

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

Case No. IT-01-47-T

IN TRIAL CHAMBER II

Before: Judge Jean-Claude Antonetti, Presiding
Judge Vonimbolana Rasoazanany
Judge Bert Swart

Registrar: Mr. Hans Holthuis

Date Filed: 22 April 2004

**THE PROSECUTOR
v.
ENVER HADŽIHASANOVIĆ
AMIR KUBURA**

**SUBMISSION ON "STATEMENT OF
GENERAL (ret) KLAUS REINHARDT ON THE CASES OF ENVER
HADŽIHASANOVIĆ AND AMIR KUBURA"**

The Office of the Prosecutor:

Mr. Ekkehard Withopf
Mr. Daryl Mundis
Mr. Chester Stamp
Ms. Tecla Henry-Benjamin

Counsel for the Accused:

Ms. Edina Rešidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura

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Background:

1. In preparation for the testimony¹ of the Prosecution’s military expert, General (ret) Klaus Reinhardt, the Prosecution discovered the need to amend some portions of his Expert Report.

Nature of Amendments:

2. Most of the proposed amendments to the military expert’s report relate to misnumbered footnotes; five amendments change the text of the report in minor ways and were discussed with the military expert on 19 April 2004. The sixth textual amendment, to Paragraph 9.4.7, the Prosecution amended unilaterally. A table indicating each change is attached as Annex A. A copy of the military expert’s report reflecting all but the amendment to Paragraph 9.4.7 is attached as Annex B.

¹ General (ret) Reinhardt is scheduled for 3 - 7 May 2004.

Examination-in-chief:

3. In addition to the details provided in the Prosecution's filing of 19 March 2004², the Prosecution wishes to inform the Trial Chamber that it in the course of its examination-in-chief³ does not intend to make the military expert comment on particular documents but to answer questions in respect to the conclusions he has drawn in his Expert Report.⁴



Ekkehard Withopf

Senior Trial Attorney

Dated this 22nd day of April 2004

At The Hague,

The Netherlands

² Submission of the Amended Report of the Prosecution's Military Expert, as filed on 19 March 2004.

³ The Prosecution anticipates that the examination-in-chief will take no longer than two hours.

⁴ Following the oral Decision of the Trial Chamber of 6 April 2004, the Prosecution will not seek to tender documents into evidence during the military expert's testimony.

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**ANNEX A to
SUBMISSION ON "STATEMENT OF
GENERAL (ret) KLAUS REINHARDT ON THE CASES OF ENVER
HADŽIHASANOVIĆ AND AMIR KUBURA" AND MOTION TO AMEND THE
LIST OF EXHIBITS**

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Location	Current	Amendment
Para. 2.9	But the rules of command authority are also laid down in the "Decree of the Armed Forces of BiH".	But the rules of command authority are also laid down in the "Rules of Service in the Army of the Republic of Bosnia and Herzegovina".
Para. 2.9	Article 2 of the same decree specifies ...	Article 12 of the same decree specifies ...
Footnote 5	The second document is "The Regulations on the authority of the Ground Forces Corps Commander in Peacetime", also published in 1990 (PT 1367)	See Motion to Amend the List of Exhibits.
Footnote 9	PT 1221	PT 474
Footnote 22	PT 471	PT 1144
Para. 2.16	In the broadest sense, the legal mandates of superior authority are found in the ABiH "Criminal Law" ...	In the broadest sense, the legal mandates of superior authority are found in the RBiH "Criminal Law" ...
Footnote 26	PT 471	PT 3
Footnote 45	PT 19	PT 119
Footnote 50	PT 359	PT 350
Footnote 69	PT 611	PT 610
Para. 4.17	In case they do not accept, show them hospitality and eventually disarm them.	In case they do not accept, show them no hospitality and eventually disarm them..
Para 4.22	According to the legal obligations of Article 239 of the RBiH Criminal Law ...	According to the legal obligations of "Regulations of International Laws of War in the Armed Forces of the SFRY" ...
Footnote 78	PT 1191	PT 1222
Footnote 81	PT 131	PT 137
Footnote 91	PT 771	PT 85
Footnote 101	PT 1281	PT 1220
Footnote 104	PT 1191	PT 1190
Footnote 110	PT 1144	PT 1222
Footnote 111	"ibidem"	PT 1144
Footnote 115		Add PT 39
Footnote 122	PT 776	PT 837
Footnote 130	PT 61	PT 168
Para. 9.4.7	On 18 April 1993 – after the killings in Miletici, but again without making any reference to them – he warned, that if members of some units still proceed with acts of looting and torching, their commanders should be held responsible and replaced in serious cases.	On 18 April 1993 he warned, that if members of some units still proceed with acts of looting and torching, their commanders should be held responsible and replaced in serious cases.
Footnote 139	PT 1446	PT 39

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**ANNEX B to
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STATEMENT OF
GENERAL (ret) KLAUS REINHARDT
on the cases against Enver Hadžihasanović and Amir Kubura

1. INTRODUCTION

1.1.

I am Klaus Reinhardt, retired General of the German Army. I served for almost 41 years in the German Bundeswehr and held command positions at every level from platoon commander up to a four star position as NATO Commander LANDCENT. In this last assignment I had the responsibility to co-ordinate all operational matters concerning NATO land forces from northern Norway to the Alps.

1.2.

My senior command assignments in the German Army and in NATO included that of the German National Commander responsible for the German contingents in UNSCOM in Somalia, UNPROFOR, IFOR and SFOR in the Balkans as well as that of NATO Commander for the multinational Kosovo Forces (KFOR).

1.3.

The Office of the Prosecutor has asked me to address a number of issues concerning the amended indictment against Enver Hadžihasanović and Amir Kubura. One question was the responsibility of a commander and his obligations to take measures to prevent crimes from being committed.

1.4.

Another question was related to the chain of command within the 3rd Corps of the Army of Bosnia and Herzegovina (hereafter ABiH) with specific regard to the 7th Muslim Mountain Brigade (hereafter 7th MMB) and the subordination of the so-called "Mujahedin".

1.5.

I was also asked to comment on the military professionalism within the 3rd (ABiH) Corps and its internal communication links.

1.6.

Finally, there was the question about the knowledge the accused had of "crime-based" incidents in their areas of responsibility and the measures they took to punish the perpetrators and to prevent the commission of further crimes.

1.7.

In preparation for my testimony before this Trial Chamber and in addition to my own command experience, military education and training, I have had certain documentation materials made available to me by the Office of the Prosecutor. I have reviewed all of this material and I am able to comment on the same during questioning. The Office of the Prosecutor provided additional material in some instances when I needed clarification.

2. THE RESPONSIBILITY OF A COMMANDER**2.1.**

For the purpose of a better understanding of the role of a commander, it might be helpful to define first the mission and responsibility of a commander.¹

2.2.

A Commander exercises personally overall authority and takes personal responsibility for all those under his command. He has universal responsibility for training, welfare, discipline and morale of his subordinates as well as for the operational readiness posture, i.e. for the state of personnel and material of this unit. This includes all questions of operational planning and conduct of operations. As I will explain in more detail later, the tasks, duties and responsibilities of an ABiH commander are largely identical to those of a commander of NATO's forces.

2.3.

A Commander leads an Army or Air Force unit, e.g. a platoon, a company, a battalion, a brigade, a wing, a division, a corps or an army-group.²

2.4.

A unit is the structurally organised and/or timely limited consolidation of material and personnel. It is administratively subordinated to a commander. This subordination includes all tasks of a military supervisor and their execution, serving the purpose of establishing and maintaining the operational readiness of the personnel and material assigned to him.³

2.5.

Consequently, command is a personal matter in the sense that the commander takes personal responsibility for every action that happens or is carried out by all those under his command. He is personally liable for the success or failure of the actions of all those under his command. He has to take personal responsibility for anything that goes wrong. As a commander, he has the material ability to prevent and halt offences or to punish the perpetrators. In this sense, he exercises effective control over his subordinates.

2.6.

These key principles of command responsibilities apply to the commanders of the ABiH as well. The key leadership of the ABiH was formed from a nucleus of ex-JNA officers of

¹ All this is according to the German Joint Service Regulation ZDv 1/50, No 111, 202, 203; The German Ministerial Directive Governing Superior - Subordinate Relations (Verordnung über die Regelung des militärischen Vorgesetztenverhältnisses) gives details on who is entitled to give orders. The provisions for the armed forces of other NATO members are rather similar in this specific respect. Details see Nolte, Georg, ed.: European Law Systems, Berlin 2003.

² ZDv 1/50, No 126.

³ Section 10 of the German Legal Status of Military Personnel Act (Soldatengesetz) describes the special duties of superiors towards their subordinates.

primarily Bosnian Muslim origin.⁴ Therefore, the existing JNA-based doctrine was a suitable foundation for these JNA trained commanders to build a credible and professional army. Consequently, the ABiH utilised JNA doctrine as the pillar of their military ethos, providing a ready-to-use source of manuals and regulations.⁵ So the rules, which were standard in the former Yugoslav Army applied also to the commanders of the ABiH, since their procedures and organisational structure followed very closely the Yugoslav example.⁶

2.7.

After an analysis of JNA Corps regulations as well as the documents and orders prepared by the 3rd (ABiH) Corps I come to the conclusion that the structure, organisation, and operating methodology of the 3rd (ABiH) Corps were in their essential provisions in accordance with the key JNA Corps regulations.

2.8.

As defined in the "Rules for Land Forces Corps (Provisional)" of the JNA, the Corps Commander "bears the responsibility for the accomplishment of a mission. He takes decisions, gives assignments to his subordinates, organises co-ordination and co-operation and controls the implementation of decisions. He is responsible for harmonising the activities of his command, subordinated commands and headquarters..."⁷ He is personally, directly and legally empowered to "lead operations of the Corps Command, assign tasks to his subordinate officers, ensure that they are carried out, and bear full responsibility for their completion."⁸

2.9.

Accepting the premise that the former JNA regulations are the foundation of the ABiH operations, one can assume that these roles, responsibilities and authorities as explained above were consistent for the commanders of the ABiH as well. But the rules of command authority are also laid down in the "Decree of the Armed Forces of BiH".⁹ Article 13 asserts the core tenet of command authority for the commanders of the ABiH: "The Leadership and command of the Army are based on the principles of the unity of command..." Article 21 of the same Decree specifies: "Superior is the person who, on the basis of the law, is authorised to supervise or command a military unit ..."

⁴ During my tenure of national commander of the German forces within IFOR and SFOR, I had many talks in BiH with officers and in particular with commanders of the ABiH who told me that they were former JNA officers. Unfortunately, I do not remember any of their names. I also had many discussions with LtGen Agim Çeku, former commander of the UÇK in Kosovo, on this issue. Çeku, too, was a former JNA officer of Muslim origin. He told me of many of his former Muslim comrades in the JNA who later became officers in the ABiH.

⁵ In this regard, the two key documents are the "Rules for Land Forces Corps (Provisional)", published in 1990, is the most comprehensive document (PT 1217). It states: "The Commander commands and controls subordinate units and institutions in the scope of the authority received. He is responsible to his superior for the work and the situation in subordinate units and institutions and for the timely and proper execution of the work and tasks in the competence of the command organ". The second document is "The Regulations on the authority of the Ground Forces Corps Commander in Peacetime", also published in 1990 (PT 1367 PT 1280). One should note that despite the designation of "peacetime", a corps is a military entity organised and designed to operate in war. As such, the peacetime designation does not imply that the commander would operate differently in war, particularly with respect to command interrelationship. These two documents set the framework for the rules, regulations, organisation, structure and methodology at the corps level throughout the war in BiH. As such, they represent the foundation of the JNA corps echelon organisation and operating methodologies as they were applied to the development of the ABiH.

⁶ Sefer Halilović, during his 14 November Tusk interview, confirmed that the ABiH used former JNA manuals as reference and complied with the existing regulations of the SFRY, until such time as new regulations were published by the BiH government (folder MAT, Nr.9, no ref #).

⁷ PT 1217, para. 65.

⁸ PT 1361, Instructions on "How the 4th Corps Command is to Operate when carrying out Priority Assignments in Peacetime and Wartime", page 14.

⁹ PT-1221 PT474.

2.10.

The concept of command is further defined in the "Manual of Service in the ABiH".¹⁰ Paragraph 16 outlines the issue of senior and superior command as well as the obligations of subordinates to obey the orders of the superior.¹¹

2.11.

A commander is not only fully and personally accountable for the conduct of all military actions in his area of responsibility, but he is also charged to ensure that there is an uninterrupted flow of information and situation reports into and out of his headquarters.¹² In short, he is required to maintain contacts with his superiors and all his subordinates, at all times.

2.12.

Within the framework of their responsibility for discipline and morale of their subordinates, commanders are required to abide by the law and standards governing the conduct of armed conflicts, including the Geneva conventions. They are obliged to ensure that the military units under their command and control respect and apply the rules of national and international laws.¹³

2.13.

The regulations for the commanders of the ABiH in this respect are very similar to the ones of other armies.¹⁴ The "Manual of Service in the ABiH" directs that all members of the armed forces "... must adhere to the rules of international law – to act humanely towards the wounded and the prisoners from the enemy ranks and to protect civilian population in accordance with international regulations and Constitution of the Republic."¹⁵ According to the order of the "Rules of the International Laws of War", a "commander is entitled to take legal actions against a person who violates the Provisions of the International Law of War".¹⁶

2.14.

A commander has to investigate and to initiate appropriate actions as soon as he becomes aware of alleged or de facto criminal activities or acts violating international law committed

¹⁰ PT 474; this Manual was published on 01 August 1992.

¹¹ para. 16 says: "The order of a superior commander... must be carried out by any person serving in the Army without discussion, completely, exactly and promptly."

¹² German Army Regulation HDv 100/100; as Commander KFOR, it was my obligation to build up and to operate a communication network which connected my headquarters in Priština with my subordinate brigades as well with NATO Headquarters in Brussels, with SHAPE in Mons and with all the Capitals, which were contributing national troops to KFOR. Para 63 of the "Rules of Land Forces (Provisional)" of the JNA (PT 1217) stipulates: "Command and control are exercised through planning, concerted action, organisation, preparation and execution of operations and other combat actions; they are based on unified, continuous, secure, flexible, efficient, operative and secret information flows among commands, units and institutions." Since the commander bears overall responsibility, the question of ensuring the flow of information is his responsibility. This principle is applied to the commanders of the ABiH as well.

¹³ Article 87(3) of the Supplementary Protocol I to the Geneva Conventions provides: "The High Contracting Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions of this Protocol, to initiate such steps as are necessary to prevent such violations of the Convention of this Protocol, and, where appropriate, to initiate disciplinary or penal actions against violators thereof."

¹⁴ On 23 August 1992, the President of BiH, Alija Izetbegović, issued a special order on the adoption of the "Rules of the International Laws of War" (PT 1218).

¹⁵ PT 474, Article 6.

¹⁶ PT 1218.

by individuals or units in his area of responsibility.¹⁷ In this case he must immediately initiate an investigation¹⁸ establishing

- whether or not these crimes or acts violating international laws have actually taken place;
- where and when they were committed;
- who was involved in these crimes and acts violating international laws;
- those responsible for the crimes and acts;
- witnesses for the crimes and acts;
- whether imposing disciplinary action is sufficient in light of the seriousness of the crime or the act violating international laws, or
- whether the case is to be transferred to the competent agency for initiating criminal prosecution; if the latter is established, the commander must immediately initiate all measures required for the transfer of the case and initiation of criminal prosecution.

2.15.

Again, very similar regulations apply to the commanders of the ABiH. In the ABiH "Rules on Military Discipline"¹⁹, Article 24 outlines the right of the commanders to "pronounce all disciplinary measures" and governs the details of how to investigate.

2.16.

In the broadest sense, the legal mandates of superior authority are found in the ARBiH "Criminal Law"²⁰ which outlines in Article 203 that a "military superior who ... failed to take steps restoring order, shall be punished ..." So the commander is responsible not only for his actions, but also for his omissions. This responsibility, in particular with respect to illegal actions by his subordinates, is well documented both in the former JNA and also ABiH regulations.

2.17.

These regulations are explicit with respect to the obligations and liabilities of a commander especially dealing with violations of the laws of war: "An officer shall be personally liable for violations of the laws of war if he knew or could have known that units subordinate to him or other units or individuals were planning the commission of such violations, and, at a time when it was still possible to prevent their commission, failed to take measures to prevent such violations."²¹

2.18.

The provisions of the RBiH "Law on special Military Courts"²² stipulate the establishment of a District Military Court for each corps area. Pursuant to these provisions, a commander who gained knowledge of a crime and who finds that his disciplinary powers are inadequate given the seriousness of the committed crime, would submit the results of his investigation to the competent public attorney of the District Military Courts for further action.

¹⁷ This and the following explanations are based on Section 28 – 41 of the German Military Disciplinary Code (Wehrdisziplinarordnung – WDO) and the German Military Penal Code. The regulations in other armed forces in NATO are similar.

¹⁸ Section 46 WDO.

¹⁹ PT 1144, ABiH Rules on Military Discipline, 03 August 1992.

²⁰ PT 1144; article 3 states that the RBiH assumes the "Criminal Code of the Socialist Federation of Yugoslavia".

²¹ "Regulations on the Application of the Rules of International Law in the Armed Forces of the SFRY", para. 21 (PT 1222).

²² PT 471 PT 1144.

2.19

I assume that a commander will prosecute a crime against the International Humanitarian Law as a first priority, because of his mere obligation by law to ensure that such crimes do not occur. It goes without saying that the prosecution of such a case does have a very important impact on military discipline and order, since it is paramount to try and punish possible persons found guilty and in doing so deter potential repetitive perpetrators. However, the legal task should always be to the fore.

2.20.

Should the commander in such a case have the impression that the competent District Military Court is delaying the case or is not prosecuting it with the required vigour, he will contact the responsible officer at the District Military Court and see to it with all his options – including an involvement of the next higher instance²³ – that the case be dealt with speedily.²⁴

2.21.

If a commander becomes aware of the fact that one of his subordinate superiors failed to take the necessary measures to punish the perpetrators or to prevent such acts, he has to commence his immediate investigation by

- asking for pertinent reports about the cases in question and any imposed measures;
- reviewing whether the taken measures are sufficient or whether he himself is possibly obliged to initiate criminal prosecution of the accused;
- personally initiating criminal prosecution of the accused and submitting the required requests to the appropriate court.

2.22.

The provisions in the ABiH requiring officers to take active measures in the sense as outlined above in para. 2.21. are similar. Article 27 of the “Statutory Order on District Military Courts” says that a military commander is “obliged to inform immediately the district military prosecutor or supreme commander about information in paragraph 1 of this article”²⁵, i.e. criminal acts, for which official prosecution is foreseen.

2.23.

All the above passages demonstrate that under the JNA and ABiH regulations, commanders are held accountable not only for the actions they undertook or were aware of, but also for those, which they should have or could have had knowledge of by virtue of their official position. At the same time, they are also responsible for failures to act within the capacity of their position, particularly when failure to act contributes to additional offences.

2.24.

A commander is obliged not only to prosecute a perpetrator under disciplinary rules or criminal law, but also to ensure that any such crimes or acts violating international law are prevented in the future.

He must therefore

²³ Article 25 of the “Statutory Order on District Military Courts”(PT 1146) calls for “second instance courts – superior courts” at the “Supreme Court of Bosnia and Herzegovina”.

²⁴ This is exactly what Hadžihasanović did. In a report to the Supreme Command Staff on the „Legality in the ABiH“ dated 10 August 1993, he complained about the slow work of the District Military Courts in Travnik and Zenica. He wrote :“The Command of this Corps initiated with the authorised organs the undertaking of appropriate measures for the more efficiently work of those military organs, but the situation has not significantly changed so far, and we believe that immediate and efficient measures should be undertaken through the Ministry of Defense and other autorised organs for the improvement of this situation.“ (PT 780).

²⁵ PT 1146, page 00609194.

- inform his subordinate commanders and soldiers about criminal offences and acts violating international laws and direct that such unlawful acts must stop immediately;
- threaten to impose adequate punishment in case of repeated occurrence;
- monitor subordinate command areas and ensure that all necessary measures are taken and implemented strictly;
- impose disciplinary punishment on supervisors who are not or not vigorously enough implementing the required measures – possibly including the removal of supervisors from their posts;
- himself initiate criminal prosecution of supervisors who cover criminal offences or acts violating international laws of war.

2.25.

The comments I have so far made on the responsibility and disciplinary power of an ABiH commander reveal that the arrangement of para. 2.24 were also applicable to ABiH commanders.

3. THE CHAIN OF COMMAND WITHIN THE 3rd (ABiH) CORPS

3.1.

The two accused officers were members of the ABiH. These armed forces were established upon directive of President Izetbegović on 18 August 1992²⁶ and structured in five army corps.²⁷ One of the two accused officers, Enver Hadžihasanović, was the Commander of the 3rd (ABiH) Corps, while the other officer, Amir Kubura, was the Commander of the 7th Muslim Mountain Brigade. A relevant question for this report is therefore whether there was a hierarchical chain of command from the Commander 3rd (ABiH) Corps to the commander of 7th MMB?

The documents which I have studied reveal the following:

3.2. 3rd (ABiH) Corps

3rd (ABiH) Corps with headquarters in Zenica was formed upon directive of the Supreme Command Staff of the Armed Forces of the ABiH dated 09 November 1992.²⁸ During this process the corps were assigned geographic areas of responsibilities and subordinate brigades, which in turn were responsible for their individual areas of responsibility. As the first commander of 3rd (ABiH) Corps, Enver Hadžihasanović, was made responsible for its organisation and build-up.²⁹ He remained in this position until 01 November 1993 when he was assigned as Chief of the Supreme Command Staff of the ABiH.³⁰

3.3. The 7th Muslim Mountain Brigade

On 18 November 1992, the Commander of the 3rd (ABiH) Corps had requested the Supreme Commander of ABiH, S. Halilović, to recruit the 1200 Muslim soldiers in the area of Vlašić to form the 7th Muslim Mountain Brigade and to assign the brigade directly to the 3rd (ABiH) Corps.³¹ This request was approved per the directive from the Supreme Command of the ABiH dated 19 November 1992, and the 7th MMB was assigned directly to the 3rd (ABiH) Corps.³²

²⁶ PT 471 PT 3.

²⁷ PT 3.

²⁸ PT 5.

²⁹ PT 478.

³⁰ Biography of Enver Hadžihasanović, IT-01-47-I, 02083017, C5.

³¹ PT 6.

³² PT 7.

3.4.

The 7th MMB was created as an infantry manoeuvre unit consisting initially of two, and from January 1993 on of three battalions with an average strength of 1500 to 1800 men. There was also a Military Police unit of the 7th MMB.³³ All its soldiers had to be strict Muslim believers. On 10 December 1992, Commander 3rd (ABiH) Corps assigned all his units, including the 7th MMB, their respective zones of responsibilities.³⁴

3.5.

On 01 January 1993, Amir Kubura, who had already been Assistant Chief of Staff Operations in the 7th MMB, assumed the tasks of Chief of Staff of the 7th MMB.³⁵ In this capacity he exercised full command and control over the 7th MMB in the absence of the brigade commander, Asim Koričić from 01 April to 20 July 1993. On 21 July 1993, Kubura was proposed acting commander of the 7th MMB.³⁶ The documents make me conclude that he was officially nominated as Commander of the 7th MMB in early August.³⁷ He retained this position until 16 March 1994 when he was appointed Commander 1st MMB in the sector of 1st (ABiH) Corps.³⁸

3.6. The Operations Group Bosnija Krajina

For quite a long time 7th MMB was not assigned directly to the 3rd (ABiH) Corps, but orders were received from the 3rd (ABiH) Corps through the Operations Group Bosnija Krajina, which was a tactical headquarters with the purpose of co-ordinating the operational actions of different units of the 3rd (ABiH) Corps at an intermediate level.

3.7.

On 16 February 1993, the 3rd (ABiH) Corps had proposed the formation of the Operations Group Bosnija Krajina (OG)³⁹. The Supreme Command Staff of the Armed Forces of the ABiH officially activated the OG and subordinated it to 3rd (ABiH) Corps with effect from 17 February 1993.⁴⁰ Under directive of 08 March 1993, the Commander 3rd (ABiH) Corps assigned the 7th Muslim Mountain Brigade, 17th Krajina Brigade, the 305th Mountain Brigade, the 27th Motorized Brigade and the Jajce municipal defence headquarters to the newly formed OG.⁴¹ This was a tactical assignment, which did not release the commander of 3rd (ABiH) Corps of his responsibility for everything that happened in the 7th MMB.⁴²

3.8.

Starting 08 March 1993, within the framework of its assignment to the OG⁴³, the 7th MMB was subsequently also attached entirely or with elements for various and timely limited operations to the 308th Brigade and the 307th Brigade, which were also under the command of the 3rd (ABiH) Corps. On 12 July 1993, the 7th MMB was re-subordinated under the direct

³³ Details for the „Instruction for the functioning of the Military Police of the 7th MMB“, issued 07 February 1993, (PT 602).

³⁴ PT 8.

³⁵ PT 736.

³⁶ PT 88.

³⁷ On 04 August 1993 Kubura signs a report to 3rd Corps as “commander” (PT 440). Officially he was appointed on 06 or 09 August by the Commander of the Supreme Staff of the ABiH (PT 427).

³⁸ Biography of Amir Kubura, 02083040.

³⁹ PT 27.

⁴⁰ PT 28.

⁴¹ PT 31.

⁴² See also footnote 44.

⁴³ PT 31.

command of the 3rd (ABiH) Corps.⁴⁴ The exception was an assignment under the 306th Brigade in 6th (ABiH) Corps area from 31 October to 6 November⁴⁵ and again from 14 November to 03 December 1993 for a timely limited and specific operation.⁴⁶

3.9.

Under the above mentioned organisational directives, both the OG and the 7th MMB were directly assigned to the 3rd (ABiH) Corps; after activation of the OG the 7th MMB was assigned to the OG and thus subordinate to the 3rd (ABiH) Corps through the OG or temporarily to other brigades.

3.10.

In my view and based on my military experience the conclusion can be drawn that this command and control arrangement established a clear-cut, consistent and hierarchical command structure of effective control between the Commander of 3rd(ABiH) Corps, Hadžihasanović, and the Commander of 7th MMB, Asim Koričić, or his Acting Commander, Amir Kubura, who later became Commander of 7th MMB in early August 1993.

3.11.

The hierarchical chain of command went

- either directly from the 3rd (ABiH) Corps to the 7th MMB
- or through intermediate units like the OG or brigades, which were also under the direct control of the 3rd (ABiH) Corps.

This command and control arrangement through intermediate units is nothing unusual. It is used very broadly within military hierarchies. In my opinion, the essential point is that this command and control arrangement did not reduce the overall commander's responsibility of the 3rd (ABiH) Corps commander for all actions in the 7th MMB area of responsibility.

4. THE SUBORDINATION OF THE "MUJAHEDIN" WITHIN THE 3rd (ABiH) CORPS

4.1. What are "Mujahedin"?

The "Mujahedin" were foreign Muslims, most of them from Islamic countries.⁴⁷ The soldiers of the ABiH called them "Turks" or "Arabs".⁴⁸ The Mujahedin have already been conducting military and guerrilla activities in what later was to become the area of operations of the 3rd (ABiH) Corps since the summer of 1992, even before the activation of the 3rd (ABiH) Corps.⁴⁹

4.2.

In a videotape produced by the "El-Mudzahedin", the speaker describes them as follows:"... at the forefront of this movement were some brothers who were veterans of the Afghan Jihad. The Afghan Jihad served as an institute for teaching of Jihad."⁵⁰ They have come to Bosnia

⁴⁴ From 12 July on 3rd (ABiH) Corps communicated directly again with the 7th MMB (PT 86); on 16 July Hadžihasanović informed the Commander 7th MMB that his unit always was and still is directly linked to the Corps Command: "...your unit is not part of the OG "Bosanska Krajina" structure. It is an independent unit directly linked to the Corps Command. Parts of your unit were subordinated to certain units for the purpose of carrying out concrete assignments. Upon completion of the assignment, those parts of your unit are being returned to the original structure. The same procedure shall be exercised in the future..." (PT 1090).

⁴⁵ PT 19 PT 119.

⁴⁶ PT 141.

⁴⁷ PT 146 and PT 340.

⁴⁸ PT 563.

⁴⁹ PT 174.

⁵⁰ PT 359-PT 350, page L 0058593.

“to help local Muslim”⁵¹ and were stationed in two “Jihad camps”, one in Central Bosnia and one in Mehurić, which became the first camp “for the military preparation and training.” Their first leader was Sheik Abu Abdel Aziz “who was one of the first people to arrive in Bosnia from the Arabian peninsula.”⁵²

4.3.

According to the same source, the Mujahedin started their first military actions together with Bosnian Territorial Forces in August 1992 in Tesanj, followed by operations in September “under the leadership of the Bahraini prince Muhammad Al-Faatih Al Bahraini ... A Group of (Bosnian Muslim forces) participated in the operation.”⁵³

4.4.

The Commander of the 3rd (ABiH) Corps defined the Mujahedin as “guerrillas” describing them as volunteers from foreign countries (Arabs and Turks)⁵⁴ together with a group of Bosnians trained by them, who did not enter the ranks of the ABiH.⁵⁵ The documents suggest to me that not every Mujahedin was a guerrilla and not all guerrillas were Mujahedin, but according to the same documents it appears that quite a number of the guerrillas were indeed Mujahedin.

4.5.

Based on the material I have looked through it is not quite clear to me to which extent and under what kind of command relationship elements of the Mujahedin were fighting within the 7th MMB before they were officially organised into an independent 3rd (ABiH) Corps detachment on 13 August 1993.⁵⁶

4.6.

Nevertheless, there are some traceable indications that individual Mujahedin were serving with and in the 7th MMB already in early 1993. According to the videotape, somewhere in early 1992 an “agreement was made with the Commander of the Muslim forces in Travnik⁵⁷ to send a group of his best soldiers to join the ranks of the Mujahedin and train them to carry out special operations.”⁵⁸

4.7.

Another example of the co-operation between the forces of the ABiH and the Mujahedin is an internal report of the 7th MMB dated 15 March 1993, in which Asim Koričić, the brigade commander of 7th MMB at that time, while describing the status of his 1st Battalion, mentioned around 60 Arabs and Turks who were fighting with the battalion without being officially included in the total strength of this unit. He also mentioned his 2nd Battalion that included some 60 men being trained as a guerrilla group.⁵⁹ Relying on the definition of “guerrillas” as given above in para. 4.4. by the Commander of the 3rd (ABiH) Corps, it appears to me that at least some of these “guerrillas” must have been Mujahedin working very

⁵¹ Ibidem.

⁵² Ibidem.

⁵³ Ibidem, page L 0058594.

⁵⁴ 7th MMB reports that the soldiers of the 1st Battalion “...got used to the Arabs (and also some Turks) taking part in b/d with them” (PT 659).

⁵⁵ PT 174.

⁵⁶ PT 92.

⁵⁷ This commander must have been the commander of the 1st Battalion of the 7th MMB since his battalion was stationed in Travnik.

⁵⁸ PT 350, page L 0058592. Even though there is no clear indication when this happened, it was after the beginning of 1993.

⁵⁹ PT 525.

closely with units of the 7th MMB. However, since the “guerrilla” was a unit under the direct command of the battalion commander, I assume that Mujahedin operating within the “guerrilla” were organic members of that battalion and as such members of the 7th MMB. Based on this and other similar documents I would assume that the Commander of 7th MMB was responsible for the activities of those Mujahedin operating under his command.

4.8.

On 24 April 1993, the Assistant Commander of Security of 7th MMB gave an account of a visit to the 2nd Battalion of this brigade after its engagement and stated that “... sheer chaos was reigning as the troops were beyond the control of their superiors ... It was impossible to keep everything under control because the Turks were driving off whatever they wanted, and members of the ... Guerrilla Group were threatening everybody who stood in their way ...”⁶⁰ Again, these Turks and members of the Guerrilla Group seem to have been elements of the 2nd Battalion and were as such members of the 7th MMB.

4.9.

A report from the Commander of the 306th Mountain Brigade dated 05 May 1993 is another indicator suggesting that the Mujahedin were fighting within the 7th MMB before 13 August 1993. In this report he complained about members of units, who slipped out of the control of their superior commanders. “In the first place, those are the members of the 7th MMB and we are not entirely familiar with the status of the Mujahedin. There are cases when they operate arbitrarily ... We suggest to resolve the status of the Mujahedin and members of the 7th Muslim Brigade”.⁶¹ The next day he reported that a “large number of foreigners, mostly Arabs in Mehurići, is very problematic. We are not able to oppose their self-wilfulness ... Opening fire, robbery, threats made to certain groups and individuals ... we are requesting that this be urgently reviewed and resolved, so Miletići would not be repeated or something even worse happen...”⁶² It is obvious to me that this brigade commander complained about Mujahedin fighting within the organisation of the 7th MMB, so the Commander of the 7th MMB and the Commander of the 3rd (ABiH) Corps knew about these criminal activities of the Mujahedin.

4.10.

Even the 7th MMB complained on 18 May 1993 that “... Arabs did not give access to one warehouse of ammunition and explosives ... All problems arose as a result of the presence of Turks, Arabs and Guerrilla.”⁶³ Since this report is about internal problems of the 7th MMB, the conclusion could be drawn that the Arabs and Turks were members of the 7th MMB.

4.11.

Based on this scarce information from existing documents one can assume that at least certain elements of the Mujahedin were incorporated in the organisation of the 7th MMB battalions beginning in early 1993. They participated in operations of the 7th MMB either as individuals or organised within the “guerrilla” fighters in the 7th MMB battalions conducting unconventional operations in front of or at the flanks of the 7th MMB forces or in the rear of their opponents. From the point of view of 7th MMB, but also from the OG and the 3rd (ABiH) Corps, they were successfully spreading terror.⁶⁴

⁶⁰ PT 151.

⁶¹ PT 805.

⁶² PT 807. This is a clear indication of the criminal activities of the Mujahedin in Miletići.

⁶³ PT 563.

⁶⁴ PT 659.

4.12.

In fact, in an internal report to the brigade commander 7th MMB praised the fact that the "... presence (of the Mujahedin) makes them (i.e. the soldiers of the 1st Battalion) feel more secure, and the Arabs were frequently of decisive importance for the success of an action, so the soldiers of the 1st Battalion, 7th MMB, want them engaged again ..."⁶⁵

4.13. The official formation of the "El Mujahedin" on 13. August 1993

In June 1993, the 3rd (ABiH) Corps wanted to solve the problems with command and control responsibility concerning the Mujahedin. Therefore, the Commander of 3rd (ABiH) Corps asked the Supreme Headquarters on 13 June 1993 for their "stances and options regarding the solution to this problem, since these units are situated in the area of responsibility of the 3rd Corps, and I do not want to be held accountable for the consequences of their actions."⁶⁶ Based on the wording of this report, it seems to me that Hadžihasanović was rather fed up with the "unconventional" behaviour of the Mujahedin operating in his area of responsibility. I assume that he wanted to take them under closer control.

4.14.

From a Mujahedin point of view, the reasoning for establishing their unit is very different. According to the Mujahedin their leaders were not at all satisfied with the professional skills of the ABiH units and also accused them of "lack of correct and sound Islamic belief". "In addition to this there were traitors amongst the ranks of the Bosnian Army, a lack of good planning and chaotic organisation during operations."⁶⁷ Last but not least, according to their accounts the Mujahedin had refused to continue fighting with the ABiH forces owing to the then rather unordered situation of a military co-operation that was not firmly established.

4.15.

Therefore – as it says in the video – "The Shura Council of the Mujahedin decided to stop taking part with the Army in any of the military operations until the Mujahedin were recognised as an independent Battalion within the Bosnian Army. The Bosnian Army acknowledged the part the Mujahedin had played so far and their need for men of this kind. Therefore the Bosnian Army leadership agreed to their request and recognised the Mujahedin Battalion as part of the Bosnian Army ... The Head Office for the battalion was in Zenica ... The training camp was ... in the village of Mehurić. The leader of the Battalion was Abdul-Harit the Libyan ... and the military commander was Wahiudeen ..."⁶⁸

4.16.

For the present investigation it is insignificant who had eventually seized the initiative to activate the "El Mudjahedin" unit. What matters is the fact that by this move, the previously rather ad hoc co-operation between the Mujahedin and the ABiH, which can be taken from the above documents, was thereafter put on a clearly binding organisational and structural foundation.

4.17.

Finally, on 16 June 1993, the Commander of the RBiH Armed Forces, General Delić, ordered 3rd (ABiH) Corps Commander to "send these groups to Mount Igman and merge them with ŠVK independent detachments in Zuka's unit. In case they do not accept, show them no

⁶⁵ Ibidem.

⁶⁶ PT 174.

⁶⁷ PT 350, page L 0058597.

⁶⁸ Ibidem, page L0058597.

hospitality and eventually disarm them.”⁶⁹ Again, this document shows that Delić, too, did not appear to be very enthusiastic about the services rendered by the Mujahedin.

4.18.

The reports, which have been made available to me gave no evidence that the Mujahedin were willing to be transferred to Mount Igman. Obviously they resisted, since on 23 June Kubura, Chief of Staff of the 7th MMB, asked the Commander of 3rd (ABiH) Corps in a meeting whether “... we will continue to hire (foreign nationals) because they receive ammunition? Will they go to Mount Igman or will they continue to conduct operations in the zone of operations of 3rd Corps?”⁷⁰

4.19.

Based on this report, it seems that the Mujahedin were rather inclined not to agree to being transferred to Mount Igman. On 23 July, Delić had to send a special representative to the 3rd (ABiH) Corps⁷¹ to carry out the arrangements for the inclusion of the Mujahedin in the ABiH and their subordination under the 3rd (ABiH) Corps. Again, it seems that these negotiations were not very easy, as it was not before 12 August 1993 that the Commander of the 3rd (ABiH) Corps requested to integrate them in the organisation of the ABiH.⁷² One day later the Commander of the Supreme Staff ordered “to form the detachment ‘El Mudzjahedin’ in the area of responsibility of 3rd Corps.”⁷³ At the beginning of its existence, it was placed under direct command of 3rd (ABiH) Corps, from 06 September on under the command of the OG for the follow-on operations.⁷⁴

4.20.

No matter what direct command relationship of individual Mujahedin might have been established de jure before 13 August 1993, the documents show that elements of them were de facto operating as small units without any structural connection to military organisations of ABiH units or as small sub-units within the 7th MMB inside the area of responsibility of the 7th MMB and the 3rd (ABiH) Corps before 13 August 1993.

4.21.

Not only based on the written documents, but also owing to the statements made on the video tape it is appears to me that the Mujahedin were engaged in a military cooperation with and received distinct orders from the ABiH⁷⁵, without, however, obeying established orders in each and every case. They were thoroughly involved in operations in Mehurić, Zenica, Miletići, Travnik, Maline, Vareš and Guča Gora, during which they seem to have collaborated with the ABiH forces and also handed over their prisoners of war.⁷⁶

4.22.

With the official formation of the “El Mujahedin” the Mujahedin were eventually placed in an organisational entity and reorganised to become a new ABiH military unit. This unit was initially subordinate directly to the 3rd (ABiH) Corps by the Bosnian Supreme Command, then from 06 September on to the OG, later back under the direct command of 3rd (ABiH) Corps and subsequently again under the command of the OG.⁷⁷ In my view, this subordination

⁶⁹ PT-611 PT 610.

⁷⁰ PT 77.

⁷¹ PT 301.

⁷² PT 91.

⁷³ PT 92.

⁷⁴ PT 95.

⁷⁵ PT 350, page L 0058596.

⁷⁶ Ibidem.

⁷⁷ PT 123.

directly under the command of the 3rd (ABiH) Corps or under the OG represented – also in the light of international standards – a clear military assignment of the Mujahedin, and hence created a legal responsibility of the respective military commanders for their actions. According to the legal obligations of Article 239 of the RBiH Criminal Law “Regulations of International Laws of War in the Armed Forces of the SFRY”⁷⁸, the corps commander was responsible for everything that happened in his specific area of responsibility, “even if the criminal acts in question were not committed by troops under his individual command”.

4.23.

Consequently, Kubura or Hadžihasanović would have been obliged by the law to initiate prosecution of suspected perpetrators from the Mujahedin as soon as they learned about crimes committed by the Mujahedin. Furthermore they would have had to ensure that these types of crime would not occur again. In my view this would have been possible by immediately addressing the Mujahedin leadership, which was constantly available pursuant to the statements made on the video tape⁷⁹. Had this turned out to be to no avail, the ABiH would have had the military power to conduct strong measures against the Mujahedin as a last resort in case all other measures failed.

5. PROFESSIONALISM WITHIN THE 3rd (ABiH) CORPS COMMAND

5.1.

The armed forces of Bosnia were no forces that had evolved over time. They were not trained in a traditional way, nor were they under a leadership with similar professional skills that can be found in NATO armies. In contrast to e.g. the German Bundeswehr or the British Army, the ABiH had no broad leadership that had professionally evolved over time. This is true specifically for structural issues and operational/tactical deployments. The Bosnian forces were practically built from scratch in times of a political emergency. They were thrown into combat without any comprehensive training, since at that time the armed conflict was already raging on the territory of Bosnia and Herzegovina with Bosnian Serb forces and – beginning in January 1993 – with Croatian forces in Central Bosnia. At the beginning of the existence of the ABiH, one should not see their operations as traditional operations involving entire army corps or brigades, but rather as tactical actions limited in time and space with a very limited military objective and evolving in space only after some time – all this due to the poor military training of the soldiers, but even more to the poor command capability of their leaders as far as tactical operations were concerned. However, these restricting comments do not apply – as far as I can see from the documents that were made available to me – to issues of disciplinary power and legal prosecution of criminal action and crimes against the International Human Law.

5.2.

An ABiH corps was not equivalent in size to that of a NATO corps, but rather to that of a NATO division. The leaders at the level of 3rd (ABiH) Corps mainly consisted of former officers of the Yugoslav People’s Army (JNA). In the Bosnian armed forces these officers had to assume posts that were very often one to two command levels above the ones they held in the JNA.

⁷⁸ PT 1194 PT 1222.

⁷⁹ The video tape shows the sequence in time concerning the command of the Mujahedin (PT 350).

5.3.

This is true also for the two accused who were former regular officers of the JNA. Hadžihasanović had served with the JNA as a Lieutenant-Colonel and brigade commander, whereas Kubura had been a Captain in the JNA. Consequently their practical experience in commanding and controlling corps and brigade-size operations was limited and improving with time only through learning by doing. Hadžihasanović had been the commander of a JNA military police battalion, and therefore procedures of military discipline probably were probably more familiar to him than planning and conduct of military operations.

5.4.

Although the former Yugoslavia was not a Warsaw Pact country, it was very much influenced by Eastern Block thinking and by the centralist thinking of the former Soviet Union. I discussed this issue very thoroughly in discussions with JNA officers who attended the US General Staff Officer Training together with me at the US Army Command and General Staff College in Fort Leavenworth, Kansas, and also later on when I spoke with Croatian, Bosnian and Albanian officers who had served with the JNA. In these talks I learned that there was a substantial exchange of officers from the former Yugoslavia and the former Soviet Union. Centralist control was a key factor also in the ABiH. People at the lower level were less prepared to take action on their own initiative without seeking the backing of higher authorities.

5.5.

A rather poor professional standard was not only to be seen on the lowest level of soldiers, but also amongst the leaders, and it can be seen from a request, which the Commander of 7th MMB submitted to the OG on 13 March 1993 and which referred to the fact that there was only a handful of qualified JNA officers in his brigade staff and in battalion leadership positions. He asked for more JNA officers in order to strengthen his brigade with more of those officers.⁸⁰ Almost simultaneously he reported that the military awareness of his soldiers of the need for security is poor or non-existent, which applied in particular to officers in commanding positions and members of commands.⁸¹ And the Commander of 6th (ABiH) Corps complained about the inability of his staff to control the units and about the undeveloped military attitude of his commanders and soldiers.⁸²

5.6.

An 3rd (ABiH) Corps complaint dated 01 September 1993 read "The units of our Army are hampered by a lack of discipline, both individual and collective, and a general lack of military structure. The training of officers from detachment commander, platoon commander and even battalion commander is incomplete, which is having a negative impact on discipline and the successful execution of combat operations ..." ⁸³ It was difficult to find former JNA officers in positions of platoon and company commander, especially in the infantry.⁸⁴

5.7.

Corps commands were not to be seen as operational headquarters on a par with NATO corps staffs. This was because they had initially been primarily responsible for receiving the territorial forces in their areas of operation, for the build-up of organic elements and administrative command and control. When the necessity for military operations was

⁸⁰ PT 464.

⁸¹ PT 131 PT 137.

⁸² PT 119.

⁸³ PT 262.

⁸⁴ PT 198, page 17.

increasing, they gradually were planning military operations limited in time and space. They pre-defined the operational objectives and the units taking part in it. Finally, the corps staff co-ordinated in detail all operational aspects of the planned and ongoing missions down to brigade level.

5.8.

The brigades in turn complained about bad morale, high levels of criminality⁸⁵ and the lack of training of soldiers assigned to them. These men were in most cases local militiamen, i.e. reservists of the former JNA who had served as conscripts of the former Yugoslav Army or volunteers with no military training at all. Hence any complicated tactical operations were out of the question.

5.9.

One of the important questions for this case is whether the communications within the 3rd (ABiH) Corps were good and stable enough to ensure that the superior commanders could be informed and/or received knowledge in time about criminal acts and violations of the international laws committed in their area of responsibility.

5.9.1.

There are a number of documents, in which the corps told their subordinate formations, i.e. the brigades/OGs, when, what and how they were supposed to report. These reports appeared to be coming through on a daily basis, actually they were called "daily combat reports."⁸⁶ Therefore, by definition they appear to be submitted every 24 hours. And indeed, in some operation orders it is laid down that all the brigades report their situation at 1700 hours each day, and that the report has to be received at the corps level of command by 1800 hours. In addition, the Corps ordered weekly reports on factors "affecting combat morale"⁸⁷ which most probably included reporting on disciplinary and criminal issues.

5.9.2.

During ongoing operations, combat reports were due even at 6 hour intervals.⁸⁸ On special occasions additional spot reports were requested at short notice, e. g. when Commander of the 3rd (ABiH) Corps ordered all his brigades and OGs to submit detailed reports on criminal activities within the 3rd Corps area by 2000 hours of 20 June 93 at the latest.⁸⁹

5.9.3.

During operations, the Chief Communications of the 3rd (ABiH) Corps distributed communication plans to all brigades and OGs with code names and wave bands for the particular days.⁹⁰

5.9.4.

Obviously, there were tactical problems in the daily communication routine, especially during mobile operations. As one of many examples I mention a report by the Commander of the OG, Alagić, in which he formed a team of communication specialists to check and repair non-functional equipment and to propose suggestions for improving the situation.⁹¹

⁸⁵ PT 492.

⁸⁶ PT 16 as one of many examples.

⁸⁷ PT 1036.

⁸⁸ PT 22.

⁸⁹ PT 181.

⁹⁰ PT 556.

⁹¹ PT 774 PT 85.

5.9.5.

The 7th MMB, too, complained about poor tactical communications⁹² and also the 3rd (ABiH) Corps had to admit communication problems at the lower level of command and control, i.e. at the squad, platoon and company levels.⁹³ But these and other similar reports referred to problems of commanding units in tactical operations only, not to the routine reports to higher headquarters which seem to have been rather stable.

5.9.6.

Limited to the very scarce communication equipment in the Bosnian Army, they used every available military and civilian means for command and control purposes. So reports were distributed by teleprinter, telegraph, telephone, motorola, radio relay communications, wire communications or special messengers, respectively.⁹⁴

5.9.7.

After having checked so many reports I come to the conclusion that the flow of information from subordinate to higher headquarters was clearly organised and working well. Indeed, with respect to command and control, I assume that over the time 3rd (ABiH) Corps became a more and more organised and efficient major unit. After having analysed many combat and other reports of 3rd (ABiH) Corps and its subordinate units, it appears to me that 3rd (ABiH) Corps had a rather uninterrupted contact with the Superior Command as well as with the subordinate and attached commands and units down to brigade level. Based on the material provided to me my impression is that Hadžihasanović received permanent and current information on all matters occurring in his area of responsibility, including minor incidents. He communicated daily with his subordinated OGs and brigades.

5.9.8.

From what I have seen I can safely conclude that the communication links existing in the area of the 3rd (ABiH) Corps were adequate even though they were not always in line with modern standards; besides the problems with tactical communications during military operations, they would have been able to ensure that criminal activities were reported from subordinate to higher headquarters and also from subordinate units to higher headquarters in a timely manner.

5.10.

The professional qualification of legal services both with the brigades and the corps left much to be desired. Since apparently there were no sufficient numbers of qualified specialists in the ABiH, the commanders were simply instructed to take care of this area on their own account, to reinforce their personnel with experienced lawyers for the purpose of more efficient and high-quality work of the legal services.⁹⁵ On the other hand, the legal services of the 3rd (ABiH) Corps were qualified enough to comment in detail on the "Rules on Military Discipline" and to explain how to apply them in the field.⁹⁶

5.10.1.

The 3rd (ABiH) Corps and the brigades had "Military security services" and "Military police forces". In para 33 of the "Rules of Operation for the Military Security Service in the ABiH"⁹⁷

⁹² PT 1039.

⁹³ PT 198.

⁹⁴ PT 671.

⁹⁵ PT 776.

⁹⁶ PT 795. The Corp's legal service even amended the Rules on Military Discipline (PT 1169).

⁹⁷ PT 476; para 40 of this document says: "When there is reasonable suspicion that a criminal offence triable by military courts has been committed, officers of the Military Security Service must take the necessary measures to

it says: “An authorised officer of the Military Security Service and military police may arrest military personnel or workers serving in the armed forces if caught in the commission of a criminal offence within the competence of district military courts.” The Security Sector of the 3rd (ABiH) Corps even issued details to the Military Security Services within the corps area on “documenting war crimes”.⁹⁸

5.10.2.

The Travnik District Military Court – one of the courts responsible for the prosecution of criminal cases in the area of 3rd (ABiH) Corps – reported that because of a lack of specialised manpower it could only provide limited support in dealing with the problems the Commander of the OG, Mehmed Alagić, reported to be resulting from a rising crime rate among his soldiers.⁹⁹ But when Alagić talked about “crime rate” he rather addressed internal military and disciplinary problems than criminal actions against civilians or prisoners.

5.11.

The documents given to me reveal that – apart from very few exceptions among leaders – the specialised military professionalism in the area of command of 3rd (ABiH) Corps was rather limited and could not be compared with NATO standards, because the ABiH leaders

- could not have resort to sufficient numbers of qualified former JNA active-duty officers;
- had to recruit insufficiently trained and poorly qualified JNA reserve officers and other leaders appointed at short notice;
- were not in the position to offer untrained officers and soldiers technical and tactical training and professional development due to the initial lack of appropriate training facilities;
- did not have experienced leaders for training as these were needed immediately in combat operations.

5.12.

In my analysis, leadership deficits, combat casualties and constant reorganisation as well as the lack of a permanent structure of headquarters and units that had traditionally evolved over time seem to have caused permanent manpower changes. These factors of poor military and tactical professionalism were understandable under the circumstances of the ABiH in the years of 1992 and 1993, but they did not exempt the commanders from taking effective control and appropriate measures against criminal activities within their areas of responsibility.

6. LEGAL PRINCIPLES FOR COMMANDERS OF THE ABiH

6.1.

The ABiH adopted the command and control principles of the Yugoslav Armed Forces. According to and in consonance with the principles the “Rules for Land Forces Corps”¹⁰⁰ of the former JNA, the ABiH laid down the principles of responsibility, authority and accountability of a Corps Commander and other commanders. Consequently, a commander in the ABiH was personally, directly, and legally empowered to lead the operations, assign tasks

find the perpetrator of the criminal offence, to prevent the perpetrator or his accomplice from going into hiding or escaping, to uncover and protect the evidence and exhibits which can serve as evidence, and to gather all the information useful for successful conduct of the criminal proceedings.”

⁹⁸ PT 548.

⁹⁹ PT 677.

¹⁰⁰ PT 1217.

to his subordinate officers, ensure they are carried out, and bear full responsibility for their completion.

6.2.

In the "Decision to Declare a State of War", RBiH President Alija Izetbegović stated that "... The Republic of Bosnia and Herzegovina shall comply with the provisions of international laws and international conventions regulating the conduct of states in a state of war ..." ¹⁰¹ One month later, Izetbegović issued an order on the adoption of the "Rules of the International Laws of War" ¹⁰², through which he forced the ABiH to apply and respect the rules of the international laws of war.

6.3.

Implementing this basic decision of President Izetbegović the ABiH "Manual of Service in the Army of the Republic of Bosnia and Herzegovina" laid down in more detail that all soldiers of the ABiH shall comply with the provisions of international laws and international conventions." All members of the armed forces ... must adhere to the rules of the international military laws - to act humanely towards the wounded and the prisoners from enemy ranks and protect civilian population in accordance with international regulations and Constitution of the Republic." ¹⁰³

6.4.

Chapter 16 of the "Criminal Law of the SFRY", which was applied in the RBiH as well, listed "Criminal Acts against Humanity and International Law" as follows:

- Genocide
- War Crimes against the Civilian Population
- War Crimes against the Wounded and Sick
- War Crimes against Prisoners of War
- Unlawful Wounding and Killing of the Enemy
- Marauding
- Cruel Treatment of the Wounded, Sick and Prisoners of War
- Destruction of Cultural and Historical Monuments. ¹⁰⁴

6.5.

Paragraph 2 of the special "Order on Enforcement of the Rules of the International Military Law in the Armed Forces of the Republic of Bosnia and Herzegovina" ¹⁰⁵ imposes a specific responsibility on the commander concerning the implementation of the provisions of international military laws. The special order states, " The commanders of the units and each member of the armed forces individually is responsible for the enforcement of the rules of the international military law. The competent commander is obliged to start procedures to pronounce legal sanctions against persons who violate the rules of the international military law." ¹⁰⁶

¹⁰¹ PT 1281 PT 1220.

¹⁰² PT 1218; this document states: "Both Commanders of Armed Forces and soldiers are bound to implement the rules of the International Laws of War" and it continues: "The Commander is entitled to take legal actions against the persons who violate the Provisions of the International Law of War".

¹⁰³ PT 474.

¹⁰⁴ PT 1191 PT 1190.

¹⁰⁵ PT 1231, page 00609162.

¹⁰⁶ Ibidem.

6.6.

Moreover, Article 5 of the “Manual on Military Discipline” states that military persons are responsible according to the rules defining criminal actions or misdemeanours in the Republic of Bosnia and Herzegovina.¹⁰⁷

7. LEGAL RESPONSIBILITIES OF AN ABiH COMMANDER

7.1.

According to the legal regulations of the armies of NATO countries, commanders are obliged to investigate and to initiate appropriate action as soon as they become aware of alleged or de facto criminal activities of individuals or units in their area of responsibility. The rules and laws governing the disciplinary system of the ABiH and their commanders were – as I have already explained in detail in chapter 2 – very similar. They were laid down in the “Decree on the Armed Forces of the RBiH”¹⁰⁸, in the “ABiH Rules on Military Discipline”¹⁰⁹, in the “ABiH Criminal Law”¹¹⁰ and in the “ABiH Decree-Law on Special Military Courts”.¹¹¹

7.2.

I have already mentioned that the ABiH have adopted the fundamental structure, regulations and operating methodologies of the JNA. In this context, a commander has the institutional, and legal authority to direct the activities of his subordinates. But he is also accountable for their actions and retains the individual responsibility for what has happened under his command.¹¹²

7.3.

The “ABiH Rules on Military Discipline” and the included regulations of “Disciplinary Responsibility” provide ABiH commanders with all the tools necessary to ensure or enforce proper military conduct. According to this document, all members of the ABiH forces “... shall be accountable in accordance with the regulations regulating criminal offences or the regulations regulating misdemeanours in the Republic of Bosnia and Herzegovina.”¹¹³

7.4.

The RBiH Bill relating to District Military Courts specifies the duties of a commander concerning the investigation of criminal activities. “The commander of armed forces or the chief of the military department are bound to take steps, in the course of official legal action, to prevent the offender from escaping, to make available all the data and sources of evidence concerning the criminal case...”¹¹⁴

¹⁰⁷ PT 474, p.53.

¹⁰⁸ PT 1221.

¹⁰⁹ PT 1144.

¹¹⁰ ~~ibidem.~~ PT 1222

¹¹¹ ~~ibidem.~~ PT 1144

¹¹² I quote from the “Regulations on the Application of the Rules of International War in the Armed Forces of the SFRY”, 1988, para. 21, : “An officer shall be personally liable for violation of the laws of war if he knew or could have known that units subordinate to him or other units or individuals were planning the commission of such violations, and, at a time when it was still possible to prevent their commission, failed to take measures to prevent such violations. The officer will also be held personally liable who, aware that violations of the laws of war have been committed, fails to institute disciplinary or criminal proceedings against the offender or ... fails to report the breach to his superior officer.” (PT 1222).

¹¹³ Article 5 of the Rules on Military Discipline (PT 1144).

¹¹⁴ PT 1146.

7.5.

The documents I have looked at lead me to believe that the legal provisions within the ABiH and their deduction from the legal regulations of the JNA and SFRY were adequate for commanders and superior officers in order to prevent, investigate and punish criminal acts committed within their area of responsibility by military units or personal. They provided the basis for these officers to take proactive measures in dealing with war crimes issues. This applied even in the case when the criminal acts in question were not committed by soldiers or others under their respective command. And finally, these provisions made a commander liable if he had not taken measures at all, particularly if the failure to do so lead to additional criminal activities.

7.6.

In summary, based on the material made available to me, I come to the conclusion that the two accused officers were required to abide by the law and standards governing the conduct of armed conflicts, including the Geneva Conventions. They were responsible for ensuring that the military units under their command and control complied with these rules of national and international laws and applied them. They were also obliged – according to the legal arrangements in the ABiH – to investigate and initiate proceedings for legal sanctions against individuals under their command and control who had violated the national laws and the international laws of war as soon as they became aware of criminal activities by individuals or units in their areas of responsibility.

8. WHERE THE TWO ACCUSED AWARE OF CRIMINAL ACTS COMMITTED WITHIN THEIR AREAS OF RESPONSIBILITY?

8.1.

When one assesses the issue of responsibility, a key question is whether or not the two accused were aware of criminal acts committed within their areas of responsibility?

8.2.

In the documents given to me, there were early and clear reports providing solid information on the illegal and criminal activities of the Mujahedin. They make me believe that Hadžihasanović and Kubura had to be aware indeed of criminal acts in their areas of responsibility. They reacted by repeatedly addressing such actions and behaviour and by giving written orders to stop them immediately. The first documents to this effect occurred in February 1993¹¹⁵ and continued to appear throughout the year.¹¹⁶

8.3.

Hadžihasanović – after a joint meeting convened by the leadership of the Croatian army, chaired by UNPROFOR commander, General Morillon, and attended by representatives of the mixed commission of European monitors and representatives of the Croatian forces – issued a directive to all his brigade commanders and ordered the following as late as 1 February 1993: "Prohibit all members of the Army of the Republic of Bosnia and Herzegovina from stealing, looting and burning property. Arrest perpetrators at once and institute criminal proceedings. I hereby make the brigade and staff commanders responsible for the realisation of this task."¹¹⁷

¹¹⁵ PT 23; PT 24, PT 39 and PT 215.

¹¹⁶ PT 805; PT 235; PT 68; PT 791; PT 192; PT 191.

¹¹⁷ PT 23.

8.4.

I believe that because of the timely sequence of incidents in Dusina on 26 January and the meeting convened subsequently on 1 February 1993, there seems to be that Hadžihasanović was indirectly addressing those incidents at Dusina which were "officially" put on the agenda of this meeting by the Croatian side and presumably also by General Morillon. The directive dated 1 February 1993 could therefore be an immediate consequence of the knowledge Hadžihasanović had gained "officially" on 1 February 1993.

8.5.

In the extensive documents I reviewed pertaining to the area of 3rd (ABiH) Corps I have only found one single case that served to prove that Hadžihasanović actually took active action in an isolated case the way he should have reacted according to the law. In this case he tasked the commander of his Military Police Battalion to reinforce the MP forces in the area of Pročica and investigate the incidents that happened there. All this was done under the impression of "demonstrated need and in order to provide assistance in preventing indiscipline, looting, torching and other prohibited activities in the zone of responsibility of the 325th bbr/Mountain Brigade". He also ordered that investigation results be reported to him immediately.¹¹⁸ And actually the report was received on the very same day.¹¹⁹ However, it cannot be taken from the documents whether or not Hadžihasanović instituted further investigations.

8.6.

The war diary of 306th Mountain Brigade reads, "Due to the very complex situation, the Mujahedeen¹²⁰ have moved the population of Miletici out, taking those fit for service to Mehurici ... Five people were killed in the fights for Miletici."¹²¹ On 16 March 1993, the Commander of 306th Mountain Brigade, Esed Sipić, reported to 3rd (ABiH) Corps Command frequent cases of all forms of criminal activities committed recently in his area of responsibility. He complained about the "Moslem forces ... financed by the people from the Arab countries" who were the main perpetrators and he announced that "criminal charges are brought against them".¹²²

8.7.

Two weeks later the same commander reported to the 3rd (ABiH) Corps "the unacceptable behaviour" of some soldiers of the 7th MMB who were "not in keeping with the general interest and goals of the patriotic forces of the RBiH and the goals and interest of Moslems in the RBiH."¹²³

8.8.

Also the HVO complained about criminal offences committed by members of the 3rd (ABiH) Corps. On 29 March 1993, Colonel Blaškić, the Commander of the Central Bosnia Operative

¹¹⁸ PT 235.

¹¹⁹ PT 1387.

¹²⁰ This is another proof of the close collaboration of the ABiH with the Mujahedin. On this issue, see also the report of the Assistant Commander of Security of the 7th MMB from 24 April 1993, in which he complained about the misbehaviour of the "Turks" in the 2nd Battalion of the 7th MMB who were stealing, looting and threatening everybody who stood in their way (PT 151). Further details can be found in another report of the 306th Mountain Brigade to the 3rd (ABiH) Corps dated 06 May 1993. This is a special report on Miletici claiming that "a group of Mujahedin with several people from Mehurici, suddenly and on their own, carried out an action where they killed 5 citizens...With extreme efforts and highest engagement of men from the brigade we prevented even graver consequences ..." (PT 807)

¹²¹ PT 558.

¹²² ~~PT 776~~ PT 837.

¹²³ PT 803.

Zone Vitez, wrote a note to the Commander 3rd (ABiH) Corps complaining about a murder of HVO Military Police officers.¹²⁴ In this connection, he requested to make clear the position of the “7th MMB within the Corps (in ideological, hierarchical, financial and other senses), because we have information indicating that these relations are of a different character” and he continued requesting “ that the 7th MMB be urgently dissolved, because it harbours confirmed enemies of the Croatian people, and that appropriate measures of responsibility be taken against the command of this brigade.”

8.9.

The ECMM Headquarters in Zagreb reported about 5 inhabitants who haven been tortured and killed in Miletici. “According to eyewitnesses 15 Arabic speaking men, dressed in ordinary uniforms, surrounded the village...their leader was called Rahmadan.”¹²⁵ The very same afternoon of the murder, Merdan, Deputy Commander of the 3rd (ABiH) Corps visited the scene¹²⁶, so the Corps Command knew what happened there.

8.10.

Therefore it seems unlikely to me that this information about the Mujahedin’s non-compliance with international law at Miletici was not reported likewise to 3rd (ABiH) Corps. All the more since the corps ordered again on 26 April, “Prevent any type of inappropriate conduct of soldiers ... Special stress should be laid on the prevention of plunder, torching, or other inappropriate behaviour. Strict measures should be taken against perpetrators.”¹²⁷ I think that there is a timely relation and therefore an immediate connection between the crime in Miletici and the written reaction of 3rd (ABiH) Corps, suggesting that the corps staff actually knew well what had happened in Miletici. Moreover, the commander of 306th Mountain Brigade implored on Hadžihasanović on 5 May 1993 to see to it that criminal activities such as those of the Mujahedin at Miletici be prevented in the future.¹²⁸ The brigade described the co-operation with the Mudjahein as “very problematic”¹²⁹ and continued :”We are not able to oppose their self-wilfulness, as well as of groups of the 7th MMB...” However, I have not found any documents that would suggest that Hadžihasanović took any additional measures following his directive dated 26 April 1993 and initiated the required legal investigation of the incident as well as the general misbehaviour of the Mudjahedin.

8.11.

In the documents I reviewed on the murders of 8 June 1993 in Maline and Bikosi I have not found any statements by either Kubura or Hadžihasanović that contain any direct reference to the incident. It is however striking that again, immediately after the incidents in Maline and Bikosi, Hadžihasanović issued a principal directive to all his commanders on 10 June 1993. In this document he deplores that “During the conflicts between the HVO and the ARBiH ... illegal and very harmful behaviour of some ARBiH members occurred, bearing unforeseeable consequences.”¹³⁰ He then deals with those crimes in detail that must be prevented in the future and holds his brigade commanders personally liable for the implementation of this directive.

¹²⁴ PT 530.

¹²⁵ PT W 44.

¹²⁶ Ibidem.

¹²⁷ PT 1442.

¹²⁸ See above, para. 4.9.

¹²⁹ PT 807

¹³⁰ PT-61 PT.168.

8.12.

Again, the timely connection between the crime and the reaction of the Commanding General of 3rd (ABiH) Corps seems obvious. And again, the documents do not contain any reference on measures that would have led to further investigations or even the institution of legal penal measures.

9. ACTIONS TAKEN BY THE ACCUSED**9.1.**

The ABiH legal provisions made it very clear that a commander of the rank of the accused was criminally liable for the acts of his subordinates if he knew or had reason to know that his subordinates were about to commit or had committed criminal acts. The same rule applied if a subordinate superior failed to take the necessary measures to punish the perpetrators or prevent such acts.

9.2.

Based on my experience and the documents I went through I assume that both Hadžihasanović and Kubura were well aware of what happened in their subordinate areas; they knew about the crimes and actions violating the international laws of war. They felt responsible for incidents in their areas of responsibility and they tried to stop these from happening by issuing pertinent written orders. However, the documents give no indication that they were willing to take a more proactive stance in order to stop and prevent these criminal acts by punishing the perpetrators or intervening by instituting their own investigations.

9.3.

I would have expected that the two accused commanders

- owing to the clearly established command structure and, thus the unequivocally assigned responsibility,
- owing to the unequivocal legal situation, which obliged them to conduct legal investigations if they were aware of crimes and actions violating international laws,
- owing to the doubtlessly existing awareness of crimes and actions violating the international law of war in their subordinate area,

should have intervened, taken action and seen to it that the crimes and actions violating international laws were punished and stopped.

9.4.

The question is whether Hadžihasanović and Kubura reacted accordingly and what actions they have actually taken.

9.4.1. Actions taken by Enver Hadžihasanović

I have found many documents indeed in which Hadžihasanović started investigations against alleged crimes or admonished his subordinate commanders to take actions against perpetrators and to prevent further criminal activities. One of the first examples in this context is an order, most probably based on his knowledge of crimes committed in Dusina on 26 January 1993 by members of the 7th MMB, in which Hadžihasanović holds his brigade commanders personally responsible for ensuring that "... all members of the Army of the Republic of Bosnia and Herzegovina (refrain) from stealing, looting and burning property. Arrest perpetrators at once and institute criminal proceedings."¹³¹ Two days later he mentioned "... occurrences of looting and burning of objects, as well as imprisonment of civilians ... We do not want to build an

¹³¹ PT 23.

army using the same methods and ways as the aggressor, we want to build an army with a humane conception of warfare that will respect and adhere to all the Geneva Conventions and the UN Charter.”¹³² It is interesting that in both of the two documents Hadžihasanović did not make any direct reference to the criminal acts committed in Dusina.

9.4.2.

On 26 February, after he became aware of renewed illegal and criminal behaviour of individuals within the 7th MMB, he warned the commander of 7th MMB regarding incorrect behaviour of members of his brigade and asked him to take measures to prevent the repeated occurrence of such cases.¹³³

9.4.3.

In principle, these and many similar orders the commander of 3rd (ABiH) Corps issued to his subordinate commands were the right and appropriate way to start investigations and to prosecute the perpetrators. However, there is only little evidence of any action that was actually instituted against individual criminals.¹³⁴

9.4.4.

In one case however, when he was asked about the looting of the 7th MMB in Kakanj, he did not deny it and said that he was going right there.¹³⁵ In a report to the Deputy Commander of the Supreme Command Staff concerning the measures he had taken in this case he reported that two members of the 7th MMB were under investigation. More importantly, he claimed that “pursuant the order of the 7th MMB, a battalion commander, company commander and several other 7th MMB officers were relieved of their duties in Kakanj on 23 June for failing to carry out an order to prevent crime and looting.”¹³⁶

9.4.5.

This is the only document that I have found in which the Corps as well as the Brigade Command had taken the measures as they were legally obliged to. However, there is no evidence in the documents whether the 7th MMB actually had relieved these officers.

9.4.6.

In general, it seems that Hadžihasanović used to accept the reports of the subordinate headquarters or asked them to provide him with information on how many criminal charges they had instituted so far, against how many individuals and for which case.¹³⁷ Nothing of what I have seen leads me to the assumption that he had then generally started further investigation or had asked for more details of the individual case. Without further investigation and based only on the reports from 7th MMB he reported to the Supreme Command that there were no grounds for taking criminal actions against individuals.¹³⁸

9.4.7.

On 18 April 1993 —~~after the killings in Miletici, but again without making any reference to them~~—he warned, that if members of some units still proceed with acts of looting and

¹³² PT 24.

¹³³ PT 136.

¹³⁴ On the other hand, Hadžihasanović was very active in persuing offences against military discipline. So he wrote to the Commander of 1st (ABiH) requesting him to deal with a case in which 35 soldiers of the ABiH had abandoned their positions even though this unit „may not actually be in our area of responsibility but next to it.“ (PT 508).

¹³⁵ PT W615.

¹³⁶ PT W538.

¹³⁷ PT775.

¹³⁸ PT 32.

torching, their commanders should be held responsible and replaced in serious cases.¹³⁹ In many similar documents – e.g. after the murder in Maline, by his order dated 10 June 1993¹⁴⁰ – he instructed his subordinate commanders of brigades and OGs to take strict measures against criminals. These measures would range from on-the-spot removal from duty, arrest up to the institution of criminal proceedings before the military and special courts.¹⁴¹

9.4.8.

For example, on 16 June, he specifically addressed the criminal activities committed in Guča Gora by ordering the commander of 306th Mountain Brigade to combine military police forces from different units with the task of preventing looting and burning.¹⁴² On the same day he ordered all his subordinate units to look into the criminal activities. He demanded that each individual case be forwarded to this command and he made his brigade commanders personally responsible for accurate reporting. He ordered his subordinate commanders to install special commissions in order to conduct verification of the received information.¹⁴³

9.4.9.

However, it seems that he did not inquire any more after he received the replies to this request from his commanders and in particular from the commander of 7th MMB who stated that the alleged criminal actions were incorrect and that there were no founded arguments that would ascribe such negative actions to members of his unit. He continued that, if such criminal actions had taken place at all, they must have been committed by other units.¹⁴⁴ Hadžihasanović seems to have accepted this report and took no further actions.

9.4.10.

In this attitude Hadžihasanović was supported by the Supreme Commander of ABiH, Sefer Halilović, who told Hadžihasanović that he should not care too much about criminal activities committed in his area of responsibility. At that time Stepan Siber, Halilović's deputy, conducted an inspection in the 3rd (ABiH) Corps and had reported criminal activities in the 3rd (ABiH) Corps area. Siber even proposed to relieve the Deputy Commander 3rd (ABiH) Corps, Dzemo Merdan, since – so the results of Siber's investigation – Merdan was personally responsible for the commitment and cover up of criminal activities. On 15 June 1993, Halilović called Hadžihasanović and referred to Siber as a "fool who creates problems". In this telephone call he advised Hadžihasanović not to be bothered by Siber's report since he, Halilović, and not Siber was the one in charge of command and control. Therefore, Siber's report would end up "in a trash bin" and – referring to a replacement of Merdan – he ensured Hadžihasanović that there would be "no changes".¹⁴⁵

9.4.11.

On 23 June 1993, both the Minister of Interior and the Minister of Defence wrote to Hadžihasanović "about serious security problems in the area under your jurisdiction. This refers particularly to the increased incidents of civilian arrests by various Police Brigades, killings of civilians, robbery and aggravated theft and overstepping official authority ... perpetrators of the most serious crimes (are) not being discovered and the population is moving out of fear ... The facts indicate that an increasing number of members of the Armed

¹³⁹ PT 1446-PT 39.

¹⁴⁰ Details see above in para. 8.17.

¹⁴¹ PT 168.

¹⁴² PT 68.

¹⁴³ PT 181.

¹⁴⁴ PT 72.

¹⁴⁵ PT 1141.

Forces are among the perpetrators of the most serious crimes ...”¹⁴⁶ Again, the documents give no evidence that Hadžihasanović had taken any actions in response to this letter.

9.4.12.

In line with this was his attitude to a request by President Izetbegović to investigate in an alleged massacre of 25 Bosnian Croats in Maline on 08 July 1993. Hadžihasanović asked the commander of the OG to forward the names of the units operating in Maline and asked whether the massacre had actually taken place.¹⁴⁷ Based on the answer he received from Alagić and without any further inquiries he then reported to the Supreme Command Staff that there had not been any massacre.¹⁴⁸ Delić, the Commander of the Supreme Command Staff, accepted this report and forwarded this information to the Minister of Defence.¹⁴⁹

9.4.13.

With the one exception of the measures taken after the looting in Kakanj, the documents did not reveal any other case in which Hadžihasanović had accused, reprimanded or replaced a commander for not initiating the appropriate measures against the perpetrators. In all his orders he showed that he initiated the measures that he – as a military commander – should have taken to obtain the information for further inquiries, and this was the right way to pursue the perpetrators. But this is as far as the accused went, while follow up can not be found.

9.4.14.

However, in a report on the “Legality in the ABIIH” dated 10 August 1993, Hadžihasanović stated that there were quite a large number of cases forwarded to the “Military-disciplinary Court of the 3rd Corps command,” but that there was “not a single member of the 3rd Corps Command (that) has committed a disciplinary offence.”¹⁵⁰ He then explained the situation of the two District Military Courts in Travnik and Zenica and commented on their legal proceedings which he deplored as “alarming and intolerable”. He complained “that there are hundreds of unfinished, very difficult cases which lie there for a year (murder, rapes and similar), and that can produce a catastrophic result for the enforcement of order and legality in that area, and even in the combat morale...” But summarising the situation he came to the conclusion that “regarding the criminal offences that have been committed, not a single one was committed by any of the members of the 3rd Corps Command.”¹⁵¹

9.4.15.

Based on the documents I have looked through, there are singular cases in which Hadžihasanović undertook the measures as the law obliged him to do, but there is no evidence that he was generally very active in investigating against the criminal activities of the Mujahedin and against the perpetrators in the 7th MMB nor was he doing all the things necessary to prevent further criminal activities in his area of responsibility.

¹⁴⁶ PT 617.

¹⁴⁷ PT 105.

¹⁴⁸ PT 108.

¹⁴⁹ PT 109.

¹⁵⁰ PT 780.

¹⁵¹ These declarations are in consonance with a report of the Canton Court in Zenica dated 10 May 1993, stating that „as far as the members of the BH Army are concerned, according to the records of the Court, no cases were processed...during the existence of the court.“ (PT 1156).

9.5. Actions taken by Amir Kubura

9.5.1.

The behaviour of the commander of 7th MMB, Amir Kubura, mirrors that of his corps commander. As an example for similar measures taken by Kubura, an order issued by his command to his subordinate commanders on 22 June 1993 – probably based on information received about criminal activities of his soldiers in Maline, Bikosi, Guča Gora, Travnik and Cukle in June 1993 – stating that arresting innocent civilians, particularly women and children and taking them into custody are strictly forbidden. He made his commanders responsible to him for the implementation of his order.¹⁵² However, there are no indications that further and more stringent action had been taken by Kubura.

9.5.2.

On 4 November 1993, the commander of 306th Brigade reported criminal activities of 7th MMB soldiers during the operations against Vareš. The documents reveal that Kubura again took no action against his own soldiers. On the contrary, he seemed to have accepted the combat report of the commander of his 2nd battalion who called his action in Vareš successful and claimed that looting and theft of property had been prevented very effectively.¹⁵³ I would have expected him to have contacted the commander of 306th Brigade for more detailed information since the two reports he had received were highly contradictory. I would have assumed that he – as the responsible commander – should have been interested in exculpating his soldiers from the accusations made by the commander of 306th Brigade. To do so, it would have been his duty to question the officers and soldiers of the 2nd battalion on the statements made by the commander of 306th Brigade, in order to verify the report of the battalion commander. Apparently, he had not done that. Kubura later flatly denied that any criminal activities were committed in Vareš.

10. SUMMARY

10.1.

Criminal activities of soldiers of 7th MMB and of Mujahedin were known and the main actions taken by the corps commander and the commander of 7th MMB in order to prevent their continuation was to issue written orders. In the wording of their many orders to their commanders, the accused were always very strong and outspoken.

10.2.

In the documents that I reviewed there was little evidence suggesting that the two accused honoured their legal obligation to impose disciplinary punishment because of criminal acts or violations against the international laws of war or to initiate criminal prosecution. On the other hand, there are documents proving that the same commanders were enforcing disciplinary punishment for the sake of internal stability and internal morale of their units.

10.3.

Both commanders, Hadžihasanović as well as Kubura, possessed de jure and de facto the power and authority to prevent a subordinate from committing a crime or to punish perpetrators if they committed a crime. Both had effective control over the actions of their subordinates, i. e. Hadžihasanović also over the actions of Kubura. Based on my military experience I would conclude that any commander who has effective control over his

¹⁵² PT 191.

¹⁵³ PT 203.

subordinates to the extent that he can prevent them from committing crimes or punish them if they committed crimes, would be held responsible for the commission of the crimes.

10.4.

I would have expected the two accused commanders not to be satisfied with written reports received from subordinate formations and with their own written directives in which they gave orders to comply with the provisions of criminal law and international law. Based on the analysis of the material given to me, I would have assumed that they had started investigations against the perpetrators and had imposed disciplinary measures or initiated criminal prosecution against the offenders. However, with the exception of one case, all they seemed to have done was to issue directives stipulating that criminal acts or acts violating international law must cease immediately and that the individual commanders must be held responsible for the implementation of the required measures, or possibly even threatening them with removing them from their positions.

10.5.

All the aforesaid and the documents I reviewed suggest the following conclusions: There is very little evidence that the accused have taken any strong measures against any of the crimes alleged in the Amended Indictment. With the exception of the massacre of Maline, the burning and looting at Vareš and Zenica and the cruelties inflicted on clergymen as well as the demolition of a church in Guča Gora, I did not find any report or any other reference or written order specifically addressing or referring to one concrete case mentioned in the Amended Indictment.

Klaus Reinhardt, General (ret)

Annex A

In order to allow the Trial Chamber to judge my competency to comment on this case, I provide the following information on my personal and military background:

1. I was born on 15 January 1941 in Berlin, but I spend most of my childhood and youth in Garmisch-Partenkirchen, Germany, where I attended grammar and high school.
2. In 1960, after graduation, I embarked on a military career as an officer candidate with the mountain infantry in Mittenwald, where I served five years as a platoon leader (a platoon consists of about 40 soldiers) before I took up my studies of history and political sciences at the University of Freiburg, Germany, in 1967. I graduated in 1972 and obtained my doctorate with a thesis on the failure of Hitler's strategy in the Second World War.
3. After my assignment as a company commander from 1972 to 1974 with the mountain infantry (a company consists of about 150 soldiers), I attended the Command and General Staff Officer Course at the Bundeswehr Command and General Staff College in Hamburg, Germany. In 1975, I went from there on to the US Command and General Staff College at Fort Leavenworth, Kansas. Back in Germany in 1976, I went through a number of assignments such as G3 Staff Officer in NATO's HQ CENTAG in Heidelberg, Military Assistant to the Vice Chief of Staff of the German Armed Forces and Commander of 231st Mountain Infantry Battalion in Bad Reichenhall from 1980 to 1983. My battalion consisted of some 800 men. In 1983, the then Minister of Defence, Dr. Manfred Wörner, asked me to become the Senior Military Assistant in his office.
4. After an assignment as Commander of the Bundeswehr's only Mountain Infantry Brigade from 1986 to 1988 (this special brigade was by far the largest German brigade and consisted of about 6000 men), I returned to the Ministry of Defence as a Brigadier General serving as Deputy Chief of Staff (Plans) of the German Armed Forces. In this position, I was responsible for the procurement, the structure and the reorganisation of the German Armed Forces. Amongst others, this task included the Bundeswehr's structural reform and the military amalgamation of the Bundeswehr and the former East German Army in 1990. During this process, I have learned a lot from East German and Russian officers about their military training and doctrine as well as their mental attitudes.
5. In October 1990, I was promoted to Major General and assumed command of the Bundeswehr Command and General Staff College, the German Armed Forces' highest training institution in which all staff and general staff officers are trained and educated. I opened the Command and General Staff College for the students from eastern European countries, which earned me an honorary doctorate from the University of Budapest, Hungary. Again, in this time I acquired a deep inside knowledge of the military education and thinking of officers from the former Warsaw Pact countries.
6. In 1993, I was promoted to Lieutenant General and took command of III (GE) Corps in Koblenz, which consisted of the 2nd (GE) Panzergrenadierdivision, the 5th and the 10th (GE) Panzerdivisions plus some 30.000 men as corps troops. The strength of the entire corps was about 90.000 men. Within the framework of the new German Army structure, I then had to disband III (GE) Corps including two of its divisions.
7. From April 1994 onwards, I built up the German Army Forces Command in Koblenz as the new coordinating agency for the Bundeswehr's operations abroad. As the commander, I was in charge of German deployments to Somalia, Croatia (UNPROFOR) and Bosnia-Herzegovina under the Implementation and Stabilisation Forces (IFOR and SFOR).

8. My military career culminated in April 1998 with the assignment as Commander of Allied Land Forces Central Europe (LANDCENT) in Heidelberg, Germany. In this position, I had the chance to play a role in the process of NATO's structural reform in Europe. Under this reorganisation, NATO's main tasks were redefined, making the support of peace missions a new and equally recognised task put on the same footing as the conventional deterrence of potential aggressors.
9. In October 1999, the NATO nations assigned me as commander of the International Peace Force in Kosovo (KFOR). In this position I commanded 50,000 soldiers deployed from 39 nations, including i.a. four Russian battalions and 1,200 soldiers from the United Arab Republic.
10. After returning from Kosovo in the spring of 2000, I reorganized my headquarters in Heidelberg into Joint Headquarters Centre (JHQ CENT), a multinational command that comprises soldiers from all services. In this position, I was responsible for the integration of the Czech and Polish land forces into NATO. In Heidelberg I retired from active duty on 1 April 2001.
11. Today, I live in Starnberg, Bavaria, where I work as an author and independent journalist. I am married and have two sons (35 and 24).