that:

- a. Stanišić had no association with the Knindžas prior to August /September 1991;
 - b. Stanišić intended to use the 28 selected to create an ATU;
 - c. Stanišić abandoned the project and disbanded the ATU in early March 1992 and had no relationship with or control over the men who had hoped to join the ATU;
 - d. The ATU did not take part in military operations or commit crimes for which the Accused may be held responsible between September 1991 and March 1992;
 - e. The new group(s) which were then formed from the remnants of the ATU and men recruited by them (“the new Red Berets”) were under a different leadership;
 - f. The “new Red Berets” did not take part in military activities or commit crimes alleged in the indictment;
 - g. The “new Red Berets” conducted only very limited training.
- A. STANIŠIĆ HAD NO ASSOCIATION WITH THE ALLEGED 28 ELITE TRAINERS PRIOR TO AUGUST / SEPTEMBER 1991

498. As Part I, Section I shows, there is no credible evidence that Stanišić had any association with the “28 Elite Trainers” prior to August/September 1991 and therefore cannot be held criminally liable for their actions.¹¹⁴³

499. The *secret* service of Serbia only became involved at the time of the men’s arrival in Fruška Gora, at the end of summer 1991. [REDACTED]. [REDACTED].¹¹⁴⁴ [REDACTED].¹¹⁴⁵

500. [REDACTED].¹¹⁴⁶ [REDACTED].¹¹⁴⁷ [REDACTED].¹¹⁴⁸ [REDACTED].¹¹⁴⁹ [REDACTED],¹¹⁵⁰ [REDACTED].

¹¹⁴³ Paras 277-337.

¹¹⁴⁴ [REDACTED].

¹¹⁴⁵ [REDACTED].

¹¹⁴⁶ [REDACTED].

501. [REDACTED].¹¹⁵¹ [REDACTED].¹¹⁵²

B. STANIŠIĆ INTENDED TO USE THE UNIT TO CREATE A LEGITIMATE ANTI-TERRORIST SQUAD

502. The evidence shows that the group of 28 were selected not as “28 Elite Trainers” but as the beginning of an ATU to operate only within Serbia.

503. [REDACTED].¹¹⁵³ [REDACTED].¹¹⁵⁴

504. The above testimony provides the clearest indication of Stanišić’s real intent in 1991, namely, to establish an ATU. [REDACTED].¹¹⁵⁵

C. THE ANTI-TERRORIST UNIT (“ATU”) WAS SHELVED IN EARLY MARCH 1992

505. The plans for the ATU were shelved in early March 1992. From that point, neither Stanišić nor the Serbian DB had no responsibility for the “28” men or their associates.

506. One reason for abandoning the project appears to be Božović’s ejection from Serbia and his removal to Croatia. [REDACTED]. [REDACTED].¹¹⁵⁶ It was around this time that the plans were shelved.

D. STANIŠIĆ HAD NO RELATIONSHIP WITH OR CONTROL OVER THE UNIT AFTER EARLY MARCH 1992

507. After the ATU was shelved in early March 1992, Stanišić had no relationship with its former members, nor did he exercise any influence or control over their activities. The Prosecution has failed to adduce credible evidence to counter this position.

¹¹⁴⁷ [REDACTED].

¹¹⁴⁸ [REDACTED].

¹¹⁴⁹ [REDACTED].

¹¹⁵⁰ [REDACTED].

¹¹⁵¹ [REDACTED].

¹¹⁵² [REDACTED].

¹¹⁵³ [REDACTED].

¹¹⁵⁴ [REDACTED].

¹¹⁵⁵ [REDACTED].

¹¹⁵⁶ [REDACTED].

508. The Defence submits that, if the Trial Chamber accepts that the plans for the ATU were shelved in early March 1992, a strong inference arises that Stanišić's relationship with the former members also terminated.

509. Consistent with the new command structures that took over the men, now based in Ilok, witnesses were equivocal concerning even Simatović's alleged command over them. Remarkably few witnesses alleged with any degree of certainty that Simatović was in charge of the men in Ilok from spring 1992 onwards. [REDACTED].¹¹⁵⁷ [REDACTED]. [REDACTED].¹¹⁵⁸

510. Bogunović testified that, according to some people who wore Red Berets, Simatović was their commander;¹¹⁵⁹ he later changed his account and claimed that none of the civilian bodies knew who was in command, including Bogunović himself. The witness did not know whom they belonged to and who was in charge of them.¹¹⁶⁰

511. JF-39 also testified on the issue. [REDACTED].¹¹⁶¹

512. Considering the extensive claim that the "28 Elite Trainers" formed a solid, coherent Unit, under Stanišić's command, training 5,000 men,¹¹⁶² it is remarkable that so little evidence has been led to demonstrate with certainty that even Simatović was in command of *all* the men. In light of the prominent symbol - the red beret - had these men formed a Unit, subordinated to "28 Elite Trainers"; had Stanišić commanded them, the news would have spread. Instead, as the following discussion shows, neither before or after the DB shelved the plan for an ATU, did this group of men distinguish themselves through training or military activity.

¹¹⁵⁷ [REDACTED].

¹¹⁵⁸ [REDACTED].

¹¹⁵⁹ Bogunović, T.6001.

¹¹⁶⁰ Bogunović, T.6076-6077.

¹¹⁶¹ [REDACTED].

¹¹⁶² Prosecution Pre-Trial Brief, para.71.

E. THE ATU DID NOT TAKE PART IN MILITARY OPERATIONS OR COMMITTED CRIMES FOR WHICH THE ACCUSED MAY BE HELD CRIMINALLY RESPONSIBLE

1. The ATU's Activities were Not Military in Nature

513. The ATU did not participate in military operations. [REDACTED]¹¹⁶³ is an act wholly inconsistent with Fruška Gora being a functioning military camp.

514. The evidence shows that between August/September 1991 and early March 1992, the men based in both Fruška Gora and Pajžos were almost exclusively participating in recruiting and training prospective ATU members. The Unit also patrolled certain areas to assist with general security. The only exceptions to this were: (i) [REDACTED];¹¹⁶⁴ (ii) [REDACTED]¹¹⁶⁵ and (iii) the capture of Croatian terrorists on 2 February 1992.¹¹⁶⁶ In relation to this anti-terrorist operation, it is instructive that it was designed to prevent Serbia from being drawn into the war.¹¹⁶⁷

515. The Prosecution has failed to prove that the ATU conducted military operations, trained external recruits, or otherwise contributed to the military objectives, before the plan was shelved. The evidence shows that the nascent ATU, based at Fruška Gora and Pajžos during this time did not coordinate or collaborate with the JNA or other local military forces.

516. The Prosecution's own evidence supports the Defence position. [REDACTED].¹¹⁶⁸ [REDACTED].¹¹⁶⁹ [REDACTED].¹¹⁷⁰ [REDACTED].¹¹⁷¹

517. [REDACTED]¹¹⁷² [REDACTED].¹¹⁷³ [REDACTED].¹¹⁷⁴

518. [REDACTED],¹¹⁷⁵ [REDACTED].¹¹⁷⁶ [REDACTED].¹¹⁷⁷ [REDACTED].¹¹⁷⁸

¹¹⁶³ [REDACTED].

¹¹⁶⁴ [REDACTED].

¹¹⁶⁵ [REDACTED].

¹¹⁶⁶ D367, p.3; D368; D369; P3193, pp.5-6; *see also* [REDACTED].

¹¹⁶⁷ Gagić, T.17186-17187; D367, p.3; D368; D369.

¹¹⁶⁸ [REDACTED].

¹¹⁶⁹ [REDACTED].

¹¹⁷⁰ [REDACTED].

¹¹⁷¹ [REDACTED].

¹¹⁷² [REDACTED].

¹¹⁷³ [REDACTED].

¹¹⁷⁴ [REDACTED].

¹¹⁷⁵ [REDACTED].

¹¹⁷⁶ [REDACTED].

519. [REDACTED].¹¹⁷⁹ [REDACTED].¹¹⁸⁰ Apparently, there was no need to replace weapons, ammunition or other military logisitics.

520. Not only is there no evidence that the Unit was involved in combat, there is, in fact, credible and corroborated evidence that members chose to leave the ATU because they were *not* getting any military action. [REDACTED]¹¹⁸¹ [REDACTED].¹¹⁸² [REDACTED].¹¹⁸³ [REDACTED].¹¹⁸⁴

521. [REDACTED].¹¹⁸⁵ [REDACTED],¹¹⁸⁶ [REDACTED].¹¹⁸⁷

522. Rather than being involved in military activity outside the camp, the Unit merely took part in patrolling activities in the Bapska-Ilok area.¹¹⁸⁸ [REDACTED]¹¹⁸⁹ [REDACTED].¹¹⁹⁰

523. These patrols were not coordinated with the local TO or police, which frustrated the SBWS authorities. Bogunović stated in his 2003 witness statement that, as Minister of Interior of the SAO SBWS and Vice President of the Commission¹¹⁹¹ (set up in Ilok to resolve the problems of Slovaks), he noticed, “a lot of problems because the Red Berets were in Ilok and those units would carry out check-ups and searches of their own accord”.¹¹⁹² They “had to be in the know. They had to know who had arrived and who was moving about Ilok”.¹¹⁹³

2. The ATU did not train men to be sent out to fight

524. The Prosecution have failed to prove that the ATU, in either Fruška Gora or Pajžos, operated functioning training bases from where recruits would be dispatched for combat.

¹¹⁷⁷ [REDACTED].

¹¹⁷⁸ [REDACTED].

¹¹⁷⁹ [REDACTED].

¹¹⁸⁰ [REDACTED].

¹¹⁸¹ [REDACTED].

¹¹⁸² [REDACTED].

¹¹⁸³ *Ibid.*

¹¹⁸⁴ *Ibid.*

¹¹⁸⁵ [REDACTED].

¹¹⁸⁶ [REDACTED].

¹¹⁸⁷ [REDACTED].

¹¹⁸⁸ P569, p.4.

¹¹⁸⁹ [REDACTED].

¹¹⁹⁰ [REDACTED].

¹¹⁹¹ Bogunović, P553, paras 7-8, 73.

¹¹⁹² Bogunović, P553, para.9.

¹¹⁹³ Bogunović, T.6001.

525. As Confidential Annex V shows, the personnel files do not contain detail of any operations conducted from the Unit's camps prior to early March 1992 or any training of outsiders. [REDACTED],¹¹⁹⁴ [REDACTED].¹¹⁹⁵

526. [REDACTED]. [REDACTED]¹¹⁹⁶ [REDACTED].¹¹⁹⁷ [REDACTED].¹¹⁹⁸ [REDACTED].¹¹⁹⁹

527. Despite the Prosecution's assertions, the alleged "28 Elite Trainers" were not responsible for the training of hundreds, let alone thousands,¹²⁰⁰ of men from the area of the SAO Krajina. This was the task conducted [REDACTED]¹²⁰¹ or the training at Tara.¹²⁰²

3. The Unit did not Cooperate with the SBWS

528. If the Prosecution theory were true, the ATU would have needed to coordinate closely with the SBWS leadership or local activities. However, the evidence suggests that the ATU had little to no meaningful relationship with the SBWS, and certainly none that amounts to participation in the local military action happening around that time.

529. No representative of the ATU attended SBWS government meetings.¹²⁰³ Whilst the evidence indicates that Hadžić met with important local leaders - [REDACTED]¹²⁰⁴ - there is no evidence that he, or any other leader, had planning or coordinating meetings with the ATU.

530. Bogunović, the SBWS Minister of Interior until December 1991¹²⁰⁵ stated categorically that "[a]s far as the relationship between the Red Berets and the military authorities is concerned, they – that was non-existent".¹²⁰⁶ Initially, there was no cooperation between the police and the ATU, and it was only sometime in 1992 that they were given a

¹¹⁹⁴ [REDACTED].

¹¹⁹⁵ [REDACTED].

¹¹⁹⁶ [REDACTED].

¹¹⁹⁷ *Ibid.*

¹¹⁹⁸ [REDACTED].

¹¹⁹⁹ [REDACTED].

¹²⁰⁰ Prosecution Pre-Trial Brief, para.71.

¹²⁰¹ [REDACTED].

¹²⁰² See Part III, Section IV.

¹²⁰³ See e.g. P1681.

¹²⁰⁴ [REDACTED].

¹²⁰⁵ Bogunović, P553, paras 8,73.

¹²⁰⁶ Bogunović, T.6088; see also P553, paras.23,24.

“task to control vehicles, passengers, and the rest of things in that area of Srem and Baranja”.¹²⁰⁷

531. [REDACTED].¹²⁰⁸ [REDACTED] Erdut with duties, which included “participating in the resolution of all matters related to military authority”,¹²⁰⁹ [REDACTED]¹²¹⁰ [REDACTED]. [REDACTED].¹²¹¹

532. JF-11, [REDACTED],¹²¹² [REDACTED],¹²¹³ and the operations at the Erdut TO centre, where “everyone actually passed through”.¹²¹⁴ He did not suggest that the ATU had any role in these activities.

533. Operatives of lower ranks confirm the lack of knowledge of and coordination with the ATU. [REDACTED],¹²¹⁵ [REDACTED].¹²¹⁶ According to DST-44, neither did the Red Berets conduct any activities with Biorčević or Ivanović or any other person from Novi Sad Corps,¹²¹⁷ nor did they join combat operations within the structure of the TO in SBWS.¹²¹⁸ [REDACTED],¹²¹⁹ [REDACTED].¹²²⁰ Biorčević issued orders concerning the establishment of military authority and the setting up of town commands by the JNA and the TO, without regard to them.¹²²¹

534. DST-44, [REDACTED]¹²²² [REDACTED],¹²²³ [REDACTED],¹²²⁴ testified that the Unit had no role to play with the Serbian MUP officers.¹²²⁵ [REDACTED],¹²²⁶ and the ATU did not assist with the border problems. These matters were tackled by the Serbian MUP’s PJP during

¹²⁰⁷ Bogunović, T.6088.

¹²⁰⁸ [REDACTED].

¹²⁰⁹ P568, p.5.

¹²¹⁰ [REDACTED].

¹²¹¹ [REDACTED].

¹²¹² [REDACTED].

¹²¹³ [REDACTED].

¹²¹⁴ JF-11, T.1658-1659.

¹²¹⁵ [REDACTED].

¹²¹⁶ J[REDACTED].

¹²¹⁷ DST-44, T.13413.

¹²¹⁸ DST-44, T.13414.

¹²¹⁹ [REDACTED].

¹²²⁰ [REDACTED].

¹²²¹ D754, pp.1-3.

¹²²² DST-44, D371, para.6. (PPCE)

¹²²³ DST-44, D371, paras 9-13. (PPCE)

¹²²⁴ DST-44, D371, para.28. (PPCE)

¹²²⁵ DST-44, D371, paras 56-58; *see also* para.62. (PPCE)

¹²²⁶ DST-44, D371, paras 56-58 (PPCE)

Operation Srem.¹²²⁷ [REDACTED].¹²²⁸ [REDACTED]¹²²⁹ and, according to Badža, were there to maintain surveillance, but “that was it”.¹²³⁰

4. The ATU played No Role in Vukovar

535. Despite the indictment claims, including alleged responsibility for forcible transfer in Vukovar, [REDACTED].¹²³¹

536. [REDACTED]¹²³² [REDACTED]. [REDACTED].¹²³³ [REDACTED]¹²³⁴ [REDACTED].¹²³⁵ [REDACTED].¹²³⁶ [REDACTED].¹²³⁷

537. The Prosecution has failed to prove that the Unit otherwise took part in the Vukovar operations.

5. There is No Evidence to Show that the ATU Engaged in Any Other Battle

538. Despite flamboyant claims by Simatović concerning the “Unit’s” military prowess - sustaining 47 casualties and 250 wounded at 50 different locations¹²³⁸ - the evidence shows that the only casualties or wounding that was sustained by the ATU was as a result of its incompetence: [REDACTED],¹²³⁹ [REDACTED].¹²⁴⁰ [REDACTED],¹²⁴¹ [REDACTED].¹²⁴²

539. Considering this reality, it is not surprising that the plans for the ATU were shelved.

6. The Prosecution Relies on Allegations of Activities Prior to the Relevant Period

540. As Confidential Annex V shows, there is no meaningful evidence in the personal files that supports the allegation that the ATU was involved in military operations. On the contrary,

¹²²⁷ DST-44, T.13426-13427.

¹²²⁸ [REDACTED].

¹²²⁹ [REDACTED].

¹²³⁰ D371, p.12 (PPCE).

¹²³¹ [REDACTED].

¹²³² [REDACTED].

¹²³³ [REDACTED].

¹²³⁴ [REDACTED].

¹²³⁵ [REDACTED].

¹²³⁶ [REDACTED]

¹²³⁷ [REDACTED].

¹²³⁸ P61, p.10.

¹²³⁹ [REDACTED].

¹²⁴⁰ [REDACTED].

¹²⁴¹ [REDACTED].

¹²⁴² [REDACTED].

the Prosecution is forced to rely on evidence that falls outside the period from September 1991 and early March 1992.

541. P2984 is one of the few personnel files that mentioned military activities. However, it is plain that the references relate to a time prior to the men's arrival in Fruška Gora. [REDACTED].¹²⁴³ As the evidence shows, these operations took place prior to September 1991.¹²⁴⁴

F. THE NEW RED BERETS WERE UNDER A DIFFERENT LEADERSHIP

542. As shown above, what is clear is that the ATU was disbanded in early March 1992. What is less clear is what became of the former members of the ATU or those that had become associated prior to early March 1992. However, the pieces of the puzzle that are available undermine the Prosecution's theory, namely, that because Stanišić was in command of the ATU until early March 1992, then he *must* also have been in command of the men thereafter. The Prosecution have failed to meet their burden in this regard. The following discussion is not intended to provide a detailed personal history of each member of the disbanded ATU – this is outlined in Part I, Section I of this Brief, but rather to illustrate that once the ATU was disbanded, new groupings formed that were not under the control or influence of Stanišić, notwithstanding their romantic attachment to the designation "Red Berets".

1. The Creation of New Groups

543. [REDACTED] once the Unit was disbanded, a small group remained in Pajzoš and the remainder in Ilok.¹²⁴⁵ The members abandoned their claims to be part of the Serbian MUP and registered their Unit as RSK MUP. They clung, however, to the Red Beret name.

a. **A Change of Allegiance: Serbian MUP Unit to RSK MUP Unit**

544. As Confidential Annex V shows, the evidence from the various DB personnel files supports the defence position that the ATU was disbanded by early March 1992.

¹²⁴³ [REDACTED].

¹²⁴⁴ See e.g. Glina in July 1991: P2658, P2876; [REDACTED]; Ljubovo in May 1991: D117, p.2; Kozibrod in July 1991: P994, p.1; Kijevo in May 1991: D117, p.2; see also [REDACTED]; D117, pp.2-3.

¹²⁴⁵ D1522, p.14 (PPCE).

545. First, it confirms that the Fruška Gora camp no longer functioned as a military camp.¹²⁴⁶ Second, it shows that a bout of applications was submitted from candidates who sought to consolidate their relationship with the Serbian MUP, which remained unanswered. These applications were submitted in February 1992 or early March 1992.¹²⁴⁷ For example, [REDACTED];¹²⁴⁸ [REDACTED].¹²⁴⁹ The files provide many similar examples.¹²⁵⁰

546. Not surprisingly, the evidence shows that, when the MUP shelved the idea for an ATU, the men based in Ilok and Pajžos started to consider that their group was aligned to the Krajina MUP, rather than the Serbian MUP Special Purpose Unit.¹²⁵¹ By June 1992, there was no other title or name for the group(s) based in Ilok.¹²⁵² Other than the belated claim in rebuttal that the RSK MUP unit was the same as the Serbian MUP unit, the Prosecution has failed to proffer any explanation that might shed some light on the reasons for this change.

547. [REDACTED]. [REDACTED].¹²⁵³ [REDACTED].¹²⁵⁴ [REDACTED].¹²⁵⁵

548. A MUP Serbia report provides further evidence of the disbandment of the Unit. [REDACTED].¹²⁵⁶ [REDACTED].¹²⁵⁷ [REDACTED].¹²⁵⁸ [REDACTED].¹²⁵⁹ [REDACTED].¹²⁶⁰

549. The Defence accepts that the majority of the men who had been in the Unit may well have remained in Ilok. It is apparent that, throughout the war, these same men or others associated with Captain Dragan's men used the mythology that surrounded the Knindžas, and its short association with the DB, to create new groups. However, rather than being promoted by Stanišić, these groups evolved outside of his control into little more than looting squads,

¹²⁴⁶ See Confidential Annex V.

¹²⁴⁷ See e.g. [REDACTED]; Đorđević, P179, p.16; [REDACTED]; Ivanović, P2964, p.1.

¹²⁴⁸ [REDACTED].

¹²⁴⁹ [REDACTED].

¹²⁵⁰ [REDACTED].

¹²⁵¹ See Confidential Annex I.

¹²⁵² See Confidential Annex V.

¹²⁵³ [REDACTED].

¹²⁵⁴ [REDACTED].

¹²⁵⁵ [REDACTED].

¹²⁵⁶ [REDACTED].

¹²⁵⁷ [REDACTED].

¹²⁵⁸ [REDACTED].

¹²⁵⁹ [REDACTED].

¹²⁶⁰ [REDACTED].

operating for *personal* gain. Using this mythology and the cache of the DB, these groups sprung up like “mushrooms”¹²⁶¹ using the cover of war as a means of self-enrichment.

550. The creation of two loose new groupings of Red Berets was recorded in a Slavonija – Baranja Corps Command Security Organ report, dated 5 August 1993; the report stated that the “Red Berets who belong to the RSUP Serbia...are permanently billeted in the Dunavka villa in Pajžos” were invited to a SRS celebration “in order to maintain the peace and order”.¹²⁶² However, the Red Berets started provoking the residents of the Bapska village and the members of the Serbian Chetnik Movement.¹²⁶³ Seven of them had ordered drinks but refused to pay for them.¹²⁶⁴ The report noted that “[w]ithin the composition of the Red Berets of RSUP Serbia, there are three former members of the Red Berets from Ilok”.¹²⁶⁵

551. Bogunović, the SAO SBWS Minister of Interior until December 1992,¹²⁶⁶ recalled the following: first, towards the end of 1991 or the beginning of 1992, the first Red Berets appeared in Ilok; he was unaware who had sent them or why.¹²⁶⁷ The Red Berets members told him that Simatović was their commander and that he was issuing orders.¹²⁶⁸ They were located in Pajzoš and Ilok and did not move anywhere from there.¹²⁶⁹ The witness confirmed that, during spring 1992, the Berets had to leave Ilok because there were conflicts between them and RSK police force.¹²⁷⁰ They went to Pajzoš, although he did “not know who decided to send them there.”¹²⁷¹

2. A New Structure and Command

552. Whilst the evidence of who took over command is confused and incomplete, it makes clear that major changes occurred that cast doubt on the Prosecution’s case. At the period when Bogunović observed the Red Berets retreating to Pajžos, [REDACTED]. JF-30 believed that Badža formed these new Red Berets in Ilok.¹²⁷² He observed that the Red Berets in Ilok in

¹²⁶¹ JF-31, P1000, p.78 (US); *see also* JF-31, T.7479-7480; *See also* Part III, Section II, paras 679-681.

¹²⁶² P1195, p.1.

¹²⁶³ P1195, p.1.

¹²⁶⁴ P1195, pp.1-2.

¹²⁶⁵ P1195, p.2.

¹²⁶⁶ Bogunović, P553, paras 7-8, 73.

¹²⁶⁷ Bogunović, T.5998-5999.

¹²⁶⁸ Bogunović, T.6001; Bogunović, P553, para.24.

¹²⁶⁹ Bogunović, P553, para.24.

¹²⁷⁰ Bogunović, P554, para.9.

¹²⁷¹ Bogunović, P554, para.9.

¹²⁷² JF-30, T.10618, 10712.

1992 were a “direct initiative of...Badža, and as I can remember, Zika Crnogorac was involved in this. But later on, the unit -- the unit become [*sic*]-- they move it -- them move them out to -- to Serbia, and then they were under -- under -- as a separate unit, as a war unit or whatever, they were under the control of DB”.¹²⁷³ He stated that he did not know when they were relocated from Ilok to Serbia. However, whilst they were in Ilok, they were “controlled by Zavisic, and Badža Stojičić was coming there”.¹²⁷⁴

553. As well as being in command of the new Red Berets, Commander of the TO and the police of the SBWS, the evidence also points to Badža being responsible for training the men in these two new groups. [REDACTED],¹²⁷⁵ for the purposes of the volunteers in SBWS TO.¹²⁷⁶ The above evidence is corroborated [REDACTED].¹²⁷⁷ The fact that Badža, as commander of the TO, was using Tara, rather than Fruška Gora or Pajžos, speaks volumes about the reliability of the “28 elite trainer” thesis and ultimately calls into question the Prosecution’s case.

554. The nomenclature ‘Red Beret’ was also used in the later formations that sprung up in 1993. [REDACTED].¹²⁷⁸ [REDACTED],¹²⁷⁹ [REDACTED].

555. This chain of command is further evidenced by D763, reporting on events in 1993. It confirms Vojin Suša, Minister of Justice in the RSK’s involvement,¹²⁸⁰ as well as their subordination to the Ilok Battalion (45th Brigade), as a Reconnaissance and Sabotage Group.¹²⁸¹ They received weapons and equipment from the 11th Corps Command.¹²⁸² The fact that they received basic training (“firing from infantry weapons”) from the Reconnaissance Company of the 453rd Mechanised Brigade from Sremska Mitrovica (12th Corps)¹²⁸³ and the fact they are referred to as “mummy’s boys”¹²⁸⁴ offer some insight into their military prowess, and the reliability of the Prosecution “28 Elite Trainers” case.

¹²⁷³ JF-30, T.10618.

¹²⁷⁴ JF-30, T.10619.

¹²⁷⁵ [REDACTED].

¹²⁷⁶ See Part III, Section IV, paras 779-782.

¹²⁷⁷ [REDACTED].

¹²⁷⁸ [REDACTED].

¹²⁷⁹ [REDACTED].

¹²⁸⁰ D763, p.2.

¹²⁸¹ *Ibid.*

¹²⁸² *Ibid.*

¹²⁸³ *Ibid.*

¹²⁸⁴ *Ibid.*

3. Petty Criminality Became the Focus on Former ATU Members

556. The trouble and petty criminality caused by the new groups in Ilok after February 1992 provides further evidence of change in overall command that is inconsistent with control by Stanišić.¹²⁸⁵

557. Having been tasked with assisting the police through controlling vehicles and passengers,¹²⁸⁶ [REDACTED].¹²⁸⁷ Bogunović summed up the situation: he testified that they were not involved in decision-making.¹²⁸⁸ They did not commit physical abuse, but, having been granted permission (presumably by the RSK authorities) to confiscate the vehicles, they failed to provide a receipt on three or four occasions.¹²⁸⁹ Concerning the complaints, Bogunović finally confirmed that “[t]here may have been some other petty things, but there was nothing important”.¹²⁹⁰

4. The Fog of War

558. [REDACTED].¹²⁹¹ [REDACTED].¹²⁹² [REDACTED].¹²⁹³

559. It is for the Prosecution to prove that Stanišić had the requisite level of control or influence over the relevant units, whether they are termed Red Berets or not. The aforementioned evidence suggests that there was no one command, let alone command by Stanišić.

G. THE NEW RED BERETS DID NOT TAKE PART IN MILITARY ACTIVITIES OR COMMIT CRIMES ALLEGED IN THE INDICTMENT

560. From early March 1992, Stanišić had no dealings, let alone control, over these new groups and they did not act in furtherance of a common plan. In any event, even if the Trial Chamber were to find that Stanišić did retain some connection to the new groups, the

¹²⁸⁵ See also JF-30, T.10693-10694.

¹²⁸⁶ Bogunović, T.6088; see also D68, D77; [REDACTED].

¹²⁸⁷ [REDACTED].

¹²⁸⁸ Bogunović, T.6074-6075.

¹²⁸⁹ Bogunović, T.5999-6000; see also P553, para.9.

¹²⁹⁰ Bogunović, T.6076.

¹²⁹¹ [REDACTED].

¹²⁹² [REDACTED].

¹²⁹³ [REDACTED].

Prosecution has failed to prove that they took part in military operations or committed any crimes in the indictment.

561. With regard to the significant military operations of that time, there is no direct evidence that they took part. They appear not to have been present during the 20 October 1992, 33rd Session of the RSK Government during which decisions were made to approve the engagement of the RSK MUP “special purpose units” for expanding “the corridor”.¹²⁹⁴ [REDACTED].¹²⁹⁵

562. In March 1993, the Red Berets from Ilok, under the command of Vojin Šuša, Minister of Justice in the RSK, are plainly avoiding military activity. Instead, they are engaged in petty criminality against Serbs and other civilians.

H. THE NEW RED BERETS DID NOT PROVIDE SIGNIFICANT TRAINING

563. The Defence accepts that the men from the new Ilok Red Berets may have trained one or possibly two groups of men in March 1992, including those who went to Bosanski Šamac and possibly a group containing Milan Lukić. However, as confirmed by all the evidence, this occurred only after early March 1992. As will be discussed in Part III, Section I whilst there is evidence that this involved some of the men from the Serbian MUP and DB, including Simatović, there is no reliable evidence to show that this was at the behest of Stanišić or with his support, acquiescence, or knowledge.¹²⁹⁶

564. As a preliminary point, it is highly significant that the Prosecution have only adduced evidence of two groups of men receiving training at Pajžos/Ilok in this period. There is little evidence to suggest that the training that was conducted at Fruška Gora, Pajžos or Ilok amounted to more than the *ad hoc* training of two groups. Even if the men in Pajžos/Ilok/Fruška Gora were a part of the “28 elite trainers”, it is plain that these locations were not training bases for common use.

565. The JNA, Badža’s TO, or paramilitaries (such as Arkan’s men) did not rely upon Pajžoš or Fruška Gora as training bases. The so-called Red Berets - the elite trainers - did not

¹²⁹⁴ D1147, p.2; *see also* JF-39, T.7342-7343.

¹²⁹⁵ [REDACTED].

¹²⁹⁶ Paras 571-626.

train the Vukovar TO, which was organised by Badža.¹²⁹⁷ The evidence shows that almost all of the SBWS witnesses were unaware of any training camp in Ilok or Pajžos.¹²⁹⁸ DST-74 had not met a recruit from the alleged Ilok training base when he was present training TOs in Eastern Slavonia.¹²⁹⁹

566. As for the training of the Lukić group, little is known except for a statement that had been taken by the DB following Stanišić's initiative to prosecute him for war crimes.¹³⁰⁰ If true, the training took place after 10 April 1992,¹³⁰¹ after Stanišić had disbanded the Unit. Unsurprisingly, despite being arrested by the DB, he did not claim to have been trained by them. Instead of regarding himself as "as staying under the command of the MUP Serbia", as alleged was the consequence of being trained at a DB camp, he stated that he was trained by "Pupe and Zoran, Red Berets – *Knindžas*".¹³⁰²

567. It is submitted that the above is a reasonable appraisal of the available evidence, most of it provided by the Prosecutions own witnesses. It exposes the mythology of the Red Berets.

568. As will be discussed further in the Brief, the commencement of the creation of the JATD in the fall of 1993 marked another attempt by Stanišić to set up a legitimate ATU. The history of Stanišić's 1991 attempt to set up an ATU, its lack of activity whilst Stanišić was in a position to effect its operations (in late 1991 to early March 1992), the resurrection of the idea in 1993 and its adherence to lawful conduct until Stanišić's resignation stands as a testament to his innocence.

569. As the following parts of the brief will discuss, Stanišić cannot be held responsible on the mere basis that he was once in control of the alleged "28 Elite Trainers" that has been shown to be a nascent ATU: no more than he can be held responsible for the JSO's eventual ignominious, criminal involvement in political assassinations at times after the indictment period, and crime following his resignation in 1998.

¹²⁹⁷ DST-74, T.13202-13203, 13281.

¹²⁹⁸ DST-63, T.13795-13796; DST-74, T.13198-13199, 13205, 13281; DST-40, T.13830-13833; DST-44, T.13414-13415.

¹²⁹⁹ DST-74, T.13199.

¹³⁰⁰ See Part I, Section II, paras 108-113, 128-133.

¹³⁰¹ P2448, p.2.

¹³⁰² P2448, p.2.

PART III – BOSNIA AND HERZEGOVINA

SECTION I. THE ALLEGED TRAINING CAMPS: BOSANSKI ŠAMAC, BARANJA, BRČKO, AND DIVIĆ

570. The Prosecution's allegation that the camps in Bosanski Šamac, Baranja, Brčko and Divić were part of the "28 Elite Trainer" master plan orchestrated and implemented by Stanišić does not stand up to scrutiny. Rather than being manned by an elite group of 28 trainers supported by the Serbian DB with a clear military purpose, the camps were populated by a rag-tag band of disorganised petty criminals with personal agendas, exploiting the chaos inherent in war for personal enrichment. None of the men said to be involved can be linked to Stanišić after early March 1992, when the MUP shelved the plans for the DB's ATU.

I. BOSANSKI ŠAMAC

571. The Prosecution failed to prove that Stanišić played any role in the military offensive in Bosanski Šamac. The training was not arranged at the behest of Stanišić. There is no evidence that Crni, the Commander of the men trained, was used at the behest of Stanišić, whether as part of the alleged "28 Elite Trainers" or at all. The training was arranged by the local authorities in Bosanski Šamac, the JNA and Badža (as head of the SBWS TO at the time) and a handful of other men involved in the Ilok/Pajžos vicinity. The Prosecution have not demonstrated beyond reasonable doubt that before, during or after the takeover of Bosanski Šamac, Stanišić played any coordinating or command role, or that Simatović acted at his behest.

A. STANIŠIĆ WAS NOT INVOLVED IN PLANNING THE OPERATION IN BOSANSKI ŠAMAC OR THE DEBRIEFING

572. Prosecution witness Todorović alleged that he held meetings with various men in Belgrade and arranged to have 20 local men go to the Ilok camp for training.¹³⁰³ He did not allege that any of the arrangements involved Stanišić (or, even that he suspected that Simatović or Prodanić, who he alleged were involved, were acting at his behest).¹³⁰⁴

¹³⁰³ Prosecution Pre-Trial Brief, para.150.

¹³⁰⁴ See P1576, pp.9-11, 88-89; P1579.

B. THE PROSECUTION HAS FAILED TO PROVE THAT STANIŠIĆ COMMANDED ANY OF THE MEN INVOLVED IN THE MILITARY OFFENSIVE IN BOSANSKI ŠAMAC

573. The Prosecution alleges that on 11 April 1992, a group of DB-trained paramilitaries and SRS volunteers, armed and trained at the Ležimir and Pajžos camps, formed a DB “Red Berets” Unit under the command of Crni, and were deployed by JNA helicopter to assist in the takeover of the municipality.¹³⁰⁵ On 17 April 1992, these Serb Forces assisted in the takeover of the municipality.¹³⁰⁶

574. This aspect of Prosecution case is advanced mainly through JF-47. It does not stand up to scrutiny, as will be discussed below.

1. JF-47 is Unreliable

575. [REDACTED]. [REDACTED].

576. JF-47’s attempts to falsely implicate the Accused are apparent. [REDACTED].¹³⁰⁷

577. [REDACTED]. [REDACTED]. [REDACTED].¹³⁰⁸

578. [REDACTED].¹³⁰⁹ In his testimony in this case he claimed the Serbian MUP gave it to him.¹³¹⁰ His explanation for the discrepancy was woeful: “this thing about Krajina, never in my life did I state ever anywhere that I was a member of the Krajina MUP”.¹³¹¹

579. This evidence undermines JF47’s claim [REDACTED]. It also fatally damages the latest permutation of the Prosecution’s evolving case, [REDACTED].¹³¹² Had they been the same, JF-47 would have easily settled on this explanation to explain his account.

¹³⁰⁵ Prosecution Pre-Trial Brief, para.151.

¹³⁰⁶ Indictment, para.47; Prosecution Pre-Trial Brief, para.152.

¹³⁰⁷ [REDACTED].

¹³⁰⁸ [REDACTED].

¹³⁰⁹ *Ibid.*

¹³¹⁰ JF-47, T.10893.

¹³¹¹ JF-47, T.10896-10897.

¹³¹² *Prosecutor v. Stanišić v. Simatović*, Case No. IT-03-69-T, Prosecution Motion for Admission of Rebuttal Evidence: Serbian DB Personnel Files, 24 September 2012, para.19 (Confidential with Confidential Annexes A and B).

2. The Training at Fruska Gora/Pajžos did not Produce a DB/Red Beret Unit

580. The evidence does not *even* show that the men involved in this operation were designated as “Red Berets”, let alone that they were the offspring of the “28 Elite Trainers”. A striking illustration of this truth is that none of the combat reports reference the existence or participation of a unit called the Red Berets or, more significantly, any unit in Bosanski Šamac subordinated, or said to be linked to, the Serbian DB.¹³¹³ Instead, they discuss the unit’s subordination to the JNA, as well as its allegiance to the SRS.¹³¹⁴ [REDACTED].¹³¹⁵

581. Todorović agreed, noting the unit’s affiliation with the JNA and subsequently with the VRS.¹³¹⁶ These volunteers, “joined into the existing military units and became part of those units” the day after their arrival.¹³¹⁷ He reiterated that “[t]hey came as volunteers of the [SRS] and were immediately included in the military unit that was under JNA command”.¹³¹⁸ Further, he agreed that they became VRS members after the JNA’s withdrawal.¹³¹⁹ There is nothing in Todorović’s account to suggest he considered the men to have been anything other than trained in a Serbian MUP (not DB) camp.

582. A 1 December 1992 report from Command of the 2nd Posavina Infantry Brigade stated that the volunteers were “part of the Special Battalion”,¹³²⁰ but not of a Unit of “28 Elite Trainers” or otherwise commanded by the Serbian DB.

583. Men involved in the operation also did not consider themselves as belonging to a Unit of “28 Elite Trainers” or even in a unit titled the “Red Berets” of the Serbian DB. [REDACTED].¹³²¹ Military documentation characterises Debeli as Chief of Staff of the Posavska/Posavina Brigade, without reference to any association with the Serbian DB.¹³²² Lugar had a group or “special detachment”,¹³²³ Crni was the Commander of a “column”,¹³²⁴ and Miljković referred to himself as “a member of the Radical Party...a platoon

¹³¹³ See e.g. P1430, P54, P179, P1426, P1429, P1416, P1417 (US), P1582, P1132, P1517, P1518, P1419, P1420, P1520, P1521, P1583.

¹³¹⁴ See eg. [REDACTED]; P1576, pp.92-95.

¹³¹⁵ [REDACTED]; [REDACTED].

¹³¹⁶ P1576, pp.93-95.

¹³¹⁷ P1576, p.93.

¹³¹⁸ P1576, p.93.

¹³¹⁹ P1576, pp.93-95, 101-102.

¹³²⁰ P1582, p.1.

¹³²¹ [REDACTED].

¹³²² P1419, p.1; P1420; P1421, P1520; P1521; see also D1198.

¹³²³ P1413, pp.1,4.

¹³²⁴ P1413, pp.2,4.

commander”.¹³²⁵ [REDACTED].¹³²⁶ In military proceedings on 25 November 1992, Miljković described himself as being part of “a group of Radicals to come to assist the soldiers in Posavina” and as the “Commander of the Special Purpose Unit” at the time of the takeover.¹³²⁷ As recorded on 17 April 1992, they were the “Forces of Tactical Group 17, units of the Serb Territorial Defence and the police”.¹³²⁸

584. The evidence of the local civilians in Šamac does not assist the Prosecution case either. [REDACTED].¹³²⁹ Others identified men with red berets, but not a Red Beret Unit.¹³³⁰ The only exception is Tihić.¹³³¹ However, his identifications were confused and his evidence unreliable: including “Lugar” being from the Grey Wolves¹³³² and Arkan’s men as members of the Red Berets.¹³³³ Furthermore, in his *Šešelj* testimony, he identified the Grey Wolves as a separate and distinct group from that of the Red Berets.¹³³⁴ He was candid enough to acknowledge, “we [the victims] called all these Specials by one name. We didn’t distinguish between Arkan’s men, the Grey Wolves, or other units”.¹³³⁵

585. A 6 December 1992 Mladić diary entry notes that Todorović reported to Mladić about the situation in Bosanski Šamac along with Blagoje Simić, Simeun Simić and Mirko Lukić. He described the arrangements to send the men, identifying, *inter alia*, two members of the “Serbian MUP”.¹³³⁶ He did not associate them with the Serbian DB.

586. Lugar also did not claim to be in a Red Beret Unit.¹³³⁷ As Lugar also noted, after the takeover, he and Crni formed a special battalion. He made no reference to the Red Berets or the DB before or after the takeover.¹³³⁸ Significantly given the Prosecution case of “28 elite trainers” commanding 5,000 men,¹³³⁹ in September 1992, [REDACTED].¹³⁴⁰

¹³²⁵ P1425, p.1.

¹³²⁶ [REDACTED].

¹³²⁷ P1428, p.4; *see also* P1416, p.2.

¹³²⁸ D18; *see also* First Adjudicated Facts Decision (Prosecution) Facts 299-300.

¹³²⁹ [REDACTED].

¹³³⁰ [REDACTED]; P1834, p.24.

¹³³¹ Tihić, P177, p.6.

¹³³² Tihić, P173, p.10.

¹³³³ Tihić, P173, p.14.

¹³³⁴ Tihić, P176, p.130.

¹³³⁵ Tihić, P177, p.61.

¹³³⁶ P3117, pp.4-5.

¹³³⁷ P1425, p.1.

¹³³⁸ P1425, p.1.

¹³³⁹ Prosecution Pre-Trial Brief, para.71.

¹³⁴⁰ [REDACTED].

587. Overall, the evidence suggests that the men trained in Ilok, including Crni [REDACTED], were not, and did not regard themselves as, members of a special unit of the Serbian DB when involved in the takeover of Bosanski Šamac. Instead, they were RSK MUP members, provided with minimal fitness training at the Ilok camp before being subordinated to 17th Tactical Group of the JNA for the operations in Šamac.¹³⁴¹

3. [REDACTED] may have been Grey Wolves, not Serbian DB or Red Berets

588. Whilst the evidence is too inconsistent to provide certainty, it appears that [REDACTED]. This possibility casts further doubt on the Prosecution case.

589. But it is difficult for the Defence to know, as the Prosecution has left their case impermissibly vague. [REDACTED]¹³⁴² [REDACTED].¹³⁴³

590. Todorović was inconsistent. He claimed the men were known “at large” as the Grey Wolves.¹³⁴⁴ When questioned by the Prosecutor, he stated that they belonged to the Serbian MUP/DB but when cross-examined, concerning whether they were Krajina Red Berets, he stated he “couldn’t really say” – more than they were the Red Berets of his Municipality.¹³⁴⁵ He, unlike the Prosecution, appeared to accept that there was a group of Krajina Red Berets.

591. JF-47 attempted to bluster his way through. [REDACTED],¹³⁴⁶ [REDACTED];¹³⁴⁷ [REDACTED].¹³⁴⁸ [REDACTED].¹³⁴⁹ [REDACTED].¹³⁵⁰

592. Tellingly, the memoirs of Tihić confirm that Crni’s men around the time of the takeover were known as the Grey Wolves. He did not identify them as wearing red berets.¹³⁵¹ He considered the Red Berets as a separate group to the Grey Wolves.¹³⁵²

¹³⁴¹ First Adjudicated Facts Decision (Prosecution), Fact 300; *see also* [REDACTED].

¹³⁴² [REDACTED]

¹³⁴³ [REDACTED].

¹³⁴⁴ Todorović, P1576, p.99.

¹³⁴⁵ Todorović, P1576, p.17, 43-44.

¹³⁴⁶ [REDACTED].

¹³⁴⁷ [REDACTED].

¹³⁴⁸ [REDACTED].

¹³⁴⁹ [REDACTED].

¹³⁵⁰ [REDACTED].

¹³⁵¹ P192, p.22.

¹³⁵² P192, p.26.

4. Crni was not Employed or Engaged by Stanišić at Any Time in 1992

593. Evidence implicates Crni as a key figure in Bosanski Šamac in 1992. However, there is no reliable evidence to prove that Crni was employed or engaged by Stanišić at the time of the takeover, either to train men from Bosanski Šamac or for any other purpose. However, as discussed, none of the exhibits mention a *Red Beret* unit participating in the takeover. At most, the military court in Banja Luka considered Crni to *perhaps* be an “employee of SUP Serbia”.¹³⁵³ Even when Crni was suspected of killing a member of the VRS¹³⁵⁴ - when his identity and institutional association was most critical (few resist the temptation to “name-drop” when accused of committing a crime) - he did not assert that he was a Red Beret or draw upon the protective status that might have been derived from engagement by the DB.

594. Blagoje Simić, the President of the Šamac Municipality, in a statement to the Military court in Banja Luka, identified the men who came as part of a group of men from Serbia as being “sent by the Serbian MUP” and further noted that “they made up the assault battalion”.¹³⁵⁵ Simić noted that Crni was with a “group of volunteers” – however, he did not associate them with the Serbian DB.¹³⁵⁶ Even immediately after Crni’s training, he was considered to be within “a legal elite unit of Serbian commandos”,¹³⁵⁷ not a Red Beret or a DB unit.

595. The description by the military court in Banja Luka characterising Crni as an individual who was “allegedly” a member of the Serbian MUP¹³⁵⁸ is consistent with the Defence position: Crni had forged personal links with individual members of the Serbian MUP and DB. These types of links do not implicate Stanišić. He was not a military commander with command responsibility over Simatović and others.¹³⁵⁹ Indeed, whilst there is some evidence suggesting the involvement of other DB employees – such as Prodanić and Simatović – this is not a straight road to Stanišić’s knowledge, assistance or acquiescence. As outlined above in Part I, Section II Prodanić and Simatović could access the limited resources

¹³⁵³ D1207, p.1.

¹³⁵⁴ D1207, pp.4-5: In November 1992, Crni and his group arrested members of the reconnaissance platoon of the 1st Krajina Corps and one of his men shot one scout. They detained the remaining members of the platoon and tortured them.

¹³⁵⁵ P1429, p.2.

¹³⁵⁶ P1429, p.3.

¹³⁵⁷ P1418, p.1

¹³⁵⁸ D126, p.1.

¹³⁵⁹ See Part I, Section II, paras 115-118.

expended on basic training and equipping 50 men with light arms, without informing, coordinating, or seeking permission from Stanišić.¹³⁶⁰

596. Todorović claimed that Crni was a member of the special units of the DB¹³⁶¹ but retracted this claim.¹³⁶² The witness agreed that Crni was, in fact, a volunteer and not a representative of any Serbian institution.¹³⁶³

597. Even after the takeover, neither Todorović nor any of the authorities from Belgrade or Bosanski Šamac concluded that Crni was in a “28 Elite Trainers” Unit, or in any way answerable to Stanišić. The following evidences this: In Bosanski Šamac after the takeover, Crni clashed with the military authorities.¹³⁶⁴ Todorović was a part of a “delegation that went to Belgrade [in June or July of 1992] in order to discuss some of the concerns” regarding Crni.¹³⁶⁵ In sum, they went to lobby “some people of influence from that area and who were living in Belgrade... so that they would lobby with the commander of the army of the Republika Srpska”¹³⁶⁶ to keep Crni in the region.¹³⁶⁷ The delegation first went to the Serbian MUP but, when no one received them at the MUP of Serbia, they went to see Maslić, employed by the Federal Presidency of Yugoslavia who took them to meet General Bajić—Chief of Staff of a unit of the JNA.¹³⁶⁸ Todorović claimed that “[l]ater on, we were joined by...Frenki”.¹³⁶⁹ General Bajić told them that the Belgrade authorities did not have the competence to appoint or replace commanders. It “was...General Mladić, who had that competence.”¹³⁷⁰ Thereafter, Mladić berated Blagoje Simić for wasting their time in Belgrade.¹³⁷¹

598. Crni was eventually elevated to commander of the Brigade.¹³⁷² Crni’s elevation to Brigade Commander was not considered to be, militarily speaking, a useful move.¹³⁷³ Blagoje Simić, during a witness interview during the investigations against Crni *et al.* by a military

¹³⁶⁰ Paras 157-167.

¹³⁶¹ Todorović, P1576, p.3

¹³⁶² Todorović, P1576, p.95.

¹³⁶³ Todorović, P1576, pp.113-114.

¹³⁶⁴ Todorović, P1576, pp.45-46; P1579; P1582, p.62.

¹³⁶⁵ Todorović, P1576, p.49.

¹³⁶⁶ Todorović, P1576, pp.49-50.

¹³⁶⁷ Todorović, P1576, p.50.

¹³⁶⁸ Todorović, P1576, pp.50, 122-123; *see also* P1579.

¹³⁶⁹ Todorović, P1576, p.51.

¹³⁷⁰ Todorović, P1576, p.53.

¹³⁷¹ Todorović, P1576, p.53.

¹³⁷² P1418, p.2.

¹³⁷³ P1418, p.3.

court, confirmed that Crni was not appointed as Brigade Commander thanks to any personal connections with the Serbian DB but because “the vast majority of active duty officers left for Serbia, and faced with a lack of personnel, Colonel Denčić” appointed him.¹³⁷⁴

599. [REDACTED].¹³⁷⁵ Instead of being assisted by the DB – as one might expect, if he was part of the alleged “28 Elite Trainer” Unit - he was assisted by an array of persons and institutions, including General Bajić, Colonel Jeremić, the Serbian MUP,¹³⁷⁶ as well as Beronja, [REDACTED]¹³⁷⁷ at the suggestion of Colonel Simić.¹³⁷⁸ Beronja provided him with everything he requested.¹³⁷⁹

a. Where Were the “28 Elite Trainers” or Their Men?

600. Notwithstanding his personnel file containing his bare claim to have been in a DB unit since “5 October 1991”,¹³⁸⁰ Crni lacked military skills and experience.¹³⁸¹ Despite promising to bring 700 volunteers to Bosanski Šamac in the fall of 1992, he brought only 20, “some of whom had never seen a battlefield”.¹³⁸² They were “all loafers”, and instead he tried to steal the best men from other units in order to form a “shock battalion”.¹³⁸³ It was their incompetence and failure to engage militarily that led to men from Vukovar being killed.¹³⁸⁴ Rather than working with “28 Elite Trainers”, or even those that had been trained for the takeover of Bosanski Šamac, the “loafers” came from Kragujevac.¹³⁸⁵

601. Indeed, Crni’s personnel file reveals that on 23 February 1992 he filed a Request for entry into active service to the unit.¹³⁸⁶ He listed his wartime experience as limited to “action at Babska [*sic*]” on 26 September 1991.¹³⁸⁷ On 28 February 1992, shortly before disbanding the group, Stanišić requested an operative check for him for “entry in the active and reserve forces”.¹³⁸⁸ Plainly, Stanišić did not regard him as a member of the DB Unit. There is no

¹³⁷⁴ P1429, p.3.

¹³⁷⁵ [REDACTED].

¹³⁷⁶ P1583, p.2.

¹³⁷⁷ [REDACTED].

¹³⁷⁸ P1583, p.2.

¹³⁷⁹ P1583, p.2.

¹³⁸⁰ P179, pp.12-13.

¹³⁸¹ P1584, p.2.

¹³⁸² P1418, p.4.

¹³⁸³ P1584, p.2.

¹³⁸⁴ P1418, p.5.

¹³⁸⁵ P1429, p.3.

¹³⁸⁶ P179, p.18.

¹³⁸⁷ P179, pp.6, 9, 10.

¹³⁸⁸ P179, p.1.

paper processing in Crni's personnel file to show that his February 1992 application to join the active service to the Unit was answered.

602. This may explain why, on 23 February 1992, Crni's civilian employment in road construction (reserve members were anticipated for only occasional use, thus allowing them to continue their regular employment) was terminated because the "certificate from the MUP was, according to company's standards invalid".¹³⁸⁹ This suggests that Crni had no official endorsement from the Serbian MUP, let alone the DB.

603. In conclusion, the Prosecution has failed to prove any link between Crni and Stanišić with respect to the aforementioned events. To the extent that Stanišić had any involvement with Crni, it ceased in early March 1992, when the plans for the ATU were shelved. Rather, as will be shown below, the evidence suggests that Badža coordinated with Crni, and was one of his superiors.

5. The Release of Crni from Prison does not Support the Prosecution Case

604. The Prosecution asserts that the evidence of the *92quater* witness Todorović pertaining to Crni's release from prison suggests that Crni was under the supervision or control of Stanišić. In fact, to the extent that this story can be believed at all – which is doubtful – it suggests the converse.

605. Todorović stated that upon Crni's arrest, the latter asked him to "inform his people" about his arrest and to try and get him out of prison.¹³⁹⁰ Specifically, he asked that Frenki be informed.¹³⁹¹ Since Simatović was not at the Serbian MUP building, Todorović claims to have spoken to Stanišić *for the first time* in a "chance meeting"¹³⁹² during which he asked Stanišić to help release Crni.¹³⁹³ Crni "was released some ten days later".¹³⁹⁴ Todorović acknowledged that it was brief encounter that went on for less than a minute.¹³⁹⁵

606. This evidence lacks the corroboration required for this *92quater* witness. Further, a detailed report of 1 December 1992 (signed by a number of senior military leaders from the

¹³⁸⁹ P179, p.16.

¹³⁹⁰ Todorović, P1576, p.53.

¹³⁹¹ Todorović, P1576, p.54.

¹³⁹² Todorović, P1576, p.108.

¹³⁹³ Todorović, P1576, pp.54-55.

¹³⁹⁴ Todorović, P1576, p.55.

¹³⁹⁵ Todorović, P1576, pp.109-110.

Command of the 2nd Posavina Infantry Brigade) complaining of Crni's behaviour tends to suggest that his release was facilitated through military channels, "high military officers from the FRY",¹³⁹⁶ Bogdanović¹³⁹⁷ [REDACTED].¹³⁹⁸

607. By creating a "random" encounter with Stanišić, rather than an official meeting, he was able to implicate Stanišić without the inconvenience of anyone being able to corroborate his account. The "random meeting" is a common ruse for the witness who seeks to hide the truth. Even if believed, it is insufficient to infer Stanišić had any involvement in the takeover of Bosanski Šamac.

608. In any event, what stands out from this testimony is that Stanišić did not know who Crni was. Stanišić asked Todorović for his proper name: "[s]o I told him his first and last name, and then he said...they've touched into a wasp – hornet nest and I will now send a telex telling them to release him immediately."¹³⁹⁹ If, as alleged by the Prosecution, Crni was a leading member of Stanišić's "28 Elite Trainers" entrusted with the takeover of Bosanski Šamac, one might have expected Stanišić to recall the name he evidently commonly used.

6. Miljković, aka Lugar, was not employed or engaged by Stanišić during Bosanski Šamac Operations

609. During cross-examination, Todorović claimed to be unaware of any official ties between Lugar and any of the police structures of Serbia, RS or RSK.¹⁴⁰⁰

610. [REDACTED].¹⁴⁰¹ The relationship he described is a relationship that is entirely consistent with Crni and his connection with Badža or individuals from the DB.

611. [REDACTED].¹⁴⁰² [REDACTED].¹⁴⁰³

612. It is likely that Miljković received a salary for a short time from Badža's Serbian MUP. On 13 December 1991, Miljković, aka Lugar, worked for Badža as a volunteer in the

¹³⁹⁶ P1418, p.9.

¹³⁹⁷ Prosecution Pre-trial Brief, para.150.

¹³⁹⁸ [REDACTED].

¹³⁹⁹ Todorović, P1576, p.55.

¹⁴⁰⁰ Todorović, P1576, p.101.

¹⁴⁰¹ [REDACTED].

¹⁴⁰² [REDACTED].

¹⁴⁰³ [REDACTED].

units of the SBWS TO. It was anticipated that he would continue to do so “until further notice”.¹⁴⁰⁴

613. [REDACTED].¹⁴⁰⁵ However, this does not implicate Stanišić: First, there is no basis for concluding that this payment was for action in Bosanski Šamac in 1992. Second, Prodanić and Simatović are alleged to have been involved with the group at Bosanski Šamac. Prodanić (Chief of the 8th (Financial) Administration) had ready access to the DB’s resources.¹⁴⁰⁶

614. [REDACTED].¹⁴⁰⁷ [REDACTED].¹⁴⁰⁸ This is an unlikely set of acts if Miljković was part of a Serbian DB special unit.

615. [REDACTED]. Miljković recalled that the agreement struck with the Public Security Station Chief, Stevan Todorović, for a group of Radicals to come to assist the soldiers in Posavina, was in exchange for a promise that they would not encounter any difficulty in transporting “war booty” into Serbia in lieu of proper pay.¹⁴⁰⁹ Considering the turn of events, it is clear that Stanišić’s DB were not privy to, or in any way endorsed, this agreement. [REDACTED].¹⁴¹⁰

7. The evidence suggests that Badža Controlled the Men who Assisted the Takeover

616. The weight of the evidence suggests that Badža coordinated with the JNA and other local authorities to train Serb forces for military engagement in Bosanski Šamac. Badža’s power, relevance and close personal relationship with Milošević is discussed at Part II, Section III.¹⁴¹¹ He had the authority to, *inter alia*, organise men and resources and was not, in any way, subordinated to Stanišić.

617. As noted above, following the DB’s shelving of he plans for the ATU, Badža took over command of some of the men who congregated around Ilok in spring 1992, including Crnogorac. In late 1991, Crnogorac had been involved in the training of the SBWS TO and their volunteers at Tara under the command of Badža.¹⁴¹² [REDACTED].¹⁴¹³ Unsurprisingly,

¹⁴⁰⁴ P54; [REDACTED], T.2131-2132 [REDACTED].

¹⁴⁰⁵ P1485.

¹⁴⁰⁶ See Part I, Section II, paras 157-167.

¹⁴⁰⁷ See Confidential Annex VI; [REDACTED].

¹⁴⁰⁸ See Confidential Annex VI.

¹⁴⁰⁹ P1428, p.4.

¹⁴¹⁰ [REDACTED].

¹⁴¹¹ Paras 416-424.

¹⁴¹² See Part III, Section IV, paras 778-781.

his new group – consisting of some of those that had been training for the DB’s nascent ATU– were known locally as a Red Berets. JF-30 was sure that they received their orders from Badža and Zavišić: it was only “later on...that they were under the control of the DB...during the time when they were in Ilok, they were controlled by Zavišić, and Badža Stojičić was coming there”.¹⁴¹⁴

618. The evidence suggests that it was Badža’s new group who were involved in the arrangements to train the men for Bosanski Šamac. Before the offensive, the SDS Main Board suggested to the commander of the TG-17 at that time, Stevan Nikolić, to “recruit, through friends and acquaintances of some of the SDS members in Šamac in the MUP of the Republic of Serbia, Dragan Đorđević aka Crni and Srećko Radovanović aka Debeli and a group of 30 men from the FRY”.¹⁴¹⁵ Simić stated in 14 December 1992, that he believed that the Serbian MUP sent Crni and the assault group.¹⁴¹⁶

619. Miljković recalled that he was in Eastern Slavonia working in the police before going to train. As discussed above, in return they were promised that they would not encounter any difficulty in transporting “war booty” into Serbia in lieu of proper pay.¹⁴¹⁷ [REDACTED]¹⁴¹⁸

620. Badža’s involvement at Bosanski Šamac is further evidenced by his relationship with the main combatants involved in the events.

a. Miljković and Badža had a Relationship Preceding Bosanski Šamac

621. Badža commanded the SBWS MUP and the SBWS TO.¹⁴¹⁹ On 13 December 1991, Miljković, aka Lugar, worked for Badža as a volunteer in the units of the SBWS TO. It was anticipated that he would continue to do so “until further notice.”¹⁴²⁰ P54, a certificate of employment registering Miljković in the SBWS TO, at a minimum, gave him freedom to travel in Serbia.¹⁴²¹

¹⁴¹³ [REDACTED].

¹⁴¹⁴ JF-30, T.10618-10619 [REDACTED].

¹⁴¹⁵ P1416, p.2; P1582, p.1.

¹⁴¹⁶ P1429, p.2.

¹⁴¹⁷ P1428, p.4.

¹⁴¹⁸ [REDACTED].

¹⁴¹⁹ DST-44, T.13490 [REDACTED].

¹⁴²⁰ P54.

¹⁴²¹ [REDACTED] T.2131-2132 [REDACTED].

b. Debeli and Badža had a Relationship Preceding Bosanski Šamac

622. Prior to the takeover in Bosanski Šamac, the evidence suggests that Debeli headed a special purpose brigade and was ultimately answerable to Badža.¹⁴²² [REDACTED].¹⁴²³ [REDACTED].¹⁴²⁴

c. Crnogorac and Badža had a Relationship Preceding Bosanski Šamac

623. The relationship between Badža - as TO and police commander of the SBWS police¹⁴²⁵ - and Crnogorac is illustrated by the Report of 28 July 1992, BH Army Main Staff Department OB. It described Crnogorac's group as the "Krajina Special Police with 45 men led by...Crnogorac is in the area of Brčko...[h]e was allegedly sent by the Serbian RSUP".¹⁴²⁶

624. JF-33, [REDACTED], provided further insight into Badža's relationship with Crnogorac. [REDACTED].¹⁴²⁷ [REDACTED]. Crnogorac was one of the trainers.¹⁴²⁸ It appears that the training was for members of the TO and other volunteers. [REDACTED].¹⁴²⁹ [REDACTED].¹⁴³⁰

625. [REDACTED].¹⁴³¹ [REDACTED].¹⁴³²

C. CONCLUSION

626. The Prosecution have failed to prove that any of the training or military activity was pursuant to Stanišić's command of a Unit of "28 elite trainers" or otherwise at his behest. Many military, MUP and DB personnel are implicated. Stanišić's name is conspicuously absent from the preparations, the training or the takeover.

¹⁴²² JF-47, T.7619-7620.

¹⁴²³ [REDACTED].

¹⁴²⁴ [REDACTED].

¹⁴²⁵ See Part III, Section IV, paras 778-781.

¹⁴²⁶ P383, p.10.

¹⁴²⁷ See Part III, Section IV, paras 778-781.

¹⁴²⁸ See Part II, Section IV.

¹⁴²⁹ [REDACTED].

¹⁴³⁰ [REDACTED].

¹⁴³¹ [REDACTED].

¹⁴³² [REDACTED].

II. BARANJA

627. There has been no proper notice provided of this alleged training camp. It is wholly insufficient to merely allege that there was a training centre and it was subordinated to or operated in coordination with “other Serb Forces”.¹⁴³³

628. The Baranja camp was not a training camp. The relevance to the Prosecution’s “28 elite trainers” thesis is therefore unknown. [REDACTED].¹⁴³⁴

629. The evidence relating to this camp is scant. JF-36 did not know the commander or the names of any of the men, had no official contact with them.¹⁴³⁵ [REDACTED].¹⁴³⁶ Under these circumstances, [REDACTED]¹⁴³⁷ cannot be reliable.

630. In particular, [REDACTED].¹⁴³⁸ [REDACTED].¹⁴³⁹

631. [REDACTED].¹⁴⁴⁰ [REDACTED].¹⁴⁴¹ [REDACTED].¹⁴⁴² At the time, members of the so-called JATD were not accused. [REDACTED]¹⁴⁴³ [REDACTED],¹⁴⁴⁴ [REDACTED].¹⁴⁴⁵

III. BRČKO

A. PROSECUTION CASE

632. Brčko is only mentioned in one paragraph of the Prosecution’s Pre-Trial Brief, wherein it alleged that Stanišić set up a training base there as part his “28 elite trainer” master plan, and that Simatović boasted about it during the Kula award ceremony.¹⁴⁴⁶ No further details have been provided in the Indictment or Pre-Trial Brief explaining when the Brčko training base was created, whom it trained, or for how long it operated. Although, based on the evidence, the Prosecution will likely claim that Crnogorac, Crni and Dragan

¹⁴³³ Indictment, para.5.

¹⁴³⁴ [REDACTED].

¹⁴³⁵ JF-36, T.4189 [REDACTED].

¹⁴³⁶ [REDACTED].

¹⁴³⁷ [REDACTED].

¹⁴³⁸ [REDACTED].

¹⁴³⁹ [REDACTED].

¹⁴⁴⁰ [REDACTED].

¹⁴⁴¹ [REDACTED].

¹⁴⁴² [REDACTED].

¹⁴⁴³ [REDACTED].

¹⁴⁴⁴ [REDACTED].

¹⁴⁴⁵ [REDACTED].

¹⁴⁴⁶ Prosecution Pre-Trial Brief, para.69.

contributed to crimes in Brčko at the behest of the first Accused as part of the “28 Elite Trainer” plan, this is deficient notice and the charges arising should be dismissed.

B. DEFENCE CASE: DRAGAN AND CRNOGORAC IN BRČKO IN 1992

633. If these charges are not dismissed for lack of notice, the Prosecution failed to prove that Crnogorac, Crni or Dragan were commanded by the “28 Elite Trainers” or otherwise under the command of Stanišić. They formed new Red Beret units that were not commanded by Stanišić. Any contribution to crimes in Brčko was not at the behest of the first Accused in furtherance of the common purpose.

634. As the Defence will show, Dragan and Crnogorac operated in Brčko in early to mid-1992. They created small groups of less than 30 men. Their newly-formed paramilitary groups became known as Red Beret units during spring to mid-1992.

635. At this time, Crnogorac and Crni regarded themselves as subordinated to the RSK MUP, even though each had links with members of various other entities (including VRS, JNA, RSK MUP, Serbian MUP and DB). They received logistical assistance locally to allow them to operate in Brčko. The evidence does not allow a reasonable inference that the men were acting a part of the “28” commanded by Stanišić to create a network of bases, or otherwise contribute to the military objectives in furtherance of the criminal purpose.

636. It can be inferred that there was some cooperation between the men, particularly Crnogorac and Dragan in Brčko. However, the men formed new and distinct groups. Dragan arrived prior to the takeover in Brčko and may have contributed to (some limited) military activities for approximately one month. Characteristically, Crnogorac arrived in Brčko after the principal military objectives had been achieved and assumed a role in the local SJB. Whether this was a genuine attempt to bring some much-needed law and order is unclear. However, both Dragan and Crnogorac’s men turned to crime, transforming from police operatives to looting squads.

1. Dragan was not Sent by the Serbian DB or Stanišić to Brčko

637. The Prosecution’s (implied) claim that Dragan was sent to Brčko by the DB is unfounded. The evidence shows that, wherever Dragan was based in a region (whether Bruška, Divić or Brčko), his arrival had not been anticipated by the local authorities, let alone

arranged by the Serbian DB. Instead, he was a freelancer, mainly relying upon the beneficence of the local political or military structures for logistical assistance in setting up his (largely), ineffectual, training bases.

638. The evidence shows that “[f]irst to arrive in Brčko was the group of instructors of Captain Dragan (Rade, Sim, Saša, Božo, Serdo and others) and that was about 4 to 6 months before the war. They formed a special unit including...Brčko residents who went through training. When the war started and during the combat activities a number of members of this unit joined the police intervention platoon, but the special unit grew to about 70 people”.¹⁴⁴⁷ At first, Lt. Col. Milinković (Commander of the 2nd Posavina Brigade of the VRS) commanded Dragan’s Unit of Red Berets.¹⁴⁴⁸

639. Instead of being a well-paid, DB-sponsored elite trainer, Dragan, (as with Crnogorac)¹⁴⁴⁹, soon descended into looting and petty crime.¹⁴⁵⁰ His men exploited the chaos and lack of functioning structures, including the police, and tried to subvert the local authorities.¹⁴⁵¹ These paramilitary formations started looting the property of Serbs and others, moving into their homes and even killing them.¹⁴⁵² These crimes were perpetrated for personal gain, unconnected to the war objectives or any alleged criminal purpose. Once local authorities organised themselves, the units were expelled (or integrated into the VRS)¹⁴⁵³ because they were avoiding combat, committing crimes irrespective of ethnicity, and transporting goods into the FRY.¹⁴⁵⁴

2. Other Members of Captain Dragan’s Group were not Acting on Behalf of the Alleged “28 Elite Trainers”

640. Dragan’s group included the brothers Rade and Božo Božić.¹⁴⁵⁵ However, as illustrated above¹⁴⁵⁶ and confirmed [REDACTED], the Božić brothers left the DB’s ATU in May

¹⁴⁴⁷ D83, p.3.

¹⁴⁴⁸ *Ibid.*

¹⁴⁴⁹ *Infra*, paras 646-648.

¹⁴⁵⁰ P3017, pp.7-8; *see also* D83, pp.4-5.

¹⁴⁵¹ P1406, pp.1,3.

¹⁴⁵² P383, pp.4-5.

¹⁴⁵³ P1406, pp.5; *see also* P3017, pp.9-10.

¹⁴⁵⁴ *See* P1406, pp.3-5; P2618, p.2; P383, p.4; P1432, p.1.

¹⁴⁵⁵ P3017, p.8.

¹⁴⁵⁶ *See* Part I, Section I, paras 37-38.

1992.¹⁴⁵⁷ It is more than likely that they left earlier since by the 1 May 1992 Božić was subordinated to the Brčko Garrison Command.¹⁴⁵⁸

641. According to the Prosecution, Miodrag Obradović was a member of the Special Units of the Serbian DB, engaged in Brčko. However, his KDF file confirms that he had no money “because *he never was employed*”.¹⁴⁵⁹ Significantly, a certificate issued by the Brčko Garrison Command confirmed that he was performing military duty in the period of time from 1 May 1992,¹⁴⁶⁰ under the command of an “Officer of the Unit Cap Božić”, under the Commander of the Brčko Garrison.¹⁴⁶¹

642. Even though Davidović’s FMUP Unit (sent to pacify the paramilitaries) observed Captain Dragan’s group and appears to have eventually assisted in disbanding them, *he* did not connect them to the Serbian MUP or DB.¹⁴⁶² No evidence exists to suggest his assessment was wrong.

a. Crnogorac in Brčko was not Engaged by the Serbian DB

643. Besides a certificate in his Personnel file issued in 1997, stating he was part of the reserve forces of the MUP Serbia since 1 June 1991 ([REDACTED])¹⁴⁶³ no evidence suggests that Crnogorac was engaged by the DB in Brčko, let alone commanded by Stanišić as part of a Unit of “28 Elite Trainers”. On the contrary, he arrived in Brčko and declared himself a policeman, before his unit transformed into a looting squad.¹⁴⁶⁴

644. Stoparić acknowledged encountering Crnogorac in Brčko; he testified that the prevailing practice permitted small groups such as Crnogorac’s to cross into BiH at this time, integrate into the Brčko barracks, and receive supplies from them.¹⁴⁶⁵ Crnogorac’s weapons were supplied locally and he took orders from Commander Milenković.¹⁴⁶⁶

¹⁴⁵⁷ See [REDACTED].

¹⁴⁵⁸ D202, p.5.

¹⁴⁵⁹ D202, p.3.

¹⁴⁶⁰ D202, pp.4-5.

¹⁴⁶¹ D202, p.5.

¹⁴⁶² P3017, pp.9-10.

¹⁴⁶³ [REDACTED]; P2964.

¹⁴⁶⁴ P3017, pp.7-10; D83, pp.3-6; P1406, pp.3-4.

¹⁴⁶⁵ Stoparić, T.10403.

¹⁴⁶⁶ Stoparić, T.10403, 10482.

645. In the 8 August 1992 Davidović report (see above), Davidović noted the “growing security problems in...Brčko” in May and June of 1992.¹⁴⁶⁷ The Prosecution relies on this report to show that “certain formations in the Brčko area, including the Serbian Volunteer Guard, Captain Dragan’s Red Berets, and Zika Crnogorac were directed to those areas by the Serbian DB”.¹⁴⁶⁸

646. A fair reading of the report exculpates Stanišić. The report notes that various paramilitaries participated “partially” in liberating Brčko.¹⁴⁶⁹ However, Crnogorac’s group is not listed as having helped ‘liberate’ the area; instead, it is specifically characterised as a group sent from Serbia, which participated “in large measure...to theft and robbery and *refusing to take part in the struggle against the enemy under the command of the army or the SR BH MUP*”.¹⁴⁷⁰

647. Further, the report notes that Crnogorac’s group took over “without authorisation [the] jobs and tasks of the organs of internal affairs” before lapsing into theft and robbery.¹⁴⁷¹

648. Crnogorac’s self-adopted police role in his early stay in Brčko exposes the unreliability of the case against Stanišić. There is no logic to the proposition that Stanišić sent him as part of the alleged “28 Elite Trainer” Unit to train and to conduct military activities in this region (critical, *inter alia*, to the creation of the corridor), only for Crnogorac to arrive after the military operations,¹⁴⁷² [REDACTED].¹⁴⁷³

b. Crnogorac’s Personnel File does Not Support the Prosecution’s Case

649. The Prosecution will claim that Crnogorac was a member of the alleged “28 Elite trainers” based on little more than [REDACTED].¹⁴⁷⁴ However, this claim cannot support an inference that all of Crnogorac’s activities from 1 June 1991 were done at the behest of the first Accused.

¹⁴⁶⁷ P3017, p.1.

¹⁴⁶⁸ Djukić, T.18108.

¹⁴⁶⁹ P3017, p.2.

¹⁴⁷⁰ P3017, p.10 (emphasis added).

¹⁴⁷¹ P3017, pp.7-8.

¹⁴⁷² Djukić, T.17963-17964.

¹⁴⁷³ [REDACTED].

¹⁴⁷⁴ [REDACTED].

650. Almost all the evidence points to Crnogorac being a volunteer who, at the time he was active in Brčko, worked principally for the RSK MUP, but maintained personal contacts with a number of individuals, including some in the Serbian MUP and DB.

651. [REDACTED].¹⁴⁷⁵ [REDACTED]¹⁴⁷⁶ stating that “[i]t is a job that I *could* do during the length of my life”.¹⁴⁷⁷ There is no evidence that this application was processed further at that time.

652. As is obvious, being a reserve member, both legally and logically, does not prove that the individual was active during any particular period, only that he *could* be engaged.¹⁴⁷⁸ [REDACTED].¹⁴⁷⁹

653. Further, and crucially, Crnogorac, despite being arrested and eventually expelled by Davidović’s Special Unit, never claimed allegiance to, or protection from, Stanišić. On the contrary, Crnogorac and his 40 members “presented themselves as Serbian MUP officials...[with] identity cards and a stamp of the Krajina MUP and official identity cards of the Serbian MUP” (engaged in trying to steal 22 official identity cards of the BH MUP from the police station).¹⁴⁸⁰ They said that they had been sent by “Tepa and Frenki from the Serbian MUP SDB, and they had lent them weapons, equipment and cars from the station”.¹⁴⁸¹

c. Crnogorac had Strong Links to Krajina MUP

654. Whatever the truth or otherwise in the allegation against “Tepa and Frenki”, one can reasonably infer that Crnogorac was a member of the RSK MUP when he was in Brčko. Despite the Prosecution’s belated claim (advanced during the rebuttal process) [REDACTED],¹⁴⁸² it is significant that Crnogorac and others did not see themselves as members of a Serbian MUP Unit. Instead, they “presented themselves as Serbian MUP officials”,¹⁴⁸³ with personal links to individuals in the Serbian MUP and the DB.

¹⁴⁷⁵ See [REDACTED].

¹⁴⁷⁶ [REDACTED].

¹⁴⁷⁷ P2964; [REDACTED].

¹⁴⁷⁸ See Part I, Section II, paras 173-178.

¹⁴⁷⁹ [REDACTED].

¹⁴⁸⁰ P3017, p.7.

¹⁴⁸¹ P3017, p.10.

¹⁴⁸² Prosecution Rebuttal Motion: Serbian DB Personnel Files, para.19 (confidential).

¹⁴⁸³ P3017, p.7.

655. Evidence presented during trial supports the above proposition. For example, Crnogorac possessed a RSK MUP ID.¹⁴⁸⁴ Whilst this is not dispositive, since it was common at that time for IDs to be issued by the Krajina MUP,¹⁴⁸⁵ it is nonetheless persuasive. [REDACTED].¹⁴⁸⁶ Further, at the time of applying to join the DB's ATU unit in 1992 or the JATD in 1993, Crnogorac himself indicated that his previous war experience was as a "member of Sabotage Unit" of the "SAO Krajina Police".¹⁴⁸⁷

656. Further evidence of Crnogorac's links with the RSK MUP include close links to Badža and others in Ilok in late 1991 and early 1992.¹⁴⁸⁸ JF-30 confirmed that in early 1992, Crnogorac was the commander of a new unit called the Red Berets on "the direct initiative of...Badža".¹⁴⁸⁹ According to this witness, only later did Badža's new Red Beret Unit move "to Serbia, and then they were under – under – as a separate unit, as a war unit or whatever, they were under the control of DB".¹⁴⁹⁰ In other words, Badža's Red Beret Unit (an RSK MUP unit) eventually disbanded and members of Crnogorac's Unit joined the JATD in 1993 or later.

657. [REDACTED].¹⁴⁹¹ [REDACTED].¹⁴⁹² [REDACTED].¹⁴⁹³ In other words, Crnogorac believed he was working for the MUP Krajina, but as a member of the units of SAO Semberija and Majevica. By November/December 1992, Crnogorac may have moved sideways to join the Krajina DB.¹⁴⁹⁴

658. The Prosecution introduced the personnel file of Torbica to show that that he was fighting in Brčko as part of a DB unit. The file contains the claim that "[o]n 24 September 1991, he was admitted into the Special Purpose Unit of the MUP of the Republic of Serbia, where he carried out the duties of an instructor and squad commander. He was killed on 22 June 1992, during fighting near Brčko".¹⁴⁹⁵

¹⁴⁸⁴ P489.

¹⁴⁸⁵ Djukić, T.18124; *see also* [REDACTED].

¹⁴⁸⁶ [REDACTED].

¹⁴⁸⁷ [REDACTED].

¹⁴⁸⁸ *See* Part III, Section IV.

¹⁴⁸⁹ JF-30, T.10618.

¹⁴⁹⁰ JF-30, T.10618.

¹⁴⁹¹ [REDACTED].

¹⁴⁹² [REDACTED].

¹⁴⁹³ [REDACTED].

¹⁴⁹⁴ D200, p.2; D201, p.3.

¹⁴⁹⁵ P3149.

659. The inference the Prosecution seeks to draw from this exhibit is an inference too far. Conspicuously, the exhibit does not state that Torbica was killed *whilst* fighting with or for the “28 Elite Trainers” or otherwise under Stanišić’s command. There are no facts (commander, unit members, circumstances of death, *etc.*...) that would allow an inference that he was in fact killed whilst in the employ of the DB.

660. [REDACTED],¹⁴⁹⁶ it is much more likely that the file is designed to facilitate payment of benefits to the dead man’s relatives. Critically, the benefits that accrued on the basis of his death, for his relatives were that of a “*reserve* force salary and full daily allowances”.¹⁴⁹⁷ In other words, he may have been a reserve member of the DB at the time he died. [REDACTED].¹⁴⁹⁸

d. Mijović was not Supplying Crnogorac or the VRS

661. The Prosecution invites the Trial Chamber to infer DB support for Crnogorac from JF-47’s claim that Crnogorac’s Red Berets in Brčko worked with Mijović.¹⁴⁹⁹ First, such a connection would, at best, provide a link to Simatović, not Stanišić or the Serbian DB.

662. Second, like much of JF-47’s claims, his evidence is unreliable. [REDACTED].¹⁵⁰⁰ [REDACTED].¹⁵⁰¹

663. Only in his evidence did JF-47 embellish his tale to attempt to connect Mijović to the DB. [REDACTED]. [REDACTED],¹⁵⁰² as often as “once weekly perhaps”.¹⁵⁰³

664. During cross-examination, he reversed his evidence, claiming, bizarrely, that Mijović supplied the VRS, but some of the surplus supplies *might* have also gone to Crnogorac’s unit: “p]erhaps a couple of cases of ammunition would be taken to us. The rest was stored in the [VRS] hangars”.¹⁵⁰⁴ It appears he forgot the lie in his statement. The proposition that Mijović

¹⁴⁹⁶ [REDACTED].

¹⁴⁹⁷ P3149 (emphasis added).

¹⁴⁹⁸ [REDACTED].

¹⁴⁹⁹ Prosecution 98*bis* submissions, T.11417.

¹⁵⁰⁰ [REDACTED].

¹⁵⁰¹ [REDACTED]

¹⁵⁰² [REDACTED].

¹⁵⁰³ JF-47, T.7650.

¹⁵⁰⁴ JF-47, T.7650.

was supplying the VRS is uncorroborated and, in light of the thousands of tonnes of supplies being transported to them by the VJ, patently absurd.¹⁵⁰⁵

IV. DIVIČ

A. PROSECUTION CASE

665. According to the Prosecution, after leaving Brčko, Dragan established a camp near Divič.¹⁵⁰⁶

B. DEFENCE CASE

666. There was no mention of Divič in the Indictment or Pre-Trial Brief. Milovanović first discussed Dragan's camp in April 2010¹⁵⁰⁷ and the first exhibit was tendered in September 2010, only months before the Prosecution's case closed. Similar to Brčko, this deficient notice should lead to the dismissal of the charges.¹⁵⁰⁸

667. In any event, it is plain that neither Dragan nor Crni (who was involved in the camp) arrived pursuant to the type of arrangements that logic and common sense dictates would have been in place if Stanišić were sending an elite group (or part of his "28 elite trainer" unit) to assist in the war effort. None of the local leadership, including Mladić had any idea they were coming or for what reason. Instead, Dragan was forced to seek *ad hoc* help from anyone who was vaguely sympathetic to his self-aggrandizing plans.

668. Instead of Stanišić calling his alleged fellow JCE member, Mladić, to let him in on the "28 elite trainers" plan, Mladić observed that Dragan appeared "out of nowhere".¹⁵⁰⁹ Dragan told Mladić that he had come through "the auspices of the [KDF] fund".¹⁵¹⁰

669. Upon arrival, various actors in the RS supported him. Dragan claimed support from the RS leadership.¹⁵¹¹ Other evidence shows that [REDACTED],¹⁵¹² Karadžić,¹⁵¹³ and/or Denčić of the Eastern Bosnia Corps supported him.¹⁵¹⁴

¹⁵⁰⁵ See Part III, Section V.

¹⁵⁰⁶ P2528, p.23.

¹⁵⁰⁷ Milovanović, T.4381.

¹⁵⁰⁸ See Part III, Section I, para. 631.

¹⁵⁰⁹ P2528, p.5.

¹⁵¹⁰ P2528, p.22.

¹⁵¹¹ P1405, p.1; P2528, pp.25-26.

670. Crni appears not to have even known Dragan, casting further doubt on the Prosecution's "28 Elite Trainer" thesis. Dragan confirmed on 30 June 1992, in a meeting with Mladić that Denčić put him "in touch with Crni who was in the Police".¹⁵¹⁵

671. Ultimately, these men did nothing but "play soldier" and loaf around.¹⁵¹⁶ They did not participate in hostilities.¹⁵¹⁷ Milovanović considered them "renegade, thieving bastards."¹⁵¹⁸ Mladić's opinion was not much higher.¹⁵¹⁹ Other local military opinion was similar.¹⁵²⁰ Crni was at the camp causing problems with the local authorities.¹⁵²¹ Other instructors were equally problematic.¹⁵²² The training centre was only there for one month.¹⁵²³ Dragan left in mid-June 1992.¹⁵²⁴

V. CONCLUSION

672. In conclusion, while renegade Serbian DB or MUP employees may have supported the men involved in the camps in Bosanski Šamac, Baranja, Brčko and Divić, the evidence does not prove that they were acting pursuant to a "28 Elite Trainer" master plan or otherwise at the behest of Stanišić.

673. It is absurd to suppose that Stanišić, an alleged leading member of the JCE, arranged these men and these camps, but "neglected" to make any arrangements with the local leadership to ensure viable training camps, proper supplies or, in most cases, useful military assistance. The fact that not a single military or political figure appears to have been aware of Stanišić's command of these men is not evidence of working "in the shadows"; it is evidence of non-involvement with these tawdry activities.

¹⁵¹² [REDACTED].

¹⁵¹³ P2528, pp.25-26; *see also* P1405, p.1; P2528, pp.4-5.

¹⁵¹⁴ Milovanović, T.15379-15380.

¹⁵¹⁵ P2528, pp.21-22.

¹⁵¹⁶ Milovanović, T.15380.

¹⁵¹⁷ Milovanović, T.15373, T.15380-15381.

¹⁵¹⁸ Milovanović, T.4493.

¹⁵¹⁹ P2528, p.5.

¹⁵²⁰ *See e.g.* P2528, p.5.

¹⁵²¹ P2528, pp.21,23,26.

¹⁵²² P2528, pp.18-19; Milovanović, T.15382.

¹⁵²³ Milovanović, T.15374; P1408, p.1; P1409, p.1.

¹⁵²⁴ Milovanović, T.4492; P1408, p.1; P1409, p.1

SECTION II. DOBOJ

I. PROSECUTION CASE

674. The Prosecution alleges that Serb Forces committed crimes in, attacked and took control of towns and villages in the municipality of Doboj.¹⁵²⁵ Specifically, it alleges that the special units of Serbian DB established a training centre in Doboj in early 1992,¹⁵²⁶ that Stanišić provided arms and equipment to the direct perpetrators of the crimes,¹⁵²⁷ that Serb Forces detained and mistreated non-Serb civilians¹⁵²⁸ and used detained non-Serbs as human shields in combat operations on or around 12 July 1992.¹⁵²⁹ Finally, the Prosecution contends that the Accused committed unlawful forcible transfer of non-Serb civilians from Doboj.¹⁵³⁰

A. NOTICE VIOLATION

675. The Indictment, the Prosecution's Pre-Trial Brief and its Opening Statement contain no reference to Subotić, Njegoš (Njegošlav Kušić), Lončar or Crnogorac regarding Doboj. The Prosecution has failed to notify Stanišić of the case in relation to these men. In particular, it has provided no notice outlining how Stanišić procured these men to commit crimes, or otherwise how their conduct gives rise to criminal liability. Any charges arising should be dismissed.

II. DEFENCE CASE

A. INTRODUCTION

676. The Prosecution case rests on a fanciful tale that Stanišić planned the Doboj/Ozren operations through the organisation of a Red Beret training camp, sending members of his "28 Elite Trainers" (Božović, Subotić, Njegoš, Crnogorac and Lončar) to train the locals to assist with the take over of Doboj. This claim further rests upon the allegation that Stanišić arranged this, along with supplies to the training base and the direct perpetrators, in cooperation with the Bosnian Serb military and police.

¹⁵²⁵ Indictment, paras 9,22-23,52,54,64; Prosecution Pre-Trial Brief, paras 156-163.

¹⁵²⁶ Indictment, para.51; Prosecution Pre-Trial Brief, para.156.

¹⁵²⁷ Prosecution Pre-Trial Brief, paras 156,158.

¹⁵²⁸ Prosecution Pre-Trial Brief, para.160.

¹⁵²⁹ Indictment, para.54; Prosecution Pre-Trial Brief, para.162.

¹⁵³⁰ Indictment, paras 64-66; Prosecution Pre-Trial Brief para.163; Prosecution Opening Statement, T.1515.

677. Logic dictates that a case as expansive as this requires cogent evidence in support. Instead, the Prosecution suggests that it is possible to infer this case beyond reasonable doubt from two aspects of the evidence: (i) from Stanišić's previous contact with the five men in Eastern Slavonia until early March 1992;¹⁵³¹ and (ii) from the evidence of JF-005, one of the most unreliable witnesses in the case.¹⁵³²

678. The remainder of the evidence is contextual. It does not corroborate the allegations against Stanišić or the Serbian DB. On the contrary, it establishes that the JNA played a principal role in the operations,¹⁵³³ organising the locals and the paramilitaries under JNA command,¹⁵³⁴ (particularly Šešelj's men¹⁵³⁵ and [REDACTED])¹⁵³⁶ and local police.¹⁵³⁷ These groups attacked villages in the Doboj municipality, killing, arresting and detaining people.¹⁵³⁸

B. PRELIMINARY MATTERS

1. Red Berets – a Generic Designation in the Doboj Area with No Link to the Serbian DB

679. The subtext to the Prosecution's case in the Doboj municipality rests upon the manifest presumption of guilt urged upon the Chamber to the effect that any member of the original Golubić group, or alleged "28 Elite Trainers" who continued to fashion himself, or derive status from, the Red Beret label, must have been acting at the behest of Stanišić.¹⁵³⁹

680. This presumption avoids the inconvenience of evidence. Despite this attribution of guilt by association, the Prosecution maintained this fiction throughout the trial, until Mladić was set for trial. At this point, the Prosecution abandoned its case that Stanišić was the commander of the Banja Luka Red Berets and their training camp in Manjača.¹⁵⁴⁰ This belated admission now allows them to prosecute Mladić for the actions of this group. Fortunately for Stanišić, it removes the stain of another false allegation.

¹⁵³¹ See e.g. Prosecution 98bis submissions, T. 11419-11420.

¹⁵³² *Ibid.*

¹⁵³³ Third Decision on Adjudicated Facts (Prosecution), Fact 292.

¹⁵³⁴ Hadžović, T.2271, T.2273-2274, T.2309-2310; see also P82, p.3 (2nd para.): "Arkan's men...the *Kninjas*...some formations from Ozren...were all quartered at military facilities – the 4th July army barracks in Doboj"; see also Third Decision on Adjudicated Facts (Prosecution), Fact 293.

¹⁵³⁵ See e.g. Third Decision on Adjudicated Facts (Prosecution), Fact 298.

¹⁵³⁶ [REDACTED].

¹⁵³⁷ Third Decision on Adjudicated Facts (Prosecution), Fact 295; see also Hadžović, P82, p.6.

¹⁵³⁸ [REDACTED].

¹⁵³⁹ See e.g. 98bis submissions, Prosecution Response, T.11376-11377, T.11380.

¹⁵⁴⁰ T.17381-17382.

681. Prosecution and Defence witnesses reject the presumption that all men wearing red berets must have been acting at the behest of Stanišić. For example, JF-24,¹⁵⁴¹ JF-27,¹⁵⁴² JF-005,¹⁵⁴³ JF-35,¹⁵⁴⁴ JF-47,¹⁵⁴⁵ JF-26,¹⁵⁴⁶ Slišković,¹⁵⁴⁷ DST-40,¹⁵⁴⁸ Grekulović,¹⁵⁴⁹ and Milovanović¹⁵⁵⁰ all provided evidence that they did not presume that any reference to Red Berets was a reference to the Serbian DB. The Red Berets camp in Vila, in Doboj commanded by Karagić, or those in Teslić commanded by Petričević have not been shown to be associated with the Serbian DB.¹⁵⁵¹

2. JF-005's Manifest Lack of Credibility

682. The Defence submits that a reasonable trier of fact must conclude that JF-005 was thoroughly unreliable and perjured himself. [REDACTED].¹⁵⁵²

683. Confidential Annex III-A contains the most obvious inconsistencies in his account, but his unreliability stems principally from the inherent implausibility of his account.

684. [REDACTED].¹⁵⁵³ [REDACTED].¹⁵⁵⁴ [REDACTED]. [REDACTED].¹⁵⁵⁵

685. Instead the witness crafted an account that might persuade without the need for corroboration:

- a. [REDACTED].¹⁵⁵⁶
- b. [REDACTED].¹⁵⁵⁷
- c. [REDACTED].¹⁵⁵⁸ [REDACTED].¹⁵⁵⁹

¹⁵⁴¹ [REDACTED].

¹⁵⁴² [REDACTED].

¹⁵⁴³ [REDACTED].

¹⁵⁴⁴ [REDACTED].

¹⁵⁴⁵ [REDACTED].

¹⁵⁴⁶ [REDACTED].

¹⁵⁴⁷ Slišković, T.5158.

¹⁵⁴⁸ [REDACTED].

¹⁵⁴⁹ Grekulović, T.15259, T.15263.

¹⁵⁵⁰ Milovanović, T.15404-15405.

¹⁵⁵¹ [REDACTED]; *see also* P1437, p.4.

¹⁵⁵² [REDACTED].

¹⁵⁵³ [REDACTED].

¹⁵⁵⁴ *See* [REDACTED].

¹⁵⁵⁵ [REDACTED].

¹⁵⁵⁶ [REDACTED]

¹⁵⁵⁷ [REDACTED].

¹⁵⁵⁸ [REDACTED].

¹⁵⁵⁹ [REDACTED].

d. [REDACTED];¹⁵⁶⁰

e. He does not know where the command of his unit and Doboje was; only that it was “most probably located at Ozren”.¹⁵⁶¹

686. [REDACTED].¹⁵⁶² [REDACTED]¹⁵⁶³ with passing knowledge of Božović, less of the DB, and even less of Stanišić. [REDACTED]. [REDACTED],¹⁵⁶⁴ [REDACTED].¹⁵⁶⁵

687. [REDACTED]. [REDACTED]. [REDACTED].¹⁵⁶⁶ He may have received orders from other VRS at some stage thereafter,¹⁵⁶⁷ but given the witness’ fluctuating account, it is impossible to know.¹⁵⁶⁸

688. Putting aside the lack of any corroboration [REDACTED], the witness exposed his lies further during his testimony. When confronted with his own claims [REDACTED],¹⁵⁶⁹ and that group was commanded by Dragan Lukić (not Božović),¹⁵⁷⁰ JF-005 claims to be “awaiting” documents to prove the contrary.¹⁵⁷¹ The documents have not been produced.

689. Despite this, he held onto his incredulous claim that he had received orders from Božović from 1992 to 1998.¹⁵⁷² Despite the claim to having “some contacts with him which were rather intensive until 1997 or 1998, more or less”,¹⁵⁷³ the witness was incapable of recalling a single order received during this time.¹⁵⁷⁴

690. The only corroboration for his account arises from a wholly unreliable procedure adopted by the Prosecution. Instead of asking JF-005 to describe who was in his “28 Elite Trainer Unit”, the Prosecution put three payment lists¹⁵⁷⁵ to the witness and asked him if he recognised “any of the names on the list as being members of [his] former unit of Red Berets

¹⁵⁶⁰ [REDACTED].

¹⁵⁶¹ JF-005, T.2857.

¹⁵⁶² [REDACTED].

¹⁵⁶³ [REDACTED].

¹⁵⁶⁴ [REDACTED].

¹⁵⁶⁵ [REDACTED].

¹⁵⁶⁶ JF-005, T.2870, T.2876-2877, T.2897-2900.

¹⁵⁶⁷ JF-005, T.2899-2900.

¹⁵⁶⁸ See Confidential Annex III-A; see also e.g. JF-005, T.2900.

¹⁵⁶⁹ [REDACTED].

¹⁵⁷⁰ JF-005, T.2901.

¹⁵⁷¹ JF-005, T.2902.

¹⁵⁷² JF-005, T.2905-2908.

¹⁵⁷³ JF-005, T.2904.

¹⁵⁷⁴ JF-005, T.2905.

¹⁵⁷⁵ P156, P157 (US), P158.

in Doboj in 1992”.¹⁵⁷⁶ Unsurprisingly, the witness claimed he did. Still, JF-005 was careful not to expose himself to searching questions – prudently, only claiming to recognise Božović as “absolutely certain”.¹⁵⁷⁷

691. While commenting on two payment lists dated January 1994,¹⁵⁷⁸ JF-005 was asked if he could provide the full name of Lončar, he testified that “[f]ull first and last name. I don’t know. I know that...them by their last name, so I would need to look to see that’s Nikola Lončar, I know them by their last names, but not by their first names”.¹⁵⁷⁹ He claimed to recognise the name of Zvezdan Jovanović but did not identify his role or relationship to the alleged unit.¹⁵⁸⁰ He was also unable to provide any information about the actions of his alleged “colleagues in the Red Berets, and/or the JSO” in the RSK.¹⁵⁸¹

C. NO EVIDENCE OF STANIŠIĆ OR THE SERBIAN DB SENDING BOŽOVIĆ, SUBOTIĆ, NJEGOŠ, LONČAR OR CRNOGORAC TO DOBOJ

1. Former Members of the ATU from Fruška Gora

692. The evidence does not show that Stanišić or the DB controlled Božović, Subotić, Njegoš, Lončar and Crnogorac in Doboj, let alone that they were dispatched there as members of a “28 Elite Trainers” Unit. As the following discussion shows, there is a dearth of evidence showing that the men were present at the behest of Stanišić and accountable to him according to the threshold required by the Appeals Chamber.¹⁵⁸² There is *nothing* (but the unreliable JF-005) to indicate that Stanišić was in command of these men.¹⁵⁸³ They did not identify themselves as members of the “28 Elite Trainers”.¹⁵⁸⁴

¹⁵⁷⁶ JF-005, T.2828, T.2834.

¹⁵⁷⁷ JF-005, T.2828.

¹⁵⁷⁸ P158, [REDACTED].

¹⁵⁷⁹ JF-005, T.2834.

¹⁵⁸⁰ JF-005, T.2829.

¹⁵⁸¹ JF-005, T.2806-2807.

¹⁵⁸² *Martić* Appeal Judgement, para.177.

¹⁵⁸³ *Martić* Appeal Judgement, para.187; see also illustrations of these threshold criteria in *Krajišnik* Appeal Judgement, paras 241–247.

¹⁵⁸⁴ *Martić* Appeal Judgement, para.188; see also *Martić* Appeal Judgement, para.186.

a. Božović, Subotić, Njegoš, Lončar and Crnogorac: alleged Labelling as the DB Red Beret unit in Doboj

693. Božović did not even refer to himself or his unit as Red Berets.¹⁵⁸⁵ Instead, JF-005 testified that this was a term used by the local population.¹⁵⁸⁶ JF-31 confirmed this to be true.¹⁵⁸⁷ KDF files suggest that, whilst the locals may have known Božović as a Red Beret, his group consisted of members of the Petrovo police.¹⁵⁸⁸

694. Further, the DB did not pay the men. They received payments from the CSB in Doboj in April 1992¹⁵⁸⁹ and May 1992.¹⁵⁹⁰ None of the men received any remuneration (“*per diem*”) payments from the DB, until their applications to join the JATD were being processed. [REDACTED],¹⁵⁹¹ [REDACTED],¹⁵⁹² [REDACTED]¹⁵⁹³ and [REDACTED]¹⁵⁹⁴ [REDACTED], [REDACTED].¹⁵⁹⁵

2. Men Trained in Mount Ozren were Not Associated with the Serbian DB

695. Another plank of the Prosecution’s “28 elite trainer” thesis is the claim that those who had been trained regarded themselves as under the DB command.¹⁵⁹⁶ Applications to the KDF Fund made after the events show that those who were subordinated to Božović – even his deputy Katanić¹⁵⁹⁷ – did not claim to be commanded as members of the Serbian DB, let alone the illusory “28 Elite Trainer” Unit.¹⁵⁹⁸

696. On 15 September 1992, the wife of a combatant killed in Doboj applied for invalidity benefits to the municipal administration in Belgrade. The request notes that the JNA paid for the funeral.¹⁵⁹⁹ Further, she was told to apply to the RS Government and received money for

¹⁵⁸⁵ JF-005, T.2851.

¹⁵⁸⁶ JF-005, T.2850-2851.

¹⁵⁸⁷ JF-31, T.7479-7480.

¹⁵⁸⁸ P144, p.3 (discussed with JF-005 at T.2910-2913); *see also* P145, p.5 (discussed with JF-005 at T.2913-2914).

¹⁵⁸⁹ P142.

¹⁵⁹⁰ P143.

¹⁵⁹¹ [REDACTED].

¹⁵⁹² [REDACTED].

¹⁵⁹³ [REDACTED].

¹⁵⁹⁴ [REDACTED].

¹⁵⁹⁵ [REDACTED].

¹⁵⁹⁶ Prosecution Pre-Trial Brief, paras 70-71.

¹⁵⁹⁷ *See* P144, pp.3, 5; JF-005, T.2912-2913.

¹⁵⁹⁸ *See e.g.* P144, pp.3, 5, 7; P145, pp.5; D13, p.2.

¹⁵⁹⁹ P147, pp.1, 2.

her late spouse's funeral from the JNA.¹⁶⁰⁰ In other words, these so-called "Red Berets" had no relationship with either Serbia or the Serbian DB.

697. P148 stands alone as evidence that one man, Dobrić Duško, considered himself to be somehow still associated with Simatović and the Serbian MUP whilst in Doboj. He states on 17 May 1992, that his commanders were Božović and Frenki, and the Serbian MUP employed him.¹⁶⁰¹ A subjective self-assessment, wishful thinking or a reference to the previous nascent Unit at Fruška Gora is a paltry piece of evidence for the gargantuan inference the Prosecution urges upon the Chamber to draw with regard to the actions of the alleged "28 Elite Trainers" Unit and the crimes in Doboj.

3. The DB Personnel Files: alleged Link with Stanišić or the Serbian DB

a. Božović

698. Simatović's speech at Kula, referring to the Doboj camp as a DB camp,¹⁶⁰² Theunens' unsubstantiated claim that Božović was a member of the Serbian MUP when he was in Doboj, and Božović's personnel file cannot amount to meaningful evidence that he was a member of an alleged unit of "28 elite trainers" while in Doboj.¹⁶⁰³

699. Božović was commander and lieutenant of the Special Purpose Unit at Petrovo, also known as the Black Berets.¹⁶⁰⁴ [REDACTED]. [REDACTED].¹⁶⁰⁵ Stanišić, if he had read the request, clearly believed that Božović was neither in the reserve or active forces of any "28 Elite Trainers" Unit at that time.

700. [REDACTED].

701. However, on the 16 August 1993 a new request was made for a check because he was a candidate "for active and reserve duty" in the JATD.¹⁶⁰⁶ [REDACTED],¹⁶⁰⁷ [REDACTED]

¹⁶⁰⁰ P147, pp.2,3.

¹⁶⁰¹ P148, p.3.

¹⁶⁰² See P61.

¹⁶⁰³ P1575, Section 3, p.41.

¹⁶⁰⁴ JF-008, T.3626-2637 [REDACTED] commenting on P144, p.5. Bosanska Petrovo is located at Mount Ozren (JF-008, T.3626 [REDACTED]).

¹⁶⁰⁵ [REDACTED].

¹⁶⁰⁶ P2388, p.6.

¹⁶⁰⁷ [REDACTED].

(even though the Stanišić Defence accepts that he was known to some individual members of the DB and the Serbian MUP)¹⁶⁰⁸. [REDACTED].¹⁶⁰⁹

b. Subotić

702. [REDACTED]. [REDACTED].¹⁶¹⁰ [REDACTED]¹⁶¹¹ [REDACTED]. At its highest, therefore, the evidence might suggest that Subotić was a member of the reserve forces of the Serbian DB.

703. It is accepted, [REDACTED] that Subotić was one of the original 28 men who went to Fruška Gora.¹⁶¹² [REDACTED].¹⁶¹³ [REDACTED].¹⁶¹⁴ [REDACTED]. [REDACTED]k.¹⁶¹⁵

704. Subotić admitted that he went to Golubić “where a Special Purpose Unit of MUP Republika Srpska was being formed”.¹⁶¹⁶ In this biographical note he does not claim to have been in a Serbian MUP/DB unit when he went to Doboj. Instead, he refers to the RSK MUP and being, *inter alia*, “dispatched with a group of men on Mount Ozren”.¹⁶¹⁷ At that time he was in possession of an RSK MUP ID.¹⁶¹⁸

c. Njegoš

705. The evidence does not allow a reasonable inference that Stanišić sent Njegoš to Doboj as part of an alleged “28 Elite Trainer” Unit. On the contrary, the only evidence of Stanišić’s (possible) involvement with him prior to his arrival in Doboj (and his payment by the CSB Doboj in April and May 1992)¹⁶¹⁹ is that he appears on a list of people (who possessed a Krajina MUP ID card) that is contained in several of the DB personal files of men who were present as prospective members of the ATU at Fruška Gora.¹⁶²⁰ Plainly this, or Njegoš’

¹⁶⁰⁸ See Part I, Section II, references to Božović.

¹⁶⁰⁹ [REDACTED].

¹⁶¹⁰ [REDACTED].

¹⁶¹¹ [REDACTED].

¹⁶¹² [REDACTED].

¹⁶¹³ [REDACTED].

¹⁶¹⁴ [REDACTED].

¹⁶¹⁵ [REDACTED].

¹⁶¹⁶ D423.

¹⁶¹⁷ D423.

¹⁶¹⁸ P489.

¹⁶¹⁹ P142 and 143.

¹⁶²⁰ P489; *see also* [REDACTED].

subsequent association and work with Božović in Doboj in April and May 1992,¹⁶²¹ cannot amount to proof that Stanišić used him to commit crimes in Doboj.

d. Lončar

706. The Prosecution has not shown that Lončar had a personnel file within the DB, [REDACTED].¹⁶²² However, consistent with the Defence case, they show nothing more than the fact that he was a member of the nascent ATU based in Fruška Gora until early March 1992. Apart from this previous association with the Serbian MUP and DB, there is no evidence to link him to Stanišić during his time in Doboj.

e. Crnogorac

707. It is unclear whether the Crnogorac (Ivanović) who is the subject of this trial was in Doboj at the salient time. The name Živojin Ivanović does not appear on the Doboj CSB payments lists.¹⁶²³ JF-008 identified someone names Crnogorac was present in Doboj. However, the identification of him could be anyone: the individual called Crnogorac in Doboj was called that “because he had a Montenegrin accent, and [the detainees in Doboj] referred to him as Crnogorac as a result of that”.¹⁶²⁴

D. STANIŠIĆ DID NOT ISSUE ORDERS TO BOŽOVIĆ OR ANYONE ELSE IN DOBOJ

708. The Prosecution’s thesis of control by Stanišić (or Simatović) rests upon the proposition that they remained in command of the training camp, as well as Božović, Subotić *et al.* As noted above, this thesis, suggesting ongoing communication, control and supply spanning several months from April to September 1992, rests solely on the testimony of JF-005. The idea that no one but JF-005 knew about Stanišić’s involvement is fanciful.

709. [REDACTED].¹⁶²⁵ [REDACTED],¹⁶²⁶ that he was not sure and that he “*assume[d]* that it was his name” on the order,¹⁶²⁷ that the name “*sounds like this name, and I’m sure that that was a similar name*”.¹⁶²⁸

¹⁶²¹ JF-005, T.2847, T.2851-2857; *See also* T.2778-2779.

¹⁶²² [REDACTED]; P351, pp.1-2.

¹⁶²³ P142; P143.

¹⁶²⁴ JF-008, T.2324; *see also* T.2337-2338.

¹⁶²⁵ [REDACTED].

¹⁶²⁶ [REDACTED].

¹⁶²⁷ JF-005, T.2921.

¹⁶²⁸ *Ibid.*

4. JF-31's Evidence: Alleged Support for the Proposition that the "Red Berets" in Doboj were there as part of a "28 Elite Trainer" Unit

710. In his statement to the Prosecution, [REDACTED].¹⁶²⁹ [REDACTED].¹⁶³⁰ [REDACTED].¹⁶³¹ [REDACTED].¹⁶³² [REDACTED]s; [REDACTED].¹⁶³³

E. MIĆO STANIŠIĆ AND THE LOCAL CRISIS STAFF BOARD ESTABLISHED THE CAMP AT MOUNT OZREN

711. The evidence shows that it is likely that Mićo Stanišić, Bijočević and the local JNA command established the so-called Red Berets camp and the JNA sent Božović and other volunteers to assist.

712. Permission to establish the camp was granted by Mićo Stanišić. P392 is an excerpt from the Mladić Notebooks, dated 6 February 1993, and states, "Slavko Lažarević, aka Amerika, now called Ciganović, lives in Belgrade and has permission from Stanišić to form the Red Berets at Ozren (Mićo wrote an order for Božović to form a special unit at the CJB/Public Security Centre/in Doboj)".¹⁶³⁴ The Prosecution mistakenly believed that the first mention of Stanišić was a reference to Jovica Stanišić, not Mićo Stanišić.¹⁶³⁵ General Milovanović made this fact abundantly clear.¹⁶³⁶

713. He was genuinely perplexed at the proposition that the "Stanišić" mentioned was Jovica, not Mićo. It could not be Jovica, according to Milovanović, because "we're talking about Doboj and the setting up of the Special Police Unit in Doboj. Jovica Stanišić never had anything to do with that. It was only the minister of the interior of Republika Srpska who could have anything to do with that".¹⁶³⁷ In putting it this way, he exposed the banality of JF-005's claims and the Prosecution case. Of course, Milovanović was suggesting, Jovica

¹⁶²⁹ [REDACTED].

¹⁶³⁰ [REDACTED].

¹⁶³¹ [REDACTED].

¹⁶³² [REDACTED].

¹⁶³³ [REDACTED].

¹⁶³⁴ P392, p.1.

¹⁶³⁵ Milovanović, T.4431-4433.

¹⁶³⁶ Milovanović, T.4431-4433. *See also ibid*, T.4473-4474.

¹⁶³⁷ Milovanović, T.4473-4474.

Stanišić could not make these decisions on behalf of the Bosnian Serbs: he “would not have been able to write an order for the [special] unit to be located in Doboj, in any case”.¹⁶³⁸

F. THE MEN WERE SENT BY THE JNA AT THE REQUEST OF COLONEL SUBOTIĆ

714. The Prosecution case is that “[o]n or about ... 2 May 1992”, the takeover of Doboj began.¹⁶³⁹ It further alleges that Božović was in charge of one of the special units (the “28 elite trainers”) of the Serbian DB that participated in the operations.¹⁶⁴⁰

715. On 27 April 1992, the MOD of RS wrote to the JNA’s 2nd Command asking for assistance. It stated that there was an agreement reached in Belgrade to respond to the RS’s request for reinforcements of active duty personnel to Doboj.¹⁶⁴¹ Two individuals were selected as TO Staff and Deputy TO Staff to go to Doboj; further, it stated, “other officers should be found and “assigned to duties upon their consent”.¹⁶⁴² Božović and the others appear to arrive shortly thereafter. A reasonable inference arises that Božović arrived as a result of these requests and the JNA order. None of this has anything to do with the Serbian DB.

G. THE SERBIAN DB’S ALLEGED ROLE REGARDING THE FORCIBLE TRANSFER AND OTHER CRIMES IN THE DOBOJ REGION

716. For the reasons stated above, the evidence does not show that the DB was involved in furthering horrendous crimes. Accordingly, it is unnecessary to address these operations more than superficially.

717. Other than the following salient point, the Defence will not address the takeover of Doboj and its surrounding areas.¹⁶⁴³ In the event that the Trial Chamber finds that Stanišić had command and control over Božović in Doboj, he could not have been participating in the human shields incident on 12 July 1992, as he was hospitalised between 26 June-23 July

¹⁶³⁸ Milovanović, T.4433.

¹⁶³⁹ Indictment, para.52.

¹⁶⁴⁰ Prosecution Pre-Trial Brief, para.159.

¹⁶⁴¹ D720, p.1.

¹⁶⁴² D720, p.2.

¹⁶⁴³ 98bis submissions, Prosecution Response, T.11418-11419.

1992.¹⁶⁴⁴ The Prosecution has agreed that this amounts to an “alibi” for any crimes committed during this time.¹⁶⁴⁵

¹⁶⁴⁴ D121.

¹⁶⁴⁵ [REDACTED].

SECTION III. ZVORNIK

I. PROSECUTION CASE

718. The Prosecution alleges that Serb Forces, in particular Arkan and his men, attacked and took control of Zvornik on or about 8 April 1992,¹⁶⁴⁶ and that Stanišić played a critical role in directing and organising the financing, training, logistical support and other substantial assistance or support to Arkan's men.¹⁶⁴⁷ According to the Prosecution, non-Serb civilians were killed,¹⁶⁴⁸ Muslim monuments were targeted,¹⁶⁴⁹ individuals were interrogated,¹⁶⁵⁰ houses were searched¹⁶⁵¹ and, finally, many Bosnian Muslims were forcibly transferred.¹⁶⁵²

719. The Prosecution further alleges that Kostić, an alleged member of the Serbian DB, played a role in arming Serb Forces in Zvornik in 1991 and 1992 on behalf of the DB.¹⁶⁵³ It also alleges that Kostić made sure that logistical support for Arkan's unit would be secured prior to the take over of Zvornik and coordinated Arkan's arrival into Zvornik.¹⁶⁵⁴

II. DEFENCE RESPONSE

A. PRELIMINARY MATTERS

1. Adjudicated Facts related to Zvornik show Stanišić's Lack of Involvement

720. The Trial Chamber has taken judicial notice of critical facts, including that Arkan was armed by the JNA and that the JNA was responsible for the takeover of Zvornik.¹⁶⁵⁵ Other facts that the Defence finds particularly relevant are discussed throughout this section.

¹⁶⁴⁶ Indictment, para.62.

¹⁶⁴⁷ Indictment, para.15(c).

¹⁶⁴⁸ Indictment, paras 22, 24, 62; *see also* Prosecution Pre-Trial Brief, paras 146-147.

¹⁶⁴⁹ Prosecution Pre-trial Brief, para.147.

¹⁶⁵⁰ *Ibid.*

¹⁶⁵¹ *Ibid.*

¹⁶⁵² Indictment, paras 22-26, 64; *see also* Prosecution Pre-Trial Brief, para.147.

¹⁶⁵³ Prosecution Pre-trial Brief, paras 89,143.

¹⁶⁵⁴ *Ibid.*, paras 77,143.

¹⁶⁵⁵ First Decision on Adjudicated Facts (Prosecution), Facts 201, 202, 221.

2. Alleged Perpetrators are not Listed in the Indictment, Thereby Depriving the Accused of Fair Notice of the Allegations against Him

721. Marko Pavlović, [REDACTED],¹⁶⁵⁶ is not referenced in the Indictment or Pre-Trial Brief as having any relationship with Stanišić or the Serbian DB. If the Prosecution is in a position to identify physical perpetrators by name, they must be identified in the Indictment.¹⁶⁵⁷ [REDACTED].¹⁶⁵⁸ Further, he was a known perpetrator in the *Milošević* case [REDACTED].¹⁶⁵⁹

722. Since Pavlović is an alleged perpetrator of crimes and an alleged “tool” of the Accused, and the Accused was not provided any notice in the Indictment or Pre-Trial Brief of this alleged link, he has been denied sufficient notice. Any charges arising from the alleged use of this tool should therefore be dismissed.

B. NEITHER STANIŠIĆ NOR THE SERBIAN DB HAD A ROLE IN THE ATTACKS IN ZVORNIK

1. Neither the Serbian DB nor the MUP are Linked to the Crimes in Zvornik through their Connection to the RS MUP

723. The only evidence that ostensibly links the Serbian MUP and the RS MUP is JF-26’s testimony and P2550. The Prosecution will assert that P2550, a report by the Zvornik public security, shows that the reference to the Serbian MUP and the desire for better cooperation indicate that previous cooperation existed between the two entities. This is irrelevant, as it relates to the Serbian MUP, not the DB, thus failing to establish a link to Stanišić.

a. JF-26 Admitted that his Evidence was Untruthful

724. The principal evidence in support of the Prosecution’s case was provided by JF-26. Apart from the obvious inconsistencies, JF-26 was clearly unreliable. He admitted to falsifying nearly his entire witness statement. He confessed playing “tactical games” with the Prosecution in providing his statement¹⁶⁶⁰ in an effort to put himself in the “OTP’s good books”.¹⁶⁶¹ He indicated that he played these “games” throughout the entire statement he

¹⁶⁵⁶ [REDACTED].

¹⁶⁵⁷ *Prosecutor v. Popović et. al*, Case No. IT-05-88-T, Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006, para. 40.

¹⁶⁵⁸ *See e.g.* [REDACTED].

¹⁶⁵⁹ *See* [REDACTED].

¹⁶⁶⁰ JF-26, T.9675.

¹⁶⁶¹ JF-26, T.9676.

provided to the Prosecution¹⁶⁶² because he considered himself a suspect and feared being indicted.¹⁶⁶³

725. His strategy was to be as useful to the Prosecution as possible, including “smearing Milošević, smearing the [Serbian] regime and everything it represented”¹⁶⁶⁴ and describing everything related to Serbia in a “very negative context”.¹⁶⁶⁵ This included making assertions against the Serbian MUP.¹⁶⁶⁶ He further acknowledged that he “dropped names” in order to save himself.¹⁶⁶⁷

b. The Relationship between the Serbian and the RS MUP around Zvornik

726. [REDACTED].¹⁶⁶⁸ [REDACTED].¹⁶⁶⁹

727. This is untrue. Firstly, and as stated above, JF-26 acknowledged that he was lying in his communication with the Prosecution.¹⁶⁷⁰ Secondly, he is mistaken, if not lying, regarding these contentions, as demonstrated when one compares his testimony with that provided in the *Milošević* case. [REDACTED].¹⁶⁷¹ [REDACTED]. [REDACTED]. Thirdly, the RS MUP in Zvornik wrote the RS MUP in Bijeljina in June 1992, noting that they were issued “quartermaster supplies and technical equipment from the Serbian MUP”, but were in need of military hardware, thereby illustrating the supplies of only police or civilian equipment up to that date.¹⁶⁷² P3119, a report dated 25 February 1993, shed further light on the issue, stating “cooperation with MUP organs was non-existent”.¹⁶⁷³

728. [REDACTED]. [REDACTED].¹⁶⁷⁴ [REDACTED].¹⁶⁷⁵ Beyond this limited logistical assistance, the Prosecution has not shown that the Serbian MUP assisted the RS MUP or any other entity in Zvornik in April 1992. [REDACTED].¹⁶⁷⁶

¹⁶⁶² JF-26, T.9676.

¹⁶⁶³ JF-26, T.9691.

¹⁶⁶⁴ JF-26, T.9693.

¹⁶⁶⁵ JF-26, T.9693.

¹⁶⁶⁶ JF-26, T.9693.

¹⁶⁶⁷ JF-26, T.9657.

¹⁶⁶⁸ [REDACTED].

¹⁶⁶⁹ [REDACTED].

¹⁶⁷⁰ See Part III, Section III, references to Stoparić.

¹⁶⁷¹ [REDACTED].

¹⁶⁷² D163; [REDACTED].

¹⁶⁷³ P3119, p.3 (3rd paragraph).

¹⁶⁷⁴ [REDACTED].

¹⁶⁷⁵ [REDACTED].

¹⁶⁷⁶ JF-26, P1701, p.70 (US).

729. Of course, none of the alleged supplies by the Serbian MUP has any relevance to Stanišić, absent a clear link with the DB and his direct participation. [REDACTED].¹⁶⁷⁷ Finally, there is no evidence that the RS MUP played a role in the crimes that took place in Zvornik on 8 April 1992.

2. Neither Stanišić nor Kostić arranged for Arkan to go to Zvornik

730. JF-26 was remarkably inconsistent on the issue of who sent Arkan to Zvornik. He first testified that, after speaking to Kostić about the deteriorating situation in Zvornik, Kostić stated that “you could do the same thing” as was done in Bijeljina, thereby suggesting that JF-26 contact Arkan to assist in Zvornik.¹⁶⁷⁸ JF-26 then went to contact Arkan, partly on the suggestion of Kostić.¹⁶⁷⁹

731. JF-26’s second version of events was that he, on behalf of the Crisis Staff in Zvornik, requested that Arkan come to Zvornik, and that there had been no prior planning.¹⁶⁸⁰ His third version included that “there was an assumption at the time on that basis, amongst [JF-26] and other members of the authorities in Zvornik, that Arkan had been sent by authorities in the Federal MUP”.¹⁶⁸¹ This latter proposition is corroborated by the fact that Arkan arrived in Zvornik fully equipped with full police gear, including uniform, weapons, and communications equipment¹⁶⁸² and with license plates from the Federal MUP.¹⁶⁸³

732. Finally, JF-26 stated that it was Plavsić who asked for Arkan to come to Zvornik.¹⁶⁸⁴ This was corroborated by JF-57.¹⁶⁸⁵ It is also logical, given that Arkan was working at her behest in Bijeljina the previous days¹⁶⁸⁶ and they appeared to admire each other somewhat.¹⁶⁸⁷ It is clear that they had one-to-one contact and required no intermediary or “channel of communication”.¹⁶⁸⁸

¹⁶⁷⁷ JF-26, T.9837.

¹⁶⁷⁸ JF-26, T.9823.

¹⁶⁷⁹ JF-26, T.9825.

¹⁶⁸⁰ JF-26, T.9680-9681; T.9820; [REDACTED].

¹⁶⁸¹ JF-26, T.9826.

¹⁶⁸² JF-26, T.9819.

¹⁶⁸³ JF-26, T.9819; *see also* [REDACTED]; D153; JF-26, T.9724.

¹⁶⁸⁴ JF-26, T.9744.

¹⁶⁸⁵ [REDACTED]..

¹⁶⁸⁶ JF-26, T.9744-9745; [REDACTED].

¹⁶⁸⁷ *See* P1621.

¹⁶⁸⁸ P699; *see also* P702.

733. [REDACTED].¹⁶⁸⁹ His circumlocutions led to Judge Orić inviting the witness to settle on a version of events that “comes closest to the truth”.¹⁶⁹⁰

3. Kostić Was not Answerable to Stanišić for any Action Found

734. The Prosecution has failed to show that Stanišić provided any instructions or orders to Kostić, or that the latter’s actions were in furtherance of any policy of the DB. Firstly, the presumption that an employment relationship is a sufficient basis for a conclusion that the employees’ actions are the result of professional directive or institutional policy, even in a military structure, is fanciful. Secondly, putting aside the flimsy nature of JF-26’s evidence, there is nothing in his testimony that would allow an inference that Kostić’s so-called invitation was made on behalf of Stanišić or the DB.

735. The Prosecution has failed to explain why Kostić or Stanišić did not just call up their alleged long-term paramilitary cohort and gave him an order, rather than indulging in such diffident equivocation.

736. JF-26 began by testifying that his claims concerning Kostić’s membership in the Serbian DB in April 1992 were not accurate.¹⁶⁹¹ The witness appeared to have been aware that Kostić was eventually [later than April 1992] made a member of the Serbian DB, but he was never “in touch with him” at that time.¹⁶⁹² [REDACTED].¹⁶⁹³ In short, JF-26 admitted lying about requesting Kostić for assistance in his role as a member of the Serbian MUP;¹⁶⁹⁴ about the fact that he knew he was a member of the Serbian DB;¹⁶⁹⁵ and even that Kostić was an employee of the Serbian DB altogether.¹⁶⁹⁶

737. The evidence suggests that no one, including Kostić, concluded at the time that he was acting at the behest of the Serbian DB or Stanišić in particular. On the contrary, the evidence suggests that Kostić may have been acting from his position within the RSK MUP at the time.¹⁶⁹⁷ There is also no evidence that Bogdanović, in his capacity as head of the

¹⁶⁸⁹ [REDACTED].

¹⁶⁹⁰ JF-26, T.9824.

¹⁶⁹¹ JF-26, T.9669.

¹⁶⁹² JF-26, T.9669.

¹⁶⁹³ [REDACTED].

¹⁶⁹⁴ JF-26, T.9716.

¹⁶⁹⁵ JF-26, T.9716; *see also* T.9802.

¹⁶⁹⁶ JF-26, T.9669.

¹⁶⁹⁷ *Ibid.*

Parliamentary Committee for Serbs outside of Serbia,¹⁶⁹⁸ was collaborating with the DB when, if true, [REDACTED]. [REDACTED].¹⁶⁹⁹ Bogdanović sent Pavlović to Kostić because the latter was a member of the RSK MUP and had weapons to spare.¹⁷⁰⁰

4. Pavlović did not Have any other Affiliation with the Serbian DB nor was He Sent to Zvornik by Kostić or the Serbian DB

738. The Prosecution has sought to connect Pavlović to the Serbian DB using the testimony of JF-61 and the evidence of JF-86, a *92quater* witness.

739. The Prosecution's attempt to link Pavlović to the DB is uncorroborated. It is at best speculation, and at worse, a clumsy attempt to falsely implicate. [REDACTED].¹⁷⁰¹ [REDACTED].¹⁷⁰² [REDACTED];¹⁷⁰³ [REDACTED].¹⁷⁰⁴

740. JF-61 did not appear to believe his boasting. [REDACTED].¹⁷⁰⁵ [REDACTED].¹⁷⁰⁶ [REDACTED].¹⁷⁰⁷

5. Tepavčević and Pavlović

741. [REDACTED].¹⁷⁰⁸ This assertion is uncorroborated and therefore must be dismissed.¹⁷⁰⁹

742. It is not known whether this might have been true. It is not inconsistent with some of Tepavčević's previous conduct. For example, in 1991, Tepavčević worked alongside Bogdanović to deliver weapons to the Knin region.¹⁷¹⁰ Further, there is evidence that he was involved in sending Crnogorac to Bosnia in mid-1992.¹⁷¹¹ However, four points should be borne in mind.

¹⁶⁹⁸ JF-26, T.9728-9729.

¹⁶⁹⁹ [REDACTED].

¹⁷⁰⁰ JF-26, T.9684, 9705.

¹⁷⁰¹ [REDACTED].

¹⁷⁰² [REDACTED].

¹⁷⁰³ [REDACTED].

¹⁷⁰⁴ [REDACTED].

¹⁷⁰⁵ [REDACTED].

¹⁷⁰⁶ [REDACTED].

¹⁷⁰⁷ [REDACTED].

¹⁷⁰⁸ [REDACTED].

¹⁷⁰⁹ The Prosecution should not be permitted to assert that this alleged relationship between Tepavčević and Pavlović is corroborated by JF-26, as he retracted this evidence on cross-examination, indicating that he did not even know Tepavčević's name. *See* JF-26, T.9802.

¹⁷¹⁰ P2990, p. 1.

¹⁷¹¹ P3017, p. 10.

743. [REDACTED].¹⁷¹² [REDACTED].¹⁷¹³ [REDACTED].¹⁷¹⁴ [REDACTED].¹⁷¹⁵ Whilst JF-26 was generally unreliable, there was no reason to suppose that this evidence was unreliable, especially since his tendency was to overimplicate the DB.

744. Second, DFS-11, [REDACTED], stated that Pavlović denied having any link with the Serbian DB, or even the MUP.¹⁷¹⁶ This was confirmed in his investigation.¹⁷¹⁷

745. Third, [REDACTED].¹⁷¹⁸ Given the paucity of evidence, such a conclusion would be tantamount to reversing the burden of proof.

746. Fourth, despite the Prosecution's best attempts to collectivise all responsibility, Tepavčević is not Stanišić. A mere employment relationship does not prove that Tepavčević was acting at Stanišić's behest. Given that Tepavčević was the Deputy of the DB, which involved being in day-to-day charge of special operations and having ready access to supplies through the 8th Administration,¹⁷¹⁹ it is plain that he had the ability to act without Stanišić's permission or knowledge. [REDACTED]¹⁷²⁰ [REDACTED], Bogdanović's apparent role in Zvornik and Tepavčević's previous relationship with him (particularly in Knin), there arises a reasonable inference, namely that the three collaborated together without any input from Stanišić.

6. Kostić Cannot be Connected to Pavlović

747. The Prosecution has also sought to connect Kostić to Pavlović, [REDACTED]".¹⁷²¹ However, he was unable to provide any meaningful detail to support this assertion. Instead, he testified that Pavlović was deployed by the JNA, not Kostić.¹⁷²² Further, he testified that Pavlović came to Zvornik where he assisted [the Ministry for Serbs outside Serbia] in the arming effort¹⁷²³ because "his best contacts were with the JNA."¹⁷²⁴ JF-26 confirmed that

¹⁷¹² JF-26, T.9755–9756.

¹⁷¹³ JF-26, T.9755.

¹⁷¹⁴ JF-26, T.9877.

¹⁷¹⁵ JF-26, T.9877.

¹⁷¹⁶ DST-11, T.17294.

¹⁷¹⁷ DST-11, T.17175; T.17294.

¹⁷¹⁸ [REDACTED].

¹⁷¹⁹ *Supra*, Part I, Section II, paras 146-152.

¹⁷²⁰ [REDACTED].

¹⁷²¹ [REDACTED].

¹⁷²² JF-26, T.9744.

¹⁷²³ [REDACTED]

¹⁷²⁴ [REDACTED].

Pavlović had an excellent relationship with General Janković, who was commander of the Tuzla Corps, and with Dubajić, his chief of security.¹⁷²⁵ [REDACTED].¹⁷²⁶

748. Further, JF-26 testified that Pavlović, immediately prior to the clash in Zvornik on 8 April 1992, met with members of the JNA in Hotel Jezero in Mali Zvornik¹⁷²⁷ to speak about “how to restore Serb authority in Zvornik”.¹⁷²⁸ The meeting was about the military takeover of Zvornik.¹⁷²⁹ JF-26 confirmed that Pavlović turned to senior officials such as General Dubajić, General Janković and General Panić, all JNA officers, to request materiel or combat assistance¹⁷³⁰ and that he never saw or heard Pavlović requesting assistance from the MUP Serbia.¹⁷³¹ Pavlović received a certificate of gratitude from the JNA on 25 March 1992 for his “exceptional commitment, dedication and cooperation in offering assistance”.¹⁷³²

749. In summary, JF-26’s claim that Pavlović was Kostić’s assistant was not supported by any description that would turn on assertion into meaningful evidence of even collaboration. Pavlović’s working relationships appeared to revolve around everybody but Kostić.

C. THE SERBIAN DB DID NOT PROVIDE ANY WEAPONS TO PERPETRATORS OF CRIMES

1. The JNA Supplied the Men who Fought in Zvornik, including Arkan’s Men

750. Neither the Serbian DB nor the Serbian MUP had any role to play in arming or financing paramilitary groups in Zvornik. The adjudicated facts create a presumption that Arkan was supplied by the JNA.¹⁷³³ [REDACTED].¹⁷³⁴ [REDACTED],¹⁷³⁵ [REDACTED].¹⁷³⁶ [REDACTED].¹⁷³⁷ [REDACTED].¹⁷³⁸ Simultaneously, while not the Serbian DB, the Serbian MUP was preventing people from crossing the border into the region, particularly SRS members.¹⁷³⁹

¹⁷²⁵ JF-26, T.9737-9738.

¹⁷²⁶ [REDACTED].

¹⁷²⁷ JF-26, T.9827.

¹⁷²⁸ JF-26, T.9828.

¹⁷²⁹ JF-26, T.9828.

¹⁷³⁰ JF-26, T.9738.

¹⁷³¹ JF-26, T.9738.

¹⁷³² D157.

¹⁷³³ First Adjudicated Facts Decision (Prosecution), Facts 201, 202, 221.

¹⁷³⁴ [REDACTED].

¹⁷³⁵ [REDACTED].

¹⁷³⁶ [REDACTED].

¹⁷³⁷ JF-26, T.9778-9780; *see also* P1403, p.2.

¹⁷³⁸ [REDACTED].

¹⁷³⁹ JF-26, T.9776-9778.

2. Kostić did not Contact JF-26 to Transfer Weapons to Zvornik on behalf of Stanišić

751. JF-26 testified that Kostić was involved in obtaining arms. His connections appear to be with Bogdanović,¹⁷⁴⁰ who was the Minister of Interior in 1990, the time when the Serbian DB first employed Kostić.¹⁷⁴¹ According to JF-26, Bogdanović was using the authority he had as the former head of the Serbian MUP and assistant Minister of Defence to set up a parallel state security service.¹⁷⁴² He was using his past connections, including the connection that the Ministry of Defence had with the JNA, to provide weapons and other materiel to various groups in Zvornik.¹⁷⁴³

752. On the contrary, there is not one piece of evidence – beyond a pre-existing employment relationship with the DB, entirely consistent with intelligence gathering, or money for survival after losing his job after being dismissed by the Croatian authorities – to suggest that Kostić was involved in any arms supply activities for Stanišić.

753. Further, considerable doubt exists concerning whether Kostić did in fact engage in the supply of arms, or that they played any part in the crimes. First, prior to May 1992 the JNA had played a significant role in training and equipping Bosnian Serb paramilitary forces.¹⁷⁴⁴ Arkan's men were "liberally supplied with arms and equipment" by the JNA during operations in 1991 and 1992 in BiH, which include the attack on Zvornik town.¹⁷⁴⁵ It is plain from JF-26's evidence that this is true and "personal" supply channels of little consequence to the events.

754. JF-26 testified that, as early as 1991, the arming of Serbs was taking place in Zvornik.¹⁷⁴⁶ [REDACTED].¹⁷⁴⁷ [REDACTED]¹⁷⁴⁸ Further, if an individual was a member of reserve JNA unit, they were armed in that manner.¹⁷⁴⁹ [REDACTED].¹⁷⁵⁰ In the present

¹⁷⁴⁰ JF-26, T.9805.

¹⁷⁴¹ P406, pp.1-2 (US).

¹⁷⁴² JF-26, T.9800-9801.

¹⁷⁴³ JF-26, T.9798-9802; T. 9789-9797.

¹⁷⁴⁴ First Decision on Adjudicated Facts (Prosecution), Fact 221.

¹⁷⁴⁵ First Decision on Adjudicated Facts (Prosecution), Facts 201, 202.

¹⁷⁴⁶ [REDACTED]; T.9703.

¹⁷⁴⁷ [REDACTED].

¹⁷⁴⁸ [REDACTED].

¹⁷⁴⁹ [REDACTED]; *see also* T.9723.

¹⁷⁵⁰ [REDACTED]

proceedings, he roughly corroborated this account by stating that “roughly 90 per cent [of the weapons came] from the JNA and 10 per cent from Baranja”.¹⁷⁵¹

755. He further agreed that the number one source for arms was the JNA or the TO depots, and the number two source was the RSK, through Bogdanović.¹⁷⁵² At the time, Bogdanović was no longer Minister of Interior; however, he had established links and used “the authority that [he] had earlier on” as Minister of Interior, as well as when he was working in the Ministry of Defence.¹⁷⁵³ Further, JF-26 explained that Bogdanović was a SPS member of the Serbian Parliament at the time and arranged to provide him weapons that would be obtained from various TO’s in Serbia.¹⁷⁵⁴

756. Arming in the region appeared to revolve almost exclusively around officers from or connections with the JNA. JF-26 stated that Duško Vukotić, a reserve officer was involved in arming because “he had a position with the JNA as an officer”.¹⁷⁵⁵

757. A 9 April 1992 report from the 17th Corps command of the JNA states that “[i]n Zvornik area [the] supply should be done from the territory of Kragujevac rear logistics base”.¹⁷⁵⁶ Along with the remainder of the evidence, the above-mentioned report, coming one day after the invasion of Zvornik, gives rise to a reasonable inference that the JNA was the main supplier for the attack and therefore, the crimes. Further, JF-26 had stated that most of the weapons received in Zvornik were provided by the JNA and that the SDS in BiH provided the remainder of the weapons.¹⁷⁵⁷

758. Second, JF-26 made a number of contrasting assertions regarding the transfer of weapons to Zvornik around April 1992. Beyond the arming of paramilitary units (particularly Arkan’s men), JF-26 stated that about 3,000 weapons were brought into the Zvornik area before war broke out on 7 April 1992.¹⁷⁵⁸ [REDACTED].¹⁷⁵⁹

¹⁷⁵¹ JF-26, T.9719; *see also* [REDACTED].

¹⁷⁵² JF-26, T.9789; JF-26, T.9719; *see also* D49, p.4, which states that the JNA provided 75% of the weapons and the SDS provided the rest.

¹⁷⁵³ JF-26, T.9800-9801.

¹⁷⁵⁴ [REDACTED].

¹⁷⁵⁵ JF-26, T.9707, T.9708-9709, T.9718-9719; *see also* [REDACTED].

¹⁷⁵⁶ P1388, p.1.

¹⁷⁵⁷ *See also* JF-26, T.9719; D49, p.4.

¹⁷⁵⁸ [REDACTED]. He testified that the number was actually between 3,000-4,000 weapons. *See* T.9789.

¹⁷⁵⁹ [REDACTED].

759. [REDACTED]¹⁷⁶⁰ [REDACTED]¹⁷⁶¹ [REDACTED].¹⁷⁶²

760. Finally, JF-26 testified that further requests for materiel and equipment in Zvornik were made to the RS MUP,¹⁷⁶³ not Kostić.

761. The truth is that JF-26, as he said, was trying to help the Prosecution. [REDACTED].¹⁷⁶⁴ Nevertheless, he did his best to help the Prosecution in the *Stanišić* case.

3. Grujić neither Met nor Communicated with Stanišić Concerning the Events in Zvornik

762. [REDACTED].¹⁷⁶⁵ [REDACTED]. However, JF-26 was not sure whether Grujić told him that he and Stanišić had met before the fighting in April 1992 or only later when Stanišić was looking for the pilots taken hostage by Mladić.¹⁷⁶⁶ Grujić confirmed that he only met with Stanišić for the first time in 1993.¹⁷⁶⁷

4. Serbian DB Member Šuka was not working with Pavlović or Anyone Else to Coordinate Weapons Transfers

763. [REDACTED].¹⁷⁶⁸ He changed his position on this matter during his testimony, noting that Šuka and Pavlović were not working cooperatively to organise the transfer of weapons, but instead were simply living in the same small town and were on “visiting terms”.¹⁷⁶⁹ Beyond that, JF-26 had no knowledge as to the relationship between the two.¹⁷⁷⁰ The flawed nature of his evidence was manifest from questions posed by Judge Orie.¹⁷⁷¹

764. [REDACTED].¹⁷⁷² Šuka worked in Mali Zvornik and was responsible for ensuring the security of the area and, more broadly, the security of the state of Serbia.¹⁷⁷³

¹⁷⁶⁰ [REDACTED].

¹⁷⁶¹ [REDACTED].

¹⁷⁶² [REDACTED].

¹⁷⁶³ JF-26, T.9723-9724.

¹⁷⁶⁴ [REDACTED].

¹⁷⁶⁵ [REDACTED].

¹⁷⁶⁶ JF-26, T.9837-9838 [REDACTED].

¹⁷⁶⁷ JF-26, T.9837-9838.

¹⁷⁶⁸ [REDACTED].

¹⁷⁶⁹ JF-26, T.9807.

¹⁷⁷⁰ JF-26, T.9807.

¹⁷⁷¹ JF-26, T.9808-9810.

¹⁷⁷² JF-26, T.9810; *see also* [REDACTED].

¹⁷⁷³ JF-26, T.9805.

D. THE SERBIAN DB WAS NOT THE PRINCIPAL EXECUTOR OF THE FORCIBLE TAKEOVER OF ZVORNIK

765. The Prosecution attempts to extricate the JNA from the events in Zvornik, not because it is true or a fair reflection of the evidence, but because it assists its efforts to overplay Arkan's role, thereby implicating Stanišić.

1. The JNA was Heavily Involved in the Operations in Zvornik

766. Theunens attempted to assert that the JNA was not involved in any operations regarding Zvornik. This unfortunate effort to assist the Prosecution goes against the evidence and military logic. The value of his evidence was further reduced by the fact that he claimed to have only reviewed the actions of the 17th Corps.¹⁷⁷⁴ In the end, he was forced to concede the JNA's (likely) involvement. He testified that, while he had not seen any orders from the 17th Corps of the JNA in relation to Zvornik during 1-10 April 1992,¹⁷⁷⁵ if Obrenović was involved in the surrender of Zvornik, this would indicate that the JNA was involved.¹⁷⁷⁶ As discussed below, the evidence shows that Obrenović was clearly involved.¹⁷⁷⁷

767. The Prosecution has forgotten that Theunens' position is inconsistent with its previously pled case indicating that the JNA was responsible for the takeover, as evidenced by one of their proposed adjudicated facts.¹⁷⁷⁸

768. [REDACTED]¹⁷⁷⁹ [REDACTED],¹⁷⁸⁰ [REDACTED]¹⁷⁸¹ and planes conducting airstrikes.¹⁷⁸² Further, paramilitary units were subordinated to the JNA,¹⁷⁸³ which makes sense,

¹⁷⁷⁴ Theunens, T.8612.

¹⁷⁷⁵ Theunens, T.8448.

¹⁷⁷⁶ Theunens, T.8449.

¹⁷⁷⁷ [REDACTED]

¹⁷⁷⁸ First Decision on Adjudicated Facts (Prosecution), Fact 224.

¹⁷⁷⁹ [REDACTED].

¹⁷⁸⁰ [REDACTED].

¹⁷⁸¹ [REDACTED].

¹⁷⁸² D177.

¹⁷⁸³ JF-26, T.9752; Theunens, T. 8451-8452; P1380 suggests that the JNA and Arkan's men were working together in Zvornik. Later, they conducted joint combat operations, which would require that Arkan's men subordinate themselves to the JNA.

as a military operation cannot be conducted with conflicting chains of command.¹⁷⁸⁴ Also, prior to the attacks, Arkan was collaborating with Obrenović, a JNA member.¹⁷⁸⁵

2. The Prosecution's Case Against Stanišić and the Serbian DB Relies Almost Entirely on a Television Interview by Šešelj

769. The Prosecution's case connecting Stanišić to the attacks on the non-Serb population in Zvornik is left to rely on an interview given by Šešelj, where he stated that the people of the State Security Service were key executors of the forcible takeover of the municipality.¹⁷⁸⁶ The Prosecution will likely argue, as they did during their 98*bis* submissions, that Šešelj's men in the SRS were under the direct authority and control of a ranking member of the Serbian MUP.¹⁷⁸⁷

770. Firstly, the Prosecution has already staked out its position when proposing adjudicated facts: the attack and takeover of Zvornik was done by the JNA.¹⁷⁸⁸ Secondly, the evidence that the Prosecution relies on was not subject to cross-examination; instead, it was a television interview. Further, Šešelj is an alleged accomplice in the crimes alleged against Stanišić.¹⁷⁸⁹ Lastly, he is, according to the Prosecution, a "shrewd and calculating man, a self-described scandal monger",¹⁷⁹⁰ a "dangerous and wicked man",¹⁷⁹¹ and, *inter alia*, a liar.¹⁷⁹²

III. CONCLUSION

771. In November 1993,¹⁷⁹³ Stanišić directly ordered the arrest the Vučković brothers, the heads of the Yellow Wasps,¹⁷⁹⁴ for the commission of war crimes.¹⁷⁹⁵ This alone raises a reasonable doubt that Stanišić had any involvement in the Zvornik crime base, especially given the flimsy nature of the evidence adduced in support of the Prosecution case.

¹⁷⁸⁴ See e.g. P1088, in particular para. 5 which makes clear that paramilitaries under JNA's area of responsibility must subordinate themselves to the JNA.

¹⁷⁸⁵ Theunens, T.8450-8452; see also P1380, p.1.

¹⁷⁸⁶ See P18, pp.28-29.

¹⁷⁸⁷ See 98*bis* submissions, Prosecution Response, T.11406.

¹⁷⁸⁸ First Adjudicated Facts Decision (Prosecution), Fact 224.

¹⁷⁸⁹ See Part I, Section I, para.25.

¹⁷⁹⁰ Šešelj case, T.1795.

¹⁷⁹¹ Milošević case, T.11866.

¹⁷⁹² *Ibid*, T.11918, 11949, 11960, 11974.

¹⁷⁹³ P2982, p.1.

¹⁷⁹⁴ P1403, p.2.

¹⁷⁹⁵ [REDACTED]; see also DST-51, T.11857-11858; P1190; P2982.

772. [REDACTED]¹⁷⁹⁶ [REDACTED].¹⁷⁹⁷

¹⁷⁹⁶ [REDACTED].

¹⁷⁹⁷ [REDACTED].

SECTION IV. RESPONSIBILITY FOR THE BRATUNAC AND SKELANI RED BERETS IN 1992 - 1993

I. BACKGROUND: TARA

A. PROSECUTION ALLEGATIONS

773. As part of the Prosecution's "28 elite trainer" thesis, it is alleged that Stanišić: (i) was in command of the Tara training base (particularly, that "Crnogorac was in charge of the training camp at Mount Tara" in 1991),¹⁷⁹⁸ and (ii) created Red Beret training camps in Bratunac and Skelani in 1992 and 1993.¹⁷⁹⁹

774. Additionally, the Prosecution allege that "[o]perations carried out in Eastern Bosnia in 1992 and 1993 involved a coordinated body of forces – MUP Serbia, the VJ, the VRS, paramilitaries from Serbia, and the RS MUP. Some members of these forces were placed at the disposal of Simatović, who established and maintained a command centre in Bajina Bašta. It is alleged that Božović led the Skelani 'Red Berets' under Simatović's direct command. During the winter and spring of 1993, the operations focused on the area of Skelani and resulted in the deaths of up to 1,000 people."¹⁸⁰⁰

775. In summary, the Prosecution alleges that Stanišić was in command of Simatović's and the Red Beret Unit's military activities throughout.¹⁸⁰¹

B. DEFENCE CASE

776. The Defence submits that the evidence shows that Stanišić was not responsible for: (i) the training base in Tara at any time; (ii) any of the so-called Red Beret paramilitary forces created by Crnogorac, Božović, Crni, Mijović or any other individual in BiH in 1992 – 1993; and (iii) any of the operations carried out in Eastern Bosnia in 1992 and 1993.

1. Tara and its Military/Police Functions

777. As the following discussion of the evidence will show, Tara was one of the most critical Serbian military training bases during the indictment period, serving Serbia, RSK and

¹⁷⁹⁸ Prosecution Pre-trial Brief, para.71.

¹⁷⁹⁹ Indictment, para.4.

¹⁸⁰⁰ Prosecution Pre-trial Brief, para.93.

¹⁸⁰¹ *Ibid*, para.91.

the BiH. Despite this, the Prosecution do not allege that DB controlled it (other than alleging that in 1991 Crnogorac was in charge of training taking place there).¹⁸⁰² This is because the evidence points unambiguously to this training base being under the command of the JNA and the VJ, even though at different times, it also was used by the Serbian and the RS police.

778. This is critical to a proper understanding of Stanišić's alleged involvement in the creation of the Red Berets of Bratunac (hereinafter "Mijović's Bratunac Red Berets") and Skelani ("Božović Skelani Red Berets"). As the evidence shows, these groups were not formed in 1992, but were created in 1993 and subordinated to the military and police joint command (VJ, VRS, MUP Serbia and the RS MUP) on Tara (the "Joint Staff"). Stanišić had no involvement in this Joint Staff. The Prosecution do not dispute the existence of this Joint Staff or its membership.¹⁸⁰³

2. Crnogorac was Training on Tara on Behalf of Badža

779. The evidence does not show that Crnogorac was working for the DB, let alone that he supervised the camp.¹⁸⁰⁴ [REDACTED].¹⁸⁰⁵ He was not a consistent or forthright witness.

780. As stated, the Prosecution argues that Crnogorac was in charge the Tara camp. [REDACTED].¹⁸⁰⁶ [REDACTED].¹⁸⁰⁷

781. In sum, the evidence suggests that both the Serbian MUP and military were using the camp at Tara in 1991. [REDACTED].¹⁸⁰⁸ [REDACTED].¹⁸⁰⁹ [REDACTED].¹⁸¹⁰ [REDACTED].¹⁸¹¹

782. These facts undermine the "28 elite trainer" thesis. Had Fruška Gora, Ilok or Pajžos been a functioning training base commanded by Crnogorac or others from the alleged "28 elite trainers" Unit, a trip to Tara for training would not have been necessary.

¹⁸⁰² Prosecution Pre-trial Brief, para.71.

¹⁸⁰³ *Ibid*, para.93.

¹⁸⁰⁴ See Part III, Section III, paras 778-781.

¹⁸⁰⁵ [REDACTED].

¹⁸⁰⁶ [REDACTED].

¹⁸⁰⁷ [REDACTED].

¹⁸⁰⁸ [REDACTED].

¹⁸⁰⁹ [REDACTED].

¹⁸¹⁰ [REDACTED].

¹⁸¹¹ [REDACTED].

[REDACTED].¹⁸¹² Logically, he must have been under the command of Badža. There is nothing to link Stanišić to the Tara camp or the training of the SBWS TO and police.

3. The Tara Command and Training Camp in 1993

783. As the evidence shows, Serbia's military/police involvement in the BiH war (including the training) in 1993 was organised by the Joint Staff at Tara. There is no doubt that there were hundreds of combatants trained at Mount Tara, particularly in 1993.

a. Attacks from Bosnian Muslim Combat Units, Particularly Orić, and Serbian Paramilitary Groups Necessitated the Creation of the Joint Staff in early 1993

784. The Prosecution's interpretation of the Tara Operations and those commanded by the Joint Staff Eastern Bosnia in 1992 and 1993 is divorced from reality.

785. In 1992 and 1993 Serbia's border areas were under threat from Serbian paramilitary forces. Orić's attacks were a further devastating assault on Serbia's security.

786. [REDACTED]¹⁸¹³ [REDACTED].¹⁸¹⁴ [REDACTED]¹⁸¹⁵ [REDACTED].¹⁸¹⁶

787. [REDACTED]¹⁸¹⁷ [REDACTED]. [REDACTED].¹⁸¹⁸ [REDACTED].¹⁸¹⁹
[REDACTED].¹⁸²⁰

788. The problems at the border around Tara escalated in 1993, as Orić's forces began destroying Serbian villages along the Drina River. In total, his forces destroyed 156 villages.¹⁸²¹ For example, Skelani was attacked from 16-23 January 1993;¹⁸²² [REDACTED].¹⁸²³

¹⁸¹² [REDACTED].

¹⁸¹³ [REDACTED].

¹⁸¹⁴ [REDACTED].

¹⁸¹⁵ [REDACTED].

¹⁸¹⁶ [REDACTED].

¹⁸¹⁷ [REDACTED].

¹⁸¹⁸ [REDACTED].

¹⁸¹⁹ [REDACTED].

¹⁸²⁰ [REDACTED].

¹⁸²¹ Milovanović, T.4505.

¹⁸²² Milovanović, T.4509, 15488.

¹⁸²³ [REDACTED].

789. Milovanović noted that, as a result of these actions, 91 villages were completely destroyed, 20,000 people fled to Serbia, 3,200 Serb civilians were killed, and about 6,000 were expelled.¹⁸²⁴ [REDACTED].¹⁸²⁵

790. [REDACTED].¹⁸²⁶ [REDACTED].¹⁸²⁷

b. Stanišić's Non-Involvement in the Tara Command

791. Apart from two meetings, the Prosecution has not proven that Stanišić was involved in *any way* with the Tara Operations, let alone with commanding its Joint Staff. It is critical to a fair assessment of Stanišić's alleged individual responsibility, that this Joint Staff is understood. Stanišić was not in the chain of command.

792. The Joint Staff involved the VJ, the VRS, the Serbian and the RS MUP. [REDACTED]¹⁸²⁸ [REDACTED].¹⁸²⁹ [REDACTED].¹⁸³⁰

793. During the time that Simatović was in Bajina Bašta, he received orders and worked subject to the authority of the Joint Staff. As will be discussed, Simatović answered directly to Stevanović, who answered to Badža who reported directly to Sokolović.

i. Stanišić: Meeting of 23 January 1993

794. It is accepted that Stanišić went to a meeting on Mount Tara on the 23 January 1993 (that was concerned with the Orić attacks and how security could be strengthened along the border).¹⁸³¹ This meeting involved Panić, Stanišić, Stojičić and Milovanović.¹⁸³²

795. Milovanović had not met Stanišić before, nor did he know who he was.¹⁸³³ He first thought he "was a waiter".¹⁸³⁴ Although Milovanović recalled that the meeting was about assisting the RSK (who had been attacked by the Croats in violation of the Vance-Owen

¹⁸²⁴ Milovanović, T.4380, 4505-4506, 15488.

¹⁸²⁵ [REDACTED].

¹⁸²⁶ [REDACTED].

¹⁸²⁷ [REDACTED].

¹⁸²⁸ [REDACTED].

¹⁸²⁹ [REDACTED].

¹⁸³⁰ [REDACTED].

¹⁸³¹ Milovanović, T.4383-4384; P376.

¹⁸³² Milovanović, T.4386.

¹⁸³³ Milovanović, T.4385, 4532.

¹⁸³⁴ Milovanović, T.4533.

Plan)¹⁸³⁵ it is submitted that this was an error. It is logical to suppose that the meeting would have been focused on the ongoing Orić attacks.

ii. *Stanišić: Meeting in Bajina Bašta with Šainović and Sokolović*

796. Following the immediate end of the Orić crisis, the “Serbian Prime Minister Nikola Sainović and Interior Minister Zoran Sokolović visited Bajina Bašta holding talks on the security situation in this border belt area”.¹⁸³⁶ Stanišić was also present.¹⁸³⁷ Milovanović confirmed that it was to be expected that both the Minister of Interior [in charge of the police] and the Chief of State Security would attend, if nothing else, to provide reassurance to a worried public.¹⁸³⁸

797. These two meetings represent the only two activities linking Stanišić to anything occurring when the Tara Joint Staff was in operation.

c. *The Joint Staff*

798. As discussed above, the Joint Staff consisted of the VRS,¹⁸³⁹ VJ,¹⁸⁴⁰ RS MUP¹⁸⁴¹ and Serbian MUP.¹⁸⁴² Subordinated to the Joint Staff were a multitude of different police and military units in a fluctuating system of subordination. P2683 is a critical exhibit with regard to the chaos that ensued. Different Serbian MUP and RS MUP police units combined and cooperated with the VRS, all acting subject to the command of the Joint Staff. The report provides a snapshot in time of some of the various Serbian MUP Special Purpose Units that were associated with the Tara operations and which fell under the authority of Badža, Stevanović, the Serbian MUP or members of the VJ and VRS – but not Stanišić.

i. *Serbian Special Purpose Units on Tara/Bajina Bašta were Units of the Serbian MUP (Not Serbian DB)*

¹⁸³⁵ Milovanović, T.4504.

¹⁸³⁶ P1592, p.2; *see also* Milovanović, T.4513-4514.

¹⁸³⁷ Milovanović, T.4619; P398.

¹⁸³⁸ Milovanović, T.4515.

¹⁸³⁹ [REDACTED]; P2683, p.2; [REDACTED].

¹⁸⁴⁰ [REDACTED].

¹⁸⁴¹ P2683, p.1; [REDACTED].

¹⁸⁴² [REDACTED]; P2683, p.2; D415

799. As part of the Joint Staff, there was a “Republic of Serbia MUP-Special units command” based on Tara and Bajina Bašta.¹⁸⁴³ Although the Prosecution submissions will attempt to obscure this fact, P2683 - the 14 May 1993 report of the Drina Corps Command to the RS Main Staff - makes plain that the Serbian MUP, subordinated to the Joint Staff, commanded these police units. In sum, it was a Serbian Police operation to train PJM’s.

800. Badža had a PJM (aka “PJP”) staff created in Bajina Bašta as a consequence of the Orić attacks.¹⁸⁴⁴ Stevanović was the Commander.¹⁸⁴⁵ They, [REDACTED], had set up the training centre for the PJP/PJM on Mount Tara.¹⁸⁴⁶

801. Badža was in direct command of the PJM’s creation and operation.¹⁸⁴⁷ At the beginning of 1993, the training of PJM detachments from the Serbian MUP commenced at Mt. Tara.¹⁸⁴⁸ PJM’s had already been involved in combat against Orić’s men.¹⁸⁴⁹ [REDACTED].¹⁸⁵⁰ [REDACTED].¹⁸⁵¹ None of this hierarchy concerned Stanišić.

802. As noted above, P2683 confirms the creation of Serbian and RS Police *Special Purpose Units* was a regular occurrence during the Tara Operations. It also confirms these were police units, which were expected to subordinate to the military structures at the Joint Staff.¹⁸⁵² Hence, the Drina Corps Command identifies the Serbian forces as “Special Purpose Units of the...Republic of Serbia MUP”¹⁸⁵³ and complains bitterly about their failure to subordinate to the brigade commands.¹⁸⁵⁴

803. Had the Serbian DB commanded the forces, or had there been an expectation that they should subordinate to the DB, the report would have identified these facts. Instead, P2683

¹⁸⁴³ P2683, p.2.

¹⁸⁴⁴ Seovac, T.17547.

¹⁸⁴⁵ Seovac, T.17547-17548.

¹⁸⁴⁶ JF-94, T.7164.

¹⁸⁴⁷ D415; *see also* Seovac, T.17547.

¹⁸⁴⁸ [REDACTED].

¹⁸⁴⁹ *See eg.* Seovac, T.17546-17547.

¹⁸⁵⁰ [REDACTED].

¹⁸⁵¹ [REDACTED].

¹⁸⁵² *See* P2683, pp.1-2 where the unit in Skelani was required to “subordinate or collaborate with the command of the TG, that is Battalion”.

¹⁸⁵³ P2683, p.2.

¹⁸⁵⁴ P2683, p.2.

discusses the “[m]isunderstandings and problems” between the command and units of the Drina Corps and “the Special Purpose Units of the RS [Serbia] MUP”.¹⁸⁵⁵

d. Simatović was Not Subordinated to Stanišić During the Tara Operations

804. As the evidence shows, [REDACTED].¹⁸⁵⁶ There is incontrovertible evidence that all the combat operations that emanated from the Joint Staff command (including all the Serbian MUP units and “Božović’s Skelani” and “Mijović Bratunac” Red Berets) were subordinated to Mrkšić’s TG1.¹⁸⁵⁷ It is submitted that the evidence shows that any military activity he may have engaged in must have been subordinated to the Joint Staff.

e. The Non - Existence of the “28 Elite Trainers” at Tara in 1993

i. [REDACTED] Exculpates Stanišić

805. [REDACTED].¹⁸⁵⁸ [REDACTED].¹⁸⁵⁹ [REDACTED]¹⁸⁶⁰ [REDACTED].¹⁸⁶¹
[REDACTED]. [REDACTED].¹⁸⁶²

ii. The Formation of New Red Beret Groups Under the Joint Staff at Tara in 1993

806. As noted above, “Mijović’s Bratunac” and “Božović Skelani” Red Berets were not part of the illusory “28 Elite Trainers”.

807. On the contrary, P2683 unequivocally confirms that these Red Berets were formed in 1993,¹⁸⁶³ from “superior officers and “instructors” including “members of the Republic of Serbia MUP”.¹⁸⁶⁴ Even after their creation in 1993, they were “commanded and controlled by the Republic of Serbia MUP – Special Units command”.¹⁸⁶⁵

808. As noted in the Report, “[f]ollowing the training, the instructors from the Republic of Serbia MUP kept v/o [conscripts] in the units of ‘Red Berets’, [including “Mijović’s Bratunac Red Berets”] and later on, they were joined by a certain number of v/o from the Brigade-

¹⁸⁵⁵ P2683, p.1.

¹⁸⁵⁶ [REDACTED].

¹⁸⁵⁷ See e.g. [REDACTED]; P392, pp.4-5; P1053, pp.15-16; P1442; P1443, p.60; [REDACTED].

¹⁸⁵⁸ [REDACTED].

¹⁸⁵⁹ [REDACTED].

¹⁸⁶⁰ [REDACTED].

¹⁸⁶¹ [REDACTED].

¹⁸⁶² [REDACTED].

¹⁸⁶³ These units were formed following the Tara training in 1993, not 1991. See P2683, p.2.

¹⁸⁶⁴ P2683, p.2.

¹⁸⁶⁵ P2683, p.2.

Battalion, who fled their war units”.¹⁸⁶⁶ From the territory of Skelani, in the Red Beret unit, 57 conscripts (hereinafter “Božović’s Skelani Red Berets”) were engaged.¹⁸⁶⁷

809. [REDACTED]. [REDACTED].¹⁸⁶⁸ [REDACTED]. [REDACTED].¹⁸⁶⁹

810. Božović was acting as part of the Public Security’s PJM’s. [REDACTED].¹⁸⁷⁰ [REDACTED].¹⁸⁷¹ He confirmed that, “[d]uring that time, that kind of units, let’s say, from police which were involved in the war fighting zones, they were as the name says on B/H/S: ‘posebna jedinica milicia’ police unit for special purposes” or units of the police for special purposes or Special Police Units.¹⁸⁷²

iii. Vakić’s Situation Makes the Distinction between Serbian MUP and DB Clear

811. P1053 notes that Vakić, a senior SRS leader claims, to have been frequently summoned for talks at the Serbian MUP Special Forces staff and to have “personally met Commander Obrad Stevanović and *his* deputy Frenki Stamatović [*sic*]”.¹⁸⁷³ In his diatribe against the Serbian government, it is instructive that he does not claim that Stanišić had a role to play in the Joint Staff or the Tara Operations. Vakić claims that, acting on the instructions of Šešelj,¹⁸⁷⁴ he attempted to obtain supplies for the SRS men. He went to see Mrkšić, Perišić, Božanović, Ojdanić, Lončar, Petković before going to Sokolović.¹⁸⁷⁵

812. Having arrived in Bajina Bašta “on board Serbian MUP buses”, Vakić went straight to the “Staff of the Serbian MUP special forces”.¹⁸⁷⁶ Again, “the commanders led by Obrad Stevanović and Frenki Simatović” welcomed him; they told him “they had a visit from Police Minister Zoran Sokolović”.¹⁸⁷⁷

¹⁸⁶⁶ P2683, p.2.

¹⁸⁶⁷ P2683, p.2.

¹⁸⁶⁸ [REDACTED].

¹⁸⁶⁹ [REDACTED].

¹⁸⁷⁰ [REDACTED].

¹⁸⁷¹ [REDACTED].

¹⁸⁷² JF-30, T.10697.

¹⁸⁷³ P1053, p.15 (emphasis added)

¹⁸⁷⁴ P1053, p.13.

¹⁸⁷⁵ P1053, pp.15-16.

¹⁸⁷⁶ P1053, p.16.

¹⁸⁷⁷ P1053, p.16.

iv. JF-52: Allegations Concerning Simatović and his Command in Bajina Bašta

813. JF-52 made various allegations against Simatović. [REDACTED].¹⁸⁷⁸ He retreated considerably on almost every allegation concerning Simatović.¹⁸⁷⁹ Logically, his account of Simatović's role in Bajina Bašta, whether true or not, exculpates Stanišić. Had Simatović been in command of "28 elite trainers", or the Red Berets, instead of implicating Simatović by identifying the Drina Wolves, he would have said so.

814. Further, apart from the "Drina Wolves", which he attributes to Simatović, and not the DB or Stanišić, he identifies only military or police units as present and active in the operations between Bajina Bašta and Srebrenica.¹⁸⁸⁰ The Drina Wolves were a Bosnian Serb military/police formation, not part of a Unit of "28 Elite Trainers" known as the Red Berets.¹⁸⁸¹

f. Military Operations by Tara Joint Staff Forces

i. Tara Joint Staff Command: The Military, Specifically Mrkšić, was in Overall Command

815. The evidence shows that Colonel Mrkšić played a commanding role in the Tara Joint Staff, or at least the military operations that were conducted therein. [REDACTED]. I[REDACTED].¹⁸⁸² [REDACTED].¹⁸⁸³ [REDACTED].¹⁸⁸⁴ Mrškić had a commanding role over the Serbian MUP forces,¹⁸⁸⁵ including the Serbian MUP JPN.¹⁸⁸⁶

816. [REDACTED].¹⁸⁸⁷

¹⁸⁷⁸ [REDACTED].

¹⁸⁷⁹ See JF-52, T.8825-8830, 8865 [REDACTED].

¹⁸⁸⁰ [REDACTED].

¹⁸⁸¹ [REDACTED]; Milovanović, T.4490; see also Plahuta, T.19525; Pelević, T.16435; D866, p.1; D82, p.1; Kovačević, P51, para.117; P2509, p.37; P2511, para.170; [REDACTED].

¹⁸⁸² [REDACTED].

¹⁸⁸³ [REDACTED].

¹⁸⁸⁴ [REDACTED].

¹⁸⁸⁵ P1053, p.15.

¹⁸⁸⁶ P1442; P1441; see also P392, p.4.

¹⁸⁸⁷ [REDACTED].

ii. *The Joint Staff's Defensive Military Activity in BiH*

817. The Defence does not accept the Simatović case as advanced through Plahuta, namely that the Serbian MUP, or rather, men associating with the Serbian MUP in the Joint Staff, “did not enter the territory of Bosnia”.¹⁸⁸⁸

818. The Serbian MUP’s “sector extended as far as the bridge that links Bajina Bašta and Skelani” and there was supposed to be cooperation “with the police from the Republika Srpska MUP on the bridge”.¹⁸⁸⁹ [REDACTED].¹⁸⁹⁰ However, Plahuta’s claim that these restrictions were maintained is probably not correct.¹⁸⁹¹

819. This is not to accept the Prosecution’s scattered approach to JCE that suggests all militarized activity in the Drina region was in pursuance of the Bosnian Serb Third Strategic Goal (the elimination of the Drina River as the border).¹⁸⁹² On the contrary, the evidence shows that the Serbian MUP’s involvement at Tara was designed to defend Serbian villages that were being attacked and destroyed by Orić’s men.

iii. *Operations Organised through the Tara Command*

a) Operation Udar

820. During the Simatović case, the Prosecution alleged for the first time that the goal of the operations conducted by the VRS in general, including the Užice Corps in January 1993 and Operation Udar conducted in February 1993, was to forcibly transfer or deport the Muslim civilian population from Eastern Bosnia.¹⁸⁹³ Relying on notes purportedly made by Mladić on 28 February 1993, the Prosecution claim that Simatović’s attendance at a meeting demonstrates that he participated in the planning of Operation Udar.¹⁸⁹⁴

821. The Defence submits that there is no evidence that Stanišić was involved in planning or otherwise committing any crime that may have been envisaged as part of Operation Udar. The Mladić notes, or other evidence, of Simatović’s involvement in the planning does not

¹⁸⁸⁸ Plahuta, T.19404.

¹⁸⁸⁹ Plahuta, T.19405.

¹⁸⁹⁰ [REDACTED].

¹⁸⁹¹ Plahuta, T.19405.

¹⁸⁹² P942.

¹⁸⁹³ Plahuta, T.19430.

¹⁸⁹⁴ P392, p.3.

allow an inference that he was acting at the behest of Stanišić. Milovanović confirmed that Stanišić had not taken part nor had his name been mentioned in any associated discussions.¹⁸⁹⁵

822. Rather, the evidence supports the Stanišić Defence case: any activity by Simatović or other members of the Serbian DB or MUP involved in the Tara Operations was commanded by the Joint Staff. As Mladić notes: the “men from the MUP shall be part of [Mrkšić’s] TG-1”¹⁸⁹⁶ during their participation in Operation Udar. There has been no evidence that Stanišić had the material ability to command the men involved, or was even aware, that these operations were being conducted.

b) Participation of Božović

823. Božović’s military activity in Operation Udar appears to have been relatively limited: he took part in the “combat operation at Kragla Vode [*sic*]”¹⁸⁹⁷ and a mopping up exercise at Radenovice.¹⁸⁹⁸ Kragivode was discussed at the planning meeting attended by Simatovic, wherein it was stated that the men from the MUP should be a part of TG-1.¹⁸⁹⁹

824. A 15 May 1993 report by the Skelani Infantry Brigade shows that Božović took part in operations at Kraglavode and Radenovice as a member of the Skelani Infantry Brigade subordinated to the VRS, and not as a member of the “28 Elite Trainers”, subordinated or answerable to the first Accused.¹⁹⁰⁰

825. P3121 contains a Božović/Jovanović report of action in Osmača on the 9 April 1993.¹⁹⁰¹ It appears to be referring to the same incidents referred to in P399.¹⁹⁰² The report is addressed to the to the “Special Purpose Unit, MUP Serbia, DB Department”.¹⁹⁰³ Plainly Božović considered that he had some obligation to report to the MUP Serbia, DB Department, at this time. However, consistent with the Stanišić case, Božović refers to his “group” as an “intervention group”.¹⁹⁰⁴ All of his military activity was centred around Bajina Bašta.¹⁹⁰⁵

¹⁸⁹⁵ Milovanović, T.4533-4534.

¹⁸⁹⁶ P392, p.4.

¹⁸⁹⁷ P399, p.2.

¹⁸⁹⁸ P399, p.2.

¹⁸⁹⁹ P392, pp.3-4.

¹⁹⁰⁰ P399, p.2; *see also* P3121, p.3.

¹⁹⁰¹ P3121, p.3.

¹⁹⁰² P399, p.2.

¹⁹⁰³ P3121, p.3.

¹⁹⁰⁴ P3121, p.3.

¹⁹⁰⁵ P3121, p.3.

Whoever Božović was addressing at this time, they were located in this region and part of the Joint Staff's "Serbian MUP-Special units command" based on Tara and Bajina Bašta.¹⁹⁰⁶ In other words, as every other piece of salient evidence discussed above shows, despite his report to the "MUP Serbia DB department" he was subordinated to the Joint Staff at Tara.

iv. Further Operations that May have Been Part of Udar

a) Operations in Skelani

826. The Prosecution has not proven that the Serbian MUP's involvement in these operations in the area of Skelani resulted in the deaths of up to 1,000 people.¹⁹⁰⁷

1) January 1993

827. [REDACTED].¹⁹⁰⁸ The witness was not a reliable witness and retreated on the principal allegations designed to implicate the Accused.

828. The Defence submits that after the attack on Skelani by Orić, the population had already fled the carnage. [REDACTED]¹⁹⁰⁹ [REDACTED].¹⁹¹⁰

829. [REDACTED]¹⁹¹¹ [REDACTED].¹⁹¹² [REDACTED].¹⁹¹³ [REDACTED].¹⁹¹⁴

830. He attempted to criminalize Serbia's involvement but essentially retracted his claims. [REDACTED].¹⁹¹⁵ [REDACTED]¹⁹¹⁶ [REDACTED].¹⁹¹⁷

831. [REDACTED]. [REDACTED]"¹⁹¹⁸ [REDACTED].¹⁹¹⁹ [REDACTED].¹⁹²⁰

832. [REDACTED].¹⁹²¹ [REDACTED].¹⁹²² [REDACTED].¹⁹²³

¹⁹⁰⁶ P2683, p.2.

¹⁹⁰⁷ Prosecution Pre-Trial Brief, para.93.

¹⁹⁰⁸ [REDACTED].

¹⁹⁰⁹ [REDACTED].

¹⁹¹⁰ [REDACTED].

¹⁹¹¹ [REDACTED].

¹⁹¹² [REDACTED].

¹⁹¹³ [REDACTED].

¹⁹¹⁴ [REDACTED].

¹⁹¹⁵ [REDACTED].

¹⁹¹⁶ [REDACTED].

¹⁹¹⁷ [REDACTED].

¹⁹¹⁸ [REDACTED].

¹⁹¹⁹ [REDACTED].

¹⁹²⁰ [REDACTED].

2) March 1993

833. [REDACTED]. [REDACTED].¹⁹²⁴ [REDACTED].¹⁹²⁵ [REDACTED].¹⁹²⁶
[REDACTED].¹⁹²⁷

C. CONCLUSION

834. As noted in the introduction, the Tara Operations and subordination of the military and police units to the Joint Staff, provides the critical context to assess the Stanišić's alleged responsibility for the four different Units of Red Berets (i) Mijović's Bratunac Red Berets"; (ii) Božović's Skelani Red Berets; (iii) "BLIB Red Berets" and (iv) "SIB Red Berets". Each will be discussed below.

835. The next Section of the Brief will discuss the "BLIB Red Berets" and the "SIB Red Berets" that were created in 1992. As discussed above, P2683 unequivocally confirms that "Mijović's Bratunac and Božović's Skelani" Red Berets were formed in 1993,¹⁹²⁸ from "superior officers and "instructors" including "members of the Republic of Serbia MUP".¹⁹²⁹ As the evidence shows there new Red Beret Units co-opted the BLIB Red Berets and the Skelani BLIB that had existed since 1992 under the command of the VRS (the Bratunac Light Infantry Brigade (BLIB) Red Berets" and the "Skelani Independent Brigade (SIB) Red Berets"). The facts show that these 1992 Red Berets (nor their illegitimate off spring, the "Mijović's Bratunac" and "Božović's Skelani" Red Berets) were not commanded by or part of the alleged "28 Elite Trainer Unit".

¹⁹²¹ [REDACTED].

¹⁹²² [REDACTED].

¹⁹²³ [REDACTED].

¹⁹²⁴ [REDACTED].

¹⁹²⁵ [REDACTED].

¹⁹²⁶ [REDACTED].

¹⁹²⁷ *Ibid.*

¹⁹²⁸ These units were formed following the Tara training in 1993, not 1991 (*see* P2683, p.2).

¹⁹²⁹ P2683, p.2.

II. BRATUNAC RED BERETS AND AN AIRFIELD

A. PRELIMINARY MATTERS

1. Deficient Notice Should Lead to Dismissal of the Charges

836. The Prosecution have failed to provide adequate notice of the Accused's alleged responsibility for events in Bratunac. It is not mentioned in the Indictment or detailed in the Pre-Trial Brief.¹⁹³⁰ It is submitted that the vague reference in the Pre-Trial Brief, to Simatović informing Serb municipal leaders from Bratunac, Višegrad and Zvornik that training camps were to be established, is deficient notice that does not allow for the preparation of an effective defence.¹⁹³¹ All charges relating to training or military activities in this location should be dismissed.

2. Lack of Notice Concerning the Alleged Role of Spasojević

837. [REDACTED].¹⁹³² [REDACTED].¹⁹³³ [REDACTED].

B. DEFENCE CASE

838. The Prosecution may allege based on the evidence that the Accused is responsible for forcible transfer in Bratunac through the following means:

- (i) Through Mijović's alleged creation of Red Beret Unit and training base;¹⁹³⁴
- (ii) [REDACTED]. This allegation is addressed in Part III, Section V, paragraphs 965-966.

839. If these charges are not dismissed for deficient notice, it is submitted that the evidence does not support the proposition that Stanišić had any involvement, whether through Simatović or otherwise, with providing military assistance to Bratunac.

¹⁹³⁰ Indictment, paras. 9, 22, 26, 64-65; Prosecution Pre-Trial Brief, paras 134-146.

¹⁹³¹ Prosecution Pre-Trial Brief, para.69.

¹⁹³² Prosecution Rebuttal Motion: Serbian DB Personnel Files, [REDACTED].

¹⁹³³ See Part III, Section III.

¹⁹³⁴ Deronjić, P2511, paras 134-135.

1. The BLIB Red Beret Unit and the Training Base in Bratunac was not Part of an Alleged “28 Elite Trainer” Unit

a. Defence Case Regarding Training

840. The evidence shows that the BLIB Red Berets were created by, or under the command of, the BLIB, a unit of the VRS. The BLIB was commanded by the Bratunac Brigade, which was commanded by the Drina Corps Command,¹⁹³⁵ which in turn was subordinated to the Main Staff of the VRS.¹⁹³⁶

841. As discussed below, Mijović’s Bratunac Red Berets did not exist in 1992. He became associated with the BLIB Red Berets at some unspecified time, before creating his Unit in early 1993, in part by co-opting part of the existing BLIB Red Beret Unit. As the analysis below will show, this is firmly established in the evidence.¹⁹³⁷

842. As the evidence shows, rather than being part of a “28 Elite Trainer” Unit, or even part of the BLIB Red Berets, Mijović set himself up as *new* Red Beret Unit. Mijović’s Bratunac Red Berets acted in some policing capacity in the region of Bratunac, before becoming involved in looting itself. It avoided military action.¹⁹³⁸

843. That is not to argue that “Mijović’s Bratunac Red Berets” did not have links with individuals in the Serbian DB or MUP. [REDACTED].¹⁹³⁹ He had an out dated Serbian MUP ID card issued on 21 March 1978.¹⁹⁴⁰

b. The Alleged “Simatović” Plan to Create the Bratunac Red Beret Training Camp Never Actually Happened

844. The Prosecution relies upon Deronjić to allege that Simatović, at the behest of Stanišić, made arrangements to use the “28 Elite Trainers” Unit to train recruits to advance the criminal purpose. Deronjić alleged that in June or July 1992, he attended a meeting with Simatović in Bajina Bašta, together with a delegation from Bratunac, Skelani, Višegrad and Zvornik (including Grujić and Pavlović).¹⁹⁴¹ At that meeting, Simatović allegedly told him

¹⁹³⁵ See e.g. P276; D178-D179; D181; D861.

¹⁹³⁶ P385.

¹⁹³⁷ *Infra*, paras 845-851.

¹⁹³⁸ See e.g. [REDACTED]; P2104, p.1.

¹⁹³⁹ [REDACTED].

¹⁹⁴⁰ P488.

¹⁹⁴¹ Deronjić, P2511, para.135.

that in all of the municipalities present, “training camps were to be established for troops with instructors who would come from the Serbian police”.¹⁹⁴²

845. Deronjić then claimed that 15 days or so after, he received information that a “camp had been set up in Skelani, and soon after in Višegrad and Rogatica”.¹⁹⁴³ To his surprise, they skipped Bratunac.¹⁹⁴⁴ Deronjić claimed that a man called Dragan Spasojević, with ties to the Serbian DB, told him that the men from Bratunac should be trained in the Skelani camp.¹⁹⁴⁵ The witness went on to describe how men were selected by Mitrović and Spasojević to go from Bratunac to the camp in Skelani.¹⁹⁴⁶ The evidence shows that even if Deronjić’s evidence is reliable, “Simatović’s” plan to set up a Red Beret training camp in Bratunac did not happen.

2. Creation of the BLIB Red Berets in 1992 Under Boško Nešković

846. The evidence suggests that Nešković, a local man from Bratunac, created a group known as the Red Berets in June 1992.¹⁹⁴⁷ According to Mladić, this group was financed by the patronage of a local priest.¹⁹⁴⁸ Subsequently, it was subordinated to the BLIB.¹⁹⁴⁹

847. The existence of the BLIB Red Berets in mid-1992, subordinated to the BLIB, is further corroborated by P2648, an application to the KDF fund. It contains a certificate confirming that Momir Ilić, at the time of his injury, was a Red Beret combatant in July 1992¹⁹⁵⁰ in Bratunac - a member of the VRS.¹⁹⁵¹

848. The Prosecution will rely upon P3125, Nešković’s alleged personnel file, appearing to confirm that Nešković was, a “Serbian MUP, Special Purposes Unit Member”.¹⁹⁵² Undoubtedly, the Prosecution will find this dispositive of the issue, arguing that this demonstrates that the “28 Elite Trainers” commanded the BLIB Red Beret Unit as part of Stanišić’s master training programme.

¹⁹⁴² Deronjić, P2511, para.136.

¹⁹⁴³ Deronjić, P2511, para.139.

¹⁹⁴⁴ Deronjić, P2511, para.139.

¹⁹⁴⁵ Deronjić, P2511, para.139.

¹⁹⁴⁶ Deronjić, P2511, para.140.

¹⁹⁴⁷ P2104, p.1.

¹⁹⁴⁸ P3208, p.1.

¹⁹⁴⁹ *See e.g.* D861, p.1.

¹⁹⁵⁰ P2648, p.5.

¹⁹⁵¹ P2648, pp.6,7.

¹⁹⁵² P3125, p.2.

849. This was Theunens' approach regarding Mijović [REDACTED].¹⁹⁵³ According to him, once Mijović was engaged or employed by the Serbian MUP/DB and even though he also had allegiances towards all the other Serbian MUP's - the RSK/RS MUP¹⁹⁵⁴ every action he took must have been at the behest of the Serbian DB.¹⁹⁵⁵ Of course, this is absurdly reductionist for the purposes of a criminal trial.

850. A personal file indicating that Nešković was, at some unknown time, a "Serbian MUP, Special Purposes Unit Member" is insufficient to show that he acted at the behest of the Serbian DB or Stanišić in 1992. It is instructive that Nešković's personnel file also notes that he had "no war time experience"¹⁹⁵⁶ - a circumstance that would appear to contradict the Prosecution's principle thesis of an elite group of 28 trainers commanding military action. The more likely event, given Nešković subsequent involvement with Mijović is that Mijović facilitated his registration with the Serbian MUP.

851. As P2104 shows, rather than a pre-arranged plan amongst the JCE members to employ "28 Elite Trainers", the local authorities did not anticipate Nešković's arrival in the municipality in 1992. Instead, "he was refused permission" to set up a unit.¹⁹⁵⁷ However, "acting on his own initiative" he set up a group of 60 youths to loot and to prepare to "stage a coup in the municipality".¹⁹⁵⁸ The ultimate plan may have been to "liquidat[e]" Mladić and Karadžić.¹⁹⁵⁹

852. Moreover, as discussed above, the BLIB Red Berets was not created pursuant to the alleged Simatović plan. Plainly, the Bratunac Red Berets was not a unit created by Stanišić as part of a pre-arranged "28" trainers plan or to otherwise assist in military operations. On the contrary, Nešković's group was lightly armed¹⁹⁶⁰ and became known as the Red Berets simply because they wore red berets.¹⁹⁶¹

¹⁹⁵³ Theunens, T.8754-8755, [REDACTED].

¹⁹⁵⁴ P355, pp.4-6; D38; JF-36, T.4305-4306; P488, p.2; [REDACTED].

¹⁹⁵⁵ Theunens, T.8758.

¹⁹⁵⁶ P3125, p.2.

¹⁹⁵⁷ P2104, p.1.

¹⁹⁵⁸ P2104, p.1.

¹⁹⁵⁹ P2104, pp.1-2.

¹⁹⁶⁰ P2104, p.1.

¹⁹⁶¹ P2401, p.1

a. In February 1993, Mijović Established his Bratunac Red Berets

853. Deronjić's evidence dating the creation of Mijović's Red Berets in Bratunac to early 1993 appears to be accurate. As discussed above,¹⁹⁶² the creation of Mijović's Red Berets was recorded contemporaneously, noting that this "Special Purpose Unit" was formed in Bratunac and Skelani, superior officers and "instructors" of which were "members of the Republic of Serbia MUP".¹⁹⁶³ As confirmed by P2683, Mijović emerged from the chaos that surrounded the Tara Joint Staff. [REDACTED]¹⁹⁶⁴ [REDACTED].

854. As indicated by P2683 Mijović, with the members of the Serbian MUP and others operating from Tara, took over command of (some of) the Red Berets of the BLIB; he refused to subordinate to the VRS between April 1993-May 1993.¹⁹⁶⁵ At the very least, its military contribution was negligible. At worse, he damaged military effectiveness by removing men from the BLIB, failing to subordinate, and acting as a (self-proclaimed) policeman, thereby enabling him to seize property.¹⁹⁶⁶

855. As P2683 and P3199¹⁹⁶⁷ show, Mijović's group operated between the Tara Joint Staff and Bratunac. [REDACTED]¹⁹⁶⁸ [REDACTED].¹⁹⁶⁹ [REDACTED].¹⁹⁷⁰ [REDACTED].¹⁹⁷¹

856. Similar to Crnogorac in Brčko,¹⁹⁷² Mijović appears to have set himself up, as a police officer purporting to bring law and order in the Bratunac region, including arresting war profiteers.¹⁹⁷³ He had an official BiH RS MUP ID card dated from 20 January 1992 (and a RSK DB ID, dated 2 April 1992).¹⁹⁷⁴ [REDACTED].¹⁹⁷⁵

857. This group, subordinated to the Tara Joint Staff, also recruited men from the military who were operating pursuant to the Joint Staff.¹⁹⁷⁶ The evidence suggests that the operation of

¹⁹⁶² Supra, paras 799-803.

¹⁹⁶³ P2683, p.2.

¹⁹⁶⁴ P3172, p.1; *see also* [REDACTED].

¹⁹⁶⁵ P2683, p.2; *see also* D178; P1081.

¹⁹⁶⁶ *See eg.* [REDACTED]; P277; D178; P1081.

¹⁹⁶⁷ [REDACTED].

¹⁹⁶⁸ [REDACTED].

¹⁹⁶⁹ [REDACTED].

¹⁹⁷⁰ [REDACTED].

¹⁹⁷¹ [REDACTED].

¹⁹⁷² *See* Part III, Section I, paras 643-660.

¹⁹⁷³ JF-26, T.9835; [REDACTED].

¹⁹⁷⁴ P488, pp.6-7.

¹⁹⁷⁵ [REDACTED].

¹⁹⁷⁶ *See* Part III, Section III, paras 815-816.

this group in Bratunac was agreed upon at the local level, probably an agreement between Deronjić, the Serbian MUP/DB representatives at Tara and the local RS MUP.

858. In light of the aforementioned evidence, it is fanciful to suggest that Mijović was acting as a member of an alleged “28 Elite Trainer” Unit, or otherwise contributing to the war effort as part of a special unit supervised by Stanišić. Stanišić had no vested interest in policing within Bratunac, let alone the disgraceful, localised self-enrichment activities that ensued.

859. The Defence refers the Trial Chamber to Part III, Section III, which outlines, *inter alia*, Stanišić’s lack of presence or involvement in these operations or the chain of command therein.¹⁹⁷⁷

b. Mijović’s Resubordination to the BLIB

860. The evidence suggests that Mijović was eventually forced to partly resubordinate his unit to the BLIB in May 1993.¹⁹⁷⁸ After his departure, Nešković and the remnants of the “Mijović Bratunac Red Berets” Unit were subsumed into the BLIB becoming once more the “BLIB Red Berets”.

861. Mijović’s refusal to subordinate to the BLIB Command is reflected in a series of exhibits from April to May 1993.¹⁹⁷⁹ As P2683 concludes, he started a little ‘war’ with the representatives of the local authorities...which led to a conflict and complexity of political-security situation”.¹⁹⁸⁰

862. In particular, on 23 February 1993, the BLIB Command of the Military Police, reported to the Chief of the OB, providing that on “22 February, the police were assigned for training to a special unit under the command of Major Vasilje Mijović”.¹⁹⁸¹ By 5 June 1993, “Mijović Bratunac Red Berets” are (at least, partly) subordinated to the BLIB.¹⁹⁸²

863. The evidence therefore shows that Mijović was independent from the BLIB from around late April 1993 to the end of May 1993.

¹⁹⁷⁷ See Part III, Section III, paras 791-805.

¹⁹⁷⁸ D178, pp.1-2.

¹⁹⁷⁹ See e.g. D178, P1081; see also P277; D178; P1081.

¹⁹⁸⁰ P2683, p.2.

¹⁹⁸¹ P277, p.1; P1511, para.146.

¹⁹⁸² D963, p.1.

c. Mijović's (or his predecessor's) Red Berets Unit was (mostly) Resubordinated to the VRS from June 1993

864. Following this resubordination, something occurred to force the removal of Mijović from the BLIB's Red Beret unit. The evidence is not clear, but it appears that this led to the re-categorization of the Unit as a "Sabotage and Reconnaissance platoon", firstly under Milenko Prodanović (the Mungosi Platoon) in September 1993 and later under Boško Nešković. It appears that this had the effect of creating two new relatively distinct Red Beret Units within the BLIB.

865. The Mungosi Platoon (30-men) was formed in September 1993 from parts of, or the remnants of, Mijović's Unit.¹⁹⁸³ It consisted of "people who were involved in looting and the resale of captured livestock before and during the war".¹⁹⁸⁴

866. By 27 October 1994, this Unit (or another Red Beret platoon) whilst still subordinated to the BLIB, now appeared to be under the Command of Nešković, and fully integrated into the war effort within the Sword-3 operation.¹⁹⁸⁵ This Unit remained subordinated to the BLIB unit the end of the war.¹⁹⁸⁶

d. Mijović's Allegiances During his time in Bratunac

867. As discussed above, rather than pursuant to a Stanišić "28 Elite Trainers" plan Mijović created his Bratunac Red Berets in 1993. [REDACTED]¹⁹⁸⁷ must be viewed in light of the totality of this evidence.

868. Mijović had allegiances to many entities and individuals, including the RS and Serbian MUP and DB (as well as the BLIB) in early 1993. The totality of the evidence suggests that he used these personal connections to set himself up as a police unit in Bratunac.

869. He was issued with a Serbian SUP ID card on 21 March 1978 (Registration number: 23232).¹⁹⁸⁸ He had a RSK DB ID card dated from 2 April 1992;¹⁹⁸⁹ and also a BiH MUP ID Card dated 20 January 1992.¹⁹⁹⁰ [REDACTED].¹⁹⁹¹

¹⁹⁸³ P1082, p.1.

¹⁹⁸⁴ *Ibid.*

¹⁹⁸⁵ D861, p.1.

¹⁹⁸⁶ D869; D870; D985, p.1; D983.

¹⁹⁸⁷ [REDACTED].

¹⁹⁸⁸ P488, p.2.

870. It is plain from a number of pieces of evidence, but most significantly from the activities engaged in, that he was not acting as an elite trainer or military combatant on behalf of Stanišić. Instead, a reasonable inference arises that he was drawn into a tawdry self-enrichment arrangement with Deronjić and others subordinated to the Joint Staff at Tara. His group undermined the taking of territory in Bratunac in 1993. As confirmed by Deronjić, he stated that in “addition to their activities, they were also involved in looting. They even looted the property of Serbs. They arrested Serbs and subjected them to torture”.¹⁹⁹²

e. Mijović Relied on a Direct Link to Sokolović in Bratunac

871. As discussed in the Part III, Section IV,¹⁹⁹³ [REDACTED].¹⁹⁹⁴ Following this introduction at the Tara Command, Mijović may have received direct authorisation from the RS MUP, Sokolović, Badža and others to create a Special Purpose Unit subordinated to both the Joint Staff and the RS MUP.

872. [REDACTED].¹⁹⁹⁵ [REDACTED].¹⁹⁹⁶ [REDACTED].¹⁹⁹⁷

873. Given that he had an out-dated ID Serbian SUP ID card dated 21 March 1978,¹⁹⁹⁸ this probable attempt to hide his card was understandable. Consistent with his *ad hoc* role in training the PJP’s (part of a “group of people”, rather than a “unit in the classic sense”¹⁹⁹⁹), it is almost certain that he did not possess a current ID card.

874. [REDACTED],²⁰⁰⁰ what happened next is highly significant. [REDACTED].²⁰⁰¹

875. It is worthwhile recalling the Prosecution case. According to the Prosecution case, Mijović was in Stanišić’s “28 elite trainer unit” and had been since May 1991. [REDACTED]. In sum, this incident reflects the situation existing at that time. Mijović arrived at Tara in a group with Simatović. He created a Unit that must have been subordinated

¹⁹⁸⁹ P488, pp.3-4.

¹⁹⁹⁰ P488, pp.6-7.

¹⁹⁹¹ [REDACTED].

¹⁹⁹² P2511, para.151.

¹⁹⁹³ Para.851.

¹⁹⁹⁴ [REDACTED].

¹⁹⁹⁵ [REDACTED].

¹⁹⁹⁶ [REDACTED].

¹⁹⁹⁷ [REDACTED].

¹⁹⁹⁸ P488, pp.1-2.

¹⁹⁹⁹ See Part III, Section III, para.851.

²⁰⁰⁰ [REDACTED].

²⁰⁰¹ [REDACTED].

to the Tara Joint Staff. From this subordination, he had reporting obligations to the Serbian and the RS Police.

876. Deronjić claimed that Tomo Kovač told him that Mijović's arrival and the establishment of the Red Beret camp was "arranged with the police of Republika Srpska, so the ministry there, and the police of Serbia."²⁰⁰² This is corroborated by P2683, which, *inter alia*, states that Mijović's and other police units being created or subordinated to the Joint Staff were "commanded and controlled by the Republic of Serbia MUP-Special units command".²⁰⁰³ As confirmed by Deronjić, these men were subject to the "orders of the Supreme Command" of the VRS,²⁰⁰⁴ (even though, according to Deronjić, they "were paid by the Minister of the Interior of Serbia").²⁰⁰⁵

877. JF-26, who was from nearby Zvornik, also corroborated the role of the RS MUP. He stated, "Vaso Mijović was stationed in Bratunac. He also had a group of locals with him. There was some sort of clash with the local authorities in Bratunac, so those from the MUP of Republika Srpska dispatched him there as an instructor. I know that he was also slapping about the president of the municipality and of the Executive Board".²⁰⁰⁶ Another incident, another chain of command, but still no subordination to Stanišić.

878. There is other evidence implicating the RS MUP in creating similar special police units the same time. In May 1993, Crnogorac was also operating in the territory of the BLIB, displaying the same belligerent refusal to subordinate, as did Mijović. The evidence is scarce, but that which exists suggests a similar history. On the 15 May 1993, pursuant to a 13 May 1993 Mladić order, the Command of the BLIB ordered Crnogorac's Unit for special purposes of the MUP of Republika Srpska to be resubordinated.²⁰⁰⁷ Another incident, another chain of command, but still no subordination to Stanišić.

879. In conclusion, there is no evidence that Stanišić was involved in these policing arrangements. The Prosecution will rely on the thesis that Stanišić was working in the "shadows". However this is just an attempt to accommodate the dearth of evidence that directly or even indirectly links him. Rather than Mijović working for Stanišić, commanded

²⁰⁰² P2511, para.146.

²⁰⁰³ P2683, p.2.

²⁰⁰⁴ P2511, para.148.

²⁰⁰⁵ P2511, para.149.

²⁰⁰⁶ JF-26, T.9834-9835.

²⁰⁰⁷ Stoparić, T.10486-10487.

by the “28 Elite Trainers, he worked for the RS and Serbian MUP, the BLIB and anyone else that might facilitate his personalised crimes.

III. THE SIB AND “BOŽOVIĆ SKELANI RED BERETS”

A. PROSECUTION CASE

880. The Prosecution’s Pre-trial Brief states that Božović commanded the camps at Skelani, while Simatović and Stanišić “remained in overall control”.²⁰⁰⁸

B. DEFENCE CASE

881. The Prosecution case concerning the Red Berets in Skelani and Bratunac in 1992 and 1993 alleges that these groups were created and commanded by Stanišić in furtherance of his “28 elite trainers” plan.

882. Instead, the evidence suggests that Pupovac created the SIB Red Berets in 1992. This group was co-opted by Božović in early 1993, from a position of command at Mount Tara. He created the “Božović Skelani Red Beret” - where he had been subordinated to the Joint Staff. Božović refused to allow the SIB to be resubordinated to the SIB.

1. Chronology of the SIB Red Berets

883. Stanišić was not involved in creating, supplying, or in any other way assisting the SIB Red Beret unit commanded by Pupovac in Skelani. The camp was established in June 1992,²⁰⁰⁹ just before Mladić’s order to disband the paramilitary units on 28 June 1992.²⁰¹⁰ They were organised by Pupovac,²⁰¹¹ who achieved this through the provision of weapons, ammunition and all essential assistance directly from the local authorities.²⁰¹² In exchange, he cooperated with local authorities to assist them with their military objectives.²⁰¹³ None of the relevant reports identify his Red Berets at this time as connected in any way to a Unit of “28

²⁰⁰⁸ Prosecution Pre-trial Brief, para.71.

²⁰⁰⁹ P2104, p.1.

²⁰¹⁰ P2104, p.1.

²⁰¹¹ P2104, p.1; P383.

²⁰¹² P1083.

²⁰¹³ P1083.

Elite Trainers”, with the Serbian MUP, DB or the Accused. This group was subordinated to the SIB.²⁰¹⁴

2. Pupovac had no Relationship to Stanišić or the Serbian DB when he was the Commander of the SIB Red Berets in 1992

884. The evidence does not link Pupovac to the Serbian DB from early 1991 until late 1992/early 1993. [REDACTED]. [REDACTED].²⁰¹⁵

885. [REDACTED].²⁰¹⁶ He did not explain or clarify this claim.

886. It is accepted that at some point in early 1993, Pupovac moved from Skelani to Tara. He was appointed as some form of camp commander.²⁰¹⁷ As argued above, this placed him under the Joint Staff, not Stanišić.²⁰¹⁸

887. Instead of the Serbian DB, it is possible that Pupovac, in 1992, was acting on behalf of or in coordination with Captain Dragan. A VRS intelligence report, dated 3 August 1992, observed that the Skelani camp was “directed by a certain Pupovac from Captain Dragan’s group, born in Knin Krajina”.²⁰¹⁹

888. A 15 May 1993 military report noted that the “SIB Red Berets” Unit was subordinated to the SIB between June 1992 (the time Pupovac arrived to Skelani) and 14 May 1993.²⁰²⁰ P399 reports that the SIB Red Berets had departed from the SIB in January 1993 due to attacks in the region. They refused to be resubordinated to the SIB brigade, explaining that it was now subordinated to the Tara Joint Staff.²⁰²¹ A confidential report by the Skelani Independent Battalion, dated 7 June 1993, corroborates this account.²⁰²² In other words the SLIB wanted its Red Beret Unit to resubordinate, but it refused.

²⁰¹⁴ P399, p.2.

²⁰¹⁵ [REDACTED].

²⁰¹⁶ [REDACTED].

²⁰¹⁷ P1053, p.18.

²⁰¹⁸ See Part III, Section IV, paras 798-810.

²⁰¹⁹ P2104, p.1; see also P383, p.5.

²⁰²⁰ P399, p.2.

²⁰²¹ P399, pp.1-2.

²⁰²² P387, pp.1-2.

3. The SIB Red Berets, Inept and Untrained, Served No Other Purpose but to Loot and Commit Petty Crimes

889. Even if the Trial Chamber finds that Pupovac had some association with certain individuals from Serbian DB before departing to Skelani, the Pupovac unit was not created as part of a “28 Elite Trainer” project.

890. By July 1992 (one month after their arrival), Pupovac’s Red Berets became a problem for the local authorities. It is plain that the local military authorities concluded that it “Captain Dragan’s Commandos” or Red Berets, “headed by Nikola Pupovac, one of Captain Dragan’s pupils”,²⁰²³ was merely interested in looting and was “preparing to overthrow the government and take power in the Serbian municipality of Skelani”.²⁰²⁴ Despite the fact that the Prosecution allege that it consisted of elite trainers – their military skills were basic.²⁰²⁵ By “September 1992, only persons who did not complete their military service have been sent to the Red Beret Unit in order to.../text missing/through basic military training”.²⁰²⁶ The Report confirms that this amateurish bunch was subordinated to, or working hand in hand with, the SIB until 15 May 1993.²⁰²⁷

4. The Role of Alleged DB Operative, Spasojević

891. Deronjić claims that Spasojević assisted with recruiting men from Bratunac to attend the Skelani “Red Beret” training base.²⁰²⁸ [REDACTED].²⁰²⁹ This is deficient notice and all charges arising should be dismissed.²⁰³⁰

892. [REDACTED].²⁰³¹ [REDACTED].

893. [REDACTED].²⁰³² As noted, due to the late admission of evidence, it has not been possible for the Defence to investigate these claims or resolve the queries arising.

²⁰²³ P383, p.1.

²⁰²⁴ P383, p.5; P2104, p.1.

²⁰²⁵ P399, p.1.

²⁰²⁶ P399, p.1.

²⁰²⁷ P399, pp.1-2.

²⁰²⁸ Deronjić, P2511, paras 139-140.

²⁰²⁹ See Part III, Section IV, para.837.

²⁰³⁰ *Ibid.*

²⁰³¹ [REDACTED].

²⁰³² [REDACTED].

894. Despite this loss of an opportunity to investigate, the Defence submits that none of the evidence establishes that he was acting at the behest of Stanišić. At most, the evidence shows that he knew Pupovac (from his time at Fruška Gora or Golubić) and worked with him in Skelani on that basis. [REDACTED]”,²⁰³³ [REDACTED]

895. On the contrary, all the evidence suggests that he was acting in a personal capacity. Deronjić described how he used to see Spasojević frequently in the camps of the Skelani Red Berets in June 1992 (when it was set up).²⁰³⁴ He claimed that he knew that Spasojević was “their worker and, in fact, an instructor in the Red Berets. He told me that his task was mostly to cooperate with the police”.²⁰³⁵ Deronjić later developed his theory claiming, “he was the one who was carrying out these police tasks”.²⁰³⁶

896. There is no evidence to support Deronjić’s claim that Stanišić engaged Spasojević either to cooperate with the police or to set up the “nucleus of the first paramilitaries in Bratunac”, whatever the import of that uncorroborated claim. Mitrović, Spasojević and Pupovac were considered to be local criminals, not elite DB trainers. They were viewed as men seeking to enrich themselves.²⁰³⁷

897. Further, although the Prosecution claims that Spasojević was a Serbian DB unit member, *he* contemporaneously claimed to “be a FRY State Security worker”.²⁰³⁸ He set up a pathetic group of youths whose aim was to “loot in order to collect material supplies and at a suitable moment stage a coup in the municipality and seize all power”.²⁰³⁹ Rather than acting in concert with the leadership of the municipality through elite training, they appeared to be acting against the local military and political leadership.

5. The SIB Red Berets Were Taken Over by Božović (from his position in the Tara Joint Staff)

898. In 1993, the SIB Red Berets of Skelani forged some links with members of the Tara Joint Staff or those subordinated to it (*e.g.* Božović).

²⁰³³ [REDACTED].

²⁰³⁴ Deronjić, P2511, para.132.

²⁰³⁵ Deronjić, P2511, para.132.

²⁰³⁶ P2510, p.211.

²⁰³⁷ P2104, p.1.

²⁰³⁸ *Ibid.*

²⁰³⁹ P2104, p.1.

899. The 15 May 1993 report on “the establishment of the Units for Special Purposes (Red Berets of the MUP) of Serbia in Skelani” by the SIB suggests that the SIB Red Berets began its relationship with the Serbian MUP through the Tara Joint Staff only in early January 1993.²⁰⁴⁰ At this time, it “left this area (Skelani) and went to Tara for further training”.²⁰⁴¹ Milovanović corroborated their presence.²⁰⁴² However, he noted that they mostly spoke about themselves as Šešelj’s Chetniks.²⁰⁴³ He ordered that they be removed.²⁰⁴⁴

900. After arriving at Tara, the group was co-opted by Božović and returned to Skelani in February under his command with 150 soldiers.²⁰⁴⁵ It is unclear whether Božović’s Skelani Red Berets were fully subordinated to the Tara Joint Staff or remained in part subordinated to the SIB.

901. It is unclear because the evidence suggests that the Joint Staff, as well as the SIB, engaged Božović from April 1993 in a variety of roles. Reading P399 [REDACTED] sheds some light on the issue [REDACTED].

902. The evidence suggests the following chronology. P399, dated 15 May 1993, reports that following two casualties during the attack on Jezero ([REDACTED]²⁰⁴⁶), “the majority of the soldiers from the (SIB Skelani Red Beret) unit were withdrawn from this [Skelani] area and taken to Tara to rest”.²⁰⁴⁷ On 14 May 1993, when they returned to camp, they refused to be subordinated to the SIB because they now claimed to be subordinated to the Serbian MUP.²⁰⁴⁸ This is corroborated by P387.

903. As can be concluded, the evidence is not clear. However, for the purposes of assessing Stanišić’s alleged responsibility, it does not matter. In sum, whether the Božović Skelani Red Berets was another name for the Serbian MUP unit or not, Stanišić had nothing to do with either. If the Unit was subordinated to the SIB or the Joint Staff, or both, Stanišić was in neither chain of command.

²⁰⁴⁰ P399, pp.1-2.

²⁰⁴¹ P399, p.1.

²⁰⁴² Milovanović, T.4491.

²⁰⁴³ Milovanović, T.4491-4492.

²⁰⁴⁴ Milovanović, T.4491.

²⁰⁴⁵ P399, p.1.

²⁰⁴⁶ [REDACTED].

²⁰⁴⁷ P399, p.2.

²⁰⁴⁸ *Ibid.*

904. A report from 17 June 1993 by the SIB sums up the situation concerning the then current information concerning the Božović Skelani Red Berets. The “(former) 5th KVO of the Skelani Battalion [...] currently as the Republika Srpska paramilitaries, the so-called Red Berets; we do not know who’s command they are because they are refusing to follow orders of the Skelani SB [SIB] Commander and according to our information, Frenki(?) is financing them”.²⁰⁴⁹ The report makes a request for the 57 military conscripts of the Skelani SB to be placed “under the command of the SB Commander and deployed at the forward defence line of the battalion (resolve this issue with the MUP) and the Republika Srpska MUP resolve the issue of their finances since Frenki has financed them so far (24 policemen per military conscript)”.²⁰⁵⁰

905. It is significant that, despite a relatively well-documented enquiry, the military intelligence at the time did not implicate Stanišić in commanding, supplying or financing the group. Instead, the writer of the 17 June 1993 report suggests that the issue be resolved with the [Serbian] MUP.²⁰⁵¹ This is consistent with Božović being subordinated to the Serbian MUP at the Joint Staff.

IV. CONCLUSION

906. It is submitted that the Prosecution have failed to prove that Stanišić commanded or supported, as part of any “28 elite trainer” master plan the BLIB Red Berets, the SIB Red Berets in 1992, the Mijović Bratunac Red Berets or the Božović Skelani Red Berets.

²⁰⁴⁹ P387, p.1.

²⁰⁵⁰ P387, p.2.

²⁰⁵¹ P387.

SECTION V. ALLEGATIONS OF GENERAL SUPPLY TO SERB FORCES IN BiH

I. PROSECUTION CASE

907. It is alleged that Stanišić contributed to the criminal purpose in BiH by directing and organising the formation, financing, supply and support to special units of the DB and other Serb Forces that were involved in the commission of crimes during the Indictment period.²⁰⁵²

II. DEFENCE CASE

908. This section addresses the above allegation. Supplies to other locations in the Indictment are addressed in Part II, Section II, paragraphs 343-410.

A. INTRODUCTION

909. This allegation presupposes that the chief of a civilian organ, normally charged with ensuring state security, would be required as a matter of routine to organise hundreds and thousands of tons of military supplies. As discussed in Part I, Section II, this misconception stems from the erroneous and wholly unproven assertion that Stanišić controlled key aspects of the JNA/VJ, in particular their security services.

1. The Supply Chain to the Bosnian Serb Forces

910. There are well-established and documented infrastructure and supply chains from the FRY to the VRS, local TOs, and paramilitaries in BiH.

911. The first part of this section tackles the nature of the supply chains, relying upon Confidential Annex VIII, as an illustration of how the Bosnian Serb forces, including the paramilitaries, obtained their combat and communications equipment. This will demonstrate the irrationality at the heart of the suggestion that Stanišić was an integral part of this supply system, or, alternatively, as asserted by Pavlović, of a second supply route from Bobanj Potok to Croatia and Bosnia.²⁰⁵³

912. The second part of the section confronts Pauk and Stanišić's alleged supply of men and logistics to assist Abdić in recovering his territory to alleviate a refugee crisis. It is

²⁰⁵² Indictment, para.15(c).

²⁰⁵³ Prosecution Pre-Trial Brief, paras 84, 88-89.

submitted that, if proven, the ad hoc supply to BiH in 1991 or that of Pauk, could not conceivably have been in furtherance of crime.

2. Hundreds of Thousands of Mobilised Men in BiH in early 1992

913. In early 1992, there were some 100,000 JNA troops in BiH with over 700 tanks, 1,000 armoured personnel carriers, much heavy weaponry, 100 planes and a substantial number of helicopters, all under the JNA's General Staff.²⁰⁵⁴

914. There were also paramilitary units mobilised in early 1992. For example, in March 1992, there were 69,198 Bosnian Serb paramilitary units in the Second MD zone.²⁰⁵⁵ Further, there were a "large number of citizens of all ethnic backgrounds" that were privately armed.²⁰⁵⁶

915. The VRS was formally established on 19 May 1992.²⁰⁵⁷ Stanišić fell outside its command structure.²⁰⁵⁸ In June 1992, the VRS had 177,341 personnel divided under the command of an Army Main Staff headed by Mladić.²⁰⁵⁹ This number does not include local TO's. Counting the paramilitaries, the Bosnian Serbs had 246,539 mobilized men and 69,198 paramilitary forces, as well as an indeterminate number of TO members. By April 1993, the VRS combat readiness report noted that there were 222,727 VRS troops.²⁰⁶⁰ In April 1995, the RS Army numbered over 275,000 men, with 74% of the men mobilised.²⁰⁶¹

916. By September 1992, the Bosnian-Serb MUP numbered 11,240 employees.²⁰⁶² Regarding the RS MUP, between April to December 1992, 1,451 police officers participated in combat activities on a daily basis.²⁰⁶³ Further, the Ministry put 6,167 police officers at the disposal of the VRS.²⁰⁶⁴

²⁰⁵⁴ First Adjudicated Facts Decision (Prosecution), Fact 209.

²⁰⁵⁵ P1311, p.6.

²⁰⁵⁶ P1321, p.8, 7th paragraph.

²⁰⁵⁷ First Adjudicated Facts Decision (Prosecution), Fact 161.

²⁰⁵⁸ See P1334.

²⁰⁵⁹ Third Adjudicated Facts Decision (Prosecution), Fact 145; *see also* P386, p.70.

²⁰⁶⁰ P386, p.71.

²⁰⁶¹ P1320, p.18.

²⁰⁶² Third Adjudicated Facts Decision (Prosecution), Fact 193.

²⁰⁶³ *Ibid*, Fact 210.

²⁰⁶⁴ *Ibid*, Fact 211.

917. [REDACTED].²⁰⁶⁵ [REDACTED].²⁰⁶⁶ [REDACTED].²⁰⁶⁷

918. None of the mobilised Serb forces – numbering over 250,000 (177,341 VRS, 69,198 paramilitaries and 6,167 RS MUP) – owed any official duties to the DB. Neither did the 615,000 VJ military conscripts, nor the 244,000 men from Serbia who participated in the war (or at least those who had been assigned to units).²⁰⁶⁸

919. Stanišić's alleged contribution to the Bosnian military machine must be seen within this overall numerical context.

B. STANIŠIĆ PLAYED NO ROLE IN ARMING THE BOSNIAN SERB ARMY

1. Arming by the JNA

920. In 1991, massive supplies of weapons started coming into BiH from Slovenia and Croatia, as the JNA departed. Selak, the commander of the logistics base (Rear Base), in Banja Luka,²⁰⁶⁹ corroborated the JNA's role in distributing these weapons to BiH forces.²⁰⁷⁰ Over "30,000 tons of equipment and materiel, ammunition, mines, explosives and different types of fuel" were brought to BiH from Slovenia alone.²⁰⁷¹

921. In 1991, these weapons, in addition to weapons already part of JNA stockpiles in BiH, were received and distributed to the Serb population by the Bosnian SDS, in coordination with Yugoslav authorities, specifically the JNA.²⁰⁷² A 1 March 1992 report corroborates this, noting that SDS leaders were seeking weapons from the JNA and Ministry of National Defence of Serbia, not the Serbian DB (or even the MUP).²⁰⁷³

²⁰⁶⁵ [REDACTED].

²⁰⁶⁶ [REDACTED].

²⁰⁶⁷ [REDACTED].

²⁰⁶⁸ D1444, pp.4-5.

²⁰⁶⁹ D705.

²⁰⁷⁰ Selak, T.17339; Selak, D699, p.8.

²⁰⁷¹ P1097, p.50.

²⁰⁷² First Adjudicated Facts Decision (Prosecution), Facts 210, 211, 217; Third Adjudicated Facts Decision (Prosecution), Fact 43a; *see also* Selak, T.17339; D949; D907; P1320, pp.316-317.

²⁰⁷³ P1307, p.5; *see also* P1575, p.289.

a. Outside of the Existing Weapon Supplies in BiH, Slovenia, and Croatia, the SSNO/JNA Provided Systematic Logistical Support to Bosnian Serb Forces in Spring 1992

i. JNA Orders to Systematize the Provision of Supplies

922. D722 is a chart prepared by Selak for the Prosecution in the *Milošević* case.²⁰⁷⁴ It outlines the logistical supply system established between the commencement of the Indictment period and 18 May 1992. Selak noted the regulated nature of this system; he could only “go along the chain of command from Banja Luka to Sarajevo...to Belgrade. Military organisation was very clear in that”.²⁰⁷⁵ Further, while D722 does not indicate the SSNO’s role, Selak noted in his war notebook on 26 December 1991 that the Federal National Defence Secretariat (“SSNO”) retained unchallenged authority over which TO’s in BiH would be provided weapons.²⁰⁷⁶

923. On 31 December 1991, the SSNO issued a confidential order further systematising the provision of logistical assistance from the JNA reserves to the TO units, with the SSNO assuming an unchallenged coordinating role.²⁰⁷⁷ Those contravening this system would be reported to the SSNO.²⁰⁷⁸ The supply system was successful.²⁰⁷⁹ Due to a significant surplus, the Bosnian Serbs sent materials out of BiH to the RSK, as well as back to Serbia.²⁰⁸⁰ JNA officers were required to be deployed in particular areas to provide support to the Bosnian Serbs.²⁰⁸¹ Annex VIII confirms the comprehensive nature of this system.²⁰⁸²

ii. After the JNA Departed, the VRS Obtained the Logistical Supplies from the VJ

924. The JNA withdrew from BiH on 19 May 1992.²⁰⁸³ The newly established VRS – constituted from the JNA remaining in BiH – were to be supplied by the VJ.²⁰⁸⁴ After 19 May

²⁰⁷⁴ Selak, T.17359.

²⁰⁷⁵ Selak, T.17360.

²⁰⁷⁶ D702, p.8.

²⁰⁷⁷ D728, p.3.

²⁰⁷⁸ See e.g. D49, p.3; D702, p.127.

²⁰⁷⁹ D49, pp.5-6; First Adjudicated Facts Decision (Defence), Bosnia Fact 20; see also D909 for evidence of arming of the TOs.

²⁰⁸⁰ See e.g. Confidential Annex VIII, pp.5 (D702, p.144), 8 (D49, pp.5-6), 10 (P1311, p.7), 12 (D737, p.2).

²⁰⁸¹ First Adjudicated Facts Decision (Defence), Bosnia Fact 20; First Adjudicated Facts Decision (Prosecution), Fact 109; see e.g. D720; D906, p.1.

²⁰⁸² See Confidential Annex VIII, Section I-C.

²⁰⁸³ First Adjudicated Facts Decision (Prosecution), Fact 250.

²⁰⁸⁴ P1334; First Adjudicated Facts Decision (Prosecution), Facts 241-243, 255-256.

1992, the FRY provided the VRS with three main types of operational support: logistics, personnel and training.²⁰⁸⁵

b. Arming and Other Assistance by the VJ

925. As noted, after the JNA withdrew from BiH, the VRS Army was formed and engaged in combat.²⁰⁸⁶ The FRY maintained its support of the Bosnian Serbs and the VRS and exerted influence over its operations.²⁰⁸⁷

926. At a 15-16 April 1995 meeting at the RS Assembly, Mladić concisely summarised the assistance provided to the VRS during the Indictment period.²⁰⁸⁸ His presentation discussed supply percentages from various entities to Bosnian Serb Forces from the beginning of the war until the date of the meeting (virtually the end of the indictment period). While Mladić detailed the percentage of support down to *the hundredth of a percent*, there is no mention of the Serbian MUP or the Serbian DB.²⁰⁸⁹ He noted that most support was provided by the JNA and, after its dissolution, the VJ.²⁰⁹⁰

927. Selak corroborated Mladić's speech to the RS Assembly, testifying that the General Staff of the VJ was responsible for the VRS regarding many questions of command and control, as well as logistics support.²⁰⁹¹ Daily personal contact occurred between him and the technical administration base of the VJ and the logistics base in Banja Luka.²⁰⁹² Regular convoys of trucks were sent from BiH to Serbia, where the technical administration would indicate the location and the material to be taken to the Banja Luka logistics base.²⁰⁹³ According to Selak, providing weapons was not necessary, as there was a surplus of weapons in the area at the time due to the departure of the JNA from Slovenia and Croatia.²⁰⁹⁴

928. D716, an exhibit used by the Prosecution in past cases, unequivocally demonstrates that neither Stanišić nor the Serbian MUP/DB had any role to play in providing logistic supplies after 18 May 1992, thereby corroborating Mladić's speech. Instead, it was a structure

²⁰⁸⁵ First Adjudicated Facts Decision (Prosecution), Fact 259.

²⁰⁸⁶ *Ibid*, Facts 229, 250.

²⁰⁸⁷ *Ibid*, Facts 245.

²⁰⁸⁸ P1320, pp.14-70.

²⁰⁸⁹ P1320, p.51.

²⁰⁹⁰ P1320, p.51.

²⁰⁹¹ Selak, D699, p.37; D716.

²⁰⁹² Selak, T.17348-17349.

²⁰⁹³ Selak, T.17467-17468.

²⁰⁹⁴ Selak, T.17380-17381.

that strictly involved the VJ/Federal Secretariat for National Defence continuing to coordinate logistics supply to the VRS. Combined with D722, Selak's flowchart demonstrating the process of logistics flow before 18 May 1992, it shows that Stanišić logically could only have played a nominal role, at best, in supplying Bosnian Serb Forces during the indictment period.

929. Supply chains were established soon after the VRS and VJ started working together. In September 1992, the "IZVOR" plan, agreed upon between the General Staff of the VJ and FRY for the supply of fuel and ammunition by the VJ to the VRS, was adopted.²⁰⁹⁵

930. Later, reports dated 3 and 12 February 1993 from the FRY Logistics Operations Administration show that the VJ was working to establish a more streamlined system for providing logistical support.²⁰⁹⁶ A 26 February 1993 report from the SSNO noted that logistics support is being implemented in a "planned and organised fashion".²⁰⁹⁷

931. As before, there were penalties for seeking materiel outside this logistics support system. On 29 April 1993, Commander General Stojanović issued a warning, with associated disciplinary consequences, that the VJ shall be the only entity to "approve and issue material supplies" for the VRS, RSK and other formations.²⁰⁹⁸

932. The VJ attempted to maintain a monopoly (or at least substantial control) on the provision of logistical assistance from the FRY. The Supreme Defence Council ("SDC") and the VJ set up a further political check on the regulation and systematisation of its assistance to the VRS.²⁰⁹⁹ [REDACTED].²¹⁰⁰ The SDC minutes show that from 1992-1995, not one discussion or decision envisaged that the Serbian MUP, DB or Stanišić was anticipated to be involved.²¹⁰¹ Annex VIII, containing a representative selection of this entrenched supply system.

²⁰⁹⁵ See e.g. P1358-P1362.

²⁰⁹⁶ D951; D952.

²⁰⁹⁷ D916, p.6.

²⁰⁹⁸ D954; D951, p.1; see also First Adjudicated Facts Decision (Prosecution), Facts 259-261.

²⁰⁹⁹ See e.g. D951; D952; D740; D922; D956.

²¹⁰⁰ [REDACTED].

²¹⁰¹ D1433; D275; [REDACTED]; D894; D895; D896; D897; D898; D1434; D1435; D1436; D1437; D1438; D1439; D1440; D1441; D1442; D1443; D1444; D1445; D1446; D1447; P1254; P1260; P2356; P2357; P2358; P3047.

C. STANIŠIĆ'S ALLEGED COORDINATION OF TRAINING, ARMING AND SUPPORT OF PARAMILITARY FORMATIONS IN BiH

933. When the VRS was formed, paramilitary units were incorporated into it, absent former JNA units feeding into the formation of new units.²¹⁰² Further, “[i]nstead of disarming the paramilitaries, the VRS incorporated them into regular forces”.²¹⁰³ At first paramilitary groups were seen as operating independently in BiH, but later were incorporated within the TO structures and eventually disbanded or integrated into the VRS.²¹⁰⁴

934. Beyond generalised subordination, there is evidence that certain paramilitary groups were subordinated to the JNA/VRS during operations in BiH. So Arkan's men were, depending on the operation, subordinated to the VRS,²¹⁰⁵ RS MUP,²¹⁰⁶ [REDACTED].²¹⁰⁷ The Yellow Wasps, was subordinated to the VRS once established.²¹⁰⁸ [REDACTED].²¹⁰⁹

1. Stanišić's Alleged Involvement in Distribution of Military Logistics in 1991 (with Kertes)

935. The Prosecution relies on P630 and P2522: a 24 June 1991 intercept of a conversation between Karadžić and Kertes and a 27 July 1991 entry in a diary recorded by Petar Janković. Kertes was discussing providing arms to Karadžić. Kertes claimed that Stanišić and he had been given “*carte blanche*” to supply Karadžić.²¹¹⁰ The Janković diary suggests Stanišić may have been involved at the behest of Bogdanović in one supply of weapons (less than 3,600).²¹¹¹

936. This participation, even if proved beyond a reasonable doubt, is not relevant to Stanišić's alleged liability for crimes committed by the Bosnian Serbs. Any criminal purpose cannot have commenced until the spring of 1992.

²¹⁰² P386, p.13.

²¹⁰³ Third Adjudicated Facts Decision (Prosecution), Fact 163.

²¹⁰⁴ *Ibid*, Fact 156.

²¹⁰⁵ See e.g. D985; D965; D1009; D974; D976; D978; D980; D981; D1010; D1435, p.4.

²¹⁰⁶ See e.g. D974; D977.

²¹⁰⁷ [REDACTED].

²¹⁰⁸ Third Adjudicated Facts Decision (Prosecution), Fact 160.

²¹⁰⁹ [REDACTED].

²¹¹⁰ P630, p.4.

²¹¹¹ P2522, pp.35-36.

937. The evidence demonstrates that supplies of weapons from Serbia to Bosnia in 1991 were delivered in the context of Serb villages and towns defending themselves. The permanent removal of non-Serbs from regions in Bosnia was not discussed until early 1992; the operations, evidencing the seriousness of these discussions, did not occur until Spring 1992.²¹¹²

938. In July 1991, Karadžić began to threaten the possibility of “a completely parallel state”, but this concerned political structures, not land.²¹¹³ By September/October 1991, this idea had taken hold and was moving towards a concrete plan. As Plavšić threatened, in a conversation with Karadžić at that time: “[w]e’ll separate, we’ll separate our part of the SUP, there. We’ll divide the SUP into cantons...we’ll do that.”²¹¹⁴ Karadžić states in agreement: “we’ll do all that”.²¹¹⁵ The plan was not to remove non-Serbs from territory, but to “establish full authority over the Serbian territories in BiH”.²¹¹⁶ This was a response to the threats of Bosnian Croatian and Muslim forced secession, rather than moves towards forcible transfer.²¹¹⁷

939. Throughout 1991, Karadžić and the Bosnian Serb leaders still hoped that the international community would prevent any forced secession.²¹¹⁸ 1991 was characterised by steps towards creating parallel structures as means of achieving self-determination, not as steps towards the furtherance of crime.²¹¹⁹

940. General fear, chaos and confusion arose on how to address fast moving political developments, threats to the constitution and attacks against Serbian villages. This is reflected in Janković’s diary. His diary was admitted *via 92quater* testimony.²¹²⁰ It therefore requires corroboration. Nonetheless, it provides an insight into the purpose of the arming at that time.

²¹¹² First Adjudicated Facts Decision (Prosecution) Facts 141, 142; First Adjudicated Facts Decision (Defence) Bosnian Facts 36, 37.

²¹¹³ P627, p.1.

²¹¹⁴ P648, p.4.

²¹¹⁵ P648, p.4.

²¹¹⁶ P660, p.7.

²¹¹⁷ P652, pp.7-8.

²¹¹⁸ P656, pp.7-8; *see also* First Adjudicated Facts Decision (Defence) Bosnian Facts 4,5,8,10,23,36; Third Adjudicated Facts Decision (Prosecution) Fact 97.

²¹¹⁹ First Adjudicated Facts Decision (Defence), Bosnian Fact 36.

²¹²⁰ *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Reasons for Decision on Prosecution’s Motion for Admission of Evidence of Witness Miroslav Deronjić Pursuant to Rule 92 *quater*, 1 March 2011, paras 43, 45 (confidential).

941. Bogdanović participated in arms supply but he plainly acted as a coordinator or agent for Jović (President of the Presidency of Yugoslavia between 15 May 1990 and 15 May 1991) and arranged the delivery of arms in that period (summer/fall 1991) for “defence only”.²¹²¹ On 6 September 1991, Bogdanović made it clear again that the arms were for restricted use: “we should let only Serb militia enter the Serb villages.”²¹²²

942. This notwithstanding, P630 proves that Stanišić’s involvement, if any, was extremely limited. As noted by Kertes, in a (June 1991) conversation riddled with contradictions, despite Milošević giving Stanišić “carte blanche” the “lads didn’t do anything all day, and one mustn’t do anything without him [Janačković]”. [REDACTED].²¹²³ Janačković “wouldn’t let him [Stanišić] do anything”.²¹²⁴ He was an “insurmountable” obstacle.²¹²⁵[REDACTED] [REDACTED]. [REDACTED].²¹²⁶ [REDACTED]. [REDACTED].²¹²⁷ [REDACTED]. He had not delivered supplies, because he could not. His hands were still “tied” by Janačković’s treason commission.²¹²⁸

2. Stanišić’s Alleged Arming of the Paramilitary Units in BiH Contemporaneously with any Criminal Purpose

943. The Trial Chamber has taken judicial notice of critical questions regarding who armed the paramilitaries in BiH. The “JNA *systematically* supplied light arms to...Serbian paramilitary groups”.²¹²⁹ The JNA supported and assisted paramilitary units such as Arkan’s men and Šešelj’s men by “cooperat[ing] and assist[ing] these paramilitary units during 1991 and 1992 in operations in Croatia and BiH and *liberally supplied them* with arms and equipment”.²¹³⁰ Šešelj stated himself that SRS/SČP units in BiH were issued uniforms and weapons upon their arrival to BiH.²¹³¹

²¹²¹ P2522, p.35-36.

²¹²² P2522, p.41.

²¹²³ See Confidential Annex I.

²¹²⁴ P630, p.3.

²¹²⁵ P630, pp.3-4.

²¹²⁶ [REDACTED].

²¹²⁷ [REDACTED].

²¹²⁸ P630, p.1.

²¹²⁹ First Adjudicated Facts Decision (Prosecution), Fact 210 (emphasis added).

²¹³⁰ First Adjudicated Facts Decision (Prosecution), Facts 201-202, 249; Third Adjudicated Facts Decision, Fact 47.

²¹³¹ P1339, p.3.

944. The Prosecution agrees that “[t]he JNA was also actively involved in preparations for the conflict in BiH by participating in the distribution of weapons to citizens of Serbian ethnicity”.²¹³² Selak confirmed this included distributing weapons to paramilitary groups.²¹³³ A JNA Report dated 20 March 1992 from the Second Military District corroborates this account: “the JNA has distributed 51,900 weapons (75%) and the SDS 17,298 pieces [25%]” to paramilitary units.²¹³⁴

945. Besides Arkan’s men and Šešelj’s men, other paramilitary groups were also armed in BiH. For example, the local TO issued arms to the Yellow Wasps in Zvornik.²¹³⁵ Selak testified that the SDS, the army and the government provided 79,000 pieces of infantry weapons to individuals and paramilitary groups in BiH.²¹³⁶ In P707, Legija confirmed that, with regard to combat in Ilidža around 15 May 1992, they were given semi-automatic rifles.²¹³⁷

946. Confidential Annex VIII, Section II-A confirms the JNA/VJ’s fulsome support for the arming of the paramilitaries. By taking weapons from police supplies, the RS MUP ensured that any temporary shortfall was short lived.²¹³⁸

D. THE RS MUP’S ALLEGED COLLABORATION WITH THE SERBIAN MUP TO ARM THE SERBIAN PEOPLE IN JULY 1991, AND PROVISION OF ANY ASSISTANCE

947. The Prosecution allege that from at least July 1991, the Bosnian Serbs in the RS MUP collaborated with the Serbian MUP in arming the Serbian people on the territory of BiH.²¹³⁹ It also alleges that the RS MUP could obtain material assistance from and reported to the DB.²¹⁴⁰

948. Annex VIII, Section III²¹⁴¹ refutes this. [REDACTED].²¹⁴²

949. For example, Selak’s notebook records that the JNA was to “provide logistical support to the...[BiH] police” before their dissolution.²¹⁴³ The JNA was also involved in providing

²¹³² First Adjudicated Facts Decision (Prosecution), Fact 273.

²¹³³ Selak, D699, p.8.

²¹³⁴ D49, p.4; *see also* D907, pp.3-4.

²¹³⁵ Third Adjudicated Facts Decision (Prosecution), Fact 159.

²¹³⁶ Selak, T.17379.

²¹³⁷ P707, p.19.

²¹³⁸ *See* Confidential Annex VIII, Section III-D.

²¹³⁹ Prosecution Pre-Trial Brief, para.42.

²¹⁴⁰ Prosecution Pre-Trial Brief, para.42.

²¹⁴¹ *See* Confidential Annex IX, Section III, pp.42-59 (Supplies to the Police).

²¹⁴² [REDACTED].

logistical supplies to “special militia units” of the RS MUP.²¹⁴⁴ [REDACTED].²¹⁴⁵ [REDACTED],²¹⁴⁶ the completion of private contracts entered previously entered into by the MUP BiH,²¹⁴⁷ [REDACTED].²¹⁴⁸

3. Cooperation between the State Security Services of the RS and Serbia in the Indictment Period

950. Since the Bosnian Serbs declared independence from BiH, there was ongoing discussion of the need for cooperation between the Serbian DB and the RS DB. Nevertheless, evidence shows no more than nominal cooperation.²¹⁴⁹

951. No documentary evidence shows that the Serbian MUP, let alone the DB, were regarded as reliable or regular “supply” partners. Regarding financing, it was concluded at a 11 July 1992 meeting that the RS MUP would be exclusively financed from the Bosnian Serb budget.²¹⁵⁰ Despite a lack of certain technical equipment - including communication equipment - and fears that the efficiency of the national security services would be “seriously jeopardise[d]”,²¹⁵¹ assistance was not sought from the Serbian DB. Instead, Banja Luka SNB was required to “co-ordinate” with the Federal SUP.²¹⁵²

952. Section III-B of Annex IX illustrates the pivotal role played by the Federal MUP in this regard.²¹⁵³

953. The Serbian MUP, DB and RS MUP could have had some connection. To reject all forms of cooperation with friendly police or security services in the middle of an ethnic conflict would be absurd. However, the evidence suggests that cooperation pivoted on the Serbian MUP/DB collection of information “about enemy armed formations, enemy intelligence services, collaborators and other hostile sources, and on everything else that the enemy was using in their war propaganda machinery against the Serbian people”.²¹⁵⁴ On

²¹⁴³ D702, p.127.

²¹⁴⁴ See Confidential Annex IX, Section III-A, pp.44 (D738), 43 (D903).

²¹⁴⁵ [REDACTED]

²¹⁴⁶ [REDACTED].

²¹⁴⁷ D1050.

²¹⁴⁸ [REDACTED].

²¹⁴⁹ See *supra*, paras 1121-1123.

²¹⁵⁰ D1013, p.28; *see also* D992, pp.6-7.

²¹⁵¹ D991, p.7.

²¹⁵² D991, p.7.

²¹⁵³ Confidential Annex IV, Section III.B. pp.47-48.

²¹⁵⁴ D1004, p.1.

issues that might have assisted the Bosnian Serbs, in its Combat Readiness Report in 1993, the VRS complained about the Serbian MUP's failure to cooperate.²¹⁵⁵

E. THE SERBIAN DB'S ALLEGED CONTRIBUTION TO THE BOSNIAN SERB (AND RSK'S) COMMUNICATION, INTELLIGENCE GATHERING, AND CRYPTOGRAPHIC DATA PROTECTION

954. There is no evidence that the Serbian DB was providing intelligence, communications or other assistance as a state security service.

1. Communications Assistance

955. As Section IV of Annex VIII, Section IV²¹⁵⁶ illustrates, the RS Military and MUP did not seek the Serbian DB's civilian or military assistance with regard to general communications technology. After the RS MUP was established, the Federal MUP provided it with radio and communication equipment.²¹⁵⁷

2. Intelligence Assistance

956. The VRS did not rely on the Serbian DB for any intelligence sharing, training of intelligence officers, or similar cooperation. The VRS Combat Readiness Reports dated April 1993 states that the RS needed training in intelligence provision support; it notes that "the solution [to this deficit] should be sought in co-operation with the Army of Yugoslavia" - not the Serbian DB.²¹⁵⁸ The report notes good cooperation with the Main Staff of the SVK and the intelligence and security organs of the VJ, but that cooperation with the Serbian MUP "is still at an unsatisfactory level".²¹⁵⁹ Cooperation with the MUP was "unsatisfactory, the main cause, being in our opinion, the passivity of the organs mentioned and their reluctance to expand co-operation" with the VRS.²¹⁶⁰

²¹⁵⁵ P386, pp.90-91.

²¹⁵⁶ Confidential Annex VIII, Section IV, pp.59-63.

²¹⁵⁷ See Confidential Annex XX Section IV-B.

²¹⁵⁸ P386, p.84.

²¹⁵⁹ P386, p.85.

²¹⁶⁰ P386, pp.90-91.

3. Cryptographic Assistance

957. [REDACTED].²¹⁶¹ This belatedly adduced evidence has no probative value.

958. Despite serious problems with the RS military cryptographic system,²¹⁶² [REDACTED].²¹⁶³ [REDACTED].²¹⁶⁴ To argue that the Serbian DB was not entitled to provide expertise to allow leaders of the RS, RSK and Serbia to communicate privately, and that such assistance was in furtherance of crime, is unreasonable. It amounts to a veiled attack on the proper functioning of a state. Without private communications, Serbia could not protect its citizens from terrorist threats. Had leaders not been able to communicate privately, peace negotiations could not have taken place.

F. STANIŠIĆ'S AND THE SERBIAN DB'S ALLEGED ROLE IN SUPPLY

1. Selak and Milovanović Exonerate Stanišić from Supply of Weapons and other Logistical Assistance

959. Osman Selak, a bulwark of the Prosecution's case against other Serb leaders (e.g. Milošević,²¹⁶⁵ Tadić,²¹⁶⁶ Brđanin,²¹⁶⁷ Stanišić and Župljanin,²¹⁶⁸ and Mladić²¹⁶⁹) and one who had to be subpoenaed to testify on behalf of the Accused, scoffed at the assertion put to him in cross-examination that he might have had reason to know Stanišić; it was implausible because Selak was involved in logistics, not security.²¹⁷⁰

960. Mladić's deputy, Milovanović, was equally incredulous at the suggestion that Stanišić had a role to play in supply, especially with regard to a core aspect of the Prosecution's case – the hundreds of alleged supply flights by the "28 Elite Trainers".²¹⁷¹ Milovanović met Stanišić once in Bajina Bašta in January 1993. He had no idea who he was; in fact, he thought he was the waiter.

²¹⁶¹ [REDACTED].

²¹⁶² P386, p.43.

²¹⁶³ Vujović, T.19756-19764; Karan, T.17830-17831, who testified that the radio facilities [REDACTED] could not be used for military purposes.

²¹⁶⁴ *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Urgent Stanišić Defence request for extension of time to file rejoinder, 7 November 2012, para.11 (i); [REDACTED].

²¹⁶⁵ *Prosecutor v. S. Milošević*, Case No. IT-02-54, 11-13 June 2003.

²¹⁶⁶ *Prosecutor v. Tadić*, Case No. IT-94-1, 4-5 June 1996.

²¹⁶⁷ *Prosecutor v. Brđanin*, Case No. IT-99-36, 13, 15-17 January 2003.

²¹⁶⁸ *Prosecutor v. Stanišić & Župljanin*, Case No. IT-08-91, 6 December 2010.

²¹⁶⁹ *Prosecutor v. Mladić*, Case No. IT-09-92, 25-27 September 2012.

²¹⁷⁰ Selak, T.17427.

²¹⁷¹ Milovanović, T.15567, 15570-15571; *see also* T.15442-15443.

961. Reliance is placed on an entry in the Mladić notebook dated 2 July 1993 concerning a meeting where Šainović introduces Stanišić to Mladić as one of the men “who carry things out” as proof that Stanišić played a pivotal role in supplying the VRS and its paramilitaries.²¹⁷² Rather than supporting their case, it singlehandedly dismantles the core of it. Clearly, Stanišić was not engaged in support to the VRS at any time during 1992 or the first half of 1993. The “28 elite trainers”, their 5000 men and their alleged supply of military logistics throughout the Bosnian Serb territory, apparently escaped the VRS’s attention.

962. After Milovanović’s “waiter” observation in January 1993, his next encounter with Stanišić was during Operation Pauk on 8 November 1994.²¹⁷³ He was still unsure of Stanišić’s function.²¹⁷⁴ It appears that Šainović’s remarks, assuming for the briefest of moments the reliability of Mladić’s notebook, was more by way of diplomatic nicety, than a serious suggestion that Stanišić was from henceforth (July 1993) to participate in supply.

G. THE SERBIAN DB’S ALLEGED NETWORK OF AIRFIELDS IN BOSNIA FACILITATING THE PROVISION OF SUPPLIES TO SERB FORCES

963. Had there been an iota of truth to Simatović’s Kula award speech, there would be evidence, having regard to the “thousand combat, reconnaissance, transport and humanitarian flights were made [evading] NATO’s sophisticated [surveillance] equipment”.²¹⁷⁵ Milovanović and Colonel Selak confirmed Simatović’s claim as baseless.²¹⁷⁶ Given the VRS’s activity and the no-fly zone imposed on the 31 March 1993, it was implausible.²¹⁷⁷

1. Skelani Airfield

964. Evidence of Simatović’s connection to Skelani airfield strongly supports Stanišić’s innocence. P387, the only basis for asserting a DB connection, shows that the Skelani airfield constructed in early 1993 belonged to the VRS. It contains an order to ensure that “Frenki” is not able to use the airfield as his personal “fiefdom” (in place of, “combat operations, couriers, medical and transport tasks”).²¹⁷⁸ There is no unit of “28 Elite Trainers”, no supplies

²¹⁷² P2529, p.2; *see also* Milovanović, T.15442-15443.

²¹⁷³ Milovanović, T.4539-4541.

²¹⁷⁴ Milovanović, T.4544.

²¹⁷⁵ P61, p.11.

²¹⁷⁶ Milovanović, T.15570-15571; T.4540, 15336-15340, 15569; Selak, T.17361-17363; D741 for Selak’s area of responsibility prior to 18 May 1992.

²¹⁷⁷ Milovanović, T.15770.

²¹⁷⁸ P387, p.2.

intended for the VRS, and no Stanišić. Instead of the “28 Elite Trainers under Stanišić’s command, it is suggested that *Simatović’s men* should be used to “take over the security of the new airport”.²¹⁷⁹

2. Bratunac Airfield

965. Evidence on Bratunac airfield further undermines the “28 Elite Trainer” thesis. Deronjić’s evidence is contradictory. First, he claims there were “sorties and...operations” from this base, all “under the command of Frenki”;²¹⁸⁰ then states that the airfield was only used because “they were involved in collecting information”.²¹⁸¹

966. Deronjić claimed that sometime in July or August a man came to Bratunac with an idea to build an airbase or small airport in Bratunac.²¹⁸² He then suggested that the pilots were “provided by the police of Republika Srpska”.²¹⁸³ He further claimed that Mladić insisted that he (Mladić) “personally would be in command” of the airfield.²¹⁸⁴ Mladić confirmed that the only aircraft that “Frenki’s group” can obtain are those that (Frenki) “can steal”.²¹⁸⁵ Once again, there is no “28 Elite Trainers”, no air squadron, no supplies and no conceivable involvement of Stanišić.

H. MLADIĆ’S ATTEMPT TO IMPLICATE STANIŠIĆ GENERALLY IN MILITARY SUPPLIES

967. The evidence to be derived from the Mladić notebooks must be approached with utmost caution. As argued below, there is ample indication that Mladić has attempted to falsely implicate Stanišić and the Serbs from Belgrade using his alleged contemporaneous notebooks.

968. In a meeting on the 2 July 1993, Mladić suggests that Stanišić made a proposal that “the majority of what we need should be issued Via the MUP /Ministry of the Interior/ of Serbia. - The centres should be Pale, Herzegovina and Talić.”²¹⁸⁶ Consistent with this being a

²¹⁷⁹ P387, p.2.

²¹⁸⁰ P2511, para.142.

²¹⁸¹ P2511, para.144.

²¹⁸² P2511, para.141.

²¹⁸³ P2511, para.141.

²¹⁸⁴ P2511, para.142.

²¹⁸⁵ P2547, p.6.

²¹⁸⁶ P2529, p.2.

fabrication, there is no evidence to corroborate this alleged plan (or any location in BiH called Talic) or any evidence to suggest that this plan was never executed.

969. In a 6 April 1995 meeting, Stanišić is alleged to have admitted several supply-related issues, including transporting 14 trailer trucks “*planned for PRETIS*”; *preparing to transport small rounds and fuel...[and]... supplying everything for Martić.*”²¹⁸⁷ Plainly this is not reliable evidence. There is no corroboration of this account. Had Stanišić been involved in supplying “everything for Martić”, this would have been reflected in the evidence. As argued in Part II, Section II, there is no evidence of Stanišić’s involvement in supplying the RSK with its military needs.

970. Conversely, as Confidential Annex VIII, Section I-A (military) and III-A (police) shows the supply chains from the SSNO to the Bosnian Serb forces were well-established. It was equally well established in the RSK.²¹⁸⁸ There is no reason to suppose Stanišić had any involvement in the thousands of tons of military supply affected from the FRY/SSNO to the Krajina Police and the SVK. Mladić’s account remains uncorroborated. Outside the clumsy attempts to implicate Stanišić, the Mladić notebooks also confirm this to be true.

971. As confirmed in a meeting on the 8 November 1993, coordination between the FRY and the VRS occurred, “based on the Army line: Mladić, Perišić, and Novaković”.²¹⁸⁹ On 13 December 1993, Mladić reports on a meeting that allegedly involved Milošević, Perisic Sokolović, Stanišić, Badža, Tepavčević from Serbia and General Mrkšić, Karadžić, Krajišnik, Mladić, Milovanović, Đukić, Miletić, Martić, Salapura, Stanišić and Kovač.²¹⁹⁰ Apart from introducing the meeting, Stanišić did not speak.²¹⁹¹ Milošević confirmed that, “General Perišić will give everything that does not jeopardise b/g/ combat readiness/ of units here”.²¹⁹²

972. At a 15 March 1994 meeting, Karadžić noted that “[s]o far cooperation between the [VRS and RSK] with the VJ /Yugoslav Army/ and General Perišić has been good and correct.”²¹⁹³

²¹⁸⁷ P394, p.4.

²¹⁸⁸ See paras 346,351,360-370.

²¹⁸⁹ P2531, p.1.

²¹⁹⁰ D767, p.53.

²¹⁹¹ D767, p.53.

²¹⁹² D767, p.57.

²¹⁹³ P2540. p.8; 1D3604.1, p.37

973. As confirmed in a meeting of the FRY's SDC, on 11 July 1994, the RS and the RSK was permitted only to conclude military supply contracts with special purpose producers *in Serbia with the consent of the Federal Ministry of Defence and the General Staff. The weapons and equipment may only be delivered under the control of the ministry and via the VJ.*²¹⁹⁴ During a meeting on the 8 July 1994, Milošević promised that he would "secure 300 tonnes of diesel, and Perišić will secure MS /material supplies/."²¹⁹⁵

I. STANIŠIĆ'S ALLEGED SUPPLY THROUGH THE ASSOCIATION OF SERBS

974. The Prosecution allege that since April 1991, through the humanitarian organisation "The Association of Serbs", the DB was involved in supplying and transporting weapons from the JNA barracks at Bubanj Potok.²¹⁹⁶

975. This rests on the misconception that the supply chains from the FRY to Croatia and BiH allowed, or needed, Stanišić's intervention. On the evidence, Stanišić was not involved in supplies, military or otherwise, through the Association of Serbs. The Association was in direct contact with the Serbian MOD (probably simply to protect its humanitarian convoys).²¹⁹⁷

1. Supplies From Bobanj Potok: Rule 92quater witness JF-87

976. JF-87 spun a fantastical tale that involved Milošević, Stanišić, Brana Crnčević, and Kertes meeting at the state security offices to arrange supplies to the SAO Krajina and Republika Srpska.²¹⁹⁸

977. Stanišić and Prodanić (who JF-87 wrongly identified as working for the 6th, and not the 8th Administration of the DB²¹⁹⁹) would review "information from the battlefield every morning before Prodanić would be dispatched to Bubanj Potok where he held meetings every afternoon with Boro Stanišić as to what should be sent where, to what part of the battlefield".²²⁰⁰ Using radio communications and "a centre for monitoring developments in

²¹⁹⁴ D1441, pp.40,41.

²¹⁹⁵ P2536, p.8.

²¹⁹⁶ Prosecution Pre-trial Brief, para.87.

²¹⁹⁷ D1097; P417; P418.

²¹⁹⁸ JF-87, P408, pp.70-72 (PPCE).

²¹⁹⁹ JF-87, P408, pp.3, 72 (PPCE).

²²⁰⁰ JF-87, P408, p.7 (PPCE).

Republika Srpska and in the Republic of Serbian Krajina”²²⁰¹ and “special telephone lines with Mr. Milošević and the state security of the MUP of Serbia”²²⁰² five men would arrange hundreds of thousands of tons of military hardware to Bosnia and Serbia. The supplies did not go through the MOD or the army.²²⁰³ In 1992 alone, according to JF-87, more than 1,200 trucks of weapons and ammunition passed through Bubanj Potok “each those with more than 20 tons carrying capacity”²²⁰⁴ were transported to Bosnia and Croatia.²²⁰⁵

978. The policemen at the checkpoints were informed so that the vehicles would not be checked at the borders.²²⁰⁶ Mladić was involved.²²⁰⁷ The convoys went nearly every day.²²⁰⁸

979. This account is transparently unreal. Why would Milošević and Stanišić create this alternative supply chain, when there existed well-established chains of supply involving the SSNO, the JNA/VJ.²²⁰⁹ It is also unclear why these entities would allow this alternative, or why the Serbian MOD would permit its supplies to be depleted through the removal of thousands of tons without authorisation.

980. Despite the fact that twenty-ton trucks would be loaded from Bubanj Potok before being transported to parking places in “Belgrade fairgrounds” or “hangers” belonging to the Serbian MUP,²²¹⁰ the MOD appeared not to have discovered this alternative supply.²²¹¹ JF-87’s wholly inadequate explanation was that only “a very small circle of people in the former JNA actually knew what was going on in Bubanj Potok... The same applies to the MUP of Serbia”.²²¹²

981. The witness folded on cross-examination. He had no documentary evidence to support his account. Despite attempting to pass off receipts that recorded the loan of weapons from the MOD (for the security of humanitarian convoys) as records of supplies to the RS and the RS, he settled on three distinct explanations for this failure: (i) that there was “no written

²²⁰¹ JF-87, P408, p.6 (PPCE).

²²⁰² JF-87, P408, p.7, 8 (PPCE).

²²⁰³ JF-87, P408, pp.22-24 (PPCE).

²²⁰⁴ JF-87, P408, p.9 (PPCE).

²²⁰⁵ JF-87, P408, p.26 (PPCE).

²²⁰⁶ JF-87, P408, p.24 (PPCE).

²²⁰⁷ JF-87, P408, p.30 (PPCE).

²²⁰⁸ JF-87, P408, p.27 (PPCE).

²²⁰⁹ See Confidential Annex VIII, Section I, A-C.

²²¹⁰ JF-87, P408, pp.13, 14 (PPCE).

²²¹¹ JF-87, P408, pp.19-20, 85-86 (PPCE).

²²¹² JF-87, P408, pp.10-11 (PPCE).

trace” because the documents were burnt in a fire at Bubanj Potok,²²¹³ (ii) the State Security had seized all the documents from his house,²²¹⁴ and (iii) that he had many more documents and would produce them.²²¹⁵ He was plainly lying.

982. A 13 October 1994 entry in Mladić’s notebooks cast’s some light on the small kernel of truth to JF-87’s extravagant lies. The entry states that “[w]eapons were issued by Colonel Borivoje Stanišić, Milan Prodanić (Chief of Administration at the MUP of Serbia - in DB /State Security/, Ljubiša Petković (he was Šešelj’s deputy), Boško Špegor (from Petrovac, and works in Galenica)”.²²¹⁶ The witness may have known something of Prodanić’s involvement with Borivoje Stanišić (in these one-off supplies), expanding it to implicate Milošević through Stanišić. There is no other mention of Prodanić in the Mladić notebooks, no reference to thousands of tons of supplies, and no mention of Stanišić being involved with this (apparently) one-time arrangement.

2. The DB’s alleged Smuggling and Sanctions Busting: B-215

983. The Prosecution relied upon B-215 in principal support for the claim of Stanišić’s weapons supplies, oil, and other items to the RSK and RS.

984. B-215 (a convicted fraudster)²²¹⁷ [REDACTED]. [REDACTED].²²¹⁸ However, similar to JF-87, after wasting court time, no notes were produced from his kitchen cupboard. The Chamber concluded that this failure should be taken into account.²²¹⁹ As Annex III, Section C shows, his evidence on almost all the critical issues was manifestly inconsistent.

985. Determined to implicate the DB for the OTP, his grandiose claim that from 1991 all paramilitary units were formed by the State Security and were under its control,²²²⁰ or that Badža was under the direct control of the Serbian DB;²²²¹ his clear speculation about the DB’s alleged relationship with the Scorpions;²²²² his incomprehensible claim that the oil products

²²¹³ JF-87, P408, p.38 (PPCE).

²²¹⁴ JF-87, P408, p.79 (PPCE).

²²¹⁵ JF-87, P408, pp.77,85-86,96-97 (PPCE).

²²¹⁶ P2537, pp.1-2.

²²¹⁷ B-215, T.6678, 6683, 6686.

²²¹⁸ [REDACTED]

²²¹⁹ See T.9621-9622.

²²²⁰ B-215, P53, para.2.

²²²¹ B-215, T.6796; B-215, P53, para.6.

²²²² B-215, T.2150.

being smuggled into Bosnia were “paid for by the DB”;²²²³ his claim to have seen a DB identity card²²²⁴ and his almost comprehensive inability to name the DB personnel involved in the smuggling from 1991 – 1995 (even whilst being able to name those involved from the RS and RSK²²²⁵) ought to have put the Prosecutor on notice that he was not a witness of truth.

986. He claimed the DB supervised the weapons supply to Borovo Selo in 1991,²²²⁶ however his account was seriously flawed.²²²⁷ He ultimately retreated from his inconsistent account, noting that perhaps it was only once that the DB had been involved.²²²⁸ His account on this one occasion was so confused that Judge Orić urged the Defence to move on, noting “that it may not always make [*sic*] sense...on every subject to continue to explore that situation any further.”²²²⁹

987. He claimed in his various statements that the DB was integral to the smuggling of weapons and oil into both the RSK and RS but, when pressed even slightly in court, he retracted all his claims, suggesting in fact that it was others, including the Serbian MUP who had played that role.²²³⁰ He was remarkably vague on all issues implicating the DB. Despite asserting a long-standing involvement with the DB, he proffered nothing that corroborated his account.

988. Despite a long list of assertions against the DB, he could not name a single DB operative involved.

989. He asserted that the Ministry of Defence and the DB of Serbia found ways to avoid the controls so they could transport ammunition, fuel and other supplies to the VRS.²²³¹ The witness stated that DB operatives always escorted them.²²³²

990. The DB made arrangements, he says, for transporting oil products in convoys to the RS so as to avoid controls at the border crossings”.²²³³ This “transport was checked and the oil

²²²³ B-215, P51, para.97.

²²²⁴ B-215, P53, para.4; B-215, T.2146.

²²²⁵ B-215, P51, paras 102-104, 114; P52, para.10.

²²²⁶ B-215, P51, paras 16-18.

²²²⁷ See Confidential Annex III-C.

²²²⁸ B-215, T.6781.

²²²⁹ B-215, T.6780.

²²³⁰ See Confidential Annex III-C.

²²³¹ B-215, P51, para.95.

²²³² B-215, P51, para.99.

²²³³ B-215, P51, para.97.

products were paid for by the DB of the Republic of Serbia and Republika Srpska”.²²³⁴ They were always escorted by DB operatives”.²²³⁵ He stated that the DB was involved in escorting oil into Serbia oil from Bulgaria and Romania for transportation onto the RS.²²³⁶ He claimed that the fuel would be sold in RS or RSK and 20% of this money would be paid to the Ministry of Defence and Ministry of Trade of the RS and the rest would be taken to Serbia in cash, some to the owner of the goods and the rest to the Serbian DB or the budget of Serbia.²²³⁷

991. He claimed that he was involved in cigarette smuggling from Serbia to the RS and claimed that he turned over the money for payment of delivery of goods in Knin to the Ministry of Finance, Ministry of Defence, Ministry of Trade, or the DB.²²³⁸

992. Had their been an iota of truth to his account, not only would his notes have appeared from his kitchen cupboard, but he would have been able to identify at least some of the DB men. At the very least, he would have provided something to allow a reasonable trier of fact to be sure that the men involved were from the DB.²²³⁹

993. His evidence was a crude attempt to pervert the course of justice, contrasting with the plethora of evidence showing that the DB did not guard or secure the borders.²²⁴⁰ This was the task of the Serbian MUP,²²⁴¹ the Customs²²⁴² and the Military.²²⁴³

994. Consistent with its constitutional mandate, the DB had a limited role at the borders²²⁴⁴ – collecting information of (terrorist²²⁴⁵ and smuggling²²⁴⁶) threats to the Serbian territory and people.²²⁴⁷

²²³⁴ B-215, P51, paras 97-98.

²²³⁵ B-215, P51, para.99.

²²³⁶ B-215, P51, paras 107, 109.

²²³⁷ B-215, P51, para.108.

²²³⁸ B-215, P51, para.114; P52, para.24.

²²³⁹ B-215, P51, paras 22, 107.

²²⁴⁰ [REDACTED].

²²⁴¹ [REDACTED]; Theunens, T.8757; JF-94, T.7156, T.7170, T.7172; Milovanović, T.4515; P2438; Selak, T.17468-17469, T.17473; [REDACTED]; [REDACTED]; [REDACTED]; Plahuta, T.19312; T.19407-19408; T.19452; T.19531, T.19534; [REDACTED].

²²⁴² Milovanović, T.4515.

²²⁴³ [REDACTED]; Novaković, T.13990-13991, T.14042; Pelević, T.16373; Plahuta, T.19310, T.19312, T.19386, T.19394, T.19405, T.19407-19408; [REDACTED].

²²⁴⁴ [REDACTED]; Seovac, T.17624-17625; *see eg.* D745.

²²⁴⁵ *See e.g.* [REDACTED]; D1253, p.2; [REDACTED]; *see also* Annex I.

²²⁴⁶ *See eg.* [REDACTED]; *see also* Annex I.

²²⁴⁷ Novaković, T.13940-13941; *see eg.* [REDACTED]; *see also* Annex I.

995. The DB was not involved in smuggling activities but was monitoring them with a view to inhibiting them. OA Thompson launched by the MUP Serbia had for aim, *inter alia*, to stop the proliferation of weapons and the channels of weapons smuggling and seized weapons brought back from the front;²²⁴⁸ this operation involved from 28-29% to 49-50% of the Serbian DB operatives.²²⁴⁹ [REDACTED].²²⁵⁰

996. [REDACTED].²²⁵¹ [REDACTED].²²⁵²

997. The Prosecution has therefore failed to prove Stanišić's involvement in systematic, generalised supply to the BiH war machine during the indictment period. The remaining evidence (of generalised supply) is limited to Pauk in 1994/5. As will be argued, even if found proven, supplies to Pauk were legitimate military supplies to a humanitarian mission. There is no evidence that allows a reasonable inference that supplies to Pauk were in furtherance of a criminal purpose.

²²⁴⁸ See Annex I; *see eg.* [REDACTED]); D1287; [REDACTED]; D1255; D1625, D1627; [REDACTED].

²²⁴⁹ See Annex I; *see also* P237.

²²⁵⁰ [REDACTED].

²²⁵¹ [REDACTED].

²²⁵² [REDACTED].

SECTION VI. OPERATION PAUK

I. PROSECUTION CASE

998. The Indictment contains no mention of Operation Pauk. In its Pre-Trial Brief, the Prosecution alleges, *inter alia*, that the APZB was an area of strategic importance for Serbs²²⁵³ and that in April 1995 Stanišić deployed the Scorpions, Arkan's unit and Red Berets to Velika Kladuša.²²⁵⁴

II. DEFENCE CASE

A. INTRODUCTION

999. It is submitted that Operation Pauk was the most legitimate and lawfully conducted operations in the whole of the Balkans war. At the outset of the trial, the Prosecution impliedly accepted the legality of this operation, limiting their allegation to it being an example of coordination between the core JCE members. Having appreciated that this operation is the best evidence of Stanišić's involvement with a military operation during the indictment period, they shifted their case, claiming that Pauk was in furtherance of criminal purpose.²²⁵⁵

1000. The Prosecution have failed to prove that the operations were conducted in furtherance of crime or any criminal purpose, or that any crimes were foreseeable.

1. Precursors to Pauk Show Prior Arrangements Between the RSK and the RS (without the Involvement of Stanišić)

1001. On 27 September 1993, after the APZB declared independence, hostilities broke out between the pro-Sarajevo 5th Corps and the APZB forces of Abdić.²²⁵⁶ Around this time, the 5th Corps strength stood at 35,000 fighters.²²⁵⁷ Abdić's forces were easily defeated.²²⁵⁸

1002. On 22 October 1993, Milošević brokered a peace agreement between the RS and APZB,²²⁵⁹ including provisions for individuals on the "right to return" to their respective

²²⁵³ Prosecution Pre-Trial Brief, para.94.

²²⁵⁴ *Ibid.*

²²⁵⁵ Prosecution Pre-Trial Brief, para.94; Prosecution 98bis submissions, T.11422-11424.

²²⁵⁶ D757, p.2.

²²⁵⁷ D41, p.2.

²²⁵⁸ Drača, T.16802.

homes in RS and APZB, and a mutual agreement to prosecute persons who violated the laws of war.²²⁶⁰ On 21 June 1994, Abdić had a meeting with Milošević where he approved \$9,000,000 for weapons and ammunition to assist the Army of APZB.²²⁶¹ On 24 June 1994, representatives of the VJ, VRS, SVK, and the armed forces of APZB also signed the Vojnić Agreement stating, *inter alia*, that the an operation to be undertaken by the VRS, dubbed the Una Operation, would commence against the 5th Corps on 10 July 1994 in the direction of the Una river.²²⁶² After the signing of these initiatives and holding of these meetings, the various entities began working together. Abdić's forces continuously relied upon military supplies from the SVK during 1994.²²⁶³

1003. Neither Stanišić nor the Serbian DB had anything to do with the organisation, planning, supply, or provision of fighting forces for the (ultimately unsuccessful) Una Operation.²²⁶⁴ Stanišić was copied on some correspondence between the other fighting forces and military units around this time;²²⁶⁵ however, these were intelligence reports concerning the situation in the APZB with many recipients receiving updates.²²⁶⁶

1004. In September/October 1994, Operation Breza was launched by the VRS to re-take Bihać from the east. It was a failed operation that did not even last ten days.²²⁶⁷ While the Mladić diaries provide uncorroborated evidence that "forces of the Serbian MUP" were planning to participate, there is no evidence that this actually occurred.²²⁶⁸

2. The Arrangements Made Between the RSK and the RS were not in Furtherance of the Criminal Purpose

1005. It is submitted that the military alliance formed in western Bosnia was aimed at legitimate defence of citizens and territory, as well as the maintenance of the right recognised by the Tribunal, and exercised by Slovenia, Croatia and BiH in 1991 and 1992, to protect a sovereign entity after its declaration of independence. In any event, what is most critical is

²²⁵⁹ D40, p.1.

²²⁶⁰ D40, p.2.

²²⁶¹ P1285, p.4.

²²⁶² P381, pp.1-2; D747, pp.1-2; Milovanović, T.4560-4561.

²²⁶³ See e.g. P1289, p.6; see also P1291, p.4.

²²⁶⁴ P381, pp.1; D747, pp.1-2.

²²⁶⁵ See e.g. [REDACTED]; D44; [REDACTED]; P1288.

²²⁶⁶ See e.g. [REDACTED], P1289, P1292, P1290.

²²⁶⁷ Milovanović, T.15465.

²²⁶⁸ P2537, p.8.

that it was not an action in that can be reasonably said to be in furtherance of crimes against civilians, including forcible transfer.²²⁶⁹

1006. The failure of the Una operation led to a human catastrophe, further prompting the need to intervene.²²⁷⁰ This was in line with the 5th Corps' (including Mujahedeen)²²⁷¹ reputation as a brutal fighting force.²²⁷² On 19-21 August 1994, the 5th Corps defeated the APZB.²²⁷³ The 5th Corps dubbed the operation "a night of...knives",²²⁷⁴ attacking Velika Kladuša with the knowledge that it was overpopulated with refugees and an attack would lead to catastrophic damage to civilian life.²²⁷⁵ After their successful operation, the 5th Corps imprisoned 70,000 civilians in two camps.²²⁷⁶

1007. At this time, Abdić was desperate for help, appealing for a demilitarisation of the area and the maintenance of a protected area or creation of an UN protectorate, "with the help from UNPROFOR".²²⁷⁷ This was not accepted.²²⁷⁸ Further, Izetbegović would not negotiate with Abdić or stop offensive operations.²²⁷⁹

3. The Pauk Operation was Not in Furtherance of the Common Purpose

1008. It is difficult to see how Pauk could have been in support of forcible transfer through the means of unlawful killings and persecution. The Pauk Operation was a consequence of the failed Breza operation.²²⁸⁰ The motive for the Pauk Operation was to ensure that Abdić *recovered* his territory.²²⁸¹

1009. [REDACTED].²²⁸² However, control of the area west of the Una River in BiH – the area declared by Abdić as APZB – was not part of the Bosnian Serbs' six strategic objectives,²²⁸³ nor was it strategically important for the RSK. However, Milošević did

²²⁶⁹ P381, p.2; D747, p.2; P2949, p. 8.

²²⁷⁰ See [REDACTED]; see also D44, p.2.

²²⁷¹ P1272, p.3.

²²⁷² [REDACTED].

²²⁷³ Milovanović, T.4535.

²²⁷⁴ P1289, p.3.

²²⁷⁵ P1289, p.2.

²²⁷⁶ Milovanović, T.4535-4536.

²²⁷⁷ P1289, p.4; see also P1288, pp.1-2.

²²⁷⁸ P1289, p.4.

²²⁷⁹ P1289, p.3; Milovanović, T.4536.

²²⁸⁰ Milovanović, T.15468-15469.

²²⁸¹ See P1272, p.3; Milovanović, T.4540-4541.

²²⁸² [REDACTED].

²²⁸³ First Decision on Adjudicated Facts (Prosecution) Fact 152; Prosecution Opening Statement, T.1500-T.1501.
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appreciate the value of the operation to the faltering peace negotiations. He appreciated that Abdić's success could provide a basis for arguing that the Bosnian Serbs had gained a bigger percentage of the territory, hence acting as an incentive to Karadžić and Mladić to bring the war to an end.²²⁸⁴

1010. In any event, being motivated to participate in Pauk for strategic reasons does not change the essential intent to protect life. Whether as a result of the 5th Corps' fearsome reputation or for another reason, the success of the 5th Corps' offensive precipitated a refugee crisis consisting of tens of thousands of civilians.²²⁸⁵ If Abdić was successful in his struggle to return his people²²⁸⁶ and gain independence in the region, his plan would have promoted peace. For example, his intention was to demilitarise the area and establish law and order.²²⁸⁷

1011. This *military* operation was not ethnically driven²²⁸⁸ and was conducted lawfully. It may be argued that Serbia was involved to entrench its territorial gains. International peace negotiators seeking to end a war and entrench ill-gotten gains (e.g. those involved in negotiating the Vance-Owen plan) might similarly be accused of criminal intent on the same impoverished basis.²²⁸⁹

B. THE PAUK COMMAND

1. Stanišić was Not Part of the Pauk Command, nor was he a Principal Decision-Maker in the Pauk Operation

1012. The Prosecution has failed to establish that Stanišić had military command over the men in Pauk, other than for members of the JATD involved in security. It is accepted that there is some evidence that it was anticipated that Stanišić might coordinate some military assistance to Pauk. However, on closer examination, and upon placing this in proper perspective, this evidence does not establish that he had more than a minimal role.²²⁹⁰ Instead,

²²⁸⁴ D1484, p.3; *see supra*, Part III, Section VII.

²²⁸⁵ *See e.g.* DST-46, T.13999; Lažarević, T.3403; P1292, p.2; D44, p.2; P1290, pp.1, 3; P235 (29 December 1994), p.54.

²²⁸⁶ [REDACTED].

²²⁸⁷ P2535, p.3; P1288, pp.1-2.

²²⁸⁸ Milovanović, T.4535, 4575.

²²⁸⁹ *See* P1221.

²²⁹⁰ *See e.g.* P2535, p.1.

Stanišić was principally involved in Pauk to provide an overview of intelligence assessments to be sent to Milošević.²²⁹¹

1013. Stanišić attended two meetings with senior members political and military officials involved in the Pauk Operation. Milovanović attended an 8 November 1994 meeting regarding the Pauk Operation.²²⁹² Consistent with Stanišić's prior lack of involvement with the VRS, Stanišić was there, but "he meant nothing to [Milovanović]".²²⁹³ In fact, Milovanović could never understand what Stanišić's role even was during this operation, both during and after this meeting.²²⁹⁴ He was not even sure of Stanišić's position in the Serbian Government.²²⁹⁵

1014. At the 22 February 1995 meeting where Milovanović's appointment to PAUK was to take place, Stanišić, acting as an emissary for the Supreme Defence Counsel ("SDC"), the VRS Supreme Command, and Milošević specifically, allegedly told Milovanović that these groups ordered his appointment as commander of the Pauk Operation.²²⁹⁶ Milovanović responded, "Jovica, I will not carry out orders from you. You are a policeman not a soldier".²²⁹⁷

1015. As this instance eloquently shows, Stanišić was not respected as having a command authority over the Operation Pauk. Further, his name appeared only twice in the Pauk logbook (as Jovica, not Stanišić).²²⁹⁸ He is absent for all proposed or actual meetings regarding the combat operations,²²⁹⁹ (except one possible meeting that has not been shown to be more than an intelligence-gathering occasion). He was not invited to a reception of the Supreme Command for the National Defence of Western Bosnia in March 1995.²³⁰⁰

1016. Further, on 7 November 1994, it is alleged that Stanišić had a meeting with Kesić, chief of the Banja Luka DB, and others regarding Pauk. Stanišić ordered Kesić to contact

²²⁹¹ Novaković, T.14009.

²²⁹² Milovanović, T.4539-4540.

²²⁹³ Milovanović, T.4541.

²²⁹⁴ Milovanović, T.4391-4392, T.4533.

²²⁹⁵ Milovanović, T.4389, referring to Stanišić as a policeman in P377.

²²⁹⁶ Milovanović, T.4394-4395.

²²⁹⁷ Milovanović, T.4389; T.4394-4395.

²²⁹⁸ P235, pp.13 (1230hrs), p.17 (0800hrs); *see also* Prosecution 98bis submissions, T.11424.

²²⁹⁹ *See e.g.* P235, pp.18 (0910hrs), 40 (0730hrs), 41-42 (0742hrs), 47 (1915hrs), 53 (1400hrs), 56 (2 January 1995), 64 (1900hrs), 68 (1900hrs), 70-71 (8 February 1995), 83 (5 March 1995), 93 (1000hrs), 99 (2000hrs).

²³⁰⁰ D47, p.1.

Karadžić to update him and Milovanović to arrange for a meeting.²³⁰¹ Consistent with Stanišić's lack of command authority, the author of the report wondered whether he should write to General Tolimir about the meeting "if [he] thought it was necessary".²³⁰² If Stanišić were of such senior authority, there would be no need to ask the question.

2. General Novaković was the Head of the Pauk Command

1017. Despite the aforesaid, the Prosecution asserts that Stanišić was in command of the Pauk Command that was stationed in Petrova Gora.²³⁰³

1018. Firstly, the Pauk Command was not in Petrova Gora.²³⁰⁴ Secondly, the SVK was in charge of the Operation Pauk, led by General Novaković (nicknamed "Pauk").²³⁰⁵ Bulat of the SVK was the chief of command for Pauk.²³⁰⁶ When Novaković was not in command, the role was delegated to him.²³⁰⁷ Prosecution witnesses Slišković²³⁰⁸ and Theunens²³⁰⁹ (the latter, basing his partial opinion on two exhibits²³¹⁰) were wrong in suggesting that this was not true.

1019. Slišković's claim that Stanišić was physically present about 70% of the time at the command post in Petrova Gora between September 1994-February 1995²³¹¹ was designed to implicate Stanišić in the command of men who were involved in the training of Abdić's men or fighting the 5th Corps.²³¹² No other witness corroborates this account.

²³⁰¹ P380, p.2.

²³⁰² P380, p.4.

²³⁰³ Prosecution Pre-trial Brief, para.94

²³⁰⁴ P382, p.2; Lažarević, T.3327; *see also* [REDACTED]; P235, p.55 (4 January 1995).

²³⁰⁵ [REDACTED]; Milovanović, T.4571; Stoparić, T.10508; [REDACTED]; D47; P1293, p.1; D164; P238, to be viewed in conjunction with P229-P230; Lažarević identified Novaković on P250 (T.3320-3321); [REDACTED].

²³⁰⁶ Milovanović, T.4571; *see also* D47.

²³⁰⁷ P235, p.57.

²³⁰⁸ Slišković, T.5109-5110.

²³⁰⁹ Theunens, T.8625-8631, T.8638-8658; Theunens, P1575, pp. 10, 250-281 (part IV).

²³¹⁰ P235 and P382.

²³¹¹ Slišković, T.5108.

²³¹² *Supra*, paras 1013-1017.

3. Stanišić's Alleged Attempt to Establish a Parallel Command was Unsuccessful, thereby Demonstrating his Limited Power and Stature

1020. On 11 November 1994, after discussions among SVK senior leaders, it was decided that the "IKM in Kordun (which is the same as Petrova Gora)"²³¹³ would be subordinate to the IKM in Korenica".²³¹⁴ Martić and the SVK overruled Stanišić.²³¹⁵

1021. Mladić, supposedly a close confidant or colleague of the first Accused, regarded Stanišić's suggestion to have a joint command between the RSK and him, and his proposal to coordinate operations with an attitude approaching disdain. In his diary, he wrote "why?" followed by "???" clearly regarding the proposal as somewhat strange, to the say the least.²³¹⁶

4. All Men Training and Fighting on Behalf of Abdić's forces were subordinated to the Pauk Command (not to the DB/Stanišić)

i. Božović and Legija, Leaders of Two Tactical Groups for Abdić, were Subordinated to the Pauk Command

1022. Božović, aka Colonel Kobac,²³¹⁷ who was head of a TG during Pauk, stated that "[w]hen forming and organising the [AP]ZB army, a system of command and control was established according to which the Pauk Command is our superior command".²³¹⁸ He wanted the rules on subordination to be strictly enforced, noting that "all documents and orders" from SVK members located in APZB must go through the Pauk Command or they "will not have any executive force" for his TG.²³¹⁹

1023. It was the same for Legija's tactical group. [REDACTED].²³²⁰ The Pauk Operations Logbook corroborates this: both Božović²³²¹ and Legija received their commands from Pauk/Novaković.²³²²

²³¹³ Drača, T.16811.

²³¹⁴ P382, p.2.

²³¹⁵ P382, p.2.

²³¹⁶ P2536, p.16; *see also* P2949, p.20.

²³¹⁷ Milovanović, T.4388-4389.

²³¹⁸ P1299.

²³¹⁹ P1299.

²³²⁰ [REDACTED].

²³²¹ Whose code name was Kobac during Pauk, Milovanović, T.4388-4389.

²³²² *See e.g.* P235, pp.5-6 (1915hrs),11 (0830hrs),13 (1145hrs),14 (1503hrs),27 (0030hrs),34 (1135hrs),41-42 (0742hrs),47-48 (1915hrs), 51 (0410hrs, 0430hrs), 52 (0550hrs, 1043hrs), 53 (0010hrs, 1900hrs, 1000hrs), 62 Case No. IT-03-69-T

1024. Slišković testified differently, noting that the alleged “paramilitary” part of the JATD was subordinated to Stanišić and Simatović, including Božović.²³²³ There is no credible evidence to support this assertion. Slišković did not explain what this alleged subordination meant in the context of military operations with a rigid command structure that Stanišić was demonstrably unable to subvert or countermand.

1025. Stanišić’s lack of involvement is further confirmed by an audio intercept of a conversation Mladić had with a number of people (allegedly, Milošević, Abdić, and Stanišić) on 9 March 1995.²³²⁴ First, it is clear that Perišić is also on the call, as Mladić’s first line is “Hi, Momo”, which is the nickname for Momčilo Perišić.²³²⁵

1026. Despite the fact that the tape is labelled “09.03.1995 S.Miloš-Fa-JS-Mladić”²³²⁶ the Prosecution alleges that Milošević, Mladić, Perišić and Stanišić are on the call, with no mention of Fikret Abdić.²³²⁷ This is not correct. Speaker A is Milošević²³²⁸ and Speaker B is Perišić. Speaker C cannot be Stanišić because he speaks about “Jovica”.²³²⁹ If Stanišić were one of the speakers it would be Unknown Speaker D, who offers only one unintelligible comment.²³³⁰ Speaker C must be Abdić.

1027. In sum, it is Abdić who confirms his control of Božović, Legija and “my 300 young men” suggesting that they be inserted to “experience combat a bit”.²³³¹

(25 January 1995), 80 (0500hrs, 0810hrs), 85 (1350hrs), 88 (0600hrs, 0800hrs, 0805hrs, 0822hrs), 89 (100hrs, 1635hrs), 100 (0425hrs, 1310hrs), 104 (0610hrs), 105 (1355hrs, 1440hrs, 1510hrs), 108 (0200hrs), 111 (2215hrs, 0135hrs, 0450hrs), 114 (1750hrs); P235, p.64 (1900hrs); Lažarević, T.3408-3409; *see also* DST-40, D409, paras 62,69 (US).

²³²³ JF-49, P441, para.44 (PPCE).

²³²⁴ P2949.

²³²⁵ P2949, p.1.

²³²⁶ *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Nineteenth Prosecution Motion for Leave to Amend Its Rule 65ter Exhibit List (Mladić Audio Files) And Motion for Admission of Excerpts From Mladić Audio Files, 19 January 2011, Public Annex A, pp.1-2.

²³²⁷ *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Nineteenth Prosecution Motion for Leave to Amend Its Rule 65ter Exhibit List (Mladić Audio Files) And Motion for Admission of Excerpts From Mladić Audio Files, 19 January 2011, Public Annex A, pp.1-2.

²³²⁸ P2949, p.1: Ratko responds to “Unknown Speaker A” as “Mr. President”.

²³²⁹ P2949, p.20

²³³⁰ P2949, p.4.

²³³¹ P2949, p.21.

ii. *Former Members of Arkan's Tigers and the Scorpions were Subordinated to the Pauk Command*

1028. Legija was in command of the former members of Arkan's Tigers.²³³² [REDACTED].²³³³

1029. Lažarević implicitly noted that Arkan's men were subordinate to the Pauk command. [REDACTED]. [REDACTED].²³³⁴ He also testified, albeit reluctantly, that the men he associated with Simatović kept their distance from Arkan's men because they regarded them as thieves and murderers, while Simatović's "police unit" comported themselves professionally.²³³⁵

iii. *The Scorpions were Subordinated to the Pauk Command*

1030. Regarding the Scorpions, [REDACTED]. [REDACTED].²³³⁶ More details on the Scorpions can be found below.²³³⁷

C. STANIŠIĆ AND THE SERBIAN DB'S ROLE IN SENDING MEN TO PAUK

1. Context

1031. The context is critical to a fair assessment of Stanišić's lack of a role in choosing men to be sent to Pauk, including an assessment of the reliability of the Mladić notebooks.

a. Mladić Notebooks

1032. The only evidence that points the finger directly at Stanišić for sending the Scorpions and Arkan's men to Pauk is that contained in the Mladić notebooks. Mladić has tried to implicate Stanišić by a series of entries in his diary suggesting that Stanišić had a role to play in personally selecting paramilitaries (Arkan's men and the Scorpions) for Pauk.

1033. In particular, Mladić writes that Stanišić suggested: (i) on the 6 April 1995, that he sent "150 men from Slavonija through Pauk"²³³⁸ and (ii) on the 30 June 1995, "we sent 80

²³³² [REDACTED]; Dimitrijević, T.16219.

²³³³ [REDACTED].

²³³⁴ [REDACTED].

²³³⁵ Lažarević, T.3414-3416.

²³³⁶ [REDACTED].

²³³⁷ *Infra*, paras 1076-1094.

²³³⁸ P394, p.4.

from Erdut and 80 from Đeletovci”.²³³⁹ The Prosecution claim that this shows that Stanišić admitted to Mladić that he had sent 80 of Arkans’ men and 80 of the Scorpions to Pauk. This is manifestly absurd.

1034. First, curiously, despite the fact that Mladić is an alleged accomplice who attempted for over 15 years to evade justice, the Prosecution appear not to want to entertain the possibility in the Stanišić trial that these might be clumsy attempts to implicate Stanišić, or even that a single detail in his notebooks (where they implicate Stanišić) might not be true - although they do not accept Mladić’s defence in *his* own trial. This is a wholly expedient stance in the Stanišić case and an unfortunate position that runs the risk of causing a miscarriage of justice.

1035. It is obvious that he has a reason to exculpate himself at the expense of others. *If* this view needs supporting, the Defence relies on the following submission.

1036. [REDACTED]. [REDACTED]. It confirmed the following:

[REDACTED].²³⁴⁰

1037. Of course, this just states the obvious. But it is useful to have had it confirmed contemporaneously.

1038. Second, such a claim was demonstrably not true with regard to the Scorpions involvement.²³⁴¹ There is no evidence that Stanišić did send nmen from Slavonija. The facts show that throughout 1994, the SVK had been sending units from the 11th Corps on a rotation basis to assist in the fight against the 5th Corps. By any reasonable analysis, hundreds of men had been sent on a monthly rotation basis.²³⁴² This was arranged through the RSK MOD,²³⁴³ which was based in Erdut.²³⁴⁴

1039. Milan Milanović stated that the Scorpions were deployed to Kladuša once or twice “[o]n orders from the SVK”²³⁴⁵ who were commanded at the time by Dušan Lončar.²³⁴⁶ There

²³³⁹ P394, p.15.

²³⁴⁰ [REDACTED].

²³⁴¹ *Infra*, paras 1076-1094.

²³⁴² *See e.g.* Milovanović, T.10128; [REDACTED].

²³⁴³ D787, p.3.

²³⁴⁴ Djukić, T.18036-18037.

²³⁴⁵ D660, p.2.

²³⁴⁶ [REDACTED].; *see also* D660, p.2; D787, p.3.

is no evidence that this had anything to do with the Serbian DB or Stanišić (or even, Simatović). There is no reason why Stanišić would claim to be responsible for sending these men to Kladuša, especially when every ounce of logic demonstrates that Mladić must have known of these rotations.

1040. Thirdly, it was also not true of Arkan's men. Mladić got the timing wrong. [REDACTED].²³⁴⁷ [REDACTED].²³⁴⁸ From October 1994 until May 1995, Arkan's camp at Erdut was closed by the RSK.²³⁴⁹ Instead as noted above, the RSK MOD was situated in Erdut.²³⁵⁰

1041. Further, as the evidence confirms, the Erdut special police were stationed in Erdut at the time when Arkan's men went to Pauk. [REDACTED].²³⁵¹ This is denied, but it does expose Mladić's lies. [REDACTED]. [REDACTED].²³⁵²

1042. Given the hundreds on rotation from "Slavonija" throughout 1994 and 1995²³⁵³ a fact that Mladić must have been aware of, it stretches the bounds of credulity, to suppose that Stanišić attended two meetings and "just happened to mention" men from Erdut and men from Đeletovci. In the context of a criminal trial such details may be significant; in the context of addressing the VRS commander, logic dictates that it would not be an important detail, let alone to mention futile. Arkan's men were deployed to Pauk in November 1994.²³⁵⁴ [REDACTED],²³⁵⁵ it is highly unlikely that Stanišić would attend a meeting with Mladić in April and June 1995 and "confess" to Mladić about this issue.

1043. Even, if the entries in Mladić Notebook were reliable they do not materially assist the Prosecution case.

b. 30 June 1995 Meeting revisited

1044. It is instructive to read the 30 June 1995 diary entry with the lie (concerning "80 from Erdut, 80 from Đeletovci") removed. In sum, Stanišić was *looking* for men. Instead of

²³⁴⁷ [REDACTED].

²³⁴⁸ [REDACTED].

²³⁴⁹ P2536, p.19; [REDACTED].

²³⁵⁰ Djukić, T.18036-18037.

²³⁵¹ [REDACTED].

²³⁵² [REDACTED].

²³⁵³ *Supra*, para.1039.

²³⁵⁴ *Infra*, paras 1057-1069.

²³⁵⁵ [REDACTED].

suggesting “28 elite trainers”, he asks “what about the police from Banja Luka? Who will provide them?”²³⁵⁶. Critically, he does not claim ownership over them, nor envisage any role for himself or the DB. On the contrary, he suggests that Perišić should equip them”.²³⁵⁷ Stanišić is alleged to have noted that the men would be “58 from Kragujevac, Niš, Ljubiškovo”.²³⁵⁸ Further, there is no evidence that any of this actually occurred. In fact, the Pauk Operation was abandoned five weeks later and all withdrew from APZB.²³⁵⁹

2. Arkan’s Men was a Disbanded Paramilitary Unit whose Former Members were not Recruited by Stanišić

a. Simatović’s Alleged Role in Relation to Arkan’s Men

1045. It is submitted that Stanišić had no knowledge of Arkan’s men’s engagement during Pauk, let alone that Simatović was involved, if this is found to be true.

1046. The claim that their presence at Pauk supports the allegation that they were a special unit of the DB is misguided. As submitted,²³⁶⁰ there is no evidence that Stanišić commanded them in any way during 1991 to 1995. [REDACTED].²³⁶¹ [REDACTED].²³⁶² [REDACTED].²³⁶³

1047. [REDACTED]. [REDACTED].

1048. [REDACTED].²³⁶⁴ [REDACTED],²³⁶⁵ [REDACTED].²³⁶⁶

1049. [REDACTED],²³⁶⁷ [REDACTED].²³⁶⁸

²³⁵⁶ P394, p.12.

²³⁵⁷ P394, p.16.

²³⁵⁸ P394, p.16.

²³⁵⁹ P394, p.18.

²³⁶⁰ See Part II, Section III.

²³⁶¹ [REDACTED].

²³⁶² [REDACTED].

²³⁶³ [REDACTED].

²³⁶⁴ [REDACTED].

²³⁶⁵ [REDACTED].

²³⁶⁶ [REDACTED].

²³⁶⁷ [REDACTED].

²³⁶⁸ [REDACTED].

b. Stanišić did Send Active Members of the JATD to Provide Security, Reconnaissance, Surveillance and to Gather Intelligence

1050. The Prosecution failed to prove that the active members of the JATD were supposed to play any other role but the aforementioned. DST-40's evidence makes clear that JATD members were providing security and carry out surveillance missions, not combat activities.²³⁶⁹

1051. A February 1995 report notes that active JATD members were involved in sniping activities on 16 December 1994 in Velika Kladuša.²³⁷⁰ This was likely the only time they were involved in such activities, as the report was written for the period from 10 December 1994 to 1 February 1995. Further, the four-month, Jimmy Carter-led, ceasefire was declared on 23 December 1994, just one week after their alleged sniping activity.²³⁷¹

1052. Slišković attempts to suggest that the JATD was heavily involved in combat were unconvincing. Putting aside the lack of documentary and oral evidence, his testimony was inconsistent. He fluctuated from the truth to exaggeration. He noted that he thought that he joined a Unit that was only going to be involved in anti-terrorist operations. He then moved from this position to claim that because the Unit involved those who had previously been involved in combat, he realised his tasks would not be so limited.²³⁷²

1053. Having based this belief on such flimsy evidence, he then attempted to suggest he had been involved in combat operations. He eventually settled on an account that he had not been involved in close combat operations, only sniping activities.²³⁷³

1054. Other Prosecution and Defence witnesses confirmed the Serbian DB's role in the area was non-combative, including [REDACTED]²³⁷⁴ and Novaković.²³⁷⁵

1055. [REDACTED].²³⁷⁶

²³⁶⁹ DST-40, D409, paras 58-59, 62 (PPCE).

²³⁷⁰ P3024, p.3.

²³⁷¹ Milovanović, T.15472.

²³⁷² Slišković, T.5093.

²³⁷³ Slišković, T.5172-5173, 5175, 5181-5182; Slišković, P440, para.13 (PPCE).

²³⁷⁴ [REDACTED].

²³⁷⁵ See Novaković, T.13993-14002.

²³⁷⁶ [REDACTED].

c. Arkan's Men had no Relation with the JATD/DB

i. Former Members of Arkan's Men did not Train Together with the JATD in Advance of the Pauk Operation

1056. When Arkan's men went to train for the Pauk Operation, they did so separately from the active JATD members.

1057. The evidence is clear that they went to Pauk as different units. [REDACTED].²³⁷⁷ [REDACTED].²³⁷⁸ [REDACTED].²³⁷⁹ This accords with DST-40's evidence that the former members of Arkan's unit did not come to Lipovača, nor did they mix with JATD members.²³⁸⁰ DST-40's account seems more likely, as it is unlikely that Arkan's men would have travelled all the way to Lipovača and then sat outside the camp before going to Mt. Tara if they were part of the same group.

1058. [REDACTED].²³⁸¹ [REDACTED].²³⁸² [REDACTED].²³⁸³ While he appears to have been lying, what is important is that there remained a separation of Arkan's men from the JATD.

1059. Prosecution's witness Slišković stated that he was also trained at Mount Tara, but that the alleged reserve members of the Serbian MUP were not trained.²³⁸⁴ He was trained separately from Arkan's men, as his account makes clear.

ii. Arkan's Men were Training Separate Groups During Pauk

1060. [REDACTED].²³⁸⁵ [REDACTED].²³⁸⁶

iii. Arkan's Men and the Reserve JATD Fought in Different Groups

1061. [REDACTED].²³⁸⁷

²³⁷⁷ [REDACTED].

²³⁷⁸ [REDACTED].

²³⁷⁹ [REDACTED].

²³⁸⁰ DST-40, D409, para.68 (PPCE).

²³⁸¹ [REDACTED].

²³⁸² [REDACTED].

²³⁸³ [REDACTED].

²³⁸⁴ JF-49, P440, para.20 (PPCE); JF-49, P441, para.62 (PPCE).

²³⁸⁵ [REDACTED].

²³⁸⁶ [REDACTED].

²³⁸⁷ [REDACTED].

iv. The Serbian DB Payment Lists: Paying Arkan's Men

1062. Former members of Arkan's Tigers are on DB payment lists; however, the DB did not finance these payments.

1063. [REDACTED].²³⁸⁸ [REDACTED].²³⁸⁹

1064. [REDACTED],²³⁹⁰ [REDACTED].²³⁹¹ The Serbian DB simply distributed the monies on his behalf, playing the role of a bank more than the institution paying Arkan's men for their services during the conflict.

1065. In any event, logic and the DB's financial processing, dictates that Stanišić would not have known who were being paid *per diems*.²³⁹² [REDACTED].²³⁹³

1066. [REDACTED].²³⁹⁴ There is no tangible evidence that this happened. [REDACTED].²³⁹⁵

1067. [REDACTED].²³⁹⁶ Firstly, there is no evidence that this ever took place. In any event, JF-27's claim is illogical. [REDACTED].²³⁹⁷ This wild assertion, left undeveloped by the Prosecution during the case, should be dismissed as the JNA were no longer in existence at that time.²³⁹⁸

v. Other Evidence Supports that Arkan's Men were not a Special Unit of the DB

1068. Slišković alleged that Arkan's Tigers/SDG were a unit controlled by the Serbian DB.²³⁹⁹ He based this on the following so-called fact that the Serbian Volunteer Guard had automatic weapons.²⁴⁰⁰ This is of very limited probative value in the absence of reliable and

²³⁸⁸ [REDACTED].

²³⁸⁹ [REDACTED].

²³⁹⁰ See Confidential Annex III-B.

²³⁹¹ [REDACTED].

²³⁹² See Part I, Section II.

²³⁹³ [REDACTED].

²³⁹⁴ [REDACTED].

²³⁹⁵ See Confidential Annex III-B.

²³⁹⁶ [REDACTED].

²³⁹⁷ [REDACTED].

²³⁹⁸ First Adjudicated Facts Decision (Prosecution) Fact 250.

²³⁹⁹ Slišković, T.5138.

²⁴⁰⁰ Slišković, T.5138

corroborative evidence. Slišković also believed this because he thought that Legija was speaking to Stanišić as his superior.²⁴⁰¹

1069. The Defence submits that Slišković plainly lied. First, he testified that Stanišić and Simatović were superior because he ostensibly overheard Simatović ordering Legija to attack Velika Kladuša. However, this whole version is thrown into question. On his first account it was Abdić who instructed that the attack take place; on another it was Simatović.²⁴⁰² Secondly, although in his account he suggested Stanišić was present during this meeting,²⁴⁰³ he then retreated from his account. The next time he told this story, he forgot Stanišić was present.²⁴⁰⁴

d. Crimes Allegedly Committed during Pauk

1070. As discussed above, it is plain from the meetings Stanišić may have attended, that he did not expect any of the volunteers to be engaged in combat.²⁴⁰⁵ [REDACTED].²⁴⁰⁶ [REDACTED].²⁴⁰⁷

1071. [REDACTED].²⁴⁰⁸ The crimes were not in furtherance of either the mission, let alone the common purpose; they were not the objective but a by-product of a lawful operation.²⁴⁰⁹

1072. As stated, Stanišić had no relationship to Arkan's men.²⁴¹⁰ Secondly, they were subordinated to the Pauk Command while in Western Bosnia.²⁴¹¹

1073. Slišković's claim that he was present when mortar fire was opened on civilians but could not observe whether anyone had been hit because he was too far away²⁴¹² was clearly an exaggeration, or a lie, as he could not have known that the people were civilians if he could

²⁴⁰¹ Slišković, T.5138; Slišković, P441, para.46 (PPCE).

²⁴⁰² Slišković, P440, para.8; Slišković, T.5250-5251.

²⁴⁰³ Slišković, P440, para.8; Slišković, P441, para.37 (PPCE).

²⁴⁰⁴ Slišković, T.5250-5251.

²⁴⁰⁵ *Supra*, paras 1033-1045.

²⁴⁰⁶ [REDACTED].

²⁴⁰⁷ [REDACTED].

²⁴⁰⁸ [REDACTED].

²⁴⁰⁹ *See supra*, paras 1443-1151.

²⁴¹⁰ *See* Part III, Section VI, paras 1046-1069; Part III, Section III, para.749; Part II, Section III, para.434-445.

²⁴¹¹ *See supra* paras 1029-1030.

²⁴¹² Slišković, T.5172.

not observe them due to the distance. These were the only “criminal” events that Slišković allegedly witnessed.²⁴¹³

3. Stanišić had Nothing to do with the Recruitment, Deployment, and Training of Abdić’s Forces by the Scorpions During Pauk

1074. There is no reliable evidence that the Scorpions were created, organised, financed or otherwise supported by the DB at any time during the indictment period. This section considers the establishment of the Scorpions, its day-to-day command, as well as its role during the Pauk Operation. Consideration of the Prosecution’s case against the Accused in Trnovo can be found in paragraph 1157 below.

4. The Scorpions were not a Special Unit of the Serbian DB

a. Establishment of the Scorpions

1075. The primary evidence concerning the sponsorship of the Scorpions is derived from JF-56 and JF-24. As Annexes III-E shows, JF-56’s evidence is internally inconsistent and contradicted by JF-24.

1076. [REDACTED].²⁴¹⁴ [REDACTED].²⁴¹⁵ [REDACTED]²⁴¹⁶ [REDACTED].²⁴¹⁷

1077. [REDACTED],²⁴¹⁸ [REDACTED].²⁴¹⁹ [REDACTED].²⁴²⁰

1078. [REDACTED].²⁴²¹ [REDACTED].²⁴²² [REDACTED].²⁴²³ [REDACTED].²⁴²⁴ They “received salaries from the Krajina oil industry”.²⁴²⁵ [REDACTED],²⁴²⁶ [REDACTED].²⁴²⁷ DFS-17 added that they had additional, albeit modest, pay from the RSK.²⁴²⁸

²⁴¹³ Slišković, T.5172-5173.

²⁴¹⁴ [REDACTED].

²⁴¹⁵ [REDACTED].

²⁴¹⁶ [REDACTED].

²⁴¹⁷ [REDACTED].

²⁴¹⁸ [REDACTED].

²⁴¹⁹ [REDACTED].

²⁴²⁰ [REDACTED].

²⁴²¹ [REDACTED].

²⁴²² [REDACTED].

²⁴²³ *Ibid.*

²⁴²⁴ [REDACTED].

²⁴²⁵ [REDACTED]; DFS-11, T.17223 .

²⁴²⁶ [REDACTED].

²⁴²⁷ [REDACTED].

1079. [REDACTED].²⁴²⁹ However, this belief was based on little more than speculative assumption. [REDACTED].²⁴³⁰ It was inherently unreliable multiple hearsay²⁴³¹ [REDACTED].²⁴³² [REDACTED].²⁴³³

b. Command of the Scorpions Before Pauk

1080. Discussion of who commanded the Scorpions during the Pauk Operation is discussed above²⁴³⁴ and below.²⁴³⁵ Before Pauk, JF-56 testified that the Scorpions received their orders principally from Mrgud and Lončar.²⁴³⁶ Even though he was not a witness of truth, he had no reason to mention these two individuals having command, unless it was true.

1081. JF-29 – [REDACTED] – [REDACTED] alleges that Lončar, as [Commander of 11th Corps] had a command role.²⁴³⁷ For the issues related to the security of the oil plant they received their orders from the director of the oil company and for other issues Milanović issued orders.²⁴³⁸ [REDACTED].²⁴³⁹

1082. [REDACTED]²⁴⁴⁰ [REDACTED].²⁴⁴¹ [REDACTED].²⁴⁴²

1083. DFS-11 was involved in the Scorpions investigation after the killings in Trnovo and stated that during the suspects' interview, none of the Scorpions said that they were members of the Serbian DB or acting under the Serbian DB.²⁴⁴³

1084. Finally, if the Scorpions had any link with the Serbia MUP, it was with the Public Security. DFS-17 said that Boca and Mrgud had ties with the Public Security.²⁴⁴⁴ For example, Badža, who was posted in the region, was a frequent guest of Medić.²⁴⁴⁵

²⁴²⁸ DFS-17, T.17994-17995.

²⁴²⁹ [REDACTED].

²⁴³⁰ [REDACTED]..

²⁴³¹ [REDACTED]..

²⁴³² [REDACTED]..

²⁴³³ [REDACTED]..

²⁴³⁴ *Supra*, para.1031.

²⁴³⁵ *Supra*, paras 1086-1091.

²⁴³⁶ JF-56, T.10445.

²⁴³⁷ D660, p.2; *see also* [REDACTED].

²⁴³⁸ DFS-7, T.17980.

²⁴³⁹ [REDACTED].

²⁴⁴⁰ [REDACTED].

²⁴⁴¹ [REDACTED].

²⁴⁴² [REDACTED].

²⁴⁴³ DFS-11, T.17221-17222.

²⁴⁴⁴ DFS-7, T.18138.

c. Command of the Scorpions within the Framework of the 11th Corps of the RSK

1085. As noted above, the Scorpions were part of an 11th Corps rotation to BiH in 1994 and 1995. There is no evidence that the above command changed as a result of the Pauk arrangements. There are no Scorpions on the DB payment lists during the period Pauk. The only Scorpion who appears on the payment list is JF-56, during 16 August 1995 and 15 December 1995²⁴⁴⁶ – as a result of his joining the JSO.

1086. As noted in Paragraphs 1076 to 1087 their involvement in BiH had already been institutionalised months before pursuant to 11th Corps/SVK rotations to assist Abdić. [REDACTED]²⁴⁴⁷ [REDACTED].²⁴⁴⁸ [REDACTED]²⁴⁴⁹ [REDACTED].²⁴⁵⁰ [REDACTED].²⁴⁵¹

1087. [REDACTED],²⁴⁵² [REDACTED].²⁴⁵³ [REDACTED].²⁴⁵⁴ [REDACTED].²⁴⁵⁵ [REDACTED].²⁴⁵⁶ [REDACTED].²⁴⁵⁷ [REDACTED].²⁴⁵⁸ [REDACTED].²⁴⁵⁹

1088. [REDACTED].²⁴⁶⁰

1089. Because the Scorpions were part of the 11th Corps, they were under the command of the SVK, they were part of the 11th corps before and during their deployment to Pauk. For example, on 18 December 1994, General Lončar indicated in a telephone intercept that 460 soldiers from the 11th Corps went to Bihać battlefield.²⁴⁶¹ Another 460 were scheduled to be

²⁴⁴⁵ DFS-7, T.17995.

²⁴⁴⁶ JF-56, T.10357.

²⁴⁴⁷ [REDACTED].

²⁴⁴⁸ [REDACTED].

²⁴⁴⁹ [REDACTED].

²⁴⁵⁰ [REDACTED].

²⁴⁵¹ [REDACTED].

²⁴⁵² See Prosecution Opening Statement, T.1523.

²⁴⁵³ [REDACTED].

²⁴⁵⁴ [REDACTED].

²⁴⁵⁵ [REDACTED].

²⁴⁵⁶ [REDACTED].

²⁴⁵⁷ [REDACTED].

²⁴⁵⁸ [REDACTED].

²⁴⁵⁹ [REDACTED].

²⁴⁶⁰ [REDACTED].

²⁴⁶¹ D787, p.3.

deployed to change forces.²⁴⁶² [REDACTED]²⁴⁶³ [REDACTED].²⁴⁶⁴ Finally, the Scorpions received their equipment from the RSK Government for the Pauk Operation.²⁴⁶⁵

1090. The Prosecution may allege that the Mirkovci Brigade is another name for the Scorpions and that Stanišić recruited these men to go to Pauk.²⁴⁶⁶ This attempt to link men from the Mirkovci Brigade (“offered the possibility... to join... Jovica...on a voluntary basis”²⁴⁶⁷) to the Scorpions (who were based nearby, at Delotovci) is misconceived. D205 makes clear that Vlado Grčić was commander of the Mirkovci Brigade of the SVK.²⁴⁶⁸ Further, it is clear from D787 that the Mirkovci Brigade was deployed to the Bihać Battlefield (Pauk) on the order of Lončar, not Stanišić, and secondly, under the command of Colonel Mile Plavšić, not Božović or anyone else.²⁴⁶⁹ Finally, even if Stanišić sent the Scorpions, they made no contribution because other SVK armed men would not accept Medić’s command.²⁴⁷⁰

d. Even if the Scorpions were Sent by Stanišić, they were Immediately Sent Back to the RSK

1091. [REDACTED]. [REDACTED].²⁴⁷¹

D. STANIŠIĆ’S INVOLVEMENT IN SUPPLY OF PAUK

1092. The only meaningful evidence that Stanišić played a role in supply is limited to the supply of Pauk. It cannot reasonably be considered to be in furtherance of crime. As argued above, it amounts to supply of a humanitarian mission, not one that involved a scintilla of forcible transfer.²⁴⁷² Even this evidence, does not implicate Stanišić in more than a subsidiary role.

1093. The Mladić intercepts shows that Milsosevic and Perišić were the principle decision makers. Perišić played the main role in liaising with the VRS. In March 1995, Mladić addressed “Momo” (Speaker D/probably Perišić) concerning supplies, asking him to

²⁴⁶² D787, p.3.

²⁴⁶³ [REDACTED].

²⁴⁶⁴ [REDACTED].

²⁴⁶⁵ DFS-11, T.17224.

²⁴⁶⁶ See e.g. P3052.

²⁴⁶⁷ P3052, p. 1.

²⁴⁶⁸ D205, p.1; see also DFS-7, T.18044-18045.

²⁴⁶⁹ D787, p.2.

²⁴⁷⁰ D785, p.1.

²⁴⁷¹ [REDACTED].

²⁴⁷² Paras 1006-1012.

influence the SVK to bring in supplies.²⁴⁷³ On the 7 March 1995, Mladić again addressed Perišić (not Stanišić) concerning supplies.²⁴⁷⁴ Speaker E is addressed as Jovica. Stanišić is mentioned as playing some intermediary or subsidiary role.²⁴⁷⁵ Nonetheless, it is plain that Milošević (A) addressed Perišić as the man who was expected to deliver, as he had been in the previous years of military assistance from the FRY to the VRS.

III. CONCLUSION

1094. In conclusion, the evidence does not show that Stanišić had any meaningful role to play in supplying the Bosnian military. The SSNO and the Bosnian Serb forces (including the police) had their own well-entrenched system of supply. The Prosecution has not proven that Stanišić had any role to play in effecting these supplies.

1095. Whilst it is not accepted that Stanišić had any contact with, or knowledge of, the dispatch of the Scorpions or Arkan's Tigers, he was involved in this operation. It is instructive that it was this operation, and no others. Pauk was a humanitarian mission. It promised the return of thousands of innocents to their homes.

²⁴⁷³ P2949, p.6.

²⁴⁷⁴ P2950, p.25,33,37.

²⁴⁷⁵ P2950, p.36,49-50.

SECTION VII. COMMON PURPOSE IN BiH

I. INTRODUCTION

1096. The Prosecution asserts that the objective of the JCE was the forcible and permanent removal of the majority of non-Serbs from large areas of BiH through the commission of crimes, to create a Serb-dominated state.²⁴⁷⁶ For an action to be part of the JCE, with its concomitant criminal responsibility, it must be an action taken to forcibly and permanently remove non-Serbs from BiH.

II. MILOŠEVIĆ AND THE BELGRADE LEADERSHIP DID NOT SUPPORT THE CREATION OF A SERB-DOMINATED STATE, AT LEAST IN 1993 AND ONWARDS

A. THE SERBIAN GOVERNMENT DID NOT TAKE STEPS TO UNIFY ETHNIC SERBS INTO A NEW STATE, NOR DID IT SHARE WAR AIMS WITH EITHER ENTITY

1097. At the beginning of the war, the Serbian Government favoured maintaining the territorial and constitutional integrity of the federal state of Yugoslavia in 1991,²⁴⁷⁷ not in the forcible displacement of non-Serbs to create a Serb-dominated state. Supporting maintenance of the *status quo* cannot support an argument that Serbia was in favour of the creation of a Serb-dominated state, regardless of whether Yugoslavia was a Serb-dominated state before it dissolved or not. There were undoubtedly political, historical and sociological reasons that Slovenia, Croatia and BiH favoured secession; however, their aspirations cannot be used to support an adverse inference against the Serbian leadership for favouring the federal construct.

1098. There is no evidence that Stanišić had any opinion on the continued existence of the SFRY or opposed the secessionist movements. Ultimately, he was pragmatic regarding the continued existence of the SFRY. [REDACTED].²⁴⁷⁸

1099. Later, after Slovenia, Croatia and BiH successfully declared independence and obtained international recognition for their efforts,²⁴⁷⁹ the political leadership in Serbia acquiesced to the geopolitical reality of the situation. For example, at 10 February 1993 and

²⁴⁷⁶ Indictment, paras 13-14; Pre-Trial Brief, para.13.

²⁴⁷⁷ First Adjudicated Facts Decision (Prosecution), Fact 107; Third Adjudicated Facts Decision (Prosecution) Fact 57.

²⁴⁷⁸ [REDACTED].

²⁴⁷⁹ First Adjudicated Facts Decision (Prosecution), Facts 80-82, 83-84, 206.

2 June 1993 SDC meetings, both Momir Bulatović and Milošević expressed their desire to end the war without demanding that the SFRY persevere with Serbian areas in Croatia and BiH.²⁴⁸⁰

1100. Bulatović, President of Montenegro and SDC member at the time,²⁴⁸¹ stated that early in the war they “pursued a single, point state policy”;²⁴⁸² thus, they were obliged to help the Bosnian Serbs. However, once the JNA withdrew from BiH [on 19 May 1992]²⁴⁸³, he noted, “it was logical for [the FRY] to do everything in [its] power to ensure the formation of the [VRS]”²⁴⁸⁴ and create a break between the FRY and the VRS: “it must be known that from now on that the [VRS] and the Yugoslav Army are not the same thing, because the Yugoslav Army must abide by and respect the decisions of the state leadership of the FRY”.²⁴⁸⁵

1101. On 8 November 1993, Martić was present at a meeting with many individuals from RS, and Serbia. Predictably, he continued in his vociferous advocacy for unification for “a united army” police and DB for the FRY, RS and RSK.²⁴⁸⁶ While exposing his caricatured plans and *his* intent, it also illustrates that, even this late into the war, they were not united, and also that no one else appeared to agree.

1102. In addition, Milošević set out the FRY agenda of the day: “[t]o end the war in Bosnia as soon as possible”;²⁴⁸⁷ to “[u]nconditionally strengthen the integrity of Serbia”; “[s]et up RS as a completely independent state” and to ensure that in “the RSK, the Serbs must have complete power”.²⁴⁸⁸ Put more concretely, in “the RSK prepare for defence against aggression” and not to “attack the Muslims...anywhere except where they attack first”.²⁴⁸⁹

1103. In this same meeting, Karadžić corroborates the lack of unification in one of the most poignant examples showing that there was implicitly an agreement that Martić’s excesses had

²⁴⁸⁰ [REDACTED]; D1434, pp.19-21.

²⁴⁸¹ D1434, p.1.

²⁴⁸² D1434, p.20.

²⁴⁸³ First Adjudicated Facts Decision (Prosecution), Fact 229.

²⁴⁸⁴ D1434, pp.19-21.

²⁴⁸⁵ D1434, pp.20-21.

²⁴⁸⁶ P2531, p.5.

²⁴⁸⁷ P2531, p.6

²⁴⁸⁸ P2531, p.2.

²⁴⁸⁹ P2531, p.3.

now to be avoided. He noted “[w]e missed our opportunity to proclaim a single country while we were strong economically and politically”.²⁴⁹⁰

1104. What all the Belgrade Serbs acknowledged at this meeting was that thus far coordination had been based on the Army line: “Mladić, Perišić and Novaković [commander of the SVK]”,²⁴⁹¹ that while such coordination at the level of governments and the army was good, but it was “necessary also to coordinate the state security”.²⁴⁹²

1105. There are other examples of the RS and RSK leadership indicating a desire for unification with Serbia, as well as Serbia’s opposition to the same. On 13 December 1993, 14 January 1994, 15 March 1994 and 21 May 1995, meetings were held where Martić, Karadžić and Mladić noted their desire for unification,²⁴⁹³ while Milošević and other representatives of the FRY disagreed, even calling it a “stupid idea”.²⁴⁹⁴

1106. The Prosecution will attempt to rely on certain assertions made in the Mladić diaries that the Serbian Government promoted the idea of unification of the RS and RSK to Serbia in 1994. The Prosecution’s tendency to seize upon speech by one alleged JCE member and attribute it to all must be avoided. Martić or Karadžić’s excesses cannot be attributed to Milošević, let alone Stanišić. In 1993 and onwards, Serbia plainly did not take actual steps towards annexing the RS and RSK to Serbia. Whilst Martić spoke of unification, Milošević of coordination, Stanišić’s DB was failing in both.

B. THE RSK/RS GOVERNMENT SOUGHT UNIFICATION, INCLUDING WITH EACH OTHER

1. The Two Governments Actively Advocated for a Closer Union

1107. While the Serbian Government preferred to keep the state of Yugoslavia intact after the independence movements of Slovenia, Croatia and BiH, the RSK and RS took steps to create a unified state of its own, culminating in the Prijedor Declaration on the Unification, signed on 31 October 1992.²⁴⁹⁵ A defensive alliance, coordinating committees, and joint

²⁴⁹⁰ P2531, p.6.

²⁴⁹¹ P2531, p.1.

²⁴⁹² P2531, p.8.

²⁴⁹³ See P2532, p.1 and D767, p.133 for Karadžić’s intent; see P2540, p.10 for Mladić’s intent; see P2540, p.6 for Martić’s intent.

²⁴⁹⁴ P394, p.8; P2540. pp.2,4.

²⁴⁹⁵ P1275.

assembly sessions were agreed upon.²⁴⁹⁶ On 22 or 23 April 1993, it was reported that Brđanin and Martić were taking steps to unify the RS and RSK.²⁴⁹⁷ There were also meetings convened between the two governments, excluding the Serbian Government.²⁴⁹⁸

1108. Around July 1994, Karadžić attended a meeting in BiH and noted that the RS had previously listened to their “bosses from Belgrade” in Belgrade and therefore “stopped implementation of the decision on unification with the RSK”.²⁴⁹⁹ He stated that “[t]his time, we shall be completely independent” of Belgrade and “take the right decision”.²⁵⁰⁰

1109. On 12-13 July 1994, the group called “United Serbia Lands” met in Pale;²⁵⁰¹ no representatives of Serbia were present. On 13 October 1994, Mladić recorded in a meeting that Martić “has been written off by Milošević”.²⁵⁰² At a 15-16 April 1995 meeting of the RS Assembly, Krajišnik explained that a session would be held in the near future to consider a plan on unification with the RSK.²⁵⁰³

2. The RSK and RS DB Sought Unification with the Serbian DB, not the Reverse

1110. The Prosecution has sought to suggest that Stanišić’s DB supported the respective services in RS and RSK. However, as indicated above when discussing the 8 November 1993 meeting, the DB was singled out as the organ of government that was not coordinating.²⁵⁰⁴ As will be discussed below, in fact, there are indications that the Serbian DB subverted and damaged the RS’s intelligence service from 1993 onwards.

1111. The RS sought better cooperation from the Serbian DB in April 1993. It noted in its combat readiness report that cooperation with the Serbian MUP had “been unsatisfactory” due to the passivity towards cooperation of, *inter alia*, the Serbian MUP.²⁵⁰⁵ It specifically noted

²⁴⁹⁶ P1275, pp.3-4.

²⁴⁹⁷ P2463, p.2.

²⁴⁹⁸ See e.g. P1276.

²⁴⁹⁹ D993, p.4.

²⁵⁰⁰ D993, p.4.

²⁵⁰¹ D993, p.1.

²⁵⁰² P2537, pp.9-10.

²⁵⁰³ P1320, pp.372-373.

²⁵⁰⁴ P2531, p.8.

²⁵⁰⁵ P386, pp.90-91.

that the cooperation between the intelligence and security organs is “still at an unsatisfactory level”.²⁵⁰⁶

1112. At an 8 November 1993 meeting, Martić submitted that there should be a united army, police and state security.²⁵⁰⁷ Drača, the head of the RSK DB, who was not at this meeting,²⁵⁰⁸ confirmed that Martić’s intention was to unite.²⁵⁰⁹ However, preparations (eg. parliamentary decisions, financing and other legal steps) for this to happen had not taken place.²⁵¹⁰

1113. On 15 March 1994, Milošević stated that the process of linking the security services “has gone slowly”.²⁵¹¹ In this meeting, Stanišić notes his agreement and suggests it take place by midsummer of 1994.²⁵¹²

1114. Cooperation, linking or other exchange of information never took place in any real capacity. The Prosecution sought to argue in rebuttal that the cryptographic data protection system was set up to facilitate the exchange of information between the Serbian DB and equivalent agencies in the RSK.²⁵¹³ There is nothing inherently criminal in seeking to set up an information exchange between the regions. There is nothing criminal about this alleged providing the means for leaders to speak privately. It is necessary for the functioning of a state. Moreover, given the lack of coordination, it seems unlikely that the DB’s assistance to the RS or RSK was of value to them, even if it was useful to the Serbian State.²⁵¹⁴

1115. The Prosecution will rely upon a 25 April 1994 report from Drača, the head of the RSK DB, which states, *inter alia*, that the “foundation for the serious work and the formal preparations for the annexation to the RDB of the Republic of Serbian MUP has been created”.²⁵¹⁵ However, this is misplaced, as a careful reading of the sentence and an analysis of the surrounding circumstances amply demonstrate.

²⁵⁰⁶ P386, p.85.

²⁵⁰⁷ D767, p.23.

²⁵⁰⁸ Drača, T.16948, 16954.

²⁵⁰⁹ Drača, T.16956.

²⁵¹⁰ Drača, T.16956.

²⁵¹¹ P2540, p.5.

²⁵¹² P2540, p.15.

²⁵¹³ Prosecution Motion for Admission of Rebuttal Evidence: Miscellaneous Documentary Evidence, Confidential Annex B, p.4 (confidential).

²⁵¹⁴ Paras 1121-1123.

²⁵¹⁵ See P3076, p.4; Drača, T.16954.

1116. First, the sentence is obviously well crafted to be meaningless and *tentatively certain*. In other words, the statement discusses the creation of a “foundation” for “formal preparations” meaning, of course, that nothing, not even preparations, had taken place.

1117. Second, Martić probably was actually un-desirous of any unification with the DB. He had significant paranoia about the Serbian DB throughout the war. Drača explained that Martić was always wondering about “everything that...happen[ed]” in Slavonia and Baranja and whether it was related to the Serbian DB.²⁵¹⁶ Martić had dissolved the Krajina DB in 1991,²⁵¹⁷ as a result of his belief that Orlović was passing information more to Stanišić, than to him.²⁵¹⁸

1118. Thirdly, Martić also believed that on 4 October 1994, Stanišić was using Kostić and Kojić to undermine his authority,²⁵¹⁹ including kidnapping his Minister of Interior, Ilija Prijić in August 1994²⁵²⁰ and detaining Martić himself on border crossings using armed police under their control.²⁵²¹

1119. Drača also pointed out a self-evident truth: “if there were any serious preparations towards unification of the services, then the Serbian DB would have provided more than a derisory “27,000 German marks for [their] work throughout that whole period”²⁵²² as the 25 April 1994 report indicates was the case.

1120. Fourth, with regards to Stanišić’s “agreement” in a 15 March 1994 meeting that there would be “formal integration” of the State Security Services of Serbia and the RS by mid-summer 1994,²⁵²³ this was plainly an empty promise as the following submissions show.

1121. The reality, at that time, was as follows: the Bosnian Serb DB regarded the Serbian DB with nothing but suspicion and distrust. By April 1993, a number of negative sentiments had emerged in the Banja Luka Service concerning the Serbian DB. The Banja Luka service considered that the Serbian DB was involved in a process of sabotage. [REDACTED].²⁵²⁴

²⁵¹⁶ Drača, T.17053.

²⁵¹⁷ Drača, T.16693-16694.

²⁵¹⁸ JF-39, T.7283, T.7329, T.7345; *see also* P2925, pp.9-10.

²⁵¹⁹ P1605, pp.2-4.

²⁵²⁰ *See* Djukić, T.18139-18140; *see also* P987, p.3

²⁵²¹ P987, pp.2-3; Djukić, T.18144-18145; P1605, p.3.

²⁵²² Drača, T.16955.

²⁵²³ P2540, p.15.

²⁵²⁴ [REDACTED].

[REDACTED].²⁵²⁵ This appears to have marked the beginning of a relationship of mutual distrust.

1122. Tajfun was an intelligence organisation that operated with the approval of Karadžić.²⁵²⁶ [REDACTED].²⁵²⁷ By autumn 1993, members of the Tajfun group were arrested “due to their links with Serbia” as part of “cleaning taking place at Karadžić’s Staff”.²⁵²⁸ by February 1994, it was clear that, within the RS, distrust had become endemic. Mladić suspected Stanišić of “call[ing] the shots” through Tajfun.²⁵²⁹ [REDACTED]. [REDACTED].²⁵³⁰ [REDACTED]. [REDACTED]²⁵³¹—[REDACTED].²⁵³² [REDACTED].²⁵³³ In 1996, Tomo Kovač stated that Tajfun was “not under the control of either the police or the [VRS]” and that “General Mladić had ample reason to settle scores with that secret service” members of which “held key posts in Banjaluka.”²⁵³⁴ In sum, despite the rhetoric at the 15 March 1994 meeting, the reality on the ground was markedly different.

C. THE RELATIONSHIP BETWEEN THE SERBIAN GOVERNMENT AND THE RS/RSK FURTHER STRAINED WHEN SERBIA BEGAN AGGRESSIVELY PROMOTING AN END TO THE WAR

1123. On 5-6 May 1993, at the RS Assembly, Milošević gave a speech stating that “the war needs to stop as soon as possible...it needs to stop now”.²⁵³⁵ The Bosnian Serbs rejected Milošević’s supplication, leading to a distinct cooling between the governments.

1124. In 2 June 1993, Milošević argued at the SDC for the “peace option in Bosnia”, noting the inability of the FRY to continue providing financial assistance to the Bosnian Serbs.²⁵³⁶ According to Mladić, on 8 July 1993, Milošević discussed breaking ties between the VRS and the VJ,²⁵³⁷ as well as proposing that the Bosnian Serbs offer peace options to the Muslims.²⁵³⁸

²⁵²⁵ [REDACTED].

²⁵²⁶ D1004, pp.1,3.

²⁵²⁷ [REDACTED].

²⁵²⁸ D995, p.2.

²⁵²⁹ P2548, p.114.

²⁵³⁰ [REDACTED].

²⁵³¹ [REDACTED].

²⁵³² [REDACTED].

²⁵³³ [REDACTED].

²⁵³⁴ D986, p.10.

²⁵³⁵ P3116, p.2.

²⁵³⁶ D1434, p.17.

²⁵³⁷ P2530, p.1.

²⁵³⁸ P2530, p.4

In a 1 October 1993 entry, Mladić writes “Serbia and the FRY will not enter the war for our sake”.²⁵³⁹

1125. As discussed above, Milošević expressed similar sentiments during the 8 November 1993 meeting, noting that the VRS should “not attack the Muslims with the Army anywhere except where they attack first”.²⁵⁴⁰ He further stated that the RSK should be *defended* “with the help of the RS and FRY”.²⁵⁴¹ Finally, he also suggested ending the war as soon as possible, including trying to organise a Serbian-Muslim meeting in Thessalonica.²⁵⁴²

1126. At a 4 August 1994 meeting, the FRY leadership thought that the FRY had done all it could do “to talk some sense into RS to accept the [peace] plan”.²⁵⁴³ The army was instructed to “refuse obedience to the RS leadership”.²⁵⁴⁴ [REDACTED].²⁵⁴⁵

1127. When asked about the relationship between Serbia and the RS, Sir Ivor Roberts, the United Kingdom Ambassador in Belgrade from March 1994 until 1998,²⁵⁴⁶ stated that “[i]t was certainly strained by the late summer of that year [1994]”.²⁵⁴⁷ The Contact Group was encouraging a formal break with the Bosnian Serbs, which eventually happened.²⁵⁴⁸ In August 1994, Milošević accepted the Contact Group Plan, consistently supported it, formally severed relations with the Bosnian Serbs, and became part of the solution, not the problem, according to Sir Roberts.²⁵⁴⁹

1128. Later meetings on 30 August 1994, 20 September 1994, 7 October 1994, 8 May 1995, 23 August 1995, 25 August 1995 and 22-23 October 1995 reinforced Serbian/FRY support for peace,²⁵⁵⁰ and Milošević’s frustration with the Bosnian Serb desire to keep fighting.²⁵⁵¹ Milošević thought the Bosnian Serbs were focused more on the “complete defeat” of the Muslims,²⁵⁵² than on obtaining peace and an independent state.²⁵⁵³ He further characterised

²⁵³⁹ D1465, p.5

²⁵⁴⁰ P2531, p.3.

²⁵⁴¹ P2531, p.3.

²⁵⁴² P2531, pp.6-7.

²⁵⁴³ D1467, p.25.

²⁵⁴⁴ D1467, p.26.

²⁵⁴⁵ [REDACTED].

²⁵⁴⁶ Roberts, T.18566; Roberts, D779, para.3.

²⁵⁴⁷ Roberts, T.18612.

²⁵⁴⁸ Roberts, T.18612-18613.

²⁵⁴⁹ Roberts, D779, para.6.

²⁵⁵⁰ [REDACTED]; D1468, pp.4-5; D460, pp.4-5; P394, p.6; D1447, pp.6-7; D1448, p.1; P969, pp.11,18.

²⁵⁵¹ Roberts, T.18571-18572; [REDACTED]; D1468, pp.4-6; P2536, p.5.

²⁵⁵² D1468, pp.4-6.

their actions as “complete madness”.²⁵⁵⁴ On 8 May 1995, Milošević discussed the stage of the peace negotiations with Mladić and others, but noted, “I don’t think Radovan will accept; he is a bad history student and he’s in a poetic fervour”.²⁵⁵⁵

1129. The rejection of the peace plan led the Serbian Government to close the border, welcome the arrival of international observers, and the lifting of some minor sanctions against the FRY.²⁵⁵⁶

1130. According to Karadžić, things deteriorated after the withdrawal of Serbian support to the RS.²⁵⁵⁷ He discussed in a meeting where, after agreeing to a ceasefire in Geneva, the Bosnian Serbs were told by the Americans that they could not take certain territory around Sarajevo or they would be bombed.²⁵⁵⁸ He further stated that “[a]nd of course, under pressure from Milošević...we had to withdraw”.²⁵⁵⁹ Another RSK Assembly member noted that the lack of logistical supply was the reason the Bosnian Serbs had failed to implement the six strategic objectives.²⁵⁶⁰

1131. Regarding the RSK, on 2 May 1995, a phone intercept showed that Milošević convinced Martić to negotiate for peace.²⁵⁶¹ Stanišić also fought with Martić, who was “blinded by conflict” and wanted secession.²⁵⁶²

1132. Other international actors besides the Contact Group took notice of the Serbian Government’s position. UNPROFOR believed that Milošević “spearheaded” the peace option,²⁵⁶³ and was otherwise cooperating with border enforcement,²⁵⁶⁴ even after NATO bombings began.²⁵⁶⁵

²⁵⁵³ D1468, pp.4-6; D1446, pp. 2-3.

²⁵⁵⁴ D1442, p.9.

²⁵⁵⁵ P394, p.6; *see also* D1448, p.6.

²⁵⁵⁶ Roberts, T.18572.

²⁵⁵⁷ P1320, p.331.

²⁵⁵⁸ P1320, p.335.

²⁵⁵⁹ P1320, p.335.

²⁵⁶⁰ P1320, p.22

²⁵⁶¹ P1607, p.3

²⁵⁶² P2536, p.17.

²⁵⁶³ P48.15, p.2.

²⁵⁶⁴ P48.15, p.2.

²⁵⁶⁵ D1491, pp.1-2.

1133. On 3 March 1995, Đukić reported during a meeting with the GŠ VRS that he met Stanišić in Belgrade, who stated that Milošević had told him “nothing can cross over any more”.²⁵⁶⁶ Eventually, the VRS began seeking supplies from other sources.²⁵⁶⁷

1134. On 25 August 1995, after a meeting at Dobanovci, it was agreed between the FRY and RS that there was “general agreement that peace is the only right option...”²⁵⁶⁸ On 28 August 1995, the RS Assembly sought the full normalisation of political and economic relations between the RS and FRY and decided to “put forward a united front before the international community”.²⁵⁶⁹ Other peace meetings were held in August and September 1995.²⁵⁷⁰

1135. On 15 September 1995, the GŠ of the VJ sent a letter to the FRY President urging the holding of an emergency meeting to consider, *inter alia*, a stoppage of offensive actions by Muslim and Croatian forces by “urgent diplomatic measures”, not fighting.²⁵⁷¹

1136. Ultimately, Milošević prevailed in his dogged pursuit to bring the war to an end. This was evident to Sir Roberts, who noted that by the time that the Dayton Accords were negotiated, Milošević had successfully coerced the Bosnian Serbs into ceding him their negotiating rights.²⁵⁷² This did not come easily.²⁵⁷³ At a 29 August 1995 meeting, Milošević requested that Karadžić sign the Contact Group plan for peace. An Agreement was then reached where Milošević had negotiating power on behalf of the Bosnian Serbs.²⁵⁷⁴ Negotiations then began.²⁵⁷⁵ According to Sir Roberts “it is fair to say that if the Bosnian Serbs had been able to exercise a veto, there would have been no agreement at Dayton”.²⁵⁷⁶

1137. On 8 September 1995, the RS was recognised by the international community. The FRY, as evidenced in a 28 November 1995 meeting, was firmly focused on implementation of the Peace Accord.²⁵⁷⁷

²⁵⁶⁶ P394, p.2.

²⁵⁶⁷ D1470, pp.3-4.

²⁵⁶⁸ D1448, p.13.

²⁵⁶⁹ D887, p.2.

²⁵⁷⁰ D1449, p.1; P2541, p.1.

²⁵⁷¹ D998, p.1.

²⁵⁷² Roberts, D779, para.7.

²⁵⁷³ See D1448.

²⁵⁷⁴ D1449, p.9.

²⁵⁷⁵ See e.g. P2541.

²⁵⁷⁶ Roberts, D779, para.7.

²⁵⁷⁷ P3047, p.4.

1138. As described by Roberts, by early 1995, Milošević had at best “some” influence in BiH.²⁵⁷⁸ In a 13 July 1995 SDC meeting, Perišić qualified Serbia’s influence in the RS as “small”.²⁵⁷⁹

D. THE SERBIAN GOVERNMENT, INCLUDING STANIŠIĆ, FOUND KARADŽIĆ AN OBSTACLE FOR PEACE AND ACTIVELY SOUGHT HIS REMOVAL

1139. According to a 16 July 1994 report, Milošević was trying hard to compel Karadžić to sign the Contact Group peace plan.²⁵⁸⁰ However, the latter refused to sign it without approval of the RS Assembly and the people (presumably through a plebiscite).²⁵⁸¹ As a consequence of his unwillingness to sign, the Serbs sought to try to have Karadžić retire, or even having Mladić taking over in a “kind of military coup”.²⁵⁸² [REDACTED].²⁵⁸³

1140. Eventually, Sir Roberts testified that, in summer 1996, when the international community demanded Karadžić’s resignation, he thought that Stanišić was dispatched to make clear to Karadžić that he must step down.²⁵⁸⁴

E. THE EFFORTS AND SUCCESS OF STANIŠIĆ FOR THE RELEASE OF THE UN PEACEKEEPERS AND FRENCH PILOTS WHICH WERE TAKEN HOSTAGE BY THE RS EXEMPLIFY THE LACK OF A COMMON CRIMINAL PLAN

1141. The UN Hostages rescue by Stanišić is covered in Part V and in Annex II of the Brief. However, it is also relevant to demonstrate the lack of a shared common purpose between the Serbian Government and the RS. [REDACTED]. [REDACTED].²⁵⁸⁵ The situation was similar in regards to the French pilots who had been taken hostage.²⁵⁸⁶

²⁵⁷⁸ Roberts, T.18623-18624.

²⁵⁷⁹ D1448, p.8.

²⁵⁸⁰ D993, p.3.

²⁵⁸¹ D993, p.3.

²⁵⁸² Roberts, T.18587; D1447, pp.6-7; *see also* Confidential Annex II.

²⁵⁸³ P2686.

²⁵⁸⁴ Roberts, T.18587; *see also* *Prosecutor v. Karadžić*, Case No. IT-95-5-I, Indictment, 24 July 1995, para.2.

²⁵⁸⁵ [REDACTED].

²⁵⁸⁶ *See* para.1258.

F. MILOŠEVIĆ'S ACTIONS IN PROMOTING PEACE BUT SUPPLYING THE VRS/SVK THROUGH THE VJ ARE NOT CRIMINAL

1142. An obvious counter to the argument that Milošević was legitimately pressing for peace to end the war was that he continued to authorise, through Perišić and the VJ, (a decreasing amount of) logistical assistance for the Bosnian Serbs. The Prosecution will argue that these actions show that his support for peace was illusory, and that his contribution to crimes continued.

1143. This anticipated Prosecution approach is seductive, but not based on legal principle or on the case being advanced concerning the alleged common purpose of the JCE.²⁵⁸⁷ Actions taken must contribute to the crimes and the common purpose of the JCE, as alleged in the Indictment. As discussed above, Milošević did not support the political plan for unification espoused by Martić and at times, the RS leadership. Their plan may have involved the (continuation of the) forcible removal of non-Serb civilians in an effort to create a Serb-dominated state; Milošević, if he ever had, no longer did.

1144. Instead, the evidence shows that Milošević and the SDC were authorising logistical support to the RSK and RS for two different but interrelated reasons. Firstly, Milošević had to implement a “carrot-and-stick” policy to bring the RS to the negotiating table. In 1994 and 1995, the Bosnian Serbs were desperate for military resources to maintain their frontlines. At the same time that the Bosnian Serbs were fighting, the Belgrade Serbs were looking to end the war, as described above. To serve these contradictory motivations, a *quid pro quo* was established between the FRY and the RS. On 9 December 1994, Milošević noted at an SDC meeting that Perišić would be permitted to equip the VRS “as soon as [he] persuade[s] Mladić to accept the [Contact Group] peace plan”.²⁵⁸⁸ This was reiterated at an 11 August 1995 SDC meeting.²⁵⁸⁹

1145. Secondly, Milošević assisted with sending arms to the VRS because of a legitimate fear that failing to do so would lead to the fall of the RS, precipitating a serious refugee crisis in Serbia. On 7 February 1994, Perišić stated that if “the two Krajinas are not defended, we

²⁵⁸⁷ Indictment, para.14; Prosecution Pre-Trial Brief, para.13.

²⁵⁸⁸ D1443, p.4.

²⁵⁸⁹ D1446, p.19.

will be significantly jeopardized. And they certainly can't be defended without our assistance in weapons and military equipment".²⁵⁹⁰

1146. Perišić discussed this at a 2 November 1994 SDC meeting. He stated that the Bosnian Serbs "will continue losing the territory to some extent, which will result in...mass emigration of civilians from Republika Srpska...and then soldiers..."²⁵⁹¹ He added that if the offensive continues, "the Serbs will really face a hopeless situation...In case of further unfavourable developments regarding FRY security, we will have to increase the measurements of BG /combat readiness/, as you have approved, and that will mean the engagement of more manpower and more means will be needed, the fuel too".²⁵⁹²

1147. [REDACTED].²⁵⁹³ [REDACTED],²⁵⁹⁴ [REDACTED]. It could have led to civil war in Serbia.

1148. The Bosnian Serbs' intransigence in ending the war made these aforementioned consequences more likely. Milošević's conundrum was obvious: providing logistical assistance and possibly continuing the war, but protecting his position and country from chaos, or not providing any assistance and allowing the RSK and RS to collapse. If it collapsed, military intervention by the VJ could likely be required to protect against these consequences, or at least to protect innocent civilians in RS territory. However, any military intervention into Bosnia would have undermined Milošević's negotiating position with the Contact Group, making the continuation of war more likely.

1149. Finally, Milošević and Perišić also knew that, if the Muslim/Croat coalition were successful in its combat activities, this change on the ground would have made it less likely that the Bosnian Serbs would have signed any peace agreement. Consequently, on 2 November 1994, it was decided that the Bosnian Serbs should be given logistical assistance from Perišić to ensure against this eventuality.²⁵⁹⁵ At that same meeting, Milošević made clear the reasons for which assistance should be given to the RS. He noted that the situation RS was moving away from peace, and added that "[t]he Peace Accord is still on the table, luckily! If

²⁵⁹⁰ D1439, p.11.

²⁵⁹¹ D1442, p.2.

²⁵⁹² D1442, pp.3-4.

²⁵⁹³ [REDACTED].

²⁵⁹⁴ [REDACTED].

²⁵⁹⁵ D1442, p.8

the map changes due to the significant combat activities of the Muslim-Croatian coalition, they will not accept that plan!”²⁵⁹⁶

1150. The Prosecution case that Milošević’s efforts for peace were deceptive is overly simplistic. Milošević did not intend to continue the war, as his overall conduct shows clearly. If Milošević did not intend to continue the war, he cannot have intended to further the crimes allegedly forming the common purpose. His actions show that he no longer had criminal intent.

G. ILL-GOTTEN GAINS AS A BASIS FOR AN INFERENCE OF CRIMINAL INTENT

1151. The Prosecution will fall back on the argument that Milošević’s effort to end the war through negotiations was done to concretize previously ill-gotten gains.²⁵⁹⁷ This is an argument that should be accorded little weight. At its core, it suggests that anyone who seeks to end a war that has brought illegitimate gains to the parties must intend any crimes committed at any subsequent time. Assessing criminal intent requires proof of concerted action in furtherance of crimes. The evidence does not support an inference that by 1994 Milošević was acting in concert with the RS leadership in furtherance of their territorial ambitions, let alone that he approved of their intention to achieve them through continuing the war.

1152. Conversely, Milošević was trying to encourage the Bosnian Serbs to give land back, not keep their ill-gotten gains. At several points in 1993-1994, Milošević argued with the Bosnian Serbs to give up land, contending to Mladić that “Ratko, you must understand, a 50%-50% division is fair”²⁵⁹⁸ This was also expressed at a 26 July 1994 meeting with Mladić, where it was discussed that the peace plan required the Bosnian Serbs to go from 70% down to 49% of the territory.²⁵⁹⁹ He further stated that the RS leadership was greedy, not being satisfied with 50% of the land, and willing to kill many more people for the sake of a few extra percent.²⁶⁰⁰ On 8 May 1995, during a meeting with Mladić, Milošević told him “[y]ou cannot keep 70% of the territory”.²⁶⁰¹

²⁵⁹⁶ D1442, p.5.

²⁵⁹⁷ See e.g. T.18615.

²⁵⁹⁸ D4168, p.7.

²⁵⁹⁹ D1467, p.22.

²⁶⁰⁰ D753, p.105.

²⁶⁰¹ P394, p.5; see also D1467, p.25.

1153. Sir Roberts noted that Belgrade and Pale were in conflict partly due to this land division dispute. Milošević considered that the Peace Plan (proposing “49:51” [49% for the Bosnian Serbs, 51% for the Croats/Muslims]) was eminently reasonable and this percentage split non-negotiable: “[h]e wasn’t going to be supporting them politically and he certainly wasn’t going to be supporting them anymore militarily”.²⁶⁰² As recognised by all involved (except the Bosnian Serb leaders), this was fair since, although the Bosnian Serbs made up only 31% of the population,²⁶⁰³ they had traditionally possessed more land to suit their agrarian lifestyle. Bosnian Muslims were traditionally more likely to be city dwellers.²⁶⁰⁴

1154. Finally, it should be noted that the Dayton Peace accords allowed for the right of return. Milošević was not trying to ensure that ill-gotten gains were preserved; instead, he was promoting a peace plan that would end the war. It was the only peace agreement on the table and the only real prospect of ending the crimes and the suffering. It would have left the Bosnian Serbs in a position that was not so different to that prior to the war.

1155. This section does not endeavour to change history’s perception of Milošević or excuse him for previous crimes. He was no democrat or peacemaker by instinct. However, he had sought a pragmatic end, for a variety of motives. He worked cooperatively with the international community to achieve peace.²⁶⁰⁵ It is simplistic at best, a misuse of international criminal law at worst, to criminalise such efforts in order to maintain the fiction of the continuation of a JCE.

²⁶⁰² Roberts, T.18616.

²⁶⁰³ P3047, p.5.

²⁶⁰⁴ Roberts, T.18621.

²⁶⁰⁵ Roberts, T.18596-18597.

SECTION VIII. TRNOVO

I. PROSECUTION CASE

1156. The Prosecution alleges that Stanišić provided assistance to special units of the Serbian DB, including the Scorpions, who were involved in the commission of crimes in Trnovo,²⁶⁰⁶ including the execution of six Muslim men and boys in July 1995.²⁶⁰⁷

II. DEFENCE CASE

A. INCONSISTENT NOTICE

1157. In the indictment, the Prosecution alleges that Stanišić *ordered* the Scorpions to deploy from their base in Đeletovci to Trnovo.²⁶⁰⁸ However, in its Pre-Trial brief, it alleges that Stojičić (aka Badža) convened a meeting where it was “decided” (*i.e.* ordered) that units including the Scorpions should go to RS to participate in joint military operations with the VRS in the Trnovo area.²⁶⁰⁹

1158. While the Indictment clearly presents a situation where Stanišić appears to have deployed the Scorpions on his own (or having played a principal role in this decision),²⁶¹⁰ the Pre-Trial Brief indicates he had no role to play.²⁶¹¹

1159. The Prosecution has not shown Stanišić to be linked in any way to the preparatory moves to deploy the Scorpions. Taking the evidence at its highest, the evidence establishes that Kojić was part of the arrangements. However, there was no notice provided alleging that Kojić was acting at the behest of the first Accused or any other JCE member. This allegation should be dismissed.

²⁶⁰⁶ Indictment, paras 4,60-61.

²⁶⁰⁷ Indictment, para.61.

²⁶⁰⁸ Indictment, para.60.

²⁶⁰⁹ Prosecution Pre-trial Brief, para.164.

²⁶¹⁰ Indictment, para.60.

²⁶¹¹ Pre-Trial Brief, paras 164-165.

B. NEITHER STANIŠIĆ NOR THE SERBIAN DB HAD ANY ROLE IN TRNOVO

1. The Trnovo Operation was Unrelated to the Common Purpose of the Alleged JCE

1160. To the extent that crimes are proved, it has not been shown that these were committed in furtherance of the common purpose, as the Trnovo operations were defensive in nature to defend against the Croatian-Muslim offense.²⁶¹²

1161. Regarding the killing of the 10 men, the Prosecution asserts that killings were ordered by Karadžić sometime after 12 July 1995 and related to the massacre in Srebrenica.²⁶¹³ This has nothing to do with Stanišić or the purpose of the Trnovo operations. As the evidence shows, the units sent by Badža were in Trnovo for military purposes. The killing of the 10 men had nothing to do with these operations and were instead acts of violence ordered by Mladić and Karadžić.

2. Badža was Responsible for the Deployment of Men to the Trnovo Area, not Stanišić

1162. The Scorpions unit were sent to Trnovo on or around 27 June 1995.²⁶¹⁴ [REDACTED]. [REDACTED].²⁶¹⁵ The evidence appears to indicate that Badža played a coordinating role for Serbia and the RS in this general mobilisation of men.

1163. The Serbian Government's decision, through Badža, to mobilise paramilitaries and RSK police battalions appears to have been a pragmatic one. As argued above, the fall of the RS was an event with a potential for causing a humanitarian crisis, as well as a change in the facts on the ground, which would have hindered the on-going peace negotiations.²⁶¹⁶

a. Badža Planning Meeting for the Deployment of Men to the Trnovo Area

1164. [REDACTED].²⁶¹⁷ [REDACTED].²⁶¹⁸ [REDACTED].²⁶¹⁹ [REDACTED].²⁶²⁰ [REDACTED].²⁶²¹ There is no evidence that the RS or Badža turned to Stanišić for assistance.

²⁶¹² J[REDACTED]; Gagić, T.17226; P1469; P1575, p.409; D660, p.1.

²⁶¹³ Prosecution Pre-Trial Brief, para. 166.

²⁶¹⁴ P1450, p.2.

²⁶¹⁵ [REDACTED](emphasis added).

²⁶¹⁶ See paras 1146-1150.

²⁶¹⁷ [REDACTED].

1165. [REDACTED].²⁶²² [REDACTED].²⁶²³ [REDACTED].²⁶²⁴ There is no evidence that allows an inference that Kojić went because he was employed by the Serbian DB, or because of any alleged subordination to Stanišić.

1166. [REDACTED].²⁶²⁵ [REDACTED]. It is highly significant, that Badža, not Stanišić, was the Deputy Minister of Interior.²⁶²⁶ [REDACTED].²⁶²⁷

1167. Other Prosecution and Defence witnesses corroborated the content of the meeting and confirmed that Stanišić did not participate. Borislav Pelević, who was a Serbian Guard Volunteer,²⁶²⁸ [REDACTED].²⁶²⁹ Badža stated that he was asked by Karadžić to help the RS.²⁶³⁰ Later that day, Karadžić called Arkan and asked for some of his men to be sent to Trnovo and placed under the command of Dragomir Milošević, a commander in the VRS.²⁶³¹

1168. The MUP units deployed were from the RSK. [REDACTED].²⁶³² The principal collaboration was therefore between the Serbian MUP and the SVK, not the Serbian DB. This can be seen from the confusion in the way in which the groups were interchangeably labelled during the events as either RSK MUP or RS MUP.²⁶³³

1169. Gagić noted that, in his role as chief of service for the detection of war crimes in the Serbian MUP, he arrested the men suspected for the Trnovo killings.²⁶³⁴ During the investigation, none of the suspects alleged that the Scorpions were under the command of the

²⁶¹⁸ [REDACTED].

²⁶¹⁹ [REDACTED].

²⁶²⁰ [REDACTED].

²⁶²¹ [REDACTED].

²⁶²² [REDACTED].

²⁶²³ [REDACTED].

²⁶²⁴ [REDACTED].

²⁶²⁵ [REDACTED].

²⁶²⁶ P1056; [REDACTED]

²⁶²⁷ [REDACTED].

²⁶²⁸ Pelević, T.16321.

²⁶²⁹ [REDACTED].

²⁶³⁰ Pelević, T.16422-16423.

²⁶³¹ Pelević, T.16423.

²⁶³² [REDACTED].

²⁶³³ P1450; P1458; P1459.

²⁶³⁴ Gagić, T.17218-17220.

Serbian DB²⁶³⁵ or even the Serbian MUP.²⁶³⁶ Gagić had also reached the same conclusion, when reviewing the evidence of that trial.²⁶³⁷

i. The Deployment did Not Involve Stanišić

1170. [REDACTED].²⁶³⁸ It is unclear what happened to these men, as the evidence shows that the three groups that eventually departed – one from Erdut (the *Plavi*), a detachment of Arkan's Tigers (*Kajman*) and the Scorpions – did not include men from the Vukovar SUP. It is also important to note that none of the men recruited by Kojić were referred to as Red Berets.

1171. [REDACTED].²⁶³⁹ [REDACTED].²⁶⁴⁰ [REDACTED].²⁶⁴¹ [REDACTED].²⁶⁴²

1172. [REDACTED]. [REDACTED].²⁶⁴³ [REDACTED].²⁶⁴⁴

1173. [REDACTED].²⁶⁴⁵ [REDACTED].²⁶⁴⁶ Finally, even if the Trial Chamber finds that Simatović facilitated the deployment of Arkan's men, there is no evidence that Simatović was acting at the behest of Stanišić to facilitate the deployment of these men.

3. Stanišić's and the Serbian DB's alleged Role in the Deployment of Serb Forces to the RS

a. The Serbian DB did Not Escort the Scorpions through Serbia after they were Deployed to BiH

1174. The Prosecution alleges that the DB escorted the Scorpions through Serbia and into Bosnia, from where they travelled to Trnovo.²⁶⁴⁷ The evidence is not capable of supporting an inference that escorting or assisting in the escort of the Scorpions, or any other militarised unit through the Serbian territory was in furtherance of crime. Such conduct, especially in view of

²⁶³⁵ Gagić, T.17221.

²⁶³⁶ Gagić, T.17221-17222.

²⁶³⁷ Gagić, T.17221-17222.

²⁶³⁸ [REDACTED].

²⁶³⁹ [REDACTED].

²⁶⁴⁰ [REDACTED].

²⁶⁴¹ [REDACTED].

²⁶⁴² [REDACTED].

²⁶⁴³ [REDACTED].

²⁶⁴⁴ [REDACTED].

²⁶⁴⁵ [REDACTED].

²⁶⁴⁶ See Confidential Annex III-B.

²⁶⁴⁷ Prosecution Pre-Trial Brief, para. 165.

the Serbian DB's mandate,²⁶⁴⁸ is equally consistent with ensuring that these armed units travel through the territory of Serbia without incident.

b. The Scorpions and Arkan's Men were not Reserve Forces of the JATD during the Indictment Period

1175. [REDACTED]. [REDACTED].²⁶⁴⁹

4. Stanišić's Alleged Coordination of the Financing, Training, or Provision of Logistical Support to the Scorpions Before or During Trnovo Operation

1176. There has been no reliable evidence that Stanišić had any relationship with the Scorpions at any time during the indictment period. In paragraphs 1031, 1076-1091, the Defence has demonstrated that there was no fiduciary, supply or command and control relationship.

1177. It has been agreed between the parties that the Scorpions who perpetrated the killings were not on Serbian DB payment lists.²⁶⁵⁰

1178. During the Trnovo operations, there is similarly no evidence that Stanišić had any role to play in preparing, organising or financing the Scorpions. Stoparić claimed that the DB paid him as a reservist. When challenged on cross-examination, however, he stated that since he was told that he was a reservist, he "suppose[d] that we were being paid by the DB".²⁶⁵¹

1179. [REDACTED].²⁶⁵² [REDACTED]²⁶⁵³ [REDACTED].²⁶⁵⁴

1180. [REDACTED].²⁶⁵⁵ However, he stated that he only saw them supplied one time and he was not certain that the crates they were loading from the camp contained ammunition.²⁶⁵⁶ DST-40 testified that the Scorpions were never present at the Pajžos camp in 1995.²⁶⁵⁷ It would make little sense for a well-resourced Unit, acting within the framework of the 11th Corps, to be seeking supplies from Pajzoš.

²⁶⁴⁸ See Part I, Section II.

²⁶⁴⁹ [REDACTED].

²⁶⁵⁰ T.10463.

²⁶⁵¹ Stoparić, T.10480; Annex III-E.

²⁶⁵² [REDACTED].

²⁶⁵³ [REDACTED].

²⁶⁵⁴ [REDACTED].

²⁶⁵⁵ [REDACTED].

²⁶⁵⁶ JF-48, T.5722-5723, 5807.

²⁶⁵⁷ DST-40, D409, para.56 (PPCE).

1181. [REDACTED].²⁶⁵⁸ The RSK Ministry of Defence in Erdut provided substantial fuel assistance.²⁶⁵⁹ [REDACTED].²⁶⁶⁰ [REDACTED].²⁶⁶¹

1182. The combat reports further show that an 11th Corps staff commanded the Scorpions. As discussed in paragraphs 1083-1091, they were part of the SVK's regularly rotating troop deployments, having been part of previous deployments throughout 1994, including Pauk.

5. Stanišić's alleged Direction of the Deployment of Scorpions or other Serb Forces to the Trnovo Area in June 1995 and Contact with them Once Deployed

1183. The Prosecution proffers a number of combat reports from the Trnovo front between June-July 1995 as evidence that the Serbian DB was involved in combat in the Trnovo area.²⁶⁶² None mention the Serbian DB. Consistent with Badža's involvement, they refer to the Serbian MUP. The combat reports are not copied to Stanišić.

1184. During the Trnovo operation, the Scorpions had contact with the VRS and Arkan's men. [REDACTED].²⁶⁶³ [REDACTED]. [REDACTED]²⁶⁶⁴

1185. Stoparić provided anecdotal evidence that, during the fighting in the Trnovo area in June-July 1995, a Bosnian Muslim was killed. He lied about that as he did about Simatović's involvement.²⁶⁶⁵ The Presiding Judge questioned him about his inconsistent evidence.²⁶⁶⁶ After Stoparić explained that it was difficult to memorise his statement, the Presiding Judge admonished Stoparić that he need not memorise anything in a statement.²⁶⁶⁷ A sensible intervention since *memories* of events need not be *memorised*. If one notes the need to memorise that statement, they are lying.

a. Mijović was not the Commander of the Trnovo Operation

1186. There was evidence presented that Mijović, from the Serbian JATD, was the commander in Trnovo and had command and control over the Scorpions.

²⁶⁵⁸ [REDACTED].

²⁶⁵⁹ D1538.

²⁶⁶⁰ [REDACTED].

²⁶⁶¹ [REDACTED].

²⁶⁶² See e.g. P1450, P1453, P1459, P1466, P1469, P1470, P1473, P1472.

²⁶⁶³ [REDACTED].

²⁶⁶⁴ [REDACTED].

²⁶⁶⁵ Stoparić, P1702, paras 103-104; T.10512-10515; T.10520-10522.

²⁶⁶⁶ Stoparić, T.10516-10517; T.10521-10522.

²⁶⁶⁷ Stoparić, T.10522.

i. Documentary Evidence

1187. Although the Prosecution will rely heavily on P1084 to attempt to demonstrate Mijović's command, the case that Mijović was in command of the Scorpions is almost exclusively based on Prosecuting Counsel's submissions. It was discussed by Theunens, but not in relation to command authority over the Scorpions.²⁶⁶⁸

1188. The document does not show such a connection. Mijović was ordered to "pull back" from a zone of combat operations.²⁶⁶⁹ It is not indicated who issued the order or why the order was issued.

1189. [REDACTED].²⁶⁷⁰

1190. P1084 is a document that otherwise lacks indicia of reliability. First, the lack of detail is somewhat strange, especially when considered alongside the lack of corroboration for that which it supposed to show. It is one in a series of 95, while the other 94 have mysteriously gone missing. The full extent of its unreliability is exposed by the witness testimony, as discussed below.

ii. Witness Evidence

1191. [REDACTED].²⁶⁷¹ Prosecution witnesses, including JF-24,²⁶⁷² Stoparić,²⁶⁷³ and [REDACTED] dispute this version of events. [REDACTED].²⁶⁷⁴ [REDACTED].²⁶⁷⁵

1192. [REDACTED].²⁶⁷⁶ [REDACTED].²⁶⁷⁷ [REDACTED],²⁶⁷⁸ [REDACTED].

1193. [REDACTED].²⁶⁷⁹ [REDACTED].²⁶⁸⁰ [REDACTED].²⁶⁸¹

1194. [REDACTED]. [REDACTED]. [REDACTED].²⁶⁸²

²⁶⁶⁸ "I've also seen a document, P1084, that's from July 1995, that identifies him as the commander of the JATD of the Republic of Serbia." See Theunens, T.8669.

²⁶⁶⁹ P1084.

²⁶⁷⁰ [REDACTED].

²⁶⁷¹ [REDACTED].

²⁶⁷² [REDACTED].

²⁶⁷³ Stoparić, T.10516.

²⁶⁷⁴ [REDACTED].

²⁶⁷⁵ [REDACTED].

²⁶⁷⁶ [REDACTED].

²⁶⁷⁷ [REDACTED].

²⁶⁷⁸ [REDACTED].

²⁶⁷⁹ [REDACTED].

²⁶⁸⁰ [REDACTED].

²⁶⁸¹ [REDACTED].

1195. His evidence cannot alone, or with P1084, amount to meaningful evidence, let alone when considered alongside the fact that no one else, not even the Scorpions themselves, appear to have been aware of Mijović's role.

1196. The evidence undermines the suggestion that Mijović was the commander. [REDACTED].²⁶⁸³ [REDACTED].²⁶⁸⁴ [REDACTED].²⁶⁸⁵ [REDACTED].²⁶⁸⁶

1197. [REDACTED]. [REDACTED]. This was the situation prior to 1995 and nothing suggests this would have been different during the Trnovo operation itself.²⁶⁸⁷

²⁶⁸² [REDACTED].

²⁶⁸³ [REDACTED].

²⁶⁸⁴ [REDACTED].

²⁶⁸⁵ [REDACTED].

²⁶⁸⁶ [REDACTED].

²⁶⁸⁷ Paras 1081-1092.

SECTION IX. SANSKI MOST

I. PROSECUTION CASE

1198. The Prosecution contends that, in September 1995, the Banja Luka operation started and “encompassed Sanski Most, Mrkonjić Grad, Ključ and Prijedor”.²⁶⁸⁸ It was a coordinated operation involving the Serbian MUP, Arkan’s Tigers, VRS and RS MUP to prevent the fall of Banja Luka and secure the corridor between the RSK and Serbia from advancing BiH troops.²⁶⁸⁹ It further alleges that about 30 Muslim men were imprisoned and two men died from severe beatings.²⁶⁹⁰ Arkan’s men also executed many non-Serb men²⁶⁹¹ and expelled others.²⁶⁹²

II. DEFENCE RESPONSE: STANIŠIĆ DID NOT SEND ARKAN TO SANSKI MOST: “ARKAN EMBEDDED HIMSELF THERE”²⁶⁹³

A. THE BANJA LUKA OPERATIONS WERE NOT IN FURTHERANCE OF THE COMMON PURPOSE OF THE JCE

1199. Despite the crimes that were undoubtedly committed in 1992 when the majority of the population left or were expelled, the Bosnian Serb operations in 1995 were focused on defending the region. No doubt the Prosecution will argue that this was in defence of their ill-gotten gains, but this reduction of a complex factual and legal situation ought to be resisted. A criminal enterprise may be extant, but this does not deprive the civilians under the JCE leadership’s governance the right to military defence. It also does not deprive any defensive action in pursuance thereof of its propriety under international law.

1200. As noted in the Prosecution’s Pre-Trial Brief, the actions were defensive in nature, taken “to prevent the fall of Banja Luka”.²⁶⁹⁴ This is a correct starting point for consideration

²⁶⁸⁸ Prosecution Pre-Trial Brief, para.168.

²⁶⁸⁹ *Ibid*, para. 168.

²⁶⁹⁰ *Ibid*, para. 170.

²⁶⁹¹ Indictment, paras 56-57; *see also* Prosecution Pre-Trial Brief, paras 171-172.

²⁶⁹² Prosecution Pre-Trial Brief, para.173.

²⁶⁹³ P2545, commented upon by JF-57 in P1620, p.4, entry 21 (US). The Defence requested CLSS for a revised translation of the entry dated 30 September 1995 Mladić Notebooks (previously exhibited as P1628 MNA, currently P2545) and the amendment was made in the exhibit, replacing “Arkan is embedded there” by “Arkan embedded himself there”. *Prosecutor v. Stanišić & Simatović*, Case No.IT-03-69-T, Internal Memorandum from the Head of ETU regarding a request for verification of the English Translation of Exhibit P1628, 24 November 2011.

²⁶⁹⁴ Prosecution Pre-Trial Brief, para.168.

of the Accused's criminal responsibility, if any, for the crimes committed in Banja Luka by Arkan's men or the Bosnian Serb forces. Even if the principal submissions concerning the "Belgrade" Serbs' lack of concerted action from early 1994 onwards are found to be lacking,²⁶⁹⁵ it is also the starting point for the consideration of whether the Serbian leadership's role, including the Accused, if found, might be considered to be intended in furtherance of crime.

1201. On 26 March 2012, during the cross-examination of Sir Ivor Roberts by the Prosecution, a question was put to the witness that highlighted the obvious: that "ethnic cleansing...had already taken place in Bosnia" by 1995.²⁶⁹⁶ The Defence submit that this was no *lapsus linguae*, although it was artfully explained away as such by skilful counsel. It was a reasonable view of the evidence and ICTY judgements.²⁶⁹⁷ The criminal purpose: "to forcibly and permanently removing the majority of non-Serbs from large areas of Croatia and BiH, through the commission of ... crimes"²⁶⁹⁸ had in fact been achieved many years prior to 1995.

1202. Given this passage of time, and the fact that the Bosnian Serb leadership – along with the civilians under their control - were trying to prevent themselves being expelled from the region, a strong presumption exists that any concerted actions in furtherance of this, must have been devoid of criminal intent. Of course, this might simplistically be described as trying to protect territory (that had been gained through the commission of crimes) but this is different from *further* action to forcibly and permanently remove the majority of non-Serbs from Banja Luka.

1203. The Accused must be judged on actions in 1995, not crimes that had been committed in 1992. Criminal intent does not exist in a vacuum; it must be evidenced from proximate conduct. International humanitarian law must maximise the protection of civilians. The alternative proposition urged on the Chamber fails in that endeavour. It supposes that any action by wronged parties must be lawful and those who have previously been responsible for crimes can never be right. It is an illegitimate encouragement to shape international criminal law to provide a *tu quoque* defence to vengeful sides to the conflict, allowing them to act knowing that international law always remains on their side.

²⁶⁹⁵ Paras 1098-1156.

²⁶⁹⁶ Roberts, T.18619.

²⁶⁹⁷ See e.g. First Decision on Adjudicated Facts (Prosecution), Facts 530-532 (Bosnia); Second Decision on Adjudicated Facts (Prosecution), Facts 208-209 (Croatia); see also Krajišnik Trial Judgement, para. 1076.

²⁶⁹⁸ Indictment, para.14.

1. Defensive Objectives

1204. Attacks launched by Bosnian Muslims and Croatians against the Bosnian Serbs to the west of Banja Luka were threatening to reach the city,²⁶⁹⁹ precipitating a massive refugee crisis.²⁷⁰⁰ On 14 August 1995, it was noted at the SDC that there were 250,000 refugees as a result of the Croatian aggression.²⁷⁰¹ This had already happened in the RSK where, by 22 September 1995, in the zone of the 2nd Krajina Corps there was no remaining Serbian population.²⁷⁰² In fact, certain municipalities had already moved out its population, such as Šipovo, Jajce, and Petrovac.²⁷⁰³ On this basis, a defensive operation to hold the city commenced. JF-57 and B-215 agreed that the operation was defensive in nature.²⁷⁰⁴ In particular, the 5th Corps of the BiH army was advancing towards Banja Luka.²⁷⁰⁵ Its reputation as a brutal, well-equipped unit preceded it, even employing Mujahedeen fighting a holy war.²⁷⁰⁶

1205. On 15 September 1995, the GS of the FRY wrote to the FRY President and urged that the Serb forces “[s]top further offensive actions of Muslim and Croatian forces by urgent diplomatic measures through influential international entities”.²⁷⁰⁷ Further, it stated that action be taken by RS state and military organs to stabilise the front and prevent “further withdrawal of the population from that area”.²⁷⁰⁸ It also noted that urgent action must be taken because the security of the FRY was threatened by the potential influx of refugees and armed personnel.²⁷⁰⁹

1206. At a 10 October 1995 briefing of the commanders on the situation at the front, RS MUP head Toma Kovač indicated that the FRY was not providing assistance and insisted that it be publicly requested from FRY as the Bosnian Serbs “will be massacred” by the Bosnian Muslims and Croatian forces.²⁷¹⁰ Killings by Bosnian Muslim forces, for example, had already

²⁶⁹⁹ See e.g. D1537.

²⁷⁰⁰ D1535; D1536; D1537.

²⁷⁰¹ D1446, p.6.

²⁷⁰² P2543, p.4.

²⁷⁰³ P2543, p.4.

²⁷⁰⁴ [REDACTED]; T.2158; Kovačević, P51, para.118.

²⁷⁰⁵ *Ibid.*

²⁷⁰⁶ See para.1007.

²⁷⁰⁷ D998, p.1.

²⁷⁰⁸ D998, p.1.

²⁷⁰⁹ D998, pp.1-2.

²⁷¹⁰ D1469, pp.15-16.

taken place in Topusko by 7 August 1995.²⁷¹¹ [REDACTED].²⁷¹² [REDACTED].²⁷¹³ This was necessary when one considers the number of civilians who had been killed in Sanski Most as refugees or as the Muslim/Croat army entered the municipality in October 1995.²⁷¹⁴

1207. Even if the Trial Chamber finds that other Serb Forces engaged in actions in furtherance of the common purpose, the Serbian MUP deployed police officers to conduct crime prevention tasks in Banja Luka did not. Rather than being in pursuance of crime, it was to prevent crime against civilians of all ethnicities. JF-53 agreed, testifying that the responsibility of the Serbian police officers was not to participate in combat, but instead to act as police officers by controlling the towns, ensuring crime prevention, and crime detection.²⁷¹⁵ Other Prosecution exhibits and witnesses corroborate JF-53.²⁷¹⁶ When Serbian police officers participated in crimes, they appear to have been sent back to Serbia or otherwise punished.²⁷¹⁷

B. STANIŠIĆ'S ALLEGED ROLE IN SENDING MEN TO BANJA LUKA/SANSKI MOST

1. Stanišić did not Send Serbian MUP Officers

1208. Grekulović credibly testified that Stanišić played no role in sending Serbian MUP officers to Bosnia in September 1995. It is important to note that Grekulović never met Stanišić.²⁷¹⁸ He is currently a colonel and a senior member with the Serbian police²⁷¹⁹ [REDACTED]. [REDACTED].²⁷²⁰

1209. Regarding the decision to send the men to RS, Grekulović had no direct knowledge, but was told by Badža that it was a request from the RS Government.²⁷²¹ Ultimately, it was Badža and Sokolović's decision to send them.²⁷²² He knew this from attending an August 1995 meeting summoned by Badža.²⁷²³ It was agreed that a group of 400 men, led by Grekulović, would depart for the RS to provide policing assistance as the RS police forces

²⁷¹¹ P394, p.18.

²⁷¹² [REDACTED].

²⁷¹³ [REDACTED].

²⁷¹⁴ See P280, pp.1-4.

²⁷¹⁵ JF-53, T.10811.

²⁷¹⁶ P2546, p.1; B-215, P51, paras 120-121; P167, p.2; see also Grekulović, D522, para. 22.

²⁷¹⁷ B-215 P51, paras 120-121.

²⁷¹⁸ Grekulović, D522, para. 28.

²⁷¹⁹ Grekulović, D522, paras 2-3.

²⁷²⁰ [REDACTED].

²⁷²¹ Grekulović, D522, para. 6.

²⁷²² Grekulović, T.15251.

²⁷²³ Grekulović, D522, para. 6.

had been sent to participate in combat operations.²⁷²⁴ Further, extra policing assistance was necessary due to an influx of refugees to the area, the need to control armed VRS deserters who were potentially disruptive to the social order (done with in cooperation with the RS MUP),²⁷²⁵ and other quotidian security problems.²⁷²⁶ Badža, wanting to show that Serbia supported RS civilians, sent the Serbian police in their normal uniforms.²⁷²⁷ They did not participate in armed operations.²⁷²⁸

1210. They departed on approximately 3-4 September 1995.²⁷²⁹ Upon arrival, the Serbian MUP were subordinated to the RS MUP and its chief in Banja Luka, Brane Pećanac.²⁷³⁰ They reported to the local RS MUP and, on occasion, to the Serbian MUP in Belgrade.²⁷³¹ The Serbian MUP paid Grekulović.²⁷³² They possessed ordinary weapons and uniforms. No joint operations with the VRS were conducted with the men under Grekulović's command.²⁷³³

2. The Serbian DB, including Filipović, Played no Role in Events of Sanski Most and were not Deployed by Stanišić

1211. B-215, another policeman deployed to Banja Luka, stated his convoy was transported from Serbia to near Sanski Most by the Serbian DB.²⁷³⁴ He provides no particulars on the Serbian DB convoys, such as who was involved specifically in the transport or who ordered that the Serbian DB provide this type of assistance. The vagueness of this allegation prohibits it from being taken as credible.

a. Dragan Filipović was not Acting on Behalf of Stanišić in Sanski Most

1212. Grekulović stated that Filipović was in Banja Luka, but it was unclear upon whose order he came. His role on behalf of the Serbian MUP was to coordinate the activities of the Serbian MUP forces.²⁷³⁵ Further, Filipović was "probably" in contact with Pećanac and Kovač

²⁷²⁴ Grekulović, D522, paras 7 - 11.

²⁷²⁵ See e.g. Grekulović, D522, paras.10,17; D526, D529, D530, D531; D532; see also D1469, p.19, where Milovanović states "[T]he Serbian MUP has probably put the border under its control after Arkan was chased away". For coordination with the RS MUP, see DST-40, T.15264-15266.

²⁷²⁶ Grekulović, T.15215, 15219-15221; D522, para. 10.

²⁷²⁷ Grekulović, T.15215; D522, para. 9; B-215, P51, para. 116.

²⁷²⁸ Grekulović, T.15266-15267.

²⁷²⁹ Grekulović, D522, para.10.

²⁷³⁰ Grekulović, D522, para.17.

²⁷³¹ Grekulović, D522, para.17.

²⁷³² Grekulović, D522, para.21.

²⁷³³ Grekulović, D522, para.12.

²⁷³⁴ B-215, P51, para.116.

²⁷³⁵ Grekulović, D522, para. 18.

of the RS MUP, coordinating activities.²⁷³⁶ Grekulović would contact him if he needed something and possibly if anything had to be clarified with the use of the Serbian MUP units.²⁷³⁷ While Filipović was a member of the Serbian DB at the time, he was formerly a particularly capable commander of the first battalion of a special brigade in the MUP.²⁷³⁸ It appears he went to Sanski Most in this capacity.

1213. Dujović was a liaison officer between Grekulović and Filipović, at least part of the time because Grekulović did not have “permanent contacts” with Filipović.²⁷³⁹ Grekulović did not know with whom or how Filipović and Dujović communicated with in Belgrade,²⁷⁴⁰ but there is no evidence that it was Stanišić.

1214. Grekulović would speak to Filipović if the Serbian MUP police officers needed further logistical supplies such as food or cigarettes, or if they had queries about the use of those forces in crime prevention.²⁷⁴¹ This is the liaison role he played with Belgrade.²⁷⁴² Grekulović did not liaise with Dujović or Filipović regarding ammunition or weapons, as the Serbian MUP officers were not involved in combat activities.²⁷⁴³ Further, Grekulović relied upon the RS MUP for fuel.²⁷⁴⁴

b. Božović and other Alleged Serbian DB Members Present during the Operations

1215. The Prosecution allege that Božović was in charge on the DB side.²⁷⁴⁵ Other than evidence from the Mladić diaries (where Božović allegedly stated that “we would replace the RS police, and that they would go to forward defence line”²⁷⁴⁶), the evidence does not disclose what he did. In sum, his purported role, confirms the role of the Serbian MUP who came to replace the RS MUP police to ensure law and order.

²⁷³⁶ Grekulović, T.15255.

²⁷³⁷ Grekulović, T.15254.

²⁷³⁸ B-215, P51, para. 10.

²⁷³⁹ Grekulović, T.15233.

²⁷⁴⁰ Grekulović, T.15233-15235.

²⁷⁴¹ Grekulović, T.15233-15235; D522, para. 18.

²⁷⁴² Grekulović, T.15232.

²⁷⁴³ Grekulović, T.15234.

²⁷⁴⁴ Grekulović, T.15235.

²⁷⁴⁵ Prosecution Pre-Trial Brief, para. 168.

²⁷⁴⁶ P2546, p.1.

1216. Other members of the JATD were not present in the area of Sanski Most at the time, including Simatović.²⁷⁴⁷

C. SUPPLY OF MEN

1. Stanišić Alleged Involvement in the Sending of Arkan's Men

a. Neither Stanišić nor Simatović Sent Arkan to Sanski Most

1217. On 16 April 1994, Arkan wrote to Karadžić and offered the services of his men to fight with the Bosnian Serb forces.²⁷⁴⁸ The Prosecution's Pre-Trial Brief states that the Bosnian Serbs took advantage of this offer, alleging that in mid-September 1995, Arkan's Men arrived in Sanski Most at the request of Bosnian Serb leaders.²⁷⁴⁹ Arkan was allowed in the area at the request of Karadžić, who had authorised him to come to Banja Luka.²⁷⁵⁰ Arkan used this authority to bully and abuse VRS officers.²⁷⁵¹

1218. On 24 September 1995, Mladić wrote Karadžić and Kovač regarding the activity of Arkan's Tigers in the region of Sanski Most. He did not write Stanišić. He stated that they were not part of any combat activities, nor were they part of any VRS formation.²⁷⁵² Mladić noted the criminal activities of Arkan's men, including the forcible induction of VRS members in Arkan's unit and the promises members of the SDG made to those VRS members that the Serbian MUP will finance unemployment and health insurance if they were injured. Mladić noted that it was contrary to the RS laws on Defence and the military.²⁷⁵³ They also upset the population when it was discovered that Arkan killed certain Muslim citizens.²⁷⁵⁴ Mladić requested that Karadžić revoke Arkan's authorisation to be in RS and that the RS MUP take action against him, since he "identified himself as member of the MUP of Serbia and RS".²⁷⁵⁵ Ultimately, while Arkan's men were not immediately removed from the RS, they were eventually removed from their role at checkpoints.²⁷⁵⁶

²⁷⁴⁷ Grekulović, D522, paras 20, 25.

²⁷⁴⁸ D29; [REDACTED].

²⁷⁴⁹ Prosecution Pre-Trial Brief, paras 168,170.

²⁷⁵⁰ P289, p.2; *see also* B-215, T.2158 .

²⁷⁵¹ P289, p.2.

²⁷⁵² P289, p.2.

²⁷⁵³ P289, p.2.

²⁷⁵⁴ P289, p.2.

²⁷⁵⁵ P289, pp.2-3.

²⁷⁵⁶ Gregulović, T.15272.

1219. The Defence acknowledges that Milovanović noted that Karadžić denied sending Arkan. Nevertheless, Milovanović testified that he did not believe him.²⁷⁵⁷ Further, Karadžić presented Arkan with the Medal of Karadjordje Star of Republika Srpska in May 1996.²⁷⁵⁸ Further, Arkan's men received payments from the RS Government if they died during the war.²⁷⁵⁹ It is notable that this was no habitual commendation by Karadžić, as he never once inspected any of the VRS brigades.²⁷⁶⁰

i. Upon Arrival to the Sanski Most area, Arkan was Subordinated to the RS MUP

1220. B-215 stated "Arkan's units seemed to be acting independently".²⁷⁶¹ This may well have been correct to a certain extent; nonetheless, the weight of the evidence suggests that he was subordinated to the RS MUP.

1221. On 20 September 1995, Kovač, Deputy Minister of the RS MUP, issued an order based on a Decision by the RS President that, *inter alia*, "Željko Ražnatović" would be part of the Prijedor staff.²⁷⁶² On 22 September 1995, Mladić allegedly noted in one of his notebooks "300 Arkan's volunteers arrived and were put into the RS MUP, they were reportedly meant to be behind the lines and arrest all those who are fleeing from the front".²⁷⁶³ On 3 October 1995, Mladić wrote that Filipović indicated that "Arkan's men are operating under the control of Pećanac"²⁷⁶⁴ - who was from the chief of Banja Luka CJB.²⁷⁶⁵ On 12 October 1995, Karadžić authorised the actions of Arkan's Tigers, empowering them to "arrest all deserters and fugitives from the armed forces" of the RS. Importantly, he characterised their status as a "Special Unit of the Ministry of the Interior of Republika Srpska".²⁷⁶⁶

1222. Other Prosecution witnesses support the account that Arkan's men were subordinated to the RS MUP, including [REDACTED],²⁷⁶⁷ JF-64,²⁷⁶⁸ and Milovanović.²⁷⁶⁹ Grekulović concurred regarding Arkan's subordination to the RS MUP.²⁷⁷⁰

²⁷⁵⁷ Milovanović, T.15530; *see also* B-215, P53, para. 25.

²⁷⁵⁸ D669; *see also* B-215, P53, para. 25.

²⁷⁵⁹ *See e.g.* D663.

²⁷⁶⁰ Milovanović, T.15530.

²⁷⁶¹ B-215, P51, para. 117.

²⁷⁶² D140, p.1.

²⁷⁶³ P2543, p.5.

²⁷⁶⁴ P2546, p.1; *see also* P57.

²⁷⁶⁵ Grekulović, T.15217; P2563.

²⁷⁶⁶ D190; *see also* P2543, p.5.

²⁷⁶⁷ [REDACTED]

²⁷⁶⁸ JF-64, T.10862-10863.

1223. [REDACTED].²⁷⁷¹ [REDACTED].²⁷⁷² [REDACTED].²⁷⁷³

ii. *The Relationship between the Serbian MUP and Arkan's Men*

1224. Grekulović, who was in charge of all the Serbian MUP police officers during the events at Sanski Most,²⁷⁷⁴ stated that his officers and Arkan's men "did not carry out any tasks together with or in cooperation with the MUP of Serbia forces".²⁷⁷⁵ He attended no meetings with Arkan present.²⁷⁷⁶ None of the Serbian MUP officers at the checkpoints worked with Arkan's men at the checkpoints.²⁷⁷⁷ While JF-10 testified differently, there is no reason to find Grekulović's evidence lacking in credibility, in particular in view of the evidence clearly demonstrating that Arkan's men were subordinated to the RS MUP.

1225. While the Prosecution used P2948 and P3050 to attempt to demonstrate that the PJP units were fighting along with Arkan's men, Grekulović made clear that the PJP referenced in these two documents was from the RS MUP and not the Serbian MUP.²⁷⁷⁸

1226. B-215 corroborated much of Grekulović's account of the relationship between the Arkan's men and the Serbian MUP. He stated that Arkan's men were operating independently of anyone else present in the area and "had very poor cooperation with" the Serbian MUP units and their commanding officers who were present in the area²⁷⁷⁹ and did not coordinate activities with them.²⁷⁸⁰ He noted that they wore different uniforms with insignia different from the Serbian MUP, as well as grey or black berets.²⁷⁸¹

1227. In fact, B-215 stated that Serbian MUP men were brought in to attempt to retake stolen goods that had been looted by Arkan's men from Oštra Luka near Prijedor.²⁷⁸² The Serbian MUP commander ordered that Arkan return the stolen goods or the Serbian MUP would shoot

²⁷⁶⁹ Milovanović, T.15563; *see also* P1650, which demonstrates that Arkan's Men were subordinated to the RS MUP.

²⁷⁷⁰ Grekulović, D522, para. 24.

²⁷⁷¹ [REDACTED].

²⁷⁷² [REDACTED].

²⁷⁷³ *See* Confidential Annex III-B.

²⁷⁷⁴ Grekulović, D522, para. 1.

²⁷⁷⁵ Grekulović, D522, para. 23; Grekulović, T.15242.

²⁷⁷⁶ Grekulović, T.15262.

²⁷⁷⁷ Grekulović, T.15272-15273.

²⁷⁷⁸ Grekulović, T.15268-15269; T.15274.

²⁷⁷⁹ B-215, T.6724.

²⁷⁸⁰ B-215, T.6724.

²⁷⁸¹ B-215, P51, para. 116.

²⁷⁸² B-215, P51, para. 118.

them.²⁷⁸³ Arkan retreated, leaving the stolen goods behind, but not before hurling abuse at the Serbian MUP commander Miladin Milić, who noted that he “would not put up with [Arkan] in his zone of responsibility”.²⁷⁸⁴

iii. Payments to Arkan’s Men

1228. [REDACTED].²⁷⁸⁵ This could implicate individuals, not the DB as an institution or Stanišić.

1229. [REDACTED]. For example, [REDACTED].²⁷⁸⁶ [REDACTED].²⁷⁸⁷ [REDACTED].²⁷⁸⁸ [REDACTED],²⁷⁸⁹ [REDACTED].²⁷⁹⁰ [REDACTED] evidence should be wholly disregarded for this material inconsistency, as well as for the reasons explained in Confidential Annex III-B.

1230. The presence of a number of Arkan’s men on the DB payment lists does not implicate Stanišić, it implicates someone within the Serbian MUP/DB who decided to do them a financial favour.²⁷⁹¹ [REDACTED].²⁷⁹² However, [REDACTED].²⁷⁹³ There is no reason to disbelieve her on this issue and no evidence adduced to the contrary.

1231. Regarding the others, there are only seven men who are alleged members of Arkan’s men and on the DB payment list for September and October 1995. [REDACTED],²⁷⁹⁴ [REDACTED],²⁷⁹⁵ or [REDACTED].²⁷⁹⁶ [REDACTED]. On 22 September 1995, Mladić allegedly noted in his notebook that “300 Arkan’s volunteers arrived”.²⁷⁹⁷ If a maximum of seven were paid, this undermines the Prosecution’s contention that the DB hired Arkan’s men. On the contrary, as noted above,²⁷⁹⁸ it tends to suggest that someone in the Serbian MUP/DB decided to do them a financial favour. As noted in the DB section of this brief, *per*

²⁷⁸³ B-215, P51, para. 118.

²⁷⁸⁴ B-215, P51, para. 118.

²⁷⁸⁵ [REDACTED].

²⁷⁸⁶ [REDACTED].

²⁷⁸⁷ [REDACTED].

²⁷⁸⁸ [REDACTED].

²⁷⁸⁹ [REDACTED].

²⁷⁹⁰ [REDACTED].

²⁷⁹¹ See e.g. P543.

²⁷⁹² [REDACTED].

²⁷⁹³ [REDACTED].

²⁷⁹⁴ [REDACTED].

²⁷⁹⁵ [REDACTED].

²⁷⁹⁶ [REDACTED].

²⁷⁹⁷ P2543, p.5.

²⁷⁹⁸ Supra, Paras 184-188.

diem lists were not received, reviewed or approved by Stanišić in his role as chief of the Serbian DB.²⁷⁹⁹

iv. The Mladić Notebooks Exculpate Stanišić

1232. The Prosecution has failed to prove that Stanišić had anything to do with Arkan's presence in Banja Luka. On the contrary, the evidence and logic proves that he did not. Stanišić was not physically present in the area of Sanski Most for the alleged events that took place in September-October 1995. B-215 only saw Stanišić when he was assisting in securing the release of the French pilots and UN employees who had been taken hostage in the RS.²⁸⁰⁰ B-215 saw Stanišić because his police brigade took over the hostages in Mali Zvornik and escorted them to Belgrade.²⁸⁰¹ According to B-215, Stanišić was in Pale working to arrange this release.²⁸⁰²

1233. This is corroborated by 9 and 22 September 1995 entries in the Mladić Notebooks which show that Stanišić was, instead of organising, planning, or providing any logistical assistance for the Serb forces participating in activities in Banja Luka, busy looking for the pilots or in meetings in Bijeljina negotiating the release of the French pilots.²⁸⁰³ During a meeting, Stanišić threatens Mladić through an individual named Belko by stating that "if [the VRS] do[es] not release the pilots we [Serbian Government] will stop everything".²⁸⁰⁴

1234. [REDACTED]. IREDACTED].²⁸⁰⁵ [REDACTED].²⁸⁰⁶ [REDACTED].

1235. According to the Prosecution case, Arkan had been "owned" by Stanišić since the beginning of the conflict. Despite this, no one seemed to be aware of this fact. Moreover, an analysis of the Mladić Notebooks shows that not a single member of the political or military leadership connected Arkan to Stanišić or the DB at the time. For example, on 24 September 1995, Mladić writes Karadžić a detailed report complaining about Arkan.²⁸⁰⁷ Most of the Serb leadership, including Badža, Bogdanović, Plavsić and Karadžić were sanguine about their

²⁷⁹⁹ Supra, Paras 189-193.

²⁸⁰⁰ B-215, P53, para. 32; [REDACTED].

²⁸⁰¹ B-215, P53, para. 32.

²⁸⁰² B0215, P53, para. 32.

²⁸⁰³ P2541, P2542.

²⁸⁰⁴ P2542.

²⁸⁰⁵ [REDACTED].

²⁸⁰⁶ See [REDACTED]

²⁸⁰⁷ P289.

public relationship with Arkan – he was a hero to some at that time.²⁸⁰⁸ If Stanišić was associated with the Serbian DB, it would have been noted as such or he would have written, or at least copied, Stanišić or the Serbian DB. Milovanović clearly thought Karadžić had a relationship with Arkan, not Stanišić.²⁸⁰⁹

1236. It is one thing to point to a handful exhibits that rumour a link, as Theunens did,²⁸¹⁰ quite another to prove that Stanišić had a single conversation with Arkan, gave him an order, provided him any logistical assistance, or any other contact in Banja Luka, or in fact at all, during the indictment period.

1237. The Prosecution rely upon a 29 September 1995 entry in the Mladić Notebooks, wherein Karadžić is alleged to state that “Jovica Stanišić is angry about something (he gave 300 of his men and the US is begrudging us for having advertised Arkan)”.²⁸¹¹ This is misplaced. First, had the 300 been a reference to Arkan, it would have more likely been precise and stated this fact. Given Mladić’s long-term contempt for Arkan,²⁸¹² it is unlikely that he would have expressed this in such a blasé fashion – he plainly did not conclude that Stanišić was referring to Arkan.

1238. Further, the “300 men” that he allegedly “gave” relate clearly to the Serbian MUP that were sent to the region, as discussed above. Regarding the expression that they were “his men” that were sent and not the Serbian MUP men, it should be recalled that this was Karadžić’s casual recollection and characterisation of the relationship Stanišić stated he had with the men. In reality, these are not “his” men, but men from the Serbian MUP, but given their essential and worthy role there would be no reason for Stanišić to avoid associating himself with them.

1239. This fact is also clear when one considers P2545. In this excerpt, when Mladić records the manner in which Stanišić personally speaks about men sent from the Serbian MUP, and not the manner in which Karadžić characterises it in P2544, he uses the pronoun “we”, not “my” or “mine”. This is a clear reference to the men sent by the Serbian MUP.

²⁸⁰⁸ See e.g. P1621 (Plavšić/Arkan); D669 (Karadžić/Arkan); Pelević, T.16422-16423 (“Badža and Arkan were friends”), T.16339 (Badža/Arkan); P404, pp.2-3 (Bogdanović/Arkan); [REDACTED].

²⁸⁰⁹ Milovanović, T.15530.

²⁸¹⁰ See e.g. P1192; P1575, p.222; P1077; P1575, p.238.

²⁸¹¹ P2544.

²⁸¹² See e.g. P289, pp.1-2.

1240. Further, Stanišić attended a subsequent meeting between Perišić, Mladić and Stanišić. During this meeting, Mladić writes that Stanišić stated the following about Sanski Most: “[t]here is no command there, political conflicts, cities are falling. Arkan embedded himself there,²⁸¹³ we sent 400 people. As far as I have been informed, this helped at Sanski Most and Novigrad”.²⁸¹⁴

1241. Regarding P2545,²⁸¹⁵ that Arkan embedded himself and the Accused stated this contemporaneously to other alleged members of the JCE (Perišić and Mladić), is hugely probative of the Defence case. It suggests that Stanišić did not send Arkan. In the event that Simatović or Serbian DB members are found to be involved, it is illustrative of Stanišić’s lack of knowledge of those arrangements or that shared intent. Given that Stanišić is alleged to have used Simatović to command Arkan through the indictment period, the correct translation stands as powerful proof of the falsity of the Prosecution case.

1242. During this same meeting, Perišić stated that “let’s see what steps can be taken to...burn that thing”.²⁸¹⁶ It makes no sense whatsoever to interpret this as some kind of exhortation to crime, when Stanišić was clearly bemoaning the chaos and the destruction, as well as listing Arkan as a problem of equal and simultaneous gravity as falling cities and a lack of command.²⁸¹⁷

1243. Moreover, the fact that Stanišić listed Arkan’s presence in Banja Luka and Sanski Most in 1995 as a problem of equal gravity as a wholesale breakdown of law and order, political conflicts and the collapse of whole cities, shows his forthright and forceful condemnation of his activities and a contemporaneous disavowal of responsibility therein.

1244. The claim that Stanišić was referring to Arkan when he is alleged to have said: “we sent 400 people. As far as I have been informed this helped at Sanski Most and Novigrad”²⁸¹⁸ must be seen in this light. It is nonsensical to suppose that in one breath Stanišić is bemoaning the chaos caused by Arkan, and then complimenting him in the other for helping in these

²⁸¹³ The original translation of this document stated that Arkan “is embedded there”. However, the Defence requested review of the translation and it was changed to “Arkan embedded himself there”, *see Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Internal Memorandum from the Head of ETU regarding a request for verification of the English Translation of Exhibit P1628, 24 November 2011; *see also* [REDACTED]; Milovanović, T.15531.

²⁸¹⁴ P2545.

²⁸¹⁵ This is the same document as P1628 which has been MNA.

²⁸¹⁶ P2545.

²⁸¹⁷ P2545.

²⁸¹⁸ P2544.

towns. Plainly, Stanišić was referring to the MUP officers and plainly he did not approve of Arkan, let alone control his dastardly deeds.

1245. Grekulović confirmed that the number of men that Stanišić mentions were sent from the Serbian MUP “corresponds to the number of men from the public security of Serbia who were in that period sent to perform police tasks” in the area at the time.²⁸¹⁹ If these men were ‘sent’ by Stanišić, Grekulović testified that it was only through the authority and consent of the chief of the public security sector and the Minister of the Interior that this could occur.²⁸²⁰

III. CONCLUSION

1246. That Arkan was allowed to commit crimes is a terrible indictment on the Bosnian Serb military and political leadership. That some of his men were paid per diems from the Serbian DB’s funds is not evidence of institutional support, but evidence of personal favours, also to be condemned. However, neither of these facts shows that Stanišić planned or was in any way involved in the Banja Luka Operations, or that the Serbian MUP was involved in the pursuance of crime.

²⁸¹⁹ Grekulović, D522, para. 26.

²⁸²⁰ Grekulović, T.15308.

PART IV – CONCLUSION/CHANNEL OF COMMUNICATION

I. STANIŠIĆ’S ALLEGED CONTRIBUTION TO THE CRIMES AND THE CRIMINAL PURPOSE

1247. Stanišić should be acquitted of all charges in the indictment. The Prosecution have failed to advance a reasonable case, let alone one beyond reasonable doubt. It was not reasonable to craft an indictment that alleged that Stanišić was responsible for organising, supplying, financing, supporting and directing all “Serb Forces” in Croatia and BiH during the indictment period.²⁸²¹ The Defence submits that had the Prosecution investigated more comprehensively before issuing its indictment, perhaps it would have arrived at the same conclusion. It also would not have had to avalanche the Defence with new evidence after the closure of its case-in-chief, leading to the addition of an unprecedented numbers of new alleged perpetrators of crimes, threatening the Accused’s right to a fair trial.

1248. Even before the evidence was scrutinised in the courtroom, it was incapable of supporting such an extravagant case. One man, even Milošević, could not have been responsible for such overweening control of the military events or the unforgivable crimes. As the Defence has shown throughout this brief, Stanišić was not the coordinator of the alleged criminal enterprise. He was not the commander of armies. He was not even the commander of the Serbian MUP or the so-called Red Berets unit.

1249. In the Pre-Trial Brief, Stanišić’s role is qualified as a “coordinator” between the core JCE members. The Prosecution relies on Stanišić’s position as head of the DB and his “very close relationship with Milošević”,²⁸²² alleging that Stanišić was “Milošević’s number two”, reporting and receiving instructions directly from him.²⁸²³ In other words, he was “Milošević’s executioner and protector”.²⁸²⁴ It is from this exalted position that he is alleged to have possessed the material ability to create the “28 Elite Trainer” Unit.

1250. As this Closing Brief has argued, *relying principally on Prosecution evidence*, the foundational premise of the case against Stanišić has been shown to be comprehensively and, it submits, unequivocally false. That is not to argue that Stanišić had no power or authority.

²⁸²¹ Indictment, Para. 3-9.

²⁸²² Prosecution Pre-Trial Brief, para.45.

²⁸²³ Prosecution Pre-Trial Brief, para.46.

²⁸²⁴ Prosecution Pre-Trial Brief, para.46.

1251. On the contrary, the post of the Chief of the State Security of Serbia carried with it meaningful authority, but not of the magnitude or type that was capable of providing him with the ability to command armies or control military events. He was a *civilian*, not military, intelligence chief.

1252. Of course, authority in one sphere of professional life does not automatically equate to power in another. Equally, the possession of power does not have to lead to its abuse - even if sadly it often does, especially within the horrors of an ethnically based war. Despite the presumptions underpinning the Prosecution's case, it is also more than possible to respect that authority and use it for good.

1253. Whilst the DB was, by dint of its mandate, a relatively powerful institution, it could not have brought the military or security services under its control".²⁸²⁵ As Milovanović illustrated, the power of the DB was never intended to override or covet that power possessed by the military. As discussed on February 1995, when pressed by Stanišić, on behalf of the Supreme Defence Counsel ("SDC"), the VRS Supreme Command, and Milošević specifically, to participate in Operation Pauk, he retorted, "Jovica, I will not carry out orders from you. You are a policeman not a soldier".²⁸²⁶

1254. Power in a civilian organ, like the DB, did not equate to control over "Serb Forces" engaged in a war. Likewise, it did not accord him political power, as evidenced by his failure to attend a single FRY meeting of the Supreme Defence Council throughout the indictment period. Concerning both the military and political spheres of government, the relatively powerful state security service was relatively weak.

1255. The Prosecution case fails to draw such distinctions. It does not examine the civilian and military structures, let alone the subtleties of human interaction in the midst of traumatic events. The Prosecution case does not descend into an examination of the minutiae of the evidence or the multiple layers of deception and subterfuge that constitute the details of a war.

1256. The Prosecution's claim that Stanišić "worked in the shadows" is an illustration of that failure to examine the evidence. Such claims are inapposite in the context of a process that must examine the evidence and only convict if it rises to proof beyond a reasonable doubt.

²⁸²⁵ *Ibid.*

²⁸²⁶ Milovanović, T.4389; T.4394-4395.

Nevertheless, the Defence has full faith that the Trial Chamber will rule on this matter in the same manner as any other case, not acting on the suggestion to conclude that an individual “working in the shadows” is entitled to any less protection guaranteed by the Tribunal’s statute and the vaunted human rights instruments underlying the rules and procedures of this Tribunal.

1257. This is particularly the case when the Accused is alleged to have also not been working in the shadows. For example, according to the Prosecution, he is alleged to have established the most visible paramilitary in the war – a unit immediately distinguishable for sporting a red beret. It betrays common sense to suggest that those wearing a highly distinguishable military accoutrement are somehow working in the shadows. An old adage in criminal law instead rings true: *an absence of evidence is evidence of absence*. Suspicion is not enough, nor are prejudicial claims designed to obscure the inadequacy of a Prosecution case.

1258. JCE is not an open-ended concept that permits convictions based on guilt by association or by otherwise collectivizing culpability.²⁸²⁷ Proof of the significance of the Accused’s contribution is required to prove that the Accused shared the intent to pursue the criminal purpose.²⁸²⁸ Not “every type of conduct would amount to a significant enough contribution to the crime for this to create criminal liability for the Accused regarding the crime in question”.²⁸²⁹ This admonishment is tailor-made for the Prosecution’s approach to Stanišić’s alleged responsibility for the crimes alleged.

1259. The Prosecution has not even shown that the information gathered by the DB as part of its core task was designed or used to facilitate the aims of the war. There is no evidence that Stanišić or the DB assisted the RS or RSK with intelligence concerning military issues, a task one would think the Serbian DB would have been tailor made to do. On the contrary, Milovanović of the VRS confirmed the lack of informational exchange between the DB and the VRS, noting that *intelligence* reports began to be sent to Stanišić only after mid 1993.²⁸³⁰ He did not claim to have received a single report from Stanišić or the DB, let alone suggest

²⁸²⁷ *Brdjanin* Appeal Judgment, para.428.

²⁸²⁸ *Kvočka* Appeal Judgement, para.97.

²⁸²⁹ *Brdjanin* Appeal Judgment, para.427.

²⁸³⁰ Milovanovic, T.4480, T.4485; D42-D44; P389; P1286-P1292; P1349-P1357; P2420; P2484.

that the VRS benefited from the knowledge of the Serbian DB. Mladić did not even have Stanišić's phone number by 1995.

1260. While Stanišić did not share intelligence with the Bosnian Serbs, he bore no such reluctance with international actors and instead used his attributes as the Serbian security chief to assist in facilitating such things as the release of the peacekeepers, the French pilots and other movements to peace. Indeed, he was specifically chosen to negotiate for peace in the region, thereby ending the war. The Defence submits that it is a rare that the head of state security negotiates peace for his region, his country and his people. This is normally the province of Presidents, foreign ministers and other international dignitaries. Nevertheless, he had presumably built up sufficient goodwill with various international actors that he was trusted to negotiate to end the war in good faith.

1261. As noted at the beginning of this brief, instead of disappearing into the shadows, as the Prosecution avers, he became famous by assisting in the release of the UNPROFOR hostages and French pilots,²⁸³¹ and in helping to negotiate the Dayton Peace Accords.²⁸³² [REDACTED].²⁸³³

1262. [REDACTED].

1263. For a finding of guilt to be based upon circumstantial evidence, it must be the *only* reasonable conclusion available. If there is another conclusion, consistent with innocence, which is reasonably available, he must be acquitted.²⁸³⁴

1264. Stanišić ran the civilian service, tasked with securing the state – not Milošević – as the Prosecution case fails to distinguish. His involvement in the war was to the extent that this was required to fulfil this crucial mandate. He was a channel of communication, but with the international community. [REDACTED].²⁸³⁵

1265. Some aspects of the Prosecution's case appears to have been influenced by a Hollywood vision of a ruthless spy chief seeking only power and control. The mass media fantasizes about the fearful, unscrupulous intelligence head doing "whatever it takes" to get

²⁸³¹ [REDACTED].

²⁸³² [REDACTED].

²⁸³³ [REDACTED].

²⁸³⁴ *Delalić et al.* Appeal Judgement, para.458.

²⁸³⁵ [REDACTED].

the job done. With Stanišić, rather than disappearing into the darkness, like the sinister spy chief the Prosecution case supposes, he worked with the international community to bring the war to an end in the best possible way.

PART V - MITIGATION

I. INTRODUCTION

1266. The Defence submits that the Trial Chamber should, in the event that it finds the First Accused guilty beyond reasonable doubt, take into consideration the personal situation of the First Accused, his good character as well as the actions he undertook in furtherance of peace as mitigation for sentencing purposes.

1267. Exhibits and excerpts from testimony in these proceedings highlight each of these elements, as it laid out in Confidential Annex II which clearly shows that the first Accused, on multiple occasions, provided a significant contribution in paving the way to the peace process.

II. APPLICABLE LAW

1268. The relevant provisions on sentencing at the ICTY are Articles 23 and 24 of the Statute and 100 to 106 of the Rules of Procedure and Evidence.²⁸³⁶ Article 24 of the Statute and Rule 101 of the Rules outline general principles for the Trial Chamber to consider in terms of sentencing.²⁸³⁷ Article 24 of the Statute enumerates the penalties upon conviction and the factors to be taken into account in determining the sentence of an accused.²⁸³⁸ Rules 100 and 101 of the Rules are the provisions applicable to the penalties of imprisonment.²⁸³⁹ Rule 101(B) of the Rules requires the Trial Chamber to take into account mitigating circumstances.²⁸⁴⁰ The Trial Chamber in determining a sentence shall consider “any mitigating circumstances.”²⁸⁴¹

1269. Sentencing is a discretionary decision²⁸⁴² and as a result, mitigating factors are not exhaustively defined in either the Statute or Rules.²⁸⁴³ In other words, sentences must be decided according to the facts of each particular case and the individual guilt of the

²⁸³⁶ *Jokić* Judgment on Sentencing Appeal, para. 6; Articles 23 and 24 of the ICTY Statute; Rules 100 – 106; *Nikolić*, Appeal Chamber Judgment on Sentencing Appeal, para.6.

²⁸³⁷ *Nikolić* Appeals Chamber Judgment on Sentencing Appeal, para.6.

²⁸³⁸ *Ibid.*

²⁸³⁹ Rules 100 – 106 of the rules.

²⁸⁴⁰ Rule 101(B) RPE; *Miodrag* Judgment on Sentencing Appeal, para.47.

²⁸⁴¹ *Blaškić* Appeal Judgment, para 696; *Babić* Judgment on Sentencing Appeal, para.43; *Deronjić* Trial Judgment, 30 March 2004, para.155.

²⁸⁴² *Blaškić* Appeal Judgment, para.680.

²⁸⁴³ *Babić* Judgment on Sentencing Appeal, para.43; *Blaškić* Appeal Judgment, para.685.

perpetrator.²⁸⁴⁴ Aside from these parameters, the Trial Chamber has considerable discretion to determine which individual factors to take into consideration is able to assess the possibility of contrition and rehabilitation.²⁸⁴⁵ While the Chamber ultimately determines the weight to be given to particular mitigating factors,²⁸⁴⁶ it is required - as a matter of law - to take account of mitigating circumstances.²⁸⁴⁷

1270. The standard of proof for mitigating factors is “proof on a balance of probabilities.” The circumstances must have existed or exist ‘more probably than not’.²⁸⁴⁸ Mitigating circumstances do not need to be directly related to the offence, they may be factors that occurred prior to or following, the alleged crimes, or they may be related to personal characteristics such as age or family circumstances.²⁸⁴⁹

III. MITIGATING FACTORS REGARDING JOVICA STANIŠIĆ

A. PERSONAL CIRCUMSTANCES

i. Serious health issues and advanced age²⁸⁵⁰

1271. Age is routinely used as a mitigating factor in sentencing. In the *Krnojelac* case, the advanced age of accused was a factor taken into consideration by the Trial Chamber in passing sentence.²⁸⁵¹ The *Plavšić* Judgement explained the policy reasons for mitigating a sentence due to the age of the Accused:

The Trial Chamber considers that it should take account of the age of the accused and does so for two reasons: First, physical deterioration associated with advanced years makes serving the same sentence harder for an older than a younger accused. Second...an offender of advanced years may have little worthwhile life left upon release.²⁸⁵²

²⁸⁴⁴ *Blaškić* Appeal Judgment, para. 680.

²⁸⁴⁵ *Galić* Trial Judgment, para. 759; *Blaškić* Appeal Judgment, para.685; *Blagojević & Jokić* Trial Judgment, para.838; *Češić* Trial Sentencing Judgment, para.47; *Bralo*, Trial Sentencing Judgment, para.27.

²⁸⁴⁶ *Blaškić* Appeal Judgment, para.696; *Blagojević & Jokić* Trial Judgment, para.840; *Deronjić*, Trial Chamber Judgment, para.155.

²⁸⁴⁷ *Jokić* Appeal Judgement, para.47; *see also* *Kordić and Čerkez*, para.1051.

²⁸⁴⁸ *Babić* Judgment on Sentencing Appeal, para.43; *Blaškić* Appeal Judgment, para.697; *Blagojević & Jokić* Trial Judgment, para.850; *Bralo* Trial Sentencing Judgment, para.25.

²⁸⁴⁹ *Brđanin* Trial Chamber Judgment, para.1117; *Limaj et al.* Trial Judgment, para.729; *Stakić* Trial Judgment, para.920.

²⁸⁵⁰ *See* Annex II.

²⁸⁵¹ *Krnojelac* Trial Judgement, para.533; *Erdemović* Sentencing Judgment, para.16; *Simić, Miroslav Tadić, et al*, Trial Judgement, para.1099.

²⁸⁵² *Plavšić* Sentencing Judgement, paras 105-106.

1272. Poor health has also been taken into account for in mitigation, in exceptional and rare cases.²⁸⁵³

1273. Jovica Stanišić was born on 30 July 1950 and is now 61 years old. Furthermore, he has numerous health issues that will significantly lower his life expectancy and will make his sentence harder than the equivalent time would for a healthier man. [REDACTED]. Therefore, a longer prison sentence would [REDACTED] render the sentence particularly difficult to bear for Mr Stanišić.

1274. During his period of detention, the Accused has shown full cooperation with the medical evaluation and receptivity to medical treatment received at the UNDU. [REDACTED].²⁸⁵⁴ [REDACTED].²⁸⁵⁵ [REDACTED].²⁸⁵⁶ [REDACTED].²⁸⁵⁷ Considering the sensitivity of his situation, the UNDU medical practitioners have been consistent in acknowledging the negative effects of detention on his physical and psychological health.

1275. The Defence submits that the exceptional and rare condition of the First Accused should warrant substantial mitigation.²⁸⁵⁸

- ii) Family concerns which would make the detention an additional hardship for Stanišić and for his family²⁸⁵⁹
- iii) Lack of prior convictions²⁸⁶⁰
- iv) Sentence in a foreign country
- v) Stanišić's cooperation with the ICTY²⁸⁶¹

B. GOOD CHARACTER

1276. The Defence submits that the following factors should be taken into account by the Trial Chamber:

²⁸⁵³ *Prosecutor v. Kvočka* (IT-98-30/1) Appeals Chamber Judgment, 28 February 2005 (hereafter *Kvočka* Appeals Chamber Judgment), paras 719-720.

²⁸⁵⁴ See also Annex II [REDACTED].

²⁸⁵⁵ See also Annex II [REDACTED].

²⁸⁵⁶ See also Annex II [REDACTED].

²⁸⁵⁷ See also Annex II [REDACTED].

²⁸⁵⁸ *Strugar* Trial Chamber Judgment, para. 469.

²⁸⁵⁹ See Annex II, p. 5.

²⁸⁶⁰ *Ibid*, pp. 6.

²⁸⁶¹ [REDACTED]. See Annex I.

- i) The neutrality of Stanišić and the absence of discriminatory behavior which demonstrates the lack of nationalistic intent²⁸⁶²
- ii) Stanišić's distance from politics and his insistence of the "non politization" of the DB²⁸⁶³
- iii) The Multi-Ethnic DB²⁸⁶⁴
- iv) Stanišić perceived moderation and his non-inclusion in the international travel bans²⁸⁶⁵

C. INTERNATIONAL COOPERATION OF STANIŠIĆ [REDACTED]

1277. The ICTY Appeals Chamber has held that activities to further peace were relevant as a mitigating factor in light of the mandate of the ICTY under Chapter VII of the UN Charter - Action with respect to threats to the peace, breaches of the peace, and acts of aggression.²⁸⁶⁶

1278. [REDACTED]. [REDACTED], he helped securing the release of the UN hostages and of the French pilots [REDACTED], Stanišić provided invaluable assistance to the peace process in the region.

1279. Perhaps his biggest "success" during the war, Stanišić initiated, negotiated and ensured the release of the UN personnel taken hostages by the Bosnian Serbs in the summer of 1995. The situation was qualified by Prosecution's witness Charles Kirudja as "a very large international problem"²⁸⁶⁷ – it is clear from the events listed in confidential Annex A that, had they not been released, the situation would have had significantly worsened, with NATO and other international forces intervening in Republika Srpska, the UN hostages may have been hurt as a result of NATO's involvement, and the Bosnian Serbs may have felt like there was no way back and undertook drastic desperate actions. Instead, the UN hostages were peacefully released and the Bosnian Serbs brought to the negotiation table, necessary for the peace process. [REDACTED].²⁸⁶⁸

²⁸⁶² See Annex II.

²⁸⁶³ *Ibid.*

²⁸⁶⁴ *Ibid.*

²⁸⁶⁵ *Ibid.*

²⁸⁶⁶ *Babić Appeals Chamber Sentencing Appeal*, para.61.

²⁸⁶⁷ *Ibid.*

²⁸⁶⁸ *Ibid.*

1280. Further, The Accused, as the Head of the DB, was instrumental in the release of the French pilots that had been detained by the Bosnian Serb leadership.²⁸⁶⁹ [REDACTED],²⁸⁷⁰ [REDACTED].²⁸⁷¹ [REDACTED].²⁸⁷² In order to confirm the Serbian commitment to signing of the Dayton Agreement, the Accused successfully sought the release of the French pilots, thereby rendering the Bosnian Serb leadership to the negotiation table. [REDACTED]²⁸⁷³ [REDACTED]²⁸⁷⁴ [REDACTED].

1281. The Defence recalls that, during its opening statement, the Prosecution stated that it would join the Defence regarding the taking into account of the Accused's actions during the hostage crisis.²⁸⁷⁵

1282. The Defence present the following mitigating factors related to Stanišić [REDACTED] in order to promote peace:

- a) [REDACTED]²⁸⁷⁶
- b) [REDACTED]²⁸⁷⁷
- c) [REDACTED]²⁸⁷⁸
 - i. [REDACTED]
 - ii. [REDACTED]
- d) [REDACTED]²⁸⁷⁹
- e) Negotiating and securing the release of the UN Hostages in May-June 1995²⁸⁸⁰
- f) Negotiating and securing the release of French pilots in September 1995²⁸⁸¹
- g) [REDACTED]²⁸⁸²
- h) Removal of Karadžić from power in July 1996²⁸⁸³
- i) [REDACTED].²⁸⁸⁴

²⁸⁶⁹ *Ibid.*

²⁸⁷⁰ [REDACTED].

²⁸⁷¹ [REDACTED].

²⁸⁷² [REDACTED].

²⁸⁷³ See Annex II, [REDACTED].

²⁸⁷⁴ See Annex II, [REDACTED].

²⁸⁷⁵ Prosecution's Opening Statement, T. 1531.

²⁸⁷⁶ See Annex XX, pp.15-30.

²⁸⁷⁷ *Ibid*, pp.31-32.

²⁸⁷⁸ *Ibid*, pp.32-33.

²⁸⁷⁹ *Ibid*, pp.33-34.

²⁸⁸⁰ *Ibid*, pp.35-65.

²⁸⁸¹ *Ibid*, pp.65-68.

²⁸⁸² *Ibid*, p.68.

²⁸⁸³ *Ibid*, pp.68-74.

D. OTHER ACTIONS IN FURTHERANCE OF PEACE

1283. The Defence presents the following mitigating factors related to further actions of Jovica Stanišić which substantially contributed to peace in the region:

- a) Negotiation and implementation of Peace agreements
 - i. *Vance Plan*²⁸⁸⁵
 - ii. *Dayton Peace Agreement*²⁸⁸⁶
- b) Fighting extremism/terrorism/nationalism²⁸⁸⁷
 - i. *Goal of the DB to fight extremism, terrorism and nationalism*²⁸⁸⁸
 - ii. *Operation Tomson*²⁸⁸⁹
 - iii. *OA "May 1993"*²⁸⁹⁰
 - iv. [REDACTED]²⁸⁹¹
 - v. [REDACTED]²⁸⁹²
 - vi. [REDACTED]²⁸⁹³
 - vii. [REDACTED]²⁸⁹⁴
 - viii. [REDACTED]²⁸⁹⁵
 - ix. *No political assassination when Stanišić was in control of the DB*²⁸⁹⁶
- c) Protection of national minorities by the DB in Serbia from 1991²⁸⁹⁷
- d) Investigations of war crimes by the DB from 1991²⁸⁹⁸

²⁸⁸⁴ *Ibid*, pp. 74-81.

²⁸⁸⁵ *Ibid*, pp. 82-83.

²⁸⁸⁶ *Ibid*, pp. 83-84.

²⁸⁸⁷ *Ibid*, pp. 84-.

²⁸⁸⁸ *Ibid*, pp. 84-87.

²⁸⁸⁹ *Ibid*, pp. 87-89.

²⁸⁹⁰ *Ibid*, p. 89.

²⁸⁹¹ *Ibid*, pp. 89-92.

²⁸⁹² *Ibid*, p. 92.

²⁸⁹³ *Ibid*, pp. 92-93.

²⁸⁹⁴ *Ibid*, pp. 93-95.

²⁸⁹⁵ *Ibid*, pp. 95-96.

²⁸⁹⁶ *Ibid*, pp. 96-97.

²⁸⁹⁷ *Ibid*, pp. 97-99.

²⁸⁹⁸ *Ibid*, pp. 99-101.

IV. CONCLUSION

1284. The Stanišić Defence respectfully requests the Trial Chamber to take into account the above-mentioned elements in order to substantially reduce the sentence which may be imposed on Jovica Stanišić in the event of a conviction.

Respectfully submitted,

11 February 2013

Signature Lead Counsel

A handwritten signature in black ink, appearing to be 'WJ', with a small dot at the end.

Wayne Jordash

Word Count:113 792